

CEP Magazine – January 2024



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Maximizing insurance coverage and managing risks for educational institutions

By Geoffrey B. Fehling, Latosha M. Ellis, and Jae Lynn Huckaba

Each year, colleges, universities, and other educational institutions face exposure to a range of claims, including those involving allegations of hazing, alcohol use, and sexual assault. In August, for example, four former football players from Northwestern University filed lawsuits against the university, alleging hazing and mistreatment.^[1] Two of the lawsuits named the university's former athletic director, a former coach, a former university president, and the university's board of trustees as defendants.^[2] Such allegations can lead to significant financial exposure for schools and are unlikely to subside in the near term. In fact, according to some reports, over half of college or university students involved in sports or other student clubs and organizations have experienced hazing.^[3] The number of deaths resulting from hazing ranges from 50 to 105 since 2001.^[4] Many hazing-related injuries and deaths are also alcohol-related.^[5] In one recent example, Baylor University settled a lawsuit brought by 15 women who alleged they were sexually assaulted as students.^[6] The details of the settlement have not been disclosed. While liability insurance coverage may be available to mitigate risks associated with these claims, not all policies are the same, and insurers often raise defenses to avoid liability and exclude coverage, leaving educational institutions and individual defendants potentially exposed without the benefit of insurance. Accordingly, compliance professionals, in-house counsel, and other decision-makers should be aware of the sources of insurance coverage for these claims, as well as the common challenges in obtaining such coverage and potential risk solutions, so they are better prepared to respond should a claim arise.

Insurance coverage for emerging claims against educational institutions

General liability policies are one potential source of coverage, but those policies have exclusions that could jeopardize coverage depending on the facts giving rise to the claim. Like most businesses, educational institutions purchase general liability insurance to protect themselves against lawsuits involving bodily injury and property damage. This type of policy might afford broad coverage for many claims that put educational institutions at risk of high financial exposure. But as explained more fully later, general liability policies typically

include broad exclusions for risks like hazing, alcohol, and sexual assault or abuse. Adding such exclusions to general liability policies is one of many insurance market reactions to the financial exposure posed by emerging claims against education institutions.

While unlikely to step in and protect educational institutions directly from third-party litigation, homeowners policies may potentially cover allegations of hazing, and students have successfully obtained coverage for these allegations in the past. The availability of this coverage to individuals insured under a homeowners policy—such as student defendants, coaches, deans, and trustees— could indirectly benefit the educational institution by offsetting losses that otherwise may be sought from the institution.

In one South Carolina lawsuit, a student involved in hazing freshman swimmers sought coverage under his parents' homeowners policy after being named individually in a lawsuit.^[7] The insurer filed a declaratory judgment action, seeking a determination of coverage under the policy. The federal court held that intentional conduct producing an unintended injury constituted an “accident” under the policy. As a result, the insurance company had to defend the student in the lawsuit.

Similarly, in a separate case in New York state court, a Pi Delta Psi fraternity pledge was an alleged victim of a hazing ceremony.^[8] The fraternity members and pledges rented a house in the Pennsylvania Poconos for the weekend. As part of the initiation ceremony, fraternity members blindfolded the pledge, weighed him down with a backpack filled with sand, and then repeatedly tackled the pledge until he was knocked unconscious. The pledge's family subsequently sued several members of the fraternity for wrongful death. One of the fraternity members requested coverage for the suit under his parents' homeowners insurance policy. The insurance carrier filed suit and moved for a ruling that they had no duty to defend or indemnify the wrongful death suit. The court denied the motions ruling that the defendant was entitled to a defense under the broad duty to defend standard. The insurers appealed the court's ruling. The appeal was later withdrawn at the stipulation of both parties.

Employees of educational institutions—who may only have limited coverage under the institution's liability insurance policy because of the policy's applicable limits, high retentions, narrow coverage grants, or broad exclusions—may also benefit from coverage under traditional homeowners policies. Specifically, if the employee is named in a lawsuit alleging failure to supervise the educational institution's organizations, failing to act to prevent hazing or participation in hazing, and the educational institution's insurance coverage does not extend to the employee, the employee could seek defense coverage under a homeowners or umbrella liability policy. Unless an insurer can establish that the allegations in a complaint are entirely excluded by policy exclusions—and subject to no other interpretation—the insurer would likely have to provide a legal defense for the lawsuit if the allegations in the complaint are alleged in a way that triggers insurance coverage.

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