The Physical Educator Vol. 83 • pp. 248–255 • 2026

YOU AND THE LAW

Review of Key Golf Cart Cases 1980-99

Part 2[1]

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Introduction

Golf carts today are a necessity for golf courses. The days of walking the course have almost vanished. With the declining rounds played, golf course operators/owners need more and more of the revenue generated by golf carts. Golf carts come with liability, as will be seen in the review of the cases below. These cases are those that have been appealed, which is about 10% of all cases brought to lower courts for a resolution. The following are case summaries of court records of key golf cart cases related to golf course incidents, 1980-1999:[2]

[1]This is the second of a three-part series reviewing key golf cart cases between 1960 and 2016.

[2]The following articles and book were used as resources to gather the case summaries in this manuscript: Robert D. Lang, A Good Ride Spoiled: Legal Liability and Golf Carts, 23, *Marquette Sports Law Review*, 393; Michael Flynn, Cart 54, Where are you? The Liability of Golf Course Operators for Golf Cart Injuries, 14 *University of Miami Entertainment & Sports Law Review, 127* (1997); and Thomas H. Sawyer (2005), *Golf and The Law: A Practitioner's Guide to the Law and Golf Management,* Carolina Academic Press.

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Utz v. Powell, 288 S.E. 2d 601 (GA. Court of Appeals 1982)

While engaged in a golf game, appellant was struck by a motorized cart that was being operated by appellee. While engaged in a golf game, appellant was struck by a motorized cart that was being operated by appellee. Appellant subsequently caused to be filed an "Employer's First Report of Injury or Occupational Disease" with his employer's workers' compensation carrier. In describing in this report the general circumstances surrounding the incident for which compensation was being sought, appellant wrote: "On Savannah Inn golf course playing golf work related, with Employers factory representative." The workers' compensation carrier denied coverage, apparently on the basis that appellant's injury was not work-related.

Ryan v. Mill River Country Club, 510 A.2d 462 (Conn. App. Ct 1986)

The plaintiff, in this case, was injured when the golf cart she was driving went out of control as she traveled downhill on the cart path. 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. 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. The Court ruled in favor of the defendant.

Shaffner v. City of Riverview, 397 N.W.2d 835, 836 (Mich. Ct. App. 1986)

The plaintiff was a member of a foursome playing golf on the course owned by the City of Riverview. After they finished at the first hole, the foursome, in two golf carts, drove to the second tee. One golfer parked his cart about five feet behind the plaintiff's cart. While the plaintiff was standing behind his cart, the first golfer saw his cart start to roll forward towards the plaintiff. He entered the cart, applied what he believed to be the brake. Unfortunately, he actually hit the accelerator and the cart lunged forward, striking the plaintiff's cart and pinning the plaintiff between the two bumpers. This collision resulted in serious injuries to the plaintiffs. The jury

found both negligence and a breach of implied warranties on the part of the city and awarded damages totaling $163,200. The trial court found no indemnity as a matter of law. The court credited the city with the $46,000 settlement and awarded judgment in the amount of $117,200.

Fears v. McNamara, 574 So.2d 729 (Ala., 1990)

The plaintiff was struck by his own golf cart after the defendant moved the cart. The plaintiff parked the cart with its wheels turned to the right. 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. The evidence indicated that the plaintiff asked the defendant to move the cart, knowing he had left the cart with the wheels turned. The court ruled the defendant not liable for plaintiff's injuries.

Timm v. Indian Springs Recreation Assoc., 589 N.E.2d 988 (Ill. App. Ct. 1992)

The plaintiff was injured when she fell out of a golf cart that was missing its protective handrails. Plaintiff sued the golf course as the owner of the golf cart for failing to warn the plaintiff of the missing hand rail. The court instructed the jury that the golf cart owner did not have a duty to warn of the missing handrail unless the golf cart owner knew or should have known that a golfer might be injured if not warned of the missing handrail. The jury found for the defendant golf cart owner.

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

The plaintiff was injured while playing golf at a municipal golf course when the cart in which he was riding drove into a hole several feet deep. Golf club personnel knew that one other person had been injured at the same location several weeks before the plaintiff's accident and had marked the area around the hole with chalk lines. The golf course took no other steps to protect golfers from this dangerous condition on the course. The plaintiff presented evidence that the chalk lines around the hole were nearly imperceptible at the time he was injured. Although the municipality was exempt by statute for claims of ordinary negligence, which in this case were dismissed

at the trial level, the court held on appeal that the plaintiff's gross negligence claim would be submitted to the jury. Specifically, the court pointed out that the hole in question was located in the rough instead of on the fairways of the golf course and that it should not have been unforeseeable to golf club employees that golfers would be in the vicinity of this hazard. The evidence presented to the district court suggested that reasonable minds could differ as to whether the City employees displayed reckless disregard for a known danger.

Montes v. Hyland Hills Park, 849 P.2d. 852 (Colorado Court of Appeals, Div.1 1992)

\Plaintiff is injured while using a golf cart. Plaintiff alleged that he was injured on August 19, 1989, at a public golf course owned and operated by the district when the steering mechanism of a rented golf cart he was driving malfunctioned, causing the cart to veer into a ditch. Plaintiff further alleged that the malfunction resulted from the district's negligent failure to inspect, maintain, and repair the cart. Here, the alleged injury arose not from a dangerous condition of the surface of the golf course itself but from the alleged negligent maintenance of a golf cart. Thus, we conclude that the cart was not a "facility" within the meaning of § 24-10-106(1)(e) and that sovereign immunity was not waived for an injury caused by the negligent maintenance of a golf cart at a public golf course. Accordingly, the District was immune from liability, and the judgment entered upon the jury verdict cannot stand.

Zurowski v. Parker, Nos. 64907, 65321, 1994 WL 173658 (Ohio Ct. App. 1994)

The defendant was driving a golf cart that left the cart path and hit a tree. The court found that the defendant was using excessive speed while driving downhill and was not applying the brakes in a timely manner. The court held that such conduct was foreseeable and created an unreasonable risk of physical harm to the plaintiff passenger. The plaintiff successfully argued that the presumption of assuming the risk of participating in sports activities does not apply to golf cart accidents. 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.

Montammy Golf Club v. Bruedan Corp., 620 N.Y.S.2d 153, 153 (App. Div. 1994)

Dorothy Koch was riding in a golf cart at Montammy Golf Club in Alpine, New Jersey, when her cart flipped over, injuring her. Koch and her husband sued Montammy and Bruedan Corporation, the company from which Montammy leased golf carts. The carrier for Bruedan disclaimed coverage, requiring the carrier for Montammy to defend. Following the settlement of the personal injury lawsuit, Montammy brought an action seeking indemnification from Bruedan and its carrier for the amounts Montammy paid in settlement and the cost of defense.

Holst v. Countryside Enterprises, Inc., 14 F.3d. 1319 (Tex. Court of Appeals, 5th 1994)

A golfer filed a negligence claim against a golf course for injuries sustained when a golf cart fell on him from an upper level of the club house. The Court determined that the golf cart was an instrumentality that caused the injury and not the entire clubhouse premises. Furthermore, the Court felt that the plaintiff failed to identify the golf cart and thus failed to establish that the operator of the clubhouse had exclusive control and management of the golf cart.

Monroe v. Grider, 884 S.W.2d 811(Tex. App.1994)

Monroe played in a golf scramble at McKinney Country Club. After the scramble was over, Monroe continued to play golf with several friends and Neal. Monroe rode with Neal in Grider's golf cart. At the fourth hole, Neal ran into Monroe as she stepped in front of the golf cart. Monroe fell and fractured her wrist. She also suffered a groin injury. The jury found Neal and Monroe were each 50% negligent in the accident. Monroe testified she relied on Neal's previous collision with Scotty Griffin in Grider's golf cart to support her negligent entrustment claim. Monroe admitted she had no personal knowledge that Neal was an incompetent driver. Pam Simmons testified Neal told her "he wrecked it [Grider's golf cart] or he hit something. I don't remember what he said. He said he rolled it or hit

it or something." Grider testified Neal told him that Neal intentionally bumped Scotty Griffin's golf cart to prevent it from tipping over. Grider testified Neal has driven Grider's golf cart on many occasions without incident. All witnesses testified they had never seen Neal drive a golf cart incompetently. The jury found Monroe and Neal each fifty-percent liable for Monroe's injuries. The trial court entered judgment against Neal on the jury's verdict

McDonald v. Grasso, 632 N.Y.S.2d 240, 240–41 (App. Div. 1995)

The plaintiff was playing golf at River Golf Club when she was hit by a golf cart. The plaintiff was standing behind her cart when a second golf cart stopped on an incline a few feet behind her. The driver of the second golf cart claimed that she brought the cart she was driving to a complete stop, pushed on the pedals to set the hill brake and got off the cart. After 20 seconds, the golf cart "suddenly rolled forward and pinned [the] plaintiff's legs between the two carts. The plaintiff argued that the second golfer was responsible for the accident due to her negligence in failing to properly set the hill brake. The plaintiff also sued the company that owned the golf cart and the golf club based upon the alleged failure of the hill brake to keep the cart from rolling on the incline. Court awarded a summary judgement to defendants.

Am. Golf. Corp. v. Manley, 473 S.E.2d 161, 163 (Ga. Ct. App. 1996)

The plaintiff and his brother were playing golf at the defendant's golf course for the first time. The 15th hole was particularly steep, and its cart path combined the particularly steep grade with a 180 degree hairpin turn. Due to heavy foliage and another curve, the hairpin turn was not visible to a cart driver starting down the hill. The plaintiff's golf cart crashed and tipped over at the hairpin turn. The manager of the golf course testified that management had considered putting in speed bumps to make the path on the [15th] hole less dangerous and had even thought about stationing a ranger there to lead drivers down the hill. However, course management decided not to do so, with the court noting that although the manager did not directly say so, the jury could have inferred from his testimony that the defendant did not want to spend the money because it had

decided to discontinue its operation of the course after its lease ran out. The trial court granted defendant's motion for directed verdict with respect to punitive damages, but allowed plaintiffs' claims for actual damages to go to trial.

DiMura v. City of Albany, 657 N.Y.S.2d 844, 845 (App. Div. 1997)

The plaintiff, after hitting his ball on the fairway at the fifth hole, the plaintiff returned to his golf cart, which was parked on the cart path, in order to drive to his playing partner's ball in the fairway. The golf course that day had a 90-degree rule in effect, which required the golf cart operator to minimize driving on the fairway by remaining on the path adjacent to the fairway until the cart reached a point ninety degrees from the ball, thereby protecting the golf course conditions. He, therefore, turned the steering wheel all the way to the right and accelerated. As he did so, he claimed the golf cart moved with a momentum that surprised him, causing him to lose his balance, fall off the golf cart, and sustain personal injuries. The plaintiff thereafter sued the E-Z-Go Division of Textron, Inc., the golf cart manufacturer, and other parties, alleging negligence, breach of warranty, and strict products liability. Supreme Court dismissed the cause of action alleging breach of warranty and that portion of the products liability claim alleging a manufacturing defect. The court denied the motion with respect to plaintiff's allegations of negligence, as well as design defect and failure to warn as they relate to products liability.

Donnelly v. Club Car, Inc., 724 So. 2d 25, 27 (Ala. Civ. App. 1998)

Donnelly was a passenger in a golf cart manufactured by Club Car. The upper half of the cart's plexiglass windshield was folded down. Apparently as the result of a gust of wind and a failure to secure the clips designed to hold the windshield folded in place, the upper half of the windshield flew up and struck the frame of the golf cart. The contact with the frame shattered the windshield, and a piece of the plexiglass struck Donnelly above the right eye. Expert witnesses for Club Car and Glen Lakes Country Club testified that plexiglass was an appropriate material for the windshield and that the accident would not have occurred had the 'hold down' clips been properly

secured. Blue Dot and Club Car filed motions for a summary judgment on August 23, 1995, and September 19, 1995, respectively. The trial court granted both motions on March 28, 1996, by entry on the case action summary sheet.