



Americans with Disabilities Act lawsuits against businesses on the upswing in Alabama

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Julie-Anne Dentici, Ed Zwilling, and David Higginbotham

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BIRMINGHAM, Alabama - A law designed to break down barriers for disabled patrons has led to a flurry of lawsuits around Birmingham. The volume

of legal action has made Alabama an outlier among states in the Southeast.

Dozens of small restaurants and bars in the Birmingham area, from Mountain Brook to Southside, have been hit with lawsuits this year claiming violations of the Americans with Disabilities Act.

Business owners say they are quick to fix any problems and don't have a problem complying with the law. But they believe the small group of disabled individuals, and their lawyer, have other motives.

Crestline Bagel Co. and Taco Mama, two neighboring businesses in Mountain Brook, were sued July 9 by Julie-Anne Dentici, a 33-year-old Homewood woman who has cerebral palsy. That same day her suit against Iron City Live -- a grill, bar and concert hall in Birmingham -- also was filed.

The three lawsuits are among a dozen Dentici has filed so far this year claiming businesses in Jefferson and Shelby counties violated the ADA. The lawsuits list a variety of barriers to her moving around in the businesses in her wheel chair, including the restrooms.

"I just like to make sure things are as accessible as they can be," Dentici said. "Nothing will make a person more uncomfortable than when they can't go to the bathroom."

In all, Dentici and several other disabled people this year have filed 45 ADA lawsuits in Jefferson and Shelby counties. All but one, a lawsuit against the City of Birmingham regarding sidewalks, was against restaurants and other businesses. One Birmingham attorney, Edward Zwilling, has handled 33 of the cases.

Another attorney from outside the Birmingham area also has clients who have filed most of the other lawsuits against businesses in Jefferson and Shelby counties.

The lawsuits are among 124 filed so far this year in Alabama. It's a 288 percent increase from the 32 filed last year in the state. This year's total is also more than the past 10 years combined.

Nationwide the number of ADA lawsuits - against businesses and local government over access issues - so far this

year is already 27 percent higher than all of last year, according to an analysis of federal court filings by **AL.com**.

Business owners say they don't have a problem with fixing ADA issues brought to their attention. Most are simple to make.

However, they say, legal fees piled on top of the costs of repairs - sometimes thousands of dollars - are driving up their price of doing business. And often the business ends up paying the legal fees for the person who sued them.

Scott Lander, facility manager for Iron City, said they don't have a problem making the requested changes to become ADA-compliant. "I just don't like the way they are doing it," he said. "They've provided us a list of things they would like to see changed. A lot of them are reasonable and a lot of them are not."

Jennifer Yarbrough, owner of Crestline Bagel, said they quickly corrected the items Dentici had listed but then turned around and fought the lawsuit.

"I think ADA laws were created for very good reasons - to make businesses accessible for everyone," she said.

But Yarbrough said they felt the lawsuit was motivated by money rather than an attempt to correct problems.

"We felt it was wrong," she said.

The lawsuit against Crestline was mutually dismissed in October with both sides taking care of their own legal costs and fees, according to a federal court document.

But it's not always the case.

The leader of one group that represents the food service and hospitality industry in Alabama said they have seen a "rash of frivolous ADA lawsuits" against businesses in Alabama and around the nation.

"Our state has become the target of plaintiffs' lawyers who are taking advantage of Alabama's hardworking entrepreneurs," said Mindy Hanan, president of the Alabama Restaurant and Hospitality Alliance.

"The Americans with Disabilities Act has the noble purpose of providing those with disabilities access to places of public accommodation such as hotels, retail stores and restaurants," Hanan said. "However, the law falls terribly short in that businesses should be given the right to cure the defects before being subjected to such harsh penalties."

Among the most common issues in the lawsuits are: handrails, soap dispensers and tables not at the correct height, inadequate handicap accessible parking, restrooms and doors inaccessible to wheelchairs, and poor viewing at concerts.

"Many of the violations are technical in nature, but the law is written in such a way that it is better for the business to settle than face the mandatory litigation costs and attorneys' fees they will be assessed if they fight rather than settle," Hanan said in an email to **AL.com**.

Hanan said the alliance is seeking any legal, regulatory or legislative relief for Alabama small businesses from the filing of the lawsuits.

"We continue to explore solutions to help protect Alabama's business owners from frivolous lawsuits while balancing the accessibility needs of our disabled citizens," Hanan said. "Unless and until we can reach a federal solution to this problem, a business owner's only defense is to educate themselves the best they can on the ADA requirements and do their best to comply."

Heads up?

Crestline Bagel and several other businesses never got a request to fix anything or a warning that a lawsuit was about to be filed if they didn't fix them.

John's City Diner also never got a warning before being sued by Dentici this year, said John's attorney Freddy Rubio. The restaurant immediately fixed and solved everything to the satisfaction of the plaintiff and the lawsuit was closed.

"We never got an opportunity to resolve these short of a lawsuit having been filed. We never received a letter," Rubio said. "While I understand they have a remedy under the law, surely that was not the only remedy ... There are a lot of businesses in Alabama that would act if you would just ask."

Zwilling said he does occasionally write letters on behalf of Dentici and other disabled clients to point out access problems. Typically the letters are written when the issues are very obvious and simple, and can be removed without any extraordinary expertise, he said.

But when there is a laundry list of issues and it becomes a question of how to fix the barriers and prioritize the constructions, then he believes litigation is the best way to get the businesses' attention and get the changes, Zwilling said.

"When I file a lawsuit I'm still trying to find a collaborative solution," Zwilling said. "Very rarely are these cases litigated. One hundred percent of the cases I have filed have been settled."

After filing the lawsuits, Zwilling said he tries to set up a meeting with the business and experts, come up with a plan to fix the problem and then settle the case. Most of the lawsuits are closed within a matter of several months, court records show.

David "Big Dave" Higginbotham, 60, who has filed 15 lawsuits this year through Zwilling against Birmingham area bars and restaurants, isn't fond of sending letters.

"It has been 24 years. How the hell much longer do we have to wait for compliance," he said, referring to the age of the ADA.

Paid?

Since settlements in the cases are confidential, it's not clear how much money the businesses are paying for legal and other expenses.

Zwilling said he does get attorney fees, but he tries to keep those costs down by settling the case quickly "so assets can be put toward barrier removal."

But Higginbotham, who also uses a wheelchair, and Dentici said they don't get any money from the lawsuits they have filed.

"No, no, no," Dentici said.

The only thing they get out of it is access to the restaurants, bars and businesses they enjoy visiting, they both said.

"We want to go out with our friends and socialize. We want to be treated as equals," Higginbotham said.

Dentici said one of the frustrations she has had is showing up to meet friends at a restaurant and finding out she can't get her wheelchair in the door. That results in a flurry of texts with her friends inside to figure out another place to go, she said.

A few lawyers said they don't see an attempt by Zwilling and others to collect fees.

"I find them to be reasonable folks. They don't bring frivolous cases," said James Ward, a lawyer who has defended a few businesses against ADA lawsuits. "I never felt they filed it to make a fee."

Codes

Several businesses also complained they had only opened in the past few years and questioned why the city didn't catch any of the ADA issues before granting them licenses or permits to open.

"Where's the accountability of the code checkers," said Lander.

Many other businesses that have opened in the past few years did so in older, renovated buildings. But that doesn't mean those businesses are immune from having to comply with the latest ADA regulations, which were last updated in 2012, several officials said.

"There are certain things you have to do," said Linda Coleman, director of ADA compliance for City of Birmingham services and facilities.

While she's not responsible for making sure businesses in the city are in compliance, Coleman said she has worked to raise awareness among businesses regarding their ADA responsibilities. She's also conducted a recent seminar with the Birmingham Business Alliance.

Zwilling said businesses in old or even historic buildings have to comply with ADA to a point. "The bottom line is they

don't have to do things that are costly or difficult," he said.

By making the changes, businesses can qualify for tax credits, too, Zwilling and Coleman said.

Why now?

Zwilling has specialized in ADA access for more than a dozen years and has filed more than 600 lawsuits across the nation. A decade ago many of the suits brought in the Birmingham area were against cities.

Those lawsuits sought to correct access to public buildings or problems with sidewalks and other issues. Among his cases was a 2002 federal lawsuit that called for the Birmingham-Jefferson Convention Complex to become accessible to people with disabilities. The suit was filed on behalf of plaintiffs who are deaf and blind as well as those who use wheelchairs. The suit was settled in 2004.

Zwilling said his clients are the ones who approach him about filing lawsuits and doesn't know why the number of ADA lawsuits has skyrocketed locally this year against small businesses.

The Wall Street Journal recently reported that a decision in one ADA case last year by the 11th Circuit Court of Appeals allowed people don't have to be patrons but can be "testers" for disabled-access compliance - opening up the ability for individuals to become serial testers.

Both Dentici and Higginbotham said they were patrons of the businesses when they noticed problems - and didn't just "drive by."

Higginbotham has been involved in filing ADA lawsuits for at least the last six years including one that resulted in the City of Birmingham signing a consent decree to fix sidewalks in a northern section of the city. He said this year's flurry of lawsuits came as a result of frustration late last with a few Birmingham festivals that were not handicap accessible, particular with restrooms.

Dentici couldn't explain why she has pursued filing more lawsuits this year than previous years.

A graduate of Mountain Brook High School and Jacksonville State University, Dentici first approached Zwilling about filing a lawsuit several years ago against a Birmingham restaurant that had queue lines in which she couldn't maneuver her wheelchair.

Dentici said she wasn't looking to be a trouble maker when she filed that first suit.

"I wanted to be an advocate because it was a blatant disregard for civil rights," she said.

Many of the restaurants she has filed lawsuits against in recent years are places she likes to visit and wants to enjoy like everyone else, Dentici said.

"I know that I will be coming back, that I will be giving them money and partaking in their food," she said.

ADA lawsuits seeking access to businesses or government services by federal districts in Alabama:

Year	Statewide	Middle District	Northern District	Southern District
2014	124	45	77	2
2013	32	16	16	0
2012	16	10	6	0
2011	15	7	7	1
2010	9	3	5	1
2009	10	1	5	4
2008	1	0	1	0
2007	6	1	5	0
2006	8	3	5	0
2005	8	6	2	0
2004	0	0	0	0
Totals	229	92	129	8

Note: The Northern District includes Birmingham and Huntsville, the Middle District includes Montgomery and the Southern District includes Mobile. The 2014 numbers are to Nov. 1.

ADA 25th Anniversary

The ADA became law in July 1990. That civil rights law prohibits discrimination and guarantees that people with disabilities have the same opportunities as everyone else to employment opportunities, to purchase goods and services, and to participate in state and local government programs and services, according to the Department of Justice.

As the 25th anniversary of the ADA approaches, there has been an increase in ADA lawsuits filed in federal courts across the nation.

So far, 4,060 lawsuits have been filed in the first 10 months of this year. That's a 27 percent jump from the 3,192 filed all of last year nationwide.

The lawsuits include those filed against local governments for issues such as access to government buildings or to repair sidewalks.

James Tucker, director of the Alabama Disabilities Advocacy Program (ADAP), said that under the law the disabled must not only have access to the building or event, but must be able to be able to access all the service offered

