Managers & owners take heed: You may be liable for on-course injuries

By GARY CRIST

Legal liability for personal injury and property damage due to an errant or "bad" golf shot seems to be a widely misunderstood concept among golfers, professionals, facility operators, insurance companies, and others involved in the golf industry.

The most common misconception is that the golfer who hits the shot is usually responsible for any resultant injury or damages. Often, however, it is the course operator, designer or tournament organizer who is ultimately found liable.

Reported cases holding the golfer liable for the results of a bad golf shot are rare. Most decisions support the proposition that the golfer fulfills his or her duty of due care by:

- Not "hitting into" other players; and,
- Hollering "fore" if an off-line shot heads toward other people.

Although it is understandable why course operators and insurers embrace the notion the golfer is responsible for the consequences of a wayward stroke, the law generally holds otherwise.

Liability in "bad golf shot" cases follows traditional tort liability principles. To recover, the plaintiff must show a breach of duty on the part of the defendant and damages resulting from the defendant's wrongful act. Interestingly, the courts have been reluctant to find any breach of duty or negligence in the mere hitting of a bad or wild golf shot, absent evidence the golfer either intended or should have foreseen the resultant harm.

A representative case is Rinaldo vs. Springville Country Club. In Rinaldo, the plaintiffs were driving a car along a road next to the 11th fairway. The defendants sliced their tee shots over trees separating the fairway from the road. In upholding the trial court's judgment favoring the golfers, New York's Supreme Court stated: "The Court of Appeals [state supreme court] has held that the fact that a golfer hits a 'bad shot' that either slices or hooks is not sufficient to permit an inference of negligence.

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Take heed of on-course liability

Continued from page 9

Duffy would have recovered against WGA if Finsterwald's shot had come from the first tee, i.e., the hole she was observing. Logically, those facts would produce a much tougher plaintiff's case in view of traditional notions of assumption of risk, i.e., arguably, spectators assume the risk of injury from shots they are or should be watching. In sustaining the verdict, the court stressed she was standing near a concession stand and reasonably believed herself to be out of harm's way. Consequently, the WGA's decision to locate the stand in an area reachable by wayward tee shots was a negligent act. The lesson from these and similar cases is that course operators, designers, tournament organizers and sponsors need to anticipate wayward shots and take appropriate measures to eliminate or reduce resultant liability. This is most often accomplished by maintaining liability insurance coverage and posting appropriate signage and warnings. At PGA Tour events, measures to manage spectator injury risks are addressed through a standardized tournament liability insurance package and ticket "disclaimer" language designed to alert the ticket holder to the risk of being struck by a bad shot. Generally, this insurance is purchased by the tournament sponsor to cover tournament-specific incidents related to the public. Regardless, the prudent course should periodically examine its own property casualty policy to ensure adequate coverage of regular activities, including member-guest events, charity outings, and daily play.

Here is an example of the ticket disclaimer language common at PGA Tour events:

"Ticket holder acknowledges and expressly assumes the risk of injuries incidental to attending a professional golf tournament, including the risk of injury due to errant or misdirected golf shots. Your club should also adopt or review existing safety policies as part of its annual risk-management program. The operation of golf cars, the posting of warning signs, and the clearance of the course before a storm are a few areas which need reviewing and standard procedures. Although yelling "fore" may fulfill the golfer's legal duty, facility operators and tournament organizers face a more complicated risk-management challenge.

Leslie comment

Continued from page 8

Tom Fazio? "My father designed and supervised construction of the course where I grew up. I remember watching him do green diagrams in preparation for the following day."

- For Jack Snyder, a Class AA member of the Golf Course Superintendents Association of America and a fellow of the American Society of Golf Course Architects, growing up on a golf course was the way to start at the bottom and work his way up. He recalls how he did "all the nasty jobs around the place — from cleaning sand traps on the course to cleaning grease traps in the clubhouse."

Saying she has the advantage of understanding the superintendent's predicament, Beljan said: "I've had my share of chastisements by club members because this or that wasn't right on the golf course," she explained. "It's a little different story when you're responsible for a job, period, rather than when you have 300 bosses."

"If you are ever in that position, it makes it easy to understand why some superintendents are at a club for a very long or very short time: It depends on the members."