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POOL CASES  
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**HIGHLIGHTS**



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Drowning is the leading cause of death for young children in Florida and many other states. Thousands of children have died or suffered serious brain damage because of defective pool gates and fences, defective pumps and defective drains in pools. While we have represented families in cases dealing with various safety lapses, the issue of ill-maintained pool gates and fences are a particular concern to us, because so many children drown here in South Florida every year.

We at The Haggard Law Firm have developed a national and international niche representing people injured or killed as a result of dangerous swimming pool drains and negligent supervision and maintenance of pool safety barriers. We have gained notoriety in this area of personal injury law by winning two jury trials that resulted in two verdicts in excess of \$100 million each.

In January 2003, partners Michael Haggard and Wm. Andrew Haggard won a \$100 million verdict in the case of a toddler who nearly drowned in her apartment complex pool because she gained access to the pool area through a broken pool gate (Hinton v. 2331 Adams Street Corp).

In August 2003, the firm made history again when partners Michael Haggard and Robert Parks won a \$104 million verdict in a case where a boy got trapped underwater by the suction of a defective and unsafe pool pump (Peterson v. Sta-Rite). Both verdicts involved irreversibly brain damaged children and are considered to be the largest in Florida's history.

Our attorneys also strive for tightened safety rules for pools in homes, apartments and hotels.

Our work representing victims has spurred changes in state codes and laws governing pool safety. Representing victims of drowning accidents in pools and in swim parks is a significant concern in national and international jurisdictions. Successful outcomes for the families we represent can go a long way toward protecting children and families in the future, both in the United States and abroad.





# TOP TEN Jury Verdicts OF 2003

## Smallest Top Ten In Six Years

By **Bill Ibelle**

If this year's Top Ten verdicts are any indication, the tort reform movement has taken root in the hearts and minds of American jurors.

After six years of surging upwards into the stratosphere, the nation's Top Ten verdicts to individual plaintiffs came crashing back to earth this year, with the lowest total since 1997.

To give you an idea just how precipitous that drop has been, the total of the Top Ten verdicts of 2002 was 20 times larger than the total for 2003. That statistic is a bit deceptive, however, because last year's total was skewed by two verdicts that were quite literally off the charts (one for \$28 billion and another for \$2.2 billion). But even if we eliminate those two verdicts and compare verdicts 3-10 for the past two years, there was still a 32 percent drop.

You would have to go all the way back to 1993 to find a number one verdict that was smaller than this year's top verdict. Although it is risky to draw conclusions from such a small sample, the magnitude of the drop begs for some analysis.

"This could be just an aberration or a blip, and go back up again next year, or it could be the beginning of a long-term trend which would be good for society in general," said Richard Samp, chief counsel for the American Tort Reform Association (ATRA).

"From a common sense perspective, you can make an inference that tort reform has had an impact on attitudes. Even if we don't enact concrete reforms, it has an impact on how people perceive the impact of large verdicts," he said.

Samp's counterpart at the Association of Trial Lawyers of America (ATLA) was adamant that the change is meaningless.

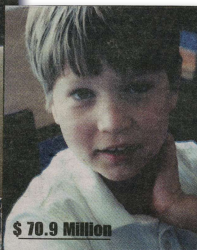
"I don't think there is anything particular to read into it," said spokesman Carlton Carl. "Our legal system is one of individual justice and jurors make their rulings based on the facts of the individual case. The largest verdicts hardly typify our civil justice system anyway."

Carl has a point. There is no way of knowing whether the year's 10 largest verdicts typify big verdicts as a whole.

However, jury consultant Richard Gabriel said that, based on conversations with hundreds of mock jurors and focus groups, the tort reform message is getting through.

"We've seen more jurors talking about windfalls and lotteries and McDonald's coffee," said Gabriel, co-founder of Decision Analysis, which has offices in San Francisco, Los Angeles and Chicago. "Jurors are influenced by the debate about tort reform. The perception that there is a med-mal crisis is having an effect."

He said the tort reform rhetoric - such as a recent publication by ATRA which targets the nation's 13 "judicial hellholes" - sinks into the public consciousness.



### The Ground Rules

This issue contains the top Ten Jury Verdicts to individual plaintiffs in 2003. The list does not include business-against-business suits, class actions or consolidated cases. We define "individual plaintiffs" as a single person, family or small group of individuals who were injured in a single incident and had their claims tried in one case before the same jury. We do not include verdicts that were the result of uncontested litigation or that resulted in awards that are purely symbolic (i.e. stand no reasonable chance of resulting in recovery of any significant damages).

### The Top Ten

- 1) \$254.6 million ..... Breach of contract ..... California
- 2) \$250 million ..... Asbestos ..... Illinois
- 3) \$164 million ..... Exploding tire ..... Texas
- 4) \$112 million ..... Medical malpractice ..... New York
- 5) \$104 million ..... Pool pump ..... Florida
- 6) \$100 million ..... Pool gate ..... Florida
- 7) \$85.7 million ..... Insurance bad faith ..... Arizona
- 8) \$70.9 million ..... Medical malpractice ..... California
- 9) \$70.4 million ..... Breach of contract ..... Texas
- 10) \$58.6 million ..... Personal injury ..... New York

# Florida Lawyer Finds Cause In Pool Safety Cases

By **Nora Lockwood Tooher**

For Florida plaintiffs' attorney Michael A. Haggard, pool safety has become a personal mission that extends beyond the courtroom.

After winning two record verdicts in separate pool safety suits last year, Haggard, 33, is aiming for legislation that would stiffen pool safety regulations throughout Florida. Regarded as one of the nation's leading plaintiff attorneys in pool liability cases, he has handled nearly a dozen lawsuits involving the accidental drowning or near drowning of children.

Last year, he posted two of the Top Ten verdicts nationwide for 2003 and both involved pool safety:

- In January 2003, he won a \$100 million negligence verdict on behalf of a 2-year-old girl who suffered permanent brain damage after nearly drowning in an apartment complex pool whose gates were unlocked.
- Six months later, Haggard did it again, winning a \$104.4 million verdict for the family of a boy who sustained permanent brain damage after his arm became stuck in a pool drain.

Together with his father, Andrew Haggard, who founded their Coral Gables, Fla., law firm, Haggard drafted a bill that

would require all commercial pools in Florida to follow strict fence and pool-gate enclosure guidelines. Under the proposed legislation, Florida Department of Health Workers would include pool gates in their yearly inspections of commercial pools. The bill, named "Loren's Bill" for the toddler who nearly drowned, passed the Florida Senate last session, but was not acted on by the House. Haggard said he is working with Florida legislators to reintroduce the bill in March 2004.

He is also working on legislation that would require Florida pools to be equipped with either dual drains or pump emergency switches to prevent victims from being trapped by pool drains. Existing Florida law requires that new pools be equipped with a secondary drain, but exempts older pools from the requirement.

"We're trying to take these cases beyond just getting a big verdict and moving on to another case," Haggard said.

He said that he does not have political aspirations, but that his experiences with pool accident cases has heightened his awareness about the need for stricter regulations.

"In Florida, for children under age 5, drowning is the number one cause for accidental death," Haggard noted. "It's an amazing, terrible statistic. If we get pool gates, it's going to have a significant effect."

- In January 2003, he won a \$100 million negligence verdict on behalf of a 2-year-old girl who suffered permanent brain damage after nearly drowning in an apartment complex pool whose gates were unlocked.
- Six months later, Haggard did it again, winning a \$104.4 million verdict for the family of a boy who sustained permanent brain damage after his arm became stuck in a pool drain.

# Top #5 Ten

## JURY VERDICTS OF 2003

# Silent Movie Moves Jurors To Award \$104.4 Million In Pool Entrapment Case

By Nora Lockwood Tooher

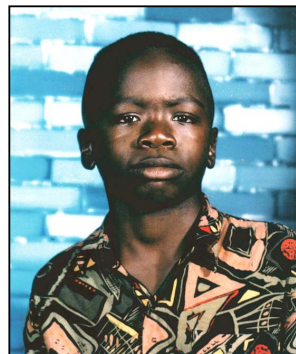
In silence, jurors watched the disturbing images of a comatose young man lying helplessly as strangers bathed and dressed him, and suctioned out his lungs.

During a two-week trial last summer, plaintiffs' attorney Michael A. Haggard showed the difficulties faced each day by Peterson, who sustained permanent brain damage three and a half years ago when his arm became ensnared by the suction of a pool pump in a North Miami apartment complex.

Because the defense had objected to the audio portion of the tape - which included encouraging comments by therapists as well as Peterson's groans and grunts - the tape was shown without any soundtrack. Haggard said he worried that deleting the audio would undercut the video's effectiveness. But when he saw jurors' reaction, he said, he realized it actually worked in his favor.

"Nobody in the courtroom is saying a word. They're watching what this boy goes through," he recalled. "It really worked to our advantage. You could hear a pin drop."

In a carefully planned tactical move by Haggard, the video was shown at 4 p.m. Friday on the first week of the



**Lorenzo Peterson was severely brain damaged when the suction from an exposed pooldrain trapped him under water.**

trial, so that jurors would carry the images of Peterson with them for the entire weekend.

"We wanted them to go home that weekend thinking about one thing: the terrible condition that boy's in because of that defective pump," Haggard said.

Haggard said the gripping video that depicted the extent of

### AT-A-GLANCE

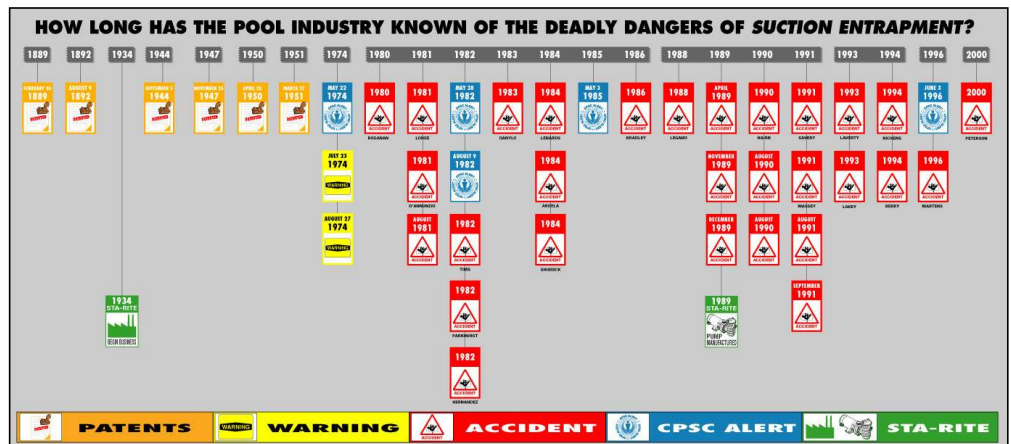
<b>Verdict:</b> \$104.4 million	Case name: Peterson v. Sta-Rite Industries
Zero punitive damages	Date of verdict: Aug. 1, 2003
State: Florida	Plaintiff's attorneys: <b>Michael A. Haggard</b> and Robert L. Parks of Haggard, Parks, Haggard & Bologna in Coral Gables, Fla. (5 attorneys)
Type of case: Product liability	Defense attorneys: Joel Adler and Karl E. Sturge of Marlow, Connell, Valerius, Abrams, Adler, Newman & Lewis in Coral Gables, Fla.
Trial: 2 weeks	
Deliberations: 1 1/2 hours	
Status: Appeal pending.	

Peterson's injuries was a key factor in jurors' Aug. 1 decision to order Sta-Rite Industries, a Wisconsin pool-pump manufacturer, to pay \$104.4 million in compensatory damages to Peterson's family.

"It's a video that we do in these types of catastrophic cases," he explained. "You

videotape a bunch of different aspects of the brain-damaged child's life - from when they wake up, to having to be bathed by nurses, going through all their therapy and having physical and respiratory therapy."

While the video was an effective tool in showing jurors



The plaintiffs' attorneys used this timeline to convince jurors that the defendant company knew for years prior to the accident that their pool drain was dangerous.

the extent of his client's injuries, it was only one element in the plaintiff's case. Haggard said that most of his strategy focused on proving that the manufacturer knew its pool pump was faulty and did nothing to fix it.

The plaintiff's complaint accused Sta-Rite of negligence, and claimed the pump was "defective and unreasonably dangerous" because it was not equipped with an automatic cut-off switch that turned off the pool pump when something became stuck in the drain.

"The pool industry and Sta-Rite, as one of the big players in the pool industry, have known about this deadly hazard for 30 years and they've done nothing about it," Haggard said in an interview with Lawyers USA.

Jurors apparently agreed, deliberating only an hour and a half before ruling against Sta-Rite Industries, one of the nation's largest manufacturers of pool pumps. The Aug. 1 judgment, one of the nation's largest product liability verdicts in 2003, was significant not just for the size of the award, but for the impact Haggard hopes it has on pool industry safety standards.

The finding that Sta-Rite's pump was defective "is definitely a message to the pool industry that they need to fix these pumps and need to fix the whole problem of suction entrapment," Haggard said.

### Twenty Incidents

On June 17, 2000, Peterson was swimming with friends when his arm became stuck in the drain at the bottom of a six-foot-deep pool in the North Miami apartment complex where he lived. The drain opening was unprotected because the cover wasn't screwed down properly and had come loose. Peterson was able

to put his arm directly into the drain, and his arm became trapped by the suction of the pool pump.

Half a dozen rescue workers tried unsuccessfully to free Peterson, but the suction power of the pump was so strong that they were unable to pry him loose.

Peterson was trapped underwater for 12 minutes



over similar pool entrapment accidents.

In 1997, a North Carolina jury ordered the company to pay \$25 million in compensatory damages to the family of Valerie Lakey, a Raleigh girl who lost most of her intestines when she became stuck to a wading pool drain.

Sta-Rite's safety brochure - published after the sale of the

The brain damage sustained by Peterson is the "worst injury that can happen to a kid. You're trapped within your own body; it's awful," said Michael Haggard.

before a firefighter finally broke open the door of a locked pool-equipment storage building and turned off the pump switch, freeing Peterson. By the time he was pulled out of the water, the teenager had suffered serious brain damage. Peterson, who is now 18, lives with his grandmother and requires around-the-clock nursing care.

According to the complaint in the case, he is "severely, permanently and irreversibly brain damaged, and lives in a permanent vegetative state suffering from seizures and convulsions."

Haggard said that the brain damage sustained by Peterson is the "worst injury that can happen to a kid. You're trapped within your own body; it's awful."

One of the nation's largest pool-equipment manufacturers, Sta-Rite has been sued before

to disclose how many of those 20 incidents involved pumps. One week before trial, the company finally disclosed that eight were pump cases and 12 were related to faulty drain covers manufactured by Sta-Rite (The manufacturer of the drain cover in the pool where Peterson's accident occurred could not be determined.)

The "bottom line," Haggard said, "is that the company knew what was happening with accidents related to its pumps and didn't do anything about it."

### Simple Solution

Plaintiff's attorneys argued at trial that the company knew of the dangers from its pump and could have taken steps to prevent the accident by installing a safety device and providing adequate warnings that children can become entrapped in uncovered and broken drains or improperly designed drain gates because of the pump's suction.

The company countered that the apartment complex and pool maintenance company were to blame because they failed to make sure the drain cover was properly fastened. Insurers for the apartment complex and the pool maintenance company had already reached a \$7 million settlement with the Peterson family prior to the trial.

"A pool is not any different than an automobile," defense attorney Karl E. Sturge told Lawyers USA. "You need to maintain your pool like you maintain your car."

At trial, plaintiff's attorneys argued that all pool pumps should be equipped with a safety device that senses when there's an obstruction and shuts off the pump automatically.

The cost of installing such cut-off switches in the estimated

pump used in the pool where Peterson's accident occurred - warns that the vacuum in a pool's main circulating pump is so strong that "anyone lying on an eight-inch diameter main drain while the pump is running could be held down on the drain by a force of up to seven hundred pounds (that's right, 700 pounds). This is enough force to trap adults or children underwater, or even to eviscerate them." The brochure adds: "Stay off the main drain!"

To convince jurors that the pool pump manufacturer knew of problems with its product, Haggard introduced evidence that Sta-Rite has been involved in 20 pool entrapment incidents since the early 1980s.

Evidence of the 20 previous entrapments was critical to the plaintiff's case, Haggard said. Plaintiffs tried for two years during discovery to get Sta-Rite



500,000 pool pumps manufactured each year could be as low as \$50 each, Haggard said, compared to adding such a switch to an existing pool pump, which would cost about \$300.

A turning point for the plaintiffs, Haggard said, was testimony from Paul McKain, a Florida firefighter who invented a low-cost switch that automatically turns off a pool pump if something is caught in the drain. Haggard said that McKain volunteered to donate his cut-off switch to Sta-Rite, but the company "totally rejected him."

Defense attorney Karl Sturge said that the company has tested several pump cut-off devices, including McKain's, but determined "they don't work and they're not reliable."

Sta-Rite's experts testified that the cut-off device was faulty and that it didn't shut off a pump as it was supposed to during a field test.

"The company has not implemented these devices because they have not been found to be effective," Sturge said.

Haggard conceded that the firefighter's invention has some glitches. But he argued that Sta-Rite has the technical know-how

to retool the device and add it to their pumps.

"All Sta-Rite had to do was put a sensing device inside their pump housing and it would have prevented this accident," Haggard told jurors, noting that several pool pump safety vacuum release systems are already on the market.

Sta-Rite also argued that the most effective way to prevent entrapment accidents is to equip all swimming pools with two drains. In dual-drain pools, if someone becomes entrapped in one drain, the suction automatically diverts to the other so that the person is released.

Requiring pool owners to refit the estimated 3.5 million swimming pools in the nation with dual drains is "not a simple solution, but it is the best one," Sturge said.

Haggard countered that it's not realistic to require pool owners to refit their pools with dual drains at an estimated cost of up to \$5,000 a piece, when equipping pool pumps with cut-off switches is a simple, affordable solution.

He noted that Florida enacted legislation in 2000 requiring that new pools be equipped with a secondary drain. Older pools,

however, are exempt from the requirement.

### Closing Statement

Haggard's closing argument focused on two main issues:

- Sta-Rite could easily have put a switch on its pumps that senses when someone is entrapped and turns the pump off.

- Although the company was involved in 20 previous suction entrapment incidents involving either its pumps or drain covers, it has done nothing to correct its equipment.

During his closing argument, Haggard asked jurors to look at a timeline that marked each pool accident since 1980 involving Sta-Rite equipment. As he pointed to the timeline, he told jurors it was apparent the pool industry was "not doing anything" to prevent pool entrapment accidents.

Haggard said he's used to having jurors look at him during his summations. This time, however, he said, "The jurors never looked at me in closing argument. They were looking at that timeline."

The jury of three women and

three men voted unanimously that Sta-Rite was negligent because its pool pump was defectively designed and because the company failed to provide adequate warnings about its dangers.

**The jury awarded \$32.4 million for medical expenses and other costs and \$72 million for pain and suffering.**

The defense is appealing the verdict.

In the Peterson case, Haggard teamed with Robert L. Parks, a partner in his five-attorney Coral Gables firm.

Haggard said that Sta-Rite offered \$3 million prior to trial, \$4 million during trial and \$4.5 million after closing arguments to settle the case, but that he rejected the offers.

Following the liability award, punitive damages were denied. The defendant's motion was denied.

Sturge, the defense attorney in the case, said that the appeals process is in the early stages. He noted that the final judgment approved on Oct. 17 deducted the \$7 million settlement reached prior to trial by insurers for the apartment complex and pool maintenance company. **The total award was reduced to \$96,725,442.**

# Top #6 Ten

JURY VERDICTS OF 2003

## Fatherhood Motivates Attorney To Win \$100 Million For Toddler's Near Drowning

By Diana Digges and  
Nora Lockwood Tooher

Plaintiffs' attorney Michael Haggard had handled plenty of other pool accident cases. But when he was asked to represent the family of 2-year-old girl who nearly drowned in the pool of a Florida apartment complex, the case struck very close to home.

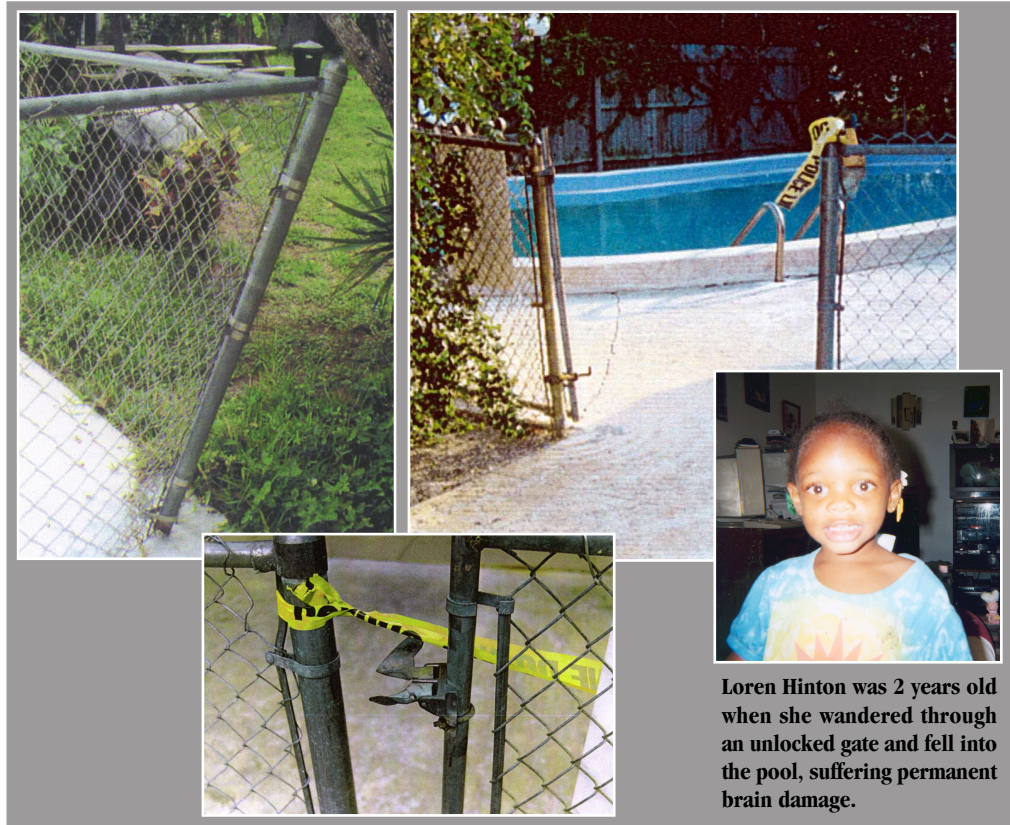
Haggard's first child was born shortly before the trial.

"When it's a 2-year-old child and I had just had my first child, that gives you unbelievable motivation," he said. "When you wake up in the middle of the night during the trial, all you're thinking about is can I do enough for this child that I would do for my own?"

Throughout six months of discovery and a two-week trial, Haggard continued to worry about whether he was doing enough for the family of Loren Hinton, a toddler who suffered irreversible brain damage after falling into the pool of the Hollywood, Fla., apartment complex where she lived.

In a recent interview with Lawyers USA, Haggard talked about how the similarities between his family and those of Loren Hinton's affected him both personally and professionally:

"Anyone can empathize with a horribly brain-damaged child, but then to have a child of similar age at home... When you think about the realities of Loren's life and her parents' life and how lucky you are, it's a motivator," he said. "But it also might put a little more



Loren Hinton was 2 years old when she wandered through an unlocked gate and fell into the pool, suffering permanent brain damage.

pressure on you when you represent someone very similar to your family."

Haggard's efforts paid off on Jan. 30, 2003, when a Florida jury ordered the apartment complex owners to pay Hinton's family \$100 million in compensatory damages - the largest personal injury award in Florida's history and one of the largest personal injury verdicts in the country that doesn't include punitive damages.

### A Moment Of Inattention

As a new father himself, Haggard realized that his greatest

### AT-A-GLANCE

Verdict: \$100 million  
Zero punitive damages

State: Florida

Type of case: Premises liability

Trial: 2 weeks

Deliberations: 7 days

Status: Appeal pending

Case name: Hinton v. 2331 Adams  
Street Corp.

Date of verdict: Jan. 30, 2003

Plaintiff's Attorneys: Michael A. Haggard and William A. Haggard of Haggard of Parks, Haggard & Bologna in Coral Gables, Fla. (5 attorneys)

Defense Attorneys: John Fitzgerald Kennedy of Canton Fields in Miami; Elliot H. Stherker (the appeal) of Greenberg Traurig in Miami.

challenge during the trial would be addressing the belief that a "good parent" would never let a child, especially a toddler, out of sight, even for a minute.

That was a particularly difficult issue in this case because the accident occurred during a cookout when the kids were playing hide-and-seek and Loren's father was manning the grill in the outdoor common area of their Hollywood, Fla., apartment complex.

As was the custom in the complex, several adult residents brought Hinton their burgers and steaks to be grilled at the same time, and set down their chairs to socialize. The children, including Loren and her 6-year-old brother, were playing hide-and-seek in the same common area.

"That's what people in this complex did - they socialized together, everybody looking out for everybody else's kids," Haggard said. "The defense contention was that our client never specifically asked someone to watch his toddler, but the testimony of all the neighbors and the father was that people didn't do that - everybody automatically watched out for each other's kids."

The Hintons lived on the second floor, about 20 feet away from the play area where the father was barbecuing. According to Haggard, Hinton told the kids he was taking food upstairs and would be back in a minute.

"He took the grilled food upstairs, put it down on the dining room table, kissed his wife, turned around to go back down and get the kids, when he heard screaming," Haggard said. "They were screaming that Loren was drowning."

During the game of hide-and-seek, Loren had wandered through the broken gate into the pool area, 60 feet away and down a breezeway, and fallen into the pool.

Haggard was concerned that jurors - especially those who don't have small children themselves -

might think the father's behavior was incredibly negligent, rather than just one of the realities of being a parent with several children.

Although the Haggard's legal case revolved around the responsibility of the apartment complex to have a lock on the pool gate, he understood that, first, he had to address the emotional issue of the parent's alleged neglect.

"The big issue in all these [pool gate] cases is not whether they

he wanted. Instead he ended up with at least three young jurors, including a mother of a single child.

"During voir dire, the defense asked a simple and key question: 'Does everyone agree that parents need to watch their children when they're toddlers?' Of course, everyone said, 'Yes.' All the time? Everybody said, 'Yes.' Every minute of the day? Same answer. People set up their own standards; whether they're super-parents or not, they

latching gate that closes in on itself and hooks into place for \$36," he said. "The sole purpose of a pool gate is because you know kids are going to try to get into a pool. Parents aren't going to be with them every second."

Working with his father, Andrew Haggard, on the case, he marshaled half a dozen witnesses from the apartment complex who testified to making numerous complaints to management about the broken pool gate.

For five months, complaints had allegedly mounted about the gate. Although there was no paper trail of the complaints, "the manager himself admitted on the stand that it was broken, but that he fixed it four to five times a week," Haggard said. "Why didn't he just buy a self-latching gate from Home Depot? There's no way a child under seven or eight can get one of those open. They're not tall enough. He didn't have a good answer."

A key witness in the trial was a resident of the complex who said that he had complained to the manager about safety issues after snatching a toddler from danger at the pool a month earlier. The witness, who worked as a truck driver, turned out to be the same person who rescued Hinton from the pool.

"This man was very, very emotional on the stand. It was brutal for him to have that opportunity to save one kid, complain about the conditions, then have the same thing happen again," Haggard said.

Haggard asked the jury to compare the longstanding negligence of the apartment complex to the father's momentary inattention.

"The issue was comparative negligence," Haggard explained. "Look at this pool owner. They were warned about this. Two months before [Hinton's accident] a little girl nearly fell into the pool. The manager was warned by 10 residents. Compare this with Loren's



**Attorney Michael Haggard (right) stands with his father, Andrew, (left) and their clients Lomne and Lorri Hinton. "Every Home Depot sells a self-latching gate that closes in on itself and hooks into place for \$36," he said.**

require a lock," Haggard said. "It's how you talk to a jury about a parent's responsibility."

He began that work in jury selection.

#### **Jury Selection**

Haggard knew the kind of person he wanted - and the kind he definitely didn't want - on the jury. "We wanted parents with multiple kids because they are much more realistic about the difficulties of having multiple children," and the challenge of keeping a close eye on all of them all the time, he said.

He was also looking for older jurors, who "tend to have a lower level of anxiety about parenting," he said.

But Haggard didn't get the jury

want to think they are," Haggard said. "That was the defense argument: If you're watching your child, they don't drown."

But the young, single-child parents on the jury were offset by the presence of a middle school principal.

"That boded well for us because this is the kind of person who deals with kids who aren't perfectly behaved all the time," Haggard said.

#### **Focusing On The Lock**

Haggard hammered home to jurors that the pool gate - not Hinton's father - was "the front and center of this case because this tragedy could have been avoided." "Every Home Depot sells a self-

father going upstairs while all the kids are playing with their neighbors. There's no comparison."

### Juror Questions

The defense tried to discredit the rescuer's testimony because he previously had a dispute with management over a sewage problem in his unit. But the tactic backfired with the jury, according to Haggard.

One of the unusual features of the trial was that the judge allowed jurors to ask questions of witnesses by writing those questions on a slip of paper and having the judge address them to the witness. For Haggard, this innovating procedure was a boon since one of the jurors asked a key question.

"The jury asked how long it took the management to respond to the sewage problem," said Haggard. "It was clear that they were totally onto the management's ineptitude in taking care of problems. I would never have asked that question because it was irrelevant to the pool gate issue, but that was shortsighted of me. It's an example of how regular people think, looking at broader patterns of behavior. Lawyers are just thinking of evidence."

Haggard also called an aquatic safety expert who made a Powerpoint presentation showing that every city and state in the country, including Hollywood, Fla., has regulations for fences and gates around pools - and all of them require a self-locking gate.

One problem the trial revealed

was that state inspections - which include checking pool drains and testing the water for chlorine and PH levels - do not require inspectors to make sure the gates are functioning properly. As a result, there was no written record that the complex had been cited for not being in compliance, an issue that clearly troubled jurors.

Again, it was juror questions that gave Haggard insight into his case. They asked whether the broken gate violated code and whether the owner received a citation.

"That really scared me, because they were still obviously thinking about the negligence issue," Haggard said. "In the two mock trials I'd done, the jurors had decided that issue within the first couple of minutes. I was worried."

Haggard thinks what helped the plaintiffs' case was the expert testimony emphasizing that the underlying reason for the pool gate regulations is precisely to protect children from lapses in supervision.

"Since the defense's whole argument was the dad wasn't watching [the toddler], this expert was extremely helpful," Haggard recalled. "He pointed out that the only reason we have gates is to keep children out because there are lapses in supervision. Not no supervision, but lapses in [it]."

### Verdict And Appeal

To make his argument for economic damages, Haggard called an economist and life care expert. He also played a powerful day-in-

the-life video of the child, who, with the help of a fleet of rehab therapists, now struggles mightily merely to blink.

After seven hours of deliberations, the jury awarded the plaintiff \$100 million, allotting only 1 percent comparative negligence to Hinton's father. The remaining 99 percent of the responsibility fell directly on the owner of the apartment complex.

More than half the award - \$54 million - is for future medical care, with the rest to compensate Hinton for her pain and suffering and to her parents for loss of her companionship.

The defense has appealed, claiming that prior to the trial, the apartment complex's owners had accepted the Hinton's pre-trial offer to settle for \$1 million.

The trial court refused to enforce the settlement agreement because the apartment complex owners had been unable to deliver the settlement proceeds before a 20-day deadline expired.

The appeals brief, filed by Florida appellate specialist Elliot Scherker, says the trial court erred in refusing to enforce the settlement agreement.

The appeal also claims that the trial itself was "plagued with errors," ranging from attorney misconduct to instructional errors on key aspects of the apartment complex owners' defense. It states that the defendants were not allowed a fair consideration of their comparative negligence defense. The defense had sought to allocate

what it called an "appropriate percentage of comparative fault" to Hinton's father.

But it claims its efforts were thwarted by several instances of alleged misconduct by Haggard and unfair limits on the defense's case, including:

- Haggard's pleas to the jury not to find comparative negligence on the part of the father, because to do so would reduce the amount of monetary damages awarded to the child. The defense claims Haggard's entreaties skewed the jury to assign percentages of fault based on sympathy for the child's needs, rather than the evidence in the case.

- Restrictions on the testimony of an expert witness for the defense, a physician who testified that Hinton has only a limited life expectancy of five to 10 years. The brief claims that Haggard "cynically manipulated the jury into ignoring the substantially reduced life-expectancy issue - and into returning the \$100 million verdict."

- The court's failure to instruct jurors about the legal duty of parents to supervise their young children. "Here, while lawyers and judges might infer from the comparative negligence instruction that Lonnie (Hinton's father) had a duty to protect his child, the jury was never so instructed."

# Daily Business REVIEW

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## Depths of danger

### Horrendous incidents of suction entrapment, giant verdicts follow lax safety procedures

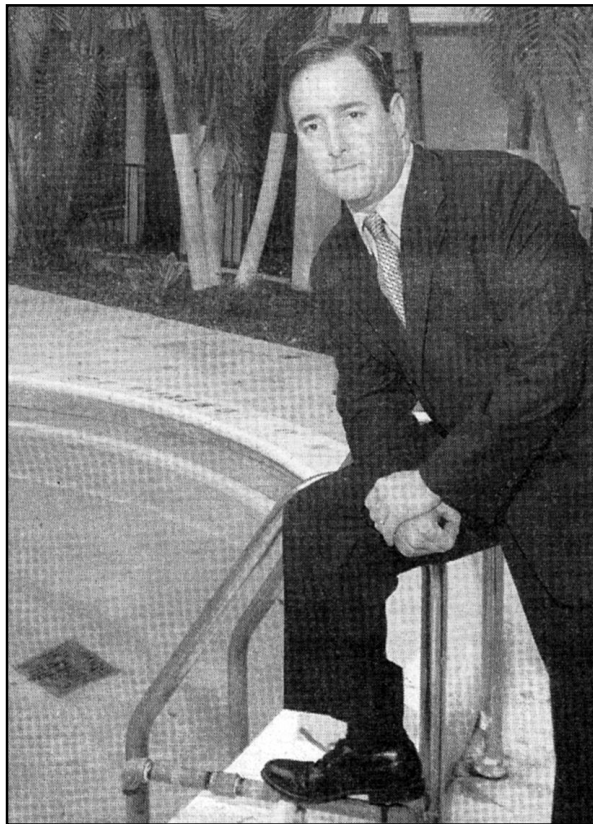
by **Matthew Haggman**

Paul McKain of Sunrise was watching a discussion on "The Oprah Winfrey Show" about a little girl who was severely injured in a swimming pool accident in North Carolina, when he got an idea for preventing such catastrophes.

Valerie Lakey, then 5-years-old, had her bowels partially sucked out by a pool pump after she sat on a drain in a children's wading pool. In 1997, a North Carolina plaintiff lawyer named John Edwards, now a Democratic presidential candidate, won a \$25 million negligence verdict in her case against Sta-Rite Industries, a Delavan-Wis.-based pool pump maker.

McKain, a former firefighter who recently retired, said the little girl's accident struck him as completely preventable. "I thought, for God's sake, there has to be a way to solve this," he said.

With his brother-in-law, McKain developed a device several years ago to immediately shut off a pool



Michael A. Haggard was a plaintiff attorney in South Florida swimming pool suits that brought verdicts last year of \$100 million and \$104 million.

pump when a person or object gets caught in the suction pressure. They founded a company called Play Safe systems and marketed the product to distributors at a price per unit of \$298. But no pool pump makers were

interested.

In the past year, however, two whopping pool liability verdicts in South Florida have changed that.

In January 2003, a Broward Circuit Court jury hit a Hollywood apartment owner

with a \$100 million verdict in the case of Loren Hinton, a 4-year-old girl who was left in a persistent vegetative state after pushing open a broken gate and nearly drowning in the swimming pool. The winning lawyers were Michael A. Haggard and his father, William Andrew Haggard, partners at Haggard, Parks, Haggard & Bologna in Coral Gables.

Then, in August, a Miami-Dade Circuit Court jury returned a \$104 million verdict against Sta-Rite Industries - the same company that had been hit with the \$25 million verdict in North Carolina in 1997. The case involved the near drowning of 14-year-old Lorenzo Peterson, whose arm got stuck in the suction from an uncovered drain while he was swimming in a pool at a North Miami apartment complex. Peterson also was left in a persistent vegetative state. Michael Haggard again was the winning lawyer, along with his partner Robert L. Parks.

In the wake of those verdicts, McKain said, three

## Depths of danger

pool pump manufacturers which he declined to identify - opened negotiations with him to buy his pump shut-off device.

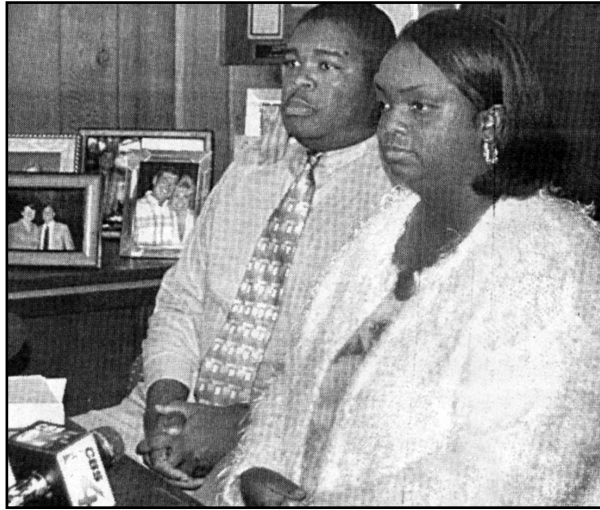
That's not the only fallout from the verdicts. Florida lawmakers now are considering legislation to toughen pool safety rules. Some condominium and apartment owners have stepped up their efforts to ensure that pools are properly enclosed and that drain pumps do not cause suction entrapment accidents. Meanwhile, plaintiff lawyers are on the hunt for promising pool liability cases, hoping to replicate Haggard's big victories.

"When I saw the verdicts, I went on high alert," said Thomas G. Mancuso, a Montgomery, Ala., tax attorney who serves on the board of a 119-unit residential development in Destin, Fla., which has several pools. "It shows that juries are now very sensitive to what goes on in pools."

"With these huge verdicts and the publicity they've gotten, plaintiff lawyers are more on the lookout for pool cases," said Benjamin M. Esco, a partner at Gaebe, Mullen, Antonelli, Esco & Dimatteo in Coral Gables who represents insurance companies and handles pool liability cases.

Neither Sta-Rite nor the Washington, D.C.-based National Pool & Spa Institute returned repeated calls for comment for this article.

But some defense



**Lonnie, left, and Lorri Hinton: Their young daughter pushed open a broken gate and nearly drowning in the swimming pool at their Hollywood apartment complex.**

attorneys reject the notion of a rising torrent of pool liability cases. Gary A. Poliakoff, managing partner of Becker & Poliakoff in Fort Lauderdale, who represents numerous condominium associations, argues that the Hinton and Peterson verdicts were anomalies, and that pool equipment manufacturers and owners already are taking adequate precautions against accidents.

"I would be very surprised - without even knowing the facts - if the [Hinton and Peterson] verdicts are not reduced or overturned," Poliakoff said. "They seem to be out of line with the fair measure of damages."

### **Drownings or entrapment?**

For years, swimming pool and hot tub equipment manufacturers and pool and hot tub owners, including individuals, companies and

municipalities, have been sued when accidents occurred. Some plaintiffs have won large verdicts and settlements.

Between 1995 and 2002, there were 147 reported suction entrapment injury-accidents in pools and spas, leading to 36 deaths, according to the U.S. Consumer Products Safety Commission.

The issue is particularly salient in semi-tropical Florida, where drowning is the No. 1 cause of accidental death for children under 5. McKain and others argue that many deaths listed as drownings are actually caused by suction entrapment from pool pumps.

"When I was a fireman," McKain said, "and we found someone in a pool, it was always considered a drowning. There is nothing on the state forms to mark it as entrapment."

There have been other recent, costly pool liability

cases as well, involving different causes of action. In August, Steven C. Marks, a partner at Podhurst, Orseck, Josefsberg, Eaton, Meadow, Olin & Perwin in Miami, settled a suit against the Fontainebleau Hilton in Miami Beach for \$1.65 million.

In October, Sean C. Domnick, a partner at Searcy, Denney, Scarola, Barnhart & Shipley in West Palm Beach won a \$1.2 million verdict against a homeowner in Broward Circuit Court. Both cases centered on claims of inappropriate supervision and failure to adequately fence in the pool.

### **Industry hasn't acted**

To prevent entrapment accidents, the pool and hot tub industries long have debated adding a suction release device to pool drains.

A 1976 article in the industry trade journal *Pool & Spa News* chronicled the death of a child from suction entrapment and described the perils of uncovered pool drains. A 2002 article in *Pool & Spa News* stated that one of the most contentious debates facing the pool and hot tub industry the last few years has centered on suction entrapment and what to do about it.

Manufacturers have been aware of the problem for many years, said Paul Pennington, principal with Fort Pierce-based Vac-Alert, which sells a suction release device through Pierce-based distributors in

# Depths of danger

Florida, California and Texas. "Since 1999, they have been aware of a solution that solves the problem in less than three seconds, yet have not acted," he said.

Instead, according to critics, the pool industry has quietly settled cases and defended itself on the grounds that suction entrapment cases are the fault of pool owners, not the manufacturers. The industry contends that if property owners adequately secured drain covers, entrapment injuries would never occur.

Similarly, apartment owners and condominium and homeowners associations also have been relatively unconcerned. "During my 16 years representing apartment owners, pool liability was not a primary issue," said Donna S. Barfield, a former legal counsel for the Florida Apartment Association who is now in private practice in West Palm Beach.

Helio De La Torre, a partner at Siegfried, Rivera, Lerner, De La Torre & Sobel in Coral Gables, which represents more than 400 condo associations in South Florida, said his clients still are not re-evaluating their liability relating to pools. "People are aware of the risk and liability," he said.

That status quo attitude may be changing.

An October 2003 article in Pool & Spa News warned that if the industry fails to act aggressively to address safety issues, more eye-popping

verdicts could result. "If pump along with the pool builders themselves, don't take matters into their own hands, the jury awards are likely to continue to grow," the article concluded.

The mounting industry concern pleases Haggard. In the wake of the Lakey and Peterson cases, he said, "pump manufacturers are starting to realize that this is their problem and they had better solve it."

He said he hopes pool and hot tub equipment makers will take corrective steps on their own initiative. In the meantime, though, he's working with state Sen. Debbie Wasserman-Schultz, Pembroke Pines, to require tougher state oversight of pools. "If you can go beyond the individual case in the civil justice system and change behavior, that is what the civil justice system is about," Haggard said.

His cause may get a boost from an incident in Virginia involving a very prominent family; In 2002, 7-year-old Graeme Baker, the granddaughter of former Secretary of State James A. Baker III, drowned in a whirlpool tub in her home after suction pressure pinned her to the bottom. The suction was so powerful that adults were unable to pull her out. No lawsuit has been filed.

"[Graeme's] senseless death should be a wake-up call for this industry to accept responsibility for all such deaths and injuries and be accountable for the decades it



Teenager Lorenzo Peterson was left in a persistent vegetative state when his arm got stuck in the suction from an uncovered drain in a pool at a North Miami apartment complex.

has ignored its duties," said Robert T. Hall, an attorney for the Baker family. The Baker family recently added Michael Haggard to its legal team.

## Tried to shift blame

Haggard's two big verdicts successively set the record for the largest single personal injury verdict ever awarded in Florida. A survey of verdicts won by individual plaintiffs last year ranked the two South Florida pool liability judgments as the fifth and sixth largest anywhere in the country.

In the Hinton case, according to the suit, Loren wandered away from her father, Lonnie Hinton, and was able to push open the pool gate and jump into the pool because the gate latch was broken and had not been repaired by the apartment owner.

Her parents claimed that the apartment owner, 2331 Adams Street Corp., was

negligent in failing to properly maintain the pool gate.

After a two-week trial, the jury deliberated for six, hours and held the apartment owner 99 percent liable for failing to repair the gate; it found Lonnie Hinton 1 percent liable for not supervising his daughter appropriately.

The size of the verdict was largely attributable to Loren's need for life-long around-the-clock care; \$56 million of the verdict was for lost wages and past and future medical expenses. The jury awarded Loren \$34 million in pain and suffering and \$10 million to Loren's parents for loss of consortium.

In the Peterson case, the pool drain was unprotected because the cover was not screwed down and came loose according to the suit. Six adults tried to quickly pull Peterson free but could not because the suction pressure from the pump drawing water down the drain was too great.

After the accident, the apartment owner and its pool maintenance company settled for \$7 million. But Sta-Rite, the maker of the drain pump, refused to settle. In July 2001, the Peterson family sued the company, contending that its pumps were unsafe and that it had failed to warn about the dangers.

Haggard told the jury that Sta-Rite had been found liable in the similar Lakey accident in 1997, yet had done nothing to make the pump safer.

After a two-week trial and 90 minutes of deliberation,

# Depths of danger

the jury last August found Sta-Rite 80 percent responsible for the accident; the apartment owner was deemed 20 percent liable. **The jury awarded Peterson \$32.5 million in economic damages and \$72 million in past and future pain and suffering.**

In both cases, the defense, unsuccessfully tried to shift the blame to Lonnie Hinton in the first case and to the apartment owner in the second. Unlike many large verdicts, neither award was reduced by the trial judge as being excessive. Both cases are on appeal.

## Gaps in safety rules

The two verdicts exposed systemic problems in pool safety and gaps in state regulation, Haggard said.

The Hinton case demonstrated the importance of proper protection around pools - particularly the use of self-closing gates - to keep toddlers out. Currently, Florida Department of Health inspectors twice a year are required to inspect all public pools, as well as those in buildings with five or more residential units, monitoring chlorine levels and checking whether pool drain covers are screwed down. But they are not required to examine whether pools are properly enclosed, Sen. Wasserman-Schultz said.

The Peterson case showed that pool drains can be dangerous if the cover comes loose or is removed. Suction pressure from the drain pump

can pin down a swimmer with a force equal to thousands of pounds, according to pool experts.

Florida lawmakers already have recognized the danger of suction entrapment by drainpumps. Under the Florida Building Code, all new, pools must have a dual-drain or ventilation pipe or suction release device that shuts down the pool pump if anything gets caught in the drain. Such systems reduce the suction force to a level that is safer for swimmers. But that law does not address the problem of the thousands of existing pools with single drains and more powerful suction.

Wasserman-Schultz said she plans to introduce legislation this spring - which she calls Loren's Law after Loren Hinton - that would require all communal pools to follow strict guidelines on fence enclosures and pool gates.

The bill would require that gates be self-closing and self-latching, that a permanent barrier enclose the pool and that pool gates open outward to make it harder for a child to enter the pool area. All these requirements would be on the required checklist for state inspectors. Violations could be used as per se evidence of negligence in lawsuits. But the bill would not apply to pools at single-family homes.

"When we realized the Department of Health does not inspect gates when it inspects pools, we were shocked," said

Wasserman-Schultz, who is running to succeed Democratic congressman Peter Deutsch, a candidate for U.S. Senate. "I think the bill has a really good chance."

"This is almost a no-brainer," said Julio Robaina, R-Miami. "This is a bipartisan issue and I would be very supportive."

Haggard is also pushing for a companion bill named after Lorenzo Peterson, as well as for changes in the Florida Building Code aimed at requiring safeguards against suction entrapment injuries. The proposal would require that all single-drain pools - not just new pools - be supplemented with a second drain, a ventilation system or a suction release device.

Haggard is waiting to see if the U.S. Consumer Product Safety Commission or the pool and spa industry takes action.

A report by the federal commission suggesting changes could spur voluntary moves by the industry and strengthen the case for new state laws. The commission is circulating a draft report on suction entrapment injuries.

## Tough sell

Haggard argues that changes must target existing pools, or else there will be more tragic accidents like the ones involving Valerie Lakey and Lorenzo Peterson. Ultimately, he hopes that suction release devices will be required in every pool across the country. "This is a nationwide concern," he said.

But requiring all pool owners to retrofit may prove a tough sell in the Legislature due to its cost.

"I don't think the Legislature will be responsive to making people replace their drains," Wasserman-Schultz said. "Instead, we hope to raise awareness and hopefully people who have pools will become aware of the need to change them on the existing pools."

Haggard notes, however, that during the Peterson trial an expert testified that if the industry mass-produced suction release devices, the price could drop to as little as \$35 per unit.

If the pool industry does not improve safety on its own or if the Florida Legislature does not require tougher safety measures, the industry and property owners are likely to face more pool liability lawsuits in Florida, some observers say.

Manufacturers are at particular risk because plaintiff lawyers may be able to demonstrate, as Haggard did in the Peterson case, that they knew about the danger of suction entrapment and had ways to reduce the risk but failed to do so. Such evidence can inflame juries.

"The message has now been demonstrated twice," said Thomas Mancuso, who serves on the board of the Destin residential community. "If someone gets injured in your swimming pool, you had better have quite a defense available."



## Three Firms Sued for Baker Entrapment: One Settles

By Rebecca Robtedo

A lawsuit was filed against three pool companies for the entrapment death of 7-year-old Virginia Graeme Baker, granddaughter of former Secretary of State James Baker.

According to the plaintiffs, on June 15, 2002, the child was entrapped in a family friend's spa during a party. Her buttocks became stuck to the vessel's single drain, holding her underwater while various individuals tried in succession to save her. Eventually, she was freed, but it was too late.

The suit named Hayward Pool Products of Elizabeth, NJ., which produced the drain cover on the single-drain spa; Poolservice Co. of Arlington, Va., which maintained the pool and in-ground spa; and Sta-Rite of Delavan, Wis., manufacturer of the pump on the site. Sta-Rite settled for an undisclosed amount before the complaint was served, said the manufacturer's attorney, James V. Etscorn of Baker & Hostetler, LLP, in Orlando, Fla.

The drain cover was not an anti-vortex or anti-entrapment version and hadn't been damaged or

loosened before the incident, according to Baker attorney Michael Haggard, "The whole fallacy to the pool and spa industry's argument that if you just maintain your drain cover, everything will be fine is gone now," said Haggard of Haggard, Parks, Haggard & Lewis in Coral Gables, Fla. "Everything was intact. It was operating exactly as intended."

The drain cover was intact so the industry's argument is gone now.

The Baker family also contends that Hayward knowingly sold flat drain covers without warning customers to only use them in dual-drain systems, nor did it recall them to be replaced with anti-vortex or anti-entrapment drain covers. "The pool pump is the suction hazard, and the drain cover is the protection against the hazard," Haggard said.

The service firm, the plaintiffs said, should have notified the homeowners of an entrapment hazard and made changes to remove it.

Industry professionals struggle with the notion that these companies should be held

responsible. "It's a shame that this young girl got killed in an accident like that, but is it all these people's fault?" said Jeff Fausett, president/CEO of Aquatech Corp. in Huntington Beach, Calif. "Technology changes. These people weren't negligent. Hayward, Sta-Rite and the service company were just doing their jobs - just Americans going through life without trying to hurt people."

Etscorn said he could not disclose any terms of the Sta-Rite settlement, but that it was no reflection on a \$104 million decision against the manufacturer last year. In that case, the caregivers of a young man blamed the manufacturer for an entrapment accident that left him in a permanent vegetative state. Sta-Rite is appealing the decision. Baker attorney Michael Haggard also worked on that case.

The court has not set a date for the suit against Hayward and Poolservice Co. Attorneys for Hayward and Poolservice Co. did not wish to provide comments for this story.

# SWIM AT YOUR OWN RISK



hanley▲wood  
**ONLINE**

July 15, 2004

## PROTECT YOUR PROPERTIES FROM POOL DANGERS

**By Rachel Z. Azoff**

Like most 2-year-olds, Loren Hinton loved to play hide-and-seek. On a warm spring day in May 2001, Loren ran around with her friends at her family's apartment community, while her father manned the grill. The little girl wandered into the community's pool area through a broken gate, took off her shoes, and slid down a kiddie slide into the pool's 6-foot-deep water. A neighbor rescued her, after finding her unconscious. The toddler survived the near-drowning but suffered irreversible brain damage.

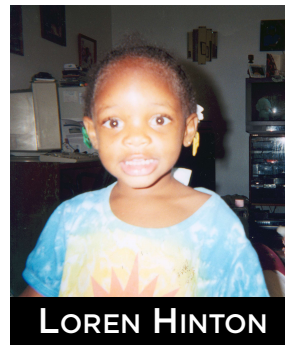
It was an accident with both emotional and financial costs. Last year, a Florida jury awarded the Hinton family \$100 million, finding the owner of the 26-unit apartment community negligent for not safeguarding the pool area and not repairing a gate that had been broken for months. (The company's attorney did not respond to a reporter's calls for comment.)

"Our child was able to get through that fence, and it nearly cost her her life," says Lorri Hinton, Loren's mother. Loren spent about a week on life support and six weeks in the hospital. "Her heart had stopped for 33 minutes," says

Hinton. "It caused her to have severe brain damage. She's not the child she was before."

Tragically, these types of injuries happen more often than one might think. On average, 250 children under the age of 5 die annually as a result of pool drownings, according to the U.S. Consumer Product Safety Commission (CPSC). Among unintentional injuries, drowning is the second leading cause of death for children under age 5, after motor vehicle accidents. Given such statistics, apartment owners and managers can't afford to overlook the dangers pools can pose, particularly to their youngest residents.

Many of these heartbreaking incidents can be prevented with proper safety precautions. "Water safety is a big concern, and you can never take your focus off of it," says Lesa LaRocca, a regional director at Phoenix-based Trillium Residential LLC. "Kids love water; it looks so enticing. We have a



LOREN HINTON

responsibility as a management company to make sure that our facilities are working properly, especially our gates and fences."

But all too often, management is unaware of how to properly safeguard

pools, says attorney Michael Haggard of Coral Gables, Fla.-based Haggard, Parks, Haggard & Bologna, who represented the Hintons in the case involving their daughter. "When I end up taking [apartment owners'] deposition or cross-examining them at trial, as much as they are negligent, they



**The broken gate Lauren walked through at her apartment community and then nearly drowned in the pool. A Florida jury awarded the Hinton family \$100 million, finding the owner negligent for not safeguarding the pool area and not repairing a gate that had been broken for several months.**

didn't want to be," the lawyer says. "They say, 'If I had just known what a self-latching gate was, I would have done that in a heartbeat.'"

To forestall such accidents at your properties, it pays to know the most common safety hazards at pools and how to reduce them. In many cases, the safer solution is easier than you might think—and could save you millions of dollars and countless regrets.

### **Hidden Danger:** **Pool Fence and Gates**

You've installed a 4-foot-tall or higher fence around your pool, with a top-of-the-line self-closing, self-latching gate, as required by many local jurisdictions. So you're all set, right? Think again. Gates can break, open gate doors can get stuck in cement, and residents can prop open gates with rocks, to name just a few possible scenarios. "Ninety-nine out of 100 times [in accidents], the pool gate was not closed," says Juliet Falevitch, spokesperson for the Phoenix Fire Department. In 2003, Phoenix had 61 pool-related injuries at community pools and home pools, with 11 fatalities.

### **Safer Solution: Do safety checks.**

"The one thing I would ask of them [apartment managers] is to check to make sure that the gates are secure and working properly," Hinton says. Your maintenance staff should check the pool at least once a day to ensure that the fencing is secure and the gate is working properly.

In addition to daily checks, Fogelman Management Group, a Memphis, Tenn.-based firm, does a quarterly inspection based on pool safety guidelines. "We review the pool site regularly to make sure that all policies and guidelines are



**A self-latching gate like this one—D&D Technologies' Magna-Latch with self-closing hinges—can help limit access to pools and thus prevent drownings.**

being followed," says John Barger, Fogelman's director of real estate services. Plus most pools are within view of a property's leasing office so business managers can keep an eye out for safety hazards, such as gates propped open.

Since many jurisdictions don't require lifeguards at multifamily communities, experts stress the importance of having several layers of protection. In addition to a self-closing, self-latching gate, install a keyed entry, which runs only about \$100, suggests Gerald Dworkin, an aquatics safety and water rescue consultant at Lifesaving Resources Inc. in Harrisville, N.H. Other safety precautions include no-diving signs displayed prominently around the pool in areas less than 9 feet deep, alarms on doors and windows leading to the pool area, lifelines separating the shallow from the deep end of the pool, and signs warning adults to supervise

children at all times. Also, make sure there is a nearby telephone that dials 911 directly.

### **Hidden Danger:** **Unexpected Details**

You think you did your best to follow regulations set forth by the state or local jurisdiction. You're not positive you've met the standards, but you figure you did an adequate job. Then a child enters the pool by pushing the gate open.

### **Safer Solution: Get expert advice.**

When it comes to pool safety, details mean the difference between life and death. Your mistake: Codes require gates to swing outward rather than inward because it is easier for a child to push a gate than pull it open. Have a professional inspect your pool to ensure that your community is code-compliant. Groups like the American Red Cross, fire department, and police department will gladly inspect your properties for no fee.

### **Hidden Danger:** **Faulty Drains**

At the bottom of the pool, a drain cover is loose or missing. A resident puts his or her hand in the pipe and is trapped by the resulting suction. The CPSC has reported 73 cases of body entrapment, including 12 confirmed deaths, between January 1990 and October 2003.

### **Safer Solution: Inspect and upgrade drains.**

Make sure the drain cover is securely fastened to the bottom of the pool. (An antivortex cover is recommended.) As part of their daily survey of the pool area, maintenance workers should check the cover. If they can't tell whether the cover is fastened, they should

turn the pump switch off—making very sure that it's off—jump in, and check the cover. It's essential that all maintenance personnel know the location of the emergency shut-off switch for the pool's pump.

Upgrades are another option. The National Swimming Pool Foundation recommends dual-drain systems. However, a dual-drain retrofit can cost as much as \$3,500. A less expensive alternative, costing between \$500 and \$1,500, is the Stingl Switch made by Stingl Products LLC, which shuts down the pump and sounds alarms if the drain's vacuum increases. The company does recommend using additional safeguards.

### **Hidden Danger:** **Maintenance Equipment**

You've purchased the appropriate rescue safety equipment, such as a ring buoy to throw to a drowning victim, shepherd's hook, and first aid kit. You place them around the pool area, figuring they'll be easy to grab in an emergency. Then one afternoon, a boy falls into the water. His father searches frantically for a buoy but can't find it because it's buried in a heap of maintenance equipment.



**Antivortex drain covers, like this one by Pentair Inc., are designed to make it less likely that any body part is trapped in a drain.**

**Safer Solution: Keep gear separate.** All safety equipment should be properly labeled and

kept together in a separate area, away from maintenance poles and other non-emergency gear. "Nine out of ten times, I go into an apartment complex and the rescue pole is either above or below the maintenance pole, the skimmer, and the vacuum cleaner, which is absolutely ridiculous," says Dworkin of Lifesaving Resources. A resident doesn't know the difference between safety equipment and a maintenance device when they are all on the same wall, he says. If you have a diverse resident population, be sure to post all labels and signs in several languages.

### **Hidden Danger:** **Unusable Safety Gear**

*If you've properly labeled all the rescue and safety equipment and grouped the items together, you may think you're ready to handle any emergency. But suppose two unsupervised children are running around the pool, and one falls into the deep end. The other child runs to the safety equipment and picks up the shepherd's hook but has no clue how to use it. His friend is left helpless.*

### **Safer Solution: Educate your residents.**

Providing safety gear is only half the battle; equipment is meaningless if residents don't know how to use it. In 2003, the Arizona Multihousing Association (AMA) introduced Project S.A.F.E.—Safety and Awareness Family Education—to teach apartment residents about safety issues. The annual month-long program covers five topics, from disaster preparation and missing children to pool safety. The program is run by the AMA, the American Red Cross, and the Nation's Missing

Children Organization and Center for Missing Adults.

"As you can imagine, out here there are just so many pools, and the number of drownings is very high in Arizona," says Wayne Kaplan, AMA's director of community relations, so the association decided to address these concerns. And from a liability point of view, offering pool safety courses is a good way to strengthen your defense that you have tried to deal with the issue before there was a problem, he adds.

This past April, American Red Cross instructors visited 48 properties throughout the Phoenix metro area, showing residents how to use safety devices and teaching children basic pool safety rules. More than 250 residents showed up at a water safety class at the Preserve Townhomes, a 360-unit community in Phoenix managed by Trillium. "So many families live at the Preserve, so we definitely wanted to do something special for that community," LaRocca says. The key is to make the events fun to encourage attendance, she adds. The event was coupled with a big barbecue party.

### **Hidden Danger:** **Uninformed Employees**

*Residents aren't the only ones who can benefit from safety training. What happens if someone falls in the pool and the only one nearby is an employee?*

**Safer Solution: Require lifesaving training.** To ensure that employees know how to respond to such situations, Calex Realty Group Inc., a Jacksonville, Fla.-based firm,

requires that all maintenance supervisors and community managers take a pool safety and rescue course. The class consists of two hours of lecture and two hours of hands-on practice, with certified instructors demonstrating lifesaving techniques.

The training pays off. About two years ago, a 3-year-old boy was drowning, and his mother couldn't help him because she didn't know how to swim, says

Michael Martin, executive director of human resource development at Callex. "One of our employees rescued him, giving him the gift of life," he says.

That's the best possible ending in what could have been a devastating situation. Unfortunately, it often takes calamities like the near-drowning of a child to spur public awareness of safety issues. After the Loren Hinton verdict, an owner of a condo

complex in Destin, Fla., called Haggard, the Hintons' attorney, to see how he could safeguard his community.

"I told him, and he went and did it all," Haggard says. "He probably spent a couple of hundred dollars, and his insurance premiums probably dropped thousands of dollars." Most important, he's much less likely to have an accident.

## TOP POOL RULES

### NEW CODE IN ARIZONA STIRS CONTROVERSY

Due to an increase in pool-related injuries and deaths, Maricopa County, Ariz., recently implemented stricter regulations for public swimming pools, which include those at multifamily communities. As of March, the code requires dual main drains, antivortex drain covers, and higher fences on all new pools. Property owners must retrofit existing pools with dual main drains the next time they resurface the pools or within 10 years, whichever comes first.

The Arizona Multihousing Association (AMA) supports the dual-drain requirement for new swimming pool and spa construction but lobbied against mandating retrofitted dual main drains, saying it doesn't make financial sense. "It's one of those mom-and-apple pie issues, where it's difficult to say you are coming out against safety, but the numbers and the economics just don't justify

it," says Terry Feinberg, AMA's executive vice president.

There have been only three injuries, all non-fatal, due to drain entrapment in Maricopa County in the past two decades, Feinberg says. Yet upgrading to dual drains can cost as much as \$3,500 per pool, not including costs of construction and water to refill the pool.

"On a cost-benefit basis, you just can't justify it," he says. "There are many more ways to ensure safety than having to spend that kind of money. But it's the law, and we will do it."

More cost-effective alternatives, Feinberg suggests, include replacing regular drain covers with antivortex ones and installing emergency shut-off switches that kill the pump. The AMA also encourages resident education, which is why the group introduced Project S.A.F.E. (Safety

and Awareness Family Education).

The annual program trains apartment residents in pool safety. "Education of the resident population and making sure that the gates work are probably the two greatest things that can be done toward pool safety," Feinberg says.



# The Miami Herald

SATURDAY, FEBRUARY 1, 2003 • FINAL EDITION

## Jurors find for girl, 4, who fell in pool \$100 million awarded to child

BY SARA OLKON

A Broward jury has awarded \$100 million to a brain-damaged 4-year-old girl who nearly drowned in a Hollywood pool. It is one of the largest personal injury verdicts in Florida history.

Loren "Tookie" Hinton, then 2, was in the middle of a game of hide-and-seek in May 2001 when she walked through a broken gate inside the Tropisun apartments and ended up at the bottom of a six-foot-deep pool.

When neighbors pulled her out, she was glassy-eyed, pale and unconscious, said her attorney Michael Haggard.

Today, she can't walk or talk. Plastic tubes snake her rigid form, protruding from her trachea and stomach. She has a nurse by her side at all times. She has learned to roll over on one side, said mother Lorri C. Hinton.

Thursday evening, the jury found the 2331 Adams Street Corp., owner of the 26-unit apartment complex where the Hintons lived, 99 percent responsible for the accident. They affixed 1 percent blame to Loren's father, Lonnie W. Hinton Jr., who had been supervising his two kids, but stepped away.

The family sued the corporation for not enclosing the pool area with a secure fence and for not repairing a broken pool gate.

Especially damning, said the family's attorney, was alleged evidence that other tenants had warned the apartment manager about the broken gate before Hinton slipped in.

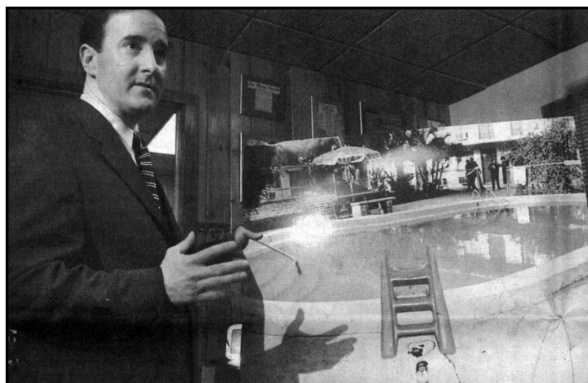
"The manager did nothing," Haggard said. "It was callous indifference."

Calls placed to Miami defense attorney John F. Kennedy from The Herald were not returned Friday.

The family said they hoped for the creation of a state law making secure pool gates and fences mandatory for apartments and hotels.

Laws now vary by municipality; Hollywood requires self-latching and self-closing devices.

"If you let a latch go unfixed, it's just an



**SCENE: Attorney Michael Haggard displays a photo of the pool where Loren Hinton nearly drowned. The photo shows the shoes of the victim as she left them after she took them off to get on the slide.**

accident waiting to happen," said state Sen. Debbie Wasserman-Schultz, D-Weston. She said her office intends to propose a bill to have the state Department of Health inspect gates.

"Children cannot protect themselves from these tragedies," she said.

The Hintons, of course, are not the only victims of swimming-pool tragedies.

Drownings are the No. 1 cause of unintentional death in children ages 4 and younger in Florida, according to the Centers for Disease Control and Prevention.

This week, two young boys drowned in a pool at a Pembroke Pines apartment complex. The lock on the gate to the pool also was broken.

Haggard said the large judgment demonstrates "how horribly she was injured."

A videotape supplied by the law firm, dated October 2002, shows a forlorn Loren as she

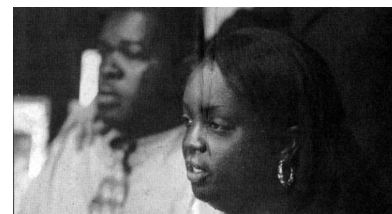
is fed, bathed, dressed and entertained by her parents. Her breathing is loud and labored. Her expression is one of resignation, at times exasperation, as she is attended to by nurses and therapists.

She cries silently in pain and shakes after a deep-suctioning procedure. The daily routine is necessary because she can't cough to remove mucus and other secretions.

Her chest visibly heaving, Lorri Hinton said her baby was "trapped inside her body."

"She is like a 6-month-old infant," she said.

She said her daughter used to love Vienna Sausages, salad and chewy fruit snacks. Now she gets her nourishment through her tubes and is visited by a succession of physical, occupational, speech and respiratory therapists.



**PARENTAL WORDS: Lonnie W. Hinton Jr. and Lorri C. Hinton speak after the award for their daughter, who is brain-damaged.**

## \$100M Award For Toddler's Near Drowning

By Diana Digges

A Florida jury awarded \$100 million late last month to the family of a toddler

**Small-Firm Victory** who suffered permanent brain damage

after nearly drowning in an apartment complex pool that was "protected" by a broken gate.

The Jan. 30 award was the largest personal injury award ever in Florida, and also one of the largest personal injury verdicts in the country that didn't include punitive damages.

The pool gate "was the front and center of this case because this tragedy could have been avoided," said plaintiffs' lawyer Michael Haggard, noting that "every Home Depot sells a self-latching gate that closes on itself and hooks into place for \$36."

The biggest hurdle for the plaintiffs was overcoming the question of why the child's father was not watching his 21-year-old child during the incident, said Haggard, a small-firm attorney who handled the case with his own father.

The father-and-son legal team marshaled half a dozen witnesses from the apartment complex who testified to making numerous complaints to management about the broken pool gate.

The plaintiffs also called an aquatic safety expert who made a Powerpoint presentation on the unanimity of standards nationwide on the necessity of a self-locking gate, and the plaintiffs' counsel pointed to an unequivocal local code requirement that all public pools be

equipped with a self-latching gate.

And they had an economist and life care expert and a powerful day-in-the-life-of video of the child, Loren Hinton, who, with the help of a fleet of rehab therapists, now struggles mightily merely to blink.

But what the plaintiffs faced during the two-week trial was the equally powerful belief that a "good parent" is vigilant in supervising a child's behavior, and does not let a child, especially a toddler, out of sight, even for one minute.

So when jurors were asked questions about whether the broken gate violated code and whether the owner received a citation, Haggard held his breath.

"That really scared me, because they were still obviously thinking about the negligence issue," said Haggard. "In the two mock trials I'd done, the jurors had decided that issue within the first couple of minutes. I was worried."

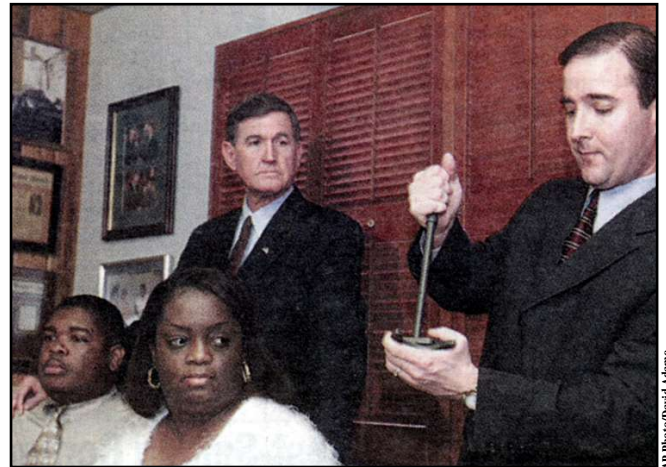
But, in the end, the six-person jury allotted only 1 percent comparative negligence to the father of Loren Hinton, and the remainder to the owner of the complex, an Argentinian family that had bought the property eight months earlier as an investment.

More than half the award - \$54 million - is for future medical care, with the rest to compensate Loren for her pain and suffering and to her parents for loss of her companionship.

Defense attorney John F. Kennedy said an appeal is planned, but declined to comment on the case.

### Barbecuing Dinner

On May 15, 2001, Loren



Andrew Haggard looks on his son Michael (left), demonstrates an automatic gate closer that could have prevented the near-drowning of a 2 1/2-year-old girl. The girl's parents, Lonnie and Lorri Hinton, are seated in front.

Hinton's father was barbecuing the family dinner in the outdoor common area of their apartment complex in Hollywood, Fla.

As was the custom in the complex, several adult residents brought Hinton their burgers or steaks to be grilled at the same time, and set down their chairs to socialize. The children, including Loren and her 6-year-old brother, were playing hide-and-seek in the same common area.

"That's what people in this complex did - they socialized together, everybody looking out for everybody else's kids," said Haggard. "The defense contention was that our client never specifically asked someone to watch his toddler, but the testimony of all the neighbors and the father was that people didn't do that - everybody automatically watched out for each other's kids."

The Hintons lived on the second floor, about 20 feet away from the

play area where the father was barbecuing. According to Haggard, Hinton told the kids he was taking food upstairs and would be back in a minute.

"He took the grilled food upstairs, put it down on the dining room table, kissed his wife, turned around to go back down and get the kids, when he heard screaming," said Haggard. "They were screaming that Loren was drowning."

During the game of hide-and-seek, Loren had wandered through the broken gate into the pool area, 60 feet away and down a breezeway, and fallen into the pool.

For five months, complaints had allegedly mounted about the gate. Although there was no paper trail of the complaints, "the manager himself admitted on the stand that it was broken, that he fixed it four to five times a week," said Haggard. "Why didn't he just buy a self-latching gate from Home Depot?"

## \$100M Award For Toddler's Near Drowning

There's no way a child under 7 or 8 can get one of those open. They're not tall enough. He didn't have a good answer."

An aquatic safety expert testified that every state and city in the country, including Hollywood, where the accident occurred, has regulations for fences and gates on public pools. Again, however, there was no written record that the complex had been cited for not being in compliance, an issue that clearly troubled the jury, judging from their 11th-hour question.

Haggard thinks what helped the plaintiffs' case was the expert testimony emphasizing that the underlying reason for the pool gate regulations is precisely to protect children from lapses in supervision.

"Since the defense's whole argument was that the dad wasn't watching [the toddler], this expert was extremely useful. He pointed out that the only reason we have gates is to keep children out because there are lapses in supervision. Not no supervision, but lapses in [it]," said Haggard.

Despite the unanimity nationwide on standards for gates and fences on public pools - and the local code requirement mirroring them - there remained the problem of inspection. Florida's Department of Health checks pools for chlorine and PH levels, and whether the main drain needs to be secured, but they don't check the existence or functioning of pool gates, according to Haggard.

"They're not required to. If they had been, they would have put this pool down right away as being in violation for over six months," he said.

### Unusual Jury

Haggard told Lawyers Weekly USA that he did not end up with the jury he wanted.

"We were looking for parents with multiple kids. It's really only when you have more than one that

parents get realistic. Any young parent with only one newborn tends to be hypervigilant," said Haggard, whose own first child was born during the case.

He was also looking for older jurors, who tend to have "a lower level of anxiety about parenting."

However, he ended up with at least three young jurors, including a mother of a single child.

"During voir dire, the defense asked a simple and key question: 'Does everyone agree that parents need to watch their children when they're toddlers?' Of course everyone said 'Yes.' All the time? Everybody said 'Yes.' Every minute of the day? Same answer. People set up their own standards; whether they're super-parents or not, they want to think they are," said Haggard. "That was the defense argument: If you're watching your child, they don't drown."

But the young, single-child parents on the jury were offset by the presence of a middle school principal

"That boded well for us because this is the kind of person who deals with kids who aren't perfectly behaved all the time," Haggard said.

Since 1999, Florida jurors have been allowed to ask questions during trial, and this jury was especially prolific, said Haggard, estimating that jurors asked so many questions that the trial was extended by a full day.

The emotional testimony of a truck driver who lived at the complex also elicited an interesting response from the jury, according to Haggard.

After snatching a toddler from danger at the pool a month earlier, the man had complained to the manager about safety issues, Haggard said, noting that he was the same person who rescued Loren from the pool.

"This man was very, very emotional on the stand. It was brutal for him to have that opportunity to save one kid, complain about the conditions, then have the same thing

happen again," said Haggard.

The defense tried to discredit the man's testimony because he had had a dispute with the management over a sewage problem in his unit, the plaintiffs' lawyer asserted.

Haggard, however, suggested that the tactic backfired with the savvy jury.

"So the jury asked how long it took the management to respond to the sewage problem. It was clear that they were totally onto the management's ineptitude in taking care of problems. I would never have asked that question because it was irrelevant to the pool gate issue, but that was shortsighted of me," said Haggard. "It's an example of how regular people think, looking at broader patterns of behavior. Lawyers are just thinking of evidence."

Impressed by the attentiveness and analytical abilities of the jury, Haggard started monitoring his experts' behavior.

"I told them, nothing wrong with making your points, answer the cross, and don't be evasive. But let me tell you, when a juror asks you a question, you be as direct as possible. For the first time in my life, I had to prepare experts for what jurors might ask," he said.

The jurors also asked for an estimate in the difference in costs between Fort Lauderdale and San Diego for the medical and rehabilitative services for Loren, whose father now works on a military base in California.

"It turned out to be 12 percent higher in San Diego. I should have thought of that!" said Haggard. "The other side didn't object, my economist looked at his city index and that's [the difference] he came up with. So the jurors incorporated that into their calculations."

### Damages 'Touchy'

The damages portion of the trial was "touchy," said Haggard, noting that the defense contended that Loren was so severely brain damaged that

her life expectancy was only 10 to 15 years.

"But we argued that if you give her the medical care she deserves and that she's been getting - 24-hour nursing care and rehab therapies - she has a normal life expectancy," he said.

In the two mock trials Haggard had conducted, the juries went in opposite directions on that issue. So at the actual trial, Haggard took pains to emphasize the human aspects of Loren's struggle, along with medical testimony of a normal life expectancy.

"This little girl has made incredible strides. That she is able to roll over - to her and the therapist who had been working with her every single day for 20 months, that was a milestone," he said.

The plaintiffs called four therapists who testified to the improvements Loren had made, and also showed a 14-minute tape that detailed a typical day in the life of the 4-year-old.

"Loren is a prisoner in her own body, but she is making improvements," said Haggard. "Her ultimate goal is that one day she might be able to blink and use the computer to communicate."

This was Haggard's fifth case in two years involving child drowning or near-drowning. He says these accidents are the leading cause of death for Florida children under the age of 5. He is currently working on legislation to require that all public pools be inspected for safe, self-latching, self-locking gates.

Plaintiffs' attorneys: Michael Haggard and William Andy Haggard of Haggard, Parks, Haggard & Bologna in Coral Gables, Fla.

Defense attorney: John Fitzgerald Kennedy, of Carlton Fields, in Miami, Fla.

The Case: Hinton v. 2331 Adams Street Corp.; Broward County Circuit Court of the 17th Judicial Circuit; Judge Charles M. Greene



# Daily Business REVIEW

DELIVERING MONEY AND POWER EVERY BUSINESS DAY

MIAMI • THURSDAY, FEBRUARY 6, 2003

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## LIABILITY

# Safety next

## Lawyers who won \$100 million for brain damaged girl push law to mandate pool safety changes in Florida

by **Matthew Haggman**

On the heels of their record-setting \$100 million verdict in a swimming pool accident case last week, two Miami attorneys are seeking sweeping new state legislation to toughen Florida's pool safety laws protecting children.

Their proposed legislation, to be sponsored by Democratic Sen. Debbie Wasserman-Schultz, has been dubbed "Loren's Law." It's named after Loren Hinton, the 4-year-old girl who suffered catastrophic brain damage after falling into a pool at a Hollywood apartment complex. It would affect commercial and public recreation pools in the state.

Last week, a Broward Circuit Court jury awarded Hinton and her parents, Lorri and Lonnie, the enormous verdict after the family's attorneys successfully argued that the girl was able to enter the pool area alone due to negligent maintenance of the pool gate.

Michael and Andrew Haggard, the son and father team of attorneys at Haggard,



Coral Gables lawyer Michael Haggard and his father represented the family of a girl who fell into an apartment pool whose gate wasn't secured.

Parks, Haggard & Bologna in Coral Gables who represented Hinton, have drafted a bill that would require that all pools, with the exception of pools at single-family homes, follow strict fence enclosure and pool gate guidelines. If the owners failed to do so, they would face hefty fines, increased liability in civil court and have the pool shut down.

According to the draft of the bill provided to the Daily Business Review, any violation could be considered negligence per se in a civil court proceeding. Negligence per se means the violation is

automatically considered negligence and does not have to be proven in court.

The bill would amend Chapter 514 of the Florida Statutes and apply to all existing and newly built pools in apartment buildings, condominium complexes, motels and hotels, Haggard said.

Under current law, the state Department of Health is required to check all public pools and pools in locations with five or more residential units twice a year. Those evaluations include checking for proper chlorine levels and whether the main drain is secured to prevent swimmers from getting sucked in. But the agency is not mandated to check on fences and gates around the pool.

"Drowning is the No. 1 killer of children under 5 in Florida," Michael Haggard said. "Right now the state checks pools for chlorine levels but does not check if a pool is enclosed or if a pool gate is self-closing and self-latching."

According to the Drowning Prevention Coalition of Palm

Beach County, which confirmed Haggard's statistic, 82 children under the age of drowned in Florida in 2000, the latest year for which figures are available.

Haggard said he has handled at least four lawsuits arising from accidental drowning deaths of children in improperly secured pools.

State Sen. Wasserman-Schultz of Pembroke Pines said she will file the bill by the Friday deadline for new legislation, though she had not yet seen the Haggards' draft as of Wednesday afternoon.

She said the bill would improve safety by adding the inspection of pool gate latches to the Health Department's checklist of safety components.

"Last week, I had a 3-year-old and a 2-year-old drown in an apartment complex in my district due to a broken gate latch," the senator said. "The Hinton case is not an isolated incident. The bill will solve the problem."

A national real estate industry group representative expressed surprise that Florida

## Safety next

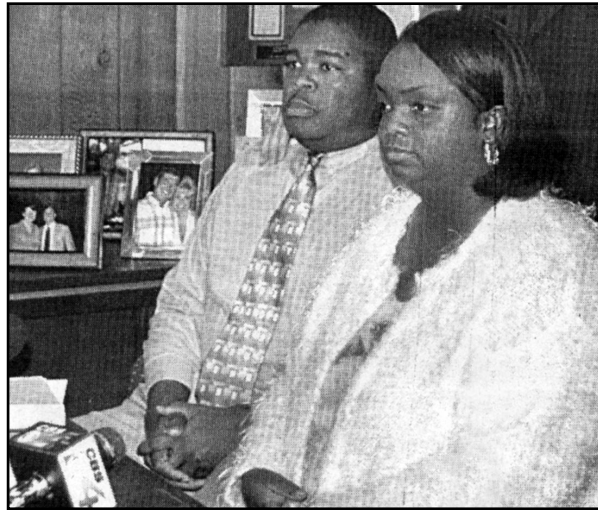
did not already have such a law. She suggested that large apartment building owners and managers probably would not oppose the change.

"This is not unusual in our industry, and generally, when we can work in partnership, we can work out something that is reasonable and protective," said Susan Weston, director of education at the National Apartment Association in Washington, D.C.

She said her group previously worked with Texas policy-makers on this issue. In 1999, that state passed a comprehensive bill that included requirements that pools be enclosed and have self-closing and self-latching gates.

But Gerald Dworkin, a consultant with the New Hampshire-based aquatic safety company Lifesaving Resources who participated as an expert witness in the Hinton trial, cautioned that the bill probably would face opposition. "The public often just opposes change," Dworkin said.

The bill arose from the May



Loren Hinton's parents, Lorri, right, and Lonnie Hinton Jr., at a press conference following the \$100 million jury award.

2001 accident in which Loren Hinton fell into a pool at a 26-unit apartment complex in Hollywood. Her parents claimed that she wandered away from her father while he was cooking barbecue, pushed open a broken pool gate and jumped into the pool. She was pulled out minutes later, unconscious.

The Haggards argued that the apartment owner, 2331 Adams Street Corp., was negligent for failing to properly maintain the pool gate. Months earlier, one witness testified, a resident had

complained to the apartment manager that "if you don't fix that gate someone will die."

After a two-week trial, a jury found the apartment owner negligent for failing to repair the gate and handed down the \$100 million verdict - which is considered to be among the largest awards in an individual personal injury case in state history.

The size of the verdict largely resulted from the fact that Hinton will need round-the-clock care for the rest of her life. The jury determined that her future medical

expenses will be \$54 million.

Among the requirements in the Haggard's bill:

- Pool gates would have to open outward to make it harder for a child to enter the pool area.

- Pools would have to have a permanent barrier enclosing the swimming area, and the gates would need to be self-closing and self-latching.

- If the safety requirements were not met, the pool would be immediately closed down and the owner would face a \$1,500 fine.

- Any violation would automatically be considered negligent in civil court.

Wasserman-Schultz said the bill would address a major problem because gate latches at swimming pools often are broken, and even when the problem is reported, they often aren't repaired.

"I don't think our political leaders would want this to happen to another Florida child," Haggard said. "I hope to have Loren there with me when Gov. Bush signs it signs it into law."

# Family wins suit for girl's accident

## Complex faulted for tot's brain damage

**BY Shannon O'Boyle**  
Staff Writer

One hundred million dollars is a lot of money, but not if the price is your child.

That's what Lorri Hinton said Friday one day after a Broward County jury ordered the owners of the Hollywood apartment complex where she used to live to pay her family that staggering sum one of the largest awards in state history.

Her daughter, Loren "Tookie" Hinton, now 4, suffered massive and irreversible brain damage after falling into the pool at the two-story apartment complex at 2331 Adams St. on May 15, 2001. The gate to the pool was broken, and tenants had been complaining for months the Hintons' lawyers said.

"I'd rather not have [the money] if I could have my baby back," said Hinton, 32. "I'm pretty sure any parent would say that. My daughter needs the money. We're not going to be around forever."

The jury estimated that

Loren's future medical care will cost \$54 million. The rest of the award compensates the girl to her pain and suffering and the parent for loss of her companionship.

The defendants, a family from Argentina who bought the building as an investment seven months before the near drowning, are expected to appeal. Their lawyer, John Kennedy, could not be reached for comment on Friday.

The little girl is confined to a bed or a wheelchair and needs a nurse with her constantly.

She cannot walk or talk. Tubes pump liquid food into her stomach, suck secretions out of her lungs and send muscle relaxants through her body so her muscles do not shrink up like coils. In addition to constant attention from nurses, she requires physical therapy seven days a week.

"It's like she's trapped in her body," said her mother, a Miami-Dade County bus driver.

"I don't want any other

families to go through this. I want to open people's eyes. This could have been prevented, and my child would be the normal child she was."

The jury found the girl's father, Lonnie Hinton, 33, one percent responsible for the drowning. He was barbecuing outside while a group of approximately 10 children were playing hide-and-seek. The girl went into the pool area, took off her shoes, and slid down a slide into the water while her father was carrying a plate of food to the family's apartment upstairs.

Lonni Hinton, who now works as a police officer on a military base in California, said his family did not use the pool and had no idea the gate was broken.

State Sen. Debbie Wasserman-Schultz, D-Weston, said no parent can watch his or her child every second. She is sponsoring a bill in Loren's name that would make checking gates the responsibility of state Department of Health

## Family wins suit for girl's accident



### NOT APPEASED:

The parents of 4-year-old Loren Hinton discuss the \$100 million judgement they won with attorneys Andrew Haggard, left and Michael A. Haggard during a news conference on Friday. Loren suffered permanent brain damage when she nearly drowned in an apartment complex pool in 2001. A jury found the Hollywood complex responsible for the accident because there was no lock on the pool's gate.

workers during their yearly inspections of commercial pools.

"They don't check the gates," she said. "Obviously, that's a very simple thing that could be added to the list of things they check."

"This is a situation where children cannot protect themselves," she said. "If parents can't do it, it falls to the government...I have twin 3-year-olds. They go in opposite directions all the time. Even in my own house, there are times where I don't know where both of them are."

Wasserman-Schultz said

she is not sure whether her bill will run into resistance. She fought successfully a few years ago to get safety features installed on all new residential pools, and she is willing to fight for this one as well.

"The same thing happened to a 3- and 2-year-old in Pembroke Pines [this week] and it just killed me," she said.

Just after midnight Wednesday, two cousins wandered away from their family's Chinese New Year's celebration at Pembroke Apartments, 2051 NW 81st Ave., fell into the near by

pool and died.

The lock on the spring-loaded gate was broken, though the city's code enforcement director said his department had received no complaints about the pool's gate in the past four years.

*Staff Researcher Barbara Hijek contributed to this report.*

# Daily Business REVIEW

DELIVERING MONEY AND POWER EVERY BUSINESS DAY

MIAMI • THURSDAY, JULY 12, 2001

## PRODUCT LIABILITY

# In name of safety

## Pool pump maker sued after teen is trapped underwater, severely brain damaged

by **Adam Miller**

Last February a 4-year-old North Miami boy who was severely disabled in a pool accident won a \$7 million settlement against the pool maintenance company and the apartment complex where the pool is located.

Now his attorney has filed a negligence suit against the manufacturer of the pool's pump.

Michael A. Haggard, a partner at Haggard Parks Haggard & Bologna in Coral Gables, filed suit Monday in Miami-Dade Circuit Court against Sta-Rite Industries Inc. of Delavan, Wis. The suit claims that product defects in the Sta-Rite model P2R single-horse-power suction pump were responsible for the accident, during which Lorenzo Peterson was held underwater for between 11 and 13 minutes.

The Peterson family

contends that the pump is unsafe and that the company made no effort to change its design to make it less dangerous or to warn distributors about risks it created for swimmers.

Jim Green, assistant general counsel for Sta-Rite, said his company would not comment for this article.

Sta-Rite is one of the world's largest swimming pool supply companies, Haggard said, and is a subsidiary of publicly traded Wisconsin Energy Corp., an \$8.4 billion holding company. In addition to its pump manufacturing through Sta-Rite, the corporation has holdings in electric, gas, steam and water distribution and other non-utility businesses.

On June 17, 2000, Peterson was swimming with friends in the pool at the Village Apartments, 1600 NE 126th St. His arm got stuck in the drain at the bottom of the

pool, which was six feet deep. The drain opening was unprotected because the cover wasn't screwed down and had come loose. Six adults tried but failed to pull him free. Peterson was rescued only after a police officer got into the locked pump room and shut off the pump.

The 14-year-old boy barely avoided drowning. He fell into a coma, and suffered irreversible brain damage. "He will never eat, talk or walk on his own again," says Haggard, who estimates Peterson's lifetime medical bills will exceed \$20 million. Some of the costs are being covered by family or other private sources. But Haggard said without the settlement, the family couldn't cover the future medical expenses.



Lorenzo Peterson, before his accident. His lawyer says Peterson was severely disabled when the boy was held underwater by the suction of the pool pump, above right.

On behalf of Peterson's grandmother and guardian, Eva Mae Peterson, Haggard sued the owner of the apartment complex, Roberta Segal, and the pool maintenance company, All Florida Pool Distributors of Miami in Miami-Dade Circuit Court. The negligence suit alleged that they should have secured the drain cover. Sta-Rite was not named as a defendant in that case, which was resolved with a \$7 million settlement.

According to the new

## In name of safety

complaint, Sta-Rite breached its duty of reasonable care by negligently designing and manufacturing an unsafe product. The suit claims the company was aware of previous similar accidents and knew that safety devices were available to prevent such accidents.

Some pool pump manufacturers include an emergency cut-off mechanism in their pumps; this feature shuts off the pump when it detects an obstruction in the intake system. But Sta-Rite did not install an emergency shutoff, which Haggard says would have added \$50 to the cost of a pool pump.

"Sta-Rite is more aware than anybody of the entrapment these pumps can cause. It's their business to know," Haggard says. "They also know about the technology that can negate these dangers, but they won't take advantage of it. It boggles my mind."

Industry experts recommend that pool pump manufacturers install such safety devices. Jack Cergol, communications director for the National Spa & Pool Institute in Washington, D.C., could not say how common the devices are in new pools, but said that the technology has proven effective.

"In general, we would encourage manufacturers to install these devices to their suction pumps," Cergol said. "They work and improve safety."

The Peterson case isn't the

first large damage award Sta-Rite has faced as a result of pool accidents related to its products. In 1997, a Raleigh, N.C., jury awarded \$25 million in compensatory damages to the family of 9-year-old Valerie Lakey, who lost most of her intestines after getting stuck to the drain of a kiddie pool. Sta-Rite was the manufacturer of that drain.

The girl's family alleged that Sta-Rite failed to put adequate warnings on its drain covers, while Sta-Rite countered the cover was installed incorrectly. Ironically, part of Sta-Rite's defense was that the pool pump involved in that case, which was not one of its products, should have been equipped with an emergency shut-off mechanism, Haggard says.

In addition to the new lawsuit, Haggard says he plans to file a formal complaint against Sta-Rite with the U.S. Consumer Product Safety Commission, claiming that the company's model P2R pool pump creates a public hazard.

Marcia Kerr, a Washington consumer information officer for the commission, says that while there is no federal law requiring pool pumps to be equipped with an emergency shutoff, the commission recommends that manufacturers voluntarily include this device. "Our recommendations are voluntary, but to ignore such standards can cause the product in question to be viewed as a hazard," Kerr says.

Peterson's accident was one of several severe accidents involving uncovered pool drains and pool pumps last year. In June of last year, an 8-year-old Miami girl drowned after she was sucked into a drain when her hair became caught in the pump system because of an allegedly defective pump and cover. The previous month, an 8-year-old Hollywood boy drowned after he went to the bottom of a pool to retrieve a ball and got caught in the drain, allegedly because of the pump.

But Kerr says injuries and deaths caused by pool pumps are rare, with only a handful occurring annually. She did not have exact figures.

In January 1997, Sta-Rite recalled a device used to cover pipes carrying water into a pool or spa. When improperly installed, a bather's hair could be drawn toward the cover and become entangled in the fitting. In the 1997 recall documents, Sta-Rite reported that at least two people drowned as a result of getting their hair trapped in its cover product, according to Consumer Product Safety Commission records.

Haggard lobbied the Florida Building Commission to pass new building code regulations requiring that pool pumps be equipped with emergency shut-off. And his efforts have paid off.

Charles Hickey, a staff member with the commission, says that on Wednesday morning, the commission added language to the code

that will require all new pool pumps in Florida to be outfitted with emergency shutoff mechanisms. He said he could not comment further.

The new state building code also is expected to require that all new pools be installed with two drains, according to Hickey. This would reduce the suction pressure at each drain.

In May 2000, Sen. Debbie Wasserman-Schultz, a Democrat from Weston and at the time a member of the House, pushed through legislation mandating that new backyard pools have safety features such as a surrounding fence or a safety cover.

Haggard says he hopes that law and the new emergency shutoff rule for which he's lobbying will prevent further pool accidents. "I hope within five years I won't have any of these cases," he says.

# THE NATIONAL LAW JOURNAL

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AUGUST 11, 2000

2003 ALM PROPERTIES INC.

## ■ FLORIDA

# \$104 million verdict for pool accident

**A day-in-the-life  
video was a key to  
a lawyer's second  
recent big award.**

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**By Leonard Post**  
STAFF REPORTER



**VICTIM AND COUNSEL:**

A school photo of Lorenzo Peterson, left, and counsel Michael Haggard, who won \$104 million for his client.

SIX MONTHS AFTER winning a \$100 million judgment for a child who suffered irreversible brain damage in a pool accident, the same South Florida plaintiffs attorney has done it again.

He won a \$104 million verdict in another pool accident-related case last week. The jury in the most recent case, which only deliberated for 11/2 hours before reaching its verdict, hasn't yet considered punitive damages. In both cases, the juries were shown videos that depicted typical days in the lives of the plaintiffs.

On June 17, 2000, Lorenzo Peterson, 15, watched his friend swim to the bottom of a pool, slide an unattached drain cover away and then slide it back, according to plaintiff's attorney Michael Haggard of Coral Gables.

Fla.'s Haggard, Parks, Haggard & Bologna.

Perhaps thinking his friend had hidden something inside, Peterson then swam down, slid the cover aside and stuck his arm inside the drain. At least seven people tried to free him to no avail. It was 12 minutes before police broke down the door to the pool equipment room and turned off the power to the drain pump. Those 12 minutes left Peterson, now 18, irreversibly brain-damaged.

The suit against the pump's manufacture is based on theories of strict liability and negligence. The suit alleges that defects in the drain's design were known to the company and that it had failed to install an automatic safety shut-off mechanism.

Peterson v. Sta-Rite Industries, No. 01-20887 CA 15 (Miami-Dade Co., Fla., Cir. Ct.).

The jury awarded \$32.4 million for past and future medical expenses and \$72 million for pain and suffering, and will consider punitive damages in a month or so. Peterson will require 24-hour nursing care for the rest of his life.

Claims against the apartment complex and the company that maintained its pool were settled for \$7 million about two years ago. That enabled Peterson's family to buy a house and adapt a van for his needs Haggard said.

Peterson has been raised by his grandmother since he was 2-years-old. Florida law does not permit claims for a grandparent's loss of consortium or for

## \$104 million verdict for pool accident

negligent infliction of emotional distress, so she was not entitled to recover for the damages she suffered.

In reviewing television news documentaries about pool accidents, Haggard said he discovered a firefighter and an engineer who had so worried about drain-pump dangers—the 300 to 400 pounds of pull—that they had independently devised a safety mechanism that would automatically shut off the pump when it detected that it was pulling more than it should.

Witnesses who Haggard called to testify had offered the safety devices for free to pool pump manufacturers, including the defendant. No manufacturer has yet installed such a device, he noted.

In the punitive damages phase, Haggard will try to make the case that the defendant acted, or failed to act, in conscious disregard for human life. He will assert that Sta-Rite

was aware of 20 prior suction-entrapment incidents caused by either its pumps or drain covers, which are designed to be screwed down, but often become loose. He will also introduce evidence of Sta-Rite's net worth.

In the liability phase, Haggard showed a 14-minute day-in-the-life video featuring Peterson. In a tactical move, it was shown at 4 p.m. on a Friday, at the end of the first week of the two-week trial.

"You always want to send the jury home with something powerful to spend the weekend thinking about," Haggard said. "Lorenzo can smile, tries to pucker his lips to give grandma a kiss, but he can't talk. He's aware, but trapped inside his body and he can't do anything about it."

Hearing a pin drop

Defense counsel, Haggard said, objected to the audio portion of the tape because, for example, sounds such as the

suctioning out of Peterson's lungs could be heard. Haggard thinks that worked to Peterson's advantage. "You could have heard a pin drop," he said.

The defendant's attorney, Joel Adler of Marlow, Connell, Valerius, Abrams, Adler & Newman in Coral Gables, did not return calls seeking comment.

In February 2003, Haggard won a \$100 million judgment against an apartment complex for not safeguarding a pool area, which had a broken gate that residents had complained to management about. *Hinton v. 2331 Adams Street Corp.*, No. 01-012933 (Broward Co., Fla. Cir. Ct.). In that case, a 2-year-old slid down a kiddie-slide into six-foot-deep water and suffered severe brain damage.

Haggard and his firm have several other drowning and near-drowning cases in the hopper.





## Boy caught in pool drain is awarded \$7 million

BY JAY WEAVER

A teenage boy whose tragic accident in a North Miami swimming pool might have been prevented by a few cheap screws for fastening a drain cover will receive a \$7 million settlement from the insurers for the apartment complex and the pool maintenance company.

The settlement, announced Thursday, will help pay for the medical costs of treating Lorenzo Peterson, 15, who went into a coma on June 17 after he got his arm stuck in the drain at the bottom of the pool in the Village Apartments, 1600 NE 126th St.

The boy's grandmother and guardian, Eva Mae Peterson, sued the complex owner, Roberta Segal, and the pool maintenance company, All Florida Distributors, alleging they should have been aware of the loose drain cover and secured it. Lorenzo was submerged under water for at least 10 minutes because he could not remove his arm from the drain. The force of the pool's suction pump kept him down.

Six people tried unsuccessfully to pull the boy out of the six-foot-deep end of the pool. Finally, a police officer turned off the switch in the pump room, which had been locked, to free the boy.

"Hopefully, this case will compel apartment owners to make sure

### The settlement will help pay for Lorenzo Peterson's medical costs.

the drain covers are secure on their pools," said Peterson's attorney, Michael Haggard. "A simple rod with a hook fastening the cover could prevent this from happening again."

Lorenzo was visiting his mother at the Village Apartments. The teen and his best friend, Antonio Boudreau were playing in the deep end of the pool. The friend was able to remove the drain cover because the screws had rusted and come loose. Lorenzo, 14 at the time, got his arm trapped in the drain.

The teen suffered irreversible brain damage. He is receiving neurological rehabilitation at a HealthSouth facility in South Dade, with the bills being partly paid by the state's Medicaid program. The settlement, which will be established as a special needs trust, will help offset the costs.

"He will need this treatment for the rest of his life," Haggard said. "The trust is set up so it will never run out money to pay his medical bills."

The attorney for Segal's insurance company, Lloyd's of London, initially blamed All Florida

Distributors, which was responsible for cleaning and maintaining the pool. But as the negligence suit headed for trial, attorney Benjamin Esco said his client realized that a jury could find the apartment owner liable for at least \$20 million.

"Our experts had looked at the boy's condition, and it was horrible," Esco said. "The owner of the premises, who visited the boy, wanted the settlement done as much as anything for the boy's sake."

Segal's primary insurer, Lloyd's, will pay \$1 million and her secondary insurer, TIG Insurance, will pay \$3 million.

The attorney for All Florida Distributors, Peter Murphy, could not be reached for comment. The company's insurer, CGU Insurance, will pay the other \$3 million.

The pool firm, which originally said it only cleaned the swimming pool at the Village Apartments, faced a potential liability problem because it either didn't check the loose drain cover or checked it and did nothing about securing it.

Lorenzo's accident was one in a series of Florida tragedies involving uncovered pool drains last year. An 11-year-old Miami girl drowned last June when she was sucked in by her hair, and an 8-year-old Hollywood boy drowned last May while trying to recover a ball.

## \$104M Awarded For Boy's Pool 'Entrapment'

### *Punitives Could Still Be Considered*

By **Nora Lockwood Tooher**

In one of the largest product liability verdicts so far this year, a Florida jury has ordered a Wisconsin

**Small-Firm Victory** pool-pump manufacturer to pay \$104 million in

compensatory damages to the family of a boy who sustained permanent brain damage after his arm became stuck in a pool drain three years ago.

The Aug. 1 judgment by a Miami-Dade jury against Sta-Rite Industries will be used to help pay the medical expenses of Lorenzo Peterson, who was trapped underwater for about 12 minutes when his arm became ensnared by the suction of a pool pump in a North Miami apartment complex pool.

Punitive damages are still to be considered in the case.

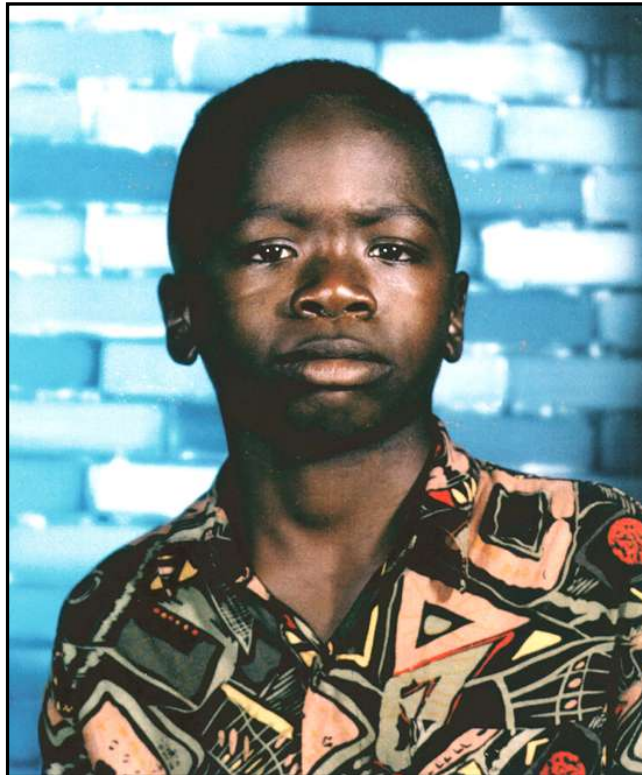
Michael A. Haggard, an attorney for the plaintiffs, told Lawyers Weekly USA that the "pool industry and Sta-Rite, as one of the big players in the pool industry, have known about this deadly hazard for 30 years and they've done little or nothing about it."

One of the nation's largest pool-equipment manufacturers, Sta-Rite has been sued before over similar pool suction accidents.

In 1997, a North Carolina jury ordered the company to pay \$25 million in compensatory damages to the family of Valerie Lakey, a Raleigh girl who lost most of her intestines when she became stuck to a wading pool drain.

According to the U.S. Consumer Products Safety Commission, from 1985 through 2002 there were a total of 147 entrapments in hot tubs, pools and whirlpools, including 36 deaths.

Sta-Rite's safety brochure -



**Lorenzo Peterson suffered brain damage when his arm became stuck in a pool drain.**

published after the sale of the pump used in the pool where Peterson's accident occurred - warns that the vacuum in a pool's main circulating pump is so strong that "anyone lying on an eight-inch diameter main drain while the pump is running could be held down on the drain by a force of up to seven hundred pounds (that's right, 700 pounds). This is enough force to trap adults or children underwater, or even to eviscerate them." The brochure adds: "Stay off the main drain!"

Peterson, who has been in a coma for the past three years, was 14 at the time of the June 17, 2000 accident. He was swimming with friends when his arm became stuck

in the drain at the bottom of a six-foot-deep pool in the apartment complex where he lived. The screws on the drain cover were loose and he was able to put his arm directly into the drain, where it became trapped by the suction of the pool pump.

Half-a-dozen rescue workers tried unsuccessfully to free Peterson, but the suction power of the pump was so strong that they were unable to pry him loose. Finally, a firefighter broke open the door of a locked pool-equipment storage building and turned off the pump switch, freeing Peterson.

By the time he was pulled out of the water, Peterson had suffered

serious brain damage. Now 18-years-old, he lives with his grandmother, Eva Mae, a plaintiff in the case, and receives around-the-clock nursing care. According to the complaint, he "is severely, permanently, and irreversibly brain damaged, and lives in a permanent vegetative state suffering from seizures and convulsions."

Haggard said that the brain damage sustained by Peterson is "the worst injury that happen to a kid. You're trapped within your own body; it's awful."

Defense attorney Karl E. Sturge said the company intends to appeal the verdict.

Under Florida law, punitive damages can be awarded separately. The judge in this case is expected to rule in September whether punitives can be assessed against Sta-Rite.

In February 2001, the insurers for the apartment complex and the pool maintenance company agreed to pay Peterson's family a \$7-million settlement.

#### **Safety Switch**

The plaintiffs' complaint accused Sta-Rite, which manufactured the pool pump, of negligence and claimed the pump was "defective and unreasonably dangerous."

They contended that the company knew of the dangers from its pump and could have taken steps to prevent the accident by installing a safety device and providing adequate warnings that children can become entrapped in uncovered and broken drains or improperly designed drain gates because of the pump's suction.

At trial, the plaintiffs' attorneys argued that all pool pumps should be equipped with a safety device that senses when there's an obstruction

## \$104M Awarded For Boy's Pool 'Entrapment'

and shuts off the pump automatically.

The cost of installing such cutoff switches in the estimated 500,000 pool pumps manufactured each year could be as low as \$50 each, Haggard said, while adding such a switch to an existing pool pump would cost about \$300.

A turning point for the plaintiffs, Haggard believes, was testimony from Paul McKain, a Florida firefighter who invented a low-cost switch that automatically turns off a pool pump if something is caught in the drain. Haggard said that McKain volunteered to donate his cutoff switch to Sta-Rite, but the company "totally rejected him."

The company argued that the apartment complex owners and pool maintenance company were to blame because they failed to make sure the drain cover was properly fastened.

"A pool is not any different than an automobile," Sturge said. "It's not a maintenance-free item. You need to maintain your pool like you maintain your car."

Sturge also said that the company has tested several pump cutoff devices - including McKain's - but determined "they don't work and they're not reliable."

A defense witness testified that McKain's cutoff device failed a field test and didn't shut off the pump as it was supposed to when the drain was obstructed.

"The company has not implemented these devices because they have not been found to be effective," Sturge said.

Haggard conceded that McKain's invention has some glitches. "These inventors aren't professional engineers," he said. But he maintained Sta-Rite could have used its technological know-how to re-tool the device.

"All Sta-Rite had to do was put a sensing device inside their pump housing and it would have prevented this incident," he said, noting that several pool pump safety vacuum release systems are already on the market.

According to Mark Ross, a spokesman for the U.S. Consumer



**'The pool industry ... has known about this deadly hazard for 30 years and they've done little or nothing about it,' said winning attorney Michael A. Haggard.**

Products Safety Commission, there is no federal requirement that swimming pool pumps have emergency cutoff devices. He added, however, that commission guidelines "recommend that people have them or that they have multiple drains to prevent the hazard."

Sta-Rite also argued that the most effective way to prevent entrapment accidents is to equip all swimming pools with two drains. In dual-drain pools, if someone becomes entrapped in one drain, the suction automatically diverts to the other so that the person is released.

Requiring pool owners to drain and re-fit the estimated 3.5 million swimming pools in the nation with dual drains "is not a simple solution, but it is the best solution," Sturge said.

But Haggard said that it's not realistic to require pool owners to re-fit their existing pools with dual drains at an estimated cost of up to \$5,000 each, when equipping pool pumps with cutoff switches is a simple, affordable solution.

He noted that Florida enacted legislation in 2000 requiring that new pools be equipped with a secondary drain. Older pools, however, are exempt from the requirement.

### Other Incidents

The plaintiffs' attorneys introduced evidence that Sta-Rite

has been involved in 20 pool entrapment incidents since the early 1980s.

"And what have they done about it? They haven't done anything," Haggard said.

The report showing the 20 entrapments was a key piece of evidence, he said. The plaintiffs tried for two years during discovery to get Sta-Rite to disclose how many of those 20 incidents involved pumps. One week before the trial, the company finally disclosed that eight were pump cases and 12 were related to faulty drain covers manufactured by Sta-Rite. (The manufacturer of the drain cover in the pool where Peterson's accident occurred could not be determined, according to Haggard.)

The "bottom line," he said, is that the company knew what was happening with accidents related to its pumps and didn't do anything about it.

The jury apparently agreed. After only an hour and a half of deliberations, it voted unanimously that Sta-Rite was negligent because its pool pump was defectively designed and because the company failed to provide adequate warnings about its dangers.

The jury awarded a total \$32.4 million for medical expenses and other costs and \$72 million for pain and suffering.

### Preventing Childhood Drowning

Haggard, who specializes in PI cases, recently scored another major victory in a pool accident case. In January, he and his father, Andrew Haggard, won a \$100-million negligence verdict in Broward Circuit Court in the case of a 4-year-old girl who suffered permanent brain damage after nearly drowning in an apartment complex pool whose gates were unlocked. The apartment complex owners are appealing the verdict.

In the Sta-Rite trial, Haggard joined forces with Robert L. Parks, a partner in his six-attorney Coral Gables, Fla., firm to take on a defense team from one of the area's largest law firms. During the two-week trial, Haggard and Parks each took on

distinct duties. Parks was responsible for jury selection; the two attorneys split opening statements; Haggard presented the plaintiffs' closing argument and Parks rebutted the defense's closing argument.

The jury - three women and three men - was comprised of five Hispanic Americans and one African-American. Although Peterson is African-American, Haggard was not concerned about the jury's ethnic or racial composition.

"You get pretty diverse juries in Miami," he said.

But that didn't mean that he and Parks knew how the jurors would vote.

"We always felt great about our case. We feel this is a terrible problem," Haggard said. "But in terms of the trial, we didn't know which way it was going."

Haggard said his goal is to educate the public about the importance of pool and pool-equipment safety.

"If we can get secure gates and get this entrapment problem resolved, we're going to stop the number two leading cause of accidental death in America for children: drowning."

Sturge said the company was "disappointed" with the verdict. "It was an emotionally charged courtroom. We move on with the appellate process."

He credited Haggard and Parks for their efforts, however, and commented, "They did a very good job. They're very good attorneys, and we look forward to litigating with them on another case."

Plaintiffs' Attorneys: Michael A. Haggard and Robert L. Parks of Haggard, Parks, Haggard & Bologna, P.A. in Coral Gables, Fla.

Defense Attorneys: Joel Adler and Karl E. Sturge of Marlow, Connell, Valerius, Abrams, Adler, Newman & Lewis in Coral Gables, Fla.

The Case: Peterson v. Sta-Rite Industries, Inc.; 11th Circuit Court in Miami-Dade County, Fla.; Judge Harold Solomon.

# DAILY BUSINESS REVIEW

Monday, August 11, 2003

## JURY VERDICTS & SETTLEMENTS

### \$104 MILLION AWARDED IN POOL-PUMP ACCIDENT

**Case:** Lorenzo Peterson v. Sta-Rite Industries, Miami-Dade Circuit Court

**Case No:** 01-20887-CA-i5

**Plaintiff attorneys:** Michael A. Haggard and Robert L. Parks of Haggard, Parks, Haggard & Bologna in Coral Gables

**Defense attorneys:** Joel D. Adler and Karl E. Sturge at Marlow, Connell, Valerius, Abrams, Adler & Newman of Coral Gables

**Judge:** Harold Solomon

**Details:** In June 2000, while swimming with friends at the Village Apartments in North Miami, 14-year-old Lorenzo Peterson got his arm stuck in the pump drain at the bottom of the pool and was unable to free it because of the suction pressure. The drain was unprotected because the cover was loose. Six adults formed a human chain to pull the teenager free, but they failed. A police officer finally got into the locked pump room and shut the pump off. Peterson suffered catastrophic brain damage and will require around-the-clock medical care for the rest of his life.

In June 2000, Peterson's family sued Roberta Segal, the owner of the apartment complex, as well as the pool maintenance company, All Florida Pool Distributors for negligence. The suit claimed they failed to properly shield the drain cover. In February 2001, the defendants settled for a total of \$7 million.

In July 2001, Peterson's family sued the pump manufacturer, Wisconsin-based Sta-Rite Industries, for negligence. The plaintiff attorneys alleged that the pool pump was a defective product and that the manufacturer failed to warn pool owners about the product's dangers.

**Plaintiff's case:** Peterson's attorneys argued that the pump had a design defect that Sta-Rite knew about and should have fixed. Sta-Rite, they said, should have installed a safety device that cuts off pressure if something gets stuck in the drain. The second theory was that Sta-Rite knew about previous similar accidents and failed to warn pool owners that drains must always be covered.

**Defense case:** Lawyers for defendants could not be reached for comment. At trial, according to the plaintiff attorneys, the defense argued that the apartment owner failed to maintain the pool in a safe manner. The defense also claimed that the pool cleaning company



**Coral Gables plaintiff lawyers Michael A. Haggard, left, and Robert L. Parks presented evidence of 20 previous suction entrapment cases involving Sta-Rite pumps.**

should have properly secured the drain cover. The defense also argued that no pool pumps on the market have a safety cut-off device.

**Turning points:** According to Haggard, the key was the presentation to the jury of 20 previous suction entrapment cases involving Sta-Rite pumps, including one North Carolina case in which a 5-year-old girl's intestines were pulled out by a pump.

**Outcome:** After a two-week trial, the six-person jury deliberated for an hour and a half. It found that the Sta-Rite pump had a design defect that caused Peterson's accident and that the company had failed to warn consumers about the defective product. The jury awarded Peterson \$32.4 million in past and future damages and \$72 million in past and future pain and suffering.

The jury found Sta-Rite 80 percent liable for the accident and the apartment complex 20 percent liable. A date has not been set on when the jury will reconvene to determine punitive damages.

The \$104 million verdict appears to be the largest single personal injury award in Florida history, breaking the previous record of \$100 million by Haggard and his father, William A. Haggard, in a swimming pool drowning case in Broward Circuit Court in January.

**-Matthew Haggman**

# The Miami Herald

SATURDAY, AUGUST 2, 2003

## Pool drain victim wins \$104 million

### Award is one of the largest in Fla.

BY JAY WEAVER

A North Miami teenager who suffered severe brain damage when his arm got stuck in a pool drain won a \$104 million judgment against the manufacturer Friday when the jury found the product unsafe.

The compensatory award, one of the largest in Florida, will help cover the medical costs of treating Lorenzo Peterson. He went into a coma on June 17, 2000, after he was trapped underwater by the suction of the drain at the bottom of the pool in the Village Apartments, 1600 NE 126th St.

His grandmother and guardian, Eva Mae Peterson, had already received a \$7 million settlement from the insurers for the apartment complex and the pool maintenance company.

The family's attorneys, Michael Haggard and Robert Parks, said they were "happy" with the Miami-Dade Circuit Court jury's verdict against Sta-Rite Industries, the manufacturer of the drain cover and P2R single-horse-power suction pump.

They would not comment further because there is an upcoming punitive trial to determine whether the company, owned by Wisconsin Energy Corp., intentionally disregarded Peterson's safety.

The manufacturer, found negligent by the jury, expressed disappointment

"This was a terrible and tragic accident, and a young man's life was changed forever," said

company spokesman Chris Iglar. "While that should remain the primary focus, we're disappointed with the jury's decision in this case. And we're reviewing our options going forward."

Lorenzo, 14 at the time, was visiting his mother at the Village Apartments. The teen and his best friend, Antonio Boudreau, were playing in the deep end of the pool.

The friend was able to remove the drain cover because the screws holding it in place had rusted and come loose. Lorenzo was submerged under water for at least 10 minutes because he could not remove his arm from the drain. The force of the pool's suction pump kept him down.

Six people tried unsuccessfully to pull the boy out of the six-foot-deep end. Finally, a police officer turned off the switch in the pump room, which had been locked, to free the boy.

Lawyers for Peterson's family argued that Sta-Rite could have easily fixed the defect if the company had installed an emergency shut-off mechanism

The Peterson case is similar to other pool accidents that have exposed defects in the company's drain cover and suction pump.

In 1993, a North Carolina girl was disemboweled when her bottom became pinned to the drain of a kiddie pool because of the force of the pump made by Sta-Rite.

Four years later, her family was awarded \$25 million in compensatory damages. The company then reached a settlement of \$5.9 million on punitive damages.

## JURY VERDICTS & SETTLEMENTS

# PREMISES LIABILITY

Miami-Dade Circuit Court

### **Unlocked padlocks kept gate to pool from closing**

The parents of a 3-year-old who drowned in a spa at his grandmother's North Miami Beach apartment complex settled with the owners and the property manager for a confidential amount.

Jordan Goff died when he was able to open a gate to the pool and spa because an unlocked padlock had been placed on the latch in such a way as to prevent the gate from closing properly.

His parents sued Hamlet at Walden Pond and Auburn Management.

The maintenance person testified that every

morning he would unlock the padlocks in a position that impeded the latch from working as it should.

The defense contended that the mother was solely at fault for not watching her son.

The plaintiffs sought damages for depression and post-traumatic stress disorder.

**Case:** Estate of Goff v. Walden Pond

**Case no.:** 04-04884 CA 25

**Plaintiff attorneys:** Michael A. Haggard,

Haggard, Parks, Haggard & Bologna, Coral Gables; Sheldon Zipkin, Law Offices of Sheldon Zipkin, Miami Beach

**Defense attorneys:** Benjamin M. Esco, Gaebe, Mullen, Antonelli Esco & DiMatteo, Coral Gables; Christopher E. Knight and J. Michael Pennekamp, Fowler, White, Burnett, Miami.

## Family to receive \$1 mil in child drowning suit

**Gina Tenorio, Staff Writer**  
San Bernardino County Sun

SAN BERNARDINO - Attorneys representing the family of a toddler who drowned last year in an apartment complex swimming pool have settled a lawsuit filed against the property owners.

Benjamin and Esther Alejandre will be awarded \$1 million by Farmer's Insurance following the June 2005 death of their 1-year-old son, Adrian Alejandre, at the Breezeway Manor apartments.

The child was found floating in the water after the family briefly lost track of him, attorneys said.

Adrian was rushed to Loma Linda University Medical Center but later died.

Property owner Ed Harding said the settlement was made without his approval. He said the apartments' management team repeatedly repaired the gate but that residents continually vandalized it, at one point, breaking it less than a day after it was fixed.

Michael Haggard, attorney for the family, claimed the death could have been prevented and that it occurred a day after the county Health Department found the apartments pool was unsafe or hazardous conditions in part because of its deficient gate.

August 23, 2006

## **Apartment complex pays \$2.5 million to family of drowned toddler**

ATLANTA - The owners of a DeKalb County apartment complex have reached a two-and-a-quarter million dollar settlement with the family of a two-year-old boy who drowned in the complex pool three years ago.

Jonathan Flores was three days shy of his third birthday on July 26th, 2003, when he entered the pool area through a broken gate at The Cliffs apartments, according to a lawsuit filed by the boy's parents, Raul Jaimes Benitez and Oralia Flores Rivera, in DeKalb County State Court.

His father was fixing a car nearby, according to the lawsuit. The case was settled August 9th.

The family's attorneys said Tempo Real Estate Corporation had been cited 21 times by the DeKalb County Board of Health because the broken pool gate was neither self-closing nor self-latching.

Michael Haggard, a Miami-based lawyer who represented the Flores' family, said Jonathan's death was preventable.

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August 24, 2006

## Ga. Apartment Complex Pays \$2.25M In Drowning of Toddler

The owners of a DeKalb County, Georgia apartment complex have reached at \$2.25 million settlement with the family of a 2-year-old boy who died in a 2003 drowning in the complex pool.

Jonathan Flores was three days shy of his third birthday on July 26, 2003, when he entered the pool area through a broken gate at The Cliffs apartments, fell into the pool and drowned, according to a lawsuit filed by the boy's parents, Raul Jaimes Benitez and Oralia Flores Rivera, in DeKalb County State Court.

His father, Benitez, was fixing a car nearby, according to the lawsuit. The case was settled Aug. 9.

The family's attorneys said Tempo Real Estate Corp., the apartment owners, had been cited 21 times by the DeKalb County Board of Health because the broken pool gate was neither self-closing nor self-latching.

Michael Haggard, a Miami-based lawyer who represented the Flores family, said Jonathan's death was preventable.

"I hope other apartment complex owners will learn from this horrible incident that an effective pool barrier is a necessity for their property so that other children do not end up drowning as Jonathan did," Haggard said in a statement issued Tuesday.

An attorney for the apartment complex, Stephen Cotter, did not immediately return calls seeking comment.

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