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AN EMERGING RISK ISSUE FROM

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Considerations for Colleges and Universities

Student Athletes-insured when involved in sports?

A lawsuit was recently brought directly against student athletes by plaintiff. The plaintiff is a football quarterback who alleges serious injuries as a result of a tackle made by three defendants as players on the opposing team. The school was sued but later released by Plaintiff. The referee at the game did not throw any flags or admonish any player for unnecessary roughness when plaintiff as quarterback was tackled and injured.

The general liability policy (GL) in place for this school would seemingly insure it for the claim, providing it with at least defense coverage, as long as the injury was not intentional or otherwise directed by the coach. The "person's insured" wording in that school's GL policy, not with United Educators ("UE"), does not seem to be broad enough to provide defense or settlement coverage to the student athletes for what could be described as other than an intentional act to cause injury.

Several higher education GL policies were reviewed to determine the extent of coverage for students as insureds for a situation as described above. None of the policies reviewed seem to provide coverage for a student as an athlete for allegations of sports caused injuries. Even the UE policy is not clear if student athletes are an "insured" in the policy as it is not clear if a game between schools is considered an insured student activity.

All college risk managers should review their GL policy to determine the extent of coverage provided to students as "insured persons". If coverage is not clear or broad enough then the GL insurer should be asked for more affirmative coverage for certain student activities as deemed appropriate. Any premium for this policy change can then be viewed on cost/benefit basis.

Do rowing and sailing programs create Jones Act exposure for college/university employees?

A recent A&S non-college/university client engagement has us thinking differently about workers compensation exposures that may arise out college and university rowing and sailing programs. Usually one thinks in terms of US Longshore & Harbor Workers Act exposure when employees are on US navigable waters. (Note: USLHW may apply to college or university rowing/sailing activities. It's better to have this endorsement on "if any" basis as fallback position).

The risk issue is what workers compensation benefits are payable if an employee is injured on US navigable waterways (i.e. Great Lakes, Long Island Sound and similar bodies of water) and is thereby subject to US admiralty law, Jones Act benefits and likely not subject to the workers compensation statue of state of hire. In this case the employer may be responsible for medical expense and other benefits without coverage from the worker's compensation insurance policy. The deciding issue if an employee is within Jones Act is if he or she meets the definition of "seaman" which requires a legal conclusion*. Jones Act coverage can be secured by endorsement to a worker's compensation policy or by endorsement to a Protection & Indemnity policy ("P&I"), a specialized marine liability insurance policy. At a minimum the applicability of admiralty law and Jones Act exposure should be discussed with legal counsel.

While a risk manager can request Jones Act coverage from its workers compensation insurer the request may open up discussions about proper classification code used for the "on water" employee exposures. A better approach is to consider cost/benefit of a P&I policy that includes Jones Act coverage. Some GL polices offered to colleges/universities, such as UE, often contain watercraft liability coverage for rowing/sailing exposures similar to a P&I policy but the GL cannot be endorsed to provide Jones Act coverage. "Other Insurance" clauses must be reviewed carefully in both the GL and P&I policies if P&I is purchased and watercraft liability coverage is also provided in the GL policy. Amendments may need to be made in each policy to reduce coverage duplicate coverage.

**If an employee spends at least 30% of their employment on US navigable water he or she may be considered a seaman and fall within admiralty law [(Chandris, Inc. v. Latsis, 515 U.S. 347 (1995) and McDermott International, Inc. v. Wilander, 498 U.S. 337 (1991)]. On the other hand Federal Statute 46 U.S.C. §10101 excludes from "seaman" any sailing school instructor or a sailing student. The exemption for sailing school instructors and students is derived from the Sailing School Vessel Act which exempts government and non-profit sailing schools from liability for maintenance and cure and seaworthiness [(46. U.S.C. §50504 (ex 46 U.S.C. App. §446c)]. It seems that legal counsel will be needed to help understand if rowing and sailing activities of a non-profit college or university falls within "non-profit sailing schools".*

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