

COMMONWEALTH OF VIRGINIA

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August 23, 2004

ADMINISTRATIVE LETTER 2004-6

TO: ALL LICENSED PROPERTY & CASUALTY INSURERS WRITING
COMMERCIAL LINES INSURANCE PRODUCTS IN VIRGINIA

RE: APPROVAL OF CONDITIONAL TERRORISM EXCLUSIONS TO ADDRESS
UNCERTAINTY RELATED TO THE EXPIRATION OF THE TERRORISM RISK
INSURANCE ACT OF 2002

The Terrorism Risk Insurance Act of 2002 (TRIA) was enacted by Congress to provide a temporary federal shared loss program for losses resulting from certain acts of terrorism in order to protect American businesses by ensuring the widespread availability and affordability of coverage for terrorism risk in commercial lines of insurance. Later this year, insurers will be called upon to make decisions about the renewal or issuance of commercial lines insurance policies without knowing whether or not TRIA's December 31, 2005 expiration date will be extended. This places insurers, businesses and regulators in the same situation encountered in the aftermath of Sept. 11th and, once again, insurance regulators find themselves having to consider approval of certain coverage limitations for acts of terrorism in order to avoid the threat of insolvency in the insurance industry. Due to uncertainty regarding the extension of TRIA, regulators expect that insurers may desire to file "conditional" terrorism exclusions that would be activated in the event TRIA is not renewed, or is renewed on a basis that substantially affects the risk of loss assumed by the insurer during the period that the policy is in effect.

The intent of this administrative letter is to inform you of our decision to approve certain conditional coverage limitations for acts of terrorism and to provide a voluntary procedure for insurers to use to expedite the review and approval of these limited exclusions consistent with standards recommended by the National Association of Insurance Commissioners (NAIC). Instead of approving broad total exclusions of coverage for acts of terrorism, Virginia intends to grant approval to conditional coverage limitations that are substantially similar to those described below. These are the same limitations that applied to the exclusions approved prior to the enactment of TRIA.

For policies providing property insurance coverage the following limitations will apply:

- Exclusions 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;
- Exclusions for acts of terrorism are not subject to the limitation 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 act was to release such materials.

Because the Virginia statute that permits the exclusion of damage caused by fire following an act of terrorism is linked to the existence of TRIA (see § 38.2-2102 B of the Code of Virginia), conditional terrorism exclusions shall not apply to direct loss caused by fire following an act of terrorism.

For policies providing liability insurance coverage the following limitations will apply:

- Exclusions 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 act was to release such materials.

Since the currently anticipated expiration date of TRIA coincides with the effective date of Virginia's Rules Governing Claims-Made Liability Insurance Policies (14 VAC 5-335-10 et seq. of the Virginia Administrative Code), conditional terrorism exclusion endorsements applicable to claims-made liability insurance policies must offer an extended reporting period in compliance with the rules adopted by order of the Commission in Case No. INS-2002-01318.

Only the following definition of terrorism, or definitions that are more favorable to policyholders, will be acceptable for use with conditional terrorism exclusions:

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.

Conditional endorsements must clearly state that the terrorism exclusion will only apply if Congress fails to enact an extension of TRIA or enacts changes to TRIA that substantially affect the risk of loss that an insurer has assumed.

For an insurer to receive an expedited review of its conditional terrorism exclusions for commercial lines insurance coverages, the exclusionary endorsements must comply with the terms and conditions set forth above and be submitted in accordance with the instructions specified below. Further, the insurer must certify that the endorsements being submitted provide coverage that is in no respect less favorable to the insured than the language recommended above.

Because Virginia's standard forms for automobile insurance do not contain terrorism exclusions, and since §§ 38.2-2220, 38.2-2223, and 38.2-2224 of the Code of Virginia prohibit approval of forms providing coverage that is in any respect less favorable to the insured than the coverage provided by the standard forms, conditional terrorism exclusions applicable to automobile insurance policies cannot be approved in Virginia. Terrorism exclusions are also prohibited with respect to workers' compensation insurance.

Attached to this letter is a uniform filing transmittal form that has been agreed upon by Virginia and other states. An insurer wishing to receive expedited treatment of its filing for approval of a conditional terrorism exclusion pursuant to § 38.2-317 of the Code of Virginia shall complete the attached EXPEDITED FILING—TERRORIST EXCLUSIONS APPLICATION Form Filing Transmittal. In addition, the filer must certify that it is filing endorsements that provide coverage that is in no respect less favorable to the insured than the language recommended above. Certification is made by signing the appropriate blank on the transmittal form.

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

1. A completed, certified Form Filing Transmittal Header for each insurer and an extra copy for return. (A comparable filing transmittal form is available in SERFF.)
2. One copy of each endorsement for each insurer.
3. A postage-paid, self-addressed envelope large enough to accommodate the return.

Please be aware that conditional terrorism exclusion endorsements are subject to the prior-approval requirements of § 38.2-317 of the Code of Virginia and must be submitted at least 30 days prior to the proposed effective date. Questions regarding filing requirements should be directed to the staff of the Property and Casualty Division's Rates and Forms Sections at (804) 371-9298.

Sincerely,



Alfred W. Gross
Commissioner of Insurance

**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</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			<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: