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Extension of TRIA Includes New Provisions by James Rowland

On September 19, 2007, the House of Representatives voted 312-110 to approve the Terrorism Risk Insurance Revision and Extension Act of 2007 (TRIREA). If enacted, TRIREA will provide a 15-year extension of the Federal Terrorism Risk Insurance Act (TRIA). The original version of TRIREA sought only a 10-year extension. However, committee members from New York successfully argued that some businesses and high-profile targets could take longer than ten years to rebuild in the event of a terrorist attack and succeeded in amending TRIREA to include a 15-year extension.

In addition to the 15-year extension, TRIREA includes provisions that: (a) will allow businesses to secure NBCR (nuclear-biological-chemical-radiological) coverage under the same terms and conditions as for conventional risks; (b) eliminate the current program's distinction between foreign and domestically sponsored acts of terrorism; and (c) reduce the program's trigger level from $100 million to $50 million. Much of the focus of the debate on the House floor concerned the insertion of a provision which would require a vote by Congress to approve funding before any payment of reinsurance funds for any future terrorist attacks. This provision was included to overcome concerns that TRIREA would violate congressional “pay-as-you-go” budget rules.

As the Bush Administration had previously indicated its opposition to the 10-year extension of TRIA as being too lengthy, and on Monday, September 17, 2007 issued a veto threat, it is expected that TRIREA will receive strong opposition from the Administration. The Administration has cited its belief that the federal government's role in the insurance market should be minimal and that the private sector is now capable of taking on an increased amount of terrorism risk and can offer the most innovative and efficient methods of providing terrorism risk insurance. Given the vote in the House, proponents of TRIREA are confident that there will be sufficient votes to override a potential Presidential veto.

Not surprisingly, insurance industry groups, including The Property Casualty Insurers of America (PCI) and the National Association of Mutual Insurance Companies (NAMIC), disagree with the Administration's belief that the private sector is capable of taking on the terrorism risk. PCI and NAMIC believe that TRIA played a key role in triggering economic recovery after 9/11, created a market for uninsurable risk and continues to protect businesses of all sizes from the continuing threat of the financial devastation of a terrorist attack.

PCI and NAMIC, however, are unhappy with the inclusion of language in TRIREA requiring insurers to provide NBCR coverage for terrorist attacks. Such coverage was previously unavailable to insureds and PCI and NAMIC believe the inclusion of mandatory NBCR coverage, without a full study on all risks associated with NBCR attacks will have serious negative consequences on the economy. Not surprisingly, other industries groups, such as the National Association of Building Owners and Managers applaud the inclusion of mandatory NBCR coverage as it provides businesses with an important new option to purchase coverage for catastrophic non-conventional terrorist attacks.

Given the Bush Administration's posturing, the divide on party lines regarding support of TRIREA and expected strenuous attempts to influence the legislation by lobby groups both in favor and opposed to different sections of TRIREA, it is expected that there will be extensive debate and further amendments to TRIREA before it is signed into law. The next scheduled significant step for TRIREA will occur on October 17, 2007 when the Senate Banking Committee is expected to take action on TRIREA. As TRIA faces an end of the year deadline, hopefully the Legislative and Executive branches will be quick to act on passing TRIREA.

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