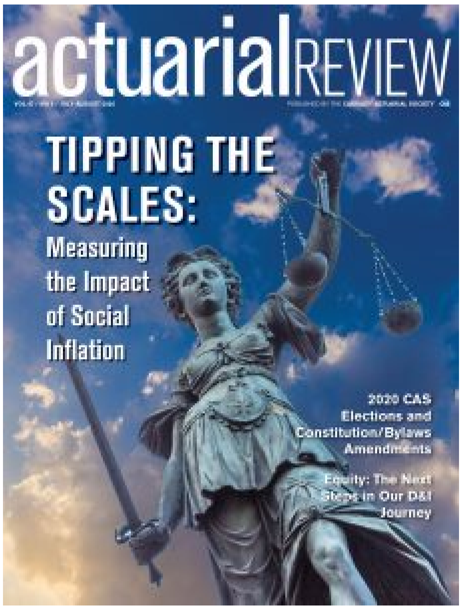
Social Inflation Impact Begs for Quantification

Social inflation was attracting a lot of attention before COVID-19 hit the scene. Search the internet for buzz words like "nuclear verdicts" and "reptile theory" and you'll see what I mean.



Before COVID-19, insurance company presidents and experts pointed to the phenomenon as a force behind rising premiums for most commercial insurance lines. But I was skeptical. After 30 years in the property/casualty insurance world, this was not the first time I heard social inflation was rearing its ugly head and pressuring insurance premium costs.

What is social inflation? To oversimplify, its essence is that Americans unhappy with the nation's economic and social conditions are more likely to be sympathetic to plaintiffs who sue companies. Of course, there is a lot more to this, including legal strategy, jurisdictional differences and so forth.

My recent Actuarial Review cover story, **Tipping the Scales: Measuring the Impact of Social Inflation,** reviews its evidence, its impact on losses and ultimately, rates. Although there is proof that social inflation is a thing, it is not showing up in industry data. Therefore, it is difficult to know its real impact and frankly, how much attention it deserves.

…the insurance industry should invest in quantifying social inflation's impact

That is why I believe the insurance industry should invest in quantifying social inflation's impact on coverage costs. This could eliminate a lot of confusion and facilitate a more informed dialogue about the impact of legal costs in general.

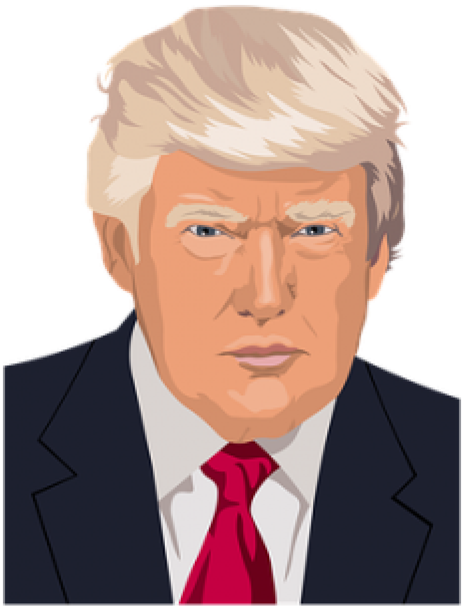
If social inflation is linked to American satisfaction, which was not great before the coronavirus crisis, there are certainly more economic and social reasons for so-called "angry" juries to be in a worse mood now. In fact, the industry could have a stronger case for the impact of social inflation than before.

Perhaps the phenomenon is a symptom of deeper problems. Why are Americans angry? My suspicion is we expect more today than our ancestors. If we expected as much from ourselves as we do our institutions, everyone would be better off.

The article also provides evidence that juries are losing impartiality by giving more weight to feelings than facts. In that regard, social inflation should concern us all.

If we expected as much from ourselves as we do our institutions, everyone would be better off.

Trump Calls Dodd-Frank Act a Disaster



Donald Trump calls the Dodd-Frank Act a disaster.

President Donald J. Trump called the Dodd-Frank Act a disaster, according to an article published at cnn.com yesterday. He pledges to take on the negative consequences of the act.

Last week I predicted that Trump would take on the Dodd-Frank Act and Trump's statement provides confirmation.

My views differed from other experts who predicted last fall that Trump would not deal with Dodd-Frank. Such "conventional wisdom" is wrong because Trump is not a conventional candidate.

My reason for believing Trump will address the Dodd-Frank Act is simple. Whether you agree with him or not, the man does what he says he is going to do. So far, his dizzying array of action demonstrates that Trump can cut through the political nonsense with decisive action.

In the current political climate, it should not be difficult for Trump to undo the provisions that affect property-casualty insurance companies. Banks — not insurance companies — are blamed for the crisis that caused the Great Recession that led to the Dodd-Frank Act. The justification for involving insurers was a far reach only possible with the political climate that created the act.

"(Trump) does what he says he is going to do."

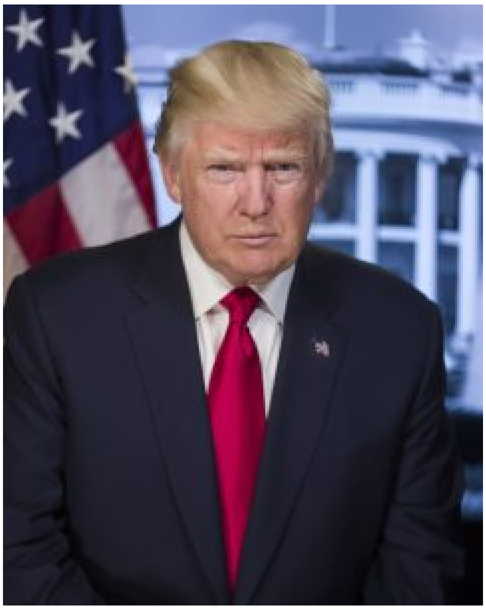
I encourage you to look at my coverage of the Dodd-Frank Act from last Spring. Unlike most articles, my *Actuarial Review* article comprehensively dug into the nitty-gritty of the act and its ultimate impact on property-casualty insurers.

When I announced the article in a previous blog, I gave my personal and unique take on the legislation. My bottom line: the act is supposed to protect consumers. I can't see how the act protects customers who purchase property-casualty insurance.

Trump calls the Dodd-Frank Act a disaster. When it comes to the insurance provisions, I agree.

The CNN article predicts that Trump will be up for quite a fight from those who believe the Dodd-Frank Act helps stabilize the economy. I have not seen him shrink from a challenge yet.

Will Trump Help Eliminate The Dodd-Frank Act's Insurance Provisions?



President Donald J. Trump
www.whitehouse.gov

Changing the Affordable Care Act is a top priority for President Donald J. Trump. Lobbyists that represent property-casualty insurance companies are hopeful he also will help eliminate The Dodd-Frank Act's provisions affecting their industry.

In a recently released video, the Property Casualty Insurers Association of America (PCI) President David Sampson discusses its legislative goals for 2017. This includes addressing The Dodd–Frank Wall Street Reform and Consumer Protection Act.

The video made me think about the rare, comprehensive and journalistic look I took into the Dodd-Frank Act in *Actuarial Review* last spring. The act mostly covers banking regulations. However, it also includes the most far-reaching federal legislation to affect property-casualty insurers — *ever*.

The act's full title contains the words "consumer protection." As I write in a previous blog, I cannot identify anything in the act that substantially benefits consumers of property-casualty insurance.

Since the post-Civil War period, state regulators have been the overseers of the insurance industry. Thanks to the dubious justification for including P/C carriers into a banking bill, Dodd-Frank has ultimately opened the door to greater federal – and even international – regulatory influence.

(Trump's) pledge to reduce regulation shows a favorable political climate…..

The media tends to focus the most attention on the act's provision that qualifies a few property-casualty insurers as Systemically Important Financial Institutions (SIFIs). Insurers with the SIFI designation are regulated just as SIFI banks by the Federal Reserve Board. This, however, does not directly affect the vast majority of property-casualty insurers.

The Dodd-Frank Act's creation of the Federal Insurance Office (FIO) and its impact deserve greater attention. Sampson covers that in the video as well.

The FIO's lack of accountability is also a source of frustration. When I began working on my article, sources told me the FIO was non-responsive. In my case, I spent six weeks trying to reach a FIO spokesperson who ultimately did not answer most of my questions. So much for accountability to the media.

But I was not alone. My *Actuarial Review* article describes a congressional committee session where an Obama appointee said he could not get clear answers from the FIO. The legislators did not fare much better, which is very disconcerting.

That is just the tip of the iceberg.

Will Trump help eliminate the Dodd-Frank Act provisions that affect property-casualty insurance? His pledge to reduce regulations shows a favorable political climate for insurance company lobbyists. The challenge will be in explaining the act's effect on insurance companies without getting too deeply into the weeds. That will be tough since the act creates more regulatory layers, but I see how it can be done.

To learn more, check out my *Actuarial Review* article, Demystifying the Regulatory Web: Dodd-Frank and Its Complex Impact. My previous blog also digs deeper into my conclusions. (Please note: Insurance Communicators, LLC is not affiliated with PCI.)

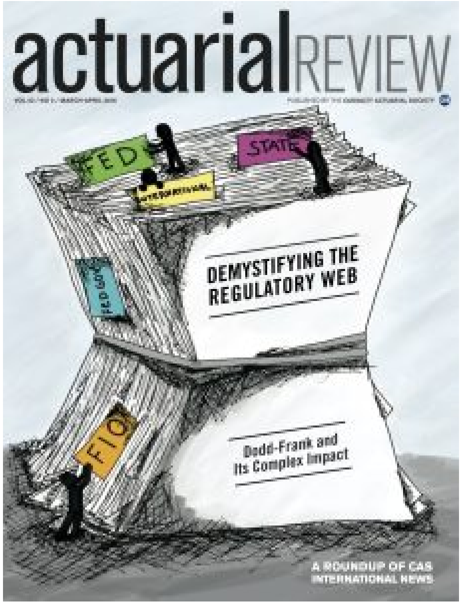
Do you think President Trump will work with Congress to eliminate the Dodd-Frank Act's insurance provisions? Please share a comment below.

[Don't Underestimate the Dodd-Frank Act's Property-Casualty Insurance Impact]

The Dodd-Frank Act's property-casualty insurance impact is greater than many in the industry realize.

Its full title, The Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, introduced the most far-reaching federal regulation the property/casualty insurance industry has ever seen.

While the regulatory focus of The Dodd-Frank Act has been on a relatively few insurers that either have



The Dodd-Frank Act Greatly Affects the Property/Casualty Insurance Industry

subsidiary banks or are considered systemically important financial institutions (SIFIs), the act is poised to affect the entire property/casualty industry. This is explained in my recently published *Actuarial Review* article, [Demystifying the Regulatory Web: Dodd-Frank and Its Complex Impact].

My article takes a rare, comprehensive and journalistic look into The Dodd-Frank Act's property-casualty insurance impact, including the ramifications of its resulting regulatory web. During my research, I could not find one article that updates the multiplicity of Dodd-Frank's impact on insurers.

As I wrote the piece, I became convinced that The Dodd-Frank Act's property-casualty insurance impact is greatly underestimated. (Life insurers are also affected.)

And after spending countless hours on the article, I could not put my finger on anything that substantially makes the insurance industry and its customers better off. If anything, federal regulation is onerous and hardly transparent. States, which have been regulating insurance for 150 years, have much more transparent processes. So does the National Association of Insurance Commissioners (NAIC).

Dodd-Frank requires its brainchild, the Federal Insurance Office (FIO) and the Federal Reserve System (Fed) to work with the NAIC at the International Association of Insurance Supervisors' (IAIS). Since then, transparency has dimmed. Formerly open meetings have been closed. In one instance, a presidential appointee told a congressional subcommittee he was barred from attending an IAIS working group meeting.

"…I could not put my finger on anything that substantially makes the insurance industry and its customers better off.

To further complicate matters on the international stage, the Fed, FIO and the NAIC, known as "Team USA," have different missions that sometimes conflict with one another.

The federal rule making process also lacks the kind of transparency states offer. Information access to reporters is also very limited. Federal agencies provided me with plenty of documents to wade through, but subject matter experts were not available for questioning. This disturbs me greatly.

I also wondered how the activity of one large U.S. insurer's London-based banking subsidiary could justify Dodd-Frank's introduction of federal insurance regulation and monitoring.

Ironically, both federal agencies depend greatly on the NAIC even as their activities seem to overlap the organization's historic role. In some cases, the Fed and the NAIC are on separate regulatory tracks to address the same concerns.

Meanwhile, Dodd-Frank directs the FIO to look into coverage discrimination issues, which is old hat for state regulators. For example, the agency chooses to evaluate auto insurance discrimination when state regulators and research organizations have been considering the claims of consumer groups for decades.

All parties express a commitment to working together, but communication has been challenging.

The FIO has the primary role of monitoring the industry and one direct regulatory role to develop international cover agreements. Through its monitoring efforts, the FIO identified new regulatory opportunities for insurers.

Meanwhile, it's been seven years since the enactment of Dodd-Frank and the Fed still has a lot of rule making to do. Besides going through that arduous process, the Fed is also working to appreciate the deep magic of insurance. This includes the role of actuarial opinion, which is part of the special sauce that makes individual companies competitive.

State vs. Federal Regulation

Federal intervention has reintroduced the time-honored question of whether states or the federal government should regulate insurers. Labor groups have long advocated for federal regulation for workers' compensation. There are pros and cons to both approaches. If the federal government regulates insurance, one benefit would be regulatory consistency across state lines.

Certainly the international community, including Europe, prefers the approach of central governance for the United States. This difference in regulatory approach between central authority and state authority is not merely an academic discussion. The Jeffersonian notion of states rights to prevent the oppression of centralized authority was a direct reaction to the European central authority model that goes back to at least the Roman Empire.

Based on other topics I have covered, the United States needs to be very careful with taking euro-style approaches when the downsides most likely outweigh the benefits. There are fewer insurance companies operating in Europe partly due to regulatory burden.

"The federal rule making process also lacks the kind of transparency states offer."

Some argue that state-based regulation is a key reason why the United States has the largest insurance industry in the world. While imperfect, the state regulatory model allows for greater innovation and flexibility. Under a truly federal regulatory model, for example, could Texas to continue to allow employers to opt out of workers' compensation?

By digging deeply into the details of Dodd-Frank's implications for property/casualty insurers, my hope is the article will be informative and thought provoking.

I am grateful to the Casualty Actuarial Society for giving me the opportunity to provide a comprehensive look at Dodd-Frank. The Fed's media staff provided very useful congressional testimony. The NAIC, the Property Casualty Insurance Association of America and the American Academy of Actuaries all provided the necessary support to complete my article.

How do you see The Dodd-Frank Act's property-casualty insurance impact?

If you like what you see, follow me!

Affordable Care Act Could Case Shift to Workers' Comp, WCRI Finds

The Affordable Care Act could case shift millions of dollars to workers' compensation.

Case shifting from health care to workers' compensation is nothing new. It often arises from gray area claims where the cause of injury might be related to work. An insurance entity does not want to pay bills that another should be paying so naturally, there has been effort to reduce case shifting.

But the ACA puts a new wrinkle on case shifting by encouraging Accountable Care Organizations (ACO) to adopt the age-old managed care capitated spending approach to reduce costs. Understand that this approach puts a lid on annual medical care spending per person (insured). Workers' compensation, however, provides first dollar coverage, pays on a per-visit basis and limits medical spending by necessity.

Naturally, doctors don't want to make less money, especially given other pressures such as reductions in Medicare payments. Critics don't like it either, especially for workers' compensation, because it can adversely affect quality of care and recovery, which can unnecessarily elongate payment of wage replacement benefits.

So the question is, if you were a medical provider with a "gray area" patient diagnosis, would you rather bill an Obama Care ACO or workers' comp? This is where the Affordable Care Act could case shift to workers' comp.

It appears that there is a greater likelihood of filing the patient's claim under workers' comp, according to evidence in the Workers Compensation Research Institute's (WCRI) study, *Will the Affordable Care Act Shift Claims to Workers' Compensation Payors?* As a result, hundreds of millions of dollars could be shifted to workers' comp.

"It appears that there is a greater likelihood of filing the patient's claim under workers' comp."

Specifically, the study found that a back injury was 30 percent more likely to be called "work-related" in a state where the patient's group health insurance was capitated rather than fee for service, according to a WCRI news release issued today.

In fact, the study found, case shifting was "more likely in states where a higher percentage of workers were covered by capitated group health plans," the release said. In one state where at least 22 percent of workers had capitated group health plans, the odds of a soft tissue case being work-related was 31 percent higher.

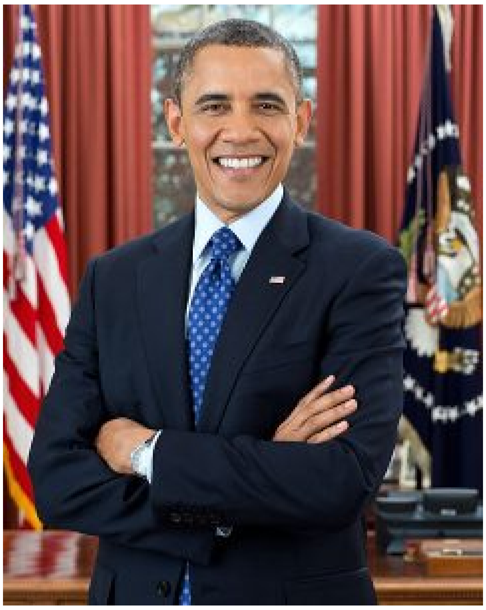
In comparison to states where capitation was less common, there was no evidence of case shifting.

"It also appears that when capitation was infrequent, the providers were less aware of the financial incentives," the release said.

I always find WCRI's research to be top notch. If you are concerned about workers' compensation medical spending, you should check out their site at [www.wcrinet.org.](http://www.wcrinet.org)

Question: The Affordable Care Act could case shift to workers' comp. Are you already seeing this?

TRIA Passes, Awaits Obama's Autograph



TRIA Passes, Awaits President Obama's Signature

TRIA passes — after a retiring Senator put the kibosh on reauthorizing the Terrorism Risk Insurance Act as part of the Cromnibus bill last month. Thankfully, a new Congress reauthorized the federal terrorism coverage backstop yesterday.

The bill, which demonstrated bipartisan support by a vote of 93 to 4, now awaits President Barack Obama's signature.

The "Terrorism Risk Reauthorization Act of 2015 (H.R. 26)," does the following:

- extends TRIA for six years;
- incrementally raises the program's trigger from $100 million to $200 million in total insurance losses beginning 2016;
- increases insurer co-share from 15 to 20 percent.
- raises the aggregate amount the insurance industry has to absorb TRIA eligibility from $27.5 billion to $37.5 billion. To put this in perspective, losses from 9/11,

> which is about $43 billion would qualify for TRIA. The industry would be responsible for the first $37.5 billion, leaving a balance of $ 5.5 billion for the industry to borrow and pay back.

TRIA passage was especially important for workers' compensation insurance. Unlike other lines, workers' compensation cannot limit coverage due to nuclear, biological, chemical or radiological, (NBCR) attacks.

I have written several blogs concerning TRIA — especially the actuarial and workers' compensation implications. The most blog recent can be found by clicking **here**.

Like what you see? Then follow me!

TRIA Reauthorization Bill Dies Due to One Retiring Republican Senator

The U.S. Senate adjourned yesterday without passing the bill that would reauthorize the Terrorism Risk Insurance Act (TRIA), which is set to expire December 31st.

In other words, TRIA will not be passed this year.

And I am shocked. The general anticipation in Comp Land was that TRIA would pass but with more financial burden on insurance companies.

TRIA is very important to the economy. The reason for TRIA is to help businesses afford terrorism coverage after 9/11 because insurers quit offering it or it was just too expensive.

The rules are a bit different for workers' compensation carriers. They must cover all work-related occupational illnesses, injuries and deaths and cannot make an exception for those caused by terrorism. For this reason, the risk of losing carriers or risking high premiums can cripple state economies should a terrorist attack occur.

It is unreasonable to ask insurers to foot the bill for terrorist attacks when it is the federal government that handles risk mitigation.

How could this happen when terrorism threats seem to grow on an almost a daily basis and the current political environment seems to be more concerned with ideals rather than reality? The insurance industry says it cannot absorb another 9/11. Given the low investment income and other challenges, this is quite possible.

Passage was looking promising last week when the U.S. House of Representatives agreed to reauthorize TRIA by a vote of 417-7, reflecting amazing bipartisan support. The seven house members who voted against it were all Republicans.

Blockages this time was also due to a Republican. Retiring Sen. Tom Coburn (R-OK) kept the bill from passage because it lacked a provision for states to opt out of a program unrelated to TRIA. U.S. Senate Majority Leader Henry Reid (D-Nev.) would not agree to add the measure, according to **Politico**.

That's right, TRIA did not pass due to an opt-out provision being demanded from one senator who is retiring anyway.

Since I am not a beltway insider, I don't know where this notion came from, but I suspect it had little to do with TRIA's merits. My guess is this has more to do with growing political tensions about states rights due to unilateral actions made by the Obama Administration. TRIA was re-authorized twice before.

Coburn might not realize a very significant fact that makes terrorism insurance different from any other. That is, insurance companies, which can encourage risk management to curtail potential losses in other lines, are dependent on government security and action to do the same. It is unreasonable to ask insurers to foot the bill for terrorist attacks when it is the federal government that handles risk mitigation.

TRIA has had its challenges all along. Lawmakers wanted the insurance industry to carry a greater financial burden with higher deductibles. Some conservative Republicans did not like it on the principle that the government should not be expanding its reach. Others viewed it as a form of corporate welfare. Last week, the bill was pulled from cromnibus negotiations, because Republicans wanted revisions to the 2010 Dodd-Frank Act. Sen. Chuck Schumer (D-New York), who had introduced the most active TRIA legislation, refused to compromise.

The concept of government-sponsored terrorism coverage and/or backstop is nothing new. Several countries, including Britain, France, Spain, The Netherlands and Germany, offer some type of terrorism backup or fund, according to a report by **Willis**.

As sure as the day is long, TRIA will be introduced in the next Congress. Hopefully, the new Congress will be more sensible.

To learn more, check out my Actuarial Review article by clicking **here**.

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TRIA Re-Authorization Could Be in Jeopardy

Update 12/10/2014 5:12 p.m.: House passes TRIA by 417-7 votes. Total support from Democrats; 7 *nays from Republicans. It's off to the Senate….*

With Congress having 21 days to re-authorize the Terrorism Risk Insurance Act (TRIA), passage has been stalled and removed from cromnibus budget negotiations, putting the program at risk.

Some fear the move could jeopardize TRIA re-authorization, which would adversely affect workers' compensation and other commercial insurance.

As of yesterday afternoon, TRIA was one of the major remaining roadblocks in cromnibus negotiations, according to Politico. (For those who do not live inside-the-beltway politics, cromnibus refers to measures Congress has approved to keep the federal government funded to avoid a shutdown.)

At issue is Republicans' desire to revise the 2010 Dodd-Frank Act, which created the Federal Insurance Office and financial regulations. House Financial Services Chairman Jeb Hensarling (R-Texas) is pushing changes to Dodd-Frank, while Sen. Chuck Schumer (D-New York), who introduced the most active TRIA legislation, is resisting such changes.

In response, House Republicans created a standalone bill they hope will force the Senate's hand by passing TRIA with their Dodd-Frank changes, according to Politico. The House Rules Committee posted TRIA bill language yesterday as well.

***Some fear the move could jeopardize TRIA re-authorization,
which would adversely affect
workers' compensation and other commercial insurance.***

As I wrote about in previous blogs, without passage, workers' compensation faces financial liabilities because it must cover work-related terrorism exposure, which could result in premium increases in states where the unthinkable occurs.

No passage will also make other types of commercial insurance, including property coverage, much more expensive and difficult to obtain. As I covered in Actuarial Review, terrorism insurance is difficult to price because there have been few terrorist events on American soil (thank God) and future terrorism treats are difficult to anticipate.

No TRIA also means no Super Bowl because game organizers will not be able to obtain affordable terrorism coverage, according to BusinessWeek. The NFL has joined with other professional sports leagues and 80 business groups nationwide to form the Coalition to Insure Against Terrorism (CIAT) to urge Congress to reauthorize of TRIA legislation.

Not everyone is a fan of TRIA re-authorization. Conservatives view TRIA as a waste of taxpayer dollars. In a recent National Review blog, writer Mark Calabria called TRIA "no more than corporate welfare wrapped up in the flag."

Given the growing terrorism risks due to ISIL and other terrorist organizations, passing TRIA makes total sense. My hope is enough lawmakers agree.

Let’s Get TRIA Passed Before Holiday Recess

Congress has 43 days — that’s six weeks from tomorrow — to pass a re-extension to the Terrorism Risk Insurance Act (TRIA).

If Congress does not pass the re-extension, a couple things happen.

1) Since terrorism risk is very expensive and difficult to predict, insurers will likely to raise premiums or back out of the market.

2) Workers’ compensation faces limitless liabilities because it must cover work-related terrorism exposure, which could result in premium increases in states where the unthinkable occurs.

The whole point of TRIA is ensuring that terrorism coverage is accessible and affordable by offering a federally-supported backstop.

If you have a problem with the government getting involved in offering insurance, consider that terrorism risk mitigation depends on government security efforts that insurers cannot incentivize. That makes terrorism coverage quite unique.

…if the trigger and co-share change too much,
there is the risk carriers will bail out of the market.

As I explain a past blog and my article, “The TRIA Challenge,” prices could already be poised for premium increases due to recent foreign policy decisions that leave the nation more vulnerable to terrorist attacks. Companies need terrorism coverage more than ever.

So what’s the hold up?

To oversimplify, some members of Congress would like to see the insurance industry carry more risk by raising the program “trigger,” or when TRIA can take effect, beyond the current $5 million. (The Boston Marathon Bombing did not reach the $5 million threshold so the insurance industry covered it without TRIA.)

Current legislation would also boosts insurers’ co-share, which is currently 15 percent.

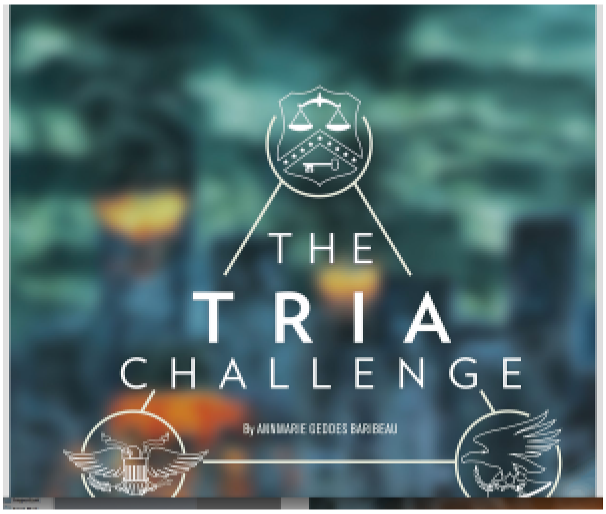
That's like your health insurance company changing its terms and expecting you to pay a higher deductible and higher co-payments.

Therefore, if the trigger and co-share change too much, there is the risk that carriers will bail out of the market.

Terrorism groups are getting bigger and stronger – and they clearly make it known that they want to attack the United States again. Businesses must be ready.

It's really quite simple. Businesses need affordable terrorism coverage. Therefore, Congress should pass a re-extension to TRIA.

Why the Terrorism Risk Insurance Act is Necessary



Tommorow is the 13th anniversary of Sept. 11, 2001, so it is fitting take a look at why the Terrorism Risk Insurance Act of 2002 needs its third re-extension.

I cover this in "The TRIA Challenge," which was recently published in the Casualty Actuarial Society's *Actuarial Review* magazine as the September/October cover story and includes a sidebar on TRIA's impact on workers' compensation. The Terrorism Risk Insurance Act (TRIA) needs to be passed by December 31, 2104 to be extended.

I wrote my article in June — and what a difference the past few months have made in the nation's concern regarding terrorist attacks by fundamentalist Islam groups.

As reported by The Hill, just yesterday, NBC News **poll** showed that 47 percent of Americans believe the U.S. is less safe than it was *before* September 11. That's a huge difference from the 28 percent who felt that way last year and the two in 10 Americans who had those feelings a year after the 9/11 attacks.

Truly, the last couple months have been disturbing. Given the recent headlines about the terrorist group ISIS (called ISIL by President Obama) and Israel's conflict with another terror group, Hamas, and evidence of terrorists using the nation's permeable southern border for entry, it is a wonder that more Americans are not concerned. (Or are too many Americans just not paying attention?)

For terrorism coverage, everything from U.S. foreign policy to a watchful security guard can affect the risk of terrorism attacks.

If you are interested in an explanation of the Terrorism Risk Insurance Act (TRIA) or want to know the legislative progress, you will find that in my article. My piece also explores the challenge of pricing coverage with little relevant historical data (just like cyber coverage, which I cover in an upcoming article). The article includes sobering actuarial cost estimates for a truck or nuclear bomb in Manhattan.

While there are those who want to reduce the role of government in many areas, the federal government should have a backstop for costs from unthinkable terrorist attacks. Terrorism insurance is the only coverage of which I am aware where the private insurance industry is covering risk when mitigation is mostly left up to government intelligence agencies and law enforcement. That is different from workers' compensation, where insurers can reward safer workplace practices with the experience modifier or cyber coverage policies that require certain safeguards before selling coverage to organizations.

For terrorism coverage, everything from U.S. foreign policy to a watchful security guard can affect the risk of terrorism attacks. If the insurance industry perceives greater risk, that means terrorism insurance prices can spike. Making terrorism courage available and affordable is the whole point behind TRIA. Meanwhile, legislative language has suggested an increase in insurer co-payments for TRIA, which the American Insurance Association opposes.

From an actuarial point of view, I like what Michael Angelina, the vice president of casualty for the American Academy of Actuaries, told me for the article. "If I feel the threat is more likely than prior belief, all else being equal, I am going to increase rates to account for this increase in frequency and additional uncertainty."

Given that this week's poll data shows that ordinary Americans feel less safe, it will be interesting to see how the actuarial community reaches its conclusions to develop future rates.

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