

# Caddie, Injured by Golf Ball, Sues Club! What's the Law?

By LESLIE CHILDS

**T**HE QUESTION of the liability of a golf club for injury suffered by caddies in the course of their employment is obviously one of considerable importance to club executives charged with this phase of a club's management. For, while caddying can hardly be considered particularly hazardous, yet, serious injuries may arise in this field for which a club may or may not be liable, depending upon the facts and circumstances involved.

In the light of which, business prudence would seem to dictate care in the conduct of this department of a club's business, to the end that ample protection from liability be guarded against, by insurance or otherwise, as the facts may justify. With this in mind, a brief review of the salient features of this subject may prove of interest and profit to golf club executives in general.

## Workmen's Compensation Laws

To begin, a club's liability for injury to a caddy may depend in a great measure upon whether or not the club is subject to a workmen's compensation law. If it is subject to the provisions of such a law any injury suffered by a caddy in the course of his employment, that arises out of the employment, will likely throw liability upon the club.

However, since the workmen's compensation laws of the different states vary in their terms, this point can only be determined in a particular case by reference to the laws of the state in which the club operates. In some states such laws have been held to apply to golf clubs in their employment of caddies; in others not. For example, in Oklahoma the statute provides: "Employment includes employment only in a trade, business or occupation carried on by the employer for pecuniary gain."

Under the above statute an employe of a golf club sought compensation for an injury in the course of his employment that resulted in the total loss of the vision in his right eye. In defense, the club set

up that it was not operated for pecuniary gain and hence was not subject to the workmen's compensation law. In reviewing the record and in upholding this contention, the court said:

"If the golf club is carried on for pecuniary gain, then the Industrial Commission had jurisdiction to make the award. If, however, it is not carried on for pecuniary gain, then it did not have such jurisdiction. The land is owned by Oklahoma City. The golf club is owned and operated by a private corporation.

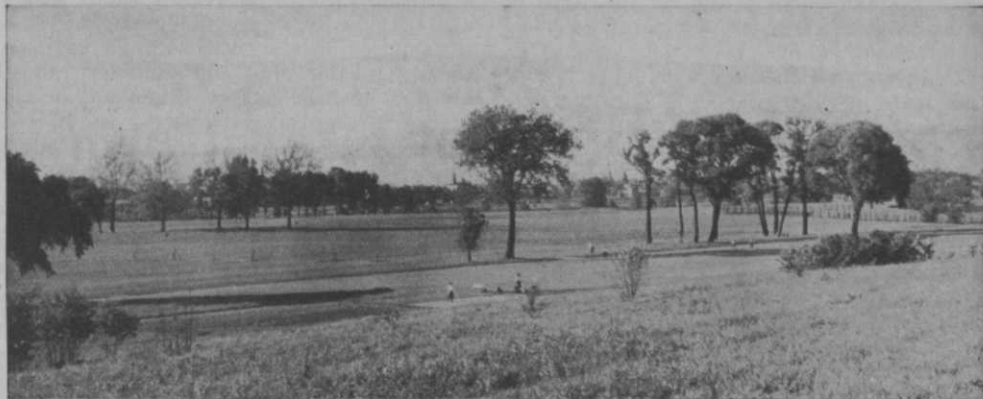
"Mr. Jackson, the secretary and manager of the Lincoln Park Golf Club Co., testified that the club was incorporated as a non-profit organization. A fee is charged for the privilege of playing golf. The evidence discloses there never has been any real surplus in the treasury. All the money collected, after paying the salaries and all charges, is put back in improvements on the golf course. \* \* \*

"Under the facts as disclosed by this record, \* \* \* we do not think the Lincoln Park Golf Club Co. is operated for pecuniary gain. Since we have reached that conclusion, it necessarily follows that the Industrial Commission had no jurisdiction to make the award. The order granting the award is vacated, with directions to dismiss the cause." (Supreme Court of Oklahoma, 288 Pac. 954.)

The foregoing case was, of course, decided upon its facts and the provision quoted from the Oklahoma statute involved, and illustrates the impracticability of attempting to cover the subject of this article by any hard and fast rule. For by the very nature of actions of this kind the outcome will depend not only upon the circumstances surrounding the injury but upon the provisions of the workmen's compensation statute involved as well. As witness the following:

## Compensation Statute Covers Caddie

A caddy in the employ of a golf club in California leaned against the hand rail of



Flat, but with brutal rough and sharply trapped greens, is the Shawnee G. C. public course at Louisville where the 11th annual Public Links championship of the USGA will be played July 19-23. Louisville has been conditioning its course for the event during the past fall and this spring, with excellent results. The city plans to stage a great show for the visiting contestants. W. E. Farnham, noted Louisville newspaperman, is local representative on Public Links section of USGA.

a small bridge that spanned a creek on the golf course. The rail gave way and the caddy suffered permanent injuries caused by falling backward into the creek. At the time of the accident he was caddying for a member of the club, having been assigned to the work by the caddy-master.

For the injuries so received the caddy applied for compensation under the California workmen's compensation law. The club denied liability on the ground that the caddy was not an employe of the club, but that it merely assembled the caddies for the convenience of the club members desiring caddy service. In denying this contention, and in affirming an award of \$1,170 in addition to the expense of medical attention made by the Industrial Commission, the court reasoned:

"The undisputed facts are that the club owns and maintains a golf links \* \* \*. The general control over this sport is vested in appropriate committees selected from the club members. Many golfers have desired and do desire the services of attendants \* \* \*. For these members the club provides caddies, and over them is a paid employe known as the caddy-master. \* \* \* At the close of the game the player hands to the caddy-master, with his report, the amount earned by his caddy, and this amount is immediately delivered by the caddy-master to the boy. Thus each player pays the caddy, \* \* \*.

"While actually caddying the control of the activities of the boy are wholly with the member using him, and the club, as a

club, has, of course, no means of knowing what particular orders or directions a member may give to his caddy, nor what unusual or dangerous duties he may call upon him to perform. For these reasons petitioners (the club) argue that the caddies are not employes of the club, and that all that the club does is to afford boys who wish to serve as caddies an opportunity for employment by members of the club who play golf. \* \* \*

"The reasoning \* \* \* makes no strong appeal to us, because the language of section 2009 (code section pertaining to what constituted employment) was never intended to mean, for example, that a housemaid, directed to give personal attention and service to a guest within the house, ceased for that reason to be an employe or servant of the householder. \* \* \*

"So here it is not of consequence that the member should pay to the caddy directly the amount he has earned, or pay it indirectly through the medium of the caddy-master. The employment and discharge of the caddy during all of the time when he is not actually in the service of a member is wholly under the control of the club, and this is the determinative fact in the matter. \* \* \* The award is therefore affirmed." (Supreme Court of California, 163 Pac. 209.)

The foregoing cases constitute valuable examples of judicial reasoning on the question of the right of a caddy to compensation, under workmen's compensation statutes, for injuries suffered in the course

of his employment. And, in the light of these cases, it is clear that here is a question about which golf club executives should take no chances, and if the law of the state in which they are operating subjects them to the provisions of a workmen's compensation act in their employment of caddies and other employes, proper insurance coverage would seem to be in order for the protection of the club.

### Where Compensation Doesn't Apply

Now, leaving aside the possible liability of a golf club under workmen's compensation statutes for the moment, let us turn to the question of such liability under the assumption that no statute of this character applies. Here a golf club would be subject to liability for injury caused by its negligence the same as any other employer would be. This would embrace accidents arising out of defects in the premises, or of equipment furnished for the use of employes, where the club had notice of such defects or should have had such notice in the exercise of reasonable care.

However, in situations of this kind, the club would not be liable for injury to a caddy caused by being struck by a ball, or like accident, resulting from the negligence of a member or other person playing the course. In such case the caddy's claim for damages, if he had one, would be against the member or person responsible for the injury and not the club. And this same rule would apply whether the injured caddy was in fact an employe of the club or had been brought to the club by a member on his own account. In all such cases any liability against the club would have to be based upon the negligence of the club, as such, which caused the injury.

Of course in the employment of caddies a golf club should have in mind the so-called child labor laws of its state. But these laws, being directed chiefly to the protection of children in their employment in factories and other strictly gainful enterprises, do not appear to throw any special burden on golf clubs. At any rate, a reasonable search has failed to disclose any case from a court of last resort in which a golf club has run afoul of statutes of this kind. But this point may well be had in mind when caddies are being employed, for a clear violation of a statute of this kind may impose a severe penalty, especially if a caddy unlawfully employed suffered injury.

Now at this point it may be noted that

a formal contract between a caddy and a club is not necessary to create the relationship of master and servant between them. If the club, through its caddy-master, professional or other authorized person, recognizes a boy as a caddy and assumes supervision over him as such, this will usually be sufficient to render the boy, in a legal sense, an employe of the club with the rights and duties as such. But this relationship would not result from the acts of a mere member of the club, or other person lawfully playing the links, in bringing a personal attendant to act as caddy upon the course.

### Insure Against Liability

From the foregoing it is obvious that there is a sharp difference between the liability of a golf club for injuries suffered by a caddy in the course of his employment, where the club is subject to a workmen's compensation statute and where it is not. In the first-named case, the club will ordinarily be liable for injuries received that arise out of and in the course of the employment.

If a caddy is struck by an automobile while on the premises of the club while going to or from his work the club may be liable; if he suffers injury by being struck by a ball, stepping in a chuck-hole, or other unforeseen accident, while he is about his work, he will usually be entitled to damages against the club under a workmen's compensation law. And this irrespective of any question of negligence on the part of the club that may have contributed to the injury.

True, in cases of this kind, if the injury to a caddy was caused by the negligence of a third party, say, a member driving wild and hooking his ball, the caddy would have the option of proceeding against such member or of claiming compensation from the club. He could not, as a general rule, collect double damages. But until the caddy has elected to release the club by pursuing his remedy against the person causing the injury the club's liability would be in existence.

On the other hand, where a club is not subject to the provisions of a workmen's compensation law, but is liable for injuries suffered by its employes only under the general doctrine of negligence, it is necessary for a person claiming damages to show that his injury was caused by the negligence of the club, as such, before liability will attach to the latter.