



## "I'm Not Covered?!"

By Daniel Bestul

Most business owners have one or more insurance policies which are intended to cover them if something goes wrong; this, after all, is the purpose of insurance. But is your insurance right for the risks of your business? You may not have the coverage you think you have.

Suppose your small retail business recently began carryout sales of beer and wine. Earlier today, the sheriff served you with the papers for a lawsuit, which claims you sold beer to Bud Bush. The lawsuit alleges Bush was a minor, although you know he was 21 at the time he bought beer. The lawsuit also claims that Bush gave some of the beer to Johnny Young, who was 18 at the time. Johnny Young was driving, and was in an accident the evening he drank the beer; a passenger who was in Johnny's car is suing you.

Before getting your liquor license, you reviewed the Wisconsin Law, and know that you can't be held liable for injuries arising out of your selling alcohol to someone who is of legal drinking age. You send the complaint along with a copy of Bud Bush's birth certificate, to your liability insurance company. They'll take care of everything for you, right?

Maybe.

Then again, maybe not.

Another example. The sidewalk in front of your shop is being replaced. The work crew couldn't finish the job in one day; they have to put the forms in place, and will return the next morning to pour the cement.

During the night, though, it rains. Unbeknownst to you, or anyone else, there is a crack in your foundation, directly in line with the section of sidewalk that was removed. Water which would usually flow down the gutter and into the storm sewer winds up in your basement instead. Your storage room, and downstairs showroom, are flooded.

After your flood damage sale, you total up the losses, and send a claim off to your property insurer. They'll get a check out to you in no time, right?

Maybe.

Then again, maybe not. In both these cases, your policy may exclude coverages you thought you had.

Let's start with the lawsuit. Your policy may exclude coverage, and, by extension, may eliminate your insurance company's obligation to provide you with a lawyer, for any liability arising out of the act of providing alcohol to an underage person.

Wait a minute, you say. You didn't provide alcohol to a minor; that's why you need someone to handle the case.

Under Wisconsin law, it doesn't make any difference.

The Wisconsin courts have decided that an insurer does not have to provide you with a lawyer unless the lawsuit includes a claim which is covered by the policy. In this case, the lawsuit only claims you provided alcohol to someone who was underage; the policy doesn't cover you for this. Even though you didn't do what the lawsuit claims, under Wisconsin law, your insurance company does not have to help you out. (In one of





the most recent cases addressing this issue, the Wisconsin Court of Appeals expressed its opinion that this was not a good policy. It suggested that the law should be changed, either through the Legislature, or through a reversal of the previous decisions of the Wisconsin Supreme Court. So far, neither the Supreme Court, nor the Legislature have made the change.)

In the case of the flooded basement, there is a good chance your policy excludes damages due to surface water. Surface water, loosely defined, is any water which was originally flowing along the surface of the ground. It includes run off, as well as flooding. Most property insurance policies exclude coverage for damage due to surface water; in most cases, if an individual wants coverage for surface water damage, he needs to obtain flood insurance through the Federal Government.

A third example: you run a farm chemical business. Last summer, one of your employees (now former employee) negligently applies herbicides to a farmer's field. Because of misapplication, the farmer's crop was killed. The farmer was understandably upset, and has now demanded that you compensate him for his loss. You have a comprehensive general liability insurance policy, which includes coverage for application of fertilizers and herbicides. Your insurer will come to your rescue, right?

Maybe.

Then again, maybe not.

Your policy may contain an exclusion from coverage, stating that the coverage does not apply for damages from the failure of the products you used, or from the work performed by or on your behalf, to meet the level of performance, quality, fitness or durability warranted or represented by you; in other words, negligence. Your policy may also contain a provision requiring the farmer to obtain a judgement against you before the insurance company will make any payment; thus, even if covered for the negligence, you might be on your own until negligence and damages have been proven in court.

My point is this: your insurance premiums are wasted if they don't cover the perils you expect them to cover. In each of the examples I've used, there may be other courses of action available to the business owner, which will limit his or her final, out of pocket costs. However, in each case, the business owner will have to pursue those remedies without the assistance, or financial backing, of the insurance company.

Liability and property insurance are important to the well-being of any business. You no doubt have a good idea of the potential risks you have in conducting your business, and have selected your insurance coverage with these risks in mind. However, it is vitally important that you discuss the specific risks with your insurance agent, to make sure your policy isn't providing you with a false sense of security. The time to make sure you're covered is before something goes wrong, not after.

