

## Memorandum

To: All NASA Swim League Representatives

From: Mark Nedza, Swim League Administer

Date: March 14, 2006

Re: North Atlanta Swim Association - 2006 Season

### Waiver/Release Program

Waiver/release forms are important in protecting your team and the league. Did you know that you don't have to be proved negligent to lose a lawsuit when a sports participant is injured? **In many states the injured party must only prove that he was not aware of the risks involved in participation and did not give his informed consent to be subjected to such risks.** This is why a "well drafted" waiver/release should contain a risk warning and informed consent provision.

Each team must have a parent/guardian sign a waiver/release form for each participant in the league recognizing that they are aware of the inherent danger in swimming. These forms should be part of each team's registration packet. These forms must be attached in age group order to the team roster and submitted to the swim league office **before the first day of practice.** Participants can be added to a team's roster throughout the season as long as a waiver/release form has been signed for each participant.

If teams do not have a waiver/release program in place you may want to use a form similar to ours.

### What is a Waiver or Release Agreement?

A waiver or release is a written agreement where the participant and or parent sign promising not to sue the league and its directors, officers, or volunteers should the participant get injured.

In the context of a minor (under age 18), the usefulness of a waiver/release agreement is dependent on a particular state's law. Most states will give some weight to a waiver/release (in the minor context) only if the following three conditions are met:

1. The intent is crystal clear and written in language that is easily understood.
2. The injury is more accidental in nature and not the result of obvious negligence.
3. The waiver/release is "well drafted" and avoids common pitfalls.

If the above three conditions are met, most courts still will not immediately throw out a lawsuit on Summary Judgment. Instead, the legal system will give weight later on in the process as the injured party's attorney must overcome the defense's presentation of the waiver/release.

Because the benefit occurs later in the legal process, legal defense costs can still be extremely high. This is why a waiver/release should not be used in lieu of purchasing liability insurance. Nevertheless, the benefit is still very important because it may ultimately limit the amount of damages that are payable. This is why most insurance companies strongly recommend or mandate the use of waiver/releases. Waiver/releases can be very effective in the adult context (18 and older), in terms of immediately having the lawsuit dismissed on Summary Judgment as long as the waiver is well drafted and the injury is not characterized as gross negligence.

## Special Risk Insurance Coverage

A league this size must be run professionally. This includes the management of risk. The issue is of such great concern, that we are implementing an accident policy for each participant upon signing a waiver.

The implementation of this Waiver/Release program and addition of a Special Risk program will ensure NASA is protected in the event we are ever faced with litigation. The insurance coverage built into the participant fee will be an excess policy. To hold down the cost of insurance for each individual, the league will pay the \$100 deductible.

The policy covers Accidental Medical, Dental and Death and Dismemberment expenses for:

- Competitions and Practices
- Visiting Teams
- Officials
- Travel to and from a meet
- Other team-sponsored activities

### Summary of Policy Features:

- **Eligibility:** All players, managers or coaches of the Policyholder
  
- **Coverage:** While participating as a member of a team in a scheduled game, an official tournament game, or in a practice session of the team; or traveling directly to or from a game or practice session as a member of a team.
  
- **Accidental Death and Dismemberment Benefit:**
  - Maximum Amount: \$10,000
  - Aggregate Limit: \$100,000 per accident
  
- **Accident Medical Expense Benefit (Excess)**
  - Maximum Amount: \$25,000
  - Deductible Amount: \$0
  - Dental Maximum: \$250 per tooth

### **Exclusions:**

No coverage shall be provided and no payment shall be made for any loss resulting in whole or in part from, or contributed to by, or a natural and probable consequence of any of the following excluded risks even if the proximate or precipitating cause of the loss is an accidental bodily Injury.

1. Suicide or any attempt at suicide or intentionally self-inflicted Injury or any attempt at intentionally self-inflicted Injury or autoeroticism.
2. Sickness, disease, mental incapacity or bodily infirmity whether the loss results directly or indirectly from any or these.
3. The Insured's commission of or attempt to commit a crime.
4. Infections of any kind regardless of how contracted, except bacterial infections that are directly caused by botulism, ptomaine poisoning or an accidental cut or wound

- independent and in the absence of any underlying sickness, disease or condition including but not limited to diabetes.
5. Declared or undeclared war, or any act of declared or undeclared war, except if specifically.
  6. Full-time active duty in the armed forces, National Guard or organized reserve corps of any country or international authority.
  7. Travel or flight in or on (including getting in or out of, or on or off of) any vehicle used for aerial navigation, if the Insured is:
    - a. riding as a passenger in any aircraft not intended or licensed for the transportation of passengers;
    - b. performing, learning to perform or instructing others to perform as a pilot or crew member of any aircraft: or
    - c. riding as a passenger in an aircraft owned, leased or operated by the Policyholder or the Insured's employer.
  8. The Insured being under the influence of intoxicants.
  9. The Insured being under the influence of drugs unless taken under the advice of and as specified by a Physician.
  10. The medical or surgical treatment of sickness, disease, mental incapacity or bodily infirmity whether the loss results directly or indirectly from the treatment.
  11. Stroke or cerebrovascular accident or event; cardiovascular accident or event: myocardial infarction or heart attack; coronary thrombosis; aneurysm.
  12. Any condition for which the Insured is entitled to benefits under any Workers' Compensation Act or similar law.
  13. The insured riding in or driving any type of motor vehicle as part of a speed contest or scheduled race, including testing such vehicle on a track, speedway or proving ground.

**The outline above provides a summary of the policy features only and does not cover all the terms, conditions and limitations.**

## Evidence of Insurance

Each team will be required to submit a certificate of insurance showing that each facility has General Liability insurance. The league does not have any requirements as far as the insurance is concerned. Each club should have some form of General Liability insurance and as an association we encourage each of you to ask and make sure that there is some form of insurance in place. If for some reason none exists you should be aware that there is a potential for personal liability.