

The New World of Student Travel



Jeffrey Ment

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Evolving Legal Issues: Reducing Exposure and Liability

NO. 017-334326-22

**Jamie Lynn Snow,
Individually and as Representative
of the Estate of
Elijah Burnett Snow, Deceased
H.K.S. and A.L.S., Minor Children of
Elijah Burnett Snow**

V.

**Let's Go On Vacay, LLC,
RCM Hotel, S.A. de C.V.,
Blue Diamond Hotels and Resorts Inc.
And Sunwing Travel Group, Inc.**

[illegible]

IN THE DISTRICT COURT

 TH DISTRICT

TARRANT COUNTY, TEXAS

PLAINTIFFS' ORIGINAL PETITION

Evolving Legal Issues: Reducing Exposure and Liability



ELIJAH BURNETT SNOW

During the Spring of 2021, the Snows decided to travel to Mexico to celebrate their tenth wedding anniversary. To make arrangements, the Snows engaged the services of Let's Go on Vacay, LLC to act as a travel agent. Let's Go On Vacay, LLC markets themselves and their travel services to individuals throughout the State of Texas and in particular, to North Texas communities. Let's Go On Vacay, LLC provided the Snows with hotels and resorts to choose from in Cancun, Mexico. The Snows ultimately settled on the Royalton Chic Cancun Resort & Spa.

Evolving Legal Issues: Reducing Exposure and Liability

Prior to the Snows' trip, Let's Go on Vacay, LLC posted specific materials regarding several Blue Diamond Resorts on its social media page to encourage Texans to book a vacation in Mexico at its resorts. Let's Go on Vacay, LLC also specifically posted advertisements for Royalton Chic Cancun that encouraged Texas residents to book and stay at the luxury resort where Elijah lost his life.

In addition to advertisements, social media accounts managed by Let's Go on Vacay, LLC have posted materials that misrepresent and minimize crime and danger in Cancun. These posts along with the other promotional posts of Blue Diamond's Mexican based resorts are meant to encourage bookings and provide a false sense of security by minimizing the level and seriousness of crime in Cancun. Beginning as early as 2017, the principal of Let's Go on Vacay, LLC compared crime by the Mexican cartels to that of U.S. street gangs.

Evolving Legal Issues: Reducing Exposure and Liability

Reading things like this can be scary. Our initial reaction is to say...NO WAY! But in all actuality, this warning is only giving info to an uptick in crime in in parts of Mexico. The SAME types of crime happen in the US everyday, but instead of cartel, we call them gangs. In fact, I would have to say that with recent events in our country, acts of violence occur at a greater frequency. Our government doesn't issue travel warnings to places in the US...many of which have MUCH HIGHER rates of violence, drugs, and gangs related crime. It's important to keep a perspective when we see things like this. Many other countries have issues travel warnings against the US for many of these same exact reasons, yet we go about our days feeling normal and safe. Whenever you are away from your home, it's important to keep your wits about you and don't engage in risky behaviors. Mexico is still a beautiful country with amazing beaches and a warm welcoming people. If any one has any questions or concerns, I am more than happy to talk with you about those.



TRAVEL.STATE.GOV

Mexico Travel Warning

The U.S. Department of State warns U.S. citizens about the risk of traveling to certain parts of Mexico due to the activities of criminal organizations in those areas. U.S. citizens have been the victims of violent crimes, including...

Evolving Legal
Issues:
Reducing Exposure
and Liability

People always ask me for a “safe” destination. And I’m very quick to point out that no one can guarantee you a “safe” place to travel. No one, no where, no how. Crime happens EVERYWHERE there are people. EVERYWHERE. That includes Caribbean, European, and even popular US destinations.
[#LetsGoOnVacay](#)



THECANCUNSUN.COM

**Cancun Is A Safer Destination Than Paris
And Las Vegas According To New Report**

Evolving Legal Issues: Reducing Exposure and Liability

A. Negligence of Let's Go on Vacay, LLC.

Plaintiffs reallege and incorporate each and every allegation above. Plaintiffs allege that defendant Let's Go on Vacay, LLC had a duty to warn the Snows, and its customers, of known, foreseeable dangers in light of its superior knowledge of local conditions of the dangerous criminal environment in Cancun, Mexico. Because Let's Go on Vacay, LLC possessed a superior knowledge of the propensity of crime in the Hotel Zone and the Royalton Chic Cancun Resort, it had a duty to warn the Snows of the substantial violent crime in the area. Had the Snows known of the likely dangers of traveling to Cancun, the Snows would have not traveled to the region. By failing to warn the Snows, Let's Go on Vacay, LLC breached its duty and thus, proximately caused the damages to plaintiffs including the wrongful death of Elijah.

Evolving Legal Issues: Reducing Exposure and Liability

B. Negligent Misrepresentation of Let's Go On Vacay, LLC and Royalton Chic Cancun.

Plaintiffs reallege and incorporate each and every separate allegation above. Plaintiffs allege that Let's Go on Vacay, LLC, Royalton Chic Cancun, and their representatives and agents made certain representations in the course of business in which Let's Go on Vacay, LLC and Royalton Chic Cancun have a pecuniary interest. In particular, Let's Go on Vacay, LLC supplied false information regarding the crime, safety and security of the Hotel Zone in Cancun, Mexico and Royalton Chic Cancun Resort.

Further, Let's Go On Vacay, LLC failed to use reasonable care in obtaining or verifying that information. The Snows relied on these representations when making their travel arrangements. Had the Snows been aware that such representations were false, they would not have traveled to the Cancun Hotel Zone nor to the Royalton Chic Cancun Resort. The representations proximately caused the injuries suffered, including the wrongful death of Elijah Snow.



Traveler Safety: There is no Guarantee!

- What Should You Do?
 - Encourage travel
 - Carefully select suppliers
 - Pass on industry data
 - Refrain from making representations about a specific regions safety
 - Emphasize safety measures without implying that there is no risk.
 - DO NOT use words or phrases such as: risk-free, no risk, harmless, secure, 100% safe



LGBTQ+ Student Travel

Evolving Legal Issues: LGBTQ+ Rooming and Accommodations

Eudora girl forced to room with biological male on school-sponsored overseas trip

By Patrick Richardson - May 17, 2022

On a school trip to Costa Rica earlier this month, three female high school students in the Eudora school district were assigned to a two-bed hotel room with a transgender student who is biologically male — meaning one of them would have had to share a bed with the trans student — and school officials refused a request for a room change.

One of the girls objected and told a chaperone she didn't feel comfortable with the arrangement, but she was told to "deal with it."

No comment, but an apparent policy change

The source told the *Sentinel* that, as the countdown for the trip neared and parents' meetings were held, no room assignments were disclosed prior to arrival in Costa Rica, even though school officials should have anticipated resistance by assigning a female student to sleep in the same bed with a biologically-male student.

The source said that going forward, parents and students will be given room assignments 48 hours in advance so that any objections can be heard and adjustments made.

However, the girl in question has not — as of this writing — been given any apology for the school district's actions or a refund for what was supposed to be a trip of a lifetime.

Evolving Legal Issues: LGBTQ+ Rooming and Accommodations

Iowa School District Allows Students to Spend Overnight Trips With Whichever Gender They Identify With

Students in seventh through 12th grade can customize their own Gender Support Plan by asking to meet with any school administrator, the policy states. The student will meet with an administrator within 10 days of their request to make arrangements for the student “regarding names/pronouns, restroom and locker facilities, overnight accommodations on school trips and participation in activities.”

Evolving Legal Issues: Differing Perspectives

TAMPA, Fla. (WFLA) — The Leon County School District board voted unanimously to create an updated “Inclusive School Guide” for the coming school year. The guide is described in its own text as “a living document” that will be reviewed and updated every year.

All students are allowed to access locker rooms and restrooms that are consistent with their gender identity or be provided appropriate accommodations. If the parent and student have requested privacy and nondisclosure about their child's gender identity within their Plan and have accepted an accommodation regarding locker room use that will provide privacy for all students, no further action is needed by school administration. Upon notification or determination of a student who is open about their gender identity, parents of the affected students will be notified of reasonable accommodation options available.

Evolving Legal Issues: Differing Perspectives



The director has to take multiple factors into consideration, including the gender identity of the trans student, who they would be most comfortable rooming with, as well as administrative/district policies, the comfort level of other students, and potential parental pushback. For the trans student, these concerns alone may cause enough anxiety for them to elect not to go on the trip, thereby missing an experience that they shouldn't have to.

Evolving Legal Issues: Differing Perspectives

There are other options that do not need to involve an administrator, other students, or the parents of other students. One option could be allowing the transgender student to have a room of their own. This could be a slightly more costly approach for the program (as the difference in cost should be shouldered by the program instead of by the family) but in the end the benefit outweighs anything else. However, some students might complain about not getting their own room as well. In these instances, it is wise to simply shut down the complaint and move on. Another option could be to ask to have the trans student's parent function as a chaperone, and the trans student can room with their parent. This way, you get an extra chaperone and figure out a rooming solution so the trans student can partake in a shared ensemble experience.



**Independent
Contractors**
where are we now?

Criteria for Exempt Occupations

- Applicable Law: S.G. Borello & Sons, Inc. v. Dep't of Indus. Relations (Borello), 48 Cal. 3d 341 (1989), the primary test of an employment relationship, known as the "right to control" test, is whether the person to whom service is rendered has the right to control the manner and means of accomplishing the result desired. In addition to the primary "right to control" test, courts considered numerous secondary factors:
- the right to discharge at will, without cause
- whether the one performing the services is engaged in a distinct occupation or business
- the kind of occupation, with reference to whether in the locality the work is usually done under the direction of the principal or by a specialist without supervision
- the skill required in the particular occupation
- whether the principal or the worker supplies the instrumentalities, tools, and the place of work for the person doing the work
- the length of time for which the services are to be performed
- method of payment, whether by the time or by the job
- whether or not the work is part of the regular business of the principal
- whether or not the parties believe they are creating the relationship of employer-employee



What About Non-Compete Agreements?

- Many employees or independent contractors were furloughed or laid off during COVID.
- Now that we are back, folks are looking for work. However, many had Non-Compete language in their contracts.
- Non-Compete clauses do not contemplate why the termination happens and most state that the clause will survive termination.
- Be careful when hiring to ensure that your new employee will not be in breach of their agreement.



What About Non-Compete Agreements?

- **Very State Specific**
 - Reasonable Time
 - Reasonable Area
 - Related to a Legitimate Business Interest
- A non-compete is not enforceable in the State of California. The law prohibits an employer from restraining anyone who is engaged in legal practice or trade.

What About Contracts?

A school recently suggested this language:

Should changes, modifications or alterations be necessitated by changes in scheduling initiated by transportation providers, delays due to weather or mechanical difficulties, changes to the order in which destinations are visited and the duration in each destination, omissions of scheduled visits due to holidays, strikes or unannounced closure, suitable alternatives shall be provided to the District for the District's approval. The District shall not unreasonably withhold approval of suitable alternatives.

What Do You Think About This Provision

Who wants to agree to this one?

The Operator shall arrange to protect Passenger payments for the Tour in a manner acceptable to the School. The Operator shall obtain the School's prior written consent to any proposed arrangement, which may include bonding, a surety trust, a joint checking account, an escrow account, or some other form of insurance satisfactory to the School.

What Do You Think About This Provision

A new (bad) Force Majeure Provision:

If a Force Majeure Event prevents Group's event from taking place on the originally scheduled dates, then the parties shall reschedule either (x) dates within the same year, subject to space and rate availability, or (y) future dates in a different year, subject to space and rate availability. If GSR cannot accommodate a replacement event date, then GSR may return any deposits, less any amounts already paid to vendors on account of Group's Event for which GSR cannot be reimbursed, and cancel this Agreement, in its reasonable discretion. If Group refuses to rebook their event pursuant to this, then GSR shall be entitled to liquidated damages above.

LIQUIDATED DAMAGES

Prior to Scheduled Arrival Guestroom Damages

DATE OF SIGNING until January 29, 2023 \$50,000



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