Casey Martin v. PGA Tour, Inc.: A New Significance to a Golfer's Handicap

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Today's society continues to grapple with the application of the Americans with Disabilities Act (hereinafter, the "ADA"). The ADA was enacted by Congress in 1990 "to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities." In the publicized case *Casey Martin v. PGA Tour, Inc.*, controversy arose in the interpretation of the ADA and its impact on sports organizations and both amateur and professional athletic exhibitions. The *Martin* case, and its decision to apply the ADA to the Professional Golf Association (the “PGA”) without exception, represents a notable interpretation of a relatively new piece of legislation. The Oregon district court's decision signifies Casey Martin’s victory in his life struggle to develop his talents while battling the infliction of a debilitating disease. The facts of this case describe an organization's failure to comply with the law. It was essential for the court to ignore the media attention directed to the famous witnesses for either party and disregard the impact on the multi-million dollar corporations involved in the dispute.

2. 42 U.S.C. § 12101 (b).
I. THE PARTIES

A. Casey Martin

Casey Martin is a native of Oregon, twenty-five years old and is by all accounts of his parents, siblings and friends, ordinary. In fact, Casey Martin is extraordinary. He was born with Klippel-Trenaunay-Weber syndrome, a rare painful vein disorder which was not correctly diagnosed until he was four. Essentially, Martin's veins can carry blood from his heart to the parts of his body, but cannot carry the blood from his right leg back to his heart, resulting in excessive pooling and the gradual erosion of the cartilage around his knee. Even with pain in his leg, Martin was active as a child until his condition forced him to stop playing grade school basketball. He then concentrated on his studies and his golf game, which he learned to play at age six. Practice made perfect and Martin earned a spot on Stanford University's Golf Team. He became a two-time Academic All-American. Martin's condition worsened and he eventually opted to use a cart in the 1994 NCAA Golf Championship with the permission of the NCAA. After college, Martin played without a cart for two years on various mini-tours, but soon realized that without a cart he would not be able to compete at the next level, the PGA Tour. Consequently, Martin feared he would be forced to quit playing professional golf altogether. As a result of his disability, his leg is

8. Id.
9. Id.
10. Id.
11. Id.
severely atrophied and weakened. He is placed at significant risk of fracturing his tibia by the simple act of walking, resulting in potential limb loss and serious complications. When his request to use a cart during qualifying tournaments of the PGA Tour was denied, Martin contemplated legal action.

B. PGA and PGA Sponsored Tours

The Professional Golf Association sponsors and co-sponsors professional golf events on three tours: the regular PGA Tour; the Senior PGA Tour; and the Nike Tour. The PGA Tour is a non-profit association of approximately 200 professional golfers, the Senior PGA has approximately 100 players and the Nike Tour has 170 players. The PGA Tour is considered the most superior and challenging level of professional golf. The PGA has established several avenues to gain playing privileges on the PGA Tour as well as the Senior and Nike Tours. Players must pay a $3,000 entrance fee and submit two reference letters to enter the three stage qualifying school tournament. Contenders who score well enough on the first seventy-two holes advance to the second stage of another seventy-two holes where the top qualifiers, approximately 168 players, compete in the last stage of 108 holes. The top thirty-five finishers are awarded playing privileges on the regular PGA Tour, and the next seventy scorers receive privileges on the Nike Tour. Nike Tour players compete and may obtain PGA Tour privileges by winning three Nike Tour events in a single season or by finishing in the top fifteen of Nike's Tour money...
winners.\textsuperscript{22} The first and second stages of the qualifying tournament permit the use of golf carts by the players, but the third stage mandates the players walk the course and use caddies.\textsuperscript{23} The PGA, an association deeply rooted in traditions and sportsmanship, contends that the "no cart" rule introduces an essential fatigue component to the game of golf.\textsuperscript{24} According to the PGA, removing the player's vulnerability to fatigue would undermine the competitive edge inherent in the PGA level of tours. During the discussion of the legality of the "no cart" rule, the PGA temporarily lifted the requirement in all third round qualifying stages, but maintained its resistance to abolishing the rule permanently.\textsuperscript{25} The PGA found itself with the support of many seasoned professional legends. Jack Nicklaus and Arnold Palmer claimed that ruling in favor of Martin would give him an unfair advantage because it would "imperil the integrity of the game"\textsuperscript{26} and asserted "it is better for the game if we all walk."\textsuperscript{27} With the nationwide attention this case attracted, the parties urged the court to acknowledge that laws, like rules, cannot be made, modified and broken purely due to the media pressure to do so. "Martin's condition can be seen with the heart. The Tour's position can be seen with the brain."\textsuperscript{28}

II. PROCEDURAL HISTORY

A. Martin v. PGA; Motions for Summary Judgment

\begin{itemize}
\item 22. Id.
\item 23. Id. Golf carts are prohibited in the third stage of only the PGA Tour and Nike Tour. Golf carts are permitted by all players on the Senior Tour in all stages of the tournament.
\item 24. Id.
\item 25. Martin, 984 F. Supp. at 1322.
\item 26. Ian O'Connor, Time to Embrace Casey, N.Y. DAILY NEWS, April 12, 1998, at 68.
\item 27. Morfit, supra note 6, at G6.
\item 28. Id.
\end{itemize}
On January 26, 1998, the United States Magistrate Judge Coffin of the District of Oregon heard the parties' motions for summary judgment in the dispute over the ADA's application to a professional sports association. Four days later, Judge Coffin granted Martin's motion for partial summary judgment and denied the PGA's motion. Martin argued that the PGA's "no-cart" rule for the PGA Tour and the Nike Tour violated the rights afforded to him under the ADA and requested permission to use a motorized golf cart. The PGA unsuccessfully argued the ADA governs only places of public accommodation and not the activities of the PGA, a private not-for-profit organization. In addition to the legal issues disputed by the PGA, members of the association were vocal in their support of the tradition and spirit of the game's rules which are integral in the past, present and future existence of their profession.

Martin alleged the PGA is a private entity which is or operates a place of public accommodation. All places of public accommodation are subject to the ADA's prohibition of "discrimination on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages or accommodations of any place of public accommodation by any person who owns, leases (or leases to) or operates a place of public accommodation." Martin also argued that under the ADA, the PGA is a private entity "offering examinations or courses related to applications, licensing, certification, or credentialing for professional or trade purposes," and therefore must do so in a place and manner accessible to persons with disabilities. Finally, Martin alleged that the PGA, as an employer, is prohibited from

30. Id.
31. Id. at 1321.
32. Id. at 1323.
35. Martin, 984 F. Supp. at 1323.
discrimination against a qualified individual with a disability because the disability affects all facets of the employer-employee relationship under the ADA.\(^{37}\)

In response to each of Martin's claims, the PGA argued its was entitled summary judgment on all three basis. The PGA insists it, as a private non-profit establishment, was exempt from regulation by the ADA.\(^ {38}\) The PGA contended that if its private club status was not accepted as an exemption under the ADA, the existence of the PGA and Nike Tour competitions are not places of public accommodation, nor is the Nike Tour a course or examination.\(^ {39}\) Lastly, in response to Martin's third claim, the PGA argued the plaintiff, Casey Martin is not an employee of the PGA Tour.\(^ {40}\) The issue regarding employee status of Casey Martin is not discussed in either the motions for summary judgment or the during the hearing on the remaining issues of fact.\(^ {41}\) Judge Coffin only concluded that Casey Martin is not an employee of the PGA and should be considered as an independent contractor under the language of the ADA.\(^ {42}\) Judge Coffin alludes to the discussion of this finding, but the discussion does not appear in the judgment or order dated February 19, 1998.\(^ {43}\) This may be due to the court's expediency in deciding the controlling issues of the controversy so that its parties can "play on" as soon as possible, but from the published opinion available, there is only the brief mention concerning the Casey Martin-PGA employee-employer status.\(^ {44}\)

**B. Court's Ruling on Motions of Summary Judgment**

1. *The PGA as a Private Club*

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40. *Id.*
42. 42 U.S.C. § 12111.
44. *Id.* at *5, n. 7.
In considering whether the defendant was exempt from coverage under the ADA as a "bona fide private membership club," Judge Coffin began his analysis by reiterating the severity of this controversy, "because of the importance of these [ADA] laws, exemptions are narrowly construed and the burden of proof rests on the party claiming the exemption." The court characterizes the PGA as an organization in the company of all organized professional sports, formed to promote and operate tournaments for the economic benefits of its members, professional golfers. The PGA sponsors tours generate sponsorship endorsements, network fees, advertising revenue and substantial prize money purses. In short, the PGA is a commercial enterprise relying primarily on public participation in all of its hosted events. The PGA relied on Welsh v. Boy Scouts of America in its argument for summary judgment, and did so, in the court's opinion, erroneously. The Welsh court held that the Boy Scouts of America, an organization with five million members, was a private club and exempt from the Civil Rights Act. The PGA wanted Judge Coffin to consider its organization, with a relatively small member size of under five hundred players, to be afforded an exemption as a private club under the ADA. However, Judge Coffin relied on the Welsh dissent which stated that the Boy Scouts should not be considered a "private club" based merely on its numbers, and held, "Congress did not intend to condition private club exclusion on the popularity of the organization." The court also considered the plain meaning

46. Martin, 984 F. Supp. at 1323
47. Id.
48. Id.
49. Id.
50. Id. at 1324. In Welsh v. Boys Scouts of Amer., the Seventh Circuit held the five million strong association was a private club and exempt from application of the Civil Rights Act, similar to the ADA in terms and application. 993 F.2d 1267 (7th Cir. 1993).
51. Welsh, 993 F.2d at 1269.
52. Martin, 984 F. Supp. at 1324.
53. Id.
Webster's Dictionary definition of "club," but ultimately based its analysis on seven variables weighed by courts in determining whether an organization is a bona fide "private club." The factors weighed by the court in this approach include: (1) the genuine selectivity of membership; (2) membership control; (3) the history of the organization; (4) the use of facilities by nonmembers; (5) the club's purpose; (6) whether the club advertises for members; and (7) whether the club is non-profit.

The Martin Court began its analysis with the application of the above factors to the PGA to determine if such a professional athletic association deemed eligible for the private club status exemption of the ADA. The court agreed with the PGA that its selection process of its members to compete in the PGA Tour is exceptionally rigorous because only the very few elite golfers possess the skills to advance through the numerous qualifying tournaments. However, the eligibility requirements are not designed to screen out members upon "social, moral, spiritual or philosophical beliefs, or any other criteria used to protect freedom of association values which are at the core of the private club exemption." Instead, the court found the PGA selection process to be primarily a measure of skills, "a natural weeding out," where only the most skilled athletes rise to the professional competitive level. The result is an extremely small percentage of the total number of participants becoming professional players which does

54. Id. at 1324. The word “club” is defined as an association of persons for social and recreational purposes or for the common promotions of some common object (as literature, science, political activity) usually jointly supported and meeting periodically, membership in social clubs usually being conferred by ballot and carrying the privilege of use of club property. WEBSTER’S INTERNATIONAL DICTIONARY, 430 (3d ed.).
56. Id.
57. Martin, 984 F. Supp. at 1324.
58. Id. at 1325.
59. Id.
60. Id.
nothing to confer "private" status to the organizations to which professional athletes belong.\textsuperscript{61} Therefore, the first factor does not weigh in favor the PGA's classification as a private club.

Furthermore, since new members of the PGA Tour are not actually "selected" or voted in by members of the PGA Tour (the players compete and must win to become members) standing members exercise very little membership control over the organization.\textsuperscript{62} The only voting rights established under the PGA are conferred to Tour golfers who play in fifteen or more regular Tour events.\textsuperscript{63} These limited voting rights are used for player directors to elect its board members from the candidates slated by standing player directors,\textsuperscript{64} which even further limits the membership control available to the PGA members.\textsuperscript{65} When an organization seeks an exemption to the ADA, it is important to consider the history of the organization to resolve any suspicions that the "private club" was created to undermine and absolve itself from the restrictions of newly passed laws. The PGA was created in 1968 and the court held it was "clearly not created to evade the ADA" which was not enacted until 1990.\textsuperscript{66} Therefore, the PGA is a bona fide organization and although this does not disfavor the PGA in achieving "private club" status, its legitimacy as club does not automatically find it a private club.\textsuperscript{67} In consideration of the use of the PGA's facilities by non-members, Coffin concluded the lucrative presence of vendors, spectators, scorekeepers and reporters weakened the PGA's contention that only its members participate in Tour events, and ruled against private club status.\textsuperscript{68}

\textsuperscript{61.} Id.
\textsuperscript{62.} Martin, 984 F. Supp. at 1325.
\textsuperscript{63.} Id.
\textsuperscript{64.} Id.
\textsuperscript{65.} Id. at 1325 n. 4.
\textsuperscript{66.} 42 U.S.C. § 12101.
\textsuperscript{67.} Martin, 984 F. Supp. at 1325.
\textsuperscript{68.} Id. See also Evans v. Laurel Links, Inc., 261 F. Supp. 474 (E.D. VA 1966). In Evans, a golf club was no longer considered a private club once it opened a lunch counter to the public because the restaurant's generated revenue ($27,568) was sufficient commercial gain to the club to remove its eligibility for the exemption to the Civil Rights Act.
The PGA's purpose is primarily mercantile and also weighs heavily against its legitimate status as a private club.\footnote{Martin, 984 F. Supp. at 1325.} If the PGA advertised for members, (i.e., paid promotion of the association by featuring their individual players to gain notoriety in the public arena) it would favor the plaintiff's case because organizations who actively advertise and solicit new members typically do not fall within the private club exemption.\footnote{Id.} However, since the PGA is extensively covered by the national and international media, it has no need or incentive to advertise for its golfers.\footnote{Id.} Finally, on one hand the court found that structurally, the PGA was non-profit organization. On the other hand, the court recognized that the reality of the PGA as an income generating organization contradicted the traditional perception of "non-profit."\footnote{Id. at 1326.} Therefore, the last factor did not favor either party's argument for or against "private club" status.\footnote{Id.} After weighing the above mentioned factors, Judge Coffin rejected the PGA's argument that it is a private club eligible for exemption from the ADA.\footnote{Martin, 984 F. Supp. at 1326.}

2. The PGA as a Place of Public Accommodation

Alternatively, the PGA argued it did not operate a place of public accommodation subject to the ADA.\footnote{Id.} The PGA based this argument on the fact that the area between the boundaries of play on all Tour courses it operated was not open to the "general public."\footnote{Id.} Under the ADA, reasonable accommodations must be afforded to the disabled using places of public accommodations.\footnote{42 U.S.C. § 12181.} In facing this contention, the court cited §12181(7) of the ADA

\footnotesize{\begin{itemize}
\item \footnote{Martin, 984 F. Supp. at 1325.}
\item \footnote{Id.}
\item \footnote{Id.}
\item \footnote{Id. at 1326.}
\item \footnote{Id.} 
\item \footnote{Martin, 984 F. Supp. at 1326.}
\item \footnote{Id.}
\item \footnote{Id.}
\item \footnote{42 U.S.C. § 12181.}
\end{itemize}}
which specifically defines the term "public accommodation." This section includes:

- places of lodging;
- establishments serving food or drink;
- theaters;
- places of public gathering;
- shopping centers and food stores;
- barber shops, dry cleaners or other service establishments;
- stations used for public transportation;
- museums and other places of public display or collection;
- parks and zoos;
- places of education;
- nursing homes and other social service establishments; and
- gymnasiums, golf courses (emphasis added) or other places of exercise or recreation.  

While the PGA recognized the inclusion of golf courses in the statute, it incorrectly distinguished the areas accessible to the public gallery from the fairways, greens and tee boxes. The PGA argued the spectator galleries were places of public accommodation while the areas of actual play were not. Ironically, the plaintiff's argument was bolstered by this line of reasoning because the statute does not support the concept that places of public accommodation have "zones" of ADA application. The PGA argued that some private clubs do not lose their exempt status when operating a discrete area public accommodation within the private facility and illustrated with the existence of a public daycare center, operated in a room of a private county club, would not force the country club to forfeit its status as "private" under to the ADA or the Civil Rights Act. The court was unwilling to assimilate the existence of a daycare facility located within the confines of the private club to the haphazard golf course boundaries strewn across the PGA's property.

78. 42 U.S.C. § 12181(7)
80. Id.
81. Id.
82. Id. at 1327.
83. Id.
The PGA also cited the functional "public/private" zones of public accommodation to the typical major league stadium. This assertion belied the PGA's argument. The ADA does not accept this "zone" rationale, and the court responded with its own illustration by stating a home team could not refuse to build a wheelchair ramp for an opposing team's disabled manager simply because spectators cannot enter the dugout. Therefore, the selected people who enter into or onto places of public accommodation cannot identify the facility as a private club under the ADA exemption. The court continued to support Martin's assertion that the PGA hosted place of public accommodation. For example, PGA could not deny an accommodation for a PGA Tour player who hired a disabled caddie. This scenario would urge the caddie, a non-player, to whom the fatigue factor is inconsequential, to challenge the PGA's "no cart" rule within the area of play. Regarding the motions for summary judgment, the court held that the PGA Tour was not exempt from the ADA as a "private club" and its tournaments were conducted within places of "public accommodation" under the ADA. In the following discussion of the remaining issue, the court determined how integral the "no cart" rule is to the nature and spirit to the game of golf.

III. THE SPIRIT OF THE GAME

A. Casey Martin v. PGA: Adjucation of the Merits

84. Martin, 984 F. Supp. at 1327.
85. Id.
86. Id.
87. Id.
88. Id.
89. Before trial, Judge Coffin ruled that Court TV could not televise the trial due to the fact Martin would have to show his deformed leg in the court room. Allegedly, a tabloid magazine offered photographers several thousand dollars for a clear image of Martin's leg. Garrity, supra note 5 at G10.
On February 19, 1998, Magistrate Judge Coffin published the opinion for the Oregon district court regarding the application of the ADA to certain athletic events and sports organizations. The court was asked to interpret the ADA to determine if the legislation, when applied, mandated that rules of athletic competition be modified in order to accommodate a disabled competitor. In Martin, the PGA felt their rules were "untouchable because any alteration of any rule would fundamentally alter the nature of the competition." The court began its analysis with an extensive description and discussion of Martin's condition, physician reports and rehabilitation measures taken by Martin. The PGA did not contest Martin's disability or his inability to walk the course. Instead, it contended: (1) the ADA did not apply to its tournaments; and (2) the "no cart" rule is a "substantive rule of the competition and a waiver of the rule would result in a fundamental alteration of its competitions." Since the court discussed the PGA's first argument in its motion for summary judgment, this opinion focused on the PGA's assertion of what constitutes a fundamental alteration of the game.

1. ADA's Application to Sports Programs

In the short history of the ADA, courts have been asked to discuss its application to "necessary" rules employed by athletic

91. Id.
92. Id.
93. Id. The court is within its discretion to begin its opinion as it sees fit, but this discussion is significant because the defendant did not contest Martin's disability or his inability to walk the courses. Furthermore, the PGA did not review Martin's medical records nor view the videotaped presentation of Martin's condition, suggesting that the PGA refrained from becoming emotionally involved in the plight of Casey Martin physically and attempted to focus, appropriately, on the relevant facts and pertinent legal issues.
94. Id. at *2.
associations regarding certain age or semester restrictions. In McPherson v. Michigan High School Athletic Association, Inc., the Sixth Circuit took the responsibility to decide whether a rule, which denied disabled student athletes to participate in its programs, was necessary. The McPherson court held that mandating a school to employ the time and money to determine whether each and every disabled student maintains the appropriate physical and athletic maturity to compete without possessing an unfair advantage, was not a reasonable accommodation. The Eighth Circuit agreed when an age eligibility rule was upheld because it was essential to the high school athletic program and an independent inquiry to the specific facts of the individual was unnecessary. In Bowers v. NCAA, a New Jersey state court held a "core course" requirement was necessary to accomplish the purpose of the NCAA program, which was to further the education and athletic achievement of its students. The rule in Bowers however, authorized waiver of the requirement on a case-by-case basis for individualized consideration which were deemed adequate to reasonably accommodate students with learning disabilities.

In light of this case law, the PGA asserted the court should "focus on whether an athletic rule is "substantive" —i.e., a rule

97. Id. at 461. The Association prohibited students from competing at the high school level for more than eight semesters. After eight semesters, the student may still attend school to graduate, but may not participate in the athletic programs competitively. The challenger to the rule was a student athlete with a learning disability which prevented him from competing his education in eight semesters. Id.
98. Sandison v. Michigan High Sch. Athletic Ass’n., 64 F.3d 1026, 1037 (6th Cir. 1995).
99. Pottgen v. Missouri State High Sch. Activities Ass’n., 40 F.3d 926 (8th Cir. 1994). In Pottgen, the court held that an age requirement for a high school football program was necessary and the school employing the rule did not need to make individual inquiries as to each challenger of the age requirement.
100. NCAA CONST. Art.I, §1.3.1.

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which defines who is eligible to compete or a rule which governs how the game is played.\textsuperscript{102} If the court decided the rule governed \textit{how} the game was played, the ADA legislation would not mandate modification in order to accommodate a person with a disability. The court distinguished the purpose of the rules governing the PGA from the rules governing collegiate and high school athletic programs.\textsuperscript{103} Traditionally, nonprofessional athletic organizations' restrictions, which are closely related to the underlying purpose of eliminating an unfair advantage among its student athletes, are upheld.\textsuperscript{104} For example, a rule would be invalid if it prohibited student athletes from using corrective lenses because it gave an unfair advantage to its competitors. It would be unreasonable to say that such an accommodation to the sight impaired athletes would fundamentally alter the spirit of competition.\textsuperscript{105} In sum, the PGA's argument, that it alone should designate the rules for its competition, is just another attempt to find the PGA entirely exempt from the ADA.\textsuperscript{106} Instead, the court inquired as to the purpose of the rule at issue in order to ascertain whether there could be a reasonable modification made to accommodate the plaintiff without frustrating the purpose of the rule and without altering the fundamental nature of the PGA Tour competition.\textsuperscript{107}

2. \textit{Was Casey Martin's Request Reasonable?}

The court found that Casey Martin had satisfied his burden of demonstrating his disablement and proved that his requested modification of the rule, the use of a golf cart, was reasonable.\textsuperscript{108} Since the official Rules of Golf promulgated by the United States Golf Association (the "USGA") do not require a player to walk, the

\begin{thebibliography}{11}
\bibitem{102} Martin, 1998 WL 67529, at *3.
\bibitem{103} Id. *4.
\bibitem{104} Id.
\bibitem{105} Id.
\bibitem{106} Id. 
\bibitem{107} Martin v. PGA, 1998 WL 67529, at *4.
\bibitem{108} Id. at *6.
\end{thebibliography}

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"no cart" rule was a requirement solely enacted by the PGA. The PGA permitted the use of a cart in the primary and secondary qualifying rounds without imposing a handicap system or stroke penalties on those who elected to use a cart. The PGA modified the USGA Rules when prohibiting the use of a cart on all PGA and Nike Tours, but included an exception where the PGA, in its own discretion, could permit every player to the use a cart during specific rounds. For example, the PGA waived the "no cart" rule for all competitors where the distance from the ninth hole was a considerable distance from the tenth hole. However, no waiver has ever been granted for individualized circumstances. The court accepted Martin's assertions and, in light of its previous determination that the PGA is a place of public accommodation, the burden shifted to the defendant to show the plaintiff's requested modification would fundamentally alter the nature of its public accommodation. Thus, the ultimate question in this case became whether granting the plaintiff, given his individual circumstances, the requested modification would fundamentally alter the PGA and Nike Tour golf competitions.

3. Would Use of a Cart Alter the Fundamental Nature of the Competition?

109. Id. at *7. The USGA permit the use of a cart unless prohibited by the local rules defining the conditions of competition for particular events. Furthermore, the USGA suggests when local rules require the players to walk, they should do so at all times during such stipulated round.

110. Id. at *6.
111. Id.
113. Id. at *7.
114. Id.
115. Id.
116. Id.
"According to the PGA, the purpose of the walking rule is to inject the element of fatigue into the skill of shot making."¹¹⁷ The court accepted the rule's purpose sufficient to challenge the ADA legislation, but noted the purpose of a rule for mere traditional reasons would not.¹¹⁸ The court rejected the PGA's argument that Martin's specific circumstances should be ignored in the evaluation of the ADA's application to the PGA.¹¹⁹ In applying the facts asserted by Casey Martin, in conjunction with the expert medical testimony, purpose of the rule, its fatigue factor, was held to be insufficient to overcome the purpose of the ADA.¹²⁰

Surprising support for the PGA came from Greg Jones, founder and president of the Association of Disabled American Golfers. Jones stated that "Casey deserves to have an opportunity to try and make a living. . . . At the same time, if he has a cart and its 100 degrees and ninety percent humidity, there certainly is the potential to change the competitive nature of the game."¹²¹ The court was persuaded by the plaintiff's medical expert's opinion, Doctor Donald Jones who analyzed the average energy exerted while walking a five mile round of golf in five hours.¹²² A player loses a mere 500 calories, which is "nutritionally less than a Big Mac."¹²³ Dr. Jones also explained there are many opportunities for a professional golfer to rest and replace the calories lost during the entire round of golf.¹²⁴

The PGA suggested that many players have combated serious injuries and extreme conditions to compete and win PGA Tournaments in the past without the assistance of golf carts. For example, in 1964, the U.S. Open winner, Ken Venturi, finished the course while suffering near-fatal exhaustion and severe dehydration due to high external temperatures and extreme

¹¹⁸ Id.
¹¹⁹ Id. at *7.
¹²⁰ Id. at *9.
¹²¹ Id.
¹²³ Id.
¹²⁴ Id.
humidity levels during the competition. The court was unwilling to equate Martin's disability with the weather conditions felt by competitors of the 1964 U.S. Open. Instead, it relied on the Jones' opinion and held fatigue, at lower intensity exercise, was primarily psychological, caused by stress and motivation. Dr. Jones also said "walking at a slow pace to the able bodied is a natural act, of little more difficulty than breathing. Additionally, the PGA's set time restrictions for getting to the ball, finding a lost ball and hitting the ball once addressed are generous and insignificant in imposing fatigue on the golfer.

On Martin's behalf, professional golfer Eric Johnson testified regarding the superficial impact of the "fatigue factor" under normal circumstances for a healthy golfer.

[B]ecause of the pace of play and our pre-shot routines, we know not to hit when we are winded or we know not to hit until we are ready to hit the golf ball. So I can't think of a time in my golfing career where I've ever hit a golf shot when I've felt I wasn't ready to hit.

The court was not convinced that walking had anything to do with the imposition of fatigue. In fact, many PGA Tour golfers prefer to walk the courses in order to keep the rhythm of their pace throughout the round. Walking, rather than sitting on the open cart, keeps the golfer warm when playing in colder weather and protects the golfer the golfer's equipment from the rain. Learning to compensate for the full effect of the elements, the cold, rain and wind, by walking the course is a skill professional golfers

125. Id. at *9.
126. Id.
128. Id.
129. Id. at *9.
130. Id.
131. Id. at *9, n 13.
hone by practicing under such conditions. One must recognize that if Casey Martin could not bear the pain of walking an eighteen-hole golf course in optimal weather, it is practically impossible for him to prepare himself for the spectrum of conditions every other healthy golfer is able to endure. As a result, the court then asked "how can anyone perceive that plaintiff has a competitive advantage by using a cart given his condition?" Martin's condition is permanent. Its only variable being the increased pain and damage to his bones and cartilage in the future. The use of a cart during PGA and Nike Tour competitions would still force Martin to walk twenty-five percent of the course, getting to and from his shots and from the tee to the green. In response to the alleged "lack of stress" Martin would endure by riding a cart and his avoidance of the physical fatigue from walking, the court found Martin was subjected to the additional stress of pain and risk of serious injury. Martin himself stated he would gladly trade the cart for a good leg. The court reasoned, to agree with the PGA's argument of unfair competitive advantage would be a gross distortion of reality, "no one has succeeded at tournament golf by virtue of his walking ability."

Thus, the court held the "no cart" rule may be modified to accommodate a disabled player without fundamentally altering the nature of the PGA Tour. This conclusion is bolstered by the USGA's guidelines to employ permissible modifications to the Rules of Golf for disabled golfers. The former president of the USGA testified that the suggested modifications for the Rules of Golf did not govern the PGA Tour regulations, but was only for recreational golfers. When the court hypothetically asked the PGA whether the modified USGA rules for blind golfers could be

133. Id. at *9, n 13.
134. Id. at *9.
135. Id.
136. Id. at *10.
137. Garrity, supra note 5, at G10.
139. Id. at *10.
140. Id. at *11.
applied to the PGA Tour, the PGA responded it would have to depend on the specific circumstances of the competitor. The court found this ironic since the PGA adamantly refused to assess the requested modification in light of the specifics of Casey Martin's disability. Therefore, the court ruled in favor of Martin in saying the "rules of golf are not sacrosanct and Martin's requested accommodation is eminently reasonable in light of his disability."

IV. IMPACT

The most common argument criticizing the result of Martin v. PGA is rooted in the fear that this holding will create a slippery slope, deteriorating the traditional rules of the golf game. Members of the golf community, both professional and amateur, characterized the permission for Casey Martin to use a cart on all Tour events as an excuse to refrain from walking because his leg irritated him. Immensely understated, it must be reiterated that Martin's condition is a disability, not an injury. The accusations of potential abuse of the Casey Martin decision, (i.e., a suit to lower the basketball nets for shorter players or provide pinch hitters for slow runners) need not be justified with an answer. Martin's pain and bleak future for turning thirty without undergoing surgery to remove his leg below the knee should make all such critics

141. Id.
142. Id. at *12.
143. Bob Robinson, Some Are Softening, Some Still Uneasy About Martin Ruling, PORTLAND OREGONIAN, April 8, 1998, at E04. Professional Golfer Jim Furyk, pleased with the Martin ruling, articulated this concern: "I am happy that Casey has gotten his chance to play...I wanted him to have that chance." In his apprehension regarding the potential future loopholes, Furyk stated, "I want to see it stop with Casey...his condition is unique, so that's OK. But I am concerned, just like some of the others, this could lead to everybody being allowed to ride and the tour not being able to govern its own game."
The PGA had a duty to its players to uphold the tradition of its rules against frivolous and unsubstantiated challenges. However, the PGA has a greater duty to humankind, disabled and abled alike, to comply with the law. Since it neglected to do so on its own volition, Martin was forced to ask the Eighth Circuit to intervene. The court listened. The repercussions of Casey Martin's suit against the PGA have already begun to materialize: criticism by peers and superiors, loss of public appeal, and the possible loss of sponsorship endorsements. Fortunately, perhaps with the help of the PGA's resistance to accommodate Martin, his public gamble has paid off, literally. Winning the season-opening Nike Lakeland Classic, Martin earned $43,532.147 His gallery included other disabled golfers and a nine year old child with the same debilitating disease. Martin acknowledges the responsibility of being a representative of the disabled. "It's like I'm standing for something far greater than just myself, and that's flattering."

The commentaries on the Martin case fall on either side of the argument, those praising the PGA for its steadfast loyalty in the face of politically incorrect actions and those voicing their disbelief in the PGA's refusal to bend. Dissenters remember Charlie Owens and Lee Elder. Owens, injured in a parachute accident while in the Army, unsuccessfully petitioned the USGA to use a cart for the 1987 Senior Open. "In protest, Owens walked the first nine holes on crutches before he withdrew."149 In 1995, Lee Elder who suffered a heart attack in 1987 and health problems afterward, requested the use of a cart in the Senior Open which was also

145. Id. at 8.
146. Gary Van Sickle, Golf Plus, SPORTS ILLUSTRATED, March 16, 1998, at G16. Because of his celebrity and the avalanche of endorsements that have come his way - Nike, Spalding, Ping and Hartford Life- Martin is just one of the guys on the Nike Tour, just like Michael Jordon was one of the guys on the Birmingham Barons.
147. Id.
148. Id.
149. Moffit, supra note 6, at G6. Arnold Palmer was vocal in protest of Owens being permitted to use a cart in the 1987 Senior Open, and is expected to voice similar concerns regarding Martin's request.
denied. Fred Couples called the Martin ruling "a farce" and Brandel Chamblee commented on what rule changes might be next, "the pros might load their carts with beer and sandwiches." Martin supporters include Greg Norman and Tom Watson who claim, "[s]hotmaking is paramount in golf, and the game will not be harmed if the Tour accommodates a disabled player." Phil Knight, founder and chairman of Nike, Inc., commented on the events of the case and said "the Tour could have made a great statement about inclusiveness. It could have blasted a huge hole in the elitist boundaries that Tiger Woods began to break through in 1997. Instead it chose to oppose Martin." It is true, Casey Martin had an advantage that neither Owens or Elder had, the ADA, his "trump card." Arguably, another distinction lies between an injury and a disablement - injured players have hope and the opportunity to recover. In Martin's case, the cart is an equalizer, not an advantage.

V. CONCLUSION

Casey Martin's battle does not end here, an appeal by the PGA has already been filed. More importantly, Martin must acknowledge that the PGA Championship, the Masters and the British Open, each have the power to set its own rules of play. Martin, as does any high profile individual, must face those in opposition of Coffin's holding and continue to perform, and perform well. Although the "no cart" rule of the PGA Tour has been amended, the qualification standards remain the same. Just because Martin has won the right to ride a cart in the tournaments

150. Mofit supra note 6, at G6.
152. Garrity, supra note 5, at G10.
154. Mofit, supra note 6, at G6.
155. Id.
156. Robinson, supra note 144, at E04.
157. O'Connor supra note 26, at 68.
he plays in, the tournaments in which he is eligible to play are by invitation only. Many tournaments are not sure who to side with; Martin or the PGA, the law or the tradition. For example, Martin was not invited to the Nissan Open in Los Angeles despite the incredible attention the event would attract. Martin intends to wait until the media focus subsides before he exercises his right to use a cart, turning down some invitations in order to best handle the situation.158 But for the time being, Martin has accomplished a greater feat for society than any green jacket could represent. The Oregon Court's decision will not open the floodgates to trample the rules governing professional sports organizations. Judge Coffin exercised scrutinizing consideration of the specific and truly unique facts of Casey Martin, Martin's request, and the operation of the PGA organization, to hold that a reasonable accommodation must be made in accordance with the ADA provisions.159

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