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10 Tips on Taking Witness Statements: Advice from an Attorney

by Lary I. Zucker, Esquire

When I review an ice skating claim sent to me for defense, the first thing I look for are the statements of witnesses and rink employees. Witness statements that are timely, thorough and complete are a good indication that care was used in investigating the claim and that all available information was gathered and reviewed. A poorly written or incomplete statement can undermine even the most defensible claim.

The following is an example of an excellent statement by an employee who investigated a fall down accident in his rink. It is complete, detailed, well written, and legible. Indeed, the statement was so effective that the plaintiff's attorney dropped his case after reading it. (The names and dates have been changed to protect the confidentiality of the parties.)

“On November 18, 1997, at approximately 2:50 p.m. while I was skate guarding for (ABC Ice Arena) during a twelve to four session, I saw a five year old boy with short blond hair who had just fallen in front of me, about 25 feet away.

I noticed a man who was kneeling over the crying boy. He was kneeling over his son to the left. He had brownish hair. Behind the son was a young girl with blond hair with a ponytail holding her hair. She was on her knees directly behind the boy. I blocked traffic while a manager came on the ice to see what had happened. After we cleared the ice, I brought the little girl ice for a bump on her head and asked who she was. She told me she was the sister. I asked her what happened. She said, ‘I was pulling on my father's shirt. My brother cut in front of my father and my father fell back on to me and then fell on my brother.'

When I approached them I saw that the area of the ice was clean and smooth and clear of debris. White lights were lighting the ice.”

Signed Skate Guard

The statement uses plain language to describe the events as they unfolded. The statement contains direct quotations from witnesses that add additional credibility to the statement.

Successfully interviewing the incident witnesses requires common sense and tact. Show the witness the same consideration that you would expect if your positions were reversed.

The experienced interviewer adapts his own style and technique for asking questions and always follows well established guidelines for taking an effective statement. The following suggested interviewing tips will also serve as a review for your employees:

1. Have the witness confine his comments to what he actually observed with his own eyes. Avoid recording hearsay or statements that are not within the witness' personal knowledge. Use “quotation marks” when you write down what the witness actually says he saw. In addition, introduce the witness' quotes by using language like “the witness stated ….” If the witness reports that someone else described the incident to him, record the name and contact that person as soon as possible.

2. Take witness statements and complete your investigation report in every case, even in those cases where the injured patron states that he lost his balance or fell on his own. Never assume that an accident investigation is unnecessary because of the statements made by an injured patron. Always complete your investigation report and always obtain statements in every case.

3. You may take notes during the initial questioning of the witness. Your note taking should be unobtrusive and should stop if it is distracting to the witness.

4. Keep your questions simple and avoid using names or terminology that the witness does not understand. Let the witness do the talking.

5. If the witness has difficulty remembering details, be patient. If the witness does not have enough information to answer a particular question, record his statement that way. Do not insist that the witness give a straight yes or no answer to every questions.

6. The witness may have difficulty putting into words what he/she observed. In such instances, sketches or diagrams can be used. Your accident investigation report or safety survey should have a diagram of the rink that you can use to provide visual cues for the witness.

7. Never admit liability. Never make a statement to the witness that might suggest that your rink has prior knowledge of a dangerous condition or patron's behavior that led to an accident. Do not argue with the witness concerning moral or legal responsibility of the rink or your co-employees.

8. Try to interview one person at a time instead of a group. Group interviews allow one witness to hear the statement of another and the interview will result in confusion and repetitious statements.

9. All statements should be signed and dated by the employee taking the statement and by the patron or witness giving the statement, if possible. The employee should write his or her name clearly and legibly and provide a home telephone number and address.

10. Use of a tape recorder is acceptable in some states, but the circumstances should be carefully controlled. If you do use a tape recorder, please keep three factors in mind: a). a signed written statement is the best evidence; b). the area where you record the statement may be noisy and may not produce the best quality recording and may not be useful; and c). always remember that you may have to transcribe the statement and supply a copy to the claimant or his/her attorney.

Always use a witness report form to document a statement given by a person who is a witness to the accident. The form should contain a checklist of information to obtain and a place for the person taking the statement and the person giving the statement to sign.

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