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A World Without TRIA: Incalculable Risk

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From the Insurance Information Institute Database

Twice since the terrorist attacks of 9/11, the nation has lacked a federal backstop for terrorism insurance – immediately after the attacks (before the original Terrorism Risk Insurance Act passed) and for a short period in 2015 when the program was permitted to lapse.

To gain insight into how the terrorism market operated in those periods, we have included abstracts of news reports in this white paper that appeared in the I.I.I. newsletter, *The Daily*.

The I.I.I. will continue to highlight our contemporaneous coverage from these two periods on the *Triple-I Blog*, www.iii.org/insuranceindustryblog.

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Executive summary

Terrorism, by design, is unpredictable, hugely destructive, and to date uninsurable through private market methods alone.

Few events demonstrate this better than the 9/11 attacks, in which terrorists hijacked commercial airliners and flew them into the World Trade Center towers and the Pentagon. The attacks remain the deadliest and most expensive terrorist incidents in U.S. history, with insurance losses totaling about \$47.0 billion in 2019 dollars, according to I.I.I. estimates.

U.S. and international insurers were able to pay virtually all the claims from the 9/11 attacks and their aftermath. But insurers also made it clear that they could not, on their own, cover future losses caused intentionally by people acting strategically to attack select targets intentionally.

In response to these concerns, the U.S. Congress enacted the Terrorism Risk Insurance Act of 2002 (TRIA), creating a federal backstop for catastrophic terrorism losses that is designed to keep terrorism risk insurance available and affordable. Renewed in 2005, 2007 and again in 2015, the act is set to expire on December 31, 2020.¹

Although the expiration is still more than a year away, U.S. commercial insurers are preparing for the possibility that the federal backstop might expire, and federal financial assistance is unavailable for a catastrophic terrorist event.

What would happen in a world without TRIA? To some extent, we know. There are two periods post-9/11 in which there was no federal backstop for terrorism insurance:

- Immediately after the attacks, insurers and reinsurers

quickly developed changes to their policies that excluded losses caused by terrorist acts. This led to a severe contraction of coverage for terrorism losses, with public and private sector leaders worrying the contraction could have dangerous ripple effects throughout the U.S. economy if another major attack occurred.

- On January 1, 2015, the program briefly lapsed. During the runup to that lapsation, the Congressional Budget Office (CBO) said that although some terrorism coverage would probably still be available, the private market “would not expand to fully offset the loss of federal reinsurance,” with fewer insurance options, higher premiums and lower coverage limits. High-risk areas would bear the greatest burden, particularly in industries such as construction.

After discussions with key participants in the insurance market, this paper concludes that the terrorism insurance market is more robust than in the immediate aftermath of 9/11, but – similar to the situation in 2015 – does not appear to have the ability to bear all terrorism risk.

In this context, the report offers a historical overview of TRIA – why it exists and how it functions – to inform the discussion about the potential consequences should the program disappear. The report discusses:

- Commercial terrorism risk insurance before the 9/11 attacks.
- How the attacks changed the terrorism risk insurance marketplace.
- The enactment of the federal Terrorism Risk Insurance Act and the program’s structure.
- What happened when the program briefly expired in 2015.
- How a failure to reauthorize the program in 2020 could affect terrorism risk insurance.





The 9/11 attacks and commercial terrorism risk insurance

The 9/11 attacks remain the deadliest and most costly terrorist attacks in U.S. history. Some 2,753 people died at the World Trade Center site; 184 people died at the Pentagon; and 40 people died aboard downed United Airlines Flight 93.²

Insurance losses stemming from 9/11 totaled about \$47.0 billion in 2019 dollars, including commercial liability and group life insurance claims. That makes the 9/11 attacks, when combined, one of the largest insured loss events in U.S. history. About two-thirds of the losses were paid by reinsurers, companies that provide insurance for insurers.³ Of the losses, the two biggest categories were for business interruption and property losses, each at approximately 30 percent, including the destruction of the World Trade Center towers.

Prior to the 9/11 attacks, standard commercial insurance policies in the U.S. made no distinction between losses caused by terrorism and the same types of losses caused by some other factor; nor was there any specific premium charge associated with terrorism exposure. This treatment persisted despite other terrorist attacks in the U.S. prior to 9/11, including the 1993 World Trade Center truck bombing, which resulted in \$872 million in insured property losses⁴, and the 1995 bombing of a federal building in Oklahoma City.

It was the magnitude of losses from the 9/11 attacks, and fears that another such attack could occur, that led reinsurers to restrict coverage for terrorism losses in the U.S. With little or no reinsurance available for terrorism risk, primary insurers had no choice but to follow reinsurers' lead and introduce exclusions for losses caused by acts of terrorism.

In the months following the 9/11 attacks, the Insurance Services Office (ISO), an organization that develops insurance forms, rules, and loss costs, released terrorism exclusions for both property and liability lines of insurance. The exclusions were filed with state regulators with a proposed effective date of January 1, 2002, to coincide with the renewal of many reinsurance treaties. Fearing that commercial insurers might retrench or withdraw entirely from certain lines of business or geographic

areas, state regulators quickly approved use of terrorism exclusions developed by ISO and private companies. In the absence of any public support for terrorism insurance, approving the exclusions avoided the possibility that commercial insurance might be entirely unavailable to certain enterprises, with potentially widespread economic consequences.⁵ What little terrorism coverage remained following the introduction of these exclusions was restricted and expensive. Terrorism risk was effectively shifted onto property owners and businesses, generally increasing the cost of doing business and hampering the real estate and construction industries in high-risk areas such as New York City, where fears of another attack led lenders to require terrorism insurance coverage on their collateral.

Workers compensation insurers were left in a particularly difficult bind. Since workers compensation coverage is mandated by statute, coverage for terrorist acts cannot be excluded; nor can workers compensation insurers impose policy limits to restrict coverage for potential catastrophic losses. It is also the only line of insurance that does not exclude coverage for acts of war.

Following 9/11, there were concerns that workers compensation insurers would limit their terrorism exposure by drastically raising premiums or declining to provide coverage in high-risk areas, thereby pushing employers into expensive residual markets ill-equipped to absorb catastrophic losses.⁶

Prior to the passage of TRIA, some of these fears had begun to be realized. Some employers in high-risk areas were being pushed into residual market plans, and the National Council on Compensation Insurance, an organization that develops policy forms and rating information for workers compensation, reported sharp premium increases in 2001 and 2002.⁷

The limited availability of terrorism insurance, among other concerns, led to the enactment of TRIA in November 2002.⁸ The act was based on two explicit premises:

1. A lack of terrorism coverage could slow and hamper an effective recovery following an attack, such as that demonstrated by insurance payments following the 9/11 attacks, which were crucial to the recovery of New York City; and
2. Coverage restrictions or high premiums could “seriously hamper ongoing and planned construction, property acquisition, and other business projects, generate a dramatic increase in rents, and otherwise suppress economic activity.”

The act created the Terrorism Risk Insurance Program, a federal program for reimbursing insurers for certain losses resulting from a certified act of terrorism.⁹ The program was renewed in 2005, 2007 and again in 2015 through a series of Terrorism Risk Insurance Program Reauthorization Acts, which implemented some changes to the original program.¹⁰

From I.I.I.'s news archives

The workers comp crunch

By Eric Krell

Business Finance, April 2, 2002

Workers comp premiums are rising by an average 15 percent this year. Robert Hartwig, senior vice president and chief economist of the Insurance Information Institute, attributes about half that percentage to the effects of 9/11, i.e., the higher cost and scarcity of reinsurance. The article also notes that while workers comp insurers must include terrorism risks as part of their coverage, reinsurers began excluding terrorism in January, pushing the entire burden onto primary workers comp carriers. **But rising rates are not the entire story, insurers are cutting back on coverage too.** This article offers a discussion of the problem from two points of view: insurers facing new realities of post September 11 and corporate risk managers trying to keep costs down.



Terrorism risks are difficult to underwrite and price

Terrorism risk remains different from other types of insurable risks, posing unique difficulties for insurers and other insurance service providers.

Historical loss data is scarce. In other lines of insurance, insurers know from historical experience roughly how many covered losses to expect (frequency) and what the costs of those losses will be (severity). This data is used to calculate a “pure premium” or “loss cost” equal to the risk an insurer assumes under a policy.

For terrorism risk, however, frequency and severity data is scarce. There have been relatively few terrorist attacks in the United States, so there is little data on which to base estimates for future losses. Furthermore, the range of possible severity of terrorism claims is much larger than in other lines of insurance.

Acts of terrorism are not random. Unlike other risks, terror attacks are intentional, targeted attacks on specific locations and designed to inflict the maximum amount of damage and injuries possible. They

are neither “accidental” nor “fortuitous,” which are crucial aspects of an insurable risk.

There are many “attack modes.” Terrorist attacks come in many forms, ranging from vehicle bombings to mass shootings to biological weapons. Some attacks can be catastrophic, both in loss of life and property damage, particularly if the attack is carried out with nuclear, biological, chemical, or radiological weapons. Uncertainty regarding the scope and scale of an attack makes it very difficult to estimate losses and to price the risk appropriately.

Attacks are often geographically concentrated. For insurance to operate economically, losses typically must not be such that many or all insureds in one location suffer the same loss, which could bankrupt an insurer. Terrorist attacks are often concentrated on a single target or set of targets to produce a stunning economic or psychological impact, making it difficult to spread the losses geographically. (The 9/11 attacks were something of an exception to this in that they involved four coordinated attacks; two on the World Trade Center, one on the Pentagon, and a hijacked flight intended for the Washington, D.C.-area before it crashed in Pennsylvania.)





How the program is structured

The overall structure of the Federal Terrorism Risk Insurance Program (TRIP) has remained essentially the same since its inception, although details have changed and the share of losses the federal Treasury would bear has been reduced.

TRIP is distinct from terrorism insurance programs in other countries in that it does not collect premiums or maintain loss reserves. Instead, when losses from certified terrorist acts reach a certain dollar amount (currently \$200 million¹¹), that triggers reimbursements from the Treasury for a portion of the losses (80 percent under the current formula; private insurers retain the remaining 20 percent).

After the program is triggered, policies in all lines covered under the program¹² will be surcharged to recoup payments made by the Treasury. Instead of charging premiums based on estimates of future losses, the program is funded by recoupments of known losses. For many attacks, the recoupment could meet or exceed federal payments. Only for the largest attacks would the federal government end up funding losses.

“Make available” requirement

Under the program, commercial insurers are required to offer applicants and insureds coverage for terrorism losses on more or less the same terms and conditions as the insurer offers for other covered losses. Policyholders are free to waive such coverage.

If coverage is accepted, the insurer must clearly and conspicuously state the share of premium charged for coverage of losses from certified terrorist acts. If an applicant or insured waives terrorism coverage, the insurer may add terrorism exclusions to the policy.

According to the Treasury Department’s 2018 data call, 78 percent of insureds that were offered terrorism insurance took it.¹³ The insurance brokerage and risk management firm Marsh found that New York has the highest take-up rate for terrorism insurance, at 80 percent.¹⁴ The Treasury Department has concluded that terrorism risk insurance is now widely available for relatively low cost. Property terrorism premiums have fallen by more than 80 percent since 2003, according to Aon, a brokerage.¹⁵

“Certifying” an act of terrorism

To trigger payments, an attack must be “certified” by the Secretary of the Treasury (in consultation with the Secretary of Homeland Security and the Attorney General) to be act of terrorism as defined under TRIA. To meet the definition, an act must cause more than \$5 million in insured losses and meet these additional criteria:

- [Be] a violent act or an act that is dangerous to (i.) human life; (ii.) property; or (iii.) infrastructure;
- [Result] in damage within the United States, or outside of the United States in the case of (i.) an air carrier or vessel...or (ii.) the premises of a United States mission; and
- ...[Be] committed by an individual or individuals as part of an effort to coerce the civilian population of the United States or to influence the policy or affect the conduct of the United States Government by coercion.

The original 2002 act included a provision requiring that the act be committed by persons “acting on behalf of any foreign person or foreign interest.” That provision was stricken in the 2007 reauthorization, so that acts of domestic terrorism can be certified as such and trigger payments.¹⁶

Triggering event threshold

Even if an attack were to exceed \$5 million in insured losses and meet other criteria for certification as an act of terrorism, there are no federal payments until insured losses reach a specified amount. That amount is set at \$200 million for 2020, a substantial increase in the insurance industry’s retained level of loss since the program was first created.

In 2020, if industry losses exceed \$200 million, the government reimbursement kicks in. Here is how it works.

- Each insurer has its own deductible. The government covers 80 percent of terrorism losses in excess of that deductible. Total losses cannot exceed \$100 billion. That is the most that the government and all insurers put together need to cover under the program.
- The government must recover some, all, or in some circumstances, more than it paid out. Its recovery is governed by a surcharge that insurers would collect from policyholders, then pass along to the government, like a premium tax. The surcharge is 1.4 times what the government paid out on its share of losses up to what is known as an industry aggregate retention. In 2020 that retention will be based on the size of lines reinsured and is projected to be about \$45 billion.¹⁷ The government can collect more at the discretion of the Secretary of the Treasury but it is not mandatory.

This process is explained in detail on the next two pages.

From I.I.I.’s news archives



Insurance rates are rising sharply across the U.S.

By Joseph Treaster

The New York Times, October 25, 2001

The cost of insurance for large corporations as well as small businesses, factories, farms, homeowners and drivers has been rising rapidly since the September 11 terrorist attacks. **As the demand for insurance increases, insurers are increasing the rates for a wide range of products sold throughout the nation.** Tim Caesar, a commercial insurance broker in Santa Barbara, California, explained that the insurance industry is facing enormous liabilities as a result of the attacks and has to raise prices for coverage throughout the nation.

How TRIA works

The Terrorism Risk Insurance Act (TRIA) defines how an event will be classified as terrorism for insurance purposes and describes how the program operates. The details have changed over the years, gradually reducing the government backstop, but the general structure has changed little over the years.

- The government certifies an event as an act of terrorism.
- Insurers satisfy a deductible before they can collect from the government.
- In the years after an attack, the government would in most events recover all of what it pays and perhaps more.
- For even the largest event, the government would have an option to recover all it paid out.
- There is a limit on how much insured losses would be paid for from a terrorism attack.

A simple example

Imagine a bomb attack in a major city in 2020 causes a high-rise to collapse. The attacks cause \$10.1 billion in insured losses from eligible insurance lines, including workers compensation. All losses are covered by a single insurer.* The Secretary of the Treasury officially certifies the bombing as an act of terror for the purposes of the program.



*This is highly unlikely, as insurers do not want to take on such a high concentration of risk. However, it is easier for illustrative purposes.

Next page: Who pays what?

How TRIA works (cont'd)

Who pays what?

The following three scenarios show the impact of TRIA, using the example from the previous page. In the third example the net government outlay is \$0.

Without TRIA, insurer losses and policyholder deductible



After TRIA, before the government recoups losses



After TRIA, and after the government recoups losses



■ Policyholder

■ Insurer

■ Government

■ Policyholders nationwide

Nuclear, biological, chemical and radiological terrorism

The logic at the core of the program is to have commercial insurers continue to cover the types of losses—particularly explosions and fires—they typically cover, even when those losses are caused by individuals acting deliberately to cause maximum harm and damage.

Terrorism can also include attacks involving methods and substances insurers do not usually cover, and which they are ill-prepared to assess or control. These methods and substances include nuclear, biological, chemical and radiological agents, components of so-called weapons of mass destruction. They are usually referred to collectively as NBCR exposures.

Given the incalculable damage that could result from an NBCR attack, TRIA allows participating insurers to exclude coverage for losses arising from such an attack. With no coverage in place for NBCR losses, there would be no reimbursements.

Workers compensation insurance, however, cannot exclude NBCR terrorism. Those losses—and those of any other insurers that fail to exclude NBCR—would receive reimbursement under the program, subject to the other terms and conditions of the program.

Acts of war

The program's definition of acts of terrorism excludes acts of war. Both personal and commercial insurance policies exclude coverage for losses or damages caused by or arising out of war or "warlike actions," including insurrections and rebellions. War is usually considered an uninsurable catastrophic risk (though some insurers do offer war insurance) and is not covered by terrorism insurance. The only line of insurance that covers injury or death from an act of war is workers compensation.

Fire

Some states have statutes requiring that any insurance policy covering fire loss provide coverage at least as broad as that which is provided under the New York Standard Fire Policy of 1942 (SFP), a longtime standard for insurance coverage.

Before 2003 there were no exclusions for a fire loss that resulted from an act of terrorism in states that based coverage on the New York form. As a result, a policyholder who had rejected terrorism coverage under TRIP would still have coverage for fire following an act of terrorism. In a handful of states this is still the case.

However, since 2003, some states citing the New York form have revised their statutes to permit exclusions for fire loss following terrorism under certain circumstances. Thus, a policyholder in these states who has rejected terrorism coverage under TRIP may have little or no coverage for fire loss resulting from an act of terrorism.

Many states do not have a standard fire policy statute or have SFPs that unconditionally exclude fire following terrorism. In these states there is no stipulated coverage for fire following terrorism.¹⁸

Private terrorism insurance

Some private insurers offer stand-alone terrorism insurance products, which operate independently of the program. These products typically cover property losses, including business income and extra expense losses, arising out of a terrorist attack. Some of these policies cover losses that occur in both certified acts and non-certified events. Stand-alone terrorism products have also evolved to account for other attack modes, including active shooter liability and cyber-related exposures.²⁰ However, there are only a limited number of insurers that have the capacity to offer large limits of coverage for standalone terrorism policies. Furthermore, these standalone policies typically do not cover workers compensation exposures.²¹

Cyberterror: what's covered?

Neither TRIA nor its re-authorization statutes explicitly addressed cyberattacks or loss to electronic data and computer networks.

Physical loss to computer hardware incurred during a certified act of terrorism, as well as physical damage to other property caused by cyber methods, would presumably be reimbursable to the extent they are covered under policies covered under the program.

As for loss to intangible data and operations, in the absence of physical damage, in December 2016 the Treasury Department issued guidance to the effect that stand-alone cyber insurance reported as “Cyber Liability” in insurer annual statements are covered, and thus subject to availability and disclosure requirements and eligible for reimbursement.

Cyber insurance reported as “Professional Errors and Omissions Liability Insurance” (E&O) is not covered, however, as E&O insurance is expressly excluded from the program.¹⁹



2015: Two weeks without a federal backstop

The program has expired once, although briefly. In December 2014 Congress failed to reauthorize the program by its Dec. 31 expiration, leaving insurers without a federal terrorism backstop and forcing the activation of provisional terrorism exclusions. Congress quickly passed a reauthorization bill in January 2015, with a retroactive date to Jan. 1. The federal terrorism backstop was back in force, but only after a flurry of unexpected administrative work that produced no lasting value.

While there was significant concern leading up to the 2014 expiration, the ultimate impact on the insurance industry following its expiration was minimal, largely due to its short duration and to the fact that insurers had adequate capital in place. Furthermore, many insurers believed that Congress would quickly reauthorize the program, leading many, including workers compensation insurers, to refrain from dramatically restricting coverage or increasing premiums.²²

During the time without a program, some policyholders bought stand-alone coverage on the private market; others were able to receive extended coverage from their insurers to address the gap in coverage; and some insurers waived any sunset clauses tied to reauthorization for some insureds (these clauses would have ended terrorism coverage with the expiration of the program on December 31, 2014).²³

Thankfully, there were no certified acts of terrorism during the brief period without the program. And the brevity of the expiration and Congress's stated commitment to expeditiously passing a reauthorization bill steadied the insurance marketplace for terrorism coverage. However, the expiration did not come without economic cost, particularly in cases where insurers had to negotiate with complicated accounts (such as trophy buildings in Manhattan) to ensure adequate coverage was maintained.²⁴

From I.I.I.'s news archives

After Congress fails to extend terror program, New York asks about impact

By Leslie Scism

The Wall Street Journal, December 30, 2014



Benjamin Lawsky, superintendent of the New York Department of Financial Services, has responded to potential economic damage that could follow Congress' failure to extend the federal terrorism program by surveying insurers on the issue. *The Wall Street Journal* has reviewed a copy of a letter Lawsky sent to more than 500 insurers operating in the state asking for details of any changes in coverage that will follow the expiration of the Terrorism Risk Insurance Program (TRIA). The program's supporters had expected Congress to extend TRIA before adjourning for the year, but Sen. Tom Coburn, (R-OK), blocked the Senate from considering an extension bill approved by the House. **In his letter Lawsky said the department is very concerned about the negative economic effect the expiration could have on the construction and insurance industries as well as other sectors of the state's economy unless the program is reinstated promptly.**

A failure to reauthorize: the implications of a world without TRIA

It remains uncertain what the world would be like if federal financial assistance were unavailable after a catastrophic terrorist event.

During the 2015 lapse of the program, the Congressional Budget Office (CBO) published a report that examined possible consequences if the backstop were not to return.²⁵ It noted that some terrorism coverage would probably still be available, particularly since insurers were already exposed to significant risks even with TRIP, given the program's trigger requirements, deductibles and copayments. Furthermore, insurer capacity has improved since the 9/11 attacks, and risks could be transferred to private reinsurance or to other lines, such as political violence insurance, or through other alternative-risk structures.

It said that the private market, "would not expand to fully offset the loss of federal reinsurance." The CBO cited the difficulties in pricing terrorism risk. It predicted:

- Consumers would have fewer insurers to choose from
- Their premiums would be higher
- Coverage limits would be lower

It added: "The effects on policyholders will probably be felt more acutely in high-risk areas, and economic activity (particularly construction) in such areas may be reduced."²⁶

There is evidence that the current market is in a similar state. A 2019 Marsh report argued – much as the CBO did four years earlier – that carriers may limit where they cover terrorism to low-risk locations. In high-risk areas, such as central business districts, premiums may be increased to compensate for the additional risk of a catastrophic loss without federal financial assistance. Insurers may lower their coverage limits to protect against catastrophic losses. There may also be more insurers moving into the private reinsurance market after the

end of TRIP, which could further affect premium pricing, as many buyers would be seeking to buy coverage in a reinsurance market with limited capacity.²⁷

As mentioned earlier, workers compensation insurers cannot exclude terrorism losses or alter their limits, techniques that property/casualty insurers in other lines can employ to limit their exposures. Workers compensation insurers would likely stop writing accounts in high-risk areas or to raise premiums, perhaps drastically, as happened in 2001 and 2002.²⁸ Employers would often be pushed into state funds or residual market pools, which are not structured to handle catastrophic terrorism losses. In this scenario, government assistance might be necessary even without TRIP. It shifted from federal assistance to state assistance (via state funds and residual pools).

The insurance and reinsurance industry are already making contingency plans, much as they did in 2014. While most people think of insurers as slow to respond and change, in circumstances like these, they have to look farther ahead than many people realize – well over a year. When an insurer writes a policy, it needs to know what the legal, cultural and business environment is like today, and what all of those will be like every day the policy is in force.

Since a typical policy lasts one year, insurers start off thinking a year ahead. And the negotiation for large policies, like those that cover terrorism targets like high-rise buildings, begins three to four months ahead of the day the policy renews. So insurers spent part of summer 2019 planning how they would approach terrorism insurance, and they are beginning to implement those plans right now.



And there are other forces to consider: regulation and reinsurance.

- Regulation: The vast majority of insurance policies and the rates charged under them are regulated. To change either policy language or price, insurers must file changes in advance with state insurance departments. Some states require prior approval. All that needs to be in place before the one-year-long policy is written. As a result, insurers are already well into the process of assessing how they would handle a world without TRIA.
- Reinsurance: The typical reinsurance contract – called *treaties* in the industry – covers all insurance policies in a book of business for a definite period, usually 12 months.
 - o One type of treaty covers all risks that the insurance company writes over those 12 months for the entire time those treaties are in force.

Consider one such treaty that began more than eight months ago – February 1, 2019 – and would end January 31, 2020. That treaty would reinsure a policy that began January 31, 2020, and would end a year later, January 30, 2021. The treaty therefore would be affected by whatever happens to the current federal back-stop for 30 days.

- o Another type of treaty usually cuts off all coverage as of a certain date – but in certain circumstances gives the insurance company the option to have the reinsurer cover risks in force on the last day of the treaty. The effect is the same as above. Reinsurance treaties being written now are determining how to proceed if TRIA expires.

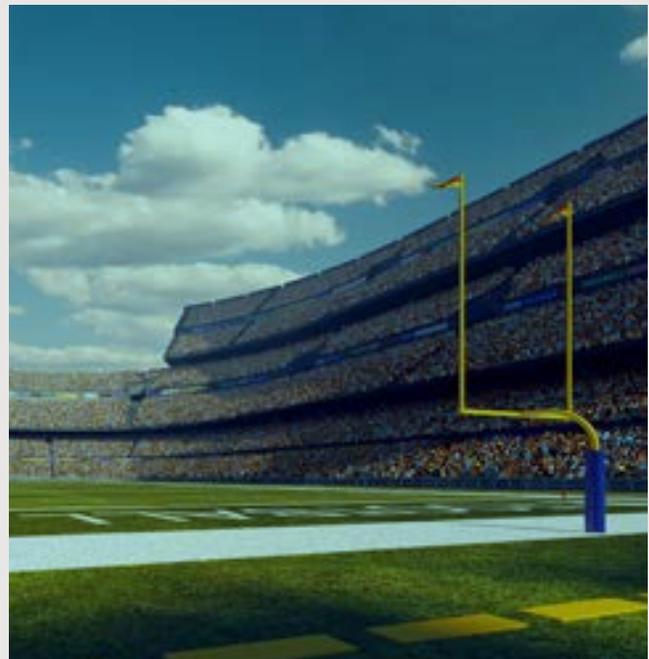
From I.I.I.'s news archives

Don't sweat the Super Bowl...but everything else?

By Allen Wastler

CNBC.com, December 15, 2014

Many industries are expressing concerns about Congress possibly missing the deadline for renewing the Terrorism Risk Insurance Act (TRIA), a law that was enacted after the 9/11 attacks that requires the government to share the cost of future attacks with insurers. Supporters of the renewal contend that without TRIA, affordable coverage for major events, such as the Super Bowl, and buildings and construction projects will not be available. If TRIA is not renewed, insurers are likely to invoke exclusions in existing policies that disallow claims for terrorism, and banks are likely to deny credit for the projects that require such insurance as part of a loan agreement. Although *Businessweek*, in its report on the impending deadline for the renewal of TRIA, suggested that the Super Bowl could be canceled if Congress does not approve an extension before the deadline, the NFL reports that the Super Bowl will be played.



Here are some of the actions being taken and contemplated:

- Organizations that draft policy language, such as ISO, are ensuring that the language they drafted the last time program expiration loomed remains up-to-date. In late September or early October 2019, they will send notices to member companies reminding them of the need to appropriately address the possibility that the program may expire.
- Reinsurers: Reinsurance sometimes covers the gaps left by TRIA – the deductible and the 20 percent share of losses above the deductible that falls to the insurance company – but market observers say there is no appetite to offer full coverage. The industry could withstand an event exceeding \$100 billion (worldwide insurance capital is in the trillions), but there are concerns that a single event that large may portend more such events, which might strain capacity in other lines of business.

One complication that arose in 2015 was that it was not unusual for reinsurance treaties to use the TRIA definition of a terrorism event. That definition required the Secretary of Treasury to certify the event. When TRIA expired, the certification process died with it, meaning no event could have met the TRIA definition of terrorism and triggered coverage under the treaty. Some reinsurers have included conditional language to handle expiration.

- A.M. Best monitors terrorism exposures for the companies that it assigns rates to. If a company has significant terrorism exposure that appears to depend on the federal backstop, A.M. Best contacts them. It wants to make sure it correctly understands the exposure, and what contingency plans the insurer has. The number of companies monitored is comparable to those in 2014.
- Common responses include:
 - Contingent endorsement: As described above, the endorsement makes terrorism coverage null and void if TRIA expires.
 - Contingent reinsurance arrangements. Some insurers have paid a fee to have the right to cede business under a reinsurance agreement that would come into force if the terrorism program expires.
 - Some insurers have policies that give them the right to cancel or fail to renew a policy should the program expire. States regulate how much notice an insurer must give policyholders.

Conclusion

The crux of the renewal debate is whether the market can absorb the loss of a federal backstop without dramatically affecting terrorism risk insurance affordability and availability.

There were two periods following 9/11 without a federal backstop for terrorism insurance. During the period immediately after the attacks, the market for terrorism risk insurance contracted severely, and had had potentially wide-reaching effects on the U.S. economy. During the second period, when TRIP lapsed at the end of 2014, the market remained stable, but largely because the lapse was so brief. Some have argued that the longer TRIP had been interrupted, the more the market would have been affected, particularly for workers compensation.

In other words, *how* the marketplace might change if the program were to disappear in 2021 is uncertain, but that it *will be* significantly disrupted seems likely.

Uncertainty around the future of TRIP imposes costs on its own, as insurers and reinsurers begin to renegotiate with the possibility that TRIP may not be re-authorized. Acts of terror are unpredictable. Uncertainty regarding government support and the regulatory environment complicates the issue.

Endnotes

1. The original legislation was known as the Terrorism Risk Insurance Act of 2002 and is referred to by its acronym, TRIA. Reauthorization occurred in the Terrorism Risk Insurance Extension Act of 2005 (TRIEA); the Terrorism Risk Insurance Program Reauthorization Act of 2007 (TRIPRA 2007); and the Terrorism Risk Insurance Program Reauthorization Act of 2015 (TRIPRA 2015). This paper uses the term TRIA to refer to all legislative action unless otherwise stated.
2. Fatalities do not include the deaths of the perpetrators. *CNN*. “[September 11 Terror Attacks Fast Facts](#).” July 19, 2019.
3. Reinsurance is insurance for insurance companies. It is a way of transferring or “ceding” some of the financial risk insurance companies assume in insuring cars, homes and businesses to another insurance company, the reinsurer. A reinsurance contract can protect an insurance company against large catastrophic losses. Reinsurance also enables an insurer to underwrite more or larger insurance policies. Insurance Information Institute. [Background on: Reinsurance](#).
4. Insurance Information Institute. [Terrorism and Insurance: 13 Years After 9/11 – The Threat of Terrorist Attack Remains Real](#). September 9, 2014.
5. By August 2002, 45 states and the District of Columbia and Puerto Rico had approved terrorism exclusions. California, Georgia, Florida, New York and Texas had either rejected these exclusions or withheld approval. The Geneva Association. [Insurance and September 11, One Year After](#). August 2002.
6. The Rand Corp. [The Impact on Workers’ Compensation Insurance Markets of Allowing the Terrorism Risk Insurance Act to Expire](#). 2014.
7. Of note, that workers compensation insurers were already facing an increasingly difficult business environment before 9/11, with coverage being restricted and premiums being increased, though the attacks did significantly exacerbate the issue.

“[Re-thinking Workers Comp](#).” *Rough Notes*. June 2, 2002; Robert P. Hartwig. “[September 11, 2001: The First Year](#).” *The John Liner Review*. October 2002; and “[Sept. 11 creates challenges for work comp](#).” *Business Insurance*. November 4, 2001.
8. [H.R. 3210](#).
9. U.S. Department of the Treasury. [Terrorism Risk Insurance Program](#).
10. Of interest, a 2015 [Congressional Budget Office report](#) noted that TRIA probably did increase the availability of terrorism insurance, but that its “broader economic effects” remain unclear. For example, TRIA might have encouraged construction and business activity in high-risk areas, where they might have moved to low-risk areas absent the program.
11. Reauthorizations of TRIA have altered some terms of the reinsurance arrangement, including the program trigger, the federal share of compensation and the marketplace aggregate retention amount, all of which will be discussed in this paper. The paper discusses terms in place scheduled to be in place in 2020, unless otherwise specified.
12. TRIP covers policies in the following lines of insurance: fire, allied lines, commercial multiple peril, ocean marine, inland marine, workers compensation, other liability, products liability, aircraft (all perils) and boiler and machinery. Exclusions include some or all policies covering medical malpractice, crop or livestock insurance, private mortgage insurance, title insurance, financial guaranty, health or life insurance (including group life), flood insurance, earthquake insurance, reinsurance, commercial auto insurance, burglary and theft, surety, professional liability and farm owners multiple peril. [Code of Federal Regulations, Title 31, Section 50.4](#).

13. Federal Insurance Office. [Report on the Effectiveness of the Terrorism Risk Insurance Program](#). June 2018.
14. Marsh. [2019 Terrorism Risk Insurance Report](#). August 2019.
15. Aon. [Reauthorization of the Terrorism Risk Insurance Act](#). Taken from Terrorism Insurance Working Group, National Association of Insurance Commissioners Summer National Meeting. August 4, 2019.
16. [Terrorism Risk Insurance Program Reauthorization Act of 2007](#).
17. Before 2020, the retention was set by statute. Starting in 2020 the retention is 20 percent of the annual average of the sum of all insurers' direct earned premium for the prior three years in lines the government reinsures. Because it is a function of industry premium, the retention is likely to rise over time.
18. Congressional Research Service. [Terrorism Risk Insurance: Issue Analysis and Overview of Current Program](#). July 23, 2014.
19. U.S. Department of the Treasury. [Guidance Concerning Stand-Alone Cyber Liability Insurance Policies Under the Terrorism Risk Insurance Program](#). December 27, 2016.
20. Matthew Lerner. "Stand-alone terrorism insurance evolving, attracting more attention." *Business Insurance*. June 4, 2018.
21. Insurance Information Institute. [Terrorism Risk: A Constant Threat. Impacts for Property/Casualty Insurers](#). March 2014.
22. Denise Johnson and Young Ha. "Workers' Comp Insurers Unfazed by TRIA Failure For Now But Expect Quick Fix." *Insurance Journal*. January 4, 2015.
23. Matthew Lerner. "TRIA's temporary lapse sparks interest in private coverage of terrorism risks." *Business Insurance*. January 18, 2015.
24. Mark A. Hofmann. "Filling the terror cover gap when Congress failed to act." *Business Insurance*. April 10, 2016.
25. Congressional Budget Office. "Federal Reinsurance for Terrorism Risk: An Update." January 18, 2015.
26. Ibid. p. 4.
27. [2019 Terrorism Risk Insurance Report](#). August 2019.
28. The Rand Corp. [The Impact on Workers' Compensation Insurance Markets of Allowing the Terrorism Risk Insurance Act to Expire](#). 2014.



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Authors

James Lynch, FCAS MAAA
Chief Actuary | Senior Vice President of Research and Education
Insurance Information Institute
jamesl@iii.org

Lucian McMahon, CPCU, ARM-E, AU-M
Senior Research Specialist
Insurance Information Institute