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ARTICLES

THE EEOC'S ENFORCEMENT OF THE  
AMERICANS WITH DISABILITIES ACT  
IN THE SIXTH CIRCUIT

*Paul Steven Miller*<sup>†</sup>

INTRODUCTION

This summer will mark the eighth anniversary of the enactment of the Americans with Disabilities Act ("ADA"),<sup>1</sup> a law intended to remove barriers, both physical and attitudinal, that prevent people with disabilities from participating fully in many aspects of community life. The ADA prohibits discrimination against people with disabilities in employment,<sup>2</sup> state and local government services,<sup>3</sup> public accommodations operated by private entities,<sup>4</sup> and telecommunications.<sup>5</sup>

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<sup>1</sup> Americans with Disabilities Act of 1990, 42 U.S.C. § 12101 (1994).

<sup>2</sup> *See id.* §§ 12111-12117.

<sup>3</sup> *See id.* §§ 12131-12165.

<sup>4</sup> *See id.* §§ 12181-12189.

<sup>5</sup> *See* 47 U.S.C. §§ 225, 661 (1994) (stating that accommodating telecommunications services must be made available by telecommunications carriers, and that federally funded television announcements must be close-captioned).

The passage of the ADA marked a significant step in the integration of persons with disabilities into mainstream society. Even after the civil rights movement of the 1960s, people with disabilities remained one of the few groups without legal redress for discrimination. In 1973, Congress passed Title V of the Rehabilitation Act, prohibiting federal government agencies, and businesses that receive federal funds, from discriminating against persons with disabilities.<sup>6</sup> It was not until passage of the ADA in 1990, however, that many individuals with disabilities were provided with basic federal protection from discrimination.<sup>7</sup> As of 1994, all employers with at least fifteen employees are subject to the ADA's employment provisions.<sup>8</sup>

President Bush signed the ADA in 1990 with overwhelming bipartisan support.<sup>9</sup> The public likewise strongly supported the Act. However, the climate has since changed. Today, a significant backlash against the disability rights movement is threatening to undermine many of the civil rights gains achieved over the last twenty-five years, including passage of the ADA.<sup>10</sup>

One recurring theme in the backlash against the disability rights movement is the criticism of the enforcement of the ADA. Critics of the ADA have contended that the ADA's employment provisions have failed to increase the number of persons with disabilities in the work force. Moreover, print and television media have asserted that the excessive cost of litigation and accommodation required by the ADA has put small employers out of business. Finally, the mainstream media has inaccurately portrayed the ADA as cumbersome and an endless source of frivolous claims by sensa-

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<sup>6</sup> See 29 U.S.C. § 794 (1994).

<sup>7</sup> See 42 U.S.C. § 12101(a)(4) (1994) (stating Congress' finding that "individuals who have experienced discrimination on the basis of disability have often had no legal recourse . . .").

<sup>8</sup> See *id.* § 1211(5)(A) (defining "employer").

<sup>9</sup> See Nancy Mathis, *Senate Oks Anti-Bias Bill for Disabled: Bush Expected to Sign Historic Rights Measure*, HOUS. CHRON., July 13, 1990, at 1A.

<sup>10</sup> For example, Justin Dart, former chairman of the President's Committee on Employment of People with Disabilities, recently observed that "[t]he atmosphere has changed very considerably, where people with disabilities are becoming scapegoats for the horrendous deficit and debt." Barbara Vobejda, *Disabled Americans Nervously Wait to See Where Budget Ax Falls*, HOUS. CHRON., Aug. 4, 1995, at 18A. Another disability rights advocate stated that "[t]here's a feeling that disabled people are taking away the rights and resources of those who are more deserving. . . . Resentment of disabled people is now being publicly expressed in Congress, the media, in conversation, and in hate crimes." Kathi Wolfe, *Bashing the Disabled: The New Hate Crime*, THE PROGRESSIVE, Nov. 1995, at 26 (quoting Barbara Faye Waxman, a disability rights activist).

tionalizing a few extreme lawsuits brought under the Act. This article will demonstrate the advantages of the ADA in the face of these criticisms and demonstrate how the EEOC has enforced the ADA, nationally and in the Sixth Circuit, for the benefit of people who have faced employment discrimination based on disability.

### I. RESPONSES TO THE CRITICISMS OF THE ADA

Contrary to the criticisms leveled against the ADA, a look at the facts demonstrates that hundreds of thousands of severely disabled people have obtained employment since the EEOC began enforcement of the ADA. Moreover, prospective employers have supported implementation of the ADA as they have discovered the minimal costs associated with compliance. Finally, despite the criticisms, there has not been an avalanche of litigation filed under the ADA.

#### A. *The Number of Individuals with Disabilities in the Work Force Has Increased Since Passage of the ADA*

According to a 1990 Census Bureau survey, there are forty-nine million Americans with disabilities.<sup>11</sup> Of this number, 56% are between the ages of twenty-one and sixty-four<sup>12</sup>—prime working age—but over 60% of this subgroup are unemployed.<sup>13</sup> People with disabilities comprise the largest percentage of people living in poverty,<sup>14</sup> and an estimated \$200 billion a year in government expenditures support people with disabilities.<sup>15</sup> By prohibiting work

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<sup>11</sup> See JOHN M. MCNEIL, U.S. DEP'T OF COMMERCE, AMERICANS WITH DISABILITIES: 1991-92 DATA FROM THE SURVEY OF INCOME AND PROGRAM PARTICIPATION 5 (1993); see also President's Committee for the Employment of People with Disabilities, *Key Facts* (visited Feb. 11, 1998) <<http://www.pcepd.gov/pubs/fact/keyfacts.htm>> (hard copy on file with the *Case Western Reserve Law Review*) (listing the National Alliance on Mental Illness as a source).

<sup>12</sup> See President's Committee on Employment of People with Disabilities, *Statistical Report: The Status of People with Disabilities* (visited Feb. 11, 1998) <<http://www.pcepd.gov/pubs/fact/statistic.htm>> (hard copy on file with the *Case Western Reserve Law Review*).

<sup>13</sup> See President's Committee on Employment of People with Disabilities, *supra* note 11.

<sup>14</sup> See Robert L. Burgdorf, Jr., *The Americans with Disabilities Act: Analysis and Implications of a Second-Generation Civil Rights Statute*, 26 HARV. C.R.-C.L. L. REV. 413, 422 (1991) (stating that the rate of poverty among people with disabilities is more than twice that of all other Americans).

<sup>15</sup> See Senator Tom Harkin, *The Americans with Disabilities Act: Four Years Later—Commentary on Blanck*, 79 IOWA L. REV. 935, 937 (1994) (quoting President Bush's assertion that support for persons with disabilities costs the American people nearly \$200

place discrimination against individuals with disabilities and requiring infrastructure changes to increase physical accessibility, the ADA makes it possible for some individuals with disabilities who have relied on public assistance (in the forms of Medicaid, Social Security Disability Insurance, and Supplemental Security Income) to have enhanced prospects of obtaining and maintaining employment. Enabling individuals with disabilities to become productive members of society by facilitating their entry into the work force is one of the policy goals of the ADA.<sup>16</sup>

A recent study of the impact of the ADA concluded that "[t]he ADA has played a significant role in enhancing labor force participation of persons with disabilities and in reducing dependence on government entitlement programs."<sup>17</sup> Similarly, an article in *The Wall Street Journal* reported a recent study showing that "job opportunities and income levels have climbed significantly for many mentally disabled people since passage [of the ADA]."<sup>18</sup>

Yet critics of the ADA point to some studies showing that the employment rate for working-age people with disabilities has not improved since the ADA went into effect.<sup>19</sup> New data from the U.S. Census Bureau contradicts these assertions, however, indicating there has been a significant increase in the number of persons with disabilities in the work force. According to the Census Bureau's Survey of Income Program and Participation, the percentage of employed individuals with severe disabilities increased from 23.3% in 1991 to 26.1% in 1994, representing an increase of 800,000 jobs from 2.91 million to 3.71 million.<sup>20</sup>

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billion annually).

<sup>16</sup> See 42 U.S.C. § 12101(a)(8) (1994) (describing Congress' finding that "the Nation's proper goals regarding individuals with disabilities are to assure equality of opportunity . . . and economic self-sufficiency for such individuals . . .").

<sup>17</sup> Peter David Blanck, *Employment Integration, Economic Opportunity, and the Americans with Disabilities Act: Empirical Study from 1990-1993*, 79 IOWA L. REV. 853, 854 (1994); see also Senator Bob Dole, *Are We Keeping America's Promises to People with Disabilities?—Commentary on Blanck*, 79 IOWA L. REV. 925, 927 (1994) (stating that the passage of the ADA reflected a "drive for independence and integration of people with disabilities"); Harkin, *supra* note 15, at 935-36 (calling for greater efforts in pursuing the goals of the ADA).

<sup>18</sup> Wade Lambert, *Law Helps Mentally Disabled Job Outlook*, WALL ST. J., Feb. 2, 1995, at B7.

<sup>19</sup> See Dole, *supra* note 17, at 928 (citing discouraging statistics from a 1994 Harris survey).

<sup>20</sup> See *Employment Rate of People with Disabilities Increases Under the Americans with Disabilities Act*, (President's Comm. on Employment of People with Disabilities, Wash. D.C.), July 22, 1996 (copy on file with the *Case Western Reserve Law Review*).

In addition to this increase in employment among severely disabled individuals, a significant number of individuals with "non-visible" disabilities seeking employment have also benefitted from the ADA's prohibition of pre-offer disability-related inquiries and medical exams.<sup>21</sup> Prior to the ADA, many people were excluded from the work force when prospective employers learned from the applicants' job applications that they had disabilities. Such questions are now illegal under the ADA until after a job offer has been made.<sup>22</sup>

Given the ADA's short life and the contradictory nature of the employment statistics to date, it is wholly inappropriate to make any conclusions about the ADA's success in increasing the employment of disabled individuals. Five years after the passage of the Civil Rights Act of 1964, no one would have argued that the Act should have been repealed if the numbers of women and people of color employed had not increased. As Justin Dart, a former chairman of the President's Committee on Employment of People with Disabilities, stated:

[The] ADA is working as intended to effect voluntary change in millions of minds, public facilities and places of employment. It is misleading [and] dishonest to suggest that ADA is a failure because it has not in sixty months solved problems that the ten commandments have not solved in more than 3,000 years.<sup>23</sup>

### *B. The Costs Associated with the ADA Are Minimal*

When the ADA became applicable to small businesses,<sup>24</sup> business leaders proclaimed that many small businesses would fail due to the cost of meeting the ADA's accessibility requirements, making accommodations to employees with disabilities, or defending the businesses when charged with ADA violations. Representa-

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<sup>21</sup> See 42 U.S.C. § 12112(d) (1994) (prohibiting employers from examining or making inquiries into the disabilities of applicants).

<sup>22</sup> See *id.* § 12112(d)(3) (allowing examinations after an offer for employment has been extended).

<sup>23</sup> *Americans with Disabilities Forum: Before S. Subcomm. on Disability Policy*, July 26, 1995 [hereinafter *Americans with Disabilities Forum*] (statement of Justin Dart), available in 1995 WL 446704 (F.D.C.H.).

<sup>24</sup> See 42 U.S.C. § 1211(5)(A) (1994) (stating that the term "employer" as used in the Act applied to employers with at least 25 employees as of July 26, 1992, and at least 15 employees as of July 26, 1994).

tive Charles Stenholm (D-Texas) was one of three Democrats who voted against the bill, believing that costs of complying with its requirements could put small businesses in jeopardy.<sup>25</sup> Max Schulz, an associate editor with *Forbes Media Critic*, stated in a commentary that appeared in the *Washington Times* that "[w]ith the law now targeting small companies, costly regulations will narrow the already slim profit margins of those least capable of coping, and the public will better witness the regressive new effects of Washington's supposedly 'progressive' edict."<sup>26</sup> The media has fueled these unsubstantiated fears by publicizing stories focusing on small business owners' fears of having to litigate an ADA employment lawsuit.

In contrast to the media's claims, an appropriate reasonable accommodation, in most cases, can be made without difficulty and at little or no cost. Employers' experiences demonstrate that the cost of making work places accessible is minimal in the majority of cases. A recent study commissioned by Sears indicates that 69% of the reasonable accommodations provided by the company cost nothing, 28% cost less than \$1,000, and only 3% more than \$1,000.<sup>27</sup> The average cost to Sears of providing work place accommodations to employees with disabilities was less than fifty dollars, compared with an average cost of \$1,800 and \$2,400 to Sears for terminating and replacing an employee.<sup>28</sup> According to a recent study by the United Cerebral Palsy Association, 73% of the work place accommodations made by businesses in 1993 cost less than \$100.<sup>29</sup> A 1994 report from the President's Committee on Employment of People with Disabilities found that since October 1992, 68% of the accommodations made for workers with disabilities cost less than \$500 and 18% cost the employers nothing.<sup>30</sup>

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<sup>25</sup> See Mary Benanti, *Marlenee Calls Disabilities Act 'Litigation Legislation'*, GANNETT NEWS SER., May 23, 1990, available in 1990 WL 4909685.

<sup>26</sup> Max Schulz, *Disability Rules Moving In On Smaller Businesses*, WASH. TIMES, Aug. 28, 1994, at B3.

<sup>27</sup> See PETER DAVID BLANCK, COMMUNICATING THE AMERICANS WITH DISABILITIES ACT, TRANSCENDING COMPLIANCE: A CASE REPORT ON SEARS, ROEBUCK AND CO. 12 (1994).

<sup>28</sup> See *id.* at 7 (stating that the average cost of providing work place accommodations to employees with disabilities was \$45.00).

<sup>29</sup> See UNITED CEREBRAL PALSY ASS'NS, IS ADA WORKING?: 1994 PROGRESS REPORT ON ADA IN AMERICAN BUSINESS 4 (1994) (copy on file with the *Case Western Reserve Law Review*).

<sup>30</sup> See Steven B. Epstein, *In Search of a Bright Line: Determining When an Employer's Financial Hardship Becomes "Undue" Under the Americans with Disabilities*

The Job Accommodation Network, a free ADA technical assistance service sponsored by the President's Committee, reports that the costs of making an accommodation is typically around \$200 per employee with a disability.<sup>31</sup> Indeed, these costs may be further reduced because the ADA allows businesses to claim federal tax credits for some accessibility-related renovation expenses.<sup>32</sup> Moreover, the relatively minor costs of providing a reasonable accommodation are offset by the benefits resulting from increased employment of people with disabilities, reduced dependence on Social Security, increased consumer spending by people with disabilities, and increased tax revenues.<sup>33</sup>

The critics who claim the ADA will bankrupt small businesses ignore the fact that the ADA imposes limits on the accommodations that must be provided. Employers of workers with disabilities and businesses that provide public accommodation services are required to provide accommodations for disabled individuals only if the modifications will not cause "undue hardship" on their operations.<sup>34</sup> Additionally, a business's obligation to provide access to people with disabilities arises if such accessibility is "readily achievable."<sup>35</sup> Thus, an employer's obligation to provide accommodation for an employee with a disability is based on a reasonableness standard which takes into account the type of accommodation needed, the financial resources of the employer, and the type

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*Act*, 48 VAND. L. REV. 391, 394 n.11 (1995) (discussing the President's Committee on Employment of People with Disabilities' Job Accommodations Network ("JAN") Report at 4 (Sept. 30, 1994)). The Committee also reported that 78% of reasonable accommodations cost less than \$1,000 and only 17% of reasonable accommodations cost between \$1,001 and \$5,000. *See id.*

<sup>31</sup> *See* President's Committee on Employment of People with Disabilities, *Report to Congress on the Job Accommodation Network* (visited Feb. 12, 1998) <<http://janweb.icdi.wvu.edu/english/congress.htm>> (hard copy on file with the *Case Western Reserve Law Review*) [hereinafter *JAN Report*].

<sup>32</sup> *See* 26 U.S.C. § 38(b)(7) (1994).

<sup>33</sup> *See* Harkin, *supra* note 15, at 937 (listing these benefits).

<sup>34</sup> *See* 42 U.S.C. § 12112(b)(5)(A) (1994). "The term 'undue hardship' means an action requiring significant difficulty or expense" when various factors are considered. *Id.* § 12111(10)(A). Those factors include the nature and cost of the accommodation, the overall resources of the company, and the types of operations of the entity. *See id.* § 12111(10)(B).

<sup>35</sup> *See* 42 U.S.C. § 12182(a)(2)(A)(iv)-(v) (1994) (stating that a failure to remove barriers to entry to persons with disabilities is discrimination where the removal is readily achievable, or where the removal is not readily achievable, but where alternative methods of provision of services is readily achievable). In determining whether something is "readily achievable," a sliding scale similar to that used to determine undue hardship is used. *Compare id.* § 12181(9) with *id.* § 12111(10)(B).



of operations of the employer.<sup>36</sup> For example, an employer may be required to provide a modified or alternative work schedule as a reasonable accommodation for an individual with a mental or physical disability in appropriate circumstances, but would never be required to tolerate chronic unscheduled lateness or unreliability from any employee.<sup>37</sup>

Many respected surveys have documented employers' support of the ADA and employment of people with disabilities. A July 1995 Louis Harris and Associates survey of senior corporate executives found that 70% of the executives surveyed supported the ADA and did not favor weakening the law in any way, while more than 80% supported policies to increase the number of people with disabilities in their companies.<sup>38</sup> The Job Accommodation Network reported that 82% of employers found the accommodations they made to be very effective, and generally employers concluded that they had reaped substantial financial *benefits* as a result of the accommodations they had provided.<sup>39</sup>

### *C. The ADA Is Not Overly Broad and Has Assisted Persons with "Genuine" Disabilities*

The ADA defines a person with a disability as a person who had, has, or is regarded as having a "physical or mental impairment that substantially limits one or more of the major life activities of such individual."<sup>40</sup> Critics of the law claim that the definition is too vague, enabling nearly everyone to claim disability and thus protection under the law. In April 1995, House Majority Leader Dick Armey stated the ADA was being misused and that he wanted to rewrite the ADA to protect only those with "genuine" disabilities.<sup>41</sup> Armey was one of 28 House members who voted

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<sup>36</sup> See *supra* notes 34-35.

<sup>37</sup> See, e.g., *Carr v. Reno*, 23 F.3d 525, 530 (D.C. Cir. 1994) (stating that "an essential function of any government job is an ability to appear for work . . . and to complete assigned tasks within a reasonable amount of time").

<sup>38</sup> Kim Mills, *Americans with Disabilities Act: A Vital Help, or Needless Hassle?*, ASSOCIATED PRESS, Aug. 22, 1995, available in 1995 WL 4402926.

<sup>39</sup> See *JAN Report*, *supra* note 31.

<sup>40</sup> 42 U.S.C. § 12102(2) (1994).

<sup>41</sup> See Anne Macias & Catalina Camia, *Disabilities Act Needs Revisions, Armey Says*, DALLAS MORNING NEWS, Apr. 19, 1995, at 30A.

against the ADA in 1990.<sup>42</sup> He claimed the "ADA in its current state is a disaster" and that rewriting it would "prevent 'gold diggers' from using the law to file frivolous lawsuits."<sup>43</sup>

ADA critics contend further that the law is being abused by people who are not disabled, but who want to take advantage of companies that would rather settle than incur the costs of litigating an ADA lawsuit, even one without merit. In a *St. Petersburg Times* article, a Florida lawyer was quoted as saying: "There's an element of extortion with them (ADA claims). . . . The last thing a company wants is a two-week trial with people testifying that the company hates disabled people."<sup>44</sup> Edward Hudgins, Director of Regulatory Studies at the Cato Institute, holds a similar view. He asserts that the ADA's uncertainty leaves employers vulnerable to a kind of extortion: settle or be sued.<sup>45</sup>

The ADA is a civil rights statute in place to protect those who want to work, not those who want to be maligners. One of the goals of the ADA is to keep disabled people in the work force, not to exclude them from employment when they can and want to work. The message of the ADA is about independence, empowerment, and integration. A careful look at the facts about the ADA rebuts the critics' contentions that the ADA is an extreme law, one that will open the courts to a flood of frivolous litigation.

The ADA does not help people with "trivial" impairments. To be protected under the ADA, an individual must have an impairment that substantially limits a major life activity, have a record of such impairment, or be regarded as having such an impairment.<sup>46</sup> The term "substantially limits" indicates that the individual is unable to perform a major life activity, or is significantly restricted as to the condition, manner or duration under which he or she can perform a major life activity as compared to the average person in the general population.<sup>47</sup>

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<sup>42</sup> See Mills, *supra* note 38.

<sup>43</sup> Macias & Camia, *supra* note 41, at 30A.

<sup>44</sup> Kim Norris, *Rights Law Falls Short of Target, Critics Say Series: Americans with Disabilities Act*, ST. PETERSBURG TIMES, June 19, 1995, at 10.

<sup>45</sup> See Andrew Ferguson, *Disabling America*, THE WASHINGTONIAN, Aug. 1995, at 47, 52 (quoting Hudgins's view of ADA litigation).

<sup>46</sup> 42 U.S.C. § 12102(2) (1994).

<sup>47</sup> See 29 C.F.R. §§ 1630.2(g), (j) (1996); see also *The Americans with Disabilities Act of 1989*, S. Rep. No. 101-116, at 23 (1989) ("Persons with minor trivial impair-

Effective EEOC enforcement and education of the ADA is substantiated by the small number of suits that have been filed and the high number of complaints that have been settled. According to a United States Department of Justice survey of the federal courts, only 650 lawsuits had been filed in federal court since the ADA became effective.<sup>48</sup> Equally compelling is the fact that, in the more than 138 formal ADA complaints studied at Sears, almost all (98%) were resolved without resorting to a trial.<sup>49</sup>

The low number of lawsuits reflects the fact that the ADA's terms are not impossibly broad or vague. In fact, most provisions of Title I mirror those in the Rehabilitation Act of 1973, established over two decades ago. For example, Congress adopted the Rehabilitation Act's definition of "disability" because the definition has worked well since it was adopted in 1973.<sup>50</sup>

The media is partially responsible for fanning this anti-ADA hysteria. Articles sensationalize the few extreme cases brought under the ADA.<sup>51</sup> In referring to some of these cases, George Will decried how the ADA's provision on mental disabilities will protect you if you are "a colossally obnoxious jerk on the job, [or] seriously insufferable to colleagues at work."<sup>52</sup>

The unbalanced coverage of ADA claims and inaccurate statements of the law do a great disservice to individuals with disabilities and the public at large. Such representations by the media trivialize the real discrimination faced by those with disabilities. Indeed, the media promulgates the view that there are two groups among the disabled population: those with "traditional" disabilities such as the blind or people who use wheelchairs who are worthy of compassion or pity, and those whose disabilities are not "genu-

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ments . . . are not impaired in a major life activity.").

<sup>48</sup> See President's Committee on Employment of People with Disabilities, *Dispelling Myths about the Americans with Disabilities Act* (visited Feb. 11, 1998) <<http://www.pcepd.gov/pubs/ek96/lawmyth.htm>> (hard copy on file with the *Case Western Reserve Law Review*).

<sup>49</sup> See BLANCK, *supra* note 27, at 7.

<sup>50</sup> Compare 42 U.S.C. §12102(2)(A) (1994), with 29 U.S.C. § 706(26)(B) (1994) (describing similarly a "disability" as a physical or mental impairment that substantially limits one or more of a person's major life activities).

<sup>51</sup> See, e.g., James Bovard, *The Disabilities Act's Parade of Absurdities*, WALL ST. J., June 22, 1995, at A16 (listing factual scenarios of some of these cases).

<sup>52</sup> George F. Will, *Protection for the Personality-Impaired*, WASH. POST, Apr. 4, 1996, at A31.

ine," but are convenient excuses for special treatment. Recently, ABC's *20/20* aired a segment on the ADA and featured plaintiffs who did not have "traditional" disabilities.<sup>53</sup> John Stossel, the interviewer, indicated that the law is not being used to protect those he considers as truly disabled, such as the blind or those in wheelchairs, but by people with bad backs or who are merely stressed out.<sup>54</sup> Such views are harmful because they perpetuate stereotypes about what constitutes a disabled person. People with disabilities must not be pigeonholed into convenient stereotypes, as the range of their disabilities and abilities is wide.

Furthermore, such one-sided coverage is irresponsible because it does not provide an accurate account of the law. All impairments are not covered by the employment provisions of the ADA. For an impairment to fall under the ADA's definition of a disability, the impairment must substantially limit a major life activity.<sup>55</sup> Only if a plaintiff can establish that she is a person with a disability, *and* is qualified for the particular job, can she meet the prima facie requirements of an ADA employment discrimination claim.<sup>56</sup> Plaintiffs in "frivolous" ADA cases, as characterized by *20/20* and others, will not prevail if they cannot meet the prima facie threshold.<sup>57</sup>

Many of the people who file ADA charges with the EEOC have back impairments, emotional and psychological impairments, or neurological impairments. However, the nature of the impairments must be severely disabling for the claimants to be protected by the law.<sup>58</sup> The ADA does not protect ordinary pains and everyday emotional upsets. The media's failure to accurately portray the ADA could result in the very thing it protests: more frivolous lawsuits being filed.

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<sup>53</sup> See *20/20: Getting In On The Act* (ABC television broadcast, Aug. 1997) (transcript on file with the *Case Western Reserve Law Review*).

<sup>54</sup> See *id.*

<sup>55</sup> See 42 U.S.C. § 12102(2) (1994).

<sup>56</sup> See *id.* § 12112(b)(4) (1994) (stating that the individual denied employment must be "qualified" in order for discrimination to occur).

<sup>57</sup> See *Daigle v. Liberty Life Ins. Co.*, 70 F.3d 394, 396 (5th Cir. 1995) (listing the elements of a prima facie case under the ADA).

<sup>58</sup> See 42 U.S.C. § 12102 (1994) (stating that the disability must limit one or more "major life activities").

## II. EEOC AND THE ADA

The United States Equal Employment Opportunity Commission is the federal government agency charged with enforcing the employment provisions of the ADA.<sup>59</sup> The EEOC's statistics show that from the time of the ADA's effective date in July 1992, the percentage of ADA charges filed has been no greater than the percentage of charges filed under the other anti-discrimination laws enforced by the Commission.<sup>60</sup> In fiscal year 1996, 23.1% of the total charges received by the EEOC alleged a violation of the ADA.<sup>61</sup> Charges that allege race (33.9%) and sex (29.0%) discrimination substantially outnumber charges alleging violation of the ADA.<sup>62</sup>

Tables 4-A through 4-D show that from July 26, 1992, when the EEOC began enforcing Title I of the ADA, through December 31, 1996, the EEOC received 77,388 ADA charges.<sup>63</sup> A breakdown of the types of violations alleged is also contained in Table 2. The majority of charges (52.1%) allege that the employee was discharged because of his disability.<sup>64</sup> Failure to provide the charging party with reasonable accommodation for his disability comprises 28.3% of the charges, harassment due to disability comprises 11.4%, while failure to hire makes up 9.7%.<sup>65</sup>

During this same period, 64,495 charges of ADA violation were resolved by the EEOC.<sup>66</sup> Of this number, 47% of the charges were determined to lack reasonable cause to support a finding that discrimination occurred.<sup>67</sup> Of the charges that were resolved

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<sup>59.</sup> See *id.* § 12116 (charging the Commission with issuing regulations to carry out the Act).

<sup>60.</sup> Data was compiled from the National Database Automatic Reporting Facility, Equal Employment Opportunity Commission, Washington, D.C. (Nov. 24, 1997) [hereinafter EEOC Database] (pertinent parts on file with the *Case Western Reserve Law Review*). Statistics may change slightly over time as the computerized Charge Data System is continually updated when data is submitted to EEOC headquarters by EEOC field offices around the country.

<sup>61.</sup> See *infra* Table 1 (attached in appendix).

<sup>62.</sup> See *infra* Table 1 (attached in appendix).

<sup>63.</sup> See *infra* Tables 4-A through 4-D (attached in appendix).

<sup>64.</sup> See *infra* Tables 4-A through 4-D (attached in appendix).

<sup>65.</sup> See *infra* Tables 4-A through 4-D (attached in appendix).

<sup>66.</sup> See *infra* Tables 5-A through 5-D (attached in appendix).

<sup>67.</sup> See *infra* Tables 5-A through 5-D (attached in appendix). It should be remembered that a determination of no reasonable cause by the EEOC does not necessarily mean that

by the EEOC under the ADA, 7934 charges (12.3%) were resolved with favorable outcomes for the charging party.<sup>68</sup>

ADA charges have a particularly high rate of meritorious resolutions when compared to other types of charges filed with the EEOC. Table 3 shows that in fiscal year 1996, 9.3% of the ADA charges that were resolved resulted in favorable outcomes for the charging parties.<sup>69</sup> This percentage was the highest amongst the listed discrimination classifications.<sup>70</sup> Table 3 also shows that ADA charges found to have meritorious allegations and/or resulting in favorable outcomes for charging parties comprised 10.7% of all resolved ADA charges in 1996.<sup>71</sup> Again, this was the highest percentage of merit resolutions amongst the classifications.<sup>72</sup>

### III. NATIONAL EEOC ENFORCEMENT OF THE ADA

Since the ADA's effective date, the EEOC has filed 187 lawsuits alleging ADA violations.<sup>73</sup> In addition, the EEOC has played an active role in the development of the ADA through its participation in filing *amicus curiae* briefs. These cases have played a key role in defining the ADA.

The EEOC has successfully litigated ADA cases on behalf of individuals with many different kinds of disabilities.<sup>74</sup> For example, the EEOC litigated discrimination charges on behalf of persons with asthma,<sup>75</sup> back impairments,<sup>76</sup> cancer,<sup>77</sup> cardiovascular dis-

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discrimination did not occur, but only that there was not sufficient evidence to support a finding that discrimination occurred.

<sup>68</sup> See *infra* Tables 5-A through 5-D (attached in appendix).

<sup>69</sup> See *infra* Table 3 (attached in appendix).

<sup>70</sup> See *infra* Table 3 (attached in appendix). Note that the next highest percentage in this regard was 8.6% for sex discrimination cases. See *infra* Table 3 (attached in appendix).

<sup>71</sup> See *infra* Table 3 (attached in appendix).

<sup>72</sup> See *infra* Table 3 (attached in appendix). Note that again, the next highest percentage was in race discrimination cases (10.5%). See *infra* Table 3 (attached in appendix).

<sup>73</sup> This number does not include cases filed since March 31, 1997.

<sup>74</sup> See U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, DOCKET OF AMERICANS WITH DISABILITIES ACT (ADA) LITIGATION (Mar. 31, 1997) [hereinafter EEOC DOCKET] (on file with the *Case Western Reserve Law Review*) (providing a comprehensive summary of all litigated and pending trials involving the ADA in which the EEOC has intervened). The author relies on this source for summary and analysis of unreported ADA cases.

<sup>75</sup> See *EEOC v. Lowe's Home Ctrs.*, No. 2-95-CV-242 (E.D. Tenn. May 17, 1996), in EEOC DOCKET, *supra* note 74, at 40; *EEOC v. The Star Ledger*, No. 95-4405 (JCL) (D.N.J. April 24, 1996), in EEOC DOCKET, *supra* note 74, at 51.

<sup>76</sup> See *EEOC v. Lake Region Mfg.*, No. 3-95-509 (D. Minn. June 28, 1996), in

orders,<sup>78</sup> carpal tunnel syndrome,<sup>79</sup> diabetes,<sup>80</sup> epilepsy,<sup>81</sup> hearing impairments,<sup>82</sup> HIV/AIDS,<sup>83</sup> mobility impairments,<sup>84</sup> psychiatric impairments,<sup>85</sup> speech impairments,<sup>86</sup> visual impairments,<sup>87</sup> and recovering substance abusers.<sup>88</sup>

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EEOC DOCKET, *supra* note 74, at 39; EEOC v. Ball Foods, Inc., No. J-C-95-68 (E.D. Ark. Dec. 7, 1995), *in* EEOC DOCKET, *supra* note 74, at 25; EEOC v. Hirschfield Sons Co., No. 93-CV-10259-BC (E.D. Mich. Apr. 25, 1995), *in* EEOC DOCKET, *supra* note 74, at 36.

<sup>77.</sup> See EEOC v. Smith Barney, Inc., No. 95-874-A (W.D. Okla. Sept. 30, 1996), *in* EEOC DOCKET, *supra* note 74, at 50; EEOC v. Monsanto Co. and Chevron Chemical Corp., No. 4:94-CV-1152 (E.D. Mo. June 10, 1996), *in* EEOC DOCKET, *supra* note 74, at 42; EEOC v. AIC Security Investigations, Ltd., No. 92-C-7330 (N.D. Ill. June 7, 1995), *in* EEOC DOCKET, *supra* note 74, at 21.

<sup>78.</sup> See EEOC v. Aeroparts Manufacturing & Repair, Inc., No. CIV-94-11108SC (D.N.M. Feb. 12, 1996), *in* EEOC DOCKET, *supra* note 74, at 21; EEOC v. Georgia Pac., No. 94-4129 (W.D. Ark. Jan. 23, 1996) *in* EEOC DOCKET, *supra* note 74, at 33; EEOC v. Wedgewood Nursing Pavilion, Ltd., No. 95-C-0666 (N.D. Ill. Sept. 27, 1995), *in* EEOC DOCKET, *supra* note 74, at 56.

<sup>79.</sup> See EEOC v. Atlas Processing Co., No. 94-2048, (W.D. La. Dec. 14, 1995), *in* EEOC DOCKET, *supra* note 74, at 24; EEOC v. Indiana Fineblanking Div. of MPI Int'l, Inc., No. 3:93-CV-0849-RM (N.D. Ind. Nov. 9, 1994), *in* EEOC DOCKET, *supra* note 74, at 36.

<sup>80.</sup> See EEOC v. The Chrysler Corp., No. 94-74979 (N.D. Mich. Mar. 6, 1996), *in* EEOC DOCKET, *supra* note 74, at 28; EEOC v. Guardsmark, Inc., No. 3:94CV660LN (S.D. Miss. Oct. 10, 1995), *in* EEOC DOCKET, *supra* note 74, at 34.

<sup>81.</sup> See EEOC v. Complete Auto Transit, Inc., No. 95-73427 (E.D. Mich. Jan. 7, 1997), *in* EEOC DOCKET, *supra* note 74, at 9; EEOC v. Armstrong Bros. Tool Co., No. 4-96-276 (D. Minn. Sept. 25, 1996), *in* EEOC DOCKET, *supra* note 74, at 24; EEOC v. Columbia Aluminum Recycling, Ltd., No. 94-C-00301 (N.D. Ill. Aug. 4, 1994), *in* EEOC DOCKET, *supra* note 74, at 29.

<sup>82.</sup> See EEOC v. Big Rivers Elec. Corp., No. 94-0219-0 (W.D. Ky. Dec. 27, 1995), *in* EEOC DOCKET, *supra* note 74, at 26; EEOC v. Pinnacle Holdings, Inc., No. CIV-95-0708-PHX RGS (D. Ariz. Oct. 24, 1995), *in* EEOC DOCKET, *supra* note 74, at 44.

<sup>83.</sup> See EEOC v. Dolphin Cruise Line, Inc., 945 F. Supp. 1550 (S.D. Fla. 1996); EEOC v. AlliedSignal Aerospace, No. 92-2776 (WGB) (D.N.J. Feb. 29, 1996), *in* EEOC DOCKET, *supra* note 74, at 22; EEOC v. Campbell Univ., No. 5:94-CV-301-60(3) (E.D.N.C. Mar. 30, 1995), *in* EEOC DOCKET, *supra* note 74, at 27.

<sup>84.</sup> See EEOC v. United Airlines, Inc., No. CIV-96-609 (E.D. Va. June 19, 1996), *in* EEOC DOCKET, *supra* note 74, at 54.

<sup>85.</sup> See EEOC v. Bentley Tool, Inc., No. 95-70575 (E.D. Mich. May 8, 1996), *in* EEOC DOCKET, *supra* note 74, at 25; EEOC v. Union Carbide, No. 94-0103 (E.D. La. Apr. 12, 1996), *in* EEOC DOCKET, *supra* note 74, at 54; EEOC v. Tootsie Roll Indus., Inc., No. 95-C-0989 (N.D. Ill. Mar. 29, 1996), *in* EEOC DOCKET, *supra* note 74, at 53.

<sup>86.</sup> See EEOC v. American Pac. Alarms, Inc., No. CIV95-1849PHX RGS (D. Ariz. June 28, 1996), *in* EEOC DOCKET, *supra* note 74, at 24; EEOC v. Big Rivers Elec. Corp., No. 94-0219-0(C) (W.D. Ky. Dec. 27, 1995), *in* EEOC DOCKET, *supra* note 74, at 26.

<sup>87.</sup> See EEOC v. Community Coffee Co., Inc., No. H-94-1061 (S.D. Tex. June 29,

The EEOC has successfully pursued violations of the ADA's prohibition on pre-employment medical examinations and inquiries. For example, in *EEOC v. Community Coffee Co., Inc.*,<sup>89</sup> a federal jury awarded compensatory and punitive damages against the defendant for making unlawful inquiries about the nature and severity of the plaintiff's disabilities. The plaintiff had facial disfigurements and was partially blind and deaf.<sup>90</sup> Even though the plaintiff was an experienced salesman qualified for all the job requirements, the company stated it was uncomfortable with his physical appearance. The company asked the plaintiff to describe the condition that caused his disabilities, the treatment he had received for the disabilities, and how customers usually reacted to his facial disfigurements.<sup>91</sup> The jury found the questions intrusive, humiliating, and not job-related, and thus unlawful. The jury awarded \$15,000 in compensatory damages and \$30,000 in punitive damages.<sup>92</sup> This verdict was the first case to award compensatory and punitive damages for an unlawful inquiry under the ADA.

In another case involving pre-employment inquiries, the EEOC brought suit against Wal-Mart for failing to hire the plaintiff, who was missing his right arm, after inquiring about the plaintiff's current and past medical conditions.<sup>93</sup> Such inquiries are illegal under the ADA<sup>94</sup> because before the enactment of the ADA, disabled job applicants were often asked about their medical condi-

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1995), in EEOC DOCKET, *supra* note 74, at 29.

<sup>88.</sup> See *EEOC v. American Golf Corp.*, No. CIV 95-2067 PHX SMM (D. Ariz. Nov. 7, 1996), in EEOC DOCKET, *supra* note 74, at 23.

<sup>89.</sup> No. H-94-1061 (S.D. Tex. June 29, 1995), in EEOC DOCKET, *supra* note 74, at 29.

<sup>90.</sup> See *id.*

<sup>91.</sup> See Original Complaint ¶ 10, *Community Coffee Co., Inc.* (No. H-94-1061) (filed Mar. 30, 1994) (on file with the *Case Western Reserve Law Review*).

<sup>92.</sup> See *Community Coffee Co., Inc.*, No. H-94-1061, in EEOC DOCKET, *supra* note 74, at 29. The court dismissed the jury's original punitive damages award, finding "insufficient evidence" of "malice or reckless indifference" by the defendant. See Final Judgment, *Community Coffee Co., Inc.* (No. H-94-1061) (filed July 28, 1995) (on file with the *Case Western Reserve Law Review*). However, the court then awarded \$30,000 in attorney's fees to the plaintiff. See *id.*; see also Satisfaction of Judgment, *Community Coffee Co., Inc.* (No. H-94-1061) (filed Nov. 30, 1995) (on file with the *Case Western Reserve Law Review*).

<sup>93.</sup> See *EEOC v. Wal-Mart Stores, Inc.*, No. CV-95-1199JP (D.N.M. Feb. 21, 1997), in EEOC DOCKET, *supra* note 74, at 55.

<sup>94.</sup> See 42 U.S.C. § 12112(d)(4) (1994).



tions in job interviews or on applications. That information was frequently used to exclude applicants with disabilities before their ability to perform a job could be evaluated. The court accepted the EEOC's guidance on unlawful inquires as authoritative.<sup>95</sup> The jury awarded \$7,500 in compensatory damages and \$150,000 in punitive damages for discriminatory failure to hire.<sup>96</sup> The jury also awarded \$100,000 in punitive damages for the unlawful inquiry, finding that the inquiry was made with "malice or reckless indifference" to the applicant's federally protected rights.<sup>97</sup>

The EEOC has also brought suits enforcing the ADA's mandate that information obtained regarding the medical condition or history of the applicant or employee be maintained separately from personnel files and treated as a confidential medical record.<sup>98</sup> In *EEOC v. 1348 Division Corp.*,<sup>99</sup> for example, the defendant discussed the plaintiff's "medical condition and history with other employees, [and failed] to keep the [plaintiff's] medical records separate from his personnel file."<sup>100</sup> The company paid \$25,000 in damages to the plaintiff and agreed to keep employee medical information confidential and to provide ADA training to its employees.<sup>101</sup>

In another case, *EEOC v. Gulf Grinding Co., Inc.*,<sup>102</sup> the EEOC filed a complaint on behalf of an employee because "the defendant disclosed the charging party's disability to his co-workers and had them vote on whether the charging party should remain as an employee (they voted him 'out')."<sup>103</sup> Through mediation, the

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<sup>95</sup> See U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, ADA ENFORCEMENT GUIDANCE: PREEMPLOYMENT DISABILITY-RELATED QUESTIONS AND MEDICAL EXAMINATIONS (October 1995) (answering frequently asked questions about pre-employment disability-related questions and medical examinations).

<sup>96</sup> See *Wal-Mart*, No. 95-1199JP, in EEOC DOCKET, *supra* note 74, at 55.

<sup>97</sup> See Judgment, *Wal-Mart* (No. 95-1199JP) (filed Feb. 24, 1997) (on file with the *Case Western Reserve Law Review*).

<sup>98</sup> 42 U.S.C. §12112(3)(B) (1995) (defining "discrimination" as "utilizing standards, criteria, or methods of administration that perpetuate the discrimination of others who are subject to common administrative control").

<sup>99</sup> No. EV-94-190-C (S.D. Ind. Oct. 23, 1995), in EEOC DOCKET, *supra* note 74, at 21.

<sup>100</sup> See *id.*

<sup>101</sup> See *id.*

<sup>102</sup> No. H-95-0382 (S.D. Tex. July 10, 1995), in EEOC DOCKET, *supra* note 74, at 35.

<sup>103</sup> See *id.*

EEOC recovered \$65,000 in compensatory damages for the plaintiff and required the company to train its management staff, maintain confidentiality of medical files and information, and post notices of the ADA.<sup>104</sup>

The EEOC has also successfully litigated cases where employers have placed insurance caps or limitations on health insurance coverage for individuals with AIDS or AIDS-related illnesses. For example, The Gage Company placed a \$5000 lifetime cap on medical coverage for AIDS-related treatments, while placing a cap of \$1,000,000 over all other catastrophic illnesses.<sup>105</sup> As a result of the EEOC lawsuit, the plaintiff received monetary relief, and the company eliminated the benefits cap with respect to AIDS-related illnesses.<sup>106</sup>

The EEOC has been victorious in litigating ADA cases addressing the issue of an employer's duty to provide a qualified disabled individual with reasonable accommodations when the company would not be unduly burdened by doing so. As stated earlier, failure to provide reasonable accommodation comprises 28.3% of the ADA charges received by the EEOC.<sup>107</sup> Examples of the types of reasonable accommodation requested include reassignment,<sup>108</sup> leave of absence,<sup>109</sup> providing a stool for someone to sit while working,<sup>110</sup> a cool work environment,<sup>111</sup> a flexible work schedule,<sup>112</sup> and occasional assistance in lifting heavy

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<sup>104</sup> See *id.*

<sup>105</sup> See *EEOC v. The Gage Co.*, No. 94-CV-72989-DT (E.D. Mich. July 11, 1994), in *EEOC DOCKET*, *supra* note 74, at 32.

<sup>106</sup> See *id.*; see also *EEOC v. Laborers Dist. Council Bldg. & Constr. Health & Welfare Fund*, No. 94-CV-3971 (E.D. Pa. Jan. 5, 1995), in *EEOC DOCKET*, *supra* note 74, at 39 (describing another ADA attack on an unfair cap for insurance coverage for AIDS-related illnesses).

<sup>107</sup> See *infra* Tables 4-A through 4-D (attached in appendix).

<sup>108</sup> See *EEOC v. AlliedSignal Aerospace*, No. 92-2776 (WGB) (D.N.J. Feb. 29, 1996), in *EEOC DOCKET*, *supra* note 74, at 22.

<sup>109</sup> See *EEOC v. Bentley Tool, Inc.*, No. 95-70575 (E.D. Mich. May 8, 1996), in *EEOC DOCKET*, *supra* note 74, at 25; *EEOC v. Arrow Concrete Co.*, No. 6:94-0940 (S.D. W. Va. May 29, 1995), in *EEOC DOCKET*, *supra* note 74, at 24.

<sup>110</sup> See *EEOC v. Sanden Int'l (USA), Inc.*, No. 4:95-CV-37 (E.D. Tex. Apr. 18 1995), in *EEOC DOCKET*, *supra* note 74, at 48.

<sup>111</sup> See *EEOC v. Gulf Grinding Co., Inc.*, No. H-95-0382 (S.D. Tex. July 10, 1995), in *EEOC DOCKET*, *supra* note 74, at 35.

<sup>112</sup> See *EEOC v. Spectacor Management Group/Spectacor, Inc.*, No. 95-2688 (E.D. Pa. June 22, 1995), in *EEOC DOCKET*, *supra* note 74, at 51.

items.<sup>113</sup> Recently, the EEOC obtained a \$5.5 million jury verdict against Complete Auto Transit, Inc. for the company's failure to reassign the plaintiff, who had epilepsy, as a means of accommodation.<sup>114</sup> As a result of his disability, the plaintiff requested a transfer to another position for which he was qualified.<sup>115</sup> The company denied the transfer on the basis that the plaintiff posed a safety threat to himself and others, even though the company's own physicians testified that he would not pose such a threat.<sup>116</sup> The jury found that the plaintiff was in fact qualified for the job and did not pose a safety threat.<sup>117</sup> This outcome was the largest award the EEOC has ever obtained for an individual plaintiff under any statute it enforces.<sup>118</sup>

Additionally, the EEOC has vigorously litigated cases to ensure that individuals with disabilities are not terminated from their employment on the basis of their disability. Allegations of termination on the basis of disability comprise more than half of the ADA charges received by the EEOC.<sup>119</sup> In *EEOC v. AIC Security Investigations, Ltd.*,<sup>120</sup> a jury found that the defendant company had fired the plaintiff from his position as Executive Director because he had terminal brain cancer. The jury awarded \$22,000 in back pay, \$50,000 in compensatory damages, and \$500,000 in punitive damages.<sup>121</sup>

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<sup>113.</sup> See *EEOC v. Puff's of Petosky*, No. 1:95-CV-314 (W.D. Mich. Nov. 16, 1995), in EEOC DOCKET, *supra* note 74, at 46; *Southeast Precast Corp.*, No. 3:94-262 (E.D. Tenn. Dec. 27, 1994), in EEOC DOCKET, *supra* note 74, at 50.

<sup>114.</sup> See *EEOC v. Complete Auto Transit*, No. 95-73427 (E.D. Mich. Jan. 6, 1997), in EEOC DOCKET, *supra* note 74, at 9.

<sup>115.</sup> See Complaint, *Complete Auto Transit* (No. 95-73427) (filed Aug. 25, 1995) (on file with the *Case Western Reserve Law Review*).

<sup>116.</sup> See *id.* ¶ 10; see also *EEOC Obtains \$5.5 Million in an ADA Case Against Complete Auto Transit* (U.S. Equal Employment Opportunity Comm'n), Jan. 26, 1997, at 1 [hereinafter *EEOC Release*].

<sup>117.</sup> See *EEOC Release*, *supra* note 116, at 1.

<sup>118.</sup> See *id.* at 2. The award was later reduced to \$491,931, plus costs and attorney's fees. See Order Granting Defendant's Motion to Amend Judgment, *Complete Auto Transit* (No. 95-73427) (filed Jan. 9, 1997) (on file with the *Case Western Reserve Law Review*).

<sup>119.</sup> See *infra* Tables 4-A through 4-D (attached in appendix) (stating that discharge represents 52.1% of the violations charged nationally).

<sup>120.</sup> No. 92-C-7330 (N.D. Ill. Mar. 18, 1993), in EEOC DOCKET, *supra* note 74, at 21.

<sup>121.</sup> See *id.* The jury awarded \$250,000 in punitive damages against defendant AIC and \$250,000 in punitive damages against Ms. Vrdolyak, the owner of AIC. See *id.* The court later reduced the punitive damages award to \$150,000, to be paid by both defendants. See *id.*

In fulfilling the mission of the ADA to eliminate employers' stereotypes regarding persons with disabilities which may influence their employment decisions, the EEOC litigated several cases where it appeared that the defendant failed to hire the plaintiff based on the irrational belief that individuals with particular disabilities were not qualified for the job. For example, in a case against Chrysler Corporation, the EEOC convinced the court that Chrysler's blanket policy of refusing to hire job applicants with an elevated blood sugar level was unlawful because the policy effectively discriminated against persons with disabilities without making individualized assessments of the individuals' abilities.<sup>122</sup>

The EEOC has also been active in writing amicus briefs in an effort to delineate the differences between the Social Security Act's definition of disability and the ADA's definition.<sup>123</sup> The EEOC has repeatedly argued that an individual's assertion of total disability when applying for benefits under the Social Security Act, workers' compensation laws, or disability plans is not an absolute bar to coverage under the ADA.<sup>124</sup> People with disabilities should not be forced to choose between enforcing their right to be free from discrimination pursuant to the ADA and asserting their eligibility for disability income supports and health coverage.<sup>125</sup> Recently, the D.C. Court of Appeals adopted the EEOC's position, stating that "because the Social Security Act and the ADA employ quite different standards and objectives . . . the receipt of Social Security disability benefits does not preclude ADA relief."<sup>126</sup>

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<sup>122</sup> See *EEOC v. Chrysler Corp.*, 917 F. Supp. 1164 (E.D. Mich. 1996).

<sup>123</sup> See, e.g., *Swanks v. Washington Metro. Area Transit Auth.*, 116 F.3d 582, 583 (D.C. Cir. 1997); *McNemar v. Disney Stores, Inc.*, 91 F.3d 610, 620 (3d Cir. 1996); *Harris v. Marathon Oil Co.*, 948 F. Supp. 27 (W.D. Tex.), *aff'd* 108 F.3d 332 (5th Cir. 1996).

<sup>124</sup> See, e.g., *Whitbeck v. Vital Signs, Inc.*, 116 F.3d 588, 590 (D.C. Cir. 1997) (citing the EEOC Enforcement Guidelines).

<sup>125</sup> *But see McNemar*, 91 F.3d at 20 (stating that because the plaintiff claimed full disability under Social Security, he was estopped from seeking redress under the ADA).

<sup>126</sup> See *Swanks*, 116 F.3d at 587.

IV. ENFORCEMENT OF THE ADA IN THE SIXTH CIRCUIT<sup>127</sup>A. *The ADA in Ohio*

The EEOC offices in Ohio (located in Cleveland and Cincinnati) received 3147 charges of ADA violations during the period of July 26, 1992 through December 31, 1996.<sup>128</sup> A comparison of Tables 1 and 2-A indicates that the composition of charges received in the Ohio offices is similar to that of the EEOC charges received nationally. In fiscal year 1995, the percentage of charges filed in Ohio that alleged disability discrimination (24.1%) was slightly higher than the national percentage (22.6%),<sup>129</sup> but lower than the percentages of charges filed in Ohio alleging age, race, and sex discrimination (25.5%, 29.3% and 30.9% respectively).<sup>130</sup>

Resolutions of ADA charges in Ohio yielded \$3,439,100 in monetary benefits<sup>131</sup> for 165 individuals. The average monetary relief received per individual in Ohio for an ADA claim was \$20,843. This is slightly higher than the national average of \$27,290 per individual.<sup>132</sup> Two hundred and twenty-six individuals received non-monetary benefits such as reasonable accommodation, training, and good references as a result of their ADA claims.<sup>133</sup>

A sampling of cases filed by the EEOC in Ohio demonstrates that the ADA is being used fairly to combat illegitimate stereotypes about persons with disabilities in the work place. The EEOC

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<sup>127</sup> In many states, private individuals have the choice between filing disability employment discrimination claims with either the EEOC or with state agencies. In the Sixth Circuit, the Ohio Civil Rights Commission, the Michigan Department of Civil Rights, the Kentucky Commission on Human Rights and the Tennessee Human Rights Commission are all agencies which handle such claims for their states. There may also be other local government agencies which investigate claims of employment discrimination. This article focuses on an analysis of claims filed with the EEOC and thus, does not incorporate an analysis of claims which may have been filed with a state or local agency. Moreover, this article does not discuss disability employment discrimination claims or cases that may have been pursued privately in either federal or state court.

<sup>128</sup> See *infra* Table 4-A (attached in appendix).

<sup>129</sup> See *infra* Tables 1, 2-A (attached in appendix).

<sup>130</sup> See *infra* Table 2-A (attached in appendix).

<sup>131</sup> See *infra* Table 5-A (attached in appendix).

<sup>132</sup> Total monetary benefits received nationally from 1992 through 1996 equalled \$142,099,000. See *infra* Table 5-A (attached in appendix). This was distributed to 5207 people, yielding an average amount of \$27,290. See EEOC Database, *supra* note 60.

<sup>133</sup> See EEOC Database, *supra* note 60. Compare this number to the 6336 people who received non-monetary benefits nationally. See *id.*

Cleveland District Office filed a complaint against Gayatri, Inc. (doing business as Instrumatics) when it denied the charging party an interview on the basis of a perceived disability.<sup>134</sup> The charging party, who walked with a limp, applied for a bookkeeper position with Instrumatics.<sup>135</sup> The employee in charge of hiring scheduled the charging party for an interview for this position because she was, on the basis of her resume, qualified for this job, but when she arrived for the interview and was observed by the employee who was to conduct the interview, the employee had his secretary announce that the bookkeeper position had been filled.<sup>136</sup>

As a result of this lawsuit the parties agreed to a settlement of \$7500 in monetary damages for the charging party and an agreement on the part of the company not to discriminate against any applicant because the applicant either has a disability or is perceived to have a disability.<sup>137</sup>

In *EEOC v. Glenn View Manor, Inc.*,<sup>138</sup> the EEOC Cleveland District Office filed suit in the U.S. District Court for the Northern District of Ohio against Glenn View Manor (doing business as Glenn View Manor Nursing Home). During the course of the EEOC's investigation, it discovered that the company utilized a job application which contained the following question: "[A]re you physically and mentally capable of performing the essential duties of the position for which you are applying?"<sup>139</sup> The company did not include in its question the caveat "with or without a reasonable accommodation." As such, the question is a per se violation of the

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<sup>134</sup> *EEOC v. Gayatri, Inc.*, No. 1:94-CV-1147 (N.D. Ohio Apr. 13, 1995), in *EEOC DOCKET*, *supra* note 74, at 33.

<sup>135</sup> See Consent Decree, *Gayatri* (No. 1:94-CV-1147) (filed Apr. 13, 1995) (on file with the *Case Western Reserve Law Review*).

<sup>136</sup> See *id.*

<sup>137</sup> See *id.* ¶¶ 4, 12.

<sup>138</sup> No. 4:96-CV-0849 (N.D. Ohio Mar. 27, 1997), in *EEOC DOCKET*, *supra* note 74, at 34. The charging parties initially filed violations of Title VII and its Pregnancy Discrimination Act amendment (the company maintained a gender-based policy requiring pregnant females to obtain a "no restriction" release to continue working during pregnancy), and the ADA charges were added later after further investigation. See Complaint and Jury Trial Demand, *Glenn View Manor* (No. 4:96-CV-0849) (filed Apr. 25, 1996) (on file with the *Case Western Reserve Law Review*).

<sup>139</sup> *Glenn View Manor*, No. 4:96-CV-0849, in *EEOC Case Compilation* (on file with author).

ADA.<sup>140</sup> In addition, the company did not provide specific information (by means of a position description, for example) about the duties of the positions along with the application form.<sup>141</sup>

As a result of the EEOC lawsuit, the parties entered into a consent decree whereby the company "rescinded its prior policy of asking applicants for employment whether they are physically and mentally capable of performing the job for which they have applied," and agreed not to ask such questions on its applications.<sup>142</sup>

### B. The ADA in Michigan

The EEOC office in Michigan (located in Detroit) received 2394 charges of ADA violations during the period of July 26, 1992 through December 31, 1996.<sup>143</sup> Similar to the national average, the violations alleged most frequently in Michigan include discharge (38.2%), failure to provide reasonable accommodation (32.1%), harassment (13.1%) and failure to hire (9.6%).<sup>144</sup> A comparison of Tables 1 and 2-B indicates that the composition of charges received in the Michigan office differs slightly from that of the EEOC charges received nationally. During the fiscal year 1995, the percentage of charges filed in Michigan that alleged disability discrimination (30.7%) was higher than the national percentage (22.6%).<sup>145</sup> In the period from July 26, 1992, through December 31, 1996, the percentage of ADA charge resolutions with favorable results for charging parties was higher in Michigan (14.8%) than nationally (12.3%).<sup>146</sup>

As of December 31, 1996, resolutions of ADA charges in Michigan yielded \$5,862,845 in monetary benefits<sup>147</sup> for 229 individuals. Thus, the average monetary relief received per individual in Michigan was \$25,601. This is slightly lower than the national average of \$27,290 per individual.<sup>148</sup> Seventy-four individuals re-

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<sup>140.</sup> See *id.*

<sup>141.</sup> See *id.*

<sup>142.</sup> See Consent Decree, *Glenn View Manor* (No. 4:96-CV-0849) (filed Mar. 27, 1997) (on file with the *Case Western Reserve Law Review*). The charging parties did recover a settlement for the company's actions in violation of Title VII as well. See *id.* ¶¶ 3-4.

<sup>143.</sup> See *infra* Table 4-B (attached in appendix).

<sup>144.</sup> See *infra* Table 4-B (attached in appendix).

<sup>145.</sup> See *infra* Tables 1, 2-B (attached in appendix).

<sup>146.</sup> See *infra* Table 5-B (attached in appendix).

<sup>147.</sup> See *infra* Table 5-B (attached in appendix).

<sup>148.</sup> Total monetary benefits received nationally from 1992 through 1996 equalled

ceived non-monetary benefits, such as reasonable accommodation, training, and good references, as a result of their ADA claim.<sup>149</sup>

A sampling of cases filed by the EEOC in Michigan demonstrates that the ADA is being used fairly to combat illegitimate stereotypes about persons with disabilities in the work place. In *EEOC v. Bailey Excavating, Inc.*,<sup>150</sup> the Detroit District Office filed an ADA complaint in the District Court for the Eastern District of Michigan against Bailey Excavating, Inc. for failing to hire the charging party due to his perceived disability. After extending an offer to the charging party, the company conducted a pre-employment physical examination which revealed evidence of degenerative disc disease.<sup>151</sup> Two days after the physical examination, the president of the company informed the charging party that he was no longer interested in employing him because his back problems would increase the company's health insurance and workmen's compensation insurance rates.<sup>152</sup> When the charging party attempted to provide the president with results of another exam indicating that he did not have a current back problem, the president stated that the decision already had been made.<sup>153</sup>

The company regarded the charging party as disabled even though he was in fact able to perform all of the essential functions of the Sewer Foreman position for which he applied.<sup>154</sup> Under the ADA, when an individual can perform the necessary job duties, a company cannot disqualify him based on a fear or speculation of future injuries or a fear of increased insurance costs.<sup>155</sup> As a result of the lawsuit, the parties entered into a consent decree providing \$35,000 in compensatory damages and an offer of a position to the charging party.<sup>156</sup>

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\$142,099,000. See *infra* Table 5-B (attached in appendix). This was distributed to 5207 people, yielding an average amount of \$27,290. See EEOC Database, *supra* note 60.

<sup>149</sup> See EEOC Database, *supra* note 60. Compare this number to the 6336 people who received non-monetary benefits nationally. See *id.*

<sup>150</sup> No. 94-CV-72752-DT (E.D. Mich. Apr. 25, 1995), in EEOC DOCKET, *supra* note 74, at 25.

<sup>151</sup> See Complaint and Jury Trial Demand, *Bailey Excavating* (No. 94-CV-72752-DT) (filed July 29, 1994) (on file with the *Case Western Reserve Law Review*).

<sup>152</sup> See *id.*

<sup>153</sup> See *id.*

<sup>154</sup> See *id.*

<sup>155</sup> H.R. REP. NO. 101-485, pt. 3, at 31 (1990).

<sup>156</sup> See *Bailey Excavating*, No. 94-CV-72752-DT, in EEOC DOCKET, *supra* note 74, at



In another case, the Detroit District office filed a complaint on behalf of a maintenance welder who was not allowed to return to his job with General Motors after taking medical leave for knee surgery.<sup>157</sup> The charging party's physician restricted him from climbing ladders, and General Motors informed the charging party that he could not return to work with such a restriction because he might have been required to climb ladders sometime during the course of his work.<sup>158</sup> General Motors failed to provide any form of reasonable accommodation to the charging party that would have enabled him to perform this function.<sup>159</sup> As a result of this lawsuit, the parties entered into a settlement agreement which provided the charging party with \$49,500 in monetary relief.<sup>160</sup>

The Detroit District office also filed a complaint on behalf of an employee who served as the Manager of Human Resources for Gabbard & Company, Inc.<sup>161</sup> After working for the company for two months, the charging party was diagnosed with cancer and began treatment.<sup>162</sup> Due to the side effects of the treatment, the charging party was unable to return to work and requested a medical leave of absence.<sup>163</sup> The case went to trial, and the EEOC obtained a favorable jury verdict, awarding \$72,631 in back pay and compensatory damages to the charging party's estate.<sup>164</sup>

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<sup>157.</sup> See EEOC v. General Motors Corp., No. 94-73888 (E.D. Mich. Aug. 7, 1995), in EEOC DOCKET, *supra* note 74, at 33.

<sup>158.</sup> See Amended Complaint and Jury Demand, *General Motors Corp.* (No. 94-73888) (filed Oct. 18, 1994) (on file with the *Case Western Reserve Law Review*).

<sup>159.</sup> See *id.*

<sup>160.</sup> See Settlement Agreement, *General Motors Corp.* (No. 94-73888) (filed Aug. 1995) (on file with the *Case Western Reserve Law Review*).

<sup>161.</sup> See EEOC v. Gabbard & Co., Inc., No. 94-CV-72976 (E.D. Mich. Sept. 11, 1995), in EEOC DOCKET, *supra* note 74, at 32; see also Complaint and Jury Trial Demand ¶ 1, *Gabbard & Co., Inc.* (No. 94-CV-72976 DT) (filed Aug. 4, 1994) (on file with the *Case Western Reserve Law Review*).

<sup>162.</sup> See Complaint and Jury Demand ¶¶ 7, 9, *Monti v. Gabbard*, No. 93-468197-CZ (Mich. Cir. Ct. Dec. 30, 1993) (on file with the *Case Western Reserve Law Review*).

<sup>163.</sup> See *id.* ¶ 10.

<sup>164.</sup> See *Gabbard & Company, Inc.*, No. 94-CV-72976 DT, in EEOC DOCKET, *supra* note 74, at 32.

### C. The ADA in Kentucky

The EEOC office for Kentucky (located in Indianapolis, Indiana) received 1222 charges of ADA violations during the period of July 26, 1992, through December 31, 1996.<sup>165</sup> The violations alleged most frequently in Kentucky include discharge (51.5%), failure to provide reasonable accommodation (33.6%), failure to hire (10.6%), and harassment (8.1%).<sup>166</sup> A comparison of Tables 1 and 2-C indicates that the composition of charges received in the Kentucky office differs slightly from that of the EEOC charges received nationally. During the fiscal year 1995, the percentage of charges filed in Kentucky that alleged disability discrimination (27.9%) was higher than the national percentage (22.6%).<sup>167</sup> In the period from July 26, 1992, through December 31, 1996, the percentage of ADA charge resolutions with favorable results for charging parties was higher in Kentucky (14.3%) than nationally (12.3%).<sup>168</sup>

As of December 31, 1996, resolutions of ADA charges in Kentucky yielded \$981,000 in monetary benefits<sup>169</sup> for 65 individuals. Thus, the average monetary relief received per individual in Kentucky was \$15,092. This is lower than the national average of \$27,290 per individual.<sup>170</sup> Fifty-one individuals received non-monetary benefits, such as reasonable accommodation, training, and good references, as a result of their ADA claim.<sup>171</sup>

Various claims have been brought under the ADA in Kentucky. The EEOC's Indianapolis District Office filed suit against an electric generating facility in Kentucky for discrimination against a hearing-impaired employee.<sup>172</sup> Because of his disability, the respondent company denied him the opportunity to progress beyond

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<sup>165.</sup> See *infra* Table 4-C (attached in appendix).

<sup>166.</sup> See *infra* Table 4-C (attached in appendix).

<sup>167.</sup> See *infra* Tables 1, 2-C (attached in appendix).

<sup>168.</sup> See *infra* Table 5-C (attached in appendix).

<sup>169.</sup> See *infra* Table 5-C (attached in appendix).

<sup>170.</sup> Total monetary benefits received nationally from 1992 through 1996 equalled \$142,099,000. See *infra* Table 5-C (attached in appendix). This was distributed to 5207 people, yielding an average amount of \$27,290. See EEOC Database, *supra* note 60.

<sup>171.</sup> See EEOC Database, *supra* note 60. Compare this number to the 6336 people who received non-monetary benefits nationally. See *id.*

<sup>172.</sup> See *EEOC v. Big Rivers Elec. Corp.*, No. 94-0219-0 (W.D. Ky. Dec. 27, 1995) in EEOC DOCKET, *supra* note 74, at 26.

a low-level job classification.<sup>173</sup> It memorialized the discrimination in a memo to the charging party's personnel file which explained that he would never be considered for the next level job, or any other job at the plant, because of his disability.<sup>174</sup> The company also refused to allow the charging party to attend training for the job he did occupy, which would also have qualified for higher paying positions, and refused to consider even modest accommodations, such as the substitution of flashing lights for a beeping horn, which would have enabled the charging party to perform a broader range of tasks.<sup>175</sup> The case was settled for \$10,000 in punitive damages, the respondent made the necessary reasonable accommodations to enable the charging party to perform the full range of his duties, and the settlement mandated ADA training for the company's managers and supervisors.<sup>176</sup>

Another Kentucky case presented the issue of harassment due to disability, as well as a failure to accommodate.<sup>177</sup> In that case, the charging party had a neurological impairment which affected his ability to stand or walk.<sup>178</sup> He was employed for a month by a local McDonald's franchisee as a cashier at a drive-thru window, during which he was subjected to name-calling and derogatory references from another employee.<sup>179</sup> The charging party complained, but the harassment continued despite management's knowledge of the situation.<sup>180</sup>

In addition, because his impairment made it impossible for him to stand for long periods of time at the drive-thru window, the

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<sup>173.</sup> See Complaint and Jury Trial Demand ¶¶ 9-10, *Big Rivers Elec. Corp.* (No. 94-0219-0) (filed Dec. 5, 1994) (on file with the *Case Western Reserve Law Review*).

<sup>174.</sup> *Big Rivers Elec. Corp.*, No. 94-0219-0, in EEOC Case Compilation, *supra* note 139.

<sup>175.</sup> See Complaint and Jury Trial Demand ¶ 9, *Big Rivers Elec. Corp.* (No. 94-0219-0) (filed Dec. 5, 1994) (on file with the *Case Western Reserve Law Review*).

<sup>176.</sup> See *Big Rivers Elec. Corp.*, No. 94-0219-0, in EEOC DOCKET, *supra* note 74, at 26.

<sup>177.</sup> See *EEOC v. G & M Foods, Inc.*, No. 3:96-CV-318-S (W.D. Ky. Nov. 26, 1996), in EEOC DOCKET, *supra* note 74, at 31.

<sup>178.</sup> See *id.*

<sup>179.</sup> See Complaint and Jury Trial Demand ¶ 8, *G & M Foods, Inc.* (No. 3:96CV-318-S) (filed May 6, 1996) (on file with the *Case Western Reserve Law Review*).

<sup>180.</sup> See *G & M Foods, Inc.*, No. 3:96CV-318-S, in EEOC Case Compilation, *supra* note 139.

charging party sought to use a stool while working.<sup>181</sup> His employer denied him this accommodation, stating that he could either lean on the equipment or use a chair.<sup>182</sup> The charging party argued that neither of these options was an effective accommodation because the chair was too low and because he could not do his job effectively while leaning.<sup>183</sup> His job was then terminated after a month because of his disability.<sup>184</sup>

As a result of a lawsuit filed by the EEOC's Indianapolis District Office, the parties entered into a consent decree which awarded the charging party \$20,000 in compensatory and punitive damages.<sup>185</sup> Because the charging party had immediately found another job at a different fast food restaurant the night he was fired (where he was able to work with reasonable accommodations and without incident), he sought neither back pay nor reinstatement.<sup>186</sup>

#### D. The ADA in Tennessee

The EEOC office in Tennessee (located in Memphis) received 2973 charges of ADA violations during the period of July 26, 1992, through December 31, 1996.<sup>187</sup> Similar to the national average, the violations alleged most frequently in Tennessee include discharge (51.1%), failure to provide reasonable accommodation (29.4%), and harassment (17.4%), but with discipline (8.6%) receiving a higher number of complaints than failure to hire (7.9%).<sup>188</sup> A comparison of Tables 1 and 2-D indicates that the composition of charges received in the Tennessee office differs slightly from that of the EEOC charges received nationally. During the fiscal year 1995, the percentage of charges filed in Tennessee that alleged disability discrimination (19.1%) was lower than the

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<sup>181.</sup> See *id.*

<sup>182.</sup> See *id.*

<sup>183.</sup> See *id.*

<sup>184.</sup> See Complaint and Jury Trial Demand ¶ 8, *G & M Foods, Inc.* (No. 3:96CV-318-S) (filed May 6, 1996) (on file with the *Case Western Reserve Law Review*).

<sup>185.</sup> See *G & M Foods, Inc.*, No. 3:96-CV-318-S, in EEOC DOCKET, *supra* note 74, at 32.

<sup>186.</sup> See *G & M Foods, Inc.*, No. 3:96CV-318-S, in EEOC Case Compilation, *supra* note 139.

<sup>187.</sup> See *infra* Table 4-D (attached in appendix).

<sup>188.</sup> See *infra* Table 4-D (attached in appendix).

national percentage (22.6%).<sup>189</sup> In the period from July 26, 1992, through December 31, 1996, the percentage of ADA charge resolutions with favorable results for charging parties was higher in Tennessee (14.1%) than nationally (12.3%).<sup>190</sup>

As of December 31, 1996, resolutions of ADA charges in Tennessee yielded \$3,000,000 in monetary benefits<sup>191</sup> for 144 individuals. Thus, the average monetary relief received per individual in Tennessee was \$20,834. This is lower than the national average of \$27,290 per individual.<sup>192</sup> Four hundred and sixty-seven individuals received non-monetary benefits, such as reasonable accommodation, training, and good references, as a result of their ADA claim.<sup>193</sup>

As in Kentucky, the Memphis, Tennessee, office recently had a case involving a hearing impaired charging party. In *EEOC v. FFV Aerotech Co.*,<sup>194</sup> the company, which provides repairs, modifications and heavy maintenance for aviation, refused to hire the charging party into its apprentice program because he was deaf. Despite the fact that the charging party had superior qualifications and had applied on a monthly basis for the program after he was told that applications were only kept on file for thirty days, less experienced and/or qualified people without disabilities received all the vacant positions for which the charging party applied.<sup>195</sup> A lawsuit ensued, and as a result, the company entered into a consent decree with the Commission in which it paid the employee \$12,000 and expunged negative comments from his personnel files.<sup>196</sup>

In another case, a charging party who was injured on the job and who received discrimination by his employer because he had a history of back impairments was also aided by the EEOC's Mem-

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<sup>189</sup>. See *infra* Tables 1, 2-D (attached in appendix).

<sup>190</sup>. See *infra* Table 5-D (attached in appendix).

<sup>191</sup>. See *infra* Table 5-D (attached in appendix).

<sup>192</sup>. Total monetary benefits received nationally from 1992 through 1996 equalled \$142,099,000. See *infra* Table 5-D (attached in appendix). This was distributed to 5207 people, yielding an average amount of \$27,290. See EEOC Database, *supra* note 60.

<sup>193</sup>. See EEOC Database, *supra* note 60. Compare this number to the 6336 people who received non-monetary benefits nationally. See *id.*

<sup>194</sup>. No. 3-95-0622 (M.D. Tenn. Dec. 2, 1996), in EEOC DOCKET, *supra* note 74, at 31.

<sup>195</sup>. See Complaint and Jury Trial Demand ¶¶ 8-9, *FFV Aerotech Co.* (No. 3-95-0622) (filed June 26, 1995) (on file with the *Case Western Reserve Law Review*).

<sup>196</sup>. See *FFV Aerotech Co.*, No. 3-95-0622, in EEOC DOCKET, *supra* note 74, at 31.

phis District Office.<sup>197</sup> The employee had been denied reinstatement to his former job of truck-driving and was denied any other job with his company for which he was qualified because his doctor had placed him on a weight lifting restriction.<sup>198</sup> The company, which manufactured precast concrete slabs, refused to reinstate the charging party because the employer knew the charging party had a record of a disability.<sup>199</sup> Following the Commission's lawsuit, the parties entered into a consent decree providing \$27,500 to the charging party as monetary relief.<sup>200</sup>

In a lawsuit against Lowe's Home Centers,<sup>201</sup> the Memphis District Office filed a suit on behalf of an individual with asthma. In that case, the charging party had requested that she not be placed in the paint department of the store, because it would exacerbate her condition.<sup>202</sup> Despite this, she was assigned near the paint department, where she claimed that the fumes caused her bronchial condition to flare up, forcing her to take leaves from work.<sup>203</sup> This ultimately led to her termination for abuse of leave. After the suit was filed, the parties entered into a consent decree, in which the charging party received \$18,000 in monetary relief.<sup>204</sup>

The Memphis District Office was also able to obtain \$17,000 in monetary relief for a charging party with epilepsy.<sup>205</sup> Despite the fact that the charging party had not had a seizure in eight years, took medication for his condition, and was cleared to work by his personal physician, the company's examining physician

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<sup>197.</sup> See *EEOC v. Southeast Precast Corp.*, No. 3:94-262 (E.D. Tenn. May 9, 1994), in *EEOC DOCKET*, *supra* note 74, at 50.

<sup>198.</sup> See Complaint and Jury Trial Demand ¶ 8, *Southeast Precast Corp.* (No. 3:94-262) (filed May 9, 1994) (on file with the *Case Western Reserve Law Review*); see also *Southeast Precast Corp.*, No. 3:94-262, in *EEOC DOCKET*, *supra* note 74, at 50.

<sup>199.</sup> See Complaint and Jury Trial Demand ¶ 8, *Southeast Precast Corp.* (No. 3:94-262) (filed May 9, 1994) (on file with the *Case Western Reserve Law Review*).

<sup>200.</sup> See *Southeast Precast Corp.*, No. 3:94-262, in *EEOC DOCKET*, *supra* note 74, at 50.

<sup>201.</sup> See *EEOC v. Lowe's Home Ctrs.*, No. 2-95-CV-242 (E.D. Tenn. May 17, 1996), in *EEOC DOCKET*, *supra* note 74, at 40.

<sup>202.</sup> See *Lowe's Home Ctrs.*, No. 2-95-CV-242, in *EEOC Case Compilation*, *supra* note 139.

<sup>203.</sup> See *id.*

<sup>204.</sup> See *Lowe's Home Ctrs.*, No. 2-95-CV-242, in *EEOC DOCKET*, *supra* note 74, at 40.

<sup>205.</sup> See *EEOC v. Taylor Forge Int'l*, No. 97-2788DV (W.D. Tenn. Jan. 13, 1998).

refused to even examine the charging party upon learning that he had epilepsy, and determined that the party's employment presented a direct threat.<sup>206</sup>

Finally, in a similar case, the Memphis District Office brought a suit on behalf of a diabetic person who was denied a permanent position as a janitor.<sup>207</sup> The charging party had successfully occupied that position as a temporary employee for some time, but had his application for a permanent position rejected when his employer discovered his condition.<sup>208</sup> The parties entered a consent decree in which the charging party received \$10,000 in relief.<sup>209</sup>

## V. CONCLUSION

These cases amply demonstrate the need for an effective and powerful civil rights law that protects the rights of persons with disabilities. They illustrate the range of disabilities covered by the ADA, as well as the law's utility in challenging artificial barriers to employment for people with disabilities in the work place. As Justin Dart reminds us: "The majority of persons who live the normal lifespan will have a significant disability at some point. Disability will occur in every family."<sup>210</sup> Thus, the ADA is a law that protects us all and enriches us all. It is not an example of extremism, but a mechanism through which many of us will be able to pursue the simplest of dreams: independence and economic self-sufficiency.

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<sup>206</sup> See Complaint, *Taylor Forge Int'l* (No. 97-2788DV) (on file with the *Case Western Reserve Law Review*).

<sup>207</sup> See *EEOC v. Imperial Fabricating Co. of Tenn., Inc.*, No. 3-97-0608 (M.D. Tenn. Dec. 18, 1997).

<sup>208</sup> See Complaint and Jury Trial Demand ¶ 8, *Imperial Fabricating Co. of Tenn., Inc.* (No. 3-97-0608) (filed June 5, 1997) (on file with the *Case Western Reserve Law Review*).

<sup>209</sup> See Consent Decree at 4, *Imperial Fabricating Co. of Tenn., Inc.* (No. 3-97-0608) (filed Dec. 17, 1997) (on file with the *Case Western Reserve Law Review*).

<sup>210</sup> *Americans with Disabilities Forum*, *supra* note 23 (statement of Justin Dart), available in 1995 WL 446704 (F.D.C.H.).

## APPENDIX

Table 1: Charges received by the EEOC (all U.S. offices) according to statute and fiscal year.

Statute	(US) 1994	% of Total	(US) 1995	% of Total	(US) 1996	% of Total
ADA	18,880	20.7	19,815	22.6	18,029	23.1
ADEA	19,621	21.5	17,422	19.9	15,709	20.1
Title VII:						
Race	31,733	34.8	30,066	34.3	26,480	33.9
Sex	24,503	26.9	24,882	28.4	22,667	29.0
National Origin	7,438	8.2	7,058	8.1	6,701	8.6
Religion	1,555	1.7	1,592	1.8	1,575	2.0
TOTAL CHARGES <sup>211</sup>	91,115		87,548 <sup>212</sup>		78,051	

<sup>211</sup> The values represent the total number of charges filed with the EEOC (all U.S. offices). Because a charge may allege a violation of more than one of the statutes enforced by the EEOC, the total does not reflect the sum of the charges brought under each statute. For the same reason, the sum of the percentages will be greater than 100%. Charges brought under the Equal Pay Act are included in the total.

<sup>212</sup> One basis for the decrease in total charges received for FY 1995 is because of the shutdown of federal government offices.



Table 2-A: Charges received by the EEOC District Offices in Ohio according to statute and fiscal year.

Statute	(OH) 1994	% of Total	(OH) 1995	% of Total	(OH) 1996	% of Total
ADA	350	17.4	692	24.1	1,111	25.9
ADEA	630	31.3	731	25.5	1,232	28.8
Title VII:						
Race	1,117	55.5	840	29.3	789	18.4
Sex	915	45.5	885	30.9	757	17.7
National Origin	124	6.1	98	3.4	84	2.0
Religion	51	2.5	39	1.4	35	0.8
TOTAL CHARGES <sup>213</sup>	2,011		2,867		4,285	

<sup>213</sup> The values represent the total number of charges filed with the EEOC District Offices in Ohio. Because a charge may allege a violation of more than one of the statutes enforced by the EEOC, the total does not reflect the sum of the charges brought under each statute. For the same reason, the sum of the percentages will be greater than 100%. Charges brought under the Equal Pay Act are included in the total.

Table 2-B: Charges received by the EEOC District Offices in Michigan according to statute and fiscal year.

Statute	(MI) 1994	% of Total	(MI) 1995	% of Total	(MI) 1996	% of Total
ADA	582	22.4	724	30.7	482	31.2
ADEA	466	17.9	385	16.3	234	15.1
Title VII:						
Race	1,222	47.1	970	41.2	619	40.0
Sex	542	20.8	485	20.6	351	22.7
National Origin	111	4.3	80	3.4	68	4.4
Religion	54	2.1	43	1.8	45	2.9
TOTAL CHARGES <sup>214</sup>	2,597		2,356		1,547	

<sup>214</sup> The values represent the total number of charges filed with the EEOC District Offices in Michigan. Because a charge may allege a violation of more than one of the statutes enforced by the EEOC, the total does not reflect the sum of the charges brought under each statute. For the same reason, the sum of the percentages will be greater than 100%. Charges brought under the Equal Pay Act are included in the total.

Table 2-C: Charges received by the EEOC District Offices in Kentucky according to statute and fiscal year.

Statute	(KY) 1994	% of Total	(KY) 1995	% of Total	(KY) 1996	% of Total
ADA	341	29.6	295	27.9	288	27.4
ADEA	191	16.6	190	18.0	177	16.8
Title VII:						
Race	367	31.8	353	33.4	378	35.9
Sex	343	29.7	288	27.2	287	27.3
National Origin	22	1.9	26	2.5	29	2.8
Religion	7	0.6	7	0.7	17	1.6
TOTAL CHARGES <sup>215</sup>	1,153		1,058 <sup>216</sup>		1,053	

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<sup>215</sup> The values represent the total number of charges filed with the EEOC District Offices in Kentucky. Because a charge may allege a violation of more than one of the statutes enforced by the EEOC, the total does not reflect the sum of the charges brought under each statute. For the same reason, the sum of the percentages will be greater than 100%. Charges brought under the Equal Pay Act are included in the total.

<sup>216</sup> One basis for the decrease in total charges received for FY 1995 is because of the shutdown of federal government offices.

Table 2-D: Charges received by the EEOC District Offices in Tennessee according to statute and fiscal year.

Statute	(TN) 1994	% of Total	(TN) 1995	% of Total	(TN) 1996	% of Total
ADA	760	19.7	789	19.1	655	22.7
ADEA	701	18.2	676	16.4	537	18.6
Title VII:						
Race	1,851	48.1	2,014	48.8	1,178	40.8
Sex	1,034	26.9	1,317	31.9	860	29.8
National Origin	65	1.7	64	1.5	72	2.5
Religion	59	1.5	85	2.1	42	1.5
TOTAL CHARGES <sup>217</sup>	3,849		4,130		2,889	

<sup>217</sup> The values represent the total number of charges filed with the EEOC District Offices in Tennessee. Because a charge may allege a violation of more than one of the statutes enforced by the EEOC, the total does not reflect the sum of the charges brought under each statute. For the same reason, the sum of the percentages will be greater than 100%. Charges brought under the Equal Pay Act are included in the total.

Table 3: Resolutions of charges by EEOC (all U.S. offices) for FY 1996 according to statute.

Resolutions (by type)	ADA	% of Total	ADEA	% of Total	TVII Race	% of Total
Settlements	777	3.3	545	2.6	998	2.8
Withdrawals w/ Benefits	1,156	4.9	848	4.0	1,091	3.1
Reasonable Cause	586	2.5	538	2.5	380	1.1
Successful Conciliations	240	1.0	124	0.6	152	0.4
Unsuccessful Conciliations	346	1.5	414	1.9	228	0.6
No Reasonable Cause <sup>218</sup>	12,961	55.3	12,986	61.1	24,222	69.0
Administrative Closures <sup>219</sup>	7,964	34.0	6,330	29.8	8,443	24.0
TOTAL RESOLUTIONS	23,444	100.0	21,247	100.0	35,134	100.0
Settlements, Withdrawals w/ Benefits and Successful Conciliations <sup>220</sup>	2,173	9.3	1,517	7.1	2,241	6.4
Merit Resolutions <sup>221</sup>	2,519	10.7	1,931	9.1	2,469	7.0

<sup>218</sup>. A determination of "No Reasonable Cause" does not necessarily mean that discrimination did not occur; only that there was not sufficient evidence to support a finding of discrimination.

<sup>219</sup>. "Administrative Closures" include charge dismissals because of failure to locate a charging party, charging party failed to respond to EEOC communications, charging party refused to accept full relief, outcome of related litigation which establishes a precedent makes further processing of the charge futile, charging party requests withdrawal of a charge without receiving benefits or having resolved the issue, no statutory jurisdiction.

<sup>220</sup>. These three categories have been grouped together because the resolutions are favorable to the charging party.

<sup>221</sup>. "Merit Resolutions" are charges with outcomes favorable to charging parties and/or charges with meritorious allegations. These include negotiated settlements, withdrawals with benefits, successful conciliations, and unsuccessful conciliations.

Table 3 (continued): Resolutions of charges by EEOC (all U.S. offices) for FY 1996 according to statute.

Resolutions (by type)	TVII Sex	% of Total	TVII N.O.	% of Total	TVII Rel.	% of Total
Settlements	1,071	3.5	202	2.2	56	2.9
Withdrawals w/ Benefits	1,322	4.3	265	2.9	57	3.0
Reasonable Cause	847	2.7	120	1.3	53	2.8
Successful Conciliations	257	0.8	56	0.6	25	1.3
Unsuccessful Conciliations	590	1.9	64	0.7	28	1.5
No Reasonable Cause <sup>222</sup>	16,728	54.0	5,838	64.5	1,135	59.3
Administrative Closures <sup>223</sup>	11,006	35.5	2,623	29.0	612	32.0
TOTAL RESOLUTIONS	30,974	100.0	9,048	100.0	1,913	100.0
Settlements, Withdrawals w/ Benefits and Successful Conciliations <sup>224</sup>	2,650	8.6	523	5.8	138	7.2
Merit Resolutions <sup>225</sup>	3,240	10.5	587	6.5	166	8.7

TOTAL RESOLUTIONS (all statutes) for FY 1996<sup>226</sup>: 103,467

<sup>222</sup> A determination of "No Reasonable Cause" does not necessarily mean that discrimination did not occur; only that there was not sufficient evidence to support a finding of discrimination.

<sup>223</sup> "Administrative Closures" include charge dismissals because of failure to locate a charging party, charging party failed to respond to EEOC communications, charging party refused to accept full relief, outcome of related litigation which establishes a precedent makes further processing of the charge futile, charging party requests withdrawal of a charge without receiving benefits or having resolved the issue, no statutory jurisdiction.

<sup>224</sup> These three categories have been grouped together because the resolutions are favorable to the charging party.

<sup>225</sup> "Merit Resolutions" are charges with outcomes favorable to charging parties and/or charges with meritorious allegations. These include negotiated settlements, withdrawals with benefits, successful conciliations, and unsuccessful conciliations.

<sup>226</sup> Resolution of a charge may implicate more than one of the statutes that the EEOC enforces. Therefore, the value will not reflect the sum of the total resolutions per statute implicated. The total value includes claims brought under the Equal Pay Act.

Table 4-A: ADA charges received by EEOC (all U.S. offices and Ohio offices) for the period of July 26, 1992, through December 31, 1996, according to violation alleged.

Violations Most Often Cited (by type)	(US) Number	(US) % of Total	(OH) Number	(OH) % of Total
Discharge	40,325	52.1	1,488	47.3
Failure to Provide Reas. Accommodation	21,917	28.3	781	24.8
Harassment	8,794	11.4	314	10.0
Hiring	7,469	9.7	235	7.5
Discipline	3,763	4.9	284	9.0
Layoff	3,599	4.7	160	5.1
Benefits	1,793	2.3	84	2.7
Promotion	3,007	3.9	101	3.2
Wages	2,683	3.5	179	5.7
Rehire	2,595	3.4	109	3.5
Suspension	1,727	2.2	80	2.5
<b>TOTAL CHARGES RECEIVED<sup>227</sup></b>	<b>77,388</b>	<b>100.0</b>	<b>3,147</b>	<b>100.0</b>

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<sup>227</sup> Values do not reflect the sum of the violations because a charge may allege more than one violation; likewise, percentages add up to more than 100%.

Table 4-B: ADA charges received by EEOC (all U.S. offices and Michigan offices) for the period of July 26, 1992, through December 31, 1996, according to violation alleged.

Violations Most Often Cited (by type)	(US) Number	(US) % of Total	(MI) Number	(MI) % of Total
Discharge	40,325	52.1	915	38.2
Failure to Provide Reas. Accommodation	21,917	28.3	769	32.1
Harassment	8,794	11.4	313	13.1
Hiring	7,469	9.7	229	9.6
Discipline	3,763	4.9	154	6.4
Layoff	3,599	4.7	111	4.6
Benefits	1,793	2.3	58	2.4
Promotion	3,007	3.9	100	4.2
Wages	2,683	3.5	146	6.1
Rehire	2,595	3.4	84	3.5
Suspension	1,727	2.2	99	4.1
<b>TOTAL CHARGES RECEIVED<sup>22a</sup></b>	<b>77,388</b>	<b>100.0</b>	<b>2,394</b>	<b>100.0</b>

<sup>22a</sup> Values do not reflect the sum of the violations because a charge may allege more than one violation; likewise, percentages add up to more than 100%.



Table 4-C: ADA charges received by EEOC (all U.S. offices and Kentucky offices) for the period of July 26, 1992, through December 31, 1996, according to violation alleged.

Violations Most Often Cited (by type)	(US) Number	(US) % of Total	(KY) Number	(KY) % of Total
Discharge	40,325	52.1	629	51.5
Failure to Provide Reas. Accommodation	21,917	28.3	410	33.6
Harassment	8,794	11.4	99	8.1
Hiring	7,469	9.7	129	10.6
Discipline	3,763	4.9	71	5.8
Layoff	3,599	4.7	62	5.1
Benefits	1,793	2.3	34	2.8
Promotion	3,007	3.9	46	3.8
Wages	2,683	3.5	38	3.1
Rehire	2,595	3.4	54	4.4
Suspension	1,727	2.2	28	2.3
TOTAL CHARGES RECEIVED <sup>229</sup>	77,388	100.0	1,222	100.0

<sup>229</sup> Values do not reflect the sum of the violations because a charge may allege more than one violation; likewise, percentages add up to more than 100%.

Table 4-D: ADA charges received by EEOC (all U.S. offices and Tennessee offices) for the period of July 26, 1992, through December 31, 1996, according to violation alleged.

Violations Most Often Cited (by type)	(US) Number	(US) % of Total	(TN) Number	(TN) % of Total
Discharge	40,325	52.1	1,519	51.1
Failure to Provide Reas. Accommodation	21,917	28.3	874	29.4
Harassment	8,794	11.4	516	17.4
Hiring	7,469	9.7	234	7.9
Discipline	3,763	4.9	255	8.6
Layoff	3,599	4.7	165	5.5
Benefits	1,793	2.3	109	3.7
Promotion	3,007	3.9	114	3.8
Wages	2,683	3.5	124	4.2
Rehire	2,595	3.4	131	4.4
Suspension	1,727	2.2	81	2.7
<b>TOTAL CHARGES RECEIVED<sup>220</sup></b>	<b>77,388</b>	<b>100.0</b>	<b>2,973</b>	<b>100.0</b>

<sup>220</sup> Values do not reflect the sum of the violations because a charge may allege more than one violation; likewise, percentages add up to more than 100%.

Table 5-A: Resolutions of ADA charges by EEOC (all U.S. offices and Ohio offices) for the period of July 26, 1992, through December 31, 1996.

Resolutions (by type)	(US) Number	(US) % of Total	(OH) Number	(OH) % of Total
Settlements	3,001	4.7	71	2.8
Withdrawals w/ Benefits	4,317	6.7	189	7.5
Reasonable Cause	1,703	2.6	55	2.2
Successful Conciliations	616	0.9	31	1.2
Unsuccessful Conciliations	1,087	1.7	24	1.0
No Reasonable Cause <sup>231</sup>	30,341	47.0	1,301	51.7
Administrative Closures <sup>232</sup>	25,133	39.0	900	35.8
TOTAL RESOLUTIONS	64,495	100.0	2,516	100.0
Settlements, Withdrawals w/ Benefits and Successful Conciliations <sup>233</sup>	7,934	12.3	291	11.6
Merit Resolutions <sup>234</sup>	9,021	14.0	315	12.5
Monetary Benefits <sup>235</sup>	142,099		3,439	

<sup>231</sup>. A determination of "No Reasonable Cause" does not necessarily mean that discrimination did not occur; only that there was not sufficient evidence to support a finding of discrimination.

<sup>232</sup>. "Administrative Closures" include charge dismissals because of failure to locate a charging party, charging party failed to respond to EEOC communications, charging party refused to accept full relief, outcome of related litigation which establishes a precedent makes further processing of the charge futile, charging party requests withdrawal of a charge without receiving benefits or having resolved the issue, no statutory jurisdiction.

<sup>233</sup>. These three categories have been grouped together because the resolutions are favorable to the charging party.

<sup>234</sup>. "Merit Resolutions" are charges with outcomes favorable to charging parties and/or charges with meritorious allegations. These include negotiated settlements, withdrawals with benefits, successful conciliations, and unsuccessful conciliations.

<sup>235</sup>. Values for monetary awards are represented in the thousands.

Table 5-B: Resolutions of ADA charges by EEOC (all U.S. offices and Michigan offices) for the period of July 26, 1992, through December 31, 1996.

Resolutions (by type)	(US) Number	(US) % of Total	(MI) Number	(MI) % of Total
Settlements	3,001	4.7	183	8.2
Withdrawals w/Benefits	4,317	6.7	135	6.1
Reasonable Cause	1,703	2.6	79	3.5
Successful Conciliations	616	0.9	11	0.5
Unsuccessful Conciliations	1,087	1.7	68	3.0
No Reasonable Cause <sup>236</sup>	30,341	47.0	1,266	56.8
Administrative Closures <sup>237</sup>	25,133	39.0	567	25.4
<b>TOTAL RESOLUTIONS</b>	<b>64,495</b>	<b>100.0</b>	<b>2,230</b>	<b>100.0</b>
Settlements, Withdrawals w/ Benefits and Successful Conciliations <sup>238</sup>	7,934	12.3	329	14.8
Merit Resolutions <sup>239</sup>	9,021	14.0	397	17.8
Monetary Benefits <sup>240</sup>	142,099		5,863	

<sup>236</sup> A determination of "No Reasonable Cause" does not necessarily mean that discrimination did not occur; only that there was not sufficient evidence to support a finding of discrimination.

<sup>237</sup> "Administrative Closures" include charge dismissals because of failure to locate a charging party, charging party failed to respond to EEOC communications, charging party refused to accept full relief, outcome of related litigation which establishes a precedent makes further processing of the charge futile, charging party requests withdrawal of a charge without receiving benefits or having resolved the issue, no statutory jurisdiction.

<sup>238</sup> These three categories have been grouped together because the resolutions are favorable to the charging party.

<sup>239</sup> "Merit Resolutions" are charges with outcomes favorable to charging parties and/or charges with meritorious allegations. These include negotiated settlements, withdrawals with benefits, successful conciliations, and unsuccessful conciliations.

<sup>240</sup> Values for monetary awards are represented in the thousands.

Table 5-C: Resolutions of ADA charges by EEOC (all U.S. offices and Kentucky offices) for the period of July 26, 1992, through December 31, 1996.

Resolutions (by type)	(US) Number	(US) % of Total	(KY) Number	(KY) % of Total
Settlements	3,001	4.7	35	4.1
Withdrawals w/ Benefits	4,317	6.7	67	7.9
Reasonable Cause	1,703	2.6	26	3.1
Successful Conciliations	616	0.9	19	2.2
Unsuccessful Conciliations	1,087	1.7	7	0.8
No Reasonable Cause <sup>241</sup>	30,341	47.0	329	38.8
Administrative Closures <sup>242</sup>	25,133	39.0	392	46.2
<b>TOTAL RESOLUTIONS</b>	<b>64,495</b>	<b>100.0</b>	<b>849</b>	<b>100.0</b>
Settlements, Withdrawals w/ Benefits and Successful Conciliations <sup>243</sup>	7,934	12.3	121	14.3
Merit Resolutions <sup>244</sup>	9,021	14.0	128	15.1
Monetary Benefits <sup>245</sup>	142,099		981	

<sup>241</sup>. A determination of "No Reasonable Cause" does not necessarily mean that discrimination did not occur; only that there was not sufficient evidence to support a finding of discrimination.

<sup>242</sup>. "Administrative Closures" include charge dismissals because of failure to locate a charging party, charging party failed to respond to EEOC communications, charging party refused to accept full relief, outcome of related litigation which establishes a precedent makes further processing of the charge futile, charging party requests withdrawal of a charge without receiving benefits or having resolved the issue, no statutory jurisdiction.

<sup>243</sup>. These three categories have been grouped together because the resolutions are favorable to the charging party.

<sup>244</sup>. "Merit Resolutions" are charges with outcomes favorable to charging parties and/or charges with meritorious allegations. These include negotiated settlements, withdrawals with benefits, successful conciliations, and unsuccessful conciliations.

<sup>245</sup>. Values for monetary awards are represented in the thousands.

Table 5-D: Resolutions of ADA charges by EEOC (all U.S. offices and Tennessee offices) for the period of July 26, 1992, through December 31, 1996.

Resolutions (by type)	(US) Number	(US) % of Total	(TN) Number	(TN) % of Total
Settlements	3,001	4.7	106	5.9
Withdrawals w/Benefits	4,317	6.7	129	7.1
Reasonable Cause	1,703	2.6	55	3.0
Successful Conciliations	616	0.9	19	1.1
Unsuccessful Conciliations	1,087	1.7	36	2.0
No Reasonable Cause <sup>246</sup>	30,341	47.0	825	45.7
Administrative Closures <sup>247</sup>	25,133	39.0	692	38.3
<b>TOTAL RESOLUTIONS</b>	<b>64,495</b>	<b>100.0</b>	<b>1,807</b>	<b>100.0</b>
Settlements, Withdrawals w/Benefits and Successful Conciliations <sup>248</sup>	7,934	12.3	254	14.1
Merit Resolutions <sup>249</sup>	9,021	14.0	290	16.0
Monetary Benefits <sup>250</sup>	142,099		3,000	

<sup>246</sup> A determination of "No Reasonable Cause" does not necessarily mean that discrimination did not occur; only that there was not sufficient evidence to support a finding of discrimination.

<sup>247</sup> "Administrative Closures" include charge dismissals because of failure to locate a charging party, charging party failed to respond to EEOC communications, charging party refused to accept full relief, outcome of related litigation which establishes a precedent makes further processing of the charge futile, charging party requests withdrawal of a charge without receiving benefits or having resolved the issue, no statutory jurisdiction.

<sup>248</sup> These three categories have been grouped together because the resolutions are favorable to the charging party.

<sup>249</sup> "Merit Resolutions" are charges with outcomes favorable to charging parties and/or charges with meritorious allegations. These include negotiated settlements, withdrawals with benefits, successful conciliations, and unsuccessful conciliations.

<sup>250</sup> Values for monetary awards are represented in the thousands.

