Henderson Brothers, Inc. White Paper

Your Commercial General Liability Policy, Liquor Liability Exclusion, and Evolving Exposure as an Event Host or Manager: What You Need to Know.

Historically, as a venue destination, your exposure to losses related to the selling, serving, or furnishing of alcoholic beverages was marginal. You could operate day-to-day as a VFW, fire hall, church, museum, or art gallery, host events where alcohol is involved, and rely on a standard form commercial general liability insurance policy to help protect you from losses arising out of over-serving a guest, serving a minor, or selling in violation of liquor sale and distribution laws. Such reliance was reasonable, and coverage was typically provided in these scenarios, because these VFW's and fire halls were viewed solely as non-profit organizations, and not (as discussed later in this article) being in the business of "manufacturing, distributing, selling, serving, or furnishing alcoholic beverages." See, e.g., Newell-Blais Post No. 443, Veterans of Foreign Wars of the United States, Inc. v. Shelby Mut. Ins. Co., 487 N.E.2d 1371 (Mass. 1986); Mutual Serv. Cas. Ins. Co. v. Wilson Twp., 603 N.W.2d 151 (Minn. App. 1999).

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The insurance anatomy and treatment of these scenarios under an insured's commercial general liability policy, containing a standard liquor liability exclusion is as follows.

The insuring agreement in section 1 of the standard commercial general liability policy reads, "*[the insurance carrier] will pay those sums that the insured becomes legally obligated to pay as damages because of 'bodily injury' or 'property damage' to which this insurance applies*." This means that when the insured is found, for example, to be negligent and legally obligated to pay a third party who was injured due to the insured's negligence, coverage, in theory, is triggered. Section 2 of the commercial general liability policy, however, contains exclusions to take away certain aspects of this coverage. A liquor liability exclusion typically reads:

It is important for your organization to be more thoughtful about how your risk management initiatives address the risks arising out of your events, fundraisers, and host operations.

Liquor Liability

"Bodily injury" or "property damage" for which any insured may be held liable by reason of:

(1) Causing or contributing to the intoxication of any person;
(2) The furnishing of alcoholic beverages to a person under the legal drinking age or under the influence of alcohol; or
(3) Any statute, ordinance or regulation relating to the sale, gift, distribution or use of alcoholic beverages.

This exclusion applies only if you are in the business of manufacturing, distributing, selling, serving, or furnishing alcoholic beverages.

The last clause of the liquor liability exclusion is what saved VFW's and fire halls during coverage disputes in the past. Courts would interpret this last clause to not be applicable, unless the insured seeking coverage was a restaurant, bar, hotel, or some other establishment profiting from the manufacture, distribution, sale, or service of alcoholic beverages. In other words, categorically, many courts found event hosts to not be classified as this type of business. As a result, these event hosts would have access to coverage via their general liability policies for losses related to the alcohol consumed and their events.

In contrast to this view, some coverage scenarios may not be as clear. More and more frequently, coverage disputes are reaching resolutions based on fact-intensive evaluations of what does it mean to be "*in the business of*." As one court described this coverage evaluation:

[the] reading of the relevant 'in the business of' language in the context of the entire policy and the exclusion, it is clear that the provision is intended to distinguish an insured who occasionally serves alcohol, from an insured who is involved with the service of alcohol with such regularity that the insured represents a significantly greater insurance risk. . . . [Merely managing or supervising a bar in operation at the insured's establishment may not constitute being 'in the business of" . . . In considering the common usage of the word "manage," however, this Court [interprets the] definition of the word, 'manage' to include the following:

- "to direct or carry on business or affairs."
- "to control and direct . . . to direct or carry on business or affairs."
- "to control and direct, to administer, to take charge of . . . to carry on the concerns of a business or establishment."
- "to control or organize someone or something, esp. a business."
- "be in charge of a business, organization, or undertaking." and
- "if you manage an organization, business, or system, or the people who work in it, you are responsible for controlling them."

Under these common dictionary definitions and usages of the word 'manage,' one who manages a business directs, controls and/or is in charge of and/or is responsible for that business. Thus, as the entity alleged to had been 'managing' [a bar service], that entity was . . . in the business of selling, serving or furnishing alcohol.

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Transportation Insurance Company v. Healthland Hospitality Group, LLC, 2:15-cv-04525 (E.D. Pa. Nov, 20, 2017); see also Mustard v. Owners Ins. Co., No. 13-CA-3362 (Ohio Ct. App. Mar. 5, 2014). The court found the liquor liability exclusion to apply and no coverage afforded.

Important facts that would impact an organization's exposure under

this type of coverage analysis are the regularity and frequency of liquor sales on the insured's premises, the insured's revenues derived from liquor sales (i.e. the host insured outsources the liquor service to a caterer but shares a portion of the sales), and the management, training, and oversight of bar and non-bar staff.

Considering how these two different views could lead to dramatically different results in coverage, it is important for your organization to be more thoughtful how your risk management initiatives address the risks arising out of your events, fundraisers, and host operations. Your status as a charity or for-profit entity may not be determinative of how you expect your commercial general liability policy to respond. Your organization may need to discuss obtaining a standalone liquor liability policy, and your organization should most certainly carefully consider the specifics of how and when alcohol may be sold, served, and/or furnished about your premises.

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