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Fla. Court Tosses $104 Million Pool Death Award

Dan Cordtz
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In the summer of 2000, 14-year-old Lorenzo Peterson went swimming with a friend in the pool of the Village Apartments, in North Miami, Fla., where his mother lived. His friend removed a loose, protective grate in the bottom and Peterson was sucked into a drain with such force that he could not be extricated until rescuers broke into a shed to turn off the pump's electric power.

By then, 12 minutes later, he had suffered brain damage that left him in a permanent vegetative state.

His representatives brought claims against Roberta Segal, owner of the Village Apartments; All Florida Distributors, the firm hired to maintain and operate the pool; and Sta-Rite, the Wisconsin-based manufacturer of the pump and drain. The first two defendants settled for $4 million and $3 million respectively.

In a 2003 personal injury trial, the jury found that Sta-Rite was liable both because the design of the drain and pump was defective, and because the company had failed to give reasonable warning to users of the dangers of the equipment.

Last week, a unanimous three-judge panel of the Florida 3rd District Court of Appeal said the jury was right that Sta-Rite was liable. Nevertheless, the panel reversed both the verdict and the $104 million judgment that the judges called "shockingly excessive." It was believed to be the largest verdict in an individual personal injury case in Florida history.

The decision written by Chief Judge Alan Schwartz in *Sta-Rite Industries v. Lewis J. Levey, as personal representative of the estate of Lorenzo Peterson* says there was a "fundamental error concerning the apportionment of liability between and among Sta-Rite, the pool owner and the maintenance company."

In last year's trial, Miami-Dade County Circuit Judge Harold Solomon instructed the jury to accept the plaintiff's theory that Peterson's injuries were caused by two accidents -- one when his arm was caught in the drain, and the second when the suction was not released because of the faulty design of the pump. This led the jurors to assign 80 percent of the liability to Sta-Rite, 20 percent to the Village Apartments and no liability to the maintenance company -- even though the drain grate was fastened with loose, rusty screws.

The 3rd DCA panel ruled that the two-accident theory, which originated in automobile crashworthiness cases, made no sense in the *Peterson* case. "Neither logic nor common sense would permit an artificial division of the causation of the plaintiff's damages into separate seconds-long intervals during all of which he remained in the same dangerous position," the panel said. "No rational person could find, as the jury was told it must, that the failures of Segal and All Florida to secure the grate or to provide ready access to an available means to turn off the pump had nothing to do with Lorenzo's ultimate condition."

The case was remanded with instructions that in any retrial, the jury will not be limited in determining the degree of negligence and liability on the part of all of the defendants. Both Segal and All Florida must be considered on the same basis as that of Sta-Rite and damages apportioned accordingly.

Moreover, the original damage award must be determined anew. That amount was based, the court said, on "equivocal and uncertain testimony" that Peterson would live for another 40 years and on "almost entirely speculative testimony" that for all of that time he would suffer excruciating "conscious" pain in spite of his vegetative state.

A footnote in the ruling noted that Peterson died earlier this year while the appeal was pending. Another footnote said that poses a question as to whether the personal injury case must now be abated and refiled as a wrongful-death suit, although one of the Peterson attorneys said they will probably oppose any such action.