

BRIEFING NOTE

**LIV AND LET LIV
PROFESSIONAL GOLFERS AND INSURANCE LAWYERS
ARE THEY REALLY THAT DIFFERENT?**

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13 September 2022**

The History

There has long been a connection between the golf and legal professions. One of the most celebrated is that of Bobby Jones. In 1930, at the age of 28, Jones won the grand slam of golf: the British Amateur, the Open, the U.S. Amateur and the U.S. Open all in the same year.

Jones then hung up his spikes to become a lawyer, and a remarkably candid one confessing to the Harvard Princeton Review: *"I am not the sort of fellow who can do much standing on his feet spouting a lot of words."* He went on: *"I don't believe that a sporting champion, as a rule, is much good at anything outside his game, but I've got a family to support."*

Of course, Jones did not abandon golf entirely. In the years leading up to its opening in 1933, Jones founded and co-designed Augusta National Golf Club with course architect Dr. Alistair Mackenzie, formerly an army surgeon who fought with the British Army in the Boer War and incorporated military camouflage into the design of the many hazards on his golf courses.

Even today, Mr. Fred Ridley, the Chairman of Augusta National Golf Club, is a senior partner of the esteemed law firm, Foley & Lardner LLP. And should anyone think that sporting standards have slipped since 1930, they would do well to remember that Mr. Ridley won the U.S. Amateur in 1975 and captained the American Walker Cup Teams in 1987 and 1989.

PGA Tour v LIV Tour

Roll the clock forward some 90 years, and the headlines this year have been dominated by the struggle between the established U.S. Professional Golf Association (or P.G.A.) Tour and the newly formed LIV Tour (LIV being Roman numerals for 54, the number of holes per tournament). Other professional tours, such as the European P.G.A. Tour, have been drawn into the struggle, as have many very accomplished professional golfers, all of whom have been asked to take sides in an increasingly binary debate, that is for or against the U.S. P.G.A. Tour.

As always, there are arguments on both sides of the coin. The P.G.A. and European Tours have heritage. The greatest golf events, in no particular order, are the Open, the Masters, the U.S. Open, the U.S. and the British P.G.A Championships, the Memorial Tournament, Bay Hill, the Irish, Scottish and French Opens, the Dubai Desert Classic and the Players Championship. The courses on which these events are played are iconic and the fields are at their strongest.

The LIV Tour does not have that heritage. But by way of almost limitless funding, it can extend the reach of professional golf and so develop the game in other parts of the world that cannot rely on the sponsorship that comes with American or European television viewing audiences, which audiences tend to be seasonal and like to watch other sports. Specifically, it can bring recognition to the great professional events held in Japan, South Korea, and Singapore, revive

the importance of the Australian Open, Masters and PGA, as well as the South African and Canadian Opens, and reinforce the pre-eminent events now held in the Middle East.

Having 20 co-sanctioned global events, and properly funded and calibrated feeder tours, is perhaps the solution that golf audiences want. Compromise, as always, is the challenge.

Insurance Lawyers

So, what is the connection with insurance lawyers? Without explanation, it is difficult to see any similarity between the writer, an insurance lawyer, and Greg Norman or Seve Ballesteros, two legendary professional golfers. But with explanation, some similarities may emerge.

The professional golf tour and the professional law firm are both platforms. Nothing more. They depend for their success on the quality of their golfers or lawyers on the one hand and the support of their audiences or clients on the other. They enable the golfer and the lawyer to practice their profession, be it golf or law, to a television audience or an institutional client base that pays for entertainment or advice (sometimes both). Perform well and they are paid more and may elevate to a higher tour or law firm. If they do not perform so well, then they are paid less and may be forced to leave for another tour or firm. At the end of each year, the prize money, or collections, are added up and bonuses are handed out. At the start of each year the slate is wiped clean and everyone, some new faces and many old faces, starts again.

The similarities continue as the advent of the LIV Tour has introduced a jealousy into the institutions of professional golf which insurance lawyers have had to endure for decades.

The PGA Tour now prohibits professional golfers from practising their profession on both the PGA Tour and the LIV Tour. The PGA Tour requires the professional golfer to make a choice, notwithstanding that it is the professional golfer who underpins the product that the PGA Tour provides to its customers, those who sponsor and watch televised golf. And it is they who suffer. Rahm vs McIlroy on the PGA Tour. Or Smith vs Johnson on the LIV tour. Yet when the two come together, as they did at Wentworth over the weekend, the golf is enthralling.

The insurance industry imposes the same restrictions on the legal profession. Again, the choice is binary: act for the insurance market at all times and without exception or, should you have the courage or commercial imperative to act against the market, be blacklisted. Again, it is the consumer that suffers but so does the insurance industry. Because if the competition is so one sided, or perceived to be, who wants to tune in and/or buy the product?

First, the purchaser of insurance cover may not be told that, should a difference of opinion as to the insurers' obligation to indemnify, or the amount of the indemnity, arise then the law firms available to advise on that dispute will be restricted by the insurance company that sold the insurance cover in the first place. The purchaser will not be able to select the law firm that it wants, only a law firm that has the courage to go against the insurance market. Rather like buying an annual television subscription, ignorant of that fact that many of the world's top 50 golf professionals will not be allowed to compete in the televised events.

Second, the purchaser of insurance cover may be told that the insurance lawyers acting on behalf of the insurance company are the best in the world. And by inference, those acting against the insurance company are not. They will be referred to the legal directories that rank insurance law firms. But they will not be told that those rankings are driven by client referrals, and of course those client referrals come exclusively from insurance companies. Rather like thinking that the Ryder and President Cups determine the best teams in world golf, without being told that those teams exclude many top players, who are not allowed to compete.

Third, the purchaser of insurance cover may be encouraged by the insurance company to withdraw the claim or accept the settlement offer proffered, or else face the risk of not securing insurance cover the following year, which cover is essential to continued financing. Rather like the professional golfer being denied access to world ranking events that determine the fields for the most coveted prizes in professional golf, the major championships. So, the message is: play on our tour or risk your hopes and aspirations falling into financial oblivion.

The Suntory World Matchplay 1984 / The Asia Power Forum 2022

In 1984, at the Suntory World Matchplay at Wentworth, four great men competed in the semi-finals. Langer defeated Norman and Ballesteros defeated Crenshaw. That day a 14-year-old kid travelled by bus and train to watch the day's play. He ran across a 300-metre car park to get an autograph from Norman, who had just lost to Langer over a gruelling 36 holes. Norman was getting into his car. The last thing he wanted to do was sign another autograph. Then he stopped. Then he got out. He told the kid to stop running and asked his name and where he played. Then he signed. And that's leadership. Bad day at the office. But make someone's day. Now he leads the LIV tour. Once hailed as the Great White Shark for his aggressive playing style, he is now demonised by players and the press. As are insurance lawyers. They get up, fight and make someone's day. Then they too are demonised, as sharks.

The final that year was won by Seve Ballesteros with all his glorious pomp and intensity. When Seve stepped onto a green, an aura descended. It was magical. And he took that magic to nine Ryder Cups, a contest that in those days was a battle between two very different tours. The P.G.A. Tour was stronger, but not in Seve's eyes. He dragged the Europeans to victory. Again, and again and again. He confounded the American players and confused the American press. How on earth could the American team keep losing? Passion and Belief. And that's what insurance lawyers bring. They do not win every battle, but in fighting every battle they enhance the insurance industry, define and refine the products, and advance society.

This week, the Asia Power Forum will be held after a hiatus of two years. Underwriters and those they instruct, loss adjusters, forensic experts and defence lawyers, will gather to discuss the direction of the insurance industry. A broker will be given just 30 minutes to present his case and a chief risk officer will be invited to participate in a single panel session, but not one that discusses claims, which test the heart and soul of the insurance product. There will be no Greg Norman or Seve Ballesteros in attendance. Why invite a couple of guys to show you how to hit shots of such ingenuity and purity that only go to highlight the fact you cannot hit them? Or at least challenge you to change the way that you approach the game? Why even think about going back to the range when there is an abundance of sponsored drinks and canapes?

Where to from here?

The LIV Tour is not going away, and nor are insurance lawyers. So where is the compromise? So far, the words of common sense, not barbs or vitriol, have come from the LIV Tour players. On Sunday, Patrick Reed, often the nemesis of the European Ryder Cup Teams yet an honorary member of the European Tour, spoke about his plans to play both the LIV Tour and the European Tour, as he had played the P.G.A Tour and the European Tour since 2015. And perhaps that's the solution. The P.G.A. and European Tours combine between April and September and the LIV Tour runs between October and March, with world ranking points on both sides and a fifth and sixth major to be played in the Southern Hemisphere?

As for insurance lawyers, in this age of diversity and inclusivity, perhaps now is the time for the insurance market to mature and carry panels open to both market and cover holder law firms? To give their customers the freedom of choice as to the counsel whom they instruct to prosecute an insurance claim, recognising that without claims, and the ability to ventilate not stifle those claims, there is no demand for the insurance product, or the insurance industry. If that cannot be achieved then at least a respect that allows counsel to accept instructions without fear of a commercial backlash. As Bobby Jones observed, golfers and lawyers may not be much good at anything outside their game, but they all have families to support.

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