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Szmaj v. AT&T - Bad News for Book Worms, Judges, and Litigants

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I. INTRODUCTION

In October 1996, George Szmaj sought and received a promotion with his long-time employer, American Telephone and Telegraph Company (AT&T). For most people, a promotion is a cause for celebration. Szmaj’s promotion, however, turned out to be anything but that.

Szmaj suffered from congenital nystagmus, a condition that caused his eyes to twitch constantly, making it difficult to focus while reading. Therefore, it was extremely uncomfortable for him to spend more than fifty percent of his day reading a computer screen. Unfortunately, his new position as global services manager required that he read a computer screen for most of the day. This higher reading load, combined with the constant eye twitching and difficulty focusing even while wearing glasses, caused “a lot of stress . . . fatigue and headaches.”

Szmaj claimed that his congenital nystagmus qualified him as a person with a disability, bringing him under the protection of the Americans with Disabilities Act (ADA). He requested, as an accommodation for the alleged disability, that he be moved to another position that required less reading. AT&T refused to grant the accommodation.

2. See id. at *1, *6.
3. See id. at *7.
4. See id. at *6.
5. Id.
6. See id. at *1.
7. See Szmaj v. Am. Tel. & Tel. Co., 291 F.3d 955, 956 (7th Cir. 2002); see also Szmaj, U.S. Dist. LEXIS 22601 at *6–7.
In Szmaj v. American Telephone & Telegraph Co., the Seventh Circuit Court of Appeals sided with AT&T and denied Szmaj relief under the ADA. The court held that the “ability to read all day long is not a major life activity,” one of the elements necessary to state a claim under the ADA. However, the court declined to discuss whether reading itself, without the “all day long” qualification, merited recognition as a major life activity. The Second and Sixth Circuits had already explicitly recognized reading as a major life activity by the time Szmaj was decided. Conversely, the Seventh Circuit’s reticence to address whether reading is cognizable as a major life activity makes it unlikely that the Seventh Circuit will ever grant relief to plaintiffs who assert “reading” as the major life activity that their alleged disabling condition substantially limits under the ADA.

A. Stating a Claim: Three Elements Must Be Established to Qualify as a Person with a Disability

Title I of the ADA provides that no employer “shall discriminate against a qualified individual with a disability . . . .” Under the Act, a “disability” is defined as “a physical or mental impairment that substantially limits one or more . . . major life activities . . . .” Congress authorized the Equal Employment Opportunity Commission (EEOC) to issue regulations to bring employers into compliance with the ADA. Although the EEOC’s regulations are

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9. 291 F.3d 955 (7th Cir. 2002).
10. See id. at 956.
11. Id.
16. Id. § 12102(2)(A).
17. See id. § 12116 (stating, “Not later than 1 year after the date of enactment of this Act . . . , the Commission shall issue regulations in an accessible format to carry out this subchapter . . . .”).
not binding on the courts' interpretations of the ADA, they are highly
persuasive and given judicial deference. These regulations are
found in the Code of Federal Regulations (CFR) and other EEOC
publications. The EEOC's definition of "disability" mirrors the
statutory language of the ADA. To qualify as a person with a
disability, a person must adduce enough evidence to satisfy the
following three elements: 1) he or she has an impairment, 2) that
limits a major life activity, 3) substantially.

The first element, an "impairment," includes any physiological
disorder. The second element, a "major life activity," includes
"functions such as caring for oneself, performing manual tasks,
walking, seeing, hearing, speaking, breathing, learning, and
working." The list is illustrative, rather than exhaustive. In fact,
the EEOC has approved judicial addition of other activities to the list
as well.

20. See 42 U.S.C. § 12102(2)(A); see also 29 C.F.R. 1630.2(g)(1).
21. See 29 C.F.R. § 1630.2(h)(1).
22. Id. § 1630.2(i).

This list is not an exhaustive list of all major life activities. Instead, it
is representative of the types of activities that are major life activities.
Specific activities that are similar to the listed activities in terms of
their impact on an individual's functioning, as compared to the
average person, also may be major life activities . . . .

Id.

24. See id. § 902.3(c) ("Judicial Interpretations—Courts . . . also have
found that other activities constitute major life activities. Such major
life activities include sitting and standing . . . . and reading . . . ."); see also Sandra
M. Tomkowicz, The Disabling Effects of Infertility: Fertile Grounds for
Accommodating Infertile Couples Under the Americans with Disabilities Act,
46 SYRACUSE L. REV. 1051, 1069. Ms. Tomkowicz explains:
This latest guidance from the EEOC is instructive because it reflects
concretely the EEOC's presumption in favor of a broad, inclusive
reading of the statute. In the EEOC Compliance Manual, the EEOC
once again cautioned that the list of major life activities set forth in its
regulations "is not an exhaustive list of all major life activities." With
this foundation laid, the EEOC expanded its previous examples of
major life activities to include reading, as well as "emotional
processes such as thinking, concentrating and interacting with others."
Id. (citations omitted).
The third element, "substantial limitation," is an inability to perform or a significant restriction as to the condition, manner, or duration of performance of a major life activity as compared to the average person. In determining whether an individual is substantially limited, considerations include the impairment's nature and severity, duration, and permanence or long-term impact.

The ADA requires that employers grant reasonable accommodations in the workplace to employees who have a qualifying disability. In one of its handbooks designed to provide simple guidance for employers, the EEOC explained, "[r]easonable accommodation is any modification or adjustment to a job or the work environment that... enable[s] a[n]... employee with a disability to participate in the application process or to perform essential job functions...." A reasonable accommodation may include moving the employee to a new job, as made clear in the EEOC's question and answer handbook:

Examples of reasonable accommodation include making existing facilities used by employees readily accessible to and usable by an individual with a disability; restructuring a job; modifying work schedules; acquiring or modifying equipment; providing qualified readers or interpreters; or appropriately modifying examinations, training, or other programs. Reasonable accommodation also may include reassigning a current employee to a vacant position for which the individual is qualified, if the person is unable to do the original job because of a disability even with an accommodation.

This requirement of accommodation, however, has limits. There is no need to reassign employees who are not qualified for the new position. Additionally, the employer is required to reassign

26. See id. § 1630.2(j)(1)(ii).
27. See id. § 1630.2(j)(2)(i).
28. See id. § 1630.2(j)(2)(ii).
29. See id. § 1630.2(j)(2)(iii).
32. Id.
33. See id. at 5–6.
employees only when doing so is "reasonable." An employer is not required to afford an accommodation that poses an undue hardship on the employer. In assessing hardship, factors such as the size and resources of the employer are weighed against the burden of the accommodation sought.

B. Plaintiff George Szmaj Claimed His Impairment, Congenital Nystagmus, Substantially Limited a Major Life Activity, Seeing, Thus Requiring His Employer to Grant Him a Reasonable Accommodation

Szmaj was employed by the defendant, AT&T, for many years in different capacities. During his time with AT&T before October 1996, he described his condition "generally as not being able to see what a normal person sees." His glasses corrected his visual acuity to only 20/80 in the left eye and 20/60 in the right eye. Although he could drive, he could not read street name signs until he passed the street. License plates, too, were illegible until he was "bumper to bumper" with the passing cars. In spite of his limitations, Szmaj could "generally accomplish what a person with normal vision could achieve" by putting reading materials closer to his eyes and taking extra time to read.

Szmaj's vision limitations, however, posed additional problems in his new position. His promotion to global services manager required him to read a computer screen for eighty percent of the workday. Due to his substantially increased reading load and constant eye twitching, Szmaj developed headaches and became

34. See id. at 5.
35. See id. at 6–7.
36. See id. at 7 (stating, "In general, a larger employer with greater resources would be expected to make accommodations requiring greater effort or expense than would be required of a smaller employer with fewer resources.").
38. Id. at *5.
39. See id. at *6.
40. See id. at *5.
41. See id.
42. Id. at *6.
43. See id.
44. See Szmaj v. Am. Tel. & Tel. Co., 291 F.3d 955, 956 (7th Cir. 2002).
more easily fatigued in his new position. When AT&T refused to transfer him to another position, Szmaj filed suit in the United States District Court for the Central District of Illinois, claiming that AT&T failed to provide reasonable accommodation for his disability as required under the ADA. At the close of the plaintiff's evidence, AT&T moved for judgment as a matter of law in accordance with Federal Rule of Civil Procedure 50(b) (Rule 50(b)). The district court took the motion under advisement and did not rule on it. The defendant did not renew its motion for judgment as a matter of law at the close of all evidence. The matter was submitted to the jury, who found in favor of Szmaj.

C. The District Court Granted the Defendant's Renewed Rule 50(b) Motion, Concluding that No Reasonable Jury Could Have Found George Szmaj's Condition Qualified Him as a Person with a Disability Under the ADA

After the jury verdict, the defendant renewed its Rule 50(b) motion for judgment as a matter of law "reassert[ing] its position that there [was] not a legally sufficient evidentiary basis in the record for a reasonable jury to find that Mr. Szmaj [was] substantially limited in the major life activity of seeing."

The district court granted the defendant's renewed Rule 50(b) motion for judgment as a matter of law, concluding the plaintiff had not alleged sufficient facts for the jury to conclude that he met all three of the elements required to find that his condition rose to the level of a disability under the ADA. It was undisputed that Szmaj's congenital nystagmus rose to the level of an impairment, the first required element. Furthermore, there was no dispute that "seeing" qualified as a major life activity, meeting the second element.

46. See id. at *1.
47. See Szmaj, 291 F.3d at 957.
48. See id.
49. See id.
50. See id.
52. See id.
53. See id.
54. See id.
third element, substantial limitation, however, was not met according to the court.55

The court, quoting Roth v. Lutheran General Hospital,56 explained, ""Not every impairment that affect[s] an individual’s major life activities is a substantially limiting impairment.’ . . . ‘[T]he key is the extent to which the impairment restricts a major life activity; the impairment must be a significant one.’""57 All parties to the litigation conceded that the plaintiff did in fact have congenital nystagmus and that it satisfied the “impairment” element of the test.58 This, however, is only the beginning of the analysis.

The court concluded that the plaintiff’s impairment was not significant, especially when compared to the abilities of most other people.59 For instance, the plaintiff conceded that before he became the global services manager, he could do the same work as his co-workers who did not have visual impairments.60

After finding that the plaintiff was able to perform the same work that employees in at least two hundred other jobs at AT&T could perform,61 the court noted that the EEOC’s regulations explain that whether a person is significantly restricted must be evaluated in comparison to the capabilities of an “average person in the general population.”62 Since the plaintiff himself admitted that he could perform the same tasks as hundreds of other workers in other jobs, the court explained that his visual limitation did not meet the EEOC’s standard, stating:

All Plaintiff has succeeded in showing is that his eye condition substantially limits his ability to see in the context of a specific job . . . . [T]his is not a substantial limitation of his ability to work. His difficulty seeing. . . . while he is driving is also a relatively narrow impediment in the context of his seeing all of the things that a person with

55. See id. at *1–2.
56. 57 F.3d 1446, 1454 (7th Cir. 1995).
58. See id. at *6.
59. See id. at *7–8.
60. See id. at *6.
61. See id. at *7.
62. Id. (citing 29 C.F.R. § 1630.2(j)(1)(ii) (2002)).
normal vision sees and is, therefore, not a substantial limitation on the major life activity of seeing.\textsuperscript{63}

The court next analyzed judicial precedent involving visual impairments under the ADA.\textsuperscript{64} The court cited several other cases holding that “a visual impairment which hinders, or makes it more difficult for an individual to function at a full visual capacity\textsuperscript{65} does not rise to the level of a substantial limitation.\textsuperscript{66} Therefore, based on the EEOC’s regulations and case law precedent, the court granted the defendant’s Rule 50(b) motion, holding that no reasonable jury could have concluded that Szmaj was substantially limited in the major life activity, “seeing.”

Although the defendant had not renewed its motion at the close of all evidence and before the jury announced its ruling as required by the literal language of the rule,\textsuperscript{67} the court overturned the jury’s award and granted the defendant’s motion for judgment as a matter of law.\textsuperscript{68} The plaintiff appealed on two bases: 1) that the wrong legal standard of substantial limitation was applied and, thus, a reasonable accommodation should have been required, and 2) the district court should not have ruled as a matter of law since the

\begin{itemize}
\item \textsuperscript{63} \textit{Id.} at *7–8.
\item \textsuperscript{64} \textit{See id.} at *8–10.
\item \textsuperscript{65} \textit{Id.} at *9.
\item \textsuperscript{66} \textit{See id.} at *8–9 (citing Monell v. Kansas Ass’n of Sch. Bds., No. 98-4063-SAC, 2001 U.S. Dist. LEXIS 5829 (D. Kan. Apr. 18, 2001) (holding that a plaintiff’s double vision which limited her ability to read a computer screen for long periods of time and limited her driving ability was not a substantial limitation)); Phillips v. Wal-Mart Stores, Inc., 78 F. Supp. 2d 1274, 1284 (S.D. Ala. 1999) (holding that the plaintiff’s sporadic blurred vision was not a substantial limitation because he could perform various activities requiring the use of sight including driving, working, and reading); Person v. Wal-Mart Stores, Inc., 65 F. Supp. 2d 361 (E.D.N.C. 1999) (holding that the plaintiff’s condition, which caused her pain, redness, dryness, and blurred or double vision during the evening hours, was not substantially limiting); Schluter v. Indus. Coils, Inc., 928 F. Supp. 1437 [6 Am. Disabilities Cas. (BNA) 625] (W.D. Wis. 1996) (holding that the plaintiff’s condition, which limited her ability to drive a car in heavy traffic or for long distances and which limited her ability to read for more than thirty to forty-five minutes at a time, was not substantially limiting).
\item \textsuperscript{67} \textit{See FED. R. CIV. P.} 50.
\item \textsuperscript{68} \textit{See Szmaj}, 2001 U.S. Dist. LEXIS 22601, at *1.
\end{itemize}
defendant did not renew its initial motion at the close of all evidence and before the jury returned a verdict. 69

II. SUMMARY OF THE COURT OF APPEALS' DECISION

The court in Szmaj first considered as a threshold matter whether the plaintiff's condition, congenital nystagmus, was in fact covered by the ADA. 70 The court explained, "[T]he Act does impose a duty of accommodation," but "[t]he duty of accommodation arises only if the employee is determined to have a disability within the meaning of the Act . . . ." 71 Therefore, even though it may not have posed an undue hardship on an employer such as AT&T to grant the plaintiff an accommodation in the form of reassignment to a job requiring less reading, that obligation would not arise unless a qualifying disability is found first.

If the condition does not rise to the level of a disability, then as a matter of law, no reasonable jury could find for the plaintiff. The Seventh Circuit upheld the district court's decision stating, "[W]e agree with the district judge that no jury could reasonably find that the plaintiff did have such a disability." 72

The Seventh Circuit employed the EEOC's three-part test to determine whether the district court erred in finding as a matter of law that the jury could not find the plaintiff was a person with a disability. 73 First, the court implicitly accepted the defendant's concession that the plaintiff had an impairment, satisfying the first element of the test. 74

Next, the court evaluated whether this impairment, congenital nystagmus, affected a major life activity, the second part of the test. 75 Unlike the district court, the Seventh Circuit did not discuss "seeing" as the major life activity. Instead, the court found that the "ability to read all day long is not a major life activity." 76 The Seventh Circuit

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69. See Szmaj v. Am. Tel. & Tel. Co., 291 F.3d 955, 956–57 (7th Cir. 2002).
70. See id. at 956.
71. Id.
72. Id.
73. See id.
75. See Szmaj, 291 F.3d at 956.
76. Id. (emphasis added).
concluded that reading all day long is not a major life activity because the majority of society does not read all day long. The court explained:

A disability is a condition that substantially prevents a person from engaging in one of the major activities of life, such as walking, seeing, or reproduction. We can imagine, though with some difficulty, a society of bookworms in which a person unable to read more than 50 percent of the time would be deemed unable to engage in a major activity of life. That is not our society. To be unable to read all day long is a misfortune for someone who loves to read or who wants to hold a job (a judgeship for example!) that requires continuous reading, but the ability to read all day long is not a major life activity.77

The court next appeared to turn its attention to the third element, “substantial limitation.” The court noted that even if “reading all day long” were a major life activity, the plaintiff was admittedly capable of reading.78 Although the court did not explicitly use the “substantial limitation” language of the EEOC’s regulations, its discussion implied its conclusion that discomfort alone does not rise to the level of a substantial limitation.79 The court stated:

There is case authority that to have enough vision to be able to read a significant part of the day is [a major life] activity . . . but that much vision the plaintiff has. True he cannot read at all without some discomfort, because his difficulty in focusing is continuous; but discomfort and disability are not synonyms.80

If discomfort alone were enough, the court expressed concern that “a very large fraction of the work force would be disabled.”81

In dismissing “reading all day” as a major life activity, the court recognized that there was strong precedent in two other circuits, which held that the ability to read a majority of the day is a major life activity.82 In Bartlett v. New York State Board of Law Examiners,83

77. Id. (citations omitted).
78. See id.
79. See id.
80. Id.
81. Id. at 957.
82. See id. at 956.
the Second Circuit considered whether a recent law school graduate’s dyslexia brought her under the protection of the ADA. The court held that reading was a major life activity under the definition of the ADA. In determining whether the plaintiff had a substantial limitation of the life activity, reading, the court considered whether she was “restricted as to the conditions, manner, or duration under which they can be performed in comparison to most people.” The court explained, “It is not enough that Bartlett has average skills on ‘some’ measures if her skills are below average on other measures to an extent that her ability to read is substantially limited.” She found reading difficult, not impossible. This, however, did not preclude a finding of substantial limitation.

In Gonzales v. National Board of Medical Examiners, the Sixth Circuit applied a similar test to evaluate whether the plaintiff’s alleged learning impairment substantially limited his ability to read. In that case, the facts did not support the plaintiff qualifying as a person with a disability because he could read as well as the average person. As in the Second Circuit, the plaintiff needed to show that he could not read “as well as the average person,” rather than show that he could not read at all.

Finally, as to Szmaj’s contention that the jury’s award should have been allowed to stand since the defendant did not renew the motion at the close of all evidence as required by Rule 50(b), the court explained that although the rule requires renewal, the requirement has not traditionally been strictly enforced. Additionally, the consequence for failure to renew is not explicitly mentioned in the rule. Thus, even strict enforcement of the rule would not necessarily demand overturning the jury award due to the
defendant's failure to renew. Finally, the purpose for requiring renewal is to put the plaintiff on notice that granting judgment as a matter of law is still a possibility. This is especially important in cases where the motion for judgment as a matter of law has been denied, since after the denial, the plaintiff lacks motive to adduce additional evidence that a jury issue remains and that the motion should be denied. The court explained that in this case, however, the judge took the original motion under advisement, rather than denying the motion. Therefore, the plaintiff was on notice that the question whether the defendant was entitled to judgment as a matter of law was a live issue. The court explained:

[N]either the language of Rule 50(b) nor the committee note suggests that renewal of the motion is required in the circumstance; and requiring a party to file a motion before a previous identical motion has been ruled on is wasteful. The case law overwhelmingly denies that failure to renew in this circumstance is inexcusable.

III. ANALYSIS OF THE COURT OF APPEALS' REASONING

On appeal, the Seventh Circuit did not analyze "seeing" as a major life activity. Instead, the court, in a brief discussion, held that "the ability to read all day long is not a major life activity." It is unusual for a court to raise arguments and issues on its own. The district court limited its analysis of major life activities to "seeing." Additionally, nothing in the record shows that either litigant proposed "reading all day long," or even merely "reading," as a major life activity that the plaintiff's condition substantially limited. It is a widely accepted notion that our adversarial system of justice works most efficiently when courts consider only those issues presented by the litigants. Since the court has little fact finding ability of its own, issues raised and then ruled on by the court

94. See Szmaj, 291 F.3d at 958.
95. See id.
96. See id.
97. See id.
98. Id.
99. Id. at 956.
without both of the parties active involvement are rarely fully and vigorously litigated.\textsuperscript{101} Therefore, the court’s holding that reading all day long is not a major life activity did little to address the plaintiff’s appeal, and, instead, raised issues not even presented by the litigants. Furthermore, the court failed to make a bona fide effort to either discuss whether “seeing” was substantially limited or to identify the real major life function at issue. Instead the court set up a proverbial “straw man”—claiming that the major life function that should be analyzed is “reading all day”—and then, having identified an activity that is clearly not a major life function, the court knocked it down.\textsuperscript{102} The court should have just focused on “seeing” as the major life activity.

Since the court insisted on analyzing “reading,” it should at least have performed more than a cursory analysis. A more in-depth analysis might have acknowledged that whether reading qualifies as a major life activity was as yet unanswered in the Seventh Circuit. The court then could have agreed or disagreed with the Second and Sixth Circuits, which had recognized reading as a major life activity. The court seems to disagree with the Second and Sixth Circuits’ judicial addition of reading to the list of major life activities. Perhaps it did not state its disagreement explicitly to avoid the risk of being overturned if the Supreme Court were to grant certiorari to resolve the conflict between the circuits. Instead of exposing the rationale behind its refusal to acknowledge reading as a major life activity, it took the safer road, explaining instead, why “reading all day long” is not a major life activity, a proposition that even the plaintiff would not argue against.

A more structured approach would have analyzed the plaintiff's case in three stages: 1) Whether congenital nystagmus qualifies as an “impairment,” 2) Whether reading qualifies as a “major life activity,” and 3) Whether the inability to read all day long (or, more accurately, eighty percent of the day) meets the standard for a “substantial limitation.” This more structured approach is preferable because it tracks the three elements—1) having an impairment, 2) that limits a major life activity, 3) substantially—established by the ADA and reflected in the EEOC’s regulations.\textsuperscript{103} Using the statute

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\textsuperscript{101} See id.  \\
\textsuperscript{102} See Szmaj, 291 F.3d at 956.  \\
\textsuperscript{103} See supra Part I.A.
\end{flushleft}
as a guide for analysis would have provided an easy to use model for lower courts in their future evaluation of ADA claims. This, in turn, would reduce uncertainty for future litigants trying to predict what level of protection will be afforded their alleged conditions under the ADA.

However, despite the structure of its analysis, the court correctly concluded that Szmaj was not a person with a qualifying disability. Even if the court had acknowledged reading as the major life activity, Szmaj’s case would have failed because the third element, the plaintiff’s inability to read for eighty percent of the day, clearly did not rise to the level of a substantial limitation. This standard was articulated clearly by the Supreme Court in *Sutton v. United Air Lines, Inc.* The Supreme Court noted that the term “substantially” suggests “considerable,” “specified to a large degree,” and “in a substantial manner.” The term “substantial” means “considerable in amount, value, or worth,” “being that specified to a large degree or in the main,” “[r]elating to or proceeding from the essence of a thing; essential,” and “of ample or considerable amount, quantity or dimensions.” The court in *Gonzales* agreed that “the Supreme Court’s review of these definitions confirms that the ADA addresses impairments that limit an individual, not in a trivial or even moderate manner, but in a major way, to a considerable amount, or to a large degree.” Therefore, the Seventh Circuit’s conclusion that the plaintiff’s discomfort is not synonymous with disability is squarely in line with the Supreme Court’s interpretation of a substantial limitation. Since the plaintiff’s impairment did not substantially limit any recognized major life activity, the court correctly granted the defendant’s motion for judgment as a matter of law.

Finally, the court’s decision not to require strict adherence to Rule 50(b) seems well grounded in policy because it did not result in any unfairness to the plaintiff. The judge had not denied the original

105. Id. at 491 (quoting WEBSTER’S THIRD INTERNATIONAL DICTIONARY 2280 (1976)).
106. Id. (quoting 17 OXFORD ENGLISH DICTIONARY 66-67 (2d. ed. 1989) and WEBSTER’S THIRD INTERNATIONAL DICTIONARY 2280).
108. See Szmaj, 291 F.3d at 956.
motion, but instead had taken the original motion under advisement. Consequently, the plaintiff knew that at the end of the trial the question of whether the defendant was entitled to judgment as a matter of law remained a live issue. The plaintiff, therefore, was not deprived of the opportunity or motive to present any additional evidence that a jury issue remained.

IV. IMPLICATIONS

In holding that "reading all day long" is not a major life activity without discussing whether reading itself is a major life activity, the court avoids ruling on whether reading is cognizable as a major life activity in the Seventh Circuit. The court's holding makes it harder for individuals with reading limitations, caused by physical impairments, to plan their litigation strategy. Even though the category has not been formally foreclosed, the safer road for plaintiffs is certainly to allege "seeing" as the major life activity and establish that their difficulty in reading substantially limits their ability to see. The latter is, of course, more difficult to prove. The result is that claims that would be sustained in other circuits that recognize reading as a major life activity are more likely to fail on preliminary motions or at trial in the Seventh Circuit.

The confusion on how to interpret Szmaj is not limited to litigants and their representatives. Some lower courts in the Seventh Circuit are reticent to analyze reading as a major life activity, lest they "guess wrong" and face being overturned. Other courts are left confused about what Szmaj actually stands for. For instance, a recent Seventh Circuit district court in Spears v. Delphi Automotive 109. See supra text accompanying notes 97–98.

109. See generally Radimecky v. Mercy Health Care and Rehab. Ctr., No. 00-C-2889, 2001 U.S. Dist. LEXIS 13954, at *17 (N.D. Ill. Aug. 28, 2001) (stating, "This court expressly reserves judgment as to whether reading actually constitutes a major life activity and will instead focus on whether Radimecky's impairment substantially limits any of the major life activities alleged."); see also id. at *17 n.2 (noting that just three weeks after the Szmaj district court decision, that "[a]fter an exhaustive search of federal law, this court found no cases in the United States Court of Appeals for the Seventh Circuit holding that reading is a major life activity and only one case in the United States Court of Appeals for the Second Circuit holding that reading is a major life activity.")
Systems Corp.\textsuperscript{111} closely tracked the Szmaj court's language, citing Szmaj as having "recently addressed whether the ability to read all day long is a major life activity."\textsuperscript{112} A different Seventh Circuit district court in Hooper v. Saint Rose Parish,\textsuperscript{113} however, interpreted the Szmaj holding differently stating, "[i]n a case recently decided by the Seventh Circuit, an employee’s condition that kept him from reading for more than 50 percent of the day was found not to limit the major life activity of seeing."\textsuperscript{114} The confusion generated by the Seventh Circuit’s clumsy and cursory analysis of “reading all day” as a major life activity not only gave little direction to future litigants, but also confused the lower courts, which is likely to result in inconsistent verdicts among lower courts in the same circuit.

The Seventh Circuit declined to equate discomfort with disability in evaluating substantial limitation, expressing concern that otherwise "a very large fraction of the work force would be disabled."\textsuperscript{115} The same concerns are probably at the heart of the court’s refusal to extend the list of major life activities to include reading. However, by keeping the bar high for the substantial limitation prong, as the court did in Szmaj, the danger that extending the list would increase the number of possible plaintiffs is reduced. Maintaining the high standard to establish substantial limitation is also in line with both the EEOC’s regulations and the recent direction from the Supreme Court, as reiterated in Gonzales.\textsuperscript{116} By extending the list to cover reading, the Seventh Circuit would make relief available to plaintiffs who are truly substantially limited in the major life activity of reading, although they are not substantially limited in the major life activity of “seeing.” Reading has become an integral part of success in modern society, even for those who fall outside the “bookworms” or “judges” categories recognized by the court. Therefore, it merits recognition as a major life activity.

\textsuperscript{111} No. IP 00-1653-C-T/K, 2002 U.S. Dist. LEXIS 15131, at *1 (S.D. Ind. Aug. 15, 2002).
\textsuperscript{112} Id. at *32.
\textsuperscript{113} 205 F. Supp. 2d 926 (N.D. Ill. 2002).
\textsuperscript{114} Id. at 929.
\textsuperscript{115} Szmaj v. Am. Tel. & Tel. Co., 291 F.3d 955, 956 (7th Cir. 2002).
\textsuperscript{116} See supra text accompanying notes 88–98.
V. CONCLUSION

The Szmaj court, departing from the issues raised by the lower court or the litigants, discussed whether “reading all day” was a major life activity. Its cursory dismissal left litigants and lower courts confused. Additionally, its failure to discuss whether reading alone is a major life activity left the Seventh Circuit without direction on this important issue. The court seemed concerned that extending the list of major life activities would include too many plaintiffs. However, by strictly enforcing the “substantial limitation” requirement, the court can avoid rewarding unmeritorious litigants while granting relief to those in need.

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