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 suburb of (dally) -daily fee course which caters, typically, to a less experienced group of golfers.

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 Davies 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 friend and fellow golfer, heard thunder and feared lightning. He did not believe the lightning or thunder to be an immediate threat to the safety of the group's facilities. Mr. Rosengren and Mr. Fisher discussed their options. Apparently the group decided to "wait out" the storm. Within five to ten 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 ended the life 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 from lightning those who may have found themselves unavailed 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 Mahady, 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 convine 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 there have been many 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.

Continued on page 44

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 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," on May 2.

Golf has long needed a representative in Washington. The environments are "light years" ahead of us in this regard and as a past, and current, victim of their regulatory policies and sometimes irrational actions, I feel that unless we can gain an equal voice with these people, golf will become a withering sport in the 21st century.

The industry has tried to effectively communicate its message for years; i.e., that it is a vibrant, thriving sport that not only provides economic benefits, but also has immense environmental benefits.

The measure, which lost narrowly, 54 percent to 46 percent, would have permitted construction of 17,500 homes on a 12,000-acre tract of land stretching from Carmel Valley in the West to Penasquitos and Rancho Bernardo in the East.

Sadly, even though one half of that 12,000-acre parcel would have been preserved forever as "Open Space," the measure didn't pass because of a well-orchestrated campaign by the environmentalists. Even more sad, there were four golf courses that were planned to be built in that area if the voters had approved Proposition C.

Your article about sending a lobbyist to Washington should serve as a "wake-up call" to the industry. It is time for the golf industry, and those who profit therein, to send a lobbyist to our nation's capital.

The golf industry's survival is crucial to the golf industry's present and future success. The golf industry acts unilaterally on this matter and every state in the Union forms a "Pro-Golf Interest Group," to protect and enhance the industry's gains, having one person in Washington may be like a voice crying in the wind! The lobbyist needs "grass roots" support from all golfers and every association or business in the industry.

With love sent, I hope she is well versed in issues at hand

Don Collett, president
Don Collett & Associates
San Diego, Calif.

 Words of Wisdom, in verse, from the Olde Sage

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

He was 53.

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 "Buckeye blue," "Kentucky blue," and "Belair" zoysia.

Mr. Murray was an active member in the American Sod Producers Association, the Golf Course Superintendents Association of America and the Professional Grounds Maintenance Society. He was also the acting director of the Turfgrass division (C-5) of the Crop Science Society of America, the Mussier International Turfgrass Foundation and the University of Florida's and the University of Vermont Turfgrass Science. Upon retirement, Mr. Murray worked there part-time for Pursley Farms and then for his own company, Turfgrass Germplasm Services.

He is survived by his wife, Bobbie, and son, Paul.

Obituaries

Jack Murray, 53

Mr. Murray worked for 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 "Buckeye blue," "Kentucky blue," and "Belair" zoysia.

Mr. Murray was an active member in the American Sod Producers Association, the Golf Course Superintendents Association of America and the Professional Grounds Maintenance Society. He was also the acting director of the Turfgrass division (C-5) of the Crop Science Society of America, the Mussier International Turfgrass Foundation and the University of Florida's and the University of Vermont Turfgrass Science. Upon retirement, Mr. Murray worked there part-time for Pursley Farms and then for his own company, Turfgrass Germplasm Services.

He is survived by his wife, Bobbie, and son, Paul.
Lightning liability?
Continued from page 40

that provide relevant and helpful information in the event that a golfer fails to heed nature's warnings and is caught during a lightning storm.

Additionally, if possible, lightning-proof shelters should be supplied at a central area on a golf course. Obviously, lightning shelters cannot be provided on every hole, nor will they be located in such a way that every golfer can reach them easily. However, they should be available where possible. But, it is more dangerous to provide shelters which are not lightning-proof which give patrons a false sense of security.

Examination of the pre-trial proceedings reveals that lawyers for both sides began a rather rigorous discovery process immediately after Mrs. Fisher filed suit. The sworn testimony of a variety of witnesses was preserved for trial.

The plaintiff retained Edward Wankel, a parks and recreation director from Long Island, N.Y. to testify that it was the golf course industry standard to provide some warnings and/or actions to protect golfers in the event of an imminent thunder and lightning storm. The city of South Portland retained a local PGA professional, Bryce Roberts, of Prouts Neck Country Club in Scarborough, Maine; who testified there was no industry standard concerning lightning protection and many golf courses did different things about lightning protection. In fact, most did nothing.

There was no question the municipal court had not undertaken any lightning "precautions." It did not have a United States Golf Association (USGA) or Golf magazine poster concerning the dangers of lightning. There was no evacuation procedure in the event of a lightning storm. The city of South Portland retained a local PGA professional, Bryce Roberts, of Prouts Neck Country Club in Scarborough, Maine; who testified there was no industry standard concerning lightning protection and many golf courses did different things about lightning protection. It did not undertake any programs to educate its patrons of the dangers of lightning or of the procedures to be taken in event of a lightning storm.

South Portland had no specific lightning-proof storm shelters on the golf course, although the clubhouse and a maintenance shed were within 1,000 yards of the area where Mr. Fisher was killed. The recreation director for the city and the golf course superintendent testified that either of those buildings would have been protection for Mr. Fisher and his group. At no time prior to Mr. Fisher's death had anyone requested lightning shelters on the golf course, although the clubhouse and a maintenance shed were within 1,000 yards of the area where Mr. Fisher was killed. The recreation director for the city and the golf course superintendent testified that either of those buildings would have been protection for Mr. Fisher and his group. At no time prior to Mr. Fisher's death had anyone requested lightning shelters on the golf course, although the clubhouse and a maintenance shed were within 1,000 yards of the area where Mr. Fisher was killed. The recreation director for the city and the golf course superintendent testified that either of those buildings would have been protection for Mr. Fisher and his group. At no time prior to Mr. Fisher's death had anyone requested lightning shelters on the golf course, although the clubhouse and a maintenance shed were within 1,000 yards of the area where Mr. Fisher was killed. The recreation director for the city and the golf course superintendent testified that either of those buildings would have been protection for Mr. Fisher and his group. At no time prior to Mr. Fisher's death had anyone requested lightning shelters on the golf course, although the clubhouse and a maintenance shed were within 1,000 yards of the area where Mr. Fisher was killed. The recreation director for the city and the golf course superintendent testified that either of those buildings would have been protection for Mr. Fisher and his group. At no time prior to Mr. Fisher's death had anyone requested lightning shelters on the golf course, although the clubhouse and a maintenance shed were within 1,000 yards of the area where Mr. Fisher was killed. The recreation director for the city and the golf course superintendent testified that either of those buildings would have been protection for Mr. Fisher and his group. At no time prior to Mr. Fisher's death had anyone requested lightning shelters on the golf course, although the clubhouse and a maintenance shed were within 1,000 yards of the area where Mr. Fisher was killed. The recreation director for the city and the golf course superintendent testified that either of those buildings would have been protection for Mr. Fisher and his group. At no time prior to Mr. Fisher's death had anyone requested lightning shelters on the golf course, although the clubhouse and a maintenance shed were within 1,000 yards of the area where Mr. Fisher was killed. The recreation director for the city and the golf course superintendent testified that either of those buildings would have been protection for Mr. Fisher and his group. At no time prior to Mr. Fisher's death had anyone requested lightning shelters on the golf course, although the clubhouse and a maintenance shed were within 1,000 yards of the area where Mr. Fisher was killed. The recreation director for the city and the golf course superintendent testified that either of those buildings would have been protection for Mr. Fisher and his group. At no time prior to Mr. Fisher's death had anyone requested lightning shelters on the golf course, although the clubhouse and a maintenance shed were within 1,000 yards of the area where Mr. Fisher was killed. The recreation director for the city and the golf course superintendent testified that either of those buildings would have been protection for Mr. Fisher and his group. At no time prior to Mr. Fisher's death had anyone requested lightning shelters on the golf course, although the clubhouse and a maintenance shed were within 1,000 yards of the area where Mr. Fisher was killed. The recreation director for the city and the golf course superintendent testified that either of those buildings would have been protection for Mr. Fisher and his group. At no time prior to Mr. Fisher's death had anyone requested lightning shelters on the golf course, although the clubhouse and a maintenance shed were within 1,000 yards of the area where Mr. Fisher was killed. The recreation director for the city and the golf course superintendent testified that either of those buildings would have been protection for Mr. Fisher and his group. At no time prior to Mr. Fisher's death had anyone requested lightning shelters on the golf course, although the clubhouse and a maintenance shed were within 1,000 yards of the area where Mr. Fisher was killed. The recreation director for the city and the golf course superintendent testified that either of those buildings would have been protection for Mr. Fisher and his group. At no time prior to Mr. Fisher's death had anyone requested lightning shelters on the golf course, although the clubhouse and a maintenance shed were within 1,000 yards of the area where Mr. Fisher was killed. The recreation director for the city and the golf course superintendent testified that either of those buildings would have been protection for Mr. Fisher and his group. At no time prior to Mr. Fisher's death had anyone requested lightning shelters on the golf course, although the clubhouse and a maintenance shed were within 1,000 yards of the area where Mr. Fisher was killed. The recreation director for the city and the golf course superintendent testified that either of those buildings would have been protection for Mr. Fisher and his group. At no time prior to Mr. Fisher's death had anyone requested lightning shelters on the golf course, although the clubhouse and a maintenance shed were within 1,000 yards of the area where Mr. Fisher was killed. The recreation director for the city and the golf course superintendent testified that either of those buildings would have been protection for Mr. Fisher and his group. At no time prior to Mr. Fisher's death had anyone requested lightning shelters on the golf course, although the clubhouse and a maintenance shed were within 1,000 yards of the area where Mr. Fisher was killed. The recreation director for the city and the golf course superintendent testified that either of those buildings would have been protection for Mr. Fisher and his group. At no time prior to Mr. Fisher's death had anyone requested lightning shelters on the golf course, although the clubhouse and a maintenance shed were within 1,000 yards of the area where Mr. Fisher was killed. The recreation director for the city and the golf course superintendent testified that either of those buildings would have been protection for Mr. Fisher and his group. At no time prior to Mr. Fisher's death had anyone requested lightning shelters on the golf course, although the clubhouse and a maintenance shed were within 1,000 yards of the area where Mr. Fisher was killed. The recreation director for the city and the golf course superintendent testified that either of those buildings would have been protection for Mr. Fisher and his group. At no time prior to Mr. Fisher's death had anyone requested lightning shelters on the golf course, although the clubhouse and a maintenance shed were within 1,000 yards of the area where Mr. Fisher was killed. The recreation director for the city and the golf course superintendent testified that either of those buildings would have been protection for Mr. Fisher and his group. At no time prior to Mr. Fisher's death had anyone requested lightning shelters on the golf course, although the clubhouse and a maintenance shed were within 1,000 yards of the area where Mr. Fisher was killed. The recreation director for the city and the golf course superintendent testified that either of those buildings would have been protection for Mr. Fisher and his group. At no time prior to Mr. Fisher's death had anyone requested lighting...