

## The Reliability Of Using Cash Transportation Services For Today's Cannabis Business

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## Discussing Civil Forfeiture Events In The Cannabis Sector

The ability to safely move cash from a licensed cannabis business to its financial institution is crucial to the success of the cannabis industry. Banking is essential for any industry, and the first step in banking is depositing funds into a designated commercial cannabis account. For public safety reasons (and others), the responsibility to transport cash into a customer's account falls on the shoulders of the cash logistics companies. In cannabis legal states across America, cash logistics companies work in concert with financial institutions and their banking customer to provide this essential service in a safe and compliant manner. The recent advent of law enforcement seizing funds through civil forfeiture from a logistics vehicle in transport has the ancillary sector in a defensive posture and the cannabis industry on edge as the seeming cycle of distrust is repeated. Let us examine some of the facts surrounding several recent in transit forfeitures amounting to approximately \$1.2 million, survey the landscape, and assess our path moving forward.

**Challenges will continue for the licensed cannabis business. Business owners should continue to use cash logistics providers as the risk is too high to do otherwise.**

## The Cannabis Industry Is Challenged

Several challenges face the cannabis business today. One of those challenges is the cannabis industry recognizing or coming to grips with the fact that they are in a high-risk industry. The cannabis business faces daunting obstacles such as high taxes, long waits for limited licensing, scarcity of real estate, and sky-high fees for banking with a limited financial product offering. Add to this mix the never-ending supply chain and testing challenges, and you find a cannabis business owner who is a bit beleaguered and wondering if they can survive what's next. What's next came on May 17<sup>th</sup>, 2021, in Dickinson County, Kansas, when a sheriff's deputy stopped a cash logistics vehicle and questioned the driver at length about their itinerary. That exact vehicle and driver were stopped the next day, and law enforcement confiscated approximately \$165,620.00 from that vehicle. The vehicle belonged to EMPYREAL, a cash logistics company operating in the cannabis sector and others. The driver had made a cash pickup in the neighboring state of Missouri from one or more licensed cannabis businesses and was heading west through Kansas. In November and December of 2021 and again in January of 2022, San Bernardino Sheriff's Department in California stopped EMPYREAL in transit several times, confiscating hundreds of thousands of dollars more connected to cannabis businesses. The total cash seized to date from EMPYREAL is approximately \$1.2 million. There is every indication at this point that the due diligence and KYC actions of EMPYREAL were in line with current standards. These roadside stops lasted hours in at least one case, and some equipment of EMPYREAL was damaged connected with the confiscations. Law enforcement confiscated the cash through civil forfeiture in all of these instances. EMPYREAL has filed a complaint against the USA, DOJ, FBI, DEA, etc.

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*Total cash seized from EMPYREAL is \$1.2 million*

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## Operation Hammer Strike; San Bernardino County, California; 2021/2022

San Bernardino County Sheriffs Office began a multi-year operation dubbed "operation hammer strike" in San Bernardino County and committed \$4m in its budget for this operation. The second week of 2022 closed out the 20<sup>th</sup> week of its operational execution. Here is a summary of the results from week one through week 20: 419 search warrants, 498 arrests, 93,265 pounds of processed cannabis, 413,026 plants, \$1.66 million in cash, 2,686 greenhouses, 42 indoor grows, 136 weapons, six labs, 24 pounds of concentrates, and 92 pounds of mushrooms were confiscated (this information was obtained from various news sources and quotes attributed to the San Bernardino County Sheriffs Office). Consider for a moment the amount of intelligence gathered from sources that include confidential informants (CI's) to obtain 419 search warrants. Law enforcement will also cultivate CI's from the 498 arrests and will, amongst other things, be looking for information regarding inversion, diversion, and money laundering within the licensed cannabis sector as CI's trade prosecution for information. It takes time to develop information from CI's and verify that information as credible. One target that will be in focus here is the licensed cannabis business that transacts with organized crime or with the illicit marketplace. You can see from operation hammer strike that illegal cannabis activity is a considerable problem. Consider that the totals mentioned above are from only one county in one state in just a few months.

## Issues Surrounding the Forfeiture

It is not common for law enforcement to stop an armored car and seize cash. In fact, I find it extraordinary. In the case of EMPYREAL, there are seizures in both Kansas and California. Currently, Kansas does not allow cannabis in any form, whereas California is a medicinal, adult-use, and hemp state. The complaint filed by EMPYREAL states it reimbursed its clients the cash that was seized in all of the incidents mentioned above. I find one piece of evidence in this case rather interesting. On the November 16<sup>th</sup>, 2021 stop search and seizure by San Bernardino Sheriff Deputies, the complaint states, "*while seizing the money, one of the deputies noted that each bag of cash had its own barcode from different companies and stated that they could not mix the money together because some companies might be able to "prove it's legit."*" This is a quote from the complaint; the italics are mine.

The statement attributed to one of the on-scene deputies would, in a vacuum, indicate that the target was EMPYREAL and its cannabis cash from licensed businesses as opposed to money from one or more identified licensed cannabis businesses that were reasonably determined to be involved in non-compliant activity which would justify these enforcement actions.

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## The Cascade Effect

A large operation like Hammer Strike will yield a trove of information on which the originating agency will act. I refer to this as the cascade effect where arrests lead to informants, which leads to information which leads to more investigations and arrests, and so on. These trailing enforcement actions will be offshoots of the original operation and may take on a different look as law enforcement goes further down the proverbial rabbit hole. One of the issues that the enforcement sector will decide on will be their course of action. Simply put, enforcements' upper echelon, in conjunction with the prosecutor, will decide how to "handle" these new events. Law enforcement confiscated \$1.66 million in cash under the civil forfeiture act in operation Hammer Strike. The civil forfeiture act is unique because it is rooted in civil laws instead of the criminal code by which the burden of proof is "a preponderance of the evidence" rather than the higher criminal standard of "beyond a reasonable doubt."

## Treasury Services Risk Management

Treasury services refer in part to the storage and transportation of money. The cannabis business has a formidable task on its hands due in part to the current banking landscape. As the cannabis industry came into the legal light in 1996 with California at the forefront, the industry itself was reticent to trust government and law enforcement, so the question of what to do with that cash is a big problem. Considerable fines for non-compliant activity, license revocations, and operations being shut down by enforcement action further exacerbated the situation in the eyes of the cannabis business owner. With the advent of cannabis licensing came robberies and burglaries of these businesses, which only amplified the cry of the cannabis industry for more access to banking services. The financial institutions that decided to serve the cannabis business did not necessarily want someone dragging in bags of cash that smelled like weed into their brick-and-mortar banks. Banks would instruct their cannabis customers not to bring cash into their institution in this manner. From a risk perspective, the smell, the safety issue, and the work hours needed to address these large deposits necessitated the services of cash logistics companies. As we are all aware, companies that transport cash are widely used across the country and worldwide in many business sectors. Hiring a logistics company to pick up cash from a cannabis business is an excellent way to manage risk by transferring that risk from the cannabis business to the logistics vendor.

Statistics show that using a cash logistics company is safe to transport cash from point A to B. Far safer, in fact, than a cannabis business stakeholder assuming the task. The risks of robbery and bodily harm from a business owner transporting large amounts of cash cannot be overstated. Understanding the implications to the licensed cannabis business, I urge the sector to continue to use cash logistics companies for their designated purpose.

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***The risk of robbery from a business  
transporting its own cash cannot be overstated***

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## The Benefits Of Using a Cannabis Risk Management Framework

Cash logistics companies and financial institutions should consider a third-party provider that can deploy a Cannabis Risk Management Framework (CRMF) with the cannabis business. The CRMF provides a risk-based strategy that allows the financial institution to determine if the customer has implemented an effective, well-designed risk-based compliance program, which includes demonstrating their appropriate policies and procedures, qualified staff to manage risk, risk assessment, controls tailored to the business's risk, training, and assurance. Demonstrating these points allows the financial institution to determine if a higher-risk customer is within their risk appetite by showing the customer's ability to manage their reputational, compliance, and operational risk without the financial institution having to act as the customer's proxy cannabis regulator.

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***Using a CRMF relieves the FI and its partners  
from having to act as the customer's proxy  
cannabis regulator***

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## Conclusions

Much will likely be forthcoming from these civil forfeiture events that will give us a clearer picture of what transpired so that we can review our risk management plan and move through the change management process. The cannabis sector would be ill-advised to transport large amounts of cash to a financial institution themselves or keep their money on-premises. The inherent risks are significant. The ancillary sector should identify its risk exposures and put control activities in place to address them. Given the current federal stance, I would not advise transporting cash from a cannabis business through states that do not have a corresponding cannabis program in place.

I surmise that the level of risk, the many risk areas to be addressed, the federally illegal status, the ever-changing regulatory landscape, and the issue of diversion, inversion, and money laundering indicate that risk is high and will be for some time. I would advise the ancillary sector to consider compliance control activities beyond the basic process of ensuring that the cash collected is from a legal sale. Because diversion and inversion are not uncommon, we may see enforcement events where confiscation occurs due to an active investigation on a licensed business.

The licensed cannabis business should take note of its risk appetite, considering its business goals and objectives. You never want to find yourself in a place where you transact with the illicit market. A company culture of compliance and active risk management and compliance program is essential to your future in a high-risk environment. Get started now and mature your program over time.