

**MARSHALL, DENNEHEY, WARNER, COLEMAN & GOGGIN**A PROFESSIONAL CORPORATION [www.marshalldennehey.com](http://www.marshalldennehey.com)**200 Lake Drive East, Suite 300 - Cherry Hill, NJ 08002***(856) 414-6000 · Fax (856) 414-6077 James F. Graham, Resident Managing Attorney***Direct Dial: (856) 414-6001****Email: [lizucker@mdwgc.com](mailto:lizucker@mdwgc.com)**PENNSYLVANIA  
Bethlehem  
Doylestown  
Eric  
Harrisburg  
King of Prussia  
Philadelphia  
Pittsburgh  
Scranton  
WilliamsportNEW JERSEY  
Cherry Hill  
RoselandDELAWARE  
WilmingtonOHIO  
AkronFLORIDA  
Ft. Lauderdale  
Jacksonville  
Orlando  
Tampa

**ADJUSTER'S OUTLINE  
ROLLER SKATING LIABILITY CLAIM  
a/k/a AN INJURY IN SEARCH OF A THEORY OF LIABILITY  
Version 2.0**



**I. DETERMINE THE CLAIMANT'S THEORY OF LIABILITY AGAINST YOUR INSURED (YOUR #1 JOB)**

**A. The Four Most Common Theories Of Liability:**

- 1. Skater-to-skater contact or knock down blamed on inadequate supervision, overcrowding, inadequate ratio of floor guards to skaters (1 to 200?) poorly trained floor guards and lack of posted warnings.
- **Primary Defenses:** Claimant lost his balance and fell; incidental contact with another skater; "phantom knockdown" where the skater did not see the other skater before the contact.
- 2. Rental skate defect causing the skater to fall. Claims may include wheels locking or spinning too fast or too slow, laces being too long, skates pulling to one side or the other, skates too big or too small, wheels different sizes or dirty.
- **Primary Defenses:** Is your insured's rental skate inventory checked on a regular basis? Are rental skates inspected by skate-room attendant before they are handed to the skater?
- 3. Premises defect involving a foreign substance, defect or spill on the skating floor blamed on gum, coins, hats, glow sticks, etc.
- **Primary Defenses:** Regular monitoring of the skating floor and removal of foreign substances, including gum; regular inspection of transitions and entrances to the floor.

- 4. "Self inflicted wounds" caused by incomplete accident investigation and/or failure to maintain a paper trail. An incomplete accident investigation sometimes occurs when a rink employee hears an injured patron state that "I lost my balance and fell," or words to that effect. The employee, believing that the accident was not the rink's fault, does not follow up to inspect the patron's skates or the surface of the floor where the patron fell. Since the patron was not firmly committed to a version of the accident, he is free to change it after he sees an attorney.

Failure to maintain a paper trail may make it difficult to defend the rink operator against certain claims. For example, in a case alleging a skate defect, it is important to have written records proving regular skate inspection and maintenance. In a case involving a foreign substance on the floor, it is important to have daily checklists to prove the area was inspected before the fall. In a case involving warning signs, it is important to have a sign log to help prove that signs were posted in the rink on the day of the incident.

B. Additional Theories of Liability:

- 1. Design defects involving the step-up or step-down transition at the entrance or exit from the skating rink floor, design of entrance/exits and walls.
- 2. Lack of security inside or outside the rink.
- 3. Injuries occurring during private or group skating lessons that are taught by employees or independent contractors in the skating rink.
- 4. Accidents occurring during sanctioned league roller-hockey games or sanctioned speed races or other competitive events.

## II. BASIC INFORMATION AND INVESTIGATION TO OBTAIN IN EVERY CASE

### A. Basic Questions to Ask Your Insured:

- 1. Is the insured rink located in one of the states that has a Roller Skating Assumption of Risk and Immunity Statute? Those states include Michigan, New Jersey, Georgia, Illinois, Indiana, Maine, North Carolina, Ohio, South Carolina, Texas.
- 2. Does your insured have a surveillance video of the claimant's accident? If so, the videotape should be preserved and reviewed. (Because surveillance videotapes are routinely erased and recorded over, locating and securing any available video should be one of the investigator's first tasks.
- 3. Does your insured require every skater to sign a written waiver and release before skating and renting skates? If so, obtain that release.
- 4. Does your insured follow the RSA Risk Management Guidelines? Does it have any guidelines of its own?
- 5. What type of skating session was taking place at the time of the claimant's injury? Was it a public session? Private party? Private event scheduled by a church or a school. Obtain documentation of the contract.

### B. Basic Information and Documentation to Request from Your Insured (a/k/a "The Paper Trail):

1. Basic information about your insured's rink:
  - ----- Size of building and dimensions of rink;
  - ----- Other amusement attractions in the skating rink, such as arcade game area, amusement rides, redemption area, party room, practice rink, ice-skating rink, lockers, soccer field, soft-play unit, snack bar and snack-bar seating area or pro shop;
  - ----- Type of surface on rink; find out the type of surface and how long ago it had been installed (wood, plastic, concrete, etc.);

- \_\_\_\_\_ Rink layout and design; numbers and locations of entries and exits, location of DJ booths, wall or no wall, rail and proximity to food-service area;
- \_\_\_\_\_ Type of skating taking place at the time of the accident; front-skating, back-skating, couples, dance, hokey-pokey?
- \_\_\_\_\_ Likely number of skaters on the floor at the time of the incident? Number of admissions to rink.
- \_\_\_\_\_ Name and age of all floor supervisors and managers on duty.

2. Basic Information About the Injured Claimant and Incident:

- \_\_\_\_\_ Name and age;
- \_\_\_\_\_ Number of times at your insured's rink;
- \_\_\_\_\_ Ever own your own skates?
- \_\_\_\_\_ Experience as a skater before the day of the incident;
- \_\_\_\_\_ Knowledge of risks of skating, including losing your balance and falling and incidental contact with other skaters;
- \_\_\_\_\_ Did the claimant ever take skating lessons?
- \_\_\_\_\_ Any witnesses to the incident who can identify the cause of the claimant's fall;
- \_\_\_\_\_ Was the claimant wearing any safety equipment;
- \_\_\_\_\_ Did the claimant see any safety or warning signs or hear any stated warnings over the P.A. system.
- \_\_\_\_\_ If claimant was with a group, who were the group supervisors, chaperons, teachers, etc.
- \_\_\_\_\_ Was the claimant aware of any condition in the rink (spill, floor defect, improper skating behavior of other skaters) before the accident took place? If yes, what did he do? Report it? Leave rink? Keep on skating?

- ----- If claimant claims that he was knocked down by another skater, did the claimant see or observe the other skater before the accident took place? (If the answer to this question is no, it is a "phantom knock down".
- ----- Determine if the incident occurred as a result of "incidental contact" with another skater. Incidental contact is an inherent risk of roller skating.
- ----- If the rink is located in a state with an immunity statute, be aware of the skater code of conduct and assumption of risk, which may give your insured immunity for the accident.
- ----- What did the claimant have to eat or drink in the couple of hours before the accident? Any alcohol or prescriptive/street-drug ingestion? (If alcohol is served on-premises, are there any receipts for claimant or his group?)

3. Documenting the paper trail of relevant business records:

- ----- Incident or accident report containing statement by the injured claimant about happening of the accident, and other basic information such as the claimant's name and age, the number of skaters and guards on the floor and the time that the incident occurred;

NOTE:

- ----- Every accident report should be reviewed to determine if the investigator inspected the floor, checked the skater's rental skates and asked questions about the claimant's observations of other skaters or conditions before the incident occurred.
- ----- Obtain session reports, manager's reports, witness statements, employee statements, cash register receipts showing ticket sales, employee time cards, risk management guidelines, job descriptions, copies of posted and stated warnings, diagrams of rink and any other information documenting the names and

job titles of each and every employee working at the time of the incident.

- ----- Information about posted signs and warnings, including copies of the insured's sign log, warning posters and a transcript of any verbal warnings or cautions given by the DJ before or during skating sessions. (Again, if there was any videotape made that would have this information recorded, be sure to secure it at the earliest possible time.);
- ----- Documentation about the number of skaters admitted to the session to help estimate the number of skaters on the floor when the incident occurred;

4. Investigation if the claimant claims that he or she was knocked down by another skater:

- ----- Review the videotape to determine what happened;
- ----- Did the claimant identify the other skater who knocked her or him down?
- ----- How long was the claimant skating before the incident occurred?
- ----- Did the claimant ever see or has he heard of any examples of bad behavior by other skaters before the incident occurred?  
----- Did he say anything about it or does he know if it was reported to anyone?
- ----- If the claimant claims that they noted a problem or condition before the accident, what did the claimant do? Did the claimant leave the rink or report it to an employee, or did the claimant continue skating?
- ----- Did the accident happen due to incidental contact with another skater?

5. Investigation of a defect in rental skates:

- ----- How long was he or she skating before noticing any problem with the skate? What did the skater do when he or she noticed a problem? Did he return the skates to the skate room, attempt to make repairs himself or continue skating?
- ----- Does the skater know which skate or wheels stopped or locked? Did claimant inspect his own skates after accident? Did any friend or witness look at the claimant's skates?
- ----- Were the skates inspected after the incident by a rink employee? If so, what was found and was it documented?
- ----- Were the skates tagged and bagged after the accident? If so, where are they at the present time?
- ----- Obtain records of regularly scheduled inspection and maintenance of rental skate inventory. This is usually done on a periodic basis by skate size.
- ----- Determine if the skate-room attendant who hands out the skates is required to do any check of the skates before they are handed out. This brief check should consist of a review of the skate boot, frame or truck attached to the bottom of the skate, bearings, wheels, bolts, toe stops, boot laces and general condition of the skate.
- ----- Determine if there is any signage near the skate room instructing skaters to return skates immediately if they notice any problems.

6. Investigation in a Premises Liability Case:

- ----- Obtain copies of preventive maintenance checklists for daily, weekly and periodic inspections.
- ----- Is the area where the accident occurred (whether inside or outside) covered by any video camera? If so, secure any videotape.

LIZ:ld

\\06\_A\LIAB\LIZUCKER\UFRM\899500\LRDOUGHERTY\28050\00102