

# TICKET TO RIDE: CASEY MARTIN v. PGA TOUR, INC.

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## I. Introduction

On January 11, 1998, Casey Martin became the first person to win a professional golf event while using a cart<sup>1</sup>. Martin rode a cart in the Lakeland Classic, the opening event of the Nike Tour season, thanks to a stipulation between Martin and the PGA Tour<sup>2</sup>. The agreement allowed Martin the use of a cart in the first two events of the Nike Tour season, after which Casey's fate would be in the hands of a United States District Court<sup>3</sup>.

The stipulation created a media firestorm unlike anything the Nike Tour, which functions as golf's minor league, had seen before. More than eleven thousand spectators turned out to see Martin's first round<sup>4</sup>. As he stepped to the first tee, Martin was keenly aware of the pressure and thought, "don't shank it. Don't shoot 90 with all these people watching"<sup>5</sup>. Martin did not shank his first shot, but instead birdied three of his first four holes, racing to a first round score of 66, only one shot off the lead<sup>6</sup>.

Martin followed up his excellent first round with a second round score of 69 and a third round score of 65<sup>7</sup>. His inspired play continued into the fourth and final round, landing him in a tie for the lead with 3 holes to play. Martin played the final 3 holes in one shot under par, securing a two stroke victory and his place in history<sup>8</sup>.

Although Martin was extremely proud of his victory, he expressed sadness that he was unable to win while walking. "I wasn't all pumped to make history. I'm kinda sad. I need a cart, but I would do anything to be able to walk down the fairway"<sup>9</sup>. Martin's victory also failed to change the PGA Tour's opposition to Casey's use of a cart. After the victory, the tour released a statement congratulating Martin, but reiterating their intent to continue the court battle over the cart<sup>10</sup>.

## II. Casey Martin

### A. Early Life

Casey Martin was born on June 2, 1972 in Eugene, Oregon<sup>11</sup>. He was the second son born to King and Melinda Martin, who had first met at the nearby University of

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<sup>1</sup> Lisa Coffey, *Martin Carts Off with a Historic Win*, LAKELAND LEDGER (Lakeland, Fla.), Jan. 12, 1998, at C1.

<sup>2</sup> Cameron Morfit, *Winning A La Cart*, SPORTS ILLUSTRATED – GOLF PLUS, Jan. 19, 1998, at G6.

<sup>3</sup> *Id.*

<sup>4</sup> Del Milligan, *Casey Martin Rides Into History*, LAKELAND LEDGER (Lakeland, Fla.), Jan. 12, 1998, at A1.

<sup>5</sup> Morfit, *supra* note 2.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> Coffey, *supra* note 1.

<sup>9</sup> Milligan, *supra* note 4.

<sup>10</sup> Morfit, *supra* note 2.

<sup>11</sup> TOM CUNNEFF, *THE CASEY MARTIN STORY: WALK A MILE IN MY SHOES* 26 (1998).

Oregon. King Martin was a Senior Vice President at Smith Barney, while Melinda stayed at home caring for Casey and his older brother Cameron<sup>12</sup>.

Soon after Casey arrived home from the hospital, the Martins noticed that something was different about him. He cried and squirmed much more than his brother Cameron ever had, and Casey woke up almost every night crying in pain<sup>13</sup>. Physically, there did not seem to be any problem with Casey, he looked just like a normal baby, with the exception of a purple birthmark on his right leg<sup>14</sup>. It was not until Casey was almost a year old that doctors identified a problem with that same leg. Even after the problem in Casey's leg was identified, doctors were unable to make a firm diagnosis of what was causing the trouble. Meanwhile, every few months Casey's leg would swell up, and would have to be drained and set into a cast. When Casey was five, King and Melinda were finally given a firm diagnosis, and told that their son suffered from Klippel-Trenaunay-Weber (KTW) syndrome<sup>15</sup>.

### **B. Klippel-Trenaunay-Weber Syndrome**

KTW is named for the French physicians who first discovered and documented it. KTW is an extremely rare birth defect effecting the development and function of a person's veins<sup>16</sup>. The cause of the disease is not known, and its effects vary widely from person to person. Despite the varying symptoms and effects, the two constants for KTW sufferers are a purple birthmark near the effected area, and an improperly functioning vascular system. KTW most often affects the vascular system of a single extremity, but there are reported cases of KTW affecting multiple limbs, the trunk, the head, and the neck. The rarity of the disease and the variety of symptoms make diagnosis of the condition difficult<sup>17</sup>.

Casey Martin has KTW in his right leg<sup>18</sup>. In his case, the lower leg's deep venous system failed to develop properly. The valves in the veins do not function properly, allowing blood to pool in the leg, causing rapid and painful swelling. To combat the swelling, Casey must wear rubber stockings almost 24 hours a day. Over time, the lack of proper blood flow has lead to the weakening of the lower leg and knee<sup>19</sup>.

### **C. Childhood**

Growing up, Casey was able to play most sports like a normal kid. Up until 8<sup>th</sup> grade, he played on the Roosevelt Middle School basketball and soccer teams. Although naturally right footed, Casey taught himself to kick with his left foot, and played goalie for the soccer team. His disability didn't hamper him much in goal; he used his height to compensate for his lack of mobility, and was described as a "brick wall" by his teammates<sup>20</sup>.

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<sup>12</sup> *Id.*

<sup>13</sup> *Id.* at 28.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> Jane H. Lisko, *Klippel-Trenaunay-Weber Syndrome*, available at <http://www.emedicine.com/derm/topic213.htm>.

<sup>17</sup> *Id.*

<sup>18</sup> CUNNEFF, *supra* note 11, at 26.

<sup>19</sup> *Id.* at 29.

<sup>20</sup> *Id.* at 31.

Besides golf, Casey's favorite sport was basketball. He would spend long hours playing one-on-one against his brother on the court in the family's backyard. Although Casey was good enough to start for his middle school team, his leg prevented him from participating in all the team's drills. During practice, while the rest of the team ran sprints, Casey would stay off to the side and do push-ups<sup>21</sup>.

Even though Casey was in almost constant pain from his leg, he kept the extent of his discomfort hidden from even his closest friends<sup>22</sup>. It wasn't until Casey filed his court case that some realized what Casey had been going through. Casey wore his protective stocking almost all the time, so his friends rarely saw the toll that KTW was taking on his leg<sup>23</sup>.

In the summer after his eighth grade year, Casey's leg took a turn for the worse and required surgery. The surgery revealed that the internal bleeding caused by KTW had caused a significant weakening of the knee joint and bones of the lower leg. The deteriorated state of Casey's right leg left him at a heightened risk of fracture of hemorrhage. Faced with these developments, Casey was forced to quit playing soccer and basketball, although he was still able to play H-O-R-S-E and retain his neighborhood championship<sup>24</sup>.

With his athletic options decreased, Casey threw himself into other pursuits. He graduated as valedictorian of his high school class with a 3.98 GPA and became an accomplished piano player<sup>25</sup>. Casey also dedicated himself to the one remaining outlet for his sporting ambitions, golf.

#### **D. Amateur and High School Golf**

Casey started playing golf at the age of six. He would accompany his dad to nearby Eugene Country Club (ECC), where his family has a membership. Soon after his introduction to the game, he became a staple around the ECC course<sup>26</sup>.

Although Casey's disability creates significant disadvantages while walking the course, it does not create the same type of catastrophic problems for his swing. Since Casey swings right handed, his left leg supports most of his weight during his swing. If Casey had been a left handed golfer, it is unlikely that he leg could have held up to the stress generated by a full swing. Being forced to keep weight on his left leg during the swing forced Casey to develop excellent mechanics. Casey must keep his lower body stable, and create torque through his hip and upper body turn<sup>27</sup>. Out of necessity, Casey perfected these advanced swing techniques at an early age.

From the time they were old enough to enter the competitions, Casey and his brother Cameron participated in junior golf. By the time that Casey was fifteen years old, he had already won seventeen junior tournaments, and established himself as one of the best young golfers in the state<sup>28</sup>. During these junior tournaments, Casey always walked

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<sup>21</sup> *Id.* at 34.

<sup>22</sup> *Id.* at 33.

<sup>23</sup> *Id.* at 34.

<sup>24</sup> *Id.* at 42.

<sup>25</sup> *Id.* at 53.

<sup>26</sup> *Id.* at 37.

<sup>27</sup> *Id.* at 40.

<sup>28</sup> PGA Tour, Inc. v. Martin, 532 U.S. 661, 667-68 (2001).

and carried his own bag<sup>29</sup>. In between rounds, Casey would lay on the floor with his leg elevated against the wall, in order to drain the blood out of the leg and get ready for the next eighteen holes. The highlight of Casey's junior career was earning a spot on the Oregon team at the Hogan Cup. The Hogan Cup is a prestigious amateur event that matches the top five juniors from each of seven western states. Casey was the youngest golfer invited to the competition, and the only 14-15 year old in the field<sup>30</sup>.

By the time that Casey entered South Eugene High School as a freshman in 1989, his leg had forced him to concentrate his athletic pursuits entirely on golf. At South Eugene, Casey joined a golf team that counted his brother Cameron as its star player. Although Casey made the varsity squad, his season was cut short by lingering problems stemming from surgery on his leg between his eighth grade and freshman years<sup>31</sup>.

When Casey returned for his sophomore year, the complications from surgery had subsided, and he was ready to be a star contributor to the team. During his brother Cameron's senior season, the South Eugene Axemen won five of eight regular season events. During the postseason, the team stormed to the first state title in its history<sup>32</sup>.

At the state championship meet, Casey finished tied for second, two strokes out of the lead. At the start of the final round, Casey was tied for the lead with the eventual champion, Kevin Miskimins. Casey started the final round on fire, and stormed to a four shot lead after eleven holes<sup>33</sup>. However, after his hot start, Casey bogeyed three straight holes, and fell into a tie for the lead after the 15<sup>th</sup> hole. The players were still tied going to the 18<sup>th</sup> hole, a 277 yard par 4. Both players matched fairway drives, but Miskimins was able to chip to within eight feet, while Martin was left with a thirty foot putt. Martin missed his long birdie putt, while Miskimins was able to sink his eight-footer for the state individual title<sup>34</sup>.

Even though Casey lost the individual title as a sophomore, he had set the stage for an excellent junior year. When the South Eugene team returned for the next season, it was missing its former captain, Casey's older brother Cameron, who had gone to UNLV on a golf scholarship. However, Cameron's departure opened the door for Casey to become the leader and star of the team. During the regular season, the team won six out of seven regular season tournaments<sup>35</sup>. At the district championship, the team and Casey both earned championship honors. The team then moved on to defend their state championship. At the state tournament, South Eugene finished second to South Salem High, but Casey was able to avenge the previous year's narrow defeat by claiming the individual state title<sup>36</sup>.

The tournament was played in rainy and windy conditions, making walking especially difficult for Casey. Heading in to the final round, Casey sat in a tie for fifth place. On the 14<sup>th</sup> hole, Casey made a clutch twenty five foot birdie putt that gave him a

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<sup>29</sup> CUNNEFF, *supra* note 11, at 41.

<sup>30</sup> *Id.* at 43.

<sup>31</sup> *Id.*

<sup>32</sup> *Id.* at 48.

<sup>33</sup> John Nolen, *Grants Pass Golfer Wins State AAA Title*, THE OREGONIAN (Portland, Or.), May 25, 1988, at D3.

<sup>34</sup> *Id.*

<sup>35</sup> CUNNEFF, *supra* note 11, at 50.

<sup>36</sup> Bob Robinson, *Saxons Cash in with State Golf Crown*, THE OREGONIAN (Portland, Or.), May 24, 1989, at E4.

lead he never relinquished. Casey finished the day with a two stroke lead, his final score of 143 broke the tournament record<sup>37</sup>. After claiming the state individual title, Casey topped off his junior year by being named an Academic All-American by the American Junior Golf Association<sup>38</sup>.

Casey returned to South Eugene for his senior season as the state champion. During the regular season, South Eugene finished with an undefeated record. The team followed up their regular season dominance with a district championship. Casey once again won the district individual title, but required the use of a cart to finish his first round<sup>39</sup>.

The next week at the state championships, Casey was once again offered a cart, but refused to take it. After the first round, where Casey finished in a tie for second, his leg swelled significantly. Overnight, Casey debated with his family whether he should play in the next day's final round. Over his mother's objections, Casey played the final round without a cart, and finished in second place, one stroke out of the lead<sup>40</sup>.

A few months later, Casey's worsening leg problems were evident at a qualifying tournament for the U.S. Amateur championship. The qualifying tournament required players to walk thirty six holes in one day. The extra workload significantly increased the toll on Casey's right leg; his discomfort was noticeable even to spectators not familiar with his condition. In response to a reporter's question, Casey described a "grinding pain" in his hip<sup>41</sup>. Although Casey played well enough to qualify for the US Amateur, his discomfort was an unpleasant reminder that he was playing on borrowed time. Casey's leg would continue to deteriorate with each round of golf he played.

### **E. Stanford**

After his successful career on the Oregon Amateur and High School circuits, Casey took his golf game on to Stanford. The Stanford program that Casey joined was struggling, a far cry from its heights in the 1930s and 40s, when it had won five national titles in eight years<sup>42</sup>. However, Coach Wally Goodwin had brought in a strong recruiting class in hopes of righting the ship. In addition to Casey, Goodwin had recruited Notah Begay III, who would go on to play several years on the PGA Tour<sup>43</sup>.

During Casey's freshman year, the rebuilding effort was slow to gain traction. The team won only one tournament and finished fifteenth at the 1991 NCAA tournament. However, Casey was a bright spot, as he finished tied for sixteenth at the NCAAs, and was an honorable mention All-American<sup>44</sup>.

The Stanford team improved by leaps and bounds during Casey's sophomore year. The Cardinal won the Pac-10 title by nineteen strokes over a heavily favored

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<sup>37</sup> *Id.*

<sup>38</sup> Wire Reports, *Lewis and Clark's Fanger, Smythe Achieve Honors*, THE OREGONIAN, (Portland, Or.), Nov. 15, 1989, at E6.

<sup>39</sup> CUNNEFF, *supra* note 11, at 61.

<sup>40</sup> *Id.*

<sup>41</sup> Jason Vondersmith, *Eugene's Casey Martin Tops in Oregon Sectional*, THE OREGONIAN (Portland, Or.) Aug. 7, 1990, at C2.

<sup>42</sup> STANFORD GOLF ALUMNI LIST, available at [http://www.stanfordmensgolf.com/alumni\\_list\\_public.htm](http://www.stanfordmensgolf.com/alumni_list_public.htm).

<sup>43</sup> CUNNEFF, *supra* note 11, at 66.

<sup>44</sup> STANFORD GOLF ALUMNI LIST, *supra* note 42.

Arizona State squad, which featured future star Phil Mickelson<sup>45</sup>. The team finished ninth at the 1992 NCAA tournament. As an individual, Casey also improved, finishing the season as the sixteenth ranked golfer in the country. After the 1992 season, Stanford's top three sophomores, Martin, Begay, and William Yanagisawa decided to redshirt the 1993 season. The trio made this decision so that they could extend their fourth year of eligibility to 1995, when the team would get Tiger Woods, a new, heralded recruit who had just committed to Stanford<sup>46</sup>.

Casey and the rest of the Cardinal started the 1994 season on fire. They cruised through a regular season which saw Casey win his first college tournament. Casey won the Quintessence Classic with a score of two over par. Two over par was an excellent score, as the tournament featured only five rounds under par, two of which belonged to Casey<sup>47</sup>.

During the last four regular season tournaments, Casey experienced significant discomfort in his leg, and was forced to use a cart. Casey would walk as long as possible, then use a cart to finish the round<sup>48</sup>. During his career, the Pac-10 and NCAA both waived their standard rules requiring players to walk<sup>49</sup>. The Pac-10 allowed for use of a cart if approved by a vote of conference coaches, the team had to submit a written request and medical records. During his time at Stanford, Casey was never denied a request to use a cart<sup>50</sup>.

To finish out 1994, the Cardinal won another Pac-10 title, defeating Arizona by three strokes. The momentum carried over to the 1994 NCAA tournament as Stanford defeated Texas to claim their first men's golf national title in forty one years<sup>51</sup>. Individually, Martin bounced back from an opening round 80 to shoot rounds of 70, 68, and 72 to finish in thirty fifth place. At the end of the year, Casey was named first team All-Pac-10 and second team All-American<sup>52</sup>.

During Casey's senior season, Stanford enlisted Freshman Tiger Woods to help defend their national title. Although Tiger had a terrific season, the Cardinal fell just short and finished second at the 1995 NCAA tournament. Stanford lost in the first overtime final in the ninety eight year history of the championship tournament. Martin capped his collegiate career adding another tournament win to his resume, and being honored as an Academic All-American<sup>53</sup>.

At the end of the year, Casey received his Economics degree. Like most other college seniors, he spent the spring evaluating his career prospects. Fresh off a successful amateur career, Casey Martin decided to take his game to the world of professional golf<sup>54</sup>.

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<sup>45</sup> Bob Robinson, *Surprising Stanford Wins PAC-10 Golf Crown*, THE OREGONIAN (Portland, Or.), May 4, 1992, at D3.

<sup>46</sup> CUNNEFF, *supra* note 11, at 69.

<sup>47</sup> Len Qiehm, *Coach Sets the Stage for Kent State Victory*, CHICAGO SUN-TIMES, Oct. 20, 1993, at 93.

<sup>48</sup> CUNNEFF, *supra* note 11, at 72.

<sup>49</sup> *Martin*, 532 U.S. at 668.

<sup>50</sup> CUNNEFF, *supra* note 11, at 73.

<sup>51</sup> AP Wire Reports, *Stanford Captures NCAA Title*, SAN JOSE MERCURY NEWS, June 5, 1994, at 1C.

<sup>52</sup> STANFORD GOLF ALUMNI LIST, *supra* note 42.

<sup>53</sup> CUNNEFF, *supra* note 11, at 83; Pat Sullivan, *Stanford Wins Tourney Without Tiger*, S.F. CHRON., Apr. 24, 1995, at C5.

<sup>54</sup> CUNNEFF, *supra* note 11, at 86.

## F. Pro Career Before Lawsuit

Like any other professional league, the PGA Tour has a system of selecting only the best golfers in the world to play on its tour. In order to play regularly on the PGA Tour, a player must earn their “tour card”. In addition to the flagship PGA Tour, the Tour operates one subsidiary minor league tour, the Nike (since renamed Nationwide) Tour. The NGA/Hooters Tour is a third level tour that is not directly affiliated with the PGA Tour<sup>55</sup>.

The Tour offers two primary ways for a player to earn their tour card, through participation in Qualifying or “Q” School or by being a top player on the Nike Tour. Q School is a three stage open qualifying tournament, held every fall. All that is needed for entry is a three thousand dollar fee and two letters of reference. The first two stages are two separate seventy two hole tournaments that whittle the thousands of entrants down to an elite group of one hundred and sixty eight golfers. After the preliminary rounds, the one hundred and sixty eight remaining golfers advance to the Q School Finals, a one hundred and eight hole, six day tournament. In the finals, the top thirty five finishers earn a tour card and the right to play on the PGA Tour for one year. The next seventy finishers earn the right to play on the Nike Tour<sup>56</sup>.

The other primary method of earning a tour card is through success on the Nike Tour. Tour cards are automatically granted to anyone who wins three Nike Tour events in one year and to the top fifteen finishers on the Nike Tour money list<sup>57</sup>. The Nike Tour is the PGA’s direct minor league. Like the PGA Tour, membership on the Nike Tour is not open, and must be earned through Q School or other professional achievements (such as winning previous Nike Tour tournaments or being a top finisher on the previous year’s money list)<sup>58</sup>.

In the summer of 1995, after graduating from Stanford, Casey began his journey towards playing on the PGA Tour. Knowing his leg limited the length of any prospective pro career, Martin was determined to “give it [his] best shot for three or four years and see what happens”<sup>59</sup>. To prepare for Q School in the fall, Casey played a few professional events on the Hooters Tour. The Hooters Tour is a third level tour not run by the PGA Tour. As on the PGA Tour, carts are not allowed. In 1995 there were no membership requirements for the Hooters Tour outside a \$1,000 membership fee and a \$550 entry fee per tournament<sup>60</sup>. In his short time on the Hooters Tour, Casey’s highest finish was fourth, at the Lilac City Open<sup>61</sup>. After getting his feet wet on the minor league tour, Casey went to Q School in the fall. During the first two stages of Q School, the PGA Tour allows players to ride carts<sup>62</sup>. Casey played well in the first stage, finishing fourth in a field of ninety and advancing to the second stage, along with about five

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<sup>55</sup> *Martin v. PGA Tour, Inc.*, 984 F.Supp. 1320, 1321 (D. Or. 1998).

<sup>56</sup> *Id.* at 1321-22.

<sup>57</sup> *Id.*

<sup>58</sup> NATIONWIDE TOUR ELIGIBILITY REQUIREMENTS, available at <http://www.pgatour.com/2008/h/01/17/eligibility/index.html>.

<sup>59</sup> Bob Robinson, *With School Behind Him, Martin Turns Pro*, THE OREGONIAN (Portland, Or.), Aug. 3, 1995 at C3.

<sup>60</sup> CUNNEFF, *supra* note 11, at 89.

<sup>61</sup> Robinson, *supra* note 59.

<sup>62</sup> *Martin*, 984 F.Supp. at 1332.

hundred other PGA Tour hopefuls. In the second stage, Casey played well but fell two shots short of a place in the finals<sup>63</sup>.

After failing to make the finals at Q School, Casey was forced to return to the Hooters tour full time in 1996. Martin played in thirteen events, finishing thirty-third on the money list with just under \$20,000 in earnings<sup>64</sup>. At the end of the year, Casey returned to Q School. Unfortunately he did not follow up on his success of the previous year. Shooting rounds of 73, 80, 74 and 74, Casey missed advancing to the second round by ten shots<sup>65</sup>.

Faced with another year on the Hooters tour, Martin resolved that 1997 would be his final year in profession golf, if he did not play well enough in Q School to at least advance to the Nike Tour<sup>66</sup>. The daily grind of the Hooters Tour was proving to be too much strain on Casey's leg for too little reward. Prior to the 1997 season, Martin contacted the director of the Hooters Tour, Tim Singer to request a cart for the upcoming season. After referring the question to the tour's attorneys, Singer denied the request, informing Casey that "it was one of our rules that players walk the course"<sup>67</sup>. After hearing the tour's decision, Casey decided against legal action, wanting to see how he could do walking for one more year. Abiding by the decision to deny him a cart, Casey walked his way through fourteen Hooters events in 1997, finishing sixty-third on the money list with winnings of \$11,000<sup>68</sup>. Martin played in just one of the last eight Hooters events, instead electing to stay home and rest his leg for what he decided would be his last shot at Q School<sup>69</sup>.

The first stage of qualifying took place at Dayton Valley Country Club in Dayton, Nevada, a small town south of Reno<sup>70</sup>. Casey finished thirteenth and advanced to the second stage. The second stage took place in Seaside, California. Of the hundreds of golfers present, only 23 would advance. Martin started the final round in forty-fourth place, but shot a 69 to move into a tie for twelfth place, good enough to move on to the finals in December<sup>71</sup>. Although the rules of Qualifying School allowed Casey to use a cart during the first two stages, but players were forced to walk in the finals<sup>72</sup>.

A few weeks before the finals, Casey petitioned the PGA Tour to use a cart. Shortly after receiving the request, the Tour denied Casey's petition. Faced with the prospect of walking or giving up his dream of playing on the highest professional level, Casey filed a lawsuit in U.S. District Court accusing the PGA Tour of discrimination under Title III of the Americans with Disabilities Act<sup>73</sup>.

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<sup>63</sup> CUNNEFF, *supra* note 11, at 87.

<sup>64</sup> *Id.* at 91.

<sup>65</sup> *PGA Tour Qualifying School – Stage I Results*, BUSINESS WIRE, Oct. 19, 1996.

<sup>66</sup> CUNNEFF, *supra* note 11, at 91.

<sup>67</sup> *Id.* at 96.

<sup>68</sup> *Id.*

<sup>69</sup> *Id.* at 103.

<sup>70</sup> *Id.*

<sup>71</sup> *Id.* at 104.

<sup>72</sup> *Martin v. PGA Tour, Inc.*, 204 F.3d 994, 996 (9<sup>th</sup> Cir. 2000).

<sup>73</sup> *Cunneff*, *supra* note 11, at 104.

### III. The ADA

#### A. History and General Provisions

The Americans with Disabilities Act (ADA) was signed into law by President George Bush on July 26, 1990<sup>74</sup>. When he signed the bill, President Bush exclaimed that “every man, woman, and child with a disability can now pass through a once-closed door to a bright new era of equality, independence and freedom”. He also referred to the bill as “historic” and “the world’s first declaration of equality for people with disabilities”<sup>75</sup>.

In a legal sense, the ADA put disability discrimination on par with other statutorily prohibited types of discrimination: race, ethnicity, gender, religion, and age<sup>76</sup>. Prior to the passage of the ADA, disabled persons were often left without legal means of fighting discrimination<sup>77</sup>. In order to be protected under the act, a person must have a disability or a relationship/association with a person who has a disability<sup>78</sup>. The ADA defines a disability as a physical or mental impairment that substantially limits one or more of the major life activities of the individual<sup>79</sup>. The provisions of the act are designed to help reverse the historical isolation of and discrimination against handicapped individuals in a wide array of areas, applying even to acts of the United States Congress<sup>80</sup>. Discrimination is explicitly prohibited on the basis of disability in employment, state and local government, public accommodations, and communications services<sup>81</sup>.

Title I of the ADA forbids discrimination in employment. The act requires employers with fifteen or more employees to provide qualified individuals with disabilities an equal opportunity to benefit from the full range of employment-related activities available to others. Employers are limited in the questions they can ask about an applicant’s disability before a job offer is made and are required to make reasonable accommodations to known physical and mental limitations of otherwise qualified individuals. If the reasonable accommodations result in an undue hardship to the employers, they may be excused from liability under the act<sup>82</sup>.

Title II of the ADA forbids discrimination in the activities of state and local governments. The act covers all non-federal governments, regardless of size or receipt of federal funding. Governments are required to give people with disabilities an equal opportunity to benefit from all their programs, including public education and transportation. Public entities are not required to take actions that would result in undue financial and administrative burdens<sup>83</sup>.

Title III of the ADA covers public accommodations. Public accommodations include businesses and non-profit service providers who operate facilities such as

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<sup>74</sup> Don Shannon, *Spirits Soar as Disabled Rights Become the Law*, L.A. TIMES, July 27, 1990, at A1.

<sup>75</sup> *Id.*

<sup>76</sup> Christopher E. Tierney, Comment, *Casey Martin, Ford Olinger and the Struggle to Define the Limits of the Americans with Disabilities Act in Professional Golf*, 51 CATH. U.L. REV. 335, 340 (2001).

<sup>77</sup> 42 U.S.C. § 12101 (2000).

<sup>78</sup> U.S. DEPT. OF JUSTICE, A GUIDE TO DISABILITIES RIGHTS LAWS 1 (2005).

<sup>79</sup> 42 U.S.C. § 12102 (2000).

<sup>80</sup> *Martin*, 532 U.S. at 674.

<sup>81</sup> U.S. Dept. of Justice, *supra* note 78, at 1.

<sup>82</sup> *Id.* at 1-2.

<sup>83</sup> *Id.* at 2-4.

restaurants, stores and hotels. Entities covered by Title III must comply with basic non-discrimination requirements that prohibit exclusion, segregation, and unequal treatment, as well as specific architectural requirements<sup>84</sup>.

Title IV of the ADA requires telephone companies to establish telecommunication relay services, available at all times, that enable callers with hearing and speech disabilities to use their services<sup>85</sup>.

### **B. Title III**

As a general rule, Title III prohibits discrimination on the basis of disability in the full and equal enjoyment of “goods, services, facilities, privileges, [or] advantages” of any public accommodation by any person who “owns, leases (or leases to), or operates a public accommodation<sup>86</sup>. The provision does not apply to private clubs or religious organizations<sup>87</sup>.

Public accommodations are defined in terms of 12 extensive categories:

- (A) an inn, motel, lodging...
- (B) a restaurant, bar ...
- (C) a theater, concert hall, stadium, or other place of exhibition or entertainment;
- (D) and auditorium, convention center, lecture hall, or other place of public gathering;
- (E) a bakery, clothing store, hardware store, shopping center, or other sales or rental establishment;
- (F) a laundromat, dry-cleaner, bank, barber shop, beauty shop, travel service, show repair service, funeral parlor, gas station, office of an accountant or lawyer, pharmacy, insurance office, professional office of a health care provider, hospital, or other service establishment;
- (G) a terminal, depot, or other station used for specified public transportation;
- (H) a museum, gallery, or other place of display or collection;
- (I) a park, zoo, amusement park, or other place of recreation;
- (J) a nursery, elementary, secondary, undergraduate, or postgraduate private school, or other place of education;
- (K) a day care center, senior citizen center, homeless shelter, food bank, adoption agency, or other social service center establishment;
- (L) a gymnasium, health spa, bowling alley, *golf course*, or other place of exercise or recreation.

<sup>88</sup>Legislative history shows that the categories should be construed liberally to afford people with disabilities equal access to the wide variety of establishments available to the non-disabled<sup>89</sup>.

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<sup>84</sup> *Id.* at 4-6.

<sup>85</sup> *Id.* at 7.

<sup>86</sup> 42 U.S.C. § 12182(a) (2000).

<sup>87</sup> 42 U.S.C. § 12187 (2000).

<sup>88</sup> 42 U.S.C. § 12187(7) (2000).

<sup>89</sup> *Martin*, 532 U.S. at 676-77.

Title III defines discrimination as failure to make *reasonable modifications*, when the modifications are necessary to afford disabled individuals equal access. The owner/operator of a public accommodation can escape liability under Title III if they can demonstrate that making the requested modifications would fundamentally alter the nature of the goods and services that they offer, and thus are not reasonable modifications<sup>90</sup>. In past cases, the court has found the following accommodations reasonable: removing architectural barriers that prevented wheelchair access to a theatre, altering safety boats on a cruise to allow for handicapped access, and adding an auxiliary service to allow deaf people to access a “fast finger” telephone selection process for a same show<sup>91</sup>.

#### **IV. PGA Tour, Inc.**

##### **A. General**

From 1916 until 1968, the PGA Tour was a division of the PGA of America (PGA). The PGA of America today exists as an association of 28,000 golf professionals, running only one golf tournament, the PGA Championship, one of golf’s four major tournaments<sup>92</sup>. Since 1968, the PGA Tour has been a separate, non-profit entity, responsible for organizing and running the week-to-week, regular events of men’s professional golf in the United States<sup>93</sup>. On tournament days, by virtue of their lease and control of the premises, the PGA Tour is the “operator” of the golf course for purposes of the ADA<sup>94</sup>. While the PGA Tour is a powerful institution in American golf, it is not the sport’s governing body, a duty which falls to the United States Golf Association (USGA). The PGA Tour does not run any of Golf’s most important and famous tournaments, the majors: the Masters is run by Augusta National Golf Club, the U.S. Open by the USGA, the British Open by the Royal and Ancient Golf Club of Scotland, and the PGA Championship by the PGA (not the PGA Tour)<sup>95</sup>.

##### **B. Tours**

As the steward of men’s professional golf in the United States, PGA Tour, Inc. operates three separate tours<sup>96</sup>. The flagship tour is the PGA Tour, the top professional tour in the world, comprised of approximately two hundred regular players<sup>97</sup>. As explained in Part II.F, almost all players gain membership on the tour by going through Qualifying School or through performance on the Nike Tour. In 2008 the PGA Tour will be comprised of forty eight events over a forty five week season. The tournaments have an average purse of six million dollars<sup>98</sup>. In 2001, the year that the Supreme Court heard

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<sup>90</sup> 42 U.S.C. § 12181(b)(2)(A)(ii) (2000).

<sup>91</sup> See *Disabled Americans for Equal Access v. Ferries del Caribe*, 405 F.3d 60 (1<sup>st</sup> Cir. 2005); *Gathright-Deitrich v. Atlanta Landmarks, Inc.*, 452 F.3d 1269 (11<sup>th</sup> Cir. 2006); *Rendon v. Valleycrest Products*, 294 F.3d 1279 (11<sup>th</sup> Cir. 2002).

<sup>92</sup> History of the PGA Tour, *available at* <http://www.pgatour.com/2008/h/01/17/eligibility/index.html>.

<sup>93</sup> *Martin*, 532 U.S. at 665; [http://en.wikipedia.org/wiki/PGA\\_Tour](http://en.wikipedia.org/wiki/PGA_Tour).

<sup>94</sup> *Martin* 204 F.3d at 998.

<sup>95</sup> [http://en.wikipedia.org/wiki/PGA\\_Tour](http://en.wikipedia.org/wiki/PGA_Tour)

<sup>96</sup> *Martin*, 204 F.3d at 996.

<sup>97</sup> <http://pgatour.com>

<sup>98</sup> *Id.*

Casey Martin's case, the PGA Tour had revenues of about three hundred million dollars, generated mostly through television contracts, ticket sales, concessions, and sponsorships. Since the PGA Tour is a non-profit organization, most of the revenue is distributed to the players as prize money<sup>99</sup>.

The second tour run by PGA Tour is the Nationwide Tour (this tour was named the Nike Tour at the time Casey Martin played in it). Started in 1990, the Nationwide Tour functions as a developmental tour or farm system for the PGA Tour. Since its inception, the tour has grown to thirty one events, each with an average purse of approximately six hundred thousand dollars. The one hundred seventy regular players on the Nationwide Tour qualify largely through Qualifying School or having formerly qualified for the PGA Tour<sup>100</sup>.

The third and final tour operated by PGA Tour, is the Champions Tour (formerly known as the Senior PGA Tour). The Tour was formally established in 1980, to capitalize on the popularity of older golfers, such as Sam Snead, Arnold Palmer, and Gary Player, who could no longer compete on the regular PGA Tour<sup>101</sup>. Players on the Champions Tour must be at least fifty years old, and qualify largely through past success on the PGA and Champions Tours, with limited open qualifying spots. In 2008, the Champions Tour will consist of thirty two events, with an average purse of approximately one million, seven hundred thousand dollars<sup>102</sup>.

### C. The Rules

Competition in PGA Tour events is governed by a system of three sets of rules. The most basic set of rules is the *Rules of Golf*, jointly written by golf's two governing bodies, the United States Golf Association and the Royal and Ancient of Scotland<sup>103</sup>. The *Rules of Golf* is updated every four years, and applies to both amateur and professional play<sup>104</sup>. Although the stated purpose of the *Rules* is to "guard the tradition and integrity of the game", it doesn't prohibit the use of carts. The *Rules* list use of carts as an optional condition, and includes carts in the definition of "equipment"<sup>105</sup>.

The second layer of rules governing competition in Tour events is the *Condition of Competition and Local Rules*, also known as the "hard card". Each of the three tours run by the PGA Tour has its own "hard card"<sup>106</sup>. For the PGA and Nationwide Tours, the hard card requires players to walk during tournaments (but not during open qualifying rounds, including the first two rounds of Qualifying School). The PGA Tour hard card provides that "players shall walk at all times during a stipulated round unless permitted to ride by the PGA Tour rules committee". Prior to the *Martin* ruling, the rules committee only granted cart use where the course had an unusual distance between consecutive holes. At the time of the *Martin* ruling, the hard card for the Champions Tour allowed use of golf carts, by any player upon request<sup>107</sup>.

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<sup>99</sup> *Martin*, 532 U.S. at 665.

<sup>100</sup> <http://www.pgatour.com/h/>

<sup>101</sup> <http://www.pgatour.com/s/>

<sup>102</sup> *Id.*

<sup>103</sup> *Martin*, 532 U.S. at 666-67.

<sup>104</sup> UNITED STATES GOLF ASSOCIATION & ROYAL AND ANCIENT, THE RULES OF GOLF ii (2008).

<sup>105</sup> *Id.* at 7.

<sup>106</sup> *Martin*, 532 U.S. at 666-67.

<sup>107</sup> *Id.*

The final layer of rules are the “Notices to Competitors”. These rules are issued by the PGA Tour prior to each tournament, and cover conditions for each specific event. The Notices to Competitors may tell players how PGA Tour officials will apply the rules of golf and the hard card to unique features of the course, such as hazards or obstructions<sup>108</sup>.

## V. The Litigation

### A. District Court

#### 1. Preliminary Injunction

On November 26, 1997, Martin filed suit in the U.S. District Court in Eugene, OR, asking for a preliminary injunction to allow Martin use of a cart in the upcoming Qualifying School finals. The judge who would decide Martin’s fate was Tom Coffin, a graduate of Harvard Law School and former federal prosecutor. As an Assistant U.S. Attorney, Coffin had been chief of the criminal division in California<sup>109</sup>. Coffin also served as an adjunct professor at the nearby University of Oregon Law School<sup>110</sup>.

Judge Coffin scheduled a hearing for November 28<sup>th</sup>. The Tour argued alternatively that the District Court did not have jurisdiction over the Tour (which is headquartered in Florida), and that the Tour was a private organization to which the ADA did not apply. After the hearing, Judge Coffin quickly ruled against the Tour, that the Tour was not a private club and subject to the ADA, and granted Martin a temporary injunction that allowed him to use a cart in the final round of Qualifying School<sup>111</sup>. Martin was ecstatic that he would get his chance to present his case to the court, “I was thrilled that a big institution like the PGA could not exempt itself from the law of the land”<sup>112</sup>. Coffin’s ruling set the stage for a non-jury trial, set to begin in early February.

#### 2. Qualifying School

With the help of a cart, and with his father serving as his caddy, Martin began the grueling one hundred and eight hole, six day marathon that is the Q School Finals. While the Tour agreed to follow the injunction and let Martin use his cart, he was not the only player to do so. The night before the final began, another golfer, Scott Verplank, brought up his condition as a diabetic and asked for use of a cart<sup>113</sup>. The Tour relented to Verplank’s request and also allowed any player who wished to use a cart to do so, even if they didn’t have a disability. Of the one hundred sixty six players in the finals, approximately fifteen players took the Tour up on their offer. Martin played well during the finals, finishing only two shots shy of earning his PGA Tour card. Despite missing a chance to play on the PGA Tour, Martin did play well enough to earn his Nike Tour Card<sup>114</sup>.

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<sup>108</sup> *Id.* at 667.

<sup>109</sup> Tom Coffin Faculty Profile - Univ. of Or., available at <http://www.law.uoregon.edu/faculty/tcoffin/>.

<sup>110</sup> *Id.*

<sup>111</sup> Janet Filips, *Judge Finds PGA Tour Must Play by ADA Rules*, THE OREGONIAN (Portland, Or.), Jan. 27, 1998, at A1.

<sup>112</sup> *Id.*

<sup>113</sup> CUNNEFF, *supra* note 11, at 109.

<sup>114</sup> *Id.*

After Qualifying School, Martin and the Tour worked out an interim agreement that allowed Martin to use a cart for the first two events of the Nike Tour season<sup>115</sup>. As described in the introduction, Martin went on to win the first of these two events, the Lakeland Classic.

### 3. Public Opinion

After Martin won his first event on the Nike Tour, the public started to take notice of Casey's story. The Tour put its publicity machine in motion, trying to shift focus away from Martin's individual disability, and concentrate opinion on the abstract ability of the Tour to make and enforce its own rules without interference from the courts. The Tour called on such legends as Arnold Palmer and Jack Nicklaus, who would both testify at trial, to speak publicly about walking's central nature to the game of golf<sup>116</sup>.

Martin struck back with his own publicity tour. One of Casey's biggest and earliest supporters was Phil Knight, founder and CEO of Nike. Knight called the president of the PGA Tour on Casey's behalf and issued a public statement in support of Casey's cause. In his statement, Knight said that "we believe that Casey should be allowed to chase his dreams. He provides an inspiration for us all". Nike signed Martin to a sponsorship deal and aired commercials featuring Martin<sup>117</sup>.

Martin also had friends in the political arena. In late January, Martin held a press conference with Iowa senator Tom Harkin and former Kansas senator Bob Dole. Senator Harkin is the author of the ADA and Senator Dole is himself disabled. At the press conference, both senators pledged their support for Martin. Harkin described Martin's case as "exactly what I had in mind when I wrote the act, which was designed to open all aspects of life – sports included – to the disabled"<sup>118</sup>.

Active PGA Tour players seemed to be evenly split between the Tour's and Martin's positions. The Tour had the support of such stars as Davis Love III, Fred Couples, and Paul Azinger<sup>119</sup>. However, Casey had the support of Tom Lehman, a well respected player-director on PGA Policy Board and Greg Norman, the former number one player in the world<sup>120</sup>. Norman called Martin to offer his support, saying that he had refused the Tour's request to testify on its behalf and that "he was looking forward to playing" with Casey on tour<sup>121</sup>.

By the time the trial was set to start, it was apparent that public opinion was squarely on Martin's side. Of all the substantial numbers of editorial articles that the case was generating, they were running ten to one in support of Casey<sup>122</sup>.

### 4. Attorneys

On February 3, 1998, the trial of Casey Martin v. PGA Tour, Inc. began. Casey Martin was represented by two attorneys, William Wiswall and Martha Walters. William Wiswall is a partner in the Eugene, Oregon firm of Wiswall & Walsh. Prior to taking the

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<sup>115</sup> *Id.*

<sup>116</sup> *Martin*, 532 U.S. at 670.

<sup>117</sup> CUNNEFF, *supra* note 11, at 127.

<sup>118</sup> *Id.* at 130.

<sup>119</sup> Bob Robinson, *Martin Wins Right to Ride Cart*, THE OREGONIAN (Portland, Or.), Feb. 12, 1998, at A1.

<sup>120</sup> John Garrity, *Out on a Limb*, SPORTS ILLUSTRATED – GOLF PLUS, Feb. 9, 1998, at G10.

<sup>121</sup> *Id.*

<sup>122</sup> CUNNEFF, *supra* note 11, at 133.

Martin case, Wiswall specialized in criminal defense, personal injury, and divorce law<sup>123</sup>. Wiswall is also a family friend of the Martin's, a fellow member of the Eugene Country Club<sup>124</sup>. He agreed to step outside his area of expertise as a favor to the Martins and because he had a personal connection to Casey's disability. Wiswall has malformed veins in his brain, a vascular condition similar to the one in Martin's leg<sup>125</sup>.

To address his inexperience in the area of civil rights law, Wiswall brought in Martha Walters to help with the trial. Walters was partner in a prominent Eugene firm, Walters Romm Chanti & Dickens, which specializes in civil rights and employment law. Walters was also a guest speaker and instructor at the University of Oregon Law School. In 2006, Walters was appointed as an Associate Justice of the Oregon Supreme Court<sup>126</sup>.

The Tour was represented by William Maledon, an experienced litigator from the Phoenix firm Osborn Maledon. Maledon is a graduate of the University of Notre Dame Law School and a former clerk to Justice Brennan of the U.S. Supreme Court. Maledon had successfully represented the Tour in a case against Karsten Manufacturing, who brought suit against the Tour after their square grooved irons were deemed to violate the Tour's design specifications<sup>127</sup>.

### **5. Trial – Opening Statements**

From the first shots fired by both sides in their opening statements, it was clear that each party had different ideas about what the case was about. Martin's legal team wanted to focus the trial on Martin himself. They wanted the court to see that a cart was the only way for Martin to pursue a professional golfing career, a career that he had the talent to succeed in. In the opening statement Walters argued that a cart simply put Martin on a level playing field with able bodied golfers, and provided no advantage. She also argued that "allowing Mr. Martin the use of a cart, and thereby a career, is not only possible, it's reasonable, it's required, and it's a right."<sup>128</sup>

In contrast, the Tour wanted to take the focus away from Martin and look toward the abstract nature of the rule being challenged. Maledon viewed the central issue of the case as "whether waiving the requirement to walk the course would change the integrity of the game"<sup>129</sup>. Maledon also viewed the case as a referendum on whether "a substantive rule of sports competition should be altered to meet the needs – unfortunate needs, but nevertheless, needs – of a particular individual or individuals."<sup>130</sup>

### **6. Trial – Martin Case-in-Chief**

As Martin's team began to present their case, their first task was to show that Martin was in fact disabled. The first piece of evidence offered in the trial was a video of Casey's leg. The video showed the dramatic swelling that occurred as soon as Martin took off the rubberized stockings he wore almost 24 hours a day, and included scenes of

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<sup>123</sup> <http://www.wiswall-walsh.com/index1.shtml>.

<sup>124</sup> CUNNEFF, *supra* note 11, at 105.

<sup>125</sup> *Id.* at 123.

<sup>126</sup> Justice Walters Biography, available at <http://www.ojd.state.or.us/courts/supreme/waltersbio.htm>.

<sup>127</sup> <http://www.omlaw.com/attorney-profile-26.html>

<sup>128</sup> CUNNEFF, *supra* note 11, at 141.

<sup>129</sup> Bob Robinson, *Martin Describes a Sport of Pain*, THE OREGONIAN (Portland, Or.), Feb. 3, 1998, at E1.

<sup>130</sup> CUNNEFF, *supra* note 11, at 142.

Martin describing the pain caused by the intense swelling<sup>131</sup>. Martin's doctor, Dr. Donald Jones, was also called to the stand. Dr. Jones testified that he had not recommended that Martin quit golf, "Casey is 25 and capable of making his own decisions", but that everyday activities put Martin at risk of an accident that may require amputation of the leg<sup>132</sup>.

Wiswall and Walters next tried to show the court that the cart would not provide an unfair advantage for Casey. Nike Tour golfer Eric Johnson was called to the stand and testified that he had "no objection at all" to Casey having a cart<sup>133</sup>. He also indicated that he didn't think that the cart would give Casey an advantage. Johnson indicated that he "never considered golf to cause physical fatigue" and that he considered "walking part of the game only for the purpose of getting the ball for the next shot"<sup>134</sup>.

Next up were a string of witnesses to illustrate the severity of Casey's disability, and the extent to which walking a golf course stressed his body more than an able-bodied golfer. Casey's brother Cameron and his college coach Wally Goodwin both testified to the deteriorative effect and progressive nature of Casey's disability, and the sometimes superhuman exertion it took for him to walk a course<sup>135</sup>. However, the witness most effective at describing Martin's disability was Casey himself. Martin took the stand as the last witness presented by the plaintiff<sup>136</sup>. During his testimony, Martin described the problems his disability caused on the course and in every day life. Martin also responded to a question asking if he thought a cart would provide him an advantage, he replied "I don't see any advantage at all if I ride. If I could trade my leg and cart for a good leg, I'd do it in a minute."<sup>137</sup>

## 7. Trial – Tour Case-in-Chief

In presenting its case, the Tour attempted to show the court that walking was an intricate part of the sport of golf, and that allowing a cart would fundamentally alter the sport. If the cart was a fundamental alteration, it was not a reasonable accommodation and gave the Tour a reprieve from the provisions of the ADA. The first obstacle that the Tour faced was explaining why if walking was fundamental to the game of golf, the Tour allowed carts on its Champions Tour. Richard Ferris, the chairman of the Tour's policy board, explained that the Champions Tour was not golf at its highest level, so walking was not required. Ferris testified that "the senior tour doesn't have the 78 most talented golfers in the world, it has 78 of the used-to-be most talented. It is a nostalgia tour, about half exhibition and half competition"<sup>138</sup>. Ferris explained that the Tour requires walking on the PGA and Nike Tours because they are the highest levels of competition, where talent levels are so similar that single strokes can make the difference between a

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<sup>131</sup> Robinson, *supra* note 129.

<sup>132</sup> *Id.*

<sup>133</sup> Bob Robinson, *Golfer: "No Objection" to Martin's Use of Cart*, THE OREGONIAN (Portland, Or.), Feb. 4, 1998, at D1.

<sup>134</sup> *Id.*

<sup>135</sup> CUNNEFF, *supra* note 11, at 143.

<sup>136</sup> Robinson, *supra* note 133.

<sup>137</sup> *Id.*

<sup>138</sup> Bob Robinson, *Martin Says Ride Would be No Gift*, THE OREGONIAN (Portland, Or.), Feb. 5, 1998, at D1.

successful and failed season. Where the margin for error is so slim, fatigue caused by walking becomes an integral part of the game<sup>139</sup>.

The Tour next brought a parade of former players to testify to the effect of walking. First up was Ken Venturi, a CBS commentator, and former U.S. Open Champion<sup>140</sup>. Venturi was most famous for his win in the 1964 U.S. Open. The tournament's famous final, thirty six hole round was played in one hundred degree heat and ninety five percent humidity. Venturi testified that by the end of the round, walking in the heat had so dehydrated and exhausted him that he could not keep his hands steady as he was putting<sup>141</sup>. Venturi's victory that day was not only over his fellow competitors but also over the elements and extreme conditions.

Two of golf's all-time great players, Arnold Palmer and Jack Nicklaus, gave videotaped depositions in support of the Tour's position. Both asserted that on the basis of their years of playing professional golf, they felt that walking is essential to championship-level golf and that a cart would give a player a competitive advantage<sup>142</sup>. On cross-examination, Venturi, Palmer, and Nicklaus all admitted that they had not, nor made any effort to view Martin's medical records. Martin was shaken by having two of his boyhood idols testify against him, but took their testimony with a grain of salt, "I don't see how they can come to the conclusion that I would be at an advantage with a cart without knowing anything about my disability. I wonder what Jack [Nicklaus] would do if he was in my situation."<sup>143</sup>

The only current player to testify for the Tour was Scott Verplank. Verplank testified about his experience playing golf with diabetes. In Verplank's view, the "whole premise of golf is that everyone starts equal", and giving one player a cart would violate this premise<sup>144</sup>. The golfer also testified he suffered from diabetes, a "debilitating disease" and that in his mind he was "just as disabled as [Martin] is."<sup>145</sup>

The Tour rapped up their case by calling Tour Commissioner Tim Finchem, who testified to his belief that "walking and the physical demands it provides are part of the unique challenge that makes up the test at golf's elite level. If an exception is made for even one player, I believe it would alter the competition."<sup>146</sup> After the Tour wrapped their case, it was up to Judge Coffin to decide the fate of Martin's golf career.

## 8. Trial – Holding

On February 12, 1998, Judge Coffin announced his ruling: that the ADA required the PGA Tour to allow Martin to ride a cart during competition<sup>147</sup>. The case was the first under the ADA that affected the rules of a professional sport<sup>148</sup>. In his opinion, Coffin stated that Martin had met his initial burdens of proving his disability and showing that

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<sup>139</sup> *Id.*

<sup>140</sup> Bob Robinson, *Golfing Greats Walk a Hard Line*, THE OREGONIAN (Portland, Or.), Feb. 6, 1998, at D1.

<sup>141</sup> CUNNEFF, *supra* note 11, at 153.

<sup>142</sup> Robinson, *supra* note 140.

<sup>143</sup> *Id.*

<sup>144</sup> *Id.*

<sup>145</sup> CUNNEFF, *supra* note 11, at 124.

<sup>146</sup> Bob Robinson, *Finchem Questions Judge's Ability to Rule*, THE OREGONIAN (Portland, Or.), Feb. 11, 1998, at C1.

<sup>147</sup> *Martin*, 994 F.Supp. at 1253.

<sup>148</sup> Robinson, *supra* note 119.

the requested modification is reasonable<sup>149</sup>. Coffin found that use of a cart was not unreasonable in golf based on a multitude of factors. He relied heavily on the fact that the *Rules of Golf* did not require walking, and that the Tour itself allows carts at two of the four types of tournaments it stages (the initial rounds of Qualifying School and the Champions Tour). Where Tour does allow carts, it does not impose a handicap system or penalty strokes for their use, evidence that even “the Tour does not consider walking a significant contributor to the skill of shot-making”<sup>150</sup>.

Judge Coffin rejected the Tour’s defense that use of a cart would fundamentally alter the nature of professional golf. In order to have a defense, the Tour had to prove that the cart fundamentally altered golf for Martin as an individual<sup>151</sup>. In his holding, Judge Coffin relied heavily on evidence of the fatigue that Martin would experience if forced to walk to course and the fatigue he experienced while riding a cart. Even while using a cart, Martin must walk approximately one and a quarter miles during a round, (compared to five miles for the average round without a cart)<sup>152</sup>. Since Martin must deal with the psychological stress of walking plus the added stress of pain and risk of serious injury, any claim that the cart puts him at a competitive advantage is a “gross distortion of reality.” Since Martin “easily endures greater fatigue even with a cart than his able-bodied competitors do by walking, it does not fundamentally alter the nature of the PGA Tour’s game to accommodate him with a cart.”<sup>153</sup>

After Coffin announced his verdict, Martin hugged his attorneys and said simply, “we won.”<sup>154</sup> At a press conference after leaving the courtroom, Martin was overjoyed to have the chance to pursue his dream, “I might not make it out there, but at least now I can go down in flames trying.”<sup>155</sup> The Tour’s representatives showed significantly less enthusiasm. Moments after leaving the courtroom, Tour attorney William Maledon said “we think the judge was wrong today”, and announced the Tour’s intention to appeal the ruling to the Ninth Circuit as soon as possible<sup>156</sup>. Tour Commissioner Finchem found fault with Judge Coffin for not being a golfer, “it’s troublesome that the person making the decision doesn’t understand the situation”<sup>157</sup>. Finchem indicated that the Tour would follow the court’s ruling and welcome Martin at future tour events. However, the Tour did not have any plans to furnish other players with carts, as the ruling applied only to Martin. Since an appeal would not be heard for six to eighteen months, Casey would have his cart for at least the remainder of the Nike Tour season<sup>158</sup>.

## **B. Ninth Circuit Appeal**

On May 4, 1999, almost fourteen months after the District Court had sided with Martin, the case went before the Ninth Circuit. The case was argued before Judges

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<sup>149</sup> *Martin*, 994 F.Supp. at 1246.

<sup>150</sup> *Id.* at 1248.

<sup>151</sup> *Id.* at 1247.

<sup>152</sup> *Id.* at 1251.

<sup>153</sup> *Id.* at 1252.

<sup>154</sup> Robinson, *supra* note 119.

<sup>155</sup> *Id.*

<sup>156</sup> *Id.*

<sup>157</sup> Robinson, *supra* note 146.

<sup>158</sup> Robinson, *supra* note 119.

Camby, Nelson, and Fogel in a packed Portland courtroom<sup>159</sup>. At the hearing, the Tour once again argued that the its professional tours were not public accommodations, or in the alternative that Martin’s cart fundamentally altered the sport of golf. Speaking after the oral arguments, Martin expressed shock that the PGA was pressing on with its appeal. Martin also indicated that most of his fellow golfers shared his shock, “over the last year, they have gotten over any concerns that the cart might give me an advantage.”<sup>160</sup> The Ninth Circuit also received amicus briefs from a number of parties. Among the briefs filed in support of Martin were those of the United States and a joint effort of Senators Dole, Harkin, and Ted Kennedy. The most prominent amicus filed in support of the Tour was from the United States Golf Association.

On March 6, 2000, the Ninth Circuit released its opinion affirming the decision of the District Court and Martin’s right to a cart under the ADA<sup>161</sup>. The opinion, written by Judge William Canby, agreed with Martin that walking was not the central competition in golf. He wrote, “The central competition in shot-making would be unaffected by Martin’s accommodation. All the card did was permit Martin access to a type of competition in which he otherwise would not engage because of his disability. That is precisely the purpose of the ADA.”<sup>162</sup> After the announcement of the verdict, the Tour declined to comment on the decision or whether it would again appeal the ruling<sup>163</sup>.

## C. Supreme Court

### 1. Oral Argument

On January 17, 2001, the Supreme Court heard oral arguments in the case of PGA Tour v Martin<sup>164</sup>. The Tour once again argued its position that its tours are not public accommodations, and therefore not covered by the ADA, and that even if covered by the ADA, the use of a cart is a fundamental alteration to the sport. Martin’s attorneys once again claimed that the Tour was subject to the ADA and that walking is not fundamental to professional golf. During oral arguments, the Tour’s attorney, H. Bartow Farr, argued that the Ninth Circuit “never took account of just what a top-level professional sport really is ... They are simply tests of excellence, of who can perform the best on a set of physical tasks, and those tasks are defined by the rules of the sport.”<sup>165</sup> Justice Souter seemed to sympathize with the Tour’s position, asking “if the people who make the rules for the PGA Tour say ‘we want to make this particular game tougher than regular golf games,’ why shouldn’t we respect it?”<sup>166</sup>

Farr also asserted that Title III applies only to customers of public accommodations such as restaurants and hotels, a category that does not include Martin.

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<sup>159</sup> Ashbel S. Green, *PGA Renews Bid to Detour Martin*, THE OREGONIAN (Portland, Or.), May 5, 1999, at C1.

<sup>160</sup> *Id.*

<sup>161</sup> *Martin*, 204 F.3d at 1002.

<sup>162</sup> *Id.* at 1000.

<sup>163</sup> Ashbel S. Green, *Disabled Golfer can Continue to Ride Cart*, THE OREGONIAN (Portland, Or.), Mar. 7, 2000, at A1.

<sup>164</sup> *Martin*, 532 U.S. at 661.

<sup>165</sup> Linda Greenhouse, *Supreme Court Hears the Casey Martin Case*, N.Y. TIMES, Jan. 18, 2001, at D4.

<sup>166</sup> Ashbel S. Green, *High Court Weighs Rights of People with Disabilities vs. the Rules of Golf*, THE OREGONIAN (Portland, Or.), Jan. 18, 2001, at A1.

This view was forcefully challenged by Justices O'Connor and Kennedy, both of whom had been important swing votes in past ADA decisions. During Farr's presentations, Kennedy interrupted and wondered if Farr was "taking too narrow a view" of the ADA's scope<sup>167</sup>.

After the oral arguments concluded, Martin was joined on the steps of the Supreme Court by Senators Dole and Harkin. Speaking to reporters, Harkin acknowledged the long tradition of walking in professional golf, but concluded that "sometimes tradition needs to give way to the reality of equal opportunity." When asked his impression of the arguments, Martin replied that the only thing running through his mind was that "these nine people just chose the leader of the free world [in *Bush v. Gore*], and now they're going to decide whether I ride a cart. Why are they hearing this when they have better things to do?"<sup>168</sup> Shortly after the arguments, Casey left Washington to return to life on the tour, and to wait for the court's decision<sup>169</sup>.

## 2. Decision

On May 29, 2001, three days before Martin's twenty ninth birthday, the Supreme Court handed down a 7-2 decision in favor of Martin. In an opinion written by Justice Stevens, the Court affirmed the Ninth Circuit opinion and held that Title III prohibited the Tour from denying Martin use of a cart on its tours<sup>170</sup>. Although the opinion vindicated Martin, it stuck close to the particular facts of the case, and avoided issuing a blanket rule applicable to other disabled golfers.

The court found that golf tours and qualifying rounds are public accommodations covered by the ADA<sup>171</sup>. Although Title III protects "clients and customers" of a public accommodation, the court ruled that Martin fell within this category. When the PGA put on a golf tournament, if offered two separate products to its customers, the opportunity to watch the tournament as a spectator and the opportunity to compete. The chance to compete is a privilege offered to the general public through the open Qualifying School. The fact that gaining membership to a professional tour is extremely difficult and rare did not nullify its status as a "privilege". By paying his \$3,000 for the chance to play at Q-School, Martin became a customer of the PGA and thus was entitled to protection under Title III<sup>172</sup>.

Justice Stevens also agreed with the lower courts that the cart was a reasonable accommodation and not a fundamental alteration of the game. Stevens wrote that the walking rule is "at best peripheral" and not an "indispensable feature of tournament golf ... thus it might be waived in individual cases without working a fundamental alteration."<sup>173</sup> Since use of a golf cart was not consistent with the essential character of golf, it was not a fundamental alteration of the PGA Tour's product, and thus Martin was entitled to a cart by Title III.

The dissent was written by Justice Scalia and joined by Justice Thomas. In his opinion, Scalia chastised the majority for exercising a "benevolent compassion that the

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<sup>167</sup> *Id.*

<sup>168</sup> Greenhouse, *supra* note 165.

<sup>169</sup> *Id.*

<sup>170</sup> *Martin*, 532 U.S. at 691.

<sup>171</sup> *Id.* at 677.

<sup>172</sup> *Id.*

<sup>173</sup> *Id.* at 663.

law does not place it within our power to impose.”<sup>174</sup> The dissent went on to disagree that Martin was a “customer” entitled to protection under Title III. Scalia argued that the PGA’s main function is to provide entertainment for audiences at home and at the course, golfers like Martin are themselves entertainers, not customers<sup>175</sup>. Scalia also wrote that the ADA does not compel a professional sports league to alter its rules. The ADA mandates equal access to competition, not an equal chance to win. Although the majority’s judgment was “decent, tolerant, and progressive”, it was not compelled by Title III of the ADA<sup>176</sup>.

### 3. Reaction

Tour Commissioner Finchem released a statement after the judgment was released saying that the “Tour will continue to welcome Casey as a member and competitor.”<sup>177</sup> However, during a conference call a few days later, Finchem made it clear that the welcome would not necessarily extend to other disabled athletes, “The court clearly focused its decision on Casey Martin and Casey Martin only. They make it quite clear that they are not certain that this same decision would apply to any other competitor.”<sup>178</sup> When asked whether the Tour would offer carts to other athletes who requested them, Finchem replied that the tour had yet to work out a policy, but that he “believe[d] we can assume that we have the flexibility to continue our rules as they apply to walking.”<sup>179</sup>

Among Tour members, most golfers were happy for Martin as an individual, but concerned about what the ruling meant for the game. Stuart Appleby, a PGA Tour member since 1996, said “I’m disappointed that the Supreme Court doesn’t believe that walking is a part of golf.”<sup>180</sup> Paul Azinger, owner of fifteen PGA Tour wins, and a cancer survivor, sided with Martin, “I don’t think this is hurtful for the game, Casey Martin is a unique individual, and his is a unique situation.”<sup>181</sup> Brenda Kuehn was eight months pregnant and scheduled to tee off at the U.S. Women’s Open only a few days after the Martin decision was handed down. Despite her condition, Kuehn did not ask for a cart, “I don’t feel like I have a disability, even if its temporary. The fact that you’re pregnant is a part of life.”<sup>182</sup>

Martin learned of the Court’s decision when he received an early morning phone call from Commissioner Finchem on May 29<sup>th</sup>. Casey immediately called his brother Cameron to share the good news<sup>183</sup>. On a conference call later in the day, Martin told reporters “I’m grateful I don’t have to deal with any more legal issues.”<sup>184</sup> When asked whether he believed he would be a trendsetter for other disabled athletes, he responded,

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<sup>174</sup> *Id.* at 691.

<sup>175</sup> *Id.* at 692.

<sup>176</sup> *Id.* at 704.

<sup>177</sup> Linda Greenhouse, *Disabled Golfer May Use a Cart on the PGA Tour, Justices Affirm*, N.Y. TIMES, May 30, 2001, at A1.

<sup>178</sup> Clifton Brown, *Martin’s Case Ends, but Debate Goes on Among Tour Players*, N.Y. TIMES, May 30, 2001, at D1.

<sup>179</sup> *Id.*

<sup>180</sup> *Id.*

<sup>181</sup> *Id.*

<sup>182</sup> *Id.*

<sup>183</sup> Bob Robinson, *Pressure Eases for Martin*, THE OREGONIAN (Portland, Or.), May 30, 2001, at F4.

<sup>184</sup> Brown, *supra* note 178.

“I don’t foresee this as being a huge change for professional sports. There are just not that many disabled people at this level of professional sports.”<sup>185</sup>

## VI. Aftermath

### A. Casey - After the Case

In 1998, after the District Court handed down its decision in favor of Martin, Casey returned to life on the Nike Tour. After winning his first event, the Lakeland Classic (as described in the Part I), Martin went on to play in twenty one more events, making sixteen cuts and recording two more top-ten finishes. After missing the cut at the season ending Nike Tour Championship, Martin finished the year with \$81,937 in winnings<sup>186</sup>. His performance left him twenty ninth on the money list, leaving him short of a PGA Tour card but guaranteeing him a spot on the Nike Tour for another season. Facing another season on the minor league tour, Martin looked toward improving his game in the off-season, “obviously I have a lot to work on. It can come back just as easily as it left, so I have to hang in there.”<sup>187</sup>

Aside from his season opening win at the Lakeland Classic, the highlight of Martin’s 1998 season was his performance at the U.S. Open, played at San Francisco’s Olympic Club. Martin had qualified through the tournament’s extensive open qualifying system. On the first day of the tournament, Martin made history by becoming the first U.S. Open contestant to ever ride a cart while playing<sup>188</sup>. Martin played well enough to make the cut and survive into the tournament’s final two rounds<sup>189</sup>. During the third round, Martin was paired with Jose Maria Olazabal, a Spanish Tour star who had recently missed almost two years while recovering from a foot injury. During his convalescence, Olazabal had turned down the opportunity to ride a cart during a European Tour event. During the round, the two golfers joked that Jose should be riding along with Casey<sup>190</sup>.

By the end of the tournament, Casey had played his way into a tie for twenty third place, an excellent showing<sup>191</sup>. Although he was extremely happy with his finish, Martin was most happy with the crowd support he received. Throughout his four rounds, Casey was cheered vociferously by the gallery. As he reached his final hole for the tournament, the crowd roared loudly and chanted his name. When asked about his performance after the tournament, Casey responded, “what I will take away the most will be the way people rooted me on.”<sup>192</sup>

Returning to the Nike Tour in 1999, Casey refocused himself and prepared to make a run at earning his PGA Tour card. Over twenty four events, Martin made thirteen cuts and had six top ten finishes. At the end of the year, Martin had earned over \$122,000 and held fourteenth place on the Nike Tour money list<sup>193</sup>. The fourteenth place

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<sup>185</sup> *Id.*

<sup>186</sup> Casey Martin PGA Tour Player Card, available at <http://www.pgatour.com/players/02/04/45/>.

<sup>187</sup> Joe Logan, *In 1998, Both Youth and Age Were Served*, PHILA. INQUIRER, Dec. 20, 1998, at C14.

<sup>188</sup> Bob Robinson, *Martin High on his Tie for 23<sup>rd</sup>*, THE OREGONIAN (Portland, Or.), June 22, 1998, at D5.

<sup>189</sup> Bob Robinson, *Martin Enjoys Open Round with Olazabal*, THE OREGONIAN (Portland, Or.), June 21, 1998, at D4.

<sup>190</sup> *Id.*

<sup>191</sup> Robinson, *supra* note 188.

<sup>192</sup> *Id.*

<sup>193</sup> Martin Player Card, *supra* note 186.

finish was good enough to earn Martin a full time spot on the PGA Tour for the 2000 season. Talking about making the Tour, Martin was ecstatic, “I was thrilled to be able to survive it and make my dream come true. My life goal has been to make it, and it will be special when I start playing.”<sup>194</sup>

In 2000, Martin played twenty nine events on the PGA Tour. His best finish was a tie for seventeenth at the Touchstone Tucson Open<sup>195</sup>. At the end of the year, Casey had earned over \$144,000 and sat at one hundred seventy ninth place on the Tour money list. Unfortunately, his low finish meant that Casey would be relegated back to the Nike Tour for the 2001 season<sup>196</sup>.

The seasons between 2001 and 2006 witnessed the gradual winding down of Martin’s professional golf career. From a high of twenty one events played in 2001, the deterioration of Martin’s leg forced him to cut back to five events in 2006<sup>197</sup>. At the end of the 2006 season, Martin announced his retirement from professional golf. When reflecting back on his career, Martin thought about his place in the history of the game, “In professional golf, you want to be known as a great player. I did not leave that mark, but I certainly had somewhat of a significant career based on my leg and all.”<sup>198</sup>

Although he gave up golfing professionally, Martin remained active in the game. During the 2005-06 season, Martin began working as a volunteer assistant coach for the University of Oregon men’s golf team<sup>199</sup>. On May 9, 2006, after only one year as an assistant, Martin was named the ninth head coach in the history of the Oregon team<sup>200</sup>. Martin inherited a team that had finished at the bottom of the Pac-10, but showed significant improvement in Martin’s first year as a coach. During the 2006-07 season, Martin led the Ducks to two tournament wins and a place in the NCAA West Regional Tournament. Even though the Ducks are far from repeating the national title that Martin won with Stanford in 1994, Martin is enjoying his new role in the sport of golf, “I’d love to look back in twenty years and see an Oregon golf program that is an elite program ... it’s a huge challenge, and it gets me up in the morning.”<sup>201</sup>

## **B. Professional Golf**

After the Supreme Court’s ruling, the PGA Tour and the USGA both added options to apply for a cart on their competition applications. Both the PGA and USGA maintain committees to review medical records and make a cart ruling on a case-by-case basis<sup>202</sup>. The PGA and USGA applications allow both players and caddies to apply for a cart so long as they have a disability as defined by the ADA, which includes temporary disabilities<sup>203</sup>. The USGA’s application requires a player to answer a series of twelve questions explaining the nature of their disability and why it necessitates the use a cart [usga]. Sample questions ask: Can you walk up the flight of stairs without assistance? In

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<sup>194</sup> Ryan White, *Spotlight Shifts to Martin*, THE OREGONIAN (Portland, Or.), Jan. 18, 2000, at E1.

<sup>195</sup> Martin Player Card, *supra* note 186.

<sup>196</sup> Ryan White, *Looking Back, Looking Forward*, THE OREGONIAN (Portland, Or.), Nov. 27, 2005, at D1.

<sup>197</sup> Martin Player Card, *supra* note 186.

<sup>198</sup> Bob Rodman, *Work and Progress*, THE REGISTER-GUARD (Eugene, Or.), May 16, 2007, at C1.

<sup>199</sup> *Id.*

<sup>200</sup> *Id.*

<sup>201</sup> *Id.*

<sup>202</sup> White, *supra* note 196.

<sup>203</sup> USGA Cart Request Form

non-tournament play, what percentage of the time do you walk when you play? Do you use walking aids, if so, describe the length of time you use them each day?<sup>204</sup> Interestingly, all the questions seem geared towards disabilities affecting a person's ability to walk. There are no questions about impairments of the arms, eyes or other parts of the body. The party requesting a cart must also provide a current medical report and testimony of a physician that has evaluated the disability<sup>205</sup>. In 2003 and 2004 the USGA received forty four requests for carts, most of which were granted. However, most of these requests were for golfer's playing at the U.S. Open qualifying rounds. Since Casey Martin, no other golfer has ridden a cart in the U.S. Open<sup>206</sup>.

Since the PGA Tour and the USGA have implemented their new procedures, only the USGA has received an application for cart use. Of those golfers who have applied to the USGA, the only uses of carts have been in qualifying rounds. No disabled golfer has made it through the qualifying rounds to play in the U.S. Open. Contrary to the PGA Tour's prediction that the Martin ruling would create a flood of disabled golfers on tour, since the Martin ruling, no other golfer has used a cart on the PGA Tour.

In contrast to the PGA Tour, which liberalized its cart policy following the *Martin* Supreme Court ruling, the Champions Tour has made it more difficult for its players to use a cart during tournaments. Prior to 2005, the Champions Tour allowed any player who wished to use a cart, although the rules "encouraged" players to walk<sup>207</sup>. In 2005, as part of an attempt to revamp its image, the Champions Tour changed its rules to ban carts except for golfers with disabilities covered by the ADA. The rule change was controversial, as it forced some fan favorites, such as Chi Chi Rodriguez, into retirement<sup>208</sup>. Despite the controversy, the rules remain in effect.

Since the *Martin* decision is so narrowly tailored to the specific facts, it is hard to forecast how the courts would rule on other claims. From the questions the USGA and PGA Tour ask on their cart applications, it seems that they do not consider the possibility of a golfer with an arm impairment who uses a more powerful club than is otherwise allowed on tour to be within their duties under the ADA. From the *Martin* decision, it seems unlikely that the ADA would cover such a golfer. Since the club directly effects shot making, which is a fundamental part of the sport, it would likely be considered a fundamental alteration and not a reasonable accommodation. On the flip side, it seems likely that the court would have granted Martin's request had he asked for a more limited accommodation, such as a cart for 9 holes instead of 18.

### C. Other Golfers

Although Casey Martin was the first to use a cart on a PGA Tour event, he was not the first to petition. In 1987, Charlie Owens asked the Senior Tour (which did not allow carts in its major championships) for use of a cart at the U.S. Senior Open. Owens had a fused knee and other leg problems stemming from a parachuting accident while serving in the Army. The Senior Tour denied Owens' request. As a protest Owens

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<sup>204</sup> *Id.*

<sup>205</sup> *Id.*

<sup>206</sup> White, *supra* note 196.

<sup>207</sup> Kevin Scarbinsky, *Taking Away Golf Carts is Wrong Decision*, BIRMINGHAM NEWS, May 2, 2004, at S1.

<sup>208</sup> *Id.*

walked the first nine holes of the tournament on crutches before withdrawing. Since the ADA had not yet been passed, Owens was forced to accept the Tour's ruling without legal recourse<sup>209</sup>.

In May 2007, MacKinzie Kline became the first golfer to use a cart in a LPGA event. Kline is a 15 year-old who suffers from a congenital Hart defect. Kline obtained a cart through processes that the LPGA put in place after the *Martin* ruling. Although she failed to make the cut in her first event, Kline continues to play on the LPGA tour with the assistance of a cart today<sup>210</sup>.

#### **D. Other Sports**

As medical technology improves, it is likely that other sports will have to face questions similar to the ones that the PGA faced in the *Martin* case. At what point do surgeries and prosthetics become a competitive advantage for the disabled athlete? Today, procedures such as Lasik and Tommy John surgeries prolong the careers of athletes whose injuries would have forced them into retirement a generation ago.

The world of Track and Field has already been forced to confront the question of whether prosthetics give a disabled sprinter a competitive advantage. In 2007, Oscar Pistorius, a double amputee sprinter from South Africa, petitioned Track and Field's governing body for the right to compete in qualifying for the 2008 Beijing Olympics. Pistorius is already an accomplished athlete, holding Paralympic records in the 100, 200, and 400 meter events. While running, Pistorius uses a pair of carbon fiber prosthetics called "Cheetahs". In a series of tests, the International Association of Athletics Federations (IAAF) found that the "Cheetahs" are more efficient than the human ankle. The "Cheetahs" allowed Pistorius to run at the same speed as able-bodied sprinters with twenty five percent less energy expenditure. Based on the results of the testing, Pistorius was ruled ineligible for the Olympic Trials so long as he used the "Cheetahs"<sup>211</sup>.

On May 16, 2008, the Court of Arbitration for Sport (CAS), an international sports appeals court, overruled the IAAF's decision. CAS ruled that the studies on which the IAAF's decision was based did not provide enough evidence to disqualify Pistorius. The ruling opened the door for Pistorius to compete in the Olympics if he posts a low enough qualifying time. Pistorius can gain an automatic berth in Beijing by running the 400 meters in 45.55 seconds during a sanctioned meet. Pistorius' current personal best in the 400 is 46.33 seconds. Even if Pistorius fails to qualify for the 2008 Olympics, he plans to qualify for the World Championships and the London Olympics in 2012. If Pistorius does qualify, the International Olympic Committee has said that it would welcome him into competition<sup>212</sup>.

Going forward, more sports will face these types of questions. Under the interpretation of the ADA put forth in *Martin*, it may fall to the courts to determine whether these changes affect the fundamental nature of sport.

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<sup>209</sup> Morfit, *supra* note 2.

<sup>210</sup> Tommy Braswell, *Teen Kline Will be First to use Cart in LPGA Event*, THE POST AND COURIER (Charleston, S.C.), Feb. 4, 2007, at C9.

<sup>211</sup> Joshua Robinson, *Amputee Ineligible for Olympic Events*, NY TIMES, Jan. 14, 2008.

<sup>212</sup> Joshua Robinson & Alan Schwarz, *Olympic Dream Stays Alive, on Synthetic Legs*, N.Y. TIMES, May 17, 2008, at A1.