An Update on TRIA

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The Terrorism Risk Insurance Program Reauthorization Act of 2007 is set to expire on December 31, 2014. The terrorism endorsements that carriers begin to attach to policies on January 1, 2014, may not be ready for the possible expiration date. Insurance companies and producers are not necessarily aware of the potential problem. There are some remedies but they are not a 100% cure-all. The U.S. insurance industry would be benefited if Congress reauthorizes the Terrorism Risk Insurance Act (TRIA) by the end of 2013.

This article will provide a summary of TRIA including concerns expressed with reauthorizing TRIA.

What's in a Name?

There are various references in the U.S. insurance industry to the terrorism insurance program. The following is a brief overview of the titles and their acronyms:

- The federal government including the U.S. Department of the Treasury (Treasury) refers to the entire program as the Terrorism Risk Insurance Program (TRIP)
- First came Terrorism Risk Insurance Act (TRIA)
- Next came Terrorism Risk Insurance Extension Act (TRIEA)
- We are currently on the Terrorism Risk Insurance Program Reauthorization Act (TRIPRA)

For the most part, within the U.S. insurance industry the colloquial reference since its inception in 2002 has been TRIA. For the purposes of this article, I will refer to the above acts and program collectively as TRIA unless I am specifically talking about one of the other specific acts.

History

President George W. Bush is the only president to sign any of the acts. Following is a brief summary of the acts whereby the federal government provides backstop protection for carriers.

TRIA was signed into law on November 26, 2002. TRIA contains certain definitions, requirements, and procedures for insurers filing claims with the Treasury for payment of the federal share of compensation for insured losses under the TRIP. The Claims Procedures Rule, in particular, specifically addresses requirements for federal payment, the submission of an initial notice of insured loss, loss certifications, the timing and process for payment, associated recordkeeping requirements, as well as the Treasury's audit and investigation authority. These procedures will apply to all insurers that wish to receive their payment of the federal share of compensation for insured losses under TRIA. Insurers are advised to review the legislation and TRIP regulations before submitting information.

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TRIEA was signed by the President on December 22, 2005. The law extended the life of TRIA through December 31, 2007.

TRIPRA extended the program by seven years through December 31, 2014. It was signed on December 26, 2007. Several provisions of the initial Act were changed in the 2007 extension. Some of the more significant changes include:

- Revising the definition of a certified act of terrorism to eliminate the requirement that the individual(s) are acting on behalf of any foreign person or foreign interest
- Required clear and conspicuous notice to policyholders of the existence of the $100 billion cap.
- Fixing the Insurer Deductible at 20% of an insurer's direct earned premium, and the federal share of compensation at 85% of insured losses that exceed insurer deductibles.
- Fixing the program trigger at $100 million for all additional program years
- Requiring the U.S. Treasury to promulgate regulations for determining pro-rata shares of insured losses under the program when insured losses exceed $100 billion.
- Requiring the Comptroller General to study the availability and affordability of insurance coverage for losses caused by terrorist attacks involving Nuclear, Biological, Chemical, or Radiological (NBCR) materials and issue a report not later than one year after the enactment of TRIPRA.
- Requiring the Comptroller General to determine if there are specific markets in the United States with unique capacity constraints on the amount of terrorism insurance available and issue a report not later than 180 days after the enactment of the TRIPRA.
- Requiring the President's Working Group on Financial Markets to continue an ongoing study of the long-term availability and affordability of terrorism risk insurance.
- Accelerating the timing of the mandatory recoupment of the federal share through policyholder surcharges.

NBCR is not specifically included or excluded in TRIPRA. It is considered as not included.

continued on page 10

An Update on TRIA – continued from page 9

The Secretary of the Treasury is to certify acts of terrorism. To date, there has been no action on the Boston Marathon bombing of April 15, 2013. Many have expressed frustration in that fact and are encouraging Congress to improve the process of certifying acts of terrorism.

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TRIA requires insurers to offer terrorism coverage on the same terms and conditions as other types of coverages offered on commercial policies; both property and casualty including workers' compensation. Individual state laws govern workers' compensation policies and acts of terrorism are included. The policies cannot limit the coverage or the dollar amount of coverage.

Treasury implements TRIP. Their web site provides updated information on the Program, including announcements of all rulemakings, interpretive guidance, and requests for public comments. Following is a link to these: http://www.treasury.gov/resource-center/fin-mkts/Pages/program.aspx.

Concern

Various trade associations, carriers and reinsurers have expressed their concern on reauthorizing TRIA. All believe TRIA should be reauthorized. There are some groups that do not believe TRIA should be reauthorized.

The current program expires December 31, 2014. This is significant to the U.S. insurance industry now. The insurance industry would like Congress to take action now.

Typically in the commercial marketplace policies are issued for one year. January 1 is a significant renewal date for many policyholders. A policy issued on January 5, 2014, will not expire until January 5, 2015, which is past the expiration of TRIA. This means there is a five day gap. A policy issued on January 6, 2014, has a six day gap and so on. What's a carrier to do?

Many insurance companies need the support of the federal government to provide a viable market for terrorism coverage. With the support of the government, the carriers can continue to provide terrorism coverage in the marketplace. Terrorism coverage for NBCR perils is generally unavailable and the support of the federal government would be helpful. Three bills have been introduced in the 113th Congress to extend or modify TRIA. In the last few months Congress has held three hearings.

In listening to the September 19, 2013, United States House of Representatives Committee on Financial Services hearing entitled The Terrorism Risk Insurance Act of 2002, it became evident that if the act is reauthorized, the coverages and the deductibles will likely change. The United States Senate Committee on Banking, Housing, and Urban Affairs held a hearing on September 25, 2013 entitled: Reauthorizing TRIA: The State of the Terrorism Risk Insurance Market. Neither of the Committees has referred anything to a sub-committee for further review. The House of Representatives Committee on Financial Services also held a hearing on November 13, entitled: The Future of Terrorism Insurance: Fostering Private Market Innovation to Limit Taxpayer Exposure.

There are some consumer advocates and others that do not believe TRIA should be reauthorized. For the most part they feel taxpayers should not provide assistance and there are some that believe acts of terrorism can be modeled. If the acts of terrorism can be modeled, there is a certain amount of predictability and therefore terrorism coverage can be priced accordingly. The insurance industry does not believe the acts of terrorism can be modeled and thereby priced accurately and are urging Congress to help them by reauthorizing TRIA.

The Treasury along with other areas of the federal government are looking for additional information. Congress may not take action before the end of this year. The Federal Insurance Office (FIO), established by the Dodd–Frank Wall Street Reform and Consumer Protection Act, is to assist with the Terrorism Risk Insurance Program. FIO is not a regulator. FIO is a part of the Treasury. I have yet to see FIO providing any assistance with TRIA. Under Dodd-Frank, FIO is to monitor insurance, monitor the extent underserved communities and consumers have access to affordable non-health insurance products and represent the United States on prudential aspects with International Association of Insurance Supervisors (IIAS) and the Financial Stability Oversight Council (FSOC).

At a conference I recently attended, one of the speakers said their office was recently in touch with a legislative aide to U.S. Representative Michael Grimm (R-NY). Grimm serves on the Committee on Financial Services. The speaker said perhaps there will be movement in June or July 2014.

The U.S. insurance industry wants Congress to renew TRIA before 2014 begins.

NAIC and Advisory Organization Roles

The National Association of Insurance Commissioners (NAIC) and advisory organizations have assisted insurance companies so far; all indications are they will continue to do so.

Since the inception of TRIA, the NAIC has been active with implementing the program. The NAIC has assisted the state insurance regulatory bodies, insurers and the federal government. The NAIC and its members have also testified before both houses of Congress on the need to extend the program. In August 2013, the NAIC passed a resolution supporting the reauthorization.

The NAIC's Property and Casualty Insurance Committee and its Terrorism Insurance Implementation Working Group have adopted model bulletins. They have also adopted expedited filing forms under each of the acts intended

continued on page 11

An Update on TRIA – continued from page 10

to help state insurance regulators advise insurers about regulatory requirements related to providing terrorism insurance under the program. The model bulletins provide guidance to insurers related to rate filings. They also provide policy language that state regulators would find acceptable to protect U.S. businesses from acts of terrorism. The model bulletins describe important changes that are contained in the Act and inform insurers regarding whether rate and policy form filings might be needed. The NAIC also adopted model disclosure forms. The Treasury worked with the NAIC to assure that the disclosures satisfied the revised disclosure requirements required in the Act. Insurers may use the disclosures as drafted; they may modify the forms to meet individual circumstances or use forms that are substantially similar.

One of the services provided by the advisory organizations of Insurance Services Office (ISO) and American Association of Insurance Services (AAIS), is the promulgation of policy forms and endorsements for the property and casualty industry. These two organizations have terrorism forms approved for their member companies. They also have what many refer to as conditional endorsements approved for their members. These conditional endorsements help with the gap occurring with policies in force on January 1, 2015, as mentioned above. There are two groups of these conditional forms. The first is a set for policies issued in 2014 and the second is for policies issued after the expiration of TRIA. Florida and New York do not allow for conditional endorsements of TRIA.

Insurance carriers using their own forms have been making filings with insurance departments to get their conditional endorsements in place for use beginning January 1, 2014.

Worldwide Terrorism Coverage

The United States is not the only country where the government is involved with helping its citizens or industries with acts of terrorism. The following is a brief overview of the different programs in use today:

- Israel – It is complete government coverage with no private involvement since 1961
- Spain – Since 1954 – Government coverage, sold by private insurers
- France – Public-Private Risk Share with unlimited government reinsurance
- United Kingdom – Unlimited government credit to private pool
- Germany – Government-Backed private insurance company
- Netherlands – dedicated reinsurance company
- Other programs exist:
    - In the European countries of Austria, Belgium, Denmark, Italy, Northern Ireland and Switzerland
    - In other countries and regions including Australia, Hong Kong, India, Russia, Sri Lanka, Taiwan, Namibia and South Africa

As you can see from this list, the United States is not the only country currently providing assistance.

What Occurs Without a Reauthorization

Since the fall of 2008, the United States and global economies have had many low points. We have endured some difficult times with the great recession, the recent U.S. government shut down and catastrophes in-between.

Small companies and regional carriers are the most disadvantaged. These carriers can be helped by having lower deductibles in TRIA. If TRIA is not renewed, these companies may need to reduce their aggregate exposure to terrorism or buy more reinsurance on the back end. They need support.

If TRIA is not renewed in the U.S. by December 31, 2014, the world reinsurance markets may become inundated. Capacity may not be enough and the price may be driven up. This may cause increased pressures on smaller or regional companies to remain as they are today.

Perhaps the capital markets, insurance companies and reinsurers will develop varied securitization products to absorb the capacity.

Summary

As of the writing of this article it appears Congress will not act in reauthorizing TRIA in 2013. It appears Congress will discuss the reauthorization in 2014 but they may not take any action.

Many believe Congress should act to reauthorize TRIA by the end of 2013. In doing so, it would be helpful for the economy, the insurance industry, and for standardization and stabilization in the global insurance marketplace.

Whether or not TRIA is reauthorized in 2013 or 2014, the hearings on Capitol Hill earlier this year and in the press indicate Congress should reauthorize TRIA including but not limited to:

- Designing a program specifically for small and regional carriers;
- Including NBCR if it is included on the underlying policy;
- A tightening of the certification process; and,
- The consideration of adding cyber terrorism. ■

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