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## Judge Finds for Plaintiff in First Public Accommodations Website Trial

In what we believe is the first trial on the issue of whether a website is covered by Title III of the Americans with Disabilities Act (ADA), on June 13, 2017, United States District Court Judge Robert Scola found in favor of the plaintiff. In *Gil v. Winn-Dixie Stores, Inc.*, Case No. 1:16-cv-23020 (S.D. Fla.), the plaintiff alleged that Winn-Dixie's website is a place of public accommodation and is not accessible to persons who are blind and use screen reader technology. Prior to trial, Winn-Dixie filed a Motion for Judgment on the Pleadings, arguing that a website is not a public accommodation pursuant to the ADA. Judge Scola rejected that argument and held that the plaintiff alleged sufficient facts from which one could infer a "nexus" between Winn-Dixie's physical stores and its website, subjecting the website to the requirements of the ADA.

At trial, the plaintiff testified that his screen reader software did not generally work with Winn-Dixie's website, he could not access information such as the store hours or the store locator, and the website did not have any indication that Winn-Dixie was working to improve its website's accessibility. Winn-Dixie's corporate representative testified that while Winn-Dixie currently does not have an accessibility policy for its website, the company has set aside \$250,000.00 to make the website accessible, and it does not conduct any direct sales through the website. Plaintiff's website accessibility expert testified that Winn-Dixie's website could be made accessible with one or two simple modifications made in accordance with the WCAG 2.0 guidelines and estimated the costs to fix these issues to be approximately \$37,000.00.

Based on this testimony, the Court found in favor of the plaintiff. Judge Scola held that:

"[t]he Court need not decide whether Winn-Dixie's website is a public accommodation in and of itself, because the factual findings demonstrate that the website is heavily integrated with Winn-Dixie's physical store locations and operates as a gateway to the physical stores locations...[and] Winn-Dixie has violated the ADA because the inaccessibility of its website has denied Gil the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations that Winn-Dixie offers its sighted customers."

Based on the Court’s factual findings and conclusions of law, Judge Scola awarded injunctive relief to the plaintiff and ordered Winn-Dixie to, among other things, remediate its website in accordance with the WCAG 2.0 guidelines over a time period still to be agreed to. The plaintiff was also awarded his reasonable attorney’s fees and costs.

Only recently have courts addressed and interpreted the application of the ADA to websites and this is a rapidly evolving area of law. Businesses that are public accommodations that use websites to communicate to their customers or to otherwise conduct business with the public would do well consult with legal counsel to determine if their website is subject to the ADA. If a business’s website is covered by the ADA, a qualified accessible website consultant can assess the website(s) to determine what, if any, changes need to be made so as not to run afoul of the ADA.

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