



## LIQUOR LIABILITY



### HARD TO SWALLOW

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This environment merits management's re-evaluation of your current program, even if you have NOT incurred a significant loss in the past. Ask yourself... Have we been good or just lucky?

### BEST PRACTICES FOR LIQUOR LIABILITY RISK MANAGEMENT IN THE HOSPITALITY INDUSTRY

Litigation related to the provision and/or sale of liquor in the workplace continues to be a high risk endeavor for companies if not properly managed. In addition, general liability and automobile liability claims have increased year-over-year due to incidents involving liquor. Generally speaking, if you are in business to sell, serve or furnish liquor for consumption, coverage is provided under a Liquor Liability policy or endorsement. If your company is outside of the hospitality industry and offers alcohol at company sponsored events, insurance is typically afforded by Host Liquor Liability coverage.

For the hospitality industry, traditional methods of managing liquor-related risks, such as basic server training, are clearly not successful given the increase in claims and litigation. For example, basic state mandated server training has proven to be inadequate to position companies to defend against an evolving and creative plaintiffs' bar. Additionally, cost escalation due to social inflation has impacted all types of litigation including those involving the provision or sale of liquor. This environment merits management's re-evaluation of your current program, even if you have NOT incurred a significant loss in the past.

Ask yourself... Have we been good or just lucky? How and what can realistically go wrong at our company?

This includes our current analysis on how to reduce the likelihood and severity of liquor related incidents by applying fundamental business processes to manage liquor use related exposures.

## OUR EXPERTISE DRIVES POSITIVE RESULTS

We can help create practical solutions that minimize loss and improve overall operations. How? By providing:

- **Technical expertise and consultation.** Our Risk Engineering team provides results-oriented solutions and value to our business customers.
- **The right consultant for each customer.** It's how we deliver tailored solutions, drive lower loss ratios and improve bottom-line results.
- **Resources and tools to satisfy our customers.** We have the success stories to prove it. Customers say we consistently exceed their expectations.

## FIRST PARTY VERSUS THIRD PARTY LIABILITY

A first party claim occurs between the policyholder (the first party) and the insurance company (the second party). These are contractual claims that are contingent on the specific language of the insurance policy. For example, a first-party insurance claim relative to liquor use in general industry may include an employee's vehicle being damaged in an automobile accident after the employee left a company sponsored event where alcohol was served. Note that an injury to the employee may be covered under workers' compensation coverage.

Whereas a third-party claim related to this same scenario includes the potential auto liability claim (physical damage and bodily injury) and general liability claim related to the harm incurred by a third party. In a third-party insurance claim, there are three parties; the claimant, the policyholder and the insurance company. In general, the legal doctrines of Vicarious Liability and Respondeat Superior (defined below) will be used as litmus tests to determine and potentially assign liability for an injury to a person who did not cause the injury, but who has a particular legal relationship to the person who did act negligently. In this scenario this might be the business owner.

**Note:** Vicarious Liability or Respondeat Superior may be the basis for a lawsuit against an employer for a liquor-related injury caused by an employee who was acting within the scope of his employment. Under the theory of respondeat superior, an employer is held vicariously liable for compensatory damages caused by the tortious acts of an employee who is acting within the scope of his employment.

## HOST LIQUOR LIABILITY VERSUS LIQUOR LIABILITY



**Host Liquor Liability** - In Commercial General Liability coverage the term "Host Liquor Liability" is defined as that coverage that includes protection against claims or suits that arise from the incidental selling or serving of alcoholic beverages. It is designed to cover both first party and third party liability as a social host. For example, a real estate company hosted a holiday party at their office and provided alcoholic drinks and food for staff. A real estate agent had too much to drink at the party. They demonstrated signs of intoxication yet decided to drive home. On the way they ran a stop sign and struck and killed the driver of another vehicle. The driver's survivors sued the real estate firm for providing alcohol to their employee and allowing them to drive home. The real estate firm does not make or sell alcohol as a part of its business operations, hence, the Host Liquor Liability insurance included in the firm's general liability policy should pay for the victim's car repairs, medical bills and death benefits. It will also pay for the lawyer that represents the deceased. Additionally the real estate firm may be subject to additional court fees and fines.

**Liquor Liability** - Is the type of insurance that covers damages that arise from the sale or furnishing of liquor if the insured is in the business of selling, serving, manufacturing, distributing or furnishing alcoholic beverages. For example, a patron entered a bar showing signs of intoxication. The patron ordered several drinks at the bar and had an appetizer. The patron left the bar and was involved in a motor vehicle accident where they struck a bus resulting in multiple injuries. The bar was the subject of multiple lawsuits by each of the injured occupants in the bus. The court found the establishment negligent for over-serving their customer.

**Note:** It is common for both criminal and civil actions to be brought against those distributing alcohol for damage caused by their patrons to third-parties and even, in some instances, to themselves. Case law suggests that assault and battery against other patrons and servers account for the majority of all claims against owners of establishments that sell alcoholic beverages. Additionally, holders of a liquor license and servers/sellers who possess a permit to serve or sell alcohol can face administrative penalties such as fines, suspension of the license/permit or even revocation of the license/permit for non-compliance of government regulations associated with the issuance of a liquor license/permit.

**DOES YOUR RISK MANAGEMENT PROGRAM ADDRESS THIS HIGH RISK?**



For businesses with host liquor liability or traditional liquor liability exposures, the checklists below can reduce the likelihood for a liquor claim and the severity of the impact in the event of an incident.

Remember, most if not all Commercial General Liability insurance policies don't provide liability coverage for

legal damages and injuries that result from the negligent service of alcohol by dram shops (bars). Similar to the laws that govern the sale of alcohol, there are also specific laws establishing when social hosts can be held responsible for the actions of their guests (simply by providing alcohol to them or permitting it to be consumed on their premises). For businesses involved in host liquor or liquor liability exposures the following questions should be considered:

Host Liquor Liability Checklist for Good Claim Prevention Practices		
Question	Yes	No
For company sponsored events where alcohol will be served, is the alcohol service contracted to a third party trained professional provider?		
Are there written company policies regarding company sponsored events that dictate the following: <ul style="list-style-type: none"> <li>- A written Human Resources policy regarding alcohol/drug use in the workplace</li> <li>- A policy that restricts the quantity of consumption when team building or athletic activities are planned</li> <li>- A zero tolerance on serving minors; all guests must have proper identification</li> <li>- A policy that expresses that no server shall serve a guest/employee alcohol if there are visible signs of intoxication</li> </ul>		
Before the event are there plans for the following to take place: <ul style="list-style-type: none"> <li>- Have responsibilities been clearly defined for event oversight</li> <li>- Establish and enforce a Drink Ticket Policy</li> <li>- Close the open bar early or make it a cash bar to limit consumption</li> <li>- Serve drinks for only a limited time period and while food is offered</li> <li>- Hire a professional bartender who knows when to stop serving patrons</li> <li>- Offer interesting non-alcoholic beverages or low-alcohol content drinks</li> <li>- Know how to escalate adverse situations including when security or the police should be engaged</li> <li>- Know when and how to provide alternative transportation for the potentially over served guest or employee</li> </ul>		

Hospitality Industry Liquor Liability Checklist for Good Claim Prevention Practices		
Question	Yes	No
For those entities in the hospitality industry, are all servers trained in local state mandated training programs such as ServeSafe® and TIPS®?		
Do the Company Policies include: <ul style="list-style-type: none"> <li>- Zero tolerance on serving minors; all guests must have proper ID</li> <li>- Never serve a guest alcohol if there are visible signs of intoxication</li> <li>- Servers will not serve guests to a point of intoxication</li> <li>- Serving staff cannot be served alcohol in uniform off or on duty</li> </ul>		
Is there a Plan to provide service training to include: <ul style="list-style-type: none"> <li>- What to look for when checking an ID; all guests must have proper ID</li> <li>- What to do if a problem is suspected</li> <li>- How to identify visible signs of intoxication</li> <li>- Key factors that influence intoxication</li> <li>- What to do to ensure all servers are aware of a potential issue</li> <li>- How to escalate an issue with the management on duty</li> <li>- Know what options are available to the guest to provide safe transport</li> </ul>		

### CONCLUSION

Businesses in the hospitality industry (e.g., bars, restaurants, hotels) provide a fun and relaxed atmosphere for clientele that often includes the provision of alcohol with or without meals. Alcohol service and/or the commercial sale of alcohol creates unique risks and exposures which companies must

address by having risk appropriate guidelines in place. For those establishments with this exposure, prudent measures, such as comprehensive policies for employee training, supervision, inventory control, and event security, can partially mitigate the associated risks and liabilities.

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