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Liability and golf generally strangers in court

Carnoustie Golf Links, the site of the 147th Open Championship, provided the idyllic stage for Tiger Woods' re-emergence as a legitimate contender for major championships.

On Sunday in Scotland, Tiger teed off from the 11th hole leading the tournament. By the end of that hole, Woods had double bogeyed and lost the lead. His second shot on Carnoustie's par-4 11th caromed off a fan during Sunday's final round. Woods walked over, shook the young fan's hand and gave him a signed golf glove. And now the fan, Colin Hauck, is the star of a viral video. Luckily, he was not injured.

Much like any other sport, injuries can occur in the game of golf. Both golfers and spectators alike share the risk of being struck by a ball. While Colin Hauck's only recourse may be a signed glove from a PGA pro and internet notoriety, back in the states liability may attach to participants, organizers or golf course management if a player or spectator is injured on a golf course.

Courts throughout the country take differing approaches to liability on a golf course from errant balls or clubs. One Connecticut court held that the risk of injury is a common aspect of athletics, generally, and that injury is just as real when it arises from an instrumentality used in a game, such as swinging a golf club. *Hotak v. Seno*, 2001 WL 752711 (Conn. Super. Ct. June 12, 2001).

In Indiana, the parties' relationship and circumstances surrounding the incident may suggest that based on the common participation in the sport, while not as dangerous as many, still involves inherent risks, such as a swinging golf club. *Bownman ex rel. Bowman v. McNary*, 853 N.E.2d 984 (Ind. Ct. App. 2006).

In Maryland, the risk of being struck by a club is seen as incidental, foreseeable and inherent in the game of golf. *Nesbitt v. Bethesda Country Club Inc.*, 20 Md. App. 226 (Md. Ct. App. 1974).

In New Jersey, risk of injury is viewed as a common and inherent aspect of golf. *Schick v. Ferolito*, 167 N.J. 7 (N.J. 2001). Likewise, a court in South Carolina found that the risk of being hit by a fellow golfer swinging a club at a high speed is, in fact, an inherent and inescapable risk posed in the game. *Rudzinski v. BB*, 2010 WL2723105 (D.S.C. July 9, 2010).

However, in California, it was determined that being hit in the head by a golf club swung by another golfer is not an inherent risk in the game of golf. *Hemady v. Long Beach Unified School District*, 143 Cal. App. 4th 566 (Cal. Ct. App. 2006).

And in North Carolina, it is held that a golf course is not usually considered a dangerous place, nor is the playing of golf a hazardous undertaking. *Everett v. Goodwin*, 201 N.C. 734 (N.C. 1931).

In Illinois, our courts have held that "golf is simply not the type of game in which participants are inherently, inevitably or customarily struck by the ball." *Zurla v. Hydel*, 289 Ill. App. 3d 215, 221 (1st Dist. 1997). As such, the elevated standard of willful and wanton conduct applicable to contact sports does not apply. Id. at 222.

Clearly, the dangers inherent in contact sports differ greatly from noncontact sports. "The type of physical contact participants reasonably expect to encounter in contact sports is the determining factor as to whether a negligence of higher-than-negligence standard properly applies." *Zurla*, 289 Ill. App. 3d at 219.

As such, our Supreme Court has held that voluntary participants in games like soccer, football and hockey are not liable for injuries caused by simple negligent conduct. *Pfister v. Shusta*, 167 Ill. 2d 417, 420 (1995). Rather, those participants owe each other a duty to refrain from willful and wanton or intentional misconduct and may be held liable only for injuries resulting from that conduct. Id.

In the 1st District case of first impression, *Zurla v. Hydel*, the plaintiff alleged that defendant negligently hit a golf ball after striking him in the head while they were playing a round of golf together.

SPORTS TORTS

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The *Zurla* court held that the traditional "zone of danger" analysis applies in golf course injury cases and that a plaintiff need only allege and prove traditional negligence, rather than the willful and wanton conduct analysis that generally applies for injuries in contact sports. Id. at 222 quoting David M. Holliday, Annotation, Liability to One Struck by a Golf Ball, 53 A.L.R.4th 282, 289 (1987) ("It is established that ... a golfer is only required to exercise ordinary care for the safety of persons reasonably within the range of danger of being struck by the ball.")

This is not to say that every errant shot in golf creates a potential cause of action. In *Heiden v. Cummings*, the 2nd District discussed that "the possibility that the ball will fly off in another direction is a risk inherent in the game [of golf]." *Heiden v. Cummings*, 337 Ill. App. 3d 584, 587 (2d Dist. 2003). As such, the fact that golf ball may travel in an unintended direction does not, alone, establish a viable negligence claim. Id.

The *Heiden* court stated, "rather, a plaintiff must affirmatively establish both the existence of a recognizable risk and some basis for concluding that the harm flowing from the consummation of that risk was reasonably preventable ... For example, [a plaintiff must show that a] golfer aimed so inaccurately as to unreasonably increase the risk of harm." Id.

A "plaintiff's presence in the zone of danger is not enough to establish liability." Id. at 588 Instead, a plaintiff must show that defendant has failed to exercise due care in hitting his or her shot or warning those in the danger zone of an approaching errant shot. Id.

In addition to participant liability, a club and/or golf course designer owes a duty to its patrons to protect them against foreseeable dangers. See *Prochnow v. El Apso Golf Club Inc.*, 253 Ill. App. 3d 387, 397 (1993); *Sullivan-Coughlin v. Palos Country Club Inc.*, 349 Ill. App. 3d 553, 560 (1st Dist. 2004). When a golf course owner should reasonably anticipate the risk of harm, they may be held liable for injuries occurring on their premises.

In *Sullivan-Coughlin*, there was sufficient evidence to support the finding that the golf course owner should have known that the area where plaintiff was injured was unreasonably dangerous. *Sullivan-Coughlin*, 349 Ill. App. 3d at 558.

The plaintiff and her sister were driving a golf cart toward the pro shop and cart return area, when plaintiff was hit in the head by an errant golf ball. Id. at 555. Plaintiff suffered brain injuries resulting in memory and coordination issues, uncontrollable muscle spasms and difficulty sleeping. Id.

Multiple witnesses testified to seeing and/or hearing golf balls strike the pro shop and cart return areas in the past. Id.

Because golf balls had occasionally landed in the subject area, that defendant had constructed a fence to provide limited protection to that area, and that golfers would often stop to socialize there, not realizing the danger of being struck by a ball, there was sufficient evidence to support a verdict against the golf course owner. Id. at 558.