

Chapter Two: Risk Management

Reducing the Potential for Incidents (Before “it” hits the fan)

Assessing Risk

- Activity – What are the possible risks? Ways to reduce them? Include errors in judgment, desire to please, adhere to schedule, disregarding gut feelings, fatigue, low blood sugar, dehydration, miscommunication...
- Participants – Unsafe acts - going too fast, not eating or drinking, wrong place at the wrong time
- Environment -Unsafe conditions-animals, terrain, weather, inappropriate clothing

Managing Risk

- Manage (assess, mitigate, warn, transfer)
- Transfer (insurance)
- Orientation – Make sure participants know what the risks are, that they must assume them & that there are no guarantees of safety
- Ignore - Not a good way to manage!

Participant Screening

- Degree of medical care available
- Exercise, stress, and environmental conditions
- Anticipated fitness of participants
- Standard of care of other programs
- Advice of medical professionals
- Medical forms and physician’s forms

Incident Reporting

- Appropriate incident report forms
- Encouragement within agency to report – report your incidents and near misses. It may help prevent future problems for others.
- Analysis by staff and supervisors
- Timely compilation of data

Program Audits

Internal audits allow for:

- Quality improvement
- Mechanism for staff feedback
- Risk management education for audit staff

External audits allow for:

- Update on industry best practices,
- “Objective observer”

New Program Planning

- Includes any new activity environment, or population
- Ask if hazards are different or higher
- Work with your Activity Leader and the Risk Manager

Section 1: Risk Management Overview

Minimizing the Consequences of Incidents (After “it” hits the fan)

Liability Releases - one purpose is to inform people

- Failure to get it signed can result in insurance company opting not to cover us because you did not follow procedures. Now your own assets are on the line
- Notice of legal document –not misrepresented like “sign-in sheet”, not coerced,
- Who is covered? COP volunteers
- Waiver of right to sue –person is giving up their right to sue. Best to get this signed in Ohio or be sure to state they will need to sign it when they join the trip. Some states (WV & Nat’l Parks) do not recognize this but do recognize....
- Assumption of Risk – person is stating that they know and accept the risks, no outright guarantee of safety
- Indemnification – Ohio case law is that parent can sign away a child’s right to sue
- Severance Clause – one part ruled inadmissible still leaves the rest of the document
- Jurisdictional Clause
- Good to give written expectations i.e. all adults will keep minors in sight, obey traffic laws, etc.

Insurance

- General Liability
- Un-reimbursed medical – Excess Med policy – don’t mention it to participants – you may advocate to the Risk Management Committee if you feel it is appropriate
- Property – some COP owned yes, participant owned no
- Auto – no

Emergency Action Plans

- Emergency #s with you
- Assign what to do in emergency
- Preplanning and practice plus on the scene response
- Next of Kin communications – Honesty is best policy, never lie. Can say you don’t have all the info. Help families of injured participants.
- Document – write down the obvious
- Take care of other participants
- Watch “I’m sorry” or guilty feelings

Accident Investigation

- Not looking to assign blame, but gather info. What can COP learn? What can we do for this person?
- Internal Review vs. External Review

COP does not have a trip sign up sheet!

Participants have the right to know they are signing a legal document, so refer to it as the release or liability release/ assumption of risk

Other Thoughts Concerning Risk

Best Areas to Manage Risk:

- Quality leader training
- More mature leaders make better judgments
- Increase first aid training
- Quality pre-participant orientation

Duties

You have a legal duty to:

- **Provide proper instructions.**
- **Provide proper supervision.**
- **Provide “safe environment” (physical & emotional).**
- **Provide Healthcare/First Aid (within your level of training, but be trained to a level appropriate for what you are doing).**
- **Enforce rules (if you have them, you have to enforce them so read your manual!).**
- **See & Evaluate injuries – (watch your participants for signs of developing trouble).**
- **Adequately Warn re: risks and known hazards.**
- **Keep records.**
- **Plan and act as a reasonably prudent person would.**

COP did not make these up. These duties are legal duties that apply whether you are a COP volunteer or just invited a buddy to go for a ride.

Elements of a Successful Suit

- **There was a duty**
- **There was a breach of that duty**
- **There was an injury, loss or damages**
- Caused by that breach of duty

Negligence

Grey area

- Negligence: *Is the failure to act or provide care as a reasonably prudent person would in the same conditions with the same knowledge, experience, and background as you (2009 Wilderness First Responder, SOLO) Usually covered by the waiver.*

The Insurance Co. is not obligated to cover you if the following kinds of negligence are involved. The Release/Waiver could be thrown out of court

- Gross Negligence – Negligence that is worse than standard negligence. i.e. You knew your river guide drank a lot, you did nothing about it.
- Willful and/or wanton - you knew your river guide worked under the influence and you cared so little about the problem that you did nothing about it.
- Intentional – You knowingly led someone into danger. i.e. You bought the guide beer.
- Negligence per se – the injury or loss happened while you were breaking the rules of a governing body i.e. hitchhiking, camping illegally, no permit, running stop signs etc. You are automatically negligent in this case.

Balance risk vs. goals - if you remove all risk, you might remove the whole activity

First Aid Training Requirement for COP Leaders

Providing healthcare/first aid is different than personally performing healthcare/first aid. Based on that, one needs to look at the environment the activity is being pursued in along with how that environment affects access to - and response by - community/area emergency services.

In the case of bicycling, the event (we're assuming a typical weeknight or weekend ride here) is on public roads that provide quick response and direct access by emergency vehicles to the incident requiring medical attention. Given the populated areas we ride in, even if no one at the scene has a cell phone handy to call for assistance, someone can quickly ride to a nearby residence or business to make a call for emergency services. Additionally, these bike groups – though massed at the start – tend to string out and disperse in the course of the ride. There is no guarantee that the leader or other person on the ride that has suitable first aid training will be with any given part of the group in the case of an incident. Even if they are behind the incident, changes in route choice may mean those persons will not happen on the incident to provide their assistance. This means that those on the scene still need to address the incident (including any medical needs) in some fashion which may well be to call for help. An urban neighborhood walking group would fall in this same risk category.

Therefore, this means COP does not need to require bike leaders to personally have first aid training nor do they need to insure that someone on each event has such training. We think it is a good idea to have first aid training. COP encourages leaders and all members to get first aid training, but it is not absolutely required for this class of event.

For other kinds of trips that venture away from quick, easy phone and road access to outside assistance, it is essential that leaders and/or other trip participants have suitable first aid training. Hiking and backpacking trips, flatwater and whitewater paddling trips, climbing trips and other trips into more remote areas would fall into this category. (3/2011)

And, let us work on getting out of the habit of referring to current training as “certified”. I believe the card now states that the person completed the class, with some wording about a time period the card is good for. We have not required “certification” since the AYH days.

This is generally the point where someone brings up the Good Samaritan Law. Good Sam does not relieve you of your legal duty to provide care. It should however, cover the care you provide as long as you follow the standard of care for which you are trained. You will find information about Good Samaritan in Appendix 15.

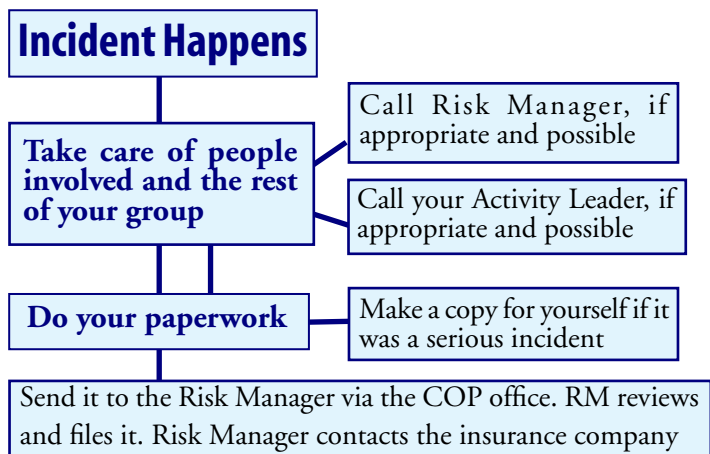
3 points

- You assume just as much risk inviting a friend out on a non-cop activity.
- Your friends are not likely to sue you. Don't be so sure about their health insurance company.
- Anyone can sue you for anything. The question is, will they win? And how much will it cost?

Pay attention to your gut reactions. Your instincts are trying to tell you something. - Ann Gerckens, COP Member

Other comments about releases/problems that can result in the release being thrown out of court

- Some states (including West Virginia and National Parks) do not recognize waivers, but do recognize assumption of risk. The COP release contains both.
- Misrepresented – Be sure your participants know what they are signing. It is important to call it a release, not a “sign up” sheet. By calling it a release you are giving notice that they are signing a legal document.
- In Loco Parentis – in absence of parents, you must make decisions a parent would make. It is a good idea to have parent make note of who is responsible for the child.



Forms needed in the COP Incident File:

- Signed liability release
- Complete Incident report form including names, addresses, phone numbers and witness statements
- Completed Incident Follow-up Form (s)

Media Communications

- Refer them to the President and give them the phone number.
- Honesty is the best policy “I don’t know all the information.”

Some Thoughts re: First Aid Training & Kits

As a long time outdoor activity enthusiast and leader, I have taken many first aid and rescue classes. I consider them to be a small investment in being able to understand and manage risks whether I am a leader on the trip or one of the trip members with another leader. As a leader, I appreciate it when other trip members have taken first aid and rescue training. Their training provides me some of the same benefits that my training provides for others. Sometimes, the trip leader (or primary first aid person) is the one in trouble or is the injured one. Having more than one person on the trip with rescue/first aid skills makes it more likely that every member of the group has someone to help them if needed. Your fellow trip members are your friends; it’s good to be able to help your friends if they need assistance and to know that they can assist you if you need it.

Another part of providing assistance (besides the knowledge part) is having a basic first aid on hand. It doesn’t need to be a big one to provide value. At a caving convention many years ago, I attended a session on first aid that advocated a minimalist four-item first aid kit: 4x4 gauze pads (cut or fold if smaller one is needed), duct tape (or first aid tape), zip lock bags (irrigation, occlusive dressing, bio-hazard gloves) and safety pins (pin sleeve to jacket to improvise sling). Supplemented with the items in your day pack, bike bag or dry bag, this minimalist kit provide just what is needed with minimal bulk. The only things I would add are vinyl or nitrile gloves (the bags are awkward), a COP incident report form <http://www.outdoor-pursuits.org/downloads/forms/incident.pdf> and ballpoint pen.

Liability waivers and other forms are also available on line at <http://www.outdoor-pursuits.org/leadershiptraining.php> or on the COP home page, click ‘About COP’ in the menu, then click ‘Leader Training’ and scroll down a little.

David Seslar, COP President

“We’ll get it to you as soon as we have it.” Then get their name and phone number. This does obligate you or someone from COP to get back to them.

- Do not say “no comment”. People read that as bad.
- With both the police and media, only give information that you to know to be absolute fact and only facts – “He fell.” Not “I heard...”
- Do not give opinions. No “I think...”

Elements of a Successful Suit against you

- There was a duty
- There was a breach of that duty
- There was an injury, loss or damages
- Caused by that breach of duty

Section 2: Using Forms to help manage risk

To help guide you through the leadership process, we have developed a planning guide and several forms. By completing these, you can be confident that you have followed key steps that will allow you to lead a trip in a way that will minimize the stress on you, and the risk to your participants.

Your Trip Plan

Gather this information for each trip to the degree necessary and practical to anticipate possible risks associated with the trip and to develop strategies to minimize or eliminate them. While we no longer require a form to be filled out, writing this information down is a good idea. For re-occurring trips that do not change, such as weekly bicycle rides, one planning session is enough.

A completed trip report from a previous trip to the area can be an effective planning tool for future trips, by providing information about the area, new ideas and outside expertise.

Finally, a written trip plan can, in a court of law, show that you did the prudent planning that participants expect from COP trips.

The Liability Release / Waiver

Participant expectations are also an integral part of the next form, the liability waiver/assumption of risk. In COP we never want participants to join a trip that they don't fully understand, with risks they may not willingly accept. Therefore, ***you must have a signed liability release/assumption of risk for each participant***; without it, they should not be permitted to take part. If the trip is out of state, the release/assumption of risk form should be signed in Ohio.

The liability waiver is where participants are given specific information about the activity in which they are about to take part. It is also the place where, by their signature, they acknowledge they understand these dangers, and agree they will personally accept them. It is important that each participant read the waiver, because we do not want uninformed participants.

As a leader, this release is also important for your protection. This form will help you make sure that you have fully warned the participants, and will provide proof you have done so.

Language giving permission for medical treatment in the case of injury or illness is included in the liability waiver. It can also be presented as a separate form. This gives the medical community prior signed approval for treatment of the individual should he or she be unconscious at the time the treatment is needed.

Hints:

- Put the names and phone numbers of the activity leader, president and risk manager on your liability release. If yours is an activity where participants get really spread out, like in bicycling, put something on the maps about "in case of accident, call ...".
- Contact information for your Activity Leader, the COP Risk Manager and the President are in your newsletter every month.
- Write this information on a small post-it note and attach it to the release form in this manual. Now when you make copies, the information will be right there on your release.

If a permission to treat is included in the liability waiver, it is important for the leader to have parents make note of who is responsible for their child. It is important that the leader have access to this document if it is needed. Note, though, that some people will not wish to agree to this, for religious or other reasons, as is their right. *No one should be denied participation in our events because they do not choose to sign this permission for medical treatment. Have them sign the release with a note exempting the medical treatment text.* This is the only instance in which participants may alter our release. If parents of minors make this decision for their children, it should certainly be documented.

For more information about Waivers, see Appendices 2 & 3.

Be prepared for when things go wrong

Even after the detailed planning you did before the trip, incidents may occur that will call on your management skills. In order to prepare yourself to respond appropriately, you should remember these three things:

Carry the Necessary Information

Nothing is more frustrating to a leader than to be unable to locate the phone numbers or names of key people that could readily solve a problem because you left that information locked in the trunk of your car 20 miles down the trail. Therefore, ***you need to carry with you the liability release***, which also has emergency contact names and numbers of your participants, so you can call them in case of emergency. Any significant interval between the time of an accident and the time you could reasonably be expected to call this emergency contact could make it appear to the contact that you were not acting in good faith, or were attempting to obscure the situation.

You must also carry with you the emergency contact number of the person or persons in COP designated to handle such emergencies. By making this call, you can bring into action the support network that can help you respond appropriately. It is important to remember at this point that you are not alone.

The Incident Report Form

Also carry an Incident Report Form (See Appendix 2). When an incident occurs, it can be chaotic. Yet it is important to make a record of the circumstances surrounding the incident. It is also important so that accurate information is transferred to other participants and family. Finally, it can be a key document in your support should legal actions follow as a result of the occurrence. Therefore,

You must complete an Incident Report Form for each reportable incident.

Take the Necessary Actions

Most of the time, leadership is a subtle thing as you guide the trip through its process. When an illness or injury happens, however, all your preparations as a leader can make a dramatic difference.

When an incident does occur, take charge, step by step.

Follow the classic instruction, do no harm. ***First, secure the situation, rendering first aid if you are so trained, or assigning this task to a participant if so trained and willing.*** You need to know ahead of time what skills are in your group and who will fill which role if needed.

Also ***take the steps necessary to safeguard the remaining***

participants. A tragic situation can only be made more tragic by allowing the other participants to put themselves into peril while reacting to the problem. For example, do not allow other participants to drift into hypothermia while watching you deal with a hypothermic victim.

Next **make arrangements to secure help from outside sources if needed.** This may require you to assign some participants to tasks they are capable of performing. You must be clear about what information you wish to convey through this request, and that the people assigned to these tasks have the skills to carry out them out without becoming imperiled. For example, do not send a team of participants for help until you are confident they are capable of carrying out the task safely.

It is important that you, in a time of crisis, maintain a cool head and act thoughtfully. If possible, step back for a moment and collect your thoughts. By maintaining a compassionate, helpful attitude, you will set an example that will help assure an appropriate response to the situation.

Finally, it is an important part of risk management that you **avoid accepting guilt or responsibility for the occurrence.** This can be difficult, as you will probably be as emotionally charged as any of your participants. If you do have some responsibility for the occurrence, there will be time for that determination later. At the time of the incident, concentrate on resolving it as soon as possible, and save introspection for later. In risk management, a phrase such as “It’s all my fault” uttered at an occurrence can make all subsequent attempts at support in the courtroom more difficult. Also, your perception of the event may change after all of the facts are known.

In addition, it is important that in the course of caring for this person, you do not violate their right to Health Information Privacy.



Make the necessary contacts

Phone the participants emergency contact when appropriate. Keep a calm demeanor, but do not mislead this person. Avoid making suppositions about the cause of the accident; deal only in facts. It is especially important at this point to avoid placing blame, or accepting blame. Note who was called, when, and what was said. Any threats or implied threats of legal action should be noted and relayed to COP Risk Manager.

For serious incidents, contact the COP Risk Manager and your Activity Leader as soon as possible. Provide them with the pertinent details, including a recap of the occurrence, the time, place, witnesses, etc. These people will work with you to make sure that the right things are done to aid the participant and safeguard the organization. If you cannot reach them, try the COP President.

If they haven’t already been contacted as part of the emergency response, **contact any police, park rangers etc. that should be notified of the occurrence.** FYI, a dead body is a crime scene until proven otherwise. Call the cops.

Follow-up

Complete the COP Incident Report form, the Incident Follow Up Form and the Trip Report Form. Send the originals of these forms and any supporting documents to the COP Risk

Manager.

After an incident, the COP Risk Manager will review the occurrence, make suggestions, and inform the Insurance Carrier, as necessary, so that they may be prepared in case of a lawsuit.

The COP Risk Manager will also coordinate with you on making follow up calls and any appropriate visits to the participant. During these visits, look for signals that might be a precursor of a lawsuit. If the participant is in financial difficulty, or seems resentful of you and/or the organization, or feels abandoned and/or ignored, it is important to note this. Sometimes, this is simply the participant expressing what his or her needs are and they can be simply addressed.

After each visit or phone call, it is important to document the conversation. Use the Incident Follow up Form to help make sure all the information needed is recorded. Should it ever come up in court, written notes will help you recall what was said, and will help COP defend you

The Trip isn’t over when it’s over

After you arrive back at the trailhead, or the start of the ride, or whatever, there are still a few steps you must take to wrap up the trip.

If the trip went right, this is the time to make notes on what went right and why. Everything from the menu and quantity of food to notes on the trail and timetables can be extremely helpful to anyone who wishes to lead a similar trip. Most leaders have a few pet trips that they run over and over, because they take less work, and therefore are more fun. It can be very rewarding to be the leader who first led a trip that becomes a regular event.

Also, give your participants a chance to comment on the trip. Their views may be quite different. Some may have struggled, meaning the severity of the trip should be emphasized. Some may have been poorly equipped, meaning better guidance in this area is needed. Some may have even found the leadership style disconcerting, giving you some information you might well need. And some may have had a wonderful time, which should tell you what things you did right. This feedback should also be forwarded to the Activity Leader to help them evaluate the success of the trip.

So what is a reportable incident?

- Any time you provide first aid or obtain help for such
- If it seems possible a participant might seek medical help in the future
- If property is damaged
- If a participant is dismissed from the group
- Any time a participant is unable to participate in normal trip activities for 24 hours or more due to injury or illness
- Any accident or near miss that could have resulted in injury
- Any incident involving violence or threats
- Any time someone threatens or initiates legal action
- Leaders must exercise judgment in this respect, but,

When in doubt, fill it out!