

## PRESS RELEASE

**Precedent-Setting Decision on Emergency Evacuations for People with Disabilities**

For the first time, a court has declared that the Americans with Disabilities Act (the ADA) requires places of public accommodation to consider the needs of people with disabilities in developing emergency evacuation plans. This groundbreaking decision – issued on December 28, 2004 by Judge John W. Debelius III of the Circuit Court for Montgomery County, Maryland – means that shopping malls, stores, restaurants, movie theaters, museums, and other private entities subject to the ADA throughout the country, whether landlords or tenants, must now seek to accommodate people with disabilities in the development and modification of emergency evacuation procedures.

“This is a significant decision that should greatly enhance the safety of persons with disabilities in the post-September 11th world,” said Elaine Gardner, Director of the Disability Rights Project at the Washington Lawyers’ Committee for Civil Rights and Urban Affairs. “The ADA always has been understood to help get people with disabilities into places of public accommodation. Now, for the first time, it also has been found to require that public places try to get those same people out in the event of a fire, terrorist attack, or other emergency.”

The court’s significant decision arises out of a lawsuit that was filed in Spring 2003 by Katie Savage, a Washington, D.C. resident who became trapped during an emergency evacuation in a local shopping mall that had no accessible exits for persons with disabilities. Ms. Savage, who uses a wheelchair, was shopping at a Marshalls store in Silver Spring, Maryland’s City Place Mall on September 3, 2002, when the store and the Mall were evacuated. After Marshalls required her to exit into an area of the

Mall that is below ground level, Ms. Savage found that she was trapped there and unable to evacuate, because the elevators were shut down and all the exits had stairs. Abandoned by store employees and trapped, Ms. Savage resolved to use her terrifying ordeal as a vehicle for ensuring that fellow citizens with disabilities would not be similarly victimized in emergency evacuation situations. Ms. Savage joined the Disability Rights Council of Greater Washington (the DRC) in filing a lawsuit against Marshalls and City Place Mall that alleged violations of the ADA in both the Mall’s emergency evacuation plan and Marshalls’ corporate-wide evacuation policies.

In briefs filed with the court last Fall, Marshalls took the position that the ADA does not require places of public accommodation to modify evacuation plans in order to accommodate the needs of people with disabilities. The court, however, rejected Marshalls’ view and held that “a store’s nationwide evacuation procedures would certainly constitute a public accommodation’s ‘policies.’” Therefore, the court wrote, “it is certain that Title III of the ADA does apply to this situation.”

“I am delighted by the court’s decision and hope that it has a lasting impact on improving safety for people with disabilities,” said Ms. Savage. “Regrettably, Marshalls and other major retailers have seen fit to evacuate non-disabled persons, while leaving people with disabilities to fend for themselves in an emergency. That is not only a poor business decision. It is also now against the law.”

One of Ms. Savage’s attorneys, Steve Hollman, agreed. “We’ve all heard stories about people with disabilities being trapped and left to die on September 11th and in other emergency situations,” said Mr. Hollman, a partner with Hogan & Hartson L.L.P. in Washington, D.C. “Hopefully, this decision will serve as a

wake-up call to public accommodations across the country that they must start considering the needs of people with disabilities in their evacuation plans.”

The Opinion of the Court also was significant for refusing to allow a tenant to abdicate its responsibility to patrons with disabilities by merely placing them outside a store’s entrance in an emergency evacuation situation and leaving actual evacuation to a shopping mall’s owners. Additionally, the Opinion recognized Ms. Savage’s standing to bring her ADA claims against Marshalls. Despite the fact that Ms. Savage had not visited the Marshalls fitting room at City Place Mall, she was found to be able to seek barrier removal there, as “a Plaintiff need not encounter every barrier in a store to bring a claim for all the store’s ADA violations.” Moreover, the Court found that Ms. Savage had standing to remedy Marshalls’ corporate-wide emergency evacuation policy – which is in effect at more than 672 Marshalls stores – because “where the harm alleged is directly traceable to a written policy . . . there is an implicit likelihood of its repetition in the immediate future.” The Disability Rights Council of Greater Washington also was found to have standing to proceed. As a result, the case will now proceed to trial to determine whether Marshalls and City Place Mall are in violation of the requirements of the ADA. The trial date will be set at a hearing on January 14.

Ms. Savage is represented by the law firm of Hogan & Hartson L.L.P. and the Washington Lawyers’ Committee for Civil Rights and Urban Affairs. An important Amicus Curiae brief was submitted to the Court by the law firm of Howrey, Simon, Arnold & White, on behalf of the American Association of People with Disabilities and several other organizations of people with disabilities.