EAGL management soars to new heights

By PETER BLAIS

Dallas firm doubles in size with last year’s acquisitions

The Dallas-based company has several courses under construction. All except one should open this spring:
- Canterberry Golf Course in Parker, Colo., an 18-hole design by John LaFoy located along the Platte River. EAGL will manage the facility.
- Pacific Springs Golf Course in Omaha, Neb. The first nine will open this spring and the second nine and an 18-hole putting course next year. EAGL is an equity partner along with Landscapes Unlimited, a golf course construction company.
- Lake Park Golf Course in Lewisville, Texas. EAGL and partner Landscapes Unlimited are renovating the existing 18-hole layout and building a new executive-length nine.
- Scheduled for a later opening is Giant’s Ridge Golf Course in Biwabik, Minn.

LEGAL CORNER

Golf car lawsuits bewilder courts, course operators

By NANCY SMITH, J.D.

The quick and easy operation of a golf cart enhances the game for many enthusiasts—until someone gets hurt. Injuries occur in various ways, from backing into a player loading clubs on the rear of the cart to falling out of the cart on a sharp turn taken too fast.

But the common factor after any injury is a search for who is at fault—often in the form of a lawsuit. Suit may be filed against the driver, the manufacturer, the servicer, the seller or the owner or operator of the golf course where the accident occurred.

In a comprehensive study of golf cart lawsuits, legal author Boyd J. Peterson, J.D. analyzed lawsuits across the country which involved injuries from carts.

"A golf cart may not be a dangerous instrumentality in all situations, however, many actions are brought...

Continued on page 58

GOLF COURSE NEWS

Continued on page 57

March 1996 53
have different ways of implementing the rule. Most states recognize the inherent unfairness of barring a suit by an injured party who is, say, only 1 percent responsible for his injuries against another who may be 99 percent responsible.

The driver of a cart that injures another can be sued under various scenarios:
- When a passenger is thrown from a cart due to a sharp turn;
- When a passenger's injuries are caused by operating the cart before the passenger was seated;
- Injuries caused by excessive speed.

The driver of a golf cart may be liable for injuries caused to either the passenger or some other patron on the golf course as a result of the driver's negligent operation of the golf cart. This liability is similar to the liability imposed on a person who operates any other motor vehicle in a negligent manner and causes personal injuries to another," Peterson wrote.

Suits may also be filed against the cart owner — the course operator, golf pro or whoever runs the rental operation.

"Since most golf courses rent golf carts to their patrons, the lessor of the cart is often the golf course owner, but it may also be a rental agency, a golf professional who independently operates a golf pro shop, or some other person or entity," according to Peterson. Such suits may be filed for:
- Renting the cart when it is in a defective condition;
- Negligently entrusting the cart to a negligent driver;
- Improper maintenance of the golf cart, such as the brakes;
- Negligent failure to inspect or maintain the cart, such as the front-wheel support.

Suits may be filed against the lessor of a golf cart for failing to warn of dangerous propensities of the golf cart, such as:
- Lack of brakes when going backward;
- Propensity to tip over.

A manufacturer may also be sued on various theories:
- For injuries caused by defective arm and back rests;
- For defective design causing the cart to be unstable;
- Failing to warn of defect, including the propensity to tip over.

Many courses attempt to limit liability by using signed waivers. The law on such waivers is technical and varies by state.

"A number of courts have addressed various other issues relevant to the negligence or liability of a lessor of an injury-causing golf cart. Use of an exculpatory clause in a rental agreement by a lessor in an effort to avoid liability for an injury caused by a cart was held by some courts to be void for public policy reasons," wrote Peterson. Additionally, suits may be filed against golf courses for cart injuries caused by problems on the course itself.

"An owner or operator of a golf course or part is under a duty to exercise reasonable care in constructing, maintaining, and operating the course or park, and is also under a duty to exercise ordinary care in promulgating and enforcing reasonable rules for the protection of those rightfully using the park or course," Peterson said.

For example, a course was sued for negligently maintaining a path which caused a cart driver to have an accident. In one case, a course was sued when a cart drove into an unmarked tree stump.

However, another court threw out a case in which a driver was injured when he drove into the rough and the cart went down a ravine. The court found the course had no duty to anticipate such operation of the cart and warn against it. Some golf courses escape liability because they are owned by government entities that fall under special immunity from suit.

Another source of suit against golf courses is for the wrongdoing of employees. One course was sued by a golfer who was injured when struck by a cart operated by a caddy employed by the course.

Although suit come in various forms, the obvious lesson is that insurance to cover for such unexpected mishaps is essential. Insurance is a must not only for the golf course, but also for any subcontractors or other entities, such as golf pros and cart-rental business.

Any agreement with such businesses should require proof of insurance in adequate amounts and for appropriate coverage. Some business owners require parties with whom they do business regularly to actually name the primary business as an "additional named insured."

Another helpful practice is to periodically verify proof of insurance. An insurer will issue proof of insurance at the policy's outset. Premiums are paid periodically. If premiums are financed and the insured has financial troubles, non-payment of premiums can result in cancellation of the insurance. Unscrupulous business owners have paid premiums, obtained proof of insurance to show others, then cancelled the policy and received a premium refund. This leaves the risk uninsured and the contractor duped.

Nancy Smith is an attorney practicing in Pasadena, Calif. You may call her with story suggestions/queries at 818-585-9907.