



INSURANCE: IMPLICATIONS OF PERSONAL LIABILITY

Stuart Phipps examines the implication of the appeal in the Lightning versus Pearson case regarding personal liability.

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"FORE!" is a familiar sound on the golf course – the natural cry of the inept player (and sometimes of the 'ept' as well!). The response is instinctive: crouch and protect your head, for you cannot be sure from which direction the attack has been launched. It has been accepted by experienced golfers as a 'natural hazard': seldom is anyone actually hit, and serious harm is almost unheard of.

But this was of little consolation to one M J Pearson, who was struck in the eye whilst playing at Dunwood Manor GC in 1992, and so badly injured that he has never played golf since. He took the matter to Court, and both the original Judge and the three Judges who considered the subsequent Appeal found in favour of Mr Pearson; Mr Lightning, the golfer who struck the ball, was found liable for considerable damages.

This case has instilled a certain amount of fear into the hearts of conscientious Secretaries, who see it as a precursor to increased claims from those who think they can make themselves rich by ignoring the cry of "FORE!" and going to Court for damages. Should this happen, insurance companies will no doubt hike up premiums.

But the word from the insurance industry is reassuring. The insurance companies are taking the long view; they are constantly dealing with "exceptional" cases and hence will wait to see whether this judgement is a one off, or becomes a regular precedent for other awards of damages.

Malcolm Tarling, spokesman for the Association of British Insurers, points out that the club is NOT responsible for the errors of individual players, but MAY be held responsible for the design of the course if repeated incidents show it to be dangerous. (This is no different from the current position, actually, in that the club has a Duty of Care to minimize all risks to the general public anyway.)

But how long will it be before some famous club is required to redesign its course to "abate the nuisance" caused to the general public? Insurance companies can, after all, exercise considerable pressure by refusing to renew cover.

Successful claims of damages following injuries in other sports are nowadays much more common, and everyone who plays on a golf course is well advised to take out protective insurance lest the 'hand of God' be turned against them. Individual golfers with Household Insurance policies are generally covered against Public Liability, but it is sensible for clubs to advise members of their potential liability, and hence their need for cover.

There is, too, a growing argument for the club to include insurance for visitors as part of their green fee (which will, of course, increase the cost, probably by 50p per visitor per day).

No doubt a contribution to Golf Club Management from a learned lawyer will soon clarify the legal situation. In the meantime, every Secretary will hope that Lightning does indeed not strike twice and certainly "not on MY course!"

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