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## WHITE PAPER ALERT

Civil Procedure:  
Declaration of Vexatious Litigant

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Molski v. Mandarin Touch Restaurant - December 9, 2004  
 United States District Court  
 Central District of California

ISSUE: When does a professional plaintiff become a vexatious litigant.

Jarek Molski is physically disabled. He relies on a wheelchair to get around. Molski claimed he visited the Mandarin Touch Restaurant in Solvang, California on January 25, 2003. After dinner, Molski alleged he tried to use the restroom but found the entrance was too narrow and that as he attempted to leave the restroom, his hand became caught in a door causing injury.

Mr. Molski filed suit against the restaurant, claiming violation of the Americans With Disabilities Act ("ADA"), 42 U.S.C. section 12101, et seq. Under the ADA, Molski asked for injunctive relief to bring the restaurant up to ADA standards. Molski also brought state law claims for damages, pursuant to California's Unruh Civil Rights Act (Cal. Civil Code section 51(f)) and the California Disabled Persons Act (Cal. Civil Code section 54(c)).

Mandarin Touch Restaurant filed a motion to have Plaintiff declared a vexatious litigant. The defendant asked the court to order Molski obtain leave of court before filing any other claims under the ADA. The defendant noted Molski filed between 300 and 400 prior ADA lawsuits alleging similar facts. Molski would visit a business, attempt to utilize a portion of the business and then, inevitably, would suffer some minor physical injury. In these lawsuits, Molski would seek not only injunctive relief, but also damages and attorney fees. The Court noted Molski filed 13 separate complaints for essentially identical injuries sustained over a four-day period in May 2003.

In deciding the motion, the court had to answer the question of whether a litigant who has a history of vexatious litigation is likely to continue to abuse the judicial process and harass other parties. The court looked at five factors in resolving this question:

- (1) the litigant's history of litigation
- (2) the litigant's motive in pursuing the current lawsuit
- (3) whether the litigant was represented by counsel

- (4) whether the litigant caused needless expense to other parties or posed an unnecessary burden to the courts, and
- (5) whether other sanctions would be adequate to protect the parties.

A vexatious suit is defined as a lawsuit instituted maliciously and without good cause. Even though some of the businesses Molski sued may have had ADA violations, the Court's finding that Molski acted in bad faith outweighed this fact. The Court particularly focused on the 13 complaints relating to incidents occurring over four days in May 2003. Molski claimed identical injuries in those suits, which the court found was simply not credible.

In discussing motivation, the court noted Molski always asserted state law claims that allow for recovery of money damages by a private individual, something the ADA does not provide. The court determined plaintiff's motive was to extract cash settlements. While courts are generally protective of pro per plaintiffs, Molski was always represented by counsel, which weighed against him. Finally, the court found its own resources were being burdened and that sanctions less severe than a pre-filing order would not be effective. The Court, therefore, found plaintiff's action to be a sham, granted defendant's motion, and declared Molski a vexatious litigant. As a result, Molski is now required to seek leave of court each time he plans to file an ADA lawsuit.

#### COMMENT

The court noted that plaintiffs, such as Molski, are not unique. There are many individuals and lawyers who are filing frivolous lawsuits invoking civil rights or unfair business practices claims. A motion to declare a professional plaintiff a vexatious litigant and the use of a pre-filing order can protect defendants and their insurance carriers from vexatious litigation. Motions to declare plaintiffs to be vexatious litigants are more common in California State courts. This court's decision will assist parties in addressing these frivolous actions in the federal system.

If you have any questions or desire further information on this, or any other topic, please contact:

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