

**From:** Philip Harris  
**Sent:** Friday, March 13, 2020 5:05 PM  
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**Subject:** Sharing Some Insights

Dear Friends,

I miss you, particularly now.

As some of you know, I am now both a Managing Director of Elevate Services and a partner at its associated law firm, ElevateNext. We have had clients contact us about the pandemic and are providing services to them. As a result, we have focused substantial resources and energy analyzing many of the issues traditional businesses are facing as a result of COVID-19.

But I took a moment to put my University General Counsel hat back on. As I used to say in meetings and still believe, it easily is one of the most difficult jobs in the legal profession. The challenges that COVID-19 presents only exacerbate that degree of difficulty.

I came up with a list of issues that I would be really concerned about and prepared to address—both for now and to be ready when plaintiff's firms (among others) gear up for action. To be clear, these are my issues and I most certainly am NOT saying that you or my prior employer need to be concerned about any of them. I lack the personal knowledge required to draw any such conclusion.

With that important caveat, here is MY list:

1. Managing communication on campus about the impact of the virus and the university's ability to address that impact. This might not sound like it should fall on the GC's lap, but in my experience now is the time when people say and write things that could be used against the university in the future. For this reason, I actually drafted a memo to be sent to senior management that I would describe as a policy statement.
2. Preparing for individual or class claims seeking full or partial refunds related to moving classes online (benefit of the bargain denied argument).
3. Evaluating the standard of care in higher education. There will be a lot of confusion in this regard, particularly with respect to whether the CDC guidelines capture the essence of the campus environment.

4. Identifying all contracts with vendors and other entities to evaluate whether they contain force majeure provisions and, if so, whether they are effective. (We know from looking at this issue already that the law varies widely depending on which state's law applies. This is an area where choice of law matters.)
5. Evaluating the ability of faculty to comply with the terms of research grants, determining when is the right time to approach sponsors, and weighing in on who should make the approach.
6. Responding to student-athletes who seek to extend their eligibility.
7. Addressing issues related to the possible loss of revenues from the cancelled NCAA basketball tournaments.
8. Reevaluating enterprise risk management mitigation scenarios.
9. Addressing what to do about pending sexual misconduct claims if students are not on campus.
10. As some schools already are doing, taking action to provide pro-rated refunds for room and board, travel for school-related programs, and other events. This is another area where there might be individual or class claims.

I am having a number of conversations about these issues. If you want to hear what I am learning, let me know at your convenience.

My best,

Phil Harris

Partner

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