

DAILY REPORT

A SMART READ FOR SMART READERS

An ALM Publication

Judge Douses Pool Company, Exec With \$5M Default Award in Near-Drowning Case

GREG LAND | gland@alm.com

RULING IN A lawsuit brought by the parents of young girl who nearly drowned in a Douglasville swimming pool, a Fulton County judge threw cold water on the pool management company and its former president, ordering them to pay \$5 million, including \$3 million in punitive damages and \$1 million for intentional fraud.

The judgment comes more than 11 years after Ashton Schneider, then 7, suffered a traumatic brain injury after a lifeguard at the Chapel Hills Community Pool failed to notice the child sink to the pool bottom until other swimmers rushed to her rescue.

Plaintiffs attorney Robert Hammers of Schneider Hammers said he thinks the defendants, USA Pools Management and its president, Troy Avery, have sufficient resources to cover most of the judgment.

Hammers noted that the punitive damages and those for intentional fraud are not dischargeable by bankruptcy.

“We believe there are assets and cash available,” said Hammers, who is the uncle of now-18-year-old Ashton.

“It was important for them to be found fraudulent [because they said] they had trained lifeguards and were properly insured when they weren’t,” he said.

Hammers and firm colleague Ashley Mitchell said the company Avery



ROB HAMMERS

Plaintiffs attorney Robert Melvin Hammers Jr. is the uncle of a girl, now 18, who was 7 years old when she nearly drowned at a Douglasville community pool operated by USA Pools Management.

launched shortly after the accident, USA Management, has hefty contracts to manage facilities around the country, including one with the state of New York that is itself worth \$1 million.

“I don’t know if we can get all \$4 million of the nonbankruptable judgment, but we’re going to pursue it,” he said. “Somebody needs to put these folks out of business.”

Several co-defendants, including Avery’s father, who founded the company, settled out of the case before Fulton County State Court Judge Myra Dixon issued her order.



ASHLEY MITCHELL

Avery’s attorney, Kirk Watkins with Davis, Zipperman, Kirschenbaum & Lotito, said his client is considering his options and hasn’t yet decided how to respond to the ruling.

Watkins noted that, because his client had been declared in default, during a bench trial last month, Avery “did not have an opportunity to present his story in this case.”

The defendant company is one of nine interrelated USA Pools entities named in the lawsuit. Watkins said that, at the time of the accident, Avery “was basically working for his father, doing the day-to-day operations,” but was not

responsible for their structure or corporate officers.

“The companies were all owned by Mr. Avery’s father, Robert Legg,” Watkins said.

“Robert retired sometime around 2000, but after that he would still come in and tell Mr. Avery what to do; he was not really retired,” he said.

Shortly after the accident, Avery and his father “kind of went their separate ways,” he said.

Avery, he said, was not even served with a copy of the amended complaint until just before the trial.

“Then his dad settled at the last minute and just left it all with him,” Watkins said.

During the bench trial, Watkins said he was limited to arguing about the damages.

“They came in asking for \$22 million,” he said. “We think there may be some issues with that award, and my client is considering an appeal.”

“This is a situation where I and my client feel terrible for the plaintiffs; they’re a wonderful family,” he said.

According to the plaintiffs lawyer and court filings, Ashton Schneider—who is not related to Hammers’ law partner, Jason Schneider—was swimming in the Rosemont Pool in the Chapel Hills community in July 2007 when she went under and didn’t come back up.

The lifeguard did not notice Ashton on the bottom because the pool did not have a lifeguard stand and because she was “monitoring the door for persons entering and leaving the pool and otherwise not paying attention,” according to the complaint.

Ashton was pulled from the pool and resuscitated but “had a clear traumatic brain injury” on the day of the accident and subsequently displayed developmental disabilities and symptoms of a complex seizure disorder, Hammer said.

Ashton’s parents, Stephan and Donna Schneider, sued USA Pools and several affiliated companies along with company founder and former president, Legg. Also sued was Legg’s son, who at the time was named Troy Legg but changed his surname to Avery during the pendency of the litigation.

They also sued the lifeguard as well as the Chapel Hills Community Association and its management company.

After the suit was filed USA Pools’ insurer, Colony, filed a motion for declaratory judgment in Fulton County Superior Court, claiming that the Leggs had misrepresented the nature of company and stated that it did not involve lifeguards. Discovery was halted and the case was stayed, pending resolution of that issue.

Robert Hammers and colleague Ashley Mitchell said a company launched shortly after the accident has hefty contracts to manage facilities around the country, including one with the state of New York that is itself worth \$1 million. “I don’t know if we can get all \$4 million of the nonbankruptable judgment, but we’re going to pursue it,” Hammers said. “Somebody needs to put these folks out of business.”

In 2013, Superior Court Judge Constance Russell granted the insurer summary judgment, ruling that the Leggs had made “intentional misrepresentations” regarding the presence and training of lifeguards and that the Schneiders’ “underlying claims are based on fraud and negligence in the provision of services outside of the scope contemplated by the policy’s business description.”

USA Pools filed a notice of appeal but dropped it in 2015, and the case was reopened.

The community association and its management company settled, and the case continued against the remaining defendants, who did not respond to

discovery demands or otherwise participate, Hammers said.

In May, Dixon struck their answer for willful contempt of court, writing that she had “provided defendants lengthy rope to participate in this litigation before concluding that imposing the ultimate sanction of striking their pleadings is appropriate for their willful failure to comply with this court’s discovery orders.”

Shortly before Dixon convened a damages-only bench trial, Robert Legg settled confidentially, and the lifeguard was voluntarily dismissed without prejudice.

“Robert Legg’s only real mistake was being asleep at the wheel after he turned over the company keys to his son,” Hammers said.

On Aug. 29, Dixon entered an order awarding Ashton Schneider and her parents \$5 million.

Hammers said his niece recently graduated from high school and will soon begin attending college out of state.

Hammers said he will continue to fight for every penny his niece was awarded.

“I’ll happily chase this judgment to the end of my career,” he said.

Avery and USA Management are also defendants in a DeKalb County suit asserting that lifeguards failed to rescue a 14-year-old boy who remained under water for several minutes at the Browns Mill Aquatic Facility.

The plaintiffs attorney in that case, Douglas Dumont of Stockbridge’s Ausband Firm, did not respond to a request for comment on Tuesday. 