## Newest Ruling in Golf Course Cases - Plaintiff Hit in Eye by Errant Shot Loses Vision and Case

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Will New York become a haven for lousy golfers? That's a possibility given an appeals court ruling last week in the case of two (theretofore) friends and golfing buddies who took to the course on October 19, 2002. One of their threesome got hit in the eye by an errant golf shot from another in the threesome, sustained a traumatic retinal detachment, lost sight in his eye, sued his buddy and has now had his case dismissed as a matter of law.

Golf course injuries can be quite severe and lawsuits concerning them seem to be on the rise. The courts, think tanks and commentators have repeatedly addressed the **situations under which there will be liability for misdirected golf shots**. When one must one yell "fore," and when should an injured golfer's case be dismissed because he was out of position? These are just some of the issues being discussed in the cases and by others such as **Walter Olson** who chronicles the high cost of our legal system at **Overlawyered (where today he mentions the case here discussed)**.

In <u>Anand v. Kapoor</u>, plaintiff and defendant, both physicians, had each hit two shots on the first hole of Dix Hills Park Golf Course. Dr. Anand was 20 feet or so ahead of Dr. Kapoor and at an angle 50 degrees away from the hole. Without seeing Dr. Anand or even knowing where he was, Dr. Kapoor hit what must have been one of the poorest wedge shots in history - it shanked 50-80 degrees and went towards the green no more than 20 feet - it went smack into Dr. Anand's left eye!

## Nobody is ahead of the golfer and all are safe here:



Dr. Anand claimed that Dr. Kapoor should have yelled "fore" before hitting or at least when he realized his shot was, shall we say, off-line. Way off line. Dr. Kapoor, for his part, claimed that the plaintiff knew that golfers should wait behind those hitting precisely to avoid injuries from errant shots.

Also, the defendant correctly noted that the obligation to yell fore arises only when another person person is:

- 1. in the intended line of flight, or
- 2. in a position such that danger to him is reasonably anticipated.

Dr. Anand was neither in the intended line of flight nor even in an area that it might be expected would be dangerous.

The court noted that it's long been the law in New York (see <u>Jenks v. McGranaghan</u>) that a golfer has a duty to give a timely warning to other persons within the foreseeable ambit of danger (i.e., to yell "fore"); however, on the facts in this case the court then held that plaintiff was at so great an angle away from the defendant and the intended line of flight that he was not in the foreseeable danger zone.

## It's not like the plaintiff was aiming for the defendant, like in this illustration:



So what exactly does "foreseeable danger zone" mean? Well, as we lawyers say, its meaning is fact specific.

- In the case of <u>Richardson v. Muscato</u>, it meant that a golfer on the tee who was hit on the head by a ball from another golfer on a different hole was in the zone when the defendant admitted he saw the plaintiff ahead about 40 feet before taking his shot.
- In the case of <u>Rinaldo v. McGovern</u>, it meant that a person driving his car on a road adjacent to a golf course was not in the zone when a ball came crashing into his windshield.

Clearly, Dr. Anand bore responsibility for his own actions in the new case - he went ahead of the pack and placed himself outside the line of sight of his playing partner. It's not that the court is blaming the victim (and we all surely must sympathize with the plaintiff who suffered a devastating injury here); rather, the court is declaring that the **doctrine of assumption of the risk applies**. Under that doctrine, <u>as we have noted before</u> (coincidentally, in another golf injury case), <u>a plaintiff may be barred from recovering for his injuries when it is shown that he voluntarily engaged in dangerous activity and he knew or should have known of the risk of harm.</u>

So, yes, a **golfer should still yell "fore" when he hits an errant shot** and if he does not he may be found liable in court if his shot injures another golfer when the plaintiff:

- 1. is not in the line of sight,
- 2. has gone ahead of the area where the golfer's ball lies who is furthest from the hole, or
- 3. otherwise acts without regard for his own safety.

New York is not, as I suggested tongue in cheek above, likely to become a haven for lousy golfers because of the new court decision. <u>High courts in magnificent golf spots like Hawaii have ruled the same way.</u> Golf, anyone?