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S.C. Rules Assumption of Risk Applies to Non-Contact Sports

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The primary assumption of risk doctrine, which generally bars actions by a participant in an inherently dangerous activity for injuries that are an inherent risk of the activity, extends to non-contact sports, including golf, the California Supreme Court ruled yesterday.

The justices affirmed a ruling by this district's Court of Appeal allowing Johnny Shin's suit against fellow golfer Jack Ahn to proceed to trial. But they held that Shin, who claims that Ahn is responsible for injuries he sustained after Ahn's errant shot hit him in the head, must prove that Ahn's conduct was reckless and not merely negligent.

The only duty of care owed by one golfer to another, Justice Carol Corrigan wrote—citing *Knight v. Jewett* (1992) 3 Cal.4th 296—is to avoid "conduct that is 'so reckless as to be totally outside the range of the ordinary activity involved in the sport.'"

Golf Outing

Shin and Ahn were playing a round of golf at Rancho Park Golf Course in Los Angeles in August 2003, when Ahn allegedly teed off at the 13th hole without noticing that Shin was standing 25 to 35 feet away taking out his water bottle and checking his phone messages.

Shin's counsel, Santa Monica attorney Richard L. Knickerbocker, told the MetNews last year that Ahn's ball was traveling an estimated 120 miles an hour when it hit Shin's head, and the impact caused serious brain injury to Shin resulting in temporary unconsciousness as well as ongoing paralysis.

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Ahn moved for summary judgment in January 2005 based on the primary assumption of risk doctrine. After initially granting the motion, Los Angeles Superior Court Judge Paul Flynn—who has since retired—effectively reversed himself by granting Shin's May 2005 motion for a new trial.

Flynn, who had initially ruled that Shin assumed the risk of injury by going out on the golf course, later concluded that triable issues of fact existed as to, among other things, whether Ahn increased Shin's risk of injury by teeing off while knowing Shin was standing in a zone of danger.

A divided panel of Div. Two of this district's Court of Appeal affirmed, over a dissent by Presiding Justice Roger Boren, who argued that there was no evidence of recklessness.

Corrigan, writing for the high court, agreed with the defendant that the principles of and its progeny apply to golf, rejecting Knickerbocker's argument that the doctrine should be repudiated.

Panel Criticized

The justice noted that several Court of Appeal decisions have applied the doctrine to golf, and said the Div. Two panel should have done so as well.

The panel was correct, however, in affirming the new trial order, Corrigan said, because the record was inadequate to establish that Ahn was not reckless.

She explained:

"At his deposition, defendant said he looked to see if the area 'directly ahead' of him was clear. It is not apparent just how broad or limited that area was. This record is simply too sparse to support a finding, as a matter of law, that defendant did, or did not, act recklessly. This will be a question the jury will ultimately resolve based on a more complete examination of the facts."

Chief Justice Ronald M. George and Justices Marvin Baxter, Kathryn M. Werdegar, Ming Chin, and Carlos Moreno concurred. Justice Joyce L. Kennard, writing separately, argued, as she has in the past, that +Knight+ was wrongly

decided and that assumption of risk should be subsumed under the principles of comparative negligence.

The case was argued in the high court by Knickerbocker for the plaintiff, by Daniel U. Smith for Consumer Attorneys of California as amicus supporting the plaintiff, by Kathryn Albarian of Glendale's Michael Maguire & Associates for the defendant, and by Jeremy B. Rosen of Encino's Horvitz & Levy for the Association of California Insurance Companies, Farmers Insurance Exchange, the National Association of Mutual Insurance Companies and the Personal Insurance Federation of California as amicus supporting the defendant.

The case is *Shin v. Ahn*, 07 S.O.S. 5482.