

# General Liability or Student Accident?

*By Will Evans - Director of Safety Education at Markel Insurance Company*

As you know, the Commercial General Liability (CGL) policy agrees to pay on your behalf all sums that you become legally obligated to pay. The CGL is primarily a third party policy designed to cover your negligence when it is the proximate cause of bodily injury or property damage to a third party. In general, negligence is the failure to meet one's duty to exercise reasonable care (defined as ordinary care any reasonable and prudent person would provide). In order for a third party to be indemnified for their loss under your CGL, it generally requires that they bring a lawsuit against you (except Medical Payments-see below). When such negligence is proven in court, the sums the policy pays on your behalf are compensatory and punitive damages. They also include general damages which most frequently are amounts the court orders be paid to compensate the injured party for their pain and suffering. Punitive damages are awarded as punishment when the conduct of the insured is grossly negligent. The purpose of punitive is to punish the insured and discourage similar behavior by them and others in the future. Under your CGL, there is also the Medical Payments Coverage Part that pays medical expenses caused by an accident occurring because of your operations or on your premises. The policy pays up to a small limit (usually \$5,000) and this amount is paid regardless of fault. It generally has an exclusion for any person taking part in athletics.

As you can see, the CGL is one remedy for indemnifying parents for student injuries at school or during school activities. It does not take care of athletic injuries, nor is it designed to handle routine student injuries efficiently and expeditiously. It is primarily designed to provide an affordable and dependable remedy for an insured when their negligence is the proximate cause of a loss for a third party.

The Student Accident Policy is a first party policy designed for the express purpose of indemnifying parents for medical expenses incurred due to injuries occurring at school or during school activities. These policies can be designed to pay the actual expenses incurred (subject to usual, customary and reasonable standards) up to limits as high as \$5 million per injury. The insured also chooses deductible amount, dental injury limits, accidental death and dismemberment principal sums and whether to include coverage for interscholastic athletic programs.

The Student Accident Policy is another option available to you for effectively dealing with student injuries. A few schools elect to retain this risk, some transfer this risk to the CGL, while many buy a Student Accident Policy. Of the few schools that elect to retain the risk, the majority probably have the financial capability and the administrative resources to do so. Apparently, the schools that transfer it to the CGL have no athletic programs and have concluded that \$5,000 of Medical Payments Coverage under the CGL is adequate for non-athletic student injuries. Regardless of the reason, we would urge the school to consider the bigger picture and consider both the direct and indirect benefits of having a Student Accident Policy. The chart below does a good job of comparing and contrasting the CGLs and Student Accident Policy's response to student injuries:

<b>Student Injury Issue</b>	<b>CGL Response</b>	<b>Student Accident Response</b>
Purpose	3rd Party Negligence	1st Party Student Injuries
Responsiveness	Typical 3rd Party	Immediate
	Independent Adjusters	Company Handles Claim Form
	Attorneys	Processed
	Built to Deliberate	Built for Turnaround
	Prove / Disprove	To Satisfy Parents
	Must Pay as Primary	Pays Excess
	Must Pay Actual Expense	Pays Usual and Customary
	No Provider Discounts	Extensive National PPOs
	Compensates Adjusters	No Adjusters Necessary
Limits	Typically up to \$5,000	Available up to \$5,000,000
Coverages	Medical Only	Includes AD&D
		Includes Disability Benefits
Excluded Student Risks	Athletics, Travel	None
Parent Conflict Resolution	Parent Sues for Over \$5000	No Conflict
Community Medical Providers	Waiting to Be Paid	Bills are Paid
	Soliciting School to Pay	

Needless to say, the Student Accident Policy is no substitute for the CGL, but with this comparison in mind, the CGL can't begin to compare with the Student Accident Policy when it comes to dealing with student injuries. Before deciding against buying a Student Accident Policy, ask yourself the following questions:

1. Does the school understand how student injury claims have affected its Property and Casualty insurance rates? How does our experience and our rates compare to other schools? Do we have an above average number of student injury claims submitted to the CGL carrier?
2. Have we had any student injury or athletic claims that were not covered by insurance? Did the school have to pay the out of pocket? How much? How fast did we pay? Does the school have cause for concern about the lack of goodwill with parents or local medical providers over its current responsiveness to student injuries?
3. Do student injuries give rise to unnecessary litigation without the presence of student accident insurance?
4. Does the school want to provide financial assistance for student injuries to parents and students beyond what the CGL will provide?