Observers: COVID-19 Stresses Higher Education Insurance Market as Rates Soar, Capacity Dwindles

OLDWICK, N.J. - Liability rates for higher education institutions this year could rise 30% to 50%, or higher, as pandemic risks inject uncertainty in a market that was retrenching, according to industry professionals.

John McLaughlin

Insurers were already hiking rates, adding new exclusions and lowering limits in the wake of hundred-million-dollar-plus sexual abuse and molestation or traumatic brain injury settlements, said Arthur J. Gallagher Senior Managing Director John McLaughlin.

Then the pandemic hit. Fall reopenings are all over the board, with most colleges and universities quickly closing dorms and moving learning online.

A full 26% of schools were still in the “to be determined” category, according to the College Crisis Initiative at Davidson College, which tracked plans for nearly 3,000 institutions. One quarter will operate primarily online, 21% primarily in person, the initiative found. Smaller numbers planned hybrid, fully online or in-person or some other arrangement.

A large number of higher education policies were renewed around July 1, leaving insurers facing the same unknowns. They clearly considered the risk of reopening during a pandemic, said McLaughlin. “We have seen some additional rate increases added to liability and D&O.”

In January, McLaughlin foresaw 20% to 30% rate increases for the segment and knew it would be tough to secure $100 million or more of coverage as the pandemic’s new risks pushed the rates even higher.

Smaller institutions — with lower policy limits — are paying more but had an advantage because they could still shop standard commercial markets, he said.

The limited number of carriers writing primary liability for higher education institutions are putting up “very small limits,” McLaughlin said, with the exception of risk retention group United Educators Insurance. And insurers in 2020 started adding exclusions for sexual abuse and molestation and traumatic brain injury risks, which are vulnerable to nine-digit claims.

United Educators Vice President of Underwriting Bryan Elie said his company, like the rest of the world, learns more each week about the virus but is still challenged by a lack of long-term uncertainty and clarity. “The modern world has not lived through a worldwide pandemic,” he pointed out.

His company underwrites long-term liability lines that may develop over a six-to-10-year period. The pandemic added pressure to a market stung by rising legal social inflation that had reached slips, trips and falls, said Elie, like a $900,000 claim when a grandmother broke her hip en route to a graduation ceremony.

The pandemic reduced claims frequency, because there are fewer people on campus or traveling.

Elie’s company covers 1,600 educational institutions and derives 75% of premium from colleges and universities, raising rates an average 10% to 30% this year, he said. It conducts an annual actuarial review and bases pricing on the loss experience of member institutions

New members must pass a fiscal strength test that include the size of endowments, tuition revenue, debt and more, said Elie. Those with a passing score rarely leave — the group’s annual retention rate holds steady at 97% to 99%.

The RRG debated adding a COVID-19 exclusion to existing policies — most renewed in early summer — but there were still so many unknowns it decided to wait, said Elie.

“You don’t want to under react, but you also don’t want to overreact,” he said. “As a member-owned group we’re trying to find balance.”

The group has been particularly conservative this year when deciding new members, he said, noting it added a COVID-19 exclusion for prior acts under new educator’s legal liability policies.

United Educators offers liability limits of up to $40 million.” We have capacity, but it seems like much of that has disappeared in the industry,” he added, and some insurer’s retractions are hitting areas integral to an institution’s operations.

It’s a serious issue. “They’re nonprofits but they’re a big part of our economy,” said Elie. “Higher education is 3% of gross domestic product.”

He recalled a conversation with a broker recently about an institution trying to renew a $250 million tower that in the past was spread over seven or eight carriers.

“In this market they might get $100 million, using twice as many carriers to build up the tower. And it has price increases and limitations,” Elie said, such as sub-limits on sexual abuse or molestation or traumatic brain injury. “It’s truly challenging for brokers.”

McLaughlin said Gallagher is helping clients with expanded risk management programs and broader risk-financing approaches. “There is a clear move to embracing an enterprise-wide evaluation of risk,” he said. “We’re working with our clients to take smart, cautious steps. There are real risks associated with opening a campus.”

UE is also pushing for safe harbor regulations to protect colleges and universities that take precautions and open in good faith from virus-related litigation, Elie said.

The rapid switch to online classes in the spring ignited about 150 class-action suits around issues such as tuition and fees or a failure to educate. Defense of these suits largely fell to institutions, not their insurers, said Elie.

“We are starting to see reductions in force,” when a position is eliminated with no intention of replacing it and results in a permanent cut in headcount, he said.

Caroline Berdzik, partner and employment and labor practice chair at law firm Goldberg Segalla, said nothing compares with the scale of the COVID-19 shutdowns, and the plaintiff’s bar was quick to respond. In New Jersey alone, she said every higher education institution was hit with a class-action suit.

She foresees legal fees from multiple potential exposures, including employment practices liability on reductions in force and a pushback from professors and staff who don’t feel safe returning to a campus. “Despite best practices, this is something that’s invisible. There’s still the potential to contract it.”

Layoffs are “the economic reality,” said Berdzik. “With the exception of the top 20 universities with unbelievable endowments, most schools are dependent on enrollment” revenue. That’s expected to decline during the pandemic.

Many carriers have formed COVID-19 task forces, said Berdzik. Should a coronavirus outbreak occur on campus, she said they would establish response timelines and actions taken and review related policies and precautions. “Class actions can get very expensive, very quickly,” she said. “It’s very hard to predict legal expenses this upcoming year.”

At a minimum, Jeff Kingsley, Goldberg Segalla partner and co-global insurance services co-chair, said insurers will be required to defend suits through the range of coverages.

He anticipates novel lawsuits, given the magnitude of losses and economic damages attributable. He compares COVID-19 coverage to asbestos. In the short term, institutions will scramble for coverage that didn’t previously exist.

“It’s going to be a challenge for insurers going forward,” he said, particularly as they seek the source of infecti0n. “Can you causally connect or pinpoint when that person contracted COVID?” he said.

There could be tangential liability exposure, he said, such as the impact of a college closure on an athlete’s future employment prospects.

Another unknown is whether carriers will treat the pandemic as a single- or multiple- occurrence event. From a liability perspective, Kingsley said carriers will look to aggregate exposure on certain lines, and clarify terms and conditions.

“There is already a virus condition. They will take what has happened in the past year and modify it to make sure the conditions are clear, whether it’s a restaurant or higher education,” said Kingsley.

The validity of any of the virus-related claims in higher education is still being sorted out, said McLaughlin at Gallagher. “The great unknown is what happens in the future. What happens if we have to close down campuses again in the fall?”

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