IV. RISK MANAGEMENT

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THE LAW AND ATHLETICS

Over the past 10 years the interest in sport activities as a means to keep one's body in peak performance has greatly escalated. The desire to keep one's body in top physical condition has taken many of us from the occasional morning job, to the three-day a week aerobics and, for the very serious minded, to long daily workouts. Being a competitive society, we have always had the urge to test our stamina and physical prowess against others to see who is the best. We no longer get self-satisfaction by just working out and seeing the physical results of our training. Competing against fellow athletes has now become the gauge for determining the effectiveness of our training program and the method for achieving satisfaction for the pain and strain we put ourselves through to be "#1". All of this has resulted in a tremendous rise in the number of part-time athletes and professional athletes participating in various individual endurance events and team sports.

The tremendous rise in interest in participating in athletic events has required that more and more events be sponsored to satisfy the needs of the athletes. As a result, one could probably find some sort of endurance event or competition in any given city or town across the United States on each and every Saturday or Sunday throughout the year. All of this competition, although healthy for mind and body, is not without its detriments. With the increase in participation and events, has come an increase in the number of participant and spectator injuries. Many of these injuries have arisen out of the negligence of others resulting in the rapid escalation of lawsuits filed and large monetary awards given.

In the past, athletic participation was virtually immune from civil liability. If one participated in or was a spectator of an athletic event, they assumed the risk involved and thus were barred from any recovery. That thinking and immunity has been eroded in today's judicial process. The primary defenses of assumption of a risk, contributory negligence, and consent have become so porous as a result of the high standards that are placed upon the athletic sponsors, promoters, coordinators, coaches, and participants. Current court cases have demonstrated that coaches, trainers, and national governing bodies can and will be held responsible for failing to warn athletes or spectators of the inherent risks, dangers, and potential injuries or death that may result from participating in athletic events.

With the erosion of common law defenses and the increase in standards to which people involved in athletics are held, it has become paramount that strategies be implemented to counterattack these trends and improve the overall quality of sporting activities. The key ingredient to effectively minimize potential injuries and resulting litigation is the implementation of specifically designed safety guidelines. It cannot be stressed enough that failure to conduct athletic events with the utmost care will increase the vulnerability of event promoters, directors, coaches, and governing bodies to litigation.

THE ELEMENTS OF NEGLIGENCE

The single factor that probably leads to more litigation as a result of participant or spectator injury is the limited knowledge coaches, trainers, administrators, and Directors have concerning the elements constituting negligence. A better understanding of how civil law works will better prepare you to foresee potential negligence and thus take steps to minimize the loss that may result.

There are four key elements that must be present to bring a cause of action for negligence:

1. A "duty" or obligation must be owed to another, which requires one party to conform to a certain standard or conduct for the protection of the other party from unreasonable harm.
2. A breach of that duty to conform to the standards.

3. An injury must arise from the breach of duty. It must be shown that the breach of duty was the proximate cause of the injury.
4. Monetary damages are warranted as compensation for the injury.

The common law rule of thumb as respects to an action of negligence is the "Reasonable and Prudent Person" doctrine. If an individual acted in a manner that was consistent with how a reasonable and prudent person, given the facts at hand, would have acted, a cause of action for negligence would be unfounded. With the increase in sports technology, medicine, and equipment, the foreseeable cause of injury or loss has been increased. Thus individuals involved in sporting activities have been held to a higher level of supervision and accountability.

There are no specific criteria for determining negligence. Every cause of action must stand on its own merits. Accidents do occur and in every instance, someone can be held negligent for that accident. It has always been incumbent upon the plaintiff to prove the elements of negligence. There must be sufficient evidence that alleged negligence was the proximate cause of the loss and that no other intervening factors contributed to the loss. Courts have not been holding defendants liable where substantial evidence proves that the defendant acted with prudence and caution in performing their duties.

THE DEFENSES AGAINST NEGLIGENCE

Although eroded in effectiveness, there are generally accepted defenses against a cause of negligence. The following are the most widely used defenses:

1. Failure to prove one or more of the elements of negligence necessary to recover damages.
2. Assumption of Risk. This is one of the oldest defenses against a cause of action for negligence and is a defense that has probably eroded the most over the years. When an individual voluntarily assumes the risk of injury or harm arising from the conduct of others, he or she cannot recover if the harm or injury actually occurs. The erosion of this defense has occurred as a result of the higher standard of care required of a defendant in advising the plaintiff, prior to injury or harm, of the potential risks involved in participating in the event.
3. Last Clear Chance. This defense puts the burden of responsibility on the plaintiff as the plaintiff had the "last clear chance" to avoid the injury or harm. This defense was only held to be valid if the harm or injury was foreseeable by the plaintiff and the plaintiff could have taken action to avoid the harm or injury.
4. Contributory Negligence. This defense varies by state and prevents a cause of action in negligence if the plaintiff, even in the slightest degree, contributed to his or her own harm or injury. With this defense, courts will evaluate the standard of conduct required of the defendant based upon the age, physical capacity, sex and training of the plaintiff before making a decision as to fault.

5. Comparative Negligence. This is a relatively new defense and one that was established by state statute to offset the unfairness associated with the contributory negligence defense, which barred a plaintiff from recovery even though they may have been only 1% at fault. Under the comparative negligence doctrine, recovery for damages is pro-rated based upon the percentage of fault associated with the plaintiff. Unlike contributory negligence, a plaintiff may be 1-49% negligent and still recover damages from the defendant. The plaintiff's percentage of fault to recover under comparative negligence varies by state and 40 states have enacted some form of comparative negligence statute. Typically, a plaintiff with 50% or more of the fault will be barred from recovery.

FACTORS THAT CONTRIBUTE TO NEGLIGENCE

There are five fundamental factors that contribute to a cause of action of negligence. It is important that you be very aware of these factors and take steps to minimize or eliminate these factors whenever possible.

1. Ignorance of the Rules. Someone once said "Ignorance is bliss" and that if you were not aware of the rules how could you be held accountable. In today's litigious society, ignorance of rules is not an acceptable basis on which decisions should be made. It is vitally important to the success of any sporting event that all parties involved know the rules.
2. Ignoring the Rules. Ignoring the rules under which a sporting event is to be conducted is to ignore safety. USA Volleyball has a specific set of rules designed to insure the safety of participants and spectators of the sport. USA Volleyball's number one priority is to insure the safety of all those involved in the sport of volleyball. To ignore these rules not only subjects participants to potential harm, but exposes USA Volleyball to a great deal of liability.
3. Failure to Act. Success of any sporting event is dependent upon the people directing the event to respond quickly to problems and act in a "proactive" manner in lieu of a "reactive" manner. Unfortunately, too many event directors or officials tend to react after a tragedy or serious injury occurs. They react to crisis when prevention is the key.

   They fail to:

   a. Assign competent personnel to supervise, maintain, inspect and repair the court or equipment;
   b. Review all aspects of the event prior to tournament day with supervising personnel to insure a coordinated effort and/or
   c. Conduct clinics for officials, safety teams and medical teams.
4. Money. Insufficient funds to properly conduct a safe sporting event often times prevents action. The lack of funds or unwillingness to spend money leads to:

   a. Reduction in safety and services;
   b. Not training or hiring competent personnel;
   c. Not securing safe equipment; and
   d. Not inspecting and maintaining equipment and facilities.
5. Failure to Warn. A great deal of duty is being placed on the event director or official by the courts to warn participants of any potential hazards associated with the event. Knowing conditions of the facility and making these conditions known to the participants prior to the event are essential. Failure to warn of hazardous or potentially hazardous conditions, especially when known, is the #1 factor leading to large monetary damages being awarded to injured athletes.

   USA Volleyball has developed a "Waiver, Release of Liability and Indemnity Agreement"

which must be signed by each participating athlete or athlete's parent or guardian, if a minor. The waiver includes:

a. An acknowledgment of the risk involved in playing a sport.
b. Agreement by participant to follow the rules and regulations of the sport of volleyball.
c. A statement of the USA Volleyball Participant Code of Conduct essential to participating in the sport.
d. Waiver of liability provision.
e. Indemnification and Hold Harmless provision.

This agreement is invaluable in assigning responsibility to the athlete or parent / guardian and for providing good public relations by advising the athlete and/or parent / guardian of the risks of injury. It is important to remember that there is no foolproof way for USA Volleyball, directors or others to transfer responsibility for conducting a reasonably safe event. Reliance on a waiver or hold harmless agreement without utilizing good common safety practices in conducting an event is the equivalent of putting a fire out with gasoline. It just will not work and will no doubt make matters worse than they would have been.

EFFECTIVE RISK MANAGEMENT RECOMMENDATIONS

Although not all-inclusive, the following risk management recommendations, if implemented, will help to prevent situations that may lead to injuries and subsequent litigation.

1. Warn, in specific terms, the athlete and parent/guardian of all the possible risks inherent in the sport activity in which they are participating.
2. Consistently use a waiver and release of liability that has been prepared by a competent attorney knowledgeable of sports law. Never allow a participant to participate without reading and signing the waiver.
3. Establish an effective medical plan for accident emergencies.
4. Establish a plan for the proper supervision of the athlete's while participating in the sporting event.
5. Follow all the sanctioning guidelines for the proper set up and conduction of a volleyball event as established by USA Volleyball.
6. Effectuate a public relations program with all parties involved in the event, especially with parents and athletes.
7. Conduct ongoing clinics to keep officials and volunteers apprised of changes in rules and new techniques used in the sport of volleyball.
8. Conduct periodic safety audits. Inspect equipment and facilities for any possible hazards. Keep records.

THE WAIVER AND RELEASE - HOW IMPORTANT IS IT?

A major concern with many, if not all, Sporting Event Directors or Promoters is how to conduct an event so that it is both profitable and, more importantly, enjoyable for the participants as well as the spectators. The various demands placed on the event Directors and Promoters from Sponsors, Participants, Governmental Agencies, Insurance Companies, etc., has taken most of the enjoyment out of conducting the event and turned the activity into a BUSINESS. The days of getting a group of people together with similar sporting interests for some good old competition and fun has been replaced with the business need to advertise and promote the event, raise sponsorship money for prizes, fight with municipalities over securing a permit, find and train volunteers to help conduct the event, and the constant need to continue looking over your shoulder to see what attorney is following you to serve legal papers over some frivolous claim.

Since it has now become a BUSINESS and no longer a GAME, how can Event Directors or Promoters shelter themselves from the ravages of litigation or claims for damages that can or will arise out of the business of conducting a sporting event? Most people respond by saying "buy insurance" and look at no other alternatives. If you are one of those people, keep looking over your shoulder because the "big one" is about to bite you and it's going to hurt. Insurance is just one aspect of an overall process called RISK MANAGEMENT that each and every Event Director and Promoter should be practicing on a daily basis.

The process of Risk Management is to evaluate the potential areas of the event that could cause a financial loss and develop action plans to help minimize or eliminate the potential for loss. Risk Management is a dynamic process requiring continuing observation and review. The purpose of this article is not to focus on the big picture of Risk Management (we will do a follow-up article outlining the whole process) but rather on one element of the process called Loss Control - the use of Waivers and Releases.

Probably the one single most important risk management action that an Event Director or Promoter can take to shelter themselves from litigation by participants is the use of a Waiver and Release. By using a valid waiver and release you are advising the participant of the hazards of the sport and are placing more of the burden of responsibility squarely on their shoulders. USA Volleyball has developed a valid waiver and release that we believe would be upheld in most if not all jurisdictions. Using a waiver and release that is valid and enforceable provides you a greater degree of security than one that has not. It is for this reason that Event Directors and Promoters should be using the USA Volleyball waiver and release in each and every event.

Using the USA Volleyball waiver and release is one of many risk management techniques that can be used. It is not the total answer to solving litigation problems but its use, coupled with a comprehensive insurance program, doing what a "Reasonable and Prudent" person would do, and abiding by the "rules of the sport" will go a long way in minimizing litigation and claims problems.

USA Volleyball encourages all tournament directors to use the USA Volleyball waiver and release as the STANDARD.

By complying with a set of STANDARDS, as evidenced by the event SANCTIONING process, USA Volleyball is able to work with you in establishing a safe and enjoyable event.

NON-OWNED AND HIRED AUTOMOBILE LIABILITY

NON-OWNED AUTOMOBILE LIABILITY

Every business entity, Sports Federation or National Governing Body, Tournament or Event Director, Coach or any other person asking someone else to use their own personal automobile for the benefit of the business, Federation, Event, Team, etc. faces a financial exposure to loss called Non-Owned Automobile Liability. Liability for loss arising out of the non-owned auto can be impinged to the business, Federation, etc., if the vehicle owner did not carry insurance, had inadequate limits, drove a defective vehicle, or any other host of reasons. The fact that the vehicle owner would not have been using his or her vehicle at the time of loss if it were not for the request of the business, Federation, Director, etc. places some burden of the responsibility for the loss on the requesting entity.

Primary responsibility for any automobile loss always rests with the OWNER of the vehicle. If the owner of an automobile carries automobile insurance, any driver using the auto, with the permission of the owner, has insurance coverage extended to them from the owner's insurance policy. This would not be the case for an entity who is not driving the vehicle but who has requested that the vehicle be used for their benefit. It was for this reason that NON-OWNED AUTOMOBILE LIABILITY INSURANCE coverage was developed.

The purpose of non-owned auto liability insurance is to provide insurance protection to the Employer, the Federation, Event Director, or Coach whenever they are held responsible for a loss arising out of an auto they do not own, hire, rent, or personally drive. Coverage under this insurance DOES NOT extend to the driver or owner of the vehicle involved in the claim for damages. THIS IS A VERY IMPORTANT FACT TO REMEMBER WHEN ASKING VOLUNTEERS, EMPLOYEES, OR OTHERS TO USE THEIR OWN PERSONAL VEHICLES FOR THE BENEFIT OF THE EVENT OR BUSINESS.

The Master Insurance Policy provided by USA Volleyball CAN provide NON-OWNED AUTOMOBILE LIABILITY INSURANCE protection for the Association, its Directors, Coaches, and others acting on behalf of the Association when requesting others to use their personal autos for the benefit of the Association. **This coverage only applies to sanctioned events where the National Office has granted coverage to the event. The request for coverage and the authorization must be in writing.**

Some risk management principles that should be applied to help minimize the loss potential arising from the use of non-owned automobiles are:

1. Always advise the vehicle owner that his/her auto insurance is primary and that the Association's policy would not offer any coverage to the vehicle owner in the event of a loss.
2. Be sure to ask if the volunteer driver's automobile is covered by insurance. It is recommended that the volunteer's insurance policy have limits of at least $300,000.
3. Ask what type of automobile will be driven. Whenever possible, make a visual evaluation of the vehicle to determine if it's in good mechanical order.
4. Whenever possible, request an MVR on the driver to determine driving habits.
5. Don't assume anything. Place yourself in the shoes of a "Reasonable and Prudent" person and ask yourself, "Would I ride in that car or with that driver?"

You may deem these risk management concepts too cumbersome and they may be for some situations. Nevertheless, you have an obligation to yourself and others to determine that people driving vehicles on your behalf are doing so in a prudent and reasonable manner. The non-owned liability exposure you face in conducting your business or event should not be taken lightly.

HIRED AUTOMOBILE LIABILITY

The exposure to loss arising from the use of a Hired Automobile occurs any time an entity or individual hires, rents, or leases (under 6 months) an automobile for business purposes. The exposure contemplates both the car/truck being driven by the person renting the vehicle and a car/truck that is hired with a driver. The first example is the most common in which a Tournament Director rents a Hertz Truck for three days to move equipment to and from the event site or several Hertz vans are rented in order to provide transportation for players or officials to and from an event site. The second example would involve a Director that hires a bus or van service to haul spectators or participants from a remote parking facility to the event complex. Both situations occur regularly at many sporting events.

As indicated under the Non-Owned Automobile Liability section, primary responsibility for loss arising out of an auto rests with the owner of the vehicle. This would be the case with autos that are hired, rented or leased by an entity. Typically, the rental agreement signed to take possession of the vehicle transfers the burden of responsibility from the vehicle owner to the vehicle operator. This contractual transfer of responsibility can cause a tremendous loss exposure to the Director, Entity, Coach, etc., if not dealt with prudently. ***This policy does not include contractual liability if a vehicle is hired.***

If a business entity or individual has either a commercial auto or personal auto liability policy in force that covers the entity or individual for loss arising out of the use of ANY vehicle, the need for any additional insurance coverage for the Hired Automobile exposure is minimized. Hired Automobile Liability insurance coverage was designed to provide automobile liability coverage for those entities or individuals that do not OWN autos and therefore, would not have a need to purchase a commercial or personal auto liability policy.

The Master Insurance Policy provided by USA Volleyball does provide HIRED AUTOMOBILE LIABILITY insurance coverage to the Association and all individuals renting, hiring, or leasing vehicles on behalf of the Association when written permission is obtained from USA Volleyball. The vehicle would have to be rented in the NAME OF THE ASSOCIATION or in the NAME OF THE SANCTIONED EVENT for coverage to apply. Only those people authorized by the national office of USA Volleyball to conduct business on behalf of USA Volleyball can give permission to rent a vehicle in the name of the ASSOCIATION or SANCTIONED EVENT. Permission in writing must be granted by the appropriate authorized person at the USA Volleyball National Office. Directors or others renting, hiring, or leasing a vehicle in their own names without written permission by USA Volleyball would not have coverage under the USA Volleyball policy.

Examples of How Non-Owned and Hired Automobile Coverage Would Apply: (Examples are generic in nature and may not reflect the actual outcome of a claim.)

NON-OWNED AUTOMOBILE EXAMPLES

1. A coach asks a Junior Player's mother to transport several players to an upcoming, sanctioned tournament and an ensuing "at fault" accident occurs injuring players as well as others. Because of the severity of the accident, the mother, the coach, and USA Volleyball are sued for damages. Coverage for the coach and USA Volleyball would be provided by the USA Volleyball policy. No coverage would be provided to the mother.

2. A coach transports players to a sanctioned or approved event in his/her vehicle and is involved in an accident causing injury to players and others. An injured player sues the coach, the Regional Commissioner, and USA Volleyball for damages. Coverage would be provided to the Commissioner and USA Volleyball but not the coach.

3. A parent or player is transporting other players to a sanctioned or approved event in his/her own personal auto and a fatality accident occurs. Neither the parent nor player was asked by USA Volleyball to transport players. No coverage would be provided by the USA Volleyball policy.

4. A Tournament Director of a sanctioned event asks a 17 year old volunteer to use her personal auto to pick up some important officials and sponsors from the airport. On returning from the airport, there is an accident resulting in severe injury to one of the passengers. Suit is brought against the driver, the Director, the Region and USA Volleyball for negligence in allowing the inexperienced driver to drive. Coverage would be provided for the Director, Region, and USA Volleyball but not for the driver.

HIRED AUTOMOBILE EXAMPLES

1. A Regional Commissioner hires a truck and driver to transport equipment to the tournament site of the Regional Championships. The truck is insured with $100,000 of Liability Insurance. While transporting the equipment, the driver rear-ends a school bus. The $100,000 of insurance coverage on the truck is inadequate to cover the loss. Parents sue the Regional Commissioner and USA Volleyball for their negligence in hiring an underinsured trucker. Coverage would be provided to the Commissioner and USA Volleyball but not the trucker. ***This policy does not include contractual liability if a vehicle is hired with a driver. The owner of the vehicle should provide insurance and name USA Volleyball, its Regions & the Tournament Director/Club as additional insureds.***

2. Four courtesy cars are rented from Hertz to be used by Officials at the U.S. Junior National Championships. Permission was granted by USA Volleyball to the Tournament Director to rent the cars in the name of the Tournament. An Official is involved in an auto accident causing injury to another party. The injured party seeks damages from the Official and the Tournament Director. If the Official has an auto policy in force, that policy would respond to cover the official. The USA Volleyball policy would provide coverage for the Tournament Director and potential excess coverage for the Official.

3. An auto is rented by the Tournament Director with written permission from the national office of USA Volleyball. The Director asks a volunteer to use the vehicle to pick up Officials at the airport. On the way to the airport, an accident occurs. The injured party sues the driver and the Tournament Director. The USA Volleyball policy is intended to respond to both the driver and Director.

4. An auto is rented in the name of the Tournament Director to haul equipment to and from a tournament site sanctioned by USA Volleyball. USA Volleyball granted no authorization for the use of the auto. While hauling equipment, the Director is involved in an accident. No coverage would be provided to the Tournament Director. Coverage would be provided to USA Volleyball if the Association were named in a suit.

SPORT ACCIDENT EXCESS MEDICAL COVERAGE -

Sport Accident Excess Medical coverage provided under the USA Volleyball master insurance policy is intended to provide up to $25,000 of Sport Accident Excess Medical coverage for injuries sustained while participating in an approved or sanctioned event. The coverage is **not** designed to replace existing medical coverage available to a participant through employment or any other means and cannot be used in lieu of existing medical coverage. The sole purpose of the Sport Accident Excess Medical coverage is to help supplement the out of pocket costs (deductibles, co-payments, coinsurance) associated with primary medical coverage and to provide reimbursement for covered sports accidents when no other collectible insurance is available.

Coverage will reimburse an injured participant for their potion of covered expenses subject to the Sport Accident Excess Medical deductible. The Sport Accident Excess Medical deductible is currently $250 if other primary health care coverage is available, or $1,000 if no other health care coverage is available.

To assist you in understanding how Sport Accident Excess Medical claims may be handled if submitted to the insurance carrier for payment, the following claims scenarios have been developed. Find the claims scenario that matches your particular claim situation to determine how the Sport Accident Excess Medical coverage may apply.

The following are examples only and may not reflect the terms and conditions of the policy that might apply to an individual claim.

Scenario #1 $3,500 Broken Ankle
Primary Health Care $500 deductible and 80/20 coinsurance

Primary Coverage

$3,500	Billed to primary carrier
-$ 500	Primary Deductible (participant responsible)
$3,000	Balance to be considered by primary carrier
-$ 600	20% coinsurance (participant responsible)
$2,400	Payment by primary carrier

Excess Coverage through USAV

$ 500	Deductible from above
$ 600	Coinsurance from above
$1,100	Balance to be considered by excess carrier
-$ 250	Excess Deductible (participant responsible)
$ 850	Payment by excess carrier

Scenario #2 $3,500 Broken Ankle
No primary health coverage

Excess Coverage through USAV

$ 3,500	Billed to excess carrier
-$1,000	Excess Deductible (participant responsible)
$ 2,500	Payment by excess carrier

SPORT ACCIDENT EXCESS MEDICAL COVERAGE (Continued)

Scenario #3 $300 Laceration to eyebrow
Primary Health Care $250 Deductible 80/20 coinsurance

Primary Coverage

$ 300	Billed to primary carrier
-$250	Primary Deductible (patient responsibility)
$ 50	Balance to be considered by primary carrier
-$ 10	20% coinsurance (patient responsibility)
$ 40	Payment by primary carrier

Excess Coverage through USAV

$ 250	Deductible from above
$ 10	Coinsurance from above
$ 260	Balance to be considered by excess carrier
-$250	Excess Deductible (participant responsible)
$ 10	Payment by excess carrier

Scenario #4 $300 Laceration to eyebrow
No primary health coverage

Excess Coverage through USAV

$ 300	Billed to excess carrier
-$1,000	Excess Deductible (participant responsible)
$ 0	Payment by excess carrier

Scenario #5 $30,000 Knee Injury
Primary Health Care is an HMO, but Participant elects not to use required doctors or hospitals.

If primary health care coverage is available and the choice is made not to use required providers, for whatever reason, the SPORT ACCIDENT EXCESS MEDICAL COVERAGE WILL NOT APPLY. The intent of the Sport Accident Excess Medical coverage is to supplement Primary Medical coverage whenever it is available.

A COACHES NIGHTMARE - AN ACCUSATION OF SEXUAL ABUSE OR MOLESTATION

One of the single most devastating accusations that can be leveled against a coach or team manager is that of sexual abuse or molestation of team members. Whether one is guilty or not of the charge, the mere accusation of child abuse can severely ruin an individual's reputation. These types of claims make great "press" in the newspaper and are often the talk of the town once they are made public.

Once accused of being a "child molester" or "pedophile" it is very difficult to overcome the stigma, even if totally exonerated of all charges. It is for this reason that a great deal of personal care and protection is taken to minimize placing yourself or the Association in position of having to defend against such a devastating claim.

Child abuse can happen in any number of ways and is not limited to the physical touching of a child. Claims can arise out of an oral utterance of sexual content; by over disciplining a player in practice; from the improper use of an auto; from negligent supervision; improper coaching or instruction; or supplying minors with alcohol. It is not uncommon for coaches or managers to be guilty of one or more of these activities in an "unknowing" way.

How can USA Volleyball or its coaches/managers/volunteers protect against such accusations? How can the Association, its Regions, or Clubs guard against allowing **known pedophiles, "closet" pedophiles, or others with serious criminal histories** from associating with junior players and exposing the players to undo harm? These are difficult questions to answer due to the various legal issues, rights of privacy issues, and organizational issues that come into play regarding this subject. Some common sense approaches to this problem can be addressed that would go a long way in minimizing this problem.

Legal Responsibility
The *Volunteers for Children Act, signed into law in 1998*, captures the importance of preventative measures that must be taken by sports organizations with regard to abuse. Under this law, if a volunteer or employee of the organization sexually molests a child in his or her care – and it can be shown that the molester had been ***previously convicted*** of a **relevant** crime **elsewhere in the U.S**. then the organization may be held liable for negligent hiring practices.

How to Protect the Association, Region, or Club
Create and adopt a sexual abuse and molestation policy statement that is universal within the Association that includes the following provisions:

A. Any adult with a legally documented history of child molestation, physical abuse, or other criminal activity that would pose harm to members of the Association would be excluded from membership participation.

B. **Establish a policy of screening potential coaches, managers, or volunteers by conducting comprehensive criminal background checks prior to their involvement in the program. The background check should include; social security verification, address history, a local & national search of criminal records and sex offender registries. It is important that all misdemeanors and felonies be included in this search as often times serious crimes or felonies are pled down to lesser crimes or misdemeanors. Knowledge that such a background check is required is often helpful in keeping "pedophiles" and other predators from infiltrating the organization**. This activity would require the permission of the individual before conducting the background check.

C. Establish a policy or procedure that limits who and what information is made available as a result of the background check. Confidentiality is extremely important and any discussions relating to this information should be limited to **those individuals who have "a need to know".** It is recommended that this responsibility rest with a "board member" of the organization to insure discretion and confidentiality.

D. Establish a training or awareness program for current and new coaches, managers or volunteers regarding abuse and molestation issues. To develop procedures or rules is only half the battle. The organization needs to continually inform, remind, and train its members in order for the procedures or rules to be truly effective.

How to Protect Yourself

As a coach, manager, or volunteer you can minimize your risk by not putting yourself in a position that could lead to a claim of abuse or molestation. This is often times easier said than done. Some rules to live by would include:

A. Never coach alone. Encourage a player's parent to assist in or monitor the practice.

B. Never encourage or allow players to share a room with a coach without another adult present in the room.

C. If you are a male coach coaching female players or vice versa, avoid physical touching in demonstrating a technique, concept or drill. Use another coach or parent as your model in lieu of a player. Keep your hands in your pockets.

D. When transporting players, obey all traffic laws. Require the use of seat belts.

E. Try to refrain from giving personal one-on-one coaching without another adult present.

F. Routinely communicate with parents concerning their sons or daughters. Address discipline or coaching problems promptly with the parents and the player. Let the parents know what the outcomes will be if change is not fostered.

G. Be observant and provide proper supervision of the practice or game. Do not depend on players to be responsible for their activities in your absence.

Following these types of rules will help you from having to defend yourself against an unwarranted claim of abuse or molestation. Whether it is feasible to implement these personal rules or policies for the Association is solely dependent upon the effort and concern placed by the Association or its members in minimizing this exposure. For the Association or its members to ignore or down play the potential risks of abuse or molestation accusations pose a tremendous threat to the overall organization. "Sticking our head in the sand" and only dealing with this potential problem when it occurs is not the solution. We do not want to find ourselves in "damage control" after the fact, but rather we want to be in control and prevent the damage from ever happening.

SEXUAL HARASSMENT

An employer must provide a work environment that is free of discrimination. This means a workplace that is free of harassment, whether it is intentional or unintentional. Employees and applicants for employment must be free of harassment of the basis of race, religious creed, color, national origin, ancestry, physical handicap, medical condition, marital status, sex or age. Harassment in the workplace is illegal no matter what its form; even innocently intended remarks or uninvited touching may be seen as harassment. The employer may become liable if he/she knows or even should have known of conduct considered harassment and failed to take immediate and appropriate corrective action.

This applies not only to employers, but also to labor organizations, employment agencies, apprenticeship programs or any of their agents or supervisors. Employers are required to have a program in place to prevent discrimination and harassment in the workplace and must take all reasonable steps to prevent harassment and discrimination from occurring. Exempted are religious organizations or corporations not organized for private profit. Harassment includes, among other things, verbal, physical or visual harassment. Sexual harassment includes conditioning a promotion or benefits on sexual favors. Although other provisions of the Fair Employment and Housing Act apply only to employers with five or more employees, the harassment provisions apply to all employers who regularly employ one or more persons.

However, where the employee establishes that the violation was willful, the employer becomes liable for damages and compensatory and punitive damages. Regardless of whether the employee proves intent, the employer will be liable for court costs and reasonable attorney's fees if a violation is proved. If an individual supervisor failed to take action to warn the harassing party and failed to report the incident, the supervisor may be individually liable.

The Federal Equal Employment Opportunity Commission (EEOC) has issued some guidelines that declare sexual harassment to be a form of sex discrimination in violation of Title VII. There are:

1. "Unwelcome" conduct. The commission considers "unwelcome" conduct which the victim did not solicit or incite and which the victim regarded as undesirable or offensive. The commission will look at whether the victim's conduct was consistent with the assertion that the sexual conduct was unwelcome.
2. Evaluating evidence of harassment. While not a necessary element of a claim, whether the charging party made a contemporaneous complaint or the commission when evaluating evidence of sexual harassment will look at protest carefully.

3. "Hostile" environment. A "reasonable person" standard will be used in determining whether a hostile environment existed and no violation is likely to be found "if the challenged conduct would not substantially affect the work environment of a reasonable person."
4. Employer liability. The employer will always be held responsible for acts of "quid pro quo" sexual harassment. In hostile environment cases, the commission will examine carefully whether the employer has in place an appropriate and effective complaint procedure designed to encourage victims to come forward, and if so, whether the victim used it.
5. Remedies. If it finds that the "harassment has been eliminated, all victims made whole and preventive measure instituted," the commission normally will administratively close the charge on the basis the employer took prompt remedial action. Harassment because of sex, race, color, religion or national origin is a violation of the Civil Rights Act of 1964. The EEOC has published guidelines on harassment because of sex, which can be summarized as follows:

Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when:

Submission to such conduct is made a condition of employment; or

A. Submission to or rejection of such conduct is used as the basis for employment decisions; or
B. Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile or offensive working environment.

In addition to the publication of a policy outlining corporate non-discrimination policy, employers need to specify the executive to whom complaints of harassment or any other form of discrimination may be directed. If in effect, an employer needs a policy and a mechanism to enforce the policy equitably.

Because the threshold of offense varies between and among individuals, and because avoidance of harassment is so important in the workplace, there needs to be some focus on the issue by supervision and management. Following dos and don'ts for your consideration:

- *Do* write and distribute a clear statement of the company's position on harassment of employees and visitors to the workplace.
- *Do* set a good example as a member of management.
- *Do* take any complaints seriously, even if your initial judgment is that the complaint is trivial or unwarranted.
- *Do* investigate complaints and take corrective action.
- *Don't* use your management position to request personal favors of any kind.
- *Don't* wait for a complaint if you personally observe something that is likely to be offensive.

The employer is held strictly liable for harassment of an applicant or employee through the employee's supervisors or agents. The employer also can be held liable for harassment if one employee harasses another employee and if the employer fails to have a policy about the harassment and fails to take corrective action. If the employer, supervisor or agent turns his or her back on the situation, it does not relieve the employer of responsibility or liability. Therefore, the employer, supervisor or agent should take immediate corrective action at the highest level. This could include speaking to the involved employees, (complainant, accused and witnesses), and/or taking immediate disciplinary action. It would be wise to establish an ongoing program to eliminate harassment in the workplace.

When an incident occurs involving harassment - sexual, racial or otherwise - the employer should:

1. Document the event.
2. Treat it confidentially.
3. Treat it seriously.
4. Have management treat the situation as far up the chain of command as possible. Incidents involving serious violations that appear to be deliberate or inexcusable may be subject to punitive damages. Although the Federal statutes pertaining to harassment are specifically targeted at "for profit" business organizations, there may be a significant impact on "non-profit" organizations as well. USA Volleyball, its Regional Associations and Clubs should take all reasonable and necessary steps to minimize the threat of harassment within the overall Association.

VOLUNTEER CONSENT FORM

Your participation as a volunteer working for the Volleyball Club is greatly appreciated. Without your support it would be very difficult for the club to provide a quality volleyball program. As a volunteer you may be asked to assist in a variety of activities including transporting players; conducting fund raisers; being a team parent or representative; working concessions at tournaments; etc. The purpose of this document is to advise you that the activities you may be involved with could result in bodily injury to yourself or others. The Club has taken every reasonable precaution to provide a safe environment for you and other members of the Club.

The Club is covered by a "master" insurance policy provided by USA Volleyball for all approved or sanctioned USA Volleyball activities. As a volunteer you are afforded liability insurance protection for all approved or sanctioned activities you are involved in as long as those activities are being conducted at the direction or request of the Club. The insurance policy provides $1,000,000 per occurrence limits of liability protection.

The Club does not provide workers' compensation or medical insurance coverage to volunteers. In addition, the Club does not provide any auto liability insurance protection to you in the event you are asked to use your automobile for the benefit of the Club. Medical insurance and auto liability insurance would be the responsibility of the volunteer. In addition to liability coverage, the master policy does provide a sport accident policy. This policy will cover accident only related injuries to the volunteer while they are serving in their capacity as a volunteer for USA Volleyball. This policy is secondary to any other insurance the volunteer might have and is limited to a maximum of $25,000.

I have read this document, understand its purpose, and consent to be a volunteer.

_____ _____

Signature of Volunteer Date

If required, I will volunteer to transport players or club members to approved or sanctioned events. I fully understand that I am responsible for maintaining insurance on my automobile and for obeying all traffic laws. As a volunteer driver, I agree to the following:

1. I have a valid driver's license.
2. I maintain at least $300,000 of auto liability insurance on my automobile.
3. My automobile is in good working condition and has the appropriate number of seatbelts for the passengers transported.

Signature of Volunteer	Address1
Print Name	Address2
Date	Telephone#

CHAPERONE RESPONSIBILITIES

Thank you very much for volunteering to be a junior team chaperone. As a chaperone you are assuming certain responsibilities for the welfare of the players under your care, custody and control. To assist you in knowing what your responsibilities are we have created this information sheet for you. Please read and discuss these responsibilities with the team coach or manager. If you understand and accept these responsibilities please sign and date the bottom of the form and return the form to the coach or manager.

As a Chaperone, I understand and take responsibility for the following:

1. As an assigned driver transporting players to and from an event, I will obey all traffic laws and will not take any driving risks that will place the players or me in a harmful situation. All players as well as myself will wear seatbelts while in the automobile.

2. If using my personal automobile for transporting players, I understand that I am responsible for any accidents or injuries to my automobile, myself or to the players. I agree to have automobile liability insurance in the amount of $300,000 or more covering the automobile I will use to transport players. I agree not to transport more players than my automobile has seatbelts for.

3. I will have a meeting with the players I am chaperoning to discuss the following:
   a. Room accommodations - player responsibilities and conduct
   b. Curfew
   c. Check-in requirements with you if the players are going to leave the hotel.
   d. Review of departure times and team activity agenda times.
   e. Alcohol, tobacco and illegal drug restrictions.
   f. Team meals.

4. I will refrain from using alcoholic beverages while conducting my chaperone responsibilities. I will absolutely not drink and drive myself or any players while acting as a chaperone. If for any reason I feel impaired to chaperone, drive, or carry out any of my responsibilities I will personally contact the team coach or manager and advise him/her of my impairment.

5. I will do everything that is reasonable and prudent to insure the safety of myself and the players while performing any chaperone duties.

6. As a chaperone, I understand that I am working under the direction of the Club, Regional Volleyball Association, or USA Volleyball. Any *General Liability* insurance available to the Club, Regional Association or USA Volleyball (excluding auto insurance) is also made available to me while working on behalf of or at the direction of the Club, Regional Association or USA Volleyball. I understand that I may be personally responsible and liable for any of my actions that fall outside the scope of authority granted to me by the Club, Regional Association, or USA Volleyball.

7. I agree and consent to a background screening check.

_____	_____
Signature	Address1
_____	_____
Print Name	Address2
_____	_____
Date	Telephone#

CONTRACTUAL AGREEMENTS

A "risk management" concern that is beginning to pose serious threats to USA Volleyball, as well as all other sports National Governing Bodies providing a "master" insurance program is that of liability assumed under a contract. There is a definite trend by municipalities, school districts, and other owners of sports venues to try and transfer all responsibility of loss to the individual or organization renting or using the venue facility. We have seen numerous instances in which coaches or clubs have been required to assume "all risks of loss" to a gym or facility as a prerequisite to securing a rental agreement. What is most disturbing about this trend is that the coach or club manager signing the rental agreement is often times unaware of the extent of responsibility assumed by the rental contract.

A rental contract or agreement is a legally binding document that needs to be read closely before signing. As a matter of law or public policy in most jurisdictions, one individual or entity cannot transfer their negligent activity to another by contract. What is deemed to be negligent activity can vary dramatically from court to court and circumstance to circumstance and, irrespective of any laws, people or entities continually try to transfer as much responsibility as possible via a contract or agreement. (Refer to the articles in the Risk Management section of this manual titled THE ELEMENTS OF NEGLIGENCE and THE DEFENSES AGAINST NEGLIGENCE for addition information.) Even though there may be favorable laws or public policy protecting against unfair transfer of negligence, a "signed" agreement between two legally responsible individuals or entities providing for proper consideration may require arbitration or legal assistance to resolve "responsibility" issues. Arbitration or legal assistance requires time and money, both of which would be better spent on the sport of volleyball. For this reason, we believe it better to spend a little more time reading, understanding and amending a rental contract prior to signing rather than disputing legal issues at the time of a loss.

The following information is a guide to help you in better understanding issues related to the assumption of risk by contract. You are not expected to understand all the legal jargon or issues relating to a contract, but a little knowledge may prevent the Association from incurring a great deal of risk that would not otherwise be accepted in the absence of such knowledge. When in doubt, ESIX or the National Office of USA Volleyball can assist in evaluating a rental agreement or any other contract in which there is HOLD HARMLESS and INDEMNIFICATION provision.

Liability Assumed by Contract

You will find that most municipalities, schools, or venue owners will require USA Volleyball to hold them harmless and cover all legal expenses as a requirement of using their facility. This contractual liability is covered under the USA Volleyball insurance program and the degree of responsibility will be determined by the wording of the agreement. From a risk management perspective, the two most important sections of any contract to review are the Indemnification and Insurance sections. These two sections can often times be amended so as not to adversely affect USA Volleyball.

There are a wide variety of Indemnification clauses used in rental agreements. Most are written to favor the Lessor (municipal, school district, or venue owner) and require the Lessee (USA Volleyball) to incur more responsibility than necessary. Whenever possible, the Indemnification provision should allocate the responsibilities of each party clearly and equitably. Indemnification provisions that appear to be one sided (in favor of the Lessor only) should be avoided or amended. The following is an example of an ACCEPTABLE Indemnification provision:

USA Volleyball shall defend and hold Lessor, its officers, employees and agents harmless from and against any and all liability, loss, expense (including reasonable attorney fees), or claims for injury or damages arising out of the performance of this Agreement but only in proportion to and to the extent such liability, loss, expense, attorney's fees, or claims for injury or damages are caused by or result from the negligence or intentional acts or omissions of USA Volleyball, it Regional Associations, Clubs, officers, employees, or agents.

The Lessor shall defend and hold USA Volleyball, its Regional Associations, Clubs, officers, employees, or agents harmless from and against any and all liability, loss, expense (including reasonable attorney fees), or claims for injury or damages arising out of the performance of this Agreement but only in proportion to and to the extent such liability, loss, expense, attorney fees, or claims from injury or damages are caused by or result from the negligence or intentional acts or omissions of the Lessor, its officers, employees, or agents.

The reason the wording of this Indemnification provision is acceptable is that each party to the agreement is only responsible for their own negligence. Often times we rent a facility that has inherent hazards (unsafe floor conditions or equipment) that are clearly the responsibility of the venue owner. If a loss occurs resulting from unsafe premises, USA Volleyball should not incur this responsibility or loss. Attached to this document is a "checklist" that should be used and completed prior to final signing of any rental agreement. The checklist will assist in identifying exposures to loss that can be identified and dealt with prior to renting the facility.

In the event that a rental agreement does not have a mutually favorable Indemnification agreement, it is recommended that we negotiate to have the attached "**Indemnification Clause Addendum**" added to the agreement. In most cases, the attachment of this Addendum should not be a major obstacle in securing a favorable rental agreement. When it is an issue and securing gym space is in jeopardy, some tough business decisions have to be made. If we can identify and control inherent hazards that are clearly the responsibility of the venue owner or the owner works with USA Volleyball to control such hazards, signing an agreement with an unfavorable indemnification provision may be permissible. When in doubt, always seek the opinion of legal counsel, ESIX or the National Office. Continued claims activity resulting from USA Volleyball's assumption of negligence by contract that could have been prevented or minimized will have a tremendous impact on the cost of insurance paid by the Association. The exposure to loss resulting from the assumption of liability by contract is controllable and every effort should be made to control such loss. Failure to do so affects everyone. Great care should be exercised in controlling potential damage to property in your care,
custody & control.

Indemnification Clause Addendum

Agreement between _____ and _____
(Venue Owner) (Volleyball Club or Region)

It is agreed that this Addendum replaces entirely Section # _____ in the foregoing facilities use agreement and is hereby made a permanent addendum for the length of the agreement.

A. USA Volleyball shall defend, indemnify and hold Venue Owner, its officers, employees, and agents harmless from and against any and all liability, loss, expense (including reasonable attorney fees), or claims for injury or damages arising out of the performance of this Agreement but only in proportion to and to the extent such liability, loss, expense, attorney fees, or claims for injury or damages are caused by or result from the negligent or intentional acts or omissions of USA Volleyball, its Regional Associations, Clubs, its officers, employees, or agents.

B. Venue Owner shall defend, indemnify and hold USA Volleyball, its Regional Associations, Clubs, officers, employees, and agents harmless from and against any and all liability, loss, expense (including reasonable attorney fees), or claims for injury or damages arising out of the performance of this Agreement but only in proportion to and to the extent such liability, loss, expense, attorney fees, or claims for injury or damages are caused by or result from the negligent or intentional acts or omissions of Venue Owner, its officers, employees or agents.

_____ _____
Signature of USA Volleyball Representative Signature of Venue Owner

Date: ___/___/___ Date: ___/___/___

Rental Agreement Checklist

Prior to signing a rental agreement or facilities use agreement has the following been reviewed:

___ **Facility Walk Through**

Yes	No	
____	____	Facility suitable for volleyball practice and tournament play
____	____	Checked floor surfaces for defects or trip and fall hazards
____	____	Checked low hanging lights, heating units, plumbing, and basketball backboards
____	____	Adequate seating - bleacher seating in good repair
____	____	Men's and Women's restrooms in good repair
____	____	Men's and Women's locker rooms in good repair
____	____	Limited access to balance of school or facility
____	____	Limited access to wrestling mats and gymnastics equipment
____	____	Volleyball standards padded and in good repair
____	____	Is there a school official or facility representative on premises during use of facility?
____	____	Are there procedures for advising venue owner of problems?
____	____	Quick access to phone in the event of emergencies?
____	____	Have maintenance/security personnel been advised of your rental of the facility?
____	____	Is a key required to gain access to the facility?
____	____	Are exits marked and doors unlocked? (no chains securing double doors)
____	____	Rental Agreement required
____	____	Are there well-lit & monitored parking spaces?
____	____	Are there secure "team" parking areas?
____	____	Is there an Emergency Response plan at facility for evacuation & medical emergencies?
____	____	Is there a responsible party for removing unruly spectators?
____	____	Are lighting and electrical systems checked at facility? Any emergency lighting?

___ **Rental Agreement Review**

Yes	No	
____	____	Does the agreement specify dates and times the Club/Region is responsible for venue?
____	____	Is there an indemnification clause?
____	____	Does the indemnification only favor the venue owner?
____	____	Is the Club/Region responsible for all loss or liability, regardless of fault?
____	____	Are there any insurance requirements?
____	____	Are limits required in excess of $2,000,000 Each Occurrence?
____	____	Can rental agreement be amended?
____	____	Venue owner has been advised in writing of the defects, damage, or portions of facility Club/Region will not take responsibility for.
____	____	Has the Indemnification Clause Addendum been added to the Agreement?
____	____	Are certificates of insurance required?
____	____	Does the agreement include signature of a board authorized person?
____	____	Is a waiver of subrogation required per the contract?
____	____	Are you responsible for business personal property of others?
____	____	Are there provisions, which make you responsible for "loss of use" of property?
____	____	Responsible for guests and spectators?
____	____	Is there any liquor liability exposure?
____	____	Any special wording required?
____	____	Warranties or representations about suitability or use of rental equipment?
____	____	Quick Release Adhesive Floor Tape used to line finished floors?