

# INSURING BARS AND RESTAURANTS

*Embrace the business. Your clients will probably be around for a while*



By Joseph S. Harrington, CPCU

**D**o you have a favorite lunch place with a sandwich “to die for”? How about a dinner spot where you and your significant other relax and reconnect? Or a pub where you and your colleagues drink to your struggles and successes?

Now, how long has that place—or those places—been around? Probably quite a few years, if it has become a fixed part of your life. Pity the person who does not have any such place.

The point of all this: To paraphrase Mark Twain, reports of the death rate for restaurants are greatly exaggerated, or at least misleading. For several years now, the restaurant business has

been pushing back against the notion that “90% of restaurants fail in their first year.”

That idea, asserted by celebrity chef Rocco DiSpirito in a 2003 television commercial, became folk wisdom in the absence of countervailing evidence. A more balanced assessment of the market steadily emerged, however, and was authoritatively stated in a 2014



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President  
ProHost USA



paper—*Only the Bad Die Young: Restaurant Mortality in the Western US*—by two researchers at the University of California. They concluded that:

“The first-year failure rate of single-establishment restaurants in the Western U.S. (the region they studied) in the past two decades was about 17 percent, belying the urban myth that 90 percent of restaurants fail in their first year. This first-year failure rate was significantly lower than the 19 percent rate of all other service-providing businesses. ... Many types of businesses have far lower survival rates than restaurants.”

Restaurateurs are eager to set the record straight so that commercial lenders will not assume they are a high risk for default. The message also applies, however, to insurance agents and brokers who may balk at writing bars and restaurants for fear that renewal potential will not compensate for the cost of acquisition. If that's the case, they should reconsider.

“With the economy strong, we have not seen much ‘churn’ in this segment, but that is always a risk,” says Jeff Witt, assistant vice president of commercial lines research and development for Arbella Insurance, which concentrates on insuring family-style and fine dining establishments. “That's why we focus on stable establishments.”

### Slow hardening

Indications are emerging that specialty insurance markets may be starting to harden after a prolonged period of relatively soft pricing and relaxed underwriting. If that's the case, the shift is gradual.

“The market for insurance for bars and restaurants is fairly stable,” says Heidi Strommen, president of ProHost USA, a division of Distinguished

Programs. “There are small rate increases on profitable accounts and bigger increases on accounts with losses, but we've not seen any big changes in the market.”

She adds that ProHost finds restaurants to be seeking increased limits on their umbrella and excess liability policies, along with new and/or increased limits of coverage for cyber insurance and employment practices liability insurance. “Demand is increasing as awareness of the potential exposures increases,” she says.

“This is a competitive, stable marketplace,” says Witt. He sees sub-limited coverages emerging for food contamination and spoilage, loss to wine stock, and losses arising from municipal orders to boil water, among other causes. Arbella is packaging several of these coverages in a new restaurant policy it is launching in the summer of 2019.

While Arbella avoids “heavily alcohol weighted” hospitality accounts, in Witt's words, the Brewery PAK Insurance Programs concentrate on a niche within that market: craft breweries and taprooms. An innovation not long ago, breweries and taprooms have matured as a market and are now under “considerable consolidation,” according to Paul Martinez, program manager for Brewery PAK.

“The cream of the trade is rising to the top and the other guys are scratching to survive,” he says. “As a result, a number of brewers are resorting to contract brewing, divesting themselves of their own facilities and opting instead to hire other brewers and/or their equipment.”

### Entry to exit

“Struggling breweries are trying to make themselves stronger by closing

their facilities, reducing their overhead, and brewing elsewhere,” Martinez says. “At the same time, some brewers are using their facilities to brew for others.”

Contract brewing is not new, he says, but was previously utilized by people getting into brewing, not getting out of it. “What used to be a form of entry before owning your own brewery is now also a safety net or exit strategy.”

A shift to contract brewing will reduce demand for property coverage, Martinez notes, which could help some struggling brewers. So far “the market is stable for brewery and taproom risks,” he says. “However, I see the market hardening and rates going up as non-niche carriers exit the market.”

Many breweries and taprooms are seeking higher deductibles on coverage, presumably to cut costs, but the Brewery PAK team cautions them against it. Says Martinez: “We make clear to our clients that, more often than not, the premium savings that result from increasing the policy deductible are not worth it.”

### Risks and claims

Claims against bars and restaurants “are on the rise,” says Adam Lustgarten, casualty general adjuster for the claims adjusting firm Engle Martin & Associates.

Much of the claims activity has been around for as long as the hospitality business, although perhaps intensified by increased “claim consciousness” in the general public and the increased cost of treating illnesses and injuries incurred by patrons.

“Salmonella and E. coli are the main causes of restaurant food poisoning,” Lustgarten says, adding that foreign objects found in food are



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another common source of claims for choking, broken teeth, and other occurrences.

Along that line, Strommen notes that ProHost offers business interruption coverage for loss of income following an incident of foodborne illness, a business income coverage indirectly connected to a liability occurrence.

Kitchen fires are still a leading source of business interruption as well as physical damage losses for restaurants. Witt comments that “we continue to see severe fire losses caused by inadequate safety precautions for cooking.”

Regarding alcohol, Lustgarten asserts that “claims for liquor liability and dram shop violations are more prevalent than ever before.” Staff training is the most effective tool for addressing the risk, he says, but that’s easier said than done in today’s tight labor market.

### Labor and EPL

Bars and restaurants have long relied on unskilled, part-time labor with high levels of turnover and precious little margin for training. Now that jobs with regular working hours and benefits are more plentiful, staffing an establishment is more difficult and more challenging.

“With a limited number of candidates to fill positions, restaurants are often left selecting newer or less experienced staff,” says Witt. “We utilize our loss control services in these cases to help train and provide best practices for food and alcohol service.”

Despite consolidation in the craft brewery business, Martinez finds



competition for brewery workers—a skilled occupation—tightening as growth in the number of very small “nano” breweries creates new competition for “micro” breweries, which have become larger by comparison.

Among other things, “breweries have experienced an increase in sexual

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harassment claims," Martinez says. "It's something brewery owners don't think about when they first open, but as they grow and add more employees their exposure to employment practices claims also grows.

"This issue has become more apparent in recent years as the #MeToo movement has raised awareness of sexual harassment," he adds.

## Cyber exposure

"Cyber liability also presents a substantial risk to breweries," says Martinez. "Any business with a website, or that stores employee and customer information on a network, needs cyber coverage. A cyberattack could damage its website and reputation, and customers' personal information could be stolen. None of this would be covered under a standard general liability policy.

"In fact, many brewery owners overestimate what general liability policies cover," he continues. "They think they have coverage for sexual harassment claims and/or cyberattacks, but they don't realize these risks are not covered by a standard policy. This is why we often recommend EPLI and cyber coverage."

Cyber exposure is a "developing trend" for restaurants, says Witt. "Small and mid-sized restaurants that accept any credit card transactions are vulnerable to hackers," he adds. "Point of sale terminals are particularly susceptible." Arbella has developed a cyber policy to help its restaurant clients respond to a cyberattack.

Witt adds that Arbella is also monitoring the expansion of food delivery service by restaurants, powered in part by online networks such as Grubhub and Uber Eats. "There are concerns here regarding hired and non-owned auto liability, and for any contracts the insured may enter into that impact auto, product, workers comp, or other liability."

In all, "these are the issues restaurant owners and managers are dealing with," says Strommen at ProHost. "A combination of knowledgeable and experienced management with proper policies and procedures plus appropriate insurance coverage will help mitigate the risks."

## Advice for producers

For producers active in the bar and restaurant field, or looking to enter it, Strommen recommends teaming up with a program writer that specializes in this niche.

"Not only will your products be designed for the food industry, but you will also work with underwriters who understand the class of business," she says. "Food and restaurant specialists are usually product leaders for the industry.

With that expertise, you can bring new, specialized coverages to the table to discuss with clients and prospects."

Strommen advises agents and brokers to "learn to speak the language" of restaurant and bar owners by reading industry publications on restaurant management and keeping up with the local restaurant "scene."

Martinez will tell you there's no substitute for first-hand observation and understanding of your risks, which can prove to be quite unusual.

"An agent with a brewery client should plan to visit that brewery weekly as a patron," he says. "He or she may see a notice for an upcoming

event and caution the client against hosting, say, that polar bear plunge, sumo wrestling tournament, or axe-throwing contest.

"The risk involved could well outweigh the awesomeness of the event." ■

## For more information:

**Arbella Insurance**  
www.arbella.com

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www.pakprograms.com

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*For more information contact Debra A. Merlo  
DMerlo@berkleyluxurygroup.com*



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301 Route 17 N, Suite 900, Rutherford, NJ 07070  
Tel: (201) 518-2500 • Fax: (201) 342-6381  
www.berkleyminedining.com