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Board Certified: Personal Injury Trial Law • Civil Trial Law  
Texas Board of Legal Specialization

## Texas Law Alert

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### The Many Perils of Pools



On a hot summer day, nothing beats a refreshing dip in your own swimming pool. Because some areas of the country have mild winters and hot summers, many people can and do use their pools almost year-round. However, the number of backyard swimming pools gives rise to a significant danger—serious personal injuries 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's 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 which then cause someone to trip, or the owner leaves the fence 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

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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 childproof 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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# Big Pharma Is Not Your Friend

When we get sick we are often prescribed a drug to treat our illness. Most drugs are safe and effective (if expensive), but more and more often the drug companies push new and untried uses for their products, endangering consumers.

When drugs are approved by the government, they are approved for a particular purpose and for particular users. This approval is based on testing that shows that the drug is safe and effective for the approved purpose. However, this limited approval does not stop drug companies from trying to increase the market for a drug by claiming that it can be used to treat other problems. Such use is called “off label” use because the drug is being used for a purpose other than the one stated on its label.

For example, one drug company aggressively marketed Depakote, an antiseizure drug, to treat those suffering from schizophrenia and Alzheimers. The problem with such marketing was that the drug had not been shown to be effective for either use, and it often caused serious side effects.

Another drug company sold Risperdal, an antipsychotic, as a drug that could be used to chemically restrain people in nursing homes, despite the facts that such a usage was not an approved use and that the drug increased the risk of death in patients with dementia. Even botox has been marketed to treat headaches, pain, and cerebral palsy, none of which are approved uses.

Unfortunately, patients are not able to rely on doctors to protect them from such schemes. The explosion in the number of drugs available means that most doctors

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are able to learn about the uses of only a relatively few drugs—ones that are common or that are used in the doctor’s specialties. For other drugs they are often guided by the pharmaceutical company marketing reps, whose job it is to sell the company’s drugs. As a result, doc-

tors often unknowingly prescribe drugs for an off-label use.

So why do drug companies promote off-label use? The answer is simple: money. Drugs are expensive, and the more drugs they sell, the more money they make. Off-label use increases the number of prescriptions written, resulting in millions of extra dollars for the drugmaker.

If you believe you have been injured by a prescription drug, particularly if the use was for one other than the use for which the drug was approved, contact our firm.

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## Do’s and Don’ts in a Lawsuit

While no one looks forward to being involved in a personal injury lawsuit, keeping in mind some simple do’s and don’ts should help to make your case as simple as possible.

- DO keep all appointments regarding your case, especially those with your lawyer and your doctor(s).
- DON’T keep any information about your injuries from either your lawyer or your doctor, even if you think this information is obvious.
- DO keep accurate records of your expenses (especially your prescriptions), any time you miss from work, and all other out-of-pocket costs related to your case. Receipts are helpful.

- DON’T forget that the defendant’s insurance company is on the other side of your case. It does not represent you and it does not have your best interests in mind.
- DO maintain contact with your lawyer, ask about anything you do not understand, and communicate your thoughts and concerns. Remember that your lawyer’s paralegal can answer many questions.
- DON’T listen to legal advice from friends, family, and other amateurs. You hired your lawyer because he or she is the expert.
- DON’T discuss your case with strangers.
- DO keep a positive attitude.

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# Financial Fraud Against the Elderly

It is a sad and sobering reality that scam artists intent on committing financial fraud or the outright stealing of money, property, or valuable information prey upon vulnerable senior citizens. The threats can take many forms, but the elderly and those watching out for them can have some measure of protection by taking a few basic precautions.

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- Do your homework when selecting a professional advisor, even if the advisor comes highly recommended by a friend or family member. This means confirming that the person is registered or licensed and has not left a trail of mistreatment of other clients.
- Powers of attorney (POA) are helpful, maybe even essential, as age takes its toll on an individual's capacity to handle financial matters. But the potential for misuse of a POA is great, since the appointed person generally has free rein to do whatever the elderly person could do on his or her own. The selected person must be trustworthy, and it is a good idea to have an attorney review the POA document.
- The array of account numbers, Social Security numbers, pins, passwords, and other such sensitive information that most of

us accumulate over time can serve as a thief's key for raiding your savings and investments. Guard this information carefully.

- It may be an after-the-fact measure, but check your credit card and bank account statements carefully for any unauthorized or suspicious transactions. If you see one, contact the financial institution right away.

- Reverse mortgages allow homeowners who are at least 62 years old to borrow money from the equity in their homes. This device has its place under the right set of circumstances, but a reverse mortgage can also become a device for scam artists. Be wary of deceptive, too-good-to-be-true offers and high-pressure tactics.

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## Hands-Free Still Harmful

Most people understand that holding a cell phone and talking while driving is dangerous, but a recent case shows that any time a driver is distracted by his or her phone—even a hands-free phone—it can be dangerous.

The case involved a collision where an employee of Coca-Cola crashed into another driver. The employee was talking on her cell phone at the time but, per company policy, was using a hands-free device. The evidence showed that she was so engrossed in her conversation, she failed to notice that she did not have a green arrow, so she turned across traffic and struck another car on the driver's side. The driver of the other car suffered a bad spinal injury and remains disabled.

Even though a hands-free device allows the driver to keep his or her eyes on the road while talking, it is still dangerous to talk and drive. Talking on the phone distracts the driver, and distracted

driving causes over 5,000 deaths and almost 450,000 injuries every year. As it turned out, the company knew this but still instituted a policy allowing employees to talk on the phone while driving if they used a hands-free device.

After hearing this case the jury found the company liable and returned a verdict of more than \$22 million for the injured driver.

### Thank You

*Thank you for trusting our firm with your legal needs. If you or someone you know has been injured due to somebody else's carelessness, please call us. We want to help.*

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## Scaffold Accidents and Injuries

Construction workers have one of the most dangerous occupations, with thousands of people killed on jobsites every year and many more injured. Some of the most common construction accidents involve scaffolds or other types of lifts. These accidents can be very serious and usually result either from falls due to defective scaffolding or from objects plummeting from scaffolding that injure a worker below.

Unfortunately, suits involving injured construction workers are often more difficult to handle than other kinds of injury cases. An injury or death at a construction site involves the acts of many workers employed by different companies, each of whom is pointing at someone else as the party responsible. The question of liability can depend on whether a party is the property owner, the general contractor, the subcontractor, or someone else. Pictures of the accident site are sometimes vital evidence to show the negligence of others.

Because of these complexities, it is vital to have a lawyer involved in a construction injury case ASAP. If you or a loved one has been injured on a construction site, contact our office and let us go to work for you.

## Swimming Pools

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have a legal claim for damages. However, the type of case you have and the kind of damages you can recover depend on both 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 a different legal strategy 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.*