

Draft Pending Adoption

Attachment **XX**
Property and Casualty Insurance (C) Committee
4/13/21

Draft: 3/26/21

Cannabis Insurance (C) Working Group
Virtual Meeting (*in lieu of meeting at the 2021 Spring National Meeting*)
March 11, 2021

The Cannabis Insurance (C) Working Group of the Property and Casualty Insurance (C) Committee met March 11, 2021. The following Working Group members participated: Ricardo Lara, Chair, represented by Melerie Michael-Brown-Brown and Camilo Pizarro (CA); Michael-Brown Conway, Vice Chair, represented by Peg Brown and Bobbie Bacca (CO); Lori K. Wing-Heier represented by Austin Childs (AK); Angel King (DC); Michael-Brown Gould (DE); Judy Mottar (IL); Marlene Caride represented by Nicole A. Brown and Randall Currier (NJ); Gennady Stolyarov and Mark Garratt (NV); Glen Mulready (OK); Andrew R. Stolfi represented by Raven Collins (OR); Elizabeth Kelleher Dwyer (RI); Christina Rouleau (VT); and Michael-Brown Bryant (WA).

1. Discussed its 2021 Work Plan

Ms. Michael-Brown stated that the Working Group did not meet in 2020 due to COVID-19. For this reason, it is important for the Working Group to review where it left off in 2019 before discussing what it should do in 2021. The Working Group was appointed by the Executive (EX) Committee during its Aug. 5, 2018, meeting to study insurance issues related to legal cannabis business. The Working Group's major deliverable was drafting the white paper *Understanding the Market for Cannabis Insurance*, which it adopted in July 2019. The white paper was then fully adopted by the Executive (EX) Committee and Plenary during the 2019 Fall National Meeting. The white paper explored regulatory issues related to insurance in the cannabis industry, including how insurance rates are set; legal and regulatory authority at the federal, state and local levels; cannabis operations; and best practices. The white paper findings showed there are substantial gaps in insurance coverage for the cannabis industry, exposing those who engage with the cannabis industry.

Given the completion of its charge to develop the white paper, the Working Group proposed that its charges be updated for 2020. Since the Working Group did not meet in 2020, these charges have carried through to 2021. The charges include:

- 1) Assess and periodically report on the status of federal legislation that would protect financial institutions from liability associated with providing services to cannabis businesses operating legally under state law.
- 2) Encourage admitted insurers to ensure coverage adequacy in states where cannabis, including hemp, is legal.
- 3) Provide insurance resources to stakeholders and keep up with new products and innovative ideas that may shape insurance in this space.
- 4) Collect aggregated insurance availability and coverage gap information, as well as other cannabis and hemp insurance-related data to then publicly share the cannabis and hemp insurance-related data in a released report by the end of 2021.

The Working Group determined at the end of 2019 that its 2020 charges should include the evaluation of commercial insurance issues, including issues related to commercial auto, workers' compensation and hemp. In determining this, it noted that both hemp and marijuana come from the same cannabis species. Additionally, many states are tracking hemp issues in parallel with marijuana issues, as businesses operating in both of these spaces face many of the same issues, such as banking and insurance availability. However, the Working Group believed issues related to impairment and safety extend beyond just cannabis-related issues and should be undertaken as part of a comprehensive effort under other working groups. The Working Group also determined that capturing information on coverage adequacy, such as the number of insurers writing in a state and what coverages they offer, was not feasible. The decision was based on the Working Group's unsuccessful attempts to do this previously when it asked the states to verify similar information collected from the National Cannabis Industry Association (NCIA).

The proposed work plan for 2020 includes:

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1. Consider drafting a memorandum to the Government Relations (EX) Leadership Council to consider NAIC support of the Secure and Fair Enforcement (SAFE) Banking Act.
2. Consider drafting a memorandum to the Government Relations (EX) Leadership Council asking that it study the status of issues related to the U.S. Department of Justice (DOJ) Cole Memorandum.
3. Hold a fact-finding hearing to hear from insurance companies on barriers they experience in expanding coverage availability in this space.
4. Consider drafting a memorandum to the Producer Licensing (D) Task Force asking that it examine how cannabis-related convictions may be preventing licensing approvals.

The first two work plan items are aimed at examining the current state of protections for financial institutions from liability associated with providing services to marijuana businesses operating legally under state law. The SAFE Banking Act was proposed legislation in 2019 regarding the disposition of funds gained through the cannabis industry. The Cole Memorandum stated that given its limited resources, the DOJ would not enforce federal marijuana prohibition in states that had legalized it. It was rescinded in 2018; in response, the Sensible Enforcement of Cannabis Act was introduced as a means to preserve the protections offered by the Cole Memorandum. As all NAIC policy positions go through the Government Relations (EX) Leadership Council, the Working Group's memorandum would ask that the Leadership Council take up examining the SAFE Banking Act and the status of the Cole Memorandum to determine if the NAIC should take further steps or positions.

The third work plan item is related to the increasing need and demand for cannabis insurance as more states continue to legalize cannabis. A hearing would allow the Working Group to get feedback from insurers on what state insurance regulators can do to help remove the barriers they are experiencing in offering coverage. Colorado shared in 2019 that after conducting a survey, it found that coverage for hemp is much different than it is for cannabis. As such, the hearing may also need to include a discussion on how the U.S. Department of Agriculture (USDA) and the Federal Crop Insurance Corporation affect the hemp industry. The findings from the hearing can be summarized in some sort of deliverable, such as a brief report to fulfill the Working Group's fourth charge. The fourth work plan item aims at how licensing efforts can increase diversity.

Mr. Stolyarov requested that the fourth work plan item be edited to hyphenate "cannabis-related." Ms. Michael-Brown agreed.

Ms. Brown suggested that the third work plan item be modified to allow for the possibility of a lengthier deliverable, potentially a report extending beyond one page, if the content that needs to be covered warrants it. Ms. Michael-Brown agreed.

Ms. Brown asked for clarification on whether the second charge should be to "improve coverage adequacy" or "ensure coverage adequacy." Ms. Michael-Brown stated that the official second charge is to "ensure coverage adequacy."

Lisa Brown (American Property and Casualty Insurance Association—APCIA) stated that insurers would benefit most by NAIC support of the SAFE Banking Act. Although the Cole Memorandum stated that the DOJ would not enforce federal marijuana prohibition in states where it is legal, carriers would be more comfortable with something definitive. The industry would like to request that states consider their legal inability to provide cannabis insurance coverage under federal law before any individual state makes coverage mandatory.

Superintendent Dwyer stated that she regulates securities and banking in addition to insurance in Rhode Island. The Conference of State Bank Supervisors (CSBS) discussed the SAFE Banking Act and the Cole Memorandum on its March 10 call. Surprisingly, Rhode Island has found that its state charters banking marijuana have been unchanged. She suggested that the NAIC government relations staff reach out to the CSBS to find out more, as it seems there is less angst around this issue now. As chair of the Producer Licensing (D) Task Force, she supports the fourth work plan item, but she suggests that it be expanded to include the entire 1033 guidance, which includes all criminal backgrounds for producer licensing. She asked if there is any evidence that producer licenses are being held up by marijuana convictions.

Ms. Michael-Brown stated that she did not know, but research into this can be included in the memorandum. California took the initiative to review and change its licensing protocols after legalizing cannabis, but she was unsure if other states did the same. The work plan item was designed to research this; see if there are any such barriers limiting diversity; and if so, create guidance for states on how to move forward.

Superintendent Dwyer stated that the guidelines on 1033, the federal statute relating to felonies, and who can participate in the insurance industry are extremely outdated. She noted that only those who have a federal marijuana trafficking conviction would

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be denied.

Ms. Michael-Brown stated that Attorney General Nominee Merrick Garland indicated in his confirmation hearing that if confirmed, he would shift back towards the Obama-era approach of limiting resources spent on federal marijuana enforcement.

Ms. Brown stated that insurers are not comfortable writing cannabis coverage with the risk that another administration or attorney general could withdraw support for considerations that the previous administration held under the Cole Memorandum. If insurers need to provide coverage for cannabis activities, the NAIC should support the SAFE Banking Act. As such, the industry would most benefit from the Working Group prioritizing this.

Ms. Brown stated that Colorado is doing a series of forums starting in April to encourage admitted carriers to enter the space. Most of the coverage in Colorado is provided by the nonadmitted market. Ms. Brown believes the Working Group needs to examine if anything should be added to the SAFE Banking Act to encourage admitted carriers to participate in this space. The Working Group should look closely to determine what mechanisms coverage is currently being provided. A surplus broker brought to Ms. Brown's attention that the inability of admitted carriers to get reinsurance may be causing insurers' reticence in entering this space. The surplus broker stated that this is important information in drafting the memorandum on the SAFE Banking Act, and she asked if Ms. Brown has any additional insight.

Ms. Brown stated that she would inquire internally and report back on her findings.

Keri Kish (Wholesale & Specialty Insurance Association—WSIA) stated that this parallels her understanding of how reinsurance is limiting admitted carriers from entering the space. She offered to find out more details and report back on her findings.

Having no further business, the Cannabis Insurance (C) Working Group adjourned.

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