The Griffith Insurance Education Foundation, an affiliate of The Institutes, is a 501(c)(3) non-profit, non-partisan, and non-advocative educational organization dedicated to the teaching and study of insurance and risk management.

In keeping with the non-partisan, non-advocative mission of The Griffith Foundation, I will keep my comments and contributions to today's program unbiased and purely educational.
Setting the Stage…

- History on this matter is very important!

- My presentation:
  - History and basic facts
  - Federal climate
  - Problems for insurers and risk managers

- Sadly there are no easy answers! All I can do is give you the unbiased facts as I know them. LET’S GO!
Basic Facts and History
HOW WE GOT HERE
Hemp vs. Cannabis

- Cannabis contains over 60 difference cannabinoids
  - THC = the psychoactive cannabinoid that produces the “high” when ingesting marijuana
- Hemp: contains minimal THC
  - Grown in over 30 countries outside the US
  - It is legal to import hemp products
Known Benefits/Uses of Hemp

- 1 acre of hemp
  - Textile fiber of 2-3 acres of cotton
  - Paper pulp of 3-4 acres of trees
  - Drought and frost tolerant
  - Grows to maturity in 120 days
  - Grows in all 50 States

- Uses
  - Paper and textiles
  - Seeds produce protein
  - Non-toxic diesel fuel, varnish, oil
  - Ethanol
  - Housing construction products
The ULTIMATE Market Disruptor, Affects Thousands of Products and Industries....

- **Baking and Nutrition**
  - CBD is a powerful nutrient/ingredient that may someday be in
    - Yogurt
    - Cereal
  - Making infused edibles
  - Protein source (more nutritious than soy)

- **Legal**
- **Advertising**
- **Banking**
- **Insurance and Risk Management**
Farming
  The technology used in marijuana grows can benefit other crops
Website development
SEO
Textiles
Paper
Diesel Fuel
1840’s

- Victorian times: muscle spasms, rheumatism, convulsions.
  - Queen Victoria used it for menstrual cramp relief.
- Became accepted in Western medicine
  - Listed in US Pharmacopeial
Post-Civil War

- Marijuana became a popular ingredient in many medicinal products and was sold openly in public pharmacies.
1937

- Cannabis is made illegal in the U.S. via the Marijuana Tax Act
  - Opposed by the American Medical Association

- Why? Lots of Reasons!
  - “Reefer Madness” movie
  - International opium trade
  - Racial tension
  - Pushback from industries competing with hemp
1970

- Federal Controlled Substances Act passed.
  - Establishes five schedules of “Controlled” substances
- Declares cannabis a “Schedule 1” drug:
  - High potential for abuse
  - No recognized medical use
  - Lack of accepted safety
  - Insufficient clinical trials to show benefits outweigh risks
  - Inconsistency in levels of active ingredients from one batch to another
What Else is Schedule I?

➤ Heroin
➤ LSD
➤ Ecstasy
➤ Peyote
Other Schedules?

Schedule II
- Demerol
- Cocaine
- Hydrocodone
- Fentanyl
- Oxycontin

Schedule III
- Testosterone
- Codeine Cough Syrup

Schedule IV
- Ativan
- Phentermine
- Ambien

Schedule V
- Lomotil
- Lyrica
- Phenergan
Today, These 31 States/Jurisdictions Allow Medical Marijuana

- Alaska (1998)
- Arizona (2010)
- Arkansas (2016)
- California (1996)
- Colorado (2000)
- Connecticut (2012)
- D.C. (2011)
- Delaware (2011)
- Florida (2016)
- Hawaii (2000)
- Illinois (2013)
- Maine (1999)
- Maryland (2014)
- Massachusetts (2012)
- Michigan (2008)
- Minnesota (2014)
- Nevada (2000)
- New Hampshire (2013)
- New Jersey (2010)
- New Mexico (2007)
- New York (2014)
- North Dakota (2016)
- Ohio (2016)
- Oklahoma (2018)
- Oregon (1996)
- Pennsylvania (2016)
- Rhode Island (2006)
- Vermont (2007)
- West Virginia (2017)
<table>
<thead>
<tr>
<th>State</th>
<th>Year Passed</th>
<th>How Passed</th>
<th>Possession Limit</th>
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<tbody>
<tr>
<td>Alaska</td>
<td>1998</td>
<td>Ballot Measure 8 (58%)</td>
<td>1 oz usable; 6 plants (3 mature, 3 immature)</td>
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<tr>
<td>Arizona</td>
<td>2010</td>
<td>Proposition 203 (51.13%)</td>
<td>2.5 oz usable; 12 plants</td>
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<tr>
<td>Arkansas</td>
<td>2016</td>
<td>Ballot Measure 6 (53.2%)</td>
<td>3 oz usable per 14-day period</td>
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<tr>
<td>California</td>
<td>1996</td>
<td>Proposition 215 (56%)</td>
<td>8 oz usable; 6 mature or 12 immature plants</td>
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<tr>
<td>Colorado</td>
<td>2000</td>
<td>Ballot Amendment 20 (54%)</td>
<td>2 oz usable; 6 plants (3 mature, 3 immature)</td>
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<tr>
<td>Connecticut</td>
<td>2012</td>
<td>House Bill 5389 (95-51 H, 21-13 S)</td>
<td>2.5 oz usable</td>
</tr>
<tr>
<td>Delaware</td>
<td>2011</td>
<td>Senate Bill 17 (27-14 H, 17-4 S)</td>
<td>6 oz usable</td>
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<tr>
<td>Florida</td>
<td>2016</td>
<td>Ballot Amendment 2 (71.3%)</td>
<td>Amount to be determined</td>
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<td>Hawaii</td>
<td>2000</td>
<td>Senate Bill 862 (32-18 H, 13-12 S)</td>
<td>4 oz usable; 7 plants</td>
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<td>Illinois</td>
<td>2013</td>
<td>House Bill 1 (61-57 H, 35-21 S)</td>
<td>2.5 ounces of usable cannabis during a period of 14 days</td>
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<td>Maine</td>
<td>1999</td>
<td>Ballot Question 2 (63%)</td>
<td>2.5 oz usable; 6 plants</td>
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<td>Maryland</td>
<td>2014</td>
<td>House Bill 681 (125-11 H, 44-2 S)</td>
<td>30-day supply of non-smokable marijuana</td>
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<tr>
<td>Massachusetts</td>
<td>2012</td>
<td>Ballot Question 8 (63%)</td>
<td>60-day supply, amount to be determined</td>
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<td>Michigan</td>
<td>2008</td>
<td>Proposal 1 (63%)</td>
<td>2.5 oz usable; 12 plants</td>
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<tr>
<td>Minnesota</td>
<td>2014</td>
<td>Senate Bill 2470 (49-16 S; 89-40 H)</td>
<td>30-day supply of non-smokable marijuana</td>
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<tr>
<td>Montana</td>
<td>2004</td>
<td>Initiative 148 (52%)</td>
<td>1 oz usable; 4 plants (mature); 12 seedlings</td>
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<td>Nevada</td>
<td>2000</td>
<td>Ballot Question 9 (65%)</td>
<td>2.5 oz usable; 12 plants</td>
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<tr>
<td>New Hampshire</td>
<td>2013</td>
<td>House Bill 573 (264-66 H; 18-6 S)</td>
<td>Two ounces of usable cannabis during a 10-day period</td>
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<td>New Jersey</td>
<td>2010</td>
<td>Senate Bill 119 (48-14 H, 25-13 S)</td>
<td>2 oz usable</td>
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<tr>
<td>New Mexico</td>
<td>2007</td>
<td>Senate Bill 523 (36-31 H; 32-3 S)</td>
<td>6 oz usable; 16 plants (4 mature, 12 immature)</td>
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<td>New York</td>
<td>2014</td>
<td>Assembly Bill 6857 (117-13 A; 49-10 S)</td>
<td>30-day supply of non-smokable marijuana</td>
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<td>North Dakota</td>
<td>2016</td>
<td>Ballot Measure 5 (63.7%)</td>
<td>3 oz per 14-day period</td>
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<tr>
<td>Ohio</td>
<td>2016</td>
<td>House Bill 523 (71-15 A; 18-15 S)</td>
<td>Maximum of a 90-day supply, amount to be determined</td>
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<tr>
<td>Oregon</td>
<td>1998</td>
<td>Ballot Measure 67 (55%)</td>
<td>24 oz usable; 24 plants (6 mature, 18 immature)</td>
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<tr>
<td>Pennsylvania</td>
<td>2016</td>
<td>Senate Bill 3 (149-46 H; 42-7 S)</td>
<td>30-day supply</td>
</tr>
<tr>
<td>Rhode Island</td>
<td>2006</td>
<td>Senate Bill 6710 (52-10 H, 33-1 S)</td>
<td>2.5 oz usable; 12 plants</td>
</tr>
<tr>
<td>Vermont</td>
<td>2004</td>
<td>Senate Bill 76 (22-7 HB 645 (82-59)</td>
<td>2 oz usable; 9 plants (2 mature, 7 immature)</td>
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<tr>
<td>Washington</td>
<td>1998</td>
<td>Initiative 592 (59%)</td>
<td>8 oz usable; 6 plants</td>
</tr>
<tr>
<td>Washington, DC</td>
<td>2010</td>
<td>Amendment Act B18-622 (19-0 vote)</td>
<td>2 oz dried</td>
</tr>
<tr>
<td>West Virginia</td>
<td>2017</td>
<td>Senate Bill 386 (74-24 H; 20-6 S)</td>
<td>30-day supply (amount TBD)</td>
</tr>
</tbody>
</table>
18 States Have CBD-Only Laws

- Alabama
- Delaware
- Florida
- Georgia
- Indiana
- Iowa
- Kentucky
- Mississippi
- Missouri
- North Carolina
- Oklahoma
- South Carolina
- Tennessee
- Texas
- Utah
- Virginia
- Wisconsin
- Wyoming

As of 7/17/2018
8 States Have Adult Use Laws

- Alaska (2015)
- California (2016)
- Colorado (2012)
- District of Columbia (2014)
- Maine (2016)
- Massachusetts (2016)
- Nevada (2016)
- Oregon (2014)
- Washington (2012)
Public Opinion: 1969 vs. 2017

Federal Climate

OBAMA AND TRUMP
Federal Climate: Obama Administration

- **2009: Ogden Memo**
  - The Obama Administration instructs Federal prosecutors not to target medical marijuana dispensaries/users in compliance with their respective state laws

- **2011: Cole Memo**
  - Better defines what federal prosecutors should try to enforce with respect to its activities.
  - Example: keeping marijuana out of the hands of minors under 21.
2014 Federal Farm Bill

- Removed hemp grown for research purposes from the list of controlled substances.
  - Our hemp seed supply is now being replenished.
Internal Revenue Code 280E

Section 280E of the Internal Revenue Code forbids businesses from deducting otherwise ordinary business expenses from gross income associated with the “trafficking” of Schedule I or II substances, as defined by the Controlled Substances Act.
2014 Federal Spending Bill

- Prohibits spending federal funds on enforcing the CSA in states that have legalized marijuana.
Federal Climate: Trump Administration

- **January 2018**
  - Attorney General Jeff Sessions issued a marijuana enforcement memo that rescinded Obama-era marijuana leniency.
  - The memo made it clear that marijuana is against federal law, and that US attorneys should approach those cases as they do all others.

- **March 2018**
  - Sessions publicly stated that federal prosecutors will not pursue “small” marijuana cases.
Banks are required to file “suspicious activity reports” (SARS) whenever they receive large sums of possibly illegal cash.

Banks are federally regulated, and, cannabis is still illegal at the federal level.

Money laundering?

Thus, most banks (especially those federally chartered) will not touch a cannabis business.

A significant percentage of the cannabis trade is conducted in cash, making it a target for crime.
Problems for P&C Insurers

HOW CAN/SHOULD INSURERS RESPOND?
Problems for P&C Insurers

- We know how many people smoke cigarettes and drink alcohol…but…
  - No way to accurately underwrite marijuana exposure
- Property Risks:
  - Fire
  - Theft
  - Pollution
  - Potentially high concentrations of value in any one structure.
- Potential liability exposure for an insured who makes marijuana available to a third party
- Workers Compensation coverage issues
- Getting caught up in a legal battle due to ambiguity of the law
- But the really big problem?… FEAR OF MONEY LAUNDERING CHARGES
Valuation of Cannabis: Property Variables

- Grade/strain of product
- Organically grown versus non-organically grown
- Indoor grown versus outdoor grown
- Point in the growing cycle when it is damaged
  - Are plants 10 days old or 100 days old?
- Climate and length of growing season
Marijuana is an extremely lucrative agricultural commodity. Using the current average price of $1,948/pound in Colorado, an acre of marijuana can yield more than $1.1 million per acre. Comparatively the most widely grown crops in the U.S., including corn, soybeans, oats and wheat all yield less than $1,000 per harvested acre. Even with more competition in legal markets causing marijuana prices to fall, the revenue margin will remain significantly greater than that of other cash crops.

For more insights like this and in-depth analysis of the cannabis sector, go to:
www.frontierfinancials.com

Sources: USDA, The Rand Corporation, Correspondence with Marijuana Cultivators in Oregon
What Do the Courts Say About Coverage?
Tracy v. USAA

- Hawaii resident asked her homeowner’s carrier to pay over $45,000 for 12 marijuana plants.
  - Initially, USAA offered to settle with her for approximately $8,800.
  - Tracy demanded more money, plus bad faith damages.
- USAA asserted there was no valid insurable interest in the plants, because of a statute that says you can only have insurable interest in a LAWFUL substance.
  - USAA argued that because the plants were illegal under Federal law, to cover marijuana would be against public policy.
- The court agreed with USAA. Tracy’s claim was denied entirely.
Green Earth Wellness Center v. Atain Speciality Insurance Company (2016)

- US District Court case
- Losses to Green Earth in 2012/2013
  - Plants damaged by a nearby wildfire
  - Robbery of grow facility
- Atain denied both claims on the grounds that marijuana is illegal at the federal level
- Green Earth sued for
  - Breach of contract
  - Bad faith
  - Unreasonable delay in payment
Court Ruled That:

- Colorado STATE laws governed the contract, not federal laws
  - Court did not throw out policy due to federal illegality
- “Contraband” exclusion was ambiguous, since it did not define contraband and because of inconsistency in federal marijuana law enforcement
- Atain, having entered into the contract knowing the business involved marijuana, could not invoke federal illegality of marijuana as a reason not to pay

CONCLUSION: Atain must pay!
MJ Biz Barriers to Purchasing

- Belief that coverage is not available
- Believe that insurance is not worth the cost
- Fear that information provided to insurer can be accessed by the federal government or others
- Cost (marijuana businesses have much more costly policies than mainstream businesses do).
Conclusions

- The conflict between the CSA and state law is severe.
- Federal racketeering laws potentially implicate insurers that do business with cannabis businesses, yet other federal policies take a hands-off approach.
- Existing ISO forms DO cover some marijuana losses in terms of their wording.
- Public opinion is leaning towards complete legalization and rescheduling (or even descheduling).
- Before it becomes completely legal, the underwriting process needs refinement to evaluate the loss exposure, or, policy language needs to address via exclusion or a sublimit.