

## YOU AND THE LAW

# Time for a Reassessment of Assumption of Risk in Golf? Don't Count on It

*Anthony C. Rosselli*

*FORE!* Those four letters are often the only thing that alerts spectators attending golf tournaments of danger heading their way. With professional golfers swinging the golf club at upwards of 120 mph, sending the ball an average of 295 yards (Wilco, 2018), and with professional long drive competitors swinging up to 150 mph, a small hard golf ball can become a dangerous projectile with serious potential for catastrophic injury. In this article, I examine the courts' stance on assumption of risk for spectators, provide real-world examples of injuries within golf, and provide potential safeguards for minimizing risk for spectators.

## Assumption of Risk: Spectators

When sports fans head to the game, there are certain assumptions that are inherent to the nature and type of sport being viewed (Augustine, n.d.). Objects and equipment regularly leave the area of play and find their way into the stands. For example, a study of 127 games in the National Hockey League found that 122 people were injured by hockey pucks leaving the ice (Winslow & Goldstein, 2007).

Historically, the courts have upheld that the spectator assumes the risks inherent within the sport of golf when watching a golf tournament. Namely, spectators expect golf balls to fly in their direction

---

Anthony C. Rosselli is an associate professor, Department of Health and Human Performance, Texas A&M Commerce. Please send author correspondence to Anthony.Rosselli@tamuc.edu

*Note:* This is a reprint from the *Sport Litigation Alert*, 15(24), 2018, with modification and permission from the author and publisher Holt Hackney.

on occasion. Fans often line the greens, and some sit within 60 ft of the flagstick. Professional golfers are prone to miss-hit the golf ball (although a bad shot alone is not grounds for liability, see *Bartlett v. Cheduhar*, 1992, and Savell, 1998), and a slight miscalculation of the wind, elevation, or force necessary for hitting the ball can cause a spectator to be hit. More often than not, the golfer gets away with an apology and a signed glove or ball. Some fans even take it as a badge of honor to be hit by one of their favorite golfers. For golfers directly around the green, it is expected that they are prepared for a ball to be hit toward them (the flagstick is within their line of sight), and the courts do not protect spectators in this case (DeVoto, 1993). Furthermore, the professional golf tours do their diligence to inform golfers that errant golf balls may come their way. The risks associated with golf are printed on the backs of the tickets in a disclaimer that states spectators “voluntarily assume all risk and danger incidental to the game of golf” (Ralph, 2018, para. 6). For a detailed examination of spectator injuries due to errant golf shots and the courts’ rulings, see Tonner, Sawyer, and Hypes (1999) and Lee (2014).

Additionally, the courts have not upheld the golfer’s duty to warn others when a shot is hit offline, when the spectator should be aware that the golfer is about to hit or when the spectator is so far out of the intended path of play that they are deemed “reasonably safe” (see *Cavin v. Kasser*, 1991). It could be argued that golfers who know their tendency to hit an errant shot should be responsible for hitting a spectator, fellow golfer, or another person, and failing to warn said party. However, in *Thompson v. McNeil*, “the Supreme Court of Ohio held that negligent conduct of a golfer could not result in liability” (DeVoto, 1993, para. 10). In a more bizarre example (*Ludwikoski v. Kurotsu*, 1995), a bystander was sitting in her car in a driveway across the street from a golf course. An errant ball subsequently hit the bystander, and she sued the offending golfer. The courts could not find evidence of negligence on the part of the golfer in this case. In short, the road is long and uphill for a plaintiff in a negligence case against a golfer, course owner, or sponsor.

### Example From 2018 Ryder Cup

Perhaps the most recent case that has received much publicity comes from the 2018 Ryder Cup tournament held in Paris, France. American golfer Brooks Koepka (the number 3 ranked golfer in

the world at the time) hit a shot that went offline. Spectator Corine Remande was struck in the eye, which resulted in permanent loss of vision in that eye (McCann, 2018). The European Tour claims that “fore” was yelled after it was evident the ball was heading offline, but Remande claims to not have heard the warning. Furthermore, Koepka stated, “You can yell ‘fore’ but it doesn’t matter from 300 yards, you can’t hear it” (as cited in McCann, 2018, para. 4). Remande says she is contemplating legal action.

### **Example From World Long Drive Competition**

The World Long Drive competition has gained in popularity in recent years. These competitions (featuring both men’s and women’s divisions) showcase competitors’ ability to hit a golf ball as far as humanly possible. Some golfers hit the ball over 500 yards during competition. For these athletes, the golf ball can leave the club head at over 220 mph (James, 2017). While long drive does not have spectators lining the fairway where the golfers are hitting their balls (and the ball itself is not the hazard relevant here), the golf club itself has become a projectile on more than one occasion. Spectators at World Long Drive events view from the back and sides of the golfer. During one competition, competitor Wes Patterson snapped his club shaft across his back on his follow-through swing. The club then flew into the stands, where spectators were watching the ball fly down the fairway, completely oblivious to the flying projectile coming their way (Kerr-Dineen, 2017). As this example demonstrates, this fiberglass projectile is even more dangerous due to the nature of the spectator’s actions during this event. As soon as the golfer hits the ball, the spectator’s line of sight transfers from the golfer and follows the golf ball down range. Spectators who are not directly behind the golfer are no longer viewing the golfer after the ball has been hit. This incident could have caused serious injury to the spectator, and all were fortunate that no injuries resulted.

## **Discussion**

As demonstrated, the law is not on the side of the spectator of sporting events (in general). However, golf is different from any other spectator sport. The playing area is immensely larger than a basketball court, hockey rink, football field, or baseball diamond, among

others, and the action often comes from different sides at the same time. As in baseball and hockey (the sports with perhaps the closest similarities to golf, i.e., projectiles flying toward the path of the spectator), in golf, spectators could have multiple projectiles heading their direction at any time. Furthermore, in the case of World Long Drive competitions, the spectator follows the golf ball as it is hit down range. This is the natural spectator action inherent in this activity. Due to the positioning of the long driver in relation to the spectator, the patron has no reason to continue watching the golfer after the ball has been hit. This is the inherent risk associated with this sport. As demonstrated, when the golf shaft breaks and flies into the audience, the spectator does not watch the golfer, but rather follows the path of the golf ball.

Perhaps it is time for golf sports to reconsider spectator safety. A potential solution for World Long Drive is the installation of plexi-glass barriers (similar to those at a hockey rink) that protect patrons from flying golf shafts. On the traditional golf course, this becomes unreasonable. However, other measures of encouraging patrons to pay more attention to their surroundings could be taken. In the past, the PGA Tour has banned the use of cellular phones during tournaments. At some tournaments, patrons have to turn in their devices at the entrance gate and can retrieve them as they leave, or can use them only within a designated space (usually far away from the potential of flying golf balls). However, the PGA Tour has since relaxed this policy (Heath, 2018). Other measures could include more golf marshals on the fairways whose responsibility it is to alert patrons of incoming golf balls (the professional tours already utilize wands from the tee box to indicate the direction the ball is traveling—either down the fairway, to the right of the fairway, or to the left of the fairway. More voices and eyes are always beneficial for alerting fans. Finally, professional golf tournaments could institute more announcements and reminders to patrons to pay attention to golfers, marshals, and their surroundings while within the field of play. Similar to the public service announcements at basketball games in which the announcer reminds fans to avoid certain behaviors, ticket takers could repeat a standard warning statement to each person as they take tickets. This is just one further method of informing the spectator of the inherent risk of the activity, and it serves to protect

all parties. In any case, the law is not on the spectator's side and does not appear it will be anytime soon.

## References

- Augustine, L. (n.d.). Who is responsible when spectators are injured while attending professional sporting events? Retrieved from <https://www.law.du.edu/documents/sports-and-entertainment-law-journal/issues/05/05-Augustine.pdf>
- Bartlett v. Cheduhar, 479 N. W. 2d. 321, 322, 323 (1992).
- Cavin v. Kasser, 820 S. W. 2d. 647, 650 (1991).
- DeVoto, L. J. (1993). Injury on the golf course: Regardless of your handicap, escaping liability is par for the course. *University of Toledo Law Review*, 24, 859–882.
- Heath, E. (2018, March 9). Are fans allowed mobile phones on the PGA Tour? *Golf Monthly*. Retrieved from <https://www.golf-monthly.co.uk/features/the-game/are-fans-allowed-mobile-phones-on-the-pga-tour-152052>
- James, J. (2017, October 3). Champion's corner: World Long Drive's increasing relevance in the golf landscape. Retrieved from <https://www.worldlongdrive.com/news/champions-corner-world-long-drives-increasing-relevance-golf-landscape/>
- Kerr-Dineen, L. (2017, September 6). Golfer snaps driver, hits a fan at the World Long Drive competition. *USA Today*. Retrieved from <https://ftw.usatoday.com/2017/09/golfer-snaps-driver-and-hits-a-fan-at-the-world-long-drive-competition-video-highlights>
- Lee, K. (2014). *Court decisions regarding golf-related injuries: A quantitative content analysis and binary logistic regression*. (Unpublished doctoral dissertation). University of New Mexico, Albuquerque, NM.
- Ludwikoski v. Kurotsu, 875 F. Supp. 727 (1995).
- McCann, M. (2018, October 2). Breaking down a potential lawsuit after Ryder Cup fan loses vision from errant shot. *Sports Illustrated*. Retrieved from <https://www.si.com/golf/2018/10/02/ryder-cup-spectator-brooks-koepka-eye-injury-lawsuit>
- Ralph, P. (2018, October 9). What happens after 'fore'? Injured fans face legal hurdles in golf-ball lawsuits. Retrieved from <https://www.golf.com/tour-and-news/2018/10/09/spectators-legal-hit-golf-ball/>
- Savell, L. (1998). Litigious links. *Golf Magazine*, 40(2), 96–97.

- Tonner, C., Sawyer, T. H., & Hypes, M. G. (1999). Legal issues in golf: A 25 year litigation history 1973–98. *Journal of Legal Aspects of Sport*, 9, 125–149. <https://doi.org/10.1123/jlas.9.3.125>
- Wilco, D. (2018, July 3). How driving distance has changed over the past 40 years on the PGA Tour. Retrieved from <https://www.pga.com/news/pga-tour/how-driving-distance-has-changed-over-past-40-years-pga-tour>
- Winslow, J. E., & Goldstein, A. O. (2007). Spectator risks at sporting events. *Internet Journal of Law, Healthcare, and Ethics*, 4(2), 1–6.