NATIONAL CONFERENCE OF INSURANCE LEGISLATORS
TASK FORCE ON TERRORISM
NEWPORT, RHODE ISLAND
JULY 7, 2005
DRAFT MINUTES

The Task Force on Terrorism (NCOIL) met at the Hotel Viking in Newport, Rhode Island, on Thursday, July 7, 2005, at 9:15 a.m.

Assem. Ivan Lafayette of New York, chair of the Committee, presided.

Other members of the Committee present were:
Sen. Joe Crisco, CT
Sen. Steven Geller, FL
Rep. Terry Parke, IL
Assem. Nancy Calhoun, NY
Sen. William J. Larkin, Jr., NY

Other legislators present were:
Rep. Shirley Bowler, LA

Also present were:
Susan Nolan, Nolan Associates, NCOIL Executive Director
Paul Donohue, NCOIL Director of State-Federal Affairs

MINUTES

The Task Force voted to approve the minutes of its March 3, 2005, meeting in Hilton Head, South Carolina, with the exception of removing American Insurance Association representative Stef Zielezienski's characterization of TRIA funding on page two.

TERRORISM RISK INSURANCE ACT (TRIA) OF 2002 REAUTHORIZATION

Assem. Lafayette opened the session by noting the latest terrorist attacks in London, England, earlier that morning. He commented that the newly released Treasury Report should be measured against those unfortunate circumstances in London. Assem. Lafayette pointed out that the attacks were coordinated and preliminary evidence indicated it was the work of Al Qaeda. He warned that people who think that the threat of terrorism is over would be wise to keep the London bombings in mind.

Mr. Donohue reported on an April 14, 2005, hearing held by the U. S. Senate Committee on Banking, Housing, and Urban Affairs on the issue of TRIA extension. Dr. Douglas Holtz-Eakin, director of the Congressional Budget Office, testified at the hearing, he said. He explained that Dr. Holtz-Eakin testified that TRIA has led to a rise in the percentage of companies that buy terrorism coverage, mainly in places thought to be at high risk of terrorist attacks, and that TRIA's absence would likely produce another episode of scarce coverage, rising prices, and uninsured assets. Mr. Donohue stated that Dr. Holtz-Eakin took the position that the threat of terrorism would continue into the foreseeable future and suggested that new building structures be designed, located, and built to withstand such attacks. He recalled that Dr. Holtz-Eakin further indicated that the speed at which the nation adjusts to sustained high levels of risk might increase by raising premiums and that letting TRIA expire or adding cost-based premiums would also help.

Mr. Donohue reported that Frank Nutter, president of the Reinsurance Association of America, also gave important testimony. Mr. Donohue said that after the September 11 tragedy reinsurance funds paid for two-thirds of the 35 billion dollar cost. Mr. Donohue stated that Mr. Nutter estimated global reinsurance capacity available in the U.S. for 2005 was approximately four to six billion dollars for stand-alone and treaty reinsurance; therefore, if another event like September 11 occurs, reinsurance funds would not exist to cover the losses.

Mr. Donohue reported that Robert Hunter of the Consumer Federation of America also testified before the Senate committee. Mr. Donohue explained that Mr. Hunter took the position that TRIA does not need to be renewed. He said that Mr. Hunter also agreed with the Congressional Budget Office findings and stated that the insurance industry has been hugely profitable since September 11 and that the growth in surplus profits alone would pay for losses from two similar terrorist incidents. Mr. Donohue stated that Mr. Hunter testified that if TRIA was extended it should be modified by (1) applying it only to those cities at moderate to high risk, (2) increasing the retentions that insurers must pay for losses in those high risk cities, (3) increasing the share of losses that insurers must pay above the deductible from 10 percent to 15 percent, and (4) insulating taxpayers from paying the costs of terrorism losses.

As a further update, Mr. Donohue stated that the Department of Treasury just released its report on TRIA and that a Senate Banking Committee hearing would take place on July 14 to review the report findings.

Neil Alldredge of the National Association of Mutual Insurance Companies (NAMIC) stated that passage of the TRIA extension was still in question and that the Treasury Report findings were the latest blow. He said the report's final recommendation, not to authorize TRIA, occurred despite the fact that parts of the report seemed to indicate the need for TRIA. Mr. Alldredge also explained that the report suggests increasing the threshold amount for triggering TRIA to such high levels that he felt TRIA would become meaningless. He speculated that the President and some members of Congress simply do not like the program and only believe in a private market solution. Mr. Alldrege reported that the industry is taking a two-pronged approach that included (1) a grass roots lobbying effort and (2) a substantive effort to come up with an alternative plan.

Sen. Geller asked if it would be possible to bring natural disaster and terrorism insurance efforts together and questioned whether that might dramatically increase the number of states that would support such a plan. Mr. Alldredge replied that while industry has discussed this extensively, no consensus existed as to how this approach would increase support in terms of congressional votes.

Assem. Lafayette stated that while many characterize TRIA as a large-city problem, a recently released Congressional Research Study (CRS) identified 23 sites in the United States where a terrorist event could theoretically kill a million people. Assem. Lafayette asked if the industry could absorb the losses from such a terrorist event. Mr. Alldredge stated that it was impossible to quantify such an event to predict its cost.

Assem. Nancy Calhoun questioned why a $500 million event size limitation would be unreasonably high. Mr. Aldridge replied that the insured event size affects a number of insurance parameters such as retention levels and deductibles. Mr. Alldredge explained that while the $500 million figure did not preclude insurability, the possibility of having multiple such events did.

Pennsylvania Commissioner Diane Koken, president of the National Association of Insurance Commissioners (NAIC), stated that NAIC had taken a position in favor of TRIA extension. Commissioner Koken reported that the NAIC also was drafting a concept paper addressing the idea of combining insurance for mega catastrophes that included both weather-related and terrorist disasters.

Commissioner Koken further stated that NAIC drafted a resolution at its last meeting supporting the inclusion of group life in TRIA. Commissioner Koken said NAIC believes that absent TRIA extension, disruption in the marketplace would occur. She said predictions of such disruptions were based on the fact that a great number of insurance companies were excluding terrorism from their filings. She explained that terrorist events could have both a national and international impact because failure in one part of the market, such as reinsurance, affects other areas of the market, such as malpractice.

Commissioner Koken stated that the NAIC would not be testifying at the upcoming Senate hearing but that it hoped to participate at future congressional hearings on TRIA. Senator Larkin queried Commissioner Koken on the possibility of approaching individual congressional representatives in concert with NCOIL. Commissioner Koken responded that the NAIC was already engaged in discussions with NCOIL on the mega catastrophe issue and would welcome an opportunity to approach individual congressional members with NCOIL.

Sen. Crisco asked Commissioner Koken her opinion of Treasury Report recommendations such as the $500 million event trigger. Commissioner Koken stated that while NAIC did not agree with all report recommendations, the recommendations created an opening for discussions on TRIA extension.

Julie Gackenbach of Property Casualty Insurers Association America (PCI) stated that she had spent a lot of time with Congressional leaders and the Administration looking into long-term alternatives to TRIA. She indicated that the Administration is not in favor of simply extending TRIA or in making it a permanent program. However, she said, the Administration recognizes the need for some sort of continuing program to deal with terrorism losses on a long-term basis. She reported that there seemed to be support for a high-level federal backstop and other market mechanisms such as pooling arrangements, bonding programs, and tax-deferred reserving. The evolving program also specifies coverage for group life and personal lines, she said.

Assem. Lafayette inquired if these programs, which involve additional risks, would result in higher policy premiums. Ms. Gackenbach replied that a re-sharing mechanism would have to be created and that would ultimately result in higher premiums. Assem. Lafayette stated that some consumer advocates argue against TRIA because of the cost to taxpayers but fail to see that without it, policy premium costs would increase, which would ultimately end up costing consumers a great deal more than TRIA ever did.

Assem. Calhoun asked about the status of multi-year policies in light of the expiration of TRIA. Ms. Gackenbach responded that most of those policies had "sleeper provisions" that specify, upon expiration of TRIA, that terrorism provisions would cease to be in effect.

Eric Goldberg of the American Insurance Association (AIA) opined that many suggest TRIA alternatives are unrealistic because (1) reinsurance is not available for large terrorist events, (2) capital markets are unwilling to step in and issue catastrophe bonds, (3) existing insurance capital is insufficient to cover large events, and (4) terrorist events are incapable of being properly modeled to quantify risk.

ADJOURNMENT

There being no further business, the meeting adjourned at 9:45 a.m.

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