

Commissioner Donna Lee H. Williams

841 Silver Lake Boulevard * Dover, DE 19904 * (302) 739-4251 (Hours: Mon-Fri 8-4:30 EST)

www.state.de.us/inscom

DOMESTIC/FOREIGN INSURERS BULLETIN NO. 17

**TO: ALL PROPERTY & CASUALTY INSURERS WRITING
COMMERCIAL LINES INSURANCE PRODUCTS**
**RE: UNCERTAINTY RELATED TO EXPIRATION OF
THE TERRORISM RISK INSURANCE ACT OF 2002
EXCLUSIONS RELATED TO ACTS OF TERRORISM**
ISSUED: July 21, 2004

Background

The Terrorism Risk Insurance Act of 2002 (TRIA) was adopted by Congress to provide a temporary federal shared loss program for incurred losses resulting from certain acts of terrorism to protect American businesses by minimizing market disruptions and ensuring the widespread availability and affordability of property and casualty insurance for terrorism risk. Recently there has been uncertainty in the markets for commercial lines property and casualty insurance coverage because of the pending expiration of TRIA. While TRIA's Dec. 31, 2005 expiration date appears to be in the distant future, insurers will be called upon to make decisions about commercial insurance coverage later this year.

The commercial insurance business cycle operates in such a way that insurers and their policyholders will be required to make decisions as early as this September that will affect coverage well into 2006. Annual policy renewals with effective dates of Jan. 1, 2005 or later will have to contemplate no federal backstop for any losses in 2006. For this reason, regulators expect that insurers and advisory organizations will file conditional exclusions for terrorism coverage and will attach them to renewal policies on a widespread basis.

This places insurers, businesses and regulators in the same situation we encountered in the aftermath of Sept. 11th and which in large part prompted TRIA's enactment. Once again, insurance regulators find themselves having to consider approval of certain coverage limitations for acts of terrorism or risk possible serious solvency concerns in the insurance industry.

The intent of this bulletin is to inform you of the decision in this state to approve certain conditional coverage limitations for acts of terrorism, to put insurers on notice that determination of certain contractual thresholds is subject to disclosure and review by this office and to provide a voluntary procedure for insurers to use to expedite the filing and timely review of these limited

exclusions. As Commissioner, I was involved in recent discussions at the National Association of Insurance Commissioners (NAIC) related to this issue. In a recent conference call the members of the NAIC agreed that the conditional endorsement approach, while not providing a perfect solution, offers the best hope for adding some certainty to address TRIA's hard ending should Congress fail to enact an extension of TRIA. By this bulletin, I am informing you of my intent to act in a manner consistent with the recommendation from the NAIC membership. I believe this to be the best course of action as it balances the need of insurers to have some certainty related to solvency concerns with the business consumer's concerns that their businesses not be subject to uninsured events.

Instead of approving the very broad total exclusions of coverage for acts of terrorism, this state intends to grant approval to conditional coverage limitations that are substantially similar to those describe in the following pages.

Explanation and Instructions for Expedited Review

The coverage limitations that will be approved by this state have some significant limitations, however, they continue to provide coverage for acts of terrorism under certain circumstances. For policies providing property insurance coverage the following limitations apply:

- Exclusion for acts of terrorism only apply if the acts of terrorism result in industry-wide insured losses that exceed \$25,000,000 for related incidents that occur within a 72 hour period;
- Exclusions for acts of terrorism are not subject to limitations above if:
 - The act involves the use, release or escape of nuclear materials, or that directly or indirectly results in nuclear reaction or radiation or radioactive contamination;
 - The act is carried out by means of the dispersal or application of pathogenic or poisonous biological or chemical materials; or
 - Pathogenic or poisonous biological or chemical materials are released, and it appears that one purpose of the terrorism was to release such materials.

For policies providing liability insurance coverage the following limitations apply:

- Exclusion for acts of terrorism only apply if the acts of terrorism result in industry-wide insured losses that exceed \$25,000,000 for related incidents that occur within a 72 hour period; or
- Fifty or more persons sustain death or serious physical injury. For purposes of this provision serious physical injury means:
 - Physical injury that involves a substantial risk of death;
 - Protracted and obvious physical disfigurement; or
 - Protracted loss of or impairment of the function of a bodily member or organ.
- Exclusions for acts of terrorism are not subject to limitations above if:
 - The act involves the use, release or escape of nuclear materials, or that directly or indirectly results in nuclear reaction or radiation or radioactive contamination;
 - The act is carried out by means of the dispersal or application of pathogenic or poisonous biological or chemical materials; or
 - Pathogenic or poisonous biological or chemical materials are released, and it appears that one purpose of the terrorism was to release such materials.

This state will accept the following definition of acts of terrorism or definitions that are more liberal to policyholders:

Terrorism means activities against persons, organizations or property of any nature:

1. That involve the following or preparation for the following:
 - a. Use or threat of force or violence; or
 - b. Commission or threat of a dangerous act; or
 - c. 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:
 - a. 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
 - b. 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 to express opposition to) a philosophy or ideology.

This state will allow insurers and advisory organizations to submit and receive approval for conditional endorsements. These conditional endorsements would only apply if Congress fails to enact an extension to TRIA or enacts changes to TRIA that substantial change the risk of loss that an insurer or policyholder has assumed.

For an insurer or advisory organization to receive expedited approval of its exclusions for commercial lines insurance coverages, the exclusionary endorsements must comply with the terms and conditions set forth in this bulletin and be submitted in accordance with the instructions specified below. Further, you must certify that you are filing endorsements that provide coverage at least as broad as described in this bulletin.

Insurers should be aware that although policy form language will provide that the insurer is to make a determination regarding when any of the thresholds described in this bulletin have been reached for purposes of settling a claim, insurers should be ready to substantiate any decision made to deny benefits to a claimant. Subject to the provisions of 18 *Del. C.* Chapter 3.

Forms with Instructions

Attached to this bulletin is a uniform filing transmittal form that has been agreed upon by this state and other states. A filer wishing to receive expedited treatment of its filing for approval or rates and/or forms shall complete the EXPEDITED FILING—TERRORIST EXCLUSIONS APPLICATION Form Filing Transmittal as directed. In addition, the filer submitting this filing must certify that it is filing endorsements that provide coverage at least as broad as described in this bulletin. Certification is made by signing the appropriate blank on the transmittal form.

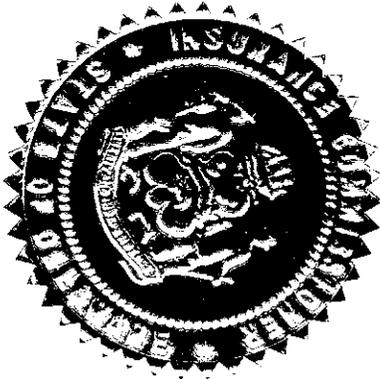
To be complete, a form filing must include the following:

1. A completed, certified Form Filing Transmittal Header for each insurer.
2. One copy of each endorsement.
3. The appropriate filing fees as set forth in 18 *Del. C.* § 701.
4. A postage-paid, self-addressed envelope **large enough to accommodate the return.** Note that a comparable filing transmittal form is available in SERFF.

If this filing is for multiple companies, please provide a copy of the transmittal header for each company and an extra copy for return to the company. (i.e. 7 companies = 8 copies)

Effective Date

This bulletin shall take immediate effect and shall expire on Dec. 31, 2005, unless Congress acts to extend or modify TRIA.



Donna Lee H. Williams
Donna Lee H. Williams
Insurance Commissioner

**EXPEDITED FILING— COMMERCIAL LINES TERRORIST EXCLUSIONS
APPLICATION**

Ed. 6/1/04

This page applies to the following state(s) _____

Department Use only

Company Name(s)	Domicile	NAIC #	FEIN #

Contact Info for Filer

Name and address of Filer(s)	Telephone #	FAX #	e-mail

Filing information

Line of Insurance (see attachment)	
Company Program Title (Marketing title) (if applicable)	
Filing Type ** see note below	
This application is used with:	
Effective Date Requested	
Filing date	
Company Tracking Number	
Date filing approved in domiciliary state	

	<u>Component/Form Name</u> <u>/Description/Synopsis</u>	Form #) Include edition date	Replacement Or withdrawn?	If replacement, give form # it replaces	Previous State Filing Number, if required by state
01			<input type="checkbox"/> Replacement <input type="checkbox"/> Withdrawn <input type="checkbox"/> Neither		
02			<input type="checkbox"/> Replacement <input type="checkbox"/> Withdrawn <input type="checkbox"/> Neither		

To be complete, a form filing must include the following:

- A completed Form Filing Transmittal Document for each insurer.
- One copy of each endorsement.
- The appropriate filing fees, if required.
- A postage-paid, self-addressed envelope **large enough to accommodate the return.**

The insurer(s) submitting this filing certifies that it is:

- Using endorsements that provide coverage that is at least as broad as described in the bulletin.

Signature

Print Name:

Title:

COMPLETED SAMPLE FORM
**EXPEDITED FILING—COMMERCIAL LINES TERRORIST EXCLUSIONS
APPLICATION**

Ed. 6/1/04

This page applies to the following state(s) _____

Department Use only

Company Name(s)	Domicile	NAIC #	FEIN #
ABC Insurance Company	NY	0000-99999	99-1234567

Contact Information for Filer

Name and address of Filer(s)	Telephone #	FAX #	e-mail
John Doe (Form Filing) Regulatory Compliance ABC Insurance Co. 12345 Fifth Ave New York, NY 10234	501-555-5555	501-555-5551	John.doe@abcins.com

Filing information

Line of Insurance (see attachment)	Commercial General Liability
Company Program Title (Marketing title) (if applicable)	General Liability Program
Filing Type ** see note below	Form (Endorsement)
This application is used with:	(Insert policy form number to which the application attaches)
Effective Date Requested	08-01-04 (Enter your desired effective date)
Filing date	(Date Company sends filing)
Company Tracking Number	ABC-EP-2004-01 (Enter your filing tracking number, if applicable)
Date filing approved in domiciliary state	Not approved yet. Filed on same date as this filing.

	<u>Component/Form Name</u> <u>/Description/Synopsis</u>	Form #) Include edition date	Replacement Or withdrawn?	If replacement, give form # it replaces	Previous State Filing Number, if required by state
01	Conditional Terrorism Coverage Limitation Endorsement	CG 21 69 01 02	<input type="checkbox"/> Replacement <input type="checkbox"/> Withdrawn <input checked="" type="checkbox"/> Neither		
02			<input type="checkbox"/> Replacement <input type="checkbox"/> Withdrawn <input type="checkbox"/> Neither		

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- One copy of each endorsement.
- The appropriate filing fees, if required
- A postage-paid, self-addressed envelope **large enough to accommodate the return.**

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Signature

Print Name:

Title: