Marijuana & Insurance

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OWNER – RISK EDUCATION STRATEGIES
Business
Insurance
Needs
Property Business Insurance Needs

- Property Coverage (fire, theft, water damage, etc)
  - Buildings
  - Contents, including coverage for valuable crops, harvested products, cash
- Armored Car Coverage
- Crop coverage
- Kidnap and Ransom
- Employee Dishonesty Coverage
- Equipment Breakdown Coverage
Liability Business Insurance Needs

- General Liability
- Product Liability
- Excess Liability
- Workers compensation coverage (for employees of the facilities)
- Auto liability (for employees who deliver marijuana to customers)
- Professional liability (for doctors that prescribe it)
- Electronic data (for dispensaries if client database is breached or stolen)
Who Buys the Insurance?

- Cultivators
- Processors and Harvesters
- Manufacturers
- Dispensaries/Retail Sales
- Physicians who prescribe it
- Laboratories
- Ancillary Providers of Services to the Trade
  - Landlords
  - Insurance companies and agencies
  - Packaging providers
Standard Versus Excess Lines Insurance

**Standard Lines**
- Rates filed with the state
- Forms filed with the state
- Have guaranty fund protection
- Disputes with carriers can be referred to insurance commissioner for assistance

**Excess & Surplus Lines**
- Rates not filed
- Forms not filed
- No guaranty fund protection
- Usually no dispute assistance from commissioner
Where Is Coverage Coming From

- Nextwave Insurance Services (MGU) is the insurer for 90%-ish
  - Crouse & Associates is the wholesaler (MGA) that independent agents must go through to access the NextWave Cannabis Program
  - Nextwave is sort of a “one-stop shop,” contracted with several different carriers for different pieces of the coverage puzzle.
    - Limited coverage available (see next slide)
  - Independent agents must be appointed by Crouse

- A handful of several small programs make up the other 10%-ish
  - Scottsdale
  - Kinsale Insurance
Nextwave

Program Highlights

- All Carrier Partners are AM Best “A” Rated
- Available for Medicinal and Recreational Operations
- New Cannabis Workers Comp Market (Now Available In All States)
- Products Liability Coverage (Claims Made With Low Minimum Premium)
- New Product Withdrawal Endorsement
- Up to $10.0M Property Limits
- Up to $10.0M Crop Limits (Living Plants)
- Stock Throughput Options
- General Liability ($2.0M/$2.0M Limits)
- Excess Liability Up To $4.0M Limits
- Equipment Breakdown – Up to $10.0m Limits
Challenges to Coverage
What Does it Cost?

- $2 million general aggregate liability; $1 million excess
- $1 million building coverage
- NO products liability coverage

<table>
<thead>
<tr>
<th>Coverages</th>
<th>Quote</th>
<th>Rating Bases:</th>
</tr>
</thead>
<tbody>
<tr>
<td>General Liability Earned</td>
<td>$26,022.00</td>
<td>General Liability – Gross Revenue</td>
</tr>
<tr>
<td>Property</td>
<td>$800.00</td>
<td>$2,400,000 Annual Revenue</td>
</tr>
<tr>
<td>Crop</td>
<td>$200.00</td>
<td>Property – Property Values</td>
</tr>
<tr>
<td>Excess Liability</td>
<td>$54.04</td>
<td>Crop - Crop Values</td>
</tr>
<tr>
<td>Total Premium</td>
<td>$810.66</td>
<td></td>
</tr>
<tr>
<td>Underwriting Fee</td>
<td>$27,886.70</td>
<td></td>
</tr>
<tr>
<td>Inspection Fee</td>
<td>**Crouse Broker Fee</td>
<td></td>
</tr>
<tr>
<td>Stamping Fee</td>
<td>$1,300.00</td>
<td></td>
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<tr>
<td>Surplus Lines Tax</td>
<td>**Not included in Premium</td>
<td></td>
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</tbody>
</table>
**Crop:** International Insurance Company of Hannover SE (A.M. Best Rated A+XV)

<table>
<thead>
<tr>
<th>Crop Schedule:</th>
<th>Coverage Limits</th>
<th>Premium</th>
</tr>
</thead>
<tbody>
<tr>
<td>Seeds</td>
<td>RCV, 90% Coinsurance</td>
<td>$0.00</td>
</tr>
<tr>
<td>Immature Seedlings</td>
<td>RCV, 90% Coinsurance</td>
<td>$0.00</td>
</tr>
<tr>
<td>Vegetative Plants</td>
<td>RCV, 90% Coinsurance</td>
<td>$50,000.00</td>
</tr>
<tr>
<td>Flowering Plants</td>
<td>RCV, 90% Coinsurance</td>
<td>$607,500.00</td>
</tr>
<tr>
<td>Harvested Plants</td>
<td>RCV, 90% Coinsurance</td>
<td>$100,000.00</td>
</tr>
<tr>
<td>Finished Stock</td>
<td>RCV, 90% Coinsurance</td>
<td>$180,000.00</td>
</tr>
</tbody>
</table>

**Deductible**  
$10,000 Per Occurrence  

**Premium**  
$10,195.00
The Banks Don’t Love Us

- Fears of money laundering charges make banks very leery of going business with cannabis-related businesses....
  - ....even insurance AGENCIES.
Cancelled workers compensation coverage on 7 major dispensaries

“...board of directors unanimously agreed to the decision after two independent legal opinions determined it would have "potential exposure for criminal liability" based on federal law.”

Rulings
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 Specialty 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!
You CAN fire workers who use marijuana for medicinal purposes

- California, Michigan, Oregon, Colorado and Washington
- Coats v. Dish Network (CO, 2015)
- Garcia v. Tractor Supply Co., (N.M. 2016)
You CANNOT fire workers who use marijuana for medicinal purposes:

- Arizona, Delaware, Minnesota and Nevada
  - Expressly prohibit firing an employee for a positive marijuana test that results from off-duty marijuana use
    - For medicinal purposes
    - If employee has otherwise complied with state law.

- Massachusetts: Barbuto Case (2017)
  - Supreme Judicial Court ruled that you must make reasonable accommodation for medical marijuana users
  - Cannot fire them without treating it like any other medicine or medical condition
Example: Nevada

- Employer must attempt to make reasonable accommodations for the medical needs of an employee who engages in the medical use of marijuana if the employee holds a valid registry identification card...[unless it would]
  - Pose a threat of harm or danger to persons or property or impose an undue hardship on the employer
  - Prohibit the employee from fulfilling any and all of his or her job responsibilities.
Must WC Provide for Medical Marijuana?

- These cases say “Yes”
  - Vialpando v. Ben’s Automotive Services (N.M. 2014)
  - Maez v. Riley Industrial (N.M. 2015)
  - Watson v. 84 Lumber (N.J. 2016)
  - Bourgoin v. Twin Rivers Paper (ME 2016)
  - Noll v. Lepage Bakeries (ME 2016)
How to Support Cannabis Businesses
How Adult Use States are Dealing with Insurable Interest

RCW 48.18.040:

• (1) No contract of insurance on property or of any interest therein or arising therefrom shall be enforceable except for the benefit of persons having an insurance interest in the things insured.

(2) “Insurable Interest” as used in this section means any lawful and substantial economic interest in the safety or preservation of the subject of the insurance free from loss, destruction, or pecuniary damage.”

• Initiative 502: one ounce is lawful under Washington law, and creates an insurable interest
Oregon Measure 91:

No contract shall be unenforceable on the basis that manufacturing, distributing, dispensing, possessing, or using marijuana is prohibited by federal law.
Form a Bank? Buy a Bank?

- California is looking at forming a state-owned bank to transact business with cannabis businesses.
  - Problems with FDIC scrutiny for new banks
- Buy a bank, or encourage a small bank to take on cannabis clients *in addition to non-cannabis clients*
- John Sullivan, “Father of Cannabis Banking”
  - Has written guidelines on cannabis banking
  - First Green Bank (Florida)
Other Workarounds

- 50 or so closed-loop systems (cashless systems)
- Block chain (Ether and Bitcoin)
Petition Sites

- Cannabismutualbank.com
  - Petition site to reform banking regulations
  - Site expected to be up and operational by today

- Cannabisriskmanagement.com
  - Another petition site
Public Opinion: 1969 vs. 2015

Who Supports Legalization?

By Generation
63% of Millennials
54% of Gen Xers
50% of Baby Boomers
27% of Silent Generation

By Race
55% of Whites
60% of African-Americans
43% of Hispanics

By Political Party
39% of Republicans
63% of Democrats
58% of Independents
Most Would Be Bothered If People Use Marijuana in Public, But Not at Home

If marijuana were legal, would it bother you if ...

<table>
<thead>
<tr>
<th>Scenario</th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td>People used marijuana in public</td>
<td>62</td>
<td>33</td>
</tr>
<tr>
<td>A business selling marijuana opened in your neighborhood</td>
<td>41</td>
<td>57</td>
</tr>
<tr>
<td>People used marijuana in their own homes</td>
<td>82</td>
<td>15</td>
</tr>
</tbody>
</table>


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