

Workmen's Compensation Laws Show Club Liability

By RENZO DEE BOWERS

Country clubs and other operators of golf courses have always been legally liable to respond financially for physical injuries sustained by their employees as a proximate result of negligence chargeable to the club. This is but the common lot of all who employ others.

Without negligence on their part, however, operators could not in former times be amerced for casualties, even fatal accidents, that happened to hired hands working for them. This left workers out in the cold with respect to a large class of injuring mishaps that occurred in their jobs—in other words, the unavoidable accident for which no one could be held blamable.

Then came along the Workmen's Compensation Laws. In the timeless traditions of the law these statutes are very modern innovations. Their benevolent purpose was to provide a forum in which toilers in industry, or their surviving dependents in event of death, could exact compensation from their employers for disabling or fatal hurts arising in their occupation while they were acting in the course of their employment, but which hurts could not be charged to the fault of the employers.

New York state was the pioneer in this project of paternal benevolence. Its legislature enacted a Workman's Compensation Law in 1910. This became a model from which practically all other states set up similar laws for their respective jurisdictions.

Basis of Workers' Law

There are variations of procedural detail among these enactments, but they are identical in basic essentials and purposes. Operators of golf courses who employ help ought to have a general understanding of the nature and object of the statute in order to perceive their position with respect to it in event casualties occur to their employees through accidents arising out of their work, or as a result of some fault not chargeable to negligence on the part of the operator. Only the briefest sketch can be given here.

The law provides for a state board, variously called Industrial Accident Commission, Workmen's Compensation Commission, or some similar name, and outlines its duties and method of procedure. Under some of the statutes, employers

hiring workmen to engage in what is called extra-hazardous employments, and all others not specified, are required to carry insurance in order to compensate employees for injuries sustained, or to pay their dependents in event injuries result in death.

Under the minutia of other state statutes, employers are to pay into a fund under the Commission's control, certain amounts at stated periods, based upon the numbers of their employees and other conditions, calculated to establish a reasonable charge for accident insurance or casualty bonding.

The Workman's Compensation Law was designed to afford to an employee injured at his job, or to his dependents in event of his accidental death from being hurt at his work, a simple and inexpensive means of obtaining compensation, in cases for which the former laws gave him or them no remedy, or one of an inadequate nature. The remedy is a summary one, differing from a common-law action in court to collect damages for personal injuries caused by negligence, in rendering the process of obtaining an allowance speedier, less technical, and more certain.

Commission Action on Claims

The proceeding is distinguished from the formalities obtaining in an ordinary lawsuit in court at its beginning, in that it is begun by filing with the Commission a statement of the accident and injury, and a claim for allowance of compensation. Notice is then given the employer and its insurer, and a hearing is held by the Commission, and a decision made as to the amount of the allowance, if any, awarded to the claimant.

The penalty against employers who fail to come within the statute by complying with its provisions, is to have the right to make certain specified defenses to a common-law action for damages denied them in event of suit in court by the employee or his dependents.

Compensation is not allowed by the Commission to an injured employee as a matter of course upon proof by him that he got hurt while working for his employer. There are two essential elements that must appear in his evidence before he will be awarded anything,

however extensive his injuries—and operators of golf courses have frequently found here legal openings through which they could squeeze to safety from liability.

How and When of Accident

The legal rule is this: To obtain an award of compensation, an injured employee must establish that his injury "arose out of and in the course of his employment." The phrase, "arise out of," and "in the course of" the employment are used conjunctively in the statute. In particular, the words, "arising out of" refer to the origin or cause of the accident and are descriptive of its character; while the words, "in the course of," refer to the time, place, and circumstances under which the accident occurred. Both elements must, however, have been present at the time of the injury in order to justify compensation.

The animad versions in the above paragraph, containing much that may seem technical and probably legal hooey to the layman, are derived from a decision rendered in 1944 by the Illinois Supreme Court, which is of considerable significance to owners and operators of country clubs and golf courses. The technicalities are noticed here in order to shed light upon the point and direction of that court's decision.

The case was this:

A boy employed by an Illinois country club was caddying on an afternoon for a golfer who was playing with two other patrons of the club. A storm arose while the players were on the fourth hole. There had been no lightning up to that time. The play proceeded to the sixth hole. It

began lightning. The boy ran to a tree. There lightning struck him, and he collapsed. Reviving quickly, he made for the clubhouse where he fainted, was again revived, and taken to a hospital to remain four days.

A claim for compensation from the country club for total temporary disability suffered by him in the occurrence was filed with the Industrial Commission. The arbitrator for the Commission heard the evidence and denied an award of compensation on the ground that the accidental injury did not arise out of and in the course of the boy's employment. The Commission itself set aside this finding as erroneous, and allowed compensation. On appeal to the Cook County circuit court, this decision of the Commission was affirmed. But upon a final appeal to the state Supreme Court, these rulings were reversed, the arbitrator's decision approved, and compensation denied.

"The conclusion is irresistible," Justice Wilson said in expressing the court's conclusion, "that M.'s injury bore no reasonable relation to the nature of, and did not arise out of, his employment, within the purview of the Workmen's Compensation Act. . . . Risk of being struck by lightning is one to which every person in the same neighborhood was similarly subjected. In short, the danger to M. of being struck by lightning was precisely the same as to other persons on and in the vicinity of the golf course. His employment did not expose him to a risk, in this respect, to a greater degree than if he had not been employed. . . . For that

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MARINES INCREASE GOLF FACILITIES



Golf continues to expand rapidly as U.S. armed forces recreation. A new 10,000 sq. ft. putting practice green, designed by Joe Frasca, Parris Island pro, and built under direction of Lt. L. V. Bartlett, recently was added to golfing facilities for officers and men at the Marines' Beaufort hospital and at the corps recruit depot.

Only seed of good quality should be used in any seed mixture. Good quality grass seed under favorable conditions will germinate in a period of 4 to 8 days and produce healthy, vigorous seedlings.

Bare areas in a newly-seeded turf area are often due to poor seed that failed to germinate. Often seed mixtures of questionable quality are the source of weed seeds and once weeds become established they are usually difficult and expensive to eradicate.

Old seed is another source of trouble in seed mixtures. In comparison with new seed, old seed takes much longer to germinate, if it germinates at all.

Rates of Seeding

Consideration must be given to the rate of seeding. Seeding excessive amounts of seed, which is commonly done, produces an overabundance of little grass plants competing for moisture and nutrients. The results are a weakened turf, more susceptible to injury from disease and drought. An illustration is drawn by the following example: seeding the Kingston Mixture at a 3 lb. and also at a 5 lb. rate per 1,000 sq. ft., there will be approximately 39 and 76 seeds per square inch, respectively. Considering the fact that grass seedlings need room to develop a healthy root system and top growth, the seeding at the 3 lb. rate would allow for this development more readily than the 5 lb. rate.

It is readily seen that the basis for calculating the rate of seeding a grass mixture is on the number of seeds per pound of the grasses used in a mixture or an individual seeding. If this practice is followed the results will be a healthier more vigorous turf at less expense.

WORKMEN'S COMPENSATION

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reason, M.'s injury did not originate in a risk connected with or incidental to the employment, it did not arise out of his employment, and, hence, is not compensable."

All courts adhere to the general rule of law which the Illinois tribunal applied to this caddy's claim. To maintain a claim against his employer, the employee must show, to repeat the rule, that the accident grew out of his job and occurred in the course of his employment. The stroke of lightning did hit the caddy while he was going about his work, but it did not strike him because of the character of his work.

Injury Not on the Job

Take another enlightening episode. This occurred in Massachusetts.

A caddy was standing on the first tee of his employer's golf course, on the point of playing a round himself. Two other caddies were there for a like purpose.

One of the two, as a warm-up, took a practice swing with his club, without looking to see if anyone was behind him. It happened that there was, and that it was the first caddy, who was standing watching. The swing took this lad in the face, and practically butchered him.

He filed the usual claim for compensation against his employer owner of the golf course, under the Workman's Compensation Law. But he, too, drew a blank. The club was not responsible for his injury, because he had not been engaged in the performance of his job at the time. He was on his own, preparing to play for his own pleasure.

"His employment did not require him to be at the tee," the court remarked in deciding against him. "He was not engaged in any work, or aiding in any way the performance of the duties for which he was employed."

This iron-clad requirement of the law, that an employee must have been performing his particular duties at the time of an accident or his employer will not be compelled to compensate him for injuries, was exemplified in another occurrence in Massachusetts.

There, an attendant engaged primarily for work in the locker room of the clubhouse, was sent on an errand for a member of the golf club. Riding on a public highway on a bicycle, carrying a bundle of clothes which he was taking to a laundry for the member, he was hit by a vehicle and injured. A court refused to allow his claim against the club under the Workmen's Compensation Act, ruling that, while his injuries were received "in the course of his employment," they did not "arise out of" the employment.

"All persons upon streets are likewise exposed to such hazards of travel," the court said. "The travel was not a hazard peculiar to this man's work, but was a risk common to all persons, and so, it did not 'arise out of' his employment."

It is, of course, an essential element of a club's liability under the Workman's Compensation Law to its worker accidentally injured, that he must have been in fact and actually an employee of the club at the time. If the situation did not present the employer-employee relationship, a claim for compensation will be disallowed.

Caddy Hiring Factors

For instance, the Rice Lake Golf Club in Wisconsin followed the practice of many country golf courses not having sufficient patronage to warrant regular employment of a caddy master and a staff of caddies, of permitting neighborhood boys to gather for caddying and taking their chances of obtaining jobs from players. The caddies were selected by individual golfers and paid by them, and the

club had no contract with either caddy or player

On one occasion, a caddy chosen at the course was standing behind a player who drove a ball which struck a tree, bounced over the player's shoulder, and hit the caddy with damaging results. The Wisconsin court ruled that the caddy was not an employee of the club, and consequently ineligible to receive compensation from it under the Workman's Compensation Law.

But different club rules in this particular brought a judgment and order of payment against the Claremont Country Club in California.

There, the situation was this: The club maintained a caddy house and paid a caddy-master to supervise the boys. The caddies were graded into three classes, and paid according to ability at rates fixed by the club. A player had no choice, but was required to take the kid whose turn to serve had arrived. Upon ending play, the golfer gave the money for his caddy to the caddy-master who immediately paid the caddy—a method adopted to avoid tipping difficulties. The caddies were employed and discharged by the caddy-master, or by the greens committee, but were subject to the orders and supervision of the player while serving him.

One caddy, while working for a player, undertook to lean for a moment against an unstable handrail of a bridge spanning a creek on the club's golf course, the rail gave way, and he plunged into the creek, incurring injuries in the accident.

Investigating a claim for compensation in the caddy's behalf under the Work-

men's Compensation Law, the California Supreme Court gave consideration to a contention of the golf club that the caddy was not engaged in its service at the time of the accident, but was in the employ of the golfer whom he served all the time while he was working for compensation. All the club did under its system it argued, was to afford caddies an opportunity to obtain employment by golfers.

The court ruled otherwise, and awarded compensation.

The Illinois court rendered a like decision against the Indian Hill Club sometime ago under analagous conditions, declaring that in furnishing a caddy to a member through a caddy-master, the club, and not the player, became the employer.

It is pertinent to call to the attention of owners and operators of golf clubs and courses the attitude of the courts toward illegal employment of minors, as such an act affects the Workman's Compensation Laws. Whatever other penalties the law may impose for employing ineligible of the kind, it is pretty well established that where a relation of the kind exists, the employer is not liable for accidental injuries under the Compensation Laws.

An occurrence in Pennsylvania a couple of years ago pointed up this attitude of the courts.

There, the Pennsylvania Golf Club had employed a youth lacking two months of being 15 years of age, as a workman on the club's course at Llanerch, in Delaware County. The boy was riding the club's tractor over its grounds one day in

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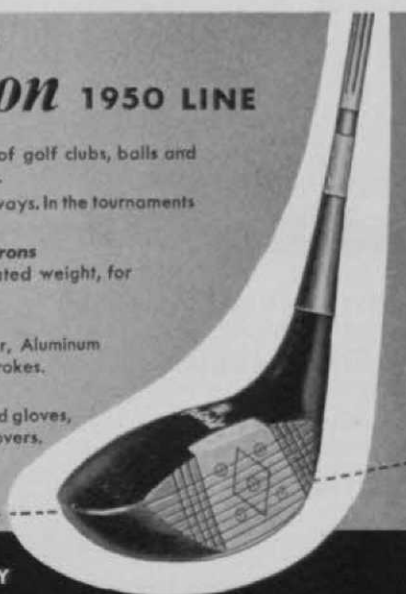
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compliance with his employment, when a sudden dip of a wheel into a rut or hole flung him from the machine, and caused him permanent injury.

His parents, in his behalf, sought compensation for the injury under the state Workman's Compensation Law. The club's employment of the boy was illegal under another state law; and since it is a general principle of law that parties to an illegal contract cannot benefit from it in the courts, the decision in this case denied the right of either the boy or his parents to obtain compensation at the expense of the golf club.

Officials of country clubs and other golf courses may note that the law does not compel them to come within the operation of Workmen's Compensation Laws. The general plan and procedure by which they subject themselves to such laws are outlined in detail by the statutes creating them. The chief feature is the consent of the management filed with the Commission or Board, accompanied by payment into the insurance fund of the amounts specified, or obtaining insurance policies, or giving bond, according to the requirements of the particular statutes of the respective states.

On the other side of the picture, if they do not bring themselves within the provisions of these laws, and happen to be sued by employees for accidental injuries arising out of the employment and as a consequence of it, the law will deprive them of their common law right to defend on the ground, either that the employee assumed the risk, was guilty of contributory negligence, or was barred under the fellow-servant doctrine. That is the penalty for not shielding themselves by complying with the provisions of the Workmen's Compensation Laws.

FIRST YEAR AS PRO

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gard the new pro is held by those people whose opinions he values most, his club members and his associates in working for the club.

I wish to stress that though well coached by my father, I gained immeasurably from my experiences while at the Baltimore and the Atlantic City CC and if every young pro will, while he is still an assistant, work hard, study the business and learn to organize the pro shop, he will someday obtain and hold an excellent club job. As a final word, I wish to mention that young pros should have no intention of participating in other than regional tournaments during the season until well established at his club, unless by full understanding and consent of club officials regarding the National Open and the PGA.