

## PRACTICE FOCUS / REAL ESTATE

# \$7.5M Verdict Against Condo Association Should Have Been Prevented

Commentary by  
Michael Hyman

While recreational amenities such as pools and hot tubs significantly add to the appeal of condominium and homeowners association communities, they also come with major liability risks that must be mitigated by the use of effective safety and maintenance measures. The recent \$7.5 million verdict for a



Hyman

St. Petersburg, Florida, condominium resident to compensate him for the injuries that he sustained in his community's hot tub is a telling example of the potential ramifications that can result when any defects in the working condition of these amenities are not properly addressed.

In 2008, Ehab Mina was about to step into the hot tub at the Boca Ciega Resort & Marina Condominium when he became startled to see that it was partially drained. The problem in the hot tub caused the 44-year-old to slip, and he badly injured his right shoulder and spine.

Mina required multiple surgeries, and he was ultimately forced to sell his boat-building business as a result of his injuries. He filed suit against the association and its property management company, Condos by Sirata Inc., alleging that the hot tub should have had a posted warning and adequate lighting in the evening hours.



GOOGLE

The attorneys for the condominium association responded by arguing that the half-empty hot tub was an obvious condition, but the jury found the association and its management company to be jointly liable. It awarded a \$7.56 million verdict to Mina.

For the unit owners, this verdict could present significant financial repercussions, especially if the association and management company general liability insurance policies' limits are insufficient to cover the entire amount of the ver-

dict. In that event, the association will be compelled to pass a special assessment, and its insurance premiums are likely to rise, leading to a substantial financial burden for all of the owners.

The expensive lesson for the association in this case is an important one for all Florida community associations and their property managers. Associations must apply reasonable vigilance in maintaining and inspecting all community recreational amenities. An association's obligations include

regularly scheduled periodic inspections followed by performing all of the necessary maintenance and replacement procedures to ensure that all amenities and equipment are kept in safe working condition. In addition, user weight and size restrictions, or limitations on the hours during which amenities may be used, could also help to potentially limit legal liability should an injury occur.

Associations must take the maintenance and upkeep of their recreational amenities and equipment just as seriously as they do for their roofs, structural elements and plumbing elements. On-site staff must be extremely diligent in monitoring the conditions of pools, hot tubs and other amenities as well as all common areas. Even if it is an obvious condition, such as the level of the water, the best course of action is to close the amenity immediately and post signs and barriers as needed to prevent anyone from using it. Once closed, the amenity should be re-opened for use by residents and guests only after it has been restored to safe and normal working condition.

This recent ruling and others similar to it in the past illustrate how the prevention of potential injuries and legal liabilities must always trump any concerns regarding the cost of repairs or the inconvenience of temporarily closing a community amenity.

**Michael L. Hyman is a shareholder with Siegfried, Rivera, Hyman, Lerner, De La Torre, Mars & Sobel in Coral Gables. He has focused on community association law since 1970. Contact him at [mhyman@srl-law.com](mailto:mhyman@srl-law.com).**

## BOARD OF CONTRIBUTORS