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**Product Liability and Complex Torts  
Charlotte Regional Seminar**

**April 11, 2019**



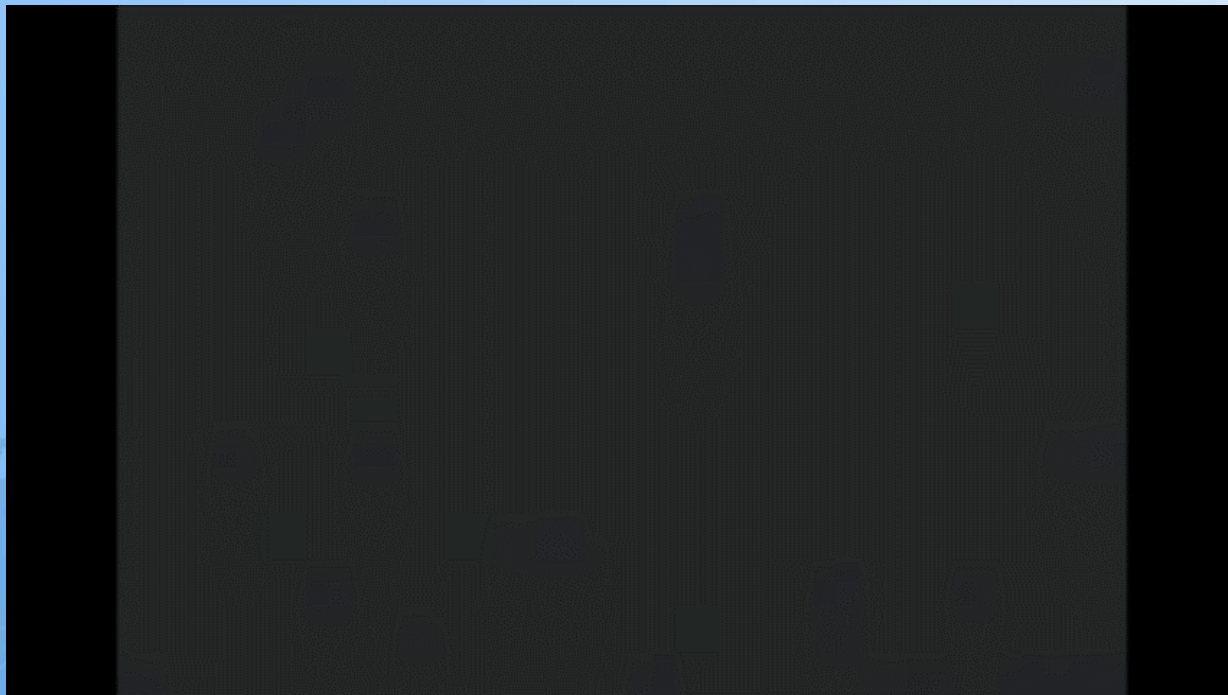
# You're Suing Me for What??

## Effectively Defend Against Innovative Claims

Presenter:  
Audra M. Dickens  
Director

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# The Treadmill



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# The Rescue



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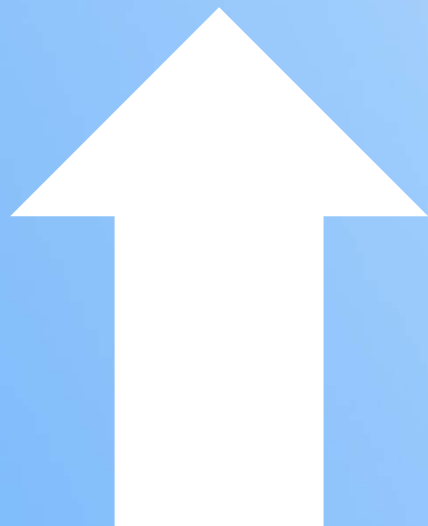
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# Rise of the Negligence Per Se Claim

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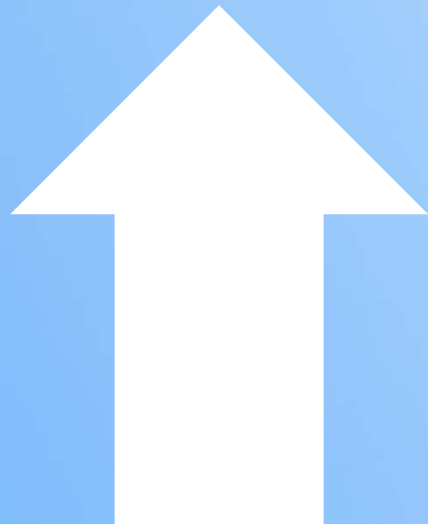


# Rise of the Negligence Per Se Claim

## I. Passenger in an Auto Accident

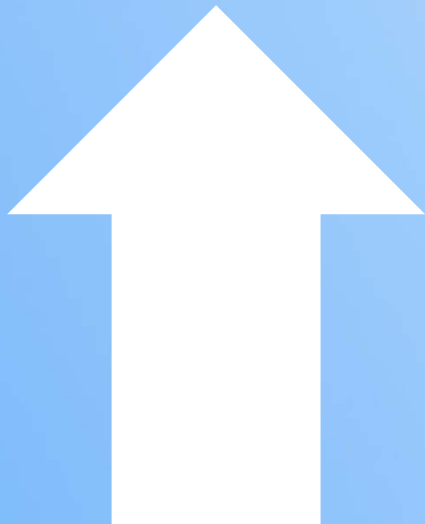
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# Rise of the Negligence Per Se Claim

1. Passenger in an Auto Accident
2. Tenant/Landlord Dispute



## Rise of the Negligence Per Se Claim

1. Passenger in an Auto Accident
2. Tenant/Landlord Dispute
3. Drowning of a Minor



- Mosteller v. Duke Energy Corp.  
207 N.C.App. 1 (2010)



Passenger sued driver and Duke Energy

- Mosteller v. Duke Energy Corp.  
207 N.C.App. 1 (2010)

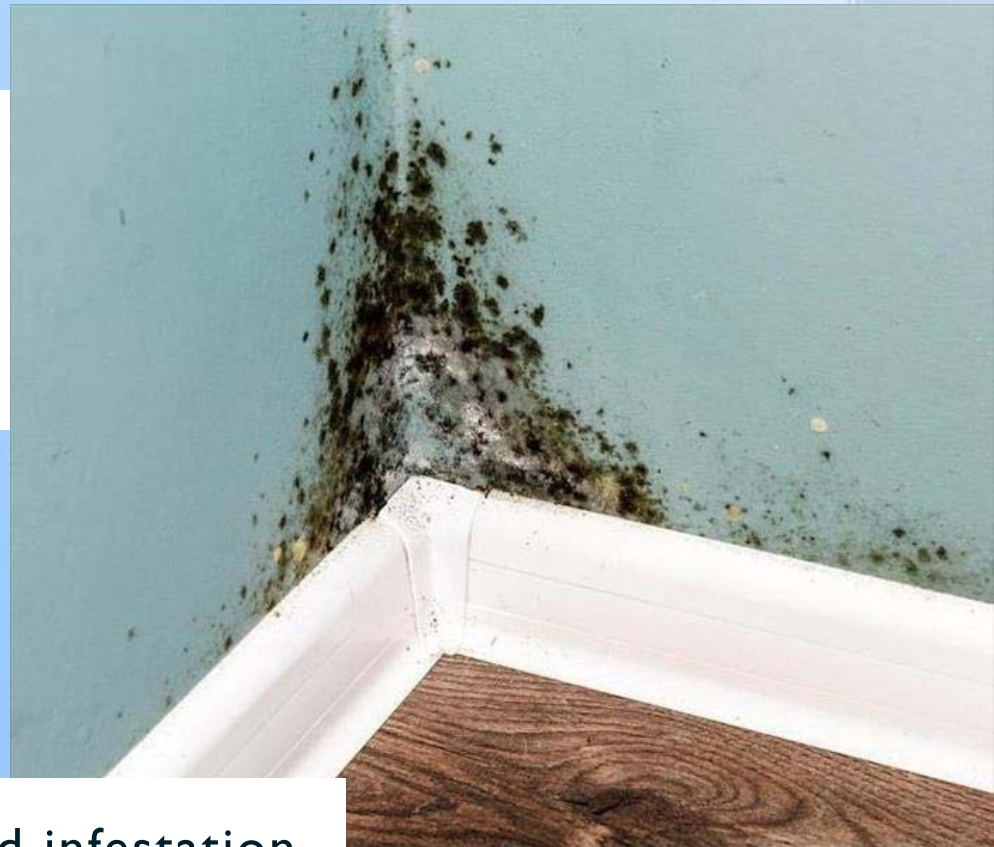


Passenger sued driver and Duke Energy

Basis: Location of light pole

## 2. Sanders v. UDR, Inc.

2011 U.S. District LEXIS  
3063 (E.D.Va. 2011)



Tenants sued Landlord over mold infestation

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## 2. Sanders v. UDR, Inc.

2011 U.S. District LEXIS  
3063 (E.D.Va. 2011)



Basis: Violations  
of the Virginia  
Statewide  
Uniform Building  
Code

Tenants sued Landlord over mold infestation

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# To Successfully Apply the Doctrine of Negligence Per Se,

A plaintiff must show:

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# To Successfully Apply the Doctrine of Negligence Per Se,

A plaintiff must show:

- (1) the opposing party violated a statute enacted for public safety,

# To Successfully Apply the Doctrine of Negligence Per Se,

A plaintiff must show:

- (1) the opposing party violated a statute enacted for public safety,
- (2) the plaintiff was a member of the class of persons intended to be protected by that statute,

# To Successfully Apply the Doctrine of Negligence Per Se,

A plaintiff must show:

- (1) the opposing party violated a statute enacted for public safety,
- (2) the plaintiff was a member of the class of persons intended to be protected by that statute,
- (3) the harm the plaintiff experienced was of the type the statute was designed to protect against, and



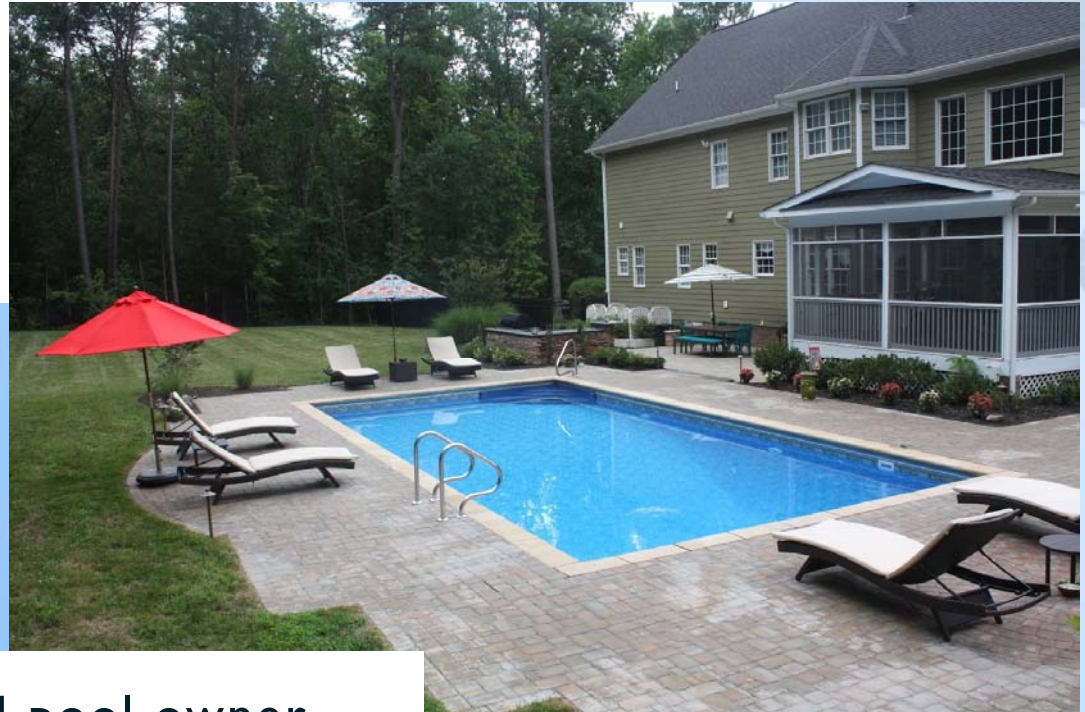
# To Successfully Apply the Doctrine of Negligence Per Se,

The plaintiff must show:

- (1) the opposing party violated a statute enacted for public safety,
- (2) the plaintiff was a member of the class of persons intended to be protected by that statute,
- (3) the harm the plaintiff experienced was of the type the statute was designed to protect against, **AND**
- (4) the statutory violation was the proximate cause of the plaintiff's injury.

### 3. McGuire v. Hodges

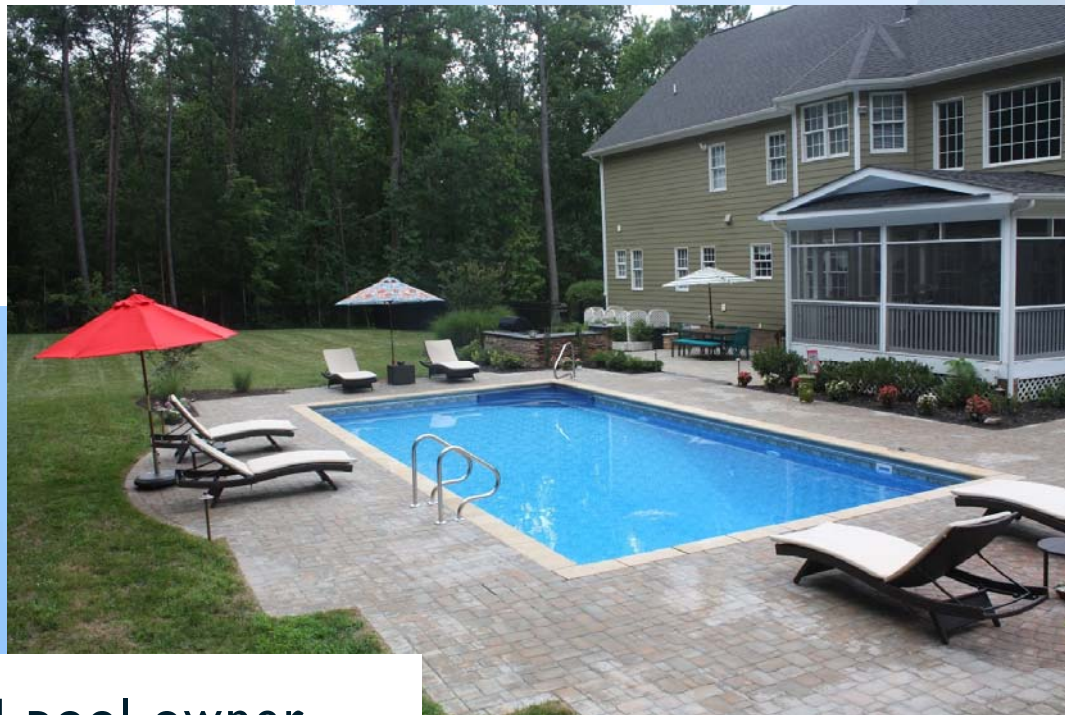
273 Va. 199 (2007)



Parent of drowned child sued pool owner

### 3. McGuire v. Hodges

273 Va. 199 (2007)



Parent of drowned child sued pool owner

Basis: homeowner's failure to comply with local and statewide building codes

# Novel Legal Theories Can Also Be Used Defensively

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# Novel Legal Theories Can Also Be Used Defensively

## Examples

I. College students sue apartment owner  
after suffering carbon monoxide poisoning

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# Novel Legal Theories Can Also Be Used Defensively

## Examples

1. College students sue apartment owner after suffering carbon monoxide poisoning
2. Tenant sued landlord after drunken fall over balcony rail

Dorman v. State Industries Inc.,  
292 Va. 111 (2016)



Residents in college apartment sue after  
suffering carbon monoxide poisoning

**Dorman v. State Industries Inc.,  
292 Va. 111 (2016)**



**Residents in college apartment sue after  
suffering carbon monoxide poisoning**

All parties settled before trial EXCEPT  
manufacturer of water heater\*

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- \* Defended claim based on:
  - Improper installation violating certain ANSI and NFPA standards, and
  - Hierarchy of negligence, if any

Jury returned verdict for Defendant

- \* Defended claim based on:
  - Improper installation violating certain ANSI and NFPA standards, and
  - Hierarchy of negligence, if any

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Jury returned verdict for Defendant

- \* Defended claim based on:
  - Improper installation violating certain ANSI and NFPA standards, and
  - Hierarchy of negligence, if any

Supreme Court affirmed

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O'Neill v. Windshire-Copeland  
Associates,  
267 Va. 605 (2004)



Tenant sues landlord after drunken fall over  
2<sup>nd</sup> story balcony

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O'Neill v. Windshire-Copeland  
Associates,  
267 Va. 605 (2004)



Does Virginia permit a defense of contributory negligence in negligence per se case?

Tenant sues landlord after drunken fall over 2<sup>nd</sup> story balcony

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Does Virginia permit a defense of contributory negligence in negligence per se case?

Supreme Court  
Said It Does!

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# QUESTIONS?

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