

Amendment to Article 6.12.1-5 of the Wisconsin Swimming Bylaws: Passed January 25, 2011

612.1 INDEMNITY –

- A. **Mandatory Indemnification.** WSI shall indemnify any Indemnified Person who is or was a party to any proceeding by reason of the fact that the Indemnified Person bears or bore one or more of the relationships to WSI specified in Section 602.1 (Members) against all liabilities and expenses incurred in the proceeding, except such liabilities or expenses as are incurred because of the Indemnified Person’s willful misconduct or knowing violation of a criminal law. Unless a determination has been made that indemnification is not permissible by operation of these bylaws or Wisconsin law, WSI shall pay for the expenses incurred by an Indemnified Person in a proceeding. Payments may be made in advance or as reimbursement, at the discretion of WSI. Indemnification of an Indemnified person shall be an unlimited, unsecured general obligation and shall be without reference to ability to make repayment.
- B. **Permissive Indemnification.** WSI is empowered, by majority vote of a quorum of disinterested members and as permitted by Wisconsin law, to cause WSI to indemnify or contract in advance to indemnify any person who is an Indemnified Person. The indemnification provided by this section shall not apply to any Indemnified Person whose otherwise indemnified conduct is finally determined to have been:
1. in bad faith,
 2. self-dealing,
 3. gross negligence,
 4. in wanton and willful disregard of applicable laws, rules and regulations, of the USA Swimming Rules and Regulations, of the USA Swimming Code of Conduct or these Bylaws,
 5. a crime, or
 6. found by the Board of Review or the National Board of Review to have committed actions which would be the basis for a conviction.

612.3 **INDEMNIFIED PERSONS** - As used in this Article, “Indemnified Person” shall mean any person who is or was a Board Member, Board of Review Chair, Vice-Chair, Presiding Officer or member, Group Member Representative, officer, official, coach, committee chair or member, coordinator, volunteer, employee or agent of WSI, or is or was serving at the direct request of WSI as an officer, Group Member Representative, meet director, official, coach, committee chair or member, coordinator, volunteer, employee or agent of another person or entity involved with the sport of swimming.

612.4 **EXTENT OF INDEMNITY** - To the full extent permitted by law, the indemnification provided in this Article shall include expenses (including attorneys’ fees, disbursements and expenses), judgments, and amounts paid in settlement. In no event will WSI indemnify an Indemnified Person for any fine, forfeiture or penalty imposed upon conviction of a crime. Except as limited by applicable laws, these expenses may be paid by WSI in advance of the final

disposition of such action, suit or proceeding. WSI may require an undertaking from the Indemnified Person obliging him to repay such sums if it is subsequently determined that an exclusion is applicable. This section shall not be deemed to limit the right of WSI to indemnify any Indemnified Person for any expenses related to a legal action to the full extent permitted by law, nor shall it be deemed exclusive of any other rights to which any Indemnified Person may be entitled under any agreement, vote of members or disinterested directors or otherwise, both as to action in an official capacity and as to action in another capacity while holding such office.

612.5 SUCCESSORS, ETC. - The indemnification provided by this Article shall continue as to an Indemnified Person who has died or been determined to be legally incompetent and shall apply for the benefit of the successors, guardians, conservators, heirs, executors, administrators and trustees of the Indemnified Person.

Notes on Rational:

1. The schema of the USAS proposed bylaws for LSCs is that the LSC will defend an accused officer, director, employee, coach, athlete, or volunteer regardless of the nature of the claim, and specifically includes criminal actions. The LSC is further required to pay judgments, fines and penalties imposed by a court against an officer, director, employee or volunteer. The proposed bylaw allows the LSC to seek repayment from the individual. Finally, if the LSC determines that there is doubt as to an individual's ability to repay the LSC, the LSC is not required to advance payments before a final determination has been rendered on the accusations. The latter provision seems discriminatory and likely to be determined as such by a court of law.
2. The relevant Wisconsin law regarding indemnification by a corporation, which applies to both for profit and non-profit corporations, is Chapter 181, Wis. Stats. Relevant sections are: 181.0670, 181.0871, 181.0872, 181.0877 and 181.0879, Wis. Stats.

Dan McAllen, USA Swimming Rules and Regulation Committee Chair, and John Morse, USA Swimming General Counsel, have approved of the proposed 612.1- 612.5 amendment by e-mail of January 22, 2011.