

Business

Long history of links and litigation

Who's liable when ball goes awry?

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The air-conditioned tents supporting this week's U.S. Open at the Merion Golf Club East Course have mostly risen, not on the edge of the fairways or the rough, but in the expansive yards of the homes facing the course's eastern edge, and at nearby Haverford College.

The links at Merion, beloved by generations but a bit cramped by modern standards, are being kept clear for the pros, caddies, camera operators, golf officials, corporate sponsors, and permitted fans.

Coming Monday

Tony McBryan has added reason to cheer golf at Merion: Its pro shop gave his blankets a shot. **Diane Mastrull, Small Business.**

Which is just as well. Because crowding the course makes accidents more likely, and golfers and well-heeled golf fans have a history of litigation, notes Ran-

dy Maniloff, golf fan and insurance lawyer at Philadelphia-based White and Williams L.L.P.

Maniloff samples that litigation, in honor of the U.S. Open, in this month's issue of his newsletter, *Coverage Opinions*, which promises to show, among other things, "what you need to know about getting hit by a golf ball at a professional tournament."

Forty years ago, onetime PGA champion Dow Finsterwald was plowing through the Western Open at Midlothian near Chicago. Just after Arnold Palmer hit from the first tee, Finsterwald sliced the ball off the nearby

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18th and through the adjacent concession stand, where it smashed spectator Alice Duffy's head, blinding and disfiguring her right eye.

Finsterwald made the cut but finished out of the money. Duffy sued the PGA, Finsterwald, and the Western Golf Association.

For 12 years the suit crossed Illinois like a wandering prairie storm. A district judge threw it out. An appeals court reinstated it. A state jury awarded Duffy a half-million dollars. That was cut 10 percent on the assumption it was partly her fault.

In a 1985 decision the state appeals court upheld the jury's award, citing a Midlothian member and pro-am champ who testified that the concession stands were set up "in areas in which balls had regularly landed in the past" and that spectators there "would not be able to see the player hitting the ball, as the shrubbery and hills interfered

with visibility."

According to Maniloff, *Duffy v. Midlothian* thus established that golf is not baseball.

"It's very hard to sue a baseball-stadium owner," Maniloff said in an interview. "Many courts have adopted a special standard for spectators that are hit by a foul ball at a baseball game — the so-called Baseball Rule — making it much more difficult for them to establish negligence on the part of the stadium operator."

Getting hit by a foul or homer "is recognized as an inherent risk of baseball," Maniloff added.

In a local twist, a Philadelphia complaint, by a man hit by a baseball who claimed to be distracted by the Philly Phanatic, was thrown out on an appeal.

But the Illinois justices declined to write an equivalent Golf Rule. Instead, they said golf tournaments were like other "business events," where the owner "has a duty" to find dangers and warn invitees so they can "avoid harm."

Maniloff notes pro golfers who happen to bean a spectator often give the stricken fan a

signed golf glove. "That's a nice gesture. Accept it," he advises. "But make clear it is not a release of any other claims."

For ordinary golfers, hitting another duffer — even if he is in a party of lawyers — might be covered by the offender's homeowners insurance, according to Maniloff. Beyond that, he says, "there is a high burden placed on a person injured by a golf ball seeking to establish liability against the golfer."

In 2001 a New Jersey judge ruled that only "reckless or intentional conduct" could make a golfer liable for damages.

A California court, in 2007, agreed: "Golfers have a limited duty of care to other players, breached only if they intentionally injure them or engage in conduct that is so reckless as to be totally outside the range of the ordinary activity involved in the sport."

Maniloff hopes to join the crowds in Merion. He's scrambling for last-minute tickets. Be careful out there, he says.

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