

# Legal advice from Ray Arouesty

Operating any small business comes with many challenges, but operating a pool service company comes with some extra concerns, especially in terms of liability.

A pool service company is responsible for maintaining a safe environment for its customers, and there are plenty of places where safety is not always assured.

Furthermore, the nature of the job involves dangerous chemicals and equipment susceptible to malfunction. Luckily, there are ways that maintenance firms can protect themselves from expensive legal troubles.

We spoke to legal expert and president of Arrow Insurance Service, Ray Arouesty, about how service companies can do just that.

*Q: How do you advise service professionals on how to protect themselves from financial ruin in the case of a potential accident?*

A: There are three things:

Competency is the first. Don't take jobs you're not able to do properly. Be educated. Don't be afraid to refer the job away, or if you're legally able, sub-contract the job to someone who is competent to do it properly.

Second, have the right insurance. Have an adequate limit of insurance to

cover you for your current and potential net worth. If you've been in business for 30 years and you have assets, \$300,000 insurance is probably not enough.

You should have an adequate limit of insurance. Furthermore, you should have insurance that covers you for the risk that you are exposed to everyday, which means at least a policy that covers chemical damage.

Third, operate under a business structure that shields one's personal assets.

*Q: How does an attorney advise a service technician on what type of business structure they should operate under?*

A: Everybody in business has to decide if they want to operate as a sole proprietor, a partnership, a corporation, or an LLC.

There is a definite advantage to operating any kind of business as an LLC or corporation.

The advantage is that only one's business assets are at risk in litigation if the LLC or corporation is operating properly. By that I mean, as long as the business is treating itself as a corporation or an LLC: not co-mingling funds, or using the business account to pay for personal expenses, keeping adequate minutes, keeping a separate checking account.

If the business is operated properly as

an LLC or corporation, it will provide a shield so that personal assets are not accessible in litigation.

However, most of the pool techs that I know, and I insure about 4,000 service techs or more, operate as a sole proprietor. A lot of guys tell me that they don't think their business is big enough so they don't think it's worth it for them to incorporate.

I should say that I don't recommend that contractors operate as an LLC in California because the bonding requirement is much greater for an LLC than it is for a corporation. In fact, prior to last year, an LLC could not get a contractors' license in California.

So my advice to my clients is that they should operate under a corporation structure even though so many of them operate as a sole proprietorship.

*Q: Why shouldn't they operate as a sole proprietorship?*

A: Let's take an example. Someone jumps off a diving board that a pool tech installed a year before. Let's say he hits his head and becomes paralyzed. A lawsuit gets filed based on a theory that the pool tech installed the wrong kind of board on the pool. The case goes to trial and the jury awards \$10 million. The pool tech has an insurance policy with a \$1 million limit and the insurance

company pays that amount.

Theoretically all of the pool tech's personal assets could be taken from him to pay the judgment over \$1 million. His future earnings from his business could be taken; he may have to declare bankruptcy, which would obviously affect his credit and his financial future.

So I think that most people in the business should consider operating under the corporate structure to protect everything they've worked for all their life. When you operate under the limited liability structure, which is either an LLC or a corporation, it gives you a lot of extra protection.

It is going to cost you a bit: the minimum tax in California for a corporation is \$800 per year. You have to file a separate tax return, but I think you get much more in return than what you pay.

This is especially important when you work in a high-risk industry, where there is the potential for serious injury or serious property damage. We're talking about cases involving heaters, diving boards, and electric shock. There's some very high liability exposure in the pool industry.

I think that really requires careful consideration of operating under a corporate structure to protect what these

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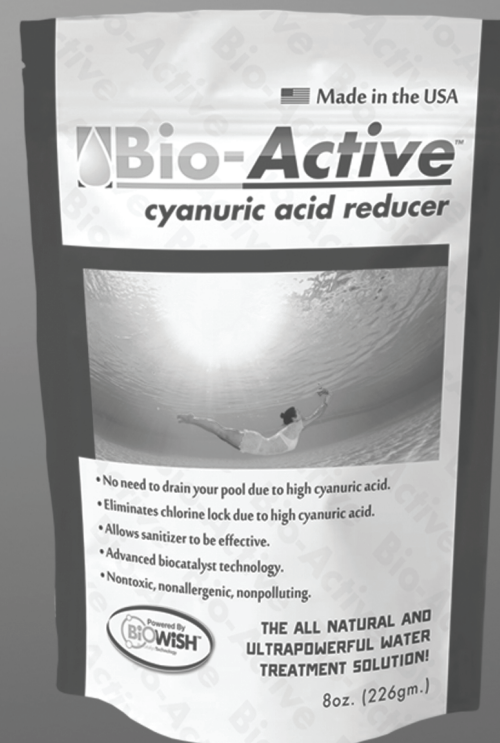
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guys have worked so hard to acquire. Other than the increased paperwork and a little extra money, I can't think of why someone would want to operate as sole proprietorship in the pool industry. I would never do that myself.

*Q: As an insurance provider, what sorts of claims do you see?*

A: In my line of work, there are really just two types of claims: high frequency-low value claims, and low frequency-high value claims.

The first kind involves claims about damage to plaster, tile and heaters, usually caused by improper water chemistry. Equipment damages don't usually exceed \$5,000. Then there are damages to the pool surfaces, and those are a little more expensive. We see a fair number of these but those sorts of claims are not what keeps me up at night.

*Q: What does keep you up at night?*

A: One thing that worries me is compressed air in filters. I think it's an overlooked hazard and that many in the industry don't recognize the potential life-threatening injuries that exploding filter lids can cause.

*Q: Do you see many of these cases?*

A: In the last five years, I've known of three. I know of one where a filter lid

hit a warranty repair man in the head causing serious brain injury.

When it comes to things like electric shock or filter lids coming off under pressure, we see few of these, but they are tremendous in value. We are talking million dollar cases and people dying or suffering serious brain injuries. Those kinds of cases trouble me.

Also, there are over-chlorination cases where we have chemical feeders in spas that fail in the on-position. We can get chlorination levels high enough to cause serious chemical burning and chemical scarring.

That worries me, too, because there are so many chemical feeders currently on older pools. Some of those chemical feeders are over five years old. I get calls from service techs who tell me it's very common for them to fail but the customers don't want to replace them before their broken. By the time it is broken, the service tech is at risk for someone getting injured in the pool or spa. So that's a major concern of mine.

You wouldn't believe the kind of phone calls I get.

A service tech called me because he was servicing a pool that had been remodeled. They installed the equipment in a small metal shed, and the heater was not vented to the outside.

He brought it to the attention of the homeowner, who really wasn't concerned. But

the homeowner called the equipment installer, and the installer said it was not part of his job.

I'm grateful that my client called me to discuss it but what keeps me up at night is all the other guys that don't call. Maybe the service tech thinks it's not my job, I didn't install it and I'm just here to maintain the pool so he just walks past it.

Then there are the guys installing ADA lifts who assume that the equipment is bonded. Maybe they bond the lift chair to the rebar assuming that the rebar is bonded to the rest of the equipment. Many guys don't do an electrical test to make sure that the rebar is bonded.

So what keeps me awake is the assumption that the prior work was done correctly because the current technician is going to be responsible if there is electric shock.

Another concern I have is lights. We had a situation where a light in a commercial pool was not operating for a long time. But the service tech continued to service the pool. Then, an unsupervised young child drowned in the pool. The parents said that the child could have been rescued had the light been operating, because someone would have seen child. We were brought into a lawsuit where the dispute involved whether the property manager was aware that the light was not operating.

So what concerns me in this regard is technicians servicing pools with defects.

Many pools have defects—but defects

that have not been identified, communicated, and documented to the responsible property owner.

That's plenty of things that keep me awake at night. It doesn't sound like I'm sleeping much...

*Q: When a claim is brought against a service technician, what steps are taken to resolve it?*

A: There is mediation, arbitration, or a trial, if the case can't be quickly settled. But all of that assumes there is a dispute.

Very commonly, there is an injury or damage involved, and there is not a dispute. If there's really no question as to who was at fault, claims are paid assuming the parties can agree on the amount of the damages.

*Q: What if there is a dispute?*

A: Here's the life of a dispute:

Let's say that a homeowner thinks that the service technician ruined his pool surface due to poor water chemistry and the technician disagrees.

The technician turns the claim in to the insurance company, who insures the pool tech.

At this point, perhaps the homeowner threatens a lawsuit.

The insurance company would like to avoid trial, so they may recommend taking the case to an independent mediator who can make recommendations.

The mediator is often a retired judge.

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This is voluntary mediation; it helps the parties reach a settlement.

The mediator will probably advise the technician that it would be cheaper to pay something rather than fight it. Meanwhile, he will probably advise the homeowner to take less than he wants because people never know how the court will find.

I jokingly tell people that the best settlement is when everyone is unhappy with it: where the party paying thinks they paid too much, and the party receiving thinks they didn't get enough. I call it the doctrine of mutual pain.

If mediation doesn't work, then we may proceed to arbitration. Arbitration is like an informal trial. The arbitrator is also usually a retired judge.

Each of the sides brings in experts and witnesses, and each is represented by a lawyer. The arbitrator decides the dispute, but with arbitration, the decision is binding. The advantage of arbitration is it's quick and much cheaper than trial.

However, some people, usually the homeowner, think that their chances will be better with a jury. The downside to trial is that it is lengthy and expensive so only five percent of all cases actually go to trial while 95 percent get settled. ■

## Alan Smith Pool Plastering Hosts Service Tech Day

Alan Smith and Pentair Pools invite the service industry to attend their 3rd annual Service Company Day on Saturday, Feb. 28 at Allen Smith Pools. Also called Service Appreciation Day, it's their way of thanking the valuable service professionals who maintain the beautiful pools and equipment that they build.

"The service industry has been so good to us, providing us with business, it's our way of giving back," said Jeff Smith, Alan's son.

Enjoy a totally free breakfast, lunch and education day.

Since its inception, the event is rather well attended. In 2013, 70 people were in attendance, which got a little bigger in 2014 with 110 pool service professionals and repair men. This year, they are expecting just over 200 pool professionals.

Seminars are free. They'll be giving away free t-shirts and start-up cards, and service techs can register early to get extra raffle tickets for more chances to win valuable prizes, including a brand new pre-fabricated barbeque unit.

The event will run from 7 a.m. to 4 p.m. at 227 W. Carleton Ave., Orange, CA, 92867. Register Online at [www.poolserviceday2015.eventbrite.com](http://www.poolserviceday2015.eventbrite.com), or register at the event.

### The Schedule

7 - 8:15 a.m. — Pancake Breakfast, tabletop and introduction  
8:15 - 10 a.m. — "Differences in pool surfaces and how they interact with water," Alan Smith

10:30 a.m. - Noon

— Class A: "Pool Forensics 101," Greg Garrett

— Class B: "Pentair Automation Class," Pentair

Noon - 1:30 p.m. — Raffle, lunch, and plaster demonstration.

1:30 - 3 p.m.

— Class A: "Pool Service Tips & Tricks," Kevin Kostka

— Class B: "Pentair Variable Speed Pump Class"

3:15 - 4 p.m. — "Nuts and bolts of selling pool equipment," Brett Gereau ■



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