

TERRORISM RISK INSURANCE PROTECTION ACT OF 2007 UPDATE

FIRE FOLLOWING ISSUES AND STANDARD FIRE POLICY (SFP) REGULATIONS

TRIPRA OVERVIEW AND BACKGROUND

TRIPRA (formerly known as TRIA) was enacted to provide a federal backstop for certain acts of terrorism through a temporary federal program which distributes the risk of loss from terrorist attacks between the federal government and the insurance industry. The intent of TRIPRA is to protect consumers and ensure the availability and affordability of property and casualty insurance for terrorism risk.

TRIPRA covers those terrorism events that are “certified” by the Secretary of the Treasury, in concurrence with the Secretary of State, and the Attorney General of the United States. In exchange for federal support, insurers are required to offer terrorism coverage. TRIPRA is set to expire in December 2014, unless extended. (TRIPRA Summary enclosed Page 3).

TRIPRA AND STANDARD FIRE POLICY (SFP) LAWS

The application of the Standard Fire Policy (SFP) is mandated in 29 states and defines the terms under which insurers which provide coverage for direct losses from fire and lightning. In certain states, insurers must continue to provide such coverage even if a policyholder has rejected the terrorism coverage afforded under TRIPRA.

Recently, insurers have lobbied a number of state legislatures to have the laws under SFP overturned. Chief among their contentions is that it is inequitable that TRIPRA and other terrorism coverage can be rejected by a policyholder, and the 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 by that Act (\$100 billion) is overridden. This means that even though the federal government back-stop has a limitation of its liability, insurers do not.

STANDARD FIRE POLICY STATES

ALASKA	NEBRASKA
ARIZONA	NEW HAMPSHIRE
CALIFORNIA	NEW JERSEY
CONNECTICUT	NEW YORK
GEORGIA	NORTH CAROLINA
HAWAII	NORTH DAKOTA
IDAHO	OKLAHOMA
ILLINOIS	OREGON
IOWA	PENNSYLVANIA
LOUISIANA	RHODE ISLAND
MAINE	VIRGINIA
MASSACHUSETTS	WASHINGTON
MICHIGAN	WEST VIRGINIA
MINNESOTA	WISCONSIN
MISSOURI	

States which do not permit terrorism exclusion from SFP policies noted in yellow.

WHAT SFP MEANS FOR POLICY HOLDERS

Our experience is that the acceptance by policyholders of TRIPRA and other terrorism proposals (when the latter are offered) has risen significantly since TRIA was first put in force. Real estate, hospitality and public entity clients are the most apt to buy the cover, either because the risk appears more real or they have other forces – lenders, etc. – exerting pressure.

It is difficult to comment on how many of the decisions to reject TRIPRA or other terrorism coverage were made considering the protection otherwise available under SFP laws. Nonetheless, It is important to consider two factors of the SFP which will affect recovery:

- Actual cash value recovery only
- No time element protection

This is most likely not enough protection to make a policyholder “whole” after a loss. In effect, in an SFP state, an insurer would only be required to pay for the direct damage caused by fire resulting from an act of terrorism on an actual cash value and there would be no time element protection, if no other terrorism coverage is purchased.

It is also important to consider the extent to which these changes in legislation affect policyholders who have bought TRIPRA and other terrorism coverage.

The significant reduction in protection we see at this time is that fire following terrorism for certified terrorism coverage will now be subject to the overall TRIPRA limitation (\$100 billion) mentioned above. (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.)

TRIPRA'S EFFECT ON THE ECONOMY AND INSURANCE MARKETPLACE

TRIPRA was meant to assist stimulate an otherwise sluggish economy post 9/11 (2001). The extent to which this goal was achieved is difficult to measure, however TRIPRA's success in stabilizing a very fragile insurance market is indisputable. Long term continuation will be critical to insureds whom are located in regions which are highly aggregated, and for which adequate terrorism coverage would otherwise be unavailable or cost prohibitive.

THE STAND ALONE TERRORISM MARKET

Purchasing stand alone terrorism provides an attractive alternative to TRIPRA-dependant insurance. Stand alone terrorism can provide comprehensive cover for physical damage and time element exposures due to an act of terrorism, including fire following:

Rates for embedded terrorism may not accurately reflect the actual terrorism risk – particularly when NOT located in Tier One (or high risk) zones. Stand alone programs can often be significantly less expensive. Other benefits include:

- Removing terrorism from property program can facilitate carrier participation and competition by those reluctant to write large terrorism limits.
- Stand alone can be broadened to include coverage extensions otherwise unavailable: nuclear, biological, chemical and radiological terrorism, war, loss of attraction, civil authority, loss of ingress/egress.
- Alternatively, policies can follow underlying property forms.
- Territory virtually unlimited globally.
- No certification requirement by U.S. government - insurers are not TRIPRA dependent.
- No requirement to reach \$5 million loss threshold for certification.
- Fire following an act of terrorism is included.
- Coverage can extend past the proposed expiration of TRIPRA in 2014.

CAPTIVES

Captives domiciled in the U.S. providing property coverage on a direct basis are obligated to offer terrorism coverage and in return are eligible for the TRIPRA backstop. Companies which are constrained in their ability to buy sufficient or cost appropriate terrorism coverage often turn to a captive structure to access government-provided TRIPRA indemnities, including coverage for nuclear, biological, chemical and radiological terrorism - often at a fraction of the cost of purchasing embedded or stand alone terrorism.

TERRORISM INSURANCE ACT OF 2007

EXPIRATION	Program expires 12/31/14, unless extended.
SCOPE/DEFINITION OF TERRORISM	The term “act of terrorism” means any act that is certified by the Secretary, in concurrence with the Secretary of State, and the Attorney General of the United States— (i) to be an act of terrorism; (ii) to be a violent act or an act that is dangerous to— – human life; – property; or – infrastructure; (iii) to have resulted in damage within the United States, or outside of the United States in the case of— – an air carrier or vessel.
“MAKE AVAILABLE PROVISION”	Terrorism cover must be quoted however purchase is not compulsory.
PROGRAM TRIGGER	\$100 million
INSURER DEDUCTIBLE	20%
PERILS EXCLUSIONS	As per original insurance contract. TRIPRA Specific Limitations: No act shall be certified by the Secretary as an act of terrorism if — (i) the act is committed as part of the course of a war declared by the Congress; or (ii) property and casualty insurance losses resulting from the act, in the aggregate, do not exceed \$5,000,000.
NUCLEAR, CHEMICAL AND BIOLOGICAL COVERAGE	Nuclear, Chemical and Biological terrorism cover is provided by TRIPRA – optional
PROGRAM CAP	\$100 billion
DEDUCTIBLES	As per original insurance contract.
POST EVENT RECOUPMENT	133% of outlays to be recovered through policyholder surcharges

“ PURCHASING STAND ALONE TERRORISM PROVIDES AN ATTRACTIVE ALTERNATIVE TO TRIPRA-DEPENDANT INSURANCE.”

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