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Supreme Court Agrees to Hear Appeal from First Circuit of Website Accessibility Tester Case

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On March 27, 2023, the Supreme Court granted a petition for a writ of certiorari by Acheson Hotels in Acheson Hotels, LLC v. Deborah Laufer, Case No. 21-1410. In its petition to appeal from an earlier First Circuit decision analyzed in a prior post, Acheson Hotels asks the Supreme Court to resolve the following question:

Does a self-appointed Americans with Disabilities Act "tester" have Article III standing to challenge a place of public accommodation's failure to provide disability accessibility information on its website, even if she lacks any intention of visiting that place of public accommodation?

In support of its petition, Acheson Hotels argued that the question was ripe for resolution by the Supreme Court based on the distinct divide among the circuit courts on the question presented and the errors it claims plagued the First Circuit's decision.

The First Circuit's Decision on Laufer's Standing to Bring her Claim

In its October 5, 2022 decision, the First Circuit reversed the district court's dismissal of Laufer's claims for lack of standing, holding that she had standing on the basis of her "dignitary harm" and "informational injury" caused by the alleged failure of the defendant's website to identify accessible rooms, provide an option for booking accessible rooms, or give sufficient information about the accessibility features of the inn. Unlike the district court, the First Circuit did not find Laufer's admitted status as a "tester" and not a traveler as a barrier to her claim.

The Growing Circuit Split on Standing for Informational Injury

The First Circuit's decision deepened the growing circuit court divide and, as a result, in its recent wake we predicted the Supreme Court would be considering the case in its next term. That prediction proved correct, with the Supreme Court's recent decision to hear the case in the coming term.

Laufer herself is a prolific plaintiff—she has brought more than 600 lawsuits against hotels around the country under the Americans with Disabilities Act based on the accessibility of their websites. As Acheson Hotels noted, the circuits are squarely divided not just on the question of whether a website tester has constitutional standing to bring an accessibility claim based on information available on a

public website, but on the question of Laufer's standing in these many cases. The First and Eleventh Circuits have found Laufer specifically had standing on different theories; the Second, Fifth, and Tenth Circuits have rejected Laufer's standing, and the Fourth, Sixth, and Seventh Circuits have held that other testers lacked standing.

A host of amici curiae urged the Supreme Court to take up the case, and Laufer herself agreed the Court should consider the appeal and uphold the First Circuit's ruling.

Briefing on the merits is scheduled to occur this summer and the justices likely to hear argument in the case in the fall. A decision will follow in 2024 and will likely shape the future of consumer class actions beyond the context of website accessibility, including class claims based on data privacy and cybersecurity, marketing and labeling, and credit reporting.

Website Accessibility Litigation Risk Exposure

In the meanwhile, companies should consult with counsel to evaluate their level of website accessibility litigation risk exposure. As we have advised clients, the risk of website accessibility is fast-growing and, following the First Circuit's Laufer ruling, that risk has expanded for hospitality companies. We expect that website and digital accessibility litigation will continue to proliferate while the Supreme Court considers the Laufer appeal, but that litigants may move to stay cases that could be affected as the Supreme Court's time for decision grows closer.

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