

Experts: Pool case won't be an easy one

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A manslaughter charge such as that brought against the owner of a Stamford company, which built a pool in which a 6-year-old died, can be difficult to prosecute successfully, lawyers and academics said yesterday.

Even if Shoreline Pools failed to install safeguard devices required by state building codes, it will be difficult to prove David Lionetti, its president, was directly responsible and recklessly caused Zachary Archer Cohn's drowning death, said Michael Sherman, a Stamford-based criminal attorney.

"I think the state has a tough road to follow in convincing a jury that bad work or some type of negligent installation amounts to two notches less than murder," Sherman said. "They'll need a smoking gun or some other indication of obvious disregard for safety that rises to the level of the crime."

Greenwich police on Monday charged Lionetti with second-degree manslaughter in the death of Zachary, who drowned last July 28 when his arm became stuck in the intake valve that circulated water in and out of the pool at his Taconic Road home, according to authorities.

Shoreline Pools built the pool in 2005, according to town records. The protective grate for the drain was found at the bottom of the pool, police have said.

Prosecutors said Lionetti's company didn't install a safety vacuum release system, a device that would have shut off suction to the valve in which Zachary's arm got stuck, and didn't install a dual drain system in the pool, which would have lessened the dangerous suction of the drain.

Lionetti plans to plead not guilty, according to Richard Meehan, his Bridgeport-based attorney. Deaths and injuries because of drain entrapment are tragic but rare, as reported in the United States, Meehan said.

"With the number of pools in this country, the number of entrapment deaths that have occurred is an infinitesimal fraction," Meehan said. "Not to minimize it, but I think this is the first instance where a pool company

executive has been charged with homicide over an allegation arising from building code violations."

According to federal statistics, from 1990 to 2005, 130 people were trapped by the suction of pool and spa drains, and 27 died.

Prosecutors could convict Lionetti of manslaughter if they show he chose not to outfit the Cohn's pool with the devices despite knowing of the legal requirement to do so, said Jeffrey Meyer, a professor of criminal procedure at the Quinnipiac School of Law in Hamden.

"The proper evaluation the prosecutor has to make when moving forward with the case is the degree to which there has been a violation of a clearly articulated and stated standard and to the degree that was done willfully," said Meyer, a federal prosecutor in Connecticut from 1995 to 2004.

If Lionetti maintains he was ignorant of the standards, prosecutors could counter with a "willful blindness" argument, that Lionetti deliberately overlooked learning about the building requirements, perhaps to avoid the expense or trouble of following them, Meyer said.

"That can be hard to prove," he said of willful blindness. "The prosecution is going to be better off to the extent it can prove he knew the standards than that he should of known them."

Yale Law School Professor Steven Duke said to obtain a conviction for manslaughter, prosecutors will have to prove that

Lionetti was aware of the serious risk of death posed by not installing the safety features and furthermore that he was aware that employees didn't install the devices in that specific pool.

"I think it quite doubtful that the state can succeed in imposing criminal responsibility on the president of the company vicariously and hold him responsible for what an employee of his company did or failed to do with regard to the pool at issue," Duke said.

Eugene Riccio, a Bridgeport-based criminal defense attorney, said while the case appears unusual, he could imagine a successful prosecution being made on the theory that the missing safety measures reflected a reckless level of disregard for safety.

Under state law, one factor in a manslaughter charge is "recklessness," defined as performing an action with the knowledge of a significant and unjustifiable risk of death or injury to another.

"Manslaughter is not just taking out a gun or a knife and taking somebody's life," Riccio said. "It is not unheard of for business owners to be arrested for something they do in the conduct of their businesses that is deemed illegal and results in death."

Paul Pennington, president of the Florida-based Vac-Alert, a company that manufactures a safety vacuum release system, said Lionetti could argue that Connecticut's regulations regarding installing dual-drain systems are unclear.

But Pennington said Connecticut law was clear on requiring a safety vacuum release system on pool drains.

"I think that this arrest is going to result in a whole lot of pools across the country being much safer," Pennington said. "Pool contractors are going to give more thought to following the building codes."

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