

Insurance Fails to Cover Drunk Driving Accident

Resource Type: Articles

Topic: Facility, Program and Transportation Safety, Insurance and Risk Financing

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Veterans of Foreign Wars Post has no insurance to defend it against a suit for injuries caused by a person drinking at the Post and then causing an automobile accident, according to an appellate court in Missouri.

The coverage is precluded by an exclusion for activities "in the business of" serving alcohol. (*Auto Owners (Mutual) Insurance Co. v. Sugar Creek Memorial Post No. 1976, WD 62120, 9/30/03.*) Coverage for accidents caused by drunk drivers is a recurring problem for nonprofit organizations. Different courts have taken different approaches to resolving the issue. When the Post was sued by relatives of individuals killed in an auto accident caused by a driver who had allegedly been furnished alcoholic beverages while visibly intoxicated, it turned to its insurer for defense.

Serving Alcohol at Special Events

Planning to serve alcohol at your event?

1. Make certain that the facility permits it and inquire about any special conditions (requiring the use of professional bartenders or limiting the time liquor can be served).
2. Research laws specific to your community and state that govern the sale and consumption of alcohol. Some states impose very strict liability on organizations that sell or provide alcoholic beverages, while other states hold the drinkers solely liable for their actions. It may be necessary to procure a special license from the appropriate regulatory officials to serve alcohol.
3. Ask your insurance agent or broker for assistance in determining whether your current insurance policy covers events where alcohol is served or if additional liquor liability coverage is needed.
4. Decide if the nonprofit's paid or volunteer staff, or an independent contractor will serve the alcohol. If using a caterer, most of the risks can be transferred to that company when you have obtained the proper additional insured endorsement from the company's carrier. However, if your organization is going to furnish the alcoholic beverages:
 - Identify the controls needed to make sure that intoxicated or underage patrons aren't served.
 - Determine how you will handle someone who becomes intoxicated.
 - Decide whether to serve beer, wine and/or hard liquor.
 - Choose an open bar or cash bar.
 - Ask if the bartenders have any special training, such as TIPS responsible alcohol management program.
 - Arrange with a local transportation company to provide services for intoxicated guests.
 - Decide how long before the close of the event will you stop serving

Adapted from [Managing Special Event Risks: 10 Steps to Safety](#).

Its commercial general liability insurance policy excluded injury caused by furnishing drinks to a person under the influence, but only if the Post was "in the business of manufacturing, distributing, selling, serving or

furnishing alcoholic beverages.”

The carrier sought a declaratory judgment that it was not responsible for the claim. The trial court agreed and the Post and the plaintiffs appealed.

The Post had operated a licensed bar open to the public since 1975. It employed a bar tender and a club room manager and generated several thousand dollars of gross revenue a month.

Neither side of the litigation found a Missouri case interpreting the “in the business of” provision.

The Post and the plaintiffs, however, cited a line of cases in other states, including New York, Massachusetts and New Hampshire, holding in favor of the nonprofits insured under similar language.

In those cases, the courts generally took the position that the provision was ambiguous because a nonprofit could not be in the business of selling alcohol when its nonprofit purpose was something other than business.

In one case, a court said that the fact that the nonprofit American Legion Post derived substantial revenues from the operation of its bar did not determine the outcome. “It is the character of the organization, not the profitability of its liquor sales...which determines whether or not an exclusionary clause...applies,” it said.

The Missouri court was more persuaded, however, by another line of cases, including decisions in Wisconsin, Washington, South Dakota, and Louisiana, which had generally held that the exclusion describes the activities of an organization rather than its corporate purpose or character.

“When determining whether a liquor-related liability is excluded from coverage, the focus of the analysis should be on the activities of the insured and the risks inherent in those activities,” the Missouri Court said, “rather than on the corporate status of the insured.

“The VFW’s bar exposed its insurer to the same risks inherent in other drinking establishments operated by for-profit entities.... We find that in the context of the policy at issue, given the activities of the VFW, a reasonable person in the position of the VFW would have understood that the VFW was ‘in the business of...selling...and serving alcoholic beverages.’ Therefore, the VFW was excluded from liability coverage for selling alcohol to [the driver].”

“We do not believe that the term ‘in the business of’ is ambiguous as used in the policy issued to the VFW simply because the dictionary holds more than one meaning for the term ‘business’.” Community Risk Management & Insurance, January 2004