

# Burden of proof ruling hits golf course

*Supreme Court of New Mexico reverses lower body, remands case of injured player for new trial.*

BY WILLIAM JABINE

An interesting decision regarding the duty which the owner or operator of a golf course owes to the persons who play thereon was handed down recently by the Supreme Court of New Mexico.

A golfer who was playing on a golf course operated by the New Mexico School of Mines was injured when he slipped and fell. Ice under the grass on the slope of one of the greens was the cause of his fall, and he brought a negligence action against the school.

The trial court directed a verdict for the defendant school at the close of the plaintiff's case and the plaintiff appealed to the Supreme Court of New Mexico.

The facts are stated by the Supreme

Court as follows: "On February 1, 1961, plaintiff together with one Reverend E. Y. Folk went to the golf course operated by defendant, where they paid the required green fee to the pro on duty. Plaintiff had played the course 35 to 50 times over the previous six years. After plaintiff's second shot, the ball came to rest at the foot of a steep grassy incline leading to the first green. Before making his approach shot to the green, plaintiff climbed the hill so that he could see where the cup was located (the location of cups on the green are changed periodically). Having determined where the cup was, plaintiff turned to go back to his ball at the bottom of the hill. After

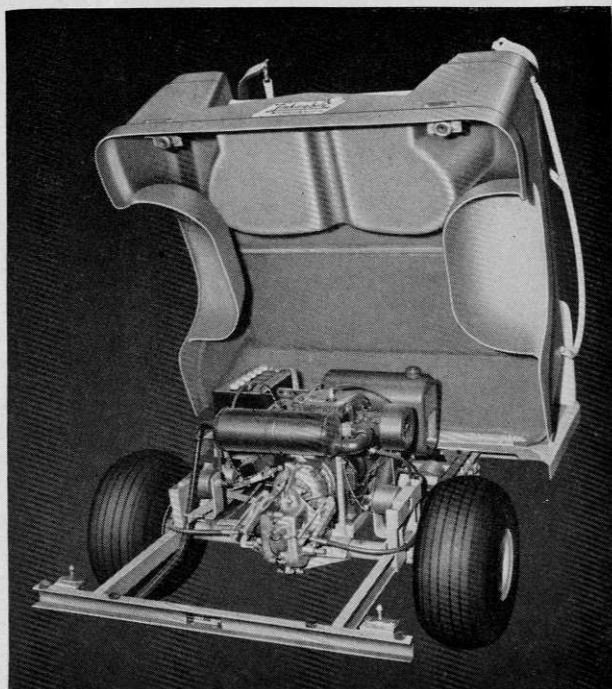
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taking a few steps, his feet slipped out from under him and he fell to the ground. He rolled or slid to the bottom of the hill, losing consciousness and suffering serious injuries. Plaintiff testified that he was wearing 'ripple' rubber-soled shoes and that he did not see ice on the hill, nor did he know what caused him to slip.

"Reverend Folk testified that he did not see plaintiff fall, but saw him lying at the bottom of the hill. Reverend Folk further testified that upon examination of the general area where plaintiff fell he could see one-half to three-quarters of an inch of ice imbedded under the grass on the hill slope. He also could hear ice crunching under his feet, and there was a path like where a deer had been dragged showing where plaintiff slid down the hill. He stated that the grass was wet, and there was water at the bottom of the hill where plaintiff was lying.

"The evidence further showed that there had been a heavy snow on December 8, 1960, whereupon the course had been closed to play until January 26, 1961. In the meantime much effort had been exerted to speed clearing of the course so play could be resumed, including spraying water on the snow. Also, it appears that at some time while snow was present, children had been sledding on the hill in question.

"After the course was reopened on January 26, it snowed again and the course was closed on January 27. On January 28, it was again opened and eight people played. Fifty-three people played on January 29, seven on January 30, nine on January 31 and ten on February 1, the date of plaintiff's injury. No one other than the plaintiff had slipped and fallen so far as the pro was aware."

After this chronicle of the facts, the Court quoted from two of its previous opinions concerning the duty of store owners to patrons of their establishments. These two cases held that a store owner is not the insurer or guarantor of the safety of patrons or business invitees.

The Court then continued: "Although we are here considering the duty of the operator of a golf course to its patrons, and not of a merchant to his customers,

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we see no reason for the application of a different rule. In the only case involving an injury on a golf course to which our attention has been called, we find support for this conclusion. (Citation) . . .

"We must now determine whether reasonable minds could differ on the question of whether or not defendant was negligent under the facts and circumstances related above. We conclude, after weighing the facts as required by the rules set forth above, together with our slip and fall cases, that the court erred in directing a verdict. Although *Farfour v. Mimosa Golf Club*, supra, came to a different result, it is clear that if the plaintiff there had not been at a place *outside* the fairway and where he was not supposed to be, the result would have been otherwise. The accident here occurred in the middle of the fairway which plaintiff properly traversed.

"Concerning defendant's passing comments that under the proof plaintiff must have been negligent because of the ice which he said he did not see, but which

Reverend Folk testified he saw, or that plaintiff had assumed the risk if he proceeded under the circumstances, we would only add that here, too, we think reasonable minds could differ and that plaintiff had made a *prima facie* case for recovery. (Citations)..."

After pointing out that the burden of proving the plaintiff's possible contributory negligence was on the defendant and not on the plaintiff, the Supreme Court reversed the judgment of the trial court and ordered a new trial.

Two justices dissented from the majority view and one of them wrote a dissenting opinion in which he contended that the fact that 87 persons had played the course in the preceding days without incident negated the conclusion that the defendant operator of the course had been guilty of negligence. He also said that in order to discover the condition which caused the plaintiff's fall, a foot by foot inspection of the course would have been necessary, and that such an inspection should not be required. (*Jones v. New Mexico School of Mines*, 404 P.2d 289.) •

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