

# Drop The Hammer: Transfer The Risk

by CHARLES F. GFELLER

**R**isk Management is a broad term that encompasses many different disciplines and tools. One of the most effective tools in the risk management tool belt is risk transfer. Consider the following real-life example:

It's a Tuesday night at the Ice House, and the Puckers are playing the Checkers. The game is being played as part of the Ice House's Fall Adult Hockey League. The game has been somewhat physical, but through the first two periods, there were no altercations. Then, about mid-way through the third period, Joe Hammer skates in on a breakaway toward the Puckers' goal. Just before taking his shot, Bill Bonebreaker, a Checkers' defenseman, catches Hammer and trips him. The whistle is blown, and as Bonebreaker skates toward the bench for a line change, Hammer drops the hammer on him — slashing the back of his leg. Bonebreaker immediately turns around and jumps on top of Hammer, causing Hammer to break his leg.

A few months later, Hammer files a lawsuit against Bonebreaker and the Ice House. Initially, the claim against the Ice House is for lack of proper supervision — Hammer claims that the Ice House should not have allowed Bonebreaker to continue playing in the league because of supposed prior similar incidents. Hammer also claims that the Ice House is vicariously responsible for the referees' failure to stop the altercation before it began.

Early on in the case, the attorney for the Ice House confirms that Bonebreaker had no prior-known history of aggressive



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*Agreements with leagues operating in your building are important.*

behavior. Following some initial discussions with the Ice House's attorney about the case and an early exchange of documents and information, Hammer's lawyer amends his complaint and changes the nature of the case to one where the only allegations against the Ice House are based on vicarious responsibility for the actions (or inactions) of the on-ice officials. Hammer's lawyer also brings the on-ice officials into the case as defendants. Following the amendment, no claims of independent negligence on the part of the Ice House remain — the only claims against it are now for vicarious liability arising from the referees' actions on the ice.

With the case now positioned in a more favorable manner, the Ice House's lawyer sends a letter to the insurance company for the Fall Adult Hockey League, tendering the defense and indemnity of the case to the league and its insurer. In other words, the Ice House asks the league and its insurer to assume the defense of the case and pay any necessary settlement or verdict. The basis for the tender is that the league, players and officials involved in this incident were all affiliated with, and insured by, the Fall Adult Hockey League, and that

Hammer asserts no claims of independent negligence on the part of the Ice House. The league provides an insurance policy to all of its members, which extends additional insured status to owners and/or lessors of premises leased, rented or loaned to the league. The Ice House was such a premises.

Ultimately, the league's insurer accepts the tender of this case and assumes the

responsibility for defending the case and, in the event of a settlement or verdict, for paying that amount. This ends the loss for the Ice House's insurer and, therefore, for the Ice House.

The lesson learned from this incident is that in addition to proper risk management in the form of training, signage, etc., risk transfer can be an effective risk management device. Oftentimes, where an injury occurs as part of a league-based hockey game, an ice arena license agreement is in place between the league and facility, which contractually obligates the league and its insurer to defend and indemnify the facility under certain circumstances. However, even where there is no such written agreement, it is always prudent to either be aware of, or investigate the possible existence of, other applicable insurance. Other insurance can be a great way to drop the hammer and get out from under a lawsuit. ★

*Charles F. Gfeller is a Partner with the law firm of Seiger Gfeller Laurie LLP and is resident in the firm's West Hartford, CT office. He focuses his practice on the representation of recreational facilities throughout the United States, particularly ice arenas, providing risk management advice and litigation services. He can be reached at (860) 760-8410 or [cgfeller@sgllawgroup.com](mailto:cgfeller@sgllawgroup.com). The law firm of Seiger Gfeller Laurie LLP handles the litigation for the Wells Fargo Special Risks Ice Rink Insurance Program. Visit [sgllawgroup.com](http://sgllawgroup.com) for more information.*