

#402
TJS

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JESSICA SLIVAK, individually and on behalf
of all others similarly situated,

Plaintiff(s)

v.

THE IRISH ROVER STATION HOUSE,
BRU HOUSE, INC. d/b/a THE IRISH
ROVER STATION HOUSE, RAYMOND
CROUSE d/b/a THE IRISH ROVER
STATION HOUSE, and TRACEY CROUSE
d/b/a THE IRISH ROVER STATION HOUSE

Defendant

Case No.

18 2401

CLASS ACTION COMPLAINT

Jury Trial Demanded

CLASS ACTION COMPLAINT

Plaintiff Jessica Slivak ("Plaintiff" or "Slivak"), on behalf of herself and all others
similarly situated, alleges as follows:

INTRODUCTION

1. Plaintiff is an "individual with a disability" as that term is understood pursuant to
Title III of the Americans with Disabilities Act ("ADA"), 42 U.S.C. § 12101 et seq., and its
implementing regulations.

2. Plaintiff, a forty-two-year-old female individual, was born with Osteogenesis
Imperfecta (i.e., brittle bone disease), which requires her to use a wheelchair on a daily basis.
Indeed, for mobility, Plaintiff has used a wheelchair for her entire adult life.

3. Plaintiff leads an active life. She maintains her career as a Speech-Language
Pathologist, while actively serving on various committees in her church and being a wife and
mother of three children.

12. Accordingly, and on behalf of a class of similarly situated individuals, Plaintiff seeks: (i) a declaration that Defendant's facilities violate federal law as described; and (ii) an injunction requiring Defendant to remove the identified access barriers, so that they are fully accessible to, and independently usable by, physically-impaired individuals such as Plaintiff and the class she seeks to represent.

13. Plaintiff also requests that once Defendant is fully in compliance with the requirements of the ADA, the Court retain jurisdiction for a period of time to be determined to ensure that Defendant has adopted and is following an institutional policy that will, in fact, cause Defendant to remain in compliance with the law.

JURISDICTION AND VENUE

14. This Court has federal question jurisdiction over the ADA claims asserted herein pursuant to 28 U.S.C. § 1331 and 42 U.S.C. § 12188.

15. Plaintiff's claims asserted herein arose in this judicial district and Defendant maintains its headquarters and/or does substantial business in this judicial district.

16. Venue in this judicial district is proper under 28 U.S.C. § 1391(b)(2), in that this is the judicial district in which a substantial part of the acts and omissions giving rise to the claims occurred.

PARTIES

17. Plaintiff is and, at all times relevant hereto, was a resident of the Commonwealth of Pennsylvania. Plaintiff is and, at all times relevant hereto, has been a legally handicapped individual, and is therefore a member of a protected class under the ADA, 42 U.S.C. § 12102(2) and the regulations implementing the ADA set forth at 28 C.F.R. § 36.101 et seq.

18. Defendant THE IRISH ROVER STATION HOUSE ("Irish Rover") is a fictitious

26. The ADA broadly protects the rights of individuals with disabilities with respect to employment, access to State and local government services, places of public accommodation, transportation, and other important areas of American life.

27. Title III of the ADA prohibits discrimination in the activities of places of public accommodation and requires places of public accommodation to comply with ADA standards and to be readily accessible to, and independently usable by, individuals with disabilities. 42 U.S.C. § 12181-89.

28. On July 26, 1991, the Department of Justice (“DOJ”) issued rules implementing Title III of the ADA, which are codified at 28 C.F.R. § 36.¹

29. Appendix A of the 1991 Title III regulations (republished as Appendix D to 28 C.F.R. § 36) contains the ADA standards for Accessible Design (“1991 Standards”), which were based upon the Americans with Disabilities Act Accessibility Guidelines (“1991 ADAAG”), published by the Access Board on the same date.²

30. The ADA requires removal of existing architectural barriers in facilities existing before January 26, 1992, where such removal is readily achievable. See 42 U.S.C. §§ 12181(9), 12182(b)(2)(A)(iv), and 28 C.F.R. § 36.304(a).

31. Facilities newly built or altered after January 26, 1993 must be readily accessible

¹ The DOJ is the administrative agency charged by Congress with implementing the requirements of the ADA.

² The Access Board was established by section 502 of the Rehabilitation Act of 1973. See 29 U.S.C. § 792. The passage of the ADA expanded the Access Board’s responsibilities. The ADA requires the Access Board to “issue minimum guidelines . . . to ensure that buildings, facilities, rail passenger cars, and vehicles are accessible, in terms of architecture and design, transportation, and communication, to individuals with disabilities.” 42 U.S.C. § 12204. The ADA requires the DOJ to issue regulations that include enforceable accessibility standards applicable to facilities subject to Title III that are consistent with the “minimum guidelines” issued by the Access Board, 42 U.S.C. §§ 12134(c), 12186(c).



43. Moreover, no parking spaces in the parking area of Defendants' Restaurant were designated "van accessible," in violation of Section 208.2.4 of the 2010 Standards that requires "at least one" van accessible designated parking space for every six accessible parking spaces a facility maintains.

44. As a result of Defendants' failure to provide "van accessible" spaces, with the requisite adjacent access aisles, as required by the ADA, Plaintiff cannot safely lower her van's ramp, which is her only means of entry and exit from her vehicle.

45. Additionally, there is only one marked access aisle serving the four purportedly accessible parking spaces.

46. Failure to provide adjacent access aisles to each accessible parking space violates Section 502.2 of the 2010 Standards.

47. Further, there is no wheelchair accessible ramp located at the main entrance to Defendants' Restaurant.

Symbol of Accessibility.

57. Defendants' Restaurant is within the geographic zone that Plaintiff typically travels as part of her routine activities.

58. Accordingly, Plaintiff will visit Defendants' Restaurant in the future as part of her regular activities.

59. Upon information and belief, Defendants have centralized policies regarding the management and operation of their Restaurant, and those policies are inadequate to ensure compliance with the ADA, as is demonstrated by the fact that Defendants' Restaurant remains non-compliant.

60. Plaintiff will continue to attempt to use Defendant's facilities. However, so long as Defendant continues to violate the ADA, Plaintiff will be unable to use them independently and will be, thereby, denied full access to Defendant's facilities.

61. Plaintiff requests periodic monitoring to confirm that the public accommodations are brought into compliance and remain in compliance.

62. Without injunctive relief, Plaintiff will continue to be unable to independently use Defendant's facilities.

CLASS ACTION ALLEGATIONS

63. Plaintiff brings this action pursuant to Rules 23(a) and 23(b)(2) of the Federal Rules of Civil Procedure on behalf of herself and all individuals with disabilities who have attempted to access, or will attempt to access Defendant's facilities (the "Class").

64. Upon information and belief, the Class is so numerous that joinder of all individual members in one action would be impracticable. The disposition of the individual claims of the respective Class members through this class action will benefit both the parties and

69. Class certification is appropriate pursuant to Fed. R. Civ. P. 23(b)(2) because Defendant has acted or refused to act on grounds generally applicable to the Class, making appropriate both declaratory and injunctive relief with respect to Plaintiff and the Class as a whole.

**COUNT I
VIOLATION OF THE ADA**

70. The allegations contained in the previous paragraphs are incorporated by reference.

71. Defendant's facilities were required to be altered, designed, or constructed so that they are readily accessible and usable by disabled individuals, including individuals who use wheelchairs. See 42 U.S.C. § 12183(a)(1).

72. The architectural barriers described above demonstrate that Defendant's facilities were not altered, designed, or constructed in a manner that causes them to be readily accessible to and usable by individuals who use wheelchairs, including Plaintiff and the class she seeks to represent.

73. The architectural barriers described above demonstrate that Defendant has failed to remove barriers, as required by 42 U.S.C. § 12182(b)(2)(A)(iv).

74. Defendant's facilities are required to comply with the Department of Justice's 2010 Standards for Accessible Design, or in some cases the 1991 Standards 42 U.S.C. § 12183(a)(1); 28 C.F.R. § 36.406; 28 C.F.R. § 36, app. A.

75. Defendant is required to provide individuals who use wheelchairs full and equal enjoyment of its facilities. 42 U.S.C. § 12182(a).

76. Defendant has discriminated against Plaintiff and the Class in that it has failed to make its facilities fully accessible to, and independently usable by, individuals who use

- d. Payment of costs of suit;
- e. Payment of reasonable attorneys' fees; and
- f. The provision of whatever other relief the Court deems just, equitable and appropriate.

DEMAND FOR JURY TRIAL

Plaintiff demands a trial by jury as to all issues so triable.

Date: January 15, 2018

Respectfully submitted,
KALIKHMAN & RAYZ, LLC



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Counsel for Plaintiff and the Proposed Class

CIVIL COVER SHEET

18-0240

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Shank

DEFENDANTS

The Irish Rover Station House

(b) County of Residence of First Listed Plaintiff

(EXCEPT IN U.S. PLAINTIFF CASES)

Phila

County of Residence of First Listed Defendant

(IN U.S. PLAINTIFF CASES ONLY)

Banks County

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

(c) Attorneys (Firm Name, Address, and Telephone Number)

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State
Citizen of Another State
Citizen or Subject of a Foreign Country
Incorporated or Principal Place of Business In This State
Incorporated and Principal Place of Business In Another State
Foreign Nation

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

Table with columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from Another District (specify)
6 Multidistrict Litigation - Transfer
8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

42 USC 1901

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$

CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

JAN 19 2018

DATE

1/19/18

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF PENNSYLVANIA — DESIGNATION FORM to be used by counsel to indicate the category of the case for the purpose of assignment to appropriate calendar.

Address of Plaintiff: c/o Kalikhman & Rayz, LLC 1051 County Line Rd., Suite "A" Huntingdon Valley, PA

Address of Defendant: 1033 Bellevue Avenue, Langhorne, Pennsylvania 19047

Place of Accident, Incident or Transaction: Bucks County (Use Reverse Side For Additional Space)

Does this civil action involve a nongovernmental corporate party with any parent corporation and any publicly held corporation owning 10% or more of its stock? (Attach two copies of the Disclosure Statement Form in accordance with Fed.R.Civ.P. 7.1(a)) Yes [] No [X]

Does this case involve multidistrict litigation possibilities? Yes [] No [X]

RELATED CASE, IF ANY:

Case Number: Judge Date Terminated:

Civil cases are deemed related when yes is answered to any of the following questions:

- 1. Is this case related to property included in an earlier numbered suit pending or within one year previously terminated action in this court? Yes [] No []
2. Does this case involve the same issue of fact or grow out of the same transaction as a prior suit pending or within one year previously terminated action in this court? Yes [] No []
3. Does this case involve the validity or infringement of a patent already in suit or any earlier numbered case pending or within one year previously terminated action in this court? Yes [] No []
4. Is this case a second or successive habeas corpus, social security appeal, or pro se civil rights case filed by the same individual? Yes [] No []

CIVIL: (Place [X] in ONE CATEGORY ONLY)

A. Federal Question Cases:

- 1. [] Indemnity Contract, Marine Contract, and All Other Contracts
2. [] FELA
3. [] Jones Act-Personal Injury
4. [] Antitrust
5. [] Patent
6. [] Labor-Management Relations

7. [] Civil Rights

8. [] Habeas Corpus

9. [] Securities Act(s) Cases

10. [] Social Security Review Cases

11. [X] All other Federal Question Cases

(Please specify) 42 U.S.C. § 12101 et seq.

B. Diversity Jurisdiction Cases:

- 1. [] Insurance Contract and Other Contracts
2. [] Airplane Personal Injury
3. [] Assault, Defamation
4. [] Marine Personal Injury
5. [] Motor Vehicle Personal Injury
6. [] Other Personal Injury (Please specify)
7. [] Products Liability
8. [] Products Liability — Asbestos
9. [] All other Diversity Cases

(Please specify)

ARBITRATION CERTIFICATION

(Check Appropriate Category)

Arkady "Eric" Rayz, Esq. counsel of record do hereby certify:

- [X] Pursuant to Local Civil Rule 53.2, Section 3(c)(2), that to the best of my knowledge and belief, the damages recoverable in this civil action case exceed the sum of \$150,000.00 exclusive of interest and costs;
[X] Relief other than monetary damages is sought.

DATE: 1/15/2018

[Signature]

Attorney-at-Law

87976

Attorney I.D.#

NOTE: A trial de novo will be a trial by jury only if there has been compliance with F.R.C.P. 38.

I certify that, to my knowledge, the within case is not related to any case now pending or within one year previously terminated action in this court except as noted above.

DATE: 1/15/2018

[Signature]

Attorney-at-Law

87976

Attorney I.D.#

CIV. 609 (6/08)

JAN 19 2018

TJS

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CASE MANAGEMENT TRACK DESIGNATION FORM

SLIVAK

CIVIL ACTION

TJS

v.

18 240

The Irish Rover Station House

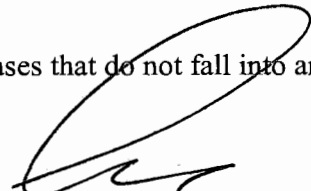
NO.

In accordance with the Civil Justice Expense and Delay Reduction Plan of this court, counsel for plaintiff shall complete a Case Management Track Designation Form in all civil cases at the time of filing the complaint and serve a copy on all defendants. (See § 1:03 of the plan set forth on the reverse side of this form.) In the event that a defendant does not agree with the plaintiff regarding said designation, that defendant shall, with its first appearance, submit to the clerk of court and serve on the plaintiff and all other parties, a Case Management Track Designation Form specifying the track to which that defendant believes the case should be assigned.

SELECT ONE OF THE FOLLOWING CASE MANAGEMENT TRACKS:

- (a) Habeas Corpus – Cases brought under 28 U.S.C. § 2241 through § 2255. ()
- (b) Social Security – Cases requesting review of a decision of the Secretary of Health and Human Services denying plaintiff Social Security Benefits. ()
- (c) Arbitration – Cases required to be designated for arbitration under Local Civil Rule 53.2. ()
- (d) Asbestos – Cases involving claims for personal injury or property damage from exposure to asbestos. ()
- (e) Special Management – Cases that do not fall into tracks (a) through (d) that are commonly referred to as complex and that need special or intense management by the court. (See reverse side of this form for a detailed explanation of special management cases.) (x)
- (f) Standard Management – Cases that do not fall into any one of the other tracks. ()

1/15/2018
Date


Attorney-at-law

Plaintiff
Attorney for

(215) 364-5030
Telephone

(215) 364-5029
FAX Number

erayz@kalraylaw.com
E-Mail Address

(Civ. 660) 10/02



JAN 19 2018

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Irish Rover Station House Facing ADA Class Action Over Parking](#)
