

# How BASK Handles Liability Concerns

## History

Since its inception in 1985, BASK has promoted safety in kayaking and developed a culture of cooperation, teamwork, and caring about one another. Fortunately we've never faced a lawsuit for injury, death, or property damage resulting from club activities. Some members, particularly those serving in officer and leadership roles, have expressed concern that they had little protection from lawsuits in their roles as volunteers for BASK. In recent years we have taken steps to improve our protections, including formal incorporation as a 501(c)(7) non-profit and securing of a general liability insurance policy and an accident/medical payments policy. Although our best safeguard is to prevent accidents from occurring, we now have a variety of liability protections in place. These are summarized below.

## For club paddles, we use the Common Adventure Model:

This helps protect us from liability because we don't have formal leaders for most paddles – everyone is responsible

From [Merrimack Valley Paddlers](#), a whitewater kayaking club in New Hampshire:

A Common Adventure trip is two or more individuals working cooperatively for common goals and sharing expenses and responsibilities as equitably as possible. There are no paid guides. Any instruction or advice provided by any member of the group is given gratuitously in a spirit of cooperation. Members of the group do not hold one another or others liable for accidents.

On a Common Adventure trip, everyone is expected to share in the responsibilities of the trip. The trip initiator (the person who posted the trip) simply gets the ball rolling. The rest of the group is expected to help plan for the success of the trip, from the arrival at the put in until the trip has ended and everyone is safely on their way home. The success or failure of a common adventure trip rests not in the hands of the trip initiator or the club, but rather in the hands of everyone that participates in the trip.

Trip Leadership. While on a Common Adventure trip, leadership is a fluid process. If someone knows the area, he/she/they assumes a leadership role, helping the group find their way. If there's an accident on the trip and someone has good first aid skills, they assume leadership. If a kayaker swims, another person may coordinate a rescue. Major decisions are made democratically as a group, with weight given to those with specialized knowledge.

## Liability Waivers

All club members sign an annual waiver with membership renewal. In addition, members and guests participating in a paddling event sign an event waiver. This waiver requires each participant to assume all risks individually and take full responsibility for any harm that occurs to them. It has been reviewed by legal experts and updated regularly.

## California Good Samaritans Act

The California Good Samaritans Act protects a paddler who assists another paddler from liability as long as they acted in accordance with reasonable standard of care. It does not protect from “gross negligence” such as telling someone to paddle in front of a ferry traveling 40 knots.

## Federal Volunteer Protection Act

There is a Federal Volunteer Protection Act that seeks to protect volunteers (at least those who serve as officers or directors) for non-profit corporations from lawsuits by shifting liability from the individual to the organization. California statutes modify this to require that the non-profit carry liability insurance, which BASK does. Therefore, the federal act does protect our officers and directors. One exception to the protections is engaging in criminal activity, e.g. BASK officers purchasing illegal drugs with club funds.

## General Liability Insurance Policy

BASK carries a general liability insurance policy through [Paddlesport Risk Management, LLC](#), an agency that specializes in insuring dragonboat clubs, outrigger clubs, white water kayaking clubs, and sea kayaking clubs. Coverage: Injury, death, and property damage \$4 million aggregate, \$2 million per occurrence.

1. Who is covered? Volunteers acting in some official capacity for the club:
  - officers
  - organizers of an event
  - volunteer instructors/coaches/safety boaters
  - trip initiators and those who play leadership roles (lead, sweep, guide?)
  - anyone who steps in to effect a rescue, etc.
2. Who is not covered?
  - Lawsuit against a member who is not acting in some official capacity for the club, e.g. one participant collides with another and destroys their boat or injures their back.
  - Paid instructors (who usually carry their own insurance from ACA)
3. What kinds of events are covered?
  - Club paddles
  - Classes or rescue practices (no trip plans or reports required)
  - General meetings (including insurance for the venue)
  - Pool sessions (we obtain certificates of additional insured for the pool owner)

4. Other requirements:
  - Annual waiver with membership
  - Trip waivers *not* required, but guests should sign a waiver
  - BASK may choose to continue requiring a trip waiver, because it includes emergency contact, license plate, kayak color. But we are free to modify our policy.
  - Some safety guidelines, such as PFDs, whistle, no alcohol on paddles, club safety plan (posted on website)

## Accident/medical Payments Insurance Policy

BASK carries an accident policy through Paddlesport Risk Management, LLC, that is bundled with our liability policy (at no extra cost).

1. Coverage: medical payments to *any* club member attending a club event
  - \$500 deductible, up to \$25,000
  - No requirement that you be a volunteer
  - Secondary to your private health insurance
  - Injury due to accident, not illness, heart attack, etc.
2. Useful for members lacking health insurance or with high deductible policies
  - Main goal on part of liability insurance company is to discourage lawsuits by making sure that injured parties can get medical treatment.

## Why doesn't BASK carry D&O Insurance?

Many non-profit organizations carry Directors and Officers (D&O) liability insurance. We considered this when obtaining general liability insurance and decided against it. Here is what went into our decision.

1. Who would it cover? Mainly our elected officers.
2. What would it cover? Financial damages caused by the club or by officers' actions
  - Employment practices
  - Lawsuits by donors claiming funds not used as they specified
  - Lawsuits by a business claiming that the club caused them to lose business (e.g. club does not allow participants in a paddle to rent from a particular outfitter)
3. What would *not* be covered?
  - Lawsuit by one officer against another officer
  - Violation of privacy, data loss
  - Defamation
  - Fraudulent or criminal acts
4. Cost: depends on options chosen, probably \$800-\$1,100/year

5. Why we chose not to carry it

- Unlike many non-profits, we do not have employees, we do not handle large amounts of money (e.g. donations, government grants), and we do not provide paid services or products to the public, so most of the things that D&O policies cover just don't apply to us.
- In the 35-year history of Paddlesport Risk Management, they have never seen a claim against a paddle club that would be covered by a D&O policy. They have had a small number of claims against paddle clubs under general liability, mostly for deaths or very serious injuries, but D&O doesn't cover these - the general liability policy does.