

BRIEFS



**KSL FAIRWAYS ADDS 2 COURSES**

KSL Fairways has acquired two Wisconsin courses, Mequon Country Club and Lake Windsor Golf Club, bringing the Manassas, Va.-based firm's total ownership to 25, 18-hole courses at 22 sites. Mequon is a private, 27-hole club located 13 miles north of Milwaukee. The company plans \$1 million in improvements to the facility. Lake Windsor is a 27-hole, daily-fee facility located eight miles northeast of Madison.

**LEGG MASON PROMOTES WELLS**

BALTIMORE — Legg Mason Realty Group has promoted David Wells to vice president. Wells leads LMRG's recreational consulting practice, specializing in golf course properties. He performs market and financial analysis, development consulting and management/operational audits, brokers properties and works with other Legg Mason subsidiaries in raising debt and equity for recreational real-estate projects.



David Wells

**SMITH TO HEAD BIGHORN**

PALM DESERT, Calif. — Warren Smith was recently named general manager of Bighorn, an exclusive golf club and community in south Palm Desert. Smith will oversee all daily operations at the club as well as sales and marketing activities for the master-planned community. Smith formerly served as senior vice president of country club operations at Palm Desert-based Sunrise Company where he was involved in the development and management of Indian Ridge, Palm Valley and Monterey Country Club. He also consulted for KSL Recreation at PGA West and LaQuinta Resort and Club.



Warren Smith

**HIRSH ELECTED INTO CRE**

HARRISBURG, Pa. — Laurence Hirsh, president of Golf Property Analysts, was elected to membership in the Counselors of Real Estate (CRE). Holders of the CRE designation are recognized for superior real-estate, problem-solving ability in specialized areas. Hirsh specializes in the valuation, litigation support, feasibility analysis, ad valorem tax-assessment analysis and general analysis with a unique expertise in golf courses and recreational and leisure properties.

MARKETING IDEA OF THE MONTH

**Llamas enhance the walk and the pocketbook**

By MARK LESLIE

CANNON FALLS, Minn. — Welcome to Elmdale Hills Golf Course. Meet Hank and Pueblo, your caddies for the day. A gimmick? Perhaps. But a true drawing card, and that is the important factor here.

You see, Hank and Pueblo are llamas. And, in addition to carrying golf bags, their gifts are their ability to grab media attention and attract golfers to this new course trying to establish itself some 40 miles south of Minneapolis.

"We've gotten a lot of media attention," said Diane Brage, who with husband Bruce opened Elmdale Hills last July 1. "It got our name out there. Quite a few from the city have read about them, or seen them on TV and come out."

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Talamore Golf Club (left) in Southern Pines, N.C., is one of a growing number of courses using llamas to carry bags and attract golfers. In photo below, a handler leads a llama around a green at Elmdale Hills Golf Course in Cannon Falls, Minn.



MAN(AGER) ON THE STREET

**Personal service called key to survival**

*This marks the first in what we plan as a regular man-on-the-street type question-and-answer feature with the heads of some of the country's leading course management companies. This month's question is: "Assuming that rounds and participation levels will remain relatively flat over the next 10 years, how will you compete for market share in your areas of business?"*

**Joe Guerra, executive vice president of American Golf Corporation**

... Through virtual marketing or one-on-one marketing. AGC is developing marketing programs that will allow us to treat customers less generically. We are finding substantial opportunity for growth

by tailoring our marketing to each customer's playing habits, whereas in the past we have been guilty of offering these unique and separate customer groups a generic menu of products and services. For instance, the needs and wants of the avid core golfer are very different from those of the casual golfer and we are now able to develop and market a wider variety of products and services to each customer type.

... By leveraging to the benefit of AGC's portfolio of golf courses the technology and other marketing and sales tools which have proved successful in other service organizations. This is already occurring at AGC. As AGC looks to the next century, we

are positioning ourselves to provide the ultimate playing experience for the customer while at the same time maximizing revenue on behalf of our landlords and clients. Some examples include AGC's proprietary central reservation system, yield management systems and exclusive service excellence training programs.

**Joe Black, president of Western Golf Properties**

We will compete in the future, just as we do today, with superior conditioned golf courses and extremely high levels of service. We will simply try to create a better golf experience than our competitors.

**Bob Husband, president of Cobblestone Golf Group**

First I do not agree that rounds and participation levels will remain flat over

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LEGAL CORNER

**Employer's right to trade secrets examined**

By NANCY SMITH

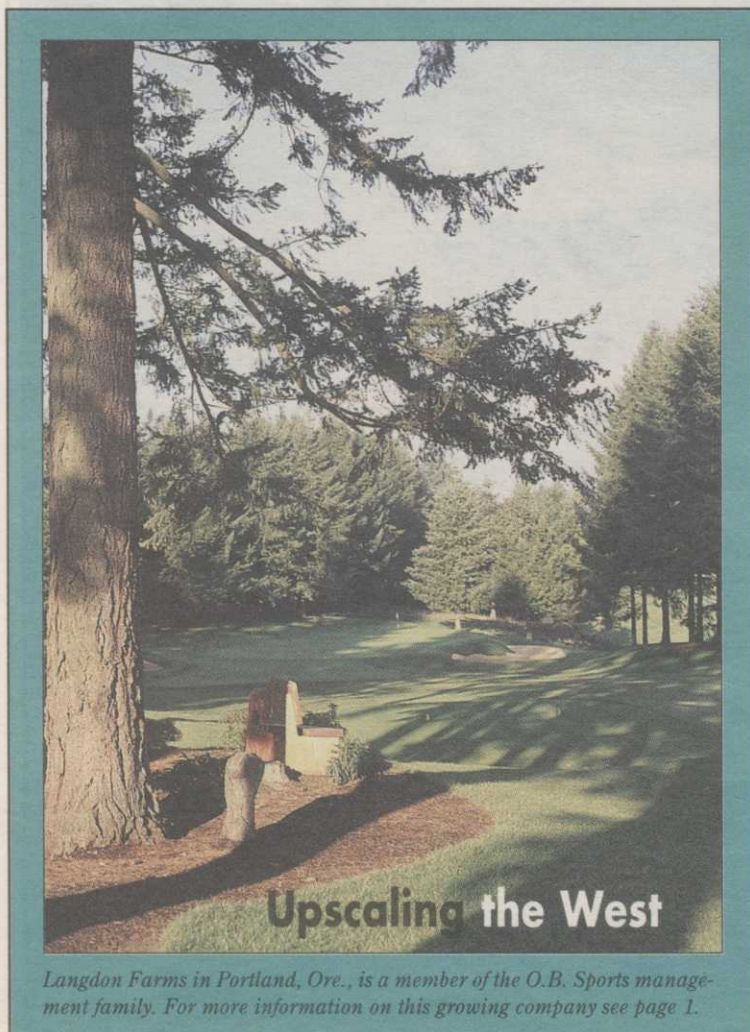
If a country club manager left to join the cross-town club, board members and co-workers might give "good-luck" wishes for the new post. But if that manager took a copy of the list of members, could that be unfair competition or just good ol' American enterprise.

Unauthorized use of a list of members and potential draws questions of trade secrets — and just how far a business can limit the acts of a former employee in a free country.

Some cautious employers ask employees agreements regarding information learned on the job. Some such agreements even make employees promise not to compete with the employer after other employment is obtained. But such agreements may not be worth the paper they are written on if they violate the basic tenets of fundamental individual freedoms and the right to openly compete in the marketplace.

Whether an employee can be kept from using information learned on the job turns largely on the nature of the information. Client or member lists may

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**Upscaling the West**

Langdon Farms in Portland, Ore., is a member of the O.B. Sports management family. For more information on this growing company see page 1.

Nancy Smith is an attorney working in Pasadena, Calif., and a regular contributor to Golf Course News. She can be reached at 818-585-9907.



# Courses added by golf management companies in recent months

Company/Course Name	City	State	Company/Course Name	City	State	Company/Course Name	City	State
<b>American Golf Corp.</b>			<b>Buena Vista Hospitality Group</b>			<b>KSL Fairways</b>		
SeaCliff CC	Huntington Bch	CA	Spanish Hills G&CC	Camarillo	CA	Tantallon CC	Ft. Washington	MD
Dunmaglas GC	Charlevoix	MI	<b>Corcoran Jennison Hospitality Co.</b>			Willow Run GC	Pewaukee	WI
Hilltop GC	Plymouth	MI	Widows Walk GC	Scituate	MA	<b>LinksCorp</b>		
Heatherwoode GC	Springboro	OH	<b>Edwin B. Raskin Co.</b>			Thorntree CC	Desoto	TX
Golden Oaks CC	Reading	PA	Bluegrass Yacht &CC	Hendersonville	TN	<b>Marty Golf Management Inc.</b>		
SilverHorn GC	San Antonio	TX	<b>Golf Enterprises Inc.</b>			Lakewood CC	New Orleans	LA
Seven Springs CC	Chesapeake	VA	Paradise Hills GC	Albuquerque	NM	<b>Masters Golf Corp.</b>		
<b>American Golf Country Clubs</b>			<b>Heritage Golf Management Inc.</b>			Rosemont CC	Orlando	FL
Oregon GC	West Linn	OR	Whitetail GC	Bloomington	IN	<b>O.B. Sports</b>		
<b>Billy Casper Golf Management</b>			<b>International Golf Group</b>			Reserve Vineyards & GC	Portland	OR
Back Creek GC	Middletown	DE	Radisson Greens GC	Syracuse	NY	<b>Western Golf Properties</b>		
Tennessee Centennial GC	Oak Ridge	TN	<b>International Golf Management</b>			The CC at DC Ranch	Scottsdale	AZ
<b>Brassie Golf Corp.</b>			Kissimmee GC	Kissimmee	FL	Oak Creek GC	Irvine	CA
Southern Dunes G&CC	Haines City	FL	Tarpon Springs GC	Tarpon Springs	FL			

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Dean Massmann, Golf Course Superintendent  
Jefferson Golf & Country Club

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Jefferson Golf & Country Club  
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## Trade secrets

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be considered protected if they meet the definition of a "trade secret." In addition to federal trade regulations, many states have adopted the Uniform Trade Secrets Act. This law defines a "trade secret" as information which derives its economic value from not being known to the general public. Once compiled, the information must be kept in a manner that maintains its secrecy. A bona fide trade secret can be a private company's client list compiled from years of hard work by employees using various methods of development.

For example, one California court found that the client list of an employment agency qualified as a trade secret because the list had considerable detail as to the needs and desires of various customers who purchased temporary employment services. In the case of *Courtesy Temporary Service, Inc. v. Camacho*, the court found the company's client list was a trade secret. The list had been developed over the years and guarded by the company for the valuable information it contained. The information was not available in other public sources, such as telephone books or directories. The court found that there was no source from which to determine what companies might be interested in using temporary services. The list had been "secured by screening a large number of such prospects, at considerable time, effort and expense."

When a small group of employees decided to quit and form a competitive company, the court found that use of the former employer's customer list was an unlawful misappropriation of a trade secret. It was as if the former employees stole the benefit of all the effort that went into making the list.

The Uniform Trade Secrets Act makes it against the law to "misappropriate" such a trade secret. Misappropriation can occur in several ways. Misappropriation can merely be acquiring the secret list. It can be revealing the list to anyone who does not have permission to have the list. It can be acquiring the list properly, such as by an employee, and then using it improperly, such as after the employment relationship ends.

The court noted, however, that the information not only has to be acquired through special labors, it must be kept under wraps. It must be "the subject of

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## Trade secrets

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efforts that are reasonable under the circumstances to maintain its secrecy." In the *Courtesy Temporary Services* case, the company made it a point of never revealing this list outside of the company. Indeed, the list was only given to the company's own employees on an "as needed" basis. The court found the list was properly created and maintained to be a trade secret. It prohibited the spin-off group of former employees from using the list.

On the other hand, efforts to limit former employees from using information on customers will not be upheld when the information doesn't qualify as a "trade secret." Such restrictions can easily be considered a restraint of trade. In addition to potential federal violations, such actions may violate state law. In California, for example, Business and Professions Code Section 16600 states that every contract "by which anyone is restrained from engaging in a lawful profession, trade, or business of any kind is to that extent void."

Under this rule, courts have found that a salesman who leaves a company can go into direct competition and call on his former employer's clients as part of the competitive marketplace. In *Gordon Termite Control v. Terrones*, the company sued a former employee. He had signed an agreement when he worked for Gordon Termite Control stating that if he ever left he would not call on any of Gordon's clients. The contract stated that if the employee ever broke the agreement, he would pay \$50 for each former client he had called.

Under the restraint of trade prohibitions, the court found the contract was not enforceable. Where the agreement was to merely keep the former salesman from "calling on" the company's clients, it did not involve any "trade secrets." As such, the contract restrained the salesman's right to practice a lawful trade. The contract was illegal. It could not be enforced.

In *Morris v. Harris*, an employer sued a former employee for taking its customers. During the employment relationship, a contract had been signed between a janitorial service and the employee who performed the services. The contract elicited a promise from the janitor that if he left the company he would not solicit any of the company's clients for 10 years. When the janitor left, the clients asked him to continue doing the work on his own. The company sued.

The court found the contract to be an illegal restraint of

trade. It was not enforceable. The court noted that a similar conclusion had been drawn by the Oklahoma Supreme Court under that state's law. In the 1944 case of *Continental Car-Na-Var Corp. v. Moseley*, the California Supreme Court found another such employee agreement void. A floor wax company tried to keep a former salesman from calling on clients he had come to know when working for the company.

The salesman had created some 250 to 300 index cards reflecting his contacts while

working at the company. When he left, the salesman notified these customers of his new position with a competitive firm. In reviewing the case, the Supreme Court noted the list was not a trade secret, but consisted of names of companies well known to salesmen of many competitive floor-wax companies. The names were "commonly known in the trade."

In the type of judicial eloquence appropriate to the court in that era, the opinion states: "Public policy and natural justice require that

equity should also be solicitous for the right inherent in all people, not centered by negative covenants upon their part to the contrary, to follow any of the common occupations of life. Every individual possesses a form of property, the right to pursue any calling, business or profession he may choose. A former employee has the right to engage in a competitive business for himself and to enter into competition with his former employer, even for the business of those who had been customers of his former

employer, provided such compensation is fairly and legally conducted."

If a club employee were to take a member list and use it at a new job for solicitation, such conduct might well be protected against any efforts to restrain trade. This is particularly true where lists are published, such as in directories. While lists containing personal or financial information might well be protected, lists of names, addresses and telephone numbers could well be used by a former employee with impunity.

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