Course cleared in fatal lightning case; liability questions remain

By Jonathan Brogan

On July 20, 1990, Tom Fisher and friends Chris Rosengren and Daryl Smith were playing golf at South Portland Municipal Golf Course in South Portland, Maine. South Portland is a coastal town (yesterday)-day fee course which caters, typically, to a less experienced group of golfers.

On July 20, Mr. Fisher's group approached the 5th green, the skies darkened and it began to rain. Apparently the rain became quite heavy and Mr. Fisher and his group went to the 6th tee. The 3rd and 6th tees share approximately the same area of the golf course. The 6th tee area is the highest point of the course.

Jonathan Brogan is an attorney with the law firm of Norman Hanson and DeTroy in Portland, Maine. He specializes in trial work and was lead counsel in the case entitled Thomas Fisher v. City of South Portland, detailed above. Brogan represented the city.

 Upon arriving, Mr. Fisher and his group noticed the course was virtually empty. It was raining heavily.

Chris Rosengren, Mr. Fisher's next-door neighbor, had been watching lightning and heard thunder. He did not believe the lightning or thunder to be an immediate threat to the safety of the group. Mr. Rosengren and Mr. Fisher discussed their options. Apparently the group decided to "wait out" the storm. Within five to 10 minutes, a lightning bolt struck the tree by which Mr. Fisher was standing, killing him and injuring Mr. Smith. Mr. Rosengren, who had answered the call of nature, escaped unharmed.

Deborah Lee Fisher, Thomas Fisher's widow, filed suit on her behalf and on the behalf of her two children, Lauren and Katherine, alleging the city of South Portland had negligently ordered the death of her husband.

At trial, the chief argument of Mrs. Fisher's attorney was that the city had a variety of options available to it to help protect golfers from lightning: the city had availed itself of none of those options. The city's contention was simple: Mr. Fisher was a full-grown adult aware of the "awesome power" of lightning who failed, for whatever reason, to use his common sense and leave the golf course during a thunder and lightning storm.

The jury, after deliberating for 2 and 1/2 hours, delivered a verdict which found the city somewhat responsible for Mr. Fisher's death but found, pursuant to Massachusetts law, that Mr. Fisher's responsibility was equal to or greater than the responsibility of the city. The jury found the city not liable for the death of Mr. Fisher.

Needless to say, the litigation costs associated with this trial were not insubstantial. The plaintiff was able to convince the jury that the city was negligent for failing to do anything to warn Thomas Fisher of the dangers of lightning. The attorneys for Mr. Fisher's estate relied upon Appendix 4 of the USGA Rules which provide, in pertinent part, that "as there may be have been deaths and injuries from lightning on golf courses, all clubs and sponsors of golf competition are urged to take every precaution for the protection of persons against lightning."

Despite lengthy testimony concerning the efficacy of the USGA rules to a friendly match on a Friday afternoon on a non-USGA golf course, a jury had to be swayed by the USGA's words asking clubs to invoke "every precaution."

Where does the jury's verdict leave golf course operations and municipalities? Frankly, the jury's verdict did nothing to decide the final issue of responsibility in the event of a lightning storm. It would seem appropriate that every golf course display USGA posters.

Letters

The Golf Industry Must Organize, or 'Wither'

To the editor:

I always enjoy reading Golf Course News as it is informative and timely with respect to what is happening in the golf industry.

In this regard, I was particularly delighted to read Hal Phillips' column about the golf industry's need for a lobbyist in your June issue, as well as Mr. Phillips' response to the Wall Street Journal's article, "Golf Courses are Denounced as Health Hazards," which appeared in the May 25 issue.

I agree wholeheartedly with Mr. Phillips. The golf industry has the obligation to communicate its message for years; i.e., "It is our task to serve you, your food and your ale. We schedule your meetings, and parties Divine. Your clubhouse is perfect both inside and out, our task is so vital without our doubt, your golf would be lacking, and your club founded to fall."" Let me speak next, Olde Sage, if I may, 've come to represent the PGA. "Ensure the open space, the development of 'Belturf' Kentucky blue and 'Belair' zoysia. The golf industry has its place in society and its place is the golf course, a jury had to be swayed by the USGA's words asking clubs to invoke "every precaution."

"Let me speak next, Olde Sage, if I may, 've come to represent the GCSAA. "The keepers of the game that is our charge, the task is vital, the responsibility large. We are the keepers of the greens, so great, without us, your golf would hate. "From the trees to the turf, which diligently now, come the playing fields of golf, where we make the grass grow."

"Let me speak next, Olde Sage, if I may, 've come to represent the CMAA. "It is our task to serve you, your food and your ale. We schedule your meetings, and parties Divine. Your clubhouse is perfect both inside and out, our task is so vital without our doubt, your golf would be lacking, and your club founded to fall.""

"Let me speak next, Olde Sage, if I may, 've come to represent the CGSAA. "The keepers of the game that is our charge, the task is vital, the responsibility large. We are the keepers of the greens, so great, without us, your golf would hate. "From the trees to the turf, which diligently now, come the playing fields of golf, where we make the grass grow."

"Let me speak next, Olde Sage, if I may, 've come to represent the USGA. "Ensure the game's integrity, that is our quest, fair play rules and are, at our behalf. "The equipment we test for distance and groove, that all tools are fair, is our charge to approve. Tournaments we run, from sea shore to plain, where the roughs will be tough and the greens free from grain. "So let the truth be known, both for and wide, the USGA is the game's inviolable guide."

"At last, all had been heard and, the Olde Sage went on to speak. "Important you are, but TEAM players, all that I seek. "To answer the quest, who's the most important in golf? here is my offer. "The answer is NE, I am the GOLFER!"

Dennis D. Lyon, CGCS
Aurora, Colo.

Obituaries

Jack Murray, 53

BRADENTON, Fla. — Former United States Department of Agriculture (USDA) research agronomist James Murray, 53, died in May after a long battle with cancer.

Mr. Murray worked with the USDA from 1969-1988 when he retired here with his family for health reasons. His contributions to the turfgrass industry include the development of "Belturf" Kentucky blue and "Belair" zoysia. Mr. Murray was an active member in the American Soil Professionals Association, the Golf Course Superintendents Association of America and the Professional Grounds Maintenance Council. He was also an active member of the Turfgrass division (C-5) of the Crop Science Society of America, the Musser International Turfgrass Foundation and the American Society of Turfgrass Consultants. He was survived by his wife, Bobbie, and son Paul. 14.