

# Sheppard Mullin Litigator a Fighter for the Disabled

Posted by Sara Randazzo  
January 6, 2014

Daniel Brown hadn't yet passed the bar when he took on a pro bono case that launched what has become a years-long legal crusade.

As a first-year associate at Bickel & Brewer in 1999, Brown—who is now a commercial litigation partner at Sheppard Mullin Richter & Hampton—sued the New York Road Runners Club over its practice of forcing wheelchair-bound racers to temporarily exit the New York City marathon course ahead of the finish line in order to make way for elite competitors.

The assignment was important to the young lawyer both personally and professionally. Brown's brother, Alan, who had lost the use of his legs and, for the most part, his arms after being struck by a wave as a young man, was one of dozens of wheelchair racers who had been halted at the Queensboro Bridge in 1998 so that runners could pass. Still new to the legal profession, Brown believed race officials had engaged in discriminatory behavior by stopping his brother, who was nearly in tears when he was finally allowed to finish the race, and his fellow competitors in wheelchairs.

With the backing of his firm, Brown filed suit on behalf of a group of plaintiffs that included amateurs like his brother along with elite wheelchair racers such as Bob Hall, who helped pioneer the sport in the 1970s. The litigation ultimately led to a settlement, and in 2000 the New York City Marathon joined the ranks of races that feature a separate wheelchair division and award prize money to the top finishers in that category. Says Brown: "It was the greatest thing I've ever done in my life."

It also proved to be the first in a series of disability rights cases that Brown, a native New Yorker raised on Manhattan's Upper East Side, handled on the way to becoming Sheppard Mullin's firmwide pro bono coordinator in 2010.

As 2013 came to a close, Brown—working in tandem with lawyers from the nonprofit Disability Rights Advocates—



Sheppard Mullin partner Daniel Brown, center, with wheelchair racers Miguel Such and Tony Nogueira in 1999.

celebrated the successful conclusions of a pair of suits aimed at improving the lives of disabled New Yorkers, one that expands the size of New York's wheelchair-accessible taxi fleet and a second that ensures adequate measures are taken during citywide emergencies to aid those with disabilities.

Brown stood in the front of a crowded room in downtown Manhattan on Dec. 6 as representatives from the New York Taxi & Limousine Commission, the office of then-Mayor Michael Bloomberg, and four disability rights groups announced the settlement, which requires half of the city's yellow cabs to be wheelchair accessible by 2020. At the moment, only 231 of the city's 13,237 yellow cabs can accommodate wheelchairs.

All city buses have been wheelchair accessible since 1995, but many subway stations are not. That, combined with the scarcity of wheelchair-equipped cabs, frequently



leave New Yorkers with disabilities relying on the often-criticized paratransit service known as Access-A-Ride that costs the city \$500 million a year.

Proponents of the taxi settlement, which still requires a federal judge's approval, hope that—in addition to making life easier for the 60,000-plus New Yorkers who use wheelchairs—boosting the number of accessible cabs will yield savings for taxpayers. City and taxi officials expressed as much enthusiasm for the settlement during the December press conference as those on the plaintiffs' side of the litigation.

Oakland-based Disability Rights Advocates initiated the suit three years ago, inspired by the trouble one of its own lawyers who uses a wheelchair had finding a cab during a visit to New York. The suit, the first-ever taxi-related challenge for the organization, claimed that by failing to increase the number of wheelchair-accessible cabs, the city was in violation of both federal disability laws and local human rights laws.

"The fight for accessible transportation in New York City has been going on for much longer than the lawsuit," says Brown, who joined the case in June when Disability Rights Advocates needed new pro bono counsel. "People are so excited that they'll be able to get a taxi like anybody else."

The announcement of the taxi settlement came about a month after a federal judge in New York issued a ruling in another joint Disability Rights Advocates–Sheppard Mullin case, this one brought over the city's failure to adequately prepare to assist those with disabilities during emergencies.

Filed in September 2011 in the wake of Hurricane Irene, the class action, which covered those in wheelchairs, as well as all New Yorkers with vision, hearing and mental disabilities, took on even greater significance when Hurricane Sandy hit a year later. In the wake of the storm, residents using wheelchairs in flood zones were unable to get to shelters; blind residents couldn't see written evacuation warnings; and others were left stranded when elevators in high-rise apartment buildings lost power.

One plaintiff in the case was waiting for a bus during the storm but was forced to return home when no bus with a wheelchair-accessible seat ever stopped, according to Brown. Back at home, Brown says, the man rose to the ceiling while still in his wheelchair as water rushed in, and only escaped thanks to a neighbor who heard him banging on the wall.

The original complaint, filed before Sandy struck, details how "as the hurricane approached, New Yorkers with disabilities had no idea how they could be evacuated, what shelters, if any, were accessible, how they would obtain life-

sustaining medications, or how they could be transported when buses and subways stopped running." Televised emergency announcements did not include sign language translators, evacuation maps included text too small for many to read, and many of the ramps at evacuation centers were steep and dangerous or led to locked doors, the complaint says.

"If you read our complaint, it would give you chills because it sounds like we knew something," says Sid Wolinsky, a cofounder of Disability Rights Advocates and a veteran public interest lawyer, of the pre-Sandy filing. "What sounded theoretical and like predictions, i.e., people with wheelchairs would be trapped in their apartments, turned out to be true to a staggering degree."

The class action went to a bench trial in March, and in early November, U.S. District Judge Jesse Furman issued a 119-page ruling in favor of the plaintiffs, based on trial testimony from 35 witnesses, 25,000 pages of exhibits and hundreds of pages in briefs. (In a statement, New York's then-corporation counsel Michael Cardozo said, "While we are disappointed with the court's conclusions, we are gratified it recognized that the city's extensive planning is impressive, and the efforts and valor of those responding to emergencies have been 'extraordinary.'" Cardozo also stressed the importance of planning for the needs of the disabled.)

Even with the ruling, Brown says he knows that putting in place an updated emergency preparedness plan will be difficult. "I think the city will want to fix this and will work cooperatively with us," he says. "It will be a long process. I don't have the answers. What is a good plan to get 900,000 disabled people out of Manhattan if necessary?"

Wolinsky says the ability to work with Sheppard Mullin and utilize the firm's resources was key to achieving the successful outcome in the two cases, especially given the California nonprofit's modest presence in New York.

"You don't always get a partner who actually throws himself into the fray in the way Dan did," Wolinsky says. "In the best sense of the word, he's a killer. He's a trial lawyer. He is not just somebody who manages some team of associates in order to work a big case."

Brown, who estimates that he spends hundreds of hours per year on pro bono work, says he is pleased with the outcomes in the two recent disability rights cases and that working on such matters has yielded some of the proudest moments of his career. "Like most people, I went to law school to do good," he says. "A lot of us forget that. ... To use my bar card, as they say, to make the world a better place for hundreds of thousands of people, that's one of the reasons I became a lawyer."