Managing liability to avoid legal system 'gone haywire'

By Gary M. Crist

In today's litigious society, lawsuits and liability concerns 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.

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 selected 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 standpoint, 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 systems, it may attract more risk. As an example, the recent high-profile lawsuit in New Mexico involved a golfer being struck by a lightning bolt while playing at a facility that安装了 lightning prediction and warning equipment. The question is if the facility could have foreseen the risk and not installed the equipment.

Medical Readiness

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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 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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