Commissioner's Monthly Column

Terrorism Risk Insurance Act Update

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The Ebola scare that has dominated headlines worldwide recently made its mark in the insurance arena with the introduction of a new product – business interruption Ebola coverage. This specialized product is being offered to businesses facing the possibility of government-mandated closures due to the spread of the deadly disease. It is not surprising to see the industry responding quickly, and we are always seeing new products introduced in response to growing threats and trends. Rideshare service and cyber-attack coverage are recent examples, but terrorism insurance is also a product we have seen evolving in response to changing times.

Before September 11, 2001, business insurers did not specifically exclude terrorism coverage. The 9/11 attacks and the resulting financial cost changed that. The 9/11 attacks caused $35 billion in insured losses, making 2001 the most expensive year up to that point for insurance and reinsurance. The attacks also pointed to a new type of terrorism threat targeting businesses and citizens, with terrorist groups aiming to cause major economic disruption along with mass casualties.

Much of the financial cost from the September 11 attacks fell on reinsurers. Since terrorism exposure is difficult to model and calculate, reinsurers largely withdrew from the market for terrorism coverage. Without reinsurance, primary insurers were then compelled to exclude terrorism. State insurance regulators, including Louisiana, approved terrorism exclusions for use by primary insurers.

Because businesses were not able to purchase insurance protection against future terrorist attacks, Congress responded by enacting the Terrorism Risk Insurance Act (TRIA) in 2002 to provide a government reinsurance backstop in case of large-scale terrorist attacks. TRIA covers up to $100 billion in commercial losses and is based on risk sharing between the federal government and the insurance industry. It has been extended twice so far, in 2005 and 2007.

The insurance industry currently has cause for concern in the commercial insurance market since Congress is down to the wire in reauthorizing TRIA which expires December 31. Here in Louisiana the commercial insurance market represents about $5 billion of written premium.

Since its creation, TRIA has proven to be an effective public-private partnership, giving insurers the confidence they need to write terrorism risk insurance. The program maintains broad support among the property and casualty insurance sector and with commercial insurance buyers who believe that TRIA offers national economic stability and resiliency within the commercial sector at times of large-scale security risks. The business sector says TRIA must be extended before the program expires in December for businesses to adequately insure against terrorist attacks and secure project funding for expansion projects and job creation. Without the federal backstop that TRIA provides, many workers compensation insurers, which are required by law to cover terrorism exposures, would also suffer.

Those opposing TRIA say its usefulness has been outlived and the private sector is well able to handle the portfolio. Some believe the federal government should not take on terrorism risk and point to the lack of funding in various programs including the National Flood Insurance Program and the overall increasing national debt. The National Flood Insurance Program has a shortfall of approximately $24 billion but that shortfall was addressed recently by the Homeowner Flood Insurance Affordability Act.

Members of Congress have made attempts to extend TRIA through the introduction of several bills proposing its extension. In July the Senate passed S.2244, a seven-year reauthorization including some modest reforms that would increase insurers' copay amount and a mandatory recoupment threshold in the event of a catastrophic terrorist attack. Three other bills that would extend TRIA have also been introduced in the House.

Business interests and the insurance industry are hopeful for a compromise between the Senate and House bills before the end of the year. The National Association of Insurance Commissioners (NAIC) supports the reauthorization and has strongly encouraged members of Congress to adopt a long-term solution. The NAIC, along with state insurance commissioners, have played an active role in assisting insurers and the federal government in administering TRIA, providing guidance about regulatory requirements.

The U.S. Department of the Treasury implements the Terrorism Risk Insurance Program. Their website provides updated information on the Program and can be found at http://www.treasury.gov/resource-center/fin-mkts/Pages/program.aspx**.**

Since its creation, TRIA has proven to be an effective and public-private partnership, giving insurers the confidence they need to write terrorism risk insurance. Regardless of whether a terrorist attack has massive results, such as the 9/11 attacks or smaller-scale impact, such as the Boston Marathon bombings in April 2013, the need for a long-range reauthorization of TRIA is real. A negative financial impact in one sector of our nation’s economy can trickle into other sectors with the effects being more widespread than expected. The sooner Congress moves to bring stability to the commercial insurance market and the business sector, the better off all of us will be.