

Terrorism Insurance Update

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With only five days left before the Terrorism Risk Insurance Act was set to expire on Dec. 31, 2007, President George W. Bush signed into law legislation that reauthorizes the federal backstop for seven years, with a new expiration of Dec. 31, 2014. The Terrorism Risk Insurance Program Reauthorization and Extension Act of 2007, or "TRIPRA", now replaces the old TRIA program. The revised government-sponsored terrorism program features a few changes:

- A distinction between what was formerly defined as certified versus non-certified acts of Terrorism has been eliminated. Regardless of who committed the act one broad category now applies.
- Life and health insurance is still not covered by the law.
- Nuclear, biological, chemical, and radiological (NBCR) events are also still excluded. (The Senate's original proposal included provisions to add NCBR events.) However, the President's Working Group (PWG) will continue to monitor the availability and affordability of further expanding TRIPRA to include these perils.
- The program's "trigger" level for coverage remains at \$100 million, and the disclosure wording provided to insured's must be "clear and conspicuous disclosure" of the existence of this cap at the time of offer, purchase, and renewal.
- The program's coverage is capped at \$100 billion annually.

William Gallagher Associates, a leading provider of insurance brokerage, risk management and employee benefits services to firms with complex risks, within industries that include high technology, life sciences, financial risks, healthcare services, energy, and environmental services. WGA has offices in Boston, MA; New York, NY; Hartford, CT; Princeton, NJ; Columbia, MD; Atlanta, GA; and Paris France.

TRIA Background

The Terrorism Risk Insurance Act of 2002 (TRIA) may end up being better remembered as the "Insurer Bailout Act" of 2002 since this Federal Legislation created a financial backstop for Commercial Property and Casualty Insurers who were faced with paying for future Terrorism losses. TRIA required insurers offering insurance to prospective buyers to (1) include an offer for "certified" acts of Terrorism (specifically defined by the legislation) and (2) disclose the premium associated with the coverage. Commercial insurance buyers were required to accept or reject this optional coverage; if rejecting, the buyer was required to submit a written statement to the insurer acknowledging the rejection within 30 days of binding. Terrorism coverage was, and remains, mandatory for all Workers' Compensation policies.

The original TRIA legislation, effective 11/26/02, contained a dollar schedule of government reimbursement to the insurance industry in the event of a certified act of Terrorism covered by the bill. For calendar years 2003, 2004, and 2005, the insurance industry's retention for Terrorism losses was to gradually increase, with an expiration of the federal backstop altogether

on 12/31/05. With fears that 3 years was insufficient for the insurance industry to properly reserve for Terrorism losses and create meaningful actuarial tables to predict the likelihood of future Terrorist event, the Act was subsequently renewed for another 2 years effective 12/31/05. During these next 2 years, the program's trigger increased from \$5 million to \$50 million in 2006 and \$100 million in 2007, meaning that the government's reinsurance would not "kick in" until covered losses reached the trigger amount. With the reauthorization effective 12/31/07, the federal backstop remains in force through 12/31/14, and the trigger remains at \$100 million.

To assist you in evaluating your exposures and determining the value of this optional coverage, we have prepared the following guidelines to make this process less chaotic and more objective:

1. **Completely evaluate your risks and options by:**
 - A. Understanding which policies within your Property & Casualty insurance portfolio are impacted by TRIPRA, and
 - B. Monitoring insurers' offers for Terrorism coverage.
2. **Review your contracts with third parties, particularly those involving real estate and/or lenders**, to ascertain under what conditions, if any, you are required to maintain insurance for the peril of Terrorism.
3. **Reassess the vulnerability of your operations and facilities to an act of Terrorism.** Be sure to assess the impact of your relationships with and proximity to operations and facilities of others as you evaluate these exposures, and examine how the coverage in question would or would not apply. First party (i.e. Property) insurance can be an important and effective risk management technique to ensure your business is able to get back on its feet as quickly as possible following a Terrorist act.
4. **Review your insurance policies, Directors' & Officers' Liability in particular**, to ascertain if there are 'Failure to Maintain Insurance' Exclusions which need to be considered as part of the overall decision making process.
5. **Be aware of key TRIPRA provisions including:**
 - A. With the government's reauthorization of TRIA effective 12/31/07, both foreign and domestic acts of Terrorism are now covered by the legislation. What we saw prior to 12/31/07 was insurers taking inconsistent positions on how their policies addressed the concept of domestic Terrorism (i.e. the Timothy McVeigh Oklahoma City bombing). Some would specifically exclude it, while others remained silent. TRIPRA provides consistency; foreign (as historically covered by TRIA) and domestic acts are included in the bill. Insureds can better anticipate the coverage they've purchased without having to review each and every policy with respects to basic Terrorism coverage.
 - B. Nuclear, biological, chemical, and radiological (NBCR) events are still excluded. In order to obtain a comprehensive Terrorism insurance program for your organization, you'll need to look beyond TRIPRA. NCBR coverage is commonly offered in the London marketplace.

C. Like TRIA, TRIPRA only covers U.S. locations. Some Property policies may further limit or exclude locations not specifically scheduled. Consider the Terrorism risks associated with your organization's worldwide operations.

6. **If Terrorism is a material concern to your company, attempt to negotiate the broadest Terrorism coverage possible.** Following point 5. C. above, you should seek to obtain terms for Terrorism coverage on a global basis, including aircraft and vessels. That way you'll have a consistent approach regardless of where the act occurs.
7. **If you receive a TRIPRA notice directly from an insurer, please forward it immediately to your WGA Account Executive.** Some insurers are sending notices directly to companies, while other insurers are sending notices to their brokers. Note that some are not copying insurance brokers on this correspondence.

Given the low frequency and the potential for extremely high severity of this loss exposure, we cannot recommend a standard course of action, but instead suggest that you consider development and implementation of prudent, economically feasible measures to prevent or minimize the impact of Terrorism, in addition to giving due consideration to transferring, via insurance, as much of this volatile risk as possible.

Our team has developed a worksheet as a tool that can help you evaluate the coverage that you will be offered under the requirements of TRIPRA, and would be happy to discuss your objectives, concerns and questions relating to this new law and the coverage that will be offered. If you would like more information on this evaluation tool, contact your WGA Account Executive.

