

DOES THE MOST RECENT WEB ACCESSIBILITY RULING IMPACT YOUR BUSINESS?

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Complex Commercial Litigation and Disputes Alert

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The recent ruling in *Juan Carlos Gil v. Winn-Dixie Stores, Inc.*, case no. 16-23020-civ-Scola (S.D. Fla. 2017) will require the attention of businesses across the country that host websites. To recap, this was a case of first impression. After a two-day nonjury trial, the Honorable Robert Scola determined that Winn Dixie's website operates as a "gateway" to its physical store locations and therefore is required to be accessible to individuals with disabilities. Commentary to the court's decision has focused mainly on two portions of the decision: (1) having an inaccessible website violates Title III of the ADA; and (2) a business is required to make its website accessible even though it is a *fact* that the Department of Justice ("DOJ") has never promulgated enforceable regulations. Instead, DOJ has relied upon the Web Accessibility Initiative (WAI) of the World Wide Web Consortium (W3C) to shape this guidance, known as the Web Content Accessibility Guidelines (WCAG). While this opinion is the first of its kind, the ruling also addresses a third important issue, specifically ADA liability arising from third-party links featured on a website. We believe this third issue has not received the attention it has deserved.

It is a common practice for businesses to host links on their websites that connect them to partners, vendors, or other third parties. The court's ruling suggests that even if a business hosts a compliant website, it may be held liable for noncompliance under Title III of the ADA if it links up to websites that are inaccessible. The court in *Winn Dixie* ruled that "[t]here are 6 different third parties . . . who interface with Winn Dixie's website so Winn-Dixie needs to make sure that those third parties also make sure that their websites are accessible" and "[M]any, if not most, of the third party vendors may already be accessible to the disabled and, if not, Winn-Dixie has a legal obligation to require them to be accessible if they choose to operate within the Winn-Dixie website." This language suggests that an operator or owner of an accessible website may face liability for the noncompliance of vendors that it features through its links. For example, if a retailer hosts an accessible website and provides a link to a vendor's noncompliant website, the retailer may face liability pursuant to this ruling.

Advocates may welcome these developments, but businesses should beware. Although this opinion is not binding on other courts, businesses with websites available to the public may want to consider the following items:

- A Web accessibility plan should be a priority. The court in the *Winn-Dixie* case took note that a plan was not in place at Winn Dixie prior to the filing of the lawsuit.
- For companies that have compliant websites, it should be noted that, if they are going to provide a link to another business, there should be some effort to confirm the link is to an accessible website.
- Businesses should consider the best practices in the industry and inquire as to whether their prospective vendor or business partner complies.

- Companies should also make sure their contracts with their vendors and partners provide provisions to protect against website accessibility lawsuits.

This type of litigation is on the rise and will likely have a record year. Until the DOJ issues permanent regulations, there is no end in sight for these types of actions, and businesses need to remain vigilant in their compliance efforts.

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