

Draft Pending Adoption

Attachment XX
Property and Casualty Insurance (C) Committee
4/7/22

Draft: 3/25/22

Cannabis Insurance (C) Working Group
Virtual Meeting (*in lieu of meeting at the 2022 Spring National Meeting*)
March 24, 2022

The Cannabis Insurance (C) Working Group of the Property and Casualty Insurance (C) Committee met March 24, 2022. The following Working Group members participated: Ricardo Lara, Chair, represented by Melerie Michael (CA); Michael Conway, Vice Chair, represented by Peg Brown (CO); Jennifer Bruce (AR); Angela King (DC); Christina Miller (DE); C.J. Metcalf (IL); Marlene Caride represented by Randall Currier (NJ); Gennady Stolyarov (NV); Raven Collins (OR); Sebastian Conforto (PA); Elizabeth Kelleher Dwyer represented by Beth Vollucci (RI); Isabelle Turpin Keiser (VT); and Michael Walker (WA).

1. Adopted its 2021 Fall National Meeting Minutes

The Working Group met Dec. 1, 2021, and took the following action: 1) adopted its Oct. 21, 2021, minutes; 2) received a status report on the drafting of the updated *Understanding the Market for Cannabis Insurance* white paper; 3) discussed the potential to collaborate with the Producer Licensing (D) Task Force; 4) heard a presentation from the University of Colorado on emerging scientific issues in the cannabis space; and 5) heard a presentation from the Cannabis Regulators Association (CANNRA) on cannabis policy and regulation trends.

Mr. Currier made a motion, seconded by Ms. Brown, to adopt the Working Group's Dec. 1, 2021, minutes (*see NAIC Proceedings – Fall 2021, Property and Casualty Insurance (C) Committee, Attachment Two*). The motion passed unanimously.

2. Heard a Presentation on the State of the Union in the Cannabis Insurance Industry

Erich Schutz (Jencap Specialty Insurance Services) stated that the cannabis space is experiencing massive growth, with sales expected to exceed \$30 billion in 2022. There is a wide breadth of cannabis insurance products, but depth is an issue. For instance, there are only a few carriers writing cyber coverage. Putting together a \$75 million property tower for a single location is not uncommon, but it is very difficult to do. Some carriers do not offer high enough limits on equipment breakdown. Workers' compensation and auto coverage vary by state. Michigan and Massachusetts are good examples of states that have very robust assigned risk pools for both coverages. Other states do not have as many options. For example, auto placement in California is difficult, expensive, and often has coverage gaps. The reinsurance marketplace is limited in the cannabis space. There are approximately eight A-rated package markets writing leaf touching cannabis coverage currently supported by only two to three reinsurers of that population. Several of the markets are very conservative with catastrophe wind and will put a named source storm exclusion on any property policy written anywhere on the eastern seaboard. It is a big issue because this exclusion will apply to properties that are 150 miles inland from the coast. Parametric insurance is the only coverage available for outdoor crop, which is not practical or cost prohibitive. Federal outdoor crop insurance will not include marijuana until it is federally legalized or decriminalized. The market has not responded yet to the need for multiple coverages to be written by one market. For delivery-only risk, different markets will write the liability and products coverages. Likewise, coverages for premises (social) consumption are usually broken up among more than one carrier. The market for directors and officers' coverage has doubled in capacity over the last 18 months to approximately 12 players. However, this does not address the needs of the many small mom and pop growers who need more robust and affordable liability coverages. Additionally, many of the smaller operations do not take up coverages unless it is mandated. Michigan has a law that all cannabis license holders

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must have \$100,000 of product liability coverage with no exclusions. If the licensee operates in both the recreation and medical cannabis space, then they must have \$100,000 for each. A specific carrier began offering a policy that specified \$100,000 had no exclusions to meet this need. The dram shop law, passed in the last year, states that a person is financially responsible for any bodily injury or property damage they incur while consuming cannabis. The law stipulates the coverage must be on admitted paper, which is limited at best.

Jodi Green (Miller Nash LLP) stated that the 2018 Farm Bill removed hemp, defined as cannabis and derivatives of cannabis with extremely low concentrations of the psychoactive compound delta-9-tetrahydrocannabinol (THC) (no more than 0.3% THC), from the definition of marijuana in the Controlled Substances Act (CSA). This created nuances that led to the development of an additional gray market for minor cannabinoids such as delta-8 and delta-10. Cannabinoids are naturally occurring in very small quantities in the plant. They are created by converting cannabidiol (CBD) isolate and distillate into delta-8 or delta-10. Companies are creating minor cannabinoids because they have psychoactive affects and present a way to bypass federal law. Some state jurisdictions have banned these compounds entirely, and others have not addressed it. This inconsistent legal standing has created confusion among companies as to how these products can or cannot be sold.

The industry is maturing, with medical cannabis legal in 39 states and adult-use cannabis legal in 19 states. There are several federal bills pending that are attempting to fully legalize marijuana. The Secure and Fair Enforcement (SAFE) Banking Act of 2021 is attempting to create insurance regulations that will insulate insurance providers from federal prosecution. These federal bills are unlikely to pass this year, but there will be new states passing medical or recreational-use marijuana legislation. Regulations vary by state and locality, which makes it difficult for operators to comply with regulations and ties into carriers' reluctance to offer coverage in the cannabis space. As the cannabis industry has matured, companies have felt safer to enforce their right under state law. This has led to more litigation. There have been many corporate governance lawsuits. Product liability lawsuits may come to the forefront given the numerous state product recalls. The largest product liability claims have come from a handful of lawsuits against Pure Leaf for mixing up their CBD and THC products, which resulted in consumers unknowingly consuming psychoactive products. This highlights the importance of liability coverage and adequate risk management in the industry. There have also been several employment lawsuits related to employee pay for time spent dining, golfing, or changing clothing. This highlights the need for more education on compliance protocols within the industry. There has been an uptick in cyber claims over the past year related to the collection and storage of customer information in the cloud. Rising risks from wildfires in places such as California and Colorado highlight the need for coverage of water, fire, and smoke damage. There have been significant theft issues, especially in Washington and California with armed robberies. There have been intellectual property lawsuits involving copyright or trademark infringement of products that are being sold. For instance, there were edibles resembling Skittles or other candies around Halloween that created concern for children's safety. Environmental claims arise from using different solvents, chemicals, and pesticides in crop production. There have also been lawsuits related to California Prop 65, which requires companies to disclose the levels of certain harmful chemicals inherent in the product on its label.

Carriers are now paying claims, unlike five years earlier when many denied coverages. For instance, Hannover paid a couple claims in excess of \$1 million. The health hazard exclusion is highly problematic. Carriers have sought to deny coverage for bodily injury and other claims based on this exclusion. Carriers also deny based on cannabis exclusions. There should be a carve-out on policies with these exclusions for companies that are operating in compliance with state law. Claims are frequently denied based on protective safeguard requirements, such as a certain number of cameras. There is not an issue with the amount of coverage available in the market but with the quality of the coverage. Carriers need to be educated that the minimum limits available under state law are designated for licensing requirements and are not meant to be what companies should be getting. There have

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been several lawsuits involving manufacturers and malfunctioning vaping products where the battery exploded and caused injury. Yet, one of the biggest failures throughout the cannabis industry is the continued lack of products coverage. Broker education is needed on this.

Ms. Brown asked what Mr. Schutz has heard about the homeowners residual market, as Colorado has recently heard about issues with the homeowners Fair Access to Insurance Requirements (FAIR) plans excluding marijuana. Mr. Schutz said he has seen this occurring in the Massachusetts risk pools, as well as the residual markets. This is a large concern, as residual markets are the markets of last resort.

Ms. Michael asked Ms. Green to elaborate on why she is not optimistic about the passing of a federal bill this year. Ms. Green stated that her views reflect that most pending bills are just iterations of earlier bills. The cannabis industry itself has not fully supported any one bill, as it is fragmented in terms of supporting piecemeal or wholistic legislation. Mr. Schutz stated that the political climate is not conducive to a bill passing in part due to the focus on Ukraine.

Mr. Currier asked for more information on the named storm exclusions and what could be done to create a reinsurance market short of federal legalization. Mr. Schutz stated that there is a limited pool of reinsurers. Education and advocacy are the best path forward until federal legalization. Brokers and carriers need to understand how well built the risk profiles are of the insureds who are in compliance with the law but are rated as if they are a higher risk because of the negative perception of the cannabis industry.

Ms. Michael asked what led to the doubling of directors and officers (D&O) coverage over the last year. Mr. Schutz said it's a social equity issue. Most cannabis companies are either of a size they don't need this coverage or they are in greater need of other coverages. However, carriers only heard from the people with deep pockets sitting on corporate boards about needing this coverage. Ms. Green said she agreed that the large corporate companies were pushing for this and it's not helpful to small operators lacking basic coverage because it's too costly.

3. Heard a Report on Federal Cannabis-Related Legislative Activities from NAIC Staff

Brooke Stringer (NAIC) stated that the NAIC is on record supporting both the SAFE Banking Act and the Clarifying Law Around Insurance of Marijuana (CLAIM) Act. The U.S. House of Representatives (House) passed the SAFE Banking Act last month for the sixth time on a bipartisan basis. It was added as an amendment to the American Competitiveness Of a More Productive Emerging Tech Economy Act (COMPETE) Act. Congressman Ed Perlmutter (D-CO) has been a strong supporter and advocate on this legislation for the SAFE Banking Act and will soon be retiring. U.S. Speaker of the House Nancy Pelosi has promised to advocate for legislation when the House conferences with the U.S. Senate (Senate) because the Senate has passed the COMPETE Act without the SAFE Banking Act in it. However, both leaders of the Senate do not support the SAFE Banking Act for assorted reasons. The SAFE Banking Act is not likely to pass because there is concern that a piecemeal approach will not be sufficient to address the issues.

4. Discussed its 2022 Work Plan

Ms. Michael stated that there would not be time to discuss its 2022 work plan. She requested that feedback on the plan be sent to NAIC staff. The work plan includes monitoring cannabis-related federal legislation, finishing updates on and moving for adoption of the *Understanding the Market for Cannabis Insurance* white paper by the Fall National Meeting, and hearing presentations and panel discussions on emerging issues.

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

SharePoint/NAIC Support Staff Hub/Member Meetings/2022 Spring National Meeting/