

PGA TOUR’S ANTI-TRUST ISSUES
COME TO A HEAD IN THE LIV GOLF CONTROVERSY

*Luke Haber, J.D.**

Abstract

Professional sports leagues have seen competitor leagues arise in the past—the WHL and the NHL; the AFL and the NFL; the ABA and the NBA; and now, LIV Golf and the PGA Tour. The professional golf landscape hopes the current divide will be solved by a merger between the PGA Tour and LIV Golf, however the PGA Tour faces unique challenges. The Tour currently classifies its players as independent contractors but retain a high degree of control over the players’ media rights and ability to play in professional golf events outside of the Tour. Additionally, critics have pointed to the Tour’s domination of the Official World Golf Rankings and reciprocity with certain professional golf leagues as a reason to investigate the Tour for monopolistic behavior. This Note discusses the underlying antitrust and labor law issues the PGA Tour has been battling for decades and forecasts the effect of the potential merger between the PGA Tour and LIV Golf.

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INTRODUCTION

The only constant in life is change. Communities change, businesses change, and laws change. Even traditionally conservative sports leagues, such as the PGA Tour, are starting to consider major changes to their business structure and labor model.¹ This change in direction for the PGA Tour comes after decades of battling antitrust and labor law issues.² The tipping point was the emergence of LIV Golf, a Saudi-funded professional golf league.³ This Note analyzes the antitrust issues that have been bubbling up against the PGA Tour for years and contends that the PGA Tour’s issues will not disappear even after the pending merger with LIV Golf is complete.

Further, this Note will analyze LIV Golf’s withdrawn lawsuit against the PGA Tour to explore a larger framework of issues with labor and anticompetitive practices in the professional sports community. Part I will provide historical context to help understand the rising tension the PGA Tour has experienced with antitrust and labor law issues. This section will also describe the rise of LIV Golf and the now-dismissed lawsuit brought by LIV golfers against the PGA Tour. Part II will assess the current structure of the law as well as the current structure of the PGA Tour, and will provide an overview of the legal framework for antitrust

1. Frank Pingue, *PGA Tour and LIV Announce Shock Merger to End Bitter Split*, REUTERS, <https://www.reuters.com/sports/golf/pga-tour-european-tour-liv-golf-announce-merger-2023-06-06/> (June 7, 2023, 2:16 AM) [<https://perma.cc/QJL4-K2FL>].

2. Ryan M. Rodenberg, *Toscana v. PGA Tour: Par for the Course of an Antitrust Mulligan*, 3 TEX. REV. OF ENT. & SPORTS L. 73, 73–83 (2002); Scott J. Champagne, *Hicks v. PGA Tour: An Examination of Caddies’ Rights and Human Billboards in Sports*, 23 SPORTS LAWYERS J. 185, 186 (2016); Richard R. Edmonds, *Facing a New Rival, a Federal Anti-Trust Probe, and Potential Troubles with the IRS, Florida’s Proud PGA Tour May Reluctantly Relax its Grip on Professional Golf*, 17 FLA. TREND 48, 48 (1995).

3. Jesus Jiménez, *PGA Tour Accuses LIV Golf of Interfering With Its Contract*, N.Y. TIMES (Sept. 29, 2022), https://www.nytimes.com/2022/09/29/sports/golf/pga-tour-liv-countersuit.html?auth=forgot-password&referring_pv_id=FYSeMrfDeMBIcJBNsNLCrdAM [<https://perma.cc/6XNW-26TQ>].

law. Part III will forecast the U.S. Justice Departments' review of the future PGA Tour–LIV Golf merger and evaluate whether there are any viable options for the PGA Tour to reconcile this escalating labor dispute.

I. BACKGROUND

A. *Introduction to the PGA Tour v. LIV Golf Dispute*

The antitrust lawsuit brought against the PGA Tour in mid-2022 revolves around two policies in the PGA Tour's handbook, the Media Rights and Conflicting Events policies.⁴ The original lawsuit, filed against the Tour on August 3, 2022, was brought by eleven LIV Golf players (including Phil Mickelson, Bryson DeChambeau, and Abraham Ancer) who were suspended by the Tour for breaching the policies contained in their player membership agreement.⁵ While only three of the eleven golfers remained in the suit,⁶ LIV Golf, backed by Saudi Arabia's Private Investment Fund,⁷ showed its intention to pursue the antitrust challenge of the Tour's policies as it relates to media rights and restraining its independent contractor players from working with other professional golf leagues.⁸

Nearly one year after the initial complaint was filed, LIV Golf and the PGA Tour moved to dismiss the antitrust lawsuit and countersuits.⁹ The shocking announcement also included plans for the Public Investment Fund of Saudi Arabia, the PGA Tour, and the European Tour to become partners in a new for-profit golf league.¹⁰ The new for-profit enterprise would mark a dramatic departure from the PGA Tour's traditional business model as a 501(c) organization, discussed in Section II.

4. Compl. para. 1–8, *Mickelson v. PGA Tour, Inc.*, No. 22-CV-04486-BLF, 2022 WL 3229341, (N.D. Cal. Aug. 10, 2022), <https://www.cand.uscourts.gov/wp-content/uploads/2022/08/PGA-complaint.pdf> [<https://perma.cc/G8KD-Y9KV>].

5. Golf Channel Digital, *LIV Golf Players vs. PGA Tour: Timeline of Legal Proceedings and Full Court Documents*, NBC GOLF (Aug. 18, 2022, 6:34 PM), <https://www.golfchannel.com/news/liv-golf-players-vs-pga-tour-timeline-legal-proceedings-and-full-court-documents> [<https://perma.cc/5KR8-UTXW>].

6. Doug Ferguson, *LIV Golf Gets Another Setback in Court Fight with PGA Tour*, AP NEWS (Feb. 22, 2023, 2:12 PM), <https://apnews.com/article/sports-legal-proceedings-saudi-arabia-lawsuits-044fc8c7a88e8b9150fbaa3a22c9636> [<https://perma.cc/Y6GC-YXJY>].

7. Jessica Golden & Dominic Chu, *Saudi-backed LIV Golf Envisions Franchises in its Future*, CNBC (July 29, 2022, 10:35 AM), <https://www.cnbc.com/2022/07/29/liv-golf-backed-by-saudis-and-trump-sees-franchises-in-its-future-exec-says.html> [<https://perma.cc/54DM-4DT9>].

8. Compl. para. 8–11, *Mickelson v. PGA Tour, Inc.*, *supra* note 4.

9. Doug Ferguson, *Saudi-Backed LIV Golf, PGA Tour File Joint Motion to Dismiss Lawsuits*, ASSOCIATED PRESS (June 16, 2023, 10:06 PM), <https://apnews.com/article/liv-lawsuits-pga-tour-dismissal-saudi-arabia-fab5777b05c9cbc69eb38c0ab1bdf34a> [<https://perma.cc/ZRS8-365Q>].

10. *Id.*

Two of the most contested policies in the PGA Tour Handbook are the Conflicting Events Policy and the Media and Marketing Rights Policy,¹¹ and these policies are specifically named in Counts I and II of LIV Golf's complaint against the Tour.¹² The Conflicting Events Policy lists the members' obligations to the Tour and then lists the restrictions on the Conflicting Event Release terms.¹³ According to this policy, the Commissioner has the ultimate discretion to allow players conditional releases; however, players are prohibited from even applying for releases to compete in several types of events.¹⁴

The Media and Marketing Rights Policy mandates that PGA Tour members/players must not grant any of their Name, Image, or Likeness rights to any entity in competition with the Tour or inconsistent with the Tour's existing sponsors, and it forbids players from the use of any PGA Tour imagery.¹⁵ This policy has also been used by the Tour to recoup licensing and royalty fees from PGA Tour players looking to compete in events not run by the PGA Tour, or one of their approved affiliates.¹⁶ While these types of Conflicting Events policies and the Media and Marketing Rights policies are not uncommon among other major professional sports leagues, PGA Tour athletes are uniquely situated as independent contractors, rather than as employees for a team.¹⁷ The Tour would contend that any revenue from broadcast and other media deals are pooled for the benefit of the 501(c)(6) organization and shared with the players at a similar split to other major sports leagues.¹⁸ Golf is in a unique position because there are no owners who get a share of the revenue "for-profit."¹⁹ However, the Tour's model creates a great deal of

11. PGA TOUR, PGA TOUR PLAY HANDBOOK & TOURNAMENT REGULATIONS 2022–2023, 135–38 (Dec. 2022), <https://qualifying.pgatourhq.com/static-assets/uploads/2022-2023-PGA-TOUR-HBAndRegs-DEC%202022.pdf> [<https://perma.cc/F778-M57U>].

12. Compl. para. 300, 307, Mickelson v. PGA Tour, Inc., *supra* note 4.

13. *Id.* para. 92–95; PGA TOUR PLAY HANDBOOK & TOURNAMENT REGULATIONS 2022–2023, *supra* note 11, at 135–38.

14. Compl. para. 92–95, Mickelson v. PGA Tour, Inc., *supra* note 4; PGA TOUR PLAY HANDBOOK & TOURNAMENT REGULATIONS 2022–2023, *supra* note 11, at 136.

15. Compl. para. 92–95, Mickelson v. PGA Tour, Inc., *supra* note 4; PGA TOUR PLAY HANDBOOK & TOURNAMENT REGULATIONS 2022–2023, *supra* note 11, at 138–39.

16. *See* Compl. para. 92–95, Mickelson v. PGA Tour, Inc., *supra* note 4; *see also* PGA TOUR, PGA TOUR PLAYER ENDORSEMENT POLICY, <https://qualifying.pgatourhq.com/static-assets/uploads/player-endorsement-policy--2-26-final.pdf> [<https://perma.cc/B9A2-LAAK>].

17. Joel Beall, *What Phil Gets Wrong About the PGA Tour's Media Rights*, GOLF DIG. (Feb. 19, 2022), <https://www.golfdigest.com/story/phil-media-rights-pga-tour> [<https://perma.cc/6T9L-8PKG>].

18. *Id.*

19. *Id.* (“[A]bout 55 percent of revenue [goes] back to the players in prize money, bonus programs and other benefits.”).

overhead/operating costs associated with setting up a tournament in a new city week after week.²⁰

B. *Origins of Sports Anti-Trust Law*

1. Sherman Act Threshold Issues

Chapter 15 of the United States Code, Sections 1–7 (The Sherman Act) covers alleged antitrust violations dealing with commercial restraints.²¹

Section 1 of the Sherman Act²² requires a plaintiff to prove (1) a contract, combination, or conspiracy among two distinct business entities that (2) unreasonably restrains trade, and (3) causes plaintiff an antitrust injury.²³ There are two frameworks for a Section 1 analysis, “per se illegality” and the “quick look” test.²⁴ Per se illegality arises where a “practice facially appear[s] to . . . almost always tend to restrict competition and decrease output.”²⁵ In other words, there is no reasonable justification for the behavior, other than to reduce competition. By contrast, the “quick look” test provides another route for plaintiffs; if a plaintiff proves an agreement has a “substantial adverse effect on competition,” the burden then shifts to the defense to prove a procompetitive justification for the challenged rule.²⁶

Because Section 1 requires collusion between two distinct entities, a business or league set up under one umbrella may be considered a “single entity” if the business is truly economically dependent and the business operations are sufficiently integrated.²⁷ In that case, the organization would be a single entity, incapable of conspiring with itself.²⁸ Today, the Single Entity doctrine comes up in only a handful of situations, primarily in Major League Soccer (MLS) and Ultimate Fighting Championship (UFC).²⁹ However, the PGA is not able to claim this exception due to its

20. Jared Doerfler, *The \$153 Million Question: Breaking Down the PGA Tour's Response to LIV*, GOLF DIG. (Jan. 18, 2023), <https://www.golfdigest.com/story/breaking-down-pga-tour-response-liv-golf-153-million-dollar-question#> [<https://perma.cc/KY5W-Y9R4>].

21. 15 U.S.C. §§ 1–38.

22. 15 U.S.C. § 1 (2023).

23. *See Texaco Inc. v. Dagher*, 547 U.S. 1, 5 (2006); *Major League Baseball Props., Inc. v. Salvino, Inc.*, 542 F.3d 290, 315 (2d Cir. 2008).

24. AM. BAR ASS'N, *SPORTS AND ANTITRUST LAW* 37–39 (2014).

25. *Broadcast Music, Inc. v. Columbia Broad. Sys.*, 441 U.S. 1, 19–20 (1979).

26. *Law v. Nat'l Collegiate Athletic Ass'n*, 134 F.3d 1010, 1017 (10th Cir. 1998).

27. AM. BAR ASS'N, *SPORTS AND ANTITRUST LAW* 32 (2014).

28. *See Copperweld Corp. v. Independence Tube Corp.*, 467 U.S. 752, 777 (1984).

29. AM. BAR ASS'N, *SPORTS AND ANTITRUST LAW* 32 (2014); *see generally* Daniel S. MacMillan, *Is MLS Inherently Anticompetitive? The Strange Single-Entity Structure of Major League Soccer in Order to Legitimize American Professional Soccer*, 28 MARQ. SPORTS L. REV. 503 (2018).

unique business structure, further explored in sub-section B of this section.

Proving a violation of Section 2 of the Sherman Act³⁰ requires the plaintiff to prove two elements: (1) “the possession of monopoly power in the market,” and (2) “the willful acquisition or maintenance of that power as distinguished from growth or development as a consequence of a superior product, business acumen, or historic accident.”³¹ In addition, a plaintiff must prove harm to competition, antitrust injury, and causation to prevail.³² Few, if any, sports antitrust cases have successfully pursued a Section 2 violation.³³

In LIV Golf’s withdrawn lawsuit against the PGA Tour, Count I of LIV Golf’s withdrawn lawsuit alleges that the PGA Tour used unlawful, anticompetitive conduct to maintain monopsony power over the professional golf market in violation of Section 2 of the Sherman Act;³⁴ and Count II alleges that the Tour has implemented unlawful restraints of trade in violation of Section 1 of the Sherman Act.³⁵

2. Non-statutory Labor Exemption

The source of most litigation arising in the sport’s antitrust sphere, including the PGA Tour–LIV Golf lawsuit,³⁶ is the non-statutory labor exemption as articulated in *Brown v. Pro Football, Inc.*³⁷ The non-statutory labor exemption brings certain labor law issues outside the purview of antitrust legislation, with the intent that such labor law issues should be settled by collective bargaining, market/economic pressure, and NLRB expertise, before courts step in to consider antitrust violations.³⁸ The scope of this exemption has been hotly contested.³⁹ For example, in *Philadelphia World Hockey Club, Inc. v. Philadelphia Hockey Club, Inc.*,⁴⁰ the court held that a reserve clause in National Hockey League (NHL) contracts, granting a team unilateral rights to sign players with expiring contracts to extensions, violated Section 2 of the Sherman Act.⁴¹ The court found that the non-statutory labor exemption

30. 15 U.S.C. § 2 (2023).

31. *United States v. Grinnell Corp.*, 384 U.S. 563, 570–71 (1966).

32. AM. BAR ASS’N, SPORTS AND ANTITRUST LAW 46 (2014).

33. *Id.*

34. Compl. para. 92, *Mickelson v. PGA Tour, Inc.*, *supra* note 4.

35. *Id.* at 94.

36. AM. BAR ASS’N, SPORTS AND ANTITRUST LAW 6 (2014).

37. *Brown v. Pro Football, Inc.*, 518 U.S. 231, 236 (1996) (“prevent[ing] judicial use of antitrust law to resolve labor disputes”).

38. AM. BAR ASS’N, SPORTS AND ANTITRUST LAW 6 (2014).

39. *Id.*

40. *Phila. World Hockey Club, Inc. v. Phila. Hockey Club, Inc.*, 351 F. Supp. 462, 499 (E.D. Pa. 1972).

41. *Id.* at 499–500.

did not shield the contested clause from being litigated in this case because the clause was not the product of collective bargaining between the Players' Association and the NHL.⁴² The court further noted that, had this clause been included in the NHL's Collective Bargaining Agreement, the NHL still would not be able to use this clause to defend itself if a competitor tried to obtain the services of players "under the control of the NHL."⁴³

The Eighth Circuit has proposed a three-prong test to analyze when the non-statutory labor exemption would apply: (1) the challenged clause must "primarily affect[] only the parties to the collective bargaining relationship"; (2) it must be "a mandatory subject of collective bargaining"; and (3) it must be "the product of bona fide arm's-length bargaining."⁴⁴ Courts have since expanded the scope of the non-statutory exemption through *Powell v. National Football League*,⁴⁵ and again through *National Basketball Association v. Williams*,⁴⁶ to allow the exemption to cover clauses in collective bargaining agreements that have expired, or when an impasse in negotiation prevented the full ratification of a clause.⁴⁷

The Supreme Court underscored the strength of this exemption in *Brown v. Pro Football, Inc.*, by stating "antitrust law often forbids or discourages the kind of joint discussions and behavior that the collective-bargaining process invites or requires."⁴⁸ In other words, courts respect the private ordering of parties to set boundaries for payment (and other broadly applying contract terms) as long as procedures are in place to ensure that each side is properly represented, and bargaining power is not abused to enforce unfavorable working conditions. Accordingly, the Court found that the non-statutory labor exemption protected the NFL, even though the parties had reached an impasse in the bargaining stage.⁴⁹

The Second Circuit has even applied the non-statutory labor exemption in a case where a college football player, who was not represented by either the NFL or the National Football League Player's Association (NFLPA) during collective bargaining, tried to challenge a draft eligibility rule.⁵⁰ The court reasoned that the "reach" of labor law policies "extends as far as is necessary to ensure the successful operation of the collective bargaining process."⁵¹ Collectively bargained rules

42. *Id.*

43. *Id.* at 499.

44. *Mackey v. NFL*, 543 F.2d 606, 614–16 (8th Cir. 1976).

45. *Powell v. NFL*, 930 F.2d 1293, 1304 (8th Cir. 1989).

46. *NBA v. Williams*, 45 F.3d 684, 693 (2d Cir. 1995).

47. AM. BAR ASS'N, SPORTS AND ANTITRUST LAW 9 (2014).

48. *Brown v. Pro Football, Inc.*, 518 U.S. 231, 242 (1996).

49. *Id.* at 235–36.

50. *Clarett v. NFL*, 369 F.3d 124, 126–29 (2d Cir. 2004).

51. *Id.* at 142–43.

governing on-field competition are not subject to antitrust intervention by courts as long as there are procompetitive justifications for the restraint.⁵² Courts are more likely to intervene if league rules are overbroad or if players/challengers to the restraint are not afforded due process.⁵³

Any argument that the PGA Tour should benefit from the non-statutory labor exemption would be tenuous based on the Tour's structure. There is no traditional union or players' association that engages in collective bargaining with the PGA Tour's Commissioner.⁵⁴ Instead, the professional golfers on the Tour are treated as independent contractors.⁵⁵ The players must abide by the Player Handbook—which is put together by the Tour's Policy Board to further the goals of the 501© organization—to be eligible to compete in Tour events.⁵⁶ The golfers on the Tour are represented on the Policy Board, which may give the Tour an avenue to claim the non-statutory labor exemption; however, it is unlikely that this would be the Tour's only rebuttal. The Tour's governing body and business structure is further analyzed in Section II. Ultimately, it may be time for major shake-ups to take place within the Tour's governing body to address these labor and antitrust issues that have existed for decades.

C. Overview of the PGA Tour's Unique Business Structure

1. Comparing the Tour's Policy Board to Major Sports Leagues

Most professional sports leagues in the U.S. are structured to have the league office separate from the players' union/association.⁵⁷ League

52. See *NCAA v. Bd. of Regents of Univ. of Okla.*, 468 U.S. 85, 101 (1984).

53. AM. BAR ASS'N, *SPORTS AND ANTITRUST LAW* 29 (2014).

54. Tim Schmitt, *Could LIV Golf's Threat Have Been Averted by a Union? Former PGA Champion Mark Brooks Thinks So*, GOLF WEEK (Mar. 16, 2023, 1:00 PM), <https://golfweek.usatoday.com/2023/03/16/liv-golf-pga-tour-1996-pga-champion-mark-brooks-union/> [https://perma.cc/FN87-UYFZ].

55. Rex Hoggard, *It May be Time for PGA Tour Players to Unionize*, GOLF DIG. (July 10, 2013, 5:30 PM), <https://www.nbcsports.com/golf/news/article-rex-hoggard-it-may-be-time-pga-tour-players-unionize> [https://perma.cc/BX4P-S9SB].

56. *Board of Directors*, PGA TOUR, <https://www.pgatour.com/company/board-of-directors> [https://perma.cc/WS63-JZAN]; see also Ike Brannon, *How Long Will the PGA Handicap Its Golfers?*, FORBES (Feb. 2, 2022, 10:59 AM), <https://www.forbes.com/sites/ikebrannon/2022/02/02/how-long-will-the-pga-handicap-its-golfers/?sh=6c958dca784c> [https://perma.cc/35L8-HT6U]; Ricky Clemons, *Commentary: The Brewing Battle Between Pro Golfers and the PGA Tour*, CAL. BUS. J., <https://calbizjournal.com/commentary-the-brewing-battle-between-pro-golfers-and-the-pga-tour/> [https://perma.cc/B98J-BJ8D].

57. Roger G. Noll, *The Organization of Sports Leagues* at 22–31, STANFORD INST. FOR ECON. POL'Y RSCH., <https://siepr.stanford.edu/publications/working-paper/organization-sports-leagues> [https://perma.cc/8ELA-H4NR]. See also Ed Garvey, *Foreword* to Ethan Lock, *The Scope of the Labor Exemption in Professional Sports*, 1989 DUKE L.J. 339 (1989); Ryan T. Dryer, *Beyond the Box Score: A Look at Collective Bargaining Agreements in Professional Sports and Their Effect on Competition*, 2008 J. DISP. RESOL. 267 (2008).

office duties include organizing media and broadcasting rights, overseeing salary cap/floor restrictions, approving trades, controlling officiating, providing medical oversight, and creating league schedules.⁵⁸ The Players' Association for all four U.S. major professional sports leagues retain licensing rights for player names, images, and likenesses (NIL).⁵⁹ Players assign group licensing rights to unions with limited opportunities to opt out; players retain individual sponsorship rights.⁶⁰ Thus, individual team/club owners are left to decide personnel decisions (players, coaches, and staff), arena logistics (ownership and contracting), local radio/tv deals, ticket sales, and certain naming rights.⁶¹

Typically, a league office is headed by a commissioner (selected by a Board of Governors), whose main job functions are to protect the integrity of the league, maximize the league's business interests, and engage in dispute resolution/disciplinary matters.⁶² The Commissioner, on behalf of the team owners and league office, also negotiates a Collective Bargaining Agreement (CBA) with the players' association. Items frequently addressed in CBAs include the salary cap, drug testing, standard player contracts, dispute resolution, anti-collusion/integrity rules, playoff formatting, and draft rules.⁶³

58. See, e.g., *League Positions*, NHL, <https://www.nhl.com/info/join-the-team> [<https://perma.cc/P28F-MAHR>]; *About Us*, NBA, <https://careers.nba.com/about-us/#:~:text=While%20Basketball%20Operations%20runs%20the,a%20wide%20range%20of%20responsibilities> [<https://perma.cc/58RR-9LAA>]; *The NFL Ops Team*, NFL, <https://operations.nfl.com/inside-football-ops/nfl-operations/the-nfl-ops-team/> [<https://perma.cc/D5XU-ZWPJ>].

59. Tobias Duschl, *The Organization of Professional Sports Leagues: A Comparison of European and North-American Leagues From the Perspective of Platform Organization* at 123, HAMBURG INST. OF INT'L ECON., <https://www.econstor.eu/bitstream/10419/61468/1/722153465.pdf> [<https://perma.cc/L57G-EUFD>]; Mackenzie L. Dimitri, *Athletes, Not Courts, Should be the Ones to Control NIL Rights*, EINBINDER & DUNN LLP (Dec. 5, 2023), <https://ed-lawfirm.com/news-events/athletes-not-courts-should-be-the-ones-to-control-nil-rights/#:~:text=In%20each%20of%20the%20four,%2C%20video%20games%2C%20and%20jerseys> [<https://perma.cc/2HYR-EXLR>].

60. David E. Schwartz et al., *Sports Law in the USA*, LEXOLOGY (Mar. 21, 2019), <https://www.lexology.com/library/detail.aspx?g=27995df4-a1da-4b5c-bb5d-682e792471f4#:~:text=For%20example%2C%20in%20player%20agreements,players'%20agreements%20and%20endorsement%20contracts> [<https://perma.cc/NEE7-CB3Y>].

61. See, e.g., Darnold L. Williams, *Managing the Game: Understanding Front Office Roles in Basketball*, CHI. BASKETBALL ACAD. (Mar. 21, 2023), <https://www.cbaworldacademy.com/blog/managing-the-game-understanding-front-office-roles-in-basketball#:~:text=The%20front%20office%20staff%20members,%2C%20team%2C%20and%20position%20held> [<https://perma.cc/7FAE-HETP>]; *What are the Top 10 Front Offices in MLB? Here's How 40 Executives Voted*, THE ATHLETIC (Apr. 24, 2024), <https://theathletic.com/5424700/2024/04/24/mlb-front-office-rankings/> [<https://perma.cc/8EPE-U4VF>]; *Front Office*, CHI. BLACKHAWKS, <https://www.nhl.com/blackhawks/team/front-office/> [<https://perma.cc/V58U-K4LA>].

62. Gregor Lentze, *The Legal Concept of Professional Sports Leagues: The Commissioner and an Alternative Approach from a Corporate Perspective*, 6 MARQ. SPORTS L.J. 65, 68 (1995).

63. *Id.* at 74.

The PGA Tour does not have the standard structure of a professional sports league. The PGA Tour formed in 1968, after the golfers in the “Tournament Players Division” split from the Professional Golfers Association of America.⁶⁴ The Tour was set up as a 501(c)(6) tax exempt organization, which is an association of professionals in the same industry.⁶⁵ The Tour’s business structure differs from most other sports leagues in the U.S. in that the players are considered independent contractors.⁶⁶ As a result, the players do not have a separate union/association that engages with collective bargaining on their behalf against the Tour.⁶⁷

Instead, the players are represented by the Tour’s governing body—the Policy Board—and must sign membership agreements to obtain Tour membership.⁶⁸ As part of the membership agreement and PGA Tour Player Handbook, the players assign certain media rights to the Tour, which aggregates the players’ rights to shop on the marketplace for the benefit of receiving a tax exempt status as a 501(c)(6).⁶⁹ While players are not bound by contractual terms on the Tour, they cannot keep their membership status on the Tour and simultaneously compete for an organization outside of the Tour because doing so would violate the common goal the Tour was organized for.⁷⁰ Players retain media rights for wholly-instructional golf videos and advertising rights for their NIL.⁷¹

The PGA’s Policy Board determines policies and regulations of the Tour.⁷² The Board is currently comprised of five independent directors—who have shown an interest in the game of golf; fiduciaries of the players and Tour—six player-directors who serve staggered terms, and the President of PGA of America.⁷³ In addition, the players are

64. *PGA Tour History*, PGA TOUR MEDIA GUIDE, <https://www.pgatour.com/americas/players/brief-history> [<https://perma.cc/3DMD-Q5NM>].

65. *Id.*

66. Brannon, *supra* note 56.

67. *Board of Directors*, *supra* note 56.

68. PGA TOUR PLAY HANDBOOK & TOURNAMENT REGULATIONS 2022–2023, *supra* note 11, at 156.

69. PGA TOUR PLAY HANDBOOK & TOURNAMENT REGULATIONS 2022–2023, *supra* note 11, at 138–39.

70. Brannon, *supra* note 56.

71. PGA TOUR PLAY HANDBOOK & TOURNAMENT REGULATIONS 2022–2023, *supra* note 11, at 138–39.

72. Tim Rosaforte, *What’s Behind the Policy Board?*, GOLF DIG. (Jan. 28, 2008), <https://www.golfdigest.com/story/gw20080201rosaforte> [<https://perma.cc/DMZ2-PLSA>].

73. *What is the PGA Tour Player Advisory Council and Who Is On It?*, BUNKERED (Jan. 29, 2024), <https://www.bunkered.co.uk/golf-news/what-is-the-pga-tour-player-advisory-council-and-who-is-on-it/> [<https://perma.cc/EN8N-JB4R>]; *Adam Scott Voted PGA Tour Player Advisory Council Chairman*, GOLF INDUS. CENT. (Feb. 15, 2023), <https://www.golfindustrycentral.com.au/golf-industry-news/adam-scott-voted-pga-tour-player-advisory-council-chairman/> [<https://perma.cc/TCB3-Q25W>].

represented by the Player Advisory Committee, who they themselves elect.⁷⁴

Thus, the PGA Tour functions how both a Players' Association and League Office would. The Tour contracts the broadcasting rights for the benefit of all members; local tournaments cannot sell broadcasting rights.⁷⁵ This has led the Tour to be criticized for its “players earn what they kill” stance.⁷⁶ Golfers on Tour pay out-of-pocket for their travel, training, staff, and most other expenses associated with performing on the Tour.⁷⁷ Just recently, the Tour implemented an Earnings Assurance Program, under which all fully exempt members (Korn Ferry Tour category and above) are guaranteed a \$500,000 league minimum.⁷⁸ In addition, the Tour implemented a policy to allow non-exempt members (126–150 category and below) to have access to a new Travel Stipend Program, providing \$5,000 for every missed cut to play on the Tour's tournaments, which assists with travel costs and other tournament-related expenses.⁷⁹

2. Relationship with PGAA, European Tour, R&A, Sponsors, Etc.

Of the forty-six tournaments put on by the PGA Tour throughout 2021–2022, the Tour fully owned and operated only twelve tournaments.⁸⁰ For the remaining thirty-four tournaments, the Tour partnered with different professional golf organizations, including the USGA (which operates the U.S. Open),⁸¹ the R&A (which operates the British Open/Open Championship),⁸² the PGA of America (which

74. *Id.*

75. PGA TOUR, PGA TOUR PLAY HANDBOOK & TOURNAMENT REGULATIONS 2022–2023, *supra* note 11, at 138–39.

76. Clemons, *supra* note 56.

77. Brannon, *supra* note 56.

78. PGA TOUR PLAY HANDBOOK & TOURNAMENT REGULATIONS 2022–2023, *supra* note 11, at 138–39.

79. *Id.*

80. *Id.*; see also *PGA Tour Releases Full Schedule for 2021-22 Season*, PGA TOUR, <https://www.pgatour.com/article/news/latest/2021/08/03/pgatour-full-schedule-2021-22-season> [https://perma.cc/R9VG-ANMH].

81. Greg Gottfried, *U.S. Open 2023: Frequently Asked Questions*, GOLF DIG. (June 9, 2023), <https://www.golfdigest.com/story/2018-us-open-frequently-asked-questions> [https://perma.cc/UX87-WSH6].

82. Sam Tremlett, *Who Runs the Open Championship?*, GOLF MONTHLY (July 13, 2021), <https://www.golfmonthly.com/tour/open-championship/who-runs-the-open-championship-238896> [https://perma.cc/P4U9-6UT2].

operates the PGA Championship),⁸³ and many others.⁸⁴ In LIV Golf's now dismissed lawsuit, Count II alleged that the PGA Tour conspired with these entities to impact LIV's chances of success by reducing the talent available on the labor market.⁸⁵ These allegations were partly based on the reciprocity the PGA Tour and European Tour have, which allows players to play events on either circuit, particularly when an event is taking place in the player's home circuit.⁸⁶ LIV Golf originally alleged that its league should be entitled to a similar relationship with both Tours for competitive purposes,⁸⁷ and the PGA Tour countered with allegations that LIV Golf interfered with its players' contracts.⁸⁸

Another allegation asserted by LIV Golf and its athletes in their original complaint is that the PGA Tour tried to dominate the Official World Golf Ranking system by preventing any other competitive organizations from participating in its point system.⁸⁹ The Official World Golf Ranking is significant because many major tournaments, including the Masters, the British Open, and the U.S. Open, grant special exemptions to players who obtain and hold a certain rank for a specified period of time.⁹⁰ This scoring system gives a way to compare players across the European Tour, PGA Tour, and other professional golf leagues for qualification into the most prestigious events.⁹¹

83. Elliott Heath, *Who Runs the PGA Championship?*, GOLF MONTHLY (May 17, 2023), <https://www.golfmonthly.com/pga-championship/who-runs-the-pga-championship-232205> [https://perma.cc/UG9M-FCHY].

84. PGA TOUR PLAY HANDBOOK & TOURNAMENT REGULATIONS 2022–2023, *supra* note 11, at 138–39; *see also* *The Players Championship Increases Purse to \$15 Million; Winner Takes Home \$2.7 Million*, NBC SPORTS (Jan. 25, 2020, 1:00 PM), <https://www.nbcsports.com/golf/news/players-championship-increases-purse-15-million> [https://perma.cc/S43Q-LJRH].

85. Compl. para. 93, *Mickelson v. PGA Tour, Inc.*, *supra* note 4.

86. *Id.* para. 95; PGA TOUR PLAY HANDBOOK & TOURNAMENT REGULATIONS 2022–2023, *supra* note 11, at 4.

87. Compl. para. 95, *Mickelson v. PGA Tour, Inc.*, *supra* note 4; PGA TOUR PLAY HANDBOOK & TOURNAMENT REGULATIONS 2022–2023, *supra* note 11, at 4.

88. Rick Maese, *PGA Tour Files Countersuit Against LIV Golf, Escalating Legal Conflict*, WASH. POST, <https://www.washingtonpost.com/sports/2022/09/29/pga-tour-liv-golf-countersuit/> (Sept. 29, 2022, 2:17 PM) [https://perma.cc/58M6-EKY4].

89. Compl. para. 11(e), *Mickelson v. PGA Tour, Inc.*, *supra* note 4.

90. Jessica Marksbury, *How Do You Qualify for the Masters Field? Here's a List of the Criteria*, GOLF.COM (Apr. 3, 2023), <https://golf.com/news/how-do-you-qualify-for-masters/> [https://perma.cc/UKZ4-6XEJ]; Mike Hall, *How to Qualify for the US Open*, GOLF MONTHLY, <https://www.golfmonthly.com/us-open/how-to-qualify-for-the-us-open-181463> [https://perma.cc/ZQ2A-4Q4Y] (June 12, 2023); Matt Chivers, *How to Qualify for The Open Championship*, NAT'L CLUB GOLFER (June 30, 2023), <https://www.nationalclubgolfer.com/tour/the-open/how-do-you-qualify-for-the-open-championship-2023/> [https://perma.cc/XD9Y-VG5S].

91. Official World Golf Ranking, PGA TOUR, <https://www.pgatour.com/stats/detail/186> [https://perma.cc/2Y7H-7VCL]; *About OWGR*, OFFICIAL WORLD GOLF RANKING, <https://www.owgr.com/about-owgr> [https://perma.cc/C6CN-E29T].

II. THE LIV GOLF LAWSUIT

A. *LIV Golf's Inception and Origin of the Lawsuit Against the PGA*

There have been many startup leagues over the years that have attempted to compete with the traditional juggernaut sports leagues, like the NFL⁹² and the NHL.⁹³ Accordingly, it is not a surprise that the PGA was faced with a competing professional golf league, LIV Golf, after fending off the World Golf Tour in 1994 and the Premier Golf League in 2020.⁹⁴ While LIV Golf's significant financial backing from the Saudi Arabia Public Investment Fund initially sparked public outcry,⁹⁵ some of LIV Golf's harshest critics have softened their stance on the league.⁹⁶ LIV Golf continued to offer hundreds of millions of dollars to current and former PGA golfers to lure them to play on its tour, which had considerably fewer events than the PGA Tour had.⁹⁷ In Mickelson's complaint, he alleged that former PGA Tour golfers including Phil Mickelson, Talor Gooch, Bryson DeChambeau, Ian Poulter, Matt Jones, and Peter Uihlein accepted offers to compete in LIV Golf events and that their PGA membership/eligibility was subsequently cancelled.⁹⁸ These players sued the PGA Tour, alleging that the Tour engaged in anticompetitive behavior by restricting "the independent contractor-players' ability" to compete in competing events (Conflicting Events and Media Rights Rules).⁹⁹ The PGA Tour countersued LIV Golf, claiming tortious interference with the golfers' contracts who switched from PGA to LIV.¹⁰⁰ Although the original suit has been voluntarily dismissed by the parties, the underlying antitrust and labor law issues have not been fully addressed.

92. Chris Bumbaca, *XFL and CFL Will Not Merge; XFL Expected to Return in 2023*, USA TODAY, <https://www.usatoday.com/story/sports/xfl/2021/07/07/xfl-football-league-cfl-news/7888794002/> (July 7, 2021, 1:00 PM) [<https://perma.cc/979H-CZU2>].

93. *The WHA – A Look Back at the Upstart Hockey League* (Jan. 6, 2024), <https://thehockeywriters.com/the-wha-a-look-back-40-years-later/> [<https://perma.cc/NQX8-GNVT>].

94. Compl. paras. 1–8, *Mickelson v. PGA Tour, Inc.*, *supra* note 4.

95. *LIV Golf: Startup Leagues and the Future of Sports*, BERKELEY ECON. REV. (Oct. 19, 2022), <https://econreview.berkeley.edu/liv-golf-startup-leagues-and-the-future-of-sports/> [<https://perma.cc/LA6S-8RRW>]; Shane Ryan, *Rory McIlroy's Evolving Stance on LIV Golf and the PIF: A Comprehensive Timeline*, GOLF DIG. (Feb. 9, 2024), <https://www.golfdigest.com/story/rory-mcilroy-evolution-liv-golf-pif-pga-tour-comprehensive-timeline> [<https://perma.cc/V8SM-92Y2>].

96. Ryan, *supra* note 95.

97. *LIV Golf: Startup Leagues and the Future of Sports*, *supra* note 95.

98. Compl. para. 9–14, *Mickelson v. PGA Tour, Inc.*, *supra* note 4.

99. *Id.* para. 22.

100. Sean Zak, *PGA Tour Countersues LIV Golf: Here's Where the Lawsuit Stands*, GOLF.COM (Sept. 29, 2022), <https://golf.com/news/pga-tour-countersues-liv-golf-where-lawsuit-stands/> [<https://perma.cc/9UUE-QUXD>].

B. Past Case Law and Relevant Statutes

The LIV Golf lawsuit alleged violations of both Section 1 and Section 2 of the Sherman Act.

The U.S. Supreme Court has held that “[t]acit collusion” or “conscious parallelism,” which is the process where competitors set similar policies/rates based on market forces, is not facially unlawful under the per se illegality test of Section 1.¹⁰¹ The Supreme Court reasoned that competitors often have shared economic interests, so there would be reasonable justification for the behavior, other than to reduce competition.¹⁰² As long as there is independence in core business decisions, there would be no per se illegality.¹⁰³

The PGA Tour will likely invoke the decision in *Brooke Group Ltd.* and similar cases to show that its cooperation with the R&A, PGAA, USGA, and other golfing organizations is not per se illegal. As is the case with many antitrust claims, it is difficult to pinpoint a concrete, particularized injury that is causally linked to the Tour’s actions. Before the dismissal of the lawsuit, although it did not appear that the PGA Tour was going to “bend their leg” to permit softer Conflicting Events and Media Rights policies, some majors allowed LIV golfers to be eligible—which may have helped the Tour and their counterparts show that they were not unduly restricting competition.¹⁰⁴

Plaintiffs alleging “monopolization” under Section 2 of the Sherman Act must prove two elements: “(1) the possession of monopoly power in the relevant market and (2) the willful acquisition or maintenance of that power as distinguished from growth or development as a consequence of a superior product, business acumen, or historic accident.”¹⁰⁵

To prove the second prong of the monopoly claim, the plaintiff must show harm to the competitive process and consumers overall; harm to one or more competitors will not suffice.¹⁰⁶ In *Morris*, a media company attempting to publish certain scores for monetization challenged the PGA Tour’s alleged monopolization of scoring data associated with the Tour’s competitions.¹⁰⁷ The media company’s complaint was formally submitted, in part, as a refusal to deal claim.¹⁰⁸ The Eleventh Circuit

101. See *Brooke Grp. Ltd. v. Brown & Williamson Tobacco Corp.*, 509 U.S. 209, 227 (1993).

102. *Id.*

103. *Id.*

104. Michael Johnson, *LIV Golfers Can Still Play in Majors but the Number Who Are Eligible May Surprise You*, GOLF DIG. (Feb. 24, 2023), <https://www.golfdigest.com/story/liv-golfers-can-still-play-major-but-number-eligible-may-surprise-you> [<https://perma.cc/ZF3M-HP TY>].

105. 15 U.S.C. § 2; see also *Morris Comm’ns Corp. v. PGA Tour, Inc.*, 364 F.3d 1288, 1293–94 (11th Cir. 2004).

106. *Morris Comm’ns Corp.*, 364 F.3d at 1294.

107. *Id.*

108. *Id.*

found that there was insufficient evidence to support the media company's allegation that the PGA Tour was creating or maintaining a monopoly.¹⁰⁹ The court reasoned that companies may deal or refuse to deal with whomever they please; there is no duty to cooperate with business rivals even if it means that the company will retain great market power as a result.¹¹⁰

While the anticompetitive behavior alleged in *Morris* had to deal with the Tour's monopolization of its own scoring data, LIV Golf's dismissed suit alleged that the PGA Tour conspired with outside organizations to stifle the entry of LIV and similar competitors.¹¹¹ When the lawsuit was originally filed, there was a great deal of uncertainty as to whether players "defecting" from the Tour to LIV would be able to play in major events, whether they would be entitled to play in or receive bonuses for qualifying for the Tour's FedEx Cup playoffs, and whether players could play on both the Tour and LIV Golf events. While we now have a clearer answer to some of these questions—LIV golfers will have access to most majors run by independent groups (i.e., the Masters) but will not be able to play in the FedEx Cup or any other Tour-run events until a possible merger is completed¹¹²—the root of LIV Golf's lawsuit against the Tour remains unsettled.

III. FUTURE IMPLICATIONS

A. *Forecasting the Department of Justice's Antitrust Review of the PGA Tour's Proposed Merger with LIV Golf*

The PGA Tour's antitrust issues are not in the rearview despite LIV Golf dropping its lawsuit against the Tour.¹¹³ In fact, the Antitrust division of the U.S. Department of Justice (DOJ) was investigating the PGA Tour for possible anticompetitive behavior aimed at keeping its players from defecting to LIV before the proposed merger between the

109. *Id.*

110. *Id.*

111. A.J. Perez, *LIV Golf Alleges PGA and European Tours Formed 'Unlawful Conspiracy'*, FRONT OFF. SPORTS (Dec. 2, 2022, 3:04 PM), <https://frontofficesports.com/liv-golf-alleges-pga-and-european-tours-formed-unlawful-conspiracy/> [https://perma.cc/V5QZ-ZSRP].

112. Rick Maese, *Judge Denies LIV Golfers' Bid to Play PGA Tour's FedEx Cup Playoffs*, WASH. POST (Aug. 9, 2022, 7:56 PM), <https://www.washingtonpost.com/sports/2022/08/09/pga-tour-liv-golf-hearing/> [https://perma.cc/947L-XYMA].

113. *Mickelson and Three Others Drop Out of LIV Golf Lawsuit Against PGA Tour*, REUTERS, <https://www.reuters.com/legal/litigation/golfer-phil-mickelson-others-drops-out-law-suit-against-pga-tour-liv-fight-2022-09-27/> (Sept. 27, 2022, 5:51 PM) [https://perma.cc/ZZ 3H-M73Z].

Tour and LIV Golf was announced.¹¹⁴ Now, the DOJ is set to evaluate whether the ensuing merger would violate antitrust laws.¹¹⁵

Professional golf presents a unique issue when examining antitrust law claims; the leagues are composed of individual athletes, rather than teams. Most antitrust litigation in the sports law sphere arises from players being employed by the owners of teams, which then comprises the league or association.¹¹⁶ In this sense, team owners in a sports league are not in economic competition with the other team owners in their individual sports' leagues.¹¹⁷ Because the rule of reason requires courts to assess the reasonableness of alleged anticompetitive restraints within the context of the industry in which the alleged antitrust violation occurs,¹¹⁸ professional golfers may benefit from increased protection. Conversely, golfers on the PGA Tour do not have the same incentives to look out for each other's financial success as NFL owners do. PGA golfers are currently treated as independent contractors, and their earnings are nearly entirely performance based (with a large portion coming from endorsements).¹¹⁹ For this reason, it may be easier to show that the Conflicting Events and Media Rights Rules have a more pervasive effect on competition in the whole market, as opposed to just impacting one individual plaintiff.

LIV Golf events did not count towards the Official World Golf Rankings (OWGR).¹²⁰ The significance of the OWGR is that certain major competitions have a limited player pool, only selecting the top golfers from the rankings.¹²¹ While the PGA directly runs the PGA Championship (and could exclude suspended LIV golf members), the Masters, the U.S. Open, and the British Open are run by independent organizations which rely on the OWGR to set their field.¹²² The current system for OWGR rewards players for performing well at PGA Tour events or at events of the PGA Tour's companion tours, which historically concentrated the best professional golfers to play in Tour

114. *US Justice Department to Investigate PGA Tour-LIV Golf Pact*, REUTERS, <https://www.reuters.com/sports/us-doj-investigate-pga-tour-liv-golf-pact-wsj-2023-06-15/> (June 15, 2023, 7:03 PM) [<https://perma.cc/8NK5-HU9T>].

115. *Id.*

116. Phillip J. Closius, *Professional Sports and Antitrust Law: The Groundrules of Immunity, Exemption and Liability*, in GOVERNMENT AND SPORT: THE PUBLIC POLICY ISSUES 140, 149 (Arthur T. Johnson & James H. Frey eds., 1985).

117. *Id.*

118. *Smith v. Pro-Football, Inc.*, 593 F.2d 1173, 1183 (D.C. Cir. 1978).

119. Brian Hill, *How Does a Golfer Get Paid*, SPORTSREC (Jan. 31, 2023), <https://www.sportsrec.com/13732709/golfer-paid-20160html> [<https://perma.cc/F4SL-7FCE>].

120. Sean Zak, *Here's What's Happening to LIV Golfers' World Rankings — and How Their Major Chances Look*, GOLF.COM (Oct. 13, 2022), <https://golf.com/news/whats-happening-liv-golfers-world-rankings/> [<https://perma.cc/3VU2-D4T9>].

121. *Id.*

122. *Id.*

events. The DOJ will evaluate whether this system, or any of the Tour's others procedures, might violate federal antitrust law.

B. Assessing PGA's Options to Potentially Reconcile the Labor Dispute, and Underlying Antitrust Issues, with the Professional Golfers

The PGA Tour is caught in a dilemma that might only be solved after a dramatic restructuring; the Tour claims its players are independent contractors, yet the PGA Tour's Conflicting Events and Media Rights policies prevent the players from playing in LIV Golf events even in cases where there is no schedule conflict.

The PGA Tour will also have to deal with the contention that the Tour improperly restricts the supply of labor in the professional golf market via the Tour's Conflicting Events and Media Rights policies and relationships with other Tours.¹²³ One potential solution for the PGA Tour would be to offer its golfers salaries and classify them as employees, rather than independent contractors.¹²⁴ However, this option may not fully address all of the anticompetitive issues raised in LIV Golf's lawsuit. Moreover, the Tour players may not even be fully on-board with forming a union, as it could lead to players having less control over their schedules and being forced into revenue sharing.¹²⁵

In other professional sports, the labor arrangement is much different. Players sign contracts with a team owner (who operates in a sports league), and that contract may limit the player's ability to participate in other sports or potentially hazardous activities—the players are employees of the team ownership.¹²⁶ While the PGA golfers sign contracts with the Tour to be eligible to compete, they are ultimately independent contractors. Even though players have some say in the policies that they agree to in the players' handbook, prominent PGA Tour members, such as Rory McIlroy, call for more transparency among Tour management in crafting the policies.¹²⁷

Theoretically, the Tour players have a path to unionize and engage in collective bargaining if they feel that they are not being fully represented

123. Compl. para. 4, *Mickelson v. PGA Tour, Inc.*, *supra* note 4.

124. See generally Nathaniel Otto, *The End of an Error: No More Misclassifying University Employees as Mere Student-Athletes*, 3 FLA. ENTER. & SPORTS L. REV. 59 (2023) (explaining the legal protections and ramifications of collegiate student-athletes being designated as university employees under the National Labor Relations Act and Fair Labor Standards Act).

125. Ike Brannon, *PGA Golfers Aren't Allowed to Play When and Where They Want, But There's a Solution*, FORBES (Mar. 11, 2022, 3:23 PM), <https://www.forbes.com/sites/ikebrannon/2022/03/11/pga-golfers-arent-allowed-to-play-when-and-where-they-want-but-theres-a-solution/?sh=524f50276004> [<https://perma.cc/L3YG-3YXK>].

126. Adam Kilgore, *Yes There Are Some Things Pro-Athletes Aren't Allowed to Do*, WASH. POST (July 16, 2015, 6:12 PM), <https://www.washingtonpost.com/news/sports/wp/2015/07/06/yes-there-are-some-things-pro-athletes-arent-allowed-to-do/> [<https://perma.cc/2J5M-RD5A>].

127. Brannon, *supra* note 125.

on the Policy Board. The National Labor Relations Board has worked on making it easier for workers to prove that they are a company's employees, and not independent contractors under federal labor law, which would allow them to unionize and garner extra protections against retaliation.¹²⁸ It is now up to the PGA Tour and its players to determine whether to opt for an employee-model, where the sides engage in collective bargaining, or to retain independent contractor status and loosen the anticompetitive restraints that provide players some security.

CONCLUSION

Even though LIV Golf dropped the lawsuit against the PGA Tour, the future is still very unclear for the PGA Tour. While the PGA Tour and LIV Golf continue to negotiate the terms of a newly-formed for-profit enterprise, the Tour needs to consider whether this deal would affect their players' status as independent contractors and whether the Tour's handbook policies can be relaxed to avoid antitrust scrutiny. Even though the Tour is existing in limbo, the PGA Tour has demonstrated that they are seriously considering changes to its traditional business model to ensure its commercial and legal viability in the long run.

128. Daniel Wiessner, *Union-Friendly Changes in the Works at U.S. Labor Board*, REUTERS (Jan. 3, 2023, 12:36 PM), <https://www.reuters.com/legal/litigation/union-friendly-changes-works-us-labor-board-2023-01-03/#:~:text=INDEPENDENT%20CONTRACTORS&text=Under%20the%20National%20Labor%20Relations,advocating%20for%20better%20working%20conditions> [https://perma.cc/2RAJ-UPHR].