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ARTICLES

CART 54, WHERE ARE YOU? THE LIABILITY OF GOLF COURSE OPERATORS FOR GOLF CART INJURIES

MICHAEL FLYNN*

I. INTRODUCTION

!WARNING! FAILURE TO FOLLOW THESE INSTRUCTION MAY RESULT IN SEVERE PERSONAL INJURY¹

There are over one million golf carts in use on golf courses throughout the United States.² The first golf cart was built in the early 1940's by Club Car. But it was not until the 1970's that golf carts became the most popular way for golfers to navigate golf courses.³ Ask any golfer or, for that matter any non-golfer, and they will tell you that it is easy to drive and fun to ride in these motorized "buggies."⁴ Yet, of the almost 45,000 golf related inju-

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1. Safety and Operation Instructions Decal, EZ GO Textron, 1996 [hereinafter Safety].

2. John Gionna, *Golf Carts: Killers On, Off Courses. Instability Lends Hidden Danger to Sedate Vehicles*, THE SAN DIEGO TRIBUNE-UNION, Nov. 11, 1986, at A1.

3. *Id.*

4. The modern golf cart can be much more than just a "buggy." For example, golf carts come in all shapes and sizes. You can have a golf cart built that resembles a BMW or a Mercedes Benz automobile. One of the most famous custom golf carts is owned by Bob Hope. The front of his golf cart resembles the familiar caricature of Bob Hopes face, including his infamous nose.

ries reported by emergency rooms in the United States,⁵ over 14%, or almost 6,500 of these injuries were golf cart accidents.⁶

This article concerns the liability of the golf course operator for golf cart accidents on the golf course.⁷ Each part of this article reviews a sample of cases which are designed to depict the trend of authority in golf cart accident cases. Part II of this article will discuss the liability of the golf course owner for golf cart accidents due to golf course design and construction defects. Part III focuses on the liability of a golf course operator for golf cart accidents due to negligent maintenance of the golf course. Part IV explains the liability of a golf course owner for injury to golfers due to golf cart defects. Part V explores the attempt by golf course owners to limit their liability for golf cart accidents through disclaimers in golf cart rental agreements. Part VI examines whether a golf cart is classified as a motor vehicle and the consequences of motor vehicle classification. Part VII concerns the liability of a golfer for another golfer's golfcart injury. The article concludes by suggesting that, perhaps, golf cart accidents and the liability consequences for the golf course owner is just part of the cost of doing business as a golf course, unless the golf cart can be replaced with golfers who walk and carry their own clubs, pull walking golf carts or use caddies.

II. GOLF CART ACCIDENTS: GOLF COURSE DESIGN AND CONSTRUCTION

DRIVE SLOWLY STRAIGHT UP AND DOWN SLOPES AND TURNS.⁸

The owner of a golf course, as the occupier of the land, has a duty to exercise reasonable care in the design and construction of the golf course.⁹ This duty inures to the benefit of the golfer as an invitee and requires the golf course owner to keep the golf course in a reasonably safe condition and to eliminate, or at least warn

5. Mary C. McCauley, *Golf Carts Not Covered by Regulations*, THE MILWAUKEE JOURNAL, June 7, 1992, at B5. According to GOLF MAGAZINE, June, 1996, there was a total of 44,370 golf course injuries in 1993.

6. *Id.* According to GOLF MAGAZINE, June, 1996, there was 6,372 golf cart related injuries in 1993.

7. This article does not concern potential products liability claims against a golf cart manufacturer.

8. Safety, *supra* note 1.

9. *Anderson v. Walthal*, 468 So. 2d. 291, 294 (Fla. 1st Dist. Ct. App. 1985); 62 Am. Jur. 2d *Premises Liability* ' 172 (1989).

golfers of, hidden dangers.¹⁰ However, the golf course owner is not “required to maintain the course . . . in such condition that no accident could possibly happen. . .” to a golfer¹¹ and is not an insurer of a golfer’s physical safety.¹² For example, in *Fleming v. Smith*,¹³ the golf course owner was found ten percent (10%) negligent when a golfer in a golf cart ran over another golfer who was walking on a dual use, pedestrian and golf cart, pathway.¹⁴ The jury found that the placement of the path to the golf cart storage area on the same elevation and beside the pedestrian sidewalk, without any barriers in between, was a golf course design defect for which the golf course was liable.¹⁵

A golf course owner may be liable not only for failing to properly construct golf cart paths but also for failing to post adequate directions.¹⁶ In *Dashiell v. Keauhou-Kona Co.*¹⁷, a golfer made a wrong turn on the way to the tenth tee.¹⁸ As the golfer went down an incline to the tenth tee, she missed the turnoff to the tenth tee, lost control of the golf cart, and ended up in a parking area where she hit a moving truck.¹⁹ The plaintiffs, vacationing in Hawaii at the time, were not familiar with the course.²⁰ The jury found the golf course²¹ liable for the defective design and construction of the golf cart path and for failing to provide adequate directional signs for golfers driving golf carts on the path.²²

Another golf course owner was found liable for the design of a paved but uneven cart path in *Ryan v. Mill River Country Club, Inc.*²³ The plaintiff, in this case, was injured when the golf cart

10. *Panoz v. Gulf and Bay Corp. of Sarasota*, 208 So. 2d 297, 300 (Fla. 2d Dist. Ct. App. 1968).

11. *Id.* at 301.

12. *Id.* and *Anderson*, 468 So. 2d at 294.

13. 638 So. 2d 467 (La. Ct. App. 1994).

14. *Id.* at 468. The defendant/player was attempting to move a cart that was blocking his own. *Id.* at 470. He did so by driving from the passenger seat, operating the steering wheel with his left hand, and the pedals with his left foot. *Id.* The defendant’s shoe spike caught on the edge of the brake, causing him to press the accelerator instead of the brake pedal, and run over the plaintiff. *Id.*

15. *Fleming*, 638 So. 2d at 471.

16. *Dashiell v. Keauhou-Kona Co.*, 487 F.2d 957 (9th Cir. 1973).

17. *Id.* at 958.

18. *Id.*

19. *Id.*

20. *Id.*

21. *Dashiell*, 487 F.2d at 958. The defendants in the case included the Keauhou-Kona Company, the owner of the golf course, and the resident manager of the course. *Id.*

22. *Id.*

23. 510 A.2d 462, 463 (Conn. App. Ct. 1986).

she was driving went out of control as she traveled downhill on the cart path.²⁴ When she reached the bottom of the hill, the golf cart flipped over.²⁵ The plaintiff presented evidence that the golf course owner knew the slope of the golf cart path in this particular area had caused previous accidents, but the owner did not take any action to correct the problem or to post any warning signs.²⁶ In ruling for the plaintiff, the jury did not reduce the golf course owner's liability despite the plaintiff's testimony that she had played golf at the defendant's course for several years prior to the accident and knew of the severe slope of this portion of the cart path.²⁷

However, in *United States v. Marshall*,²⁸ a golf course owner was not found liable when a golfer's golf cart fell into a ravine.²⁹ The plaintiff and her husband were playing golf on a course that featured a deep ravine that was obscured by a large hill.³⁰ The ravine was only noticeable to golfer's travelling from the men's tee on the seventeenth hole to the green on the seventeenth hole.³¹ The plaintiff used the women's tee on the seventeenth hole and never saw the ravine.³² When it started to rain, the plaintiff drove from the woman's tee back to the men's tee of the seventeenth hole to pick up her husband, and then drove under a tree to seek shelter.³³ To get to the tree, the plaintiff had to drive through grass that was three to four feet high.³⁴ Instead of reaching the tree, the cart slid down the hill into the ravine.³⁵ The plaintiff's husband testified he was aware of the ravine, but he did not know it extended to the area of the tree.³⁶

The court reasoned that the plaintiff was not negligent to seek shelter under a tree by the tee for seventeenth hole even though the nearest weather shelter was by the green for the sixteenth hole.³⁷ However, the court noted that the plaintiff drove through a "jungle three or four feet high and different in type from the golf

24. *Id.*

25. *Id.*

26. *Id.* at 464.

27. *Id.* at 463.

28. 391 F.2d 880 (1st Cir. 1968).

29. *Id.* at 882.

30. *Id.*

31. *Id.* at 884.

32. *Id.*

33. *Marshall*, 391 F.2d at 881.

34. *Id.*

35. *Id.* at 882.

36. *Id.* at 884.

37. *Id.* at 885.

course grass” in order to get to the tree.³⁸ Further, the court stated that the plaintiff, by driving into an unknown area, should have taken steps to protect herself from whatever could be hidden in the area off the golf cart path.³⁹ The court found that the golf course defendant could not anticipate that a golfer would drive into this high grass area, and, therefore, was not liable for the plaintiff’s injuries because the golf course did not have any duty to protect the plaintiff or warn of hidden dangers in this untravelled area.⁴⁰

Additionally, in *Fraliegh v. Heatherdowns Country Club Assoc.*,⁴¹ the golf course owner was not liable for injuries to a golfer who drove his golf cart into a retaining wall.⁴² In most jurisdictions, including Ohio, a landowner, like a golf course owner, has no duty to protect or warn invitees, golfers, of open and obvious dangers on the land.⁴³ The plaintiff, in this case, testified that she knew that the golf cart path where the accident occurred descended in a circular fashion, because she “had golfed there many times.”⁴⁴ The court found that the plaintiff’s testimony constituted an admission of knowledge of an open and obvious danger on the golf course.⁴⁵ The court ruled that such knowledge negated any duty owed by the golf course owner to redesign or warn of the dangers of the golf cart path.⁴⁶

These cases do not present a consistent line of court decisions concerning a golf course owner’s liability for golf course design and construction defects. However, it seems clear that the courts have recognized that a golf course owner has a duty to discover and eliminate, or at least, warn of, dangerous golf course conditions. Yet, it is equally clear, that in most cases, the golf course owner’s liability for golf cart injuries caused by the faulty design or construction of the golf course will not attach for injuries caused by open and obvious dangers. Further, the golfer’s contributory negligence in driving the golf cart may reduce the amount of the golf course owner’s liability. Finally, these cases seem to say that the golf course owner’s liability will only extend to areas on the golf

38. Marshall, 391 F.2d at 885.

39. *Id.*

40. *Id.* at 884 and 885.

41. No. L-94-202, 1995 WL 316541 (Ohio Ct. App. May 26, 1995).

42. *Id.* at 1.

43. *Id.*

44. *Id.* at 2.

45. *Id.*

46. Fralieg, 1995 WL 316541 at 1.

course where it is foreseeable that golfers in their golf carts will travel.

III. GOLF CARTS ACCIDENTS: NEGLIGENT MAINTENANCE OF GOLF COURSES

USE EXTRA CARE IN REVERSE, IN CONGESTED AREAS OR ON WET OR LOOSE TERRAIN⁴⁷

The care and upkeep of a golf course is not only a matter of pride for a golf course owner but a matter of safety. For example, tree stumps on a golf course are evidence of a golf course owner's failure to exercise reasonable care in the maintenance of the golf course.⁴⁸ In *McRoy v. Riverlake County Club, Inc.*,⁴⁹ the plaintiff hit his ball into the grass approaching the green on the eighteenth hole.⁵⁰ McRoy's partner drove their golf cart into the rough to look for McRoy's ball.⁵¹ The cart's axle caught on a tree stump, causing the cart to come to a sudden stop, and threw McRoy from the cart.⁵² McRoy claimed that the stump was obscured by the grass.⁵³ The court ruled that the plaintiff was entitled to a jury trial on the issue of whether the failure to remove an unmarked, grass-obscured, tree stump from the travelled areas of the golf course amounted to negligent maintenance of the golf course by the golf course owner.⁵⁴

In another case, the golf course maintenance crew stretched a plastic rope across a fairway to keep golf carts from damaging areas in the fairway.⁵⁵ A golfer was "clothes lined" when the plastic rope, about a foot off the ground, caught on the front of the golf cart, rode upwards and jerked him from the cart.⁵⁶ The golf course owner was found liable for negligently maintaining the golf

47. Safety, *supra* note 1.

48. *McRoy v. Riverlake Country Club, Inc.*, 426 S.W.2d 299, 301-302 (Tex. Civ. App. 1968).

49. *Id.* at 302.

50. *Id.* at 301.

51. *Id.* at 302.

52. *Id.*

53. *McRoy*, 426 S.W. 2d at 302.

54. *Id.* at 302. Although the plaintiff may have admitted he saw the stump, he testified that he was looking for golf balls, not tree stumps, and even if he did see the stump, he would have thought the cart was able to drive over it. *Id.*

55. *Kenton County Public Parks Corp. v. Modlin*, 901 S.W.2d 876, 877 (Ky. Ct. App. 1995).

56. *Id.*

course by placing the plastic rope in a position where golfers could be hurt, without a warning as to the danger.⁵⁷

Additionally, a golf course owner may be liable for negligent maintenance of a stop sign on the golf course.⁵⁸ In one case, a four lane divided highway passed through the golf course.⁵⁹ A traffic light and stop sign were in place where the golf course intersected with the road.⁶⁰ The stop sign was originally placed to stop golf carts from entering the road.⁶¹ However, because the stop sign hindered mowing equipment, someone turned the sign sideways so that it faced the road instead.⁶² The plaintiff and his partner thought the sign was intended to stop highway traffic.⁶³ When the plaintiff drove the golf cart into the road, he was hit by a car.⁶⁴

The jury ruled that only the plaintiff, as the driver of the golf cart, was negligent.⁶⁵ On appeal, the appellate court ordered a new trial for the plaintiff in which the issue of the golf course owner's negligence in the maintenance of the stop sign could be presented to a jury.⁶⁶

A city-owned golf course may be liable for inadequate maintenance of a public golf course.⁶⁷ In a case⁶⁸ from Kansas, the golf course avoided liability at the trial level because the Kansas Tort Claims Act provided immunity to a government entity for ordinary negligence.⁶⁹ The court held that the state's recreational use exception within the Kansas Act applied to government owned golf courses.⁷⁰ Thus, the golf course was not responsible for acts of ordinary negligence but rather the plaintiff must prove willful and wanton or reckless conduct by the golf course to sustain a claim.⁷¹ The plaintiff, in this case, was injured when his golf cart dropped

57. *Id.* at 881. The fact that the golfer, who was returning to his group after retrieving a missing club cover, was driving on an open fairway, with the rope in clear view, did not influence the outcome of the case. *Id.* at 877.

58. *McFall v. Inverrary Country Club, Inc.*, 622 So. 2d 41, 46 (Fla. 4th Dist. Ct. App. 1993).

59. *Id.* at 42.

60. *Id.* at 43.

61. *Id.*

62. *Id.*

63. *McFall*, 622 So. 2d at 43.

64. *Id.*

65. *Id.* at 42.

66. *McFall*, 622 So. 2d at 46.

67. *Gruhin v. City of Overland Park*, 836 P.2d 1222, 1223 (Kan. Ct. App. 1992).

68. *Id.*

69. *Id.* at 1225.

70. *Id.* at 1223.

71. *Id.* at 1225.

into a hole several feet deep.⁷² The evidence showed that the golf course knew of a prior accident in the same place but did nothing more than draw chalk lines around the hole.⁷³ The court ruled that if the actions of the golf course which allowed the hole to remain in the travelled portions of the golf course constituted reckless disregard for the safety of golfers, then the plaintiff had a valid claim against the city, as owner of the golf course.⁷⁴ The court specifically ruled that the recreational use exception will not immunize a government defendant golf course owner from willful and wanton or reckless acts which injure golfers.⁷⁵

In *Goodman v. City of Gahanna*,⁷⁶ the plaintiff's golf cart hit a cement planter while traveling downhill to the first tee.⁷⁷ The court found that the cement planter, which was placed next to the cart path at the bottom of the hill and clearly visible to golfers, was not a dangerous condition.⁷⁸ The court ruled that even if the golf course owner had a duty to exercise reasonable care towards golfers, the placement of the planter was not a negligent act.⁷⁹

However, a golf course owner, just like any other defendant in a tort case, will not be liable for the injuries sustained by a golfer unless the golf course owner's failure to adequately maintain the golf course caused the injury.⁸⁰ In *North Dade Golf, Inc. v. Clarke*,⁸¹ the plaintiff's golf cart hit an invisible hole on the edge of the concrete golf cart pathway.⁸² The plaintiff was severely injured and hospitalized that afternoon.⁸³ He suffered a heart attack seven days later.⁸⁴ The court ruled that the plaintiff had a viable claim against the golf course owner based on negligence for his injuries attributable to driving over the invisible hole.⁸⁵ However, the court ruled that the plaintiff could not recover any damages from the golf course owner for his heart attack because the

72. Gruhin, 836 P.2d at 1223.

73. *Id.* at 1225.

74. *Id.* at 1226.

75. *Id.* at 1225.

76. No. 92 AP-1246, 1993 Ohio App. LEXIS 631, at 1.

77. *Id.* at 1.

78. *Id.* at 3.

79. *Id.*

80. *North Dade Golf, Inc. v. Clarke*, 439 So. 2d 296 (Fla. 3d Dist. Ct. App. 1983).

81. *Id.*

82. *Id.* at 297.

83. *Id.*

84. *Id.*

85. *Id.* at 298.

golf course owner's negligence did not cause the plaintiff's heart attack.⁸⁶

Finally, in *Gillespie v. Chevy Chase Golf Club*,⁸⁷ the court found that even though the golf cart path was bumpy, the golf course owner did not breach his duty to reasonably maintain the golf course.⁸⁸ The court ruled that the plaintiff's golf cart accident was not caused by the rough ride on the cart path.⁸⁹ Rather, the court said the plaintiff's injuries occurred when the plaintiff's golf bag, held by the plaintiff instead of placed in the golf cart's bag rack, hit the tiller of the cart.⁹⁰ The driver lost control of the golf cart and the cart rolled over in the middle of the fairway of the ninth hole.⁹¹ In short, the court ruled that the maintenance of the golf cart path did not have anything to do with the plaintiff's injuries.⁹²

From these cases, it appears that the courts look carefully to determine exactly how the golf cart accident occurred before fixing blame on the golf course owner for negligent maintenance of the golf course. The key issue, just like in situations involving defective design and construction of a golf course, is whether the negligent maintenance of the golf course actually caused injury to the golfer. However, hidden dangers, like tree stumps or other natural conditions, do place the golf course owner in the line of liability if the golf course owner should have discovered or actually knew of the hazard and did not correct or at least, warn of the danger. Furthermore, because the golf cart is a motorized vehicle, the golf course owner has a particular duty to make sure that golf cart traffic control signs are visible and useful. Finally, as in the golf course design and construction cases, the golf course owner's primary line of defense is to characterize the alleged hazard as open and obvious and to reduce his degree of liability based on the contributory negligence of the golfer driving or riding in the golf cart.

86. *Id.*

87. 9 Cal. Rptr. 437, 439 (Cal. Ct. App. 1960).

88. *Id.*

89. *Id.*

90. *Id.*

91. *Id.*

92. *Gillespie*, 9 Cal. Rptr. at 439. The evidence that the driver drank a highball immediately before beginning play and three beers before finishing the fourth hole was not "deserving of our [the court's] attention," in the argument that the golf course owner should not have rented a golf cart to someone who was going to drink alcoholic beverages. *Id.*

IV. GOLF CART ACCIDENTS: GOLF CART MALFUNCTION VEHICLE MUST BE SERVICED BY QUALIFIED PERSONNEL ONLY⁹³

Some golf course proprietors own the golf carts used at the golf course and then profit from renting the golf carts to golfers.⁹⁴ Other golf course owners lease the golf carts used at the golf course and also profit from renting the golf carts to golfers.⁹⁵ In either case, the golf course owner is a bailor and as a bailor, owes a duty of reasonable care to rent golfers properly maintained golf carts.⁹⁶ However, a bailor, golf course owner, will only be liable for injury to a golfer caused by a golf cart malfunction when the golf course owner knew or should have known of the defect.⁹⁷ For example, in *McDonald v. Grasso*,⁹⁸ the golf carts were leased to the golf course owner.⁹⁹ The plaintiff claimed that the golf course owner was liable for his injuries when a golf cart rolled downhill and pinned him between the runaway golf cart and the plaintiff's own golf cart.¹⁰⁰ The plaintiff said the golf course owner was liable because a faulty hill brake caused the accident.¹⁰¹ The court

93. Safety, *supra* note 1.

94. Michael Bamberger, *Caddies*, GOLF DIGEST, February, 1993 at 71-77. Not only the golf course owner but also the golf course professional may share in the profits from the rental of golf carts.

95. *Id.* According to Les Persan, a distributor of EZ-Go Golf Carts for over 15 years, the golf course owner has two basic options:

- 1) The golf course owner can purchase a fleet of golf carts. This option is expensive. See, *infra*, note 221. Whether structured as an outright purchase or through a conditional sales contract, the golf course owner owns the golf carts, which are depreciable assets.
- 2) The golf course owner can lease a fleet of golf carts. This is the most attractive option, whether structured as a straight lease or a lease with an option to purchase. Most of these leases are for three years, the length of the manufacturer's warranty on the golf carts. The lease payments are tax deductible expenses. With a monthly lease payment of \$78, a fleet of 100 golf carts would cost \$7,800 per month. Most golf course owners will cover that expense if 520 golfers per month use a golf cart (assuming a cart fee of \$15 per golfer). Most golf courses average over 3,000 golfers per month. See, *infra*, notes 227 and 228.

Interview with Les Persan, August 19, 1997, Fort Lauderdale, Florida.

96. Hudson v. Drive it Yourself, Inc., 236 N.C. 503 (N.C. 1952).

97. *Id.* Note also, that the injured golfer may have a products liability claim against the manufacturer of the golf cart if the defect in the golf cart can be traced back to the golf cart manufacturer. See, *supra* note 6. Any products liability claim against the manufacturer has the potential to reduce the percentage of fault attributable to the golf course owner for the golfers injury.

98. 632 N.Y.S. 2d 240, 241 (N.Y. App. Div. 1995).

99. *Id.*

100. *Id.*

101. *Id.*

however, was not convinced from the plaintiff's evidence that the hill brake failed because immediately after the accident, the hill brake worked fine.¹⁰² The golf course owner introduced evidence that the plaintiff improperly set the hill brake.¹⁰³ The court ruled that the plaintiff failed to prove that the hill brake malfunctioned and that the golf course owner knew or should have known of the faulty hill brake.¹⁰⁴ Therefore, the golf course owner was not found liable.¹⁰⁵

In *England v. United States*,¹⁰⁶ the plaintiff was injured when he was thrown from the golf cart he was riding downhill.¹⁰⁷ The plaintiff argued that the golf cart brakes malfunctioned so that the plaintiff could not control the golf cart as it raced downhill.¹⁰⁸ The evidence indicated that the golf cart brakes were tested by the golf course attendant before the plaintiff rented the golf cart.¹⁰⁹ According to the testimony of the golf course attendant the brakes worked fine.¹¹⁰ In addition, the plaintiff testified that through the first twelve holes, the brakes on the golf cart worked fine.¹¹¹ The plaintiff's expert testified that the sudden failure of the brakes between the twelfth and thirteenth holes meant "something had broken since the last application of the brakes."¹¹² The court again found the golf course owner not liable for the plaintiff's injuries because the golf course owner did not know and could not have known about the sudden malfunction of the golf cart brakes.¹¹³

In *Timm v. Indian Springs Recreation Assoc.*,¹¹⁴ the plaintiff was injured when she fell out of a golf cart which was missing its protective handrails.¹¹⁵ Plaintiff sued the golf course as the owner of the golf cart for failing to warn the plaintiff of the missing hand rail.¹¹⁶ The court instructed the jury that the golf cart owner did not have a duty to warn of the missing handrail unless the golf

102. *Id.*

103. McDonald, 632 N.Y.S. 2d at 241.

104. *Id.*

105. *Id.*

106. 405 F.2d 862 (5th Cir. 1968).

107. *Id.*

108. *Id.* at 864.

109. *Id.*

110. *Id.*

111. England, 405 F.2d at 864.

112. *Id.*

113. *Id.* at 863.

114. 589 N.E.2d 988 (Ill. App. Ct. 1992).

115. *Id.*

116. *Id.*

cart owner knew or should have known that a golfer might be injured if not warned of the missing handrail.¹¹⁷ In essence, the court instructed the jury about the open and obvious danger defense to the plaintiff's claim.¹¹⁸ No evidence was presented by the plaintiff that the golf cart owner knew or should have known that a golf cart without handrails was dangerous.¹¹⁹ The jury found for the defendant golf cart owner.¹²⁰

However, in *Goodwin v. Woodbridge Country Club Inc.*,¹²¹ the golf course owner was found liable for the a golfer's injuries when he was pinned between two golf carts.¹²² In this case, another golfer's golf cart began rolling toward the plaintiff and eventually crushed him.¹²³ The plaintiff sued the golf course owner for negligence, claiming the golf cart that hit the plaintiff had faulty brakes.¹²⁴ The plaintiff presented evidence that upon inspection of the brakes, the golf course staff should have noticed the wearing through of the brake pads.¹²⁵ The jury found the golf course owner liable because the golf course knew or should have known of the defect in the brakes of the golf cart which injured the plaintiff.¹²⁶

In *Fort Lauderdale Country Club, Inc. v. Winnemore*¹²⁷ the plaintiff was injured by another golfer's golf cart.¹²⁸ The golf course leased the carts and split the profits with the lessor.¹²⁹ When the golf carts were delivered to the golf course, each had a rubber brake pedal cover.¹³⁰ The golf cart which ran over the plaintiff was missing the brake cover.¹³¹ According to the plaintiff's evidence, the golf cart driver's metal spiked golf shoes slipped off the brake pedal, and he was unable to stop the golf cart before hitting the plaintiff.¹³² The jury found the golf course owner liable

117. *Id.*

118. *Id.*

119. Timm, 589 N.E.2d 988.

120. *Id.*

121. 365 A.2d 1158 (Conn. 1976).

122. *Id.*

123. *Id.* at 1160.

124. *Id.*

125. *Id.*

126. *Id.* at 1159.

127. 189 So. 2d 222 (Fla. 4th Dist. Ct. App. 1966).

128. *Id.* at 223.

129. *Id.* at 222.

130. *Id.*

131. *Id.*

132. Winnemore, 189 So. 2d at 222.

because he knew or should have known that the golf cart did not have a rubber cover over the brake pedal.¹³³

This representative sample of cases indicates that the courts are slow to hold a golf course owner, who either owns or leases golf carts, liable for malfunctioning golf carts. The courts seem to rigidly require that the golf course owner know or have reason to know of the specific problem or fault with the golf cart before liability will attach for golfer injury. Consequently, the sudden, unexpected malfunction of the golf cart will most likely not give rise to golf course owner liability. However, if the injured golfer is able to present evidence of a failure to adequately inspect and maintain the golf cart or the lack of a regular inspection and maintenance program for the golf carts, then the injured golfer will be more successful in holding the golf course owner liable for golf cart accidents.

V. GOLF CART ACCIDENTS: GOLF COURSE OWNER LIMITATION OF LIABILITY

BE SURE OCCUPANTS ARE SEATED, MOVE DIRECTION SELECTOR LEVER TO DESIRED POSITION, APPLY SERVICE BRAKE, TURN KEY "ON" AND ACCELERATE SMOOTHLY¹³⁴

The golf course owner can take several steps to limit or in some cases, completely avoid liability for golf cart accidents. As noted in the other parts of this article, golf course owners routinely use the injured golfer's contributory negligence, the negligence of other golfers and perhaps, even the fault of a golf cart manufacturer to reduce the amount of their liability.¹³⁵ In addition, a popular defense is for the golf course owner to categorize the injury producing condition or event as an open and obvious danger for which the golf course owner cannot be held liable.¹³⁶

Golf course owners also rely on written directions and warnings. For example, the introductory quotes for each Part of this article is taken from the set of written safety instructions placed inside most golf carts.¹³⁷ A golfer's failure to follow adequate and conspicuous instructions and warnings may also act to reduce the

133. *Id.*

134. Safety, *supra* note 1.

135. See Parts II and III and VI of this article; see generally *Prosser and Keeton On Torts*, West Publishing (5th ed. 1988).

136. See Part II and III and VI of this article.

137. See *supra* note 1.

golf course owner's liability for golf cart accidents.¹³⁸ In addition to the written directions and instructions, the golf course owner uses written limitation of liability or disclaimer paragraphs in the golf cart rental agreement to limit liability.

The following is an example of a standard disclaimer contained in the golf cart rental agreement signed by each golfer.

"In consideration for the rental of said golf cart to the above signed, I on behalf of my self, my heirs, executors, administrators and assigns, release [golf course name], the owner, from any and all liability, loss or damage to me and/or to my property arising from or through the use of said golf cart and further agree to hold aforementioned owner, the lessor, free and harmless from any claims, liability, or damages of any nature whatsoever that may arise from or through the use of said golf cart."¹³⁹

Golf course owners put this type of disclaimer in the golf cart rental agreement, hoping to rid themselves of liability for golf cart accidents. Generally, disclaimer paragraphs are not favored in the law and are construed strictly against the party asserting them, in this case the golf course owner.¹⁴⁰ Despite this fact, disclaimer clauses are commonly contained in all types of equipment rental agreements.¹⁴¹ The validity of such clauses are tested by factors including the public policy against limiting the liability of the lessor in particular circumstances,¹⁴² the particular type of activity, the type of relationship between the lessor and the

138. See generally PROSSER AND KEETON ON TORTS, Chapter 11, West Publishing (5th ed. 1988).

139. Doral Golf Resort and Spa Golf/Retail rental receipt, Doral Golf Resort and Spa, (1996).

140. *Weiner v. Mt. Airy Lodge, Inc.*, 719 F. Supp. 342 (M.D. Penn. 1989). Absent some statute to the contrary, the generally accepted rule is that contracts prohibiting liability for negligence are valid except in those cases where a public interest is involved. 57A AM. JUR. 2D. *Negligence* § 53 (1989). Additionally, a bargain for exemption from liability for the consequences of negligence not falling greatly below the standard established by law for the protection of others against unreasonable risk of harm, is legal. RESTATEMENT OF CONTRACTS § 574 (1932).

141. *E.g. see* *Weiner v. Mr. Airy Lodge Inc.*, 719 F. Supp. 342, (M.D. Pa. 1989) (involving rental of snow ski equipment); *Zimmer v. Mitchell and Ness*, 385 A.2d 437 (Pa. 1978) (involving snow ski equipment); *Diedrich v. Wright*, 550 F. Supp. 805 (N.D. Ill. 1982) (involving a rented parachute); *Hewitt v. Miller*, 521 P.2d 244 (Wash. Ct. App. 1974) (involving the rental scuba diving equipment).

142. *Diedrich v. Wright*, 550 F. Supp. 805 (N.D. Ill. 1982); 57A AM. JUR. 2D. *Negligence* § 59 (1989).

lessee¹⁴³ and the intent of both the lessor and the lessee at the time the lease agreement is signed.¹⁴⁴

While valid disclaimer clauses will bar a claim for negligence, some courts refuse to allow disclaimer clauses to bar a claim based on strict liability.¹⁴⁵ For example, in *Sipari v. Villa Olivia Country Club*,¹⁴⁶ the disclaimer clause in the golf cart rental ticket did not bar a golfer's claim against a golf course owner when the golf cart tipped over on the plaintiff.¹⁴⁷ The plaintiff sued the golf course owner on the basis of strict liability.¹⁴⁸ The golf course owner asserted that the disclaimer clause in the golf cart rental ticket precluded liability.¹⁴⁹ The court held that since the plaintiff's claim was based on strict liability, a theory of liability not based on fault, the disclaimer clause could not "function to preclude imposition of liability for using products whose defective conditions make them unreasonably dangerous to the user."¹⁵⁰

However, in *Baker v. City of Seattle*,¹⁵¹ the court stated that the disclaimer contained in the golf cart rental agreement could have insulated the golf course from a negligence claim by an injured golfer.¹⁵² However, the court noted that the disclaimer clause was hidden in the middle of the text of the golf cart rental agreement and was typed in the same size print as the rest of the agreement.¹⁵³ The court ruled that for a disclaimer to be binding it must be conspicuous.¹⁵⁴ The court went on to say that when a business, like a golf course, regularly requires the lease of equipment to its customers, like a golf cart to a golfer if the golfer wants to play golf, then this type of business relationship also supports the need for any disclaimer to be conspicuous.¹⁵⁵

143. 57A AM. JUR. 2D. *Negligence* § 59 (1989). Where the party invoking exculpation possesses a decisive advantage in bargaining strength against any member of the public, or uses a standardized adhesion contract with no provision for the purchaser to pay additional fees to obtain protection against negligence, exculpation clauses are generally held invalid. *Id.*

144. *Diedrich*, 550 F. Supp. 805; *see also* 57A AM. JUR. 2D. *Negligence* § 59 (1989).

145. *Id.*

146. 380 N.E.2d 819 (Ill. App. Ct. 1978).

147. *Id.* at 825.

148. *Id.* at 820.

149. *Id.*

150. *Id.* at 823.

151. 484 P.2d 405 (Wash. 1971).

152. *Id.* at 407.

153. *Id.* at 406.

154. *Id.*

155. *Id.* at 407.

One critical factor in determining whether a golf course owner will be held harmless from liability by inserting a disclaimer clause in a golf cart rental ticket, is the stated intent of the parties.¹⁵⁶ If the word "negligence" is not included in the disclaimer clause of the golf cart agreement, then the courts will more carefully examine the words in the agreement before permitting the golf course owner to escape liability for its own negligence.¹⁵⁷ The courts seem to require the disclaimer to include the word "negligence,"¹⁵⁸ and to explicitly state that the lessor intends to avoid liability for its own negligence.¹⁵⁹ Florida, for example, requires a disclaimer clause to "clearly and unequivocally state that it releases [lessor] from liability for its own negligence."¹⁶⁰ Finally, the courts view a disclaimer clause from the perspective of the lessee.¹⁶¹ If the reasonable golfer does not know what is being contracted away by virtue of the disclaimer clause, then the clause will not be enforced.¹⁶²

From the foregoing review of cases, the courts consistently rule that a disclaimer clause may not always absolve a golf course owner from liability for its own negligent acts.¹⁶³ However, if the disclaimer clause in the golf cart rental agreement is conspicuously placed, written in clear, specific language, and the ordinary golfer would fully appreciate the significance of the "hold harmless" agreement, then the courts may enforce the disclaimer. Yet

156. 57A AM. JUR. 2D *Negligence* § 53 (1989).

157. See *Diedrich v. Wright*, 350 F. Supp. 805, 807 (N.D. Ill. 1982); and *supra* notes 142 through 144.

158. See *Sirek v. Fairfield Snowbowl, Inc.*, 800 P. 2d. 1291 (Ariz. Ct. App. 1990).

159. *Id.* at 1295.

160. *Hertz Corp. v. David Klein Manufacturer, Inc.*, 636 So. 2d 189, 191 (Fla. 3rd Dist. Ct. App. 1994). In *O'Connell v. Walt Disney World Co.*, the court found that the disclaimer clause did not contain any language indicating the extent to either release or indemnify the defendant for its own negligence. 413 So. 2d 444, 446 (Fla. 5th Dist. Ct. App. 1982). The clause provided: "I agree . . . to waive any claim or causes of action which . . . I may now or hereafter have against Walt Disney World Co. arising out of any injuries . . . may sustain as a result of that horseback riding, and I will hold Walt Disney World Co. harmless against any and all claims resulting from such injuries." *Id.* at 445. The court did not explain what language was missing from the clause.

However, the clause in *FDIC v. Carre* was found clear and the defendant bank was not liable for negligence. *FDIC*, 436 So. 2d 227 (Fla. 3rd Dist. Ct. App. 1994). The clause provided that the "[b]ank shall not be liable for the loss or disappearance of the contents of any safe deposit box or any part thereof, unless such loss or disappearance occurs by reason of gross negligence, fraud or bad faith on its part." *Id.* at 228. The court found that the bank clearly intended to limit its liability. *Id.* at 229.

161. *Hertz*, 636 So. 2d at 190.

162. *Id.*

163. *Id.*

the courts still appear reluctant to fully permit the golf course owner to avoid liability for golf cart accidents if the golf course owner requires the golfer to rent a golf cart.

**VI. GOLF CART ACCIDENTS: GOLF CART CLASSIFICATION
OPERATE FROM THE DRIVER'S SIDE ONLY.
FOR GOLF COURSE AND NON-HIGHWAY
USE ONLY, AND TO BE OPERATED ONLY BY
AUTHORIZED DRIVERS IN DESIGNATED
AREAS¹⁶⁴**

The Florida Supreme Court and Florida Legislature have determined that a golf cart is a motor vehicle.¹⁶⁵ Additionally, golf carts operated on a golf course are included in Florida's dangerous instrumentality doctrine.¹⁶⁶ The dangerous instrumentality doctrine is a form of vicarious liability which arises when the owner of an "instrumentality which has the capacity of causing death or destruction" allows someone else to operate the instrumentality and a third party is injured.¹⁶⁷ The owner is held liable for any "misuse" that results.¹⁶⁸ The Florida Supreme Court decided that since a "golf cart when negligently operated on a golf course, has the . . . ability to cause serious injury," the owner of the golf cart is subject to the dangerous instrumentality doctrine.¹⁶⁹

A recent decision in Arizona interpreting an Arizona statute, follows Florida's lead. The court in *Del E. Webb Cactus Development v. Jessup*¹⁷⁰ ruled that where a golf cart is required to be used on public highways, it is covered by the Arizona statute that requires all vehicles used on public roads to be registered and be covered by public liability insurance.¹⁷¹ The plaintiff, in this case,

164. Safety, *supra* note 1.

165. *Meister v. Fisher*, 462 So. 2d 1071, 1072 (Fla. 1984); *see also* FLA. STAT. ch. 316.003 (68) (1983).

166. *Id.* at 1073.

167. *Id.* at 1072. The doctrine was first applied to automobiles in *Anderson v. Southern Cotton Oil Co.*, 74 So. 975 (Fla. 1917).

168. *Meister*, 462 So. 2d at 1072.

169. *Id.* at 1073. In a subsequent case, a Florida appellate court held that *Meister* did not establish that a golf cart was a motor vehicle subject to statutory financial responsibility. *American States Ins. Co. v. Baroletti*, 566 So. 2d 314, 315 (Fla. 2d Dist. Ct. App. 1990). Hence, the owner's insurer would not automatically be primarily liable for any injury. *Id.* Also note that the owner of the golf carts used at a golf course may not only be the golf course owner but the manufacturer or a distributor of the golf carts. The dangerous instrumentality doctrine applies to whomever is the owner of the golf cart.

170. 863 P.2d 260, 262 (Ariz. Ct. App. 1993).

171. *Id.* at 262.

was injured when his golf cart collided with a car as he crossed a public dirt road that ran through the golf course.¹⁷²

The Arizona statute further provides that the owner of a motor vehicle, like a golf cart, who rents a motor vehicle without public liability insurance "shall be joint and severally liable with the renter for damage caused by the negligence of the renter operating the motor vehicle."¹⁷³ Arizona differs from Florida by only classifying a golf cart as a motor vehicles if the golf cart will be driven on a public highway.¹⁷⁴ Florida classifies a golf cart as a motor vehicle and subject to the dangerous instrumentality doctrine no matter where the golf cart is driven.¹⁷⁵

The *Webb* decision meant that golf course owners across Arizona were faced with the cost of registering entire fleets of golf carts if a golf cart would travel on a public highway. Almost half of the golf courses in Arizona cross public roads,¹⁷⁶ and courses typically have fleets of 65 to 100 golf carts.¹⁷⁷ The Arizona Golf Association then stepped in, on behalf of the golf course owners in Arizona, and successfully lobbied the state legislature to exempt golf carts used on golf courses from the registration requirements for motor vehicles, regardless of whether the golf carts will travel on or cross a public road.¹⁷⁸ However, non-golf course owned golf carts still must be registered as a motor vehicle if used on a public road.¹⁷⁹

Other states have rejected the premise that a golf cart is a motor vehicle. For example, in Kentucky an appellate court reversed the trial court's ruling that a golf cart was a motor vehicle.¹⁸⁰ The court held that a golf course fairway was not a public roadway within the meaning of Kentucky's motor vehicle statute.¹⁸¹ Hence, a golf cart operated on a golf course is not a motor vehicle as defined in the statute.¹⁸²

172. *Id.* at 261.

173. *Id.* at 262.

174. *Id.* at 262.

175. *Meister v. Fisher*, 462 So. 2d 1071, 1073 (Fla. 1984).

176. Jack Rickard, *AGA Deserves Credit for its Lobby Effort*, THE TUCSON CITIZEN, June 7, 1994 at 15.

177. David Wichner, *Golf Courses Seek Exemption From Law*, THE PHOENIX GAZETTE, February 18, 1994 at C1.

178. See Rickard, *AGA Deserves Credit for its Lobby Effort*.

179. Lori Baker, *The Great Golf Cart Debate Law Gives Courses Exemptions*, THE PHOENIX GAZETTE, April 18, 1994 at 1.

180. *Kenton County Public Parks Corp. v. Modlin*, *supra* note 55 at 878.

181. *Id.*

182. *Id.*

Additionally, in *Nepstad v. Randall*,¹⁸³ the South Dakota Supreme Court rejected the defendant's argument that since the cart was a motor vehicle, the plaintiff fell under the state's guest statute.¹⁸⁴ The guest statutes prevented a guest in a motor vehicle from recovering against a driver for injures absent willful and wanton misconduct.¹⁸⁵ The court held that a golf cart on a golf course was not a motor vehicle.¹⁸⁶

One point is clear from these representative cases, requiring motor vehicle registration for entire fleets of golf carts does have serious economic consequences for golf course owners. But not every state requires golf carts to be registered as motor vehicles. Regardless of the state law, because of the number of golf cart accidents and the severity of injury to golfers in these accidents, the prudent golf course owner should purchase liability insurance to cover golf cart accidents.

VII. GOLF CART ACCIDENTS: OTHER GOLFER NEGLIGENCE

DO NOT OPERATE UNDER THE INFLUENCE OF DRUGS OR ALCOHOL¹⁸⁷

Aside from the golf course owner of the golf cart and the golf cart manufacturer, an injured golfer may also blame another golfer for a golf cart accident. For example, a golfer who fell out of a golf cart, sued the golfer/driver of the golf cart.¹⁸⁸ The plaintiff alleged that but for the excessive speed of the golf cart, the driver's failure to control the golf cart, and the driver's failure to warn the plaintiff when the golf cart was going to turn, the plaintiff would not have been thrown from the golf cart and injured.¹⁸⁹ The plaintiff testified that he knew the defendant's ball was on the left side of the fairway; that a left turn could not be made surreptitiously by the driver; and that it was not usual for the driver to warn a passenger that he was going to turn.¹⁹⁰ Moreover, there was no evidence of "other than a prudent speed."¹⁹¹ The only evidence of negligence was the plaintiff's own descriptive testimony

183. 152 N.W. 2d 383, 385 (S.D. 1967).

184. *Id.*

185. *Id.*

186. *Id.* at 386.

187. Safety, *supra* note 1.

188. *Miller v. Robinson*, 216 A.2d 743 (Md. 1966).

189. *Id.* at 744.

190. *Id.*

191. *Id.*

of the defendant's actions in operating a golf cart.¹⁹² The court held that such testimony by itself was insufficient to infer negligence.¹⁹³

In *Fears v. McNamara*,¹⁹⁴ the plaintiff was struck by his own golf cart after the defendant moved the cart.¹⁹⁵ The plaintiff parked the cart with its wheels turned to the right.¹⁹⁶ When the defendant released the brake, the cart swung in the direction the wheels were turned and hit the plaintiff as he was approaching the cart.¹⁹⁷ The evidence indicated that the plaintiff asked the defendant to move the cart, knowing he had left the cart with the wheels turned.¹⁹⁸ The court ruled the defendant not liable for plaintiff's injuries.¹⁹⁹

In *Bona v. Graefe*,²⁰⁰ the driver of a golf cart was not responsible when the plaintiff was injured after the golf cart brakes failed while traveling downhill, tossing the plaintiff from the cart at the bottom of the hill.²⁰¹ The defendant saw a course employee test the golf cart brakes prior to releasing the golf cart for the defendant's use.²⁰² The uncontroverted testimony was that this testing of golf cart brakes before renting any golf cart was the standard operating procedure for the golf course.²⁰³ Additionally, the plaintiff did not present any evidence that the defendant failed to use reasonable care when driving the golf cart.²⁰⁴ Hence, the court found the defendant golf cart driver not negligent.²⁰⁵

Conversely, in *Nepstad v. Randall*²⁰⁶ the defendant golf cart driver was found liable for the plaintiff's injuries.²⁰⁷ After the plaintiff's golf cart ran out of gas on the course, the defendant and his partner gave the plaintiff and plaintiff's partner a ride.²⁰⁸ They both rode on the hood of the cart.²⁰⁹ The driver turned

192. *Id.* at 745.

193. *Id.* at 746.

194. 574 So. 2d 729 (Ala. 1990).

195. *Id.* at 730.

196. *Id.*

197. *Id.*

198. *Id.*

199. *Id.*

200. 285 A. 2d 607 (Md. 1972).

201. *Id.* at 608.

202. *Id.*

203. *Id.*

204. *Id.*

205. *Bona*, 285 A. 2d 607.

206. 152 N.W.2d 383 (S.D. 1967).

207. *Id.* at 384.

208. *Id.*

209. *Id.*

quickly to the left while still traveling forward, which threw the plaintiff and his partner to the ground.²¹⁰ The evidence presented indicated that the defendant did not even attempt to slow down before turning.²¹¹ The verdict for the plaintiff against the defendant was upheld by the South Dakota Supreme Court.²¹²

Additionally, a defendant was found liable when he looked down at his watch and upon looking up, was running over his golf partner.²¹³ Although the defendant alleged the cart's brakes were defective, the court found that the accident occurred solely as a result of the defendant's negligence.²¹⁴

The defendant in *Zurowski v. Parker*²¹⁵ was driving a golf cart that left the cart path and hit a tree.²¹⁶ The court found that the defendant was using excessive speed while driving downhill and was not applying the brakes in a timely manner.²¹⁷ The court held that such conduct was foreseeable and created an unreasonable risk of physical harm to the plaintiff passenger.²¹⁸ The plaintiff successfully argued that the presumption of assuming the risk of participating in sports activities does not apply to golf cart accidents.²¹⁹ Finally, the plaintiff successfully argued that since the defendant golf cart driver was acting within the scope of his employment (the purpose of the golf game was for the defendant and plaintiff to discuss a business deal between their respective companies), the plaintiff was permitted to impute the defendant's liability to the defendant's employer under the doctrine of respondeat superior.²²⁰

This sample of cases shows the dramatic difference in the way courts handle golf cart injuries due to some other golfer's negligence. There appears to be no trend of authority in this area. Rather, more than in other aspects of golf cart accidents, each case stands on its own unique facts. The predominant characteristic of cases in which the defendant, the other golfer, is not found liable is the profound lack of evidence presented by the injured golfer.

210. *Id.* at 386.

211. *Id.*

212. *Id.*

213. *Webb v. City of Hamilton*, No. CA85-02-013, 1985 WL 7689 (Ohio Ct. App. 1985).

214. *Id.* at 2.

215. Nos. 64907, 65321, 1994 WL 173658 (Ohio Ct. App. 1994).

216. *Id.* at 8.

217. *Id.*

218. *Id.*

219. *Id.*

220. *Zurowski*, 1994 WL 173658 at 10.

The major factor in cases in which the plaintiff succeeds in holding the defendant, the other golfer, liable is proof of excessive speed. With no discernable trend of authority, the quirky nature of each case will control whether the courts grow to view the liability of the other golfer on equal footing with the golf course owner in golf cart accidents.

VIII. CONCLUSION

CADDIES ONLY! WALKING AFTER 3:00PM

As the number of people who play golf increase, the number of golf cart accidents will, likewise, increase. For the disabled and physically incapable golfer, the golf cart is appropriate and necessary. But for other golfers, the golf cart is an accident waiting to happen. Why would a golf course owner voluntarily offer or require golf carts to be used only to be faced with exposure to liability for golf cart accidents?

For many golf courses owners and golf course professionals, golf carts are a steady source of income. The cost to purchase or lease golf carts and to maintain a stable of golf carts for golfer use is not minimal. The cost of the average golf cart is \$3,850.²²¹ The cost for a fleet 100 golf carts is \$385,000.²²² The average golf course hires the equivalent of two to five full time, year round, golf course attendants to care for the golf carts.²²³ The hourly wage for these golf course attendants is about \$5.00, excluding tips.²²⁴ Even assuming these golf course attendants work fifty hours per

221. According to Les Persan, who has been a distributor of EZ-Go Golf Carts for over 15 years, the cost of a standard, two person golf cart is \$3,850. However, Textron, the manufacturer of EZ-Go Golf Carts will discount the price of a golf cart when a golf course purchases a fleet of golf carts. According to Mr. Persan, the fleet price for a golf cart is about \$2,800. Interview with Les Persan, August 19, 1997, Fort Lauderdale, Florida.

222. *Id.* The actual fleet cost may actually be only about \$280,000, but for purposes of this article, the higher cost will be used to more dramatically illustrate the golf course proprietor's profit from renting golf carts to golfers.

223. According to J.J. Sehlke, the Director of Golf at the Rolling Hills Hotel and Golf Resort in Fort Lauderdale, Florida, the need for golf cart attendants varies throughout the year. During the peak tourist season, Mr. Sehlke may need eight to ten golf cart attendants to handle the player demand. However, during other parts of the year, he may only use one or two, part time golf cart attendants. On average, Mr. Sehlke agreed that two to five full time golf cart attendants would be enough to handle player demand throughout the year. Interview with J.J. Sehlke, June 16, 1997.

224. Mike Tag is a golf cart attendant at the Oak Tree Country Club in Fort Lauderdale, Florida. Mike rotates his work shifts or work with another attendant to make sure that there is always at least one golf cart attendant available for the players. Mike is a long time employee of the golf course. Assuming Mike works an

week for the entire year,²²⁵ the labor cost to the golf course owner per golf course attendant amounts to about \$16,000.²²⁶ Each golfer pays about \$15.00 to rent a golf cart.²²⁷ If a golf course averages 60,000 rounds of golf per year,²²⁸ the gross income from golf cart rental is about \$900,000. Even after subtracting the cost of 100 golf carts and the cost for five full time golf cart attendants and adding in an additional \$95,000 to purchase twenty-five new golf carts each year, the golf course owner stands to net over \$300,000 per year.²²⁹ With these kinds of numbers, why not take the liability risk when the financial reward is so great.

The golf course owner has another option. Rather than risk that one of the 6,500 golf cart injuries happens to one of his customers, the golf course owner can replace golf carts with pull carts, caddies or just plain walking.²³⁰ By increasing player fees and by setting a required caddy fee, the golf course owner can still make a good profit and reduce injury to golfers.

This is not a radical idea! In 1993, *Golf Digest* began a crusade to promote caddy programs and golfers who walk the golf course.²³¹ This year long series of articles covered topics from the

average of five days per week and ten hours a day, he earns over \$12,000 per year excluding tips. Interview with Mike Tag, August 14, 1997, Fort Lauderdale, Florida.

225. *Id.*

226. *Id.* This figure assumes that the golf course operator not only pays the \$5.00 per hour wage but some employee benefits as well. Therefore, the cost of one full time golf course attendant for the year is approximately \$12,000 wages plus \$4,000 in benefits for a total cost of \$16,000.

227. The golf cart fee for a member golfer at the Oak Tree Country Club in Fort Lauderdale, Florida varies depending on the time of year. During the summer months, basically May through September, the fee per golfer is \$10 for nine holes and \$15 for eighteen holes fo golf. During the "season," the golf cart fee per golfer is \$15 for nine holes and \$20 for eighteen holes of golf. \$15 seems to be a reasonable average fee per golfer for rental of a golf cart.

228. The Rancho Park Golf Course in Los Angeles, California boasts 120,000 rounds (precisely, 122,799 rounds of golf in 1996) on a single course per year. Interview with Mary Keener, staff person, Rancho Park Golf Course, Los Angeles, California, September 30, 1997. By comparison, the Oak Tree Country Club in Fort Lauderdale, Florida averages around 40,000 rounds of golf per year. Interview with Mike Tag, golf cart attendant, Oak Tree Country Club, Fort Lauderdale, Florida, Auust 14, 1997.

229. This net profit figure may vary especially depending on location of the golf course. Many golf courses are not open year round. However, the figures used to calculate the net profit are conservative.

230. See *supra* note 96. Even *GOLF DIGEST*, in its series crusading for the return of caddy programs and walking golfers notes that carts probably cannot be totally replaced by caddies and walking golfers. But, *GOLF DIGEST*, cries out for giving the golfer the option of a caddy or walking, rather than mandating golf carts.

231. See *supra* note 96.

fundamentals of caddying²³² to the blight of golf cart paths²³³ to the golf course owners tax consequences in hiring caddies.²³⁴ But most importantly, the *Golf Digest* series suggests that the golf course owner and golf professional need not suffer an income loss in the process.²³⁵ Although there still remain select golf courses that offer or require caddies,²³⁶ even with the push from the *Golf Digest* series, caddies are not the norm.²³⁷ And despite the health benefits from carrying a lightweight golf bag full of golf clubs,²³⁸ more and more golf courses are limiting the walking golfer.

The complaint about caddies and walking golfers is that they slow down play. They are too slow for the golf course owner because it reduces the number of people who can play golf on a given day and too slow for the other golf cart golfers who must wait behind a walking golfer and a caddy. With the crowds of people playing golf, a round of golf is often tediously slow. Although perceived differently, the walking golfer does not appreciably slow down the pace of play.²³⁹ Yet this investment protecting perception is still the norm among golf course owners in the United States.

232. Guy Yocum, *Inside Stuff For An Outside Job*, GOLF DIGEST, September 1993 at 75 through 80.

233. Ron Whitten, *Cart Before The Course*, GOLF DIGEST, March, 1995 at 120 through 121

234. See Mike Stachura, *Caddies - A Taxing Time*, GOLF DIGEST, April 1997; Chris Millard, *Caddie Crusade - Bag Toters, The Law And The IRS*, GOLF DIGEST, June 1993 at 48.

235. See *supra* note 96.

236. Probably the most renowned caddy program can be found at the Inverness Golf Club. Other well known golf courses with extensive caddy programs include the Medinah Country Club, Hazeltine National Golf Club, Oakland Hills Country Club, Olympia Fields Country Club and the Oak Hill Country Club. Topsy Siderowf, *Caddie Crusade - An Honor Roll Of Caddie Programs*, GOLF DIGEST, November, 1993 at 77.

237. Mike Stachura, *Caddie Crusade - The Caddy: Not Just A Luxury*, GOLF DIGEST, October 1993 at 28.

238. Kathy Kelly, *Golf Is Made For Walking*, GOLF DIGEST, August 1994 at 63 through 65.

239. At the Oak Tree Country Club in Fort Lauderdale, Florida this author, as a golfer, is given an option of using a golf cart or of using a "walker," that is an electric golf cart that follows along behind a walking golfer. As one of the few golf courses in South Florida which permits a golfer to walk at all, the Oak Tree Country Club is the pleasant exception to the rule. In the several rounds of golf the author has played at this golf course using a "walker," not once has a "cart" golfer complained of slow play (even as bad as this author has played). In fact, the use of the walker is many times as fast if not faster then driving a golf cart on the cart paths and carrying clubs back and forth to hit a shot.

Walking golfers, carrying golf clubs or pulling a trolley,²⁴⁰ and caddies are the norm outside the United States. Frankly, the lore of the caddy in places like Scotland, England and Ireland, where golf began, is as rich as the game itself. Despite John Updike's protests,²⁴¹ the caddy is a welcome companion, partner, to most golfers. It is worth it to pay for a caddy who, in response to your question of how you should play the next shot, says that your game is not so bad that you should switch from right-handed to left-handed quite yet!²⁴² To replace this kind of banter with the rough-flattening, noise-creating, air-polluting, exercise-robbing and path-requiring golf cart²⁴³ is disheartening. Perhaps, golf course owners in the United States can learn something from their foreign counterparts. Then, our golf course owners may not only reduce golf cart accidents and their liability, but also not spoil a good walk.²⁴⁴

240. This is the English or Scottish or Irish term for a pull cart.

241. John Updike, *The Trouble With A Caddie*, *GOLF DIGEST*, December 1993 at 134 through 136.

242. See MYLES DUNGAN, *A GOOD WALK SPOILED* (Poolbeg Press Ltd. 1995).

243. See *supra* note 96.

244. Mark Twain is the first to have said that, "golf is a good walk spoiled." From then on many golf writers have used that phrase in their writing. Most notably, JOHN FIENSTEIN, *A GOOD WALK SPOILED* (Little Brown 1995) and MYLES DUNGAN, *A GOOD WALK SPOILED* (Poolbeg Press Ltd., Dublin 1995).