

Risk Management Concerns Building a Fortress of Protection for ACA Instructors

Paddlesport instructors work in a challenging, dynamic environment. Water conditions, weather and wind change constantly, creating risks for even the most skilled paddlers and instructors. Paddlers address these risks by being flexible, by developing their paddling skills and knowledge, and by gaining strong experience. Paddling instructors also face risks from the challenging and dynamic legal environment in which we operate. Legal risks can impact the most experienced and skilled instructors, but these risks also can be addressed through flexibility, skills and knowledge development, and experience. If a paddling instructor is the target of a lawsuit, the attorney for the plaintiff will often try to build a case for negligence by making numerous allegations. The six most common and significant allegations are listed below in order of importance and prevalence.

1. Failure to “warn and inform”- Managing this most important issue is a science unto itself. You should cover this thoroughly by having a waiver or release written to describe the activity’s specific risks and hazards in clear, accurate terms. Participants need “time to consider” the specific risks, and need an opportunity to ask questions before participating. A verbal discussion of the activity specific risks and their frequency is a critical part of the waiver. Instructors should ask for questions from participants, and ascertain the level of appreciation of risks. The “challenge and participation by choice” option must be discussed and given so that forced participation is not an issue.

2. Failure to give proper instructions- Instructions to the participants are a critical part of risk management. Instructions should reflect current industry standards. Instructors should give appropriate instructions, describing

what the expect of the participants in order to minimize exposure to the outlined inherent risk. Comments like “do you understand the instructions, any questions?” are a critical part of instructions and help build a solid foundation of appropriate risk management.

3. Instructor/ guide error- Attempts may be made to disparage training received by guides and instructors. To help address this, instructors should ensure they have written training records and a recognized certification that meets or exceeds the current accepted “standard of care”. Documented guide training and instructor certifications hold a lot of weight in court. The courts value experience as the most significant attribute of proper training. Past and expired certifications are seen as relevant to your level of training, but maintaining current certification helps keeps you abreast of changing standards.
4. Wrong place, wrong time - Document weather conditions, water levels and hazards, and make sure you have a plan to address them. Be flexible, so that you can change plans in response to changes in local conditions.
5. Equipment failure- The courts require properly maintained appropriate gear for the activity. Experience with the industry standards and documentation of prior usage is essential. Instructors need to make sure that their gear and the participant’s gear is in good working order.
6. Rescue was unduly long and exhaustive, causing pain and suffering – Plan in advance for problems. Have a written evacuation / emergency plan and put appropriate procedures in place. Make sure that you have appropriate equipment to carry out a rescue. Documentation and pre-planning are key elements of risk management.

Instructors can build a solid defense if you points abover are properly addressed. The legal standard is to perform as a “reasonable and prudent” person, with your level of training or position of responsibility, would perform under similar circumstances. Know the currently accepted “standard of care” by having the proper training and instruction. Always, “Get it in writing”, and maintain your records of the above. ACA sets the standard for paddlesport instruction. Documentation available on the ACA website (www.americancanoe.org) can help you develop your own event specific risk management plan.

The bottom line is prevention. Proper training, knowledge and experience gives instructors the judgment to recognize when a situation is developing and the tools to take both preventative and corrective action.

Adapted by Sam Fowlkes from a Risk Management Seminar given by Will Leverette at the 2004 Whitewater Symposium.