

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT  
IN AND FOR PALM BEACH COUNTY, FLORIDA

CASE NO.: 50-2022-CA-006587

LARRY KLAYMAN,

Plaintiff,

v.

PGA TOUR, DP WORLD TOUR,  
JOSEPH WILLIAM MONAHAN IV,  
and KEITH PELLEY,

Defendants.

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TRANSCRIPT OF PROCEEDINGS  
HELD VIA VIDEOCONFERENCE  
BEFORE THE HONORABLE LUIS DELGADO

(Pages 1 to 37)

DATE: Thursday, December 8, 2022  
TIME: 12:01 p.m. to 12:41 p.m.

Held remotely via videoconference

Reported By: Gail Hmielewski  
Court Stenographer

1 ALL PARTIES APPEARED VIA VIDEOCONFERENCE:

2

3 Appeared for the Plaintiff:

4 LARRY E. KLAYMAN, ESQUIRE, PRO SE  
FREEDOM WATCH, INC.

5 7050 West Palmetto Park Road, #15-287  
Boca Raton, Florida 33433

6 561-558-5336  
leklayman@gmail.com

7

8 Appeared for Defendants PGA Tour and  
Joseph William Monahan, IV:

9

LAWRENCE D. SILVERMAN, ESQUIRE  
10 KYLE TANZER, ESQUIRE  
SIDLEY AUSTIN LLP

11 1001 Brickell Bay Drive, Suite 900  
Miami, Florida 33131

12 305-391-5205  
lawrence.silverman@sidley.com  
13 ktanzer@sidley.com

14

15 Appeared Pro Hac Vice for Defendants PGA Tour and  
Joseph William Monahan, IV:

16 KAREN HOFFMAN LENT, ESQUIRE  
ANTHONY J. DREYER, ESQUIRE  
17 SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP  
One Manhattan West

18 395 Ninth Avenue  
New York, New York 10001

19 212-735-3000  
anthony.dreyer@skadden.com  
20 karen.lent@skadden.com

21

22 ALSO PRESENT:

23 Asher Anderson, Legal Assistant  
Len Brown, Chief Legal Officer

24 Mark Rabinowitz, Court Reporter  
Neera Shetty, Executive Vice President

25

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1 PROCEEDINGS

2 THE COURT: Good afternoon, everybody.

3 MR. RABINOWITZ: Good afternoon, Judge. We  
4 have two court reporters.

5 THE COURT: Two court reporters.

6 MR. RABINOWITZ: Yes, sir.

7 THE COURT: So who's staying, who's going?

8 MR. KLAYMAN: I would request, Your Honor,  
9 that, since I'm the plaintiff, that Gail Hmielewski  
10 remain, if that's possible.

11 THE COURT: All right.

12 MR. RABINOWITZ: I don't mind, sir. I'm here  
13 for Mr. Silverman.

14 THE COURT: All right. So Mr. Rabinowitz,  
15 I'll excuse you.

16 MR. RABINOWITZ: All right, Judge. Thank you,  
17 sir. Thank you, Counsel.

18 MR. KLAYMAN: Thank you, Your Honor.

19 THE COURT: All right, so I see a lot of  
20 people, actually. I have got Mr. Klayman and  
21 Mr. Silverman. I think those are the only two I  
22 really need, but everybody else is also present,  
23 right?

24 MS. LENT: Your Honor, it's Karen Lent. I'm  
25 going to be arguing on behalf of the Tour today.

1 THE COURT: Oh, okay. Have we met?

2 MS. LENT: I've been on the prior conferences,  
3 but Mr. Silverman took the lead. I'll be doing  
4 that today.

5 THE COURT: Okay, so you're going to be,  
6 you're going to be the attorney that is arguing for  
7 the Tour.

8 You know, my question for Mr. Silverman the  
9 last time was whether he represented the Tour;  
10 DP World Tour; Joseph William Monahan, IV; Keith  
11 Pelley; TGC, LLC; and Official World Golf Ranking,  
12 and the answer was yes, so you represent all those  
13 people as well?

14 MS. LENT: No, no --

15 THE COURT: No.

16 MS. LENT: -- the answer is not yes. We  
17 represent the PGA Tour and we represent  
18 Mr. Monahan. Those other defendants have not, as  
19 far as we know, have not been served.

20 THE COURT: They've not been served. I think  
21 I just signed the order extending time --

22 MS. LENT: Right.

23 THE COURT: -- yesterday or the day before.  
24 Okay, so you represent the PGA Tour.

25 MS. LENT: Correct, and Mr. Monahan.

1           THE COURT: Who is, I think, from our  
2           conversation the last time, an officer of that  
3           organization?

4           MS. LENT: He is the commissioner of that  
5           organization, correct.

6           THE COURT: And you represent him in his  
7           personal capacity, as an officer? What's your  
8           representation of him?

9           MS. LENT: We represent him as an officer of  
10          the PGA Tour, which is the capacity in which we  
11          understand him to be sued.

12          THE COURT: Okay.

13          MR. KLAYMAN: Well, he's, Your Honor, if I may  
14          correct that, he's being sued personally as well  
15          for his involvement in the alleged anticompetitive  
16          acts.

17          THE COURT: All right, I'm asking, I'm not  
18          doing anything. The attorneys will figure whatever  
19          they need to figure out, if anything at all. Right  
20          now I'm here on defendants' motion to dismiss the  
21          second amended complaint filed by Mr. Klayman.

22          I've reviewed all your materials. It's  
23          different from my cast iron pipe cases and my auto  
24          negligence cases and, gladly, I'm thankful it's  
25          much different than my condominium cases and so

1           it's interesting to me, but I have reviewed  
2           everything and I'll hear your arguments in a  
3           moment. Let me get my notes.

4           And I think, you know, if I sum up your motion  
5           to dismiss, you're actually - it's based on five,  
6           five specific arguments: One, failure to  
7           sufficiently plead the facts; no cause of action;  
8           an issue about I think it's a matter of law for  
9           being either a direct or indirect purchaser; and  
10          the civil conspiracy issue, right? Those are your  
11          five points?

12          MS. LENT: I believe that's correct,  
13          Your Honor.

14          THE COURT: Okay, whenever you're ready.

15          MS. LENT: Okay, thank you.

16          To survive the motion to dismiss, the  
17          plaintiff is required to plead facts that, if true,  
18          would establish that defendants' conduct  
19          unreasonably reduced competition in a relevant  
20          market and caused the plaintiff to suffer antitrust  
21          injury, and that's just injury that results from  
22          the reduction in competition. Plaintiff has done  
23          neither of those things here.

24          When we strip out the legal conclusions, the  
25          speculation and rhetoric in plaintiff's complaint,

1 as we need to on a motion to dismiss, we're left  
2 with a set of factual allegations that show that  
3 LIV was not excluded from competing in the  
4 United States after January 9th, that the Tour did  
5 not prevent LIV from competing in the United States  
6 after January 9th, and that the Tour's alleged  
7 attempt to exclude LIV did not cause spectator  
8 ticket prices to increase.

9 The factual allegations in the complaint  
10 otherwise reflect either unilateral conduct by the  
11 Tour or benign commercial relationships between the  
12 Tour and other businesses that do not plausibly  
13 plead a conspiracy. These pleaded facts do not  
14 support plaintiff's claims or suggest that the Tour  
15 violated the Florida Antitrust Act or the Florida  
16 Deceptive and Unfair Trade Practices Act.

17 I'd like to start by considering the factual  
18 allegations in the complaint regarding LIV. The  
19 plaintiff alleges that LIV has competed vigorously  
20 and successfully in the U.S. since January - since  
21 June 9th, excuse me.

22 Paragraph 29 of the complaint alleges that LIV  
23 has recruited numerous well-known, highly-ranked  
24 professional golfers to participate in its events.  
25 The complaint alleges that since June 9th many more



1 prominent golf professionals have joined LIV and  
2 that an ever-growing list of world-class players  
3 has joined LIV, with still more expected to join in  
4 the future.

5 The complaint also alleges that LIV conducted  
6 eight tournaments in 2022, including five in the  
7 U.S., since June 9th, and that LIV has increased  
8 its schedule for 2023 to fourteen events, many of  
9 which will take place in the United States.

10 These facts, again right from the complaint,  
11 show that LIV was not excluded from competing in  
12 the United States after June 9th. They also  
13 establish two other things - the first is that the  
14 Tour's alleged conduct did not cause LIV to be  
15 excluded from competition, because LIV was not  
16 excluded; and that LIV's purported exclusion from  
17 competition did not cause any increases in  
18 spectator ticket prices for the Tour events in  
19 2023, again because LIV has not been excluded.  
20 These things break the causal chain between the  
21 Tour's alleged conduct and any alleged injury that  
22 the plaintiff claims to have suffered, and that  
23 requires dismissal of each and every claim in the  
24 plaintiff's complaint.

25 Plaintiff has one retort found only in its

1           opposition, so not pled in the complaint, that LIV  
2           might have offered, quote, larger and more frequent  
3           tournaments in the first season - that's in the  
4           opposition at Page 7 - but that's made up, created  
5           without any supporting facts whatsoever, and that  
6           should not be credited when considering this motion  
7           to dismiss.

8           Next I want to look at the facts that the  
9           plaintiff pleads about what the Tour allegedly did.  
10          The complaint alleges that on June 9th, 2022, the  
11          Tour suspended 17 of its members after they  
12          voluntarily joined the LIV tour and played in its  
13          inaugural tournament. This is unilateral conduct  
14          by the Tour without any facts pled as to why that  
15          is anticompetitive. To the contrary, all of those  
16          players accepted huge sums of money to play golf  
17          for LIV and are thus competing against the Tour.

18          The plaintiff doesn't plead any facts  
19          suggesting that the Tour had an agreement with  
20          anyone to suspend these players. Instead, with  
21          respect to the alleged conspiracy, the plaintiff  
22          pleads four things. The first is that in 2020, the  
23          Tour and the DP World Tour entered into a strategic  
24          alliance to co-sanction three events - the Scottish  
25          Open in Scotland, the Barbasol and Barracuda

1           Championships in the United States. There is  
2           nothing unlawful about that.

3           The second thing that the complaint alleges  
4           regarding a so-called conspiracy is that in 2020  
5           and 2022, the Tour purportedly purchased certain  
6           media and equity rights from the DP World Tour.  
7           Again, there's nothing illegal about that.

8           Third, the complaint pleads that the  
9           commissioners of the Tour and the DP World Tour sit  
10          with others on the board of the Official World Golf  
11          Rankings, which has not yet decided LIV's recent  
12          application for ranking points. This doesn't even  
13          plead an agreement, let alone anything unlawful.

14          And then, fourth, the complaint pleads that  
15          the Tour's commissioner allegedly referred to the  
16          Golf Channel, which purportedly has run  
17          unflattering stories about LIV's connection to the  
18          Saudi regime and its abysmal human rights record,  
19          as the Tour's, quote, partner. This is not  
20          unlawful, nor a conspiracy.

21          None of these facts, even if they are true,  
22          suggest a conspiracy to suspend 17 Tour members on  
23          June 9th or to deprive LIV golfers of OWGR ranking  
24          points, let alone what's required under the  
25          pleading standard announced by the Supreme Court in

1 Twombly, which is the who, what, when, and where of  
2 that conspiracy.

3 Now let's look at the facts that plaintiff  
4 pleads about spectator admission prices since  
5 June 9th. Here again the plaintiff pleads very few  
6 facts about admission prices to Tour-sanctioned  
7 events, and those few facts do not support his  
8 theory that the Tour's alleged conduct caused  
9 ticket prices to increase above competitive levels.  
10 The complaint doesn't allege what ticket prices  
11 were for any Tour-sanctioned event, either before  
12 or after June 9th.

13 The complaint alleges that ticket prices for  
14 THE PLAYERS Championship, which is scheduled for  
15 2023, increased by 34 percent since 2022, but that  
16 assertion can't be based on any facts because when  
17 the complaint was filed and plaintiff made that  
18 assertion, ticket prices for that event had not yet  
19 even been announced. The complaint also alleges  
20 that some ticket prices for the 2023 Arnold Palmer  
21 Invitational have increased by ten percent since  
22 2022.

23 And then plaintiff in the complaint vaguely  
24 alleges that the ticket prices for other events, as  
25 well as prices for alcohol and other beverages and

1 food, have increased since 2021, but again no  
2 specific prices or percentages before or after  
3 June 9th.

4 And then, finally, the plaintiff doesn't plead  
5 that he actually purchased any tickets himself or  
6 that the tickets he apparently holds were purchased  
7 directly from the Tour. Instead the complaint  
8 says, quote, tickets have been purchased concerning  
9 Plaintiff Klayman from the PGA Tour and/or its  
10 agents, assigns, and/or licensees. Why use such  
11 convoluted language if you actually directly  
12 purchased tickets from the Tour? I don't know.

13 None of these allegations are sufficient to  
14 ascribe a cause for any alleged price increase in  
15 2023, and it's totally implausible to infer that  
16 the Tour's alleged anticompetitive efforts to  
17 exclude LIV are the cause of price increases.

18 I mean, just think about this argument.  
19 Prices before LIV entered the market, when the Tour  
20 was allegedly a monopolist, were lower than prices  
21 after LIV began competing with the Tour, and this  
22 is because the Tour was trying to drive LIV out of  
23 the market? It doesn't make any sense.

24 In any event, it's important that I note that  
25 the Tour made these same arguments in its motion to

1 dismiss the original complaint and plaintiff adds  
2 no facts to address them. In fact, if you look at  
3 Paragraph 31 of the complaint, there's some  
4 bracketed language which says, quote, insert  
5 examples of higher prices in 2023 over 2021 and  
6 2022. I don't see any evidence that there were  
7 examples of higher prices inserted. That language  
8 was just left in the complaint unaddressed.

9 But, look, most importantly for this motion to  
10 dismiss, the pleaded facts show that LIV's  
11 successful vigorous competition in the  
12 United States since June 9th establishes that LIV's  
13 alleged exclusion did not cause the Tour to  
14 increase its ticket prices, if in fact those ticket  
15 prices even did increase.

16 I want to address a couple of other legal  
17 arguments that we've made in our motion to dismiss.  
18 The first is that the plaintiff has no cognizable  
19 claim for his inability to see LIV golfers  
20 participating in Tour events. We've cited a number  
21 of cases that demonstrate the law is clear that  
22 plaintiffs have no right to see any particular  
23 golfer participate in any Tour-sanctioned event.

24 Now, the plaintiff attempts to distinguish  
25 those cases by claiming that they don't involve,

1 quote, athletes having been excluded from  
2 competition due to anticompetitive conduct. That  
3 distinction is irrelevant. In the cases the Tour  
4 cites, the plaintiffs were ticket holders. They  
5 were complaining that they were unable to see  
6 certain players participate at the events to which  
7 they held tickets, and the courts held that the  
8 ticket holders had no right to see any particular  
9 players at an event. Plaintiff here has no right,  
10 either, and therefore cannot claim that he's  
11 injured by not seeing LIV players at Tour events.

12 This case is exactly like the Strauss v.  
13 Long Island Sports case where the plaintiffs, who  
14 were Nets season ticket holders, complained that  
15 they couldn't see Dr. J play for the Nets after he  
16 was traded to the 76ers. Dr. J had no right to  
17 play for the Nets after he had been traded to the  
18 76ers, and the same is true here. LIV golfers have  
19 no right to play in Tour events after they  
20 voluntarily joined the competing LIV Tour.

21 This is exactly what the district court in  
22 California held in the Phil Mickelson case when she  
23 denied an injunction that would have required the  
24 Tour to allow LIV golfers to play in Tour events.  
25 She said they don't have to do that.

1           Also in the Dr. J case, the court held that  
2           Nets fans held no legal right to watch Dr. J play  
3           for the Nets after his trade to the 76ers. The  
4           plaintiff here has no legal right to watch LIV  
5           golfers participate in Tour events after they  
6           voluntarily joined LIV.

7           And plaintiff recognizes that Nets fans were  
8           still able to watch Dr. J play for the 76ers, just  
9           as he can watch LIV golfers compete by purchasing a  
10          ticket to a LIV event. Like Dr. J, they were  
11          merely playing for a different organization. They  
12          have not been, quote, completely excluded from  
13          competition.

14          And in fact, plaintiff's argument here is even  
15          more ripe for dismissal than in the cases that the  
16          Tour cites, because in those other cases the ticket  
17          holders had already purchased their tickets before  
18          they learned that particular players would not be  
19          playing in the event, but here plaintiff defines  
20          his class as Florida residents who purchased  
21          tickets after June 9th, when the Tour suspended its  
22          members who joined the competing LIV Tour. So he  
23          and all of the potential class members knew when  
24          they purchased their tickets that golfers who  
25          voluntarily joined the competing LIV tour would not



1 be playing in Tour events for which he had  
2 purchased tickets, thus plaintiff is getting  
3 exactly what he bargained for.

4 THE COURT: That's specifically Count I,  
5 correct?

6 MS. LENT: Let me see Count I. I mean, look,  
7 that is all of the counts. That is the alleged  
8 injury in all of the counts.

9 MR. KLAYMAN: That's incorrect, Your Honor,  
10 and I'll get to that.

11 MS. LENT: Okay, well --

12 THE COURT: All right, let's not interrupt.  
13 Let me hear from Ms. Lent and I will give you the  
14 appropriate equal time.

15 MS. LENT: Yeah. My, again, my understanding  
16 is that plaintiff is claiming injury from not being  
17 able to see LIV players with respect to all of his  
18 claims.

19 Okay, in discussing the factual allegations, I  
20 had mentioned that plaintiffs didn't plead that he  
21 directly purchased tickets to Tour events from the  
22 Tour, and this is why we argue that plaintiffs lack  
23 antitrust standing to bring a treble damages claim  
24 under the Florida Antitrust Act. Florida applies  
25 the direct purchaser rule that was announced by the

1 Supreme Court decades ago in Illinois Brick. That  
2 was affirmed in 1996 in the Mack v. Bristol-Myers  
3 Squibb case that both we, the Tour, and the  
4 plaintiff cites.

5 And as I said earlier, the plaintiff has not  
6 pled any facts to establish that he purchased  
7 admission to a Tour-sanctioned golf tournament  
8 directly from the Tour. He doesn't allege when and  
9 from whom he purportedly purchased his tickets, and  
10 his vague pleading, again, as I said, that tickets  
11 have been purchased concerning Plaintiff Klayman  
12 from the Tour and/or its agents, licensees, and/or  
13 assigns is insufficient to plead that he purchased  
14 tickets directly from the Tour.

15 The attempt to cure the pleading defect by  
16 attaching an exhibit to the opposition is not  
17 allowed and shouldn't be considered on a motion to  
18 dismiss.

19 And then a brief note on the civil conspiracy  
20 claim - I don't believe the plaintiff is disputing  
21 that Florida law does not recognize civil  
22 conspiracy as a freestanding tort. That comes from  
23 the Banco de Los Trabaja - I can't even say that -  
24 Trabajadores case from a few years ago, but because  
25 of this plaintiff's civil conspiracy claim fails

1 for the same reasons that his antitrust and  
2 Deceptive and Unfair Trade Practices Act claims  
3 fail.

4 Finally, the plaintiff's complaint should be  
5 dismissed with prejudice. This is the third  
6 complaint that plaintiff has filed and the second  
7 one since the Tour filed its motion to dismiss.  
8 Plaintiff had every opportunity to amend in order  
9 to address the numerous grounds for dismissal that  
10 the Tour identified, but he has not and he cannot  
11 and thus there's no basis to provide another  
12 opportunity to amend, so we would request that the  
13 second amended complaint be dismissed with  
14 prejudice. Thank you.

15 THE COURT: Thank you, Ms. Lent. All right,  
16 Mr. Klayman?

17 MR. KLAYMAN: Thank you, Your Honor.

18 I want to say at the outset, and I'm sure  
19 Your Honor's had the opportunity to review it, our  
20 complaint is exceedingly detailed and specific.

21 Number two, I did purchase the tickets and  
22 they were from the PGA Tour. It's alleged in  
23 Paragraph 4, tickets had been purchased concerning  
24 Plaintiff Klayman directly from the PGA Tour. But  
25 even if that is not the case, which it is, under

1           the Florida Unfair Trade Practices statute, known  
2           as the Florida DUTPA, indirect purchasers are also  
3           included with regard to anticompetitive conduct  
4           complaints. So that moots that completely out, and  
5           that's why in fact we filed an amended complaint  
6           and moot that issue out, but we do contend that I  
7           did purchase directly from the PGA Tour, its agents  
8           and assigns. So that's not an issue, that's a red  
9           herring.

10                 With regard to what happened in the Northern  
11           District of California, that was misrepresented by  
12           the defendants, couched to make their case. The  
13           judge in that case, and a very similar case brought  
14           by LIV players and LIV itself, said this is very  
15           factually intensive, I'm not going to entertain a  
16           motion to dismiss at this time or a motion for  
17           summary judgment, proceed to discovery, we'll try  
18           this case in a year. That's what happened there.

19                 This case is similar. It's very fact  
20           intensive, Your Honor, and we have pled everything  
21           that we needed to plead to survive a motion to  
22           dismiss and to go to discovery. They'll have an  
23           opportunity later to move for summary judgment;  
24           they will not be successful in my opinion, but they  
25           will have that opportunity after discovery is able

1 to go forward.

2 Now, what have we pled in this complaint? We  
3 pled a concerted refusal to deal, market division,  
4 attempted monopolization and monopoly, as well as  
5 unfair competition under the Florida unfair  
6 competition statute, which does include indirect  
7 purchasers as well.

8 The Florida antitrust statutes, which can be  
9 found at Florida Statute 542.18, 542.19, state  
10 specifically that they're to be read broadly, much  
11 more broadly than the federal statutes.

12 Here's what the statute says at 542.16, "The  
13 Legislature" - the Florida Legislature - "declares  
14 it to be the purpose of this act to complement the  
15 body of federal law prohibiting restraints -- "

16 THE COURT: I read your motion, I know you  
17 cited all that, you know.

18 Let me ask you very specific questions. I  
19 want you to address what was brought up by defense  
20 counsel and how that applies to your counts, and  
21 that is specifically the issue of seeing specific  
22 golfers at specific events.

23 MR. KLAYMAN: That's just an ancillary damage,  
24 Your Honor. The primary damage, as I've pointed  
25 out in the opposition, in the sur-reply, is the

1           increase in prices, the super competitive prices,  
2           and it also was not a true statement that I did not  
3           publish - or I did not purchase the ticket prior to  
4           the time that the second amended complaint was  
5           filed. We simply submitted a second amended  
6           complaint with leave to file if Your Honor granted  
7           that. We then agreed that it could be filed. By  
8           the time the second amended complaint was filed, I  
9           had purchased that ticket, as correctly stated in  
10          the complaint, with regard to the players - 34  
11          percent increase. That's a super competitive --

12                 THE COURT: I'm not talking about the prices,  
13           you know. I don't know who jumped ship, but let's  
14           pretend they did jump ship voluntarily, or however  
15           you want to phrase it, but let's pretend, you know,  
16           Lou Delgado is a great golfer and you can't see  
17           him. I think that's one of the things that they're  
18           addressing, is that you don't have a right to that.

19                 MR. KLAYMAN: That's --

20                 THE COURT: You know -- I'm sorry, go ahead?

21                 MR. KLAYMAN: That is not the primary basis  
22           that we're claiming antitrust injury. That was put  
23           in for good measure, okay? The case will proceed  
24           forward based upon the super competitive impact of  
25           reduction of competition, however, those cases are

1 not on point because that's where you had players  
2 voluntarily leave teams to play. Here you have  
3 anticompetitive conduct forcing people off of  
4 teams.

5 In other words, these players were members of  
6 the PGA Tour. They're independent contractors,  
7 Your Honor; they weren't employees - independent  
8 contractors. It is well established in the golf  
9 industry, as we pled, that players play in a number  
10 of tours and they have a right to play both on the  
11 PGA Tour and on the LIV tour, and in fact PGA  
12 players are playing on other tours as well, such as  
13 the Asian Tour, such as the DP World Tour, such as,  
14 you know, other tours that are out there.

15 So the exclusion of them from LIV, excuse me,  
16 from the PGA Tour is anticompetitive, and that is  
17 the issue that's involved in the Northern District  
18 of California as well. They're independent  
19 contractors, so to have suspended them and to fine  
20 them and to collude with the DP World Tour, which  
21 is now the joint venture partner - it used to be  
22 the European Tour - and to collude with Golf  
23 Channel, all of these things are intended to kill  
24 LIV in its infancy.

25 The fact that with a few tournaments - it

1 entered into in the U.S. with 5 tournaments, PGA  
2 Tour has 33 tournaments in the U.S. - it retarded  
3 their growth, it retarded their ability and it  
4 lessened competition, thereby increasing the price  
5 the PGA Tour could charge to its events, because if  
6 LIV was able to compete freely and openly without  
7 restriction, it would have to lower the prices to  
8 compete with LIV. That's a simple economic  
9 concept.

10 You know, this case was brought by me as the  
11 head of Freedom Watch, which used to be the  
12 International Center for Economic Justice. We  
13 believe in free competition and free trade and  
14 that's the basis for this, and it's very important  
15 to remember it.

16 But let me go through some just basic points  
17 here, because the pleadings that were presented by  
18 the defendant were misleading and they were  
19 intended to confuse.

20 Number one, we pled causes of action with  
21 specificity under the Florida antitrust statute and  
22 the FDUTPA, and, again, indirect purchasers are  
23 included and we set forth language to that effect.  
24 We pled that I was a direct purchaser. We pled  
25 that there was an antitrust injury, super



1 competitive prices. Just as an ancillary result of  
2 the anticompetitive conduct, we just said we were  
3 excluded from seeing the players, but that's not  
4 the primary basis of the antitrust injury here. We  
5 pled price increases at THE PLAYERS Tournament, and  
6 I have purchased that ticket, 34 percent, and  
7 Arnold Palmer, 10 percent, above inflation, and  
8 information and belief, prices rising in the other  
9 events as well. We pled specifics of a conspiracy.  
10 This was a complete misrepresentation, Your Honor,  
11 and we set that forth.

12 THE COURT: Well, here, let me stop you and  
13 let me do this, because I am familiar with -- I  
14 mean, I did go over everything. I mean, I'm  
15 prepared to rule.

16 I'm going to deny the motion to dismiss. I do  
17 think it was pled specifically. I do think that  
18 there's enough in there, enough material there to  
19 where it's going to survive this stage. You know,  
20 you kind of I think might have been reading my mind  
21 a little bit. When it comes to a motion to  
22 dismiss, I think you put everything in there to  
23 survive a motion to dismiss.

24 I'm curious about summary judgment, but, you  
25 know, Florida has amended its summary judgment

1 standard recently to follow the federal standard,  
2 but that's neither here nor there.

3 I thought some of the arguments made by  
4 defense counsel were summary judgment arguments,  
5 and I think some of the arguments being made by  
6 plaintiff right now are outside of the four corners  
7 of the pleading.

8 You know, Mr. Klayman, I will tell you I  
9 thought your pleading was specific enough, detailed  
10 enough. I was disappointed that there was, you  
11 know, and I think it happens when people are  
12 practicing, but if we're going to leave a note to  
13 ourself to fill information in, then let's fill it  
14 in and let's not turn that in to the court.

15 As far as the arguments made regarding, you  
16 know, and I think the case you cited was Strauss,  
17 but those cases were about rescission of ticket  
18 prices. This is, you know, a different chapter of  
19 Florida Statute. I think those cases are  
20 distinguishable. Here we're talking about trade  
21 practices and so I think they're apples and  
22 oranges.

23 Anyway, so, again, I don't - I don't know how  
24 strong or weak the case might be, but I know that  
25 for today's purpose, to address the motion to

1 dismiss, I have enough to deny the motion to  
2 dismiss.

3 How much time do you need to respond?

4 MR. SILVERMAN: Twenty days, Your Honor?

5 THE COURT: I mean, we're going into the  
6 holidays. We're going to go, you know, into -- I  
7 celebrate Christmas, and 21 days takes, you're  
8 going to lose -- I don't know if you have anybody  
9 who works for you that is going to be working in  
10 Christmas, but you're going to lose several days.  
11 I'd be prepared to give you 30 days so you can go  
12 to January.

13 MR. SILVERMAN: Thank you, Your Honor.

14 THE COURT: Let's see, that would take you  
15 through the first week of January, so we took a  
16 couple days for the New Year. All right, I'll give  
17 you 30 days to respond.

18 And one of the things that I do in my cases is  
19 I really, I really get involved in case management.  
20 I'm not the kind of judge that likes to let things  
21 sit and I'm not the kind of judge that will  
22 tolerate petty disputes over scheduling.

23 As kind of a warning to everybody - and I say  
24 warning, it's so ominous, but it's not, you know -  
25 I will never raise my voice at anybody, I will

1           treat everybody with dignity and respect, but I --  
2           You know, you permit what you permit. I don't  
3           tolerate that stuff. I expect courtesy and  
4           civility from everybody.

5           You know, I've been known in the past where,  
6           you know, people try to set hearings way, way out  
7           and I bring it in early if I have the time. You  
8           know, I don't like to let things sit and I expect  
9           things to move, you know. I'm sure everybody has a  
10          lot of cases. I have 1300 of them and if I can  
11          find time to hear somebody, then I'm sure you can  
12          find time for me with, you know, maybe your couple  
13          hundred cases that you guys each have, and so, you  
14          know, I expect things to move.

15          I'm a stickler for deadlines. I like  
16          deadlines and I believe that, you know, the court  
17          issues orders, they are orders, they're not  
18          suggestions, and, you know, they lose their effect  
19          if we treat them as suggestions, so I'm a stickler  
20          for deadlines.

21          I'm one of these people that, you know, I  
22          don't do things that I don't think I can do, so if  
23          you're asking me to give you something, I need you  
24          to cite an authority, I need you to cite a statute,  
25          I need you to cite a rule, I need you to bring a

1 case, you know, highlight it for me.

2 You know, I'm not -- As a human being, I  
3 think I have empathy and sympathy for lots of  
4 people, but in this capacity I just do what the  
5 black letter says, so that's the kind of person I  
6 am.

7 That's my guidance to all of you because I  
8 think you should know who you're in front of. I  
9 make a lot of decisions I don't like and so, you  
10 know, whatever I might think or feel as a person is  
11 inconsequential to what my actions as a jurist are,  
12 so, you know, that's why I need the authority from  
13 you. I was very happy with the authorities that  
14 you guys provided me for this hearing. That's the  
15 kind of thing that I do appreciate very much.

16 So now that I've kind of told you a little bit  
17 about me and how I practice, you know, I do  
18 think -- You know, I'm going to treat you well, I  
19 hope you guys treat each other well.

20 Is there anything for me to discuss with you  
21 at this point?

22 MR. KLAYMAN: One other thing, Your Honor.  
23 You had a temporary stay on discovery. I take it  
24 it's now lifted?

25 THE COURT: Yeah, it can be taken at this

1 point. I denied the motion to dismiss. You know,  
2 even if, as I talked about, I heard arguments that  
3 I think were best suited for summary judgment, I  
4 think our new summary judgment amendment  
5 contemplates that discovery is going to be at least  
6 well under way before a motion for summary judgment  
7 is heard, and I think that's in the actual rule,  
8 the text of that new rule.

9 All right, is there anything else I need to  
10 address?

11 MR. KLAYMAN: One other thing in that regard  
12 is that, you know, there were discovery requests  
13 that were served. There were notices of intent to  
14 take depositions, there was a notice of deposition  
15 for Mr. Monahan and a notice of intent to take  
16 depositions of certain golfers who participated in  
17 meetings that are alleged to have discussed  
18 anticompetitive conduct.

19 THE COURT: Oh, I remember this conversation,  
20 okay.

21 MR. KLAYMAN: Yes, so --

22 THE COURT: So we had this conversation.

23 MR. KLAYMAN: Do we need another hearing date  
24 to go through? Because they didn't respond to one  
25 request.

1           THE COURT: Well, everything was stayed.  
2           Everything was stayed. So, no, we don't need to  
3           have another hearing. The attorneys will discuss  
4           this like ladies and gentlemen.

5           As far as the stay on discovery that's lifted,  
6           that doesn't mean -- You know, obviously if  
7           there's an objection to that discovery, then that's  
8           what my UMC is for and, again, you know, come in  
9           early and try to get heard on these things before  
10          it becomes an issue if there are disagreements.

11          I can anticipate I think, based on the  
12          arguments I heard from everybody at the last couple  
13          hearings, potential objections or requests for  
14          protective orders regarding - apex doctrine I think  
15          was brought up, corporate representatives,  
16          et cetera, et cetera. If you can't figure this out  
17          amongst yourselves, bring it to my attention. At  
18          that point I'll do what I do, right. That's my  
19          job, is to rule on those motions.

20          MR. SILVERMAN: In that regard, Your Honor,  
21          you had indicated to us previously two items.  
22          Number one, that in terms of getting expedited  
23          hearings beyond the UMC, you would give preference  
24          to folks who were complying with their case  
25          management order.

1 THE COURT: We don't have one yet.

2 MR. SILVERMAN: We don't have a case  
3 management order yet, so if you could issue that or  
4 just issue the order to - for the parties to sit  
5 and do that.

6 THE COURT: Well, I'm going to instruct you  
7 now to do that.

8 MR. SILVERMAN: Okay, so that's --

9 THE COURT: The parties sit down, general  
10 track, which means to come to a conclusion in the  
11 next 18 months and use that as your guideline.

12 In your case management order, what I would  
13 like from you is to include at least two case  
14 management conferences, at six months and one year.  
15 You know, that way -- I don't like to let anything  
16 sit.

17 MR. SILVERMAN: Sure.

18 THE COURT: And, you know, working back 18  
19 months from right now takes us to - I want to say  
20 June of '24? So that's roughly when you'll be set  
21 for trial.

22 I'm not going to issue a trial order because I  
23 do that during - I set you for trial during  
24 calendar calls but, you know, anticipated trial,  
25 June of '24. That's 18 months from today.



1 MR. KLAYMAN: Thank you, Your Honor.

2 MR. SILVERMAN: And the other complicating  
3 factor, Your Honor, is, as you'd noted because you  
4 recently signed the order, is most of the  
5 defendants have not been served yet and so I  
6 anticipate that we're going to end up with an  
7 early - seek an early hearing on the motion for  
8 protective order on the depositions until the other  
9 defendants are here. And so I would like to get  
10 that, you know, to the extent that whether that's a  
11 lunch time issue or a UMC --

12 THE COURT: I signed that order to extend time  
13 for deposition and I think there's 120 days on it.  
14 I can tell you I wasn't crazy about that date, you  
15 know, but I figured some of these were  
16 international and I don't know how they work, you  
17 know, service over there. I don't know, but let's  
18 get that done sooner than later. I don't want  
19 things to sit, you know.

20 As far as motions, yeah, you know, I  
21 apologize. Today, I don't know if you guys see any  
22 cameras or not, but I'm actually in the middle of a  
23 trial. We broke at noon from trial and I'm picking  
24 it back up at 1:00 and I've taken you from noon  
25 until about - right now it's 12:40, and so I was

1           eating a sandwich, you know, and so I do work  
2           during lunch. You know, this is why we get the big  
3           bucks, right, is to get work done. So if you need  
4           to get heard, you're not going to get heard for  
5           lack of effort on my part, you know.

6                       Sometimes you're going to get heard too much  
7           by me because I'll compel your attendance for stuff  
8           because I'm curious about why things aren't moving,  
9           because I do micromanage my cases. But if you need  
10          to get heard and you can't, you know, find time,  
11          you know, bring it to my assistant's attention and,  
12          you know, if I think it's appropriate I'll bring  
13          you in during lunch or I'll set you for, you know,  
14          8:30 or, you know, instead of my 8:45s, I'll take  
15          you before or after or I'll squeeze you in  
16          somewhere, you know, especially if things are  
17          well-briefed and people are working with each other  
18          and in compliance with deadlines.

19                      If you're not in compliance with deadlines,  
20          forget it. You know, the example that I give  
21          everybody is the tandem bicycle. If you're  
22          working, then, you know, I'm working. If you're on  
23          that tandem bicycle and you're pedaling, then I'll,  
24          you know, yeah, I would ride that with you, but if  
25          you're going to get on the bicycle and I'm the only

1           one pedaling, then forget it, you know? It's not  
2           worth it. I like to reward effort, so if you're in  
3           compliance with whatever order you submit, I will  
4           make time to hear you.

5           MR. SILVERMAN: Thank you.

6           MR. KLAYMAN: Thank you, Your Honor.

7           THE COURT: Okay. Anything else?

8           MR. KLAYMAN: No, thank you.

9           THE COURT: Gentlemen, madam, anything else?

10          MR. SILVERMAN: Now, are you going to issue  
11          the -- Do we just submit a proposed on the  
12          dismissal?

13          THE COURT: Yes, submit a proposed and I'll  
14          take a look at it.

15          MR. SILVERMAN: Okay.

16          THE COURT: Generally 95 percent of those that  
17          I look at I accept. Occasionally I'll see  
18          something crazy or, you know, they don't give me  
19          the opportunity to kind of peak behind the curtain  
20          enough and so I'll amend it a little bit. Like I  
21          said, you know -- The world is changing,  
22          especially the way we practice law in Florida. I  
23          anticipate there's going to be new rules that are  
24          going to be more along with how I run the division.  
25          I think everybody's going to be doing this, but,

1           you know, nothing sits and, you know, every wheel  
2           gets a little greasy, even the ones that are not  
3           squeaky, so, you know, work on it and I'll take a  
4           look at it, okay?

5           MR. SILVERMAN: Thank you, Judge.

6           MR. KLAYMAN: Thank you, Your Honor.

7           THE COURT: All right, please have a wonderful  
8           day.

9           MR. KLAYMAN: Thank you.

10          THE COURT: Merry Christmas, everyone.

11          MR. KLAYMAN: God bless. Thank you. Bye-bye.

12          (The proceedings concluded at 12:41 p.m.)

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CERTIFICATE

STATE OF FLORIDA  
COUNTY OF PALM BEACH

I, Gail Hmielewski, Court Stenographer,  
certify that I was authorized to and did  
stenographically report the foregoing remote  
proceedings, and that the transcript is a true and  
complete record of my stenographic notes.

Dated this 8th day of December, 2022.

*Gail Hmielewski*



Gail Hmielewski, Court Stenographer

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