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Inadequate Accessibility Standards?

Access Board-Sponsored Study on Wheeled Mobility

The current US accessibility standards related to wheeled mobility may not be adequate for today's population, according to a report from a US Architectural & Transportation Barriers Compliance Board (Access Board)-sponsored study.

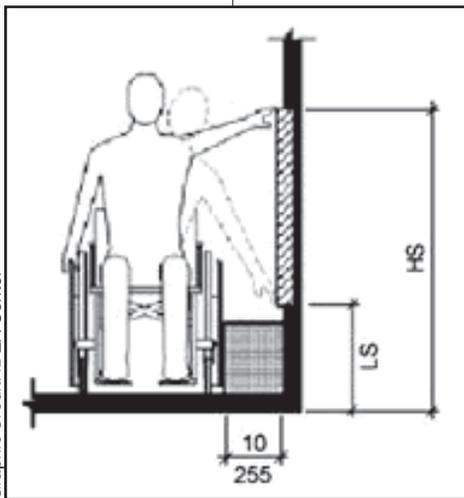
The report, *Standards and Anthropometry for Wheeled Mobility*, was prepared for the Access Board by the staff of the Center for Inclusive Design and Environmental Access (IDEA Center) at the School of Architecture and Planning, University at Buffalo, State University of New York.

The report was commissioned to provide guidance in the future development of the Americans with Disabilities Act/Architectural Barriers Act Guidelines (ADA/ABA Guidelines) and to provide technical assistance to designers and code developers.

The report notes that current US standards are based on research completed in the late 1970s. Advances in wheeled mobility technology and demographic changes that have occurred since that time suggest that the US standards may be out of date, according to the report.

In response to this lack of current information, the IDEA Center has been de-

See Anthropometry Study, page 6



Graphic Credit: IDEA Center

The study compared high side (HS) and low side (LS) lateral reach ranges in four countries.

The Steady March of Litigation

A Review of Recent ADA Cases

Fifteen years after the passage of the Americans with Disabilities Act (ADA) the slow but steady movement of litigation through the court system endures. Some recent decisions related to accessibility are trending toward a narrower interpretation of the scope of the ADA. The following is a collection of descriptions of some recent cases.

Limiting Attorneys' Fees

The ability to collect attorneys' fees under the ADA continues to get more difficult. In June, a US District Court in southern California denied a prevailing plaintiff's motion requesting attorneys' fees because no "pre-litigation unambiguous warning notice" was sent to the defendant, thus denying the defendant the chance to correct the ADA violation. In the case, *Doran v. Del Taco, et al.*, Jerry Doran, a restaurant patron who uses a wheel-

See Litigation, page 8

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Universal Design Getting Attention in Post-Tsunami Reconstruction

When thoughts of rebuilding the tsunami ravaged provinces were new, there was hope that universal design might be taken into account in the reconstruction efforts. It is unclear what is occurring in the residential rebuilding process, but those promoting accessible tourism are experiencing some success in pushing universal design onto the rebuilding agenda.

Disabled Peoples' International (DPI) and others have adopted the approach that if governments and businesses aren't willing to make their facilities accessible for their own residents, perhaps they will take the necessary actions to attract a variety of tourists.

Topong Kulkhanchit, Regional Development Officer for the Disabled Peoples' International (DPI) Asia Pacific Region, reports there has been progress in his organization's efforts in promoting universal design. He notes that of the six southern Andaman coastal provinces devastated by the tsunami, namely Phuket, Pang-nga, and Krabi are considered to have high tourism potential. "Pang-nga was the worst damaged," he says "With more than 200 kilometers of coastal area and hundreds of various sized hotels, resorts, national parks and other tourist sites."

DPI-Thailand sent a letter to the government asking it to specifically consider disability-related issues in the affected areas including a reconstruction process with accessibility features to promote barrier-free tourism, but to no avail, according to Kulkhanchit.

Undeterred, DPI Asia/Pacific Regional Office based in Thailand, reached out directly to owners of tourism-related businesses in Krabi and

Pang-nga by conducting a survey focused on reconstruction and introducing the idea of universal design.

In May, members of DPI Asia/Pacific Regional Office, DPI-Indonesia, DPI-Thailand attended the International Accessible Tourism Conference in Taiwan. Universal design and barrier-free tourism for reconstruction in tsunami affected areas were strongly proposed and discussed.

DPI Asia/Pacific Regional Office continues its efforts. This month it organized a workshop, entitled "Tourism for All" for Pang-nga-based tourism businesses and it participated in the 3rd Global Summit on Peace through Tourism in Thailand. 

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Rebuilding the Gulf Coast Region After the Hurricanes

Editor's Note: What role will Universal Design play in rebuilding Louisiana, Mississippi and Texas? **Richard Duncan**, Project Manager at the Center for Universal Design at North Carolina State University, agreed to share his thoughts:

"This is an interesting and tantalizing prospect as we see the silver lining here: an opportunity for a lot of all-new construction that would invoke the full force of the ADA and the provisions of the Fair Housing Amendments Act and presumably the accessibility portions of the states' building codes. So rather than the slow, piece meal and partial levels off accessibility that occurs when renovating occasional buildings, we might look to a much more dramatic improvements in the accessibility levels. So the result might be more accessible retail, commercial, government, infrastructure, etc. We hope that the rush to rebuild will not allow for lax compliance and enforcement of these provisions, however.

"Of course I hope that much less is built - period - as this catastrophe points to the hidden costs that we are all bearing for the luxury of unconstrained development in dangerous areas."

Dick Duncan

Your Say: Post-Hurricane Reconstruction

We welcome you to share your ideas on the rebuilding of the Gulf Coast with the readers of *Universal Design Newsletter*. Send your comments to dmhofstedt@universaldesign.com. We will post them on the website, www.UniversalDesign.com, and perhaps reprint some in the January issue.

Mayors Voice Support for Visitability

The independence of seniors and people with disabilities can be enhanced by state and local initiatives that promote visitable housing, according to a resolution passed this summer by the US Conference of Mayors (USCM).

Citing the 2000 US Census that indicates 20 percent of the American population has a disability and projections that there will be 70 million seniors by 2030, the USCM voted to endorse a resolution promoting the concept of including visitability standards in building codes.

Visitability is a design approach that calls for a no step entrance, doorways with 32" of clear passage space, and at least one accessible bathroom. "Visitability features would allow seniors to stay in their homes longer and people with disabilities to visit friends and families in their homes, thereby enhancing the quality of life and community living," states the resolution.

Board Publishes Editorial Corrections to the ADA and ABA Guidelines

On Aug. 5 the US Transportation & Barriers Compliance Board (Access Board) issued corrections to the updated guidelines it published last year under the Americans with Disabilities Act (ADA) and the Architectural Barriers Act (ABA).

According to the Access Board, the revisions are editorial in nature and do not change the substance of any provisions. For example, defined terms are italicized consistently throughout the document, and in several instances this convention was inadvertently omitted.

However, *Universal Design Newsletter* noticed what appeared to be a substantive change in the lodging requirements eliminating the use of lavatories outside rooms in accessible guest rooms. According to Dave Yanchulis of the Access Board it was not the Board's intention to eliminate the use of lavatories used in that way. "The revised language is meant to allow placement of lavatories in locations immediately outside toilet and/or bathing areas in transient lodging facilities. It would not allow lavatories or other required bathroom fixtures to be located away from the bathroom such that travel

through the guest room -- e.g., sleeping or living areas -- was required. This language was included for transient lodging to be consistent with provisions for bathrooms in residential dwelling units [see 809.4]."

The published amendments are posted on the Access Board's website at www.access-board.gov/ada-aba/corrections.htm.

ANSI A117 Committee Accepting Comments

The ANSI A117 Committee is accepting public comments on ICC/ANSI A117.1-03 Accessible and Usable Buildings and Facilities Standard. This is the first step in the cycle to develop the 2008 edition of the A117.1 standard. Information on how to submit comments can be found on the ICC website: www.iccsafe.org/cs/standards/a117/index.html. The deadline for comments is Dec. 15, 2005.

Inclusive Home Design Act Gets More Sponsors

In July, five more Congressional Representatives signed on to a bill in the US House of Representatives that would require all newly constructed, federally-assisted single family houses and townhouses meet minimum standards of visitability. The standards outlined in HR 2353 include: an accessible route or "zero step" entrance into the home, doorways with 32" clearances on the main level and one wheelchair accessible bathroom. The bill now has 25 sponsors and has been referred to the House Financial Services Subcommittee on Benefits.

North Carolina Accessibility Code Receives Preliminary Certification

In March, the US Department of Justice (DOJ) notified the State of North Carolina of its decision to certify preliminarily that the North Carolina Accessibility Code meets or exceeds the new construction and alternation requirements of Title III of the Americans with Disabilities Act. After a public comment period that ended in early June and a public hearing June 20, DOJ will make its decision as to whether it will issue a final certification of equivalency.

"Visitability features would allow seniors to stay in their homes longer and people with disabilities to visit friends and families in their homes, thereby enhancing the quality of life and community living...."

US Conference of Mayors' Resolution

Marc Fiedler: Fighting the Good Fight

Attorney at the Heart of Many Landmark ADA Decisions

Attorney Marc Fiedler's philosophy is simple: "There are a lot of people with disabilities that don't have the blessings that I have. I have an obligation to do my fair share to make their lives – and mine – a little easier."

Fiedler's sense of obligation has put him at the center of many precedent setting Americans with Disabilities Act-related lawsuits. When he speaks about accessibility you can't help but be swept up in his passion and indignation.

"I simply want to create equal opportunities for people with disabilities," says Fiedler. "I know what it's like not to be disabled... and to take everything for granted... being able to make spontaneous decisions about where to go and what to do. I became disabled and all that changed. I am the same person who likes to do the same things – go to jazz clubs, restaurants, movie theaters... I just want to get back to doing the things I like to do."

Fiedler began his life of advocacy 30 years ago while a student at Harvard. After he became disabled at 20 years old, he began to pursue his rights under the Rehabilitation Act of 1973. Under the act, entities receiving federal funding, like colleges, were required to make their programs and facilities accessible for people with disabilities. He began to notice that the inroads he made at Harvard benefited not only him, but also many of his peers and the students that came behind him.

After graduating, Fiedler helped establish the Massachusetts Office of Handicapped Affairs and then served as its deputy director. In that capacity, he drafted and lobbied to enact numerous statutes protecting the rights of people with disabilities. After leading a successful referendum campaign for statewide approval of a comprehensive disability-rights constitutional amendment in 1980, Fiedler concluded that even that wasn't enough. "I realized that adoption of all the laws in the world wouldn't do the trick; someone had to be out there enforcing them," says Fiedler.

So he decided to go to law school to become a more effective change agent and better equipped to fight the disability-rights battle. After graduating from Harvard Law School he

served two clerkships at the District of Columbia Court of Appeals and in 1985 landed a job with the Washington, D.C. law firm of Koonz, McKenney, Johnson, DePaolis & Lightfoot. He

is currently a partner with the firm, serving as the chief appellate lawyer.

The ADA

With the passage of the Americans with Disabilities Act, his real work began. During the ADA's 18-month grace period, he sent letters to businesses that he had visited and that



Marc Fiedler

had architectural barriers, urging the businesses to come into compliance with the ADA. Lawsuits were filed against those that were unwilling or unresponsive. Among the suits filed was one against the AMC Union Station 9 Theatres. According to Fiedler, it was the first lawsuit of its kind.

The principal issue addressed in the suit, was the placement of wheelchair seating. "All the wheelchair seating was in the back row or behind the back row of each auditorium," says Fiedler. The judge rejected AMC's efforts to have the case dismissed, and AMC ended up "doing everything I had asked to make its theaters accessible," he says.

Fiedler recalls seeing a movie there after the changes were made. He pulled up next to a mom and her kid, who was in a seat with a lift-up armrest. "I didn't pay much attention," he says. He watched the movie and waited until the theater emptied before getting ready to leave. The mom stood up, walked over to the corner of the auditorium, and pulled out a folded up wheelchair for her daughter. "The mother turned to me and said 'We used to have to sit way in the back, but now they have these accessible seats with a better view. Isn't this great?' You know, it doesn't matter how [those changes inside the theater] came about, all that mother and daughter need to know is that they can go to the movies with-

See Marc Fiedler, page 12

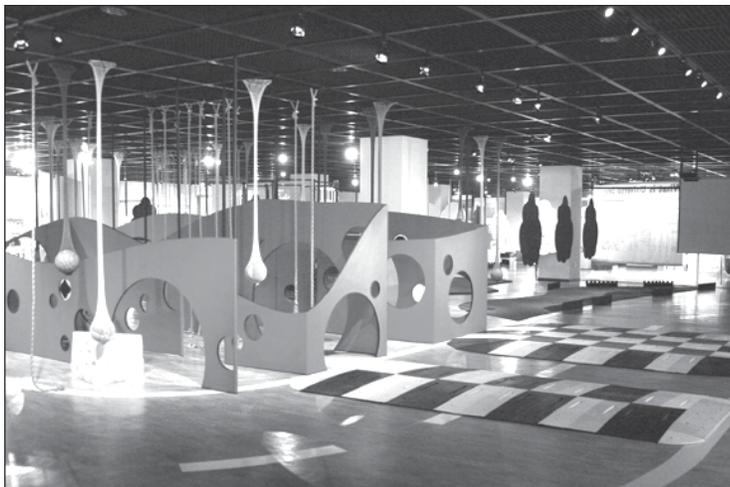
"I realized that adoption of all the laws in the world wouldn't do the trick; someone had to be out there enforcing them."

Marc Fiedler

JAPAN

New National Policy Based on Universal Design

The Japanese government is implementing national land and transportation policies based on the concept of universal design. In July, the Ministry of Land, Infrastructure and Transport made public its General Principles of Universal Design Policy. In introducing the policy, the agency noted that the country is undergoing a radical change. "The simultaneous aging of the population and decline of the birth rate are bringing an unprecedented period of population decline. This society is introducing measures to support independent activities planned so that elderly people can autonomously select their lifestyles.... We are entering an age when we must make efforts to create a society in which every person can exercise his or her own unique qualities in this way and participate freely in society to achieve self-actualization."



Korea: Museum exhibit promotes universal design.

and participate freely in society to achieve self-actualization."

The policy notes one of the current challenges to achieving universal design is the focus on removing barriers for older people and people with disabilities and not a wider range of users such as foreigners, children, adults with children and people with mental illness. It also acknowledges the need for better continuity in connecting facilities and states that the elimination of barriers in newly constructed facilities has been inadequate.

The policy outlines specific measures that can be taken in 10 categories including: pre-con-

struction design; development of standards and guidelines; transportation systems; information technology; and psychological barriers. For a copy of the policy in English, visit: www.mlit.go.jp/kisha/kisha05/01/010711_.html (scroll down to the end of the first page).

KOREA

Museum Exhibit Promotes Universal Design

Universal design was recently promoted in Korea through a month-long exhibit at the Hangaram Design Museum at the Seoul Arts Center. The exhibition traced the development of the city and showed current inclusive features in Seoul and other cities around the world. The exhibition includes reproductions of universal design features so that visitors can experience the conveniences they offer.

Found in the exhibit were Japan's Miho Museum, shown with its ledgeless front door and public restroom at the Fukuoka Canal City which features toilet stools and wash stands at different heights for the use of children. Also included was an example of stairs that have a slope in the center to permit use by older people, bicycle users and people with rolling luggage.

This is the second in a series of exhibits on universal design. Last year's exhibit introduced the concept of universal design, while this year's exhibit focused on showing actual applications in urban settings. For more information, contact www.designgallery.or.kr.

We are entering an age when we must make efforts to create a society in which every person can exercise his or her own unique qualities in this way and participate freely in society to achieve self-actualization."

General Principles of Universal Design Policy, Ministry of Land, Infrastructure and Transportation, Japan

WORLD

Usability Day 2005

More than 20 speakers on accessibility and usability will address the first ever World Usability Day webcast on Nov. 3. Organized by the Usability Professionals Association, this world-

See World Update, page 11

"World Update" is compiled by Elaine Ostroff, founding director of the Adaptive Environments Center, and Denise Hofstedt. If you have information about international universal design efforts that you would like to have published in Universal Design Newsletter, write to us at: 6 Grant Ave., Takoma Park, MD 20912; or contact publisher@universaldesign.com.

Anthropometry Study, *from page 1*

veloping a comprehensive data set over the last five years. Although data collection is ongoing, the Center has begun to compare its data with existing studies from the United Kingdom, Canada and Australia to identify needs for improving standards.

Below are comparisons and recommendations from the report.

Floor Space

The research results suggest that clear floor areas be increased to address the actual size of contemporary occupied devices. Although there are differences in the findings, they can be attributed to methods and reporting approaches. The table below shows the standards from the four countries related to clear floor area. The study recommends:

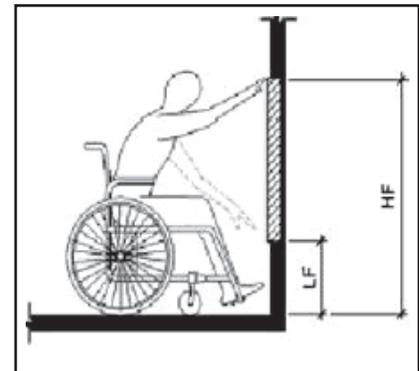
- The clear floor area width should be increased from the existing requirement of 30" found in the US standards. A width of 800 mm (31.5 in.) would accommodate the 95th percentile in the IDEA sample.
- The clear floor area length should be increased from the 48" currently required in the US standards. A length of 1400 mm (55 in.)

would accommodate the 95th percentile in the IDEA sample.

Reach Ranges

The US, Canadian and Australian standards are similar, al-

though the latter use a reach envelope to provide guidance for obstructed forward reach, and both the Australian and the Canadian standards are less restrictive for low side reach. According to the study, on the whole, the UK standards proscribe much more restrictive reach ranges although they include different limits for different types of applications.



Forward Reach Range (LF= Low Forward, HF= High Forward)

Graphic Credit: IDEA Center

Recommendations

Included in study's overall recommendations are:

- Develop revised criteria for reaching from a wheeled mobility device that are more realistic and comparable to everyday tasks.
- Base reach limits on a sample of individuals that excludes those with marginal abilities.
- Advisory information should be used either in the standards themselves or in a companion document to help designers address the variety of reaching conditions not specifically addressed in the requirements. (UK has taken this approach in BS8300.)
- Examine the implications of knee clearance on reach envelopes.
- Develop a method to represent reaching over obstructions.

Conclusions

The report concludes that there is a need to develop an international consensus on standards and research methods.

"In a global economy, people who use wheeled mobility devices can be expected to travel all over the world. At least in facilities that are frequented by international travelers, minimum requirements for key built elements would provide a basic level of accessibility that everyone could expect," according to the report. The complete report can be found on: www.ap.buffalo.edu/idea.

At least in facilities that are frequented by international travelers, minimum requirements for key built elements would provide a basic level of accessibility that everyone could expect."

Anthropometry Study

Standards Related to Clear Floor Area

	in mm			
	US	Australia	Canada	UK
Width (W)	760	800	750	900
Length (L)	1200	1300	1200	1350

Standards Comparison

in mm

	US	Australia	Canada	UK
Unobstructed				
High Forward Reach (HF)	1220	1220	1220	X
Low Forward Reach (LF)	380	250	380	X
High Side Reach (HS)	1370	1350	140	1060-1170
Low Side Reach (LS)	380	230	230	630-665
Obstructed				
High Forward Reach	1120	R.E.	1100	1000-1170
Low Forward Reach	X	X	X	650
High Side Reach	1220	1170	1200	X
Low Side Reach	X	X	X	X

R.E. = Reach Envelope

Reaching Out to Customers with Disabilities

The US Department of Justice is currently offering an online course for businesses on compliance with the Americans with Disabilities Act (ADA). The course, "Reaching Out to Customers with Disabilities," explains how the ADA applies to businesses in 10 lessons and can introduce business owners to a new group of potential customers. It includes information on policies and procedures, customer communications, accessible design, alternate access and cost issues. For more information, visit www.ada.gov/reachingout.

The NEW Accessible Home Modifications DVD and Script

The Center for Universal Design at North Carolina State University, Raleigh, NC, has modernized its Accessible Home Modifications slide show by converting it to DVD. It provides an overview of problem areas in the home and possible solutions for greater accessibility.

It includes sections on entrances, doors and doorways, windows, kitchens, bathrooms, housing controls, and level changes. A script describing each picture accompanies the DVD. For more information, visit www.design.ncsu.edu/cud/. 

Accessible Home Modifications slide show, now on a DVD, provides an overview of problem areas in the home and possible solutions for greater accessibility.

Reg/Leg Watch, *from page 3*

Comments on the Revising the ADA Design Standards

The US Department of Justice (DOJ) received more than 700 comments concerning revising the Americans with Disabilities Act Standards for Accessible Design to make them consistent with the ADA Accessibility Guidelines (ADAAG) published by the US Architectural & Transportation Barriers Compliance Board (Access Board). The deadline for comments was May 31, 2005.

Indoor Air Quality Report Issued

The US Architectural & Transportation Barriers Compliance Board (Access Board) recently released the results of a study on ways to improve indoor environmental air quality. Conducted for the Access Board by the National Institute of Building Sciences (NIBS), this project brought together various stakeholders to explore issues and to develop an action plan. The report includes recommendations on improving indoor environmental air quality that address building products, materials, ventilation, and maintenance.

The NIBS IEQ committee offers several recommendations for further action, including: workshops be held to deliberate the issues and recommendations in the report; a single guidelines document be developed; new building code provisions be crafted; and guidelines be

created for the design of an "ideal space" for people with multiple chemical sensitivity and electro-magnetic sensitivity. A copy of the resulting report is now available on the NIBS website at <http://ieq.nibs.org>.

Promoting Accessible Design in Education

The US Architectural & Transportation Barriers Compliance Board (Access Board) is undertaking an initiative to promote accessible design in the education of architects, interior designers, engineers and others. As a first step in this endeavor, the Access Board held a forum in July to get advice from various experts on how it should proceed.

More than 30 participants, including representatives from university programs, accrediting organizations, trade associations, professional societies, and disability groups, provided guidance and suggestions on how this initiative can be undertaken most effectively and strategically.

The discussion touched on various venues for providing education and training on accessible design, training materials and potential partnerships, the effectiveness of design competitions and outreach efforts to schools, accrediting bodies, and professional and student societies. For additional information, visit: www.access-board.gov/news/edu-forum.htm. 

Litigation, *from page 1*

chair, visited a Del Taco Restaurant in Costa Mesa, CA where he claimed to have encountered architectural barriers. The parties in the case reached a settlement under which Del Taco agreed to remove the barriers and pay \$4,000 in damages. The agreement did not address Doran's request for more than \$39,000 in attorneys' fees. The court took up the issue and denied Doran's motion to award attorneys' fees because no notice of the alleged violations was given and therefore no opportunity to fix the problems was permitted.

A judge ruling on *Macort v. Checker Drive-In Restaurant*, in US District Court in the Middle District of Florida, similarly denied Macort's motion for approval of fees and costs noting that, "One might reasonably ask whether attorney's fees should be awarded where no effort is made pre-suit to obtain voluntary compliance. After all, if the litigation achieves no result other than that which could be accomplished by agreement, what social or economic value has been added by the lawyer's decision to file a suit without warning?"

According to Noel McDonell, an attorney with Macfarlane, Ferguson & McMullen in Tampa, FL who has represented businesses af-

fectured by "drive by lawsuits," the rulings may deter so called, "drive by attorneys" from using the court system to justify fees from filing a multitude of suits. "Attorneys for the plaintiffs are no longer entitled to fees generated by drive by lawsuits if facilities immediately begin to bring properties into compliance upon receiving notice of allegations that there are barriers on the property," says McDonell.

Attorney Mark Fiedler, Chair of the Equal Rights Center, Disability Rights Advisory Council in Washington, DC fears the rulings could do more than that. "It will also stop meritorious lawsuits," he says. Since the ADA allows plaintiffs only injunctive relief and recovery of attorneys' fees, it will be harder to find attorneys to take on any ADA case. "It's been 15 years since the passage of the ADA – businesses, by now, should figure out what they have to do," says Fiedler. "It will insulate businesses from any liability for violating the law."

The issue of attorneys' fees came to the fore in May 2001 when the Supreme Court held that attorneys' fees could not be awarded to the "prevailing party" in *Buckhannon Board and Care Home Inc. v. West Virginia Department of Health and Human Resources*, a Fair Housing Authority Act and ADA case, because there was no official court action taken to resolve the case. The Supreme Court's decision narrowed the definition of "prevailing party" by rejecting the "catalyst theory," a standard that had been used by many US courts. Under the theory, the courts had held that a plaintiff was considered a "prevailing party," and able to collect attorneys' fees, if its lawsuit achieved the desired result — bringing about a voluntary change in the defendant's behavior. In the *Buckhannon* decision, the court required that there must be a judicially sanctioned change in the legal relationship of the parties before a party could be eligible for attorneys' fees.

"Attorney for the plaintiffs are no longer entitled to fees generated by drive by lawsuits if facilities immediately begin to bring properties into compliance upon receiving notice of allegations that there are barriers on the property."

Noel McDonell
Attorney



Photo Credit: Larimer Square

Larimer Square was at center of controversy in the *Cross Colorado Disability Coalition and Kevin Williams v. Hermanson Family LP*.

Litigation, from page 8

Readily Achievable Put to the Test

A federal court of appeals in Colorado has upheld a ruling that it is up to a plaintiff to show that the suggested method of barrier removal is “readily achievable” and if the plaintiff is successful in its arguments, it is then up to the defendant to persuade the court that such barrier removal it is not readily achievable.

In the case, *Cross Colorado Disability Coalition and Kevin Williams v. Hermanson Family LP*, CCDC sued the owner of Larimer Square, an historic block of shops and restaurants in downtown Denver, after plaintiff Kevin Williams, who uses a wheelchair, could not access several stores because of architectural barriers. In its decision, the court stated, “We therefore adopt the same approach wherein Plaintiff bears the burden of production to present evidence that a suggested method of barrier removal is readily achievable, i.e., can be accomplished easily and without much difficulty or expense. If Plaintiff satisfies this burden, Defendant then has the opportunity to rebut that showing. Defendant bears the ultimate burden of persuasion regarding its affirmative defense that a suggested method of barrier removal is not readily achievable.”

Further, the court noted that the plaintiff failed to present evidence that the a specific design was readily achievable and failed to provide precise cost estimates for the proposed modification. The court upheld the district court’s judgment that the plaintiff failed to establish that removal of architectural barriers was readily achievable. (*Disclosure statement: Universal Design Newsletter Publisher John P. S. Salmen served as an expert witness in this case.*)

The Historic Fox Theater in Atlanta

In a decision in a case involving the historic Fox Theater in Atlanta, the judge noted that the determination of what is or is not a barrier in a pre-ADA facility, the Standards for Accessible Design should be used as a guide, not as a re-

quirement. The judge employed the readily achievable burden of proof standard, citing *CCDC v. Hermanson*.



Photo Credit: The Fox Theater

Historic Fox Theater

In discussing the plaintiff’s claims of barriers in seating, restrooms and concessions, the judge repeatedly called the plaintiff’s reliance on the Standards to determine what changes must be made to an existing facility “misguided.” The judge went on to say, “Plaintiffs’ Standards-based analysis necessarily allows them to avoid the circumstance-based analysis required under the ADA when existing facilities are at issue.”

The plaintiffs plan to appeal the decision.

(*Disclosure statement: Universal Design Newsletter Publisher John P. S. Salmen served as an expert witness in this case.*)

See Litigation, page 10

“Defendant bears the ultimate burden of persuasion regarding its affirmative defense that a suggested method of barrier removal is not readily achievable.”

US Court of Appeals for the 10th Circuit

Litigation, *from page 9*

Challenging the ADAAG Rulemaking Process

A small business advocacy group has filed a lawsuit asking the federal district court to require the Architectural & Transportation Barriers Compliance Board (Access Board) to comply with the Regulatory Flexibility Act (RFA).

In its suit, the National Federation of Independent Businesses Legal Foundation claims that in issuing the "Final Revised Accessibility Guidelines for the Americans with Disabilities Act and the Architectural Barriers Act (Revised ADA/ABA Accessibility Guidelines), the Access Board "completely and improperly ignored the rulemaking process."

Under the RFA, the Access Board is required to perform an analysis, which would have considered regulatory alternatives that would minimize the economic impact on small businesses without compromising the intent of the statute.

In the suit, NFIB claims the Board did not conduct a regulatory flexibility analysis because of its conclusion that the new guidelines would only add a maximum of .5 percent to the total cost of new and altered facilities. When drawing that conclusion, the Board did not consider any cost data on projects costing less than \$100,000.

"Instead of conducting this analysis, the Board issued an arbitrary and capricious certification that the Revised ADA Guidelines are not expected to have a significant economic impact on the new construction and alteration of facilities..., " according to the lawsuit.

"The types of alterations the Access Board didn't consider are exactly the type of alterations small businesses are most likely to make, those costing less than \$100,000," says Karen Harned, executive director of the NFIB Legal Foundation.

"This case is about making sure small business can comply with any new ADA guidelines," says Harned. "We're asking the court to order the Access Board to conduct a regulatory flexibility analysis so that non-burdensome al-

ternatives can be identified for small business to comply with the new regulations."

Disability Discrimination Law Suit Settled

This summer the Department of Justice reached a settlement agreement with three residential construction firms in Reno, Nevada, resolving a lawsuit that alleged disability related housing discrimination. The suit is the DOJ's first enforcement action in Reno concerning the accessibility requirements of the federal Fair Housing Act.

"The Justice Department will continue to hold accountable those who have a legal obligation to provide accessible housing," said Bradley J. Schlozman, Acting Assistant Attorney General for the Civil Rights Division. "The design and construction requirements of the Fair Housing Act are clear and readily achievable in new construction."

According to the government's complaint, ERGS, Inc.; civil engineering firm CFA, Inc.; and an individual architect violated the Fair Housing Act by designing and constructing housing complexes in a manner that left them inaccessible to people with disabilities.

The properties, Silver Lake Apartments and Sierra Sage Apartments, are on the outskirts of Reno. The Reno-based Silver State Fair Housing Council (SSFHC) brought suit first, after filing a complaint with the U.S. Department of Housing and Urban Development, with which the United States' lawsuit was consolidated.

The agreement requires accessibility improvements to the apartment units and the complexes' common areas at an estimated cost of \$1.67 million. The agreement also provides \$27,500 in damages for the SSFHC and \$250,000 to reimburse its attorney's fees and litigation expenses; establishes a \$150,000 fund to compensate individuals injured by the inaccessible housing; and requires the payment of a \$30,000 civil penalty.

Since January 21, 2001, the Civil Rights Division has filed 161 lawsuits alleging discrimination in housing. 

"Instead of conducting this analysis, the Board issued an arbitrary and capricious certification that the Revised ADA Guidelines are not expected to have a significant economic impact on the new construction and alteration of facilities..., " NIFB Complaint

Majority of Travelers With Disabilities Report Obstacles

84% Had Problems With Airlines

Sixty percent of travelers with disabilities who have stayed overnight in paid accommodations said they had problems at those properties, according to a research study conducted by Harris Interactive®.

The report, commissioned by The Open Doors Organization (ODO) and the Travel Industry Association of America (TIA), notes that 48 percent of those surveyed said they encountered physical barriers such as heavy doors, rooms and bathrooms that were too small to maneuver in, and inaccessible shower or bath facilities.

Of those surveyed, 45 percent said they had problems with customer service and 15 percent reported communication barriers.

Despite the problems reported, ODO Executive Director Eric Lipp is optimistic, "Many of the most common complaints identified by the study, such as heavy doors and lack of knowledge among staff, could be easy and inexpensive to resolve."

The poll, which is a follow up to a 2002 ODO

study on the spending trends and market scope of US adults with disabilities, found that in the last two years, more than 21 million adults with disabilities traveled for pleasure and/or business.

Among those adults with disabilities who have traveled by air, 84 percent said they encountered obstacles when interfacing with airlines and 82 percent said they encountered obstacles at airports.

Despite trouble, the average number of leisure trips and hotel stays was up 50 percent from 2002.

The 2005 study also explored travelers experience and opinions about car rentals. It found that 20 percent of adults with disabilities rented a car for travel in the past two years. But 50 percent said they would be more inclined to rent a car if it were delivered to and picked up from them, while 36 percent would be willing to pay more for this service.

For more information about the survey, visit www.opendoorsnfp.org

"Many of the most common complaints identified by the study, such as heavy doors and lack of knowledge among staff, could be easy and inexpensive to resolve."

Eric Lipp,
Executive Director,
The Open Doors
Organization (ODO)

World Update, from page 5

wide series of events will promote awareness of the benefits of usability engineering and user-centered design. Activities will be held at the local level all over the world on the same day. This year's focus is e-government, while also including commercial applications. The theme is "Making It Easy."

"Any event that brings user experience to the forefront of people's minds is a good event for World Usability Day," says Elizabeth Rosenzweig, Principal Research Scientist at Kodak, and Co-Chair of the event. "The goal is to create a critical mass of enough interesting stories that will capture the collective imagination of innovative people around the world."

This international event will have a rolling

timeline, documented on the World Usability Day website. The day will begin with events in Australia, and then move westward to end with an event at the DUX 2005 (Designing for User Experiences) Conference in San Francisco.

"It is not enough to have and use new technology such as the Internet, cell phones, PDAs, digital cameras and just accept that sometimes it does not do what you want or thought it should," says Rosenzweig. "People need to see that technology is not driving us, but we are crafting and using technology to serve us.... Technology should always be usable."

For more information, visit: www.worldusabilityday.net

Marc Fiedler, *from page 4*

out encountering discriminatory treatment. It was very rewarding,” he says.

Later that year, Fiedler, in his spare time, helped found the Disabilities Rights Council of Greater Washington, a nonprofit advocacy organization. The reverberations of what started as a personal quest to be able to shop and frequent local businesses, were now being felt nationally.

Far Reaching Effects

Working with the Washington Lawyers Committee for Civil Rights and Urban Affairs (WLC), the Disability Rights Council (DRC) brought a number of lawsuits including one against Safeway, a national grocery store chain. The suit claimed the shopping cart corrals were barriers to people who use wheelchairs. The suit was settled and Safeway was required to survey more than 800 stores nationwide to bring them into ADA compliance.

In a recent settlement agreement involving Radio Shack, the electronics retailer will make its 5,000 stores more accessible by lowering counters and interactive displays and clearing merchandise aisles, among other things.

Fiedler was also recently involved in case against retailer Marshalls [see Universal Design Newsletter, July 2005, page 3]. The landmark settlement reached in the case ensures, among other things, accessible emergency exits or areas of rescue assistance in all Marshalls stores in the US and Puerto Rico, the adoption of nationwide policies for the emergency evacuation of people with disabilities from these stores and the training of store personnel on these policies, oversight by an approved ADA consultant and designated employee, and compliance reporting.

The basic right to exercise one’s civic duty is also near and dear to Fiedler’s heart. In a case against the District of Columbia Board of Elections, the DRC was successful in reaching a settlement agreement that requires the District of Columbia to have at least one accessible polling place in every precinct and to provide at least one accessible voting machine in each accessible polling places. He notes that DC was among the first jurisdictions in the country to provide that to its citizens.

He is excited about a current groundbreaking case involving the Washington Hospital Center. The suit seeks to have the hospital not only pro-

vide accessible patient rooms but also purchase accessible medical equipment, including height-adjustable examination tables and chairs, accessible beds and gurneys . “It is a cutting edge case,” says Fiedler. “We hope it helps persuade other hospitals to properly accommodate people with disabilities.”

Elaine Gardner, Project Director for the Disabilities Rights Project, Washington Lawyers Committee, who has known and worked with Fiedler for 10 years, describes him as passionate and thorough. “He has an incredible eye for detail. He knows the law, and knows how it will impact people with a variety of disabilities.” She says he is thorough and generous with his time.

Systemic Approach

Fiedler describes the primary thrust of the DRC’s litigation as rooting out systemic discrimination. “We take the cases that come in,” he says. “Our strategy is to investigate complaints about inaccessibility... and try to find out if it is caused by one stupid employee or a company-wide policy.”

Recently the DRC merged with the Equal Rights Center, a larger and more diversified civil-rights organization. The center will carry on the same activities of the DRC and continue to pursue housing issues for people with disabilities as it has done in the past. “There is a great need for such an organization,” says Fiedler. “People with disabilities can get injunctive relief, but the ADA has no provisions for damages in private suits – that reduces the incentive for someone to find an attorney to take on an ADA case. At the Equal Rights Center we can pursue those cases. We can take on big businesses. We get lawyers from big law firms to represent us. We can go toe to toe with the attorneys from big corporations.”

Building Code Work

And if his pro bono work on those cases weren’t enough to keep him busy, Fiedler has involved himself in the DC building code revision process. In the latest cycle, Fiedler, a member of the DC Building Code Advisory Committee, Subcommittee on Accessibility, drafted for , drafted a requirement for automatic door openers on exterior doors in certain newly constructed buildings. “We have all the [acces-

“Our strategy is to investigate complaints about inaccessibility... and try to find out if it is caused by one stupid employee or a company-wide policy.”

Marc Fiedler

Universal Access Picnic Table

A new Universal Access Picnic Table with raised top, is available from R. J. Thomas Manufacturing Co., Inc. The table top is raised to allow most wheelchair armrests to fit under it for



Picnic Table

a closer approach. This picnic table is accessible at both ends and comes in 6-, 8-, 10-, and 12-foot lengths. Model WXTH offers clearances under table top of 30" wide, 24" deep knee and toe clearance (19" knee + 5" toe), plus under table clearance of up to 30" high. The bench height is 19". Its

Marc Fielder, *from page 12*

sibility] requirements inside the building, but opening the exterior door is so hard, many people can't even get into the building to use those features," he says. If passed, he believes that the requirement would be the first of its kind in the country. He is optimistic it will be approved.

Subcommittee Chair Samantha McAskill, ASID, praises Fiedler for his commitment and passion. "He never waivers from what is right," she says. "He is brilliant. He takes his work very seriously, he pushes us to do the best job we can and not settle for less."

She notes, "He's our expert on accessibility, he's our reference book. We depend on him especially when we need to justify our recommendations to the full committee. DC has one of the most accessibility-friendly codes in the country because of Marc."

Despite his role in improved accessibility in DC and beyond, enriching the lives of people around the country and numerous accolades and awards from peers and colleagues, Fiedler remains un-awed by his own accomplishments. When pushed, he notes his proudest accomplishment is: "Me. Getting myself up into my wheelchair every morning, getting dressed, being active, productive, and ready to fight the day's fight." 

frame finishes are: hot dip galvanized, black enamel paint, or powder coated available in black, green, or brown.

Instant Hot Water Dispenser

In-Sink-Erator offers an extensive line of instant hot water dispensers for commercial and residential applications. The system can dispense 60 cups of cool filtered drinking water or near-boiling water per hour. The 1100 Series includes a filtration system, an adjustable thermostat and comes in a variety of designer finishes. The design includes a high arching spout for enhanced accessibility. It is designed to make food preparation and clean up faster.



Sink Erator

Coordinated Grab Bars

Homecare by Moen is offering a full line of stylish, attractive and affordable grab bars to enhance bath safety. Style matched Moen faucets and bath accessories are available for total elegant coordination in the bath.



Coordinating grab bars

Microwave Drawer

The Insight Pro Microwave Drawer from Sharp Electronics was voted "Product of the Show" at the 2005 Kitchen/Bath Industry Show in May. The 30" wide Insight Pro provides an alternative to a countertop unit and provides design flexibility. It works well for kitchens and islands. 



Microwave drawer

Universal Access Picnic Table with Raised Top

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Sharp Electronics Corp.
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www.sharpusa.com

Loss of Funding for Centers Means Less Research

Public's Interest in Universal Design Remains High

In the year since two universal design centers in the United States lost a significant source of federal funding, interest in universal design remains strong while new research has suffered.

It was August 2004 that the Center for Universal Design (CUD) in Raleigh, NC and Center for Inclusive Design and Environmental Access (IDEA Center) received word that the National Institute on Disability and Rehabilitation Research (NIDRR) would not fund their proposals submitted for 2005.

Center for Universal Design

Despite the blow, CUD "looks remarkably the same," according to Dick Duncan, senior project manager for the center. The CUD, housed at North Carolina State University, is a national research, information, and technical assistance center that evaluates, develops, and promotes universal design in housing, public and commercial facilities, and related products. In the past year the center has picked up new clients and new projects, many from within the state, and has been able to maintain its website and information services. "We've been around for 16 years. We have a national presence," says Duncan. He notes that while projects are keeping CUD busy, there has not been interest from the private sector for research funding.

"We are doing less research," he says. "Overall, most of us agree that a constant stream of research is essential — as it is in any field — to address the many important and evolving questions that need answers. NIDRR is among the funders that focus on research. Until and unless the Center gets new funding from other sources for research, our research activities will be more limited but not entirely absent. Work that is intimately related to research in the field of design, is design development: conceptualizing and producing new designs in response

to perceived needs. Whether on cabinetry, architectural products, home designs or other, we'll continue to develop and test in this area."

IDEA Center

The IDEA Center, based at the School of Architecture and Planning at the University of Buffalo, State University of New York, has felt the pinch, but filled the gap with other projects funded by other sources, according to Ed Steinfeld, Arch. D., AIA, Professor of Architecture and Director of the IDEA Center.

"We always had other projects and sources of income," he says. The center is continuing work on an existing grant from the National Endowment for the Arts as well as a contract with the US Architectural & Transportation Barriers Compliance Board (Access Board) that extends its anthropometry of wheeled mobility work. "We have a substantial and expanding fee for service program on design of home modifications, [Americans with Disabilities Act] consulting work and home design," he says.

The center's operating expenses have been significantly reduced and there have been some staff changes, but the fulltime tenured staff remains, including: Scott Danford, Beth Tauke, Victor Paquet and Steinfeld. "We continue to have excellent support from the School of Architecture and Planning, the unit of the university in which we operate," says Steinfeld. "We are hopeful that we will find some additional sources of income. We continue to get very

"Overall, most of us agree that a constant stream of research is essential — as it is in any field — to address the many important and evolving questions that need answers..."

Dick Duncan
The Center for
Universal Design



Center for Universal Design logo



Images from the IDEA Center website

positive feedback about our work and feel that the future is bright for the IDEA Center over the long run." 

Center for Universal Design:

www.ap.buffalo.edu/idea/Home/index.asp

IDEA Center:

www.design.ncsu.edu:8120/cud/



The New Mexican Law on Disability

by Andres Balcazar

This past May, Mexico passed the country's first national law on disability. Although the adoption of this law represents success after many years of struggle, this law unfortunately also represents a step backward in the recognition of the rights of persons with disabilities. The new law identifies disability as a health issue and as a result, the Ministry of Health will now be responsible for leading governmental efforts in this field.

An unfortunate consequence of the new law, will be the mandated closure of the President's Office on Disability Issues (better known as ORPIS) and the dissolution of CODIS, the national council for the integration of persons with disabilities, created and chaired by ORPIS. However, a new council called The National Council on Disability, will be established and chaired by the Ministry of Health and under the direct responsibility of the National System for the Integral Development of the Family (DIF), with the participation of other governmental agencies and the civil society.

Highlights of the legislation include:

- Recognition of the braille writing system and of Mexican Sign Language as an official language.
- The right of persons with a disability to freely access all public spaces in the built environments in a safe and dignified manner.

- Access features for the built environment should be based on the Principles of Universal Design and adapted to all types of persons.
- Encouragement programs leading to the development of accessible, safe and comfortable aerial, terrestrial and maritime means of transportation.
- Accessibility to communications technologies should be provided to persons with disabili-

About ICTA

The International Commission on Technology and Accessibility (ICTA) is a global organization promoting more equitable and accessible environments and technology. *Universal Design Newsletter* readers are invited to contact ICTA regional commissions and participate in ICTA activities and programs worldwide. Visit: www.ictaglobal.org.



ties. Currently, the law addresses specifically the needs of the deaf persons, but access to information technologies for other disabilities (software, interfaces, etc) is not mentioned.

At this time, Mexico is in a transition period, waiting for the formation of the new National Council on Disability, and the implementation of the Law's specific regulations. We look forward for better times to come for all the disability community in the country. 

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Oct. 10 & 11, 2005: NAHB Remodelers' Council Certified Aging-in-Place Specialist (CAPS) Course, Baltimore, MD. Part of a national conference, the program is for remodelers interested in the fastest growing segment of the residential industry. Contact: www.theremodelingshow.com.

Oct. 31, 2005: 5th Annual Accessible America Award Deadline, National Organization on Disability. Contact: Abbey Glenn 202.293.5960.

Nov. 1, 2005: Accessibility & Historic Integrity, Sacramento, CA. Sponsored by the National Preservation Institute. Contact: www.npi.org.

Nov. 3: World Usability Day. More than 20 speakers on accessibility and usability will address the first ever World Usability Day webcast. Local events will be held all over the world. Contact: www.worldusabilityday.net

Nov. 7-9, 2005: US Architectural & Transportation Barriers Compliance Board, Washington, DC. This is the bi-monthly meeting of the Access Board. Contact: 202.272.5434 (v), 800.872.2253 (v), 202.272.5449 (tty) or www.access-board.gov.

Nov. 8-9, 2005: 21st Century Trails: A Universal Approach to Trail Design, Martinsville, IN. Discussion will include proposed accessi-

bility guidelines for trails, design maintenance considerations, surfacing issues and the blending universal design principles into trail design. Contact: www.ncalonline.org.

Nov. 16-18, 2005: World Summit on the Information Society, Tunis, Tunisia. A fundamental change from an industrial to information-based society is taking place. This information revolution affects the way people live, learn and work and how governments interact with civil society. Contact: wsis@itu.int.

Dec. 11-14, 2005: White House Conference on Aging, Washington, DC. This conference, which occurs once a decade, makes policy recommendations to assist the public and private sectors in promoting the dignity, health, independence, and economic security of current and future generations of older persons. Contact: www.aoa.gov/press/conference_on_aging/conf_on_aging.asp

Feb. 1-4, 2006: International Conference on Aging, Disability and Independence, St. Petersburg, FL. This conference is expected to include presentations on assistive devices; housing and home modification and universal design; smart homes; telehealth; transportation. Contact: www.icadi.php.ufl.edu

Events to be placed in the UDN Calendar must be submitted to the editor two months before the publication date.

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