

LIQUOR LIABILITY LAWSUITS

BY ED TARASKUS

Licensees often become involved in civil lawsuits for allegedly serving a patron too much alcohol. These lawsuits are generally referred to as “dram shop” lawsuits. There are steps that licensees should take once they have received a notice of a claim.

These steps apply to all lawsuits. Your very first acts should be to put your insurance company on notice and hire an attorney as soon as you become aware of a potential claim (immediately after you learn of an incident or after receiving a letter from the plaintiff’s attorney or service of a complaint filed in a Pennsylvania court).

You should talk to your staff about the incident and preserve all evidence, such as incident reports, video surveillance, and sales receipts. Destroying evidence could negatively impact you if an action is filed against you.

If you have been served with a complaint, the Pennsylvania Rules of Civil

Procedure provide that you have 20 days to file a response to the complaint. In the event that you do not file an answer to the complaint within the 20-day period, the plaintiff may send what is called a 10-day default notice via regular mail. Once the default notice is mailed, you have 10 days from the date of the notice to file a response to the complaint or the plaintiff may be entitled to seek a default judgement against you. If a default is entered, you can no longer dispute liability in the case. Therefore, if a default is entered against you for failure to file an answer to the complaint, you should seek an attorney to represent you to determine if you are able to open the default. If the default is opened, you can then file a response to the complaint.

Generally, your insurance company will assign an attorney to defend you and issue a reservation of rights letter from the insurer advising that it will provide you a defense in the action unless it

receives information indicating that the claims are not covered under your policy. While not required, many licensees also wisely choose to hire their own personal attorney to represent their interests in liquor liability or “dram shop” cases.

Taking action before an incident occurs is critical as well. You should always make sure that you have insurance coverage for liquor liability and general negligence matters and that your liability limits are high enough to protect your business. Talk with your insurance broker. ■

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