

Terrorism Risk Insurance Act of 2002

**Presentation for
AIMU on December 5, 2002**

Overview

- ***Effective 11/26/02: Currently in effect, but not retroactive***
- ***Creates a program through which the Federal Government will share with the insurance industry the risk of loss from certain future terrorist attacks aimed at U.S. interests***
- ***Program lasts through 12/31/05***

Applicability

- ***\$5 Million threshold for loss to be covered***
- ***\$100 Billion aggregate limit***
- ***Applies to all primary and excess P & C insurers***
 - **Admitted and surplus lines**
- ***No exemption for marine insurers***
- ***Does not apply to reinsurers***

Scope

- **Participation is mandatory through 12/31/04, with reassessment to take place for final year (2005)**
- **“Insured losses” covered by program are losses from terrorist events in the “United States”**

- ***“United States”***:

- **Includes the states, territorial sea and continental shelf; Puerto Rico, USVI, Guam, Samoa, Northern Mariana Islands**
- **Also includes U.S. Missions, U.S. air carriers, U.S. flagged vessels and foreign flagged vessels which are home ported and pay taxes in the U.S.**

Definition of Terrorism

- **“Terrorism” is specifically defined:**
 - **Does not include domestic terrorism**
 - **Does not include “war”**

Preemption of State Law

- ***State law is preempted only to the extent that it conflicts with TRIA (e.g., in the definition of “terrorism”, and in approved exclusions for terrorism)***
- ***“States retain their ability to invalidate a rate judged ‘excessive, inadequate or unfairly discriminatory’”
(AIA)***

Retention

- ***Per Insurer Retention (Deductible):
Based on a percentage of company-wide
direct written premium:***
 - 1% during “transition period” (until 12/31/02)
 - 7% during 2003
 - 10% during 2004
 - 15% during 2005
- **“Insurer” would include syndicates established pursuant to Federal law**

Government Share

- ***Federal Government then pays 90%, with insurer paying 10%***
- ***Insurer may reinsure its share***
- ***Insurer may recover from reinsurer or Federal Government, at its choice, provided it does not recover any amount in excess of its loss***

Effect

- ***Voids all policy exclusions for terrorism, as of 11/26/02***
- ***Coverage for terrorism must be offered in all policies for “insured losses,” and such coverage may not “differ materially from the terms, amounts, and other coverage limitations applicable to losses arising from events other than acts of terrorism”***
- ***Thus, exclusion for nuclear events, etc. may continue to be excluded***

- ***Exclusion may be reinstated if:***
 - **Insured authorizes reinstatement in writing, or**
 - **Insured fails to pay premium for terrorism coverage, after notice**

Notice Required

- ***Insurers must notify insureds of:***
 - **Premium for terrorism risk**
 - **Federal Government share of losses**

- ***Required notice depends on date of coverage (section 103)***
 - **90 days to provide notice of premium for terrorism for policies in effect prior to 11/26/02**
 - **Immediate for coverages and renewals incepting after 11/26/02, and for coverages and renewals incepting after 2/24/05, premium for terrorism risk must be shown on separate line item in policy**

- ***NAIC Models***
- ***Model Bulletin***
- ***Model Disclosures***
 - **Can disclosure be sent to broker?**
 - **Is acknowledgment of insured required?**

POLICYHOLDER DISCLOSURE NOTICE OF TERRORISM INSURANCE COVERAGE

-You are hereby notified that under the Terrorism Risk Insurance Act of 2002, effective November 26, 2002, that you now have a right to purchase insurance coverage for losses arising out of acts of terrorism, as defined in Section 102(1) of the Act: The term “act of terrorism” means any act that is certified by the Secretary of the Treasury, in concurrence with the Secretary of State, and the Attorney General of the United States—to be an act of terrorism; to be a violent act or an act that is dangerous to human life, property; or infrastructure; to have resulted in damage within the United States, or outside the United States in the case of an air carrier or vessel or the premises of a United States mission; and to have been committed by an individual or individuals acting on behalf of any foreign person or foreign interest, 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. Coverage under your existing policy may be affected as follows:

- **ANY IN-FORCE TERRORISM EXCLUSIONS FOR ACTS OF TERRORISM, AS DEFINED IN THE ACT, ALREADY CONTAINED IN YOUR POLICY OR INCLUDED IN AN ENDORSEMENT ARE NULLIFIED AS OF NOVEMBER 26, 2002.**
- **YOU SHOULD KNOW THAT COVERAGE PROVIDED BY THIS POLICY FOR LOSSES CAUSED BY CERTIFIED ACTS OF TERRORISM IS PARTIALLY REIMBURSED BY THE UNITED STATES UNDER A FORMULA ESTABLISHED BY FEDERAL LAW. UNDER THIS FORMULA, THE UNITED STATES PAYS 90% OF COVERED TERRORISM LOSSES EXCEEDING THE STATUTORILY ESTABLISHED DEDUCTIBLE PAID BY THE INSURANCE COMPANY PROVIDING THE COVERAGE. THE PREMIUM CHARGED FOR THIS COVERAGE IS PROVIDED BELOW AND DOES NOT INCLUDE ANY CHARGES FOR THE PORTION OF LOSS COVERED BY THE FEDERAL GOVERNMENT UNDER THE ACT.**
- **SELECTION OR REJECTION OF TERRORISM INSURANCE COVERAGE**
- **UNDER FEDERAL LAW, YOU HAVE THIRTY (30) DAYS TO CONSIDER THIS OFFER OF COVERAGE FOR TERRORIST ACTS AND SUBMIT THE PREMIUM REQUIRED. IF WE DO NOT RECEIVE THE QUOTED PREMIUM BY _____, THE TERRORISM EXCLUSION NULLIFIED BY THE ACT WILL BE REINSTATED ON _____, AND YOU WILL NOT BE COVERED FOR LOSSES ARISING FROM TERRORIST ACTS THAT WERE PREVIOUSLY EXCLUDED.**

- ***I hereby elect to purchase Terrorism coverage for a prospective premium of \$_____. I hereby elect to have the exclusion for terrorism coverage reinstated. I understand that I will have no coverage for losses arising from acts of terrorism that were previously excluded.***

- _____

Policyholder/Applicant's Signature Insurance Company _____

Print Name Policy Number _____ ***Date***

**POLICYHOLDER DISCLOSURE
NOTICE OF TERRORISM
INSURANCE COVERAGE**

Coverage for acts of terrorism is already included in your current policy. You should know that, effective November 26, 2002, under your existing coverage, any losses caused by certified acts of terrorism would be partially reimbursed by the United States under a formula established by federal law. Under this formula, the United States pays 90% of covered terrorism losses exceeding the statutorily established deductible paid by the insurance company providing the coverage. The portion of your annual premium that is attributable to coverage for acts of terrorism is: \$_____.

- **ACKNOWLEDGE THAT I HAVE BEEN NOTIFIED THAT UNDER THE TERRORISM RISK INSURANCE ACT OF 2002, ANY LOSSES CAUSED BY CERTIFIED ACTS OF TERRORISM UNDER MY POLICY COVERAGE WILL BE PARTIALLY REIMBURSED BY THE UNITED STATES AND I HAVE BEEN NOTIFIED OF THE AMOUNT OF MY PREMIUM ATTRIBUTABLE TO SUCH COVERAGE.**
- _____ **Policyholder/Applicant's**
Signature _____ **Print**
Name _____ **Date**
- **Name of Insurer:** _____
- **Policy Number:** _____
- **DRAFTING NOTE: An insurer may choose not to use the acknowledgement section for workers compensation.**

Payback

- *The Treasury will recoup expenditures (up to certain industry-wide aggregates) through a surcharge on commercial property/casualty policies capped at 3% of premiums charged annually. The Secretary will require insurers to collect the surcharges and may recoup additional amounts after considering the economic impact of such additional charges.*

Litigation Management

- No restrictions on claims against policyholders for punitive or non-economic damages. However, the legislation (1) creates an exclusive Federal cause of action, governed by applicable state law, for all suits for property loss, personal injury or death arising out of a terrorist event; (2) consolidates claims into a single Federal district court assigned by the Judicial Panel on Multidistrict Litigation; and (3) specifies that punitive damages will not be paid from Treasury funds. Consequently, insurance companies and their assureds are subject to claims for punitive and non-economic damages in accordance with existing law, and the federal program will not be available to pay such claims.

Civil Penalties

- *Provides for civil penalties (fines up to \$1 million) for failure to comply*

