Waiver Forms:
A waiver form is also an effective measure to avoid liability. However, a waiver form must clearly set out the purpose of the form, the fact that the party executing the form understands it and the terms of the release. Frequently, waivers are deemed to be insufficient because they fail to clearly state that the party executing the form agrees that the potential defendant is not liable even if he is negligent. Therefore, in Delaney v. Cascade River Holidays Ltd. (1983) 44 BCLR 24 (BCCA) a passenger on a rafting trip was given a life jacket which, to the defendant’s knowledge, would not provide enough flotation. The plaintiff had signed a liability release form which was clearly worded to cover even negligence on the part of the defendant. The defendant was not liable in the circumstances.

On the other hand, children cannot waive their rights to seek compensation for an injury sustained at a recreation facility [Crawford v. Ferris (1953) OWN 713 (Ont. HC)]. This does not mean the waiver should not be obtained. While a minor cannot be bound by a contract, evidence arising from the execution of the waiver can be used to establish that the child voluntarily assumed the risk.

CONCLUSIONS
Risk management is a growing industry. As the courts consider more bizarre cases the efforts of risk managers must be incrementally increased to deal with the imaginative plaintiff’s counsel. However, a good system of risk management does not have to go overboard or eliminate altogether the activities that the corporation is involved in. Moreover, a good system of checklists, waiver execution and insurance will insure that the corporation is not brought to its knees by “one false step”.

[An address to the 1996 WCTA Conference, Victoria, BC. Reproduced with permission from The Turf Line News]