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NEWSLETTER OF THE HOSPITALITY PRACTICE GROUP OF MANATT, PHELPS & PHILLIPS, LLP

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Manatt Formalizes Its Hospitality Practice Group

[Timi Anyon Hallem, Chair](#)

This is the inaugural newsletter of the Hospitality Practice Group of Manatt, Phelps & Phillips, LLP. Manatt has been actively engaged in hospitality law for decades, and has now formalized that practice. Our practice covers virtually every aspect of the hospitality industry. We add to that the firm's international capabilities, real estate experience, and legislative advocacy, all essential in today's world. We believe that having that broad range of talents available gives our attorneys an edge in representing our hospitality clients.

This newsletter provides an analysis of one of the most current and hotly disputed industry issues -- ADA compliance (with a twist). We hope you find our newsletter useful, and welcome your thoughts on issues and topics you would like to see addressed.

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Are Hospitality Entity Websites Subject to the ADA?

[Alison Sultan White, Associate](#)

The Americans with Disabilities Act ("ADA") prohibits discrimination on the basis of disability "in the full and equal

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OUR PRACTICE

The attorneys in Manatt's Hospitality Practice Group have the knowledge and experience required to give our clients the edge to succeed. Our professionals are among the premier practitioners in the nation, with proficiency in virtually every aspect of the hospitality industry ... [more](#)

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enjoyment of the goods, services, facilities, privileges, advantages or accommodations of any place of public accommodation.” 42 U.S.C. § 12181 *et seq.* “Public accommodations” are specifically defined in the statute to include hotels, restaurants, theaters, auditoriums, laundromats, museums, zoos, and gymnasiums. Thus, hospitality entities are especially susceptible to ADA claims since most are places of public accommodation.

While owners and operators of hospitality entities are likely familiar with the ADA’s requirements pertaining to their physical facilities, such as restrooms, parking spots and doorways, many are surprised to learn that their website might also be susceptible to ADA violations. Early ADA lawsuits targeted online reservations systems and the availability of accessible rooms; looking forward, however, the trend is shifting toward lawsuits targeting the accessibility of websites for the visually impaired.

Southwest Airlines and Target have both recently been sued by organizations representing blind consumers who alleged that their websites denied access to blind users through the use of a special screen reader. See *Access Now, Inc. v. Southwest Airlines, Co.*, 227 F. Supp. 2d 1312 (S.D. Fla. 2002) and *Nat’l Federation of the Blind v. Target Corp.*, 2007 WL 2846462, No. C 06-1802 MHP (N.D. Cal. Oct. 2, 2007). The plaintiffs in those lawsuits alleged that because they could not use the websites, they were denied full and equal access to a place of public accommodation, in violation of the ADA. An integral issue in both lawsuits—whether a website can be a place of “public accommodation.”

In fact, the circuits are split regarding the question of whether a place of public accommodation under the ADA must be an actual, concrete physical structure. Compare *Carparts Distribution Center, Inc. v. Automotive Wholesaler’s Assoc. of New England, Inc.*, 37 F.3d 12, 18-20 (1st Cir. 1994) (holding that a trade association that administers a health insurance program, without any connection to a physical facility, can be a “place of public accommodation”) with *Parker v. Metropolitan Life Insurance Co.*, 121 F.3d 1006, 1014 (6th Cir. 1997) (a public accommodation is a physical place); *Ford v. Schering-Plough Corp.*, 145 F.3d 601, 612-13 (3d Cir. 1998) (“the plain meaning of Title III is that a public accommodation is a place”); *Weyer v. Twentieth Century Fox Film Corp.*, 198 F.3d 1104, 1114-16 (9th Cir. 2000) (following *Parker* and *Ford*).

In *Southwest*, the court held that the airline’s website, which serves as an online ticket counter, did not constitute a “place

covered by the ADA. *Access Now, Inc. v. Southwest Airlines Co.*, 385 F.3d 1324 (11th Cir. 2004).

In the *Target* case, however, the court allowed the plaintiffs' claims to proceed, declining to reach a conclusion about the "public accommodation" issue at that stage of the litigation, but noting that if the plaintiffs incurred increased expense and time from their inability to access the website, they may have viable ADA claims. *Target*, 2007 WL 2846462, at *17. This closely watched case is currently pending in the Northern District of California.

Regardless of the outcome of *Target*, ADA lawsuits targeting websites are the wave of the future. An experienced ADA lawyer can help ensure your website is fully accessible – not only to protect you from potential liability under the ADA, but also because it just makes good business sense not to turn away potential customers at the cyber doorstep.

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FOR ADDITIONAL INFORMATION ON THIS ISSUE, CONTACT:



[Timi A. Hallem](#) Ms. Hallem's expertise focuses on all areas of real property and land use, including hospitality, commercial, industrial, residential, public/private development and mixed-use projects. Her practice covers all aspects of real property and hotel ownership and development, including acquisition, entitlement, development, financing, leasing and disposition.



[Alison Sultan White](#) Ms. White is experienced in a full range of employment matters, including wage and hour issues, employment agreements, personnel practices and policies, leaves of absence, hiring and termination decisions, workplace violence issues, and trade secrets, among others. Ms. White's practice also focuses on employment litigation, including civil claims involving wrongful terminations, harassment, discrimination, and unpaid wages. Ms. White is also experienced in general business litigation, including contract disputes, business torts and other

commercial matters.

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