



IV. RISK MANAGEMENT



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THE LAW AND AMATEUR SPORTS

Over the past 20 years, participation in athletic activities has continued to grow at all levels (including youth, high school, collegiate and adult sports), including the sport of volleyball. During this time, we have also seen a migration from local recreational based leagues to more competitive travel sports. With increased participation, more and more athletic events have been organized around the country to satisfy the needs of athletes of all ages. As participation has increased, so have the number of participant injuries accompanied by a rise in the claims and lawsuits as a result of those injuries.

Historically, event organizers were virtually immune from civil liability other than for cases of gross negligence. It was largely accepted that participants and spectators at athletic events assumed the risks involved. This perceived immunity has been eroded in our current judicial system. Today, National Governing Bodies (NGBs), amateur sports associations, athletic event organizers, sports promoters, coaches and officials are being held to a higher standard, including the duty to warn athletes or spectators of the inherent risks and dangers that may result from participating in or attending athletic events. Over the past 10 years, liability claims trends have included the following:

- Higher frequency and increased severity of claims
- Longer tail exposure (i.e. especially for claims arising out of abuse, concussions, etc.)
- Increased potential for class action lawsuits

Federal and State legislation related to concussions/brain injuries and abuse & molestation issues have had a direct impact on these claims trends.

By 2017, all 50 states had established sports-related concussion laws. In May 2009, the State of Washington was the first state to pass concussion management requirements for youth sports (known as the “Zackery Lystedt Law” in honor of a high school football player who suffered a catastrophic brain injury). As of June 2017, all 50 states had established laws for concussion management, including removal from play, return to play (with medical clearance) and concussion awareness & training requirements. The requirements vary by state and no Federal standards currently exist.

In 2018, Federal SafeSport legislation (known as the “Protecting Young Victims from Sexual Abuse and Safe Sport Authorization Act of 2017”) was signed into law. The law was passed in response to concerns about abuse in amateur sports (such as the Larry Nassar situation). The Act created a new “standard of care” for all youth sport organizations, requiring abuse awareness training & prevention policies & procedures for coaches, officials and others, and mandatory reporting of suspected abuse situations to appropriate law enforcement agencies within 24 hours.

In 2019, individual states began passing laws temporarily suspending or permanently eliminating the statute of limitations on abuse claims. As a result of this legislation, many abuse claims have been brought against National Governing Bodies (NGBs), amateur sports associations, leagues, schools, etc. that would have previously been barred by statute.

With the erosion of common law defenses and the increase in standards to which amateur sports organizations are held accountable, it is imperative that effective risk management strategies (including safety standards) be implemented to reduce the frequency and severity of claims. Failure to conduct athletic events with the utmost care will increase the potential liability of NGBs, amateur sports associations, event organizers, clubs, directors, coaches, officials and volunteers.

THE ELEMENTS OF NEGLIGENCE

Negligence is the most common allegation in liability claims and lawsuits arising out of sports events and activities, including claims brought by participants and spectators. Four key elements must be present to establish a cause of action for negligence:

1. A "duty" or obligation which requires one party to meet a certain standard of conduct (such as 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, and the breach of duty must be the proximate cause of the injury.
4. Monetary damages are warranted as compensation for the injury.

The plaintiff (i.e. the party bringing the claim) must prove negligence on the part of the alleged negligent party, with enough evidence to establish the negligence was the proximate cause of the injury or loss.

COMMON DEFENSES AGAINST NEGLIGENCE

The following are the most common defenses against a claim of negligence:

1. Failure to prove negligence. All key elements of negligence are necessary to establish negligence. If one or more of the key elements are NOT established, the claimant will NOT be able to recover damages.
2. Reasonable or Prudent Person Doctrine. This doctrine is a common law rule of thumb that if an individual acted in a manner consistent with how a reasonable and prudent person would respond in a similar situation, a cause of action for negligence would be unfounded.
3. Assumption of Risk. One of the oldest and historically strongest defenses against a cause of action for negligence is also a defense that has probably eroded the most over the years for sports activities. When an individual voluntarily assumes the risk of injury or harm arising in connection with certain activities, this person cannot blame others and seek recovery of damages if such harm or injury occurs. The erosion of this defense has occurred as a result of the higher standard of care required of event organizers. While the strength of this defense has been undermined, it is still a best practice for an event organizer to have a participant acknowledge and assume the potential risks involved in participating in the event. This is often accomplished through a waiver & release of liability, which will be discussed later.
4. Last Clear Chance. This defense puts the burden of responsibility on the plaintiff as the claimant had the "last clear chance" to avoid the injury or harm. This defense is usually only valid if the harm or injury was foreseeable by the plaintiff and the plaintiff could have taken action to avoid the harm or injury.
5. Contributory Negligence. The enforceability of this defense varies by state. In states where this defense is accepted, a cause of action for negligence is barred if the plaintiff, even to the slightest degree, contributed to the plaintiff's own harm or injury.
6. Comparative Negligence. A relatively new defense has been established by most states to offset the perceived "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 and defendant. 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. In most states, a plaintiff with 50% or more of the fault will be barred from pursuing any damages from another party.

FACTORS THAT CONTRIBUTE TO NEGLIGENCE

The following factors can be used to establish negligence on the part of NGBs, amateur sports associations, event organizers, clubs, coaches, officials and volunteers. It is important that you be aware of these factors and take steps to minimize or eliminate these factors whenever possible.

1. **Ignorance of the Rules.** The saying "Ignorance is bliss" does NOT apply when it comes to negligence claims. In today's litigious society, ignorance of rules is not a defense. Failure to be aware of the rules or your responsibilities in whatever capacity you are serving (such as an event organizer, coach, official or volunteer) is NOT a defense against being held accountable for your negligence. It is vitally important to the success of any sporting event that all parties involved know the rules and are educated about their roles and responsibilities.
2. **Ignoring the Rules.** Ignoring the rules and regulations for the conduct of a sporting event is a major mistake. USA Volleyball has established rules and regulations for the safety of all participants and spectators involved with sanctioned events or approved activities. Safety is one of USA Volleyball's most significant priorities. Ignoring the rules increases the likelihood of injuries to participants, and exposes USA Volleyball, its event organizers, clubs, coaches and officials to a greater potential liability. Following and enforcing the rules and regulations is one of the best risk management measures.
3. **Failure to Act.** The success of any sporting event is dependent upon the ability of those managing the event to respond quickly when problems arise. While prevention is the best risk management approach, accidents and injuries will occur from time to time no matter what efforts have been made. Being "proactive" in preparations for being "reactive" is crucial. Unfortunately, too many volleyball event organizers fail to:
 - Assign competent personnel to supervise, maintain, inspect and repair the court or equipment;
 - Review all aspects of event management prior to tournament day with supervising personnel to ensure a coordinated effort. Be sure to educate event staff, coaches, officials, safety, medical and volunteers on their roles and responsibilities.
4. **Inadequate Funding.** Insufficient funding for an event often results in "cutting corners" which can undermine the ability for an event to be conducted as safely as possible. The lack of funds or unwillingness to spend money often leads to:
 - Reduction in safety, first aid, security or other key event support services;
 - Not hiring or training competent personnel;
 - Not inspecting and properly maintaining equipment and facilities;
 - Not replacing unsafe equipment
5. **Failure to Warn.** Event directors, coaches and officials have a duty to warn participants of any potential hazards. Knowing the condition of the equipment and facilities 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 a significant factor leading to large monetary damages being awarded to injured athletes. Any dangerous conditions should be properly addressed before play begins or before play continues.

EVENT RISK MANAGEMENT BEST PRACTICES

For many event directors/promoters, the management and operation of events has transitioned from a part-time labor of love into a full-time business pursuit. The days of getting a group of people together with similar sports interests for some “good old healthy competition and fun” has been replaced with the business need to advertise and promote the event to attract participants, raise sponsorship funds, secure facilities & permits, obtain appropriate insurance, find and train responsible volunteers, comply with federal & state laws as well as the NGB’s requirements, rules & regulations, etc. For many, the goal is to conduct an event that it is both profitable (or at least able to cover costs) and an enjoyable experience for the participants as well as the spectators.

In today’s litigious society, event organizers often find themselves looking over their shoulder to see what attorney is waiting to file a “claim” against them. The following are some examples of common claims that have been brought against event organizers, club directors, coaches and officials:

- Failure to enforce safety rules and regulations
- Failure to control aggressive or unsportsmanlike behavior
- Failure to provide adequate security for the event
- Failure to operate and/or maintain premises or facilities
- Failure to stop play for dangerous conditions (i.e. such as issues related to the court/field of play, equipment, adverse weather, etc.)
- Failure to recognize a participant injury (such as a suspected concussion, neck or back injury, etc.)
- Failure to respond appropriately to a medical emergency
- Failure to prevent a sexual abuse or molestation incident
- Failure to report a suspected sexual abuse situation
- Failure to prevent discrimination or harassment
- Claims arising out of concessions

How can event organizers, etc. protect themselves from claims or litigation arising out of a sports event? While most people respond by saying “buy insurance”, insurance is only one of the Risk Management techniques. Prevention is the best insurance policy!

The 4 Key Risk Management Strategies

Risk Management is the continuous process of identifying, assessing and mitigating risks to reduce the frequency and severity of potential losses. The goal of risk management is to develop action plans to eliminate, minimize or manage the identified risks. The 4 key Risk Management strategies are as follows:

1. Risk Avoidance: avoiding risky hazards, activities or exposures for your event.
2. Risk Acceptance: knowing the risk exists and assuming the risk (i.e. assuming the inherent risk of injury).
3. Risk Reduction: following rules and regulations, risk management best practices, safety guidelines, etc. to reduce the likelihood, frequency or severity of loss. *[Operational risk management examples include establishing event safety plans/protocols, event security, event medical, event staff and volunteer training, etc.]*
4. Risk Transfer: shifting risk from one party to another. (i.e. waiver forms for participants and volunteers, insurance policies, contracts with suppliers/vendors for concessions, event medical, event security, etc.)

Event Risk Management – Practical Recommendations

Beyond the placement of insurance, the following are some practical recommendations for USAV sanctioned events and approved activities. Although not all-inclusive, implementation of the following risk management recommendations will help to prevent situations that may lead to injuries and subsequent claims/litigation. *It's better to be proactive (rather than simply reactive!!)*

- **USAV Rules & Regulations:** follow all the guidelines established by USA Volleyball and its RVAs for the proper set up and conduct of a sanctioned volleyball event. Be sure to enforce safety rules and regulations.
- **Waiver Forms (for participants and volunteers):** all participants and volunteers should be required to sign the approved USAV's waiver & release forms (*be sure to review the waiver section later in this document*).
- **Event Safety & Security Plan:** establish a safety and security plan for your event. Conduct periodic safety audits to inspect equipment and facilities for any possible hazards. Address any issues with the facility owner and document the outcome of discussions. For outdoor events, be sure to include adverse weather as part of your contingency plans.
- **Event Medical Plan:** Establish an effective medical response plan for both first aid and emergency medical situations. Automatic External Defibrillators (AED) units should be available.
- **Communications Plan:** establish a public relations/communication plan with all parties involved in the event, especially with parents and athletes.
- **Athlete Supervision (for minors):** Establish a plan for the proper supervision of the athletes while participating in the sporting event, particularly if they are not accompanied by a parent/legal guardian.
- **SafeSport Guidelines:** Be sure that all coaches, officials or other adults with care, custody and control of minors have had a comprehensive background screening and gone through USAV abuse & molestation awareness & prevention training.
- **Event Staff and Volunteer Training:** Be sure to educate event staff and volunteers on their roles and responsibilities, communication protocols, event safety, security and medical plans, etc. Conduct periodic clinics to keep officials and volunteers apprised of changes in rules and regulations, etc.
- **Contractual Risk Management (*see contract section for more information*)**
 - Commit to written contracts (*avoid handshake deals*)
 - Consult legal counsel (for your protection)
 - Clearly define roles and responsibilities in agreements
 - Use standardized contracts (*don't just sign what the other party provides*)
 - Review Indemnification and Insurance requirements closely
 - Obtain Certificates of Insurance (pursuant to insurance requirements)
- **Incident/Claims Reporting Procedures & Forms:** be sure to document and report incidents/injuries in accordance with USAV's guidelines (as outlined in this document).
- **COVID-19 Risk Management:**
 - Follow USA Volleyball COVID-19 Return to Play Guidelines
 - Comply with any requirements from State/Local Authorities
 - Adhere to CDC Guidelines, Protocols and Resources
 - Create a COVID-19 Event Plan
 - Educate event staff, officials and volunteers about the Plan
 - Utilize signage (to provide notices/warnings/reminders/instructions)
 - Clean & sanitize event facilities and equipment
 - Follow social distancing protocols and limit access (as required)
 - Mandate face masks be worn (as required by USAV or state/local regulations)

WAIVER AND RELEASE OF LIABILITY FORMS

As is the case for most amateur sports, signed waiver forms are required from all participants (and from parents/legal guardians in the case of minors) prior to participation in USA Volleyball sanctioned or approved events. This is not just a USAV requirement, but also a requirement from USAV's General Liability insurance carrier. Event organizers and clubs are responsible for making sure these forms are being signed and submitted in accordance with USA Volleyball guidelines.

Contrary to popular belief, a well written waiver and release form serves as a "first line of defense" against a cause of action for negligence and is a very effective risk management tool. In most jurisdictions, waivers are customary and enforceable. It is important to remember that obtaining signed waivers from all participants does not reduce the need for insurance or effective safety practices.

The following are key elements of an effective waiver:

- **Acknowledgment of Risk:** Addresses the inherent risk of participation in athletic activities (including the sport volleyball) and the potential for bodily injury, sickness & disease, death, etc.
- **Assumption of Risk:** By signing these forms, the participants (or parents of participating minors) acknowledge the inherent risks and dangers associated with participating in USA Volleyball sanctioned activities and their acceptance of these risks.
- **Waiver and Release from Liability:** By signing these forms, the participants (or parents of participating minors) agree to waive and release various parties, including USAV, its RVAs, the event organizer, clubs, facility, sponsors, coaches, officials, volunteers, etc.
- **Indemnification:** By signing these forms, the participants (or parents of participating minors) agree to indemnify these same parties for any claims brought against them for which the waiver applies.

The USAV waiver form addresses each of the aforementioned elements. It is for this reason that Event Organizers should be using the USA Volleyball waiver and release form.

PARTICIPANT ACCIDENT COVERAGE (i.e. Accident Medical and AD&D coverage)

The USAV Participant Accident policy provides up to \$25,000 of excess Accident 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 Participant Accident coverage is to help supplement the out of pocket costs (such as deductibles, co-payments, coinsurance, etc.) associated with primary medical coverage and to provide reimbursement if no other collectible insurance is available. The Accident Medical coverage under the USAV Participant Accident policy is subject to the deductible of \$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 Participant 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 claim situation to determine how the Participant 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
<u>-\$ 500</u>	Primary Deductible (participant responsible)
\$3,000	Balance to be considered by primary carrier
<u>-\$ 600</u>	20% coinsurance (participant responsible)
\$2,400	Payment by primary carrier

Excess Coverage through USAV

\$ 500	Deductible from above
<u>\$ 600</u>	Coinsurance from above
\$1,100	Balance to be considered by excess carrier
<u>-\$ 250</u>	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
<u>-\$1,000</u>	Excess Deductible (participant responsible)
\$ 2,500	Payment by excess carrier

PARTICIPANT 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
<u>-\$250</u>	Primary Deductible (patient responsibility)
\$ 50	Balance to be considered by primary carrier
<u>-\$ 10</u>	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
<u>-\$250</u>	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
<u>-\$1,000</u>	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 PARTICIPANT ACCIDENT EXCESS MEDICAL COVERAGE WILL NOT APPLY. The intent of the Participant Accident Excess Medical coverage is to supplement Primary Medical coverage whenever it is available.

*****REFER TO USA VOLLEYBALL'S SAFESPORT REQUIREMENTS AND LEGAL REPRESENTATION
FOR MORE GUIDANCE ON THIS TOPIC*****

SEXUAL ABUSE OR MOLESTATION EXPOSURE

Protecting children from sexual abuse and molestation situations is one of the most important responsibilities and greatest challenges facing National Governing Bodies (NGBs) and amateur sports associations. Organizations have a moral and legal obligation to take appropriate precautions to prevent these situations from occurring.

When alleged abuse occurs, the NGB/association, facility owner, club/team, etc. can be held legally responsible for the actions of the alleged perpetrator (such as a coach, official or volunteer). The claims often allege negligent selection (of an employee, contractor or volunteer), inadequate background screening, improper supervision, failure to prevent abuse, failure to investigate and report allegations of abuse to the proper authorities, etc. The mere accusation of abuse or molestation can ruin reputations for both the organization and individuals involved, and it can be difficult to overcome the stigma even if one is totally exonerated of all charges.

For this reason, prevention is the best approach to managing this risk. Long before abuse became a national issue with the Larry Nassar situation in 2017, USA Volleyball has taken a proactive approach to abuse risk management. For more than 15 years, USA Volleyball has required comprehensive background screening and mandatory abuse & molestation awareness and prevention training.

To learn more about USA Volleyball's current SafeSport measures, please refer to the following link:
www.teamusa.org/usa-volleyball/about-us/safesport

CONTRACTUAL RISK MANAGEMENT

One of the most significant exposures for USAV clubs and event organizers arises out of liability assumed in a written contract or agreement. Common contracts include:

- Facility rental agreements
- Equipment rental agreements
- Municipality Permits
- Vendors/Contractors (providing products or services in connection with an event)
- Sponsorship agreements

Within many of these contracts, the party that drafted the agreement often tries to transfer as much risk to the other party as possible. The following information will provide a better understanding of the 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 you from incurring a great deal of risk that would not otherwise be accepted in the absence of such knowledge.

Some key points to keep in mind with respect to contracts:

- Contracts often favor those who draft the contract wording.
- Terms & conditions of a contract may determine whether an insurance claim will be paid.
- Liability is often assumed/transferred within contracts (Assumption of Risk or Contractual Risk Transfer)

The following are best practices when it comes to contracts:

- Commit to written contracts (avoid handshake deals)
- Consult legal counsel (for your protection)
- Clearly define roles & responsibilities (i.e. including products or services to be provided).
- Include appropriate Indemnification requirements (mutual is recommended)
- Include appropriate Insurance requirements (including additional insured status, waivers of subrogation, certificate of insurance requirements, etc.)

Liability Assumed by Contract

Municipalities, school districts, and other facility owners often try to transfer all risk of loss to the party renting or using the venue facility. Coaches and club officials have agreed to assume these risks as part of a rental agreement without understanding 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 many jurisdictions, one party cannot transfer its sole negligence to another by contract. However, it is very common for contractual risk transfer as much responsibility as possible via a contract or agreement. It is 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.

While contractual liability associated with a facility rental for sanctioned or approved events is covered under the USA Volleyball General Liability insurance program, claims arising out of assumption of risk 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.

Municipalities, schools and other venue owners will require USA Volleyball clubs to hold them harmless and cover all legal expenses as a requirement of using their facility. There are a wide variety of Indemnification clauses used in rental agreements. Most are written to favor the Lessor (i.e. the municipality, school district, or venue owner) and require the Lessee (a USA Volleyball club or event organizer) 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 a MUTUAL Indemnification provision that is preferred:

Lessee shall indemnify, defend and hold harmless Lessor, its officers, employees and agents from any claim, liability, loss or expense (including reasonable attorney fees) arising out of the Lessee's occupancy and use of the facility, but only in proportion to the extent such claims, liability, loss or expense arise out of the negligent acts or omissions of USA Volleyball, its Regional Volleyball Associations (RVAs), clubs, officers, employees, volunteers or agents.

Lessor shall indemnify, defend and hold harmless USA Volleyball, its Regional Volleyball Associations (RVAs), clubs, officers, employees, volunteers or agents from any claim, liability, loss or expense (including reasonable attorney fees) arising out of the Lessor's ownership, operation or maintenance of the facility, but only in proportion to the extent such claims, liability, loss or expense arise out of the negligent acts or omissions of the Lessor, its officers, employees, contractors or agents.

The reason this Indemnification provision is preferred is that each party to the agreement is only responsible for their own negligence. A facility that has inherent hazards (such issues related to maintenance of facility, etc.) should be the responsibility of the venue owner. If a loss occurs resulting from unsafe premises, USA Volleyball, its clubs, etc. should not assume responsibility for this type of exposure.

If a rental agreement does not have a mutual Indemnification requirement, it is recommended that you negotiate to have the attached "**Indemnification Clause Addendum**" added to the agreement. We have also created a **Facility Rental Agreement Checklist** for your consideration and use. As always, we recommend seeking the opinion of qualified legal counsel before entering into any written agreements.

FACILITY RENTAL AGREEMENT

Indemnification Clause Addendum (SAMPLE)

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. *Lessee shall indemnify, defend and hold harmless Lessor, its officers, employees and agents from any claim, liability, loss or expense (including reasonable attorney fees) arising out of the Lessee's occupancy and use of the facility, but only in proportion to the extent such claims, liability, loss or expense arise out of the negligent acts or omissions of USA Volleyball, its Regional Volleyball Associations (RVAs), clubs, officers, employees, volunteers or agents.*
- B.
- C. *Lessor shall indemnify, defend and hold harmless USA Volleyball, its Regional Volleyball Associations (RVAs), clubs, officers, employees, volunteers or agents from any claim, liability, loss or expense (including reasonable attorney fees) arising out of the Lessor's ownership, operation or maintenance of the facility, but only in proportion to the extent such claims, liability, loss or expense arise out of the negligent acts or omissions of the Lessor, its officers, employees, contractors or agents.*

Signature of USA Volleyball Representative

Signature of Venue Owner

Date: ___/___/___

Date: ___/___/___

*****PLEASE BE SURE TO HAVE AN ATTORNEY REVIEW ANY CONTRACTUAL OBLIGATIONS, HOLD HARMLESS AND/OR INDEMNIFICATION PROVISIONS PRIOR TO SIGNING ANY WRITTEN CONTRACT OR AGREEMENT. *****

FACILITY RENTAL AGREEMENT CHECKLIST (SAMPLE)

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

Facility Walk Through

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

Rental Agreement Review

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

DRONE RISKS

The use of drones (also known as Unmanned Aircraft Systems) is becoming more widespread for both recreational and business purposes.

Contrary to popular belief, drones are considered aircraft and when used for business or commercial purposes, drones are subject to Federal Aviation Administration (FAA) regulations. In fact, the FAA has established rules and regulations governing the commercial use of the drones that went into effect in 2016.

Federal Aviation Administration (FAA) Unmanned Aircraft Systems (UAS)

www.faa.gov/uas

From an insurance perspective, drones are also considered “aircraft” and therefore subject to the aircraft liability exclusion under a standard ISO General Liability policy. Most general liability carriers have taken the position that since drones are aircraft, they will not provide coverage. This is the case with the USA Volleyball General Liability program.

Given the compliance and insurance issues surrounding drones, hiring a commercial drone operator (with appropriate FAA certification and proper aviation insurance) is the best risk management approach for many sports organizations.

We encourage you to reach out to EPIC if you would like to discuss your current or potential drone related risks.