AGC gets restructuring deal

By DEREK RICE

SANTA MONICA, Calif.—American GolfCorp. (AGC), like its potential merger partner National Golf Properties (NGP), recently received a reprieve in the form of a restructuring agreement with its lenders.

AGC’s inability to make lease payments to NGP for several months has jeopardized the financial security of both companies. This was also one of the major factors that led to the proposed merger, which has been industry insiders and shareholders as benefiting no one but David Price, who owns a large portion of both companies, and NGP executives including chairman and CEO David Pillsbury, who is also chairman and CEO of AGC.

Under the restructuring agreement, Bank of America granted AGC a limited waiver, which is subject to delivery of leasehold mortgages on certain golf courses leased by AGC. At press time, the process of preparing those leasehold mortgages was expected to be completed by Aug. 8, although there was no assurance that deadline would be met. Bank of America extended the maturity of AGC’s credit facility and private placement notes to the earlier of March 31, 2003, or the consummation of the AGC-NGP merger. In addition, Bank of America and AGC note holders have waived existing defaults and all potential future events of default other than specified “major defaults” during this period.

As additional security for AGC’s obligations, Price personally pledged approximately 3.6 million shares of common stock and National Golf Operating Partners (NGOP) common units, as well as a second deed of trust. He is required to substitute cash collateral for this collateral by Oct. 15 in the case of the shares and units and Sept. 30 in the case of the deed of trust.

Spokespeople for both NGP and AGC declined to comment on this agreement or previous agreements, saying that all necessary information is contained in the companies’ filings with the Securities and Exchange Commission.

There has been speculation that some NGP shareholders have amassed shares to counterbalance the votes of Price and the companies’ boards of directors. An AGC spokesman also declined to discuss the proposed merger or give a firm timeframe for a shareholder vote.

 Courses face rising insurance premiums

By ANDREW OVERBECK

Since Sept. 11, insurance premiums have risen across the board, and some companies have abandoned the golf course market altogether. The recent up-and-down nature of the stock market certainly hasn’t helped matters.

“Companies that were attracted by high premiums to invest in the stock market are getting out of the market,” said Tom Marks, executive vice president for club programs for Bollinger Insurance.

That, coupled with falling profits, meant that premiums had to increase.

“The last several years have not been terribly profitable,” said Bob Goldthorpe, head of St. Paul’s Eagle 3 program for golf courses. “In 1999, for every dollar that we brought in, we paid out $1.62. That is why premiums went up.”

With premiums increasing and companies discontinuing service, many courses are scrambling to get new insurance carriers and to re-evaluate existing policies. According to industry experts, as courses go through this process, there are several must-have insurance items to keep in mind that are not always covered on golf policies.

ENVIRONMENTAL LIABILITIES

Environmental liability coverage handles items like herbicide and pesticide overspray rider and fuel tank leakage.

“Five years ago, this was not available,” said Ken Robinson, of Lumbrca Robinson and Associates, a representative for Zurich and other carriers that offer golf insurance. “It is important for courses to have

Courses win golf car cases in past year

By J O H N T O R S I E L L O

RYE, N.Y.—Officials at Westchester Country Club have won insurance cases against the firm that handled their golf policies.

Two players, Eliseo Ferrer and Fernando Calvo, were participating in league play at the Fontainebleau Golf Course. Ferrer, who was driving the golf car, got out and Calvo moved into the driver’s seat. Unfortunately, Calvo then accidentally struck Ferrer with the car. Ferrer sued the insurance company, claiming that it was liable under a Florida legal theory called the “dangerous instrumentality doctrine.” In fact, in 1984 decision, the Florida Supreme Court had ruled that a golf car is

Westchester Country Club digs geothermal heating system

By JOHN TORSIELLO

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The defendant golf course was also victorious in September 2001 in a golf car suit brought against Lorain Country Club Ltd., in Lorain, Ohio. In that case, Joseph Ritenauer was injured after falling out of a golf car in which he was a passenger. Ritenauer argued that the golf course had earlier watered the grass on which the car was being driven as it went down a hill. The slick grass caused the car to spill. The legal issue turned on whether the wet grass was an "open and obvious danger," which states that "an owner owes no duty to protect invitees from hazards which are so obvious and apparent that the invitee is reasonably expected to discover and protect against them himself." Ritenauer stated at deposition that, during the play on the first 12 holes, he noted that the grass was wet because it had been watered. In fact, he commented, "They were watering the whole course all day practically." Under the circumstances, the court felt that the wet grass problem was a clear danger to the accident, and ruled against Ritenauer.

Still another victory in a golf car case went to the owners of a golf course, American Golf Corp. (AGC), doing business as the River’s Edge Golf Course, in Fayetteville, Ga. In April 2002, AGC won a defense verdict in a suit where a plaintiff claimed an ankle fracture, as well as head trauma, shoulder and back injuries after his car hit some boulders next to the cart path and overturned. The legal theory rested on a claim of premise liability and the alleged failure by the course to maintain safe brakes on the car. AGC defended by claiming that the plaintiff drove the car too fast and did not keep a proper lookout. Following a trial, the jury ruled in favor of AGC.

Although it seems to have been a decent year for golf courses as far as golf car claims are concerned, this does not mean that there is necessarily a defense trend, per se. The consistently favorable, from the course owner’s point of view, decisions hinge on the particular circumstances of each case. In a particularly interesting case involving a golf course in Oklahoma, the course lost the first legal round in the Oklahoma Supreme Court.

As many readers may know, a hot issue in many states is the degree of legal liability that may be imposed on a business when it serves alcohol to patrons that subsequently become involved in accidents. This is exactly the legal issue facing Willow Creek Golf Club in Oklahoma City. The case began in 1997 when a man and his adult daughter were killed by a drunk driver, Neal Alexander Jr., near Oklahoma City. Alexander had been attending a golf scramble fundraiser and party at Willow Creek, which was sponsored by the Hillcrest Health Center.

During the evening hours, Alexander drank a number of beers on the golf course and had two more in the clubhouse, which were purchased with coupons given to tournament participants. Willow Creek did not furnish the drinks on the golf course, but did staff the open bar at the clubhouse where the coupons for drinks were redeemed. After Alexander left the club and became involved in the accident, he was found to have had a blood alcohol level of .19.

The survivors of the accident victims sued various individuals as well as both Willow Creek and Hillcrest Health Center. Willow Creek and Hillcrest both moved for summary judgment, which was granted by the lower court. In September 2001, the Supreme Court of Oklahoma, however, reversed the lower court as far as Willow Creek was concerned. It found that Willow Creek was not a social host (which might have protected it under Oklahoma law), but was a licensed commercial vendor of alcohol. The court noted that the club was a licensed alcohol vendor and that it charged Hillcrest for each redeemed coupon. The summary judgment ruling in favor of Hillcrest, incidentally, was allowed to stand by the Supreme Court, since Hillcrest was not a commercial vendor of alcohol and was not, in the view of the Court, in a joint venture with Willow Creek. The case was sent back to the lower court and the parties are preparing for a trial that will likely come next year.

The best general advice that can be given to operators, managers and owners of golf courses is that the law varies often from state to state and, in any event, any case anywhere will have a specific set of facts that will often "make or break" the eventual outcome. Owners should try as much as possible to anticipate problems in advance rather than simply wait for an issue to arise.