

# **Avoiding the Lawsuit Experience Without Staying in Bed All Day**

**by Stephen C. Baker, Esq.**

## **I. Introduction:**

The purpose of this outline is to provide information to United States Swimming officials which will assist them during the officiating of swim meets. This outline will not help official improve their skills in starting a race or identifying an illegal backstroke turn. However, the information provided will help officials avoid what many consider the worst experience of a lifetime: being a defendant in a lawsuit.

I must emphasize, it is not likely that an official will ever become embroiled in a lawsuit arising out of a swimming meet. The very fact that this outline exists does not mean that officiating carries with it an increased risk of being sued. Rather, it is simply a fact of life in America, especially in California, that lawsuits happen.

What I hope to do through this outline is to arm swim meet officials with basic information they can use during their officiating of a swim meet so as to minimize the likelihood that a lawsuit will occur. In addition, given the inevitability of lawsuits in our society, I present information concerning what to do when incidents do happen.

Finally, I have included some recommendations regarding the management of a United States Swimming Team. Most swimming officials become officials because they have at least one child on a USS team and many of those parents find themselves on the board of directors. Being a board member of a swimming team carries with it responsibility and risks. The recommendations I present are intended to help minimize exposure to those risks.

This outline is based upon a talk given by me to the Pacific Local Swim Committee Officials Clinic on January 6, 2001. I am a partner in the law firm of Diamond & Baker. Diamond & Baker is located in Cedar Ridge, California, near Grass Valley, and specializes in insurance defense litigation. Recently, we have represented USA Swimming teams in various civil matters in California.

My interest in swimming is not just professional. I swam competitively over 13 years growing up and I currently swim with a local Masters club. For four years I was president of my local United States Swimming Team.

I am a great believer in what competitive swimming offers to our youth. It is my hope that this outline will ultimately encourage people to volunteer as officials and as swim team board members. Don't stay in bed all day!

## **A. Lawsuits in California**

### **1. Our Litigious Society**

-accidents happen.

-lawsuits are a fact of life and can occur whether or not you exercised due care.

### **2. Precautions and Common Sense**

-may eliminate the lawsuit from ever happening.

- 3. Swimming Officials
  - need to be proactive: nip problems in the bud.

## II. Insurance Coverage

Generally, swimming officials acting on behalf of and with the approval of USA Swimming are covered for claims of negligence by participants or any other person for bodily injury, property damage or personal injury. A more detailed summary concerning insurance coverage is set out at the end of this outline. For the purposes of this outline, the key for swimming officials to ensure coverage is to make sure the rules are followed.

## III. Significant 2001 Pacific and 2001 USA Swimming Rules and Regulations Regarding Safety

### A. 2001 Pacific Swim Guide, Section 3, Conduct of Meets

- (1) All meets shall be conducted under current USS rules.

#### **Key USA Rules:**

Article 102.1. Events: “Meets should be planned to ...provide adequate meal, rest breaks, and properly supervised sheltered rest areas.”

Article 102.13. Referee: The referee “shall have full authority over all officials ... shall enforce all applicable rules and shall decide all questions relating to the actual conduct of the meet.”

Article 102.18. Marshals: “...shall enforce warm up procedures and maintain order in the swimming venue. The Marshal shall have full authority to warn or order to cease and desist, and, with the concurrence of the Referee, to remove, or have removed from the swimming venue anyone behaving in an unsafe manner or using abusive language or whose actions are disrupting to orderly conduct”

Article 102.23. Meet Director: “Shall be appointed by the meet host. The meet director’s responsibilities include: but are not limited to: ...preparing the facility, arranging for personnel, equipment and supplies necessary for meet operation...”

Article 102.25. Tobacco Products: Smoking and use of tobacco products is prohibited in all areas of the venue, including, but not limited to, pool deck, locker rooms, spectator seating or standing areas, and in all areas used by swimmers.”

Article 102.26. Alcoholic Beverages: “Sale and use of alcoholic beverages is prohibited in all areas of the venue, including, but not limited to, pool deck, locker rooms, spectator seating or standing areas, and in all areas used by swimmers.”

Article 103.2.3 Rules regarding water depth. Allowing swimmers to dive into pools with a depth below minimum risks serious injuries and potential lawsuits for which there may not be insurance coverage.

#### Article 103.3./M/ Racing Course Walls

Includes requirements regarding end wall target and nonskid surface.

Article 103.7./ M/Ladders “All ladders, steps or stairs within the racing course shall be recessed in the pool side walls or shall be removed during competition.”

From USA Swimming Glossary: “Swimming Venue: the area located on the sides and ends of the pool, spectator area, team areas within the pool facility (e.g. portion of the building designated for teams and swimmers, or fenced area around outdoor pool), locker rooms, and other such areas as may be specifically designated by the host club or organization, meet director, or referee.”

### **Additional Key Pacific Rules:**

Section 3, A. 2. “All sanctioned competitions are required to have all warm up sessions supervised and controlled using the format adopted by Pacific.”

Section 3, A. 5. “All animals are prohibited from the pool deck areas during swim meets.”

Is safety part of the responsibility of the meet official? The language in these rules suggests it is. What constitutes a properly supervised rest area? Is there a hazard in the rest area that may endanger swimmers or others? Is there a need for marshals to supervise the rest area? Which lane is being used for the sprint lane during warm-ups?

### **B. Addressing These Safety Rules**

1. Pre-meet Officials Meeting
  - a. Include the Meet Director
  - b. Include safety in your pre-meet discussions
2. Considerations: This is not all-inclusive
  - a. Warm up: Which lane is being used for sprints? Are the marshals present?
  - b. Water depth: Are you certain that you have the minimum water depth?  
**This is crucial. Claims arising out of insufficient water depth may not be covered.**
  - c. Starting blocks: Are they the correct height? (USA Rule 103.11) Are they secure?
  - d. Electronic Equipment: See USA Rule 103.18. Is proper equipment being used?
  - e. Ladders: See USA Rule 103.7.
  - f. Are there any slippery places on the deck, in the locker room or anywhere else in the swimming venue?
  - g. Locker Rooms: They are part of the swimming venue. Marshals should check them periodically. (Don't ask for problems: have female marshals checking the women's locker room and male marshals checking the men's locker room).
  - h. First Aid Equipment: Where is it? Do you know the location of the nearest hospital?
  - I. No animals on the deck. The little yappers are just as prone to bite as the big ones.

A failure to follow USA Swimming and LSC Rules may lead to an accident or incident and exposure in a resulting lawsuit. Spend a few minutes with the meet director in the morning before the meet starts discussing safety. An ounce of prevention is worth a pound of cure.

### C. Handling an Incident

#### 1. The Incident Report

**All claims or incidents of bodily injury or property damage must be reported immediately to the USA Swimming National Headquarters and Risk Management Services, Inc. It is imperative that no person admits liability or responsibility or discusses any aspect of an incident with anyone other than an authorized claims representative of USA Swimming, law enforcement authorities or emergency medical personnel.**

- a. USA Swimming Report of Occurrence Form
- b. Conduct a reasonable investigation.
- c. Don't speculate. Don't conclude. "Just the facts ma'am, just the facts."
- d. Be Professional: Treat all people with respect.

If someone has slipped and fallen, describe the type of footwear worn by the victim. If you suspect someone was drunk, describe what led you to that belief, e.g. slurred speech, smell of alcohol, etc.

#### 2. The Difficult Parent

- a. Always know that your conduct may be under scrutiny later. Stay calm. Be beyond reproach.
- b. Be respectful, even of the person screaming at you. Don't stoop to his or her level.
- c. Be firm. Don't be wishy-washy.
- d. If a parent will not calm down, instruct him or her to leave the swimming venue. If the problem continues, call the sheriff. Remember the authority of the Marshall per USA Rule 102.19.
- e. Regarding Marshals: You don't need "Dirty Harry", at least in this position. He will just buy you trouble.
- f. California Penal Code Section 243.8(a): battery on a sports official. If someone hits you in your capacity as a sports official, that person needs to be punished. Contact the sheriff immediately. The local district attorney may want to prosecute under this code section. You may also have civil remedies against the perpetrator.

#### 3. Code of Conduct Issues

Article 304 Code of Conduct:

Violations -

- a. anti-doping provisions
- b. discrimination
- c. any sexual contact or advance directed toward an athlete by a coach, official, trainer or other person who, in the context of swimming is in a position of authority.

If you observe what you believe to be a code of conduct violation, contact officials or representatives of the team whose members may be involved. Discreetly report factually what you saw. Remember, what you think you are seeing may not be what you think it is. If a male coach hugs his 16-year-old female swimmer after a race, is that a sexual advance? Accusation of racial discrimination or sexual misconduct could be devastating to a coach's career. On the other hand, you can't put your head in the sand. If you are uncertain about something, discuss it with the other officials. Be discreet.

#### IV. Open Water Swimming

Open water swimming is an inherently dangerous sport. Currents, tides, sharks, jellyfish, hypothermia, boat propellers; these are just some of the dangers facing the open water swimmer. Generally, a person engaging in this activity assumes the risk of the sport. However, assumption of the risk does not preclude the need of anyone involved in this activity to be mindful of safety. Article 703 of the USA Swimming Rules and Regulations states that safety recommendations in the USA Swimming Open Water Meet Director's Guidelines shall be strictly followed. If you are officiating an open water swim, know these recommendations.

#### V. Swim Team Management

I could spend hours talking about the "dos" and "don'ts" of managing a swimming team by a board of directors. This could be the subject of another talk by itself. That said, I present the following points to keep in mind.

##### A. Insurance

1. Make sure payment for your team insurance policy is paid.  
Don't allow your team to be uninsured.
2. Understand what is and is not covered by your policy.  
Are you planning a parents social where alcohol is being sold? (Don't expect coverage).  
Is your fundraiser legal?
3. Have separate policies for:
  - a. Directors and Officers Liability
  - b. Workers Compensation
  - c. Water Polo
  - d. Diving

Contact Sandi Blumit at Risk Management Services, Inc. (602) 667-1822, facsimile: (602) 274-9138 regarding your specific needs.

##### B. Know the Purpose of your Program

1. Give all kids the opportunity to compete to their best ability and desire.
2. Keep your program in perspective. Not every athlete will go to the Olympic Games. Do your best to accommodate all levels of athletes.

3. Protect your coach.

A parent's role is to parent, not to coach.

Parents should be able to talk with coaches, but not to the extent where they interfere with the coaches' ability to coach.

Have a clear procedure for the handling of complaints.

4. Communicate

A monthly newsletter and website will do wonders. Make sure your coaches have their own column.

C. Financial Issues

1. Run your team like a business.

Your treasurer is crucial.

Stay in the black. Be accountable for the swim team's money.

Don't enter into obligations your team cannot afford.

Develop a budget each year and monitor your income and expenses closely every month. Anticipate financial problems (e.g. pool heating expenses). Don't let your team get into debt.

2. Make sure your fundraisers are successful . . . and legal!

D. Coaches/Employees

1. Make sure you have workers compensation insurance coverage.

2. Hiring and firing: A board appointed committee should have the responsibility for hiring and firing any employee.

a. Hire carefully: Your coach is a role model for your children and is a representative of your team. Character and integrity are more important than swimming knowledge. A "great" coach with a substance abuse problem is not a great coach.

b. Written contract: The terms should be clear.

c. Deal with parental complaints promptly.

Be respectful of both the coach and complaining parent.

Document factually everything.

Be discreet. Don't let rumors and innuendos make problems worse. Level heads and common sense are crucial. Most importantly, always keep in mind the purpose of your program.

E. Dealings With Entities That Own the Pool

1. Negotiate a fair contract. Your heating cost is probably your greatest expense. Make sure your team can afford to pay the bill.

2. Have a positive working relationship with the pool maintenance people and the janitors who clean the locker rooms.
3. Make sure your security system is clearly understood by all: janitors, pool maintenance people, coaches and masters. Avoid the possibility of a communication error leading to an open door or gate. A gate left open could be disastrous.

Supplement: USA Swimming 2001 Insurance Coverage: Liability Insurance Coverage

**(Note:** this outline regarding insurance coverage is intended to provide basic information but cannot and does not address every situation. Specific questions concerning coverage should be addressed to Risk Management Services. (602) 667-1822; facsimile: (602) 274-9138)

1. General Liability:

Who is insured: USA Swimming; USA Swimming Local Swimming Committees.  
Additional Named Insured: USA Swimming Member Clubs for Insured Activities; Any member of USA Swimming, or volunteer, for Insured Activities.

Coverage: Coverage is provided under the USA Swimming General Liability policy for any USA Swimming member, local member club, or volunteer while acting on behalf of and with the approval of USA Swimming for:

- Claims of negligence or personal injury against an Insured, by participants, or any other person, for bodily injury, property damage or personal injury for Insured Activities.
- Limited Contractual Liability for claims arising from a written contract for Insured Activities. Coverage is only provided for claims resulting from negligence of the insured.

Exclusions: (not all inclusive)

Diving - any claim arising out of any incident occurring on a diving board or diving platform and or its supporting structure, including ladders and steps. This exclusion does not apply to starting platforms as stated in *USA Swimming Rules and Regulations*.

Water depth - any claim arising from racing starts in water depths less than the minimum(s) as stated in *USA Swimming Rules and Regulations*.

Water polo, except intra-squad.

Employment Related Activities - including refusal to employ, termination, coercion, demotion, discipline, harassment, discrimination, evaluation, defamation, or any other employment related practices, policies, acts or omissions.

Property - Property in insured's care, custody or control.

Automobile or Motor Vehicle

## Workers Compensation.

### Insured Activities:

- Swimming events where a USA Swimming sanction has been issued.
- Approved meets per *USA Swimming Rules and Regulations*.
- Covered competition - A covered competition is a swimming competition between a USA Swimming member club and a non-member club, non-member swimmers or unattached swimmers hosted by the USA Swimming member club, the certificate of insurance with the wording required by USA Swimming must be executed by the non-USA Swimming club's insurer or its authorized agent. In the case of an unattached swimmer, a liability/medical release form must be executed by the swimmer and his or her legal guardian. The certificate/release form must be sent to and approved by Risk Management Services, Inc. prior to the covered competition taking place.
- Learn to Swim Programs where all participating athletes and coaches are members of USA Swimming. Must be held under the sole and direct supervision of USA Swimming Member Coaches.
- Swimming tryouts under direct supervision of USA Swimming Member Coaches.
- Swim-a-thon - USA Swimming-contracted only.
- Approved socials where alcoholic beverages are not sold. Contact Risk Management Services for approval for all social activities.
- Approved fund raising activities. Contact Risk Management Services for approval for all fund raising activities.