

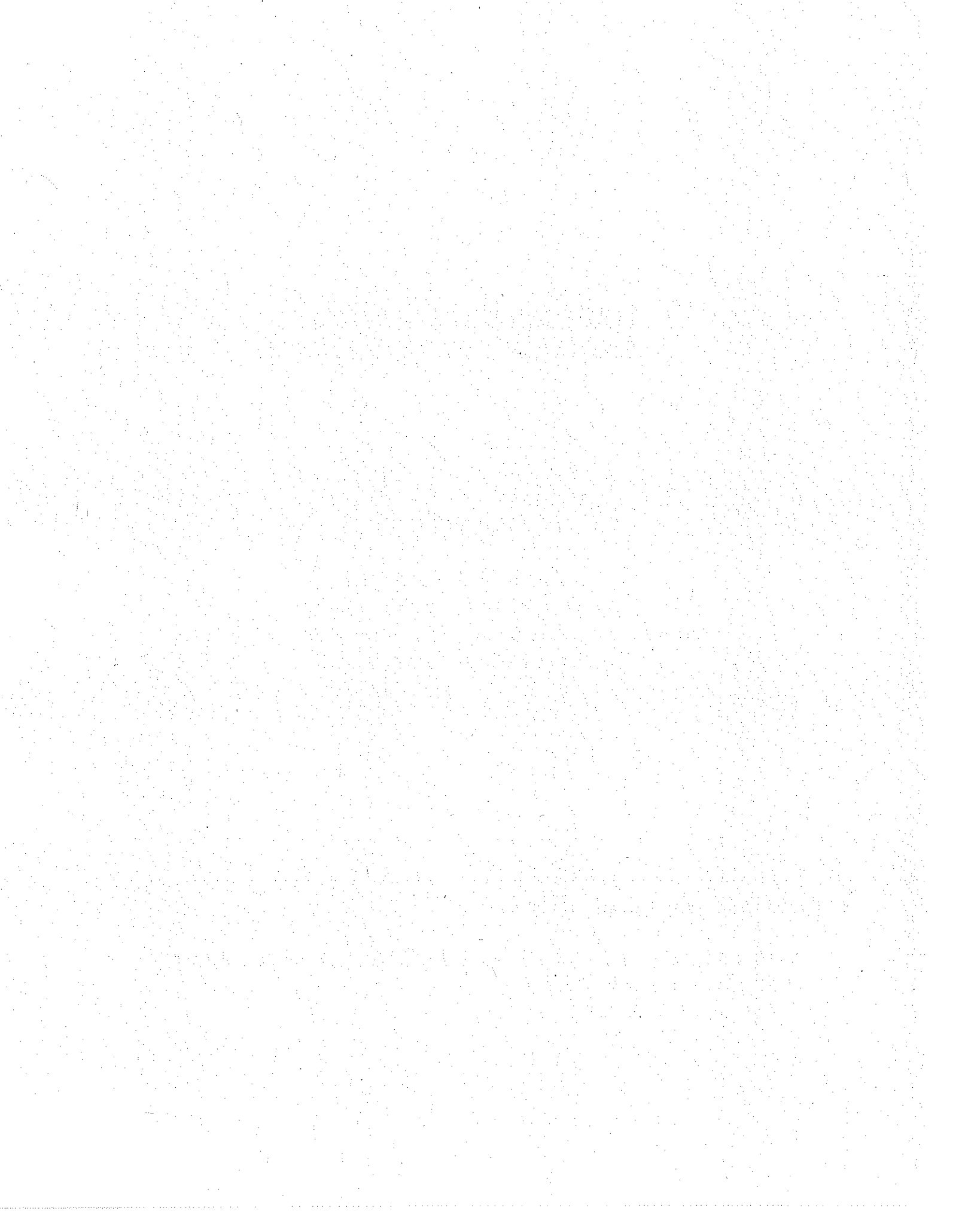
TORT LIABILITY ALERT:
LESSONS LEARNED FROM LOSSES

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Stetson University College of Law:

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**TORT LIABILITY ALERT:
LESSONS LEARNED FROM LOSSES**

**Stetson University College of Law's
18th Annual National Conference on
Law and Higher Education:
Legal Issues and Challenges in 1997**

**Jeffrey I. Chasen
United Educators IRRG, Inc.
February 1997**

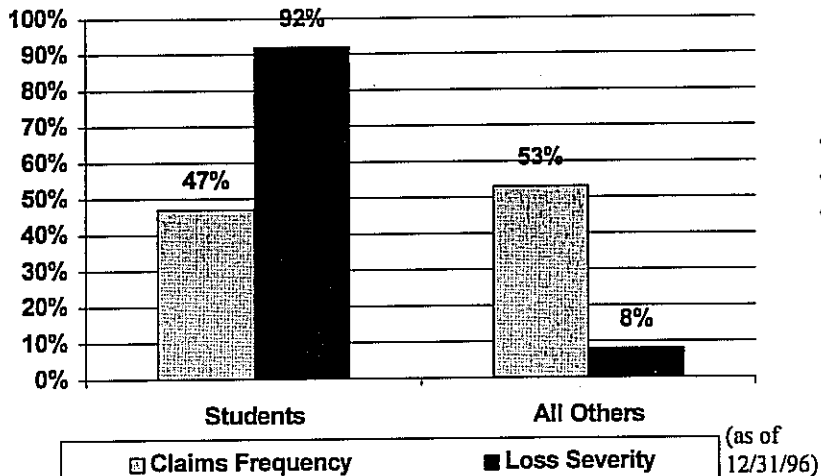
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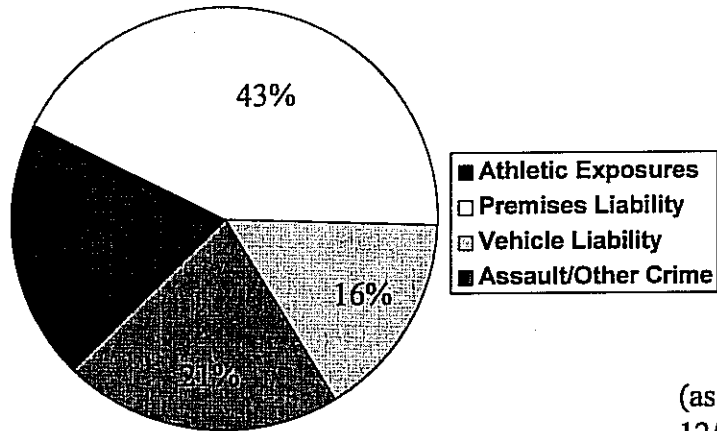
GLOSSARY OF KEY TERMS:

- ◆ General Liability Excess (“GLX”) Claims
 - Typically Severe Bodily/Personal Injury
- ◆ Educators Legal Liability (“ELL”) Claims
 - Essentially Professional Liability
- ◆ “Frequency” vs. “Severity”
 - Frequency reflects the raw number of claims;
 - Severity reflects the total cost (amounts paid to claimants and, for ELL claims, defense counsel).

GLX CLAIMANTS: Where do the dollars go?

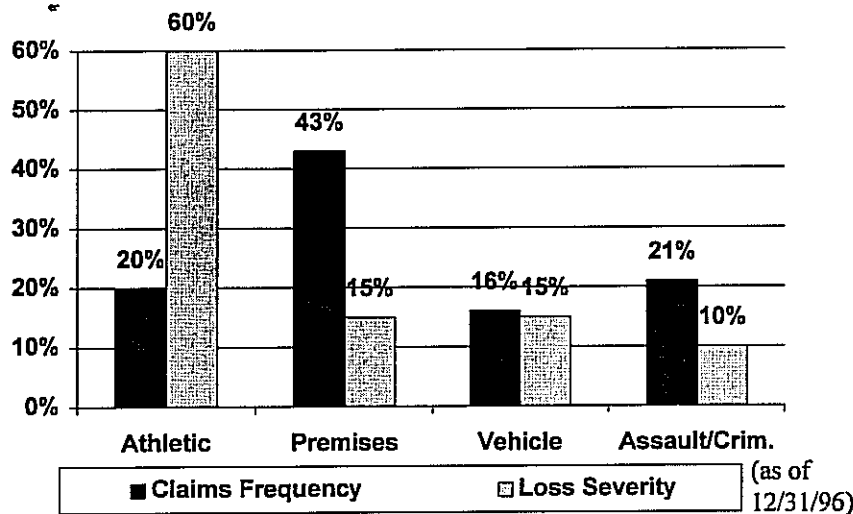


GLX Claims: Frequency



(as of
12/31/96)

GLX Claims: Frequency & Severity



(as of
12/31/96)

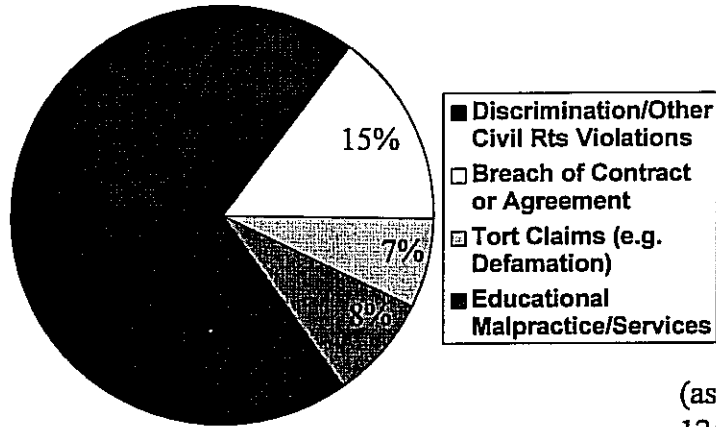
HOT TRENDS re: GLX CLAIMS (Part I: Athletic Exposures)

- ◆ Athletic injuries continue to account for almost 2/3 of all severe injury payments;
 - and the “severity” tends to increase as the “level of competition” decreases.
- ◆ Among athletic exposures, the largest (by far) source of liability is anything related to “water” -- e.g. swimming/diving/boating;
 - The second largest (and growing) exposure is rugby.
- ◆ Be careful about ancillary exposures --
 - e.g. transportation of student-athletes.

HOT TRENDS re: GLX CLAIMS (Part II: Other Serious Exposures)

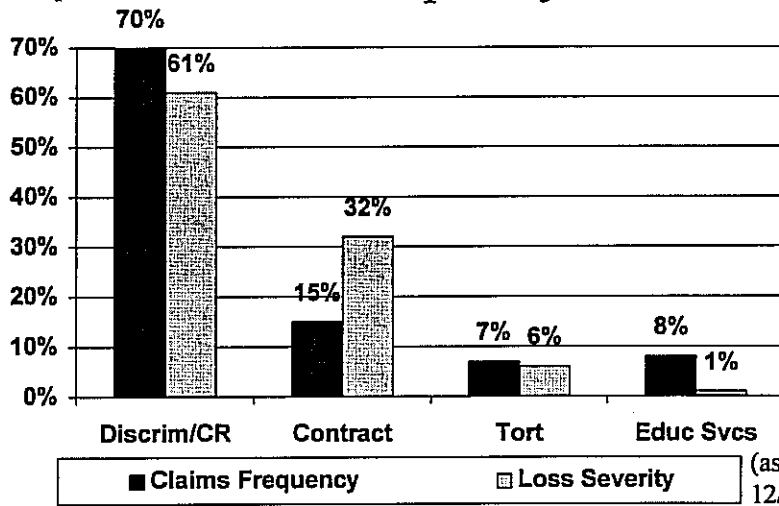
- ◆ Premises liability typically presents a frequency problem for institutions ... but usually does not result in the most severe injuries;
 - as you might expect, premises liability is the largest exposure under our “primary” GL policy.
- ◆ Assaults and other crimes on campus are occurring at an alarming rate;
 - worse yet, the “severity” factor has increased many times over.
- ◆ In our experience, severe injury claims call for more than a “cool head” strategy;
 - a “warm heart” approach is helpful ... and the right thing to do.

ELL Claims: Frequency



(as of 12/31/96)

ELL Claims: Frequency & Severity



(as of 12/31/96)

HOT TRENDS re: ELL CLAIMS

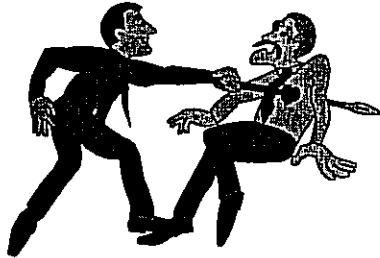
- ◆ Discrimination and other civil rights claims continue to dominate the ELL landscape ...
 - with allegations of sexual harassment and disability discrimination leading the way since the early 1990s.
- ◆ Tort claims are growing --
 - especially as “the tail wagging the dog.”
- ◆ Student claims are becoming increasingly aggressive, creative, complex ...
 - and expensive.

LITIGATION ... WHO WINS?

- ◆ To DEFENSE COUNSEL Appx 2/3
- ◆ To PLAINTIFFS Appx 1/3
 - But PLAINTIFF’S COUNSEL Gets Appx 1/3
 - So ...
- ◆ To LAWYERS Appx 80%

PREVENTION 101:

Lessons Learned from Losses



LESSONS FROM LOSSES

- ◆ In for a penny, in for a pound.
- ◆ Follow your own procedures:
 - Document what you do ... and why you do it.
- ◆ Be proactive.
- ◆ It's about mitigation, not litigation.
- ◆ Seek appropriate counsel.
- ◆ Do unto others

APPENDIX #1:
“RED FLAGS”

As we have often heard, each case is unique and must be evaluated based on its facts. This adage is familiar, accurate ... and dangerous.

Despite the complexities of the relevant body of law, several general patterns have emerged which provide warning signs (or “red flags,” if you will). Actually, these patterns are more aptly described as trends, since even many of these general principles must be continually reviewed and applied on a (you guessed it) case-by-case basis.

Nevertheless, these “lessons from losses” are worthy of note. Of course, your best line of defense is to employ **risk management** (and other preventative) activities to minimize potential liability and, therefore, the need for any defense at all. Nevertheless, things do happen, and the next best response is **proactive**, prompt and thoughtful investigation and involvement. Unfortunately, some litigation seems inevitable, which calls for creative and efficient **litigation management** (including the use of **alternative dispute resolution** mechanisms).

The following is a listing of some of the especially noteworthy red flags confronting schools today. Some are basic, others may be counter-intuitive -- but all can be very costly.

A. STUDENT CLAIMS

Claims made by or on behalf of students remain the primary source of serious tort liability. In addition to the usual issues of liability and damages, the school’s relationship with its students (from both the legal and practical standpoints) as well as the heightened potential for jury sympathy make this type of tort claim especially problematic.

B. CRISIS MANAGEMENT

The all-too-common occurrence of a crisis presents not only a critical challenge, but also an important opportunity to “do good and do well.” Schools which are successful in times of crisis tend to be those which (1) rely on a capable management team, (2) develop a proactive and positive strategy, and (3) follow through to maximize success. In fact, these principles are broadly applicable -- regardless of whether a crisis is at hand -- to most institutional initiatives to manage risk and prevent injuries.

C. PERSONAL LIABILITY

Plaintiffs are increasingly naming individuals as co-defendants (in both their official and personal capacities). Apart from the so-called “revenge factor,” plaintiffs often benefit from this tactic by the creation of potential conflicts of interest (thereby requiring multiple defense counsel) and the fragmentation of the defense.

D. ATHLETIC LIABILITY

Obviously, injuries to athletes, coaches and spectators may give rise to liability. Additionally, there are numerous ancillary exposures (e.g. transportation) which can be even more troublesome.

E. CRIME ON CAMPUS

Regrettably, the higher education community must contend with all of the consequences of violent and other criminal conduct on campus (and sometimes even off campus). We are seeing a dramatic increase in institutional liability under these unfortunate circumstances. This may be the most compelling example of the advantages -- for everyone -- of proactive risk management and other preventative activities.

F. SECURITY PERSONNEL

Beyond the more foreseeable types of claims (e.g. false arrest, assault/battery), there are a host of exposures which are created or exacerbated within this context. Even internal disputes (such as charges of discrimination and/or harassment) tend to be more troublesome than their counterparts in the more typical academic environment.

G. INDEPENDENT, BUT RELATED, TORTS

There are a variety of independent causes of action which are increasingly alleged as "companions" to the main claim. The most common of these is defamation, but it is never surprising to see allegations of invasion of privacy, misrepresentation, conspiracy, infliction of emotional distress and/or other torts. These causes of action often complicate matters far beyond their substantive merit.

H. TRENDS

Obviously, schools must be aware of events (legal or otherwise) both inside and outside the educational community. For example, in the 1990s, there has been a marked increase in litigation alleging sexual harassment.

I. "BACKLASH"

Juries and judges are increasingly focusing on "form over substance"; that is, they have been scrutinizing school policies and procedures and the compliance therewith. In fact, liability has even attached -- even if the school has followed its procedures -- when the court disapproves of the procedures themselves.

APPENDIX #2:
LITIGATION MANAGEMENT

Litigation abounds in state and federal courts and administrative agencies, and educational institutions are faced with greater potential liabilities than ever before. And yet, it is **one** law in particular which presents the greatest single threat in **every** case: Murphy's Law -- "anything that can go wrong, will go wrong."

As a rule, the management of litigation is almost always the key to a truly successful defense. Success must be defined by notions of **efficiency** and **creativity** as well as victory. The insurer and insured can directly increase the chances for a **true** victory by:

- ⇒ Carefully selecting counsel;
- ⇒ Actively supervising counsel; and
- ⇒ Creatively guiding counsel.

There are two competing philosophies of litigation management: **quantitative vs. qualitative**. The quantitative approach tends to focus far more on dollars than "sense"; that is, outside counsel is viewed more as a necessary evil (or even an adversary) than as a valuable resource. The qualitative approach focuses more on the client's (and its carrier's) responsibilities -- to be proactive, constructive, creative -- and recognizes that most outside counsel want to do the best possible job for the client. Indeed, the best outside counsel invariably appreciate appropriate involvement (as opposed to micro-management) and work very hard to nurture the relationship which is critical to true success.

Proactive management begins with the review of counsel's litigation budget; actually, the budget is merely a component in counsel's overall **litigation plan**. This critical document, prepared by counsel after a prompt initial investigation, allows the entire defense team the opportunity to map out the best possible strategy and to adapt to future developments in the litigation. Subsequently, counsel should provide regular updates which include revisions to the budget and other aspects of the initial plan.

A litigation plan also helps identify -- at the earliest possible moment -- whether settlement and/or **alternative dispute resolution** would be appropriate. With ADR, you can tailor the litigation process to fit the circumstances of any given dispute. As a result, the process may be quicker, cheaper and friendlier -- in other words, far more efficient -- than litigation. Of course, settlement and/or other ADR may not be appropriate in a particular case, but that is a conclusion to be thoughtfully reached by the defense team, not an assumption to be routinely made by counsel.

The interests of the parties, not the litigators, must always be the focus of litigation -- and this is especially true inside the educational community. Although we typically refer to law firms as "partnerships," the most important legal partnership is the one shared with the institution and its insurer. To be sure, the skilled attorney is an artist, but the "canvas" belongs to the client and the client's interests must be paramount.

A. THE SELECTION OF COUNSEL

1. First and foremost, consider the specific **expertise** required for the litigation at hand and the relative **experience** of the firms which may be available. One firm, regardless of how familiar it may be with your school, may not be the best choice for every dispute.
2. A second consideration is **efficiency**. Billing rates and hours billed are only a portion of the factors required to assess counsel's efficiency; foresight, creativity, flexibility and the ability to see the "big picture" are all key ingredients in the recipe for a truly successful defense.
3. The variety of **billing arrangements** in the legal marketplace are expansive, not just expensive. Clients have many alternatives to the familiar -- but often inefficient -- hourly fee, but few firms (even in this competitive market) are asked to consider more suitable arrangements.
4. In complex, multi-party litigation, consider a formalized **cooperative defense arrangement**. Although defense counsel typically tries to coordinate efforts with co-defendants, there will be even less duplication of efforts if each counsel's responsibilities are specified.
5. At the conclusion of each matter, evaluate and rate your law firm and each attorney (and paralegal, expert, etc.). Your **grade card** should include relevant categories of information as well as substantive comments for future reference.

B. THE SUPERVISION OF COUNSEL

1. Every meeting (and even every telephone conversation) with counsel should begin with an **agenda** and end with a "**to do**" list. The agenda may be informal, but the follow-up "to dos" should be clear to everyone (in fact, the "to dos" help form the agenda for the next conference).
2. **Audit billings** for accuracy. Even in this era of computerized billings, mathematical and other errors occasionally occur.
3. More important, careful review of **detailed billing statements** allows you to monitor the cost and conduct of litigation, including which (and how many) attorneys are involved, what your attorneys do on a day-to-day basis and how efficiently they execute the "litigation plan." You may even ask the firm to use a task-based system or to otherwise tailor the substantive descriptive entries on bills to meet your needs.

4. The conventional wisdom that the lowest billing rate is always best is not a trustworthy principle. Although all legal work should be performed at the most efficient level, **appropriate staffing** may require that the lead partner conduct, not merely monitor, the litigation.

5. Counsel needs your feedback and should be responsive to your concerns. Employ a system of **prompt and progressive discipline** so that counsel can provide an adequate explanation and take any necessary corrective action before the quality of the defense suffers.

C. THE GUIDANCE OF COUNSEL

1. It is helpful to keep in mind the **litigator's mindset**. Counsel's training and experience are valuable resources, but combative litigation tends to eliminate the potential for a win-win solution and instead increases the economic and non-economic costs of litigation.

2. Also keep in mind that the **plaintiff's counsel** has the litigator's mindset. For example, plaintiff's counsel may provoke a confrontation in the early stages of a dispute in order to discourage you from making a settlement offer which the plaintiff may be tempted to accept (in lieu of a higher offer or a large award from a jury).

3. Beware of the **underworked file**, where counsel fails to be creative and is not responsive to your needs. The lawyer who litigates on "automatic pilot" really has not worked hard enough for you -- no matter how many hours are billed.

4. Consider **settlement options** early and often, especially since over 90% of all cases are resolved before trial. Creative resolutions (not merely "paying off" the plaintiff) allow you to avoid costly legal fees and damages as well as the non-economic costs of litigation.

5. Suggest **alternative dispute resolution** instead of cumbersome litigation. Without your guidance, counsel may be reluctant to pursue an innovative approach. See Appendix #3.

On the whole, ADR -- like all litigation management techniques -- must be analyzed in connection with the specific facts and circumstances of each case. Successful, proactive litigation management is about maximizing the chances for true success ... so that anything that can go wrong, goes *right*.

APPENDIX #3:
WHY (AND WHY NOT) ADR?

Alternative dispute resolution is a dynamic, multifaceted process which lends itself to a variety of uses in furtherance of a variety of goals, needs and interests. As such, it is often especially helpful in the diverse, complex educational context.

One of the greatest benefits of ADR is the fact that it is virtually limitless in the types of processes available to participants. Literally anything which the parties want to do can be attempted, and the alternatives range from mere assistance with the parties' negotiations to a final, binding adjudication. In fact, ADR can even be used in conjunction with traditional litigation.

Despite the infinite alternatives, the ADR experience to date has tended to focus on two types of processes: **mediation** and **arbitration**. Both approaches are often very helpful in resolving -- and even preventing -- litigation.

A. WHY MEDIATION?

It promotes **early intervention** by allowing a complainant to address concerns before a divisive dispute blossoms. Problems do not escalate and are thus easier to solve, both in terms of their magnitude as well as the likelihood of addressing and correcting misunderstandings.

It enlists the assistance of a **skilled and knowledgeable mediator**. A well-chosen mediator is an invaluable resource in the mutual effort to maximize the interests of both parties.

It is **participatory**, focusing on people rather than the law (and lawyers). The affected parties are provided maximum input into the process and the outcome. The results are not imposed upon the parties; instead, they are embraced.

It is **flexible**, both in terms of process and outcomes.

It is **voluntary**, both in connection with the ultimate outcome as well as (typically) the decision to attempt the process.

It accommodates issues of **principle and intellect**, as opposed to a more typical judicial focus on money.

It is typically **quicker and relatively inexpensive** in comparison to more traditional, adversarial methods of resolving disputes.

It provides an opportunity for the parties to **vent their emotions** -- to win the battle without fighting the war. The parties get their "day in court" without any days in court (let alone motion practice, etc.).

It is **confidential**, both overall and within individual caucus sessions, where parties can vent (and make admissions) without provoking further conflict (or otherwise undermining their interests). It can eliminate bad publicity and the resulting impacts.

It provides potential litigants with an **objective assessment** of their respective positions before an adversarial approach is selected.

It can provide **superior results**: typically, along a continuum ranging from "no lose" to "win-win."

It provides opportunities for **true problem-solving** since the parties actively participate and bear significant responsibility for fashioning the outcome. As such, solutions are more likely to be meaningful and effective.

It **preserves relationships**, which -- despite the dispute -- will inevitably continue (or would be beneficial absent the dispute).

It **educates the parties** about ways to peacefully prevent and resolve disputes. It also provides valuable opportunities to appreciate personal differences.

B. WHY ARBITRATION?

It allows the parties to **create a suitable process** which specifically addresses the dispute at hand without the encumbrance of needless "red tape."

It includes a **skilled and knowledgeable arbitrator**. The ultimate outcome is determined by a person (or panel) selected by the parties rather than a reliance on the "luck of the draw."

It can be **less costly**, both in terms of the out-of-pocket expense of litigation as well as the intangible costs to the parties.

It is typically **quicker** than traditional litigation, both in getting to verdict as well as ultimately concluding the process.

It **avoids a jury**, which often makes unpredictable, emotional and inflated decisions.

It **avoids creation of bad precedent** -- e.g. when "bad facts" might make "bad law."

It can **minimize bad publicity**, including the "me too" claims which often result.

It allows for **more flexible outcomes** than traditional litigation.

C. WHY NOT ADR?

It **empowers all potential complainants**, which may lead to additional disputes.

It fosters **uncertainty**, both as to whether there will be a definitive outcome as well as what it will be.

It can result in **additional processes**, which may mean extra time and money.

It encourages **meddling in sensitive areas**.

It encourages **outcomes which "split the baby"** rather than follow the law to a more predictable result.

It may spawn **derivative litigation** challenging the existence, conduct or outcome of the process.

It **denies benefits of the judicial system**, such as the right of appeal (e.g. an erroneous arbitration award) and other inherent protections of traditional litigation.

APPENDIX #4:
SPECIAL CONSIDERATIONS FOR INSURANCE-FUNDED LITIGATION

The rights (and responsibilities) of an insured under the terms of an insurance policy are -- logically and necessarily -- governed by those terms. Nevertheless, insured and insurer alike should aspire to implement an important set of **principles** in conjunction with the insurance defense relationship.

Although these principles should be uniformly employed, they cannot be uniformly applied (again, each case is unique and must be evaluated on its facts). In every case, however, the insured and insurer must function as a **team** (together and with defense counsel), and this teamwork is often the key to achieving **true** success.

A. INSURED-INSURER RELATIONS

The following is a list of some of the aspirational principles which -- when fulfilled -- go a long way toward maximizing the benefits of the *insurance* relationship. More important, they promote the prevention of future claims -- the ultimate **win-win outcome**.

1. **Proactivity**
2. **Service by Experienced, Expert Claims Personnel**
3. **Selection of Experienced, Expert Defense Counsel**
4. **Willingness and Ability to Communicate**
5. **Willingness to Consider Creative Solutions (including ADR)**
6. **Long-Term View (a.k.a. the "Big Picture")**
7. **Focus on Relationships, Not Transactions**

B. INSURED-COUNSEL RELATIONS

The following is a list of some of the aspirational principles which -- when fulfilled -- go a long way toward maximizing the benefits of the *insurance defense* relationship. Again, many of these items promote the true **win-win outcome**: prevention of future claims.

1. **Practice Areas**
 - a. Education Law
 - i. General Client Base
 - ii. Key Issues (e.g. Student Activities)
 - b. Other Relevant Non-Profit Law
 - c. Other Relevant Practice Areas
 - d. Alternative Dispute Resolution

2. Preventative Law

- a. Draft/Edit Policies and Procedures
- b. Conduct Liability Audits
- c. Conduct Training Sessions
- d. Conduct Seminars or Other Periodic Meetings
- e. Publish Newsletter(s) or Other Advisory Materials
- f. Participate in Key Professional Associations (e.g. NACUA)
- g. General Advice

3. Firm Demographics (i.e. Ability to Deliver Quality Representation)

- a. Sufficient Size/Departmental Depth
- b. Able to Cover Geographic Region
- c. Willing to Discount Standard Rates
- d. Considers Flat Fee/Other Innovative Billing Arrangements
- e. Willing to Accommodate Non-Defense Needs (e.g. Retainers)
- f. Able to Provide Accurate Case Assessments/Budgets (and Updates)
- g. Able to Communicate

APPENDIX #5:
AUDIT GUIDES

The following self-audit guides may be useful in preventing tort liability -- and, more important, serious injuries -- in connection with two especially risky areas: **student activities** (including athletics -- e.g. club sports) and **vehicle safety**. These guides were prepared in conjunction with United Educators' series of monographs entitled "Managing Liability."

Specifically, please note the following resource materials:

- "Audit Guide for Student Activities" (1992)
- "Vehicle Liability Checklist" (1996)

II. THE "INVITATION"

WHAT ROLE DOES THE INSTITUTION PLAY IN FOSTERING STUDENT PARTICIPATION IN ORGANIZED EXTRACURRICULAR ACTIVITIES?

	✓ NO	✓ YES	REFERRED TO
1. Are students recruited through student government initiatives, such as annual "Activity Sign Up Night" events open to the whole campus community?			
Or, are they "rushed" by upperclass students who have sole discretion in selecting new members and leaders?			
2. Has the institution circulated "promotional" literature to new students (through such media as admissions materials or first year guides/mail box bulletins) concerning the existence of various student organizations?			

III. SCHOOL OVERSIGHT RESPONSIBILITIES — RECOGNITION, FUNDING, SUPERVISION AND MANAGEMENT

A. WHAT ARE THE CRITERIA FOR "RECOGNITION" AND THE "REGISTRATION" OF A STUDENT ORGANIZATION'S ACTIVITIES TO QUALIFY FOR ACCESS TO CAMPUS RESOURCES?

	✓ NO	✓ YES	REFERRED TO
1. Must a group:			
identify all its members and leaders;			
provide a set of by-laws meeting certain membership, fundraising and governance standards;			
list all planned activities and the financial management of them?			
2. Must groups:			
apply for access to campus facilities and equipment;			
identify their plans for serving food and beverages;			
state their policy for admission of non-university guests?			
3. Are there group sanctions, like withdrawal of recognition, for:			
"hazing,"			
illegal activity, and			
institutional policy violations?"			

B. WHAT POLICIES CONTROL THE ALLOCATION OF INSTITUTIONAL FUNDS AND RESOURCES GIVEN TO STUDENT ACTIVITIES?

	✓ NO	✓ YES	REFERRED TO
1. Is official recognition accompanied by access to an institutional budget for expenses?			
2. Are groups permitted to open bank accounts using the institutional name as part of their title?			
3. May groups use the institution's non-profit postal privileges?			
4. Does the institution hold title to any equipment purchased by a student group, such as lab materials, sports equipment, facsimile machines, or cameras purchased?			
Does this change if the equipment is purchased with student activity funds?			
5. Does the group representative controlling the financial resources allocated for student activity funds have a role in that allocation?			
6. Must groups account for use of funds, whether or not acquired from the institution?			

C. WHAT FORM OF SUPERVISION OR MONITORING IS PLACED UPON THE STUDENT ACTIVITIES?

	✓ NO	✓ YES	REFERRED TO
1. Are groups required to have faculty or staff "advisors"?			
2. Must events be attended by:			
faculty monitors;			
staff "monitors"; and/or,			
campus security?			
3. Are these advisors or monitors understood to be serving the institution?			

D. IS THERE A SINGLE OFFICE THAT MANAGES STUDENT GROUPS?

	✓ NO	✓ YES	REFERRED TO
1. Are these employees compensated for this activity?			
2. Are they indemnified for their own exposure?			
3. Do they maintain records of group recognition and registration applications?			
4. Do they receive reports of incidents?			
5. Do they verify compliance with financial and legal obligations?			

E. WHO OVERSEES THE ABOVE-DESCRIBED RISK MANAGEMENT PROCESS AND WHAT PROCEDURES HAVE BEEN ADOPTED TO REDUCE LIABILITY?

	✓ NO	✓ YES	REFERRED TO
1. Is there a plan to respond to adverse occurrences arising out of student activities?			
2. Are prior release forms mandatory for all group activities so as to avoid institutional liability?			
3. Does the institution's medical expense or liability coverage extend to injuries or loss arising out of incidents?			
4. Does the institution require special insurance from groups for certain events or for use of certain institutional property?			

IV. CONTRACTUAL POLICIES/OBLIGATIONS

HOW ARE GROUPS MADE TO UNDERSTAND LIMITS ON THEIR AUTHORITY TO ENTER INTO CONTRACTS WITH OUTSIDE ENTITIES SUCH AS CATERERS, CONCERT PROMOTERS, AND CAR RENTAL AGENCIES?

	✓ NO	✓ YES	REFERRED TO
1. May student groups "bind" the institution by using its name in entering into contracts for:			
services;			
vehicle rentals;			
leases of off-campus space?			
If not, is this limitation communicated to them?			
2. Is there a single person to whom groups must send all contracts?			
3. Does the school require:			
outside liability insurance from groups naming the institution as additional insureds;			
accident insurance for group participants;			
property coverage for acquired property?			
4. Will groups be required to exercise their own disciplinary processes for violations of "house rules"?			
5. Will some groups be required to incorporate or organize separately from the institution?			

V. SAFETY CONCERNS

A. WHAT INSTITUTIONAL POLICIES ENSURE THAT STUDENT LEADERS AND PARTICIPANTS ARE ORIENTED ABOUT ITS PROCESSES, THE LIMITATIONS ON THEIR AUTHORITY, AND SAFETY?

	✓ NO	✓ YES	REFERRED TO
1. Will the institution provide:			
safety manuals;			
leadership and skills training;			
coaching;			
refereeing?			
2. Is at least one member of the group required to undergo an orientation each year to maximize understanding?			

B. HAVE MINIMUM SAFETY STANDARDS BEEN ESTABLISHED FOR CERTAIN ACTIVITIES ON WHICH RECOGNITION OR REGISTRATION IS CONDITIONED?

	✓ NO	✓ YES	REFERRED TO
1. Does the institution require students who plan to operate vehicles to register by:			
evidencing a valid drivers license, and			
receiving driver safety training?			
2. Must students who engage in highly technical activities (such as lighting and sound set-up):			
receive certification from outside associations, or			
function only under the supervision of trained staff?			
3. Are groups required to present plans for:			
regulating behavior (e.g., underage drinking); and,			
protecting property during events?			

VI. LIABILITY AND INDEMNIFICATION

HAS POSSIBLE TRANSFER OF ALL LIABILITY AND PROPERTY RISKS TO INDIVIDUALS OR ENTITIES OTHER THAN THE INSTITUTION BEEN MADE A CONDITION OF RECOGNITION OR REGISTRATION?

	✓ NO	✓ YES	REFERRED TO
1. Has the institution adopted recognition policies requiring all vendors engaged to provide services for student activities to sign pre-approved contracts which contain indemnification agreements defending and indemnifying the institution, as well as the student group, from claims or loss arising out of the vendor services?			
2. Does the institution require "informed consent" waivers for certain hard-to-control and high risk activities?			
3. Are certain activities banned because of their uncontrollable nature?			
4. Are there registration policies requiring that:			
outside technical expertise be arranged; or,			
outside premises used for which appropriate indemnification is obtained?			
5. Have advisors been recruited and trained to oversee the groups' compliance with recognition and registration requirements?			

VEHICLE LIABILITY CHECKLIST

Item	✓	Notes
Which administrative department or committee is responsible for coordinating vehicle safety awareness activities (e.g. posters, pamphlets, special events)?		
Which department, person, or committee is responsible for coordinating the development and uniform enforcement of the vehicle policy and procedures throughout the institution?		
Are your vehicle policies and procedures clearly communicated to students, faculty, staff, and volunteers through:		
■ Handbooks (student, faculty, staff, volunteer)		
■ Campus media (student paper, staff/faculty newsletters)		
■ Driver applications/vehicle check-out forms		
■ Other		
Which department or person is responsible for coordinating record keeping on all facets of vehicle use and maintenance?		
Which department maintains the master vehicle list?		
■ How often is the list updated?		
Do your vehicle policies and procedures address:		
■ Driver qualifications		
■ Driver obligations		
■ Driver training		
■ Driver testing		
■ Vehicle use		
— What are your institution's approved, non-business activities for students/employees using school owned vehicles?		
— Do you have guidelines for age/mileage restrictions on vehicles used for out-of-town travel?		
■ Vehicle maintenance		
— Pre-use inspections		
— After-use reports		
— Preventive maintenance		
— As-needed repairs		
■ Procedures for reporting accidents		
■ Disciplinary actions for accidents		
■ Guidelines for outside transportation contracts		
■ Guidelines for transporting hazardous waste		

VEHICLE LIABILITY CHECKLIST

Item	✓	Notes
Do your procedures stipulate that all keys to vehicles not in use must be kept in a locked drawer or cabinet?		
Which person or department is responsible for ensuring proper reporting of accidents?		
How long does your institution keep accident reports?		
<ul style="list-style-type: none"> ■ What is the statute of limitations in your state for auto liability claims for bodily injury or property damage? 		
<ul style="list-style-type: none"> ■ Who is responsible for analyzing accident data? 		
Which person, department, or committee is responsible for approving transportation contracts?		
Do you keep in the glove compartment of every vehicle:		
<ul style="list-style-type: none"> ■ Insurance information 		
<ul style="list-style-type: none"> ■ Maintenance record sheet for pre and post-use inspections 		
<ul style="list-style-type: none"> ■ Accident report form including the individual/phone number to whom accidents should be reported 		
Does your insurance coverage include:		
<ul style="list-style-type: none"> ■ Business auto liability form 		
<ul style="list-style-type: none"> — No fault personal injury protection benefits 		
<ul style="list-style-type: none"> — Uninsured motorist coverage 		
<ul style="list-style-type: none"> — Underinsured motorist coverage 		
<ul style="list-style-type: none"> — Pollution spills coverage 		
<ul style="list-style-type: none"> — Non-owned vehicle coverage 		
<ul style="list-style-type: none"> — Drive other car coverage 		
<ul style="list-style-type: none"> ■ Comprehensive general liability form 		
<ul style="list-style-type: none"> ■ Excess/umbrella coverage 		
<ul style="list-style-type: none"> ■ Foreign auto difference in condition 		
<ul style="list-style-type: none"> ■ Worker's compensation 		
<ul style="list-style-type: none"> ■ Employee/student health insurance 		
<ul style="list-style-type: none"> ■ Collision and comprehensive 		
Does your institution have clear guidelines for insuring rental cars?		
<ul style="list-style-type: none"> ■ One approved rental company with negotiated collision contract 		
<ul style="list-style-type: none"> ■ Employees choose rental company, but purchase collision insurance 		
<ul style="list-style-type: none"> ■ Rental insurance is negotiated under the business auto form 		
<ul style="list-style-type: none"> ■ Coverage is provided by credit card company 		
Does your vehicle policy clearly address the issue of using personal vehicles for university travel?		