

Original Article

Content analysis of court decisions regarding golf-related injuries

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Abstract:

Using quantitative content analysis, this study analyzed 147 golf-related injury legal cases between 1930 and 2013 for the purpose of examining the characteristics of golf-injury lawsuits brought against golf courses as well as the most influential factors that can affect a golf course's success in golf-injury lawsuits. The lead plaintiffs in golf-injury litigation were considered to be invitees. A large number of plaintiffs who suffered golf-related injuries usually brought negligence claims against nonmunicipal golf courses rather than municipal golf courses. Dominant defenses available to golf courses were four elements not present, multiple defenses, and primary assumption of risk. More than half of the cases were in favor of golf courses. There was a significant association between the type of claim and the type of defense. A significant association also was found between the type of golf course and the type of defense. It was found that the most influential factors that can affect a golf course's success or failure were known risks to the plaintiff, assumption of risk, and multiple defense.

Key Words: golf course accidents, golf-injury litigation, content analysis, risk management,

Introduction

Sports activities have their own inherent risks, and participants assume such risks when they participate (van der Smissen, 2007). However, lawsuits concerning sports activities have grown consistently over the past 30 years, and this tendency most likely will continue (Hronek, Spengler, & Baker III, 2007). This tendency seems to indicate that sports participants have become less likely to accept risks inherent in the sports activity (Young & Jamieson, 1999). A similar tendency occurs in golf. For example, most jurisdictions would find that golf course owners are not to be held liable for injuries caused by an errant golf ball on the grounds that being hit by such a shot is an inherent risk of the game (*Baker v. Thibodaux*, 1985). However, a study of court decisions conducted by Tonner, Sawyer, and Hypes (1999) showed that more than half of the reviewed golf litigation between 1973 and 1998 were legal claims brought by golfers or spectators hit by an errant ball.

In this context, golf courses may never be free of lawsuits from golf injuries. Given that settling a case may require a considerable amount of time and money, golf course managers are expected to reduce the number of golf-injury lawsuits against their golf courses using risk management strategies.

Many authors used court decisions to address various theories of liability and defense concerning golf-related injuries on or near golf courses (DeVoto, 1993; Flynn, 1996, 1997; Kircher, 2001; Scoffield, 2004; Tonner et al., 1999). The court-decision studies focused on legal aspects such as potential plaintiffs or defendants in golf-injury lawsuits, types of claims brought by the plaintiffs, liability on the defendants, and defenses available to the defendants.

Type of plaintiffs

Potential plaintiffs in golf-injury claims can be divided into four classes: golfers, spectators, employees, and people living or passing near a golf course. Golfers can be victims of errant balls (DeVoto, 1993; Scoffield, 2004; Tonner et al., 1999); golf clubs (DeVoto, 1993; Tonner et al., 1999); golf carts (DeVoto, 1993; Flynn, 1996, 1997; Tonner et al., 1999); lightning strikes (Tonner et al., 1999); or slip, trip, and fall accidents (Tonner et al., 1999). Also, spectators at a golf tournament or employees of a golf course can suffer injuries due to an errant golf ball (DeVoto, 1993; Scoffield, 2004; Tonner et al., 1999). Even passersby or neighbors of a golf course can be casualties of errant balls (DeVoto, 1993; Scoffield, 2004; Tonner et al., 1999).

Liability on the Golf Course

In tort claims, when a golf course fails to exercise the duty of care owed to the plaintiff, the golf course breaches the duty. Under some circumstances, however, the liability for injury may not attach to the golf course even if the plaintiff was injured on the golf course premise. For example, if the plaintiff knew of a dangerous condition on the golf course premises, the golf course may not have a duty to warn the plaintiff of the danger and may not be liable for the injury (*Pound v. Augusta National, Inc.*, 1981). Also, as one can see from the cases of *Broome v. Parkview* and *Kendall Oil Co. v. Payne*, there would be no liability on the part of the golf course when the injury was caused by "dangers that were obvious, reasonably apparent, or as well known to the invitee as the owner" (as cited in *Davis v. The Country Club, Inc.*, 1963, p. 309).

Types of claims against the golf course

The plaintiffs can bring a golf-injury claim against a golf course based on torts or statutes when they are injured by a golf course accident. A tort refers to “an injury or a civil wrong that has caused harm to a person or a person’s property for which the courts will provide a remedy” (Clement, 2004, p. 13). Thus, the injured plaintiffs on or off of a golf course can bring a golf-injury claim against the golf course based on negligence, product liability, or nuisance theories (DeVoto, 1993; Kircher, 2001). Additionally, the injured plaintiffs can bring a golf-injury lawsuit against golf courses using statutes because liability on a golf course may be determined by state and federal laws (Nohr, 2009).

Possible defenses to golf-injury lawsuits

Keeping in mind that most golf-injury claims against a golf course are brought on the basis of negligence theories (Tonner et al., 1999), golf course managers need to fully understand possible defenses to negligence claims. The best way to win a claim of negligence is that a golf course must show that any one of the four elements of negligence (i.e., duty, breach of duty, proximate cause, and damage) is not proven (Cotten, 2007). Additional defenses to negligence claims include “assumption of risk, comparative negligence, contributory negligence, and governmental immunity” (Sawyer, 2005, pp. 42-43).

Also, in some golf-cart accident injury claims where strict liability is applied, defenses available to the golf course may include “assumption of risk, misuse, and disclaimers” (*Sipari v. Villa Olivia Country Club*, 1978, p. 823). Finally, when a nuisance claim is brought, the golf course may raise certain defenses such as “lack of notice or lack of foreseeability” (*Nussbaum v. Lacopo*, 1970, p. 765).

The court-decision studies analyzed judicial decisions concerning golf-related injuries resulting from golf course accidents using traditional legal analysis. Legal scholars using this method usually examine a small number of legal cases on a particular topic based on their subjective interpretation (Hall & Wright, 2008). This approach can help identify legal issues on a given topic (Levine, 2006). However, the results of studies using this method can be affected by selection bias because most of the studies tend to withhold information about where the legal cases regarding the topic came from or why they were chosen as a sample (Hall & Wright, 2008). Also, considering that traditional legal analysis does not have systematic case coding, it would be difficult to secure “the objectivity and reproducibility of case law interpretation” (Hall & Wright, 2008, p. 81). Furthermore, because research using this method does not analyze legal cases quantitatively, the legal scholars can have difficulties determining overall characteristics in all of the legal cases concerning the topic (Hall & Wright, 2008). In an effort to supplement the limitations of traditional legal analysis, legal scholars have tried to quantitatively analyze a larger number of legal cases using an empirical method called content analysis (Hall & Wright, 2008). This method has been used by some researchers to examine sports-related legal cases and to determine which factors may contribute to the decision of the courts. For example, Clement and Otto (2007) identified the most important factors that can affect a plaintiff’s success in court decisions concerning headfirst aquatic accidents. However, to date, relatively little research of court decisions on golf-related injuries has been done to analyze a large number of legal cases using quantitative content analysis. Thus, the purpose of the present study was to examine the characteristics of golf-injury lawsuits brought against golf courses and to determine the most influential factors that may affect the golf course’s success in litigation based on quantitative content analysis.

Based on a review of relevant literature, this study addressed the following research questions:

- What are the characteristics of golf-injury lawsuits against a golf course?
 - Who are main plaintiffs in litigation?
 - What types of claims usually are brought against a golf course?
 - What types of legal defenses are usually raised by a golf course?
 - What are patterns of municipal and nonmunicipal golf courses in litigation?
 - What is the golf course’s win rate in litigation?
 - What are the associations between each variable?
- Among the following factors, which best predict whether the golf course wins or loses in litigation?
 - Types of plaintiffs
 - Types of claims
 - Types of legal defenses
 - Types of golf courses
 - Foreseeability
 - Known dangers to plaintiffs

Methods

This study analyzed legal cases concerning golf-related injuries based on the methodological steps for conducting quantitative content analysis that Neuendorf (2002) presented and Clement and Otto (2007) used in their research, including case selection, coding scheme, validity and reliability, coding, and statistical analysis.

Case Selection

The LexisNexis legal search engine was used to find legal cases for this study. The cases of the study included 147 reported federal court and state court decisions between 1930 and 2013. To select legal cases

relevant to the research questions, the following search keywords were entered, such as golf-related injuries, golf courses, errant ball accidents, golf club accidents, golf cart accidents, lightning strikes, slip, trip, and fall accidents, and tort laws. To ensure that each particular case of a golf-related injury was included in the cases, a plaintiff had to be injured by one of the golf course accidents resulting from golf ball, golf club, golf cart, lightning strike or slip, trip, and fall accidents.

Coding Scheme

Key variables for this study were obtained using the content of the selected cases. Golf-related injury literature, as an early form of content analysis, guided whether any variables were of particular importance to the study. To measure the characteristics of golf-injury lawsuits against a golf course, the following variables were extracted from the cases: (a) types of plaintiffs, (b) types of claims, (c) types of legal defenses, (d) types of golf courses, and (e) case outcome. Types of plaintiffs consisted of three categories: invitee, noninvitee, and unknown. Types of claims included five categories: negligence, statute, product liability, nuisance, and multiple claims. Types of legal defenses consisted of five categories: four elements not present, assumption of risk, immunity, other, and multiple defenses. Types of golf courses had two categories: municipal and nonmunicipal golf courses. Case outcome included three groups: the golf course’s success, the golf course’s failure, and remand. To measure the most influential factors that can affect a golf course’s success in litigation, the following variables were extracted from the cases: (a) types of plaintiffs, (b) types of claims, (c) foreseeability, (d) known dangers to plaintiffs, (e) types of legal defenses, (f) types of golf courses, and (g) case outcome. Foreseeability was divided into two groups: yes and no. Known dangers to plaintiffs had two categories: yes and no. Case outcome consisted of two categories: the golf course’s success in litigation and the golf course’s failure in litigation.

Validity and Reliability

While developing the coding scheme for this study, a panel of experts was asked whether the coding scheme included the concept to be measured, in order to provide the evidence of content validity. The participating experts were the four full-time professors in sport administration programs who are well-versed in sports law. If any problems in the coding scheme were found, they were corrected. Additionally, the Cohen’s kappa reliability test was conducted to measure inter-rater agreement for categorical variables between two coders.

Coding- After the codebook was developed, it was given to another coder, a full-time professor in the department of sport administration. At the same time, the coder was trained with detailed instructions on the variables used in the study and the levels of measure associated with the variables. The researcher and the coder coded the 147 legal cases according to the same coding scheme individually.

Statistical Analysis The coded data was analyzed using the SPSS program. Considering that the selected variables for this study are categorical variables, descriptive statistics for categorical variables were used to summarize the variables. The association between variables was analyzed with a chi-square test for independence. Binary logistic regression was performed to predict the influence of two or more categorical independent variables on a dichotomous dependent variable.

Results

Results of Reliability Analysis

The Cohen’s kappa reliability test was done with the following variables, including type of plaintiff, type of claim, type of legal defense, type of golf course, known risk to plaintiff, foreseeability, and case outcome. Table 1 shows the inter-rater reliabilities for the coders regarding the variables. Peat indicated that “a value of .5 for kappa represents moderate agreement, above .7 represents good agreement, and above .8 represents very good agreement” (as cited in Pallant, 2010, p. 226). Based on this guideline, the levels of agreement between two coders regarding the variables were very good.

Table 1 The levels of agreement between two coders

Variables	Kappa Coefficients	P-value
Type of plaintiff	.85	.000
Type of claim	.82	.000
Type of legal defense	.84	.000
Type of golf course	.86	.000
Known risk to plaintiff	.84	.000
Foreseeability	.82	.000
Case outcome	.82	.000

Descriptive Statistics Results

Among cases reviewed, 106 golfers (72.1%) and 7 spectators (4.8%) brought a personal injury lawsuit against golf courses. All employee lawsuits against golf courses were brought by caddies (n = 6). Injured plaintiffs (n = 27) off of the golf course made up about 18% of the plaintiffs in litigation. One of the cases did not describe who the plaintiff was. Some 124 (84.4%) of the injured plaintiffs were invitees; 21 plaintiffs (14.3%) were noninvitees. The status of the plaintiff in the remaining two cases (1.4%) was not clearly defined.

Some 113 of the defendants (77%) operated nonmunicipal golf courses, whereas 34 golf courses (23%) were owned by the municipality.

Regarding the type of claim, some 66 (44.9%) of the cases were golf ball-related injury lawsuits; 40 (27.2%) were slip, trip, and fall-related lawsuits; 37 (25.2%) were golf cart-related injury lawsuits; and 4 (2.7%) were lightning-related lawsuits. 124 plaintiffs (84%) brought a negligence claim against golf courses to recover financially from injuries caused by golf course accidents. Additional types of claims available to the plaintiffs in golf-injury lawsuits included multiple claims (n = 11), statute (n = 6), product liability (n = 4), and nuisance (n = 2). Statutes that the injured plaintiffs used in golf-injury lawsuits included the Federal Tort Claims Act (n = 2), the state tort claims act (n = 1), the dangerous instrument doctrine (n = 2), and the vehicles rented without drivers statute (n = 1), respectively.

About half of the golf courses (n = 66) raised four elements not present as a defense to golf injury claims, followed by multiple defenses (n = 34), primary assumption of risk (n = 25), immunity (n = 11), and other (n = 11). Other defenses used by golf courses in litigation were contributory negligence (n = 1); worker compensation legislation (n = 1); disclaimer clause (n = 3); the golf cart's crossing of the highway is a risk inherent in golf (n = 1); golf cart on a golf course is not included in the statute (n = 1); status of plaintiff (n = 1); strict liability cannot be applied (n = 1); two-pronged test not established (n = 1); and joint adventure (n = 1). Table 2 specifically indicate multiple defenses that golf courses used in golf injury claims. Seventy-seven of the cases (52.4%) ended in favor of the golf course. Another 43 (29.3%) were decided against the golf courses, and the remaining 27 cases (18.4%) were remanded.

Table 2 Multiple defenses used by golf courses in litigation

Type of multiple defense	Frequency	Percent
Four elements not present and primary assumption of risk	8	23.5
Four elements not present and comparative negligence	4	11.8
Four elements not present and contributory negligence	2	5.9
Four elements not present and immunity	5	14.7
Four elements not present, primary assumption of risk, contributory negligence, and statute limitation	1	2.9
Immunity and statute limitation	2	5.9
Four elements not present, primary assumption of risk, and contributory negligence	2	5.9
Four elements not present, immunity, and comparative negligence	1	2.9
Four elements not present, statute limitation, and comparative negligence	1	2.9
Four elements not present and worker compensation legislation	1	2.9
Status of plaintiff, four elements not present, contribution, and indemnity	1	2.9
Four elements not present, primary assumption of risk, disclaimer clause, and contributory negligence	1	2.9
Four elements not present and disclaimer clause	1	2.9
Primary assumption of risk, misuse, and disclaimer clause	1	2.9
Four element not presents, statute limitation, and contributory negligence	1	2.9
Four elements not present, primary assumption of risk, and comparative negligence	1	2.9
Four elements not present, comparative negligence, and contributory negligence	1	2.9
Total	34	100.0

Results of the Chi-square Test for Independence

A chi-square test for independence was performed to investigate the associations between each variable regarding the characteristics of golf-injury lawsuits against golf courses. The variables included type of plaintiff, type of claim, type of legal defense, and type of golf course. In terms of the type of plaintiff, significant associations were not shown with the type of claim ($\chi^2 = 14.2$, $df = 8$, $N = 147$, $p = .153$); type of defense ($\chi^2 = 14.3$, $df = 8$, $N = 147$, $p = .67$); and type of golf course ($\chi^2 = 4.07$, $df = 2$, $N = 147$, $p = .112$).

Similarly, the type of claim was not significantly associated with type of golf course ($\chi^2 = 4.96$, $df = 4$, $N = 147$, $p = .248$). However, a significant association was found between the type of claim and the type of defense ($\chi^2 = 36.2$, $df = 16$, $N = 147$, $p = .003$). When a nuisance claim was brought, golf courses used a higher percentage of four elements not present as a defense. A higher percentage of primary assumption of risk was used as a defense of negligence claims. A higher percentage of defense in statute or multiple claims was immunity. As compared to other types of claims, a higher rate of "other" defense was used in statute or product claims. A higher percentage of multiple defense was used in negligence or product claims.

Finally, the type of golf course was found to be significantly associated with the type of defense ($\chi^2 = 31.66$, $df = 4$, $N = 147$, $p = .000$). Nonmunicipal golf courses used a higher percentage of four elements not present as a defense to golf injury claims, whereas immunity was used as a defense by a higher percentage of municipal golf courses.

Logistic Regression Results

A binary logistic regression was performed to determine the most influential factors that can affect a golf course's success in litigation. Because 27 of the 147 cases were remanded, the logistic regression was run with the remaining 120 cases. The independent variables in the logistic regression model included type of plaintiff, type of claim, type of legal defense, type of golf course, foreseeability, and known risk to the plaintiff. The dichotomous dependent variable was case outcome.

Multicollinearity occurred when the 6 independent variables were entered into the model. That is, the standard errors (SEs) of a few independent variables were very high. To treat multicollinearity, as Chan (2004) recommended, the variable with largest SE, at first was eliminated from the logistic regression model. This process continued until the size of the SEs reached between .0001 and 5.0. Finally, four independent variables – type of claim, type of defense, type of golf course, and known risk to plaintiff again – were entered into the model. They significantly predicted whether a golf course won in litigation, $\chi^2(10, N = 120) = 39.85, p < .001$. Overall, the combination of four independent variables explained between 28.3% (Cox and Snell R square) and 38.8% (Nagelkerke R squared) of the variance in whether a golf course won in litigation. As shown in Table 3, the most influential factor in determining a golf course's success in litigation was the known risk to plaintiff. Golf courses were 34 times more likely to win when an injured plaintiff knew any risks existing on or near the golf courses than when an injured plaintiff did not know of any risks on or near the golf course. Additional important factors in determining the golf course's success in litigation were assumption of risk and multiple defense. Golf courses were .14 times less likely to win when they used assumption of risk as a defense to golf-injury claims than when they raised four elements not present as a defense to golf-injury claims. Golf courses were .24 times less likely to win when they used multiple defense as a defense to golf-injury claims when they raised four elements not present as a defense to golf-injury claims.

Table 3 Estimates of Importance of Each of the Independent Variables

Categories	Levels of category	B	Sig.	Odds ratio
Type of claim	Statute	.134	.897	1.144
	Product	-.356	.760	.700
	Nuisance	-2.629	.196	.072
	Multiple claim	-1.483	.142	.227
Types of defense	Assumption of risk	-1.957	.039	.141
	Immunity	-.1047	.237	.351
	Other	-.216	.818	.806
	Multiple defense	-1.439	.010	.237
Type of golf course	Municipal	.221	.710	1.247
Known risk to plaintiff	Yes	3.538	.000	34.390

Discussion

Using quantitative content analysis, this study examined the characteristics of golf-injury lawsuits against a golf course as well as the most influential factors that can affect a golf course's win or loss in litigation. One of main characteristics in golf-injury litigation was that a large majority of injured plaintiffs (84.4%) filed a lawsuit against golf courses claiming negligence when they were injured on or near golf courses due to golf course accidents. This pattern is supported by a court-decision study conducted by Tonner, Sawyer, and Hypes (1999), which analyzed golf-related litigation between 1973 and 1998 and concluded that nearly 53% of the reviewed cases were associated with personal injury claims resulting from negligence.

Another characteristic in terms of the type of claim is that this study found no legal case regarding golf club-related injury lawsuits against golf courses despite the fact that golf course owners may be liable for injuries caused by any defects in a rented golf club under product liability (Kircher, 2001). As Tonner et al. (1999) noted in their golf litigation study, this may be attributable to the unique characteristic of a golf club-related injury claim. Most of the plaintiffs in golf club accident cases would be minors and their parents and would file a lawsuit against the parents who have the legal responsibility for the negligent acts of their children, rather than of the golf course. Similarly, legal cases (n = 4) regarding lightning-related injury lawsuits against golf courses were extremely rare (2.7%). This result may reflect that because lightning accidents would ordinarily be considered an act of God, golfers injured by lightning strikes on golf courses would believe that golf courses may avoid liability for lightning strikes even if they bring a golf-injury lawsuit against a golf course (Tonner et al., 1999). In relation to the most influential factors in predicting whether a golf course won or lost in golf-injury litigation, it was expected that whether an injured plaintiff was an invitee or not would be an important factor in predicting whether the golf course won or lost in litigation. However, the status of the plaintiff did not affect the outcome of the case. This result may reflect that most courts would accept that it is impossible for golf course owners to act as a perfect insurer to make their golf course safe in such condition that no golf course accidents occur on or near their golf courses. Additionally, it has been well known that most golf-injury lawsuits are settled based on the assumption-of-risk doctrine (Sawyer, 2005). Also, because municipal golf courses are regarded as government entities, there has been a high possibility that they would be immune from liability for ordinary negligence when compared to other types of golf courses (Sawyer, 2005). However, this study shows that primary assumption of risk and governmental immunity did not influence the golf course's success in

litigation. This tendency may occur because the influence of primary assumption of risk has been greatly reduced in that most states have adopted the doctrine of comparative negligence (Kircher, 2001) and because many jurisdictions have eliminated the doctrine of governmental immunity (Sawyer, 2005). The results of this study may contribute to a decrease in the number of lawsuits against a golf course, but there are some limitations of the study. Based on a review of relevant literature, there are different types of potential defendants in golf injury lawsuits resulting from golf course accidents noted earlier, including “golfers, golf course owners, golf course designers and builders, the sponsor of a golf tournament, school golf teams, the employer of an injured employee, and manufacturers, servicers, or sellers of golf carts” (DeVoto, 1993, pp. 860-878). However, cases in which a defendant is not a golf course were excluded from the study. Additionally, multicollinearity occurred in this study. A good way to deal with multicollinearity is to increase sample size. Thus, it is recommended that researchers who plan to use quantitative content analysis to find certain factors that can predict whether the defendant will win or lose in golf-injury lawsuits include different types of defendants, such as other golfers, manufacturers, and golf course designers, rather than limiting a defendant to a golf course. Furthermore, the methodological steps for quantitative content analysis used in this study can be applied to analyze legal cases regarding other sports-related injuries for the purpose of finding certain factors that can predict whether the plaintiff or the defendant will win or lose in litigation.

Conclusions

The study found known risks to the plaintiff as the most important factor that can affect a golf course’s success in golf-injury lawsuits. Therefore, to avoid the liability for injury, golf course managers are required to discover dangerous conditions on their golf courses by carrying out regular inspections. But, if the dangerous conditions are hard to eliminate, a warning should be given to golf participants about the conditions. Such action may help golf courses win golf-injury lawsuits.

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