

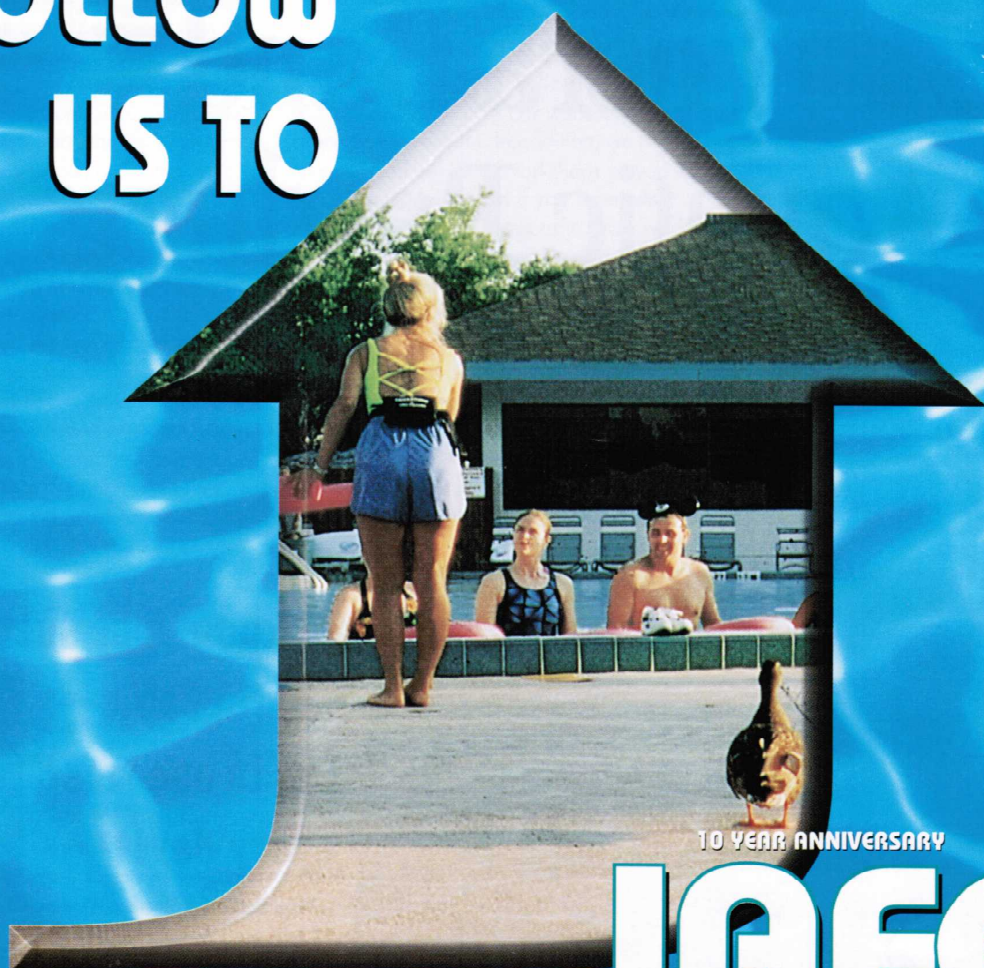
the **AKWA** letter

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IAFC '98

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Hot Topics in Aquatic Litigation

by Alison Osinski, Ph.D.

The number of lawsuits resulting from participation in aquatic related activities, or use of aquatic facilities and equipment, is increasing. Juries are awarding previously unheard of sums of money for damages. Multi-million dollar awards are no longer unusual.

There are several reasons why this is occurring. The number of aquatic facilities is increasing and existing facilities are aging and lacking in preventative maintenance. Fewer Americans are learning to swim. It is estimated that less than 35% of the American population knows how to swim and skilled swimmers (able to swim distances of laps for an extended amount of time) account for fewer than 7% of the population. Participation in various aspects of aquatic, including fitness and therapy, by non swimmers is increasing and participants are engaging in more risky activities while in the water. Rising medical costs and the exorbitant cost of insurance, along with the growing number of uninsured Americans, indicates that participants who are injured will be more likely to sue to recover the cost of medical treatment.

Hidden hazards; inadequate supervision or lack of instructor or supervisor qualifications, certification or training; inadequate, inaccessible or improperly maintained rescue equipment; inadequate facility maintenance; signage that does not provide meaningful warning; injuries inflicted by other patrons; and failure to prohibit swimming under dangerous conditions have always been common reasons given when litigation ensues.

However, there are some new trends in aquatic litigation that have recently appeared.

➔ Litigation is being brought by young adults soon after they reach the age of majority for injuries sustained in pool accidents that occurred years earlier. The statute of limitations starts at age 18 and, depending on the particular State, lasts two to four years. In particular, lawsuits over falls which resulted in closed head injuries seem to be prevalent.

➔ Suction entrapment incidents have received widespread publicity primarily as a result of the 1996 Tanya Nickens prom night drowning incident. Television shows including Dateline NBC, ABC's 20/20, Rescue

9-1-1, and Oprah have done segments on the horrors of body and limb entrapment, hair entanglement and disembowelment-evisceration. The incidents occur when unsuspecting pool and spa users are trapped by poorly designed or maintained main drains, skimmers, dedicated vacuum lines, equalizer lines, or other pool suction outlets.

➔ There has been an increase in the frequency of litigation over minor injuries. Plaintiffs seem to be more willing to exaggerate the extent of their injuries. Young, healthy individuals are claiming devastating, life altering damages from fairly minor incidents. Claims have been filed for million dollar awards for injuries such as slip-and-fall, broken noses, and stepping on broken glass in a pool.

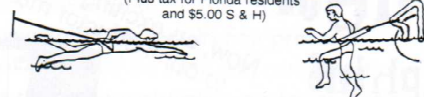
➔ Playground safety standards are being applied to water fitness, diving board and water play equipment accidents. Pool operators should become familiar with the:

ASTM Standard F 1487-93 "Standard Consumer Safety Performance Specifications for Playground Equipment for Public Use" (Rev. '95)

ASTM Standard F 1292 "Specification for Impact Attenuation of Surface Systems Under and Around Playground Equipment"

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AQUATIC EXERCISE FOR A FUNCTIONAL LIFE (cont.)

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U.S. CPSC Guidelines (Rev. '94) "Handbook for Public Playground Safety"

U.S. Architectural and Transportation Barriers Compliance Board ('95) "Recommendations for Accessibility Standards for Children's Environments"

Pool operators should make sure all pool equipment used by children and all surfaces below the equipment comply with the above mentioned standards. It should be noted that concrete pool decks and equipment designed prior to the late 1980's probably won't comply with the standards.

➔ County Health and Building Inspection Departments are being held responsible for poor pool design and inadequate inspection procedures. Regulatory agencies have been held accountable and have been required to pay monetary damages to injured plaintiffs for allowing improperly constructed or maintained facilities to operate.

➔ Employees who spend their days working in the aquatic environment are filing sick building syndrome and halogen sensitivity claims. The environment they work in is making them sick and the employers are being held responsible.

Although most cases settle because of the expense of litigation, the unpredictability of jury verdicts, and the quality of witnesses from which relevant facts can be obtained. Aquatic fitness professionals need to gain an awareness of these and other recent trends in aquatic litigation. They need to become knowledgeable in risk management procedures that can be implemented to reduce exposure and loss, and need to be aware of measures they can take to reduce the likelihood of injury to pool users or employees.

NOTE: The increasing frequency of certain claims, delays in filing complaints by children injured in aquatic accidents, increasing size of awards, employee health related claims, county health departments being held responsible for poor pool design or maintenance, the increase in litigation over minor injuries, and risk management procedures will be discussed in more detail at IAFC '98 in San Diego.

Alison Osinski, Ph.D., is the owner of Aquatic Consulting Services, located in San Diego, CA. She specializes in aquatic risk management, and aquatic facility design, maintenance, management and operation. Services include: pool and water park site inspections, pool design, staff screening and selections, lifeguard audits, expert testimony, equipment specification and testing, pool operator training and certification courses, and water quality analysis.

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