

DROWNING AND AQUATIC ACCIDENTS

**How To Find The Right Legal Recourse
And The Way Forward**

Jimmy Doan, Esq.

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PREFACE

I am proud to work with my wonderful team to create this book to help victims and their families during some of the worst times in their lives. There is light at the end of the tunnel. I hope my experience, passion, and knowledge can help you find peace during the trying times. Godspeed.

DEDICATION

I would like to thank everyone I have encountered in my life. Everyone has added to who I am today. The journey to be a lawyer itself has been very rewarding. I hope to meet many more great people as I continue this journey in life.

DISCLAIMER

This publication is intended to be used for educational purposes only. No legal advice is being given, and no attorney-client relationship is intended to be created by reading this material. The author assumes no liability for any errors or omissions or for how this book or its contents are used or interpreted, or for any consequences resulting directly or indirectly from the use of this book. For legal or any other advice, please consult an experienced attorney or the appropriate expert, who is aware of the specific facts of your case and is knowledgeable in the law in your jurisdiction.

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TESTIMONIALS

"I have recommended the Doan law firm to multiple friends who were all blown away by the exceptional service they received and by the settlements Jimmy and his staff fought to get for them! Jimmy is someone you need to have in your corner when fighting the insurance companies for the compensation you deserve!"

- D.P.

"The Doan Law Firm staff was very kind and helpful throughout the whole process of my injury claim. They worked really hard on my case and never gave up. They got me the amount I deserved. I would recommend any family member or friend without any doubt."

- S.T.

"The firm was very helpful with my situation and contacted me throughout the process. We were in constant contact over the phone and email with any problems that would come up. They are very thorough and knowledgeable with all legal needs."

- J.S.

“The Doan law firm is very friendly while being professional, and extremely knowledgeable. They made the whole litigation process less stressful.”

- Z.S.

“I'm so blessed to have found The Doan Law Firm. They aren't like other law firms, they actually care and listen to what you want and help you get what you need.”

- G.K.

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ABOUT THE AUTHOR



I've been practicing law for over 15 years, handling drowning cases across the United States.

I began my career in aquatics and water safety when I was at the University of Texas by taking a lifeguarding class. It was my freshman year and I fell in love with it. I understood the importance of water safety and lifeguard training. I also learned at that point, that drowning is the second leading cause of death for accidental issues in United States and that shocked me.

While in college I ended up going down to Galveston, Texas. I began working with a great professor, Kim Tyson, who has been one of the lead persons at the

Red Cross for over 30 years. He introduced me to Vic Maceo, with the Galveston Sheriff's Department, who I ended up working with for over 10 years. I ended up working for the beach patrol for about 13 years as a lifeguard, paramedic, and eventually as a police officer.

While at police academy I was a supervisor and in charge of the junior lifeguard program. While there, I had the unfortunate, but unique, experience of handling hundreds of drowning and death cases firsthand. In fact, I have probably performed CPR more than any lifeguard in history; maybe over 100 times. I've seen the impact of a drowning firsthand. I've held dying people in my hands as I tried to breathe life back into their bodies.

I knew I wanted to make a career of water safety and teaching. So, after I left the beach patrol, I formed my own aquatic management and consulting company. I worked with country clubs, summer camps, and schools across the United States teaching as a water safety instructor for the Red Cross and as a lifeguard instructor trainer. I am ranked as high as you can be as an instructor with the Red Cross and I have been with

them for 20 years. I have taught over 5,000 lifeguards and over 10,000 swimming lessons. This is all before becoming a lawyer!

After I went to law school, I was still involved in aquatics. I worked with a group called the National Drowning Prevention Alliance. I'm a big supporter and as a lawyer, I provide them with a lot of guidance. By working with the National Drowning Prevention Alliance, I was able to understand the importance of having an aquatic lawyer, such as myself, because no one existed in this sector.

I knew my career focus was calling to be the go-to guy in this field. I wanted to make sure that whenever there was a drowning or near drowning accident, I was able to represent victims and their families.

It isn't about the money. It's about making sure that we prevent as many drowning deaths as possible. Our aim is to send a clear message to those at fault in these incidents. If you don't have adequate training or don't have adequate safety measures in place, we will punish you if a drowning occurs under your watch. We don't

punish the at-fault party because we have a black heart. We punish to prevent drownings from happening again. As such, we penalize the at-fault party where it hurts, in the pocketbook. I have won multi-million dollar verdicts against apartment complexes, schools, country clubs, and lifeguarding agencies. I'm definitely known as the aquatics drowning lawyer. People find me all day every day. At least once a week, I get a call about a drowning.

Experience As An Expert Witness

An expert witness is a unique qualification. However, a lot of people don't know what an expert witness actually does.

An expert witness helps build the case for a lawyer. Attorneys generally have a general skillset, but not usually a specific skillset on different items. As a result, lawyers often hire experts.

I have been retained as an expert in over 50 drowning cases across the United States for other attorneys. Moreover, not only am I an expert for the victim, I've been an expert for the defense as well in

drowning or near drowning cases. This makes my experience valuable because I can see a case from both sides. I don't simply take a job as an expert to make money. I make sure I'm on the right side. If I feel that the defense did something wrong, I won't be their expert. If I feel like the plaintiff did something wrong, I won't be their expert either.

There is a very high standard to work as an expert witness in a drowning case. The judge has to review the background and career of said expert and give approval to say that you are the authority in this area. I have never been rejected as an expert in any drowning case. Today, I still get many calls from other attorneys asking me to help with their cases.

I love being able to have a unique skill set of experience that other lawyers cannot find anywhere else. Additionally, because I'm a lawyer myself, I know how to testify well. I know the tricks on both sides. I can say being an expert in this field, has really shaped my career as a lawyer.

CHAPTER 1

DROWNING OR NEAR-DROWNING ACCIDENTS ACROSS THE US



Drownings or near drownings are very common across the United States. Before I got involved in aquatics, I thought there were maybe about 100 to 500 drownings per year in the U.S. One day I actually I looked up the answer.

In 2019 alone, there were 3,536 drownings, which is about 10 per day, in this country. It is shocking to see how high that number is. It seems to me, as the

world evolves more kids and more adults are doing less activities outdoors. People don't seem to know how to swim as well as compared to 30 years ago.

I remember going to school and having swimming lessons as a mandatory part of physical education classes. A lot of schools are now being built without swimming pools because they don't want the liability of a drowning. There are a great number of people who don't even learn the basics of swimming skills. I hate to say it, but I feel like the average is going to go up as future generation spends more time on the phone and computer and less time outdoors or swimming.

Where Do Most Drowning Accidents Or Near-Drowning Accidents Generally Occur?

Approximately 80 to 90% of drownings occur at beaches and lakes, which is mainly due to the tides and other conditions, such as murky water. The issue with beaches and lakes is that the water often has very low clarity. If someone goes under because they are having difficulty swimming, the chances of recovery are much less than in a clear pool. If someone is in trouble or

having difficulty swimming in a pool, which is normally clear, often a rescue can easily happen. Generally there would be a lifeguard, a bystander, or a family member who could simply look down in the pool and make a rescue if a drowning was occurring.

When Does A Drowning Accident Case Become A Wrongful Death Claim?

When the word “drowning” is used to reference a case, I assume the victim is dead to begin with. With that in mind, it already starts off as a wrongful death case. The words “wrongful death” are thrown around very loosely, however. When you categorize a case as a wrongful death, it opens it up for other people to be able to get compensated for a horrible accident, and not only for the victim or the victim’s family.

For example, under many states’ wrongful death claims, bystanders can also receive compensation for the trauma they went through for witnessing such a drowning.

Wrongful death cases allow more people to participate in the claim's process and possibly receive compensation simply because they witnessed the incident.

That's the main difference between a drowning case and filing a wrongful death case.

CHAPTER 2

COMMON CAUSES OF DROWNING ACCIDENTS IN US



One of the most common causes of drowning accidents in the United States is due to lack of swimming skills and the inability to swim in the first place. I'm shocked at the amount of people that go into the water who do not know how to swim.

I have also found another common cause of drowning accidents is due to impairment issues. Often people drink alcohol at the beach, lake, or by the pool

and can find themselves in trouble very quickly. Their coordination is already impaired due to the drug or drink. That coupled with a lack of swimming skills, makes for a very deadly combination. Unfortunately, I see this often.

Factors That Determine A Strong Case

Whenever a potential client calls me regarding a family member that has suffered a drowning or near-drowning, one of the first things I look for is fault. Did someone do something wrong to cause this drowning besides the victim? Oftentimes when clients call me, and I can't quite tell who is at fault, I will ask, "Who do you think is at fault?"

With every case, whether it be a drowning or a car accident, fault is the key in the United States liability system.

One big issue we deal with is governmental immunity. Governmental immunity is a very fancy word for saying that you cannot sue the government. It is a very old law that basically states that the king is

never wrong, and the king, in this case, would be the government. If a drowning occurs at a public facility, such as a beach or a lake, oftentimes, we find that the lifeguards or the city is at fault. In these instances, unfortunately, sometimes we can't help. This is a state-by-state thing depending on what kind of immunity they have. That's something I always have to look for - finding out if the drowning occurred at a public facility.

An important advantage my firm has in these cases, is that because I'm licensed in many states, I can tell pretty quickly if someone has a case against the government if it is a public situation.

CHAPTER 3

STEPS TO TAKE IN A DROWNING OR NEAR DROWNING ACCIDENT



One of the most important things to do when there has been a drowning or near drowning incident, is to, is to ensure police are called to the scene. There needs to be documentation about what happened. If there are any witnesses, you need to be sure their contact information is obtained.

Secondly, if you have been injured in a near drowning accident, it's important to go to the doctor

immediately. Whether you get transported to the emergency room or see your primary care doctor, it is essential to get checked out. You should also call a lawyer to see if they have a network of providers that can help. Documentation is the key. It's one thing to say you're hurt, it's another thing to have documentation. The sooner you go to the medical provider or see a doctor, the sooner they can document the injuries to help with your case.

How Critical Is It To Seek Medical Attention And Do Follow Up Care After An Accident?

It's so critical to get care immediately after a near drowning accident for two reasons. First and foremost, it is important to put your health and safety as priority. The second reason why it is so important to go to the doctor immediately is to have a valid argument against the defense. If you wait, the defense side could say that you weren't negatively affected by the incident or that it really wasn't that serious. They're going to argue that if it was, you would have gone to the doctor immediately. Again, this is the reason it is so important to have the documentation that you went

immediately or soon afterwards. If you have had a near drowning accident and wait seven days, ten days, or a month, it could be very easy for the defense to argue in front of the jury that it was not serious and that maybe your lawyer just sent you to the doctor. Again, documentation is the key to every case. I can't stress that enough.

I can't just call the defense lawyer and tell them that my client was seriously impacted or injured in a near drowning accident or that my client's family member drowns due to their client's negligence or fault. I need documented proof. That's what makes the insurance companies nervous. That's what makes them pay on cases. When I have proof to win, that is when they pay big.

Benefits Of Finding Qualified Medical Care Through Your Own Lawyer

I've often found that clients who were injured generally go to their primary care doctors. That is a natural first step, of course. However, the truth is, that primary care doctors don't handle that many near

drowning cases. A lot of times, a) They don't know how to treat a drowning victim; and b) They don't understand the long-term health effects a near drowning experience can have on someone.

Also, a lot of times, your own doctors, as soon as they know that you are involved in a personal injury claim, they don't want to get involved. They're afraid they may have to testify. I've seen that often. However, the good thing about working with our firm, is that all of the doctors we recommend are not only amazing physicians, they also understand the legal system. They know the documentation that is needed to prove your case, and are more than happy to go to court and testify on your behalf if it is necessary.

The Network Of Medical Providers That I Have At My Disposal

In practicing over 15 years, I've pretty much had cases in every state. With the wide number of providers that I have in my network, our clients usually don't have trouble finding a doctor close to their home. That's unusual for a lawyer to have that

type of strength and ability. Most attorneys only practice in one city or state, whereas I have a national practice with over 40 offices across the United States, and I am licensed everywhere. That is a valuable thing that no other law firm can provide.

Some lawyers can most likely help you find a medical provider in Oklahoma or Texas. However, I can help you find doctors and specialists throughout the country because of the vast network of doctors I have at my disposal.

CHAPTER 4

WHAT DO YOU SAY TO ANYONE WHO MIGHT BE THINKING ABOUT HANDLING THEIR CASE?



I always tell every client the same advice that I would give a family member. Sometimes, you don't need to hire a lawyer on a case if involves a less serious injury. But, for more severe cases, such as near drowning or death from drowning, insurance companies will never pay what you are owed unless you have a lawyer to represent you; a very good, aggressive attorney.

It is also important to consider that every case involves two parts. It involves liability, which refers to at-fault, and it involves damages, which refers to how much they need to pay for being at-fault. The second part is the difficult part. Liability is often clear in a lot of personal injury cases. In drowning or near-drowning cases, liability can be much harder to show. If you try to do the case yourself, sometimes you may only be getting 2% to 5% of what you actually deserve because the defense lawyer knows that you can't do anything about it. You can't go into court and enforce your rights on your own. However, if you have a lawyer, they know that if they don't pay the right amount, I will march into court and make them pay the fair amount for your damages.

Damages are the really complicated part of a case. Often, the liability is pretty clear, especially if there is a police report or witnesses. That's why it's so important on a drowning or near drowning case to hire a lawyer. There is much more money at stake and they won't pay you what you deserve unless you have a lawyer.

What Do You Tell To People Who Believe The Lawyer Is Going To Take Everything?

Often people believe that the lawyer is going to take everything in a personal injury case. I can't speak for other law firms, and I've heard these horror stories before. I can tell you, though in over 15 years, we have over 500, 5-star Google ratings. We have never settled a case where the client has not received money in their pocket after all of their bills have been paid. Also, we will not accept any offer or take any settlement until the client agrees to it and signs off on it. If the client is not happy with the amount, the client can always tell us to try and win more, or just not sign it.

There would never be a situation where the client would sign and say, "Hey, I still owe people."

We are very meticulous and obtain the client's approval for everything. That is a good safeguard for to have. I take very good care of my clients and work to get them compensated for what has happened.

CHAPTER 5

WHO COULD POTENTIALLY BE LIABLE IN A DROWNING OR NEAR-DROWNING CASE?



Our job, as your lawyer, is to hold anyone and everyone accountable who is at-fault. We work with a team of aquatic experts that can quickly come on the scene and interview witnesses. That's the first thing we do. After we file a lawsuit, we will go through a process called discovery. Discovery is when we find out who was involved with the pool, the drowning, the training, and any businesses that own the facility or any

businesses that own those businesses. Responsibility can fall on a lifeguard, a trainer, an apartment, the apartment's management and so on. Therefore, we will take a look at everyone and everything. Because we have so vast experience handling these cases over the last 15 years, we make sure that no stone goes unturned. We make sure that our investigator follows the trail to hold everyone who had anything to do with the incident is held accountable.

As I've mentioned, often individual people could be responsible for the accident, but they may not have to pay. That is in reference to governmental immunity. That's always an issue when we deal with waterfronts and public places, such as public pools. However, one of the things I pride myself on, is being thorough. At our firm, we hunt down and investigate everyone who is involved. That way, the family can focus on the grieving process.

What Evidence Is Critical To Build A Strong Wrongful Death Drowning Or Near-Drowning Personal Injury Case?

Often times what we find in drownings, especially in an apartment situation, is that murky water contributed to the incident. This is why it is so important to hire our firm, attorneys who are well-versed in drowning cases. We don't have to call an expert because I am an aquatic expert myself. My team can quickly go to the scene and preserve the evidence I need to prove your case.

For instance, if the case involves an apartment pool and bystanders couldn't find the victim in-time to resuscitate him or her because the water was murky, it is critical that we send out our safety team within 24 hours to get water samples. Every pool is required to have sanitation. Usually, the most common type of sanitation is chlorine. Water chemistry can sometimes change within hours and we need to be able to test it to help your case. We may be able to tell if the apartment's pool was in compliance with the chemical requirements.

Many times, a lawyer or another law firm will call me and ask for help after they've realized they can't handle the case because they weren't quick enough to get there. They will send me pictures of a very murky pool that maybe they received from a police officer that went to the scene. However, when I ask them about the chemical readings for the day, they have no clue what I'm talking about. If the victim's family had hired me immediately, I could have sent my team out there within 24 hours to retain the water sample. We would have the evidence necessary to show that the pool chemicals were not in compliance with the law, if that was the case.

CHAPTER 6

THE DAMAGES AND COVERAGE AVAILABLE



There are differences between an injury case versus a death case when it comes to damages available to the victims. For both types of cases, I have experts and doctors that have worked on hundreds of drowning cases that will testify to how horrible a drowning is for a victim. We have experts that can testify how it feels to suffocate underwater, how long a death takes, and talk about the kind of pressure on a victim's chest. That really is a different damage model

that adds a significant amount of money to a case than a personal injury claim.

When it comes to wrongful death cases, the victim's family would also get loss of consortium or loss of future relationships, which means time lost with the family.

The loss of companionship in the future with the person that passed away can be very valuable.

Defenses Insurance Companies Use

There are two defenses that I see very often in drowning cases. Number one, when a minor, such as a child or teenager, is involved in a drowning, the defense likes to blame the parents. They like to put the blame that the parent should have been watching the child. We've handled a lot of these cases, so we know how to deal with this type of defense.

Is there some blame to be shared in certain situation with the parents? Absolutely. However, is the parent 100% at fault if a child is swimming in a pool where you can barely see your hands because the

water is so murky? That is what you hire us for. We can deal with these defenses.

The second defense that I often see is blaming the victim's prior or existing health condition. I've had several cases where the defense pulled the autopsy and wanted to blame the drowning on a health condition, such as a heart attack or stroke, especially in a lifeguarded situation. However, as a lifeguard instructor myself, one of the key points we teach lifeguards is to make a rescue no matter what happens. If someone is submerged, you need to make a rescue. It's very easy for me to take care of that defense. Our argument is that you need to give that person a chance to survive. Let's say that the autopsy report says that it was 100% a heart attack that caused the death. We will still argue that you need to have given the victim a chance to survive. This is 101 Red Cross Basic. We never teach a lifeguard to think that a person looks too sick or old, and just let them die. A lifeguard's job is to make a rescue.

We've handled these two defenses and many other defenses that the insurance companies like to use multiple times. There hasn't been a defense that has caused us any issues in my entire 15-year career because I've seen them all.

CHAPTER 7

HOW DOES YOUR FIRM TAKE ON THE LARGE INSURANCE COMPANIES IN THESE CASES?



As I mentioned earlier, it is a huge part of my law firm that I serve as an expert. Typically, a lawyer will do a deposition, meaning a lawyer will get to cross-examine the defense, whether it be a lifeguard, a pool manager, or an apartment manager. It's not the expert that does the deposition, it's the lawyer. The lawyer will often study, practice, and spend time with the expert to learn about how to deal with the witness

that they're interrogating. Because I'm an expert witness myself, it's like having two powerful persons do the deposition at the same time. I don't have to consult with an expert because I am an expert. I know everything there is to know about drownings.

It's easy for me, during a deposition, to pull upon my own experience to ask the exact question we need to win the case. That's very unique. Truthfully, I have never known another lawyer to be an expert and a lawyer, especially in this area of aquatics. The defense and the witnesses can't keep up with my experience and knowledge in this area. I'm able to get to the truth very quickly during the deposition.

Is Taking The Case To Trial Similar To Trucking Accident Cases Where The Criteria Looks The Same, Or Is It Different?

Trials for trucking accident cases and drowning accident cases are very similar. The only difference is that the jury is very sympathetic to a drowning victims. The awards are often very large because the word "drowning" is so horrific to people. The plaintiff side

has a much bigger advantage in the damage model with drowning cases because people think about how horrible the drowning itself is, and how horrible it is for the family to think that their loved one suffocated in water. The damage model really shifts to the plaintiff's side. We've won some huge verdicts.

We spend a lot of money in these cases and have what's called a mock trial. We bring in juries and find out what kind of damage amount they would award. It's been in excess of a \$100 million sometimes in these cases. Juries tend to award a lot of money on these cases. There's less risk of losing a case in a drowning, especially if we can show someone's at fault. When we win, we can win a very large amount.

What Sets You Apart In Taking On Drowning Cases?

There are many things that set us apart from other attorneys who handle drowning cases. However, the main highlight is our experience and the amount that we have won in settlements in these cases. I am known as the "drowning lawyer". It's not a title that

makes me happy, but it's just the reality. Lawyers across the United States know who I am. Even if they have a client they signed up, they often call me to get involved in their case. I have never lost a drowning case. That fact and my reputation increases the value of their case.

If I am not licensed in a particular state, I can work on drowning cases with other lawyers who can serve as local counsel. As a result, I am able to file a lawsuit in any state in the United States. That's what really sets me apart - my experience and connection with every state as a drowning lawyer or drowning expert.

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