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SUPREME COURT OF VIRGINIA
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RICHMOND, VIRGINIA

IN THE

# Supreme Court of Virginia

AT RICHMOND

760721

ROLL 'R' WAY RINKS, INC.
*Appellant,*

*v.*

MICHAEL LESTER SMITH
*Appellee.*

## JOINT APPENDIX

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Campbell, Lustig H Hancock
One Commercial Place
Norfolk, Virginia 23510
*Counsel for Appellant*

Guy E. Daugherty
Willis J. Spalding
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Norfolk, Virginia 23510
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VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF NEWPORT NEWS

| | | |
|---|---|---|
| MICHAEL LESTER SMITH, | : | |
| Plaintiff | : | LAW DOCKET |
| v. | : | NO. 1556-B |
| ROLL 'R' WAY RINKS, INC., | : | |
| Defendant | : | |

AMENDED MOTION FOR JUDGMENT

Michael Lester Smith, plaintiff herein, moves the Circuit Court for the City of Newport News, Virginia, for a judgment and award of execution against Roll 'R' Way Rinks, Inc., defendant, for the sum of Two Hundred Thousand ($200,000.00) Dollars damages, with interest thereon from the date of judgment until paid, and the costs of this proceeding, for this, to-wit:

1. At all times hereinvolved, the defendant, Roll 'R' Way Rinks, Inc., was a corporation organized and existing under the laws of the State of Pennsylvania; was carrying on business and transacting affairs in the State of Virginia; and maintained a registered office in the City of Newport News, Virginia.

2. On or about April 22, 1974, and for some time prior thereto, the defendant, Roll 'R' Way Rinks, Inc., owned and operated a skating rink on Main Street in the City of Newport News, Virginia, within the jurisdiction of this Honorable Court.

3. On or about April 22, 1974, at approximately 7:30 P.M., the plaintiff, as a paid business invitee, entered the defendant's skating rink on Main Street in the City of Newport News, Virginia. At or about 9:30 P.M., on the same date, the plaintiff finished skating, and while leaving the skating area, by and through the negligence of the defendant, the plaintiff was caused to trip and fall. As a result of this fall, the plaintiff was caused to suffer severe damages.

4. At the time of the happening of the accident herein set forth, it was the duty of the defendant, its agents, servants and employees, to use and exercise reasonable care to keep the premises in and around its skating rink in a reasonably safe condition and free from danger to the public and those having the right to be in and about said skating rink, and in the event any unsafe condition existed in said premises, it was the duty of the defendant, its agents, servants and employees, to warn the plaintiff of any such unsafe condition. Notwithstanding the aforesaid duty owed by the defendant to the plaintiff, the defendant, by and through its agents, servants and employees, negligently permitted its premises about said skating rink to be maintained in an improper condition and unsafe for the use of the public, and the defendant, by and through its agents, servants and employees, negligently and carelessly failed to give the plaintiff any warning whatsoever of the aforesaid defect in said premises.

2

5. As a direct and proximate result of the aforesaid negligence of the defendant, the plaintiff was caused to suffer, among other serious and permanent injuries, injuries to his right knee, requiring the plaintiff to be hospitalized, which have caused and will in the future cause the plaintiff great suffering, both mental and physical. Said injuries have caused and will continue in the future to cause the plaintiff to expend money in an effort to effect a cure, to lose wages, and has caused and will continue to cause the plaintiff to be unable to carry on activities formerly associated with his person and station in life.

WHEREFORE, plaintiff prays judgment against the defendant in the sum of Two Hundred Thousand ($200,000.00) Dollars, together with interest and costs, by reason of the foregoing, demand for which is hereby made.

MICHAEL LESTER SMITH

By: R. Michael Smith
Of Counsel

CHARLES H. GORDON, ESQUIRE
107 North King Street
Hampton, Virginia

HOWELL, ANNINOS, DAUGHERTY & BROWN
808 Maritime Tower
Norfolk, Virginia

2 A

C E R T I F I C A T E

I hereby certify that a true copy of the foregoing Amended Motion for Judgment was mailed this 23rd day of June, 1975, to Lionel Hancock, Esquire, 1340 Virginia National Bank Building, Norfolk, Virginia 23510, counsel of record for the defendant.

R. Michael Smith

R. Michael Smith



W OFFICES OF
VELL, ANNINOS,
DAUGHERTY &
BROWN
MARITIME TOWER
K, VIRGINIA 23510

354 p.

VIRGINIA: Circuit Court of the City of Newport News, Monday, the 2nd day of February, 1976.

PRESENT: The Honorable S. R. BUXTON, JR., Judge.

MICHAEL LESTER SMITH, )
Plaintiff,

VS ) LAW #1556-B

ROLL "R" WAY RINKS, INC., )
Defendant.

ORDER

This day came the plaintiff in person and by counsel, and the defendant by its authorized representative, and by counsel, and Doris O. Derieux, court reporter, of Associated Court Reporters, having been previously sworn in open Court to record and transcribe the evidence and incidents of the trial of this cause, and the evidence having been heard in full on January 30, 1976, the defendant, by counsel renewed its motion to strike the evidence of the plaintiff, and moved for a mistrial for reasons previously ascerted at the bar, which motion the Court doth overrule, to which ruling of the Court the defendant, by counsel excepted, and the jury having been heretofore empaneled again took their seats in the jury box, and after instructions of Court and arguments of counsel, the jury retired to their room to consider their verdict and after some time returned into Court with the following verdict: "We the jury find in favor of the plaintiff and fix his damages at $85,000.00." (signed) Carl M. Ball, Jr., Foreman, February 2, 1976. And the jury was dismissed.

Whereupon, the defendant, by counsel moved to set aside the verdict of the jury and enter up judgment for the defendant on the grounds that the verdict is contrary to law and evidence, and for errors of the Court in admitting into evidence certain exhibits objected to by the defendant, which motion the Court doth overrule, to which ruling of the Court the defendant, by counsel excepted.

Therefore, it is considered by the Court that the plaintiff recover against the defendant the sum of EIGHTY FIVE THOUSAND (85,000.00) DOLLARS, the amount by the jurors in their verdict assessed against them, with interest thereon to be computed at the rate of EIGHT PER-CENTUM PER-ANNUM (8%) from the 2nd day of February, 1976 until paid and his costs in this behalf expended.

It is further ordered that this cause be dismissed from the docket of this Court and the record made by the Court Reporter of the proceedings herein is filed as part of the record in this case.

A COPY, TESTE: GEORGE D. DESHAZOR, Clerk

By _____ D. C.

VIRGINIA: IN THE CIRCUIT COURT OF THE CITY OF NEWPORT NEWS

| | | |
|---|---|---|
| MICHAEL LESTER SMITH, Plaintiff | ) | |
| | ) | |
| v. | ) | LAW DOCKET |
| ROLL 'R' WAY RINKS, INC., Defendant | ) | NO. 1556-B |
| | ) | |

NOTICE OF APPEAL AND ASSIGNMENTS OF ERROR

TO: GUY E. DAUGHERTY, ESQUIRE
Attorney for the Plaintiff
808 Maritime Tower
Norfolk, Virginia 23510

Roll 'R' Way Rinks, Inc., defendant, is aggrieved by a certain final judgment order entered by the Circuit Court of the City of Newport News on the 2nd day of February, 1976, in the above entitled action at law, and hereby files its notice of appeal and intention to apply to the Supreme Court of the State of ?Virginia for a writ of error and supersedeas.

ASSIGNMENT OF ERROR

The defendant, Roll 'R' Way Rinks, Inc., assigns the following errors:

1. The Court erred in denying defendant's motion to exclude the testimony of the witness, Nancy Kline, on the grounds that her testimony as to the condition of the steel plate before and after the accident in question was irrelevant to the subject matter of this case and that the admission of such evidence to the jury was prejudicial to the defendant.

2. That the Court erred in submitting the question of permanent disability of the plaintiff to the jury on the

grounds that as a matter of law plaintiff failed to show any evidence of causal relation between the alleged permanent disability and the alleged accident causing plaintiff's injuries.

3. The Court erred in denying the defendant's motion to strike the plaintiff's evidence, on the grounds that as a matter of law, the plaintiff had not presented a prima facie case which should go to the jury.

4. The Court erred in denying the defendant's motion to strike the plaintiff's evidence at the conclusion of all of the evidence, on the grounds that as a matter of law, the plaintiff had not presented a prima facie case which should go to the jury.

5. The Court erred in submitting instruction No. 20 to the jury on the grounds that the same was contrary to law and evidence before the Court.

6. The Court erred in refusing to grant instruction K on the grounds that there was no evidence of any permanent injury before the jury and they should have been so instructed.

7. The Court erred in refusing to grant instruction J on the grounds that there was sufficient evidence before the jury to require submission of said instruction.

FILING OF TRANSCRIPT

The defendant will file the transcript of the testimony of this case within sixty (60) days from 2 February 1976, the date of entry of the judgment order herein.

ROLL 'R' WAY RINKS, INC.

By_____
Of Counsel



Campbell, Lustig & Hancock
1340 Virginia National Bank Building
Norfolk, Virginia 23510

21 Q State your full name, please, sir.

22 A Raymond Howell.

18 Q Now, did you have an occasion to ever see him in
19 his physical activities before this outing in April of 1974 at the
20 roller rink?
21 A I have seen him at football games up and down
22 the sidelines, things like that, or jogging around the neighborhood.
23 Q Have you had a chance to observe him physically
24 move since the April '74 incident?
25 A Yes, I have.

1 Q All right, sir. First of all, were you a member
2 of the church group that went to the roller rink?
3 A Yes.
4 Q How did that come about? What was the idea
5 behind it?
6 A It was for the youth of the church, an open
7 function which I set up.

12 Q Was that for pay or was it donated to the church?
13 A No. Each member paid.
14 Q And was it paid to the roller rink?
15 A Yes, it was.

6 Q Did you observe Coach Smith skating that evening?

7 A Quite a few times.

8 Q How did he seem to be on his skates?

9 A He did a lot better than some of the others that

10 were falling.

11 Q All right. Now, did you observe anything unusual

12 happen to him?

13 A I was about the distance between the table you

14 are standing in front of behind him when he fell.

15 Q This way or this way?

16 A From you to me.

17 Q In other words, about this distance from you and

18 I?

19 A That is correct.

20 MR. DAUGHERTY: Fifteen to twenty feet, Mr.

21 Campbell?

22 MR. CAMPBELL: Fair enough.

23

18 Q All right. Where were you, and, if you will, I
19 am going to ask you to come over here and put an "H" down where
20 you were approximately at the time you saw the plaintiff.
21 A (Witness complies with request.)
22 Q All right. Now, if you will, I am going to ask
23 you to put an "S" where the plaintiff was.
24 A (Witness complies with request.)
25 Q I am going to put a circle around the "H" and

1 put a circle around the "S".

* * *

* * *

7 THE COURT: I will mark that as Exhibit 1 for
8 the plaintiff and admit it as part of the evidence.

* * *

* * *

14 Q All right, sir. You have marked down that
15 Coach Smith was right at the exit, and you have marked the
16 corner. Tell us what you saw.
17 A I saw his feet go from underneath him and he
18 fell.
19 Q All right. What did you do when you saw this?
20 A I went over to see if I could help him get up.
21 Q Did you observe his condition at that point?
22 A He was in a lot of pain. He couldn't move. He
23 said that his leg was either locked or he had pulled it or
24 something, but he couldn't move his leg.
25 Q Did he say anything to you as far as disturbing

1 him?

2 A He said, "Don't move me. My leg is locked. Let

3 me see if I can rub it. Maybe it will unlock."

6 Incidentally, let me ask you, did anyone else

7 come to him at the same time you got to him?

8 A Yes. There was a man, Mr. Collingsworth.

9 Q Anyone else?

10 A The manager of the rink also came within minutes.

11 Q Do you remember his name?

12 A I think it is Jones.

13 Q Now, did you overhear Coach Smith say anything

14 as to what caused him to fall and how he fell right within that

15 period of time immediately after his fall?

16 A Well, within minutes I got to him. Other than

17 saying that his leg had locked, he said that one leg went to the

18 left and one leg went to the right or stopped, which caused him

19 to flip.

20 Q Did he say which foot stopped and which foot

21 went to the left?

22 A He said his left foot went one way and his right

23 foot went the other way.

24 Q Did you actually see the details of the fall, or

25 did you see him after he fell, or in the process of the fall, or

1 what portion did you catch?

2 A It just looked like his right leg just went

3 under, I think is the best way to describe it.

4 Q How was the leg? What was the position of that

5 right leg to his body when you got to him?

6 A Turned under him.

***

15 Q All right. Now, how long did he stay there after
16 the fall before he left?
17 A I am sure it must have been five or ten minutes.
18 He stayed on the floor at least five to ten minutes. I guess it
19 must have been fifteen, twenty minutes.
20 Q Was he attempting to rub the leg?
21 A Oh, yes, sir. He was rubbing it the whole time
22 trying to see if he could stop it from hurting then and unlock it,
23 I guess.
24 Q Then how long would you say he was in the chair?
25 A Just long enough to get the skates off. Then

1 Mr. Collingsworth, who is much larger than I am, and I, we put
2 him on our shoulders and carried him out.
3 Q Where did you carry him to?
4 A To his car that his wife had brought around.
5 Q And did you stay with him after that or did they
6 go on?
7 A No. They went off to the hospital, to the
8 emergency room.

***

***

16 Q Generally how did he appear in the hospital?
17 Did he seem to have been having any difficulty or was he all
18 right?
19 A He was in a lot of pain.

***



NORFOLK, VIRGINIA

***

***

17 Q Have you observed any changes in his condition,
18 physical, mental spirits, anything before this accident and since?
19 A He favors the leg.
20 Q How? What way?
21 A He limps, and I have asked him many times how
22 his leg is doing and about swelling and things like that, and he
23 says his leg is still giving him trouble. Well, he couldn't run.
24 He has gained a lot of weight and I have lost a lot of weight.
25 So we kid each other about myself losing weight and he can't lose

it because he can't jog like he used to.

***

***

12 Q Is there any difference as far as you can
13 determine in his activities since?
14 A Well, nothing that -- he has got a bad leg. He
15 doesn't move like he used to.
16 I know of one particular time in church he
17 mentioned that he was having trouble keeping up with the boys
18 like he used to. So I know that he is having problems there.

***



25 Q Mr. Howell, you were there with a group of

1 approximately how many on this occasion?

2 A Fifty or sixty.

3 Q And they were of varying ages?

4 A From about four years up to about fifty years

5 old.

6 Q And how long had the group been skating there

7 before this mishap occurred to Mr. Smith?

8 A About a couple of hours.

9 Q Had you skated?

10 A Oh, yes.

11 Q And did you have occasion to skate off the

12 skating area any time during the two hours that you were skating?

13 A Very much so.

14 Q And had you skated off of this particular exit?

15 A Yes, sir.

16 Q I don't know whether they had any program of

17 skating. Did they have off-skating or the usual type of program

18 of organized skating, or were you just able to skate as you

19 wished?

20 A No. It was organized. Sometimes the females

21 skated. Sometimes the males themselves skated. Sometimes we

22 skated with partners.

23 Q I see. And at the time that this organized

24 skating went on, those that were not participating would come

25 off the skating area, would they not?

A Yes, sir.

Q And they would use this exit to get off the skating area?

A Yes, among the others.

Q Beg your pardon?

A Along with the others.

Q I understood that you used this skating area and you had no trouble, did you?

A No, sir.

Q From four years on up to fifty and with fifty or sixty of them there, Mr. Smith is the only one who met with a mishap coming out of that exit, isn't that correct?

A To the best of my knowledge, yes, sir.

Q Now, I understand that you came up to him, you asked him what happened, and he told you that one foot went one way and the other foot went the other way? That was his explanation?

A That is correct.

***



***

11 Q And while you were close to him, basically all
12 you saw was when he went down and you were curious to know why?
13 A I was concerned, yes.
14 Q Yes. Well, of course, concerned. I used the
15 word "curious". I didn't mean it was just superficial. I know
16 you were concerned. He is a friend of yours. Please don't
17 misunderstand me. I wasn't dealing lightly about it.
18 At the time that he went down with reference to
19 the skating area, where did he fall?
20 A Right inside the exit.
21 Q On which side of the exit?
22 A In towards the house where they issue the skates
23 off the skating rink area.
24 Q Off the skating surface?
25 A Right there at the entrance at the exit as you

1 come off.

2 Q Did he fall through the exit when he got there?

3 Was he in the off-skating area?

4 A In the off-skating area.

***



***

10 Q What sports have you played throughout the
11 school years? Start at high school and come on up.
12 A Football and tennis are the only two I have been
13 involved with. I just played baseball as a recreational sport,
14 mostly.
15 Q But you have played football and also you have
16 played tennis, organized sports?
17 A Yes, sir, I have, in both of them. In high
18 school I was an All-State football player. I mostly played in
19 the Virginia and Tennessee All-Star games. In tennis I played
20 number one position on the college tournament team.

1 Q Coach Smith, up until April the 22nd of 1974,
2 aside from bruises and what not, had you received any major
3 injuries at all through any of your career as a coach or as a
4 player physically?
5 A No, sir, no more serious than a sprained ankle,
6 which I had sprained in p aying tennis.

Q What was your position then at the time you were injured?

A. I am Dean of Men, head football coach, and formerly was the head tennis coach.

***

***

17 Q Let's take direct attention. What do you
18 specialize in as coach? Do you actually teach any particular
19 part of football?
20 A I spend more time with the defensive aspect of
21 it than I do the offensive end. Nowadays, of course, a big part
22 of it is just in developing the overall program, which I work
23 with the linebackers and defensive line more than anyone
24 else.

10 Q As coach, how must a coach teach the position of
11 linebacker?
12 A By showing them, and this is the only way of
13 doing it. You can tell them, but you have got to demonstrate.
14 Q All right. Now, what are the movements of a
15 linebacker that you must demonstrate?
16 A For the linebacker, probably the biggest thing
17 that you have got to teach better than anything else is lateral
18 movement, from one side to the other. We do this by using what
19 we call blocking dummies, put them in a series, and moving people
20 through them, stepping over them, coming through them.
21 Q Would you, prior to April the 22nd, 1974,
22 demonstrate this yourself physically?
23 A Yes. I feel that is the only way to teach it
24 to be effective.
25 Q The injury that you had in April of 1974, has it

1 changed any of your teaching methods?

2 A Well, the most important thing is the mobility

3 in lateral movement as well as working with the down linemen.

4 Now, one of my other assistants that did offensive line also

5 takes the down linemen, and he does most of the demonstrating,

6 and up until that time, no one ever coached the linebackers

7 except myself, but I have got a coach now that works with them

8 in the demonstrations because of my limitations.

9 Q Now, you said you also were coach of the tennis

10 team?

11 A Yes, sir.

12 Q What did this involve so far as physical

13 movement, if any, of a tennis coach before your injury, sir?

14 A Me teaching as a teacher on the court, I think

15 you know as you progress and become a better tennis player, then

16 it requires more movement than it would with the young child,

17 which requires a certain amount, but working with the younger

18 ones in movements, you know, and position of the ball on the

19 court itself, it required a great deal of movement on the court

20 bending, changing directions, and movement laterally, which is

21 impaired more than anything, and hitting with the players, and

22 playing with them, you know.

23 Q In other words, you yourself hit the ball and

24 move about on the court as you are teaching them?

25 A We have six courts, and in using the single

1 player, I revolve from one to the other approximately fifteen,
2 twenty minutes with each. That is the longest time allowed, yes.
3 Q What is the length of time of your tennis
4 program for the school when you were coaching?
5 A Well --
6 Q From what month to what month?
7 A Yes. We begin practice in approximately March
8 the 1st. I think Virginia high schools, they have changed
9 somewhat, but I think that is the opening day. We begin the
10 matches in the latter week in March, and the State tournament
11 begins in May.
12 Q How many hours a day when you did teach would
13 you work with these tennis players?
14 A On the average of three to four hours.
15 Q How many days a week?
16 A Five to six depending, much more time in the
17 pre-season than at the beginning. Once the season begins, we
18 were playing two matches a week. Sometimes I would get one out
19 of it, but you will be playing on a Saturday, but the biggest
20 thing that happens, sometimes when you get rain, you have to move
21 indoors to practice, and you would have to postpone matches and
22 it would change, but it would vary.

8 Q Are you coaching tennis now?

9 A No, sir.

10 Q Why not?

11 A Well, after '74 I coached the tennis team. I'll

12 put it this way: I made an attempt to coach the tennis team last

13 spring of '75, but I was on a rehab program with my knee at that

14 time working on it, and it was thought that I could possibly do

15 it, and I wanted to do it, but during the course of the season,

16 I found I couldn't do the job that I felt had to be done, and

17 even though I had total commitments, then I couldn't do it.

18 So I talked to the principal and I told him I

19 would consider it, you know, over the summer, and the work that

20 I could do on the knee and see if I could get it corrected. Then

21 it was changed.

22 I went back in August and started the football

23 practice, and the trouble got worse and worse with the knee.

24 Then in September I resigned from the tennis position because

25 I had talked to my principal concerning it a number of times

1 even prior to the '75 season.

5 Q Now, did you have occasion to go on a church

6 outing sometime in April of '74?

7 A Yes, sir.

12 Q Do you remember roughly how many people were

13 there from the church?

14 A I am not sure, forty, fifty. It could vary.

15 There was a large group.

3 Q Now, before this fall we have been talking about,

4 did you have any difficulty at all?

5 A No.

16 Q How long had you been skating?

17 A That evening?

18 Q Yes.

19 A Approximately two hours.

20 Q How would you classify yourself as a skater?

21 A Just average.

22 Q You had skated as a youth?

23 A Yes, sir.

24 Q Had you been skating continuously, or had you

25 been skating a while and stopping a while?

1 A During that evening?

2 Q Yes.

3 A I had been skating most all evening, but it had

4 been intermittently because they had had different groups, like

5 a couple of times the girls, and then maybe the girls and the

6 boys skated. I skated with my wife once or twice.

7 Q What was your general physical condition?

8 A Excellent.

9 Q What did you do to keep yourself in condition?

10 A Well, I ran during the day, lifted weights

11 periodically during the week.

12 Q How much?

13 A Approximately two, two and a half miles. We

14 worked with weights. We have a winter and a spring football

15 program.

4 Q Was part of the conditioning of the tennis team --
5 tell us a little bit about that.
6 A Well, most of the tennis players would -- we had
7 to begin inside, and we began by what we call a suicide sprint,
8 just in with the basketball within the court, ran inside, because
9 of the inclement weather outside, and it would be so cold because
10 we couldn't get outside because of muscle pulls and et cetera.
11 So we stayed inside in the evening after everyone had left.
12 Q Did you do this?
13 A Yes.
14 Q Let's go to that evening. What time did this
15 fall take place to the best of your knowledge?
16 A Approximately ten o'clock give or take a few
17 minutes.
18 Q What happened?
19 A At the time before that, as I had stated earlier,
20 I had been having some problems with the skates during the evening.
21 So I had changed skating back onto the floor, and during that
22 time, I don't know what they call it, but maybe Mr. Jones or
23 whoever was on the monitor would know, but it was skate, a
24 whistle blew, then you changed position, and then go back in the
25 other direction to the corner, east corner.

1 Q Some game you were playing?

2 A I don't know whether they called it a game or

3 something. I suppose it was sort of a game, but, anyhow, I had

4 just changed skates prior to that and we began. We skated around

5 the rink a couple of times, and as I had gone past the exit where

6 I fell, the whistle blew. I had gone back and started up to the

7 corner, and I was having problems with these skates somewhat at

8 the time, and I decided to call it an evening. I had been on

9 about two hours. As I say, I started off at the upper edge,

10 which, I would say, would be the west end of the exit.

11 As I started off at that time, I felt my foot

12 cross something, and when I did, I fell back in an inverted

13 position back over the knee.

14 THE COURT: I am sorry. You said you started

15 something?

16 THE WITNESS As I started to the exit, I felt

17 my foot hit against something. My left foot went forward,

18 and I fell over my leg. My leg was inverted underneath

19 me.

4 Q Now, how fast were you skating as you got right
5 at this exit?
6 A Well, I don't know how you would measure it.
7 You know, just fast enough to exit off the floor. I had slowed
8 down and was pushing off the floor onto the outside.
9 Q You said you felt your skate hit something?
10 A Yes.
11 Q Which skate?
12 A The right one.
13 Q Your right one?
14 A Yes.
15 Q What was the sensation?
16 A Just lost my balance at the time until I hit the
17 floor, and it was just a crunching sound in the knee, followed by
18 pain at that time and numbness to some extent.
19 Q When that right skate hit something, did it move,
20 and, if so, in what direction did it stop, or what did it do, the
21 skate, now, so far as you can determine?
22 A As far as I could determine, when it hit, it
23 might have gone backwards somewhat because my body fell back over
24 it with the knee bent under me.
25 Q I want that description. You said your knee



25

1 went out from under you and you have drawn something out with your
2 left hand. Take that description bit by bit.
3 A The fact about the right foot?
4 Q Right.
5 A It hit this.
6 Q You felt like it went back? You mean back
7 toward your body?
8 A Yes, behind me.
9 Q Now, which way did your body go?
10 A Fell back over to the left.
11 Q Which way did the foot go? Did it stay still or
12 did it seem to go backwards?
13 A The foot kind of stayed still and it was turned
14 at an angle to the right, because when I fell back, it was on an
15 inverted or lateral aspect of the leg.
16 Q Where was your buttock in relation to your foot
17 when you fell?
18 A They were just inside my right heel.
19 Q You mean up like in this position?
20 A Yes, in that position.
21 Q For the record, I will pull my leg up behind me
22 with my right foot out to my right side.
23 A Yes, sir.
24 Q Where was your left foot?
25 A The best that I can recollect, it was slightly

1 to the left in front of me as I kind of went in that direction.

2 Q Mr. Smith, I am not asking you to say which is

3 right or not, but he described you saying something about one

4 foot going in one direction and one in another. First of all,

5 do you remember saying anything at that time?

6 A No. I don't remember having said that. It is

7 a possibility I did, you know. I had a great deal of pain and

8 I was just concerned with the leg at that time.

18 First of all, what separated the skating rink

19 from the area around it?

20 A There was a center block, concrete block wall

21 approximately three feet in height.

22 Q All right. How did you get to and from the

23 skating area to that wall?

24 A This was the first time I had ever been there

25 ~~skating. There are two exits or entrances in the front that were~~

1 used unless you were going to the game rooms on the back side.

14 Q All right, sir. Now, what would be the area
15 outside of this?
16 A Walkway, skateway. It was the area of the
17 concessions on the lower side.
18 Q What was the surface of the floor?
19 A Carpet.

23 between the concrete blocks?
24 A It was a metal plate.





24

7 Q Where was your body in relation to that metal
8 plate?
9 A My left leg, I think, was across the plate. I
10 know that I was back over my right leg and I was just inside the
11 plate a little bit.
12 Q You say inside the plate itself?
13 A My left leg, my thigh was over the plate, but I
14 was laying back this way back across almost in a --
15 Q Speaking for the record, now, you have got the
16 metal plate. Were you on the walkway area or the skate area?
17 A My head was on the skating area. My leg was
18 back here.
19 Q All right, sir. Now, after you had fallen and
20 you were sitting there, did you look to see what caused it?
21 A Well, yes. After I hit, I really, more than
22 sitting, I was laying. I was all the way back across my leg.
23 One of the first things I did, I looked to see what it was, and
24 I saw this metal plate, a big space between the metal plate and
25 the floor.

1 Q Which side would that be? Let's talk about the
2 plate being at the east end and the west end.
3 A It would be on the west end of the plate.
4 Q You have got the other two edges, one would be
5 on the walkway, the carpet, and the other would be on the wood
6 or the skating area. Which side are you talking about?
7 A On the wood, the skating area side.
8 Q Now, you said it was raised. How much would you
9 estimate it was raised - a half inch?
10 A About this far, I would say, that distance.
11 Q What would be the least it would be in your
12 opinion?
13 A Five-eighths of an inch, a quarter of an inch
14 at a minimum.
15 Q In other words, those ranges?
16 A I would say, yes, something like that. I deal
17 more in, you know, feet and yards in football and I don't know
18 how much.
19 Q You didn't measure it?
20 A No, not at the time.

7 Q Can you remember saying anything about "Don't
8 move me" or anything?
9 A At the immediate time when Mr. Howell first
10 came up, I told him, "Wait a minute." I wasn't sure what
11 happened. I knew that something had happened in the knee and
12 it was locked. I couldn't move.
13 Q How was it locked? Describe that for us, Coach
14 Smith.
15 A I couldn't push the knee. The lower part of the
16 leg is the humerus. The upper part of the leg was almost at a
17 forty-five degree angle and I couldn't extend it, no extension.
18 Q Was there any pain associated with it?
19 A Yes.
20 Q How? What kind?
21 A Very sharp, very sharp pain at the time. At the
22 very time it happened, it was numbness, and then, you know, the
23 pain got worse a long way before I got to the hospital.
24 Q Did you attempt to do anything to it yourself?
25 A I rubbed the knee and I reached down and checked

1 the leg to see if anything, you know -- if I could straighten it,

2 but, you know, I couldn't.

12 A From the date that I saw Dr. Kretz in the
13 morning, and he admitted me to the hospital on the 23rd. It is
14 the day I was admitted to the hospital.
15 Q And that is treatment while there?
16 A Yes. Three days he had me in traction while
17 trying to straighten my leg, and then surgery in the hospital
18 at the time.

25 Q What did the knee look like by the time you saw

6 Q Now, you have previously said that Dr. Kretz
7 first put you in traction. Some people may not know what that
8 is. Describe what was done to you.
9 A They had a type of harness that they hooked
10 onto the leg, and I can't remember where they hooked it onto
11 the knee, but it went up to an apparatus on the hospital bed
12 and had various weights at the end.

4 Q This went on, I think you said, three days?

5 A To the best of my recollection, it was three

6 days, two or three. I believe three days. I think the third

7 day he decided he couldn't get the knee straightened out, that

8 he was going to do surgery.

22 Q Was the knee still locked during that time?

23 A Oh, yes.

24 Q Describe this locking sensation. You talk about

25 locking a door, but we are talking about a joint now.

1 A The knee -- I am not really good at angles. I
2 would describe it something like a forty-five.

13 Q As I understand what you meant by your forty-
14 five degree angle, this is for the record again, if you were
15 going to extend your leg out in a straight line, then drop the
16 lower part of the leg back forty-five degrees off that line, is
17 that what you were trying to say?
18 A Yes.
19 Q It would have looked like that?
20 A At that time, yes. It was locked. It was
21 locked from the time of the injury. In fact, when I went to the
22 hospital and had the X-rays, my wife got me back through the
23 door, and I couldn't make it back past the living room sofa and
24 I spent the night there.
25 Q Did you have crutches or anything?

1 A No, sir. I didn't have any at that time.

2 Q How did you get into the hospital emergency room?

3 A My wife got me out of the car, and there was a

4 nurse -- at that time she went in and saw that I couldn't move.

5 I was hanging on the car door. My wife was trying to help me.

6 She aonly weighs a hundred pounds and couldn't do that much, but

7 the nurse went in and got a wheelchair.

8 Q Did this traction do anything to relieve this

9 leg from being in that position?

10 A There wasn't any change in the position of the

11 leg, no.

21 Q When the surgery was explained to you, did this

22 bother you in any way?

23 A Well, I didn't want to go through surgery unless

24 it was absolutely necessary. That is why I chose Dr. Kretz. I

25 knew he wouldn't do it unless it had to be done, and, again, he

11
- 25

1 and I discussed the traction together to try to unlock the knee
2 first without having to do the surgery. He did everything he
3 could.

22 Q So you went through the surgery. When you came
23 out of it, what was the condition of your body as far as you
24 yourself could observe it, Coach Smith?
25 A Well, when I first woke up, I thought I ran the

1 city, you know. My leg was straight and everything was okay.
2 Dr. Kretz, of course, told me aspects of rehabilitation, and we
3 had worked with the kids.
4 One thing I didn't know, when he came in, he
5 said, "You can get up out of bed as soon as you can raise your
6 leg." I thought that was no problem. I thought I was all right
7 to go, but I couldn't raise it. So we were talking about that,
8 and the muscles in the leg.
9 Q What muscles were you talking about?
10 A The quadriceps muscle in the upper thigh area.

24 Q You said you tried to use that muscle to lift
25 the leg?

1 A Yes.

2 Q What happened?

3 A Nothing.

4 Q Were you in a cast at that time?

5 A No. I was never in a hard cast. It was a soft

6 one.

14

15 Q Could you see the knee, the area of the scar?

16 A No, not at the time because it was covered by

17 the bandages, but I couldn't raise the leg at all, couldn't even

18 move it off the bed.

19 Q How long before you got successful and could do

20 that?

21 A I don't recall. I think about -- I eased myself

22 out of bed about three days later. I think that was about that

23 time.



23

10 Q What type of therapy or rehabilitation did you

11 undergo?

12 A Under Dr. Kretz, he started me out on two-pound

13 weights in building up the quadriceps.

1
2
3 Q What would you do?
4 A Extension of the quadriceps.

14 Q What does that do to the quadriceps muscles?
15 A That develops the quadriceps back where the
16 atrophy had set in after the surgery.



-16

25 Q As you went through this rehabilitation process,

1 Coach Smith, what did you feel?

2 A Well, I think I started out, you know, and, of

3 course, there is some pain associated with it, but I started out

4 with a great deal of hope in establishing the knee back to normal,

5 but the further I went, the more frustrated I got with the pain.

6 Q But with the pain, you would still do this?

7 A Any lifting, either pulling, lifting, or

8 extension, or even if I am lifting weights just on my shoulders,

9 I have pain with it still, yes.

10 Q Is there some normal pain associated with just

11 doing this kind of exercise with a normal knee?

12 A Nothing more than stiffness, I think, the day

13 after if you weren't used to it, but this usually works itself

14 out.

15 Q In other words, it was not the kind of pain you

16 would have with the normal use?

17 A No.

7 MR. CAMPBELL: If Your Honor please, I know
8 that Mr. Daugherty is about to interrogate the witness
9 and to exhibit pictures taken some three weeks or more
10 following this mishap, and I have, through the courtesy
11 of Mr. Daugherty, seen those pictures.
12 According to many witnesses that I have
13 available, it is contended that the pictures taken some
14 three weeks or so following this mishap do not make a
15 fair representation of the condition as existed as of the
16 time of the happening, and it is my understanding that
17 pictures taken are supposed to reflect what was a
18 reasonable representation of the physical facts at the
19 time of the accident. In view of the fact that they
20 were taken some three weeks afterwards, and the evidence
21 to the effect that it is not a fair representation of
22 what existed the night of the happening, I object to the
23 introduction of these pictures. They reflect the
24 situation entirely different, according to quite a few
25 witnesses that the defendant has who are aware of the



25

1 conditions, and these pictures reflect a different
2 situation than existed that night.
3 THE COURT: Better or worse?
4 MR. CAMPBELL: Worse, of course.
5 MR. DAUGHERTY: That goes both ways, Judge. We
6 have got witnesses who will say the conditions were like
7 this, and he has got witnesses who say they were like
8 that, but my client is here. He is going to testify that
9 these pictures represent the conditions as they existed
10 at that time, that they also represented the condition
11 at the time he looked at it immediately after he fell,
12 and that someone went back a month and a half or two
13 months after that because all my pictures didn't come
14 out. We had trouble with my camera. So I got Mr.
15 Fernandez, and my client went with him, and they still
16 reflect the same conditions, Your Honor. Now, I think
17 with that evidence that the jury should be allowed to
18 see them, and at least that way pit one witness against
19 the other.
20 MR. CAMPBELL: This witness has testified, if
21 Your Honor please, that one foot went one way and the
22 other foot went the other way, and he went further and
23 said that as if it stopped or hit something. He has not
24 stated what he hit, and he has been under discovery, and
25 he has not spelled out at any time specifically what

1 caused his fall. He said he hadn't seen anything prior
2 to the fall, and as far as his testimony here today, he
3 has not, and I don't think he has demonstrated the
4 situation that would enable him to say that these
5 pictures are a fair representation of what the condition
6 was that night.
7 MR. DAUGHERTY: If Your Honor please, I took the
8 deposition of Mr. Jones, the manager, in Mr. Gordon's
9 office, Mr. Gordon Campbell's office. I keep saying
10 Mr. Gordon because I was associated with Flash Gordon
11 and I am thinking, and I apologize.
12 MR. CAMPBELL: Well, I have fond memories of
13 him.
14 MR. DAUGHERTY: So do I.
15 Mr. Jones, when I asked him about this incident,
16 I asked him did he go to the plaintiff, and he said yes.
17 I asked him did he speak to him at the time he fell and
18 he said yes.
19 "Did he make a statement to you?"
20 I asked him at that point in time how it
21 happened.
22 MR. CAMPBELL: This is not in evidence, Your
23 Honor.
24 MR. DAUGHERTY: It is. You have had time to go
25 over it.

MR. CAMPBELL: I object at this time based upon the record as it now stands.

MR. DAUGHERTY: I am going to tender this, Your Honor, and this is the evidence that is under oath. He is saying he never told him what caused him to fall, and I am saying that at that time he told the manager that he tripped on that plate.

THE COURT: Well, I haven't seen the pictures and I don't know what the pictures are. Are these pictures of the exits or the skating rink?

MR. DAUGHERTY: No, sir. Let me show them to the Court, please. I think it might be wise, and to save a lot of time, the black and white pictures, I took them myself with my camera. All of them didn't come out at the time. I sent Mr. Fernandez back to take a generalized picture to show the area, the same exit, also a picture looking down on top of the plate at the same place, Your Honor.

MR. CAMPBELL: Are these all the pictures?

MR. DAUGHERTY: That is all I have. I took a whole roll and something was wrong with my camera.

MR. CAMPBELL: Well now, that was taken by Fernandez. Were you there?

MR. DAUGHERTY: My client was. I was not there.

~~THE WITNESS: Mr. Jones was there.~~

1 MR. CAMPBELL: It is contended, Your Honor, that
2 this picture does not reflect the condition as it existed
3 that night, and this picture here clearly discloses that
4 there is an apparent discrepancy of what occurred on that
5 particular occasion. Here are the pictures that Mr.
6 Daugherty took.
7 THE COURT: I don't see anything that we can do
8 except to let these be introduced. Assuming that the
9 witnesses will testify that it represents the condition
10 at the time of the accident as far as the plaintiff is
11 concerned, then you have a right with your witnesses to
12 show them the exhibits and ask them to express their
13 opinion as to whether those are pictures of the conditions
14 that existed at the time, and then let it be a question
15 as to what weight the jurors want to give to each witness.
16 MR. CAMPBELL: All right, sir.
17 Well, for the record, may I save my point and
18 note my exception?
19 THE COURT: Yes.

24 Q For the record, sir, state your full name.

25 A Wieman H. Kretz.

3 Q What is your occupation?

4 A I am an orthopedic surgeon.

amounts to.

23 Q All right, sir. Now, Dr. Kretz, in furtherance

24 of your education, have you recently done any studies to assist

25 you in the diagnostic examinations of patients such as an injury

1 to a knee suffered by Coach Smith?

10 A When I was up in Canada a couple of years ago,
11 they had a Japanese instrument called an arthroscope, which is
12 a little telescope which you can slip into the knee joint, or
13 any joint, and in any big joint, and it has a very bright light
14 in it and you can look around on this inside of the joint
15 providing you can clear out enough blood and other material so
16 that you can get a clear view.
17 Q You were trained in the use of this instrument?
18 A Yes, sir.
19 Q Did you use it in the case of Coach Smith?
20 A Yes, sir.
21 Q Dr. Kretz, how long have you known Coach Smith
22 either as a patient or just known him?
23 A Well, I first saw him as a patient on the 23rd
24 of April, 1974.
25 Q Had you known him before that in any other

1 capacity?

2 A Yes. Offhand, not as a patient, as a coach,

3 yes.

11 Q What were his complaints at that time?

12 A Well, he came in the office in a lot of pain.

13 His right knee was banged up and he couldn't straighten it up,

14 nor could he straighten it out.

15 Q How did you attempt to straighten it?

16 A By pulling on it.

17 Q What was the position of that leg, the right

18 leg?

19 A I will show you with my arm. It was bent about

20 forty-five degrees from the normal straight out position.

21 And I said, "Well, how did you do it?"

22 He said, well, he had been roller skating the

23 night before and had hung the skate up, wrenched the knee around

24 when one skate went one way and his foot was held by whatever held

25 it, then down he went.

Q Now, after taking that history and that initial examination with you pulling on his leg, did you do anything further?

A Yes. Because the knee was swollen, and sometimes the swelling alone will keep you from straightening out a knee, we slipped a needle in there and pulled what blood we could get out of it, and then again tried to straighten the knee, but no way.

Q There was blood in the joint?

A Yes, sir.

Q Is that normal?

A No, sir.

Q All right, sir. Was there any other thing discernible about the joint just by your eye or by palpating?

A It was, well, extremely tender to motion, and I could bend it back around, but I could not straighten it beyond a forty-five degree angle.

Q In other words, you could bend the heel toward the buttock?

A But I couldn't straighten it out, which meant something was blocking it.

Q I see, sir. Did you take any other diagnostic tests and tools at that time?

A Well, the X-rays, and that didn't show anything because the bone part itself was normal.

1 Q In other words, there could be something wrong
2 that wasn't showing on X-rays?
3 A Correct.
4 Q What was your opinion at that moment based on
5 the history that you had then taken from this young man, your
6 examination, and all the diagnostic tests that you had performed?
7 A Well, I assumed he had a normal knee the day
8 before on injuring it. He could have hurt the cartilage or he
9 could have hurt one of the big ligaments.

17 Now, it shows these two cut things here, which
18 are the two ligaments inside the joint. That has nothing to do
19 with the injury.
20 It shows these things here, the cartilage, it
21 looks like, and in his particular case we found out this part of
22 the cartilage was torn loose completely from the front here. It
23 flipped over to itself and was lying doubled up, and that is why
24 I couldn't straighten his knee out.

19 Q Turn those over so the jury can look down and
20 see that socket with it open like that.
21 A Okay. Then I was talking about the cartilage
22 and the half-moons, which, again, are these two things, one on
23 the lateral side, or the outer side, as we call it, and one on
24 the medial side, or the inner side, as we call it. 70
25 Q Thank you very much, Doctor.



19-25

1 A Now, I will tell you what happened. The
2 cartilage by the force of the injury was torn loose right in
3 front here, and this white thing had flipped back open, and
4 instead of the knee where you straighten the leg out, it was
5 here, and that is just like you stick it in a door, you jam it
6 and it puts a couple shots in it.





6

9 Q What is the function of this cartilaginous
10 material that was torn in Coach Smith as you found it?
11 A Well, the thighbone has a round end and the
12 shinbone has a flat end, so you have got the round surface going
13 against the flat surface. Nature has put these two cartilages
14 in there to make up for that. Also, they serve another purpose.
15 They are shock absorbers, and it is like having a rubber heel on
16 your shoe versus a wooden heel. A rubber heel gives you a little
17 bounce when you hit, and these cartilages, which makes the knee
18 move back and forth, make up for the difference in the contour
19 of the surfaces. They keep the bones apart. They provide, along
20 with the lining of the joint, a certain amount of lubrication for
21 this joint. You may not realize it, but when you come straight
22 out, you twist your upper portion of your legs just a little bit,
23 and this sets the knee, or, as we call it, screws it home. In
24 other words, when you put a screw in a board, you finally give
25 it that little twist to set it tight. The same thing happens

when you walk on it, every step you take, and the cartilages provide some of that ability to carry it out.

*

19 Q As I understood it, when you examined him before
20 anything further, you thought it might be one or two things?
21 A Well, it could have been those ligaments on the
22 side which could have been partially torn. He was too sore to
23 tell. The other thing it could have been was the cartilage
24 inside the joint.
25 Q What did you decide to do to treat him?



-2
9-25

1 A Well, I thought I would give him a little time
2 with traction and something for the pain. Since this was his
3 first injury, we don't like to operate on an initial injury
4 unless we are forced to. So we decided to give him a day or so
5 with traction and narcotics to get rid of the pain as much as we
6 could to see what happened.
7 Q Where was he placed in order to do this?
8 A In the hospital.

13 Q All right, sir. Now, you have described the
14 things that you did and Coach Smith has already described
15 generally what they were, the form of the traction. Was it
16 successful?
17 A No, it wasn't.
18 Q What then did you decide to do?
19 A Well, the next thing you got to do is to look
20 in the joint and decide what you can do in the way of surgery to
21 restore it the best you can.

13 Q I would appreciate it very much if you would tell
14 us, referring to your notes as you wish, just what you did in the
15 surgery on this man's knee.
16 A Well, first the anesthesiologist puts him to
17 sleep, and then to keep the joint, which was already sort of big
18 and distended with what we assumed was blood, which we found out
19 later was blood, you put what is known as a tourniquet around the
20 man's leg. You start at the tip of his toes and wrap it in a very
21 heavy rubber bandage all the way up over the knee to force the
22 surface blood out of the leg as you can. Then you put this heavy
23 tourniquet on, which is a blown-up affair. It is blown up, anyway,
24 and that keeps any further blood from coming down in the leg.
25 Now, there is a limit to the time that you can

3-25

1 put a tourniquet on, and I figured the total limit is no longer
2 than one hour and fifteen minutes if you do incur any trouble or
3 the patient is in trouble. So you have a time limit on your
4 operation. Then you go ahead and you clean the leg up and it is
5 shaved, then scrubbed with an Iodine solution. Then you drape it
6 up with sterile towels so that you don't get any bugs inside the
7 joint, and then we made a little puncture hole in the joint. In
8 the skin of the joint we passed this arthroscope into it. This
9 is a Japanese instrument, and it is quite a fine instrument when
10 it works. It doesn't always work.
11 We looked around in his joint and we tried to
12 pump saline in there and drain it out and to clean out the blood
13 and materials that were in there.
14 Q What is saline, Doctor?
15 A Saline is salt water.
16 We got it as clean as we could, and I could see
17 there was something more with the lateral cartilages. The
18 ligaments themselves, as far as I could see, were intact.
19 So I withdrew the arthroscope and planned to
20 make an incision over the side where the cartilage was broken.
21 Now, this sounds kind of weird, but you don't always know which
22 cartilage is broken. We just can't tell, and this arthroscope
23 is a great thing to help us tell this.
24 So we saw that there was something on the outside
25 of his knee joint, and we made the incision, opened it up, and the

1 first thing I could see was the cartilage was flopped over onto
2 itself, which is not normal. Then I could see the inner side of
3 these ligaments, which are those sort of brown things on the side
4 of the joint of the model there, had blood in them. So he must
5 have had a pretty good fall to make blood go into those things,
6 plus breaking the cartilage.
7 So then I came up to a point of decision of how
8 far you are going to go as to your surgery, and I made the
9 decision that I would take out what was loose, and what I could
10 get without doing any more than one incision, which I did. I
11 irrigated again with saline to make sure there was nothing loose
12 inside floating around, closed it up, and then we went through
13 the postoperative period.
14 Q Doctor, I am going to hand you this diagram of
15 his knee joint and the cartilages, and so forth, and give you
16 this pen because it is rather heavy, and ask you to mark the area
17 that you excised, the part that was torn that you took out.
18 A I will criss-cross it.
19 Q All right. Thank you so much. Would you initial
20 that?
21 A (Witness complies with request.) Does that do
22 it?
23 Q Yes, sir, it certainly will.
24 Dr. Kretz, following the surgery, how did Coach
25 Smith get along?

1 A Well, a fair amount of pain for about a week,
2 which is not unusual in this sort of thing.

15 Q What were your instructions to him so far as
16 what he should do to treat himself and when he should come back
17 to see you?
18 A Well, the big thing was to start motion as soon
19 as we could and to try to rebuild his leg muscles.
20 Q What is the purpose of motion as soon as you can?
21 A Well, the actual motion of the joint causes a
22 pumping action inside the joint, and this goes on every day with
23 everybody, and forces nature to pick up any swelling, any fluid,
24 anything that is out of line so that they can pick up in the
25 blood stream and just helps to pump it out. Also, you restore

1 the flexibility of his muscles which have become weak and stiff
2 just from lying there.
3 Q What were the exercises you prescribed for him?
4 A What we call straight leg raising, having him
5 put the leg out straight and bringing it up, then after a while
6 when he does that sufficiently, you have him start swinging it
7 back and forth off the end of the bed, or chair, or whatever.
8 Q The extension or quadriceps exercise?
9 A Yes.
10 Q What others, Doctor, do you prescribe as he
11 moves along?
12 A Well, then you get him into flexion exercises
13 to try to restore his range of motion again.
14 Q Did you follow him along?
15 A Yes, sir, indeed.
16 Q During his recovery period?
17 A Yes, indeed.
18 Q How did it go?
19 A Well, he was doing quite well until along about
20 September, August or September, somewhere in there when he began
21 to complain of a catching in his knee, and this is something you
22 ride along with and you keep going for a while and see what is
23 going to happen.
24 Q What did the catching in the knee mean to you?
25 A Well, he feels a little jerking motion in it and

then it doesn't want to go in certain positions.

Also he said his hip was hurting him and I couldn't tell whether that was coming from the knee or directly from the hip. So we treated the hip, too.

Q How did you treat the hip?

A Injected him with some Cortisone a couple of times.

Q What can cause the hip to hurt or have trouble when you have got a leg or you have had this condition?

A Well, you may be walking at an odd angle, or you may go, you know, kind of gingerly with it at first, and you may strain the ligaments around the hip to try to avoid hurting your knee.

Q You treated them both right around at the same time?

A Yes, sir.

So we followed him along until January, and then he never could get the knee back to full bend. In other words, he couldn't bring the heel back and hit his buttock with it which made me suspicious that something in the back of the joint was still bothering him.

Q How was he during that time? Was he doing what you told him to do? Was he working at this time?

A Oh, yeah, sure.

Q How could you tell this?

1 A I can tell the way his muscles bend and the way
2 he moves.
3 Q You saw this when you would see him?
4 A Yeah, sure.
5 Q So now with this problem with suspicion of the
6 back, what did you start doing?
7 A Well, I told him if he didn't get better and it
8 was still bothering him enough to interfere with his activities,
9 which is a coach of various sorts, then I thought we ought to go
10 and do an arthroscopy with the hopes that the joint would be
11 clear and clean inside and we could look in the back.
12 Q Did you continue treating conservatively hoping
13 that it might clear up?
14 A Yeah.
15 Q Did it?
16 A No.
17 Q Now, you followed him along right up to the
18 present time?
19 A Yes, sir. The last time I saw him was 12/15/75,
20 somewhere in here.

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3 ›ar.

4 Q Now, Doctor, if you do nothing further for this

5 man, if he stays just like he is, as he has been for some time

6 since the injury, does he suffer at this time any type of

7 disability?

8 A Yes, he does.

9 Q What is it?

10 A Well, he lacks agility. I say agility. Well,

11 this man is a coach and he has to be able at times to demonstrate

12 plays to his players. He is a tennis coach, and certainly he has

13 to be able to run around the tennis court, and pivot, and swing,

14 and turn, and do the things that tennis coaches have to do, and

15 he cannot do that.

16 He can do his football pretty nicely because

17 that requires not the agility of a tennis coach, but a tennis

18 coach is a running, scrambling business, and he can't do it.

19 Oh, he can do it, but he will fall down and get hurt.

20 Q You don't recommend it, Doctor?

21 A Well, it is good for business, but it is not

22 good for him.

23 Q What is the percentage, if you can so state it,

24 that he suffers at this time of a permanent nature if he stays

25 like he is?





4-25

A In my best judgment, twenty-five percent of his knee.

Q Have you recommended any future course for this man?

A If he continues to have the same symptoms, which I expect he is going to, then I think we ought to arthroscope him, and, if necessary, to go back in in the back of the joint this time.

Q What do you think is wrong?

A I think he has got a little piece of cartilage in there which I couldn't see the first time.

Q Has an operation been scheduled?

A Yes, sir.

Q Do you happen to remember the date?

A Sometime in February. It has been on and off because of his duties.

Q In other words, the championship postponed it, did it not?

A His football team did. I didn't know they were going to be champions then.

Q But you have scheduled this in the future sometime?

A Yes.

Q And you explained to him what you hoped to do?

A Yes, sir.

1 Q What is the best use, the best you really can
2 hope for if you do everything you hope to do for him?
3 A Well, I will put it this way: No joint that has
4 been opened and had a cartilage taken out is ever a normal joint
5 again. The best I hope for is ten percent disability.
6 Q You did everything that you can do?
7 A Yes, sir.
8 Q So the best you can hope for is ten percent?
9 A Yes, sir.
10 Q Do you expect any complications in the future
11 because of this kind of injury and surgery?
12 A Well, once you have had a cartilage cut, it is
13 never a normal joint, as I just said, and you expect at a later
14 date to get some arthritis in it, yes, sir.
15 Q Well, what kind of arthritis is it that you are
16 talking about?
17 A This is a traumatic arthritis. That is not the
18 arthritis that people get in their hands and all over their body.
19 This is directly from injury.
20 Q Is there any problem to the person who suffers
21 such an --
22 A If they get bad enough, they hurt.

Q Dr. Kretz, in the vernacular, what Mr. Smith has sustained is a typical football injury happening to his knee?

A Yeah.

Q And that procedure that you have outlined as having been necessary in this particular instance is pretty generally the type of procedure as an orthopod you would be doing for a similar football injury?

A You mean taking the cartilage out and so on?

Q That sort of thing, yes.

A Yes.

Q Now, you ultimately feel that he might, after you finally discharge him, would have about a ten percent disability?

A That is what I would expect.

1 Q When did you first determine in your professional
2 opinion to do the second procedure?
3 A Just about a year later.

24 Q So, actually, had this procedure been followed
25 in April of last year, we would have known today, not a prognosis



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4-25

1 but a diagnosis, of what his condition would be, so this jury
2 would know just what his current physical condition would be,
3 wouldn't we?
4 A I think they would or I think they know. I
5 explained it as best I can.

-- that is possible, yes.
20 Q So you have given a prognosis that his relative
21 disability, you are prognosing, is ten percent?
22 A Um-hum.
23 Q But if the procedure had been followed in April
24 of '75, it would have been a matter of diagnosing what his
25 condition today would be?

1 A It still would have been ten percent.

2 Q In other words, you rely upon your prognosis as

3 being --

4 A I rely on the fact that we have operated on a

5 knee. It is never a perfect knee again.

6 Q I see.

7 A And after a thousand or so knees, you are pretty

8 sure of yourself on that.

9 Q So from where we stand today, then, we can be

10 reasonably certain that he is involved with a ten percent

11 disability of his right knee?

12 A After the second operation.

9 Q Coach Smith, at the time we took the recess for
10 lunch, the question raised was to discuss the picture, and I
11 asked you if you had occasion to go over there with me, and you
12 said yes, sometime between the middle of May right after your
13 injury and the first week or so in June. Am I correct about
14 that?
15 A Yes, that is true, approximately the third week
16 of May, along in this time, yes.
17 Q Do you remember me taking a camera?
18 A Yes, sir.
19 Q I ask you whether or not you recall any
20 difficulty I had at this time.
21 A Yes. The flash part wasn't working. We had to
22 go buy some batteries at the shopping center.
23 Q I ask you to look at three black and white
24 pictures and ask you whether or not you recognize the scene that
25 is shown in those pictures.

1 A Yes, I do.

2 Q Do those scenes reflect the condition at the

3 time the pictures were taken when you were there?

4 A Yes.

5 Q Are these all the pictures that I had taken on

6 that occasion?

7 A No. Because of the difficulty with the flash,

8 we took a roll, but this is all that came out.

9 Q Now, looking at those, after that were there

10 any other pictures scheduled?

11 A Yes.

12 Q Were you present when they were taken?

13 THE COURT: Let me interrupt you.

14 You talked to him about going with him to take

15 pictures?

16 THE WITNESS: Yes, sir.

17 THE COURT: Then you have shown him pictures and

18 you asked him whether or not the pictures reflect the

19 conditions at that time.

20 MR. DAUGHERTY: I will get to that.

21 THE COURT: What time were you talking about?

22 MR. DAUGHERTY: The time that I took the pictures.

23 THE COURT: All right.

24 THE WITNESS: At the time the pictures were

25 taken, yes.

BY MR. DAUGHERTY:

Q Did you go a second time?

A Yes, I did.

Q Who did you go with?

A Mr. Fernandez.

Q Do you know who arranged for him?

A Yes, sir. He met me in Mr. Gordon's office.

Q Had you known this gentleman before?

A Yes. He had taken pictures of my football team.

Q What is his occupation?

A He is a professional photographer.

Q I am going to show you three pictures which are in color, but can you tell me when they were taken?

A These are the ones he sent you back and I was with him when he took some photographs, and I am sure these are the ones.

Q When were these taken?

A Approximately one month, one month and one week after -- during the summer.

Q After I had been there?

A After you and I had been there, yes.

Q Do they reflect the condition that was present when these photographs were taken?

A Yes, sir.



NORFOLK, VIRGINIA

24

6 Q All right, sir. You have described the
7 condition of the plate as you fell?
8 A Yes. The plate was raised even higher. It was
9 higher than what it is in the pictures that were taken the time
10 you and I were there.
11 Q Is it similar to what is shown in those pictures?
12 A In the same area, yes.
13 Q But higher, as I understand it?
14 A Yes.
15 Q Would that be the only difference?
16 A Other than that the physical facilities are the
17 same, yes, sir.
18 MR. DAUGHERTY: With that, Your Honor, I offer
19 these pictures.
20 MR. CAMPBELL: I object to it and continue it,
21 Your Honor.

16 The first picture that I have, the one that is
17 on top of the black and white photographs, shows the photographer
18 standing and pointing in what direction? What area is he standing
19 on?
20 A Back in this area on the skating floor.
21 THE COURT: Talk loud.
22 THE WITNESS: Yes, sir. He is standing on the
23 skating surface area, the floor, looking into the outside
24 wall. This is the west end at this corner here.
25

10 Q Is that the exit area you were using when you
11 fell that evening?
12 A Yes, this area here.

16 Q All right. What does the next picture show?
17 A This shows the same area.
18 Q In a little different view?
19 A Yes.
20 Q And the next one?
21 A This shows the same area with the ruler.
22 Q Who was holding the ruler?
23 A I was when you took the photograph.
24 Q All right. The next, or the color photographs
25 that we are now pointing to, which are Plaintiff's Exhibit No. 7,



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25

1 and the first one --

2 A These are the ones Mr. Fernandez took, and it

3 shows an overall view with the background. This is still in the

4 west end.

5 Q That would be to the right side again?

6 A To the right of the skating floor, yes, sir.

7 Q What does this second view show?

8 A That is still on the top surface of the metal

9 plate.

10 Q There is a little color on one side of that

11 metal plate and a dark color on the other side. Which is the

12 light color?

13 A That is the skating floor.

14 Q That would be the upper top, the lighter color?

15 A Yes.

16 Q What is this one?

17 A This is the carpeted area.

18 Q And this third one, again it has a ruler in

19 there, who was holding that ruler?

20 A I was holding this ruler.

21 Q Mr. Fernandez took the picture?

22 A Yes. Mr. Fernandez took it.

23 Q As I understand it, you said the only difference

24 was it was higher when you fell?

25 A Yes, sir. This area in here was higher.

11 Q Coach, this disability that you have had, you
12 have described some pain and problems with rehabilitation. What
13 to you has been the most significant thing it has done to you?
14 A I used to think the biggest thing with anyone
15 is, you know, to be a competitor. Anyone that has ever competed
16 in anything, you know if you had a speech impediment and you were
17 an orator and liked to talk or anything, it would be important.
18 And the next best thing is being an athlete. I am an outdoorsman.
19 I like to hunt a lot. In fact, I spend my vacations during
20 Christmas vacations in the southwestern part of the State with
21 my father hunting and climbing the mountains. I have been unable
22 to do that. I think that the total frustration with the pain is
23 the limitation on the things that you can do.

6 Q But this year you took it the whole way? You
7 won the State championship?
8 A Well, we were undefeated in '73 and got beat in
9 the playoffs. You know, those things happen. You get a bad
10 break.
11 Q Notwithstanding your injury, you produced
12 results that are particularly outstanding and unexcelled in
13 this State for the past year, is that correct?
14 A With help, yes.
15 Q At the time of your injury, your salary as
16 football coach was how much?
17 A Just as a coach, sir, in football?
18 Q Yes.
19 A I believe I made the statement to you earlier
20 it was $900.00. I think I am correct in saying that.
21 Q And then was there a supplement to your salary
22 as Dean of Boys?
23 A Yes, sir.
24 Q What was your total compensation at the time of
25 your accident from the City School System?

1 A I believe, I am not going to say for sure, but
2 to the best of my knowledge that I gave in the deposition, it
3 was twelve-five, $12,500.00, give or take a little bit.
4 Q And what is your salary today?
5 A Well, I have had two increases this year. The
6 one that I had before I gave up tennis was fourteen-eight, and
7 now it is in the neighborhood of fourteen-three, fourteen-two-
8 seventy-five or something.
9 Q So today your income is approximately $2,000.00
10 more than it was when you were hurt?
11 A I would say that due to the inflation rate I
12 have gone downhill a good twenty-five percent, Mr. Gordon.
13 Q Well, I understand we all suffer from inflation,
14 but, actually, your salary is $2,000.00 a year more than it was
15 at the time you were injured, is that correct?
16 A Well, I don't think this was related to the
17 injury. In fact, everybody else in the City got a raise the
18 same percentage I did, you know.
19 Q Mr. Smith, I am not arguing the point with you.
20 I am merely asking you whether it isn't a fact that your salary
21 today, after your injury, is $2,000.00 a year more than it was
22 at the time of your injury. That is correct, isn't it?
23 A Well, my salary in '75 was probably $2,000.00
24 more than it was in 1973 and '74, yes, sir, I will say that.

8 Prior to the time that you were skating on this
9 occasion, when had been the last time or prior to that time that
10 you had been skating?
11 A It had been a long time.
12 Q What do you designate as a long time?
13 A Ten years, maybe more.
14 Q So this was the first time you had had on the
15 skates for ten years - correct?
16 A I'd say approximately, yes, sir.
17 Q Approximately?
18 A Yes.
19 Q And you were with a group of fifty or sixty or
20 more people on this occasion?
21 A Yes, sir.
22 Q Ranging from four years on up to fifty?
23 A Well, I don't know the age factor, but it was
24 young and elderly people there.
25 Q That would be approximately correct, would it

1 not?

2 A I would assume so, yes, sir.

3 Q And you are the only one that fell coming off of

4 this, is that correct?

5 A As far as my knowledge, yes, sir.

6 Q How did you approach this exit - on a slant,

7 head-on, or how?

8 A Almost head-on, sir, I would say.

9 Q Head-on?

10 A Yes.

11 Q And had you skated by that exit during the two

12 hours that you were skating?

13 A While returning to the floor or coming off the

14 exit.

15 Q When you were on the floor skating, did you

16 skate around that and pass by this exit?

17 A Oh, well, to get around the floor, I had to pass

18 it, but I was well in sight of it, but I was skating in between

19 them all.

6 Q And you made an exit over this same exit how
7 many times during the course of the evening?
8 A Well, I didn't count them, sir, but I had gone
9 in and out.
10 Q You went in and out?
11 A Yes, sir.
12 Q You encountered no difficulty until the time of
13 your fall, is that right?
14 A To be quite honest with you, I hadn't even
15 noticed the plate.
16 Q I see. You encountered no difficulty on the
17 several times that you went in and out?
18 A No, sir.
19 Q Now, when you landed in your fallen position,
20 were you beyond the metal plate, or were you on the skating side
21 of it?
22 A Yes. I answered that question earlier to Mr.
23 Daugherty. I think I said my left leg, I think, was extended
24 beyond the plate partially. I was standing back off the plate.
25 My shoulders were behind the plate on the skating floor kind of

1 twisted.

2 Q I see. So the most of your body was to the

3 skating area?

4 A Well, that is generally true, yes, sir.

5 Q Yes, sir. Well, now, you were skating up at an

6 average skating speed of exiting?

7 A Well, I don't know how you rate that, sir. I

8 had slowed down to approach the exit. I don't know whether it

9 would be average, just enough to get me off the floor, I suppose.

10 This was one of the things they don't allow you to stop on the

11 floor, you know. You have to exit because of the other people

12 coming. They had to run people off of there.

13

14 A I would assume, yes.

15 Q Well now, Mr. Smith, if you were going forward

16 in this manner and you didn't obstruct him with your feet when

17 you are going forward, don't you fall forward rather than

18 backward? If your feet suddenly stop, doesn't your body go

19 forward?

20 A I don't think I said feet. I believe you put

21 it in the plural. It was in the singular vernacular. It was

22 foot, my right foot.

23 Q Well, foot or feet.

24 A No.

25 Q When you suddenly hit an obstruction with your



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5:25

1 lower extremities, doesn't your body go forward rather than fall
2 backward on your posterior?
3 A In this instance, it didn't. I can't account
4 for a number of facts because this is the first time I have ever
5 hit anything on a skate, you know, obstruction with a skate, but
6 I know the left foot went forward and my back foot was under me,
7 and my body went this way, you know, but that was the only
8 experience I ever had falling down, so I really couldn't testify
9 any more than that, sir.
10 Q There was no obstruction to your vision of being
11 able to see where you were going, was there?
12 A Through the exit, no, sir, none at all.
13 Q When did you first determine that the metal was
14 what caused you to fall?
15 A While I was on the floor.
16 Q While you were on the floor?
17 A Yes, sir.

5 Am I correct in assuming that it is your
6 position that although you were injured on the 22nd of April,
7 as you came back five weeks later and took pictures, that those
8 pictures reflected that there still existed a hazardous condition
9 and no corrections had been made of the installation of this
10 metal plate?
11 A I went back the first time on May the 6th, as
12 I stated before, and notified Mr. Jones. At that time it still
13 hadn't been corrected. When I went back with Mr. Daugherty, I
14 don't think they had made any attempt to correct it, or it wasn't
15 as high as it was, but, as you can see by the photograph, it is
16 still high. I really don't know what took place in the meantime,
17 sir. Evidently they hadn't corrected it, though, because it
18 still existed.



18

11 Q Your discovery deposition was taken of your
12 testimony in my office on August the 7th. You remember that,
13 don't you?
14 A Yes, sir. I sure do.
15 Q Do you remember this question on page 14, sir?
16 "Just from the beginning of your mishap. How
17 did you happen to be injured? What led up to it? How did it
18 occur?"
19 Do you remember answering thusly?
20 "Okay. Well, I had started off the skating
21 floor, and when I skated off the skating floor, as I started
22 through the exit, I hit my foot. The right skate or something
23 threw me back over on an inverted position on my leg, which was
24 inverted underneath me, and I just heard something crunch, and
25 I couldn't move at that point." Do you remember saying that?

1 A If you have got it down there, I am sure I did,
2 but I think the "or" instead of the "skate or something", it hit
3 something. I don't know the possibility that it was a mistake
4 there.

10 Would you state your full name, sir?

11 A Benny Jackson Jones, Sr.

23 Q All right, sir. You are employed where?

24 A With Roll "R" Way Rinks, Incorporated, 307 Main

25 Street, Newport News.

1 Q How many years have you been with them?

2 A I have been with the company since May of 1971,

3 sir.

11 Q Mr. Jones, when you first went to work for

12 Roll "R" Way Rinks, Incorporated, what was your position?

13 A I was a floor guard.

14 Q Which required what kind of duties?

15 A Well, it is a surveillance of the floor during

16 the sessions where you would monitor the activities going on

17 during the sessions.

18 Q Would you be skating yourself?

19 A Yes, sir.



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8 Q Okay. The first witness this morning drew sort
9 of a free-lance sketch of the skating rink. I would ask you to
10 look at it, and I think that it is fairly self-explanatory. He
11 describes it as having five exits and entrances to the skating
12 area. How many are there?
13 A There are five. However, on this sketch they
14 are in the wrong places.
15 Q All right. Where are they? First of all, is
16 there one to the west side like it is marked here where there is
17 a little "S"?
18 A Yes, sir.
19 Q Is it one in the center that would be on the
20 south side of the bottom?
21 A No, sir. It would be in this area here.
22 Q You have pointed where there is another exit
23 marked here?
24 A Yes, sir.
25 Q But the third one, the one in the center, would

1 not be there?

2 A Right.

3 Q All right, sir. Look to the opposite side.

4 Were there two generally where they are?

5 A Yes, sir.

6 Q Where would the fifth one be?

7 A On the west end.

8 Q All right. Now, since you are a different

9 witness, I am not going to let you use the same color pen.

10 Make a similar "X" with this pen which will

11 mark it in blue, and I am going to let you put your initials

12 on that one to distinguish it. I want you to draw a circle in

13 that same blue and initial it with the one you say was not there.

14 Draw a circle around it. That's fine. Then

15 initial that.

16 A (Witness complies with request.)

17 Q I know this is not to scale, but otherwise it

18 generally fits with the layout?

19 A Yes, sir.

20

***

2 Q What was your next duty?

3 A Assistant manager and then manager.

4 Q All right. When did you become manager?

5 A In August of 1973.

6 Q Approximately a year before this incident with

7 Mr. Smith in 1974, then?

8 A Not quite a year.

15 Q You were there within a few days of when it

16 opened?

17 A Yes, sir.

6 Q So you had done this kind of work before?

7 A Yes, sir.

8 Q And you knew how to skate yourself?

9 A Yes, sir.

10 Q How would you classify yourself as a skater,

11 not trying to be modest or anything else? Would you be someone

12 who would demonstrate skating, teach it, or would you be just a

13 good, average skater?

14 A I could demonstrate, yes, sir.

15 Q You can demonstrate?

16 A Yes, sir.

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-16

1 Q How about the floor that was in that building
2 before the roller rink commenced? What was that, to your
3 knowledge?
4 A To my knowledge it was concrete. The interior
5 I am not familiar with.

13 Q Is there concrete underneath the various areas
14 inside the building as it exists today?
15 A Yes, sir.

5 Q What is the surface of the skating area itself?
6 First of all, what is the material, and tell us what size it is,
7 to the best of your knowledge?
8 A The entire skating area, sir?
9 Q The skating area itself, the area in which you
10 skate.
11 A It is an epoxy coated composition board.
12 Q I think at one time you told me the name or the
13 manufacturer, or whatever the product is called. Do you remember
14 that?
15 A Temblin.

13 Q I understand. Now, the Temblin itself, how is
14 it put down? Does it just cover the entire area, or is it in
15 sheets, or what is it?
16 A Well, it is basically sheets, to the best of my
17 knowledge, sir.
18 Q What are the sizes of these sheets?
19 A As far as I know, they were five foot by nine
20 foot.
21 Q What is the thickness of the sheets?
22 A Approximately an inch and an eighth.

10 Q I understand that, but what I am asking you, are
11 they fastened by any means to the concrete floor other than by
12 their own weight?
13 A In the installation, no, sir.
14 Q Are they fastened by any means to the sheets
15 that they adjoin on each four sides?
16 A Yes, sir.
17 Q How?
18 A By the spline in the edge of the sheet.
19 Q And do I understand that in the spline that
20 there has been a groove cut in the edges of each piece so that
21 you could run another piece of wood through there and then could
22 draw the material around another piece of wood?
23 A That is what I am talking about, yes, sir.
24 Q So there is a strip of wood, a spline, that is
25 joining the two pieces that the edges butt, and this keeps the

1 two edges from coming up, is that right?

2 A Yes, sir.

3 Q Is that spline glued in place or is it just

4 driven in?

5 A It is driven in.

6 Q Not glued?

7 A No, sir.

3 Q All right, sir. Now, what surrounds, immediately
4 surrounds the skating area itself?
5 A The block wall, concrete block wall.
6 Q And what is the thickness of that?
7 A About an eight-inch block. I think it is an
8 eight-inch block, yes, sir.
9 Q What is the height generally?
10 A Approximately forty-two inches, I believe.
11 Q Now, outside of that concrete wall, what do you
12 designate that area, the area that runs around the skating area?
13 A An off-skate area.
14 Q What is the surface there?
15 A It is carpeted.

A I do not know, sir.
19 Q What is the thickness of the carpet?
20 A It is approximately three-eighths of an inch.





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-20

5 Q But in any event, that leaves a raised portion
6 between the off-skate area and the skating area, does it not?
7 A Yes, sir.
8 Q Something what - about a quarter of an inch or
9 so from the dimensions you have given me?
10 A Yes, sir.
11 Q Does a raised portion like that present any
12 hazard to skaters?
13 A If it was just left as a raised portion, yes,
14 sir.
15 Q Why?
16 A It could present a tripping hazard.
17 Q All right, sir. Why would the three-quarters
18 of an inch present a tripping hazard? What would be the mechanics
19 involved?
20 A It would be rather difficult for the wheel to
21 roll up over top of that.
22 Q It could hang the wheel?
23 A It could hang the wheel, yes, sir.

7 Q All right, sir. Now, you said that allowing the
8 difference between the Temblin, the skating area and the carpet
9 to remain, it would present a hazard.
10 A Yes, sir.
11 Q A tripping hazard.
12 A Yes, sir.
13 Q What was done in the roller rink out on Main
14 Street in order to prevent that?
15 A A steel plate was put in position to form a
16 ramp from that surface down to the carpeted area.
17 Q And that steel ramp is shown in these photographs
18 which you have in front of you, which are Plaintiff's Exhibits,
19 I believe, 4, 5, 6 and 7, is it not?
20 A Yes, sir.
21 Q What is the approximate size of that steel plate?
22 A It is approximately nine foot long by ten inches
23 wide.
24 Q How thick?
25 A About an eighth of an inch, ninety thousandths

1 to an eighth of an inch.

2 Q Nine feet by what?

3 A By approximately ten inches wide.

4 Q By one-eighth?

5 A One-eighth thickness.

6 Q Now, that would raise the hazard. Would any

7 kind of a raised surface of a quarter inch or more present a

8 danger to the wheels and the skater?

9 A Yes, sir, it could.

10 Q So you are trying to avoid anything a quarter

11 of an inch or more, are you not?

12 A Yes, sir.

13 Q Why are you doing that?

14 A You wouldn't drive your automobile over a

15 curbing. It is the same thing.

19 Q Now, this is one method that you know of because

20 it was used in all the entrances and exits there, am I correct?

21 A Yes, sir.

22 Q Are you familiar with other methods which your

23 employer or the corporation uses?

24 A This is primarily the method that we use in all

25 our rinks that have this type of floor.

1 Q Are you working with any other kind of
2 installation? I am not trying to trick you. I am looking at
3 your testimony where you said you had been looking at one like
4 a curb device.
5 A Well, there are other types of installations
6 where they have curbings, yes, sir, but with this type of
7 installation we could have others.
8 Q What you are saying is that you have used that
9 and you have also used a curb?
10 A Yes, sir.
11 Q Which is a considerable difference, if I
12 understand you.
13 A Yes, sir.
14 Q Why would you go to a considerable difference
15 as opposed to this right narrow difference? What is the reason
16 behind it, the rationale that is known to you?
17 A To my knowledge, it would be that with that
18 height someone would know that they couldn't roll over it.
19 Q Something you could see?
20 A Yes, sir.
21 Q It would be much easier to see a curb than it
22 would be something raised a quarter of an inch?
23 A Yes, sir.
24 Q It would be some similarity between the color

1 A Yes, sir.

2 Q Now, I ask you whether or not there was some

3 method, or if you had given any thought as manager, or discussed

4 it with your employers the method of fastening a piece of tapered

5 wood, splining it or butting it to the beam next to the one where

6 you just put a piece of steel there, have you?

7 A I have, but that is as far as it has gone, sir.

8 Q You have thought about it?

9 A Yes, sir.

10 Q Have you passed it on to them?

11 A Yes, sir.

12 Q And it stops right there?

13 A Yes, sir.

14 Q You recommended it, didn't you, Mr. Jones?

15 A Not necessarily.

18 Q Why did you suggest it? Did you personally
19 think that was a better way than the steel?
20 A It is hard to say. As I say, I am always
21 looking for ways to improve things, so evidently I thought it
22 might have been a better way.
23 Q Yes, sir. Now, how was that piece of metal
24 secured in place, if in fact it was secured in place?
25 A It was put down by sheet wood screws, sir.

1 Q What kind of screws?

2 A Wood screws.

3 Q It is fairly obvious from the picture, if I can

4 lead just a little bit, that these go through holes drilled in the

5 metal, am I correct?

6 A Yes, sir.

7 Q Then screwed down in this composition board, the

8 Temblin?

9 A Yes, sir.

10 Q And it is fairly apparent, I guess I am correct,

11 that the holes in the steel are tapered?

12 A They are countersunk, yes, sir.

13 Q So that the countersunk head of the screw can

14 fit down in it, am I correct about that?

15 A Yes, sir.

16 Q All right. At any time were you in charge of

17 maintenance, or did you do the maintenance there?

18 A Yes, sir.

19 Q At any time as an employee of any kind from the

20 time you were a floor guard right on up to assistant manager, the

21 manager, did you receive any complaints about any of those metal

22 strips? Would it be correct to call them transition plates?

23 A It would serve the purpose, yes, sir.

24 Q Did you ever receive any complaints from either

25 employees or from patrons?

1 A No, sir.

2 Q None?

3 A Never.

4 Q Not one?

5 A No.

6 Q Now, sir, have you ever looked at those plates

7 yourself, examined them to see whether or not they were coming

8 loose?

9 A Yes, sir.

10 Q Is this part of your periodic maintenance check?

11 A Yes, sir.

12 Q Do they come loose?

13 A Only when we take them loose. They can vibrate.

14 The screws can vibrate up, but the plate itself is still flat on

15 the floor.

16 Q Let's talk about that for a moment. You said

17 they only come up when you take them up, but the screws themselves

18 do vibrate up. They come loose, don't they?

19 A They do come loose, yes, sir.

20 Q All right. Now, you yourself have seen them

21 loose, haven't you?

22 A Yes, sir.

23 Q You yourself have screwed them back down,

24 haven't you?

25 A Yes, sir.

1 Q Have you ever replaced them with other screws?

2 A Yes, sir.

3 Q Why?

4 A If you put a screw in the same hole, it enlarges

5 the hole to the point where if you put that same screw back in,

6 it would not hold.

7 Q It was loose in there and it wouldn't hold?

8 A Yes, sir.

9 Q So you put a bigger one in?

10 A Yes, sir.

11 Q All right, sir. Now, how frequently would you

12 check those as a maintenance man, as assistant manager, or anyone

13 else? How frequently would they be checked by yourself or by any

14 employee or by your employer?

15 A They are checked weekly, and they are also spot-

16 checked, or cursory checks are made during every session.

17 Q Now, you said you have periodic maintenance, am

18 I correct about that?

19 A Yes, sir.

20 Q First of all you stated they are spot-checked.

21 What do you mean by spot-checked?

22 A In the type of work of surveillance of the floor,

23 you are always looking for things that are laying on the floor,

24 like if someone drops a cup or a strap comes loose from somebody,

25 say it would be laying on the floor, these are times when you

1 would see things that were out of order with respect to the
2 conditions on the floor.

22 Q So you have changed your opinion. You first
23 said that you would spot-check them as you would go by if you
24 see something, but you wouldn't get right down there and look
25 at each screw, would you?

A No, sir.

Q How frequently would you do that? Would you get right down and inspect it?

A Not at any time because you can stand up. The screw heads are large enough to be able to see them from a standing height. You wouldn't have to kneel down.

Q From a standing height, could you see whether or not the plate was raised?

A Yes, sir.

Q Did you ever get down? You said you didn't have to, but did you ever get down and look at the edge of the plate to see whether or not it had been raised?

A No, sir.

Q Is that because you didn't think it was necessary?

A I believe my own eyes, sir.

1 Q But now you are aware that that is a weekly
2 inspection?
3 A Sir, I would like to ask that I have from my own
4 attorney there some weekly inspection report forms. Prior to our
5 weekly checks, we were conducting monthly checks, and we changed
6 to weekly, and it happened shortly before that.

12 Q Just show me one of them around the time of
13 April or something like that, of '74. I guess that is the period
14 I have got.
15 A Yes, sir. This one is the 14th of April, which
16 was approximately eight days before the time that the accident
17 happened.
18 Q This is signed by you, is it not?
19 A Yes, sir.
20 Q All right. And this tells you the maintenance
21 and the inventory control report -- could we have one of these
22 so we could offer it in evidence?

5 Q Does any one of those areas say anything at all
6 about that transition plate, or that metal across the exit, or
7 anything about the screws or anything?
8 A It would be covered under the skating surface.
9 Q It says "Skating Surface"?
10 A Yes, sir.
11 Q You have checked "Okay"?
12 A Yes, sir.
13 Q Would you look through all of these and see if
14 they show one single mention of where you found the loose screws
15 and you retightened it or replaced it or anything like that?
16 A There are none.
17 Q Well, are there any other people that do
18 maintenance?
19 A No, sir.
20 Q You are the only one?
21 A Yes, sir.
22 Q You did maintenance before you became manager
23 principally?
24 A Yes, sir.
25 Q Has anyone replaced you doing maintenance since

1 you have become manager?

2 A No, sir.

3 Q You were the only person, then?

4 A I did my own maintenance work, yes, sir.

5 Q Do you ever notice any defects?

6 A Oh, yes, sir.

7 Q Show me a defect.

8 A Somewhere it says "Unable to find anybody to

9 work on parking lot, but still trying". That is defective.

10 Q That is a defect in the parking lot?

11 A Yes, sir.

12 Q What was it?

13 A It was potholes, if you want to call them that,

14 chuckholes.

15 Q But you did not note that on here? You just

16 said you couldn't find anybody to work on it?

17 A This is not referring to the fact that I had

18 been unable to find anyone to work on that.

19 Q I want you to find on there somewhere where it

20 says this was defective, this was wrong, or this was bad, or

21 whatever, so somebody reading the report will know that thing

22 wasn't right.

23 A On the 1st of April I noted on this one, "The

24 potholes in driveway still not repaired", and I would have to go

25 continue back until I found -- looking at another one, it says,

1 "Skating surface began to show signs of bare wood. Have ordered
2 and received epoxy for refinishing."
3 Q From any of those, did you ever note the fact
4 that screws came loose, screws were replaced?
5 A No, sir.

12 Q Were you there at the area when some of the
13 pictures were taken?
14 A Yes, sir.
15 Q I want you to look at the two pictures I have
16 put in front of you, and I ask you whether or not they show that
17 metal that we are talking about and whether that is not raised
18 from the surface of the skating rink.
19 A It appears to be raised, yes, sir.
20 Q You didn't think so the first time you looked
21 at it, did you?
22 A No, sir. I am still not convinced. I said it
23 appears.
24 Q Okay. Did you get down at that time? You were
25 standing up while they were taking the pictures, weren't you?

1 A I was not in the area. I did not stay in the
2 area where they were taking the pictures.
3 Q You had been there, though?
4 A Yes, sir.
5 Q And you had looked at it? You had looked at the
6 transition plate?
7 A Oh, yes, sir.
8 Q Did it appear to be raised to you as you looked
9 at it just before they took the picture?
10 A I wasn't paying that close attention to it at
11 that particular time, no, sir.
12 Q You knew they were there, did you not, Mr. Jones?
13 You knew that Mr. Smith had been injured there, didn't you?
14 A Yes, sir.
15 Q And you knew that they were there to take
16 pictures of that transition plate, that piece of metal, didn't
17 you?
18 A Yes, sir.
19 Q And you were right there in that area, weren't
20 you?
21 A At that day, yes, sir.

2 Q Now, you said you checked it. Had you checked
3 it the day before, that metal plate?
4 A No, sir.
5 Q How about that evening after the pictures were
6 taken?
7 A I don't recall, sir. I know on Sunday night I
8 made an inspection and the plate was in the proper location, but
9 I don't recall when these pictures were actually made other than
10 one specific date which I had noted.
11 Q You have never seen the edge of the plate raised?
12 A No, sir.
13 Q Do you still have some doubt even though the
14 pictures show it?
15 A Yes, sir.
16 Q Do you know who installed that metal stripping?
17 A No, sir.
18 Q Do you know whether or not this was an
19 independent contractor or one of the employees of your employer?
20 A I do not know, sir.
21 Q Again, and I am --
22 A I know, but I still say I don't know.
23 Q At the time you did tell me, did you not, that
24 this was one of the company employees?
25 A I thought.

1 Q I understand, sir. Now, I would ask you, sir,
2 if you take an average skater and he hangs one skate whether or
3 not that would present difficulty in maintaining balance?
4 A It would, yes, sir.
5 Q It could cause him to fall, couldn't it?
6 A It could.
7 Q Even in an expert at the wrong time, couldn't
8 it?
9 A Yes, sir.
10 Q Now, were you there the night that Mr. Smith
11 was there?
12 A Yes, sir.
13 Q Were you on the floor?
14 A Yes, sir.
15 Q Did you see him fall?
16 A No, sir.
17 Q Did you go there after he fell right away?
18 A Yes, sir.
19 Q Now, what was his position at the time you got
20 there?
21 A He was leaning against the bench on the east
22 side of that exit.
23 Q In other words, he had been removed from where
24 he was sitting down, or did you see him being moved, or do you
25 know?

1 A No, sir. He was seated on the floor with his
2 back against the bench on the east side of that exitway.
3 Q I understand that. The opposite side, then.
4 Let me be sure we are right so we understand. He has previously
5 identified looking at it this way with the east being here and
6 this being the west side.
7 A Yes, sir.
8 Q So you are talking about, then, when you saw
9 him he was leaning up against the opposite side or the east side?
10 A Yes, sir.
11 Q Could he have been up against the concrete blocks
12 then or the bench?
13 A In essence it is one and the same.
14 Q And as manager did you inquire of him what
15 caused it or what had happened?
16 A I did.
17 Q What did he tell you?
18 A He told me that he tripped over the plate and
19 fell.
20 Q How did he appear as far as his physical
21 condition with reference to pain?
22 A He was in some pain, I will guarantee it.
23 Q He was in pain?
24 A Yes, sir.
25 Q You were there when he testified to Mr. Campbell

1 he didn't remember making a statement to anybody, weren't you?

2 A Yes, sir.

3 Q Did that surprise you?

4 A It did.

5 Q Was there much of a crowd there that evening?

6 A There was approximately one hundred people there

7 that evening.

8 Q Were they all from this church group, or had you

9 let other people in from the general public?

10 A No, sir. They were all members of that church

11 and their guests.

12 Q Did they pay an admission to get in?

13 A No, sir.

14 Q How did they get in without paying?

15 A They rented the building, sir.

16 Q Well, I mean --

17 A The church.

18 Q That was money.

19 A But the church rented the rink. They did not

20 pay me admission.

21 Q So I understand, it wasn't donated to the church

22 by the roller rink?

23 A No, sir.

9 NANCY KLINE, called as a witness on behalf of
10 the plaintiff, being first duly sworn, was examined and
11 testified as follows:
12
13 DIRECT EXAMINATION
14
15 BY MR. SMITH:
16 Q State your name, please.
17 A Nancy Kline.
18 Q What is your address?
19 A 1521 Mark Drive.
20 Q Are you a student in school?
21 A Yes, I am. I am a senior at Hampton High.
22 Q Do you know the plaintiff - Coach Smith?
23 A Yes, I do.
24 Q How long have you known him?
25 A Ever since I was a sophomore.

1 Q And do you know in what capacity he serves at
2 the school?
3 A Yes, football coach. I have known that ever
4 since about my junior year.
5 Q Does he serve in any other capacity?
6 A Yes, sir. He is Dean of Boys.
7 Q Are you familiar with the Roll "R" Way Rink on
8 Main Street in Newport News?
9 A Yes, sir, I am.
10 Q Do you have occasion to skate there yourself?
11 A Yes, sir, I did. I skated there for close to
12 three years.
13 Q I am sorry, Nancy. Would you please tell us
14 what your age is?
15 A I am seventeen.
16 Q How long have you been skating?
17 A I have been skating close to five years.
18 Q How frequently did you attend the Roll "R" Way
19 Rink on Main Street?
20 A At the time I was going there, I was there for
21 close to three years, I skated as lessons, and after that, for
22 about a year and a half, I was there on an average of about five
23 times a week.
24 Q Who was your instructor?
25 A I had two instructors when I first went there.

1 It was June Fored, and when I left it was Bobbi Jones.

2 Q Bobbi Jones, is that individual related to Mr.

3 Benny Jones?

4 A Yes. That is his wife.

5 Q Was she an employee of the roller rink?

6 A She was a pro there, the teacher.

7 Q Do you know of your own knowledge if she was

8 employed by the Roll "R" Way, or did you pay your lessons to her?

9 A Yes, I did. I don't know if the money went

10 directly to her or not.

11 Q Nancy, I am going to show you a sketch that was

12 drawn by a witness earlier and then some corrections were made

13 by Mr. Jones, who testified a little while ago, and just ask you

14 if this generally represents the Roll "R" Way Rink, and I might

15 point out, Mr. Campbell, some of the things that were earlier

16 marked. This is the area where the skates are dispensed and the

17 concession stand. Was that the general shape of the rink in

18 April of '74?

19 A Yes, it was.

20 Q Could you approximate the dimensions of the

21 roller rink itself?

22 A A little over a hundred, maybe a hundred fifty.

23 Q Could you describe the floor surface?

24 A I suppose it was -- it made a sound like wood.

25 It was plastic-coated. The coatings were renewed every now and

then.

Q Was the rink surface, the floor of the skating rink itself, flush with or raised above the off-skate area?

A It was an inch above it around from under the rink.

Q Would that one-inch difference, without any sort of transition, be a danger to a skater, perhaps, of falling?

A It probably would, yes.

Q Did the roller rink people provide some kind of transition to effect the difference in height?

A Yes, they did.

Q How was it accomplished?

A By a metal plate. It looked like it was made of steel.

Q Could you give the approximate dimensions, width and length?

A The length, it went from one end of the exit to the other to the cement walls on either side. It was about eight inches in width.

Q Was it a flat piece of metal, or was there a bend in it?

A No. It was shaped like this, you know, graduated to the two floors, and then there was a flat inch part that the screws were in.

Q How many screws were in the one-inch wide part?

A I couldn't tell you exactly. I never bent down to count them. I guess about six.

Q Could you estimate how far apart each screw was?

A Maybe about five or six inches.

Q Did you ever have occasion to observe these plates being raised above the floor of the skating rink?

A Yes, I did.

MR. CAMPBELL: Your Honor please, we are concerned with what was existing on this particular occasion, not on other occasions.

MR. SMITH: Your Honor, I feel that in all fairness this is a question of notice. The manager said he never knew this to be done. The question is what is open and available, and notice of the fact and condition to be repaired and corrected, and that is what this question goes to, not the condition as it existed, but simply notice to management.

MR. CAMPBELL: That has been his testimony, that it was not originated from the defendant's side except by a straw man and knocking it down.

I am going to object to what might have occurred on other occasions two or three years prior to this happening.

This lady hasn't been there for goodness knows how long. What happened when she was there might not

exist today or might not have existed at the time this accident happened. We are concerned with what was the condition at the time Mr. Smith got hurt.

THE COURT: You called Mr. Jones and questioned him in reference to this, which is contrary to what she is getting ready to testify to.

I will sustain the objection.

MR. DAUGHERTY: Your Honor, recognizing Mr. Jones --

MR. CAMPBELL: I don't think we ought to argue this matter before the jury.

MR. DAUGHERTY: Well, I will defer to the Court and argue out of the presence of the jury.

THE COURT: All right. Let the jury go back to the Jury Room.

(Whereupon, the jury retired to the Jury Room at 4:30 p.m.)

PROCEEDINGS IN THE COURTROOM OUT OF THE PRESENCE OF THE JURY

MR. DAUGHERTY: Your Honor, Mr. Jones -- well, I could not call him as an adverse witness because he is not in management per se as far as an owner and I recognize the limitation, but he was the manager. He stated that

he didn't see it and he is there all the time.

THE COURT: He says he never saw it raised.

MR. DAUGHERTY: Yes, sir. He even doubted what he saw in those pictures, but I think we are allowed to show whether he or other employees, if it was open and obvious and existed prior and existed over a period of time, that that would be notice for the management, and that is not just Jones, that is everybody. He is not the only employee.

I feel that this is a critical issue, Your Honor, and I think that the testimony is to that, not to set up a straw man and knock him down, but to show notice.

MR. CAMPBELL: If Your Honor please, my friend surely knows that the question of notice applies to the condition that existed at that time. Notice of what has happened two years prior when this young lady was skating there, she hasn't skated there in a couple of years. I believe what she may have observed two years ago certainly is not any notice to management that on the 22nd day of April there was a dangerous condition existing. There may have been a previous lack of attention. This may have been corrected. We don't concede that there have been any misdoings, but at this particular time two years after this young lady left the premises as a skater, and her information is related to two years prior to this

1 particular occasion --

2 THE COURT: I don't recall her testifying, maybe

3 I missed it, but she said she hasn't skated there for two

4 years.

5 MR. DAUGHERTY: That is from today. She has

6 been skating a total of five years, Your Honor. We

7 didn't develop information about the time. I think we

8 might do so.

9 THE COURT: You are saying something about two

10 years. I don't know whether I have --

11 MR. CAMPBELL: I think I may have gotten it

12 through counsel or some other source. I will ask her.

13

14 BY MR. CAMPBELL:

15 Q When was the last time you skated there, little

16 lady?

17 A The only record I have -- I can't say exactly.

18 The only record I have is a club card that I received. Every

19 month you get a club card.

20 Q How long has it been since you skated there?

21 A How long has it been since I skated there?

22 Q Yes.

23 A About --

24 MR. DAUGHERTY: What year and what month, if you

25 know? Your club card, what does it show?

1 THE WITNESS: August of '74. After the accident
2 when I tried to look back and remember, the last time I
3 remembered being there it was cold weather. It was close
4 to Christmas. So I believe it was around November.
5
6 BY MR. DAUGHERTY:
7 Q Your club card doesn't seem in accord with your
8 particular memory?
9 A No. My cards, they got lost. I never saved
10 them for any reason. These I dug up out of a box that I keep in
11 my room.
12 Q From what I understood, you were skating there
13 before Coach Smith fell in April of '74 and you skated there
14 after?
15 A And after, yes.
16 MR. DAUGHERTY: That is what I thought your
17 testimony would be, but I want the Court to be aware of
18 this before we proceed any further.
19
20 BY MR. CAMPBELL:
21 Q You transferred your site of skating activities
22 from this particular roller rink to what place?
23 A Plaza Roller Rink in Denbigh.
24 Q And when was it that you did that?
25 A That I changed?

1 Q What year was it?

2 A There was a break in between the time I left

3 Roll "R" Way and the time I started skating. It was about maybe

4 a month, two months that I didn't skate there professionally. I

5 just went as a session skating. I'd say about two months' break,

6 then I started going there in January or February of 1975.

7 Q You started going to this other place in '75?

8 A Um-hum.

9 Q Were you skating at this roller rink in April?

10 A Which one?

11 Q Of '74.

12 A Which roller rink?

13 THE COURT: Main Street.

14 THE WITNESS: Main Street in April? Yes, I was.

15 THE COURT: 1974?

16 THE WITNESS: Yes.

17

18 BY MR. SMITH:

19 Q Do you have a club card for April of 1974 with

20 you?

21 A I believe so.

22 THE COURT: I don't know that a club card is

23 necessary. I have a membership card to a country club,

24 but that doesn't mean I go every day.

25 I think her testimony is what we are going to

have to rely on.

THE WITNESS: April of '74.

THE COURT: The purpose of the club card means that anybody can go there and skate, and if they don't have their card, they can go there and pay an entrance fee and skate. Isn't that what it means?

THE WITNESS: This means that you get -- well, you paid $15.00 a month for that card. You get in all the sessions free.

THE COURT: All right. But the mere fact that you have a card doesn't mean that you actually attended sessions and went skating?

THE WITNESS: No.

THE COURT: You are relying on your recollection and you did skate before and after April 22, 1974, is that correct?

THE WITNESS: Yeah. I did skate there before I left there.

BY MR. CAMPBELL:

Q You have no knowledge of what the conditions were on the 22nd day of April, 1974, do you?

A I am sorry. I don't understand.

Q You do not know what the conditions were as to the exit on the specific date of April 22, 1974?

A No. I have no way of remembering that.

1 MR. CAMPBELL: If Your Honor please, notice to
2 management will have to apply, as I understand the law,
3 to the conditions that prevailed on that particular day.
4 For example, we had what Mr. Daugherty has referred to as
5 weekly surveys.
6 Suppose on April the 10th there was that
7 condition as complained about in this case, and by reason
8 of a weekly complaint or survey or maintenance survey
9 report that was listed and it was corrected, so that on
10 the 22nd day of April the condition that had previously
11 existed was no longer in existence, and suppose this
12 witness had seen it on the 10th of April and it was
13 repaired or changed the following week after this report
14 went to management, so that on the 22nd day of April the
15 condition no longer existed. That would not be a faulty
16 condition that supposedly occurred on the 22nd of April,
17 would not be brought to the attention of management, in
18 other words, notice of a defect or a dangerous condition.
19 It's got to be as of that time, that the witness
20 knows about it under conditions that brought home notice
21 to management, and she is not in a position, and she
22 tells you that candidly, that she doesn't know what the
23 conditions that are complained about were on the 22nd
24 of April. They may have had all kinds of notice on
25 previous occasions, but if they were corrected, new

1 screws put in, for example, and on the 22nd day of April
2 did not exist, then what is attempted to be shown here by
3 prior inferences of misdoings, we will say is no proof of
4 that on that particular occasion it occurred, and I object
5 to her so testifying.
6 THE COURT: Let's let the witness step outside.
7
8 (Whereupon, the witness was excused from the
9 courtroom.)
10
11 THE COURT: Mr. Daugherty.
12 MR. DAUGHERTY: With respect to counsel, that
13 is not the law in Virginia. The law in Virginia is that
14 if you can show a condition existed prior to the
15 occurrence of the same nature and character that caused,
16 or which allegedly caused the injury, you may show this.
17 You cannot show conditions that existed subsequent to the
18 injury, but I think the law is very clear, and I think
19 it has existed for quite a long time, and I think it
20 still exists, and that is the law today.
21 THE COURT: I feel that while both of you
22 apparently are right, I think -- I feel this: After the
23 testimony of this witness, or any witness, would be --
24 and I don't know what she is going to say -- that she had
25 been there for one or two nights a week, or whatever it

1 was before this accident happened, and that she had
2 noticed this metal plate, and that it was raised, and
3 she called it to the attention of the management, that
4 is one thing.
5 Now, I understand that the management may have
6 fixed it and it may not have existed at the time of this
7 accident. I understand that the defense has the report,
8 but it doesn't show any defects listed in the report that
9 is made.
10 MR. DAUGHERTY: Right.
11 THE COURT: On the other hand, I can see how in
12 a grocery store there may be cold storage and an icebox
13 that continuously drips and causes a puddle of water in
14 front of it, and you might have a patron of the grocery
15 store that has walked in and seen this and registered a
16 complaint and pointed it out to the manager, and so forth,
17 maybe even the day before, but that doesn't mean that it
18 existed at the time that somebody came and said that they
19 slipped, and the management may have seen this report
20 that he showed that it was fixed when the reports made
21 may not be proper or correct, or they may be, I have no
22 way of knowing, but I think as far as the reports are
23 concerned that would be something to offset any testimony
24 as far as any correcting or not correcting the defects,
25 which would be a question that the jury would consider

in assessing as to whether they had knowledge or notice of this defect and that they had been negligent in not taking care of it.

So I will let this lady testify, inasmuch as she can testify, that she was then skating around at the time of this accident as to what she knows about the defects, whatever they are, and what she did, if anything, about it.

MR. DAUGHERTY: Thank you very much.

MR. CAMPBELL: Of course, I save my exception, sir.

THE COURT: All right. Bring the jury back.

(Whereupon, the jury resumed the Jury Box at 4:50 p.m.)

PROCEEDINGS IN THE COURTROOM IN THE PRESENCE OF THE JURY

THE COURT: All right, Mr. Smith.

MR. SMITH: All right, sir. Thank you.

BY MR. SMITH:

Q Nancy, we have had a little break and I might try to refresh your recollection. I believe you testified you skated for approximately five years?

1 A Yes.

2 Q And that you had frequented the Roll "R" Way

3 Rink on Main Street?

4 A Yes, I did.

5 Q How often did you say that you skated there

6 before April of '74?

7 A How often did I go to the rink during a week?

8 About five times a week on an average.

9 Q And did you also skate at the rink sometime

10 subsequent to April of '74?

11 A Yes, I did.

12 Q Do you recall when you stopped skating there?

13 A Around in November.

14 Q Of '74?

15 A Right.

16 Q I believe I asked you if you have ever observed

17 the metal plate that you described being above the surface of the

18 skating rink itself.

19 A Yes, sir, I did.

20 Q I am speaking of before April 22, 1974. How

21 frequently did you observe that condition?

22 A Okay. When I first started skating there, I was

23 just a beginner. I was just a sessions skater, and I noticed the

24 plate above the floor most often when I fell over it, which I did

25 do several times.

1 Q Did you sustain any injury?

2 A Yes. The carpeted area is more or less like

3 indoor-outdoor carpet, and I got burns on my -- well, like if I

4 was wearing a dress, a skating dress, I got burns on my knee and

5 on the palms of my hands from falling on it.

6 Q You mentioned this was while you were a beginning

7 skater?

8 A Yes.

9 Q Did there come a time that you did not fall over

10 the plate any longer?

11 A After a while you remember it is there and you

12 learn to step over it.

13 Q Did you ever observe anyone else fall over the

14 plate?

15 A Yes, I did.

16 Q Please relate that to us.

17 A Okay. Several times it was little children.

18 More than half of the time it was beginning skaters, and once I

19 saw a lady fall over it. She turned around backwards and fell

20 on her back. There was an ambulance called, or a Rescue Squad,

21 and they came and got her. I don't know what was wrong with her.

22 She complained of her leg.

23 Q Did Mr. Jones or any of the other employees of

24 the rink assist that lady who fell?

25 A Yes. Benny was out of his office as soon as he

1 heard that the lady was hurt. He came over to see if there was
2 anything he could do, and then he stayed with her and her
3 companion, whoever it was that was with her stayed with her, and
4 I believe someone in the office called an ambulance.
5 Q Did you see her fall over the plate?
6 A Yes, I did. I was right behind her.
7 Q When did that occur, to the best of your
8 recollection?
9 A Oh, my gosh! I don't know. It was after I had
10 joined the club because I was skating around with a few of the
11 club members, but I couldn't give you a date.
12 Q Would that be before April of '74?
13 A It could have been. I can't say definitely.
14 Q When did you join the club?
15 A The first card I have, I was there for two
16 months before she left. It is signed by June. I have a card,
17 I think it was February.
18 Q Of what year?
19 A '74. I am not sure.
20 Q Were these plates loose on occasions?
21 A Yes, they were.
22 Q How did this loose condition come to your
23 attention?
24 A Like I said, when I fell over them, the plates
25 make a rattling noise when you roll over them. They rattle. It

1 makes a -- they will jar you if you just flat out roll over them
2 or step on them at all. They will jolt you and you will fall,
3 especially if you are a beginner skater, if you don't know about
4 the place, if you don't know how to watch out for them, they will
5 jolt you.
6 Q Nancy, I am showing you a couple of pictures.
7 I am going to ask you if the plate that is shown in these
8 pictures is similar to the plate or plates that you are talking
9 about.
10 THE COURT: For the record, are these exhibits
11 that you are showing her?
12 MR. SMITH: Yes, Your Honor. I am showing her
13 Exhibit No. 6, the black and white photos right now.
14 THE WITNESS: Yes. That is the exit right in
15 front of the skate room where you get your skates and
16 where you return them.
17
18 BY MR. SMITH:
19 Q Is the plate, to your eye, raised?
20 A Yes, it is, especially on the right-hand corner
21 here.
22 Q Is that a condition that you observed, that
23 height, I mean?
24 A Every now and then it was raised that height.
25 Now and then you would notice it higher than that.

Q Could you recall prior to April of '74 what the greatest height was that you ever saw with the plate?

A Oh, gosh, I don't know. The greatest, maybe a little over a quarter of an inch.

Q In your experience as a skater, would a plate raised a quarter of an inch in this nature present a danger to a skater?

A Well, I could tell you this: These are ball bearing skates, and if any of you have ever seen a BB gun, the size of a BB, that is about the size of a ball bearing that fits in the wheels of some skates. A ball bearing on the floor of a skating rink will trip up a skater if they roll over it. It happens many times.

Q And you are using that as a comparison with a plate a quarter of an inch high?

A Yes.

Q Did you ever observe any screws missing from holes in the plates?

A Yes, I did.

Q Do you recall any specific instance?

A I was with a club member. I won't mention the name. It was a younger girl. She was younger than I am. I believe at the time she was about eleven. She was skating. We had skating dresses on and we were kind of goofing off, and she went out of the exit. She fell. When she did, she had on a

1 dress and a pair of hose. When she fell, she fell on the plate.
2 Her thigh hit the plate and it ripped her hose and scratched her
3 leg. When all of us turned around to look, to pick her up, to
4 see what happened, there was a screw sitting up out of the plate.
5 Q Did you bring it to the attention of the
6 management that the screw was above the plate?
7 A The screw was pulled out by one of my friends,
8 handed to me, we all looked at it for a minute, thought about
9 putting it back in there, but decided it would just come up again.
10 So we didn't take it to the manager, we took it to a floor guard.
11 THE COURT: You took it where?
12 THE WITNESS: To a floor guard. Okay. He
13 looked at it, shrugged his shoulders, and threw it in
14 the trash can.
15
16 BY MR. SMITH:
17 Q Are the floor guards, to your knowledge,
18 employees of the rink?
19 A Yes, they are.
20 Q Did you ever personally make a complaint as to
21 this plate or plates that you observed to Mr. Jones or any of the
22 other people?
23 A No. I, like many of the club members, figured
24 that Benny Jones knew what he was doing. It was his rink, and
25 he knew how to keep it up. I didn't feel it my place to tell

1 him how to fix it or how to run this rink.

2 Q Nancy, do you have any other official duties at

3 school other than being a student?

4 A Yes. Very often, if students have a study hall

5 that they feel they don't really need, especially seniors, they

6 have something called a Student Assistant where you can work for

7 members of the faculty and help them with paper work.

8 I worked in the clinic in my junior year, and

9 this year for the first two nine weeks I worked for Mr. Price

10 who is the Assistant Principal at Hampton.

11 Q Did you continue to assist in the clinic?

12 A From time to time Mr. Price had important

13 meetings with some important people. I never really knew who

14 they were. He would ask me to leave the office. When he did,

15 Mrs. Gibson, who is the school nurse, and she and I are good

16 friends, I go down and talk to her and help her out in the

17 clinic as much as I could to get students in and out.

18 Q Were you aware of Coach Smith's injury in April

19 of [illegible]?

20 A Yes, I was.

21 Q How did you learn of it?

22 A Well, the thing you most often noticed was he

23 was hobbling around on crutches and had a cast on his leg. Word

24 got around the school. Quite often some kids I asked just said

25 that he had broken his leg. Later I found out it to be a fact

from Coach Smith that he had fallen at the skating rink and broken his leg.

Q Subsequent to that time, did you ever observe Coach Smith with the cast off and the crutches gone?

A Well, yes, at football games quite often.

Q Did you notice any change in his physical goings on after his accident as opposed to before his accident?

A Okay. In my sophomore year, I went to see quite a few football games. I wasn't working then. It was easy for me to attend the football games. This year I am working. Of course, it is not easy, but I have been to a few.

In my sophomore year Coach Smith was -- he was always an active person. At the football games you would see him jump up on the bleachers, yell at the football players, pacing back and forth, up and down the lines. I would see him. I knew he was a coach. He was always wearing red and white to the football games and was an active person.

Q And this past fall, did you observe him at any of the football games?

A Yes, I did. More often he was just standing with his arms crossed, his legs spread apart, still yelling, but I will have to say he wasn't moving around as much.

Q Did you have any occasion to see Coach Smith in the clinic at any time while you were working?

A Yes, I did. He comes in quite often and talks

1 to Mrs. Gibson, speaks to people he knows there.

2 Q Did he make any complaint that you heard?

3 A Yeah. A couple of times he came in and

4 complained of being tired. Several times you would hear of him

5 speaking of having to go back to surgery again as if he was tired

6 of going.

7 Q Did he ever say anything about pain in his knee?

8 A Yes, he did.

9 MR. CAMPBELL: If Your Honor please, that is all

10 self-serving and totally inadmissible, and I object to

11 pursuing it any further.

12 THE COURT: I think it is very leading.

13 MR. SMITH: I am not going to pursue it. If I

14 could have one moment, sir.

15 THE COURT: All right.

16 MR. SMITH: No further questions.

17

18 CROSS-EXAMINATION

19

20 BY MR. CAMPBELL:

21 Q Miss Kline, you are a part of the school

22 organization over there in Hampton High School, are you not,

23 that you have just described?

24 A It is not what you would consider an organization.

25 It is just something to take up a period. If you don't want a

1 study hall, if you feel you don't need it, you are allowed to
2 work as a Student Assistant.
3 Q Mr. Smith is sort of an idol of the student body
4 over there at Hampton High School because of his accomplishments
5 in producing a State championship team, isn't he?
6 A This year, yes, he was. Everybody was very proud.
7 Q And so he is a favorite and is sort of idolized
8 by some of the City over there, wasn't he?
9 A Well, I can't say he was an idol.
10 Q Well now, I understand it was when you were a
11 beginner skater that you did most of your falling, I believe you
12 have told us, but I have no note of it, and I don't recall
13 specifically. When did you start skating?
14 A When I started skating, it was like a little
15 thing, on Sundays. My father would take me down there for a
16 little matinee.
17 THE COURT: Just tell us what age you were, if
18 you can.
19 THE WITNESS: Twelve.
20
21 BY MR. CAMPBELL:
22 Q So you have been skating for five years, and
23 when do you think you would characterize you got beyond the
24 beginning skater stage?
25 A Well, oh, I guess -- I couldn't tell you. I

1 guess about fourteen or fifteen.

2 Q In other words, it took you two to three years

3 to get beyond the beginning stage?

4 A Well, the only help I had in getting beyond the

5 beginner stage was when I started taking lessons.

6 Q And that was at what age?

7 A Fourteen, I guess about then.

8 Q And that was when you started taking lessons at

9 this roller rink on Main Street?

10 A Yes. It was under June Fored at first.

11 Q And that was a period of time that you had

12 episodes of falling down as you came out the exit ramp, is that

13 correct?

14 A Yes.

15 Q I see. And was it back in that period of time

16 that all of this - without waiving any objections, Your Honor -

17 was all of this, of seeing persons fall and little children and

18 so on, at about the time that you were taking lessons there -

19 fourteen or fifteen years of age?

20 A Well, from the time I started skating there

21 until the time I left, it was an everyday thing to see somebody

22 fall.

23 Q Is there more than one exit to that skating rink?

24 A Yes, there is.

25 Q And did you encounter any difficulty. Did you

1 always use one exit?

2 A No, I did not.

3 Q Did you have a similar experience with all of

4 the exits?

5 A I couldn't give you one specific time that I

6 fell over each of the plates. There were several plates that you

7 knew you had to slow down before you came off of them, the one

8 near the snack bar. In the snack bar there are some mats.

9 Q That is on the opposite side of the skating rink

10 from where you rent the skates and so on?

11 A No. That is right next to it.

12 Q On the opposite side?

13 A It is right next to the office is where you come

14 in. There is some matting there and it is very rickety matting.

15 It is there so, I guess, if you spill a drink or something you

16 don't slip in it, but, you know, you have to slow down before you

17 hit that matting because it is very rugged. You can't really

18 roller skate over it.

19 Q Now, you mentioned a girl who fell and you

20 noticed a screw sticking up. Was that at your beginning stage?

21 A That is when I was in the club, so I can't say

22 it was in the beginning stage.

23 Q But that --

24 A That was after I was in the club.

25 Q And that would be when? I get confused about

1 this club situation, Miss Kline. If you can, tell me about when
2 it was timewise.
3 A I joined the skating club in February, around
4 February of 1974.
5 Q '74. You have not belonged to any club prior to
6 that?
7 A Not that I remember. Like I said, my father
8 took me to different rinks on Sunday afternoons to skate little
9 kiddie matinees.
10 Q Did you belong to the club when you were being
11 instructed by Bobbi Jones and others?
12 A Yes, to take lessons you were at the club, and
13 you went to club practice on Wednesday afternoons.
14 Q That was back when you were fourteen and fifteen
15 years of age?
16 A About that.
17 Q So you have been a member of some club since you
18 were fourteen or fifteen?
19 A Yeah, not at the time, but eventually I was a
20 member.

*

18 Q State your full name, please, sir.

19 A Kenneth Harold Murray.

*

22 Q Where are you employed?

23 A Old Dominion University.

24 Q In what position?

25 A I am Assistant Dean of Engineering, Associate

1 Professor of Civil Engineering.

2 Q What degree or degrees do you hold?

3 A I have a Bachelor of Science degree in Civil

4 Engineering from VPI. I have a Master's in Structural Engineering,

5 a PhD in Civil Engineering, all from VPI.

6 Q All right, sir. How long have you been teaching?

7 A Been teaching at Old Dominion University about

8 seven and a half years. I did some student teaching while at VPI.

9 Q Do you have a PhD and are a Doctor of Engineering?

10 A Yes, sir.

11 Q All right, sir. In your teaching or in your

12 outside industry, have you done any work other than just simply

13 teaching students? Have you participated in research or anything

14 else of this nature?

15 A Yes, sir. I have had a number of research

16 contracts with the University, the Research Foundation, and also

17 through NASA, Langley, and I have done work, consulting type work,

18 for local contractors. I have also done work for other lawyers

19 in products safety cases.

3 Q Dr. Murray, did you at my request visit the
4 roller rink out on Main Street in Newport News?
5 A Yes, sir, I did.
6 Q When was it that you went there?
7 A One Saturday morning early in September.
8 Q Which year?
9 A 1975.
10 Q There has been a free-hand sketch that was
11 introduced in the trial earlier yesterday. I will let you just
12 look at it briefly, while it is not to scale or anything else,
13 but is that generally what you saw when you got out there?
14 A Yes, sir.
15 Q First of all, what did you inspect when you got
16 out there?
17 A I went straight to the place that I was
18 involved -- was the one that caused the accident. I looked at
19 one and I also walked around the left-hand side of the rink and
20 inspected casually the rest of the transition plates.
21 Q Who was the one that pointed out where the fall
22 had taken place?
23 A Your attorney.
24 Q Mr. Smith?
25 A Mr. Smith.





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1 Q Do you remember looking at this, which particular
2 one of them that it was?
3 A We went in from the door on the right, and we just
4 passed it. There is a seat or something. We looked at one just
5 to the left of the seat.
6 Q Can you point on here what you looked at?
7 A It would be the one just behind the skates there.
8 Q Here?
9 A Yes, sir.
10 Q You said to the left. Would it be this way?
11 A Yes, sir.
12 Q Around this way?
13 A Yes, sir.
14 Q Now, while you were doing this, did you inspect
15 the plate itself?
16 A Yes, sir, the best I could. It was still in
17 place.
18 Q It was in place? You didn't disturb it, then?
19 A No, sir.
20 Q Did you at any time take any screws out or
21 anything like that?
22 A No, sir.
23 Q What did you find when you looked at that plate
24 on that occasion in September of 1975?
25 A I found, first of all, there were screw holes

1 there but no screws.

2 Q How many of those?

3 A My notes do not show how many were in that

4 particular place. As I walked around --

5 Q How many were missing?

6 A In the three exits I looked at, there were five

7 holes without screws.

****

****

13 Q Was any one of the employees with you as you

14 made your inspection? Were they around?

15 A I was informed that the manager was the man that

16 I met there, and he was with us during that time.

****

21 Q Did you take measurements?

22 A Yes, sir, took a few measurements.

23 Q What measurements did you take?

24 A First of all I measured the basic width of the

25 plates, ten inches.

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1 Q All right, sir.

2 A And I measured also the lip that overhangs the

3 wood part.

4 Q I don't want there to be any misunderstanding

5 about that. If you would, would you please step down here in

6 front of the jury? I have a picture looking down on the plate,

7 and I want you to show me what part you mean by the lip.

8 A The ten inches was the total width.

9 Q Can all of you see?

10 A The lip is from this gray line here, which is

11 the plate cover with the pins bent over, and that lip there or

12 width was approximately seven-eighths of an inch.

13 Q All right, sir. I am going to have you do

14 something for me. Take the witness stand again.

15 A (Witness complies with request.)

16 Q Trace with a pencil on this color photograph,

17 draw a line along the edge where you said the bend was and then

18 put an arrow so that you can put that dimension there that you

19 previously testified to.

20 A Yes, sir.

21 Q All right, sir. Write your initials by the

22 seven-eighths of an inch.

23 A (Witness complies with request.)

24 Q All right, sir. Now, did you also measure the

25 distance from the edge of the plate, which would be on the skating

1 area over to the center of where these screw holes were?

2 A Yes, sir.

3 Q What was that?

4 A It was three-eighths of an inch.

5 Q All right, sir. Would you be kind enough to

6 take one of the screw holes and draw a line through the center

7 of it and again show that three-eighths dimension off to the

8 edge?

9 A Yes, sir.

10 Q And please initial that again for me.

11 A (Witness complies with request.)

12 Q Thank you, sir. Now, did you measure the

13 distance that separated one screw hole from the other?

14 A Yes, sir.

15 Q What were they?

16 A They varied. I measured three, and one was

17 thirteen and a half inches, one was sixteen inches, and one was

18 fifteen inches.

19 Q All right, sir. I would like for you, then, if

20 you will, off to the side just to draw a line through the center

21 where the two holes are, and then, not that that would be that

22 particular hole, but write down the three various measurements

23 you got of the three that you measured and initial that.

24 A (Witness complies with request.)

25 Q All right, sir. What would be the thickness of

that plate? Did you measure it?

A Yes, sir, the best I could since it was in place, and I measured approximately three-thirty-seconds of an inch, approximately ten-gauge steel.

Q All right, sir. Around an eighth of an inch?

A Yes, sir, right. Four-thirty-seconds would be an eighth of an inch.

Q All right, sir. Now, what would be the correct terminology of a transition plate? What would you refer to it as?

A I think transition plate is reasonable.

Q All right, sir. Professor, based on your training and your experience in the field, and inspection of this plate, could you tell me whether you have an opinion as to whether or not this transition plate measures up to minimal reasonable engineering standards for the purpose for which it is attempting to serve?

A I think I have an opinion.

Q What is this?

A I believe the basic concept of the steel plate is reasonable. I believe that the screw spacing is not reasonable. Approximately fifteen inches between screws is too much, and I think the fact that the screws have worked out back this up.

Q All right, sir. Now, when you go to design any type of structure, even one such as this, what about design criteria that an engineer must keep in mind?

1 A Okay. First of all, he must consider the
2 function ability. It has to function properly. It must also
3 be safe in that process, and it must be economical feasible.
4 Q Now, you have said that the plate of steel, you
5 feel, would be acceptable. Would it be, as it is now so far as
6 the steel is concerned, would the width be sufficient?
7 A What do you mean by width?
8 Q The width of the ten inches. Is that wide
9 enough?
10 A I believe so. That is, I think, a question of
11 functionability, I am not sure, and I did not make measurements
12 on what is the principal angle the plate could be so that it
13 would not catch the front wheel on the skate. I did not make
14 those measurements.
15 Q All right. What recommendation do you make,
16 since you have said that the basic steel approach is okay, to
17 make this fit within the minimal safety standards that you would
18 recommend?
19 A I believe that you could increase the lip, that
20 is, the distance from the bend to the end of the plate that is
21 actually laying on top of the wood. That should be increased,
22 my guess would be, in the neighborhood of two inches so that you
23 could then put in more screws further away from the edge, and
24 these screws, I would recommend, be staggered, in other words,
25 in a zig-zag pattern.

1 Q All right, sir. So that there would be no
2 misunderstanding, let me take a pad, and if you would be so kind
3 just to draw a portion of a steel plate and show the ways the
4 screws should be fastened if you have an opinion. All right, sir?
5 A All right, sir.
6 Q While you have it, what would be the recommended
7 spacing between these holes?
8 A I would indicate this to be approximately six
9 inches.
10 Q All right, sir. What would be the distance
11 between the center line measurements back from the edges?
12 A Be half an inch from each edge or one inch from
13 each end.
14 Q And the total width across would be?
15 A Two inches.
16 Q All right, sir. Now, sign that, if you will,
17 please, sir.
18 A All right.

23 THE COURT: Mark this as Exhibit No. 8 for the
24 plaintiff.
25

6 Q Now, Dr. Murray, what forces create the condition
7 that cause screws to work loose from the plate as it now exists?
8 A The only connection between the wood and the
9 plate would be the screws. As you step on the plate between
10 screws, it would bend like so.
11 Q You have taken a pad and reflected - this is for
12 the record - so it bends up and down.
13 A All right. It bends and the ends pull up, and
14 when the ends pull up, the screws are just subjected to a tension
15 force which tends to pull them out of the wood. Then the skater
16 goes by or any load is released and the plate sits back down flat
17 again, and, of course, this is repeated over, and over, and over
18 again, and wood does not take would-be loads very well in tension.
19 Q And in my language, what would you be calling
20 those forces you are talking about?
21 A It would be a vibration of sorts. In a technical
22 term, I think it would be called fatigue, but it is a vibration,
23 but a very slow vibration.
24 Q All right, sir. Now, have you previously seen
25 these black and white photos that I put in front of you?



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1 A Yes, sir, right.

2 Q When you got out there in September of 1975,

3 what was the condition as compared to those photos of the plate

4 when you saw it?

5 A Basically the same. I looked at these earlier,

6 and I can see really no basic difference.

***

17 Q Now, let's assume that in place of the plate

18 that is in there we put the plate that you are talking about,

19 widen the lip, decrease by at least half the distance of the

20 holes apart, and put them in a staggered relationship. If the

21 vibration forces of the rollers were to start working those

22 screws loose, would that be acceptable?

23 A No, sir. I think at that point we would have

24 to re-evaluate what we have done.

25 Q What ways could you do it, again within your



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design criteria of being economical? What would be your next approach?

A My approach in past work with this particle board has been to go ahead and insert in the particle board a plastic fastener. These are the same type of things you use in a plaster wall. They call them lead shields or plastic shields.

Q Have you done this application?

A Yes, sir, I have.

Q Has it been successful?

A At the present it has. I worked with a set of tables, folding tables at our church, and have done this, and it is holding presently.

Q Now, if that proved not to be successful, do you have any other methods that are economical, maybe more closely but still within the economical range that it should be for such a job?

A It would be most costly. I am not sure which one I would choose.

Keeping with the plate, you are still using a steel plate, would be to go ahead and cut it out, take the plate out, off-cut another slot with the screw holes, drill those through, then use any new nut from the bottom, or use a new nut. I am not sure what it is called, but it actually corresponds to the thing where you hold the nut in place, then replace the plate, and then use the machine bolt instead of a wood screw,

1 and then hook it down with that.

2 Now, the problem there is that you can't get to

3 the nut. Once you put the plate over it, everything is covered

4 and it would take some time and a little bit of effort.

5 Q Is there any other method that you considered?

6 A Another way would be, I think, to throw the

7 steel plate away and make a wood block transition that could be

8 bolted or anchored into the concrete floor before the particle

9 board.

10 Q In considering this, have you made any sketches

11 or drawings that would illustrate what you have been speaking

12 about?

13 A Yes, sir.

14 Q I ask you whether or not this is the drawing

15 which you have made.

16 A Right, it is.

***

20 THE COURT: Mark that as Exhibit No. 9 for the

21 plaintiff as part of the evidence.

***

BY MR. DAUGHERTY:

Q If you choose to add this many screws as suggested to a plate with a wider lip, what effect would that have on the vibration in the plate itself?

A Okay. Since the major cause of the screws pulling out is the deflection that occurs at the end, it tends to pull up, then if you decrease the spacing of the screws by one-half, then you in fact reduce the displacement by one-eighth, which would mean to me that you would then have less force, less reaction at the screw hold, and then therefore less chance of it pulling up.

Q What would be the amount of the reduction of this vibrating or this bending force?

A Theoretically an eighth, but I think practically we are talking about something like less than th s, maybe a fifth.

Q All right. That is of the total forces?

A Right.

***

***

A No, sir.

Q Do I understand from the plaintiff's diagram here that you made a careful inspection of the one exit across from the skate rental area, the one exit that is in question?

A Yes, sir.

18 Q So on the west end of the building, you just
19 examined those three, and the two you just made a cursory pace,
20 is that right?
21 A Actually, the one towards the back of the
22 building, I looked at very closely because it had a gap large
23 enough for me to get into to do the measurements without pulling
24 anything up.
25 Q Now, the one that is in question, the one that

1 Mr. Smith complains he fell down on, did you get down and look at
2 it at an angle, or did you just make your observations from
3 standing up?
4 A No, sir. I got down on my hands and knees.
5 Q You got down on your hands and knees, but you
6 did not take the plate up?
7 A No, sir.

*****

10 Q You have previously testified, I believe, and
11 made some notations on Plaintiff's Exhibit No. 7, you have made
12 mention of the fact that you found screw holes without screws in
13 them, is that correct?
14 A Yes, sir.

*****

17 Q In this picture where you have drawn a line,
18 there is a screw in the plate, is it not?
19 A Yes, sir.
20 Q And that is adjacent to a vacant screw hole?
21 A Yes, sir.

*****

2 Q Now, where you have this line here, that is
3 drawn across the screw head, is that correct?
4 A Yes, sir.
5 Q Next to it is the vacancy?
6 A Yes, sir.
7 Q Also at the other end of the plate as shown in
8 this picture, there is not a vacant hole and a screw right next
9 to it?
10 A Yes, sir, there is.
11 Q Do you remember, are these the only two vacant
12 holes in this plate?
13 A I do not remember if they were the only two, no,
14 sir.
15 Q Do you remember that wherever you found a vacant
16 hole and next to it there was a hole with a screw in it?
17 A There was at least one place on one of the other
18 transition ramps where there was a screw missing and no adjacent
19 screw.
20 Q But not on the transition plate in question?
21 A No, sir.

*****

8 Q Now, did you notice that when the plate is
9 installed here, you look at it from an angle at the end, the
10 plate does not protrude out beyond the bumper that sits on the
11 skating surface?
12 A I did not notice that, no.
13 Q You did not notice that?
14 A No.
15 Q Did you notice that if you lengthen the plate
16 that it would project itself into the skating surface area or
17 into the off-skate area?
18 A Right. It would have to project into the
19 skating area a little bit farther than one inch further than
20 what it is now.
21 Q Would that not perhaps constitute a hazard?
22 A It would if nothing was done. I think that you
23 would have to either -- when you put the epoxy coating on the
24 floor, that you put it on the plate, too, right there to give a
25 smooth transition or that you countersink the plate.

1 Q All right, sir. Now, backing up, if you
2 countersink the plate, wouldn't you take away from the strength
3 of the wood, the particle board?
4 A Quite obviously, if you remove wood, you take
5 away from the strength, but the loads are straight vertically
6 and I believe that what you would lose there, an eighth of an
7 inch, would not be enough to cause any more problems.

*****

13 Q Are these plastic fasteners that you talk about,
14 would you not have to bore out the particle board to insert the
15 plastic fastener into it?
16 A You possibly would have to. I have found that
17 when a screw works out, it has in essence bored out a hole in
18 the particle board.
19 Q How would you install the plastic fasteners so
20 that it would stay in there?
21 A They just slide in and the screw goes into the
22 plastic fastener and hooks it into the thing. It expands.
23 Q You say that would hold better than just a plain
24 screw in the board?
25 A After the screw has worked out, yes.

4 consultation with wood blocks at a skating rink?

5 A No, sir.

6 Q Now, in order to have the proper transition, you

7 would have to take wood blocks that thinned out on one end, would

8 you not?

9 A This is correct.

10 Q And if you did that, would you not be reducing

11 the strength that you have as opposed to the tempered steel plate?

12 A The thin piece of wood would have less strength

13 than the steel, yes.

14 Q And with skaters going across that transition

15 plate, going on and off the skating surface, wouldn't that

16 tapered edge be subject to splinters and chipping?

17 A Yes. You would have to do more than just put

18 the thin edge there. You would probably have to protect it in

19 some fashion with an aluminum strip or making it a little bit --

20 not taking it down to a sharp knife edge, but leaving the eighth

21 of an inch and three-sixteenths of an inch just like the steel

22 plate.

1 Q -- the wood block could pose problems,
2 maintenance problems, could it not?
3 A Yes. I think it could pose problems. That is
4 the reason why I stuck it last.
5 Q It was not the first on your list?
6 A No, sir. The steel plate, I think, would be
7 first on my list.

****

8 This transition plate, did you examine it closely
9 at the Roll "R" Way Rink to determine that one end of that plate
10 was not fastened?
11 A That is correct. It slid on the carpet.
12 Q Do you know why it is not fastened?
13 A Yes, sir, because wood tends to expand with
14 moisture and with temperature.
15 Q The wood block that you have shown there in the
16 diagram is fastened in that very area that we are talking about.
17 A Yes, sir, but it is not fastened to the rink
18 floor. It is there as a gap between the rink floor and the block.
19 Q Wouldn't that cause a problem?
20 A I don't believe so. Regular roller skate wheels
21 would roll over an eighth or a quarter of an inch gap. It would
22 be a noticeable condition, but without a problem.
23 Q You say an eighth of an inch gap or a quarter of
24 an inch gap wouldn't cause any problem?
25 A I have not skated that much. So my guess is

that it would not cause much of a problem.

Q You have never had any problem in installing wood block to a wooden skating floor?

A No, sir.

****

Q Have you ever skated on a sidewalk, Professor?

A Yes, sir.

Q What is the gap in a sidewalk in the concrete?

A It has got to be at least a quarter of an inch.

Q Did you have any problem?

A No, sir.

****

9 Q State your full name, sir.

10 A Alfred H. Hughes.





9-10

2 Q What kind of a tennis player -- first of all,
3 what type of a player was he? There are many different kinds
4 of tennis players. How would you judge him?
5 A Well, Mike is a scrambler. He would go after
6 things, and that is the way he taught the boys.
7 Q What would that involve in physical movements?
8 That sounds like a simple question, but what does it mean to be
9 a tennis player?
10 A Well, a tennis player has to move laterally and
11 forward and backwards, and to keep up with the game you have got
12 to move and you have got to move fast.

*****

18 Q Now, when you watched -- first of all, before
19 April of '74, you did have a chance, apparently, to observe Mike
20 Smith and his activities?
21 A Oh, yes.
22 Q Did you ever see him as a football coach, for
23 example?
24 A I certainly have.
25 Q How was he with his body, his physical ability?

1 Did you notice any difficulty at all, Mr. Hughes?

2 A Well, not until he had this accident.

3 Q Before that?

4 A Before that he was never still.

5 Q How about since this accident?

6 A Well, when I knew that that had happened, in

7 fact, I used to drive down to Hampton High School. As I say,

8 we are close friends. I would drive down and I know that when

9 he was walking around, I noticed on the ball field, because I

10 did see quite a few home high school games, that he wasn't

11 moving like he used to move.

12 Q State your name, sir.

13 A My name is Frank Johnson.

16 Q Where are you employed, sir?

17 A I am employed by the School Board for the City

18 of Hampton and I am currently at Hampton High School.

19 Q And what is your position at Hampton High School?

20 A I am a teacher-coach.

23 Q And what sports do you coach?

24 A Football and basketball.

25 Q Are you an assistant football coach?

2-13
6-20
3-25

1 A Yes, I am.

2 Q With Coach Smith?

3 A Yes, I am.

4 Q Do you know Coach Smith?

5 A Very well.

6 Q How long have you known him?

7 A About seven years.

21 Q How was it that Coach Smith was one of the best

22 coaches you saw? Why would you evaluate him that way?

23 A Well, at Hampton High School we have a philosophy -

24 show, then tell, demonstrate, demonstrate, teach, re-teach, teach,

25 re-teach. That is the way we do our program.

1 Q Is that Coach Smith's philosophy?

2 A That is the entire coaching staff. He happens

3 to be at the head and that is what he believes in.

4 Q Have you observed him instructing the players in

5 any particular exercises or drills?

6 A Yes. Coach Smith is -- when I was -- I would

7 consider a specialist, and an expert in lines and defensive

8 linebackers.

9 Q What kind of activities are involved for a coach

10 to demonstrate or, say, influence blocking by a lineman?

11 A Okay. It involves a crouched position, usually

12 a three-point stance, two-point stance, or four-point stance, and

13 at Hampton we use only the four-point stance. That is where the

14 players are on both hands and both feet.

15 Q And as a coach, he would have to get down on the

16 ground and then go through the procedure of a block?

17 A Yes, he would.

18 Q What does the coach have to do to demonstrate a

19 linebacker's lateral pursuit?

20 A Okay. Lateral pursuit is usually done from a

21 standing-up position, two-point stance, and you have to move

22 laterally by shifting your feet from side to side very rapidly

23 in order to intercept a play or to stop a play going to what we

24 call the flats of these for each play.

25 Q Would Coach Smith demonstrate this activity?

1 A Yes, he would.

2 Q Are you speaking of before or after his accident?

3 A I am speaking of before.

4 Q Has there been a change in his activities as

5 coach since his accident?

6 A Yes. Coach Smith -- it is kind of hard for me

7 to call him Coach Smith because I call him Mike all the time. We

8 had to get another coach we have employed. We have on our staff

9 another coach that handles the linebackers' assignments because

10 he doesn't have this mobility any more. He can't get out there.

11 Q Can he get down in a four-point stance with an

12 offensive lineman?

13 A Not comfortably.

14 Q Has he done it and been uncomfortable?

15 A He tried.

16 Q Has he worked with your specialty teams at all?

17 A Yes, sir. He handles the punting and he had to

18 give that up. So Coach Tyson and I, we have been working on the

19 kicking game for the past year.

20 Q His punting activities, that puts stress on a

21 knee?

22 A It definitely does. Say, when you punt the ball,

23 your leg is used like a wheel, and the knee is the hinge joint

24 because there is a lot of stress and strain there.

25 Q Subsequent to his accident, have you observed

1 Coach Smith undertaking any activities to improve his leg?

2 A Yes. I came down to Dr. Kretz. Dr. Kretz put

3 him on a rehabilitation program. I have personally worked with

4 him to try to cause quick recovery in his accident. He has a

5 program that he does at home, and he has a program that I have

6 helped him run through at school.

7 Q You testified that you helped him. Are you

*****

*****

10 Q Just one final question, Coach. While you were
11 working with Coach Smith in his physical therapy program, did he
12 ever exhibit any pain or discomfort?
13 A Well, you know, I have been coaching a long time.
14 The only way to register pain is to move the muscles and watch
15 the face.
16 Q Did you watch his face?
17 A Sometimes that man -- I can recall two times I
18 had to make him go sit down when we were getting ready for the
19 championship team, and his legs just went. So he fussed, but I
20 finally got him to go over and sit down, but he is a very
21 energetic person. He gives you everything he's got, and I know
22 that two times that I have seen him physically just his legs just
23 went limp.

21 Q State your full name, sir.

22 A Vernon Edwin Duckworth, Jr.

25 Q Mr. Duckworth, where are you employed?

21-25

1 A For the Hampton School System at Hampton High
2 School as assistant principal.
3 Q All right, sir. How long have you been employed
4 in the Hampton High School system?
5 A I have been in the Hampton School System since
6 1961, the fall of 1961.
7 Q Have you, in this position or otherwise, come
8 to know Mike Smith, Coach Smith?
9 A Yes, I have. 1962, that is when I believe he
10 came to work there. I was teaching at that time.
11 Q You were a teacher at that time?
12 A Yes, sir.
13 Q Are you friends?
14 A Yes.

19 Q All right, sir. Now, how frequently do you come
20 in contact with Coach Smith over these years that you have seen
21 him since the early sixties?
22 A Well, I have seen him almost every day with the
23 exception of the time that I was away at graduate school, and
24 when I was Associate Study Supervisor, and I would see him when
25 I would come to visit Hampton at that time, but during this time

9-25

1 of assistant principal, I see him every day.

2 Q Have you observed any change in him since this

3 year of April of 1974?

4 A Yes. He has a limp and I am pretty sure he is

5 in a lot of pain.

14 Q State your name, sir.

15 A Robert Styer.

16 Q Mr. Styer, how are you employed?

17 A I am self-employed.

1 Q How long have you been in that business?

2 A Since about 1949.

3 Q What is your background in the skating industry?

4 A For about the first fifteen years I was a pro,

5 taught roller skating, and since 1963 I have had my own rinks.

6 Q In your capacity either as a teacher or in the

7 business of running the roller skating business, have you had

8 experience in installing floors, skating surfaces in roller

9 skating rinks?

10 A Yes, sir, quite a few.

11 Q Are you in fact familiar with the defendant's

12 operation on Main Street?

13 A Yes, sir, I am.

14 Q Did you participate in the installation of that

15 floor?

16 A Right. I helped lay that floor.

17 Q Where have you been consulted, what areas have

18 you been consulted in in installing roller skating floors?

19 A Well, in our own rinks we have a floor identical

20 in Petersburg, Virginia. We have floors identical in the

21 Washington area, and also the Pennsylvania area.

22 Q So you have worked with several rinks?

23 A Right.



1-23

5 Q On this diagram there are several things that
6 have been marked as exits. Now, in a roller skating rink, when
7 you leave the skating floor and go to what is known as the off-
8 skate area, what is the transition method to get from one level
9 to the other? What is used in the industry?
10 A Usually a metal plate.
11 Q Why would you use a metal plate?
12 A Well, when the wooden floor is laid, regardless
13 of whether it is a wall or pipe or what have you around, you have
14 an inch, an inch to an inch and a half gap between the skating
15 area and the other area for expansion and contraction.
16 Q Now, you say a gap. Let me show you a picture,
17 Mr. Styer. This is Plaintiff's Exhibit No. 7. This picture
18 shows --
19 Come on down here in front of the jury, if you
20 would.
21 A (Witness complies with request.)
22 Q This picture shows -- this is the wall you are
23 talking about?
24 A Right. That is the wall around the edge.
25 Q What is this board?

1 A Kick board, prevents the skate from hitting the
2 block.
3 Q And you refer to a one-inch gap. Where would
4 that gap be?
5 A Well, that would be under this board here.
6 Q Under the kick board?
7 A Right, for expansion and contraction.
8 Q Why would you have to leave the gap?
9 A Expansion and contraction. Any wood you use,
10 regardless of what kind of wood, it expands, and therefore you
11 must leave an inch to an inch and a half gap. If you use a
12 maple, I would say an inch and a half. Particle board, I would
13 say an inch.
14 Q Could a metal plate be put in if this were a
15 typical situation?
16 A Your metal plate will run pretty flush with your
17 board here screwed onto this, which is the skating floor, and
18 left free on the off-skating floor, and, again, it is free
19 because of the movement.
20 Q Have a seat back up there.
21 A (Witness complies with request.)
22 Q You say that other end is free?
23 A The other end would have to be free or it
24 wouldn't survive its purpose because it has to expand and
25 contract.

1 Q Now, is this plate which you have described,
2 what is the construction of this plate?
3 A Well, usually we use an eighth of an inch metal,
4 and we put a slight bend in it. The floor can run anything from
5 an inch and a quarter to two inches depending on what you are
6 using, and in this case there is about an inch and a half, and
7 we put a bend in it so that you will come off easy instead of
8 a harsh drop.
9 Q What would happen if you had a drop coming from
10 the skating surface to the off-skating area?
11 A Well, a step is not a good thing unless it would
12 be a big step. In other words, we are talking about maybe an
13 inch and a half, and that would be a hazard not to have a ramp.
14 Q All right, sir. Now, Mr. Styer, there has been
15 testimony in this case that you could possibly use wooden ramps.
16 Have you had experience in trying to use wooden ramps?
17 A Yes, sir. We have used oak, which is about the
18 hardest wood to use. Even that will splinter. So once it
19 splinters, of course, then you got a problem again. You have
20 maybe as high as an inch drop.
21 Q In your opinion, sir, as an expert in the
22 skating field, would you or would you not employ wooden ramps
23 to go from the skating surface to the off-skate area?
24 A We have tried it in two places and eliminated
25 it in both places. We use metal every place.

1 Q Now, sir, suppose that I will ask you a
2 hypothetical question. Suppose that you have a metal plate made
3 of tempered steel approximately nine feet in length, ten inches
4 wide, and it is an eighth of an inch thick, and that it was
5 installed in an exitway from a skating surface constructed of
6 particle board, and that the difference in height between the
7 off-skate area and the skating surface was approximately one
8 inch, and that the screws securing this plate to the floor had
9 been removed, that is, all of the screws, and that the skaters
10 were using this exit. In your opinion would the plate raise up
11 so as to become a hazard to a skater?
12 MR. DAUGHERTY: Objection, Your Honor, on
13 several grounds. First of all, the man has testified
14 he was a skater. He also testified he has installed
15 floors. The man may be a fine carpenter and he may have
16 installed ten thousand floors, but that doesn't make him
17 qualified to design them. So I challenge his
18 qualifications as an expert to answer such a question.
19 Number two, this is the first time I have heard
20 the introduction of the words "tempered steel". In some
21 other questions all we have talked about is the fact.
22 Secondly, I would want to know something about
23 his expertise so far as what would happen with steel,
24 which was the direct question asked him, and for these
25 reasons I object.

THE COURT: Well, in your hypothetical question, I noticed you say a plate in there which has no screws. We don't have that from a factual standpoint from the evidence, do we?

MR. HANCOCK: Your Honor, I am driving at the point of what would happen if the plate did not have any screws in it at all. There has been testimony that the plate was secured down, but I think I am entitled to show what the plate would do if all the screws had been taken out of the plate.

MR. DAUGHERTY: I would like to know where his expertise is to testify.

THE COURT: Before we let him answer that question, let's see if you can qualify him as an expert.

BY MR. HANCOCK:

Q Mr. Styer, you previously answered my questions that you have been in the skating business since 1950, is that correct?

A Yes.

Q Now, I will ask you, have you been employed as a consultant to install skating floors and ramps in roller skating rinks with this particular floor, that type of floor we are talking about now, particle board floor?

A Yes, sir. The type that is used in this rink,

1 plus several other rinks, is actually my design.

2 Q Your design?

3 A My design.

4 Q All right. How long have you been designing

5 roller skating floors?

6 A This was the first one that we put down.

7 Q How many years have you been designing floors?

8 A We have --

9 MR. DAUGHERTY: Your Honor, this "we" is a

10 rather collective word that I can't quite attach. We

11 are talking about this man's qualifications and what is

12 his education. I want to know his experience in the

13 actual field, where he got his training. I can design

14 a floor and I am not too sure it would be too good, but --

15 MR. HANCOCK: All right.

16

17 BY MR. HANCOCK:

18 Q Mr. Styer, would you tell us what training you

19 have had in the field and in the design of roller skating floors?

20 A Well, being in skating all my life, naturally we

21 are always looking for something better. Everybody has used a

22 maple floor for years. It is very expensive. What we were

23 looking for was something, you know, cheaper to use to put into

24 rinks. A particle board floor has been used in the midwest in a

25 method of gluing down, using a type of glue and gluing it to the

1 floor. I didn't particularly like that type of method. I felt
2 that my entire business relied on glue. So we, let's say, played
3 around with different theories of glue, put it down, and we felt
4 that by cutting our own grooves in the board and putting a spline
5 in it that this way we had one solid piece of board that covered
6 the entire floor.
7 Q You say "we", Mr. Styer. Did you do this?
8 A Well, I did this primarily myself. It was my
9 own design, right.
10 Q Your own design?
11 A A man by the name of George Williams has laid
12 quite a few of them with me. When I use the word "we", I would
13 be speaking of him also. The design was mine.
14 MR. DAUGHERTY: I have had no objection to the
15 fact that there are some Temblin sheets that are splined
16 together on the floor. We are talking about transition.
17 We are talking about steel with or without screws. We
18 are talking about knowledge of steel and how it works.
19 We are talking about vibration forces. We are talking
20 about the flexion forces and that is what the question
21 is. I am not talking about the fact that he got the
22 Temblin. I don't even challenge the Temblin on the
23 floor.
24 MR. HANCOCK: I haven't asked him anything
25 about his knowledge of steel. I have just asked him

about the fact that he had a steel plate and certain qualifications about what it would do, and he has objected to that, and I think based on the evidence I am entitled to go forward.

THE COURT: We will let him go ahead in reference to the plate.

MR. DAUGHERTY: Note my objection, Your Honor.

BY MR. HANCOCK:

Q Let me give you the question again, Mr. Styer.

Suppose you have a metal plate made of tempered steel approximately nine feet by ten inches by one eighth of an inch thickness that was installed in an exitway from a skating surface constructed of particle board, that the difference in height between the off-skate area and the skating surface was approximately one inch, and that the screws securing the plate to the floor had been removed, and that skaters were using that exit. In your opinion as an expert, would the plate raise up so as to become a hazard to skaters?

A In my opinion, without any screws, it wouldn't move.

Q What do you base that opinion on?

A Well, if you look at your picture again there, you have an eight-inch block wall with the metal plate laying right between the block wall, so it couldn't shift from side to

1 side. So that moves the load forward and backwards. The plate
2 is beveled so it lays on the floor and also lays on the other
3 part of the floor so that even if it were fastened to the wooden
4 part, it has to move, but with that bevel it would definitely
5 move either way.

*****

9 CROSS-EXAMINATION
10
11 BY MR. DAUGHERTY:

*

14 Q Mr. Styer, I would like to explore just a little
15 bit with you your background.
16 You told us, and I am not trying to challenge
17 your education, but certainly as one of the qualifications of an
18 expert, how old are you?
19 A I am fifty-one.
20 Q Well, I am of such an age. Where did you go to
21 school?
22 A Lancaster, Pennsylvania.
23 Q What is your education?
24 A High school.
25 Q What did you study while in high school?

A General course.

Q No engineering?

A No.

Q Now, did this collective "we" that you have used, and I am going to use a collective "you", or let me say "you all", consult any engineers or designers, men with training and college educations in the design criteria that you put in the roller rinks there and in these other cities where you operated, or did you do this yourself?

A I did it myself.

Q Now, when you say you were a pro in the business, you were a skater, teaching, running roller rinks?

A No. I taught.

Q You taught?

A I taught for about the first fifteen years from '49 to '63.

Q In other words, you have quite a bit of ability as a skater, then?

A Right.

22 Q All right, sir. Now, apparently you don't own

23 this particular business we are talking about?

24 A No.

25 Q Do you have a maintenance check in the ones that

1 you own and run?

2 A Oh, definitely.

3 Q What is the purpose of the maintenance? Is it

4 a written check?

5 A My manager -- we have a manager in each rink,

6 and we meet in the Richmond area. We meet every Monday morning.

7 That includes five rinks.

8 Q Do you have a written report of maintenance

9 problems?

10 A Yes, sir.

11 Q Now, when you have a problem, anything happens,

12 do you want it noted?

13 A Definitely.

14 Q And the reason you want it noted, and in writing,

15 is so that if something keeps occurring, you can correct it, don't

16 you?

17 A I would say so, yes.

18 Q Now, if you had a manager and you had a kind of

19 corporation that we have out there with this steel plate and the

20 Temblin floor, and at the lower level the carpet, if the screws

21 continuously kept coming out and they wouldn't hold, and you had

22 to put bigger screws in it, wouldn't you want that noted in your

23 maintenance report?

24 A I would say yes.

25 Q And if you found that that existed, that these

1 screws kept coming out and they kept having to be replaced, you
2 would not then seek another way of securing that plate down or
3 something to stop that condition?
4 A Yes, sir.
5 Q It is true as an expert skater that you get a
6 quarter inch, but if you don't see too well, you can trip and
7 fall, can't you?
8 A No. We don't use a quarter inch plate.
9 Q No, but if you did stop sometime going up a
10 quarter of an inch, you could trip and fall?
11 A Possibly.
12 Q Even you?
13 A Even me.
14 Q And you are a good one?
15 A I would say so.

****

***

18 Q If you had a quarter inch screw and it raised
19 up so a quarter of an inch stuck above the surface, that could
20 present a hazard, couldn't it?
21 A Yes, I would say.
22 Q If you had one that kept raising up, would you
23 want that kind of system staying there?
24 A No. I would definitely put it down.
25 Q ~~Have you been up there and looked at the roller~~

rink?

A I haven't been in that rink for four or five years.

Q You came down here and testified as an expert, and the last time you saw it was four or five years ago?

A Yes, sir.

Q When you were out there four or five years ago, I am showing you a black and white picture and a picture with no color to show the edge of the strip from the skating area beside you. Do you see those photographs?

A Yes, sir.

Q Do you see that the edge is raised?

A I see that the edge is raised in this corner, but I also see on this picture here there is something under it.

Q What do you think that is under it?

A Well, that I can't say, but something is pushing it up over here.

Q Well, if you saw that kind of a transition plate or whatever in your skating rink with something shoved up underneath that thing like that, would you let it stay there like that?

A No. What is under it should be removed.

Q What would you call it when that transition plate is raised and that stuff is under it?

A Well, that would be a hazard.

1 Q State your name, sir.

2 A Louis Quinton, Jr.

13 Q Mr. Quinton, how are you employed?

14 A I am the president of Roll "R" Way Rinks,

15 Incorporated, and Quinton Corporation.

16 Q And in being employed that way, sir, what is the

17 nature of your business?

18 A We operate roller skating rinks in Pennsylvania

19 and Virginia, and the Quinton Corporation is a consulting firm,

20 and also we install particle board floor systems and sound systems

21 within the rinks.

22 Q When you say "we install particle board floors",

23 does that mean you?

24 A That means me. I speak in the "I" as a non-

25 important word as I was taught.

1 Q How many years have you been in the roller
2 skating business?
3 A I started teaching roller skating in 1962 when
4 I was in New York with the Military, and took over the management
5 of the roller skating center for the Army that was run by the
6 American Youth Activities in Frankfurt, Germany, and upon my
7 return to the United States, I went to work as a manager in
8 roller skating rinks, and in 1969 I went into business for myself.
9 Q All right, sir. When you went into business for
10 yourself, what did you take on?
11 A I started with a skating rink in York,
12 Pennsylvania, and we now have rinks in Pennsylvania and Virginia.
13 Q Now, you have testified earlier that you had
14 done some consulting work.
15 A That's right.
16 Q Who have you done consulting work for and in
17 what nature are you a consultant?
18 A Well, I started the consultant work about two
19 years ago, and we do a wide range of consulting in respect to
20 market surveys, the establishment of new skating centers for
21 other people along with ourselves, or in addition to ourselves.
22 We also do consulting work in the form of operations for the
23 skating rinks and bookkeeping methods, all areas of operations
24 of roller skating.
25 Q What about the installing of floors?

A This is a separate part of the Quinton part, the accolade division, and we physically install roller skating floors made from particle board, only from particle board.

Q How many floors in the last two years since you have been a consultant have you participated in in an installing or consulting manner?

A Oh, I would say approximately a dozen.

Q Now, when was the operation here in Newport News started, the one on Main Street?

A That operation opened in May of 1971.

Q Are you familiar with the installing of that floor and that operation?

A Yes, I am. We worked on that floor.

Q Would you tell the jury how you are familiar with that operation?

A Well, that, I think, has been previously brought out. That was an old building here in Newport News that had been used for many, many purposes, factories, armories, the Postal Service, I think, was in it for a while. It was owned by Mr. Phillips here in Newport News, and I approached him many years ago on the idea of establishing a roller rink there.

Q When you took over the premises, sir, what did you do?

A We just about completely rebuilt the building itself. We tore the whole structure out. The only thing left

to that building, really, is the exterior walls and the heating plant.

Q Would you tell the jury whether or not you were present for the installing of the floor?

A Yes, I was physically present.

Q There has been a lot of testimony about a metal plate. Do you have that plate here with you?

A Yes, we do.

MR. HANCOCK: Your Honor, can we have Mr. Styer help me go out and get this plate?

THE COURT: Yes.

BY MR. HANCOCK:

Q Now, Mr. Quinton, you have seen me bring in a plate. Can you identify this plate, sir?

A Yes. That is the plate that covers the exit in question.

Q The exit that is the subject matter of this litigation?

A That is true.

Q Can you tell the jury whether or not you were present when this plate was originally installed in your building?

A That's right, I was. I bought the plate from a local steel man here. I can't remember his name offhand. He is up on Warwick Boulevard.

Q What kind of steel is it constructed of?

A It is tempered steel.

Q Would you tell us whether or not that is the same plate that was installed when you opened the rink?

A Absolutely.

Q Mr. Quinton, could you come down here, sir?

A (Witness complies with request.)

Q There has been some testimony about some additional holes in this plate. First of all, can you identify which end of the plate is which?

A This is the end in question. This is the west end of the plate.

Q All right. The one facing the jury?

A True. That is the east end of the plate.

Q Thank you. Now, there appears to be some screw holes in the west end of the plate. Can you identify those and tell us what they are?

A Yes, sir. These are the original holes and holes that were drilled in the interim, and we have a -- there was originally one hole there. We then put the additional holes in it at the time we needed them to reduce them when they were tightened.

17 Q So on an average since this has happened and
18 shortly before, Mr. Quinton, how often would you say you had
19 been in the Main Street roller skating rink?
20 A Numerous times.
21 Q Have you in fact inspected this plate several
22 times?
23 A Yes, after we leased the facility. In fact,
24 we have a general inspection scheduled this week and have a
25 gentleman with us today throughout this weekend.

7-25

1 Q All right, sir. Now, going back to our original
2 question: How frequently have you been troubled in the Main
3 Street Roll "R" Way Rink with loose screws in the plate?
4 A I think the plate shows that itself. We have
5 had in this particular plate to drill additional holes, one hole
6 here and one hole there and another hole there on this one end,
7 and that is the extent of any trouble over a period of five years
8 we have had with that on any rink.
9 Q Now, I want to see if we can demonstrate it to
10 the jury here, the flexibility of this plate which has been
11 testified to. According to the pictures which have been
12 introduced, this is the end, you say, nearest the Jury Box, that
13 is in question?
14 A Right.
15 Q Now, I am going to stand on this plate
16 approximately right here, which is in accordance with what the
17 pictures show that have been shown to the jury. I want you to
18 lift that end of the plate up and see what happens.

*****

23 Q Now, I am going to stand midway, and I want you
24 to do the same thing, Mr. Quinton.
25 A (Witness complies with request.)



-18
3-25

6 Q Again.

7 A (Witness complies with request.)

8 Q All right, sir. Now, if you will, go back up

9 to the witness stand.

10 A (Witness complies with request.)

11 Q You have told us how long that you have been in

12 the field of roller skating, since 1962, I believe.

13 A That is correct.

14 Q Would you tell us of your educational background?

15 A Well, I have a high school education. I took

16 some courses at the University of Maryland when I was in the

17 Service in Business Administration. That is the extent of my

18 formal education.





6-18
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7 Q Can you tell the jury approximately how much
8 difference in height in the Main Street roller skating rink there
9 is between the skating surface and the off-skate surface?
10 A The actual difference in the wood is an inch and
11 an eighth. I have heard numerous dimensions here, but the actual
12 wood at that particular facility was one and one-eighth inch, and
13 beneath that lumber is a tar base on concrete and fifteen-pound
14 felt paper, which is just a normal tar paper that you use on
15 roofs, and it is a waterproofing measurement under the particle
16 board systems. That tar paper is very, very thin. I would think
17 that it couldn't raise the floor more than eight-sixteenths or an
18 eighth of an inch.
19 Q All right, sir. Now, you have heard testimony
20 here today about some wooden blocks to be used as ramps as opposed
21 to this metal plate.
22 Could you tell us whether or not you have had
23 any experience in the field in using wooden ramps?
24 A We have not personally installed the wooden
25 ramp at any time, but we do know of wooden ramps where they have

7-25

1 been used and were not a successful type of installation.

2 Q Do you have a personal knowledge of that

3 installation, Mr. Quinton?

4 A Yes, I do. It is in Pasadena, Maryland.

5 Q Could you give us an approximate, or tell the

6 jury, if you know, what type of wooden ramp was installed and how

7 long it was installed, if you know?

8 A The type of wood I am not familiar with, but I

9 know that the ramp only lasted for between thirty and sixty days,

10 and it had to be covered with metal.

11 Q All right, sir. Now, there has been some

12 testimony, I believe, by Professor Murray when he suggested as

13 an alternate to the method that is used in your roller skating

14 rink of countersinking this plate into the particle board that

15 we have been talking about.

16 Now, again based on your experience in the

17 field, what you have done, could you tell us whether or not that

18 would work, that method, if you countersank this plate into the

19 surface of the particle board?

20 A The matter of whether it would work or not is

21 one thing. I would take exception to the amount of strength you

22 would lose in this particular board by doing so. I believe he

23 noted there would be a twelve percent loss of strength. I would

24 say, after working with this board for a number of years, that the

25 loss in strength in that board created by that countersinking was

closer to forty to fifty percent. The board is a smooth surface board that is heat-pressed. It is composed of particle board put down with glues and resin binders, and the real strength of the board is in the top and bottom, on its face and its underside, and once you break through that face, you decrease the strength of the board considerably.

Q All right, sir. Looking at Plaintiff's Exhibit No. 9, there was another method which the professor testified to of using a machine bolt and cutting out the bottom of the particle board. What would that do to the strength of the particle board?

A Well, there again, as he has this drawing here, this would have to decrease the strength considerably at that point.

Q Have you ever used that method in any of your rinks or those that you have been consulted on?

A No.

Q What method do you use, sir?

A We use the metal plate, as you see it there, attached with the screws.

Q Mr. Quinton, there was some previous testimony here about having the off-skate area and the skating surface at the same level, in other words, running the particle board floor all the way across the whole rink.

Could you tell us whether or not this is a proper method of installing, and if it isn't, why you wouldn't

use that method?

MR. DAUGHERTY: Again, I hate to go into this, but this gentleman has a high school education, has no expertise in engineering. They lay flooring and they do business consulting, and I really feel that he is not qualified to discuss technical engineering phases; and I object.

MR. HANCOCK: Your Honor, I think that he has testified as to his background. He has testified as to his experience in the field, and he has further testified that he has been a consultant in the installation of the very type of floor that is the subject matter of this litigation.

For that reason, I feel he is qualified to answer the question.

THE COURT: I will let him answer. Let the jury consider whatever they will.

BY MR. HANCOCK:

Q Can you answer the question?

A Could you repeat the question?

Q Yes, sir. I said there has been testimony in this case, Mr. Quinton, that it is possible to install a floor, a skating floor, and run it all the way across the entire building and not have a difference in height in your skating



A

1 surface and your off-skating surface, it would be the same, and
2 I want to know, sir, based on your experience whether or not that
3 is the proper installation, and, if it isn't, why wouldn't you
4 use it?
5 A Let me preface that by saying that for many
6 years when hardwood was being used, hardwood surfaces were put
7 into the roller rinks throughout the complete floor area of the
8 building. We found that one of our major accident prone areas
9 within a rink was that area on the off-skate where the children
10 would be able to move back and forth very readily and attain
11 speeds that they would use on the skating floor itself. These
12 areas are not patrolled and they are not controlled with that
13 speed, and we would have numerous accidents in that area because
14 they would be knocking people down.
15 Children are generally pretty rowdy, and ninety
16 percent of our business is children. We stopped laying floors
17 in the off-skate areas, I would say, probably ten years ago, and
18 basically because of that, and we went into carpets. They were
19 at one time using rubber tile, which was a very resilient tile,
20 and therefore slowed down that traffic, but we found that the
21 tile over a period of time would stretch, and therefore would
22 cause problems and especially upheaval of the tile itself. So
23 we did away with the tile and went to the carpet. We found that
24 carpet was a very useful material to be used on that area to slow
25 the traffic down. The only thing we find wrong with the carpet

is that this doesn't last long, and it is a little more expensive to use, but it is much safer.

Q There has been some testimony that you could put a carpet on top of particle board. Have you had any experience in that area?

A Oh, it could be done very easily. It is the same as you could put tile on top of the particle board, but I can see where it would serve no useful purpose, and I am speaking of from my experience in the roller skating business.

Being around roller skating rinks for a number of years, that is the only experience I can bring here. It is not book-learning, but it is experience, and we have found through the years what is safe and what is not safe in the rink. The carpet has served that purpose. Putting it over particle board would serve no purpose whatsoever.

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15 Q Now, what is the strength of the Temblin you
16 have been talking about if you were to strip off a little piece
17 off the top?
18 A Three-thirty-seconds of an inch, and whatever
19 the thickness of this piece of metal is.
20 Q You would describe in your opinion fifty percent
21 of the piece of composition board and an inch and a what? What
22 are you saying the thickness is?
23 A An eighth of an inch.
24 Q If you were to cut an eighth of an inch off, did
25 you realize that it would destroy fifty percent of the holding

1 strength of the screws?

2 A No, it would not destroy fifty percent of the

3 holding strength of the screws.

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14 Q Okay. Let's get to that point, now. First of
15 all, what is the type of screw that you installed?
16 A We installed machine screws and wood screws.
17 Q Are you telling me that you installed a machine
18 screw in this board?
19 A Yes.
20 Q Do you know what a machine screw is?
21 A Yes. It is a fully-threaded screw. If that is
22 the proper nomenclature, I am not sure.
23 Q Let's see if we know what we are talking about.
24 Do you know what a wood screw is?
25 A Yes.

14-25

1 Q What kind was put in here?

2 A Just a general wood screw.

3 Q Name it. If you went to the store and ordered

4 it, what do you ask for?

5 A A wood screw.

6 Q Would you be asking for a buttonhead, a round

7 head, a flat head, a countersink, overall rail?

8 A It is a flat head countersink screw. I wouldn't

9 ask for it. I would just pick it up, sir.

10 Q What size?

11 A In about an inch, inch and a quarter.

12 Q You are going to use --

13 A Pardon me, three-quarters of an inch. It is a

14 three-quarters of an inch screw.

15 Q Okay. Would you object if Mr. Jones says he

16 has been putting in one-inch screws?

17 A Not necessarily, no.

18 Q What is the size? The length you have told me.

19 What size do you order? Now, sir, you are the consultant who is

20 handling it, putting these metal pieces on wood floors. What is

21 the size of the screw you order?

22 A Sir, we go and buy a screw for the size hole we

23 drill in that plate right there.

24 Q Yes, sir.

25 A I am not familiar with all the screw sizes.

Q What is the size that is drilled in here? You inspected this. You helped bring it in and you helped remove it, didn't you?

A Right. You have about a three-eighths hole there.

Q In a three-eighths hole, what size wood screw do you put in? Do you know how you designate the size of wood screws?

A I am not familiar.

Q Do you know what a number eight, or number ten, or twelve or fourteen means?

A No. The only place I use wood screws is in those plates, sir. I very seldom use them anywhere else.

Q When you had to go to the store and you pick up those wood screws, does it have a part of the shank which has absolutely no threads on it?

A The wood screws do, yeah.

Q What about the machine screws?

A They have a full thread on them.

Q Now then, I am going to sketch something, but it is going to be grossly out of size, if you will allow me just a second.

What I have drawn, which I am showing counsel now, and I think you got a glimpse of, is somewhat the idea of a cross-section or a cut-through of a wood screw, is it not?

A That is correct.

Q The upper portion where I have dotted would be the recess for the slot, then you have the countersink section, and the part that would be unthreaded, and these hash marks would be the threads.

A Right.

Q All right. Now, would the machine screws be fully threaded or would they have a shank that was unthreaded?

A No. They are fully threaded.

Q Would the machine screw look like that, having no point on the end?

A No. The one with the point had a fully threaded screw.

Q Are you talking about a metal tapping screw?

A No.

Q You are talking about what you call a --

A It is possibly a wood screw, sir. I am not up on nomenclature of screws. It is a fully threaded screw. I have always referred to it as a machine screw. It has a point on the end.

Q You think it is a machine screw?

A Well, I am not -- I wouldn't know that.

Q Who designated how many holes are to be drilled in that piece of metal?

A We didn't designate it, sir. We just drilled them and put it down, secured it to the board.

Q Who put it down?

A We did when we installed the floor.

Q "We" is the most difficult word for a trial lawyer to examine. Name the man. Did you do it?

A Oh, I probably did one or two of those plates, yes, or helped to do them.

Q Did you take out a ruler and say they shall be ever so many inches apart?

A No.

Q You just saw and drilled them where you thought was a good place?

A We secured the plate to the board.

Q Were any dimensions, any directions given to whoever did it?

A No.

Q In other words, every one of those plates over there would be wherever the guy happened to take the drill and the countersinks and put them -- right?

A No. They just drilled them and put them in.

Q Did you consult an engineer on how to do it or how many were necessary?

A I didn't think that was necessary.

Q I know you didn't think so, sir, but I asked you did you?

A No, we did not.

1 Q And that is because you didn't think it was
2 necessary?
3 A Absolutely.
4 Q All right, sir, and is that because of your
5 expertise?
6 A That is true.

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22 Q Now, you apparently have someone in your
23 organization set up the idea of keeping records for maintenance.
24 Who did this, by the way?
25 A I did.

1 Q What was that purpose?

2 A Generally to insure the safety of our patrons.

3 We deal with kids. Again, I wanted to be certain that our

4 establishments are kept in a safe manner.

5 Q And, therefore, these records, you want them

6 to show anything that is happening to anything that needs

7 repair, isn't that correct?

8 A Of major consequence.

9 Q Now, do you consider the fact that screws are

10 continually working their way out of the metal plate of consequence

11 A I don't believe it has been established that

12 they continually work out, sir. They do not. That is a small

13 consequence, those plates. They do not work out on any regular

14 intervals that they have to be reported on, because if there is

15 a screw loose, we expect it to be tightened up by the manager.

16 Q If they come completely out, would you want

17 that in your report?

18 A We would want those replaced.

19 Q I asked you, would you want it recorded?

20 A No. I would expect it to be replaced. When

21 I came in from my inspection, I would be very adament with my

22 manager if these screws were out and weren't replaced.

23 Q Yes, but I am asking you, so we understand

24 each other, if they work their way out and if they come loose

25 or if they come completely out and have to be replaced with

1 larger screws, you don't want to know anything about that?

2 A Not necessarily, no. I am interested in items

3 of major consequence in the building. If it is something that

4 needs a judgment on the financial end of the thing, if the

5 plastic is coming off of the floor or something --

6 Q Primarily major repair by resurfacing the

7 floor?

8 A Right.

9 Q You expect somebody else to review those

10 records and keep up with that? That isn't your job at the

11 present time?

12 A It absolutely is. I am a very, very working

13 president. You can throw the word away. It doesn't mean much.

14 Q I understand that, but you are not interested

15 in screws coming loose?

16 A Well, I am very interested.

17 Q How are you going to know it unless you have

18 your records to say, "This screw had to be tightened on Monday,

19 it had to be tightened again on Wednesday, it had to be

20 tightened again on Thursday and Friday"? How can you refer to

21 that and read it and how could you use your record effectively

22 unless that is done?

23 A That is not what you asked me, sir. You

24 asked me if we were interested to have that put on that report

25 when we tighten a screw. If they were coming up out of this

1 plate every day, I would sure want to know about it. We would
2 want to find another method.
3 Q Right, sir, but you are not interested in it
4 being put down there if it comes out once a week?
5 A They don't come out once a week, sir.
6 Q Do you know this?
7 A I know this for a fact. I not only own these
8 rinks. I have been in these rinks personally operating them.
9 Many screws do not come out of these plates once a week.
10 Q Do you agree with Mr. Jones and the other
11 expert that we just heard from that if something hangs up a
12 quarter of an inch in the air that it can cause even an expert
13 skater to fall?
14 A No. I do not necessarily believe that.
15 Q I didn't say necessarily. I asked you whether
16 you agree.
17 A I think I consider myself an expert skater,
18 and I don't believe that would throw me
19 Q You?
20 A Throw me.
21 Q If it caught your skate, the edge of the wheel,
22 without your being aware it was there, could it throw you?
23 A I don't believe so, sir.
24 Q Okay. That is your opinion, sir, and you are
25 entitled to it.

1 Now, when you purchased this plate, you
2 purchased tempered steel. I guess that was the purpose for your
3 playing like it was a bow string, is that right?
4 A You gave me two questions, sir.
5 Q Well, let's start talking about first it was
6 tempered steel.
7 A True.
8 Q And then you noticed -- I thought that was
9 your answer. Then I asked you was this the purpose while you
10 and counsel were standing on it?
11 A I don't believe that was my purpose.
12 Q No? What were you trying to demonstrate?
13 A I was trying to demonstrate in pulling that
14 plate up that as long as there is one screw holding that plate
15 down, any place on that plate, that that plate will fall right
16 back into place, and would take just as much strength to lift it
17 any distance off the floor, and in the case where that screw was
18 attached and shows in the picture, it is very hard to even get
19 your fingernails under the plate on the one end to lift it.
20 Q I understand you, but under questioning by
21 counsel here, you were demonstrating that the plate would come
22 back in place, is that right?
23 A That is true.
24 Q When you bought this plate brand new, it was
25 certainly straight, wasn't it?

A What is that?

Q It was straight and level; it wasn't crooked and bent, am I correct?

A We had that bend put in it.

Q You had it flanged?

A Right.

Q But the end was straight so it could lay down flat even right along the skating surface, right?

A It was a flat piece of metal, yes, sir.

Q And it is tempered steel?

A Right.

Q And if you were to place it up without extending it beyond its limits, it will spring back, won't it?

A That's right.

Q Only in tempered steel when you deform it beyond certain limits that it will retain the characteristic of being bent; am I correct about that?

A As I understand it.

Q I am going to ask the jury to step down here and take a look at this piece of steel if they would do so.

THE COURT: All right. I think this will be much easier than handing it to them.

MR. DAUGHERTY: That is why I suggested they come down here and take a look at it, gentlemen.

Would you come down here, sir, with the jury?

1 A (Witness complies.)

2

3 BY MR. DAUGHERTY:

4 Q You would consider this a reasonably flat

5 floor, wouldn't you, sir?

6 A Reasonably.

7 Q And you notice how it is touching at what you

8 all have described as the east end. It has got a bend here some

9 distance. I can almost put my little finger under there, and it

10 comes over and comes flat. Again you can find the bend up here

11 at the west end, also?

12 Was that like that when that was delivered to

13 you to be installed?

14 A Yes, I believe it was.

15 Q And you put it in like that?

16 A Yes, sir, I did.

17 Q So if the screws were coming up, for example,

18 right in there, that steel would be sticking up over the floor,

19 wouldn't it?

20 A The steel wouldn't come up.

21 Q I asked you if the screw was taken out at that

22 point, it would certainly come up, would it not?

23 A It would. You see right there, yes.

Q Now, sir, when this plate is installed, and I am going to imagine I am standing on the plate, that the center block wall is at the end of it and the kick board is in place, the outer edge or the skating surface side of the kick board, where is that designed to come with respect to the edge of this plate, which is sitting up an eighth of an inch on the skating surface?

A It just comes out just beyond the kick board, very, very little beyond the kick board.

Q Why do you put them in that way?

A Because we don't want anyone coming around at these speeds that they skate on the rink, and to hit any obstruction that would be on the floor, any obstruction.

Q Now, there has been elicited from you that possibly a larger lip or larger flange would be used on this metal plate. What would that do?

A It would be there any time anybody came around the wall, and even the little children which we have skating there, in all of our places they have a tendency to hold onto that wall to keep their balance. Between the opening there, the exit, they have to leave the wall, and if they would hit the

1 plate or anything that is in their way, it is possible that

2 they could fall down.

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15 Q Let me see if I understand the process, first
16 of all, on the off-skate area.
17 Down underneath you have got the original
18 concrete that was there when you came, is that right, the floor?
19 A Well, the original slab, but it has been
20 resurfaced.
21 Q The concrete slab. What do you put on top
22 of that? I am talking about the off-skate area. First things
23 first. Application, what did you put on it?
24 A There is nothing on the concrete other than
25 the glue and the carpet, carpet glue.

21 Q Please state your name, for the record.

22 A Preston Bailey Kearney.

23 Q Mr. Kearney, you are employed where?

24 A Roll "R" Way.

25 Q In what capacity?

1 A Floor guard.

2 Q How long have you been employed by this

3 corporation?

4 A About two years.

13 Q Do you remember the occasion that Mr. Smith

14 fell while skating there?

15 A Yes, sir.

16 Q Did you see him as he was down, or did you see

17 him fall, or what?

18 A No. I saw him when he was down on the floor,

19 or he was on the floor when I saw him.

20 Q And did you go over to where he was?

21 A Yes, sir.

22 Q Did you make any examination, Mr. Kearney, of

23 the exit ramp, this piece of steel?

24 A No, sir.

25 Q Had you been over or back across that either

1 before or immediately after Mr. Smith fell?

2 A Yes, sir, many times.

3 Q How far in advance of his mishap, how soon in

4 advance of his mishap had you been across, in and out of that

5 exit?

6 A Oh, I'd say maybe five minutes.

7 Q Five minutes. I see. Did you have occasion,

8 after he fell and after he left the premises, to make use of

9 this exit and entrance?

10 A Yes, sir.

11 Q Was there anything wrong with it?

12 A No, sir.

13 Q Was there anything loose in this metal plate

14 here?

15 A No, sir.

2 Q What was the condition of the metal plate?

3 A Good

4 Q What do you mean by good?

5 A Weren't no problem. I went over it many a

6 time, and I have never had no problem with that metal plate.

7 On Sunday, I go over that thing at least two

8 hundred times on Sunday. I work all day on Sunday, five-and-a-

9 half hours. I have never seen nothing wrong with that plate

10 since I have ever worked there. Before I'd been working there,

11 I have never seen it up.

12 Q Pardon?

13 A I have never seen that metal plate up.

14 Q During the course of a week, how many skaters

15 would you say patronize this establishment?

16 A A week?

17 Q Yes, sir.

18 MR. DAUGHERTY: If he knows.

19 THE WITNESS: I would estimate a thousand

20 people a week, possibly more.

21 Q I show you some pictures that were taken a

22 short time after Coach Smith fell, and I want you to look at it,

23 and I will tell you that it has been testified that that shows

24 the edge of that particular steel.

11 Q Now, I am asking you to look at it, and you
12 see at the corner there where the steel appears to be raised?
13 A Yes. I see where it is raised.
14 Q And you see where it appears to be some material
15 up under it?
16 A Yes, sir. I see that, too.
17 Q Have you ever seen that condition at all?
18 A No, sir
19 Q Never seen that?
20 A I have never seen that thing up before.
21 Q Has there been a week that you have not skated
22 there since the week after it opened?
23 A No, sir.

23 Q During that morning, how many times would you

24 judge you had gone in and out, on and off that exit?

25 A Three or four.

1 Q Was anything wrong with it?

2 A No, sir.

3 Q Did you have any problem with it at all?

4 A No, sir.

5 Q Following the picture taking, did you have

6 any problem with it?

7 A Yes. After we came off the ramp, after the

8 pictures were taken, it was raised up some.

9 Q To what extent, if you know? Was Mrs. Jones

10 around and about at that time?

11 A Yes, sir.

12 Q Did she see any difference in the metal plate?

13 MR. DAUGHERTY: Just a moment, Your Honor. How

14 can she tell what somebody else saw?

15 MR. CAMPBELL: I will rephrase the question.

16

17 BY MR. CAMPBELL:

18 Q Were you present or did she come over to where

19 the exit ramp was?

20 A We brought it to her attention that it wasn't

21 as it was before. There was something --

22 Q Just in calling it to her attention, what, if

23 any, action did she take, do you know?

24 A She closed that ramp off.

25 Q She closed the ramp off?

8 Q I am flattered. I am very distinguished and
9 well dressed. I will accept that.
10 Now, I want to show you some black and white
11 pictures, and I want you to look at that edge there and I can
12 assure you it has been testified that those were taken at least
13 a month and a half or two months before the day you saw the
14 photographer.
15 Will you look at the picture there of that
16 piece of plate, Mrs. Manspile?
17 A Yes, sir.
18 Q Do you see it raised?
19 A Yes.
20 Q Was it like that when you skated off it before
21 Coach Smith came there this second time with this other
22 photographer?
23 A Before he came there, it was not raised like
24 that.
25 Q You had skated over it two or three times and

1 you didn't notice it?

2 A No.

3 Q When you went back over it after you had

4 skated off it, you happened to look over and noticed something on

5 your right-hand side where it was raised, is that right?

6 A Yes, sir.

7 Q Is that when you told Mrs. Jones about it?

8 A Yes, sir.

9 Q And had you used that exit that morning?

10 A Yes, sir.

11 Q And as an inexperienced skater, did you have

12 any problem going over it?

13 A No, sir.

14 Q Did you notice anything wrong with it?

15 A No, sir.

16 Q You are here today under a subpoena by the

17 Court to be here, are you not?

18 A Yes, sir.

19 Q After these pictures were taken, did you at any

20 time use that exit or start to or observe it?

21 A Yes, sir.

22 Q What did you find to be true?

23 A You mean, what did I see?

24 Q Yes

25 A I saw the photographer and Mr. Smith over at

1 the exit.

2 Q After the pictures had been taken, did you see

3 the exit?

4 A Yes, sir.

5 Q Did you go near it?

6 A Yes, sir.

7 Q Did you go up on it or out of it after the

8 pictures were taken?

9 A No, sir. We didn't use that exit any more.

10 Q Why not?

11 A Because it had loosened. It was higher off

12 the ground than it was before.

13 Q Had it been off of the floor at any degree that

14 would cause you any trouble prior to the picture taking?

15 A No, sir.

16 Q Was any report of that condition made to Mrs.

17 Jones?

18 A Yes, sir.

19 Q Did she come over and look at it?

20 A Yes, sir.

21 Q What, if any, action did she take?

22 A Well, she told everyone to don't go out that

23 exit.

7 Q Did you notice whether or not this metal
8 plate that we have here, whether that was elevated above floor
9 level?
10 A No, sir, it wasn't.
11 Q After these pictures were taken, did you make
12 use of that exit?
13 A One time.
14 Q Why only one time?
15 A Because it was unlevel the first time I went
16 across after housewives' break.
17 Q After what?
18 A We have what we call housewives' break, and
19 have a break and then went back and skated. It was unlevel.
20 Q It was unlevel?
21 A Yes, sir. It was not elevated, but it was a
22 bumpy effect.
23 Q I see. Had this condition been present before
24 in the morning when you were skating on it?
25 A No, sir.





-25

1 Q Do you know whether or not it was reported to
2 Mrs. Jones?
3 A Yes, sir. I am the one that reported it.
4 Q You were the one?
5 A Yes, sir.
6 Q Did Mrs. Jones come over to the exit?
7 A Yes, she did.
8 Q Was there any pronouncement made by Mrs. Jones
9 with regard to using the exit?
10 A She didn't actually close it off, but she told
11 all the ladies not to come across it any more that morning. She
12 closed it off to us.
13 Q She told you not to use it?
14 A In other words, she closed it off. In my mind
15 we were not to use that exit any more that day.

22 Q For the record, it is the exit that has been

23 heretofore described as the exit where the plaintiff suffered

24 injury.

25 On that particular day or morning prior to the

1 taking of these pictures, had you used that exit?

2 A Yes, sir, all morning.

3 Q Do you have any recollection of whether they

4 used it more than once?

5 A Yes, sir.

6 Q How often do you say you used it after and

7 before that?

8 A A good ten, fifteen times.

9 Q Was there anything noticeably wrong with the

10 metal plate that was in place there?

11 A No, sir.

12 Q Working there as an instructor, do you feel

13 that had there been anything unusual about the metal plate, you

14 would have noticed it?

15 A Yes, sir.

16 Q Subsequent to the taking of these pictures, were

17 you called over to see the exit?

18 A Yes, sir.

19 Q Do you remember which one of the ladies came to

20 speak to you about it?

21 A Mrs. McCormick.

22 Q She is the lady who preceded you on the witness

23 stand?

24 A Yes, sir.

25 Q When you went over there, what was the condition

1 of the metal plate?

2 A There was one screw loose. There was a screw

3 loose at the left-hand end of the plate, and it was loose.

4 Q Now, I don't know which would be the left hand.

5 Would that be the west, or the east, or what? I don't know.

6 A The west end of the plate.

7 Q The west end?

8 A Yes, sir.

9 Q I see. What, if anything, did you do?

10 A I asked the ladies not to use that exit for the

11 rest of the afternoon or the rest of the morning because we stop

12 at twelve.

13 Q Was there any effort made to correct it by you

14 at that time, or was there by the maintenance man?

15 A Well, as a matter of fact, I called the

16 maintenance man to come back in and fix it late that afternoon,

17 but not by me.

18 Q What, if anything, when you saw the screw, was

19 it loose at the time?

20 A Yes, sir.

21 Q Did you do anything with the screw yourself?

22 A I jiggled it.

23 Q You what?

24 A Jiggled it.

25 Q You jiggled it?

A Yes, sir.

Q Which one of the ladies was with you at that time, if there was one there?

A Mrs. McCormick, I believe, was there. I don't know whether Mrs. Easterly was there or not.

Q I see. And you tried to manipulate it or jiggle it, you say?

A Yes, sir.

Q From the nature of that metal plate, if that screw had been loose, the nature of the condition that you found it when you were called over by Mrs. McCormick, if that had been in existence when you last went across it, would you have been able to have determined that with your skates?

A Yes. I think it would have made a little noise.

2 Q I just have one question to ask you, Mr. Jones.
3 You were put on by Mr. Daugherty yesterday.
4 On the night that Mr. Smith was injured, did you
5 or did you not look at this metal plate, and, if you did, was it
6 in proper condition?
7 A It was in proper condition that night, sir.
8 Q Were there any screws loose in it?
9 A Not to my knowledge.
10 Q Was it elevated in any manner?
11 A No, sir.

INSTRUCTION NO. 1

The Court instructs the jury that under the law of Virginia, the life expectancy of the plaintiff, Michael Smith, is 36.6 years.

Granted
SMAf

INSTRUCTION NO. 2

The Court instructs the jury that as a matter of law, the defendant, Roll 'R'Way Rinks, Inc., is liable for any injury brought about by the negligence ~~or misconduct~~, if any, of its agents, servants and employees who were acting in the scope of their employment, and any negligence on the part of such agent, servant or employee, while acting in the scope of their employment is attributable to and in law is the negligence of the defendant.

Granted
SR 13

INSTRUCTION NO. 4

The Court instructs the jury that as a matter of law, the plaintiff, Michael Smith, was an invitee of the defendant, Roll 'R' Way Rinks, Inc., in its skating rink, on April 22, 1974.

Granted
SRB

INSTRUCTION NO. 5

The Court instructs the jury that the plaintiff was an invitee on the premises of the defendant, Roll 'R' Way Rinks, Inc., and said defendant, by and through its agents, servants and employees owed the plaintiff the duty to exercise ordinary care:

(1) To have its premises in a reasonably safe condition for the plaintiff's visit;

(2) To repair or correct within a reasonable time any defect in its premises which it knew, or in the exercise of ordinary care should have known was there; and

(3) To effectively and timely warn the plaintiff of any unsafe condition if it was unknown or not reasonably known to the plaintiff but was known or in the exercise of reasonable care should have been known to the defendant.

And if you believe from a preponderance of the evidence that the defendant failed to exercise ordinary care in the performance of any one or more of the foregoing duties, then the defendant was guilty of negligence, and if you further believe that such negligence, if any, was the sole proximate cause of the plaintiff's injuries, then you should return your verdict for the plaintiff, Michael Smith.

Granted
SRB

INSTRUCTION NO. 10

The Court instructs the jury that the plaintiff was an invitee on the premises of the defendant, Roll 'R' Way Rinks, Inc., and said defendant, by and through its agents, servants and employees, owed the plaintiff the duty to exercise ordinary care:

(1) To have its premises in a reasonably safe condition for the plaintiff's visit;

(2) To repair or correct within a reasonable time any defect in its premises which it knew, or in the exercise of ordinary care, should have known was there; and

(3) To effectively and timely warn the plaintiff of any unsafe condition if it was unknown or not reasonably known to the plaintiff but was known or in the exercise of reasonable care should have been known to the defendant.

And if you believe from a preponderance of the evidence that the defendant failed to exercise ordinary care in the performance of any one or more of the foregoing duties, then the defendant was guilty of negligence, and if you further believe that such negligence, if any, was a proximate cause of the plaintiff's injuires, then you should return your verdict for the plaintiff, Michael Smith.

Denied
SRB

INSTRUCTION NO. 7

The Court instructs the jury that under the law of Virginia, the defendant, Roll 'R' Way Rinks, Inc., by and through its agents, servants and employees, was under a duty to exercise ordinary care in the design and construction of the ramp or method of access from the aisle to the skating area in the area where the plaintiff was injured, and if you believe from a preponderance of the evidence that the defendant failed to exercise such care, then the defendant is guilty of negligence.

The Court further instructs the jury that if you believe from a preponderance of the evidence that such negligence was the sole proximate cause of the plaintiff's injuires, then you should return your verdict for the plaintiff.

Granted
SRB

INSTRUCTION NO. 8

The Court instructs the jury that under the law of Virginia, the defendant, Roll 'R' Way Rinks, Inc., by and through its agents, servants and employees, was under a duty to exercise ordinary care in the design and construction of the ramp or method of access from the aisle to the skating area in the area where the plaintiff was injured, and if you believe from a preponderance of the evidence that the defendant failed to exercise such care, then the defendant is guilty of negligence.

The Court further instructs the jury that if you believe from a preponderance of the evidence that such negligence was a proximate cause of the plaintiff's injuries, then you should return your verdict for the plaintiff.

Denied
RBG

INSTRUCTION NO. 10

The Court instructs the jury that the plaintiff, Michael Smith, like every other customer, had the right to assume, until in the exercise of ordinary care the contrary was made to appear, that the metal ramp leading to the skating area in the defendant's premises were in a reasonable safe condition, and unless the plaintiff knew of a hazardous condition in said premises, he was not required to be on the look-out for any hazardous condition in said premises under the circumstances then and there existing which were not open and obvious.

Granted
SRBJ

INSTRUCTION NO. 13

The Court instructs the jury that under the law of Virginia, the defendant, Roll 'R' Way Rinks, Inc., as a matter of law is guilty of negligence which was the sole proximate cause of the plaintiff's injuries, and you are to return your verdict for the plaintiff in accordance with other instructions of the Court.

Denied
SRB

INSTRUCTION NO. 14

The Court instructs the jury that under the law of Virginia, the defendant, Roll 'R' Way Rinks, Inc., is guilty of negligence, and if you believe from a preponderance of the evidence that this negligence was the sole proximate cause of the plaintiff's injuries, then you should return your verdict for the plaintiff, Michael Smith.

Denied
SMB

INSTRUCTION NO. 15

The Court instructs the jury that in a case in which the defendant relies upon the contributory negligence of the plaintiff as a defense:

(1) The law presumes the plaitiff to be free from any contributory negligence.

(2) The burden is upon the defendant to prove by a preponderance of the evidence that the plaintiff was guilty of such negligence and that any such negligence was a ~~proximate~~ contributing cause of the plaintiff's injuries; and unless the defendant thus proves the existence of such negligence, or unless such negligence appears in the plaintiff's own evidence or can be inferred from all the circumstances in the case, then you cannot find the plaintiff guilty of contributory negligence.

(3) If the jury is uncertain as to whether the plaintiff was guilty of contributory negligence, of if you believe that it is just as probable that the plaintiff was not guilty of any such negligence as it is that he was, or if you believe that any such negligence was not a ~~proximate~~ contributing cause of the plaintiff's injuries, then you cannot find the plaintiff guilty of contributory negligence.

Granted
SRM

INSTRUCTION NO. 16

The Court instructs the jury that under the law of Virginia, the plaintiff, Michael Smith, is free from contributory negligence as a matter of law.

The Court further instructs you that you are not to consider any negligence on his part during your deliberations.

Daniel
DMB Jr

INSTRUCTION NO. 17

The Court instructs the jury that in arriving at the amount of damages to which the plaintiff may be entitled, you should award inm such sum as you believe from a preponderance of the evidence to be fair, just and adequate compensation for the damages which were proximately caused by this accident. In ascertaining such sum you may take into consideration the following:

(1) The loss of earnings, if any, resulting from his injuries.

(2) The expenses, if any, incurred for doctors, x-rays or other treatement and expenses as a result of his injuries.

(3) The physical pain and suffering, if any, the plaintiff endured and the mental anguish, if any, the plaintiff has endured as a result of his injuries.

(4) The nature, character and duration of his injuries, and their effect, if any, on his ability to follow his usual affairs.

And you may fix his damages at such sum as you feel just and adequate under the evidence, not to exceed the sum sued for.

Denied
SRB

INSTRUCTION NO. 19

The Court instructs the jury that in arriving at the amount of damages to which the plaintiff may be entitled, you should award him such sum as you believe by a preponderance of the evidence to be fair, just and adequate compensation for the damages which were proximately caused by this accident. In ascertaining such sum, you may take into consideration the following:

(1) The loss of earnings, if any, resulting from his injuries.

(2) The expenses, if any, incurred in the past or may reasonably be expected to be incurred in the future, for doctors, x-rays, and other treatment and expenses as a result of his injuries.

(3) The physical pain and suffering, if any, the plaintiff endured, and any which may be reasonably expected to be suffered by him in the future, and the mental anguish, if any, the plaintiff has encured and will endure as a result of his injuries.

(4) The nature, character and duration of his injuries, and their effect, if any, on his ability to follow his usual affairs.

(5) The inconvenience and discomfort, if any, resulting from his injuries in the past and any which will probably be caused in the future.

And you may fix his damages at such sum as you feel just and adequate under the evidence, not to exceed the sum sued for.

Denied
RBG

INSTRUCTION NO. 20

The Court instructs the jury that if you find your verdict for the plaintiff in this case, in arriving at the amount of damages, if any, to which he may be entitled, you should award him such sum as you believe from a preponderance of the evidence to be fair, just and adequate compensation for the injuries sustained. In ascertaining such sum, you may take into consideration the following:

(1) The loss of earnings, if any, resulting from his injuries.

(2) The expenses, if any, incurred in the past or may reasonably be expected to be incurred in the future, for doctors, x-rays, or other treatment and expenses as a result of his injuries.

(3) The physical pain and suffering, if any, the plaintiff endured, and any which may be reasonably expected to be suffered by him in the future, and the mental anguish, if any, the plaintiff has endured and will endure as a result of his injuries.

(4) The nature, character and duration of his injuires, and their effect, if any, on his ability to follow his usual affairs.

(5) The inconvenience and discomfort, if any, resulting from his injuries in the past and any which will probably be caused in the future.

And you may fix his damages at such sum as you feel just and adequate under the evidence, not to exceed the sum sued for.

Granted
SRB/K

287

B

The Court instructs the jury that while it was the duty of the Defendant, Roll 'R' Way Rinks, Inc., to use ordinary care to see that its premises were reasonably safe for its patrons, it was not a guarantor or insurer of their safety and it owed them no greater duty than ordinary or reasonable care. The mere fact that there was an accident that resulted in injury to the Plaintiff raises no presumption that the said Defendant failed to exercise such care for its patrons. On the contrary, the burden of proof is on the Plaintiff throughout the trial of this case and unless you believe from a preponderance of the evidence that the said Defendant failed to exercise ordinary or reasonable care for the safety of its patrons, you should find a verdict in favor of the Defendant.

Granted
SRB

C

The Court instructs the jury that if you should believe from the evidence that both Plaintiff and Defendant were guilty of negligence which combined and proximately contributed to cause the accident and injuries disclosed by the evidence, then the Plaintiff cannot recover damages, and it is your duty to return a verdict in favor of the Defendant.

Granted
SRB

D

The Court instructs the jury that the Plaintiff is charged with the duty of exercising reasonable care for his own safety and to maintain a reasonable look-out for any defect or hazardous condition existing on the premises of the Defendant and to exercise reasonable care to avoid being injured, and if the jury should believe from the evidence that a defect or hazardous condition existed and such was open and obvious and could have been seen by a person exercising a reasonable look-out and that the Plaintiff failed to observe such condition, then he was guilty of contributory negligence and is not entitled to recover in this case.

Granted
SRB

E

The Court instructs the jury that your verdict should not be based on speculation, surmise, conjecture or sympathy, but should rest entirely upon the evidence in the case and instructions of the Court.

Granted
SRB

The Court instructs the jury that the term, preponderance of the evidence, does not necessarily mean the greater number of witnesses. It does mean the greater weight of the evidence to which you give credence. If you believe from the evidence that it is just as probable that the Defendant exercised ordinary care for the safety of its patrons as that it did not exercise such care, then the Plaintiff has not borne the proof as to it and you should find in favor of the Defendant.

Granted
S/RBJ

H

Notice or warning by the defendant is not required where a dangerous condition on the premises is open and obvious to a person who is exercising ordinary care for his own safety; and if you believe from the evidence that a dangerous condition existed on the premises and that it was open and obvious to a reasonably prudent person exercising ordinary care for his own safety under the circumstance, and that the plaintiff failed to see such dangerous condition, then, even though no notice or warning was given by the defendant, the plaintiff cannot recover and you shall find your verdict for the defendant.

Granted
SRB

I

The Court instructs the jury that the defendant, Roll 'R' Way Rinks, Inc., is presumed to be free of negligence as a matter of law until the contrary is made to appear by a preponderance of the evidence and that the burden is upon the Plaintiff to prove each and every element of his case by a preponderance of the evidence and this burden never shifts and if you believe from the evidence in this case that the Plaintiff has failed to thus prove his case, you should find for the Defendant.

Granted
SRB

294

8

The Court instructs the jury that if you believe from the evidence that the exit ramp in question was in reasonably safe condition for its intended use for the period of approximately two hours prior to the plaintiff falling and that the defendant did not know, nor in the exercise of reasonable care should have known of any change in the condition of the exit ramp which made it unsafe, then you should find for the defendant.

Daniel
SCB 9

295

K

The Court instructs the jury that you are not permitted to consider any evidence of permanent injury or any expense to be incurred by future surgery. You are limited to considering the evidence showing facts beginning on the date of plaintiff's fall and ending during August or September of 1974.

Denied
SRB J