

## **UNITED STATES SUPREME COURT REFUSES TO ENTERTAIN APPEAL BY FRIVOLOUS, VEXATIOUS LITIGANT IN FEDERAL COURTS**

*Good news for retailers, restaurants, hotels, other places of public accommodation and the disabled community*

by Martin H. Orlick, 11/20/08

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On November 17, 2008, the United States Supreme Court let stand a key Ninth Circuit Court of Appeals ruling that a "serial plaintiff" and his attorney, who had filed more than 400 lawsuits against California businesses, could not file repeated Americans with Disabilities Act of 1990 (ADA) lawsuits against business owners without first obtaining court permission. In all but one of the 400 cases, the businesses settled out of court, avoiding substantial defense costs and time needed to fight the litigation.

A federal judge in Los Angeles called these litigation tactics "extortion" and based on trumped up claims of injury. The United States Supreme Court refused to grant a hearing to review the appellate court's highly extraordinary ruling in the case, *Molski v. Evergreen Dynasty Corp.*, 08-38, which found the plaintiff and his attorney to be "vexatious" for filing over 400 virtually identical ADA lawsuits in federal court.

The ruling is important because the lower courts found that the lawsuits were filed for improper purposes, even though barriers to accessibility existed at many of the businesses.

### **BACKGROUND**

The plaintiff alleged he visited as many as six businesses on any given day and encountered access barriers in each of the businesses which caused him the identical physical injuries, humiliation and emotional distress. The District

Court granted Evergreen Dynasty Corp.'s motion for an order that the litigation was part of an implausible, cynical scheme to extort settlements from property and business owners.

The District Court found the plaintiff and his lawyer were vexatious litigants, imposed mandatory sanctions against both of them, and required the plaintiff and counsel to get the Presiding Judge's permission to file new lawsuits. The trial court's decision was affirmed on appeal. Then, by refusing to grant review, the Supreme Court let stand the lower court's decision that frivolous ADA litigation and litigators will not be entertained in federal court. To insure that future cases filed by the plaintiff are meritorious, the Presiding Judge must weigh in on the merits and approve the lawsuit before it can be filed.

By declining to review the case, the Supreme Court seems to be sending the message that ADA cases, like other civil rights litigation, must be brought for a proper purpose to redress actual discrimination.

It is this author's view that the *Molski* decision is important to business owners as it prevents vexatious litigation, and important to the disabled community as it protects against a backlash attributable to serial litigation, which at least one Judge characterized as a cynical money making scheme.



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