Protections and Liabilities for Golfers

By Alex Chazen

As everyone in the Bay Window this month looks forward to the upcoming Hoag Classic at Newport Beach Country Club, leave it to the lawyer to take the opportunity to investigate the potential liabilities that a golfer undertakes when they step onto the course. Almost anyone who plays, including some of the pros, knows the feeling of hitting a ball off the tee, starting to watch it slice, and then listening to try to determine whether there is the THUMP of hitting a roof, or the CRASH of breaking a window. Similarly, anyone who has ever lived on a golf course knows the sound of an errant ball hitting their roof or windows, and immediately having to check to see whether any actual damage occurred. But, in the eyes of the courts, who is actually responsible for any property damage or (God forbid) personal injury as a result of either a poorly hit or better than expected shot that strikes person or property?

Just over a year ago, Fred Couples struck a patron in the head with an errant tee shot while playing in the Masters Tournament at Augusta National Golf Club in Georgia. It seems that almost every major tournament has one incident per year, as the crowds get larger, and closer to the action. Ultimately, Couples signed a glove, gave it to the spectator, and went on with his round. This has become the common procedure for Tour pros who have this happen to them – sign an autograph, apologize, and move on to the next shot. However, what happens when rather than a Tour pro, it's your regular weekend hacker, and instead of a paying customer whose ticket likely includes a laundry list of releases in fine print, it's another golfer, or someone who just happens to live in a house that overlooks the golf course.

Those with double-digit handicaps in California have no need to fear – the California Supreme Court has ruled time and again that simply being near a golf course should be a warning that there is a potential for something to go wrong. In legal terms, the Court applied the assumption of the risk doctrine. The case was Shin v. Ahn, and involved a golfer being hit in the temple by a golf ball hit by one of his playing partners. Shin v. Ahn (2007) 42 Cal. 4th 482. In this case, the Court found that being hit by a carelessly struck golf ball is an inherent risk of the game. Therefore, the assumption of the risk doctrine would operate as a complete protection to the player who hit the ball from the lawsuit filed by the player who was hit by the ball. The Court reasoned that golf balls, after being hit by a player, often have a mind of their own. A ball that goes astray and strikes another is a risk that all golfers should assume when they play the game. Holding golfers liable for controlling their shots, in the Court's view, only would encourage lawsuits and prevent players from enjoying the game.

If you are anything like me, your next thought might be to wonder whether the law is the same everywhere where you might go to play golf. The California Court, in ruling in the case discussed above did, in fact, analyze whether their ruling would make California stand out from other places in the United States. It found that even ten years ago, cases from Ohio, Pennsylvania, New Jersey, Massachusetts, Texas, and Hawaii all agreed with California's approach. Although other states, like Oregon (look out Bandon Dunes), have abolished traditional assumption of the risk statutes, they still look at the totality of the circumstances, and it would be very much out of the ordinary to find a golfer liable for damage, unless it is shown that the damage was not "part of the game" – for example, if the golfer through a club through a window, or purposefully aimed at the group ahead of them because they were playing too slowly.