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Drive Down Your Client's Chances of Being Sued in an ADA Lawsuit

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In recent months, a handful of serial plaintiffs have filed lawsuits against automobile dealerships in San Diego, California claiming these dealerships are discriminating against them in violation of the Americans with Disabilities Act of 1990 (ADA) and related state laws. Although we are not aware of these types of suits being filed in other places, dealers nationwide should be aware of these claims. The plaintiffs claim the dealerships refused to provide and install hand control devices on vehicles for persons with disabilities to test drive the dealers' vehicles. The complaints are nearly identical in each instance, and the plaintiffs are represented by the same law firm. In fact, the plaintiff is the same man in all but one of the nine cases we identified.

Defendant dealerships have filed motions to dismiss several of these cases, and the results to date are mixed. Most judges reviewing these cases have found that the plaintiffs' legal theory is insufficient. Another judge denied a motion to dismiss on the grounds that the complaint stated a legally sufficient cause of action and the case is moving forward. As of this writing, there are five more cases in which are pending the respective defendants' motions to have the cases dismissed, and another case was filed the week of August 10.

Dealers across California who have not yet been sued are put in positions of uncertainty. On the one hand, the plaintiffs' theory is a novel application of the ADA. The arguments made in the successful motions to dismiss could provide a roadmap to defending your dealership should it be sued. On the other hand, at least one court has found that this ADA theory is enough to keep the case alive – at least at the pleading stage. The uncertainty of the situation must be factored into any decision regarding how to respond to this new wave of litigation.

If the plaintiffs see some success in these ADA claims, it is likely that similar cases will be filed against more California dealers, and perhaps across the country. Dealers everywhere, and counsel advising them, may wish to consider various courses of action. Two options are: (1) creating a plan to accommodate disabled customers, or (2) preparing to defend an ADA lawsuit.

The most conservative approach is to devise a policy to accommodate your client's disabled customers with hand controls. Your clients should

determine how long it would take their dealerships to acquire and install hand controls on a vehicle, and require in their policies sufficient notice from a potential customer in order to achieve the accommodation. Once your clients have policies in place, they should communicate that policy to any potential customer who may require an accommodation – including in dealership brochures and on websites, among others. The dealers' employees should be trained on policies and procedure for accommodating customers requesting hand controls on vehicles they would like to test drive. Dealers should consider posting on their websites their ADA policies, including those related to any notice required to request a test vehicle with hand controls.

During a client's investigation, it may be discovered that the cost or difficulty of installing hand controls is prohibitive. If this is the case, your client should document its investigation and retain these documents. The ADA only requires "reasonable" accommodations. If a dealership decides not to implement an accommodation policy, it will want to have evidence supporting its determination that the installation of hand controls as an accommodation was unreasonable and not readily achievable based on its individualized circumstances – which, of course, are highly fact intensive.

The ADA is a complicated and nuanced area of the law. The accommodations required by the ADA will differ between dealerships, as will the determination of what is readily achievable. It is recommended any dealer consult with an experienced ADA lawyer to talk about its specific situation and prepare the best approach to avoiding liability while at the same time providing as much access to all customers as is possible. ■

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