

Lightning Strikes and Negligence in Sport

by

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With the increasing numbers of athletes taking to the sport fields and arenas and the rising incidences of storms, lightning, tornados and other forms of inclement weather, some attention must be given to risk management concerns as the sports population is affected. Additionally, athletic programs may need to devote some attention to training and orienting their coaching staffs to reasonable standards of behavior when storms, lightning and other hazards of nature occur. Particularly, Florida has more lightning per year than any other state yet very little, if anything, is done to prepare coaches procedurally as to what to do if lightning is present other than "to use one's own judgement." This may not be enough as more athletes are being hit by lightning, even killed, and athletes or their surviving relatives are turning to the court system for remedies to this mounting loss. In actual sport contests and games, the referee or umpire has the authority to clear the field and postpone or cancel action, but coaches have an influence with these cancellation policies and have complete control of all the practices as to when to cancel and discontinue or resume play.

An increasing number of accidents has occurred across all outdoor sports activity such as soccer, softball, baseball and golf. The statistics show water activities as having the highest incidences of lightning strikes with golf following at a close second. Table I. shows these data.

Table 1 shows the incidents of lightning hitting sports activities from 1976-1986.

Most of the case law is with the sport of golf where several appellate courts have held operators, both public and private, liable for lightning injuries to invitees. Usually the defense of a pure accident or "Act of God" is chosen. In one case upholding the plaintiff, Muehlfelder v. Crystal Woods Golf Club, Inc., No. 85L-27954,

1993 WL 456111 (Cir. Ct. Ill.), a wrongful death trial case involved a 25 year old golfer who was killed when lightning struck a wooden weather shelter during a thunderstorm. The plaintiff argued that the defendant was negligent for failing to provide a lightning proof shelter and for building the shelter on the highest point of the golf course. The defendant argued that the golfer's death was caused by "an Act of God," and that it did not have a responsibility to protect the shelter against lightning. The "Act of God" defense was not acceptable, according to this court, if the defendant could have avoided it by proper care and diligence. The plaintiff received a \$250,000 verdict.

However, some cases do settle on the reason of lightning injuries being an "Act of God" as was the result of *Stanbridge v. United States*, 71 8 F.2d 1100 (6th Cir. 1983). In this case, the court held that a landowner would only be held liable for Acts of God if it negligently breached a duty of care owed to the invitee, and this negligence, joined with the Act of God, proximately caused the invitee's injury.

In *Davis v The Country Club, Inc.*, 381 S.W.

Activity	No. Injured	No. Killed
Water activities	134	118
Golf	147	32
Camping/picnicking	148	28
Hiking	32	16
Baseball/softball	1 07	8
Football	52	8
Soccer	1 7	7
Hunting	16	6
Bicycling	12	4
Motorcycling	10	8
Horseback riding	8	4
Jogging	3	6

(The Physician and Sportsmedicine, p. 60)

2d 41 (Tenn. 1991), 14 year old Phyllis Davis was playing a round of golf with a 16 year old companion, John Reitz. They continued play when storm clouds appeared and within 30 minutes the storm struck. The two sought shelter in a weather shelter which was not lightning proof. Phyllis was injured and her father, Clifford Davis, sued the golf course for negligence. The Tennessee Court stated that lightning is an "Act of God" and cannot be the sole basis for a negligence claim. When an "Act of God" combines or concurs with a negligent act to proximately cause personal injury, however, the negligent defendant could be held liable. The court, though, observed that the risk of a lightning bolt striking the weather shelter was too remote and unforeseeable. The court ruled that the golf course was not liable for the plaintiff's injury because neither the lightning nor the defendant's negligent act of failing to provide the appropriate shelter was the proximate cause of the injury.

With regards to warnings, *Hames v. State*, 808 S.W. 2d 41 (Tenn. 1991), the court explained, "it would be unreasonable to impose a duty on the organizer of an outdoor event to warn a spectator of a condition that the spectator is fully able to observe and react to on his own." As in this case and *Estate of Fisher v. City of South Portland*, No. CV-92-714, 1994 LEXIS 147191 (Super. Ct. Me.), the defendant had no obligation to post warnings regarding the risk of playing golf while thunder clouds were in the area or for failing, for that matter, to provide shelters.

The standard of care for a reasonably prudent golf course operator has been interpreted differently. In *Davis*, lightning was considered too remote to impose liability upon the golf course proprietors and, as in the *Hames* case, lightning has been interpreted as the sole proximate cause of *Hame's* death. However, in *Muelfelder*, the court combined an "Act of God" with the golf course negligence in providing shelters and ruled for the plaintiff.

The United States Golf Association and the Royal and Ancient Golf Club of St. Andrews, Scotland, the major governing bodies of golf, urge all clubs and courses to take precautionary methods for the protection of invitees against lightning. The USGA provides lightning protection warning signs, golf cart stickers and other shelter signs and safety tips. This protection certainly would be "reasonable care" for golf course own-

ers even though an individual should have the common sense to heed weather warnings on his/her own steam. Another concern, though, would be with specific lightning protection systems. Lightning Protection Systems can be installed on golf courses but many of them indicate that "false alarms" may occur or may not function properly. The question then arises, does this increase a golf course's liability to install such a system, one which may not work when needed and when invitees are relying on them. The answer may be for a course like Boca West in Florida, which is one of the largest in Florida, and others like them to install such a system due to the heavy traffic flows but for smaller courses with less traffic not to invest in them.

Although these cases and concerns are confined to the golf course setting, one can "stretch" them to apply to other sports. The area of reasonable standard of care and proximate cause of injuries from "Acts of God" coupled with or without negligent behaviors would yield similar results.

Lightning

The unpredictability of lightning strikes is widely known, and is supported by a comment from LPGA golfer, Pat Bradley when she and partner Kathy Whitworth, were playing in the Rochester International, "Lightning flashed right in front of our eyes.. And was one of the scariest experiences in my life. With no warning, nothing! The course was monitoring radar but with all these instruments, it still won't always tell you it's coming. Mother Nature is not to be fool..." ("Facts About Lightning").

To further support the unpredictability of lightning, a little girl at Lighthouse Point, Florida, was practicing softball with ten of her teammates and with the sun still shining at 6:30 p.m., suddenly, a bolt of lightning knocked all the girls to the ground along with their coach.

Everyone got back up, except Jenna, the shortest member of the squad.

However, an amazing amount of information is available about lightning which coaches, managers and athletic personnel should be made aware of either in written word through policies and procedures handbooks or orally by way of workshops, in service training sessions, etc. Such knowledge as, once an edge of a thunderstorm approaches to within 10 miles, an immediate risk exists even with clear skies directly

overhead. Coaching personnel should be aware that the average storm travels about 25 miles an hour. Too many may be relying on the odds that lightning will not strike here. Such data as approximately 100,000 thunderstorms occur in the United States each year and lightning strikes the earth between eight and nine million times a day, however, a person is about as likely to get hit by lightning as he/she is to win the lottery jackpot. The odds of getting totally zapped by lightning is about one in three million. For comparison's sake, there is a one in 5800 chance of dying in a traffic accident, one in 39,000 change of dying from a fall at home, and a one in 342,000 chance of perishing in an airplane. Probably these statistics have been the basis for little training and warning in the preparation of coaches.

It takes but one happening a year; or even a decade to get the attention of many. Certain procedures should be followed and these should be in writing and distributed throughout the coaching staffs and other personnel. To make sure that they are read, maybe an in service training session should be held with weather/lightning experts as well as the appropriate medical personnel conducting them. University curricular and athletic programs have neglected this area of training. It may also be wise to assign "weather alert" responsibilities to someone in the administrative staff to warn coaches at different location of impending hazards approaching. Specific procedures for reducing risks during lightning storms can be accomplished by the following steps.

1. Seek indoor shelter
2. Remain in a closed automobile
3. Avoid open fields
4. Avoid high terrain and bodies of water
5. Avoid contact with metal objects such as golf clubs and carts, rods, bicycles, umbrellas, and metal jewelry
6. Avoid taking refuge under an isolated tree or other tall structure; it is safer to be in a thick forest
7. If caught in an open field, seek a low spot and assume a curled, squatting position with hands and arms around knees
8. Plan activity to reduce likelihood of being caught in a thunderstorm; for instance, plan a morning hike in the mountains to avoid an afternoon thunderstorm (*The Physician and Sportsmedicine*, p. 61)

Additional safety tips include:

If you are isolated in a level field or prairie and you feel your hair stand on end (which indicates that lightning is about to strike), bend forward, putting your hands on your knees. A position with feet together and crouching while removing all metal objects is recommended. Do not lie flat on the ground.

In a car pull safely onto the shoulder of road away from trees and do not touch any metal. The frame of the auto will provide you some safety - not the rubber tires.

Some so-called lightning experts advocate to clear the area and wait 15 minute periods or even 20 minute periods before returning to the field, but who can really predict time periods exactly.

Still others advocate the "flash-to-bang" method. Count the seconds between the lightning flash and the sound of the thunder and divide by 5 for an estimate of miles away the lightning is. However, you are in danger whenever you hear thunder regardless of far away it is.

The age-old philosophy of "using the coach's own judgment" may not be substantial enough in proving that an "Act of God" was the proximate cause of a lightning strike even with the extreme unpredictability of such strikes. Coaches may need a lesson about Mother Nature and given procedures which will prevent accidents and injuries as well as be something solid to defend themselves in a court of law when injuries or even deaths occur.

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