Risk Management and Insurance Manual

INTRODUCTION TO CANNABIS INSURANCE

PART TWO

NATIONAL CANNABIS INDUSTRY ASSOCIATION

RISK MANAGEMENT & INSURANCE COMMITTEE

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NCIA's Risk Management and Insurance Manual

Purpose and Scope

Let's face it: Insurance is complicated, opaque, confusing, even boring (to most normal people). However, it is also a very important risk-management tool for business owners including those participating in the cannabis industry, whether as a state-licensed, "plant-touching" business, or as one of the many ancillary businesses providing goods and services to cannabis businesses and consumers.

Obtaining appropriate insurance coverage is just one of the many challenges faced as a business owner in the cannabis industry. We hope that this publication will help demystify insurance and be a resource for decisions about whether and how to obtain insurance coverage for risks associated with cannabis-related business, a navigation tool for the application process, and an informational tool for the claims process.

This manual is meant for those in the cannabis industry, and its purpose is to educate about the insurance process—not cannabis itself. It cannot answer all questions, but we hope it will give enough information to ask insurance professionals informed questions about the specific risk exposures of the business, steps the business can take to avoid, transfer, or mitigate those risks, and what insurance coverage is needed for the business.

> *Please note that the scope of this manual is limited to "property and casualty" (P&C) insurance coverages for businesses. This manual covers neither homeowners' nor personal auto insurance policies for individuals and families, nor individual or group health insurance plans that may be available for the business and its employees.*

About the RMIC

The National Cannabis Industry Association's Risk Management & Insurance Committee is a multidisciplinary group of professionals working in the cannabis and insurance industries. We have created this manual to help business owners operating in state-legal cannabis industry gain a basic understanding of risk management, particularly insurance.

The Committee works to provide educational material to the cannabis industry on the topics of risk management and insurance in a variety of formats, including publications such as this Manual, and also webinars, podcasts and other media.

The Committee is one of several committees established by NCIA to serve the interests of the cannabis industry in the United States. Committee members are appointed for annual terms from among interested and qualified volunteers who are members of NCIA. It is intended that future Committees will refresh and supplement the material in this Manual; however, there is no guarantee that information in this manual will remain current after the date of initial publication.

Introduction

Every business faces numerous risks. Cannabis businesses, in principle, are no different. Of course, "plant-touching" businesses face additional risks associated with federal prohibition, and often extremely burdensome regulation at the state level, and these risks are definitely unique to cannabis (and mostly uninsurable). Moreover, to some degree or another, our whole industry is affected by the lingering stigma of prohibition, which continues to limit our access to capital, banking, insurance, and other business services that other industries pay less for and can usually take for granted. It provides a unique challenge for our industry.

When we refer to the "cannabis industry," we mean state-licensed companies in the United States (i.e., "plant-touching" businesses); as well as producers, processors, sellers, etc. of hemp, CBD and other minor cannabinoids; ancillary business are non-plant-touching goods and services (e.g., paraphernalia, accounting, legal and security services, software developers).

We will start by describing some basic concepts about risk management, and how insurance fits into a greater risk-management strategy. We will then dive into the details about the different types of insurance coverages that are available, how insurance policies are structured, the insurance marketplace, the claims process, and more. We also include a glossary to help you learn the language of insurance.

"Risk" is a difficult term to define and has several different connotations. For our purposes, *risk* is the possibility of an occurrence or loss due to a *hazard* or *peril*. Risk also can be used by insurance professionals as the general term for the insured or property to which a policy applies. In addition to its unique risks, the cannabis industry faces exposures that are similar to those faced by other industries such as losses from fire, theft, product liability, employment practices liability, to name a few. Companies throughout the supply chain are subject to risks such as product contamination and theft. Cannabis operators must address risks that have not previously been addressed by the insurance industry. They are forced to consider the impact of continued federal prohibition obliging many cannabis companies to do business exclusively in cash, which carries additional risks. With the industry still in relative infancy, new laws or regulations can help to reduce or to create risks for these businesses. For example, a change in the interpretation of a regulation might make certain product lines unsaleable or place restrictions on the ownership of a licensed business.

Risk Management and Insurance

Every business faces a multitude of risks, as previously discussed, and the cannabis industry is no different. In some cases, losses could amount to just a few thousand dollars; in others, the damage could run to hundreds of thousands or even millions of dollars. Risk management is, quite simply, the process for identifying and evaluating loss exposures faced by a business and then selecting and implementing the most appropriate method for treating or minimizing those exposures. Because the possibility of a loss can never be completely escaped, there are four main methods for treating the exposure of a loss: risk transfer, risk mitigation, risk retention, and risk avoidance.

Insurance is key component of a risk management program. Insurance provides repayment and compensation for loss sustained by the insured. The insurance policy is a legal contract that sets out how, and in what circumstances, the insurance company will provide indemnification and pay compensation. The loss need not be financial, but it must be expressible in financial terms. Through insurance, businesses transfer their risks to an insurance company in exchange for annual or monthly payments, called premiums. When a covered loss occurs, the policyholder files a claim with his/her insurer. Depending on the nature of the loss and policy in question, the insurer may:

- make payments to compensate the insured for damage to property or covered financial losses;
- hire a lawyer to defend the insured;
- make a settlement with a third party injured by the insured; or
- pay for judgments entered against the insured.

This will be covered in greater detail in another section.

Insurance is a form of *risk transfer*, where the risk of loss is transferred by one party (the insured) to another (the insurer) through the purchase and sale of a contract of insurance (i.e., an insurance policy).

> The principal reason for purchasing insurance is to protect the business from financial losses it might incur in the course of its operations, especially those of a magnitude which could threaten its survival. Through payment of the premium, the policyholder transfers certain risks to an insurance company, which will pay a claim up to the limits of insurance in the case of a covered loss.

An insurance company is the institution that provides contracts to protect individuals and businesses against the risk of financial losses in return for regular payments of premiums. Insurance companies are all rated in terms of their financial strength.

An excellent option to augmenting the risk transference process is *risk mitigation*. It is the possibility of a reduction for a loss through affirmative, conscious actions by the policyholder to control or prevent a risk to an acceptable or tolerable level. Mitigating (reducing) the risk may have the added benefit of lowering premiums since the policyholder is seeking ways to reduce frequent losses from occurring. For example, there might always be a risk that someone will sustain an injury by slipping and falling on steps, but the chances can be reduced by keeping the stairway well-lit, by installing a banister/hand rails, by applying salt to iced steps, and by other methods. Likewise, to reduce the possibility of legal and regulatory violations, seeking legal counsel and adopting a robust compliance program to stay informed of the legal and regulatory requirements that apply to the business operations can avoid or lessen the severity of any compliance violations that would result in fines or the loss of a license to operate.

Similar to risk mitigation is *risk retention*, but the main difference is there is not an insurance policy to cover a loss. Risk retention is when an organization or person retains, or keeps, the risk and its consequences (a claim) for itself. This could occur consciously, as part of a sound risk-management strategy, or it could happen unknowingly, if—for example—the entity is unaware a certain risk exists and thus does nothing to mitigate or transfer it; or where the organization believes a particular hazard is covered under its policy but discovers the loss is excluded. Risk retentions are sometimes seen as part of a *captive insurer* or through *self-insurance*. These will be discussed later in the manual.

There is probably not any scenario in which all risks can be completely transferred or avoided. Even when risk is transferred via insurance, insurance policies are still subject to limits, exclusions, deductibles, and retentions, all of which are designed so that the insured always has some "skin in the game" and thus retains some risk of loss. It is important to have an alignment of interest with the insurance carrier. The fourth risk management tool is *risk avoidance*. This approach would entail a conscious decision to not engage in a certain activity or course of conduct that could expose a business to an unacceptable risk of loss. For example, business operators avoid the risk of losing their licenses to operate by complying with the law.

When insureds bear at least some risk of loss in the event of a claim, this creates incentives for insureds to engage in good risk-management practices such as risk avoidance and mitigation and thereby prevent loss for both the insured and the insurer. Obtaining insurance on favorable terms also relies on a good claims (loss) history.

Running a business is risky and a huge responsibility; the consequences of failure may be irreversible. Insurance is designed to help pay for certain, but not all, losses. Insurance carriers still rely on their policyholders to protect their customers, employees, the general public, and their property.

The Insurance Market: How Insurance Is Bought and Sold

It is a myth that cannabis companies cannot get insurance. As with banking, solutions are available, but there are fewer options and these generally cost more than they would for non-cannabis companies. Although the insurance market is expanding, the condition is expected to continue, at least until there are more substantial steps taken towards lifting the federal prohibition of cannabis.

One of the main reasons that insurance options for the cannabis industry are limited is federal prohibition of cannabis. Because cannabis remains a controlled substance under federal law, funds received from plant-touching businesses could be considered to be proceeds from criminal activity, which makes banking the cannabis industry problematic for financial institutions. The banking system is essential for all insurance companies. Because it is also strictly regulated, compliance costs are high, and violations result in steep fines and penalties that could jeopardize access to banking by insurers and even their ability to continue in business. Although there is existing regulatory guidance on how federally chartered banks can legitimately service the cannabis industry, the risks are high and the largest banking institutions and insurance companies have thus far decided to not get involved.

Another issue is lack of knowledge about the industry, which makes it difficult for insurers to understand and underwrite the associated risks. There are several ways to organize an insurance company; this will be discussed later. However, these companies are generally categorized in one of two marketplaces: admitted and non-admitted, also known as excess and surplus lines. The difference between the two is how they are regulated by the state. All of insurance is governed by the individual states.

The admitted or domestic insurance companies are licensed in the states in which they sell policies. These companies are domiciled in a single state but must be specifically licensed in each state where it intends to conduct business, and they must comply with each state's insurance laws and regulations, including financial fitness requirements, and submit their policy forms and rates for approval by the state. If an admitted insurer becomes insolvent, that state's guarantee fund will provide some protection for the policyholders. It is important to note that this protection is limited and may not fully pay claims that would have been paid by the insurance company had it been financially solvent.

Non-admitted insurance companies (also known as a "surplus" or "excess" lines carriers) can offer insurance, but only when coverage is not available from admitted insurers in the state. When buying insurance from a non-admitted carrier, the insured pays additional taxes and fees and must be informed that the non-admitted company is not backed by the state if it becomes insolvent and unable to pay claims. That is not to say that non-admitted carriers are "bad" companies or that they will fail; it means there is not a state-run guarantee fund for excess & surplus carriers' policyholders. In the event of a catastrophe and the subsequent insolvency of the non-admitted carrier, there is no "safety net." These insurers usually write coverage through an excess and surplus lines broker licensed in that jurisdiction. Non-admitted companies can adjust and modify their forms and rates to meet various market conditions.

Currently, only a handful of insurance companies will issue policies to cannabis businesses. Most of these companies are non-admitted insurance carriers. The terms under which they will offer coverage to cannabis operators generally is less favorable than what would be available to similar companies in other industries from admitted carriers. This reflects the rather limited competition among insurers. However, the currently elevated premiums in the cannabis industry relative to other industries will continue to attract new entrants to the cannabis insurance markets and premiums and coverage terms should eventually improve, even if the status of cannabis under federal law is not fully normalized.

Occasionally, however, ancillary businesses may find options from admitted carriers. These options will almost always be better than offers from non-admitted carriers, but it is not unheard of for policies to be cancelled or not renewed when the admitted carrier learns that there is cannabis-industry exposure in their portfolio.

It is also worth mentioning that the unique marketplace surrounding cannabis businesses is giving rise to further exploration of captive insurance solutions and risk retention groups. *Captive* insurance companies and Risk Retention Groups are private insurance companies created to insure the risks of the insured/owners or their related corporations. They are a form of self-insurance offered widely in the United States and are often used in high-risk industries where there are few, if any, other options. They have existed since the 1950s, and they cover businesses that share similar risks. They are created when businesses cannot obtain reasonable coverage at acceptable prices and allow owners to design customized policy forms, set pricing, and retain the profits from insuring their risks. In terms of risk management, because it is insurance, it is a form of risk transfer, but because it is the organization's insurance company, it can also be considered a form of risk retention, or self-insurance. Like other insurers, the states regulate every captive in which they are filed/domiciled.

Businesses will consider creating captive insurance companies when they cannot obtain reasonable coverage at acceptable prices. Cannabis licensees face exactly these conditions. Premiums are high, coverage is limited by exclusions, and insurance companies enter and leave the cannabis insurance space. The owners of a captive insurance company can design customized policy forms, set premium pricing, administer claims, and retain any profits realized from insuring their risks.

There are different types of captives that serve a variety of ownership structures and financial objectives. In broad terms, they are either “single-parent captives” or “group captives.” As the names suggest, a single-parent captive is owned by one corporation, usually a financially strong entity that wants to retain a large portion of its insurance risk. It can offer policies to affiliated companies as well as itself. A group captive is owned by members of an association, profession, or group of entities that share similar risks.

The advantages that owners of captives can expect are:

1. Specific coverages tailored to their business;
2. The potential of lower premiums;
3. Retain the underwriting profits generated by the insurance;
4. Retain the investment income generated by premiums;
5. Greater control over the claims process and legal defense of frivolous claims made against policyholders; and
6. Customized risk management and safety programs.

Captives underwrite all kinds of risks, including liability, property, and workers’ compensation. To date, captives in the cannabis market have focused on liability lines of insurance such as Product Liability, General Liability, and Directors and Officers Insurance.

Well-run captives will contract with experienced advisors such as accountants, actuaries, reinsurers, and lawyers, who help administer the operations of the company. As with all insurance, success is mostly determined by careful risk selection, sound pricing, and effective claims handling practices.

There are risks, and captive owners must contribute the capital required to fund the operations of the company. Policyholders should know that losses can exceed revenues, and there are no guaranty funds available to policyholders. That said, captives have many ways to manage risk, and they are a reliable way for buyers of insurance to improve their options.

Consulting with legal counsel and seeking additional information from the state department of insurance before making an investment is encouraged.

Underwriting Perspective on the Cannabis Industry

Underwriters are trained insurance professionals who evaluate risk for an insurance company. They review applications for insurance, and determine premiums, rates, and coverage options. Most underwriters evaluate a prospective insured based on factors such as the size of the company, number of employees, gross revenues, number and/or types of products and past losses or claims, among other risk management and loss control variables.

Relative to other industries, evaluating risk in the cannabis industry is still a new game for underwriters, who have less historical data about the industry to analyze, and there are geographical, political, and other factors unique to each state. This leads underwriters to take a cautious approach to assessing each risk, which limits the extent to which they are willing to offer coverage. As a result, participants in the cannabis industry will often pay higher premiums and see more limitations and exclusions in their coverage forms than comparable businesses in other industries; also, they may not be able to purchase higher limits.

Insurance Agents, Brokers and Managing General Agents

While the terms insurance "broker" and "agent" are often used interchangeably—even by insurance professionals—it is important to understand the similarities and differences between the two different roles. As compensation for their services, both agents and brokers are paid commissions or fees by the insurance companies for the policies that they bind or sell. However, while agents represent insurers, brokers represent insureds and are ethically obligated to act in their best interests. Also, while agents may represent just one insurance company or even several, brokers will usually have access to a broader market of insurers, most often through insurance wholesalers and sometimes directly with the insurers.

A Managing General Agent, also known as MGAs are organizations appointed by insurance companies to manage all or a portion of their business. They are not insurers, but rather have contractual authority to underwrite and issue policies, settle claims, and generally act on behalf of the insurance company. They are regulated by their state division of insurance.

Working With an Insurance Broker

Producer is the overarching term for a person who sells insurance; this is the term we will use to reference both an agent and a broker and to avoid confusion with a broker in the Lloyd's of London marketplace. Because of the limited market for cannabis insurance, it is strongly recommended that policyholders work with an insurance Broker that specializes in cannabis when looking for insurance. Brokers who specialize in cannabis insurance will have better knowledge and understanding of the industry, the insurers willing to offer coverage, and the common exclusions and limitations in cannabis coverage forms. They will be better able to help insureds understand your risks, advocate for their business in the underwriting and claims processes, and to explain coverage terms than brokers without cannabis industry experience and knowledge.

What to Look for in an Insurance Broker

Due diligence is critical when selecting an insurance Broker specializing in cannabis. The following are good resources to consider when selecting a Broker:

- Referrals: Number of cannabis clients the Broker currently has and request several referrals;
- Market Access: List of carriers the Broker has access to and evaluate the number of carriers;
- Contract Review: Specialists on staff to review contracts and advise on contractual exposures and risk transfer;
- Risk Management: Specialists on staff to provide in-person facility walk-throughs, workplace safety consulting, and risk reduction support;
- Claims: Access to carriers with dedicated claims team knowledgeable in cannabis claims and attorneys available to drive claims resolution processes;
- Employee Benefits: Employee Benefits and 401K team to support employee advocacy and benefit solutions;
- Additional Services: Specialists in additional areas that can assist as a cannabis business scales.

The relationship between the Broker and a cannabis business should be one of transparency; a foundation built upon consistent communication. The following will outline a rough timeline of when a cannabis organization should engage with a Broker.

1. Initial Entry into the Cannabis Space
    a. The initial purchase of insurance will be different for every cannabis organization and will vary from state to state. However, once the businessowner begins contemplating entering into the cannabis space, he/she should begin vetting Brokers.

       It is important for a cannabis organization to seek recommendations and begin interviewing potential Brokers early in their licensing journey. The reason is two-fold: businesses often enter into lease agreements or other legal contracts which may not be covered by their insurance policy. Having a savvy Broker to help navigate this will ensure there are no gaps in coverage. Second, the Broker may be able to reduce premiums through proper risk management techniques.
2. During the Policy Term
    a. Any time there is a material change to the organization–purchase of new property, substantially increased revenues or payroll, exploring new contractual arrangements, merger/acquisition activity–the insurance Broker should be consulted.
3. Renewals
    a. The insurance renewal period is a good time to review all current coverages and discuss upcoming revenue, payroll, and overall expansion strategy with the insurance Broker. Unlike other types of coverage, cannabis policies are not automatically renewed. Affirmative action must be taken by the policyholder to ensure they have coverage for the upcoming year. Renewal preparation should begin 90-120 days before the expiration date of the policies currently in force.
4. Claims

    a. Any time a potential claim event takes place, the insurance broker should be notified by the cannabis organization. It is tempting *not* to notify the carrier in an effort to reduce loss history occurrences. However, this can be a slippery slope. Please see the claims section for more information.
5. Transition to a New Broker
    a. The time may come where a cannabis organization wishes to move to a new broker. Lack of knowledge, slow response, poor servicing, limited capabilities, and a myriad of additional causes may lead to this. The process of transitioning to a new Broker while keeping the same insurance carriers is a called a Broker of Record (BOR). To trigger and complete the process, a signed letter on the cannabis organization's letterhead must be submitted to all insurance carriers. After a hold of 5-10 days, depending on the carrier, in which the current Broker is given the opportunity to submit countermanding letters, the new Broker will assume servicing control of the cannabis organizations current policies. In the cannabis marketplace, very few insurance carriers allow of servicing the BOR, thus the policies will most often need to be rewritten. This happens often in the industry and simply needs the time and attention to make sure the changes can be done and are the most beneficial to the cannabis operator.

There have been numerous articles about insurers becoming insolvent in several states. Discussing the financial strength of carriers is beyond the scope of this manual, but businesses should ensure their insurance company is rated by a number of agencies including AM best, Demotech, and Standard & Poor which the broker can explain in more detail. Needless to say, the insurer should meet the local regulations as well.

While every claim is different, brokers can also help cannabis businesses navigate the claims process and will know how arduous it can be.

Insurance Applications

The first step in the insurance purchasing process is to complete an insurance application. Insurance companies prefer using their own application forms, each of which is geared to the specific type of coverage; some applications will include multiple sections, and if a particular coverage is not wanted or needed, that section should be marked "not applicable" to avoid any ambiguity.

A good insurance broker will select and send one application form to complete, depending on the type of coverage requested. Usually, this will be the form that elicits the most information, and they will use the information provided to populate the forms of other insurers they will approach for a quote. It is vitally important that the information provided is truthful, accurate and complete since the application is relied upon for the proper pricing and terms. In addition, the application can become a part of the policy and policyholder is not only signing under penalty of perjury, but also if a misrepresentation is later discovered, the policy can be voided leaving the insured without any coverage for the loss.

When the insured accepts the insurance quote, they will sign the application; the Broker will submit it to the insurer and bind coverage.

Basic Application Information

The following is an overview of the basic information that is usually requested by insurers when you apply for various types of coverage.

General Information (all coverage types)

- Business Description and Legal Entity Information
    - Experience managing a cannabis business or otherwise should be highlighted
- Trade Associations: Provide a list of associations that the organization belongs to
- Financial Information (5 years if available)
    - Gross Sales (a breakdown as follows will most likely be requested)
        - Flower
        - Edibles
        - Vapes
        - Topical
        - Oil and Concentrates
        - Non-THC Products (pipes, nutritional supplements, services, accessories)
    - Annual Payroll
    - Number of Employees
- Proof of Prior Coverage for all lines of insurance
- Prior Claim Information (also known as "loss runs")
    - Detailed descriptions of major claim activity provided by the previous insurance carriers. This is typically obtained through the insured's broker
    - 5 years of loss runs for each coverage line if available

General Liability

- General Exposure Information
    - Compliance Best Practices and Procedures
    - Water exposures, residential exposures, additional commercial tenants, firearms on premise, extraction type
    - All premises owned, rented, or occupied as part of the business operations must be listed. If this is not done, properties which do not appear in the

Declarations Page may not be covered under the policy leaving the property and claim uninsured. See Insurance Nuts & Bolts for more information.

- Product Storage/Inventory and Consumption
  - Value and Percent of product on display
  - On-site consumption
  - Track and trace

Note: The premiums for most general liability and product liability policies are priced based on a rate tied to gross sales during the policy period—e.g., $1.20 per $1,000 of gross sales which are auditable each year. This means that after the end of the policy period (usually one year), the insurance company will review the actual gross revenue compared to the projected gross revenue on the application. If the actual gross revenue is greater than the amount projected on the application, the insurer will issue a bill for additional premium, based upon which will be at the same rates as were in effect at the time as coverage was bound.

Unfortunately, the converse does not apply, as most non-admitted insurers will not offer a premium refund if the actual gross revenue for the period turns out to be less than the amount projected on the application. In some cases, the rate charged on audit will change.

Product Liability

- Detailed Product Descriptions
  - Dosage Information (assuming cannabis product)
  - Highest dosed products and best practices and procedures for selling high dosed products

- Testing Practices
    - 3rd party testing practices, including list of products completed
    - Name and contact information of primary testing facility utilized may be requested
- Labels
    - Copies of all product labels may be requested
- Product Recall Practices and Procedures
- Verification of deterrence to minors, disclaimers, etc.

Property Coverage

(This will be requested for each property and location)

- Description of Operations at this location
- Type of Building Construction
    - Year built
- Square Footage (including breakdown of any additional tenant's sq. ft.)
- Number of buildings and stories
- Building Updates (the year of most recent updates)
    - Roof
    - Plumbing
    - Electric
    - HVAC
- Risk Reduction Information
    - Security features (vaults/safes, CCTV, fences, security guards, gated windows/doors)
    - Sprinkler System
    - Central Station Fire Alarm
- Vault and Safe Information
    - Fire rating and weight of safe

    - Detailed vault information, typically subject to carrier vault form requirements and approval
- Crop coverage
    - Crop values by stage of growth
- Inventory values (cannabis and non-cannabis)
- Business Income Worksheets
- Business Personal Property values

Auto Coverage

- Vehicle Information (year, make, model, radius of operations)
- Driver Information (age, driving record aka motor vehicle report)
- Fleet safety/management, best practices and procedures

Workers Compensation

- Payroll and Employee Breakdown as follows:
    - Per location
    - Per classification (cultivation, clerical, retail, etc.)

Note: Premium is based upon a projection of the payroll for the upcoming policy period. Like the General Liability policy, Workers Compensation policies are auditable. This means following the coverage period, an insurance company will review the actual payroll vs. the stated payroll on the application. If the payroll from the application is less than the actual, then additional premium will be collected by the insurance company. If the application payroll is more than the actual, return premium will be granted by the insurance company.

Cyber Liability

- The following controls will be reviewed:

    - Record keeping and collection best practices/procedures
    - PCI-DSS Compliance
    - Sender Policy Framework (SPF)/DomainKeys Identified Mail (DKIM)/Multi-Factor Authentication (MFA)
    - Remote access
    - Internal/external email security controls
    - Phishing controls
    - Employee training
    - Backup/recovery policies

Note: Absence of one or more items above may limit coverage options available

Management Liability

- Detailed overview of the operations
- Financial Statements
    - Audited will be preferable
- Detailed Organizational Chart
- Capital Table and Inventor activity, or capital raises
- Merger and acquisition plans
- Historical employee count
- Past claims details

Additional Application Information

Before submitting an application, it is recommended that final review takes place of the information captured. While most businesses do not intend on intentionally misrepresenting their operation, incidental application statements will carry coverage implications. It is important that protective safeguards and the representations and warranties highlighted on an application are adhered to. Accurate completion of insurance applications is key to making sure a cannabis business has the appropriate coverages in place and is adhering to policy terms, conditions, and warranties. Inaccurate completion of applications can result in increased likelihood of uncovered claims or cancelled coverage altogether. When in doubt of any question on the application, clarification and guidance should be sought from the broker.

Once an application is submitted to underwriting, a cannabis business can expect varying turnaround times. The market and type of coverage will typically dictate the turnaround time. To be safe, businesses should plan for a 30-day turnaround time for new quotes.

Timing should also be a consideration for renewing insurance coverages. Preparation for renewals will often be triggered by the insurance producer. Ideally, this preparation should begin 90 days out from the policy expiration date. While the market will also dictate renewal quote turnaround times, the sooner information is submitted to underwriting the better position a cannabis business will be in. In the cannabis industry, renewals are not automatic and a renewal application will be required.

Insurance Nuts & Bolts

Insurance and its policies can be daunting. Even savvy businessowners may ignore insurance and turn to something that makes more sense to them. It is hoped this manual will help the cannabis and ancillary businessowner make sense of this necessary product.

Insurance Policies

At its most basic level, an insurance policy is a contract between an insurance company (the “insurer”) and a business entity or individual (the “insured” or “policyholder”). In exchange for a payment or series of payments by the insured (the "premium"), the insurer agrees to pay money to the insured in the event of certain occurrences resulting in loss to the insured during the policy period, subject to numerous limitations, exclusions and other terms and conditions.

In most cases, carriers offer coverage pursuant to various forms they have drafted and there is very little, if any, room for negotiation for the ordinary individual or the small- or medium-sized business. In other words, it is usually a "take-it-or-leave-it" proposition. Thus, most insurance policies—which are a collection or package of forms drafted by insurance companies—are what are called "contracts of adhesion." Though this sounds pretty bad, there is a silver lining: When the policyholder is a party to a contract of adhesion drafted by carrier, a court of law will interpret any ambiguous language in the contract in the insured's favor in the event of a dispute between the parties. (This concept will be discussed more in the section dealing with Claims.)

Most policies are comprised of a similar structure, and the most basic policy form is discussed here. Definitions of the terms below can be found in other sections of this manual and/or the Glossary.

Declarations

The Declarations Page, or Dec Page for short, will usually be the first page of an insurance policy. This page summarizes and highlights the main features of the policy. It identifies the *who, what, when, how*, and *how much* of the coverage requested.

Who

The who of the policy is:

- *Insurer name and address*—This is the insurance company issuing the policy.

- *Named Insured*—The name of the business entity covered by the policy. It is very important to confirm that this information is correct when the policy is issued. The insured's mailing address should also be listed. This address can be different than the insured location (below).

What

The what of the policy is:

- *Insured locations*—The address(es) of insured locations. All should be listed. If they are not, there should be separate policies for those locations. This can be different than the insured's mailing address.
- *Description of business*—The business description should be reasonably comprehensive considering the scope of the operations, and not in any way misleading, or the carrier can deny coverage or cancel the policy altogether.

When

The when of the policy is:

- *Policy Period*—The precise dates and times at which coverage commences and ends). If the policy is a claims made policy, the retroactive date will also be included.

How

The how of a policy is:

- *Schedule of Forms*—The Declaration page will include a schedule (list) of all of the forms attached to the policy. This schedule is very important because it lists all of the documents comprising the insurance policy covering the business.

It is important the policyholder reviews the schedule and confirms a copy of every document listed is in their possession. These are the forms which will be used to adjust a claim should one be filed.

The schedule will not only list the base policy but also all endorsements which can modify the policy by either expanding, limiting, or excluding coverage. Insureds must repeat this process every year upon renewal to ensure their policy coverage has not changed without their knowledge.

How Much

The how much of a policy is:

- *Limits of Insurance*—The maximum dollar amount the insurer will pay for a covered loss during the policy period.
- *Deductible or Retention*—The amount that will be deducted from any claims payment to an insured during the policy period (a "deductible"), or the amount that the policyholder must pay out of pocket before the insurer will start to pay (a "retention" or self-insured retention or "SIR").
- *Premium*—The total premium paid for the policy, which may be broken down for different coverage sections.

Insuring Agreement

There may be multiple Insuring Agreements in an insurance policy. Each coverage part will start with the agreement which is the basic promise of the insurance company about when it will pay out money under the policy.

The basic concept expressed in the Insuring Agreement is that the insurer will pay for a covered cause of loss that occurs (or that is first reported, depending on the type of policy) during the policy period, but only up to the limits of insurance and subject to the any other limitations, exclusions, definitions and other terms and conditions contained in the policy documents. The last part of the above sentence is important—the policy will have terms and conditions which may limit coverage; therefore, it is imperative to read the complete policy in order to understand all the coverages.

Conditions

The conditions of the policy are provisions which place limitations on the duties of the insurer or place requirements on the policyholder to perform certain acts prior to the policy becoming effective. The carrier's obligation to pay a claim is contingent on if the insured complied with all the applicable policy conditions. An example of this is to file a police report in the event of a theft. Failure to do so may jeopardize coverage for the insured.

Endorsements/Exclusions

This section of the insurance policy is usually discussed together although endorsements and exclusions perform different functions.

An insurance endorsement is an amendment or addition to an existing insurance contract which changes the terms or scope of the original policy. Endorsements may sometimes be referred to as riders. An insurance endorsement is used to add, delete, exclude, and/or otherwise alter coverage in the insurance policy. An exclusion is a policy provision that eliminates coverage for some portion of the risk. Exclusions narrow the scope of coverage provided by the insuring agreement.

The insuring agreement is very broadly worded in most insurance contracts. Insurers then use exclusions and endorsements to carve out or limit coverage for risks they do not wish to insure. The absence of an exclusionary endorsement does not necessarily mean that an item or property is covered (i.e., not excluded). Limits of insurance, deductibles, and retentions also operate as exclusions—e.g., liability in an amount that exceeds the limit of insurance, or that is lower than a deductible is effectively excluded from coverage. It's important to read the complete policy, especially in the Definitions and the Endorsements sections, since this can amend coverage.

Most of the exclusions in the Exclusions section cover two types of situations:

1) Where insurance will never apply (*e.g.*, intentional injury or criminal activity); and
2) Where other insurance coverages would apply (*e.g.*, workers compensation; Damage to Your Property), regardless if the coverage that might otherwise apply to that loss situation is purchased.

Policyholders should be aware there are exceptions to the exclusions in a policy. This means that, within an exclusion, the insurer will allow for certain types of losses. This language is preceded by the words, "this exclusion does not apply to . . . ."

Exclusionary language—wherever it appears—may leave the company exposed to risks that can directly impact operations and the survival of the business. It is vital that any policy obtained provides the coverage necessary to indemnify the policyholder in the event of a claim. Insureds should ask their producer about such endorsements and exclusions before binding coverage. In some cases, it may be possible to negotiate carve-backs or other modifications. If that is not possible, then the policyholder can self-insure the gap in coverage and avoid unfinanced losses.

Definitions

The Definition section of the policy is just as it sounds—it defines words or phrases in the policy which have a special meaning. Unfortunately, not all words which have a special meaning are found in the definition section. If a word is used once, then it may be defined in the section of the policy where it is used. If a word is not defined in the policy, then its everyday meaning is used.

Definitions help narrow the policy and avoid ambiguity or misunderstandings of what the policy does or does not cover. The policyholder can find the defined term/phrase since it is usually in quotes or bolded.

Basic Coverages and Concepts

Speaking very broadly, there are two types of insurance coverage: 1) liability coverage, which protects the policyholder of causing injury to another person (bodily injury or personal injury) or *their* property (property damage), and 2) property coverage, which reimburses the policyholder if his/her property is damaged due to a covered cause of loss.

When thinking about insurance, it is helpful to keep in mind this distinction and that an insurance policy will respond only if the injury or property damage is from a covered cause of loss (meaning the cause of the injury or damage is captured by the language in the insurance policy and is not specifically excluded), and only up to the policy limits subject to any applicable deductible or retention.

It should also be stressed that whether insurance coverage is triggered in any situation will depend on the unique facts and circumstances of each case and the relevant policy language, which may not be identical in every contract of insurance. Therefore, the discussions in this manual about various types of insurance coverage are necessarily general in nature and intended only to give a basic idea of what type of loss scenario might be covered.

Coverage Parts

Nearly all business insurance is formed as a package policy, which places two or more insurance coverages together, unlike the combined policy which already has coverages in one form—most insureds are more familiar with the combined policy which is similar to the personal automobile policy and the homeowners policy. The exception to this is the businessowners policy, which is not discussed here.

General Liability Policy Nuts & Bolts

General liability insurance refers to the legal liability arising out of business operations; it is often abbreviated CGL for Commercial General Liability. A typical CGL policy will contain several sections such as:

- *Section I, Coverage A—Bodily Injury and Property Damage Liability*: This coverage is intended to insure against third-party bodily injury or property damage claims from an occurrence caused by the insured;
- *Section I, Coverage B—Personal and Advertising Injury Liability:* This coverage is intended to insure against third-party claims for "personal injury" or "advertising injury," which generally means injuries other than "bodily injury" or "property damage." Because these words are in quotes, they will have a special definition in the policy;
- *Section I, Coverage C—Medical Payments*: This coverage is intended to insure against third-party bodily injury claims; it has a lower policy limit than Coverage A and it is regardless of liability. It is usually considered to be a good-will payment as it can help deter lawsuits by paying medical costs;
- *Section I, Supplementary Payments (Coverages A & B):* This coverage is intended to insure for additional costs such as defense counsel in the event of a suit;

- *Section II, Who Is an Insured?:* This section defines who is an insured, which can be more than just the person or entity listed on the Declarations Page;
- *Section III, Limits of Insurance:* This section lists the maximum amount the carrier will pay regardless of the number of insureds, claims made, or suits filed;
- *Section IV—Commercial General Liability Conditions:* As mentioned above, the conditions will outline the provisions which place limitations on the duties of the insurer or place requirements on the policyholder to perform certain acts prior to the policy becoming effective.
- *Section V, Definitions:* As mentioned above, this section will list words or phrases which have special meaning.

Property Damage Insurance Nuts & Bolts

The structure of the property damage policy is similar to the CGL. The property damage policy is first-party coverage intended to cover the property the policyholder owns; it is also known as the Building and Personal Property (BPP) coverage form. A typical BPP policy will contain the following sections:

- *Covered Property—Building, Your Business Personal Property, and Personal Property of Others:* This part is intended to cover the insured's owned building, the business contents at the location as described in the Declarations Page, and property belonging to someone else that the insured is caring for;
- *Exclusions:* This portion of the policy will list what is not covered;
- *Covered Cause of Loss:* This section refers the reader to another portion of the policy which will outline what is and is not insured.

- *Additional Coverages:* This coverage is intended to outline the items the insurer will pay in addition to the policy limits. The section has several limitations and should be read closely;
- *Coverage Extensions:* This coverage is intended to provide coverage for certain items if the policyholder meets some conditions such as the coinsurance condition;
- *Limits of Insurance:* Like the CGL policy, this section lists the maximum amount the carrier will pay regardless of the number of insureds, claims made, or suits filed;
- *Conditions:* This will outline the provisions which place limitations on the duties of the insurer or place requirements on the policyholder to perform certain acts prior to the policy becoming effective.
- *Loss Payment:* This section will outline how the insurer will pay the claim; it is usually discussed as an actual cash value (ACV) or replacement cost value (RCV)payment;
- *Optional Coverages:* This coverage is enacted only when the Declarations Page notes that the optional coverage has been chosen and a premium for the coverage paid;
- *Definitions:* As mentioned above, this section will list words or phrases which have special meaning.

Other Provisions in Policies

Deductibles are well known to most policyholders, so this manual will not discuss it much further. Insureds should be aware that deductibles are not only for property or first-party coverages. CGL policies may have deductibles.

A "time deductible" is also a phrase that insureds may hear producers and adjusters use. A time deductible is a waiting period, such as 72 hours in the case of business interruption coverage. Rather than a monetary amount the policyholder must pay, they must wait three days from the date of the accident before insurance coverage will commence. In the meantime, the businessowner should do everything in their power to start the business again.

Deductibles may also appear in the form of a percentage which may be a percent of total insured values (TIV) or of a particular coverage limit amount. The difference is startling and should be discussed with the producer. For example, if an insured had several different lines of coverage such as property, liability, and business interruption with a total insured value of $2,000,000, a 5% deductible for a fire claim would be $100,000; alternatively, if the insured had a 5% deductible for the building coverage of $500,000, the deductible would be $25,000.

Deductibles help lower premiums, but it is an amount the insured must have in a liquid form in order to access it quickly in the event of a loss.

Coinsurance

Coinsurance is possibly the most misunderstood concept in insurance. Put simply, if the policyholder does not insure their property to value, they will become a co-insurer of the loss—meaning the insured must pay a portion of their claim in addition to the deductible.

This clause can be found in many insurance policies requiring the insured to cover their property to a specified percentage of its actual value (ex. 80%, 90%, 100%). The issue to understand is that the insurance policy does not consider the retail value of the property, but, rather, the insurance replacement cost of the property. For example, most commercial properties do not underwrite (and will not pay for loss to) land, but when a businessowner purchases a building, they buy, in addition to the bricks, mortar, wires, plumbing, light fixtures, etc. the land under the building. Since the policy does not concern itself with land, it only will cover the loss to the bricks, mortar, wires, plumbing, light fixtures, etc.

The insurance value of the property, as mentioned, is based on replacement cost. Theoretically, a brick in a depressed part of town will cost the same as a brick in an affluent part of town. The price of the brick is what the insurance company will pay. It is entirely possible that the replacement cost of a property can be less than half of its market value.

There are various reasons for policyholders to be underinsured. Neither they nor their producer may know or understand the value of the item to be insured and, therefore, list the purchase price of the building/land as the insurance value. However, if the building/land is in a depressed area of town, the insured could be underinsured. Alternatively, if the property is in an affluent part of town the insured could be paying too much for insurance since premiums are, partially, based on the amount of coverage.

To ensure the property is correctly insured to value, the policyholder should work with the producer giving accurate information about the property to include square footage, improvements and betterments on the property (such as types of light fixtures or fire suppression systems), building materials (such as wood, masonry, stucco, drywall), walls, windows, etc.

Once the insurance to value amount is determined, the carrier allows the policyholder to insure the property up to a pre-determined amount (usually 80%). If this is done, then the carrier will pay the loss in total less any deductibles, sublimits, or other terms and conditions. However, if the insured has not chosen the correct limits, they will pay for a pro-rata portion of the claim in addition to the deductible since they are now considered to be an insurance company.

The adjuster will determine the insurance to value using software then apply a mathematical formula which is usually rendered:

$$\left(\frac{Did}{Should}\ x\ Loss\right) - Deductible\ =\ Amount\ Owed$$

The “did” is the amount the insured had insured the property for; “should” is the amount the property should be insured for; the loss is the amount of damage. For example:

> The insured has a BPP policy with building limits of $500,000, a $1,000 deductible, and an 80% coinsurance requirement. They have a fire loss which damages the property in the amount of $50,000. The insurance to value of the building is $700,000.
>
> First, to determine if the insured is a coinsurer, the adjuster takes the $\frac{Did}{Should}$ portion of the equation.
>
> $$\frac{\$500{,}000}{\$700{,}000} = 71\%$$
>
> Because the insured is under the 80% coinsurance requirement, they will now pay 29% of their loss.
>
> $$(71\%\ x\ \$50,000) - \$1,000\ =\ \$34,500\ paid\ by\ the\ carrier$$
>
> $$\$50,000\ -\ \$34,500\ =\ \$15,500\ paid\ by\ the\ policyholder$$

The commercial policy allows the insured to choose between receiving replacement cost settlement (RCV) or actual cash value (ACV) settlement; the coinsurance requirement applies to the RCV settlement alone regardless if the loss is a partial loss or a total loss. The policy dictates that if the insured has RCV, and the settlement is more than $2,500, the insurer can first settle on an ACV basis until the insured repairs or replaces the property. Then the insurer will pay the recoverable depreciation in the amount the insured spent, up to the holdback amount or the policy limits, whichever is less.

There is also a little-known section of the policy which allows the insured to accept ACV payment without the deduction of the coinsurance amount if the ACV payment is greater than the coinsurance payment amount. However, if the insured avails themselves to this policy language, they are not allowed to claim the recoverable depreciation. It is best in this instance to speak with the adjuster if this occurs.

Coinsurance values and calculations vary by policy; so, it is important to understand and discuss the policy terms and conditions with the producer.

Certificates of Insurance

Finally, businesses should demand certificates of insurance (and ideally the full policy) from vendors to confirm protection in the event of a claim arising from another company's product which may be sold to consumers. Unfortunately, certificates of insurance (COI) often give a false sense of security since they have a myriad of disclaimers and often have language that is ambiguous, not based on the policy, and can be misinterpreted.

COIs can be misleading since the policyholder can cancel the policy immediately after receiving a copy of the certificate. Regardless, it is still good practice to ask for one and review it to make sure the business is an additional insured on the vendor's policy.

Insurance Coverages Explained

The appropriate type of insurance coverage for any business—and the decision about what insurance to buy—depends on the nature of and the risks inherent in the business operations, the risk tolerance of the owners, and the financial resources available to pay insurance premiums. Other items to consider are leases or other contracts which require insurance, or if law or regulations require that specific types and levels of insurance coverage be covered such as liability coverage.

This section is not intended to be exhaustive since it is a brief summary of certain types of insurance coverages, and it identifies businesses in different segments of the cannabis value chain which should at least consider whether that type of coverage is relevant to their operation and risk profile. Other specialized insurance policies not mentioned here may be relevant and available (or may become available) to cover the risks associated with specific cannabis businesses.

It begins with the liability coverages and then the property coverages. A matrix of coverage table for cannabis operators is included for easy reference. For additional definitions and explanations, for a better understanding of insurance coverage, and for information on how insurance policies are typically structured, refer to the Glossary, below, and the Insurance Nuts & Bolts, above.

As always, when making decisions about insurance, policyholders should seek guidance from an insurance producer who is knowledgeable about insurance, about the cannabis industry, and the insured's specific role in it. The market for insurance in cannabis is constantly evolving with new entrants and new products.

Liability Coverages

Cannabis insurance protects a policyholder's business and financial assets if they are sued due to negligence in the business operations. A company can be held liable (responsible) for a variety of third-party claims, such as property damage or bodily injuries from cannabis products manufactured, distributed, or sold to the customers. How liability is determined is beyond the scope of this manual, but when a claim is filed, adjusters will read the policy and determine through an investigation what a reasonable person would or would not do in a similar situation.

A cannabis business should confirm whether there is a duty to defend covenant in its liability policies. The duty to defend describes an insurance company's obligation to provide legal defense and pay the cost of claims made under a liability insurance policy. However, the insured should make sure the defense costs are not within the limits which will reduce the amount of money available to settle the claim. As a general rule, an insured need only establish that there is potential occurrence for coverage under a policy to give rise to the carrier's duty to defend.

The general liability policy was discussed in the Insurance Nuts & Bolts section. What follows are various types of liability coverages policyholders may wish to consider.

Personal and Advertising Injury

Personal and Advertising Injury is triggered if a claimant accuses the insured or their employees of causing the claimant a "personal injury," such as libel or slander (as opposed to a "bodily injury"—e.g., a broken leg). For example, slander occurs when someone speaks falsely about another person or business and harms their reputation; libel is the same thing when done in writing. This could come up in the context of advertising products or services and trying to distinguish them from the competitor's goods and services. Depending on policy language and the specific facts and circumstances at play, this coverage might be triggered if the policyholder is accused of infringing on a competitor's or someone else's trademarks or other intellectual property.

Product Liability and Completed Operations

General Liability policies also often include Product Liability and Completed Operations coverage, which will respond similarly if someone is injured away from the business location by the products which the insured manufactures or sells, or by their business operations. Sometimes this additional coverage is included in a General Liability package policy or it is sold separately for additional premium. Product liability coverage may also include coverage for the expenses associated with product recalls.

Cargo or Inland Marine

Most people consider cargo insurance to be property coverage, but in fact, it is a liability policy because it covers other people's property in the care, custody, and control of the insured. Cargo coverage is a separate line of coverage and must be specifically requested as it will not be covered in the standard CGL policy.

Specific to the cannabis industry, this insurance covers property in transit, as well as money and securities.

Cyber Liability/Data Breach

Again, the base liability policy will not cover most cyber events. This policy or endorsement is utilized to protect an insured from electronic and internet-based risks, such as loss of electronic data, privacy breach, network security, cyber extortion, electronic media liability, and–in some cases–errors & omissions.

Intellectual Property/Trademark Infringement

This coverage has briefly been discussed in the liability section of the Insurance Nuts & Bolts section, and it may be covered under a base CGL policy Section I, Coverage B, Personal Injury and Advertising Injury.

On Premise/Consumption Lounge

Recently states have begun to allow users to consume cannabis on their premises. These spaces can either operate as a stand-alone place or in conjunction with a dispensary. In some cases, cannabis has been used in cooking to provide a cannagourmet meal. Because these operations are new, policyholders and producers may wish to watch the webinar on consumption lounges listed in the Appendix.

Property Coverages

Generally, property coverage protects a property owner for loss of covered property or loss of income resulting from damage to covered property. This includes both real property (buildings), as well as business personal property (contents). Fire is a typical cause of a property loss where the insurance policy would respond to make the policyholder whole. The property policy was discussed in the [Insurance Nuts & Bolts] section. What follows are various types of property coverages policyholders may wish to consider.

Business Interruption and Extra Expense

Property coverage can also include Business Interruption and Extra Expense coverage, which comes into play when operations are halted or curtailed because of physical damage to the covered facilities from a covered cause of loss. For example, if the insured's building is damaged in a fire, and operations cannot continue for several weeks or months, or if additional expense to temporarily relocate the business operations is incurred during the repair, the carrier may pay for some or all of the lost income or extra expense during this time, in addition to contributing to the cost of repairs.

Policyholders should be aware that this coverage must be requested and added to the base BPP form, and that there are separate duties and insuring agreements for this line of coverage. For example, as the name of the insurance indicates, only additional, or extra, expenses are covered by the carrier. Normal operational expenses are deducted from the settlement amount. The insured has a duty to resume operations as soon as possible.

Crop or Agriculture

Licensed cannabis cultivators should consider what risks of loss there are to the crop, what can be done to eliminate or mitigate these risks, the value of the crop on the market, and the consequences to the business if the crop were to be lost. The cannabis crop is at its highest value after harvest, when it has been dried and cured and is ready for sale. It is possible to obtain some coverage for live cannabis plants. Insurance for cultivators covers plants in-process, seeds, clones, vegetative, flowering, harvest, and finished stock.

Cultivators could quickly recover from a loss of seedlings or plants in the vegetative state, but if they have a high-value, contractual obligation to deliver cannabis to another party or if the plants have a unique and highly sought-after genetic makeup, it may be more difficult to withstand a loss. Cultivators should consider not only fire losses, but smoke damage to the mature buds which may damage a crop.

Generally, coverage is limited to indoor growth facilities, and covered losses may be limited to fire, smoke, and theft, not loss to the crop from pests or disease, etc. If crop coverage is unavailable or unaffordable, proper risk management is essential. For example, keeping mother plants in a separate location, off-site, will aid in restarting the crop in the event of a fire. Also, having separate HVAC systems and air filtration will deter smoke from contaminating one grow house to another.

Before purchasing crop insurance or basic business property coverage, policyholders should work with their producers to determine whether, how and until when the live plants, harvested plants, dried and cured flower, and trim are covered under the policies. Gaps could exist in coverage between two or more insurance policies intended to cover the same material during different phases of its life cycle.

Equipment Breakdown

This insurance covers a loss due to mechanical or electrical breakdown. Coverage applies to the cost incurred to repair or replace the damaged equipment or property caused by the equipment breakdown. This also includes loss of Business Income and

Extra Expense from such an event, as well as Data Compromise and Reputation Recovery.

Insurance Required by Contract or Law/Regulation

Often, contracts the businessowner signs will require specific insurance coverage and contain indemnity agreements between the Named Insured and the person requesting protection under the policy, usually an Additional Insured. Being covered under an insured's commercial general liability (CGL) policy is a way for the Additional Insured to have protection in the event of a loss. For example, if the insured leases the premises, the lease terms will require that the landlord is listed as an Additional Insured and will specify the liability policy limit amount. In the event of a lawsuit, the landlord will often be named as a defendant. The lease agreement may also require the insured to provide for property damage coverage; so, the rental agreement should be closely read to know the policyholder's responsibilities.

General Liability coverage is often required to rent a booth at a trade show.

Another example is Product Liability coverage. If the insured manufactures a product, the distributors and retailers which carry the product will require Product Liability coverage up to a minimum limit of liability and that names the distributor or retailer as an Additional Insured. For example, the insured's liability policy will provide a defense to the distributor and retailer until negligence (responsibility for the loss) can be determined. When a consumer is injured by a product, every business in the supply chain that brought the product to market could be sued, not just the product manufacturer due to the legal concept of strict liability. This theory applies even if the policyholder did not touch the product which allegedly caused the injury, such as when another company that manufactures, packages and sells the product under the insured's brand name.

Other Coverages That May Be Relevant for Most Businesses

When discussing insurance, there is a great deal of overlap for what cannabis businesses need regardless of their sector—this is true in non-cannabis businesses as well. Again, this is an abbreviated summary of coverages an insured should ask their producer about.

Business Auto Insurance

Naturally those involved in transporting cannabis from the cultivator, to the lab, to the dispensary would need commercial auto insurance. However, with the advent of cannabis delivery due to the pandemic, dispensaries also need business auto insurance to protect its interests. This is a packaged policy with coverage for the company-owned vehicles, hired or non-owned vehicles, leased vehicles, or employee-owned vehicles and liability for an accident. There may also be Med-Pay coverage for the insured and any passengers in the vehicle.

This insurance covers the policyholder for the use of its vehicles for business, but care should be exercised to make certain the vehicle being used is insured. Business Auto coverage has numbers on the Declarations Page which describes which vehicles are covered.

Directors and Officers Liability

Insurance that covers the directors and officers of a company for claims of willful negligence and misconduct made against them while serving in such a capacity. It protects against claims resulting from managerial decisions that result in financial consequences. The policy will pay for legal defense, damages, and fees.

Employment Practices Liability Insurance

Though not required by law, Employment Practices Liability Insurance (EPLI) protects employers from lawsuits brought by employees for claims like wage and hour violations, wrongful termination, failure to hire or promote, discrimination, sexual harassment, etc.

Businesses with employees should consider the risk of employment practices litigation and what that might cost relative to the cost of EPLI coverage.

<u>Important notes about EPLI coverage</u>

1) In cases brought by employees for unpaid wages (e.g., a failure to pay overtime), EPLI coverage may cover some or all of the defense costs, but it usually will not cover the amount awarded by a court (or pursuant to a settlement agreement) for legally obligated wages owed to the employees for services rendered.
2) Many employers enter into relationships with Professional Employer Organizations (PEOs) for payroll services, health insurance plans, 401(k) plans, and other benefits they would like to offer to their employees. Although these relationships often include some EPLI coverage as part of the package, it should not be assumed the insured will be covered by the PEO's EPLI policy in the event of a claim. EPLI coverage provided by PEOs may be subject to high deductibles and an aggregate limit of liability that is shared by all members of the PEO, which could be hundreds or thousands of other employers. A claim by one or more of those other employers could exhaust most, or all, of that aggregate limit, leaving little or no money left to cover the insured's employee's claim. It is, therefore, highly recommended that the insured obtains their own EPLI policy with a dedicated limit.
3) Regardless of EPLI coverage, it is highly recommended that the cannabis businessowner consult and start a relationship with an attorney who specializes in labor law and advising employers. Ensuring employment policies and practices are sound and up to date with the law and best practices, which are constantly evolving, is the best defense. Litigation against employers is common and can be very costly. Often it results from a lack of understanding by employers about their obligations to

employees, or employers not having well-written policies and procedures in place regarding hiring, firing, paid time off, overtime, etc., or managers not being adequately trained about what would otherwise be effective policies and procedures.

Errors & Omissions (E&O)/Professional Liability

Coverage designed to protect professionals (e.g., medical directors, doctors, accountants, attorneys) and quasi-professionals (e.g., growers, consultants, etc.) against liability incurred as a result of errors and omissions in performing their professional services. This typically applies to financial losses. E&O and Professional Liability are often used as interchangeable terms.

If doctors are employed for the medical cannabis business, policyholders need to be aware most medical malpractice insurance policies do not cover cannabis recommendations, unless a specific cannabis endorsement is agreed upon with the insurance company.

Processing and Manufacturing

Businesses that process harvested plants into jarred eighths and pre-rolls, that extract cannabis oils, that make hash and rosin and other concentrates, or that make edibles, topicals or other products containing cannabis have both liability and property damage exposures. Regarding liability exposures, a lab can incorrectly determine the THC content of a product or miss toxins not safe for human consumption; processing and manufacturing locations also have the peril of fire, wind, and water losses just as any other insured does.

Workers Compensation

This insurance is required by law in many states to be carried by employers and provides compensation to those employees who have been injured at work or who have contracted an occupational disease. It is a system of insurance designed to provide relief to employees injured on the job while limiting the liability of employers in the case of work-related injuries. Thus, an employee injured while on duty will usually be required to file a workers compensation claim, which should pay for medical care, rehabilitation and lost income, etc. In return, the employee agrees not to file suit against the employer for bodily injury claims and foregoes seeking reimbursement for damages such as pain and suffering or mental anguish.

Coverage is available for all cannabis class codes and in all legal states where cannabis is legal. A workers compensation policy will pay for medical care and lost wages regardless of who is at fault in the accident. If the employee dies, the policy can pay compensation benefits to the employee's family.

In states where workers compensation is required as a condition of doing business, the state will offer coverage through a "state fund," which is the insurer of last resort for employers that cannot obtain workers compensation coverage in the private market. Currently, many cannabis businesses obtain workers compensation coverage from their state fund. Choosing to not have workers compensation coverage is extremely risky. It may be a legal violation and can result in steep fines and penalties. Furthermore, not having this coverage does not protect the businessowner from employee lawsuits in the event of an injury, disease, or death.

Generally, workers compensation coverage will be priced based on the number of employees and how their jobs are classified. Premiums will be higher when employees are in relatively higher risk roles (e.g., forklift operator in a warehouse vs. clerical employee in an office).

Conditions and Exclusions—What's Not Covered?

Conditions, Endorsements and Exclusions have been previously discussed in the Insurance Nuts & Bolts section. The following is a non-exhaustive list of exclusions that are sometimes or often seen in cannabis policies and may become the basis for a coverage dispute:

Adverse health effects exclusion: This endorsement is often attached to product liability policies.

Assault and Battery Exclusion: Provides protection against varying assault and battery triggers. Coverage can be triggered by employees, third-party subs, or patrons. Examples include incidents that take place both in and outside of the covered premises such as if an employee removes a patron from a facility, even if to protect others or property, there is absolutely no coverage for bodily injury or property damage, and, likewise, there is no defense for a lawsuit.

> Note that this may be broken out separately for each different coverage provided by the policy form (some of which might not apply, in which case the word "EXCLUDED" will appear rather than a dollar amount). The maximum that will be paid for all covered losses under the policy, notwithstanding a specific sub-limit specified for a particular coverage section that has not already been exhausted, will be listed as General Aggregate.

Business Risk Exclusion: This exclusion concerns claims for damages associated with a business's faulty goods or services, as opposed to damage caused to others.

Carcinogens Exclusion: Cannabis companies that sell dried flower, vaporizers, and any form of a cannabis product that contains carcinogens or has the potential to create carcinogens could not respond if their insurance policy contains this exclusion. The carcinogen exclusion will prohibit coverage for bodily injury, property damage, and personal and advertising injury.

Cannabis Exclusion: The general cannabis exclusion is designed to render an insurance policy ineffective if the insured operates within the cannabis industry. For cannabis companies, this can leave them exposed to a variety of risks associated with product liability, directors' and officers' claims, and regulatory claims.

Drugs/Controlled Substances exclusion: This exclusion typically excludes coverage for the use, sale, manufacture, delivery, transfer, or possession of a controlled substance as defined by the federal Controlled Substances Act ("CSA"). Under the CSA, it is illegal to manufacture, distribute, dispense, or possess cannabis.

> Note that broad exclusions such as the two above would most likely appear in a policy that is not tailored for state-licensed cannabis operators. It is intended to protect insurers who are consciously trying to avoid cannabis industry exposure and are, therefore, not targeting cannabis industry clients. If this exclusion appears in the policy, the policyholder should contact their producer immediately. It is the duty of every insured to read the policy forms very carefully before deciding to purchase or renew a policy with this type of language. State-licensed operators with a policy including this type of exclusion will not have coverage for their claims.

Designated Premises Limitation: This limitation is included on many policies issued for cannabis/hemp companies. This limitation excludes operations that are beyond your primary location, such as a special event or delivery services or locations that were not disclosed to the carrier.

Federal crimes exclusion: This exclusion may void all cannabis coverage within a policy, or it may be more narrowly tailored to exclude liability directly related to actual criminal violations. Policies with overly broad cannabis exclusions should be avoided.

Governmental Acts Exclusion: This exclusion removes coverage for any loss or damage caused by or resulting from confiscation or destruction by the government or public authority.

Hardware Exclusion: Be certain to check for this exclusion if you sell vape cartridges, batteries, or any hardware that assists with consumption.

Health Hazard Exclusion: Any products sold by a company that may cause some form of health hazard will not be covered. These hazards include any form of adverse health effects, including injuries sustained from vaping.

Impairment Exclusion: Any products with the potential to alter an individual's mental state would not be covered in a product liability lawsuit if this exclusion was included in the policy. Virtually all forms of cannabis alter your mental state, whether or not they are psychoactive.

Ingredients exclusion: Cannabis/hemp insurance companies that offer products coverage may apply this endorsement to their policies. However, the scope of this endorsement can vary greatly from company to company.

Medical Malpractice Exclusion: Most standard medical malpractice policies exclude cannabis related practices. The policies state:

> *"...use, administration or prescription of any drug, pharmaceutical, medical device or procedure which has not* ***received final approval by the U. S. Food and Drug Administration (FDA)*** *for treatment of human beings or*

which is not used, administered or prescribed as part of an FDA approved study;"

Protective Safeguard or Warranty: This is simply the confirmation or promise to have a specific safety element in place that will or should reduce the risk of a loss. Failure to have these protections, if claimed on the application can cause a claim to be denied or the entire policy voided.

For example, if the safeguard of fire sprinklers was required and a fire occurred, and the insured did not have functioning fire sprinklers, their coverage could be voided.

Some examples of safeguards or warranties:

- Vault requirements
- Safe weight and fire rating
- Stock or inventory & monies are outside the safe during non-business hours
- Central station burglar & fire alarms
- Video Surveillance System with back up data of 14 days
- Compliance with all local/city/county and state ordinances/laws/regulations
- Quality Assurance/Quality Control program that is formal and documented
- Licensed & insured contractor has inspected or performed all work
- Locked vehicle warranty

Vaporizing Equipment and Components Exclusion: This form can be a massive risk to the operations of manufacturers, distributors, wholesalers and retailers. If this exclusion is included in the policy, there is no coverage for any claim arising out of the use, handling, or ownership of vaporizing equipment, or any part of the accessories attached or used with vaporizing equipment, including pens, cartridges, mouth pieces, batteries, chargers, coils and any miscellaneous products used with, or attached to, vaporizing equipment. Considering the wrongful death lawsuits and bodily injury lawsuits emerging recently, it is important to negotiate this form off the policy, if possible. Many insurers are no longer underwriting vaping equipment and components.

Claims

Policyholders hope to never use their insurance by filing a claim, which can be a traumatic event since the situation means that there is a loss and damage to property. Cannabis insurance claims data have been difficult to capture for several reasons. First and foremost, there is a lack of historical data. The cannabis industry is still new and is not federally legal, leaving a large degree of uncertainty when it comes to insurance claims. This section will give a broad overview of the claims process for both a first-party and third-party point of view.

A claim is a demand on the policy made by a person or business for payment of damages. The word is often used interchangeably for occurrence and loss by insurance professionals. First-party claims refer to the policyholder's accident, injury, or loss caused by a covered peril. The insured's property policies would respond to these occurrences.

Third-party claims refer to another person's accident, injury, or loss caused by the insured's negligence to which the insured's liability policy would respond. In the event of a liability claim, an adjuster will not only confirm coverage is in order, but also that the insured is responsible for the accident, injury, or damage. It is possible the insured was responsible for the loss, but there is no coverage under the policy due to an exclusion; alternatively, it is possible that there is coverage, but the insured did nothing wrong. In both instances, the third-party claimant's claim would be denied.

Filing a Claim

Policies contain conditions which outline the insureds' duties in the event of a loss. The insurance policy is purchased to pay for a covered loss, and, so, it stands to reason that when insureds have suffered from a loss—either through damage to their own property or through negligence—they should file a claim. Many insureds, though, are hesitant to do so whether due to a fear of increased premiums or due to a fear that the federal government will obtain information of alleged federal illegal actions is not clear. However, due to the reporting conditions in the policy, the insurer may deny a loss due to late notice; therefore, it is best to report any loss or damage immediately.

Agents should be particularly careful when either a first- or third-party claimant presents a demand for a claim to be filed. In some instances, the agent is a representative of the carrier, and the knowledge of the agent imputes upon the carrier. In other words, if the agent knew about the loss, but did not report it to the claims department, the agent could be negligent for this if there is prejudicial late notice. Finally, many states require licenses to adjust claims.

While agents can and should understand coverages, it may be a violation of the state's unfair trade practices and good faith claims handling regulations to verbally deny coverage and instruct the insured to not file a claim. The National Association of Insurance Commissioners (NAIC) has put forth regulations, which nearly all states have adopted, mandating that carriers cannot "deny a claim on the grounds of a specific policy provision, condition or exclusion unless reference to such provision, condition, or exclusion is included in the denial. The denial must be given to the claimant in writing and the claim file of the insurer shall contain documentation of the denial..."

The best course of action is to advise the insured that there may not be coverage, but the insurer has the duty to determine this.

When a claim is filed, the carrier will need the most information possible, including but not limited to:

- Policyholders' name, address, and phone number(s); it is best to have various methods to contact the insured such as work and mobile numbers and email addresses;
- The same contact information will be needed for witnesses and third-party claimants;
- Date, time, and location of accident. In this matter, precision is important, but if the date is not known (for example if a roof began to leak but there have been no storms in the area), then the last known occurrence would suffice;
- The policy number;
- A summation of what occurred; and
- Any documents or information which can aid the carrier in quickly resolving the claim (see below for more information).

The following represent a sample of policies available for the cannabis insureds and what information and documents may be needed from them in the event of a claim.

- Commercial Automobile
    - Copy of title
    - Police or fire report number, if applicable
    - Driver's name, address, contact information including phone numbers (work, home, mobile, email), driver's license number
    - Information regarding recent drug use (Because of the way the body metabolizes cannabis, a positive drug test after an accident may not be indicative of impaired driving. The chemicals in delta 9-THC make it difficult to test a correlation to an individual's intoxication level.)
    - If in a medicinal-use state, a copy of the driver's physician's recommendation for cannabis.

    - Copy of employee file
- Commercial General Liability
    - Witnesses' name, address, contact information including phone numbers (work, home, mobile, email)
    - Human Resource reports
    - Police or fire report number, if applicable
    - Training manuals of employees
    - Employee files
    - Copies of third-party vendor contracts
    - Correspondence received concerning the loss
- Commercial Property
    - Copy of deed or rental agreement (if structure is damaged)
    - Police or fire report number, if applicable
    - Open/Close report from alarm company (in the event of a theft)
    - Proof of ownership for item that damaged (i.e. receipts showing delivery of products); documents showing how much "stock" was at the premises at the time of the loss
    - Copy of employee files if damage or loss is suspected as an inside job
    - Tax accountant contact information in the event of a business income loss claim
    - Business and tax receipts and documents in the event of a business income loss claim
- Crop/Agriculture
    - Information showing yield and price per acre (if outdoor grow)
    - Electrical and water bills in the event of a business income loss claim
    - Information regarding how many yields per year (if indoor grow)
    - Any recent electrical work in the event of a fire
    - Police or fire report number, if applicable
- Cyber Liability

- Police or fire report number, if applicable
- Contact information for the IT staff
- Operation manuals
- Copies of third-party vendor contracts
- Copies of any emails or contacts by the alleged hackers

- Directors &Officers, Errors &Omissions, ELPI
  - Witnesses' name, address, contact information including phone numbers (work, home, mobile, email)
  - Human Resource reports
  - Operation manuals
  - Notices of violations
  - Letters from claimants alleging violations
  - Training manuals of employees
  - Employee files
  - Copies of third-party vendor contracts
  - Correspondence received concerning the loss
- Environmental Liability
  - Notices of violations
  - Letters from claimants alleging violations
  - Copies of air, soil, water quality test results
  - Information regarding chemicals/pesticides/fertilizers being used (either as an indoor or outdoor grow)
- Product Liability
  - Operation manual for harvesting, processing, manufacturing of product
  - Training manuals of employees
  - Employee files
  - Copies of third-party vendor contracts
  - Correspondence received concerning the loss
- Transportation/Cargo/Inland Marine

    - Bill of Lading
    - Similar information as Commercial Automobile claims
- Workers Compensation
    - Employee’s name, address, contact information including phone numbers (work, home, mobile, email)
    - Witnesses’ name, address, contact information including phone numbers (work, home, mobile, email)
    - Human Resource or incident reports
    - Operation manuals
    - Training manuals of employees
    - Employee files
    - Copies of third-party vendor contracts
    - Correspondence received concerning the loss

The Claim Process

The duty of the insurer is to pay for covered losses. The claims department’s function is to handle and adjust the losses suffered by those who make a demand on the policy. This includes first- and third-party claimants.

Retail, growth facilities, and plant-touching industries such as manufacturing and transportation experience claims, and the claims-handling process follows similar paths even if the lines of business are different. Cannabis insureds have the same exposures (such as fire, wind, hail, vandalism, theft) as non-cannabis insureds.

For adjusters to handle claims in good faith, they must review the policy and the first notice of loss. They will contact the policyholder and any witnesses. If the claim is a liability loss, and there is a third-party claimant involved, the adjuster will contact the claimant as well. Getting information from all parties is part of the investigation process.

Adjusters will ask for various documents and information, some of which are listed above. It is possible the information received will create a question regarding coverage. Adjusters handle the loss pursuant to the provisions of the policy, the state regulations, and court rulings. An adjuster should take the insurer's intent for coverage when they encounter a coverage question. If the coverage issue involves a word or phrase which may be ambiguous, courts typically find in favor of the insured, not the insurer. The logic is that if the insurer wanted to exclude a particular type of coverage, then it would have worded the policy to that effect.

The majority of departments of insurance mandate that the policyholder be informed as soon as practical when the adjuster recognizes there is a question of coverage. Best practices state this should be in written form which is called a reservation of rights letter. In this letter the adjuster will outline the part of the claim which may not be covered and link it to the specific policy language by copying it into the letter. If the claim is not covered, states' unfair claims practices mandate that, like the reservation of rights letter, the policyholder is notified in writing while quoting the applicable policy language which is directly linked to the part of the claim not covered.

Based on the facts of the claim, the insurer will determine if the policy provides for compensation for a covered loss. Once the insurance company validates coverage and, if necessary, negligence, it then moves to determining the value of the loss. The valuation of "stock," for example, may be difficult to determine. The "selling price (of the product) less discounts and expenses you otherwise would have had …" dictates the manner of valuation according to the CP 00 10 10 12 with a Special Form Cause of Loss (CP 10 30 10 12). Cannabis plants are difficult to value unless there is a roadmap for adjusters in the policy. The best advice for policyholders is to keep track of receipts which will help speed the resolution of the claim.

When all coverage and liability issues have been resolved, the adjuster will make payment to the insured or a claimant. Generally, there will be claims closing documents such as a Proof of Loss, in the event of a first-party loss, or a Release of All Claims, in the event of a third-party loss. These documents need to be signed and notarized and returned to the adjuster prior to the check being released.

Insureds and Claimants often want to know how long a claim adjudication will take, and the answer is "it depends." Some losses such as a fire or a theft, provided that documents and information is quickly gathered, can be resolved in weeks. Other losses such as liability claims may take several months to years to resolve. Regardless, the first- and third-party claimants should be aware of the deadlines to complete the claim or file a lawsuit to "stop the clock."

Lawsuits

Disputes over insurance coverage are often resolved with lawsuits. While there is not a great deal of pure claims data available for the cannabis industry, there are several areas of litigation that signal the claims trends the cannabis industry can anticipate. Product liability claims and Directors' & Officers' claims are at the forefront of cannabis litigation. This section will discuss third-party lawsuits. Although first-party, bad faith lawsuits follow a similar pattern, it is beyond the scope of the manual to discuss this.

A court will make a fact specific evaluation of the claim to determine if the insurance policy provides coverage for that claim.

Service of a Lawsuit

It may happen that the insured is unaware of a claim until a lawsuit is served. If this is the case, the policyholder must immediately contact their producer and the insurance carrier's claim department to file a claim. The insured's corporate counsel should also be consulted. The reason is that, as discussed previously, if the subject of the lawsuit is covered under a policy, the carrier can provide a defense by hiring an attorney to handle the suit, which can be an expensive endeavor.

The entire lawsuit should be sent to corporate counsel, the claims department, and the producer. Once the insured has been served, the policyholder has a specific deadline to respond, or the allegations in the suit are deemed admitted. The attorney retained by the carrier will need to answer all of the allegations.

As a word of caution, the carrier may not use the policyholder's corporate counsel since they may not be skilled in handling insurance defense work. The attorney retained by the carrier represents the insured—not the insurance company. However, the insured can ask that their counsel be kept informed by the attorney who is defending them and who has been hired by the carrier.

It is imperative the insured cooperate with retained counsel in order to provide a proper defense to the lawsuit even if they think the suit is frivolous. It is not only a duty outlined in the Conditions of the policy, but failure to do so may cause the carrier to deny the claim and withdraw from defending the insured.

Trial

Outside of some policies like Directors & Officers and Errors & Omissions, the carrier can settle the lawsuit without the insured's permission; this is because the carrier, who may have greater knowledge of the event through the retained attorney and through experience of handling similar claims, is protecting the policyholder.

The judge may require the parties to go through arbitration or mediation, dispute resolution techniques, in an attempt to settle their differences outside of trial. If the arbitrator or mediator can bring the claim to resolution and settlement, trial is not needed and will be dismissed; the carrier will close the claim.

Post-Trial

Once the trial has concluded, if a party is not pleased with the outcome, the judgement could be appealed. This discussion is beyond the scope of this manual. Policyholders should continue to cooperate with the carrier and retained counsel until the claim is closed or the lawsuit fully resolved. Unfortunately, many of the filed lawsuits have not yet been fully adjudicated and cannot provide guidance.

Summary

Cannabis businesses operating in the medical and recreational cannabis industry face numerous risks. At a minimum, cannabis operators should:

- Look for a producer who stays current with the national and state regulated cannabis industry.
- Make sure the producer has access to all insurance companies offering policies.
- Obtain references from existing cannabis clients.
- Ask to see a sample policy and seek clarification for confusing policy language.
- Read the endorsements and exclusions for each policy closely. Make sure they provide coverage for cannabis companies.
- Have an attorney review all insurance policies.
- Develop a comprehensive risk assessment of the business. Professional risk managers and specialist insurance attorneys are resources to consider.

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Appendix:

Below are additional resources which may be helpful to policyholders and producers.

Advanced Risk Mitigation for Cannabis: Best Practices and Policies

Webinar with Cimone Cassan, Kevin Mullins, Matthew Johnson, Chris Payne, Danny Bozzuto

NCIA

PowerPoint slides available here.

Cannabis Consumption Lounges & the Next Wave of Hospitality Disruption

Webinar with Andrew Brisbo, Tatiana Grant, Jodi Green, and Mathew Grimes

NCIA

Guide for Workplace Safety & Health for Cannabis Industry

Sandra Sheils, BCSP

How to develop a Risk Assessment for your Canna-Business

Webinar with Helkin Berg, Kevin Haller, Summer Jenkins, Mathew Grimes, Merril Gilbert

NCIA

PowerPoint slides available here.

NCIA Industry Insights Blog

NCIA Podcasts: *The Cannabis Industry Voice* and *NCIA's Cannabis Minority Report*

Hosted by Bethany Moore and Khadijah Adams & Mike Lomuto, respectively

Tips for Businesses Impacted by Damage & Theft

Webinar with Jason Horst, Amber Senter, Ramon Garcia, Kris Krane, Summer Jenkins, Eric Rahn, Ian Stewart

NCIA

Coverage Matrix

Each segment of the cannabis industry is exposed to various risks for which insurance coverage is available. The table below provides a high-level, summary overview of the different types of insurance coverage that will likely be relevant—and that are generally available—to cannabis operations in different segments of the supply cycle. This will be followed by a narrative description of each coverage type. This is neither intended to list every coverage type available, nor all the specific coverages that may be recommended for a business in particular. Every company is unique. Each has its own location, risk exposure, management style, budget and tolerance for risk.

The insurance marketplace is consistently evolving due to new coverage offerings; insurers entering and leaving the market; and swings in pricing and availability of coverage. Therefore, this is not an exhaustive list. A cannabis and ancillary business should determine the most appropriate policies in consultation with a reputable, cannabis insurance producer and legal advisers for guidance on the appropriate policies for their business.

	Cultivation	**Manufacturing**	**Retail**	**Delivery**	**Secure Transport/Security**
General Liability	X	X	X	X	X
General Liability – Assault and Battery			X	X	X
Product Liability	X	X	X	X	X

Professional Liability			X		X
Employment Practices Liability	X	X	X	X	X
Cyber Liability	X	X	X	X	X
Excess Liability	X	X	X	X	X
Directors and Officers	X	X	X	X	X
Workers Compensation	X	X	X	X	X
Commercial Auto	X	X	X	X	X
Property Insurance	X	X	X	X	X
Property – Crop	X				
Property – Inventory	X	X	X	X	X
Property – Business Income	X	X	X	X	X
Equipment Breakdown	X	X	X	X	X
Cargo	X			X	X
Crime	X	X	X	X	X
Product Recall	X	X	X		

GLOSSARY

Additional Insured: An entity which must be added as an insured to the policy by endorsement and request of the Named Insured.

Admitted aka Domestic Carriers: Insurance companies licensed in the states in which they sell policies. These companies are domiciled in a single state but must be specifically be licensed in each state where it intends to conduct business, and must comply with each state's insurance codes, and financial requirements.

Agent: A person who represents the insurance carrier and sells insurance on behalf of the carrier.

Ancillary business: A non-cannabis-touching goods and services (e.g., paraphernalia, accounting, legal and security services, software developers).

Application: A form used by insurers, filled out by potential insureds, to apply for an insurance policy and coverage.

Actual Cash Value (ACV): Calculation based on depreciated value of property at the time of loss. In many cases, this means replacement cost minus depreciated value. In nearly all cases, the policy dictates ACV will be paid initially. Once the property has been repaired or replaced, the held-back depreciation amount will be issued to the policyholder upon demand. In the case of third-party claims, the payment is usually on an ACV basis.

Agreed Value Coverage: A clause by which the insurer waives the coinsurance requirement. The insurer will often require a signed statement of property values from the insured and will cover the insured's property up to 100% of the mutually agreed value in the event of a loss.

Arbitration: A dispute resolution method in which an impartial, third party is chosen by the parties in the dispute. The parties agree to abide by the arbitrator's decision after the arbitrator has heard both sides. Compare with mediation.

Basic Causes of Loss Form: An industry standard ISO (Insurance Services Office, Inc.) form that provides coverage for named perils, which include: fire, lightning, explosion, smoke, windstorm, hail, riot, civil commotion, aircraft, vehicles, vandalism, sprinkler leakage, sinkhole collapse, and volcanic action. Unless one of these perils causes the damage, a claim will not be covered.

Binder: A form issued by the producer or the insurer to provide temporary evidence of insurance until a formal policy can be issued.

Bodily Injury: A term which means bodily harm, sickness, disease, or death.

Broad Causes of Loss Form: An industry standard ISO (Insurance Services Office, Inc.) form that provides coverage for all of the perils named on the Basic Causes of Loss form in addition to the following: falling objects; weight of snow, ice, or sleet; water damage (in the form of leakage from appliances); and collapse from specified causes. Unless one of these perils causes the damage, a claim will not be covered.

Broker: In the United States insurance system, a person who represents the interests of the policyholder; in the excess & surplus line system, a person who is an intermediary between the insurer and the retail agent.

Captive Carriers: Closely held insurance companies that write insurance policies for their owners and affiliated entities. Captives are used widely in the United States and are increasingly available to the cannabis industry.

Certificate of Insurance: A document providing evidence that insurance coverage is in place for a certain amount on a certain date.

Coinsurance: A clause that can be found in many insurance policies requiring the insured to cover their property to a specified percentage of its actual value (ex. 80%, 90%, 100%). If the insured fails to do so, and a loss occurs, the insured will become a co-insurer for the loss and pay a percentage of it in addition to the deductible.

Conditions: The policy provisions which place limitations on the duties of the insurer or place requirements on the policyholder to perform certain acts prior to the policy becoming effective.

Claim: A demand on the policy made by a person or business for payment of damages. Claim is often used interchangeably for occurrence and loss by insurance professionals.

Claimant: The person who makes the demand for policy benefits. A claimant can either be the policyholder (a first-party claimant) or a person who is not part of the insurance contract, a third-party claimant. The term generally indicates a lawsuit has not been filed; if a suit has been filed, the party would be known as a plaintiff.

Claims-Made Policy: Insurance policy that provides coverage for claims that are filed with the insurance company during the policy period. If a retroactive date is specified, the event that gave rise to the claim must have occurred on or after that date for coverage to apply.

Completed Operations: In a liability policy, work that has been completed by the insured.

Contractual Liability: Covers an insured for the liability they have assumed by entering into a contract (in accordance with such contractual terms).

Covered Cause of Loss: A term used to indicate which perils or hazards are underwritten and will, therefore, be paid, in the event of a loss. There are three covered cause of loss types: the basic, broad, and special. There is not an "all risks" cause of loss.

Damage to Premises Rented to You: Coverage for fire damage to rented premises and damage by any cause other than fire to premises and/or its contents rented for a maximum of 7 days.

Declarations Page: Also known as the Dec Sheet; the front page(s) of a policy which specify the named insured, address, policy period, insured location, policy limits and other important information.

Deductible: The amount of the loss the policyholder must pay before the carrier will issue payment for the claim. Compare with *risk retention* and *self-insured retention*.

Defense Costs: The costs associated with defending the insured in the event of a lawsuit. Usually these are additional coverages and do not reduce the policy limits; however, if the named insured must indemnify and defend another entity, then that costs are within limits (below).

Defense Within Limits: A provision in liability policies where the carrier will pay to defend the insured in a lawsuit, but the costs associated with the defense, such as the attorney invoices, reduce the policy limits.

Defense Inside or Outside the Limits: Insurance policies may be written with defense costs contained within the policy limits or outside of the limits. A policy that includes defense cost within the limit provides less coverage than a policy that pays for defense costs in addition to the limit of indemnity.

Definitions: A section of the policy in which a word or phrase has a specific or special meaning relating to insurance coverage. It can narrow coverage or aid in avoiding ambiguity. Although there is a section for defined words/phrases, not all words/phrases are defined in the policy, and not all defined words/phrases are found in the Definition section.

Endorsement: A form in a policy that will either adds or deletes coverage in the base form; an endorsement changes the original policy in some fashion.

Excess Liability: Insurance coverage that provided additional limits, exceeding those of the underlying liability policies.

Exclusion: Language found in the insurance policy or as an endorsement which causes coverage to be deleted.

General Liability: Insurance coverage that protects against bodily injury and property damage liability claims arising out of premises exposures, business operations, products sold, as well as advertising and personal injury exposures.

Hazard: A condition that would increase the probability of a claim.

Hemp: One of the species of the *Cannabis* plant. It was removed from the Controlled Substances Act (CSA) in 2018 as part of the Agriculture Improvement Act, commonly called the Farm Bill. The US government defines hemp as "*Cannabis sativa L.*" having a “delta-9 tetrahydrocannabinol (THC) concentration of not more than 0.3 percent on a dry weight basis."

Insuring Agreement: A statement at the beginning of each coverage section stating that the insurer will pay for a covered cause of loss that occurs (or that is first reported, depending on the type of policy) during the policy period, but only up to the limits of insurance and subject to the any other limitations, exclusions, definitions and other terms and conditions contained in the policy documents.

Loss: the event which caused damages under a policy and resulted in a claim. Loss is often used interchangeably for *occurrence* and *claim* by insurance professionals.

Managing General Agent: Also known as MGAs are organizations appointed by insurance companies to manage all or a portion of their business.

Mediation: A dispute resolution technique in which an impartial, third party is chosen by the parties in the dispute. Although the mediator will attempt to bring about settlement, unlike an arbitration, the parties involved in the dispute have not agreed to abide by the mediator’s actions.

Named Insured: Any person, business, or organization specifically named on the Declarations Page of the insurance policy.

Negligence: A term for unintentional torts or wrongs which result in another person’s injury, loss, or damage to property. These damages are often covered in liability policies. When investigating a liability claim, adjusters and courts apply the reasonable person test to assess the standard of care owed to the third-party claimant by the insured.

Non-Admitted aka Excess & Surplus Carriers: An insurer not licensed to do business in the state.

Occurrence: A common liability and property policy term usually defined as a "continuous or repeated exposure to substantially the same general harmful conditions." In order for coverage to be triggered, an occurrence must have taken place.

Occurrence Policy: Insurance policy that covers claims that occur during any point within the policy period.

Peril: A cause of loss, for example, wind, water, earthquake, smoke, fire.

Personal Injury and Advertising Injury: A type of liability coverage separate from bodily injury. This coverage will apply for personal injuries to a third-party as a result of slander or libel or as a result of false advertisement or trademark infringement.

Policy Effective and Expiration Dates: The dates on which a policy becomes effective and through which the insured's coverage extends.

Producer: A general term for an agent or a broker.

Product Liability: Insurance that provides protection from bodily injury or property damage claims resulting from products that have been manufactured or sold. Product liability involves strict legal liability, and all businesses that come into contact with a product can be liable for damages, regardless of their role in the manufacturing or distribution chain.

Property Damage: First-party insurance coverage that protects against damage or loss of use to physical property and of its income-producing ability, when the loss or damage is caused by a covered peril. Property damage can also be covered under a liability policy in which case this means physical injury to tangible property resulting from loss of use.

Replacement Cost (RC): Calculation used to determine the cost to replace property that is damaged due to a covered loss. Each state differs in the determination of market value to replace property such as structures.

Retroactive Date: A clause in many claims-made policies stating that a wrongful act must have taken place on or after a specific date for coverage to apply.

Risk: The possibility of an occurrence or loss due to a hazard or peril. Risk also can be used by insurance professionals as the general term for the insured or property to which a policy applies.

Risk Avoidance: A conscious decision to not engage in a certain activity or course of conduct that could expose a business to an unacceptable risk of loss.

Risk Mitigation: The possibility of a reduction for a loss through affirmative, conscious actions by the policyholder to control or prevent a risk to an acceptable or tolerable level.

Risk Retention: The risk management technique when an organization or person retains, or keeps, a portion of the risk. In the event of a loss, the entity would handle its claim since there is not a policy of insurance. See also *captive insurers* and *self-insured retention*.

Risk Transfer: The essential element of insurance. A risk is transferred from the policyholder to the carrier in exchange for a premium.

Self-Insurance: A program in which the corporation or person retains or pays for part or all of the losses.

Self-Insured Retention: The amount of money the organization or person retains before an insurance policy would assume the handling of the loss. As with *risk retention*, there is not an insurance policy since the entity is keeping a portion of the risk. Compare with *deductible*.

Special Causes of Loss Form: An industry standard ISO (Insurance Services Office, Inc.) and AAIS (American Association of Insurance Services) form, also referred to an "all risk" form. ISO and AAIS removed the "all" in the insurance agreement to avoid creating the expectation by the insureds that everything was covered. The special cause of loss form covers against risks except for those specifically excluded in the policy. The usual policy language refers to "risks of direct physical loss, unless the loss is excluded . . .," a much more realistic goal of coverage.

Strict Liability: A legal doctrine which states that responsibility for a loss is imposed regardless of fault.

Subrogation: The act of seeking reimbursement from the at-fault party by the carrier after it has paid the policyholder under their policy.