At Risk Abroad: Lessons From Higher Ed Claims

Each year, more than a quarter million college students participate in academic study abroad programs. The organization and oversight of these programs is an immense undertaking with many risks.

United Educators (UE) recently reviewed 10 years of study abroad higher education claims received from 2005 to 2014. The 126 claims cost UE and its members more than $1.6 million. Study abroad activities generated on average 12 claims per year, however, the costs of claims that incurred losses are noteworthy. The average claim loss was nearly $50,000. This bulletin highlights nine areas that can be improved through proactive risk management.

1 In this report, “claim” is defined broadly to include any incident reported to UE whether a demand for money was made or not.
2 One of the largest jury verdicts in a UE claim involved an injury during an independent school’s study abroad trip. Although the $41 million award may change on appeal, the incident highlights the potential liability exposure of study abroad trips, particularly those involving minors.

Other International Travel
The health, safety, and security of international travelers and program risk management should be a concern across campus—not only in the study abroad office. These recommendations are applicable to any institution-sponsored foreign travel program, such as: noncredit-bearing student academic travel; intercollegiate athletic competitions; faculty, staff, and administrative travel; arts performances; and registered student organization travel.
Overview of Claims

Frequency and Severity

Study abroad claims reported to UE concerned sexual misconduct, injury or illness, death, and “other.” The graph below shows the percentage of total claims received (frequency) and the percentage of total losses produced by those claims (severity) for each claim type. Significantly, incidents of sexual misconduct were responsible for over half the study’s claims and more than two-thirds of its losses. The claims defined as “other” resulted in no reported losses to UE and its members.

3 “Other” claims included incidents such as students who went missing but were found, near-miss transportation incidents, student drug use, students unhappy with the study abroad experience and/or fees, and code of conduct violations other than sexual misconduct.
Theories of Liability

The most common theories of liability or “causes of action” lodged against the institution included:

- **Failure to follow the institution’s policy.** The college often had sound policies in place, but trip leaders or study abroad administrators did not follow or were unaware of the policy requirements.

  **Example:** A student reported inappropriate sexual advances by her host father. Upon further investigation, college administrators learned that the study abroad director had ignored similar accusations for years in violation of the college’s policy, which required severing ties with the host family upon notice of such accusations.

- **Negligent supervision of students.** During some college-sponsored activities, it was alleged that a trip leader was inattentive or completely failed to supervise study abroad participants.

  **Example:** When a student in Spain fell ill, her music professor left her unsupervised in a hospital and continued with the other students to the next city on their tour. There was no second trip leader on the program. The student was left alone in a Spanish hospital without an interpreter while her condition worsened.

- **Inappropriate employee sexual misconduct.** Sexual relationships between institution employees and students studying abroad, both consensual and nonconsensual, frequently led to legal claims.

  **Example:** A trip leader bought two students several rounds of drinks and invited them to his apartment for a sexual encounter. The university’s policies stated that sober consent was necessary for sexual relationships and prohibited sexual relationships between trip leaders and students. The two students sued and reached a settlement with the university.

- **Improper medical care.** College health care providers that misdiagnose or mistreat medical conditions put students at risk and increase the likelihood of institutional liability.

  **Example:** A student’s arm began swelling on a trip to Nepal, and the institution’s doctor advised her not to see a local physician. Later, the student sued the institution after she was diagnosed with deep vein thrombosis.
Compliance and Standards of Care

Recently published statutes and guidance pose fresh compliance challenges for study abroad programs and may affect the standard of care expected from institutions offering study abroad. Readers should be aware of these laws and standards as travelers leave the home campus to study abroad:

- **Federal sexual violence response requirements.** When students travel abroad, the sexual violence response requirements imposed by Title IX and the Campus SaVE Act (also known as the amendments to the Violence Against Women Act or VAWA) follow. In fact, a small number of the claims in the study involved Title IX complaints from students; it is likely that statutes such as Title IX and VAWA will be raised in future study abroad claims as national attention to sexual violence increases. For more information, consult with legal counsel and refer to the EduRisk publication, *Responding to Sexual Assaults in the Study Abroad Setting*.

- **State reporting obligations.** In 2014, Minnesota passed a law requiring higher education institutions to report to the state certain health and safety incidents of credit-bearing education abroad programs. Other states are considering comparable legislation. Readers should consult with legal counsel on similar laws in their jurisdiction.

- **Standards development organizations.** The Forum on Education Abroad (FEA), an organization recognized by the U.S. State Department, has developed standards for education abroad. The group publishes the *Standards of Good Practice for Education Abroad*, of which Standard 8, “Health, Safety, Security and Risk Management,” is particularly relevant. When institutions join FEA, they voluntarily agree to the standards. In light of this, it is critical that institutions know whether they are a member of FEA and have agreed to comply with these standards.
Key Findings From the Claims

Use a Cool Head, Warm Heart Approach to Crisis Response

UE recommends treating an injured traveler and those affected by the injury with compassion—the “Cool Head, Warm Heart”® approach—which may discourage litigation. Fortunately, in more than half of the claims analyzed, the college’s response to a study abroad crisis was thoughtful and helped to mitigate potential losses. Common ways colleges displayed compassion and kindness to those in crisis include:

- Continuously communicating with parents of injured students via an institution liaison, such as the study abroad director
- Widely offering counseling to students affected by a traumatic event, such as victims, their friends, and the larger student population
- Making travel arrangements for the injured student and the parents
- Hiring a native language interpreter
- Having a staff member accompany the injured student back home
- Reimbursing full or partial tuition for the study abroad program
- Promptly communicating with the home campus about the crisis abroad by sending an all-campus email detailing confirmed facts about the event
- Conducting an on-campus memorial service after a student fatality

For more information, review The “Cool Head, Warm Heart” Response to a Crisis.

Prepare for a Crisis

To prepare their study abroad staff and trip leaders to respond to a crisis, many institutions:

- Create written emergency and crisis management plans. The plans should consider preparation, prevention, and response to a range of situations and emergency actions.
- Review and practice crisis and emergency plans regularly. Consider including crisis management in trip leader training by using EduRisk’s sample study abroad tabletop exercises, which mirror real situations reported to UE as claims.
- Establish a 24/7 emergency hotline for international travelers. Many institutions have employees in the global security and study abroad offices take turns being “on call” with the hotline phone.
- Develop emergency contact plans. Many UE members use an emergency notification system that relies on reported phone numbers and email addresses. For example, the University of Pittsburgh created travel registry guidelines to reach Pitt students and personnel abroad in an emergency.
Sexual Misconduct Is the Most Common Claim Reported in Study Abroad

Slightly more than half of the claims involved an allegation of sexual misconduct. In nine out of 10 of those claims, the victim was female. Unlike most sexual assaults on American campuses, most female victims did not know their attackers. The perpetrator was usually an unknown international male the victim met in a bar.

**Example:** A student studying abroad in South America who was out with her friends left with men she met at a bar. She was discovered the next morning covered in her own vomit at her homestay. A rape kit confirmed sexual assault. The institution helped her seek medical attention and counseling and purchased her plane tickets home.

Use the pre-trip orientation sessions to educate students about the risks of sexual misconduct. Reiterate these important lessons after arrival in the host country in an on-site orientation. The Institute for the International Education of Students, a major third-party provider of study abroad programs, covers these issues in its pre-trip and on-site orientations:

- The name and contact information for the Title IX coordinator to whom reports of study abroad sexual misconduct should be made
- Cultural norms, such as gender-related attitudes toward dating, dress, and social interactions in the host country
- Lingering stereotypes about American students and behaviors that are frequently misunderstood by those in the host country
- Locations that should be avoided
- An understanding of sexual harassment laws and resources in the host country and how they differ from those in the U.S.
- The importance of traveling in groups, staying together, and looking out for friends

For more in-depth information on sexual violence abroad please review EduRisk’s *Responding to Sexual Assaults in the Study Abroad Setting*. Further recommendations on pre-trip orientations are included in *Risk Orientations Are Worth the Effort*. 
**Many Claims Occur During a Student’s “Free Time”**

More than half of the claims occurred while a student was participating in recreational activities, such as swimming, boating, hiking, jogging, and downhill and water skiing.

Example: *Students rented a boat during a university trip to Indonesia. One student broke her back while floating on a raft behind the boat. The college responded to the injury promptly and paid for the student’s medical evacuation. As a result, the student suffered no permanent injury and did not seek damages.*

While an institution usually faces little to no liability for injuries and accidents that occur during a traveler’s free time, it will almost always be asked to assist. The first phone number a student usually calls in an emergency is his or her home campus. Even if the institution is little more than a liaison between the student, a separate host institution, or a third-party provider, providing aid in a crisis—even when not obligated to do so—is an excellent example of the “Cool Head, Warm Heart”® approach.

In interviews with UE members, study abroad directors report that many students want to participate in extreme sports such as cliff climbing, zip lining, and skydiving. Institutions cannot dictate how international travelers spend their free time, but they should consider providing information on dangers of recreational activities and location-specific risks, such as volcanoes, rock slides, or dangerous water currents. For example, Northwestern University includes information on water safety and road safety as part of its *Strategies for Staying Safe*. Northwestern reminds its students they are more likely to be injured in such accidents than terrorism or civil unrest. This information is intended for use in pre-departure risk orientation.

Consider whether adding recreational activities to the institution’s travel registry would enhance the ability to help students in distress. In some claims, the institution learned about voluntary trips taken by students, faculty, and staff only after an incident was reported. Terra Dotta, a provider of study abroad software to many UE members, offers an *online registration form* for students and faculty to register side trips while abroad. In contrast, some campuses discourage registering voluntary trips because it could increase liability. Consult with general counsel or an experienced attorney before establishing a registration requirement.
Alcohol Is Often a Factor

One in three study abroad claims involved alcohol. Student alcohol use and abuse in the U.S. has been well-researched, but its impact on study abroad students has received relatively little attention. Students who study abroad incorrectly perceive their peers are drinking more while abroad, according to a study published in the *Journal of Studies on Alcohol and Drugs*. This perception can increase drinking behaviors while abroad, putting students at risk of alcohol-induced injuries.

Example: As part of a study abroad program in Europe, several students, two faculty advisors, and a resident advisor (RA) lived in university-owned housing. The attic was well known as the site of drinking games among students and the RA. When one student drank to excess and passed out there, she woke up to find another resident sexually assaulting her. The school’s alcohol and sexual violence policies were not followed, and the case was settled for several hundred thousand dollars.

Many students are not of legal drinking age in the U.S. but can legally consume alcohol in the host country. For some, this may be their first experience with alcohol. All international travelers should be reminded that alcohol increases the risk of accidents, injury, unwanted attention, and theft in any location, but particularly while abroad. The ability to respond to new and changing circumstances is impaired under the influence of alcohol.

Educate students about the consequences of risky drinking before departure. This can be part of an institution’s larger alcohol education program. Alternatively, some UE members prohibit drinking abroad. These institutions frequently employ an amnesty policy that allows students to report accidents and injuries that occur while alcohol is being consumed without fear of punishment.

Responsible Alcohol Use

The *Overseas Security Advisory Council* (OSAC), a division of the Department of State, offers guidance on alcohol use for international travelers:

- Don’t drink homemade or counterfeit alcoholic beverages. Alcohol poisoning from local gin caused deaths in Nigeria recently.
- Don’t overdo it. Alcoholic drinks abroad may have higher alcohol content than in the U.S.
- Don’t compete with locals and their brew. Cultural traditions may involve multiple shots of high percentage alcohol that a visitor is not accustomed to.
- Don’t let your food and drink out of your sight. They can be spiked with drugs that can result in weakness and confusion.
Employees and Students Operate Vehicles Abroad

Driving or being a passenger in a vehicle abroad can be risky. One in 10 claims were related to a transportation incident abroad, and half of those claims involved a van or car operated by someone from the institution. According to the Centers for Disease Control and Prevention (CDC), road traffic crashes are the leading cause of injury deaths to U.S. citizens while abroad.

**Example:** Several students and a professor were studying in Honduras. The professor rented a car and gave four students permission to drive in violation of university policy. They were inexperienced in driving on the winding local roads and one student crashed the car and rolled down a hill. There were no injuries, but the institution was responsible for property damage to the car.

If applicable, remind travelers that the institution’s transportation policies apply while abroad; not all institutions allow students to operate institution-owned or institution-controlled vehicles. Determine whether the institution’s automobile insurance coverage applies to accidents outside the U.S. For more information on transportation safety, consult EduRisk’s Safety in Student and Employee Transportation Checklist. For colleges and universities that frequently rely on institution drivers while abroad, use the Association for Safe International Road Travel’s Road Travel Reports and Study Abroad Toolbox.

Students With Diagnosed Health Conditions Need Assistance

To accommodate students and staff with health conditions, colleges frequently ask travelers to voluntarily disclose medical diagnoses as part of the pre-trip application or registration process. This disclosure should include mental health conditions. Almost 10 percent of the study’s claims involved a student mental health condition, usually a suicide or an incomplete suicide.

**Example:** A student was under the college counseling center’s care prior to studying abroad in Germany, but he was not asked to report his counseling or anxiety diagnosis before departure. When he committed suicide while abroad, the institution worked with his parents to handle repatriation and conduct a memorial service on campus.
Colleges are best equipped to accommodate and help students when they have prior knowledge of medical diagnoses, including mental health conditions. To avoid violating the Americans with Disabilities Act (ADA) or similar state laws prohibiting discrimination on the basis of disability, a traveler’s mental or physical disability should not be the basis for denying admission to institution-sponsored foreign travel programs. However, institutions are advised to be clear about the conditions to be encountered during the trip. Help students consider other programs when accommodations in a foreign country are not possible.

For more information on how to accommodate and respond to student mental health conditions on study abroad, see resources from Mobility International USA.

**Consider a Medical Management Plan**

Encourage students to draft medical management plans after they voluntarily disclose health conditions. This written plan prepares travelers for various health care actions abroad, such as:

- Continuing treatment, including mental health counseling
- Taking prescription medications
- Locating emergency medical services
- Coping with potential stressors

The plan is prepared by the traveler and a health care professional and may be shared with the institution. Work with legal counsel to ensure compliance with the Family Educational Rights and Privacy Act (FERPA) and the Health Insurance Portability and Accountability Act (HIPAA) when medical management plans are shared with the institution. Gonzaga University built a special section of its study abroad website just for parents with a FERPA waiver form.

**Example:** A student studying abroad in Rome was injured in a motorbike accident. Although the injury was extremely severe, the medical insurance provider would not pay for a doctor to accompany the student on the plane ride back to the U.S. The student’s parents were upset and incurred more than $10,000 in out-of-pocket medical expenses to get their son back home. The university decided to reimburse the parents to avoid legal action.

**Poor Contracting and Insurance Practices Are Costly**

One-third of the UE study’s losses resulted from insurance and contract issues.

The two most common insurance issues were:

- The traveler did not purchase insurance required by the institution
- Insurance coverage was not as broad as expected, for example:
  - An emergency evacuation insurance carrier was unwilling to fly a student, parent, or doctor home or to a new location
  - An emergency medical insurance carrier did not cover the costs associated with a student’s traumatic injury

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The purchase and understanding of appropriate insurance coverage provides further protection to institutions and students abroad. A survey of international travel insurance policies most frequently purchased by institutions includes:

- Health (usually travel coverage to supplement existing medical insurance)
- Political and natural disaster
- Emergency evacuation and repatriation
- Kidnap and ransom
- Institutional liability

While most institutions purchase these policies for their travelers or include the cost of insurance in trip fees, institutions that delegate this responsibility to individual travelers should require confirmation of purchase.

The most common problem in contracts between the institution and a third-party provider was the agreement’s failure to address risk allocation and include an “indemnification” or “hold harmless” clause. Ensure every third-party contract contains:

- A provision that states how each party is responsible for losses or claims arising out of the agreement
- Confirmation that the third-party provider has insurance coverage

The University of Denver requires that any agreement between the institution and a third party be reviewed by university counsel if one of several factors exist. The risk management department also plays a part in the contract and approval signing process. For more information on recommended contracting practices, consult the EduRisk resources *Improving Contracting on Campus* and *Allocating Risks Between Parties*.

**Waivers Are Not Used or Retained**

Liability and losses increase when international travelers are not informed of inherent risks before departure or when signed waivers are not maintained consistent with document-retention policies. Institutions could produce a signed pre-travel waiver in only 15 percent of the study’s claims. It was difficult to determine whether colleges were not using waivers or could not locate waivers used.

**Example:** Two students studying in Asia were dismissed from the program for poor behavior. They later alleged the institution failed to prevent a sexual assault from an unknown attacker while they waited for their flight home. Although both signed a waiver before the trip and upon dismissal, only one of the signed waivers could be located during settlement negotiations. The institution’s failure to retain the waiver increased losses in the case.
While not foolproof, a well-drafted waiver can provide valuable evidence that an institution educated travelers about the risks of international travel. As legal documents, the enforceability of waivers varies by jurisdiction; a college should consult its attorney about drafting and retaining waivers for study abroad programs. If waivers are appropriate, store them in accordance with the institution’s document-retention policies.

Remember to offer international travelers time to read and review participation agreements and releases before signing. For more information about drafting sound waivers and releases, EduRisk offers a Checklist for Drafting Effective Releases with guidelines and sample language included.

**Risk Orientations Are Worth the Effort**

A review of UE claims involving pre-departure risk orientations indicates that liability is decreased when institutions educate travelers on the dangers involved before the trip.

The U.S. State Department is an excellent source of safety and security information to incorporate in pre-departure risk orientations. While many institutions develop their own risk orientations, third-party providers or health insurance carriers may also have content available to include. HTH Worldwide, an international travel medical insurance provider, offers a series of videos narrated by the company’s medical director on health and safety, alcohol, prescription drugs, and more. The free videos could be used in any institution’s pre-departure risk orientation.

Remember to track completion and attendance at risk orientations. Consider also whether certain student populations merit additional advice or education before departure. Brown University offers diversity resources for study abroad participants, with special attention to LGBT and women’s concerns. Additionally, reinforce the issues covered in the risk orientation once students reach the foreign location. Some UE members ask students to research and lead these on-site orientations to encourage buy-in and promote student discussion of risk management.
Conclusion

International travel, whether through credit-bearing study abroad programs or other activities, requires effective risk management. Administrators and study abroad directors can use this UE claims study to better focus their efforts to keep students, faculty, and staff safe while abroad.

Acknowledgment

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Additional Resources

NAFSA: Association of International Educators
Responsible Study Abroad: Good Practices for Health and Safety

ClearCause Foundation
Travel Checklist

International Society of Travel Medicine
Online Clinic Directory

Centers for Disease Control and Prevention
Travelers with Specific Needs