The nice thing about standards is that there are so many of them to choose from.

—Andrew S. Tanenbaum

The Redding Pilot

with the news of Georgetown

41ST YEAR NO. 31 — Thursday, July 31, 2008 — 75 CENTS

Marx family is suing town after near drowning

by Rachel Kirkpatrick
rkirkpatrick@thereddingpilot.com

The parents of Chandler Marx, the boy who nearly drowned at Topstone Park in August 2006, have filed a lawsuit against the town and 14 public employees.

The suit, filed on July 24 in Danbury Superior Court, alleges the town and the employees failed to properly operate a summer camp, leading to their son's near death and severe brain injury.

On Aug. 2, 2006, Chandler, who was 8 years old at the time, was at the swimming pond with the Park and Recreation camp program when he went underwater near a deep-water dock. According to the police report on the incident, lifeguard Evan Hanczor, then 19, pulled the unconscious boy from seven to eight feet of water and brought him to shore.

Chandler was transported to Danbury Hospital and immediately airlifted to Westchester Medical Center, where he remained unconscious for three days, the lawsuit says. He spent the next three weeks in Westchester Medical Center, after which he spent months in Blythedale Children's Hospital, receiving intensive therapies.

"Unfortunately, Chandler has been left with a severe brain injury, causing motor and cognitive

See Marx on page 14A

Marx family is suing the town over near drowning

Continued from Page One

impairments," said the family's attorney, Angelo Ziotas of the Stamford-based law firm Silver Golub & Teitell LLP, in a press release.

The suit, which also names Park and Recreation Director Rob Blick, and former Park and Recreation Commission Chairman Susan Goldman, alleges that lifeguard Brittany Shea, then 19, observed a swimmer struggling and bobbing in the water, but did not take action. It was when Chandler's brother, Jarrod, asked where his brother was, the suit alleges, that Evan called for a "buddy check" based on what Brittany said she saw during the shift change that was happening simultaneously.

Mr. Ziotas asserts that Chandler was underwater "for approximately five minutes" before the shift change took place.

According to the police report, buddy checks are conducted every 10 minutes. During a buddy check, campers are called from the water to their individual counselors on shore, who make sure all campers are accounted for. It had been three minutes since the last buddy check that day, the report said.

In the police report, however, Brittany said that while executing the shift change at the lifeguard chair she observed what she believed to be a "camper bobbing in the water" and alerted Evan to her observation.

"Believing there was a problem," the report said, "Evan told a counselor to check bathrooms and alert the other guards. Evan stated he entered the water and swam to the location where Brittany had indicated someone may be bobbing."

The suit also alleges that all children participating in the camp were supposed to be given a swim test (dock test), after which "only those children who were deemed strong swimmers were permitted to swim in water deeper than their chest."

According to the police report, "a number of counselors and lifeguards interviewed" said that Chandler never expressed interest in being dock tested and, in addition, had never strayed into deeper water.

The suit alleges negligence on behalf of the defendants for failing to properly supervise Chandler, who had not been dock tested.

"Despite the fact that four lifeguards were on duty at this time and that this was a busy, hot day at Topstone, only three lifeguards supervised swimmers," the suit alleges.

It was recounted by Laura Anderson, assistant Park and Recreation director, in the police report that there were six camp counselors with the children in addition to a junior counselor. Five lifeguards were assigned to duty on that day.

Chandler's parents, Eric G. Marx and Carol S. Coderre-Marx, issued this statement last Thursday: "On behalf of our son, we have filed a lawsuit because, despite the best efforts of so many dedicated physicians, therapists, and teachers, Chandler has been left with a serious brain injury that affects him every day. This injury was preventable and occurred because of the negligence of people to whom we had entrusted our son.

"However, we are grateful for the support that our family has received from the community in Redding and regret the fact that all of the persons named in our suit needed to be defendants as we had hoped that the town would have accepted responsibility for its employees and this tragic event.

"We understand that the town reviewed and revised its procedures at Topstone after Chandler was injured and that the state of Connecticut has recently undertaken a review of the procedures at all state parks as well. We sincerely hope that these steps prevent another young child from nearly drowning," Chandler's parents said.

Mr. Ziotas said because the town's attorney declined an offer from the Marx family to have the claim brought solely against the town, it was necessary, in his opinion, to bring the suit against all the individuals involved in the incident.

He disputed First Selectman Natalie Ketcham's claims in a recent daily newspaper article that there was no offer to have the claim brought solely against the town.

In a follow-up statement, Mr. Ziotas said that a municipality, like the town of Redding, "unlike the citizens of Connecticut or even a business, has all kinds of legal privileges and immunities that they can claim when they are sued.

"Some of these special rules do not apply to town employees. For that reason, I recommended to my clients that they sue all of the individuals involved, unless the town agreed that it would play by the same rules that apply to its employees," Mr. Ziotas said. "There was no reason for the town to turn down my offer, because, under Connecticut law, the town must pay any and all damages assessed against the lifeguards, camp counselors and other employees."

Ms. Ketcham said this week that the lawyers for the Marx family could have chosen to sue the town directly, without naming any individual employee as a defendant.

"They presumably felt that the best legal strategy for their client was to assert claims against individuals, but it is wrong to try to blame the town for their decision," Ms. Ketcham said. "The only communication from the lawyers mentioned the possibility of an agreement acceptable to them, with no details, to induce them to refrain naming individuals as defendants."

In the initial letter sent to the town, a copy of which was provided to The Pilot, Mr. Ziotas said his clients would be forced to file additional notices (include the other individuals in the suit), unless he could reach "certain agreements" with the town, which would make the notices, in his opinion, unnecessary.

Ms. Ketcham said all town employees will be defended by the town's liability insurance counsel, and will be indemnified by the town so that they will have no personal liability.

"The town does not believe that its employees were negligent — indeed, one of the lifeguards who is now being sued actually performed the rescue," she said.

One consequence of "our adversarial legal system," she said, is that one party must "try to portray the other party as causing harm through negligence or lack of care."

"Although this may have to be done in the courtroom, it does not have to be done by press release or in the newspaper," she said. "Unfortunately, the town never received a constructive communication for the purpose of resolving this matter prior to litigation."