GOLFERS' BAD SHOTS SHATTER WINDSHIELD OF PASSING MOTORIST

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The May 1986 NRPA Law Review column entitled "Golf Course Liability for Injury to Adjacent Homeowner," addressed the issue of landowner liability for injuries caused by errant golf shots landing on abutting property. In this article, the court concluded that the occasional errant golf shot landing on abutting property was not sufficiently dangerous, nor foreseeable to impose landowner liability. According to the court, "one who deliberately decides to reside in the suburbs on very desirable lots adjoining golf clubs and thus receive social benefits and other not inconsiderable advantages of country club surroundings must accept the occasional, concomitant annoyances," such as errant shots landing on the property.

This month's column addresses a related, but perhaps more complex issue, of golfer liability for errant shots which cause injuries to passing motorists. Can the rationale stated above for limiting landowner liability to abutting property owners be extended to passing motorists? In other words, must motorists who deliberately decide to drive on a public highway or thoroughfare adjoining a golf course accept the occasional, concomitant annoyances such as an errant shots which may shatter windshields and possibly injure the driver and/or passengers? The Renaldo decision described in the following paragraphs presents the majority and dissenting views of appellate judges who recently addressed this issue.

Carefree Highway; Shattered

In the case of Renaldo v. Springville Country Club, Inc., 561 N.Y.S.2d 1006 (A.D. 1990), plaintiffs Roberta and Gary Rinaldo brought this action after Roberta Rinaldo was injured when the windshield of their car was shattered by a golf ball. The facts of the case were as follows:

The Rinaldos were traveling on Route 219 in the vicinity of the 11th hole of the Springville Country Club. Defendants, Arthur McGovern and Donald Vogel, both had hit tee shots at the 11th hole which had sliced to the right, either into or over the trees that separate the fairway from Route 219.

The Rinaldos alleged that Vogel and McGovern had negligently "failed to give them timely warning of their intention to strike a ball." The trial court granted summary judgment to defendants. The Renaldos appealed.

In the opinion of the appeals court, this suit "was properly dismissed."

This court has recently held that a golfer has no duty to warn persons who are not in the intended line of flight of an intention to hit the ball. If a golfer owes no duty to warn a person on another tee or fairway of his intention to hit the ball, he owes no duty to warn a person inside an automobile, driving by the golf course on an adjacent roadway. Moreover, even if such a duty exists, under these circumstances, where there would be only a remote possibility that the Rinaldos would have heard or been able to respond to
a warning if one were given, Vogel and McGovern's failure to warn was not the proximate cause of Roberta Rinaldo's injuries as a matter of law.

As noted by the appeals court, "[t]he only other conduct that the Rinaldos alleged to be negligent was that defendants McGovern and Vogel each hit a 'bad shot'." According to the appeals court, a "bad shot," in and of itself, is insufficient to establish a claim for negligence liability.

The Court of Appeals [state supreme court] has held that the fact that a golfer hits a "bad shot" that either slices or hooks is not sufficient to permit an inference of negligence. The mere fact that a ball does not travel the intended course does not establish negligence. Even the best professional golfers cannot avoid an occasional "hook" or "slice". Rather, the Rinaldos must prove that defendants Vogel and McGovern failed to use due care in striking the ball.

Applying these principles to the facts of the case, the appeals court found that "each defendant presented sufficient evidence concerning the manner in which he swung to demonstrate his entitlement to summary judgment as a matter of law."

Each defendant testified at an examination before trial that he intended his shot to remain on the fairway. Defendant Vogel testified that he, in fact, had intended to hit the ball down the left side of the fairway. However, both shots sliced and the balls went into the trees which parallel the fairway and separate the golf course from Route 219. The fairway is bordered by a thick barrier of trees, and neither golfer saw nor heard a vehicle on Route 219 at the time he hit his ball.

On the other hand, the appeals court found that the Rinaldos had "failed to come forward with proof that defendants Vogel and McGovern did not exercise due care when attempting their shots." Consequently, the appeals court concluded that "defendants were entitled to summary judgment." The appeals court, therefore, affirmed the judgment of the lower court in favor of Vogel and McGovern.

Opposing Minority View

In this case, two appellate judges dissented from the three judge majority opinion described above. As characterized by the dissenting judges, the ruling by the majority in this case "is contrary to long established principles of law."

The majority holds that, as a matter of law, an injured passenger in a vehicle which is lawfully proceeding on a highway adjacent to a golf course has no cause of action against the golfer who drives a golf ball into the windshield of the car causing the driver to lose control and crash. Surely it is foreseeable that if a golfer drives a ball "out of bounds" onto the road it may strike an automobile. To absolve the golfer from fault against an innocent person is unjust.

Surprisingly, this is the first occasion for an appellate court in New York to address this issue. It is not, however, a case of first impression. In a similar factual situation, a [lower] court held that a golfer and the golf club were jointly and severally liable for
injuries sustained by a passenger in an automobile traveling along an adjoining public highway, when a golf ball struck the windshield.

As described by the dissenters, the majority in this case "holds that a golfer has no duty to warn persons not in the intended line of flight of an intention to hit the ball." According to the dissent, the court decisions relied upon by the majority to support its holding in this particular situation "involve injuries to other golfers on the golf course or others on residential property abutting the course." In the opinion of the dissenters, the duty owed by golfers to abutting property owners is to be distinguished from the legal duty golfers owe to motorists traveling on roads and highways adjacent to golf courses.

In our view, the Court of Appeals has recognized a distinction between persons within the foreseeable ambit of danger and innocent motorists lawfully traveling on a public highway. [T]he Court of Appeals noted that the plaintiff (an adjacent land owner) is not entitled to the same protection as the traveler on the public highway. The right of the public to free and unmolested use of the highway is well defined, as the highways are created for public convenience to give the public the privilege of passage...

[A] golf ball in itself is an innocent, lawful article, and so is the club which drives it. But, when driven, though in full compliance with the rules of the game, the ball attains great speed, and may thus become a dangerous and destructive object and may strike with great violence and force, not unlike a projectile which is propelled from a weapon by whatever power it be actuated, or a stone thrown by a catapult or by the hand. There is, therefore, a known and foreseeable element of danger and risk involved.

The presence of risk imports liability. The risk reasonably to be perceived defines the duty to be obeyed, and risk imports relation; it is risk to another or to others within the range of apprehension. This does not mean, of course, that one who launches a destructive force is always relieved of liability if the force, though known to be destructive, pursues an unexpected path. It was not necessary that defendant should have had notice of the particular method in which an accident would occur, if the possibility of an accident was clear to the ordinary prudent eye.

It is well established that negligence is not a tort unless it results in the commission of a wrong, and the commission of a wrong imports the violation of a right. Wrong is defined in terms of the natural or probable, when unintentional.

In the opinion of the dissenters, the Rinaldos "had a right to be traveling in their automobile on the highway free from any molestation or interference."

Their vehicle was struck suddenly by a golf ball. It is foreseeable that should a golf ball be driven "out of bounds" onto the highway, that it might strike the windshield of an innocent traveler lawfully proceeding thereon. The Rinaldos here had a right of bodily security, and are entitled to be protected against being struck by the ball, and if that right has been violated, they may recover, albeit that interference did not result from knowing and willful conduct of defendants, so long as hitting the ball and causing harm was within the range of natural probability.
Accordingly, the two dissenting judges would have had the appeals court vote "to reverse the order and deny the motions" of the defendants Vogel and McGovern.

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