

# From Fairways to Foul Balls to Field Goals: The Sports Lawsuits Making Headlines

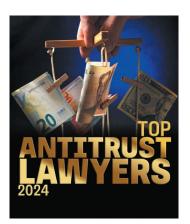
March 26, 2025

Eric MacMichael, Nick Goldberg, Nate Brown

### **KVP Industry Recognitions**



KVP helped an imperiled college athletics conference. defended the PGA TOUR and is the goto counsel for MLB



Conference realignment and NIL rights will drive "significant changes in the structure and operation of college athletics."



LIV Golf v. **PGA TOUR** KVP continues to advise the TOUR on antitrust and other issues



WSU and OSU v. 10 Departing Schools KVP represents the Pac-12 in realignment litigation

Washington State University and Oregon State University v. 10 Departing Schools

### 10 Schools Announce Their Departure From the Pac-12

**Pac-12** 





**Big Ten** 







**Big 12** 







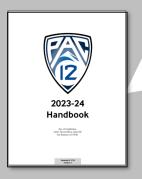
**ACC** 







## The Pac-12 Bylaws



#### 3. Withdrawal.

No member shall *deliver a notice of withdrawal* to the Conference in the period beginning on July 24, 2011, and ending on August 1, 2024; provided, that if any member does deliver a notice of withdrawal prior to August 1, 2024, in violation of this chapter, the Conference shall be entitled to an injunction and other equitable relief to prevent such breach, and if a court of competent jurisdiction shall deny the Conference such injunctive relief, the Conference shall be entitled to retain all the media and sponsorship rights in the multi-player video distribution (MPVD) and telecommunications/wireless categories of the member purporting to withdraw through August 1, 2024, even if the member is then a member of another conference or an independent school for some or all intercollegiate sports competitions. Additionally, if a member delivers notice of withdrawal in violation of this chapter, the member's representative to the Pac-12 Board of Directors shall automatically cease to be a member of the Pac-12 Board of Directors and shall cease to have the right to vote on any matter before the Pac-12 Board of Directors.





### Departing Schools' Flawed Interpretation

#### **Bylaws:**

"No member shall deliver a notice of withdrawal to the Conference in the period beginning on July 24, 2011, and ending on August 1, 2024."

#### **Departing Schools' Interpretation:**

No member shall withdraw from the Conference in the period beginning on July 24, 2011, and ending on August 1, 2024.

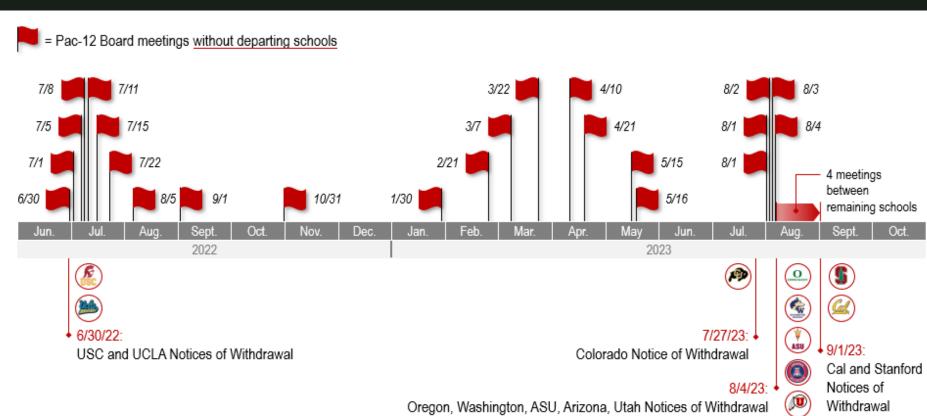
Departing Schools' Interpretation: "Deliver a notice of withdrawal" = Withdraw



## Departing Schools Automatically Removed from Board



## Departing Schools Automatically Removed from Board





#### **UW Reverses Its Position**



August 4, 2023

The University of Washington will not be delivering a grant of media rights authorization to the Conference for any time beyond August 1, 2024. For the sake of clarity, the University is not delivering a notice of withdrawal from the Conference at this time in contravention of Chapter 2, Section 3 of the Conference bylaws.... While the University expects to remain an active and participating member in the Conference until that time, I understand that the University will be excluded from the Conference discussions pertaining to matters occurring after August 1, 2024, such as media rights agreements and new Conference member considerations.



## Oregon Reverses Its Position



August 4, 2023

The University of Oregon will not be delivering a grant of media rights authorization to the Conference for any time beyond August 1, 2024. For the sake of clarity, the University is not delivering a notice of withdrawal from the Conference at this time in contravention of Chapter 2, Section 3 of the Conference bylaws.... While the University expects to remain an active and participating member in the Conference until that time, I understand that the University will be excluded from the Conference discussions pertaining to matters occurring after August 1, 2024, such as media rights agreements and new Conference member considerations.



#### Colorado Reverses Its Position



August 18, 2023

The University of Colorado, however, clarifies that it did not withdraw from the Pac-12 Conference. Rather, the University of Colorado will be granting its media rights to the Big 12 Conference beginning on August 2, 2024. Until that time, CU intends to remain a committed member of the Pac-12 conference, and it expects that Chancellor DiStefano will continue to participate and vote on conference matters which remain applicable and relevant to CU.

### All 10 Departing Schools Reverse Their Position



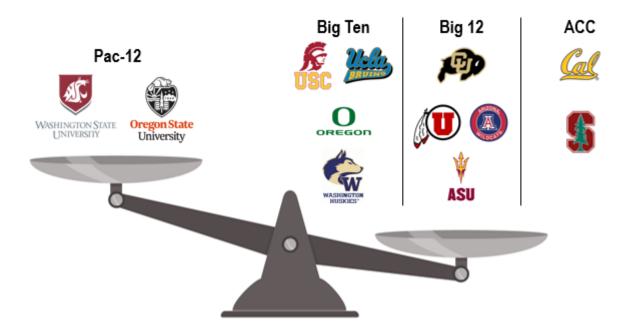


September 8, 2023

Your suggestion that ten of the Conference's 12 members have "withdrawn" from the Conference within the meaning of the Bylaws is mistaken. Not one member schools has signaled any intention – or actually attempted – to leave Conference play at any time prior to the end of the current fiscal year on July 31, 2024 ("FY 24"), or to take back and exploit their media rights. We simply cannot accept the suggestion that only two members – Oregon State University ("OSU") and Washington State University ("WSU") – now have the right to determine by themselves all issues affecting the Conference, and determine the course of all revenue coming into the Conference, to the exclusion of the other ten member schools.



#### Without a PI, WSU & OSU Will Suffer Irreparable Harm

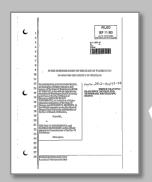


Representative of One Departing School:

"It seems obvious that any 9 Members can declare the fate of the Conference at any time."



## Court's Preliminary Injunction Order



"Plaintiffs have established that they are likely to prevail on the merits of the claim. The Pac-12 Conference Bylaws state unambiguously that if a member delivers a notice of withdrawal to the Conference before August 1, 2024, that member's representative 'shall automatically cease to be a member of the Pac-12 Board of Directors and shall cease to have the right to vote on any matter before the Pac-12 Board of Directors."



## The PAC-12 Conference v. The Mountain West Conference

## Scheduling Agreement with MWC



- Oregon State and Washington State each schedule 6 football games with the Mountain West Conference for \$14 million total.
- MWC insists on a "Poaching Penalty" provision in contract designed to prevent the Pac 12 from competing for MWC member schools in the future.



## The "Poaching Penalty"



"[I]f... at any time prior to the two-year anniversary of the expiration or termination of this Agreement . . . the Pac-12 makes an offer to any MWC Member Institution (other than an offer to all MWC Member Institutions . . .) to join the Pac-12 as a Pac-12 member, which any such MWC Member Institution accepts, or announces that it will accept . . . the Pac-12 shall pay liquidated damages to MWC in the form of . . . a termination fee as set forth on Schedule 7."

"Schedule 7, in turn, sets forth a series of escalating 'termination fees' ranging from \$10 million to \$137.5 million, depending on the number of MWC member schools that join the Pac-12."



#### 5 MWC Schools Announce Intention to Join Pac-12



Fresno State

San Diego State

**Utah State** 

**Boise State** 

**Colorado State** 



## Pac-12 Conference Complaint



"Poaching Penalty is an unlawful horizontal restraint on competition, functioning the same as a no-poach clause."

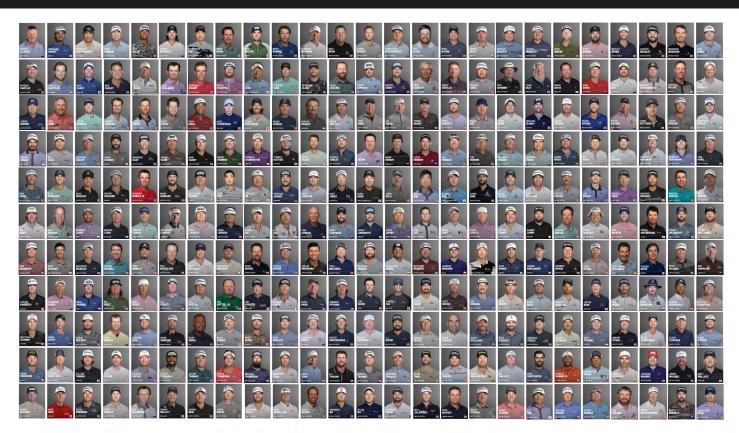
"The Poaching Penalty is unrelated to the purpose of the Scheduling Agreement."

"The Poaching Penalty is duplicative of the 'Exit Fees' provided for in MWC Bylaws."



### LIV Golf v. PGA TOUR

#### The PGA TOUR





## PGA TOUR Player Handbook



- The TOUR's regulations are publicly available in the PGA TOUR Player Handbook.
- The Player Handbook is approved by the TOUR Policy Board and agreed to by members.
- The Policy Board includes TOUR members



### **PGA TOUR Regulations**

#### Media Rights

#### **PGA TOUR Regulations**

Section V.B.1. - Media Rights (emphasis added)

- a. The television, digital, radio, motion picture and all other media rights of all players participating in PGA TOUR cosponsored and coordinated tournaments. pro-ams or any other golf event conducted in conjunction with PGA TOUR cosponsored and coordinated tournaments (e.g., clinics, long-drive contests), or any portion thereof, are hereby granted and assigned to PGA TOUR. Based upon this grant and assignment, all such rights shall be the property of and expressly reserved by and to PGA TOUR, and any use thereof without the express written consent of PGA TOUR shall be forbidden.
- b. No PGA TOUR member shall participate in any live or recorded golf program without the prior written approval of the Commissioner, except that this requirement shall not apply to PGA TOUR cosponsored, coordinated or approved tournaments, wholly instructional programs\* or personal appearances on interview or guest shows. "Golf program" for purposes of this section means any golf contest, exhibition or play that is shown anywhere in the world in any form of media now known or hereinafter developed. The Commissioner's approval of any member(s) participating in any golf program covered by this rule may be subject, without limitation, to the sponsor, promoter, television producer and/ or other parties involved in the golf program entering into a sanctioning or other agreement with PGA TOUR, including an acknowledgement of PGA TOUR's media rights and the payment of rights fees to the PGA TOUR. therefore, and to such other conditions as are designated by the Commissioner.

#### Tour Members:

- Assign their media rights for participation in TOUR events to the TOUR
- Cannot participate in non-TOUR golf events without waiver, with an exception for instructional events and personal appearances on interview or guest shows
- Retain all other individual marketing rights



#### **PGA TOUR Regulations**

#### **Conflicting Events**

#### **PGA TOUR Regulations**

#### **Section V.A.2 Obligations of PGA TOUR Members**

To contribute to the success of a PGA TOUR tournament or event and to permit PGA TOUR to fulfill its contractual obligations concerning representative fields, no PGA TOUR member shall participate in any other golf tournament or event on a date when a PGA TOUR (Regular TOUR) cosponsored tournament or event for which such member is exempt is scheduled, except for the following tournaments or events:

a A tournament or event for which a member obtains an advance written release for his participation from the Commissioner (See "Guidelines for Conflicting Event Release" set forth below);

NOTE: No conflicting event releases will be approved for tournaments held in North America

#### Tour Members:

- Cannot play in golf tournaments or events held on the same date as a TOUR tournament without waiver
- Can apply for up to three waivers per season to play in conflicting, non-North American tournaments if they play in at least fifteen TOUR events
- Can play in a "home circuit" (non-North American) conflicting event without waiver if they play in at least fifteen TOUR events
- Cannot play in conflicting events in North America



#### LIV Golf

- LIV Golf founded in 2021
- Funded and controlled by sovereign wealth fund of Saudi Arabia: Public Investment Fund ("PIF")
- Access to nearly unlimited funding through PIF
- \$2 billion+ committed



## LIV Signed Players to Massive Guaranteed Contracts

Player	Publicly Reported LIV Guarantee
Phil Mickelson	\$200 million
Dustin Johnson	\$125 million
Bryson DeChambeau	\$125 million
Brooks Koepka	\$100+ million
Cameron Smith	\$100 million



#### Top 10 Most Impactful Golfers in 2021 as Identified by the TOUR



#### 2021

- 1. Tiger Woods
- 2. Phil Mickelson
- 3. Rory McIlroy
- 4. Jordan Spieth
- 5. Bryson DeChambeau
- 6. Justin Thomas
- 7. Dustin Johnson
- 8. Brooks Koepka
- 9. Jon Rahm
- 10. Bubba Watson



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#### LIV Golf's Contracts Are More Restrictive





#### No Irreparable Harm: Players Compensated for Alleged Damage



Jeffrey Leitzinger Plaintiffs' expert



"Elite"\* golfers have assessed the costs associated with "the loss of expected lifetime playing revenues on the TOUR," "the loss of opportunities to earn ranking points," and the loss of opportunities "to earn entry into the Majors" when determining what "large upfront payments" would be "required" for them to join LIV.

Leitzinger Declaration ¶ 9 (ECF 2-13 at 7)



#### Court Denied Plaintiffs' Request for a TRO



- "Plaintiffs have signed contracts that richly reward them for their talent and compensate for lost opportunity through TOUR play."
- "Plaintiffs have not even shown that they have been harmed—let alone irreparably."
- "The Court finds TRO Plaintiffs' showing as to the Sherman Act Section 1 claim to be insufficient...."
- The "PGA TOUR has responded with preliminary evidence and argument potentially exposing fundamental flaws in Plaintiffs' [antitrust] claims."



## All Golfers Dropped Out of the Lawsuit

#### **Original Plaintiffs**



Ian Poulter

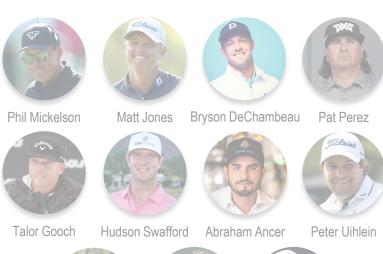
Carlos Ortiz

Jason Kokrak



## All Golfers Dropped Out of the Lawsuit

#### **Original Plaintiffs**









Ian Poulter



Jason Kokrak

#### **Plaintiff**





## Discovery From Saudi Arabia's PIF

"To the extent there's appropriate discovery of the Public Investment Fund, we will find a way to cooperate with that. We would never insist that they do any sort of formal service, so we will figure out a way to do that. All of that will come together swimmingly."



Attorney for LIV, PIF and Al-Rumayyan August 18, 2022

## PIF Claims Sovereign Immunity Under the FSIA

Subject to existing international agreements to which the United States is a party at the time of enactment of this Act a foreign state shall be immune from the jurisdiction of the courts of the United States and of the States except as provided in sections 1605 to 1607 of this chapter.

28 U.S.C. § 1604

"Foreign state" defined as "a political subdivision of a foreign state or an agency or instrumentality of a foreign state."



### FSIA Commercial Activity Exception Statutory Framework

No foreign state or instrumentality is immune from a legal action based upon:

- 1) Commercial activity carried on in the United States by the Foreign State
- 2) Act outside the United States in connection with commercial activity of the foreign state elsewhere that causes a direct effect in the United States

28 U.S.C. § 1605(a)(2)



## Court Orders Discovery from PIF



Yasir Al-Rumayyan "is in up to his eyeballs in everything that LIV has done."

Judge B. Freeman (2/24/2023 Case Management Conference)

"It is plain that PIF is not a mere investor in LIV; it is the moving force behind the founding, funding, oversight, and operation of LIV."

- M.J. S. van Keulen (2/9/2023 Order granting the TOUR's Motion to Compel)

"PIF created a new professional golf league in the United States and made a concerted effort to disrupt TOUR's operations by providing large financial incentives for top golfers to sign long-term, exclusive contracts with LIV that made it impossible for those golfers to meet their contractual obligations to TOUR."

– Judge B. Freeman (4/3/2023 Order denying PIF Motion for Relief from Discovery Order)



### LIV Dismisses with Prejudice

#### **EPIC COURT BATTLE BETWEEN LIV AND** THE PGA TOUR ENDS







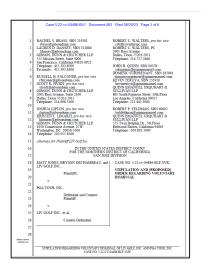












LIV sought a relatively fast victory so that the PGA Tour's regulations would be declared unenforceable. That outcome would have motivated more top golfers to join LIV. In an ideal timeline for LIV, it could have used the litigation to, in effect, take over the golf world from the PGA Tour.

Instead, LIV faced a slow and complicated path to what early returns indicated would be a loss in court. That trajectory likely played a crucial role in LIV accepting a settlement where it agreed to provide funding, but the PGA Tour will appoint a majority of the new entity's board of directors to oversee operations, businesses and investments

https://www.sportico.com/law/analysis/2023/liv-golf-pga-tour-lawsuit-court-dismissal-1234726532/



#### SSG Investment



#### The Athletic

PGA Tour announces \$3 billion investment by SSG, negotiations continue with PIF

PGA Tour players will collectively have access to \$1.5 billion in equity shares of the new company, PGA Tour Enterprises. The amount for individual players will be determined by career accomplishments, recent success and tour membership status and will vest over time.

https://www.nytimes.com/athletic/5240764/2024/01/31/pga-tour-ssq-pif-golf/



## Litigating America's Pastime

## Litigating America's Pastime

- 1. Trial Lawyers as Utility Players
- 2. Assumption of Risk & "The Baseball Rule"

### Trial Lawyers as Utility Players

- Antitrust
  - City of San Jose v. MLB (2015) franchise relocation
  - Wyckoff v. MLB (2017) scout employment
  - Miranda v. MLB (2017) minor league employment
  - Concepcion v. MLB (2023) minor league employment
- Consumer Class Actions Ajzenmann v. Major League Baseball
- Defamation Harkins v. Major League Baseball
- Premises Liability Williamson v. China Basin Ballpark Company



"[L]ack of a screen is as obvious as the fact that the Grand Canyon is a chasm, and the danger that a spectator hit by a foul ball may be injured is as evident as the likelihood that one who falls into the Grand Canyon may be hurt."

Bellezzo v. Arizona, 174 Ariz. 548 (Ct. App. 1992).



When a fan "chooses to occupy an unscreened seat," he or she voluntarily "assume[s] the risk of being struck by thrown or batted balls" from foul balls or errant bats and defendants owe no duty.

Quinn v. Recreation Park Ass'n, 3 Cal. 2d 725 (1935)

"To be sure, foul balls are part of baseball. But as the entity responsible for operating Blair Field on that date, US Baseball had a duty not only to use due care not to increase the risks to spectators inherent in the game but also to take reasonable measures that would increase safety and minimize those risks without altering the nature of the game."

Summer J. v. United States Baseball Fed'n, 45 Cal. App. 5th 261, 273 (2020) (emphasis added).

- Standing
- Claim Waiver
- Agreement to Arbitrate
- Mascot Violence



## Thank you!