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Bar, Nightclub Owners Urged to Look Beyond Price

Risk management and loss control tools and techniques essential to avoid lawsuits

By Jeffery M. Short for National Underwriter Magazine

Combine a generous amount of alcohol with exotic entertainment, shake it up and what do you get—at least as far as the insurance industry is concerned? The answer is the unique risks served up at bars, nightclubs and some restaurants. While these exposures might give some standard insurers a headache, solutions can be found through wholesale brokers and excess and surplus lines carriers who specialize in this industry sector.

The average restaurant—whether it's a small eatery, a family-style establishment or a fine-dining location—doesn't fall in this category. Most are still written through the standard markets. However, when an establishment adds a dance floor, live entertainment, a DJ or derives more than 40-to-50 percent of its gross receipts from the sale of alcohol, then it typically looks to the E&S industry for coverage.

Those bars, nightclubs and restaurants that rely on alcohol sales are holding their own, reporting relatively small declines in sales despite the poor economy. Fine-dining restaurants cannot say the same, unfortunately. They are reporting sales down as much as 30-to-50 percent in some cases, shrinking insurable exposures for carriers of all stripes.

In addition, restaurants written by the standard markets are facing double-digit rate increases for insurance. This has pushed some of these risks to the E&S market, which is still reporting relatively low rates, plenty of capacity and broad terms available.

There are two primary risks that differentiate bars and nightclubs from restaurants. The average restaurant finds its most common claims when patrons slip and fall, chip a tooth while eating, or became ill after eating. Bars and nightclubs, on the other hand, identify assault and battery as well as liquor as the two biggest liability concerns. In fact, about 60 percent of claims against bars and nightclubs result from assault and battery. These claims involve patrons who get into fights with one another or who claim the security people—either staff or contracted security guards—used unreasonable force in dealing with them. Such claims can be expensive. Just one altercation could easily result in a \$50,000 claim.

With the potential for assault and battery charges, these establishments need to beware of inexpensive general liability policies that exclude assault and battery or reduce the limits available to a small fraction of the typical \$1 million policy—perhaps issuing a \$25,000 sublimit for this coverage.

A minimum limit of \$1 million for assault and battery is recommended—or even better, have the GL carrier include the assault and battery coverage up to the policy limits. Similar recommendations apply for liquor liability—as buyers are cautioned against policies that exclude this important coverage or contain a sublimit. Again, a minimum \$1 million limit for liquor liability coverage is suggested.

This coverage protects establishments from claims that

they served liquor to a visibly intoxicated person or to a minor who subsequently caused death or injury to third parties—those not having a relationship to the bar.

In addition to having adequate liquor and general liability coverage and limits, buyers should consider an excess or umbrella policy to further enhance coverage.

RISK MANAGEMENT

Given the potential for liquor and assault and battery claims, bars, nightclubs and restaurants are advised to use surveillance cameras inside and outside to monitor activity. This way, for example, when a patron claims that a security guard used excessive force, the camera will record the behavior of the patron who prompted the altercation.

Another risk control tool is an activity log, which bartenders and other employees can use to record the date, time and nature of any incident, as well as a description of the patron involved. For example, if the bar stopped serving the patron because he or she was intoxicated, it can be documented and may be able to be used as a defense in a liquor liability claim. Other loss control tools that should be in place include hand stamps and wristbands, which help identify those eligible to drink, as well as beverage service training for both bartenders and wait staff. In addition, security practices are understandably important. Carriers want to know details—such as procedures for removing a rowdy patron, and whether the bar or nightclub employs its own security staff. If an outside agency is hired to provide security, that contractor should provide a certificate of insurance naming the establishment as an additional insured.

Employment practices liability insurance is another essential coverage that defends or indemnifies against employment-related suits. Some of the most common claims are discrimination, wrongful termination, sexual harassment, or failure to comply with statutory hiring requirements or practices. These claims are more frequent in restaurants, but bars and nightclubs also have the same exposures.

With respect to EPLI, more bars, nightclubs and restaurants are increasingly requesting two very important components—wage and hour as well as third-party coverage. Wage and hour claims involve allegations that an employer has violated federal or state laws that govern how employees get paid. Employee claims vary from a simple miscalculation of overtime pay, to whether they took all of their mandated break times. Third-party coverage protects insureds for claims brought by customers, clients or vendors in regards to employment-related suits.

With the standard markets already showing some signs of hardening, more business is expected to move into surplus lines, where there is plenty of capacity to write these risks, as well as the industry expertise to provide the best rates and coverage available.

Security Cameras Helpful at Time of a Claim

One of the insurance companies we represent recently sent us an example of why having security cameras on your business' premises is a worthwhile investment and why they reward owners who install them with discounts.

A claim came in involving an allegedly intoxicated person (AIP) who caused serious injury to a motorcycle rider and passenger. The injuries were serious and the AIP was clearly at fault as he pulled out of the insured's parking lot.

Fortunately, the insured had video which clearly showed that they had not contributed to this terrible accident, and were therefore not liable. The company's claim notes tell the story:

Obtained statement from owner of insured business. See summary.

He has video tape showing that claimant walked into the bar at 1208am, WAS NOT SERVED, and walked out at 1210am. Accident occurred after that and is also on video tape. AIP pulled out in front of the claimant motorcycle, then ran over it when he was turning around.

State police also have a copy of the video and investigated.

This is a great example of how recorded images can save countless hours and dollars in settling a claim. We want to encourage you to install and use security cameras to receive premium credit and help protect yourself from bogus claims.

REMINDER: Illinois Fire Suppression Mandate for 2010

The Illinois Fire Marshal implemented code changes for establishments with cooking equipment last year. We've done mailers and promoted the change in several newsletters now. The change goes into effect January 1st, 2010. If you haven't already, check out the details of the change at <http://www.bretdixonins.com/News%20Articles/1275-ILCookingCode2010.htm> to see if you're ready.

What Food Industry Workers Should Know About Hepatitis

Hepatitis can be an expensive problem for those in the food service industry. If customers become infected, it can result in a large claim and can scare customers away for weeks or even months following the incident.

Two employees at a fast food restaurant in Milan, Illinois were recently serving food while infected with Hepatitis A. During that time, the restaurant served approximately 10,000 patrons resulting in an outbreak in which 25 people contracted the disease and thousands more had to be immunized. The restaurant was shut down for a short period of time by the health department and, while it is now open, their sales are undoubtedly suffering from the bad publicity that they have received. To date, two lawsuits have been filed against the restaurant, one of which is seeking class action status.

While we don't often think of this issue, it is an exposure that all food-serving businesses face. Hepatitis A is contagious, but there are very simple steps that can be taken to prevent its spread.

What Is Hepatitis?

Hepatitis is an inflammation of the liver and is most often caused by a viral infection. There are five types of hepatitis viruses, which are known by the letters A, B, C, D, and E. Types A and E are typically contracted by ingesting food or water contaminated with the virus. Since types B, C, and D are contracted through contact with an infected person's bodily fluid, and since type E rarely occurs in the United States, we'll focus on Hepatitis A for the purposes of this article.

The symptoms of Hepatitis A virus can range from a mild illness which lasts a few weeks to severe illness which lasts for several months. It is spread primarily when a person ingests food or drinks that have been exposed to contaminated fecal matter. It

can be spread from an infected food handler in a restaurant or from food that has been contaminated at some point in processing from the field to the table.

Symptoms of Hepatitis A include fever, fatigue, loss of appetite, nausea, vomiting, abdominal pain, and jaundice. Symptoms will usually appear within 2-6 weeks. Some people never develop symptoms but are still able to spread the disease, potentially causing a large number of people to be infected. The good news is, almost everyone who gets Hepatitis A will recover completely without any lasting liver damage.

What Can You Do?

Hepatitis A can be prevented by vaccination and through good hygiene and sanitation. The most important steps to be taken in food service are to regularly clean all restaurant surfaces and to train employees on proper hand washing. Owners and manager should emphasize cleanliness with their employees and ensure that restrooms and kitchen sinks are always stocked with hand soap and paper towels.

Employees should wash their hands after potential contamination of any sort such as handling food; using the restroom; touching their hair or clothing; sneezing or coughing; eating, drinking, or smoking; taking out the trash; or bussing tables. It is especially important that they thoroughly wash their hands following use of the restroom. The amount of time it takes to effectively wash hands is at least 20 seconds.

By educating employees and enforcing these standards, you can prevent such an incident from occurring, which would hurt both your customers and your business' bottom line.