

MARSH

# Event Liability

What you don't know **'Can'** hurt you!



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Leadership, Knowledge, Solutions...Worldwide.

# Event Liability: What you don't know 'Can' hurt you!

- What activities are your students engaged in at your special functions?
- What can you do to mitigate your liability as well as protect your students and your institution while hosting a successful event?

This session will feature lessons learned, provide preventative strategies, and explore losses experienced by peer institutions in the area of event liability.



# Special Events Can Involve Everything From

- Councils
- Honoraries
- Multicultural
- Recreation
- Sororities
- Fraternities
- Departmental
- Special Interest
- Military
- Political/Activism
- Service/Volunteerism
- Sports Clubs
- Media
- Music/Performing Arts
- Religious/Spiritual

**Source:** Rebecca L. Adair, Director of Risk Management  
Iowa State University University Risk Management Presentation—Denver 2007

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# Something for Everyone..

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- Juggling Club
- Puerto Rican Club
- Rugby Club
- Guitar Club
- Entomology Club
- Ducks Unlimited
- Game Renegades
- Time for Peace
- Ball Room Dance
- Chess
- Campus Scouts
- Got Ignorance
- Winter Fest
- John Paul Jones Society
- Cigar Club
- Dance Marathon
- Cuffs
- Pre-Vet Club
- Block and Bridle
- Quidditch

**Source:** Rebecca L. Adair, Director of Risk Management  
Iowa State University University Risk Management Presentation—Denver 2007

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# General Liability

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- General Liability is the legal obligations of the institution to pay damages because of injury or damage caused to a third party
  - **Private Colleges and Universities**—Typically **do** cover students participating in a student organization event under the college or university’s general liability insurance program.
  - **Public Colleges and Universities**—Typically **do not** cover students other than student teachers and interns as part of their educational experience. Therefore, any student participating in a student organization could potentially be liable for a claim.



# General Liability Coverage for Student Events

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- When there is no general liability coverage for students and participants for their involvement in a Student Organization activity (both on or off campus), a potential problem is posed for both students and the University because:
  - The students may have to rely on personal or family financial resources to defend a claim or lawsuit arising out of their activities.
  - The University may have no financial recourse when it's property is damaged by student activities or when it received a claim or lawsuit arising from student activities.



# General Liability Coverage for Student Events

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## California State University, Los Angeles - website

*“Please be aware that student organization events are not covered for liability or other insurance by California State University, Los Angeles or the University-Student Union.*

*Student organization officers or the advisor may be held personally liable. If the student organization would like to purchase Special Event Insurance for a particular event, please contact the Center for Student Involvement.”*



# General Liability Coverage for Student Events

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## San Diego State University - website

*“SDSU does not provide insurance coverage for student organization activities.... Student groups will be responsible for providing a certificate of insurance naming State of California, its officers, agents, and employees as additional insured unless arrangements have been made through AS.”*



# General Liability Coverage for Student Events

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## Arizona State University - website

*“The recognized student organization and its individual active, inactive, or associate members shall indemnify, defend, and hold harmless the State of Arizona, the Arizona Board of Regents, the University of Arizona, their officers, employees and agents from and against any and all liability, loss, claims, damages or expenses, including reasonable attorneys’ fees, arising from or related to the performance by the University or the organization or their respective agents of any obligation or responsibility referenced in this Student Organization Policy and Form Handbook for Student Leaders and Advisors or any other activity undertaken for any purpose by the organization or its individual active, inactive, or associate members, or guests or invitees regardless whether such activities are negligent or intentional acts or omission. This indemnification does not extend to actions caused by the sole negligence of the University of Arizona or its employees.”*



# Serious Events Impacting Higher Education

|      |           |   |  |
|------|-----------|---|--|
| 1993 | Northeast | Drowned, boating  | \$1,800,000  |
| 1999 | Mid-South | 5 students killed when sky diving plane crashes                               | recognized student org activity                        |
| 1999 | Northeast | 1 advisor killed, 20+ students injured, bus crash                             | Contract bus service, heavy fog                        |
| 1999 | Mid-South | Bonfire log pile collapses during construction                                | 12 fatalities, 25+ injured                             |
| 1999 | South     | Student elevated fall recreation, studying abroad                             | 3 weeks to recover from site and repatriate from China |
| 2000 | Northeast | Minor falls from unsecured climbing tower                                     | In suit  |
| 2005 | Midwest   | Towing Formula Car to competition, rolled van                                 | 5 student fatalities, settled \$5,000,000              |
| 2006 | Northeast | Participant sexually molested by summer camp counselor, background check made | Settled, \$1,000,000                                   |
| 2006 | Northeast | Spinal injury tackled in jello pool   | Open   |
| 2007 | Northeast | Tubing on river   | \$1,650,000  |

**Note:** Information developed from Marsh's Education Practice.



# Serious Events Impacting Higher Education

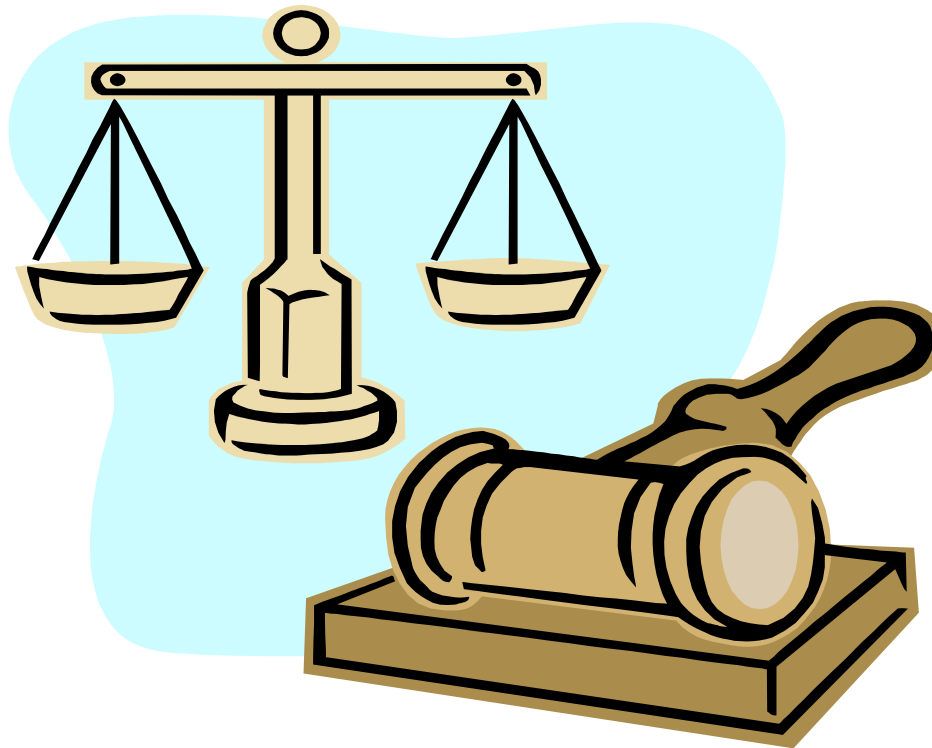
|      |           |  |  |
|------|-----------|--|--|
| 2007 | West      | Breach of Contract, increase in student fees                           | \$33,000,000 refunded to students            |
| 2008 | Northeast | Summer science camp, minor drinks liquid nitrogen                      | In suit                                      |
| 2008 | Northeast | Visitor stabbed after student club dance in space leased by university | Allege inadequate security                   |
| 2009 | Midwest   | Student had seizure, fell into campfire                                | Settled \$500,000                            |
| 2010 | South     | Alcohol death, fraternity sued   | \$16,000,000 jury award, overturned by judge |
| 2010 | Midwest   | Quadriplegic diving into shallow pool                                  | Sues fraternity, not university for hazing   |

**Note:** Information developed from Marsh's Education Practice.



# The Legal Perspective

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# Case Study: University of California

- University of California Office of the President
- Risk Services
- Mission—Our mission is to enable the University faculty, staff and students to identify and manage risks associated with their activities, consistent with the University's missions of teaching, research and public service. By strategically managing risk we can reduce the chances of loss, create greater financial stability, and protect our resources.



Grace Crickette  
Chief Risk Officer  
Office of Risk Services



# Public Entity Non-Liability

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- Sovereign Immunity—doctrine that the sovereign or state cannot commit a legal wrong; applies to public entities.
- The Regents is a CA public entity.
- Legislature waives the immunity when a statute allows for liability (i.e. creates a duty).



# Public Entity Liability

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- The University is **directly** liable when it breaches a duty imposed by statute and the breach proximately causes injury.
- The University is **vicariously** liable (i.e. liable for the acts of another) for its employees when an employee breaches a duty that causes injury.
- The law **does not** impose vicarious liability for students!



# What is Negligence

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- Duty to exercise ordinary care to prevent harm to others.
- Breach of the duty when someone acts (or fails to act) as an ordinary prudent person would under the same or similar circumstances.
- Breach of the duty causes injury.



# Risk Management

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- **Loss Avoidance** = don't engage in the activity
  - Translation—**No! You may not!**
- **Loss Prevention** = reduces the frequency of the loss
  - Translation—**What were you thinking?!**
- **Loss Reduction** = reduces the severity of the loss
  - Translation—**You should have been more careful!**
- **Risk Transfer** = buy insurance
  - Translation—**Why are you in trouble?**



## Doe v. Regents

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- Association of Chinese Americans (ACA) is “officially recognized” at UCLA.
- ACA allowed to: use UCLA name; access to UCLA funding; facility use; and UCLA logo and seal.
- No insurance required for officially recognized or non-recognized campus organizations.
- ACA/UCLA website historically features "social broomball".
- Broomball = ice hockey with sneakers, broomsticks, 20-30 participants and two broomballs.
- Broomball is played off-campus at a non-UC venue.
- Participants paid for ice time.



# Doe v. Regents

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- The ACA did not have insurance.
- The ice rink did not have insurance
- The ACA did not provide protective gear.
- The ice rink did not provide protective gear.
- An 18 year old freshman at UCLA invited by the ACA to attend/participate in the broomball event.
- Plaintiff lost her eye from a "high stick".



# Outcome

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- The University did not owe a statutorily imposed duty to prevent the injury.
- University employees did not undertake a special duty to protect against the injury.
- Sworn declarations of UCLA employees established that it did not have notice of the event; exercising ordinary care does not require you to prevent an event or activity that you don't know about.



# Outcome

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- Plaintiffs sued the ACA's authorized representatives (i.e. student leaders) and the ACA member who caused the accident.
- The University declined to defend the student leaders and the member that caused the injury.
- Students notified their parents, who obtained a defense under the parents' homeowner insurance policies.
- Damages will potentially exceed policy limits, exposing students and/or families personal assets.



# Roe vs. Regents

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- Cal Poly Pomona students sought to establish a Chapter of Lambda Phi Epsilon fraternity ( $\Lambda\Phi E$ ).
- UCI Chapter asks national fraternity to act as sponsor for Cal Poly/ $\Lambda\Phi E$ .
- UCI Director of Greek Life sends a letter of recommendation to  $\Lambda\Phi E$  national, supporting UCI/ $\Lambda\Phi E$  as sponsor.
- 19 year old Cal Poly pledge is killed at an off-campus flag football game after 10 days of alleged hazing at multiple UC campuses.
- UCI/ $\Lambda\Phi E$  outnumbered Cal Poly 9 to 1 in a tackle game with no rules.
- Neither UCI/ $\Lambda\Phi E$  nor  $\Lambda\Phi E$ /national had insurance.



# Case Law

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- "Despite the outrageous and regrettable conduct of the perpetrators... a University is not liable as an insurer for the crimes of its students... courts with good reason have been unwilling to shift moral and legal responsibility away from student perpetrators and onto the heads of college administrators.... recognition of liability would force colleges to impose onerous conditions on the freedoms and privacy of resident students which restrictions are incompatible with a recognition that students are now generally responsible for their own actions and welfare.

[Tanja H. v. Regents of University of California (1991) 228 Cal.App.3d 434]

- The person against whom the hazing is directed may commence a civil action for injury or damages. The action may be brought against any participants in the hazing, or any organization to which the student is seeking membership whose agents, directors, trustees, managers, or officers authorized, requested, commanded, participated in, or ratified the hazing.”

[Penal Code § 245.6 (as amended May 10, 2006)]



# Outcome

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- The University argued no legal duty at the outset of the case.
- Nominal settlement.
- Proof UCI/ΛΦE officers signed annual anti-hazing documentation.
- Plaintiff continues to pursue 35 individual UCI/ΛΦE and alumni under homeowner policies defending a reservation of rights for intentional/punitive conduct.



# Test Topics

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- The University is not vicariously liable for the conduct of its students; personal liability is possible.
- Despite your best intentions, people can be injured.
- Use standard risk management techniques—loss avoidance, loss prevention, loss reduction.
- Mitigate risk through insurance.



# Special Events Risk Management

## Three Phases of Operations:

- **Planning**
- Prevention
- Response



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# Identify Those Ultimately Responsible for the Event

## Have a thorough understanding of what is taking place

- Who is the audience?
- What is the event size?
- What is the purpose of the event?
- What is the experience level of the event organizers?
- Do the organizers share your views about Special Event Risk Management?



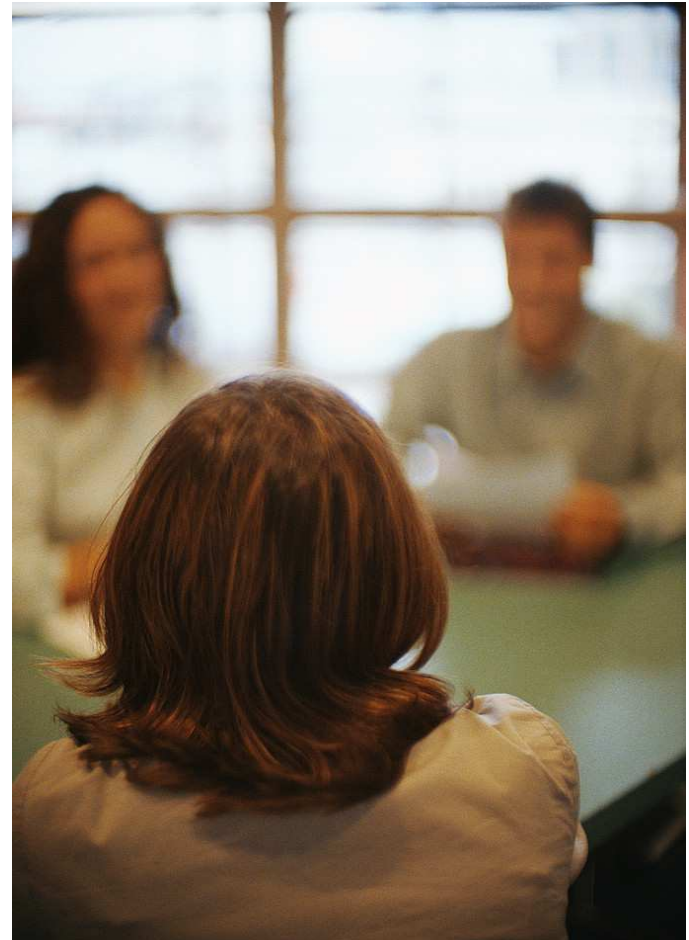
# Identify Those Ultimately Responsible for the Event

- What university departments need to be involved and who are the individuals within those departments?
- Have those persons involved in the event been trained on campus emergency response and security matters?
- What communication mechanisms will be in place? Is there redundancy?



## Get Involved Early

- The more complex the event, the earlier you should begin to ask questions
- Keep asking questions as the date of the event draws closer, as plans often change
- A series of pre-plumbing meetings should occur with various stakeholders, including outside emergency first-responders
- Conduct a tabletop exercise of the event prior to the actual day



# Plan for Emergencies

- Weather and injured patrons are the most common emergencies
- There may be other possible emergencies that need to be thought out and planned for
- What might these be?



# Venue Concerns

- Indoor vs. outdoor
- Size and shape
- Type of event
- Barriers and connectors
- Location from resources
- Traffic and pedestrian flow



# Modifiers

- Crowd demographics
- Alcohol and drugs
- Crowd size and age
- Length of event
- Familiarity with venue
- Students versus non-students



## Develop Partnership Agreements With:

- Law enforcement/public safety agencies
- City/county departments and agencies
- Private security
- Business community
- Neighboring communities



# Event Leadership

- Decide which agency is in charge—that is, which agency is responsible for:
  - Plan design and implementation
  - Legal and financial matters
  - Command and control
  - Crisis response and management
  - Public safety/private sector relations



# Special Events Risk Management

## Three Phases of Operations:

- Planning
- **Prevention**
- Response



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# Prevention

- Analyze risks, hazards
- Look at Causal Chain
  - Multiple opportunities to intervene
- Mitigate hazards
  - Anticipate, change, create barriers, avoid
- Look at human factors



# Risk Assessment

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## Get involved early in the process

- Develop a detailed risk analysis for all special events
- Ask lots of questions
- Know as much as possible about what will be presented and who will be attending
- Know who is in charge
- Who is the target audience
- What is the experience level of the organizers
- When and where will the event take place
- Will there be any hazardous activities involved
- Could weather impact the success of the event
- Know about all event activities and plans for controlling exposures
- See sample checklists



# Examples of Impact

- Loss of life
- Serious injury
- Economic loss
- Disruption/cancellation of event
- Compromise your brand
- Psychological effects (fear, terror)
- Symbolic effects



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## Some Risks Must be Avoided

- Some risks are so inherently dangerous that they **MUST** be avoided
  - There are no hard and fast rules for this
- You will know a risk is too dangerous when you get a bad feeling when the event planners explain what they are planning
- This is why pre-planning is so important!



# Evaluation of Student Events—Sample

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## Developed Event Risk Assessment Form

- High, Medium and Low Risk Events
- The WSU Police Department and the Office of Student Activities will collaborate in assessing the risk for events based on the following objective scoring system:

**NOTE:** Courtesy of Wright State University (WSU) who developed this process to evaluate their events on campus.



# WSU: Event Risk Assessment Form

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- \_\_\_ Alcohol is served (30)
- \_\_\_ Past history of violence, student conduct cases or police involvement in resolving incidents within the last year or when similar organizational event was last held (10)
- \_\_\_ An internal or external critical incident or event that may adversely impact the safety and security of the event participants, patrons or venue (10)
- \_\_\_ Maximum attendance is to be over 300 or in a space with the capacity of over 300 (8)
- \_\_\_ Maximum attendance is between 200-300 (6)
- \_\_\_ Maximum attendance is between 100-200 (4)
- \_\_\_ Maximum attendance is under 100 (0)
- \_\_\_ Unseated event (8)
- \_\_\_ Combined seated and unseated event (4)
- \_\_\_ Seated event (0)



## WSU: Event Risk Assessment Form (continued)

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- \_\_\_ Occurs or continues after 8 p.m. (6)
  - Add (4) points if the event extends beyond midnight
  - Add (2) points if the event is held on a Friday or Saturday evening
- \_\_\_ Advertised to the general public with anticipation of over 50 off campus guests (6)
  - Advertised and or open to WSU students, faculty and staff only (0)
  - Invitation only (0)
- \_\_\_ Admission fee collected at the door (6)
  - Add (2) points if anticipated at door sales exceed \$1000
  - No admission fee collected at the door (0)
- \_\_\_ Total Points
  - >27 points      High Risk
  - 13–26 points    Medium Risk
  - <13 points      Low



# Special Events Risk Management

## Three Phases of Operation

- Planning
- Prevention
- **Response**



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# Special Event Response Preparations

- “Perfect practice makes perfect”
- Practice “what if” scenarios for all risks identified in the Risk Assessment
- Involve all partners in “what if” scenarios
- Re-assess preparedness following each practice session
- Document all prevention exercises



# Emergency Response

- Evacuation or sheltering of occupants
  - Number of occupants and those with special needs
  - Layout of the building or facility and means of egress
  - Nature and location of the threat (inside or outside)
- Supervision or control of building utility and protection systems
- Triage, first aid, and transportation
- Firefighting, rescue, hazmat response



# Emergency Response Shelter-in-Place

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- Notify occupants to move to pre-determined shelter areas
- Close and seal windows and doors
- Shutdown HVAC
- Monitor official information for instruction



# Attend the Event

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- Lessons are learned from every event
- A risk management observer should attend
  - Learn what went right and what can be improved upon
- Keep a list of lessons learned and apply them to future events



# Questions?

Presenter:

**Frank D. Cella**

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# Thank you.

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