

Assured Comment: Time for a Name Change – Surplus to Owners’ Equity

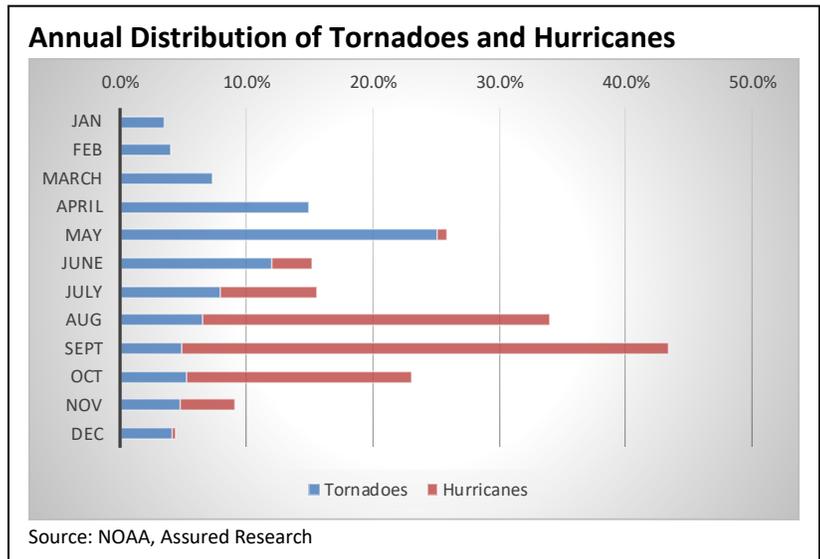
If surplus is appropriated to pay for business interruption claims, who’ll pay for catastrophes?

The dispute over whether business interruption covers will pay for losses caused the coronavirus pandemic just heated up: *Insurance Insider* has reported that the four celebrity chefs had the ear of President Trump; working to convince him that the P/C industry is wrongly denying business interruption claims. At least one of those chefs has already filed a claim and lawsuit against his restaurant’s property insurer.

Readers will know of legislative actions underway in several states and ideas floated by federal legislators to annul any virus exclusions found in property/business interruption policies.

Some of those proposals include mechanisms to mutualize the BI claims across all insurers, perhaps with a feature allowing P/C companies to build those claims into future rates (we’re speculating there). No doubt, lawmakers are incentivized by the P/C industry’s *surplus* of some \$860 billion. We’d be preaching to the choir in this note were we to offer a discourse on the dangers of politicians voiding private contracts by legislative fiat (though it is has happened before – think CERCLA (aka Superfund) and environmental liabilities; after all, they are called lawmakers for a reason).

As a defensive maneuver, albeit too late to be helpful in crisis, **it may be time for the insurance industry to send the term *surplus* to the dustbin of history. We propose owners’ equity instead**; that better conveys whose surplus it is! There is precedence for such an action. Consider the change in “C” from *comprehensive* to *commercial* when courts regularly decided in favor of policyholders in liability disputes on the basis that comprehensive meant just that...despite the text in the CGL policies.



Who Will Pay for Catastrophes? The APCA has estimated that the industry’s surplus (err...owners’ equity) would be depleted in two-to-three months were all BI claims covered nationwide (despite policy language excluding viruses/pandemics). The industry might point out how problematic that would be considering that **catastrophes operate independently of pandemics**. Our chart above shows that the coming months – April through October – represent the busiest months for tornadoes and hurricanes. The footprint of convective storms would look similar to tornadoes, wildfires are predominantly in summer months, and of course it’s always earthquake season. It’s not our intent to be flippant or dismissive of the legislative risks posed. But, preaching to this choir, we can all agree that legislative rewriting of private contracts (even at times of national emergencies) would fundamentally and forever alter the conduct of business and perception of risk in the USA.

We do see another storm on the horizon – the categorization of about half our economy as being *essential* and what that might mean for workers’ comp/COVID-19 claims. Forcing *essential* workers who have left their homes (to provide for those in lockdown) to prove they picked up the virus at their jobsite could force courts or legislators to consider whether insurers are using their *surplus* for the common good or protecting it.