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Texas Law Alert

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Swimming Pool Accidents



On a hot summer day in Texas nothing beats a refreshing dip in your own swimming pool. Because of the summer heat and mild winters, many Texans can and do use their pools almost year round. However, the number of backyard swimming pools gives rise to a significant danger—serious personal injury and deaths.

Every year, hundreds of children drown in swimming pools, and thousands more are treated for injuries caused by near-drowning. Pools can cause other injuries, such as paralysis resulting from a swimmer diving into water that is too shallow, as well as injuries caused by slipping on a wet pool deck.

Pool-related injuries are not always caused by the inherent dangers that a pool presents. Many injuries are the result of dangerous or defective pool equipment. For example, the pool's gas heater could blow up, the cover on the pool's drain could catch the foot of an unsuspecting swimmer or the pool's slide could collapse.

Other injuries are attributable to the carelessness of an owner, such as when the owner does not replace loose pool tiles that cause someone to trip, or the owner leaves the gate open, allowing a child to fall in and drown. Many injuries that could be prevented occur because of lack of planning, such as when

the owner of a pool does not have sufficient rescue equipment or does not take the time to learn basic lifesaving techniques.

If you or a loved one has been injured in a pool accident, you may have a legal claim for damages.

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Swimming Pool Safety

How can you protect people from drowning in your swimming pool? As with any safety issue the best response is a "layered" approach:

- Most importantly, surround the pool with a child-proof fence, which will keep children away from the pool entirely. A properly designed and installed fence cannot be climbed and should have a self-latching gate that can be locked, with a handle that is too high for small children to reach.
- A second layer of protection is to have a pool alarm. Pool alarms float in the water and make noise when they detect an object (such as a child) that has fallen into the pool.
- Pool owners should take the time to learn CPR. Even the best safety systems sometimes fail, and knowing CPR can save the lives of both young children and adult guests who fall into a pool.

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Uninsured and Underinsured Coverage

Texas law requires drivers to have automobile liability insurance, which is the insurance that pays for the *other* person's expenses if you cause an accident. Minimum liability coverage in Texas is \$30,000 per injured person, with up to a maximum of \$60,000 for all injured persons in the same accident, and \$25,000 for property damage. The shorthand for this coverage is 30/60/25.

In theory, every driver on Texas highways is covered by liability insurance to protect other drivers. In reality, some people drive without insurance, or they hit and run, or, even if they have the minimum coverage required by law, it is not enough to cover the other driver's damages. This is where uninsured coverage and underinsured coverage come in.

An *uninsured* driver is someone who either has no insurance or who hits and runs. An *underinsured* driver is one who does have liability insurance, but in an amount that is not enough to cover the other driver's damages in a particular situation. For example, a negligent driver might have 30/60/25 minimum coverage but be found liable for \$50,000 in damages to you individually. If you have underinsured coverage, it would pay the \$20,000 difference.

Texas law gives you the opportunity to buy insurance coverage to protect yourself against both uninsured and underinsured motorists. This coverage is optional, but your insurer must offer you the opportunity to purchase it, and your refusal to purchase it must be in writing. This coverage protects you, your family

members, passengers in your vehicle, and anybody driving your vehicle with your permission.

Texas law gives you the opportunity to buy insurance coverage to protect yourself against both uninsured and underinsured motorists.

It pays your medical and funeral expenses, car repairs, car rental, the replacement of damaged contents, lost wages, pain and suffering, disfigurement, and permanent or partial disability up to the dollar limits that you have purchased.

You can buy uninsured or underinsured motorist coverage in the minimum amount or in a larger amount up to the dollar limits of your liability policy. If you are not sure what choice you made when you were offered the opportunity to buy this cover-

age, talk to your insurance agent.

Your liability coverage protects you from having to pay damages to someone if you cause an accident. Your liability policy will not pay your expenses resulting from an accident with an uninsured or underinsured motorist. Uninsured motorists often have few assets, and you could face significant financial hardship if you do not have this coverage and you are injured by such a driver.

Even if the other driver has liability insurance, it may be only the minimum amount, and this coverage can quickly be exhausted. Medical care is expensive. The replacement cost of even a single vehicle easily can be \$30,000 or more. Your underinsured coverage kicks in to pick up all or part of the difference once the other person's liability limits are exhausted.

Purchase at least the minimum amount of both uninsured and underinsured motorist coverage. If possible, have as much uninsured and underinsured coverage as you have liability coverage. This may be your only protection against uninsured and underinsured motorists.

We Prefer You to Refer!

The period of time following an accident is one of confusion and uncertainty. There are many things to take care of. Hiring a good lawyer is one of them.

Many times, people don't know where to go when they need legal help. If you or a loved one has been injured in an accident, call us. We will vigorously represent you and make sure that you are justly compensated for your injuries. That's our job.

A Boating Accident Can Ruin a Sunny Day



Texans love their boats and jet skis. At last count, Texans had over 600,000 registered watercraft (!)

that are used on the largest volume of inland water anywhere in the United States. With all of these boats on all of these lakes and rivers (not to mention the Gulf), accidents are not uncommon.

Boating accidents can involve collisions between boats and between boats and personal watercraft, collisions between boats and obstructions such as rocks and tree trunks, and boats that capsize and trap people underneath. However, the most common type of boating-related injury occurs when people fall off of a boat. The injuries caused by boating accidents are as serious as any that occur on land, and they include everything from broken bones and knee injuries all the way up to serious brain injuries and drowning.

According to the Texas Parks and Wildlife Department, Texas averages about 150 serious injuries and about 50 deaths every year in boating accidents. The typical boating death involves:

1. an open motorboat;
2. people boating between noon and 7 p.m. on a weekend;
3. the victim falling overboard; and
4. an operator between 26 and 50 years of age.

Many boating accidents also involve the overuse of alcohol - statistics show that alcohol is a factor in about half of all boating

accidents, and that the use of alcohol while boating more than doubles the risk of having an accident.

The number one thing you can do to protect yourself when boating is to wear a life jacket. Like wearing your seatbelt, the use of a life jacket takes little time or effort but significantly increases your chances of surviving an accident, especially if you fall into the water. In fact, over 85% of the victims of boating accidents who drown are not wearing a life jacket at the time. Be sure to wear your life jacket even if you are a good swimmer, because even a good swimmer can get tired, suffer from a cramp, or be caught in an unexpectedly strong current.

Look for one that is approved by the Coast Guard, and do not rely on water wings, inner tubes, or other inflatable toys. The life jacket you choose should have the appropriate rating for a person of your size. A life jacket that is too small will not support you and one that is too big may slip off unexpectedly. Carry a few extras, in case someone falls in while not wearing one or in case you come upon someone from another boat who does not have one on.

Remember: The law requires that all children younger than 13 years old wear a life jacket at all times when the boat that they are on is moving. Make sure that they have life jackets sized for their smaller bodies. It is also a good idea to carry other kinds of gear that will allow you to help someone who has fallen into the water, such as spare ropes and a first-aid kit.

The other major thing you can do to prevent boating accidents is to control the use of alcohol. Many people who would never drink and drive think nothing of having a few drinks and then taking their boat out for a spin. The fact is that boating while intoxicated (BWI) is a crime just like driving while intoxicated, and the same blood-alcohol level of 0.08 means that you will be presumed to be an impaired boater. If you are caught BWI, you can be arrested, jailed, and even lose your driver's license.

If you are involved in a boating accident, it is a good idea to report it to the Texas Parks and Wildlife Department or (if the accident occurs in coastal waters) to the Coast Guard. If you have been injured in a boating accident through the negligence or carelessness of another, you might be entitled to be compensated for your injuries. The facts of each case will differ, and you will need to speak with an experienced lawyer to determine whether you have a claim and, if so, how much that claim may be worth.

Children and ATVs

Children are involved in over 15,000 ATV accidents every year. Amazingly, 95% of children between the ages of 12 and 15 who are injured on ATVs (and 65% of younger children) are injured or killed while riding a full-size ATV intended for an adult. These full-size machines are dangerous for children because they are too big and powerful for kids to control.

Alarmed by the number of injuries and deaths suffered by child ATV riders and passengers, neurologists who conducted a study of ATV accidents involving children issued a call for a number of common-sense

guidelines, including banning children younger than 16 from riding ATVs and requiring all ATV riders to wear a helmet. Such common sense would reduce the profits of ATV manufacturers, who oppose any such regulation and continue to market ever more powerful ATVs to children.

Regulations or not, if parents allow their children to ride ATVs, they should insist that their children safely ride ATVs of an appropriate size while wearing a helmet. This is not a cure-all but should help reduce what is becoming an epidemic of ATV-related injuries.

Swimming Pools

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However, the type of case you have and the kind of damages you can recover depend both on who the responsible party is and how the injury occurred.

For example, if a child drowns because the pool owner left the pool gate open, there may be a premises liability claim. If a child drowns as the result of careless horseplay, there may be a claim for negligence. Claims against those who make or sell a dangerous pool product are generally product liability claims. Each of these claims requires different legal strategies to win your case. You will need an experienced lawyer to help you first to determine who is responsible for the injury and then to prove it. Call us.

Actual resolution of legal issues depends upon many factors, including variations of facts and Texas law. This newsletter is not intended to provide legal advice on specific subjects, but rather to provide insight into legal developments and issues. The reader should always consult with legal counsel before taking action on matters covered by this newsletter.