Chris Werely: Good afternoon, good morning. Hello to everybody online today. My name is Chris Werely with UsableNet, global head of Sales and Marketing here at UsableNet. Very excited that everybody carved out a little bit of time in their day to join our webinar. We're really excited about the topic today, and we've got a great expert and partner on the phone with us today as well.

Chris Werely: Today's topic is about How to Manage and Defend Website Accessibility Claims. I'll be presenting this webinar along with Mark Sidoti, who is an attorney with Gibbons. Mark has defended and counseled many companies facing website accessibility litigation and recently posted a great article on the New York Law Review also seen on Law.com. He's an experienced attorney in the space and somebody I think can hand out a lot of practical tips to the audience today, so we're very much looking forward to this.

Chris Werely: Just a couple of housekeeping things. We are recording the webinar, so you'll get a copy of the slides as well as the recording afterwards, so we've got a lot of content on these slides that we think will be relevant to you in the followup. If you weren't able to make it, you'll get both the recording and the slides, so thanks for joining.

Chris Werely: We'll also be fielding questions, a Q&A, mostly at the end of the presentation today. There's two ways for you to submit a question. There's a question window in GoToMeeting, so you can pop a question in there, or you can use the chat window, and we'll be monitoring both of those.

Mark Sidoti: Let's move over to the agenda. Just let me jump in for a second, Chris, and thank you for having me, asking me to do this. It's a pleasure. Something I've been doing a lot of these cases in the last couple of years, and of course, as we're going to talk about, the business in this area has picked up significantly. Just so the audience understands, my work is on the defense side generally for clients that I do at Gibbons. Certainly in this area, I work on defending these claims on behalf of companies large and small that have to deal with them.

Mark Sidoti: In talking about the agenda, I think we have, as Chris mentioned, it's really going to be a lot of information. We have a lot of slides and a lot of detail. I don't think what we're going to try to do here is necessarily go through every element of every slide, because you will have those materials and will have access to all of that information. We're going to try to get as much as we can in in the hour in terms of discussion and also field some of your questions.

Mark Sidoti: Roughly, the agenda today is going to start with a brief discussion of the nature of ADA website accessibility claims, the statutory basis for those claims, the regulatory issues that surround those claims as well. Then we're going to move on to how these claims are being used by the plaintiff's bar. They're really a weapon at this point for plaintiff's law firms and, with due respect, to any plaintiff's attorneys who are on this call may be interested in this discussion.

Certainly they are being used effectively by the plaintiff's bar to get relief for their clients and also to make some money for attorneys, which we'll talk about.

Mark Sidoti: We're going to then talk about how the courts are dealing with website accessibility claims, where do the various courts stand, and that has a lot to do with why there are so many of the claims at this point. We're going to conclude with what I think everybody is really most interested in, I suspect, and that is some of the practical strategies for defending against ADA website accessibility claims, just how to deal with them, and what are some ways that you can mitigate the damage, so to speak, when these claims are brought against your company.

Mark Sidoti: We'll go to the next slide. We're ask a question-

Chris Werely: [crosstalk 00:04:57]-

Mark Sidoti: This is helpful to us just to get a background on people, so I'll turn it over to Chris.

Chris Werely: Yeah. I'll just also add that we'll add a couple of anecdotes here through the presentation on testing remediation and maintenance, really things that you can do. This poll we wanted to start with, just to get an understanding of the audience who's on the line. If you can just quickly pop that in the poll, and we'll review the results here.

Chris Werely: We have 46% of the people are representing legal. Just based on the attendee list, we know that there's some outside council as well as inside council at companies. Business and marketing, IT, and then a couple of service providers.

Mark Sidoti: Okay. That's excellent. That's a good mix. We suspected it would be primarily attorneys, which is anticipated, but that's a great mix, and it's good to know the audience.

Mark Sidoti: Let's talk about the nature of these claims and where they come from. We can go to the next slide.

Mark Sidoti: Very briefly, it's not going to be a full lesson on Title III and the ADA, but folks and many of you may know some of this stuff, so apologies if it's too surface level. Certainly Title III of the ADA requires that places of public accommodation, like really most businesses that are open to the public ... hotels, shopping centers, retailers, of course, restaurants, educational institutions, etc. ... maintain facilities that are accessible to the disabled. That's commonly known. To be covered by the ADA, an entity simply needs to fit the description above that we just mentioned regardless of number of employees, annual revenue, and things of that nature.

Mark Sidoti: What Title III states that's relevant here is that no individual shall be discriminated against on the basis of disability and the full and equal enjoyment of the goods and services, facilities, privileges, advantages, or accommodation of any place of public accommodation by any person who owns or leases such a space.

Mark Sidoti: The of is highlighted there, and it's a very short word, but very important word in this statute. We're going to talk about later how that word impacts the way the courts are interpreting the need to have an accessible website and how it relates to brick-and-mortar operations. That's a very important issue.

Mark Sidoti: We'll go to the next slide. Under Title III, what is discrimination? Discrimination includes, among other things, the failure to take steps as may be necessary to ensure that no individual with a disability is excluded, denied services, segregated, or otherwise treated differently than other individuals because of the absence of any kind of auxiliary aid or service unless the entity can demonstrate that taking those steps would fundamentally alter the nature of the goods, service, facility, or privilege or would result in an undue burden.

Mark Sidoti: You can see that there are exceptions to the extent to which companies necessarily have to make accommodations for handicapped individuals or disabled individuals, but very rarely do those exceptions come into play, certainly in the website space. Again, that's something that we'll talk further about.

Mark Sidoti: Just as a corollary, the Workforce Rehabilitation Act requires that federal agencies and federally funded programs also reasonably accommodate people with disabilities, and that applies, of course, also to websites.

Mark Sidoti: We're going to go to the next slide. Now, the ADA does not directly address websites, as you would imagine. It was a statute that was brought online in the '90s, and it was pre-internet, basically. These kinds of things were not addressed in the statute itself, but the Department of Justice has long ago ... and that's the agency that's responsible for regulating and enforcing the ADA ... long ago determined and indicated that it considers websites that offer goods and services to consumers to be places of public accommodations.

Mark Sidoti: That determination by the DOJ has really driven the way the courts have interpreted whether or not websites have to be accessible under the ADA. The courts have put very heavy reliance in the DOJ's interpretation of the statute, as might be expected, of course. DOJ regulations implementing the ADA list examples of auxiliary aids and services, and you might imagine what those include for vision-impaired individuals, braille materials.

Mark Sidoti: Most relevant to ADA website accessibility claims, screen-reader software. For the folks who don't know what that is, basically it's software that can be

installed on your computer, if you have a visual impairment, that will read basically everything on the screen or describe what is on the screen. It requires that the website be set up and coded in a way that that software will work and be able to read and verbalize, through the computer, everything that is on the screen for the vision-impaired person. The genesis for the vast, almost all, of the website accessibility claims is the fact that the screen-reader software that's most commonly used won't work effectively because of the way the website is coded and set up.

Mark Sidoti: The ADA and its implemented regulations can be enforced in a number of ways. One is through private law suits, and of course we are seeing thousands of those in this area. Separately, the DOJ can also enforce the ADA. The DOJ can intervene also in private lawsuits and has under a number of high-profile cases, although it's very uncommon for the DOJ to intervene in your typical ADA website claim. Private litigants ... and this is important ... can only seek injunctive relief. Those who don't know the difference between injunctive and compensatory relief ... injunctive is basically you are forced on the other side to fix something, to repair something, to make a change that, in this case, for example of course, to remediate the website so that it is usable for the vision-impaired person. That's really the only relief under the ADA that a private litigant can obtain, but the opener here is that a successful plaintiff can also recover attorney's fees. And attorney's fees, as you might imagine, is the factor that really drives many of these lawsuits. This whole industry of ADA website accessibility claims, while it certainly ultimately benefits vision-impaired individuals, it benefits plaintiff's attorneys because it allows for the collection of attorney's fees, which is the monetary payment that's involved in the majority of these cases that settle.

Mark Sidoti: The DOJ, if it does get involved, has broader remedies that it can obtain, because it can collect civil monetary penalties, anywhere between 75,000 and 150,000, depending on the number of violations, is recoverable if the DOJ is involved. And frankly, if the DOJ gets involved in an ADA website case involving your company, there are some serious concerns that you have to be aware of. Since it's rare, we're not going to spend too much time on that.

Mark Sidoti: We can go to the next slide. In 2010 ... and this is important ... DOJ issued what they call Advance Notice of Proposed Rulemaking, and this is basically a notice that they are considering whether or not to revise Title III of the ADA to establish requirements for website accessibility. Since they've already determined that websites need to be accessible under the ADA, obviously it would be helpful if they issued rules to say, "How do you make them accessible? What are the standards to make websites accessible?"

Mark Sidoti: One of the things that the DOJ was to consider and comment on in this rulemaking was whether or not what we know now to be the Web Content Accessibility Guidelines ... you can see that a lot. ... WCAG, which is a set of

guidelines, very detailed guidelines, that was created by an entity known as the Website Accessibility initiative of the World Wide Web Consortium. DOJ determined some time ago that those guidelines are what they are going to look to for compliance with website accessibility. One of the things that they were supposed to formally comment on was whether or not those are the guidelines that everybody should be following. In the meantime, they've made that argument in court, and many courts, as you'll see soon in our discussion, have accepted those guidelines in any event as the defacto standard for website accessibility, particularly for vision-impaired individuals.

Mark Sidoti: DOJ announced in the fall of 2015, as everybody waited for this rulemaking, that it would issue the rules, final regulations, sometime soon. It never happened. Once the Trump administration came on board, a lot of this regulatory rulemaking got put on hold or got shelved permanently, and that's what happened here. On December 26, 2017, the DOJ withdrew its Advance Notice of Proposed Rulemaking and said it will not be issuing final regulations. This is a very significant issue because it leaves litigants in this area challenging what the actual standards are or should be here, and that's one of the things you'll see when we talk about some of the current cases that the courts are considering.

Mark Sidoti: Go to the next slide. We're going to talk now a little bit about how these claims are being used by the plaintiff's bar and what plaintiffs are doing with these cases. As I mentioned, this is big business for the plaintiff's bar. You see this in certain areas of the law, certainly over my 30-plus-year career have seen various areas, whether it's fen-phen litigation over the diet drugs, or other types of cases that become a hot commodity and can last for a while. That's what you're seeing here with ADA website accessibility claims, particularly in very recent years.

Mark Sidoti: In 2018, you can see there that there were over 2000 of these claims filed in the federal courts, which is significant. 1500-plus of those claims in 2018 were filed in New York, so I sit here in New York in Gibbons' New York office. I do most of my work in New York and get automated notices of these claims. I can tell you that a handful of them cross my desk every single desk, of new claims that are being filed. There's been a tremendous increase. That, by the way, between 2018 and 2017 ... some folks have done the math on this ... it's been about 177% increase in the filings of these cases.

Mark Sidoti: They're generated by ... it used to be a very small handful of plaintiff's firms. I knew all of them and who they were. They group is getting a little bit bigger, but it's still a fairly small fraternity of firms that file these claims, and it's basically all they do. They get the moniker, as you see in a lot of patent litigation ... you've heard of patent trolls who file to enforce patents on behalf of other companies, and that's their business. These folks are sometimes referred to as ADA trolls, although they're pejorative, but that's the way it is. In 2016-

Chris Werely: Can I make a quick [crosstalk 00:17:34]?

Mark Sidoti: Yeah. Just let me finish this one bullet point.

Chris Werely: Yeah, sure.

Mark Sidoti: It's interesting to note, Chris, I wanted to tell everybody, that in 2016, if you go back just two years, there was just one firm filing almost 50% of these claims. It was the firm out of Pennsylvania. They still file a lot of these claims, but they have some company. As you see in the last bullet, no industry is immune. I mentioned this earlier. Schools, banks, retailers, educational institutions. You name it. Art galleries. We're seeing everybody get sued, and Chris can speak to this a little bit.

Chris Werely: Yeah. I'll just add a couple of anecdotes. It's been very heavily focused on retail, especially with the nexus of brick-and-mortar, and online. But we've seen all kinds of different companies. As well as size, right? That's actually an early question that just came up was what if it's a micro business? It's a small site. And Mark, there's really no distinction between a large business or a small business for any of these claims, is there?

Mark Sidoti: There really isn't. As I mentioned earlier, the ADA doesn't really turn on how many employees you have. This is one of the reasons why you see such a increase in these claims, because any size company can be sued. To get to the heart of that question, I think, and anticipate where that's going, the cases are handled somewhat differently when it's a smaller company. The plaintiff's attorneys know that they likely need to take less money to settle the case in terms of council fees, perhaps be a little more lenient in terms of what they're looking for regarding remediation. So they are handled differently, depending on the size of the company, but certainly no size company is really immune from these types of claims. We can go to the next slide.

Mark Sidoti: Yeah. The allegations in these cases, as you might imagine, are fairly standard. As I mentioned, hearing or visually impaired plaintiffs, and usually visual, allege that they use screen-reading software or other types of assistive technology to access a websites' content, but there are digital barriers based on the way the website is set up that limits their access. A very basic, straightforward claim. Of course, the ADA is cited. But again, the complaints will typically itemize specific barriers that are encountered on websites generally, not even necessarily with respect to that website, and oftentimes they're supported by some sort of expert analysis, a website accessibility or compliance expert, or someone who has looked at the site and determined that it is not compliant with WCAG 2.0.

Mark Sidoti: Sometimes these suits are preceded by a detailed letter to the target entity, which outlines the problems with the website, summarizes what the law is, maybe mentions that an expert has accessed the site, and demands a pre-suit

settlement in the form of the injunctive relief we talked about, which is of course remediation of the site and attorney's fees. You can go to the next slide.

Mark Sidoti: The letter approach is becoming less and less a way of proceeding. When these cases first started three or four ... more than this ... four of five years ago, very often ... and often it was that one firm in Pennsylvania ... would initiate many of the cases by sending a letter to the company basically saying, "Your site's not in compliance. My client tried to use it and was unable to successfully use the site and is being discriminated against. We want you to remediate and to pay us whatever the amount of money is," and we'll talk about what the range is later. Those letters have basically ... I don't want to say disappeared, but they're much less frequent at this point.

Mark Sidoti: In 2017 and 2018 for sure, most claims have been initiated by the actual filing of a lawsuit seeking injunctive relief, remediation as I mentioned, and council fees. So the point there is that there is no advanced notice in the vast majority of cases at this point. When you learn about this is when you receive a summons and complaint as a company, typically. The approach has changed a little bit over the years.

Mark Sidoti: A lot of recent claims ... and this is important as well ... particularly in 2018, we have started to see a tremendous number of cases being filed as class action, particularly in New York, which seek relief on behalf of an entire class of vision-impaired individuals. Just very briefly on the class action aspect of these cases, if it scares people, that's because it's designed to scare people. By that I mean the plaintiff's attorneys really do not intend to pursue these cases as actual class actions. A class action is a very complex litigation. It's also very costly and very time consuming. The purpose of filing these as class actions, in my experience with these cases, is to scare the other side into taking action and settling the case, perhaps parting with more money than they would normally want to part with to resolve the case.

Mark Sidoti: The class aspects of these litigations rarely proceed. I don't know of one case where the typical step ... for non-lawyers and those who don't do class actions ... in class action litigation is to go to what's called class certification and have the court certify the class in the first instance. None of these cases have gone to class certification, and all of them have been settled with a dismissal or a release of the class action claims. It's really what I call an in terrorem step that the plaintiffs are taking to spook their adversaries in these cases. You can go to the next slide.

Mark Sidoti: Now, again, the claims almost always, I say here, have some degree of merit. They almost always have some degree of merit, meaning that the websites have deficiencies. They are not in full compliance certainly with WCAG 2.0 in many cases, and things need to be done to make the websites more accessible. But a lot of times, these deficiencies are magnified in order to try to extract a larger

settlement or to get a reluctant company to agree to focus on the case and fix the website. Oftentimes, you do need a website accessibility expert. Certainly I would say in every case where you have a definitely site, you need a company like UsableNet to jump in, take a look at the site, and start the process of advising what needs to be done to remediate. Because at the end of the day, the litigation in these cases is typically very brief and can be resolved, but what remains is the big undertaking, which is to remediate your site. That is not something that happens quickly in many cases, depending on the size of your company and the complexity of your site. That's the area where you really need to start to think about getting things done to make sure you don't get sued again. We're going to talk about that issue of being sued more than once in this area shortly.

Chris Werely: Can I just add two anecdotes based on that last slide, just around merit. I think it's important to recognize that every case is not created equally. Some cases are brought by civil rights attorneys with plaintiffs who have done an exhaustive amount of probably notification to some of the companies where they actually have a plan. Others are more of this quick and more of the quote "drive-by" type litigation. But just to talk about merit, it's very easy for a plaintiff attorney to use some basic free testing tools to determine if a site is accessible or not. Just to put that in perspective, there's a nonprofit called Webbing. They have a popular basic tool called WAVE, which you may be familiar with. They did a project where they tested one million of the world's most popular home pages with their automated tools, and their results were that 97.8% of those one million home pages had a detectable accessibility issue on it. If you think about that stat, it's mind boggling. It's a very easy target for a plaintiff firm to go after, because many companies have really either done nothing or very little. That adds some perspective there.

Mark Sidoti: Okay. Thanks, Chris. We can go to the next one. As I mentioned earlier, and as Chris just alluded to, these are easy cases not only because almost every website has something that needs to be remediated on it to make it fully accessible or bring it into compliance, but because the claims are very sympathetic. They are on behalf of disabled persons. They assert what we call boilerplate claims. These are cookie-cutter complaints. They all look the same, the pleadings or the complaints that are filed. In fact, I've seen complaints more than once that simply have forgotten to change the name of the plaintiff, and it relates to another lawsuit where they used the form from another case. So they're not expensive to pursue. It costs the filing fee of filing the complaint in court and then serving it on the other side basically to start the action.

Mark Sidoti: Many times, these claims ... and by the way, these are bullets about why these claims really work for the plaintiff's bar, as it says. Many times these claims are backburnered by companies that just feel like they have more pressing legal and business challenges. Many large companies in particular, this is not a priority item for them, although I think it should be much more of a priority item

because of what can happen if you don't take care of it on a timely basis. But many companies don't, and these claims get lost in the shuffle.

Mark Sidoti: A lot of companies don't feel like these claims are worth the investment of significant defense costs. We're going to talk about how the courts dealt with these claims and the fact that it might be surprising to know that there have only been a handful of very few cases where litigants and defendants have decided they're going to challenge these claims, make motions, have hearings, do what you would normally do in a litigation, which is of course leading to the incurring of a lot of costs, a lot of attorney's fees, only basically in the end to get a ruling from the court that says, "You need to do what they said you needed to do, which is bring your site up to compliance." So there's not a lot of incentive to challenge these by spending a lot of defense costs on them. And the plaintiff council, as Chris mentioned, know that the majority of the sites need to be remediated to some extent, and that's an easy thing to determine. Overall, these are very easy claims to bring, and they lead typically to fairly quick settlements.

Mark Sidoti: You can go to the next slide. I mentioned ... whoops. No. Back one more, I think. We're way ahead. Sorry. Nope. [inaudible 00:30:05]. Yes. Oh, sorry. Okay. The next one. Thanks.

Mark Sidoti: I mentioned briefly a minute ago about follow-on claims, or second and third claims, or sometimes more. This is a growing trend. We're seeing a lot of this ... Chris can talk to it as well ... of companies that are not just being sued once in this area. They're being sued several times. Now, you might say, "How does that happen?" There's a number of reasons for that happening. Most plaintiff's attorneys, at least in the past, have tried not to sue the same company twice. They look in the dockets to see who's been sued in these cases, and they try to move on to someone else. There are so many companies that you typically don't have to really, at least in the early days, focus on the same company going back to them to sue them again. But what's happening with more attorneys getting involved on the plaintiff side is that they're losing track of who's been sued, so that's one issue why we're seeing more follow-on cases. But the main issue is that companies are not remediating their sites fast enough.

Mark Sidoti: Typically in these cases, when you settle the case, you agree to a fairly lengthy term, usually one to two years, within which you can settle the claim. What is happening is that companies are not getting their sites remediated within that period of time or they're being sued before they complete their remediation by someone else who tries to use the site and finds that it is not yet accessible.

Mark Sidoti: The other thing that's a little bit more nefarious here is that plaintiffs, I think, and I think Chris agrees, are intentionally now trying to hit companies more than once with respect to related links on their site or, with large companies, subsidiaries that have sites that are linked to a main site, for example. I have

found recently that plaintiffs are not looking as they did in the past to wrap up all related sites in one settlement with a company that they sue. They seem to be fine with just settled as to one or two specific sites and then coming back, or trying to come back, and sue again as to a linked site on a particular company's web page. I don't know, Chris, if you have any comments on this.

Chris Werely: Yeah, just two quick stats. Last year, 24% of all retailers had multiple suits against them. 24% of retailers who were sued had multiple suits. So far in 2019, 15% of all cases are ones that have been sued prior. I think we'll probably see that number continue to increase, but it's significant enough to flag it, that it's a potential issue for any company.

Mark Sidoti: Okay. Thanks, Chris. Let's talk briefly about really how the courts are dealing. I mentioned earlier it's an important factor here is what the courts are saying about these claims. We can go to the first slide. Again, as I mentioned, in the absence of the DOJ regulations and formal rulemaking by the DOJ, the courts are really left to decide whether the ADA applies to website accessibility. They've been dealing with that issue for the last five or six years. The federal courts are generally split on the issue, and this is the most important issue in ADA website litigation as to whether only a physical structure can be a place of public accommodation. Many of the early challenges to these claims basically were that a website is not a place of public accommodation, therefore it does not fall within the parameters of the ADA. I'll kill the suspense for all of you to tell you that that argument has failed on one level or another in every court that it's been brought. The courts have not agreed with that generally, so I'm getting ahead.

Mark Sidoti: The case, though, it does continue to develop, but where we stand right now, as we can see on the next slide, the Third, Sixth, Ninth, and Eleventh Circuits ... so Eleventh is Florida, where many of these cases are filed. By the way, most of the cases are in New York. Just to give you the stats, last year, 1500 cases and change filed in New York. The second most was Florida with about 575 cases. Pennsylvania and Massachusetts were a distant third and fourth, 42 and 26 cases, and a handful in California. California is about to change, or is changing, and I'll tell you why. It's based on a court decision that just came down recently, so there's going to be many more cases in California. That's generally the breakdown of the jurisdiction.

Mark Sidoti: The Eleventh Circuit is Florida, so that's obviously an important circuit in terms of how the courts are determing these cases. All those circuits have held that a place of public accommodation are physical structures and that an ADA claim can only be asserted if the discrimination bears what they call a nexus to the goods and services offered at the physical location. So there has to be some connection in those circuits between what you're doing on the website and what you may want to do in the brick-and-mortar location. If you want to see, for example, a menu that you want to take a look at for a restaurant that you

want to actually go to and access, or for some retail operation, you wanted to look at what goods and services they are offering before you actually access the location.

Mark Sidoti: As I say there, in practice, this means that an inaccessible website of a brick-and-mortar retail store could violate the ADA if the inaccessibility features of the website interfere with the full and equal enjoyment of the goods and services that are offered at the physical store. But technically, a business that operates only through the internet would be under no obligation under certain circumstances to make their website accessible. That's what's happening in those circuits right now, and actually in the Eleventh Circuit, the issue is currently before the circuit court.

Mark Sidoti: When we say circuits, we're either talking about the actual circuit court, which as some of you may know is the appellate court, the appellate federal court, or we're also talking about the districts within that circuit. Interestingly enough, there have been very few, really only two, appellate-level courts, circuit-level courts, that have dealt with ADA website accessibility claims. One is now pending in the Eleventh Circuit. The other one we're going to talk about is a decision that just came out at the Ninth Circuit, which covers California. Let's go to the next page.

Mark Sidoti: This is the split that we were talking about. In the First and Seventh Circuits, those courts ... the Seventh Circuit is Chicago, Illinois, for example ... those courts have held that a place of public accommodation need not be a physical structure and that discrimination may occur when goods and services of a place of public accommodation are enjoyed by customers who never even visit the physical location. So there's does not have to be in those circuits a nexus, and that's a couple of decisions cited there for that proposition. We can go to the next one. Back one.

Mark Sidoti: Second Circuit. Obviously a very important circuit court in terms of these cases, since the vast majority of these cases are filed in New York, and Second Circuit covers New York. The Second Circuit has not addressed this issue yet, interestingly enough. There have been several very active district court cases in this area with opinions that are very plaintiff friendly. We're going to talk about one or two of them in a second. But the Second Circuit has not gotten this issue yet.

Mark Sidoti: Everything seems to indicate, from the district court opinions, that when it does get this issue, it's likely going to rule that the nexus requirement is not necessary in the Second Circuit. That's just my prediction, based on what I've seen on the district court level. The signs that I see from a legal standpoint, it seems that it's going to become one of those circuits that does not require the nexus to the physical location, so that a pure website e-commerce business

could also be hit with one of these claims and have to remediate their site. Let's go to the next slide.

Mark Sidoti: One of those cases that's very well known is called Andrews versus Blick Art. We don't have to go through all the details so that we can stay on time here. You can see the details there, and most of these have similar facts. The plaintiff in that case wanted to use the website for this company that sold art materials. He was not able to do it because of his visual disability. The court actually ... that was Judge [Weinstein 00:39:20], a very respected, one of the older jurists on the federal bench here in the district court level in New York, rejected the nexus requirement and said there doesn't have to be a connection to a physical store, even though there likely was one in that case. But it held that the website being inaccessible was discriminatory. You can go to the next slide.

Mark Sidoti: In that case actually, the matter settled, as it did in another pretty well-known case called Five Guys Burgers and Fries versus [Marquette 00:39:58], another big New York, southern district of New York, case. The matter was litigated. There was a motion to dismiss, as often occurs when people want to challenge these claims, and the judge rules on and issues a formal opinion in connection with the motion dismissed. In both of those cases, which was very favorable to the plaintiff, and found that the sites do have to be made accessible and that attorney's fees are required to be paid.

Mark Sidoti: As you can see there, virtually all ADA decisions to date in this area have been rendered on a motion-to-dismiss stage, as I just mentioned. The courts have recognized in some very detailed opinions, particularly at the Second Circuit, the Eleventh Circuit, and some of the Ninth Circuit, that these claims, and whether or not you can succeed in these claims depends heavily on the facts and circumstances of each case, what you've done to your site, what your site looks like in terms of accessibility, the plaintiff's personal experience from a standing standpoint, what we call standing and ability to sue, and whether or not the modifications that you've made, if there are any, were reasonable and appropriate under the circumstances. Because as I mentioned earlier, you do not have to do something that would be unduly burdensome or would fundamentally alter the nature of the goods and services that you supply. We haven't seen one of those types of challenges succeed yet, just to tell you how rare that would be. Next slide, please.

Mark Sidoti: Gil versus Winn-Dixie is worth mentioning also. Gil is famous for being the only case in this area, ADA website accessibility, that has actually gone to trial. This is an Eleventh Circuit case in the southern district of Florida. There was motion practice. The court let the claim survive, and this was a fellow who is vision impaired and was trying to use the Winn-Dixie supermarket website mostly to fill prescriptions and claimed that he was unable to do so ... You can go to the next slide ... because the site was not accessible. The issues that were eventually tried in that case ... and this is significant that there's been thousands of cases,

and only one has gone to trial. It tells you something ... whether Winn-Dixie's website was subject to the ADA as a service of a public accommodation or whether the website itself was a public accommodation, so this is that nexus or no-nexus issue the court was asked to look at, whether the plaintiff was denied full and equal enjoyment of the goods and services because of his disability, and whether they requested modifications were reasonable and achievable.

Mark Sidoti: Standard ADA-type issues would be tried in a case like this, and you can see in this one instance, they were. Again, you can see the nature of the claim. He had the software on his computer, which is the acronym for the software mostly commonly used, the screen-reading software is JAWS, J-A-W-S. Many of the claimants use that software to try to read the screens, and he was unable to do so.

Mark Sidoti: The interesting thing with Winn-Dixie is they had spent $2 million in September 2015 to create their website and 7 million in 2016 to re-do their website, and this claim came on the heels of that activity. When they did their website over, they didn't make it accessible. They didn't deal with this accessibility issue. They set aside $250,000 to make it accessible for the disabled, but that was not done certainly before this claim was brought. Next slide, please.

Mark Sidoti: Of course, as I mentioned, as you would expect, the plaintiff called an expert, an accessibility expert, at the trial to testify that the JAWS software does not work appropriately on the website as it was configured. This expert, interestingly enough, concluded that the remediation of this site would cost approximately $37,000 or less to complete on the website. Now, without getting into numbers ... and I don't know if Chris every wants to talk about numbers ... but that was probably a low-ball figure for a company the size of Winn-Dixie, but there was a strategy there, and the plaintiff wanted to make the point that it wouldn't cost so much to do this, and you spend millions of dollars on your website already when you re-did it. That point was taken by the court. As you can see in that last bullet, the court basically said, "Why are we disputing whether it's 250 or 37,000? If you look at it in comparison to the 2 million or 7 million you spent on your website without making it accessible, it really pales in comparison. So that was an effective way of the plaintiff approaching that issue of cost. You can go to the next slide.

Mark Sidoti: Without really deciding that issue of whether it's a public accommodation in and of itself, the website, the court concluded that the website is heavily integrated with the physical store, and therefore there is that nexus. It meets the nexus test. Also found that it was inaccessible to impaired individuals and concluded that there was discrimination in that case. You can go to the next slide.

Mark Sidoti: Here's the typical remedial measures that you would face if you tried a case and actually lost. I think this would be very common. It's also the elements of typical settlement agreement. You have to remediate the site to conform to the WCAG

2.0 guidelines. You have to require a third-party vendor to interface with the website and make it fully accessible, any third-party vendor that interfaces with a website also be fully accessible, provide training to your employees to develop programs, code, etc., to make the website accessible, and conduct automated accessibility tests. You can go to the next slide.

Chris Werely: Mark, can I just pause there quickly? There's been a couple of questions that came in just around WCAG and why that is the acceptable standard, and why are plaintiffs getting away with it? Could you comment on that?

Mark Sidoti: Well, that's a central issue in many of the challenges, and as I mentioned earlier, WCAG as a standard has the force it has in this area because the DOJ has adopted it. That's the bottom line. DOJ enforces the ADA. All right? DOJ is the authority that makes rules with respect to the ADA. So if the DOJ says that, "I like these WCAG 2.0 guidelines. They should be the standard," which is what happened several years ago, and the courts have said, "Yeah. That makes sense. That's a fair standard to impose," then that's how these standards became adopted. To give you the short answer, the DOJ endorses them. The courts have agreed with the DOJ's endorsement, and therefore they have defacto become the standard, even though there is not formal rulemaking from the DOJ.

Mark Sidoti: Now, these issues have been challenged, and again, we're going to mention ... there's a good segue into the next slide. We're going to go to the next slide.

Chris Werely: Yeah, Mark. Can I just also add that Section 508 of the Rehabilitation Act now points to WCAG, and the DOT, Department of Transportation, has a mandate around accessibility that also points to WCAG, so any government entity that actually enforces accessibility points to WCAG as well as DOJ.

Mark Sidoti: That's right. And that's a good sign. That's a good point, Chris. The federal cases, federally funded entities, have to already comply by statute of rulemaking with WCAG, so that seems to be where things are headed. All signs pointing towards compliance with these particular guidelines.

Mark Sidoti: Just very quick, because we're running short on time, the Winn-Dixie case, as I mentioned, is on appeal. It's a very important appeal to watch. It's now in the Eleventh Circuit, and you could see the defenders are challenging the free trial ruling that the website is a place of public accommodation, whether that's independently or with a nexus to a physical location and also whether the plaintiff has standing. So let's go to the next slide on Robles. Nope.

Mark Sidoti: Okay, very quickly on Robles. Super important decision. January 15, 2019. This is the first federal appellate court to really thoroughly address the issue of ADA website claims. this was a case where the district court, the lower court, granted summary judgment in favor of Domino's and dismissing the ADA website case against Domino's based on the fact, basically ... and to the person's question ...

that it was a violation of due process to try to hold Domino's, or anyone, to a standard that hasn't been formally promulgated, in other words, compliance with these guidelines, also based on the argument, or the decision, that the DOJ should rule on this before litigants are allowed to bring these claims successfully in court. We'll skip to the next slide.

Mark Sidoti: Here are the key rulings on the appellate level. The appellate court said, "Nope. Don't agree with you, district court. The claims are viable. We're going to reinstate them," and basically said, "Look, for all the reasons that we've seen in the other district court opinion, the ADA applies to the Domino's website because the ADA mandates that places a public accommodation like Domino's provide auxiliary aides to vision-impaired individuals. It applies to services of a place of public accommodation. You remember I bolded that at the beginning of the presentation? Not in a place of public accommodation. So in other words, if you're accessing goods and services of a brick-and-mortar location through a website, that's sufficient. The mere nexus to the physical location suffices. The other arguments were rejected. The appellate court, the Ninth Circuit, felt that Domino's had fair notice of what it needs to do to bring its sight into compliance. It didn't care that there aren't specific regulations promulgated yet by the DOJ. It said, "We're not going to wait for the DOJ, particularly since they said they're not going to rule any time soon. In fact, they shelved the whole issue or ruling." Again, the highest court in the country addressed the ADA website claims, rejected a number of the key defenses.

Mark Sidoti: It was decided, despite the input of a number of what we call amici, which are other interested organizations that were allowed to put in legal briefs in support of Domino's in that case. So notwithstanding that, the arguments were rejected. Likely, I think, the Gil decision in the Eleventh Circuit is going to follow this pretty closely, and I think we're also going to see a huge number of new claims in California based on the Robles versus Domino's case. Very influential decision. Okay. Let's go to the next. Okay.

Mark Sidoti: We have a few minutes to discuss the issue of strategies. There are lots of ways to respond to these claims. Not responding is not one of the ways to respond. Ignoring them only creates significant additional issues down the road. You should consider careful the manner in which you respond, including whether or not you send a letter from counsel or you send a letter on your own. I think it's typically better to involve counsel. Sometimes it may be more effective to try and negotiate these things if you're a smaller company on your own. You'll certainly save legal fees, but I don't think that's the preferable approach. Next slide, please. Okay. I'm sorry. Okay. [inaudible 00:52:03]

Mark Sidoti: All right. Responding to a website accessibility letter or complaint. We talked about this slide. Next one.

Mark Sidoti: All right. What you really want to do when you're responding to these claims, you want to let the other side know you understand what your legal obligations are, particularly if it's a letter and not a complaint. You want to object to the demands to the extent that someone is trying to interpret the law for you. Again, this is mostly applicable to a letter, not a complaint. If you've begun updating your website, you want to indicate that changes are ongoing or have occurred. You're looking at this issue. You care about it. You're taking steps. It never hurts to do that. In fact, it helps sometimes significantly.

Mark Sidoti: You may want to check with your insurance carrier. Some policies do cover these claims. It's important to at least look into that issue. Next slide, please.

Mark Sidoti: Sometimes you get what's called the litigation hold letter to preserve documents related to upgrades to your website or any work that was done on your website. You don't want to ignore those in this age of what we call spoliation of evidence. If you don't take steps to preserve those documents related to work done on your website, you may get into trouble down the road if the claim progresses.

Mark Sidoti: Again, you want to prepare for litigation. In every case where you receive a letter or a notice, you're almost always going to get a lawsuit, and certainly as I mentioned, in most cases, you get a lawsuit right off the bat. Can we go to the next slide, please?

Mark Sidoti: Two possible complaint response options, as it says here, fix then fight. That's very time dependent. What that means is fix your site, and then worry about fighting the lawsuit. That really only applies to companies that have done significant work on remediation on their site. They're near the end, very close to being done, and they make a determination that they're going to try to finish before they get into a heated dispute with the other side. Obviously that requires negotiation with the plaintiff's attorney. Or, of course, more commonly, fight for the time to fix. By that, I mean you really want to get in the first instance, more time. Courts have sometimes stayed these litigations if you are in the throes of remediation efforts on your website, but very commonly, almost every case, the plaintiff will agree to a significant extension of the time to answer the complaint so that you have almost a pre-suit period of time to negotiate a resolution and try to work out the claim before you even have to answer the complaint formally in court. You want to stop the plaintiff's attorney from doing a lot of work in the case if you feel like you're going to settle the case, because if they continue to do work, they're going to try to shift those fees to you when the settlement occurs. Next slide.

Mark Sidoti: You can consider motion practice in some cases. As I mentioned, and you got the sense from the case law, it's highly unlike to succeed in some jurisdictions, but there may be open issues. Certainly we got to see what the DOJ does with regulations, and that needs to be monitored. If you have a foreign company, you

may have issues with jurisdiction, whether that foreign company and that foreign website is subject to jurisdiction in the U.S. Those are unique issues that you have to look into. But for the most part, we want to stay away from challenges that you know are going to fail in the jurisdiction that you're in. Next slide.

Mark Sidoti: This is just a quick polling question to see if we've had all this discussion today about accessibility, how many folks know whether or not their website is accessible. I want to get a quickie look at that. You'll see the options there if you've started working on improvements or not. That's good. 61% of folks are at least alerted to the issue and taking some steps, and there's a good percentage there that say that they are accessible. So we can move quickly to the next slide.

Mark Sidoti: Resolving the case. Some practical steps. I think it's important to know, for companies that have not yet been hit with one of these claims, that you are absolutely susceptible. You can assume, and you should assume, that you will be sued. These cases are being filed all the time. If you're consumer facing to any extent, you have a likelihood of being sued at some point, and it makes sense to start looking at your site.

Mark Sidoti: The next bullet, proactively check your website. Take steps to evaluate your website's compliance with WCAG 2.0. talk to consultants like UsableNet that specialize in this area, that can help you very quickly make that assessment and suggest how you can deal with bringing your site into compliance. But you do need a baseline to understand what your site's deficiencies are. Are any of them very serious? Are some of them easy fixes? There's usually a combination of both. If you're rebuilding your website, absolutely at that point, you learn from the Gil versus Winn-Dixie case, take steps to make the site accessible while you're rebuilding or as part of the rebuilding process, because you're throwing a lot of good money after bad if you don't do that.

Mark Sidoti: Once you're on notice, don't ignore the complaint. I mentioned that earlier. You should talk to counsel who's experienced in the area. In a sense, time is of the essence. You certainly don't want to find yourself in a default situation. If you don't get a extension of time to answer the complaint, you could be defaulted by the plaintiff's attorney after 21 days. That would be a problem that you'd have to undo or deal with. You also lose control over the timing of the remediation and the consequences if you just sit back on a complaint that's filed. Most cases, you should know, settle within two to six months, usually in what we call the pre-answer period, because we get an extension of time to negotiate the outcome. These are not long-lived cases by any means. We'll go to the next slide.

Mark Sidoti: Again, on counsel, really I just think it's very helpful to consult counsel who understands these cases, knows what steps to take, has dealt with the other side. You want to talk to an attorney who knows what's been challenged in

court, particularly in your jurisdiction, and what challenges have succeeded and failed. Very few have succeeded, as you can see from our discussion. Because you don't want to throw good money after bad. You don't want to spend money on counsel fees when you're not going to win in the end on a particular legal issue. You're also going to have to pay the plaintiff's fees if you engage in a lengthy and costly challenge at the end of the day when the case settles, and that's the point that's made there.

Mark Sidoti: Also, counsel who's been in this area knows the other side, knows the plaintiffs who are filing these cases, the plaintiff's attorneys, knows how they negotiate the resolution of them, what they're willing to concede, and that's a huge advantage when you're trying to resolve these cases. Counsel also knows the judges so that you have a sense in that jurisdiction of who the judges are. Next slide, please.

Mark Sidoti: The other thing about counsels experienced in this area is that they understand a lot of these nuanced issues. What you do with the class action claims and how those are best resolved, the issue of resource judicata, which for non-lawyers, is how you use the settlement of the current case to preclude future claims. It's a very difficult issue in this area. It's been rejected actually a number of times by the courts, but you can still work that element into some of your settlement agreement. How to deal with follow-on claims. Those second and third claims, and sometimes more, are very challenging, but if you get somebody who has dealt with them before, you're ahead of the game.

Mark Sidoti: Really important issue. Private versus public settlement agreements. It's really important to understand that these agreements should be non-confidential. A lot of the early agreements and settlements by maybe attorneys who didn't really understand this area were entered into under confidentiality terms, which is typical, kind of intuitive to do that. Problem is, these cases, it's not a good thing to have a confidential settlement agreement because you want the world to know that you've been sued, and you're already taking steps to remediate your site. You don't want to be hamstrung in holding that settlement out in front of the next person who says they're having a problem with your site. That's a very important issue in these cases and something to be concerned about. Next slide.

Mark Sidoti: Again, we mentioned class action, notice and settlement issues in class action, and how to deal with that issue. Some issues of state versus federal courts, some states like New York and California have analogous state statutes that do allow for monetary recovery by the actual plaintiff, unlike the ADA. You need to understand that issue and how you get these cases settled and dismissed by the court. There are ways that you can get these cases dismissed that help when future claims might be filed or threatened, so that's an important thing to understand. Next slide and last slide, I believe.

Mark Sidoti: Confidentiality and payment, as I mentioned, very important issue, confidentiality and how that's dealt with. Typically you want every element of the settlement agreement not to be confidential, to be publicly available for you to use as you wish with the exception of the amount that was paid. Usually both sides don't want the amount to be discussed, so you can separately agree that the amount won't be stated in the settlement agreement. There will be a separate document that states the amount that's paid in attorney's fees, and that is not something that will typically be disclosed.

Mark Sidoti: Timing is important, getting enough time to get this done, as I mentioned. Plaintiffs will typically agree to one to two years, sometimes more if there's a unique circumstance, to get the remediation completed. And then things like monitoring procedures are things that a company like UsableNet can advise on of how to make sure your site remains in compliance and you take appropriate steps going forward. Chris.

Chris Werely: All right. Yeah. The only other point I'll add here is that it's not just about the remediation and monitoring that's critical. We talked about the specs, or the numbers around the companies who've been sued multiple times. If you're on the legal side of the house, either inside or outside, you really need to be pushing your teams on the process, the monitoring, and the compliance aspects of accessibility ongoing.

Chris Werely: This is great. There's been a bunch of questions. Mark, if you're okay to hang on the line, we can go through and answer some of these.

Mark Sidoti: Yeah, sure.

Chris Werely: And for folks that need to drop. Just so-

Mark Sidoti: Just read it for me, Chris, because I'm having a problem seeing them. So if you could read them, that would be great.

Chris Werely: That's okay. Just a couple of questions. Is there any application of undue burden under the ADA as it relates to web accessibility, meaning it's an undue burden to fix the site?

Mark Sidoti: Yeah. I think I could see that argument being made in certain circumstances. It hasn't been one that's been pressed typically by the companies that have been the big challengers that we talked about, the Winn-Dixies, and the Blick Arts, and the Domino's. The reason for that is typically those companies have enough money to fund whatever's necessary to get the site into compliance, and it's usually a pittance in the grand scheme as was shown in the Winn-Dixie case. I could see the argument being made successfully, possibly by a very small company, that the investment would be something that would be just grossly excessive for a company of a certain size, where you might want to try to make

that challenge. Again, the issue is are you better negotiating that issue with the other side and reaching some agreed resolution that makes sense? Maybe they don't ask you to remediate to the extent that they normally would for a larger company. They'll certainly take less in legal fees from a smaller company. Because if you challenge that issue, you are going to spend a lot of money in legal fees and motion practice in the court before you get a decision that may not go in your favor, so that's the important consideration if you want to make that type of challenge. I'm not saying you could never succeed. It might for a certain size company.

Chris Werely: Yeah. I'll make two other just quick comments as it relates to small business. One is, pick a CMS, or a content-management system, that's accessible. Wix, and GoDaddy are not, so you need to look at platforms like WordPress that are just more accessible. The other challenge is getting the word out to small business on what they need to do. It's definitely a challenge.

Chris Werely: Okay. Is having a customer call center a viable option to serve ADA customers? Does it offset the website compliance?

Mark Sidoti: I'm sorry. One more time on that, Chris.

Chris Werely: Sure. The question was, is having a call center a viable option to deflect people from the website to the call center for ADA compliance?

Mark Sidoti: Yeah. Well, that's an open question. I think ultimately the answer's going to be no on that, but that's one of the things, interestingly enough, that's going to be considered by the ongoing litigation in the Robles court. What I didn't mention to everybody is that Robles, Domino's is likely to petition the Supreme Court of the United States for [inaudible 01:05:57], which is review of the Ninth Circuit's opinion. If that is granted, you're going to ultimately have a Supreme Court opinion dealing with these issues and opining on them. The problem's always that what's left open in Robles, and even to some extent some of the other cases that we talked about, is that until the case is actually tried and full evidence is put in on those issues, it's not going to be determined whether or not something like a call center is sufficient to meet the accessibility requirements of the ADA. In fact, the court in Robles left that question open and what's called remanded the case to the district court to actually have evidence in a trial ultimately on the issue of whether remediation efforts like that are sufficient. So we don't know the answer, but in my feeling, my opinion, it's unlikely that that's going to be enough. I really don't think that's going to prevail.

Chris Werely: Mark, any insight into Unruh Act claims?

Mark Sidoti: Yeah. Unruh is California's state-level statute on accessibility, in fact, the analog to the ADA in California. Really, the issue with Unruh is it allows for a certain

amount of monetary damages to the plaintiff. It also allows plaintiffs to bring those cases directly in state court. Interestingly enough, New York state and city has its own analog statutes, but you don't see folks bringing those cases in state court in New York. I don't think I've seen one yet that's not brought in federal court.

Mark Sidoti: They have been brought in California. I've handled a few California state court cases under the Unruh Act. It's sort of a way of getting around the bad federal law that existed in California until the Ninth Circuit decision in Robles. I think what you're going to see now is Unruh is going to be part of the federal court complaint, because folks are going to go back to federal court in California post Robles Ninth Circuit.

Chris Werely: Yep. Got it. There's a couple of questions. Do you recommend WCAG 2.1 as a matter of course now?

Mark Sidoti: Actually, that's the kind of question I'd ask you, Chris. There are some plaintiffs who are asking for 2.1 in the settlement agreements. Most are still cool with 2.0. I frankly don't know if it makes that much difference.

Chris Werely: Yeah. Back to the point around DOJ, DOT, and 508 are still pointing at 2.0, so until I think there's a broader tidal wave of settlements or regulatory changes, we think that it'll probably stay at 2.0. Now, that doesn't mean that 2.1 isn't coming, so if a company wants to get there, we fully support that. Many of our customers have made that decision from a policy or customer perspective they wanted to do that. The other good thing about 2.1, if you're not familiar, is it's additive to 2.0, so it's not a complete rebuild. You're just adding more success criteria.

Chris Werely: There's also some questions that have just been asked around what does accessible mean? Because WCAG is a guideline. It's actually not a standard. And it's a good point. What we generally recommend is the combination of process, tools, and policy to be accessible, meaning you've remediated your site, you're testing it with automated tools, you're testing it manually, you've involved people from the disability community to test your site because just because it's accessible to the technical guideline doesn't mean that it's actually usable, and that you have an ongoing accessible statement. We know that that creates the most usable customer experiences and helps mitigate risk, so that's generally what we advise. That answers some of the questions around you have to fulfill all of them. It's really about having a robust process, and communication, and being able to demonstrate the accessibility of your site.

Chris Werely: Really firmly believe in user testing, which is something that we help many of our clients with. If a complaint comes to somebody that you have a rapport, a documentation or video from people with disabilities using your site, it means

that you've really done some of the diligence that care about the community and can use that from a defense standpoint.

Mark Sidoti: Yeah. I think an accessibility statement is really important. There's a couple of questions on that. Every site, if you're aware of this issue and to any extent working on it, you should have a statement up on the first page of your site indicating that you understand the issues of accessibility, you're working on making the site accessible if you're in process, and that you have a phone number and a way to communicate with the company if you run into any difficulty with the accessibility of the site. You can write these in many different ways. The key is to have one on your site and to not wait on that issue, for everything to be done before you put up a statement of what your company policy is.

Chris Werely: Yeah. There's a question here around complex functionality, providing an alternative method for screen readers to meet compliance. Inside of WCAG, there's a guideline or the applicability for what's called an alternative conforming view. As long as that page has the same features, functionality, and content, it's permissible. We actually offer a technology that helps companies with that type of functionality, so if we can help there, happy to dive in.

Chris Werely: There's a question here, Mark, as you take this from a legal standpoint, but they had their site redesigned. There's three known issues that remain, and the developers don't want to fix them because of Google. Is that sound reasoning? I guess, it goes back to the answer that I gave before around is the site accessible? Do you have processes to monitor, test ongoing? And have you tested it with members of the disability community to make sure that it is indeed accessible? There's three issues that the company has decided that they're not going to fix, then I think that's more of a company policy. You can't say that those three issues will or will not prevent lawsuit. The question is what have you done to try to mitigate your risk and make the site more usable?

Mark Sidoti: Yes, and that's the kind of question I would go to you on actually from a technical standpoint, because if it's something that is not difficult to do, then the argument is that it's not unduly burdensome to fix those remaining three issues.

Chris Werely: Yeah.

Mark Sidoti: It really depends on what the technical experts have to say on that.

Chris Werely: Yep. Great. Some of the commonly used programs by the visually impaired, JAWS, NVDA, VoiceOver on Mac, and then all of the mobile platforms, both Samsung and ... sorry ... Android and Apple have their own native accessibility features built into the phones, so if you have a native app, you need to think about testing that functionality on mobile as well.

Chris Werely: I think we've hit most of the questions here. If we haven't, we will go through all of them and just make sure we're answering email and get those out to everybody. There's been some fantastic questions, some really good feedback in the chat as well. There's clearly some people on the webinar who've been working on accessibility for a long time, made some great points. Thank you for your participation.

Chris Werely: Mark, any closing thoughts here?

Mark Sidoti: No, I just want to say thanks to everyone. I hope that it was helpful information and gives folks a starting point to be able to deal with these cases and a little bit of a comfort level if they have to confront them and deal with them. Thank you for having me again. It was a pleasure.

Chris Werely: Great. If we can be of any help, let us know. We will get the recording and the slides out to everybody shortly, and hope everybody has a great day. Thanks so much.

Mark Sidoti: Bye now.