

# 2016 HOSPITALITY LAW CONFERENCE

FEBRUARY 22-24, 2016,

## AQUATIC ACCIDENT INVESTIGATIONS

Presented by:

TJ Cate, P.E., S.E.

&

Kari Jacobson



**HospitalityLawyer.com**

worldwide legal, safety and security solutions

®

# PRESENTERS



## Kari K. Jacobson

La Cava & Jacobson, P.A.

- ❖ Ms. Jacobson is principally involved in the defense of self insured companies, insurance companies and those whom they insure
- ❖ Her practice is primarily concentrated in the areas of general liability, premises liability, negligent security, construction litigation, professional liability, employment discrimination claims, automobile, trucking and commercial freight defense litigation claims.



## TJ Cate, P.E., S.E.

Division Manager, Rimkus Consulting Group

- ❖ Professional Engineer
- ❖ General Contractor, Swimming Pool Contractor
- ❖ Certified Aquatic Facility Operator



# 2016 HOSPITALITY LAW CONFERENCE

FEBRUARY 22-24, 2016,

## AQUATIC ACCIDENT INVESTIGATIONS

Presented by:

TJ Cate, P.E., S.E.

&

Kari Jacobson



**HospitalityLawyer.com**<sup>®</sup>

worldwide legal, safety and security solutions

# COURSE OBJECTIVES

- Risks
- Laws & Rules
- Operation
- Case Studies







# SWIMMING POOL LOSSES AND CLAIMS

Dollars and Sense



# JURY AWARDS

Jury awards \$12.3 million to family of girl who drowned – Largest in Waterbury history.

Drowning victim's family awarded \$16.3 Million in damages; one of the largest-ever judgments in a drowning case.

\$650,000 - Premises Liability - Injuries to a woman's leg resulting from slipping on a pool deck.



# Richie RICH<sup>®</sup> IN "POOL OF FUN"

THE POOR LITTLE RICH BOY

BOYBOY,  
RICHIE! ~~WHAT~~  
A POOL!

IT WAS JUST COMPLETED  
TODAY, FELLOWS, AND I  
WANTED YOU TO BE MY  
VERY FIRST GUESTS!




Richie Rich  
**RELICS**<sup>™</sup>  
BLAST FROM THE PAST



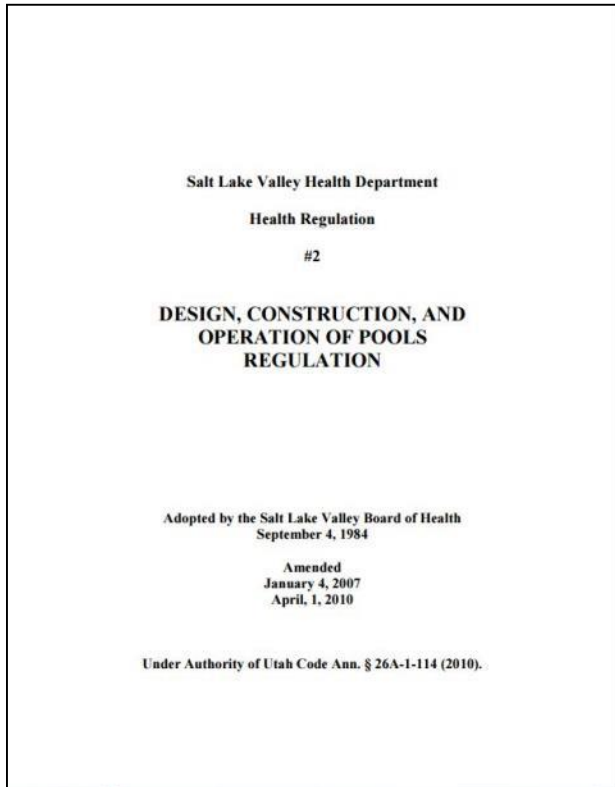
# LAWS AND REGULATIONS



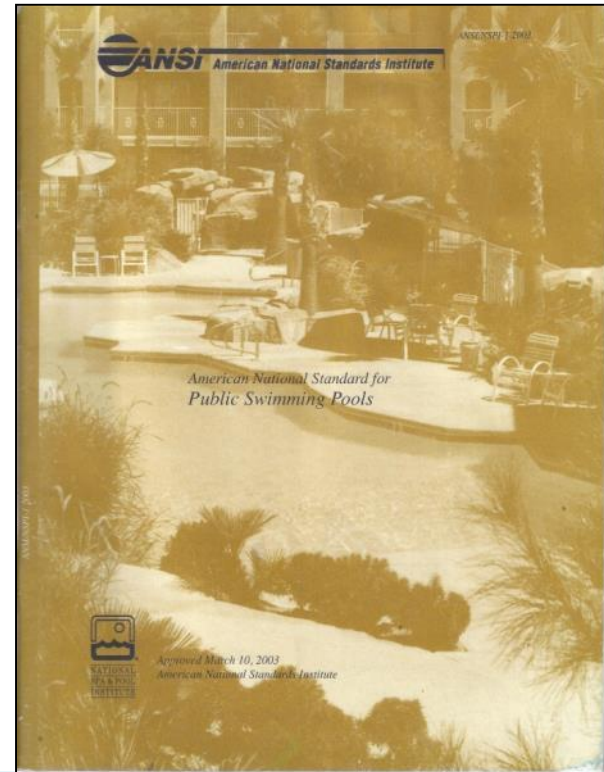
## PRIMARY BUILDING CODES

- International Building Code
    - Chapter 31 – Special Construction
  - ANSI/APSP – 1 American National Standard for Public Swimming Pools
  - ANSI/APSP – 2 American National Standard for Public Spas
  - ANSI/APSP – 7 and 16: Suction Fittings and Entrapment
  - International Swimming Pool and Spa Code
    - Incorporates the 3 ANSI codes above into one standard
  - Local Health Departments (Usually the most stringent)
- 

# STRICT LOCAL CODES



63 PAGES OF RULES



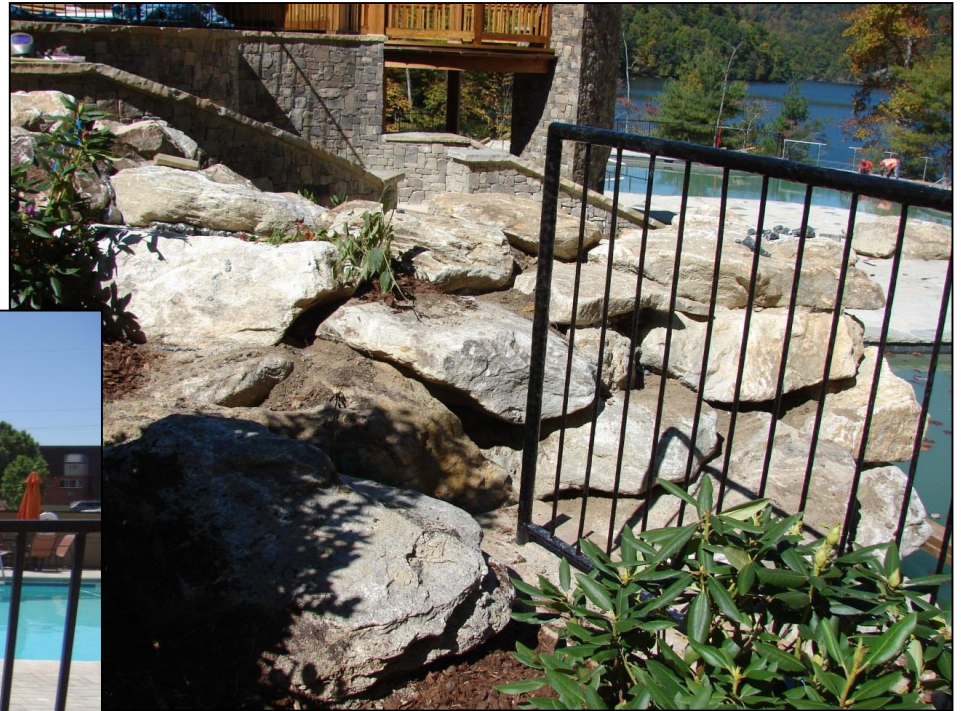
34 PAGES OF RULES

# NOT TO BE OVERLOOKED

- National Electrical Code
- International Fuel Gas Code
- International Fire Code
- International Mechanical Code
- International Plumbing Code



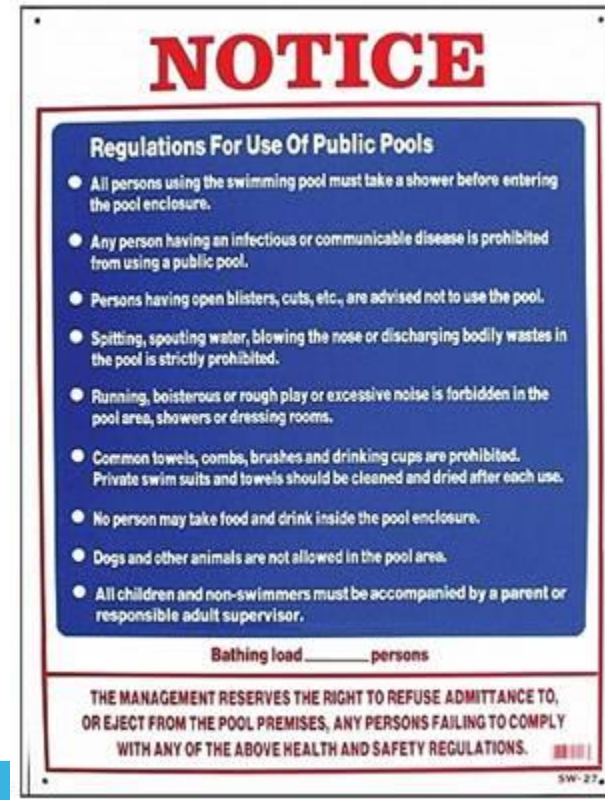
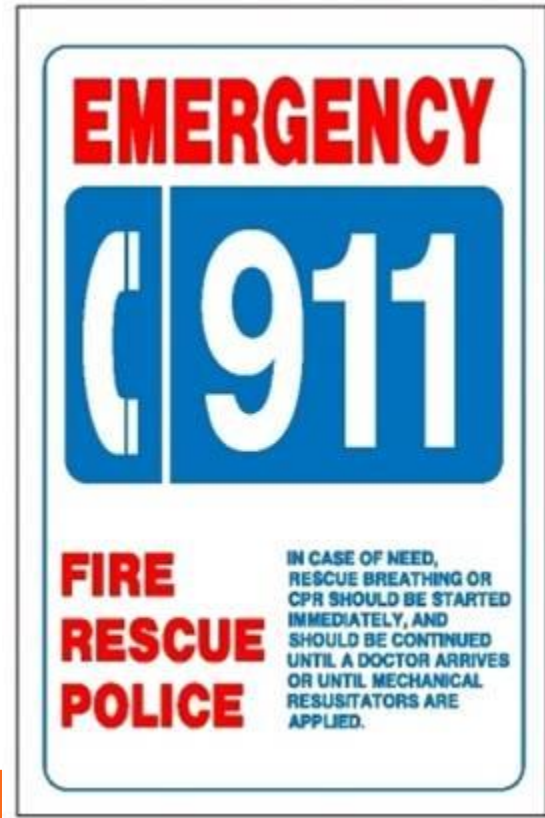
# ACCESS CONTROL



# FENCES

- 2012 IBC and ISPSC:
  - Fence shall be 4 feet high (measured from the side away from the pool)
  - No passage of a 4-inch sphere
  - No more than 2-inches between the bottom and the un-paved ground
  - Clear zone of 36-inches around the exterior of the barrier
  - Self-Closing, Self-Latching Gate
  - No opening greater than  $\frac{1}{2}$ " within 18-inches of the latch
- Local Codes often govern:
  - Texas Class A or B pools require 6 feet high.
  - Nevada requires 5-feet high.

# SIGNS





**POOL CAPACITY**  
~~~~~  
**PERSONS**  
~~~~~

**WARNING**  
**NO LIFEGUARD ON DUTY**  
**BATHERS SHOULD NOT**  
**SWIM ALONE**  
CHILDREN 14 AND UNDER SHOULD NOT USE POOL  
WITHOUT RESPONSIBLE ADULT SUPERVISION

## **HYGENE/BEHAVIOR RULES**

(A) A BATHER USING THE FACILITY MUST TAKE A CLEANSING SHOWER BEFORE ENTERING THE POOL ENCLOSURE. A BATHER LEAVING THE POOL TO USE THE TOILET MUST TAKE A SECOND CLEANSING SHOWER BEFORE RETURNING TO THE POOL ENCLOSURE.

(B) ANY PERSON HAVING A COMMUNICABLE DISEASE TRANSMISSIBLE BY WATER WILL NOT BE ALLOWED TO USE THE POOL. A PERSON HAVING ANY EXPOSED SUB-EPIDERMAL TISSUE, INCLUDING OPEN BLISTERS, CUTS, OR OTHER LESIONS MAY NOT USE A PUBLIC POOL. A PERSON WHO HAS OR HAS HAD DIARRHEA WITHIN THE LAST TWO WEEKS CAUSED BY AN UNKNOWN SOURCE OR FROM ANY COMMUNICABLE OR FECAL-BORNE DISEASE MAY NOT ENTER ANY PUBLIC POOL.

(C) ANY CHILD UNDER THREE YEARS OLD, ANY CHILD NOT TOILET TRAINED, AND ANYONE WHO LACKS CONTROL OF DEFECATION SHALL WEAR A WATER RESISTANT SWIM DIAPER AND WATERPROOF SWIMWEAR. SWIM DIAPERS AND WATERPROOF SWIMWEAR SHALL HAVE WAIST AND LEG OPENINGS FITTED SUCH THAT THEY ARE IN CONTACT WITH THE WAIST OR LEG AROUND THE ENTIRE CIRCUMFERENCE.

(D) RUNNING, BOISTEROUS PLAY, OR ROUGH PLAY, EXCEPT SUPERVISED WATER SPORTS, ARE PROHIBITED.

(E) DIAPER CHANGING IS NOT ALLOWED AT POOSIDE. DIAPER CHANGING MUST BE DONE IN RESTROOMS OR CHANGING STATIONS. THE PERSON OR PERSONS WHO CHANGE THE DIAPER MUST WASH THEIR HANDS THOROUGHLY WITH SOAP BEFORE RETURNING TO THE POOL. THE DIAPERED PERSON MUST UNDERGO A CLEANSING SHOWER BEFORE RETURNING TO THE POOL.



# DECK AREAS

- Non-Slip
- Unobstructed
  - 5 feet of clear space all around the pool
- Cleanable
- Drainage:
  - Standing water “not deeper than 1/8-inch 20 minutes after the cessation of the addition of water to the deck”



# STEPS AND LADDERS

- Steps: Rise and Run
  - 12-inch Maximum Rise
  - 10-inch Minimum Run
- Ladders:
  - Two Handrails Required
  - Uniform Distance Between Treads: Not Less Than 78-inches, Not More than 12-inches.

# CERTIFIED OPERATORS

- Public Pools must be supervised by an operator that is certified through a recognized program approved by the local jurisdiction.
  - NRPA – Certified Aquatic Facility Operator.
  - NSPF – Certified Pool Operator

# PAPERWORK, PAPERWORK, PAPERWORK!

- Written records of “...**all information** pertinent to the operation, maintenance, and sanitation of each pool facility”
- “These records must include disinfectant residual in the pool water, pH and temperature of the pool water, pool circulation rate, quantities of chemicals and filter aid used, filter head loss, filter washing schedule, cleaning and disinfecting schedule for pool decks and dressing rooms, occurrences of fecal release into the pool water or onto the pool deck, bather load, and other information required by the local health department. The pool operator must keep the records at the facility, for at least two operating seasons.”

The public pool owner, in consultation with the qualified operator designated in accordance with 392-302-29(1), shall develop an operation, maintenance and sanitation plan for the pool that will assure that the pool water meets the sanitation and quality standards set forth in this rule. The plan shall be in writing and available for inspection by the local health department. At a minimum the plan shall include the frequency of measurements of pool disinfectant residuals, pH and pool water temperature that will be taken. The plan shall also specify who is responsible to take and record the measurements.





# VGB ACT REQUIREMENTS

Minimum of Two Drains, or an approved Suction limiting device



Tested, certified, approved drain cover

**NEW Unblockable!**  
No second drain or SVRS required – two drains in one



Part # FCxxx

# CERTIFICATES ARE REQUIRED

**VGB - 2008**  
**CERTIFICATE OF COMPLIANCE**

[REDACTED] LAZY RIVER  
[REDACTED]

The Suction Outlet described as: **MAIN OUTLET: 141" X 192"** is compliant with the requirements set forth in the **ASME A112.19.8-2007 with Addenda A112.19.8a-2008** standard

 For Single Drain Use  
10,000 GPM—Field Fabricated Outlet  
Life: 15 years (actual UV exposure time)  
Floor Only


The suction outlet is only certified for the conditions as they existed at the time of our visit on **May 14, 2010**. Modifications to pumps, filters, piping, grates, plaster, frames, or any other element affecting the performance or condition of the outlet void this certification.

[REDACTED]

# PATRON RESPONSIBILITIES

**ASTM F2376: Standard Practice for Classification, Design, Manufacture, Construction, and Operation of Water Slide Systems refers to Standard F770 for Patron Responsibilities.**

**ASTM F770: Standard Practice for Ownership, Operation, Maintenance, and Inspection of Amusement Rides and Devices.**

- There are inherent risks which the patron accepts by participating.
  - **Duty to exercise good judgment and act in a responsible manner.**
  - Obey all written and oral warnings.
  - Not participate when under the influence of drugs or alcohol.
  - Properly use all ride or device safety equipment provided.
- 

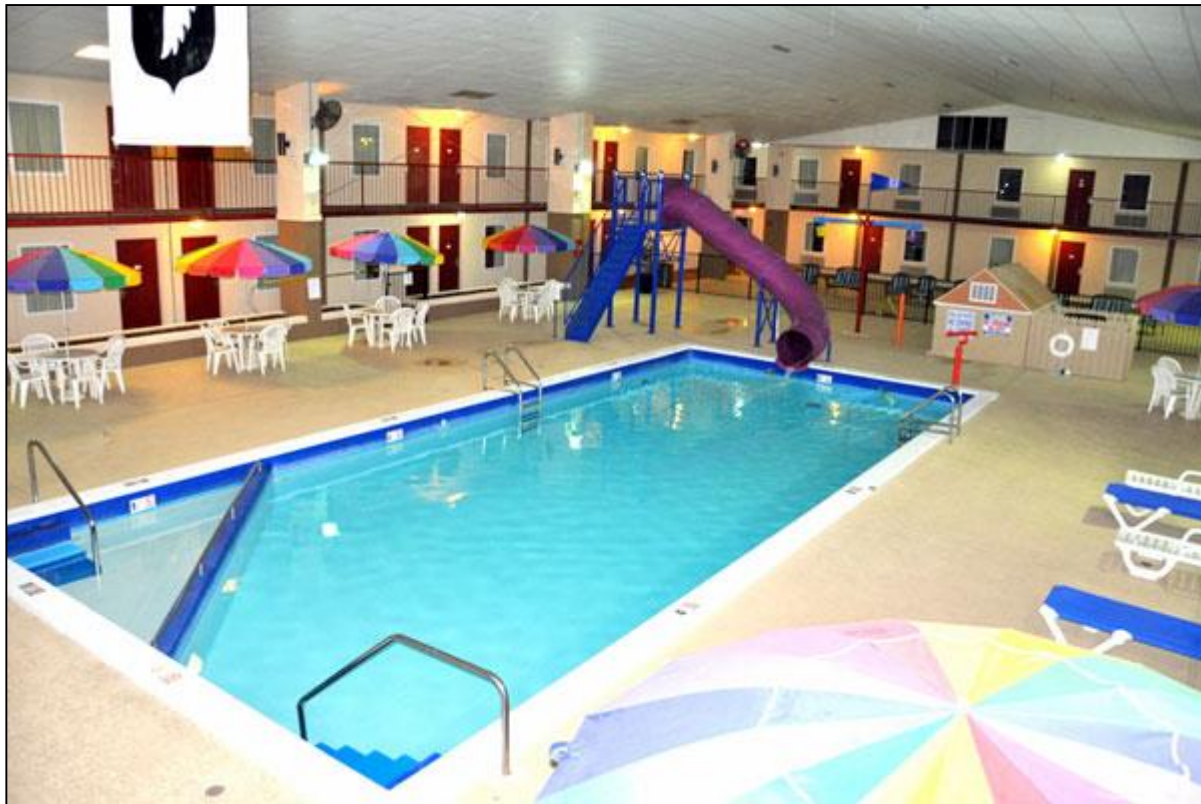


# A POOL IS NOT ENOUGH



- Waterslides
- Play Structures
- Lazy Rivers
- Splash Pads

# Lifeguards



- Historically have not been required at Hotel swimming pools.
- Many jurisdictions now require them if a diving board or slide is present.
- Training: Initial Certification, Facility Specific, Ongoing. **RECORD KEEPING!**

# Case Study #1

## Waterslide Injury in Orlando, FL









3 FT 6 IN 1.05 M



# SPLASH ZONE



# Case Study #2

## Hotel Swimming Pool Drowning in Dallas, Texas



**IN CASE OF  
EMERGENCY  
DIAL 911**

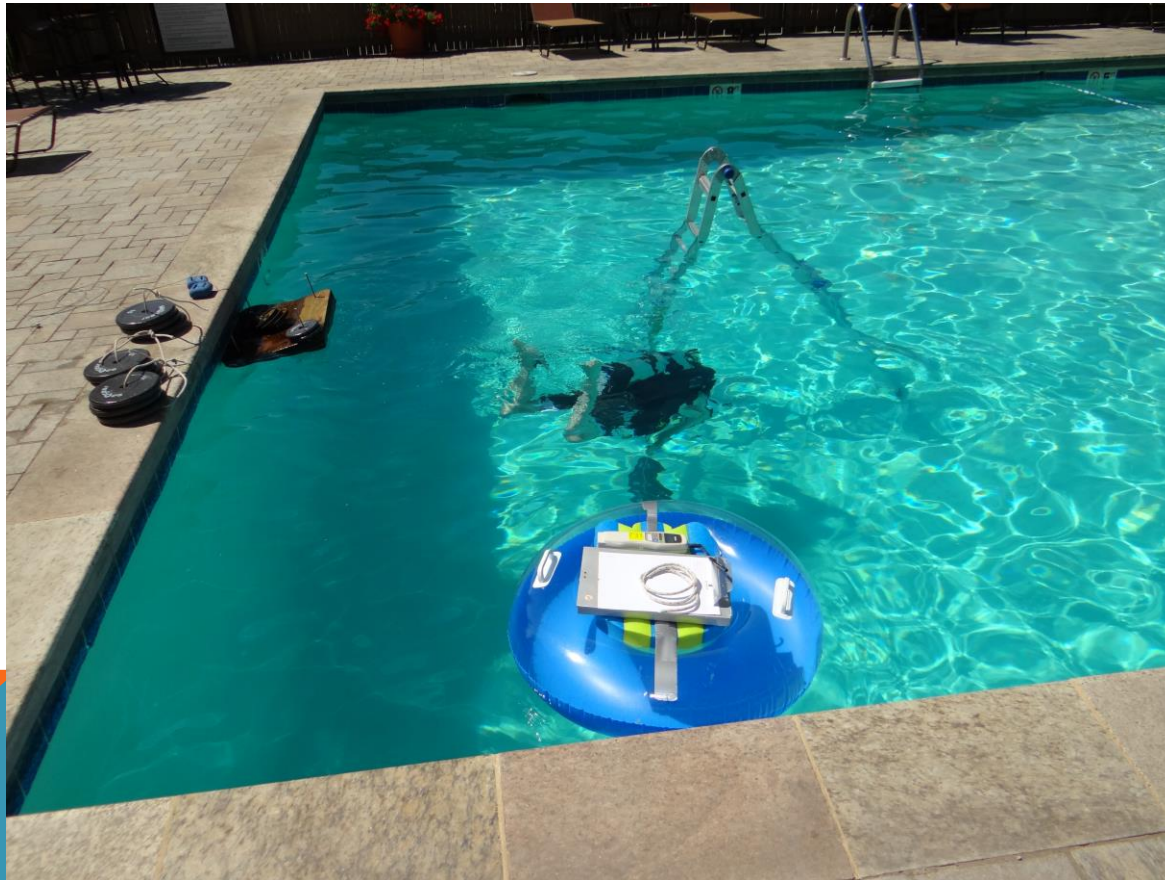
  
**EMERGENCY  
PHONE  
ONLY**





# Case Study #3

Drowning at a Swimming Pool in Denver, CO (VGB investigation with SCUBA)



# Case Study #4

## Slip and Fall at a Pool in Virginia Beach

