

Liability considerations for recreational groundsmen

by Dr. Arthur H. Mittelstaedt, Jr.

■ We often hear that the public has an "assumption of risk." This term, like many legal terms, carries different definitions from state to state. Interpretations should be addressed in accordance with the laws in your state.

However, practically speaking, when a person acknowledges formal risks which have been correctly communicated to them, that person assumes the risk. If signed statements of the risks along with verbal cautions are standard procedure, the owner/operator has less liability or has reduced his or her vulnerability.

"Contributory negligence"—another legal term that varies by state—usually means that the plaintiff, by omission or commission, has been negligent to the point of injuring or in any way helping cause an injury. In cases involving "comparative negligences," any negligent action of the plaintiff or injured is weighted and the fault is shared proportionally in the judgment.

"Proximate cause"—another variable legal term—generally means that an injury was caused or aggravated by a specific act of negligence.

"Foreseeability" is a less legal term. It is often used with "reasonable." Foreseeability is when the defendant should have predicted, foreseen or anticipated the plaintiff's action that caused or resulted in the injury. Today, we must consider what could happen, recognize it and prevent it from happening. When we don't, we are negligent.

"Reasonable" is when the defendant did try to think and do all things within possibility to recognize a hazard or danger and prevent it. However, he or she just didn't plan for that one-in-a-thousand situation or condition and someone was injured.

This is why a complete safety program is necessary. That one-in-a-thousand contingency may occur. If it does, at least it can be said that all reasonable precautions were taken. Thus, the risk had been reduced, but obviously not eliminated.

Standards are a broad term that are used as the means of measurement. Standards may be formalized, such as laws, government regulations, ordinances and policies. They may be set forth by voluntary standards groups such as ASTM or

Last month, we discussed safety as it relates to maintenance of public recreational areas. This month, liability takes the focus.

ANSI. They may be set forth by trade or professional organizations. They are also established by law.

Standards, when informally established, are often called "criterion" or "guidelines;" often referred to as "accepted practice" or "learned treatise" (books, professional articles, consumer articles, speeches), and as the state of the art.

"Theories of negligence" is a broad informal term used to describe the theories which a complaint or petition stipulates as having been violated when a suit is filed. It is used throughout the litigation process. The expert and attorney often focus on such theories, whereas the law is so variable by state that it is only the attorney's domain.

Theories of negligence often specify evidence that the defendant was aware of a defect or deficiency in practice. If the defendant received prior notice, such as through an inspection or an actual notice, does nothing to correct or prevent the incident, negligence becomes obvious.

Theories of negligence include entail established principles or practices governing the activity or facility:

- Improper planning
- Improper design (surveying, architecture, landscape architecture or engineering)
- Improper construction (electrical, mechanical, structural, general contracting or building, and the manufacturing and installing of materials)
- Improper maintenance and operation
- Improper protection (securing and protecting—including containing, prohibiting and warning of hazards and dangers)
- Improper surveillance (superintending and overseeing)
- Improper instruction: (leading, teaching and counseling)
- Improper user selection (in sports): (separating age, skill level, developmental

levels, interests and needs; and assigning such individuals appropriately)

- Improper safeguards (providing guards, signs and labels, footwear, goggles, clothing, mouthwear, fences and insuring their fit and ability to withstand use and even abuse)

- Improper supervision/coaching: (providing, controlling, officiating, instructing and coaching)

- Improper or lack of warnings: (alerting and notifying through verbal and visual techniques)

- Improper administrative procedures: (conducting and administering through various recognized records like injury reports, incident reports, minutes, logs and other forms of communication)

- Improper medical attention: (notifying, replying, responding, treating, attending, removing and subsequent treatment)

An understanding of the landscape professional's role in relation to public liability and its many aspects can correct or prevent the chance of an injury or death, and control the risk and loss to the agency.

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Winter golf: Can it work?

Having a golf course open for winter play in cool-season areas is not common. But it can work, as shown by this Canadian course.

■ Here's one for you: winter golf in Canada. How's it done? Can it work for your course?

Gordon Witteveen, superintendent at the Board of Trade Country Club outside of Toronto, Canada, offers year-round tee

times on the club's south nine. There is rarely a shortage of "die-hards" for the extended service, he says.

Since 1981, club members have had the option to play the course throughout the winter when weather permits, although two other 18-hole courses are closed until the traditional season returns.

"It is not as cold as Americans might think," Witteveen says. (Toronto lies along the same latitude as Boston.) Witteveen adds that there are many mild winter days when a full round of golf is not only possible, but pleasant.

Witteveen keeps the tees, fairways and greens snow-free, occasionally by using snowblowers. Surface scalding damage from snowblowers is easily repaired in early spring. Beyond that, the course suffers no real damage from winter play, Witteveen says.

Tees and greens receive a heavy late-season sand topdressing which Witteveen credits as a good preventive practice. Dependable drainage also bolsters the hale

and hearty sand-based greens which make a smooth transition from winter to spring play. The greens are kept clear through the winter.

"Those greens seem to survive a lot better and are in better shape in the regular season than some of the other greens. That is an interesting by-product. We're always amazed at how beautifully the course comes out," says Witteveen.

Winter's charms do pose special challenges for golfers and superintendents alike; Witteveen responds with unique solutions.

- Four cups are pre-dug on each green in late fall. Three are plugged over with artificial turf plates until needed. This makes changing the hole placement easier when the ground is frozen. Winter cups are also located at the back of the green because approach shots in cold settings tend to bounce to that area.

- Wooden tees are not practical in winter because of the frozen ground, so Witteveen's crew fashions rubber tees from discarded irrigation piping. Colored balls

are used to stand out from the bordering white groundcover.

The short (three par-3s, six par-4s), challenging course can attract 75 to 100 golfers on a "balmy" winter day, and once played host to a 1984 tournament during a Canadian turfgrass convention. Low score that day was a respectable three-over 33.

Witteveen says holes-in-one have been recorded in December, January, February and March, and have all been dutifully reported to local newspapers.

Toronto's Board of Trade, the American equivalent of an American chamber of commerce, is likely the only one in Canada to own and operate a golf course, much less one offering tee times in November through February.

"This has not always made me popular with my colleagues in the area, who sometimes resent me for doing this. They feel it puts unfair pressure on them to do the same," says Witteveen, his voice trailing off in a low laugh.

—Jack Simonds

Mower safety reduces trips to hospital

Don't let any of your employees join the growing number of people injured while mowing a lawn.

- Last year, an estimated 77,000 persons visited hospital emergency rooms, suffering from lost fingers, toes and other extremities that were nicked, lacerated or amputated by power mowers. Thousands more were probably treated in doctors' offices for lesser injuries.

Statistics show that about 50 percent of the injuries from all mowers and 64 percent of the injuries to operators of walk-behind mowers occur from blade contact.

The Consumer Product Safety Commission (CPSC) established mower safety standards in 1982 to guide manufacturers in the production of safer equipment. However, there are things that you can do, as operators, to reduce injury potential.

The following suggestions come from "Divots," the newsletter of the Miami



Valley GCSA:

- Study your operator's manual to know the different functions of your mower.

- Make any adjustments to the mower before you begin to cut. And make sure the engine is not running.

- Remove all stones, wire and other objects from the area you plan to mow.

- Make sure children and other bystanders are away from the area you plan to mow.

- Never mow up and down a hill with a walk-behind mower. Always mow laterally to prevent slipping toward the mower.

- Never mow wet grass. It clogs up the deck and increases the chance of slipping.

- Wear sturdy leather or steel-toed shoes to protect your feet.

- When refueling, let the mower cool down first.

17 steps to course safety

- Knowing the 17 steps that you, as a golf course superintendent, can take to make your golf course safer for its players is a key to good management, said Al Zikorus at a recent Public Golf Course Management Association meeting.

There are also design considerations that can take into account player safety, Zikorus said, but maintenance suggestions he cited are:

1. Remove all dead wood in trees. Golfers don't stay out of woods on real windy days.

2. Protect all shelters with properly installed lighting rods.

3. Find and fill any potholes on the property.

4. Repair any eroded areas by grading, seeding or sodding.

5. Fill any settlement of drains after heavy rains.

6. Keep all stairs under repair. Eliminate them where possible and re-grade the slope.

7. Keep all signs serviced.

8. Keep ball washers serviced.

9. Use Turface or a similar product to