

Golf law niche is par for the course

Attorneys thrive despite struggling industry

By Justin Rebello Staff writer Published: June 30, 2008

Even with the golf industry tightening its belt in the midst of the latest recession, "golf law" lawyers say their business is thriving.

In fact, as the industry shrinks, it has become more competitive, presenting a variety of challenges for attorneys to address.

To see accompanying story [Click here](#).

"It has produced more legal work because of the problems that occur when there is this much course turnover and competition," said Dalton Floyd of the Floyd Law Firm in Surfside Beach, S.C.

After extensive work with golf course development litigation earlier in his career, Floyd was hired to represent the Carolinas' section of the PGA in the early-1990s. The Carolinas' section is the largest area of the tour.

Floyd, who hits the links as part of a regular foursome most Saturdays, enjoyed the experience so much he incorporated the niche into his practice near Myrtle Beach, a Mecca for golf enthusiasts with more than 100 courses.

"You have to understand a little about golf to practice in the law," said Floyd. "When they are trying to convert an area into a golf course, you have to know what kind of litigation you might run into, like errant golf balls or nearby homeowners."

It's not surprising that this niche has been successful in the balmy Carolinas, but 1,400 miles northwest in Minnesota, Mike Kraker has also built a practice around the sport.

Kraker is a St. Paul-based lawyer and consultant, and the founder of www.golflawyer.com.

"I had this preference for [working with] risk management and I just merged it together with my love for playing the game, to focus on the different liability issues that could come up on the course," he said.

The cash-strapped client

David Dawsey, an intellectual property lawyer at the Ohio-based Gallagher & Dawsey, works with golf products companies. He faces several challenges when advocating for smaller entities.

"Large companies have the resources to invest in IP," said Dawsey. "Smaller companies have to be a little more savvy, a bit more knowledgeable about their rights."

Dawsey has handled intellectual property matters on a number of golf-related products, including clubs and putters, travel bags, tees and swing analysis devices. He said a large part of the attorney-client relationship is educational, but when it comes to course owners attorneys believe the client can be almost be overly knowledgeable.

"Fifty years ago, course superintendents didn't have degrees in science; now they're all experts in turf grass," Kraker said.

The challenge comes into play when trying to convince a course owner to spend more to avoid liability.

"It's a very complicated service and they are trying to keep a number of people happy," said Kraker. "But if they're in a pinch, maybe they don't have the money to take on the renovation process of two holes that are too near each other. They can't move the green. They can't shut down the course for half the year. So I have to be more creative."

Patience is the key, particularly since representing a course owner is rarely a one-and-done relationship.

"If I send a bill for 20 hours of my time, I wouldn't have any clients at all," said Kraker. "I have to meet the client, build a long-term relationship where they trust me and know I will give them reliable advice. It's sort of like corporate counsel."

Legal sand traps

Here is an overview of some of the legal areas that are prominent in the golf industry. (See the accompanying story for more detail on personal injury-related golf matters.)

Intellectual property.

As the industry tightens its belt, the business strategy of product makers is to "steal market share from competitors," said Dawsey.

In February 2006, Callaway Golf Co. filed a patent infringement suit against Acushnet Co., the makers of the immensely popular Titleist Pro V1 golf ball.

Callaway alleged Acushnet infringed on a patent they owned, acquired from the bankrupted Top-Flite in 2003. The patent concerned a soft polyurethane cover over a thin middle layer and solid rubber core, increasing distance and increasing/decreasing the spin of the ball depending on which club was used. Acushnet's defense was that it held 70 similar patents, although none was the precise patent formerly held by Top-Flite.

Callaway won its suit in December.

According to Dawsey, the suit was representative of the market as a whole.

"The golf market is not growing; it's stagnant," he said. "All of these companies recognize there is such an importance on exclusivity toward a certain piece of equipment."

Real estate law

For some owners of failing courses, the best move is to shut down and convert the land to housing developments.

But according to Floyd, there is a fair amount of resistance when courses threaten to move out of the neighborhood or becoming single- or multi-family housing. Not only is the neighborhood losing a nearby amenity, it loses some of its visual appeal for prospective buyers.

Floyd said the preparation of transactional documents is vital.

"You have to make [the nearby homeowners] understand, in writing, that the area might not always be a golf course," he said.

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