

**THE FALL AND RISE OF TERRORISM INSURANCE
COVERAGE SINCE SEPTEMBER 11, 2001**

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I. INTRODUCTION

Since 1968, terrorists have carried out over 14,000 attacks worldwide.¹ The United States was virtually free of such incidents until 1993, when terrorists attacked the World Trade Center for the first time.² Not only has international terrorism arrived in the United States, but domestic terrorism has increased as well.³ The rise of terrorist activity in the United States, culminating in the

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1. James G. Rizzo, *Tragedy's Aftermath: The Impact of 9/11 on the Insurance Industry*, 46 BOSTON B.J. 10, 12 (2002).

2. *Id.*

3. *Id.* Two high profile examples of domestic terrorism are the Oklahoma City Federal Building bombing in 1995 and the nightclub bombing in Atlanta during the 1996 Olympics. *Id.*

September 11 attack, has had an undeniable impact on the insurance industry.⁴

This article will examine the impact of September 11 on the insurance industry. Part II will examine the state of terrorism insurance before September 11. Part III will address the effect of September 11 on the insurance industry. Part IV will discuss the Terrorism Risk Insurance Act of 2002.

II. TERRORISM INSURANCE BEFORE SEPTEMBER 11

A. *Policy Language*

Before the September 11 attack, terrorism in the United States was nearly unheard of. Accordingly, insurers gave little thought to coverage for terrorism. Few policies contained express terrorism exclusions. The exclusion that arguably came closest to excluding terrorism was the war risk exclusion. A typical war risk exclusion stated that the policy would not cover damage due to:

- (1) hostile or warlike action in time of peace or war, including action in hindering, combating or defending against an actual, impending or expected attack (a) by any government or sovereign power (de jure or de facto), or by any authority maintaining or using military, naval or air forces; or (b) by military, naval or air forces; or (c) by an agent of any such government, power, authority or forces, it being understood that any discharge, explosion or use of any weapon of war employing nuclear fission or fusion shall be conclusively presumed to be such a hostile or warlike action by such government, power, authority or forces;
- (2) insurrection, rebellion, revolution, civil war, usurped power, or action taken by governmental authority in hindering, combating or defending against such an occurrence; seizure or destruction under quarantine or custom's regulations, confiscation by order of any government or public authority, or risk of contraband or illegal trade.⁵

4. The impact of the September 11 attack on the insurance industry has been more than economic. Marsh & McLennan and Aon, two of the largest insurance brokers in the United States, lost 295 and 200 employees respectively in the World Trade Center attack. *Insurance and Terrorism, Hearing Before the House Financial Services Comm.*, 107th Cong. (2001) (statement of John T. Sinnott, Chairman and CEO, Marsh, Inc.).

5. STEVEN A. COZEN, *INSURING REAL PROPERTY* app. 7f-15 (2000) (ISO Form

The war risk exclusion was designed to prevent insurers from having to cover large losses from war and correlated warlike activities.⁶ War usually causes widespread damage to many policyholders within a region over an extended period, making it costly for insurers to cover.⁷

B. Case Law

Prior to September 11 only one case, *Pan American World Airways, Inc. v. Aetna Casualty & Surety Co.* (“Pan Am”), directly addressed whether terrorism was excluded by standard policy language.⁸ On September 6, 1970, Pan Am flight 083 was hijacked over London.⁹ Two men, acting on behalf of the Popular Front for the Liberation of Palestine (PFLP),¹⁰ seized control of the plane and forced the crew to fly to Beirut.¹¹ After an explosives expert boarded the plane in Beirut, the hijackers directed the crew to fly the plane to Cairo.¹² In Cairo, the hijackers evacuated the passengers and destroyed the plane.¹³

The issue in *Pan Am* was whether the hijacking qualified for any of the exclusions contained in a group of identical all-risk aviation policies.¹⁴ The relevant exclusions stated:

- c. This policy does not cover anything herein to the contrary notwithstanding loss or damage due to or resulting from:
 - 1. capture, seizure, arrest, restraint or detention or the consequences thereof or of any attempt thereat, or any taking of the property insured or damage to or

BU 00 01 (1976)).

6. Jeffrey W. Stempel, *The Insurance Aftermath of September 11: Myriad Claims, Multiple Lines, Arguments Over Occurrence Counting, War Risk Exclusions, the Future of Terrorism Coverage, and New Issues of Government Role*, 37 TORT & INS. L.J. 817, 844 (2002). It also includes certain losses that are unrelated to war. See *Blaine Richards & Co. v. Marine Indem. Ins. Co.*, 635 F.2d 1051 (2d Cir. 1980).

7. *Id.*

8. 505 F.2d 989 (2d Cir. 1974).

9. *Id.* at 993.

10. The PFLP was the second largest faction of the Palestinian Liberation Organization during the 1970s. See

http://news.bbc.co.uk/2/hi/in_depth/middle_east/israel_and_the_palestinians/profiles/1604540.htm (last visited Feb. 1, 2003). Founded in 1967, the PFLP combined Arab nationalism with Marxist Leninist ideology. *Id.*

11. *Pan Am. World Airways*, 505 F.2d at 993.

12. *Id.*

13. *Id.*

14. *Id.*

destruction thereof by any Government or governmental authority or agent (whether secret or otherwise) or by any military, naval or usurped power, whether any of the foregoing be done by way of requisition or otherwise and whether in time of peace or war and whether lawful or unlawful (this subdivision 1. shall not apply, however, to any such action by a foreign government or foreign governmental authority follow-the [*sic*] forceful diversion to a foreign country by any person not in lawful possession or custody of such insured aircraft and who is not an agent or representative, secret or otherwise, of any foreign government or governmental authority) . . . ;

2. war, invasion, civil war, revolution, rebellion, insurrection or warlike operations, whether there be a declaration of war or not . . . ;

3. strikes, riots, civil commotion¹⁵

The court examined the three exclusions and decided that none applied to the hijacking.¹⁶ Regarding the first exclusion, the court stated that in order to constitute a military or usurped power within the meaning of the exclusion, there must at least be action by a de facto government.¹⁷ The court then explained that the PFLP was not a de facto government in the sky over London at the time of the hijacking.¹⁸ Thus, the loss of the plane was not due to or resulting from a military or usurped power within the meaning of the exclusion.¹⁹

Similarly, the second exclusion did not apply to the hijacking.²⁰ Again, the court took the position that the PFLP was not a de facto government in the context of war.²¹ The court observed that case law established that war is a course of hostility engaged in by entities that have "significant attributes of sovereignty."²² The court reasoned that the PFLP could not have been acting on behalf of any of the states in which the PFLP existed when it hijacked the plane,²³ because those states uniformly opposed the hijacking.²⁴ The court acknowledged that war could exist between quasi-

15. *Id.* at 994.

16. *Id.* at 1009-22.

17. *Id.* at 1009.

18. *Id.*

19. *Id.*

20. *Id.* at 1012-19.

21. *Id.* at 1013.

22. *Id.* at 1012.

23. The PFLP existed in Jordan and Lebanon at the time. *Id.* at 1010.

24. *Id.* at 1013.

sovereign entities, such as guerrilla groups.²⁵ The court, however, stated that a guerrilla group must have at least some sovereignty before its activity can be called a war.²⁶ The facts of the case did not indicate that the PFLP was a quasi-sovereign entity.²⁷

The court also rejected the idea that the hijacking was a warlike operation,²⁸ basing its position on the following factors: "The hijackers did not wear insignia. They did not openly carry arms. Their acts had criminal rather than military overtones. They were the agents of a radical political group, rather than a sovereign government."²⁹ The court held that the hijacking was not an incidence of insurrection within the meaning of the second exclusion.³⁰

Reviewing the final exclusion, the court held that the hijacking was not a riot or civil commotion.³¹ The court ultimately found coverage under the policies.³²

The court in *Pan Am* did not expressly discuss a public policy rationale behind its holding. One commentator, however, explained that the purpose of the war risk exclusion is inconsistent with the exclusion of terrorist attacks:

[t]he purpose of the war risk exclusion is to prevent insurers from being wiped out by correlated claims (those emanating from one source or affecting a discrete group rather than a cross-section or large population) that inflict abnormal losses throughout society. An act of terrorism, even repeated acts of terrorism, does not inflict the countrywide correlated losses of a state of armed conflict (be it civil commotion, insurrection, civil war, or war between established nations). Even where the conflict does not involve conventional troops or established government, there is a difference between the occasional act of terror (*e.g.*, a car bomb at a Jerusalem intersection) and the hostilities of insurrection, militias, or guerrilla troops (*e.g.*, raids throughout the countryside in Peru by the Shining Path rebels).

25. *Id.*

26. *Id.*

27. *Id.* at 1015. Although the PFLP received financial support from Arab states, this fact was not sufficient to establish the PFLP as a quasi-sovereign entity. *Id.* No Arab state recognized the PFLP. *Id.*

28. *Id.*

29. *Id.*

30. *Id.* at 1018.

31. *Id.* at 1019-22.

32. *Id.* at 1022.

Although terrorist initiatives make normal loss prediction much more difficult, they do not pose the same risk calculation and risk distribution problems presented by more dispersed, semi-constant war. Although terrorism can of course strike anywhere or anytime, it tends not to engulf or affect entire regions on a sustained basis.³³

III. THE EFFECT OF SEPTEMBER 11 ON THE INSURANCE INDUSTRY

A. *The September 11 Attack*

On the morning of September 11, 2001, terrorists affiliated with Osama bin Laden's al-Qaeda organization hijacked four passenger jets within the United States. The terrorists flew two of the jets into the north and south towers of the World Trade Center in Manhattan, and caused the towers to collapse.³⁴ The terrorists flew the third jet into the Pentagon. The fourth jet crashed in rural Pennsylvania. Approximately 3,000 people died in the September 11 attack. Monetary losses are estimated to total between \$35 billion and \$75 billion.³⁵

B. *September 11 and the Insurance Industry*

1. *War Risk Exclusion*

In the wake of the September 11 attack, there was general concern that some insurers might attempt to deny coverage under existing policies by invoking the war risk exclusion.³⁶ On September 17, 2001, members of the U.S. House Financial Services Committee sent a letter to the National Association of Insurance

33. Stempel, *supra* note 6, at 852.

34. See, e.g., WILLIAM LAUGEWESCHE, *AMERICAN GROUND* (2002).

35. Mark A. Hofmann & Meg Fletcher, *Loss Picture Still Unclear*, *BUS. INS.*, Sept. 9, 2002, at 10.

36. The insurance industry would have had to rely on the war risk exclusion because most policies did not contain express terrorism exclusions. Even after *Pan Am*, terrorism exclusions were not added to policies because of "the competitiveness of the market, the perception of adequate protection created by complex ceding and retrocession arrangements, and the failure of actuarial worst-case maximum liability models to contemplate a terrorism-generated clash event of such gigantic proportions." Jane Kendell, *The Incalculable Risk: How the World Trade Center Disaster Accelerated the Evolution of Insurance Terrorism Exclusions*, 36 *U. RICH. L. REV.* 569, 581-82 (2002).

Commissioners (“NAIC”).³⁷ The government’s use of war-like language in response to the attack was asserted to be simply rhetoric and not a reflection of the reality of the attack.³⁸ The letter stated that it would be unpatriotic of insurers to try to avoid coverage of the attack based on “legal maneuvering.”³⁹ State insurance commissions agreed. For example, on September 24, 2001, Minnesota Commerce Commissioner Jim Bernstein issued the following press release, warning insurers not to deny coverage based on the war risk exclusion:

Since the tragic events of September 11, concerns have been raised that insurance companies may try to invoke an “act of war exclusion” in the insurance policies covering the loss of life and property that resulted from these horrific attacks. As Minnesota’s insurance regulator, it is clear to me that these exclusions cannot, and should not, be applied in this case [I]t seems clear that the attacks in New York, on the Pentagon, or on the plane that crashed in Pennsylvania, do not constitute “acts of war” as contemplated by the language of these exclusions. An “act of war” must be committed by a foreign government, a sovereign, or at least a recognizable authority utilizing military force.

. . .

However, in the event that an insurer were to attempt to take unfair advantage of its policyholders by hiding behind an act of war exclusion, I will not hesitate to intervene. I will call upon every resource available to me to guarantee that every insurance company under the authority of this Department fulfills its contractual, moral, and patriotic obligations to those who suffered loss of life or property as a result of these tragic events.⁴⁰

In the face of such pressure, insurance industry leaders announced that their companies would not deny coverage based

37. *Officials Ponder Reopening of Reagan Airport*, ST. LOUIS POST DISPATCH, Sept. 19, 2001, at A7. The NAIC is the organization of insurance regulators from the fifty states, Washington D.C., and the U.S. territories. See <http://www.naic.org>. Insurance is largely regulated at the state level, as opposed to Congressional control. See, e.g., McCarren-Ferguson Act, 15 U.S.C. §§ 1011-1015 (2002).

38. *Officials Ponder Reopening*, *supra* note 37.

39. *Id.*

40. Press Release, Minnesota Commerce Commissioner Jim Berstein, Insurance Policy “Act of War” Exclusion (Sept. 24, 2001), *available at* <http://www.commerce.state.mn.us/pages/NewsReleases/Releases2001/News010924.htm>.

on the war risk exclusion.⁴¹

2. *Terrorism Exclusion*

Although it is believed that insurers have not denied coverage under existing policies based on the war risk exclusion, the industry quickly moved to add an express terrorism exclusion to new policies and policies due to be renewed.⁴² In November 2001,

41. Joseph B. Treaster, *After the Attacks: The Insurers*, N.Y. TIMES, Sept. 17, 2001, at C10. During congressional hearings in October 2001, the chairman of General Re Corporation testified that he was "proud of the way [the insurance industry] stepped up to the losses of September 11th without complaint." *The Availability of Terrorism Insurance Coverage, Hearing Before the Senate Banking, Housing, and Urban Affairs Comm.*, 107th Cong. (2001) (statement of Ronald E. Ferguson, Chairman, General Re Corp.).

One commentator has observed that "[i]n light of the history of war-risk exclusion litigation, insurers can hardly be accused of making a gratuitous gesture in the aftermath of the September 11 tragedy." Stempel, *supra* note 6, at 857-58. This commentator argues that the insurers would have lost had *Pan Am* had been applied to the September 11 attack:

The September 11 terrorists did not want to conquer the United States (war), depose the government (insurrection) or support a faction during domestic strife (civil war). The September 11 terrorism, despite its awful magnitude, is more properly seen as a gruesomely heightened version of the Pan Am hijacking rather than as an incident of war.

...

If anything, one can characterize the September 11 hijackers as less political than those who took the Pan Am plane thirty years earlier.

Id. at 853, 858.

The commentator further noted that the insurance industry has not changed the wording of the war risk exclusion since *Pan Am*. *Id.* at 861. If insurers meant to include terrorism in the war risk exclusion, they could have changed its wording after *Pan Am*. *Id.* Not all commentators agree that the insurers would have lost under *Pan Am*. For instance, another commentator has argued that September 11 was an act of war:

The events of September 11 involved the use of hijacked commercial airliners as weapons to attack civilian and military targets on sovereign American territory. The only analogous action in modern times is the Japanese attack on Pearl Harbor. Both involved the use of airplanes as weapons to attack the United States, rather than as the target of the attack as in *Pan Am*.

...

An attack by one nation on the people and sovereign territory of another nation is an act of war because the essence of war is the invasion of another country.

Annemarie Sedore, *War Risk Exclusions in the 21st Century: Applying War Risk Exclusions to the Attacks of September 11th*, 82 B.U. L. REV. 1041, 1047-48 (2002).

42. Without insurance coverage for terrorist attacks, the sole means by which property owners could recoup their losses would be civil litigation against the terrorists and their supporters. See, e.g., Antiterrorism Act, 18 U.S.C. § 2333 (2002)

Insurance Services Office, Inc. (“ISO”) filed endorsements that insurers could use to exclude coverage for terrorism in both their commercial property and liability forms.⁴³ The proposed exclusion defines a terrorist act as follows:

[t]errorism means activities against persons, organizations or property of any nature:

(1) that involve the following or preparation for the following:

- use or threat of force or violence; or
- commission or threat of a dangerous act; or
- commission or threat of an act that interferes with or disrupts an electronic, communication, information or mechanical system; and

(2) when one or both of the following applies:

- the effect is to intimidate or coerce a government or the civilian population or any segment thereof, or to disrupt any segment of the economy; or
- it appears that the intent is to intimidate or coerce a government, or to further political, ideological, religious, social or economic objectives or to express (or express opposition to) a philosophy or ideology.⁴⁴

ISO subsequently amended its filing to narrow the application of the terrorism exclusion by establishing a \$25 million damage threshold for the exclusion to take effect.⁴⁵ This threshold did not apply in cases of terrorist attacks using nuclear, chemical, or biological materials.⁴⁶ Such attacks were entirely excluded from coverage.⁴⁷ The endorsement for liability coverage provided an

(providing that “[a]ny national of the United States injured in his or her person, property, or business by reason of an act of international terrorism . . . may sue therefor in any appropriate district court of the United States and shall recover threefold the damages he or she sustains”); Racketeer Influenced and Corrupt Organization Act (“RICO”), 18 U.S.C. § 1964 (2002); *Boim v. Quranic Literacy Inst.*, 291 F.3d 1000 (7th Cir. 2002) (recognizing civil liability under 18 U.S.C. § 2333 for funding a foreign terrorist organization).

43. Press Release, Insurance Services Organization, ISO Gratified by Insurance Regulators’ Call for Approval of Terrorism Exclusions (Dec. 21, 2001) available at http://www.iso.com/press_releases/2001/12_21_01.html. (last visited Feb. 3, 2003). ISO produces standardized policy contract language for the property/casualty insurance industry. See <http://www.iso.com>.

44. RICHARD J. HILLMAN, U.S. GEN. ACCOUNTING OFFICE, TERRORISM INSURANCE: RISING UNINSURED EXPOSURE TO ATTACKS HEIGHTENS POTENTIAL ECONOMIC VULNERABILITIES 17-18 (2002).

45. Press Release, *supra* note 43.

46. *Id.*

47. HILLMAN, *supra* note 44, at 19.

additional threshold for serious physical injury to fifty or more persons.⁴⁸ If either threshold was met or exceeded, the exclusion would apply, and the policy would not cover any loss.⁴⁹ On December 21, 2001, ISO announced that the NAIC had agreed to the wording of the exclusion.⁵⁰

Most states reacted to the new terrorism exclusion with approval, although the approval was often qualified.⁵¹ For instance, on January 16, 2002, the Minnesota Department of Commerce issued a memorandum to all property and casualty insurance companies licensed to do business in Minnesota regarding the new terrorism exclusion.⁵² The memo announced that the Commerce Department would accept the exclusionary language developed by ISO.⁵³ The Commerce Department, however, would not accept terrorism exclusions for use with personal lines insurance products written in Minnesota.⁵⁴ The Commerce Department also limited insurers' use of the exclusion for commercial lines products written in Minnesota to those where the companies were unable to obtain reinsurance for damages resulting from acts of terrorism.⁵⁵ Finally, the memorandum stated that if the federal government established a program providing reinsurance for terrorism coverage, insurers would be required to withdraw any corresponding exclusionary language.⁵⁶

By February 22, 2002, 45 states, plus the District of Columbia and Puerto Rico, had approved the new terrorism exclusion.⁵⁷ The remaining states expressed concerns such as:

48. Press Release, *supra* note 43.

49. *Id.*

50. *Id.*

51. HILLMAN, *supra* note 44, at 5. Several states issued bulletins granting conditional approval to the exclusion but adding a sunset provision based on the passage of a federal backstop law. For Status of Terrorism Filing, *see* ISO Web site, at <http://www.iso.com/filings/update.html>.

52. Memorandum from the Minnesota Department of Commerce, Policy Analysis Division, Property and Casualty Section to All Property and Casualty Insurance Companies and Rate Service Organizations Licensed to Do Business in Minnesota (Jan. 16, 2002), *available at* <http://www.commerce.state.mn.us/pages/Insurance/P-C/terrorism.pdf> (last visited Feb. 3, 2003).

53. *Id.* at 3.

54. *Id.* at 1. Personal lines typically refer to home- and automobile-related coverage.

55. *Id.*

56. *Id.* at 4.

57. HILLMAN, *supra* note 44, at 5.

The low thresholds for the exclusion (\$25 million or 50 serious casualties); the all-or-nothing nature of the threshold (insurers pay nothing if either threshold is reached); the aggregation of all losses from multiple incidents within a 72-hour period and across most of North America into one event if they “appear to be carried out in concert or to have a related purpose or common leadership;” fear that the exclusion would leave some small and medium-size businesses that could least afford the losses from a terrorist attack totally unprotected; and worry that the included definition of terrorism is overly broad.⁵⁸

3. *Federal Backstop Program*

Insurers did not limit their efforts to excluding terrorism coverage from new and renewing policies. Insurers also lobbied Congress for a federal backstop program.⁵⁹ Under such a program, the federal government would act as an insurer, providing coverage for terrorism.⁶⁰ Congress held hearings on the issue in late October 2001.⁶¹ With industry executives, academics, and public officials providing testimony at the hearings, three questions emerged: (1) whether the insurance industry could survive September 11, (2) whether the federal government should be involved in the insurance business, and (3) who would benefit from a federal backstop program.⁶²

With regard to the first question, members of the insurance industry posited that the losses generated by the September 11 attack threatened the survival of the insurance industry. For instance, Robert E. Vagley, President of the American Insurance Association, testified that the September 11 attack were the most costly insured event in history.⁶³ He stated that losses would exceed the entire property/casualty industry’s net income for the previous three years.⁶⁴ In other words, September 11 wiped out three years

58. *Id.*

59. *Hearing on the Treasury Dep’t, Before the Senate Banking, Housing and Urban Affairs Comm.*, 107th Cong. (2001).

60. *Id.*

61. *Id.*

62. *Id.*

63. *Terrorism Insurance, Hearing Before the Senate Commerce, Science and Transportation Comm.*, 107th Cong. 2 (2001) (statement of Robert E. Vagley, President, American Insurance Association).

64. *Id.* at 2.

of industry profits, including investment income.⁶⁵

The NAIC took the opposite position, arguing that the insurance industry was well capitalized and able to withstand claims from the September 11 attack.⁶⁶ Diane Koken, Chair of the NAIC's Northeast Zone, testified, "[t]he United States insurance industry is a \$1 trillion business with assets of more than \$3 trillion. Preliminary loss estimates of \$30 billion to \$40 billion represent just 3 to 4 percent of the premiums written in 2000."⁶⁷ Senator Bill Nelson of Florida took a similar position. He stated that the surplus in property and casualty lines was between \$300 billion and \$350 billion, that the overall insurance industry surplus was about \$550 billion, and that the industry had about \$3 trillion worth of assets.⁶⁸ Furthermore, Koken pointed out that the insurance industry has historically shown itself able to respond to huge disasters.⁶⁹ For example, during the 1980's and 1990's, claims relating to asbestos, medical malpractice, and environmental pollution were unforeseen by the insurance industry.⁷⁰ The industry was nevertheless able to weather these large financial losses.⁷¹

With regard to the second question, David A. Moss, Associate Professor at Harvard Business School, testified that government has long been involved with private sector risk.⁷² He said, "[t]he prospect of involving the federal government in the management of terror related risks would in no way constitute a radical departure from the path of American policymaking."⁷³ He gave several successful examples of government involvement in risk management, including limited liability loss, federal deposit insurance, and the cap on credit card liability.⁷⁴ Moss also noted,

65. *Id.*

66. *The Role of the Federal Government in Assuring that Insurance for Terrorist Acts Remains Available to American Consumers, Hearing Before the Senate Commerce, Science and Transportation Comm.*, 107th Cong. 3 (2001) [hereinafter *Hearings*] (statement of Diane Koken, Commissioner of Insurance, Pennsylvania).

67. *Id.* at 3.

68. *Hearing on the Treasury Dep't, Before the Senate Banking, Housing and Urban Affairs Comm.*, 107th Cong. (2001) (statement of Bill Nelson, U.S. Senator).

69. *Hearings, supra* note 66.

70. *Id.* at 4.

71. *Id.*

72. *The Future of Insuring Terrorism Risks, Hearing Before the Senate Commerce, Science, and Transportation Comm.*, 107th Cong. (2001) (statement of David A. Moss, Associate Professor, Harvard Business School).

73. *Id.* at 2.

74. *Id.*

however, that federal disaster policy has encouraged construction in hazard-prone areas.⁷⁵ Similarly, the National Taxpayers Union (“NTU”)⁷⁶ argued that a federal backstop program would create moral and security hazards.⁷⁷ The NTU argued that such legislation would remove any incentive to underwrite risks with any caution, to avoid concentrated risks, or to help clients reduce risk.⁷⁸

The third question generated some of the most heated comments. Senator Jim Bunning of Kentucky stated that he had “real problems with the federal government guaranteeing profits for insurance and reinsurance companies.”⁷⁹ In contrast, the CEO of Kemper Insurance Companies took the position that the legislation would not be a bailout for the insurance industry.⁸⁰ He argued the primary beneficiaries of the legislation would be insurance customers and the U.S. economy.⁸¹ Similarly, the American Counsel for Capital Formation (“ACCF”)⁸² urged that if state insurance regulators refused to permit insurers to exclude terrorism coverage, insurers might withdraw completely from those states, thereby hurting local businesses.⁸³ The ACCF also argued that apartment residents would suffer higher housing costs because real estate operating expenses would rise without terrorism insurance.⁸⁴ The ACCF predicted that rising operating costs would be passed on to low and moderate-income families.⁸⁵

The House introduced a federal backstop bill on November 1,

75. *Id.*

76. The NTU lobbies Congress regarding fiscal and economic policy. See <http://www.ntu.org>.

77. *Proposals for Terrorism Reinsurance, Hearing Before the House Financial Services Comm.*, 107th Cong. 1 (2001) (statement of David L. Keating, Senior Counselor, National Taxpayers Union).

78. *Id.*

79. *Hearing on the Treasury Dep’t*, *supra* note 68 (statement of Jim Bunning, U.S. Senator).

80. *Insurance and Terrorism, Hearing Before the House Financial Services Comm.*, 107th Cong. 5 (2001) (statement of David B. Mathis, Chairman and CEO, Kemper Insurance Cos.).

81. *Id.*

82. The ACCF, composed of organizations such as the National Apartment Association and the National Association of Realtors, states that its mission is “to promote the saving and investment essential to economic growth, job creation, and international competitiveness.” See <http://www.accf.org/Mission.htm>.

83. *Terrorism Risk, Hearing Before the Senate Commerce, Science, and Transportation Comm.*, 107th Cong. (2001) (statement of American Council for Capital Formation).

84. *Id.*

85. *Id.*

2001, but it was not immediately made into law. The Consumer Federation of America⁸⁶ issued a report in January 2002 entitled *How the Lack of Federal Backup for Terrorism Insurance has Affected Insurers and Consumers: An Analysis of Market Conditions and Policy Implications*.⁸⁷ In the report, the CFA came to five major conclusions about the current state of the insurance market, especially as it related to terrorism coverage. First, the CFA concluded that the insurance industry was overcapitalized.⁸⁸ Second, high insurance rates were a problem for mid- and larger-size companies.⁸⁹ Third, the economic cycle of the industry caused the rate problem, not solely the terrorist attack.⁹⁰ Fourth, banks were loaning money to most businesses, despite the terrorism insurance situation.⁹¹ Fifth, there were “no widespread economic problems related to the terrorism insurance situation in America.”⁹²

Based on these conclusions, the CFA urged Congress not to rush into passing a federal backup plan.⁹³ It asked Congress not to provide the insurance industry with handouts.⁹⁴ Instead, it suggested that Congress create incentives for the development of private sector alternatives.⁹⁵ In addition, the CFA recommended that Congress address rate gouging in any bill that passed.⁹⁶

The CFA also made recommendations to the states. It urged the states to reject exclusions for personal lines of coverage⁹⁷ and for commercial lines for small and mid-sized insureds.⁹⁸

86. The CFA is a pro-consumer advocacy and education organization. See <http://www.consumerfed.org>.

87. J. ROBERT HUNTER, *HOW THE LACK OF FEDERAL BACKUP FOR TERRORISM INSURANCE HAS AFFECTED INSURERS AND CONSUMERS: AN ANALYSIS OF MARKET CONDITIONS AND POLICY IMPLICATIONS* (2002). In October of 2001, the CFA had announced that it supported a federal reinsurance program for terrorism. *Terrorism Insurance, Hearing Before the Senate Banking, Housing and Urban Affairs Comm.*, 107th Cong. (2001) (statement of J. Robert Hunter, Director of Insurance, Consumer Federation of America).

88. HUNTER, *supra* note 87, at 11.

89. *Id.*

90. *Id.* at 1.

91. *Id.*

92. *Id.*

93. *Id.* at 10-11.

94. *Id.* at 11. The CFA stated that “[i]f any federal back up is enacted, it should be a loan program modeled after the House bill, not a give away program that does not require . . . assistance to be paid back.” *Id.*

95. *Id.*

96. *Id.* at 12.

97. *Id.*

98. *Id.*

Additionally, the CFA urged states to review pricing in the marketplace to prevent price gouging.⁹⁹ The CFA was particularly concerned about non-terror rates for smaller and mid-sized commercial insureds.¹⁰⁰

One month after the CFA issued its report, the General Accounting Office (“GAO”)¹⁰¹ produced its own report on terrorism and insurance, entitled *Rising Uninsured Exposure to Attacks Heightens Potential Economic Vulnerability*.¹⁰² The purpose of the report was to describe to Congress “how, in the absence of federal action, insurance companies and the marketplace have reacted to the events of September 11th.”¹⁰³ The report was based on discussions with insurance industry participants, regulators, policyholders, and other affected parties.¹⁰⁴ These sources spoke to the GAO on condition of anonymity because they feared the consequences of their lack of terrorism coverage becoming common knowledge.¹⁰⁵

The GAO’s report opened by explaining that prior to September 11, 2001, insured losses resulting from terrorism in the United States were extremely infrequent.¹⁰⁶ Because their experience with terrorism was limited, it was virtually impossible for insurers to set actuarially sound prices for terrorism coverage after September 11.¹⁰⁷ As a result, many insurers considered terrorism an uninsurable risk and decided not to offer insurance for it.¹⁰⁸ As insurance contracts came up for renewal, reinsurers and insurers took the opportunity to reduce their exposure to terrorism risk.¹⁰⁹ Most reinsurance contracts expired at the beginning of January 2002.¹¹⁰

In contrast to reinsurance contracts, regular insurance

99. *Id.* at 13.

100. *Id.*

101. The GAO is the investigative arm of Congress. See <http://www.gao.gov>. The GAO “exists to support the Congress in meeting its Constitutional responsibilities and to help improve the performance and ensure the accountability of the federal government for the American people.” *Id.*

102. See HILLMAN, *supra* note 44.

103. *Id.* at 1.

104. *Id.*

105. *Id.*

106. *Id.* at 3.

107. *Id.*

108. *Id.*

109. See *id.*

110. *Id.* at 4. There are two kinds of reinsurance contracts: treaty and facultative. Treaty reinsurance is usually on going. *Id.*

contracts were eligible for renewal at various dates throughout the year.¹¹¹ Therefore, when reinsurers withdrew from the market at the beginning of the year, many direct insurers' exposures increased dramatically because the primary insurance contracts were not scheduled for renewal until a later date.¹¹² Also, unlike reinsurance, changes to the coverage provided by direct insurers require regulatory approval in most states.¹¹³ Direct insurers had to overcome this additional hurdle to drop terrorism coverage and limit their exposure to loss.¹¹⁴

As the insurance industry limited its exposure to terrorism risks, the economic burden of a terrorist attack shifted to policyholders.¹¹⁵ Some property owners and developers have had to go without insurance or partially insure assets because they were unable to obtain meaningful terrorism coverage.¹¹⁶ Even when limited coverage was available, insurers set premiums high because of uncertainties about the frequency and cost of terrorist attacks.¹¹⁷ In addition to fears regarding their personal liability for terrorist attacks on their properties, property owners also faced problems because lenders required insurance coverage on the collateral that backed existing mortgage loans.¹¹⁸ Based on the above, the GAO's report concluded the "resulting economic drag could slow economic recovery and growth."¹¹⁹

On August 22, 2002, the CFA revisited the issue of terrorism insurance and updated its previous positions on how the lack of a federal backup program for terrorism insurance was affecting insurers and consumers.¹²⁰ The CFA concluded that a broad-based terrorism insurance crisis did not exist.¹²¹ Rather, it observed that the capacity to write insurance had increased.¹²² The CFA stated

111. *Id.*

112. *See id.*

113. *Id.* at 4-5. Reinsurers are generally subject to less state regulation than insurers. *See, e.g.*, MINN. STAT. § 70A.02 subd. 2(2) (2002) (excluding reinsurance from form and rate regulation).

114. HILLMAN, *supra* note 44, at 5.

115. *Id.* at 7.

116. *Id.* at 10.

117. *Id.*

118. *Id.* at 11.

119. *Id.* at 2.

120. J. ROBERT HUNTER, HOW THE LACK OF FEDERAL BACK UP FOR TERRORISM INSURANCE HAS AFFECTED INSURERS AND CONSUMERS: AN UPDATE (2002).

121. *Id.* at 2.

122. *Id.* at 3-4.

that terrorism coverage was available in most cases.¹²³ In addition, rates were stabilizing and increases were starting to slow.¹²⁴ Finally, the CFA took the position that “terror insurance availability [was] having virtually no impact on lending.”¹²⁵

Again, the CFA recommended that Congress refrain from enacting a broad backup bill¹²⁶ and giving handouts to insurers,¹²⁷ while creating incentives for the development of private-sector alternatives,¹²⁸ and addressing rate gouging.¹²⁹ The CFA also urged the states to do more to stop price gouging by insurers.¹³⁰

The CFA concluded its August report by forcefully expressing its opposition to the proposed federal backstop legislation, which the Senate passed in June 2002:

Insurers have offered absolutely no evidence to justify exposing taxpayers to significant financial risk in the event of future terrorism losses. Taxpayers are already 100% liable for attacks on government facilities, like the Pentagon, and 35% exposed to all other terrorist losses (because of the corporate tax write-off rate). To go further when the private market is largely covering terrorism risks is inappropriate and wasteful To provide federal backup for these risks is not only unnecessary, but would provide insurers with a windfall Congress should limit taxpayer exposure to areas of real need, such as very large commercial and real estate risks.¹³¹

Insurer and policyholder groups strongly disagreed with the CFA.¹³² These groups argued that any available terrorism insurance was limited in terms of capacity and coverage.¹³³ Even if coverage was available, it was too expensive to be within reach of most buyers.¹³⁴ In addition, buyer and insurer groups argued that without a federal coverage backstop, another terrorist attack would

123. *Id.* at 5-6.

124. *Id.* at 7-8.

125. *Id.* at 9.

126. *Id.* at 10.

127. *Id.* at 11.

128. *Id.*

129. *Id.* at 12.

130. *Id.*

131. *Id.* at 13.

132. Gavin Souter, *Buyers, Insurers Rebut CFA Report on Terrorism Cover*, BUS. INS., Aug. 26, 2002, at 1.

133. *Id.*

134. *Id.*

devastate the insurance market.¹³⁵

IV. THE TERRORISM RISK INSURANCE ACT OF 2002

On November 26, 2002, the President signed the Terrorism Risk Insurance Act (TRIA) into law.¹³⁶ TRIA came into being nearly one year after the House passed a terrorism insurance bill that would have allowed the federal government to lend money to insurers after a terrorist attack, as long as the insurers paid back the government.¹³⁷ The House bill protected property owners against punitive damages.¹³⁸ The Senate did not pass its version of the bill until June due to disputes over whether it should contain certain so-called tort reforms.¹³⁹ Under the Senate version, insurers and the federal government would share the cost of terrorist attacks and insurers would not be required to pay back the government's share.¹⁴⁰ The only tort reform included in the Senate bill was a prohibition against using federal funds to pay punitive damages.¹⁴¹

President Bush believed that the bill would revive the economy, and the administration became involved in the negotiations over the bill.¹⁴² The administration favored tort limitations and cost sharing.¹⁴³ Progress on the bill was stalled until the administration agreed to drop its push for the inclusion of tort reforms.¹⁴⁴ Congressional Democrats, in turn, agreed to the consolidation of multiple lawsuits for property loss, personal injury or death from terrorist attacks in one federal district court.¹⁴⁵

A. *Main Features of TRIA*

TRIA nullifies all existing terrorism exclusions¹⁴⁶ and requires all property and casualty insurers to offer terrorism insurance for

135. *Id.*

136. Pub. L. No. 107-297, tit. 1, § 101-08 (codified as amended at 15 U.S.C. § 6701).

137. Mark A. Hofmann & Jerry Geisel, *Terror Cover Deal Reached*, BUS. INS., Oct. 21, 2002, at 1-4.

138. *Id.*

139. *Id.*

140. *Id.*

141. *Id.*

142. *Id.*

143. *Id.*

144. *Id.*

145. *Id.*

146. Pub. L. No. 107-297, § 105(a).

the next two years.¹⁴⁷ The Treasury Secretary¹⁴⁸ may extend the requirement by an additional year.¹⁴⁹ Under TRIA, the coverage offered for terrorism cannot materially differ from other types of coverage.¹⁵⁰ If states determine the rates charged by insurers for terrorism insurance are too high, the states can invalidate those rates.¹⁵¹ TRIA permits policyholders to decline to purchase terrorism coverage.¹⁵² Insurers must disclose the premiums charged to policyholders for terrorism coverage within time limits specified by the statute.¹⁵³

To activate the federal backstop program under TRIA, the following requirements must be met. First, the event causing the loss must be certified as a foreign act of terrorism.¹⁵⁴ Second, the

147. *Id.* § 103(c). TRIA defines an insurer as any entity, including any affiliate thereof—
(A) that is—

(i) licensed or admitted to engage in the business of providing primary or excess insurance in any State;

(ii) not licensed or admitted as described in clause (i), if it is an eligible surplus line carrier listed on the Quarterly Listing of Alien Insurers of the NAIC, or any successor thereto;

(iii) approved for the purpose of offering property and casualty insurance by a Federal agency in connection with maritime, energy, or aviation activity;

(iv) a State residual market insurance entity or State workers' compensation fund; or

(v) any other entity described in section 103(f), to the extent provided in the rules of the Secretary issued under section 103(f);

(B) that receives direct earned premiums for any type of commercial property and casualty insurance coverage, other than in the case of entities described in sections 103(d) and 103(f); and

(C) that meets any other criteria that the Secretary may reasonably prescribe.

Id. § 102(6). TRIA does not cover reinsurers. Reinsurers are nevertheless affected by TRIA because reinsurers support primary insurers. Janina Clark, *US Terror Bill Slows Renewals*, REINS. MAG., Dec. 16, 2002, at 1.

148. The Department of the Treasury administers the program. Pub. L. No. 107-297 § 103(a)(1).

149. *Id.* § 103(c)(2).

150. *Id.* § 103(c)(1)(B).

151. *Id.* § 106(a)(2)(B).

152. *Id.* § 105(c).

153. *Id.* § 103(b)(2).

154. *Id.* § 102(1)(A). An act of terrorism is defined under the act as:

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;

losses from the event must be in excess of \$5 million.¹⁵⁵ Third, the insurer must pay a deductible.¹⁵⁶

After the insurer pays the deductible, the government pays 90% of the remaining loss and the insurer pays the other 10%.¹⁵⁷ The program has a one-year cap of \$100 billion.¹⁵⁸ If the total annual losses are greater than \$100 billion, Congress can decide who will pay the rest of the losses and how much.¹⁵⁹ The government is permitted to recoup its payments through surcharges on policyholders.¹⁶⁰

(ii) to be a violent act or an act that is dangerous to—

- (I) human life;
- (II) property; or
- (III) infrastructure;

(iii) to have resulted in damage within the United States, or outside of the United States in the case of—

- (I) an air carrier or vessel described in paragraph (5)(B); or
- (II) the premises of a United States mission; and

(iv) 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.

Id.

155. *Id.* § 102(1)(B)(ii).

156. *Id.* § 102(7). The deductible varies depending on the time period in which the loss occurs. From November 26, 2002 to December 31, 2002, the deductible is one percent of the value of the insurer's directly earned premiums during the year preceding November 26, 2002. *Id.* During 2003, the deductible is seven percent of the insurer's directly earned premiums from the preceding year. *Id.* During 2004, the deductible is ten percent. *Id.* If the program is extended to 2005, the deductible is fifteen percent. *Id.*

157. *Id.* § 103(e)(1)(A).

158. *Id.* § 103(e)(2)(A).

159. *Id.* § 103(e)(3).

160. *Id.* § 103(e)(7). The amount that the government can recoup is the difference between the insurance marketplace aggregate retention amount and the aggregate amount, for all insurers, of insured losses that are not compensated by the Federal Government because such losses—

- (I) are within the insurer deductible for the insurer subject to the losses; or
- (II) are within the portion of losses of the insurer that exceed the insurer deductible, but are not compensated pursuant to paragraph (1).

Id. § 103(e)(7)(A).

The insurance marketplace aggregate retention amount is

- (A) for the period beginning on the first day of the Transition Period and ending on the last day of Program Year 1, the lesser of—

TRIA makes a federal cause of action the exclusive remedy for claims arising out of a single act of terrorism.¹⁶¹ The law of the state in which the act of terrorism occurred will govern the substantive law of the case.¹⁶² A single district court will be assigned to have jurisdiction over all actions.¹⁶³ Punitive damages are excluded from the calculation of insured losses.¹⁶⁴

B. Implementation of TRIA

General confusion about the requirements of various provisions of the law, especially the disclosure provisions followed immediately after the passage of TRIA.¹⁶⁵ The Treasury Department issued interim guidelines to assist insurers with compliance.¹⁶⁶

-
- (i) \$ 10,000,000,000; and
 - (ii) the aggregate amount, for all insurers, of insured losses during such period;
 - (B) for Program Year 2, the lesser of—
 - (i) \$ 12,500,000,000; and
 - (ii) the aggregate amount, for all insurers, of insured losses during such Program Year; and
 - (C) for Program Year 3, the lesser of—
 - (i) \$ 15,000,000,000; and
 - (ii) the aggregate amount, for all insurers, of insured losses during such Program Year.

Id. § 103(e)(6).

Recoupment is not mandatory if uncompensated losses exceed the insurance marketplace aggregate retention amount. *Id.* § 103(e)(7)(B).

Insurers will collect the surcharges and remit them to the federal government. *Id.* § 103(e)(8). The surcharges may not exceed three percent of any policy's annual premium. *Id.* § 103(e)(8)(C).

161. *Id.* § 107(a). This venue provision appears to be modeled after the Air Transportation Safety and System Stabilization Act, which grants the United States District Court for the Southern District of New York exclusive jurisdiction over all actions brought for any claim resulting from or relating to the terrorist-related aircraft crashed of September 11. Pub. L. No. 107-42, § 408(b)(3).

162. Pub. L. No. 107-297, § 107(a)(3).

163. *Id.* § 107(a)(4).

164. *Id.* § 107(a)(5).

165. *Id.* § 103(b)(2).

166. Treas. Dep't Notice, *Interim Guidance Concerning Certain Conditions for Federal Payment, Non-U.S. Insurers, and Scope of Insurance Coverage in the Terrorism Risk Insurance Act of 2002* (Jan. 22, 2003); Treas. Dep't Notice, *Interim Guidance Concerning Definition of Insurers, Scope of Insurance Coverage, and Disclosures Mandated by the Terrorism Risk Insurance Act of 2002* (Dec. 18, 2002); Treas. Dep't Notice, *Interim Guidance Concerning New Statutory Disclosure and Mandatory Availability*

C. *Mixed Reaction to TRIA*

Although insurers lobbied heavily for TRIA, and passage of the bill was seen as a win for the commercial insurance industry,¹⁶⁷ insurers nonetheless expressed concerns about TRIA as passed. One of the objections was that TRIA forced insurers to take on greater risk.¹⁶⁸ Prior to passage of TRIA, insurers were shedding coverage and reducing their exposure.¹⁶⁹ Under TRIA, insurers had no choice but to offer coverage for those very risks.¹⁷⁰

Another insurance industry objection was that the deductibles were too high. Kemper Insurance Company's William D. Smith, stated, "[t]he act doesn't do us any good at all."¹⁷¹ He was referring to the requirement that insurers pay a deductible before federal money becomes available.¹⁷² The deductible, asserted Smith, would expose insurers to huge liability.¹⁷³ He explained that under TRIA, if a terrorist attack took place within one year of passage, Kemper's liability could reach \$300 million.¹⁷⁴ Other insurers complained the deductible was too high in the later stages of the program.¹⁷⁵ These insurers described the deductible requirement as "more positive for the industry in the first year than in the second and third year[s]."¹⁷⁶

The insurance industry also complained the law was unclear or incomplete about the lines of insurance and entities it was designed to protect.¹⁷⁷ Finally, the industry voiced fears that TRIA could lead to more federal regulation. After TRIA was passed, some states insisted on enforcing their own insurance laws and regulations, which sometimes conflicted with the federal law.¹⁷⁸ For instance,

Requirements of the Terrorism Risk Insurance Act of 2002 (Dec. 3, 2002).

167. Jerry Geisel, *Terror Backstop Clears House*, BUS. INS., Nov. 18, 2002, at 1.

168. Clark, *supra* note 147.

169. *Id.*

170. *Id.*

171. Gavin Souter, *Exposures Forcing Insurers to Keep Rates High, CEO Says*, BUS. INS., Dec. 23, 2002, at 3.

172. *Id.*

173. *Id.*

174. *Id.*

175. Michael Ha, *Insurers Scrambling to Comply with New Terrorism Insurance Law*, NAT'L UNDERWRITER PROP. & CAS. RISK & BENEFITS MGMT., Dec. 2, 2002, at 5.

176. *Id.*

177. Meg Fletcher, *States' Laws Clash with Federal Terror Act*, BUS. INS., Dec. 23, 2002, at 2.

178. *Id.*

Florida continued to maintain its ban on terrorism exclusions.¹⁷⁹ Florida did not permit insureds to opt out of terrorism coverage because exclusions were not necessary; \$100 billion of new reinsurance capacity had been added.¹⁸⁰ Therefore, policyholders in Florida could not opt out of coverage, as TRIA provided.¹⁸¹ The insurance industry was concerned that if the states did not respond in a uniform manner to the federal law, federal intervention would be likely.¹⁸²

The business community also expressed concerns about TRIA. For instance, TRIA does not cover acts of domestic terrorism.¹⁸³ Accordingly, the Oklahoma City bombing would not have been covered.¹⁸⁴ Another concern is that the law is not clear as to whether it covers damages from biological or chemical attacks.¹⁸⁵ Insurers could argue these damages are environmental, and thus potentially prohibited by a policy's pollution exclusion.¹⁸⁶ The interplay between coverage for acts of terror and the war risk exclusion also raises questions.¹⁸⁷ One possibility is that if Congress adopts a tough stance against rogue states and terrorism, Congress's action could be seen as a declared war.¹⁸⁸ For instance, Congress passed a resolution authorizing military action against Iraq.¹⁸⁹ If a domestic act of terror was linked to Iraq, insurers might argue that it comes within the war exclusion.¹⁹⁰

TRIA's effect on premium rates is still unclear.¹⁹¹ Some commentators predict that large insureds and insureds in urban areas would experience inflated premiums.¹⁹² Others discussed the possibility that insurers could artificially reduce rates by relying on

179. *Id.*

180. *Feds, States Eye Final Terror Regs*, INS. CHRON., Dec. 30, 2002, at 1.

181. Fletcher, *supra* note 177.

182. *Id.*

183. Meg Fletcher, *Terror Law Will Bring Challenges: Tough Choices Ahead*, BUS. INS., Nov. 4, 2002, at 1.

184. *Id.*

185. *Early Verdict: Terror-Insurance Law Helping*, COM. MORTGAGE ALERT, Dec. 6, 2002.

186. *Id.*

187. *Feds, States Eye Final Terror Regs*, *supra* note 180.

188. *Id.*

189. Alison Mitchell & Carl Hulse, *Congress Authorizes Bush to Use Force Against Iraq, Creating A Broad Mandate*, N.Y. TIMES, Oct. 11, 2002, at A1.

190. *Feds, States Eye Final Terror Regs*, *supra* note 180.

191. Ha, *supra* note 175.

192. *Id.*

TRIA.¹⁹³ Not long after the passage of TRIA, two insurers that had stopped offering terrorism coverage began to offer it again at prices substantially lower than previously offered, indicating that price gouging might not be an issue.¹⁹⁴

Another reaction to TRIA was the development of new policy language by ISO¹⁹⁵ and the American Association of Insurance Services.¹⁹⁶ The new language stated the terrorism exclusion does not apply to a "certified" terrorism loss.¹⁹⁷ Such a loss results from a certified act of terrorism, as defined in TRIA.¹⁹⁸

V. CONCLUSION

In the absence of a terrorist attack, TRIA's impact is difficult to gauge. As Part IV indicates, many issues related to TRIA have yet to be resolved. Over the coming months, the Treasury Department will likely address these issues and attempt to clarify them. Some issues may not be resolved short of litigation. Other issues, currently unforeseen, will no doubt arise if terrorism activity increases in the United States and insurers and the government have to pay for extensive losses. The United States' backstopping of casualty insurers' terrorism coverage represents unusual federal involvement with an industry long resistant to federal control. The exigencies of the times have brought together a partnership deemed necessary to help protect the country's economy. Whether this precedent-setting program proves to be economically necessary, or merely corporate welfare, will unfold over the next few years.

193. *Id.*

194. *Early Verdict*, *supra* note 185. For example, a large property insurer quoted a \$112,000 annual premium with a \$34,000 terrorism component for a \$50 million all-risk policy on a 400,000 square foot office building in the Bronx. *Id.* Before passage of TRIA, the terrorism component alone would have cost more than \$100,000. *Id.*

195. See <http://www.iso.com>.

196. American Association of Insurance Services develops products for property/casualty insurers. See <http://www.aaisonline.com>.

197. *Id.*

198. *Id.*