E&O Angle

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Avoiding Liquor Liability E&O Claims

Agents who write coverage for establishments such as bars, restaurants, bowling alleys, liquor stores, convenience stores, private clubs, marinas and other establishments that serve alcohol need to be familiar with liquor liability coverage.

The liquor liability coverage form (sometimes referred to as "dram shop coverage") can provide liquor liability insurance for insureds in the business of manufacturing, distributing, selling, serving or furnishing alcohol—activities generally subject to the liquor liability exclusion in the standard commercial general liability policy. In the liquor liability coverage form, the insurer agrees to pay sums that the insured becomes legally obligated to pay in damages because of bodily injury or property damage resulting from selling, serving or furnishing of any alcoholic beverages. For example, coverage kicks in if a bar owner is sued by a motorist who was injured by an intoxicated patron who left the insured's premises. The coverage form generally does not provide coverage for a host at a private function such as a party in someone's home.

If you know that a customer is going to sell alcoholic beverages, offer liquor liability coverage. You should advise the customer that a BOP or a commercial general liability policy generally will not cover selling liquor, so he must obtain separate coverage for liquor liability. If the customer declines to purchase the additional coverage, have the customer sign a document acknowledging that you offered him the coverage and it was refused. Make sure to provide the customer with a copy of this document and put a copy in the file. You may even want to consider not dealing with customers who will not buy this coverage if they are selling liquor.

When writing liquor liability coverage, carefully work through the application process with the insured. Many of the applications require specific information such as prior violations of laws relating to alcohol sales, offering of drink specials, if minors are allowed on the premises in the evening hours, if the applicant has had any recent assault and battery claims and what percentage of the business's sales is related to alcohol. Do not assume that you know the answer to any of these questions, and do not just transfer the information from a prior application. A misrepresentation on the application could cause the carrier to void the policy even after the claim rises. For this same reason, it is also important to obtain the customer's signature on the application.

Liquor liability coverage is often sold through the excess and surplus lines market. Agents should be familiar with the applicable rules and regulations of the market before attempting to write that business. Obviously, a licensed E&S broker must be involved in the transaction. Review with your customer any restrictions on the obtained coverage, such as exclusions for sales to minors or any warranties.

When dealing with clients who currently sell or might in the future sell alcohol, it is critical to document that you have relayed the importance of obtaining liquor liability coverage and offered such coverage. Juries faced with a severely injured victim of a drunk driver are sometimes quite generous. Documentation is your best protection against E&O claims by a tavern or liquor store that opted not to purchase liquor liability coverage. IA

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Remember to Follow Up

A common error occurs when a customer opens or purchases a new establishment such as a restaurant or convenience store with future plans to sell liquor. Sometimes the customer has not obtained the liquor license and does not want to incur the extra expense of premiums for liquor liability. Thus, he says that he will add the coverage when he becomes licensed to sell liquor.

Unfortunately, it is not uncommon for the customer to not follow up with obtaining the coverage before an incident arises. At this point, the client will testify that he thought he had full coverage on his business or that he expected the agent to add the coverage (especially in a smaller community or if the agent is a patron of the establishment).

In a situation like this, make it clear to the customer who is responsible for following up at the appropriate time to obtain the liquor liability coverage. Prudent agents will diary for specific dates and follow up themselves. Perhaps an even better practice is to document this in a letter to the customer.

—E.B.