

# TRIA Update

Willis

The Terrorism Risk Insurance Act of 2002

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While this Bulletin is being issued under the "TRIA" category, its application is to "terrorism" in general in certain states of the United States.

## Update on Standard Fire Policy (SFP) Regulations

### Overview

In an earlier TRIA Bulletin, we outlined the states in which laws in effect at that time required that insurers who provide coverage for fire must continue to provide such coverage when a policyholder rejects TRIA or other terrorism coverage.

These states were: Arizona, California, Connecticut, Georgia, Hawaii, Idaho, Illinois, Iowa, Louisiana, Maine, Massachusetts, Michigan, Minnesota, Missouri, Nebraska, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Oklahoma, Oregon, Pennsylvania, Rhode Island, Virginia, Washington, West Virginia and Wisconsin. The US Virgin Islands has a similar law.

Since that Bulletin, insurers have lobbied a number of state legislatures to have these laws overturned. Chief among their contentions is that it is inequitable that TRIA and other terrorism coverage can be rejected by a policyholder, and premium element for same withheld, but insurers must still pay what may likely be the most inevitable ensuing loss – fire. A secondary argument is that under these same laws, the limitation on all liability for TRIA events as prescribed by that Act (\$100 billion) is overridden.

Certainly, insurance regulators in the State of Georgia have been specific on this

point. This means that even though the federal government back-stop has a limitation on its liability, insurers do not.

Legislatures seemed to have listened.

As of the writing of this Bulletin, the legislation described above has been overturned in Michigan, Minnesota, Nebraska (effective September 1), New Hampshire (effective January 1, 2004) and Virginia. Legislatures in other states, including Connecticut, Louisiana, Massachusetts and Oklahoma, have similar bills under consideration. It is uncertain if these changes share TRIA's sunset date of December 31, 2005.

### Other Changes of Relevance

In the same earlier Bulletin, we noted those states that had not authorized the use of terrorism exclusions, TRIA or otherwise. These were California, Florida, Georgia, New York and Texas (some of these states have certain exceptions, such as "large risks" as defined in their insurance laws, but these are too discrete to summarize here).

We have been advised that 1) California has now accepted an ISO exclusion although rating parameters have to be agreed and 2) New York has approved a limited number of exclusions, although forensic evidence of this has not been uncovered.



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## Immediate Effects for Policy Holders

Our experience is that the acceptance by policyholders of TRIA and other terrorism proposals (when the latter are offered) is relatively low overall, although as rates have "moderated" for many insurers, the number has risen on average slightly in the 2nd quarter of 2003. Manufacturers in particular, whose operations largely reside outside "city centers," seem to continue to view themselves not at risk of a terrorism loss, whether certified or not. Real estate, hospitality and public entity clients are more apt to buy the cover, either because the risk appears more real or they have other forces – lenders, etc. – exerting pressure.

It is not possible to comment on how many of the decisions to reject TRIA or other terrorism coverage were made considering the protection otherwise available under SFP laws. Certainly there are limitations on that protection, which we've pointed out before, that should cause some sleepless nights:

- Actual cash value recovery only
- No time element protection
- ...Likely not enough protection to make a policyholder "whole" after a loss.

The impact of this new legislation, however, is eminently clear on any policyholder who did rely on SFP legislation in the states outlined above. You are now flying without a net in the above states and likely others as the year progresses.

Perhaps as important a question is the extent to which these changes in legislation affect policyholders who have bought TRIA and other terrorism coverage.

The significant reduction in protection we see at this time is that fire following terrorism for 1) certified terrorism coverage will now be subject to the overall TRIA limitation (\$100 billion) mentioned above and 2) non-certified terrorism will be subject to the limit you chose to purchase. (Note: none of the regulators of the states in question have rejected terrorism exclusions per se; however, state laws, beyond their purview, prohibited fire following terrorism exclusions/limitations – until now.) With the exceptions noted, these changes in liability appear to be immediate.

## Longer Term Effects

In the states whose legislation has changed, some insurers have been quoting 1) TRIA and separately 2) fire following TRIA and separately 3) non-certified terrorism (and its ensuing loss including fire - we've not seen this element segregated). The third option, however, has not been made available without the first and second, in our experience. Our position on the second is that the basic premium already includes fire (since same was mandated by law) and therefore no separate premium is due. We won most arguments, but it may be unlikely going forward that the option for fire will be given in the first place. You either buy TRIA (and ensuing fire) or you choose not to.

The alternative in these states is that a policyholder may buy a limited amount of TRIA (after full amounts are made available by "eligible insurers") and this limit will apply, as well, to fire following a certified event.

## Other Issues

TRIA was meant to stimulate an otherwise sluggish economy post 9/11 (2001). The extent to which this goal has been achieved has yet to be measured.

Major construction projects have duration periods well beyond the sunset of TRIA, December 31, 2005. And TRIA (at least) coverage is being required for these by lenders and other interested parties.

Construction risk insurers now have to decide whether to 1) hope TRIA will be extended (at this point unlikely per a Treasury speech given recently) or 2) write these risks potentially for their own accounts in 2006 with neither TRIA nor treaty reinsurance support but when values at risk are at their highest. Stay tuned.

The stand-alone terrorism market remains robust. It is unlikely that the state legislative changes outlined ... will change the appetite for, or pricing of this coverage. In fact, it may eliminate the uncertainty that has arisen as to who pays first for what.

We will continue to prepare updates as developments occur.

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