ADA REQUIRES WHEELCHAIR AREAS TO BE INTEGRATED INTO GENERAL SEATING

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When the Americans with Disabilities Act (ADA) was enacted in 1990, Congress recognized that "historically, persons with disabilities have been relegated to separate and often inferior services." In particular, Congress noted that "seating for persons using wheelchairs is often located in the back of auditoriums." In addition to "providing inferior seating," Congress noted further that "the patron in a wheelchair is forced to separate from family or friends during the performance." H.R. Rep. No. 101-485, pt. 2 at 102 (1990). The stated purpose of the ADA is to eliminate this and other forms of discrimination against individuals with disabilities by providing "clear, strong, consistent, [and] enforceable standards addressing discrimination against individuals with disabilities," including wheelchair seating in public gathering places.

Title II of the ADA prohibits discrimination on the basis of disability by public entities which includes any State or local government as well as any department, agency, special purpose district, or other instrumentality of a State or States or local government. 28 C.F.R. 35.104

Title III of the ADA prohibits discrimination on the basis of disability by those who own or operate places of public accommodation which includes the following facilities operated by private entities:

> Place of public accommodation means… (3) A motion picture house, theater, concert hall, stadium, or other place of exhibition or entertainment;(4) An auditorium… convention center, lecture hall, or other place of public gathering… (8) A museum, library, gallery, or other place of public display or collection; (9) A park, zoo, amusement park, or other place of recreation…. (12) A gymnasium, health spa, bowling alley, golf course, or other place of exercise or recreation. 28 C.F.R. 36.104

Title III also addresses architectural accessibility. To comply, a facility must be built in conformance with Department of Justice ("DOJ") Standards for Accessible Design. 28 C.F.R. Pt. 36, App. A. In particular, DOJ's Standard 4.33.3, governing assembly areas requires the following:

> wheelchair areas shall be an integral part of any fixed seating plan and shall be provided so as to provide people with physical disabilities a choice of admission prices and lines of sight comparable to those for members of the general public. At least one companion fixed seat shall be provided next to each wheelchair seating area. When the seating capacity exceeds 300, wheelchair spaces shall be provided in more than one location. 28 C.F.R. Part 36, App. A, § 4.33.3

An exception is provided for "bleachers, balconies and other areas having sight lines that require slopes of greater than 5 percent." This "Bleacher/Balcony Exception" allows 'accessible viewing positions" to be "clustered."

LAST ROW WHEELCHAIR "GHETTO"

In the case of *Colorado Cross-Disability Coalition v. Colorado Rockies Baseball Club, Ltd.*, 2004 U.S. Dist. LEXIS 19349, (U.S.D.C. Colo. 2004), the federal district court had to determine whether wheelchair seating at a major league baseball stadium complied with the ADA accessibility standard for public assembly areas, i.e., Standard 4.33.3. In this particular instance, several wheelchair bound patrons at a Colorado Rockies baseball game claimed the defendant Rockies had violated the Americans with Disabilities Act in failing to provide "appropriate seating." Specifically, the plaintiffs contended that the ADA required the Rockies and Coors Field to "provide wheelchair accessible seating which is integrated into the seating plan of the arena, dispersed throughout all seating areas and providing lines of sight and choices of admission prices comparable to those for the general public."

In response, the Rockies acknowledged that the ADA requires "places of public accommodation to be readily accessible to and usable by individuals with disabilities." 42 U.S.C. § 12183(a)(1). The Rockies, however, maintained that the "Balcony/Bleacher Exception" to Standard 4.33.3 permitted accessible seating for the disabled to be "clustered at the top of certain seating sections" in Coors Field "so disabled patrons have a view over the heads of other persons."

Coors Field was constructed after the effective date of the ADA, i.e., January 26, 1992. (ADA accessibility standards distinguish between new construction and facilities existing prior to January 26, 1992).

Initially, there were only a small number of wheelchair accessible seats near the infield on the lower level at Coors Field. The rest of the wheelchair accessible seats in those seating areas were behind the back row under an overhang. The Rockies charged the same price for these seats as it did for ambulatory seats near the infield. This practice permitted some fans with disabilities to sit near the infield for the same price as non-disabled fans.

In 2001, the Rockies created a high-priced luxury seating area which absorbed the only wheelchair accessible seats near the infield. After this change, fans in wheelchairs could not sit near the infield unless they are willing to pay "luxury" prices (over $ 100) for a ticket. The only available alternative for fans in wheelchairs desiring to sit near the infield was to sit behind the back row of ambulatory seating in the infield seating areas, in most cases 38 rows from the field.

Meanwhile, non-disabled fans could still obtain a seat in the infield at non-luxury prices significantly less than $100 (e.g., $38 or less for lower box level seats in 2003).

Accordingly, as of 2001, a wheelchair using fan had to pay approximately three times as much as most non-disabled patrons to sit near the infield at Coors Field.

The wheelchair accessible seats behind the back rows of the infield seating areas were under an overhang created by the press box and the club level seating area. Plaintiffs contended that "fans in the wheelchair accessible seats under the overhang have restricted sight lines."

> [Plaintiffs asserted that fans in these seats] are unable to see pop foul balls, pop fly balls and home runs. The trajectory of a high fly ball is obstructed by the overhang. Few rows of the ambulatory seats in the Lower Level Box are similarly affected by the overhang. All wheelchair accessible seats are obstructed by the overhang; 9,225 ambulatory seats are completely unaffected by that obstruction. Wheelchair accessible seats behind the back row of the Lower Level Box do not provide views or lines of sight comparable to ambulatory seats in the front row or close to the infield.

Similarly, plaintiffs noted that 88% of the 406 wheelchair accessible seats at Coors Field were "located in the back of their respective seating areas." Under such circumstances, plaintiffs contended that Coors Field did not comply with the ADA regulatory requirement that wheelchair accessible seats to be dispersed throughout seating areas, i.e., "located so as to provide a choice of lines of sight and views comparable to those of the general public and integrated into the seating plan, and offered at prices comparable to those offered to the general public." In comparison to the ambulatory seats in the front of these seating areas, plaintiffs also questioned the relative quality of wheelchair accessible seats clustered in the back.

Contrary to the position espoused by the Rockies, plaintiffs contended the ADA would not permit the Rockies to "cluster all of its wheelchair accessible seats only at the back of the seating area." Assuming the "Bleacher/Balcony Exception" applied to the facts of this case, plaintiffs maintained that the Rockies were still required to provide wheelchair accessible seating which was clustered in the front as well as the back of the Lower Box Level. Specifically, plaintiffs argued the Rockies "must provide wheelchair accessible seats at all levels having accessible egress, including the field level of Coors Field where there does exist accessible egress." Accordingly, plaintiffs claimed the "Bleacher/Balcony Exception" was "not an exemption from requirements for integrated or companion seating or choice in admission prices."

ISOLATION OR CHOICE

As noted by the federal district court, "Standard 4.33.3 requires dispersed seating throughout all seating areas and a choice of admission prices and views comparable to those for the general public." Similarly, citing the ADA Accessibility Guidelines (ADAAG) Manual, plaintiffs had asserted that dispersion, where feasible, must be achieved.

Applying these principles to the facts of the case, the federal district court found plaintiffs had alleged sufficient facts to support their claims of discriminatory seating practices in violation of the ADA.

> At Coors Field, choices of wheelchair patrons do not generally match those of ambulatory spectators. To sit near infield, they must pay at least $ 100, while non-disabled fans can do so for $20-38. All wheelchair accessible seats in the Infield Box and Midfield Box, and many in the Outfield Box [i.e., Lower Box seating], are under an overhang; non-disabled patrons have a choice of thousands of seats in those areas not obstructed by the overhang.

The federal district court also agreed with plaintiffs' assertion that the regulatory requirement for "comparable lines of sights for wheelchair patrons" was not satisfied by "[l]ocating the wheelchair accessible seats at the back of the Lower Level." Further, the court found these seats were "not integrated" pursuant to Section 4.33.3 which "requires wheelchair areas to be an integral part of any fixed seating plan."

In reaching this conclusion, the court noted that the Department of Justice had construed such integration within the context of Section 4.33.3 to require "'theater operators to provide wheelchair seating in the area of the theater where most members or the general public usually choose to sit.'" In this particular instance, the court noted that wheelchair seating was "not among the general public seating." On the contrary, the court found "all wheelchair accessible seating in the Lower Level Box is at the back of the seating area at Coors Field." Further, the court found "[c]hoices of prices for wheelchair seats also are not comparable to those of the general public."

Moreover, in the opinion of the federal district court. dispersal of wheelchair seating was feasible at Coors Field given the fact that such seating "existed physically when the Infield Seating Box area was initially opened." In addition, the court found that "application of the defendant's pricing policy" had resulted in "wheelchair accessible seats with Field Level access cost[ing] three times as much as most ambulatory seats at or near Field Level."

As characterized by the federal district court, the Rockies had claimed the "Bleacher/Balcony Exception" permitted the clustering wheelchair accessible seating at the back of the Lower Level Box seating area. According to the court, such a broad interpretation of the exception would "deny fans with disabilities any seats equivalent to almost 2,000 ambulatory seats in the first five rows of these areas." In contrast, the court found "[t]he clear language of Standard 4.33.3 requires fans with disabilities be provided lines of sight and prices comparable to those of non-disabled fans, and the ADAAG Manual states the exception is not an exception to comparable pricing requirement."

> According to an old saying, baseball is as American as Mom and apple pie. In a newly constructed public assembly area, a facility constructed

> specifically to enjoy that all-American activity, such as Coors Field, should be required to provide access to all Americans, disabled and non-disabled, and may not discriminate on the basis of disability in the full and equal enjoyment of Coors Field and the home team, the Colorado Rockies.

In the absence of evidence of evidence produced at trial to the contrary, the court found the Rockies had not provided disabled fans with a comparable experience at Coors Field as that of non-disabled fans. In reaching this conclusion, the federal district court found the clustering exception to Standard 4.33.3 was intended to have a "limited application to discrete parts of this particular public assembly area, such as balconies, bleachers and the like."

While noting the relative lack of cases interpreting the scope and applicability of the "Bleacher/Balcony Exception" to Standard 4.33.3, the court found the reasoning in *Berry v. City of Lowell*, 2003 U.S. Dist. LEXIS 15209 (D.Mass. 2003) to be instructive. This case considered the applicability of the exception to "a 4,700 seat ballpark in which all wheelchair spaces were located in the last row of the ballpark."

> Although only six stadium sections are in the outfield, 58 percent of the wheelchair spaces are located there. The premium box area and the sections behind home plate have no handicapped accessible seating.

Under such circumstances, the plaintiffs in *Berry* claimed the defendants had "violated the ADA by designing and constructing a stadium in which all wheelchair spaces are located in the last row, with a disproportionate number in the outfield and none behind home plate and in the premium box section."

In addition to citing Standard 4.33.3, the plaintiff in *Berry* referenced the following language from a 1996 technical assistance bulletin on *Accessible Stadiums* from the Department of Justice: "Accessible seating must be an integral part of the seating plan so that people using wheelchairs are not isolated from other spectators or their friends or family."

This DOJ bulletin further stipulated that "wheelchair seating must be provided in all areas including sky boxes and specialty areas and must be dispersed throughout all seating areas and provide a choice of admission prices and views comparable to those for the general public." Absent a requirement for "horizontal and vertical dispersal of wheelchair seats at a large indoor arena," the *Berry* opinion noted that "an arena operator could simply designate a few token wheelchair seats in the better seating areas, and cluster the majority of wheelchair seats in the last row or in other undesirable locations." In the opinion of the *Berry* court, it would be "contrary to the Congressional intent in enacting Title III of the ADA" to allow such discriminatory practices.

Adopting the analysis of the court in *Berry v. City of Lowell*, the federal district court in this case reached a similar conclusion. Specifically, the court held that "[t]he Rockies may not 'ghettoize' wheelchair spaces or designate a few token wheelchair spaces in the

luxury seating areas as has been done." Rather, the court found "[d]ispersal requires a choice of various seating areas, good and bad, expensive and inexpensive, which generally matches those of ambulatory spectators."

The federal district court, therefore, denied the Rockies motion for summary judgment which would effectively dismiss plaintiffs' ADA claims without a trial. In so doing, the court found plaintiffs had alleged sufficient facts which, if proven at trial, would establish violations of the ADA.