

What happens when your hole in one puts a hole in someone instead?

“Fore!” is shouted after a swing, but perhaps “look out!” should be instead. Every year, hundreds of personal and property damages arise in golf courses across the nations, as golf balls and clubs fly this time of year. When liability is generated depends on the specifics of each state’s law. Here in Michigan, the standard is higher than it is in some other states. One must show recklessness, but what does that mean as you step up to the tee?

The Michigan Supreme Court has held that when a risk inherent to a particular activity results in injury, a participant or spectator has no grounds for complaint. Liability will only arise if the defendant was reckless which is indicated when “a participant’s actions exceed the normal bounds of conduct associated with the activity.” Further, there must be proof of a willingness or purposeful indifference to injury. The mere fact that a golf ball, after being struck, does not travel in its intended course does not establish liability. The Supreme Court has also said that each claim must be judged on a case-by-case basis.

As to real property or vehicles adjacent to the golf course, the same standard applies as for personal injury because the owner assumes the risks of errant golf balls if they choose to live or park nearby. A golfer still owes a duty of care for property immediately adjacent to the golf course and known to the golfer to be within the normal range of striking distance, but only if the golfer’s conduct is intentional or reckless. Thus, if a house is 75 yards directly behind the green, and a player uses a driver at 40 yards, this may be considered reckless, but again, it will be decided in Michigan on a case-by-case basis.

The risks involved, however, have to be related to golf, specifically. For example, in the recent case of *Bertin v Mann*, the Michigan Supreme Court held that an injury from a golf cart striking another golfer was not an inherent risk of golf. Foreseeability was again a factor, as was examination of the general rules of golf, to see if the participants departed from rule.

In short, look before you swing!

PRACTICE AREAS

- Insurance Coverage and Defense

ATTORNEYS

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