

Connecticut LawTribune

An **incisive**media publication

Pool Death Causes Legal Ripples

Builder faces civil, criminal charges after boy's drowning

By **THOMAS B. SCHEFFEY**

The civil lawsuit against David Lionetti and his Shoreline Pools business promised to be dramatic enough. After all, a security video captured heroic efforts to try to save 6-year-old Zachary Cohn last July from a Greenwich pool installed by Shoreline.

Cohn drowned after his arm got caught in a powerful drain pump in the family's inground pool. And now Lionetti is in even deeper water. Stamford State's Attorney David Cohen last week took the unusual step of charging the pool company president with second-degree manslaughter.

Authorities say Lionetti "recklessly caused" the boy's death because his company failed to install safety devices mandated by the state in 2003 after dozens of people across the country were entrapped in drains, and injured or killed.

Lionetti's criminal defense attorney is Richard Meehan, of Bridgeport's Meehan, Meehan & Gavin. "From our preliminary research," Meehan said, "this is the first time anywhere in the country that a pool company executive has been charged with homicide arising out of a claim of entrapment."

Meehan continued: "Here [in Connecticut], the standard of recklessness is defined as that the defendant was personally aware of, and consciously disregarded, an unjustifiable risk.

"I do not believe the state can meet that very difficult burden of proof."

If convicted, Lionetti faces up to 10 years in prison. Meehan said he will plead not guilty.

The case had made national news even before last week's developments. That's partly because the boy's father, Brian Cohn, had been a successful hedge fund



ERNEST F. TEITELL



PETER M. DREYER



PAUL A. SLAGER

president. In January, he and his wife, Karen, filed a 33-count civil suit against Shoreline, its engineer, pool equipment suppliers, and the town of Greenwich, which conducts pool inspections.

The parents, according to their attorneys at Silver, Golub & Teitell, have pledged the proceeds of their civil suit to a foundation to foster childhood safety issues.

Heartbreaking Account

At 6:10 p.m. on July 28, 2007, police were called to the Cohn's home. In interviews and from the videotape, Detective Jeffrey J. Stempein learned that earlier that afternoon, Zachary and his 7-year old sister began swimming in their shorts and shirts.

Their nanny, Noemi Franco, left them to get swimsuits from the house. She told another woman, Hazel Cooper, who was watching a 2-year-old sibling, to keep an eye on the older children.

On the video, "Zachary can be seen swimming to the deep end of the pool and shortly thereafter becomes entrapped in the intake suction line of the pool located at the far end of the pool," the detective wrote. "Jenna, 7, then notices her brother is in trouble and alerts Cooper, who then goes to the deep end of the pool where she looks into the pool for approximately one minute before she realizes Zachary's arm is stuck in the intake line and he is drowning."

Cooper, a non-swimmer, screams. Franco runs from the house, jumps in and tries to rescue Zachary. Next the father jumps in and tries to help. The mother appears, realizes what is happening and shuts off the electrical power to the entire house.

Only then is the boy freed. Brian Cohn, instructed by a 911 operator, begins CPR. The father would later tell police "he was pulling with all his strength and could not pull Zachary's arm from the pool suction

pipe.”

As recounted in the arrest warrant and the civil complaint, when the pool was built in 2005, new building code amendments required that pool intake drains like this, which powered a fountain display, be built in pairs so that if one were obstructed, powerful suction pressure would not build up. In addition, state building code provisions introduced in 2003 required installation of a safety vacuum release system (SVRS), to automatically shut off the pump if the inlet is obstructed.

“No such device was ever installed,” Detective Stempein wrote.

In the weeks before the accident, the pool company had reportedly been notified that the drain cover was loose. According to the civil complaint, Shoreline Pools employees returned several times for maintenance and did not fix the loose drain cover. It was found at the bottom of the pool the day Zachary died, according to the arrest warrant.

The civil complaint also alleged Shoreline failed to place an emergency electrical shut-off switch in a reasonably close location. The drain, three feet below the water level, was located so that a trapped swimmer could not get air. The Cohns, the arrest warrant stated, were not warned that the installation was dangerous and not code-compliant.

The civil action is being handled by Ernest F. Teitell and two other partners at Silver, Golub, Paul A. Slager and Peter M. Dreyer. In an interview, Teitell and Slager said the negligence that led to the boy’s

death rose to the level of legal recklessness. Their complaint includes an unfair trade practices claim, noting that the Shoreline Pools web site advertised that it “has the experience, expertise and resources to handle every aspect of new pool installation.” It added, “Unlike other construction projects you may have experienced, there’s no need to look over Shoreline’s shoulder.”

Trade Shows, Mail

Prosecutor David Cohen said investigators spent a year on the case before deciding to charge Lionetti, whose company installs more than 150 pools each season.

In August 2007, according to the arrest warrant, Greenwich police executed warrants to seize all the plans, diagrams, plumbing and electrical drawings, and other paperwork for the Cohn’s pool installation. Shoreline Pools attorney Edward Gavin wrote that the entire records request encompassed “tens of thousands of documents.”

In an Oct. 12 letter, he acknowledged that “none of the construction records contain any plans or plumbing schematics indicating safety vacuum release systems were in fact installed on these pools and spas.”

The police also contacted the Northeast Pool and Spa Association in Morganville, N.J., which sends industry news to its members and sponsors an annual trade show in Atlantic City. According to the warrant, the association mailed out an alert about the 2003 building code changes in Connecticut that required SVRS devices.

Greenwich detectives also ascertained that Shoreline Pools employees attended the Atlantic City trade shows between 2004 and 2007, at which manufacturers displayed the newly-required safety devices.

A Greenwich officer interviewed the president of All-American Pools in Norwich, John Romano, a past president of NESPA. He acknowledged that he did not know about the 2003 code change until spring 2005. But, Romano said, in October 2005 he called the heads of pool companies around the state to alert them. “One of the people I personally spoke to was David Lionetti of Shoreline Pools,” he told police, according to the arrest warrant affidavit.

Meehan, the defense lawyer, said his client has cooperated in the investigation. He said he has requested “a great deal of information” from the state, and that a trial was likely a long way off. “It’s our view that the state set the bar way too high in charging reckless manslaughter, and charging the president of the company personally,” Meehan said. “Shoreline Pools employs over 300 people.”

There have been 150 pool drain entrapments nationwide and 48 deaths since 1985. Given all the inground pools in the country, the entrapment rate is “infinitesimal,” said Meehan.

“My clients are absolutely heartbroken to think that one of their pools would have been involved in the death of a child,” Meehan said. “They have had nothing but positive experiences in the 40 years this company’s been in existence.” ■