

LEGISTAR NO.

150597

IN THE CIRCUIT COURT OF THE EIGHTH JUDICIAL CIRCUIT
IN AND FOR ALACHUA COUNTY, FLORIDA

DUVAL AUTOMOTIVE GAINESVILLE, LLC
dba MERCEDES-BENZ OF GAINESVILLE,

Plaintiff,

Vs.

CITY OF GAINESVILLE,

Defendant.

Case No.: 01 2015 CA 003947
Division: J

COMPLAINT

Plaintiff, DUVAL AUTOMOTIVE GAINESVILLE, LLC, dba MERCEDES-BENZ OF GAINESVILLE ("DUVAL"),
sues Defendant, CITY OF GAINESVILLE ("CITY), and alleges:

CLAIM AGAINST THE CITY OF GAINESVILLE FOR NEGLIGENCE

- 1. This is an action for negligence, and for damages which exceeds the sum of \$15,000, exclusive of interest, costs or attorney's fees.**
- 2. Plaintiff Duval is a Mercedes-Benz automobile dealer located and doing business in Gainesville, Florida.**
- 3. Defendant City is a Florida municipal corporation, which owns and operates Ironwood Golf Course, formerly a privately owned golf club.**
- 4. As it had done every year since 2011, Plaintiff Duval again agreed to serve as a sponsor for the Twenty Pearls Foundation charity golf tournament to be held at the Ironwood Golf Course on November 8, 2014, and to furnish a new Mercedes-Benz automobile as the prize for a hole-in-one contest to be held during said tournament.**
- 5. Also as it had done every year since 2011, and as was customary in such cases, Duval purchased a policy of hole-in-one insurance from TSI Sports, Inc. ("TSI") which was designed and intended to fully indemnify Duval for the cost of the new automobile should a participant in the tournament score a qualifying hole-in-one and thereby win the prize during the tournament.**
- 6. As in every year past since the 2011 tournament, based upon its understanding from its initial dealings with the City's representative at the golf course, Duval again advised TSI that Hole #4, a 165 yard par 3 hole, would be the designated "target hole" utilized by the City, and purchased from TSI**

and paid for an insurance policy insuring a qualifying hole-in-one on that hole.

7. Also as in the past, on the day before the tournament, Duval delivered the new car to be used as the hole-in-one prize to the golf course. In the front seat of the car Duval provided the City with a box containing the large sponsor sign provided by TSI clearly designating hole#4 as the prize hole, and a copy of the insurance contract which likewise designated Hole #4 as the insured Target Hole. The contract also set forth all of the specifications, witness requirements, and conditions which the City recognized and agreed must be met in order for a hole-in-one to qualify for the prize. Copies of the sign (reduced in size) and the TSI contract are attached hereto as Exhibit "A."

8. Duval had never been involved in setting up the golf course or the Target Hole for the tournament.

9. Defendant City was solely responsible for setting up the golf course for the tournament, including the hole to be used as the "Target Hole" for the hole-in-one contest, and undertook and assumed the duty and obligation to set up the Target Hole so that a hole-in-one on that hole would comply with all of the specifications, witness requirements and conditions set forth in the TSI contract of insurance which were all necessary to qualify for the prize.

10. The City did in fact set up the course, and the Target Hole, in accordance with the TSI contract specifications, witness requirements and conditions - with one major exception.

11. The specifications also clearly informed the City that the designated and insured Target Hole was Hole #4.

12. The City knew or should have known that Duval, as sponsor of the hole-in-one prize, would

purchase hole-in-one insurance. The City likewise knew or should have known that Duval had purchased insurance from TSI to cover a qualifying hole-in-one on Hole #4 during the tournament. As part of its duties and responsibilities for setting up the golf course properly, the City owed a duty to Duval to either set up the hole-in-one contest on the hole pre-designated in the insurance contract as the Target Hole and on which Plaintiff had purchased insurance - or, alternatively, to notify Duval of any change in the Target Hole in time for Duval to notify TSI and make the necessary change in coverage, as per the conditions set out in the insurance contract.

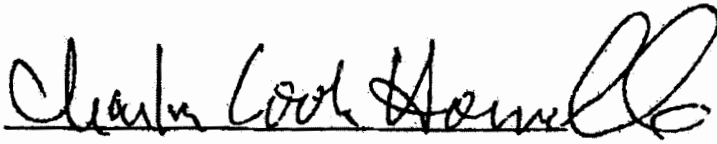
14. The City carelessly and negligently breached said duty to Duval, by unilaterally deciding to use Hole #6 (also a 165 yard par 3 hole) as the prize hole for the tournament instead of the pre-designated, and insured, Hole #4, without ever notifying Duval of such change.

15. Accordingly, when a participant in the tournament scored a hole-in-one on Hole #6, TSI denied coverage under its policy, for the stated reason that the hole-in-one did not occur on the Target Hole which had been pre-designated in the policy, and Duval had to defend resulting litigation. (See Exhibit "B" attached hereto.)

16. As a direct result of the City's said negligence, Duval sustained damages.

17. Plaintiff has complied with the notice requirements of Florida Statute Section 768.28.

WHEREFORE Plaintiff demands judgment for damages against the Defendant, City of Gainesville.



Charles Cook Howell, III

Florida Bar No. 097235

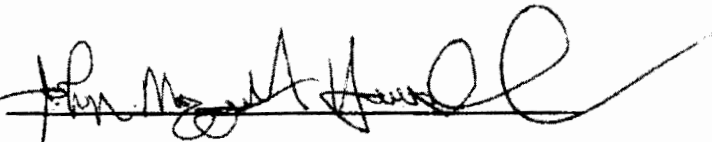
701 Riverside Park Place, Suite 310

Jacksonville, Florida 32204

Telephone: (904) 380-4246

Email: charles.howell@smagcorp.com

And



John Moffitt Howell

O'Neal & Howell, P.A.

2700 University Blvd, West, Suite C

Jacksonville, Florida 32217

Telephone: (904) 353-0024

Email: jhowell@ohnjax.com

Attorneys for Plaintiff



Hole-In-1 Event Specifications	TO: _____
	PAGES: _____

PO Box 1320 Flowery Branch GA 30542 800.465.3461 FAX 770.594.2233

Client ID: 20215500 Contract Number: 154451 Status: Quote Contract Date: 04-Nov-2014

Contact: Roger Daigen
 Member: MERCEDES BENZ OF GAINESVILLE
 Phone: 352.332.7671 Fax: 352.332.8879 4000 North Main Street
 eMail: rogef.daigen@mbofgainesville.com GAINESVILLE FL 32608

Golf Course: Ironwood Golf Course - Gainesville FL

Tournament: 7th Annual Twenty Pearl Golf Scramble

Tournament Date(s): 08-Nov-2014

		Strokes Per Day By Player Category						
Hole	Dist	Amateurs	Club Pros	Tour Pros	Yards	Prize Value	Prize Description	Fee
4	1	60			185	\$85,000	2014 Mercedes-Benz GLA250	\$415
b1	1	60			135	*Bonus*	Tiflnt Pro V1 Balls and Putter	
b2	1	60			135	*Bonus*	Bushnell Golf GPS	
b3	1	60			135	*Bonus*	\$250 AmEx Gift Card	

Read the Contest Insurance Agreement and Conditions Carefully. Sign and return a copy of these Specifications.

Bonus Prizes: If not otherwise specified, three bonus prizes and signs for the bonus prizes are provided free by TSI Sports when a main hole prize is insured. Bonus prizes may be placed on any per three hole where the yardage is 135 yards or greater, except that multiple prizes are not permitted on the same hole.

Initial this box to Decline bonus prizes and bonus prize signs. Decline:

Insurance:	\$416.00
Registration:	
10.00% Discount:	-\$42.00
Signs:	
Shipping:	
Other:	
Total Fee:	\$374.00

In consideration of the Insurance Fee, TSI Sports agrees to secure the prize insurance specified herein on behalf of the member, subject to the Contest Insurance Agreement and Conditions incorporated herein by reference.

TSI Sports: Gloda Evans, Tournament Coordinator

Date: 04 Nov 2014 11:39:AM

Member: I have received, read, understand and hereby agree to the contents of these Event Specifications, (Insured) Hole-In-1 Agreement and Conditions and Contest Rules.

Signed: *[Signature]*

Email: *ROGER.DAIGEN@MBOFGAINESVILLE.COM*

Date: *11/4/2014*

Payment Method: Check Prior to Event Invoice (Preapproval Required)

Credit Card: Visa MC Amex Credit Card #:

Exp Date:

Street or PO Box # of Cardholder:

Zip Code:

Security Code:

Name on Card:

Cardholder Signature:

Contract Number: 154451

A

Copyright (C) 2008 TSI Sports Form TSI-2101

TSI SPORTS INCORPORATED HOLE-IN-1 CONTEST INDEMNIFICATION AGREEMENT
(PAGE 1 OF 2)

TSI Sports Incorporated (hereinafter referred to as TSI Sports) in consideration of the tournament fee, and acting as purchasing group manager on behalf of the member named in this Agreement, hereby agrees to reimburse the member named in this Agreement the prize value specified for each target hole for the first Hole-in-1 by an eligible player that occurs on the date(s) and target hole(s) as specified in the Hole-in-1 Event Specifications (hereinafter referred to as Specifications) which form part of this Agreement and are incorporated herein by reference. TSI Sports acts only on behalf of the member named in this Contract and specifically not as an agent of any contestant in the specified event. Member agrees to protect, indemnify & save harmless TSI from any cost or expense arising from any and all claims by event contestants alleged to have been caused by any act or omission, negligent or otherwise of member or tournament director. The following Conditions apply to this contract.

CONDITIONS

A. BEFORE TOURNAMENT

1. **PAYMENT** A valid and collectible tournament fee as specified herein is the basis of coverage. In the absence of a valid corporate contract or credit arrangement, coverage is not provided without payment postmarked prior to the start of the tournament.
2. **CONFIRMATION OF TERMS:** TSI Sports will fax, email or mail first class to the member a written confirmation of all Specifications prior to the tournament. Only a written, signed and completed TSI Sports Agreement postmarked by the U.S. Postal Service, emailed or faxed prior to the tournament date will supersede prior written communications of terms and conditions.

B. DURING TOURNAMENT

3. **WITNESSES:** All witnesses must be event non-participants, age 21 or over, of good moral character and appointed by the member as follows: Prize limits to \$99,999 two witnesses, \$100,000 to \$249,999 two witnesses, one of which is a PGA Certified Golf Professional, \$250,000 and above require a PGA Certified Golf Professional and a video tape of all eligible shots by a second witness. One witness must be at the tee box and the other witness must be at the green. The witnesses must be positioned in a manner so that they can see the striking of the ball and the flight of the ball. In the case of a Hole-in-1, the witnesses must personally verify (a) that the player took only one stroke, (b) that the hole was empty prior to the stroke and (c) that the ball went into the hole. TSI Sports may require (a) that the witnesses be approved by TSI Sports and/or (b) that witnesses sign a statement stating that they understand the Conditions of the Hole-in-1 Agreement.
4. **YARDAGE:** The target hole(s) must measure from teeing ground to hole no less than the specified yards. In this Agreement, the terms teeing ground and hole are used as defined in The Rules of Golf as approved by the United States Golf Association (USGA). In the case the target hole yardage is less than 135 yards, no claim will be paid for that hole. In case there is a Hole-in-1 on a hole that is at least 135 yards long and the yardage is understated by more than one (1) yard, the payout will be reduced by 10% + 2% per understated yard. In a tournament where men are at least 50% of the competitors, amateur women are permitted to use a teeing ground that is a 15 yards shorter than the specified yards, but no less than 135 yards from the hole. In a tournament where women are more than 50% of the competitors, the women's yardage must be specified.
5. **ELIGIBILITY:** A Hole-in-1 must occur by a competitor who officially qualified and registered prior to the start of the tournament. Competitors must be correctly designated as Amateurs, Club Pros or Tour Pros. Amateurs are as defined in The Rules of Golf (Rules of Amateur Status) as approved by the United States Golf Association (USGA). Club pros are those competitors who are not Amateurs and who have not participated in a professional golf tour event in the five years prior to the tournament. Touring Pros or Tour Pros are all other competitors who are not amateurs.
6. **STROKES:** Strokes as used in the Specifications means number of strokes as defined in The Rules of Golf as approved by the United States Golf Association (USGA). The number of strokes must be specified for each category of players. Only one (1) stroke per player per target hole per day is permitted. No practice strokes or mulligans on a target hole are permitted on the day of the Hole-in-1 competition. Each category of authorized number of strokes is permitted only during the stipulated round(s) of the named tournament on the date(s) specified.
7. **LIMITATION OF LIABILITY (NO PRIZE RESET):** Only one (1) Hole-in-1 prize will be paid for the target hole(s) as specified herein. The prize is not reset after the first Hole-in-1 on that hole during the stipulated round(s) of the named tournament on the date(s) specified. The designated prize value, including any limitations noted in the Specifications and Section D-16(c) is the total maximum limitation of liability per target hole per event.
8. **TARGET HOLE:** Only one (1) pre-designated hole cup may be used for each target hole. The target hole must meet USGA regulations. On nine-hole courses it will be conclusively presumed a golfer is competing for the prize only the first time he plays a designated target hole. That is, on 9-hole courses if the hole number 9 on the course is designated as a target hole, TSI Sports will not reimburse any prize unless a Hole-in-1 is made the first time hole 9 is played, notwithstanding that the same hole and green are also used a second time around the course.
9. **BONUS PRIZES:** Bonus prizes may be provided as part of this Agreement. Bonus prizes valued less than \$1,001 do not require target hole witnesses as defined in section B-3 of this agreement. All other documentation as defined in section C-11 of this agreement is required as proof of claim.

TSI SPORTS INCORPORATED HOLE-IN-1 CONTEST INDEMNIFICATION AGREEMENT
(Page 2 of 2)

Members may use bonus prizes on any par three hole where the yardage is 135 yards or greater, except that multiple prizes are not permitted on the same hole.

C. AFTER TOURNAMENT

10. **CLAIM NOTIFICATION:** Notice by the member to TSI Sports must be reported no later than 5:00pm Eastern Time on the first business day after the Hole-in-1.
11. **PROOF OF CLAIM:** The following documentation must be provided to TSI Sports as proof of a Hole-in-1 claim:
 - (a) Attested statements by the target hole witnesses (as defined by section B-3 of this Agreement); the successful maker of the Hole-in-1; the remaining persons grouped with the successful maker of the Hole-in-1 as shown on the tournament pairing sheet and the respective Official statement forms are furnished by TSI Sports.
 - (b) The original signed and completed scorecard of the player who made the Hole-in-1.
 - (c) Original Pairing Sheet of the tournament director clearly documenting name and, if necessary, address and phone number of contestants; their amateur or professional status and number of shots allowed.
12. **SUBMISSION OF CLAIM:** Proof of Claim (as described in section C-11 of this Agreement) must be submitted to TSI Sports within 30 days of the date of the Hole-in-1. Claims submitted after 30 days will be deemed invalid and will not be paid.
13. **INVESTIGATION:** Upon receipt of Proof of Claim, TSI Sports may conduct a reasonable investigation. This may include, but is not limited to, requiring all attestors (in section C-11-a) to submit to, and pass (i.e. no attempted deception), a polygraph examination as a condition to payment of the claim if in the sole opinion of TSI Sports such an examination is warranted by the facts.
14. **DISPUTED CLAIMS:** Except where prohibited by law, member agrees that (1) any and all disputes and causes of action arising out of or connected with this Agreement, or any prizes awarded, shall be resolved individually, without resort to any form of class action, and exclusively by final and binding arbitration under the rules of the American Arbitration Association and held at the AAA regional office nearest Atlanta, Georgia; (2) the Federal Arbitration Act shall govern the interpretation, enforcement and all proceedings at such arbitration; and (3) judgment upon such arbitration award may be entered in any court having jurisdiction. Under no circumstances will member be permitted to obtain awards for, and member hereby waives all rights to claim, punitive, incidental or consequential damages, or any other damages, including attorneys' fees, other than the prize value specified in this Agreement, and participant further waives all rights to have damages multiplied or increased.

D. VARIABLE TOURNAMENT CONDITIONS

15. **CHANGES IN SPECIFICATIONS:** Any changes in specific event data such as number of shots, hole yardage, dates, prize value, etc. require notification to TSI Sports prior to the start of tournament. After normal business hours, changes are required in writing via facsimile (770) 534-2233 or by leaving a voice mail message in the TSI Sports main voice mailbox. Tournament fee adjustments will be billed after the tournament.
16. **NUMBER OF STROKES:**
 - (a) **SHOOTOUT EVENTS:** A golf event where contestants are qualified by skill level or other selection process to participate in a designated target hole competition. Each category of strokes specified in the Specifications is the maximum allowable during the event.
 - (b) **TOURNAMENT EVENTS:** A golf event where contestants (i) play one or more full rounds and (ii) are registered to compete prior to the stipulated round(s) on either a 9 or 18 hole course.
 - (c) **PROPORTIONATE REDUCTION OF LIABILITY:** For a Tournament Event, the prize value will be prorated downward if a Hole-in-1 occurs and the number of authorized strokes has been understated by more than two (2). The prorating formula is the number of authorized strokes divided by total of actual number of strokes taken plus 30, times the agreed upon value of prize = amount of claim for a Tournament Event. For a Shootout Event, this Agreement is void and the prize will not be paid if the number of strokes is greater than the specified number of strokes.
17. **CANCELLATION:** If signs are shipped for a tournament that has been accepted, cancelled and not rescheduled, the sign fee or \$100, whichever is greater, will be due. A refund will be made if tournament is cancelled prior to the scheduled date of the tournament or the Specifications will be amended to a rescheduled date without additional charge. Rained out events will be credited for unused shots on a pro rata basis subject to verification.



800-HOLE-IN-1™
800-465-3461

PO BOX 1320
FLOWERY BRANCH
GA 30542

Witness Requirements

All witnesses must be event non-participants, age 21 or over, of good moral character, and appointed by the member as follows:

- Prizes up to \$99,999 two witnesses;
- Prizes \$100,000 to \$249,999 two witnesses one of which is a PGA Certified Golf Professional;
- Prizes \$250,000 and above require a PGA Certified Golf Professional and a video tape of all eligible shots by a second witness.

One witness must be at the tee box and the other witness must be at the green. The witnesses must be positioned in a manner so that they can see the striking of the ball and the flight of the ball. In the case of a Hole-in-1, the witnesses must personally verify (a) that the player took only one stroke, (b) that the hole was empty prior to the stroke and (c) that the ball went into the hole.



HOLE-IN-1 INSURANCE

800-465-3461

FAX: 770-534-2233

**PLEASE READ THIS
IMPORTANT INFORMATION**

1. PAYMENT OPTIONS

- Check postmarked prior to tournament date
- American Express, Visa, MasterCard
- Monthly invoicing with approved credit

2. SHIPPING

- Free if signed contract received by 3:00pm Eastern time two (2) business days prior to tournament date
- Next Day Air \$40
- Saturday Delivery \$55 (where available)
- Early AM Delivery \$90 (where available)
- Residential deliveries not guaranteed

PO BOX 1320 FLOWERY BRANCH GA 30542

FAX: 770-534-2233

800-465-3461

800HOLEIN1.COM



800-HOLE-IN-1™
800-465-3461

PO Box 1320
Flowery Branch
GA 30542

January 12, 2015

Mr. Roger Daigen
Mercedes Benz of Gainesville
4000 North Main Street
Gainesville GA 32609

RE: Contract #154451

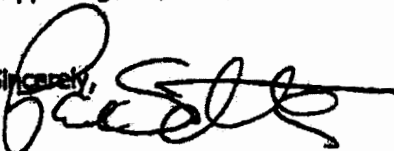
Dear Mr. Daigen:

This letter is to inform you that TSI Sports, Inc. has received the paperwork for the above-mentioned claim that you reported to this office. The affidavits submitted and scorecard shows there was a Hole-in-One on Hole number 6 at Ironwood Golf Course on November 8, 2014. However, both the contract and the Hole-in-One sign TSI Sports provided to Ironwood Golf Course shows that Hole #4 was the specified insured hole; NOT Hole #6. The TSI Sports Hole-in-One Agreement section B:8 clearly states:

8: TARGET HOLE: Only one (1) predestinated hole cup may be used for each target hole. The target hole must meet USGA regulations. On nine-hole courses it will be conclusively presumed a golfer is competing for the prize only the first time he plays a designated target hole. That is, on 9-hole courses if the hole number 9 on the course is designated as a target hole, TSI Sports will not reimburse any prize unless a Hole-in-1 is made the first time hole 9 is played, notwithstanding that the same hole and green are also used a second time around the course.

I have enclosed a copy for your review. I must inform you that this claim has been denied due to the fact that the Hole-in-One occurred on a hole #6 and not Hole # 4 as your Hole-in-One event Specifications reflect.

Supporting statements and documentation enclosed.

Sincerely,


Paul C. Schwartz
TSI Sports, Inc.
800-465-3461

'B'