

INSURANCE COVERAGE CONSIDERATIONS FOR TRIBAL CANNABIS BUSINESSES

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The Tribal cannabis industry can be highly profitable if undertaken correctly but involves an ever-evolving series of complex hurdles and loopholes. Insurance coverage is an important business decision, and when it includes cannabis and Tribal components, it may be difficult to navigate. However, the complexity can be easily managed if Tribes utilize knowledgeable and reputable partners.

In this article, we are pleased to include advice from John Balian, Practice Director for the Cannabis Industry at Wood Gutmann & Bogart Insurance Brokers, and an expert on insuring Tribal cannabis businesses.

The top three issues that Tribes should keep in mind when choosing and purchasing insurance coverage for their Tribal cannabis businesses include:

1) **Policy Wording.** The policy wording (particularly exclusions and endorsements) needs to be carefully reviewed. Tribes should watch out for “Health Hazard Exclusion” on Products Liability policies, and a variety of exclusions (e.g., Definition of Claim, Cannabis Regulatory and Enforcement Exclusion, Bankruptcy and Insolvency & Creditor and Debtor Exclusions, Automatic Class Action, Automatic 10% Threshold for Reduction in Force Exclusion) on Management Liability/ Employment Practices Liability Insurance (EPLI) policies. The extent of the exclusions can render many policies basically worthless to Tribal cannabis businesses.

2) **Tribal Sovereignty.** The majority of cannabis insurers will not insure Tribal businesses due to concerns about Tribal sovereignty. Sometimes, their reinsurers exclude Tribes and, other times, these insurers are frightened of the concept of Tribal sovereignty. It may be necessary to negotiate a limited waiver of sovereign immunity that is solely applicable to the jurisdiction for claims disputes that is acceptable to both the insurer and insured. It is helpful to engage legal counsel who can explain Tribal sovereignty to an insurer in a manner that gives them some comfort. Regardless, Tribes need to work with an experienced broker who knows the marketplace, prepares quality submissions, and works hard to dialogue with potential carriers. Knowledge of the unique environment in which Tribes operate and make decisions is critical.

3) **Potential Exposures.** Tribes must ensure that all potential exposures to loss are identified and addressed. That treatment may be an insurance policy, risk transfer (via indemnification/hold harmless agreements), or self-insurance. Depending upon the nature of the operations, insured Tribes need to consider management liability, crime/employee dishonesty, crop, stock throughput, cargo, business income, builders' risk, etc., in addition to the basic coverages such as workers compensation, liability, and property and automobile coverage.

Many cannabis businesses, Tribal or otherwise, fail because their management team is more experienced in the cultivation, processing, and/or sale of cannabis than in running a business. However, Tribes can enhance their chances of success by partnering with professionals from adjacent industries who have the expertise to help their Tribal cannabis businesses succeed.

Tribes—or businesses that want to work with Tribes—who are interested in learning more about purchasing cannabis insurance should contact [John Balian](#). For additional questions or guidance on preparing for participation in the Tribal cannabis industry, please contact [Robert Conrad](#) or [Laura Jones](#). Additional coverage of Tribal cannabis issues can be found in previous editions of Van Ness Feldman's [Native Affairs Quarterly](#) newsletter.