Acheson Hotels, LLC v. Laufer: SCOTUS to Decide Whether Self-Appointed "Tester" Plaintiffs Have Standing to Sue Under the ADA

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During its next term, the United States Supreme Court will review the First Circuit Court of Appeals's holding in *Acheson Hotels, LLC v. Laufer* that a self-appointed Americans with Disabilities Act (ADA) "tester" plaintiff has Article III standing to challenge a place of public accommodation's failure to provide disability accessibility information on its website, even if the plaintiff has no intention of visiting that place of public accommodation. In this first review of an ADA Title III case in almost two decades, the Supreme Court will address an issue that has split the circuit courts across the country. The Supreme Court's merits decision could have significant ramifications for ADA litigation that has been wildly proliferating in the Second Circuit and elsewhere for the past decade.

By way of background, a DOJ-promulgated regulation – 28 C.F.R. § 36.302(e)(1)(ii) – provides that a "public accommodation" operating a "place of lodging" must "with respect to reservations made by any means … [i]dentify and describe accessible features in the hotels and guest rooms offered through its reservations service in enough detail to reasonably permit individuals with disabilities to assess independently whether a given hotel or guest room meets his or her accessibility needs." In September 2020, Deborah Laufer, a self-proclaimed "tester" plaintiff who has filed more than 600 federal lawsuits under the ADA against hotel owners and operators alleging that their websites do not provide adequate information about whether the hotels are accessible to persons with disabilities, filed seven ADA lawsuits in the District of Maine, including one against Acheson Hotels, LLC ("Acheson"). Acheson operates an inn in a small town on Maine's southern coast. Laufer alleges that Acheson accepts reservations for the inn on its own and other travel-related websites, but she found that none of those websites provided sufficient information to determine whether the rooms and features

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of the inn were accessible to her. As with the vast majority of the other cases she filed, Laufer had no intention of visiting or lodging at Acheson's inn; rather, she simply desired to bring a lawsuit to compel Acheson to comply with the ADA and to recover her attorneys' fees in bringing the lawsuit pursuant to the ADA's fee-shifting provisions.

Most ADA lawsuits like these settle quickly, as many of the hotel owners and operators targeted by ADA "tester" plaintiffs like Laufer are small businesses that lack the financial resources to engage in drawn-out litigation or risk paying the plaintiff's attorneys' fees at the end of the case. However, this case did not settle – Acheson instead challenged Laufer's Article III standing to bring the lawsuit against it. The district court concluded that Laufer lacked Article III standing to pursue her claims because she had no real intention of booking a room at the inn, but the First Circuit reversed. It held that the denial of accessibility information alone was an actionable Article III injury, and the fact "[t]hat Laufer had no intent to use the information for anything but a lawsuit doesn't change things." In any event, the court reasoned, "dignitary harm or stigmatic injuries caused by discrimination have long been held a concrete injury in fact, even without informational injury," and thus "Laufer's feelings of frustration, humiliation, and second-class citizenry" are "'downstream consequences' and 'adverse effects' of the informational injury she experienced," which the court held were sufficient to confer standing.

In reaching its conclusion, the First Circuit widened an existing circuit split. Three courts of appeals have rejected pure "tester" standing on virtually identical facts. *See Harty v. W. Point Realty, Inc.* (Second Circuit); *Laufer v. Looper* (Tenth Circuit); and *Laufer v. Mann Hosp. LLC* (Fifth Circuit). The Eleventh Circuit, however, held that Laufer's allegations that she suffered "frustration and humiliation" and other "stigmatic" injury as a result of another inn's failure to provide accessibility information on its website, if true, would establish standing. *See Laufer v. Arpan LLC*.

The Supreme Court is now poised in *Acheson Hotels* to answer this pure "tester" plaintiff standing question. For an analysis of the

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Acheson case, the relevant Supreme Court precedents, and the practical implications of the Supreme Court's impending decision, see our article that was recently published in the *New York Law Journal*.

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