

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN

Julie Withers and
Dawn Green
Plaintiffs

Case No: 19 cv 115
Americans with Disabilities Act (“ADA”)
42 U.S.C. 12101 et seq.

vs.

Milwaukee Brewers Baseball Club and;
Southeast Wisconsin Professional Baseball Park District

**Plaintiff’s Status Brief and Preliminary Response to Defendant’s Arguments Related
to Dismissing Certain Causes**

Background Regarding Plaintiff’s Delayed Responses

The Plaintiff’s understand that their counsel has been tardy in responding to Defendant’s outstanding demands to withdraw certain claims. There is a price to pay in litigation, but Plaintiffs’ Counsel does set out that this is the first unfortunate Rule 11 hearing in this case and that dismissing a case entirely is a harsh sanction.

One of the Plaintiffs, Dawn Green has been released from the hospital just last week following months of hospitalization (Napierala Declaration at 1). Dawn Green is disabled and is not able to recover as quickly as the average human (*Id* at 2). That the COVID-19 Pandemic has hit the lead counsel, Attorney Napierala hard. Attorney Napierala’s wife is a nurse

practitioner who cares for COVID-19 patients as a cardiovascular caregiver (*Id* at 4). That Attorney Napierala has 3 children who he home schools due to his wife's absence caring for patients (*Id* at 5-8). That for a majority of Attorney Napierala's cases he functions as a sole practitioner and has been overwhelmed by a difficult pandemic environment (*Id* at 9). Attorney Strouse's staff was equally decimated since his office manager was out on prolonged medical leave. In short 2020 has been a difficult year thus far on Plaintiff's counsel. Due to the COVID-19 Pandemic, the 2020 regular season of baseball has been delayed thwarting a one day in game inspection. The Court had previously granted an extension to the Plaintiff's expert to inspect during the 2020 season, in order to accomplish the necessary one-day game inspection. However due to the pandemic all game play has been so far cancelled.

Response to Defendant's Withdrawal of Claims and Related Allegations

The Defendants have demanded that the Plaintiffs withdraw different claims (See Exhibit 1). The Plaintiff agrees to withdraw certain claims but based on the Plaintiff's preliminary expert report, *Miller Park-ADA Barrier Types known as of 1/13/2020 Jim Terry of Evan Terry and Associates* (See Exhibit 2), other claims should remain as identified in the deposition of Plaintiff Julie Withers (See Exhibit 3).

1. Ticketing Practices: Plaintiff agrees to withdraw claims.
2. Helfaer Field: Plaintiff agrees to withdraw claims.
3. Sausage Haus: Plaintiff agrees to withdraw claims.
4. Arm Rest Claims: Plaintiff declines to withdraw claims. Plaintiff's expert

Has identified one or more barriers under the ADA with regard to armrests, “Companion seats do not have folding armrests whereas almost all other seats have armrests.” *See Exhibit 2 at p. 2 at #15; See Also Deposition of Julie Withers at p. 60, 62-67).*

5. Founders Suites: Plaintiff declines to withdraw claims. Plaintiff’s expert
Plaintiff’s expert has identified one or more barriers under the ADA with regard to Founders Suites, “Founder’s Suites eliminate over 80% of potential wheelchair positions behind home plate between second base few options for wheelchair users between third base, home plate and first base on the lower field...There are only 8 wheel chair spaces on the Field Level (100 Sections) in this area adjacent to the infield...sections 117 & 118” *See Exhibit 2 at p. 1 at #14; See Also Deposition of Julie Withers at p. 68-71,79-80).*
6. Club Suites: Plaintiff agrees to withdraw claims.
7. Johnson Controls Stadium Club: Plaintiff agrees to withdraw claims.
8. Northwest Mutual Legends Club: Plaintiff agrees to withdraw claims.
9. Aurora Health Care Bullpen: Plaintiff declines to withdraw claims. Plaintiff declines to withdraw claims. Plaintiff’s expert has identified one or more barriers with regards to the Aurora Health Care Bullpen, “The only “accessible route” into the Aurora Health Care Bullpen goes through service areas with significant sloped areas, door maneuvering clearance problems, and security

concerns. There is no obvious easy rooms without security escorts." *See Exhibit 2 at p. 1 at #9; See Also Deposition of Julie Withers at p. 82, 84, 87, 91 and 93).*

10. Mobile Charging Stations: Plaintiff agrees to withdraw claims.

11. Additionally, Plaintiff declines to withdraw those barriers identified within Exhibit 2 as identified by the plaintiff's expert.

Title II of the ADA provides that "no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity . . ." [42 U.S.C. § 12132](#). The implementing regulations include an "integration mandate," which requires public entities to "administer services, programs, and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities." [28 C.F.R. § 35.130\(d\)](#). "Under this mandate, states are required to provide care in integrated environments for as many disabled persons as is reasonably feasible" [Arc of Wash. State, Inc. v. Braddock](#), 427 F.3d 615, 618 (9th Cir. 2005).

Conclusion

Plaintiff's Counsel understand that there is a price to pay for delay. However, it is a drastic sanction indeed to dismiss Plaintiffs' entire case after Plaintiffs' expert has identified numerous Barriers under the ADA. Plaintiffs have not been able to conduct an in game inspection due to the impossibility caused by the COVID-19 pandemic. Their staffs and themselves have been strained by the pandemic as well. The Plaintiff's counsel prays for an

amended scheduling order and an extension of time to conduct an in-game inspection as granted by This Court.

Dated this 8 of June 2020

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/s/ Paul Strouse

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