

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

VOICES FOR INDEPENDENCE, ET AL.,	}	
	}	
Plaintiffs,	}	
	}	No. 06-78 Erie
vs.	}	Judge McLaughlin
	}	
COMMONWEALTH OF PENNSYLVANIA DEPARTMENT OF TRANSPORTATION, ET AL.,	}	
	}	
Defendants.	}	

FOURTH SETTLEMENT AGREEMENT BETWEEN PLAINTIFFS AND
DEFENDANT COMMONWEALTH OF PENNSYLVANIA DEPARTMENT OF TRANSPORTATION

I. BACKGROUND

On March 28, 2006, Plaintiffs filed a class action complaint against, inter alia, the Commonwealth of Pennsylvania Department of Transportation (“PennDOT”) alleging violations of Title II of the Americans with Disabilities Act and of the Rehabilitation Act of 1973, arising from PennDOT’s failure to install curb ramps compliant with the applicable federal access provisions along PennDOT streets, roads or highways located in the Cities of Erie and Meadville, Pennsylvania.

The Court previously has approved and has expressly retained jurisdiction over the Parties to interpret and to enforce the terms of three Settlement Agreements between Plaintiffs and PennDOT. See Document 23, entered December 22, 2006, Document 33, entered April 19, 2007 and Document 51, entered March 4, 2009. Additional issues have arisen between the Parties regarding some of the application of the terms and conditions of those three documents, and the Parties have met to discuss these issues. The Parties have now agreed on the following terms to clarify these issues, have approached the Court, and the Court now finds as follows:

II. AGREEMENT

A. Intent of the Parties. The Plaintiffs and PennDOT now wish to clarify several issues that have arisen during the implementation of the previously entered documents ## 23, 33 and 51. The requirements of the Parties' earlier Settlement Agreement Orders remain in full force and effect, except to the extent expressly set forth below.

B. Ramps Must be installed at all Intersections.

(1) Beginning January 1, 2011 and thereafter, PennDOT shall ensure that within the Cities of Erie and Meadville newly constructed or altered State streets, roads and highways shall contain curb ramps crossing the State streets, roads and highways at all intersections containing curbs or other barriers to entry from a street level pedestrian walkway, in order to provide access from those intersections to the walkways. Each such project shall comply with all Americans with Disability Act requirements, including 28 C.F.R. § 35.151(b), (c), (i)(1) and (i)(2), and 28 C.F.R., Part 36, App. A, the ADAAG. If future changes to applicable law are formally adopted by the appropriate regulating agency, the new standards are to be incorporated in this Settlement Agreement. All curb ramps that are part of State street, road and highway projects involving new construction, resurfacing or other alteration that triggers the installation of curb ramps shall be installed during the course of and/or prior to completion of such new construction, resurfacing or other alteration project.

(2) Notwithstanding the foregoing paragraph, the Parties have been unable to agree on the disposition of curb ramps at Unsignalized T-intersections (the intersection of one roadway or highway with another roadway or highway that results in a perpendicular junction where one roadway or highway terminates). Accordingly, the Parties agree that the foregoing paragraph does not apply to Unsignalized T-intersections as heretofore described. Nevertheless, by signing this agreement, neither Party waives or abandons its position with respect to the implementation

of curb ramps at Unsignalized T-intersections. The Parties further agree to engage in further consultations pursuant to Section H of this Settlement Agreement (relating to Continuing Discussions) in order to attempt to reach a consensus on this issue.

(3) For purposes of this Agreement, the junction of an alley or driveway with a State street, road or highway shall not constitute an intersection, unless the State street, road or highway at said junction is controlled by a traffic control device.

(4) In the rare circumstance that PennDOT believes that on a State street, road or highway it should leave in place a curb or other barrier to entry to a pedestrian level walkway, or that it should replace an existing ramp with a curb or other barrier, it must first adhere to the following procedure:

(a) Written Notice. PennDOT shall within ten days of discovering the alleged site conditions which it believes supports such action, inform Plaintiffs' counsel in writing via email and hard copy. This writing shall identify the engineer(s) who have reviewed the intersection(s), shall identify the location of the intersection(s), and shall provide a statement of the circumstances which PennDOT believes supports its proposed action. The Parties shall allow 15 days from the postmark or email notification to resolve the matter.

(b) Unresolved Disputes. In the event that the Parties cannot resolve a dispute concerning removing barriers at any such intersection(s), the Parties expressly agree and the Court expressly retains jurisdiction to resolve any disputes under the terms of this Order, as well as the Court's earlier Settlement Agreement Orders. Either party may file a motion with the Court to address any unresolved issues.

Any final resolution under this paragraph shall be treated as a decision by the Court.

C. Installing ramps omitted during work performed since 2007

(1) In a written report, PennDOT shall identify all State street, road and highway intersections newly constructed or altered by PennDOT in the Cities of Erie and Meadville during the years 2007 through 2010, where curb ramps were not installed at each such intersection. The report shall specify at those intersections each location still containing curbs or other barriers to entry from a street level pedestrian walkway. PennDOT shall file with the Court and Plaintiffs' Counsel a report comprehensively listing each such location no later than thirty days from today;

(2) The Parties shall negotiate in good faith to establish a schedule to install where appropriate the omitted curb ramps at these locations. In the rare event that PennDOT believes that as to any locations on this listing it should leave in place a curb or other barrier to entry to a pedestrian level walkway, or that it should replace an existing ramp with a curb or other barrier, it must first adhere to the following procedure set forth in Section B(2) above. PennDOT will file any mutually agreed upon schedule with this Court no later than sixty days from today. If the Parties do not agree by this deadline, any party may file a motion with the Court to resolve the time frame for this retrofitting.

D. "Pitcher's Mound" Issue. Beginning in Year 2011 and thereafter, PennDOT shall make all reasonable efforts to avoid altering or installing new curb ramps at intersections while also ending the construction season with the resurfacing unfinished, creating a non-flush transition where the new curb ramp meets the intersection. In the event that this occurs, PennDOT, within fifteen days of such an occurrence, shall notify in writing Plaintiffs' Counsel

of the exact locations of each such occurrence, along with PennDOT's proposal for creating a transition during the Winter. The Parties shall allow at least ten days to resolve the issue, and either party may file a motion or approach the Court thereafter if they are unable to reach a resolution.

E. "Undulating" Pedestrian Walkways. The Parties have discussed newly constructed pedestrian walkways where there are several rapid increases or decreases in running slopes of these walkways, including, but not limited to, where the walkways intersect with driveway aprons cutting through the walkway. Especially where two or more such driveway aprons are close to each other, this tends to create an "undulating" walkway, which can be difficult for mobility impaired pedestrians to navigate. PennDOT shall take all reasonable steps to minimize constructing walkway portions with running slopes exceeding 5%.

F. Accessibility Standards and Guidelines Controlling Settlement Order. According to the Settlement Orders already existing in this lawsuit (Documents 23 and 32), all portions of State streets, roads and highways newly constructed or otherwise altered by PennDOT shall comply with all Americans with Disability Act requirements, including 28 C.F.R. § 35.151(b),(c), (i)(1) and (i)(2), and 28 C.F.R. Part 36, App. A, the ADAAG. That version of the ADAAG is known as the "ADAAG 2004".

On September 15, 2010, the USDOJ formally adopted revised ADA standards, known as the 2010 Standards for Accessible Design (hereinafter referred to as the "2010 Standards"). Thus, beginning March 15, 2012, the effective date of the regulations and the 2010 Standards, the 2010 Standards now establish the standard PennDOT must comply with during future construction or alterations of State streets, roads and highways located in the Cities of Erie and Meadville. However, if future changes to applicable law are formally adopted by the appropriate

regulating agency, the new standards are to be incorporated in this Settlement Agreement for the curb ramps to be installed or reconstructed after the effective date of such changes.

G. Emergency or "Department Force Maintenance" work. The Parties have met to discuss concerns Plaintiffs have with PennDOT performing maintenance work on street sections pursuant to its "Department Force Maintenance". The Parties, solely for purposes of amicable resolution, have agreed to the following: PennDOT shall provide to Plaintiffs' Counsel, via email transmission, a listing of the locations of any such work performed each year within the Cities of Erie or Meadville. Within each listing, PennDOT will identify the State Route involved, the local name of the State Route involved and, if available, the intersection nearest to the starting point of the work and the intersection nearest to the ending point of the work. This listing shall be included in a separately listed section of the Annual Report PennDOT provides to Plaintiffs' Counsel. Plaintiffs reserve the right to file a motion with the Court to determine whether any such work by PennDOT triggers the requirement for PennDOT to install ramps as a part of such work.

H. Continuing Discussions. The Parties have met to discuss various issues and concerns that have arisen in the course of this litigation, including but not limited to Emergency or "Maintenance Budget" Alterations, the Pending Peach Street Corridor Project and PennDOT Design Standards and Technical Guidelines, and shall continue to meet as necessary to address and resolve any conflicts or disagreements. If, after meeting in good faith, the Parties are unable to resolve their conflicts or disagreements, any party may file a motion with the Court concerning such issue(s).

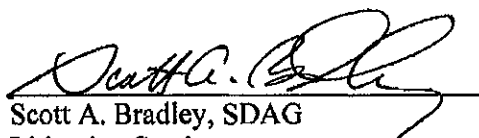
I. Fees and Costs. The Parties have met and have agreed upon an amount of compensation to Plaintiffs' attorneys. The Parties agree that this satisfies any and all claims for

fees and costs in this lawsuit up to and through the dates reflected on the invoices. By paying this amount, no party waives any claims or objections to claims for fees and costs that plaintiffs may seek for future actions in this lawsuit.

J. Prior Settlement Agreements not Affected. This settlement agreement shall not affect nor alter—unless by its explicit language—any of the obligations, duties and/or requirements arising under or created by the settlement agreements or consent decrees which previously have been entered in this case. To the contrary, to the extent the terms and conditions of those prior settlement agreements are applicable, they are hereby incorporated by reference.

K. Retention of Jurisdiction. The Parties expressly agree, and the Court expressly finds that the Court shall retain jurisdiction concerning the interpretation of and compliance with this Settlement Agreement.

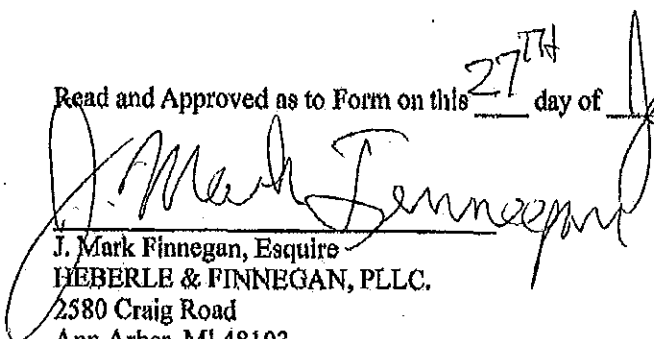
Read and Approved as to Form on this 27th day of January, 2012, by:



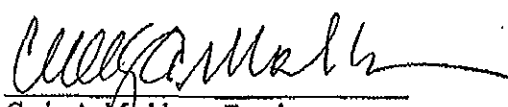
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Read and Approved as to Form on this 27th day of January, 2012, by:



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