

## **"He's Got a Ticket to Ride"**

# **Casey Martin v. PGA Tour and its Impact on Sports**

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by:

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Is walking an essential element of golf on the PGA Tours? Would allowing an individual with a disability to ride a cart be fundamentally unfair to all the other competitors? These were just some of the questions a United States District Court Judge in Eugene, Oregon was asked to answer in *Casey Martin v. PGA Tour*, 1998 WL 67529 (D.OR). In answering these questions Judge Thomas Coffin ruled that while the walking-only rule was substantive, waiving the rule in Casey Martin's case would not fundamentally alter the competitive balance of the Tour. Nothing in the rule of golf, as promulgated by the United States Golf Association and the Royal and Ancient Golf Club of St. Andrews, Scotland, requires or defines walking as part of the game. Therefore, since walking is not an essential part of golf, Judge Coffin ruled that the PGA Tour must make reasonable accommodations to disabled golfer Casey Martin by allowing him to use a cart during tournaments.

The purpose of this article is to examine Judge Coffin's decision in *Casey Martin v. PGA Tour* and the impact the decision will have on other sports and recreational activities. The article begins by reviewing the facts in the controversy. In the case, Casey Martin a professional golfer sued the PGA Tour for failure to comply with Title III of the Americans with Disabilities Act (ADA). Title III of the ADA entitled "Public Accommodations and Services Operated by Private Entities" prohibits discrimination against any qualified individual in all programs, activities and services of public entities.

Martin argued that the PGA Tour was in violation of Title III when it refused to allow him to use a cart on the NIKE Tour. After reviewing the facts, the article will then review some of the arguments presented by the PGA Tour. The two main arguments presented by the PGA Tour were that it was a private entity and therefore not subject to the requirements of the ADA. In the alternative, the PGA Tour argued that its' walking only rule was an essential element of golf on the PGA and Nike tours and that waiving the rule would fundamentally alter the nature of the sport. Next, the article reviews another recent case involving the ADA and a professional golfer's attempt to ride a cart in competition, *Ford Olinger v. the United States Golf Association*. The article concludes by exploring the impact the Martin decision will have on not only golf, but also other sports and recreational activities.

### **The Current Controversy**

A former Oregon amateur champion and member of Stanford University's 1994 NCAA championship team, Casey Martin suffers from Klippel-Trenaunay-Weber Syndrome (Wolohan, 1998). Klippel-Trenaunay-Weber Syndrome is a rare circulatory disorder that has caused his right leg to waste away so that it is only about half the size of his left leg (Blauvelt, 1998). The reason for the atrophy is because Martin's leg does not have the vein that runs along the bone in his lower leg. The blood returning to his heart, therefore, goes through a jumble of veins near the surface of his leg and when stressed, the

veins bleed into his knee causing pain and excessive bleeding into the knee has caused the bone to weaken and could lead to the leg being amputated later in life (Blauvelt, 1998).

The PGA Tour, the defendant, "sponsors and cosponsors professional golf events on three tours: the regular PGA Tour, with approximately 200 players; the Seniors PGA Tour, with approximately 100 players; and the Nike Tour, with approximately 170 players" (Martin #1, 1998). While there are various ways to qualify for the PGA Tour, the most common means of making the Tour is a three-stage qualifying tournament. The first stage of the qualifying tournament consists of 72 holes (Martin #1, 1998). If player scores low enough, he then advances to the second stage, which also consists of 72 holes. During the first two stages of the qualifying tournament the PGA Tour allows golfers to use carts. The top golfers then advance to the third stage, which consists of 108 holes (Martin #1, 1998). During the third stage players are required to walk and to use caddies (Martin #1, 1998). The lowest 35 finishers are awarded playing privileges on the regular PGA Tour. The next 70 lowest finishers are awarded playing privileges on the Nike Tour (Martin #1, 1998). Any golfer who fails to qualify for the regular PGA Tour, but qualifies for the Nike Tour can play his way onto the PGA Tour by winning three Nike Tour tournaments or by finishing in the top fifteen on the Nike Tour money list (Martin #1, 1998).

In an attempt to make the PGA Tour, which is a non-profit association of professional golfers, Casey Martin filed a preliminary injunction request against the PGA Tour in November 1997 seeking to be allowed to use a cart during all three stages of the qualifying tournament. Martin claimed that due to his having Klippel-Trenaunay-Weber Syndrome he was protected under the ADA. Therefore, when the PGA refused to make reasonable accommodations, allowing him to use a cart, Martin claimed that the PGA Tour failed to make its tournaments accessible to individuals with disabilities in vio-

lation of the ADA (Martin #1, 1998). Judge Coffin issued the injunction, which allowed Martin to ride a cart during all three stages of the qualifying tournament in December. The injunction was limited to the qualifying tournament. Martin missed earning a PGA Tour card, which would have allowed him to play on the PGA Tour, by two strokes. He did however qualify for the Nike Tour, the PGA's developmental tour.

After qualifying for the Nike Tour, Martin filed a lawsuit to overturn the PGA Tour's walking only rule so that he could use a cart while playing on the Nike Tour. Since the trial was not scheduled until February, the PGA Tour in a voluntary agreement with Martin's attorneys allowed Casey Martin to use a cart in the first two Nike Tour events. In his first tournament appearance Casey Martin won the Nike Lakeland Classic by one stroke. In his second tournament appearance, Martin failed to make the cut at the Nike South Florida Classic.

#### **Casey Martin v. PGA Tour, 984 F.Supp. 1320 (1998)**

Before the actual trial, the PGA Tour filed a motion for summary judgement. At the summary judgement hearing Casey Martin presented three arguments against granting the PGA's request. First, he alleged that the PGA Tour is a private entity that is or operates a place of public accommodation. As such, Martin claimed that the PGA Tour is subject to Title III of 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 accommodations (42 U.S.C. # 12182). The second argument presented by Martin was that the PGA Tour is a private entity that offers examinations related to applications, licensing certifications, or credentialing for professional trade purposes (Martin #1, 1998). Therefore, Martin argued that the PGA Tour was subject to the ADA requirements prohibiting private entities

from offering examinations related to applications, licensing certifications, or credentialing for professional trade purposes in a place and manner inaccessible to people with disabilities (42 U.S.C. # 12189).

The final argument presented by Martin was that the PGA Tour qualified as an employer under the ADA (Martin #1, 1998). As an employer, Martin argued that the PGA Tour is prohibited from "discriminating against a qualified individual with a disability in regard to job application procedures, the hiring, advancement or discharge of employees, employee compensation, job training and other terms, conditions and privileges of employment" (42 U.S.C. # 12112(a)).

In support of its motion for summary judgement, the PGA Tour argued that it was exempt from the prohibitions of the ADA because it is a private non-profit organization (Martin #1, 1998). Even if not exempt as a private non-profit organization, the PGA argued that its competitions do not constitute "places of public accommodation" (Martin #1, 1998). Finally, the PGA Tour argued that Casey Martin was not an employee of the PGA Tour nor was the Nike Tour an examination or course as defined by the ADA (Martin #1, 1998).

In denying the PGA's summary judgement motion Judge Coffin found that the PGA Tour did not qualify for the "private club" exemption under the ADA. The PGA Tour, the court found, "is an organization formed to promote and operate tournaments for the economic benefit of its members, a highly skilled group of professional golfers" (Martin #1, 1998). In short, the court held that the PGA Tour is a commercial enterprise (Martin #1, 1998). The success of the PGA Tour in generating revenue for its members, however, is dependent on the participation of the public as spectator and television viewers of the tournaments (Martin #1, 1998). Therefore, the court held the PGA Tour does not qualify as a private entity outside the scope of the ADA. In determining whether the PGA Tour was public or private Judge Coffin analyzed the following vari-

ables: organization's selectivity; membership control; history of the organization; use of facilities by non-members; the club purpose; whether the club advertises for members and whether the club is nonprofit (Martin #1, 1998).

The court also rejected the PGA Tour's second argument that even if it was not exempt from the provisions of the ADA as a private nonprofit organization the golf courses where the competitions are played do not constitute "places of public accommodation." In rejecting this argument, the court noted that the ADA specifically listed golf courses under the definition of places of public accommodations (42 U.S.C. §12181). The PGA Tour however argued that the course was private since the public was excluded from the course during tournaments and only allowed in certain areas. The court however rejected this concept of "zones of public accommodations" finding that even though an area may not be open to the general public it is still subject to the ADA (Martin #1, 1998).

After rejecting the PGA Tour's first two arguments, the court deferred the last two defenses, whether the Nike Tour is an examination or course as defined by the ADA and whether Casey Martin was an employee of the PGA Tour, until trial (Martin #1, 1998).

**Casey Martin v. PGA Tour,  
1998 WL 67529 (D.OR.)**

At trial, Casey Martin presented the same arguments that he did in the summary judgement hearing. First, he alleged that the PGA Tour is a private entity that is or operates a place of public accommodation. Second, he argued that the PGA Tour is a private entity that offers examinations related to applications, licensing certifications, or credentialing for professional trade purposes. The final argument presented by Martin was that the PGA Tour qualified as an employer under the ADA. The court quickly rejected Martin's second argument that the PGA Tour was a private entity that offers examinations related to applications, licensing certifications, or credentialing for professional trade purposes and third argument that

the PGA Tour qualified as an employer under the ADA. The issue therefore was whether the PGA Tour was a private entity that is or operates a place of public accommodation.

The court had already established at the summary judgement hearing that the PGA Tour was not exempt as a private entity and that golf courses were specifically covered under the ADA as places of "public accommodations."

Therefore, since the court had already held that the PGA Tour was subject to Title III of the ADA, it was up to Casey Martin to demonstrate that he met the three requirements for a Title III claim. First, he had to establish that he had a qualified disability under the ADA. Second, Martin had to establish that his request for accommodations was reasonable. Third, he had to show that his request had been denied (Martin #2, 1998). With regards to the first requirement, the ADA defines a "qualified individual with a disability" as any person who has a physical or mental disability "who, with or without reasonable modifications meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a public entity" (42 U.S.C. 12115). The PGA Tour conceded the fact that Martin has a qualified disability under the ADA. It also agreed that it had denied Martin's request to use a cart. With the PGA Tour conceding points one and three, the court was asked to determine whether raiding a cart, the accommodation requested by Martin, was reasonable or whether it would fundamentally alter the game of golf. The ADA states that any accommodations that impose undue financial burdens or require fundamental alterations in the nature of the association or program are unreasonable (42 U.S.C. 12113). Casey Martin argued that his request was reasonable since walking is not specifically required in the rules of golf and since the PGA Tour allowed carts on the Senior Tour and during the first two rounds of the Qualifying School Tournament (Martin #2, 1998). The court therefore held that since the use of a cart was a

reasonable accommodation, the PGA Tour was required to show that the use of carts would fundamentally alter the game of golf.

In an attempt to show that walking was an essential element of golf on the PGA and Nike tours and that waiving the rule would fundamentally alter the nature of the sport, the PGA presented the following four arguments. First, the PGA argued that stamina was a major part of PGA Tournament golf and that allowing an individual to ride a cart would take the physical part out of the game. To support this contention, the PGA Tour called golfing legends Arnold Palmer, Jack Nicklaus and Ken Venturi to testify at the trial. Palmer testified that a golfer's stamina was part of PGA Tournament golf and that allowing an individual to ride a cart would take the physical part out of the game (Blauvelt, 1998, February 6). Venturi, who battled heat exhaustion to win the 1964 U.S. Open, testified that fatigue was a big factor in the game of golf and can effect both a golfer's concentration and shot selection (Blauvelt, 1998, February 6). While Judge Coffin agreed that the "fatigue factor" would be a valid purpose for the rule under the ADA, he dismissed the fatigue factor as insignificant (Martin #2, 1998). Based on evidence presented by Dr. Gary Klug, a professor in physiology at the University of Oregon, Judge Coffin found that walking 18 holes over a five hour time period expended only about 500 calories (Martin #2, 1998). The fatigue factor surrounding Casey Martin's condition, the court found were undeniably greater then that of other golfers (Martin #2, 1998).

Next, the PGA Tour argued that the purpose of the ADA is to place individuals with disabilities on equal footing, not give them an unfair advantage. The PGA Tour argued that allowing Casey Martin to ride a cart would give him an unfair advantage over all the other competitors on the tour. PGA Tour Commissioner Tim Finchem explained that the difference between Tiger Woods, the top money winner on the tour, and the golfer ranked 100 on the money list last

year was about two strokes every 18 holes. To demonstrate how significant those two strokes are, Finchem noted that Tiger Woods won \$2 million last year, while the player ranked 100 only made \$250,000 (Blauvelt, 1998, February 11). Even one stroke, Finchem argued, is significant. Last year, Tiger Woods averaged 69.1 strokes per round and won an average \$100,000 per event (Blauvelt, 1998, February 11). Craig Perry on the other hand averaged 70.1 strokes and only \$20,000 per event (Blauvelt, 1998, February 11). Therefore, Finchem argued that if riding a cart gives Martin even a stroke advantage it can make a tremendous difference in the outcome of a tournament and translate into hundreds of thousands of dollars.

In rejecting this argument, Judge Coffin once again held that Casey Martin's disability was such a handicap that his using a cart would only level the playing field. Even with a cart, Casey Martin must still walk approximately 25% of the course in constant pain (Martin #2, 1998).

Therefore, the court held that "to perceive that the cart puts him with his condition at a competitive advantage is a gross distortion of reality" (Martin #2, 1998). Riding a cart may even be a disadvantage to Martin, the court held, since he will be isolated, unable to walk off nervous energy or get a feel for the course. The evidence introduced at the trial showed that the vast majority of PGA golfers "prefer walking as a way of dealing with the psychological factors of fatigue" (Martin #2, 1998).

The last two arguments presented by the PGA Tour dealt with the impact the decision might have on the PGA Tour. First, the PGA Tour argued that its rules are reasonable and that it should be able to establish the rules of the game without the court's interference. The court rejected this argument finding that it was "simply another version of the argument that the PGA Tour is exempt from the provisions of the ADA" (Martin #2, 1998). The intent of the ADA is "to provide a clear and comprehensive national mandate for the elimination of discrimination against

individuals with disabilities" (Martin #2, 1998). In relying on this language, Judge Coffin found that the court has an independent duty to inquire into the purpose of rule and eliminate discriminatory practices within organizations like the PGA Tour and to force them to open themselves up to people with disabilities (Martin #2, 1998). The last argument presented by the PGA Tour was that if Casey Martin were allowed to ride a cart on the PGA Tour other golfers would also want to use carts. This, the PGA Tour argues, would impose an undue hardship on the organization by forcing it to review numerous appeals by other golfers. Even Casey Martin agrees that if the PGA Tour were required to make reasonable accommodations to him, it would open up a door for other qualified golfers with disabilities and could lead to abuses (Chambers, 1998, February 12).

In dismissing this argument, Judge Coffin held that his ruling only applied to Casey Martin. The court also noted that temporary, non-chronic impairments of short duration, with little or no long term or permanent impact, are not disabilities under the ADA (Martin #2, 1998). The ADA defines a disability as any physical or mental impairment that substantially limits one or more major life activities, having a record of such impairment, or being regarded as having such an impairment (42 U.S.C. 12102). The court then went on to list some of the impairments which would not be covered under the ADA, such as broken bones and sprained joints (Martin #2, 1998). Also, since the ruling only applied to Casey Martin, if another golfer wished to ride a cart on the PGA Tour he would still have to meet all the requirements of the ADA. The PGA Tour has already said that it will appeal the decision to the Ninth U.S. Circuit Court of Appeals in San Francisco. The Ninth U.S. Circuit Court of Appeals, however, has a reputation of being very liberal and is not likely to overturn the decision. Therefore, if the PGA Tour wants to overturn Judge Coffin's decision it will probably have to take this case all the way to

the United States Supreme Court.

### **Olinger v. USGA**

As if to prove the PGA's contention that the Martin decision will lead to more and more lawsuits, another golfer, Ford Olinger, sued the United States Golf Association (USGA) under the ADA to use a cart during one of the U.S. Open Qualifying Tournament (Chambers, 1998, May 21). Olinger who suffers from bilateral a vascular necrosis, a painful hip disability, filed his suit against the USGA after the judgement in the Martin case (Chambers, 1998, May 21). Like Martin, Olinger claims that the USGA is required by the ADA to provide him with a cart so that he may compete in the Open Qualifying Tournament.

The USGA, which had already announced that it would allow Casey Martin to use a cart if he wanted to try and qualify for the U.S. Open, refused to let Olinger use a cart during the qualifying tournament. The USGA argued that Qualifying Tournament requires each player to walk 36 holes during one day of play. Therefore, the USGA argued that to allow a golfer the opportunity to ride during the 36 holes would provide that player with an unreasonable competitive advantage (Chambers, 1998, May 21).

Judge Robert Miller of the United States District Court in Fort Wayne, Indiana ruled that Olinger was entitled to use a cart during the first qualifying round, an 18 hole event (Chambers, 1998, May 21). Olinger however failed to qualify for the second sectional tournament, so the issue of whether he could use a cart during the 36-hole event was never raised. The USGA, which does not want to fight individual plaintiffs every year, is seeking a clear legal mandate on whether the "walking only" rule is legal and is applying the decision.

### **Impact of the Decision**

Casey Martin's victory over the PGA Tour is the first time a professional athlete has used the ADA to challenge a rule or policy of a professional sports organization. While the

Martin case might have been the first time the ADA has been used at the professional level, the ADA has been used with varying success at the Little League, high school and college level, as well as at sports facilities and arenas to overturn league or association policies or rules (Wolohan, 1998). The rest of this paper examines the impact the decision will have on sport and recreational programs. As for the world of golf, it is easy to see the could have a significant impact is on private recreational programs and facilities. Under Title III of the ADA, all of the following private entities are considered Public Accommodations: motion picture houses, theaters, concert halls, stadiums, other places of exhibition or entertainment and camps, gymnasiums, health spas, bowling alleys, golf courses, or other places of exercise or recreation (42 U.S.C. 12181). With the Martin decision as precedent, every recreational programs and facilities that opens itself to the public is going to be required to make reasonable accommodations to individuals with disabilities.

### **Conclusion**

The court's decision in Casey Martin is just another example of the impact the ADA is beginning to have on sports and recreational programs. Since it's passage in 1990 the ADA has been used successfully by individuals with disabilities to not only gain access to athletic arenas but also to playing and coaching opportunities. It is therefore essential that sports and recreational programs review their eligibility requirements with an eye on the impact these requirements have on individuals with disabilities. This is especially important since a number of eligibility requirements, while they may seem neutral at first glance, when applied to individuals with disabilities are in fact discriminatory. If programs do not take a proactive approach in eliminating discriminatory requirements they can rest assured that like the PGA Tour they too will find themselves on the wrong end of the ADA.

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