

Legal Issues in Golf: A 25 Year Litigation History 1973-98

Catherine Tonner, M.S.
Thomas H. Sawyer, Ed.D.
Michael G. Hypes, D.A.

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INTRODUCTION

On average, people in American society spend as many waking hours at leisure as they do at work. Fewer households today have children in them, Americans are spending more of their lives unmarried, and people are retiring earlier and living longer after retirement. All of these conditions are positively related to the amount of leisure time one has (Godbey, 1990). With this increase in time, people tend to participate in sports and recreate more than before.

As the number of people who participate in sports grows more and more each year, so do the risks associated with these sports.

Consequently, whether participation is for recreation or competition, the legal liability of these sports has long since been a concern for recreation and sport professionals alike.

The sport of golf is a popular choice for individuals looking to spend their increased free time. Golf is viewed as both a recreational and competitive sport, however, whatever the venue, the sport of golf has many more risks than the average recreation or sport professional may be aware of. These risks (e.g., personal injuries to the eyes, nose, face, head, legs, knees, ankles, as well as property damage to houses, cars, fences, satellite dishes, and windows), which often result in litigation, are costly in both time and money. What is most intriguing is that the litigation which golf courses and country clubs are often faced with can be avoided and prevented through sound risk management practices and programs. New golf courses are being built in the United States at the rate of more than one per day (Floyd, 1999). There are over 16,300 golf courses in the United States with another 1,069 courses under construction as of January 1, 1999 (National Golf Foundation (NGF), 1999). The golf industry is booming. This rapid expansion, however, could be a problem since according to Floyd (1999) each one is a complex business venture, which includes complex business related problems. These problems typically include such things as real estate issues, employment matters, premises liability, discrimination, personal injury, and property damage as well as many other issues.

Golf used to be nothing more than a popular pastime. However, the golf industry today resembles a stand-alone business complete with

its own legal issues. The golf industry will likely continue to grow as Baby Boomers age and retire (Floyd, 1999). With this increase in complexity on the business side, golfers, course managers, course designers, equipment manufacturers, and adjacent property owners need to pay close attention to risks that might be present that could lead to litigation.

Over the past 25 years (1973 - 98) the sport of golf has grown rapidly in popularity. With this growth in participation, there has also been marked growth in litigation. This paper will analyze 25 years of golf litigation, determine the primary areas which have played the greatest role in golf litigation, and identify risk management tips geared towards alleviating or eliminating these risks.

Of the areas identified, personal injury as the result of negligence, was the most profound area accounting for nearly 53% of all litigation concerning the sport of golf. Other areas included concerns regarding taxes and taxation (17%), breach of contract (14%), discrimination issues (7%), nuisance (5%), and wrongful death suits (4%). In addition there were a number of other areas, which would best be categorized as miscellaneous, including lien complaints, environmental protection, product liability, declaratory relief, property use, zoning, trademark infringement, as well as some employee-related issues such as wrongful termination and due process.

NEGLIGENCE

A golf course environment is one of the most serene and spiritually relaxing experiences a person can enjoy. However, golf courses can also be dangerous to golfers, employees, and adjacent property users unless proper risk management practices are implemented. Some areas of potential risk include discrimination, errant golf balls, food and beverage concessions, general protection against environmental pests and varmints, golf carts, maintenance practices, steps and pavement, and wrongful death. (Hurdzan, 1990). Keeping this in mind, legal claims involving golf related injuries and damages are becom-

ing almost a matter of course: Players sue other players, spectators sue players, and both players and homeowners sue golf course owners for a number of reasons (Savell, 1998).

Player Injury Due to Errant Ball

One of the most prevalent areas in litigation concerning the sport of golf is personal injury as a result of negligence. Accounting for 53% of all litigation, it warrants attention. The most commonly litigated situation occurs when a player hits a ball (unintentionally) and mistakes another player for the flag (Savell, 1998). Airborne golf balls are a danger with which golf course personnel must pay close attention (Kleinman, 1998). Of all the cases researched, negligence concerning golf balls hitting players and spectators was the most frequent, comprising over 50% of all cases reviewed.

Participants, spectators, and even employees have often been the unlucky recipient of a renegade golf ball, sometimes causing serious, if not fatal injuries. Generally, participants in sports, like golf, can only hold another player responsible for injuries that are intentionally, or in some cases, recklessly caused. Injuries that result from a merely accidental bad shot generally cannot be the basis for liability (Savell, 1998). Golfers (and, usually spectators) are viewed as having "assumed the risks" inherent in the sport, which includes the risk of being hit by an errant stroke. However, the rules and customs of the game must be followed. Therefore, if a golfer knows that another is in the line of flight of his or her shot and fails to yell the customary "Fore" the golfer might be liable (when such a warning would have made a difference) (Savell, 1998).

In some cases of player injury, it is alleged that a golfer neglected to warn players within the reasonable ambit of danger of their intent to tee off. In *Schmidt v. Youngs* (1996), a golf partner brought a negligence suit against a fellow golfer for injuries he sustained when he was hit in the eye by a golf ball. The court of appeals held that the defendant had no duty to issue an audible warning upon striking the ball, nor to protect a partner from injuries that might

result from the ordinary and ever present risks of the sport of golf. Further, in Bartlett v. Cheduhar (1992), a golfer and his wife brought a negligence suit against a second golfer for injuries they sustained when they were hit by a ball struck by the second golfer. The court found that in a situation where a person is struck by a golf ball, the general rule is that a golfer is only required to exercise ordinary care for the safety of persons reasonably within the range of danger of being struck by the ball. If the golfer happens to drive a bad golf shot which causes injury to another this does not of itself, establish negligence.

However, a bad shot may constitute negligence in a situation where a golfer has a propensity to shank his golf shots. In a situation such as this, the golfer who has a habit of shanking his shots could reasonably foresee that this might happen, which therefore increases the ambit of danger to include the area where a shanked golf shot might be included. He then has a duty to warn any golfer that might be in that area of danger. In Cook v. Johnston (1984), the plaintiff was struck in the eye with a golf ball hit by a member of his golfing foursome with an alleged propensity to shank his golf shot. In deciding this case, the court looked at whether a golfer with an alleged propensity to shank his golf shot owed a duty to warn a member of his golfing foursome about this problem and whether the shanker breached that duty. If the golfer knew of his propensity to shank his golf shots, then he had a duty to warn those players around him. However, if the injured party also knew of this propensity and did not take precautions (e.g., ducking), his or her own lack of care might be used as a defense in a court of law (Savell, 1998). As Sevell (1998) points out, the safest course of action is for players to announce their intention to hit the ball to those even remotely in the line of fire, and for those anywhere in range to keep in mind the navigational limitations of the human golfer.

Further, in Cavin v. Kasser (1991), a golf ball hit by another golfer struck a fellow golfer in a different foursome on a different green. The

court of appeals decided that a golfer has no duty to give timely warning of their intention to strike a ball to any other persons within the foreseeable ambit of danger. There is generally no duty to warn persons, not in the intended line of flight of the shot, on another tee or fairway. If the golfer who was hitting the ball did not intend for the ball to travel over and into another fairway or green, then it is reasonable that they did not warn the players on that other fairway. Once again the court found in favor of the defendant following the general rule of thumb that a player cannot be held liable for anything more than a bad shot. The court followed this line of thought and found that the golfer did not breach any duty to a person on the tee or adjacent fairway, where the golfer and others yelled "fore" as soon as it was apparent that the drive was heading toward the other tee. In addition to this, the plaintiff in this case admitted that he had heard the warning before he was struck and did not pay attention to the warning. In Jenks v. McGranaghan (1973), a golfer was struck by a golf ball driven by another golfer who was on another tee 150 yards away. The court of appeals held that a golfer has a duty to give timely warning to other persons within the foreseeable ambit of danger; however, there is generally no duty to warn persons not in the intended line of flight of an intention to drive the ball. The defendant golfer teed-off while the plaintiff golfer was on another tee 150 yards away and about 25 yards from the intended line of flight, at the time the defendant was prepared to drive the ball, the plaintiff was behind a protective fence. Therefore, there was no duty on the part of the defendant golfer to yell "fore" prior to hitting the ball. Once again the court followed the general rule of thumb in holding that a golfer cannot be held liable for a shot that deviated from the intended line of flight. The court found that the mere fact that a golf ball does not travel the intended course does not establish negligence on the part of the defendant golfer.

There have been some instances where the courts have ruled against the general rule concerning a bad shot constituting negligence. In

Zurla v. Hydel (1997), a golfer sued a fellow golfer for injuries received alleging that the defendant golfer negligently hit the golf ball which struck him as they played a round of golf. The appellate court found that golfing participants were not inherently, inevitably, or customarily struck by a golf ball. It was further upheld that golf was a contemplative and careful sport with emphasis placed on control and finesse rather than speed or raw strength, and that the physical dangers that existed were diminished by long standing traditions in which courtesy between players prevailed.

Spectator Injury Due to Errant Ball

Not only do players sue other players when a golf ball hits them, but spectators also have been known to bring negligence suits against players and course owners when they are the unfortunate recipients of a flying golf ball. In Ludwikoski v. Kurotsu (1995), a bystander who was sitting in a car in a driveway across the street from the golf course was hit in the face by a golf ball and consequently sued the golfer who hit the ball. The driveway was past the perimeter of the safety fence and a group of trees that were planted to prevent balls from leaving the course. In deciding this case the court found in favor of the golfer reasoning that the mere fact that a golf ball driven by a person playing a game of golf strikes a person is not proof of negligence on the part of the golfer who hit the ball. A golfer is only required to exercise reasonable care for the safety of persons reasonably within the range of danger of being struck by a ball. Since the plaintiff was sitting in the car far outside the perimeter of the golf course, he was outside the foreseeable ambit of danger and was not entitled to a warning prior to the golfer's shot. Spectators and golfers alike have taken their concerns into the courtroom in the form of a lawsuit against the actual golf course, country club, or property on which the injury occurred, in some cases with success.

Similarly, in Baker v. Mid Maine Medical Center (1985), a business invitee brought a negligence action against a country club and sponsor of a golf exhibition. The plaintiff was watching

a featured golf celebrity search for a ball when a golf ball driven by another tournament player hit him. The plaintiff alleged that the country club and exhibition sponsor failed to take adequate precautions to prevent the invitee from being struck by a golf ball. The court held that the country club and sponsor of a golfing exhibition are required to use ordinary care to ensure that the premises are in reasonably safe condition for the invitee, guarding the invitee against all reasonably foreseeable dangers in light of the totality of the circumstances. It was reasonably foreseeable that the plaintiff and other spectators would focus their attention on the featured celebrity golfers, which would result in inattention to other golfers. The plaintiff was not warned that the other golfers were about to play their shots. Furthermore, the sponsor of the exhibition was not relieved of its nondelegable responsibility to make the premises of a country club reasonably safe for its invitees, where the sponsor: planned the exhibition, controlled admissions, collected admission price, and retained whatever profits were derived and had the right to use the golf course in order to invite the public to attend the event.

Lawsuits under this area of litigation usually involve negligent design, construction, maintenance, or operation. In Knittle v. Miller (709 P 2d 32, 1985), the plaintiff was a spectator at an amateur golf tournament when he was struck by a golf ball and consequently filed a negligence suit against the golfer, the country club, the golf association, and the tournament sponsor. According to the court, a golfer has a duty to warn those persons within the foreseeable ambit of danger of his intention to strike the ball. However, one who is outside the zone of danger from a golf ball or who is or should be aware of the impending shot is not entitled to a warning and if hit, cannot hold the golfer liable for failing to give any warning before making the shot. Since the plaintiff was in fact a spectator of the tournament, he should have been watching and therefore been aware that the defendant was going to strike the golf ball.

In Duffy v. Midlothian Country Club (1980), a spectator claimed negligent construction by the country club and the golf association when she was struck in the eye with a golf ball while waiting in line at the concession stand. In deciding this case the court reviewed why the plaintiff was on the property when the injury occurred. Since the plaintiff was purchasing something at the time she was injured, it was argued whether the spectator was a business invitee to whom the defendant owed a duty of care as owners and operators of the golf course or tournament. This seemed to be a defining factor in this case, since the owner of business premises has a duty to discover dangerous conditions existing on the premises and to give sufficient warnings to invitees to enable them to avoid harm the defendant was considered to be negligent. In their defense the country club and golf association raised assumption of risk. However, the club and association had to prove that the spectator appreciated the danger of being struck by the golf ball while in the presumed area of safety at the concession stand at the golf course. It was reasonable for the spectator to assume that she was relatively safe from danger while waiting in line at the concession stand.

In a different approach a spectator felt he had the right to sue based on where he stood as a spectator at a golf tournament (Grisim v. Tapemark Charity Pro-Am Golf Tournament, 415 N.W. 2d 874, 1987). In the Grisim case (1987), a spectator brought a personal injury action against golf tournament promoters, the country club, and the amateur golfer for injuries received from a flying golf ball. The courts held that the amateur golfer had no duty to shout a warning prior to teeing off. It was reasoned that the only duty owed to a spectator at a golf tournament was to provide reasonable opportunity to view the participants from a safe area. The amateur golfer playing in the tournament owed no duty to provide the spectator with a reasonably safe area for watching the tournament since he had no control over the arrangements for the spectators. It appears that the spectator in this

case felt that the golfer who hit him with the golf ball was responsible for his standing where he was when he was hit. The court ruled in favor of the golfer, since he was not the one who decided where the spectators were going to stand during the tournament.

Swinging the Golf Club

The vast majority of the cases researched in this classification involved minors and their parents. Typically, the cases within this area involved the parents of one adolescent or minor bringing action against the parents of another child who was directly responsible for the injury of the first child. In Mayer v. Self et al. (1986), the mother of the injured child brought action against the parents of another child to recover damages for injuries the first child suffered when the defendants' child struck her child with a golf club. The key to deciding this case hinged on whether the parents of the defendant child permitted their child to have access to the golf club and whether the parents should have anticipated injury to another through the child's use of the golf club. The court suggested that generally parents are not liable in damages for torts of their minor children merely because of the parent-child relationship. Likewise, in (1980), the court held that a parent could not be held liable for injuries that resulted when a nine-year old child obtained a golf club from an unlocked storage building and in swinging the club, struck another child. Once again the court reasoned that where the injured party seeks to impose liability on a parent for the actions of a minor child, the facts of the case must impose on the parent a duty to anticipate injury to another through the child's use of the club. Furthermore, in Poythress v. Walls et al. (1979), action was brought against the parents of a sixteen-year-old for serious facial injuries that were sustained by a child who was struck by the head of a golf club. The injury occurred when the head of a golf club broke or slipped from the wooden shaft as it was used to hit a semi-deflated volleyball. Again the court decided that the parents of the sixteen-year-old knew nothing of the golf club and that they had

no reason to believe that that the son would put the golf club to a reckless use. The court further found that the parents were not liable on the basis of negligent entrustment. The court took a little bit of a different approach in deciding the case of Morrison v. Sudduth (1977), where a thirteen year-old boy was struck in the head by a golf club which was swung by an eleven year old boy. The defendant of this case admitted to knowing at the time of the accident that a person should not swing a golf club when another is near. In addition to this, the defendant further admitted to not looking and not warning the plaintiff of his impending swing.

In Thurston Metals and Supply Company Inc. v. Taylor & Taylor v. Thurston Metals and Supply Company Inc. (1986), a golfer and his corporate employer were sued for the loss of an eye in a golfing accident. The verdict of this case hinged on whether the golfer exercised reasonable care toward a fellow golfer in rear when he performed a practice swing without a ball in place using as much velocity and gusto as he had employed when he was attempting to strike two previous shots. This caused the club, through the action of the wrist, to travel backward and strike the fellow golfer in the eye. In deciding this case the courts looked at several different elements of the law: theaters and show, corporations, master servant, and insurance. However, the court found that a player upon a golf course must exercise reasonable care in playing the game to prevent injury to others. The court held that an employer and its employees are deemed to be jointly liable and jointly suable for the employee's wrongful act.

Lightning and Wrongful Death

Golf is an outdoor game. It is open-air experience that attracts more than 12 million Americans. Consequently, golfers and golf facilities are often exposed to inclement and sometimes dangerous weather conditions (Crist, 1996). Facility managers must anticipate the effects of adverse weather and take the necessary steps to protect their patrons. Failure to do so may result in property damage, personal injury

and sometimes death and will more than likely result in legal liability. All of these could have been avoided by practicing preventative risk management techniques to protect not only the owner and operator of the golf course, but the patron as well (Crist, 1996).

Lightening claims more lives than any other weather phenomenon - including tornadoes. There are more than 200 people killed and about twice that many are injured by lightning each year in the U.S. and approximately 30% of all lightning victims are engaged in some sort of outdoor recreational activity at the time they are struck (Fucini, 1980). Athletic contests such as baseball, water sports, golf, and camping were the top four pursuits ranked among outdoor recreational activities which resulted in lightning fatalities. Every year approximately 40 people who are either participating in or viewing an athletic event are struck by lightning (Fucini, 1980).

Despite the relatively high number of instances where people have been injured or killed by lightning strikes, there have been only a select few cases where litigation has resulted. It is the belief of these authors that this is primarily due to the fact that the occurrence of lightning is often regarded as an act of God. An act of God is an unusual, extraordinary and unexpected manifestation of the forces of nature, or a misfortune or accident arising from inevitable necessity which cannot be prevented by reasonable human foresight and care (Kozlowski, 1997). As a result of this type of classification, few people believe that they can recover for injuries and damages. However, when the negligence of a defendant coincides with an act of God, a plaintiff can usually recover from a defendant (Kozlowski, 1997). As is well-known, negligence is often determined by what kind of relationship existed between the plaintiff and the defendant and therefore plays an important role in determining accountability.

The business relationship that exists between a golf facility and the people on or around the premises imposes a legal obligation on the part of the facility operator to do whatever is appropriate to provide for a reasonably safe

environment (Crist, 1996). It is not required that every conceivable preventive measure or precaution be taken. It is only what the reasonable businessperson would do under similar circumstances that dictates what is required. An excellent example of this concept is in (1991), where the plaintiff brought a wrongful death claim against the state of Tennessee after her husband was struck and killed by lightning while playing a round of golf on a state park golf course. On the day of the accident the weather was somewhat overcast as Hames and his group began to play their round of golf. Within 30 minutes of the game a thunderstorm moved over the golf course area with visible lightning and audible thunder. This continued until approximately 2:30 p.m., at which time the three golfers were found beneath two trees after having been struck by lightning. Hames was instantly rendered brain dead upon being struck by the lightning (Kozlowski, 1992). The Supreme Court ruled that the state's conduct did not fall below the applicable standard of care and that conduct that was purported to be negligent was not the proximate cause of the golfers' death. It was reasoned that it is of common knowledge by persons of ordinary or greater intelligence that lightning is a powerful, deadly and potent act of God and nature. The risks and dangers of playing golf in a lightning storm are rather obvious to most adults. Lightning is typically accompanied by thunder, and no warning device could be louder and more accurate than thunder. Thunder warns everyone that lightning is near. The courts further reasoned that the absence of a warning device was not the proximate cause of death and that the victim died from dangers and risks of which he assumed when he chose to seek shelter under a tree on a hill. Lightning is such a highly unpredictable occurrence of nature that it is not reasonable to require the owner and operator to anticipate when and where it will strike. Simply put, the risk to guard against is too remote to impose legal liability. In a similar case the courts contradict this finding. In (1997), a golfer brought action against the golf club at which he was a member for injuries

he received when he was struck by lightning. On the third hole of the plaintiffs' game of golf the weather started to downpour and there were visible signs of lightning. The plaintiff and fellow players headed towards the clubhouse to seek refuge from the storm, crossing the seventh fairway en route, while he was walking, the plaintiff put up his umbrella to avoid the rain. It was at this time that he was struck by lightning and received substantial injuries. In his reasoning the plaintiff felt that a lightning strike on a golf course was a foreseeable risk that must be addressed by the owners of the golf course where various means of protection were feasible (Kozlowski, 1997). It appeared that the courts agreed with the plaintiff in some respects. The courts reasoned that a golf course owed golfers a duty of reasonable care to implement its safety precautions properly particularly when it had taken steps to protect the golfers from lightning strikes. However, in light of this the court refrained from imposing this greater duty to the golfers because it would be cost prohibitive to make all golf courses adopt particular safety procedures. It is important for the defendants to realize that if a golf course chooses to utilize a particular safety feature, it owes a duty of reasonable care to its patrons to utilize it correctly. For example, if a course decides to build shelters for players to seek refuge from inclement weather, it must build lightning proof shelters; if a course has an evacuation plan, it must be posted where members can see and understand it. The forces of nature leading to a wrongful death suit need not be the only concern for the owner and operator of a golf course.

Employee Negligence

Course operators may also be held responsible for injuries resulting from the acts of their employees. One court held an owner liable for the actions of a starter he hired to speed up play. The starter improperly directed a golfer to tee off while the plaintiff was only 125 yards away. Other cases have found operators liable for allowing courses to become overcrowded where such a situation resulted in injury (Sevelle,

1998). Likewise, in (1977), action was brought against a city and four city employees to recover for injuries which arose out of a tobogganing accident on a golf course. The courts ruled that where a municipality, through its agent or employee acts in the performance of a governmental duty, the municipality has limited immunity from liability; however, when the action complained of is a ministerial action, the municipality is responsible for its negligent execution. As was mentioned earlier, producing a risk free golf course environment is almost impossible, but controlling risks is not only possible, it must be a full time concern of everyone on the golf course, including the golfers themselves (Hurdzan, 1990).

There have been a handful of additional cases that have centered on the issue of alcohol. In (1993) the surviving family members of the deceased brought a wrongful death suit against the golf course alleging that the sale of alcohol was the cause of the fatal automobile accident. Two gentlemen were out playing a round of golf. Upon their return to the clubhouse, the employees of the golf course noticed that one of the two gentlemen was visibly intoxicated and proceeded to take his car keys from him. When the second gentleman, who was clearly sober, intervened and offered to drive his partner home the employees returned the keys to the second individual. When the two gentlemen reached the parking lot, the second individual returned the keys back to his golfing partner and allowed him to drive home. On his way home, the intoxicated golfer was killed in a one-car accident. The court ruled that the second golfer had assumed the duty of a good Samaritan to use reasonable care for his drunk partner by offering to drive him home, and then placing him in a worse position by giving him his keys back and allowing him to drive away. The courts determined that the golf course was not liable, and that the second golfer could be a nonparty at fault.

Golf Carts

Golf carts pose a risk of litigation with which owners and operators of golf courses

should be concerned. Golf carts can be sources of high-risk exposure unless thoughtful risk management practices are implemented. Some sources of risk concerning golf carts include: (1) improper design, construction, and/or maintenance of golf cart paths, bridges or tunnels, (2) inadequate maintenance or record keeping of periodic or specialized maintenance on the golf carts such as brakes, steering, tires, back-up buzzers, and drive trains, and (3) inappropriately renting a motor vehicle to an unlicensed driver, minor, or drinking driver or those untrained in cart operation (Hurdzan, 1990). Typically, in any litigation that surrounds golf carts, courts turn to the law as it pertains to automobiles. On the golf course, golf carts are considered automobiles and therefore are generally subject to the same laws that govern actual automobiles on public streets.

Negligence suits involving golf carts usually occur in one of three ways: (1) someone is injured when they are struck by a rolling or moving golf cart, (2) someone is injured when they fall-out of or tip-over in a rolling or moving golf cart, and (3) someone is injured when there is a collision between two or more golf carts. In (1982), the plaintiff brought suit against a fellow employee to recover for damages for injuries which he sustained when he was struck by a motorized golf cart which was being driven by the defendant. Initially the two individuals were out playing a round of golf with a representative from one of their clients. During the course of the game a golf cart that was being driven by the fellow employee struck the other individual. Due to the injuries the employee had to file a claim under workman's compensation. After this was denied because it was not considered a work related injury, the injured party brought suit against the employee who was driving the golf cart to recover for lost wages. The court ruled that where there was issue as to whether a negligence action could be maintained against a fellow employee or was barred by applicable statute, and subsequently found in favor of the defendant. Further, in Holst v. Countryside Enterprises Inc. (1994), a golfer filed a negli-

gence action against a golf course for injuries he sustained when a golf cart fell on him from an upper level of the clubhouse and struck him in the head. The court once again found in favor of the defendant. The court determined that the golf cart was an instrumentality that caused the injury and not the entire clubhouse premises. Furthermore, the court felt that the plaintiff failed to identify the golf cart and thus failed to establish that the operator of the clubhouse had exclusive control and management of the golf cart.

While in Monroe v. Grider (1994), a golfer who was hit by a golf cart sued the driver for negligence, as well as the cart owner for negligent entrustment. The court rendered the second claim against the cart owner groundless for several reasons. The court indicated that in order to establish negligent entrustment, the plaintiff must show that the vehicle was entrusted by the owner to the incompetent driver and that the owner knew or should have known that the driver was unlicensed, incompetent or reckless, that the driver was negligent on the occasion in question, and that the driver's negligence proximately caused the accident. There must be knowledge of incompetence when giving consent to the use of a vehicle in order for there to be guilt of negligent entrustment. Finally, the cart owner's knowledge that the driver had been involved in other collisions did not create an inference or conclusion of incompetence, particularly where the record showed that the driver's previous collision occurred in an intentional attempt to prevent another cart from rolling over. For these reasons, the court ruled the second claim as groundless; however, with respect to the first part of the claim, the court ruled in part favor for the plaintiff.

Almost every golf course has some area not safe for the use of golf carts (Hurdzan, 1990). Things such as insufficient signage and directions, poor traveling surfaces for the carts, inadequate pathways, and the landscape in general terms of hills and valleys all pose subtle risks for golfers. With this in mind, another manner in which a golf cart creates a risk for owners and

operators of golf courses is when a person is injured when they fall out of a cart. In American Golf Corporation v. Manley (1996), a golf course patron and his wife sued a golf course operator for injuries they sustained when the golf cart they were riding in crashed at a hairpin turn on the cart path. The path of the golf cart proceeded down a steep hill and then made a sharp turn in a hairpin fashion. The turn was not marked and the plaintiff could not see the turn from the cart and cart pathway. Prior to this accident, there were two prior accidents at the same location and were extremely similar to the plaintiff's accidents. Based on this, the court found that the operator had superior knowledge of the dangerous condition at the accident site and was negligent in warning invitees about it. It was reasoned that since there were in fact two prior accidents at the same location on the golf course, that the operator should have been alerted to the dangerous condition of the path and taken adequate measures to bring attention to the risk. Further, in (1986), a golf cart driver brought a negligence suit action against the owner of a golf course to recover for injuries he sustained when the golf cart he was riding in over turned. The court found in favor of the plaintiff stating that there were not any guardrails or warning signs to advise cart users of the uneven nature of the golf cart path.

There are problems with accidents and collisions between golf carts on the golf course. In Del E. Webb Cactus Development v. Jessup (1993), a passenger in a golf cart was injured and brought action against the driver of the golf cart and the owner and operator of the golf course. The golf course on which the plaintiff was playing required that all persons playing golf to use a golf cart and therefore included a fee for the golf cart, in the greens fee that was charged to all players. On the course the golf carts were required to cross a public highway in order to get from one part of the course to the other. In deciding the verdict, the court ruled that the rented vehicle liability insurance statute applied to golf carts operated on a golf course traversed by a public highway, and that noncompliance with

the statute imposed joint and several liability upon the owner of the course. Under this section of law, the owner of the motor vehicle who rents it to another party without having procured public liability insurance is jointly and severally liable, with the renter, for damage caused by the renter's negligence in operating the motor vehicle.

Course owner and operators also need to make sure that golf carts are properly kept and maintained to ensure safe operation. Inadequate maintenance or record keeping of periodic or specialized maintenance of such items as brakes, steering, tires, back-up buzzers or drive trains can create risks for the owner or operator of a golf course. For example, in Montes v. Hyland Hills Park (1993), a patron of a public golf course was allegedly injured by a negligently maintained golf cart and subsequently brought action against the parks and recreation district which owned and operated the golf course. It was ruled that the golf cart was not a "facility" within the meaning of the statute waiving immunity conferred by Governmental Immunity Act in actions for injuries resulting from a dangerous condition of public facility located in a recreation area maintained by a public entity.

Manufacturers and lessors of motorized golf carts have also found themselves in court dealing with negligence suits. In (1979), an action was brought against the manufacturer and lessor of a motorized golf cart when someone was injured while riding in the cart. It was ultimately found that the defendants failed to warn the plaintiff of the cart's propensity to tip while turning, and that the absence of such a warning rendered the product substantially dangerous to the user. In deciding this case the court determined that an otherwise faultlessly made article may be deemed defective if the manufacturer/lessor fails to warn users of dangerous propensities which in absence of adequate warning render the article dangerous.

GOLF COURSE DESIGN

The design of a course may provide the basis for liability. In Koltes v. St. Charles Park

District (1997), a patron who was struck by an errant golf ball as she stood in a standing area near the first tee of a golf course, sued the park district for negligent design and maintenance of the course. The court ruled in favor of the defendant. Since the park district did not engage in willful and wanton conduct by failing to alter the design of the first tee at the golf course after the patron was hit or by failing to provide warnings and fencing in the area where the spectator was hit. Interestingly, the district also was not liable for injuries to a second patron who was struck by a ball in a subsequent incident while standing in the same area. Logically, the court reasoned that a public entity might be found to have been engaged in willful and wanton conduct, so as to be liable for injuries resulting from a dangerous condition on recreational property. This is the case only if the district has been informed of the dangerous condition, knows others who have been injured because of the condition, or intentionally removes a safety device or feature from the property.

Contractors and Manufacturers

In some cases owners and operators of golf courses have brought lawsuits against construction companies, contractors as well as manufacturers for negligence issues. In the case of Loup-Miller v. Brauer and Associates Rocky Mountain Inc. (1977), the owners of a golf course brought action against the architects and the person hired to perform the earth moving services for the golf courses to recover for damages alleging negligent construction of the golf course. The court determined that the owners of the golf course were contributorily negligent since they were aware that the ground was not properly prepared for the planting of grass seed in the fall, and nonetheless directed that the seeding process proceed. Therefore, the owners were also at fault when the grass did not grow properly in the spring.

In the Midwest a golfer was awarded more than \$40,000 for injuries suffered when he tripped on a brick path and broke his jaw and shattered his teeth. It did not seem to matter to

the courts that the injured party had a blood-alcohol level of .28, a full 60 minutes after the incident, or that he admitted to having consumed eight beers and several mixed drinks prior to the fall. The court determined that the club was negligent because the gaps in the brick path were such that even a sober individual could conceivably trip over them (Bartlett, 1998). Legal questions may also arise where an injury is caused not by another person, but by dangerous conditions (such as an open drain) on the course itself. Depending on the circumstances, the injured person might be successful in their suit (Sevell, 1998).

Maintenance and Operations

In *Lemovitz v Pine Ridge Realty* (1995), a golfer sued the owner of the golf course on which he played for injuries he received when he was struck in the eye by a golf ball. The court found that the owner did not design the course and therefore could not be liable for the course's allegedly negligent design. Further, the owner of the course was not liable on premises liability theory and did not make any changes to the course during the time of his ownership and control of the course. Although the owner could not be held liable for negligent design of course, he could be subject to liability under Maine law, since the possessor and owner of a golf course must use ordinary care to ensure that premises were reasonably safe for invitees in light of totally existing circumstance. The court reasoned that since there was no evidence that the owner of the golf course had, or should have had, sufficient knowledge of the alleged hazard on the premises to constitute premises liability, the course owner was not liable. In addition, since the golfer acknowledged that there was insufficient distance between the third and fourth holes of the golf course; that he knew from experience that golfers do not always know where a hit ball will go; and that there is limited control of a golf ball after it has been hit. Therefore, the conditions, which allegedly created a hazard at the third hole, were obvious to the golfer.

In *Young v. Gregg* (1992), a tournament

golfer brought a negligent operation suit against the owner and operator of the golf course when he was struck by a ball hit by a non-tournament golfer who was permitted to begin play before the tournament had ended. The court decided that the standard for possessor of land when the invitee was injured by the acts of a third party applied to the action. The court further ruled that there was sufficient evidence that the operator of the golf course had breached his duty to the tournament golfer and consequently was the proximate cause of the golfer's injuries. The court held that the possessor of land who holds it open to the public for entry of business purposes is subject to liability to the members of the public while they are on the land from physical harm by any cause, or intentionally harmful acts of third persons and animals. Furthermore, the court held that the course operator failed to exercise reasonable care and was negligent in letting the non-tournament golfers begin play before the tournament was over, and failing to warn the tournament golfers that the course was opened up to non-tournament players. The operator should have known that by letting the non-tournament players begin to play before the course had been vacated by other people, that there was an increased risk to those individuals who were left on the green at the time.

Generally, the owner is only responsible for dangers of which only the owner is aware. The operator need not protect players from dangers that are either known to the players or are so obvious that the players should have been aware of and protected themselves from them (Sevell, 1998). Producing a risk free golf course environment is almost impossible (Hurdzan, 1990). One area that should be of a concern for owners, deals with slip, fall and trip accidents, which accounts for nearly 75% of all accidents occurring on a golf course (Hurdzan, 1990). In *Burns v. Addison Golf Club Inc.* (1987), a golfer unsuccessfully sued a golf course alleging negligent maintenance when she tripped over an exposed tree root causing her to fall and injure her foot. The court reasoned that the tree root was a natural condi-

tion of the course and that the course could therefore not be liable for the natural condition of the course. The court further ruled that the fact that foot traffic by golfers may have contributed to the exposure of the roots of the tree did not render the root an unnatural condition.

Holes, drains and sewers also appear to be another risk management issue for owners and operators of golf courses. A husband and wife brought an action against a county for injuries the wife received on a golf course in the county park (Quesenberry v. Milwaukee 317 N.W. 2d. 468, 1982). The woman fell and broke her leg when she stepped into an 18-inch diameter hole created by a drainage tile. In Melehes v Wilson (774 P. 2d 573, 1989), an individual was injured when he stepped into a grass covered hole on the fairway of the golf course. Consequently, the injured party brought a negligent maintenance suit against the corporate owner of the course, the president, as well as the manager. Similarly, in Fritscher v. Chateau Golf and Country Club (1984), a golfer brought a negligence action against a country club for injuries he sustained to his spinal cord when he fell into an open drain hole while jogging on the course at night. The member was successful in his suit winning more than \$400, 000 for pain and suffering. The court reasoned that the member did not assume the risk of injury since the tall grass generally surrounding the hole acted as a natural barrier. At the time the accident occurred the grass had been cut, so therefore the member did not have a clear understanding and appreciation of the risk. The court stated that assumption of risk requires that the plaintiff had a knowledge of the danger and that he understood and appreciated the risk that could arise from such a situation, and ultimately that he voluntarily exposed himself to the risk. This was not the case since the hole in the ground was usually protected and concealed by the tall grass. This case is only one of several that deal with golf courses after hours or in the off season. It is important for owners and operators of golf courses remain cognizant to the risks that remain in the off season and after hours of normal oper-

ation. In Adam v. Sylvan Glynn Golf Course (1992, 1993), an individual was injured while she was cross-country skiing on a city owned golf course. The injured person brought a negligence suit against the city that owned and operated the golf course. The court ruled that the city was immune from the negligence action since although there was no specific authorization that allowed the city to use the golf course for cross-country skiing, the city was authorized to use the property for recreational purposes, which included cross-country skiing. Furthermore, the city could not be held liable for the injuries since there was no indication that the city operated the golf course as a cross-country skiing facility for primary purpose of making a profit. The golf course was a nonprofit public facility, therefore any revenue that was collected from cross-country skiing and other activities on the golf course were used to pay prices associated with general operations of the course.

Finally, a player was successful in suing the owner and operator of a golf course for injuries she received when she hit herself with a golf ball. In Pelletier v. Fort Kent Golf Club (1995), a woman golfer was hit by her own ball when it ricocheted off of a railroad track which crossed the course, so she brought a negligent maintenance suit against the owner of the course. The court ruled in her favor reasoning that a business owner has a general duty to exercise reasonable care to prevent injury to business invitees. The owner of the golf course was the possessor of the railroad track, which ran across a hole on the golf course and therefore owned a duty to protect golfers from risks created by the track. Consequently, the owner was liable for any injuries that were suffered by the golfer.

Adjacent Property Owners

Golf courses can face some very unusual liabilities. With the continuing growth of the golf industry and construction of new golf courses, there is also an increase in the number of lawsuits seeking damages for personal injuries and property damage from golf balls (Floyd, 1999). Recently, questions have arisen regarding golf

course operations and their impact on adjoining off-course property and property owners (Ochs, 1997). The topic is of interest because of reports concerning damages or injuries from golf balls that fly off the course onto adjacent property or highways (Ochs, 1997). There are two specific rights by which golf balls can become a nuisance - public and private. When there is interference of a public right such things as public highways, sidewalks or other public thoroughfares are affected. Private rights refer to private homes and properties.

When the interference of the golf course affects a public right such as danger to the highway, sidewalk or other public thoroughfare, then it is often dealt with as a public nuisance. A large number of cases have involved dangers to an adjacent public highway. Once the highway or roadway has been established, the public's right of passage carries with it an obligation upon the occupiers of abutting land to use reasonable care to see that the roadway remains safe. Golf course operators will likely be found liable for any unreasonable risk to people who are on the public thoroughfare lawfully and must exercise due care for their safety (Ochs, 1997).

Do motorists who deliberately decide to drive on a public highway or thoroughfare adjoining a golf course accept the occasional, concomitant annoyances such as an errant shot which may shatter windshields and possibly injure the driver or passenger? (Kozlowski, 1991). This was just the case in Rinaldo v. McGovern (1990), where an action was brought against the golfers to recover for personal injuries sustained when the windshield of the car the individual was riding in was shattered by a golf ball. The appellate court held that the golfers owed no duty to warn the person of the impending tee shot. Even if a duty was owed, their failure to warn the individual was not the proximate cause of the person's injuries as a matter of law. There would be only a remote possibility that the person would have heard or been able to respond to the warning had one been given. It was further reasoned that the evidence did not establish that

the golfers failed to use due care in hitting their tee shots.

The situation involving homeowners or residents adjoining a golf course is somewhat different. Decisions of the courts in the past have upheld the defense of "assumption of risk" where the adjacent property owner built or purchased his home subsequent to the construction of the golf course. If the golf course was there first, it should have been known that errant golf balls could accidentally land on the property (Floyd, 1999). If however, homeowners around a course have the use and enjoyment of their land impaired by flying golf balls, they would probably have to rely on a theory of nuisance to recover (Ochs, 1997, Kleinman, 1998). This would be the case if the problem was acute and the frequency of golf balls landing in the yard of the property owner was frequent enough to cause material annoyance or discomfort (Floyd, 1999). Depending on the circumstances, if the adjacent property is an apartment building or condominium, liability may be divided between the owner of the course and the owner of the property. For example, in Kole v. AMFAC Inc. (1988), a condominium pool user and lessee of a condo unit brought action against the golf course and the owner of the condominium for injuries he received when he was struck on the head by a stray golf ball from the adjacent golf course. The Supreme Court ruled that the condo unit owner had a duty to warn lessees of the hazardous condition of the swimming pool being adjacent to the golf course. It was stated that notice in the lease or even a simple note left in the unit would have satisfied the owners duty to warn, and would have avoided responsibility in the lawsuit altogether.

Sometimes the courts will give consideration to the problem of "coming to a nuisance". This is when a plaintiff builds or buys a home near an existing golf course. It would seem that if he is allowed to recover for damages then the court would be giving the plaintiff a windfall gain at the expense of the defendant. If the course were already in existence, then the plaintiff made

a conscience choice to build in that location after taking into account the possibility of errant golf balls landing on his property during the course of play. He should not be allowed to purchase the property with an eye to also buy a cause of action against his neighbors (Ochs, 1997). If, however, a natural barrier that was in place to act as a buffer zone between the two properties was for some reason removed (e.g., storm or diseased trees) the frequency and risk of injury from golf shots is increased dramatically, the courts look at this situation differently. If this were the case, the courts would not prevent the person from recovering for damages since the annoyance has been increased by reason of change (Floyd, 1999). Regardless of the situation, it is essential that the interests of adjoining property owners or occupiers and users be taken into account. Owners and operators of golf courses must become and remain conscience to this problem and take effective risk management steps to avoid litigious situations concerning adjacent property owners.

BREACH OF CONTRACT

Breach of contract comprised nearly 15% of golf litigation over the 25-year period (1973-1998). Within this area of litigation, cases could be further broken down into five primary areas. The most common breach of contract were contracts between golf courses and its investors, followed by golf courses and construction firms, golf courses and design build firms, and contracts dealing with real estate issues. Contracts involving licensees and lessors, and employees rounded out this area of golf litigation.

Construction and Design

Over the past 25 years, it has become evident that contracts that exist between a golf course and contractors hired for construction or design purposes has been a legal handicap for owners and operators alike. In Gundersons v. Tull (1984), a contractor brought action against the owner of the golf course for breach of construction contract. The court found in favor of the contractor stating that the contractor met the burden of establishing with reasonable certainty the amount of expected net profit as a basis for an

award for lost profits. In addition to this, it was found that the owners' breach of contract for the construction of the golf course, in itself, entitled the contractor to at least nominal damages. The amount of expected net profit was used as a basis for an award of lost profits. Furthermore, the contractor was also entitled to the consequential damages for maintenance of long-term leases on equipment that he had leased for the project and was therefore left idle by the breach of contract. Golf courses have also brought breach of contract suits against contractors as well. In Breckenridge v. Golfcourse Inc. (1993), the Town of Breckenridge filed a breach of contract suit against the designers of a public golf course. As a basis of determining fault in this case the court evaluated the contractual obligations between the two parties regarding the performance and supervision of sampling and testing procedures and in what way to determine compliance with the golf associations standards for drainage and percolation conditions. It was clear that the evidence supported that the contract between the town and the designers for the construction of the golf course had been breached. Consequently, the courts found in favor of the town.

Real Estate

In Oceanside Community Association v. Oceanside Land Co. (1983), the homeowners association brought against developer and subsequent purchasers of developers property adjacent to the residential development seeking mandatory injunction to restrict the subject property for use as a golf course as covenanted by the developer. The Superior Court denied the mandatory injunction but granted an equitable lien on the property for each month the golf course was not in the process of being renovated or maintained. The association and most recent purchaser of the property cross-appealed. The Appeals court ruled that the clauses of the contract restricting the use of the property as a golf course was a burden rather than a benefit to the property and that it was not personal to covenantor developer but, rather, was intended to run with the land to bind the developers successors. Likewise, in Breen v.

Wollaston Golf Club (1975), action was brought by a member of a corporate golf club following the sale of the club for determination of value of his certificate of ownership and award of damages. The court ruled that the statutory appraisal provisions, which fall under the statute governing corporations established for carrying on business for profit, did not apply to the corporations formed under the statute which governs corporations having civic, educational, charitable, benevolent, religious or state cognate purposes. This also included corporations whose purpose was of fostering, encouraging or engaging in athletic exercises or yachting, and which contains no reference to or adoption of appraisal provisions. Finally, in McHugh v. Johnson (1978), a real estate broker brought action to recover for commission from the defendant who is the joint owner of the golf course. The court held that there was sufficient evidence to establish a contract between the plaintiff and defendant, notwithstanding the absence of a written listing. In addition, it was further ruled that the broker who had produced a buyer who was willing and able to buy, on terms that were acceptable to the defendant joint owner of the golf course, with whom he dealt, was entitled to commission as was agreed between the two parties.

Lessor/Lessee/Licensee/Licensor

The agreements between licensee and licensor, and lessor and lessee, are also areas of concerns for the owners and operators of golf courses. Whether the agreement concerns the pro shop or the food concessionaire at the club, managers and operators of golf courses need to be sensitive to the risks that these areas can pose if not carefully managed. For instance, in The Association Creditors Agency v. Davis (1975), a credit agency as the assignee of the creditors who furnished alcoholic beverages and foodstuffs to concessionaire at the golf club, brought action against the golf club, whose liquor licenses had been used by the concessionaire. The Supreme Court ruled that the concessionaire merely paid rent to the golf club owners, and therefore was not the agent of the owners. The court reasoned

that the agreement that allowed the concessionaire to use the golf clubs liquor license did not establish an agency as a matter of law since the golf club owners who had leased the restaurant and bar concession to another party never directly undertook to order and pay for the beverages or provisions furnished to the restaurant and bar. However, the use of the license by the concessionaire could, if relied upon by the creditor have created an ostensible agency. In addition to this, the courts ruled that the creditors who had supplied foodstuffs never investigated to determine if or to whom the on-site liquor license had been issued and never relied on the credit of the licensees in furnishing foodstuffs, could not recover on theory of ostensible agency. In The City of Needles v. Griswold (1992), the defendant breached a written agreement with the city to operate the golf course that was owned by the city. In the agreement, the City reserved the right to terminate the license for cause upon 180 days notice to the defendant. Within the agreement it was stated that in the event that there should be any sort of disagreement or controversy with regards to the termination, it would be settled by arbitration in accordance with the rules of the American Arbitration Association. As a part of the agreement between the two parties, the defendant was obligated to provide whatever personal property was necessary to equip, operate, maintain and supply inventory for the golf course and its attendant pro shop and restaurant. Upon the termination of the lease, the city used the land and personal property of the defendant for public purpose. Furthermore, the court decided that the city contravened the constitutional limitations in eminent domain power.

In Woburn Country Club v. Woburn Golf and Ski Authority (1984, 1985, 1986), the former lessee brought action against the city golf and ski authority to recover for goods left on leased premises, and the city sought to recover fees collected by the lessee. The Superior Court initially ruled in favor of the city on its claim for the fees collected and allowed a new trial as to the claim as was presented by the lessee. The court of

Appeals ruled that the city golf and ski authority was a gratuitous bailee for the use of goods left by the former lessee on the premises for an indefinite term, and as such, had an obligation to confine its use of goods to that contemplated at the creation of the bailment. The court further ruled that there existed a responsibility to exercise care with respect to the goods, and to return the goods to the lessee, or to make them available to be picked up if demanded so. The court also ruled that the former lessees' demand for rent for the goods left on the leased premises was not equivalent of the demand that the city golf and ski authority return such goods and thus did not terminate the authority's rights to use such goods. Even if the city golf and ski authority's right to use the goods left by the former lessee was terminated by the lessees' demand for rent, the authority had no obligation to pay rent, but rather, continued use of the property while denying obligation to pay rent would, in effect constitute conversion of property entitling lessee to recover fair market value of the goods at the time of conversion with the interest to the date of judgement.

In Kautza v. City of Cody (1991) the co-owners of a miniature golf course brought action against the city and some of its officials alleging a lack of statutory authority for the city to operate the course, unfair competition, and constitutional violations. After being initially dismissed by the District Court, the owners appealed. The Supreme Court ruled that the co-owners contention that the lease agreement was detrimental to them was insufficient to mount a third party challenge to the validity of the lease. It was also ruled that the city was not subject to the unfair competition statute since the city had statutory authority to own and lease the miniature golf course. In it's ruling the court reasoned that the City had the authority to own and lease the miniature golf course, where there was no claim that the lease involved discriminatory or other questionable practices, and it appeared that the ownership and lease was for the benefit of the citizens of Cody.

Investors/Investments/Corporations

In Simmons v. Golf Course Specialist Incorporated (1981), a property owner appealed a summary judgement from the Circuit Court in which favor was given to the corporation in a postarbitration suit by the property owner alleging a breach on contract, fraud, and personal liability on the part of the president of the corporation. The Court of Appeals held that the contract included an arbitration clause, which stated that it is mutually agreed that the decision of the arbitrators shall be a condition precedent to any right of legal action that either party may take against the other. Based solely on this, it was reasoned that the corporation was entitled to confirmation of arbitration award. Similarly, in Kraus v. Willow Park Public Golf Course (1977), investors in the investment corporations golf course project filed a complaint against the golf course corporation, the golf course limited partnership and others alleging breach of contract and fraud. The Superior Court found favorably for the plaintiffs and determined that only certain defendants held their interest in the golf course for the benefit of the plaintiffs and other investors. The defendants appealed the verdict. The Court of Appeals held that since the investors in the golf courses' limited partnership made claims in bankruptcy proceedings instituted by the investment corporation, it did not preclude them from asserting claims as third party beneficiaries against the corporation which had agreed to assume the indebtedness to all those who had paid money to it for the development of the golf course. In contrast to this case, in Buckner v. Shorehaven Golf Club Incorporated (1988), a former member of a private country club brought action against the private capital stock corporation which operated the club, seeking an injunction ordering his reinstatement as a member of the club. The initial ruling by the Superior Court was in favor of the defendant with a denial of injunctive relief. The member appealed this decision. The appellate court found that the former member was not entitled to the injunction ordering his reinstatement since he

had been expelled by a vote of the club's boards of directors after a hearing before the board at which witnesses were heard. The trial court expressly found that the former member had not suffered irreparable harm and was therefore not entitled to an injunction.

Employees

Employees and employee related contracts are also another concern that could give rise to contract law for owners and operators of golf courses. For example, in Catropa v. Bargas (1989), a golf professional who received a portion of his compensation from the operation of the pro shop in his employers clubhouse brought a forcible entry and detainer action against his employer for possession of the pro shop following early termination of his at-will employment. The Superior Court found that the golf professional paid no rent and therefore could not maintain the forcible entry and detainer action against employer. The courts reasoned that the golf pro was not a tenant, and whatever right he had to use the pro shop premises were incidental to his at-will employment. Similarly, in Cole et al. V. City of Atlanta (1990), a group of professional golfers brought action against the city alleging that the city had breached an oral contract. The contract was said to include provisions that would provide the golfers services on the city's golf courses until each of them reached the age of seventy and to enjoin the city from leasing the golf courses. The Court of Appeals held that the golfers could not prevail against the city on the claim and recovery based on the theory of quantum meruit. The courts reasoned the decision in two ways. First, a person asserting a contractual claim against a city must clearly show that the contract was authorized, any person dealing with a municipality in a contractual context has a duty to determine that the city has complied with the law limited and prescribing its powers. Second, providers can recover damages on the theory of quantum merit for the value of the services received by the recipient, but not for the cost of their own expenditures.

DISCRIMINATION

Over the years men have developed the "good ol' boy" network on the golf course. They have organized private clubs that were devoid of blacks, Jews, and women. At first, these clubs were formed for political reasons, but as time passed, discrimination became the primary purpose for the existence of the private clubs. However, the constitutional right of freedom of association has opened the door to the right to discriminate if a group of individuals wants to form a genuinely selective and exclusive, truly private club. Yet at the same time, Americans have the right to equal protection under the law to not be discriminated against (Sawyer, 1993). It is the apparent contradiction that is the basis of these two rights that has been the source of much litigation for golf course owners and operators. Discrimination by either gender or race comprised a relevant number of the cases researched for this paper.

Golf can be a powerful network builder. Consequently, African-Americans from all walks of life - entrepreneurs, vice presidents, and sales people - are choosing golf as a way of making, building, and maintaining business relationships while relaxing in the company of others (Gite, 1992). For decades, golf was off limits to most African-Americans. As the racial barriers began to fall, more black golfers came into prominence (Gite, 1992). In deciding cases of a racially discriminatory nature, the courts have generally remained conservative in their decisions. For example, in Brown v. Loudoun Golf and Country Club (1983), a golfer brought a civil rights action against a golf professional and the golf club, alleging racial discrimination and intentional infliction of emotional harm. The plaintiff, who was a guest of a member of the club, and the foursome he was golfing with, was ejected from the golf course because he was black. The District Court held that the golf club, whose formal admission procedures did not entitle the club to status as a place of public accommodation, was not covered by Title II and was therefore not exempt from Title II's coverage as a private club.

The racial discrimination of players and

members is not the only concern for owners and operators of golf clubs. Employees and employee related issues with respect to discrimination should not be forgotten. In Los Angeles County Department of Parks and Recreation v. Civil Service Commission (1992), a Mexican-American golf course manager appealed after he was not promoted to the position of assistant golf director. The County civil service commission ordered that the manager be appointed to the next available vacancy in the position of assistant golf director after finding that the department of parks and recreation had engaged in unlawful discrimination, the Department appealed. The Appellate court found that there was no substantial evidence of unlawful discrimination and the decision was reversed. It was reasoned that to establish intentional discrimination in employment, a minority plaintiff must show more than the fact that a non-minority competitor was preferred. The plaintiff must present some evidence that the employers stated reasons were a pretext to the intentional unlawful discrimination. The decision to hire a candidate other than a minority candidate was based on the supervisor's subjective evaluation, and was not an inference of unlawful discrimination.

Male golfers everywhere have had to tip-toe in recent years around the issue of equal rights for women golfers (Bartlett, 1998). Professional women, like men, need to join golf and other professional and social clubs to expand their business network. They are learning, however, that swinging a club can be easier than joining one. Women golfers suffer from discrimination similar to those experienced by Jews and blacks, when it comes to joining a golf club (Sawyer, 1993). Many private golf clubs throughout America discriminate against women in subtle ways, such as unequal tee times, restricted voting rights, and restricted access to club rooms. However, outright exclusion of women from courses is rare. In light of growing attention to the rights of minorities, owners, and operators must remain cognizant to these issues and take the necessary precautions to avoid related litigation.

In Warfield v. Peninsula Golf and Country Club (1989, 1995), a divorced wife who was awarded country club membership in her divorce settlement brought suit against the club after it terminated her membership because of its policy of issuing family memberships to adult males only. The appellate court ruled that a private club that benefitted from business transactions with nonmembers qualifies as a business establishment subject to California's public accommodation statute. Based on this, all persons are entitled to the full and equal accommodations, advantages, facilities, and privileges, or services in all business establishments of every kind whatsoever. It was further reasoned by the Supreme Court that a measure such as this does not affect truly private social clubs since an entity is not automatically exempt from the strictures of the statute simply because it characterizes itself as a private social club. In this case the club engaged in a number of regular business transactions with nonmembers such as rental of the facilities, sale of food, beverages, and golf and tennis equipment. In Barry v. Maple Bluff Country Club (1997, 1998), a female country club member brought action against the club and some individual members alleging that the composition of the clubs governing bodies, and the clubs policy of setting men-only golf tee times, and the construction of certain amenities in the men's locker room violated the law of public accommodation. Since the law of Public Accommodation protects access to places, and not governing bodies the member had no claim with regard to the structure and composition of the club's governing body. However, with regards to the allegations of preferential treatment of the male members of the club, the courts ruled in favor of the plaintiff. Reasoning that the country club was a place of public accommodation and that by providing preferential treatment to the male members they were in violation of the laws of public accommodation.

RISK MANAGEMENT TIPS

The following is a listing of risk management tips developed based on the case law found

over the past 25 years (1973-98) regarding golf litigation:

1. Golfers are viewed as having “assumed the risks” inherent in golf, which includes the risk of being hit by an errant ball.
2. The rules and customs of golf must be followed (e.g., yelling the customary “fore” when another golfer is in the line of flight of the shot).
3. Courts have held that a golfer has no duty to issue an audible warning upon striking the ball, nor protect a partner from injuries that might result from injuries that might result from the ordinary and ever present risks of golf.
4. Further, the courts have established the following as a general rule: a golfer is only required to exercise ordinary care for the safety of persons reasonably within the range of danger of being struck by the ball.
5. However, a bad shot may constitute negligence in a situation where a golfer has the propensity to shank his/her golf shot.
6. Yet, courts have established another general rule of thumb that indicates a player cannot be held liable for anything more than a bad shot when the ball deviated from the intended line of flight.
7. There is generally no duty to warn persons not in the intended line of flight of the shot on another tee or fairway.
8. Golfers are only required to exercise reasonable care for the safety of persons reasonably within the range of danger of being struck by the ball.
9. Golf course management is required to use ordinary care to ensure that the premises are in reasonably safe conditions for the spectator (business invitee), guarding the invitee against all reasonably foreseeable dangers in the light of the totality of the circumstances.
10. Golf course operators have a duty to discover dangerous conditions existing on the premises and to give sufficient warning to invitees to enable them to avoid harm.
11. Courts have found that the only duty owed to a spectator at a golf tournament is to provide reasonable opportunity to view the participants from a safe area.
12. Negligence is often determined by what kind of relationship existed between the plaintiff and the defendant. The business relationship that exists between a golf facility and the people on or around the premises imposes a legal obligation on the part of the facility operator to do whatever is appropriate to provide for a reasonably safe environment. It is not required that every conceivable preventive measure or precaution be taken. It is only what the reasonable businessperson would do under similar circumstances that dictates what is required. What are the other golf courses doing in the area?
13. The courts, as a general rule, suggest that if the golf course operator chooses to utilize a particular safety feature, the operator owes a duty of reasonable care to patrons to use it correctly (e.g., if the operator decides to construct shelters for players to seek refuge from inclement weather, he/she must build lightning proof shelters; if the operator has an evacuation plan, he/she must post where members can see and understand the plan.
14. Golf course operators need to understand the risks that golf carts pose including: (1) improper design, construction, and/or maintenance of golf cart paths, bridges or tunnels, (2) inadequate maintenance or record keeping of periodic or specialized maintenance on the golf carts such as brakes, steering, tires, back-up buzzers, and drive trains, and (3) inappropriately renting a motor vehicle to an unlicensed driver, minor, or drinking driver or those untrained in cart operation. Typically, in any litigation that surrounds golf carts, courts turn to the law as it pertains to automobiles. On the golf course, golf carts are considered automobiles and therefore are generally subject to the same laws that govern actual automobiles on public streets.
15. Negligence suits involving golf carts usually occur in one of three ways: (1) someone is

injured when they are struck by a rolling or moving golf cart, (2) someone is injured when they fall-out of or tip-over in a rolling or moving golf cart, and (3) someone is injured when there is a collision between two or more golf carts.

16. Almost every golf course has some area not safe for the use of golf carts. Things such as insufficient signage and directions, poor traveling surfaces for the carts, inadequate pathways, and the landscape in general in terms of hills and valleys all pose subtle risks for golfers. With this in mind, another manner in which a golf cart creates a risk for owners and operators of golf courses is when a person is injured when they fall out of a cart.
17. The courts have held that the owner of the motor vehicle (i.e., a golf cart) who rents it to another party without having procured public liability insurance is jointly and severally liable, with the renter, for damage caused by the renter's negligence in operating the motor vehicle.
18. Course owner and operators also need to make sure that golf carts are properly kept and maintained to ensure safe operation. Inadequate maintenance or record keeping of periodic or specialized maintenance of such items as brakes, steering, tires, back-up buzzers or drive trains can create risks for the owner or operator of a golf course.
19. Courts have reasoned that a public entity might be found to have been engaged in willful and wanton conduct, so as to be liable for injuries resulting from a dangerous condition on recreational property. This is the case only, if the district has been informed of the dangerous condition, knows others who have been injured because of the condition, or intentionally removes a safety device or feature from the property.
20. Generally, the courts have ruled, that the owner is only responsible for dangers of which only the owner is aware. The operator need not protect players from dangers that are either known to the players or are so obvious that the players should have been aware of and protected themselves from them. Producing a risk free golf course environment is almost impossible. One area that should be of a concern for owners, deals with slip, fall and trip accidents, which accounts for nearly 75% of all accidents occurring on a golf course.
21. There are two specific types of rights by which golf balls can become a nuisance - public and private. When there is interference of a public right such things as public highways, sidewalks or other public thoroughfares are affected. Private rights refer to private homes and properties. When the interference of the golf course affects a public right such as danger to the highway, sidewalk or other public thoroughfare, then it is often dealt with as a public nuisance. A large number of cases have involved dangers to an adjacent public highway. Once the highway or roadway has been established, the public's right of passage carries with it an obligation upon the occupiers of abutting land to use reasonable care to see that the roadway remains safe. Golf course operators will likely be found liable for any unreasonable risk to people who are on the public thoroughfare lawfully and must exercise due care for their safety.
22. Do motorists who deliberately decide to drive on a public highway or thoroughfare adjoining a golf course accept the occasional, concomitant annoyances such as an errant shot which may shatter windshields and possibly injure the driver or passenger? The courts have held that the golfer owed no duty to warn the person of the impending tee shot. Even if a duty was owed, their failure to warn the individual was not the proximate cause of the person's injuries as a matter of law. There would be only a remote possibility that the person would have heard or been able to respond to the warning had one been given.

23. The situation involving homeowners or residents adjoining a golf course is somewhat different. Decisions of the courts in the past have upheld the defense of "assumption of risk" where the adjacent property owner built or purchased his home subsequent to the construction of the golf course. If the golf course was there first, it should have been known that errant golf balls could accidentally land on the property. If however, homeowners around a course have the use and enjoyment of their land impaired by flying golf balls, they would probably have to rely on a theory of nuisance to recover. This would be the case if the problem was acute and the frequency of golf balls landing in the yard of the property owner was frequent enough to cause material annoyance or discomfort. Depending on the circumstances, if the adjacent property is an apartment building or condominium liability may be divided between the owner of the course and the owner of the property.
24. Sometimes the courts will give consideration to the problem of "coming to a nuisance". This is when a plaintiff builds or buys a home near an existing golf course. It would seem that if he is allowed to recover for damages then the court would be giving the plaintiff a windfall gain at the expense of the defendant. If the course were already in existence then the plaintiff made a conscience choice to build in that location after taking into account the possibility of errant golf balls landing on his property during the course of play. He should not be allowed to purchase the property with an eye to also buy a cause of action against his neighbors. If however a natural barrier that was in place to act as a buffer zone between the two properties was for some reason removed (e.g., storm or diseased trees) the frequency and risk of injury from golf balls is increased dramatically the courts look at this situation differently. If this were the case, the courts would not prevent the person from recovering for damages since the annoyance has been increased by reason of change. Regardless of the situation, it is essential that the interests of adjoining property owners or occupiers and users be taken into account. Owners and operators of golf courses must become and remain conscience to this problem and take effective risk management steps to avoid litigious situations concerning adjacent property owners.
25. Golf course operators need to clearly understand contracts - the laws that support a contract, remedies for breach of contract, and how to develop a contract. No contract should be entered into unless first reviewed by an attorney.
26. Over the years men have developed the "good ol' boy" network on the golf course. They have organized private clubs that were devoid of blacks, Jews, and women. At first, these clubs were formed for political reasons, but as time passed, discrimination became the primary purpose for the existence of the private clubs. However, the constitutional right of freedom of association has opened the door to the right to discriminate if a group of individuals wants to form a genuinely selective and exclusive, truly private club. Yet at the same time, Americans have the right to equal protection under the law to not be discriminated against. It is the apparent contradiction that is the basis of these two rights that has been the source of much litigation for golf course owners and operators.
27. Male golfers everywhere have had to tiptoe in recent years around the issue of equal rights for women golfers. Professional women, like men, need to join golf and other professional and social clubs to expand their business network. They are learning, however, that swinging a club can be easier than joining one. Women golfers suffer from discrimination similar to those experienced by Jews and blacks, when it comes to joining a golf club. Many private golf clubs through-

out America discriminate against women in subtle ways, such as unequal tee times, restricted voting rights, and restricted access to club rooms. However, outright exclusion of women from courses is rare. In light of growing attention to the rights of minorities, owners, and operators must remain cognizant to these issues and take the necessary precautions to avoid related litigation.

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¹A recent Master's degree graduate in Sport Management from Indiana State University who resides in Canada - 873 Morley Avenue, Milton, Ontario, L9T 4Y2, (905)875-1540, imfitgrl@hotmail.com

²Dr. Sawyer is a Professor of Recreation and Sport Management and the graduate sport management program coordinator at Indiana State University, Executive Director of the Society for the Study of the Legal Aspects of Sport and Physical Activity, and Editor of the Journal of Legal Aspects of Sport - Department of Recreation and Sport Management, HHP Building, Indiana State University, Terre Haute, IN 47809, (812)237-2186; fax (812)237-4338, pmsawyr@scifac.indstate.edu

³Dr. Hypes is a Visiting Assistant Professor of Recreation and Sport Management and the undergraduate sport management program coordinator at Indiana State University, Assistant Editor of the Journal of Legal Aspects of Sport - Department of Recreation and Sport Management, HHP Building, Indiana State University, Terre Haute, IN 47809, (812)237-3900; fax (812)237-4338; rchypesm@scifac.indstate.edu

⁴This is a complete set of cases between 1973 and 1998. Not all of these cases were used in this paper. The cases with the * were used in this paper.