

## Understanding ‘Standing’: The Eighth Circuit Slams the Brakes on Three More ADA Title III ‘Drive-By’ Suits

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Continuing a trend that saw Minnesota courts dismiss at least eight disability access lawsuits under Title III of the American with Disabilities Act (ADA) in [2018](#) and [2019](#), the Eighth Circuit Court of Appeals, which has jurisdiction over Minnesota as well as several other states, recently affirmed the dismissals of three more Title III cases.

The appellate court’s decisions served as another reminder of the judiciary’s antipathy toward so-called “drive-by” lawsuits, so named for the suspected practice of plaintiffs or lawyers allegedly “driving by” businesses to spot visible ADA-access violations without any real intent to patronize those businesses. Finding a perceived violation, the plaintiff files suit, claiming he or she was unable to patronize the business due to the alleged violation. These cases often settle quickly because the defendants wish to avoid the associated legal expenses that can easily surpass the plaintiffs’ settlement demands.

All three of the new cases focused on the legal doctrine of “standing.” Standing is based on the constitutional concept that courts may only decide actual “cases or controversies” and cannot issue advisory opinions. In the context of an ADA access case, this means that the plaintiff has to demonstrate that he or she suffered an actual injury due to the defendant’s conduct, and that the injury is “likely to be redressed” by a favorable court decision. With regard to the “actual injury” requirement, the plaintiff must show that the noncompliant barrier either prevented or limited his or her use of the facility, or that he or she would patronize the facility in the future if not for those barriers.

The Eighth Circuit issued the first of the new decisions on August 3, 2020, affirming the U.S. District Court for the District of Minnesota’s dismissal of the plaintiff’s case in [Dalton v. JJSC Properties, LLC](#). In this case, the plaintiff noticed alleged ADA violations when he pulled his van into a gas station parking lot to look up directions on his phone because he was lost. The Eighth Circuit held that the plaintiff lacked standing to pursue claims relating to the slope of the parking lot’s surface because he had not suffered any actual injury, in that he had no intention of leaving his van that night, or of patronizing the gas station in the future. The court reiterated that “mere knowledge of barriers,” without an injury and likelihood of a future injury, is insufficient to establish standing to sue. The court also affirmed the dismissal of the plaintiff’s remaining claims relating to the demarcation of an accessible parking space, on the grounds of “mootness,” because the defendant had quickly and

effectively remedied the alleged violation.

Two days later, the Eighth Circuit affirmed the dismissal of another ADA Title III case, [\*Hillesheim v. O.J.'s Café, Inc.\*](#), which involved a restaurant parking lot. While the slope in some parts of the parking lot's accessible spaces and access aisle failed to meet the ADA's guidelines, the court agreed with the restaurant's expert witness, who opined that the plaintiff would not have to traverse those areas in order to enter the restaurant. Therefore, again relying on the doctrine of standing, the court held that the plaintiff had not shown any risk of an "ongoing or future harm," and therefore, affirmed the dismissal of the case by the U.S. District Court for the District of Nebraska.

Finally, on August 10, 2020, the Eighth Circuit completed the trifecta by affirming the dismissal of another case on the grounds that the plaintiff lacked standing. In [\*Smith v. Bradley Pizza, Inc.\*](#), the plaintiff went to the defendant restaurant, took some photographs from his car, and left before the restaurant opened, in true drive-by fashion. He later testified that he had never been to the restaurant before, that he had gone there that day only to test the restaurant for ADA violations, that the same franchise had several other restaurants closer to his home, and that he had no specific plans to return to that particular restaurant. The Eighth Circuit affirmed the dismissal by the U.S. District Court for the District of Minnesota, holding that the plaintiff's testimony was insufficient to show any actual or imminent injury, and that the plaintiff therefore lacked standing.

## Key Takeaways

These three new cases illustrate that the Eighth Circuit Court of Appeals, which has jurisdiction over the states of Arkansas, Iowa, Minnesota, Missouri, Nebraska, North Dakota, and South Dakota, takes a dim view of drive-by lawsuits. While these cases focused primarily on the legal principle of standing, prior decisions in drive-by cases have demonstrated that several other defenses are also available to Minnesota business owners who are faced with such lawsuits. While the economics of litigation may still lead some defendants to settle these ADA claims quickly, the trend of decisions over the past few years indicates that the courts often grant favorable outcomes to those business owners who decide to defend the cases aggressively.

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