

## Managing liability to avoid legal system 'gone haywire'

By GARY M. CRIST

In today's litigious society, lawsuits and liability claims are facts of life. Many believe the legal system has gone haywire, characterized too often by trumped-up cases filed by unscrupulous lawyers. As a result, golf course operations, like any other business, are increasingly scrutinized in situations where personal injury or property damage is incurred, or illegal discrimination is claimed.



Gary Crist

Of course, the objective of the scrutiny is to find fault, lay blame, and ultimately recover big bucks through the legal process.

Difficult and frustrating as liability matters have become, the forward-thinking business person should focus not on the apparent abuses of the system, but rather on the steps that can be taken to minimize legal exposure. Such discipline will serve to help protect business assets from the potential devastation of an adverse legal judgment.

### UNDERSTANDING LIABILITY

The first of these steps is to recognize that liability generally results from the failure to fulfill a legal duty owed to the injured party. In the case of premises liability, i.e., responsibility for damages incurred on or about the golf course property, the nature of the legal duty owed by an owner/operator to facility patrons is the exercise of "due care."

Admittedly a vague standard, the essence of due care is to anticipate foreseeable safety risks, and take reasonable steps to minimize them. As an example, when locating a practice green, the se-

lected location should be well removed from the range of even the wildest slices and hooks. A recent legal settlement of \$7.5 million was based on a golfer being struck by a ball while standing on the practice green (*GCN* October 2000).

However, the legal obligation is not to ensure that no one is ever injured. The obligation of the owner/operator is to do what is reasonable and prudent under the circumstances. For common risks, the elements of due care are often obvious: signage should be used on slippery floors and identification should be checked to avoid serving alcoholic beverages to minors.

### RISKY BUSINESS

More complex risks sometimes make the components of due care more difficult to determine. A good example is the risk of lightning strikes, which is statistically high at golf facilities.

A recent legal case, *Maussner v. Atlantic City Country Club* indicates that golf facility owner/operators have some duty to at least warn golfers of the dangers of lightning and to detail what safety procedures, if any, are being utilized.

The quandary for the owner/operator is what, if anything, is appropriate in addition to the posting of warning signs. From customer service and general safety standpoints, more pro-active lightning risk management practices seem indicated, particularly in view of the sophisticated lightning prediction equipment and weather monitoring services now available in the marketplace.

When the specter of legal liability is taken into account, however, sometimes less is better when it comes to managing risk. The "catch-22" is that if a facility installs lightning prediction and warning

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## Development reality check

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super-high rollers.

One is the Summit Course, the fourth and final layout at the Club at Cordillera, in Edwards. The Jack Nicklaus design unfolds over 7,550 yards of magnificent mountaintop country, 9,000 feet up. The course joins three others, designed by Tom Fazio, Hale Irwin and Dave Pelz. Wadsworth Construction recently unveiled this marvel, which backs up to three million acres of White River National Forest.

This is one well-protected site, and only for the well-heeled. Home sites range from \$200,000 to \$2 million, and homes range up to \$8 million.

Memberships don't come cheap – \$175,000 – but guests at the Lodge & Spa at Cordillera can play for just \$182, including cart and caddie.

### RED SKY GOLF CLUB

An equally impressive complex is taking shape at Red Sky Golf Club, in Wolcott. Vail Resorts Inc. is investing \$100 million in this one, which features layouts by Tom Fazio and Greg Norman. The Fazio track is scheduled to open next summer, and Landscapes Unlimited is moving flat out to meet the deadline.

Here, home sites go for \$795,000 – "that's just for the lot, for the dirt," says director of golf Jeff Hanson. Memberships – 425, all told, when both courses are open – are priced at \$150,000. About 80 have been sold so far, Hanson says, and he's eager for more.

Could Red Sky fall victim to the same funk going on elsewhere? Will the lavish Red Sky club sell out, or is Jeff Hanson whistling past the graveyard?

Who can say? But one thing is certain – the old adage "If you build it, they will come," is no longer a sure thing in golf. ■

## Medical readiness

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determine what steps have been taken to manage medical emergencies at their facilities. Not surprisingly, we found very few golf courses do more than call 9-1-1 and wait for the ambulance to arrive.

Of the 17,000 courses in the United States, we estimate that only three to five percent have a comprehensive medical response plan in place today.

Considering the number of new golfers over the age of 50 (a 34-percent increase annually from 1994 to 1999, according to NGF), most clubs are not adequately preparing for the expected increase in on-course medical emergencies.

### 'ULTIMATE IN CUSTOMER SERVICE'

A medical emergency at your facility

requires immediate response by your staff. Calling 9-1-1 and waiting to meet the ambulance is not an adequate plan.

Instead, being prepared to manage any incident with a professional, competent and caring response will make the difference between a medical crisis and providing the ultimate in customer service.

So what goes into a medical response plan?

- The first step is to evaluate your facility, including course layout, EMS access points, staff training, equipment, on-course communications and local regulations governing medical equipment.

- Your plan needs to address how your staff is notified of an on-course emergency, who responds, deployment of your medical equipment, first aid procedures

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## Crist on liability

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apparatus, the facility's due care responsibility becomes greater.

The judge in the *Maussner* case put it this way: "All golf courses have a duty to post a sign that details what, if any, safety procedures are being utilized by the golf course to protect its patrons from lightning....If, however, a golf course chooses to utilize a particular safety feature, it owes a duty of reasonable care to its patrons to use it correctly."

Similar complexities are involved in the decision to make defibrillators available to assist in cardiac incidents on the golf course. On the one hand, it certainly seems like the enlightened and progressive thing to do. On the other hand, such well-intended, humanitarian efforts, if implemented incorrectly or inadequately, could increase liability exposure rather

than reduce it.

### COMMON SENSE

Perhaps the best mix in fulfilling the duty of due care is a combination of concern, common sense and a good liability insurance program. Paramount should be concern for the customer's welfare and desire on the owner/operator's part to anticipate foreseeable risks and take reasonable preventive measures.

Avoiding liability claims is impossible, but a concern for safety, a good liability insurance program and the implementation of risk management policies will go a long way toward keeping things under control. ■

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## Bryn Mawr

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Noted projects that contributed to the certification include: allowing non-play areas to grow naturally; adding several bluebird and wood duck houses; incorporating native prairie plants into the landscape; and decreasing pesticide usage.

"We have an integrated pest management scheme here now where we monitor turf conditions heavily," Bossert said. "We don't spray anything on a preventive basis."

A new irrigation system was installed in 1998 to water the layout more efficiently and a \$25,000 equipment wash pad was put in place the following year.

The superintendent credits his former assistant, Dan Augdahl and his assistant for the past two years, Bryan Widmer. "They really deserve a lot of the credit," he said. "They did all of the documentation work."

This fall, the facility will complete the final

## Architects

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golfers more distance, it will be impossible for us to design courses that will be a challenge for more than a decade."

Research shows that many players drop out because they become discouraged, and Pascuzzo believes that the percentage would rise if courses had to be longer and more difficult to challenge the better players.

"It's becoming increasingly difficult to design a course that all levels of players find interesting," he said. ■

stage of a four-year renovation plan. "The project is mostly new tees and bunkers," said Bossert. Architect Richard Jacobson, based in Libertyville, Ill., provided the design work for the renovation project. ■



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