

Terrorism Coverage: To Buy or Not to Buy

The federal backstop underscores the seriousness of the terrorism threat to U.S. business

For years, science, technology and loss trends have combined to enable insurers to forecast potential future losses and price insurance coverage accordingly. However, the randomness and incomprehensibility of terrorist acts do not lend themselves to predictable loss forecasting. Hopefully, the world will never see a time when events like those of September 11, 2001, become predictable.

Following the magnitude of the 9/11 tragedies, the President of the United States called key insurance leaders, including XL's CEO Brian O'Hara, to a meeting in the oval office. Obviously, assuring that insurance carriers could continue to provide business coverage was critical.

Thus, the original Terrorism Risk Insurance Act of 2002 (TRIA) was born as a financial backstop, providing public and private compensation for losses arising from acts of terrorism, thus enabling insurers to offer affordable terrorism coverage for insureds. TRIA has been extended twice now, most recently on November 26, 2007, through the Terrorism Risk Insurance Program Reauthorization Act of 2007 (TRIPRA or the new Act).

With the U.S. government having extended TRIA for a full seven years and the take-up (purchase) rate continuing to rise, it is clear more companies recognize the real danger — and possible losses — from acts of terrorism. The extension is good news for businesses and the economy, since it mandates that insurers writing coverage in the United States provide an option for terrorism coverage for the various insurance lines subject to the act.

The debate in Congress last year over what the extension would look like was divisive and complicated, what with legislators and lobbyists from a number of industries all working to shape the new version. The House proposed a mandatory offering for nuclear, biological, chemical and radiological coverage (NBCR), an

addition of group life, a reset mechanism to reduce insurer retentions for sites already hit with acts of terrorism, and a 15-year term. Most significantly, the proposal eliminated the distinction between acts of foreign and domestic terrorism.

The Bush administration had threatened to veto the House version on the grounds that the bill expanded the federal government's role in terrorism insurance. The Senate ultimately fashioned a smaller bill which was eventually agreed to by the House.

Key elements of the new Act include:

- The Terrorism Risk Insurance Program Reauthorization Act of 2007 applies to all new, renewal or quotes for insurance issued after 12/26/07.
- The new Act eliminates the distinction between domestic and foreign acts of terrorism. Therefore, the act of terrorism causing the major loss no longer needs to be of a foreign nature to trigger the federal program.
- The seven-year extension of the federal TRIA program eliminates the uncertainty arising from the past shorter extensions and offers insurers and insureds more security ("peace of mind" insurance) over the next few years — until TRIA is up for renewal again. This longer extension period is particularly good for long-term commercial projects, assuring that they will have a longer period of insurance protection from losses resulting from terrorism.

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- While the new Act does not mandate that insurers offer coverage for nuclear, biological, chemical and radiological (NBCR) attacks, it does require the Comptroller General of the United States to conduct a study of the availability and affordability of insurance coverage for NBCR losses related to terrorism and requires that a report on the findings be provided by the end of 2008.
- The TRIA program trigger was maintained at \$100 million, which means that the payment of federal funds under the new Act will be triggered only if losses from terrorist acts are likely to exceed the \$100 million threshold.
- The new \$100 billion industry aggregate on insured losses offers a critical cap on losses for insurers.

Insureds will see some minor changes in forms and mandatory policyholder disclosure notices to accommodate the technical policy changes resulting from TRIPRA.

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Those companies that have purchased coverage for losses from acts of terrorism, of course, must remain vigilant, taking all appropriate measures to protect employees and facilities. Every company should have current disaster plans in place and update these plans regularly. (See the interview with corporate intelligence and security expert Juval Aviv,

Risks You May Not Know About, on page 4 for a discussion about security risks and corporate travel safety.)

Not all companies, of course, may need terrorism coverage. For one thing, employees are automatically covered under Workers' Compensation policies. However, a business' property, casualty and professional liability risks are other matters to consider. Terrorist acts can be perpetrated by diverse groups and no location or industry is invulnerable. Therefore, purchasing coverage should be given serious consideration in any risk management planning.

Unfortunately, when it comes to terrorism, it is not a question of "if" but "when." **XL**