# The problem of interlocking ownership

*Spectator who is injured at golf match selects wrong 'owner' when filing suit*

**by William Jabine**

A woman spectator who fell in a hole while dodging a flying golf ball during a professional golf match at Falmouth, Massachusetts, had some trouble in deciding who to sue for damages because of a rather confusing situation in regard to the ownership of the course and just who was in charge of the match. As it turned out she guessed wrong, according to a recent decision of the Supreme Judicial Court of Massachusetts.

The court sets forth this confusing situation as follows: "The corporate defendant, Clauson's Inn at Coonamessett, Inc. (Inn), of which one Donald H. Clauson was president, operated a hotel and restaurant on premises in Falmouth adjacent to a golf course. Clauson's Garage, Inc., owned the golf course. A separate corporation, Country Club at Coonamessett, Inc. (Club), operated the golf course. The individual defendant, Harvey G. Clauson, Jr., was president of Club. There was only one 'Clauson's Inn' on Cape Cod in 1960. The mother of Harvey Clauson and Donald Clauson was the 'boss' of both Inn and Club."

Confronted with this somewhat bewildering group of people and corporations as possible defendants, plaintiff selected Harvey G. Clauson Jr., and Clauson's Inn at Coonamessett, Inc. as the ones against whom she brought suit.

The court describes the accident as follows: "The female plaintiff and her husband both went to a professional golf match at the golf course on August 13, 1960. For this the husband had bought the tickets. About 2,000 other persons also attended. The female plaintiff was standing on the edge of the eighth fairway, about 200 yards from the tee, to watch the drives land. The tee was not visible from where she was standing. She saw a golf ball coming toward her and, as she testified, was injured when she fell backward into a hole 'about three feet from the fairway, in the area of higher grass called the rough. The hole was about three feet in diameter and three feet deep, and was lined with rocks and stones. It was surrounded by grass about six to eight inches high.' She remained to see the conclusion of the 18-hole match and on that day gave no notice of her fall to anyone at the golf course.

"Harvey Clauson was in charge of all arrangements for the golf match on August 13, 1960. He had known of the hole on the eighth fairway since 1946, and, 'prior to the match he took no precautions for the safety of spectators with respect to the hole.' Advertising for the match was authorized by a committee consisting of himself, his brother Donald, and an advertising agent. 'He expected that spectators would be all over the course during the match.' No advertising for the match carried Club's corporate name, but certain expenses of the match were paid from the checking account of Club. Inn and Club were advertised together in 1960 under the designation 'Clauson's Inn and Country Club,' which, of course, was not the precise name of either corporation.

"In the action against Harvey Clauson, individually, and against Inn, it is alleged that each of them operated and controlled the golf course and that the female plaintiff was injured because of the negligence of each defendant or his or its agents. No action against Club appears to have been commenced and the docket reveals no motion to substitute Club as a defendant. (Citations)"

The Supreme Judicial Court held that the trial court was correct in dismissing the complaint against Harvey Clauson, and in regard to Inn's responsibility, had this to say: "Liability for damage caused by the condition of premises ordinarily rests upon the control of the offending instrumentality. (Citations) The plaintiffs, however, in effect contend that Inn held itself out as the proprietor or operator of the golf course and that, accordingly, there may be recovery against Inn. This is not the case where either Inn or Club has been shown to have been a concessionaire upon premises of the other. (Citations) The somewhat ambiguous facts fall short of showing that Inn held itself out as controlling the golf course in such a way as to render it liable or estop it to deny that it owned or was in control of the course. If there were representations, they were consistent with mere cooperation between two closely related corporations. Nothing on this record suggests that facts concerning Club were concealed or that Club would not have been able to satisfy a judgment against it, if it had been sued or substituted as a defendant by an amendment seasonably sought and allowed in the discretion of the trial judge.

"Doubtless the golf match was undertaken for the joint benefit of Club and of Inn, both of which presumably obtained some advertising advantage and some patronage from persons attending the match. The advertising did not represent in terms that Inn controlled the golf course, in fact operated by Club, a separate corporation, or that Club controlled Inn. The advertising was consistent with the facts, viz. that two separate corporations under the control of a single family operated two closely related enterprises."

The ruling of the trial court in fabor of both defendants was affirmed. (Buck v. Clauson's Inn at Coonamessett, Inc. 211 N.E. 2d 349.) □