

# Broker's Notes

## Host Liquor Liability

**April 2006**

There is no question that the issue of "Liquor Host Liability" is getting worse, and unfortunately, while some golf & curling clubs have realized the severity of the problem many still do not believe that it can or will effect them.

Clubs have been lucky over the past 20 years in that the public, and the courts, have not perceived the "traditional golf club" as a significant source of trouble. Unfortunately that is changing and Corporate Tournament behaviour, beverage carts and rampant "private liquor consumption" on the course is changing the attitude. These same activities are making the job of "monitoring and controlling" the quantities consumed much more difficult.

At the same time that the legal "Duty of Care" is being expanded, and the consumption activity at golf clubs is increasing, the courts have been moving to higher and higher award settlements for personal injuries. Twenty five years ago, an individual injury award in excess of \$1 million was virtually unheard of in Canada. Today awards regularly exceed \$10 million. Typical automobile policies (driving home impaired being the source of most of the major losses) only provide \$1 or \$2 million of coverage, so if the Court expects the plaintiff to actually receive the award, it is vital that at least one defendant with assets and insurance is found liable. Golf Clubs fit that description to a "T".

### **Coverage:**

Under ClubPac, Host Liquor Liability is usually not restricted. The full liability limit (including any Umbrella or Excess coverage) applies. Coverage is not subject to a separate large liquor deductible nor is coverage written on a "Claims Made" basis.

### **Exception:**

We do not charge separately for Liquor Liability, nor do we surcharge this exposure as we believe that no amount of premium will offset poor risk management practices. We take a "Loss Control" approach. We require that our Liquor Liability Questionnaire be completed by the club and if our underwriting standards are not met then coverage is limited to \$200,000. including defense costs.

As soon as our minimum standards are met, the coverage limitation is removed.

### **Underwriting:**

The Court cases in virtually every province have made it perfectly clear that if a lawsuit is filed against a commercial liquor host there is only ONE defense. The host must be able to "PROVE" that it did everything that could be reasonably (reasonable in the court's mind) expected to prevent the impaired patron from injuring him/herself or others.

Towards this end we require:

- i. As already mentioned, that our Liquor Liability Questionnaire be completed by the club. The form is both an underwriting application and a “educational reminder”. Ideally the answers to all of the questions should be “yes” and the club owner or manager completing the form should realize this fairly quickly.
- ii. One of the only ways of proving appropriate behaviour by all staff is to able to prove that all staff have adequate training. Every province has an “officially approved” training program. Unfortunately it is only fully legally required in four provinces (BC; MB; NS; & PEI) and required for post-1997 licensees in Ontario. Obviously we require compliance with the law in those provinces.

In the other five/six provinces “approved training” is optional, at law, however we require it as our minimum underwriting standard, in all provinces. Clubs who do not require and provide the recognized approved training to their staff are automatically subject to the limited coverage, until training is implemented.

- iii. Knowing what to do is obviously not effective if the practices are not implemented and followed. Our Liquor Questionnaire essentially reflects the procedures and practices recommended by the recognized training programs. Obviously not every club can implement every recommended process, but a preponderance of “No’s” on the questionnaire would likely result in the club being offered only a reduce limit of coverage.

We have already paid a number of Host Liquor liability claims at golf clubs ranging from \$30,000. to \$100,000. and have open files on a number of others with one writ demanding in excess of \$10 million dollars. In this particular case the injuries are extreme, long term and permanent, there is no question about the responsibility of the impaired patron/driver of the automobile, and the golf club is the only defendant with assets or insurance. Neither the driver nor the owner of the automobile has any significant assets and neither has automobile insurance.