

PROTECTING YOUR CANNABIS BUSINESS: A COMMERCIAL INSURANCE OVERVIEW

National Cannabis Industry Association

FINANCE AND INSURANCE COMMITTEE

INSURANCE SUBCOMMITTEE

Committee Chair, Vice Chair

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I. GENERAL LIABILITY INSURANCE

1. Definition:

An Insurance policy that provides coverage for claims, by a third party alleging negligence, resulting in bodily injury or property damage to that third party.

2. What types of cannabis businesses need General Liability Insurance?

- Cultivators
- Processors / Harvesters
- Dispensaries
- Manufacturers
- Landlords
- Laboratories
- Wholesalers / Distributors
- Security Guard Services
- Transporters
- Smoke Shops
- Hydroponics / Garden Stores

3. Examples:

- A. A customer slips and falls on a wet floor in a dispensary, and sues the dispensary for his injuries and pain & suffering.
- B. A landlord, who rents his building to the same dispensary, is also sued by that injured customer.
- C. A manufacturer, who hires a repairman to fix a machine, is sued by the repairman who is bitten by the manufacturer's dog.
- D. A RICO suit is brought by a dispensary neighbors.
- E. A suit alleging product disparagement is brought by a competitor.



II. PRODUCTS LIABILITY INSURANCE

1. Definition:

An insurance policy that provides coverage for claims, by a third party (usually a consumer of an ingested product) alleging bodily injury or property damage, as a result of a defect in the ingested product. Many times this coverage can be included in a General Liability Insurance policy.

2. What types of cannabis businesses need Products Liability Insurance?

- Dispensaries
- Manufacturers
- Processors
- Cultivators
- Wholesalers
- Distributors

3. Examples:

- A. A consumer ingests a cannabis infused cookie and later claims illness or injury due to the alleged defect in the manufacturing process. The consumer sues the dispensary and the manufacturer.
- B. A processor of cannabis oil is sued by a supplier of a vape pen, who was sued by a consumer alleging that the oil was impure and contained harmful chemicals.
- C. A processor of cannabis oil sues a cultivator alleging that the harvested flower contains pesticides which later allegedly sickened the oil's end user.
- D. A budtender recommends a strain or brand to a consumer, who later sues the dispensary alleging poor advice leading to an adverse reaction.
- E. A consumer alleges unfair or deceptive advertising.



III. PRODUCT RECALL / WITHDRAWAL INSURANCE

1. Definition:

An insurance policy that reimburses a cannabis business owner for costs incurred due to the necessary withdrawal of a cannabis product from the marketplace due to a defect / product tampering that creates a dangerous condition.

This coverage is flexible in the breadth of its coverage and exclusions. It can also be expensive and / or difficult to obtain.

2. What types of cannabis businesses need Product Recall / Withdrawal Insurance?

- Distributors
- Wholesalers
- Manufacturers
- Processors
- Cultivators

Generally speaking, whose name appears on the products distributed in the marketplace?

3. Examples:

- A. A manufacturer of a cannabis infused candy is forced to recall an entire batch of its product due to a contaminant. Costs include gathering all the inventory, returning to the supplier, and advertising / media costs to maintain its reputation.
- B. A distributor of a vape pen is forced to withdraw their products from multiple dispensaries.



IV. COMMERCIAL PROPERTY AND BUSINESS INTERRUPTION INSURANCE

1. Definitions:

Commercial Property Insurance protects property such as Buildings, Contents, Equipment and Business Personal Property from such perils as fire, theft and natural disaster.

In addition to physical loss of property, commercial property insurance policies often provide cover for loss to **Business Income**. Coverage for Loss of Business Income is often referred to as **Business Interruption Insurance**.

Business Interruption / Business Income Insurance (BI) protects a business against the loss of income generated due to loss caused by a covered peril under the property policy.

Business Interruption Insurance differs from property insurance in that a property insurance policy only covers the physical damage to the physical property, while the additional coverage allotted by the business interruption insurance covers the profits that would have been earned.

Business Interruption/Business Income coverage is not sold as a stand-alone policy, but can be included with the business' property insurance policy.

2. What types of cannabis businesses need Commercial Property and Business Interruption Insurance?

Commercial Property and Business Interruption Insurance are often carried by a variety of cannabis businesses, including;

- Landlords
- Manufacturers
- Dispensaries
- Processors
- Cultivators
- Retail Stores
- Wholesalers



3. Examples

- A. THC Cannabis Company has a fire in the storage area that damages the building, its contents and equipment. The business must remain closed for 3 months during the clean-up and rebuild process, creating a loss of profits from their normal customers during this time.
- B. **Property Insurance** would pay for the physical damage to the building, contents and equipment.
- C. **Business Interruption Insurance**, of a property policy, would pay for the loss of profits, during the time the business remained closed for repair.
- D. It is important to note, in order for Business Interruption coverage to apply, the loss must be caused by a covered peril under the Property Insurance Policy

V. COMMERCIAL AUTO COVERAGE

If your company owns, operates, or uses motor vehicles—or if you have employees who use their cars for business purposes—you need Commercial Auto Insurance to provide financial protection against losses from mishaps that occur behind the wheel.

1. This valuable policy provides these coverages:

- **Bodily Injury Liability** pays the cost of bodily injury to others from accidents for which you are responsible. If you're sued, it also pays your defense and court costs.
- **Property Damage Liability** picks up the tab for property damage to others for which you are responsible, as well as defense and court expenses.
- **Personal Injury/Medical Payments** usually covers medical and funeral expenses for bodily injury from an accident that involves an insured vehicle.
- **Collision** pays for a covered vehicle that is damaged by a collision with another vehicle or object.
- **Comprehensive Coverage** pays for a covered auto that is stolen or that is damaged by causes other than collision or reckless driving.
- **Uninsured/Underinsured Motorists** covers injuries and, in some cases, property damage, when you're involved in an accident with another person who either doesn't have Auto Insurance or carry enough coverage.



A typical commercial insurance policy will provide limits of \$1,000,000 Combined Single Limit (CSL).

The **combined single limit** simply states a single dollar limit that applies to any combination of bodily injury and property damage liability claims.

Delivery operations, as well as most businesses, need to be sure that they have added the HNO endorsement to their Commercial Auto Insurance

Hired and Non-Owned Auto Insurance covers liability for bodily injuries and property damage caused by a vehicle your client rents, leases, hires, or borrows, up to the policy's stated limits. Typically, **Hired and Non-Owned Auto** Insurance is added as an **endorsement** to your commercial **Auto** policy.

2. Understanding Non-Owned and Hired Automobile Liability Coverage

Does your business have potential automobile loss exposures that you are not aware of?

You've taken all of the necessary steps to ensure that your own fleet operation is properly covered in the event of an accident. But what about the potential loss that arises from individual employees who operate their own personal vehicles for company business?

There are many situations that present a potential for you to be held accountable for the actions of your employees while they are driving their own vehicles.

- Do administrative employees use their own vehicles to go to the post office or bank on your company's behalf?
- Do you occasionally send an employee to pick up a visiting client at the airport? Have you sent employees to pick up lunch, drop off mail or pick up office supplies?
- Have you ever rented a vehicle while on a business trip?
- Do you have a sales force to which you provide a car allowance for business use of their personal vehicles?

If an employee has an accident under any of these situations, your business can be held accountable and sued for damages. Basic business automobile policies only cover employees while they operate company owned vehicles to perform company business. Your best protection:



non-owned and hired automobile liability coverage. This type of coverage will kick in if there is an accident and your company is found legally liable. Sometimes, an employee's personal automobile insurance will provide primary insurance to both the employee and the business if the employee is using their own vehicle on company business. However, there is the chance that charges will exceed the employee's policy limit and would then be passed on to the company. Without non-owned and hired automobile liability coverage you may be vulnerable to a potentially costly exposure.

Non-owned and hired automobile liability insurance covers bodily injury and property damage caused by a vehicle you hire (including rented or borrowed vehicles) or caused by non-owned vehicles (vehicles owned by others, including vehicles owned by your employees). This coverage is typically added to your business automobile policy; however, it can be added to your general liability policy if you do not have a business automobile policy. It protects your company if it is found legally liable as a result of an automobile accident that you or your employee has in a hired or non-owned vehicle while on company business. Hired automobile coverage replaces or augments the liability coverage offered by automobile rental agencies.

3. Non-owned and Hired Automobile Coverage: The Basics

- **Who needs non-owned and hired automobile coverage?**

If you or your employees ever drive vehicles not owned by your business for business purposes, then you need non-owned and hired automobile coverage.

- **What is non-owned automobile coverage?**

Non-owned automobile insurance provides liability protection when an employee occasionally has to drive his or her personally owned vehicle for business purposes. It assumes that the vehicle is not owned, registered or contracted in your name or on your behalf.

- **What is hired automobile coverage?**

Hired automobile insurance provides liability protection when you or an employee is driving a rented, hired or borrowed vehicle.

- **Next Steps**

If you do not already have this type of coverage and your employees occasionally use their own vehicles for business purposes — even quick errands — consider adding it to your business insurance package today. Consult with a licensed insurance broker to review your business automobile and general liability policies to ensure you have adequate coverage and liability limits for non-owned and hired automobiles.



VI. CYBER LIABILITY, ERRORS & OMISSIONS

1. Definitions:

Cyber Liability is designed to protect businesses against lawsuits from third parties as well as fines and penalties from regulators. The goal of these policies is to address the risk exposure created by various electronic activities, the most common of which being the collecting or storing some kind of PII typically handled by a software business. If your system or software has been compromised, data restoration services can be costly—cyber policies can pay this bill after a covered loss. Last but not least, the right insurance product will reimburse you for income lost and payroll spent during the time when your systems were down and you were unable to operate. Policies often will pay for crisis management consultation, forensic investigation into the source of the breach, guidance in public messaging from a PR firm and notification and credit monitoring services for affected users

Errors & omissions insurance, or “E&O,” is a type of [professional liability insurance](#). The professional liability category of business insurance includes several types of policies. Miscellaneous professional liability, technology E&O, and malpractice insurance are three of the more common examples. Beyond those, many types of businesses in the manufacturing, agricultural and financial sectors have policies designed specifically for them and their unique exposures. **Technology E&O and [cyber liability](#) coverages are often packaged together since the two types of claims tend to intertwine.**

Errors & omissions insurance covers two very big risks:

- Financial loss of a third party arising from failure of the insured’s product to perform as intended or expected.
- Financial loss of a third party arising from an act, error or omission committed in the course of the policyholder’s performance of services for another.



2. What types of businesses need an E&O/Cyber Technology policy?

Cannatech / Agtech & software businesses

- Seed to Sale
- marketplaces / distribution / wholesale platform
- Marketing & advertising businesses
- Big data and analytics companies
- CRM / customer loyalty and management
- eCommerce

Cultivation / Dispensary / Processing

- Any business storing sensitive information on their clients should be purchasing an E&O/ Cyber Liability policy

Venture capital funds & investment groups

- Proprietary information and sensitive data for port co's

3. Claim examples

- A. ABC dispensary utilizes a seed-to-sale platform to track daily sales and inventory SKUs to remain in compliance with the state of Colorado. The seed-to-sale platform has a data breach from a malicious hacker stealing customer (PII).
- B. ABC dispensary has to pay the cost to reach out to every customer whose information was breached (notification costs) and follow proper protocol to ensure there is ongoing communication to inform the customers of progress. A class-action suit is filed and ABC must pay damages to every customer whose information was breached.
- C. Seed-to-sale technology company must perform emergency maintenance to the system to fix the malicious hack causing the software to be down for 5 business days. The seed-to-sale company makes a claim to absorb the cost to not only fix the platform but also loss in revenue due to the system outage.



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