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PRO GOLFER'S CART "REASONABLE ACCOMMODATION" UNDER ADA

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In the case of *Martin v. PGA Tour, Inc.*, No. 98-35309 (9th Cir. 2000), PGA Tour, Inc. ("PGA") appealed from the district court's decision in favor of Casey Martin, a disabled professional golfer, ordering PGA to make an exception to its "walking rule" to allow Martin to ride a golf cart during PGA competitions. The facts of the case were as follows:

> Casey Martin suffers from Klippel-Trenaunay-Weber Syndrome, a congenital, degenerative circulatory disorder that is manifested in a malformation of his right leg. This disorder causes Martin severe pain and atrophy in his lower leg, rendering him unable to walk for extended periods of time. The mere act of walking subjects him to a significant risk of fracture or hemorrhaging. There is no dispute that Martin is profoundly disabled.
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> PGA is a non-profit association of professional golfers. It sponsors three competitive tours: (1) the PGA Tour, its most competitive tour, (2) the Nike Tour, one step down from the PGA Tour, and (3) the Senior PGA Tour, restricted to professional golfers age 50 and over. On days of tour competition, PGA is the operator of the golf course. [The term "operates," as it is used in the ADA, is extensive and "would include sublessees, management companies, and any other entity that owns, leases, leases to, or operates a place of public accommodation, even if the operation is only for a short time." 28 C.F.R. ch. I, pt. 36, app. B., at 628 (1999).]
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> The primary means of gaining entry to the PGA Tour and Nike Tour is by a competition known as the qualifying school. The best scorers in that competition qualify for the PGA Tour, and the next-best finishers qualify for the Nike Tour. Players in the Nike Tour may qualify for the PGA Tour by winning three Nike Tour tournaments in one year or by being in the top fifteen money-winners in the Nike Tour.
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> The qualifying school competition is conducted in three stages. In the first two stages, players are permitted to use golf carts. In the third stage, and in the PGA and Nike Tours themselves, players are required to walk as they play the course. [Players are permitted to use golf carts on the Senior Tour.] After qualifying for the third and final stage of the 1997 qualifying school, Martin requested permission from PGA to use a golf cart. PGA denied this request, and Martin sued.

The district court ordered PGA to allow Martin to use a golf cart. Using a golf cart, Martin performed well enough in the final stage of the qualifying school to earn a spot on the 1998 Nike Tour. The federal district court subsequently held that "PGA was subject to Title III of the ADA because it owns, operates and leases golf courses, which the ADA identifies as places of public accommodation."

Following a trial, the district court concluded that "modifying the walking rule for Martin was a reasonable accommodation that did not fundamentally alter the nature of PGA golf tournaments." Accordingly, the district court issued an order "requiring PGA to permit Martin to use a golf cart in PGA and Nike Tour competitions in which he is eligible to participate, and in any qualifying rounds for those tours." PGA appealed.

On appeal, the initial issue was whether the Americans with Disabilities Act ("ADA") applied to PGA competitions." If the ADA was applicable under the circumstances of this case, the court would then consider whether allowing Martin to use a cart was a "reasonable accommodation" that did not "fundamentally alter" the nature of those events.

ADA TITLE III "PUBLIC ACCOMMODATION"?

In determining whether "Title III of the ADA applied to the PGA and Nike Tour competitions," the appeals court began its analysis by citing "[t]he basic anti-discrimination clause of Title III of the ADA" which provides as follows:

> No individual shall be discriminated against on the basis of disability in the full enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation by any person who owns, leases (or leases to), or operates a place of public accommodation. 42 U.S.C. Sec. 12182(a).

Accordingly, based upon this statutory language, the "first issue for decision" by the court was "whether Martin seeks to enjoy the facilities of a 'place of public accommodation'." As cited by the appeals court, the section of Title III of the ADA, in pertinent part, defined the term "places of public accommodation" as follows::

> The following private entities are considered public accommodations for purposes of this subchapter . . . (L) a gymnasium, health spa, bowling alley, *golf course, or other place of exercise or recreation*. 42 U.S.C. S 12181(7)(L). (Emphasis added.)

Applying this definition to the facts of the case, the appeals court found "nothing ambiguous about this provision; golf courses are public accommodations." Moreover, the court noted that the PGA did not

dispute that "during one of its tournaments a golf course is a public accommodation with regard to the spectator areas." Rather, as applied to Martin, the PGA contended that "the competitors' area 'behind the ropes' is not a public accommodation because the public has no right to enter it." The appeals court rejected PGA's argument because "it too narrowly construes the nature of a public accommodation." According to the court, "a public accommodation could not be compartmentalized in the fashion PGA desired." In so doing, the appeals court determined that "Title III [of the ADA] applies to the playing field, not just the stands.

> It is true that the general public cannot enter the area "inside the ropes," but competitors, caddies, and certain other personnel can. PGA contends that the restricted area is not being used as a "place of exercise or recreation," within the meaning of S 12181(7)(L), because the competitors are trying to win money, not exercise or recreate. Even if we were to agree with this point, it would not aid PGA. The statute also defines "public accommodation" to include a "theater, . . . stadium or other place of exhibition or entertainment." 42 U.S.C. S 12181(7)(C).
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> If a golf course during a tournament is not a place of exercise or recreation, then it is a place of exhibition or entertainment. The statute does not restrict this definition to those portions of the place of exhibition that are open to the general public. The fact that entry to a part of a public accommodation may be limited does not deprive the facility of its character as a public accommodation.

In addition, PGA had contended that the golf courses on which tournaments are played "cannot be places of public accommodation" because PGA tournaments are" restricted to the nation's best golfers." The appeals court disagreed. According to the court, "the fact that users of a facility are highly selected does not mean that the facility cannot be a public accommodation." On the contrary, the court found "[c]ompetition to enter the select circle of PGA and Nike Tour golfers" was comparable to limited admissions to a elite universities which are also considered places of public accommodation under the ADA.

> Title III includes in its definition "secondary, undergraduate, or postgraduate private school[s]." 42 U.S.C. § 12181(7)(J). The competition to enter the most elite private universities is intense, and a relatively select few are admitted. That fact clearly does not remove the universities from the statute's definition as places of public accommodation. It is true that the rest of the public is then excluded from the schools, but the students who are admitted are nevertheless members of the public using the universities as places of public accommodation.

> Title III does not restrict its coverage to members of the public; it provides that "No individual shall be discriminated against" in the enjoyment of public accommodations by reason of disability. 42 U.S.C. S 12182(a). This provision does not, however, grant access to a place where the individual is not entitled to be; the rejected applicant for admission is not entitled to access to the university, and the spectator is not entitled to access to the tees, fairways and greens during a PGA golf tournament.
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> Any member of the public who pays a $3000 entry fee and supplies two letters of recommendation may try out in the qualifying school. At the initial stage, it seems plain that the golf course on which the elimination begins is a place of public accommodation. As even PGA admits, "[t]he competition areas of some amateur sporting events may well constitute places of public accommodation under Title III of the ADA when virtually any member of the public can participate."

Moreover, the appeals court questioned “why a winnowing process would change the nature of the facility” which would otherwise be considered “a place of public accommodation” under the ADA.

> If a stadium owner invited the public to compete in long distance races, and continued to run heats until only the ten best runners remained, the track would be no less a place of public accommodation when the final race was run. We see no justification in reason or in the statute to draw a line beyond which the performance of athletes becomes so excellent that a competition restricted to their level deprives its situs of the character of a public accommodation. Nor do we see any such justification for drawing a line between use of a place of public accommodation for pleasure and use in the pursuit of a living.

As a result, the appeals court held that “golf courses remain places of public accommodations while a PGA tournament is being conducted on them.”

REASONABLE MODIFICATION (ACCOMMODATION)?

The appeals court then considered whether PGA’s refusal to permit Martin to use a golf-cart constituted “discrimination” for a failure to make “reasonable accommodations” within the context of the ADA.

> Title III further defines "discrimination" to include: a failure to make reasonable modifications in policies, practices, or procedures, when such modifications are necessary to afford such goods, services, facilities, privileges, advantages, or accommodations to individuals with disabilities, unless the entity can demonstrate that

> making such modifications would fundamentally alter the nature of such goods, services , facilities, privileges, advantages or accommodations . 42 U.S.C. S 12182(b)(2)(A)(ii)

Under the circumstances of this particular case, the appeals court found it was “clear that permitting Martin to use a golf-cart is ‘reasonable’ in the sense that it solves the problem of Martin's access to the competition.”

> It is also "reasonable" in that golf-carts are used in other competitions (such as those on the Senior Tour), and it is not a difficult practical matter to permit them. Use of a golf cart is also "necessary"; there was ample evidence to support the district court's finding that Martin could not walk the course, even with artificial aids. These matters are no longer in serious contention.

As a result, the appeals court concluded that “the district court did not err in determining that the provision of a golf cart to Martin was a reasonable accommodation to his disability.”

“FUNDAMENTALLY ALTER” NATURE OF COMPETITION?

Having found that “the provision of a golf cart to Martin was a reasonable accommodation to his disability,” the appeals court then considered “whether permitting Martin to use a golf cart will "fundamentally alter" the nature of the goods or service--the PGA or Nike Tour. As noted by the court the ADA requires “reasonable accommodation,” unless the public accommodation can demonstrate that the accommodation would “fundamentally alter the nature” of its goods and services. 42 U.S.C. § 12182(b)(2)(A)(ii).

On appeal, PGA had maintained that any exception to competition rules constituted fundamental alterations to their competitions, including permitting a disabled player to ride a golf-cart. Accordingly, the appeals court noted that “PGA has steadfastly declined to consider Martin's condition in adhering to its position that permitting him to use a cart would fundamentally change its competition.”

The appeals court, however, found “[t]he mere fact that PGA has defined walking to be part of the competition cannot preclude inquiry, or PGA will have been able to define itself out of reach of the ADA.” According to the court, the ADA “mandates an inquiry into whether a particular exception to a rule would ‘fundamentally alter’ the nature of the good or service being offered.”

> The issue here is not whether use of carts generally would fundamentally alter the competition, but whether the use of a cart by Martin would do so. The evidence must "focus on the specifics of the plaintiff's or defendant's circumstances and not on the

> general nature of the accommodation"... [T]he inquiry must focus on the individual exception... in light of the plaintiff's individual characteristics... [W]hether an accommodation fundamentally alters a competition is an intensively fact-based inquiry.

In conducting such an intensively fact-based inquiry as to "whether a golf cart for Martin fundamentally alters the competition," the appeals court first considered "whether walking is fundamental to the competition." As noted by the appeals court, the district court had found that "the fatigue factor injected into the game by walking was not significant" and, therefore, not fundamental to the competition.

> The district court found that the purpose of requiring players to walk was to inject a fatigue factor into the shot-making of the game. It also found, however, that "the fatigue factor injected into the game of golf by walking the course cannot be deemed significant under normal circumstances." It further found that, at the low levels of intensity of exercise involved in untimed walking of a golf course during a competition, "fatigue . . . is primarily a psychological phenomenon . . . . Stress and motivation are the key ingredients here."
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> The court noted that, given the choice of carts or walking in other tours, large numbers of players chose to walk. In the events in which PGA permits carts, it assigns no handicap penalty to those who ride as opposed to those who walk...
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> It is readily apparent that walking is not essential to the generalized game of golf. Rule 1-1 of the Rules of Golf, promulgated by the United States Golf Association and the Royal and Ancient Golf Club of St. Andrews, Scotland, states:
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> > The Game of Golf consists in playing a ball from the teeing ground into the hole by a stroke or successive strokes in accordance with the Rules.
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> These Rules do not require players to walk. Indeed, PGA does not require players to walk in the early stages of the qualifying school or in the Senior Tour...
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> PGA provides, in the Conditions of Competition for its PGA and Nike Tours, that "[p]layers shall walk at all times during a stipulated round unless permitted to ride by the PGA TOUR Rules Committee." On occasions when the Committee has permitted players to ride, the waiver applies to all competitors, as when all players must be shuttled from the 9th green to the 10th tee when the distance is great. It also appears that, to save time, rides have been given from the fairway back to the tee to players who

> have lost a ball and must tee off again.

On appeal, PGA had argued that it would be “far too burdensome” to determine “whether disabled individuals using carts would have an advantage over non-disabled walking competitors.” However, in the opinion of the appeals court, “[n]othing in the record establishes that an individualized determination would impose an intolerable burden on PGA.” On the contrary, the appeals court noted that “the district court appeared to have little difficulty making the factual determination that providing Martin with a golf cart would not give him an unfair advantage over his competitors.”

> Even with a cart, Martin must walk about twenty-five percent of the course because the cart cannot be brought near to the ball in many cases. Martin endures significant pain while walking, and while getting in and out of his cart. The district court, after considering these factors, found that Martin "easily endures greater fatigue even with a cart than his able-bodied competitors do by walking."

In light of these findings, the appeals court agreed with the district court’s determination that “permitting Martin to use a golf court in PGA and Nike Tour competitions would not fundamentally alter the nature of those competitions.”

> The central competition in shot-making would be unaffected by Martin's accommodation. All that the cart does is permit Martin access to a type of competition in which he otherwise could not engage because of his disability.
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> We note that the NCAA and Pac-10 rules of competition require players to walk and carry their own clubs. Martin applied for, and was granted, a waiver of that rule that permitted him to compete in college tournaments when he was a student... That is precisely the purpose of the ADA. See 42 U.S.C. S 12101(a)(5) [D]iscrimination against disabled includes failure to make modifications to existing facilities and practices. Congress intended ADA to cover discriminatory impact of facially neutral barriers.

In so doing, the appeals court rejected “PGA's argument that permitting Martin to use a golf cart would open the door to future decisions requiring that disabled swimmers or runners be given a head start in a race, or that a growth-impaired basketball player be allowed to shoot 3-point baskets from inside the three-point line.”

> We have little doubt that fact-based inquiries into the effects of such accommodations would result in rulings that those accommodations fundamentally altered the competitions. The same would be true if Martin were seeking to use a special golf ball

> that carried farther than others, or was seeking to play a shorter course than his competitors. Martin, however, seeks only to use a cart between shots, and the district court, after considering the evidence presented in a full trial, found that this accommodation does not fundamentally alter the competition.

Having concluded that Title III of the ADA applied to the facts of this case, the appeals court affirmed the judgment of the federal district court which had held "the provision of a golf cart to Martin was a reasonable accommodation to his disability, and that use of the cart by Martin did not fundamentally alter the nature of the PGA and Nike Tour tournaments."