



# The New World of Student Travel

By Jeff Ment



# Travel is Back!

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- “The pent-up demand for travel is overwhelming,” said travel agent Tee McNeill, of McNeill Luxury Travel.
- “I have never seen anything like this in this industry. And I think anyone who thought travel was dead as a result of COVID-19 was totally fooling themselves,” McNeill said. “People are ready to go, and what they need to know is where they can go, and what are the protocols for getting there, and what kind of experience they can expect to have.”
- - <https://whyy.org/articles/i-want-to-travel-outside-the-us-are-there-still-covid-19-restrictions/>



# Travel is Back!

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- How do we protect ourselves?
- What is our obligation to travelers?
- What do people want to know ?







# How Do We Protect Ourselves?

Contracts, Waivers, Trusted Partners and  
Flexibility

## Contracting With Schools

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We are seeing more school districts striking out terms and adding conditions to our contracts. How should you approach this?



# Pay Attention to the Parties



- Recently an Operator was contracting for a school trip with students in Alabama. The students paid for the trip with their own funds and funds raised through boosters. The school did not pay for the trip.
- The school district sought changes to the contract and cited the State Constitution allowing schools to use public funds for public purposes.
- While this may actually be the case, the school was NOT a party to the contract.
- PAY ATTENTION TO WHO THE PARTIES ARE!

# What Are Schools Doing



- Because of social distancing requirements and other issues related to numerous people being in close proximity, which vary among states and localities, you should contact your state school boards association and your COSA attorney to discuss whether it is advisable to schedule field trips and overnight trips during the coronavirus pandemic. Your attorney can assist you in interpreting and applying any force majeure or cancellation clauses in current contracts with educational trips and transportation companies

# Pay Attention to the Words



- Recently an Operator was contracting for a school trip when the district asked for a signed addendum.
- The addendum included a Force Majeure clause with the following language.
  - Notwithstanding anything herein to the contrary, the District at its sole discretion, reserves the **right to seek reimbursement or refund of any amounts paid under this Contract or reschedule services at a time mutually agreeable to the parties.**
- We did not object to this because of the word “seek.” This does not give them a right to refund just a right to try to get a refund.
- **WORDS MATTER IN CONTRACTS**



# Working with Vendors for School Tours: When to Fight Back



- Recently an Operator was contracting with a motorcoach company for a school trip.
- The motorcoach company wanted a clause that allowed it to cancel at anytime without penalty.
- We disagreed and suggested the following:
- Bus Company recognizes that Tour Operator has relied on prices for transportation provided by Bus Company in pricing the Trip. If Bus Company terminates this Agreement and/or refuses to provide transportation as agreed, Bus Company shall be responsible for any additional transportation costs incurred by Tour Operator.



# A Word About Waivers

Protecting Yourself in an  
Uncertain World

# A Word About Waivers



Liability waivers, also known as waivers of liability, release forms, and hold harmless agreements, are legally binding documents.

A participant accepts risk and agrees to waive the company's liability for damages associated with inherent dangers.

The limitation of liability insulates the company from civil damages if the participant suffers from losses or injuries.



# A Word About Waivers

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- **Key Parts of a Liability Waiver**

- **Part 1. Inherent Risks**

Inherent risks are those that we take when engaging in specific activities. Acts of gross negligence don't preclude you from civil claims. Make sure the risk is clearly outlined in the waiver.

- **Part 2. Assumption of Risk**

The assumption of risk clause indicates that the participating party understands the associated dangers of using your products or services. This section reduces the chance of a participant claiming that they weren't aware of the risks.

- **Part 3. Release Clause**

Release clauses state that your company doesn't carry the liability burden arising from harmful events. The other party should be told clearly what rights they are giving up.

- **Part 4. Indemnification**

Indemnification clauses are acknowledgments made by participants. They agree to pay your legal costs and attorneys' fees if their actions result in someone filing a lawsuit against you. This clause is an essential component to deterring lawsuits from third parties.

- **Part 5. Insurance**

The insurance clause of your liability waiver should clearly state that your liability insurance policy doesn't cover participant damages. This statement reinforces the conspicuous language aspect of a liability waiver.





# Liability Waivers Generally: State to State

Liability Waivers are ultimately determined by state law this must be kept in mind when you are choosing the law that applies to your contract.

Disclaimers are entirely void in Virginia and Louisiana

Their use is restricted in Arizona.

REMEMBER you CANNOT waive GROSS NEGLIGENCE in any state.

# Waivers in Arizona

- In Arizona, the assumption of risk is always a question for the jury at trial per the Arizona Constitution.
- Ultimately, for a liability waiver to be effective, the participant must “intentionally relinquish a known right,” and there are 3 questions the court must answer to decide if the waiver is enforceable:
  - Was the language used in the waiver clear and unambiguous?
  - Was the injury caused by or the result of a reasonably related act that the waiver sought protection from?
  - Does the waiver or release violate public policy?

# Waivers in Arizona

- A waiver of liability in Arizona will generally be upheld so long as they meet certain criteria. This includes:
  - Clear language. The waiver needs to clearly state that you absolve the provider of all liability, including cases of ordinary negligence.
  - Format. **The release of liability needs to be identifiable and not hidden inside of a larger document.**
  - Precise list. The waiver needs to list specific risks or types of injuries that you are releasing the other party's liability.
  - Signature. You need to have agreed to the waiver of liability with some form of signature, though this may be an electronic signature or "agreement."
  - Legality. The waiver of liability must not violate state or federal law in terms of wording or content.

# Add a COVID-19 Wavier to Booking Terms

- Your booking terms need to include a COVID-19 reminder that, despite all of the best planning, the trip might not go as one expects. Services offered by suppliers still vary drastically.
- Your COVID Clause should contain language that you are not responsible for changes suppliers may make due to COVID. Remember we want to provide information while still shifting the burden!





# Covid Disclaimer Language

- All destinations and suppliers have their own rules related to COVID-19. For example, you may be required to quarantine upon arrival in some locations. Some locations may require masks or social distancing, they may require you to provide proof of vaccination or negative testing. Stopover countries requirements will also apply. On your return home, additional testing, requirements, or documentation may be required. While we will try to assist you in understanding these requirements, you are responsible for understanding these requirements and must not rely on any representations made by Tour Operator. Should you be denied entry to any destination, we shall not be responsible for any such denial, or any cost associated therewith.



# Speaking of Covid: What About Vaccines?

- Can You Require Proof of Vaccination?
  - Yes! Even for a medical exemption!
  - Private businesses can dictate the terms of doing business.
  - The only possible prohibition is if you violate an individual's civil rights
  - In the case of medical exemption, the only possible violation would be ADA
  - Even under ADA medical vaccine exemptions are not a disability.



# Speaking of Covid: Plan for the Worst

- What Can Go Wrong Will Go Wrong.
- A tour operator has a school scheduled for departure. A week out the school had an outbreak. The question was what do we do? Can we ask for testing?
- YES! You can ask for test results. We would suggest that you do not make copies.
- When it comes to COVID be NIMBLE! Be ready for bad outcomes and be ready to think on your feet to find solutions.



# What About Non-Compete Agreements?



"Upset at you for breaching the non-compete? Of course not."

- 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.



# Trusted Partners



# What's Your Duty In Choosing a Vendor?



- the Vendor was incompetent or unfit to perform the work;
- the TO knew or reasonably should have known of the particular incompetence or unfitness. The relevant inquiry is whether TO diligently inquired into Vendor's fitness; and
- the incompetence or unfitness was a proximate cause of the traveler's injury.

# What's Your Duty In Choosing a Vendor: Further Consideration



- Supplier recommended by other supplier, industry colleague, and/or recognized by travel or tour industry association
- Proven track record of safety
- Training program for its staff
- Crisis Management plan
- Insurance
- Signed contract/agreement with vendor
- Indemnification/Hold Harmless Agreement
- Provision for resolving conflicts
- Protection of your guests
- Periodic QC
- Favorable credit references
- COVID Policy



# Vendors Getting It Right!

## **Park Attendance**

Park attendance is managed via the Disney Park Pass reservation system.

## **Face Coverings**

Required indoors, including in all indoor attractions and indoor queues and in enclosed transportation. Optional in outdoor areas.

## **Cleanliness & Sanitation**

Our ongoing commitment to cleanliness and sanitation. As part of our ongoing commitment to the health and safety of our Guests, Cast Members and the larger community, we have high standards for general cleanliness and sanitation and employ robust cleaning procedures, such as:

- Training for Cast Members, with ongoing reinforcement on a regular basis
- Easy access to handwashing facilities and hand sanitizer dispensers
- Quick response to spills, trash and other situations
- End of day sanitation procedures for restroom, kitchen, and other facilities

## **Innovative Technology**

Mobile Order Service for Dining:

Scannable Codes for Select Restaurant Menus

Online Check-In at Disney Resort Hotels



# United CleanPlus Program



United CleanPlus<sup>SM</sup> is our commitment to delivering industry-leading cleanliness as we continue to put health and safety at the forefront of your experience.

- Delivering industry-leading cleanliness
  - Disinfecting high-touch areas like arm rests, door handles and seat belts.
  - Providing hand sanitizer wipes as you board the aircraft.
  - Using state-of-the-art high-efficiency (HEPA) filters<sup>2</sup> and Ultraviolet C (UVC) technology.
  - Encouraging touchless travel through the United app or [united.com](https://www.united.com).
  - Installing sneeze guards at key interaction points.
- Prioritizing your well-being
  - Requiring all travelers over the age of 2 to wear a face mask during their entire flight and in the airport in accordance with Federal law.
  - Requiring you during the check-in process to acknowledge you don't have symptoms for COVID-19 and to agree to follow our policies.
  - Providing personalized, up-to-date information about testing and travel requirements before your trip through the Travel-Ready Center.
  - Implementing temporary changes to our inflight dining service.
  - Updating policies and procedures at our United Club<sup>SM</sup> locations.



- We look forward to welcoming you and remain committed to making your next stay a smooth and memorable experience. See what you can expect at our hotels and some tips to help you get ready.
- **Upon Request Housekeeping**
  - Our complimentary housekeeping is now available by request. We know that comfort levels may vary when it comes to people entering your space. Now you can simply contact the front desk to request a room cleaning or just a few extra towels.
- **Contactless Arrival**
  - To help you make your arrival as smooth and quick as possible, we recommend you download the Hilton Honors app and use it to check in, choose your room, and opt in for Digital Key.
- **Hilton CleanStay**
  - We've taken additional measures beyond our industry-leading cleaning standards by partnering with Reckitt, maker of Lysol & Dettol, to develop our Hilton CleanStay program. This innovative program builds upon our already rigorous cleaning standards by providing enhanced training for Team Members, increased cleaning of public areas and adjusted food & beverage service, to ensure our guests enjoy a worry-free stay.

# Traveling In NYC

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New York City is ready for a safe reopening. Per NYC mandate, and effective August 30, 2021, all guests 12 years of age or older must present proof of Covid-19 vaccination (at least one shot) upon entry to restaurants and tourist attractions



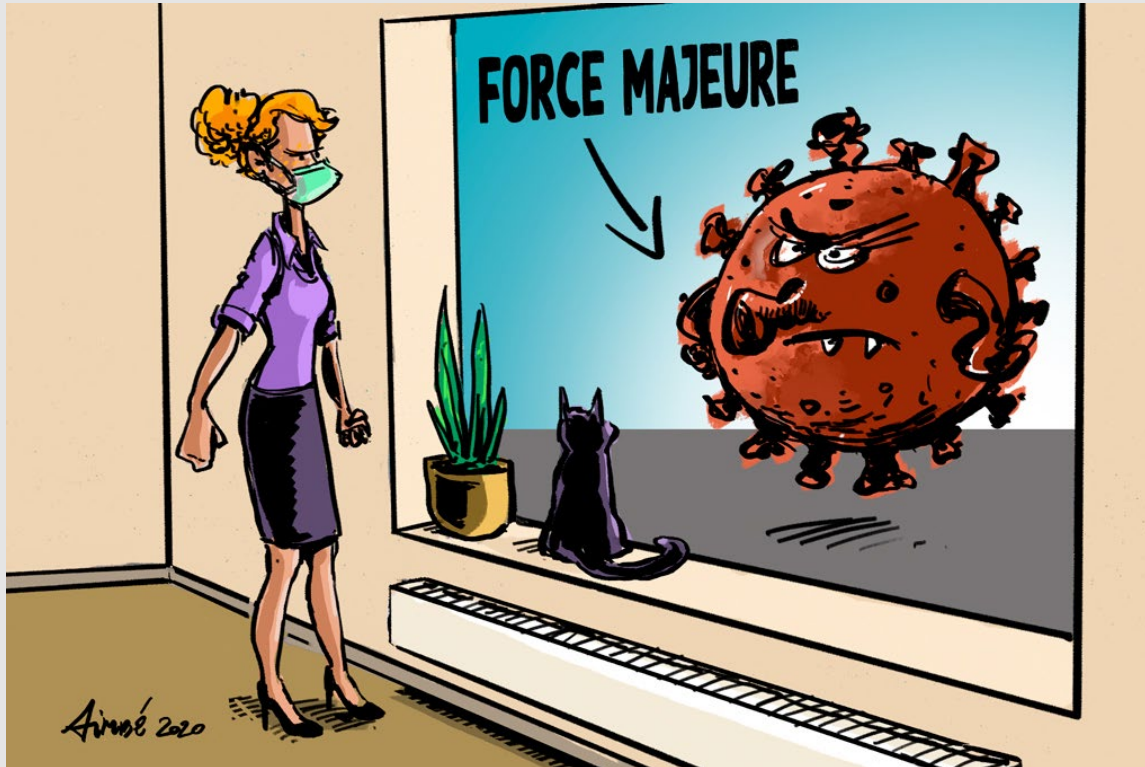




Business Partners:  
Flexible Terms  
and Force  
Majeure



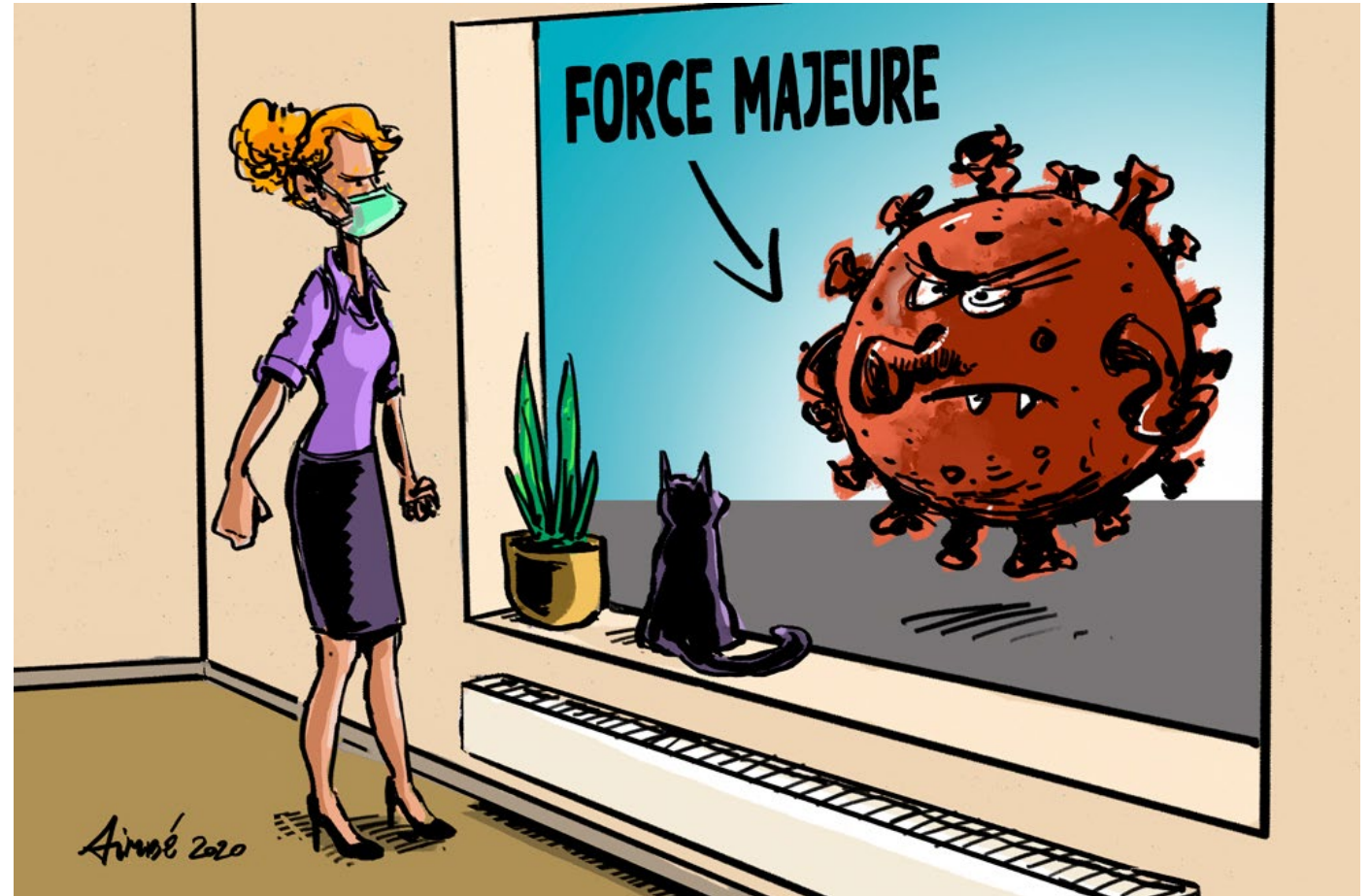
# Business Relationships and Force Majeure



- Every contract should provide clear terms of what will happen in the event of an event over which neither party has control (also known as “force majeure” or an “impossibility”).
- A force majeure clause should excuse the performance of the parties should an event occur
- BUT YOU MUST GO FURTHER: You must agree on what will happen with regard to refunds. THESE TERMS SHOULD BE CLEAR. CASH REFUNDS SHOULD BE OFFERED WHENEVER POSSIBLE. If travel credits are the only possibility, this should be clearly communicated to the consumer in the terms and conditions of travel.

# Force Majeure: A Sample

- Tour Operator cannot accept liability, and shall be entitled to a full refund, not a credit, where the performance or prompt performance of either parties' contractual obligations is prevented or affected or a tour is cancelled either by us or our guest, as a result of circumstances amounting to "force majeure". "Force majeure" means any event or circumstances which we could not foresee or avoid. Such events and circumstances may include, acts of God, actual or threatened, war, insurrection, riots, strikes, civil action, decisions by governments or governing authority, technical or maintenance problems with transport, changes of schedules or operational decisions of air carriers, terrorist activity or the threat thereof, industrial action, natural or nuclear activity, epidemic, pandemic, illness, physical injury, quarantine, medical or customs or immigration regulation, delay, or cancellation, adverse weather conditions, fire and all similar events outside our control. **In the case of Force Majeure, supplier shall promptly refund all money paid for services and cease all work for the specified event effected by Force Majeure.**



# Contracting Flexible Cancellation



- Cancellation needs an update. Look for:
  - Flexible Cancellation- try to negotiate for full refunds as close to travel as possible
  - Refunds v. Credits
  - Full payment due at a later date
  - Discuss flexible cancellation for COVID
  - Suppliers, offering more flexible terms is going to lead to more business. Consumers are now savvy to these issues and will look for and insist on the best possible terms.

# Leverage Your Expertise!



- In a recent Travel Weekly Article, Cruise Planners CEO Michelle Fee said, "At this time, confusion abounds when it comes to any form of travel, which we feel is a strength for the travel advisor."
- Travelers are confused about travel restrictions which change on an almost daily basis.
- As travel experts this is your time to shine! Your ability to inform your clients is an invaluable business tool that can increase your business. **BUT YOU MUST BE INFORMED!**



# What Do People Want to Know



- They want to know the rules!
  - We cannot sit back and rely on others to know what is going on.
  - If you haven't already, sign up for daily blasts of industry data. **After all, clients can reasonably expect you to be up to date with what's happening.**
  - Suppliers, you must communicate your COVID precautions clearly to TO's you partner with. Your partners should not have to guess.

# What Do People Want to Know?



- They want to know about safety!
  - Suppliers are constantly changing the rules to adjust to changing conditions — temperature checks, possible vaccination mandates and rules about mask wearing can change on a dime. Suppliers-when you make a change you should inform TO's and Advisors.
- Tell your clients to be nimble and expect the unexpected. Travelers can be denied entry by a supplier (a theme park, for example) and then what?
- When they call you to complain, you can remind them that they needed to be prepared for the unexpected.

# What to Do When Covid Strikes

- Testing: You should have a plan to test all members of the group should one fall ill.
- You must communicate the issue with suppliers and follow any procedures the hotel may require.
- Arrange with hotels in advance how they handle COVID infections. Have a rate plan in place in case quarantine is necessary.
- Make sure travelers are aware through a COVID waiver that all medical costs are their responsibility.
- Insurance coverage- Again ask the important questions and get it in writing.
- Keep a written record!





A photograph of a courtroom interior. The room features extensive wood paneling on the walls and ceiling. In the foreground, there are rows of wooden benches with leather upholstery. In the background, a judge's bench is visible, along with a desk and a chair. An American flag stands to the left of the judge's bench. A dark blue banner with the text "LEGAL UPDATE" is overlaid on the right side of the image.

# LEGAL UPDATE





# The Importance of Understanding State Statutes

- There is currently a case pending in the Massachusetts courts with regard to a state regulation that requires a full refund if the operator “failed” to provide travel.
- The operator in this case was prevented from providing travel do to COVID and had a FM clause.
- The question becomes what the word “failed” means.
- The public has become savy to finding these little known provisions during COVID and trying to use them to advantage. Be aware of state statutes when entering agreements.



## Contract Terms vs. Seller of Travel

- A Tour Operator sold travel to a California resident. The terms were clear that if a Force Majeure event occurred, no refund would be given.
- The operator in this case was prevented from providing travel due to COVID and had a clause that clearly stated that cancellation terms still apply even if caused by government restrictions.
- The traveler cancelled due to COVID and was advised of the cancellation penalty.
- Unhappy they appealed to SOT.
- CA SOT upheld the terms.
- The traveler then filed a small claims suit.
- The Tour Operator prevailed because the terms were clear.

# Traveler Safety: There is no Guarantee!



- Guests are asking:  
“Should we go on a trip?”  
“Do you think it is safe to go on a plane?” “What is the air quality in the hotel?” “Is the motorcoach safe?”
- REMEMBER: You cannot guarantee anyone’s safety!

# Traveler Safety: There is no Guarantee!



- What Should You Do?
  - Encourage travel
  - Select suppliers who have published new safety standards
  - Pass on industry data
  - Cautiously share your post COVID travel experiences



**ANY  
QUESTIONS?**



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