

# Angels Fans Must Build 'Class' to Proceed

By Don J. DeBenedictis  
Daily Journal Staff Writer

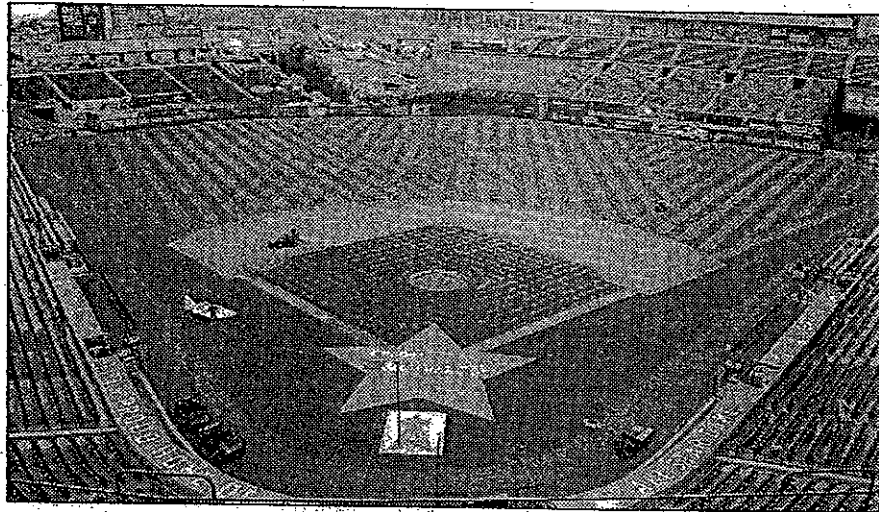
SANTA ANA — A federal judge tentatively certified a class action against the Los Angeles Angels of Anaheim baseball team and the city of Anaheim for having too few wheelchair-accessible seats in the team's stadium.

But U.S. District Judge David O. Carter first wants the plaintiffs' side to come up with about 40 potential class members.

In fact, Carter wrote in a tentative decision Monday, "should Plaintiffs fail to secure at least forty class members in the future, the Court may consider revoking its granting of certification." *Charlebois v. Angels Baseball*, 8:10-cv-853-DOC (CA C.D., filed June 15, 2010).

The lawsuit claims that Angels Stadium has only two wheelchair-accessible seats out of 3,733 on the higher-priced "Club level," which is the only area in the stadium in which waiters serve food to patrons. That's only 0.05 percent of the seats, rather than the one percent that the Americans With Disabilities Act generally requires, according to the named plaintiff's attorney, V. James DeSimone of Schonbrun DeSimone Seplow Harris Hoffman & Harrison in Venice.

Moreover, an expert for the plaintiff said in a declaration that the stadium has a total of just 287 wheelchair seats, rather than the 439 it should have under the disabilities



Associated Press

## Angel Stadium in Anaheim

act. Of those 287 accessible seats, 64 percent are in the cheaper "Terrace level," where sightlines are poor, rather than being spread proportionally around the stadium as the act requires. Two levels of the stadium have no accessible seats.

Attorneys for the Angels and the city countered in pleadings that the team works closely with Loyola Law School's Disability Rights Legal Center to assure disabled baseball fans are treated properly. They also argued that the existing number of wheelchair-accessible seats must be sufficient because "more than 85% of these seats go unsold."

But the real issue in terms of whether to certify a class action is numerosity — whether there are enough potential plaintiffs to justify creating a class, argued Brent M. Giddens of Carlton DiSante & Freud-

enberger.

"While identifying a precise number is not essential, Plaintiff cannot ask this Court to take the quantum leap of faith necessary to equate all wheel chair users to putative class members," Giddens wrote.

DeSimone said he doesn't believe the law requires identifying a minimum number of class members. He estimated that if only 15 percent of the number of wheelchair seats are sold each year, there could be at least 3,000 class members.

Carter agreed in his tentative opinion that statistics could be used to estimate the class. Nevertheless, he wrote, the issue of numerosity "is a close call."

The judge set a second hearing on the issue for May 23.

[don\\_debenedictis@dailyjournal.com](mailto:don_debenedictis@dailyjournal.com)