



CURTIS PARKER

Heading Off Course

By Lawrence Savell

Much has been written about the responsibility of a golfer who accidentally strikes another player with a shot, as well as the responsibility of a course operator to a neighbor who claims that recurrent errant shots have become a nuisance. But what if a golfer accidentally hits his ball off the course and injures a passing motorist or pedestrian? Can the motorist or pedestrian hold the golfer liable for the personal injuries caused by a poor tee shot?

A recent case addressed this question. Arthur McGovern and Donald Vogel were teeing off at the 11th hole of the Springville Country Club in upstate New York. McGovern's ball left the course entirely, traveled through or over a screen of trees, and landed on an adjacent public road, where it struck the windshield of a passing automobile. Roberta Rinaldo, who was riding in the vehicle, was injured.

Rinaldo sued the golfers, alleging that they had failed to warn her of the risk of injury and had otherwise been negligent (that is, had failed to use necessary care). The defendants asked the trial court to dismiss the case, which it did. An intermediate appellate court affirmed the dismissal. Rinaldo appealed again. (At some point, Rinaldo dropped her appeal with respect to Vogel, as well as with respect to the course

operator, whom she had also sued.)

On November 21, 1991, the Court of Appeals, New York's highest court, again affirmed the dismissal. The Court noted that whatever a golfer's duty may be to other players, a golfer ordinarily cannot be held responsible by individuals located entirely outside the boundaries of a golf course who happen to be struck by a stray, mishit ball.

Turning to Rinaldo's claim that McGovern had not warned her, the Court noted that the key question is whether a warning, had one been given, would have been effective in preventing the accident. One cannot be liable for failing to give a warning if such a warning would not have changed the outcome. Under the circumstances of the case, the Court concluded that a warning by the golfer almost certainly would have been futile. Even if McGovern had shouted "fore," it would have been unlikely that Rinaldo, riding in a vehicle on a roadway outside the course, would have heard, much less had the opportunity to act upon, such a warning.

As to Rinaldo's claim that McGovern had been negligent, the Court concluded that that allegation was similarly untenable. According to the Court, "though the object of the game of golf is to drive the ball as cleanly and directly as possible toward its ultimate intended goal (the hole), the possibility that the ball will fly off in another direction is a risk inherent in the game." The Court observed that "even the best professional golfers cannot avoid an occasional hook or slice."

Although other courts in other cases may, and sometimes have, come to different conclusions, it is rare for someone outside a course to succeed in holding a golfer liable for injuries from an ordinary, well-intended shot. In the Rinaldo case, the evidence was undisputed that McGovern and Vogel had each intended to drive his ball straight down the fairway and not in the direction of the trees or the road.

The courts may be somewhat more willing to find a course operator responsible for injuries to passing motorists or pedestrians, if the plaintiff can show that such factors as the design of the course or the absence of warning signs cautioning passersby that they may be in danger made the risk of such injuries excessively high. For example, a 1978 North Dakota case held a private golf club responsible for injuries suffered by a boater who was struck by a ball while on a river that flowed through the course. The evidence indicated that the course operator was aware that golfers hit balls into the river and that boaters used the river for recreation; the court upheld a jury's finding that the operator should have provided adequate warnings to such boaters by signs or other means. ☒

Lawrence Savell is a lawyer and a writer in New York City. This column provides general information and is not intended as a substitute for consulting an attorney.