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**GLOBAL
INSURANCE
INDUSTRY**
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EXCERPT

An abstract graphic design consisting of multiple overlapping, parallel lines that form a series of connected, angular shapes resembling a zig-zag or a stylized mountain range. The lines are light blue and set against a darker blue background.

NAIC Begins to Address Cannabis

The cannabis industry is rapidly evolving and expanding as more states legalize medical and/or recreational cannabis. By 2018, cannabis had been legalized for medical use in 33 states and the District of Columbia, and for recreational use in 10 states and the District of Columbia. Nationally, at the end of 2018, the overall cannabis industry was valued at over \$10 billion and is expected to be valued at over \$20 billion by 2021. With innovative entrepreneurs, experienced investors, large public and private corporations and high profile executives entering the market, there is a new level of sophistication in the cannabis industry. Legal cannabis businesses, like any other business, are exposed to a variety of risks and seek access to insurance to cover those risks. However, there are many legal uncertainties, emerging risks and unique hazards involved in cannabis-related insurance activities.

NAIC Working Group and White Paper

To begin to address these uncertainties and risks, the NAIC Cannabis Insurance (C) Working Group was formed in 2018. In 2019, the working group drafted a white paper entitled “Regulatory Guide: Understanding the Market for Cannabis Insurance.” The white paper, which was adopted at the NAIC 2019 Summer Meeting, identifies insurance issues, gaps and opportunities facing the legal cannabis industry and identifies best regulatory practices to address those issues. The white paper provides information to state insurance regulators, insurers and consumers about the structure of the cannabis business supply chain, the types of insurance needed by companies in the cannabis industry, the availability of insurance for cannabis businesses in state insurance markets and the scope of insurance gaps. The white paper further identifies best practices that state insurance regulators can apply to encourage insurers to write insurance in the cannabis industry. The white paper does not address workers’ compensation or safety issues related to auto insurance.

Insurance Coverage Gaps

The white paper identifies substantial gaps in insurance coverage for the cannabis industry. While many of the risks facing the cannabis industry are no different from any other business in the same general area of business activity;¹ a unique feature of the cannabis industry is the different treatment of cannabis under federal and state law (in states that have legalized cannabis). Conflicting state and federal laws, a paucity of data, emerging standardization of business practices and rapidly evolving regulations have largely discouraged insurers from participating in

¹ For example, outdoor cultivators of cannabis encounter similar risks to their crops as other cultivators in the agricultural industry.

this market. For example, while laws in many states have legalized cannabis, federal laws such as the Bank Secrecy Act and federal laws relating to anti-money laundering and unlicensed money transmission could expose insurers to liability. Insurers may face exposure in other areas as well, including, but not limited to, environmental and agricultural regulation and intellectual property. Although state law generally preempts federal law with respect to the regulation of “the business of insurance,” it is unclear whether this would apply to federal laws that could be deemed to be violated by activities of insurers in insuring cannabis-related exposures.

Moreover, issues of conflicting law have already proven problematic in dealing with such elementary concepts as whether one has an insurable interest and whether one can contractually insure for a substance that is federally defined as “illegal.” For example, there is conflicting case law surrounding whether a cannabis-related insurance policy would be enforceable as a matter of public policy, since cannabis is federally defined as an illegal substance. Thus, due to the fear of criminal and civil liability, many insurers are not willing to write cannabis-related insurance policies.

Best Practices for Regulators

In addition to identifying the insurance gaps facing the cannabis industry, the NAIC white paper also suggests best practices for state insurance regulators to follow to address coverage gaps and other cannabis insurance regulatory issues. These best practices include education, outreach and public communication; creating dedicated internal infrastructure and resources; and monitoring the market and conducting gap analyses. By way of example, California was the first state to approve admitted insurance carriers to offer coverage to cannabis-based businesses.

Going Forward

As more states legalize cannabis and the industry continues to innovate and grow, the need and demand for cannabis-related insurance will continue to increase. Although a few admitted insurers are issuing policies in the cannabis industry, the white paper makes clear that there are substantial gaps in insurance coverage for the cannabis industry—which put consumers, workers, vendors, owners and investors at risk. With the establishment of the NAIC Cannabis Insurance (C) Working Group and the development of the white paper as a starting point, the next decade may see an increased effort by state insurance regulators to further address the coverage gaps and encourage more insurers to participate in the cannabis industry. ■

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