

The Key Role Of Economic Analysis In PGA Tour Antitrust Suit

By **Tim Derdenger and Alison Palo** (August 18, 2022)

The antitrust legal community has been buzzing about the legal battle between the PGA Tour and its players.

This article discusses the issues contributing to that legal battle, including the economic factors that will play a role in evaluating the PGA Tour's actions.

Background

Early in June, LIV Golf kicked off its inaugural LIV Golf Invitational in London.[1] Seventeen PGA Tour players participated in the event and were subsequently suspended and deemed no longer eligible to participate in any future PGA Tour tournament play.[2]

PGA Tour Commissioner Jay Monahan stated that pros taking part in the new series were now ineligible for the PGA Tour events and indicated that others willing to participate would face a similar fate.[3]

Eleven professional golfers have now brought antitrust action against the PGA Tour in the U.S. District Court for the Northern District of California[4] — Mickelson v. PGA Tour — alleging that the PGA Tour operates as a monopoly and unlawfully is punishing PGA Tour golfers who also play for LIV Golf.

The Aug. 3 complaint claims that the PGA Tour has "craft[ed] an arsenal of anti-competitive restraints to protect its long-standing monopoly" and "has ventured to harm the careers" of golfers who dare to play for LIV Golf by intentionally and relentlessly trying to "crush nascent competition before it threatens the Tour's monopoly." [5]

The plaintiffs allege unlawful monopsony[6] unlawful restraint[7] and breach of contract.[8]

They seek declaratory relief[9] and claim they will be irreparably harmed if they are denied an injunction prohibiting the PGA Tour from the anti-competitive conduct.

They claim they face direct harm and argue that, if left unchecked, the PGA Tour's behavior would thwart LIV Golf's entry into the market and thereby deny the players potentially large compensation opportunities.[10] They further seek monetary, treble and economic damages, costs and further relief.[11]

The players claim that, before the development of LIV Golf, the PGA Tour had a stranglehold over professional golfers in the United States.

Specifically, the complaint alleges that the PGA Tour was the only option available for those players who sought to play at the highest level and this allowed the PGA Tour to force these players into unfairly restrictive contract terms.

The complaint further alleges that the PGA Tour has effectively controlled players on the PGA Tour, preventing them from playing in competing events and suppressing their



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compensation below competitive levels, and has blocked competitors — particularly LIV Golf — from obtaining professional golfers for their competing tours.

In addition, the complaint claims that, because the PGA Tour holds a monopoly over professional golf, it has failed to innovate and, thus, has allowed professional golf to stagnate.[12]

The complaint identifies a host of PGA Tour actions that, it alleges, violate the Sherman Act including:

- Threatening lifetime bans for those who join the LIV Golf tour or play in a LIV event;
- Imposing such a ban for those who resigned from the PGA Tour;
- Broadening its Media Rights and Conflicting Events Regulations to prevent players from playing for LIV Golf;
- Illegally partnering with the European Tour to deny those who play for LIV Golf from being able to play virtually anywhere else globally;[13]
- Encouraging or otherwise "leaning on" other golf entities to block or threaten to block LIV Golf payers from participating in their events;
- Causing the Official World Golf Ranking, or OWGR, to create doubt as to whether LIV Golf results would be included in their rankings; and
- Threatening PGA Tour golfers' agents and business partners with losing their credentials to represent Tour members; and threatening sponsors with no longer having access to any PGA Tour opportunities.[14]

The players further allege that they were denied a fair process[15] and assert that the PGA Tour's actions have harmed them by strengthening the PGA Tour's monopsony power, reducing competition for player services; denying players' various income and tournament opportunities; and damaging their reputations, goodwill, and brands.

They also allege that these actions have reduced competition by scaring others from joining LIV Golf.[16]

Economic Analysis Will Be Central to Many of the Claims

As this litigation unfolds, the parties will need to address the economic factors that play a key role in the PGA Tour's actions and the effects they have on players and others in the professional golf world.

The PGA Tour and LIV Golf are competing for top ranked professional golfers. However, each tour has used different strategies to attract talent.

LIV Golf is competing with sizeable tournament purses, tournament appearance fees for top golfers, and signing bonuses whereas the PGA Tour, until recently, was competing through rules banning golfers from the PGA tournaments for any player who leaves to play on the LIV Golf Tour.

On June 2 the PGA Tour commissioner announced they would include eight tournaments with greatly enhanced purses of up to \$25 million, revised field sizes for the FedExCup Playoffs, and a reimagined fall including up to three no-cut, limited-field international events.[17]

With this announcement, the PGA tour appears to be partially replicating the LIV tour strategy to attract talent.

Potential antitrust issues, however, are now in play due to the banning of PGA Tour players who have left or might leave to play for LIV Golf as well as the other PGA Tour actions alleged in the current action, all of which is alleged to have limited competition and suppressed player income and opportunity.

As an initial matter, economists and marketers will develop models to identify effects from such alleged anti-competitive behavior on LIV golfers.

Questions of importance are:

- Does the PGA tour hold monopoly power for professional golfers?
- How much power?
- Are other tours relevant substitutes for the best golfers in the world?
- What impact does the alleged anti-competitive behavior from the PGA Tour have on player income from tournament earnings to off-course earnings such as endorsements from existing and future sponsors?

The importance of this latter question should not be overlooked as endorsements comprise a sizeable fraction of a top 50 PGA Tour golfer's total income. Answering these questions require the building of economic models to ascertain the impact or effects of the PGA Tour's behavior.

Economists will also need to understand the institutional setting. There are unique features in this market which differ from a traditional product market.

For one, a player's income is dependent upon how others do in any given tournament and who those other players are in each tournament.

Additionally, the purse size of each tournament is partially dictated by the quality of players in each event, which complicates the matter further.

Lastly, the details and terms of the recent media rights contracts with NBCUniversal Media LLC, CBS and ESPN Inc. — potentially worth \$6 billion over the next nine years — may play an important role in the case.

If terms are determined by the number of viewers, any loss of quality golfers will affect current and future revenue for the PGA Tour.[18]

As mentioned previously, endorsements comprise a sizeable fraction of a top 50 PGA Tour golfer's total income. It is no surprise, then, that the recently filed case includes PGA Tour behavior that affects such current or future income for Phil Mickelson and the other named

plaintiff golfers in the suit.

A player brings two things to the table for an endorsement: prestige and information.

The first is best understood by restating the iconic Gatorade ad slogan with Michael Jordan, "Be like Mike." Here, Gatorade Company Inc. was focused on capitalizing on the prestige that Michael Jordan brought by capturing consumers who would like to use the same product as Michael Jordan.

The second aspect is that of the informational kind. Take Tiger Woods, during the height of his career. His endorsement of a product delivered information to consumers, especially if it was a product he played with during tournaments, as it signaled that the product was high quality since the No. 1 player in the world was using it to earn tournament winnings.

Currently, a significant concern for the PGA Tour around player endorsement value is the banning of LIV golfers from the PGA Tour events, thereby limiting their exposure to consumers through TV. In doing so, a player's potential for exploiting his prestige has been limited.

That said, if the PGA Tour continues to encourage the majors to ban LIV players or colludes with them to do so or leverages its proximity to the OWGR by voting to not offer OWGR points to LIV events, then such behavior may impact the signaling effect of endorsements as LIV golfers will not be ranked — and their prestige effect will be eliminated from the majors.

Similarly, denying sponsors from access to PGA Tour events, as described in the complaint, can curtail revenue streams for players connected with those sponsors.

Finally, it will be fascinating to follow the development of how DP World Tour — formerly the European Golf Tour — may further integrate with the PGA Tour.

Thus far, the European Golf Tour has followed the path of the PGA Tour by also banning and fining LIV golfers from DP World Tour events.[19]

The decision by Keith Pelley, CEO of the DP World Tour, of which path to take may play an influential role in the outcome of the pending and any future antitrust case.

A decision to further integrate with the PGA Tour may be viewed as a merger of the No. 1 and No. 2 tours, by market share, and with that comes concerns of greater market power.

Conversely, a partnership with LIV Golf would indicate a credible substitute for players and would thus lessen the monopsony case against the PGA Tour.

There may also be potential litigation looming between the PGA and the LIV tour itself, which will present its own unique set of challenges that will need to be addressed by economic analysis.

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[1] See <https://www.livgolf.com/events/centurion-club-london> (accessed August 11, 2022).

[2] "PGATour.com." Commissioner Jay Monahan responds to players competing this week without proper releases. <https://www.pgatour.com/news/2022/06/09/pgatour-commissioner-jay-monahan-responds-players-competing-without-proper-releases.html> (accessed August 11, 2022).

[3] Id.

[4] See *Mickelson et al. v. PGA Tour, Inc.*, C.A. No. 3:22-cv-04486 (N.D. Ca. Aug. 3, 2022), Dockets and Filings, <<https://dockets.justia.com/docket/california/candce/5:2022cv04486/398834>>; (accessed August 11, 2022). The plaintiffs include Phil Mickelson, Talor Gooch, Hudson Swafford, Matt Jones, Bryson Dechambeau, Abraham Ancer, Carlos Ortiz, Ian Poulter, Pat Perez, Jason Kokrak, and Peter Uihlein.

[5] *Mickelson et al. v. PGA Tour, Inc.*, C.A. No. 3:22-cv-04486 (N.D. Ca. Aug. 3, 2022), Complaint, ¶ 1. <https://assets.law360news.com/1518000/1518020/https-ecf-cand-uscourts-gov-doc1-035122186807.pdf> (accessed August 11, 2022).

[6] Id. at ¶¶ 298-306.

[7] Id. at ¶¶ 307-319.

[8] Id. at ¶¶ 330-336, The plaintiffs argue that, to the extent that certain contract provisions might actually be enforceable, the PGA Tour violated the provision requiring the effective date(s) of certain penalties to be stayed pending player appeals of Tour disciplinary actions. As a result, they claim, the Tour was required to honor their requests to play in Tour events while their appeals to the Tour's Appeals Committees were pending. The Tour did not do so.

[9] Id. at ¶¶ 337-345 (seeking a declaratory judgment that the PGA Tour's suspensions violated their right to fair procedures).

[10] Id. at ¶ 15.

[11] Id. at p. 150-51 (request for relief).

[12] Id. at ¶ 2.

[13] The complaint also alleges state violations for the PGA Tour's actions with the European Tour. See id. at ¶¶ 320-331.

[14] Id. at ¶¶ 11, 300.

[15] Id. at ¶ 14.

[16] Id. at ¶¶ 11, 302.

[17] "PGATour.com." Commissioner Jay Monahan responds to players competing this week without proper releases. <https://www.pgatour.com/news/2022/06/09/pgatour-commissioner-jay-monahan-responds-players-competing-without-proper-releases.html> (accessed August 11, 2022).

[18] "PGATour.com." PGA TOUR announces landmark domestic media rights portfolio.

<https://www.pgatour.com/news/2020/03/09/pgatour-announces-landmark-domestic-media-rights-portfolio.html> (accessed August 11, 2022).

[19] Huggan, John. "DP World Tour hands out fines, suspensions to LIV golfers." GolfDigest.com (June 24, 2022)

<https://www.golfdigest.com/story/dp-world-tour-hands-out-fines-suspensions-to-liv-golfers> (accessed August 11, 2022).