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Monroe Moxness Berg

From newly minted startups to well-established operations, **Monroe Moxness Berg** attorneys, using a practical, cost-effective approach, help brewing industry clients secure, grow and realize the full value of their ingenuity and craft, allowing them to stay focused on their strength - brewing beer!



Three Key Steps in Raising Capital to Fund Breweries

By **Marcus Urlaub**, associate,
Monroe Moxness Berg

In our December 2014 newsletter, we outlined the various securities laws considerations for breweries and taprooms looking to raise money through a private placement offering. Now we turn our attention to the mechanics of actually approaching and securing commitments from investors. Below are a few thoughts on the money-raising process, based on recent client experiences.

Breaking the Process Down
Raising capital to fund a new

concept is a complex process, but basically it involves three steps. First, you need a written presentation with which to approach investors and draw interest in your offering. Second, you need to identify would-be investors and make an introduction. Third, you need to present your offering to investors and secure contribution commitments.

Getting Ready - Knowing Your Numbers

Before reaching out to potential investors, you need to develop a written presentation. Your written materials can take one of several forms depending on applicable

securities laws and the types of investors you are seeking. Often, the presentation is in the form of a private placement memorandum (PPM). A PPM generally includes a business plan, historic and pro forma financials, risk factors, management team overviews, and proposed use of proceeds. If permitted under the securities laws, an alternative, and less formal, set of documents may include a deck of PowerPoint slides, business plan, subscription agreement, and/or risk factors. An experienced securities law attorney can advise you on the form and content of your written materials for investors.

Regardless of the form your written materials take, what is perhaps most important to investors is that you know your numbers. You not only need to know how much initial capital is required, but you also need a solid and understandable pro forma analysis of your financials, including working capital, projected cash flows, margins, and net return to investors. While you will rely in part on your legal and financial advisors to prepare these materials, it is up to you to understand your numbers inside and out.

Finding the Money

People invest with – and in – people they know. The first question, therefore, is who do you know? The obvious starting point is preexisting relationships with family and friends that you think may have available cash and an interest and/or history of investing in small companies or similar ventures. While family and friends are certainly tier-one prospects, don't stop there. Many entrepreneurs underestimate how many prospective investors they are acquainted with. In your network, you may know small business owners, corporate executives, high-net-worth families and individuals as well as professionals, including doctors, dentists, lawyers and accountants.



If your family, friends and network is somewhat limited, then you might consider taking advantage of some of the recent rules of the Securities Exchange Commission (SEC) that have liberalized the prohibition on general solicitation and general advertising in private placement offerings. Here again a securities law attorney can help guide you through the advantages and disadvantages of these various rules.

Securing a Commitment - Selling You

You make great beer. Your attorneys, accountants and other advisors have helped you produce a great set of documents to present to potential investors. But most investors do not commit to writing a check on the basis of your beer,

your financial projections, or your PPM – they are investing in you. You cannot outsource your presentation. Investors want to hear from you as an individual. They want to hear your story, feel your passion, sense your commitment to making their hard-earned money succeed. Ultimately, people make a decision to invest based on a combination of emotion and logic. Your offering documents will bolster the logical rationale for investing by demonstrating your business acumen and ability to pick the right people to help make your business successful. It is your job to secure an emotional connection.

“Investors want to hear from you as an individual. They want to hear your story, feel your passion, sense your commitment to making their hard-earned money succeed.”



Insurance Crafted for Brewing: Specialized Types of Coverage for Brewery Operations

By **Marc Cohen**

Our guest contributor Marc Cohen is a risk consultant with the Property & Casualty department at Bearence Management Group.

All businesses follow the same general principles of insurance, and some of those businesses will be entirely covered by the basic policies – general liability, property, auto, and workers compensation. But because breweries are unique, they need many additional endorsements, found in what we refer to as a specialized insurance program. These days no two breweries are alike and are nothing like the breweries of past generations. What used to be factories set up as manufacturing plants are now

set up more as destinations for entertainment, offering tours, live music, tasting rooms and even food. As craft breweries grow and evolve, so do the insurance programs by several insurance carriers.

The following are specialized types of coverage specific to a brewery operation and not included in your basic policies:

Broadened definition of property:

Your raw materials are stored outside the building in silos or sheds. To cover those materials, you may need a broadened definition of property endorsement depending on how far these storage places are from your building. Here's another example of broadened property: think about all the pipes moving water and

ingredients around to the different tanks. If these pipes were to go out of commission and need repair, you would need to find coverage here.

Spoilage and contamination: The power goes out on the whole block because a substation was hit by lightning, and your whole batch of Oktoberfest is ruined. Or, your raw material is contaminated in refrigeration or while in storage. This coverage pays to replace the beer and/or raw material and may also pay for the lost profits while you get back up to speed.

Product recall expense: A good segue from spoilage. Say you inadvertently send a contaminated batch of brew out. If you learn that you must withdraw your

product from the market before it causes harm to consumers, you find coverage here for those many expenses incurred in that process.

Business income from dependent properties: One of your key suppliers experienced a fire and therefore was cut off from making deliveries for an extended period of time. Would that interrupt your business, and do you have coverage to make up for lost profits?

Equipment breakdown: This coverage will pay for replacement, repair, and in most cases rental of temporary equipment if necessary in the event that any piece of equipment were to break down.

Beer leakage/tank collapse: Your employee drives a forklift into a tank, puncturing it, and beer spills everywhere, or a tank collapses. This endorsement pays for that lost beer.

Property in transit: Once your product leaves your building, it is no longer covered under your business personal property. If you are headed to a tasting, a trade show, or delivering product to a customer, and your vehicle is involved in an accident, ruining all your product,

you will find reimbursement here. This coverage may also cover the raw materials you order while they are in transit to you.

Seasonal increase: You may be a lot busier in the summer months, resulting in 25% more inventory than what is typical. This endorsement automatically increases the value of your inventory.

Liquor liability: If your brewery has a tasting room, this is a no-brainer. Pretty straightforward: a guest has a few too many, leaves your brewery, gets behind the wheel and is involved in an accident. Your business may get sued.

Umbrella: Umbrella extends over your general and auto liability, but most policies exclude liquor liability. It is imperative to buy an umbrella that does not exclude the liquor liability.

Risk control services: Does your current carrier include risk control consulting in the premium you pay? To help prevent claims, some of the better carriers out there will visit your establishment and write up a review on things that may cause exposure to loss. Many of my clients

have taken advantage of these services and find a lot of value in the visits.

Many or all of these types of coverage can be conveniently bundled into a single program if you are with the right carrier. The prices will vary depending on how high a limit you want to set. Your agent should take the time to go over every exposure and the values of all your property, inventory and equipment, and take care to place you with the best customized insurance program that fits your operation.

A specialized industry like craft breweries requires an insurance agent who truly understands your operation in order to adequately protect it. If your agent does not know the difference between a lauter tun and a fermentation tank, then you may want to have a second set of eyes on your current insurance program.

Contact Marc Cohen at mcohen@bearence.com or 651-379-7852 with questions or to schedule a no-obligation policy review.





Be Careful What You Broadcast!

By **John R. Remakel**, shareholder, Monroe Moxness Berg

With the historic Mayweather-Pacquiao fight just days away, we thought it would be timely to remind our brewpub and taproom clients and friends to make sure they have the proper commercial licenses and accounts in place if they plan to show the May 2 fight or other pay-per-view events such as MMA, professional wrestling and international soccer. Federal telecommunications and copyright laws prohibit broadcasting such events without a commercial license and allow claims of up to \$260,000 for violations.

Purchase the Right License

Whether intentional or not, establishments will purchase and use a residential or non-commercial package for \$50-100 to show a pay-per-view event when instead they should have purchased a commercial package for around \$1,000-3,000 depending on the size of the venue. Promoters of pay-per-view events are aggressive in enforcement and enlist secret shoppers and collection agencies to search out bars, restaurants and other establishments who may be broadcasting without the proper license. The promoters will then bring or threaten a lawsuit against violators -- and with the law

tilted heavily in their favor, the promoters will likely extract a settlement to avoid or end a costly litigation -- with settlements often exceeding \$10,000 for a single violation.

What About Cable Television and Music?

In addition to pay-per-view events, brewpubs and taprooms should also be mindful that federal telecommunications and copyright laws apply to cable television and music. Making sure you have the proper commercial plans set up with your cable or satellite provider is important before broadcasting cable TV. For music, there are exemptions based on the size of the establishment and the way the music is transmitted (e.g., via radio, TV and cable and satellite). However, playing music through other means such as CD, MP3, digital audio and internet streaming and live band performances is not covered by the exemption and will likely require obtaining a blanket license from a performing rights organization, such as BMI, ASCAP and SESAC.

While the focus of enforcement has been on bars and restaurants, brewpubs and taprooms seem like a logical extension and opportunity for promoters and media companies to target federal telecommunications and copyright law violations. Therefore, be careful what you broadcast!



Left to Right: Marcus Urlaub and John Remakel of Monroe Moxness Berg with their clients Blake Verdon and Jeremy Hale at the LTD Brewing Co. in Hopkins, MN.

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