On July 24, 2009, President Barack Obama made the United States the 142nd official signatory to the United Nations Convention on the Rights of Persons with Disabilities (CRPD) (United Nations, 2009). The President’s decision also coincided with the 19th anniversary of the enactment of the Americans with Disabilities Act of 1990 (ADA) (“Obama celebrates ADA Anniversary”, 2009). Disability rights advocates welcomed the United States adoption of the Convention, which provided a strong statement of this nation’s commitment to non-discrimination against people with disabilities (Augusto, 2009; Diament, 2009; Ness, 2009). However, there are many questions related to whether the CRPD will impact the enforcement of existing non-discrimination laws in the United States, including the Americans with Disabilities Act of 1990 (42 U.S.C. §§ 12111 et seq., 12131 et seq. and 12181 et seq., 2009) and the Rehabilitation Act of 1973 (Rehab Act) (29 U.S.C. § 701 et seq.). Both statutes contain a substantial volume of jurisprudence, including how these laws impact access to sport programming and athletic opportunities. Both statutes are also deeply rooted in social policy as is the Convention.

Sport organizations have recognized both their legal and moral obligation to address disability discrimination (IOC, 2009; Women’s Sport Foundation, 2009; IPC, 2009; Klyce, 2009; NCAA, 2009). Recently, the United Nations Secretary General acknowledged the power of sport to address discrimination and marginalization and stated, “We must use the potential of sports to help people who are marginalized, including people with disabilities…. I hope that all sports will strive to provide equal access to everyone, in keeping with the landmark United Nations Convention on the Rights of Persons with Disabilities” (United Nations, 2009). Scholars have suggested that countries with existing non-discrimination laws are in the best position to maximize the impact of the Convention (Lord & Stein, 2009, McArdle, 2009), thus, recent and ongoing disputes involving alleged disability discrimination in United States should be carefully examined in order to inform a better understanding of disability rights and sport.

Since its enactment, the ADA’s application to sport organizations has raised many questions and challenges for sport managers. Disputes in the sport industry involving people with disabilities in sport tend to fall into one of three categories: (1) stadium design; (2) competition rules; and (3) eligibility rules (Moorman, 2009). Disputes involving stadium design and construction raised a number of issues over the years ranging from the number of required wheelchair accessible seats, to the placement of those seating locations, to providing equivalent sightlines so seated spectators could see over standing spectators (McArdle, 2009). The Justice Department provides specific guidance for accessible stadiums and additional technical assistance documents for ADA compliance for stadium design. The Justice Department also recently proposed updated ADA Standards for Accessible Design in an effort to provide more clarity on these issues (Department of Justice, 2008). The Justice Department does not provide detailed guidelines specific to sport competition rules or sport eligibility rules to aid sport organizations to follow to ensure ADA compliance. Instead in these two areas, the legal framework for analyzing disputes has been created by the courts on a case by case basis.

In the area of sport competition rules and sport eligibility rules, the absence of a consistent compliance standard continues to challenge sport organizations responding to demands from athletes with disabilities. This paper focuses on competition rules and eligibility rules and the disputes resolved by the courts and currently in litigation. This paper examines the analytical framework initially established in 2001 by the United States Supreme Court in PGA Tour, Inc. v. Martin, 532 U.S. 661, 121 S. Ct. 1879 (2001) (hereinafter “Martin”) and tracks the evolution of the Martin analytical framework through numerous legal disputes between sport organizations and athletes with disabilities. In Martin, the United States Supreme Court was asked to apply the ADA in the context of an elite professional sport competition. A key component of the statutory framework of the ADA is its requirement for providers of programs and services to make reasonable accommodations for people with disabilities. A reasonable accommodation may include the modification of existing rules or policies that serve as barriers to full and equal access by people with disabilities. An exception, known as the “fundamental alteration exception”, permits a provider to deny the requested modification if the modification would fundamentally alter its programs or services. The Supreme Court provided a two-step analytical framework for evaluating requested modifications and applying the fundamental
alteration exception. A central element of both competition rules and eligibility rules cases surrounds a determination of what does or does not amount to a “fundamental alteration” of the sport, activity, or program in question.

Several cases have employed varying interpretations of the “fundamental alteration” framework establish in Martin. For example, several athletes with disabilities have requested modification of eligibility or competition rules with mixed success and courts have emphasized various aspects of the Martin analysis. See, Cruz v. Pennsylvania Interscholastic Athletic Association, Inc., 2001 (after individualized inquiry, the purpose of the association rules had not been fundamentally altered); Baisden v. West Virginia Secondary Schools Activities Commission, 2002 (safety risk would amount to fundamental alteration); Kuketz v. MDC Fitness Corporation, 2005 (competitive advantage creates fundamental alteration); Murphy v. Bridger Bowl, 2005 (safety hazard was fundamental alteration); Logan v. American Contract Bridge League, 2006 (requested accommodation was not necessary); Badgett v. Alabama High School Athletic Association, 2007 (safety risk creates fundamental alteration); and McFadden v. Grasmick, 2007 (competitive advantage was fundamental alteration).

However, despite the varied outcomes in many of these cases, the genesis of a common analytical framework has emerged which should guide sport organizations in the future. This presentation will explain this developing legal analytical framework and recommend a compliance model applicable to sport organizations in disability discrimination litigation. This presentation will also discuss how the intersection of the CRPD and the ADA may impact sport managers and disability rights advocates in the future.