

Examples of Potential D&O Claims

The following are types of situations that would be covered by Directors & Officers Liability. As you know, Directors & Officers coverage is meant to supplement the coverage provided by a General Liability policy. General Liability provides coverage for BODILY INJURY or PROPERTY DAMAGE situations, while Directors & Officers provides coverage for NON-BODILY INJURY or PROPERTY DAMAGE claims.

Employment Practices - Coverage is provided for wrongful termination of an employee, breach of any oral or written contract, violation of employment discrimination laws (including harassment), wrongful failure to employ or promote, employment related wrongful infliction of emotional distress.

Disciplinary Practices - The club itself and its Board of Directors would be provided coverage for suits brought against them as a result of disciplinary reasons. Parents sue the club and coach alleging the athlete's chances of making a meet cut or qualifying time were impeded due to disciplinary action.

Membership Denial - We have a claim currently resulting from a club denying membership to a family. The club does have a right to deny membership. However, suit was brought against the club for the denial. The D&O policy is defending this claim.

Reports of Occurrence (ROO) - We had a situation where a club had not filed a Report of Occurrence on an incident that happened in April 1995. The injured party had surgery to repair a tendon. The injured party's primary insurance carrier did not pay for the majority of the expense for the surgery. The surgeon ended up turning the family over to a collection agency. Interest, fees and court costs amounted to over \$2,500. The family brought suit against the club for failing to file the ROO in a timely manner as the Excess Accident coverage would have picked up the unpaid amount due to the surgeon.

Financial Matters - Financial matters can create an unforeseen exposure for Member Clubs. For example, if a Member Club purchases property or equipment using individual 'member fees'. Should adjacent property owners or individual club members object to the purchase and pursue litigation, then our D&O form would respond to a demand for 'defense' (for the Member Club) and, should Plaintiffs prevail, 'indemnification' as well. Significantly, both 'defense' and 'indemnification' would likely be excluded under a standard CGL form.

Sample D&O Indemnification Wording

1. Each person who is or was a director, officer, or employee of the corporation (including the heirs, executors, administrators, or estate of such person) shall be indemnified by the corporation to the full extent permitted by the Nonprofit Corporation Law of the state of _____ against any liability cost or expense incurred in the capacity as director, officer, or employee, or arising out of the status as a director, officer, or employee (including serving at the request of the corporation as a director, officer, employee, or agent of another corporation).

2. The corporation may maintain insurance, at its expense, to protect itself and any such person against any such liability, cost, or expense.

Please note, this is a requirement for all 501(c)3 organizations

United States Swimming Member Clubs Program
Directors & Officers Liability,
Employment Practices Liability, and Crime Program



CRIME INSURANCE COVERAGE

Also available, it provides:

- Limits: A maximum of \$25,000 each loss.
- Deductible: \$250 for each loss.
- Cost: See Rating Guide on application.

(Rates apply only to clubs without previous losses.)

CRIME INSURANCE DESCRIPTIONS

Employee Dishonesty

Protects the club against losses caused by dishonest acts of employees, or volunteers, whether identified or not, acting alone or in collusion with other persons, with the intent to cause a club a loss and to obtain financial benefit.

Theft, Disappearance & Destruction

Protects the Club against non-employee theft of money or securities inside the premises or banking premises, or outside the premises in the care and custody of a messenger.



RISK MANAGEMENT SERVICES

Application for USA Swimming & US Masters Member Clubs Non-Profit Directors, Officers and Employees Liability coverage (D&O) with Employment Practices Liability (EPL) coverage and Crime coverage

I. GENERAL INFORMATION – ALL QUESTIONS MUST BE ANSWERED

- 1. Registered Board Name (Please print/type): _____
- 2. Club Affiliation Name (Please print/type): _____
Club Website: _____
- 3. Contact person / position held: (Required) _____
- 4. Address: _____
- 5. City or Town: _____ State _____ Zip code: _____
- 6. Phone: Work: _____ Cell: _____
Fax: _____ E-mail: _____
- 7. Is the **Board an organizational** member of USA Swimming or member of US Masters Swimming, Inc.? Yes No
- 8. Does the Board have a 5013c Not for Profit status? Yes No
- 9. Did the Applicant purchase this type of coverage last year? Yes No
- 10. Loss experience (**Attach full details of any loss activity.**)
If no losses, check here: Yes No
- 11. Is there a claim that would fall within the scope of the proposed insurance that has been made against any person or entity proposed for this insurance (including without limitation any claim against such person or entity for any employment practice, as described in the proposed insurance, or any complaint against any such person or entity before the Equal Employment Opportunity commission or any similar state or local authority)?
 Yes No (**If yes, please attach sheet with specific details.**)
- 12. Is any person or entity proposed for this insurance cognizant of any fact, circumstance or situation (including without limitation any suspected or threatened claim against any such person or entity for any employment practice, as described in the proposed insurance, or any suspected or threatened complaint against any such person or entity before the Equal Employment Opportunity Commission or any similar state or local authority) which might afford grounds for any claim that would fall within the scope of the proposed insurances?
 Yes No (**If yes, please attach sheet with specific details.**)

II. CRIME INSURANCE

Non-Profit D&O with EPL does not automatically come with Crime Insurance. Please indicate below if you would like the additional coverage. If you choose to decline please select no below. This must be completed in order to complete your purchase.

- * 1. **Crime Insurance Form A: Employee Dishonesty and Form C: Theft, Disappearance & Destruction Insurance** (available only in conjunction with the D&O Coverage) Yes No
- * 2. **Have any dishonesty, burglary, robbery, disappearance, destruction or forgery losses been discovered by the insured in the last six years?** Yes No
(If yes, please attach sheet with specific details. If no losses, proceed to self-rate.)

RATING CHART

Fill in the rating chart by **completing and totaling** the numbers that correspond with the number of your **athletic members** and **employees** (this includes coaches), and amount of revenue in order to calculate your premium rate. The rate calculated by the Applicant will be verified by the Insurer prior to binding insurance coverage.

Part-time employees = 1/2

Full-time employees = 1

Members = Athletic Members

| # of Members | POINTS | CAL | # of EMP | POINTS | CAL | REVENUE | POINTS | CAL |
|--------------------|--------|-----|----------|--------|-----|-------------------|--------|-----|
| 1-100 | 1 | | 0-4 | 2 | | \$500,000 or less | 0 | |
| 101-150 | 2 | | 5-10 | 4 | | \$500,000 or more | 2 | |
| 151-200 | 3 | | 11 + | 6 | | | | |
| 201-350 | 4 | | | | | | | |
| 351-+ | 5 | | | | | | | |
| * TOTAL PTS | | | | | | | | |

For Booster Clubs with No Athletic Members or Employees you will begin the 1-3 Points

| Points | D&O | D&O/Crime |
|---------|---------|-----------|
| 1 – 3 | \$540 | \$749 |
| 4 – 5 | \$744 | \$953 |
| 6 – 7 | \$953 | \$1,162 |
| 8 – 9 | \$1,271 | \$1,580 |
| 10 – 12 | \$1,493 | \$1,802 |
| 13 | \$1,747 | \$2,056 |

Please read the following statements carefully and sign on the last page where indicated. If a policy is issued, this signed statement will be attached to the policy.

THE UNDERSIGNED AUTHORIZED OFFICER OF THE APPLICANT DECLARES THAT THE STATEMENTS SET FORTH HEREIN ARE TRUE. THE UNDERSIGNED AUTHORIZED OFFICER AGREES THAT IF THE INFORMATION SUPPLIED ON THIS APPLICATION CHANGES BETWEEN THE DATE OF THIS APPLICATION AND THE EFFECTIVE DATE OF THE INSURANCE, HE/SHE (UNDERSIGNED) WILL, IN ORDER FOR THE INFORMATION TO BE ACCURATE ON THE EFFECTIVE DATE OF THE INSURANCE, IMMEDIATELY NOTIFY THE INSURER OF SUCH CHANGES, AND THE INSURER MAY WITHDRAW OR MODIFY ANY OUTSTANDING QUOTATIONS AND/OR AUTHORIZATIONS OF AGREEMENTS TO BIND THE INSURANCE.

SIGNING OF THIS APPLICATION DOES NOT BIND THE APPLICANT OR THE INSURER TO COMPLETE THE INSURANCE, BUT IT IS AGREED THAT THIS APPLICATION SHALL BE THE BASIS OF THE CONTRACT SHOULD A POLICY BE ISSUED, AND IT WILL BE ATTACHED TO AND BECOME PART OF THE POLICY.

APPLICABLE IN ALABAMA: Any person who knowingly presents a false or fraudulent claim for payment of a loss or benefit or who knowingly presents false information in an application for insurance is guilty of a crime and may be subject to restitution fines or confinement in prison, or any combination thereof.

APPLICABLE IN ALASKA: Any person who knowingly and with intent to injure, defraud, or deceive an insurance company files a claim containing false, incomplete, or misleading information may be prosecuted under state law.

APPLICABLE IN ARIZONA: For your protection, Arizona law requires the following statement to appear on this form. Any person who knowingly presents a false or fraudulent claim for payment of a loss is subject to criminal and civil penalties.

APPLICABLE IN ARKANSAS, DELAWARE, KENTUCKY, LOUISIANA, MAINE, MICHIGAN, NEW JERSEY, NEW MEXICO, NEW YORK, NORTH DAKOTA, PENNSYLVANIA, RHODE ISLAND, SOUTH DAKOTA, TENNESSEE, TEXAS, VIRGINIA, AND WEST VIRGINIA: Any person who knowingly and with intent to defraud any insurance company or another person, files a statement of claim containing any materially false information, or conceals for the purpose of misleading, information concerning any fact, material thereto, commits a fraudulent insurance act, which is a crime, subject to criminal prosecution and [NY: substantial] civil penalties. In LA, ME, TN, and VA, insurance benefits may also be denied.

APPLICABLE IN CALIFORNIA: For your protection, California law requires the following to appear on this form: Any person who knowingly presents a false or fraudulent claim for payment of a loss is guilty of a crime and may be subject to fines and confinement in state prison.

APPLICABLE IN COLORADO: It is unlawful to knowingly provide false, incomplete, or misleading facts or information to an insurance company for the purpose of defrauding or attempting to defraud the company. Penalties may include imprisonment, fines, denial of insurance, and civil damages. Any insurance company or agent of an insurance company who knowingly provides false, incomplete, or misleading facts or information to a policy holder or claimant for the purpose of defrauding or attempting to defraud the policy holder or claimant with regard to a settlement or award payable from insurance proceeds shall be reported to the Colorado Division of Insurance within the Department of Regulatory Agencies.

APPLICABLE IN THE DISTRICT OF COLUMBIA: Warning: It is a crime to provide false or misleading information to an insurer for the purpose of defrauding the insurer or any other person. Penalties include imprisonment and/or fines. In addition, an insurer may deny insurance benefits, if false information materially related to a claim was provided by the applicant.

APPLICABLE IN FLORIDA: Pursuant to S. 817.234, Florida Statutes, any person who, with the intent to injure, defraud, or deceive any insurer or insured, prepares, presents, or causes to be presented a proof of loss or estimate of cost or repair of damaged property in support of a claim under an insurance policy knowing that the proof of loss or estimate of claim or repairs contains any false, incomplete, or misleading information concerning any fact or thing material to the claim commits a felony of the third degree, punishable as provided in S. 775.082, S. 775.083, or S. 775.084, Florida Statutes.

APPLICABLE IN HAWAII: For your protection, Hawaii law requires you to be informed that presenting a fraudulent claim for payment of a loss or benefit is a crime punishable by fines or imprisonment, or both.

APPLICABLE IN IDAHO: Any person who knowingly and with the intent to injure, defraud, or deceive any insurance company files a statement of claim containing any false, incomplete or misleading information is guilty of a felony.

APPLICABLE IN INDIANA: A person who knowingly and with intent to defraud an insurer files a statement of claim containing any false, incomplete, or misleading information commits a felony.

APPLICABLE IN KANSAS: Any person who, knowingly and with intent to defraud, presents, causes to be presented or prepares with knowledge or belief that it will be presented to or by an insurer, purported insurer, broker or any agent thereof, any written statement as part of, or in support of, an application for the issuance of, or the rating of an insurance policy for personal or commercial insurance, or a claim for payment or other benefit pursuant to an insurance policy for commercial or personal insurance which such person knows to contain materially false information concerning any fact material thereto; or conceals, for the purpose of misleading, information concerning any fact material thereto commits a fraudulent insurance act.

APPLICABLE IN MARYLAND: Any person who knowingly or willfully presents a false or fraudulent claim for payment of a loss or benefit or who knowingly or willfully presents false information in an application for insurance is guilty of a crime and may be subject to fines and confinement in prison.

APPLICABLE IN MINNESOTA: A person who files a claim with intent to defraud or helps commit a fraud against an insurer is guilty of a crime.

APPLICABLE IN NEVADA: Pursuant to NRS 686A.291, any person who knowingly and willfully files a statement of claim that contains any false, incomplete or misleading information concerning a material fact is guilty of a felony.

APPLICABLE IN NEW HAMPSHIRE: Any person who, with purpose to injure, defraud or deceive any insurance company, files a statement of claim containing any false, incomplete or misleading information is subject to prosecution and punishment for insurance fraud, as provided in RSA 638:20.

APPLICABLE IN OHIO: Any person who, with intent to defraud or knowing that he/she is facilitating a fraud against an insurer, submits an application or files a claim containing a false or deceptive statement is guilty of insurance fraud.

APPLICABLE IN OKLAHOMA: WARNING: Any person who knowingly and with intent to injure, defraud or deceive any insurer, makes any claim for the proceeds of an insurance policy containing any false, incomplete or misleading information is guilty of a felony.

APPLICABLE IN WASHINGTON: It is a crime to knowingly provide false, incomplete, or misleading information to an insurance company for the purpose of defrauding the company. Penalties include imprisonment, fines and denial of insurance benefits.

Warranty and Disclosure Statement: I understand that the insurance company, in determining whether to provide insurance coverage, will rely on the information contained in this form and all other information being submitted. I hereby warrant, represent and confirm that, to the best of my knowledge, all information provided is complete, true and correct.

I am aware that the insurance company expects accurate reporting for my premium calculation, and should my figures exceed my estimates during the coverage term I will make arrangements to pay the additional premium. I understand that my book and records may be examined or audited by the insurance company at any time during the coverage period and up to three years thereafter. Intentional misrepresentation or misreporting may jeopardize coverage. K&K reserves the right to decline/void any ineligible coverage.

I further acknowledge that, I have reviewed all information provided with this enrollment form and understand the exclusions which apply, as well as the activities and operations for which coverage is not provided. The information I provided on this enrollment form becomes a part of the insurance contract.

Name (Please Print)

Title **(MUST BE SIGNED BY THE PRESIDENT, CHAIRMAN OR EXECUTIVE DIRECTOR)**

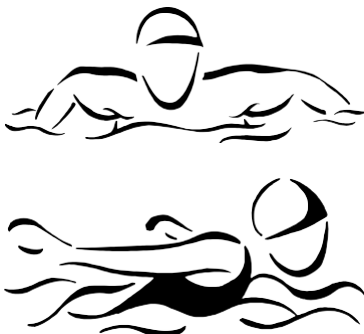
Signature

Date

The above signed warrants that he/she is authorized and has the power to complete and execute this Application, including the Warranty Statement on behalf of the **Applicant** and their respective Directors, Officers or other insured persons.

**Please Make All Checks Payable To:
Risk Management Services, Inc.**

**Original Application MUST be returned to
Risk Management Services, Inc.**



Please mail your completed application to:



RISK MANAGEMENT SERVICES

THE RISK PEOPLE

Risk Management Services, Inc.

PO Box 50310
Phoenix, AZ 85076
1-800-777-4930

The policies described herein may not be available in all states, and the description thereof is not a complete description nor a complete list of all policy terms, conditions and exclusions. Note that certain terms in this highlight sheet are defined in the policy. Please see the policy for a complete description of its scope and limitations of coverage.

Insurance provided by:

