

Client Alert

A report
for clients
and friends
of the firm June 2001

Supreme Court Adopts Expansive View of the Americans With Disabilities Act

The decision by the United States Supreme Court on May 29, 2001 permitting Casey Martin, a professional golfer, to use a golf cart in professional tour events raises important considerations regarding the future application of Title III of the Americans with Disabilities Act (the "ADA").

Title III prohibits "public accommodations" from discriminating against the disabled and affirmatively requires that they modify their policies and procedures to permit access to the disabled, provided the requested modification is "reasonable" and "necessary" to accommodate the disabled person and that it does not "fundamentally alter" the nature of what the public accommodation does. In *PGA Tour, Inc. v. Casey Martin*, 2001 US Lexis 4114 (May 29, 2001), by a 7-2 majority (with a strongly worded dissent), the Supreme Court held that PGA tournaments are not only places of public accommodation whose contestants, though independent contractors, have the right to invoke the protections of Title III in order to enjoy the "privilege" of competing, but that the rules of the game must be examined, on a case by case basis, to determine whether a requested modification should be permitted in order to accommodate participation by a disabled competitor. Such a decision has obviously important consequences for both professional sports' organizations and more conventional commercial enterprises.

Prior History

Since birth, Martin has been afflicted with Klippel-Trenaunay-Weber Syndrome, a degenerative circulatory disorder that obstructs the flow of blood from his right

leg back to his heart. As a result of this progressive disease, since the latter part of his college days, Martin has been unable to walk an 18-hole golf course. Walking not only causes him pain, fatigue and anxiety, but it also creates a significant risk of further injury that could lead to amputation. Accordingly, Stanford University, for whom Martin played intercollegiate golf, successfully obtained a waiver from the Pacific 10 Conference and the NCAA to obtain an exemption from their "walking" rules.

When Martin turned pro, he sought permission to use a cart during the third round of the PGA qualifying school. The PGA declined, and, in 1998, Martin filed an action in the United States District Court in Oregon against the PGA Tour, initially obtaining a preliminary injunction requiring it to allow him to use a cart in the "Q-School" and in Nike and PGA tour events.

Thereafter, at trial, the PGA did not contest that Martin has a disability covered by the ADA or that it prevents him from walking the course during a round of golf. Instead, the PGA argued, in part, that walking is a substantive rule of competition which causes fatigue and that waiving it as to any competitor would fundamentally alter the nature of the competition. The PGA's witnesses amounted to a virtual "who's who" of competitive golf, including golfing legends Arnold Palmer and Jack Nicklaus, both of whom testified that fatigue can be a critical factor in a golf tournament. The District Court rejected the PGA's arguments and concluded that it would not fundamentally alter the nature of tournament golf to accommodate Martin with a cart. The Ninth Circuit affirmed. Notably, the day after the Court of Appeals ruled in Martin's favor, the Seventh Circuit reached a contrary result in a case brought by another disabled golfer, Ford Olinger, who had sued the United States Golf Association for permission to ride a cart during US Open qualifying rounds.

The Supreme Court agreed to hear the Martin dispute to determine whether the ADA applies to professional golf tournaments and to resolve the conflict that had developed between the lower courts as to whether riding a cart amounts to a fundamental alteration of tournament golf.

The Supreme Court's Decision

The Court's opinion is divided into two principal parts. First, it addresses whether a PGA event is a public accommodation (as opposed to what are more typically thought of as "open to the public" places such as restaurants, parks, and theaters), and whether a professional competitor like Martin (who was found to be an "independent contractor" by the lower courts) was entitled to sue under Title III.

Although a "golf course" is specifically identified in Title III as an example of a "public accommodation," and while the PGA admitted that tournaments are public events, the PGA argued that Title III is designed to remedy discrimination against "clients and customers" and thus did not apply to independent contractors like Martin who compete at the tournaments. In this respect, the PGA claimed that it does not operate a "golf course," but rather a place of entertainment, and that competitors who perform "inside the ropes" are like actors who provide entertainment rather than spectators who "consume" it. Accordingly, the PGA argued that only Title I (which deals with discrimination against employees) could potentially apply to a claim by a contestant; however, it contended that as Martin, like other professional golfers on tour, was an independent contractor, he had no right to sue under Title I of the ADA.

The Court held that it did not have to decide whether Title III only covers discrimination against "clients and customers" because golfers must pay \$3,000 for the chance to qualify for PGA events and therefore may appropriately be considered the PGA's clients or customers. Thus, according to the Court, tournaments "simultaneously offer at least two privileges to the public — that of watching the golf competition and that of competing in it." The Court commented that "it would be inconsistent with the literal text of the statute as well as its expansive purpose to read Title III's coverage . . . any less broadly."

Having concluded that PGA tournaments are covered by Title III and that competitors like Martin may invoke its protections, the second part of the Court's decision focused on whether the PGA's failure to modify its "walking only" rule for Martin amounted to illegal discrimination. Because the PGA did not contest that a golf cart is a reasonable modification that is necessary for Martin to play in its tournaments, the only question that the Court had to confront was whether allowing Martin to use a golf cart would "fundamentally alter the nature" of the competition.

The Court recognized that any modification to a PGA rule might constitute a fundamental alteration in two ways. First, it might alter such an "essential" aspect of the game as to make it unacceptable even if it affected all competitors equally. The example given by the Court was enlarging the diameter of the

golf hole. Second, an accommodation might fundamentally alter the competition if it gave a particular player a competitive advantage over other contestants.

With respect to the first issue, the Court concluded that the essence of golf is shot-making and that the "walking only" rule was neither an essential attribute of the game nor an indispensable feature of tournament golf. With respect to the second issue, as to which the Court held that an "individualized inquiry" is necessary, the Court concluded that Martin would not be competitively advantaged by being permitted to ride a golf cart because the fatigue otherwise caused by his physical disability would still be greater than that suffered by those competitors who would be walking. According to the Court, "A modification that provides an exception to a peripheral tournament rule without impairing its purpose cannot be said to 'fundamentally alter' the tournament."

In reaching its decision, the Court acknowledged the potential administrative burdens that might result from giving individualized attention to requests from disabled athletes to modify or waive a rule of competition, although it expressed skepticism that the burden would be substantial. In any case, the Court concluded that Congress intended that an entity like the PGA not only give such individualized treatment to the "handful of requests that it might receive from talented but disabled athletes ... but [that it] also carefully weigh the purpose, as well as the letter, of the rule before determining that no accommodation would be tolerable."

The Dissent

Justice Scalia wrote a strongly worded dissent in which he was joined by Justice Thomas. First, the dissent argued that the majority's finding that a PGA event constitutes a "public accommodation" is unsupportable since professional golfers competing in tour events are no more customers of professional golf than Major League Baseball players are customers of the baseball games in which they participate. Second, the dissent reasoned that just as the ADA requires a business to provide the disabled with access to the same goods, services and privileges that are made available to others, but does not require such a business to alter its inventory (such as by stocking goods designed for the disabled), the PGA cannot deny Martin access to its game because of his disability, but it need not provide him with a game different from that offered to everyone else. Third, the dissent challenged the Court's conclusion that walking is not a "fundamental" aspect of golf, noting that because the very nature of a game is amusement, it is impossible to say that any of a game's arbitrary rules are essential. Finally, the dissent criticized the Court's endorsement of "individualized inquiries" to determine whether a modification to a practice or policy would give a player an advantage over other competitors.

According to the dissent, such inquiries will require intensive fact finding and guarantee that future cases of this sort will be numerous.

The Consequences

Although it certainly has implications in the sports world, and likely beyond, the practical consequences of the Martin decision are not yet entirely clear, as much will depend upon how lower courts apply the holding in future cases. For example, while the decision makes clear that professional sports are not automatically exempt from coverage under the ADA with respect to the manner in which the competitions under their jurisdictions are played, it is unclear whether, and the extent to which, the courts will give extra weight or deference to the views of governing bodies regarding what is or isn't an "essential" aspect of the game. It is also unclear from the decision how it will be applied to sports leagues where players are employed by individual teams or are not independent contractors. However, if there is coverage, the rules of play may have to be modified on a case-by-case basis, after an individualized examination of the circumstances, and, when necessary, allow a disabled professional athlete to participate, provided that the requested modification would not alter an essential element of the game or result in an unfair competitive advantage.

The Martin decision also has implications beyond the "playing field." The Court's conclusion that PGA events are subject to Title III certainly confirms that judges may take an expansive and inclusive approach to the types of activities and enterprises that constitute a "public accommodation" for purposes of the ADA generally. In addition, the Court's reliance on the ancient origins of golf to determine whether the PGA's "walking only" rule is essential to the game seems to suggest a greater deference to policies and practices that are classic or "traditional." Whether that will impair the ability and willingness of enterprises to modernize their practices (or, in the case of sports bodies, to refine their rules of play) remains to be seen.

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