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Amendments to Americans with Disabilities Act, What the Changes Mean to You

By Regina Morris Parker, Esquire



In the early 1990's, Congress enacted the Americans with Disabilities Act (“ADA”) which prohibits discrimination against persons with physical or mental disabilities in employment, housing and public accommodations. At that time, the ADA defined a “disability,” in part, as a physical or mental impairment that substantially limits a major life activity of an individual. In several cases, the Supreme Court has narrowly construed this definition

in a way that has led lower courts to exclude a range of individuals from coverage, including individuals with diabetes, epilepsy, cancer, muscular dystrophy, and artificial limbs.

On September 25, 2008, Congress amended the ADA and the ADA Amendments Act of 2008 (“ADAAA”), effective January 1, 2009. The ADAAA eliminates the Supreme Court’s interpretation by providing a rule of construction that the term “substantially limits” shall be interpreted consistent with the findings and purposes of the ADAAA. These make clear that Congress intended to apply a less demanding standard than that applied by the courts, and to cover a broad range of disabilities.

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“The Hudson River Landing”: A Case For The Admiralty Courts?

By Patricia M. O’Neill, Esquire and Michael Mattioni, Esquire

On January 15, 2009, the world witnessed the incredible landing of U.S. Airways Flight 1549 on the Hudson River. Although the investigation into this incident is still pending, the reported cause of the accident was double “bird strike” or the collision of aircraft with airborne birds and ingestion of birds by the plane’s engines causing engine damage and/or power failure. Miraculously, there were no fatalities stemming from this incident. The potential for personal injury and property damage lawsuits, however, remains open, as well as the question of what law will govern these lawsuits, including whether the claims will fall within the court’s admiralty jurisdiction.

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Another rule of construction provides that the definition of "disability" shall be construed in favor of broad coverage of individuals, to the maximum extent permitted by the terms of the ADA. While in many respects the amendments will not alter the existing obligations of Pennsylvania employers, there are a few areas in which the new Federal legislation will impact employers in this state.

It is expected that the expanded coverage provided in the ADAAA will increase litigation under the ADA. The ADAAA contains four significant changes. First, the ADAAA expands the definition of "disability," so that an impairment that is episodic or in remission will be considered a disability if it would "substantially limit" a "major life" activity when active. Under this broader definition, an employee with cancer that has been in remission for years could be covered. This opens up the protection of the ADA to a class of individuals that has not previously been afforded the protections of the ADA. The ADAAA also clarifies that an impairment that substantially limits only one major life activity will still be considered a disability.

Second, the ADAAA also broadens the definition of "major life activity." Major life activities will now include, among other things, seeing, hearing, speaking, walking, breathing, performing manual tasks, learning, caring for oneself, working, eating, standing, lifting and bending. The ADAAA further includes the operation of major bodily functions, including without limitation, digestive, bladder, bowel, endocrine and reproductive functions. This definition is to be construed broadly.

Third, the ADAAA, has broadened the applicability of the ADA by including protections for those who are "regarded as" disabled. Thus, an employee is now required to establish that he or she has been subjected to an action prohibited under the ADA because of an actual or perceived impairment, regardless of whether the impairment actually limits a major life activity. This change will make it more difficult for employers to prevail at a preliminary stage of litigation.

Finally, the determination of whether an impairment substantially limits a major life activity must now be made without regard to the ameliorative effects of mitigating measures such as prosthetics, hearing aids, low-vision devices with the exception of ordinary glasses or contact lenses, mobility devices, or

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reasonable accommodations or auxiliary aids or services. For example, it is presumed that an individual's high blood pressure will be considered a disability, even when the condition is well-controlled by the use of medication such that there is little to no impact on any of the individual's major life activities.

With the expansion of the definition of a disability, employers are encouraged to ensure compliance with the ADAAA, thereby reducing the risk of claims of discrimination and litigation. Individuals who are disabled are encouraged to insure that their rights are being adequately protected.

This article highlights some of the changes to the ADA. It is not a comprehensive review of the ADA and the recent amendments. Anyone with questions regarding the expanded definition or the ADA in general is encouraged to seek advice from professionals who are familiar with the ADA and the ADAAA.

"The Hudson River Landing": A Case For The Admiralty Courts?

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Generally, admiralty jurisdiction extends to civil wrongs, or torts, committed on navigable waters where the tort has some relationship to traditional maritime activity. A claim within federal admiralty jurisdiction is subject to federal general maritime law, a body of law that is distinct from state or common law in both its remedies and procedure. Because a claimant could potentially be awarded greater damages under general maritime law than under state law. Thus, in certain circumstances, it is in the claimant's interest to seek admiralty jurisdiction.

The peculiar facts of this incident may provoke debate as to the applicable law governing potential lawsuits, as one can easily argue the crash or landing of an airplane in the navigable waters of the Hudson River triggers admiralty jurisdiction. A decision by the United States Supreme Court approximately 37 years ago lends insight as to what law governs this situation. In 1972, the Supreme Court, in the case of *Executive Jet Aviation, Inc. v. City of Cleveland*, 409 U.S. 249, determined whether admiralty jurisdiction applied to a similar incident involving an aircraft that was taking off from an Ohio airport adjacent to Lake Erie. Once cleared for take off, the plane began its ascent, during which time it encountered a flock of seagulls in the airspace directly ahead of the plane.

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The ingestion of the birds into the plane’s engines resulted in an almost complete engine power failure. Thereafter, in a semi-stalled condition, the plane began its descent toward the runway and ultimately landed North on the runway, but in the waters of Lake Erie. There were no injuries to the people aboard the plane, but the plane eventually sank and became a total loss. The owners of the plane brought suit against the City of Cleveland and others for damages and sought federal admiralty jurisdiction. The District Court dismissed the matter based on lack of admiralty jurisdiction, a decision that was ultimately affirmed by the United States Supreme Court.

In considering whether admiralty jurisdiction extended to the plane crash in Lake Erie, the Supreme Court noted that “whether a tort is maritime and thus within the admiralty jurisdiction of the federal courts has traditionally depended upon the locality of the wrong. If the wrong occurred on navigable waters, the action is within admiralty jurisdiction; if the wrong occurred on land, it is not.” In the case of aviation tort cases, however, the Supreme Court held that “maritime locality alone is not a sufficient predicate for admiralty jurisdiction” and in the absence of legislation of the contrary, there is no federal admiralty jurisdiction over aviation torts claims arising from flights by land-based aircraft between points within the continental United States unless the claim has a significant relationship to traditional maritime activity. The Court noted that the “the fact that an aircraft happens to fall in navigable waters, rather than on land” during flights within the continental United States is “wholly fortuitous” and lacked a substantial relationship to maritime commerce and admiralty jurisdiction must be denied.

The facts of the Hudson River landing parallel those of the Supreme Court’s *Executive Jet* decision. Thus, it is unlikely admiralty jurisdiction will extend to lawsuits stemming from the January 15, 2009 incident. The Supreme Court did, however, decline to hold that admiralty jurisdiction could never extend to an aviation tort. Therefore, if a claimant can demonstrate that the aviation tort bears a significant relationship to traditional maritime activity, that claim may be within the court’s admiralty jurisdiction.

This article provides general information regarding the topics discussed. It does not include information applicable to every situation and cannot be relied upon to address a particular situation. Anyone with questions regarding admiralty jurisdiction is encouraged to seek the advice of an attorney or other qualified professional.

What is a Codicil?

By James DeMarco, Esquire

For many people, the creation of a Last Will and Testament is a task that is as emotional and sacred as it is difficult and thought provoking. One should always go to a trusted attorney to advise, draft, and execute such an important document which, if not done properly, can have legal insufficiencies resulting in painful and expensive litigation among loved ones after passing. However, for minor adjustments to one's will which may be your desire as years progress, a self-made amendment or "codicil" can be an easy and effective way to add or subtract something, further perfecting one's wishes. This article will explain the right way to go about making small changes to a will.

Warning! A codicil is not for making substantial changes to a will and should not involve complex instructions or devise large sums of money. Even for the smartest and most detail oriented people, major changes to a will should be handled by an attorney as there are many hidden legal traps and unthought-of ambiguities which can potentially threaten one's entire estate plan.

Simply stated, a codicil does not destroy and revoke one's entire pre-existing will but it supplements or "tweaks" it, explaining, modifying, adding to, or subtracting from the provisions that are already set forth in the will. Although the codicil does not make large alterations, its contents must be taken very seriously and the creation and execution of the document should be done in the exact same way and with the same care as your attorney did with your drafting your will.

First, type or print your codicil using plain and unambiguous language, making specific references to the property being conveyed and the person to whom it is going. Make reference to the date of your current will and any previous codicils which are still in effect and keep them all together in the same place. All of the documents must be taken to the Register of Wills in the County where you reside at the time of your death, so you want to keep them together in a safe place. Do not, however, store them in a safe deposit box as the executor/executrix will not be able to get access to the box without "probating" the will and codicils which cannot be done if they are locked inside the box.

Whenever a will or codicil is revoked, make sure the document is completely destroyed and that no other remaining estate document makes reference to it being still in effect.

It is not suggested that you continuously make changes to your will. Having more than one or two codicils is confusing and may lead to inconsistencies in determining your desires.

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Next, make sure you sign and date the codicil in the presence of two witnesses who also sign and date the document in your presence when you do so. Include the addresses and phone numbers of the witnesses so they can be easily contacted if necessary. You can pick whomever you want to witness your codicil or will BUT make sure they can be easily reached at the time of your passing. It is best to pick witnesses who are not receiving anything from the codicil so as not to cast suspicion on their role in altering your original will. Do not forget that the witnesses do not have to be shown the contents of your codicil, just that you signed and dated it in their presence.

Lastly, you should have your signature and those of your witnesses notarized when executing your codicil. It is just another layer of proof that you signed this document in the presence of witnesses who will be able to testify to your sound mind and lack of coercion or intoxication.

This article provides some general information regarding codicils. Anyone with specific questions regarding codicils should contact an attorney as an improperly completed codicil will not be effective.



Firm News and Updates

Stephen J. Galati, Esq. has been appointed to the Planning and Zoning Boards of Adjustment for South Harrison Township, NJ.

Patricia M. O'Neill, Esq. has been appointed to the Burlington County Bar Association's Programming and entertaining Committee.

Dawn M. Tancredi, Esq. was appointed by the Board of Trustees of the Zoeza Institute to be a member of the advisory board. The Zoeza Institute is an organization that provides programs to children living in dependency living situations.

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