Public Officials Liability Collides With Public Policy

The Rhode Island Station Nightclub Fire Disaster
“America’s Most Deadliest Rock Concert”

Presented by
Thomas E. Dwyer
President and Executive Director (retired)
Rhode Island Interlocal Risk Management Trust

The Station Nightclub Fire: 4th Deadliest Fire in US Nightclub History

<table>
<thead>
<tr>
<th>Fire</th>
<th>Location</th>
<th>Date</th>
<th>Deaths</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cocoanut Grove Club</td>
<td>Boston, MA</td>
<td>November 1942</td>
<td>492</td>
</tr>
<tr>
<td>Rhythm Club Dance Hall</td>
<td>Natchez, MS</td>
<td>April 1940</td>
<td>207</td>
</tr>
<tr>
<td>Beverly Hills Supper Club</td>
<td>Southgate, KY</td>
<td>May 1977</td>
<td>165</td>
</tr>
<tr>
<td>The Station Nightclub</td>
<td>West Warwick, RI</td>
<td>February 2003</td>
<td>100</td>
</tr>
<tr>
<td>Happy Land Social Club</td>
<td>Bronx, NY</td>
<td>March 1990</td>
<td>87</td>
</tr>
</tbody>
</table>
The Station Nightclub

West Warwick, RI

The Fiery Inferno – What Happened!
February 20-21, 2003

Attendance:
- Estimated 462 persons

Conditions Inside:
- 90 seconds: 750 – 1,800 degrees
- 100 seconds: black-out

Fully Engulfed with 3 minutes

Toxic Smoke Killed Most
The Club’s Layout

And the Location of the 100 Dead

The Morning After
### THE GRIM STATISTICS

<table>
<thead>
<tr>
<th>100 Deaths (ages 18 to 46)</th>
</tr>
</thead>
<tbody>
<tr>
<td>✓ 96 deaths in the nightclub</td>
</tr>
<tr>
<td>✓ 4 deaths at hospitals</td>
</tr>
</tbody>
</table>

**Personal Injuries: 208 treated at Hospitals:**
- 11 survivors still in critical condition one month later
- 8 survivors still in an acute-care hospital two months later

### THE GRIM STATISTICS

**Loss of Consortium:**
- 68 children under 18 lost a parent; 1 lost both
- About 180 minors affected in one way or another
- 23 Spouses perished
- 7 Engaged Persons perished
Joe Kinan
— The Most Severely Injured, Physically

- 30 operations in first 5 months of hospitalization
  - 122 in total

Estimated Financial Damages

$500 Million to $1 Billion

<table>
<thead>
<tr>
<th>Town Liability Scenarios</th>
<th>$500 Million</th>
<th>$1 Billion</th>
</tr>
</thead>
<tbody>
<tr>
<td>2% Liable</td>
<td>$10 Million</td>
<td>$20 Million</td>
</tr>
<tr>
<td>5% Liable</td>
<td>$25 Million</td>
<td>$50 Million</td>
</tr>
<tr>
<td>20% Liable</td>
<td>$110 Million</td>
<td>$220 Million</td>
</tr>
<tr>
<td>50% Liable</td>
<td>$250 Million</td>
<td>$500 Million</td>
</tr>
</tbody>
</table>
The Scoundrel Entrepreneurs: The Brothers Derderian

- **Jeff:** “In Your Face” Investigative TV News Reporter
  - “Burning Beds/Getting Out Alive” 2001
  - Taping News Spot at own club in wake of E2 Nightclub Stampede in Chicago 3 days earlier
  - In Deep Debt

- **Michael:**
  - Active Station Nightclub Operator
  - Life & Health Insurance Salesman
  - Ran an Airplane Leasing Company
  - Going Thru Divorce

- **Together as Nightclub Operators:**
  - No Workers’ Compensation Insurance Carried
  - Employees Paid Under the Table
  - Swinging Door Trickery on Fire Marshal

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So Who Is To Blame? So Who is to Pay?

- **The Band**
- **Fire Marshal Dennis Laroque**
- **Tour Manager**
- **Nightclub Operators**
Joint and Several Liability

At $500 Million in Damages

<table>
<thead>
<tr>
<th></th>
<th>The Station Nightclub</th>
<th>Great White Band</th>
<th>The Town of West Warwick</th>
</tr>
</thead>
<tbody>
<tr>
<td>% Share</td>
<td>60%</td>
<td>39%</td>
<td>1%</td>
</tr>
<tr>
<td>$ Share</td>
<td>$300 Million</td>
<td>$195 Million</td>
<td>$5 Million</td>
</tr>
<tr>
<td>Resources</td>
<td>$2 Million then bankrupt</td>
<td>$1 Million then bankrupt</td>
<td>$497 Million and Unlimited</td>
</tr>
</tbody>
</table>

Public Liability vs Public Safety Policy

- Public Policy **Encourages** Reasonable Inspection and Responsible Licensing to Protect Public Safety, Health and Welfare
  
  **versus**

- Governmental Liability **Discourages** Inspection and Licensing Because It Opens Municipalities and Officials and Employees to Suits and Damages
The Hunt for “The Deep Pocket”

- Governmental
  - The Town of West Warwick and the State of RI
    - Negligent Inspection and Code Enforcement

- Non-Governmental
  - Products and Service Liability of Every Conceivable Kind
    - 100+ Defendants Named

Non-Governmental “Liability” – The Story of the Polyurethane Foam

- 25 sheets/545 sq feet of Foam
  - Egg-crate Packing & Flammable at $545
    - versus
  - Inflammable Type at $1,000

Barry Warner: Neighbor and Foam Salesman

Foam Manufacturers and Suppliers Eventually Settled with Plaintiffs at about $67 Million – 40% of the Total Settlement!
Final Guarantors Are Presumed to Exist But Who Are They

Final Guarantors:
- Government?
- Private Sector thru Cradle to Grave Product Liability?
- Or No Guarantors?

The Absurd Result:
- Cost and Availability of Insurance
- Infringement of Property Rights
- Invasion of Privacy
- Intrusive Business Regulation
- The Cost of Governmental Regulation
Is This a Just Outcome?

<table>
<thead>
<tr>
<th>Station Nightclub Fire</th>
<th>Gross</th>
<th>Attorney’s Fees</th>
<th>Net</th>
<th>Net Average</th>
</tr>
</thead>
<tbody>
<tr>
<td>Families of Dead</td>
<td>$83.0 Million</td>
<td>$27.8 Million</td>
<td>$55.2 Million</td>
<td>$547,000</td>
</tr>
<tr>
<td>Injured Victims</td>
<td>$31.0 Million</td>
<td>$31.2 Million</td>
<td>$61.8 Million</td>
<td>$307,000</td>
</tr>
<tr>
<td>Total</td>
<td>$176 Million</td>
<td>$59.0 Million</td>
<td>$117.0 Million</td>
<td></td>
</tr>
</tbody>
</table>

Examples after Attorney Fees
- $837K to widow with 4 children
- $3.5M to badly burned victim
- 63 minor children < $3K
- Children younger than 18 = $202K avg.
- Children 18 – 24 = $156K avg.

7 Years Later claims all settled

Or Is this a Just Outcome?

**September 11th Victim Compensation Fund of 2001**

- Of the 2,833 who died, **98%** filed claims with the Fund
  - 40 of 79 who sued changed their mind and filed with the Fund by December 22, 2003, the deadline date

- Statistics:
  - Total Claims Filed – 7,400
  - **5,300 found eligible**
  - Average Award - $2.1 million
  - Range: $500 to $8.6 million

- Cost - $5 Billion via Federal Government Blank Check

Within 3 years claims all settled
Lessons Learned:
As Claims Managers, Think Outside the Box

- Work with Plaintiffs
  - Special State Victims Compensation Fund
  - Changing the Way Joint Tortfeasor Settlements Are Reached
  - Plaintiff Attorney Before West Warwick Town Council
- Statutorily Limiting the Town’s Liability Retroactively

Lessons Learned:
As Pool Trustees and As Local Government Officials

- Fiduciary Obligation to Member to Extinguish Its Full Liability
  - Think Outside the Box: 2 Examples
- Defend the Member in Court of Public Opinion
- Allay Your Own Pool Members’ Concerns about Pool Solvency
- The Inherent Absurdities of “Needed” Insurance Limits
- The Unimportance on Illegality on Liability
- Government Actors Will Always Be Prime Culprits
### Lessons Learned:

**“We” Are Seriously Conflicted About What to Do?**

- To Inspect or Not Inspect?
  - The Sovereign or Qualified Immunity Conundrum
- Does Joint and Several Liability Make Sense?
- Is the “Cradle to Grave” Theory our De Facto Liability Model of the Present and Future?
- Is Government to be the Ultimate Guarantor?
- Should Special Victims’ Funds Replace/Supplement Civil Liability Claims and Suits