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What TRIPRA's Approaching Expiration Means for Workers' Compensation Programs

Uncertainty surrounding the future of the Terrorism Risk Insurance Program Reauthorization Act is expected to put significant pressure to employers' workers' compensation programs as TRIPRA's 2020 expiration date approaches.

The scheduled expiration of TRIPRA on December 31, 2020, and the possibility that it will be altered or not reauthorized, could have significant insurance implications for businesses of all types, including affecting their property and business interruption coverage. In workers' compensation, challenges for employers will likely include price increases and doubt about their renewal status. And although companies of all types could be affected by the continuing uncertainty surrounding TRIPRA, some could see a bigger impact. These include businesses with large concentrations of employees, in high profile industries, or those in major cities.

TRIPRA, which was renewed for the third time in 2015, extended the original Terrorism Risk Insurance Act (TRIA) that was passed in 2002 to maintain stability in the insurance market following the attacks of September 11, 2001. But TRIPRA is set to expire on December 31, 2020, and recently introduced reauthorization bills are advancing through both the House of Representatives and Senate. These are encouraging steps, but the ultimate fate of the federal backstop — and the timetable for its potential renewal — remain unclear as of this writing.

Many members of Congress agree that TRIPRA remains essential to the health of the insurance market and Marsh & McLennan colleagues continue to advocate for its reauthorization. The federal terrorism backstop is particularly crucial for insuring potential nuclear, biological, chemical, radiological (NBCR) attacks that could lead to very large losses.

However, the closer we get to TRIPRA's expiration without an extension or reauthorization commitment, the more likely it is that insureds will start to feel repercussions as they renew their workers' compensation programs. Given the uncertainty about

TRIPRA's future, insurers are expected to start evaluating their books of business, and we anticipate that some will consider limiting their underwriting of workers' compensation, which could have a ripple effect on the economy. And since insurers cannot exclude terrorism-related losses from their workers' compensation policies — and employers are required to purchase these policies in nearly all states — buyers' options could become increasingly limited as TRIPRA's expiration approaches and rates for available programs increase.

RISK DATA CRUCIAL DURING RENEWALS

Before entering renewal negotiations, employers should make sure they have accurate and detailed information regarding their exposures and operations, and be prepared to provide this data to underwriters. Among other items, employers should present information about loss trends, safety programs, and risk management practices.

It's important to keep in mind that insurers are already asking questions about terrorism risks, and are expected to apply greater scrutiny amid uncertainty about TRIPRA's future. Employers facing aggregation issues should expect to be asked for even more detailed information regarding:

- Employees' marital and dependency status.
- Employees' telecommuting and hospitality practices and their impact on concentration.
- Physical security measures, including the presence of guards, surveillance cameras, and information on parking areas and HVAC protections.
- Means to control access to the building.
- Details on the location of offices and their construction.
- Management policies on workplace violence, weapons, and employee screening.
- Employee security procedures.
- Emergency response and crisis management plans and procedures.
- Fire and life safety programs.
- Security staff.

Insurers and reinsurers are paying particular attention to catastrophe models. Organizations that have employees working multiple shifts or those operating in campus settings can provide additional data to better reflect their actual exposure to a catastrophic loss at a specific time, thus helping to differentiate their risk. Information should include:

- The total number of employees working during peak shifts, which amounts to the actual exposure to a terrorist event.
- The actual buildings where employees are located.
- The percentage of workers who are outside of the office where payroll is assigned — either in the field or telecommuting. This information can significantly reduce the potential exposures associated with employee concentration.

Employee Concentrations Potentially Problematic

The issue of employee aggregation — an insurer's cumulative insured employee concentration in a particular geographic area — is of particular importance and affects any business with a large number of employees in a single location or campus. Hotels, hospitals, financial institutions, higher education entities, professional services firms, defense contractors, and nuclear power companies often face this challenge.

Before 9/11, insurers monitored workers' compensation aggregations to determine the potential impact of an earthquake on their book of business. After the terrorist attacks, however, workers' compensation insurers and reinsurers shifted their focus on employee concentration in areas that were considered high-risk terrorism targets. Insurers remain focused on this issue, using increasingly sophisticated modeling tools to produce detailed worst-case loss scenarios. These include modeled losses so large that they would prompt insurers to reconsider writing specific risks without the federal backstop provided by TRIPRA.

All this has increased underwriting scrutiny. Insurers that are writing multiple lines of business — for example, workers' compensation and property, including business interruption — must consider the impact from a potential terrorist attack across all correlated lines they write. Of particular concern is the threat of NBCR attacks that could lead to very large human and economic losses. For example, according to the Reinsurance Association of America, a nuclear detonation in midtown Manhattan could result in insured property and workers' compensation losses of more than $800 billion, while a biological attack in New York could lead to losses exceeding $600 billion. However, coverage for these type of attacks is not typically included in reinsurance programs meant to protect insurers from risk aggregation, even though very large losses can exceed insurers' surplus.

Due to their state-regulated and statutory nature, workers' compensation policies differ from other commercial insurance policies. They do not include policy limits or limitations or exclusions for terrorism losses, so potential insurer exposure to large workers' compensation incidents is unlimited. However, insurers can reduce their aggregate terrorism exposure by limiting the amount of capacity they deploy in certain geographical areas.

Preparing for Potentially Challenging Renewals

For policies effective on or after January 1, 2020, insurers are underwriting workers' compensation policies that contemplate coverage without the potential financial protections provided by the federal backstop. This presents challenges for some buyers and could lead to increased rates and premiums if uncertainty surrounding TRIPRA's renewal persists in 2020.

Ahead of the federal terrorism backstop's expiration at the end of 2014, insurers attached endorsements to their policies, including NCCI endorsement WC000114, which stated in part that:

"The premium charge for the coverage your policy provides for terrorism or war losses… may continue or change for new, renewal, and in-force policies in effect on or after December 31, 2014, in the event of TRIPRA's expiration, subject to regulatory review in accordance with applicable state law."

We expect some insurers to take similar action as TRIPRA's 2020 expiration date looms. Others might take it a step further and set their policy expiration dates to coincide with TRIPRA's expiration date.

In view of the current situation, and as we await further legislative developments, it is imperative for insurance buyers to start the renewal process early — at least 120 days prior to the policy or program's effective date. Risk professionals should also work with insurance advisors to develop communication strategies and presentation tactics surrounding key risk exposures in a bid to provide insurers with a differentiated view of their organizations' terrorism risk profiles.

When discussing real estate plans — for example, consolidating multiple locations — employers should consider how increased employee numbers in fewer locations could affect workers' compensation program pricing and capacity.

TRIPRA remains crucial for the health and stability of the terrorism insurance market. Employers will know more about the future of the federal backstop in 2020, but given the current uncertainty about TRIPRA's fate, it's imperative that they prepare for potential challenges in renewals and consider ways to effectively manage their workers' compensation risk.

For more information, visit marsh.com, contact your local Marsh representative, or contact:

CHRISTINE WILLIAMS
Workers' Compensation Center of Excellence
christine.j.williams@marsh.com