

DRAFTING
AND
REVIEWING
INSURANCE *AND* INDEMNITY
PROVISIONS

Presented by:

William H. Staples, Esq.

ARCHER ■ NORRIS
A PROFESSIONAL LAW CORPORATION

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LEAGUE OF CALIFORNIA CITIES

City Attorneys Department 2003 Spring Conference

DRAFTING AND REVIEWING INSURANCE AND INDEMNITY PROVISIONS

William H. Staples, Esq.

Indemnity Agreements/Provisions

- Adequate hold harmless provision
- Good hold harmless provision
- Best damned provision I've ever seen

Additional Insured Endorsements

- Certificate of Insurance
- Owners, Lessees or Contractors (CG 2010 11-85)
- Owners, Lessees or Contractors (CG 2010 10-93)
- Managers or Lessors of Premises (CG 2011 1-96)
- Owners and/or Lessors of Premises, Sponsors or Co-Promoters (S-157 10-89)
- State or Political Subdivisions-Permits (CG 2012 6-98)
- State or Political Subdivisions-Permits Relating to Premises (CG 2013 11-85)

Waiver and Release of liability

- Participant
- Parent or legal Guardian for a Minor





William H. Staples, *Shareholder*

Archer Norris, a Professional Law Corporation, is one of the largest law firms headquartered in Contra Costa County, with offices in Walnut Creek, Richmond, Corona, and Los Angeles. The firm counsels clients in complex litigation and business, insurance coverage and bad faith litigation, health care, environmental, real estate transactions, and discretionary government approvals.

William Staples is one of the firm's senior trial lawyers. He leverages 27 years of legal experience, a keen understanding of legal strategies and tactics, and a poised courtroom presence to produce the strongest advocacy possible for his clients. His practice areas include employment, public entity, products liability, construction disputes/defects, toxic torts, commercial and general tort litigation.

He has tried in excess of thirty cases to judgment. These would include a defense verdict for a municipality in a roadway design case. Defense verdict of a products liability claim against a national retailer for an alleged defect in the design of a snow-throwing machine. Defense verdict for an employer against claims of wrongful termination, sexual discrimination and defamation by a former employee. An eight-month trial where Mr. Staples persuaded the court that the plaintiff (bonding company) had failed to act in good faith toward the defendant (general contractor). This shifted the burden for over \$2,000,000 of construction costs from the contractor back to its bonding company. Mr. Staples has also appeared before the California Supreme Court and successfully had them declare a portion of the Government Code unconstitutional, thereby protecting his client from thousands of dollars of potential damage claims.

In addition to trying cases, and possibly more important, Mr. Staples is extremely adept at posturing cases for early resolution. Thoughtful analysis is given at each stage of the litigation. His initial discovery is planned to obtain the information most necessary for an overall evaluation and his clients are kept fully up to date so that informed decisions can be made.

Mr. Staples is a shareholder and the head of the Construction Litigation Group for Archer Norris. He graduated from the University of California, Berkeley with a degree in political science and earned his Juris Doctorate degree from the University of San Francisco. He is a member of the Contra Costa County Bar Association, Association of Defense Counsel of Northern California, Defense Research Institute, and the Association of Defense Trial Attorneys. He is active in youth sports in his community.



Indemnity Agreements/Provisions

ADEQUATE Hold Harmless Clause

To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner and the Architect and their agents and employees from and against all claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from the performance of The Work, provided that any such claim, damage, loss or expenses (i) is attributable to bodily injury, sickness, disease or death, or injury to or destruction of tangible property (other than The Work itself) including the loss of use resulting therefrom and (ii) is caused in whole or in part by any negligent act or omission of the Contractor, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this paragraph.

Source: AIA document A201, General Conditions of the Contract for Construction.

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- Requires defense and indemnification of City.
 - Covers City even if City is negligent (except for sole negligence).
 - Only applies if Contractor is at least partially responsible due to negligent act or omission.



Indemnity Agreements/Provisions

GOOD Hold Harmless Clause

To the fullest extent permitted by law, the Contractor shall indemnify, defend and hold harmless the Owner and the Architect and their agents and employees from and against all claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of, resulting from or in any manner related to any work performed or services provided under this Subcontract agreement, provided that any such claim, damage, loss or expenses is attributable to bodily injury, sickness, disease or death, or injury to or destruction of tangible property (other than the work itself) including the loss of use resulting therefrom regardless of whether or not it is caused in part by a party indemnified hereunder.

Notwithstanding the foregoing, nothing herein shall be construed to require Contractor to indemnify a party indemnified hereunder from any claim arising from the sole negligence or willful misconduct of the party to be indemnified.

-
- Requires defense and indemnification of City.
 - Covers City even if City is negligent (except for sole negligence).
 - Applies even if Contractor is not negligent, as long as incident is in any way related to Contractor's work.



Indemnity Agreements/Provisions

“The Best Damned Provision I’ve Ever Seen”

INDEMNIFICATION

To the fullest extent permitted by law, Subcontractor shall indemnify, defend (at Subcontractor’s sole cost and expense and with legal counsel approved by Contractor and/or Owner, which approval shall not be unreasonably withheld), protect and hold harmless Contractor and/or Owner, all subsidiaries, divisions and affiliated companies of Contractor and/or Owner, and all of such parties’ representatives, partners, designees, officers, directors, shareholders, employees, consultants, agents, successors and assigns, and any lender of Owner with an interest in the Project (collectively, the “Indemnified Parties”), from and against any and all claims (including, without limitation, claims for bodily injury, death or damage to property), demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including, without limitation, attorneys’ fees, disbursements and court costs, and all other professional, expert or consultants’ fees and costs and Contractor’s and/or Owner’s general and administrative expenses) of every kind and nature whatsoever (individually, a “Claim”; collectively, “Claims”) which may arise from or in any manner relate (directly or indirectly) to any work performed or services provided under this Subcontract Agreement (including, without limitation, defects in workmanship or materials and/or design defects [if the design originated with Subcontractor]) or Subcontractor’s presence or activities conducted on the Project (including, without limitation, the negligent and/or willful acts, errors and/or omissions of Subcontractor, its principals, officers, agents, employees, vendors, suppliers, consultants, subconsultants, subcontractors, anyone employed directly or indirectly by any of them or for whose acts they may be liable or any or all of them) regardless of any active or passive negligence or strict liability of an Indemnified Party. Subcontractor understands and acknowledges that the indemnification obligation hereunder is intended to constitute a “Type I” indemnity under California law and extends to and includes Claims arising from the active or passive negligence of Indemnified Parties. Notwithstanding the foregoing, nothing herein shall be construed to require Subcontractor to indemnify the Indemnified Parties from any Claim arising from the sole negligence or willful misconduct of the Indemnified Parties.

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- Requires defense and indemnification of City.
 - Covers City even if City is negligent (except for sole negligence).
 - Applies even if Contractor is not negligent, as long as incident is in any way related to Contractor’s work.
 - No possibility of an ambiguity.



Indemnity Agreements/Provisions

“The Best...” (Continued)

DUTY TO DEFEND

The duty to defend hereunder is wholly independent of and separate from the duty to indemnify and such duty to defend exists regardless of any ultimate liability of Subcontractor. Such defense obligation, shall arise immediately upon presentation of a Claim by any party and written notice of such Claim being provided to Subcontractor. Payment to Subcontractor by any Indemnified Party or the payment or advance of defense costs by any Indemnified Party shall not be a condition precedent to enforcing such Indemnified Party's rights to indemnification hereunder. Subcontractor's indemnification obligation hereunder shall survive the expiration or earlier termination of this Subcontract Agreement until such time as action against the Indemnified Parties for such matter indemnified hereunder is fully and finally barred by the applicable statute of limitations or statute of repose. Subcontractor's liability for indemnification hereunder is in addition to any liability Subcontractor may have to Contractor and/or Owner for a breach by Subcontractor of any of the provisions of this Subcontract Agreement. Under no circumstances shall the insurance requirements and limits set forth in this Subcontract Agreement be construed to limit Subcontractor's indemnification obligation or other liability hereunder. The terms of this Subcontract Agreement are contractual and the result of negotiation between the parties hereto. Accordingly, any rule of construction of contracts (including, without limitation, California Civil Code Section 1654) that ambiguities are to be construed against the drafting party shall not be employed in the interpretation of this Subcontract Agreement.

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- Makes clear that duty to defend is independent of duty to indemnify;
 - Indemnification obligation continues until expiration of all statutes of limitations or repose.



Indemnity Agreements/Provisions

“The Best ...” (Continued)

INSURING PROVISION TO INCORPORATE INTO SUBCONTRACT AGREEMENT SUBCONTRACT SECTION:

INSURANCE Subcontractor shall secure and maintain at its own cost, for all operations, the following insurance coverage:

1.1 Workers' Compensation & Employer's Liability Insurance. The Workers' Compensation Insurance shall be in the form and amount required by State statute. The Employer's Liability minimum limits required are: (a) \$1,000,000 Each Accident; (b) \$1,000,000 Disease - Policy Limit; and (c) \$1,000,000 Disease - Each Employee. The Workers' Compensation policy shall contain endorsements providing (I) a waiver of subrogation in favor of Contractor and Project owner; and (II) thirty (30) days' written notice to Contractor in the event of cancellation or material reduction in coverage.

1.2 General Liability Insurance. Occurrence basis with minimum limits of (a) \$1,000,000 Each Occurrence; (b) \$2,000,000 General Aggregate; and (c) \$1,000,000 Products/Completed Operations Aggregate. General Liability Insurance shall be at least as broad as ISO "Occurrence" Form CG 0001 and shall include coverages as follows: (I) Premises, operations and mobile equipment liability coverage for explosion, collapse and underground hazards; (II) independent contractor's coverage (liability a subcontractor may incur as a result of the operations, acts or omissions of subcontractors, suppliers and their agents or employees); (III) products and completed operations coverage; (IV) blanket contractual coverage including both oral and written contracts and including obligations assumed by Subcontractor under the Subcontract Agreement documents; (V) personal injury coverage; (VI) broad form property damage coverage including completed operations; (VII) an endorsement naming Contractor, Project Owner and such additional parties as Contractor designates as additional insureds (the endorsement must be ISO Form CG2010 11/85 edition or its equivalent and must cover joint negligence, completed operations and the acts of subcontractors and suppliers); (VIII) an endorsement providing the insurance is primary as respects Contractor and Project Owner and that any insurance maintained by Contractor and Project Owner is excess and non-contributing; and (IX) an endorsement providing thirty (30) days' written notice to Contractor in the event of cancellation or material reduction in coverage.

No endorsement limiting or excluding a standard coverage is permitted and claims-made coverage or modified occurrence is not acceptable.



Indemnity Agreements/Provisions

“The Best ...” (Continued)

1.3 Business Auto Liability Insurance. \$1,000,000 each occurrence combined single limit for bodily injury and/or property damage liability, including coverage for (I) owned automobiles; (II) hired or borrowed automobiles; and (III) non-owned automobiles. Subcontractor shall provide an endorsement naming Contractor and Project Owner and such additional parties as Contractor reasonably designates as additional insureds. Said endorsement shall provide thirty (30) days' written notice to Contractor in the event of cancellation or material reduction in coverage.

2.1 GENERAL REQUIREMENTS. A certificate and endorsement in a form acceptable to Contractor demonstrating compliance with the above insurance requirements (or, at Contractor's request, certified copies of Subcontractor's actual policies) shall be delivered to Contractor before Subcontractor performs any work at or prepares or delivers material to the Project site. Subcontractor shall maintain all of the above insurance coverage in force until the Project's completion of work. Subcontractor shall maintain the Products and Completed Operations Liability Coverage, including the required endorsements, in force until expiration of the applicable statute of limitation relating to latent defects in construction of or improvements to real property.

If Subcontractor fails to purchase or maintain the insurance specified in this Section, Contractor shall have the right, but not the obligation, to purchase such insurance on Subcontractor's behalf and at Subcontractor's cost. Subcontractor shall deliver all information required in connection with such purchase. If Subcontractor's insurance is considered inadequate by Contractor's insurer, Contractor shall have the right to charge Subcontractor any additional premium charged by Contractor's insurer.

The use of self-insured retention or deductibles in excess of \$10,000 shall not be allowed unless specifically approved by Contractor in advance and in writing. Subcontractor is fully responsible for payment of any self-insured retentions or deductibles, regardless of their amount.

-
- Spells out insurer's requirements in detail.
 - Requires Contractor to name City as an additional insured under broadest endorsement.
 - Requires Carrier to notify City in writing if policy cancelled.
 - Requires provision that Contractors' policy will be primary and City's will be excess and non-contributory.
 - Requires Contractor to maintain City additional insured status until expiration of all possible statutes of limitations.



Additional Insured Endorsements

CERTIFICATE OF INSURANCE					ISSUE DATE (MM/DD/YY) <input type="checkbox"/>	
PRODUCER			THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.			
INSURED						
COMPANIES AFFORDING COVERAGE						
			COMPANY LETTER A			
			COMPANY LETTER B			
			COMPANY LETTER C			
COVERAGES						
THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED, NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN. THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.						
CO. LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS (in thousands)	
A	General Liability <input checked="" type="checkbox"/> Commercial General Liability <input type="checkbox"/> Claims Made <input type="checkbox"/> Occur <input type="checkbox"/> Owner's & Contractors Prot. <input type="checkbox"/>				General Aggregate	\$ NONE
					Products-Comp/Das Aggregate	\$ 1000
					Personal & Advertising Injury	\$ 1000
					Each Occurrence	\$ 1000
					Fire Damage (Any one fire)	\$ 300
					Medical Expense (Any one person)	\$ 5
					Participant Legal Liability	\$ 1000
	Automobile Liability <input type="checkbox"/> Any auto <input type="checkbox"/> All owned autos <input type="checkbox"/> Scheduled autos <input type="checkbox"/> Hired autos <input type="checkbox"/> Non-owned autos <input type="checkbox"/> Garage Liability <input type="checkbox"/>				Combined Single Limit	\$
					Bodily Injury (per person)	\$
					Bodily Injury (per accident)	\$
					Property Damage	\$
						Each Occurrence
	Excess Liability <input type="checkbox"/> <input type="checkbox"/> Other than Umbrella/Excess				Aggregate	\$
						Statutory
	Workers' Compensation and Employers' Liability				Each Accident	\$
					Disease-Policy Limit	\$
					Disease-Each Employee	\$
					AD&D	\$
	Participant Accident				Primary Medical	\$
					Excess Medical	\$
					Weekly Indemnity	\$ X
DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/RESTRICTIONS/SPECIAL ITEMS						
CERTIFICATE HOLDER			CANCELLATION			
			SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING COMPANY WILL endeavor TO MAIL _____ DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO MAIL SUCH NOTICE SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE COMPANY, ITS AGENTS OR REPRESENTATIVES.			
						AUTHORIZED REPRESENTATIVE

- Never rely solely on certificate of insurance.
- It only verifies the existence of coverage as of the date of issuance.



Additional Insured Endorsements

POLICY NUMBER:

COMMERCIAL GENERAL LIABILITY

THIS ENDORSEMENT CHANGES THE POLICY, PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED — OWNERS, LESSEES OR CONTRACTORS (FORM B)

This endorsement modifies insurance provided under the following:

**COMMERCIAL GENERAL LIABILITY COVERAGE PART:
SCHEDULE:**

Name of Person or Organization:

(If no entry appears above, information required to complete this endorsement will be shown in the Declarations as applicable to this endorsement.)

WHO IS AN INSURED (Section II) is amended to include as an insured the person or organization shown in the Schedule, but only with respect to liability arising out of "your work" for that insured by or for you.

SUCH INSURANCE AS IS AFFORDED BY THIS POLICY FOR THE BENEFIT OF OWNER AND GENERAL CONTRACTOR SHALL BE PRIMARY INSURANCE AS RESPECTS TO ANY CLAIMS, LOSSES, OR LIABILITY ARISING DIRECTLY OR INDIRECTLY FROM THE CONTRACTOR'S OPERATIONS AND ANY OTHER INSURANCE MAINTAINED BY OWNER AND GENERAL CONTRACTOR SHALL BE EXCESS AND NOT CONTRIBUTORY WITH THE INSURANCE PROVIDED HEREUNDER.

CG 20 10 11 85

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- Broadest coverage form in use when dealing with contractors.
- Includes claims/incidents that arise after work is completed.
- [] is not part of the form. Be sure to have it included or added by separate endorsement.



Additional Insured Endorsements

POLICY NUMBER:

COMMERCIAL GENERAL LIABILITY
CG 20 10 10 93

THIS ENDORSEMENT CHANGES THE POLICY, PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED — OWNERS, LESSEES OR CONTRACTORS (FORM B)

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART:
SCHEDULE:

Name of Person or Organization:

(If no entry appears above, information required to complete this endorsement will be shown in the Declarations as applicable to this endorsement.)

WHO IS AN INSURED (Section II) is amended to include as an insured the person or organization shown in the Schedule, but only with respect to liability arising out of your on going operations performed for that insured.

Coverage is primary and is not excess or contributing with any insurance for self-insurance maintained by the additional insured, but only as outlined in coverage form CG 0001 1185, Section IV, item 4, paragraphs a, b, and c.

CG 20 10 10 93

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-
- **DO NOT ACCEPT** unless you have no choice.
 - **Does not** cover claims/incidents arising after work is completed.



Additional Insured Endorsements

POLICY NUMBER:

COMMERCIAL GENERAL LIABILITY

CG 2011 01 96

THIS ENDORSEMENT CHANGES THE POLICY, PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED — MANAGERS OR LESSORS OF PREMISES

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART:

SCHEDULE:

1. Designation of Premises (Part Leased to You):
2. Name of Person or Organization (Additional Insured):
3. Additional Premium: INCLUDED

(If no entry appears above, information required to complete this endorsement will be shown in the Declarations as applicable to this endorsement.)

WHO IS AN INSURED (Section II) is amended to include as an insured the person or organization shown in the Schedule, but only with respect to liability arising out of the ownership, maintenance or use of that part of the premises leased to you and shown in the Schedule and subject to the following additional exclusions:

This insurance does not apply to:

1. Any "occurrence" which take place after you cease to be a tenant in that premises.
2. Structural alterations, new construction or demolition operations performed by or on behalf of the person or organization shown in the Schedule.

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- Covers you when persons or organizations rent/lease public facilities.



Additional Insured Endorsements

POLICY NUMBER: COMMERCIAL GENERAL LIABILITY

THIS ENDORSEMENT CHANGES THE POLICY, PLEASE READ IT CAREFULLY.

**ADDITIONAL INSURED
OWNERS AND/OR LESSORS OF PREMISES, SPONSORS OR
CO-PROMOTERS**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE FORM

Policy # _____ is amended to include as an additional Insured any person or organization of the types designated below, but only with respect to liability arising out of your operations:

1. Owners and/or lessors of the premises leased, rented, or loaned to you, subject to the following additional exclusions:

A. This insurance applies only to an occurrence which takes place while you are a tenant in the premises;

B. This insurance does not apply to Bodily Injury of Property Damage resulting from structural alterations, new construction or demolition operations performed by or on behalf of the owner and/or lessor of the premises;

C. This insurance does not apply to any design defect or structural maintenance of the premises by or on behalf of the owner and/or lessor.

With respect to any "Additional Insured" included under this policy, this insurance does not apply to the sole negligence of such "Additional Insured."

2. Sponsors.

3. Co-Promoters.

-
- Provides same coverage as "Managers or Lessors" endorsement.
 - Also covers City of its sponsors or co-promotes an organization or event.



Additional Insured Endorsements

CG 20 12 07 98

ADDITIONAL INSURED — STATE OR POLITICAL SUBDIVISIONS—PERMITS

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART.

SCHEDULE

State or Political Subdivision:

(If no entry appears above, information required to complete this endorsement will be shown in the Declarations as applicable to this endorsement.)

Section II—WHO IS AN INSURED is amended to include as an insured any state or political subdivision shown in the Schedule, subject to the following provisions:

1. This insurance applies only with respect to operations performed by you or on your behalf for which the state or political subdivision has issued a permit.

2. This insurance does not apply to:

a. "Bodily injury," "property damage" or "personal and advertising injury" arising out of operations performed for the state or municipality; or

b. "Bodily injury" or "property damage" included within the "products-completed operations hazard."

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- **Beware** - rarely used and provides extremely restricted coverage.



Additional Insured Endorsements

CG 20 13 11 85

ADDITIONAL INSURED — STATE OR POLITICAL SUBDIVISIONS—PERMITS RELATING TO PREMISES

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART.

SCHEDULE

State or Political Subdivision:

(If no entry appears above, information required to complete this endorsement will be shown in the Declarations as applicable to this endorsement.)

WHO IS AN INSURED (Section II) is amended to include as an insured any state or political subdivision shown in the Schedule, subject to the following additional provision:

This insurance applies only with respect to the following hazards for which the state or political subdivision has issued a permit in connection with premises you own, rent, or control and to which this insurance applies:

1. The existence, maintenance, repair, construction, erection or removal of advertis-

ing signs, awnings, canopies, cellar entrances, coal holes, driveways, manholes, marquees, hoist away openings, sidewalk vaults, street banners, or decorations and similar exposures; or

2. The construction, erection, or removal of elevators; or

3. The ownership, maintenance, or use of any elevators covered by this insurance.

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- **Beware** - rarely used and provides extremely restricted coverage.



Waiver and Release of Liability

AQUATIC WAIVER AND RELEASE OF LIABILITY

- Walnut Creek Aquabears Walnut Creek Aquanuts
 Diablo Divers Walnut Creek Swim Club

Participant's Name _____ Phone _____

Address _____

City _____ State _____ Zip _____

Emergency Phone Number (____) _____ Age _____

I the undersigned, certify that I am in good physical condition and wish to participate in the program marked above.

I hereby acknowledge that I have voluntarily applied to participate in aquatic activities in conjunction with the above named team.

I am aware that serious accidents occasionally occur during aquatic activities; and that participants occasionally sustain serious personal injury or death and/or property damage, as a consequence thereof. I understand that included among the dangerous elements of aquatic activities are risks associated with weather, water conditions, including temperature, currents, waves and pollution, of injury as a result of being struck by another swimmer/diver or his/her equipment. Additionally, I understand that there is a risk of injury to muscles, tendons, ligaments, joints, ankles, knees, and legs while practicing and competing. I understand that the pool deck, bottom, sides, diving boards and starting blocks cannot be guaranteed to be smooth or free of defects, and that there is the risk of injury as a result of tripping or striking an unknown object. I understand that in addition to the above-mentioned risks, there are unpredictable dangers involved

Waiver and Release of Liability

in this sport. If, however, I observe any unusual and/or significant hazard I will bring such to the attention of the nearest official immediately and remove myself from participation if necessary.

In consideration of my participation in aquatic activities, I voluntarily release the team indicated above, the City of Walnut Creek and the Sponsors, or their officers, agents, employees and volunteers from any and all liability for injuries or death, or property damage resulting from or in any way connected with my participation in aquatic activities, that this waiver and release is applicable even though the negligent activities of team named above, the City of Walnut Creek, the Sponsors, or their officers, agents, employees or volunteers may have caused or contributed to the injury or death or property damage, and this document is binding on my heirs and dependents as well as myself. I freely and voluntarily expressly assume all the risks of participating in these aquatic activities.

I also certify that I am physically fit, have sufficiently trained for participation in this aquatic activity and have not been advised otherwise by a qualified medical person. I authorize you to call my family physician in case of emergency.

I understand that during practice and competition or related activities, I may be photographed. I agree to allow photo, video or film likeness of me to be used for any legitimate purpose by the program officials, producers, sponsors, organizers and or assign.

Lastly, I agree to accept and abide by the rules and regulations of the team named above and the City of Walnut Creek

I HAVE READ THIS RELEASE OF LIABILITY AND ASSUMPTION OF RISK AGREEMENT, FULLY UNDERSTAND IT AND SIGN IT FREELY AND VOLUNTARILY WITHOUT INDUCEMENT.

Signature _____ Date: _____

Family Doctor _____ Phone () _____

10/16/95 Adat

Waiver and Release of Liability

AQUATIC WAIVER AND RELEASE OF LIABILITY

- Walnut Creek Aquabears Walnut Creek Aquanauts
 Diablo Divers Walnut Creek Swim Club

Participant's Name _____ Phone _____

Parent or Legal Guardian _____

Address _____

City _____ State _____ Zip _____

Emergency Phone Number (____) _____ Age _____

We the undersigned, certify that we are the parent or legal guardian of the above named child, that he/she is in good physical condition and we, therefore, give our permission for him/her to participate in the program marked above.

We hereby acknowledge that the above named child has voluntarily agreed to participate in aquatic activities in conjunction with the above named team.

We are aware that serious accidents occasionally occur during aquatic activities, and that participants occasionally sustain serious personal injury or death and/or property damage, as a consequence thereof. We understand that included among the dangerous elements of aquatic activities are risks associated with weather, water conditions, including temperature, currents, waves and pollution, of injury as a result of being struck by another swimmer/diver or his/her equipment. Additionally, we understand that there is a risk of injury to muscles, tendons, ligaments, joints, ankles, knees, and legs while practicing and competing. We understand that the pool deck, bottom, sides, diving boards and starting blocks cannot be guaranteed to be smooth or free of defects, and that there is the risk of injury as a result of tripping or striking an unknown object. We understand that in addition to the above-mentioned risks, there are unpredictable dangers involved in this sport. If, however, we observe any unusual and/or significant hazard we

Waiver and Release of Liability

will bring such to the attention of the nearest official immediately and remove the above named child from participation if necessary.

In consideration of the above named child's participation in aquatic activities, we voluntarily release the team indicated above, the City of Walnut Creek and the Sponsors, or their officers, agents, employees and volunteers from any and all liability for injuries or death, or property damage resulting from or in any way connected with the above named child's participation in aquatic activities, that this waiver and release is applicable even though the negligent activities of team named above, the City of Walnut Creek, the Sponsors, or their officers, agents, employees or volunteers may have caused or contributed to the injury or death or property damage, and this document is binding on my heirs and dependents as well as myself. We freely and voluntarily expressly assume all the risks of participating in these aquatic activities.

We also certify that the above named child is physically fit, has sufficiently trained for participation in this aquatic activity and has not been advised otherwise by a qualified medical person. We authorize you to call our family physician in case of emergency.

We understand that during practice and competition or related activities, the above named child may be photographed. We agree to allow photo, video or film likeness of the above named child to be used for any legitimate purpose by the program officials, producers, sponsors, organizers and or assigns.

Lastly, we agree to accept and abide by the rules and regulations of the team named above and the City of Walnut Creek.

WE HAVE READ THIS RELEASE OF LIABILITY AND ASSUMPTION OF RISK AGREEMENT, FULLY UNDERSTAND IT AND SIGN IT FREELY AND VOLUNTARILY WITHOUT INDUCEMENT.

Signature of Parent or Legal Guardian: _____

Date: _____

Family Doctor _____ Phone () _____

10/16/95 M5007



William H. Staples, Esq.
(925) 930-6600

ARCHER ■ NORRIS
A PROFESSIONAL LAW CORPORATION

WALNUT CREEK RICHMOND CORONA LOS ANGELES

