

Draft: 8/19/21

Cannabis Insurance (C) Working Group
Virtual Meeting (*in lieu of meeting at the 2021 Summer National Meeting*)
July 19, 2021

The Cannabis Insurance (C) Working Group of the Property and Casualty Insurance (C) Committee met July 19, 2021. The following Working Group members participated: Ricardo Lara, Chair, represented by Melerie Michael (CA); Michael Conway, Vice Chair, represented by Peg Brown (CO); Jimmy Harris (AR); Angela King (DC); C.J. Metcalf (IL); Marlene Caride represented by Randall Currier (NJ); Gennady Stolyarov (NV); Andrew Schallhorn (OK); John Lacey (PA); Elizabeth Kelleher Dwyer (RI); Christina Rouleau (VT); and Michael Walker (WA).

1. Heard a Presentation on the Geographical Expansion of States Legalizing Cannabis and its Impact at the Federal Level

Ms. Michael stated that the first day of the Fact-Finding Hearing on Insurance for Cannabis-Related Businesses will focus on setting the cannabis stage and insurance product availability. In 2017, the California Department of Insurance (DOI) held the nation's first public hearing for cannabis insurance and approved the nation's first admitted carrier, Golden Bear, to write cannabis insurance products in California. Two years later, the Working Group adopted its white paper, *Understanding the Market for Cannabis Insurance*. As much has transpired in this industry over the last decade, the Working Group will use the information gained over its two-day hearing to update the white paper through the addition of an appendix. The Working Group also plans to leverage the feedback gained from the hearing to discuss how state insurance regulators can better collaborate with each other and other regulatory agencies.

Ian Stewart (Wilson Elser) stated that nearly all Americans now live in a state where some form of cannabis is legal. Additionally, over 90% of Americans believe cannabis should be legal either for adult or medical use. The geographic expansion of state cannabis markets now includes 18 states and Guam legalizing cannabis for adult use and 37 states; Washington, DC; Puerto Rico; Guam; and the U.S. Virgin Islands legalizing cannabis for medical use. Since last November, 10 states have passed new adult-use or medical cannabis laws, including Alabama, Arizona, Connecticut, New Jersey, New Mexico, New York, Mississippi, Montana, South Dakota, and Virginia. In 2021, six states have passed expansions to their medical cannabis regulations, including Georgia, Louisiana, Minnesota, Pennsylvania, Tennessee, and Texas. Adult-use legislation is currently being considered in Delaware, Florida, Hawaii, Iowa, Maryland, Minnesota, North Carolina, North Dakota, Pennsylvania, Rhode Island, and Wisconsin. Adult-use ballot initiatives in 2022 are expected in Arkansas, Florida, Missouri, Ohio, and Oklahoma.

The Cannabis Administration and Opportunity Act is a draft bill released by Sen. Chuck Schumer (D-NY), Sen. Cory Booker (D-NJ), and Sen. Ron Wyden (D-OR) on July 14 to remove marijuana from Schedule 1 of the Controlled Substances Act (CSA) and have it regulated similar to alcohol. This would allow states to determine their own cannabis laws and transfer federal agency jurisdiction from the Drug Enforcement Administration (DEA) to the U.S. Food and Drug Administration (FDA), the U.S. Department of Health and Human Services (HHS), Alcohol and Tobacco Tax and Trade Bureau (TTB), and Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF). It would also lift restrictions on research and direct various federal agencies and departments to study and report on cannabis. It automatically expunges criminal convictions for non-violent marijuana offenses. Grant programs would be established for non-profits, small business loans, and state funding to assist individuals disproportionately affected by the war on drugs. It would levy federal excise tax on cannabis products and establish a federal track and trace regime. Interstate commerce would be restricted for cannabis products that fail to comply with mandated packaging and labeling requirements. A legal pathway would be created for Cannabidiol (CBD) in dietary supplements with a maximum recommended daily serving. It would also establish a process for delivery of inadvertent "hot hemp" to a licensed cannabis operator for processing.

2. Heard a Presentation on the Cannabis Business Regulatory and Licensing Landscape

Norman Birenbaum (Cannabis Regulators Association—CANNRA) stated that the CANNRA is a national organization of cannabis regulators that provides policy makers and regulatory agencies with the resources to make informed decisions when considering whether and how to legalize and regulate cannabis. Its members are the primary regulatory agencies and officials charged with the oversight of adult-use cannabis and/or medical cannabis in Arizona; California; Colorado; Connecticut; Delaware; Florida; Georgia; Hawaii; Illinois; Iowa; Louisiana; Maine; Maryland; Massachusetts; Michigan; Minnesota; Montana; Nevada; New Jersey; New York; North Dakota; Oregon; Rhode Island; South Dakota; Utah; Washington; and

Washington, DC. Each of the 36 states and four territories that have legalized some form of cannabis have their own unique regulatory framework. Licensed activities, tax mechanisms and rates, market structure, the role of local governments, marketing and advertising, approved qualifying medical conditions, and many more regulatory issues vary greatly between jurisdictions. As an association, CANNRA brings states together, even with varying regulatory frameworks, to discuss shared challenges and identify best practices in cannabis regulation.

The evolution in federal oversight and how standards are created has really affected the work of CANNRA. This included shifts from voter initiatives to legislative process and U.S. Department of Justice (DOJ) enforcement to U.S. Department of the Treasury (Treasury Department) compliance. There is a trend of states pushing back against federal initiatives, particularly around background checks and past criminal history, to embrace social and economic equity priorities around the cannabis industry and licensing. The U.S. is now entering into a stage of learning from other jurisdictions. CANNRA members often discuss how they are moving towards product standards, including everything from packaging to labeling. Testing and product safety regulations vary greatly between states in terms of what is being tested and how it is being tested. This includes how labs are credentialed and how different action levels and limits around mold microbials, pesticide residual solvents, and heavy metal toxicity are determined. Sampling processes and procedures also vary between jurisdictions. Additional issues include how to perform cross jurisdiction verification if there is change at the federal level to make sure there are consistency and good regulatory tools for product recalls and administrative action. The labs are the hardest in the cannabis space to regulate because of the nature of the testing and the competition amongst labs for market share. E-cigarette or vaping use-associated lung injury (EVALI) was identified in 2019 by the federal Centers for Disease Control and Prevention (CDC) as a dangerous lung disease linked to vaping. The plethora of young people becoming seriously ill after vaping prompted a wave of regulations that changed the landscape. States are also issuing policy statements or regulations prohibiting delta-8 tetrahydrocannabinol (THC) and other intoxicating synthetic isomers of CBD currently being marketed as legal because the 2018 Farm Bill legalized hemp extracts.

Tax structures is an area that has produced some of the greatest variations and new innovations over the last year. Initial tax structures were mostly based on ad valorem tax rates and the value at the point of sale. Over the past three years, this has transitioned to using potency or THC concentration to determine the tax rate. This has prompted conversations with stakeholders on whether the tax rate, given limited supply and unlimited distribution in the initial years when prices are the highest, affects the overall price for the consumer or just the margins of the licensees. There was a huge increase in medical and adult-use cannabis delivery services in the wake of the pandemic. There is an emerging trend of social consumption licenses. Policy considerations for this include federal indoor clean air protections, providing a location for consuming that does not conflict with federal restrictions like federal subsidized housing, and public health considerations. Market architecture and licensing is something states are taking a more aggressive stance on, particularly here in New York. In New York, if you are involved in the cultivation manufacturing or wholesale distribution, you cannot be involved in the retail distribution of the product, outside of a few exceptions. States struggle with public health and education programs because the revenue is typically based off sales, which take up to 18 months to realize. This makes it hard to establish baseline data and perform ongoing monitoring of use rates and outcomes. States struggle with issues of workplace impairment and driving under the influence. This is a shift away from per se limits because cannabis-related products affect everyone differently based on individual usage and metabolic rate. There is no breath analyzer equivalent for cannabis, and much research will be needed to develop one.

Social and economic equity is becoming the linchpin in passing legislation. How this is defined is of great deliberation. Jurisdictions have shared that providing someone with prioritization and licensing does not guarantee them access to that license, especially in jurisdictions where there are dual licensing structures. Additionally, access to a license does not equate to market share and capital access. Due to a lack of guidance from the federal government, states are working with institutions to help them satisfy their due diligence requirements under the inset guidance, particularly with banking and financial services. States are speaking more with state banks around what is needed for their disclosure licensing requirements to make them more comfortable providing services to the industry. For the first time, traditional capital is being made available to certain large cannabis licensees. States are also trying to lay the groundwork for interstate commerce; i.e., uniform standards, validation, intellectual property (IP), distribution.

3. Heard a Presentation on the Cannabis Insurance Market Segments and Insurance Needs from Seed to Sale for Vertically Integrated and Niche Players

Michael Hall (Golden Bear) stated that Lloyds stepped out of the cannabis insurance business when it got its federal charter five years ago. The nonadmitted market stepped up to fill the void. Admitted insurers are hesitant to enter the market due to a lack of reinsurance and clarity of legality at the federal level. State insurance regulators have little ability to influence reinsurance, as it mostly occurs at the international level. What they can work on is building strong systems of risk management and clarifying ancillary risks, such as dram shop statutes. From an insurance perspective many regulations, like track and trace

and strict licensing rules, provide a strong starting point for risk management.

Summer J. Jenkins (National Cannabis Industry Association [NCIA] and Cannasure) stated that cannabis businesses are just like any other business in that the biggest needs for most are the basic coverages. For cultivation, nationally recognized success of the agricultural industry affords a wealth of information. Challenges include technological advancement and speed of industry developments. Some technologies like artificial intelligence (AI), nanotechnology, and the use of synthetic DNA are not contemplated in law or insurance coverages. Insurance coverages and laws should also be cognizant of the frequently changing use in types of lighting and equipment. Additionally, there is a need to address commercial and residential exposures with a coverage form that allows the agricultural industry to recognize the residential and habitational exposure blends with commercial exposure. For instance, outdoor crop is only available from nonadmitted carriers in the form of parametric coverage. There is also a need for insurance for things like vehicles or mobile equipment that are licensed for road use and are also used in the outdoor cultivation. Additionally, most policies do not address conveniences like rail and air due to federal legality. There is not much availability for environmental incidents. There is a lack of coverage for testing done by distributors. The bailment bailee-bailor protection coverage is not adequately covered in cannabis law, which makes it difficult from an insurance standpoint. Hired and non-owned auto is also a challenge, with only excess liability coverage and limits over \$1 million limited or non-existent.

Mr. Hall stated that despite the wide range of retail set-ups, there has been a push recently on the nonadmitted side for coverage to transition from the wholesale brokerage market into the managing general agent (MGA) binding market. States should focus on how they can encourage admitted carriers to enter the retail space. Part of this should include clarifying shop statutes for onsite consumption lounges at retail dispensaries. Most shop laws address alcohol specifically, but not cannabis. On the manufacturing side, there is an issue with the lack of standardization and the coverage forms, particularly with valuation of product and how it is seen when multiple insurance companies are involved in handling a claim. Standardization of things, such as the current health hazard and cancer exclusions and their evaluation, will help provide clarity from an admitted perspective. A clearer more conservative approach to labeling requirements would also help attract more carrier participants.

Mr. Birenbaum said early approaches to packing and labeling included numerous different disclaimers, which made it hard for the consumer to recall any single warning because there were so many. Canadian federally funded research found that consumers wanted plain packaging and simple labeling that includes only two to three warnings. This approach is just starting to be adopted in the U.S. research from the University of Waterloo, which found that 40–50% of people who consider themselves regular cannabis users on at least a monthly basis could not identify what causes intoxication. This illustrates solutions that may seem good in a vacuum do not execute well because of the lack of education and awareness and the federal stance.

Mr. Stewart said he agrees and believes that as the science comes out, we will likely see a standard of care developing, possibly through civil tort. As with other consumer products, legal verdicts will likely influence voluntary standards over time. It could likely be a diversion between edible products and other forms of products. Things like product inserts may be on the horizon.

Mr. Birenbaum said the majority of consumers get their information from friends or budtenders. For this reason, states are starting to look at budtender certification and training programs. This would address current issues, such as budtenders recommending products to expecting and nursing women for related symptoms, because cannabis is not good for either the mom or the baby. For this reason, it is important to have robust education programs for consumers and trusted messengers, such as budtenders and medical providers. Continuing educational (CE) requirements are really important, as medical schools are just now starting to teach about the endocannabinoid system (ECS).

Kristen Augustine (Colorado Marijuana Enforcement Division) asked who is able to attend the CANNRA meetings. Mr. Birenbaum said CANNRA voting members are the primary state regulatory agencies and offices overseeing cannabis. Associate memberships are open to any statewide office that has anything to do with cannabis policy or regulation or intersects with it. CANNRA also has a statewide membership level that covers every statewide office within the state. Membership is not currently open to the industry or anyone who is on the commercial side of the cannabis sector.

4. Heard a Presentation on Expanding Commercial Product Options

Joe Lam (Insurance Services Office—ISO) stated that entities seeking cannabis coverage solutions span the entire production cycle, including cultivation, storage, manufacturing and processing, design, packaging, testing, distribution, selling, serving, dispensing, and disposal. There are three cannabis commercial general liability (CGL) options. The cannabis activity coverage aggregate limit endorsement modifies the CGL form, which includes a “cannabis activity” definition, and specifies that the

“cannabis activity” must be properly licensed and permitted by law. The cannabis exclusion with an exception for hemp subject to the hemp aggregate limit endorsement modifies the CGL coverage form and provides coverage for bodily injury, property damage, personal and advertising injury (P&AI) arising out of hemp products and select offenses. Cannabis exclusion with designated product or work exception subject to cannabis products/completed operations aggregate limit modifies the CGL coverage form and excludes property damage to cannabis and for bodily injury/property damage (BI/PD) included in “products-completed operations hazard” and arising out of cannabis, except for designated products or work related to cannabis (up to a limit). The cannabis coverage endorsement addresses property-related coverages for cannabis stock, business income, and extra expense, with additional provisions for deductible and valuation.

Joseph Jonas (American Association of Insurance Services—AAIS) stated that coverage exclusions related to cannabis include health hazard, contaminated or untraceable cannabis property, noncompliance with pertinent state and local regulations, onsite use or exposure, and professional/medical advice. Myths about the cannabis market include that the industry is unprofessional and inexperienced, there is no due diligence, insured compliance is impossible, no bank will work with the cannabis industry, the insurance industry is a target of federal enforcement, and carriers risk reputational damage. Cannabis insurance truths include that cannabis items and activities are insurable, coverage expectations are reasonable, and contracts are enforceable. However, unresolved legal issues and untested policy language remains an issue. There are unrealized liability trends and unanticipated exposures, with risks and exposures varying significantly among businesses and locations. Insurance solutions include increasing admitted carrier participation; standardizing programs; and working with state insurance regulators, trade organizations, and interested carriers. The AAIS business owner’s policy offers an existing program rate modification based on industry analogues (e.g., pharmaceutical, liquor, tobacco, etc.), informed by state laws, licenses, and regulatory structure. Judgmental rates will be adjusted as loss data becomes more prevalent.

5. Heard a Panel Discussion on Admitted and Nonadmitted Coverage Across the Cannabis Business Sectors

Ms. Brown asked if cannabis business insurance will evolve from the surplus to the admitted market.

Mr. Hall stated that there is no question that eventually coverage for cannabis-related businesses will move from the nonadmitted to the admitted market. There are several companies who provided reinsurance to cannabis-related insurers moving from not wanting anyone to know who they are to openly putting out their name on applications. The retail side of the business will likely be the first to move to the admitted market. Admitted coverage would also be a good fit for dispensary exposures that are serving only as a point of distribution for others’ goods. Products coverage are likely to follow a pick-and-choose type of evolution due to the lack of uniformity of risks across the industry.

Ms. Jenkins agreed that coverage of dispensaries or production-only agricultural that does not involve extraction are natural fits for the admitted market. However, complex extraction risks that involve working with different solvents would not be a good fit for the admitted market.

Ms. Brown asked what insurance product is most available to obtain in the surplus and admitted markets.

Mr. Hall stated that general liability coverage is easily available in the nonadmitted market. However, Golden Bear and two other smaller insurers are the only admitted carriers. Several of the ancillary lines, such as earthquake and storm are almost totally unavailable. Cannabis businesses are starting to look for these coverages as they get larger, but they are unable to find them.

Ms. Jenkins stated that premise operations is the most available coverage type, followed by workers’ compensation and products liability. Product liability coverage is more complex because all the coverage forms and risks being insured differ greatly by carrier. More flexibility and availability of property coverage is needed.

Ms. Brown asked what insurance product is the most difficult to obtain for cannabis industry clients.

Ms. Jenkins stated that some of the ancillary lines and management liability-type coverages are not available. Coverage forms that detail where the ownership is transferred via some type of mechanism is also not available. Warehouse and move-people liability coverage is only available from a few carriers. This leaves it up to each carrier to make their own determinations as to who the real ownership lies with when a claim occurs.

Norman Ives (Amwins) stated that consumption lounges and spaces are an area very underserved in the casualty space.

Coverage is only available to consumption spaces directly attached to a manufacturer making a product that is distributed onsite or a dispensary providing onsite consumption for standalone consumption spaces. Despite the expansion of delivery services, there is a lack of coverage for this exposure. Most casualty placements in the cannabis space are limited to designated premises. A delivery exposure where an employee is going offsite to deliver cannabis to a consumer is a largely uncovered exposure right now.

Ms. Brown asked what type of pricing issues are being found.

Beth Medvedev (James River) stated that when James River first came into the cannabis market, there was very little information to use for pricing. She leveraged research on the cannabis industry and her pharmaceuticals and clinical trials background to find similarities in her underwriting. Rates were high at first because of the numerous unknowns and need to satisfy their reinsurers' concerns. Marijuana is a very profitable business and a good book of business for James River, given it had few claims in its seven years of writing adult-use coverage. As a nonadmitted insurer, they can lower their rates without regulatory approval, and they have done so in states with stricter regulations.

Mr. Hall stated that Golden Bear is in the process of providing a refund to lower its rates. More flexibility in rate ranges would encourage more admitted carriers to enter the market.

Ms. Brown asked what changes in coverage availability and market participants have occurred over the last decade.

Ms. Jenkins stated that over the last three to five years, the cannabis industry has become recognized as a viable and thriving industry that can add value to our political and economic system. The coverage availability is evolving with this change in perception.

Mr. Ives stated that there has been a slow progression and evolution of the products that are available in the market. Carriers are starting to become more comfortable in this space, expanding their product offerings within their given segments. For example, cyber liability is now available in the market, albeit with small sub limits. It was not available at all three years ago. Significant and quick advances will occur in this market once there is clarity at the federal level.

Ms. Brown stated that vertically integrated companies must insure all aspects of the supply chain. She asked how these risks are approached differently than others that may only participate in one segment of the supply chain.

Ms. Medvedev stated that vertically integrated companies and companies operating in only one segment are not treated differently. Instead, the underwriter fully underwrites for each part of the company. If a company has cultivation, extraction, and a dispensary, the underwriter will have the information and understand the regulations for each of them. A lot of vertically integrated operations are also multi-state operations. Rates and endorsements would reflect the regulations in each state by aggregate location. The audit would be a little different in that intercompany revenues would not be counted. Companies that are vertically integrated may want to insure each piece separately. In this case, there would be a regular policy for each part of their operations.

Mr. Hall stated that Golden Bear focuses a lot on products liability exposure, especially the lack of multiple parties to share in products liability claims defense and eventually the obligation that is available. Golden Bear's current products liability claims have the entire chain—i.e., dispensary, manufacture, and distributor—sharing in the defense costs. Since Golden Bear will likely be taking on the defense costs, vertically integrated businesses demand a slightly higher rate.

Ms. Brown asked if insurance providers prefer companies that are not vertically integrated.

Mr. Hall stated that it depends on whether the vertically integrated company has strong controls in place, is well-financed, has state-of-the-art facilities, and manages its supply chain well.

Ms. Brown asked what the hardest part about dealing with cannabis businesses seeking insurance is.

Mr. Ives stated that the lack of standardization in vocabulary in the industry can make it more difficult to speak with an insurer or broker about complex risks. The terminology is not uniform between regions or areas. Also, some cannabis companies may lack business acumen and knowledge of insurance, while some investors may fully understand insurance but lack an understanding of the cannabis industry.

Ms. Jenkins stated that it can also be difficult to help a retail agent, broker, or direct consumer understand the difference between legislative requirements and best practices for protecting a business.

Ms. Brown asked if it is difficult to explain an insurer's data needs to a prospective insured.

Ms. Medvedev stated that James River uses a specific application for cannabis businesses that asks for all the information it needs from the insured. It is important to be very specific. For instance, the application would ask not just about quality controls, but if certain things are tested. This allows the underwriter to have all the information needed up front so they can respond promptly with a decision. James River also makes a concerted effort to educate its agents and brokers, as many lack knowledge of the cannabis industry.

Mr. Ives stated that business operators are asked for such an enormous amount of information just to begin operating that they are accustomed to providing it when insurers request it. Additionally, underwriters have become flexible and willing to work from other carriers' applications.

Ms. Jenkins agreed that insureds are required to provide extensive information, regardless of the carrier. From a broker perspective, they make it clear to the client that the underwriter is likely to have additional questions, given the use of different vocabulary and descriptions used in the industry. Insureds understand that the few insurance carriers available are going to want to do their due diligence in this space.

Ms. Brown asked about the availability and demand for cyber-related coverage in the cannabis-related business space.

Mr. Ives stated that the average cannabis operator is not purchasing cyber coverage, despite having fairly significant cyber exposure. Some of this is due to a lack of education on the need for cyber coverage.

Ms. Brown asked about crop insurance availability, particularly in the private crop market. However, it is very limited in its defined coverages.

Mr. Hall stated that it is available on a parametric basis and through traditional federal crop insurance.

Ms. Augustine asked if having a business' employees trained on how to be compliant with state regulations would reduce their perceived risk exposure and rates.

Ms. Medvedev stated that anytime a company puts in place measures that help it comply with regulations or reduce risk, it makes a difference in underwriting.

Ms. Brown asked if there are areas where liquor liability and cannabis can be analogized.

Mr. Hall stated that it is helpful. Ms. Jenkins added that underwriters consider what other guidelines outside of the insurance policy contract are going to control the risk. There are different ramifications for dram shop liability as it relates to consumption law for cannabis business. They can currently be drawn into a claim, whereas liability for liquor is restricted to the provider of the beverage.

Ms. Brown asked how cannabis businesses find insurers willing to provide them coverage.

Ms. Jenkins stated that there are many methods for finding insurers. California provides a list of cannabis insurers on its website. Some licensing bodies and consultants have referral networks. Agents and brokers perform a lot of marketing and use social media and blogs.

Ms. Brown asked what the impact has been from the pandemic.

Mr. Hall stated that coverage for business interruption and directors and officers has diminished and is being written on a much more restricted basis. This is largely related to reinsurers reacting to dynamics outside the U.S.

Mr. Ives stated that from a sales perspective, most cannabis businesses thrived during the pandemic since they were deemed essential businesses.

Ms. Augustine asked about the access minorities and women have in the cannabis space.

Mr. Ives stated that he believes minorities and women are indirectly affected since they tend to have less access to resources, resulting in being pushed out to more rural areas that are at higher fire risk.

Ms. Jenkins stated that social equity is a strong focal point in this space. The procurement aspect has been significantly simplified for marginalized communities.

Mr. Hall stated that underwriters are not likely to know who is submitting the application, as they are usually filed under a limited liability company name.

Ms. Brown stated that the investigation of licensure and the risk from its ownership is robust in Colorado. Mr. Hall stated that licensing checks occur at the end of the underwriting process.

Mr. Ives stated that insurance carriers are not aware of an applicant's minority status so there is little opportunity for them to discriminate.

Ms. Medvedev stated that insurance is required to get licensed in many states, so underwriters are usually making quotes without a license and then checking later that it is in place.

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

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