

Welcome to the
Cannabis
Insurance
(C)
Working
Group

OUR MEETING WILL BEGIN SHORTLY

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NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS

Date: 10/20/21

CANNABIS INSURANCE (C) WORKING GROUP

Thursday, October 21, 2021

12:00 – 1:15 p.m. ET / 11:00 a.m. – 12:15 p.m. CT / 10:00 a.m. – 11:15 a.m. MT / 9:00 a.m. – 10:15 a.m. PT

ROLL CALL

Ricardo Lara, Chair	California	Marlene Caride	New Jersey
Michael Conway, Vice Chair	Colorado	Glen Mulready	Oklahoma
Lori K. Wing-Heier	Alaska	Andrew Stolfi	Oregon
Jimmy Harris	Arkansas	John Lacek	Pennsylvania
Michael Gould	Delaware	Elizabeth Kelleher Dwyer	Rhode Island
Angela King	District of Columbia	Karla Nuissl	Vermont
CJ Metcalf	Illinois	Michael Walker	Washington
Gennady Stolyarov	Nevada		

NAIC Support Staff: Anne Obersteadt/Aaron Brandenburg

AGENDA

1. Consider Adoption of its May 27, July 19 and July 27, 2021 Minutes Attachments 1-3
—*Commissioner Ricardo Lara (CA)*
2. Discuss the Draft Outline for the *Understanding the Market for Cannabis Insurance* White Paper Appendix—*Commissioner Ricardo Lara (CA)* Attachment 4
3. Discuss the Drafting Timeline for the Appendix—*Commissioner Ricardo Lara (CA)* Attachment 5
4. Discuss 2022 Charges—*Commissioner Ricardo Lara (CA)* Attachment 6
5. Any Other Matters—*Commissioner Ricardo Lara (CA)*

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**Consider Adoption of its *May 27,*
July 19 and July 27, 2021 Minutes—
*Commissioner Ricardo Lara (CA)***

Draft: 6/1/21

Cannabis Insurance (C) Working Group
Virtual Meeting
May 27, 2021

The Cannabis Insurance (C) Working Group of the Property and Casualty Insurance (C) Committee met May 27, 2021. The following Working Group members participated: Ricardo Lara, Chair, represented by Melerie Michael (CA); Michael Conway, Vice Chair, represented by Peg Brown (CO); Lori K. Wing-Heier represented by Austin Childs (AK); Jimmy Harris (AR); C.J. Metcalf (IL); Marlene Caride represented by Randall Currier (NJ); Gennady Stolyarov (NV); Andrew R. Stolfi represented by Jan Vitus (OR); John Lacek (PA); Elizabeth Kelleher Dwyer and Beth Vollucci (RI); Christina Rouleau (VT); and Michael Walker (WA). Also participating was: Sandra Darby (ME).

1. Adopted its April 27 Minutes

The Working Group met April 27 and took the following actions: 1) adopted its March 11 minutes; and 2) held a panel discussion on cannabis insurance-related legislation.

Ms. Brown made a motion, seconded by Mr. Lacek, to adopt the Working Group's April 27 minutes (Attachment One). The motion passed unanimously.

2. Discussed a Draft Memo to the Government Relations (EX) Leadership Council

Ms. Michael stated that the memo satisfies the Working Group's first and second work plan items for 2021. It is important to note that this is a draft memo from the Working Group to the Government Relations (EX) Leadership Council, and it does not represent the NAIC's position. All NAIC policy positions go through and are determined by the Leadership Council.

The Working Group is aiming to send the recommendations expeditiously to the Leadership Council. The memo is from the Working Group to the Leadership Council recommending that the Leadership Council consider supporting the Secure and Fair Enforcement (SAFE) Banking Act of 2019 (H.R. 1996/S. 910) and the Clarifying Law Around Insurance of Marijuana (CLAIM) Act (H.R. 2068/S. 862). These bills would help remove federal barriers for insurers to conduct business with any state legalized cannabis-related businesses, thereby helping to provide insurance coverage options for these commercial policyholders that will mitigate their business risks. These protections can improve insurance availability by supporting the growth of the cannabis business-related admitted market. Additionally, given that the Cole Memorandum was rescinded in 2018, the Working Group recommends to the Leadership Council that the NAIC support and advocate for the U.S. Department of Justice (DOJ) to release an updated memo or similar policy of discretionary enforcement. If legislation is not enacted this year, a newly issued memo or policy could provide some minimal level of assurance to insurers, leading to an increase in coverage provided in the admitted insurance market for cannabis businesses.

Mr. Walker asked whether this is an internal memo and if it is common to ask for interested parties to comment. Brooke Stringer (NAIC) stated that it is an internal memo, and although interested parties are being invited to comment on this memo, they are usually not invited to comment.

Lisa Brown (American Property Casualty Insurance Association—APCIA) recommended placing the SAFE Banking Act and the CLAIM Act paragraphs before the Cole Memorandum paragraph to indicate that those are a higher priority. Ms. Brown replied that reorganizing the paragraphs is not necessary since it is an internal memo, and the recommendations are clear.

Ms. Brown made a motion, seconded by Mr. Childs, to send the memo to the Leadership Council (Attachment Two). The motion passed unanimously.

3. Discussed a Draft Agenda for a Hearing on Market Barriers for Cannabis Insurance

Ms. Michael stated that the hearing is anticipated to be four to five hours in total, and it will be held virtually over multiple days in August. The hearing addresses the Working Group's third work plan item for 2021. The Working Group felt that the hearing is important because the need and demand for cannabis insurance will only continue to increase as more states legalize cannabis. The hearing is aimed at providing the Working Group with feedback from insurers on what state insurance regulators can do to help remove the barriers insurers are experiencing in offering coverage.

The draft agenda includes four parts. The first section is to provide a foundation of understanding and an overview. It begins by having a legal expert, such as Ian Stewart (Wilson Elser) who presented at the Working Group's panel discussion, review what states have legalized cannabis, the impact of increasing legalization by states, and federal regulations. It then progresses to having an organization like CANN-RA discuss the regulatory landscape. It concludes with a discussion on underwriting and risk. Potential speakers for this include someone from the Insurance Services Office (ISO) and an academic from East Carolina University. The second section focuses on insurance product availability, including identifying insurance needs, current offerings and gaps. Potential speakers include Summer Jenkins from the National Cannabis Industry Association (NCIA) and Cannasure, Keri Kish from the Wholesale & Specialty Insurance Association (WSIA), and possibly another speaker from an organization similar to the NCIA. The third section addresses barriers to offering coverage. It includes federal versus state legalization differences and interstate considerations, potentially presented by a legal expert like Mr. Stewart. It also includes discussion on crop insurance and reinsurance considerations. Potential presenter suggestions are needed on these. The fourth section includes a panel question and answer (Q&A) style discussion on what is on the horizon and how state insurance regulators can help. Potential panelists include Mr. Stewart, Ms. Jenkins, the Golden Bear General Counsel, and another admitted insurer. It also includes a discussion by the Working Group on how to collaborate better.

Ms. Brown stated that CANN-RA is a new organization that is somewhat similar to the NAIC. Its members are the state regulatory agencies overseeing cannabis in states that have legalized cannabis for medical and/or recreational use. The NCIA is a trade group of organizations involved in the cannabis industry.

David Kodama (Surplus Lines Association of California) asked if the hearing would be virtual, in-person or hybrid. Ms. Michael stated that the hearing would be virtual.

Ms. Darby asked when the hearing would be held. Ms. Michael stated that the hearing would be held in segments over multiple days in August, likely in connection with the NAIC Summer National Meeting.

Ms. Brown made a motion, seconded by Mr. Childs, to proceed with implementing the hearing agenda (Attachment **Three**). The motion passed unanimously.

4. Discussed Objectives on an Appendix to the NAIC *Understanding the Market for Cannabis Insurance* White Paper

Ms. Michael stated that the Working Group adopted the NAIC *Understanding the Market for Cannabis Insurance* white paper in July 2019. 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. Much has happened in this space since the white paper's adoption in 2019. As such, the Working Group determined during its work plan discussion that it should consider updating the white paper through the addition of an appendix. Drafting sessions on the appendix will begin shortly after the hearing. Ms. Michael invited Working Group members to notify Anne Obersteadt (NAIC) at aobersteadt@naic.org by June 10 if they want to participate in the drafting group. The appendix objectives include providing an update on the legalization of cannabis and how the industry is being insured. They also include taking a closer look at hemp and crop insurance, directors' and officers' coverage, reinsurance requirements, and interstate transportation issues. Discussion on innovations and emerging products, barriers to the admitted market, and how state insurance regulators can assist in this area are also proposed topics.

Mr. Stolyarov asked for clarification on what the objectives represent. Ms. Michael stated that they represent the goals of what the appendix should include.

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

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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 Lacek (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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Draft: 8/20/21

Cannabis Insurance (C) Working Group
Virtual Meeting (*in lieu of meeting at the 2021 Summer National Meeting*)
July 27, 2021

The Cannabis Insurance (C) Working Group of the Property and Casualty Insurance (C) Committee met July 27, 2021. The following Working Group members participated: Ricardo Lara, Chair, represented by Melerie Michael (CA); Michael Conway, Vice Chair, represented by Peg Brown (CO); Austin Childs (AK); Jimmy Harris (AR); Angela King (DC); Tanisha Merced (DE); C.J. Metcalf (IL); Marlene Caride represented by Randall Currier (NJ); Gennady Stolyarov and Mark Garratt (NV); Shelly Scott (OK); Raven Collins (OR); Christina Rouleau (VT); and Michael Walker and Ned Gaines (WA). Also participating was: George Bradner (CT); and Benjamin Yardley (ME).

1. Heard a Presentation on Balancing Actual and Perceived Risks

Ms. Brown stated that the second day of the Fact-Finding Hearing on Insurance for Cannabis-Related Businesses will focus on barriers to affordability and moving forward. As much has transpired in this industry over last decade, the Working Group intends to use the information gained from the two-day hearing to update its white paper, *Understanding the Market for Cannabis Insurance*, through the addition of an appendix. Drafting sessions on the white paper appendix will begin in August. Working Group members interested in participating in these drafting sessions were directed to notify NAIC staff by Aug. 10. The Working Group also plans to leverage the feedback gained from the hearing to discuss at its next meeting how state insurance regulators can better collaborate with each other and other regulatory agencies.

Brenda Wells (East Carolina University) stated that cannabis businesses pay several times what other industries pay for insurance. Directors and officers liability insurance costs well into the six-figure range for \$1 million in coverage. A small mercantile general liability policy might cost around \$1,000, but a cannabis policy without products liability is about \$10,000. Consumer concerns and misperceptions include a belief that coverage is not available or not worth the cost. Additionally, there is a fear that information provided to the insurer can be accessed by the federal government or others. Some also have concerns about deceptive trade practices, like being initially promised coverage but then being denied by the insurer based on the federal illegality of cannabis.

This occurred in the *Green Earth Wellness Center LLC v. Atain Specialty Insurance Company* lawsuit. Green Earth, a retail medical marijuana business in Colorado Springs, CO, attained commercial insurance for its business from Atain effective on June 29, 2012. Several days later, Green Earth contended that the smoke and ash from a nearby fire caused damage to its ventilation system, eventually damaging its plants. In November 2012, Green Earth made a claim under the insurance policy to Atain. Atain denied the claim on the grounds that the policy expressly excluded coverage for contraband, and it was void as against public policy. Atain moved for summary judgment. The court agreed with Atain that possession of marijuana for distribution is a federal crime. However, Atain solely pointed to the federal statute and did not assert whether Green Earth's operation violates Colorado law. Therefore, due to Atain's neglect to assert that Green Earth's operation was a violation of Colorado law, the court found that there is a genuine issue of material fact and denied Atain's motion for summary judgment.

Ms. Wells stated that a major issue is lack of data. While cannabis has been used for thousands of years, the legal industry in the U.S. is in its infancy. We know very little about the losses and expenses associated with this industry. Ms. Wells plans to conduct a cannabis industry Cost of Risk Survey soon. Underwriting for cannabis has been extrapolating data from other industries where similarities exist. For instance, underwriters can look at pharmacies when evaluating medical cannabis and liquor stores when evaluating vape shops. Underwriting factors include third-party inspection results, security systems wired to an outside monitoring station, an adequate electrical system with proper wattage and circuits, fire suppression systems, the type of safe used for storing cash/product, motion detectors in the room where finished product is stored, membership in state trade associations, education and training of owners/operators, and use of related regulations.

2. Heard a Panel Discussion on Uncovering Obstacles to Offering Coverage

Ms. Brown asked what additionally needs to happen at state and federal levels to make insurers comfortable entering the cannabis insurance industry. She also asked if this would likely be under this administration.

Ian Stewart (Wilson Elser) stated that the status quo is not sustainable. There must be some clarity of cannabis' legality at the federal level. There have been comments from democratic senators that they should not allow a vote on the Secure and Fair

Enforcement (SAFE) Banking Act without a broader social equity and social justice provisions. Arguably the most conservative U.S. Supreme Court justice, Clarence Thomas, criticized the federal ban on marijuana and the U.S. government's inconsistent enforcement in a statement a couple weeks ago, questioning whether the government has the authority to "intrude on" state-legal cannabis markets. This indicates that time is limited for the U.S. Congress (Congress) to act before the U.S. Supreme Court does so. For carriers, Schedule One of the Controlled Substances Act (CSA) is the largest hinderance because it prevents primary protection of its banking relationships. The directives in the proposed U.S. Senate (Senate) bill for the federal government to study cannabis are needed to increase the data available to insurers.

Ms. Brown asked what additional actuarial and experience data is needed to help insurers write cannabis-related business coverages.

Tim McCarthy (Insurance Services Office—ISO) stated that cannabis is an emerging type of risk, and more public data on it is needed to better analyze information on a state-by-state basis because operations differ so much by state. It may take several years before there are sufficient court cases for products liability. Long-term studies on the impacts of cannabis are also needed. The ISO has introduced 10 new classifications related to cannabis that will be implemented in 40 jurisdictions later this year. The ISO will begin to collect data next month related to this to more uniformly analyze and update its commercial general liability cost information.

Lois J. Massa (G.J. Sullivan Co. Reinsurance—GJS Re) stated that in lieu of lack of data, carriers are benchmarking to similar industries and/or evaluating and aggregating their own data.

Ms. Brown asked how reputational concerns factor into insurers and reinsurers' willingness to participate in the cannabis space.

Mr. Stewart stated that reputational concerns are still relevant, but much less of a concern than they were just a couple years ago. Marijuana has become socially accepted over the past year or two. Conservative states are now enacting adult-use cannabis laws very quickly. However, a positional schism is beginning to form in the cannabis community between the regulated marijuana market and the hemp-derivatives market. There is reputation risk in hemp derivatives because they are not laboratory tested and regulated the same way as regulated cannabis companies' products.

Ms. Massa agreed and said the greater acceptance of cannabis is due to the cannabis industry's educational efforts. However, the impact of future claims going to court will determine if this industry sees payouts that might affect reputational risk. This happened with the liquor industry a decade ago. The Juul vaping case is a good example of this.

Michael Hall (Golden Bear) stated that many of the countries that the global reinsurers are from still view cannabis as an illicit drug. As a result, the global reinsurers have great concern on reputational risks that may stem from bad press in their respective countries.

Ms. Brown stated that Lloyd's of London stopped insuring in the U.S. cannabis industry due to the continuing legal uncertainty. She asked what this had on the insurers ability to buy reinsurance.

Ms. Massa stated that Llyod's syndicates had been the lead cannabis writers in the U.S. in 2015 because they are regulated by one entity. They decided as a group collectively to withdraw from the U.S. market due to legal uncertainty at the federal and state levels and concerns about U.S. banking regulations. The impact in the U.S. was on primary coverage and reinsurance support, as Llyods provided both. It was temporarily difficult to get primary policies; then, companies such as Golden Bear and James River stepped in to fill the void. Most global reinsurers are not based in the U.S. and operating in the U.S. cannabis market due to the aforementioned concerns. However, there is some exposure to cannabis through reinsuring portfolios. In October 2018, Canada passed the federal Cannabis Act. The bill amended the criminal code to remove it from the CSA, established cannabis operations as legal in Canada (only the second country to do so), and put in place a series of regulations to manage it in a similar manner as liquor liability. As a result, Llyod's and global reinsurers have entered their market. Some U.S. companies have bought or established Canadian carriers to write cannabis.

Ms. Brown asked to what extent exclusions and reinsurance contracts are impeding carriers' abilities to offer coverage to cannabis-related businesses.

Ms. Massa stated that reinsurance is insurance that insurance companies buy. So, insurers can choose to hold the risk on their books, but it is not advisable. There have been 30–40 new fronting companies in the past two years. There is some global reinsurance support through large treaty arrangements that include other pieces of business. However, reinsurance is difficult to obtain for new carriers.

Mr. Hall stated that the Bermuda Monetary Authority (BMA) issued a statement to reinsurers in late-2019, encouraging them to enter the now legal cannabis market in Canada. This implied to reinsurers that they should not enter markets, like the U.S., where cannabis still remains federally illegal. The result was a freeze in reinsurance capacity in the U.S. for cannabis operators.

3. Heard a Panel Discussion on Insurance Challenges

Ms. Brown asked what factors drive the lack of capacity for organizational coverage.

Norman Ives (Amwins) stated that the cannabis industry has been experiencing the same trends as the general insurance industry, just to a greater extent. The insurance market has been hardening. Professional lines risks were significantly affected when the Cole Memorandum was rescinded in January 2018. The market almost shrank in half overnight and rates rose. Since this time, the market has hardened.

Mr. Stewart stated that cannabis is a hard market inside of a hard market, especially for coverages like directors and officers. Compliance is very difficult for many of these companies leading to an uptick in securities litigation, shareholder and derivative suits, investor disputes and allegations of mismanagement actions by regulators. These cases are expensive and caused by the chaos surrounding the disparate regulation and lack of traditional financing. This leaves companies seeking private investment where they need to disclose all risks in a memo to investors, which is extremely difficult to do and leads to predictions that do not come to fruition. The genesis of the current suits is the foreign exchanges and reverse takeovers occurring in a very fragmented environment. A study in late-2000 by Stanford Law School found that there were 2008 securities class action lawsuits filed against U.S. and Canadian cannabis businesses. However, the majority of the suits had been filed within the previous two years. The filings are for failing to disclose weak demand for products, misstating inventory, failing to report operational problems, making revised earning reports that cause a stock drop, and allegedly misleading investors about contamination issues. There is a magnifying glass over the cannabis industry, resulting in several lawsuits all at once. Federal legalization in the form of the SAFE Banking Act could have a very positive impact because companies would start to operate more similarly to other industries. However, broad federal legalization may result in a temporary period of increased chaos due to the introduction of interstate commerce.

Ms. Brown stated that there are definite parallels between how insurance is regulated by states and how cannabis state-based regulation is evolving. She asked if there are gaps in products liability insurance coverage for cannabis-related businesses.

Mr. Stewart stated that the science and products are being developed concurrently, making it difficult to know what is unreasonably dangerous. This makes it hard for juries who must make decisions in product liability suits. There is a developing standard of care around agreed standards but not enough case law. The cannabis industry could see large uninsured risks materialize as tort cases get filed in the coming years. Recent science findings on vascular conditions arising out of high tetrahydrocannabinol (THC) edible products. However, insurance companies usually do good at insulating themselves with certain types of exclusions.

Mr. Hall stated that the cannabis industry has uninsured risks related to long-tail liability. Some carriers are covering things like mental illness, knowingly or unknowingly, and others are excluding it. There is a gap in the perception of what is covered and what is actually covered once you read deep into the 100-page policy.

Ms. Brown asked about products liability coverage for cannabis businesses.

Beth Medvedev (James River) stated that cannabis is very similar to other products, and underwriters can leverage similarities. One issue James River has encountered is that the industry is so unique it must anticipate the coverages. For example, on-site consumption cafes are not quite the same as alcohol because there is not a test to determine how much a person is impaired by cannabis. It is difficult to determine the effect of someone eating an edible on site and then leaving 30 minutes later. In the absence of a full understanding of all the risks, insurers may be covering unanticipated risks. Carriers also differ in their interpretations of coverage, like health hazard forms. Another issue is cannabis insureds must be aware of how the language in standard policy forms needs to be modified to remove exclusions for federal legal issues, or they could potentially face a declination of a claim.

Ms. Brown asked if there are alternate arrangements being developed or already being used in the market.

Mr. Stewart stated that there has been an increased interest in fronting over the past year. The market has also seen single cell captives being domiciled in a few states and offshore and some cannabis-specific group captives.

Mr. Ives asked Mr. Stewart if its federal legalization was needed before more progress occurs with captive risk retention groups (RRGs).

Mr. Stewart said there has been a natural reluctance to move money offshore because it gives people the impression of money laundering. There needs to be a banking solution. State insurance departments would likely have a greater comfort level with regard to actively domiciling cannabis captives if there was more certainty at the federal level.

Ms. Brown asked what risks in the cannabis industry affects property coverage.

Summer J. Jenkins (National Cannabis Industry Association [NCIA] and Cannasure) stated that an underwriter would consider the known risks. This would include anything that would increase frequency or severity of the loss; i.e., construction, occupancy, protection, and class exposure. Factors that will increase the frequency and severity include wind, hail, crime zone, and types of controls in place. Many of these questions are answered by the law. Cannabis businesses must have safe vaults and multiple secured access and entry points for areas where cash is stored. Unique to the cannabis industry is that businesses tend to be cash based. They also grow much more rapidly than other businesses, making business income an important factor. This could lead to their potential loss of revenue exceeding the amount of all other covered property from an insurance standpoint. Some carriers have a coinsurance penalty.

Mr. Hall stated that oftentimes, a fast-growing cannabis-related business will find it is maxed out on the capacity it has with its primary carrier. This is the main property exposure in the cannabis industry.

Mr. Stewart asked what can be done in cases where there is a disconnect between what was written and when the claim comes in the insured finds its underinsured.

Mr. Hall stated that some of the issue lies in educating brokers. However, the largest issue is businesses in this industry foregoing insurance because it is so expensive.

Ms. Jenkins stated that there are some coverage forms in the market for things like peak season limit endorsements, fluctuating valuation endorsements, and monthly reporting endorsements. The issue is carriers being able to navigate the administrative hurdles to implement them.

Peg Brown stated that if it were legal, there would likely be a lot of interest in interstate commerce for cannabis between California and Colorado.

Mr. Stewart stated that once interstate commerce is allowed, there is likely to be an increase in confusion due to the different state regulatory structures that require different things for their distributors. For example, in California, there are requirements that the vehicle must have a security cage or other type of protective equipment installed in the vehicle. There are restrictions that require drivers to be an employee of a certain age. Insurance provisions often go off what is required in the state. This can be an issue for cannabis businesses because they often only focus on complying with state regulations and do not read their policies. A problem will arise when the business operates in multiple states with just one system for its various distributors. The solution lies in achieving more consistency between state regulations.

4. Heard a Panel Discussion on What the Horizon Looks Like and How State Insurance Regulators Can Help

Ms. Michael asked how coverage will evolve from the surplus market to the admitted market in the coming years. She also asked if there was something that could be done to encourage this process.

Ms. Wells stated that it would take a long time for the admitted market to want to provide coverage to some of the exposures in the cannabis industry. It would need sufficient data in addition to a federal solution. Liquor liability coverage is still being provided for by the nonadmitted market.

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

Mr. Ives stated that the internet is a good source to find information on insurers in the cannabis space. He also recommended that state insurance regulators provide a list of brokers similar to the one the California Department of Insurance (DOI) provides online.

Ms. Michael asked what supportive measures state insurance regulators can provide when reinsurance conditions and federal laws change.

Ms. Jenkins stated that state insurance regulators can help by making the filing rate approval process much easier, providing more clarifying documents, and implementing a more expedient process.

Ms. Medvedev stated support for promoting those regulations in the industry to attract more insurers and reinsurers into the market. The major hurdle is having more options of insurance coverage.

Ms. Michael asked how the NAIC can support availability and affordability of coverage.

Mr. Hall stated that lack of data currently has insurers making educated guesses. Providing more flexibility inside rate filings for rates to increase or decrease would allow more insurers to feel comfortable entering the market.

Ms. Jenkins stated that the availability of forms and rate justifications are big issues because of the nature of the industry. It would be greatly helpful if state insurance regulators established justification reasoning requirements more representative of the tenure of the industry. It would also be helpful if state insurance regulators accepted data from a similar industry in lieu of data that is directly applicable.

Ms. Medvedev stated that it is important that states remain welcoming to nonadmitted carriers, as they provide an important service to emerging industries by having more flexibility.

Ms. Michael asked what innovation can facilitate better availability of coverage.

Ms. Wells stated that it really all comes down to changes with federal regulation.

Ms. Michael asked how support for legalized cannabis will evolve in the future.

Ms. Wells stated that Pew Research's April poll showed over 90% of the U.S. population thinks cannabis should be legal in some form. However, there are well-funded campaigns pushing against its legalization.

Ms. Michael asked what private solutions exist for crop insurance.

Mr. Ives stated that the federal government allowed crop coverage to be available for hemp crops for the first time last year, but only if the insured had grown crops the previous year. The crop coverage that is available would not benefit businesses growing hemp or cannabidiol (CBD) products for human or animal consumption. Crop programs are based around a federal program and the commercial insurance policies available for crop are supplemental to coverage provided through the federal program. There will not be much movement on agricultural product coverage until there is a federal crop program that is really viable for hemp farmers. The only programs currently offered for crop coverage are parametric programs, which are very limited risk-specific programs.

Mr. Bradner asked if it would be likely that the tobacco and alcohol industry would enter the cannabis industry once the federal illegality is no longer an issue. He also asked if there is anything to learn from Canada's legalization of recreational cannabis.

Ms. Wells stated that the tobacco and alcohol industry are already diversifying into the space with things like infused alcohol drinks. They are also a force against the legalization of cannabis for competitive reasons.

Mr. Stewart stated that both industries are involved, and there will likely be a coalescent around a smaller number of brands in the future. The focus of the alcohol industry is to get control of those brands. Canada is regulated very differently than what federal regulation will end up looking like in the U.S.

Kristen Augustine (Colorado Marijuana Enforcement Division) asked if a business owner would be considered higher risk if he/she has a felony record for unlawful distribution.

Ms. Jenkins stated that from an underwriting standpoint, it is illegal to discriminate or give someone preference based on their application status. But underwriters can provide things like association membership or rating credits that apply directly to the decrease of exposure on the risk. In some instances, carriers will offer a 10% credit for social equity applicants that are also members of a trade association. Trade association members are required to go through more rigorous training. Underwriting is based a lot on the underwriter's personal perceptions.

Ms. Medvedev stated that it depends on the risk, the offense, and how much it affects what is being done. Offenses, such as embezzlement, would be looked at as a moral offense.

Mr. Yardley asked how valid experience data develops in the absence of a federal solution.

Ms. Medvedev stated that individual carriers will have their own data and experience. There is also a part of underwriting that looks at where lawsuits and claims are occurring.

Mr. Ives stated that it can be difficult to try to aggregate data, as claim data is still proprietary. Aggregating litigation data can be difficult because many state courts do not provide searchable databases. States need to provide good state-level data on cannabis regulatory schemes. Traceability systems and reporting capabilities within the states need to be upgraded to generate usable data, such as gross sales. The Washington State Liquor and Cannabis Board (WSLCB) makes this type of information available.

Mr. Bradner asked if the information is obtainable through a Freedom of Information Act (FOIA) request.

Mr. Stewart stated that to a certain extent, this information can be acquired through an FOIA request, but it would be time consuming and costly. The information would only be provided through redacted records, and there are some privacy concerns. California coordinated through its various agencies to amend regulations to make it easier to share data that insurers and banks need, such as the owners, financial interest holders, and background information. This has provided marked improvement in the turnaround time and amount of data that is provided to ancillary service providers. What is allowed to be disclosed and the system set-up varies by state.

Ms. Brown stated that state insurance regulators may need to take up coordinating with sister state agencies and the Cannabis Regulators Association (CANNRA) to help provide the needed data to the insurance industry.

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

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**Discuss the Draft Outline for the
*Understanding the Market for
Cannabis Insurance White Paper*
Appendix**

— *Commissioner Ricardo Lara (CA)*

**Appendix Draft Outline
for the
*Understanding the Market for Cannabis Insurance White Paper (Adopted 7/9/19)***

- I. Intro/Overview
 - a. Provides information about the fact-finding hearing and sets the stage for the appendix
 - b. Makes executive summary of findings

- II. Setting the Stage
 - a. Understanding the Geographical Expansion of States Legalizing Cannabis and impact on Federal Level
 - i. How many states have legalized cannabis -either medically or recreational use
 - ii. Public opinion regarding legalization
 - iii. Mention federal bills and NAIC support for Claim Act and SAFE Banking Act
 - b. Cannabis Business Regulatory and Licensing Landscape
 - i. Role of Cannra
 - ii. Licensing overview
 - 1. Social and economic equity licensing
 - iii. Regulatory overview
 - 1. Vaping Regulations and impact on cannabis
 - iv. Public health and education programs
 - v. Workplace impairment and DUI
 - vi. Filling the federal void
 - c. Cannabis Insurance Market Segments and Insurance Players
 - i. Lack of admitted insurers and impact
 - ii. Seed to sale and needs for each segment
 - 1. Cultivation: goods in Process, finished stock and crop
 - 2. Manufacturing: products Liability
 - 3. Testing Labs: Professional Liability
 - 4. Distribution: Transit
 - 5. Retail: Product Liability, Budtender E&O GL Endorsement, GL
 - iii. Vertically integrated and niche players
 - 1. Is there a preference?
 - 2. How are these two treated?

- III. Insurance Product Availability
 - a. Actual and Perceived Risks
 - i. Prices between coverage for cannabis-related businesses and other industries
 - ii. Consumer beliefs
 - iii. Affordability and the role of Data
 - b. Commercial product options
 - i. Developing Policy Forms
 - 1. Iso Product
 - 2. AAIS Product
 - 3. Maybe other similar products?
 - ii. Adoption by admitted carriers and challenges
 - iii. Carrier Rate Filing Process

- c. Admitted and Nonadmitted Coverage Across the Business Sectors
 - i. Surplus Lines still primary in writing coverage
 - 1. Participation trends?
 - ii. Cannabis industry as a client
 - iii. Product Availability
 - 1. What products are available in surplus lines but not in admitted
 - 2. What is the most available product?
 - 3. Least available product?
 - 4. Purchasing Hierarchy (Cybersecurity)
 - iv. Product Affordability
- IV. Barriers to Coverage Availability and Affordability
- a. Obstacles to offering Coverage
 - i. Federal obstacles
 - ii. Need for data in underwriting
 - iii. Public opinion and reputational concerns
 - 1. Reinsurance
 - 2. What other Countries can we look at?
 - 3. Do exclusions in contract impeded insurers' ability to offer coverage?
 - iv. Risk varies by State
 - v. Impact of Interstate commerce
 - vi. Uncertainty of future litigation
 - b. Insurance Coverage Challenges
 - i. Lack of capacity for organizational coverage
 - 1. D&O Liability Coverage
 - 2. Investor Lawsuits
 - a. Impact on rising rates and deductibles
 - 3. Employment practices liability
 - ii. Gaps in Products Liability
 - 1. Health Hazard and Mental Illness Exclusions
 - 2. Use of complex and difficult forms/exclusions
 - a. Heavily scripted and untested by courts
 - 3. Environmental and toxic tort gaps
 - iii. Alternate arrangements?
 - 1. Use of alien fronting carriers by brokers
 - 2. Captives and RRGs
 - iv. Risk in Property Coverage
 - 1. Loss from crime risks
 - 2. Business income and excess property coverage
 - 3. Plant loss
 - 4. Marginalized locations and the risks that arise
- V. Moving Forward – Next Steps and closing remarks
- a. What is the role Insurance Regulators can play?
 - i. How to help evolve the process from surplus lines to admitted
 - ii. How can we help out after there is federal clarity?
 - 1. Streamline process
 - 2. Flexibility in rate filings
 - iii. Common Terms?

- iv. Crop Insurance
- v. Education?
 1. Underinsurance and reminding folks to check their policy (especially when they grow rapidly)
- b. Emerging Issues
 - i. More states legalizing
 - ii. Interstate commerce
 - iii. The role of public approval
 - iv. Products emerging
 1. Delta 8
 - v. Innovations that can assist with availability and affordability
 1. Data sharing
- c. Upcoming projects and ways to get involved
 - i. Support future legislation
 - ii. Work on a voluntary list to help industry get started
- d. Closing remarks

Additional Research:

- Public v. private sectors implications
 - Example Amazon changed their drug testing policy for most employees but not their licensed transportation employees
- Jurisdictional differences
 - Example some states prohibit vertical integrated
 - Medical v recreational differences
- CBD
 - Whether it is cannabis or hemp

Send feedback to aobersteadt@naic.org

**Discuss the Drafting Timeline for the
Appendix to the *NAIC Understanding
the Market for Cannabis Insurance*
White Paper**

— Commissioner Ricardo Lara (CA)

Discuss Draft 2022 Charges

—*Commissioner Ricardo Lara (CA)*

Draft 2022 Adopted Charges

The **Cannabis Insurance (C) Working Group** will:

- A. 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.
- B. Encourage admitted insurers to ensure coverage adequacy in states where cannabis, including hemp, is legal.
- C. Provide insurance resources to stakeholders and keep up with new products and innovative ideas that may shape insurance in this space.
- ~~D. Collect aggregated insurance availability and coverage gap information, as well as other cannabis and hemp insurance-related data, to then publicly share in a released report by the end of 2021.~~
- E. Develop an appendix to the *Understanding the Market for Cannabis Insurance* white paper providing updated information on cannabis-related insurance issues for adoption by the 2022 Summer National Meeting.
- F. Collaborate with the Producer Licensing (D) Task Force to study, in states where cannabis is legalized for medical and/or recreational use, whether cannabis-related convictions are preventing individuals from being licensed as an agent or broker. This includes collaborating to produce a report detailing the findings and potential guidance, if needed.

Any Other Matters

—Commissioner Ricardo Lara (CA)