



BRIEFS

INVERNESS CLUB HIRES VETERAN GM LARocca

TOLEDO, Ohio — The Inverness Club has hired Pasquale "Pat" LaRocca as general manager. The hiring was announced at an Inverness Club event in late July. Most recently, LaRocca was general manager and chief operating officer at Muirfield Village Golf Club and the Memorial Tournament in Dublin. Prior to that, LaRocca served as general manager at Youngstown Country Club in Youngstown for four years and at the Oakmont Country Club just outside Pittsburgh, Pa., for 16 years.

KEEFER TO HEAD GOLF OPERATIONS AT TRILOGY GC

LA QUINTA, Calif. — Phoenix-based Intrawest Golf has named Todd Keefer as director of golf for the 18-hole Trilogy Golf Club in La Quinta, which is scheduled to open this winter. Keefer previously served as head golf pro for Intrawest-managed CrossCreek Golf Club in Temecula. Keefer will be responsible for overseeing all operations at the Gary Panks-designed club, which is part of Shea Homes' Trilogy Active Adult community network. Intrawest and Shea have also teamed at Trilogy Golf Club at Power Ranch and Seville Golf and Country Club, both in Gilbert, Ariz., as well as Trilogy Golf Club at Redmond Ridge in Redmond, Ariz.

CHICAGO PARK DIST. PRODUCT RETURNS TO HEAD JUNIOR GOLF OUTREACH

NORTHBROOK, Ill. — Derrick Moseberry, himself a product of the Chicago Park District's youth golf program, has returned to the program as coordinator of junior golf outreach for the Chicago Park District and KemperGolf Management. Moseberry's grandmother, Arnette Moseberry, is president of the Bob O'Links Junior Golf League at Jackson Park. Moseberry attended Texas Southern University in Houston on a partial golf scholarship combined with the James S. Kemper Jr. Foundation scholarship. Moseberry will be responsible for junior golf outreach at all of the park district's facilities, which include five nine-hole courses, one 18-hole course, three driving ranges, a junior learning center and a miniature golf course.

AGC gets restructuring deal

By DEREK RICE

SANTA MONICA, Calif. — American Golf Corp. (AGC), like its potential merger partner National Golf Properties (NGP), recently received a reprieve in the form of a restructuring agreement with its lenders.

AGC's inability to make lease payments to NGP for several months has jeopardized the financial security of both companies. This was also one of the major factors that led to the proposed merger, which has been decried by industry insiders and shareholders as beneficial to no one but David Price, who owns a large portion of both companies, and NGP executives including chairman and CEO David Pillsbury, who is also chairman and CEO of AGC.

Under the restructuring agreement, Bank of America granted AGC a limited waiver, which is subject to delivery of leasehold mortgages on certain golf courses leased by AGC. At press time, the process of preparing those leasehold mortgages was expected to be completed by Aug. 8, although there was no assurance that deadline would be met. Bank of



David Pillsbury

America extended the maturity of AGC's credit facility and private placement notes to the earlier of March 31, 2003, or the consummation of the AGC-NGP merger. In addition, Bank of America and AGC noteholders have waived existing defaults and all potential future events of default other than specified "major defaults" during this period.

As additional security for AGC's obligations, Price personally pledged approximately 3.6 million shares of common stock and National Golf Operating Partners (NGOP) common units, as well as a second deed of trust. He is required to substitute cash collateral for this collateral by Oct. 15 in the case of the shares and units and Sept. 30 in the case of the deed of trust.

Spokespeople for both NGP and AGC declined to comment on this agreement or previous agreements, saying that all necessary information is contained in the companies' filings with the Securities and Exchange Commission.

There has been speculation that some NGP shareholders were amassing shares to counterbalance the votes of Price and the companies' boards of directors. An AGC spokesman also declined to discuss the proposed merger or give a firm timeframe for a shareholder vote.

Editorial Focus: Insurance & liability

Courses face rising insurance premiums

By ANDREW OVERBECK

Since Sept. 11, insurance premiums have risen across the board, and some companies have abandoned the golf course market altogether. The recent up-and-down nature of the stock market certainly hasn't helped matters.

"Companies that were attracted by high premiums [to invest in the stock market] are getting out of the market," said Tom Marks, executive vice president for club programs for Bollinger Insurance.

That, coupled with falling profits, meant that premiums had to increase.

"The last several years have not been terribly profitable," said Bob Goldthorpe, head of St. Paul's Eagle 3 program for golf courses. "In 1999, for every dollar that we brought in, we paid out \$1.62. That is why premiums went up."

With premiums increasing and companies discontinuing service, many courses are scrambling to get new insurance carriers and to re-evaluate existing policies. According to industry experts, as courses go through this process, there are several must-have insurance items to keep in mind that are not always standard on golf policies.

ENVIRONMENTAL LIABILITIES

Environmental liability coverage handles items like herbicide and pesticide overspray rider and fuel tank leakage.

"Five years ago, this was not available," said Ken Robinson, of Lumbra Robinson and Associates, a representative for Zurich and other carriers that offer golf insurance. "It is important for courses to have

Continued on page 16

Editorial Focus: Insurance & liability

Courses win golf car cases in past year

By JOSEPH J. DEVANNEY and
DIANE SUMMERS DEVANNEY

Decisions in golf car-related lawsuits over the past year have been largely favorable to golf course owners. However, that success has not necessarily translated to other types of suits. The following four cases demonstrate how courts across the country have treated the golf industry over the last 12 months.



One case arose in Miami, Fla., where two players, Eliseo Ferrer and Fernando Calvo, were participating in league play at the Fontainebleau Golf Course. Ferrer, who was driving the golf car, got out and Calvo moved into the driver's seat. Unfortunately, Calvo then accidentally struck Ferrer with the car. Ferrer sued the course, claiming that it was liable under a Florida legal theory called the "dangerous instrumentality doctrine." In fact, in a 1984 decision, the Florida Supreme Court had ruled that a golf car is

Continued on page 17

Westchester Country Club digs geothermal heating system

By JOHN TORSIELLO

RYE, N.Y. — Officials at Westchester Country Club have gone underground, at least as it pertains to the club's heating and cooling needs.

A \$7 million renovation at the historic layout, which hosts the annual PGA Buick Classic, has resulted in the conversion of the 80-year-old club's massive 340-room hotel from a traditional heating and cooling system to a geothermal system.

The project's contractor was R. J. Dooley & Associates of Poughkeepsie, N.Y. The firm has installed geothermal systems for over 17 years, including those at golf clubs in Georgia and the Midwest.

"Golf courses are a prime site for geothermal systems because of the available land," said Bob Dooley, owner of the firm. "This type of system can be installed anywhere. In fact, the Westchester site was one of the more challenging projects we have undertaken because we had to drill through bedrock."

Some 180 wells were drilled to depths of 300 feet into solid granite located below open land at Westchester CC, which includes two golf courses, a hotel, clubhouse, tennis courts and other amenities.

The geothermal system runs water through underground pipes and uses a stable ground temperature to act as both a heating and cooling engine. (The

earth's temperature is a constant 55 degrees some 15 feet below the surface.)

Water flowing through six miles of ductwork connects to individual heat pumps in each room of the hotel, built at the turn of the 20th century. The water passing through the piping cools rooms by absorbing heat during the summer and is warmed to heat the spaces during the winter. The re-circulated water always returns to the building at 55 degrees. The club uses a backup boiler and water-cooling tower for kitchen and laundry operations.

Disruption to the club was minimal and the system was installed so as to be unobtrusive, Dooley said. At its peak, about 60 workers were involved with the project, which took a little over a year to complete.

"The vertical bores took up about an acre and a half," he said. "We picked an area in an open field off the first green of the South Course. It was either there or the driving range, and we felt the site we picked would cause the least inconvenience. We pulled topsoil off and pushed it back once we were done drilling."

"The technology made sense and the system is environmentally sound," said Bob James, the club's executive director.

James said that while the geothermal system was somewhat more costly (around \$350,000 more) than if the

Continued on page 16

Golf car cases favorable for course owners

Continued from page 14

a dangerous instrument. Ferrer's wife, incidentally, also sued the course with a loss of consortium claim.

In November 2001, however, the Court of Appeal of Florida, Third District, affirmed the Dade County Circuit Court's granting of summary judgment in favor of the golf course. The Court noted that "League members using golf cars in this situation are properly viewed as being co-bailees or joint adventurers." This distinction about whether a golfer was part of a league was fatal to Ferrer's case.

The defendant golf course was also victorious in September 2001 in a golf car suit brought against Lorain Country Club Ltd. in Lorain, Ohio. In that case, Joseph Ritenauer was injured after falling out of a golf car in which he was a passenger. Ritenauer argued that the golf course had earlier watered the grass on which the car was being driven as it went down a hill. The slick grass caused the car to spill. The legal issue turned on whether the wet grass was an "open and obvious danger," which states that "an owner owes no duty to protect business invitees from hazards which are so obvious and apparent that the invitee is reasonably expected to discover and protect against them himself." Ritenauer stated at deposition that, during the play on the first 12 holes, he noted that the grass was wet because it had been watered. In fact, he commented, "They were watering the whole course all day practically." Under the circumstances, the court felt that the wet grass problem was a clear danger, prior to the accident, and ruled against Ritenauer.

Still another victory in a golf car case went to the owners of a golf course, American Golf Corp. (AGC), doing business as the Rivers Edge Golf Course, in Fayetteville, Ga. In April 2002, AGC won a defense verdict in a suit where a plaintiff claimed an ankle fracture, as well as head trauma, shoulder and back injuries after his car hit some boulders next to the cart path and overturned. The legal theory rested on a claim of premise liability and the alleged failure by the course to maintain safe brakes on the car. AGC defended by claiming that the plaintiff drove the car too fast and did not keep a proper lookout. Following a trial, the jury ruled in favor of AGC.

Although it seems to have been a decent year for golf courses as far as golf car claims are concerned, this does not mean that there is necessarily a defense trend, per se. The consistently favorable, from the course owner's point of view, decisions hinge on the particular circumstances of each case. In a particularly interesting case involving a golf course in Oklahoma, the course lost the first legal round in the Oklahoma Supreme Court.

As many readers may know, a hot issue in many states is the degree of legal liability that may be imposed on a business when it serves alcohol to patrons that subsequently become involved in accidents. This is exactly the legal issue facing Willow Creek Golf Club in Oklahoma City. The case began in 1997 when a man and his adult daughter were killed by a drunk driver, Neal Alexander Jr., near Oklahoma City. Alexander had been attending a golf scramble fundraiser and party at Willow Creek, which was sponsored by the Hillcrest Health Center.

During the evening hours, Alexander

drank a number of beers on the golf course and had two more in the clubhouse, which were purchased with coupons given to tournament participants. Willow Creek did not furnish the drinks on the golf course, but did staff the open bar at the clubhouse where the coupons for drinks were redeemed. After Alexander left the club and became involved in the accident, he was found to have a blood alcohol level of .19.

The survivors of the accident victims sued various individuals as well as both Willow Creek and Hillcrest Health Center. Willow Creek and Hillcrest both moved for

summary judgment, which was granted by the lower courts. In September 2001, the Supreme Court of Oklahoma, however, reversed the lower court as far as Willow Creek was concerned. It found that Willow Creek was not a social host (which might have protected it under Oklahoma law), but was instead a commercial vendor of alcohol. The court noted that the club was a licensed alcohol vendor and that it charged Hillcrest for each redeemed coupon. The summary judgment ruling in favor of Hillcrest, incidentally, was allowed to stand by the Supreme Court, since Hillcrest was not a commercial vendor of alcohol and

was not, in the view of the Court, in a joint venture with Willow Creek. The case was sent back to the lower court and the parties are preparing for a trial that will likely come next year.

The best general advice that can be given to operators, managers and owners of golf courses is that the law varies often from state to state and, in any event, any case anywhere will have a specific set of facts that will often "make or break" the eventual outcome. Owners should try as much as possible to anticipate problems in advance rather than simply wait for an issue to arise. ■

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