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# Emergency Preparedness for Individuals with Disabilities

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*Savage v. City Place Limited Partnership*

No. 240306-V

Cir. Ct. Montgomery County, Md

August 28, 2004

The importance of an effective emergency evacuation plan for people with disabilities was highlighted by the recent lawsuit referenced above. Katherine Savage, a wheelchair user, was shopping at Marshalls, a major clothing retailer, when the fire alarm sounded and customers were told to evacuate the store, located on the second floor of a shopping mall. However, the mall's elevators were inoperable due to the emergency, leaving the only accessible exit route by stairs. Given her physical limitations, Savage was unable to escape until after the emergency was over.

## The Trial

Savage and a disability advocacy group sued Marshalls for negligence and false imprisonment as well as for violations of Title III of the Americans with Disabilities Act (ADA). In their claims for violation of the ADA, the plaintiffs alleged that Marshalls failed to "design

evacuation procedures that comply with Title III of the ADA." A Title III violation occurs where the place of public accommodation "fail[s] to make reasonable modification in policies, practices, or procedures, when such modifications are necessary to afford such [goods and services]...to individuals with disabilities, unless the entity can demonstrate that making such modifications would fundamentally alter the nature of such goods, services, ...or accommodations" (42 U.S.C. § 12182[b] [2] [A] [ii]).

Marshalls argued that its evacuation plans could not violate the ADA since Title III does not contain any specific rules for a public accommodation's emergency evacuation plans. Plaintiffs cited the *Casey Martin* decision (*PGA Tour, Inc. v. Martin*) to argue that Title III applies to Marshalls' policies, and the court agreed, stating that "a store's nationwide evacuation procedures would certainly constitute a public accommodation's policies." Marshalls then argued that modifying its evacuation procedures at all of its 673 stores would pose an administrative burden. On this issue, "the plaintiff has the burden of proving the reasonableness of the modification while the defendant has the burden of proving that modification would fundamentally alter the nature of the public accommodation (*Johnson v. Gambrinus Company/Spoetzl Brewery*). Finding that both sides raised issues and presented evidence to satisfy their respective burdens, both plaintiff's and defendant's motions for summary judgment were denied. The case

was settled on March 29, 2005. As part of the settlement, Marshalls agreed to redevelop the evacuation procedures at all stores nationwide.

## The Wider Context

The *Savage* case is not an isolated incident and is perhaps more reflective of a common safety concern faced by people with disabilities on a daily basis. The importance of an emergency evacuation plan has gained attention once again with the recent natural disasters associated with the tsunami in Indonesia and Hurricanes Katrina and Rita. An estimated 250,000 people died from the tsunami, and according to FEMA, almost 300,000 people were evacuated and safely housed in shelters in over 20 states and the District of Columbia due to the destruction from the hurricanes. An important component of any effective evacuation plan is the strategy employed by local emergency management to accommodate individuals with disabilities during emergency evacuation efforts. Plans typically are designed with able-bodied individuals in mind, for whom escape or rescue involves walking, running, driving, seeing, hearing and quickly responding to instructions, alerts, and evacuation announcements. However, for people with disabilities, these routine tasks are often difficult if not impossible. Many of those who perished from those disasters could not vacate the premises.

Recognizing this barrier, in 2004, President George W. Bush created a new governmental en-

## Disclaimer

The comments regarding the case presented here are generalized thoughts and not hard law. The cases in Law Review are illustrative of situations that can happen and how the courts have responded to the circumstances. The generalized thoughts may not apply or be proper in all states and jurisdictions and under all circumstances. Finally, it is important to understand that the tips provided may not apply in your state or jurisdiction.

tity intended to better integrate people with disabilities into the national emergency preparedness effort. The Interagency Coordinating Council on Emergency Preparedness and Individuals with Disabilities was founded to address the safety and security needs of people with disabilities in emergency situations such as tornadoes, earthquakes, fires, floods, hurricanes, and acts of terrorism. In addition, Executive Order 13347, signed by President Bush on July 22, 2004, requires agencies to (1) consider the needs of individuals with disabilities in their emergency preparedness planning; (2) consider the unique needs of employees and individuals with disabilities served by state, local and tribal governments and private organizations in emergency preparedness planning; and (3) facilitate cooperation in the implementation of emergency preparedness plans as they relate to individuals with disabilities. Individual states have also responded to the pressing need to incorporate individuals with disabilities into emergency evacuation plans.

The need for emergency evacuation plans for sport facilities did not become a reality until 1972, when 11 Israeli athletes and coaches were killed by Palestinian terrorists at the Munich Olympics. Emergency evacuation planning came to the forefront again at the 1996 Atlanta Olympics with the bombing in Olympic Park. At the 2004 Athens Olympics, over \$1 billion was spent on security. In the fall of 2005, at a home football game in Norman, Oklahoma, a suicide bomber blew himself up outside a stadium filled with 80,000 spectators.

### Risk Management Tips

The case against Marshalls provides the legal impetus for sport facilities to reconsider their emergency evacuation plans. Similarly, the federal government has been proactive in meeting its legal ob-

ligation to protect employees as well as guests by issuing guidelines for the inclusion of individuals with disabilities in emergency evacuation plans. These guidelines can be found in the U.S. Department of Labor Office of Disability Employment Policy's (2004) guide, *Emergency Preparedness for People with Disabilities: An Interagency Seminar of Exchange for Federal Managers*. The report stresses the following points:

- Flexibility: Agencies need to provide room for improvement and changes, along with backup emergency support plans for evacuating people with disabilities and ensuring their safety.

- Commitment: Senior-level management must recognize the importance of emergency preparedness for all employees, including those with disabilities.

- Practice: All employees of the agency should practice the emergency preparedness evacuation plan so they are familiar with the system and understand their roles in the procedure.

- Evaluation: Managers should look closely at the plan to find its strengths and weaknesses and make improvements as necessary.

- Communication: The key to an effective plan is to keep lines of communication open for employees, managers, and senior management. Make sure those with disabilities feel their needs will be met in case of an emergency, and make sure all employees understand the emergency plan and its importance at the workplace.

Further, the document recommends that administrators involve people with disabilities in the planning process to ensure that the evacuation plans are accessible to people with disabilities. In addition, the importance of training response personnel to assist individuals with disabilities during emergencies is highlighted. Emergency information should be readily accessible in a variety of formats, and materials regard-

ing emergency preparedness for people with disabilities should be shared with employees. Finally, a variety of viable communication systems should be implemented. Individuals in the sport industry—such as facility and event managers, risk management specialists, and educators—should utilize the suggestions put forth by the U.S. Department of Labor Office of Disability Employment when designing their respective emergency evacuation plans.

### References

- Americans with Disabilities Act, 42 U.S.C. 12101 et seq. (1990).  
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### Submissions Welcome!

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