WOMBLE CARLYLE SANDRIDGE & RICE
A PROFESSIONAL LIMITED LIABILITY COMPANY

TERRORISM INSURANCE EXTENSION SENT TO PRESIDENT BUSH

by Rob Cohen

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After intense lobbying by the business community and the insurance industry, Congress passed a two-year extension of the Terrorism Risk Insurance Act of 2002 ("TRIA") on December 17, 2005 and sent the bill to President Bush for his signature (S.467, the Terrorism Risk Insurance Act Extension Act of 2005-"the Act"). TRIA was set to expire at the end of the year, unless it was renewed by Congress. TRIA was enacted after the terrorist attacks of 9-11 as a federal terrorism insurance backstop to ensure that comprehensive terrorism insurance coverage would be available and affordable across the United States.

This two-year extension of TRIA marks a victory for the policyholder community, including the real estate industry. The continuation of the federal backstop should allow insurers to provide comprehensive and affordable terrorism insurance to real estate, lodging, and other public and private companies across the United States.

Besides extending TRIA for the benefit of policyholders, the Act increases the amount of property and casualty losses needed to trigger any federal payments and raises insurance industry deductibles and payments. Additionally, the lobbying campaign by the life insurance industry to add group life insurance to the program was not successful as the group life insurance amendments in the House bill were removed in the final bill that was sent to the President. Also, due to opposition in the Senate, substantive reform provisions that were found in the House bill were not included in the bill that was sent to the President.

Highlights of the Act:

- Program extension to December 31, 2007
- Requirement that insurers make terrorism insurance coverage available under the same terms and conditions as other lines of coverage to policyholders with the following exclusions:
  - Commercial automobile insurance
  - Burglary and theft insurance
  - Surety insurance
  - Professional liability insurance
  - Farm owners multiple peril insurance
- Program Trigger. In the event of a certified act of terrorism occurring after March 31, 2006, no compensation will be paid by the Secretary of Treasury unless the aggregate industry insurance loss

resulting from such certified act of terrorism exceeds $50,000,000 in 2006 and $100,000,000 in 2007.

- Litigation Management. Treasury regulations regarding litigation management under TRIA shall remain in effect.

- Insurer Deductibles. For 2006, 17.5% of an insurer's direct earned premiums from the proceeding calendar year and for 2007, 20% of an insurer's direct earned premium over the calendar year 2006.

- Report. The President's Working Group on Financial Markets in consultation with insurance regulators, insurance industry, securities industry, and policyholder representatives shall prepare a report on the long-term availability and affordability of terrorism insurance, including group life coverage and coverage for chemical, nuclear, biological, and radiological events. The report shall be submitted to Congress no later than September 30, 2006.

If you have any questions about this important legislation, please contact Rob Cohen at rcohen@wcsr.com or 202-857-4492.