

FORE SPECTATORS

Who's to **blame** if you're **hit** by a tour pro's errant **shot**?

By Lawrence Savell

WE'VE ALL WATCHED THE SCENE on television — an errant shot during tournament play ricochets off a spectator. Who's to blame if you're the unlucky individual smack in the path of a pro's wayward ball? This question and others arise as to who may be held legally responsible. Here are some answers.

If I'm a spectator at a golf tournament and I'm hit and injured by a stray shot, can I sue the player who hit me?

Probably not, because the legal doctrine of "assumption of the risk" would apply. This means that a person cannot recover for a serious injury received when she voluntarily exposes herself to a known danger. The courts have ruled that, at least with regard to a claim against a player, a spectator at a golf tournament assumes the recognized risk of being hit by a wayward shot.

Doesn't the player have a duty to yell "fore" to protect spectators?

Not under normal circumstances.

Why?

The courts have said it's reasonable for a golfer to assume spectators close to the playing area are observing the play of the golfers. Also, depending on the spectator's location, she might

not be able to hear the warning.

By and large, courts have ruled that golfers and spectators know many shots go astray, and that fact is a risk observers at a tournament must accept. Courts generally say that to hold a golfer negligent because her golf ball did not travel in the direction she intended would impose a greater duty of care on the golfer than is realistic.

Can I hold the operators of the tournament responsible if I'm hit?

Possibly.

What are the operators' responsibilities?

The sponsors or managers of a golf tournament have a limited duty to provide spectators with a reasonable opportunity to view the participants from a safe area. The operators must take adequate steps to provide a protected viewing area for the public.

Now you're standing behind the ropes in a designated viewing area when you're hit by an errant shot and the resulting injury sends you to the hospital for treatment and tests. You can choose to discuss your medical bills with the tournament's operator or course owner to explore the possibility of their insurance covering your medical expenses.

What factors do courts consider?

Courts will examine such matters as whether the tournament operator designated a reasonable amount of safe seating and whether it provided crowd control measures such as barricades and marshals. Some golf associations have set standards for such precautions.

In one case, the court suggested that placing a spectator concession stand in an area where wayward golf balls had frequently landed in the past (and where the plaintiff was struck) might be negligent.

Can I sue the player if no such safe area is provided?

No. The courts have ruled that the duty to provide adequate areas for the public does not extend to a golfer who was merely playing in the tournament and had no control over the arrangements for spectators.

What if a safe area is provided, but the spectator stands in another area and is hit?

In that case, the spectator has only herself to blame. Once the tournament operator has satisfied the duty to provide a safe area, it has fulfilled its obligation. The spectator who chooses to stand or sit in an unprotected area assumes the risk for her own safety and cannot hold the manager responsible.

Can I hold the owner of the course responsible?

Possibly. The same rules that apply to the tournament operator would probably apply to the course owner, depending on the circumstances.

But what if I'm injured because of a dangerous condition on the course, such as a concealed hole?

Then you might have a claim against course owners or operators, particularly if they knew of the hazard but did nothing to fix it or warn spectators about it if it wasn't obvious. Landowners have a duty of ordinary care to those lawfully on their premises, which may include discovering dangerous conditions and providing warnings about them. You would have to show that the owner or operator was negligent and that such negligence was the cause of your injury. *GFW*

LAWRENCE SAVELL is a New York attorney. This column provides general information and cannot substitute for consultation with a lawyer.