

American Golf adds two new courses to growing portfolio

SANTA MONICA, Calif. — American Golf Corporation has added a pair of new golf course facilities to its growing management portfolio.

The California company signed a long-term operating lease with owner O-Sports Development Co. for the Silver-Horn Golf Club in San Antonio, Texas. Randy Heckenkemper designed the 18-hole layout in cooperation with widely known PGA Tour professionals Scott Verplank and Willie Wood.

The same team designed SilverHorn Golf Club in Oklahoma City, which is also owned by O-Sports and managed by American Golf Corp.

The Dayton, Ohio, suburb of Springboro recently awarded AGC a management contract for municipal Heatherwoode Golf Club. Denis Griffiths designed the 18-hole layout, which has hosted the Nike Tour's Miami Valley Open the past four years.



Beware insurers

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neys for the agency came up with 27 different claims against Buss. Most involved contract breaches. One, however, asserted that by firing the agency, Buss had defamed the agency and damaged its reputation. Since defamation was covered insurance, this gave Buss' attorneys the idea their fees might be paid by Buss' insurance company. When they asked Transamerica Insurance to pay the attorneys' fees, the insurance company agreed.

However, the insurer looked at the ad agency's complaint and concluded that only the defamation claim had any potential for coverage under its policy. The company agreed to pay the attorneys' fees, but reserved its rights to come back later and ask Buss for reimbursement, if it turned out the money was spent to defend claims entirely unrelated to the actions covered by the policy. Buss eventually settled with the ad agency, paying the company \$8.5 million. Although Buss asked Transamerica to pay some of the settlement, the company refused, stating this was really a breach of contract lawsuit not covered by the policy. Buss then sued Transamerica, claiming it should have at least contributed something to the settlement to cover the defamation claim.

But Transamerica fought back, countering Buss. The company contended the single defamation was really baseless. In essence, Transamerica said, the defamation claim was like one ball in the bottom of a water trap. The insurance company

said it had spent more than \$1 million defending the case, but only as much as \$55,000 of those funds related to the defamation claim. Transamerica wanted its money back.

Earlier this year, more than seven years after Buss had fired the ad agency, the California Court of Appeal ruled Transamerica could seek reimbursement. The two will now return to a trial to determine exactly how much Buss will have to pay the insurance company.

The case turned on somewhat technical but significant practices involving insurance companies. These principals apply to all insurance companies, whether they cover a slip and fall in the clubhouse dining room or cart accident on the course. Generally, when there is any reasonable possibility an insurance policy will cover any claim made in a lawsuit, the policy provides payment for an attorney to defend the insured.

The duty to defend an insured is separate from the duty to pay any ultimate judgment or settlement. As the California Court of Appeal pointed out in the Buss case, "The insurer's desire to secure the right to call on the insurer's superior resources for the defense of third-party claims is, in all likelihood, typically as significant a motive for the purchase of insurance as is the wish to obtain indemnity for possible liability."

As a consequence, California courts have been consistently solicitous of insurers' expectations on this score. "However, it is common for lawsuits to have a mixture of claims, some of which may be covered by insurance and others which

are not. Plaintiffs' attorneys often try to come up with ideas for allegations that will trigger insurance coverage as a way to facilitate settlement. When some claims are covered and some are not, insurance companies typically will pay the defense costs, but reserve the right to later ask for reimbursement.

In the Buss case, the stakes were so high, Transamerica felt it was entitled to more than \$1 million back. In a detailed legal opinion, the Court of Appeal ruled Transamerica was entitled to the right to seek the money and prove these funds were spent defending the contract claims and not the defamation allegation.

Generally, insurance is available for unintentional mishaps which injure others, such as negligent maintenance of a cart road. Insurance is not generally available for intentional conduct, such as assault and battery.

The breach of a business contract is not covered by standard insurance. When both covered and uncovered allegations are alleged in the same suit, however, insurance companies have a duty to defend their insureds.

As long as a potential for coverage exists, the court ruled, the insurer has no right to come back later and ask for reimbursement for attorneys' fees. However, if there is no potential for coverage, payback time is at hand.

The court's message is clear: Just because the insurance company is paying defense costs, when there is a reservation of rights, don't be lulled into thinking the insurance company might just forget to ask for some of its money back.

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is proud to announce it has closed on the following transactions since its inception in late 1994.

\$7,000,000 - NORTHGATE COUNTRY CLUB, Houston, TX
Refinance of an 18-hole private course.

\$3,400,000 - THE LINKS GROUP, Myrtle Beach, SC
Refinance of leases on 144 holes of golf plus a credit line for future acquisitions.

\$11,500,000 - THE LODGE OF FOUR SEASONS, Lake of the Ozarks, MO
Refinance of a 311-room lodge, 211-slip marina and 45 holes of golf.

\$5,000,000 - KEMPER SPORTS MANAGEMENT, Chicago, IL

\$2,250,000 - OLDE POINT GOLF & COUNTRY CLUB, Wilmington, NC
Refinance of 18-hole course plus construction funding for clubhouse expansion.

\$2,500,000 - GEORGETOWN COUNTRY CLUB, Georgetown, MA
Refinance of a 9-hole public course plus construction funds for additional 9 holes.

\$3,500,000 - THE SEA RANCH GOLF LINKS, Sea Ranch, CA
Refinance of a 9-hole public course plus construction for a second nine holes.

\$2,400,000 - WHITTIER GC & VICTORIA GC, Los Angeles, CA
Refinance of two 18-hole public courses.

\$5,000,000 - THE BEACH CLUB GOLF LINKS, Ocean City, MD
Refinance of an 18-hole course and construction financing of new 18-hole course.

\$3,600,000 - THE HERITAGE GOLF CLUB, Atlanta, GA
Construction of an 18-hole course and a line of credit for new acquisitions.

\$5,200,000 - AVILA BEACH RESORT, San Luis Obispo, CA
Refinance of an 18-hole resort golf course.

\$4,750,000 - CRYSTAL SPRINGS GC, Sussex Co., NJ
Refinance of an existing course to draw out equity to construct a new course.

\$3,250,000 - BLACK BEAR GC, Sussex Co., NJ
Construction of a new 18-hole course, cross-collateralized with Crystal Springs.

\$3,800,000 - CHESTNUT HILL & DEERFIELD GC, Buffalo/Rochester, NY
Refinance of 18-hole course and acquisition of 27-hole course.

\$8,500,000 - ANGEL FIRE RESORT, near Taos, NM
Acquisition of a ski mountain, golf course, hotel, RV park & other amenities.

\$9,500,000 - GOLF CLUB of ILLINOIS & BURR HILL GC, Chicago, IL
Refinance GCI, acquire Burr Hill and provide a line for future acquisitions.

\$7,000,000 - ELY BOWLING, Northern NJ
Refinance of 4 bowling centers in northern NJ and southwestern NY.

\$6,700,000 - BADLANDS GC, Las Vegas, NV
Take-out of course construction loan, plus provide for clubhouse construction.

\$2,600,000 - CASSELBERRY GC, Orlando, FL
Acquisition of an 18-hole daily fee course.

\$3,600,000 - SOUTH RIDING GC, Washington, DC
Construction Loan for new daily fee course.

Don Rhodes Vice President
Jerry Hinckley
Barbara Welty
Debbie Suppa
Rick Nekoroski
Bobby Fitzpatrick
Nancy Loucks

400 Northridge Road, Suite 520
Atlanta, Georgia 30350
(770) 993-1202 fax (770) 643-0344