

2023

Debating Outcomes of the Antitrust Challenges Between the PGA Tour and the LIV Golf Tour

John A. Fortunato

Follow this and additional works at: <https://scholarship.law.marquette.edu/sportslaw>



Part of the [Entertainment, Arts, and Sports Law Commons](#)

Repository Citation

John A. Fortunato, *Debating Outcomes of the Antitrust Challenges Between the PGA Tour and the LIV Golf Tour*, 33 Marq. Sports L. Rev. 751 (2023)

Available at: <https://scholarship.law.marquette.edu/sportslaw/vol33/iss2/3>

This Article is brought to you for free and open access by the Journals at Marquette Law Scholarly Commons. For more information, please contact megan.obrien@marquette.edu.

DEBATING OUTCOMES OF THE ANTITRUST CHALLENGES BETWEEN THE PGA TOUR AND THE LIV GOLF TOUR

JOHN A. FORTUNATO*

I. INTRODUCTION

The PGA Tour was confronted with an unprecedented business challenge when the LIV Golf Tour launched its inaugural series of tournaments in 2022. Several major tournament champion golfers left the PGA Tour to join LIV Golf.¹ The LIV Golf Tour features a lucrative compensation system where each tournament in 2022 had prize money totaling \$25 million.² Every golfer is guaranteed to be paid when competing.³ LIV Golf tournaments also have a unique format where there is an individual and team competition that create additional earning opportunities.⁴

The PGA Tour suspended the golfers who participated in a LIV Golf tournament. The PGA Tour then introduced several compensation initiatives to entice golfers to remain on the PGA Tour and not defect to LIV Golf. These actions by the PGA Tour ignited legal challenges. An investigation by the

* John A. Fortunato, Ph. D., is a professor at Fordham University in the Gabelli School of Business, Area of Communication and Media Management. Dr. Fortunato is the author of six books, including *Commissioner: The Legacy of Pete Rozelle*, *Sports Sponsorship: Principles & Practices*, and *Making the Cut: Inside the PGA TOUR System*. He has published more than sixty journal articles and book chapters, including multiple law reviews. Dr. Fortunato received his Ph.D. from Rutgers University in the School of Communication.

1. Professional golf's major tournaments are: The Masters, United States Open, PGA Championship, and The Open Championship. Phil Mickelson, Dustin Johnson, Sergio Garcia, Louis Oosthuizen, and Graeme McDowell played in the first LIV Golf tournament. The second LIV Golf tournament added Bryson DeChambeau, Brooks Koepka, and Patrick Reed.

2. Sam Dunn, *LIV Golf Payouts: How Much Prize Money Does Johnson Win as Individual Champion?*, BOARDROOM (Jan. 18, 2023), <https://boardroom.tv/liv-golf-payouts-dustin-johnson-2022/>.

3. *Id.*

4. *Id.*

United States Department of Justice was reported in July 2022.⁵ A lawsuit was filed by eleven LIV golfers⁶ against the PGA Tour in August 2022.⁷ The allegations are that the PGA Tour is a monopoly that is acting in ways that limit industry competition and suppress golfers' earnings.⁸ The legal framework that highlights this business conduct is antitrust law.

The antitrust laws of the United States are designed to protect and promote the economic competitiveness of a marketplace by combating trusts and other arrangements that have the potential to restrain trade.⁹ Through the Department of Justice investigation and the antitrust lawsuit, the PGA Tour is being required to justify why its policies and practices both prior to and in response to the existence of the LIV Golf Tour are in compliance with the antitrust ideals of promoting and inducing competition. The legal challenges will determine if the PGA Tour's actions are an unreasonable restraint of trade under the rule of reason standard.

The PGA Tour is a 501(c)(6) corporation.¹⁰ Its mission is that “[b]y showcasing golf’s greatest players, we engage, inspire and positively impact our fans, partners and communities worldwide.”¹¹ The business structure of the PGA Tour is that it negotiates media rights and sponsorship agreements that fund the golfers' prize money for its tournaments.¹² The PGA Tour believes that this model has driven financial and historical legacy benefits for all of its members.¹³

5. Louise Radnofsky & Andrew Beaton, *Justice Department is Investigating PGA Tour Over Potential Antitrust Violations in LIV Golf Battle*, WALL ST. J. (July 11, 2022, 4:28 PM), <https://www.wsj.com/articles/pga-tour-antitrust-liv-department-of-justice-investigation-11657557177>.

6. The eleven golfers in the original lawsuit filing were: Phil Mickelson, Talor Gooch, Hudson Swafford, Matt Jones, Bryson DeChambeau, Abraham Ancer, Carlos Ortiz, Ian Poulter, Pat Perez, Jason Kokrak, and Peter Uihlein. Complaint, *Mickelson v. PGA Tour, Inc.*, No. 3:22-cv-04486, 2022 WL 3083626 (N.D. Cal. Aug. 3, 2022) [hereinafter Complaint].

7. *Id.* See also Louise Radnofsky & Andrew Beaton, *Phil Mickelson and 10 Other LIV Golfers File Antitrust Lawsuit Against PGA Tour*, WALL ST. J. (Aug. 3, 2022, 3:13 PM), <https://www.wsj.com/articles/liv-golf-phil-mickelson-sue-pga-tour-antitrust-fedex-cup-playoffs-11659544753>.

8. Complaint, *supra* note 6, at 9.

9. EARL W. KINTER, AN ANTITRUST PRIMER: A GUIDE TO ANTITRUST AND TRADE REGULATION LAWS FOR BUSINESSMEN 15 (The Macmillan Co., 2d ed. 1973). See generally *Standard Oil Co. v. United States*, 221 U.S. 1 (1911); see generally *Copperweld Corp. v. Indep. Tube Corp.*, 467 U.S. 752 (1984).

10. Complaint, *supra* note 6, at 36.

11. *About Us*, PGA TOUR, <https://www.pgatour.com/company/aboutus.html> (last visited May 2, 2023).

12. *Commissioner Jay Monahan Responds to Players Competing This Week Without Proper Releases*, PGA TOUR (June 9, 2022), <https://www.pgatour.com/news/2022/06/09/pga-tour-commissioner-jay-monahan-responds-players-competing-without-proper-releases.html>.

13. *Id.*

The PGA Tour cites that LIV Golf launched its league and recruited golfers as evidence that it is not hindering competition in professional golf.¹⁴ The PGA Tour also points out that the LIV Golf Tour is funded by the government of Saudi Arabia. It is this controversial relationship, and not the actions of the PGA Tour, that is hindering the LIV Golf Tour from attracting business partnerships with media, sponsors, more golfers, and fans.¹⁵

One question is why professional golfers cannot compete in both leagues. Tournaments are often played simultaneously. The position of the PGA Tour is that if golfers choose to play in a LIV Golf tournament that has higher prize money that is guaranteed, PGA Tour's event is less appealing for its business partners of broadcast networks and sponsors, and to consumers. The PGA Tour claims that the LIV Tour golfers cannot "force the [PGA] TOUR to allow LIV to freeride off the TOUR's investment and goodwill by compelling the TOUR to allow Plaintiffs to play in both TOUR and LIV events."¹⁶

The LIV Golf Tour's position is that professional golfers are independent contractors who should be permitted to play when and where they choose. LIV Golf and its players argue that the PGA Tour's decision to suspend golfers, "deprived Plaintiffs' opportunities to continue playing on the Tour, earning deserved compensation, earning opportunities into Majors, sponsorship relationships and revenue, and future opportunities to play and earn on the Tour. The Tour's punishments have also caused irreparable harm to Plaintiffs' goodwill, reputation, and brand."¹⁷

II. ANTITRUST LAW

On July 2, 1890, the United States Congress passed the Sherman Antitrust Act,¹⁸ with the primary purpose of combating trusts and other arrangements that have the potential to unfairly restrain trade. Section One of the Sherman Antitrust Act prohibits combinations and conspiracies that are in restraint of trade.¹⁹ Section Two examines the practice of monopolization, with firms deemed an illegal monopoly if: (1) they have monopoly power and (2) there has

14. Defendant PGA Tour Inc.'s Opposition to TRO Plaintiffs' Motion for a Temporary Restraining Order at 5, 15, 19, Mickelson v. PGA Tour, Inc., No. 5:22-cv-04486-BLF (N.D. Cal. Aug. 9, 2022) [hereinafter Defendant's Brief].

15. *Id.*

16. *Id.* at 19.

17. Complaint, *supra* note 6, at 89.

18. Act of July 2, 1890, ch. 647, 26 Stat. 209 (codified as amended at 15 U.S.C. § 1 (2023)).

19. ROSS D. PETTY, THE IMPACT OF ADVERTISING LAW ON BUSINESS AND PUBLIC 131 (Quorum Books 1992).

been a willful acquisition or maintenance of that power through predatory or exclusionary conduct.²⁰

The goal of the Sherman Antitrust Act is to foster competition within an industry marketplace. There, essentially, must be an environment where there is an availability of options for consumers. Lacy and Vermeer suggest that in a marketplace, “[a]t the most basic level, competition exists when one or more potential buyers consider two or more products to be acceptable substitutes for each other.”²¹ Petty explains that the antitrust laws concern themselves with a lack of competition through collusion or exclusion.²² He defines “collusion” as competitors agreeing with each other in order to restrict competition in the market, and “exclusion” as a single company purposefully acting to drive or keep others from capturing a part of its particular market.²³

The language of the Sherman Antitrust Act is, however, broad and ambiguous. Viewed widely, one could interpret it to declare almost every type of agreement between two or more businesses illegal. The Supreme Court held that only those agreements that operate as an “unreasonable” restraint of trade are in violation of the law.²⁴ This assessment has come to be known as “the rule of reason.” The rule of reason applies standards about the effect that the conduct under scrutiny will have on competition—whether competition will increase through the conduct and whether any potential restraint is necessary for a legitimate competitive purpose.²⁵

The application of the rule of reason standard follows a three-step process. The plaintiff has the initial burden of demonstrating that the conduct led to a less competitive marketplace as produced by an increase in price, a decrease in output, or a deterioration in the quality of goods or services.²⁶ If that is established, the defendant has the ability to justify its conduct as procompetitive. If the defendant is able to provide some justification, the final part of applying the rule of reason standard is a ruling by the courts, consisting of an analysis of

20. *Id.* at 131-32.

21. Stephen Lacy & Jan P. Vermeer, *Theoretical and Practical Considerations in Operationalizing Newspaper and Television Competition*, 8 J. MEDIA ECON. 49, 50 (1995).

22. PETTY, *supra* note 19, at 131.

23. *Id.*

24. *Standard Oil Co. v. United States*, 221 U.S. 1, 58 (1911).

25. Nicole LaBletta, Note, *If Per Se is Dying, Why Not in TV Tying? A Case for Adopting the Rule of Reason Standard in Television Block-Booking Arrangements*, 12 FORDHAM INTELL. PROP. MEDIA & ENT. L.J. 195, 196-97 (2001).

26. Alter A. Fogel, Comment, *The “Superstation,” the NBA, and Antitrust: An Analysis of Chicago Professional Sports Limited Partnership v. National Basketball Association*, 47 RUTGERS L. REV. 1195, 1205-06 (1995); Edan Lisovicz, Comment, *Protecting Home: Are MLB’s Television Market Protection Restrictions Reasonable Under Antitrust Law?*, 24 SETON HALL J. SPORTS & ENT. L. 203, 221-22 (2014).

whether less restrictive conduct alternatives are feasible.²⁷ LaBletta observes that “[u]nder the rule of reason standard, courts balance all the competitive harms and benefits of a particular business arrangement before labeling it an unreasonable restraint of trade.”²⁸ Lisovicz summarizes, “[a] restraint is considered unreasonable if, under the totality of the circumstances, its anticompetitive effects outweigh its procompetitive effects.”²⁹

The application of antitrust laws has to consider the unique competitive characteristics of a specific industry. Regulatory questions in the context of sports tend to focus on team sports and the economic complexity that sports leagues claim of their need for franchise revenue sharing and league competitive balance in their industry.³⁰ It has been pointed out that competitive balance is linked to a league’s equitable distribution of revenues.³¹ Lisovicz explains, “[w]hereas in most industries firms’ decision-making processes are guided entirely by the goal of maximizing profits at the expense of competitors, professional sports franchises must act not only in their individual self-interest but also in the best interests of the league as a whole.”³² He adds:

[i]nstead of focusing solely on their own profitability, clubs have a significant interest in seeing their competitors succeed, which is necessary to ensure the success of the league as a whole. Although clubs compete vigorously on the field of play and vie for fans and sponsorships, cooperation and restraints on competition in some aspects of business are essential to a league’s survival. Truly “free and unfettered competition,” the hallmark of an ideal marketplace, is simply not possible in the sports industry.³³

27. Lisovicz, *supra* note 26, at 221-22.

28. LaBletta, *supra* note 25, at 197.

29. Lisovicz, *supra* note 26, at 208.

30. *Id.* at 233 n.163; James T. McKeown, *The Economics of Competitive Balance: Sports Antitrust Claims After American Needle*, 21 MARQ. SPORTS L. REV. 517, 524-25 nn.32-35 (2011); see John Vrooman, *Theory of the Perfect Game: Competitive Balance in Monopoly Sports Leagues*, 34 REV. INDUS. ORG. 5 (2009).

31. For a summary of what are considered the seminal antitrust cases in Major League Baseball, see Mitchell Nathanson, *Law, in UNDERSTANDING BASEBALL: A TEXTBOOK* 143, 143-44 (McFarland & Co., Inc., Publishers 2015). See generally *Fed. Baseball Club of Balt., Inc. v. Nat’l League of Pro. Baseball Players*, 259 U.S. 200 (1922); *Toolson v. N.Y. Yankees, Inc.*, 346 U.S. 356 (1953); *Flood v. Kuhn*, 407 U.S. 258 (1972); *United States v. Nat’l Football League*, 196 F. Supp. 445 (E.D. Pa. 1961). See *United States v. Nat’l Football League*, 116 F. Supp. 319, 324 (E.D. Pa. 1953); *Chi. Pro. Sports Ltd. P’ship v. Nat’l Basketball Ass’n*, 961 F.2d 667, 671 (7th Cir. 1992).

32. Lisovicz, *supra* note 26, at 209.

33. *Id.* at 210.

While there are business similarities in trying to attract media partners, sponsors, and fans, sports leagues are not monolithic. Their distinguishing business practices have to be considered in an antitrust context. For example, in terms of college sports, the seminal antitrust case is the 1984 Supreme Court ruling in *NCAA v. Regents of the University of Oklahoma*.³⁴ In this lawsuit, several universities with major college football programs argued against the National Collegiate Athletic Association (NCAA) and its television partners' policies that limited the number of games being aired and limited the number of times that each university could appear on television.³⁵ The universities claimed that these restrictions reduced output and hindered their economic opportunities.³⁶

The Supreme Court ruled seven to two that the restraints imposed by the NCAA were anticompetitive.³⁷ The NCAA lost control over singularly negotiating television contracts for regular season games. The individual universities decided to give their affiliated conferences the ability to negotiate television deals with the networks.³⁸ The Court did, however, state that "most of the regulatory controls of the NCAA are justifiable means of fostering competition among amateur athletic teams and therefore procompetitive because they enhance public interest in intercollegiate athletics."³⁹

Perhaps, more applicable to the professional golf industry which centers on individual golfers' earnings are the recent antitrust challenges against the NCAA involving student-athlete compensation. The uniformity of a student-athlete scholarship was challenged in *Jenkins v. NCAA*.⁴⁰ The plaintiffs argued that the scholarship system was restrictive because it limited competition, hindering the student-athletes earning capability by not permitting them to shop their talents on an open market. The complaint filed with the court claimed:

instead of allowing their member institutions to compete for the services of those players while operating their businesses, Defendants have entered into what amounts to cartel

34. See generally *NCAA v. Bd. of Regents of the Univ. of Okla.*, 468 U.S. 85 (1984).

35. *Id.* at 94

36. *Id.* at 88.

37. *Id.* at 85.

38. The Big Ten reached a seven-year broadcast agreement with CBS, Fox, and NBC that will start in 2023 and pay the conference a reported total of \$7.5 billion. See, e.g., Laine Higgins, *Big Ten Strikes \$7.5 Billion Deal For TV Rights*, WALL ST. J. (Aug. 18, 2022, 9:55 AM), <https://www.wsj.com/articles/big-ten-tv-rights-11660829533>.

39. *Bd. of Regents of the Univ. of Okla.*, 468 U.S. at 117.

40. Complaint for Plaintiff at 10, *Jenkins v. NCAA*, No.3:33-av-00001 (D.N.J. Mar. 17, 2014).

agreements with the avowed purpose and effect of placing a ceiling on the compensation that may be paid to these athletes for their services.⁴¹

A settlement totaling \$208 million offered payments between \$5,000 and \$7,500 to the student-athletes who are part of the class action.⁴²

The court ruled that the NCAA violated antitrust laws and could no longer use student-athletes' name, image, and likeness without compensation in *O'Bannon v. NCAA*.⁴³ In the initial ruling by United States District Court Judge Claudia Wilken, the result of the *O'Bannon v. NCAA* lawsuit was that universities must set aside a minimum payment of \$5,000 per year for each football and men's basketball player for the use of their name, image, and likeness.⁴⁴ The student-athletes would receive that money after they were no longer eligible to play in college.⁴⁵ Judge Wilken did provide the NCAA with some measure of victory by allowing the NCAA to cap the money paid to student-athletes.⁴⁶ The appellate court affirmed that the NCAA's rules were restrictive but held that compensation for student-athletes would come in the form of cost of attendance.⁴⁷

The initial argument presented by the plaintiffs in *Alston v. NCAA*,⁴⁸ first filed in 2014, was that the NCAA and the conferences violated antitrust laws with claims that an athletic scholarship is not equivalent to the full cost of attendance.⁴⁹ In March 2019, Judge Wilken found that the NCAA violated antitrust laws with rules that are anticompetitive. Wilken ruled that the compensation related to education cannot be capped.⁵⁰ The court, however, was clear that "non-cash education-related benefits" are for "legitimate education-related costs," not luxury cars or expensive musical instruments for students

41. *Id.* at 2.

42. David Broughton, *Name, Image, Likeness Timeline*, SPORTS BUS. J. (Dec. 2, 2019) <https://www.sportsbusinessjournal.com/Journal/Issues/2019/12/02/In-Depth/NIL-timeline.aspx>.

43. *O'Bannon v. NCAA*, 802 F.3d 1049, 1079 (9th Cir. 2015). For a first-hand account of the lawsuit, see generally ED O'BANNON WITH MICHAEL MCCANN, *COURT JUSTICE: THE INSIDE STORY OF MY BATTLE AGAINST THE NCAA* (Diversion Books 2018).

44. *O'Bannon v. NCAA*, 7 F. Supp. 3d 955, 1008 (N.D. Cal. 2014).

45. *Id.*

46. *Id.*

47. *O'Bannon*, 802 F.3d at 1079.

48. *In re NCAA Grant-in-Aid Cap Antitrust Litig.*, 375 F. Supp. 3d 1058, 1062 (N.D. Cal. 2019), *aff'd*, 958 F.3d 1239, 1247 (9th Cir. 2020), *aff'd sub nom. NCAA v. Alston*, 141 S. Ct. 2141 (2021).

49. *Id.* at 1062

50. *Id.*

who are not studying music.⁵¹ The decision was appealed by the plaintiffs who requested that conferences and universities be permitted to offer benefits beyond those directly tied to education. The NCAA appealed to have the decision completely overturned.⁵²

In May 2020, a three-judge panel in the Ninth Circuit Court of Appeals unanimously affirmed that the NCAA violated antitrust laws by restricting competition of student-athlete compensation related to education.⁵³ Another appeal by the NCAA asking for a reversal of the Ninth Circuit Court ruling resulted in the Supreme Court in December 2020, agreeing to hear the case.⁵⁴ A critical distinction in antitrust adjudication is raised in *Alston*, whereas the question under scrutiny in the typical antitrust case is business behavior leading to less industry competition and higher prices for consumers, while the question regarding the NCAA practices is one of antitrust competition in labor markets with business behavior leading to a suppression of wages.⁵⁵

Alston was decided on June 21, 2021, when the Supreme Court unanimously ruled that the NCAA was in violation of the antitrust laws by having anticompetitive practices of capping the educational benefits that student-athletes could receive.⁵⁶ Individual universities are not required to offer additional educational benefits to student-athletes through this ruling, but they are permitted to do so.

The relevance of the student-athlete compensation rulings is that it deals with the competitive environment for talent, now very much at issue in the professional golf industry. In professional team sports, the agreements between the league owners and their respective players' associations govern the acquisition and compensation for talent. There has not been competition for players in a professional team sports league in the United States since the American Basketball Association challenged the National Basketball Association in the 1970s, and the United States Football League (USFL) challenged the National Football League (NFL) in the 1980s.

51. *In re NCAA Grant-in-Aid Cap Antitrust Litig.*, 375 F. Supp. 3d at 1105.

52. *In re NCAA Grant-in-Aid Cap Antitrust Litig.*, 958 F.3d at 1243-44.

53. *See id.* at 1240.

54. Brent Kendall et al., *Supreme Court to Hear NCAA Antitrust Case on College-Athlete Compensation*, WALL ST. J. (Dec. 16, 2020, 3:40 PM), <https://www.wsj.com/articles/supreme-court-to-consider-ncaa-anti-trust-case-on-college-athlete-compensation-11608129891>.

55. Brent Kendall, *Supreme Court's NCAA Case Could Sweep Beyond Athletics*, WALL ST. J. (Mar. 30, 2021, 12:22 PM), <https://www.wsj.com/articles/supreme-courts-ncaa-case-could-sweep-beyond-athletics-11617121355>.

56. *NCAA v. Alston*, 141 S. Ct. 2141, 2166 (2021).

The USFL signed many top college players and recruited others to defect from the NFL. The USFL filed an antitrust lawsuit against the NFL.⁵⁷ The USFL claimed that the NFL pressured television networks to not broadcast USFL games as it planned to move its season from the spring to the fall and directly compete with the NFL.⁵⁸ The jury found that the NFL acquired and maintained a monopoly position of professional football and that this position caused injury to the USFL.⁵⁹ The jury, however, awarded the USFL only one dollar in damages, an amount trebled to three dollars.⁶⁰ The USFL was also awarded court costs.⁶¹ The jury concluded that the NFL did not control or attempt to control the television market.⁶² The jury indicated that the USFL's business problems were the result of its own mismanagement.⁶³ The USFL's request for a new trial on damages was denied.⁶⁴

The launch of the LIV Golf Tour created a competition for professional golfer talent. The PGA Tour's decision to suspend the golfers who participated in a LIV Golf tournament led to new scrutiny of its business operations. The policies of the PGA Tour were the subject of a Federal Trade Commission investigation in 1994.⁶⁵ There were two provisions of the PGA Tour bylaws concerning golfers' participation in non-PGA Tour events that were called into question. The first provision was that golfers need the permission of the PGA Tour commissioner to compete in other televised golf tournaments.⁶⁶ The second provision was that golfers have to request and be granted a release by the PGA Tour commissioner to play in tournaments that are in conflict with the PGA Tour.⁶⁷ The government dropped its inquiry without any action being taken against the PGA Tour.⁶⁸

III. THE PGA TOUR ECONOMIC MODEL

Basic information about the financial structure and business operations of the PGA Tour is necessary to properly dissect if its policies have any potential

57. U.S. Football League v. Nat'l Football League, 634 F. Supp. 1155, 1158 (S.D.N.Y. 1986).

58. *Id.* at 1166.

59. U.S. Football League v. Nat'l Football League, 644 F. Supp. 1040, 1042 (S.D.N.Y. 1986).

60. *Id.*

61. *Id.*

62. *Id.*

63. *Id.* at 1052.

64. *Id.* at 1058.

65. Radnofsky & Beaton, *supra* note 5.

66. *Id.*

67. *Id.*

68. *Id.*

antitrust implications. The PGA Tour has a complex competitive system of qualifying for entrance into a tournament that uses a priority list that is based on a golfer's accomplishments.⁶⁹ The tournament entrance priority list is adjusted at the beginning of each new season. The golfers positioned higher on the priority list have the right of first refusal to compete in a tournament, meaning that the golfers in a lower position may need some golfers in a higher position to decide not to play for them to have the opportunity to compete.⁷⁰ Winning a tournament is one accomplishment that provides a golfer high priority status that guarantees entrance into any regular season tournament.⁷¹

The PGA Tour's compensation system is based on a golfer's performance. Each tournament finishing position offers a specific amount of prize money. Every golfer once entered into a PGA tournament needs to be in the top seventy on the leaderboard, plus ties, after the second round of the tournament to continue to play in the third and fourth rounds, referred to as making the tournament cut.⁷² Only golfers who make the cut receive compensation for that week's tournament.

Every finishing position on a tournament leaderboard also offers a certain amount of FedEx Cup points. In 2007, the PGA Tour introduced the season-long FedEx Cup points and playoff format.⁷³ The points accumulated in a season determine entrance into the FedEx Cup Playoffs. A limited number of golfers advance to the playoff tournament. The FedEx Cup Playoffs culminate in the Tour Championship, in which the top thirty golfers compete. Golfers earn bonuses for the end-of-season finish in the FedEx Cup standings.⁷⁴

The PGA Tour has lucrative partnerships with television networks and sponsors as a funding source for its tournament prize money (tickets are another revenue source for the PGA Tour). The PGA Tour reached nine-year agreements with broadcast partners CBS and NBC that began in 2022 and will

69. JOHN A. FORTUNATO, MAKING THE CUT: LIFE INSIDE THE PGA TOUR SYSTEM 17 (McFarland & Co., Inc., Publishers 2019).

70. Golfers may also receive entrance into a regular season tournament through a sponsor exemption, being one of the four golfers who shoot the lowest score in an 18-hole qualifying round that is played on Monday of the week of the tournament, or if a golfer who finishes in the top ten, including ties, in a tournament qualifies for entrance into the next regular season tournament. *Id.*

71. Winning a major tournament provides high-priority status for the remainder of the current season and the following five seasons. A victory in other prestigious tournaments, including the Tour Championship, the Players Championship, Arnold Palmer Invitational, the Memorial, or any World Golf Championship tournaments provides a high priority status for the remainder of the current season and the following three seasons. A victory in a regular season tournament provides a high-priority status for the remainder of the current season and the following two seasons. *Id.* at 18.

72. FORTUNATO, *supra* note 69, at 45.

73. *About Us*, *supra* note 11.

74. *Id.*

run through 2030.⁷⁵ The PGA Tour also reached an agreement with ESPN Plus to be the exclusive streaming service of PGA Tour Live, a platform that provides live coverage of featured golfers or the play on a specific hole, on-demand video clips, and speed replays of a round.⁷⁶ The PGA Tour earns \$700 million annually through these media agreements.⁷⁷

The PGA Tour altered its schedule prior to the 2018-19 season to conclude the regular season earlier and reduce the number of FedEx Cup Playoff tournaments from four to three. This schedule change allowed the FedEx Cup Playoffs to be completed by the third week in August instead of in September, avoiding competition from football and the last weeks of the baseball season.⁷⁸

The revised schedule meant that networks with contracts to televise college football and the NFL that would not have been able to broadcast the FedEx Cup Playoffs now had the ability to bid for the rights to broadcast these playoff tournaments. CBS, for example, televised only the first round of the FedEx Cup Playoffs in the years prior to this schedule change, prevented by commitments to televise football from airing later FedEx Cup tournaments. CBS and NBC annually alternate televising the FedEx Cup Playoff tournaments in the recent agreement. More networks bidding is attributed as a primary reason that the PGA Tour saw its media rights increase from \$400 million to \$700 million.⁷⁹

The PGA Tour has sponsors in many product categories.⁸⁰ The PGA Tour is considered to be appealing to television networks and sponsors because its audience is, “affluent, educated, and serves as business decision makers.”⁸¹ The audience that watches golf also does not typically watch other sports.⁸²

IV. THE LIV GOLF TOUR ECONOMIC MODEL

The LIV Golf Tour describes its mission, “is to build on and complement the existing format of professional golf and take it to new levels of excitement

75. John Ourand & John Lombardo, *PGA Tour: Coming Up Green*, SPORTS BUS. J. (Mar. 9, 2020), <https://www.sportsbusinessjournal.com/Journal/Issues/2020/03/09/Media/PGA-Tour.aspx>.

76. Joe Flint, *Golf's PGA Tour Gets Big Boost in TV, Streaming Rights*, WALL ST. J. (Mar. 9, 2020, 9:18 AM), <https://www.wsj.com/articles/golfs-pga-tour-gets-big-boost-in-tv-streaming-rights-11583689594>.

77. Ourand & Lombardo, *supra* note 75.

78. *Id.*; Flint *supra* note 76.

79. Ourand & Lombardo, *supra* note 75.

80. For the full roster of PGA Tour sponsors, see *Official Marketing Partners*, PGA TOUR, <https://www.pgatour.com/marketing-partners> (last visited May 2, 2023).

81. John Ourand & Austin Karp, *Golf's Numbers Game: Golf Business Pushes Back on LIV Narrative About Viewers*, SPORTS BUS. J. (Aug. 8, 2022) <https://www.sportsbusinessjournal.com/Journal/Issues/2022/08/08/Upfront/Golf.aspx>.

82. *Id.*

and engagement with generations of fans.”⁸³ The predominant appeal for golfers to join the LIV Golf Tour is its lucrative compensation system. Each LIV Golf tournament has prize money totaling \$25 million. There is \$20 million in prize money for golfers’ individual performances. LIV Golf has a tournament format where each of the forty-eight golfers competing earns guaranteed prize money. The winner of the tournament receives \$4 million, while the forty-eighth-place finisher receives \$120,000.⁸⁴

An additional \$30 million is provided for the individual season-long competition. An individual season champion is recognized based on all of a golfer’s tournament performances. The top golfer for the LIV Tour season in 2022 earned \$18 million, with \$8 million for second place, and \$4 million for third place.⁸⁵

There is a simultaneous team competition at each LIV Golf tournament. Each team consists of four golfers. The two lowest golfers’ scores in the first two rounds count for each team. The three lowest golfers’ scores count for the third and final round. The lowest team score at the end of the tournament is the winner of the team competition. There is \$5 million for the team portion of the tournament. The first-place team is awarded \$3 million, the second-place team earns \$1.5 million, and the third-place team earns \$500,000.⁸⁶

The eighth and final tournament of the LIV Golf season was the team championship event. This was a twelve-team seeded elimination tournament played over four days. There was \$50 million in prize money for the team championship event. All twelve teams were guaranteed prize money. The first-place team earned \$16 million, while the last-place team earned \$1 million. Each golfer received twenty-five percent of the team’s earnings.⁸⁷

Golfers also received signing bonuses for joining the LIV Golf Tour. It was reported that Phil Mickelson was paid \$200 million to join the LIV Golf Tour, an amount that he did not confirm or deny.⁸⁸ Bryson DeChambeau was reportedly paid a signing bonus of \$100 million to join the LIV Golf Tour.⁸⁹

The financial appeal of joining the LIV Golf Tour is enhanced by the golfers having to play in fewer tournaments. The LIV Golf Tour had eight tournaments

83. *About LIV Golf*, LIV GOLF, www.livgolf.com/about (last visited May 2, 2023).

84. Dunn, *supra* note 2.

85. *Id.*

86. *Id.*

87. *Id.*

88. Andrew Beaton, *As LIV Golf Teed Off, The Battle For Golf’s Future Began*, WALL ST. J. (June 10, 2022, 12:36 PM), <https://www.wsj.com/articles/liv-golf-london-pga-tour-suspensions-11654822174>.

89. Jack Baer, *Bryson DeChambeau Becomes Latest Golfer to Lose Sponsor After Joining LIV Golf*, YAHOO! SPORTS (June 10, 2022), <https://sports.yahoo.com/bryson-de-chambeau-becomes-latest-golfer-to-lose-sponsor-after-joining-liv-golf-010817015.html>.

in its inaugural season.⁹⁰ Each LIV tournament consists of only fifty-four holes and is completed in three rounds.⁹¹

Some of the LIV Golf players commented on the lucrative guaranteed payments and the LIV tournament format. Bryson DeChambeau claimed, “I run and operate my golf as a business.”⁹² Dustin Johnson stated of his decision to join the LIV Golf Tour that, “I thought it was best for me and my family . . . I don’t want to play golf for the rest of my life, which I felt like I was probably going to have to do.”⁹³ Brooks Koepka stated when he joined LIV Golf, “[w]hat I’ve had to go through the last two years on my knees, the pain, the rehab, all this stuff, I need a little bit more time off.”⁹⁴

The LIV Golf Tour is funded by the Saudi Arabia sovereign wealth fund.⁹⁵ The relationship with the government of Saudi Arabia has been noted as hindering the LIV Golf Tour from attracting business partnerships with television networks⁹⁶ and sponsors.⁹⁷ The LIV Golf Tour did not have a broadcast rights agreement for the television distribution of its tournaments in the United States in 2022.⁹⁸ LIV Golf streamed its tournaments on its own website, YouTube, and Facebook.⁹⁹

Some golfers commented on Saudi Arabia funding the LIV Golf series. Phil Mickelson, in particular, brought much attention to LIV Golf and its relationship

90. Five tournaments were played in the United States, along with tournaments in London, Bangkok, and Jeddah. The first tournament was in London from June 9 through June 11. The final tournament of the season occurred from October 27 through October 30 in Miami. 2022 *LIV Golf Invitational Series Schedule: Complete Dates, Winners, Purses*, SPORTS ILLUSTRATED (Oct. 30, 2022, 5:45 PM), <https://www.si.com/golf/news/2022-liv-golf-invitational-series-schedule-complete-dates-winners-purses>.

91. *The LIV Golf Format*, LIV GOLF, <https://www.livgolf.com/liv-format> (last visited May 2, 2023).

92. Andrew Beaton, *LIV Golf’s Stars Have Something in Common: They Haven’t Been Playing Well*, WALL ST. J. (June 30, 2022, 6:39 AM), <https://www.wsj.com/articles/liv-golf-portland-dechambeau-koepka-mickelson-saudi-arabia-11656555842>.

93. Andrew Beaton, *Dustin Johnson Quits PGA Tour For Saudi-Backed LIV Golf*, WALL ST. J. (June 7, 2022, 10:59 AM), <https://www.wsj.com/articles/liv-golf-dustin-johnson-pga-tour-phil-mickelson-centurion-11654613892>.

94. Beaton, *supra* note 92.

95. Andrew Beaton, *The PGA Tour Banned LIV Golfers. They’re Playing in the U.S. Open Anyway*, WALL ST. J. (June 15, 2022, 8:00 AM), <https://www.wsj.com/articles/liv-golf-us-open-2022-pga-tour-11655264223>.

96. Ourand & Karp, *supra* note 81.

97. Terry Lefton, *Marketing and Sponsorship: Even if LIV Golf Finds a TV Home, Talk Turns to Tough Road to Finding Sponsors, Especially in U.S.*, SPORTS BUS. J. (Oct. 3, 2022), <https://www.sportsbusinessjournal.com/Journal/Issues/2022/10/03/Insiders/Marketing-and-Sponsorship.aspx>.

98. Ourand & Karp, *supra* note 81.

99. *Id.*

with Saudi Arabia in February 2022.¹⁰⁰ Mickelson described the Saudi Arabia regime as “scary” and acknowledged that the country has a “horrible record on human rights.”¹⁰¹

Graeme McDowell commented when he was asked at a press conference the week of the first LIV Golf tournament about Saudi Arabia’s human rights policies. He stated:

[i]f Saudi Arabia wanted to use the game of golf as a way for them to get to where they want to be and they have the resources to accelerate that experience, I think we’re proud to help them on that journey – using the game of golf and the abilities that we have to help grow the sport and take them to where they want to be.¹⁰²

McDowell added, “[i]f we tried to cure geopolitical situations in every country in the world that we play golf in, we wouldn’t play a lot of golf.”¹⁰³

Several golfers had their sponsorships terminated when they joined the LIV Golf Tour. Some sponsors alluded to LIV Golf’s relationship with Saudi Arabia in their announcement that they were ceasing their partnerships. For example, golf equipment manufacturer Callaway stated when it terminated its sponsorship with Phil Mickelson, that his comments did not “reflect our values or what we stand for as a company.”¹⁰⁴ UPS stated that it would focus on sponsorship initiatives that are “consistent with our business priorities.”¹⁰⁵ Other sponsors highlighted their partnerships with the PGA Tour when announcing that they were terminating their sponsorships of LIV Tour golfers. For example,

100. Andrew Beaton, *Tiger’s Presence, Phil’s Absence and the Saudi Questions Simmering at the PGA Championship*, WALL ST. J. (May 18, 2022, 9:00 AM), <https://www.wsj.com/articles/tiger-woods-phil-mickelson-pga-championship-2022-11652875010>.

101. *Id.*

102. Beaton, *supra* note 95.

103. *Id.*

104. Jared Schwartz, *Phil Mickelson Loses Two More Sponsors After Controversial Saudi Comments*, N.Y. POST (Feb. 26, 2022, 2:20 AM), <https://nypost.com/2022/02/26/phil-mickelson-loses-two-more-sponsors-after-controversial-saudi-comments/>.

105. Ryan Young, *UPS Ends 14-year Deal With Lee Westwood Amid Involvement With Saudi-Backed League*, YAHOO! SPORTS (May, 19, 2022), <https://sports.yahoo.com/ups-ends-14-year-deal-with-lee-westwood-amid-involvement-with-saudi-backed-league-pga-championship-222402167.html>.

RBC,¹⁰⁶ Bridgestone,¹⁰⁷ and Rocket Mortgage¹⁰⁸ referenced their relationships with the PGA Tour in their statements.

V. PGA TOUR'S RESPONSE TO THE LIV GOLF TOUR: PGA TOUR MEMBERS

The PGA Tour engaged in several actions to confront the threat of the LIV Golf Tour and try to prevent more golfers from defecting. The PGA Tour made changes to its tournament and player compensation system. The PGA Tour announced on June 22, thirteen days after the first LIV Golf tournament, that it increased the prize money for eight tournaments. Seven tournaments would reach \$20 million in prize money, and The Players Championship prize money was increased to \$25 million.¹⁰⁹ The increased prize money would be funded by sponsors and money in the PGA Tour reserve operating fund.¹¹⁰

The field for the FedEx Cup Playoff tournaments was altered as part of the PGA Tour's initial set of changes. There would be seventy golfers for the first playoff tournament, down from 125, and fifty golfers for the second tournament, down from seventy.¹¹¹ The Tour Championship, the third and final tournament of the FedEx Cup Playoffs would continue to have thirty golfers.¹¹²

Jay Monahan, PGA Tour commissioner, held a press conference on June 22, 2022, the day before the start of that week's PGA Tour event, to explain the PGA Tour's new initiatives. He stated, "implementing substantial changes to our schedule gives us the best opportunity to not only drive earnings to our players, but also improve our product and create a platform for continued growth in the future" and "a more compelling product for our players, fans, and partners."¹¹³

106. Joel Beall, *RBC Cuts Dustin Johnson After LIV Golf Announcement: "We are Extremely Disappointed in His Decision"*, GOLF DIG. (May 31, 2022), <https://www.golfdigest.com/story/rbc-dustin-johnson-liv-golf>.

107. Riley Hamel & David Dusek, *Bridgestone and Bryson DeChambeau Part Ways, Ending Their Six-Year Relationship*, YAHOO! SPORTS (July 12, 2022), <https://www.yahoo.com/sports/bridgestone-bryson-dechambeau-part-ways-204425728.html>.

108. Baer, *supra* note 89.

109. Mark Schlabach, *PGA Tour Commissioner Jay Monahan Says LIV Golf Invitational Series is an 'Irrational Threat' to The Game*, ESPN (June 22, 2022, 2:55 PM), https://www.espn.com/golf/story/_/id/34131368/pga-tour-commissioner-jay-monahan-says-liv-golf-invitational-series-irrational-threat-game.

110. *Id.*

111. *PGA TOUR Announces 'Significant Changes'*, PGA TOUR (June 22, 2022), <https://www.pgatour.com/news/2022/06/22/pga-tour-commissioner-jay-monahan-returns-to-calendar-year-schedule-sizable-purse-increases-reimagines-fall-revises-field-fedexcup-playoffs.html>.

112. *Id.*

113. *Id.*

The PGA Tour announced an enhanced relationship with the Dubai Ports (DP) World Tour, the governing body for the tournaments that many European golfers participate, on June 28, 2022.¹¹⁴ The partnership between the PGA Tour and the DP World Tour allows the golfers on those tours to compete in co-sanctioned tournaments.¹¹⁵ The leading ten DP World Tour golfers at the end of the season will now have access to all PGA Tour events the following season.¹¹⁶

The PGA Tour announced on the same day that it was increasing the number of golfers from twenty-five to thirty who qualify for the PGA Tour from the Korn Ferry Tour, the developmental tour of the PGA Tour.¹¹⁷ The Korn Ferry Tour represented approximately eighty percent of the PGA Tour's playing membership in 2022. The prize money was also going to be increased for Korn Ferry Tour events.¹¹⁸

On August 24, 2022, the PGA Tour announced four more initiatives: (1) four additional tournaments were elevated to having a purse of at least \$20 million, bringing the total number of regular season tournaments at that value to twelve; (2) the top PGA Tour golfers committed to playing in all twelve of the higher prize money tournaments every season, along with the four major tournaments; The Players Championship, and three other tournaments of their choosing to bring their regular season guaranteed number of appearances to twenty;¹¹⁹ (3) the PGA Tour increased the money allocated for the Players Impact Program¹²⁰ which recognizes the golfers who generate the most positive interest in promoting golf from \$40 million to \$100 million and it will be dispersed to twenty golfers, up from ten; and (4) the PGA Tour introduced the Earnings Assurance Program. This guarantees PGA Tour members at least \$500,000 for the season if they play in fifteen tournaments, but do not earn that amount of prize money.¹²¹

114. *DP World Tour, PGA TOUR Expand and Strengthen Alliance*, PGA TOUR (June 28, 2022), <https://www.pgatour.com/news/2022/06/28/dp-world-tour-pga-tour-european-tour-expand-strengthen-alliance.html>.

115. The three co-sanctioned tournaments are the Scottish Open, Barbasol Championship, and Barracuda Championship. *Id.*

116. *Id.*

117. *Korn Ferry Tour to Award an Unprecedented 30 TOUR Cards in 2023*, PGA TOUR (June 28, 2022), <https://www.pgatour.com/korn-ferry-tour/news/2022/06/28/qualification-eligibility-changes-structure-explained-2023-finals-q-school-pga-tour-cards.html>.

118. *Id.*

119. *Golf's Top Players Make 'Unprecedented Commitment' to TOUR, Future Schedule*, PGA TOUR (Aug. 24, 2022), <https://www.pgatour.com/news/2022/08/24/pga-tour-top-players-make-unprecedented-commitment-to-pga-tour-future-schedule.html>.

120. The PGA Tour launched the Players Impact Program in 2021. *See* Beaton, *supra* note 88.

121. *Golf's Top Players Make 'Unprecedented Commitment' to TOUR, Future Schedule*, *supra* note 119.

Monahan explained, “[t]he TOUR is going to continue to grow by having the best players in the world committed to it, by us continuing to lean into and invest in our ethos, which is the single-best competitive platform.”¹²² He added, “[t]oday is a culmination of a strengthened partnership between the TOUR and the players, and amongst the players themselves It’s unprecedented for our TOUR and a testament to who these guys are and what they believe in.”¹²³

VI. PGA TOUR’S RESPONSE TO THE LIV GOLF TOUR: LIV TOUR GOLFERS

PGA Tour members can request to play in three other events per season that have to be played outside of North America.¹²⁴ Several golfers, including Phil Mickelson, put in a request for approval from the PGA Tour to play in the first LIV Golf tournament.¹²⁵ The PGA Tour announced on May 10, 2022, that it was denying the request of its member golfers to participate in LIV Golf tournaments. The decision was defined as being made “in accordance with the PGA TOUR Tournament Regulations.”¹²⁶

Shortly after LIV Golf’s first tournament began on June 9, 2022, Jay Monahan announced that the golfers who were participating in that and future LIV Golf tournaments were suspended from the PGA Tour.¹²⁷ Those golfers would not be able to participate in any PGA Tour events, including tournaments on the PGA Champions Tour, the tour for golfers over the age of fifty, the Korn Ferry Tour, and the President’s Cup, the match-play event that is held every two years where golfers from the United States compete against golfers from Asia.¹²⁸ The golfers who played in a LIV Golf tournament were also immediately removed from the season’s PGA Tour FedEx Cup points standings.

Monahan stated in a memo sent to the PGA Tour golfers and posted on the Tour’s website that the LIV participants “have made their choice for their own

122. *Id.*

123. *Id.*

124. Radnofsky & Beaton, *supra* note 5.

125. Beaton, *supra* note 100.

126. *PGA TOUR Declines Players’ Requests to Play Opening LIV Event*, PGA TOUR (May 10, 2022), <https://www.pgatour.com/news/2022/05/10/pgatour-declines-players-request-to-play-opening-liv-event.html>.

127. *Commissioner Jay Monahan Responds to Players Competing This Week Without Proper Releases*, *supra* note 12. It was revealed in the LIV Golf lawsuit that Phil Mickelson was suspended on March 22, 2022, for two months for “attempting to recruit players to join [LIV Golf].” Complaint, *supra* note 6, at 66. Mickelson applied for reinstatement on June 20, but the PGA denied his request, citing his violation of PGA Tour regulations for competing in the inaugural LIV tournament on June 9. *Id.* Mickelson’s suspension was extended to March 31, 2023. *Id.*

128. *Commissioner Jay Monahan Responds to Players Competing This Week Without Proper Releases*, *supra* note 12.

financial-based reasons But they can't demand the same PGA TOUR membership benefits, considerations, opportunities and platform as you. That expectation disrespects you, our fans and our partners."¹²⁹

LIV Golf responded on Twitter to the decision by the PGA Tour to suspend the golfers. The LIV Golf statement read:

[t]oday's announcement by the PGA Tour is vindictive and it deepens the divide between the Tour and its members. It's troubling that the Tour, an organization dedicated to creating opportunities for golfers to play the game, is the entity blocking golfers from playing. This certainly is not the last word on this topic. The era of free agency is beginning as we are proud to have a full field of players joining us in London, and beyond.¹³⁰

Monahan highlighted that the LIV Golf Tour was funded by the Saudi Arabia Public Investment Fund in the interview with Jim Nantz of CBS that was part of the network's coverage of that week's PGA Tour event on the same weekend as the first LIV tournament. Monahan stated, "I would ask any player who has left or any player who would ever consider leaving, have you ever had to apologize for being a member of the PGA Tour?"¹³¹

Monahan addressed the economic realities of the PGA Tour in comparison to the Saudi Arabia-funded LIV Golf Tour at a press conference on June 22, stating, "[i]f this is an arms race and if the only weapons here are dollar bills, the PGA Tour can't compete. The PGA Tour, an American institution, can't compete with a foreign monarchy that is spending billions of dollars in an attempt to buy the game of golf."¹³² Monahan added, "[w]e welcome good, healthy competition. The LIV Saudi Golf League is not that. It's an irrational threat, one not concerned with the return on investment or true growth of the game."¹³³

The position of LIV Golf is to co-exist with the PGA Tour and to have it so that golfers can participate in both PGA Tour and LIV Golf tournaments as they

129. *Id.*

130. LIV Golf (@LIVGolfInv), TWITTER (June 9, 2022, 8:57 AM), <https://twitter.com/LIVGolfInv/status/1534897584732610566>.

131. *Commissioner Jay Monahan Says He 'Couldn't Be More Excited' About TOUR's Future*, PGA TOUR, <https://www.pgatour.com/article/news/latest/2022/06/12/pga-tour-commissioner-jay-monahan-excited-for-pga-tour-future> (last visited May 2, 2023).

132. Schlabach, *supra* note 109.

133. *Id.*

desire. Greg Norman, LIV Golf Commissioner and CEO,¹³⁴ described that LIV Golf has not:

done anything other than putting together a business model and giving independent contractors a right to earn a living doing something else, as well as still being a member of the PGA Tour. The entire business model from the ground up was built to coexist within the ecosystem of golf, coexist within the majors, coexist with the DP World Tour, coexist with the PGA Tour. Allowing the players to play here and play there.¹³⁵

VII. LEGAL CHALLENGES TO THE PGA TOUR

The PGA Tour's suspension of the LIV Tour golfers created the conditions for the antitrust, non-competitive marketplace environment claims. A letter sent by the LIV Golf Tour to golfers and agents pointed out that the PGA Tour's banning golfers who joined LIV Golf, would "likely cause the federal government to investigate and punish the PGA Tour's unlawful practices."¹³⁶

On July 11, 2022, it was reported in the *Wall Street Journal* that the United States Department of Justice was investigating if the PGA Tour engaged in anticompetitive practices that violated antitrust laws.¹³⁷ The media report of the investigation stated that the Department of Justice Antitrust Division inquired with golfers' agents about the PGA Tour's bylaws that govern golfers' participation in non-PGA Tour events and the actions that the PGA Tour took in reacting to the launch of the LIV Golf Tour.¹³⁸

It was reported on October 26, 2022, in the *Wall Street Journal* that the Department of Justice investigation included the organizations that govern golf's major tournament championships in the United States.¹³⁹ The probe

134. Greg Norman is a member of the World Golf Hall of Fame and the winner of two major tournament championships. *Career Highlights*, GREGNORMAN, <https://shark.com/the-shark/career-highlights/> (last visited May 2, 2023).

135. Tom D'Angelo, *Exclusive Q&A: Greg Norman's Vision For LIV Golf, PGA Tour Players Creating 'Firestorm of Controversy,' and More*, YAHOO! NEWS (July 19, 2022), <https://www.yahoo.com/news/exclusive-q-greg-normans-vision-203434761.html>.

136. Radnofsky & Beaton, *supra* note 5.

137. *Id.*

138. *Id.*

139. Louise Radnofsky & Andrew Beaton, *Augusta National Golf Club Under Investigation in DOJ Antitrust Probe*, WALL ST. J. (Oct. 26, 2022, 10:00 AM), <https://www.wsj.com/articles/augusta-national-investigation-masters-liv-golf-doj-usga-11666792047>.

included the Augusta National Golf Club, the organization that runs the Masters golf tournament, the United States Golf Association, which oversees the U.S. Open tournament, and the PGA of America, an organization different from the PGA Tour which operates the PGA Championship.¹⁴⁰ LIV golfers did participate in the U.S. Open and The Open Championship in 2022. Both of those major tournaments were held after LIV Golf had its first tournament.

The Augusta National Golf Club announced on December 20, 2022, that it would allow any eligible golfers to compete in the Masters.¹⁴¹ Former Masters tournament champions receive automatic entry into the Masters, making prominent LIV golfers eligible to compete.¹⁴² Fred Ridley, Augusta National Golf Club chairman, stated:

[r]egrettably, recent actions have divided men’s professional golf by diminishing the virtues of the game and the meaningful legacies of those who built it Although we are disappointed in these developments, our focus is to honor the tradition of bringing together a pre-eminent field of golfers this coming April.¹⁴³

LIV golfers initiated legal proceedings against the established organizations of professional golf. On June 24, 2022, LIV golfers were suspended by the DP World Tour from participating in co-sanctioned tournaments with the PGA Tour.¹⁴⁴ LIV golfers, Ian Poulter, Adrian Otaegui, and Justin Harding, brought a lawsuit on July 1, 2022, against the DP Tour seeking a stay to their suspensions that would allow them to play in the Scottish Open held in July. An arbiter in England sided with the LIV golfers. The arbiter stated that Keith Pelley, DP Tour commissioner, did not adequately replicate “the guidelines for a disciplinary hearing,” and that he “was on record as having made strong adverse

140. *Id.*

141. Andrew Beaton & Louise Radnofsky, *The Masters Says it Will Allow LIV Golfers to Compete in 2023*, WALL ST. J. (Dec. 20, 2022, 11:04 AM), <https://www.wsj.com/articles/masters-2023-liv-golf-augusta-national-11671552195>.

142. Masters champions playing on the LIV Golf Tour include: Phil Mickelson, Bubba Watson, Patrick Reed, Dustin Johnson, Sergio Garcia, and Charl Schwartzel. *Id.*

143. Beaton & Radnofsky, *supra* note 141.

144. Radnofsky & Beaton, *supra* note 5.

public statements on LIV.¹⁴⁵ The matter is scheduled to be heard again in court in February 2023.¹⁴⁶

On August 3, 2022, eleven golfers¹⁴⁷ who joined LIV Golf filed an antitrust lawsuit against the PGA Tour in the United States District Court for the Northern District of California.¹⁴⁸ The lawsuit alleges that the PGA Tour, “has evolved into an entrenched monopolist with a vice-grip on professional golf. As the Tour’s monopoly power has grown, it has employed its dominance to craft an arsenal of anticompetitive restraints to protect its long-standing monopoly.”¹⁴⁹ It is also argued that the PGA Tour’s actions are part of an “intentional and relentless effort to crush nascent competition before it threatens the Tour’s monopoly.”¹⁵⁰

It is reported that until the LIV Golf Tour launched, “no other golf tour in the world is a reasonable competitive substitute for the PGA Tour.”¹⁵¹ The LIV Golf Tour provides professional golfers with a meaningful services market option, but it is the PGA Tour’s “ability to force players into restrictive terms that foreclose them from playing in competing events and the ability to suppress player compensation below competitive levels.”¹⁵² The lawsuit filed by the plaintiffs claimed that the PGA Tour’s decision to suspend the golfers brings,

145. Complaint, *supra* note 6, at 47-48.

146. Michael Collins & Mark Schlabach, *LIV Golf Players Asked Not to Wear Logos, Can Skip Pro-am at BMW PGA Championship*, ESPN (Aug. 31, 2022, 11:01 AM), https://www.espn.com/golf/story/_/id/34494059/liv-golf-players-told-not-wear-logos-skip-pro-bmw-pga-championship.

147. Carlos Ortiz and Pat Perez withdrew their names from the lawsuit by the end of August. Perez stated, I have no ill feelings toward the PGA Tour or any of the players. I’m a LIV guy 100 percent. I’m going to play for them. But I don’t feel any need to go after the PGA Tour. They gave me a wonderful opportunity for 21 years. I’ve got nothing against them, no hard feelings toward anybody.

See Max Schreiber, *Pat Perez Drops Out of LIV Golf Antitrust Lawsuit: ‘I Didn’t Really Think it Through’*, GOLF CHANNEL (Aug. 21, 2022, 11:47 AM), <https://www.golfchannel.com/news/pat-perez-drops-out-liv-golf-antitrust-lawsuit-i-didnt-really-think-it-through>. Perez added, “I chose to leave and I’m not looking to come back.” *Id.* Abraham Ancer and Jason Kokrak dropped their participation in a court filing on Friday, August 26, 2022. See Max Hoggard, *Two More Players Drop Out of Antitrust Lawsuit; LIV Golf Added as Interested Party*, GOLF CHANNEL (Aug. 27, 2022, 10:22 AM), <https://www.golfchannel.com/news/two-more-players-drop-out-antitrust-lawsuit-liv-golf-added-interested-party>. Phil Mickelson, Talor Gooch, Ian Poulter, and Hudson Swafford dropped out of the lawsuit on September, 27, 2022. Mickelson stated, “[w]ith LIV’s involvement in these issues, the players’ rights will be protected, and I no longer feel it is necessary for me to be part of the proceedings.” See Louise Radnofsky & Andrew Beaton, *Phil Mickelson and Three Other LIV Golfers Drop Out of Lawsuit Against PGA Tour*, WALL ST. J. (Sept. 27, 2022, 11:06 AM), <https://www.wsj.com/articles/phil-mickelson-liv-golf-lawsuit-pga-tour-11664291165>.

148. See Complaint, *supra* note 6; Radnofsky & Beaton, *supra* note 5.

149. Complaint, *supra* note 6, at 1.

150. *Id.*

151. *Id.* at 15.

152. *Id.* at 1.

“irreparable harm to the players and their ability to pursue their profession.”¹⁵³ The plaintiffs are seeking injunctive relief and damages under the Sherman Antitrust Act.

It is pointed out in the lawsuit filing that professional golfers are independent contractors and not employees of the PGA Tour.¹⁵⁴ It is argued the PGA Tour is willing to harm its own business through its attempts to squelch the existence of the LIV Golf Tour. The complaint states that not allowing the LIV golfers to participate in PGA Tour events:

degrades the Tour’s strength of field and diminishes the quality of the product that it offers to golf fans by depriving them from seeing many top golfers participate in Tour events. The only conceivable benefit to the Tour from degrading its own product in this manner is the destruction of competition.¹⁵⁵

The lawsuit contrasts LIV’s approach to golfers’ participation as, “[d]uring weeks in which there is no LIV Golf Invitational Series tournament, LIV Golf encourages players to play wherever they choose, including Tour events, other events on other tours, or events that might be created in the future”¹⁵⁶

The lawsuit documents the specific policies of the PGA Tour that are used to maintain its anticompetitive, monopolistic position. It cites the PGA Tour’s Conflict Event Regulation policy that prohibits its members from competing, without exception, in a non-PGA tournament or event in North America that takes place the same week that a PGA Tour event is held.¹⁵⁷ It notes that the commissioner of the PGA Tour has complete discretion to permit the golfers up to three times to play in non-PGA Tour international events.¹⁵⁸ The PGA Tour made a distinction between other one-time golf events and what it terms LIV Golf as a series of events, the majority of which in 2022 were played in the United States.¹⁵⁹

153. *Id.* at 2.

154. That the golfers are independent contractors is mentioned ten times in the lawsuit filing. *See id.* at 2, 5, 20, 23, 25, 28, 82, 88, 90, 96.

155. *Id.* at 3.

156. *Id.* at 54.

157. *Id.* at 3-4.

158. *Id.* at 4.

159. A statement from the PGA Tour vice president is included in the lawsuit brief that reads, “[w]hile releases have been granted in limited circumstances for one-off events outside North America or for events outside of North America on tours based exclusively outside of North America, the event for which you have requested a release is the first in an eight-event “2022 LIV Golf Invitational Series” season, and more than half of them will be held in the United States.” *Id.* at 26.

The PGA Tour's Media Rights Regulation is also cited by the LIV Tour golfers as a policy that is restrictive. This provision prevents golfers from participating in non-PGA-sanctioned tournaments that are shown on any media of any type.¹⁶⁰ It is put forth that this policy acts as a disincentive for media companies to sign a broadcast agreement with the LIV Golf Tour.¹⁶¹

The lawsuit also documents alleged collusion efforts of the PGA Tour. These include pressuring the Augusta National Golf Club,¹⁶² the Royal and Ancient golf organization, which runs The Open Championship, the DP World Tour, and the Official World Golf Rankings¹⁶³ to not allot points for LIV Golf Tour events, and sponsors. The lawsuit also noted the PGA Tour's efforts to discredit the LIV Golf Tour, including emphasizing its relationship with the government of Saudi Arabia as its funding source. Jay Monahan referred to the LIV Golf Tour in his interview on CBS as "a series of exhibition matches against the same players."¹⁶⁴

LIV Golf claimed that the PGA Tour's many increases in compensation were designed to make it less appealing for the top golfers to defect. Greg Norman wrote of the PGA Tour's changes, "[i]t is a classic case of competition benefitting workers and customers. LIV Golf is the best thing that has happened to the careers of professional golfers. The PGA Tour never would have changed without it."¹⁶⁵ Norman added, "[l]ike other incumbent monopolies, the PGA Tour changed only because it was forced to. Now, in the time-honored tradition of market competition, it has reluctantly reacted to a new challenger . . ."¹⁶⁶

Monahan issued a statement to the PGA Tour's golfers on August 3, 2022, to explain the PGA Tour's position on the antitrust lawsuit. He stated that, "[w]e have been preparing to protect our membership and contest this latest attempt to disrupt our Tour, and you should be confident in the legal merits of our

160. *Id.* at 4.

161. *Id.* at 24.

162. The lawsuit claims that Fred Ridley, Augusta National Golf Club chairman, instructed golfers who were participants in the 2022 Masters not to play in LIV Golf and that Ridley declined an invitation to meet with Greg Norman, LIV Golf CEO. *See id.* at 51.

163. The Official World Golf Rankings is the measurement used for entry into prestigious golf tournaments. *See id.* at 8.

164. *Commissioner Jay Monahan Say He 'Couldn't Be More Excited' About TOUR's Future*, *supra* note 131.

165. Greg Norman, *Competition Comes For the PGA Tour*, WALL ST. J. (Sept. 15, 2022, 6:10 PM), <https://www.wsj.com/articles/competition-comes-for-the-pga-tour-liv-golf-greg-norman-salaries-fans-dustin-johnson-phil-mickelson-monopoly-rankings-antitrust-11663266507>.

166. *Id.*

position.”¹⁶⁷ A summary judgment hearing was set for July 23, 2023, and a trial date of January 8, 2024.¹⁶⁸

Talor Gooch, Hudson Swafford, and Matt Jones left the PGA Tour and joined LIV Golf, but they petitioned the court for a temporary restraining order that would allow them to participate in the FedEx Cup Playoffs.¹⁶⁹ The three golfers amassed enough points to qualify for the playoffs prior to their leaving the PGA Tour.

The position of the PGA Tour was that allowing these golfers to play in the FedEx Cup Playoffs would be, “an action that would harm all TOUR members that follow the rules.”¹⁷⁰ Monahan stated, “[f]undamentally, these suspended players—who are now Saudi Golf League employees—have walked away from the Tour and now want back in.”¹⁷¹

The PGA Tour cited that four of the other plaintiffs in the antitrust lawsuit also had enough points to qualify for the FedEx Cup Playoffs, but they were not seeking relief. The PGA Tour used that fact in its argument to the court to “recognize there is no emergency or irreparable harm”¹⁷² to the golfers seeking relief.

The PGA Tour took the opportunity in its brief to point out some characteristics of the LIV Golf Tour. The PGA Tour claimed that LIV, “is not a rational economic actor, competing fairly to start a golf tour. It is prepared to lose billions of dollars”¹⁷³ The brief added that, “LIV’s direct ties to the Saudi government have cast a black cloud over its events and its players.”¹⁷⁴ The PGA Tour added that it “will suffer irreparable reputational damage if it is forced to give a stage to players engaged with LIV and to associate the PGA TOUR brand with the Saudi government’s efforts to ‘sportswash’ its deplorable reputation.”¹⁷⁵

167. Riley Hamel, *‘These Suspended Players Have Walked Away From the Tour and Now Want Back In’: Jay Monahan Sends Memo to PGA Tour Players After LIV Golf Series Lawsuit*, GOLFWEEK (Aug. 3, 2022, 3:31 PM), <https://golfweek.usatoday.com/2022/08/03/liv-golf-lawsuit-pga-tour-jay-monahan-memo/>.

168. Rex Hoggard, *Judge Sets Trial Date For LIV Golf Players Suing PGA Tour*, GOLF CHANNEL (Aug. 18, 2022, 3:33 PM), <https://www.golfchannel.com/news/judge-sets-trial-date-liv-players-suing-pga-tour>.

169. Andrew Beaton & Louise Radnofsky, *Judge Rules Against Golfers Suspended LIV Golfers Vying to Play in PGA Tour’s FedEx Cup Playoffs*, WALL STREET J. (Aug. 9, 2022, 6:41 PM), <https://www.wsj.com/articles/liv-golf-pga-tour-lawsuit-fedex-cup-playoffs-talor-gooch-11660084871>.

170. Defendant’s Brief, *supra* note 14, at 1.

171. Hamel, *supra* note 167; Radnofsky & Beaton, *supra* note 5.

172. Defendant’s Brief, *supra* note 14, at 2.

173. *Id.*

174. *Id.* at 6.

175. *Id.* at 16.

The PGA Tour also commented on the larger antitrust claims of the LIV Golf Tour. The brief, filed by the PGA Tour, stated,

“[s]uccessful entry by LIV Golf” demonstrates that the TOUR lacks the power to exclude competition In just its first year, LIV has established a tour that competes directly with the PGA TOUR, has more financial resources than the TOUR, and offers more guaranteed money to players than the TOUR.¹⁷⁶

The court rejected the three golfers’ motion, citing that they failed to demonstrate how they would be irreparably harmed by not playing in the PGA Tour’s FedEx Cup Playoffs.¹⁷⁷ Judge Beth Labson Freeman stated:

TRO Plaintiffs are not barred from playing professional golf against the world’s top players, from earning lucrative prizes in some of golf’s highest-profile events, from earning sponsorships, or from building a reputation, brand, and fan following in elite golf The only thing TRO Plaintiffs are barred from is pursuing these goals *at PGA TOUR events*.¹⁷⁸

Judge Labson Freeman added, “TRO Plaintiffs each knew, going into negotiations with LIV Golf, that they were virtually certain to be cut off from TOUR play.”¹⁷⁹ Judge Labson Freeman indicated that signing bonuses given to LIV Tour golfers are in part designed to offset a loss of financial opportunities that might have come from playing in PGA Tour events. She elaborated:

the LIV Golf contracts negotiated by the TRO Plaintiffs and consummated between the parties were based on the players’ calculation of what they would be leaving behind and the amount of money they would need to compensate for those losses. TRO Plaintiffs have signed contracts that richly reward them for their talent and compensate for lost opportunity through TOUR play. In fact, the evidence shows almost without

176. *Id.* at 18.

177. Order Denying Plaintiffs Talor Gooch, Hudson Swafford, and Matt Jones’s Motion for Temporary Restraining Order at 1, *Mickelson v. PGA Tour, Inc.*, No. 22-cv-04486 (N.D. Cal. Aug. 10, 2022) [hereinafter Order]; Beaton & Radnofsky, *supra* note 169.

178. Order, *supra* note 177, at 9.

179. *Id.* at 10.

a doubt that they will be earning significantly more money with LIV Golf than they could reasonably have expected to make through TOUR play over the same time period.¹⁸⁰

VIII. DISCUSSION

The legal challenges that were brought on by the existence of the LIV Golf Tour and the PGA Tour's response center on the antitrust principle of a competitive marketplace. There are dual antitrust issues in the case of the PGA Tour. The first issue is industry-related and if the PGA Tour's behavior led to less industry competition. The second issue is labor-related and if the PGA Tour's behavior led to a suppression of earnings.

There are three specific legal questions that need to be adjudicated based on these competitive issues. (1) Did the PGA Tour willfully acquire and maintain monopoly power in a relevant market, that being the professional golf industry? (2) Did the PGA Tour's monopolization cause harm to another's business, either the LIV Golf Tour or its golfers? (3) Were the actions of the PGA Tour conspiratorial, predatory, and constitute an unreasonable restraint of trade in violation of the Sherman Antitrust Act? Applying the rule of reason standard is the legal remedy for these questions.

Under the first step of rule of reason, the LIV Golf Tour and its golfers have the burden of demonstrating that a less competitive marketplace was produced. This would be evidenced by an increase in price, a decrease in output, or a deterioration in quality. The issues related to a decrease in output or deterioration in quality appear to be more prevalent than the price to consumers to experience professional golf. Many golf tournaments' final rounds are available on free, over-the-air television. LIV Golf desires to acquire a media partner for better exposure of its tournaments. It was reported in *The Wall Street Journal* on January 19, 2023, that LIV Golf reached an agreement with the CW Network to televise its tournaments in 2023.¹⁸¹

An argument for a decrease in industry output would seem to be unfounded. The launching of the LIV Golf Tour meant that more professional golf was going to be played. The PGA Tour points to LIV Golf launching as insulating it from any charges that there is an anticompetitive marketplace in professional golf. LIV Golf also announced that it is expanding its tournament schedule in 2023 to fourteen events, furthering the increase of professional golf events.

180. *Id.*

181. Joe Flint & Andrew Beaton, *LIV Golf Reaches Deal to Broadcast Events on CW Network*, WALL ST. J. (Jan 19, 2023, 9:15 AM), <https://www.wsj.com/articles/liv-golf-reaches-deal-to-broadcast-events-on-cw-network-11674136667>.

A deterioration in quality of professional golf can be argued in that the best golfers will rarely compete against each other in a tournament. The major championships will be the only opportunity. The current result of the PGA Tour's decision to suspend the golfers who participated in LIV Golf tournaments is that professional golfers cannot compete on both golf tours. LIV Golf claims that PGA Tour events would have a higher quality product by having the LIV golfers participate in those tournaments, presumably on the weekends when LIV does not have a tournament. LIV Golf is making an argument that the PGA Tour is willing to offer a product of lesser quality to continue its monopolistic position in professional golf. LIV Golf points out that its business model was developed with the intention to coexist with the PGA Tour.¹⁸² The professional golfers, who are independent contractors, can then decide when and where they want to play.

If the concern of a less competitive marketplace is met under the rule of reason's first step analysis, the PGA Tour has to justify its actions as procompetitive in the step two rule of reason application. The PGA Tour can argue that its actions are producing a better environment for its members. The PGA Tour increased the prize money for twelve of its regular season tournaments, increased money for its Players Impact Program, and provided a guaranteed salary of \$500,000 to its members who do not earn that amount of prize money in a season. The golfers who choose to remain as members or earn membership onto the PGA Tour can reap these rewards. The PGA Tour had to address the most attractive feature to join LIV Golf, the lucrative, guaranteed payments to players. The PGA Tour can interject that it has a right to alter its compensation system to remain competitive with its emergent business challenge or risk having more golfers' defect.

Having more tournaments with greater prize money will entice participation for PGA Tour golfers. Therefore, a claim can be made that there will not be a deterioration of quality of the professional golf product. These tournaments with prominent golfers competing will help make the PGA Tour more appealing to fans, television partners, and sponsors.

The PGA Tour can also make a procompetitive argument from a labor perspective in that its tournaments allow earning opportunities to many more professional golfers than the forty-eight golfers in a LIV Golf tournament. The PGA Tour also created opportunities for DP World Tour golfers to be a part of a PGA Tour field and more golfers will be promoted every year from the developmental Korn Ferry Tour.

182. D'Angelo, *supra* note 135.

There are two potential favorable outcomes for the PGA Tour. One, the United States Department of Justice drops its investigation without pursuing any legal remedies, as the government did in 1994.¹⁸³ Two, the PGA Tour's business operations, including the changes to its compensation system since the launch of the LIV Golf Tour, are considered procompetitive.

The more interesting potential outcomes worthy of analysis are if it is determined that the PGA Tour's actions are not procompetitive. The third rule of reason standard that questions if less restrictive conduct alternatives are feasible will have to be applied. One possible alternative would have been for the PGA Tour to adopt the position that golfers are permitted to play on both tours. Many LIV tournaments and PGA tournaments are played simultaneously. The practical outcome would seemingly be that golfers play in the LIV Tour event that has higher prize money. Golfers have the opportunity to earn through both individual and team competition. The LIV Tour golfers also do not have to worry about being eliminated through the tournament cut. They are guaranteed to receive some compensation. If the top forty-eight golfers all played in the LIV Golf event, the PGA Tour event that week is less attractive. The ability to compete on both tours also does not mean that golfers will definitely want to play in the PGA Tour events on the weeks that there is not a LIV Golf tournament.

An assessment as to the level of harm being infused on the LIV golfers and the LIV Golf Tour will then have to be made if there is a legal demonstration that the PGA Tour's actions are anticompetitive. This analysis leads to an interpretation of the facts of this case and the variables that will be deemed the most prevalent. The allegation put forth by the LIV golfers is that harm is being done by limiting their earning potential. The suspension of LIV golfers by the PGA Tour essentially eliminated playing opportunities and earning potential by no longer allowing them to participate in PGA Tour events. There are arguments that a player's legacy, reputation, and ability to attract sponsors are also being harmed.

Conversely, the LIV Golf Tour golfers claim that they are being harmed by the PGA Tour's decision to suspend them can be questioned. Professional golfers can choose which tour to commit their services. The LIV golfers made a choice to join this tour in which there is ample potential to make more money while playing less golf. In the one judicial ruling on the three LIV Tour golfers who sought injunctive relief to play in the PGA Tour's FedEx Cup Playoffs, Judge Beth Labson Freeman commented that LIV golfers have the opportunity to play elite golf in the United States with guaranteed pay.¹⁸⁴

183. Radnofsky & Beaton, *supra* note 5.

184. Order, *supra* note 177, at 10.

The LIV Golf Tour claims that its business is being harmed by the PGA Tour's actions. LIV Golf alleges that the PGA Tour pressured media networks, sponsors, and other golf organizations, notably the DP World Tour and the Official World Golf Rankings, to deprive it of critical business partnerships. The LIV Golf Tour, however, insinuated that a government investigation and an antitrust lawsuit were probable with a letter to golfers and their agents sent before the first LIV tournament was played or the PGA Tour implemented its changes.¹⁸⁵ The position of the LIV Golf Tour would indicate that any action taken by the PGA Tour was going to be rendered anticompetitive. Any new professional sports league can, thus, deem that the established league has a monopoly and is acting to prevent the existence of a competitor.

The business decisions of the LIV Golf Tour can be brought into the analysis on the question of harm. The *USFL v. NFL* case can be illustrative on the claims of the LIV Golf business being harmed by not being able to attract media partners and sponsors. The jury ruled there were decisions made by the USFL that caused its business challenges. The LIV Golf Tour being funded by the government of Saudi Arabia could become relevant as harm is debated.

There was repeated rhetoric coming from Jay Monahan that highlighted that the LIV Golf Tour was funded by Saudi Arabia. The PGA Tour could argue that it is that relationship that is preventing the LIV Golf Tour from acquiring media and sponsorship business partners. As evidence of this point, some sponsors that terminated their partnerships with golfers who joined LIV Golf referenced that tour's association with the government of Saudi Arabia. Other sponsors did mention their relationship with the PGA Tour as a reason for their canceling a sponsorship with a LIV Golf Tour player. The sponsors and media organizations have a right to make decisions that align with their values and business objectives. The PGA Tour may also point out that it cannot coexist with LIV Golf as it too would then have an association with a controversial entity.

One potential outcome could be a ruling that is similar to the USFL case. A jury finds that the PGA Tour is trying to monopolize professional golf but finds that it is the decisions made by the LIV Golf Tour, particularly its relationship with Saudi Arabia, that is leading to whatever business challenges it is facing. This ruling may produce a verdict in favor of the LIV Golf Tour and its golfers, but with minimal damages provided. One notable difference between LIV Golf and the USFL is that the USFL immediately folded and the players were allowed to return to the NFL. LIV Golf can survive because of its deep-pocketed funding source.

185. Radnofsky & Beaton, *supra* note 5.

Another outcome would be a ruling that the PGA Tour's actions are monopolistic and caused harm to the LIV Golf Tour to the extent that requires a legal remedy. A jury could award the LIV Golf Tour and its golfers significant damages. This outcome might not alter the current professional golf environment. What could the court force the PGA to do in terms of altering its policies? Could the court compel the PGA Tour to lift its suspension and permit golfers to play in its events? It seems that the competitive marketplace for professional golfers will be in their choice of which golf tour they join. The court could be comfortable that the choice to shop their talents on the open market exists, but there are restrictions that result from that choice.