

# Man injured by golf ball wins \$350,000 jury award

► *The doctor sued after a shot bounced off the frame of a practice net and hit him in the eye.*

By John Hogan  
The Grand Rapids Press

A Rockford-area doctor whose left eye was injured by a golf ball that ricocheted off the frame of a practice golf net was awarded \$350,000 by a Kent County jury who decided the mail-order device was defective.

Dr. Mario D. Gatchalian, an anesthesiologist at Butterworth Hospital, lost 30 percent of his vision in the accident which occurred 3 years ago in the basement of his Cannon Township home.

Jurors heard four days of testimony over two weeks before returning the verdict earlier this month. The judgment was submitted this week for the court's review. It will likely be approved in January.

The trial included a demonstration by an Arizona golf pro who hit three balls into the massive net set up in the fourth-floor courtroom of Circuit Judge George Buth, who also is an avid golfer.

"You need to put on your safety goggles," said attorney Keary Sawyer, who represented Gatchalian. "This really is a dangerous product and a danger to consumers."

The practice net is attached to several steel pipes which are left unguarded and "presents a feature which can cause ricochets," Sawyer said.

"You hit this steel pipe in the

right spot and it will come right back at you," he said. "In this product, the hazard was not necessarily obvious and there were no warnings on it."

Gatchalian, 57, who is married and has three children, is still able to work and drive a car, despite the partial vision loss, Sawyer said. Gatchalian declined comment on the case.

The doctor purchased the golf net in April 1989 for \$169 from the Austed Co., based in Sioux Falls, S.D. Nearly 8,000 nets were manufactured before production was discontinued, Sawyer said.

Gatchalian was hitting golf balls into the net in June 1991, when a ricochet shot shattered the plastic lens of his eye glasses, causing a severe cut to his cornea, according to the lawsuit.

Austed Co. failed to inspect and test the golf net for its safety and did not warn consumers of potential dangers of ricocheting golf balls, according to the suit filed in April 1993.

Witnesses called by Sawyer included an engineer from Chicago who said the product was not fit for its intended purpose, which Sawyer said represents a "breach of implied warranty."

Grand Rapids attorney Thomas G. Herman, who represented Austed Co., said his client still stands behind the product, and called the incident involving Gatchalian a "fluke accident."

He said the manufacturer stopped selling the net, but said the decision was based on the "normal life cycles of the product" and had nothing to do with the accident or the lawsuit.

Herman contended the golf ball

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traveled through one of several holes that Gatchalian had worn through the net and hit a solid object which caused it to ricochet.

Herman called the jury award "fairly hefty," but said his client did not want to settle out of court because they "still believe in the product."

The lawsuit was sent to mediation in April and a three-member panel recommended a settlement of \$60,000. Gatchalian agreed to accept that amount because he wanted to avoid the rigors of a trial, Sawyer said.

But Austed Co. balked and made a \$10,000 counteroffer. On the first day of the trial, the company in-

creased that offer to \$20,000, but Gatchalian rejected it. No counteroffer was made, and the matter was heard by the jury.

Sawyer said he hopes the jury award, and similar product liability awards, will force manufacturers to offer products that do not present undue risks to the consumer, notably during peak shopping periods like Christmastime.

"In terms of product liability cases, what people don't realize is that our government relies on the free market to root out the products that are unreasonably dangerous, and litigation is part of it.

"When we have an unreasonable, dangerous and hazardous product, the litigation system does act in a positive way."