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High Risk or High Reward? Navigating the Emerging Insurance Market for the Cannabis Industry

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What's in a Name? That which we call a rose by any other name would smell as sweet.^[1]

The availability of insurance coverage for the nascent cannabis industry remains in flux. This is largely because the cannabis sativa plant—known for its many names and extracts, including marijuana, hemp, THC, and CBD—has a checkered past. After enjoying a brief status as a “fashionable narcotic,”^[2] cannabis has been largely condemned in the United States since the Prohibition era until the most recent paradigm shift. But as the pendulum swings toward acceptance, the high-risk industry may offer an even higher reward to those insurers willing to delve into understanding this controversial cash crop.

The dichotomy presented by the (il)legality of cannabis in its many forms presents significant complexities for insurers and policyholders alike. Federal illegality has led to an absence of financial services support, which means that for some cannabis companies “money is still being transported around in buckets and being buried in backyards.”^[3] Conflicting rules and regulations governing cannabis evolve on a near-daily basis, demanding vigilant scrutiny by investors and underwriters attempting to assess potential exposure. As with all other businesses, insurance is a prerequisite for proper capitalization and licensing of cannabis-related companies, but most insurers are risk-averse and fear entering the market without legalization. With federal law lagging behind the exploding cannabis market, many potential policyholders have found themselves in a catch-22 situation, unable to secure adequate insurance.

To assist in navigating the insurance market for the cannabis industry, this article considers the evolution of cannabis from an illegal street-corner drug to a mainstream cash crop; the evolving regulatory landscape; the historical trends of third-party litigation involving cannabis companies; insurance coverage decisions involving cannabis claims; and the underwriting considerations, coverages, and policy forms available, including key terms and exclusions.

A “Field Guide” to Cannabis in its Many Forms

The historically negative connotation associated with marijuana has been downplayed in recent years as industry insiders attempt to mainstream the product by rebranding it by its botanical name—*Cannabis sativa* L.—rather than pejorative terms like “pot” or “weed.”^[4] The following is a compendium of common terms associated with cannabis:

Cannabis—*Cannabis sativa* L. is the botanical name for the plant that produces the flowering buds commonly known as marijuana.^[5] Numerous varieties of the plant are cultivated with differing levels of CBD, THC, and other cannabinoids.^[6]

Cannabinoids—Cannabis plants produce at least 500 identifiable chemical constituents known as cannabinoids.^[7] The two most widely known cannabinoids are CBD and THC.^[8]

CBD—CBD refers to the chemical compound cannabidiol. CBD can be extracted from the cannabis plant and used in oils, topical creams, and edible products. Unlike THC, CBD does not produce a “high.” CBD is used for pain reduction and to treat medical conditions, including anxiety, epilepsy, multiple sclerosis.^[9]

Hemp—Hemp typically refers to varieties of the cannabis plant that are cultivated for non-drug use.^[10] For example, under the 2018 Farm Bill, “industrial hemp” refers to any cannabis-derived product with less than .3 percent THC. Hemp is also commonly known as a product of the fibrous stalks of the cannabis plant, which can be used to produce rope, textiles, and other industrial products.

Marijuana—Marijuana typically refers to the dried flower buds from the cannabis plant, which can be smoked or consumed.^[11]

THC—THC is the chemical compound tetrahydrocannabinol, which produces the euphoric or “high”-inducing effects typically associated with cannabis.

The Shifting Regulatory Landscape for Cannabis Companies

Since the passage of the Controlled Substances Act (CSA) in 1970, the distribution, sale, and mere possession of marijuana (other than certain parts of the cannabis plant under certain conditions, as discussed below) have been considered a federal criminal offense. Marijuana is grouped in Schedule I, the most tightly restricted category of the CSA reserved for allegedly dangerous drugs with “no currently

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accepted medical use.”^[12] By comparison, cocaine is considered a less-dangerous Schedule II drug than marijuana. According to the CSA and the corresponding chart, ([viewable here](#) as a PDF) cocaine is deemed to have some medical value despite its “high potential for abuse.”^[13]

Despite the movement toward legalization of marijuana, efforts to remove cannabis from Schedule I of the CSA have been historically unsuccessful, due to, among other things, an absence of scientific data regarding the medical value of the drug.^[14] Yet, the U.S. Food and Drug Administration (FDA) appears committed to evaluating the scientific and medical value of cannabis. Significantly, the FDA is holding a public hearing on May 31, 2019, to allow individuals to share their experiences and challenges with products containing cannabis and cannabis-derived compounds, including information and views related to the safety of such products, as well as to solicit input relevant to the agency’s regulatory strategy related to existing products.^[15]

Notably, Canada legalized recreational cannabis nationally in October 2018. As the Canadian cannabis market matures, it should provide a helpful case study for the burgeoning U.S. industry.^[16] Juxtaposed with federal law, as of April 2019, 10 states and the District of Columbia have followed Canada’s lead in legalizing recreational marijuana, while a majority of states sanction medical use.^[17] Specific regulations govern the use and sale of cannabis—and related products—in each state.

Adding to the confusion surrounding the legality of cannabis, the CSA historically excluded from the definition of marijuana the stalks and certain other parts of the cannabis plant,^[18] described by the Ninth Circuit Court of Appeals as “non-psychoactive hemp.”^[19] More recently, the Agriculture Improvement Act of 2018 (commonly known as the “Farm Bill”) formally exempted cannabis plants and products containing low levels of THC from the CSA’s purview.^[20] Notably, however, states are expressly empowered under the Farm Bill to impose more stringent standards governing hemp—including to bar its cultivation and sale altogether.^[21]

Under the Farm Bill, which President Trump signed in December 2018, cannabis plants and hemp products containing derivatives like CBD, which contain no more than 0.3 percent THC, are no longer controlled substances under federal law.^[22] No longer within the Drug Enforcement Agency’s bailiwick, “hemp” will now be evaluated by the Department of Agriculture as a crop, while some associated products will come under the purview of the FDA.

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While many products meeting the definition of “hemp” will no longer be considered illegal drugs, they are now subjected to the added requirement of compliance with the Food, Drug, and Cosmetic Act and state regulations governing testing and labeling.^[23] As of April 2019, the FDA and Federal Trade Commission have already targeted cannabis companies by sending warning letters regarding fraudulent marketing concerning the health benefits of cannabis-related products, including those containing CBD.^[24] As discussed below, lawsuits have also been brought on similar grounds, and an influx of FDA warning letters will only foster further litigation.

Cannabis: Moving Past the Fringe into the Mainstream

As the *New York Times* reported, navigating the world of cannabis is no longer a “journey to the fringe of legitimacy” as the product becomes mainstream.^[25] While cannabis industry expansion creates new and emerging risks to insure, it presents a wealth of opportunity to those willing to brave the complexities of the market. Marijuana, for many years, came with a stigma—evoking images of stoners from Cheech and Chong films or aggressively frenzied maniacs in *Reefer Madness*. Marijuana was fought in the “war against drugs,” where kids were encouraged to “just say no.” But cannabis is not a street-corner drug purveyed by tie-dyed hippies anymore—it is a billion-dollar cash crop.

In the next few years, cannabis-related business ventures are projected to surpass sales of \$50 billion (though many report higher numbers) and create an exponential number of new jobs, as cannabis has become one of the fastest-growing industries in North America.^[26] While these predictions may seem remarkable on the one hand, they may in fact be *understated*. The cannabis space, from seed to support structure, is vast. Cannabis has permeated both new and traditional industries: from farming and cultivation, to product and food manufacturers, medical and health care, testing labs, transportation companies, banking, marketing and advertising, retail dispensaries, and e-commerce and online stores. In the form of CBD oils, lotions, and other beauty products, cannabis is now finding its way onto the shelves of common brick-and-mortar stores, including Sephora and luxury stores such as The High End at Barneys in Los Angeles. An entire industry has formed around the creation of CBD pet products.

While the entrepreneurial spirit of cannabis companies propels the industry forward, it also creates new risks. The need for protection and standardization in the form of insurance goes hand-in-hand with this expansion.

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Cannabis Risks and Litigation

Cannabis companies face many of the same liability risks as most traditional industries, but these businesses and operations also present unique challenges for the insurance market. Some of these risks are discussed below.

Insurer liability. Many banks and insurance companies remain hesitant to partner with the cannabis industry due to concerns about potential risk—not only risk to the companies they finance and insure but also their own potential direct liability under money-laundering laws, asset-forfeiture laws, and the federal Racketeer Influenced and Corrupt Organizations Act (RICO). These concerns are not purely hypothetical either. While fears about criminal prosecution appear overly cautious given the federal government’s apparent lack of interest in prosecuting state-legal cannabis companies, civil liability remains.

In particular, insurance companies, along with other financial institutions, have been sued along with cannabis companies as co-conspirators to commit illegal acts under RICO.^[27] For example, property owners have argued that adjacent cannabis operations interfere with the use and enjoyment of their land and that insurers are responsible co-conspirators for furthering the intent to violate the CSA.^[28] In the first RICO lawsuit to go to trial, *Safe Streets Alliance v. Hickenlooper*, the insurance company co-conspirators were dismissed prior to trial. In October 2018, a Colorado jury entered a verdict in favor of the cannabis company, finding an absence of evidence that the homeowner plaintiffs were damaged by the alleged smell and noise from the neighboring cannabis operation.^[29] Another RICO case, *Crimson Galeria LP v. Healthy Pharms, Inc.*, included claims against unnamed insurers as “Doe” defendants and remains pending in Massachusetts federal court after the court denied motions to dismiss.^[30]

To protect companies attempting to service the cannabis industry from these types of direct and derivative liabilities, federal legislation has been introduced. While similar congressional efforts to enable the cannabis industry have failed, the Secure and Fair Enforcement Banking Act of 2019 (the SAFE Act) was approved by the House Financial Services Committee (45 to 15) in March 2019 and is currently pending. The SAFE Act specifically provides a safe harbor for banks and insurance companies doing business with cannabis companies acting in compliance with state and federal law.^[31]

While federal legalization would be the best avenue to clear the path for insurers, efforts like the SAFE Act signal a positive trend toward ensuring cannabis

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companies are not forced to operate in cash and increase potential insurance risks. The Farm Bill, coupled with federal law providing these types of express carve-outs, should help minimize concerns about potential illegality and pave the way for the financial services and insurance industries to transact with companies selling cannabis and cannabis-related products without fear of criminal liability.

First-party risks. Grounded on crops valued in the millions of dollars, cannabis companies face both traditional and unique first-party risks. According to industry sources, most claims activity has arisen from property damage or theft. For example, the proliferation of California wildfires has devastated many cannabis farms, as well as downstream operations that rely on crops to produce their products, giving rise to claims for property damage, business interruption, and loss of use. Contamination from the use of pesticides presents another cultivation risk, especially in light of differing regulations concerning the amount and type of pesticides used in recreational and medical marijuana and the potential for cross-contamination. Several cultivation facilities, testing labs, and retail dispensaries in California and Massachusetts have already been subject to quarantine and closure due to concerns about the use of pesticides and alleged falsification of testing results, leading to potential recall costs.^[32]

In the retail environment, where businesses must operate with cash due to banking restrictions, theft is of particular concern. Risks of fire and water damage arising from indoor grow operations also proliferate.

Products liability claims. The interplay between federal, state, and local regulations remains fluid and creates opportunities for products liability litigation. As stated above, cannabis products must conform to a host of conflicting regulatory requirements both federally and statewide, giving rise to claims based on mislabeling, consumer protection statutes, negligence, and fraud.

A federal court, in *Horn v. Medical Marijuana, Inc.*, confronted the question of hemp's legality in April of 2019, allowing a lawsuit to go forward arising from sales of CBD before the Farm Bill became law.^[33] In that case, a purchaser of "Dixie X Dew Drops" brought fraud, strict liability, negligence, and conspiracy claims against a cannabis company relating to the sale and marketing of hemp-based consumable CBD oil.^[34] According to the plaintiff, the company misrepresented the THC content of the oil, causing him to fail a drug test and lose his job.^[35] The company asserted that it subjectively believed the oil was legally compliant, and each side presented expert testimony concerning the THC content of the product. The court

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found these factual disputes sufficient to allow the plaintiff to proceed with his fraud and RICO claims.^[36] The case remains pending.

In *Brandon Flores v. LivWell, Inc.*, a class action lawsuit was brought against a cannabis company for use of a controversial pesticide in its marijuana. The lawsuit asserted claims based on breach of contract, breach of warranty, misrepresentation, unjust enrichment, and conspiracy. Unlike the court in *Horn*, however, the court in *Flores* found that the plaintiffs lacked standing because they did not state a cognizable claim for damages.^[37] The court reasoned that products cases must allege some legal detriment, whether in terms of lost profits, repair costs, or the diminished opportunity to use the purchased product, but the plaintiffs in *Flores* sought to recover for mere overpayment for the product (marijuana).^[38] Because the plaintiffs suffered no cognizable physical or emotional injury from their inhalation of marijuana, the court dismissed the case.^[39]

Cannabis may very well be the next cottage industry for the class action plaintiffs' bar, as lawsuits are instituted over improper labeling in the same manner as lawsuits against other food and beverage companies. Multiple class action lawsuits in Canada, where cannabis is federally legal, have already developed, charging cannabis companies for failing to disclose the use of pesticides after product recalls of medical cannabis arose.^[40] This type of litigation will likely be especially prevalent in states like California, with robust strict-liability rules, like Prop 65, that require companies to notify consumers about the presence of certain harmful chemicals in goods. Even before the confusing regulations concerning hemp were instituted by the Farm Bill, Prop 65 lawsuits had already been filed against cannabis companies in California.^[41] Only more will arise after the FDA and other state agencies institute express requirements concerning the labeling, testing, and sale of cannabis products, including hemp.

While the defendants prevailed in some of these cases, the initiation of litigation alone sends a clear warning to cannabis companies and underwriters that strict scrutiny regarding the regulatory compliance of cannabis and hemp products, and representations concerning them, is essential to reduce potential legal exposure. Indeed, sales of hemp-derived products that allegedly fail—whether intentionally or not—to comply with the strict regulations governing the THC content in products will give rise to potential liability, even though hemp grown and sold in compliance with the Farm Bill (and applicable state regulations) is no longer technically illegal.

Discrimination and employment claims. The use of marijuana in the workplace

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presents unique risks. Lawsuits have been brought by employees claiming discrimination and wrongful termination arising from the use of medical marijuana. For example, in February 2019, a federal judge in Arizona upheld a discrimination claim filed by a Walmart worker who was fired after failing a drug test.^[42] The court, reasoning that Walmart failed to prove that the worker was impaired at work, allowed the lawsuit to proceed. In like fashion, last fall, a Connecticut district court granted summary judgment in favor of a plaintiff employee who sued a nursing home that withdrew a job offer after she tested positive for marijuana, which she allegedly used to treat post-traumatic stress disorder.^[43]

Traditional risks—trademark, directors’ and officers’ policies, and securities litigation. As with any other industry, cannabis companies face traditional risks, including those arising from employment, discrimination, trademark, and securities statutes. A host of lawsuits have already been initiated for patent and trademark infringement. Lawsuits alleging trademark infringement have been brought by various companies, including Gorilla Glue, Tapatio Foods, and the United Parcel Service (UPS). Most recently, a Colorado federal court denied a motion for summary judgment in a closely watched patent dispute (*United Cannabis v. Pure Hemp Collective, Inc.*), paving the way for a trial to determine the validity of a patent for methods of preparing liquid CBD and THC.^[44]

Lawsuits have also been filed against cannabis companies for securities violations and other claims involving corporate governance. In January 2019, the former chief financial officer of MedMen filed a lawsuit in Los Angeles County Superior Court, alleging that he was forced out of the cannabis company in November for complaining about questionable corporate activities, such as excessive personal spending by executives, efforts to prop up stock prices, and allowing a hostile work environment.^[45] Another lawsuit was filed in January 2019 by early investors who contended that they have not been able to sell their MedMen shares due to a “lock-up” arrangement.^[46] The investors assert claims of breach of fiduciary duty and are seeking at least \$19.8 million in damages.

Lawsuits have also been brought against cannabis companies for more typical labor employment violations. In a pending lawsuit filed in August 2018 in a California federal court, *Whitaker v. RHS Robertson Property LP*, a plaintiff asserted that retail cannabis giant MedMen failed to conform to Americans with Disabilities Act requirements regarding the height of the retail store’s transaction counter, denying him full and equal access and causing him difficulty, discomfort, and embarrassment.^[47] Another lawsuit was brought against MedMen in November

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2018, asserting violations of labor standards as a class action on behalf of California employees.^[48]

These types of lawsuits, involving typical business risks, suggest that the cannabis industry may be normalizing—a positive sign despite the potential exposure they generate.

Cannabis Insurance Coverage Litigation

While few courts have had occasion to confront cannabis-related insurance coverage issues due to a limited claims history, the courts that have, have issued conflicting rulings. Early decisions favored insurers. In 2012, a Hawaii federal court, in *Tracy v. USAA Casualty Insurance Co.*, upheld an insurer’s denial of coverage for the theft of 12 medical marijuana plants under a homeowner’s insurance policy.^[49] The policy provided coverage for the loss of “trees, shrubs, and other plants.” The decision was not rooted in the policy language; instead, it was based on public policy, holding that “the cultivation of marijuana, even for the State-authorized medical use, violates federal law.” Due to illegality, the court refused to enforce the express policy language providing coverage for plants—essentially rendering the policy illusory in that respect.

Also in 2012, a California federal court upheld an insurer’s denial of coverage arising from a claim for damages at a residential rental property that were caused by a tenant’s illegal marijuana grow operation, in *Anh Hung Huynh v. Safeco Insurance Company of America*.^[50] Finding that the marijuana plants were technically illegal under state law, the court applied an exclusion that precluded coverage for the “illegal growing of plants.”^[51]

Four years later, a Colorado federal court, in *Green Earth Wellness Center, LLC v. Atain Specialty Insurance Co.*, specifically rejected *Tracy*’s public policy analysis.^[52] The *Green Earth* court found coverage for a \$40,000 claim arising from harvested marijuana damaged in a fire under a commercial property and commercial general liability (CGL) policy issued to a medical marijuana dispensary. The court refused to invalidate coverage based on public policy, noting a “continued erosion of any clear and consistent federal public policy” relative to cannabis and reasoning that the insurer, “having entered into the Policy of its own will, knowingly and intelligently, [was] obligated to comply with its terms or pay damages for having breached it.” It is interesting that the court refused to opine on whether it was legal for the insurer to actually pay the claim. Subsequent case law suggests that courts would enforce contracts involving “marijuana-adjacent” businesses that are only

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tangentially involved in illegal activity, to avoid a windfall.^[53] In *Mann v. Gullickson*, for example, a California court enforced a contract for the sale of a medical marijuana business, relying on, among other things, the continued evisceration of federal policy enforcing the CSA and the state's legalization of medical marijuana.^[54]

More recent insurance coverage cases have upheld denials of coverage based on the plain language of the policies in question, not on some obscure notion of public policy as in *Tracy*. This move toward a familiar policy interpretation analysis should provide some comfort to policyholders and insurers issuing policies in this area, who may fear that the contracts they enter into will be unenforceable. For example, a court upheld a denial of coverage in *Admiral Insurance Co. v. Gulshan Enterprises, Inc.*, after a woman purchased synthetic marijuana from a gas station convenience store and suffered a "massive stroke" after ingesting the drug.^[55] Because the policy provided coverage only for "wholesale gasoline sales," the court held that damages arising from the retail sale of synthetic marijuana were "simply and undeniably" not covered. In 2015, in turn, the Sixth Circuit Court of Appeals agreed to rescind a policy after an investigation determined that a claim for fire damage arose from the homeowner's basement marijuana lab.^[56] The court reasoned that the use was not contemplated at the time the policy was entered into.

Most recently, the Sixth Circuit Court of Appeals found no coverage for damage to a landlord's property due to tenants' marijuana operation in *K.V.G. Properties, Inc. v. Westfield Insurance Co.*^[57] The commercial property policy, issued to a landlord who was not involved in the cannabis industry, included a "dishonest or criminal acts exclusion." Allegedly unbeknownst to the landlord, the tenants had significantly altered the rental units by removing or damaging walls and ductwork, among other things, causing about \$500,000 in damages. The court's decision appeared to be premised on the landlord's admission that its tenants had engaged in illegal activity, coupled with the acknowledgment that cannabis was illegal under Michigan state law and federal law. It is significant that the court left open, by virtue of dicta, the question of whether the exclusion would apply to preclude coverage in a state where cannabis was legal when it remained illegal under federal law.

Given that insurance policies are governed by state law, and with favorable precedent such as *Mann v. Gullickson*, states that have legalized marijuana are more likely to enforce insurance policies by their terms, rather than deny coverage on grounds of public policy.

Conclusion: Limited Coverage Options Present a Wealth of Opportunity

As a general matter, the insurance market for cannabis companies remains sparse—and nebulous. In April 2019, A.M. Best reported there were about 25 carriers doing business in the cannabis space throughout all of North America, with extremely limited reinsurance available.^[58] Most of these companies are non-admitted. The entry of more admitted carriers, as well as the creation of cannabis-specific policy forms and endorsements, however, signals an upward trend toward a more stable insurance market.

Several admitted carriers have emerged in California due to the strenuous efforts of former California insurance commissioner Dave Jones, who in 2018 urged insurers to meet the needs of the cannabis industry, proclaiming that “cannabis businesses should have insurance coverage available to them just like any other California business.”^[59] Following the lead of Dave Jones, Golden Bear Insurance Company became the first admitted cannabis carrier in the state (offering a range of commercial products, including CGL, products, property, crime, and excess coverage), followed by California Mutual Insurance Company (providing cannabis lessor’s risk), and Continental Heritage Insurance Company (offering surety bond and product liability and recall coverage). In turn, some surplus lines carriers and agencies focus solely on the cannabis industry, including Cannasure Insurance Services, which offers “insurance built exclusively for the cannabis and hemp industry.”^[60]

Despite the steadily growing availability of insurance, not all coverage is created equal. Many carriers entering the market offer policies with limits of no more than \$1 million per occurrence and \$2 million aggregate for CGL, property, and product liability coverages.^[61] These limits (especially where sublimits or anti-stacking endorsements apply) may be insufficient for cannabis companies exposed to the unique risks and liabilities discussed above, especially in terms of property damage for valuable plants and products. Low limits will likely continue to prevail until more reinsurers begin creating cannabis-related books of business.

In addition to inadequate limits, many policies also follow standard non-cannabis-specific forms issued by the Insurance Services Office (ISO), which may contain limited coverage grants and exclusions that narrow coverage for cannabis-related risks. Product coverage for cannabis companies, for example, is often offered on a claims-made-only basis, rather than by occurrence, to help carriers isolate emerging risks. As with some of the precedent discussed above, exclusions for criminal

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activity, illegal acts, or violations of public policy, if not modified by endorsement, could apply to deny coverage for claims involving federally illegal cannabis.

To counter some of these concerns, the American Association of Insurance Services, a nonprofit that produces policy forms similar to ISO's, created a first-of-its-kind Cannabis Business Owners Policy, which it calls "CannaBOP."^[62] Uniquely tailored to insure cannabis-related businesses (such as retail dispensaries, manufacturers, distributors, and testing labs), the CannaBOP form includes specific definitions for cannabis and cannabis activities, as well as exceptions to typical criminal acts, illegal acts, and contraband exclusions for cannabis sold in compliance with state law. The CannaBOP policy was first requested and approved by the California Department of Insurance in June 2018, was approved by the Colorado Department of Insurance in April 2019, and is being currently marketed to other states with established cannabis industries.^[63]

Despite a host of challenges, all signs suggest that the seemingly archaic designation of cannabis as a dangerous drug with no beneficial use will catch up to both science and the public's softening perception. Recent trends signal a shift in the right direction, as more admitted carriers, non-admitted carriers, and reinsurers begin writing coverage for the industry. Insurers' responses to Canada's legalization will also shed some light on potential future developments in the United States. For example, although Lloyds of London exited the U.S. market in 2015, citing concerns about illegality, it reemerged in Canada in 2018 shortly after recreational cannabis became legal.

Above all, the passage of the federal Farm Bill and its corresponding exemption of hemp from the CSA may spur new insurer interest in the cannabis boom. While these legislative developments may initially open limited doors to coverage—for companies that deal only in hemp and hemp-based products—any number of new carriers entering the space is encouraging. Without question, the growth of the legal cannabis sector and the demand for associated insurance coverage go hand in hand. Pioneering insurers willing to shoulder the present uncertainty may reap great rewards as the cannabis industry steps out of the shadows and into the spotlight.

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[1] William Shakespeare, *Romeo and Juliet*, act 2, sc. 2.

[2] "Our Fashionable Narcotics," *N.Y. Times*, Jan. 10, 1854.

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[3] “Insurance Coverage Remains Sparse, Confusing for Cannabis Industry,” *Cannabis Wire*, Apr. 15, 2019.

[4] Conor Dougherty, “Cannabis, Marijuana, Weed, Pot? Just Call It a Job Machine,” *N.Y. Times*, Apr. 25, 2019.

[5] U.S. Dep’t of Justice, [Schedule of Controlled Substances: Maintaining Marijuana in Schedule I of the Controlled Substances Act](#), 81 Fed. Reg. 57,671 (Aug. 12, 2016).

[6] Shelly B. DeAdder, “The Legal Status of Cannabidiol Oil and the Need for Congressional Action,” 9 *BIOPLR* 68, 72 (2015) (explaining that while “the marijuana plant and industrial hemp plant come from the same botanical species,” the “hemp plant has been crossbred to have low concentrations of THC”). CBD can be extracted from both varieties of the plant. *See* DeAdder, at 72 & n.34.

[7] U.S. Dep’t of Justice, *supra* note 5, 81 Fed. Reg. at 53,777.

[8] U.S. Dep’t of Justice, *supra* note 5, 81 Fed. Reg. at 53,777.

[9] National Academies of Sciences, Engineering & Medicine, Health & Medicine Div., Comm. on the Health Effects of Marijuana, [The Health Effects of Cannabis and Cannabinoids: The Current State of Evidence and Recommendations for Research](#) (Jan. 12, 2017).

[10] DeAdder, *supra* note 6, at 72.

[11] U.S. Dep’t of Justice, *supra* note 5, 81 Fed. Reg. at 53,777.

[12] *See* 21 U.S.C. 13 § 801 et seq.

[13] U.S. Drug Enforcement Admin., [Drug Scheduling](#).

[14] U.S. Dep’t of Justice, *supra* note 5.

[15] U.S. Food & Drug Admin., [FDA Regulation of Cannabis and Cannabis-Derived Products: Questions and Answers](#).

[16] A.M. Best, “New Opportunities for Insurers, But with Burgeoning Risks,” *Best’s Special Report*, Mar. 12, 2019.

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[17] Jeremy Berke & Skye Gould, “New Jersey Lawmakers Postponed a Critical Vote to Legalize Marijuana—Here Are All the States Where Pot Is Legal,” *Bus. Insider*, Mar. 26, 2019.

[18] 21 U.S.C. § 802(16).

[19] *Hemp Indus. Ass’n v. Drug Enf’t Admin.*, 357 F.3d 1012, 1015 (9th Cir. 2004) (finding that trace levels of naturally occurring THC within non-psychoactive hemp products did not fall within the CSA).

[20] Agriculture Improvement Act of 2018, Pub. L. No. 115-334, § 10113, 132 Stat. 4490 (2018).

[21] Agriculture Improvement Act of 2018, §10113. *See also Big Sky Sci. LLC v. Idaho State Police*, No. 1:19-CV-00040-REB, 2019 U.S. Dist. LEXIS 18758, at *2 (D. Idaho Feb. 2, 2019) (discussing preemption arguments under the Farm Bill).

[22] The statute specifically defines “hemp” as the “plant *Cannabis sativa* L. and any part of that plant, including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis.” 7 U.S.C.A. § 1639o. *See also United States v. Mallory*, No. CV 3:18-1289, 2019 U.S. Dist. LEXIS 35588, at *6 (S.D. W. Va. Mar. 6, 2019).

[23] U.S. Food & Drug Admin., *supra* note 15.

[24] Press Release, Fed. Trade Comm’n, [FTC Joins FDA in Sending Warning Letters to Companies Advertising and Selling Products Containing Cannabidiol \(CBD\) Claiming to Treat Alzheimer’s, Cancer, and Other Diseases](#) (Apr. 2, 2019).

[25] Dougherty, *supra* note 4.

[26] Kevin Murphy, “[Legal Marijuana: The \\$9 Billion Industry That Most Banks Won’t Touch](#),” *Forbes*, Sept. 6, 2018.

[27] *Safe Streets All. v. Hickenlooper*, 859 F.3d 865 (10th Cir. 2017). *See also Crimson Galeria LP v. Healthy Pharms, Inc.*, 337 F. Supp. 3d 20, 26 (D. Mass. 2018).

[28] *Crimson Galeria LP*, 337 F. Supp. 3d at 26.

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[29] Diana Novak Jones, “[Pot Grower Wins First Civil RICO Trial for Cannabis Industry](#),” *Law360*, Oct. 31, 2018.

[30] *Crimson Galeria LP*, 337 F. Supp. 3d 20.

[31] SAFE Banking Act of 2019, H.R. 1595, 116th Cong. *See also* Tom Angel, “[Marijuana Banking Bill Approved by Congressional Committee](#),” *Forbes*, Mar. 28, 2019.

[32] “[Pesticides Spur MA Medical Marijuana Retail Closures; 700 Batches Failed CA Testing](#),” *Marijuana Bus. Daily*, Dec. 17, 2018.

[33] *Horn v. Med. Marijuana, Inc.*, No. 15-CV-701-FPG, 2019 U.S. Dist. LEXIS 65609, at *1 (W.D.N.Y. Apr. 17, 2019).

[34] *Horn*, 2019 U.S. Dist. LEXIS 65609, at *1.

[35] *Horn*, 2019 U.S. Dist. LEXIS 65609, at *1.

[36] *Horn*, 2019 U.S. Dist. LEXIS 65609, at *1.

[37] *Brandon Flores v. LivWell, Inc.*, No. 2015CV33528, slip op. at 5 (Colo. Dist. Ct. Feb. 11, 2016).

[38] *Flores*, No. 2015CV33528, slip op. at 4.

[39] *Flores*, No. 2015CV33528, slip op. at 2–3.

[40] “[Class-Action Lawsuit Against OrganiGram Gets Green Light](#),” *CBC News*, Jan. 21, 2019.

[41] Eric Sandy, “[What Should California Cannabis Dispensaries Know about Prop. 65?](#),” *Cannabis Bus. Times*, June 21, 2018.

[42] *Whitmire v. Wal-Mart Stores Inc.*, 359 F. Supp. 3d 761 (D. Ariz. 2019).

[43] *Noffsinger v. SSC Niantic Operating Co., LLC*, 338 F. Supp. 3d 78 (D. Conn. 2018).

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[44] *United Cannabis Corp. v. Pure Hemp Collective, Inc.*, No. 18-cv-1922-WJM-NYW (D. Ariz. (Apr. 17, 2019) ([Order Denying Defendant’s Early Motion for Summary Judgment](#)).

[45] *See James Parker v. MM Enters. USA, LLC*, No. 19SMCV 00189 (Cal. Super. Ct. 2019).

[46] *MMMG-MC, Inc. v. Adam Bierman*, No. 19SMCV00045 (Cal. Super. Ct. 2019).

[47] *Whitaker v. RHS Robertson Prop. LP*, No. 18-cv-06671 (C.D. Cal. 2018).

[48] *Chelsea Medlock v. Manlin I, LLC*, No. 18STCV05391 (Cal. Super. Ct. 2018).

[49] *Tracy v. USAA Cas. Ins. Co.*, No. 11-00487 LEK-KSC, 2012 U.S. Dist. LEXIS 35913 (D. Haw. Mar. 16, 2012).

[50] *Anh Hung Huynh v. Safeco Ins. Co. of Am.*, No. C 12-01574-PSG, 2012 U.S. Dist. LEXIS 167389, at *1 (N.D. Cal. Nov. 23, 2012).

[51] *Anh Hung Huynh*, 2012 U.S. Dist. LEXIS 167389, at *1.

[52] *Green Earth Wellness Ctr., LLC v. Atain Specialty Ins. Co.*, 163 F. Supp. 3d 821, 834–35 (D. Colo. 2016).

[53] *See Mann v. Gullickson*, No. 15-CV-03630-MEJ, 2016 U.S. Dist. LEXIS 152125, at *1 (N.D. Cal. Nov. 2, 2016) (enforcing sale of marijuana business and reasoning that mandating payment would not require the plaintiff “to possess, cultivate, or distribute marijuana, or to in any other way require her to violate the CSA”); *Green Cross Med., Inc. v. Gally*, 242 Ariz. 293 (2017) (enforcing lease with marijuana company).

[54] *Mann*, 2016 WL 6473215, at *1.

[55] *Admiral Ins. Co. v. Gulshan Enters., Inc.*, No. 4:16-CV-2837, 2017 U.S. Dist. LEXIS 130790, at *1 (S.D. Tex. Nov. 15, 2017).

[56] *Nationwide Mut. Fire Ins. Co. v. McDermott*, 603 F. App’x 374, 378 (6th Cir. 2015).

[57] *K.V.G. Props., Inc. v. Westfield Ins. Co.*, 900 F.3d 818 (6th Cir. 2018).

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[58] A.M. Best, *supra* note 16.

[59] Press Release, Cal. Dep't of Ins., [Insurance Commissioner Announces New Workers' Compensation Program for California's Cannabis Industry](#) (Aug. 30, 2018).

[60] A.M. Best, *supra* note 16. *See also* [Cannasure Insurance Services](#).

[61] A.M. Best, *supra* note 16.

[62] Press Release, Cal. Dep't of Ins., [California's Cannabis Insurance Marketplace Continues to Grow with Commissioner's Latest Approval](#) (June 4, 2018).

[63] Danielle Ling, ["Colorado Approves AAIS's Cannabis Businessowners Policy Program,"](#) *Prop. Cas.* 360, Apr. 23, 2019.

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