

Taking the Stand on Propane Safety



Donald Beattie

Prominent plaintiff lawyer suggests steps for marketers to reduce liability and avoid lawsuits

BY PATRICK HYLAND
Editor in Chief

Every propane marketer's worst nightmare is getting word that a business-related accident has caused injury or taken a life. But with nearly 60 million Americans consuming some 20 billion gallons of the combustible fuel each year, incidents in our industry are a daily reality – sometimes with dire consequences.

Not far behind that fear is hearing that your company has been named in a multi-million dollar lawsuit filed by an accident victim or their survivor. It's a worry that

drives most every propane marketer to spend tens of thousands of dollars every year for liability insurance on themselves and their businesses.

Donald Beattie, 61, is among the most recognized legal adversaries in cases against propane marketers and equipment manufacturers. The Des Moines, Iowa, attorney has served as lead counsel in scores of personal injury and wrongful death lawsuits since 1985. Many of those verdicts and settlements exceeded \$1 million; one delivered \$18 million.

The former U.S. Marine, Navy pilot and Drake University Law School graduate recently discussed his perception of safety in the propane industry with LP Gas Editor Patrick Hyland. Following are excerpts from that interview.



Q: It seems that the vast majority of cases that go to jury come down to the issue of “failure to warn.” Is that a fair assessment?

A: That’s accurate. The heart of it is “failure to warn.” There’s all these other side issues like failure to test and abstract or perhaps a defective valve or things like that, but the very prominent issue is always “failure to warn.”

Q: The guys in our industry say, “What more do they want us to do? We send out warning pamphlets, we have reminders and educational bill stuffers, we tell people not to repair and install equipment on their own and to use professionals, we tell them not to relight, we tell them not to bring cylinders indoors – but they don’t listen to our warnings. Then we get dragged into the lawsuits because we have the deep pockets.” How do you respond?

A: If you’re talking about the reliability of the odor-only warning system – and that’s just one component – it’s a proven and documented fact that simply providing a pamphlet is grossly inadequate. It simply doesn’t work. The way that I prove it is through the gas employees themselves. If you ask them what do they know about the odor warning system, do they consider it reliable, is it always going to be there no matter what to warn you and everything, you’ll get the same answer out of them that you’ll get out of a consumer – that shows that there is a failure. The failure is that if the consuming public gets a brochure, there is a likelihood that they may not read it. And even if they read it, they probably aren’t going to understand it.

I’ve advocated for years for videos. I have said that gas companies need to supply the video and get certification from the consumer that they watched and understand it. Then they have been warned and heeded by it. NPGA has lots of videos – training videos – for their own gas employees. To me, it just makes sense that they use videos for consumers too.

The other part is that you always go back to the gas detector issue. That’s a little more complicated.

The way I analyze situations is that you have lines of defense that keep people from getting blown up. I don’t think anybody would ever accuse the gas company of intentional conduct. Nobody wants to see a gas leak and

somebody get hurt.

The first line of defense, obviously, is to try to keep that system leak-free. If it won’t leak, you’re not going to get blown up.

The second line of defense is the warning of the presence of gas. Warn people so that they have enough time

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to evacuate the premises and get out and call a professional to get the gas supply shut off. It's been established that an odor-only warning system isn't that reliable. Now, when I asked anybody what is the failure rate of an odor-only warning system, nobody can tell you.

I've gotten a lot of depositions from gas employees who literally believe the same thing that the consumers do, which is if there's a gas leak they'll detect the odor, they'll know what it is, they'll know how to react and get out of the premises. I think the reliance of only an annual mailing as meeting the duty to warn exposes the gas industry horribly. I don't believe there are many cases out there where courts have held as a matter of law that if they mail a document once a year that there's adequate warning in that regard.

Then you get to the issue of the gas detector and the efficacy of the odor-only warning system. All the courts that I have appeared in – except for one – agree with me that the jury can determine whether the odor-only warning system is defective or not without a gas detector. I think it's good for a jury to consider and say, "If there was a gas detector with a bell or siren or whistle going off, you'll know. You'll hear it, and you're going to react to that in some fashion. You're not just going to assume you've had a gas leak or ask 'What am I smelling?'" The judges, by and large, say the jury can decide that issue.

We know that the NPGA has a lot of training videos – CETP videos and Gas Check videos – for employees. It makes even more sense for retailers to provide videos to their consumers and make them watch it. Require the consumer to sign a statement attesting that they have watched the video and they understood the contents and they know all those things. I would list out all the things covered in the video that they are suppose to know and do. Now, I believe that gives protection

to the consumer and I believe it gives protection to the gas company.

I once told a gas lawyer that if his client would do that, I would certify that I thought that it would be an adequate warning and there's nothing more that they could do.

Q: Are you telling me you would not bring a propane retailer into a lawsuit had they followed that?

A: I don't think I would have grounds to.

"I would love it if there were no more gas explosions at all."

Q: Would you try?

A: No, I wouldn't. Gas cases are tough as it is and where the retailer would present me with the evidence – that they have a video that covers all the necessary items and the signed statement from their customer that they watched the video, that they remember all these things that are in there, and they know what to do and they've read it and understood it, they signed it and date it and gave it to the retailer – I don't think there's a judge in the world that would keep that case in court. They could provide the video and pick it up at the next gas call. Now that's your duty to warn.

Q: Have you seen the safety materials that the Propane Education & Research Council has created in recent years?

A: Yes, I have.

Q: What is your assessment?

A: I would say that the PERC material is a big improvement and it covers a lot of material. It probably covers more material than what you need to cover in what a consumer really needs. I

think there are three or four essential things that consumers need to know.

Number one, under no set of circumstances do you touch your gas system – period – because you could die if you do. The only thing the consumer should ever do is manipulate the thermostat. That's it. So that takes care of pilot lighting. It takes care of the do-it-yourselfers. It covers turning your gas on and off. I can't think of anything that it doesn't cover where a consumer is going to put his/her hand on a part of the gas system.

Number two is if you smell gas or if you smell a bad odor – even if you don't know what it is – get out. Of course you need to tell the consumer don't use the phone, don't turn on light switches or do anything that might create a spark.

The third and fourth is to tell the customer that under a variety of circumstances they may not get the odor warning because it alone is unreliable. So make sure that you install a gas detector, and install it next to appliances about a foot off the ground. If it goes off – even if you detect no odor – evacuate. Again, don't turn on light switches or anything like that and call the gas company.

Once you get beyond those issues, what else is there left to do? There's nothing more that I can think of that you could do as far as warnings, the odor, gas leaks or anything like that.

I also would be absolutely adamant about mandating implementation of the Gas Check Program. I think that is a very, very good program. I think it's onerous to tell a gas company you have got to check somebody's system more than once every five or seven years, unless there has been an interruption of gas. I don't want to interfere with that.

I think gas explosions in consumers' homes would drop 90-95 percent. I really do. I also think you would see a substantial reduction in insurance premiums if that happens. I've had long discussions with higher-ups in insurance companies and told them

how simple it would be, and why don't they mandate it as a condition of insurability. It's the old answer of, "Well, if nobody else does it, we can't do it because it puts us at a competitive disadvantage."

Q: If the numbers were to drop that precipitously, that would indicate that customers now just don't know the safety issues. Propane marketers maintain that they do know, yet they go ahead and do these boneheaded things anyway.

A: My answer to that goes back to my officer training in the Marines. There's always going to be 10 percent that's bad. Unquestionably, there will always be people that are going to do something that they absolutely know they shouldn't do. But I think the vast majority of people truly don't understand the degree of danger that propane gas presents to them if

there's a leak. I'm convinced of that.

I personally have had four cases where the houses exploded at night. In two of the cases, people died. And we know that the gas warning odor is not going to warn somebody that's sleeping. That's a documented fact. So that's where I try to start when I talk to retailers. Do you realize your clients are unprotected at least one-third of the day? At night when they're asleep, when they need the protection the most, they are unprotected. That's a scary thought! And we know that leaks can arise any time, for any reason.

If you're dealing with a corroded line underground on the exterior, that leak is going to develop at some time, independent of whether it's night or day. Or if a gas valve finally gives out. Or a gas connection inside the house finally corrodes through.

So, yes there's a basis for the gas company to say, "Well, some people

are going to do it no matter what." But there is zero basis to say that they have any idea of what the percent of people are that are going to do that. So, because some would, you don't try for everybody else?

If you took those steps where you got your warning down to where customers can't deny they knew better if somebody's done something, who can blame a retailer under those conditions? I can't, and I'm the biggest advocate in the world for the consumer.

I think a lot of it is that most retailers have a misconception that if they don't do anything inside the house that they can't be found liable. And that's just not accurate.

Q: So you think they need to better understand that degree of liability?

A: That's exactly correct. I have deposited a lot of safety officers for the big

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gas companies – and I’d rather not say who in print – and these really big gas companies do a terrible job in training their people about this odor warning system, and about dos and don’ts.

I don’t think anything’s going to get done in the industry until the industry makes itself become self-aware. I bet I have deposed 300-400 gas employees of 50 or 60 different gas companies – maybe more. The number certainly is less than 10 of anybody who owns a gas detector. And the ones that do, it’s always been after a tragic event, when they thought they’d better get one. Their concern is protecting themselves on this “duty to warn” rather than to really get serious about trying to reduce explosions. I think that they’re afraid of people like me, that it will give us more fodder to go after them. But it’s just the opposite. I don’t want to see people get blown up, people getting hurt. There’s always other cases for me to get. I would love it if there were no more gas explosions at all.

I also do not want to downplay the issue of carbon monoxide or carbon monoxide gas detectors. If carbon monoxide occurs, you don’t even have an odor that may give you a warning. To me, I think it’s utterly unconscionable for any propane retailer not to, at a minimum, mandate carbon monoxide detectors. I’ve had a lot of carbon monoxide cases. It is one dangerous, dangerous issue. Most of the time, you’re talking death.

Q: If you could have the industry make one change, instantly, in order to reduce the number of accidents, what would that one thing be?

A: Mandate gas detectors. I really don’t understand why they don’t do it. They have everything to gain by doing that and nothing to lose – except their perception that it would increase their liability in the event something goes wrong. I say it greatly improves a gas retailer’s protection.

I think it’s a win-win for everybody. Except for the lawyers, of course. And insurance companies, too. If there was no lawsuits, there would be no reason for insurance and insurance companies would go out of existence. There wouldn’t be a need for liability insurance. They wouldn’t like that much.

Q: Do you believe that technology in general would be a huge step across the board to alleviating a lot of the safety problems we experience.

A: Yes, I do. Look at it this way: When I first started handling my early gas cases, the gas industry really denied

“I think the vast majority of people truly don’t understand the degree of danger that propane gas presents to them if there’s a leak.”

the issue of odor fade. They denied that the odor warning would fail to be effective all the time. It was just complete denial. Today, I don’t know of a single major gas company that does, and almost every propane appliance manufacturer recommends gas detectors. So it is a universal belief that gas detectors are an effective device.

But retailers don’t want to put them in. I’ve even said that I would not mandate retailers to install the gas detectors themselves. I don’t think they have to do that, necessarily. I would like for them to, but I think that they have to mandate that it be done, and they get the certification from their customers that they have, in fact, done it.

Q: And if customers don’t have one, you don’t deliver gas?

A: Right. And I think (marketers) argument is, “Once you go to the step of mandating gas detectors, then we’re liable if the gas detector doesn’t work, if it doesn’t go off.” I say that’s garbage; that’s hogwash. If you had a bad gas detector, you’d go after the gas detector manufacturer, wouldn’t you?

Q: But it’s not going to keep them out of hot water or the courtroom.

A: If I was representing a burn victim and knew that gas detector usage was common, I would contact the retailer before I filed suit and ask them for evidence. What evidence do you have whether or not there was a gas detector? Pony up what you’ve got, because I don’t want to sue you if you’ve done what I think you should do.

Q: Given the number of propane users and the number of incidents, would you say overall the propane industry has a good track record?

A: I believe the industry improved safety in glacial steps, but it improved safety. I don’t have the figures to tell you one way or another, but I believe through anecdotal evidence . . . that there are fewer gas explosions today than there were 20 years ago. I think a lot of that is attributable to one fact: that most bad gas valves have been recalled, removed or replaced. So I think most of it is attributable to the fact that the hardware is more reliable today than it was 20 years ago.

Q: So you do see strides in accident prevention. You also acknowledge that the industry, through PERC, does a much better job of educating the public with better materials. Do you feel that you’ve contributed to pushing the industry toward improvement?

A: That’s one of the purposes of lawsuits is to improve safety, and I would like to think that I’ve helped in that regard. And I know that there are defense lawyers that have had a more effective voice than the threat on the other side. **LPG**