

A close-up photograph of a cannabis plant with green serrated leaves and a developing bud covered in trichomes, serving as the background for the text.

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OCTOBER 24-25, 2019 | MARRIOTT MARQUIS | NEW YORK CITY

Standard Policies and Cannabis

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University of the Pacific

McGeorge School of Law

Overview of Presentation

- **Carriers expressly insuring cannabis businesses will do so knowingly and (hopefully) intelligently.**
- **Standard policies do not work well regarding state-legal cannabis**
- **Review principles of interpretation and coverage issues (public policy)**

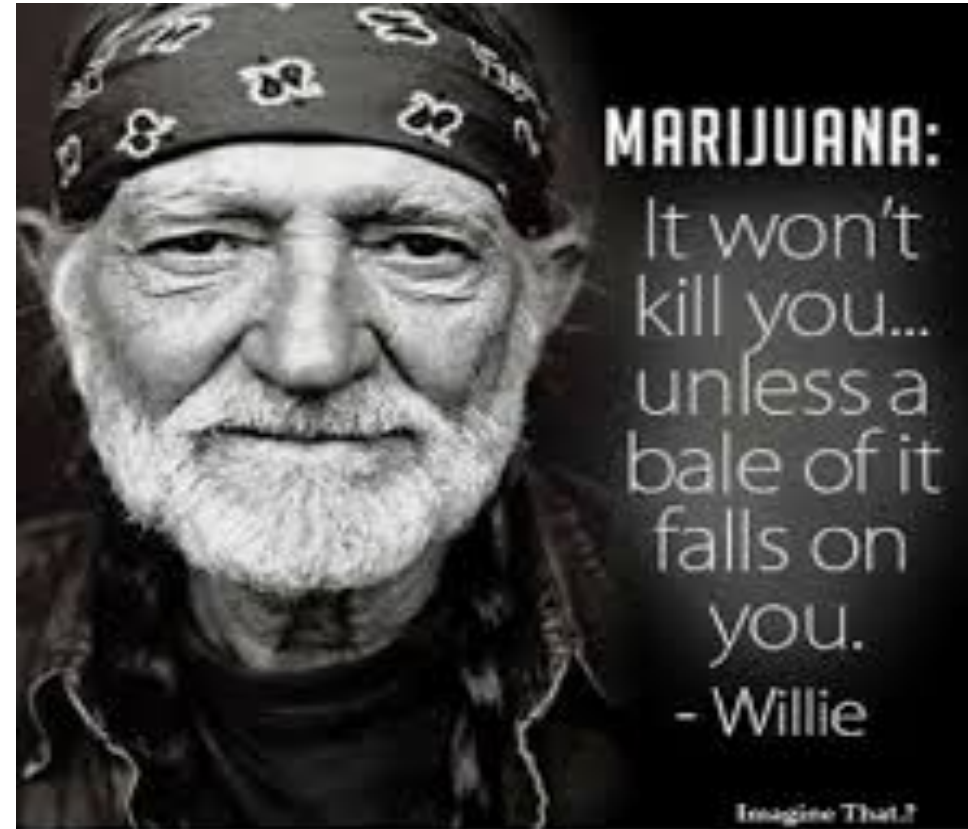
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Cannabis is a Divisive Issue



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Standard Form Policies Are Inadequate

1. Cannabis is illegal under federal law

- Unique risk to underwrite; Industry instability
- Policy forms often exclude losses resulting from:
 - Criminal conduct
 - Scheduled drugs; psychoactive products

2. Competing public policies: coverage vs. illegality

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Example: Worker's Comp Policies

1. Post-accident drug testing as requirement

- Some: presume injury caused by drugs in system
- Cal.: Employer has burden to prove
- Burden is everything, given difficulty of proving intoxication with residual metabolites.

2. Cannabis as compensable treatment.

- \$21,000 per year to get the “dosage” right.

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Competing Public Policies

1. Public Policy favors Coverage

- Insuring Provisions Interpreted Broadly
- Exclusions Interpreted Narrowly
- “*Super contra proferentem*”
- Doctrine of Reasonable Expectations

2. Public Policy Precludes “illegal” contracts

- No enforcement, not even restitution

Example: Policy Favoring Coverage

- **Tenant converts to grow house; mold damage**
- **Policy covered “vandalism”**
 - **Intended conversion showed disregard of integrity of the property**
- **Policy excluded “mold” losses**
 - **Conversion caused loss; mold was secondary effect**

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Example: Illegal Conduct Not Insured

- **State-legal plants stolen from backyard**
- **HO Policy insured theft of “plants on premises”**
- **Carrier: Insured will purchase new plants = illegal**
- **D.C.: federal public policy precludes coverage, despite clear policy language**
- **Is this “rewriting the policy?” YES**

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Thank you

- **Phil and Kevin will now discuss policy forms designed for cannabis businesses**
- **I'm happy to answer questions at the end of the panel, or later today.**

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A close-up photograph of a cannabis plant with vibrant green serrated leaves and a developing flower bud in the center. The background is softly blurred, showing more of the plant's foliage.

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EMERGING FORMS FOR EMERGING INDUSTRIES

Kevin Maher

Senior Underwriter
Canopus Group

EMERGING FORMS FOR EMERGING INDUSTRIES

- The Cannabis and Hemp industries (yes, they're different!) continue to evolve at a rapid pace. It is critical that dynamic coverage exists to support these emergent industries.
 - Off the shelf coverage forms alone are not enough.
 - That said; they are a starting point, and can offer a foundation for coverage needs (eliminating the need to start from scratch).
 - Specialized definitions and coverage language are key elements in providing cannabis/hemp businesses with the coverage they need.
 - Carriers that are unable to keep up with the fast pace of these industries are at a disadvantage. The job is never done.

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- Mistakes of the past have at times given the insurance industry a bad rap within the Cannabis & Hemp industries.
 - Examples being:
 - Carriers that hide behind exclusionary language offering only the illusion of coverage.
 - Insured's feeling that they are beholden to the insurance industry; they can only get the coverage that insurance companies are willing to offer.
 - Poor understanding of the industry translating into claim denials.
 - We need to destroy the stigma that we are working against them.
 - Education is critical – working together with the Cannabis & Hemp industries to better understand their needs will help the insurance industry offer better coverage solutions.

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EMERGING FORMS FOR EMERGING INDUSTRIES

- The Carrier Perspective on Coverage Forms:
 - It requires significant resource to effectively manage a forms library that remains relevant to the Cannabis & Hemp industries.
 - Collaboration with Claims professionals during the forms creation process is critical.
 - This helps to ensure the underwriting intent is effectively conveyed in the policy language by those actually adjusting the losses.
 - Knowledge is power. Understanding the needs of the insured help us to tailor policy language that is meaningful to them.
 - Education (yes that word again) is key. It's important to make sure the person selling the policy to the insured understands the product, and effectively communicates what is and is not covered.

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- The coverage forms we utilize today are quite different from those we began with.
 - This comes from a better understanding of the industry, working closely with our insureds, and a few lessons learned along the way.
- What have we learned, and how have we responded?
 - Broad definitions in standardized forms can have significant impacts; either providing coverage when it was not the intent, or possibly excluding coverage where it was not the intent. Using specialized definitions in the forms helps to eliminate these situations.
 - The coverage needs for a dispensary are different from cultivation, etc. – one size does not fit all.
 - Losses will happen. Post loss analysis helps us continue to evolve and improve our coverage language.
 - Most importantly, we've learned that we need to never stop learning and to embrace change. Constant awareness of what is happening in the Cannabis & Hemp industries enables us to be proactive with the coverage forms we offer.

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Locking It Down - Clarity and Consistency

- Definitions
 - Cannabis Items and Activities
 - Hemp
 - Cannabinoids
- Territorial Restrictions
- Track and Trace Data Conditions
- Exclusions:
 - Illegal Activity; Contraband; Controlled Substances; Public Policy
 - Noncompliance with pertinent state and local regulations
 - Health Hazard vs. Chronic Illness Exposures
 - Contaminated or untraceable cannabis property
 - On-site use or exposure
 - Professional/medical advice



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Controlled Substances Act	Colorado Statute (AK, DC, MA, MI, NV, WA)
<p>(A) Subject to subparagraph (B), the term “marihuana” means <u>all parts of the plant Cannabis sativa L., whether growing or not; the seeds thereof; the resin extracted from any part of such plant; and every compound, manufacture, salt, derivative, mixture, or preparation of such plant, its seeds or resin.</u></p> <p>(B) The term “marihuana” does not include—</p> <p>(i) hemp, as defined in section 1639o of title 7; or</p> <p>(ii) the mature stalks of such plant, fiber produced from such stalks, oil or cake made from the seeds of such plant, any other compound, manufacture, salt, derivative, mixture, or preparation of such mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of such plant which is incapable of germination.</p>	<p>"Marijuana" means <u>all parts of the plant of the genus cannabis whether growing or not, the seeds thereof, the resin extracted from any part of the plant, and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or its resin, including marihuana concentrate.</u></p> <p>"Marijuana" or "marihuana" does not include industrial hemp, nor does it include fiber produced from the stalks, oil, or cake made from the seeds of the plant, sterilized seed of the plant which is incapable of germination, or the weight of any other ingredient combined with marijuana to prepare topical or oral administrations, food, drink, or other product.</p>

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Insurance Services Office (BP 15 33 09 19)

"Cannabis":

1. Means:

Any good or product that consists of or contains any amount of Tetrahydrocannabinol (THC) or any other cannabinoid, regardless of whether any such THC or cannabinoid is natural or synthetic.

2. Paragraph 1. above includes, but is not limited to, any of the following containing such THC or cannabinoid:

a. Any plant of the genus Cannabis L., or any part thereof, such as seeds, stems, flowers, stalks and roots; or

b. Any compound, byproduct, extract, derivative, mixture or combination, such as:

(1) Resin, oil or wax;

(2) Hash or hemp; or

(3) Infused liquid or edible cannabis;

whether or not derived from any plant or part of any plant set forth in Paragraph 2.a.

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1. "Cannabis" means any:
 - a. plant of the genus Cannabis, whether growing or not;
 - b. material or part of item a. above; or
 - c. preparation, mixture, good, or "product" containing delta-9 tetrahydrocannabinol (THC), whether natural or synthetic.

However, "cannabis" does not include "hemp".
2. "Cannabis activities" means the cooking, cultivation, delivery, design, disposal, distribution, extraction, furnishing, harvesting, manufacture, planting, preparation, processing, production, sale, serving, storage, testing, or trade of "cannabis" in any form or quantity.
3. "Hemp" means any:
 - a. plant of the genus Cannabis, whether growing or not;
 - b. material or part of item a. above; or
 - c. goods or "products" containing or made from items a. or b. above;

with a delta-9 tetrahydrocannabinol (THC) concentration of 0.3 percent or less on a dry weight basis.

However, "hemp" does not include any plants or "products" that violate any applicable federal, state, or local laws pertaining to agriculture, food, prescription or non-prescription drugs, cosmetics, health supplements, alcohol, tobacco, or controlled substances.



AAIS CannaBOP



- First-Party Property
- Loss of Income
- Occurrence-Based BI and PD Liability
- Products/Completed Work Hazard
- Medical Payments Liability
- Fire Legal Liability
- Personal and Advertising Injury
- Rated for Retailers, Producers, and Labs
- Statute-Based Definitions of Cannabis, Cannabis Items, and Cannabis Activities
- Territorial Cannabis Coverage Restrictions
- Track & Trace Data Condition
- Cannabis-Specific Exclusions
- Comprehensive Rules and Loss Costs

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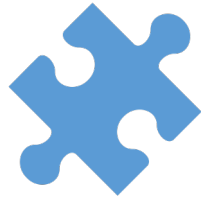
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AAIS Standard Form Development



Multi-State
Exclusion
Endorsements



Specialized
& Custom
Endorsements



Cannabis
Farmowners
(CannaFO)



Commercial
Package
(CannaPAK)

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Questions?

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