LEGAL CORNER

On release forms, don’t overstep your legal bounds

By NANCY SMITH

Owners of sports facilities are often relieved to learn that the signature on a release form can insulate them from liability when a sports participant is injured. But an Oregon facility recently learned the hard way that seeking too much protection in a release can result in getting no protection at all.

A federal appellate court recently held that an Oregon sports resort may as well have had no release form signed because the one it used was so all-encompassing that it stepped beyond legally acceptable bounds. The court thereon struck the entire release, even though some of its terms were appropriate. The resort will now face a trial by the ski resort was entirely invalid because it included a release for more than Oregon law permitted.

The court provided two lessons for all owners of sporting facilities: (1) do not seek release from injuries caused by intentional or grossly negligent conduct; and (2) make sure release agreements have a provision that will allow valid releases to survive when portions of the agreement are found improper.

Anthony Farina went to the Mt. Bachelor in Oregon to ski. When he purchased a season pass, he signed a form releasing the facility for liability. The release included a “Skiers’ Responsibility Code” and warned of the inherent risks of personal injury associated with downhill skiing.

Farina released Mt. Bachelor from liability for personal injuries or death he might suffer in his use of the sports facility. The release included injuries that could occur not only from the ordinary negligence of the facility, but also from “any other theory of liability.”

Farina suffered multiple fractures on March 31, 1992, while skiing at Mt. Bachelor. In a lawsuit to recover for his injuries, Farina alleged that he ran into an unmarked boulder hidden below the crest of a hill which obstructed his view as he approached on his skis. Under Oregon state law, the resort could ask skiers to sign a release for injuries caused by the resort’s ordinary negligence. The court threw out this release, however, because it found that the term “any other theory of liability” would include release for intentional and grossly negligent conduct, in addition to ordinary negligence.

Oregon law, like most states, has a public policy against waiving rights for future injuries caused by intentional or grossly negligent actions. An

NEW TECHNOLOGY

Introducing a temperature gauge to the controlled-release mix

By JOHN WALTHER

As superintendents face pressures from the proliferation of competing courses as well as player demand for world-class turf, industry suppliers are providing technological advancements which are greatly helping to solve their problems.

The result is higher quality turf in every climate, as well as better use of the often limited dollars in the average superintendent’s budget. Perhaps the first major step in this direction was the introduction of polymer-coated urea technology. Although not perfect when developed some years ago, it did bring turf managers the advantage of “slow” or “controlled-release” fertility.

Further development of this technology virtually eliminated the environmental factors which contribute to the release of nitrogen except one: temperature. United Horticultural Supply has taken another step forward with its polymer-coated ESN nitrogen which responds to temperature changes and releases nutrients as they are needed by turf.

It works like this: as temperatures cool and the nutrient demands of the turfgrass diminish, the ESN polymer coating responds by reacting to the temperature in the turf thatch and reducing the release of nitrogen.

Conversely, as temperatures rise and plant growth is stimulated, ESN responds by increasing the release of nitrogen.

Turfgrass performance is enhanced and wasteful nitrogen release is greatly reduced.

While the production of temperature-based controlled release nitrogen seems simple enough in concept, production of the product is complicated and difficult to duplicate.

The first step in the production process is to apply a micro-thin water-permeable polymer membrane over a spherical, uniformly-sized urea granule.

For ultimate success this membrane must completely encapsulate the urea granule and be free of holes and imperfections.

The second step is the application of a water-dispersible, abrasion-resistant coating. This surrounds the polymer-coated granule and protects the underlying polymer from damage during handling, blending, transportation and application.

Such protection is critical to the success of ESN performance since the release mechanism is based on the diffusion of nutrients which are dissolved and then dispersed through the polymer membrane.

The protective top coat is water soluble and dissipates on contact with moisture, exposing the polymer-coated urea granules to the environment.

The polymer coating is the only factor that controls the rate of water diffusion into the urea granule and the subsequent movement of the dissolved nitrogen through the membrane into the soil environment.

UHS believes temperature-controlled, polymer-coated urea is superior to other controlled-release nitrogen because the rate of release is unusually linear when compared to the up-front release which is normal with less-advanced products.

The linear release of ESN results in more even turf growth without the flushes or lack of adequate release associated with the older technology found in most controlled-release fertilizers.

In addition to supplying “nutrients on demand,” ESN has demonstrated the ability to maximize the overall health and color of the turf as well as reduce the frequency of mowing.

Because the technology involved in the manufacturing process is so advanced, the temperature-controlled polymer coating can be engineered to control nitrogen release over a wide range of time intervals.

This sophistication allows ESN to be produced in formulas which match the unique climatic conditions in various

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GOLF COURSE NEWS

Nancy Smith, J.D., is an attorney practicing in Pasadena, Calif. Her "Legal Corner" feature appears regularly in GCN. You may call her with story suggestions/queries at 818-585-9907.

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Another First
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O nce again, FLOWTRONEX PSI offers a level of quality assurance unmatched in the industry. Underwriters Laboratories (UL), the most widely recognized independent testing service in the country, evaluated our Silent Storm pumping systems and found them to meet UL Standards for Safety. That’s why the UL Mark of Safety is on every Silent Storm pump station, covering the COMPLETE pump station, from controls to conduit and skid to discharge manifold. It’s just another example of how FLOWTRONEX PSI leads the way for the turfgrass industry.

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November 1995 13
Leslie comment
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ational Relations' State Sports and Tourism Administration. Polackwich came away from his meeting with Sochan saying: ... much for me... This is a seed. My basic idea is creating golf for juniors. That would later translate to adults.”

His forecast for Poland? “They want to wait for the economy to stabilize. Then they can build golf courses to ... attractions, like their great ski areas. They have 3 million visitors a year to [ski area] Zarkopani alone.”

Golf Nation could use a few more Steve Polackwiches—Golf Ambassadors who take it upon themselves (even when they’re vacationing in their ancestral lands) to expound on the virtues of golf.

The world is ripe for the invasion:
- It took 20 years for Moscow to get its first course after Robert Trent Jones Sr. and Jr. first traveled there. How long for Steve Polackwich in Poland?
- Arnold Palmer in 1985 opened the Bamboo Curtain long enough to design Chung Shan Golf Course in China, with Ed Seay and Bob Walker. J. Michael Poellot and Brad Benz did a couple more in 1887-88. Now golf is burgeoning there, with 11 courses in the ground and more than 80 under construction or in planning.
- Israel has but 8,000 inhabitants. Officials dreamed of golf development a couple of years ago. Roll the film. I want to see that ending.

Checking out where various course architects have taken golf can send you flipping through your atlas. A smattering: ... (1985); Willie Park in Monacco (1917); Seth Raynor in Bermuda (1924); and Ron Fream in St. Kitts, Fiji, Brunei...

In this month’s question-and-answer feature (see page 37), course architect Greg Nash bemoaned the fact that the golf cart and lack of caddies have changed how people look at the game. Without the cart, you never would see if you were riding a cart, and the impact of the way the golf hole plays.

“I came to a realization that there were a lot of little things I’d been missing because I’d never seen or felt them. So I started putting them into my designs. It’s amazing the intricacies and subtleties on the courses in the UK that you don’t see over here.”

Temperature
Continued from page 13

genographic areas in the country. In practical application, the hydrated ESN polymer is best described as elastic, ... nutrient release increases and the accuracy of the stated longevity of the product comes under question.

Moisture also affects soil microbiological populations. These populations are difficult to predict, for example, will release more nutrients through holes and imperfections in its coating when increased moisture is present. Therefore, estimate it or irrigation is applied, nutrient release increases and the accuracy of the stated longevity of the product comes under question.

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$3,400,000 - THE LINKS GROUP, Myrtle Beach, SC
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$11,500,000 - THE LODGE OF FOUR SEASONS, Lake of the Ozarks, MO
Refinance of a 311-room lodge, 211-slip marina and 45 holes of golf.

$5,000,000 - KEMPER SPORTS MANAGEMENT, Chicago, IL

$2,250,000 - OLDE POINT GOLF & COUNTRY CLUB, Wilmington, NC
Refinance of an 18-hole public course plus construction funding for clubhouse expansion.

$2,500,000 - GEORGETOWN COUNTRY CLUB, Georgetown, MA
Refinance of a 9-hole public course plus construction funds for additional 9 holes.

$3,500,000 - THE SEA RANCH GOLF LINKS, Sea Ranch, CA
Refinance of a 9-hole public course plus construction financing for second nine holes.

$2,400,000 - WHITTIER GC, Whittier, CA & VICTORIA GC, Los Angeles, CA
Refinance of two 18-hole public courses.

$5,000,000 - THE BEACH CLUB GOLF LINKS, Ocean City, MD
Refinance of an 18-hole public golf course and construction financing of an additional 18-hole public course.

$3,800,000 - CRYSTAL SPRINGS GC & BLACK BEAR GC, Sussex County, NJ
Refinance of an 18-hole public golf course and construction financing of an additional 18-hole public course.

$3,800,000 - CHESTNUT HILL GC, Darien, NY & DEERFIELD CC, Rochester, NY
One 18-hole & one 27-hole public course -- one loan to refinance one and acquire the other.

$8,500,000 - ANGEL FIRE RESORT, near Taos, NM
Acquisition of resort - ski mountain, 18-hole golf course, 157-room hotel, RV park, & assorted amenities.

$9,500,000 - GOLF CLUB OF ILLINOIS, EAGLEBROOK CC & BURR HILL GC, Chicago, IL
Loan to Southwest Golf to refinance 2 courses, acquire a 3rd, and provide a line for future acquisitions.

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CIRCLE #110
November


4-7 — Georgia GCSA Annual Meeting atekyll Island. Contact Karen White at 706-769-0776.

7-9 — Penn State Golf Turf Conference in State Collage, Pa. Contact Dr. Peter Landschoot at 814-883-3475.

7-10 — Turf and Grounds Exposition in Rochester, N.Y. Contact 800-873-TURF.

9 — Impact of Golf Business Symposium in Myrtle Beach, S.C. Contact the University of South Carolina Department of Sport Administration at 803-777-4960.

9-10 — Golf Course Expo in Orlando, Fla. Contact Golf Course News Conference Group at 207-846-0600.

9-11 — 1st International Hong Kong & China Golf Exhibition and Conference in Hong Kong. Contact Golf Media Group at (+852) 3222 3222.


13-16 — 7th Annual West Virginia GCSA Turf Conference and Show in Morgantown. Contact David Tennant at 304-594-1541.

14-16 — Region 8 Turfgrass Foundation Conference and trade show in Lafayette. Contact 317-494-8039.

16-18 — Tree Care Industry Exposition '95 in Indianapolis. Contact National Arborists Assn at 800-733-2622.

21 — The Alliance for Environmental Concerns Annual Environmental Seminar in Bedminster, N.J. Contact Ilona Gray at 201-995-7172.

December

4-7 — 26th Annual Georgia Turfgrass Conference and Trade Show in Atlanta. Contact 404-228-7300.

5-7 — Kansas Turfgrass Conference at Kansas Expocentre, Topeka. Contact Cliff Digman at 913-539-405.

5-8 — Ohio Turfgrass Foundation Conference and Show in Columbus, Ohio. Contact 614-594-8700.

6-8 — Minnesota Turf and Grounds Conference and Show in Minneapolis. Contact Scott Turtinen at 612-473-0557.

6-8 — Rocky Mountain Regional Turfgrass Conference and Trade Show in Denver. Contact Julie Marie at 303-688-3440.

12-14 — Georgia Turfgrass Conference and Show in Atlanta. Contact 404-975-4123.

* For more information contact the GCSAA Education Office at 913-832-4430.

Legal Corner

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Oregon Supreme Court opinion had previously held that "agreements to exonerate a party from liability or to limit the extent of the party's liability for tortious conduct are not favorites of the courts."

The Oregon Supreme Court has held that such exculpatory clauses in release forms are valid only if they are limited to ordinary negligence.

Generally, state law prohibits any type of insurance or indemnification for intentional torts. Otherwise, the principle holds, persons could plan an attack on a person and then purchase insurance, or get a release, that would protect them from responsibility for their intentional and wrongful conduct.

The federal court of appeal had little difficulty concluding that the overreaching release included the possibility of exonerating Mt. Bachelor from intentional

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CIRCLE #166

Legal Corner

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and grossly negligent conduct, in violation of public policy. In a somewhat technical but crucial aspect of the agreement, the court's decision to throw out the entire release contract, the court of appeal held the invalid portion of the release agreement did not contain a severability clause. Such a clause that states if one provision of the contract is determined to be invalid, it may be severed and the remaining valid provisions of the contract will be enforced while invalid provisions will be "severed" and held unenforceable, it does not contaminate the remaining provisions of the agreement.

Although the opinion can only be used by lawyers to interpret Oregon law, the decision is persuasive in other states because the basic principles are the same as in the court's decision to throw out the entire release clause that was missing from this particular release agreement.

Contracts often contain what attorneys refer to as a "severability" clause. Such a clause states that if one provision of the contract is determined to be invalid, it may be severed and the remaining valid provisions of the contract will be enforced while invalid provisions will be "severed" and held unenforceable. The Mt. Bachelor release agreement did not contain a severability clause. Without such a provision in the release contract, the court of appeal held that the invalid portion of the release invalidated the entire contract.

Although the opinion can only be used by lawyers to interpret Oregon law, the opinion sends a word of caution to sports facilities everywhere. The decision is persuasive in other states because the basic principles are the same as in the court's decision to throw out the entire release clause that was missing from this particular release agreement.