

## Best's Insurance Law Podcast



### It's Only Fun Until Someone Gets Hurt: Emerging Risks in Amusements, Sports and Entertainment - Episode #184

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**Hosted by:** John Czuba, Managing Editor

**Guest Attorneys:** Lary Zucker and Sara Mazzolla from [Marshall Dennehey Warner Coleman & Goggin](#)

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**John Czuba:** Welcome to "Best's Insurance Law Podcast," the broadcast about timely and important legal issues affecting the insurance industry. I'm John Czuba, Managing Editor of *Best's Insurance Professional Resources*.

We're pleased to have with us attorneys Lary Zucker and Sara Mazzolla from the law firm [Marshall, Dennehey, Warner, Coleman and Goggin](#). Lary Zucker is counsel to Marshall Dennehey and co-chair of the firm's amusement, sports, and entertainment practice group.

Lary has almost 50 years of trial experience in the state and federal courts in New Jersey and Pennsylvania, including 25 years as a certified civil trial lawyer in New Jersey. Lary began his career defending roller skating cases and drafted risk management guidelines for the Roller Skating Association International.

A frequent lecturer and author on risk management, he has shared his experience with the amusement industry, bowling trade associations, trampoline court owners, water parks, and other groups. Lary is also a charter member of IALDA Incorporated, the International Amusement and Leisure Defense Association. He serves as counsel to the New Jersey Attractions Association.

Sara Mazzolla is senior associate in the practice group. Her background as a former Olympic level ice skater provides her with unique insights when litigating matters involving ice skating and roller rinks, world and Olympic coaches, athletes, sports teams, and contractors.

Along with Lary, Sara is a member of the International Amusement and Leisure Defense Association. She is also a member of the Defense Research Institute and the American, New Jersey, and state bar associations.

Lary and Sara, thank you both so much for joining us today.

**Sara Mazzolla:** Thank you for having us, John.

**Lary Zucker:** Thanks, John.

**John:** Today's discussion is, "Emerging Risks in Amusement, Sports, and Entertainment." Sara, we'll start our questioning with you today. Can you tell us a little bit about the amusement, sports, and entertainment practice group at Marshall Dennehey and why there's a specific group dedicated to this area?

**Sara:** Well, John, when I arrived at Marshall Dennehey, I was already a decorated figure skater and an experienced personal injury defense lawyer. In my first week here, I received this ice skating case with two skaters colliding, right in my wheelhouse. Lary had transferred it up from his office to my office, which is closer in venue to northern New Jersey.

Quickly, he received a call and was wondering, "Why is this associate who just joined our firm handling this case?"

My colleague said, "Lary, You are absolutely going to want this particular experienced associate on your team and specifically on this ice skating case. Sara's the national figure skating champion. She was on the US international team. If anyone knows this sport, Sara does. You're going to be delighted to have her work with you on your sports cases."

Needless to say, when I joined Marshall Dennehey, I was quite happy to find that there was a specific group dedicated to amusement, sports, and entertainment defense, one that Lary had established more than 20 years ago.

Combining my sports experience and legal training has been a personal dream come true. As an elite athlete and coach, I know the ins and outs of a variety of sports, industries, biomechanics, and protocol.

Because of our unique sports background, our practice group brings a special team approach to our clients' needs. We cover the gamut from amusement parks, to ice and roller skating rinks, to climbing facilities, to bowling, to football, even yoga facilities.

With the population seeking to participate in these fun and engaging types of activities, we work with our clients on having an offensive strategy and the importance of having a risk management protocol in place.

**John:** Sara, thanks for that background and introduction to the team. Lary, how do you define risk management? Is there anything more than accident prevention?

**Lary:** John, thank you.

Yes, I've been defining and learning about managing risks in the amusement and leisure industries for almost 50 years. Believe it or not, it all started with the disco roller skating boom in the 1970s. My first job out of law school was with an insurance defense firm that had a carrier client that insured most of the roller skating rinks in New Jersey.

I started trying cases when roller skating was reaching its height of popularity and the number of accidents and lawsuits skyrocketed. Indeed, in the first three years in my practice, I tried 50 cases involving roller skating claims.

Although there is an obvious inherent risk of losing your balance and falling in roller skating, I immediately noticed a common pattern of negligence claims against my client based on three theories. Defective roller skates, lack of supervision, and defects in the premises.

The problem was that there was no common agreement among roller skating rink operators as to the rules to follow or not follow. There were no risk management guidelines intended to reduce the frequency of these accidents. Guidelines, if there were any, varied from rink to rink.

30 years ago, I formed an organization called IALDA, the International Amusement and Leisure Defense Association, which was made up of attorneys and claims professionals with the same focus on amusement defense that I had. Together, we drafted a set of risk management guidelines for roller skating that became accepted practice.

This was a set of voluntary best practices for rinks to follow to prevent incidents and also investigate accidents. These risk management guidelines were endorsed by the roller skating trade association, RSA International, and enabled the RSA to actually create its own endorsed liability insurance program with a major carrier.

Fast forward, and I think history will prove that our efforts for the RSA was the first national recreational organization with risk management guidelines. Many other associations followed based on the same or similar template.

Risk management is a process. You try cases as a defense attorney and you see patterns and understand what the risks are in a particular activity. You then study the industry and develop best practices to reduce the frequency of those incidents.

**John:** I already talked a little bit about risk management guidelines. Are there any common threads that should be followed from a practical standpoint?

**Lary:** Anyone involved in the sports and activities that we're discussing -- roller skating, trampoline parks, ice skating rinks, bowling -- there's a tremendous amount of information out there. For example, with the Roller Skating Association, the national roller skating association is the Roller Skating Association International.

They publish the risk management guidelines that IALDA put together that were adopted by the association in 2008. There are also magazines, publications and annual regional and national trade shows. During a trade show, there's always an IALDA seminar on risk management.

In addition, every roller skating rink operator and every carrier that is interested in providing roller skating rinks should know about the Roller Skating Liability Statutes that have been adopted, beginning with Michigan back in 1988. These statutes contain a list of responsibilities and requirements for skating rinks and skaters such as maintaining a ratio of one floor guard for every 200 skaters.

It's important for every skating rink to follow those state requirements because they are public policy. The 11 states that enacted Roller Skating Liability statutes are Michigan, New Jersey, Alabama, Illinois, Indiana, Maine, North Carolina, South Carolina, Texas, Ohio, and Georgia.

The trampoline court national organization is the IATP, the International Association of Trampoline Parks. That particular organization doesn't have its own set of risk management guidelines because in 2013 ASTM International adopted a Standard known as ASTM F- 2970, a comprehensive treatment of trampoline courts, covering manufacturers, suppliers, and operations. It is really incumbent on every operator of a trampoline court to be familiar with the requirements for operators and ASTM F2970, which includes a lot of very critical information such as the weight of jumpers and the number of jumpers on a trampoline at one time.

It's critical that everybody be familiar with these, no matter where their trampoline park is located. There are also several state statutes that are popping up nowadays because of the history of trampoline parks. New York has a new statute which regulates trampolines and also voids, as against public policy, any pre-event waiver that is requested by a trampoline operator. Utah has a statute that adopts the ASTM standards as the law in Utah.

Bowling has a national organization called the Bowling Proprietors Association of America, the BPAA. It's a large group with a very active risk management committee. They actually adopted risk management guidelines that were prepared by IALDA. There are other risk management guidelines prepared by Brunswick and other manufacturers.

Ice skating has a national group called the ISI or the Ice Skating Institute. There's also another group called the Metropolitan Ice Rink Managers Association, MIRMA. They have conferences, trade shows, and symposiums. They published a list of risk management guidelines called the Public Guide to Public Skating Management and Supervision.

That's how risk management guidelines have spread and been adopted. They come in many forms that I've just described.

**John:** Sara, can you talk a little bit about pre-event waivers being part of risk management. Are they useful and enforceable?

**Sara:** Yes, and it depends on their content and the state that you're in.

We write a lot of waivers for our clients here at Marshall Dennehey. In New Jersey, as in many other states, waivers are effective as to adults. Parts of them can also be enforceable as to children in terms of arbitration selection, for example.

In that respect, it's important that the facility has an executed waiver from the parent or an individual that has a power of attorney on file with the facility. There's a New Jersey case that just came out that follows many other states across the US. You have to be appointed as a guardian or have a legal power of attorney from the parent of the child to waive for that child.

It's recommended in this respect that facilities use an electronic form to collect this data and make a paper trail. In other words, if I show up to Jumpnasium with 10 kids with different last names for my kid's birthday party, unless I have a power of attorney from each child's parent I cannot legally sign a waiver for those kids.

In terms of waiver, you cannot waive an intentional tort or gross negligence. For example, in 1994 I found myself in the hallway about to take the ice in Detroit to compete after the infamous Nancy Kerrigan clubbing incident.

This was when she was still on the floor. I arrived to the scene and she was screaming, "Why me?"

The clubbing to her knee, that's an assault and battery. In the civil realm, it's considered an intentional tort. You can't waive that.

Also, obviously, being clubbed in the knee is not a risk that Nancy would have expected to have been inherent in the nature of the sport. When we're talking about waivers, we're essentially talking about claims of negligence and hold harmless provisions for risks inherent in the sport in most parts of the country.

The timing of the waiver is important. It has to be executed as a condition to entry and before participating. Lastly, getting the facility's procedures in place and making a paper trail is a very important aspect to risk management here.

**John:** Lary, Sara hit on the points of a paper trail. How can good record keeping lead to effective risk management?

**Lary:** John, I've always considered paper trails to be the cornerstone of a good risk management program. A good paper trail, that is document retention, helps you prove what you did, when you did it, and the circumstances taking place at the time of the accident, which may be in dispute.

When we're talking about a paper trail, I also include video because, to me, the single most critical and important development in the past 25 years has been the use of surveillance video, first VCRs and now digital video, because it helps to prove exactly what took place despite what the claims may be at the time of trial.

For example, in a roller skating rink, the liability question always comes down to the number of floor guards, the ratio of floor guards to skaters on the floor and the behavior of skaters on the rink at the time of the accident.

Your floor guard and attendant training certifications and your inspection checklists are critical to win those cases.

Skating Rinks now number skates and use bar coded skates to determine when each set of skates are handed out maintained and repaired. There's a lot that is going on in the roller skating industry concerning the paper trail.

I mentioned ASTM 2970. That standard requires manufacturers to supply operational instructions, maintenance procedures, inspection requirements, and all service bulletins plus manufacturer certifications that component parts comply with industry standards. This paper trail is very important for every trampoline business to well maintain.

Also, videos are critically important because people misremember, if that's what you want to call it, the way accidents happen. Videos bring everything back to the truth.

Bowling, you want to have records showing the application of lane conditioner because lane conditioner somehow gets onto approaches. That's where most of the accidents involving bowling occur. You want to have your regular inspection schedule.

With regard to bowling, video is critically important because I've handled many, many bowling cases where individuals will claim that they did not go over the foul line but when you show them the video it shows them well across the foul line. They bring back the conditioner onto the approach. That's how they slip and fall.

Those are some of the things with bowling. In terms of ice skating, the Ice Skating Institute, there are specific documents that should be maintained, such as when the ice was treated with a Zamboni, the names of all floor guards, the number of skaters on the ice, and also the number and training of floor guards or ice guards working at the time of the incident.

**John:** Sara, Lary hit on quite a few points. What are some of the emerging issues in risk management in sports businesses?

**Sara:** It's critical to be in the know regarding safe sport compliance, mandatory reporting of child abuse, sexual or other misconduct. You've seen it in the news recently. It's absolutely necessary to be up on the obligations to prohibit categories of abuse and misconduct.

Clubs and facilities are encouraged to designate a compliance chair. That designee acts as a point person, initial contact to verify coaching compliance, to take reports, to monitor policies and procedures, and to make reports when necessary to the various sports organizations.

Maintaining compliance and oversight over your coaching staff, for example, is also very important for the facility.

They need to know that the coaches are on the up and up and have obtained the requisite compliance, such as background checks, purchasing of insurance, fulfilling educational requirements, and also completing your safe sport education requirements, and maintaining the memberships that are required.

Other emerging items that we are seeing as a trend in COVID provisions and waivers. We're getting a lot of calls as to whether they are effective. I think it's going to boil down to what that particular state finds to be effective in terms of the waiver on a whole, and the law on a whole. When we're talking about sports, we need to be thinking about what risks are inherent in the sport.

I think a good argument may be made in terms of, particularly indoor sports that have close contact between individuals. You probably want to take a look at your waiver and update it with a COVID provision, in particular with this new world in which we're living in.

Return to play and return to sports are also important. These tie into doctors' orders. We're talking about COVID quarantining and concussion prevention.



We also want to highlight some issues with regard to equipment that we're seeing. It's important to have communication with your carrier to understand whether the equipment that you're using for sports and sports learning is covered under your insurance policy.

You may want to have a policy in place where those that may want to use specific equipment are running it by you first so that you, as a manager and facility owner, can run it by your carrier.

For example, on a public session having orange caution cones in the center to preserve the center for private instruction. You want to find out from your carrier if they're on board with that.

Are you following the industry guidelines for use of equipment? Is your facility following its own guidelines as to when and where the equipment may be used?

**John:** Lary and Sara, thank you both so much for joining us today.

**Sara:** Thank you so much, John. Our pleasure.

**Lary:** Thank you, John.

**John:** You've just listened to Lary Zucker and Sara Mazzolla from the law firm [Marshall, Dennehey, Warner, Coleman, and Goggin](#). Special thanks to today's producer, Frank Vowinkel.

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I'm John Czuba, and now this message.

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