

# Ruling deals blow to replica designs

By HAL PHILLIPS

**H**OUSTON — **Question:** When should a tiger be legally compelled to change its stripes?

**Answer:** When the tiger is actually a lighthouse standing beacon here in landlocked southeast Texas.

Confused? Well, customer confusion sits at the heart of a lawsuit still pending here in U.S. District Court. Judge David Hittner has ruled that a red- and white-striped lighthouse at Houston's Tour 18 Golf Club — a collection of holes that duplicates some of the greatest in golf — must, at the very least, change its stripes to differentiate itself from the original, which sits behind the 18th green at Harbour Town Golf Links on Hilton Head, S.C.

In his summary judgment Hittner wrote, "This duplication has weakened the lighthouse's propensity to bring to golfers' minds Harbour Town when they encounter the trade dress of the lighthouse." [See story at right for details on the ruling.]

When Hittner issued his judgment Sept. 10, he gave both sides — Tour 18 Inc. and The Sea Pines Co., owner of Pete Dye/Jack Nicklaus-designed Harbour Town — 60 days to work out a settlement or the judge would impose one. However, Dennis Wilkerson, president and chief shareholder of Tour 18, has since filed a motion for rehearing, which the court has not yet addressed.

"I have a feeling we may be taking down the lighthouse, but I don't know," said Wilkerson, whose firm owns another "homage" course in the Dallas area. The Dallas layout also features a replica of the Harbour Town lighthouse so it, too, will be affected by the settlement.

"As two parties who have been fighting a lawsuit for two years, I can't



imagine us working it out completely by the deadline," Wilkerson continued. "There's probably going to be another year or two of lengthy appeals. Nothing is ever completely final and, like all lawsuits, the only people that really win are the lawyers."

The plaintiffs might not agree. The Sea Pines Co., which joined The Pebble Beach Co. and ClubCorp of America in the suit, views Hittner's still-ambiguous ruling as a victory.

"We are very glad the decision upheld our belief that Harbour Town Golf Links' 18th hole and the lighthouse are distinctive landmarks and should not be reproduced without our approval," said Sea Pines Director of Sports Cary Corbitt. "Harbour Town Golf Links is very important to our

overall Sea Pines image and we work very hard to protect it."

The Tour 18 layout in Houston features holes duplicated from Pebble Beach, Pinehurst No. 2, Augusta National, Bay Hill, Inverness, Colonial, Oakmont, Oak Tree, Doral (Blue), Olympic (Lake), Disney World, the TPC at Sawgrass and LaCosta.

The course opened in late 1992 and The Pebble Beach Co. brought suit Dec. 7, 1993, claiming duplication of its 14th hole was, in essence, a copyright infringement. Soon ClubCorp of America — owner and operator of Pinehurst Golf & Country Club — and The Sea Pines Co. joined Pebble Beach in the suit.

Continued on page 38

## THE LETTER OF THE LAW

The following are excerpts from Judge David Hittner's ruling on "Pebble Beach Co., Resort of Pinehurst, Inc. and Sea Pines Co., Inc. vs. Tour 18 I, Ltd.," filed Sept. 10, from U.S. District Court, Southern District of Texas:

In addition to barring use of the lighthouse, Judge Hittner's ruling enjoined Tour 18 from "using in connection with the promotion, advertising or sale of golfing services, the service marks Pebble Beach, Pebble Beach Golf Links... Pinehurst, Pinehurst No. 2... Harbour Town, Harbour Town Golf Links."

The defendant, Tour 18, "may use these marks only to the limited extent necessary to inform the public which golf holes it copied. To comply with this section of the injunction, Tour 18 may use plaintiffs' marks on its scorecard, yardage guide and tee box signs. Additionally, Tour 18 may place these service marks in other printed materials only within a simple legend of the course's replicated golf holes. This legend shall include only the Tour 18 hole number, name of replicated hole, par and yardage, similar to the legend contained within Tour 18's current promotional brochure... Tour 18 must remove all other superfluous uses of the marks listed in this section from its written materials, including but not limited to the Tour 18 promotional brochures, mailers, advertisements in independent publications, and restaurant menu."

Hittner also ruled that Tour 18 must place prominent disclaimers on all "advertisements, promotional brochures, scorecards, yardage guides, or other written materials provided to the public as a means of marketing... The disclaimer shall disclaim any association, affiliation, sponsorship, or permission from the owners of golf holes tour 18 copied."

Further, Tour 18 was enjoined from claiming it used "original" blueprints in constructing the holes — unless "such a statement... also includes a disclaimer clearly stating that it neither received the blueprints or maps from the owners of the original golf holes or that the owners of the original golf holes authorized Tour 18's use of such blueprints or maps."

## It's the smart course that plans for emergencies

By DONALD GEYER

BRIGANTINE, N.J. — Early one morning at about 8 a.m., I looked out of the front door of our local club, Brigantine Golf Links. A pick-up truck entered the parking lot at a high rate of speed and came to a very sudden stop. The driver jumped out of his truck and raced into the clubhouse.

"Call 911, there is a guy with a heart attack on the fourth hole," he said.

The person working on the desk immediately picked up the telephone and called 911. The conversation ran like this, "This is the Brigantine golf course. There is a guy down on the fourth hole with a heart attack."

This course is laid out with houses on practically every fairway bounded by city streets. Quite naturally the emergency



Access roads are plentiful at Brigantine Golf Links — a mixed blessing, actually.

person said, "What street is the fourth hole on?"

"I don't know," the desk person said. "Wait a minute."

Luckily, the fellow in the pick-up was still there and familiar with the streets. He said he would meet the emergency vehicle at a certain intersection. The golfer was given emergency treatment at the scene (not a heart attack fortunately) and was transported to a local hospital as a precautionary measure. End of the story.

But the episode got me thinking. Our course has 18 holes: the Hagen nine and the Vardon nine. The way this course is laid out, a number of streets run between green and the next tee box. There are a number of streets that run parallel to a fairway with potential access points. This course also has many ponds and waterways subject to tides and running along and across fairways.

Considering this information

Continued on page 54

## BRIGANTINE GOLF LINKS EMERGENCY EVACUATION PLAN

The purpose of this plan is to coordinate the efforts of the Golf Course and Rescue Personnel in aiding a person needing assistance. All of us working together will save valuable time, which may save a life.

### D. Access Points Number Location

1. On Club House parking lot near H1 Tee Box and H9 Green and across Roosevelt Blvd. to V1 Tee Box and V9 Green.

2. On Hagen Road near H1 Green and H2 Tee Box.

3. On East Shore Drive near H4 Green and H5 Tee Box.

4. At Dead End Street off 11th. Street near H5 Fairway and H5 & H6.

5. On Sheridan Place near H6 Green, H7 Tee Box & Green.

6. At Sheridan Blvd. and Washington Drive near H9 Tee Box and on Washington Drive along H9 Fairway

7. On Sheridan Blvd. near V1 Green and V2 Tee Box and Green.

8. Pump House On Roosevelt Blvd. near V3 Green and V4 Tee Box.

9. On Sheridan Blvd. near V5 Green, V6 Tee Box and Green and V7 Tee Box.

10. On Sheridan Blvd. near V7 Tee Box.

11. On Sarazan Road near V7 Green and near V8 Tee Box and Green.

12. On North Shore Drive near the middle of V9 Fairway.

### E. Pro Shop

1. Dispatch at least one person and cart to the emergency site — D.G.

### A. Upon learning of an emergency

1. Determine which hole Hagen 1-9 (front) or Vardon 1-9 (back) and the exact location of the person on the hole.

2. Obtain a brief description of the type of emergency.

3. The exact location on the hole will determine the Fire Rescue Access #.

### B. Dial 911

1. This is Brigantine Golf Links

2. We have a possible heart attack or stroke or broken leg.

3. Fire Rescue access Area # is. The emergency is on (See A1 above)

4. Golf Course Personnel will meet you at Access #

### C. Call Ranger on the radio

1. We have an emergency. Where are you?

2. Go to Hagen 1-9 or Vardon 1-9. The person is at [give a specific location on the hole.]

3. Please meet the F.D. Rescue Unit at their Access Point to give them directions.

## Armstrong polishes off new Maine nine

SANFORD, Maine — Construction has been completed on the 9-hole addition to Sanford Golf Club here, according to Marvin Armstrong of Frankestown, N.H.-based Armstrong Associates.

"Considering the very wet fall [1995] and this spring, the project has moved along smoothly," said Armstrong.

International Golf Construction of Arlington, Mass., completed the work only slightly later than agreed, even with the

weather delays. The ownership hopes for an aggressive grow-in, resulting in a July 1, 1997 opening.

Armstrong Associates was able to design the new holes so that play on the existing course would not be interrupted. Only a pond — on the existing 7th (future 16th) — required a temporary tee last fall for permitting reasons.

In other Armstrong Associates news, the firm has been retained by the City Worces-

ter, Mass., to complete a renovation master plan that will explore the incorporation of a driving range and relocation of the clubhouse.

Also, Armstrong continues to complete renovations at Longshore Park Club for the Town of Westport, Conn. Armstrong said he expects to continue work for Three Rivers Golf Club in Woodbury, Conn. and Cold Springs Golf Club in Belchertown, Mass. Also, feasibility work was recently completed for 17 holes for the Town of Plymouth, Mass.

## Tour 18 ruling: Owners prevail

Continued from page 37

According to Wilkerson, Judge Hittner took more seriously the claims of Sea Pines because "Harbour Town uses the lighthouse as a corporate logo, which is treated differently than just a golf hole. With the Pinehurst and Pebble Beach holes, the judge ordered some modification in our advertising, bigger disclaimers and less prominent use of their names. But he did allow us to continue using their names in our holes."

ClubCorp viewed the decision as better than nothing.

"It's not as broad as we would like to have seen it," said Terry Taylor, general counsel for the Dallas-based club management giant. "The decision establishes a new application of the trade dress law, which is exactly what we wanted to establish. We think it doesn't go far enough. We haven't come to a decision on an appeal."

Stephen Wille, vice president of marketing for The Pebble Beach Co., is similarly ambivalent with Hittner's ruling.

"While we didn't agree with everything the judge ruled, we were pretty happy with the primary ruling, which we take to mean that copycat courses can only use non-famous, non-distinctive holes," Wille said. "The ruling, as I understand it, says he must indicate the origin of the hole design in various listings — like scorecards or yardage books. What he can't do is say, 'You may have always wanted to play Pebble Beach. You don't have to go to Monterey. You can do it at Tour 18,' which he was doing in advertising all over the place."

In addition to the Tour 18 courses in Houston and Dallas, there are several other "homage" courses up and running, including the Donald Ross Memorial at Boyne Highlands Resort & Country Club in Highland Springs, Mich., and Golden Ocala (Fla.) Golf Club. Taylor said there are no similarities between the Ross project and Wilkerson's.

"We were contacted and asked to participate in [the Donald Ross] project," Taylor explained. "The big difference, in our view, is the Ross Memorial was put together to honor the spirit and legend of Donald Ross, not to copy otherwise popular holes without any sort of licensing in place. We see absolutely no similarity between the two."

# GO PRO WITH THE PRO

**Y**ou can't help them play better. But you can be sure the limestone you applied just minutes ago won't get in their way — with new calcium-rich **Pro Pelleted** Limestone from Lime Crest. **Pro Pelleted's** unique Micro-Select Prill goes right down to the soil to make your greens and tees greener without making your golfers see red!

No other limestone works like new **Pro Pelleted** Limestone, because Lime Crest packs more pH-correcting limestone particles into every pellet! **Pro Pelleted** Limestone goes down clean and breaks down finer to become available when you need it... NOW!

And **Pro Pelleted** Pro-Select Prill does for your fairways and roughs what Micro-Select Prill does for greens and tees.

Trust your limestone needs to the pro — **Pro Pelleted** Limestone from Lime Crest. Available in convenient 50 lb. bags or in bulk by the truckload.



- ▶ **Adds essential calcium**
- ▶ **Corrects soil pH without burning**
- ▶ **Improves nutrient availability**
- ▶ **Activates microorganisms**
- ▶ **100% natural**

**LIME CREST**  
CORPORATION

Lime Crest Corporation • PO Box 217, Sparta, NJ 07871 • (800) 526-1753 • (201) 383-2000 • Fax (201) 383-8021