



PUBLICATIONS

9307

IN THE GOLF SEASON TEEING OFF CAN BE DANGEROUS

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COWAN NEWS*

***By Thompson Rogers,
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The Plaintiff was a fifty-four year old woman who had not played golf for over twenty-five years. She had taken group lessons at the local YMCA and had gone with her friend to the golf course for her first game of golf. Her lessons had not included anything about the rules of golf or about safety matters. Because Mrs. Wright and her friend were novices, it took them some time to play the first three holes. Mr. and Mrs. Sorenson were playing behind them. Because the Plaintiff was such a slow player, she asked Mr. and Mrs. Sorenson whether the Sorensens wanted to "play through." The Plaintiff asked the Sorensens this just after she teed off at the fourth hole. Her offer was gratefully accepted by the Sorensens.

When Mr. Sorenson teed off, the Plaintiff, her

companion and Mrs. Sorenson were about forty-five feet to Mr. Sorenson's side and about ten to twelve feet in front of him. Mr. Sorenson was a very experienced golfer who played two or three times a week.

Before Mr. Sorenson teed off, Mrs. Wright asked Mrs. Sorenson if she was in a safe position. Mrs. Sorenson replied, "I told her I was sure we were in a safe place. My husband is a really good golfer and usually hits the ball straight."

Mr. Sorenson teed off and the ball flew off to his right striking Mrs. Wright on the inside of the lower part of her right leg above the anklebone. As Mrs. Wright expected the golf ball to be going straight down the fairway, she looked ahead of her to follow the flight of the ball. As such, she did not see the golf ball coming toward her and was unable to protect herself.

Mr. Sorenson indicated that he was generally familiar with the *Royal Canadian Golf Association's Rules of Golf* and in particular the rule in section 1 on Etiquette, which states that; "Prior to playing a stroke or making a practice swing, the player should ensure that no one is standing close by or in a position to be hit by the club, the ball or any stones, pebbles, twigs or the like which may be moved by stroke or swing."

The trial judge concluded that Mr. Sorenson's conduct was a proximate cause of the injury suffered by the Plaintiff. The first question to be decided is what is the standard of care set by the law in these circumstances? The standard is an objective one which is measured by reference to the actions of the "reasonable person." Negligence is the failure to use the care a reasonable person would have exercised under the same or similar circumstances. The

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standard is not one of perfection... the law recognizes that even the most careful person may have an accident and that a person may be guilty of an error in judgement without incurring tort liability.

The Court held that Mr. Sorenson ought to have been aware of the risk of striking Mrs. Wright. He was aware of the position of the Plaintiff in an area of potential danger. He was aware that even professional golfers strike errant shots and that people can be hit and injured by them. Although the *Rules of Golf* are not of statutory force, they represent the generally accepted standard of conduct by which the game of golf is played. They are designed not only to regulate the play of the game but also to prevent possible serious injury, given the risks inherent in hitting with great force a

small, hard, ball, the flight of which cannot always be predicted with certainty and, I suspect for most golfers, rarely goes exactly where it is aimed... in my opinion, the shot in question was not so improbable that the risk of its occurring could reasonably be ignored. The potential for serious harm existed.

The Court rejected the proposition that Mrs. Sorenson was also liable given the fact that she had advised the Plaintiff that the Plaintiff was standing in a safe place.

The Court held the Plaintiff to be twenty percent contributorily negligent. Common sense would dictate that she was in a position of potential danger and that there was a risk of being hit if she remained there. It was a risk she ought not reasonably to have ignored and was one

that might have been eliminated by her simply continuing to walk south to a point behind the imaginary line.

The Court assessed general damages at \$8,000. This is a very modest award given the fact that the Plaintiff suffered a significant leg injury which ultimately gave rise to gangrene of some of the soft tissues, necessitating surgery and approximately five days in the hospital.

The case is an example of those issues which will be considered by the Court in dealing with "leisure torts." What starts out as a "fun day" on the golf course may lead to civil liability. As such it is imperative that homeowners' policies be purchased to protect armchair and amateur athletes from the "errors" of their ways. 🌿

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