



## BYOB: Liquor Liability Coverage Complications

June, 2015

Property Casualty 360

Welcome to June! The month of baseball games, summer picnics, graduation parties and weddings! Can you guess from that list—especially the last two—what coverage issue jumps to mind? That's right: Liquor Liability!

Although there is an increasing awareness of the advantages of either limiting or eliminating alcohol from various previously beer-drenched activities, each of these social occasions is still traditionally a cause for imbibing. Although the personal lines exposure of pure host liquor is a topic for another day, let's consider a key trend in otherwise commercial/business activities: BYOB.

Whether translated as "Bring your own bottle" or the more colorful and likely more accurate "Bring your own booze," the trend is growing steadily, driven by convenience, establishment preference or simply a lack of available—or affordable—liquor licenses. Adding to the potential coverage complexity is that the practice can take a multitude of forms:

- **Traditional:** Long practiced in the "dry county" areas of the country, customers simply bring their own beer (perhaps in a cooler), wine or liquor (in the traditional brown bag) to the eating establishment. The establishment provides food and nonalcoholic drinks, and those who wish the harder stuff simply serve themselves from their personal stash.
- **Hybrid #1:** Same as Traditional, except the establishment may provide cups, glasses, mixers or setups for the harder liquor.

- **Hybrid #2:** Same as #1, except the establishment now offers to take the mixed drinks or brews and serve the rest of the party around the table.
- **Hybrid #3:** The customer brings in the liquor (typically wine), and delivers it to the designated establishment staffer (the wine steward or waiter). The establishment then serves the wine to the party just as if the wine came from the establishment's own supply.
- **Hybrid #4:** Any of the above where the establishment charges a fee for the BYOB privilege.

You can easily see how the establishment's potential exposure to liquor liability steadily increases as we move from Traditional to Hybrid #4. With other possible variations being created and practiced, at what point does the establishment—which in all of the variations may describe its process as BYOB—stretch the line of "I'm only hosting, so there is really no need for separate liquor liability" to the breaking point? What will your underwriter say? For those who represent a multitude of carriers, what will each of your potential underwriters say, and how might their opinions differ?

### **Professional Exclusion**

**This is the perfect point at which to take a look at the applicable form language. Here is the ISO CG 00 01 04 13 exclusion:**

#### **c. 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 even if the claims against any insured allege negligence or other wrongdoing in:*

- (a) The supervision, hiring, employment, training or monitoring of others by that insured; or*
- (b) Providing or failing to provide transportation with respect to any person that may be under the influence of alcohol;*

*if the "occurrence" which caused the "bodily injury" or "property damage", involved that*

which is described in Paragraph (1), (2) or (3) above.

*However, this exclusion applies only if you are in the business of manufacturing, distributing, selling, serving or furnishing alcoholic beverages. For the purposes of this exclusion, permitting a person to bring alcoholic beverages on your premises, for consumption on your premises, whether or not a fee is charged or a license is required for such activity, is not by itself considered the business of selling, serving or furnishing alcoholic beverages.*

For those who haven't visited this exclusion recently, permit me to provide a quick reminder of a few salient facts:

- This is predominantly a professional exclusion. Note the emphasis on intoxication, drinking age and laws. Nothing excludes claims arising from liquor as a food or beverage in and of itself. For example, if someone were to sue, claiming a recent trip to the emergency room was engendered by a spoiled worm or rancid wine, that would be treated as any other product claim. The alleged liability is the same as if the cause were a spoiled sandwich or rancid coffee. But serve that liquor to an already intoxicated or underage person, and the CGL coverage will disappear.
- The additions to the exclusion—(a) and (b)—created in the 2013 ISO filings don't alter the basic professional intent, only reinforce it. If the server is alleged to have violated what's excluded by (1), (2) or (3) due to improper training or supervision, the exclusion still applies. That same lack of training or supervision cited in (a) also may be the major reason for the violation of (b): the server can claim he was unaware of the requirements involving transportation, and how the heck was he to know the guy was under the influence in the first place?
- The second sentence of the last paragraph in the exclusion also was added in the 2013 filing, and it is the key to our BYOB discussion of today. Note that rather than the flat-out exclusion of the previous language, in the new sentence ISO simply introduces the idea that the exclusion *may* apply to BYOB.

My opinion is that ISO faced the same issues discussed previously with our Hybrid examples: When does a BYOB situation turn from "Hey, the customer brought his own beer, so it's his problem who drinks it" to the establishment becoming sufficiently involved to risk creating a liquor liability exposure? Facing those same issues, ISO came to the same conclusion as above: pass it to the underwriters. Let them take the specific facts of a given BYOB situation and determine where their individual carrier line has been crossed. At that point the underwriter can either let the coverage ride along under the CGL (BYOB likely covered) or attach a clarifying liquor exclusion, such as the CG 21 50 04 13 Amendment of Liquor Liability Exclusion.

#### **Endorsement Draws the Line**

Here is the key sentence from the endorsement for our discussion: *This exclusion applies only if you (4) Permit any person to bring any alcoholic beverages on your premises, for consumption on your premises.*

Voila! No more grey area, no more need to wonder where the line is crossed. Under the CG 21 50, BYOB equals excluded. Now you can clearly see your client or prospect's need to look to separate Liquor Liability Coverage forms such as the CG 00 33 or CG 00 34, to which you will now need to add the CG 24 06 04 13, Liquor Liability—Bring Your Own Alcohol Establishments, which delivers the liability coverage goods in a single paragraph:

**1. Insuring Agreement**

*An insured who permits any person to bring any alcoholic beverage on their premises, for consumption on the premises, whether or not a fee is charged for such activity, will also be considered selling, serving or furnishing alcoholic beverages.*

Ah, short and sweet. Just like an ice-cold June lemonade or iced tea. Cheers!

Copyright © 2015 PropertyCasualty360, A Summit Professional Networks Website

[Return to Article Index](#)

[Forward this article to a colleague](#)

Address To	Recipient Name
Subject	
Message	
<input type="button" value="Send"/> <input type="button" value="Reset"/>	

