TRIA Update

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Terrorism Risk Insurance Revision and Extension Act of 2007 (TRIREA)

On December 18, only hours before adjourning for the holiday season, the U.S. House of Representatives voted to extend the Terrorism Risk Insurance Extension Act (TRIEA) for an additional seven years, using the version of the bill approved by the Senate Banking Committee on October 17 and deemed to be acceptable to the Bush administration. On December 26, President Bush signed the bill into law.

While the final bill is not as comprehensive as that originally proposed by the House, it is nonetheless a clear improvement over the expiring program, ensuring longer-term continuity of the program and eliminating the previously blurred distinction between foreign and domestic acts of terrorism.

In summary, the legislation will:

- Extend the program by seven years – from December 31, 2007 to December 31, 2014.
- Eliminate the distinction between foreign and domestic acts of terrorism by eliminating the requirement that such acts be "committed on behalf of any foreign person or foreign interest."
- Retain the insurer deductible level of 20% of direct earned premium for insured terrorism losses.
- Continue the current "make available" provision for insurance for acts of terrorism as redefined under the act.
- Continue the current level of federal compensation and insurer co-pay at 85% and 15% respectively.
- Maintain the current $100 million aggregate industry loss to trigger coverage.

The provisions of the original House bill that did not survive include:

- A program extension for 15 years.
- Inclusion of NBCR – acts of nuclear, biological, chemical and radiological – terrorism within the "make available" provision.
- Inclusion of Group Life as a covered line of insurance.
- Provision of a "reset mechanism" for significant attacks – lowering the deductible from 20% to 5% for insurers affected by an event exceeding $1 billion in insured losses.
- A reduction to $50 million of the aggregate industry loss required to trigger coverage.

As a concession to the House, the Senate Finance Committee has agreed to "revisit" the issues of NBCR and Group Life in the near future and to address the feasibility of future expansion of the program.

Property Insurance Programs

Even before the President inked the measure, Property underwriters whose renewal capacity commitments were constrained by uncertainty surrounding TRIA's fate began signing binders for January 1, 2008 renewals. Their collective sigh of relief was echoed by Construction risk underwriters who had been trying to determine how they could support multi-year projects without the benefit of TRIREA's backstop.

For some policyholders with sunset provisions, underwriters will now be issuing

prorata TRIREA additional premium notices to cover the period from January 1, 2008 to their respective policy expirations. Most insureds will view this as a minor inconvenience when measured against the benefit of the continuation of terrorism protection.

TRIA and Captive Utilization

While the focus of this legislation has always been to provide a source of reinsurance support to mainstream insurance markets, TRIA and its extension as TRIEA in 2005 have also had a significant impact on the development of the alternative risk transfer marketplace, particularly in the utilization of captive insurance companies. As the program pertains to any U.S. Property or Casualty insurance company licensed to engage in the business of providing primary or excess insurance and receive direct earned premiums, it was subsequently determined (in the Treasury Department's set of final regulations issued in 2003) that "state license captive insurance companies" and "admitted risk retention groups" would also be eligible for the protections afforded under TRIA. As a result, certain insurance regulators – e.g., those in Vermont, New York, South Carolina and Arizona – have approved the creation and funding of captives designed specifically for the purpose of accessing program coverages.

Captives that are used to accessing TRIA (now TRIREA) coverage have the opportunity to achieve potentially significant savings in the long-term cost of risk for terrorism insurance, and they also have the latitude to obtain broader coverage than that which may be available in the traditional marketplace – including access to coverage for nuclear, biological, chemical and radiological terrorism.

With the federal government's longer-term commitment to this legislation now confirmed, we expect to witness continued expansion of captive formation in 2008.

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