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COMMONWEALTH OF PENNSYLVANIA
HOUSE OF REPRESENTATIVES
COMMITTEE ON JUDICIARY
SUBCOMMITTEE ON CRIME AND CORRECTIONS

In re: House Bill 469, Roller Skating Rink Safety
and Fair Liability Bill

* * * * *

Stenographic report of hearing held
in Room 113 East Wing, Main Capitol
Building, Harrisburg, Pennsylvania

Tuesday,
April 23, 1991
9:30 a.m.

HON. KEVIN BLAUM, SUBCOMMITTEE CHAIRMAN

MEMBERS OF SUBCOMMITTEE ON CRIME
AND CORRECTIONS

Hon. Frank Dermody Hon. Christopher McNally
Hon. Lois S. Hagarty Hon. Karen Ritter

Also Present:

Representative Kruszewski
Leon Czikowsky, Subcommittee Staff
David Krantz, Executive Director, Judiciary Committee
Ken Suter, Republican Counsel
Reizdan Moore, House Majority Legal Staff

Reported by:
Ann-Marie P. Sweeney, Reporter

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*68 pages
+ 14 attached
82 pages*

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23
24
25

INDEX

PAGE

| | |
|---|----|
| Howard Messer, Esquire, Chairman, Legislative Policy Committee, Pennsylvania Trial Lawyers | 3 |
| Barry Lefkowitz, Legislative Representative, Pennsylvania Roller Skating Association | 24 |
| Lary Zucker, General Counsel, Pennsylvania Roller Skating Association | 30 |
| Lewis Quinten, National President, Roller Skating Association | 43 |
| Sue Rendfrey, President, Pennsylvania Roller Skating Association | |

APPENDIX

1 SUBCOMMITTEE CHAIRMAN BLAUM: Our first
2 witness before the Subcommittee on Crime and
3 Corrections concerning House Bill 460, Howard Messer,
4 Chairman of the Legislative Policy Committee,
5 Pennsylvania Trial Lawyers.

6 Howard.

7 MR. MESSER: Thank you, Mr. Chairman,
8 members of the committee. It's always an honor for me
9 to address a committee of our House of Representatives
10 in Pennsylvania. I haven't done it that often, but
11 it's always been an honor for me to do so.

12 Let me start by saying that on behalf of
13 the Pennsylvania Trial Lawyers Association, I would
14 like to state for the record that in its present form
15 we are opposed to House Bill 469. I can assure you
16 that I'm probably the only representative from my
17 organization in this room, except for Tom Previc, and
18 so the second thing I want to say is that we are not
19 against an effort to make a determination as to why the
20 insurance rates for roller skating rink operators are
21 as high as they are. I notice, actually by absence,
22 that the Insurance Federation is not present and is not
23 going to testify before this subcommittee. I think
24 there are very appropriate questions that members of
25 this group, including their counsel, could address to

1 the insurance industry about the cost and the
2 affordability of this line of insurance in
3 Pennsylvania, because fundamentally, I don't think that
4 the trial lawyers, myself, and the group of people in
5 this room have any difference of opinion about the
6 goals that we want to accomplish in the legislative
7 process. In fact, I think they are very similar, and I
8 think those goals are these: Roller skating rink
9 operators provide a recreational sport and a forum by
10 which our children, mostly our children but some adults
11 as well, are able to have a lot of fun.

12 I can tell you from my own personal
13 experience that my childhood was spent in roller
14 skating rinks, that I have two children who go to
15 roller skating rinks all the time, and in fact I was
16 the owner of a roller skating rink for about five
17 years, co-owner. It was located on Route 66 in
18 Westmoreland County. So I have more than a passing
19 knowledge of what happens in these places. And about a
20 week ago my daughter, who is 9 years old, was involved
21 in a roller skating party. Their school went, the
22 third grade of their school went to Spinning Wheels,
23 which is in Pittsburgh, Pennsylvania. A very big
24 operation, very, very well-run and very well-operated,
25 and it was a third grade roller skating party and it

1 was actually, and it always is a joy to watch these
2 children. My daughter is 9 going on 30, if you know
3 what I mean, and the little boys in this operation or
4 this class are 9 going on 2, so that the little boys
5 are always running around trying to do things, the
6 little girls are trying to act like they are going to
7 have a date Friday night, but there were about 170 of
8 them there, there were about 40 parents and 8 or 9
9 employees of the roller skating rink, and we had one
10 heck of a time keeping track of all of the kids at
11 various times and places. So I understand the problems
12 that occur here. I have been involved in them myself.

13 Whenever I looked at the bill the first
14 time that I read it, the preface to the bill says that
15 what we need in Pennsylvania is predictability in the
16 law, and this is where I digress from the goals of the
17 operators. The law of premises liability in
18 Pennsylvania set forth in the Statement of Torts 343,
19 344, and in our common law, has been and is
20 predictable. It's been the same for 30 or 40 years.
21 And the primary goal of that law is to protect patrons
22 who pay admission, and this is I'm talking now about
23 business invitees, into any different number of
24 establishments - movie theaters, roller skating rinks,
25 ice skating rinks, any auditorium, any event of any

1 type. And the law has always provided that because the
2 invitee is coming into a building or an operation that
3 may be unfamiliar to them, that it's the person who
4 owns or operates that facility who has the duty to warn
5 the public. That they must welcome them with open arms
6 and provide a safe place for them to conduct their
7 recreational activities or whatever activity they have.
8 And that's a laudable goal.

9 Secondly, it's been the law in
10 Pennsylvania for a long, long time that we protect
11 children. That we want to make our playgrounds, our
12 skating rinks, our theaters as safe as we can, and I
13 daresay there's not a person in this room that would
14 disagree with that goal. The common law of
15 Pennsylvania, for those who are unfamiliar with it and
16 who may not be lawyers, states unequivocally that if a
17 child is from the age of 0 to 7, they are conclusively
18 presumed to be incapable of negligence. From the age
19 of 7 to 14, it's a rebuttable presumption. And the
20 closer you become to 14, the less likely it is that you
21 will be presumed to be capable of negligence, and over
22 14 you are conclusively presumed to be capable of
23 negligence, unless you have some infirmity or
24 disability or incapacity that can be alleged.

25 Now, the public policy behind that law of

1 protecting children between the ages of 0 to 14 is
2 right. That's what we're supposed to do. Children
3 cannot protect themselves. Yet what we have in the
4 current law, in the current situation, is an effort,
5 maybe unintentional, maybe not unintentional, to
6 abrogate the common law and the statutes of
7 Pennsylvania to protect children. This law provides in
8 Sections 5 and 6 for specific duties that apply to
9 roller skaters, and that's all roller skaters,
10 regardless of age. And it sets forth under Section 5
11 five different types of activities. That each roller
12 skater shall "Heed all posted signs and warnings," for
13 example. Well, I submit to this board that a 5-year
14 old child just might not be able to read. "Accept the
15 responsibility for knowing the range of his own ability
16 to negotiate the intended direction of travel while on
17 roller skates and for skating within the limits of that
18 ability." I suggest a 7-year-old might not even know
19 what that means.

20 What I'm saying is that although we as
21 adults can sit here and understand these five goals and
22 say, gee, it sounds reasonable, that the children just
23 may not be able to do so. And after all, if safety is
24 a primary concern, which we certainly agree it is, then
25 we have to understand that the children should not be

1 and cannot be subject to the same rules, laws, and
2 regulations as adults. They are not subject to the
3 same rules and regulations under the criminal law, and
4 this legislature should not make them subject to the
5 same standards of conduct as an adult by passing this
6 piece of legislation.

7 But even beyond that, what this law does
8 is attempt to overrule the common law and adopt into
9 the law of Pennsylvania that all children, regardless
10 of age, assume the risks of whatever happens to them in
11 a roller skating rink. And I quote from the act as
12 it's proposed, "Roller skaters and spectators are
13 deemed to have knowledge of and to assume the inherent
14 risks of roller skating, insofar as those risks are
15 obvious and necessary. These risks include, but are
16 not limited to," and then it goes on, "injuries which
17 result from incidental contact with other roller
18 skaters or spectators, injuries which result from falls
19 caused by loss of balance and injuries which involve
20 objects or artificial structures properly within the
21 intended path of travel...."

22 Now, what I suppose this means is that if
23 a 16-year-old boy running around these rinks, which
24 they often do, hits a 5-year old kid and knocks him
25 down and the kid gets a concussion or a broken skull or

1 a fractured arm, that the kid has assumed the risk of
2 that type of lack of supervision and conduct. That's
3 not what the law intends. That's not what the policy
4 of the law intends. That's what this act intends, and
5 it's wrong.

6 Let's also talk just a little bit about
7 what the act does in terms of segregating the
8 responsibilities of roller skaters and operators.
9 Under this act, it says, "roller skaters shall," and
10 then it lists the five commandments and the assumption
11 of risk section. The act, when it talks about the
12 responsibility of the operators, says, "It shall be the
13 responsibility of the operator, to the extent
14 practicable," which means it's voluntary. If we look
15 at the 13 items, most of them, 2 of them, the first 2
16 are brand new because the act is new. But if we look
17 at numbers 3, 4, 5, and 6, it's nothing new, and as a
18 matter of fact, it lessens the obligation under the law
19 of the operators to the public.

20 For example, number 3 says, and I quote,
21 "When the rink is open for sessions, have at least one
22 floor guard on duty for approximately every 200
23 skaters." Well, I can tell you after my visit to the
24 roller skating rink the other night where there were
25 170 children that one person absolutely without

1 question would never be able to have any type of impact
2 on those 170 kids. In no possible way could control
3 them.

4 I might cite for you some lessons I
5 learned when I was involved in this business, and I can
6 say I was involuntarily involved in it, but in any
7 event I was involved in it. One of the biggest
8 problems we had wasn't with the 6-, 7-, 8- and
9 9-year-old kids, it was with the 14-, 15-, 16-year-old
10 crowd. And what would happen is they would congregate
11 in the lobbies, they would congregate in the restrooms,
12 maybe a little fight starts here because of some
13 jealousy battle, maybe there was smoking going on in
14 the restrooms, and we always had to have people
15 circulating throughout these areas to make sure that
16 public peace was upheld, frankly. It was not unusual
17 on Friday and Saturday evenings to have fights break
18 out outside the building between rival groups of kids
19 fighting over girls or smoking or whatever they were
20 doing. And we must admit that there was probably some
21 drinking going on. So if you have one guard for 200
22 people who must also undertake to circulate around the
23 building to provide the type of protection, security
24 that we need, it just is not going to work. It's just
25 never going to work.

1 If this is the indication of a standard
2 that we want applicable to the roller skating industry
3 in Pennsylvania, that this is an industry or a
4 nationwide standard, it's just abjectly wrong. There's
5 no other way I can put it. There's no way that you're
6 going to maintain peace among 200 kids and do
7 everything else that's necessary with one person.

8 As I indicated before, Section 344 and
9 343 of the Statement of Torts adopted in Pennsylvania
10 maintains that the owner of premises, general premises,
11 not just indicate skating rink owners, has a duty of
12 high care to its business invitees. What happens in
13 Section 4 of this bill under sub (4), (5), and (6) is
14 that the sections reduce the standard of care for
15 roller skating rink operators. Of course everybody
16 else would be subject to the other standards, but these
17 would be reduced.

18 I also suggest to you that if you read
19 this act under subsection (7) under Section 4 says,
20 "Install fire extinguishers and inspect fire
21 extinguishers at recommended intervals." Number (9)
22 says, "Inspect emergency lighting units
23 periodically...."

24 So I think that the members of this
25 subcommittee should examine the statutes of

1 Pennsylvania to determine whether or not in your
2 discretion you think that this act preempts certain
3 other acts which you've already passed. Title 53,
4 Section 4620.2 is the Borough Code, which specifically
5 gives boroughs the right to police skating rinks by
6 naming skating rinks. Title 33, Section 1221, which is
7 the Fire and the Fire Protection Code, specifically
8 delegates the duty as to who is going to police the
9 fire, the sprinkler systems, and all of that type of
10 thing in the Commonwealth of Pennsylvania, and
11 specifically mentions roller skating rinks coming under
12 the umbrella of that statute. Title 71, Section 1455,
13 which is the Administrative Code section in the
14 Department of Labor and Industry section of that
15 statute, deals with handicapped people and specifically
16 mentions that roller skating rinks are within the
17 purview of that statute.

18 It is quite possible in reading House
19 Bill 469 that you may preempt provisions in those acts
20 applicable to handicapped people, applicable to fire
21 protection, and applicable to the local policing of
22 these facilities. I do not come here as an expert in
23 statutory construction or statutory interpretation, but
24 I do suggest to you that you have to look and make
25 decisions about what you're doing with 469 vis-a-vis

1 these three statutes which I found in my investigation
2 of the law of Pennsylvania.

3 So it's not just easy to say we want to
4 give immunity to roller skating rink operators. We
5 obviously have the goal of making these institutions,
6 these recreational facilities, safe for our children.
7 We want to do that, and safe for all patrons. There
8 should be an effort made to find out what the cost is
9 of insurance and why it is so high, as it's alleged to
10 be. However, we cannot obliterate the rights of our
11 children in the process.

12 I don't know what the claims history is
13 for roller skating rink operators. There aren't any
14 published statistics available that I can go to to find
15 out whether or not there are massive amounts of claims
16 against the operators of roller skating rinks. If
17 there are not such claims, then the question becomes,
18 what's driving the insurance cost? Is it because this
19 is a specialty line of insurance and the insurance
20 industry is charging what it thinks it can get? Is
21 there a competition for the business of these
22 operators? What is driving insurance rates? I don't
23 know.

24 In any event, it would be interesting to
25 find out what and how this whole process got started in

1 Pennsylvania. I practiced, I have practiced law in
2 Pennsylvania for 20 years. I have done personal injury
3 work in Pittsburgh, Allegheny County primarily,
4 although all over western Pennsylvania. I have never,
5 in my career, handled a roller skating rink case. Just
6 as a private survey, I called five or six of the
7 largest plaintiffs' law firms in Allegheny County and I
8 asked them if they ever handled a roller skating rink
9 case, and I found one case, five years ago, Chuck
10 Evans, a former officer of our association, told me
11 that his firm had handled one roller skating rink case,
12 and what happened was a little girl was knocked down by
13 a drunk skater and she suffered a fractured leg. They
14 settled the case for \$4,750. That is the only claim
15 that I could find.

16 So I don't know where all the claims are
17 coming from, and frankly, I can't explain to these
18 people why their insurance costs are so high. You
19 know, it's easy to touch a button and blame it on
20 frivolous lawsuits, it's easy to touch another button
21 and blame it on frequency of claims, but really, before
22 we undertake changing the protection we give our
23 children, I think we should ask the question what is
24 the real reason and find out the answer to that
25 question.

1 What we and the Pennsylvania Trial
2 Lawyers Association request this subcommittee and
3 ultimately the committee to do is to read the act from
4 the viewpoint of what does it accomplish? There are
5 three things it accomplishes, in our opinion.

6 Number one, it does not make mandatory
7 any safety regulations for the operators. For example,
8 when I was at Spinning Wheels the other night, I
9 wondered to myself if what happened in our roller
10 skating rink happened at Spinning Wheels, what would
11 they do? We had a situation, very dangerous situation,
12 out in Greensburg where our battery system in our
13 emergency lighting circuits burned out. And that sets
14 off an alarm that there is no more emergency lighting
15 available. In case of a fire or a blackout, we would
16 not be able to have any light to get people out of the
17 building, okay? So we had to shut down our operation.
18 My major fear was, what if it had been a fire and the
19 emergency lighting system had blacked out? I mean, I
20 knew what the problem was, the fellow at the rink knew
21 what the problem was, but there was chaos at the rink.
22 How do we get these kids out of here, who's going to do
23 what? Because most of the guards that are employed and
24 around are not much older than the kids themselves.
25 Sure, there are operators who patrol themselves, but

1 our guards were 19-, 20-year-old people that we had
2 never even trained on emergency evacuation procedures.

3 So what happens if there's a fire in a
4 rink like this? I mean, in an airplane they have
5 people that know how to get people in and out of the
6 aircraft and are trained to do so. In these roller
7 skating rinks, I don't think that's the case. And I'm
8 not sure whether it shouldn't be a requirement. Maybe
9 there should be sprinklers in all of these facilities.
10 Maybe there should be a Safety Code that the operators
11 should train all of their employees on how to evacuate
12 the building, just like we do in our schools. We have
13 drills. People know how to get in and out. Maybe we
14 should require if there are claims, and I have a
15 suspicion that there are probably claims involving
16 little kids who fall down because it's their first time
17 in a roller skating rink, maybe we should have a helmet
18 law that requires--

19 REPRESENTATIVE HAGARTY: Don't mention
20 that today.

21 MR. MESSER: Okay. Maybe we should do a
22 number of these types of investigations into what we
23 should require of roller skating rink operators as
24 mandatory safety measures to protect our children.

25 The other thing I would just like to

1 mention to you is that I have a suspicion, although
2 it's only a suspicion, that in fact the roller skating
3 rink business just isn't doing well today. I know
4 there's a lot of fads that go in and out, and we called
5 the Roller Skating Rink Association who didn't have
6 figures exactly on attendance and they referred us to
7 another organization in Kansas, and they said that
8 there's almost a 3 1/2 million drop-off in attendance
9 between 1989 and 1990, so maybe this is being fiscally
10 driven. I don't know that.

11 In any event, all I can ask you to do in
12 your good conscience is to review this legislation and
13 undertake to make decisions about what the goals should
14 be for it, and hopefully after you do review it and see
15 the inconsistent results that it will produce vote
16 against its adoption.

17 Thank you very much. I am willing to
18 answer any questions the committee might have.

19 SUBCOMMITTEE CHAIRMAN BLAUM: Attorney
20 Messer, one question that I have heard is from the
21 people in support of the bill is that this kind of
22 legislation was adopted for ski resorts, that if the
23 ski facilities can have this kind of legislation, why
24 can't roller skating rinks? And my question would be,
25 in your opinion, how do the two differ and why, if

1 that's on the books, why this legislation should not
2 be?

3 MR. MESSER: Well, the downhill skiing
4 legislation is two paragraphs long. And I'll read it
5 to you. It says, "The General Assembly finds the sport
6 of downhill skiing is practiced by a large number of
7 citizens in this Commonwealth and also attracts to this
8 Commonwealth large numbers of nonresidents
9 significantly contributing to the economy of this
10 Commonwealth. It is recognized that as in some other
11 sports there are inherent risks in the sport of
12 downhill skiing." That's the first paragraph.

13 Paragraph number two and the last
14 paragraph says, "The doctrine of voluntary assumption
15 of risk as it applies to downhill skiing injuries and
16 damages is not modified by Subsections (a) and (b)."
17 That's the Downhill Skiing Act. The Downhill Skiing
18 Act does not place mandatory rules and regulations on
19 skiers, it doesn't place any mandatory rules and
20 regulations on operators, it does not abrogate to
21 Doctrine of Immunity for children under the age of 7.
22 It doesn't change the common law except that it says
23 specifically that the voluntary assumption of risk is
24 applicable to all skiers, and that's the difference.
25 There's a major difference in the sense that the act,

1 the 469, goes far beyond the legislation for downhill
2 skiing.

3 SUBCOMMITTEE CHAIRMAN BLAUM: Any members
4 have any other questions?

5 REPRESENTATIVE HAGARTY: Just on that
6 point.

7 SUBCOMMITTEE CHAIRMAN BLAUM:
8 Representative Lois Hagarty.

9 REPRESENTATIVE HAGARTY: Thank you.

10 BY REPRESENTATIVE HAGARTY: (Of Mr. Messer)

11 Q. Could you explain to us what it means
12 that the voluntary assumption of risk is not abrogated

13 A. Yeah. In Pennsylvania, the common law
14 provides that children from the age of 1 to 7 are
15 conclusively presumed to be incapable of any
16 negligence.

17 Q. So they cannot assume the risk?

18 A. That's correct.

19 Q. So this would clearly not apply to them
20 in the skiing situation then?

21 A. That's correct.

22 Q. Okay.

23 A. It does not abrogate negligence. And
24 from the age of 7 to 14 they are presumed to be
25 incapable of negligence, but the presumption lessens

1 the closer you get to age 14, and when you get to age
2 14, the presumption ends, unless the particular child
3 has an incapacity which prevents them from
4 understanding. Because the assumption of the risk is
5 the knowing acceptance of, you know, it's like playing
6 Russian roulette. You know and understand the danger
7 you're getting involved in.

8 Q. But then what does that do for those
9 non-juveniles?

10 A. In 469?

11 Q. No, what's the practical effect? I'm
12 trying to figure out what we've done exactly for ski
13 operators, as Kevin's question. I still don't
14 understand it exactly. For adults, what does it mean
15 that they voluntarily assume the risk? Can they ever
16 sue in those cases? Just so I understand the
17 difference between what we're doing here and what we
18 did for ski operators.

19 A. You must remember that what you did for
20 ski operators was amended to the comparative negligence
21 statute, and there was an effort, at least this is my
22 speculation, to make it very clear as to downhill
23 skiing. This was not going to be a comparative
24 negligence situation that a skier who is going down a
25 hill and falls over and gets hurt, as long as they are

1 an adult compos mentis, so to speak, if they cannot say
2 that they are going to take advantage of the
3 comparative negligence statute. I mean, that's my
4 interpretation.

5 Q. Well, can they still say that the slope
6 wasn't maintained in such a condition as -- in other
7 words, can you sue because, you know, it's icy and they
8 have artificially manufactured it and have not
9 maintained it?

10 A. No, I don't think so.

11 Q. Are there any circumstances in which an
12 adult skier can sue a ski resort?

13 A. Oh, yes. I think that there have been
14 several circumstances where skiers have sued ski
15 resorts because of the failure of equipment and
16 bindings that are rented to the skier that don't work
17 properly.

18 Q. So you can still do that?

19 A. Pardon me?

20 Q. You can still do that under our law?

21 A. That's correct. But that's a decision,
22 see, whenever a person goes in to rent skis, they have
23 to give them their height, weight, and so on and all
24 the equipment has to be adjusted. As a skier, I can
25 tell you it has to be adjusted for that particular

1 person. There are circumstances where ski operators
2 haven't adjusted them properly or allegedly haven't
3 adjusted them properly and caused injuries because of
4 the failure of the ski to release from the foot,
5 causing ankle, knee, and foot injuries.

6 Q. Okay, thank you.

7 SUBCOMMITTEE CHAIRMAN BLAUM: Anybody
8 else?

9 Representative McNally.

10 REPRESENTATIVE McNALLY: Yes, Mr.
11 Messer.

12 I think the bill that is before us
13 includes standards that you mentioned, and I've been
14 told that those are standards promulgated by the roller
15 skating industry, and I was wondering if in your
16 experience is there are any other statutes that the
17 State of Pennsylvania has enacted which basically enact
18 industry standards verbatim into law?

19 I am not aware of any industry standards
20 being enacted in Pennsylvania. In fact, I'm not sure
21 if there are government standards other than the ones I
22 cited about fire protection and so on. You know, the
23 Department of Labor and Industry polices the remodeling
24 and construction of roller skating rinks and other
25 facilities that are open to the public, and, you know,

1 they may have set standards that may be industry
2 standards. I don't know that. I mean, that would be a
3 possibility, but I do not know of any statute. Theirs
4 are done by regulation. I don't know of any statute
5 that has enacted industry standards for example for
6 movie theaters or ice skating rinks or anything of that
7 nature.

8 SUBCOMMITTEE CHAIRMAN BLAUM:

9 Representative Ritter.

10 REPRESENTATIVE RITTER: Thank you.

11 I had the understanding that this is
12 similar or the language in this bill as is being
13 proposed is similar to legislation that was passed in
14 New Jersey, I believe it was New Jersey, maybe it was
15 some other State. Do you have any knowledge of that?
16 I mean, do you have any experience with the New Jersey
17 statutes or how it would have worked over there?

18 MR. MESSER: No, I don't. All I can tell
19 you is that their law may be different. I do not
20 practice in New Jersey, I have never practiced there,
21 and I cannot even tell you what their law is in regard
22 to premises liability.

23 For example, in Pennsylvania we have
24 adopted into our law Section 344, the Restatement of
25 Torts. That is not true for every State. And whether

1 it's true in New Jersey, I can't tell you.

2 REPRESENTATIVE RITTER: Okay, thank you.

3 SUBCOMMITTEE CHAIRMAN BLAUM: Any other
4 questions?

5 (No response.)

6 SUBCOMMITTEE CHAIRMAN BLAUM: Thank you,
7 Mr. Messer.

8 The next group to testify will be a panel
9 in support of House Bill 469, Lou Quinten, National
10 President of the Roller Skating Association; Sue
11 Rendfrey, President of the Pennsylvania Roller Skating
12 Association; Lary Zucker, General Counsel to the
13 Pennsylvania Roller Skating Association; and Barry
14 Barry Lefkowitz, Legislative Representative of the
15 Pennsylvania Roller Skating Association.

16 MR. LEFKOWITZ: Good morning, Mr.
17 Chairman, members of the committee. I'm Barry
18 Lefkowitz.

19 What I'd like to do, Mr. Chairman, if you
20 will indulge me for a few seconds, and members of the
21 committee, is sort of set the tone for what we're here
22 about.

23 And by the way, Representative Ritter,
24 your question in regards to where this bill is now law
25 and where this language comes from is both from

1 Michigan and New Jersey. Michigan has a history now of
2 a little over a year of seeing what its impact will be
3 and that's going to be shared with you, and New Jersey
4 was signed into law in February.

5 But I think the most important thing is
6 that I think House Bill 469, rather than just the issue
7 of talking about insurance or the issue of talking
8 about tort reform and liability, is really a social
9 contract between the State of Pennsylvania, the rink
10 operators of Pennsylvania, and the citizens of
11 Pennsylvania. What this bill says is that we, both the
12 State, the rink operators, and the citizens of
13 Pennsylvania, have a responsibility and an obligation
14 to one another. That if in fact we deem that roller
15 skating rinks are an integral part of the community,
16 and that if in fact roller rinks play an integral role
17 in terms of providing facilities for young people,
18 drug-free and alcoholic-free, then we the State, we the
19 rink operators, and we the participants at the rinks
20 then have a responsibility and obligation to insure
21 that in fact those recreational activities are
22 continued to be available to the young people and the
23 adults in the State of Pennsylvania.

24 Pennsylvania has seen a dramatic decrease
25 in the number of operating rinks. Representative

1 McNally, you had a rink in your district. I say "you
2 had" because not too long ago that gentleman had to
3 close his shop because he could not get liability
4 insurance in order to meet his lease agreement with the
5 owner of his facility.

6 Representative Blaum, we discovered in
7 your office recently that your children, in fact,
8 roller skate, and that there was the possibility of
9 them roller skating, I think it was you talked about,
10 and the thing is that you want to be able to make sure
11 that there is a place for your children to be able to
12 go.

13 Sue Rendfrey, the President of the
14 association, she's more than a rink operator. She's a
15 former national champion, a roller skater. She's also
16 a mother of a daughter who competes, operating at a
17 Pennsylvania roller rink. Lary Zucker, the General
18 Counsel who is going to deal with legal and technical
19 aspects, he is a father, but he's also a father of
20 children who are being taught to roller skate at Sue
21 Rendfrey's facility.

22 Hiles Hagey has the Fountain Blue here in
23 Dauphin County.

24 MR. HAGEY: York County.

25 MR. LEFKOWITZ: York County. He provides

1 not just for young people but now for older people who
2 want to be able to have the continuation of physical
3 exercise and development. All the rinks around you
4 that you see here all participate with Special
5 Olympics. All of us understand the importance of what
6 it means to a Special Olympian to be able to
7 demonstrate that they are capable of doing something.
8 Now, what it means to their self-esteem, but even more
9 importantly, roller skating provides them with an
10 opportunity to physically develop themselves.

11 In a meeting last week with one of your
12 colleagues, he was explaining to us how an individual
13 who had been seriously injured and the doctors had put
14 them through rehabilitation through a number of
15 different approaches, the final one and the one that
16 helped overcome the physical handicap of the injury was
17 roller skating.

18 We hear this question about the roller
19 skating standards and the fact that, you know, the
20 industry developed it. Well, what is the industry?
21 The industry was a roller skater and a mother of a
22 roller skater. The industry was parents of people who
23 roller skate. It wasn't done in isolation. These
24 standards were developed on the basis that I, as a
25 parent, who have my children not only roller skating

1 but now my family carrying on and running our rinks.
2 When you look around this room, the majority of the
3 rink operators will tell you these are family-run
4 businesses and they run it for the families of their
5 community. So that when these standards were
6 developed, it was not in isolation, it was based on the
7 fact of the years and years of experience that each of
8 these individuals have had as roller skaters
9 themselves.

10 So that when the rink operators come
11 before you today, it's not on the basis of
12 self-serving. They come here saying to you, look, we
13 want to be able to continue to serve the State of
14 Pennsylvania, we want to be able to continue to service
15 the community that we're a part of. How many times can
16 these people tell you here around this room that they
17 ran fundraisers for Right to Read, or for recently a
18 young man who is paralyzed and they were raising money?
19 PTA, Scouts, diocese groups, every conceivable group
20 that you can think of, the lifeblood of this State, all
21 participate at roller rinks. And so we're here today
22 to be able to emphasize to you that the main thrust of
23 this legislation is to be able to provide a vehicle
24 that rinks can be able to maintain themselves. And
25 that's really what the bottom line is.

1 The experience in Michigan and the
2 experience in New Jersey will be shared with you as we
3 continue on in the morning, but I want to stop here and
4 then turn it over to our other participants, but before
5 I do, I want to thank you, Mr. Chairman, because
6 originally we were supposed to go first and as you
7 know, your kind staffer had it so that the trial
8 lawyers would go first because I just came in from a
9 plane from North Carolina so I could be here today, and
10 we want to thank you and we appreciate the fact of the
11 timeliness of the scheduling of this particular hearing
12 because it is so critical to our industry, because our
13 industry has gone from over 200 rinks 10 years ago to
14 168 rinks 5 years ago, to now where we're just above
15 100 rinks. And people will tell you time after time,
16 as our other participants talk, that the bottom line
17 was that most of them had to give up their operations
18 because of the crisis that we're here to talk to you
19 about.

20 Thank you very much, Mr. Chairman.

21 SUBCOMMITTEE CHAIRMAN BLAUM: As we
22 proceed with your group and questions, I just would
23 like everybody to keep in mind that the House is in
24 session at 11:00 o'clock and the meeting will have to
25 end at 11:00.

1 MR. ZUCKER: Members of the committee, my
2 name is Lary Zucker. I'm an attorney in practice in
3 New Jersey and I just took the Bar in Pennsylvania in
4 February and I am anxiously awaiting the results. I am
5 the General Counsel to the Eastern Region of the Roller
6 Skate Owners of America, commonly known as the RSROA.
7 That includes the rinks in New Jersey, Delaware, and in
8 Pennsylvania. I've been the General Counsel since
9 1984. I have been involved in roller rinks and
10 defending roller rinks specifically since approximately
11 1978 during the disco roller boom that we all remember
12 fondly, or not so fondly.

13 REPRESENTATIVE HAGARTY: I don't remember
14 it at all. I never knew it existed.

15 SUBCOMMITTEE CHAIRMAN BLAUM: Karen does.

16 MR. ZUCKER: It gave us some of the least
17 memorable movies that have ever been produced by
18 Hollywood.

19 I've probably tried over the years
20 between 100 and 150 roller rink cases. I have lost
21 count. My office has probably been involved in a
22 thousand over the last 12 or 15 years in the areas that
23 we have been involved in. I regularly lecture to the
24 groups on risk management, on safety techniques. They
25 are very interested in that subject, and in May they

1 are flying me out to Las Vegas to their annual
2 convention to once again address the entire body on
3 roller rink risk management and safety. It's a group
4 that's very interested in roller rink safety, and
5 safety, I would like to add, is the main thrust of this
6 legislation.

7 If I had to, if I was called upon to free
8 associate with this legislation and say what does it
9 do, what is the thrust, how should I read this
10 legislation? I would say that the purpose of the
11 legislation is to make roller rinks in Pennsylvania
12 safer. Safer for participants, adults, teenagers and
13 children. Safer for everybody who participates in the
14 sport and the activity of roller skating. By making it
15 safer, by reducing the risk, by reducing we thereby
16 reduce the incidents of injuries and accidents that
17 occur in rinks, and by doing that it is our hope that
18 the connection will be made between the reduced level
19 of incidents in the rink and the availability of
20 insurance.

21 This legislation, there was some question
22 raised about the genesis of this legislation. This
23 legislation was enacted not in its present form but in
24 a very similar form for the first time in Michigan in
25 1988 as a result of an attorney and also a lifelong

1 world champion roller rink skater named Kurt Ansalmi
2 who was facing the crisis in Michigan. He was a step
3 ahead of everybody else in drafting this legislation,
4 similar legislation, which was enacted in 1988 in
5 Michigan. On February 19th of this year, Governor
6 Florio signed legislation that is once again similar to
7 this legislation in New Jersey. It took effect
8 immediately. And now the legislation has been
9 introduced in Pennsylvania and you are now considering
10 it.

11 I would say to begin with that this
12 legislation does not cause or create any major
13 earthquake in the common law jurisprudence in
14 Pennsylvania. The common law in New Jersey, the common
15 law in Michigan, the common law in Pennsylvania, I dare
16 say the common law in most of the other 50 States,
17 except perhaps for Louisiana, is that an owner of a
18 business who invites people upon their premises, that
19 is invites business invitees onto their premises, has
20 the duty of taking reasonable care to make their
21 premises reasonably safe. This bill does not change
22 that duty, it does not change that aspect of the common
23 law in Pennsylvania, New Jersey, or Michigan. What it
24 does is takes into account the particular unique nature
25 and the inherent risks that we all understand in some

1 vague way inherent in roller skating, and what it does
2 is makes those risks, it codifies the subjective
3 knowledge that those risks occur, and what it does is
4 for the first time makes the roller rink, it imposes
5 mandatory safety features, safety standards on the
6 roller rinks, and also imposes a certain minimum level
7 of obligation on the roller skaters themselves.

8 And I would like to address some of the
9 specific considerations that were raised by counsel to
10 the trial lawyers. And let me begin by saying that I'm
11 glad that the trial lawyers have as their legislative
12 counsel someone who is involved and has been involved
13 as an owner of a roller rink. I think that's terrific.
14 I think that is probably one of the reasons why they
15 support the goals of this bill and do not oppose each
16 and every section and do not oppose the enactment in
17 any form at all. I think that Howard must understand
18 the liability and the pressures that are on roller
19 rinks or else I would think they would come out and
20 just tell you to veto the bill and not to consider the
21 bill in any form in any way.

22 What PTLA has presented to you, however,
23 is some constructive suggestions, some ideas for
24 looking at this bill that we are not in great
25 disagreement with. In certain respects we believe that

1 a careful reading of the bill will show that the
2 legislation takes into account their considerations.
3 In other respects we may be willing to suggest an
4 amendment to clarify the intent of the legislation.
5 Let me give you, let me respond specifically, if I
6 might.

7 In terms of the responsibility of the
8 duty of owners contained in Section 4, those
9 responsibilities of the roller rink have been the
10 voluntary, the voluntary responsibility of roller rinks
11 since approximately 1980 when the first voluntary
12 standards in the roller rink industry were first
13 promulgated by the national RSROA, which is now known
14 as the RSA. They are strictly voluntary. Some rinks
15 comply, some rinks don't comply. You have a great
16 number of different size rinks in Pennsylvania anywhere
17 from the large rinks that are owned by Ted and Sue
18 Rendfrey in Pennsylvania to a small rink that's
19 basically in a garage I first encountered about two
20 years ago when I spent Thanksgiving at a resort called
21 the Buckhill Inn here in Pennsylvania with my family
22 and they open their rink about two hours every week.
23 Your rinks vary in size, and quite frankly, they vary
24 in their compliance with the national voluntary
25 standards. For the first time in Michigan and now in

1 New Jersey there are mandatory standards, and I think
2 that this, these rules, these 13 minimum standards did
3 not just spring out of the air. They have been
4 voluntary standards since at least 1980.

5 One of the standards that counsel
6 discussed was standard number 3, "When the rink is open
7 for sessions, have at least one floor guard on duty for
8 approximately every 200 skaters." And the criticism of
9 that specific provision was that how can one skate
10 guard watch the parking lot or watch the aisles and
11 watch the floor all at the same time, especially when,
12 as he had as at his daughter's party, 170 teenage
13 skaters. Well, the operative word in that is "floor
14 guard." It is a common meaning and it's a common
15 understanding in the roller rink industry that a floor
16 guard is a person designated to skate on the skating
17 floor and not -- and the floor guard is not deemed
18 responsible, solely responsible, for the concourses,
19 the game room, the parking lots. That is one floor
20 guard for every 200 skaters on the skating floor
21 itself.

22 So generally, the rink operators who I
23 have dealt with, because I have emphasized this over
24 and over again in my speeches and my addresses on risk
25 management, is that everybody in a rink, from the

1 person behind the concession stands to the person
2 giving out skates, they are additional eyes and ears.
3 They are supposed to maintain supervision, they are
4 usually given whistles, they are always given black and
5 white referee shirts to make them stand out from the
6 crowd. But we are not talking about those additional
7 people, those other employees who are responsible for
8 safety. This standard is 1 to 200 for the floor
9 itself.

10 Now, it has been the experience, and you
11 will hear testimony before you today on this point, it
12 has been the experience that when there are 200
13 admissions, for example, in a rink on a given evening,
14 out of that 200, or lets say there are 400 admissions
15 on a given evening, out of that 200 to 400,
16 approximately 50 percent, maybe even less, are actually
17 skating on the floor at one time. The other people are
18 non-skaters, they are there for social reasons. The
19 other people may be in the game rooms, playing the
20 concessions, having a drink, talking to their friends,
21 using whatever facilities that the rink may provide.
22 There's only a limited number of skaters who are going
23 to be skating on the rink at any one time. But what
24 this standard does and what this standard has shown to
25 be effective is 1 to 200 for the skaters on the rink.

1 Now, I think that the standard number 3
2 is clear in and of itself. I believe that it does need
3 amendment, but if the committee is willing and if the
4 committee thinks there is some vagueness here, we can
5 make it even clearer by saying every 200 skaters on the
6 skating floor. It doesn't -- it's a standard that's
7 accepted in the industry, it's a standard that is
8 proven to be effective.

9 Let me also address the idea that what
10 this bill is doing is abrogating each and every code,
11 safety code, that is in effect in the State of
12 Pennsylvania. I think that's a bit of an exaggeration.
13 I think that if you look at paragraph 13, it
14 specifically requires the rink to "Comply with all
15 applicable State and local safety codes." I believe
16 that paragraph in and of itself is an answer to the
17 trial lawyers' consideration on that issue. I don't
18 have to belabor that point.

19 The other emphasis by the trial lawyers
20 is the question of the non-liability under current
21 common law of children under the age of 7. I would
22 submit that this bill, in the form that you're
23 considering it, does nothing to change the common law
24 with regard to the normal liability of 7-year-old
25 children. If there's a question about that, then by

1 all means clarify that in the act. Say that there's
2 nothing in this act shall abrogate the existing common
3 law with regard to children. It's not designed to
4 steal lawsuits away from deserving children. It's not
5 designed to steal lawsuits away from anyone. What it
6 is is designed to give us a level playing field because
7 now we would like to address what I consider to be the
8 most important point raised by PTLA.

9 You have heard before you anecdotal
10 evidence that no one ever files lawsuits against roller
11 rinks. You've heard testimony that phone calls were
12 made to individuals in Pittsburgh and no one can
13 remember a lawsuit in the Pittsburgh area except one
14 that occurred five years ago. Well, at the present
15 time I have an office in Bala Cynwyd, Pennsylvania, and
16 I am admitted pro hac in approximately 25 roller rink
17 cases that are pending in Philadelphia County and in
18 the Federal District Court in the Eastern District in
19 Pennsylvania. Other lawyers in my firm are handling
20 approximately another 25 cases that are pending in the
21 Delaware Valley, and that's in Pennsylvania and New
22 Jersey. I'd say once every two weeks I'm before an
23 arbitration panel in Pennsylvania on a case involving a
24 roller rink claim, and the overwhelming number of those
25 claims that I have handled, I have personally handled

1 and am personally handling in my office have to do with
2 risks that are inherent in the sport. I'm not saying
3 every one of them, but I'm saying the overwhelming
4 majority, the overwhelming majority involve risks,
5 involve collisions, involve skaters falling down,
6 involve those types of risks that even the Supreme
7 Court of Pennsylvania has said are assumed by skaters
8 going into skating rinks. And the cost of defending
9 those and the cost of the ultimate jury verdicts are,
10 we believe, what's chasing and has chased the insurance
11 companies away.

12 Now, what insurance companies are left
13 here? I probably am not the best person to tell you
14 what the insurance situation is. I am not in the
15 insurance industry, although I do work for insurance
16 companies in my practice. I have a general defense
17 negligence practice and they are the bread and butter
18 of my operation, and over the years I have been
19 retained by many different insurance companies that
20 have attempted to write roller rinks in New Jersey and
21 in Pennsylvania and Delaware. And what happens is
22 these rinks are often shunted into, almost exclusively
23 shunted into the excessive surplus line market where
24 the risks are high and where the rates are unregulated.
25 And those risks, those groups, those excessive surplus

1 line insurance companies, are almost universally from
2 outside this State, they are almost universally outside
3 of the careful scrutiny of the Pennsylvania Department
4 of Insurance, and they almost universally go out of
5 business as soon as the premiums are collected and the
6 first claims start coming in. I know that because not
7 only do the rinks end up paying premiums but they end
8 up paying me when they no longer have any insurance.
9 And I end up getting stuck for the bills that I
10 incurred until they found out that their insurance
11 companies are going under.

12 Plaintiffs' attorneys in the State have
13 also experienced similar problems because when they
14 find out that there isn't any insurance, they often
15 tell their clients and what generally happens is that
16 the plaintiffs decide that since there is no insurance,
17 they choose not to file suit. That happens. I've seen
18 it happen. I've sent out letters explaining that there
19 isn't any insurance and I have seen claims just not be
20 filed.

21 Everyone is affected by this problem. We
22 can give you more than anecdotal evidence, we can give
23 you statistical evidence that rinks are closing their
24 doors because of the unavailability of insurance, and
25 what this bill is designed to do is not just bring

1 insurance back into the market, but if we want to do
2 that, we would have presented a bill that was similar
3 to the ski area bill, which is nice and clean and which
4 just generally cuts people off. Or we would present a
5 bill that provided an assumption of risk as an absolute
6 defense, and which would totally bar the claims of
7 roller skaters in Pennsylvania. We didn't do that.
8 What we tried to do is offer a fair and balanced bill,
9 offer a bill that imposes obligations on skaters and
10 imposes obligations on rink owners. And what we are
11 hoping is that once this bill is enacted, the incidence
12 of roller skating, of accidents will go down, and the
13 industry will -- and another segment of the industry, a
14 different segment of the industry, the non-excess on
15 surplus line segment of the industry will be attracted
16 to the industry in Pennsylvania. And in fact, that's
17 what happened in Michigan.

18 Now, Michigan's has been in effect since
19 1988. They have almost three years of experience, and
20 Kurt Ansalmi was in New Jersey last week. Kurt
21 Ansalmi, as I mentioned, is the attorney, and he is now
22 doing work for several primary carriers that have now
23 elected to write rinks in Michigan. Including, by the
24 way, Kurt's father's rink. Kurt's from a long-time
25 rink family.

1 We are hopeful that will happen here. We
2 have no guarantees, but we are hopeful it will happen
3 here. And that would be my response to what the trial
4 lawyers have presented. I would, of course, ask for
5 any questions and I would be happy to answer.

6 SUBCOMMITTEE CHAIRMAN BLAUM: Can I ask,
7 are the two other people going to testify or is that
8 basically the presentation?

9 MR. LEFKOWITZ: No. I think Lou is going
10 to be able to, as National President, Lou Quinten, as
11 National President, will be able to, one, discuss what
12 has happened in Michigan because he has just recently
13 come back from working with the Michigan people, and he
14 is also a rink operator here who just recently went
15 through a lawsuit and had to take care of that problem,
16 so that he'll be able to share that experience.

17 SUBCOMMITTEE CHAIRMAN BLAUM: You also
18 have Sue Rendfrey?

19 MR. LEFKOWITZ: Yes, who is President of
20 the Pennsylvania Roller Skating Association.

21 SUBCOMMITTEE CHAIRMAN BLAUM: So they
22 don't have testimony as much as they just would want to
23 respond to questions? What I want to do is get anymore
24 testimony out of the way before we get into questions.
25 If you can make it quick, then we can get into the

1 questions.

2 MR. LEFKOWITZ: Okay, why don't you
3 quickly, Lou.

4 MR. QUINTEN: Certainly.

5 MR. LEFKOWITZ: A limited amount.

6 MR. QUINTEN: I would probably -- first
7 of all, I am Lewis Quinten. I am the President of our
8 national association. I also operate a roller skating
9 center here in York, Pennsylvania, and I would like to
10 try to make it clear to the committee that this is not
11 a small or minimal situation for us. I think you can
12 recognize that there is nothing, there is no problem
13 that exists within our organization that brings as many
14 people together as this kind of problem. And it occurs
15 here in Pennsylvania and everywhere that it happens.
16 When the Michigan people started to talk about, and
17 Kurt talked about bringing forth this law, it was
18 amazing how the rink operators from that State suddenly
19 came to a meeting. We have the same problems that a
20 lot of associations have. We can't get all of our
21 people to all of our meetings at all times, but it's
22 this kind of a problem that brings out the absolute
23 majority of our members.

24 Over the past 10 years it has absolutely
25 been one of the most pressing problems that has

1 confronted our industry. Where the insurance has been
2 available its cost has been either prohibitive, or in
3 those cases where the price was right the insurance
4 companies selling the same were not there for the long
5 haul. And during the past five years, our industry has
6 seen four insurance companies fail for lack of adequate
7 resources, thereby leaving those operators who
8 purchased that insurance to be left without it and
9 cases to be defended where the defense costs became the
10 responsibility of the rink owner. Thousands of dollars
11 had been lost in premium, which was paid and for which
12 the rink operator received either no coverage or
13 inadequate coverage.

14 99 percent, and that, you know, is
15 debatable, but in our minds, 99 percent of the
16 liability cases that are being brought before the
17 courts in roller rinks were accidents that occur in
18 roller rinks are of a frivolous nature. There is no
19 doubt about that. I think if you look back over the
20 records you would see it very readily. We have people
21 suing for sprained thumbs, we have older individuals
22 who come into the rink who haven't skated for 20 years
23 and put on a pair of skates, they fall on their rear
24 end, they try to catch themselves and break a wrist,
25 and they immediately believe that we should pay all of

1 their bills for that accident when we had nothing
2 whatsoever to do with it.

3 Just last week I stopped by the office of
4 the roller rink chain in Columbus, Ohio, the United
5 States of America. They operate roller rinks here in
6 the State of Pennsylvania. And he laid the figures out
7 on the table for me and showed me in one of his rinks
8 in this east coast where it's costing him 17 percent of
9 his gross business each year to defend lawsuits. So
10 when people say that lawsuits are not being filed
11 against roller rink operators, they are sadly mistaken.

12 The price of his insurance is so high
13 that he has to take a \$50,000 deductible in order to be
14 able to maintain his operation. He is a chain, and
15 because he's a chain, he gets -- there's an onus put on
16 him and on his organization. We have that happening
17 all the time. Anyone who owns two or three roller
18 rinks is subject to greater scrutiny by the insurance
19 companies, many times will not insure them at all. In
20 his case, he might as well not be insured at all. He
21 has to cover \$50,000 of all upfront costs. He spent
22 \$171,000 this past year defending roller skating suits.

23 I have had the same experiences in York,
24 Pennsylvania. York is a very conservative town. I'm
25 sure that most of you realize that. York County is a

1 conservative county. But we still get lawsuits. We
2 still get people who believe that we ought to pay
3 because they ran into the wall. I mean, seriously,
4 just a phone call here just two weeks ago from a mother
5 whose daughter came in the rink, was skating with
6 another little girl and they fell down and her little
7 girl broke her leg. Nobody touched them, had nothing
8 happen to them in the rink, but she expected that I
9 should pay for it. Her lawyer told her that I should
10 have insurance to cover that. Well, the fact is I
11 don't. I do not have med pay insurance, I don't have
12 any kind of insurance such as that. It wasn't
13 available to me at a price I could afford.

14 The problem does exist. In Conquerville,
15 Pennsylvania, we had a roller skating rink there, the
16 man operating the rink had been in the business since
17 1937. This happened to be a brand new facility, had
18 only been in operation for about seven years, a very
19 large one that we were very proud of in our
20 association. This particular gentleman had a lot of
21 real estate in the Delaware County and Philadelphia
22 County area, and he had decided he wanted to retire, so
23 he decided to liquidate his real estate corporation.
24 In doing so, he ended up selling all of his properties
25 with the exception of the roller rink and an office

1 building next door. When his law firm realized that he
2 had all this cash in the bank, they advised him to
3 immediately close the roller rink. And why? Because
4 he had no liability insurance. He could not obtain the
5 liability insurance, and consequently was vulnerable
6 that someone could come in and take a lot of the money
7 that he had just accumulated from these properties. So
8 the rink closed. Conquerville, Pennsylvania, no longer
9 has a roller skating center, and it was a great loss to
10 that community.

11 We talked about the Allegheny County
12 facility. The facility right down the road here
13 outside of Reading they closed is now a warehouse. We
14 have had numerous closings of roller skating centers
15 throughout this Commonwealth and many, many of them
16 having to do with insurance and not with the pressures
17 of business.

18 In the Michigan situation, I just
19 attended a meeting with about 40 of their members, just
20 about I guess two to three weeks ago, and I asked them
21 about the impact of the bill that was passed in their
22 State. And they honestly believe that it is probably
23 one of the best things that ever happened to them.
24 They are now able to get insurance. They are able to
25 buy insurance from companies other than a meadowlark,

1 which is one that we're dealing with now here in
2 Pennsylvania who has been selling insurance and which
3 we've been advised that if a claim, any kind of a heavy
4 claim comes in, forget it, they are not going to pay.
5 They haven't got the money to do it. We've had four of
6 those companies in the last five years.

7 SUBCOMMITTEE CHAIRMAN BLAUM: Okay.

8 Sue, do you have anything to say or do
9 you just want to wait for questions?

10 MR. LEFKOWITZ: I think we'll go to
11 questions.

12 SUBCOMMITTEE CHAIRMAN BLAUM: I think
13 that's a good idea.

14 Representative Ritter.

15 REPRESENTATIVE RITTER: I have a question
16 for Attorney Zucker.

17 BY REPRESENTATIVE RITTER: (Of Mr. Zucker)

18 Q. Under the duties of operators under
19 Section 4, one of the other points that was brought up
20 by Attorney Messer were the words that say, "to the
21 extent practicable. It seems to me if all the other
22 things say "reasonably safe condition," "reasonable
23 security," and so on, why would you say that that
24 particular phrase is necessary in there? It seems to
25 me it limits it further than it should be.

1 A. I understand the point that counsel was
2 making and I understand the basis for your question. I
3 think that too much attention is being paid to "to the
4 extent practicable." I think that in Pennsylvania any
5 judge, any jury interpreting "to the extent
6 practicable" would have to impose a duty of
7 reasonableness, and I seriously doubt that any rink
8 owner could avoid complying with 1 through 13 because
9 it wasn't practicable to do so.

10 Q. Well, in other words, but can that
11 language be removed without affecting it?

12 A. I think it could be removed and perhaps
13 even replaced with something, "to the extent
14 reasonable," or something like that.

15 Q. Well, no, I think--

16 A. That's my suggestion. Certainly the
17 committee can do whatever they want with it, but that
18 is not -- that was not intended to limit or narrow the
19 scope of 1 through 13.

20 MR. LEFKOWITZ: Representative Ritter,
21 are you saying is it your hope to see it just read, "it
22 shall be the responsibility of the operator to," then
23 just do it from there?

24 REPRESENTATIVE RITTER: Yeah. I mean, I
25 don't think that change -- what you're saying is it

1 doesn't really change the effect of it and it makes it
2 clear that it's not a further limitation of the word
3 "reasonable."

4 MR. LEFKOWITZ: That's not a problem at
5 all.

6 SUBCOMMITTEE CHAIRMAN BLAUM:
7 Representative Hagarty.

8 REPRESENTATIVE HAGARTY: Yes, thank you.
9 You indicated that you did not think that
10 this changed the standard of negligence for children
11 under 7, and I don't know how you reached, I'm not a
12 negligence attorney, I don't know if you're right or
13 wrong, but it just seems to me that the assumption of
14 the risk in Section 6 includes all young children, and
15 so I'm concerned that it seems to me that we have
16 removed that for children under 7. I'm wondering why
17 you reached that conclusion.

18 SUBCOMMITTEE CHAIRMAN BLAUM: 14. I
19 believe it's 14.

20 REPRESENTATIVE HAGARTY: Well, whether
21 it's the 7 or 14, my concern is with regard to the
22 special protection we provide for young children, it
23 seems to me this does change it, and the reason I'm
24 particularly concerned about that is at least in my
25 experience as a mother observing roller skating, the

1 risk that I think roller skating rink operators are
2 most able to control are the big kids skating fast and
3 bumping into the little kids, and that's why I'm
4 concerned that we not assume that little kids can
5 protect themselves.

6 MR. ZUCKER: Representative Hagarty, I
7 think that you're raising a point that needs to be
8 addressed in this legislation to make the intent
9 clearer, because the point that counsel made with
10 regard to a 5-year-old child being unable to read or
11 heed the warnings.

12 REPRESENTATIVE HAGARTY: Right.

13 MR. ZUCKER: I mean, I can't argue
14 against that. That's certainly correct. I have a
15 4-year-old daughter and to expect her to read a sign
16 is, I mean, it's an absurd thought. And I think that
17 language saying that it's not intended to abrogate the
18 responsibility towards children I think--

19 REPRESENTATIVE HAGARTY: The duty toward
20 young children?

21 MR. ZUCKER: I think that would be
22 appropriate.

23 REPRESENTATIVE HAGARTY: I mean, I think
24 rink operators have a separate duty towards young
25 children. As long as they allow young children on

1 their rink, mothers like me who send our kids to
2 birthday parties, you know, expect when the kid falls
3 down there to be enough people to help pick them up and
4 make sure they are not skated over.

5 MR. ZUCKER: Absolutely. Absolutely.
6 Point well taken.

7 May I also address something else that
8 you raised with counsel before me, the difference
9 between this legislation and the ski area legislation?

10 REPRESENTATIVE HAGARTY: Um-hum.

11 MR. ZUCKER: I thought long and hard
12 about dealing with the difference in the legislation
13 and it's tempting to think that maybe we should just
14 deal with it, if we do persuade you that the rink
15 owners have a problem that needs addressing by this
16 legislation, perhaps we should just go the way of the
17 ski area bill, just, you know, abrogate, impose
18 contributory negligence. But understand this: I think
19 you should understand that what you did, what the
20 legislature did in the ski area bill was to pull out
21 skiers from the comparative negligence statute and say
22 that if they do assume the risk, if they are negligent
23 in their skiing, that it's a total bar and it goes back
24 to the old complete assumption of risk doctrine which
25 was a bar, a total bar to a lawsuit. We're not trying

1 to do that here. There's nothing in this act that is
2 as harsh as that, and perhaps what this legislature
3 ought to consider, and this might be a proper subject
4 for consideration by the legislature if they decide, is
5 to do for the ski areas what this legislation does for
6 the roller rinks. That is, a minimum set of standards
7 that ski areas have to comply with that will make ski
8 areas safer, just as this legislation will make roller
9 rinks safer.

10 REPRESENTATIVE HAGARTY: But let me ask
11 you, if the roller rink operator does comply with all
12 of these points, isn't the effect essentially then
13 assumption of the risk by the skater?

14 MR. ZUCKER: No. Let me explain to you
15 why it's not.

16 Assumption of risk in Section 6, it's
17 probably a misnomer because it really isn't a pure
18 assumption of risk in either the primary or secondary
19 sense.

20 REPRESENTATIVE HAGARTY: Well, then what
21 should we say? Because those are legal words which
22 attach a significant body of law to them.

23 MR. ZUCKER: Let me say this. In
24 Michigan and New Jersey, the version of the legislation
25 that was enacted in both of those States contains a

1 pure assumption of risk clause. That is, under certain
2 circumstances, a skater's negligence can be a complete
3 bar and comparative negligence will not apply. I think
4 that was in, I believe it was in an early version of
5 this legislation, but it is not, it was removed at the
6 request of the Judiciary Committee staff. And the
7 legislation as it now reads, as you have it before you,
8 is not an assumption of risk. It does not do for
9 roller skaters what the assumption of risk bill does to
10 skiers. Comparative negligence is still the operative
11 standard for consideration by a jury in terms of roller
12 skaters and their relationship to roller rink
13 operators, and there's nothing in here that says
14 anything different, Representative.

15 REPRESENTATIVE RITTER: Let me move on to
16 another question because we don't have much time and I
17 don't want to monopolize.

18 I am concerned as to whether we have a
19 liability problem or an insurance problem, as I think
20 we all are. You know, I guess for those of us
21 particularly on this committee it seems any time
22 there's an industry who has a problem with insurance
23 premiums they want to change the liability law, and I
24 think some of us, including myself, are not convinced
25 that it's not necessarily the liability law, it may be

1 an insurance problem. So you told me you had 25 cases
2 in the Delaware Valley?

3 MR. ZUCKER: Yeah.

4 REPRESENTATIVE HAGARTY: You're including
5 what, the five-county area? And for what period of
6 time?

7 MR. ZUCKER: I'm saying the five-county.
8 I'm saying that I have approximately 25 in my office
9 right now, pending, open files; pending, open claims,
10 and probably another 25--

11 REPRESENTATIVE HAGARTY: Assuming you
12 have most of the legal defense work--

13 MR. ZUCKER: I hope I do.

14 REPRESENTATIVE HAGARTY: It sounds that
15 way to me. I mean, if you want to share it let us
16 know, but otherwise I'm going to assume that's how many
17 cases there are.

18 MR. ZUCKER: Over the years--

19 REPRESENTATIVE HAGARTY: And over how
20 many years are the 25 cases? You have 25 open cases
21 now?

22 MR. ZUCKER: I'm saying there are 25 open
23 now, and that if I included the closed cases, the cases
24 that have been settled, the cases where arbitration
25 verdicts were accepted by one side or the other, if I

1 included that, the number would be much higher.

2 REPRESENTATIVE HAGARTY: What has been
3 the success rate in those cases against the roller
4 rinks, would you generally say?

5 MR. ZUCKER: The success rate has been --
6 see, it's very difficult to -- success rate you have to
7 take into account arbitration, because most are
8 arbitration cases and not major jury trials. There are
9 a few major jury trials, but most, 90 percent are
10 arbitration cases.

11 REPRESENTATIVE HAGARTY: So they're not
12 big verdicts then? We're not talking big verdicts, if
13 you're telling me they're arbitration cases.

14 MR. ZUCKER: No, you're right. That's
15 correct.

16 REPRESENTATIVE HAGARTY: Because then
17 you're under the arbitration limits.

18 MR. ZUCKER: That's true. The problem is
19 not big verdicts. That's not what's driving the
20 industry away.

21 REPRESENTATIVE HAGARTY: What is then?

22 MR. ZUCKER: It's frequency of claims,
23 because for a rink to have five, six, seven, eight,
24 nine claims pending at one time, for example, means if
25 they don't have insurance paying a lawyer to defend all

1 five, six, seven, eight, nine lawsuits -- and let me
2 say one thing. The arbitration system in Philadelphia
3 is not kind, it has been my experience, and this is
4 again anecdotal, it's not kind to defendants as a
5 group, and it's especially not kind to roller rinks.
6 They tend to look at as soon as they see an injury,
7 they see an orthopedic injury, you know, a fracture of
8 the wrist, a turned ankle, a broken leg, a fractured
9 coccyx, typical roller rink type injuries, they tend to
10 award money because it occurred inside of a rink.

11 REPRESENTATIVE HAGARTY: I know. What
12 did -- when did insurance become unavailable and
13 unaffordable in this industry?

14 MR. ZUCKER: In the early '80's, and I
15 can have Lou address it, but let me tell you what my
16 experience has been. In the early '80's was sort of
17 the end of the line for primary insurance, first dollar
18 insurance, cheap insurance. Since '83, '82, there have
19 been only the excess and surplus line carriers that
20 have been willing to come in, and what happened is
21 this. Let me give you -- that's an answer to your
22 question. We're running out of time.

23 REPRESENTATIVE HAGARTY: Let me go,
24 because other members have questions.

25 SUBCOMMITTEE CHAIRMAN BLAUM:

1 Representative McNally.

2 REPRESENTATIVE McNALLY: First, I'd like
3 to know the name and address of the roller skating rink
4 which is allegedly in my district and when it closed.

5 MR. LEFKOWITZ: We would be glad to
6 provide you with it.

7 REPRESENTATIVE McNALLY: You don't know
8 it?

9 MS. RENDFREY: It was called Gold Circle.

10 REPRESENTATIVE McNALLY: And where was
11 that?

12 MS. RENDFREY: It was in the Builder's
13 Square Shopping Center on Lebanon Church Road.

14 REPRESENTATIVE McNALLY: Okay, that's not
15 in my district.

16 MS. RENDFREY: Oh, okay.

17 REPRESENTATIVE McNALLY: I have a couple
18 of other questions.

19 Do you have any kind of reports which
20 would indicate the kind of injuries that typically
21 occur in roller skating, and for example what
22 percentage are head injuries, what percentage are
23 fractures, sprains, that type of thing?

24 MR. ZUCKER: There was a study done that
25 was published in the American Medical Association

1 Journal approximately five years ago that I have access
2 to that I could supply to you if you wish it.

3 REPRESENTATIVE McNALLY: I think we
4 should have that.

5 MR. ZUCKER: It does -- it's a survey of
6 roller rink injuries. It's mostly ankles and wrists.

7 REPRESENTATIVE McNALLY: Okay. I also
8 have a couple questions about the standards themselves.
9 For example, I see that you prohibit the same or use of
10 alcoholic beverages on the premises. Would you have
11 any objection to a standard which prohibits the
12 admission of any person who has or is under the
13 influence of alcohol or drugs?

14 MR. ZUCKER: No. I can defer to my--

15 MR. QUINTEN: We also do that to the
16 greatest extent possible. I mean, it's not --
17 sometimes one will get by you, but we usually catch
18 them real quick as soon as they put skates on their
19 feet.

20 REPRESENTATIVE HAGARTY: I'll bet.

21 MR. ZUCKER: That's something the
22 industry is sensitive to.

23 MR. QUINTEN: We wanted to have that kind
24 of rule.

25 REPRESENTATIVE McNALLY: Also, in terms

1 of rental skates, I assume that some people bring their
2 own skates?

3 MR. ZUCKER: Yes.

4 REPRESENTATIVE McNALLY: What about a
5 standard to have the owner check those skates as well?

6 MR. QUINTEN: We do that.

7 REPRESENTATIVE McNALLY: Well, it's not
8 in the bill.

9 MR. ZUCKER: Let me say this,
10 Representative. It's been my experience that rental
11 skates are checked periodically and they are also
12 checked every time they are handed out to the extent
13 that they can be checked for the outer boot to see if
14 the track is loose, to check to make sure that the
15 wheels turn. That is a relatively simple procedure
16 that can be checked.

17 REPRESENTATIVE McNALLY: Right.

18 MR. ZUCKER: I have defended cases in
19 which--

20 REPRESENTATIVE McNALLY: Well, all I want
21 to know is do they check the personally owned skates?

22 MR. ZUCKER: Also, let me say this: Most
23 rental roller skates inventory are kept on gravity
24 racks, and you will also be able to note if the skate
25 comes down or not to the end of the gravity rack, so

1 that's not a big--

2 REPRESENTATIVE McNALLY: Also, with
3 respect to the duties of operators, you know, you
4 mentioned some of the injuries that occur. What about
5 a standard which would require operators to supply
6 helmet, pads, and that sort of thing to the--

7 MR. ZUCKER: I would rather have the rink
8 operators address that. Helmet and pads are very
9 popular in the outside on the street use.

10 REPRESENTATIVE McNALLY: I take it that
11 you would have an objection?

12 MR. QUINTEN: I can assure you,
13 Representative, if we did that in our facilities you
14 would close us down. We'd have to close business. The
15 kids wouldn't come anymore.

16 REPRESENTATIVE McNALLY: Well, is it true
17 that you use hardwood floors, hardwood or plexiglass
18 walls, that kind of thing?

19 MR. QUINTEN: Well, we have hardwood
20 floors. Our walls are made out of different materials.
21 Some rinks have concrete.

22 REPRESENTATIVE McNALLY: Concrete blocks?
23 You mean the boundaries of the roller skating rinks?

24 MR. QUINTEN: The roller skating center
25 is either surrounded by a concrete block wall which is

1 either painted or sometimes carpeted, and others have a
2 rink that the railing had been a metal railing, had
3 been there for many, many years.

4 REPRESENTATIVE McNALLY: A concrete wall,
5 for example, is it situated in a fashion that a person
6 skating on the rink might be bumped into it and collide
7 with the concrete wall?

8 MR. QUINTEN: It is not a common
9 occurrence.

10 REPRESENTATIVE McNALLY: It could happen?

11 MR. QUINTEN: It could happen, sure.

12 REPRESENTATIVE McNALLY: What about
13 padding the hard exteriors or changing some of the, you
14 know, for example the surfaces? I know that
15 playgrounds, city playgrounds, have replaced asphalt or
16 concrete surfaces with some sort of softer surface in
17 keeping with technological advances.

18 MR. ZUCKER: Let me address that. The
19 rink surface itself, the skating surface itself has to
20 be hardwood, has to be some sort of a hard surface or
21 else you cannot skate. It will slow you down. It's
22 not an appropriate skating surface. The concourse
23 around the outside of the rink itself is always
24 carpeted. I haven't seen very many rinks where it's
25 not carpeted. That provides some protection, but the

1 trouble is if the surface is too soft, it cannot be
2 skated on. If you were to put a playground type soft
3 material on the floor, you could not -- you couldn't
4 skate on it. It would be impossible to move from one
5 point to the other without a great deal of effort.

6 REPRESENTATIVE McNALLY: Are there like
7 on an ice skating rink walls around the roller skating
8 area?

9 MR. ZUCKER: In some rinks there are, in
10 some rinks there's not. It varies from rink to rink.
11 There's no national BOCA Code for standardized roller
12 rink construction.

13 The trouble with padding walls and
14 padding other surfaces is that and the experience has
15 been very mixed. Those surfaces can become torn, they
16 can become broken very easily, and torn padding in and
17 of itself can provide chipping hazard, can provide
18 catching hazards, and it has not been a standard in the
19 industry and it has not been very -- it would be more
20 expensive, too.

21 MR. QUINTEN: I would assume. It would
22 be more expensive to put carpet on your wall than to
23 paint them with your epoxy coatings and so on and so
24 forth. So it's not a matter of expense.

25 REPRESENTATIVE McNALLY: Well, carpeting

1 and padding, I would think padding would be better at
2 absorbing an impact than carpeting.

3 MR. ZUCKER: I am not an expert in that
4 type of the field.

5 REPRESENTATIVE McNALLY: Even though
6 you're not an expert, you're willing to say that the
7 standards maintained herein without any kind of
8 protective surfaces are adequate and reasonable?

9 MR. ZUCKER: I'm willing to say based on
10 my experience as a trial attorney and representing this
11 group, yes, it is adequate and reasonable. I haven't
12 seen a claim, in my experience, where somebody claimed
13 that there was a lack of padding. That's not something
14 that comes up.

15 REPRESENTATIVE McNALLY: Well, let me
16 just finish with a comment.

17 You know, I understand that your position
18 is that it's the small claims which are the problem of
19 your liability insurance crisis, although we've had
20 similar in front of our committee, similar situations,
21 other groups that have come forward and they've said
22 the same thing, and in particular I remember the
23 physicians here in Pennsylvania who said exactly the
24 same thing and then they brought their own statistics
25 from their own insurance company to document their

1 claims and they proved beyond a shadow of a doubt that
2 it's only like 60 or 70 percent of all their insurance
3 costs came from big claims and that if they got rid of
4 the bad doctors and policed themselves better, they
5 could cut down the bad claims and that's where they
6 could make substantial savings in liability insurance.

7 So, you know, I certainly am not
8 persuaded, based on the experience with the medical
9 profession and with a lot of the other industries that
10 I've seen in the last two years come before this
11 committee, that it's not in fact the large claims that
12 are the source of the problem.

13 SUBCOMMITTEE CHAIRMAN BLAUM: Thank you,
14 Chris.

15 MR. SUTER: I would just like to see some
16 additional documentation that the legislation that was
17 passed in Michigan and New Jersey has resulted in
18 increased competition in the insurance industry and a
19 reduction in insurance rates.

20 MR. ZUCKER: I can obtain that
21 information with regard to Michigan. The experience in
22 New Jersey is not -- we are not able to present any yet
23 because the bill has not really had any impact.

24 MR. SUTER: Okay.

25 MR. ZUCKER: But Michigan it has and I

1 can present that to you.

2 I will also obtain for Representative
3 McNally the statistical information that he wanted to
4 review on roller rink injuries.

5 MR. LEFKOWITZ: There is one other point
6 that should be noted about what the bill does. It
7 defines what a roller skating rink is. That is
8 critical. We have become aware of the fact that the
9 skateboard cases that have the indoor facilities are in
10 fact being classified as roller rinks, and because they
11 are being classified as roller rinks, they skew part of
12 the rate situation in terms of when the industry looks
13 at the number of accidents in total, and so this
14 legislation is critical in terms of helping define out
15 that category that is now put in part of our rate
16 situation.

17 REPRESENTATIVE McNALLY: Well, it doesn't
18 stop insurance companies from putting those in the same
19 risk category. This bill wouldn't do that.

20 MR. LEFKOWITZ: No, but it will have them
21 not classified as roller rinks.

22 REPRESENTATIVE McNALLY: It doesn't mean
23 they can't write their rates including skateboard areas
24 and roller skating rinks. I mean, we have a lot of
25 different types of specialties in the medical

1 profession and that doesn't stop insurance, the
2 insurance industry from grouping various specialties
3 together.

4 SUBCOMMITTEE CHAIRMAN BLAUM: I want to
5 thank everybody for coming today and for their
6 testimony. I think both sides have given the
7 subcommittee an awful lot to think about, and we will
8 be considering the bill in the future. Thank you very
9 much.

10 (Whereupon, the proceedings were
11 concluded at 11.05 a.m.)

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I hereby certify that the proceedings and evidence are contained fully and accurately in the notes taken by me during the hearing of the within cause, and that this is a true and correct transcript of the same.

Ann-Marie P. Sweeney
ANN-MARIE P. SWEENEY

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