

Update Alert on Mickelson v. PGA Tour, Inc.

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On August 16, 2022, we prepared an alert discussing *Mickelson v. PGA Tour, Inc.* and the claims made by suspended PGA Tour players (“Player Plaintiffs”) against PGA Tour, Inc. (“Tour.”) Quite a bit has transpired in the past three weeks both in and out of the courtroom. This alert highlights new developments that stem from an amended complaint that was filed in the US District Court, Northern District of California on August 26, 2022 (the “Amended Complaint.”)

The Amended Complaint can be found [here](#) and the original alert can be found [here](#).

The Amended Complaint removes several Player-Plaintiffs listed as plaintiffs in the [original complaint](#). Originally, the Player Plaintiffs were comprised of the following eleven golfers: Abraham Ancer, Bryson DeChambeau, Taylor Gooch, Matt Jones, Jason Kokrak, Phil Mickelson, Carlos Ortiz, Pat Perez, Ian Poulter, Hudson Swafford, and Peter Uihlein. Per the Amended Complaint, four of the original Plaintiff Players have been removed as plaintiffs, namely: Abraham Ancer, Jason Kokrak, Carlos Ortiz, and Pat Perez.^[1] As a result, only seven of the eleven original Player Plaintiffs remain as Player Plaintiffs.

Perhaps the most significant development in the case is that LIV Golf has been added as a Plaintiff in the Amended Complaint. The Amended Complaint generally reiterates allegations made by the Player Plaintiffs (together with LIV Golf, collectively, the “Plaintiffs”) in the original complaint and incorporates LIV Golf’s alleged harm, mainly, that the Tour’s efforts made to prevent LIV Golf’s entry into the elite professional golf market forced LIV Golf to delay and restructure its 2022 launch plans and required LIV Golf “to pay excessively higher guaranteed payments to recruit a number of marquee players than would be required in a competitive market.”

Three more claims were added to the Amended Complaint, for a total of eight claims brought by the Plaintiffs. The first new claim alleges that Tour has violated Section 2 of the Sherman Antitrust Act by monopolizing the market for promotion of elite professional golf events (which is in addition to the

Section 2 claim in the original complaint that alleges that the Tour maintains a monopoly on elite event services.) In addition to the now three antitrust claims brought in the Amended Complaint, LIV Golf also brought separate tortious interference claims of contractual relationships and prospective business relationships. The antitrust claims and the tortious interference claims are based on the premise that the Tour's exclusionary actions: (i) prevent competition for the promotion of golf entertainment among stakeholders, such as broadcasters, players (via the Media Rights Regulation), vendors, sponsors, advertisers, partners, and agencies, and (ii) interfere with LIV Golf's ability to negotiate and enter into contracts with those stakeholders.

Key Observations

Although more than one-third of the original Player Plaintiffs have withdrawn from *Mickelson v. PGA Tour, Inc.*, the addition of LIV Golf as a plaintiff elevates the lawsuit because it brings the very public rivalry between the Tour and LIV Golf to the courtroom. The circumstances surrounding the case are also rapidly evolving. Since the order denying Player Plaintiffs Talor Gooch, Hudson Swafford, and Matt Jones's motion for [temporary restraining order](#) ("TRO") issued on August 9, 2022, six Tour members (most notably world number 2 Cameron Smith) have joined LIV Golf, which amounts to [nearly half of the major winners since 2016](#) and [26 of the world's top 100 golfers](#) that have now signed with LIV Golf. In addition, the Tour [announced](#) various rule changes for the 2023 PGA Tour season, including increased purse winnings, bonus pools, and elevated events. It remains to be seen whether these circumstances will materially alter the arguments made throughout the TRO proceedings.

The tentative date to hear dispositive motions (such as summary judgment) has been scheduled for July 23, 2023, and the jury trial date is expected to begin on January 8, 2024.

FOOTNOTES

^[1] Pat Perez was the only player who directly provided the reason for his withdrawal: "I didn't really think it through... I did it to back our guys," he [reportedly](#) said. He also said that he does not have "ill will" towards the Tour and emphasized his content of playing for LIV Golf.

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