British root-zone ruling sheds little light

By DAVID WHITE

EAST DORSET, England — The legal action begun in 1994 by East Dorset Golf Club against golf course architect, Hawtree and Sons, still manages to produce its share of sparks. However, valuable lessons the golf industry may have gathered from its testimony remain quashed by the settlement's confidentiality clause.

In its lawsuit, which dragged on for almost two years, East Dorset GC alleged that company principal Martin Hawtree was responsible for the club's failed greens — greens Hawtree had recently renovated. The plaintiff alleged Hawtree was in breach of contract, claiming that, as the club's consultant and architect, "he was responsible for the choice and specification of the root zone and for ensuring the specified root zone was suitable and fit for its purpose, and the root zone was, in fact, unsuitable and unfit for its purpose."

Hawtree in turn counter-claimed against the Sports Turf Research Institute (STRI), which he had hired to test root-zone materials and advise on the selected root-zone mix. Hawtree claimed STRI was in breach in failing to advise that the root zone was unsuitable.

By British standards, the club's claim for more than £4 million in damages was seen as something of a watershed, and the industry waited with baited breath for judgment. After all, it is common knowledge that "cowboys" often operate with the barest minimum of insurance, if indeed any at all, while those who were responsibly covered — the blameless and claimless — were eager to learn how any future premiums might be affected. Indeed, premiums have seen a hefty increase, the cost of which get passed down the line, while Joe Public remains denied the full story.

The high-profile dispute was settled under a "confidentiality clause." The case was settled in its first day, with all parties concerned no doubt assuaged, though a growing ground swell of opinion now suggests that industry interests would have been better served by a thorough chapter-and-verse disclosure.

For example, nothing is known of the legal thinking pertinent to the obligations a golf course architect and agronomist owe to each other, or indeed those who buy their expertise. From the writ we know that Hawtree was aggrieved with the STRI, yet we learn nothing of how STRI defended itself, save the Institute's lawyer claiming its role under Hawtree was limited, dismissing it as a mere "cameo." Lips remain sealed. Thus what really went amiss at East Dorset remains a mystery.

The bare bones of settlement make their own quiet statement, the common knowledge being East Dorset GC accepted an offer of £1,575,000, which included legal costs of £512,000. Hawtree, through his insurance company, paid around £1 million to the club, with about one quarter of that sum recompensed by STRI.

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Further, STRI agreed to pay the club an additional £575,000. Though these settlement payments were offered and accepted, both Hawtree and STRI deny liability. Further, such payments do not insinuate and must not be taken as an admission of guilt.

As a postscript, litigation has generated a huge demand for professional materials evaluations services, while spawning the formation of one influential new company, European Turfgrass Laboratories, from an amalgamation of several independent lab consultancies: Professional Sports Turf Design, McMillan Shiels and Grass Technology International. The new laboratory competes directly with STRI, its services including the sourcing of suitable root-zone materials, correct mixing and safe delivery to the golf course.

Meanwhile, at East Dorset GC, the greens that caused all the trouble remain unexcavated. To be fair, this last drought-ridden summer was a tough one to begin ripping apart greens.