

Eleventh Circuit Doesn't Give a Hoot About Prior Settlement Agreements

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On June 19, 2018, in *Haynes v. Hooters of America, LLC*, 2018 WL 3030840 (11th Cir. 2018), the Eleventh Circuit Court of Appeals eliminated a useful defense strategy in the website accessibility arena when it held that a business's agreement to remediate its website in a prior, private settlement did not render moot subsequent actions seeking the same relief.

The decision vacated and remanded a business-friendly decision by the Southern District of Florida granting a motion to dismiss, finding the dispute was still "live" after considering the following factors:

- whether there was evidence in the record that the business had been complying with the earlier settlement agreement;
- whether the injunction sought by the plaintiff sought continually updating and maintenance of its website to ensure accessibility—relief different than agreed to in the settlement agreement; and
- whether the current plaintiff could enforce the prior remediation commitments if he or she was not a party to the prior settlement agreement.

Importantly, the Eleventh Circuit noted that the district court did not retain jurisdiction to enforce the settlement agreement, preventing the court from ordering the relief to occur. Businesses should note that having the court retain jurisdiction over enforcement of a private settlement agreement *enhances* the chances of using the settlement to preclude future actions seeking the same relief, while by no means guaranteeing that result.

Key Takeaways

This holding deals a blow to businesses that have entered into settlement agreements in part to obtain "insurance" against future website accessibility claims. In fact, as a result of this holding, places of public accommodation may start declining to settle such claims going forward, as a mere

settlement agreement will not prevent future claimants from bringing copycat claims.

The holding also underscores the utility of including language in settlement agreements to have the court retain jurisdiction to enforce the settlement agreement, which may provide a better chance of precluding future actions seeking the same relief. With the Eleventh Circuit's decision eliminating one popular option, businesses may want to also consider the prospect of a consent decree or a voluntary class action as potential options that may have a better chance of providing the desired preclusive effect. Of course, each of these options requires consideration of a wide range of pros and cons.

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