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BIB BROUHAHA: GOLF CADDIES' LAWSUIT CHALLENGES  
PGA TOUR'S COMPENSATION AND  
BENEFIT STRUCTURE

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Television news reporter Diane Sawyer claims the best marital advice she ever received goes as follows: “A criticism is just a really bad way of making a request. So why don’t you just make the request? Why don’t you just say, Could we work out this thing that makes me feel this way?”<sup>1</sup> Sawyer’s insight—which she steadfastly asserts applies to all disputes—provides an appropriate lens for viewing *Hicks v. PGA Tour, Inc.*, the class action complaint recently filed against the PGA by Tour caddies.<sup>2</sup> According to the caddies’ complaint,

The purposes of this lawsuit are to compensate caddies who have been forced to wear the logos of Defendant’s corporate sponsors without remuneration, and to preclude Defendant from forcing caddies to provide these endorsement services gratuitously in the future. The main issue in this lawsuit is whether Defendant may lawfully compel caddies to wear “bibs” . . . during professional golf tournaments and then retain for itself the tens of millions of dollars in advertising revenue generated by those bibs annually.<sup>3</sup>

As the complaint explains, “the bibs bear sponsor logos. The sponsors represented by those logos pay Defendant for the bib space. No one, however, pays Plaintiffs to wear these bibs.”<sup>4</sup>

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<sup>1</sup> *Diane Sawyer Shares the ‘Genius’ Marriage Advice She’ll Never Forget (VIDEO)*, HUFFINGTON POST (Feb. 11, 2015, 9:59 PM), [http://www.huffingtonpost.com/2015/02/11/diane-sawyer-marriage-advice\\_n\\_6660978.html](http://www.huffingtonpost.com/2015/02/11/diane-sawyer-marriage-advice_n_6660978.html).

<sup>2</sup> Original Class Action Complaint and Demand for Jury Trial, *Hicks v. PGA Tour, Inc.*, No. 3:15-cv-00489 (N.D. Cal. Feb. 3, 2015) [hereinafter Complaint].

<sup>3</sup> *Id.* ¶ 1.

<sup>4</sup> *Id.* ¶ 54.

The caddies leverage their ostensible grievance about the bib into a smorgasbord of claims based on their argument that the smock-of-the-week makes them involuntary and unpaid product spokespersons, thus precluding them from hawking goods and services for those presumably willing to pay them for sartorial shelf space.<sup>5</sup> While asserting that the Tour has regulations “permit[ting] caddies to endorse their own sponsors’ products and services in the space occupied by the bibs,” the caddies allege that they “have continued to wear the bibs in acquiescence to Defendant’s threats to interfere with the caddie-player relationship and to further limit Plaintiffs’ endorsement opportunities.”<sup>6</sup> Contending that “the bib provides the most valuable marketing medium between commercials during tournament broadcasts,” the caddies complain that they “are made to serve as billboards to advertise, at the direction of the PGA Tour, for some of the most profitable companies in the world without compensation.”<sup>7</sup> Further escalating their grievances, the caddies further allege that the

PGA T[our] has threatened to prohibit Plaintiffs from providing caddie services at tournaments organized and promoted by Defendant PGA T[our] if Plaintiffs refuse to wear the bibs. Additionally, Defendant PGA T[our] has contacted tour players to determine whether players would be willing to terminate their agreements with caddies who refuse to wear the bibs. Defendant PGA T[our] has demonstrated that if Plaintiffs do not supply the marketing medium for Defendant’s sponsors by wearing bibs, Defendant will interfere with the relationships between Plaintiffs and the players for whom they work.<sup>8</sup>

Asserting that “[t]he value of the bibs is approximately \$50 million annually,” the caddies state that they “receive none of that revenue and never have consented to Defendant’s commercial use of their likenesses and images.”<sup>9</sup>

Packaging their allegations into presumed causes of action, the caddies allege that the Tour’s insistence on a bib dress code is unlawful, constituting antitrust activity in breach of sections 1 and 2 of the Sherman Act;<sup>10</sup> misappropriation of “the images and likenesses of Plaintiffs for marketing purposes without Plaintiffs’ consent;” breach of contract “by prohibiting Plaintiffs from exercising their rights under the Endorsement Policy;” unjust enrichment by capturing for itself

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<sup>5</sup> *Id.* ¶¶ 66, 68.

<sup>6</sup> *Id.* ¶ 11.

<sup>7</sup> *Id.* ¶ 57.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.* ¶ 10.

<sup>10</sup> The Sherman Act, 15 U.S.C. §§ 1–2 (2004).

“payment for the endorsements effectuated by the bibs;” violation of section 43 of the Lanham Act<sup>11</sup> by “employ[ing] a marketing device that is likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of Defendant with Plaintiffs, or as to the origin, sponsorship, or approval of Defendant’s and bib sponsors’ goods, services, or commercial activities;” duress; and violation of California’s unfair competition law.<sup>12</sup>

*Employed by the Players, Caddies Are Blocked from Tapping  
the Resources of the PGA Tour*

While a seven-count putative class action attacking the forced wearing of bibs seems to be a fairly compelling statement about what irks the tour caddies, Diane Sawyer might ask, “What is it that the caddies really want?” The complaint provides certain context, as the caddies offer an evolution of professional golf where player and caddie initially were joined at the hip: “Early professional golfers were generally poor and survived on meager wages earned by making golf clubs and balls, managing the course shop, giving golf lessons, or working as a caddie.”<sup>13</sup>

“Similar to professional golfers, professional caddies had very humble beginnings. Caddies were originally golf club servants chosen by a club member to carry his bag and to locate errant balls.”<sup>14</sup> According to the complaint, golf’s evolution brought with it heightened expertise for both golfer and caddie.<sup>15</sup> “As time passed, caddies became experts in course geometry and topography and provided players an advantage over competitors who lacked such a resource.”<sup>16</sup> In today’s professional golf, “caddies are expected to have considerable expertise in course topography and geometry. Caddies must know the correct yardage for every lie on every hole, and they must be skilled in reading greens. Caddies also serve as coaches, strategists, general assistants, cheerleaders, counselors, and friends.”<sup>17</sup>

Thus, according to the complaint, “[a]lthough it is axiomatic that success in professional golf comes down to making good shots, caddies

<sup>11</sup> Lanham Act, 15 U.S.C. § 1125 (2006).

<sup>12</sup> CAL. BUS. & PROF. CODE § 17200 (West 2014).

<sup>13</sup> Complaint, *supra* note 2, ¶ 2.

<sup>14</sup> *Id.* ¶ 3.

<sup>15</sup> *Id.* ¶ 6.

<sup>16</sup> *Id.* ¶ 4.

<sup>17</sup> *Id.* ¶ 6.

are undeniably instrumental in supporting the level of competition that contributes to Defendant's success."<sup>18</sup> "Given the knowledge and skill that good caddies possess, it is no surprise that golfing greats such as Ben Hogan, Byron Nelson, and Sam Snead caddied at local clubs in their youth."<sup>19</sup> While working side-by-side with their players, and tracing a common lineage to Ben Hogan, Byron Nelson, and Sam Snead, the caddies explain how they have come to occupy second-child status in the world of golf primogeniture:

Despite the caddies' contribution to professional golf, Defendant has treated caddies as second-class participants of the game. The Barclays tournament in 2013 provides a microcosm of Defendant's treatment of caddies. During a rain delay, caddies and members of some of the caddies' families retreated to a shelter designated for caddies. Although the shelter was not crowded, security officials entered the shelter, demanded identification, and began to shout and berate caddies and their families. While caddies who produced credentials were permitted to remain in the shelter, caddies' wives and children were put out into the rain by security personnel . . . . During tournament play, Defendant forces caddies to use portable lavatories that lack running water and denies caddies access to areas of tournament venues necessary for caddies to perform their duties fully. The list goes on.<sup>20</sup>

Or, as Rodney Dangerfield might say, "we don't get no respect."<sup>21</sup>

In 2013, caddies formed a trade association, the Association of Professional Tour Caddies ("APTC"), "to improve the Plaintiffs' profession in general and to represent Plaintiffs' collective professional interests."<sup>22</sup> Those collective professional interests certainly include concerns about the economics of PGA Tour caddying. The APTC website provides background:

**Are caddies paid by the PGA?**

No – caddies are independent contractors that are paid by their golfers.

**Do caddies have to pay for their own travel or does the golfer pay for it?**

Caddies pay for all their own travel to and from the tournaments.

**On average, how much do caddies earn?**

In general, a caddie's salary is between \$1,200 and \$3,000 per week when a golfer is participating in tournament play. A caddie also earns five to nine percent of the golfer's purse. When a golfer places [first], a caddie

<sup>18</sup> *Id.*

<sup>19</sup> *Id.* ¶ 4.

<sup>20</sup> *Id.* ¶¶ 8, 9.

<sup>21</sup> See RODNEY DANGERFIELD, IT'S NOT EASY BEIN' ME: A LIFETIME OF NO RESPECT BUT PLENTY OF SEX AND DRUGS 127 (2004) (featuring Dangerfield's trademark catchphrase "I don't get no respect").

<sup>22</sup> Complaint, *supra* note 2, ¶ 55.

will generally receive ten percent of the purse, as opposed to the regular five to nine percent.<sup>23</sup>

Based on the APTC figures, it appears that, whatever fame a caddie may engender from his job, fortune does not follow.<sup>24</sup> According to PGA Tour statistics, the median 2014 earnings amount for the top performing 200 professional golfers was approximately \$950,000.<sup>25</sup> Using the median of the numbers provided by the APTC—\$2100 in salary per tournament week, plus seven percent of the golfer's purse—a caddie carrying a bag for an exceedingly ambitious thirty-week schedule would earn \$99,500, prior to the payment of expenses. Assuming conservatively \$1000 in travel, housing, and food costs, a caddy's take home compensation would be \$69,500.

Further, as the caddies explain in their complaint—and this is the “aha moment,”—“[the PGA Tour] has denied caddies basic health care coverage and access to pension plans.”<sup>26</sup> Therein lies the crux of the matter: the caddies are employed by the players, depending for their livelihood on the employment terms that they can negotiate with one person.<sup>27</sup> This employment structure provides the caddies with no ability to tap the substantial resources of the PGA Tour.<sup>28</sup> The Tour, of course, likes it this way. Commenting on the suit filed by the caddies, PGA Tour Commissioner Tim Finchem gave a big thumbs up to what is effectively a trickle-down system of compensation:

A player is an individual, an independent contractor. He doesn't have an HR (human resources) department, he makes an arrangement with somebody that's going to carry the bag and work with him . . . . The historical process is the player handles that and they are employees of the player. We think that's been a good system. The extent to which this lawsuit challenges that system, for whatever reasons they have in the lawsuit from a legal standpoint, it is what it is, but we would like to continue that system and let it go on . . . . The extent to which the tour does better financially for the players, that impacts the ability of the player to do better for the caddie financially.<sup>29</sup>

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<sup>23</sup> *Caddie Facts*, ASS'N PROF. TOUR CADDIES, <http://theaptc.com/caddie-facts/> (last visited Mar. 29, 2015).

<sup>24</sup> *Id.*

<sup>25</sup> *Fed Ex Cup Standings*, PGA TOUR, <http://www.pgatour.com/stats/stat.109.2014.html> (last visited Mar. 29, 2015).

<sup>26</sup> Complaint, *supra* note 2, ¶ 9.

<sup>27</sup> *Caddie Facts*, *supra* note 23.

<sup>28</sup> *Id.*

<sup>29</sup> *Finchem Says Olympic Drug Testing to Start in May 2016*, USA TODAY (Feb. 4, 2015, 9:58 PM), <http://www.usatoday.com/story/sports/golf/2015/02/04/finchem-says-olympic-drug-testing-to-start-in-may-2016/22895467/>.

*The Caddies' Lawsuit Serves to Create a Bargaining Chip to Make the Tour a Contributor of Compensation and/or Benefits*

The APTC's mission statement seeks "to unite caddies for the betterment of the profession," and "to provide long term benefits that will protect caddies and allow for retirement when caddies are no longer able to serve professional players and professional golf. APTC will provide caddies with group benefits programs and a greater voice in professional golf."<sup>30</sup> How will the APTC achieve its mission? Unlike a labor union that collectively can negotiate with a single company that employs hundreds of workers, the APTC cannot achieve its stated objectives by expecting individual players to fund healthcare, retirement, and other group benefits.<sup>31</sup> Instead, the APTC needs to make the Tour a part of the discussion, i.e., to transcend the Tour's "trickle-down" position that responsibility for caddy compensation and benefits begins and ends with the player. Thus, while the Tour's insistence that the caddies wear designated bibs perhaps presented the best legal claims for the caddies, the caddies' real objective is to make the PGA Tour and its balance sheet a party with which to negotiate collective labor issues.

At the time of the APTC's formation, its elected president, caddie James Edmondson stated: "Caddies realized we had two options. Go to the Tour with our hands held out or empower ourselves by organizing, therefore expediting the process of the PGA Tour recognizing caddies as a profession."<sup>32</sup> While professing not to be driven by finances,<sup>33</sup> by January 2014, the APTC's meeting agenda with PGA Tour officials included the creation of healthcare and retirement programs.<sup>34</sup> By the summer, the APTC was asserting that the Tour was thwarting the caddies' desire to pursue sponsorship opportunities.<sup>35</sup> At the time, the

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<sup>30</sup> *About the APTC*, ASS'N PROF. TOUR CADDIES, <http://theaptc.com/about-the-aptc/> (last visited Mar. 29, 2015).

<sup>31</sup> Jeff Rude, *Caddies Unite with Formation of APTC*, GOLF WEEK (Nov. 10, 2013), <http://golfweek.com/news/2013/nov/10/pga-tour-association-professional-tour-caddies/> (last visited Mar. 29, 2015).

<sup>32</sup> Michael Collins, *Tour Caddies Vote on New Group*, ESPN (Nov. 6, 2013), [http://espn.go.com/golf/story/\\_/id/9934681/pga-tour-caddies-forming-new-association](http://espn.go.com/golf/story/_/id/9934681/pga-tour-caddies-forming-new-association).

<sup>33</sup> *Id.*

<sup>34</sup> Rex Hoggard, *New Caddie Association Pushes for Better Treatment*, GOLF CENT. BLOG (Jan. 21, 2014, 5:16 PM), <http://www.golfchannel.com/news/golf-central-blog/aptc-begins-push-better-caddie-treatment-tour/>.

<sup>35</sup> Rex Hoggard, *Conflict Brewing Between PGA Tour, Caddie Association*, GOLF CENT. BLOG (Jul. 2, 2014, 6:34 PM), <http://www.golfchannel.com/news/golf-central-blog/conflict-brewing-between-pga-tour-caddie-association/>.

APTC was reported to have proposed to the Tour that, in exchange for the Tour funding an insurance program and retirement plan, at an annual cost of \$10 million, the caddies would agree to wear the tournament bibs.<sup>36</sup>

*The Support of the Public and Golf Sponsors, More Than the Merits of the Litigation, Will Determine Whether the Caddies Succeed with Their Objectives*

The commencement of litigation provides the caddies with a bargaining chip that encourages a resistant Tour to become a willing partner in the resolution of the caddies' broader concerns. The filing of the lawsuit generated substantial media attention, serving to educate the public about the caddies' concerns.<sup>37</sup> Similarly, with their sponsors' bibs targeted, the companies that finance so much of the Tour's activities may encourage the Tour to be more responsive to the caddies. To evaluate the direction the litigation will take—whether and when it will lead to a negotiated resolution—the grid below may help:

	Merits Favor Caddies	Merits Favor Tour
Strong, Pro-Caddy Public/Sponsor Reaction	<b>Settle early</b>	<b>Settle early</b>
Apathetic Public/Sponsor Reaction	<b>Settle late</b>	<b>Don't Settle</b>

While the merits of the underlying lawsuit are important, the most significant driver of a settlement decision likely will be the degree and intensity of the support the caddies are able to engender from the media, golf fans, golf organizations, and corporate sponsors. Without a meaningful outcry of support for the caddies, the Tour will treat the lawsuit as a defendant treats most litigation of this type: by attempting to dismiss counts at the outset or at summary judgment and ultimately settling or failing to settle based on the merits and the plaintiffs' settlement demand.<sup>38</sup> If, however, the caddies successfully keep the case on the radar screen, rallying support either by public outcry or

<sup>36</sup> *Id.*

<sup>37</sup> Renee Montagne, *Caddies File \$50 Million Class-Action Lawsuit Against PGA Tour*, NPR (Mar. 11, 2015, 5:02 AM), <http://www.npr.org/2015/03/11/392263838/caddies-file-50-million-class-action-lawsuit-against-pga-tour>.

<sup>38</sup> Robert Wilde, *Caddies Sue PGA for \$50 Million in Lost Revenue*, BREITBART (Feb. 5, 2015), <http://www.breitbart.com/sports/2015/02/05/caddies-sue-pga-for-50-million-in-lost-advertising-revenue/>.

private persuasion by corporate sponsors, the Tour will negotiate with the caddies and agree upon a package of benefits to give the caddies, a byproduct of which will be the termination of the litigation. Post-filing events are consistent with this dynamic.

The caddies' lawsuit included a request for injunctive relief "prohibiting Defendant PGA T[our] from taking any retaliatory action against Plaintiffs or members of the proposed class."<sup>39</sup> Recognizing that early and public court action on the caddies' motion to obtain preliminary injunctive relief would substantially enhance the initial publicity generated by the lawsuit's filing, the Tour expeditiously provided assurances that retaliation would not occur, depriving the caddies of an early judicial forum.<sup>40</sup> Consequently, the caddies withdrew their motion, indicating that:

[The Tour] has informed the players on the PGA Tour, Champions Tour, and Web.com Tour that the Tour is in no way suggesting or requiring that any member take any action against any caddie solely as a result of the lawsuit . . . . In addition, the Tour has represented that it has directed Tour officials not to take any action, or make any statements to players, inconsistent with the foregoing statement made to players.<sup>41</sup>

Subsequently, a February 28, 2015 storm at the Honda Classic provided the caddies with an opportunity to reinforce the APTC's advocacy points, with coverage provided by leading golf media.

As severe thunderstorms hit PGA National, play was suspended—and ultimately, postponed—sending players and fans to seek shelter. But while players huddled in the clubhouse, caddies, who aren't given clubhouse access during PGA Tour events, had to take cover in a metal shed on the course.<sup>42</sup>

More recently, attorneys representing the caddies have announced plans to amend the complaint by adding seventy additional

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<sup>39</sup> Brenda S. Jeffreys, *Fore! Golf Caddies File Class Action Lawsuit over Bibs*, TEX. LAW. (Feb. 4, 2015), <http://www.texaslawyer.com/id=1202717030405/Fore-Golf-Caddies-File-Class-Action-Lawsuit-Over-Bibs>.

<sup>40</sup> Rex Hoggard, *Motion to File Injunction to Protect Caddies Withdrawn*, GOLF CENT. BLOG (Feb. 20, 2015, 8:38 AM), <http://www.golfchannel.com/news/golf-central-blog/caddie-lawyers-withdraw-motion-injunction/>.

<sup>41</sup> *Id.*

<sup>42</sup> Alex Myers, *PGA Tour Caddies Furious After Being Forced to Take Shelter from Storm in Metal Shed*, GOLF DIGEST (Feb. 28, 2015), <http://www.golfdigest.com/blogs/the-loop/2015/02/pga-tour-caddies-furious-storm-shelter.html>; see also Will Gray, *Caddies Bristle at Shelter Offered During Storm*, GOLF CENT. BLOG (Feb. 28, 2015, 6:06 PM), <http://www.golfchannel.com/news/golf-central-blog/caddies-bristle-shelter-offered-during-storm/>.

plaintiffs, including Tiger Woods's and Adam Scott's former caddie, Steve Williams.<sup>43</sup> As the caddies attempt to engender public support, the Tour likely will try to defuse the impact of the complaint by moving to dismiss some, if not all, of the caddies' claims. By the time the court rules on the motion to dismiss, the parties will have a better read on the caddies' success in generating support from the public and sponsors. With meaningful support, the Tour will be hard pressed to continue to exclude the caddies from Tour-funded benefits. Without support, the caddies' fortunes will live or die on the strength of their legal claims and the generosity of their player-employers.

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<sup>43</sup> Rex Hoggard, *Williams Joins Caddies' Lawsuit*, GOLF CENT. BLOG (Mar. 2, 2015, 4:37 PM), <http://www.golfchannel.com/news/golf-central-blog/williams-joins-caddies-lawsuit/>.

