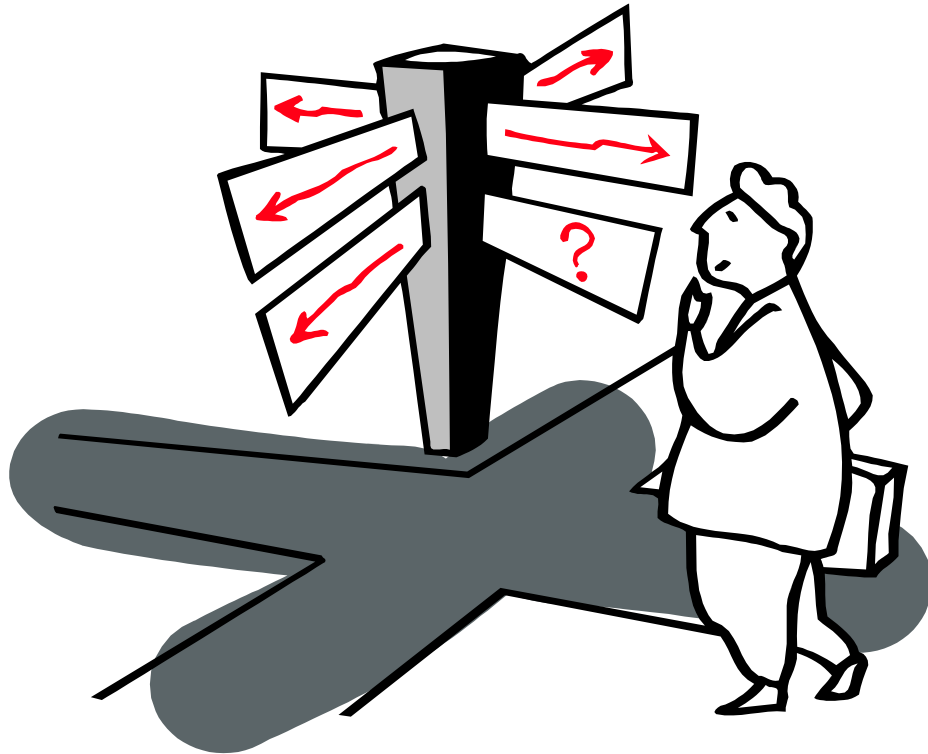


*Lehigh University  
Field Trips  
A Guide for Faculty / Staff*



*Lehigh University  
Risk Management Office  
June 2002*

**LEHIGH UNIVERSITY**  
***Field Trips***  
*A Guide for Faculty*

This handout is designed to answer the most frequently asked questions regarding liability, insurance, and risk management issues related to field trips or class trips. It is also designed to facilitate your communications with your students before you go on a field trip, and to give you tools to help you make your field trip safer for all participants.

If you have any questions regarding this material or need any assistance or waiver forms, please contact:

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Risk Management Office  
June 2002

## FACULTY INFORMATION

### A. PERSONAL LIABILITY ISSUES

**Does my personal liability, in relation to the students, change because I am leading a field trip?** No. While there is always a potential for you to be sued personally for the work you perform for the University, there is no significant increase or decrease in potential liability because you are off campus.

**Will the University protect me if I am sued?** The University carries insurance policies for its liability, and its employees are also covered under these policies for their negligence. No one is ever insured for willful misconduct.

### B. AUTO LIABILITY & INSURANCE

**How am I covered when driving University Owned Vehicles?** The University insures all its vehicles for liability (injury to third parties and third party property damage) and physical damage (comprehensive/collision). If you are driving a University-owned vehicle with the permission of the University, then you are an insured driver under the University's policy. The same holds true for students or others driving University vehicles with permission.

**What if I am driving a Rented Vehicle?** All vehicles rented for use in the local area must be rented through Lehigh's Transportation Services Department (ph: x84410). If you are traveling outside of the local area and you are renting a vehicle while working on behalf of the University (including unpaid or volunteer work), you should rent the vehicle in the name of the University and your own name. This means that you should sign both your name and "the name of the University" on the rental agreement. The University's Auto Policy will then respond as if the rented vehicle is an "owned" vehicle, so you should decline liability and collision insurance. Never rent a vehicle valued in excess of \$50,000.

With respect to vehicles being rented in Canada, or driving a University-owned vehicle into Canada, Lehigh's Transportation Services Department ***must be notified IN ADVANCE*** so that a Canada Non-Resident Insurance Card can be issued by the University's insurance broker.

If you rent a vehicle anywhere outside the United States or Canada, you must purchase the insurance coverage offered by the rental agency in that country.

It is important to **inspect any rented vehicle before driving it**. Make sure any dents, scratches or other damage to the vehicle are noted on the rental form. Otherwise, the University and your department may have to pay for damages you did not cause.

#### **Do I have coverage from the University if I drive my own car?**

Mileage reimbursements are designed to include an incremental cost for insurance and deductibles. When you drive your own car on University business, your *own* insurance policy serves as a "primary" policy for third party liability and physical damage to your vehicle. This means that if a claim arising out of an accident exceeds your policy limits, then the University's policy will cover the accident in excess of your policy. For example, if you carry \$20,000/\$40,000 liability insurance, and injure a pedestrian severely, resulting in over \$100,000 of medical bills, your policy would pay the first \$20,000 of the claim, and the University policy would respond for the balance of the claim.

If your vehicle is damaged as a result of an accident, whether it is your fault or not, your comprehensive/collision coverage would respond. You are responsible for any deductible amounts under your policy. If you do not carry any collision insurance, then the entire amount of the damage is your responsibility. *Neither the University nor the University's Insurance will pay for any physical damage to your vehicle - you use it at your own risk.*

**What do I do if I am in an auto accident, while on University business and driving a University-owned or rented vehicle?**

• **AT THE SCENE OF THE ACCIDENT:**

1. *Do not admit any liability for the accident* even if you think you are at fault. Relate only the facts.
2. Do not move your vehicle unless leaving your vehicle where it is could cause further accidents or injuries.
3. Set out warning devices, if available.
4. Call (or send for) the police. If anyone is injured, ask for an ambulance.
5. Protect your passengers, yourself, your vehicle and your cargo.
6. Contact Transportation Services -- or the Lehigh University Campus Police if not during normal business hours -- as soon as possible. You may also wish to contact your supervisor.
7. Discuss the specifics of the accident *only* with the police, your supervisor, or a representative of the Transportation Services office.
8. If the police do not respond, give the other driver *only*:
  - a. Your name, address, driver's license number and state of issuance.
  - b. The name and address of Lehigh University as stated on the vehicle owner's card.
  - c. The name of Lehigh's insurance carrier as stated on the Insurance Identification Card.
  - d. The vehicle license number

*and please obtain and record the same information from him/her.*

9. If police are on the scene, obtain the officer's badge number, station address and telephone number, and the report number.

• **BACK ON CAMPUS:**

Immediately file an accident report with the Transportation Services Office, located at 126 Goodman Drive. File any mandated state accident reports to the proper authorities, and give a copy to the Transportation Services Office.

***DO NOT HAVE THE VEHICLE REPAIRED BEFORE IT IS INSPECTED!***

Failure to follow the University's established accident policy completely may result in repair, administrative and/or other charges being assessed to your department.

An *Accident* is defined as follows:

***Any time a vehicle strikes or is struck by another vehicle, object, or person, regardless of the amount of the damage or the owner of the vehicle/object.***



## F. INFORMED CONSENT FORMS, WAIVERS & RELEASES

(See page 9 for a sample Assumption of Risk and Informed Consent Form that can be adapted for the trip.)

Generally, we do not ask our students to sign waivers or releases for programs/trips that are required course work and which are sponsored by the University. It is, however, important that students be informed of the dangers they may face while participating on a field trip. It is strongly recommended that all students sign the voluntary *Assumption of Risk and Informed Consent Form* before participating in the trip, to establish their voluntary participation and that they have been warned of the dangers, and are aware of their responsibility for their own safety. **This form does not have the student waive his/her right to recover for losses caused by negligence of the University or its employees.**

Informed Consent Forms must be specific to each trip. Some classes may take frequent trips, such as a geology class. In such cases, an informed consent form about class activities may be appropriate in lieu of a form per trip. Contact the University Risk Manager, for assistance.

## G. WAIVER AND RELEASE OF LIABILITY

(See page 9 for sample Waiver and Release of Liability Form)

If Field Trips/Activities are not part of course work but are voluntary, use the *Lehigh University Waiver and Release of Liability Form*. This waiver should also be used whenever a student or group wants to do something unusual or risky, if only for the protection of all the students participating. Included in the waiver are the institution, its employees, students and all other persons involved. Therefore, if one student were accidentally injured by another student's act or failure to act, the student involved cannot be sued.

The Waiver and Release of Liability Form must be specific to each trip/activity.

**A parent or legal guardian must sign the Waiver and Release of Liability Form if the participant is under 18 years of age.**

## HAVE A SAFE FIELD TRIP!

*As the leader of the trip, it is important for you to inform the participants what to expect. Here are some general issues you should cover. Use the Field Trip Fact Sheet form (see page 7) provided as a guide for student handouts.*

### □ Where are you going?

- **What is the climate?** Highest and lowest temperatures? Constant rain? Constant sun?

*Give your students written information and advise as to the type of clothing they should bring, including protective wear such as UV sunglasses, hats, rain ponchos, warm clothing, sun block, proper footwear, etc.*

- **What are the facilities?** Hotels, hostels or camping?

*Do students need to bring water, pillows, backpacks, passports, non US Currency, etc.? Make sure they know in advance what is needed for the trip, and that they are appropriately prepared for it. All students should know to carry ID and medical insurance cards.*

- **How safe is the region** you are going to? What are the dangers?  
*Give students written warning of the dangers of the region, whether it is of insects, pickpockets, animals or other dangers. (See waivers & releases below).*

- **How are you getting there?** (University owned vehicles? Rentals? Public transportation?)

- **What happens if someone needs to leave right away?**

*Is there transportation available? If you are in the middle of a desert or have climbed a mountain, or are in the middle of the ocean on a ship, there may be long delays in getting emergency medical care. Students should be made aware of transportation conditions and limitations in writing.*

- **What will the students be doing? What is expected of them?**

*Students should be informed in writing what will be done in the course of the field trip and what is expected of them as participants in the trip such as:*

*- “walking 10 miles a day carrying a 35 lb. pack”; or “strenuous walking, climbing and lifting and carrying weights up to 50 lbs.”, or “setting up tents, cooking for the group”, etc.*

- **How long is the trip for?**

*- Students should be informed in writing what the start date of the trip is, the end date, and what, if any contingencies could extend or shorten the trip, and what, if any, responsibility the University takes or doesn't take for said contingencies. For example, if a student pays \$500 for a five-day trip, and has to leave early because of a personal emergency, is the “unused” portion of the trip refundable?*

***Keep in mind, you may need to make special provisions for emergencies:***

- **Who is responsible for first aid? Do you have access to communication? Should someone carry a cell phone?**

*- If the trip is to a remote or inaccessible region it is strongly recommended that at least two persons on the trip have first aid skills and first aid kits. A lightweight cell phone is also recommended in case emergency aid is needed.*

***It is especially important to inform the students of any dangers they may face:***

- **Give the students informed consent forms.**

*- It is required that all students sign an Assumption of Risk and Informed Consent Form before participating in the trip, to establish their voluntary participation and that they have been fully warned of the dangers, and are aware of their responsibility for their own safety. This form should be written specifically for the trip you are taking.*

**Lehigh University  
Field Trip Fact Sheet**

**Print Name of Field Trip:** \_\_\_\_\_

This is a voluntary trip to \_\_\_\_\_ for the purpose of \_\_\_\_\_  
\_\_\_\_\_. Participants are limited to (*number, University affiliation*) \_\_\_\_\_  
\_\_\_\_\_. Cost is \$ \_\_\_\_\_. You must sign up by \_\_\_\_/\_\_\_\_/\_\_\_\_\_.

Refund policy: \_\_\_\_\_

Starting Point: \_\_\_\_\_

Destination(s): \_\_\_\_\_

Start Date: \_\_\_\_/\_\_\_\_/\_\_\_\_ . Return Date: \_\_\_\_/\_\_\_\_/\_\_\_\_

Contingencies: In the event of any airport closures, call \_\_\_\_\_ for travel information updates.

Local weather conditions: Average Max Temperature \_\_\_\_\_°  
Average Min Temperature \_\_\_\_\_°

Other: \_\_\_\_\_

Bring the following protective gear/clothing (*e.g. rain gear, boots, etc.*):

Facilities (*describe-- e.g. you will be sleeping on the floor of a church basement*):

Bring the following for your personal comfort (*e.g. pillows, sleeping bag to \_\_\_\_°; sleeping bag mat, etc.*):

Transportation is provided by (*e.g. ABC Bus Service; the University; you or other students*):

Activities/Physical Requirements: (*e.g. you will be doing construction in a city; must be able to use a hammer, and lift 50 lbs., etc.*):

Other (*e.g. Bring Photo ID, your health insurance card, passport, etc.*):

\*\*\*\*\*

*This is a general list of things to think of as you are preparing for the trip. It is not intended as an exhaustive or comprehensive list of conditions you may encounter, perils or hazards that may exist or a guarantee of services that may be provided. Discuss any concerns or questions that you may have with the trip coordinator or faculty member before you leave for the trip.*

# Voluntary Assumption of Risk and Informed Consent Form

Lehigh University Field Trip: \_\_\_\_\_ (name) \_\_\_\_\_

Lehigh University is a non-profit educational institution. References to Lehigh University include Lehigh University, its trustees, officers, faculty, employees, volunteer workers, students, agents and assigns.

I [print your name] \_\_\_\_\_ freely choose to participate in the Lehigh University Field Trip/Activity (name) \_\_\_\_\_ (referred to as the Field Trip/Activity).

I understand that the Lehigh University Field Trip may include several activities, and that as part of these activities, Lehigh University may make certain equipment and certain facilities available to me. Some activities may take place on campus, and other activities may take place off-campus.

I understand that Lehigh University is not an agent of, and has no responsibility for, any third party that may provide any services including food, lodging, travel, or certain equipment associated with the Field Trip/Activity.

Activities may include \_\_\_\_\_ (be specific) \_\_\_\_\_, or other strenuous indoor or outdoor physical activity. I understand that on any "Wilderness" trip, it may take 48 hours or more to get to a medical care facility, and that transportation to that facility may be by boat or on foot. I accept the increased risk that such isolation may pose in the event of injury.

Participating in any activity is an acceptance of some risk of injury. I agree that my safety is primarily dependent upon my taking proper care of myself. I understand that it is my responsibility to know what personal equipment is required (such as footwear, clothing, and other personal equipment) and provide the proper personal equipment for my participation in the Field Trip, and to ensure that it is in good and suitable condition. I agree to ask questions to make sure that I know how to safely participate in the activity, and I agree to observe the rules and practices that may be employed to minimize the risk of injury while pursuing the benefits of the activity. I agree to advise the activity coordinator immediately if I do not believe I can safely continue in the activity. I agree to reduce the risk of injury to myself and/or others by limiting my participation to reflect my personal fitness level, wearing the proper protection as dictated by the activity, not wearing anything that would pose a hazard in the pursuit of the activity, not ingesting or using any substance during the activity which could pose a hazard to myself or others. I agree that if I fail to act in accordance with this agreement I may not be permitted to continue to participate in the activity.

## MEDICAL TREATMENT AUTHORIZATION

I authorize Lehigh University to act on my behalf in any medical emergency. \_\_\_\_\_ (Initial)

Despite precautions, accidents and injuries can and will occur. I understand that participation in some of the activities of the Lehigh University Field Trip/Activity may be potentially dangerous, and that I may be injured and/or lose or damage personal property as a result of participation in the Field Trip. Therefore I ASSUME ALL RISKS RELATED TO THE ACTIVITIES including but not limited to:

- Death, injury or illness from accidents of any nature whatsoever, including but not limited to bodily injury of any nature whether severe or not, including but not limited to head trauma, joint trauma, broken bones, oral, eye or other facial injury, other muscular-skeletal injury which may be temporary or permanent, including death, which may occur as a result of participating in an activity or contact with equipment, physical surroundings or other persons.
- Death, injury or loss of or damage to personal belongings arising from travel by air, bus or other conveyance.
- Death, injury or illness including food poisoning arising from the provision of food or beverage by airlines or other service providers.
- Theft or loss of my personal property while in transit or during the Field Trip/Activity.
- Natural disaster or other disturbances, and alteration or cancellation of the Field Trip/Activity due to such causes.

My signature below indicates that I have read and freely signed this agreement.

### - IMPORTANT - READ ENTIRE AGREEMENT BEFORE SIGNING

Signature: \_\_\_\_\_

Date: \_\_\_\_\_ (day/month/year)

Name Printed: \_\_\_\_\_

Address: \_\_\_\_\_

Tel. No.: \_\_\_\_\_

Parent's Signature \_\_\_\_\_  
(if participant is under age 18)

Parent's Name Printed: \_\_\_\_\_

Address: \_\_\_\_\_

**Signatures need not be notarized but must be witnessed.**

**LEHIGH UNIVERSITY  
WAIVER and RELEASE OF LIABILITY FORM  
for ACTIVITIES OFF CAMPUS**

**This is a legal and binding agreement which, when signed, will permanently limit your ability to recover from the parties indicated below for injuries or losses you may sustain as a result of participation in off-campus activities.**

Lehigh University is a non-profit educational institution. References to Lehigh University include Lehigh University, its trustees, officers, faculty, employees, volunteer workers, students, Student Government Association and participating organizations, agents and assigns, and anyone else participating in the off-campus activities described below.

I [*print your name*]\_\_\_\_\_ freely choose to participate in an off-campus program of my own selection (*name*) \_\_\_\_\_ (referred to as the Trip).

I understand that Lehigh University is not an agent of, and has no responsibility for, any third party including without limitation any sponsor which may provide any services including food, lodging, travel, or any equipment associated with the Trip. Lehigh University has not reviewed the qualifications of the Trip organizer or sponsor. Lehigh University does not endorse the program in any way, including the safety of the program, the quality of the program or any services the program may contract for.

I understand that participating in any activity is an acceptance of some risk of injury. I agree that my safety is primarily dependent upon my taking proper care of myself. I agree to evaluate the qualifications of the trip organizer or sponsor and any contracted services they may provide. I agree to inform myself about the potential dangers of the area I am traveling to and precautions which should be taken, including reviewing the State Department Consular Travel Information at <http://www.travel.state.gov> and the Centers for Disease Control Travelers Information at <http://www.cdc.gov/travel/> for health and immunization information, and any other information that may be provided to me by the Trip organizer or by Lehigh University.

I agree to inform my parent(s) or guardian(s) that I will be participating in this Trip.

Despite precautions, accidents and injuries can and will occur. I understand that travel and other activities the Trip may undertake may be potentially dangerous and that I may be injured and/or lose or damage personal property as a result of participation in the Trip. Therefore **I, ASSUME ALL RISKS RELATED TO THE ACTIVITIES** including but not limited to:

- Death, injury or illness from accidents of any nature whatsoever, including but not limited to bodily injury of any nature whether severe or not, temporary or permanent, including death, which may occur as a result of participating in an activity or contact with physical surroundings, animals, insects, plants or other persons
- Death, injury or loss of or damage to personal belongings arising from travel by car, bus, van or any other means.
- Death, injury or illness including food poisoning arising from the provision of food or beverage by restaurants or other service providers.
- Death, injury or illness from deliberate acts of violence including criminal activities, political unrest, war, rebellion, hostage taking, riots, or any other actions by third parties.
- Theft or loss of my personal property while in transit or during Trip activities.
- Natural disaster or other disturbances, and alteration or cancellation of Trip activities due to such causes.

I further acknowledge that the above list is not inclusive of all possible risks associated with the Trip and that the above list in no way limits the extent or reach of this release and covenant not to sue. I further understand that participating in this Trip is an acceptance of risk of injury or death.

**Medical Treatment Authorization**

**I authorize Lehigh University to act on my behalf in any medical emergency.** \_\_\_\_\_ (Initial)

**Release from Liability, Indemnification Agreement and  
Covenant Not to Sue**

I the undersigned, to the fullest extent permitted by law, agree to forever release and on behalf of myself, my spouse, heirs, representatives, executors, administrators and assigns, HEREBY DO FOREVER RELEASE Lehigh University from any cause of action, claims, or demands of any nature whatsoever, including but not limited to a claim of negligence which I or my spouse, heirs, representatives, executors, administrators and assigns may now have, or have in the future against Lehigh University on account of personal injury, bodily injury, property damage, death or accident of any kind, arising out of or in any way related to my participation in the Trip and/or the use of facilities, equipment, or services in association with the Trip howsoever the injury is caused, whether by the negligence of Lehigh University or otherwise.

I, the undersigned, COVENANT NOT TO SUE and agree to INDEMNIFY AND HOLD HARMLESS Lehigh University from any and all causes of action, claims, demands, losses or costs of any nature whatsoever arising out of or in any way relating to my participation in the Trip and my use of facilities, equipment, or services in association with the Trip.

I hereby certify that I have full knowledge of the nature and extent of the risks inherent in the Trip and the use of facilities, equipment, or services in association with the Trip, and that I am voluntarily assuming all risks, whether known or unknown.

I understand that I will be solely responsible for any loss or damage, including death, which I sustain or cause, whether in whole or in part, while participating in the Trip and my use of facilities, equipment, or services in association with the Trip, and that by this agreement I am relieving Lehigh University of any and all liability for such loss, damage or death.

My signature below indicates that I have read, understood, and freely signed this agreement, which shall take effect as a sealed instrument. I further certify that my date of birth is \_\_\_\_\_(month/day/year), and that my present age is \_\_\_\_\_, and that I am otherwise legally competent to sign this agreement. I further understand that the terms of this agreement are legally binding and I certify that I am signing this agreement after having carefully read and understood the same, of my own free will. This agreement is made in sole consideration of Lehigh University supporting my participation in the Trip and my use of facilities, equipment, or services associated with the Trip.

This agreement shall be construed and enforced in accordance with the laws of the Commonwealth of Pennsylvania, and I consent to the jurisdiction of this state. I expressly agree that this waiver and release is intended to be as broad and inclusive as permitted under the laws of the Commonwealth of Pennsylvania, that if any portion hereof is held invalid, it is agreed that the remainder of it shall, notwithstanding, continue in full legal force and effect.

**- IMPORTANT -  
READ ENTIRE AGREEMENT BEFORE SIGNING**

Signature: \_\_\_\_\_

Date: \_\_\_\_\_ (*day/month/year*)

Name Printed: \_\_\_\_\_

Address: \_\_\_\_\_

Tel No.: \_\_\_\_\_

Parent's Signature: \_\_\_\_\_

(if participant is under age 18)

Parent's Name Printed: \_\_\_\_\_

LU Waiver and Release of Liability  
Form  
(off-campus activity)

## **GUIDELINES FOR USING AND EVALUATING WAIVERS AND RELATED FORMS**

### **What are differences between the forms we use?**

Informed Consent Forms and Voluntary Assumption of Risk Forms are basically the same form with a different title. They are used to describe an event or activity to a participant, describe the participant's responsibilities in participating in the activities, identify the risks associated with the activity, confirm that participation is voluntary, and confirm that the participant voluntarily assumes the risks associated with the activity.

A Waiver includes the information in the Informed Consent Form, and adds a release from liability resulting from negligence on the part of the parties released. It may also include an Indemnity Agreement, which means that if the participant causes a loss or damage to the parties released [for example, damage property] or others for which the parties released suffer a loss or damage [they hurt someone and the University is sued as a result], the participant will reimburse the parties released for those losses or damages. A Covenant Not-to-Sue agreement can also be included in the Waiver, which means that the signer gives up his/her right to bring suit against the parties released.

### **How do I know when to use them?**

The University traditionally does not require waivers of liability from its students or members of its community for those activities which are part of the institution's "core" business. This includes trips for courses, ordinary use of the facilities, and ordinary business. We do not use any forms when students come to study on our campus, live in our dorms, or participate in ordinary student activities.

Informed Consent Forms are used when students have the opportunity to voluntarily participate in activities which are not ordinary, usual, or which may present dangers or risks to the students that they may not know about. We want to be sure that students participating in these activities know what the risks are and what is expected of them. We would never want to have a student come back to us and say "Had I known how dangerous that was, I would never have done it.", especially if they have been hurt as a result of their participation.

Waivers are used when the institutions depart from their "core" business as an educational institution. Summer camps, non-educational users of the facilities, and for-profit corporate use of the facilities all fall within legitimate use of waivers and extended waivers. Sometimes, a student group will want to do something so unusual or risky that an extended waiver is beneficial to use, if only for the protection of all the students participating. Winter ice climbing is an example where waivers that include an indemnity agreement and a covenant not-to-sue may be appropriate. Included in the waiver are the institution, employees, students and all other persons involved, so that if one student were to be accidentally hurt by another's acts or failure to act, the student involved cannot be sued.

If you have a question as to the appropriateness of the form to use, feel free to contact the University Risk Management Office.

## **Guidelines for Using and Evaluating Waivers and Related Forms**

If Field Trips are part of the course work, and are not voluntary, do not use a Voluntary Assumption of Risk Form. However, it is recommended that if a student does not wish to participate in a Field Trip because of the risks associated with it, that an alternative (such as lab work) be assigned without penalty for the choice in grading or course evaluations. The choice should be clearly presented to the student before or at the time the choice is to be made, and should not be so burdensome or unpleasant as to make the Field Trip constructively non-voluntary.

### **Why do we have to bother with these forms?**

Waivers and informed consent forms are important to the University, because contrary to popular belief, waivers are not worthless. In at least 45 states, a well-written waiver, signed voluntarily by an adult, can serve as a complete bar to liability for injuries caused by the negligence of the business or its employees. Waivers are frequently challenged, however, and found ineffective because of deficiencies in the agreement or the circumstances under which the waiver was signed.

### **CHECKLIST FOR EVALUATION<sup>1</sup>:**

#### **Requirements for a Legal Agreement**

1. Is the wording of the Waiver clear and easily understood by the person signing it? *Waivers should not contain “legalese”, or confusing language.*
2. Is consideration denoted within the contract? *To have a valid contract, there must be consideration, that is something in exchange for something else – such as “in consideration of my participation...”*
3. If the signer of the waiver is a minor, is there a space for parental signature? *Waivers involving minors are usually not effective, but may at least lay the foundation for the assumption of risk.*
4. Does the waiver also apply to claims that might be made by others, such as spouse, heirs, and assigns? *State laws vary, and this type of phrase may not be effective in all states.*
5. Is the waiver specific as to who is protected by the waiver? *All classes of persons or entities that are to be protected should be listed, including the organization, employees, volunteers, sponsors, students, “...and all others who are involved” should be included.*
6. Is the language sufficiently broad to encompass all of the activity? *Be wary of limiting language, such as “on the premises”, or “while using the equipment”, but do not broaden the description so much that it is not clear what the activity is.*
7. Does the waiver contain any false statements? *A false statement (such as the organization does not carry any liability insurance) will void the waiver.*

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<sup>1</sup>The Checklist was edited and printed with permission from “Before the Fall” by Doyice J. Cotten, Athletic Business May 1996

## **Guidelines for Using and Evaluating Waivers and Related Forms**

### **Format and Exculpatory Language**

- 1) Is the title of the waiver descriptive? *It should say “waiver” or “release of liability”, i.e. be very specific as to what it is.*
- 2) Is the font readable? *Do not use less than 8-point type, and the document should be easy to read.*
- 3) Is the exculpatory wording conspicuous in the agreement? *Bolding, capital letters or underlining should bring it to the reader’s attention. It is a good idea to note “Caution: Read Before Signing” or use similar language.*
- 4) Is the signature near the exculpatory wording? *It should be very close to it - not on another page or on the back.*
- 5) Is there a statement that the signer affirms that the waiver has been read and understood? *There should be, near the signature.*
- 6) Does the agreement refer to the “ordinary negligence” of the organization (and others)? This phrase, or the phrase “to the extent permitted by law” clarifies the agreement as to its intent, that gross negligence or acts not indemnifiable under law are not intended to be the subject of the waiver.
- 7) Does the waiver include a description of the specific risks that are unique to the activities or situation? *It should.*
- 8) Does the agreement specify the duration of the waiver? The ongoing nature of the waiver can be ensured by wording such as “forever release and discharge”, or “I forever release...”
- 9) Does the agreement contain a severability clause? This means, that if some of the agreement is not “legal” it does not invalidate the rest of the agreement. Wording like “If any portion of this agreement is held invalid, the rest of the document shall continue in full force and effect.” should be included in the agreement.

### **Other Protective Language in the Waiver**

- 1) Does the waiver include a statement of disclaimer? *“...[the institution] is not responsible for or liable for any loss of damage arising from [subject of waiver].”*
- 2) Does the waiver include a “Covenant not-to-sue”? *The signer gives up his/her right to sue any of the parties released in the agreement.*
- 3) Does the waiver include an agreement by which the signer agrees to repay the business for any losses caused by the signer? *This is an indemnity agreement, in which the signer agrees to reimburse the institution for any losses that s/he may cause, whether to the facilities, equipment or other persons for which the institution suffers a loss.*

## **Guidelines for Using and Evaluating Waivers and Related Forms**

- 4) Does the waiver include a selection of venue? *The state and county where any legal proceedings will take place should be specified.*
- 5) Does the waiver clearly describe the nature of the activity? *A clear description should be given, with emphasis on anything unpleasant or unusual.*
- 6) Does the waiver clearly warn of the risks involved in the activity? *This is critical to the effectiveness of any waiver, and should be broadly worded “including without limitation...” and describe common risks, as well as more severe ones, including death.*
- 7) Does the waiver include an affirmation of voluntary participation? The waiver should include a statement such as *“I understand the risks involved and am voluntarily participating in the [activity].” The assumption-of-risk defense is only effective when the participation is voluntary.*
- 8) Does the waiver contain a statement that the signer assumes the risk of the activity? *“...and I assume the risks of the activity” should be included.*

## **Other Precautions**

- 1) Make sure the signers have ample time to read the agreement. If this is an outside event, send it with the preliminary information about the event, and inform the potential participants that a signed waiver will be required for participation.
- 2) Explain what the waiver is, in clear language, if possible. If a signer does not speak English fluently, arrange for a translation.
- 3) Make sure the signer is not intoxicated when the waiver is signed.
- 4) The statute of limitations in Pennsylvania is 2 years. Waivers should be kept for two years, unless signed by a minor, in which case, the waiver should be kept until the minor reaches the age of 21.
- 5) Make sure it is clearly identified as a waiver, and not part of any sign-up sheet, membership forms, team rosters or any other document.