



# FORE! Lawyers Tee Off On Errant Golf Ball Suits

JUSTIN REBELLO

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Golfers are well aware of the potential for injuries from what Mark Twain famously called “a good walk spoiled.” After all, if Tiger Woods can slice an approach and slice a woman on the head so severely she needs stitches, like he did during last year’s British Open, the average weekend duffer could wreak even more havoc.

“There is an inherent danger in the game,” said John Shields, whose family has owned the Glenn Dale Golf Club in Prince George’s County for 50 years. “When you have a projectile flying around at 100 miles per hour with the density of a rock, it can cause damage.”

But who can or should be held legally responsible once the damage has been assessed largely depends on the circumstances surrounding the accident, according to various state courts and lawyers familiar with golf course-related personal injury lawsuits.

In the summer of 2006, for example, a New Jersey woman was watching her boyfriend tee off from the 16th hole at Owl’s Creek Golf Course in Virginia Beach, Va., when she was struck in the left temple and eye by an errant ball driven by a player at the next hole.

Crystal Timpanaro sued the golf course for \$1 million, alleging a design defect — specifically, the 16th and 17th holes were too close to one another and errant shots were too probable — that led to her eye injury, requiring surgery.

“They were obligated to take necessary precautions and didn’t,” said Timpanaro’s attorney, Michelle Douglas, of Kalbian Hagerty in Washington, D.C. “Of course, there’s an inherent risk in the game, but that has to [be considered] when the course is designed.”

The case went to trial last month in federal court in Norfolk, Va., where the jury entered a defense verdict on June 20.

But Timpanaro is not alone. Experts estimate that 10,000 players and onlookers are injured annually by golf shots gone awry.

## Assumption of risk

Lawsuits alleging negligent course design are prevalent throughout the country, but a suit against the fellow player who hit the errant shot is typically thrown out of court.

“The concept of assumption of risk comes into play,” said Mike Kraker, a St. Paul, Minn.-based lawyer and consultant. “The defendant typically wins the case because he can’t be held liable just because he hit a bad shot.”

Shields, who recently stepped down as president of the Maryland Golf Course Owners Association, recalled two lawsuits where Glenn Dale was named as a defendant. In one case, a man walked in front of his golfing group and was struck in the eye, blinding him; in the other, a teenager illegally swimming in a water hazard retrieving balls was hit in the head by a golfer who told the teen he was safe there.

Nothing came of the first lawsuit, and the golf course was dismissed from the second one, Shields said.

In 2006, the Hawaii Supreme Court found that a man who was struck in the eye by a ball while riding in a golf cart could not sue the golfer because of the nature of the sport and the risks involved for participants.

“[W]e conclude that, (1) by his participation in the sport of golfing, [the plaintiff] assumed all of the ordinary dangers incident to the game, i.e., the inherent risks; (2) as a co-participant, [the other golfer’s] errant shot was neither intentional nor reckless; and (3) [the golfer] had no duty to warn [the plaintiff] of the errant ball,” the court said in *Yoneda v. Tom*.

In 2007, the California Supreme Court reached a similar conclusion in *Shin v. Ahn*.

“[T]he primary assumption of risk doctrine does apply to golf and ... being struck by a carelessly hit ball is an inherent risk of the sport. ... Hitting a golf ball at a high rate of speed involves the very real possibility that the ball will take flight in an unintended direction,” the court held.

## Are courses protected?

While players have legal protection for their bad shots, the course may not.

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In the Yoneda case, the Hawaii court allowed an action to be brought against the golf course, because it “has an obligation to design a golf course to minimize the risk that players will be hit by golf balls, e.g., by the way the various tees, fairways and greens are aligned or separated.”

In November 2000, The Golf Club at Lansdowne in Virginia reached a \$7.5 million settlement with a golfer struck in the neck by a stray driving range ball while he was on the putting green, causing him to suffer a stroke and confining him to a wheelchair.

“It made me go out and get more insurance,” Shields said of the settlement.

Washington lawyer Wayne R. Cohen has handled several golf course-related personal injury cases, and said these types of lawsuits are more common in the southern and western parts of the United States, where there are more golf courses open more days per year.

Cohen, managing partner of Cohen & Cohen P.C., said the lawsuits typically are based on problems with a golf course’s layout, as was alleged in Timpanaro’s case, or a course’s driving range, which may be located too close to the course or lack a bell that rings when someone is on the driving range.

Kraker, of St. Paul, said courses can run into problems based on minor design defects, such as a green being too close to the tee or tee boxes arranged too close to each other. Courses are vulnerable unless such defects are taken care of in the design process.

“The facts are so unique in these cases,” said Kraker, who has also served as an expert witness in golf-related litigation. “There never seems to be a pattern I can find that I can say unequivocally how to avoid [lawsuits.]”

Cohen said lawsuits brought against golf courses typically involve head or eye injuries, so the medical damages sought are more than other personal injury cases. Trials also require the use of a golf teaching professional or designer to prove a golf course’s liability, he said.

“You have to have an expert come in,” Cohen said. “You have to have someone come in and say the design of the course is negligent or there is some other factor.”

Kraker suggested courses spend money to fix problems, such as adding netting or growing trees to knock down shots that can sail from hole to hole. Courses that invest in sufficient warning signage tend to sidestep litigation as well. These moves, Kraker said, serve not only to prevent litigation but as a strong defense if a suit is filed.

They allow “a defendant the ability to say, ‘yeah, something bad happened, but we did this and this to avoid it.’”

Shields said newer golf courses have more acres and space between fairways to prevent accidents. But the most effective way to prevent accidents might be found in a golf tradition for an errant shot.

“The main thing is the golfer has to yell ‘Fore!’” he said.

Some golfers are embarrassed to yell “Fore!” and admit they hit a bad shot, but Shields said it is the easiest way for others on the course to avoid an injury.

“If they yell ‘Fore!’ don’t look toward the sound, turn away and duck,” he advised.

### **A legal nuisance?**

A wild drive can also endanger individuals who are not on the course.

For golf courses located in suburban neighborhoods, nearby homes are popular targets for especially bad shots. Still, the cases tend to favor the course ownership.

“If a golf course was there first, the defense of the golf course owner is that the person assumed a risk and should have known there was a strong possibility of his property being hit by errant balls,” said Dalton Floyd, of the Floyd Law Firm in Surfside Beach, S.C., who specializes in every aspect of the golf industry, from land acquisition to personal injury.

Dalton has previously represented PGA presidents Gary Shaw and Will Mann.

One option for the plaintiff is to prove the course has created a legal nuisance. But Floyd said that only comes into play if the property is hit by a substantial number of golf balls — say “over a hundred” in a short period of time.