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A Good Ride Spoiled: Legal Liability and Golf Carts

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A GOOD RIDE SPOILED: LEGAL LIABILITY AND GOLF CARTS

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I. INTRODUCTION

If golf is a "good walk spoiled," as phrased by Mark Twain,[1] one wonders how he would have viewed today's game of golf, where many participants now ride golf carts rather than walk the course.

Golf is such a difficult sport that mere negligence in hitting (or trying to hit) the ball often does not give rise to liability.[2] That being said, negligence in driving a golf cart will certainly sustain a complaint. In *Blake v. Cotter*, the plaintiff and the defendant were playing golf together.[3] "After teeing off, the defendant was driving a golf cart to retrieve the hit balls and the plaintiff was a passenger in the cart."[4] The plaintiff alleged that the defendant drove the cart negligently, which led to the plaintiff falling from the cart and sustaining personal injuries.[5] The defendant moved to strike the complaint.[6] In its decision, the court distinguished those cases that occur in golf from an errant golf shot from those where a defendant drives a golf cart in a negligent manner, causing personal injury and, therefore, sustained the complaint.[7]

It does not take a nuclear scientist to know that golf is one frustrating sport. Shanks, hooks, hitting it fat, hitting it thin, hitting balls in sand traps, leaving balls in sand traps, skulling balls out of sand traps, miss-hits, three-putts—all of this and more await golfers each time they tee up.

There is, however, an oasis, a respite, during each round: driving around a golf course, in a golf cart. You will not be in the water or in the sand, and

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1. Allan A. Michie, *Golf's Own Home Town*, SATURDAY EVENING POST, Aug. 28, 1948, at 33.

2. *See* Robert D. Lang, *Lawsuits on the Links: Golfers Must Exercise Ordinary Care to Avoid Slices, Shanks and Hooks*, N.Y. ST. B.A. J., July–Aug. 2000, at 10, 14.

3. Blake v. Cotter, No. CV010074912S, 2001 Conn. Super. LEXIS 3500, at *1 (Dec. 11, 2001).

4. *Id.*

5. *Id.*

6. *Id.*

7. *Id.* at *6–8.

there is a place to keep a sweater, a coat, and a cold (or hot) drink, although not necessarily an adult beverage. If it is stifling, you can create a breeze while driving the golf cart and head to the shade in the area until it is your turn to hit. There is also an opportunity for easy conversation if there is a second person in the golf cart, even if it is only to bemoan the fates that have brought your ball to rest in the rough, the water, the sand, behind a tree, or in the wrong fairway.

Yet, here too, there is danger and risk of serious personal injuries, as accidents involving golf carts are frequent and, given the speed of the vehicles, which have no seat restraints and little safety protection, can give rise to serious and painful injuries. It is only a short step from the golf course to the courts when this type of litigation is concerned. The array of potential defendants includes the driver of vehicles, the manufacturers of the golf carts, those responsible for maintaining the golf carts, and the owners of the golf courses.

For any number of reasons, golf has become one of the most popular recreational sports and activities. As the amount of players at all levels of ability has increased, so have injuries on the golf course. Not all injuries from golf come from golf balls and golf clubs. The number of golf carts in use throughout the United States is staggering.[8]

Although golf is an old and honored sport, dating back hundreds of years, golf carts themselves were not built until the early 1940s.[9] By the 1970s, golf carts had become "the most popular way for golfers to navigate golf courses[,]"[10] especially being favored by those who prefer not to pull golf clubs over long and hilly terrains.

In addition, golf carts now offer convenient and speedy travel in a variety of venues. They are now routinely used at sporting events, airports, hospitals, parks, college campuses, businesses, and military bases. In many retirement and gated communities, golf carts have become the primary means of transportation.

One would think that golf carts should be extremely safe. Typically, they are used only on smooth paved paths. They are hard to tip and are weighted down with heavy engines and batteries, and most have accelerated governors that do not permit vehicles to exceed speeds of fifteen miles per hour. However, because golf carts do not have seatbelts, many accidents involving golf carts involve drivers and passengers being ejected or falling from the

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8. *See* Michael Flynn, *Cart 54, Where Are You? The Liability of Golf Course Operators for Golf Cart Injuries*, 14 U. MIAMI ENT. & SPORTS L. REV. 127, 127 (1997).

9. *Id.*

10. *Id.*

carts. Golf carts can tilt over, and passengers or drivers, with their legs extended outside the vehicle, can be injured when the cart is driven too close to another object (or golf cart).

A recent study published in the *American Journal of Preventive Medicine* demonstrates a marked increase in golf cart-related injuries.[11] The National Electronic Injury Surveillance System database was used to examine all cases of non-fatal golf cart-related injuries treated in U.S. emergency rooms from 1990–2006.[12] An estimated 147,696 injuries involving individuals as young as 2 months old to 96 years old were treated in emergency rooms in the United States for golf cart-related injuries during that period.[13] Injuries to children below the age of 17 made up 31.2% of the cases, and hospitalization was required in 7.8% of the incidents.[14] Falling from a golf cart (38.3%) was the most common cause of golf cart-related injuries.[15] The most frequently reported location of accidents (over 70.3%) occurred at sports facilities, 15.2% occurred on streets or public property, and 14.5% occurred around a home or farm.[16] Significantly, the number of golf cart-related injuries increase steadily each year, a whopping increase of 132.3% over the 17-year study.[17]

II. LEGAL LIABILITY AS SEEN THROUGH CASE LAW

To be sure, not all claims involving golf carts take place on or near golf courses. Earlier this year, an eighteen-year-old New York woman was sentenced to prison after acknowledging fault for the death of a friend in a golf cart accident, pleading "guilty . . . to criminally negligent homicide and driving with her ability impaired by alcohol and drugs."[18] Cortney Greene was driving a golf cart on a rural road when it was struck by another vehicle, and she and her passenger, Zachary Rusin, were thrown from the golf cart.[19] Rusin died as a result of the injuries sustained.[20]

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11. Daniel S. Watson et al., *Golf Cart-Related Injuries in the U.S.*, AM. J. PREVENTIVE MED., July 2008, at 55, 56.

12. *Id.*

13. *Id.*

14. *Id.* at 56–57.

15. *Id.* at 57.

16. *Id.*

17. *Id.* at 56.

18. Associated Press, *Western NY Woman Admits Guilt in Deadly Cart Crash*, THE-LEADER.COM (June 11, 2012), http://www.the-leader.com/newsnow/x1267875001/Western-NY-woman-admits-guilt-in-deadly-cart-crash.

19. *Id.*

20. *Id.*

In August 2011, an eight-year-old boy died after an accident in Oswego County in New York.[21] The young boy, Cole Dolbear, fell off the rear of a golf cart while riding around with his best friend on private property; he died from his injuries.[22] The friend was driving the golf cart, did not notice that Dolbear had fallen off, and accidentally backed the golf cart over him.[23]

In *DePerno v. Hans*, the eight-year-old defendant drove a golf cart that crashed into his aunt, who was washing the car at the time of the accident.[24] The defendant had been using his grandfather's golf cart to bring supplies out to an area where family members were playing paintball.[25] The plaintiff sued the infant defendant, his father, and his grandfather and claimed that the adults entrusted a dangerous instrument, namely the golf cart, to a minor.[26] The infant defendant was not deposed and claimed that he did not remember anything.[27] However, he allegedly told his father that he had been "following a cousin who had suggested that they 'go for a ride'" and that he was unable to turn the golf cart quickly enough to avoid the accident.[28] The defendant's father and grandfather moved for summary judgment, and the plaintiff cross-moved for summary judgment on the issue of the infant's negligence.[29]

All the motions were denied by Judge Rumsey of the Cortland County Supreme Court.[30] The court found that a full-sized golf cart, especially when placed at the hands of an eight-year-old child, could be found to be a "dangerous instrument."[31] After reviewing applicable case law, the court found that

> [A] full-sized golf cart . . . , capable of attaining sufficient speed to cause substantial damage to people and property in its path, and designed to be operated by an adult—has more in common with an All-Terrain Vehicle (ATV), boat, or motorized bicycle, all of which have been found to be potentially dangerous in the hands of minors, than with a hot

21. Chris Shepherd, *Police: Eight-Year-Old Boy Killed in Golf Cart Accident*, CNYCENTRAL.COM (Aug. 12, 2011), http://www.cnycentral.com/news/money/story.aspx?id=651045#.UQcsJUI3QfN.

22. *Id.*

23. *Id.*

24. DePerno v. Hans, No. 39799, 2007 WL 4786210, at *1 (N.Y. Sup. Ct. Nov. 20, 2007).

25. *Id.*

26. *Id.*

27. *Id.*

28. *Id.*

29. *Id.*

30. *Id.* at *3.

31. *Id.* at *2.

pizza or a bicycle.[32]

On the issue of whether the parents and grandparents were liable for negligent supervision, the court found that their ability to control the infant's use of the golf cart was a jury question.[33]

When a golf cart is being driven in the dark, without a headlight on, this can be taken as evidence of negligence in contributing substantially to an accident where the golf cart is operated as such.[34]

Those who sell, manufacture, or service golf carts may be liable under theories of strict products liability, negligence, and warranty.

Among others, the theories of liability include strict products liability; breach of warranty; and negligence in suits against the driver of the golf cart, the manufacturer of the golf cart, the lessor of the golf cart, the company responsible for servicing and upkeep of the golf carts, and the owner of the golf course where the accident took place. Some of the more common claims arise as a result of the driver's alleged negligence in driving too fast, turning too sharply, driving inattentively, and driving up or down steep slopes and golf paths. Those injured in golf cart accidents may look to the golf cart driver's automobile liability policy and homeowner's insurance policy as pockets for the recovery of damages. Likewise, injured plaintiffs will seek to recover from the liability insurance policy of the golf course owners or operators.[35]

In *Montammy Golf Club v. Bruedan Corp.*, Dorothy Koch was riding in a golf cart at Montammy Golf Club in Alpine, New Jersey, when her cart flipped over, injuring her.[36] Koch and her husband sued Montammy and Bruedan Corporation, the company from which Montammy leased golf carts.[37] The carrier for Bruedan disclaimed coverage, requiring the carrier for Montammy to defend.[38]

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.[39] The lower court found that the plaintiffs were not entitled to indemnification.[40] The

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32. *Id.* (internal citations omitted).

33. *Id.*

34. Shessel v. Murphy, 920 F.2d 784, 787 (11th Cir. 1991).

35. Louis J. DeVoto, *Injury on the Golf Course: Regardless of Your Handicap, Escaping Liability Is Par for the Course*, 24 U. TOL. L. REV. 859, 877 (1993).

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

37. *Id.*

38. *Id.*

39. *Id.*

40. *Id.* at 154.

appellate division affirmed.[41] The appellate division found that the face sheet of Bruedan's insurer provided for coverage for leased golf carts and that "the declaration page identifie[d] the hazard insured against as 'golfmobiles.'"[42] However, the sole allegation of negligence in the underlying personal injury complaint was that Montammy had "negligently and carelessly maintained the cart path along the [eighteenth] hole and the area adjacent thereto in a dangerous, hazardous and unsafe condition."[43] Accordingly, the appellate division held that since the "allegation relate[d] to premises liability and not to the operation or maintenance of a golf cart, the risk[s] covered under the policy" were not involved, and therefore, the insurer had no duty to defend.[44] Similarly, because Montammy was not covered by Bruedan's policy in this situation, there was no obligation that the carrier indemnify Montammy.[45]

Whether the insurance coverage provided for the company that leases or sells golf carts is triggered will depend upon the allegations in the underlying personal injury suit brought by the injured golfer or passenger.

Children, in particular, may cause injuries in golf carts as well as be injured. Very often, parents take along young children who, although not yet ready to play golf, can "experience" the golf course and play while riding in the golf cart. As opposed to bikes and skateboards, children do not wear helmets when driving golf carts, which have no doors. Since the child may not be playing golf, some will allow the child to have his or her first driving experience with a golf cart or to help drive a golf cart, resulting in accidents.

In *MacDonald v. B.M.D. Golf Associates, Inc.*, the plaintiff was injured while riding in a golf cart at Indian Mound Golf Club.[46] The plaintiff's adolescent nephew was driving the golf cart, and when approaching a fork in the path, they accidentally went to the right when they were supposed to go to the left.[47] When his nephew "realized the mistake, he attempted to turn back to the left, causing the cart to overturn."[48] As the plaintiff "jumped out of the cart, the roof of the cart struck and injured his ankle. Within minutes of the accident, John Murphy, a member of the club, arrived at the scene and saw [the plaintiff] injured on the ground . . . ."[49] His nephew was nearby,

41. *Id.*
42. *Id.*
43. *Id.*
44. *Id.*
45. *Id.*
46. MacDonald v. B.M.D. Golf Assocs., Inc., 813 A.2d 488, 490 (N.H. 2002).
47. *Id.*
48. *Id.*
49. *Id.*

trembling.[50] The member asked the nephew "if he was okay, and a few seconds later he responded, 'I wasn't supposed to be driving.'"[51]

Prior to trial, the plaintiff "filed a motion *in limine* to exclude testimony from Murphy about [the nephew's] statement, claiming that the statement was inadmissible hearsay."[52] The trial court disagreed and held that the statement was an excited utterance and, therefore, admissible.[53] On appeal, decision on this point was affirmed; the court pointed out that the statement was made within minutes of the accident, and as evidenced by his trembling, the nephew was still upset from being involved in the accident.[54] Although the nephew gave his comment in response to a question, his additional comment that he should not have been driving the golf cart forced the conclusion that this statement was spontaneous rather than merely the response to a question.[55]

Golfers have been held liable in suits for personal injury solely as a result of where they parked their golf cart. In *Haeg v. Geiger*, the accident occurred at Chomonix Golf Course.[56] At the third tee, a golfer, Slater, shanked his first shot and decided to take a mulligan.[57] The plaintiff and the defendant were in the same golf cart and were playing directly behind the struggling golfer.[58] Just as the golfer was about to hit his mulligan, the defendant stopped the golf cart in front of the tee box, at about a forty-five to fifty degree angle from the tee.[59] The golfer's "second shot angled sharply[,] . . . hit the roof of his own golf cart that was parked nearby[,]" ricocheted off his golf cart, and struck the plaintiff in the left eye.[60] The accident caused the plaintiff to lose her eye.[61] The defendant's motion for summary judgment was granted by the district court but was reversed on appeal.[62] The appellate court held that the defendant had a duty to operate the golf cart with reasonable care and that there were material issues of fact as to whether the defendant should have parked the golf cart in front of the tee box.[63] The court held that:

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50. *Id.*
51. *Id.*
52. *Id.*
53. *Id.*
54. *Id.* at 491.
55. *Id.*
56. Haeg v. Geiger, No. A06-1840, 2007 WL 2472545, at *2 (Minn. Ct. App. Sept. 4, 2007).
57. *Id.*
58. *Id.*
59. *Id.*
60. *Id.* at *3.
61. *Id.*
62. *Id.* at *4, *13.
63. *Id.* at *8–9, *13.

> Positioning the golf cart at a 45- to 50-degree angle in front of the tee box—especially given respondent's knowledge that Slater was hitting a second shot from that tee—created the danger, not any additional act by appellant. [It] therefore conclude[d] that respondent owed appellants a duty of reasonable care not to operate the golf cart in a negligent manner.[64]

Injuries on the golf course can take place in many locations. Recently, in June of 2012, while Tiger Woods was playing at the AT&T National Golf Tournament at Congressional, a volunteer was severely injured in a golf cart accident.[65] The injured individual was driving in a golf cart near the tee box at the seventh hole "when he struck a nylon rope that [sic] separating the spectators from the course."[66] Arteries on both sides of his neck were cut, causing severe injury with profuse bleeding.[67]

There are times when an accident involving golf carts can result from the golf course rather than the cart itself or the driver.[68] In *American Golf Corp. v. Manley*, plaintiff "and his brother were playing golf at [the] defendant's golf course for the first time."[69] The fifteenth hole was "particularly steep," and its cart path "combined the particularly steep grade with a 180 degree hairpin turn."[70] "[D]ue to heavy foliage and another curve, the hairpin turn was not visible to a cart driver starting down the hill."[71] The plaintiff's golf "cart crashed and tipped over at the hairpin turn."[72] The manager of the golf course testified "that management had considered putting in speed bumps to make the path on the [fifteenth] hole less dangerous and had even thought about stationing a ranger there to lead drivers down the hill."[73] 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

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64. *Id.* at *10.

65. *Man Suffers Life Threatening Injuries in Golf Cart Accident at Tiger Woods' AT&T National Golf Tournament*, CBS DC (June 29, 2012), http://washington.cbslocal.com/2012/06/29/man-suffers-life-threatening-injuries-in-golf-cart-accident-at-tiger-woods-att-national-golf-tournament.

66. *Id.*

67. *Id.*

68. *See* Karen M. Vieira, Comment, *"Fore!" May Be Just Par for the Course*, 4 SETON HALL J. SPORT L. 181, 193 (1994).

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

70. *Id.*

71. *Id.*

72. *Id.*

73. *Id.*

decided to discontinue its operation of the course after its lease ran out."[74]

The plaintiff also "presented the testimony of two of the other golfers who crashed at the same turn[.]"[75] In addition, the plaintiff submitted the testimony of a "golf course architect hired by [the] defendant to consult about a different problem the year before [the] plaintiff's accident" but who, when he saw the fifteenth hole, "told [the] defendant's representative, 'Someone could get killed on this cart path,' and the representative responded, 'Yeah, we know. We've had some problems here.'"[76] The court granted judgment for the plaintiff.[77]

In those instances where a golf cart accident involves accidents on steep inclines or winding paths, course owners may also be named as defendants on a negligence theory premise due to the golf course owner's duty to maintain golf courses in a reasonably safe condition.[78] Discovery in those cases will zero in on prior similar incidents and the failure of the golf course owner or operator to warn golfers of the dangers.

In *Ritenauer v. Lorain Country Club, Ltd.*, the plaintiff was injured when the golf cart he was riding in slid down a hill and spun in circles, causing the plaintiff to fall out of the cart and to injure his shoulder.[79] The spinout was due to wet grass.[80] The plaintiff sued the golf club, which moved for summary judgment to dismiss the complaint.[81] In granting the motion to dismiss, which was affirmed on appeal,[82] the court noted that that plaintiff admitted that, when "playing the first twelve holes of the course, he noticed that the grass was wet from watering[,]" and he stated, "[T]hey were just watering the heck out of the course."[83] The accident occurred after the plaintiff had teed off on the thirteenth hole and he and his playing partner's balls went over a hill in the fairway.[84] The plaintiff testified that "they drove to the top of the hill and located the balls on the other side at the bottom" when

74. *Id.*

75. *Id.*

76. *Id.*

77. *Id.* at 165.

78. *See generally* Michael Flynn, *The Sign Said, "Beware of Duffers" – The Liability of Golf Course Operators for Failing to Post Warning Signs*, 12 SETON HALL J. SPORT L. 1 (2002).

79. Ritenauer v. Lorain Country Club, Ltd., No. 01CA007811, 2001 WL 1044082, at *6 (Ohio Ct. App. Sept. 12, 2001).

80. *Id.*

81. *Id.*

82. *Id.* at *8.

83. *Id.* at *5.

84. *Id.* at *6.

the golf cart spun out of control.[85] The court found that wet grass on the hill was an "open and obvious danger" and that the plaintiff's "own deposition testimony indicate[d] that he observed that the grass on the golf course was wet from watering."[86]

In *Gruhin v. City of Overland Park*, 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."[87] The golf course took "no other steps to protect golfers from this dangerous condition on the course."[88] The plaintiff presented evidence "that the chalk lines around the hole were nearly imperceptible at the time he was injured."[89] 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.[90] 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 "[i]t 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 suggest[ed] that reasonable minds could differ as to whether the City employees displayed reckless disregard for a known danger."[91]

In *Poelker v. Swan Lake Golf Corp.*, the "plaintiff was a passenger in a golf cart which was making a turn on a golf course when it tipped over onto him[,]" causing personal injuries.[92] The plaintiff then filed suit against the owner of the golf course, arguing that there were "dangerous or defective conditions in the accident area and in the cart, about which the defendant failed to warn him."[93] The golf course owner moved for summary judgment but was denied by Judge Gazzillo of the Suffolk County Supreme Court.[94] On appeal, the court reversed, granting summary judgment dismissing the

85. *Id.*
86. *Id.* at *7.
87. Gruhin v. City of Overland Park, 836 P.2d 1222, 1223 (Kan. Ct. App. 1992).
88. *Id.* at 1225.
89. *Id.* at 1225–26.
90. *Id.*
91. *Id.*
92. Poelker v. Swan Lake Golf Corp., 897 N.Y.S.2d 174, 175 (App. Div. 2010).
93. *Id.*
94. *Id.*

complaint.[95] The court found that the defendant had met its burden of establishing that there was no dangerous or defective condition by "tender[ing] photographs of the accident area which showed no defective or dangerous condition."[96] Further, the plaintiff "stated at his deposition that he was unable to identify what caused the cart to tip over, and failed to identify any dangerous or defective condition in the accident area."[97] In addition, the defendant offered evidence that, following the incident, "the seller of the cart performed an inspection of the cart at its request and found it to be fully operational and safe to drive."[98] Although the plaintiff offered his own expert affidavit "attributing the accident to 'extreme weight differences' between the driver of the cart and the plaintiff," an alleged failure to warn, and the absence of a "safety factor" in the cart, a unanimous court found that this affidavit was "speculative and conclusory and, therefore, insufficient to raise a triable issue of fact."[99]

In most golf cart accident cases, the comparative negligence of plaintiff will often be raised where the plaintiff either operated the golf cart or had an opportunity to avoid the incident.

One scenario for accidents is when the passenger decides to drive the golf cart without moving over to the driver's side. In these circumstances, the person operating the golf cart is seated off-center in the vehicle, is unwilling or unable to slide over and move into the driver's seat, and is inattentive and not focused on driving the golf cart.

Critical to the case for the plaintiff is identifying the specific golf cart in question that was involved in the incident. In *Massey v. Brueden Corp.*, the plaintiff was at "the Yale University Golf Course as a corporate sponsor for a charity event. She was provided a golf cart to operate on the course[,]" and while driving the golf cart between the ninth and tenth greens, "she applied the brakes of the vehicle but they failed to work[,] which caused the cart to leave the travel path."[100] In an effort "to avoid going over a steep elevation change, the cart struck a tree head[-]on causing the plaintiff injury."[101] The plaintiff thereafter sued Textron, Inc., doing business as E-Z-Go, the owner and lessor

95. *Id.*

96. *Id.*

97. *Id.* (citations omitted).

98. *Id.*

99. *Id.* (citations omitted).

100. Massey v. Brueden Corp., No. CV030479151S, 2005 WL 2082987, at *1 (Conn. Super. Ct. Aug. 9, 2005).

101. *Id.*

of the golf carts used by Yale University at its golf course.[102] In granting the defendant's motion for summary judgment, the court pointed out that the plaintiff could not and had not identified the cart involved in the accident.[103] The court also noted that "[t]here [was] no evidence presented beyond the failure of the brakes to engage that the failure was due to the negligence of Textron in performing its maintenance contract."[104] Further, no evidence was introduced by experts "that industry standards required the carts be inspected periodically or that they be equipped with a certain type of brakes."[105] Because the subject cart was not identified, and therefore not made available for expert examination, "it [could not] be said that failure to make periodic inspections or supply a certain type of brake in fact caused the subject cart to be in such a defective condition that its brakes did not work."[106]

In most cases involving golf cart injuries, expert testimony will be critical to proving the case and failure to have supporting expert testimony could lend the case to dismissal on summary judgment.

In *Donnelly v. Club Car, Inc.*,

> 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 [the plaintiff] above the right eye.[107]

The plaintiff thereafter sued Club Car, who manufactured the golf cart; Blue Dot, who manufactured the windshield; and Glen Lakes Country Club, whose employees maintained the golf cart.[108]

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."[109] The complaint was dismissed as against Club Car and Blue Dot on summary judgment, and the appellate court specifically noted that that

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102. *Id.*
103. *Id.* at *10.
104. *Id.* at *11.
105. *Id.* at *21.
106. *Id.* at *22.
107. Donnelly v. Club Car, Inc., 724 So. 2d 25, 27 (Ala. Civ. App. 1998).
108. *Id.* at 26–27.
109. *Id.* at 27.

plaintiff failed to present any contrary expert evidence raising a genuine issue of material fact about whether the construction and composition of the windshield were defective.[110]

When a plaintiff files suit to recover for personal injuries due to an alleged defective golf cart, as is generally the rule in any litigation, it is prudent to sue all potential parties. It is also important that any engineering expert needed for the defense examine the subject golf cart as soon as practicable. In *Tidemann v. Schiff, Hardin & Waite*, the plaintiff "was severely injured . . . when a golf cart in which she was sitting unexpectedly accelerated and crashed through a garage door. The golf cart had been manufactured by Club Car, Inc. and reconditioned by Nadler Golf Car Sales, Inc."[111] The plaintiff retained counsel "to represent her in a product liability suit to recover damages for the injuries she suffered in the accident[,]" and suit was brought against Nadler.[112] After the plaintiff lost her case at trial, she then sued her attorneys for malpractice for failing to name Club Car as a defendant.[113] The plaintiff claimed that her attorneys "told her they did not name Club Car as a defendant because only Nadler could be held liable since it had reconditioned the golf cart."[114] Specifically, the plaintiff alleged that she had a strict product liability claim against Club Car.[115]

The accident occurred in 1989,[116] and the lawsuit was filed against Nadler in 1991.[117] The engineering expert retained by the law firm did not examine the golf cart until 1993.[118] By 1993, when the law firm did hire an expert, the applicable statute of limitations barred a strict liability claim against Club Car.[119] The defendant's motion for summary judgment was denied.[120]

In *Sujoy v. Patel*, the plaintiff was injured in a golf outing organized by Deutsche Bank for its corporate tax department at a golf course operated by American Golf Corporation (AGC) at the South Shore Country Club.[121]

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110. *Id.* at 28.

111. Tidemann v. Schiff, Hardin & Waite, No. 03 C 988, 2005 WL 351772, at *1–2 (N.D. Ill. Feb. 14, 2005).

112. *Id.* at *2.

113. *Id.*

114. *Id.* at *4.

115. *Id.* at *4, *6.

116. *Id.* at *1.

117. *Id.* at *4.

118. *Id.*

119. *Id.* at *6.

120. *Id.* at *22.

121. Sujoy v. Patel, No. 115917/2006, 2011 N.Y. Misc. LEXIS 2672, at *1–2 (Sup. Ct. May 31, 2011).

During the course of the outing, the plaintiff was injured when defendant Patel, who was also enjoying the outing, crashed into him with a golf cart.[122]

At his deposition, the plaintiff testified that, "[a]fter teeing off while facing the back of his golf cart to return his golf club[, he] heard some sort of whizzing sound similar to the one of a golf cart approaching."[123] The plaintiff turned and saw that Patel's cart was barreling towards him.[124] The plaintiff's "right leg got pinned between the rear of his golf cart and the front bumper of Patel's cart."[125] After the accident, Patel called the plaintiff and apologized for the incident.[126] Patel testified that his golf cart was moving at a speed less than two or three miles per hour, but he admitted to apologizing to the plaintiff and told the police that the incident was an accident.[127]

One problem with golf outings is that inexperienced golfers sometimes take part without necessarily having knowledge of golf. Here, the defendant testified that he had never played golf prior to the outing.[128]

At his deposition, the general manager of South Shore Country Club testified that the incident was not the result of any failure in the golf cart's mechanics, and the case record included the written instructions located on the dashboard of the cart in the form of the safety and operation instructions placard.[129]

AGC moved for summary judgment dismissing the complaint, "arguing that Patel's actions [were] the sole proximate cause of the accident" and, in particular, "rel[ying] on Patel's testimony in which he admitted his responsibility for the accident when he put his foot on the accelerator instead of the brake."[130] AGC also argued that "the risk of injury resulting from the improper use of golf carts on a fairway is inherent in and arises out of the nature of playing and participating in a golf game."[131] The plaintiff opposed the motion, stating that "being hit by a golf cart . . . , as opposed to being hit by a golf ball, is [hardly] incidental to the golf game."[132] The plaintiff

> [A]lso argue[d] that AGC's failure to properly warn and

122. *Id.* at *1.
123. *Id.* at *2.
124. *Id.*
125. *Id.*
126. *Id.*
127. *Id.* at *3–4.
128. *Id.* at *4.
129. *Id.* at *5–6.
130. *Id.* at *7.
131. *Id.* at *7–8.
132. *Id.* at *8.

> instruct Patel, a first time golfer, on how to operate a golf cart raise[d] a triable issue of fact as to the proximate cause of [his] injuries. With respect to the instruction placard . . . [the plaintiff] argue[d] that it [was] insufficient since it fail[ed] to warn that the brake and the accelerator pedals were close together and easy to mistake one for the other.[133]

Judge Madden granted the motion for summary judgment, finding that AGC did not breach any duty owed to the plaintiff and that the warning and operating instructions located on the dashboard of the golf cart were sufficient.[134] In addition, mechanics inspecting the golf cart in question after the accident did not find any mechanical problems, and the evidence pointed to the incident having been caused by Patel accidentally stepping on the accelerator rather than the brake.[135] The court found that there was no triable issue of fact as to whether there was a defect in the cart, in the design of the vehicle, or in the placement of the accelerator and brake.[136] In particular, Judge Madden found that the plaintiff had not offered any expert testimony in support of his design or manufacturing defect claims.[137] The court also found that there was no evidence to support the creative argument that a first-time golfer should receive additional instructions and advice before operating a golf cart.[138]

Many golfers are reluctant to admit to making wrong turns while driving golf carts, but that can happen, especially on courses with which they are not familiar. Their efforts to find their way back to the proper path by making U-turns and sometimes leaving the road can cause accidents. In *Dashiell v. Keauhou-Kona Co.*, the plaintiff, while visiting Hawaii, was with her husband on the Keauhou Golf Course on the Island of Hawaii.[139] After nine holes of golf and lunch, the couple decided to rejoin some friends on the tenth tee, and the plaintiff drove the cart that way.[140] However, she made a wrong turn and "headed back toward the tenth tee along a maintenance road. As the golf cart went down an incline, [the plaintiff] lost control [of the cart], failed to make the tenth tee turn-off, sped into a parking area and collided with a truck[,]

133. *Id.*
134. *Id.* at *10, *12.
135. *Id.* at *10–11.
136. *Id.* at *11.
137. *Id.*
138. *Id.* at *12.
139. Dashiell v. Keauhou-Kona Co., 487 F.2d 957, 958 (9th Cir. 1973).
140. *Id.*

which was backing out of the area."[141] The plaintiff sued the golf course as well as the manufacturer of the golf cart.[142] The jury found that, although "the golf cart had a defect in the steering mechanism," the plaintiff assumed that risk by continuing to use the golf cart.[143] However, it was decided that the assumption of that risk was not the proximate cause of the accident.[144] Rather, the jury found, and the appellate court affirmed, that the golf course was negligent in its failure to adequately warn of the dangers of steep inclines; this negligence was a proximate cause of the accident.[145]

In *Pappas v. Cherry Creek, Inc.*, the "plaintiff was a passenger in a golf cart operated by his friend and golfing partner" while playing at the Cherry Creek Golf Course in Suffolk County.[146] While "negotiating a U-turn on a path between the sixth green and the seventh tee[,]" the cart tipped over, causing the plaintiff to sustain personal injuries.[147] He sued the operator of the golf cart (his friend and golfing partner—nice) and the owners of the golf course.[148] The defendants moved for summary judgment.[149] Judge Brandveen of the Nassau County Supreme Court granted the golf course's motion for summary judgment and denied the individual defendant's motion.[150]

On appeal, the court found that "it [was] not necessary to consider the sufficiency of the papers submitted in opposition to the [individual defendant's] motion" for summary judgment since the evidence submitted in support of his motion "failed to eliminate all triable issues of fact as to whether the accident was proximately caused by his operation of the cart at an excessive speed . . . " shortly prior to the occurrence.[151] The golf course's motion for summary judgment was found to have been properly granted, notwithstanding the affidavit of plaintiff's expert.[152] Specifically, the court found that "the accident was not proximately caused by any negligence on [the course's] part in the design and maintenance of the golf course."[153] The fact

141. *Id.*
142. *Id.*
143. *Id.*
144. *Id.*
145. *Id.* at 958, 962.
146. Pappas v. Cherry Creek, Inc., 888 N.Y.S.2d 511, 512 (App. Div. 2009).
147. *Id.* at 513.
148. *Id.*
149. *Id.*
150. *Id.*
151. *Id.*
152. *Id.*
153. *Id.*

that the plaintiff's expert failed set forth an opinion based on industry standards or other foundational information meant that the plaintiff did not raise a triable issue of fact.[154]

In order to establish that the defendants were aware of a defect with a golf cart, pre-trial discovery should be directed to prior similar incidents and internal documents from the defendants indicating awareness of the problem with the golf cart. For example, in *Mendoza v. Club Car, Inc.*, the plaintiff suffered multiple fractures of the spinal vertebrae and a spinal cord injury after the parking brake on the golf cart involved in the accident released.[155] In order to prove notice of the alleged defect, counsel for the plaintiff obtained, and succeeded at introducing into evidence for the limited purpose of showing notice of brake problem, "five documents evidencing prior complaints of failure of braking systems in [Club Car] golf carts . . . ."[156] One of the documents was a letter from an individual claiming that his Club Car rolled after the parking brake failed, and the remaining four documents were Club Car warranty records indicating that "parking brakes on carts would not hold."[157]

Sudden stops and difficulty with brakes give rise to many cases. For example, in *Shaffner v. City of Riverview*, the plaintiff was a member of a foursome playing golf on the course owned by the City of Riverview.[158] After they finished at the first hole, the foursome, in two golf carts, drove to the second tee.[159] One golfer, Branchick parked his cart about five feet behind the plaintiff's cart.[160] "While [the] plaintiff was standing behind his cart, Branchick saw his cart start to roll forward towards [the] plaintiff."[161] Branchick entered the cart, "jumped in it, and applied what he believed to be the brake. Unfortunately, Branchick actually hit the accelerator and the cart lunged forward, striking [the] plaintiff's cart and pinning [the] plaintiff between the two bumpers."[162] This collision resulted in serious injuries to the plaintiff.[163]

In *McDonald v. Grasso*, the plaintiff was playing golf at River Golf Club

154. *Id.*

155. Mendoza v. Club Car, Inc., 96 Cal. Rptr. 2d 605, 609 (Ct. App. 2000).

156. *Id.* at 610.

157. *Id.*

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

159. *Id.*

160. *Id.*

161. *Id.*

162. *Id.*

163. *Id.*

when she was hit by a golf cart.[164] The plaintiff was standing behind her cart when a second golf cart stopped on an incline a few feet behind her.[165] 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."[166] After twenty seconds, the golf cart "suddenly rolled forward and pinned [the] plaintiff's legs between the two carts."[167] The plaintiff argued that the second golfer was "responsible for the accident . . . due to her negligence in failing to properly set the hill brake."[168] 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."[169]

The corporate defendants moved for summary judgment, claiming there was no defect in the golf cart and relying upon the testimony of an employee of the golf club who said that "shortly after the accident he tested the brake system of the cart [in question] and found that both the regular brake and the hill brake worked."[170] Specifically, that employee "stopped the cart on an incline [that] was steeper than the site" where the accident occurred.[171] The owners of the golf cart also presented an affidavit from "its product safety manager, a mechanical engineer, who explained that the mechanical hill brake system could not fail temporarily" in that "the system either functioned properly when used or it did not work at all . . . ."[172] The corporate defendants also argued that there was evidence that the second golfer did not properly follow the procedure on setting the hill brake.[173] Judge Lynch of the Schenectady County Supreme Court denied the motion for summary judgment.[174]

On appeal, a unanimous court reversed, granting summary judgment as to the corporate defendants.[175] The appellate court found that the corporate defendants met their burden for summary judgment by "submitting evidentiary proof . . . to demonstrate that [the] plaintiff's injuries were not caused by a

164. McDonald v. Grasso, 632 N.Y.S.2d 240, 240–41 (App. Div. 1995).
165. *Id.* at 241.
166. *Id.*
167. *Id.*
168. *Id.*
169. *Id.*
170. *Id.*
171. *Id.*
172. *Id.*
173. *Id.*
174. *Id.* at 240.
175. *Id.* at 241.

defect in the brake system of the golf cart."[176] The burden shifted to the plaintiff and the operator of the second golf cart. The court found that they failed to meet their burden.[177] Specifically, although the appellate division agreed with the logic that "if the hill brake was properly set, the cart must have been defective because it did not perform as intended[,]" it found that there was "insufficient evidence to raise a question of fact as to whether the hill brake was properly set."[178] Referring to the evidence of the second golfer, the court found that testimony "equivocal at best."[179] With respect to the argument that the cart had remained stationary for a period of time after the brake had been set before the cart began to move, the court pointed out the "absence of evidence concerning the grade and surface of the site . . . " and the lack of expert evidence reduced this argument to "pure speculation."[180]

In *DiMura v. City of Albany*, the plaintiff, "[a]fter hitting his ball on the fairway at the fifth hole [at The New Course at Albany], [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."[181] The golf course that day had a ninety-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.[182]

He, therefore, "turned the steering wheel all the way to the right" and accelerated.[183] 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.[184]

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.[185] Judge Ceresia of the Albany County Supreme Court, partially granted E-Z-Go's motion for summary judgment, dismissing "the cause of action alleging breach of warranty and that portion of the

176. *Id.*
177. *Id.*
178. *Id.*
179. *Id.*
180. *Id.*
181. DiMura v. City of Albany, 657 N.Y.S.2d 844, 845 (App. Div. 1997).
182. *See id.*
183. *Id.*
184. *Id.*
185. *Id.*

products liability claim alleging a manufacturing defect."[186] He "denied the motion with respect to [the] plaintiff's allegations of negligence, as well as design defect and failure to warn as they relate to products liability."[187]

E-Z-Go appealed, and the court affirmed, noting that the plaintiff, in opposition to the motion for summary judgment, had submitted an affidavit from a licensed engineer who tested three E-Z-Go golf carts, including the golf cart involved in the incident, and "concluded, with a reasonable degree of scientific and engineering certainty, that . . . 'the sudden acceleration at full throttle [of the golf cart] when the parking brake was automatically released, caus[ed] a sudden jerking motion on the driver and passengers.'"[188] The expert witness found that "'the sudden acceleration plus sharp turning angle, alone, could have been sufficiently strong to cause the accident . . . .'"[189] The expert witness further found that "adequate warning signs and notices to users of the golf cart could have prevented" the incident and that the "required use of seat belts on the cart, a higher restraint bar at the sides of the seat and roll bars on the golf carts could constitute an alternative solution."[190] Even though E-Z-Go noted the "warning on [the golf cart's] dashboard, informing operators to 'accelerate smoothly[,]'" the court found that a jury question existed as to whether this warning was enough to escape liability.[191] Accordingly, the trial court was affirmed.[192]

In *Lash v. Noland*, the "[p]laintiff went to play golf at a country club in New Smyrna Beach" in Florida.[193] After driving "to the first tee in a golf cart obtained from the club, and park[ing] the cart on an incline[, h]e set the brake and exited the cart to speak to friends. Thereafter, the cart rolled backward, pinning [the] plaintiff against an automobile parked nearby, causing him injury."[194] The plaintiff sued the manufacturer of the golf cart, the company that serviced it, and the owner of the service company.[195] In support of his claim, "[t]he only testimony presented by [the] plaintiff was of the golf cart professional who . . . checked the cart after the accident" and who discovered that the brakes for this cart released after "'being depressed only a third of the

186. *Id.*
187. *Id.*
188. *Id.* at 845–46.
189. *Id.* at 846.
190. *Id.* at 846–47.
191. *Id.* at 846 n.2.
192. *Id.* at 847.
193. Lash v. Noland, 321 So. 2d 104, 105 (Fla. Dist. Ct. App. 1975).
194. *Id.*
195. *Id.*

way'" down and that the brake would hold when it was fully depressed.[196] The plaintiff relied "heavily upon the golf professional's testimony" that he had received prior complaints regarding the brakes, but the plaintiff presented no expert testimony.[197] The "defendant's [sic] expert testified that the braking system was far superior to that used in other golf carts."[198] The verdict was granted in favor of the defendants.[199] The plaintiff appealed, and the Florida appellate court ruled that he failed to present sufficient evidence that "the brake portion of the cart was faulty."[200]

III. CONCLUSION

In conclusion, just because someone knows how to play golf, that does not make that person the best at decisions when operating a golf cart, especially if that person is still thinking about the putt he left hanging on the lip of the proceeding hole. Accidents also occur because some operators take greater risk in a golf cart than they would in a car. For these and other reasons, this favorite toy of the Baby Boomer generation causes serious accidents, even when it is not lent out to children to drive for fun. Golf carts may be perceived as a low-risk, low-speed form of transportation, but the increased frequency of personal injuries resulting from golf carts points to the need for all of us to slow down, enjoy that ride, and avoid accidents.

196. *Id.*
197. *Id.*
198. *Id.*
199. *Id.*
200. *Id.* at 105–06.