

Part 1: Visionary law's litigious legacy

California allows uniquely generous payouts to disabled people who sue private businesses and public agencies for violations of the federal Americans With Disabilities Act. That has sparked a wave of lawsuits and made the state a magnet for lawyers, plain

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First of three parts

Jerry Doran was more than 500 miles from his Tehama County home when he stopped at a Del Taco in Mission Viejo for some enchiladas -- or so he said. Doran, 52 and a paraplegic since a 1985 auto accident, said he encountered numerous problems at the restaurant: a wheelchair ramp that was too steep, a toilet that was too low, hand dryers that were too high. So, on Jan. 15, 2004, Doran did what he had done at least 223 times in California courts, suing the restaurant for violating the Americans With Disabilities Act.

When the restaurant company refused to settle, Doran's story literally became a federal case. How could he order enchiladas when the restaurant doesn't serve them, the defense wanted to know. Why did he complain about a hand dryer that doesn't exist? Did Jerry Doran even go to Del Taco that day?

The case, which Doran lost last summer, highlights one of the most emotional and contentious legal battles in California today: enforcement of the Americans With Disabilities Act.

Across the nation, the federal law has been hailed by many as a civil rights triumph since its passage 16 years ago. But California laws allowing the nation's most generous payouts to disabled people who sue businesses have made this state a magnet for lawyers and plaintiffs and for aggressive, sometimes questionable practices.

"Despite the important mission of the ADA, there are those individuals who would abuse (it)... with the intent to profit financially," wrote U.S. District Judge Cormac J. Carney of the Central District of California, who ruled against Doran in July.

"Simply put," the judge wrote, "this litigation abuse of the ADA results in the exact harmful consequences that Congress sought to eradicate by passing the ADA."

A six-month investigation by The Bee found troubling cases across the state that have fueled the controversy:

- A disabled teenager was offered \$1,000 by a San Diego attorney for every business he could visit to "find" ADA violations the attorney actually had already identified.

- Another disabled man who sued more than 50 businesses in Los Angeles later accused his lawyer of failing to ensure that the violations were fixed.
- Out-of-state lawyers have been lured to California by its laws, setting up shop to sue businesses, using local disabled people as clients.
- One Southern California man who issued a string of letters demanding payment for ADA violations turned out not to be a lawyer, but a self-described "nutritionist," better known to authorities for his Internet business arranging body-parts transplants overseas.
- A woman is facing prosecution on insurance fraud charges after allegedly faking a disability and filing access claims against several California cities. When confronted by police, the supposedly wheelchair-dependent woman tried to run away.

The San Diego-based Lawyers Against Lawsuit Abuse calculates that at least 14,550 ADA suits were filed in the state's federal courts between 1992 and July 2006. The lawyers group conservatively estimates that such suits cost California businesses \$20 million each year.

Hundreds more lawsuits have been filed in state courts, and even some in small claims divisions.

"It's just a big shakedown, and nobody's doing anything about it," said Brian Crane, a San Bernardino businessman. Crane was stunned to learn this year that he was being sued for access violations after serving the disabled community for 30 years at his Mobile Help Inc. store, which sells customized equipment to the disabled.

Many disabled citizens reject that charge, arguing vehemently that businesses have had more than enough time to comply with the law. This, they say, involves nothing less than their civil rights.

"If they obeyed the law, there wouldn't be any lawsuits," said Laura Williams, president of Californians for Disability Rights, the state's oldest and largest advocacy group for the disabled.

As it turns out, both sides may be right.

The Bee's examination of the 910 ADA lawsuits filed in 2005 in California's four federal court districts illustrates not only how many businesses have failed to obey the law, but how lucrative those violations have become for a handful of lawyers and disabled Californians.

Nearly 80 percent of the access suits filed in federal court last year were handled by just 10 lawyers or law firms. Together they dominate the ADA litigation in the nation's most populous state -- home to an estimated 2.5 million people with physical disabilities.

California's two busiest access lawyers in the federal courts both practice in the Eastern District, based in Sacramento. Scott N. Johnson, a 44-year-old quadriplegic

attorney from Carmichael, and Lynn Hubbard III, a 66-year-old attorney based in Chico, filed 277 lawsuits between them in 2005.

More than a dozen investigations by the California State Bar, judicial disciplinary committees, state regulatory agencies and county district attorneys have been launched into the activities of ADA lawyers. To date, however, no charges have been filed.

Like Judge Carney in the Jerry Doran case, some federal judges have been especially critical of the mass ADA filings, challenging attorneys' ethical conduct and billing practices. In a 2004 veto message, California Gov. Arnold Schwarzenegger called the issue "the next lawsuit abuse problem in California that is likely to drive businesses out of state."

No business is immune. Last year, ADA suits were lodged against Disneyland in Anaheim and the family-owned Grand Illusions magic shop in Carmichael. Marie's Donuts was sued in North Highlands along with numerous McDonald's statewide. There was a church, a courthouse, a carwash and a cigar store.

The suits attack a variety of significant flaws: Steps leading into establishments. Doors too heavy for wheelchair users to open. Pay phones and counters that are too high. Parking lots without spaces for specially equipped vans, or no disabled spaces at all. Wheelchair ramps that are dangerously steep.

In recent years, lawsuits have forced important changes, literally opening doors for California's disabled. Disabled Rights Advocates, a Berkeley nonprofit that pursues "high-impact litigation," reached a settlement with the state last year to increase access at state parks and recreation areas. In class-action lawsuits, the group also pressed Macy's to eliminate barriers including crowded aisles and reached a settlement that helped deaf UPS employees nationwide.

Other lawsuits are less sweeping, targeting mom-and-pop businesses -- many of them owned by immigrants with limited knowledge of English -- who tend to settle quickly, sometimes without being told what needs to be fixed.

Many business owners swear the disabled plaintiff never visited the property but simply drove by, a belief that has spawned the derogatory term "drive-by lawsuits" to describe ADA complaints.

Portions of such suits sometimes zero in on violations that don't directly involve accessibility. They cite the wording on signs or the color they are painted. Some pinpoint discrepancies between federal and state standards. A lawsuit against a Dollar Tree store in Sacramento that was set to go to trial in federal court this month came down to the placement and wording on two signs. The case was dismissed.

Some ADA lawyers and disability rights advocates acknowledge that petty cases have begun to overshadow the important, groundbreaking suits, creating a backlash against all disabled Californians. Business owners admit they cringe when a disabled person enters their establishment.

"The backlash is real; this is not imagined," said Kim R. Blackseth, a disabled access consultant from Oakland who helps businesses meet federal and state requirements.

Blackseth, who is quadriplegic and uses a motorized wheelchair, said hotel staff members frequently tell him that accessible rooms are unavailable.

Not long ago, while working as a consultant in Los Osos, near where a litigious plaintiff had recently swept through, Blackseth said he was physically accosted in a parking lot while he worked with a business owner. The assailant, seeing Blackseth's clipboard, tape measure and wheelchair, mistakenly assumed he was working up a lawsuit.

"I don't want the law to go away; we fought hard for this," Blackseth said. "What I'm afraid of is the negative backlash created by the people at the fringes. It's going to kill the golden goose for all of us."

SUIT SUPPORTERS UNAPOLOGETIC

People love to hate lawsuits -- any lawsuits -- but disability rights advocates contend that filing suit is how the ADA was meant to be enforced.

Signed into law by the first President Bush in 1990, the landmark legislation ensured disabled people access to public places and businesses.

California, birthplace of the disability rights movement, already was way ahead, having passed its own access laws more than two decades earlier. Today the state offers the nation's highest civil damages for violations, which can be awarded in either state or federal court.

Under the federal ADA, private plaintiffs are entitled only to injunctive relief -- that the problems be fixed -- plus attorneys' fees. Under California's Unruh Civil Rights Act, plaintiffs can collect a minimum of \$4,000 in damages per violation beyond attorneys' fees. A related state code, the Disabled Persons Act, allows a plaintiff to recover three times the actual damages, or a minimum of \$1,000, with attorneys' fees awarded to the prevailing party at the judge's discretion.

"California definitely has the most of these ADA lawsuits," said Kevin Maher of the American Hotel and Lodging Association, which has urged Congress to pass laws allowing businesses to comply before they can be sued.

"What's happening is that a few attorneys are kind of gaming the system. They see an opportunity to work toward these out-of-court settlements and are just filing these lawsuits by the handful, and hope businesses will settle and go away."

At the center of the storm are the handful of lawyers and plaintiffs dominating California's ADA market.

Among the state's 10 busiest ADA lawyers last year, three are disabled and sue on behalf of themselves or others: Scott N. Johnson in Carmichael, and Theodore Pinnock and Amy Vandeveld in San Diego. The other attorneys rely on disabled plaintiffs, sometimes filing for the same individuals over and over.

One of the most prolific filers in past years, attorney Thomas Frankovich of San Francisco, recently was suspended from practicing for six months in the Los Angeles-based Central District for improperly contacting a party represented by another attorney. Frankovich did not respond to an interview request.

Frankovich had filed more than 200 ADA lawsuits on behalf of Jarek Molski of Los Angeles, a disabled law school graduate who was declared a "vexatious litigant" in 2004. This barred Molski -- known as "the Sheriff" for his ADA vigilance -- from bringing any more federal suits in Los Angeles without a judge's approval.

U.S. District Court Judge Edward Rafeedie said Molski was "misusing a noble law" while engaging in a "scheme of systematic extortion, designed to harass and intimidate business owners into agreeing to cash settlements." Molski could not be reached for a response.

The Los Angeles judge was equally harsh on Frankovich, who he said had "engaged in a pattern of unethical behavior designed ultimately to extort money from businesses and their insurers." The judge called the law firm's conduct "sufficiently egregious to justify the suspension, or even disbarment" of the Frankovich group.

Despite judicial rebukes, no criminal charges have been filed in such cases. Several attorneys say that is because, while their representation of disabled clients may be aggressive, it's legal.

"I know this sounds corny, but I'm helping people that really need help," said Lynn Hubbard III, the Chico attorney who last year was California's busiest ADA filer in federal court.

Hubbard said his opponents have "turned me in to the attorney general, to the district attorney, to the State Bar and to the IRS." An investigation by Shasta County District Attorney Gerald Benito lasted three years, he said.

Benito says his investigation of Hubbard remains open. After he launched the probe, he said, one of Hubbard's clients showed up in the parking lot outside the District Attorney's Office in Redding with a tape measure.

The result: Benito's office had to rebuild a wheelchair ramp, restripe his parking lot and redo a downstairs restroom.

Yolo County District Attorney Dave Henderson said his office investigated Mathew Lakota of Palermo last year for, among other things, his "apparent use of threats to obtain settlements" in his frequent ADA filings in state court.

Lakota, who is not a licensed attorney in California, gained notoriety in 2004 when he was found guilty in Butte County of issuing homemade, \$280 tickets to vehicles unlawfully parked in disabled spaces, then pocketing the payments. Two years earlier, a Butte County judge had declared him a vexatious litigant.

No charges were filed against Lakota in Yolo County, but Henderson said he is still being monitored. "After we got interested in him, he hasn't been back to Yolo County," Henderson said.

So efficient are some filers that their suits are largely boilerplate forms, mass-produced on an attorney's computer with the name of the targeted business simply inserted in the appropriate spot. As Judge Rafeedie observed with Molski, his complaints are identical -- "even down to the typos."

The lawyers say they want to force long overdue access; some acknowledge they also are in it for the money.

"Lawyers get paid money," said Pinnock, the San Diego attorney, who says he has filed more than 2,000 ADA lawsuits since the late 1990s. "You get paid. I get paid."

Pinnock has become notorious in the Southern California business community in the past year for threatening to sue entire towns, dozens of businesses at a time, often offering a sliding scale of settlement fees.

"Our initial demand is \$10,500 for each defendant," Pinnock wrote in a March 22 letter to merchants in Alpine, east of San Diego. "LET ME BE CLEAR: IF YOU WANT TO NEGOTIATE THIS AMOUNT DOWNWARD WE MUST HEAR FROM YOU BEFORE MARCH 24, 2006 AND RECEIVE PAYMENT BY MARCH 27, 2006. THE DEMAND WILL START INCREASING ON MARCH 27, 2006."

Such tactics led to investigations by the San Diego County district attorney and the State Bar of California, but no action was taken.

In Sacramento, a federal judge estimated that Hubbard and his son, Scottlyn Hubbard, may have collected millions of dollars in attorneys' fees from ADA lawsuits.

"By the Hubbards' own account, '99.8 percent of their suits settle before going to trial,'" U.S. District Court Judge William B. Shubb wrote in April. "If the amount of fees awarded in this case is even close to typical, they would have recovered from defendants more than \$12 million in fees over the past four years.

"No wonder that other attorneys over that period of time may have decided to compete with them for the business."

Hubbard, who has filed more than 1,000 ADA lawsuits, said he bills \$250 to \$300 an hour for his time depending on the district where he files his suits. But he insists he is not getting rich.

"Are you kidding me?" he said in a recent interview at a Chico restaurant. "I make \$75,000 a year off all this business."

SAME CLIENTS SUE REPEATEDLY

Like many disabled access attorneys, Hubbard relies on a handful of disabled clients for the bulk of his practice. He filed 116 federal suits last year on behalf of just five clients, one of whom sued 35 California businesses.

The same names pop up so frequently on court documents that even judges remark on it.

Sherie White, a 40-year-old quadriplegic woman from Corning, has been the plaintiff in 60 suits since 2003; Gypsie Jones, a 34-year-old Anderson woman who broke her back in a car accident 17 years ago, is named in 162. Ron Wilson, 70, is behind at least 60 suits in and around Dixon as part of a virtual one-man crusade to bring businesses into compliance.

Wilson has a degenerative disease and can walk for short periods, but relies frequently on his wheelchair. He has studied the ADA for years, becoming an expert on even its most arcane aspects, and he wields that knowledge on regular patrols around Dixon, Vacaville and other nearby communities. He happily points out businesses he has forced into compliance.

"You probably remember the signs 'Kilroy was here?'" Wilson asked as he piloted his van through downtown Dixon. "Well, now it's, 'Wilson was here.'"

Not all plaintiffs share Wilson's zeal.

Phil Di Prima, a 66-year-old diabetic who began using a wheelchair after amputation of his lower right leg, spotted an ad for the San Marcos-based Center for Disability Access in a magazine for the disabled. Frustrated by the access barriers he had encountered, and getting nowhere with businesses on his own, he decided to fight back with an attorney.

"I wanted to live as normal a life as possible," he said. "I just wanted to fix up my corner of the world."

Between 2001 and 2004, Di Prima was the plaintiff in more than 50 lawsuits against shop owners in his suburban Los Angeles neighborhood before he began to have second thoughts. Once, while leaving City Hall, a businesswoman pulled up and began screaming at him about one of his suits.

Di Prima reportedly made about \$50,000 to \$60,000 from the lawsuits. But he said he began to question the motives and tactics of his attorney, Mark D. Potter of the Center for Disability Access, who also ranked among the top 10 filers in the state last year.

Becoming a virtual pariah in his own community -- and still not getting access -- "wasn't worth the money," Di Prima said. "What the hell does money do? I still couldn't get in."

In court papers filed this year, he accused Potter of failing to ensure that properties were fixed and of falsely claiming Di Prima had suffered injuries. Di Prima also alleged that he was not apprised of some settlement offers.

"The real losers in this arrangement are the disabled community," he stated in January 2006 court declarations. "Of the 50+ locations CDA sued on my behalf since 2001, only four of them have made the changes I need to get in. In some cases, it appears that some defendants were never required to make the changes I needed, while others were required to make changes I did not need."

Potter, in turn, sued Di Prima for libel. The attorney did not return phone calls and an e-mail from The Bee seeking comment.

BUSINESS OWNERS CLAIM IGNORANCE

For business owners being sued for access violations -- or businesses afraid they might be -- the mantra is the same: We didn't know. We didn't understand.

Disabled rights advocates are skeptical of such ignorance, but the laws are indeed contradictory and confusing. And businesses are on their own to sort it all out, wading through the conflicting state and federal standards -- or hiring someone who can.

The Department of Fair Employment and Housing protects Californians from workplace and housing discrimination, for instance, but there is no comprehensive administrative oversight of the ADA. The U.S. Department of Justice polices some violations, as do state's attorneys general, but the vast mission is largely left to individuals.

Cal-OSHA inspectors may visit businesses to investigate workplace safety and health -- and pinpoint violations -- but no such government inspectors exist to certify that access laws are met.

The disabled public and their lawyers and consultants are the de facto inspectors. And the lawsuit is their hammer.

"There's no question that California is one of the most accessible places in the country simply because of these lawsuits," said Blackseth, the access consultant from Oakland.

Blackseth, however, is skeptical of the long-term effectiveness of incessant litigation.

"I don't think it's proper to be getting up in the morning and making a business of going out and finding people to sue," said Blackseth, who was appointed by the governor this year to the Building Standards Commission. "I don't think it's the spirit of the law. I don't think it was the intent of the law."

One of the state's most active ADA attorneys, Thomas N. Stewart III of Clayton, is among those who believe the state's minimum award of \$4,000 for damages in ADA cases is excessive.

"It shouldn't be that high," he said. "That makes disabled people look bad." Instead, he said, the minimum should be reduced to \$1,000 to \$2,000.

With so much money at stake, it is hardly surprising that California has attracted out-of-state interest.

"The word is out," said Greg Hurley, a Southern California attorney who has fought such suits. "The Gold Rush is back on."

Hurley pointed to the American Disability Institute of Philadelphia. The ADI, which has filed numerous access suits in Pennsylvania, says on its Web site that it has opened an office in Southern California and has found two Bay Area attorneys to handle its lawsuits here.

ADI filed three class-action suits last year in California -- potentially worth tens of millions -- against In-N-Out Burgers, Denny's and El Pollo Loco.

ADI's lead plaintiff in the Denny's suit, the restaurant's attorneys alleged in court documents, is a convicted felon who became disabled when he was shot by police during a fight involving a meat cleaver.

Nationwide, the ADI has filed more than 120 such suits and, Denny's attorneys claimed, has plans to file as many as 5,000.

ADI officials and their attorneys did not respond to requests for comment. But in a court deposition, ADI's founder said that he was misquoted about the 5,000 suits and added that his group is merely seeking access for the disabled.

In some cases, properties have been targets of out-and-out scams.

Laura Lee Medley, a 35-year-old Alhambra woman who authorities say had previously passed herself off as disabled, faces charges in San Bernardino over allegedly filing false access claims.

Medley became the subject of late-night television comedians earlier this year after reports surfaced that the supposedly wheelchair-dependent woman ran from officers trying to arrest her in Las Vegas.

Medley was caught quickly and now faces charges of falsely claiming she was injured on a San Bernardino County sidewalk that did not have the proper ramp for a wheelchair.

In one bizarre case, J. Cohan & Associates of Los Angeles sent a series of demand letters to small businesses in suburban Los Angeles, alleging civil rights violations of the ADA and state access laws. Writer Jim Cohan's letterhead included "Disability Rights Advocates," the name of the internationally recognized group from Berkeley.

Business owners in Eagle Rock, a community in northeastern Los Angeles, said the letters urged them to settle before attorney's fees and damages piled up.

Effie Vlahos, owner of Pete's Blue Chip Burgers, called Cohan immediately and said she was told it would cost her \$14,000 to settle. Vlahos wound up in small claims court in Los Angeles, where she was ordered to pay \$1,000 for her alleged violations -- nearly all of which she said she had already fixed.

Vlahos, like many other business owners, had assumed J. Cohan & Associates was a law firm. In fact, Cohan says he is a nutritionist, and his Web site identifies Cohan & Associates as Sun Valley-based "international transplant coordinators" who work with foreign hospitals able to perform transplants to paying customers (a kidney or pancreas goes for \$140,000, it states).

The Berkeley disability law firm sent Cohan a letter in June, demanding that he stop using its name. He promptly e-mailed back that he would, according to the firm.

Cohan told The Bee he has never held himself up as a lawyer but got involved in filing ADA cases because disabled people "don't have a voice. They're a beaten-down group of people." He said he has represented a few dozen disabled clients over the past several years and keeps a maximum 10 to 20 percent of the small settlements.

He has no sympathy for businesses, either, saying, "Everyone's a bad guy except them." HIS BUSINESS SADDLED BY SUIT

While some insist that business laments are largely overblown -- that most can afford the fixes and the lawsuits -- Dave Mock tells a different story.

Mock's saddlery business had run smoothly in Yucca Valley for nearly two decades. That all changed in December 2002, when he was sued for access violations, among them improper counter height, at his decades-old building.

Mock tried to fight but settled after two years in court and \$50,000 in costs, including a \$27,000 payment to the plaintiff and his attorney.

The lawyer who sued him says Mock could have gotten off for much less if he had simply agreed to fix the violations and pay a settlement fee.

"I think I offered to settle that case for eight grand early on," said Jason K. Singleton, a Eureka-based attorney who files such suits statewide.

Mock ended up folding his business. Today he is a mortgage lender.

"My total lifestyle is changed from being a cowboy to a loan officer," said Mock, 61. "I'd rather spend my days on the range."

Even some disability rights advocates question whether lawsuits are the best way to get businesses to comply.

"If I thought I could hire an attorney and go out and sue every small business in town and effectively achieve access, I'd be out there doing it," said Herb Levine, executive director of the Independent Living Resource Center in San Francisco.

"I don't think that's good for access. I don't think it's good for the community's financial climate."

That sentiment isn't shared by everyone, of course -- least of all the most prolific ADA attorneys.

Hubbard represented Jerry Doran when he sued Del Taco, and even after losing the case, Hubbard insists the restaurant was in violation.

"Our architect visited the place and itemized all the problems," he said. "The case is still crying out for somebody to go sue them."

Despite the judge's conclusion that Doran had not visited the restaurant before he sued, Hubbard said Doran had a receipt proving he had been there. Doran couldn't produce that proof, Hubbard said, because his law office lost it.

But Doran's appetite for dining out -- and for suing -- remains strong. Since 2002, he has used Hubbard to sue Taco Bell, Long John Silver's, HomeTown Buffet, Coco's, McDonald's, Kentucky Fried Chicken, Denny's and Burger King. MONDAY: The two busiest filers
