

## **NOTICE OF PROPOSED SETTLEMENT OF CLASS ACTION LAWSUITS**

ATTENTION: ALL PERSONS WITH A QUALIFIED DISABILITY: This is a court-authorized notice. If you have used any of the City of New York's ramps, cuts, or slopes where a pedestrian walkway crosses a curb ("Pedestrian Ramps") since January 26, 1994 or if you believe that you will seek to use the City's Pedestrian Ramps in the future and you are a person with a disability as defined by the Americans with Disabilities Act ("ADA"), you may be a member of the Plaintiff Class affected by the settlement of these lawsuits. Qualified disabilities may include, but are not limited to, mobility disabilities and vision disabilities.

**PLEASE READ THIS NOTICE CAREFULLY. YOUR RIGHTS MAY BE AFFECTED BY LEGAL PROCEEDINGS IN THESE CASES.**

### **NOTICE OF CLASS ACTION**

The purpose of this notice is to inform you of a proposed settlement in two lawsuits brought on behalf of persons with disabilities against the City of New York ("the City"). This class action settlement ("Settlement Agreement" or "Agreement"), which must be approved by the United States District Court for the Southern District of New York, was reached in: *Eastern Paralyzed Veterans Association v. City of New York*, 94 CV 0435 (GBD) (KNF) ("the EPVA action") and *Center for Independence of the Disabled, New York et al. v. City of New York, et al.*, 14 CV 5884 (GBD) (KNF) ("the CIDNY action").

### **BACKGROUND INFORMATION**

The EPVA action was filed on January 26, 1994, alleging that the City had failed to install Pedestrian Ramps at all of its corners, as required by Title II of the ADA, thus making streets and sidewalks inaccessible to the disabled. On August 27, 2002, EPVA (now known as United Spinal Association) and the City entered into a Stipulation ("the 2002 Stipulation"), which was "so-ordered" by the Honorable U.S. District Court Judge Thomas P. Griesa on September 10, 2002. The 2002 Stipulation certified (a) the Plaintiff Class, consisting of "qualified individuals with a disability, as defined in [the ADA] "who use or seek to use pedestrian ramps in the City," (b) EPVA as the Class Representative, and (c) Broach & Stulberg, LLP as Class Counsel. The 2002 Stipulation required the City to install Pedestrian Ramps at all corners lacking ramps, and to spend hundreds of millions of dollars to accomplish that goal. Pursuant to the 2002 Stipulation, the City: installed Pedestrian Ramps throughout the five boroughs; amended its Pedestrian Ramp Transition Plan to recite its financial and operational commitments to those installations; and established, with EPVA, a Working Group to share relevant data, and a dispute resolution process to address conflicts. The Court retained jurisdiction to decide disputes that the parties could not resolve.

Subsequently, EPVA, through the Working Group, raised concerns about the need to: complete the installation of Pedestrian Ramps at the corners remaining to be ramped; upgrade Pedestrian Ramps that were not ADA-compliant; and improve the City's system for responding to Pedestrian Ramp-related complaints.

The CIDNY action was filed on August 1, 2014, alleging, among other things, that the City had violated Title II of the ADA, Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, *et seq.*,

and the New York City Human Rights Law § 8-107 *et seq.*, by failing to install and maintain Pedestrian Ramps in Community Boards 1, 2 and 3 in Manhattan. CIDNY brought the action on behalf of a putative class of “all persons with mobility and/or vision disabilities who use or will use New York City pedestrian rights-of-way in Lower Manhattan.” CIDNY sought to be appointed the Class Representative, and Disability Rights Advocates (“DRA”) sought to be appointed Class Counsel in the CIDNY action.

On January 28, 2016, EPVA and the City entered into a So Ordered Stipulation Resolving Disputes (“the 2016 Stipulation”), which was “so-ordered” by Judge Griesa on February 11, 2016. On May 31, 2016, the Honorable U.S. District Judge George B. Daniels held a Fairness Hearing concerning the 2016 Stipulation, at which counsel for the City, for EPVA, and for several disability rights organizations with objections to the 2016 Stipulation<sup>1</sup> were heard. Following the Fairness Hearing, the Court appointed a Special Master to evaluate the 2016 Stipulation. On August 1, 2017, the Special Master issued his report containing the evaluation. Thereafter, counsel for the City, counsel for EPVA and the Plaintiff Class, and counsel for CIDNY and the other Objectors engaged in extensive, arms-length, good faith discussions, which included dozens of in-person and telephonic negotiation sessions, and mediation sessions conducted by the Honorable U.S. Magistrate Judge Kevin D. Fox.

As a result of those discussions, the parties now wish to effect a complete resolution and settlement of the claims, disputes and controversies presented in the EPVA and CIDNY actions, and to resolve their differences on the terms set forth in the proposed Agreement

Judge Daniels, presiding in the U.S. District Court for the Southern District of New York, is in charge of the EPVA and CIDNY suits. Judge Daniels did not decide in favor of the Plaintiffs or the City in these cases. Instead, all parties have agreed to the proposed settlement terms. That way, they avoid the cost, delay, and uncertainty of a trial, and the settlement benefits go to the Class Members. The Class Representatives and Class Counsel (the attorneys appointed by the Court to represent the Class) believe that the proposed Agreement is in the best interests of the Class Members, taking into account the benefits of the settlement, the risks of continued litigation, and the delay in obtaining relief for the Class if the litigation continues.

### **THE PLAINTIFF CLASS, CLASS REPRESENTATIVES & CLASS COUNSEL**

In a class action, one or more people or organizations, called Class Representatives, sue on behalf of people who have similar legal claims. One court resolves the issues for all Class Members upon approval of the Agreement.

For purposes of this settlement, the Plaintiff Class includes all persons with a qualified disability, including but not limited to Mobility and Vision Disabilities, who use or seek to use the City’s Pedestrian Ramps.

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<sup>1</sup> American Council of the Blind, Harlem Independent Living Center, Center for Independence of the Disabled New York, Bronx Independent Living Services, United for Equal Access, Inc., Brooklyn Center for Independence of the Disabled, American Council of the Blind of New York, Inc., and Disabled in Action of Metropolitan New York, Inc. (“Objectors”).

The Agreement provides that EPVA n/k/a United Spinal Association and CIDNY will be the Class Representatives, subject to Court approval. The Agreement also provides for Broach & Stulberg, LLP (or a successor firm) and DRA to collectively serve as Class Counsel, subject to Court approval.

### **SUMMARY OF THE PROPOSED SETTLEMENT AGREEMENT**

The Agreement commits the City to ongoing, widespread accessibility improvements to its Pedestrian Ramps through City-wide surveys, scheduled installations and upgrades, complaint remediation, on-going maintenance, sharing of information, and third-party monitoring.

The Agreement requires the City to survey all street corners across the five boroughs using laser technology to determine how many currently require Pedestrian Ramp installations and/or upgrades. The survey is to be completed no later than October 2019. The results of the survey will be used by the City to target future Pedestrian Ramp upgrades and installations, and its results will be incorporated into an Updated Transition Plan, which will be made publicly available and set forth the schedule for installation and upgrades consistent with the Agreement. The Agreement requires the City to conduct two additional City-wide surveys during the term of the Agreement in order to assess the status of Pedestrian Ramps in the City. The first of those surveys must be conducted by the close of Fiscal Year (“FY”) 2033, while the second must be conducted by the close of FY2046.

The Agreement sets out long-term and short-term deadlines to be met for installation of all remaining missing Pedestrian Ramps and upgrading of all non-compliant Pedestrian Ramps. The City is committing to installing and upgrading Pedestrian Ramps at specified rates. Overall, installations of remaining standard Pedestrian Ramps (at approximately 424 corners) will be completed by FY2021, and installations of remaining complex Pedestrian Ramps (at approximately 2,736 corners) will be completed by FY2030. Upgrades of non-compliant standard Pedestrian Ramps (at approximately 108,590 corners) will be completed by FY2032. Upgrades of non-compliant complex Pedestrian Ramps (at approximately 5,500 corners) will be completed by FY2034, and upgrades of the remaining non-compliant complex ramps (at approximately 10,500 corners) will be completed at the rate of approximately 815 corners per Fiscal Year, starting in FY2035. These installations and upgrades will be accomplished through various means of construction, including but not limited to, in connection with the City’s resurfacing operations, in connection with complaints made by members of the public, and through a mutually agreed prioritization criteria.

In addition to these installations and upgrades, the Agreement requires the City to maintain its Pedestrian Ramps as required by the federal accessibility laws, both during and after the term of the Agreement, so that members of the Plaintiff Class will be able to access those Pedestrian Ramps safely and independently. The maintenance will be performed on an ongoing, indefinite and regular basis, as required by the federal accessibility laws.

The Agreement also requires the City to install or upgrade Pedestrian Ramps at both standard and complex corners in accordance with federal accessibility laws whenever it resurfaces an adjacent roadway.

The Agreement commits the City to maintaining a Pedestrian Ramp complaint program in order to allow members of the general public to request installations and repairs as needed. The Complaint Program will require the City to permanently install or upgrade complained-of Pedestrian Ramps as soon as possible, and to dedicate a full-time in-house construction crew to respond to such complaints. The City also will provide temporary accessible solutions at complained-of corners, as appropriate and compliant with federal accessibility laws. For complaints currently pending, the City will provide temporary accessible solutions, as appropriate and compliant with federal accessibility laws, by March 15, 2019. For complaints received after March 15, 2019, the City will provide temporary accessible solutions, as appropriate and compliant with federal accessibility laws, within 45 days of receiving the complaint.

The City also will employ an Associate Deputy Commissioner to head the Pedestrian Ramp Program Unit at the City's Department of Transportation, to ensure that all implementation-related tasks are carried out.

Finally, the Agreement requires additional oversight of the implementation by an independent Monitor for a period of up to 15 years. The Monitor's duties will encompass assessing, among other things: the surveying process; the progress with installing and upgrading Pedestrian Ramps; the Pedestrian Ramp maintenance program; and the Pedestrian Ramp complaint program. The Monitor will conduct semi-annual reviews for the first five years, to be followed by annual reviews for the remainder of the monitoring period. Each compliance assessment by the Monitor will be reported to the Court, Class Counsel, and the City's counsel within 30 days of the annual review.

### **RELEASE OF CLAIMS**

The Agreement resolves and releases, up until the end of its term (i.e., the date on which all scheduled installations and upgrades are completed), all claims for injunctive, declaratory or other non-monetary relief that were brought, could have been brought, or could be brought in the future alleging that, during the period of January 26, 1994 through the term of the Agreement, persons with qualified disabilities were denied access to, excluded from participation in, or denied the benefits of the City's Pedestrian Ramps. The Agreement does not provide for any monetary relief to the Plaintiff Class, and does not release any damages for personal injury claims that Plaintiff Class members may have.

### **REASONABLE ATTORNEYS' FEES, COSTS AND EXPENSES**

Plaintiffs and the City have not yet reached an agreement with respect to the amount of reasonable attorneys' fees, costs, and expenses to be paid. Absent an agreement between the parties, Plaintiffs will seek an order from the Court requiring the City to pay Plaintiffs' counsel and Objectors' counsel for all reasonable attorneys' fees incurred since work began on this case through final approval of the Agreement by the Court, in addition to a certain sum for litigation costs and expenses incurred. Class Counsel, as well as the Monitor discussed above, shall also be entitled to reasonable fees, costs and expenses for monitoring the City's compliance with the Agreement. Any award of attorneys' fees, costs and expenses must be approved by the Court as fair, reasonable and consistent with prevailing marketplace standards. The Court-awarded amount will not be paid from the monies to be spent on disability access improvements pursuant to the Agreement.

## **FAIRNESS OF SETTLEMENT AGREEMENT**

The Class Representatives and Class Counsel have concluded that the terms and conditions of the proposed Agreement are fair, reasonable, adequate, and in the best interests of the Plaintiff Class. In reaching this conclusion, the Class Representatives and Class Counsel have considered the benefits of the settlement, the possible outcomes of continued litigation of these issues, the expense and length of continued litigation, and actual and possible appeals.

## **THE COURT'S FINAL APPROVAL/FAIRNESS HEARING**

The Court has preliminarily approved the settlement, and has scheduled a hearing for July 23, 2019, at 10:30 a.m., in Courtroom 11A of the Honorable George B. Daniels, United States District Court for the Southern District of New York, 500 Pearl Street, New York, NY, 10007. The purpose of the hearing is to decide whether the proposed settlement is fair, reasonable, and adequate, and should be finally approved. Although Plaintiff Class Members are not required to attend the hearing, they have the right to attend and be heard there. In the course of the hearing, the Court will consider any objections to the settlement and listen to people who have asked to speak. After the hearing, the Court will decide whether to approve the settlement. The Court will also consider how much to award Class Counsel as reasonable attorneys' fees, costs and litigation expenses. It is unknown long this decision will take.

The hearing date is subject to change without further notice. If you wish to be informed of any changes to the schedule, please notify Class Counsel at the addresses listed in the next section below. You may also check the Disability Rights Advocates' website at <https://dralegal.org/case/center-independence-disabled-new-york-cidny-et-al-v-city-new-york-et-al/>, Broach & Stulberg's website at <http://www.brostul.com>, the New York City Department of Transportation Pedestrian Ramp website at <http://www.nycpedramps.info>, or the public court records on file in this action at <https://www.pacer.gov/> for any updates.

## **OBJECTIONS TO THE SETTLEMENT AGREEMENT**

Any Plaintiff Class member may object to the terms of the proposed settlement described above by submitting a written or oral objection to Class Counsel via regular or electronic mail, or by leaving a message with their objection via telephone or Video Relay Service. If you submit an objection, you may appear at the Final Approval Hearing to have your objection heard by the Court, however you do not have to come to the Final Approval Hearing to talk about it. If you plan on speaking at the Final Approval Hearing, please indicate that you plan to do so in your objection. If you do not submit an objection prior to the deadline, you may not be provided an opportunity to speak to the District Court about your objection at the Final Approval Hearing.

If you submit an objection, it should include the following information: (a) your name, address, and, if available, your telephone number and e-mail address; (b) if you are being represented by counsel, the name, address, telephone number and e-mail address of your attorney; (c) a statement of your objections; and (d) a statement of whether you are a member of the Plaintiff Class.

Please note that the Court can only approve or deny the Settlement Agreement, not change the

terms of the Settlement Agreement based on objections or comments received.

**All objections must be submitted or postmarked on or before June 3, 2019.**

All email objections must be sent to the following email address: [frontdesk@dralegal.org](mailto:frontdesk@dralegal.org) or [rstulberg@brostul.com](mailto:rstulberg@brostul.com).

All oral objections must be made by leaving a message at the following number: 212-644-8644 or 212-268-1000.

All regular mail objections must be sent to one of the following addresses:

Robert B. Stulberg, Esq.  
Broach & Stulberg, LLP  
One Penn Plaza, Suite 2601  
New York, NY 10119

Michelle Caiola, Esq.  
Disability Rights Advocates  
655 Third Avenue, 14<sup>th</sup> Floor  
New York, NY 10017

**Any Class Member who does not object at or before the Final Approval Hearing will be deemed to have approved the Settlement and to have waived such objections and shall not be able to make any objections (by appeal or otherwise) to the Settlement.**

**IF YOU DO NOT OPPOSE THIS SETTLEMENT, YOU NEED NOT  
APPEAR OR FILE ANYTHING IN WRITING.**

### **BINDING EFFECT**

The proposed Agreement, if given final approval by the Court, will bind all members of the Plaintiff Class. This will bar any person who is a member of the Plaintiff Class from prosecuting or maintaining any claim or action released under the terms of the Agreement.

### **FURTHER INFORMATION**

The terms of the settlement are only summarized in this notice. For the precise and full terms and conditions of the settlement, please see the Settlement Agreement available at <https://dralegal.org/case/center-independence-disabled-new-york-cidny-et-al-v-city-new-york-et-al/>, or at <http://www.brostul.com>, or <http://www.nycpedramps.info>. You can additionally view the settlement by accessing the Court docket on this case through the Court's Public Access to Electronic Records (PACER) system at <https://ecfcand.uscourts.gov>, or by visiting the office of the Clerk of the Court for the United States District Court for the Southern District of New York, 500 Pearl Street, New York, NY 10007, between 8:30 a.m. and 5:00 p.m., Monday through Friday, excluding Court holidays.

You can also obtain more detailed information about the settlement or a copy of the Agreement, or obtain a copy of this Notice in an alternative accessible format from Class Counsel at either of the following addresses or telephone numbers:

Robert B. Stulberg, Esq.  
Broach & Stulberg, LLP  
One Penn Plaza, Suite 2601  
New York, NY 10119  
212.268.1000 (Tel.)  
212.947.6010 (Fax)

Michelle Caiola, Esq.  
Disability Rights Advocates  
655 Third Avenue, 14<sup>th</sup> Floor  
New York, NY 10017  
212 644 8644 (Tel.)  
212 644 8636 (Fax)

Please do not direct questions to the District Court.