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Using Risk Management as a Tool for Accident Prevention in the Resort Golf Area

Abstract
Risk Management can be an effective preventative measure to optimize accident prevention in the resort golf arena. This article explores known risks, identifies other potential areas of risk, and offers solutions that may be adopted by Resort Facilities to minimize risk in the golf sector.

Keywords
Risk Management, Golf
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By Steve Eisenberg

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Introduction

In 1995, after six years as a personal injury lawyer, and three years as a golf professional, this researcher began to explore liability issues in the golf business. In this age of litigation-happy consumers, it had become necessary to face the reality of personal injury liability litigation in the golf arena. This article offers an assessment based on trends that have been present in the industry from 1995 to the present time, and how the modern resort golf facility can offset the risks associated with these trends by adopting a comprehensive risk management plan.

It is suggested that there are four categories within the context of this issue that will help successfully implement such a preventative plan. They are:

A) Identifying Sources of Risk
B) Determining and implementing measures to eliminate or minimize risk
C) Supplementing the plan with various forms of insurance coverage
D) Steps to take to minimize exposure in case of an accident

Categories of risk and measures to eliminate risk

The first and second categories of the preventative plan are inexorably woven together and vitally important to its success. Many facilities neglect to even do a cursory examination of their premises, assuming that insurance will avoid the necessity of this time consuming endeavor. Obviously, without the examination, the cure is never applied. However, such facilities miss the obvious; that accidents themselves make it harder for an entity to remain eligible for insurance at competitive rates. Sources of risk run the gamut of the obvious to the subtle. They can involve golf car paths, golf car defects, negligent golf car operation, bridges, steep grades, golf spike use, errant golf shots, negligence in golf course design, driving range and practice area design and use, or risks involved in teaching the game to patrons, alcohol-related risks, and weather-related risks.

As stated in an article published by Joseph and Diane Devanney (2002), “The best general advice that can be given to operators, managers and owners of golf courses is that the law varies often from state to state and, in any event, any case anywhere will have a specific set of facts that will often "make or break" the eventual outcome. Owners should try as much as possible to anticipate problems in advance rather than simply wait for an issue to arise. “

A facility should engage in a risk assessment on a regular basis, involving not just those hired to do such an assessment, but also staff members working in all areas of a particular golf operation. This should involve an “A to Z” examination, as well as thinking broadly about various contingency situations. One excellent practice that is often utilized is trying to replicate possible situations where incidents could occur. Rather than using the facility in a safe manner, examine what would happen if a patron were to exhibit less than safe behavior. As an example, while car paths are meant to be traveled upon, players often go off the edges of such paths while driving. Are there steep drop-offs on the sides that could contribute to an accident? If there is even a fair chance an accident would occur, roping off such an area or adding fill would be prudent solution to avoid a potential accident. Such conduct may be viewed positively by a jury if a case does go to trial.
Another example regarding golf car paths is the fact that many patrons ride with their feet outside the golf car floor area. This behavior exposes them to danger from protruding rocks or curbs built to contain a golf car. While it would appear that the curb is designed as a safety precaution, litigation has occurred as a result of a curb built too close to the side of a golf car path, which exacerbated driving errors in a way that may lead to foot and leg injuries.

This approach to risk assessment is amplified by Joseph and Dianne Devanney (2002), “It is not enough to just design pleasant and attractive surroundings. In developing the necessary proactive protections against lawsuits, everyone has to be as diligent as possible and try to foresee how the design could lead to accidents.” Other articles also recommend that course owners put out highly visible signs in areas where golf cart users must cross public roadways or make slow turns, etc. “Make sure you have great signage and police it,” he says. “If you see someone violating that rule, stop them and get them out of the cart.”

The attorneys cited also mentioned incidences where golf carts have been struck by automobiles with the parties being severely injured. Such situations can create catastrophic liability exposures for a golf course. “If they have golf cart paths that cross public roadways, they really need to be well-marked-rumble sticks, stop signs. Golf clubs really need to do a good job making that a more defensible situation.”

Safety measure implementation and recent areas of injury

In implementing safety measures regarding car paths, it is best to insure they are properly designed, and constructed using materials that will last based given anticipated climate conditions. The designs should avoid sharp turns and blind spots; warning signs should be specified for any steep gradients. The golf facility must also do continuous inspection of the paths, with course rangers specifically mandated to do such inspection on a daily basis. If dangers are noted, barriers must immediately be placed as appropriate. Ruding bridges should be assessed at the same time as they may be prone to collapse if not properly maintained.

Golf car defects are another area that is ripe with litigation potential. While it is often difficult to assess the legitimacy of complaints in this area, it is quite common for an injured party to claim that the car’s brakes malfunctioned or that there was improper training given to them prior to their use of the car. Regarding this area of potential liability, this researcher interviewed several prominent personal injury attorneys in the golf cart accident area. Also, my own experiences support the contention by McDonald (2005) that “clients obtain releases from people when they sign up for golf carts.” This is a verification that the party acknowledges they are responsible for driving that golf cart and any injuries that may ensue.

There is a need for set training policies in use of a golf car. The attorneys who were interviewed spoke of the “surprising the number of claims from people who have been tossed out of golf carts or were injured when a golf cart overturned.” Another interviewee stated, “You can’t have people out there horseplaying on golf carts.” Personal experience has been that Golf Resort Operations and golf courses in general tend to fail to take the time to show patrons how to use the golf cars prior to operating them. This problem is endemic in the resort facility business as the “laid back-on vacation” atmosphere is perceived as not being conducive to convincing a patron of the need to properly operate a golf car and the dangers inherent in faulty operation. We recommend operators always instructed staff to have the patron demonstrate their skills operating the basic controls before releasing the car to them. Also, facility operators should have warning signs placed on all steep grades that prevent parking on such grades.

The importance of the rental agreement should not be minimized. It should have a “hold harmless” clause in place, indemnification clause and property damage repayment clause. It must be signed by the patron.
Another area of concern in regard to operation is poor maintenance practices tolerated by some resort facilities. Golf car attendants are under paid, under trained and under motivated. If a golf car is exhibiting a problem, and that problem might prevent the employee from leaving on time, it may not get reported. It is incumbent on the facility to make reporting and car line removal procedures as painless as possible. Having a qualified mechanic available is essential to a proper safety program. A daily checklist of the proper operation of a golf car is strongly recommended. All these measures will eventually find their way into the minds of jurors should litigation occur.

The risks from actually playing should present another area of concern to resort golf course operators. Many golf courses exist where it is obvious that someone will eventually get hurt by an errant golf shot. Humorous signage designed to “warn” but those warnings are inappropriate. Golf courses have taken it upon themselves to try to convince a golfer to hit their ball straight and not left or right, but such warnings will not substitute for design or other preventative measures that could be implemented to reduce the likelihood of injury. Landscaping or netting and fencing can be incorporated into the design of the course so as to prevent injury. Litigation involving errant golf shots, where mere landscaping would have avoided the accident, but was not considered serious enough to cure can result in very large awards. One golf course paid $500,000 to a claimant. In another case, the claimant injured himself on a metal spike protruding from the tee area, which acted as a “tee marker.” The risk of injury from using such a device was major, and could have been prevented by using a plastic marker.

Top golf course designers in the world, they will tell you that they have to rethink the design and hit points of golf holes, the landing areas and barrier landscaping, because of the change in the golf ball and the golf club. Homebuilders have been consistently expanding the corridor widths on the advice of counsel, design experts and golf construction experts. At existing golf courses, owners are redesigning many holes including realigning tee boxes and installing barrier landscaping and fencing to accommodate the problem. The main thing with errant golf balls is that if you have an issue, identify it and deal with it.

Another area of concern are negligently designed practice areas where the hitting area faces an area where patrons might be sitting or waiting to play; injuries are inevitable in that environment. A simple net or landscaping can be put in place to minimize injury here. In regard to practice golf ranges, there are many places where the spacing between those using the range is insufficient to prevent one golfer from possibly hitting another with their club.

Changes in the design of golf shoes have contributed to slip and fall accidents. It was not too long ago that the design of “softspikes” was all the rage. They were designed with protection of the surface of the green in mind, not the safety of the golfer. Golf courses were often designed with steep grades, knowing the player’s metal spikes would allow them to traverse the steep terrain. That inherent safety measure changed with the introduction of softspikes. Now, even slight grades that are wet are areas of danger. Wood walking bridges are also an obvious flashpoint of shoe-related accidents. It would be prudent for course owners to evaluate their walkways, slopes and paths to provide greater traction in order to minimize the number of claims.

Severe weather is a concern for most golf course operators. It appears that courses are “damned if you do, damned if you don’t.” Employing lightning detection and weather detection systems seem prudent, but if not used correctly, can lead to catastrophe. Many facilities just tell patrons to vacate when they see storms coming. If you warn your staff of dangerous weather, and not your patrons, you are ripe for a lawsuit. A jury may consider warning systems to be evidence of a caring operator.

Use of alcohol while playing golf contributes to as many problems in the golf sector as it does in any other sector of life. Many states have "dram shop" laws that permit people who are
injured by intoxicated individuals to file lawsuits against the person or company that sold or served the alcohol. This could potentially be devastating for a golf course. Liquor license authorities now are under tremendous pressure, and they may try to pull your license in addition to any liability claim you have from the injured party.

Courses must be diligent about liquor licenses, consumption and the training of staff to identify and deal with customers who are intoxicated or on their way to that condition. The key is to make sure that the operation’s alcohol awareness programs are being implemented and that the training program is being properly implemented. Clubs sometimes let someone who is not familiar with all the regulations be in charge of the beverage area. Many clubs don’t even know if they have a proper permit that allows people to take alcoholic beverages onto the golf course.

The growth in tournaments, special events and banquets presents a special problem in the area of alcohol consumption. During the tournament the many roving golf carts with people out on the course five or six hours on a hot day often drinking large amounts of alcoholic beverages is a problem. In addition, many of these attendees then come back into the clubhouse and drink even more. When they leave the club, they can easily be considerably over the legal limit and pose a hazard on the road. It situation should be a matter of grave concern to an operator.

Liquor liability insurance is very crucial to protect golf courses and private clubs from catastrophic claims resulting from such liquor liability. But the insurance may not cover acts of incompetence on the part of the operator. It is always better to take action to mitigate a problem before that problem occurs. Put a liquor policy in place immediately.

Environmental issues are present at many older golf courses that are not compliant with current environmental laws and regulations. Many golf courses, in the areas where the golf carts and maintenance equipment are being cleaned, allow a drain line to flow into a creek public tributary or stream. Golf courses must remain in compliance with environmental codes and if not, they are being forced to remove underground fuel storage tanks, clean areas of potential spills. An operator must also carefully monitor the use of pesticides, herbicides and other chemicals on the course.

Supplementing your risk management plan with insurance
While safety and training are the most important components of protecting your golf course operation, if something does happen, insurance is important to protect your business. A thorough risk evaluation on a continuing basis can help keep your premiums down and the club insurable. It is recommended to buy a commercial umbrella liability policy providing additional liability limits.

Minimizing exposure in case of an accident
In light of the above, steps must still be taken to minimize liability in the case of an accident that has already occurred. If the following steps are taken, in this researcher’s judgment, liability exposure will be minimized:
1) Insure medical aid is immediately summoned. This cements the feeling of concern for the well-being of the patron which endears the operation to the jury.
2) Make the patron comfortable and provide blankets, without unduly moving the injured party.
3) Get signed statements from all witnesses immediately, as they may leave the area, and don’t forget to record any statements made by the injured party. They may implicate themselves.
4) Obtain statements that the patron made to medical personnel at the scene and at the hospital.
5) Take photographs of the patron, the accident scene, impact marks, any pertinent markings, and if a golf car was involved, of the car itself. Date all photos upon development.

6) If a golf car is involved, pull the car from service and do an immediate inspection by a qualified inspector and obtain the report.

7) If a golf car is involved, pull the service and inspection records to determine if the car was operating properly prior to the accident, as well as to note if the proper inspection and maintenance work was performed.

8) Communicate all information to your insurance agent and company immediately.

9) Do not communicate with other parties concerning the accident. If the patron calls, memorialize the conversation and date.

10) If your insurance company claims you are not covered, hire a personal attorney for the facility. Do this also if the claim exceeds your commercial policy limits.

**Conclusion**

Golf can be dangerous to the player, but most importantly, to the operator as well. Considering our litigious society and the fact that insurance rates have escalated since Sept. 11, it has become more important than ever to implement a sound risk management program to help prevent injuries and property damage, as well as to protect against liability.

Effective safety training and risk management programs are not developed overnight. But like it or not, golf course resort operators must consider the tasks of safety training and risk management as the highest priorities within their operations. Zero accidents, while possibly utopian in outlook, should be the goal for the entire golf course staff.

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