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ADA Audio Conference Series  
April 19, 2016

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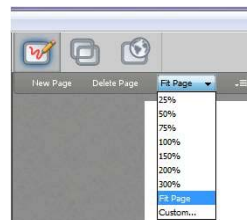


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## Hot Legal Topics in Accessible Transportation

ADA Audio Conference  
ADA National Network  
April 19, 2016

Presented by:  
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Valuable assistance provided by  
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## Outline of Today's Presentation

- Air Carrier Access Act
- Ride sharing & taxi litigation
- Public Transportation
- Private Transportation
- Questions

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## Air Carrier Access Act



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## ACAA: Private Right of Action

- Enacted in 1986 after airlines were found not to be covered by Section 504 of the Rehabilitation Act
- 2 circuits interpreted the ACAA to imply a private cause of action
  - ✦ *Shinault v. Am. Airlines, Inc.*, 936 F.2d 796, 802 (5th Cir.1991)
  - ✦ *Tallarico v. Trans World Airlines, Inc.*, 881 F.2d 566, 570 (8th Cir.1989)
- 2001: Supreme Court narrowly interpreted when a statute can have an implied cause of action in *Alexander v. Sandoval*, 532 U.S. 275 (2001) (not about ACAA)
- Since then, courts have found there to be no private cause of action
  - ✦ *Lopez v. Jet Blue Airways*, 662 F.3d 593 (2d Cir. 2011)
  - ✦ *Boswell v. Skywest Airlines, Inc.*, 361 F.3d 1263 (10th Cir. 2004)
  - ✦ *Love v. Delta Air Lines*, 310 F.3d 1347 (11th Cir. 2002)
- Enforcement = Complaint with the Dep't of Transportation

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## ACAA: Any Relief in Federal Courts

### ***Gilstrap v. United Air Lines, Inc.***

709 F.3d 995 (9th Cir. 2013)

- Passenger with osteoarthritis asked for a wheelchair to assist her
- Alleged that United provided inadequate assistance:
  - ❖ Rude treatment from employees – agents yelled at her; expressed skepticism that she needed the wheelchair; directed her to stand
  - ❖ Delays in providing her a wheelchair
- Claims under state tort law (negligence) and the ADA
  - ❖ ACAA/DOT regs: Air carriers must provide assistance in transporting a passenger with a disability from the terminal entrance through the airport to the aircraft and from the aircraft through the airport to the terminal entrance, including providing assistance in areas such as ticket counters and baggage claim.

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## ***Gilstrap: ACAA as Standard for State Law Claim***

### **9<sup>th</sup> Circuit**

- Air Carrier Access Act
  - ❖ Did not address whether ACAA may be enforced through private lawsuits because was not an issue in this case
- State law tort claim can proceed
  - ❖ Even if there is no federal cause of action under ACAA, the ACAA can be the basis for a state law tort claim
  - ❖ ACAA establishes the standard of care owed to a passenger with a disability
- ADA claim should be dismissed
  - ❖ Portion of an airport terminal controlled by an air carrier is *not a place of public accommodation under Title III of the ADA*

Case settled following remand and subsequent motion to dismiss

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## ACAA: Recent DOT Enforcement

### ***DOT Agreement with United Airlines*** **DOT-OST-2016-0002 (available on regulations.gov)**

- DOT complaints for failure to:
  - ❖ Provide “prompt and adequate assistance” on and off planes
  - ❖ Provide such assistance moving through various terminals including (O’Hare, Houston, Denver, Newark and Dulles Int’l)
  - ❖ Return wheelchairs or mobility aids promptly in same condition
- Significant rise in the number of disability-related complaints from consumers in 2014
- **1-7-2016:** DOT issued consent decree for ACAA violations
- \$2 fine + order to cease and desist from similar conduct

Press release: [www.transportation.gov/briefing-room/united-fined-violating-airline-disability-tarmac-delay-rules](http://www.transportation.gov/briefing-room/united-fined-violating-airline-disability-tarmac-delay-rules)

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## ACAA: Recent DOT Regulation re Website Accessibility

Effective December 12, 2013

- Airlines must make websites accessible
  - ❖ 2 years to modify website pages with core travel information
  - ❖ 3 years to modify all other web pages accessible
- Specifies WCAG as the proper standard
- Applies to U.S. and foreign airlines, so long as foreign airline has a website that markets air transport to U.S. consumers for travel within, to, and from the U.S.
- Ticket agents must disclose and offer web-based discount fares to customers unable to use their websites due to a disability
- After the website is accessible, airlines must still offer equivalent services to passengers with disabilities unable to use websites

[www.regulations.gov/#!documentDetail;D=DOT-OST-2011-0177-0111](http://www.regulations.gov/#!documentDetail;D=DOT-OST-2011-0177-0111)

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## DOT: Notice of Intent

Published December 7, 2015

- DOT published a Notice of Intent to initiate a rule making process about several issues
  - ❖ Accessibility of in-flight entertainment
  - ❖ Supplemental medical oxygen
  - ❖ Service animals
  - ❖ Accessible lavatories on single-aisle aircraft
  - ❖ Seating accommodations
  - ❖ Carrier reporting of disability service requests.

<https://www.federalregister.gov/articles/2015/12/07/2015-30764/nondiscrimination-on-the-basis-of-disability-in-air-travel-consideration-of-negotiated-rulemaking>

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## Accessible In-flight Entertainment

January 26, 2016: Agreement between NAD and GoGo, Inc.

- NAD represented by DREDF and CREEC
- GoGo provides broadband connectivity and wireless entertainment for the aviation industry
- First agreement of its kind with an in-flight entertainment company
- GoGo has added technology for customers to display closed captions for content with closed captions sourced by GoGo
- GoGo has also begun sourcing new content with closed captions
- GoGo will replace all existing sourced content with content that has closed captions by June 30, 2017

<https://nad.org/news/2016/1/nad-and-gogo-llc-agree-make-closed-captions-available-flight-entertainment-systems>

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## ACAA: Emotional Support Animals

- ACAA permits service animals and emotional support animals
- Permissible questions/documentation depends on type of animal
- If an individual has an obvious disability and
  - ❖ Animal is wearing a harness, tags, vest or backpack
  - ❖ Person provides ID cards or other written documentation or
  - ❖ Person provides credible verbal assurances that the animal is a service animal
- Then the airline should permit the animal to accompany the individual on the plane
- If still uncertain, can ask: (1) What tasks or functions does your animal perform for you? (2) What has the animal been trained to do for you? (3) Would you describe how the animal performs this task or function for you?

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## ACAA: Emotional Support Animals

- **For emotional support or psychiatric service animals:**
  - ❖ Airlines may request more specific documentation 48 hours in advance of the flight to substantiate the need for the emotional support animal or psychiatric service animal
  - ❖ Documentation does not have to state the person's diagnosis, but it must be:
    - Current
    - On the letterhead of a licensed mental health professional
    - State that the animal is needed as an accommodation for air travel or for activity at the individual's destination

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## 504 Claim Against TSA

### *Ruskai v. Pistole* 775 F.3d 61 (1st Cir. 2014)

- Plaintiff has a metallic joint replacement
- Under TSA security procedures, she must undergo a standard pat-down in certain circumstances (no AIT scanner)
- She petitioned TSA to change its protocols, filed administrative complaints, and ultimately filed this lawsuit alleging violations of the Fourth Amendment and Section 504 of the Rehab Act
- Rehab Act: TSA security measures have a disparate impact on people with disabilities
- Requested that TSA conduct a metal-only search using a hand-held metal detector (HHMD), supplemented by inspection of medical documentation, and a limited pat-down

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## 504 Claim Against TSA

### **Court: Found for TSA**

- Noted that DHS's response to administrative complaint was "unacceptably dismal"
- Still, concluded that Plaintiff was not denied "meaningful access" to secure side of checkpoint or screening program
- Even if she were, her request for modified screening would constitute a fundamental alteration to the TSA security program
- Would have to expand use of HHMD, eliminate benefits in standardization, training and flexible personnel assignments that are achieved with the same standard procedures
- Given "extraordinary safety concerns," TSA's refusal to change standards is not a violation of Section 504

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## Air Carrier Access Act Resources

- DOT: Air Travelers With Disabilities: Technical Assistance Manual for Airline Employees, Contractors, and Travelers
  - ❖ [www.dot.gov/airconsumer/air-travelers-disabilities-technical-assistance-manual-airline-employees](http://www.dot.gov/airconsumer/air-travelers-disabilities-technical-assistance-manual-airline-employees)
- DOT Guide for Air Travelers with Developmental Disabilities
  - ❖ [https://www.transportation.gov/sites/dot.gov/files/docs/Developmental\\_Disabilities\\_Guide.pdf](https://www.transportation.gov/sites/dot.gov/files/docs/Developmental_Disabilities_Guide.pdf)
- Complaint with DOT/Aviation Consumer Protection Division
  - ❖ <http://airconsumer.ost.dot.gov/ACAComplaint.htm>
- DOT hotline (includes addressing complaints in real time)
  - ❖ <http://airconsumer.ost.dot.gov/hotline.htm>
- Each airline has a Complaint Resolution Official at the airport or by telephone to resolve disability related complaints as they happen

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## Ride Sharing & Taxi Litigation

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## The Issue: Emergence of Ride Sharing Businesses

- Recent emergence of ride sharing businesses (such as Uber and Lyft) - A/K/A Transportation Network Providers
- Uber launched in 2009 and has grown rapidly – worth estimated at \$62.5 billion
- Lyft launched in 2012 – worth estimated at \$2.5 billion
- Using an app, passengers are connected with drivers
- Many complaints from passengers with disabilities that drivers were discriminating against them
- Like any new company/business, questions emerged about ADA applicability
  - ❖ And if so, which ADA provisions apply?
  - ❖ And if so, what are the requirements? Wheelchair accessible vehicles?

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## Are Ride Sharing Businesses Covered by the ADA? If so, what part of the ADA?

### ***Ramos v. Uber Technologies, Inc***

2015 WL 758087 (W.D. Tex. Feb. 20, 2015)

- Plaintiffs are three individuals with mobility disabilities who use wheelchairs
- Allege that Uber and Lyft violate Title III of the ADA b/c they:
  - ❖ Have no vehicle-for-hire services for individuals who use wheelchairs
  - ❖ Allow their drivers to deny services to people with disabilities
  - ❖ Provide no training about serving customers with disabilities
  - ❖ Have no mechanism to service individuals who use wheelchairs
- Bring claims under § 12184 (specified transportation services)
- Uber/Lyft file a motion to dismiss with a number of arguments

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## Ride Sharing Litigation

### Background on Title III

- Title III prohibits discrimination by:
  - ❖ places of public accommodation § 12182
  - ❖ private entities providing certain services, including specified transportation services primarily engaged in the business of transporting people § 12184
- DOT promulgated specific regs for § 12184
- Regs incorporate certain § 12182 requirements

**Uber argues:** Title III only applies to places of public accommodation

**Lyft similarly argues:** Plaintiffs must establish that Lyft is a place of public accommodation to be subject to § 12184

**Court:** No. Title III applies to places of public accommodation and to specified transportation services primarily engaged in the business of transporting people

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## Ride Sharing Litigation

**Lyft/Uber argue:** Not subject to § 12184

- Do not provide **specified public transportation services**
- **Not engaged in business of transporting people but rather are a mobile-based ridesharing** platform to connect drivers/riders
- Do not own vehicles; connect people with particular skills/assets to connect with people looking to pay for skills/assets

**Court:** Plausibly subject to § 12184

- ADA applies to situations not expressly anticipated

**Lyft/Uber argues:** No violation of provision requiring training (49 C.F.R. § 37.173) of personnel because it doesn't employ drivers

**Court:** Whether drivers are "personnel" is not an issue that can be decided on a motion to dismiss

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## Ride Sharing Litigation

**Uber argues:** We have no ability to require drivers to modify personal vehicles or control conditions

**Court:** Court disagrees

- “Disingenuous” to argue that it has no control over its drivers--has at least some control over drivers
  - ❖ Requires license, car insurance, clean record, 4-door vehicle
- Plausible that Uber can modify its app to permit riders to request a specific type of vehicle

**Status:** Settled under confidential terms (2015)

**Open question:** If companies are subject to ADA, what is required for accessible vehicles?

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## Are Ride Sharing Businesses Covered by the ADA? If so, what part of the ADA?

### *Nat'l Fed. of the Blind of California v. Uber*

103 F.Supp.3d 1073 (N.D. Cal. 2015)

- Organization and individual plaintiffs allege that Uber refuses to transport guide dogs
  - ❖ Examples: Driver shouted “no dogs” and left; driver refused to accept passenger with service animal
- Claims under **42 USC § 12182** (public accommodation) and **42 USC § 12184** (specified public transportation service)
- Uber filed a motion to dismiss – only argues that it is not a place of public accommodation
  - Cites 9<sup>th</sup> Circuit opinions finding places of public accommodation must be physical places
- **Court:** Denied motion to dismiss – Plaintiffs’ claim can proceed

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## Ride Sharing Litigation

- ADA lists 12 categories of places of public accommodation
- Plaintiffs allege that Uber falls within “travel service” category
- ADA doesn’t define travel service
- Court cites *Carparts Distrib. Ctr. v. Auto. Wholesaler’s Ass’n*:
  - ❖ “By including ‘travel service’ among the list of services considered to be ‘public accommodations,’ Congress clearly contemplated that ‘service establishments’ include providers of services which do not require a person to physically enter an actual physical structure.”
- No binding law that Uber’s services are precluded from regulation as a travel service
- Therefore, when taking Plaintiffs’ allegations as true, Uber plausibly qualifies as a place of public accommodation

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**Status:** Currently in settlement discussions

## DOJ Position Statement of Interest in *NFB v. Uber*

- An entity could fall within the ADA’s requirements for **transportation service providers** and not the ADA’s requirements for **places of public accommodation**
- DOT regs re: § 12184 broadly define transportation services
  - Taxis and other demand responsive transportation service
  - “Demand responsive” = “any system of providing transportation of individuals by a vehicle, other than ... a fixed route system.”
- DOT regs broadly define what it means to “operate” a service
  - “Operate” = “the provision of transportation services by a ... public entity itself or by a person under a contractual or other arrangement or relationship with the entity.”
- Offered no opinion about whether Uber is a public accommodation

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[www.ada.gov/briefs/uber\\_soi.pdf](http://www.ada.gov/briefs/uber_soi.pdf)



## Snapshot: State/Local Intervention

- Georgia: Bill introduced during the 2015-2016 Session (HB 791)
  - ❖ Has requirements for minimum number of WAVs
- Chicago, IL: Ordinance introduced on 3/16/16
  - ❖ Current ordinance: Applications must permit customers to indicate if they require a wheelchair accessible transportation
  - ❖ Proposed language: Requires a minimum of 5% of the total vehicles available for hire through digital platform to be WAVs
  - ❖ Services must be equal in terms of pricing and response time
- Austin, TX: Ordinance amending city code chapter 13-2
  - ❖ Fund of 10 cents/ride to support riders who need access
  - ❖ Conduct outreach events to publicize need for ADA vehicles
  - ❖ Must have accessible service indicator on app; must ID alternative service arrangement
  - ❖ Prohibits higher fares

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## What are the obligations of a governmental licensing entity?



### *Noel v. New York City Tax and Limousine Commission (TLC)* 687 F.3d 63 (2d Cir. 2012)

- NYC taxis are licensed and regulated by the TLC
- NYC law limits number of yellow cabs – 13,237
- 233 taxis are accessible - 98.2% are inaccessible
- Chances of hailing any taxi in Manhattan within 10 minutes = 87.33%
- Chances of hailing an accessible taxi = 3.31%
- **Lawsuit:** Taxi services in NYC fail to give meaningful access to persons with disabilities in violation of Title II
- **District Court:** Granted partial summary judgment to Plaintiffs

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## ***Noel v. New York City Taxi and Limousine Commission***

### **District court: TLC...**

- is a public entity carrying out a public regulatory function that confers a benefit on NYC cab riders
- cannot discriminate in any of its functions, incl. regulatory activities
- must ensure that persons with disabilities have meaningful access

### **Second Circuit: Vacated ruling for plaintiffs and remanded**

- NYC taxi industry is a private industry – not a City program
- Title II entities cannot administer a license/certification program in a discriminatory manner, but ADA's licensure requirements do not assist persons who are *consumers* of the licensees' product
- Distinguished situation where TLC refused to grant licenses to persons with disabilities otherwise qualified to own/operate a taxi

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## ***Noel v. New York City Taxi and Limousine Commission***

- Distinguished cases finding lottery commission must require all places that sell lottery tickets to be accessible
  - Emphasized lottery commission “furnishes the lottery devices and services that allow the licensee to conduct lottery sales.”
- Makes a statutory construction argument
  - Title III expressly exempts taxi providers from purchasing or leasing “accessible automobiles.” 49 C.F.R. § 37.29(b).
  - If TLC required to ensure that the taxi cab industry provides a sufficient number of accessible taxis, then private taxi owners would be required to purchase or lease accessible taxis even though the ADA exempts them from such requirements
- Footnote that Plaintiffs might have “more force” if TLC failed to include accessible models on its list of possible vehicles, which Plaintiffs argue might happen with “Taxi-for-Tomorrow”

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## NYC Taxi Settlement



- **April 2013:** Court permitted plaintiffs to amend complaint to include challenges to NYC's selection of the Nissan NV200 van as the exclusive taxi vehicle for the next decade
  - ❖ Nissan NV 2000 is not accessible to wheelchair-users
- **December 2013:** Parties announced settlement
  - ❖ Phase-in wheelchair accessible medallion cabs so that 50% will be accessible by 2020

<http://dralegal.org/press/nyc-and-disability-advocates-announce-landmark-settlement-to-dramatically-increase-nyc-taxicab-accessibility/>

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## Private Entity Providing Transportation Services Must Transport Service Animals

### ***DOJ Settlement with Altagracia Roumou***

- Mr. Birnie, a blind individual who uses a service animal, was denied taxi service by Ms. Roumou
- Ms. Roumou did not permit Mr. Birnie in her vehicle but says she did not know he was blind or that his dog was a service animal
- **DOJ Agreement:**
  - ❖ Service animal policy: Welcome all passengers with service animals; no surcharge even if an extra fee is required for the transportation of a pet (sample policy in agreement)
  - ❖ Training required for Ms. Roumou
  - ❖ Monetary relief (\$1,000 to Mr. Birnie; \$1,000 to USA)

[www.ada.gov/roumou-taxi-sa.htm](http://www.ada.gov/roumou-taxi-sa.htm)

See also: [www.ada.gov/golden\\_cab.htm](http://www.ada.gov/golden_cab.htm)

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## Case to Watch: Additional Charges for Accessible Vehicles

### ***Stokes v. Total Transit, Inc. d/b/a Discount Taxi*** **2:15-cv-02363 (D. Ariz.) (Complaint filed Nov. 2015)**

- Class action against one of the largest cab companies in Arizona
- TTI imposes a \$10 surcharge for trips using a van
  - ❖ Applies to regardless whether the van has a lift/ramp or whether customer requires lift/van
  - ❖ Surcharge is not necessarily applied if the customer hails a cab, but because there are so few accessible cabs, it is disproportionately difficult to hail an accessible cab
  - ❖ TTI said needs surcharge to compensate driver for extra expenses with fuel inefficiency and additional time to carry a wheelchair

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## Case to Watch: Additional Charges for Accessible Vehicles

Legal claims:

- TTI is violating § 12184 by
  - ❖ Purchasing and/or leasing new vans that were not accessible
  - ❖ Charging an additional fee for serving passengers with disabilities
  - ❖ Failing to waive the \$10 fee as a reasonable modification
  - ❖ Establishing eligibility criteria (\$10 payment) that screens out people with disabilities
  - ❖ Threatening to discontinue its dispatch service for all vans if Plaintiffs choose to challenge the \$10 charge
- Current status = In discovery

<http://dralegal.org/press/lawsuit-challenges-discriminatory-charge-for-wheelchair-accessible-taxi-service/>

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## Public Transportation

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## ADA & Airports

### ***Harris v. Wayne County Airport Authority*** **14-cv-13630 (E.D. Mich. filed 9/19/2014)**

- Airport planned to relocate its pick-up/drop-off location from the curb at the arrivals level, which is accessible, to the ground transportation center, which is inaccessible and unsafe
- Plaintiffs challenged under Title II of the ADA
- 10/17/14: Settlement reached where Airport will make the ground transportation center more convenient, accessible and safer
  - ❖ Examples: accessible phones, restrooms, drinking fountains; video information system; full-service assistance

Settlement: <http://www.clearinghouse.net/chDocs/public/DR-MI-0006-0004.pdf>

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## Retaliation: After the *Harris* case...

### ***Michigan Flyer v. Wayne County Airport Authority*** **2015 WL 5836052 (E.D. Mich. Sept. 7, 2015)**

- Plaintiffs (private, for-profit transportation companies) operate bus/shuttle services to/from the Airport
- Supported Plaintiffs in the *Harris* case by filing affidavits
- Plaintiffs allege that immediately after settlement, Airport retaliated against them in violation of ADA
  - ❖ Ex: Reducing time buses could stop; forcing drivers' to circle airport instead of park in assigned spot; forcing drivers to vacate assigned spots
- **Court:** No ADA claim because Plaintiffs are not "individuals" protected from retaliation

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## Houston Transit Agency Digital Access Settlement Agreement

- Settlement achieved in March 2016 through structured negotiations
- Two riders who are blind were represented by Disability Rights Texas and the Law Office of Lainey Feingold
- Houston Metro agreed to use best efforts to ensure that its website and mobile app complies with WCAG 2.0 AA by 12/17/2015
- Materials will be provided in alternate formats
- If CAPTCHAs are used, there will be an alternative security measure that is accessible to individuals with visual impairments
- PDF documents, electronic forms will be made accessible
- Will develop a website policy and identify a Web Accessibility Coordinator
- Will conduct usability testing and staff training

[www.lflegal.com/2016/03/houston-agreement](http://www.lflegal.com/2016/03/houston-agreement)

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## DOJ Letter of Findings re: the Virgin Island's Public Bus System

11/14/2014: DOJ issued letter of findings

[www.ada.gov/briefs/vitran\\_lof.docx](http://www.ada.gov/briefs/vitran_lof.docx)

- Letter provides comprehensive look at requirements for public buses
- Virgin Islands Department of Public Workers' public transportation system (VITRAN) violated various requirements under Title II

### Problems with VITRAN's fixed route system:

- Generally, VITRAN is not readily accessible to and usable by individuals with disabilities
- Problems with operable wheelchair lifts
  - ❖ Only 2 of 4 buses had operable lifts; waiting on parts for months
  - ❖ Should have vehicles to swap out in meantime but don't
  - ❖ Failed to regularly/frequently perform maintenance checks

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## Public Transportation: Buses

- Inadequate stop announcements
  - ❖ Only announce stops upon request – violation of DOT regs
  - ❖ DOJ notes this discourages riders from using fixed route system
- Insufficient wheelchair securement devices
  - ❖ Buses over 22 feet are required to have at least 2 securement devices
  - ❖ None of the 5 buses inspected had 2; 1 bus didn't have even 1
  - ❖ As a result, drivers wouldn't let passengers in wheelchairs on
- Failure to permit passengers using the lift to board/disembark at designated stops

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## Public Transportation: Paratransit

### Problems with VITRAN's complementary paratransit service:

- Generally, fails to provide service “comparable to the level of ... services provided to individuals without disabilities...”
- Does not deploy sufficient vehicles so cannot meet demand
  - ❖ DOT regs require plan to meet 100% demand for next-day ride appointments for eligible riders
  - ❖ Data suggests demand is increasing and budget is decreasing
  - ❖ Failure to supplement with new vehicles
- Charges more than double for services
  - ❖ Fixed route is \$0.75/ride in the city; VITRAN Plus charges \$2.00 for some trips in the city
- Untimely pickups
  - ❖ Defined as 30+ minutes or more, late 22% of the time

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## Public Transportation: Paratransit

- Impermissible restrictions on companions
  - ❖ Regs require riders to have one companion and one PCA
  - ❖ Only permit companions if space is available and no res.
  - ❖ Kids under certain ages cannot be companions
- Unduly restrictive reservation policies and practices
  - ❖ DOT regs require service hours comparable to normal business hours and on a day before service day
  - ❖ Here, shorted phone hours (ending at 4/4:30 instead of 5:00)
  - ❖ Not permitting reservations on Sunday for Monday rides
- Failed to train personnel
  - ❖ Drivers don't inspect lifts for operability
  - ❖ Staff gave inconsistent answers about basic policies

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## Standing to Seek Injunctive Relief Against Amtrak

### *Pincus v. National R.R. Passenger Corp.*

581 Fed. Appx. 88 (2d. Cir. 2014)

- Plaintiff uses a wheelchair; cannot stand/walk for more than 3-5 min
- Travelled roundtrip from FL to NY
  - ❖ Amtrak didn't have a wheelchair/attendant waiting for her despite prior notification; provided small wheelchair; left her unattended
- **Dist. Ct.:** Dismissed case – no standing b/c no intent to return
- **2<sup>nd</sup> Cir:** Reversed – Plaintiff intends to patronize Amtrak again
  - ❖ Plaintiff desires to use Amtrak's services (and to be a tester)
  - ❖ Unlike a local restaurant; this is the only Nat'l railway system
  - ❖ Plaintiff has used Amtrak in past; lives in a city with a station, and the "distinct and widespread nature of Amtrak's services in providing access to intercity travel"

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## Case to Watch: Maryland Paratransit Case

### *Freeman v. Smith*

15-cv-00149 (D. Md. Class complaint filed 1/16/2015)

- Complaint alleges improper eligibility denials and capacity constraints
- Eligibility criteria when fixed route is accessible:
  - ❖ Cannot travel on fixed route because of a disability
  - ❖ Have a specific disability-related condition that prevents them from traveling/disembarking to/from a boarding location
- Sought preliminary injunction re: eligibility
  - ❖ Failing to assess comprehensively and accurately how applicants' specific disabilities prevent them from using public transit system
  - ❖ Improperly denying eligibility based on ability to use the fixed route public transit or non-use of paratransit
  - ❖ Failing to state with specificity the reasons for denying eligibility

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## Case to Watch: Maryland Paratransit Case

- Examples illustrative of class experience
- Mr. Freeman:
  - ❖ End stage renal failure
  - ❖ Performed MTA's functional assessment simulating the effort/tasks needed to ride public transit
  - ❖ Blood pressure skyrocketed - MTA stopped the assessment, called paramedics
  - ❖ Denied his application, concluding he can use the regular public transit system b/c used fixed route in past
  - ❖ Passengers have to wait on hold over 30 minutes just to schedule a ride or to confirm that a scheduled ride is actually coming when it is already more than 30 minutes late

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## Case to Watch: Maryland Paratransit Case

- Capacity constraints that limit the availability of paratransit services are prohibited by ADA/DOT regs
- Sought preliminary injunction re: capacity constraints in telephone call operations
  - ❖ Seek to require Defendants to implement a long-planned upgrade to their telephone system
- Problems experienced
  - ❖ Calls cannot be connected to a call agent; receiving a busy signal instead of being connected to a call agent; being disconnected; being placed on hold for unreasonably long periods of time
- **Status:** Motion for preliminary injunction is dismissed without prejudice pending settlement

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## DOT: Policy Issues

- FTA Circular: 306 page document about how to comply with disability laws, including personnel training requirements
  - ❖ Discusses personnel training, fixed route buses, complementary paratransit, demand responsive, rail (rapid, light, commuter) and water transportation/passenger ferries
  - ❖ [https://www.fta.dot.gov/sites/fta.dot.gov/files/docs/Final\\_FTA\\_ADA\\_Circular\\_C\\_4710.1.pdf](https://www.fta.dot.gov/sites/fta.dot.gov/files/docs/Final_FTA_ADA_Circular_C_4710.1.pdf)
- 7/13/2015: DOT's reasonable modification rule became effective clarifying that public transportation providers must make reasonable modifications to policies, practices, and procedures to ensure programs and services are accessible
  - ❖ <https://www.fta.dot.gov/about/news/us-dot-announces-reasonable-modification-rule-improve-access-public-transportation>

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## Private Transportation

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## DOJ Consent Decree with Greyhound Lines

### ***United States v. Greyhound Lines, Inc.***

16-67-RGA (Consent decree dated 2/16/2016)

- DOJ alleged that Greyhound:
  - ❖ failed to provide full and equal enjoyment of its transportation services to persons with disabilities
  - ❖ engaged in a pattern or practice of discrimination
- Monetary relief:
  - ❖ \$300,000 in compensation to passengers identified by the DOJ
  - ❖ Claims administrator will compensate uncapped number of additional passengers who have experienced discrimination during last three years

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## DOJ Consent Decree with Greyhound Lines

### Systemic reforms / injunctive relief

- Maintain in operative condition accessibility features including lifts and securement devices
- Offer a reservation system equivalent to one for others
  - ❖ Online system will have options for “travel in a wheelchair” “travel with a service animal” “other”
  - ❖ Will not require passengers to call to reserve spot
- Assist individuals with the use of securement systems/lifts where necessary or upon request (including for de-boarding at intermediate or rest stops)
- Not require/request that passengers reschedule trips or travel at alternative times to receive accessible transportation
- Hire an ADA Compliance Manager

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## DOJ Consent Decree with Greyhound Lines

- Require all employees and contractors who may interact with the public to attend annual in-person training on the ADA
- Provide technical training to all employees and contractors on the proper operation of accessibility features of Greyhound's fleet
- Report every three months to the DOJ on its compliance efforts
- Ensure that persons with disabilities can lodge other disability-related requests through its online booking system

Claims administer site: [www.dojvgreyhoundsettlement.com/](http://www.dojvgreyhoundsettlement.com/)  
Consent decree: [www.ada.gov/greyhound/greyhound\\_cd.html](http://www.ada.gov/greyhound/greyhound_cd.html)

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## Two Settlements in Hospitality Industry & Standing for Testers

### ***Civil Rights Educ. & Enf't Ctr. v. RLJ Lodging Trust*** 2016 WL 314400 (N.D. Cal. Jan. 25, 2016)

- Class action lawsuit alleging hotels fail to provide accessible transportation service
- RLJ Lodging Trust = nationwide hotel chain with 127 hotels
  - ✦ 42 hotels provide transportation to guests
- ADA/DOT regs:
  - ✦ Hotels must purchase accessible vehicles or provide equivalent wheelchair-accessible transportation services (depending on size of vehicle and whether there is on-demand service)
- Parties reached a class settlement agreement requiring hotels to
  - ✦ Comply with DOT regulations
  - ✦ Provide accurate information to hotel guests
  - ✦ Provide "equivalent" accessible transportation - defines equivalent

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## Settlements in Hospitality Industry & Standing for Testers

**Court:** Granted preliminary approval to class action settlement and certification of settlement class (1/25/16)

- Concluded testers have standing to pursue injunctive relief
- Agreed with 10<sup>th</sup> and 11<sup>th</sup> Circuits on issue of standing
- Plaintiffs do not lose “standing because their motive in patronizing a place . . . is to test for compliance”
- To have standing for injunctive relief, must show a “a real and immediate threat of repeated injury”
- Here, plaintiffs have standing because they will patronize the hotels once there is equivalent accessible transportation

**See also *CREEC v. Ashford Hospitality*, 2016 WL 1177950 (N.D. Cal. March 22, 2016)** (granting plaintiffs’ motion for final approval of class action settlement on similar transportation issues)

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## DOJ Settlement with Autobuses Regiomontanos (Oct. 2015)

- Outlines ADA/DOT requirements for private bus companies:
  - ❖ Perform regular maintenance checks to ensure that lifts work
  - ❖ Provide prompt accessible service with an alternate carrier if the company doesn’t have a lift-equipped bus
  - ❖ Train employees on accessibility requirements
  - ❖ File annual accessibility reports with the Federal Motor Carrier Safety Administration
- Settlement remedies failures to:
  - ❖ Have an ADA training in place for employees and contractors
  - ❖ Ensure that all lifts on its buses are properly maintained
  - ❖ File required ADA compliance reports with the DOT

[www.justice.gov/usao-sdtx/pr/us-attorney-announces-settlement-bus-company-ensure-accessibility-people-disabilities](http://www.justice.gov/usao-sdtx/pr/us-attorney-announces-settlement-bus-company-ensure-accessibility-people-disabilities)

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## DOJ Settlement with SuperShuttle

- Complainant is blind and has a service animal
- With 5 colleagues, Complainant booked a non-exclusive shared ride for \$91
- When employees saw the service animal, required Complainant to book an exclusive shared trip for \$125 because “no one would want to travel with a service animal”
- SuperShuttle has a policy regarding service animals, but it wasn’t followed in this case
- DOJ concluded (2013): Complainant was required to pay an unnecessary surcharge in violation of Title III of the ADA

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## DOJ Settlement with SuperShuttle

SuperShuttle agreed:

- Adopt a Service Animal Policy permitting individuals to use service animals, without additional surcharge, on all SuperShuttle rides
- Policy will be distributed to all employees, franchisees
- Post a “Service Animals Welcome” sign in a conspicuous location at each guest service center
- Train all personnel, including franchisees and independent contractors
- \$1,000 to Complainant

[www.ada.gov/supershuttle.htm](http://www.ada.gov/supershuttle.htm)

Attachment A: Policy

Attachment B: Service Animals Welcome sign

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## DOJ Settlement with D.C. Trails (Dec. 2014)

- Private transportation company that operates an over-the-road bus
- ADA/DOT Requirements:
  - ❖ By Oct. 29, 2012, large operators were required to ensure that 100% of the buses in its fleet for fixed-route service are accessible to people with disabilities
  - ❖ Once buses are 100% accessible, operators may not require up to 48 hours advance notice to provide accessible service
- May 2013: DOJ/FMCSA conducted a joint compliance review
  - ❖ Fleet was not 100% accessible
  - ❖ An inaccessible bus was used 33% of the time
  - ❖ No training on securement of mobility aids, sensitive and appropriate interactions, handling/storage of mobility devices, DOT's ADA regulations

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## Terms of Agreement

- Passengers cannot be required to provide advanced notice to secure an accessible bus; cannot be excluded on this basis
- Only use wheelchair-accessible motor coaches for fixed-route svcs
  - ❖ Regardless of whether offered by DC Trails or under contract by DC Trails for another entity
- Written materials cannot state that passengers must provide advanced notice
- Training requirements (annual training)
  - ❖ 3 hour training
  - ❖ All employees and contractors working on fixed route on ADA requirements and agreement requirements

[www.ada.gov/dc\\_trails\\_sa.htm](http://www.ada.gov/dc_trails_sa.htm)

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## Case to Watch: Public Bus Stop at Shopping Mall

### *Access Center for Independent Living v. WP Glimcher, Inc. (Dayton Mall)*

3:15-cv-444 (S. D. Ohio, filed Dec. 15, 2015)

- For 30 years, the mall allowed RTA (public transportation) to operate a bus stop a few steps away from the mall entrance
- 2003: Mall required RTA to move its stop to a back corner of a rear parking lot and limited number of buses who could stop at mall
  - ❖ Parking lot is two football fields away from an entrance
  - ❖ Has no cross walks or other protective measures from traffic
- **Complaint:** Plaintiffs with mobility and vision-related disabilities must walk through parking lot and make additional bus transfers
- **Status:** Defendants filed a motion to dismiss – currently pending

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## QUESTIONS?

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## Hot Legal Topics in Accessible Transportation

**ADA Audio Conference  
ADA National Network  
April 19, 2016**

**Presented by:**  
Barry C. Taylor  
Rachel M. Weisberg  
Equip for Equality

Valuable assistance provided by  
Holly Sanchez Perry

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