

'They wouldn't let me wear my shoes, your honor'

The alternative-spike revolution may have its pitfalls

facilities adopting "no metal spike" policies unwittingly incurring a new area of potential liability, in the wake of the inevitable "slips and falls" that may be attributed to mandated soft spikes? Are some shoe manufacturers heading for legal problems as well?

As unpopular as it may sound, in my opinion the answer is probably "yes," on both counts. Although I have heard of no current litigation on the "soft spikes only" issue and my insurance industry contacts indicate that "slip and fall" claims activity does not appear to be particularly on the rise, I fear it's just a matter of time.

To date, discussion of the liability ramifications of soft spikes in the golf media has been sparse, and in my view superficial. Such as they are, the conclusions of the commentators so far appear to be that the liability concerns stemming from soft spikes are not thought to be very significant.

I wonder. There would seem to be two basic areas of exposure: (1) "premises liability" on the part of

facilities (particularly ones that adopt mandatory policies), and (2) "products liability" on the part of soft spike manufacturers, distributors and sellers.

Premises liability, in essence, relates to the "duty of care" owed by a property owner to persons on or about the property. This duty is highest in the case of so-called "business invitees", i.e., people who come onto the premises to do business. Patrons of a golf facility would "fall" into this category (pun intended). The obligation is to maintain the premises in a reasonably safe condition, taking into account the foreseeable activities the business invitees will engage in on the property.

Products liability has to do with defective or badly designed products that cause injury under foreseeable conditions when being used in their intended manner.

So where do soft spike (and "spikeless") shoes and "soft spikes only" policies fit into all this? As I admitted at the top, I don't presume to know the ultimate answer, but I do note

a few things in reading up on soft spikes that give me some concern. First, nearly everyone says that the greatest benefit they provide is the positive effect they have on the condition of greens, e.g., no spike marks, the ball rolls truer, poa annua isn't tracked from the fairway onto the greens, etc. Second, almost no one says they provide an equally secure stance to that provided by metal spikes. It is virtually conceded that soft spikes are inferior in terms of traction, particularly in wet conditions. Some, more outspoken critics, like Tom Watson, have stated flatly that soft spikes are dangerous.

To a personal injury lawyer, (you know, the ones who often advertise on television) the preceding constitutes valuing property above people, i.e., "so a few people fall down, big deal, look how smooth the greens are; I'm putting a lot better." I know jurists who begin to salivate just thinking about such situations. God knows what they will try to reap if the actual cases ever happen.

Nevertheless, the attitude industry-wide appears to be "damn the torpedoes," and the revolution to outlaw metal spikes proceeds "full speed ahead." My crystal ball reveals "learned counsel" out there who will name boats, pay for braces and send kids to expensive schools, thanks to

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By GARY M. CRIST

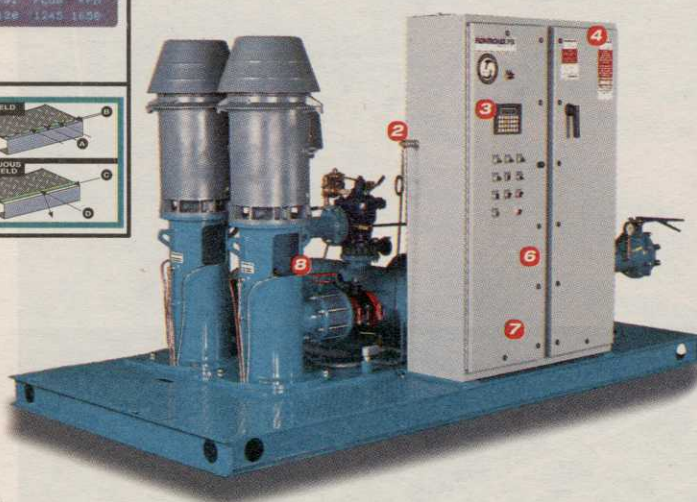
Given the "soft spike revolution," which is whisking the metal golf spike the way of the dinosaur, sooner or later the words in the title to this piece will be uttered in court. People like me are supposed to know what the legal outcome will likely be when they are. How's this for \$150 per hour: "I don't know?"

What strikes me most about the "revolution" is its rapidity (or is it that I'm getting old, and things just seem to happen faster than they used to)? In any event, more and more courses are going "metal spikeless." And many of the clubs adopting the "soft spikes only" policies are storied places, otherwise steeped in conservatism and tradition, like Muirfield Village in Ohio and The Loxahatchee Club in Florida... the kinds of places where a few years ago if a player walked across a hard surface without his metal spikes crunching along, he would have seemed just as glaringly "out of uniform" as a businessman showing up for a board meeting in bermuda shorts.

So what's the deal, legally. Are the

Gary M. Crist practices sports and entertainment law in Jupiter, Fla. The above column has been reprinted from his monthly newsletter, "Down the Middle," with permission.

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Crist: Legal footing?

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the soft spikes revolution, if its implementation is not carefully managed.

In my view, two main things are needed: (1) education of the consumer who buys the shoes, e.g., pamphlets and warnings in the shoe box, such as Foot Joy and Etonic are already doing, and (2) generous use of signage at facilities, posting areas and conditions that may be dangerous to soft spike wearers.

The bottom line is that soft spikes do not impart as good a "grip" as metal spikes do. And people are going to slip and fall using the soft

spikes in the precise activity for which they were designed and sold. If an injury is serious, given the nature of our system, litigation will follow. The shoe companies and the facility operators will do much better in resolving the liability dilemma if they can point to an appropriate consumer education program about the risks associated with soft spikes, and adequate on-course signage informing and warning players about particularly dangerous areas and conditions.

"Yes, your honor, I'll never play golf, or even walk again. But on the other hand, their greens are beautiful."

I wouldn't want to be sitting in court somewhere hearing those words.

Leslie comment

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and *GCV* editorial advisor.

• "It's agronomics [not the beauty of a course's trees] that will carry you into the future. You all like trees, but I'll tell you: The game of golf is played from blade to blade — not from limb to limb." — Bob Brame, director of the USGA Green Section North-Central Region.

• "It's wrong to think of golf course maintenance as a deep

black hole. The golf course operation is the [facility's] biggest money-producer." — Tommy Witt, superintendent at Wynstone Golf Club and a director of the Golf Course Superintendents Association of America.

• "We all have customers. Our customer is the employee." — Ted Horton, vice president of resource management, Pebble Beach Co.

Also from Horton: "Golf course superintendency is a tough job. Don't wear yourself out. Don't wear your employees out. Take care of your health first, your family next, and the job will take care of itself."

...

The father-son relationships in the world of golf course design are educational (see story, page 35). Jay Morrish sent son Carter off to study landscape architecture, then to work for Wadsworth Golf Construction Co. for several years. As the elder Morrish explained: "One day Brent [Wadsworth] called me and said, 'You either have to take him back, or I have to promote him.' So I took him back and told him, 'You think your education is done, but it's not. So he enrolled in a Tulsa school specializing in drafting and took a crash course in turf management. You still are not even close,' I told him, so I sent him to work with [superintendent] Gary Grigg at Shadow Glen and told Gary, 'You have a slave for the growing season. Teach him.' Then he came back and I said, 'Now, you are in a position to start learning something.' He has done it all now."

Asked if his 18-year-old son, a student at the Air Force Academy, has shown interest in joining his golf course architectural firm, Design 3, W. Bruce Matthews III said: "Yes, he has. I look at him as being the corporate pilot."

...

The chemical revolution in the golf industry has died, overthrown by a new type of revolutionary, according to Tom Mead.

Mead, formerly of Crystal Downs and now an agronomy consultant with course architect Tom Doak, reported the trend is toward using fewer chemicals and more biologicals — because of pressure both from superintendents and the government.

"Of our clients, everybody is more aware of the environment in 1997," Mead said. "The environment is discussed from the beginning. It's a key part of the discussion."

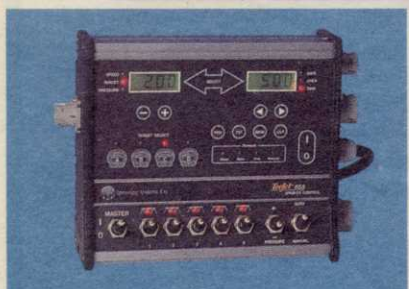
"I started in 1969 and land-use issues weren't even known at that time. It has evolved to where we are right now: Everyone is fairly sophisticated; there are a lot of different viewpoints; and it's become more complicated because there is more input from different backgrounds, which makes the product better overall."

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