

SWIMMER INJURIES—WHO'S LIABLE?

BY RICHARD HARTZMAN

Swimming and other water-related sports are among the most popular leisure activities in America—a fact amply demonstrated by the popularity of coastal destinations as venues for meetings and conventions.

While swimming is ordinarily a benign pursuit, accidents do happen. Swimmers are injured or drown because of faults in the facilities or equipment or through their own negligence. If the accident happens at a hotel or resort, the property may be held liable for damages.

The general rule is quite simple. A hotel or resort does not insure the safety of its guests, but it does have an obligation to exercise *reasonable care* in the prevention of accidents. Guests, for their part, have a parallel obligation to exercise proper care for their own safety.

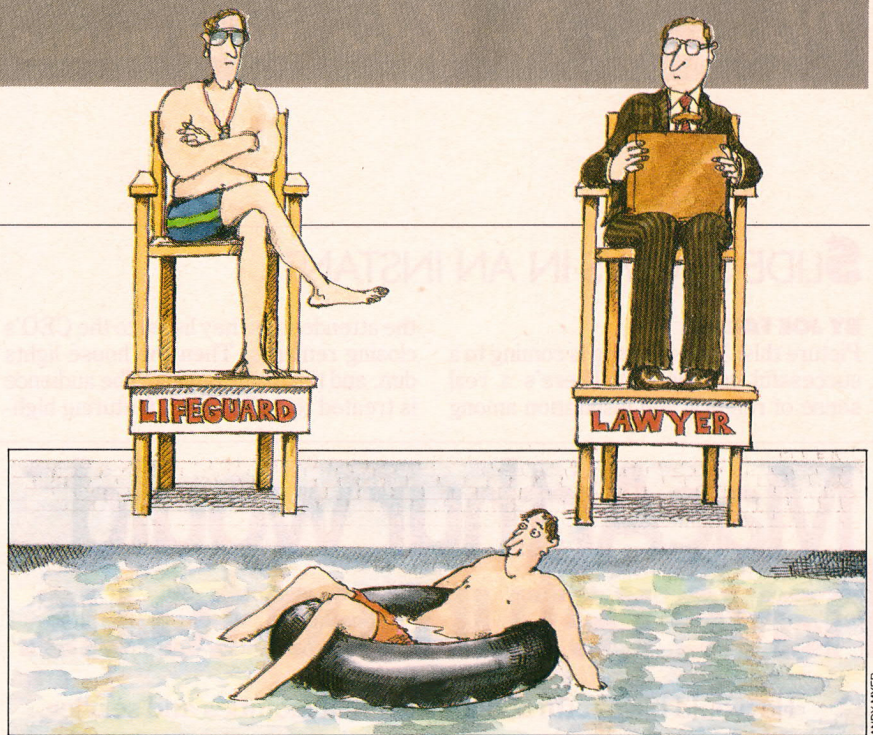
The application of the general rule is not so simple—as illustrated by the many court decisions that have turned on points and have been affected by statutes and ordinances dealing with the operation of swimming facilities.

In one case involving a hotel in Washington D. C., 18-year-old Thomas Hooks was awarded \$4.5 million because of injuries he sustained in a diving accident. Hooks, an inexperienced diver, jumped from the three-meter diving board into the property's pool and landed in shallow water. He struck his head on the bottom of the pool and suffered injuries that made him a quadriplegic.

The hotel was found negligent because it had deviated from approved plans for the pool that called for a wooden diving board less elastic than the aluminum one installed. In addition, the aluminum board extended five inches farther over the pool than the specified wooden one, and, on the day of the accident, the water level was several inches lower than normal.

DEFECTS IN SWIMMING POOL EQUIPMENT

Accidents can be caused by any number of defects in swimming pool equipment. Diving boards may be inadequately supported or fastened. They may have a slippery surface, or may be covered with torn or badly worn material. There may



be loose tiles, slippery surfaces, holes, or other irregularities on decks, piers, or in bathhouses. Water slides may have improperly placed structural components or defective guardrails.

In another accident case, a 13-year-old patron lost a finger going down the slide into a public lake. Sharp metal braces extended to the edge of the slide and the facility's operators had failed to warn users about them.

Defects in pumps and underwater lights have led to some rather gruesome accidents. As a result of one such accident a federal court found the government liable for the death of a 19-year-old serviceman who drowned in the bottom of a naval-station pool. The suction of a circulating pump drew his arm into an 8-inch drainpipe up to the shoulder. He was held there by the suction and could not free himself.

Although neither of these two cases involved hotels, the same legal principles apply.

HAZARDOUS CONDITIONS

Swimming facility operators have been found liable when hazardous conditions have caused accidents. Such conditions include holes, dropoffs and areas of deep water about which no suitable warning is provided; dangerous currents or waves; cold or electrified water; floating, submerged or partially submerged objects; pieces of glass; and slippery or uneven surfaces.

The absence of effective supervision is often the basis for liability when swimming accidents occur. There may be an insufficient number of lifeguards to cover

the facility, or lifeguards may be absent altogether. A lifeguard may not have been attending to his or her job, or may not be properly trained in rescue techniques such as artificial respiration. Necessary rescue equipment may not be available or properly maintained.

On the other hand, where a lifeguard is not provided but a clear warning of danger is posted, the risk of injury in many situations is borne solely by the swimmer. Also, if a drowning individual does not show any signs of distress or trouble, there may be no liability even though a lifeguard was present.

Boisterous conduct by patrons often leads to injuries. In one reported case, horseplay—which included shoving and throwing each other into the water—by boys at a Florida hotel pool had been going on almost daily without control by the pool attendant. While the plaintiff was swimming face down, one of the boys landed on her. She blacked out and became hysterical when pulled from the water. The court said that the hotel could be held liable for the plaintiff's injuries.

The possible causes of liability for swimming accidents are many and often subtle. If someone in your group asks about liability for a swimming accident, caution him or her about the complexities involved. If it appears the swimming facility operator may have been at fault, recommend legal consultation. ■

Richard Hartzman is a member of the bar in New York and Colorado. He practices law in New York City and writes for *M&C* on a variety of subjects.

We urge meeting planners to submit questions and experiences that relate to the law and their profession.

ANDY MEYER