

# Don't Let the Legal Beagle Bite You

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During a recent MAGCS meeting, our guest speaker for the day raised an interesting question. He asked the group of attending superintendents to raise their hands if they or the club they work for are currently or have ever gone through a general liability lawsuit. I should have been surprised at the many show of hands; but given the current "sue-or-be-sued" attitude of the American public these days, I was not.

I also took a personal interest in this question having been one of the many superintendents with a raised hand. It was only a few years prior that I witnessed such a lawsuit unfold before my very eyes in the Cook County judicial courts. This question also prompted me to take things one step further and do my own survey. Of the show of hands, I personally asked several of the superintendents if their case ever made it to trial. I quickly found out that of the superintendents I surveyed, all of them worked for public golf courses, and their respective cases were either still in litigation, possibly awaiting trial, or were settled out of court—furthering my suspicions of the general attitude of the American public.

Of all the superintendents I talked to, I was the only one who witnessed one of these cases through from start to finish, that is, the gathering of all information, meeting with the lawyers,

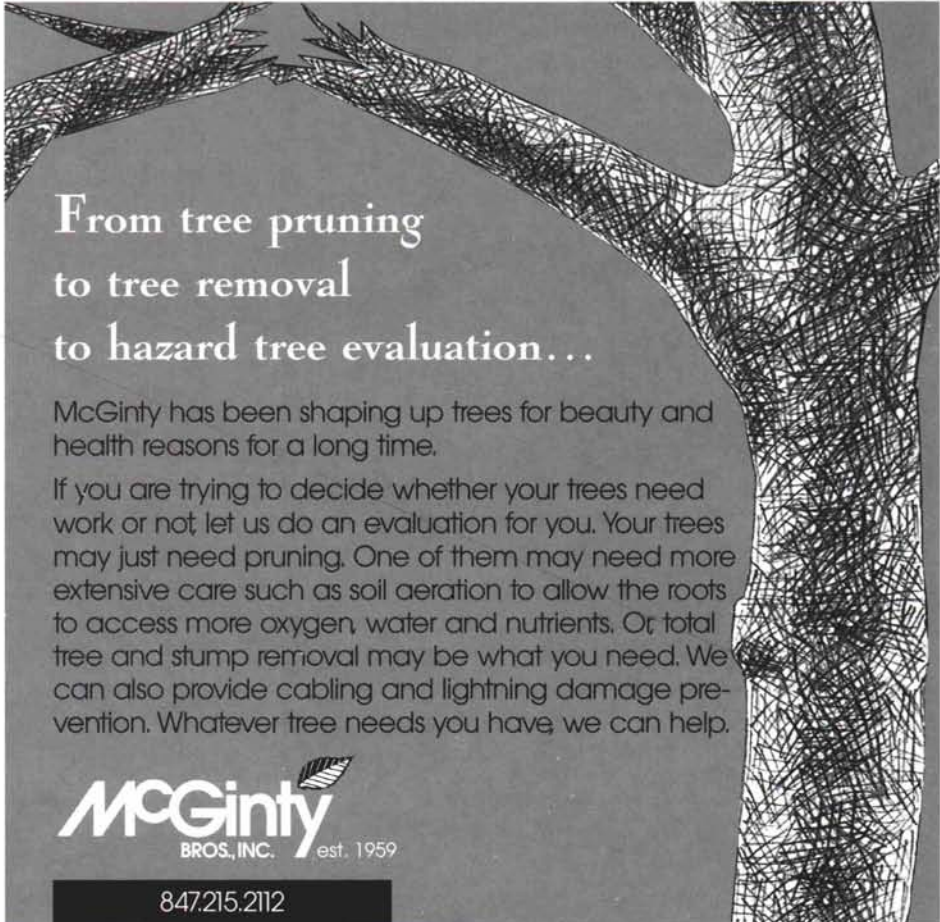
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giving a deposition, watching the choosing of the jury, listening to the expert witnesses, giving my own testimony in front of a judge and jury, and hearing the reading of the verdict. Given the title section of this article, "Ask the Expert," I found myself in very unfamiliar territory. It would seem I was finally the expert on something, something that is other than "How to say no to your own kids." Undaunted by my own survey, and willing to take on this challenge of journeying through yet uncharted waters, I will go on and share my own experience and, hopefully, give some practical, commonsense steps on how to

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protect ourselves and our employers from our somewhat confusing judicial system, in layman's terms, of course.

To do this, I must first give a bit of background information on this case that I am so familiar with. This case involved a golfer being struck by a golf ball on a golf course. Imagine that. To further complicate matters, the individual was struck while playing his golf ball from a temporary teeing area. This temporary tee was set up and was being utilized by the golfers because the original tee was under construction at the time of the incident, an all too familiar common maintenance practice among golf courses these days. It was the contention of the golfer, who was struck by the golf ball (the complainant), that the golf course was negligent in putting the temporary tee in an unsafe position. Our defense to this was prove it, which in the State of Illinois means they would have to prove to a jury beyond a shadow of a doubt that I and the golf course I am employed by willfully and wantonly were negligent in the placement of this temporary teeing surface. In the end, this defense proved to be insurmountable for the complainant.

As you may already have guessed, a case such as this should never have made it to trial; and most of them do not. They are usually settled out of court for a significantly lesser amount than what is mentioned in the lawsuit. This brings me to my first commonsense step to the winning of a liability litigation lawsuit:

1. Do not treat any liability litigation too lightly. Always be prepared to see this case through to the end. Never think that your case will not ever end up in court, because

just when you do, you will soon find yourself sitting in front of 12 jurors who do not want to be there anymore than you do.

2. Keep impeccable records, and I am not only talking about those insurance forms we all dread filling out. I mean take photographs or videos of the accident scene on the day it

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happened. Keep a daily journal and record all significant jobs for that day. Even weather reports may be a factor in proving your innocence. Gather your own witnesses, and do an immediate, thorough investigation. Just remember, it may be two to three years before a case ever makes it to a court. The more information you give yourself initially will only benefit you later.

3. Hire a professional. I truly believe that if I had hired a golf course architect or consultant to do the design work on the newly constructed tee and mark the temporary tee location, my case would have never made it to trial. Do not put yourself or your employer in that position. Any money I saved by doing the entire restoration project in-house is nothing compared to the dollars given away by having to fight in a liability litigation lawsuit, whether it goes to trial or not.

4. Keep to the facts. If you do find yourself giving and listening to testimony in front of a jury, just remember you, the superintendent, know more about your golf course than anyone else. Make sure that point is brought out to the jury. Prepare yourself to find fallacies in the expert witnesses that will be brought in. Most of all, think each answer through before saying it out loud. Remember, lawyers will not ask a question they themselves do not already know the answer for. Throw their timing off by asking them to repeat the question or to be more specific with their questioning. It is perfectly legal without being argumentative, and it also will show the jury you know how to keep your cool while under fire.

5. Last, but not least, the most commonsense step of all is prevention. The best way to winning a long, dragged out liability lawsuit is to avoid it altogether. Keep your safety standards high for the golfers and employees alike, and you, too, may keep the legal beagle from biting you. 