

Posted on Fri, Sep. 10, 2004

## Wave of disability lawsuits takes toll on area businesses

**One owner claims they are being targeted by 'a professional litigant'; a Morro Bay eatery closes its doors after 28 years because of the legal action**

**Lindsay Christians**  
**The Tribune**

**TEMPLETON** - More than 50 Central Coast businesses are reeling -- and at least one closed -- after a disabled man visited lawsuit after lawsuit on San Luis Obispo County establishments he claims discriminated against him by making it tough for him to get around.

Jarek Molski uses a wheelchair because of a 1988 motorcycle accident. The 34-year-old Woodland Hills man said heavy doors and access ramps that were too steep posed access problems for him.

These are among a litany of other violations of the Americans with Disabilities Act and state disabled-access laws that he claims.

The latest round of lawsuits follows ones he filed against North County wineries last year.

Disabled-parking signs at many restaurants aren't up to California code, Molski's lawsuits state. Counters at other eateries were too high, bathrooms too small and grip bars and paper dispensers were the wrong height.

At nearly every establishment, Molski claimed that he was humiliated and injured, including "upper extremity trauma" and scraping his knuckles.

In most cases, the businesses don't dispute the violations, but argue that they didn't know of the problems and were not given an opportunity to fix them before the suits were filed.

"He's a professional litigant," said Galley Restaurant owner and former Morro Bay Mayor Rodger Anderson -- among those who were sued.

The lawsuits are generally settled but cost the businesses thousands of dollars, even before they make the improvements needed to avoid another suit.

The Hungry Fisherman, also in Morro Bay, closed this week after 28 years in business. Owners posted a sign saying the lawsuit led to the closure.

Sharron Pagent, who uses a walker because she had polio as a child, was dismayed when she saw the Hungry Fisherman had closed.

"For years I've been to these places. They're just small restaurants," she said. "I'd like to see up-to-date things ... but I don't think it's a good deal to go around and sue everybody to make my life more comfortable."

San Luis Obispo County Assessor Tom Bordonaro, who has used a wheelchair since 1977, called Molski's actions "despicable."

"I don't believe he's a crusader at all," Bordonaro said. "He's someone who's taking advantage of the system."

"If a restaurant's not accessible, they don't get my dollars," Bordonaro added. "I don't need to have access to every single building in every town in every state. Economically it just does not make sense."

Morro Bay Mayor Bill Yates said the City Council will talk about the issue at its Monday meeting. He wants the city to take a strong stand opposing Molski and his pattern of litigation.

Molski has made nearly identical claims against restaurants and wineries in the county over the past year and has filed more than 250 lawsuits in California.

Thomas Frankovich, Molski's lawyer, is on vacation, and Molski could not be reached.

But in previous interviews, Molski has claimed that his goal is justice for the disabled.

Upset business owners claim his objective is money.

Molski is "taking advantage of people who are trying to make a living," said Jay Hieatt, a San Luis Obispo civil attorney who has spent the past few years working with disability law cases. "If the real goal is (Americans with Disabilities Act) compliance, give them notice."

Hieatt said the claim that the sued businesses are out of compliance is usually true. The law is vague, he noted, and there are no official enforcers from the state or the city.

But business owners have protested that they didn't know about the law or that new details change too quickly for them to comply.

Carla Borchard, who has owned Carla's Country Kitchen in Morro Bay for 17 years, said she "wants to accommodate everybody."

"Normally, when somebody's chipped a tooth or tripped in the parking lot, they always tell you," she said.

But until she got served three weeks ago, Borchard said she didn't know Molski had been there at all, let alone that he'd apparently hurt himself in her restroom and had trouble opening the front door.

She's not alone.

"I feel like I was blindsided because I had no warning," said Chris Goldie, who for six years has owned Pismo Bowl, an eight-lane bowling alley on Pomeroy Avenue in Pismo Beach. Molski filed a lawsuit against her in May.

Goldie said her attorney, Allen Hutkin of San Luis Obispo, has advised her to settle. She said she's already spent around \$5,000 defending herself and can't afford to fight the lawsuit.

"The scheme works because business owners are afraid of litigation," she said. "It takes a deep pocket to fight back."

Molski claims that the violations of the law entitle him to "at least \$4,000 per day" from the date of his visit until the alleged violations are corrected, plus medical costs, attorney's fees and punitive damages.

This adds up quickly. The least expensive settlement that local disability lawyer Gerald Mason has defended added up to \$26,000.

Mason, who is representing seven sued restaurants, said he remembers another, similar settlement that the defendants fought that reached \$750,000 in damages.

Lawyers advise their clients to settle as soon as possible to keep the costs low.

Hutkin recommended business owners protect themselves by hiring a professional to inspect their establishment.

"You win by being proactive," Hutkin said.

But some, like Goldie, said the lawsuit was the first time she realized she was not in compliance.

"What scares me the most is what's to stop the next person from doing the same thing to me?" she asked. "Now when I see a disabled person (come) in I'm afraid that he's going to sue me."

Tribune staff writer Cynthia Neff contributed to this report.

xxxxxxx

## **LOCAL BUSINESSES BEING SUED**

### **ARROYO GRANDE**

#### **Girl's Restaurant**

F. McLintocks Saloon

#### **Cayucos**

Bill and Carol's Sea Shanty

### **CAMBRIA**

#### **Cambria Café**

JBj Roundup Pizza

#### **Harmony**

Harmony Cellars

#### **Los Osos**

Tio Albertos

### **MORRO BAY**

### **GALLEY RESTAURANT**

**THE WHALE'S TAIL**

**MARGIE'S DINER**

**FOSTER'S FREEZE**

**OUTRIGGER**

**Harbor Hut**

Great American Fish Co.

**COFFEE POT RESTAURANT**

**CARLA'S COUNTRY KITCHEN**

**HUNGRY FISHERMAN**

**CHEVRON**

**Taco De Mexico**

Pizza Port

**PASO ROBLES**

**SYLVESTER WINERY**

**JUSTIN VINEYARDS**

**SUMMERWOOD WINERY**

**EOS ESTATE WINERY**

**MERIDIAN VINEYARDS**

**CHUMEIA VINEYARDS**

**PEACHY CANYON CELLARS**

**DICARLO VINEYARD**

**EBERLE WINERY**

**PENMAN SPRINGS VINEYARD**

**LINNE CALODO CELLARS**

**HUNT CELLARS**

**WILSON'S LANES**

Foster's Freeze

Señor Sancho's

**PISMO BEACH**

**PIERSIDE INN**

**PISMO BOWL**

**PEZZULO'S BEACH HOUSE**

**PERKO'S**

**Cracked Crab**

Hoover's Enterprises

**SAN LUIS OBISPO**

**FOSTER'S FREEZE**

**MCCARTHY'S IRISH PUB**

**Claiborne and Churchill**

Kynsi Winery

**TEMPLETON**

**AJ SPURS**

**YORK MOUNTAIN WINERY**

**CASTORO CELLARS**

**BELLA LUNA**

**CHATEAU MARGENE**

**WILD HORSE WINERY**

**JanKris Winery**

Mastantuono Winery