Mark Twain quipped that golf was nothing more than “a good walk spoiled.” But for those who live next to golf courses, the errant balls golf produces can be a nightmare, and potentially even deadly. This Article is the first of its kind to focus on a more expansive interpretation of golfer liability for damages incurred by people and property adjacent to a golf course. To arrive at this conclusion, the latest in golf course computer modeling is applied to a recent $5 million jury verdict to demonstrate the nature of errant golf shots.

If every ball behaved as the golfer wished, there would be little “sport” in the sport of golf.1

I. INTRODUCTION

It is difficult to imagine a recreational activity more prone to damaging nearby people and property than golf. Large houses are deliberately built on golf courses due to their aesthetic beauty. There is no skills test or licensing conducted to ensure a minimum level of competency on behalf of the golfer. Alcohol is readily available. A golf ball is very dense and designed to maximize flight distance. Even the world’s most skilled golfers with millions of dollars on the line occasionally hit errant

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golf balls.\textsuperscript{2} While other legal scholars have argued that existing legal standards for golfer liability are inadequately low,\textsuperscript{3} this Article is the first to implement a computer modeling program to the facts from a recent $5 million jury award. Furthermore, this is the first article to argue for a strict-liability standard.

Part II of this Article examines the existing case law regarding liability for hitting a fellow golfer. Part III addresses existing case law regarding golfer liability for hitting property and people adjacent to the golf course. These two parts demonstrate the abnormally defendant-friendly standards applied to golfers. Part IV describes the “foreseeable zone of danger” standard that is sometimes applied to golfer liability and explains why it is ambiguous and often nonsensical. Part V proposes the strict-liability standard and explains the numerous benefits over the existing standards. Part VI addresses potential counterarguments against the proposed strict-liability standard. Part VII provides the results of a novel computer model regarding a recent $5 million jury award to a homeowner living adjacent to a golf course. This analysis demonstrates the inevitable nature of constant property damage for some houses. Part VIII considers how the peculiar, ends-justify-the-means nature of defendant-friendly legal standards for golfer liability may be the result of judges being disproportionately biased in favor of fellow golfers. Part IX compares golfer liability to that of liability in other sports to demonstrate the privileged position the sport of golf receives. Finally, Part X concludes by making the case that the strict-liability standard may have a net benefit to the sport of golf and considers how this Article will likely spark interest in future research.

II. HITTING ANOTHER GOLFER OR SPECTATOR

All jurisdictions agree in attributing liability if the golfer’s actions leading to injury are “intentional.”\textsuperscript{4} And all jurisdictions agree that simply intending to hit a golf ball does not satisfy this “intentionality” requirement.\textsuperscript{5} But beyond this, there is no consensus among jurisdictions as to when a golfer should be held liable. The majority standard only

\begin{itemize}
\item \textsuperscript{2} Nussbaum v. Lacopo, 265 N.E.2d 762, 767 (N.Y. 1970) (“[E]ven the best professional golfers cannot avoid an occasional ‘hook’ or ‘slice.’”).
\item \textsuperscript{3} Louis J. DeVoto, Injury on the Golf Course: Regardless of Your Handicap, Escaping Liability Is Par for the Course, 24 U. TOL. L. REV. 859, 880 (1993) (“Even though plaintiffs do not assume the risk for another’s negligence, the standard of conduct to which golfers are held is inadequately low.”).
\item \textsuperscript{4} Lincoln Scoffield, Avoiding Legal Sandtraps on the Golf Course—How Liability Is Apportioned for Golfer’s Bad Shots, WILLAMETTE SPORTS L.J., Winter 2004, at 1, 3.
\item \textsuperscript{5} Id.
\end{itemize}
imposes liability in rare occurrences of defendant recklessness. As one court explains, “a golfer is only required to exercise ordinary care for the safety of persons reasonably within the range of danger of being struck by the ball.”7 Ordinary care is defined as “the care which a reasonably careful person would use under similar circumstances.”8 The range of danger—also referred to as the foreseeable zone of danger—is defined differently depending on the jurisdiction but at a minimum includes the “intended line of flight of the ball.”9 This recklessness standard is generous to the defendant golfer, as liability is only attributed if the conduct is deemed “so reckless as to be totally outside the range of the ordinary activity involved.”10 While this is the majority rule, some jurisdictions have rejected this standard and provided a strong rationale for doing so. For example, an Illinois court rejected the recklessness standard—as it pertains to a golfer hitting a fellow golfer—because it “undermines the reasonable incentive golfers have to guard against injuries to one another, ultimately becoming a self-fulfilling prophesy [sic].”11

Some states have adopted even more defendant-friendly standards. Ohio allows a golfer injured by a golf shot to recover for injuries only when the defendant golfer’s behavior was intentional or in reckless indifference to the rights of others.12 And in some states, such as California, despite the official rules of golf requiring it,13 there is no duty to warn fellow golfers who may foreseeably be struck by an errant golf ball by yelling the customary “fore!”14 This represents a significant weakening of the previous standard of ordinary negligence, which required adequate warning to fellow golfers in the “foreseeable zone of

8. Bartlett, 479 N.W.2d at 322.
danger.” In other states, an audible warning is generally not necessary when the struck golfer was located in a place where he should have been reasonably safe and was aware of the player’s intention to play the ball. The reasoning here is that, in such a situation, an “audible warning would be superfluous.”

Courts have applied similarly defendant-friendly standards when considering injuries to golf spectators. Spectators at a golf tournament are generally held to know that, even at the highest levels of competition, golf shots often land in the crowds, and therefore these people assume the risk of being hit.

While the standard for golfer liability is a high bar, some courts have indicated that under certain circumstances liability is possible. In some jurisdictions, a golfer who is known to have a high propensity to shank his golf shots could potentially be held liable. And some jurisdictions have shown more of a willingness to hold golfers accountable when it is a minor that is injured by the shot. For example, in Outlaw v. Bituminous Insurance Co., a nine-year-old located sixty yards away from the tee box waved an adult golfer to play through and crouched behind his golf bag for protection. When the minor peeked out over the top of his golf bag, he was struck in the eye, causing serious impairment to his vision. Acknowledging that the general rule would result in no liability, the Louisiana court nevertheless reasoned that “young children possess limited judgment and are likely at times to forget dangers and behave thoughtlessly.” Other courts have implied in dicta that liability could be more likely—through a broadening of what encompasses the foreseeable zone of danger—if the defendant golfer was intoxicated, rushing, or swinging the club in a wild manner.

III. HITTING PROPERTY AND PEOPLE ADJACENT TO A GOLF COURSE

When an errant golf ball hits a person or property located outside of the golf course, it is distinguishable from the previously discussed examples of a golfer or spectator on the golf course being struck.

15. Dexter, supra note 14, at 3. See infra Part IV for more on the foreseeable zone of danger.
17. Id.
18. See DeVoto, supra note 3, at 872.
21. Id. at 1352.
22. Id.
23. Id.
Therefore, one might expect that it would be much easier for someone injured outside of the golf course to recover for damages than someone who was injured inside the golf course. However, case law is not consistent with this assumption.\(^25\)

In *McGuire v. New Orleans City Park Improvement Ass’n*,\(^26\) the plaintiff was jogging outside of a golf course when he was struck in the groin by an errant golf ball.\(^27\) The Louisiana Supreme Court concluded that an adequate implied warning to the plaintiff was in effect since he lived in the area, frequently jogged there, knew a golf course was nearby, and observed golfers playing that day.\(^28\) The court went on to explain that, because this was an “isolated incident of injury,” the golf course was not liable.\(^29\)

In *Nussbaum v. Lacopo*,\(^30\) the plaintiff was reading a newspaper on his patio next to a golf course when the defendant hit a golf shot that went through twenty to thirty feet of trees and struck the plaintiff.\(^31\) The New York Court of Appeals refused to impose liability.\(^32\) The court reasoned that, while the defendant did not bother to yell “fore,” there was no duty to warn since the plaintiff would have been unlikely to respond.\(^33\) The court’s rationale for this conclusion is somewhat suspect. It reasoned, “Living so close to a golf course, plaintiff would necessarily hear numerous warning shouts each day. As the warning would ordinarily be directed to other golfers, plaintiff could be expected to ignore them.”\(^34\)

Under a similar theory to that in *Nussbaum*, the court in *Rinaldo v. McGovern*\(^35\) ruled in favor of the defendant after his errant golf shot struck the windshield of a moving car traveling outside of the golf course.\(^36\) Here, it is clearer that any attempt to yell a warning would either not have been heard or not have been heeded by the plaintiff given the circumstances. But is this proper justification for not requiring the

\(^{25}\) See Rinaldo v. McGovern, 587 N.E.2d 264, 266 (N.Y. 1991) (“[A] golfer ordinarily may not be held liable to individuals located entirely outside of the boundaries of the golf course who happen to be hit by a stray, mishit ball.”); Scoffield, supra note 4, at 24 (“[I]f the act is not intentional, it is very difficult for a neighbor to recover from an individual golfer.”).

\(^{26}\) 835 So. 2d 416 (La. 2003).

\(^{27}\) Id. at 418.

\(^{28}\) Id. at 421.

\(^{29}\) Id. at 422.


\(^{31}\) Id. at 764.  

\(^{32}\) Id. at 767.

\(^{33}\) Id. at 766-67.

\(^{34}\) Id. at 766.


\(^{36}\) Id. at 265, 267.
proximate cause of the damages (the golfer) to compensate the completely innocent plaintiff? The court maintained that, in order for the plaintiff to successfully recover damages caused by the defendant, he would need to show “that the golfer aimed so inaccurately as to unreasonably increase the risk of the harm.” 37 The majority rule is that a golfer never has a duty to warn people who are adjacent to the golf course. 38

An even more draconian result was obtained in Ludwikoski v. Kurotsu, 39 in which the plaintiff was struck in the head by an errant golf shot while sitting next to a golf course. 40 The court ruled that the plaintiff was not even owed a warning—whether it would have been effectual or not—as she was not in the “foreseeable [zone] of danger.” 41 While this foreseeable zone of danger is never clearly defined, it is followed by a majority of jurisdictions 42 and would almost always exclude property and persons outside of the golf course. 43

The practical implications as to why a golfer is far more likely to owe a warning to fellow golfers after inadvertently hitting a ball in their direction than when hitting a ball at someone next to the golf course is somewhat counterintuitive. After all, the people who choose to play golf are always aware that they are on a golf course and, as golfers, are aware of the dangers of the sport. This is in contrast to someone standing next to a golf course, who may be ignorant of the dangers or even ignorant of the fact that he happens to be next to a golf course. Furthermore, the activity of golf allows ample time to look around and assess potential dangers, something a golfer is well qualified to do. 44 But someone next to a golf course may be unable to pay attention to what is happening on the golf course due to being preoccupied with activities, such as doing yard work or sunbathing with his or her eyes closed.

The reason for this seemingly counterintuitive result—that golfers are often owed a warning and those outside the golf course are not—is

37. Id. at 267 (quotation marks and further citation omitted).
38. Scoffield, supra note 4, at 23.
40. Id. at 729.
41. Id. at 731-32 (referring to the “foreseeable ambit of danger”). However, the more common term is the “foreseeable zone of danger.” See infra Part IV.
42. See Ludwikoski, 875 F. Supp. at 732.
43. See infra Part IV for more on the foreseeable zone of danger.
44. For example, qualified golfers should know that right-handed golfers are far more likely to slice a shot (hit to the right) than hook the shot (hit to the left). Or qualified golfers would be likely to know that on a particular hole, people often make the ambitious decision to “go for the green” which produces areas of increased danger. While golfers would be aware of these factors, non-golfers located next to a golf course may not. See DeVoto, supra note 3, at 863 (showcasing that it is well known that golfers cannot perfectly hit the ball where they intend it to go as the occurrence of hooking and slicing a golf shot is very likely).
the foreseeable zone of danger legal standard. Golfers are far more likely to be in this foreseeable zone of danger because they are far more likely to be in the general direction of where the person hitting the ball is aiming. But why is this proper justification for making it harder to apply liability to someone outside of the golf course compared to a fellow golfer? Golfers who are in the foreseeable zone of danger are highly likely to be aware of this, and therefore, a warning appears to be more necessary for those outside the foreseeable zone of danger, not inside it. Additionally, because golfers are far more likely to be in the foreseeable zone of danger—and to be aware that they are in the foreseeable zone of danger—this implies that they are more likely to have assumed the risk of being struck than someone who is not in the foreseeable zone of danger.

There are some jurisdictions that have allowed a homeowner to receive compensation for injuries from an errant golf ball. In Curran v. Green Hills Country Club, a property owner was struck by a golf ball while in his backyard pool. The court held that the doctrine of assumption of risk should not be applied to injuries that take place on the plaintiff’s own property, which is made unsafe only from the incoming projectiles from neighbors. And in Gleason v. Hillcrest Golf Course, the plaintiff was injured when a golf ball hit her automobile windshield while driving on a highway adjacent to a golf course. The court held that the golf course’s improper design and prior knowledge that golf balls occasionally hit the highway resulted in joint and severable liability for both the golfer and the golf course under a public nuisance theory.

There have also been some jurisdictions that, in limited circumstances, have been willing to find for a homeowner under a theory of continuing trespass. For example, in Amaral v. Cuppels, a house was hit with “alarming frequency” by golf balls. Despite the golf course existing many years prior to the house, the court determined that this constituted a continuing trespass. The court went further to explain:

45. See supra notes 41-43 and accompanying text.
47. Id. at 159.
48. Id. at 160-61.
50. Id. at 887.
51. Id. at 895, 897.
52. 831 N.E.2d 915 (Mass. App. Ct. 2005). The plaintiff claimed an average of six golf balls a day landing on her property during a busy weekend. Id. at 917.
53. Id. at 916.
54. Id. at 917.
55. Id. at 919-20.
To the extent that the ordinary use of the defendants’ golf course requires land beyond the course boundaries to accommodate the travel of errant shots, it is incumbent on the defendants to acquire either the fee in the additional land itself, or the right to use the additional land for that purpose.56

At least one jurisdiction has held, in the context of damage to a homeowner, that assumption of risk “should not be applied with liberality, if it be applicable at all, where the injury takes place on plaintiff’s own property,”57 and that an assumption of risk is not voluntary, and therefore not a defense, if the defendant’s negligence leaves the property owner with “no reasonable alternative course of conduct.”58 This concept was further explained by the court: “[i]n general, the plaintiff is not required to surrender a valuable legal right, such as the use of his [or her] own property as he [or she] sees fit, merely because the defendant’s conduct has threatened him [or her] with harm if the right is exercised.”59

The peculiar ability of golfers to avoid liability for the injuries they cause is further illustrated when compared to how hard it is for others to avoid liability. For example, in Kole v. AMFAC, Inc.,60 the Hawaii Supreme Court considered potential liability for a condo tenant who was injured from an errant shot by a nearby golfer while in the condo’s pool.61 The court found liability, not for the golfer who caused the injury, but rather for the owner of the condominium for not warning the lessee of “a known hazardous condition[,]” even though the pool was not under the owner’s control.62

The peculiarity in the standards for liability from errant golf balls is illustrated when compared to legal liability in the context of invitees. If a homeowner adjacent to a golf course were to invite a golfer over for dinner, he or she would be held to a higher standard than the golfer was held to earlier that day hitting golf balls toward that house. Homeowners are generally required to inspect the premises and either fix or give an

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56. Id. at 920.
58. Id. at 700 (quoting RESTATEMENT (SECOND) OF TORTS § 496E(b) (AM. L. INST. 1965)).
59. Id. (alteration in original) (quoting WILLIAM L. PROSSER, HANDBOOK OF THE LAW OF TORTS § 68, at 451 (4th ed. 1971)).
60. 750 P.2d 929 (Haw. 1988).
61. Id. at 930.
62. Id. at 930-31.
adequate warning regarding potentially unsafe conditions. But golfers are not required to perform any inspections, undertake preventative measures, or provide warnings. Likewise, the law is rather clear that non-golfer invitees to a golf course are owed a duty of care that includes discovering dangerous conditions and warning invitees to prevent injuries. But golfers are often absolved of the simple task of yelling “fore!”—something required in the rules of golf.

An analogy to another form of negligence serves to further illustrate the unique nature of errant-golf-ball liability. Automobile drivers may be held liable for injuries that are the result of tire pressure that is either too high or too low. Likewise, a driver who causes injuries because he or she momentarily looked at his or her cell phone while driving—a common practice—may be held liable. Attempting to apply errant-golf-shot-liability standards to such automobile occurrences would likely appear absurd. For example, imagine a driver who caused injuries from looking at his or her phone trying to explain to the court how he or she was not “so reckless as to be totally outside the range of the ordinary activity involved[,]” which was the standard applied to avoid imposing liability on golfers.

IV. AMBIGUITY OF THE “FORESEEABLE ZONE OF DANGER”

As mentioned in the two previous parts, the notion of a foreseeable zone of danger is sometimes applied when errant golf balls cause damages. This is problematic, as it is an inherently subjective standard. Some jurisdictions maintain that if the victim is outside of this zone,

69. See Dexter, supra note 14, at 7-10. The Supreme Court of Arizona did maintain that, at the very least, negligence is precluded when the plaintiffs are outside of ninety degrees of the intended flight path and hinted that perhaps fifty degrees would be a good mark of delineation, but this has not been recognized by courts as the standard. Id. at 10.
negligence is largely precluded.\textsuperscript{70} Further problematic is that some courts make reference to this zone as if there is some objective, as-of-yet-to-be-defined angle that can identify exactly what falls within the foreseeable zone of danger. For example, the Supreme Court of Arizona referenced how “[s]omewhere between zero and ninety degrees, there is a dividing line—a deviation which might, as a matter of law, preclude a finding of negligence.”\textsuperscript{71} But, as any golfer knows, accuracy—and therefore the associated foreseeable zone of danger—is far from a universal principle. It is highly contingent upon golfer skill, conservative versus aggressive strategy for the given shot, distance of shot,\textsuperscript{72} the presence of obstacles that can drastically change the ball’s flight path, and the presence of a strong headwind.\textsuperscript{73}

The majority rule in negligence jurisprudence is that the foreseeable zone of danger is not merely confined to the intended line of flight but instead “encompasses a wider zone of danger based on the facts and circumstances in each individual case.”\textsuperscript{74} Some courts have also implied in dicta that liability could be more likely—through a broadening of what encompasses the foreseeable zone of danger—if the plaintiff golfer was intoxicated, rushing, or swinging the club in a wild manner.\textsuperscript{75} As the Supreme Court of Minnesota bluntly explained, “[t]he poorer the player the greater is the zone of danger.”\textsuperscript{76}

Because some jurisdictions consider poor golfers to have a greater zone of danger, this means that poor golfers will often have a greater duty to warn. This further demonstrates the faulty logic of the rule. Imagine two golfers, one unskilled, and one highly skilled. If they both hit the same wildly errant shot toward someone, because this shot falls within the unskilled golfer’s foreseeable zone of danger and outside of the skilled golfer’s narrower foreseeable zone of danger, some courts would impose on the former a duty to warn but not on the latter. But what

\textsuperscript{70} Id. at 9.


\textsuperscript{72} A golfer is far more likely to hit a shot fifty degrees offline on a 300-yard drive than a fifty-yard approach shot. See Bob Christina & Eric Alpenfels, \textit{Aim Small, Miss Small: To What Extent Does It Work?}, GOLF SCI. J. (Dec. 17, 2018), https://www.golfsciencejournal.org/article/5119-aim-small-miss-small-to-what-extent-does-it-work [https://perma.cc/JE3U-PK25] (demonstrating through a series of experiments undergone by golfers that there is a larger margin for error drives than putts or chips).

\textsuperscript{73} A strong headwind functions to exaggerate the effects of offline shots. Dave Tutelman, \textit{What Wind Does to a Drive}, TUTELMAN SITE (Dec. 29, 2019), https://www.tutelman.com/golf/ballflight/windSpeed.php [https://perma.cc/7FB2-DFVR].


\textsuperscript{76} Hollinbeck v. Downey, 113 N.W.2d 9, 12 (Minn. 1962).
purpose is served by this distinction, since in both instances the exact same thing has occurred, and the potential victim is in the exact same amount of danger? Furthermore, the victim is unlikely to be able to differentiate between an unskilled and skilled golfer over 100 yards away. It could perhaps be argued that such a rule incentivizes the acquisition of more skill on behalf of golfers, but that would be a highly peculiar rationale. It would be similar to courts reducing the types of plaintiffs who could recover from an accidental shooting if the person responsible was known to otherwise be an excellent shot.

The foreseeable zone of danger standard is further problematic in that it is based on some variables that the plaintiff is not privy to. For example, the foreseeable zone of danger is based on the intended flight path. But the intended flight path on some holes can vary greatly depending on whether the golfer is playing a conservative lay-up shot or an aggressive go-for-the-green shot. Someone 200 yards away is unlikely to be able to accurately make this differentiation.

V. PROPOSAL OF STRICT-LIABILITY STANDARD

This Part argues for the application of strict liability for damage from errant golf shots to adjacent people and property. Under the efficient-deterrence theory of liability, strict liability is the ideal method to both deter injurious behavior and compensate the innocent injured party. This is because it would internalize the costs of the potentially harmful activity. As economist Thomas Ulen explains (with brackets added for applicability to a golfer), “[b]ecause [the golfer] can never escape liability for harms that he has caused [to those outside the golf course], the best that [he] can do under strict liability is to take sufficient precaution to minimize his expected liability.”

Strict liability is a particularly advantageous solution to this situation because it is an instance of unilateral precaution. Because homeowners are not reasonably expected to completely fortify their properties from incoming projectiles, these are situations when, realistically, only one party could be expected to have taken the preventative measures necessary to reduce the probability of harm.

This is consistent with modern law and economics principles, which suggest that tort law should encourage behavior that maximizes

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79. See id.
aggregate social welfare by incentivizing those involved to act in accordance with “reduce[ing] the sum of the costs of accidents.”\textsuperscript{80} This would require the imposition of liability on the party that is the lowest cost, or best risk, avoider.\textsuperscript{81} Putting this principle in practice regarding the current topic, a golfer who hits an errant ball is clearly the party with the more efficient ability to avoid the damages. Therefore, by allocating liability to the golfers—and not the victims who live near golf courses—this type of harm is more likely to be mitigated. For example, imagine a golfer who frequently slices his tee shot is about to play a hole with a house and a lot of people in the yard just to the right of the fairway. Here, it would be far easier for this golfer to simply choose to take a conservative shot than for the homeowner to erect costly and unsightly nets to protect from golf balls. Put another way, the aggregate social costs of the golfer taking a conservative shot on this one hole are far less than the cost of the homeowner erecting nets. This is especially the case with golf, for which studies show that more conservative shot selection leads to better scores.\textsuperscript{82} Therefore, not only are aggregate social costs minimized, but arguably all parties involved benefit from this approach.\textsuperscript{83} Additionally, shifting liability to the golfer does not incur the negative consequence of incentivizing homeowners to be less careful because homeowners would still prefer to not have their houses and family members struck by golf balls even if compensation were guaranteed.\textsuperscript{84}

Applying the strict-liability standard to errant golf shots is also a practical solution when considering the financial and temporal costs of litigation. Because the strict-liability standard has few defenses, the finding of liability at trial would rarely need to be adjudicated. This would help foster settlements, which avoid time-consuming and costly trials, making the entire process far more efficient. Existing causes of action involve subjective standards which could be interpreted differently by various adjudicators. Examples include the legal standards of


\textsuperscript{81} Id.


\textsuperscript{83} An additional way in which this incentive to play more conservatively could be said to benefit the golfer as well as potential victims is that it helps the golfer avoid the psychic costs involved with harming another human. See Grow & Flagel, \textit{supra} note 80, at 99.

\textsuperscript{84} Even under a strict-liability regime, compensation is far from guaranteed. The victim may not be able to identify the golfer responsible for the damage, or the golfer responsible may be judgment proof.
recklessness, improper design of the golf course, and negligent supervision from the golf course. Another example is the subjective notion of what is a foreseeable, “occasional, concomitant” annoyance of living next to a golf course compared to an unforeseeable, continuous annoyance.

Note that this standard does not preclude recovery as a result of a duly executed easement. Easements are, and should continue to be, a highly effective method for golf courses to purchase limited liability. Express easements allow golf courses to, in effect, purchase reduced liability and they allow homeowners to, in effect, sell the inconvenience of golf balls hitting their property. This voluntary transaction produces mutually beneficial outcomes, as the golf course will only consent to the easement if it values the reduced liability more than the amount of money paid to the homeowner and a homeowner will only consent to the easement if he or she values the money more than the inability to pursue litigation. These express easements also afford the ability for customization. For example, some create a right for golfers to enter the homeowner’s property to retrieve their golf balls. The existence of an express easement also helps warn potential homeowners who may be unfamiliar with the likelihood of golf balls hitting the property. Express easements may be further beneficial in that the price paid may help communicate the relative danger involved.

87. Id. at 765.
88. For an example of how effective an express easement can be, see DeSarno v. Jam Golf Mgmt., LLC, 670 S.E.2d 889, 890 (Ga. Ct. App. 2008). Plaintiff’s property was hit by more than 4,000 golf balls a year resulting in an average of nine broken windows per year. Id. The plaintiff argued that, while there was an express easement, golf course traffic dramatically increased and therefore constituted unlawful “excessive use” of the easement. Id. at 891. The court rejected this claim, explaining that “the concept of ‘excessive use’ of an easement relates not to the number of times an easement is used but rather to a use of the easement that exceeds the scope of the easement or that is intended to benefit a property that is not the dominant estate.” Id.
89. Id. at 890 (holding that even if the express easement was entered into between the developer and the golf course before the homeowner purchased the house, the same principles applied).
90. Id. at 889 (ruled in favor of a golf course because the adjacent housing lots contained an express easement that allowed for “golf balls unintentionally to come upon the Lot . . . . , and for Golfers at reasonable times and in a reasonable manner to come upon the exterior portions of a Lot . . . . to retrieve errant golf balls”).
91. See id. at 891. For example, an express easement involving small compensation may imply relatively little danger while one involving greater compensation may imply greater danger.
VI. COUNTERARGUMENTS

As with all policy proposals, the strict-liability standard advocated for in this Article involves tradeoffs. While the authors believe an honest assessment of these tradeoffs clearly favors its implementation, there are arguments against imposing such a standard. One could argue that strict liability is too harsh given the accidental nature of the behavior involved. Outside of products liability, the strict-liability standard is generally applied only to those engaging in extreme conduct, such as the storage of dynamite or the keeping of wild animals. The person making such an objection may argue that the negligence theory is preferable not only because it is less strict but because it affords the defendant the defenses of contributory negligence and comparative negligence. Under comparative negligence, the plaintiff’s damages award is reduced by the percent at fault the plaintiff was for his or her injury. Under contributory negligence, if the plaintiff was found to be in any way at fault, he or she is barred from recovery. Why should the golfer be burdened with 100% of the liability if the homeowner is partially to blame for his injuries? However, this objection appears to be misplaced, as it would be difficult to imagine a scenario in which the homeowner’s actions would justify him receiving less compensation for the defendant hitting his property or himself with a golf ball. Such occurrences would be so unlikely as to not justify consideration.

One could posit that simply by choosing to live in a house within striking distance of a golf course—or choosing not to relocate after a golf course was built next door—the homeowner is partially to blame. This is similar to a theory of coming to the nuisance or assumption of risk. The coming-to-the-nuisance theory is generally applied to instances involving noises and odors, not negligent activity that results in projectiles striking property and people. These alternatives of comparative

95. Even attempting to imagine such a scenario quickly leads to the preposterous. Perhaps a drunken homeowner could intentionally try to run toward the golf balls flying at his house in a misguided effort to catch one and end up being struck on the head.
96. See, e.g., Gleason v. Hillcrest Golf Course, Inc., 265 N.Y.S. 886, 891 (N.Y.C. Mun. Ct. 1933) (stating, "every person is bound to make a reasonable use of his property so as to occasion no unnecessary damage or annoyance to his neighbor. If he make an unreasonable, unwarrantable or unlawful use of it, so as to produce material annoyance, inconvenience, discomfort or hurt to his
and contributory negligence and coming to the nuisance demonstrate the benefit of certainty offered by strict liability. Finally, the inherent uncertainty in how a jury may hold the homeowner accountable would lead to inefficiencies as it would require a costly trial to determine. With strict liability, however, a trial would be less likely, as the question of liability would rarely be in dispute, thus potentially saving both sides from a time-consuming and costly trial.

Another argument one could posit against the strict-liability standard proposed in this Article is that it would result in more lawsuits filed. This is perhaps true but is nevertheless not a strong argument against the strict-liability standard. Policymakers can often decrease the frequency of lawsuits by denying protections to victims. The decrease of lawsuits is not per se a proper goal to seek out. For example, the increased lawsuits could result in more precautionary measures by golf courses and golfers. Furthermore, while the strict-liability standard may likely lead to more homeowners filing lawsuits, the increased certainty and lack of potential defenses could result in less time and money spent on litigation, as parties would be more likely to settle.

One could also attempt to argue against the application of strict liability because of the potential negative effect it would have on the sport of golf. Such a standard would be particularly onerous on new recruits to the sport, as they are the most likely to cause errant shots. A reduction in new recruits would likely result in decreased investment in golf courses in the long run. It appears that many judges have applied such an “ends justify the means” rationale. While a judge who plays golf may personally benefit from the promotion of the sport, society at large likely does not. The creation of a golf course incurs significant construction and often results in deforestation. The maintenance of a golf course requires large amounts of pesticides and water. Finally, on a per-acre basis, golfing is an incredibly inefficient form of recreation, therefore

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neighbor, he will be guilty of a nuisance to his neighbor”); see also Scoffield, supra note 4, at 30-31 (discussing a case where the court noted that houses adjacent to a golf course are very desirable, and that the neighbors to the golf course “came to the nuisance” when purchasing their house).

97. See Smith, supra note 6, at 118-19 (noting that litigation would increase under even the more limited negligence standard).

98. Id. at 121.

99. See infra Part VIII.


101. Id.
negatively affecting the price of land that could be used for other purposes such as affordable housing.102

One final argument against the application of strict liability is that it would be applicable even in incredibly unlikely instances. Yes, under strict liability, an incredibly unlucky golfer could be held liable for hitting a shot that then struck a bird in flight followed by a hard surface and then finally hit someone over 100 yards away from the golf course property line. But such an unlikely parade of horribles does not serve as proper justification for negating the benefits of strict liability that incur from the far more common occurrences.

VII. MONTE CARLO COMPUTER SIMULATION

The perceived likelihood of adjacent houses and people being struck by errant golf shots is likely underestimated by golfers and non-golfers alike. Non-golfers are likely not familiar with how difficult it is to routinely hit accurate golf shots. Their perception may be distorted by watching professionals on television who make the act look easy. Golfers may also underestimate the likelihood of hitting a house or a person, because a day of golfing may only offer a couple of holes where a house is in the potential zone of danger. The golfer likely does not consider how hundreds of people of varying skill levels will play those holes every day, thus greatly increasing the odds of striking the house or a person. Additionally, golfers may be experiencing cognitive dissonance in that they disproportionately remember hitting good golf shots and are quick to dismiss as a rare fluke every time they hit an errant shot, thus overestimating their abilities. And according to the Dunning-Kruger effect, this cognitive dissonance is likely most pronounced in the most unskilled of golfers—the very people who are at the greatest risk for striking houses and people.103

In order to demonstrate the frequency at which a house adjacent to a golf course may be struck by golf balls, this Article utilizes a computer-modeling program applied to a real-life house that was the result of a recent lawsuit. In 2017, the Tenczars purchased a $750,000,


103. The Dunning-Kruger effect is a cognitive bias whereby people overestimate their abilities. Dunning-Kruger Effect, PSYCH TODAY, https://www.psychologytoday.com/us/basics/dunning-kruger-effect [https://perma.cc/2QTR-USZG] (last visited Dec. 2, 2023). Furthermore, “[t]hose with limited knowledge in a domain suffer a dual burden: Not only do they reach mistaken conclusions and make regrettable errors, but their incompetence robs them of the ability to realize it.” Id. (further citation omitted).
four-bedroom, 3,000-square-foot home in Kingston, Massachusetts.\textsuperscript{104} The property abuts hole fifteen on the Indian Pond Country Club in Kingston, Massachusetts.\textsuperscript{105} The layout of this hole—diagrammed in the computer modeling images below—resulted in the Tenczars’ house being struck more than 650 times in four years.\textsuperscript{106} This resulted in twenty-six broken windows and one incident in particular during which a window was broken, shattering glass that terrified their nearby daughter.\textsuperscript{107} Additionally, the Tenczars had to replace all of the siding on two sides of the house due to golf-ball-sized holes.\textsuperscript{108}

After numerous failed requests by the Tenczars to get the golf club to either redesign hole fifteen or install protective netting, they filed a lawsuit against the country club and the housing developer.\textsuperscript{109} They settled with the housing developer, but the lawsuit against the country club went to trial.\textsuperscript{110} At the trial court level, a jury awarded the Tenczars $4.93 million in December 2021.\textsuperscript{111} This figure was the result of $100,000 in property damage and $3.4 million in emotional distress, plus statutory interest.\textsuperscript{112} The Indian Pond Country Club did not possess an easement as to the Tenczars’ property, despite initially having the opportunity to acquire one.\textsuperscript{113} The trial court judge refused the golf course’s request to reduce the verdict.\textsuperscript{114} However, on appeal the Massachusetts Supreme Judicial Court vacated the jury’s verdict due to clear error from the trial court judge.\textsuperscript{115}


\textsuperscript{106} Id.

\textsuperscript{107} Id.; Schupak, supra note 104.

\textsuperscript{108} Schupak, supra note 104.

\textsuperscript{109} Li, supra note 105.

\textsuperscript{110} Id.

\textsuperscript{111} Id.


\textsuperscript{113} Schupak, supra note 104.

\textsuperscript{114} Id.

A. Methodology

To determine the frequency that the Tenczars’ home (or property) would be hit by a golf ball, a Monte Carlo simulation was used to model golf play. Monte Carlo simulations predict probabilities of a variety of outcomes when randomness occurs.\textsuperscript{116} Applied to the golf model, once a target is identified, variability occurs in distance and direction. The amount of variability is a function of many factors, including golfer ability; ball lie, such as tee, fairway, rough, and bunker; and golf hole features, such as trees and water.

This same model was originally designed by the authors to simulate golf in a United States Golf Association-funded pace-of-play analysis. The model was validated by modifying model parameters such that only statistically insignificant differences occurred between model output and published data. This included a study on how close professional golfers hit the green from the fairway\textsuperscript{117} and a study showing greens in regulation percentage ("GIR%") based on handicap.\textsuperscript{118}

Validated models are not exact replicas of the actual system; however, the goal is to produce a representation of reality that is close enough to conduct what-if studies. Once validated, the model can be applied to new situations, including the topic of this study. Major benefits of the model are the ability to produce many trials in a short amount of time and the ability to try different policies, such as playing the hole as designed or playing aggressively by going for the green.

B. Results

Figure 1 shows the simulation output for good golfers playing the course as designed. Good golfers are defined in this model as possessing a handicap of 0 or better. This group constitutes only about 0.5% of all golfers.\textsuperscript{119} Figure 2 shows the simulation output for good golfers going for the green. From both, the house (or property) is hit more often when


\textsuperscript{117} Dylan Dethier, How Close Should You Hit It from 100 Yards? (Not as Close as You Think!), GOLF (Oct. 4, 2020), https://golf.com/instruction/100-yards-approach-shots-how-close [https://perma.cc/26E3-C6TP].


\textsuperscript{119} What Percentage of Golfers Break Par?, UNDER PAR GOALS (Dec. 6, 2020), https://www.underpargoals.com/percentage-golfers-break-par [https://perma.cc/W2RX-WKZP]. However, this does not mean that only 0.5% of golfers who play a given hole have a handicap of 0 or better. This is because these golfers likely play more frequently than less skilled golfers.
the golfer goes for the green. In fact, from the analysis, good golfers never hit the home if the golfers played the hole as designed: hitting a 200-to-220-yard tee shot to the fairway, followed by a 100-to-150-yard approach shot to the green. The property involved in the Tenczar lawsuit is marked in red.

Figures 3 and 4 show the output for average golfers, which the model defines as those with handicaps of 10-15. Figures 5 and 6 show the output for bad golfers, which the model defines as golfers with handicaps of 25 and above.
Figure 7 shows the percentage of golf shots that hit the house (or property). If played as designed, the likelihood of the home being hit is almost nonexistent; however, going for the green clearly increases the likelihood of this outcome. This is particularly relevant because studies indicate that many golfers are overly aggressive in their shot selections.¹²⁹

Figure 7

Figures 8 and 9 reveal the possible reasons that golfers go for the green instead of playing as designed. For both average and bad golfers, there is a benefit to going for the green, both in GIR% and average strokes to reach the green. Only for good golfers does playing as designed increase performance for both metrics. Bad golfers perform better when going for the green. Average golfers increase the GIR%; however, their number of strokes to reach the green is best when playing as designed.

¹²⁹ Build a Conservative Plan, supra note 82.
C. Discussion

The results of the computer model demonstrate how frequently houses (and properties) that are adjacent to golf courses can be hit. Almost twenty-five percent of average golfers going for the green hit the property, and even good golfers going for the green hit the property...
fifteen percent of the time. With some golf courses experiencing 30,000 rounds of golf per year, the Tenczars’ allegation that their house was hit 650 times over the course of four years may have been a conservative estimate. Other, similar lawsuits have plaintiffs alleging 320 golf balls per year and even more than 4,000 per year, resulting in an average of nine broken windows per year.

Further consistent with the Tenczars’ allegations and the results of this computer modeling is that media accounts of the fifteenth hole at Indian Pond Country Club recount golfers frequently attempting to “cut the dogleg” by attempting to very aggressively drive the ball from the tee box and clear the tree line, which often ends in hitting the Tenczars’ house. The Indian Pond Country Club even provided a description on its website encouraging players to cut the corner and go for the green from the tee box.

VIII. GOLF RECEIVING BENEFICIAL TREATMENT FROM JUDGES

In discussing the issue of liability for errant golf shots, it is worth noting the unique position golf holds in the United States. As humorist A.P. Herbert explained in 1928, “the game of golf may well be included in that category of intolerable provocations which may legally excuse or mitigate behavior not otherwise excusable.” The sport is widely known as a “rich man’s sport” and is disproportionately played by judges and lawyers. This potentially creates a symbiotic relationship of sorts whereby the sport provides enjoyment to those in the legal profession and those in the legal profession return the favor by applying the law in a manner favorable to its flourishing. Reading opinions on golfer liability, it quickly becomes apparent the high regard in which judges

123. DeSarno, 670 S.E.2d at 890. The plaintiff argued that, while there was an express easement, golf course traffic dramatically increased and therefore constituted unlawful “excessive use” of the easement. Id. The court rejected this claim, explaining that “the concept of ‘excessive use’ of an easement relates not to the number of times an easement is used but rather to a use of the easement that exceeds the scope of the easement or that is intended to benefit a property that is not the dominant estate.” Id. at 891.
124. Li, supra note 105.
125. Schupak, supra note 104.
hold the sport, sometimes sounding more like a salesman for the sport than a neutral arbitrator. Additionally, these opinions sometimes demonstrate an apparent “ends justify the means” logic whereby diminished standards of liability are justified by the need for golfing to flourish.

A California appeals court reasoned:

Holding participants liable for missed hits would only encourage lawsuits and deter players from enjoying the sport. Golf offers many healthful advantages to both the golfer and the community. The physical exercise in the fresh air with the smell of the pines and eucalyptus renews the spirit and refreshes the body. The sport offers an opportunity for recreation with friends and the chance to meet other citizens with like interests. A foursome can be a very social event, relieving each golfer of the stresses of business and everyday urban life. Neighborhoods benefit by the scenic green belts golf brings to their communities, and wild life [sic] enjoy and flourish in a friendly habitat. Social policy dictates that the law should not discourage participation in such an activity whose benefits to the individual player and community at large are so great.129

In Schick v. Ferolito,130 the court affirmed a heightened standard of recklessness that imposes liability only in cases of “clearly unreasonable” behavior.131 In an attempt to justify the grounds for such a defendant-friendly standard, the court in Schick explained that this is required to promote “vigorous” participation in golf and to avoid a “flood of litigation.”132 The Ohio Supreme Court rejected a mere negligence threshold for golfer liability on the grounds that it would “stifle the rewards of athletic competition.”133 And another court explained that it did not apply the ordinary negligence standard on the ground that the “promotion of vigorous participation in [golf] would be threatened . . . .”134

IX. GOLFER LIABILITY COMPARED TO LIABILITY IN OTHER SPORTS

The favored position golfers enjoy in the legal system is further illustrated when liability for golfing is compared to that of other sports. Courts appear to apply liability to participants of other sports far more

131. Id. at 965
132. Id. at 968. Although, the fear of a “flood of litigation” seems misplaced, as there are other activities that are far more common to everyday life—such as driving a car—where more defendant-friendly standards are applied without such fear for a “flood of litigation.”
liberally. In *Alden v. Norwood Arena*, a spectator to an auto racing event was killed after being struck by a tire while sitting in the stands. The appeals court upheld the verdict for the plaintiff, reasoning that the defendant arena did not warn spectators of this potential danger.

Traditionally, the “baseball rule”—which was applied to various sporting events—made it difficult for an injured spectator to recover. However, the recent trend is toward allowing injured spectators to recover. In *Hayden v. University of Notre Dame*, Hayden was injured when nearby fans lunged to catch the ball from a field goal attempt. The appellate court ruled in favor of Hayden, reasoning that Notre Dame had a duty to protect Hayden as a spectator because the injury was foreseeable and criminal. Similarly, in *Lee v. National League Baseball Club of Milwaukee*, the plaintiff was injured after other spectators scrambled to get a foul ball. The Wisconsin Supreme Court maintained liability because the baseball field owners did not take “reasonable and appropriate measures to restrict the conduct of such third parties.” Furthermore, the court reasoned that, while it is foreseeable that balls will fly into the stands, it is not foreseeable that an injury could result from a nearby fan scrambling to get the ball. A recent law review article argues that a plaintiff injured from a field-rushing incident would also likely be successful.

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136. Id. at 506.
137. Id. at 508.
139. See, e.g., Grow & Flagel, supra note 80, at 66; Brett Cledon, *Flying Objects: Arena Liability for Fan Injuries in Hockey and Other Sports*, 15 SPORTS LAWS J. 115, 122-23 (2008) (describing how in ice hockey some jurisdictions recognize a “limited duty” to protect “high risk” areas and to offer protected seating as an option); Hockey Facility Liability Act, 745 ILL. COMP. STAT. 52/10 (2006) (allowing liability at hockey arenas for faulty protection or willful and wanton conduct); Maisonave v. Newark Bears Pro. Baseball Club, Inc., 881 A.2d 700, 709 (N.J. 2005) (holding the “baseball rule” did not apply to spectators when they were not in their seats).
141. Id. at 604, 607.
142. See id. at 606 (neglecting to explain just exactly how Notre Dame was supposed to protect all spectators from fans scrambling to get a game ball in the stands).
143. 89 N.W.2d 811 (Wis. 1958).
144. Id. at 814.
145. Id.
146. Id. It could be of note that this case was decided in 1958, when television viewership of baseball was less widespread. See *First Televised Major League Baseball Game*, HIST. (Nov. 24, 2009), https://www.history.com/this-day-in-history/first-televised-major-league-baseball-game [https://perma.cc/3PAQ-4N6M].
However, these previous examples only pertain to spectators who intentionally chose to attend a sporting event and implicitly agreed to the inherent dangers of doing so when purchasing their tickets. In some sports, such as baseball, the risk is even considered a perk of being in attendance, as the chance of catching an errant ball provides the ultimate souvenir.\textsuperscript{148} Damage to people or property outside of the sporting arena’s property is difficult to come by in sports other than golf. This is due to the comparative ease of a golf ball to travel outside of the golf course.\textsuperscript{149}

There do exist some examples of cases regarding an athletic pursuit that resulted in damage to people or property located off grounds. In \textit{Wills v. Wisconsin-Minnesota Light & Power Co.},\textsuperscript{150} the plaintiff was struck by a baseball while walking at a nearby amusement park.\textsuperscript{151} The Wisconsin Supreme Court upheld the jury verdict for the plaintiff, reasoning that the danger was foreseeable and easily protected against and that the plaintiff was not contributorily negligent because she was not even aware a baseball game was taking place.\textsuperscript{152}

In a rare case from another sport that is analogous to golf balls damaging nearby property, baseballs from a nearby diamond persistently struck the plaintiff’s property and caused damage.\textsuperscript{153} The court held that the actions of the defendant baseball diamond’s invitees

were acts of trespass in so far as they were direct invasions of the property; and they were a nuisance, when not a trespass, because the consequence of them was to deprive the plaintiff of the exclusive right to enjoy the use of her premises free from material disturbance and annoyance.\textsuperscript{154}

Firearm shooting range owners can be held liable for noise pollution.\textsuperscript{155} Even the emanation of dust (“fugitive dust”) from a shooting range may be grounds for a public nuisance action.\textsuperscript{156} And in a 2008 case involving a house near a shooting range that was occasionally struck by a stray bullet, the court held that even in the absence of actual

\begin{itemize}
  \item [148] Celoldonia, \textit{supra} note 139, at 130.
  \item [149] Even beginner golfers can hit the ball over 300 yards. Golfcity, \textit{Long Drive - Amateur vs Pro, YOUTUBE} (Oct. 22, 2022), https://www.youtube.com/shorts/haSD9iYuY3s [https://perma.cc/A9KR-XUK7].
  \item [150] 205 N.W. 556 (Wis. 1925).
  \item [151] \textit{Id.} at 556.
  \item [152] \textit{Id.} at 557.
  \item [153] Hennessy v. City of Boston, 164 N.E. 470, 471 (Mass. 1929).
  \item [154] \textit{Id.} at 471.
  \item [156] \textit{See, e.g.}, Davis v. Izaak Walton League of Am., 717 P.2d 984, 986 (Colo. App. 1985).
\end{itemize}
damages, the plaintiff may be able to recover nominal damages for nuisance.157

Imagine the analogy of shooting a gun that had the same level of inaccuracy as an amateur golfer, so that even when aimed properly at the intended target, it would frequently veer off forty degrees to one side or the other. If one of these frequent errant shots struck a nearby house or person not located on the gun range, it would be highly unlikely that a court would rule against the plaintiffs, reasoning that they assumed the risk by not relocating after a gun range moved in next door.

One legal commentator created a clever analogy that compares football to golf to illustrate that while it is proper for courts to impose such a forgiving standard to sports like football, the same logic would not justify its application to golf.158 Imagine a linebacker executing an aggressive “blitz” play, running full speed at the quarterback and attempting to hit the quarterback as hard as he can.159 This is a common occurrence in football and is allowed under the rules of the sport.160 However, if the linebacker hits the quarterback a fraction of a second after the quarterback releases the ball, the result could be a roughing the passer penalty, which results in a significant penalty.161 In the event of serious injury from a late hit, it would not be prudent to apply civil liability, as late hits are common in the sport and the difference between a late hit and a permissible hit is often a fraction of a second.162 Furthermore, it requires great restraint on behalf of a linebacker to switch from running full speed at a quarterback with bad intentions to diverting course in a fraction of a second.163 Therefore, applying a regular standard of care to football would significantly change the game, as players would become more hesitant due to the fear of liability.164

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159. Id. at 123-24.
163. Id. at 125
164. See id. at 125-26. This analogy is even more poignant today with slight differences in tackling resulting in a “spearing” penalty. Unnecessary Roughness, NFL FOOTBALL OPERATIONS,
Conversely, applying a regular standard of care to the sport of golf would not significantly change the game.165 Occasionally, a situation may arise when the fear of liability causes a golfer to play a more conservative approach shot rather than a more ambitious, go-for-the-green shot.166 But other than this infrequent occurrence, the sport would be unchanged. Golfers may be incentivized to wait a little longer before teeing off to ensure the players in front of them are out of the zone of danger, more likely to yell “fore” after hitting an errant shot, and more likely to carefully look for golfers before hitting. This may slightly increase the amount of time to play an average round of golf, but the “athletic movement” aspects of the game would remain unchanged.167 An argument could be offered that there could exist a few golfers so extremely unskilled that the fear of liability would cause them to stick to the driving range to improve their skills or forego the sport altogether. And yes, for such a person, it could be said that this rule altered the sport from his or her perspective by precluding him or her from playing. However, the sport overall would not be changed in any way from such occurrences, other than being made safer with some of the most dangerous players removed.

Litigation involving National Football League (“NFL”) players provides another stark contrast to golfing liability. In 2013, the NFL entered into a settlement agreement for $765 million in restitution to former players who experienced long-term effects of concussions.168 These football players intentionally and repeatedly participated in an activity that involved violent, helmet-to-helmet contact and yet still received significant compensation. Compare this outcome to the legal standards in golf, under which an innocent person walking next to a golf course might be struck and barred from receiving compensation for the direct injury that incurred.

Even the sport of golf itself provides a powerful analogy for how the current standards are overly defendant-friendly. Imagine a golf course employee who accidentally walks out onto the driving range after being explicitly warned not to do so. Regardless, such an employee would likely be able to receive compensation for injuries received under

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165. Harlan, supra note 13, at 128.
166. Regardless, research indicates that more conservative play is a preferable strategy. See supra note 82 and accompanying text.
167. Harlan, supra note 13, at 126.
workers’ compensation.\textsuperscript{169} The notion that the law should provide compensation for such an employee, while a homeowner who built his house before an adjacent golf course was built should not, is highly peculiar.

\section*{X. Conclusion}

While the existing legal standards for liability could be described as “golfer friendly,” an argument could be made that the strict-liability standard advocated for in this Article would result in a net benefit to the sport, not a net harm. While the defendant in these cases would always be a golfer, the victim would also often be a golfer. And the less reckless play of golf that would be incentivized by a strict-liability standard would likely contribute to a more enjoyable experience. Studies also show that more conservative play results in improved scores.\textsuperscript{170} Additionally, the reduction of reckless shots may result in higher demand for golf-course-adjacent housing, which would in turn incentivize the building of more golf courses. Finally, incentivizing more conservative play could result in advantageous innovation. One such example is the use of limited-flight golf balls, which could increase the speed of play and result in smaller, more cost-effective golf courses.\textsuperscript{171}

Regardless of the net effect on the sport of golf, it makes little sense to continue imposing the cost of harm from errant golf shots on the victims rather than on those who hit the ball. Existing standards such as the foreseeable zone of danger are inherently vague and therefore produce uncertainty which leads to inefficient adjudications. The existing standards are also largely inconsistent with liability in other situations, including in other sports. The application of strict liability is consistent with the efficient-deterrence theory of liability, as the one hitting the ball is clearly the lowest cost, best risk avoider. Furthermore, strict liability provides more legal certainty, which reduces the need for time-consuming and costly litigation. Finally, as the novel computer modeling analysis in this Article demonstrates, the instance of certain houses being struck is far from infrequent.

\textsuperscript{169} Assuming that this behavior was not held to rise to the level of gross negligence or misconduct. \textit{See, e.g., Can I Get Workers’ Compensation if the Injury Was My Fault?}, HUMPHREY & ASSOCs. (Oct. 14, 2019), https://www.humphreyaandassociates.com/blog/2019/october/can-i-get-workers-compensation-if-the-injury-was [https://perma.cc/AF59-T8V7] (explaining that benefits are usually prohibited from employees engaging in misconduct or gross negligence).

\textsuperscript{170} \textit{See Build a Conservative Plan, supra note 82.}

This Article will hopefully serve as a powerful catalyst for future research. This includes the application of law and economics theories, such as efficient deterrence to sports liability; how athletes adjust their behavior when confronted with alterations to the incentive structures surrounding potential liability; and the advantages of legal certainty over vague legal standards. Finally, the topic of how the personal preferences of judges affect the application of law is a topic that should be examined more in depth. The favorable treatment that defendant golfers receive—and the ends justify the means explanations provided—suggest that these personal biases can greatly affect legal outcomes. This could also illuminate related areas in which a judge’s personal background—such as race, gender, and socioeconomic status—could affect their adjudications.