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Workers' Comp Insurers Unfazed by TRIA Failure For Now But Expect Quick Fix

The expectation that the new Congress that convenes this week will act quickly to reauthorize the Terrorism Risk Insurance Act (TRIA) is keeping workers' compensation insurers in particular from altering their behavior at least for now, according to insurance executives.

While the executives told *Insurance Journal* that the failure of the previous Congress to renew TRIA was both surprising and disappointing, they fully expect the new Congress will restart the reinsurance program that was first enacted in 2002 after the Sept. 11 terrorist attacks. The program, which backs up insurers should they suffer large claims related to terrorism, officially expired at the end of 2014 after having been renewed by Congress several times. It has not had to pay any claims.

Despite concerns that insurers might restrict writings, raise premiums or take other actions in response to the expiration of TRIA, workers' compensation insurers are for the most part remaining calm and taking a wait-and-see approach.

With TRIA Renewal Efforts Killed, Some Predict Market Chaos

To the extent that any workers' compensation writers have reacted to life without TRIA, they did so last year when they renewed policies that would be in effect now and into 2015, according to executives.

Meanwhile, most employers are unlikely to go without workers' compensation coverage for their injured workers, according to insurer leaders who maintain that there is so much capacity in the market now that another carrier is likely to step in wherever one may pull back. Also state residual markets are available to help any employers having trouble obtaining workers' compensation coverage.

The failure of Congress to renew TRIA could have consequences for workers' compensation because state workers' compensation laws restrict insurers from excluding terrorism risk. Without TRIA, workers' compensation writers could be on the hook without any government backstop for the full amount of any claims from a terrorist attack.

Carriers' Expectations

Frank Scott, senior vice president with USI Insurance Services in Valhalla, New York, said he thinks most carriers expect that TRIA will be reauthorized within next 30 days.

"If there was a concern that [TRIA renewal] wasn't going to pass, I think you would have seen carriers in the larger markets holding off on offering renewal quotations," said Scott. "The problem is that because all states have some type of non-renewal laws, unless the carriers sent them out, they were going to be on the hook to write this as of 1/1 anyway."

Mark Noonan, managing principal and senior knowledge manager for workers' compensation for New York-based broker Integro's casualty practice, said markets will give Congress some time to act.

"Some excess markets are reluctant to quote statutory and this isn't helping but I have not seen a pullback," said Noonan. "I doubt anyone will cancel but non-renewal for risks with large concentration issues is something that could happen."

Christopher Flatt, leader at Marsh's Workers' Compensation Center of Excellence, was asked if he senses any panic in the marketplace.

"I wouldn't say panic. I think the reaction, obviously, has been negative. People are disappointed that Congress didn't take the time to reauthorize TRIA, especially given that both houses of Congress had basically agreed on what a future bill would look like and then it got hung up on a technicality," said Flatt.

Flatt said the biggest impact on workers' compensation will be on pricing and availability of coverage for certain types of insureds such as those with large concentrations of employees in a single geographical location.

According to Flatt, carriers think that Congress will fix the problem. "That's what's been signaled in Congress, that they will pass re−authorization of TRIA," said Flatt.

John Leonard, president and CEO of MEMIC Group, a workers' compensation insurer based in Maine, agreed. He said that while he doesn't yet sense panic in the marketplace, "there already is disruption in certain segments of the market, particularly involving those risks in major metropolitan areas, whether it be a workers' comp or a property cover."

Businesses in those geographic centers will be affected not only by insurance cover issues but also by financing or refinancing efforts, said Leonard.

Already Renewed Business

One reason there appears to be little reaction in the marketplace right now is because workers' compensation carriers have already weighed the prospect of TRIA non-renewal, said Mark Walls, vice president of communications and strategic analysis for Missouri-based Safety National.

"My opinion is the work comp market has already responded to this. The coverage is on the books," said Walls. "In February of last year, the work comp industry started writing coverage that contemplated that they'd be on the loss without TRIA. All year long they've been issuing policies that go more and more into 2015."

According to Walls, some carriers have become more conservative.

"Are there some insurers pulling back in certain areas? Sure there are. Ever since 9/11, carriers have been paying attention to their employee concentration modeling and the catastrophic modeling when they're looking at business. That's been going on for years," Walls said.

Walls said that carriers started issuing policies back in February and March of 2014 and placing an end date at the end of the year so they could renegotiate the terms.

"What happened is the market responded," said Walls.

Though some carriers placed cancellation terms on their policies, others didn't.

"Safety National didn't; we didn't change our policy at all," Walls said. "The caveat I'll give you here is excess casualty, that excess policy is the one policy that could exclude terrorism because it's not a manuscript policy. Some carriers did, but we didn't."

Plenty of Capacity

At Utica National Insurance in New Hartford, New York, Chairman and CEO J. Douglas Robinsonsaid he is not seeing carriers pulling back or cancelling policies.

"There's overcapacity in most of the markets we're in, so if any insurer has pulled back, the remaining players will pick up the slack," said Robinson. "We haven't seen a spike in new business submissions that would indicate other insurers are pulling back."

Safety National's Walls agreed.

"The workers comp market is very competitive right now. There's new capital coming into the market. If one carrier says, 'We're going to step back, and we won't write the risk', other carriers seem to be willing to do it right now,"' said Walls.

And, Walls said, every state has a market of last resort so employers can always get workers' compensation coverage. "That's never going to be an issue. They may have to pay more for it," Walls said. "They may not have as many choices between carriers as they'd like, but they're going to be able to get the coverage unlike, say, property where nuclear, chemical, biological, radiological is excluded on a property form. They can't get coverage for it. You can't do that on comp."

Wouldn't Know It Happened

At Friedlander Group Inc. in Purchase, New York, which manages safety groups underwritten by the New York State Insurance Fund, Adam Friedlander, president, said currently nothing is happening differently in the marketplace.

"If we didn't read about the TRIA expiration, we wouldn't know it happened, based upon the marketplace being business as usual," he said.

Friedlander said that he has not seen any impact related to the National Council on Compensation Insurance (NCCI) endorsement that limits the scope of workers' compensation coverage in case TRIA expires.

Some but not all carriers have the NCCI endorsement, Flatt said.

"The NCCI endorsement is out there. Some carriers put that endorsement on the policy when they issued it, but not all of them did. The endorsement allowed carriers to renegotiate terms if TRIA expired. You did see some carriers use that endorsement, but there's also a lot that didn't," said Walls.

Robinson said Utica National does not have conditional wording regarding TRIA in its policies, nor does it have early expiration dates based on the existence of a federal terrorism insurance program.

"We oppose such language as against public policy," said Robinson.

Wait and See

It's also "wait-and-see" what Congress does at New Jersey Manufacturers Insurance Co. in West Trenton, New Jersey.

"We can only speak for ourselves, but we expect that most carriers, like us, are taking a wait-and-see approach, very hopeful that TRIA will be renewed very quickly by the new Congress," said company spokesman Eric Stenson.

However, he added, if the new Congress doesn't renew it quickly, "we expect that all workers' comp carriers will need to carefully review their potential terrorism exposures going forward. At this point, NJM is not canceling any workers' comp policies because we want to see what happens."

Stenson said the company is in discussions with the New Jersey Compensation and Rating Bureau (CRIB) regarding appropriate next steps in the event that renewal of TRIA does not occur.

Rookies in Congress

Reauthorization by the new Congress might take longer than many are expecting, cautioned Warren Heck, chairman and CEO of GNY Insurance Companies in New York.

"At this point, most people in the business world and the insurance industry expect the new Congress to take up reauthorization as a priority and to pass it," said Heck, who has served as a witness for the industry and offered testimony to the Senate Banking Committee last February for reauthorization of TRIA.

But with the new Congress, "you have a lot of new members," Heck said. "It may take time for them to get acclimated to get up to speed. And you are dealing with a strong Republican majority."

When asked if there is any panic among workers' compensation insurers, Heck said there doesn't appear to be any panic at all.

"The companies and CEOs and senior management believe that the new Congress will reauthorize TRIA when it convenes in January, so no one is really stressed out about it. I would characterize what's happening as: everyone is waiting to see what happens," Heck said.

Geographic Differences

If and when there is a reaction in the marketplace, it is likely to differ based on geographic location and size of the insurer, according to the executives.

"Writers of workers' comp in the city of New York or Chicago or D.C, or L.A., they're looking very closely at their modeled loss estimates for terrorism. They look at their portfolio of insureds in those areas," Marsh's Flatt said. "They estimate worst−case scenario of what a terrorist event could cost them from a loss perspective. They manage what they're willing to write based on that analysis. It's the large cities or the geographical locations that are considered prime terrorist targets that are being affected the most."

If TRIA is not reauthorized by, say, mid-February, workers' compensation issue could arise, according to USI's Scott. "I think it could become a problem for major urban areas, and especially for some of the smaller carriers that have lower attachment points," he said.

"Ultimately it's going to depend on what Congress does." said Walls. "The reality for the workers' comp industry, compared to other lines of property/casualty coverages, is that the policies are already on the books. The coverages are already there."

Walls said most carriers aren't going to walk away from business because TRIA won't be there.

Regulatory Reaction

New York's Financial Services Superintendent Benjamin Lawsky has directed insurers, including workers' compensation writers, in the state to submit information on how they are responding to the expiration of TRIA. The regulator is asking whether the insurers plan to non-renew any policies that are subject to coverage under TRIA, limit writing of new business for any lines of business, or take any rate action for any lines of business or geographical areas.

Insurance company rating agency A.M. Best has said that does not see a need for any rating actions on insurers it previously tagged as "over-reliant upon [TRIA]." The rating agency said it reviewed action plans from those carriers that addressed what they would do if TRIA was not renewed, and concluded that "sufficient mitigation initiatives were developed to avoid a material impact on a rating unit's financial strength."

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