

# 148-1952  
DOL:  
DOS:

UNITED STATES DISTRICT COURT  
Southern District of Florida  
DIVISION

SUMMONS IN A CIVIL CASE

Case No.:

01-6521

ACCESS FOR THE DISABLED, INC.,  
a Florida not-for-profit corporation, and  
ROBERT COHEN, Individually,

CIV - DIMITROULEAS

Plaintiff(s),

vs.

IRVING WELLENS,

MAGISTRATE JUDGE  
JOHNSON

Defendant(s).

Miriam Wellens wife  
4/7/01  
9:20 A  
Jenne Kidwell  
#931

To: IRVING WELLENS  
17531 Foxborough Lane  
Boca Raton, Florida

YOU ARE HEREBY SUMMONED and required to serve upon Plaintiffs' attorney:

Lawrence A. Fuller, Esquire  
Fuller, Fuller & Associates, P.A.  
1111 Lincoln Road, PH 802  
Miami Beach, FL 33139  
Tel: (305) 538-6483  
Fax: (305) 534-9894

an answer to the Complaint which is herewith served upon you, within twenty (20) days after service of this Summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the Complaint. You must also file your answer with the Clerk of this Court within a reasonable period of time after service.

Clarence Maddox

APR 03 2001

Clerk

Date

(By) Deputy Clerk

#2966

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APR 11 2001 Kw  
RISK MANAGEMENT

### STATUTORY BACKGROUND

3. On July 26, 1990, Congress enacted the Americans with Disabilities Act of 1990, establishing important civil rights for individuals with disabilities, including the right to full and equal enjoyment of the goods, services, facilities, privileges, and access to places of public accommodation.
4. Pursuant to 42 U.S.C. § 12182 and 28 CFR 36.201(a), no place of public accommodation shall discriminate against an individual, on the basis of such individual's disability, with regard to the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations at that place of public accommodation.
5. The effective date of Title III of the ADA was January 26, 1992, or January 26, 1993, if the Defendant has ten(10) or fewer employees and gross receipts of \$500,000 or less. 42 U.S.C. 12181; 28 CFR 36.508(a)

### THE PARTIES AND STANDING

6. Plaintiff, ACCESS FOR THE DISABLED, INC., is a non-profit Florida corporation. The members of this organization include individuals with disabilities as defined by the ADA. This organization's purpose is to represent it's members interests by assuring that places of public accommodation are accessible to and usable by the disabled and that its members are not discriminated against because of their disabilities. ACCESS FOR THE DISABLED, INC., and its members have suffered and will continue to suffer direct and indirect injury as a result of the Defendant's discrimination until Defendant is compelled to comply with the requirements of the ADA. ACCESS FOR THE DISABLED, INC., has also been discriminated against because of its association with its disabled members and their claims.

7. Plaintiff, ROBERT COHEN is a Florida resident, is sui juris and qualifies as an individual with disabilities as defined by the ADA. ROBERT COHEN has visited the property which forms the basis of this lawsuit and plans to return to the property to avail himself of the goods and the services offered to the public at the property.
8. The barriers to access at the property described below have effectively denied or diminished plaintiff's ability to visit the property and have endangered his safety. Barriers to access involving parking and path of travel at this property have posed a risk of injury to the plaintiff. Every other barrier to access as described in this complaint causes similar risk of injury, embarrassment or discomfort to the plaintiff.
9. ACCESS FOR THE DISABLED, INC., and ROBERT COHEN have a realistic, credible, existing and continuing threat of discrimination from the defendant's non-compliance with the ADA with respect to this property as described but not necessarily limited to the allegations in paragraph 16 of this complaint.
10. ROBERT COHEN desires to visit the defendant's property not only to avail himself of the goods and services available at the property but to assure himself that this property is in compliance with the ADA so that he and others similarly situated will have full and equal enjoyment of the property without fear of discrimination.
11. Plaintiffs have reasonable grounds to believe that they will continue to be subjected to discrimination in violation of the ADA by the Defendant.
12. Defendant, owns; or leases; or leases to; or operates a place of public accommodation as defined by the ADA and the regulations implementing the ADA 28 CFR 36.201(a) and 36.104. Defendant is responsible for complying with the obligations of the ADA. The place

of public accommodation that the Defendant owns, operates, leases or leases to is known as WENDY'S RESTAURANT and is located at 2250 North Federal Highway, Pompano Beach, Florida.

### THE INSTANT CLAIM

13. Defendant is required to remove architectural barriers to the physically disabled when such removal is readily achievable for its place of public accommodation that has existed prior to January 26, 1992, 28 CFR § 36.304(a); in the alternative, if there has been an alteration to Defendant's place of public accommodation since January 26, 1992, then the Defendant is required to ensure to the maximum extent feasible, that the altered portions of the facility are readily accessible to and useable by individuals with disabilities, including individuals who use wheelchairs, 28 CFR 36.402; and finally if the defendant's facility is one which was designed and constructed for first occupancy subsequent to January 26, 1993 as defined in 28 CFR 36.401 then the Defendant's facility must be readily accessible to and useable by individuals with disabilities as defined by the ADA.
14. Appendix A to Part 36- Standards for Accessible Design (28 CFR pt. 36, App. A) sets out guidelines for accessibility for buildings and facilities. These guidelines are to be applied during design, construction and alteration of such buildings and facilities to the extent required by regulations issued by Federal Agencies, including the Department of Justice, under the ADA.
15. Defendant has discriminated against the individual and corporate Plaintiffs by denying them access to full and equal enjoyment of the goods, services, facilities, privileges, advantages and or accommodations of its place of public accommodation or commercial facility in

violation of 42 U.S.C. 12181 et seq. and 28 CFR 36.302 et seq. as described below.

- 16. Defendant has discriminated and is discriminating against the Plaintiff in violation of the ADA by failing to, inter alia, have accessible facilities as described below by January 26,1992 (or January 26,1993 if defendant has 10 or fewer employees and gross receipts of \$500,000 or less):

**The Site:**

- 1. The ramp exceeds a 1:12 and the flared sides exceed a 1:10, in violation of sections 4.8.2 and 4.7.5 of the ADAAG. See photos C and D.
- 2. The ramp protrudes into the parking space, in violation of section 4.6.2 of the ADAAG. See Photos C and E.
- 3. Each accessible parking space, located on the north, side should be 12 ft. wide with a 5 ft. access aisle and be part of the accessible route to the building. The spaces should also be marked white and proximately outlined in blue, in violation of sections 4.1.2.1, 4.6.3, 4.6.4, Title 23 Section 109D. See photo A.
- 4. There is no accessible route connecting the street, in violation of section 4.1.2 of the ADAAG. See photo A.
- 5. The ordering counter is above the 36 inches prescribed, in violation of section 5.2 of the ADAAG. See photo M.
- 6. The restroom doors do not have proper maneuvering clearance, in violation of Figure 25 of the ADAAG. See photo L.
- 7. The urinal in the mens restroom exceeds 17 inches to the rim and the flush-o-meter exceeds 44 inches to the handle, in violation of sections 4.18.4 and 4.18.2 of the ADAAG. See photo I.
- 8. The restroom lavatories are not per Figure 31 of the ADAAG. See photos G, H and J.
- 9. The toilet stall is not properly configured and is of insufficient depth, in violation of section 4.17.3, Figure 30 of the ADAAG. See photo K.
- 10. The grab bar on the side wall is not installed as per Figure 30 and the toilet tissue dispenser is out of reach of the disabled as per Figure 30 and section 4.17 of the ADAAG. See photo K.

- 17. The discriminatory violations described in Paragraph 16 are not an exclusive list of the Defendant's ADA violations. Plaintiff requires an inspection of the Defendant's place of public accommodation in order to determine all of the discriminatory acts violating the ADA.

- 18. The correction of these violations of the ADA is readily achievable or the Defendant is obligated to have its place of public accommodation readily accessible as defined by the ADA.
- 19. Plaintiffs have retained the undersigned counsel and are obligated to pay reasonable Attorneys' Fees including costs and expenses incurred in this action. Plaintiffs are entitled to recover these Attorney's Fees, costs and expenses from the Defendant pursuant to 42 U.S.C. § 12205 and 28 CFR 36.505.
- 20. Notice to Defendant is not required as a result of the Defendant's failure to cure the violations by January 26,1992 (or January 26,1993 if Defendant has 10 or fewer employees and gross receipts of \$ 500,000 or less). All other conditions precedent have been met by Plaintiff or waived by the Defendant.
- 21. Plaintiffs are without adequate remedy at law and are suffering irreparable harm.
- 22. Pursuant to 42 U.S.C. 12188, this Court is provided authority to grant Plaintiffs Injunctive Relief including an order to alter the Defendant's facility to make those facilities readily accessible to the Plaintiffs and all other persons with disabilities as defined by the ADA ; or by closing the facility either temporary or permanently until such time as the defendant cures its violations of the ADA.

**WHEREFORE, Plaintiffs respectfully request:**

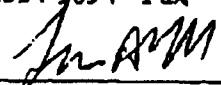
- a. A temporary injunction and a permanent injunction providing for injunctive relief against the Defendant including an order to make all readily achievable alterations to the facility ;or to make such facility readily accessible to and usable by individuals with disabilities to the extent required by the ADA.

- b. An award of Attorney's Fees, costs and litigation expense pursuant to 42 U.S.C. 12205.
- c. Such other relief as the Court deems just and proper.

Respectfully Submitted,

**FULLER, FULLER AND ASSOCIATES, P.A.**

Attorney for Plaintiffs  
 1111 Lincoln Road, Suite 802  
 Miami Beach, FL 33139  
 (305) 538-6483 - Dade  
 (954) 463-6570 - Broward  
 (305) 534-9894 - Fax

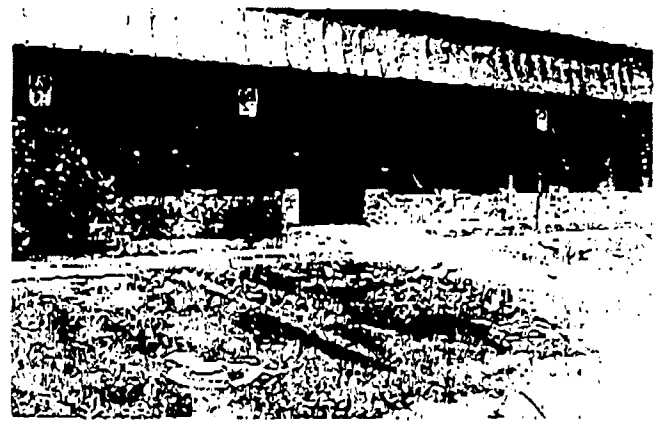
By:   
 Lawrence A. Fuller, Esquire  
 Florida Bar #0180470

Date: 04/02/01

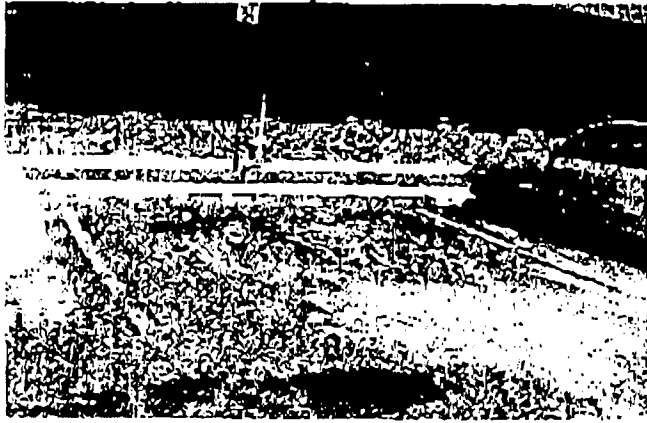
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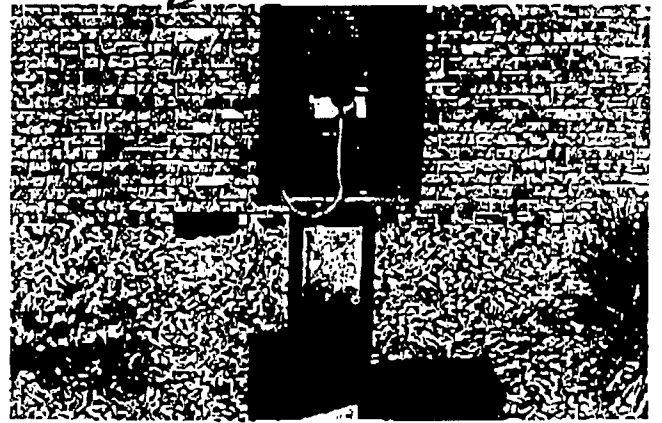
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B



C



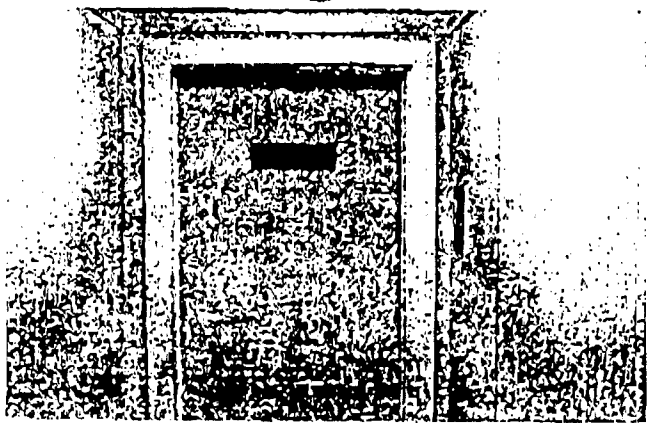
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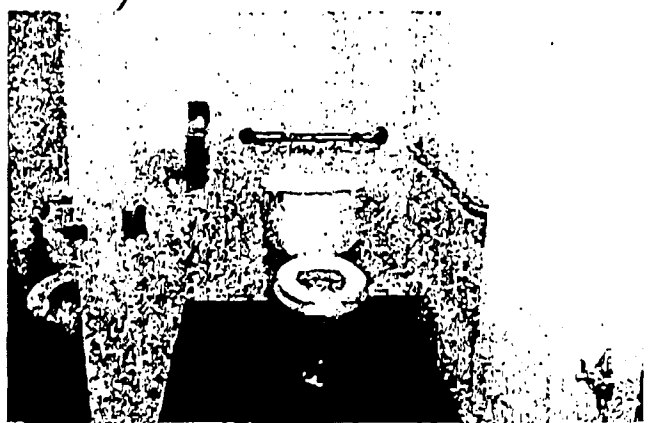
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G



H

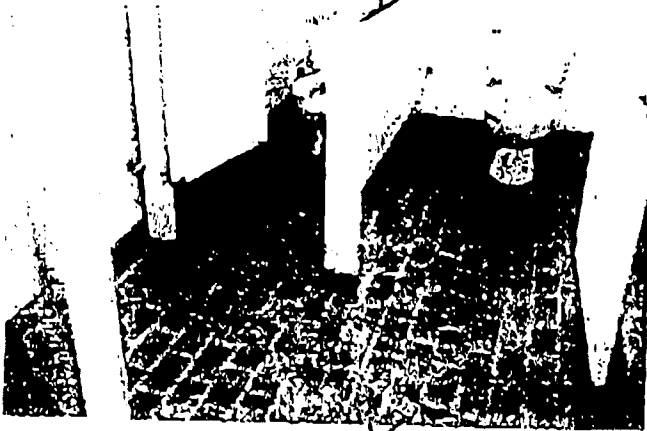




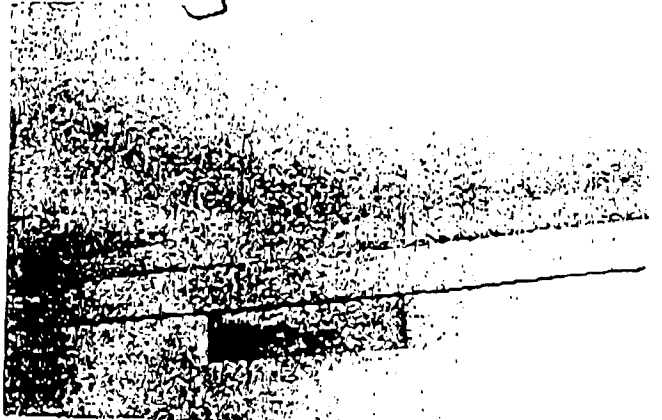
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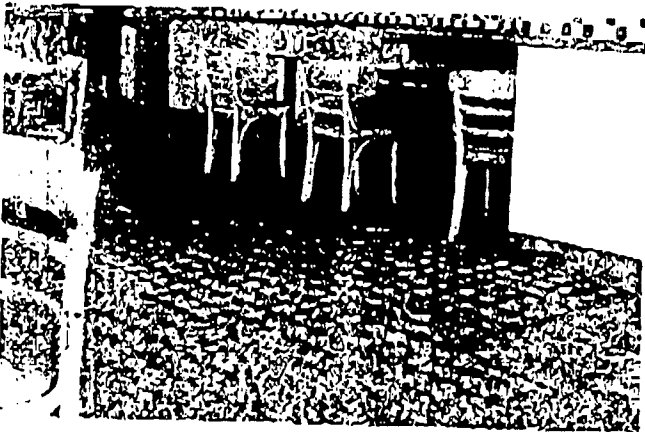
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K



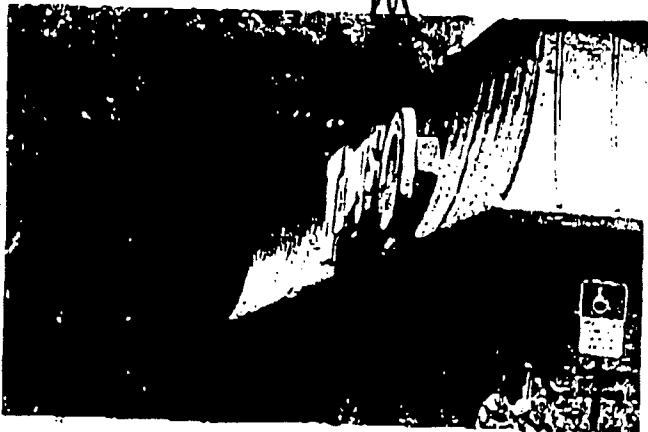
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M



N



O

LAW OFFICES OF  
**DAVID R. WELLENS**

616 Rosa Court  
Palm Beach Gardens, FL 33410  
Telephone/Telefax: 561-622-9849

April 10, 2001

*Transmitted By Facsimile*  
Joseph Karpowicz, Esquire  
Assistant General Counsel  
Wendy's International, Inc.  
P.O. Box 256  
Dublin, Ohio 43017

**Re: Access For The Disabled et. al vs. Wellens**  
**Case # 01-6521, United States District Court,**  
**Southern District of Florida**  
**Store # 131**  
**2250 North Federal Hwy.**  
**Pompano Beach, Florida**

Dear Mr. Karpowicz:

The purpose of this letter and enclosed Summons and Complaint is to convey to Wendy's International notice of above-styled action filed against Irving Wellens, as owner of the leased real property. The Complaint alleges that Wendy's Store #131, doing business on the leased premises, is not in compliance with the Americans With Disabilities Act. Service of the Complaint was effected on April 7, 2001, and an answer to the Complaint is required on or before April 27, 2001, in order to preclude a Default Judgment.

Pursuant to the insurance and indemnification provisions of our lease with Wendy's, you are requested to timely appear and provide a defense to this action, as well as save Mr. Wellens harmless from any cost, damages or decree that may be entered in connection therewith.

I am also requesting that you provide the undersigned with a copy of the current endorsement listing Irving and Miriam Wellens as additional named insureds under the liability policy applicable to the subject premises.

Please acknowledge your receipt of this letter with enclosures. Thank you for your anticipated cooperation.

Very truly yours,



David R. Wellens

DRW/mew  
Enclosures