



THE LAW OF THE LINKS... HAZARDOUS DRIVING

by Lawrence Savell

BILL KING

An admittedly mediocre golfer, I follow Murphy's Laws of Golf Trajectory. First, if I intend a shot to go in the direction of point X, it never will. Second, if I do *not* want a shot to go in the direction of point Y, it will virtually always go there.

Usually, the application of these two rules simply results in another blow to the long-suffering ego of this duffer. Unfortunately, there also is the danger of a wayward drive becoming a heat-seeking missile and striking another player. The question thus arises: Can a golfer be held liable for accidentally hitting another on the course? This issue has been litigated often. Recently, such a case was decided by the Supreme Court of Ohio.

On July 22, 1986, JoAnn Thompson, Lucille McNeill, and two others were golfing at Prestwick CC. McNeill hit her ball into a water hazard to her right, and Thompson went to search for it. McNeill then decided to hit another ball in place of the submerged one (testimony was contradictory as to whether she announced her

intention). Thompson was standing approximately 90 degrees from the intended path of the ball and 12 to 15 yards from McNeill. But McNeill again shanked her shot. Although McNeill and another player yelled when they saw the direction of the shot, the ball hit Thompson in the right eye, causing severe injury.

Thompson sued McNeill for negligence. The trial court dismissed the action, but the appellate court reversed that decision and found McNeill responsible. McNeill then appealed to the Ohio Supreme Court, which ruled in her favor because participants in sporting events such as golf can hold another player responsible only for injuries that are intentionally, or, in some cases, recklessly caused. Injuries that result from negligent actions, such as McNeill's, cannot be the basis for liability.

According to the court, a golfer or a spectator on a golf course implicitly agrees to participate in or watch an event that has known risks. Such a person has "assumed the risks" inher-

ent in the sport, which include the risk of being hit by a wayward ball. Thus, a player who injures another unintentionally by conduct that is a foreseeable, customary part of the sport (such as hitting a ball) cannot be held responsible.

The court did note, however, that if a golfer knows someone is in the line of flight of the ball but fails to yell the customary warning, *fore!*, she might be held liable. Failure to yell might constitute recklessness that would support liability. In this case, the court pointed to the fact that Thompson had been far away from the intended path of the ball. Additionally, the ball was traveling so rapidly that a warning would not have helped her. Moreover, the rules allowed McNeill to play her next shot from where she had shot the ball that ended up submerged, so it was foreseeable that she would hit from that point.

The Ohio court cautioned that, in other situations, a reckless, even though unintentional, act could lead to liability. For example, if you were to get upset at a bad shot and throw your club in the air, you might be responsible for the consequences.

Courts in other states might come to different conclusions than that of the Ohio court. In fact, other courts have found a golfer liable in situations where the offending golfer knew she had a tendency to hit balls in a particular direction. On the other hand, if the injured person knew of this propensity and did not protect herself, her own lack of care might prevent her from winning a suit.

The significant number of cases involving golfers struck by balls suggests that such unfortunate accidents happen often. Regardless of legal considerations, the safest course for all concerned is for players to announce their intention to hit to people even remotely in the line of fire. And those anywhere in that line of fire should always keep in mind the navigational limitations of the human golfer. □

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