NEW YORK INJURY CASES BLOG
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New York Injury Cases Blog

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Eye Surgeries Fail to Save Eye after Golf Driving Range Accident - $1,000,000 Settlement

A devastating traumatic eye injury resulted in a **$1,000,000 settlement** in the midst of testimony in a lawsuit brought by a 42 year old man in Florida who was hitting golf balls at a driving range when his ball struck a granite marker used to separate each golfer and then ricocheted right into his eye socket.

The plaintiff suffered the following injuries:

- a severely **ruptured globe** of his eye,
- an inferior **orbital blowout fracture** with nerve and muscle entrapment and
- **retinal damage.**
- After several surgeries, the eye could not be saved and the plaintiff was fitted for a **prosthetic eye**.

The case, Jones v. Westchase Golf and Country Club, available here thanks to Walter Olson at Overlawyered, is controversial because in athletic injury cases, and especially in golf course injury cases, the **doctrine of assumption of the risk** usually carries the day for the defense resulting in no recovery at all for the injured plaintiff.

Under the doctrine of assumption of the risk, a plaintiff may be barred from recovering for injuries when it can be shown that he voluntarily engaged in dangerous activity and that he knew or should have known of the risk of harm.

So, the typical errant or hooked shot that strikes another golfer on the course will likely go nowhere for the injured person. These cases are usually dismissed before trial. And they should be.

The Jones case, though, involves facts that are both more damaging to the plaintiff's case and more damaging to the defendant's case. I mean, it was his own golf ball! He couldn't even hit it out of the area

of his stall. True, but the **plaintiff brought in an expert in golf course design who said ropes should have been used instead of granite dividers**.The case settled after that testimony.

The case has generated some snickering among lawyers on Twitter (h/t Nicole Black at Sui Generis). But let's face it: there are lots of lousy golfers at driving ranges hitting balls in every direction. The range owner surely has some safety obligations towards its patrons. It appears that the defense thought the jury would agree with the plaintiff's expert and find that ropes should have been used and would have been safe.

So would this be safe? What about the golfers next to one another? Might not they be hit?

The case was probably defensible and may well have resulted in no recovery at all by the plaintiff but **the driving range had only a $1,000,000 liability insurance policy** and the plaintiff was very sympathetic in that not only had he undergone extremely painful surgeries and then lost his eye but also he was diagnosed with esophageal cancer that his attorney was prepared to try to connect medically to the original accident due to stress and the need to spend large amounts of time on his stomach.

Had the jury agreed with the plaintiff, the damages could well have been much more than $1,000,000 so it appeared that the defendant convinced its insurance company to pay the policy limit and thus protect the driving range company from having to pay from its own funds any verdict in excess of the $1,000,000 of coverage.

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