

NOTICE OF SETTLEMENT IN A CLASS ACTION LAWSUIT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

..... X

EASTERN PARALYZED VETERANS
ASSOCIATION,

94 CV 0435 (TPG)

Plaintiff,

vs.

THE CITY OF NEW YORK,

Defendant.

..... X

ATTENTION: ALL PERSONS WITH DISABILITIES, AS DEFINED BY THE AMERICANS WITH DISABILITIES ACT, WHO USE OR SEEK TO USE CURB RAMPS IN NEW YORK CITY.

If you have a disability, and use, try to use, or believe that you will use curb ramps in New York City, you may be a member of the Plaintiff Class in the class action lawsuit entitled, Eastern Paralyzed Veterans Association v. City of New York, 94 CV 435 (“the EPVA Case”). This is a court-authorized Notice to inform you about a stipulation resolving disputes in the EPVA Case regarding the accessibility of streets in New York City to persons with disabilities.

PLEASE READ THIS NOTICE CAREFULLY. THIS NOTICE CONTAINS IMPORTANT DATES AND INFORMATION CONCERNING THE RIGHTS OF PLAINTIFF CLASS MEMBERS.

Introduction

The EPVA Case alleged claims under the Americans with Disabilities Act, 42 U.S.C. § 12131 (“ADA”), against the City of New York (“the City”) for failure to install curb ramps at street comers throughout the City and has been certified as a class action. The EPVA Case was filed in 1994 in the United States District Court for the Southern District of New York. In 2002, the parties reached a Stipulation of Settlement (“the 2002 Settlement”), which required the City to make City-streets accessible to persons with disabilities by installing curb ramps at all unramped comers in the City. As a result of the 2002 Settlement, more than 97% of the City’s comers are now ramped. Despite that progress, the parties have had disputes over, among other things, the remaining 3% of unramped comers and the need to upgrade curb ramps that complied with the ADA when they were installed but that may no longer be ADA-compliant. In January 2016, the parties in the EPVA Case reached a settlement resolving those disputes (“the 2016 Settlement”). This Notice is to tell you about the 2016 Settlement and your rights in connection with that settlement.

The Plaintiff Class and Class Representative

In 2002, the Court certified the EPVA Case as a class action, appointing a Class Representative to represent the interests and claims of a class of people (called, the “Plaintiff Class”) with respect to the issues in the EPVA lawsuit. The Plaintiff Class consists of all persons who are qualified individuals with a disability, as defined in the ADA, who use or seek to use curb ramps in the City. The Court has appointed United Spinal Association (f/k/a Eastern Paralyzed Veterans Association) as the Class Representative of the Plaintiff Class.

The EPVA Case and the 2002 Settlement

The EPVA Case alleged that the City violated the ADA by failing to install curb ramps at unramped comers throughout the City. In 2002, after eight years of litigation, including extensive mediation, the parties reached the 2002 Settlement, and, on September 10, 2002, the Court “so ordered” (or approved) the 2002 Settlement. The 2002 Settlement required the City to install curb ramps at unramped corners City-wide. To accomplish that mandate, the 2002 Settlement required the City to spend about \$218 million through Fiscal Year (“FY”) 2010 and at least \$20 million per fiscal year thereafter until curb ramp installations in the City were completed.

The 2002 Settlement established an On-Going Working Group, consisting of representatives of the City and the Plaintiff Class, to meet periodically and share data regarding implementation of the 2002 Settlement and expertise on curb ramp-related issues. The 2002 Stipulation also established a dispute resolution mechanism to enable the parties to address disputes related to the 2002 Settlement without the need for Court intervention, and provided that the Court retained authority to hear disputes that were not resolved through that mechanism.

The Results of the 2002 Settlement

As a result of the 2002 Settlement, approximately 97% of corners throughout New York City have now been ramped. The installations were accomplished primarily through the use of a “blitz construction” method, in which ramps were installed on a neighborhood-by-neighborhood basis since 2002. Between FY 2002 and FY 2014, the City allocated approximately \$243 million on curb ramp installations throughout the City, and, in FY 2015, the City spent an additional \$20 million on curb ramp installations. The 2002 Settlement remains in full force and effect (except to the extent amended by the 2016 Settlement) and requires the City to continue to spend \$20 million per fiscal year on curb ramp installations, until curb ramps are installed at all unramped comers in the City.

The Disputes Leading to the 2016 Settlement

Despite the successes of the 2002 Settlement, the parties had disputes over implementation of the 2002 Settlement, including disputes over the installation of curb ramps at the remaining 3% of comers in the City to be ramped (many of which are in high-construction and/or high-density areas), the need to upgrade curb ramps which complied with the ADA when

they were installed but may no longer be ADA-compliant, and the City's responses to accessibility complaints concerning unramped comers and non-ADA compliant curb ramps. Using the dispute resolution process of the 2002 Settlement, the parties repeatedly conferred about their disputes and, after extensive, arm's length negotiations, agreed to resolve their disputes by the terms of the 2016 Settlement.

Summary of the 2016 Settlement

The 2016 Settlement is designed to: (1) continue the achievements of the 2002 Settlement in order to complete curb ramp installations City-wide; (2) upgrade curb ramps that met ADA standards when they were installed but that are no longer ADA-compliant; (3) improve the City's methods and procedures for responding to complaints about unramped and/or non-ADA-compliant comers; and (4) improve accessibility training for inspectors and education for contractors whose work occupies public paths of travel.

As to curb ramp installations and upgrades, the 2016 Settlement requires that, in addition to the annual \$20 million to be spent on curb ramp installations, the City will spend **an additional \$86.7 million** through FY 2017 on curb ramp installations and curb ramp upgrades. The additional \$86.7 million in funds to install and upgrade curb ramps includes \$11.5 million to upgrade and install curb ramps in the high-construction/high-density areas mentioned above. Moreover, as 97% of City street comers are now ramped, the City will no longer use "blitz construction" but instead will install and upgrade curb ramps, as needed, on comers adjacent to streets that are being resurfaced. The City will also seek additional funds in future fiscal years in order to continue curb ramp upgrades after FY 2017.

As to accessibility complaints, the 2016 Settlement further requires the City to enhance its 311 system to help 311 operators better direct accessibility complaints to appropriate agencies and to modify the New York City Department of Transportation's website, by including specific links to the agency's Accessibility Coordinator and by enhancing the website functions to capture curb ramp-specific complaints.

As to training and education, the 2016 Settlement also requires the City to enhance its training of inspectors to better identify and address accessibility issues in and around construction sites and to mount an educational campaign that will highlight for construction permit applicants the importance of providing accessible paths of travel when construction impacts the public paths of travel.

Fairness of the Settlement

The Class Representative and Class Counsel have concluded that the terms of the 2016 Settlement are fair, reasonable, adequate, and in the best interests of the Plaintiff Class. Class Representative and Class Counsel reached that conclusion after considering the benefits of the 2016 Settlement and the time and potential outcomes of litigation over the disputes leading to the 2016 Settlement.

Class Counsel

The Plaintiff Class is represented by the following Class Counsel:

Robert B. Stulberg, Esq.
Amy F. Shulman, Esq.
Broach & Stulberg, LLP One
Penn Plaza, Suite 2601 New
York, New York 10119

James Weisman, Esq.
President, Chief Executive Officer and General
Counsel United Spinal Association (f/k/a Eastern
Paralyzed Veterans Association)
120-34 Queens Boulevard Kew Gardens, New York
11415

Attorneys' Fees and Expenses

The 2016 Settlement provides that Class Counsel and the City will attempt to reach agreement on the reasonable attorneys' fees and costs to be paid to Class Counsel by the City. If Class Counsel and the City cannot reach agreement, Class Counsel will ask the Court to order the City to pay Class Counsel's reasonable attorneys' fees and costs. Class Counsel's reasonable attorney fees and costs will not be paid from the monies to be spent by the City on the installation and upgrade of curb ramps under the 2002 or 2016 Settlements.

Fairness Hearing on the 2016 Settlement

On February 11, 2016, the Court "so ordered" the 2016 Settlement. The Court has scheduled a hearing for **May 24, 2016 at 2:00 p.m.** to assess the fairness, reasonableness, and adequacy of the 2016 Settlement ("the Fairness Hearing"). If the Court finds, after the Fairness Hearing, that the 2016 Settlement is fair, reasonable, and adequate, the 2016 Settlement will be binding on the Plaintiff Class.

Members of the Plaintiff Class are entitled to attend the Fairness Hearing at their own expense, but are **not** required to attend the Fairness Hearing. At the hearing, the Court will consider objections, if any, to the 2016 Settlement, but only Plaintiff Class Members who have asked to speak at the hearing will be permitted to do so. In order to submit objections and to speak at the hearing, Plaintiff Class Members must comply in all respects with the instructions below in the Section entitled, "Deadline and Procedure for Objections."

The date of the Fairness Hearing is subject to change without further notice. If you wish to be informed of any changes to the date of the Fairness Hearing, please notify Class Counsel at the addresses listed under the Section entitled, "Class Counsel," above, check the websites of Broach & Stulberg, LLP, www.brostul.com, or check the public court records on file in the EPVA Case at www.pacer.aov.

Binding Effect of the 2016 Settlement

The 2016 Settlement, if approved by the Court after the Fairness Hearing, will be binding on all members of the Plaintiff Class until all of the relief required by the 2016 Settlement has been implemented, i.e., all of the unramped corners have been ramped and all of the non-compliant curb ramps have been brought into compliance with the ADA. As a result, members of the Plaintiff Class will be barred from bringing their own actions for equitable relief, including injunctive and declaratory relief, against the City regarding all issues addressed in the 2016 Settlement, including issues regarding the installation or upgrade of curb ramps throughout the City, for the duration of implementation of the 2016 Settlement.

The 2002 Settlement contains a **dispute resolution mechanism** for any disputes concerning the installation and/or upgrade of curb ramps in the City. Anyone with a dispute regarding the installation and/or upgrade of curb ramps in the City should write to Class Counsel at Broach & Stulberg, LLP, Attention: Class Counsel, EPVA Case, One Pennsylvania Plaza, Suite 2601, New York, New York 10119.

Deadline and Procedure for Objections

Members of the Plaintiff Class have the right to object to the terms of the 2016 Settlement. Objections may be submitted at the address provided in the next paragraph. Objections must be submitted or postmarked by **May 2, 2016**. Untimely objections will **not** be considered. Additionally, to be considered, objections **must** state the objector's name, address, phone number, email address (if any), a full explanation of the specific basis for the objection, and any legal support for the objection. Moreover, if an objector wishes to speak about his or her objection at the Fairness Hearing, he or she **must** (i) request the opportunity to do so in his or her objection, (ii) file with the Clerk of the Court for the United States District Court for the Southern District of New York a "Notice of Intention to Appear at the Fairness Hearing," and (iii) deliver copies of the Notice of Intention to Appear at the Fairness Hearing to Class Counsel at Broach & Stulberg, LLP, Attention: Class Counsel, EPVA Case, One Pennsylvania Plaza, Suite 2601, New York New York 10119.

Objections may be submitted by mail to Broach & Stulberg, LLP, Attention: Class Counsel, EPVA Case, One Pennsylvania Plaza, Suite 2601, New York, New York 10119.

All timely objections will be provided to counsel for the City and filed with the Court by Class Counsel within five business days of the deadline for objections. Class Counsel and/or the City have the right to file responses to any objections.

Objectors are responsible for bearing their own fees and costs in connection with submitting objections and/or appearing at the Fairness Hearing.

IF YOU DO NOT OPPOSE THE 2016 SETTLEMENT, YOU DO NOT NEED TO DO ANYTHING.

Questions

This Notice summarizes the EPVA Case, the 2002 Settlement, the 2016 Settlement and related items. For additional information, or to ask any questions, contact Class Counsel at the following address:

Broach & Stulberg, LLP Attention:
Class Counsel, EPVA Case One Penn
Plaza, Suite 2601,
New York, New York 10119

You may also review the Court's file for the EPVA Case by visiting the Clerk of the Court, United States District Court for the Southern District of New York, 500 Pearl Street, New York, New York 10007 during regular business hours and referencing Eastern Paralyzed Veterans Association v. City of New York, 94 CV 435 (TPG). Public court documents are available for inspection and copying at your own cost.

You may also obtain information concerning the Settlement by visiting www.brostul.com or www.unitedspinal.org (under "Updates") and www.nvc.gov/dot.

If you require copies of this Notice in an accessible format, please contact Class Counsel Broach & Stulberg, LLP listed above.

**PLEASE DO NOT CONTACT THE COURT DIRECTLY ABOUT THIS MATTER.
THE COURT CANNOT PROVIDE LEGAL ADVICE REGARDING THE 2016
SETTLEMENT OR THIS MATTER.**