

Liquor Liability For Sportsplexes

(John M. Sadler, 05-27-11)

Sportsplexes that sell beer, wine, or liquor to patrons can be held liable for injuries resulting from such sales (both to the patron and to other third parties) under the following circumstances:

- 1) The patron was under the legal drinking age
- 2) The patron was obviously intoxicated
- 3) Statutes, regulations, or ordinances (ex: "dram shop" acts or alcoholic beverage control laws) or case law that imposes "strict liability" for the sale of alcoholic beverages even if it can't be proved that the serving of the alcoholic beverage was the "proximate cause" of the injury.

General Liability Insurance Does Not Cover Injuries Arising From Sales Of Alcoholic Beverages

The standard General Liability policy form has an exclusion for businesses that manufacture, distribute, sell, serve, or furnish alcoholic beverages. Therefore, sportsplexes that sell alcoholic beverages can't look to their own General Liability policy for coverage.

Liquor Legal Liability Insurance Must Be Purchased

Sportsplexes that sell alcoholic beverages must purchase Liquor Legal Liability which can be accomplished in two different ways: 1) the existing General Liability policy may be endorsed to add Liquor Legal Liability for an additional premium charge or, 2) a stand alone Liquor Legal Liability policy can be purchased from a number of sources that specialize in this type of coverage.

Sportsplexes may serve alcoholic beverages to patrons on a direct basis with their own staff or in many cases they may contract out the serving of alcoholic beverages to a vendor. **Primary Liquor Legal Liability** insurance is needed in the event that the alcohol sales are made by the staff of the sportsplex which holds the liquor license. On the other hand, **Contingent Liquor Liability** insurance is needed if the sales are made by a vendor under contract which holds the liquor license.

Estimated Premium Costs

A leading source of Liquor Legal Liability insurance for sportsplexes, K&K Insurance Group, Inc., provides the following guidelines for premium indications:

Minimum Premium: Ranges from \$500 to \$2,000 depending on the state where the risk is located.

Rate Per \$1000 of Beer, Wine, Liquor Sales For Primary Liquor Legal Liability: varies from \$5 to \$20 depending on past loss experience of sportsplex, state where sportsplex is located (states with strong Dram Shop Laws are more expensive), and type of alcohol served (ex: more expensive to serve liquor).

For Contingent Liquor Legal Liability, the rates are the same as Primary except that the sales are based on the percentage of income that is received by the sportsplex under the terms of the contract with the vendor. For example, if the contract provides the sportsplex is to receive income of 25% of alcohol sales made by the vendor, the rate would only be applied to the 25%.

Additional Considerations If A Vendor Sells Alcohol For Sportsplex

If the sportsplex contracts out the alcohol sales to a vendor, it is imperative that there is a written contract in existence to protect the legitimate interests of the sportsplex.

Such contract should contain a **strong indemnification/hold harmless provision in favor of the sportsplex** whereby the vendor agrees to indemnify and hold harmless the sportsplex and its directors, officers, employees, and volunteers against any and all claims, damages, and expenses, including reasonable attorney's fees arising out of the subject matter of the contract which includes the sale of alcoholic beverages.

In addition to providing evidence of the normal insurance coverages that are required of vendors such as General Liability, Workers' Compensation, Business Auto, etc., the vendor must also provide **evidence of currently valid Liquor Legal Liability coverage** with an insurance carrier that is rated at least A- in Best's Key Rating Guide and such policy must contain at least a limit of \$1,000,000 Each Claim (even though it is recommended that a limit of \$5,000,000 or more be carried). In addition, the sportsplex should be named as "Additional Insured" under the Liquor Legal Liability policy.

Why Is Contingent Liquor Legal Liability Needed If The Vendor Sells Alcohol For Sportsplex?

It is recommended that the sportsplex buy its own Contingent Liquor Legal Liability policy even if its vendor provides an indemnification/hold harmless provision in favor of the sportsplex and carries its own Liquor Legal Liability policy with adequate limits naming the sportsplex as "Additional Insured".

Many sportsplex owners may think that it is "overkill" to carry a Contingent Liquor Legal Liability policy when the vendor already provides the protections outlined above. However, things can go wrong with the vendor's insurance. For example, the vendor's insurance can be cancelled for non payment of premium (and the sportsplex owner may never be notified) or the limits of the vendor's policy may be exhausted in a lawsuit leaving little or no limits to the benefit of the sportsplex that has been named as "Additional Insured".

Sportsplex, arena, and facility owners and operators are usually "shot gunned" into liquor liability lawsuits under various legal theories of recovery. For example, the following allegations can be made against a sportsplex even if it has contracted out the alcohol sales:

- * The sportsplex was negligent in its hiring and retention of an alcohol vendor that was known to cut corners and turn a blind eye to safety rules in serving patrons.
- * The security provided by the sportsplex should have noticed that a patron was intoxicated and should have thrown him out before he bought two more drinks.
- * The ticket taker provided by the sportsplex should have noticed that a patron was intoxicated and denied admission to such patron.

Underwriting And Risk Management Criteria That Are Considered By Insurance Carriers When Deciding To Accept/Decline Risks Or Debit/Credit The Rates (provided by K&K Insurance Group, Inc.)

Prior Experience Of Owner: How many years of experience does the owner have in managing an operation that sells alcoholic beverages? At least three years of prior experience is preferable.

Alcohol Training For Servers: Have the servers attended a formal alcohol training class such as one put on by TEAM, TIPS, or TAM? These training programs cover topics such as how to properly check for fraudulent ID's and how to notice signs of intoxication.

Percentage Sales Of Alcohol vs. Food: Most underwriters want to make sure that alcohol sales are less than 50% of total combined sales for alcohol, non alcoholic beverages and food.

Limitation Of Number Of Drinks Sold: No more than two drinks should be sold to a patron at any given trip to the concession stand.

ID's Checked For All Patrons Regardless Of Age

No Consumption By Athletic Participants Prior To Play: This should be prohibited to reduce the incidents of athlete injuries which can have an impact on the General Liability and Participant Accident policies of the sportsplex.

Public Not Allowed To Bring Own Alcohol Into Facility: Consumption of alcohol outside of that purchased at the concession stand makes it more difficult to monitor patron intoxication.

Sale Of Alcohol Cut Off Prior To Closing Time: Alcohol sales should be cut off at least one hour prior to closing time of sportsplex.

Note: if a sportsplex has not implemented all or most of the risk management controls listed above, it is doubtful that their application will be accepted by an insurance carrier.

\$105 Million Jury Verdict Awarded Against Beer Vendor For Paralysis Caused By Drunken Fan
(source: New Jersey Law Journal, Jan 24, 2005)

A New Jersey jury awarded \$105 million against Aramark Corp., the nation's leading arena concessionaire, in the case of a girl paralyzed in an auto crash caused by a driver drunk on beer who was served at a New York Giants football game. The NY Giants and the National Football League were also sued and separately settled their cases for an undisclosed amount.

The father of the victim stated that the award "will make liquor vendors and arenas do a better job of enforcing their rules against selling alcohol to fans who appear to be intoxicated. In a few months, you're going to see major changes in the way concessionaires do business.....they will need to show more responsibility, and their insurers will insist on it."

Disclaimer: The content of this article is in no way meant to provide legal advice but instead is meant to convey general principles of risk management guidance. Please consult an attorney in your state for advice on how to protect against liquor liability lawsuits.