

Vermont Department of Banking, Insurance, Securities & Health Care Administration

Insurance Division Bulletin 147

November 5, 2004

**UNCERTAINTY RELATED TO EXPIRATION OF THE TERRORISM RISK INSURANCE
ACT OF 2002: EXCLUSIONS RELATED TO ACTS OF TERRORISM**

Background

The Terrorism Risk Insurance Act of 2002 (TRIA) was adopted by Congress to provide a temporary federal backstop for incurred losses resulting from certain acts of terrorism, thereby protecting 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, for policies with expiration dates subsequent to Dec. 31, 2005, later this year.

The commercial insurance business cycle operates in such a way that insurers and their policyholders had to make decisions as early as this past 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 policies effective on or after January 1, 2005 on a widespread basis.

The impending expiration of the federal backstop places insurers, businesses, and regulators in the same situation they encountered in the aftermath of Sept. 11th, which in large part prompted TRIA's enactment. Once again, there is a need to address regulatory concerns about insurance company solvency related to terrorism risk, while assuring that affected policyholders are provided sufficient disclosure of what may be covered or excluded, as well as the timing of possible changes to existing commercial terrorism coverages.

The intent of this Bulletin is to inform insurers doing business in Vermont of the Department's decision to:

- approve certain conditional coverage limitations for acts of terrorism;
- put insurers on notice that determination of certain contractual thresholds is subject to disclosure and review by this office; and
- provide a voluntary procedure for insurers to use to expedite the filing and timely review of allowable endorsements.

Instead of approving very broad total exclusions of coverage for acts of terrorism, Vermont will grant approval to conditional coverage endorsements that contain significant limitations, but continue to provide coverage for acts of terrorism under certain circumstances. These conditional endorsements

would only apply if Congress fails to enact an extension to TRIA or enacts changes to TRIA that substantially change the risk of loss that an insurer or policyholder has assumed. Vermont's approach is consistent with the approach adopted by the membership of the National Association of Insurance Commissioners (NAIC), and balances the need of insurers to have some certainty related to solvency concerns with the business consumer's need to minimize exposure to uninsured events.

Explanation and Instructions for Expedited Review

For policies providing property insurance coverage the following limitations will 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 the limitations above if:
 - The act involves the use, release or escape of nuclear materials, or 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 will apply:

- Exclusion for acts of terrorism apply only 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 the limitations above if:
 - The act involves the use, release or escape of nuclear materials, or 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.

Vermont 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.

For an insurer or advisory organization to receive expedited handling 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, filers must certify that they 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.

Forms with Instructions

Attached to this bulletin is a uniform filing transmittal form that has been agreed upon by Vermont and other states. **All filings shall be accompanied by a completed and signed EXPEDITED FILING—TERRORIST EXCLUSIONS APPLICATION Filing Transmittal form.** 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 checking the appropriate block on the transmittal form.

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

1. **A completed filing Transmittal Letter;**
2. **A completed, certified, signed copy of the “Expedited Filing Application” attached for each filing submitted;**
3. **One copy of each endorsement or rule;**
4. **The appropriate filing fees; and**
5. **A postage-paid, self-addressed envelope large enough to accommodate the return. (Note that a comparable filing transmittal form is available in SERFF.)**

VERMONT SPECIFIC INSTRUCTIONS:

- **All Terrorism filings should be individual single purpose filings and not include other non-terrorism related forms or rules.**
- **A signed "Expedited Filing" form is required to be forwarded with each filing under this Bulletin. One form is sufficient for all forms / rules being filed.**
- **Vermont is not a Standard Fire Policy state; please refrain from filing SFP forms or related rules.**
- **Forms and rules may be included in the same filing if desired.**
- **Multiple Companies may be included on one filing for a given line of business.**

- **Companies are reminded that to comply with Regulation 78-1 (1), the insured must be given written notice whenever a coverage has been modified or eliminated.**

Effective Date

This bulletin shall take immediate effect and shall expire on December 31, 2005.

John P. Crowley, 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 /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	[] Replacement [] Withdrawn [x] Neither		
02			[] Replacement [] Withdrawn [] Neither		

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

- A completed Form Filing Transmittal Header 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: