

boundaries

A GUIDE FOR PROPERTY OWNERS AND INSURERS IN A LITIGIOUS SOCIETY

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Expert Not Required to Support a Failure to Warn Claim in a Premises Liability Case

By Todd M. Rowe

In *Auito v. Clarkston Creek Golf Club*, the jury awarded Plaintiff over \$842,000 in a premises liability claim. Plaintiff was a participant in a golf scramble held at Defendant's golf course. After finishing the 17th hole, Plaintiff walked with members of his foursome toward their carts parked between the 17th green and the 18th tee when he was struck in the eye by golf ball hit by a player teeing off at the 18th hole. Plaintiff permanently lost vision in his right eye. Plaintiff sued the golf course on two separate legal theories. First, Plaintiff alleged Defendant failed to warn of the danger posed by the location of the 18th hole in proximity to the location of golfers as they left the 17th green. Second, Plaintiff alleged that the design of the golf course was defective as the cart path from the 17th green led directly toward the 18th tee.

The trial court dismissed Plaintiff's defective design claim because Plaintiff failed to provide any expert testimony establishing that the golf course was defectively designed. The only evidence concerning the defective design claim was the testimony of one of the members of Plaintiff's foursome. He testified that Defendant's design was unusual because it routed golfers directly toward the tee of the next hole rather than through the back or side. The trial court found

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Due to common sense, knowledge and experience, expert testimony is usually not needed by a Plaintiff to establish a "failure to warn" claim in a premises liability case. While experts are often employed by Plaintiffs to testify on such issues, they simply serve to underscore Plaintiff's theories against a premises owner.

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this person lacked the expertise to opine on golf course design and dismissed Plaintiff's cause of action. The trial court allowed Plaintiff's failure to warn claim to go before the jury. The jury found Defendant was negligent for not warning golfers that they would be entering the 18th tee from the front rather than the back or side.

On appeal, Defendant argued that the failure to warn claim should have been dismissed for the same reason the trial court dismissed the defective design claim. In an unpublished opinion, the Court of Appeals affirmed the trial court's holding that the two claims were separate and distinct. The Court held that the defective design needed to be supported by expert testimony concerning the risks posed by the design, alternatives to the design, or other factors related to the design of the golf course. On the other hand, proving negligence in a premises liability claim only required demonstrating that a "dangerous condition" existed on the premises. The Court of Appeals held the premises liability claim could be supported by the testimony of a lay person rather than an expert. Plaintiff's cause of action involved matters easily understood by a lay person – that is, a condition of the land where Plaintiff was unknowingly placed in danger of being struck by a golf ball. While expert testimony may have been admissible to support the failure to warn claim, it was not required.

Therefore, the Court of Appeals affirmed the trial court's ruling that Plaintiff's failure to warn claim was not reliant on his design defect claim and upheld the jury's verdict.

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