

Legalized Cannabis: Should Professionals Still Beware?, PropertyCasualty 360, KD authors Jonathan Isaacson, Esq, and Adam Nicolazzo, Esq.

Legalized cannabis: Should professionals still beware?

Conflicting state and federal cannabis laws continue to raise concerns as some courts tackle the matter.

By Jonathan B. Isaacson and Adam Nicolazzo , August 18, 2021

Entrepreneurs and industries of all stripes across the nation are excited about the business and professional opportunities presented by the legalization of marijuana for both medical and recreational purposes at the state level. Currently, 18 states and Washington, D.C., have legalized recreational marijuana in some capacity (though some programs are not yet operational), while 36 states and Washington, D.C., have legalized medical marijuana. Nevertheless, it is critical to remember that marijuana remains illegal under the Controlled Substances Act (CSA) and continues to be listed as a Schedule I drug (in the company of heroin and LSD).

The conflict between state and federal laws regarding marijuana remains a persistent source of confusion, not only for the marijuana industry but also for the professionals upon which the industry relies for everything from legal and accounting support to insurance/risk management and security needs.

As courts continue to navigate their way through this challenging liability landscape, it is important for professional service providers to acknowledge and understand the unique risks posed by engagement with the marijuana industry and understand that while federal illegality may bar certain claims and actions between marijuana market participants, it may not prevent malpractice and other claims arising from professional services performed on behalf of marijuana clients.

How it played out in court

A recent decision issued by the *United States District Court of Colorado in Sensoria, LLC v. Kaweske* presents an interesting and unique case study in how courts grapple with these issues and, arguably, inconsistently address concerns regarding marijuana illegality when it comes to professional liability claims.

In the case, the plaintiffs asserted direct and derivative claims on behalf of Clover Top Holdings, Inc., a company formed to participate in various aspects of the marijuana and cannabis industry. Sensoria, an investor in Clover Top, alleged that Clover Top's management falsely solicited investment, mismanaged the business, and took assets for their own benefit.