

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 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 negli-

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GOLF COURSE NEWS

gence. The mere fact that a ball does not travel the intended course does not establish negligence. Even the best golfers cannot avoid an occasional 'hook' or 'slice.' Rather, the Rinaldos must prove that defendants Vogel and McGovern failed to use due care in striking the ball."

Other courts have applied a similar rationale, even in cases



Gary Crist

of touring professional golfers. A good example is *Duffy vs. Midlothian Country Club*. The plaintiff was a spectator at the 1972 Western Open, a regular PGA Tour event co-sponsored by the PGA Tour and Western Golf Association (WGA).

The plaintiff was standing in the rough between the 1st and 18th fairways, near a conces-

sion stand, watching play on the 1st hole. The plaintiff was struck in the eye by Dow Finsterwald's hooked tee shot from the 18th hole. Although the plaintiff recovered damages from the tournament sponsor, the jury specifically exonerated Finsterwald under the rationale that even a PGA Tour-caliber golfer occasionally hits an off-line shot, and to do so is not in and of itself negligence.

So, who is responsible when

a wild golf shot causes damage or injury?

As indicated in *Duffy*, the defendant most likely to be liable is one who can be shown to have breached a legal duty. In *Duffy* it was the WGA, the tournament organizer, not Finsterwald, that permitted the plaintiff to stand in an area where it was reasonable for her not to be "on guard" against shots hit from the 18th tee.

One wonders whether Mrs.

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Take heed of on-course liability

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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.

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 Fertilizer with 1.00% Surflan
 Fertilizer with 0.57% Team & 0.57% Dursban
 Fertilizer with 0.87% Team & 0.58% Dursban
 Fertilizer with 1.15% Team & 0.57% Dursban
 Fertilizer with 0.57% Team
 Fertilizer with 0.87% Team
 Fertilizer with 0.92% Team
 Fertilizer with 1.00% Team
 Fertilizer with 1.15% Team
 Fertilizer with 1.25% Team
 Fertilizer with 1.50% Team
 Fertilizer with 1.54% Team
 Fertilizer with 0.92% Balan
 Fertilizer with 1.02% Balan
 Fertilizer with 1.04% Balan
 Fertilizer with 1.15% Balan
 Fertilizer with 1.28% Balan
 Fertilizer with 0.46% Balan & 0.92% Dursban
 Fertilizer with 0.86% Balan & 0.86% Surflan
 Fertilizer with 0.57% Balan & 0.57% Surflan
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Treflan Granular 5.00%
 Team Granular 2.00%
 Balan Granular 0.58%
 Balan Granular 0.92%
 Balan Granular 1.72%
 Balan Granular 2.50%
 Confront 4x1 gal.
 Confront 30 gal.
 Gallery 75DF 4x1 gal.
 Snapshot TG 50 lb. bag
 Surflan 12x1 qt.
 Surflan 5x1 gal.
 Surflan 2x2.5 gal.
 Turflon II Amine 2x2.5 gal.
 Turflon D* 2x2.5 gal.
 Turflon Ester* 2x2.5 gal.
 XL2G* 50 lb. bag

Insecticides

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 Dursban Granular 0.97%
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 Dursban Granular 1.16%
 Dursban Granular 1.20%
 Dursban Granular 2.32%
 Dursban Granular 2.50%
 Dursban Turf 2x2.5 gal.
 Dursban Turf 4x1 gal.
 Dursban Turf 55 gal.
 Dursban 50 WSP 6x2 lb.
 Pageant* 6x5 lb.

Fungicides

Cutlass 50W* 4x8 oz.
 Rubigan AS* 2x0.5 gal.

* Limited quantities available

Leslie comment

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Tom Fazio? "My father designed and supervised construction of the course where I grew up. I remember watching him doing greens 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 one 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."

Phillips comment

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you the differences: More traffic at public-access courses; more profit motive; different staffing challenges. These issues and more will be addressed during the Expo's agronomy sessions.

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