

Increase in beginner golfers leads to more golf-related personal injury and liability cases

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design, and a club professional who may have been supervising play at the time of the accident.

A partner in the Manhattan law firm D'Amato & Lynch, where he heads up the casualty defense department, Lang has represented golf courses in liability lawsuits.

In his article – "Lawsuits on the Links: Golfers Must Exercise Ordinary Care to Avoid Slices, Shanks and Hooks" – he warns that the risk of injury is greater today than ever. Legions of new golfers, intrigued by the Tiger Woods phenomenon, have taken up the game. Some three million Americans tried golf for the first time last year, he said.

"Given the increased number of golfers," Lang writes, "now typically armed with technologically advanced multi-metal woods, irons promising to produce explosive power due to revolutionary breakthroughs, and with minds crowded with diverse 'swing thoughts,' crowded golf courses can give rise to potential liability for personal and property damage that may be the result of the seemingly inevitable off-line shot."

ACCIDENT RATE GROWING

The actual number of personal-injury lawsuits filed against golf clubs or players is unknown. "I looked into that [for the article]," Lang said. "A lot of them are settled through insurance coverage. I did find, however, that there are more and more incidents on golf courses now, and people are taking them more seriously."

Given the highly litigious nature of our culture, he added, the instinct is to file suit. "The feeling people have is that, I'm not really suing you [the player/defendant], I'm suing your insurance company, or the club, or the course. Someone should pay for my medical bills, for my pain and suffering."

Most courses have insurance coverage for this kind of action, Lang said, but golfers would be wise to have their own coverage. "In a general sense, I always encourage my clients to have an umbrella policy, because you don't know what catastrophe is going to strike you, or for which you might be held responsible. It's possible in some cases to lose your house, all your savings. So people ought to have umbrella coverage. It doesn't cost that much."

NEGLIGENCE HARD TO PROVE

In Lang's lengthy essay in the NYSBA Journal, he explores case law surrounding golf course mishaps and liability.

By and large, he concluded, most court rulings are favorable to the golf courses. "There is this oddity in golf that, although it's negligent to hit a bad shot, bad shots are part of the game," said Lang, who himself carries a 14 handicap that he admits is "sometimes questioned." The important thing, he added, is "to show due care, so that before you hit the ball, you make sure people are out of your intended path."

A good example came in a case called *Jenks v. McGranaghan*. The defendant had driven a golf ball from the 8th tee at Windsor Golf Course, in California, without warning to players standing near the 9th tee, adjacent to the 8th fairway. The ball, as Lang explains, struck one of the players in the eye, causing blindness. Members of the defendant's threesome shouted "fore," but the plaintiff did not hear the warning.

The court observed that "there is no fixed rule

regarding the distance and angle which are considered within the foreseeable danger." Significantly, at the time that the defendant drove the ball, the plaintiff walked out from behind a screen where he had left his golf bag. The Court of Appeals fastened onto that fact, Lang writes, "pointing out that, at the time the defendant was preparing to drive, the plaintiff was still behind the protective fence."

The court wrote thusly: "A golfer cannot be expected to break his concentration while addressing the ball the instant before he hits to look and see if someone has stepped into the danger zone."

The court went on to conclude that there was therefore no duty to yell "fore" before hitting. A unanimous Court of Appeals found that the defendant did not breach a duty to the plaintiff, Lang explained, and dismissed the complaint.

HOOK TO THE PATIO

In another case, a man was relaxing on the patio behind his house, which backed up to the 13th hole of a course in New York's Nassau County. A 15-year-old player – not a club member but actually a trespasser on the course – fired a severe "hook" that struck the unwary homeowner in the head, inflicting a concussion and hospitalizing the man for a month. The victim filed suit against the country club and the golfer.

According to Lang, "the plaintiff's wife conceded that no golf ball had previously struck their home, although balls were found in the bushes and fence area. Using language that suggests a social commentary," Lang writes, "the Court of Appeals observed that 'these inva-

sions are the annoyances which must be accepted by one seeking to reside in the serenity and semi-isolation of such a pastoral setting.' "

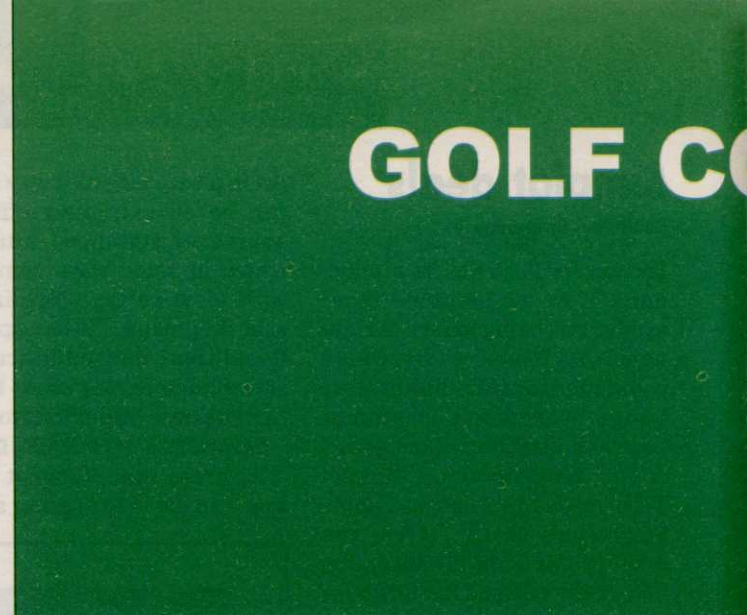
The failure of the youthful player to shout "fore" was irrelevant, the court said, because the plaintiff, living so close to the course, would hear numerous warning shouts all day, from one player to another, and could be expected to ignore them.

THE MULLIGAN MENACE

Lang advises that the basic rule imposes no duty on the golfer to warn persons who are not in the intended line of the ball's flight. Spectators, for their part, assume the risk that even the best golfers will occasional hook or slice a shot. But courses can take steps to promote safe play and save on legal fees, he said.

"First, it's very important to have a rule, and to enforce the rule, about mulligans," Lang explained. "Say I'm playing and I hit a bad shot, and you're playing with me. You hear me hit my ball so you walk off to find yours, and I decide to hit a second shot – not because my ball is lost or provisional but just because I'm upset and want to make sure I can hit a 6-iron correctly. All of a sudden, you've gone from a position where you are out of range to one where you are in range. I'm upset about my shot, so I don't bother to look around to see if you're safe. Next thing you know, the ball is in the air."

Lang also advises clubs to remind members about course safety, so more experienced players can keep tabs on newer golfers. "Some people's idea about course safety is to hit the ball, and when it's really off line, they yell out 'fore.' That doesn't do a hell of a lot of good, especially when the wind is blowing against you." It's better to observe fundamental safety points, he said, "so we may all enjoy a round of golf without a request for judicial intervention." ■



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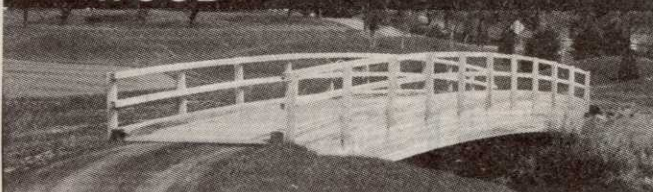
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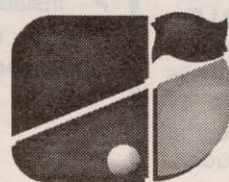
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Golf Partners

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and as a consultant," said Grigg. "Whether it be helping someone build a maintenance facility or helping someone renovate or grow in a golf course. I have always enjoyed that more than golf course maintenance."

As Golf Partners gets off the ground, French rules nothing out. "We will look at anything," he said. "Ownership is a possibility if it is the right situation — none of us wants to be tied to one piece of property.

"As far as new projects go, the strongest market is in the Northeast. An owner that can put a project together up there is going to have a full golf course. We also will be exploring our international contacts and opportunities." ■

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