



Protecting Your Assets: a Brewery Owners' Insurance Checklist

NanoCon 2023

Jacquelyn Heitman

November 2023

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Jacquelyn Heitman is a partner in Pasich LLP's Manhattan Beach office. She specializes in representing commercial and individual clients in complex insurance coverage disputes. Over her career, she has helped policyholders recover hundreds of millions of dollars from insurance companies.





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AGENDA

Insurance Basics – Who, What, Where, When, Why, and How?

What To Do When a Claim Comes In or a Lawsuit is Filed?

Best Practices To Keep Claims Moving

Policyholder Maxims

Insurance Basics – Who?

Policyholder, Insured

Brokers (Retail, Wholesale, Bermuda/London)

Insurers, Captives, Reinsurers

Insurance Basics – What? First-Party vs. Third-Party Insurance

First-Party Insurance: Covers loss or damage sustained by the insured.

Third-Party Insurance: Covers an insured for claims or suits by third parties alleging that they suffered injury caused by the insured or for which the insured is otherwise responsible.

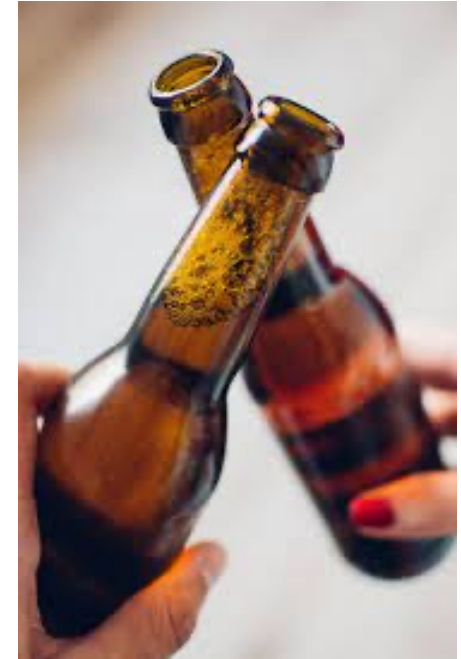
- **Some policies, often referred to as “package” policies, combine first-party and third-party coverages.**

Insurance Basics – What? Breweries: Coverages to Consider

- **Liquor Liability Insurance**
- **Property and Business Interruption Coverage**
- **Commercial General Liability Coverage**
- **Directors' & Officers' Liability Coverage**
- **Errors & Omissions Liability Coverage**
- **Employment Practices Liability Coverage**
- **Cyber Coverage**
- **Products Liability Insurance**
- **Commercial Auto Insurance**

Liquor Liability Insurance

- Liquor liability insurance, also known as “dram shop insurance,” covers businesses that serve or sell alcohol
 - Alcohol-related incidents, accidents, injuries, or property damage and related lawsuits
 - Over-serving that leads to harm to oneself or others and related lawsuits
 - Underage drinking
 - Defense costs relating to lawsuits arising out of alcohol-related incidents
 - Settlements & judgments relating to alcohol-related incidents



Property and Business Interruption coverage

- **Property Damage Coverage**
 - Covers damage to and loss of property
 - Buildings, equipment, business property
 - Typically, “all-risk” coverage
 - Damage generally covered unless an exclusion applies
 - Covers the cost to repair or replace, as warranted

Property and Business Interruption coverage

- **Business Interruption Coverage**
 - Reimburses the insured for the amount of profits the insured would have earned but for the covered damage
 - Not essential that the insured directly suffer the property damage
 - Contingent business interruption coverage
 - Ingress/egress and civil authority
 - Covers extra expenses incurred to continue business operations until property has been repaired or replaced

Commercial general liability coverage

- **Covers Bodily Injury and Property Damage Claims**
- **Also covers claims alleging various personal and advertising injuries**
 - False arrest, detention, or imprisonment
 - Libel, slander, and defamation
 - Invasion of privacy
 - Infringement of copyright, trademark, and slogan
- **Duty to defend potentially covered claims, as well as indemnify insured against covered settlements and judgments**

Directors' and officers' liability coverage

- **Covers liabilities asserted against directors and officers for “Wrongful Acts” committed in their capacity as a director or officer**
 - Usually includes past, present, and future directors and officers
 - Covers the corporation if it indemnifies the directors and officers or the directors and officers directly if the corporation is unable to indemnify them
- **Covers the insured entity against securities claims and, in some cases, other errors and omissions**
- **Coverage is generally written on a “claim-made” or “claims-made-and-reported” basis**

errors and omissions liability coverage

- Also known as “Professional Liability Insurance”
- These claims typically include allegations of negligence, misrepresentation, or inaccurate advice
- An E&O policy typically covers sums the insured becomes legally obligated to pay by reason of any act, error, or omission arising out of an insured’s professional services
- Coverage is generally limited to “professional services” or “business of the insured”
 - Pay close attention to this definition to be sure all business pursuits are covered

employment practices liability coverage

- **Covers employment-related claims that are typically excluded by CGL and other liability policies**
- **These employment-related claims can include:**
 - Wrongful termination
 - Breach of employment contract
 - Employment-related retaliation
 - Employment-related harassment
 - Employment-related discrimination
 - Failure to adopt or enforce policies or procedures
 - Employment-related misrepresentations

employment practices liability coverage

- **EPL policies typically exclude coverage for certain employment-related statutes, such as:**
 - Employees Retirement Income Security Act
 - Fair Labor Standards Act (except the Equal Pay Act)
 - National Labor Relations Act
 - Worker Adjustment and Retraining Notification Act
 - Consolidated Omnibus Budget Reconciliation Act
 - Occupational Safety & Health Act
- **The exclusion often includes claims arising under “similar” state laws**

Other Insurance?

- **Products Liability Insurance**- provides coverage for businesses that manufacture, distribute, or sell products. It is designed to protect businesses from potential liabilities and financial losses arising from injuries or property damage caused by their products
- **Commercial Auto Insurance** – provides coverage for company’s use of cars, trucks, vans and other vehicles in the course of carrying out a business
- **Workers Comp Insurance** – coverage for employees who get sick and injured on the job. Worked in some states.
- **Cyber Coverage** – coverage for malware attacks, cyber crime, third party attacks on customer data

Insurance Basics – What and When? Common Insurance Claims for Breweries

- Liquor Liability Claims
- Bodily Injury Claims
- Property Damage Claims
- Employment Claims
- Professional Liability Claims

Insurance Basics – How?

How to Read An Insurance Policy



Front to Back!



Print it Out!



Flags/Tabs



Annotations in the
Margins



Consult Your Broker
– missing
pages/forms/endors
ements, non-
concurrencies,
errors?

DECLARATIONS

	Policy No.: 47-EPP-302645-05	Renewal of: 42-EPP-302645-04
1. Named Insured:	NASDAQ, Inc.	
Mailing Address:	1 Liberty Plaza New York, NY 10006-1404	
2. Insurer:	National Fire & Marine Insurance Company	
3. Policy Period:	From: June 01, 2020 to June 01, 2021 12:01 a.m. local time at Mailing Address listed in Item 1, above.	
4. Limit of Liability, Retention and Retroactive Date:		
A. Aggregate Limit of Liability for all Claims, Breaches and Extortion Threats subject to the following Aggregate Sublimits in 4(B) below:	\$10,000,000	
B. Insuring Agreement	Sublimit of Liability	Retention*
Technology and Professional Liability Coverage	\$10,000,000	\$5,000,000
		Retroactive Date
		Full Prior Acts

*\$10M retention for Regulatory Defense Coverage not tied to a 3rd party claim and \$1M Retention for Corporate Solutions.

Insurance Basics – How? Anatomy of an insurance policy

- **Declarations page**
- **Coverage grants**
- **Exclusions**
- **Conditions**
- **Definitions**
- **Endorsements**



Insurance Basics – How?

the RULES OF CONSTRUCTION

Generally viewed as contracts of adhesion

All terms are to be given meaning and effect, rendering no term superfluous

Exclusions are construed narrowly

Exclusions do not apply unless they are clear, unmistakable, and unambiguous

Ambiguous drafting construed against drafter/insurer



What To Do When a Claim Comes in Or A Lawsuit Is Filed?

Do Not Overlook Any Sources of Coverage

- Check all potentially applicable policies
 - Different lines of coverage
 - Different policy periods
 - Named insured and additional insured status
- Check all contracts and indemnity agreements
- Certificates of Insurance
- Reliance on insurance broker

provide Timely Notice

- **When notice is required**
 - Generally, as soon as is practicable once you are aware of a loss, suit, or claim
 - Some policies impose stricter reporting deadlines, so review your policies carefully
 - Claims-made and reported policies
 - Crime and Cyber policies
 - Notice of Circumstances (i.e., notice of anticipated claims)
 - Review policies to determine when claims must be noticed or reported

Provide Timely Notice

- **How to give notice**
 - Follow requirements in policy strictly
 - Insurance brokers often will assist
- **What happens if there is not “timely” notice?**
 - Prejudice requirement often applies, but not always
 - Result depends on jurisdiction
 - Insurer may dispute coverage for pre-notice costs and expenses
- **Concerns re increased premiums**
- **Alert others to give notice under their policies**

evaluate the insurer's response

- **Potential insurer responses:**
 - Accepting coverage unequivocally
 - Accepting coverage under a reservation of rights
 - Denial of coverage
 - Litigation, ADR
 - Deferred response generally doesn't waive rights
- **Careful re deadlines to file suit or commence arbitration**
 - Statutes of limitations
 - Contractual limitations provisions

understanding insurer duties

- **The duty to act in good faith**
- **The duty to respond and engage**
 - Statutory and regulatory requirements
 - Implied requirements
- **The duty to investigate**
 - What constitutes a reasonable investigation?
 - First-party vs. third-party
- **The duty to pay and resolve covered claims**

Get the Most Out of the Defense Obligations

- **The liability insurer's duty to defend**
 - “Potential for coverage” standard
 - Complaint plus extrinsic evidence
 - Understanding the scope of the duty to defend
 - Duty is immediate and complete
 - Selection and retention of defense counsel
 - Control of defense
 - Hourly rates
 - Includes all reasonable and necessary “defense costs”

Best Practices to Keep Claims Moving

- Understanding the role of your broker
- Document management system in place *before* a loss
- E-mail protocols
- Documentation of business personal property
- Read Proof of Loss & Notice provisions carefully
- Getting the right help after a loss
- The Insurer (and their consultants) are not your friend
- Follow-up regularly

Policyholder Maxims

Before a Claim

- Know the risks and **READ THE POLICY**
- Review the application carefully and answer truthfully
- Pay attention to notice provisions, time to file a claim, deductibles
- Consult with a broker
- Purchase adequate limits
- Cross-check contractual requirements regarding insurance
- Read the sample policy and any proposed endorsements

After a Claim

- Consider all possible insurance coverage
- Read all policies
- Provide proper notice under all potentially applicable policies
- Consider pushing back on anything less than a full acceptance of the claim
- Make no offers or concessions without first confirming coverage and insurer's position
- When in doubt, consult coverage counsel



Questions?



Jacquelyn Heitman
Partner, Pasich LLP
JHeitman@Pasichllp.com
(424) 313-7857

