

No Theft Coverage for Medical Marijuana Plants

By Patrick B. Omilian of Goldberg Segalla LLP, Buffalo, New York.

IRMI-Update@IRMI.com

June 15, 2012

A federal court in Hawaii recent ruled that a homeowners policy does not cover the theft of marijuana plants grown for medical use because use and cultivation of marijuana, even for state law-sanctioned medical purposes, violates federal law. USAA Casualty Insurance Company issued a homeowners policy that included theft coverage for trees, shrubs, and other plants on the premises. The home owner, Barbara Tracy, who was permitted by the state of Hawaii to possess and grow marijuana for her own medical use, submitted a claim to USAA after 12 marijuana plants, valued at \$45,600, were stolen from her property. USAA initially paid \$8,801 on the claim, but Tracy sued seeking additional funds. USAA argued that it owed no coverage obligation because marijuana possession is illegal under federal law notwithstanding Hawaii state law, which permits marijuana possession for medical use. The court agreed with USAA, holding that an insurer has no obligation to pay for stolen marijuana plants because use of marijuana for medical purposes is illegal under the Controlled Substances Act (CSA). The case is *Tracy v. USAA Cas. Ins. Co.*, No. 11-00487 (March 16, 2012).

Tracy argued that her possession and cultivation of marijuana for medical use was expressly permitted by state law; thus, she had an insurable interest in the marijuana plants. USAA argued that Tracy had no insurable interest in the marijuana because it would be illegal to use insurance proceeds to purchase marijuana. USAA also argued that requiring insurers to cover marijuana plants would violate federal public policy because the U.S. Supreme Court has ruled that distribution, possession, and use of marijuana, even for medical purposes, are illegal under the CSA.

The court first held that Tracy had an insurable interest in her marijuana plants in accordance with Hawaii's medical marijuana laws. Turning next to the CSA, however, the court ruled that Tracy's possession and use of marijuana violated federal law. The court explained that, although Tracy possessed marijuana in compliance with state law, Hawaii law permitting medical use of marijuana was in direct conflict with the CSA's prohibitions of such use. And if there is a conflict between state and federal law, federal law preempts state law. The court concluded that Tracy's medical use of marijuana, although permitted by state law, violated federal law and, therefore, the insurance policy purportedly covering her marijuana plants was an illegal contract that could not be enforced. Consequently, the insurer had no obligation to cover Tracy's stolen marijuana plants.

[Patrick B. Omilian](#) of Goldberg Segalla LLP, Buffalo, New York, wrote the case of the month summary.

[International Risk Management Institute, Inc.](#)

Copyright 2012

Sign up for our free [Risk Management and Insurance Newsletters](#).