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WHITE PAPER ALERT

Assumption of Risk
Duty of Care - Golf

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Shin v. Ahn

Court of Appeal, Second District - July 21, 2006

California Appellate Courts continue to struggle when applying the primary assumption of risk doctrine in a sports setting. This case involves the application of the doctrine to a suit by a golfer who was struck by a golf ball.

Johnny Shin and Jack Ahn were playing golf. As they finished the first hole, Ahn walked to the next tee. Shin lagged back. Shin then began to walk toward the tee box as Ahn was preparing to tee off. Shin stopped 25 to 35 feet away and at a 40° to 45° angle in front and to the left of Ahn. Ahn never knew where Shin was. Ahn struck his ball, looked up and saw Shin on the ground. He had been hit in the head.

In the trial court, Ahn moved for summary judgment. The trial court granted the motion. Shin moved for reconsideration and a new trial. The court changed its mind and granted a new trial.

In a hotly contested 2-1 decision, the appellate court upheld granting the new trial. Primary assumption of the risk acts as a complete bar to recovery where someone is injured during an inherently dangerous activity. The doctrine does not apply to conduct that is reckless or totally outside the range of ordinary activity involved in the sport.

Primary assumption of the risk applies to the sport of golf and one of the inherent risks of golf is being hit by an errant shot. However, the court refused to apply the primary assumption of the risk doctrine.

The court felt Ahn, who was in the same group as Shin, increased the risk inherent in the sport by failing to determine Shin's whereabouts at the time he teed off. The court concluded that a golfer who tees off without ascertaining the location of individuals in his own group increases the risks beyond that inherent in the sport. The court noted that the Rules of Golf published by the United States Golf Association instruct that, before striking a ball, a player should ensure no one is in danger of being hit by the ball. Here, Ahn did not comply with this rule increasing golf's inherent risks. The court went on to note that imposing such a duty on a golfer would not destroy or alter the basic nature of the sport.

The court did, however, hold that the doctrine of secondary assumption of the risk applied. Shin's location within range of a potential tee shot raised issues of comparative fault.

The dissent argued the primary assumption of the risk doctrine should bar one golfer's suit against another golfer after the former was hit by a ball. The dissent felt Ahn's conduct was, at most, careless or negligent, and was not outside the range of ordinary activity involved in golf. Quoting W.C. Fields, the dissent stated Shin's duty was to "[s]tand clear and keep [his] eye on the ball." Having placed himself in danger, Shin should not be able to argue that Ahn increased the inherent risk of the game. The dissent would have reversed the granting of a new trial.

COMMENT

This case illustrates the problem in most of these cases, namely, where the line is drawn between activities ordinarily incident to a sport and activities that increase the danger inherent in the sport. Because the rules are difficult to apply, continued appeals in this area can be expected.

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