

# Course cleared in fatal lightning case; liability questions remain

By JONATHAN BROGAN

On July 20, 1990, Tom Fisher and friends Chris Rosengren and Daryl Smith were playing golf at South Portland Municipal Golf Course in South Portland, Maine. South Portland is a small (2,700-yard) daily-fee course which caters, typically, to a less experienced group of golfers.

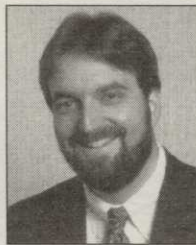
As Mr. Fisher's group approached the 5th green, the skies darkened and it began to rain. Apparently the rain became quite heavy and Mr. Fisher and his group went to the 6th tee. The 3rd and 6th tees share approximately the same area of the golf course. The 6th tee area is the highest point of the course.

*Jonathan Brogan is an attorney with the law firm of Norman Hanson and DeTroy in Portland, Maine. He specializes in trial work and was lead counsel in the case entitled Thomas Fisher v. City of South Portland, detailed above. Brogan represented the city.*

Upon arriving, Mr. Fisher and his group noticed the course was virtually empty. It was raining heavily.

Chris Rosengren, Mr. Fisher's best friend, noticed lightning and heard thunder. He did not believe the lightning or thunder to be an immediate threat to the group's safety. Mr. Rosengren and Mr. Fisher discussed their options. Apparently the group decided to "wait out" the storm. Within five to 10 minutes, a lightning bolt struck the tree by which Mr. Fisher was standing, killing him and injuring Mr. Smith. Mr. Rosengren, who had answered the call of nature, escaped unharmed.

Deborah Lee Fisher, Thomas Fisher's widow, filed suit on her behalf and on the behalf of her two children, Lauren and Katherine, alleging the city of South Portland had negligently caused the



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death of her husband.

At trial, the chief argument of Mrs. Fisher's attorney was the city had a variety of options available to it to help protect golfers from lightning. It availed itself of none of those options. The city's contention was simple: Mr. Fisher was a full-grown adult aware of the "awesome power" of lightning who failed, for whatever reason, to use his common sense and leave the golf course during a thunder and lightning storm.

The jury, after deliberating for 2 and 1/2 hours, delivered a verdict which found the city somewhat responsible for Mr. Fisher's death but found, pursuant to Maine law, that Mr. Fisher's responsibility was equal to or greater than the responsibility of the city. The jury found the city not liable for the death of Thomas Fisher.

Needless to say, the litigation costs

associated with this trial were not insubstantial. The plaintiff was able to convince the jury that the city was negligent for failing to do anything to warn Thomas Fisher of the dangers of lightning. The attorneys for Mr. Fisher's estate relied upon Appendix 4 of the USGA Rules which provide, in pertinent part, *as there have been many deaths and injuries from lightning on golf courses, all clubs and sponsors of golf competition are urged to take every precaution for the protection of persons against lightning.*

Despite lengthy testimony concerning the efficacy of the USGA rules to a friendly match on a Friday afternoon on a non-USGA golf course, a jury had to be swayed by the USGA's words asking clubs to invoke "every precaution."

Where does the jury's verdict leave golf course operations and municipalities? Frankly, the jury's verdict did nothing to decide the final issue of responsibility in the event of a lightning storm. It would seem appropriate that every golf course display USGA posters

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## Letters

### THE GOLF INDUSTRY MUST ORGANIZE, OR 'WITHER'

To the editor:

I always enjoy reading *Golf Course News* as it is informative and timely with respect to what is happening in the golf industry.

In this regard, I was particularly delighted to read Hal Phillips' column about the golf industry's need for a lobbyist in your June issue, as well as Mr. Phillips' response to the *Wall Street Journal's* article, "Golf Courses are Denounced as Health Hazards," on May 2.

Golf has long needed a representative in Washington. The environmentalists are "light years" ahead of us in this regard and as a past, and current, victim of their regulatory policies and sometimes irrational requirements, I'm here to tell you that unless we can gain an equal voice with these people, golf will become a withering sport in the 21st century.

The golf industry has failed to effectively communicate its message for years; i.e., that it is a vibrant, thriving sport that not only aids the environment, but contributes significantly to economic well-being of our citizens, golfers and non-golfers alike.

Proof of that came from your own publication nearly two years ago (Sept. '92 issue) which quantified golf's economic impact. In that issue Peter Blais wrote that "Golf pumps \$17.5 billion into the marketplace." He was reporting on an article published by Frank Mahady of the Massachusetts-based FXM Associates and entitled "Economic Impact of Golf Course Operations on the Local, Regional and National Economy."

The National Golf Foundation commissioned the study for use by developers, golf course owners and others to explain the benefits of golf projects to local, state and regional officials as well as special-interest groups like environmentalists.

The report "confirms the positive benefits of golf previously chronicled in a handful of regional economic impact studies," Blais wrote.

"Golf's \$17.5 billion in direct and indirect economic benefits, combined with its ability to raise adjacent property values, provide green space and add recreational amenities," he said.

He further quoted Mahady, who stated that this multi-billion dollar industry is one of the "most powerful combinations of posi-

tive effects" ever witnessed by a researcher who has done hundreds of economic impact studies for various industries.

"Very few businesses produce these types of numbers and the wide range of benefits provided by golf courses," Mahady continued.

So, why are we failing so miserably to tell our story, and conversely, why are the environmentalists so effective in getting out their messages? Like the NRA (National Rifle Association), the environmental lobby has powerful self-interest groups in Washington and in every state of the Union. Thus, they have forged a strong coalition of forces in this country that is unbelievably effective.

Take, for example, what happened just yesterday here in San Diego. In the primary election, one of the measures on the ballot—Proposition C, proposed to free up the City of San Diego's biggest chunk of open land, known as the North City Urban Reserve.

The measure, which lost narrowly, 54 percent to 46 percent, would have permitted construction of 17,500 homes on a 12,000-acre swath of land stretching from Carmel Valley in the West to Rancho Penasquitos and Rancho Bernardo in the East.

Sadly, even though one half of that 12,000-acre parcel would have been preserved forever as "Open Space," the measure didn't pass because of a well-orchestrated campaign by the environmentalists. Even more sadly, there were four golf courses that were planned to be built in that area if the voters had approved Proposition C.

Your article about sending a lobbyist to Washington should serve as a "wake-up call" to the industry. It is time for the golf industry, and those who profit therein, to send a lobbyist to our nation's capital.

However, until such time as the golf industry acts unitedly on this matter and every state in the Union forms a "Pro-Golf Interest Group," to protect and enhance the industry's goals, having one person in Washington may be like a voice crying in the wind! The lobbyist needs "grass roots" support from all golfers and every association or business in the industry.

Whoever is sent, I hope he/she is well versed in issues at hand!

Don Collett, president  
Don Collett & Associates  
San Diego, Calif.

## Words of Wisdom, in verse, from the Olde Sage

Throughout the land there came a great wail,  
A testy problem to solve, with logic and wisdom, wrought to prevail.  
Who is the most important in this game of golf? was the cry,  
From all corners of the kingdom the answer was heard, "the most important is I."

The clamor went on, for so long it was thought,  
The kingdom will fall, and all come to naught.  
One day on the links, a wizened olde man, his eyes clear as crystal and a putter in hand,  
Though wanting to play, at least one more round, took up his clubs and strode into town.

"Let the word go out across this land," proclaimed the *Olde Sage*,  
"Roust every stable boy and wake every page,  
Take note all ye groups in golf, a meeting shall be conducted by the *Olde Sage*."

Came Saturday next, down at the clubhouse, on the public links land,  
His crystal eyes grazing, the *Olde Sage* held session, with all those on hand.  
"Tell me," asked the *Olde Sage* while he sipped on his ale,  
"why are you the most important, in the game of golf, why must your view prevail?"

"Let me speak first, *Olde Sage*, if I may, I've come to represent the PGA.  
"It is our task in this fine old game, to teach the techniques to players young and old, and Provide the wares which are to be sold.  
We are the makers of clubs, and tell of the rules, To enjoy this great game, we provide all the tools."

"Let me speak next, *Olde Sage*, if I may, I've come to represent the CMAA.  
"It is our task to serve you, your food and your ale. We schedule your meetings, and parties Divine.  
Your clubhouse is perfect both inside and out, our task is so vital without us no doubt,  
Your golf would be lacking, and your club bound to fail."

"Let me speak next, *Olde Sage*, if I may, I've come to represent the GCSAA.  
"The keepers of the game that is our charge, the task is vital, the responsibility large.  
We Are the keepers of greens, so great, without us, your golf you would hate.  
From the trees to the turf, which we diligently mow, come the playing fields of golf, where we make the grass grow."

"Let me speak next, *Olde Sage*, if I may, I've come to represent the USGA.  
"Ensure the game's integrity, that is our quest, fair play and rules are, at our behest.  
The equipment we test for distance and groove, that all tools are fair, is our charge to approve.  
Tournaments we run, from sea shore to plain, where the roughs will be tough and the greens free from grain.  
So let the truth be known, both far and wide, the USGA is the game's invaluable guide."

At last, all had been heard and, the *Olde Sage* went on to speak.  
"Important you are, but TEAM players, are all that I seek"  
"To answer the quest, who's the most important in golf? here is my offer,  
The answer is ME, for I am the GOLFER."

Dennis D. Lyon, CGCS  
Aurora, Colo.

## Obituaries ..... Jack Murray, 53

BRADENTON, Fla. — Former United States Department of Agriculture (USDA) research agronomist James "Jack" Murray died in May after a long battle with cancer. He was 53.

Mr. Murray worked with the USDA from 1969-1988 when he retired here with his family for health reasons. His contributions to the turfgrass industry include the development of "Belturf" Kentucky blue and "Belair" zoysia.

Mr. Murray was an active member in the American Sod Producers Association, the Golf



Mr. Jack Murray

Course Superintendents Association of America and the Professional Grounds Maintenance Society. He was also involved with the Turfgrass division (C-5) of the Crop Science Society of America, the

Musser International Turfgrass Foundation and the International Turfgrass Society. Upon retirement, Mr. Murray worked here part-time for Pursley Turf Farms then, as his health permitted, for his own company, Turfgrass Germplasm Services.

He is survived by his wife, Bobbie, and son Paul, 14.



## Lightning liability?

Continued from page 40

that provide relevant and helpful information in the event that a golfer fails to heed nature's warnings and is caught during a lightning storm.

Additionally, if possible, lightning-proof shelters should be supplied at a central area on a golf course. Obviously, lightning shelters cannot be provided on every hole, nor will they be located in such a way that every golfer can reach them easily. However, they should be available where possible. But, it is more dangerous to provide shelters which are not lightning-proof which give patrons a false sense of security.

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Examination of the pre-trial proceedings reveals that lawyers for both sides began a rather rigorous discovery process immediately after Mrs. Fisher filed suit. The sworn testimony of a variety of witnesses was preserved for trial.

The plaintiff retained Edward Wankel, a parks and recreation director from Long Island, N.Y., to testify that it was the golf course industry standard to provide some warnings and/or actions to protect golfers in the event of an imminent thunder and lightning storm. The city of South Portland retained a local PGA professional, Bryce Roberts, of Prouts Neck Country Club in Scarborough, Maine, who testified there was no industry standard concerning lightning protection and many golf courses did different things about lightning protection. In fact, most did nothing.

There was no question the municipal course had not undertaken any lightning "precautions." It did not have a United States Golf Association (USGA) or Golf magazine poster concerning the dangers of lightning. There was no evacuation procedure in the event of a lightning storm. The course did not sound horns or sirens to warn patrons of imminent lightning storms. It did not undertake any programs to educate its patrons of the dangers of lightning or of the procedures to be taken in event of a lightning storm.

South Portland had no specific lightning-proof storm shelters on the golf course, although the clubhouse and a maintenance shed were within 1,000 yards of the area where Mr. Fisher was killed. The recreation director for the city and the golf course superintendent testified that either of those buildings would have been protection for Mr. Fisher and his group. At no time prior to Mr. Fisher's death had anyone requested lightning shelters on

*The sounding of horns or sirens relies upon the judgment of the pro shop staff or other personnel. If that judgment is not correct, would a golf course operator become liable in a situation where he ordinarily would not be?*



South Portland Municipal Golf Course.

The city brought a motion before the court to have Mrs. Fisher's claim dismissed prior to trial. The city argued there

was no legal basis for her claim that there was a duty to warn adults of the dangers of lightning or that they had to leave a golf course during a thunder and lightning storm. The court denied the motion, allowing the matter to proceed to trial.

At trial Mr. Wankel again testified and stated that 50 percent of all lightning deaths occur on golf courses. He testified it was well known within the golfing industry, in 1990, that lightning was dangerous to golfers and that golfers should be warned, in some fashion, of the dangers of lightning storms and what to do in the event of a lightning storm.

Mr. Wankel did admit, on cross-examination, that Mr. Fisher would have been exposed, in national golf magazines, to a variety of lightning safety tips. He also admitted that Mr. Fisher, an avid golfer who played 35 to 40 times a year, more likely than not would have been exposed to a USGA poster at some golf course other than South Portland Muni.

The most powerful witness in this matter was Mr. Rosengren. He testified that he and Mr. Fisher were aware of thunder and lightning in the area and decided to "wait it out." Mrs. Fisher admitted, upon cross-examination, that her husband was aware of the "awesome power" of lightning and had, in fact, comforted his daughters during thunder and lightning storms.

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Others actions routinely taken by golf courses would seem to add, not detract, from their liability. For instance, the sounding of horns or sirens relies upon the judgment of the pro shop staff or other personnel.

If that judgment is not correct, would a golf course operator become liable in a situation where he ordinarily would not be? It certainly was a question that was raised throughout the Fisher trial. Also, dispatching attendants on the golf course in anything other than automobiles asks employees to risk their lives in situations where golfers might well be failing to heed nature's warnings.

In the end, one hopes that golfers will continue to rely upon their own common sense to leave a golf course when thunder and lightning threatens. Nature provides the best warnings for an impending thunder storm. Those warnings include thunder, lightning and/or heavy precipitation and wind. Although some golfers may never heed nature's warnings, hopefully common sense and personal responsibility will prevent another tragedy like Tom Fisher's.

## Algae fighters

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For more information, contact Enviro-Reps International at its Algae Research Center, 2646 Palma Dr. #455, Ventura, CA 93003; or call 805-650-3563.

CIRCLE #301

## Jake unveils SV

Jacobsen has unveiled two new system vehicle (SV) work trucks, the SV-2322 and SV-3422.

The SV-2322 is run by a 23-horsepower diesel engine and the SV-3422 has a 34-horsepower gasoline engine. Both feature engine-forward designs, a 2,800-pound total capacity, and versatility of attachment compatibility.

New engine-forward designs allow both better vehicle balance and easier maintenance. The four-wheel design provides stability and an inside 15-inch turning radius. For more information contact Jacobsen, 1721 Packard Ave., Racine, WI 53403, or call them at 414-637-6711.

CIRCLE #302

## Message cups

Hole Advertising, has announced a new line in golf advertising, Printable Golf Cup Protectors.

The disks, available with courtesy and personal messages, protect the golf cup. The messages on them can promote events, golf etiquette or advertising. The Printable Golf Cup Protector is shipped flat. It snaps into its disk shape before placement in a hole.

For more information call Hole at 305-753-0464 or write Hole Advertising at 1746 NW 84th Drive, Coral Springs, FL 33071.

CIRCLE #303

## Ransomes' new UTVs

Ransomes America Corp. has introduced two new utility vehicles, the Cushman UTV-Max and UTV-Maxim.

The UTV-Max features a 40-inch cargo bed while the UTV-Maxim comes equipped with an 72-inch bed. Both vehicles can haul up to 1,200 pounds and are available with a choice of either gasoline or electric power.

Features for both include: 14-gauge steel cargo-box bodies, double-leaf and coil spring suspension systems, front/rear shock absorbers and pedal or key start. For more info, write Ransomes at P.O. Box 82409, Lincoln, Neb. 68501.

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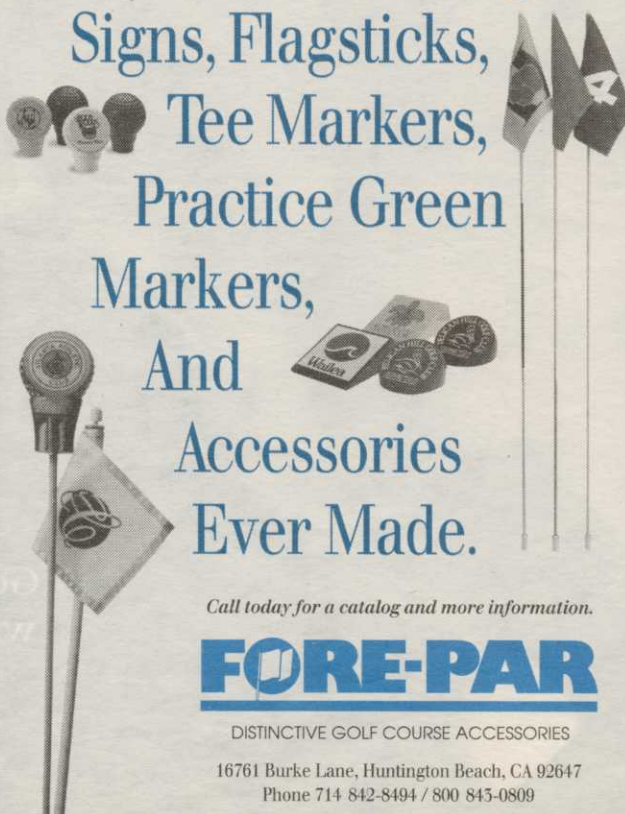
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