Circular

DECEMBER 28, 2007 | **ANNOUNCEMENT** | **FL-2007-14**

Florida–Item 05-FL-2007–Terrorism Risk Insurance Program Reauthorization Act of 2007 Endorsements

ACTION NEEDED

Please review the changes outlined in the attachments for their impact on your company's systems and procedures. Also review the ***Status of Item Filings*** circular for state approval of this item.

Caution: At the time of distribution of this circular, this item has been filed with the regulator but is **not yet approved**. This information is provided for your convenience and analysis. Please do not use the information until the regulator has approved the filing.

BACKGROUND

The Terrorism Risk Insurance Act of 2002 ("TRIA" or the "Act") was implemented as a result of the United States Congress (Congress) recognizing that terrorism is a catastrophe exposure that is real and significant for insurers of workers compensation and other lines of insurance. Items B-1383, B-1398, and P-1392 were subsequently filed to implement the Terrorism Risk Insurance Act of 2002 and to provide miscellaneous values for foreign terrorism.

TRIA was scheduled to expire on December 31, 2005. Prior to the expiration of that Act, Congress passed the Terrorism Risk Insurance Extension Act of 2005 ("TRIEA"), which is scheduled to expire on December 31, 2007. Item 06-FL-2005 was subsequently filed to implement the disclosure requirements of the Terrorism Risk Insurance Extension Act of 2005.

Recognizing that terrorism is a catastrophe exposure that continues to be significant for insurers of workers compensation and other lines of insurance, Congress has now enacted the Terrorism Risk Insurance Program Reauthorization Act of 2007 ("TRIPRA"), which makes several amendments to the Act including:

- Amending the definition of "act of terrorism" to remove "acting on behalf of any foreign person or foreign interest"
- Extending the Act to December 31, 2014
- Requiring insurers to provide a clear and conspicuous disclosure of the requirements of Section 103(e)(B)(2)(A) of TRIA, which states:
  - i. The Federal government should not make any payment under the Act for any portion of the amount of Insured Losses that exceeds $100,000,000,000; and
  - ii. No insurer that has met its deductible should be liable for the payment of any portion of that amount that exceeds $100,000,000,000

IMPACT

There is no change in premium as a result of this item.

NCCI ACTION

NCCI has attached the Florida Terrorism Risk Insurance Program Reauthorization Act Endorsement (WC 09 04 03 A) and the Florida Retrospective Premium Endorsement for Non-Ratable Catastrophe Element or Surcharge (WC 09 05 02 A) to this circular. These endorsements will also be located in NCCI's ***Forms Manual of Workers Compensation and Employers Liability Insurance*** shortly.

PERSON TO CONTACT

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FILING MEMORANDUM

ITEM 05-FL-2007—TERRORISM RISK INSURANCE PROGRAM REAUTHORIZATION ACT OF 2007 ENDORSEMENTS

(To be effective 12:01 a.m. on January 1, 2008 applicable to new and renewal policies.)

PURPOSE

This item updates the Florida Terrorism Risk Insurance Extension Act Endorsement (WC 09 04 03) and the Florida Retrospective Premium Endorsement for Non-Ratable Catastrophe Element or Surcharge (WC 09 05 02) to reflect certain changes required by the Terrorism Risk Insurance Program Reauthorization Act of 2007.

BACKGROUND

The Terrorism Risk Insurance Act of 2002 (“TRIA” or the “Act”) was implemented as a result of the United States Congress (Congress) recognizing that terrorism is a catastrophe exposure that is real and significant for insurers of workers compensation and other lines of insurance. Items B-1383, B-1398, and P-1392 were subsequently filed to implement the Terrorism Risk Insurance Act of 2002 and to provide miscellaneous values for foreign terrorism.

TRIA was scheduled to expire on December 31, 2005. Prior to the expiration of that Act, Congress passed the Terrorism Risk Insurance Extension Act of 2005 (“TRIEA”), which is scheduled to expire on December 31, 2007. Item 06-FL-2005 was subsequently filed to implement the disclosure requirements of the Terrorism Risk Insurance Extension Act of 2005.

Recognizing that terrorism is a catastrophe exposure that continues to be significant for insurers of workers compensation and other lines of insurance, Congress has now enacted the Terrorism Risk Insurance Program Reauthorization Act of 2007 (“TRIPRA”), which makes several amendments to the Act including:

- Amending the definition of “act of terrorism” to remove “acting on behalf of any foreign person or foreign interest”
- Extending the Act to December 31, 2014
- Requiring insurers to provide a clear and conspicuous disclosure of the requirements of Section 103(e)(B)(2)(A) of TRIA, which states:
  - i. The Federal government should not make any payment under the Act for any portion of the amount of Insured Losses that exceeds $100,000,000,000; and
  - ii. no insurer that has met its deductible should be liable for the payment of any portion of that amount that exceed $100,000,000,000

PROPOSAL

It is proposed that the Florida Terrorism Risk Insurance Program Reauthorization Act Endorsement (WC 09 04 03) be revised to:

a. Change the reference of TRIEA to TRIPRA
b. Revise the definition of "act of terrorism" to include domestic terrorism
c. Update the insurer deductible provisions

FILING MEMORANDUM

ITEM 05-FL-2007—TERRORISM RISK INSURANCE PROGRAM REAUTHORIZATION ACT OF 2007 ENDORSEMENTS

d. Update the definition of “program year”
e. Disclose the $100,000,000,000 cap as required by Section 4 of TRIPRA, and
f. Update the existing disclosures

It is also proposed that the Florida Retrospective Premium Endorsement for Non-Ratable Catastrophe Element or Surcharge (WC 09 05 02) be revised to show “terrorism” to include domestic terrorism instead of “foreign terrorism.”

This item is being filed in conjunction with Item 04-FL-2007—Terrorism Risk Insurance Program Reauthorization Act of 2007, which proposes that, effective January 1, 2008, the references to “foreign terrorism” be revised to “terrorism” because TRIPRA eliminates the distinction between foreign and domestic terrorism. It also proposes to update the reference to terrorism in Rule 3-A-24-a of NCCI’s ***Basic Manual for Workers Compensation and Employers Liability Insurance*** and establish a new statistical code for “terrorism.” Therefore, this item and 04-FL-2007 should be adopted concurrently.

IMPACT

There is no change in premium as a result of this item.

IMPLEMENTATION

The attached exhibits outline the changes required to the Florida Terrorism Risk Extension Act Endorsement and the Florida Retrospective Premium Endorsement for Non-Ratable Catastrophe Element or Surcharge, which will be located in NCCI’s ***Forms Manual of Workers Compensation and Employers Liability Insurance***.

EXHIBIT 1
FORMS MANUAL OF WORKERS COMPENSATION AND EMPLOYERS LIABILITY INSURANCE

FLORIDA TERRORISM RISK INSURANCE ~~EXTENSION~~ PROGRAM REAUTHORIZATION ACT ENDORSEMENT (WC 09 04 03 A)

This endorsement addresses requirements of the Terrorism Risk Insurance Act of 2002 as amended by the Terrorism Risk Insurance ~~Extension~~ Program Reauthorization Act of 200~~5~~7.

Definitions

The definitions provided in this endorsement are based on and have the same meaning as the definitions in the Act ~~and are intended to have the same meaning.~~ If words or phrases not defined in this endorsement are defined in the Act, the definitions in the Act will apply.

1. "Act" means the Terrorism Risk Insurance Act of 2002, which took effect on November 26, 2002, and any amendments resulting from the Terrorism Risk Insurance ~~Extension~~ Program Reauthorization Act of 200~~5~~7 .
2. "Act of Terrorism" means any act that is certified by the Secretary of the Treasury, in concurrence with the Secretary of State, and the Attorney General of the United States as meeting all of the following requirements:
   a. The act is an act of terrorism.
   b. The act is violent or dangerous to human life, property or infrastructure.
   c. The act resulted in damage within the United States, or outside of the United States in the case of the premises of United States missions or certain air carriers or vessels.
   d. The act has 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.
3. "Insured ~~terrorism or war~~ Loss" means any loss resulting from an act of terrorism (including an act of war, in the case of workers compensation) that is covered by primary or excess property and casualty insurance issued by an insurer if the loss occurs in the United States or at the premises of United States missions or to certain air carriers or vessels.
4. "Insurer Deductible" means~~:~~, for the period beginning on January 1, 2008, and ending on December 31, 2014, an amount equal to 20% of our direct earned premiums, over the calendar year immediately preceding the applicable Program Year.
   a. ~~For the period beginning on January 1, 2006 and ending on December 31, 2006, an amount equal to 17.5% of our direct earned premiums, as provided in the Act, over the calendar year immediately preceding January 1, 2006.~~
   b. ~~For the period beginning January 1, 2007 and ending on December 31, 2007, an amount equal to 20% of our direct earned premiums, as provided in the Act, over the calendar year immediately preceding January 1, 2007.~~
5. ~~"Program Year 4" means the period beginning on January 1, 2006 and ending on December 31, 2006.~~
6. ~~"Program Year 5" means the period beginning on January 1, 2007 and ending on December 31, 2007.~~

5. "Program Year" refers to each calendar year between January 1, 2008 and December 31, 2014, as applicable.

Limitation of Liability

The Act may limit our liability to you under this policy. If ~~annual~~ aggregate Insured ~~terrorism or war~~ Losses ~~of all insurers~~ exceed $100,000,000,000 in a Program Year ~~during the applicable period provided in the Act,~~ and if we have met our Insurer Deductible, we may not be liable for the payment of any portion of the amount of

EXHIBIT 1 (CONT'D)
FORMS MANUAL OF WORKERS COMPENSATION AND EMPLOYERS LIABILITY INSURANCE

Insured Losses that exceeds $100,000,000,000; and for aggregate Insured Losses up to $100,000,000,000, we may only have to pay a pro rata share of such~~ the amount we will pay for I~~nsured~~ terrorism or war~~ Losses ~~under this policy will be limited by the Act, a~~s determined by the Secretary of the Treasury.

Policyholder Disclosure Notice

1. Insured~~ terrorism or war L~~osses would be partially reimbursed by the United States Government. ~~under a formula established by the Act. Under this formula,~~If the aggregate industry Insured Losses exceeds $100,000,000 in a Program Year, the United States Government would pay~~ 90% for Program Year 4 and 85% for Program Year 5~~ 85% of our Insured Losses that exceed~~ ing~~ our Insurer Deductible.
2. Notwithstanding item 1 above, the United States Government may not have to make any payment under the Act for any portion of Insured Losses that exceeds $100,000,000,000.
3. The premium charged for the coverag~~e this policy provides~~ for Insured~~ terrorism or war~~ Losses under this policy is included in the amount shown in Item 4 of the Information Page or the Schedule below.

Schedule

Rate per $100 of Remuneration

EXHIBIT 2
FORMS MANUAL OF WORKERS COMPENSATION AND EMPLOYERS LIABILITY INSURANCE

FLORIDA RETROSPECTIVE PREMIUM ENDORSEMENT FOR NON-RATABLE CATASTROPHE ELEMENT OR SURCHARGE (WC 09 05 02 A)

This endorsement clarifies the Retrospective Premium Endorsement attached to the policy.

1. Standard premium excludes the portion of the premium that is determined by the application of a non-ratable catastrophe element in a rate or a non-ratable catastrophe surcharge required by our manuals.
2. Incurred losses do not include:
   a. the cost in excess of the two most costly claims arising out of an accident involving two or more persons under a classification for which our manuals contain a non-ratable catastrophe element.
   b. losses involving passenger employees, other than members of the flying crew, if the losses result from the crash of an aircraft described on the Aircraft Premium Endorsement.
   c. losses for acts of ~~foreign~~ terrorism.
3. Acts of ~~foreign~~ terrorism are included in total policy premium, but excluded from the standard premium used in the retrospective premium calculation.

   For purposes of this endorsement, an "act of ~~foreign~~ terrorism" is defined as:
   a. Any act that is violent or dangerous to human life, property or infrastructure; and
   b. The act has 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.

Note:

1. Use this endorsement if the policy is retrospectively rated.