

Beaver Tail, RIP?

Continued from page 3

of 70 years. One thing remains constant, however: Beaver Tail occupies a stunning piece of land, nestled as it is on a corner of Jamestown Island with Narragansett Bay and Rhode Island Sound lapping against it. The original 18-hole course was opened for private play in 1926 — very private play. In fact, Tillinghast designed Beaver Tail for one man, owner Audley Clarke, on whose estate it was built.

Shortly after he christened the course, however, Clarke started leasing it to various management companies, who could never make it profitable. At that time, Jamestown Island was accessible only by ferry, and the Depression era didn't help matters.

Nine holes were eventually sold for housing and, when Clarke died in the 1940s, the situation went from bad to worse, culminating in the complete abandonment of the course operation in 1947.

There it stood, dormant and overgrown, until the early 1970s when a distant relative of Clarke's, Robert Munro Clarke, became intrigued by this course in hibernation. Clarke the younger is not a golfer and owns only 18 acres of the former course. Yet he decided the nine remaining holes could be restored to profitably serve the Newport summer crowd.

Then he discovered it was a Tillinghast original and lightbulbs went off in his head.

Steve Smyers was retained to design a new nine to accompany the Tillinghast nine, while Clarke set about securing enough land. He couldn't do it. As it turned out, neither could Abrams and Senior Tour Development.

Phillips comment

Continued from page 12

tion tourney reaches the man on the street, while the firm's backing of the GCSAA's Environmental Steward Award is designed to create positive vibes in the turf market. There is new leadership here, as well. Senior Vice President Michael Kely has succeeded Dick Stahl as head of the Professional Business Group.

• Then there's the new kid on the block: **United Horticultural Supply (UHS)**. This Aurora, Ore.-based firm has been around for a long time, but it has thrust itself into the fertilizer fray with its new temperature-sensitive, controlled-release product, ESN. "It's been going real well," reports Fertilizer Product Manager John Walther, "but we feel we still have a long way to go. Even the researchers need to better understand these technologies."

These aren't the only firms fighting for a piece of the fertilizer pie (a less-than-appetizing but apt metaphor for the growing importance fertilizer has in this, the heyday of IPM). There's **Lebanon Chemical Corp.**, which has taken the same route as Scott, supplementing its strong product line with sponsorship of the GCSAA's Environmental General Session. **Milorganite** has gone to new packaging, expanding its market outside the Midwest, where the Milwaukee-based firm has been extremely successful. **Vicksburg Chemical Corp.**, along with its sister company, Haifa Corp., are now the largest producers of potassium nitrate in the world, providing significant backing to its coated KNO₃ product, Multicote. When you add the strong and growing regional presences of **The Andersons** and **Terra Products**, it's hard to imagine anyone can earn the market share they seek.

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4-7 — Georgia GCSA Annual Meeting at Jekyll Island. Contact Karen White at 706-769-4076.

7-9 — Penn State Golf Turf Conference in State College, Pa. Contact Dr. Peter Landschoot at 814-863-3475.

7-10 — Turf and Grounds Exposition in Rochester, N.Y. Contact 800-873-TURF.

9 — Impact of Golf Business Symposium in Myrtle Beach, S.C. Contact the University of South Carolina Department of Sport Administration at 803-777-4960.

9-10 — Golf Course Expo in Orlando, Fla. Contact Golf Course News Conference Group at 207-846-0600.

9-11 — 1st International Hong Kong & China Golf Exhibition and Conference in Hong Kong. Contact Golf Media Group at (+61 9) 322 3222.

12-14 — 16th Annual International Irrigation Exposition and Technical Conference in Phoenix. Contact 703-573-1913.

13-16 — 7th Annual West Virginia GCSA Turf Conference and Show in Morgantown. Contact David Tennant at 304-594-1541.

14-16 — Midwest Regional Turf Foundation Turfgrass and Ornamental Seminar in Lafayette. Contact 317-494-8039.

16-18 — Tree Care Industry Exposition '95 in Indianapolis. Contact National Arborists Assn at 800-733-2622.

21 — The Alliance for Environmental Concerns Annual Environmental Seminar in Bedminster, N.J. Contact Ilona Gray at 201-595-7172.

December

4-7 — 26th Annual Georgia Turfgrass Conference and Trade Show in Atlanta. Contact 404-228-7300.

5-7 — Kansas Turfgrass Conference at Kansas Expocentre, Topeka. Contact Cliff Dipman at 913-539-4053.

5-8 — Ohio Turfgrass Foundation Conference and Show in Columbus, Ohio. Contact 614-261-6750.

6-8 — Minnesota Turf and Grounds Conference and Show in Minneapolis. Contact Scott Turtinen at 612-473-0557.

6-8 — Rocky Mountain Regional Turfgrass Conference and Trade Show in Denver. Contact Julia Marie at 303-688-3440.

12-14 — Georgia Turfgrass Conference and Show in Atlanta. Contact 404-975-4123.

* For more information contact the GCSAA Education Office at 913-832-4430.

Legal Corner

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Oregon Supreme Court opinion had previously held that "agreements to exonerate a party from liability or to limit the extent of the party's liability for tortious conduct are not favorites of the courts." The Oregon Supreme Court has held that such exculpatory clauses in release forms are valid only if they are limited to ordinary negligence.

Generally, state law prohibits any type of insurance or indemnification for intentional acts. Otherwise, the principle holds, persons could plan an attach on a person and then purchase insurance, or get a release, that would protect them from responsibility for their intentional and wrongful conduct.

The federal court of appeal had little difficulty concluding that the overreaching release included the possibility of exonerating Mt. Bachelor from intentional

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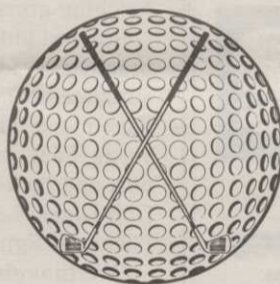
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Legal Corner

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and grossly negligent conduct, in violation of public policy. In a somewhat technical but crucial aspect of the agreement, the court's decision to throw out the entire release turned on common contract clause that was missing from this particular release agreement.

Contracts often contain what attorneys refer to as a "severability" clause. Such a clause states that if one provision of the contract is determined to be invalid, it may be severed from the rest of the contract. When the invalid portion is "severable," it does not contaminate the remaining valid provisions of the contract.

In such an instance, valid parts of the agreement will be enforced while invalid provisions will be "severe" and held unenforceable. The Mt. Bachelor release agreement did not contain a severability clause. Without such a provision in the release contract, the court of appeal held that the invalid portion of the release invalidated the entire contract.

Although the opinion can only be used by lawyers to interpret Oregon law, the opinion sends a word of caution to sports facilities everywhere. The decision is persuasive in other states because the basic principles are common to other jurisdictions. A brief review of existing release forms to assure they are not overreaching and contain the appropriate "severability" clause could avoid costly and time-consuming jury trial in the future.