

THE DEEP POCKET THEORY IN PRACTICE

A few years ago, a young mother brought her 18-month-old son to a neighborhood park. She encouraged the child to climb up a slide, even though it was typically used by older children. Unfortunately, the small child fell from the top of the ladder, hit his head on hard, compacted ground and remains forever a slow learner.

The mother ultimately sued the park district (which owned the property), the contractor (who installed the slide a decade earlier) and the manufacturer of the slide.

The litigation was long and extremely costly before the jury ruled in favor of the plaintiff. The judgement? The three parties were ordered to pay approximately \$3 million apiece.

Before you get angry about this case, or perhaps even dismiss it as a fluke, you should realize that similar cases are frequently replayed in our court system.

The problems that cause these kinds of claims to happen do not have simple, one-line answers. But

it is not sufficient to throw up our hands in defeat and say, "We live in a litigious society, so what can we do?"

In the above case, there was a maintenance issue pertaining specifically to a lack of cushioning material under the playground equipment. If more thorough maintenance steps had been taken, it's likely that the award would have been substantially reduced, if not nixed altogether.

Still, we're victims of the "deep pocket" theory, which says, in effect, that an injured party has the right to recovery regardless of who is at fault. This is a reality; the only way it's going to change is through a grassroots effort to achieve tort reform.

The public needs to understand that it is not the faceless, "rich" insurance companies that are paying out these large awards. The monies paid in cases like this translate into higher premiums for every kind of insurance available.

—Jim Leatzow □

issue in their specifications. Also, make sure the lighting is sufficient and provides adequate security.

Prime firm

The "prime" design firm is the one that lines up subcontractors for specific work. The prime firm can and will be held responsible for the deficiencies, real or merely perceived, of every subcontractor working under it.

If the prime design firm hires subcontractors without verifying that they carry their own professional liability insurance, then the prime can expect to be called upon to defend any litigation that comes about as a result of their subcontractors' work.

When construction begins, the insurance exposure becomes one of a general liability nature. Exposure does not begin until the public begins using the design in its final form.

Ample security

It is important to make sure that adequate protection is implemented to keep the public from gaining access to the construction site. Signage, as well as barriers, may be needed to prevent kids from gaining access to equipment or materials. On a large project, security may be needed to protect the facility from uninvited guests.

It is especially important to make certain that adequate fencing and appropriate signage are used to keep unwanted guests out of areas that are inherently dangerous and to provide adequate fencing for spectators to keep them from harm. Fencing takes on a critical dimension when athletic fields are placed close to or adjacent to roads and other areas of vehicular traffic.

Exactly who is responsible for security ought to be addressed in the contract and work agreements between the appropriate parties.

Maintenance responsibilities

Once the athletic field has been constructed, accepted and turned over to the landowner, a new set of exposure to risk begins.

The landowner has a legal duty of care to provide five essentials to the public. The property owner must:

1. Keep the premises in repair;
 2. Inspect the premises to discover hidden or obvious hazards;
 3. Remove those hazards or warn the public about their existence;
 4. The owner must anticipate typical uses and activities by the public and take reasonable precautions to protect the public from foreseeable dangers;
- continued on page 32*



Compacted, bare ground and the injuries resulting from it primarily affect the landowner, who has final responsibility for a field after it's constructed.

5. Conduct operations on the premises with reasonable care for the safety of the public using the facility. Most claims concerning athletic fields involve a lot of finger-pointing, usually because there are so many parties involved. The plaintiff (injured party), construction firm and property owner may all attempt to show that faulty de-

sign in some way contributed to an injury. The design team may attempt to show that the facility was not constructed as originally designed.

The property owner may be attacked for failing to provide adequate maintenance, cushioning material, and routine inspections of equipment and facilities.

The most important step in reducing liability exposure begins when the contracts and work agreements are signed by all parties.

The documents should be extremely specific about who is responsible for what. Furthermore, the parties should include expected or anticipated maintenance schedules (it is not unreasonable for the design team specialists to inform the property owner of future maintenance needs).

The designers should make periodic observations of the facility during construction. This important practice can make a tremendous difference in negating potential lawsuits after a project is built.

When choosing plant material, keep the users of the field in mind. It would not make sense to use sharp, thorned plants if even the most remote chance existed of a youngster running into it and getting hurt.

Liability poses major challenge

Whether justified or not, many of today's liability lawsuits are directed at the maintenance and care of the facilities, and ultimately at the individuals responsible for that maintenance.

I recently met with two different attorneys who asked me to serve as an expert witness on two separate cases. One attorney is representing a private school where a soccer player supposedly stepped into a depression during a game and severely damaged a knee. The second attorney represents a private corporation with recreational facilities. An employee, who was playing in an organized softball game, claims to have broken an ankle while running around second base after tripping in a hole.

Eyeing a settlement

Both of these episodes occurred in 1985. One will go to trial in 1990, the other in 1991. The plaintiffs' goal is to prove that the facilities were poor and that the maintenance staffs were negligent in performing their duties.

We all know that it takes money to maintain a good turf. Administrators who withhold needed dollars from landscaping need to understand that the money paid out for just one lawsuit that goes against your facility could purchase an abundant supply of maintenance supplies for many years.

Possibly 90 percent of athletic field problems are soil-related. A professional who has knowledge and expertise in the field of soil science is invaluable in the planning and construction of athletic facilities.

Knowledge of soil modification and management, drainage and irrigation are essential to the success of an athletic field. Most severe injuries occur on hard, compacted surfaces with a sparse turf cover. A well-maintained natural grass turf with correct soil composition pro-

vides the athlete forgiveness.

A useful tool

The Clegg Impact Testing Apparatus is a tool that is assisting researchers in assessing the hardness of athletic field surfaces. It's proving to be extremely valuable by calling attention to potential problems.

The lower its reading, the softer the surface. An athletic field that is properly watered, fertilized, aerified, mowed and with a firm but resilient surface may have a reading between 30 and 50. Good synthetic turf surfaces may have readings averaging between 80 and 90 or more.

When used by a competent technician, this tool has the capability to convince administrators to at least consider correcting a situation before it is too late.

Establishing standards

A recent inspection of some athletic fields in the Los Angeles area revealed some extremely high readings, especially where no turf cover was present.

Surfaces we expected to be hard, such as the top of sprinkler heads and the running track surrounding a football field, had readings of 270 or higher. However, we were sorry to find compacted, bare areas in the center of two local football fields with readings between 160 and 180.

If an injury occurred on a field with high readings like the ones mentioned above, a subsequent lawsuit could lead to a large settlement for the plaintiff.

Negligence is much more difficult to prove if we progress toward improving our facilities.

—Kent Kurtz □

Dr. Kurtz has been a professor in the Ornamental Horticulture Department at California State Polytechnic University and is an editorial advisor to *LANDSCAPE MANAGEMENT*.

Deep pockets?

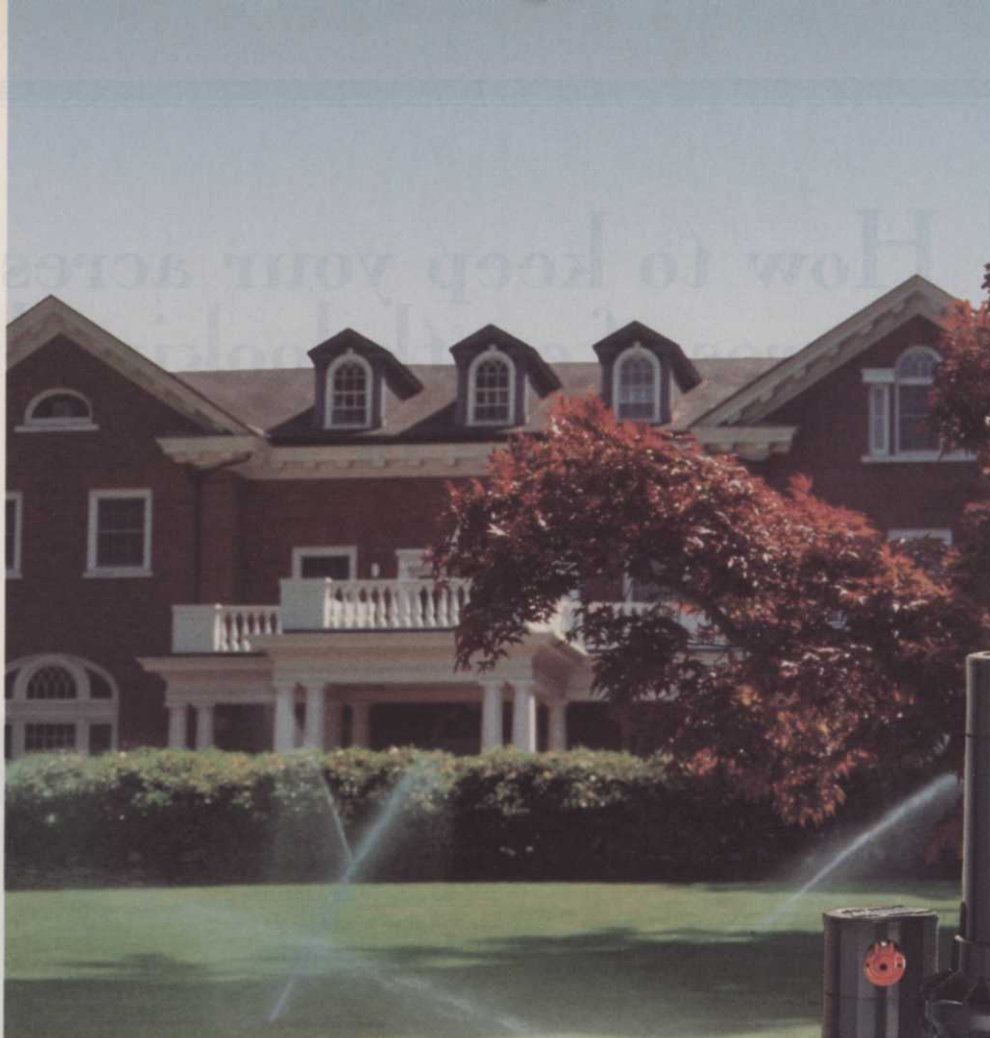
The willingness of the public to perceive us as "deep pockets" and grant injured parties huge awards is one of several issues that plague the insurance industry. These issues will remain until the public understands that we all lose when outrageous monetary awards are granted.

You can and should protect yourself, especially on projects that ultimately involve children at play. The work agreements, sufficient observation during construction, competent participants in the project and adequate insurance should provide protection to you and the public.

LM



Jim Leatzow is an insurance agent specializing in green industry matters. His office is located in Glen Ellyn, Ill.



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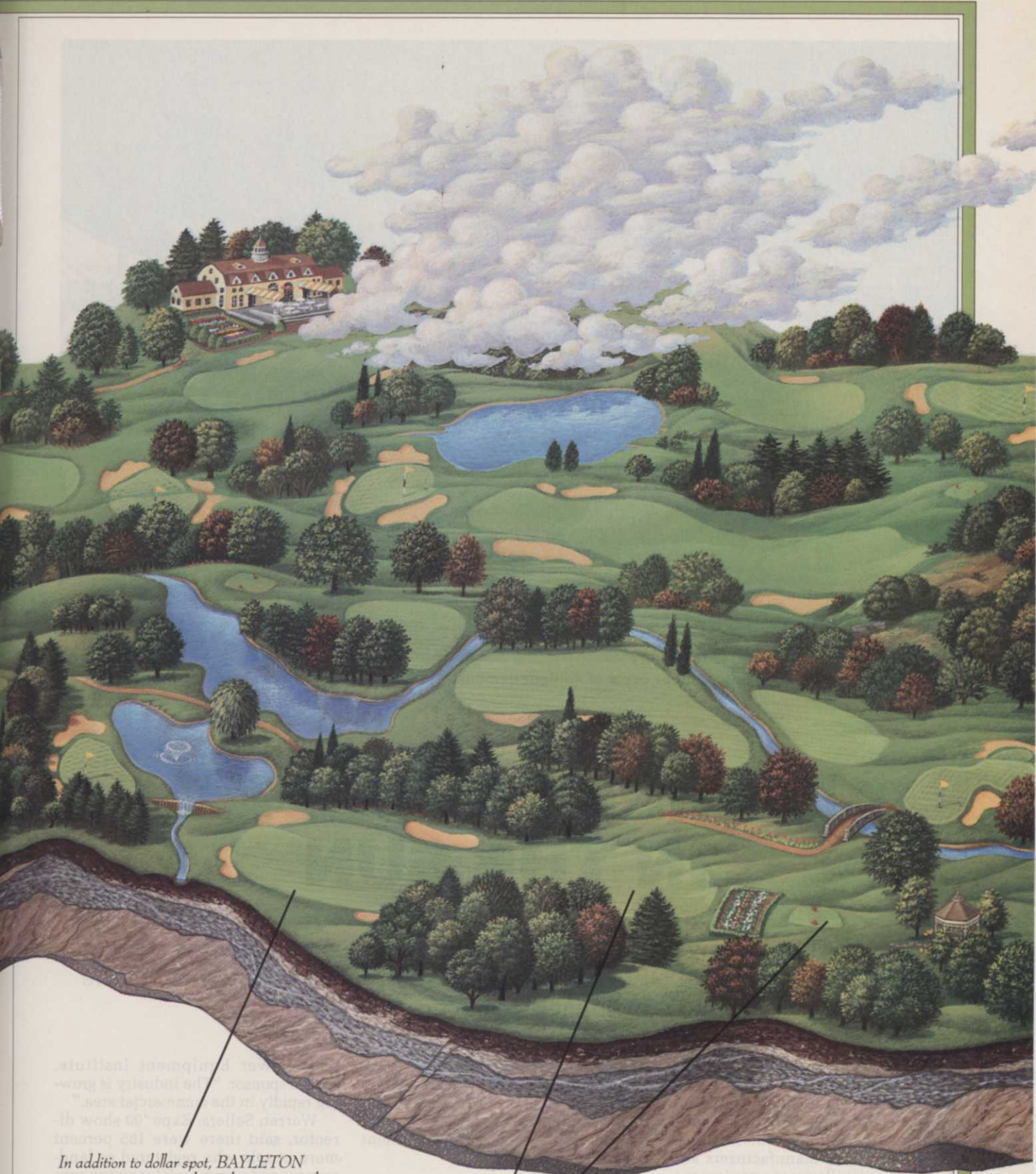
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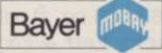
Plant turf varieties that resist diseases in your area. Apply a balanced fertilizer. Aerate, irrigate, and dethatch periodically.



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Expo '90 will feature an additional four acres of outdoor demonstration area. The highly anticipated event is July 29-31 in Louisville.

EQUIPMENT'S DAY IN THE SUN

The most impressive display of turf equipment ever assembled awaits visitors to the annual OPEI Expo in Louisville, Ky. Here are some of the innovative machines to be showcased.

Ask most people what comes to mind when they think of Louisville and they'll probably say Dixieland jazz, paddlewheel boats or college basketball. But for landscape equipment manufacturers and dealers, Louisville means equipment. Lots of equipment.

And this year is no different. July 29-31, more than 500 companies will take up 280,000 sq. ft. of space inside the Kentucky Fair & Exposition Center and more than 14 football fields outside. Their wares include the latest innovations in mowers, irriga-

tion equipment, engines, chain saws, garden tools, snowthrowers, tillers and a variety of other related equipment, products and services for the outdoor leisure and power equipment industries.

More commercial

Expo '90's outdoor facilities will be expanded by four acres to accommodate the rapidly growing commercial equipment market. "Expo has always mirrored the trends in our industry," says Dennis Dix, executive director and chief operating officer of the Out-

door Power Equipment Institute, Expo's sponsor. "The industry is growing rapidly in the commercial area."

Warren Sellers, Expo '90 show director, said there were 185 percent more people who registered as landscapers and commercial mowing contractors at Expo '90 than at Expo '88.

Three years ago, the OPEI tried a trade show called the "Pro Show," which was separate from the OPEI Expo. Although that particular idea didn't work, the OPEI didn't give up hope of reaching the commercial market—not by far.

Woods makes the grade... the commercial grade, that is.

Since our introduction of the first tractor powered rotary mower in 1947, customers have consistently awarded our equipment top grades for innovation and reliable performance.

Now we've applied our engineering and manufacturing expertise to an expanded line of commercial turf maintenance equipment. From the design stage right through component specification and assembly, these products are in a class by themselves.



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Walk-Behind Mowers

Smooth operating hydrostatic drive mowers with cutting swaths from 36" to 61".

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Louisville Expo**



Division of Hesston Corporation

"There was enough interest among Pro Show advertisers that the OPEI experimented and came up with this demo area idea," notes Nic Smokey, advertising director at **Tecumseh Products**.

Manufacturers happy

"It makes sense," says advertising manager Jack Steinhour of **Woods/Hesston**. "The commercial market is bigger than the consumer (home-owner) market, so this is probably a good move."

The show's indoor/outdoor venue sets it apart in the eyes of many manufacturers as well. "This is the premiere show as far as commercial equipment is concerned," says Dave Buchanan of **Jacobsen Division of Textron**. "The fact that it's grown as much as it has in the past few years is testimony to that. It's a very good forum for getting your product in front of the dealer and landscaper, so it's a very important show for anyone who wants to be a player in the commercial market."

Jacobsen will show off its new 21-inch rear-bagging commercial

mower, its Turfcats T422D four-wheel drive machine, the Crew King floating-deck rotary mower, "plus a few surprises," promised Buchanan.

Howard Day, vice president and sales manager at **Yazoo**, concurs.

"I see the (commercial) market growing, and we are changing some of our methods to reflect that growth," he says. "We're strong in that area and plan to get stronger."

Growth is good

Scag has, so to speak, all its eggs in one basket: the commercial market. And that philosophy is bearing fruit.

"Our growth has been very good," says vice president and general manager Jerry Bailey. "We've even managed to stay ahead of the market's growth rate."

Scag will introduce zero-turn-radius walk-behind and riding mowers, and will have the rest of its equipment available to OPEI attendees.

Ralph Parsons is owner of **Parsons & Son**, which owns Micro-Mower, a manufacturer of attachments for 15 to 35 hp compact tractors.

Micro-Mower will be displaying

two small-arm mowers for smaller tractors. The 92.5, with a 92.5-inch reach, and the 135, with a 135-inch reach. They're working on a small, tow-type three gang flail mower, but it's unlikely it will be available by the OPEI show.

"It's a very attractive show for us," says Parsons, "though it's an expensive show too. It's good because of the number and type of person we reach."

Parsons says Micro-Mower products fill a niche because they work as an attachment to compact tractors, allowing landscapers to take full advantage of equipment that's already in existence.

"I'm optimistic about the commercial lawn equipment market," Parsons adds, "because people need to keep up the appearance of physical facilities. The type of equipment we offer will allow them to do that while taking better advantage of equipment they probably already own."

Ransomes will take advantage of the new commercial demo area to exhibit "some of our larger riders and turf equipment," says communications director Maria Large. "We'll be



You can get more powerful grub control than Chipco Mocalp 5G.



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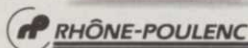
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able to show a larger variety than ever before, including our turf renovation products."

Tecumseh will be taking a "getting-to-know-you" approach. On display will be products from the company's Tecnamoter Division, which manufactures Italian engines that are being shipped to the U.S. Its lines of X-L engines and possibly a complete new line of heavy duty engines will also be demonstrated.

Woods will have its riding mowers and intermediate walk-behinds on display. "Our machines are strictly for large-area mowing," notes Steinhour.

Targeting markets

Teledyne Total Power finds the commercial demo area especially suited to its marketing tactics.

"Our target market has always been the professional, the person who uses engines eight hours a day, six days a week," says director of OEM sales Art Porter. "And it would be nice for that end user to demand our power. This is an opportunity to get that message out."

Teledyne will display its full line of Wisconsin Robin engines.

Bunton's Mike Packer, whose company will be displaying its complete line of walk-behind, self-propelled units, sees the commercial market growing at a much faster pace than the home market.

"It's been an upward trend for the past five years. The homeowner mar-

ket simply isn't growing at a double-digit pace like the commercial market.

"Louisville is an especially good show for us," he adds, "because of the amount of distributors and dealers there."

Packer predicts that in the coming decade landscapers will see increasingly sophisticated equipment that is more productive, yet costs the same or less.

Expanded lines

Meanwhile, **Giant Vac** is enjoying the fruits of an expanding product line

year, buyers are cautious spending money, but with the added products we're doing well."

While Jean Evans, secretary treasurer of **Magic Circle**, in Coatesville, Ind., is not sure what exact models will be on display in Louisville, she is sure that the Louisville show is one not to be missed.

"It's a very good show for us because it's where you get a large audience of dealers and distributors, plus quite a few landscapers," says Evans.

Sure to be included in Magic Circle's display are Dixie Chopper's ZTR (zero turning radius) models. They've

'It's a very important show for anyone who wants to be a player in the commercial market.'

—Dave Buchanan
Jacobsen Div. of Textron

that will include mulching mowers in the future. At Louisville this summer, however, it will demonstrate outfront mowers from 36 to 60 inches, commercial all-welded push mowers 19 to 21 inches, thatchers, leaf blowers and truck loaders.

"We've added new products that have strengthened us," says Giant Vac president Herman Diehl. "This

developed a new drive system and filed a patent for their all-hydraulic, no chains mowers.

Evans notes that every year her company "grows a little bit more."

As for future trends? "I see zero-turning-radius mowers as a definite trend that's going to take over," says Evans. "The idea and number of companies pursuing it has grown tremendously over the past 15 years. Some people continue to hang on to the tractors, but they're becoming fewer and fewer."

Steiner, which positions itself at "the top of the line" of consumer equipment, is rapidly expanding—with its dealers—its commercial line. According to company president Bill Mason, commercial sales is now one third of total sales. He says landscapers will have a chance to use two-wheel drive outfront and four-wheel drive articulated Steiner mowing units.

Goossen Industries is touting its Chopper bale-chopper for mulching, a Vac-N-Load system and a Rake-N-Vac. Though the company markets primarily to cities and municipalities, notes spokesman Lawrence Vitosh, it will also be "leaning more toward the commercial market."

Yamaha is planning to inundate the OPEI show with its full line of trimmers, brush cutters, blowers, edgers and more, says marketing coordinator Charlie Sovacool. "Most of our products are geared toward commercial users, and it's a competitive industry. We're just trying to carve our niche," he notes. **LM**

More equipment at Expo '90

LOUISVILLE, Ky. — With the addition of four acres of commercial equipment, the seventh annual International Lawn, Garden & Power Equipment Expo will feature its most extensive showcase of products yet.

The July 29-31 show at the Kentucky Fair and Exposition Center here is expected to draw more than 22,000 people from all over the world. It features the latest innovations in mowers, sprinkler systems, chainsaws, engines, patio furniture and other outdoor leisure products and power equipment.

"As the commercial segment of the show grows, we expect to see an ever-increasing representation by commercial end users, plus dealers and distributors who carry commercial products," says Expo '90 show director Warren Sellers.

There will be 550 indoor booths and the equivalent of 14 football fields of outdoor demonstration area. In addition, there will be six free seminars to help dealers and retailers increase their efficiency, sales and profits. The sessions will cover customer service, merchandising, the commercial market, effective selling, rentals, Yellow Pages advertising, extended warranties and pricing.

Pre-registration for the show is free; it is \$10 at the door. For more information, call Expo '90 at (800) 558-8767 or, in Kentucky, (502) 473-1992. □