**FORE GOLF BALL DAMAGE**

**BY: WILLIAM G. MORRIS, ESQ.**

Golf is a spectacular sport. What could be more exciting than a pastureland dotted with people swinging away at little white balls hoping the balls will go into a hole in the ground? One thing that could be more exciting is when one of those little white ball hits something other than land set aside as a golf course. When that happens, there can be more concern than how that affects the ball getting into the hole.

A lot of golf courses are in golf course communities. People buy homes along the course because the view is nice and, in some cases, even to watch the parade of golfers go by between tee and green. Some of the balls hit by those golfers will end up on the homeowner’s property and some may actually hit the home. Most of the time, the golfer who hit the errant shot will simply walk to the ball, retrieve it and play on, leaving the property owner with a broken window or worse.

Because these courses are created by the property developer, they are addressed in deed restrictions applicable to the property adjacent to the courses. Those restrictions generally allow a golfer to retrieve the ball, converting what would otherwise be a trespass into an allowed act. The restrictions will also provide the golf course operator and owner protection from liability. They also confirm the homeowner buys with knowledge of the course, possibility of golf ball incursions and that the golf course and developer are not liable for damage.

Those restrictions do a pretty good job of insulating the golf course owner and operator from liability. To make matters worse for the homeowner, many judges have explained when one buys on a golf course one buys with knowledge of the risk of golf balls and therefore that risk falls on the homeowner.

Golf courses are not exclusive to golf course communities. Florida has many public courses and even driving ranges. There is no statute addressing liability for golf courses, so these facilities are subject to general Florida law. That means the course operator and even designer is required to design, maintain and operate the course in a reasonably safe condition. That obligation also includes associations in golf course communities, so even with protection provided by deed restrictions there is still potential liability.

Sometimes a golf course owner will change the course layout. If the change increases number of errant shots into a particular property the protection of deed restrictions and assumption of the risk of golf balls can be lost. When that happens, the golf course operator may be liable for negligence and private nuisance. Negligence means damages but private nuisance could go so far as to prohibit playing golf on the course as redesigned!

What about the golfer? Florida cases indicate everyone on or near a golf course or driving range must exercise appropriate care. That means a person hitting a golf ball must exercise reasonable care to avoid hurting someone else or damaging property. In one case, the court ruled that standard was violated when a person hitting balls on a driving range hit a ball diagonally across the range as he always did to practice. This time, there was an 11 year old boy shagging balls with another golfer on the side of the range and the ball hit the boy, The court ruled the person hitting the ball had liability for not warning the boy he intended to hit over his head and the operator of the driving range also had liability. The range operator liability was apparently due to allowing someone to shag balls while others were actively hitting at the range.

Florida courts make a big deal about duty to look for and warn people who might be struck by a hit ball. In one case, a golfer hitting off the tee of the 15th hole struck a caddy while caddying on the 14th tee. The golfer claimed he saw the danger and yelled “Fore,” but the caddy disagreed. The caddy did admit he saw the ball coming and the court ruled he had a duty to make a reasonable effort to avoid the ball. Apparently, that effort was not made. On appeal, the appellate court sent the case back to the trial court for further proceedings and the final outcome not reported.

In another case, a golfer hit a ball that struck a person operating a riding lawn mower. The trial court ruled the golfer free from liability. On appeal, the appellate court said there was a question about whether noise from the mower put the golfer on notice the operator was in the line of fire and the court had to hear evidence on that issue.

Golfers on a course might find they have less protection than non-golfers. There is a case when a golfer and her husband sued when the golfer was struck by a ball hit by another member of their foursome. The golfer stood on the green facing the fellow member of her foursome hitting out of rough about 50 feet away. She was struck by the ball hit out of the rough. The court ruled there was no need for a trial because the golfer clearly was injured by the obvious and ordinary risk of the sport of golfing and had full knowledge of the risks of golf.

Many think these cases involve so much from a little white ball. But, the trouble is really the operator. The real issue in golf injuries is not the ball, it is the golfer. So many play golf but so few play it well.

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