

ADA Sidewalk Class Action against City of Chicago

SETTLEMENT SUMMARY

The Chicago City Council agreed to a settlement agreement in September 2007. The short synopsis is this:

- 1 From now on the City of Chicago will only install curb ramps and sidewalks that meet or exceed the specifications of the government guidelines (the “ADAAG”).
- 2 For the next 5 years the City will spend \$50,000,000 (\$10,000,000 per year) in new money to repair and replace curb ramps and sidewalks in high traffic areas which are not on the City’s schedule for repair or replacement. The City will continue to spend approximately eighteen million dollars (\$18,000,000) each year installing curb ramps and sidewalks as a part of the City's annual resurfacing work.
- 3 The City shall install curb ramps into intersections of each cross street at its intersection with the alteration or resurfacing, so that the altered or resurfaced intersections are fully accessible to mobility-impaired persons with disabilities. For example: if the City paves Dearborn Street, the curb ramps to cross Monroe at Dearborn Street and the curb ramps to cross the alley between Adams and Monroe will be ADA compliant even though the City did not pave Monroe or the alley.
- 4 If anyone is aware of a problem curb ramp (OF ANY KIND–NEW, OLD or NOT DONE RIGHT), they should call 311 and the City will take corrective action.
- 5 If you don’t get a satisfactory result or if the City doesn’t do it correctly, send me an email.

SETTLEMENT

The Council for Disability Rights, a local nonprofit, announces the settlement of its lawsuit demanding the City of Chicago comply with the law when it resurfaces streets. Chicago will spend over \$140,000,000 in the next 5 years installing curb ramps that comply with the Americans with Disabilities Act (ADA). If there is a bad curb ramp, any Chicagoan can call 311 to complain and have it fixed.

The Council for Disability Rights filed its October 2005 lawsuit claiming Chicago had continuously failed to provide and maintain curb-ramps that complied with the Americans with Disabilities Act (ADA) of 1990. In July 2006 the City of Chicago threw in the towel and conceded it was not building sidewalks and curb ramps which complied the Americans with Disabilities Act.

As soon as the lawsuit was filed, the City ran to Federal Judge Wayne Andersen and proclaimed that there was no need for Federal intervention. The City said from November 2005 forward Chicago would build perfect sidewalks and curb ramps which would all be in compliance with the ADA.

Maybe Mayor Daley had been wrong and the City hadn't followed the Disability Law up until then. Maybe Chicago really wasn't disability friendly. BUT Chicago would never build a bad curb ramp or sidewalk again. The head of the Department of Transportation said to Judge Andersen: "we will be perfect from now on." The attorneys from the Corporation Counsel's office told the Judge that Chicago needs no oversight. Mayor Daley's Chief of Staff, Ron Huberman, went to Judge Andersen and said all the pieces were in place for the City to be perfect from then on.

Judge Andersen listened and gave Chicago a chance to prove it. He let the City show what it could do in the 2006 construction season. Many streets were resurfaced, which meant new curb ramps and, sometimes, new sidewalks. The City rebuilt a large portion of Chicago Avenue from the Kennedy Expressway west to Damen and Fullerton from Sacramento west. It was a fiasco. The City wasted millions of taxpayer dollars building bad ramps and sidewalks.

On July 17, 2006, Judge Andersen went to look at the Chicago Avenue project. The City sent along executives from the Department of Transportation, and engineers, lawyers, architects, etc. They walked and inspected Chicago from Elizabeth to Ada. Nothing was right. None

(that's right—not one) of the new curb ramps or sidewalks complied with the law. Driving west to Damen, none of the curb ramps appeared to comply. The City made excuses, their engineers made excuses, their lawyers were quiet, and the architects said “oh, oh.”

The City changed its standards and said “everything will be perfect from now on.” No cement will be poured for a sidewalk or a curb ramp unless the sidewalk or curb ramp complies with the law.

In August 2006, Ms. Holzer, the director of the CDR saw cement trucks pouring cement on the Fullerton project. She called Mr. Woerthwein, the attorney. They measured the sidewalks---the extreme slope broke the law. They measured the curb ramps. These broke the law as well. They notified the City. The City said: “you are wrong, our measurements show these comply with the law.” Everyone went out and measured. The level used by Chicago engineers showed the City was in compliance with the law, no matter how far off level it looked. The CDR's level showed parts of the sidewalk were 2 or 3 times as steep as the law allowed. There was a big difference.

The City's architect was along. His level was used. His readings agreed with those taken by the CDR. The “magic level” used by the City was set aside. The City ripped up and replaced the new Fullerton project (at taxpayers' expense). The City was in the process of ripping up and repairing some but not all of the Chicago Avenue project previously looked at by Judge Andersen on July 17, 2006 (also at taxpayers' expense). The City is installing curb ramps wherever it resurfaced a street in 2006.

In December, 2006, Chicago started drafting an agreement whereby it would comply with the Americans With Disabilities Act when it resurfaced streets. If Chicago does not, the Council for Disability Rights will come back to Judge Andersen and have the law enforced. Both sides just agreed to final language.

Copies of the Settlement are available.

"The City's noncompliance creates inconvenient, often dangerous, barriers to the general public as they travel through the City as pedestrians," said CDR's Executive Director Jo Holzer. "These sidewalk barriers often force pedestrians in wheelchairs to use the street, further endangering their own physical well-being as well as creating hazards for drivers. Chicago is responsible for removing barriers and for creating and maintaining accessible

public pathways."

The named plaintiffs are a small number of those affected by the grievances presented in this case -- people with mobility limitations who use the public ways of Chicago, whether residents or not. Residents of Chicago who have mobility limitations (or may have in the future) number in the tens of thousands. The 2000 US Census says there were 600,000 people with disabilities living in Chicago. Non-residents include visitors as well as daily commuters, many thousands of whom have or will have mobility limitations.

The number of curbs at a given intersection may range from eight to ten or more, depending on the number of intersecting streets, pedestrian islands, etc. And, alleys at mid-block present two more sites on each side of the street that require curb cuts or ramps.

The need to correct the pattern of failure presented in this case is compounded by the number of individuals affected; the need is complicated by the number of possible sites with improper installations. Finally, it is a compelling need -- to avoid injury to individuals in the general public and to improve the daily quality of life for the individuals with disabilities and everyone else traversing the public way in Chicago. And it is a compelling need to avoid or prevent further individual lawsuits against the City of Chicago.

The impact of these conditions on the daily life of a person with a mobility limitation is unimaginable and brings a real sense of urgency to the discussion. In order to travel to and from work, a person must know the condition of each and every curb that s/he must safely traverse. And, those conditions change with the season -- in the winter, piles of snow or ice often make the curb cut impassable; in the summer, construction work and summer lunch tables on the sidewalks often requires the person to find another, safer path to work. In order to meet someone for lunch, not only must s/he know whether the restaurant is accessible, but also whether the path of travel from point A (the office) to point B (the restaurant) is also accessible. In order for him/her to use public buildings or other public venues, the path of travel to (as well as into and throughout) the facility must be accessible. And, if a person with mobility limitations is going to a new location, a safe, accessible path of travel is unknowable. There is no one, no agency with the answer -- only another person with a mobility limitation who has been recently to that location can know the conditions. Job-hunting becomes a real adventure into new territory, requiring a cell phone so that s/he can inform a potentially new employer when blocked by an inaccessible

public way or when reaching an inaccessible site.

An accessible path of travel becomes an integral part of the daily planning for a person with a mobility limitation in order for him/her to reach any given destination in a safe and timely manner. A flexible approach to daily events also becomes part of his/her mind set. Even then, there may be occasional breakthroughs of anger that result in rude outbursts or, perhaps, lawsuits.

With this settlement, the Council for Disability Rights (CDR) and the City have crafted a solution that, if followed, will enable people with disabilities in the future to move through this world class city in the conduct of their daily lives with total confidence that all public venues are accessible to them, including the public way. Under the conditions of the settlement, all contractors and City staff who work on streets and sidewalks will be trained on ADA requirements; contractors who fail to meet ADA standards must bring the ramps up to ADA standards at their own expense; the City will spend \$50,000,000 over the next five years on correcting bad curbs-cuts and ramps.

Incorporated in 1981, CDR was founded by adults with disabilities, parents of children with disabilities and their advocates; since 1983 CDR has been qualified to receive federally deductible gifts. Governed, managed and staffed by a super-majority of people with disabilities and their families, its mission is to seek and provide information and resources for people with disabilities and their families as they pursue independence and self-reliance, and to advocate for improved public policies that will enhance and protect that independent lifestyle.

The five Plaintiffs are all people who have traversed Chicago's streets on a regular basis and who have mobility limitations -- some use wheelchairs, some white canes, some walking canes or crutches.

The lawsuit could not have succeeded without the hard work of each of the Plaintiffs: Bruce Moore, Larry Quillinan, Venzelma Cotton, Kent Smith, Doris Stewart, and Margaret Holzer, all of whom were passionate about getting the City to "do it right." Sadly for all of us, Larry Quillinan died while the lawsuit was still being fought. The Council for Disability Rights and Jo Holzer were supportive each step of the way. Bruce Moore and Jo Holzer put in a lot of time and effort and were present at each of the meetings on the "street" where we pointed out failures to the City and Judge Andersen.

This wasn't just a Chicago legal effort. We had the wonderful help of attorneys who had sued many, many, many cities for failing to obey the law: Denise Heberly and Mark Finnegan of Ann Arbor, Michigan and Megan Buffington of Bowling Green, Ohio. They read and revised pleadings and other court filings and made a lot of trips to Chicago to measure curb ramps, attend court proceedings, meet with Judge Andersen and help prepare all the things that go into a large lawsuit. And they were always there on the telephone with a helpful answer to our questions.

For further information on the lawsuit or the ADA, contact CDR at 312/444.9484 (cdr@disabilityrights.org) or Ted Woerthwein 312/654.0001 (ted@wamlaw.com)