

March 17, 2004

Dear Mr. F:

Thank you for your letter requesting an interpretation of the Terrorism Risk Insurance Act¹ (TRIA) and Treasury's implementing regulations to two types of stop loss insurance policies (Stop Loss Policies) issued by the CCC Insurance Company (CCC). As you know, TRIA provides federal compensation for insured losses arising from acts of terrorism but limits such compensation to losses involving "property and casualty insurance." TRIA defines "property and casualty insurance" to mean commercial lines of property and casualty insurance, including excess insurance, but specifically excluding health insurance.² You request Treasury's confirmation about whether the term "property and casualty insurance" contained in TRIA and Treasury's implementing regulations includes Stop Loss Policies.

You describe CCC's Stop Loss Policies as follows:

"(1) traditional stop loss policies issues to employers to cover the employers' excess losses under their ERISA self-funded employee health benefit plans, and (2) policies which provide excess protection for medical expenses incurred by institutional or professional health care providers when they contract with managed care organizations (MCOs) to provide professional services to members of the MCOs."³

Although the CCC policies are titled "excess" insurance, you believe the two Stop Loss Policies are akin to health insurance (and in many respects reinsurance) and therefore fall beyond the scope of TRIA. Some states regulate Stop Loss Policies as a property and casualty coverage, and you express concern that this creates uncertainty about the treatment of such Policies under TRIA.

As explained in the preamble to Treasury's final rule on the definition of "property and casualty insurance", Treasury found "no uniform or consistent definition of 'commercial property and casualty insurance' among the States that could provide guidance or be used for purposes of the Program."⁴ In general, Treasury determined to use the information reported on Statutory Page 14 of the NAIC Annual Statement as a reference point for this TRIA definition.

¹ Public Law 107-297, 116 Stat. 2322, 15 USCS § 6701.

² Section 102(12)(A) and (B)(v),(vii) of the Act; 31 C.F.R. §50.5(1)(2)(v), (vii).

³ At Treasury's request you provided copies of the CCC policies.

⁴ See 68 Fed. Reg. 41,250, 41,256 (Jul. 11, 2003)(as amended at 68 Fed. Reg. 48,280 (Aug. 13, 2003).

As described in the final rule, Treasury considered TRIA's definition of commercial property and casualty insurance in the context of the Program's structure and what would be necessary to effectively administer the Program. "Treasury's approach is to maintain a close correlation between the lines of commercial property and casualty insurance eligible for the Federal payment under the Program, and the amount of premiums for those coverages"⁵ as reported on the insurer's NAIC Annual Statement. Following this approach, if an insurer reports premium attributable to a particular coverage on one of the commercial lines in the NAIC Annual Statement, then as a general rule, Treasury will consider the coverage to fall within the definition of commercial property and casualty insurance for purposes of TRIA and will share in the insured losses paid by the insurer under the coverage. However, if a specific coverage or type of insurance is expressly excluded from the definition of commercial property and casualty insurance in TRIA, then no Federal share of compensation will be paid for losses arising from the coverage.⁶

In the case of the first Stop Loss Policy you describe (excess loss coverage for ERISA self-funded employee health benefit plans), you indicated the premium for such Policy is reported by CCC either on line 13 of the NAIC Annual Statement as "Group accident and health" or on line 15.6 as "All other A & H", depending on particular state insurance department requirements. Neither of these lines of business is included in the definition "property and casualty insurance" under our regulations [31 C.F.R. § 50.5(l)(2)] and health insurance is explicitly excluded from the definition of commercial property and casualty insurance in section 102(12)(B)(v) of TRIA. Therefore, the first Stop Loss Policy is not commercial "property and casualty insurance" for purposes of TRIA.

In the case of the second Stop Loss Policy you describe (healthcare provider stop-loss insurance), states vary in how they require premiums to be reported. While New York requires premiums to be reported as health insurance,⁷ New Jersey considers this second type of Stop Loss Policy to be "commercial lines property/liability coverage".⁸ However, New Jersey specifically requires that insurers writing healthcare provider stop loss insurance report the premium for this coverage "separately from 'other liability' in the underwriting and investment exhibits on a 'write-in' line."⁹ Premiums on this line of the NAIC Annual Statement (Line 33 – Aggregate write-ins for other lines of business) are not considered "property and casualty insurance" for purposes of the TRIA Program.¹⁰ Therefore, the second Stop Loss Policy you describe (healthcare provider stop-loss) also is not "property and casualty insurance" within the meaning of TRIA in the States of New York, New Jersey and all states with similar reporting requirements as these two states. To the extent a state takes a different view and requires the reporting of

⁵ 68 FR at 41256.

⁶ One example of this is the exclusion of privately issued crop insurance from the scope of TRIA even though premium for such coverage may be reported in the insurer's NAIC Annual Statement under Allied Lines.

⁷ New York Insurance Dept Circular Letter 1997-9 (April 4, 1997).

⁸ New Jersey Insurance Bulletin 95-05 (March 9, 1995).

⁹ Id.

¹⁰ See 31 C.F.R. 50.5(l)(1).

the premiums for this second Stop Loss Policy on one of the commercial lines listed in our regulations, we would reach a different result. In such event, the second Stop Loss Policy would be considered “property and casualty insurance” under our regulation implementing TRIA.

This response addresses the application of the Act and regulations to the specific situation set forth in your request, as you have represented the facts to Treasury. If there is a change in any of the facts or assumptions presented, and such facts or assumptions are material to a conclusion presented in this response, then you may not rely on that conclusion generally or as support for any proposed or subsequent activity. This response is provided by the Terrorism Risk Insurance Program as a means of stating its current interpretation of the Act and regulations. The Program may revise or revoke this interpretation upon its own initiative or upon the enactment of amendments to the Act or regulations.

Sincerely,

Jeffrey Bragg
Executive Director
Terrorism Risk Insurance Program