

Avoiding (or surviving) an ADA Lawsuit

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“Brother Can you Spare a Dime”



US DoJ Transit ADA Lawsuits

- US Justice Department Transit Lawsuits
 - 1992-2004: Zero
 - 2005: Detroit
 - 2010: Jackson, MS
- How does Justice Get Involved?
 - USDoT Referral
 - Number of Referrals since 1992: Zero
 - “Plaintiff-Intervenor”
 - Spring 2011: Direct Intervention

**“It’s 8:00 PM, Do You Know
Where Your Children Are?”**

*1970’s Public Service Announcement on WNEW, New
York

You Can't Fix it if you Don't Know

- Boston
 - Undercover, scientifically valid bus compliance survey
 - 12 teams of 2 (PWD tester/observer)
 - ~1000 rides over 6 weeks
 - Random seed points
 - 12 page survey instrument
 - Findings:
 - 19% lift boarding failures
 - 73% failure of alternative transport
 - 91% failure of securements
 - The MBTA honestly did not know things were that bad

How Are You Doing?

- Do you know how well your bus system is performing?
 - Pre-Trip Inspections
 - Lift Maintenance
 - Lift/Ramp Failures
 - Driver Training Proficiency
 - Driver Assistance
 - Securement Use
 - Stop Announcements
 - Destination Signs
 - ADA Compliant Equipment Designs

Conduct a Self Assessment

- Required by the ADA
- You need to know
- Remediate problems seriously
- Be Ready...

See what's coming

- Public Advisory Committees
- Complaints
- Your Own Staff
- Lawsuits almost never come out of the blue

The Letter...

“Strange game...the only winning move is not to play”

-WHOPER computer from the movie *War Games*, MGM

1983

Responding to Allegations

- Are they right?
 - Your own data
 - Additional investigations
- Negotiate
 - Be respectful and honest
 - Avoid “mission creep”
 - Stick to their allegations
 - Buy time
- Prepare
 - Start drafting the settlement, don’t wait for the plaintiffs

Settlement

“Everyone’s Guilty of Something”

Settlement is Your Goal

- Right or wrong, you will end up with a settlement
- Limit the scope
- Have a concrete plan
 - Measures of performance
 - Specific remedial actions
 - Timeframes
 - Specific performance goals
- De-fang the plaintiffs
 - Show the Judge that you are on-top of this

Monitor

- Insist on an independent monitor
 - Participate in selection
- Regular assessment and reporting
 - Monthly status meetings
 - Quarterly/semi-annual assessments
- Allow a forum to discuss issues
 - DoJ Model treats the settlement as the finish line; it's the starting line
- Empower the monitor to recommend

The “Hawthorne Effect”



Solve the problems

- Avoid “Punch Lists”
- Define good performance
- Allow time for organizational change
 - 3-5 years
- Remove items from monitoring as they achieve compliance
- You won't get it right the first time
 - Additional fixes
- Remember, if you don't fix it the first time, you can always be sued again later...



Questions?