

CANNABUSINESS AND COVERAGE

EXPLORING COVERAGE CONSIDERATIONS IN
THIS BUDDING AND SMOKING HOT INDUSTRY

INTERNATIONAL SOCIETY OF
PRIMERUS LAW FIRMS

INSURANCE COVERAGE & BAD
FAITH SEMINAR 2016

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Fast facts . . .

- Use of marijuana is now legal in 26 states, with new states putting the issue up for vote each year.
- Legal for Recreational Use: Colorado, Washington, Oregon, Alaska, D.C. and on the ballot in California, Nevada, Arizona, Massachusetts, Maine, Rhode Island and Vermont.
- \$5.4 Billion in Sales in 2015;
Projected to be \$21.8 Billion by 2020.

"BUDDIE"



THE LAW OF THE LAND



PUBLIC POLICY CONSIDERATIONS

- Federally, possession of marijuana for purposes to distribute is a federal crime (21 U.S.C. §841(a)(1) and (B)(1)(D). **The FDA continue to maintain marijuana as a Schedule I Drug.** This places it on par with substances which are not readily available for clinical use, and which no state has legalized, such as Heroin and Cocaine.
- Thus, marijuana in its various forms, has traditionally been considered **contraband**.

CONTRABAND

BUILDING AND PERSONAL PROPERTY COVERAGE FORM

2. Property Not Covered

Covered Property does not include:

- e. Contraband, or property in the course of illegal transportation or trade

“Contraband” undefined, but commonly understood to be “goods or merchandise whose importation, exportation, or possession is forbidden.” (thanks to Meriam-Webster 10th Ed.)



Barnett v. State Farm (2001) – California – Insured had medical marijuana license. No theft coverage under homeowners policy where plants seized by police.

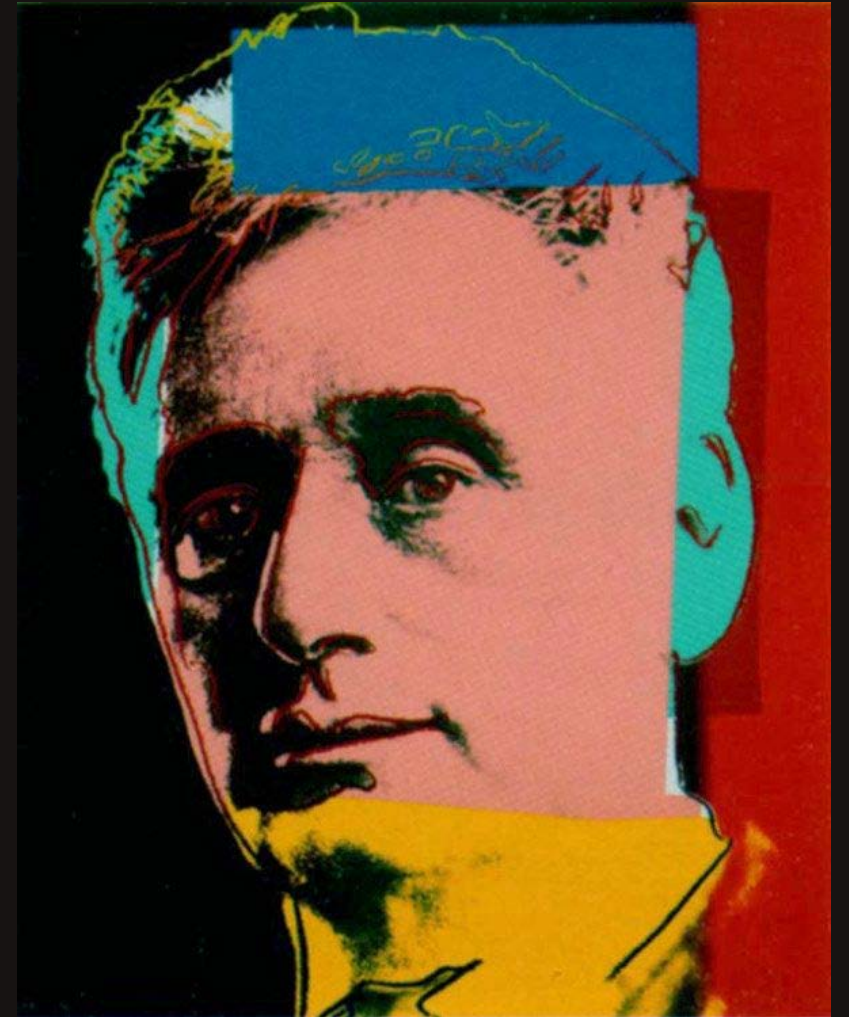
See Tracy v. USAA (2012) – Hawaii – \$45,000 in coverage over plants sought from homeowner's carrier under coverages for trees, shrubs and other plants. Court found no coverage because plants were illegal under federal law, so to enforce coverage for the plants would be against public policy.

Haw. Rev. Stat. § 431:10E-101: There is no insurable interest over unlawful items.

Coates v. Dish Network (2015) – Colorado - Colorado Supreme Court upheld an employer's right to maintain a true drug free workplace, even where use of marijuana outside of the workplace was permitted under state law.

“Is it not one of Federalism’s chief virtues that it promotes innovation by allowing for the possibility that ‘a single, courageous State may, if its citizens choose, serve as a laboratory; and try novel social and economic experiments without risk to the rest of the country?’ ”

Emerald Steel Fabricators, Inc. v. Bureau of Labor and Industries – OR 2010 – Walters, J. dissent citing the contention held by Justice Brandies in *New State Ice Co. v. Liebmann*, S.Ct. 1932.



NEW INTERPRETATION OF PUBLIC POLICY CONCERNS

State Statutes Governing Workplace Impact – AZ, CT, DE, MA, MT, RI

Green Earth Wellness Center v. Atain Specialty Ins. Co. (2016) – U.S., D.Colo. 2016 – Policy issued to retail medical marijuana business and adjacent growing facility, which were damaged in a wild fire. Coverage for marijuana plants and product *not* precluded under contraband exclusion.

U.S. Fed. Ct.: “The nominal federal prohibition against possession of marijuana conceals a far more nuanced (and perhaps even erratic) expression of federal Policy.” Took into consideration public statements from federal authorities that reflected “ambivalence towards enforcement of the Controlled Substances Act in circumstances where a person or entity’s possession and distribution of marijuana was consistent with well-regulated state law.”

Inherent Risks and Insurable Interests in Personal and Commercial Lines

Mandatory CGL – State as AI

Washington

Colorado

Illinois



PRODUCTS LIABILITY: CONSUMER WARNINGS

- [Alaska](#)
- [Arizona](#)
- [California](#)
- [Colorado](#)
- [Connecticut](#)
- [Delaware](#)
- [District of Columbia](#)
- [Hawaii](#)
- [Illinois](#)
- [Maine](#)
- [Maryland](#)
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- [New York](#)
- [Oregon](#)
- [Rhode Island](#)
- [Vermont](#)
- [Washington](#)



INJURY TO PERSONS OR PROPERTY

Defective Construction and Installation

Incorporation of faulty product of another:

> *Shade Foods v. Innovative Prods. Sales & Marketing, Inc.*, it was determined physical property damage occurred when defective almonds were incorporated into a third party cereal company's products.

Premises Liability



PROPERTY INSURANCE

Fire, Water and Mold

Theft

Business Interruption

WORKER'S COMPENSATION

Are marijuana related services covered as treatment for an employee hurt on the job?

Note: Presently, medical marijuana is not included in any Workers Compensation treatment guidelines, such as the Official Disability Guidelines (ODG) and the American College of Occupational & Environmental Medicine (ACOEM) Practice Guidelines—which are considered the industry benchmarks in the treatment of occupational injuries.

Can an employee claim worker's compensation if they fail a drug test?

AUTO

- Who is driving?
- Cargo
- Employee theft/dishonesty
- Standard home and personal auto policies contain no exclusions for marijuana related losses.



PROFESSIONAL LIABILITY

- Doctors prescribing medical marijuana
- People creating product including extracts and edibles.
- Professionals providing services to the cannabis industry
 - Accountants
 - Lawyers
 - Architects





WHAT'S NEXT?

DRAM (AND POT?) SHOP LIABILITY

- Ballot initiatives to expand recreational marijuana to public consumption in certain venues.
 - Smoking and edible
 - Served with alcohol
 - On a commercial premises

Employment Practices; Copyright
Infringement

QUESTIONS?

OH, WAIT, I JUST HAD IT...