

# Headfirst Aquatic Incident Court Decisions: The Plaintiff's Odds

ANNIE CLEMENT  
*Saint Leo University*

&

KADENCE A. OTTO  
*Western Carolina University*

Swimming and diving are among the most popular sport and recreational activities in the United States. Within these activities is one of the most serious injuries in all of sport – the headfirst water entry injury. The National Spinal Cord Injury Association Resource Center estimated that the number of persons living in the United States in 2003 had sustained permanent spinal cord injury from diving (headfirst entry) to be between 13,250 and 21,200 (National Spinal Cord Injury Statistics, 2006). Present (1989) and Gabrielsen and Spivey (1990) published comprehensive studies on headfirst injuries resulting from entry into water for recreational purposes. Present (1989) analyzed descriptive data of headfirst injuries reported to the National Electronic Injury Surveillance System (NEISS) for a single year. Over a fifteen-year period, Gabrielsen and Spivey (1990) examined 486 court decisions and cases settled out of court. The following study was inspired by the rigor of Present's research design and report, and the depth of information gained by Gabrielsen and Spivey in examining the results of cases.

The purpose of this study was to investigate the results of published court decisions involving headfirst entry into water from 1990 to June, 2005, and to determine the factors that support the plaintiff who has the greatest chance of success in a court of law. Although tort law is state specific and attorney skill and diligent discovery efforts play a key role in success in the courts, the results of this research will provide attorneys, risk managers, and administrators a general idea of the odds of the plaintiff winning in a court of law.

## LITERATURE

For decades, researchers have sought to uncover the numerous factors that makeup the person who is most likely to sustain a headfirst diving injury. Yet, only Gabrielsen and Spivey (1990) and Munro, as reported by Bogus (2004), examined court cases. Neither of these authors tracked an identified group that would lend their work to a statistical analysis. For example, Gabrielsen and Spivey combined incidents that were never filed with the courts, cases settled out of court and decisions from trial and courts of appeals. No differentiation was made among these incidents. Munro never published his work. The absence of information concerning factors involving headfirst incidents into water resulting in injury became clear to the authors when not one case that was reviewed for this study discussed literature or studies on the subject. Further, no case discussed accident information on the subject.

While compiling spinal cord injury statistics, Young, Burns, Bowen, & McCutchen (1982) found that of 564 diving injuries, 6% were in the age group of zero to 14, 63% were in the 15 to 29 age group, 11% were between 30-44 years of age, and 1% was found in the 45 to 59 age group. "Ninety one percent were male; 9% were female. Approximately half occurred in rivers, lakes, and the ocean" (Young et al., p. 26). These results have provided researchers with baseline data specific to age and sex of the victim and the location in which the incident occurred. The overwhelming majority of victims were males between the ages of 15-29 who were diving into open bodies of water.

Present (1989) examined the reports of 83,000 headfirst pool entry injuries treated in hospital emergency rooms participating in the NEISS database between May 1st and September 30th, 1988. "Twenty-eight thousand, five hundred of the incidents were estimated to have occurred as the person was preparing to, or actually did, enter the water" (p. 5). Of these incidents, 55% involved contact with the bottom or sides of the pool; 13% used a diving board prior to entry, and 9% hit a person or object on the way to or after contact with the water.

Among those who sustained a direct impact with the bottom of the pool, 62% were male, and 33% were female. Fifteen percent of the headfirst entries occurred in above ground pools while 85% occurred in in-ground pools. Fifty percent of the incidents occurred in home pools, 37% in public or semi-public pools, and 12% in apartments (Present, 1989).

Bailes et al. (1990) studied 2,435 patients with spinal injuries sustained between 1975 and 1986; 9% had been injured while diving. Of those injured in a dive, 55% occurred in a lake. The use of alcohol was documented in 44% of

the dive cases. Using the results of Albrand and Walter's (1975) research, Bailes et al. (1990), "calculated when diving from deck level or higher it takes almost double the individual's height in water depth to allow complete deceleration of the body. Above ground shallow swimming pools are notoriously dangerous for diving" (Bailes et al., p. 158).

Gabrielsen and Spivey (1990) analyzed 486 cases, 360 involving swimming pools and 126 from the natural environment. Data was obtained from diving accidents where litigation was either in progress or had been completed. All but seven of the victims sustained injuries to the spinal cord; 84% were male, 16% were female. Fifteen victims were beyond forty years of age.

Of the 360 pool incidents, 55% were residential; 18% hotel/motel, 15% apartments/condos, and the remaining 12% was nearly an even three-way split amongst city/county, schools, and other (Gabrielsen & Spivey, 1990). Forty-one percent of the cases were in the six states of Illinois (36), Florida (27), Pennsylvania (24), California (21), Massachusetts (20), and Michigan (20) (Gabrielsen & Spivey). Seventy-four injuries occurred on spring or jump boards into in-ground swimming pools. One hundred and ninety four injuries were dives from decks and adjacent structures into in-ground pools. Forty six percent of the dives (from starting blocks and slides in the shallow end of a pool) were into shallow water (Gabrielsen & Spivey). "Twenty-six percent of the injuries occurred in an above ground pool of three and one half feet of water" (#7, p. 1). Gabrielsen & Spivey's findings affirm Bailes et al. (1990) conclusion that above ground shallow swimming pools are extremely dangerous for diving.

DeVivo and Sekar (1997) conducted interviews with 196 persons involved in diving incidents in the National Spinal Cord Injury Statistics Center. Half of them said that they dove into less than four feet of water, while 38% were injured in four to eight feet of water. Forty four percent reported that the event occurred on their first visit to the site.

Recently, Bogus (2004), in discussing litigation involving diving boards, mentioned the unpublished work of Gregory S. Munro of the University of Montana, School of Law. Munro examined 52 reported cases in state and federal court during the last half of the twentieth century. He found that "Plaintiff's obtained judgments in somewhere between 25 percent and 42 percent of the cases reaching appeal" (p. 18). Bogus noted that these numbers may be a small fraction of the total, as about 95 percent of civil cases are resolved before trial.

## METHOD

Two hundred and forty-seven court decisions rendered between 1990 and June, 2005 were obtained from Lexis/Nexis Universe (<http://0-web.lexis-nexis.com.wncln.wncln.org/universe/>) and examined for this study. In order for a case to be included in the sample a victim must have sustained a head injury while attempting to move headfirst into a body of water for sport or recreational purposes. Only incidents that were decided in a court of law and were part of the usual Court of Appeals decisions found in Lexis/Nexis federal and state case law databases were analyzed. Scuba diving and work related incidents were not used. All variables utilized in the study were obtained directly from the original court decisions.

To begin with, a document/content analysis was conducted. The content analytic method, commonly used in the field of social science, is unobtrusive and does not alter the subject (which in this case is the record of the court's decision) (Babbie, 1995). Derived from factors found to be of significance in the review of literature, cases were alphabetized by state, identified by case name, year the court decision was rendered, age of injured party, sex of injured party, type of injury or death, location of or type of water entry, behavior of participant, environment in which incident occurred, type of claim, and the case outcome.

Examination of the data found that an exact age was not available for nearly half of the cases. Often the participant was referred to as either an adult or a minor; thus, the decision was made to dichotomously categorize age by coding the variable as adult or minor (18 years of age or less). Type of injury revealed three distinct categories: died, paraplegic/quadruplegic, or severely injured. The words died, paraplegic or quadruplegic must have appeared in the description of the case for it to be considered under the terms died or quad. The word severely injured was used in many cases. If no mention was made concerning death or paraplegic/quadruplegic the case was coded as severe.

Location of or type of water entry resulted in eleven categories: above-ground pool, board dive, boat, bridge/ledge, in ground pool, other, pier/dock, racing start, run and plunge into open water, swing, and water slide. The categorized variable, "other," included examples of a dive from the following: a roof (*Robertson v. State of Louisiana through Department of Planning and Control, et al.*, 1999), lifeguard chair (*Kendrick, et al. v. Ed's Beach Service, Inc.*, 1991), or a wooden plank nailed to a tree (*Lionarons, et al. v. General Electric Company, et al.*, 1995). Under behavior of participant the search included documented evidence of horseplay, intentional entry into shallow

water, alcohol consumption, or a standard or traditional headfirst entry into water (American Red Cross, 2002).

Type of claim included the tort claims of negligence, premise liability, and products liability. Also included was the defense of immunity. In order to better examine why the plaintiff may or may not have been successful the authors tracked the strength of the immunity defense. For this study, a claim brought under negligence included the word negligence in the text, a description of an act that a reasonable person would not be expected to do or failing to do something that a reasonable person would be expected to do (ALI, *Restatement (Second) of the Law: Torts*, §282). Premise liability included a plaintiff filing suit alleging negligence on account of the property owner (public or private). Products liability claims included a plaintiff suing a product manufacturer, company or other business responsible for the manufacturing and/or design of the product. The immunity category included all cases in which the defendant claimed governmental (federal, state or municipal) immunity and, more specifically, in some cases cited recreational user statutes as it pertained to the use of land.

The environment in which the incident occurred consisted of eight different categories: home, hotel/motel, lake, ocean, other, park/municipal, river, and school. "Other" referred to a pool whose ownership could not be identified from the case or the pool was the only one of its type. For example, only one incident was found in a country club. The dependent variable, case outcome, was recorded as either "finding for the plaintiff," "finding not for the plaintiff," or remand/case in process.

Following the content analysis, binary logistic regression was used to examine the cases in this study. Logistic regression estimates the probability of a certain event occurring; in this case the event is a "finding for the plaintiff." The output, reported as the odds ratio gives the importance that each factor has on increasing the odds for a "finding for the plaintiff." The Wald statistic was used to test the significance that each factor had on a "finding for the plaintiff". Based on the significance level, the Wald statistic tests whether or not a factor is contributing to the significance of the model (Ramsey & Schafer, 1997).

A specific factor within each variable heading was chosen to be the 'reference category.' In order to run the logistic regression a comparison or 'reference category' must be established. The reference category is the factor with a large or mean number of cases so that a stable statistical comparison can be made. For this study, the reference categories were as follows: age of injured party, "adult;" sex of injured party, "male;" type of injury, "severe;" location of or type of water entry, "in ground;" behavior of participant,

"standard;" environment in which incident occurred, "home;" and, type of claim, "negligence." This means, for example, if a significant finding was found for quadriplegia/paraplegia the odds ratio would then be in comparison to the reference category for type of injury, "severe."

## RESULTS

Six states yielded the largest numbers of headfirst incident court decisions: New York (42), Illinois (19), Michigan (17), Ohio (14), California (14), and Louisiana (14); totaling 49% of the subject sample. Of the cases,  $n=247$ , 17% resulted in a "finding for the plaintiff," 63% resulted in a "finding not for the plaintiff," and 20% were remanded or in process.

One hundred and sixty-six (67%) of the individuals involved were adults; 81 (33%) were minors. Eighty three percent of the victims were male. Thirteen (5%) persons died while 112 (45%) became paraplegic/quadruplegic, and 122 (50%) were severely injured. Alcohol was documented as playing a role in 38 (15%) of the cases while horseplay was noted in 28 (11%) of the incidents.

Thirty-six (15%) of the headfirst incidents were entries into above ground swimming pools, pools in which the performer could walk along the outside of the pool and compare the height of the pool to their height estimating the depth of the pool and the distance to the bottom of the structure in relation to their body size. Fifty-nine or near one-fourth of the cases involved entries into in ground pools. Bridges and ledges were responsible for 8.5% of the incidents while dives from boats accounted for 4% of the incidents. Piers and docks were the scene of 34 (14%) of the headfirst injuries and deaths. Racing starts and run and plunge water entries accounted for nearly 15% of the total incidents.

Table I examined the relationship between the age and sex of the injured party and the location of or type of water entry. No women moved headfirst from a boat or bridge/ledge. Nearly three times the percentage of injuries to women (30%) as compared to men (11%) took place in above ground pools. Also, women sustained higher injury rates than men in incidents involving in ground pools (35% and 22%, respectively) and diving boards (14% and 10%, respectively). When compared with adults, minors yielded a greater percentage of injuries stemming from moving headfirst from a racing start (9%, 4% greater than adults), a run and plunge (14%, 8% greater than adults), and a waterslide (4%, 2% greater than adults). Adults, in contrast, had a proportionally higher percent ratio of incidents diving from bridges and ledges (2:1), and piers and docks (3:1).

TABLE I: LOCATION OF, OR TYPE OF WATER ENTRY, SEX &amp; AGE OF INJURED PARTY

Categorized Variable	Frequency	Percentage	AGE		SEX	
			Adult (%)	Minor (%)	Male (%)	Female (%)
Above ground	36	14.6%	22 (13.3%)	14 (17.3%)	23 (11.3%)	13 (30.2%)
Board Dive	26	10.5%	18 (10.8%)	8 (9.9%)	20 (9.8%)	6 (14.0%)
Boat	10	4.0%	6 (3.6%)	4 (4.9%)	10 (4.9%)	0 (0%)
Bridge/Ledge	21	8.5%	17 (10.2%)	4 (4.9%)	21 (10.3%)	0 (0%)
In ground	59	23.9%	40 (24.1%)	19 (23.5%)	44 (21.6%)	15 (34.9%)
Other	12	4.9%	8 (4.8%)	4 (4.9%)	12 (5.9%)	0 (0%)
Pier/Dock	34	13.8%	29 (17.5%)	5 (6.2%)	30 (14.7%)	4 (9.3%)
Racing Start	15	6.1%	8 (4.8%)	7 (8.6%)	13 (6.4%)	2 (4.7%)
Run and Plunge	21	8.5%	10 (6.0%)	11 (13.6%)	20 (9.8%)	1 (2.3%)
Swing	8	3.2%	6 (3.6%)	2 (2.5%)	7 (3.4%)	1 (2.3%)
Waterslide	5	2.0%	2 (1.2%)	3 (3.7%)	4 (2.0%)	1 (2.3%)
TOTALS	247	100%	166 (100%)	81 (100%)	204 (100%)	43 (100%)

Table II analyzed age, sex and the environment in which the incident occurred. Ninety-two (37%) of the incidents occurred in a home pool; 57 or near one-fourth were in a lake. Park districts and municipal agencies accounted for 20 cases (8%). Hotels/motels were the environment for 17 cases (7%). No incidents in an ocean or river were found for women. Of the females, 21% were injured in municipal park districts while 5% of the males were injured in the same environment. Women also incurred a higher percentage of injuries in hotels and motels than did men (44% and 36%, respectively). Adults yielded a higher percentage rate of injury incidences in hotels and motels (9% to 2.5%) and in lakes (27% to 15%) than did minors. Minors had a proportionally higher percentage rate of injury in the ocean (12% to 5%), park districts (14% to 5%), and schools (15% to 4%) than adults.

TABLE II: ENVIRONMENT IN WHICH INCIDENT OCCURRED,  
SEX & AGE OF INJURED PARTY

Categorized Variable	Frequency	Percentage	AGE		SEX	
			Adult (%)	Minor (%)	Male (%)	Female (%)
Home	92	37.2%	63 (38.0%)	29 (35.8%)	73 (35.8%)	19 (44.2%)
Hotel/Motel	17	6.9%	15 (9.0%)	2 (2.5%)	11 (5.4%)	6 (14.0%)
Lake	57	23.1%	45 (27.1%)	12 (14.8%)	53 (26.0%)	4 (9.3%)
Ocean	18	7.3%	8 (4.8%)	10 (12.3%)	18 (8.8%)	0 (0%)
Other	6	2.4%	5 (3.0%)	1 (1.2%)	6 (2.9%)	0 (0%)
Park/Municipal	20	8.1%	9 (5.4%)	11 (13.6%)	11 (5.4%)	9 (20.9%)
River	19	7.7%	15 (9.0%)	4 (4.9%)	19 (9.3%)	0 (0%)
School	18	7.3%	6 (3.6%)	12 (14.8%)	13 (6.4%)	5 (11.6%)
TOTALS	247	100%	166 (100%)	81 (100%)	204 (100%)	43 (100%)

The percentage of occurrence for females sustaining paraplegia/quadruplegia was nearly half that of males (25.5% to 50%), while having a higher percentage of severe injuries than did males (67% to 46%) (see Table III). Percentages based on alcohol consumption was lower for females (12% to 16%) as was horseplay (5% of 13%) when compared with men, respectively. Women, however, were found to dive into shallow water at a much higher rate than that found for men. Fifty-one percent of females dove into shallow water while only 24% of the males dove into shallow water. Alcohol played a significant role in injuries sustained to adults (20%) verses minors (6%). Injuries, as a result of shallow dives, were found more often among minors than adults (41% and 23%), respectively (see Table III). The tort claim of negligence was the type of claim most often litigated (64%). Immunity, when used as a defense in a negligence claim, controlled—in 15% of the cases; products liability was found to play a part in 13%.



TABLE III: TYPE OF INJURY, BEHAVIOR OF PARTICIPANT, AGE &amp; SEX OF INJURED PARTY

Categorized Variable	Frequency	Percentage	AGE		SEX	
			Adult (%)	Minor (%)	Male (%)	Female (%)
<b>TYPE OF INJURY</b>						
Died	13	5.3%	10 (6.0%)	3 (3.7%)	10 (4.9%)	3 (7.0%)
Quad/Para	112	45.3%	77 (46.4%)	35 (43.2%)	101 (49.5%)	11 (25.6%)
Severe	122	49.4%	79 (47.6%)	43 (53.1%)	93 (45.6%)	29 (67.4%)
<b>TOTALS</b>	<b>247</b>	<b>100%</b>	<b>166 (100%)</b>	<b>81 (100%)</b>	<b>204 (100%)</b>	<b>43 (100%)</b>
<b>BEHAVIOR OF PARTICIPANT</b>						
Horseplay	28	11.3%	18 (10.8%)	10 (12.3%)	26 (12.7%)	2 (4.7%)
Shallow	71	28.7%	38 (22.9%)	33 (40.7%)	49 (24.0%)	22 (51.1%)
Alcohol	38	15.4%	33 (19.9%)	5 (6.2%)	33 (16.2%)	5 (11.6%)
Standard	110	44.5%	77 (46.4%)	33 (40.7%)	96 (47.1%)	14 (32.6%)
<b>TOTALS</b>	<b>247</b>	<b>100%</b>	<b>140 (100%)</b>	<b>69 (100%)</b>	<b>174 (100%)</b>	<b>35 (100%)</b>

Descriptively, many of the results found in this study correspond to results found in previous studies (Bailes et al., 1990; Gabrielsen & Spivey, 1990; Present, 1989; Young et al., 1982). While descriptive statistics are interesting they do not always provide professionals with enough information; rather, it would be more helpful if there was a way to analyze the probability of winning in a court of law. The results of the logistic regression begin to do just that.

Of the sample ( $n=247$ ), 17% resulted in a "finding for the plaintiff," 63% resulted in a "finding not for the plaintiff," and 20% were remanded. Plaintiffs were successful in a court of law in 42 instances. Of the successful plaintiffs, the authors determined the factors that played the greatest role in increasing the odds of a plaintiff winning in court. Since 50 of the 247 cases were remanded, they were used in the descriptive analysis only; the logistic

regression was run on the remaining 197 case that found definitively for the plaintiff or not for the plaintiff. The following factors yielded a statistically significant result ( $p < .05$ ) within the categorized variable headings: type of injury, "quadriplegic/paraplegic;" behavior of participant, "shallow;" and, type of claim, "immunity" (see Table IV).

TABLE IV: SIGNIFICANCE VALUES AND ODDS RATIOS FOR MODEL VARIABLES

Variable	Sig.	Odds Ratio
Adult	.587	1.321
Male	.923	.945
Died	.691	1.630
<b>Quad</b>	<b>.015*</b>	<b>3.389</b>
Above Ground	.084	.243
Board Dive	.663	1.378
Bridge/Ledge	.368	3.058
Pier/Dock	.557	1.972
Racing Start	.201	.259
Run and Plunge	.847	1.285
Horseplay	.543	.568
<b>Shallow</b>	<b>.009*</b>	<b>4.389</b>
Alcohol	.301	.466
School	.180	3.268
Hotel/Motel	.668	1.445
Lake	.869	.836
Ocean	.434	.353
Park/Municipal	.454	2.028
River	.129	.115
<b>Immunity</b>	<b>.017*</b>	<b>.057</b>
Premise Liability	.447	.503
Product Liability	.748	1.257

\* Sig. at .05 level

Note: Results for the variables boat, waterslide, other and swing are not reported due to their insignificant rate of occurrence.

Results of the Cox & Snell and Nagelkerke were .215 and .333; these report how well the factors chosen explain the desired result, namely a "finding for the plaintiff" (to a maximum of 1). The factors chosen for this study are responsible for explaining between 21% and 33% of the total explanation a "finding for the plaintiff". Determining that these factors are significant provides the plaintiff's attorney with nearly one-third of factors that are important in obtaining a winning outcome. On the flip side, these results

will aide the defense attorney by highlighting the best defense option (immunity). Furthermore, knowledge of the importance of these factors will help private businesses (such as hotels/motels) to enact preventative, risk management measures so as to decrease the number of potential lawsuits.

From the factors found to be significant, the odds ratio can then be interpreted. Table IV provides the results of the odds ratios for all factors in relation to their effect on a "finding for the plaintiff." The odds ratio explains the level of importance that each factor has on explaining a "finding for the plaintiff;" an odds ratio greater than one increases the likelihood that the court will yield a "finding for the plaintiff." The odds of "finding for the plaintiff" that became a quadriplegic/paraplegic were 3.4 times higher than a plaintiff who had been severely injured. The odds of "finding for the plaintiff" who dove into shallow water were 4.4 times higher than a plaintiff injured while engaged in standard behavior. The odds of "finding for the plaintiff" when immunity, as a defense to negligence, was employed is .05 times lower than when other defenses to negligence (i.e. comparative fault and/or assumption of risk) were utilized.

## DISCUSSION

Six states, New York, Illinois, Michigan, Ohio, California, and Louisiana had a combined total of nearly half of the 247 headfirst incident cases examined. These results corresponded with Gabrielsen and Spivey (1990) findings (Illinois, Florida, Pennsylvania, California, Massachusetts, and Michigan in descending order). A portion of each of these states is located on an ocean or one of the great lakes. Even though a majority of the incidents occurred in pools, proximity to the ocean or large bodies of water (i.e. great lakes) could encourage a higher rate of participation in swimming and diving; thus, a greater chance of being involved in a headfirst incident. What is more, persons who learn to swim in open water often do so with limited diving instruction and safety; therefore, they may be unaware of the inherent dangers of moving headfirst in shallow water pools.

The current male/female ratio (83%/17%) was identical to Gabrielsen and Spivey's (1990) ratio. Alcohol and horseplay played a role in 25% of the cases identified in the study. It was, however, far less than the 46% reported by Gabrielsen and Spivey (1990) and the 44% reported in Bailes et al. (1990). Although no literature was available for comparison in the area of horseplay, it is the researchers' opinion that horseplay may have had a far greater role in headfirst incidents than the research was able to detect and that its presence needs to be documented in future research.

The above ground entry percentages and the board dives closely paralleled Present's (1989) findings. Gabrielsen and Spivey (1990) found a much higher number (26%) of participants to have entered an above ground pool and a somewhat similar group (15%) to be involved with a board dive.

Thirty-nine percent of the injured participants sustained their injury in a home or residential environment. This was similar to Gabrielsen and Spivey (1990) and less than Present's (1989) 50% percent. Eight percent of the results were in school environments, more than double the results (3%) found in Gabrielsen and Spivey.

Factors found to be statistically significant ( $p < .05$ ) were: "quadriplegic/paraplegic," "shallow;" and "immunity." Results of the binary logistic regression analysis revealed that the courts found nearly 3.4 times more often for plaintiffs who became paraplegic/quadriplegic (verses the plaintiff who sustained a severe injury) and 4.4 times more often for those who dove into shallow water (verses those engaged in standard behavior). Fifty-six percent of females were injured as a result of a shallow water entry. Twenty-seven percent of the time females were successful in a court of law; whereas, males were successful only 20% of the time. The courts were less likely to find for the plaintiff who was up against an immunity defense, which is oftentimes used in sport and recreation decisions and, in this study, was argued successfully in the states of California, New Jersey and Michigan.

Perhaps the most relevant finding for a professional was the percentage of successful verses unsuccessful plaintiffs. Less than one-quarter of the plaintiffs (17%) were successful in a court of law. This finding is critical. Professionals and their attorneys must inventory the factors that comprise the potential plaintiff's case in order to determine whether or not their client has a chance of winning in a court of law. Based on the findings of this study, if the plaintiff dove into shallow water, became a quadriplegic/paraplegic and was not going up against the defense of immunity, then they would have the best chance of being part of the 17% of the plaintiffs who were successful. Furthermore, the plaintiff was least successful when up against the defense of immunity (winning only 3% of the time). The plaintiff had the best chance of winning when suing under product liability or negligence (winning 33% of the time, in both cases).

Out of 16 ocean cases plaintiffs were successful in only three decisions. Of the remaining 13 who lost, over half lost in California and New Jersey, states in which immunity controlled. The fact that the courts found most often for a persons who became a "quadriplegic/paraplegic" suggests that jurors recognize the seriousness of the plaintiff's injury, death being the most serious (death was not found to be significant in this study, researchers speculate, due

to the low number of occurrences – 13 out of 247 (5.3%)—of which five yielded a finding for the plaintiff), followed by quadriplegia/paraplegia, and severe.

Within the group of cases, some emerged as models of how the results of the logistic regression are useful. For example, in *McCubbins v. State of Alaska, et al.* (1999), McCubbins dove into shallow water sustaining a serious head injury. The state of Alaska claimed the injuries were caused by the plaintiff's negligence (note that state of Alaska chose McCubbins' negligence rather than employing immunity as their defense). The result was a finding of liability for McCubbins at the trial and appeals levels (*McCubbins*, pg. 509).

The power of the immunity defense was made obvious in *Fisher v. United States Army Corps of Engineers* (1994). In this case, although Fisher sustained a broken neck while diving into a shallow body of water the court dismissed the case holding that the Army Corp was immune from liability (*Fisher*, pg. 685). Here, it is important to recognize that the factor immunity was weighted more heavily than type of injury sustained (severe) and type of entry into water (shallow).

Finally, in *Rowland v. Colquitt* (1994), Rowland dove into a shallow above ground residential pool sustaining a severe neck injury. Prior to the injury she had consumed both alcohol and drugs. Rowland claimed Colquitt was negligent in posting warning signs. Colquitt claimed assumption of risk. The court held that Colquitt was liable for Rowland's injuries because he knew of the dangerous conditions but did nothing. The result was a finding for the plaintiff (*Rowland*, pg. 551). Note that even though the plaintiff was under the influence of drugs and alcohol, the factor shallow was more powerful in determining liability.

## CONCLUSION

These findings provide a way by which industry professionals and litigators can better assess the plaintiff's odds of winning in a court of law. Based on these results, "best case" scenarios can now begin to be developed. For example, an attorney can determine that he/she will have a better chance of winning in court if they represent a person who has become a quadriplegic/paraplegic while attempting a shallow water entry into water verses representing someone who has incurred a severe injury while engaging in standard behavior and is up against the defense of immunity.

Future research should be conducted utilizing similar methodology with a larger sample size as well as additional factors. Future researchers should assess the weighted affect that the defense of immunity has state-to-state and

whether it is powerful enough to override the factors of "quad/para" and "shallow". Finally, researchers may want to consider what affect state statutes may have on the decision of the courts. Researchers can use this system of analysis to assess other sports in which the athletes commonly incur serious or even deadly injuries (sports such as skiing, snowboarding, football, skydiving, and ice hockey).

#### ABOUT THE AUTHORS

KADIE OTTO is Assistant Professor and Director of the Undergraduate Sport Management Program at Western Carolina University. She holds a Bachelors degree from Plymouth State University and a Masters and Doctorate from Florida State University. She teaches courses in law, ethics and sociology. Her research interests include unethical conduct in, and the commercialization of, intercollegiate athletics. Currently, she serves as an executive member of The Drake Group.

ANNIE CLEMENT is Professor of Sport Business in the College of Business at Saint Leo University in Saint Leo, Florida. She holds a Bachelors and Masters degree from the University of Minnesota, a doctorate from the University of Iowa, and a Juris Doctorate from Cleveland State University. Dr. Clement is the author of Law in Sport and Physical Activity, Legal Responsibility in Aquatics, Teaching Physical Activity and twenty book chapters. She is past president of the National Association for Sport and Physical Education (NASPE) and is a Fellow of the American Bar Foundation.

#### REFERENCES

- Albrand, O.W., & Walter, J. (1975). Underwater deceleration curves in relation to Injuries from diving. *Surg. Neural*, 4, 461-465.
- American Law Institute. (1965). *Restatement of the law: Torts (Second)*. St. Paul: MN: American Law Institute Publishers.
- American Red Cross (2002). *Swimming and diving*. St. Louis, MO: Mosby Lifeline.
- Babbie, E. (1995). *The practice of social research*. (7th ed.). Belmont, CA: Wadsworth.
- Bailes, J.E., Herman, J.M., Quigley, M.R., Cerullo, L.J., & Meyer, P.R. (1990). Diving injuries of the cervical spine. *Surg. Neural*, 34, 155-158.

- Bogus, C. T. (Fall, 2004). Fear-mongering torts and the exaggerated death of diving. *Harvard Journal of Law & Public Policy*, 28(1), 17 – 21.
- DeVivo, M.J., & Sekar, P. (1997). Prevention of spinal cord injuries that occur in swimming pools. *Spinal Cord*, 35, 509-515.
- Fisher v. United States Army Corps of Engineers, 31 F. 3d 683 (8th Cir. 1994).
- Gabrielsen, M.A., & Spivey, M. (1990). *Diving injuries*. Fort Lauderdale, FL: Nova University.
- Kendrich, et al. v. Ed's Beach Service, Inc., 577 So. 2d 936 (Fla. 1991).
- Lionarons, et al. v. General Electric Company, et al., 86 N. Y. 2d 832 (N.Y. 1995).
- McCubbins v. State of Alaska, et al., 973 P. 2d 588 (Ala. 1999).
- National Spinal Cord Injury Association Resource Center (n.d.). Fact sheet 2: Spinal cord injury statistics. Retrieved January 17, 2006, from <http://www.makoa.org/nsCIA/fact02.html>.
- Present, P. (1989). *Diving study: Report on injuries treated in hospital emergency rooms as result of diving into swimming pools*. Washington, D.C.: Consumer Product Safety Commission.
- Ramsey, F.L., & Schafer, D.W. (1997). *The statistical sleuth*. Belmont, CA: Wadsworth.
- Robertson v. State of Louisiana through Department of Planning and Control, et al., 747 So. 2d 1276 (Ct. App. La. 1999).
- Rowland v. Colquitt, et al., 214 Ga. App. 545 (Ga. Ct. App. 1994).
- Young, J.S., Burns, P.E., Bowen, A.M., & McCutchen, R. (1982). Spinal cord injury statistics. Phoenix, AZ: Good Samaritan Medical Center.

## APPENDIX

## HEADFIRST AQUATIC INCIDENT COURT CASES

(N=247)

## Alabama

King v. National Spa and Pool Inst., Inc., 607 So. 2d 1241 (Ala. 1992).

## Alaska

McCubbins v. Department of Natural Resources, Div. of Parks & Recreation, 973 P.2d 588 (Alaska 1999).

## Arizona

Callender v. MCO Properties, 885 P.2d 123 (Ariz. Ct. App. 1994).

Menendez v. Paddock Pool Constr. Co., 836 P.2d 968 (Ariz. Ct. App. 1991).

Smith v. Lucia, 842 P.2d 1303 (Ariz. Ct. App. 1992).

## Arkansas

Jenkins v. Arkansas Power & Light Co., 140 F.3d 1161 (8th Cir. 1998).

## California

Blackburn v. United States, 100 F.3d 1426 (9th Cir. 1996).

Boy Scouts of Am., v. Graham, 86 F.3d 861 (9th Cir. 1996) *remanded to sub nom.* In re Complaint of BSA No. C-93-2958 MHP, 1997 U. S. Dist. LEXIS 4401 (D. Cal. Feb. 13, 1997).

Bunch v. Hoffinger Industries, Inc., 20 Cal. Rptr. 3d 780 (Cal. Ct. App. 2004).

Cal. v. Superior Court, 39 Cal. Rptr. 2d 694 (Cal. Ct. App. 1995).

Delta County Ventures v. Magana, 986 F.2d 1260 (9th Cir. 1993).

Faber v. United States, 56 F.3d 1122 (9th Cir. 1995).



- Kahn v. Eastside Union High Sch. Dist., 117 Cal. Rptr. 2d 356 (2002), *rev'd*, 75 P.3d 30 (Cal. 2003), *remanded to H021239*, 2004 Cal. App. Unpub. LEXIS 210 (Cal. Ct. App. Jan. 9, 2004).
- Knight v. City of Capitola, 6 Cal. Rptr. 2d 874 (Cal. Ct. App.1992).
- Kransco v. Am. Empire Surplus Lines Ins. Co., 2 P.3d 1 (Cal. 2000).
- Lupash v. City of Seal Beach, 89 Cal. Rptr. 2d 920 (Cal. Ct. App. 1999).
- Pulford v. County of Los Angeles, B166044, 2004 Cal. App. Unpub. LEXIS 8580 (Cal. Ct. App. Sept. 22, 2004).
- Soto v. United States, 748 F. Supp. 727 (D. Cal. 1990).
- Tessier v. City of Newport Beach, 268 Cal. Rptr. 233 (Cal. Ct. App. 1990).
- Valenzuela v. City of San Diego, 286 Cal. Rptr. 1 (Cal. Ct. App. 1991).

#### Colorado

- Acierno v. Trailside Townhome Ass'n, 862 P.2d 975 (1993) *aff'd in part, rev'd in part*, 880 P. 2d 1197 (Colo. 1994).
- Vigil v. Franklin, 103 P.3d 322 (Colo. 2004).

#### Connecticut

- Battistoni v. Weatherking Prods., CV 920059579, 1994 Conn. Super. LEXIS 2529 (Conn. Super. Ct. Oct. 5, 1994).
- Kopesky v Connecticut Am. Water Co., CV 950145791, 1999 Conn. Super. LEXIS 2166 (Conn. Super. Ct. Aug. 2, 1999).
- Neudeck v. Stewart, CV960335425S, 1998 Conn. Super. LEXIS 2908 (Cons. Super. Ct. Oct. 1, 1998).
- Robillard v. Asahi Chem. Indus. Co., 695 A.2d 1087 (Conn. Super. Ct. 1995).
- Tirado v. Super 8 Motels, CV030102170S, 2004 Conn. Super. LEXIS 3505 (Conn. Super. Ct. Dec. 2, 2004).
- Ullmar v. Robco Group, Inc., No. 379465, 1992 Conn. Super. LEXIS 408 (Conn Super. Ct. Feb. 11, 1992).

#### Delaware

- Dick v. Lisa's Sailboats, Inc., New Castle County Super. Ct., No. 96C-10-065 (Del. 1998).

Hervey v. Leisure World Corp. No. 90C-JL-14, 1991 Del Super. LEXIS 201 (Del. Super. Ct. June 18, 1991).

Macey v. AAA-1 Pool Builders & Serv. Co., No. 88C-JN-10, 1993 Del. Super. LEXIS 152 (Del. Super. Ct. Apr. 30, 1993).

#### Florida

Bishop v. First National Bank of Florida, Inc., 609 So. 2d 722 (Fla. 5th Dist. Ct. App. 1992).

Florida Dep't of Natural Res. v. Garcia, 753 So. 2d 72 (Fla. 2000).

Kendrick v. Ed's Beach Serv., 577 So. 2d 936 (Fla. 1991).

Sperka v. Little Sabine Bay, 642 So. 2d 654 (Fla. 1st Dist. Ct. App. 1994).

Waterfront Motels, Inc., v. Stromholt, 664 So. 2d 258 (Ct. App. Fla. 1995).

Wilson v. United States, 786 F. Supp. 1571 (D. Fla. 1991).

#### Georgia

Colquitt v. Rowland, 448 S.E.2d 457 (Ga. Ct. App. 1994) *rev'd*, 463 S.E.2d 491 (Ga. 1995).

Craig v. Lakeshore Marine, Inc., 491 S.E. 2d 197 (Ga. Ct. App. 1997).

Martin v. Johnson-Lemon, 516 S.E. 2d 66 (Ga. 1999).

Plantation at Lenox Unit Owners' Ass'n v. Lee, 395 S.E. 2d 817 (Ga. Ct. App. 1990).

Sharpnack v. Hoffinger Indus., 499 S.E. 2d 363 (Ga. Ct. App. 1998).

#### Hawaii

Hays v. City & County of Honolulu, 917 P.2d 718 (Haw. 1996).

Ng v. City & County of Honolulu, Hawaii, No. 90-1851-06 (1st Cir. Ct. 1993).

#### Idaho

Evans v. State, 18 P.3d 227 (Idaho Ct. App. 2001).

## Illinois

- Bailey v. Unite States, Dep't of the Army Corps. of Eng'rs, 35 F.3d 1118 (7th Cir. 1994).
- Barham v. Knickrehm, 661 N.E.2d 1166 (Ill. App. Ct. 1996).
- Barnett v. Zion Park Dist., 665 N.E.2d 808 (Ill. 1996).
- Beir v. Leanna Lakeside Prop. Ass'n, 711 N.E.2d 773 (Ill. App. Ct. 1999).
- Blankenship v. Peoria Park Dist., 647 N.E.2d 287 (Ill. App. Ct. 1994).
- Borden v. Sweeney, No. 90 C 3434, 1990 U.S. Dist. LEXIS 16205 (D. Ill Nov. 30, 1990).
- Bousis v Marriott Int'l, Inc., 47 F. Supp. 2d 1004 (D. Ill. 1999).
- Bucheleres, v. Chicago Park District, 665 N.E.2d 826 (Ill. 1996).
- Fryman v. United States, 901 F. 2d 79 (7th Cir. 1990).
- Haley v. Doughboy Corp., Ill. Cook County Cir. Ct. No. 84 L 1136 (1991). Retrieved February 16, 2007, from [http://www.mnlawoffice.com/RJN\\_settlementsverdicts.htm](http://www.mnlawoffice.com/RJN_settlementsverdicts.htm).
- Hanson v. Hyatt Corp., 554 N.E.2d 394 (Ill. App. Ct. 1990).
- Hoye v. Illinois Power Co., 646 N.E.2d 651 (Ill. App. Ct. 1995).
- Jackson v. TLC Assocs., 706 N.E.2d 460 (Ill. 1998).
- Klen v. Asahi Pool Inc., 643 N.E.2d 1360 (Ill. App. Ct. 1994).
- Lederman v. Pacific Indus., 119 F.3d 551 (7th Cir. 1997).
- Leonard v. Pitstick Dairy Lake & Park, 560 N.E.2d 467 (Ill. App. Ct. 1990).
- Osborne v. Claydon, 640 N.E.2d 684 (Ill. App. Ct. 1994).
- Schneider v. Pine Crest Marina, Inc., No. 91 C 5102, 1992 U.S. Dist. LEXIS 5543 (D. Ill. Mar. 26, 1992).
- Shellenberg v. Winnetka Park District, 596 N.E.2d 93 (Ill. App. Ct. 1992).

## Indiana

- Benton v. City of Oakland City, 721 N.E.2d 224 (Ind. 1999).
- Beresford v. Starkey, 571 N.E.2d 1257 (Ind. 1991).
- Blackburn v. City of Rochester, 640 N.E.2d 1068 (Ind. Ct. App. 1994).
- Dunifon v. Iovino, 665 N.E.2d 51 (Ind. Ct. App. 1996).
- Foster v. Purdue Univ. Chapter, 567 N.E.2d 865 (Ind. Ct. App. 1991).

South Dearborn Sch. Bldg. Corp. v. Duerstock 612 N.E.2d 203 (Ind. Ct. App. 1993).

#### Iowa

Carr v. San-Tan, Inc., 543 N.W.2d 303 (Iowa Ct. App. 1995).

Fisher v. United States Army Corps of Eng'rs, 31 F. 3d 683 (8th Cir. 1994).

#### Kansas

Boos v. National Fed'n of State High Sch. Ass'ns., 889 P.2d 797 (Kan. Ct. App. 1995).

Collins v. Douglas County, 822 P.2d 1042 (Kan. 1991).

Neff v. Coleco Industries, Inc., 760 F. Supp. 864 (D. Kan. 1991).

#### Kentucky

City of Louisville v. Silcox, 977 S.W.2d 254 (Ky. Ct. App. 1998).

Scifres v. Kraft, 916 S.W.2d 779 (Ky. Ct. App. 1996).

#### Louisiana

Deumite v. State, 692 So. 2d 1127 (La. Ct. App. 1997).

Gilbert v. B.D.O.W.S., Inc., 764 So. 2d 313 (La. Ct. App. 2000).

Hampton v. Leisure Systems, Inc., No 85-414 (La. Tangipahoa Parish Dist. Ct. 1990).

Insley v. Titan Ins. Co., 589 So. 2d 10 (La. Ct. App. 1991).

Mann v. Brittany Place Assocs., Ltd., 770 So. 2d 25 (2000).

Martino v. Sunrall, 619 So. 2d 87 (La. Ct. App. 1993).

Robertson v. State ex. rel. Dept. of Planning & Control, 747 So. 2d 1276 (La. Ct. App. 1999).

Rodriquez v. Class Travel Worldwide, L.L.C., No. 99-1706, 2000 U.S. Dist. LEXIS 1926 (D. La. Feb. 17, 2000).

Russell v. Bissell & Assoc., 562 So. 2d 1059 (La. Ct. App. 1990).

Schneider v. Gulf Insurance Co., No 92-3577, 1993 U.S. Dist. LEXIS 4719 (D. La. Apr. 8, 1993).

- Socorro v. New Orleans, 579 So. 2d 931 (La. 1991).  
Thibodeau v. Major & Councilmen of Morgan City, 619 So. 2d 595 (La. Ct. App. 1993).  
Tisdale v. State, 581 So. 2d 1045 (La. Ct. App. 1991).  
Wilson v. State Farm Fire & Casualty Ins. Co., 654 So. 2d 385 (La. Ct. App. 1995).

#### Maine

- Kraul v. Maine Bonding & Cas. Co., 672 A.2d 1107 (Me. 1996).

#### Maryland

- Corder v. Chalet Susse Int'l., No. 96-1748, 1997 U.S. App. LEXIS 17395 (4th Cir. July 11, 1997).  
Leakas v. Columbia Country Club, 831 F. Supp. 1231 (D. Md. 1993).  
Mahon v. O. C. Seacrets, No. 94-1567, 1995 U. S. App. LEXIS 21969 (4th Cir. Aug. 14, 1995).  
Rose v. Fox Pool Corp., 643 A.2d 906 (Md. 1994).

#### Massachusetts

- Bean v. Cole, 4 Mass. L. Rep. 109 (Mass. Super. Ct. 1995).  
Connors v. Connors, 93-5199, 1996 Mass. Super LEXIS 181 (Mass. Super. Ct. 1996).  
Davidson v. Metro. Dist. Comm'n, 8 Mass. L. Rep. 36 (Mass. Super. Ct. 1997).  
Greenslade v. Mohawk Park, Inc., 798 N.E.2d 336 (Mass. App. Ct. 2003).  
Martins v. Healy, 15 Mass. L. Rep. 42 (Mass. Super. Ct. 2002).  
O'Sullivan v. Shaw, 726 N.E.2d 951 (Mass. 2000).  
Taube v. Delair Group, 6 Mass. L. Rep. 362 (Mass. Super. Ct. 1996).

#### Michigan

- Alef v. United States (DOI), 990 F. Supp. 932 (D. Mich. 1997).  
Bronson v. Oscoda Township, 470 N.W.2d 688 (Mich. Ct. App. 1991).  
Dinger v. Dept. of Natural Resources, 479 N.W.2d 353 (Mich. Ct. App. 1991).

- Ginop v. A 1984 Bayliner 27' Cabin Cruiser, 242 F. Supp. 2d 482 (D. Mich. 2003).
- Glittenberg v. Doughboy Recreational Indus., 491 N.W.2d 208 (Mich. 1992).
- Langan v. Grand Rapids Pub. Sch. Sys., No. 1-94-CV-174, 1995 U.S. Dist. Lexis 4215 (D. Mich. Feb. 28, 1995).
- Lockman v. Charlevoix County, No. 1-95-CV-69, 1995 U.S. Dist. LEXIS 11252 (D. Mich. July 18, 1995).
- Lopez v. Pirolli Park, 50 Fed. Appx. 723 (6th Cir. 2002).
- Mallard v. Hoffinger Indus., Inc., 564 N.W.2d 74 (Mich. Ct. App. 1997).
- Pigeon v. Radloff, 546 N.W.2d 655 (Mich. Ct. App. 1996).
- Sagan v. United States, 342 F.3d 493 (6th Cir. 2003).
- Sanders v. Bellinger, No. 245825, 2004 Mich. App. LEXIS 426 (Mich. Ct. App. 2004).
- Sewell v Southfield Public Sch., 576 N.W.2d 153 (Mich. 1998).
- Siver v. Campbell, No. 218287, 2001 Mich. App. LEXIS 1014 (Mich. Ct. App. 2001).
- Spaulding v. Lesco Int'l Corp., 451 N.W.2d 603 (Mich. Ct. App. 1990).
- Stopczynski v. Woodcox, 671 N.W.2d 119 (Mich. Ct. App. 2003).
- Weaver v. United States, 809 F. Supp. 527 (D. Mich. 1992).

#### Minnesota

- Gatheridge v. Strata Corporation-Bradshaw Gravel Supply, 119 F.3d 710 (8th Cir. 1997).
- Harper v. Herman, 499 N.W.2d 472 (Minn. 1993).
- Kline v. Doughboy Recreational Mfg. Co., 495 N.W.2d 435 (Minn. Ct. App. 1993).
- Kudja v. Becker, A04-1093, 2004 Minn. App. LEXIS 1364 (Minn. Ct. App. Dec. 4, 2004).
- Louis v. Louis, 636 N.W.2d 314 (Minn. 2001).
- Lundberg v. Seigert, No. CX-90-492, 1990 Minn. App. LEXIS 923 (Minn. Ct. App. Sept. 18, 1990).
- O'Rourke v. KDI Paragon, Inc., No. CX-90-2095, 1991 Minn. App. LEXIS 200 (Minn. Ct. App. Mar. 5, 1991).

Snilsberg v. Lake Wash. Club, 614 N.W.2d 738 (Minn. Ct. App. 2000).

#### Mississippi

Churchill v. Pearl River Basin Dev. Dist., 757 So. 2d 940 (Miss. 1999).

#### Missouri

Bourguignon v. Holiday Inns of America, Inc., No. 89-4126-CV-C-9, 1990 U.S. Dist. LEXIS 8741 (D. Mo. June 8, 1990).

Dunbar v. Burns, 973 S.W.2d 517 (Mo. Ct. App. 1998).

Koedding v. Kirkwood Contractors, Inc., 851 S.W.2d 122 (Mo. Ct. App. 1993).

#### Montana

Dayberry, et al., v. City of E. Helena, 80 P.3d 1218 (Mont. 2003).

#### Nebraska

Alexander v. J. D. Warehouse, 568 N.W.2d 892 (Neb. 1997).

Johnston v. State, No. A-00-373, 2001 Neb. App. LEXIS 189 (Neb. Ct. App. Aug. 28, 2001).

Olson v. Sanitary & Improvement Dist. No. 177, 557 N.W.2d 651 (Neb. 1997)

Zavadil v. United States, 908 F. 2d 334 (8th Cir. 1990).

#### New Hampshire

Fish v. Homestead Woolen Mills, 592 A.2d 1151 (N.H. 1991).

Lemay v. Burnett, 660 A.2d 1116 (N.H. 1995).

#### New Jersey

Cellucci v. Bronstein, 649 A.2d 1333 (App. Div. 1994).

Dziewiecki v. Bakula, 853 A.2d 234 (N.J. 2004).

Fleuhr v. City of Cape May, 732 A.2d 1035 (N.J. 1999).

Holloway v. State, 593 A.2d 716 (N.J. 1991).

Kowalsky v. Long Beach Twp., 72 F.3d 385 (3rd Cir. 1995).

Levin v. County of Salem, 626 A.2d 1091 (N.J. 1993).

Lewis v. Hopewell Valley Racquet Club, 634 A.2d 568 (App. Div. 1993).

Ryan v. KDI Sylvan Pools, Inc., 579 A.2d 1241 (N.J. 1990).

Tighe v. Peterson, 812 A.2d 423 (App. Div. 2002).

Witter v. Leo, 635 A.2d 580 (App. Div. 1994).

#### New Mexico

Bell v. United States, 127 F.3d 1226 (10th Cir. 1997).

Maldonado v. United States, 893 F.2d 267 (10th Cir. 1990).

#### New York

Agoglia v. Sterling Foster & Co., 655 N.Y.S.2d 636 (N.Y. App. Div. 1997).

Akerman v. City of New York, 640 N.Y.S.2d 571 (N.Y. App. Div. 1996).

Amatulli v. Delhi Constr. Corp., 571 N.E.2d 645 (N.Y. 1991).

Aronson v. Horace Mann-Bernard Sch., 637 N.Y.S.2d 410 (N.Y. App. Div. 1996).

Brandon v. Schmits, 718 N.Y.S.2d 749 (N.Y. App. Div. 2000).

Brown v. New Commodore Cruise Line Ltd., 98 Civ. 4402 (BSJ), 2000 U.S. Dist. LEXIS 536 (D.N.Y. Jan. 19, 2000).

Brown v. City of New York, 749 N.Y.S.2d 34 (N.Y. App. Div. 2002).

Butler v. Marshall, 663 N.Y.S.2d 381 (N.Y. App. Div. 1997).

Butler v. Passaro, 560 N.Y.S.2d 829 (N.Y. App. Div. 1990).

Clark v. Sachem Sch. Dist., 641 N.Y.S.2d 890 (N.Y. App. Div. 1996).

Colon v. City of New York, 607 N.Y.S.2d 371 (N.Y. App. Div. 1994).

Culkin v. Park & Recreation Dept., 565 N.Y.S.2d 655 (N.Y. App. Div. 1990).

Don Vito v. State, 582 N.Y.S.2d 872 (N.Y. App. Div. 1992).

Donacik v. Pool Mart, Inc. 705 N.Y.S.2d 784 (N.Y. App. Div. 2000).

Dryden Cent. Sch. Dist. v. Dryden Aquatics Racing Team, 600 N.Y.S.2d 388 (N.Y. App. Div. 1993).

Edmonds v. Fodera, 658 N.Y.S.2d 325 (N.Y. App. Div. 1997).

Feldman v. Drum, 577 N.Y.S.2d 144 (N.Y. App. Div. 1991).

Fernandes v. Lawrence, 780 N.Y.S.2d 774 (N.Y. App. Div. 2004).



- Finguerra v. Conn, 676 N.Y.S.2d 154 (N.Y. App. Div. 1998) *rev'd*, 720 N.Y.S.2d 497 (N.Y. App. Div. 2001).
- Guimond v. Wyndham Hotels, 95 Civ. 0428 (JFK), 1996 U.S. Dist. LEXIS 7255 (D.N.Y. May 28, 1996).
- Hardy v. Hardy, 557 N.Y.S.2d 572 (N.Y. App. Div. 1990).
- Heard v. The City of New York, 623 N.E.2d 541 (N.Y. 1993).
- Johnson v. Harrington, 626 N.Y.S.2d 324 (N.Y. App. Div. 1995).
- Johnson v. Cherry Grove Island Management, Inc., 573 N.Y.S.2d 187 (N.Y. App. Div. 1991) *aff'd*, 594 N.Y.S.2d 2 (N.Y. App. Div. 1993).
- Lionarons v. General Elec. Co., 658 N.E.2d 214 (N.Y. 1995).
- Magnus v. Fawcett, 637 N.Y.S.2d 707 (N.Y. App. Div. 1996).
- Mason v. Anderson, 752 N.Y.S.2d 390 (N.Y. App. Div. 2002).
- Mihill v. Ger-Am, Inc., 651 N.Y.S.2d 746 (N.Y. App. Div. 1997).
- Mortis v. Dittl, 715 N.Y.S.2d 182 (N.Y. App. Div. 2000).
- Mullen-Hall v. Buranich, 2003 N.Y. Slip Op. 40003U (N.Y. Misc. Jan. 17, 2003).
- Murach v. Island of Bob-Lo Co., 737 N.Y.S.2d 465 (N.Y. App. Div. 2002).
- Olsen v. Richfield, 616 N.E.2d 498 (N.Y. 1993).
- Paulison v. Suffolk County, 775 F. Supp. 50 (D.N.Y. 1991).
- Reickert v. Misciagna, 590 N.Y.S.2d 100 (N.Y. App. Div. 1992).
- Sciangula v. Mancuso, 612 N.Y.S.2d 645 (N.Y. App. Div. 1994).
- Silverman v. Zebersky, 571 N.Y.S.2d 317 (N.Y. App. Div. 1991).
- Simons v. Sherburne-Earlville Cent. Sch. Dist., 649 N.Y.S.2d 111 (N.Y. App. Div. 1996).
- Somma v. Seminario, 619 N.Y.S.2d 138 (N.Y. App. Div. 1994).
- Taylor v. Village of Ilion, 695 N.Y.S.2d 467 (N.Y. App. Div. 1999).
- Testaverde v. Lyman, 793 N.Y.S.2d 182 (N.Y. App. Div. 2005).
- Treston v. Allegretta, 581 N.Y.S.2d 288 (N.Y. App. Div. 1992).
- Walter v. Niagara Mohawk Power Corp., 598 N.Y.S.2d 416 (N.Y. App. Div. 1993).

## North Carolina

Davies v. Lewis, 514 S.E.2d 742 (N.C. Ct. App. 1999).

Jenkins v. Lake Montonia Club, Inc., 479 S.E.2d 259 (N.C. Ct. App. 1997).

Lee v. Fantasy Lake, Inc., No. C0A02-966, 2003 N.C. App. LEXIS 1580 (N.C. Ct. App. Aug. 5, 2003).

## North Dakota

Muller v. Custom Distribs., 487 N.W.2d 1 (N.D. 1992).

## Ohio

Webb v. S.R.S. Liquidation Co., CA No. 18859, 1998 Ohio App. LEXIS 5482 (Ohio Ct. App. Nov. 18, 1998) *aff'd. sub. nom.*, Webb v. Smith, 92 Fed. Appx. 249 (6th Cir. 2004).

Westray v. Imperial Pool & Supplies, Inc., 728 N.E.2d 431 (Ohio Ct. App. 1999).

Mattox v. Village of Bradner, No. WD-96-038, 1997 Ohio App. LEXIS 963 (Ohio Ct. App. Mar. 21, 1997).

Schremp v. Haugh's Prods., No. 97CA006655, 1997 Ohio App. LEXIS 5204 (Ohio Ct. App. Nov. 19, 1997).

Allums v. Gillenwater, Nos. 68870 and 68871, 1996 Ohio App. LEXIS 1687 (Ohio Ct. App. Apr. 25, 1996).

Siebenaler v. Village of Montpelier, 680 N.E.2d 654 (Ohio Ct. App. 1996).

Whitener v. Firwood Inv. Co., No. 14938, 1995 Ohio App. LEXIS 3986 (Ohio Ct. App. Sept. 13, 1995).

Toopes v. Gutierrez, No. 92 C.A. 38, 1993 Ohio App. LEXIS 1824 (Ohio Ct. App. Mar. 30, 1993).

Rogaliner v. Lieb, No. CA-420, 1992 Ohio App. LEXIS 4246 (Ohio Ct. App. Aug. 6, 1992).

Fisher v. Ohio Univ., 589 N. E. 2d 13 (Ohio 1992).

Davis v. Home & Roam Leisure Prods., No. C-890604, 1990 Ohio App. LEXIS 4563 (Ohio Ct. App. Oct. 24, 1990).

Teggart v. Irwin Pools, No. CA-2744, 1990 Ohio App. LEXIS 3571 (Ohio Ct. App. Aug. 13, 1990).

Stanton v. Miller, 583 N.E.2d 1080 (Ohio Ct. App. 1990).

Scottsdale Ins. Co. v. Brock, No. CA99-01-009, 2000 Ohio App. LEXIS 477 (Ohio Ct. App. Feb. 14, 2000).

#### Oklahoma

Morin v. Coral Swimming Pool Supply Co., 867 P.2d 494 (Okla. Ct. App. 1993).

#### Pennsylvania

Commonwealth v. A.D.B., 752 A.2d 438 (Pa. Commw. Ct. 2000).

County of Allegheny v. Fedunok, 642 A.2d 595 (Pa. Commw. Ct. 1994).

Fleck v. Hoffinger Indus., 115 S. Ct. 427 (U.S. 1994).

Long v. Manzo, 682 A.2d 370 (Pa. Super. Ct. 1996).

Micromanolis v. Woods Sch., Inc., 989 F.2d 696 (3rd Cir. 1993).

Mucowski v. Clark, 590 A.2d 348 (Pa. Super. Ct. 1991).

Noll v. Harrisburg Area YMCA, 643 A.2d 81 (Pa. 1994)

Philadelphia v. Duda, 595 A.2d 206 (Pa. Commw. Ct. 1991).

#### Rhode Island

Almonte v. Lakeside Swimming Pool & Supply Co., No. 91-657, 1994 R.I. Super LEXIS 72 (R.I. Super. Ct. Dec. 14, 1994).

Banks v. Bowen's Landing Corp., 652 A.2d 461 (R.I. 1995).

#### South Carolina

Harrell v. Pineland Plantation, Ltd., 523 S.E.2d 766 (S.C. 1999).

Vogt v. Murraywood Swim & Racquet Club, 593 S.E.2d 617 (S.C. Ct. App. 2004).

Walker v. Days Inn of America, Inc., No. 92-CP-40-5281 (1994). Retrieved February 16, 2007, from <http://www.atla.org/Search/searchresults.aspx?tSearch=walker&SearchCategory=Law+Reporter+Online+Articles>.

## Tennessee

Glover v. Oakwood Terrance Associated II Limited, 816 S.W.2d 43 (Tenn. Ct. App. 1991).

## Texas

Barnes v. Dallas Park & Rec. Dep't., 1999 U.S. Dist. LEXIS 9370 (D. Tex. June 7, 1999).

Bynum v. Univ. Place Apts., No. 88-01159 (Tex. Harris County 215<sup>th</sup> Judicial Dist. Ct. 1990).

Correa v. City of Bay City, 981 F. Supp. 477 (D. Tex. 1997).

Dickerson v. Davis, 925 S.W.2d 123 (Tex. App. 1996).

Gardner v. Best Western Int'l, 929 S.W.2d 474 (Tex. App. 1996).

Lipton v. Wilhite, 902 S.W.2d 598 (Tex. App. 1995).

Payne v. Cinco Ranch Venture, 822 S.W.2d 364 (Tex. App. 1992).

Univ. Prep. Sch. v. Huitt, 941 S.W.2d 177 (Tex. App. 1996).

## Utah

Vitale v. Belmont Springs, 916 P.2d 359 (Utah Ct. App. 1996).

## Virginia

Hiatt v. Lake Bancroft Cmty. Ass'n., 418 S.E.2d 894 (Va.1992).

Krebill v. National Capital Area Council of Boy Scouts of America, Va., No. 123072 (Fairfax County Cir. Ct. 1994).

## Washington

Hendrickson v. King County, 2 P.3d 1006 (Wash. Ct. App. 2000).

Meneely v. S.R. Smith, Inc., 5 P.3d 49 (Wash. Ct. App. 2000).

Schooley v. Pinch's Deli Market, 912 P.2d 1044 (Wash. Ct. App. 1996) *aff'd*, 951 P.2d 749 (Wash. 1998).

Swanson v. McKain, 796 P.2d 1291 (Wash. Ct. App. 1990).

## Wisconsin

Anderson v. North Wood Group of Cable, 488 N.W.2d 929 (Wis. Ct. App. 1992).

Douglas v. Dewey, 453 N.W. 2d 500 (Wis. Ct. App. 1990).

Griebler v. Doughboy Recreational, Inc., 466 N.W.2d 897 (Wis. 1991).

Heimerl v. Waverly Beach Inc., 680 N.W.2d 832 (Wis. Ct. App. 2004).

Mohr v. St. Paul Fire & Marine Ins. Co., 674 N.W.2d 576 (Wis. Ct. App. 2003).

Wisnicky v. Fox Hills Inn & Country Club, Inc., 163 Wis. 2d 1023; 473 N.W.2d 523 (Wis. Ct. App. 1991).