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INSTANT INSURANCE INSIGHTS™

News from Dean & Fulkerson's
Insurance Coverage & Defense Group

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Read the Latest News You Can Use Articles:

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

When is the golf course an additional insured on a maintenance company's liability policy?

Editor's Note

By Karen Libertiny Ludden

It's October, and a heady time for golf enthusiasts. Many lawyers enjoy golf, but more of us wonder whether that particularly bad swing is going to land someone in a lawsuit.

Alas, the practice of law changes the way you look at the world, even when enjoying the finer things in life.

In our inaugural edition of Instant Insurance Insights, we examine just how bad that swing has to be before liability arises and, from a coverage perspective, when a golf course becomes an insured on the commercial general liability policy of a greenskeeper, landscaper or other contractor.

So take a look at this "News You Can Use" and look for other tips in upcoming issues; just don't expect any golf swing advice.

Stay Safe,
Karen

Karen Libertiny Ludden is the Insurance Coverage and Defense Practice Group leader at Dean & Fulkerson. She has represented insurers and insureds in commercial general liability, commercial auto, property and fraud claims with regard to both coverage and liability for 25 years.

Karen can be reached at
248.273.2162 (dd).

News You Can Use

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

By Robert J. Figa

"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!

Robert J. Figa concentrates his practice on litigation involving coverage disputes in relation to residential and commercial insurance policies and defends agents against a variety of allegations such as failure to advise insureds, as well as assisting agents and brokers in regulatory enforcement proceedings.

When is the golf course an additional insured on a maintenance company's liability policy?

By Sarah J. Brutman

In almost every contract for lawn care or snow removal services, there is a provision requiring the service provider to name the owner of the property as an additional insured, and to defend and indemnify the owner for any personal injury or property damage caused by those services. So, what has to happen for that the service provider's insurer to pick up these obligations? As with all things contractual, it's in the fine print.

The obvious way for an insured to meet its obligations is to ask their insurers to name each of their specific customers as additional insureds on their commercial general liability (CGL) policies. The problem, however, is that this may not be so easy to do because the service provider may be a national company with hundreds of customers, who might often change.

Another option is for an insured to purchase the "Additional Insured – Owners, Lessees or Contractors – Automatic Status when Required in Construction Agreement" endorsement. In order for this to trigger coverage, there must be: 1) a written agreement requiring the service provider to name the owner as an additional insured; 2) operations actually provided by the insured to the owner; and 3) bodily injury or property damage actually caused by the service provider or someone acting on its behalf. If those criteria are all met, the specific name of the customer does not need to be identified in the policy, but instead, is automatically included.

It should be noted that, although the above endorsement references only "Construction Agreements," Michigan courts and federal courts applying Michigan law, have held that the title of an endorsement is not controlling. See *Northland Ins Co v Geisel*, 1997 WL 33353531, *1; *Meridian Sec Ins Co v Church Mut Ins Co,* 2006 WL 1235091, *6 (ED Mich 2006). Moreover, lawn care and snow removal may qualify as "construction" under Michigan law. The Michigan Construction Act defines physical improvement to real property to mean "actual physical change in, or alteration of, real property as a result of labor provided, pursuant to a contract, by a contractor, subcontractor, or laborer which is readily visible and of a kind that would alert a person upon reasonable inspection of the existence of an improvement." MCL 570.1101 *et seq.*

If a lawn care, landscaping or snow removal company is servicing big commercial properties like golf courses, they should take the necessary steps to ensure coverage should there be damage arising from those services.

Sarah J. Brutman is a member of Dean & Fulkerson, P.C.'s Insurance Coverage and Defense Group. She concentrates her practice on representing insurance carriers in complex first and third-party coverage matters.

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