

# UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

## Christopher Mielo v. Steak 'N Shake Operations, Inc.

Christopher Mielo v. Steak 'N Shake Operations, Inc., 897 F.3d 467 (3d Cir. 2018) · No. No. 17-2678 · Decided July 26, 2018

### SUMMARY

The Third Circuit held that disability rights plaintiffs had Article III standing based on concrete injuries from encountering steep slopes in parking facilities, but reversed class certification under Rule 23(a) for failure to satisfy numerosity and commonality. The court clarified that a "relaxed" certification standard is no longer valid and that a nationwide class alleging various types of ADA architectural barriers (e.g., slopes, signage, door hardware) lacked commonality because the claims did not depend on a common contention capable of classwide resolution. The case was remanded for reconsideration of a narrower class definition.

### CASE DETAILS

|                       |                                                                                                                                                                            |
|-----------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | United States Court of Appeals for the Third Circuit                                                                                                                       |
| WRITING FOR THE COURT | Smith; Hardiman; Restrepo                                                                                                                                                  |
| JURISDICTION          | Federal                                                                                                                                                                    |
| DECIDED               | July 26, 2018                                                                                                                                                              |
| DOCKET                | No. 17-2678                                                                                                                                                                |
| DISPOSITION           | reversed_and_remanded                                                                                                                                                      |
| PROCEDURAL POSTURE    | Appeal from the United States District Court for the Western District of Pennsylvania's order granting class certification under Federal Rule of Civil Procedure 23(b)(2). |
| STANDARD OF REVIEW    | Abuse of discretion for class certification decision; de novo for legal standards applied.                                                                                 |
| PRECEDENTIAL VALUE    | published                                                                                                                                                                  |
| PARTIES               | Steak 'N Shake Operations, Inc. v. Christopher Mielo; Sarah Heinzl, individually and on behalf of all others similarly situated                                            |

### TOPICS

[class actions](#)[standing](#)[civil procedure](#)[appellate procedure](#)[standard of review](#)

## PRACTICE AREAS

Civil Rights

Class Actions

Disability Law

## QUESTIONS PRESENTED

1. Whether Plaintiffs have Article III standing to bring their ADA claims.
2. Whether Plaintiffs satisfied the requirements of Federal Rule of Civil Procedure 23(a) for class certification.

## HOLDINGS

1. Plaintiffs have standing because they alleged concrete, particularized injuries (physical difficulty ambulating through non-compliant parking facilities) that are fairly traceable to Steak 'n Shake's policies and redressable by injunctive relief.
2. Plaintiffs failed to satisfy Rule 23(a)(1) numerosity and Rule 23(a)(2) commonality. The class definition was too broad and lacked sufficient evidence to support numerosity or commonality.

## KEY QUOTATIONS

*“Although a mere procedural violation of the ADA does not qualify as an injury in fact under Article III, Plaintiffs allege to have personally experienced concrete injuries as a result of ADA violations on at least two occasions.”* (at 5)

*“As to the second question before us, we conclude that Plaintiffs have failed to satisfy Rule 23(a). The extraordinarily broad class certified by the District Court runs afoul of at least two of Rule 23(a)'s requirements.”* (at 6)

*“Bare procedural or technical violations of a statute alone will not satisfy the concreteness requirement.”* (at 22)

*“When courts harbor doubt as to whether a plaintiff has carried her burden under Rule 23, the class should not be certified.”* (at 34)

*“Commonality requires the plaintiff to demonstrate that the class members 'have suffered the same injury.' This does not mean merely that they have all suffered a violation of the same provision of law.”* (at 49-50)

## FACTUAL BACKGROUND

Christopher Mielo and Sarah Heinzl are physically disabled individuals who experienced difficulty ambulating in their wheelchairs through steeply graded parking facilities at two Steak 'n Shake locations in Pennsylvania. They allege that Steak 'n Shake's corporate policies fail to ensure ADA compliance, resulting in access violations. Plaintiffs seek to represent a class of all persons with mobility disabilities who encountered accessibility barriers at any Steak 'n Shake restaurant where the defendant owns, controls, or operates parking facilities. There are approximately 417 company-owned restaurants at issue.

## PROCEDURAL HISTORY

Plaintiffs filed a class action under the ADA seeking injunctive relief. The District Court certified a nationwide class of persons with mobility disabilities who encountered accessibility barriers at Steak 'n Shake restaurants where the defendant owns, controls, or operates parking facilities. Steak 'n Shake appealed the certification order under Rule 23(f).

## DISPOSITION

reversed\_and\_remanded

## REMAND INSTRUCTIONS

The District Court's judgment certifying the class is reversed. On remand, the District Court should reconsider class certification. Plaintiffs may present a newly-formulated class definition that addresses the numerosity and commonality deficiencies. Specifically, Plaintiffs should provide additional evidence to support numerosity and propose a class definition limited to a narrower set of ADA violations (e.g., slope-related injuries within parking facilities).

## CASES CITED

- Spokeo, Inc. v. Robins, 136 S. Ct. 1540 (2016)
- Lujan v. Defenders of Wildlife, 504 U.S. 555 (1997)
- Cottrell v. Alcon Labs., 874 F.3d 154 (3d Cir. 2017)
- Finkelman v. Nat'l Football League, 810 F.3d 187 (3d Cir. 2016)
- Gill v. Whitford, 138 S. Ct. 1916 (2018)
- Neale v. Volvo Cars of N. Am., LLC, 794 F.3d 353 (3d Cir. 2015)
- Wal-Mart Stores, Inc. v. Dukes, 564 U.S. 338 (2011)
- In re Hydrogen Peroxide Antitrust Litig., 552 F.3d 305 (3d Cir. 2008)
- Marcus v. BMW of N. Am., LLC, 687 F.3d 583 (3d Cir. 2012)
- Hayes v. Wal-Mart Stores, Inc., 725 F.3d 349 (3d Cir. 2013)
- In re Modafinil Antitrust Litig., 837 F.3d 238 (3d Cir. 2016)
- Eisenberg v. Gagnon, 766 F.2d 770 (3d Cir. 1985)
- In re Schering Plough Corp. ERISA Litig., 589 F.3d 585 (3d Cir. 2009)
- Stewart v. Abraham, 275 F.3d 220 (3d Cir. 2001)
- Vega v. T-Mobile USA, Inc., 564 F.3d 1256 (11th Cir. 2009)
- Comcast Corp. v. Behrend, 569 U.S. 27 (2013)
- General Telephone Co. of Southwest v. Falcon, 457 U.S. 147 (1982)
- Eubank v. Pella Corp., 753 F.3d 718 (7th Cir. 2014)
- Lewis v. Casey, 518 U.S. 343 (1996)
- Initiative & Referendum Inst. v. Walker, 450 F.3d 1082 (10th Cir. 2006)
- Wachtel ex rel. Jesse v. Guardian Life Ins. Co. of Am., 453 F.3d 179 (3d Cir. 2006)

## CITED IN

- Christopher Mielo v. Steak 'N Shake Operations, Inc., Mielo v. Steak 'n Shake Operations, Inc., 897 F.3d 467 (3d Cir. 2018)

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