

Lessons learned in litigation

By Reed Hardesty

Ms. Johnson never learned to swim as a child. When she became engaged she wanted to swim in the ocean during her honeymoon so she took swimming lessons at the City pool. She had attended eight lessons and was progressing as a swimmer. After the lessons, the pool was changed to Community Open Pool swim with three designated lanes for lap swimmers. Participants in the swim lessons were allowed to continue to swim after their lessons and during the Open Pool swim times. Ms. Johnson started lap swimming in the lane closest to the pool edge. A new lifeguard was established for the Open Swim and Ms. Johnson's instructor left the pool area for the office area. A few minutes later an off duty EMT that was lap swimming alerted the lifeguard and dove to assist Ms. Johnson who was motionless at the bottom of the pool. Life saving measures were started immediately; however Ms. Johnson never regained a pulse and was pronounced dead.

The pool's lifeguard stand was less than six feet tall and the positioning at the time was not effective in seeing the area of the pool where Ms. Johnson drowned. The nineteen-year-old lifeguard was earnest but admitted he could not see Ms. Johnson prior to being alerted by the EMT lap swimmer. Since no one saw how the drowning event started we could not determine if there was a precipitating event to the drowning. One speculation was she struck her head on the pool side ladder, lost consciousness and sank to the bottom of the pool. There was no indication she suffered a heart attack or other medical emergency while swimming. There were many unknowns.

The City called WCIA the day after the event and opened a liability claim and assigned a defense attorney to defend the expected future claim. The defense attorney worked with City pool staff on documenting the operations and WCIA hired a Pool expert to review the facility. The expert analysis aided in understanding the weaknesses of the liability defense all under the protections of attorney client privilege.

Ms. Johnson's parents filed a Claim for Damages against the City for \$15 million dollars. They alleged negligent supervision by the City through the pool lifeguards and alleged the pool facility did not meet national standards. Their attorney contacted the local TV news which reported extensively on the event.

[WAC 246-260](#) provides information on what operational policies are expected of public pools. [Section 131.6.B](#) states: "Ensure all persons being instructed are monitored at all times while in the pool to ensure thirty-second response time can be provided." Since Ms. Johnson transitioned from instruction her Estate's attorney asserted the Pool violated this State standard.

Through the litigation we learned Ms. Johnson had a master's degree, was a mentor to youth, and kept a daily gratitude journal. She was a joyous person that was a help to her community and her loss was deeply felt by her friends and family. Ms. Johnson was in her late twenties, living financially independently from her parents and she had no dependents, so the State wrongful death beneficiary statutes provided little standing for anyone to claim financial impacts from her death. As personal representatives of Ms. Johnson's Estate, her parents settled with WCIA for \$350,000 very early in the litigation.

Drownings in member run pools are rare events. As in most claims, allegations will focus on violation of the standard of care the Pool owed to its users. Washington State Dept. of Health ([WAC 246-260](#)) United States Lifesaving Association (USLA), The American Red Cross and WCIA's Liability Resource manual may be useful resources to aid in reviewing your lifeguard operation policies.