

## Draft Pending Adoption

Attachment XX  
Property and Casualty Insurance (C) Committee  
8/12/22

Draft: 7/21/22

Cannabis Insurance (C) Working Group  
Virtual Meeting (*in lieu of meeting at the 2022 Summer National Meeting*)  
July 12, 2022

The Cannabis Insurance (C) Working Group of the Property and Casualty Insurance (C) Committee met July 12, 2022. The following Working Group members participated: Ricardo Lara, Chair, represented by Melerie Michael and Camilo Pizarro (CA); Michael Conway, Vice Chair, represented by Peg Brown (CO); Lori K. Wing-Heier represented by Austin Childs (AK); Jimmy Harris (AR); Angela King (DC); Christina Miller (DE); Marlene Caride represented by Randall Currier (NJ); Barbara D. Richardson and Gennady Stolyarov (NV); Glen Mulready represented by Andrew Schallhorn (OK); Carlos Valles (PR); Elizabeth Kelleher Dwyer represented by Beth Vollucci (RI); Karla Nuisl and Marcia Violette (VT); and Michael Walker (WA).

1. Adopted its Spring National Meeting Minutes

Ms. Brown made a motion, seconded by Mr. Walker, to adopt the Working Group's March 24 minutes (*see NAIC Proceedings – Spring 2022, Property and Casualty Insurance (C) Committee, Attachment One*). The motion passed unanimously.

2. Received a Status Report on the Drafting of the *Understanding the Market for Cannabis Insurance 2.0* White Paper

Ms. Michael stated the drafting group continues to meet every few weeks and has made considerable progress. The draft *Understanding the Market for Cannabis Insurance 2.0* white paper covers the expansion of states legalizing cannabis and recent federal legislative activities. It also provides information on the current cannabis business regulatory, licensing, and educational landscape. The evolution of operating and organizational structures for cannabis businesses is discussed. An understanding of cannabis insurance needs, coverage currently available, and market considerations is also included. The white paper concludes with discussion on the next steps for moving forward. The drafting is in its final stages with only a few additional emerging issues left to be added. This includes minor cannabinoids, which is being discussed today, and on-site consumption lounges. The drafting group anticipates bringing the completed draft before the Working Group by early 2023, with full adoption by the 2023 Summer National Meeting.

3. Heard a Presentation on How Insurers are Dealing with State Legalization of Minor Cannabinoids

Matthew Johnson (QuadScore) stated that QuadScore is a custom cannabis insurance company serving licensed marijuana operations. It was created to help fill the insurance needs of the largest companies in the U.S. Although only a small portion of QuadScore's losses is from product liability, that amount is expected to grow significantly—driven in large part by novel cannabinoids. Losses could come from claims against advertising practices, lack of proper testing or manufacturing protocol, or as a result of frustration from licensed marijuana operators over the entrance of unlicensed businesses operating in a gray market.

Jodi Green (Miller Nash) stated product liability is an area of future concern because the partially regulated, complex nature of this industry lacks a gold standard for labeling, testing, and protocols. Minor cannabinoids that have intoxicating effects are of particular concern for insurers. The federal 2018 Farm Bill de-scheduled hemp, which is defined as a cannabis plant containing no more than 0.3% delta-9 tetrahydrocannabinol (THC)—levels

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considered too low to be psychoactive. Cannabis plants exceeding the 0.3% THC level constitute marijuana and remain a Schedule 1 controlled substance under the federal Controlled Substances Act (CSA). The U.S. Drug Enforcement Administration (DEA) responded to the de-scheduling by publishing its interim final rule (IFR) on implementation of the Farm Bill. The IFR stated naturally occurring THC in hemp is not a controlled substance if it has no more than 0.3% delta-9 THC. However, it also stated the DEA would view synthetically derived THC as a Schedule 1 controlled substance regardless of whether it was derived from hemp and its delta-9 THC concentration.

Mr. Johnson stated that the cannabis plant contains more than 500 chemical compounds, including more than 140 cannabinoids, like cannabidiol (CBD) and various forms of THC. Scientists have identified that more than a dozen of these cannabinoids are intoxicating. However, there are only eight or nine major cannabinoids that naturally occur within the cannabis plant with quantities high enough for direct extraction. Since delta-8 and delta-10 only occur naturally in the cannabis plant in very small amounts, they must be derived from the conversion of CBD using chemical agents in a laboratory setting. Ms. Green stated that while delta-8 and delta-10 THC are not explicitly banned or prohibited from production, sale, or ownership under the Farm Bill, the IFR's reference to synthetically derived THC being viewed as a controlled substance creates a gray area of legality. At the heart of the debate is whether the process used to convert hemp-derived CBD should be considered as synthetically derived.

Mr. Johnson stated products with delta-8 and delta-10 THC have become popular because they have a psychoactive effect. In Atlanta, GA, where he lives, medical cannabis laws have been slow to roll out. However, sales of products containing novel cannabinoids like delta-8 have taken off without a strong understanding of the intoxicating chemicals, how they are produced, and the science around its health consequences. Many cannabinoids share similar atomic structures and can be synthesized via chemical processes such as isomerization or acetylation. This synthesization can leave residual chemicals in finished products. There is also a lack of product testing and lack of age verification at the point of sale. Oversight, regulation, and good manufacturing practices are needed in this space to protect consumers. Ms. Green stated the most significant liability concerns involve the potentially harmful solvents used in the chemical conversion process. The health risks increase even more when taken in combination with risk from cartridges.

Mr. Johnson stated delta-8 and delta-10 THC are delta-9 THC's isomers. Isomers are molecules comprised of the same number and types of atoms but with differing arrangements. Isomers are similar in structure and diverge only in one or two bonds. Delta-8 THC and delta-10 THC are distinct from delta-9 THC only in the location of the double bond in the cyclohexene moiety. Because of the difference in the location of one of the double bonds, delta-8 has less potency than delta-9 THC. Delta-10 THC tends to also have milder effects. Manufacturers dilute the delta-9 that still exists after processing to be compliant with the Farm Bill. However, there are some products on the market that contain both delta-8 and delta-9 THC, as well as other fillers or chemicals. Consumers may be unknowingly purchasing higher intoxication inducing products.

Ms. Green stated delta-8 and other minor cannabinoids are being sold outside of the regulated cannabis market because of the loophole in the Farm Bill. In states where it is legal, delta-8 products are being sold in grocery stores and gas stations as hemp or CBD products. This is confusing for consumers, who may not understand they are purchasing an intoxicating product. This includes children who are drawn to the wide variety of colorful gummies in various flavors. In May 2021, the U.S. Food and Drug Administration (FDA) issued five warning letters to companies for selling products containing CBD in ways that violate the Federal Food, Drug, and Cosmetic (FD&C) Act. Specifically, it took issue with its potential safety and efficacy concerns as unapproved CBD products. FDA warning letters are typically followed by litigation, although none has occurred yet. In September 2021, the FDA

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issued and updated a consumer advisory on delta-8 safety concerns, including the potentially harmful chemicals used in its synthetic production. In September 2021, the DEA clarified in a non-binding response letter to the Alabama Board of Pharmacy that synthetically produced THC's are illegal and not exempt under the Farm Bill. It remains unclear if the conversion process used to produce delta-8 would be considered synthetically produced. Adding to the confusion, in May 2021, the Ninth Circuit Court of Appeals held in *AK Futures LLC v. Boyd St. Distro* that delta-8 THC is legal for purposes of trademark protection. It further stated that it would be the responsibility of the U.S. Congress to fix any inadvertent loophole. The quandary is that different circuit courts of appeals may reach different decisions or different decisions in a different context.

Ms. Green stated about 18 states have banned or restricted delta-8 THC products. Some states have placed any minor cannabinoids that are considered intoxicating into the regulated cannabis market. Like cannabis, intoxicating cannabinoids are then subject to testing, labeling, and sale requirements. This eliminates the consumer confusion that may occur when being purchased from a whole foods store. Other states, such as Oregon, recently banned all artificially derived (i.e., substances created by changing the molecular structure) cannabinoids from any part of the cannabis plant. California has a complicated system of two regulated markets. The first is for hemp and food products, which diverges from federal law. The second is for cannabis containing more than 0.3% delta-9. This means that delta-8 and delta-10 fall under the hemp and food products regulations. The California legislature has reserved the right to prohibit or add to the list of prohibited items any other intoxicating cannabinoids that are developed after for the research. Ms. Green said that states across the country are grappling with these issues and trying to understand the science just like we are.

Mr. Johnson stated there are three chief concerns: 1) residual chemicals in finished products; 2) lack of product testing; and 3) lack of age verification at point of sale. A dispensary will check consumers' identification when they enter the door and when they make a purchase. There is no control when products are being sold through a gas station or whole food store. This is particularly troublesome in the context of copycat products. These products are similarly packaged to a standard food item but infused with intoxicating cannabinoids. Intoxicating Stony Patch Kids look appealing to young and impressionable children who enjoy nonintoxicating Sour Patch Kids candy. Adults too have been confused and accidentally ingested chocolate they did not realize was intoxicating. This should be caveated with the knowledge that the human endocannabinoid system can automatically shut off people's receptors if they have ridiculously high doses of cannabinoids in their systems. This effectively safeguards the type of overdose one might have in a parallel industry, like alcohol. While these products do illicit intoxicating effects, there have not been any death claims tied to them. The concerns are around how the products are made, labeled, tested, and overseen. Ms. Green stated that outside of a few states, there is not a gold standard on product testing that identifies the amount of each type of cannabinoid and any byproducts in the product. The market for intoxicating minor cannabinoids is attractive as it bypasses the high barriers to entry (licensing costs, testing, compliance, etc.) of the regulated cannabis market.

Ms. Green stated the typical policy form for insurance coverage for cannabis products that is developed for non-cannabis industries is problematic for cannabis operators. They have cannabis exclusions that prohibit coverage for products, bodily injury, or property damage arising from cannabis operations. These cannabis exclusions will read broadly enough to encompass delta-8 THC products. If a negative event occurs related to the product, more exclusions are likely to follow. Exclusions could include language that excludes hemp-derived intoxicating cannabinoids or use the Farm Bill definition by exempting products with less than 0.3% delta-9 THC. Coverage could also be denied on the basis the policy did not specifically specify the cannabinoids are covered. Health hazard exclusions are likely to be more prominent with delta-8 THC as it is synthetically derived and has the potential for harmful byproducts.

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Mr. Walker asked if Congress would be likely to take legislative action in this area in the near term.

Ms. Green stated it is plausible federal legislation could be passed in the next five years. Many states have passed medical and/or recreation legislation over the last five years. This, coupled with growing medical research and favorable court and public opinions, increases the likelihood some sort of federal legalization will occur in the next five years. Federal regulation would help eliminate loopholes like the one being used to produce and sell delta-8 THC and create consistent testing and label protocols. Mr. Johnson stated federal regulation would help address disparity issues such as arrest rates for Black cannabis users being four times higher than those for white users.

Mr. Currier asked what the reinsurance market is like for minor cannabinoids. Mr. Johnson stated that the reinsurers he works with do not understand the cannabis industry. Reinsurers are wary of the product liability exposure created by an unregulated market. His company determined the exclusionary language included in its reinsurance policies did not provide appropriate mitigation against potential claims. For this reason, his company has determined to insure only licensed marijuana businesses.

Ms. Michael asked if risks are minimized or eliminated in states that regulate this space and if there are any take-aways state insurance regulators should prioritize from the presentation. Mr. Johnson stated that it helps, but risks can never be truly eliminated. Appropriate regulation and oversight that includes mandatory product testing for new products is needed. Consumers should not consume anything that has not been tested for their own safety. Producers of minor cannabinoids should be held at the same standards as the pharmaceutical industry. Ms. Green stated there has been little research on short-term and long-term effects for some of the minor cannabinoids that are found in small quantities in the cannabis plant. Policy exclusions create the potential for coverage gaps and uninsured risks. These may be particularly troublesome for delta-8 products, where these exclusions may be ambiguous with unknown interpretation.

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

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