

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Civil Action No. 03-WY-0034-AJ (MJW)

COLORADO CROSS-DISABILITY COALITION, a Colorado corporation,  
JEREMY HUDSON, and  
JAMES HUDSON,

Plaintiffs,

v.

COLORADO ROCKIES BASEBALL CLUB, LTD., a Colorado limited partnership,

Defendant.

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CARRIE ANN LUCAS, for herself and as next friend of  
HEATHER REBEKAH LUCAS,  
SHERWOOD OWENS, for himself and as next friend of  
NICHOLAS OWENS,  
KYLE STUBBS,  
ROANNE KUENZLER, and  
EVAN STUTMAN,

Plaintiffs,

v.

COLORADO ROCKIES BASEBALL CLUB, LTD., a Colorado limited partnership,

Defendant.

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**PLAINTIFFS' PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW**

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Plaintiffs, by and through their counsel, hereby submit their Proposed Findings of Fact and Conclusions of Law.

## **INTRODUCTION**

Plaintiffs have brought this lawsuit challenging the compliance of wheelchair-accessible seating in the lower level of Coors Field with Title III of the Americans with Disabilities Act (“ADA”). 42 U.S.C. §§ 12181 - 12189.

## **FINDINGS OF FACT**

1. Plaintiff Colorado Cross-Disability Coalition (“CCDC”) is a Colorado non-profit corporation whose members are persons with disabilities and their nondisabled allies.
2. CCDC’s purpose is to work for systemic change that promotes independence, self-reliance, and full inclusion for people with disabilities in the entire community. As part of that purpose, CCDC seeks to ensure that persons with disabilities have access to -- and do not encounter discrimination in -- public accommodations such as Coors Field.
3. Plaintiff Jeremy Hudson has spina bifida and is substantially impaired in several major life activities, including but not limited to walking. He uses a manual wheelchair for mobility. Plaintiff Jeremy Hudson is a member of CCDC.
4. Plaintiff James Hudson is the father of Jeremy Hudson and often attends baseball games at Coors Field with him. As such, he is in a known relationship with and/or association with an individual with a disability. Plaintiff James Hudson is a member of CCDC.
5. Plaintiff Carrie Ann Lucas, as a result of fibrous dysplasia, osteomyelitis, and related treatment, as well as ototoxicity and Stevens Johnson Syndrome, is substantially impaired in several major life activities including, but not limited, to walking, hearing, and seeing and uses

a motorized wheelchair for mobility. Ms. Lucas is a member of CCDC. Ms. Lucas is also the mother of Plaintiff Heather Rebekeh Lucas.

6. Plaintiffs Heather Rebekah Lucas, as a result of Cri du Chat Syndrome, is substantially limited in several major life activities including, but not limited to, walking, seeing, and learning, and uses a manual wheelchair for mobility. Miss Lucas is a member of CCDC.

7. Plaintiff Kyle Stubbs, as a result of post-polio syndrome, is substantially impaired in several major life activities including, but not limited to, walking. He uses a power wheelchair for mobility. Mr. Stubbs is a member of CCDC.

8. Plaintiff Roanne Kuenzler, as a result of a spinal cord injury, is substantially impaired in several major life activities including, but not limited to, walking. She uses a manual wheelchair for mobility. Ms. Kuenzler is a member of CCDC.

9. Plaintiff Evan Stutman, as a result of muscular dystrophy, is substantially impaired in several major life activities including, but not limited to, walking and uses a power wheelchair for mobility. Mr. Stutman is a member of CCDC.

10. Plaintiffs Hudson, Hudson, Lucas, Lucas, Stubbs, Kuenzler, and Stutman will be referred to herein as the “Individual Plaintiffs.”

11. Defendant Colorado Rockies Baseball Club, Ltd. is a Colorado limited partnership that owns the Colorado Rockies Major League Baseball team and leases and operates Coors Field, the stadium in which the team plays.

12. Coors Field was built for first occupancy after January 26, 1993.

13. Defendant has divided the seats at Coors Field into seating areas for purposes of pricing and sales.

14. The “Infield Box” seating area includes sections 120 through 141 on the lower level. In 2003, these seats sold for \$27 to \$38. In 2004, these seats are selling for \$27 to \$40.

15. The “Midfield Box” seating area includes sections 116 through 119 and 142 through 145 on the lower level. In 2003, these seats sold for \$21.50 to \$33. In 2004, these seats are selling for \$21.50 to \$35.

16. The “Outfield Box” seating area includes sections 110 through 115 and 146 through 150 on the lower level. In 2003, these seats sold for \$20 to \$32. In 2004, these seats are selling for \$20 to \$34.

17. The Infield Box, Midfield Box and Outfield Box seating areas will be collectively referred to in this pleading as the “Lower Level Box” seating areas; this term thus refers to all seats in sections 110 through 150 of Coors Field. All of these seats currently sell for \$40 or less.

18. The Lower Level Box seating areas are not bleachers or balconies.

19. Currently, the only wheelchair-accessible seating in the Lower Level Box seating areas is located behind the back row of ambulatory seating<sup>1</sup> in each section. In most of these seating areas, the back row of ambulatory seating is 38 rows from the field. This places

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<sup>1</sup> Seats that are not accessible to people who use wheelchairs will be referred to herein as “ambulatory seats.” See, e.g., Ind. Living Res. v. Oregon Arena Corp., 982 F. Supp. 698, 712 (D. Or. 1997).

wheelchair-accessible seating approximately 108 feet farther from the field, and approximately 30 feet higher, than front row ambulatory seating.

20. Coors Field, as originally designed, had no front row seats for people who use wheelchairs anywhere on the lower level.

21. Before construction began on Coors Field, Coloradans with disabilities met with representatives of Defendant, the Denver Metropolitan Major League Baseball Stadium District, and HOK Sport, the architect that designed Coors Field, to discuss seating for people with disabilities.

22. As a result of these meetings, a commitment was made to add front-row seating in four locations: 10 seats immediately behind the backstop (“Backstop Accessible Seats”); 50 seats at the front of the Pavilion section; 20 front row bullpen seats; and 16 front row right field box seats. This was to provide a total of 96 front-row wheelchair-accessible seats on the lower level at Coors Field.

23. When Coors Field was finally constructed, only two of these four promised areas materialized. There were no front row wheelchair-accessible seats adjacent to the bullpen or in the right field box section. Instead of the promised 50 front row seats in the Pavilion area, there were 26. Instead of the promised ten Backstop Accessible Seats, there were eight. There were thus 34 wheelchair-accessible seats in two areas instead of the promised 96 seats in four areas.

24. Of these seats, the Backstop Accessible Seats were the only wheelchair-accessible seats near the front of any of the Lower Level Box seating areas. From 1995 to 2000, Defendant sold these seats for the same price as all other Infield Box seats.

25. In 2001, Defendant converted the first few rows of seating behind home plate, including the Backstop Accessible Seats, into a premium seating area called the “Coors Clubhouse.” The Coors Clubhouse has 168 ambulatory seats, and the eight wheelchair-accessible and eight companion seats that make up the Backstop Accessible Seats.

26. Ambulatory seats in the front row of the Coors Clubhouse sell for \$150 each; in the remaining rows, they cost \$135. This price includes certain amenities, for example, a pre-game buffet, non-alcoholic beverages, in-seat waitstaff service, and preferred parking. These seats are largely sold on a season-ticket basis.

27. Now that the Backstop Accessible Seats are part of the Coors Clubhouse, they cost \$100 each. This price excludes the pre-game buffet. In addition, they are only sold on the day of the game in question; that is, fans with disabilities are not permitted to purchase them in advance.

28. The eight wheelchair-accessible Backstop Accessible Seats that now cost \$100 are still the only wheelchair-accessible seats near the infield, whereas Coors Field has 210 ambulatory seats in the first row of the Infield Box seating area, and 1,017 ambulatory seats in the first five rows of that seating area (all of which sell for \$27 to \$40). There are a total of 383 front-row ambulatory seats in the Lower Level Box seating areas and 1,996 ambulatory seats within the first five rows of those areas, all of which sell for \$40 or less.

29. As a result of the above, starting in 2001, a wheelchair-using baseball fan who wanted to sit near the infield at Coors Field was required to pay approximately three times as much as most non-disabled fans paid to sit near the infield. The prices paid by people who use

wheelchairs for seats adjacent to the infield were thus not comparable to the prices paid by members of the general public for such seats.

30. The wheelchair-accessible seats behind the back rows of Sections 114-126 and 135-147 of the Lower Level Box seating areas are under the overhang created by the club level seating. The wheelchair-accessible seats behind Sections 127-134 are also under the slightly less severe overhang created by the press box.

31. When fans with disabilities sit in the wheelchair-accessible seats under the overhang, they are unable to see many pop foul balls, pop fly balls and home runs: When the batter hits a high fly ball, the trajectory of the ball is obstructed by the overhang.

32. Relatively few rows of ambulatory seats in the Lower Level Box seating areas are affected by the overhang and, because the ambulatory seats are lower and farther forward than the accessible seats behind the back row, the impact of the overhang is not as great. Ultimately, while all wheelchair-accessible seats in sections 114 through 147 are obstructed by the overhang, there are 9,225 ambulatory seats in these seating areas that are completely unaffected by this obstruction.

33. In light of this and their relative distance from, and height above, the field, the wheelchair-accessible seats behind the back row of the Lower Level Box seats do not provide views or lines of sight comparable to those from the ambulatory seats in the front row or close to the infield.

34. Coors Field has 406 wheelchair-accessible seats. Of these, only 12% are located at the front of their respective seating areas. The remaining 88% are located at the back of their respective seating areas.

35. In 1999 and 2000 -- the last two years before the creation of the Coors Clubhouse -- Defendant sold an average of 789 tickets per year for the Backstop Accessible Seats.

36. During the 2001 season, after the price of these seats was raised to \$100, Defendant was only able to sell 86 tickets to the Backstop Accessible Seats. In 2002, it sold 115 tickets, and in 2003, 148.

37. Even though the price for the Backstop Accessible Seats had more than tripled, Defendant's revenue from the sale of tickets to these seats in 2001 and 2002 was less than half what it was in 1999 and 2000, before the creation of the Coors Clubhouse.

38. If the Defendant sold the Backstop Accessible Seats for the same price as the Infield Box Seats in 2004, and sold as many seats as it did on average during the two years preceding the creation of the Coors Clubhouse, it would take in approximately \$30,000, over twice the amount of revenue attributable to the Backstop Accessible Seats during 2003.

39. That is, if Defendant were to sell some of the Backstop Accessible Seats for Infield Box prices, it is likely that it would make more money off those seats than it currently does.

40. In well over half of the games played at Coors Field since the creation of the Coors Clubhouse, none of the Backstop Accessible Seats sold, that is, the only wheelchair-accessible seats near the infield sat empty.



41. There is no evidence that it would have been “structurally impracticable” to design and construct Coors Field with wheelchair-accessible seating adjacent to the infield.

42. There is no evidence that it is currently -- or would have been during design and construction -- infeasible to locate wheelchair-accessible seating adjacent to the infield.

43. Among seats in the Lower Level Box seating areas, most members of the general public and Defendant’s owners, officers and management employees choose to sit in the front row or toward the front. Far fewer choose to sit in the back row or under the overhang.

44. Ambulatory seats near the field have advantages over the accessible seats located in the back of the Lower Level Box seating areas. These advantages include:

- a. Being closer to the game, thus providing a better view of the action;
- b. Being able to hear the on-field sounds of the games and see players’ expressions;
- c. Being able to interact with players and umpires;
- d. Being able to enjoy the sun on cooler days; and
- e. Receiving baseballs from field attendants or players.

45. The Individual Plaintiffs are all baseball fans who enjoy attending games at Coors Field.

46. CCDC members, including Individual Plaintiffs, have been to Coors Field in the past, have sat -- prior to 2001 -- in the wheelchair-accessible seating behind home plate (the “Backstop Accessible Seats”), and would like to return to Coors Field and sit in seats adjacent to

the infield for the same price as non-disabled patrons pay to sit near the infield in the Infield Box Seats.

47. While many of the Individual Plaintiffs enjoy sitting in various areas of Coors Field, all want to have the choice of sitting adjacent to the infield, so they can have lines of sight and views comparable to the ambulatory seats near the infield, while paying a price comparable to the prices paid by most nondisabled fans for those seats.

48. Individual Plaintiffs testified that they are unable to see high fly balls when sitting in the wheelchair-accessible seats at the rear of the Lower Level Box seating areas, that they preferred seats in which they could watch an entire game without obstruction, and that they would enjoy the other advantages of sitting closer to the infield.

49. In particular, Plaintiff Carrie Ann Lucas is Deaf and has a significant visual impairment, so the only way she can enjoy a baseball game is from the front row. Ms. Lucas's daughter, Heather Rebekah Lucas, has significant visual and cognitive disabilities. It is Ms. Lucas's experience that Heather can only follow a game if she sits close to the field.

### **CONCLUSIONS OF LAW**

#### **I. Plaintiffs Have Standing to Bring this Action.**

50. The Individual Plaintiffs have been injured by Defendant's conduct in the past, are continuing to be injured by that conduct and will be injured by it in the future. The relief Plaintiffs have requested -- installation of wheelchair-accessible seating adjacent to the infield or pricing six of the eight Backstop Accessible Seats (and the corresponding companions seats) at

prices comparable to the Infield Box Seats -- will remedy this injury. Therefore, the Individual Plaintiffs have standing. Lujan v. Defenders of Wildlife, 504 U.S. 555, 560-61 (1992).

51. Because CCDC members otherwise have standing to sue in their own right, because the interests at stake in this litigation are germane to CCDC's purpose, and because neither the claim asserted nor the relief requested requires the participation of individual members, CCDC has standing to bring this case. Friends of the Earth, Inc. v. Laidlaw Env'tl. Servs. (TOC), Inc., 528 U.S. 167, 181 (2000).

## **II. Statutory and Regulatory Background.**

52. The ADA was passed in 1990 "to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities." 42 U.S.C. § 12101(b)(1). Title III of the ADA prohibits disability discrimination by those who own or operate places of public accommodation -- such as Coors Field -- "in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations" of that public accommodation. Id. § 12182(a).

53. Coors Field is a place of public accommodation, as that term is used in Title III of the ADA. Id. § 12181(7)(D).

54. The ADA prohibits places of public accommodation from affording people with disabilities an opportunity that is not equal to that afforded others, id. § 12182(b)(1)(A)(ii), or providing people with disabilities goods, services, facilities, privileges, advantages or accommodations that are different or separate from those provided others, unless such action is

necessary to provide people with disabilities with goods and services that are as effective as those provided others. Id. § 12182(b)(1)(A)(iii).

55. Title III also requires that “[g]oods, services, facilities, privileges, advantages, and accommodations shall be afforded to an individual with a disability in the most integrated setting appropriate to the needs of the individual.” Id. § 12182(b)(1)(B).

56. Because it was built for first occupancy after January 26, 1993, Coors Field was required to be designed and constructed to be “readily accessible to and usable by individuals with disabilities.” 42 U.S.C. § 12183(a)(1).

57. To comply with section 12183(a)(1), a facility must be built in conformance with the Department of Justice Standards for Accessible Design (“Standards”). 28 C.F.R. pt. 36, app. A; see 28 C.F.R. § 36.406 (requiring conformance with the Standards). Coors Field was built after January 26, 1993, and was thus required to be designed and constructed in compliance with the Standards.

58. The only defense to compliance with the Standards in the design and construction of new facilities is where it is “structurally impracticable” to do so, 42 U.S.C. § 12183(a)(1), that is, “only in those rare circumstances when the unique characteristics of terrain prevent the incorporation of accessibility features.” 28 C.F.R. § 36.401(c)(1) (emphasis added), see also Standards § 4.1.1(5)(a) (same).

59. Because Defendant did not plead the affirmative defense of structural impracticability, the Court will not consider whether this defense applies. Defendant did not, in

any event, offer any evidence that it would have been structurally impracticable to design and construct Coors Field with wheelchair-accessible seats adjacent to the infield.

60. The Standards prohibit any alteration that “decreases or has the effect of decreasing accessibility or usability of a building or facility below the requirements for new construction at the time of alteration.” Standards § 4.1.6(1)(a).

### **III. The Lower Level Box Seating Areas At Coors Field Are In Violation of the ADA.**

61. Congress, in discussing the ADA’s “fundamental principle” of integration for people with disabilities, stated that:

[h]istorically, persons with disabilities have been relegated to separate and often inferior services. For example, seating for persons using wheelchairs is often located in the back of auditoriums. In addition to providing inferior seating, the patron in a wheelchair is forced to separate from family or friends during the performance.

H.R. Rep. No. 101-485, pt. 2, at 102 (1990), reprinted in 1990 U.S.C.C.A.N. 303, 385 (emphasis added). Congress specifically concluded that, “it is critical that seating be available in the front of the audience for persons with hearing and vision impairments, including those who use wheelchairs.” Id. at 103, reprinted in 1990 U.S.C.C.A.N. 303, 386.

62. In the text of the ADA, Congress instructed the Department of Justice (“DOJ”) to promulgate regulations and standards implementing the provisions of Title III, 42 U.S.C. § 12186(b); these regulations are “entitled to deference.” Bragdon v. Abbott, 524 U.S. 624, 646 (1998). Congress also instructed the Architectural and Transportation Barriers Compliance Board (“Access Board”) to issue “minimum guidelines” that “shall establish additional requirements . . . to ensure that buildings [and] facilities . . . are accessible, in terms of

architecture and design . . . to individuals with disabilities.” 42 U.S.C. § 12204(a) & (b). In response to this instruction, the Access Board issued its “Americans with Disabilities Act Architectural Guidelines” (“ADAAG”). 56 Fed. Reg. 35,408 (July 26, 1991).

63. Pursuant to the instruction of Congress in § 12186(c), the DOJ adopted the ADAAG as its Standards for Accessible Design. 28 C.F.R. pt. 36, app. A.

64. Section 4.1.3(19) of the Standards requires assembly areas such as Coors Field to have wheelchair-accessible seating that numbers approximately one percent of the seating, and requires each wheelchair-accessible seat to have a companion seat next to it. Standards § 4.1.3(19), Department of Justice, “Accessible Stadiums,” at 1.

65. Section 4.33.3 of the Standards governs assembly areas such as Coors Field. It reads, in relevant part:

[w]heelchair areas shall be an integral part of any fixed seating plan and shall be provided so as to provide people with physical disabilities a choice of admission prices and lines of sight comparable to those for members of the general public. . . . At least one companion fixed seat shall be provided next to each wheelchair seating area. When the seating capacity exceeds 300, wheelchair spaces shall be provided in more than one location.

EXCEPTION: Accessible viewing positions may be clustered for bleachers, balconies and other areas having sight lines that require slopes of greater than 5 percent. Equivalent accessible viewing positions may be located on levels having accessible egress.

66. The Department of Justice has explained that the requirement for wheelchair-accessible seating in more than one location where capacity exceeds 300 “is known as dispersed seating. Wheelchair seating locations must be dispersed throughout all seating areas and provide

a choice of admission prices and views comparable to those for the general public.” Department of Justice, “Accessible Stadiums” at 1 (emphasis added).

67. Section 4.33.3 thus requires four things: that wheelchair-accessible seating be integrated into the seating for the general public; that it be dispersed throughout all seating areas; that it provide lines of sight comparable to those for the general public; and that it provide a choice of admission prices comparable to those for the general public.

68. It is appropriate to apply the requirements of 4.33.3 to seating areas within Coors Field rather than limiting the analysis to the assembly area as a whole. The DOJ requires this when it requires dispersal “throughout all seating areas,” “Accessible Stadiums,” at 1, and a number of cases have applied the requirements to individual seating areas within assembly areas. See, e.g., Indep. Living Res. v. Oregon Arena Corp., 982 F. Supp. 698, 709 & n.9 (D. Or. 1997) (quoting “Accessible Stadiums,” noting that the DOJ believes “wheelchair spaces ‘must be dispersed more or less evenly throughout the categories of ticket prices and classes of seating,’” and applying requirement of one percent wheelchair-accessible seating to individual seating areas within an arena); Paralyzed Veterans of Am. v. Ellerbe Becket Architects & Eng’rs., P.C., 950 F. Supp. 393, 404 (D.D.C. 1996) (applying the comparable line of sight requirement to individual seating areas in the arena).

69. In addition, it is appropriate to read the requirements of Section 4.33.3 together, so that dispersed, integrated seats with comparable lines of sight are priced comparably to similar seats for the general public. See, e.g., Paralyzed Veterans, 950 F. Supp. at 404 (“Dispersal requires a choice of various seating areas, good and bad, expensive and inexpensive, which

generally matches those of ambulatory spectators. . . . [I]t is not ‘comparable’ to force a wheelchair patron to choose between a good view and a good location.”); United States v. Cinemark USA, Inc., 348 F.3d 569, 576 (6th Cir. 2003) (Section 4.33.3 is “intended to assure disabled patrons seats of ‘comparable’ quality to those provided for members of the general public.”), petition for cert. filed No. 03-1131 (U.S. Feb. 4, 2004).

70. The Lower Level Box seating areas at Coors Field do not comply with the ADA.

**A. The Lower Level Box Seating Areas at Coors Field Are in Violation of Section 4.33.3.**

**1. Wheelchair-Accessible Seating Is Not Dispersed In the Lower Level Box Seating Areas at Coors Field.**

71. In order to satisfy the requirement that wheelchair-accessible seating be “dispersed throughout all seating areas,” it must be “provided in a number equal to approximately one percent of the seats in each price range, level of amenities, and viewing angle.” Indep. Living Res., 982 F. Supp. at 709 & n.9 (quoting letter dated Nov. 21, 1994 from the DOJ regarding Yakima Stadium).

72. Dispersal, under Section 4.33.3, requires both horizontal and vertical dispersal and requires that “wheelchair locations must be distributed in a manner that roughly approximates the overall distribution of seats in the arena.” Id. at 709. Without this requirement, “an arena operator could simply designate a few token wheelchair seats in the better seating areas, and cluster the majority of wheelchair seats in the last row or in other undesirable locations.” Id.



73. “[T]here need not be wheelchair seating in every section of the arena, but there must be spaces scattered throughout a sufficiently representative number of sections in the seating bowl to provide comparable choices.” Paralyzed Veterans, 950 F. Supp. at 404.

74. Wheelchair-accessible seating is not dispersed throughout the Lower Level Box seating areas at Coors Field. Because there are no wheelchair-accessible seats farther forward than the last row, this does not “roughly approximate” the distribution of seats in the ballpark, which distribution includes many ambulatory seats in the front row and many rows closer to the infield than the 39th row.

75. The choice of wheelchair-accessible in the Lower Level Box seating areas does not “generally match[ ] [that] of ambulatory spectators,” see Paralyzed Veterans, 950 F. Supp. at 404, because patrons who use wheelchairs may not choose to sit near the infield unless they are willing to pay at least \$100 per seat, while non-disabled patrons can do this for \$20 to \$40. All of the wheelchair-accessible seats in the Infield Box and Midfield Box seating areas, and many of those in the Outfield Box seating areas, are under an overhang, while non-disabled patrons have a choice of 9,225 seats in these areas that are not obstructed by the overhang.

76. Ultimately, Defendant has done in the Lower Level Box seating areas precisely what the court in Independent Living Resources warned against: “designate[d] a few token wheelchair seats in the better seating areas” -- here, the Coors Clubhouse -- and “cluster[ed] the majority of wheelchair seats in the last row . . .” Id., 982 F. Supp. at 709.

77. While Coors Field is not required to have front row wheelchair-accessible seating in every section of the Lower Level Box seating areas, there must be front-row wheelchair-

accessible seats in a “sufficiently representative number of sections . . . to provide comparable choices” for seats near the infield. See Paralyzed Veterans, 950 F. Supp. at 404.

78. Based on the above, wheelchair-accessible seating is not dispersed throughout the Lower Level Box seating areas at Coors Field, in violation of section 4.33.3 of the Standards.

**2. Wheelchair-Accessible Seating Is Not Integrated In the Lower Level Box Seating Areas at Coors Field.**

79. Section 4.33.3 requires that “[w]heelchair areas shall be an integral part of any fixed seating plan . . .” As noted above, in discussing the importance of integration under the ADA, Congress specifically noted the history of relegating individuals with disabilities to inferior seating at the rear of assembly areas. See H.R. Rep. No. 101-485, pt. 2, at 102 (1990), reprinted in 1990 U.S.C.C.A.N. 303, 385 (emphasis added).

80. Congress specifically concluded that, “it is critical that seating be available in the front of the audience for persons with hearing and vision impairments, including those who use wheelchairs.” Id. at 103, reprinted in 1990 U.S.C.C.A.N. 303, 386.

81. Because all wheelchair-accessible seating in the Lower Level Box seating areas is located at the rear of those sections, it is not integrated.

82. This is especially so for individuals such as the Lucases, both of whom have visual impairments and use wheelchairs, so that they must sit close to the game in order to enjoy it.

83. Seating is integrated where it is “incorporated into, and located among, the seating for the general public.” Meineker v. Hoyts Cinemas Corp., 216 F. Supp. 2d 14, 19 (N.D.N.Y.

2002) (“Meineker I”), vacated and remanded on other grounds Meineker v. Hoyts Cinemas Corp., No. 02-9034, 69 Fed. Appx. 19, 2003 WL 21510423 (2d Cir. July 1, 2003) (“Meineker II”).

84. In addition, the DOJ has construed the integration requirement of section 4.33.3 to require “that theater operators provide wheelchair seating in the area of the theater where most members of the general public usually choose to sit.” Meineker II, 2003 WL 21510423, at \*\*2 (quoting Brief for the United States as Amicus Curiae at 25 (emphasis in Meineker II)).

85. At Coors Field, most people who purchase tickets in the Lower Level Box seating areas choose to sit close to the field; far fewer choose to sit in the back row or under the overhang. And all of the wheelchair-accessible seating in the Lower Level Box seating areas are located at the back of each seating area, behind where most people sit, not among the seating for the general public.

86. Where, as at Coors Field, “a defendant has relegated wheelchair patrons to a portion of the [assembly area] that provide[s] truly inferior viewing angles and limited or no seating for the general public,” the situation is “unquestionably . . . in violation of the ADA.” Meineker I, 216 F. Supp. 2d at 18 n.4.<sup>2</sup>

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<sup>2</sup> Defendant has suggested that wheelchair-accessible is integrated if it is merely within the footprint of the seating layout. This formulation does not ensure that the goal of Congress -- to prevent relegation of individuals with disabilities to the rear of seating areas -- is achieved. It does not, in any event, save the seating configuration at Coors Field. Ballpark-wide, 88% of the wheelchair-accessible seats are located at the back of their respective seating areas. Cf. Indep. Living Res., 982 F. Supp. at 717 (fact that 82% of wheelchair-accessible seating was clustered at the ends and on an upper level was “disproportionate”). As such, wheelchair-

(continued...)

87. Based on the above, wheelchair-accessible seating is not integrated into the Lower Level Box seating areas at Coors Field, in violation of section 4.33.3 of the Standards.

**3. Wheelchair-Accessible Seating Does Not Provide Comparable Lines of Sight In the Lower Level Box Seating Areas at Coors Field.**

88. Section 4.33.3. requires that Defendant locate wheelchair-accessible seats “so as to provide people with physical disabilities a choice of . . . lines of sight comparable to those for members of the general public.”

89. “Comparable” in this context means “similar.” Cinemark, 348 F.3d at 575-76; see also Meineker I, 216 F. Supp. 2d at 18 (“The requirement that a line of sight be ‘comparable’ clearly imposes a qualitative requirement that the sight line be ‘similar . . .’”).

90. “Line of sight” means “a line from an observer’s eye to a distant point . . . toward which he is looking . . .” Oregon Paralyzed Veterans of Am. v. Regal Cinemas, Inc., 339 F.3d 1126, 1131 (9th Cir. 2003) (quoting Webster’s Third New International Dictionary, at 1316 (1993) (ellipses added)), petition for cert. filed, No. 03-641 (U.S. Oct. 27, 2003).

91. The requirement of similar lines of sight includes both horizontal and vertical viewing angles; “[a] variety of factors determine the quality of ‘vertical’ sight lines, such as the distance from performance areas . . .” Architectural and Transportation Barriers Compliance Board, ADAAG Manual at 117 (emphasis added).

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<sup>2</sup>(...continued)  
accessible seating at Coors Field cannot be considered to be “integrated.”

92. Locating wheelchair-accessible seats only behind the back of the Lower Level Box seating areas does not offer disabled patrons seats with comparable lines of sight to the ambulatory seats in the front of these areas.

93. Given that the quality of vertical sight lines includes distance from the performance area, because of their greater distance from and height above the field, the wheelchair-accessible seats behind the 38th row are not comparable to the ambulatory seats in the first few rows.

94. Given that “lines of sight” means a line from the observer’s eye to that toward which he is looking, the fact that most fans with disabilities sitting behind the back row under an overhang have no lines of sight to many pop fly, pop foul and home run balls means that their lines of sight are not comparable to those of the thousands ambulatory Lower Level Box seats unaffected by the overhang.

95. Based on the above, wheelchair-accessible seating in the Lower Level Box seating areas does not provide people with physical disabilities a choice of lines of sight comparable to those for members of the general public, in violation of section 4.33.3 of the Standards.

**4. Wheelchair-Accessible Seating Does Not Provide Comparable Prices In the Lower Level Box Seating Areas at Coors Field.**

96. Section 4.33.3 requires that patrons who use wheelchairs be provided “a choice of admission prices . . . comparable to those for members of the general public.”

97. This requirement must be read together with the requirements of dispersal, integration and lines of sight. As one court has noted: “Dispersal requires a choice of various

seating areas, good and bad, expensive and inexpensive, which generally matches those of ambulatory spectators. . . .” Paralyzed Veterans, 950 F. Supp. at 404.

98. It is not sufficient simply to have some wheelchair-accessible seats in each price range:

[W]heelchair spaces ordinarily must be available in each ticket price category. However, that by itself will not always be enough to completely satisfy the requirement in Standard 4.33.3 that in large assembly areas wheelchair spaces must be an integral part of the seating plan and be dispersed so as to provide wheelchair users with a choice of sightlines and ticket prices comparable to those available to the general public.

Indep. Living Res., 982 F. Supp. at 709.

99. Comparable seats should thus have comparable prices.

100. This is not the case at Coors Field, where the only wheelchair-accessible seats providing comparable views, lines of sight and experiences to the almost 2,000 ambulatory seats in the first five rows of the Lower Level Box seating areas cost at least three times as much.<sup>3</sup>

101. Based on the above, wheelchair-accessible seating in the Lower Level Box seating areas does not provide people with physical disabilities prices comparable to those for members of the general public, in violation of section 4.33.3 of the Standards.

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<sup>3</sup> Defendant argues that section 4.33.3 merely requires a range of admission prices. This is contrary to the language of the regulation, which requires “a choice of admission prices . . . comparable to those for members of the general public.” In addition, it would permit pricing policies in flagrant violation of the letter and spirit of the ADA, for example, charging \$10 more for each wheelchair-accessible seat than for an ambulatory seat in the same section. The prices would still represent a “range,” but would not be “comparable to those for members of the general public.”

102. Further, wheelchair-accessible seating in the Lower Level Box seating areas does not provide people with physical disabilities with seats of comparable quality or that offer a comparable experience to those for members of the general public.

**B. The Exception In Section 4.33.3 Does Not Apply to the Lower Level Box Seating Areas at Coors Field.**

103. Section 4.33.3 contains the following exception (the “Bleacher/Balcony Exception”):

EXCEPTION: Accessible viewing positions may be clustered for bleachers, balconies and other areas having sight lines that require slopes of greater than 5 percent. Equivalent accessible viewing positions may be located on levels having accessible egress.

104. Defendant argues that the Bleacher/Balcony Exception excuses the current configuration at Coors Field, in which all wheelchair-accessible seats in the Lower Level Box seating areas are located behind the back row of ambulatory seating. This is not the case.

105. As an initial matter, the Bleacher/Balcony Exception does not apply to the Lower Level Box seating areas at Coors Field.

106. The ADAAG Manual states that it applies “only [in] discrete parts of an assembly seating area” often “situated high above the performing area.” Id. at 117.

107. The DOJ concurs:

The government . . . asserts that the clustering exception is intended to have very limited application to discrete parts of assembly areas, such as balconies, bleachers, and the like. These seating areas are unique, it says, in that they are almost always situated high above the spectacle to be observed (i.e., where the sight lines almost always exceed five percent).

Fiedler v. Am. Multi-Cinema, Inc., 871 F. Supp. 35, 38-39 (D.D.C. 1994).

108. The Infield Box seating areas at Coors Field are neither bleachers nor balconies, and this area is not located high above the performance area, but rather immediately adjacent to the field.

109. As such, the Bleacher/Balcony Exception does not apply to the Lower Level Box seating areas at Coors Field.

**C. Even If the Bleacher/Balcony Exception Applies to the Lower Level Box Seating Areas at Coors Field, Those Seating Areas Are Still out of Compliance with the ADA.**

110. The Bleacher/Balcony Exception does not excuse Defendant from the requirements of integration, comparable prices, comparable lines of sight or (where feasible) dispersal. As such, even if it does apply to the Lower Level Box seating areas at Coors Field, it would not excuse the lack of front-row wheelchair-accessible seating.

111. The Bleacher/Balcony Exception itself provides that “[e]quivalent accessible viewing positions may be located on levels having accessible egress.” Standards § 4.33.3.

112. In this context, the phrase “[e]quivalent accessible viewing positions” refers to the types of equivalence required by the section of which the Bleacher/Balcony Exception is a part -- Section 4.33.3 -- and thus refers to seats with equivalent lines of sight and prices.<sup>4</sup>

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<sup>4</sup> Defendant argues that “equivalent” used in this context refers to the equivalent numbers required by section 4.1.3(19) of the Standards. Given that the Bleacher/Balcony Exception is included in section 4.33.3 and immediately follows that section’s requirement of comparable lines of sight and prices, it makes far more sense to read “equivalent” in the Bleacher/Balcony Exception to refer to those required equivalences. This interpretation also has the advantage of being in harmony with the language and goals of the ADA and its legislative history, and is thus to be preferred. See Joy Techs., Inc. v. Sec’y of Labor, 99 F.3d 991, 996 (continued...)



113. The ADAAG Manual makes clear that the Bleacher/Balcony Exception “is not an exemption from requirements for integrated or companion seating or choice in admission prices. Where dispersion is feasible, it must be achieved.” Id. at 117. One of the only cases to discuss the Bleacher/Balcony Exception applied that exception while, at the same time, requiring compliance with the integration and comparable line of sight requirements. Meineker I, 216 F. Supp. 2d at 17-19.

114. The Bleacher/Balcony Exception -- read in its entirety and in light of the ADAAG Manual and the Meineker I decision -- excuses dispersal “throughout” a seating area -- that is, to middle rows or tiers -- and permits the stadium to cluster the wheelchair-accessible seating otherwise required by section 4.33.3 where accessible egress is feasible.

115. At Coors Field, this means that Defendant is not required to provide wheelchair-accessible seating in the middle -- say, row 19 -- of the Lower Level Box seating areas; but it is required to provide wheelchair-accessible seating where accessible egress was and is feasible, that is, at the back and front of those areas.

116. Defendant did not plead and has not proven that accessible egress -- and therefore dispersal -- is not feasible in the front row of the Lower Level Box seating areas.

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<sup>4</sup>(...continued)  
(10th Cir. 1996) (“a regulation must be interpreted so as to harmonize with and further and not to conflict with the objective of the statute it implements.” (Citation omitted.)); Emery Mining Corp. v. Sec’y of Labor, 744 F.2d 1411, 1414 (10th Cir. 1984) (“[w]here there is an interpretation of an ambiguous regulation which is reasonable and consistent with the statute, that interpretation is to be preferred.” (Citation omitted.))

117. Coors Field was required to be designed and constructed in compliance with the Standards. 42 U.S.C. § 12183(a)(1); 28 C.F.R. § 36.406(a).

118. Section 4.33.3 of the Standards requires dispersal “throughout all seating areas.” “Accessible Stadiums” at 1. Section 4.1.3(1) requires that “[a]t least one accessible route . . . shall connect accessible building or facility entrances with all accessible spaces and elements within the building or facility.”

119. As a result, Coors Field was required to have been designed and constructed with front-row wheelchair-accessible seating in the Lower Level Box seating areas and an accessible route to those seats.

120. The only defense to compliance in new construction is where it is “structurally impracticable.” Defendant has neither pleaded nor proved that defense.

121. Although “feasibility” is not a defense to compliance with the Standards, Defendant has neither pleaded nor proved that it was “infeasible” to include wheelchair-accessible seating at the front of the Lower Level Box seating areas.

122. Ultimately, Defendant cannot argue that it was infeasible to provide accessible egress at field level, because such egress already exists: in the Coors Clubhouse. There are already wheelchair-accessible at the field level; they are simply insufficient in number and -- at \$100 each, in contrast to the thousands of ambulatory seats \$40 and under -- violate the requirement of comparable prices.

**D. The Lower Level Box Seating Areas Violate the General Anti-Discrimination Provisions of the ADA.**

123. The current configuration and pricing of wheelchair-accessible seating in the Lower Level Box seating areas at Coors Field does not provide people with disabilities an opportunity equal to that provided others, but rather provides such people with goods, services, facilities, privileges, advantages and accommodations that are different or separate from those provided others, in violation of 42 U.S.C. §§ 12182(b)(1)(A)(ii) & (iii).

124. The current configuration and pricing of wheelchair-accessible seating also fails to provide “[g]oods, services, facilities, privileges, advantages, and accommodations . . . to . . . individual[s] with . . . disabilit[ies] in the most integrated setting appropriate to the needs of the individual[s],” in violation of 42 U.S.C. § 12182(b)(1)(B).

**E. The Creation of the Coors Clubhouse Reduced the Accessibility of Coors Field Below that Required by the Standards.**

125. When Coors Field was built, it included eight wheelchair-accessible seats and nine companion seats in the front of section 132 of the Infield Box seating area.

126. Because these were the only wheelchair-accessible seats adjacent to the infield -- indeed, the only such seats that were not behind all ambulatory seats -- there were not enough of them. To have been in full compliance with Section 4.33.3, Coors Field should have had at least twenty wheelchair-accessible seats and twenty companion seats located in the front row of several different Infield Box Sections. However, the Backstop Accessible Seats -- from 1995 to 2000 -- were properly dispersed to the front of the Infield Box seating area, integrated into that seating area, and priced comparably to the other front-row ambulatory seats in that seating area.

127. Because the creation of the Coors Clubhouse had the effect of removing front-row wheelchair-accessible seating from the Infield Box seating area and of pricing the only wheelchair-accessible seats near the infield at three times the level of comparable ambulatory seats, it decreased the level of compliance below that required by the Standards, in violation of section 4.1.6(1)(a) of the Standards.

#### **IV. Remedies**

##### **A. Injunction**

128. Defendant is in violation of 42 U.S.C. §§ 12182 and 12183 of the ADA, and their implementing regulations, because the Lower Level Box seating areas does not have wheelchair-accessible seating that is integrated and dispersed, with comparable prices and lines of sight, and because Defendant has reduced the accessibility of Coors Field below that required by the Standards.

129. Pursuant to 42 U.S.C. § 12188(a)(2), Defendant is ordered to remedy this violation by either

- a. Selling six wheelchair-accessible and six companion seats in the Coors Clubhouse for the same price as Infield Box seats.<sup>5</sup> Defendant may elect not to provide Coors Clubhouse amenities with these seats, but -- because such facilities are available to nondisabled patrons in ambulatory seats in

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<sup>5</sup> Cf. Paralyzed Veterans, 950 F. Supp. at 404 n.24 (noting that one arena had “cured” the lack of wheelchair-accessible seating in a less-expensive section by offering accessible seats in a more-expensive section for the less-expensive price).

the Lower Level Box seating areas -- must permit occupants of these seats to use the restroom closest to the seats. For the same reason, although Defendant need not provide free food and non-alcoholic beverages to the occupants of such seats, it must permit those occupants to purchase food and beverages, as well as alcoholic beverages, from Coors Clubhouse waitstaff.

and/or

- b. Installing twenty wheelchair-accessible and twenty companion seats in the front of two separate sections of the Lower Level Box seating areas before the commencement of the 2005 Major League Baseball season. One section (containing ten wheelchair-accessible and ten companion seats) must be an Infield Box section; the other may be either a Midfield Box section or an Outfield Box section. The seats must comply with the requirements of section 4.33.3, for example, governing companion seating and with the remainder of the requirements of the Standards.

130. Defendant is further ordered to ensure that any seats constructed or repriced pursuant to Paragraph 128 above are made available for sale to individuals with disabilities on the same terms as ambulatory seats in the Infield Box section (or, in the case of seats installed in the Midfield or Outfield Box sections, on the same terms as ambulatory seats in the corresponding section) are made available to individuals without disabilities. Specifically, Defendant shall not limit the sales of any such seats to the day of game, and shall advertise and

publicize their presence and availability to the same extent and on all charts and in all media in which the availability of ambulatory seats in the Lower Level Box seating areas are advertised or publicized.

131. Finally, Defendant is ordered to train its staff and contractors concerning the availability of any such seats to ensure that, when patrons inquire concerning the availability of such seats, they receive accurate information.

**B. Attorneys' Fees and Costs**

132. Plaintiffs are the prevailing parties in this litigation, as that term is used in 42 U.S.C. § 12205. As such, they are entitled to recover their attorneys' fees, including litigation expenses, and costs.

Respectfully submitted,

FOX & ROBERTSON, P.C.

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Timothy P. Fox  
Amy F. Robertson  
910 - 16th Street, Suite 610  
Denver, CO 80202  
303.595.9700

Kevin W. Williams  
Legal Program Director  
Colorado Cross Disability Coalition  
655 Broadway, Suite 775  
Denver, CO 80203  
303.839.1775

Attorneys for Plaintiffs

Dated: March 15, 2004

**Certificate of Service**

I hereby certify that on March 15, 2004, copies of Plaintiffs' Proposed Findings of Fact and Conclusions of Law were served by first-class mail, postage prepaid, on:

K. Preston Oade, Esq.  
Holme, Roberts & Owen, LLP  
1700 Lincoln Street  
Suite 4100  
Denver, CO 80203

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