

The VGB Effect

Can residential pool owners be held responsible for failing to comply with VGB, and are service techs at risk if they don't warn?

The requirement to bring pools and spas into compliance with the Virginia Graeme Baker Pool and Spa Safety Act became effective more than a year ago. As we know, VGB mandates that all *public* pools and spas be equipped with unblockable suction outlets and/or secondary safety devices.

However, little attention has been paid to the potential liability of residential pool or spa owners and the pool service technician's duty, if any, to address the issue of residential anti-entrapment safety upgrades.

The key question here is could a residential pool owner be held liable for failing to outfit his pool with anti-entrapment systems should tragedy strike? Is a pool service technician potentially liable as well for not informing his customer of the increased safety provided by the new technology?

Surprisingly, the answer to both questions is yes.

Commonly accepted legal principles say that a landowner will be liable for injury caused by his failure to exercise ordinary care. For example, the parents of a child entrapped in a non-compliant



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residential pool would argue that the pool owner didn't exercise ordinary care because the entrapment was foreseeable and would have been prevented had the pool been upgraded with readily available anti-entrapment products.

The pool service technician would likely be sued as well for failing to advise the homeowner of the availability of VGB-compliant equipment.

The best approach for the service technician is to provide his residential customers written notification of the availability of VGB-compliant covers and SVRS products, and the safety benefits each offers. Doing so should satisfy the pool technician's duty to warn and, at minimum, provide an important element to his legal defense.

Ultimately, society has an interest in preventing entrapments. The relatively low cost of anti-entrapment covers is not a financial burden to pool owners, and the slight burden placed on pool techs to warn of the potential dangers makes it more likely that the nation's courts will move in this direction.

Now is the time to prepare for that eventuality. ■