

Liquor Liability Insurance:

Innovating to comply with 21 and over

Steven A. Zappia

Utica College

Senior

Dr. Pamela Hurley

Abstract:

The purpose of this paper is to provide an innovative solution to preventing underage drinking and an overview of surplus lines pertaining to liquor liabilities. This paper will address regulations and legislation for the distribution of alcohol at establishments in the United States. It will also include a discussion of policy implications for the surplus and wholesale liquor and liability insurance market. Some of the primary liabilities that will be covered in this paper include: underage drinking, use of fake identification, bar fights, weapons, drinking and driving, and risks associated with college liquor licenses. Risk transfer through the utilization of extraordinary surplus liability coverage enabling bars and restaurants to serve alcohol is one of those insurable risks that young people are frequently confronted with.

Surplus line insurance is a form of insurance that provides coverage in areas rejected by domestic insurers. "Excess and surplus lines insurance is a segment of the insurance market that allows consumers to buy property and casualty insurance through the state regulated insurance market, where policyholders, agents, brokers and insurance companies all have the ability to design specific insurance coverage and negotiate pricing based on the risks to be secured."(AAMGA) This provides a valuable service through the writing of policies for individuals and companies otherwise deemed too risky or vague to be underwritten and covered through more traditional policies. People are individually liable for losses on their assumed risks to the fullest extent of personal assets, unless liability is intentionally limited. Companies and businesses are also responsible for exposures due to foreseen and latent risks. Liquor liability insurance is a line of insurance in the category of surplus lines markets, due to the extraordinary exposures. In a bar and restaurant insurance policy things such as liquor liability, general liability, property, crime, assault and battery, umbrella, and employment practices liability need

to be covered. It is imperative to identify the exposures covered by bar and restaurant insurance policies with specific emphasis on liquor liability, the underutilization of this type of insurance, and the availability and applicability of various surplus policies.

Many young adults will be confronted with the harsh realities of alcohol related accidents or fatalities and this is a relevant topic that will generate interest in understanding the surplus market. It also demonstrates the significance of risk mitigation and insurance coverage. More businesses and individuals are concerned about adhering to liquor liability legislation and concerned about exposures from serving alcohol, specifically to minors. There are many minors who circumvent the legal drinking age by coercing peers to provide alcohol, acquiring fake identification, and other inappropriate procurement.

Liquor liability insurance is the first type of coverage to be discussed. “Liquor liability insurance is a business insurance that protects your business against losses and damages claimed as a result of a patron of your business becoming intoxicated and injuring themselves or others.” (Boop) These types of claims usually take place when a patron of the bar or restaurant has overindulged in alcoholic beverages and lacks the judgment not to get behind a wheel. It is often times difficult for an employee of a bar or restaurant to tell when an experienced drinker has had too much to drink, yet the person who serves the alcohol and the businesses employee can ultimately be held responsible. “Attorneys typically seek a connection to those that have the most to lose, so lawsuits often name liquor manufacturers, distributors and others, along with the business owner and server.” (Tympanick) This can also give rise to joint and several liability. Settlements for these types of lawsuits can be very expensive therefore establishments such as bars and restaurants that lack coverage can be at great risk. Also, many states exclude punitive damages awarded to the plaintiff from being covered by an insurance policy.

The second type of coverage is general liability insurance which is intended to guard or protect owners of a business from claims that can come from a wide variety of sources. When running any business in which you have employees or patrons you have a risk of accidents occurring. This type of insurance protects against bodily injury, property damage, or personal injury claims made by someone else.

Third, is property insurance that covers a business against fires, theft, and natural disasters. Crime insurance is also needed for bars and restaurants. Common crime insurance claims are things such as employee dishonesty, embezzlement, forgery, robbery, safe burglary, computer fraud, wire transfer fraud, counterfeiting, and other criminal acts. “If yours is like the average U.S. business, you can expect to lose six percent of your total annual revenues to employee fraud.” (Fidelity/Crime Insurance) Again in businesses such as bars or restaurants where alcohol is served there can be a greater risk for crime when a patron or employee becomes intoxicated. Assault and Battery insurance is another form of insurance that should be carried by bars and restaurants. The injuries that can occur in a fight can lead to many medical bills which will ultimately be brought back in a lawsuit to the business where the injury occurred. Bodily injury sustained in fights is also one of the leading causes of losses for dram businesses. An umbrella policy for a bar or restaurant is also advisable. An umbrella policy will give a bar or restaurant excess liability insurance to cover liability costs that surpass the original liability insurance. An umbrella policy will act as a blanket over the original policy so that claims exceeding costs of the original policy are covered.

Employment Practices Liability Insurance, (EPLI) provides protection for an employer against claims made by employees, former employees, or potential employees. It covers discrimination, wrongful termination of employment, sexual harassment, and other employment-

related allegations. “It is predicted that three out of five firms will be sued by an employee.” (EPL Insurance) Any business should have EPLI coverage; its applicability is not just limited to bars and restaurants. Products and completed operations coverage is also a necessity for a bar or restaurant. If an injury occurs due to the use of a bar or restaurants products or services provided, the policy would pay for any resulting damages and legal fees. The legal drinking age in the United States is twenty one years of age. “Excessive alcohol consumption contributes to more than 4,600 deaths among underage youth, that is, persons less than 21 years of age, in the United States each year.” (Age 21 Minimal Legal Drinking Age) This is a huge concern with bars and restaurants and their liability associated with underage drinking. With the use of fake identification many underage persons are being served alcohol daily.

General Statistics (According to Underage Drinking Statistics):

Underage Drinkers in the United States	10.8 million
Young People Engaged in Heavy Drinking before ages 19-20	70%
Most of the criminal charges in alcohol poisoning death cases were against those who obtained alcohol for underage drinkers.	
Percentage of underage drinkers who paid for the alcohol they drank	30.8%
Underage drinkers who received alcohol from someone unrelated	37.4%
Underage drinker who received alcohol from parent of guardian	21.1%
Percent of drivers 16 to 20 with invalid driver licenses had BACs .08 or higher	32%
Alcohol sellers who don't ask for identification, therefore potentially selling to minors	2/3
Percent of college students who said they used fake identification	18%

If the United States could implement a program that links identification cards and finger prints with the Department of Motor Vehicles we would be able to eliminate most underage alcohol distribution. The plan would be for identification cards and finger prints to scan into a device located at the establishment selling liquor that would link to the DMV. The device can be used in a couple different ways. First, the bar or restaurant can use the device at the front door in order to let the individual inside. Second, the bar or restaurant can use the device per drink. This means that the purchaser will have to scan their identification and finger per drink which can also control how much a person is allowed to consume. The device will relay if the identification card is valid, along with whether or not the finger print matches that of the name and person pictured on the card. Underage individuals with a non-drivers id or driver's license would also have their fingerprints on record so this would be a very reliable method for ascertaining an individual's true age and identity. Violators could be identified and fined. The DMV records should be linked nationwide to prevent out of state loopholes. This way there would be no way around using fake identification, as underage drinkers would not be able to fake a finger print. An underage person may try to make a mold of a finger print, but that would be very farfetched and an extremely difficult hassle for underage drinkers. It would also require greater sophistication to match the fake identification with an actual individual's finger print. Parties participating in creating the fake identification cards would be easier to prosecute. Large fines or the revocation of a driver's license would also work as excellent deterrents. Potential underage drinkers would be more fearful of repercussions and would be more likely to drink responsibly when they are of age to drink legally. Young adults would be more likely to exercise better judgment and would incur fewer losses due to underage drinking. This would also reduce liability for businesses involved in selling and distributing alcoholic beverages. The use of this device will prevent a

large number of underage alcohol fatalities which in turn will save bars and restaurants a lot of trouble in terms of liability. It would also provide the insurance companies issuing these policies with better loss ratios. The insurance industry could provide premium incentives to encourage adoption rates among insured's, as the initial costs of the program and device may be expensive. The proactive approach to protecting young people and reduced fatality rates would be a positive externality for the insurance industry. It should also translate into better accident rates among the demographic most traditionally responsible for auto accident losses.

Many of the social aspects of networking involve alcoholic beverages. This is certainly a pleasant diversion for many individuals, although it must be managed responsibly. Without the various insurance policies, especially those in surplus and excess liability lines, many companies would be unable to operate due to the insurmountable potential for losses that would exist without a risk transfer option. Surplus and excess lines are some of the most interesting insurance policies for younger insurance professionals and will also appeal to a younger demographic because policies that affect alcohol consumption are topics that appeal to young adults. Younger people are also more likely to be involved in the types of extreme events that give rise to the majority of legal liabilities in bars, restaurants, and college environments since many high school and college students who are underage seek to evade liquor laws and are the best ones to find risk mitigation techniques. It is imperative to continue to provide innovative new insurance solutions and risk mitigation techniques to prevent losses and protect the insured. Insurance companies provide coverage for on a daily basis, and in the auto industry many companies are beginning to track driving behaviors to better differentiate risks. The insurance industry provides fundamental risk transfer capacity, enabling many companies to operate successfully. This

purpose of this paper was to deter underage drinking and provide a comprehensive plan for the insurance industry to provide enhanced solutions and optimal coverage.

Work Cited

- “ABC Law: Article 1”. New York State Alcoholic Beverage Control Laws. Web. 14 Feb. 2012.
<<http://ypdcrime.com/abc/article1.htm>>
- “Age 21 Minimum Legal Drinking Age”. Center for Disease Control and Prevention. Web. 14 Feb. 2012. <<http://www.cdc.gov/alcohol/fact-sheets/mla.htm>>
- “Alcohol Beverage Laws for Retailers Licenses”. Wisconsin Department of Revenue. Web. 14 Feb. 2012. <<http://www.revenue.wi.gov/faqs/ise/atlicns.html>>
- Boop, Gregory. “Liquor Liability Insurance: Serve Safely and Protect your Business”. About.com 2012. Web. 7 Feb. 2012.
<<http://businessinsure.about.com/od/liabilityinsurance/a/liqliabpol.htm>>
- “EPL Insurance Explained”. InsurePro 2009. Web. 9 Feb. 2012.
<http://www.insurepro.net/html/employment_practices_liability.asp>
- “Excess and Surplus Lines FAQ’s”. American Association of Managing General Agents. Web. 14 Feb. 2012. <<http://www.aamga.org/faqs>>
- “Fidelity/Crime Insurance”. Insure Cast 2012. Web. 9 Feb. 2012.
<http://www.insurecast.com/html/crime_insurance.asp>
- Mealey, Lorri. “All About Restaurant Liquor Licenses: How to Apply for a Liquor License”. About.com 2012. Web. 14 Feb. 2012.
<http://restaurants.about.com/od/lawsinsurance/a/Liquor_License.htm>
- “Most Common Violations of ABC Law”. New York State Liquor Authority. Web. 16 Feb. 2012. <<http://www.sla.ny.gov/handbook-for-retail-licenses>>
- “Restaurant/Bar Liability”. Keep Insurance 2010. Web. 9 Feb. 2012.
<<http://www.insuringmyrestaurant.com/restaurant-bar-liability.aspx>>
- T., Buddy. “Crime and Alcohol: Alcohol a Factor in 40 Percent of Violent Crimes”. About.com 2012. Web. 14 Feb. 2012.
<<http://alcoholism.about.com/cs/costs/a/aa980415.htm>>
- Tympanick, John. “Raising the Bar on Liquor Liability Training”. Insurance Journal. Web. 9 Feb. 2012.
<http://www.insurancejournal.com/magazines/features/2006/07/03/71258.htm>
- “Underage Drinking Statistics”. Edgar Snyder and Associates. Web. 1 Mar. 2013
<http://www.edgarsnyder.com/drunk-driving/underage-drinking/underage-statistics.html>

“Winebow Case- Largest Disciplinary Case Settlement Ever”. New York State Liquor Authority. Web. 26 Feb. 2012. < <http://www.sla.ny.gov/winebow-case-largest-disciplinary-case-settlement-ever>>

“2009 Drunk Driving Statistics”. Alcohol Alert. 2011 Alcoholalert.com. Web. 14 Feb. 2012. <<http://www.alcoholalert.com/drun-driving-statistics.html>>