

Toscano v. PGA Tour, Inc.
201 F. Supp. 2d 1106 (E.D. Cal. 2002)
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Harry Toscano, a senior professional golfer, brought an antitrust action against the Professional Golfers Association ("PGA") and its affiliates alleging conduct that prevented the formation of competing senior golf events and tournaments; thereby monopolizing the market for senior professional golf, and restricting his ability to earn prize money by participating in golf tournaments other than those of the PGA. The U.S District Court for the Eastern District of California granted summary judgment for the PGA citing Toscano's failure to show he was the proper party to bring the suit.

Toscano had golfed professionally since 1962, spending twenty-two years on the regular PGA Tour. In 1992, he became eligible for the Senior PGA Tour where he played until 1996, at which time he sustained a shoulder injury that limited his tournament play over the next two years. Toscano did continue to golf through 2001, however, and had earned over \$730,000. Toscano challenges rules involving a guarantee by the PGA to event sponsors and televisors "that a significant number of marquee players will play in any scheduled Tour event as opposed to a competing golf event," and that competing events "are not televised at the same time." Toscano argued the rules allow the PGA to monopolize the market by limiting the ability of golfers who become eligible to play on the senior tour to effectively compete in that market, and enhance their skills and careers.

The Court considered Toscano's claims as antitrust claims citing §4 of the Clayton Act, which authorizes a cause of action for private damages for violations of antitrust laws.

A key part of §4 is that, read literally, it could "afford relief to all persons whose injuries are causally related to an antitrust violation." However, the Supreme Court has determined Congress did not intend for this section to have "such an expansive scope." Thus, courts have interpreted the section as having three elements for determining if a plaintiff is the proper party to bring an antitrust claim: (1) evaluate the plaintiff's harm; (2) evaluate the alleged wrongdoing by the defendants; and (3) evaluate the relationship between the first two elements. The Court went on to explain that antitrust standing is determined by reviewing five factors: (1) the nature of the plaintiff's injury; (2) the directness of the injury; (3) the speculative measure of the harm; (4) the risk of duplicative recovery; and (5) the complexity in apportioning damages.

The Court stated that (1) Toscano must show his injury was of the type that the antitrust laws were designed to prevent, and that it flowed from the unlawful acts of defendants. Defendants argued Toscano failed on this factor because he was "neither a consumer nor a competitor in the market in which trade was restrained;" however, the Court disagreed since there was no need to show Toscano was a consumer or competitor of the PGA tour. He only needed to show the relationship between the PGA's behavior and the resulting harm to himself. The Court then found Toscano's alleged injury to be too remote from the claim of restraint or that it was derivative of an injury suffered by a third party who was absent from the suit (2). The Court found Toscano's damages were speculative since his injury was too indirect and not shown to have been the result of other, independent factors (3). The Court found Toscano's damages would be distinct from other potential plaintiffs who might complain about the PGA's unlawful behavior and, thus, (4) would not present a risk of duplicative recovery. The Court found the final factor (5) weighed against Toscano since his

injuries were both indirect and derivative, which would require a complex trial to determine and allocate damages. Separating Toscano's damages from those of more immediate victims, and then estimating the amount of prize money that may have been at stake, and may have been won by Toscano, would prove too cumbersome a task.

Toscano had failed to establish he was directly injured by the PGA's rules, which would result in speculative measures of harm and great difficulties in determining his damages. For these reasons, the Court held Toscano failed to prove the PGA's conflicting events and media rights rules unreasonably restrain trade, and he further failed to show he was the proper party to challenge these rules. The PGA testified that it uses its eligibility rules to ensure that well-known and popular golfers will participate for the entirety of each PGA tournament since this is why fans choose to watch this event. The PGA should not be penalized for using a sound business model that has resulted in the success of the Senior PGA Tour, and this decision should deter future allegations of antitrust violations by disgruntled plaintiffs.