

Lawsuits Against Colleges and Universities for Transitioning from In-Person to Online Classes: The Latest Wave of Covid-19 Litigation

July 7, 2020

Executive Summary: An Auburn University student claims he did not get what he bargained for in being relegated to distance learning instead of having an in-person educational experience. On June 30, 2020, Steven Bailey filed a federal court class action lawsuit against the university based on the school's decision to provide online courses instead of in-person instruction during the Spring semester in response to the COVID-19 pandemic. *See Bailey v. Auburn University*, Case No. 3:20-cv-457-ECM-WC (pending in the Middle District of Alabama).

Background

The representative plaintiff in this case is a resident of Georgia and a full-time undergraduate student at Auburn University. The suit arises out of Auburn's decision on or about March 12, 2020, like many colleges and universities across the nation, to cancel all in-person education and its subsequent decision to cancel in-person education for the remainder of the Spring 2020 semester, because of the "Novel Coronavirus Disease." Auburn transitioned all classes to online learning, but failed to refund any portion of the tuition and fees paid for the Spring semester. The suit claims that students bargained and specifically paid for "in-person educational services, experiences, opportunities, and other related services." As a result of the school's decision to suspend in-person classes, the students claim they did not receive the benefits they bargained for when paying tuition and other fees. The suit claims Auburn promised in-person learning in its advertisements and other marketing materials, but failed to provide "44%" of that promise.

The suit asserts, on behalf of all similarly situated Auburn students, a breach of contract between the students and Auburn arising from the school's decision to provide online courses instead of in-person instruction. The suit also claims Auburn interfered with the students' ownership right to in-person educational services and that the school was unjustly enriched by accepting the students' money but not providing in-person educational services and other experiences and opportunities. The suit joins other

MEET THE AUTHORS



Wesley C. Redmond

Partner
Birmingham, Alabama Office
wredmond@fordharrison.com
P: 205-244-5905



Dawn Siler-Nixon

Partner
Tampa, Florida Office
dsiler-nixon@fordharrison.com
P: 813-261-7834

similar lawsuits filed against both private and public colleges and universities around the country seeking “pro-rata shares of the tuition and fees” paid by students “that related to services that were not provided for” after the shutdown caused by Covid-19.

The suit claims class members are entitled to a pro rata refund of tuition and fees for the 44 percent of the school year they missed. The suit also seeks treble (triple) damages, punitive damages, and attorneys’ fees. Jurisdiction in federal court for this action is based on the Class Action Fairness Act (CAFA), which provides federal jurisdiction for class actions where one plaintiff is from a different state than the defendant, the suit involves 100 or more plaintiffs, and the amount in controversy exceeds \$5 million.

Bottom Line: For universities and colleges, who may already be struggling with lost revenue, these suits raise significant legal questions regarding the application of defenses such as force majeure, requirements to comply with state guidelines, and sovereign immunity for public institutions. In a previous [Alert](#) we discussed the immunities for civil liabilities contained in the Alabama Governor’s May 8, 2020, Proclamation. Those immunities specifically extend to universities and institutions of higher learning. This case thus raises the issues of whether Auburn’s actions are immune from liability as a “covered Covid-19 response activity” and whether the immunity applies to Auburn’s actions prior to the May 8 Proclamation.

We will keep you updated on the status of this and other COVID-19 related litigation against educational institutions. If you have any questions regarding this Alert, please contact the authors, [Wesley Redmond](#), partner in our Birmingham office at wredmond@fordharrison.com, and [Dawn Siler-Nixon](#), partner in our Tampa office at dsiler-nixon@fordharrison.com, both of whom are members of FordHarrison’s [Education](#) practice group. You can also contact any member of the practice group or the FordHarrison attorney with whom you usually work.

Our**Coronavirus****Response**

FordHarrison is closely monitoring COVID-19 developments including associated federal and state legislation and reopening guidance. The firm has implemented continuity plans to allow our lawyers and staff to work remotely in a technologically secure environment when necessary, ensuring continuity of our operations and uninterrupted service to our clients. We are following all CDC guidelines and state and local laws as applicable. We are committed to ensuring the health and welfare of our clients, employees, and communities while continuing to provide our clients with the highest quality service. Please see our dedicated [Coronavirus Taskforce](#) and [Coronavirus – CARES Act](#) pages for the latest FH Legal Alerts and webinars on COVID-19, the new American workplace, workplace-related provisions of the CARES Act, as well as links to governmental and industry-specific resources for employers to obtain additional information and guidance. For more information or to be connected with a Coronavirus Taskforce or CARES Act attorney, please contact clientservice@fordharrison.com.