"Fore!" May Be Just Par For The Course

INTRODUCTION

One of the most popular pastimes in this country is golf.[1] Unfortunately, as the sport's popularity has increased, so have golf-related injuries.[2] This is not a new discovery for golfers, because they all know that slices and hooks not only can end in a sand trap or the woods, but such shots may also result in serious injuries.[3] Errant shots, reckless and intentional swings, golf cart accidents, and thrown clubs are examples of causes of golf-related injuries, and they all form different theories of liability.[4] Some errant shots will not be actionable, while an injury caused by a thrown club or a reckless intentional swing, will almost always be actionable.[5] As a result, the area of golfers' liability is one that needs specific boundaries to be defined in light of new cases that have recently come before the courts.[6]

Originally, a golfer was not liable for any injuries that resulted from ordinary negligence unless the golfer failed to provide a warning to the other party of the incoming shot.[7] More recently though,

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1. Harry J. O'Kane & William L. Schaller, *Injuries from Errant Golf Balls: Liability Theories and Defenses* 37 FED'N OF INS. & CORP. COUNS. Q. 247 (1987). Dr. Gary Wiren quips, "The objective of golf is simple, but the game of golf is complex." GARY WIREN, THE P.G.A. MANUAL OF GOLF 1 (1991).

2. WIREN, *supra* note 1, at 232. Common golf-related injuries include those to the wrist, back, hand, shoulders, neck and eyes. *Id.* These injuries are usually more chronic than traumatic and some people never fully recover. *Id.*

3. O'Kane & Schaller, *supra* note 1, at 247-48. Large and very expensive lawsuits usually follow serious injuries. *Id.* at 247.

4. *Id.* Since many causes of golf related injuries exist, the legal implications of these accidents are also becoming increasingly important and expensive. *Id.*

5. *Id.* Recovery for injuries sustained by a person struck by a golf ball is sometimes barred because the person assumed a foreseeable risk of injury ordinarily incident to the game of golf. *Id.* One does not assume the risk of being struck by a golf ball as a result of the negligence or recklessness of another, although recovery maybe precluded due to the contributory negligence of the injured party. David M. Holliday, Annotation, *Liability to One Struck by Golf Ball*, 53 A.L.R.4TH 282, 290. Ordinarily, golfers will not be held liable for errant shots, since a golfer does not have complete control over his golf ball. O'Kane & Schaller, *supra* note 1, at 260. Golfers will be held liable for any intentionally reckless conduct, such as aiming balls off the course or disobeying "prohibiting golf" signs in certain areas of a golf course. *Id.*

6. *See* Bartlett v. Chebuhar 479 N.W.2d 321 (Iowa 1992); Gruhin v. Overland Park, 836 P.2d 1222 (Kan. Ct. App. 1992); Cavin v. Kasser, 820 S.W.2d 647 (Mo. Ct. App. 1991).

7. Jenks v. McGranaghan, 285 N.E.2d 876 (N.Y. 1972). Generally, the mere fact that a

the courts have begun to expand golfers' liability to include a wider range of injured plaintiffs.[8]

This Comment will discuss the various theories of golfers' liability with an explanation as to what theory is currently used by the majority of the courts. Additionally, this Comment will discuss other golf-related lawsuits against golf course owners and/or designers, golfers' employers, and golf associations and sponsors. The different theories of liability for golfers and spectators will be distinguished, and finally, there will be a prediction of the future of golfers' liability.

HISTORICAL ANALYSIS OF GOLFERS' LIABILITY

In the early 1800s, when people first began playing golf, potential liability was not even a consideration.[9] Approximately, a century and a half later, individuals began to bring cases in various jurisdictions, requesting a clarification on liability for golfers.[10]

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golf ball strikes a person does not constitute proof of negligence on the part of the golfer who hit the ball. *Id.* The golfer is only required to exercise ordinary care for the safety of persons reasonably within the range. *Id.* at 877. Although a golfer must give an adequate and timely warning to those who are unaware of his intention to hit and who may be endangered by his ball, this duty does not extend to those persons who are not in the line of play. Holiday, *supra* note 5, at 289. *See* Andrew v. Stevenson, 13 Scott. L.T. 581 (1905). In *Andrew*, the court stated this general premise that:

> The risks of accident in golf are such, whether from those playing behind or from those meeting the player or crossing his line of play that no one is entitled to take part in the game without paying attention to what is going on around and near him and that when he receives an injury which by a little care and diligence on his part might have been escaped, he should not be entitled to claim damages for that injury.

Andrew v. Stevenson, 13 Scott. L.T. 581 (1905).

8. *Bartlett*, 479 N.W.2d at 321. In *Bartlett*, the court decided to expand golfers' liability to include those not necessarily within, but near the zone of danger. *Id. See infra* note 46 and accompanying text.

9. WIREN, *supra* note 1, at 3. As early as the 13th century, the Dutch claimed to have invented a golf like game, but the Scots claim that golf was their invention, and if you look to the first written word regarding golf, it was the edict of King James I of Scotland 1457, which declared golf illegal. *Id.* Even while these two countries debated the patent rights, liability for golf-related injuries was not a consideration. *Id.*

10. *Id.* In Jenks v. McGranaghan, 285 N.E.2d 876 (N.Y. 1972), one of the important cases to request such a clarification, established the general rule that golfers were not liable for injuries sustained by other golfers unless they acted intentionally or recklessly or failed to warn another in the intended flight of the ball of an incoming errant shot. *Id.* at 878. *See* Alexander v. Wrenn, 164 S.E. 715, (Va. 1932) (establishing the same rule articulated later in *Jenks*). In *Alexander*, the plaintiff, Alexander, suffered an eye injury when the defendant's golf ball hit him while he was searching for his ball in the rough. *Id.* At the time, the plain-

Originally, the liability of golfers was extremely limited, and the courts generally refused to impose penalties on golfers who injured other players and spectators.[11] The general rule was that one managing a golf course or one participating in the sport was under an ordinary duty that required the exercise of reasonable care for the well-being of others that corresponded with the surrounding circumstances.[12] Also, later cases recognized that a golf player has a duty to warn players[13] within the foreseeable zone of danger of his intention to strike the ball.[14] Likewise, a golfer standing outside this zone of danger is not entitled to any warning, and, if he is injured by a golf ball while outside this zone, no liability will be imposed upon the golfer for his failure to give any warning before making the shot.[15]

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tiff was standing at a thirty-three degree angle of the intended line of the defendant's ball, which was approximately 50 feet from the defendant. *Id.* at 715-16. A jury returned a verdict for the plaintiff, and the Virginia Supreme Court of Appeals affirmed, noting that a warning must be given to those a golfer knows or should have known, are in the line of the intended flight of the ball. *Id.* at 717-18. The court reasoned that since the defendant golfer was a wild and erratic player, he knew that his golf ball hit by him may fly at almost any angle and such evidence justified the plaintiff's inference that he was within the range of danger. *Id.* at 720.

11. *Jenks*, 285 N.E.2d at 876. When a golfer sustains an injury caused by a fellow golfer, the courts generally refuse to impose penalties on the golfer on the basis that golfers assume inherent risks and dangers of golf when they participate in the sport. O'Kane & Schaller, *supra* note 1, at 268.

12. B. Finberg, Annotation, *Liability for Injury or Death on or Near Golf Course*, 82 A.L.R.2D 1183, 1185. Since later cases recognized the rule that a player or spectator of a sport will be considered to have assumed any inherent risks or dangers of the game, most plaintiffs have been denied recovery and have also experienced much difficulty in proving their case. *Id.* at 1185. To the contrary, spectators have been more successful in their recovery. *Id.* Golfers who are considered to be familiar with the sport are more likely to be held to have assumed the inherent dangers and risks of the sport. JEFFREY K. RIFFER, SPORTS AND RECREATIONAL SPORTS 480 (1985). A golfer will not assume an unreasonable risk, and courts have held that golfers do not assume any risks which include the negligence of another person. *Id.* Most courts have decided that a golfer does assume any risk of injury caused by another person's negligent failure to give adequate warning of a dangerous incoming shot. *Id.*

13. Cavin v. Kasser, 820 S.W.2d 647, 648 (Mo. Ct. App. 1991). The usual warning to other golfers and/or spectators, is the term "fore." O'Kane & Schaller, *supra* note 1, at 269. As a result, courts have focused on the crucial issue of whether the golfer had a duty to warn the plaintiff by yelling "fore" before or after he hit his shot, and then if he did have a duty, whether the golfer fulfilled the duty. *Id.*

14. Finberg, *supra* note 12, at 1185. See RIFFER, *supra* note 12, at 84 (stating that while participating in recreational activities, individuals must exercise reasonable care).

15. Finberg, *supra* note 12, at 1185. The reason for this rule is that the risk of being hit by an errant golf shot is so inherent in the game of golf, that one participating in the sport is said to have assumed the risk and it would be an injustice to hold the golfer liable for the injuries sustained. *Id.*

In *Jenks v. McGranaghan,*[16] one of the leading cases that first introduced golfers' liability law, the plaintiff, Jenks, and the defendant, McGranaghan, were both playing golf at the Windsor Golf Course.[17] As McGranaghan was teeing up the ball on the eighth hole, the plaintiff was on the tee on the ninth hole, standing behind a protective fence.[18] McGranaghan "shanked"[19] his shot and, it hooked wildly to the left, hitting Jenks in the eye, and causing severe injury.[20] McGranaghan and the other members of his foursome did yell "fore," but Jenks did not hear the warning.[21] Jenks sued McGranaghan for the injury he sustained as a result of the defendant's errant shot, contending that McGranaghan was liable due to his negligence in failing to warn Jenks before he teed off.[22]

The Court of Appeals of New York noted that a duty exists for a golfer to make a timely warning to others within the foreseeable ambit of danger; however, the lone fact that a ball fails to travel the anticipated line of flight does not constitute negligence.[23] Even the best professional golfers cannot avoid an occasional "hook"[24] or

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16. 285 N.E.2d 876 (N.Y. 1972).

17. *Id.* The plaintiff Charles Jenks, a fireman, and the defendant, Donald McGranaghan, a retired police superintendent, were both playing on the golf course at the same time, with McGranaghan on the eighth tee in a threesome and Jenks on the ninth tee in a twosome. *Id.* at 877.

18. *Id.* The ninth tee at the Windsor Golf Course is adjacent to the eighth fairway on the left side, about 150 yards from the eighth tee. *Id.* The ninth tee is also partially enclosed by an "'L' shaped, six-foot-high mesh wire fence." *Id.* One side of the "L" runs parallel to the eight fairway, 23 yards to the left of a line running from the eighth tee to where the pin is located on the eighth green. *Id.* The other side of the "L" faces the eighth tee, extending about six yards away from the eighth fairway. *Id.*

19. WIREN, *supra* note 1, at 67. Shanking is defined as striking "the ball on the hosel of the club. Usually, this causes the shot to travel sharply to the right, but it could go straight or to the left as well." *Id.*

20. Jenks v. McGranaghan, 285 N.E.2d 876, 877 (N.Y. 1972). The plaintiff never received any advanced warning of McGranaghan's intention to drive and suffered an injury that eventually led to blindness in one eye. *Id.*

21. *Id.*

22. *Id.* The Broome County Supreme Court, Trial Term, set aside a jury verdict for the plaintiff golfer and entered a judgment dismissing the complaint on the merits. *Id.* On appeal, Jenks contended that the lower court erred because McGranaghan's failure to warn the plaintiff of his intention to drive constituted negligence. *Id.*

23. *Id.* at 878. Under the Restatement, "negligence" is defined as "conduct which falls below the standard established by law for the protection of others against unreasonable risk of harm." RESTATEMENT (SECOND) OF TORTS § 282a (1965). Four standard elements exist which constitute negligence: duty, breach of that duty, causation, and actual damages resulting from the breach. *Id.* § 328(a).

24. WIREN, supra note 1, at 63. A hook "is a golf shot which markedly curves in flight from right to left." *Id.* A pushed hook is a shot which starts to the right of the intended tar-

"slice."[25] According to the New York Court of Appeals, a golfer is under no duty to warn another person, who is not in the intended line of flight[26] and who is on another tee or fairway, of an intention to drive, since the person cannot be considered to be in the foreseeable[27] ambit of danger.[28] On appeal, the court decided that since the plaintiff was still behind the protective fence, McGranaghan could not have been expected to forewarn anyone not

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get and curves to the left. *Id.* at 66.

25. A slice can be defined as "a shot that markedly curves in flight from left to right." *Id.* A pushed slice is a shot which starts to the right of the target and continues right. *Id. See* Nussbaum v. Lacopo, 265 N.E.2d 762, 767 (N.Y. Ct. App. 1990). In *Nussbaum*, the plaintiff's home was located on a piece of land which was adjacent to the thirteenth hole of the defendant's Plandome Country Club. *Id.* at 764-69. Approximately 20 to 30 feet of rough separated the plaintiff's patio and the thirteenth fairway, and a natural barrier of 45 to 60 feet high trees was located in the rough. *Id.* Despite the fact that the plaintiff's property line ran parallel to the thirteenth fairway, the correct line of flight from the tee to the green was at a considerable right angle to the property line. *Id.* One day during the summer, when the rough was quite dense and the trees in full bloom, the defendant teed off on the thirteenth hole without yelling "fore." *Id.* Unfortunately, the shot hooked and struck the plaintiff, Wilbur Nussbaum, while he was sitting on his patio. *Id.* The plaintiff then brought suit against the golf club, alleging that the course was negligently designed and arguing that the golfer was negligent in failing to provide the warning "fore." *Id.* As for the plaintiff's claim against the golf club, the New York Court of Appeals concluded that:

> [t]he present accident is best described as unforeseeable. Plaintiff's property and the fairway were separated by twenty to thirty feet of dense rough, through which no ball could pass with any great force, and a stand of trees forty-five to sixty feet high, over which only one ball, so far as the evidence herein shows, has passed. Under these circumstances the possibility of an accident could not be clear to the ordinarily prudent eye.

Nussbaum v. Lacapo, 265 N.E.2d 762, 766 (N.Y. Ct. App. 1990).

On the charge against the golfer, Judge Burke noted that the general rule of obligating players to give a timely warning did exist, but he also distinguished between players and people on adjacent property and held that the golfer was not under a duty to warn the plaintiff since he was not a player. *Id.*

26. Finberg, *supra* note 12, at 1185. The "intended line of flight" is the path the golfer plans and expects his shot to land. *Id.*

27. RESTATEMENT (SECOND) OF TORTS § 289. The Restatement notes that an event is "foreseeable" when one knows or has reason to know that the other person, property or rights of another are so situated that they may be damaged through the persons conduct. *Id.* If something is foreseeable, the person has a duty to govern his actions so as to not injure persons thus exposed. *Id.* §§ 289, 291, 293.

28. Jenks v. McGranaghan, 285 N.E.2d 876, 879 (N.Y. 1972). Similarly, in Trauman v. New York, 143 N.Y.S.2d 467 (1955), a tee shot from the first tee struck the plaintiff while he was standing in the ninth fairway. *Id.* at 468. The plaintiff was about 100 feet from the tee and only about 20 to 25 feet from the intended line of flight. *Id.* While Trauman did not see the defendant tee off, the court still held that the defendant was under no duty to yell "fore" to warn plaintiff that he might be endangered by a bad shot. *Id.* at 469-470. *See* Rose v. Morris, 104 S.E.2d 485 (Ga. Ct. App. 1952) (holding that there was no negligence in failing to give advance warning when a golfer was struck by a golf ball while standing in the fairway).

within his intended line of flight.[29] Under these circumstances, the court held McGranaghan did not have a duty to yell "fore" before hitting and was not liable for Jenks' injury.[30]

Extracting the standard established in *Jenks*, courts later determined that a golfer only had a duty to warn those in his intended line of flight rather than those who may be near but not necessarily within the line of an errant golf shot.[31] If a golfer fails to give this warning in a timely fashion, or not at all, then he may still be held liable for any resulting injury as in *Cavin v. Kasser*.[32]

In *Cavin*, the plaintiff, Edgar Cavin was waiting to tee off on the second hole of the Crave Coeur Golf Club when he heard the warning "fore."[33] Cavin moved to protect himself from the incoming shot, but unfortunately, the golf ball from the third tee struck him, causing severe injury.[34]

As a result, the plaintiff brought an action against Kasser alleging that the defendant warned Cavin too late and made it impossible for Cavin to avoid being struck by the golf ball.[35] The Missouri

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29. *Jenks*, 285 N.E.2d at 878.

30. *Id.* The court focused on the plaintiff's location behind the protective fence, which removed him from the intended line of flight, and relieved the defendant from any duty to warn the plaintiff of his incoming shot. *Id.*

31. Finberg, *supra* note 12, at 1187-88. *See* RIFFER, *supra* note 12, at 130 (maintaining that a golfer must give adequate and timely notice to all people, caddies included, who seem to be unaware of the golfer's intention to hit, when he knows or should have known that such people are sufficiently close to the reasonably foreseeable path of the ball that danger can be reasonably anticipated). A golfer's duty to warn is also limited to those persons who are located in an area where he will swing the club or where it is reasonably foreseeable that the ball will land. *Id.* at 131. A golfer does not have a duty to warn everyone in the entire area of his play before each shot. *Id. See also* Hoffman v. Polsky, 386 S.W.2d 376, 378 (Mo. 1965) (holding a golfer did not have a duty to warn when her errant golf ball hit another golfer, who was standing in the rough and not in the direct line of flight of the ball, since the defendant could not see the plaintiff before teeing off). *But see* Allen v. Pinewood Country Club Inc., 292 So.2d 786, 789 (La. Ct. App. 1st Cir. 1974) (holding that a golfer was liable for injuries sustained when he took a practice swing in close proximity to another person addressing the ball).

32. 820 S.W.2d 647 (Mo. Ct. App. 1991).

33. *Id.* at 648. The plaintiff and the defendant were familiar with the golf course since they had played there numerous times over a 12 year period. *Id.* at 649. The defendant contended that he did not yell the warning "fore" before striking the ball, but he did so as soon as he realized that his shot was going to the left end towards the plaintiff. *Id.* The plaintiff did not see the defendant tee off, only hearing the warning "fore" shortly before the ball struck him in the cheek. *Id.*

34. *Id.* The golf ball struck Cavin's left cheek, and he fell on his right shoulder. *Id.* at 648. The injury required surgery, but Cavin still continued to be plagued by a "constant ringing in his ears, insomnia, stiffness in the right shoulder, and swelling of his right hand in the morning." *Id.*

35. *Id.* at 647-49. The second fairway was 156 yards in length, while the third fairway

Court of Appeals noted that an accepted rule of golf is that if no duty to warn exists prior to the striking of a ball, one does exist when the golfer realizes that the ball is wildly errant.[36] Applying this rule in *Cavin*, Judge Reinhard held that the defendant did not have a duty to warn the plaintiff prior to his striking of the ball, since a person on the third tee had an unobstructed view of the second tee, and, as a result, the plaintiff was not in the "zone of danger."[37]

The courts utilized the *Jenks'* standard of liability from the 1950s to the early 1980s.[38] Starting in the late 1980s and early 19-

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was 385 yards. *Id.* at 649. The two fairways run parallel to each other but in opposite directions with the third tee located directly across from the second green. *Id.* Trees separated the two fairways, but a golfer teeing off at the third tee had an unobstructed view of the second tee and vice versa. *Id.* Kasser moved for summary judgment on the basis that no issue of genuine fact existed on the negligence question. *Id.* at 648-49. He contended that he was under no duty to give a warning to the plaintiff before he teed off and that when it became apparent that his drive was errantly going to the right, he did give a warning. *Id.* Kasser, in his answer, argued that he was not negligent, since he did warn Cavin of the incoming shot, when he realized that it was driving sharply to the right. *Id.* at 649. He also contended that he was under no duty to warn Cavin prior to hitting his shot; thus, there were no facts in existence to establish a case of negligence. *Id.* The St. Louis County Circuit Court consequently granted summary judgment against the plaintiff, and the plaintiff appealed. *Id.* at 648.

36. *Id.* at 651. *See* Hoffman v. Polsky 386 S.W.2d 376 (Mo. 1965). In *Hoffman*, the plaintiff was not more than 125 feet forward and 50 yards south and in full view of the defendant as he addressed his ball and hit it from the eighteenth tee. *Id.* The point where plaintiff was standing was approximately 19 degrees left of the intended flight of defendant's ball. *Id.* The court granted summary judgment in favor of defendant. *Id. See also* Benjamin v. Nernberg, 157 A. 10 (Pa. Super. 1931) (serving as a basis for the *Hoffman* decision). *Benjamin* involved an accident where the plaintiff received serious injuries when a shot from the seventh tee hit him, while putting on the sixth green. *Id.* at 10. The green in question was located 120 feet to the left and about 100 feet in front of the seventh tee. *Id.* The court affirmed the trial court's entry of judgment notwithstanding the verdict in favor of defendant, stating that:

> [t]he entire 7th fairway was clear before the defendant; plaintiff was not in the line of defendant's play; he was not where anyone could reasonably believe that he was in danger of being struck by a drive from the 7th tee, it was not until after the ball was driven and it appeared that defendant had made a bad shot, and when the ball was going directly towards plaintiff, that anyone thought it necessary to shout a warning. There was no duty, under the facts of this case, on defendant to warn plaintiff of this intention to play. We cannot see that defendant was at fault or that he disregarded any rule or custom of the game.

Benjamin v. Nernberg, 157 A. 10-11 (Pa. Super. 1931).

37. Cavin v. Kasser, 820 S.W.2d 647, 651 (Mo. Ct. App. 1991). The court determined that all the evidence indicated that the defendant warned the plaintiff as soon as the ball went astray, and by doing so, he was relieved of any liability for the injury the plaintiff suffered. *Id.*

38. O'Kane & Schaller, *supra* note 1, at 247. In Murphy v. Podgurski, 236 So.2d 508 (La. App. 4th Cir. 1970), the Louisiana Court of Appeals held that the defendant was not negli-

90s, some courts, began to expand golfers' liability to include those injured not within the golfer's intended line of flight.[39]

An example of this trend is the Supreme Court of Iowa's decision in *Bartlett v. Chebuhar*.[40] In *Bartlett*, a golfer and his wife brought an action against another golfer after the defendant, Martin Chebuhar, hit a golf ball that struck the plaintiff, Larry Bartlett, in the eye.[41] The plaintiff was playing the third hole, while Chebuhar was on the ninth hole.[42] After hitting his shot, Chebuhar realized that his ball was traveling towards the third hole where Bartlett and his wife were located.[43] Chebuhar then yelled "fore" to warn the golfers of the incoming shot, but Bartlett did not hear the warning and the ball struck him in the eye after it ricocheted off an embankment on the third green.[44]

Bartlett filed a suit against Chebuhar, claiming that the defendant was negligent for hitting the ball and failing to warn the plaintiffs.[45] The Supreme Court of Iowa concluded that Bartlett was within the zone of danger.[46] The court held that this zone of

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gent in striking the ball and failing to yell "fore", since the entire fairway was open to him because the plaintiff was not in his line of play. *Id.* at 508-09. Conceivably, under some circumstances, a tort action for injury on a golf course might call for a state statute to be applied, which would impose "responsibility for damage occasioned by a person's lack of skill." *Id.* The court stated that the present situation did not present such a case, noting that the shot "was a freak blow which caused the ball to travel on an extreme angle to the defendant's left." *Id.*

39. Jenks v. McGranaghan, 285 N.E.2d 876, 879 (N.Y. 1972).

40. 479 N.W.2d 321 (Iowa 1992).

41. *Id.* at 322.

42. *Id.* When Chebuhar prepared to hit his third shot, he saw that the only players were to his right on the third green, but he did not see anyone in his intended path to the ninth green. *Id.*

43. *Id.* Chebuhar's tee shot fell short and to the right of the fairway. *Id.* His second shot sliced sharply and landed in front of the fourth hole. *Id.* When Chebuhar prepared to take his third shot, he saw no one in his intended line of flight and proceeded to hit the ball. *Id.*

44. *Id.*

45. Bartlett v. Chebuhar, 479 N.W.2d 321, 322 (Iowa 1992). The Washington County District Court found that the plaintiff was not in the defendant's intended line of flight and as a result, found no evidence of negligence. *Id.* The Bartletts appealed. *Id.* The Iowa courts have defined "negligence" as the failure to use ordinary care where a reasonable person would have. 1 Iowa Civil Jury Instructions 700.2 (1987). "Ordinary care is the care which a reasonable, careful person would use under similar circumstances." 1 Iowa Civil Jury Instructions 700.2 (1987).

46. *Bartlett*, 479 N.W.2d at 322-23. *See* Boozer v. Arizona Country Club, 434 P.2d 630 (Ariz. 1967) (holding that plaintiff could be considered within the zone of danger due to the close proximity of the tees when plaintiff was on the practice tee and was struck by a golf ball hit by the defendant who was on the first tee).

danger is not to be narrowly construed.[47] The court found that the duty of a golfer exceeds the anticipated path of the ball and includes a wider zone of danger based on the particular facts and circumstances in each case.[48] In sum, the Supreme Court of Iowa found Bartlett and his wife to be within this zone of danger, thereby establishing a case of negligence against Chebuhar for failing to warn the plaintiffs of his incoming errant shot.[49]

The *Bartlett* case was the first to expand the liability of golfers,[50] but, the majority of courts[51] continue to follow the *Jenks*

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47. *Bartlett*, 479 N.W.2d at 322. The district court held that the plaintiff was not in the zone of danger. *Id.* at 321.

48. *Id.* This new standard is considered to be more subjective. *Id. See* Cook v. Johnston, 688 P.2d 215 (Ariz. Ct. App. 1984). In *Cook*, the plaintiff, Charlie Cook was playing at the Oro Valley Country Club in Tuscon. *Id.* at 216. The defendant joined the plaintiff's foursome and at the time of the accident, all four players were on the ninth hole. *Id.* The defendant had an alleged propensity to shank his tee shots, but had been playing golf for years. *Id.* On the ninth tee, everyone had hit their first two shots when the defendant's third shot landed in the fairway, approximately 70 to 80 yards from the ninth green. *Id.* At this time, the plaintiff was sitting in his golf cart, about 30 yards away from the direct, intended line of flight of the defendant's ball. *Id.* at 217. The defendant proceeded to shank his golf shot, and when he realized that it was heading towards the plaintiff, he yelled "fore." *Id.* The golf ball struck the plaintiff in his right eye, causing serious permanent injury. *Id.* The plaintiff brought suit against the defendant, alleging that he negligently failed to warn the plaintiff of his propensity to shank his golf shots. *Id.* A jury returned a verdict in favor of the plaintiff, but the Pima County Superior Court entered judgment notwithstanding the jury's verdict in favor of the defendant and the plaintiff appealed. *Id.* at 215. Judge Hathaway of the Arizona Court of Appeals ruled that "whether a golfer with an alleged propensity to shank his golf shot, owed a duty to warn a member of his golfing foursome about this problem and whether the so-called shanker breached that duty was a question for the jury" and he reversed and remanded the lower court's judgment, noting that the zone of danger was wider in this case, given the golfer's propensity to shank his golf shots. *Id.* at 217-18.

49. *Bartlett*, 479 N.W.2d at 322.

50. Bartlett v. Chebuhar, 479 N.W.2d 321, 321 (Iowa 1992).

51. Baker v. Thibodaux, 470 So.2d 245 (La. Ct. App. 4th Cir. 1985) involved an action for damages by a golfer who was in a different foursome than the defendant whose golf ball struck the plaintiff in the eye. *Baker*, 470 So.2d at 246. The Louisiana Court of Appeals held that the defendant was not negligent where he had attempted to hit a straight shot but ended up hooking the ball to the left, and both he and other members of his foursome yelled "fore" upon observing the ball veer to the left. *Id.* The court rejected the plaintiff's contention that the defendant was due to his lack of skill by pointing out that shots such as the one in question were an integral part of the game of golf and could result from the efforts of the most qualified and conscientious of golfers. *Id.* In Walsh v. Machlin, 23 A.2d 156 (Conn. 1941), the Connecticut Court of Appeals affirmed the trial court's judgment in favor of the defendant golfer who hit a golf ball and shanked it so that it was deflected at almost a 90-degree angle to the right and struck the plaintiff, who was in the same foursome. *Walsh*, 23 A.2d at 156. Specifically, the court of appeals held that the trial court was warranted in concluding that the plaintiff's injury was not caused by the defendant's negligence. *Id.* at 157. Noting that at the same time the defendant made his shot he knew that the plaintiff was

standard of not holding a golfer liable for an injury sustained by another golfer unless the former golfer acted intentionally or recklessly.[52] Many courts advanced this theory along with the assump-

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about 40 feet away on a line at right angles to the intended flight of the defendant's ball, the court said that at that point the plaintiff was in a position where he should have been reasonably safe. *Id.* The court reasoned that the defendant was not under a duty to warn the plaintiff that he was going to strike the ball, since the plaintiff knew that he was about to hit, and an oral or audible warning would have been superfluous. *Id.* Observing that a shot at a 90-degree angle was a very unusual shot which the defendant could not reasonably have anticipated under the circumstances, the court said that the trial court was warranted in concluding that the defendant did not act unreasonably, recklessly, or negligently in attempting to play the ball, and that the injury received by the plaintiff was the result of an accident involving a non-negligent act. *Id.* The Washington Court of Appeals in Wood v. Postelthwaite, 496 P.2d 988 (Wash. App. 1972), reversed a jury verdict in favor of the defendant golfer in an action for injuries sustained by another golfer in the same foursome who was 45 degrees to the right of the intended flight of the defendant's shot and 70 to 85 yards away. *Wood*, 496 P.2d at 992. The court noted that the jury should have been instructed that a player assumes the risks of the game of which he has knowledge but does not assume the risk of negligence of which he has not been forewarned. *Id.* at 993-95.

52. Jenks v. McGranaghan, 285 N.E.2d 876, 877 (N.Y. 1972). *See* Thompson v. McNeill, 559 N.E.2d 705 (Ohio 1990). In *Thompson*, a golfer, JoAnn Thompson, filed an action against the defendant, Lucille McNeill, alleging negligence after being struck in the eye by a golf ball hit by the defendant. *Id.* at 706. Thompson and McNeill were both playing golf in a foursome at the Prestwick Country Club. *Id.* When the players reached the twelfth hole, McNeill hit her ball onto the fairway. *Id.* When her next shot went to the right and into the water hazard, Thompson went to look for it. *Id.* McNeill then decided to hit another shot, while Thompson remained at the water hazard. *Id.* McNeill shanked the shot toward Thompson and yelled "fore" in her direction. *Id.* Thompson did not hear the warning, and the ball struck her in the right eye, causing severe injury. *Id.* Thompson brought an action against McNeill for negligence, but McNeill raised the defenses of assumption of the risk and comparative negligence. *Id.* The trial court granted summary judgment for the defendant, finding that Ohio does not recognize a cause of action in negligence for a claim of injury to a participant in a sporting activity by a co-participant. *Id.* The Summit County Court of Appeals reversed the trial court's decision and remanded the case. *Thompson*, 53 Ohio St.3d at 104. The Supreme Court of Ohio disagreed with the court of appeals and found that in a sporting event no liability exists for injuries caused by negligent conduct between participants. *Id.* at 103. The court elaborated that an injury to a golfer during a golf game was foreseeable and not uncommon occurrence. *Id.* at 103-04. Applying these general rules, the supreme court decided that it was foreseeable and within the rules that McNeill's next shot would come from the fairway. *Id.* Since McNeill's shot was not reckless, McNeill was not liable. *Id.* at 104. *But see* Brady v. Kane, 111 So.2d 472 (Fla. 1959). In *Brady*, the plaintiff, Peter Brady, filed an action against the defendant, Phillip Kane, seeking damages for an injury sustained when the defendant took a practice swing and struck the plaintiff on the head with his golf club. *Id.* Brady filed a suit against the defendant on the basis that he acted negligently in swinging the golf club in such close proximity to the plaintiff. *Id.* at 473. The District Court of Florida directed a verdict for the defendant, holding that a jury would have been entitled to find that Kane was in a position where he was able to take a practice swing. *Id.* In addition, since he was facing the direction in which he was going to strike the ball, the court believed his actions did not establish a case of negligence. *Id.* at 474. The Court of Appeals of Florida perceived the circumstances in *Brady* differently, for they considered that when the defendant

tion of the risk factor;[53] that is, golfers assume some of the risks of the game, such as the risk of being hit by a golf ball.[54] A minority of states have also recently begun to expand the liability of golfers to include those in the line of flight as well as those near and not necessarily in the line of flight.[55] A possibility exists that a majority of courts will begin to expand golfers' liability to allow injured plaintiffs to look to other alternatives for relief.[56]

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took a practice swing behind the unsuspecting plaintiff, he was under a duty to notify the plaintiff in a manner that would not cause any injury to his companion. *Id.* at 474. The player will be held accountable for any injuries which may be the result of improper and unauthorized actions. *Id.* In *Brady*, the court of appeals held that the defendant's actions were in fact reckless and liable for the plaintiff's injury. *Id.*

53. *Wood*, 496 P.2d at 992. Under the doctrine of assumption of the risk an individual assumes the risk when he knowingly comprehends the danger of a situation and voluntarily exposes himself to such danger even though he may not be negligent in so doing. *Id.*

54. *Id.* If a player allows another golfer to play through and is subsequently hit, he will be unable to seek relief from the golfer. Boynton v. Ryan, 257 F.2d 70 (3d Cir. 1958). In *Boynton*, the plaintiff golfer and his companion both made poor shots off the tee. *Id.* at 71. While searching for their balls in the rough, they waved through the following threesome. *Id.* The defendant then hit his golf ball, but did not warn the plaintiff that he was about to drive his golf ball. *Id.* The shot flew in the direction of the plaintiff and struck him, causing severe injury. *Id.* The United States Court of Appeals for the Third Circuit held that the golfer was under no duty to warn the plaintiff that he was about to drive his golf ball, since the plaintiff waved the threesome through. *Id.* at 73. The court further reasoned that the plaintiff's action of walking to the left of the fairway, putting himself behind a small tree and partially cutting off his view of the tee constituted contributory negligence, and barred recovery for the injuries sustained by the plaintiff. *Id.*

55. *See* Boozer v. Arizona Country Club, 434 P.2d 630 (Ariz. 1967) (supporting the minority position on golfers' liability line of flight theory); Thomas v. Shaw, 125 S.E.2d 79 (Ga. Ct. App. 1962) (lending support to the minority position under the theory of negligence); Bartlett v. Chebuhar, 479 N.W.2d 321 (Iowa 1992)(supporting the minority position where the zone of danger is expanded to include those not necessarily in the line of flight of a golfer's shot). In *Thomas*, the court noted that a sufficient cause of action existed where the defendant golfer allegedly could have seen the plaintiff in time to give him a notice or warning of his approach, had he used ordinary care. *Thomas*, 125 S.E.2d at 80. The plaintiff's complaint alleged that he was standing on another fairway two hundred yards away, with no obstructions between the plaintiff and the defendant to obscure his vision. *Id.* The complaint further alleged that the defendant teed off wherein his ball made a 45 degree turn in the direction of the plaintiff and hit him. *Id.* While recognizing that golf players assume the risk of dangers ordinarily incident to the game, the court said that "this rule did not apply or extend to a negligent act of a fellow player, since another player on the same course must always exercise ordinary care and diligence, and a failure to do so is actionable notwithstanding the assumption of the risk rule." *Id.* at 81. The court concluded that the plaintiff's complaint did sufficiently plead a cause of action, since it was alleged that if the defendant had not been negligent in failing to notify or warn the plaintiff of the approaching ball, he would not have been injured. *Id.* at 82.

56. *See Boozer*, 434 P.2d at 630. In *Boozer*, the plaintiffs, Vermelle Boozer and her husband, brought an action against the defendants, the Arizona Country Club, Arthur McCance and his wife, for her injuries when a ball driven by the golfer struck Boozer. *Id.* at 630-31.

DEFENDANTS IN GOLFERS' LIABILITY SUITS

Golfers injured on the golf course not only institute causes of action against other golfers but also against a wide range of other entities such as country club owners and designers, golf associations and sponsors, and even the golfers' employers.[57] For each of these situations, liability exists.[58]

A. Golf Course Owners/Designers

When an errant golf ball strikes a golfer or a golfer is injured on the golf course, the injured party may also commence an action against the golf course owner and/or the golf course designer.[59] Golf course owners are divided into two separate categories: those privately owned and those publicly owned.[60] If the course is publicly owned, then the courts usually hold that the government is immune from liability; however, if it is privately owned, then the owner may be held liable for injuries if he failed to exercise ordinary care in maintaining the course in a reasonably safe condition.[61]

Boozer alleged that McCance failed to warn her of his incoming shot when he drove the ball from the first tee unintentionally towards the practice tee, where the plaintiff and her husband were located. *Id.* at 632. The Maricopa County Superior Court granted summary judgment for the defendants, concluding that the plaintiff and her husband were not in the zone of danger. *Id.* at 633. The Supreme Court of Arizona reversed the trial court's summary judgment decision, holding that negligence is based on foreseeability. *Id.* If the driving range in this case had been placed directly in front of the first tee, then it would not be difficult for all three defendants as well as for the plaintiff to foresee danger. *Id.* This was not the case here, and as a result, the jury held the defendants accountable for the Boozer's injury. *Id.* at 634.

57. RIFFER, *supra* note 12, at 481. A golfer may to some extent rely on a golf club owner's or another golf entity's obligation to keep his premises in a reasonably safe condition. *Id.*

58. *Id.*

59. Thomas Logan, Comment, *Fore! Liability to Spectators at Golf Tournaments,* 13 AM. J. OF TRIAL ADVOC. 1207 (1990).

60. Gruhin v. Overland Park, 836 P.2d 1222 (Kan. Ct. App. 1992). *See* Atlanta v. Mapel, 174 S.E.2d 599 (Ga. Ct. App. 1970) (barring a cause of action against a municipality which owned a public golf course on the basis of the doctrine of governmental tort immunity).

61. *Gruhin,* 836 P.2d at 1222. Different theories of liability for golf course owners are enforced by some state statutes, such as the Kansas Tort Claims Act (KTCA), which declares that cities will be held accountable for willful and wanton negligence; while the private owners of golf courses will be held accountable for willful and wanton negligence, as well as ordinary negligence. KAN. STAT. ANN. § 75-6101 (1991).

In *Gruhin v. Overland Park*,[62] a golfer, Morris Gruhin, brought a negligence action against the city of Overland Park for injuries sustained when the cart he was riding fell into a hole several feet deep.[63] Gruhin argued that the golf course did not fall within the purview of the Kansas Tort Claims Act (KTCA)[64] or more specifically, within the recreational use exception of the statute.[65] The KTCA, did provide, as a general rule, that a governmental entity is liable for the negligence of its employees acting within the scope of their employment in the same manner as a private person would be liable.[66]

The Court of Appeals of Kansas held that the city did fall under the statute's definition of a governmental entity and that the recreational use exception[67] to the general rule of liability applied to the city's golf club as well.[68] According to the statute, the city would only be liable for gross and wanton negligence[69] proximately

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62. 836 P.2d 1222 (Kan. App. 1992).

63. *Id.* at 1223. The employees of the country club knew that another injury had occurred earlier at the same location, and had marked the area with chalk lines to warn others; unfortunately, the plaintiff did not see the marked area. *Id.* The district court ruled in favor of the golf course, holding that the city was immune from liability for ordinary negligence pursuant to the KTCA, which relieves any city or municipality from ordinary negligence. *Id.* at 1225.

64. KAN. STAT. ANN. § 75-6103 (1992). The statute reads that "a governmental entity is liable for the negligence of its employees acting within the scope of their employment in those situations where a private person would also be held liable." KAN. STAT. ANN. § 75-6103(b)-(c) (1991). The KTCA also provides that:

> [A] city or municipality is immune from liability for ordinary negligence, when there is property under the city's or municipality's control - thus creating a recreational use. If the property is considered to be of recreational use, then the K.T.C.A. provides a recreational use exception to the general rule of liability, which states that a governmental entity or an employee acting within the scope of the employee's employment shall not be liable for damages resulting from . . . any claim for injuries resulting from the use of any public property intended or permitted to be used as a park, playground or open area for recreational purposes, unless the governmental entity or an employee thereof is guilty of gross and wanton negligence proximately causing such injury.

KAN. STAT. ANN. § 75-6104 (1991).

65. *Id.* The recreational use exception applies to any public property used as a park, playground or open area for recreational purposes. *Id.* The statute also relieves a governmental entity from liability for injuries unless the cause of which was gross and wanton negligence. *Id.*

66. *Gruhin*, 836 P.2d at 1222.

67. *See* KAN. STAT. ANN. § 75-6103 (1991).

68. Gruhin v. Overland Park, 836 P.2d 1222, 1226 (Kan. App. 1992).

69. *Id.* A "wanton act" is "something more than ordinary negligence but less than a willful act. BARRON'S LAW DICTIONARY 524 (1991). A wanton act indicates a realization of the imminence of danger and a reckless disregard and indifference for the consequences. *Id.*

causing injury and not for ordinary negligence.[70]

Since the golf course owner will usually raise the defenses of assumption of the risk[71] and contributory negligence[72] in cases like *Gruhin,* plaintiffs usually have a very difficult legal battle against the country club owner, unless they can illustrate that the golf course owner did not keep the premises in a reasonably safe condition.[73] As a result, plaintiffs have begun to look to other alternatives and one such alternative for the injured golfer is to file a suit against the golf course designer.[74]

In *Klatt v. Thomas,*[75] Cory Klatt, brought an action against the designer of a golf course after a golf ball struck her in the eye when

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70. *Gruhin,* 836 P.2d at 1226. The Kansas Court of Appeals ruled that it should have been foreseeable to the employees of the golf club that golfers would be in the area of the hazard and could be injured there. *Id.* at 1227. The court suggested that reasonable minds could differ as to whether the city employees recklessly disregarded a known danger. *Id.*

71. Manley F. Brown, Note, 14 MERCER L. REV. 295 (1962). The doctrine of assumption of the risk "in its primary sense refers to a relationship of free association between members of society. Judicially, the result of such a relationship is that the members are under no duty to protect each other." *Id.*

72. RESTATEMENT (SECOND) OF TORTS § 463 (1965). The Second Restatement of Torts defines "contributory negligence" as "conduct on the part of the plaintiff which falls below the standard to which he should conform for his own protection, and which is a legally contributing cause co-operating with the negligence of the defendant in bringing about the plaintiff's harm." *Id.* Golfers who act unreasonably or reckless may be contributorily negligent. *See* Morrison v. Sudduth, 546 F.2d 1231 (5th Cir. 1977) (holding that a golfer, injured during the defendant's backswing, did not act unreasonably by moving away after he gave the defendant his golf club).

73. O'Kane & Schaller, *supra* note 1, at 250. *See* Rockwell v. Hillcrest Country Club, Inc., 181 N.W.2d 290 (Mich. Ct. App. 1960). In *Rockwell,* the plaintiffs brought a negligence suit against the defendant, Hillcrest Country Club, when a suspension bridge on the golf course collapsed causing severe injury to the plaintiff. *Id.* The plaintiff alleged that the bridge, which had a capacity of 25 people, collapsed due to the weight of over 80 people and a golf cart. *Id.* Rockwell offered proof that no marshals or other supervisory personnel were present to ensure the proper, safe use of the bridge. *Id.* The court reasoned that the owner of the premises was not only bound to use ordinary care to prevent injury to visitors by negligent acts but was also required to exercise reasonable precautions to protect invitees from any dangers foreseeable as a result of use. *Id.* Since the evidence showed that no supervision was present and that the use of the bridge by more than 25 people was reasonably foreseeable under the circumstances, the court found in favor of Rockwell. *Id.* at 295. Miniature golf course owners are subject to the same liabilities and are allowed to use the same defenses. Wegener v. Foster, 8 P.2d 154 (Cal. Ct. App. 1932). *Wegener* involved an action to recover damages for a broken ankle sustained when the plaintiff tripped on a concrete strip while playing golf at a miniature golf course. *Id.* The California Court of Appeals held that the evidence presented did not establish any negligence on the part of the golf course owner, since the area where the plaintiff fell was a well-lit part of the premises and the plaintiff chose to walk along the concrete strip rather than on another part of the course. *Id.*

74. O'Kane & Schaller, *supra* note 1, at 250.

75. 788 P.2d 510 (Utah 1990).

she was on the fifteenth tee waiting to hit her shot.[76] Klatt alleged that the close proximity of the tees was a major contributing cause of the injury and as a result, the golf course designers were liable for her injury due to their negligence.[77] The defendant designer, Southgate Golf Course, crossclaimed against the defendant builders for their contribution.[78] The court held that there was a dispute as to whether negligence existed.[79]

In following *Klatt*, courts have decided that if it can be demonstrated that a golf course designer was negligent in his design of the golf course, then he may be held liable for any injuries sustained.[80] If the plaintiff was contributorily negligent,[81] then the designer may not be held accountable for the plaintiff's injuries, and the plaintiff may need to seek relief from other sources.[82]

B. Associations and Tournament Sponsors

Since the plaintiff may need to seek relief from sources other than the golf course owner and designer, additional defendants may include golf associations and golf tournament sponsors.[83] These suits are usually rare, but one particular case was the decision of the Colorado Court of Appeals in *Knittle v. Miller*.[84]

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76. *Id.* at 511. The defendant, Ike Thomas, was on the fourteenth tee which faced the fifteenth tee. *Id.* Golfers on the fourteenth and fifteenth tees practically faced each other but 50 to 75 feet apart. *Id.* Plaintiff alleged that the designers and the builders of the course negligently designed and constructed the golf course. *Id.*

77. *Id.* The Fifth District Court in Washington County granted summary judgment in favor of the defendants. *Id.*

78. *Id.*

79. *Klatt*, 788 P.2d at 511.

80. Klatt v. Thomas, 788 P.2d 510, 511 (Utah 1990). Miniature golf courses are also subject to the same restrictions. *See* Young v. Ross, 21 A.2d 762, 127 N.J.L. 211 (1941) (rejecting the plaintiff's contention that the obstacle golf course on which he was injured was negligently constructed in that it contained a six-inch slope at a 45-degree angle without a warning sign or a handrail). In *Young*, the New Jersey Court of Appeals held that even if the construction was negligent, the plaintiff assumed the risk of such an injury due to the fact that he paid the admission price and played six holes of the obstacle golf course before falling on the seventh hole. *Id.* at 763-65, 127 N.J.L. at 212-14. The court also found that "watch your step," was on all of the golfers' score cards. *Id.* at 764-65, 127 N.J.L. at 214. The court also reasoned that there was no evidence of negligence because there was a path provided, which the plaintiff could have used on the seventh fairway without encountering any obstacles. *Id.*

81. *See* RESTATEMENT (SECOND OF TORTS) § 463, *supra* note 72.

82. O'Kane & Schaller, *supra* note 1, at 251.

83. *Id.*

84. 709 P.2d 32 (Colo. Ct. App. 1985).

In *Knittle*, the plaintiff, Jeanne Knittle, was a spectator at a golf tournament and was hit by an errant shot by the defendant, Skip Miller.[85] Knittle brought a negligence action against Miller, as well as the Green Gables Country Club, the Ladies Professional Golf Association, and the National Jewish Hospital and Research Center-National Asthma Center.[86]

The Colorado Court of Appeals found that the plaintiff's injury was not caused by any negligent act on the part of the various defendants.[87] Applying the *Knittle* standard, the only way for a plaintiff to be successful with this kind of action is to establish some aspect of negligence on the part of the golf association and/or sponsor.[88]

C. Golfers' Employers

In some rare and unusual cases, injured parties have instituted actions against the defendant golfer's employer, especially if the golfer was golfing in a work-related tournament.[89] A golfer who is

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85. *Id.* On September 7, 1978, Green Gables Country Club hosted a pro-amateur golf tournament, co-sponsored by the Ladies-Professional Golf Association and the National Jewish Hospital. *Id.* at 33. The defendant Miller was participating as an amateur in the golf tournament, and was about 190 yards away form the tenth hole. *Id.* The defendant's second shot veered sharply to the right and headed toward a spectator area where the plaintiff was located. *Id.* After the members of Miller's foursome realized that the shot was slicing to the right, they yelled "fore," but unfortunately the plaintiff did not hear the warning and could not prevent the ball from striking her in the eye. *Id.* at 33-34.

86. *Id.* at 33. The district court entered a special verdict for the tournament sponsor and golf association. *Id.* Although the jury found that one of the remaining defendants had been negligent, it also found that such negligence was not the cause of the plaintiff's injuries. *Id.* Knittle appealed the trial court's special verdict, and the court again clarified the district court's earlier ruling. *Id.*

87. *Id.* at 34. Specifically, the Colorado Court of Appeals made three significant findings. *Id.* First, the instructions to the jury on the issue of causation were adequately covered by the trial court and were properly refused. *Id.* Second, the jury's findings as to the special issues were not inherently inconsistent. *Id.* Third, the spectator in this case could not hold the golfer liable for her injuries since there was no indication that the spectator could have heard or heeded the warning because she was not in the intended line of flight. *Id.* at 32-35.

88. *Id.* at 34.

89. *See* O'Kane & Schaller, *supra* note 1, at 250. *See also* Duke's GMC, Inc. v. Erskine, 447 N.E.2d 1118 (Ind. Ct. App. 1983) (holding a corporation liable for the acts of its employee). In *Duke's*, a golfer was injured by a golf ball hit by the president of the defendant corporation. *Id.* The president hit his tee shot, which flew sharply to the right, but he did not give any warning to the plaintiff of the errant shot. *Id.* at 1121. The Indiana Court of Appeals upheld the jury verdict in favor of the plaintiff, reasoning that the trial court properly instructed the jury on the doctrine of incurred risk and the assumption that all golfers would observe the rules and regulations of the game. *Id.* at 1121-25. The court noted that a golfer

injured as a result of the negligence of another golfer at a corporate outing may sue the employer under the theory of respondeat superior.[90]

A decision that articulated this theory was the Virginia case of *Thurston Metals & Supply Co. v. Taylor*.[91] In *Thurston*, a plaintiff instituted a suit against a golfer and his corporate employer for the loss of an eye in a golfing accident.[92] Thurston Metals argued that the plaintiff failed to carry the burden of proof of negligence and it contended that the testimony "merely showed that an accident occurred."[93] The Supreme Court of Virginia disagreed and applied the basic rule of law concerning golfers: that a player on a golf course must exercise reasonable care in playing the game to prevent injury to others."[94] Applying this general rule to the circumstances of the case, the court found that the employee had the duty to exercise reasonable care in controlling his golf club so that it would not fly from his hands in the course of a swing.[95] Under these circumstances, the plaintiff did establish a prima facie case of negligence.[96] As for the question of whether Thurston Metals could be held accountable for the acts of its employee, the Supreme Court of Virginia found that the defendant corporation, as employer, is vicariously liable in tort for the plaintiff's injury.[97]

While some courts take the position that an employer will be

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does incur certain risks of the sport but does not, as a matter of law, incur the risk of another participant's negligence, and the defendant was liable for the plaintiff's injuries due to his negligent failure to warn the plaintiff. *Id.*

90. *See* O'Kane & Schaller, *supra* note 1, at 250. The theory of respondeat superior states that an employer and his employees are deemed to be jointly liable for an employee's wrongful act; thus, a corporation employing a negligent employee falls within the accepted definition of a tort-feasor. *Id.*

91. 339 S.E.2d 538 (Va. 1986).

92. *Id.* The defendant was the last golfer in the foursome to tee off on the fifth hole. *Id.* at 540. Thurston lost control of his golf club, striking the plaintiff on the head. *Id.* At the time, the plaintiff was about 20 feet behind Thurston. *Id.* As a result of his injury, the plaintiff needed an artificial eye. *Id.*

93. *Id.*

94. *Id. See* Alexander v. Wrenn, 164 S.E. 715 (Va. 1932) (noting that a warning must be given to individuals that a golfer knows or should have known, are in the line of the intended flight of the ball).

95. *Thurston Metals*, 339 S.E.2d at 540.

96. *Id.* For a definition of negligence, *see* RESTATEMENT (SECOND) OF TORTS § 328 (A), *supra* note 23.

97. Thurston Metals & Supply Co. v. Taylor, 339 S.E.2d 538, 543 (Va. 1986). *But see* Rogers v. Allis-Chalmers Mfg. Co., 92 N.E.2d 677 (Ohio 1950) (finding that the defendant corporation was not liable to the plaintiff, a non-employee golfer, struck by a golf ball hit by the defendant employee).

held liable for the acts of its employees, some other courts disagree and hold that an employer is not jointly liable nor jointly suable for the employee's wrongful act.[98] These cases are rarely seen in the courts, but they are one example of an alternative theory of liability that an injured party may pursue.[99]

SPECTATORS' INJURIES ON THE GOLF COURSE

Spectators at golf tournaments are also parties that may be injured on the golf course.[100] When spectators are injured, they may sue a variety of sources, but the more successful suits are the ones brought against the country club owner on whose course the tournament was being held, and the golf association which was sponsoring the tournament.[101] Historically, courts have held that sport facility owners and operators are not considered to be insurers of spectators,[102] and they have found that spectators assume any inherent risks and dangers involved in the particular sport.[103]

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98. *See* Trauman v. New York, 143 N.Y.S.2d 467 (1955). *Trauman* involved an action by a golfer, Harold Trauman, against another golfer, Joseph Yanneti, and his employer, the City of New York. *Id.* The defendant was playing on the first hole, which was parallel to the ninth hole, where the plaintiff was located. *Id.* at 468. Yanneti's drive sliced to the right and struck the plaintiff in the left eye, causing severe injury. *Id.* The plaintiff alleged negligence against the city under the theory that the golf course was improperly constructed, dangerous, and that the city failed to employ qualified help properly to supervise the course. *Id.* Judge Streit of the New York Supreme Court held that Yanneti did not have a duty to warn Trauman of his impending tee shot, since Trauman was on a contiguous fairway and away from any reasonably anticipated danger. *Id.* at 470.

99. *Id. See* O'Kane & Schaller, *supra* note 1, at 252.

100. *See* Comment, *supra* note 59, at 1207-08.

101. *Id. See* Duffy v. Midlothian Country Club, 415 N.E.2d 1099 (Ill. Ct. App. 1980)(finding that a golf course owner may be negligent for putting a concession stand between two fairways since it could have been foreseeable that a golf ball may hit a spectator at the concession stand).

102. *See* Logan, *supra* note 59, at 1207. *See also* Hartzell v. United States, 539 F.2d 65, 69 (10th Cir. 1976) (football stadium); Uline Ice, Inc. v. Sullivan, 187 F.2d 82, 84 (D.C. Cir. 1950) (hockey club); Harrell v. Martin, 345 So.2d 868, 869 (Fla. Dist. Ct. App. 1977) (automobile racetrack); Reynolds v. Deep South Sports, Inc., 211 So.2d 37, 38 (Fla. Dist. Ct. App. 1968) (wrestling); Wells v. Palm Beach Kennel Club, 35 So.2d 720, 721 (Fla. Dist. Ct. App. 1948) (dog track); Thompson v. Sunset Country Club, 227 S.W.2d 523, 525 (Mo. Ct. App. 1950) (golf); Townsley v. Cincinnati Gardens, Inc., 324 N.E.d 409, 411-12 (Ohio 1974) (basketball); Stradtner v. Cincinnati Reds, Inc., 316 N.E.2d 924 (Ohio Ct. App. 1972) (baseball club); Cofone v. Narragansett Racing Ass'n., 237 A.2d 717, 720 (R.I. 1968) (horsetrack).

103. *See* Logan, Comment, *supra* note 59, at 1207. Many courts have expressed this view in a number of sports, including autoracing. *Id.* Baseball has become the front runner in sports injury cases. *See also* Wells v. Minneapolis Baseball and Athletic Ass'n, 142 N.W. 706 (Minn. 1913) (holding that an injury sustained by a plaintiff while at a baseball game was an assumed risk and danger involved in the game). In *Wells*, the Supreme Court of Minnesota

Other courts recently have decided to reject this notion of assumption of the risk and have applied the rule that sponsors of sporting events must provide spectators with reasonably safe premises.[104]

Since little predictability exists as to where a shot will land when one strikes a golf ball, in order to avoid possible liability, sponsors of golf tournaments and golf course owners must meet standard safety requirements.[105] Golf spectators may assume any inherent dangers and risks involved, but golf courses and sponsors still have a duty provide reasonably safe premises for the spectators.[106]

In *Duffy v. Midlothian Country Club*,[107] a spectator, Alice Duffy, suffered an eye injury when a golf ball hit her while she was in a segregated concession area during a golf tournament.[108] Duffy brought a negligence action against the Midlothian County Club and golf association.[109] The club argued that the plaintiff knew the risks inherently involved in a professional golf tournament.[110]

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concluded that spectators who attend sporting events are considered to have assumed any inherent risks and dangers of the particular sport they choose to view. *Id.* at 708. Specifically, the court stated that "[b]aseball is the national game and the rules governing it, the manner in which it is played and the risks and dangers incident thereto are matters of common knowledge . . . as a general rule, the spectator assumes the risks." *Id.*

104. *See* Logan, Comment, *supra* note 59, at 1207. Some courts have specifically held that golf tournament sponsors and owners also owe spectators the duty of providing reasonably safe premises. *Id.*

105. WALTER B. CHAMPION, JR., SPORTS LAW IN A NUTSHELL, 108 (1983). Champion states that the landowner is not under a duty to protect the invitee from a known or obviously dangerous risk unless he anticipates that the invitee could be injured. *Id.* at 109. The main question is "whether the defendant has reason to expect harm to the plaintiff from an obvious risk in circumstances where the plaintiff's attention might be distracted from the risk, causing him to forget to protect himself against that harm." *Id.*

106. *Id.* Golf is not the only sport where spectators must be protected for other inherently dangerous sports, such as hockey, car racing, and wrestling, tend to define the legal boundaries, which mandate standard safety requirements for spectators. *Id.* at 109-10.

107. 418 N.E.2d 1037 (Ill. Ct. App. 1985).

108. *Id.* at 1039. The plaintiff Duffy was at her first golf tournament when she stopped at a segregated concession stand located between two fairways. She was watching an unidentified golfer hit a ball, when another golfer, from the opposite fairway, hit her with his tee shot. *Id.* at 1040.

109. *Id.* at 1037-40. In her complaint, Duffy alleged that "the defendants had failed to give the plaintiff a timely warning of the approaching shot, had failed to restrict or warn the plaintiff from a dangerous area, and had failed to provide reasonably safe environment for a professional golf tournament." *Id.*

110. *Id.* at 1040. In their motion, the defendants alleged that the plaintiff, an experienced golfer, understood and fully knew the risks and dangers inherently involved in the game of golf and as such, the plaintiff had voluntarily assumed this known risk and was barred against recovery. *Id.* The trial court agreed with the defendants and granted their summary

On appeal, the court held that the defendants had a duty of reasonable care toward spectators as business invitees, and that the applicable standard of reasonable care was a question for the jury.[111] Finally, the court ruled that the assumption of the risk doctrine could be a defense to the plaintiff's claim only if it could be proven that the plaintiff understood the inherent risks in the situation.[112]

In a similar case, *Grisim v. Tapemark Charity Pro-Am Golf Tournament*,[113] the plaintiff, Mary Grisim, a spectator at the golf tournament, brought suit for an injury sustained while seated approximately fifty feet from the edge of a green. She argued that the golf tournament promoters and country club were negligent due to a failure to provide adequate safety, protection, and supervision for the spectators at the tournament.[114]

The Supreme Court of Minnesota noted that no measures were taken to indicate spectator areas, and that no personnel were present to assist spectators.[115] As a result, the court held that genuine issues of material fact existed as to whether the defendants were negligent in failing to provide the necessary adequate protection.[116]

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judgment motion, but the Appellate Court of Illinois disagreed and reversed the trial court's summary judgment. *Id.*

111. *Id.*

112. Duffy v. Midlothian Country Club, 418 N.E.2d 1037, 1040 (Ill. Ct. App. 1985). The court said that the owner of a business premise is responsible for dangerous conditions on the premises and for giving sufficient warning to avoid harm. *Id.* The court further stated that in raising the defense of assumption of risk the defendants had to prove that the spectator appreciated the danger of being struck by a golf ball while she was in a presumed area of safety, the concession stand on the golf course. *Id.* at 1040-41. At trial, a jury found in favor of the plaintiff, deciding that the injury was the result, not of the errant shot, but of a negligent course design. *Id.* The jury also held the golfer was not liable. *Id.* at 1040-42.

113. 394 N.W.2d 261 (Minn. Ct. App. 1986).

114. *Id.* While a spectator at the TapeMark Charity Pro-Am Golf Tournament, the plaintiff, Grisim, sustained a serious eye injury, when she sat under a tree approximately 30 to 50 feet from the edge of the green because of the lack of space in the spectator stands. *Id.* at 263. The trial court held in favor of the defendant finding that Grisim chose not to sit in the safe seating supplied by the defendant. *Id.* By doing so, the trial court concluded that the plaintiff assumed the risk to protect herself from injury and the dangers incidental to the game "as would be apparent to a reasonable person in the exercise of due care." *Id.* at 263-64. On appeal, Grisim claimed the trial court erred in finding that a grant of summary judgment based on this finding was improper. *Id.*

115. *Id.* at 265.

116. *Id. See* Baker v. Mid Maine Medical Center, 499 A.2d 464 (Me. 1985) (holding the plaintiff assumed a risk when he attended a charity golf tournament, especially since he was an experienced golfer). In *Baker*, the plaintiff was watching golf professional Tom Watson retrieve his ball from the woods, when he heard someone shout the warning "fore" as a golf ball strike him in the eye. *Id.* at 465. The trial court granted Mid Maine's summary judgment motion holding that the plaintiff, even though he was attending an exhibition, did contractu-

The general rule that can be extrapolated from these two cases is that even golf tournament sponsors and country club owners have minimal safety requirements.[117] These standards usually include the use of barricades and marshals.[118] Many courts may reject the assumption of the risk defense in matters of spectator injury both on and off the course, but, assumption of the risk should be considered more favorably by the courts in light of the contractual agreement which arises from the purchase of an admission ticket.[119] Where a country club or golf association violates its duty to exercise ordinary care in providing even minimal protection for spectators, liability should not be avoided.[120]

CONCLUSION

The liability for golfers was extremely limited until the 1980s. Generally, a golfer did not have a duty to warn persons not in the intended line of flight but did have a duty to warn those in his line of flight or in the zone of danger. Consequently, if a golfer did warn another golfer, he was relieved of all liability. Starting in the late 1980s and early 1990s, some courts began to expand golfers' liability to include a duty to warn others who may be near, but not necessarily in, the golfer's intended line of flight. This zone of danger, should be determined on a case-by-case basis, creating somewhat of a subjective standard in determining the liability for golfers.

Golfers injured on the golf course have not only instituted suits against the golfers who hit them but also a wide range of other entities such as golf course owners and designers, golf associations and sponsors, and even the golfer's employers. Generally, suits against golf course owners are unsuccessful unless it can be proven

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ally assume a risk because he was an experienced golfer who appreciated the risks involved in a golfing exhibition. *Id.* The Maine Supreme Judicial Court disagreed, concluding that as a business invitee, the plaintiff was owed ordinary care in guarding him against reasonably foreseeable danger while on the premises. *Id.* The court found that the club should have expected that spectators would be more attentive to the professionals at an exhibition than to nonprofessionals. *Id.* at 465-66. This coupled with the duty of a landowner to exercise reasonable care to prevent harm caused by third persons and Mid Maine's failure to keep that duty, led the supreme court to reverse the trial court's summary judgment and hold the defendants liable for Baker's injuries. *Id.*

117. CHAMPION, *supra* note 105, at 108-09.

118. *Id.*

119. *Id.*

120. *Id.* This specifically seems to hold true in instances where the plaintiff lacks knowledge or appreciation of the game or of the course. *Id.*

that the owner failed to exercise ordinary care in seeing that the course continued to be maintained in a reasonably safe condition. Likewise, golf course designers will not be held liable for injuries unless the course was negligently designed or contained hidden dangers.

In some rare cases, injured parties have also instituted causes of actions against golf sponsors and/or the Professional Golf Association or other golf associations. Normally this type of case is not successful for a party who was also golfing since it is very difficult to prove a case of negligence against the golf association or a sponsor and how it would possibly relate to the injury.

Again, in some rare and unusual cases, injured parties have instituted actions against the golfers' employer if the golfer was golfing in a work-related tournament. Similarly, this kind of suit is usually not successful since a negligence case would be difficult to prove, but some plaintiffs have been successful under the respondeat superior theory which holds an employer negligent vicariously through the employee.

Spectators are usually more successful in their golfers' liability suits. When spectators are injured, they have to establish that the defendant was negligent in providing protection. Some defendants argue that golfing spectators know or should have known that many shots could and do go astray from the intended line of flight. As a result, spectators also assume a risk when they step on a golf course.

It appears that the liability of golfers has already been defined and agreed on by a number of states but, as more golf-related injuries arise, the courts will become more willing to award damages. Courts, especially those in Iowa, Ohio, and other Midwest states, have illustrated a "plaintiff sensitive" platform. The more golfers' liability cases brought before the court, the more damages that will be awarded. These damages will not be solely awarded against golfers. This "plaintiff sensitive" platform is sufficiently broad to include golf associations and golf sponsors when golfers are injured at golf tournaments.

It is foreseeable that the liability of golf course owners and designers, along with that of the golfers' employers, will expand with the other theories of liability. This is not the direction that the liability of golfers should take. One basic idea of the game of golf is the unpredictability of an improper shot. A slice, hook, and shank are all as easily attainable as a perfect fairway drive. When one

participates or observes the game of golf, he is assuming a risk; a risk that a reasonable person knows or should have known exists. As a result, it is grossly unjust to hold a golfer liable for any injuries sustained by a plaintiff who is not in the zone of danger. The courts should apply the *Jenks* standard of holding a golfer liable for injuries sustained by another golfer unless the former golfer acts intentionally or recklessly.

The *Bartlett* standard is misguided. In holding golfers liable for injuries sustained by golfers near and not in the line of flight, the Bartlett Court stretched liability too far. This kind of standard not only represents a gross injustice based on the very nature of the game of golf but also creates future difficulties with golfers worrying about potential liability for anyone on the golf course every time they hit a golf ball. Hopefully said predictions of expanding liability are incorrect, and eventually the states will uniformly adopt the *Jenks* standard.

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