Statement for the Hearing "Policy Options for Extending the Terrorism Risk Insurance Act"

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By

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Chairman and Members of the Committee:

Thank you for the opportunity to participate in your "Policy Options for Extending the Terrorism Risk Insurance Act". I am the president and Chief Executive Officer of United Educators Insurance. Created in 1987, United Educators is a risk retention group that has added much needed capacity, coverage and competitiveness to liability insurance market serving educational institutions. I believe, United Educators and other risk retention groups may be a model to consider as a part of the solution to strengthening the public private partnership needed to supply adequate capacity and coverage for terrorism insurance.

I would like, first, to provide a brief description of our company and its history. I will review what I understand to have been the Congressional purposes behind the 1986 Liability Risk Retention Act Amendments, and then I will explain why an expansion of the Risk Retention Act to include property insurance can be part of an important public-private partnership to encourage more private sector coverage for terrorism events in the long term.

Over twenty years ago Congress, with great wisdom and foresight passed legislation that supported non-profits and businesses, both large and small, to join together to share risk management resources and risk. Since that time risk retention groups have grown to $2.7 billion in premium, according to a 2006 report by the Risk Retention Reporter. Although this is estimated to be less than three percent of the total US liability insurance premiums, RRGs offer coverage to some of the most challenging risks where the traditional insurance markets are reluctant to provide stable and consistent coverage. The Liability Risk Retention Act permits RRGs to offer only liability insurance; property insurance is not permitted under current legislation.

A. About United Educators

United Educators Insurance, a Reciprocal Risk Retention Group, serves schools, colleges, universities, and related educational associations and groups. We are owned and governed by the educational institutions that are our policy holders. The institutions that are members of United Educators are committed to sharing risks, investing in risk management programs, taking an active role in reducing risks on their campuses and running United Educators.

We cover all levels of education from pre-K, including Head Start programs, to post graduate, providing liability insurance to public, private, nonprofit, and for-profit education-related entities. Our main policies are Educators Legal Liability, which cover employment practices liability such as directors & officers and failure to educate, and general liability--both "first-dollar" primary general liability and excess general liability--at high limits. Our members include Penn State, University of Scranton, University of Missouri, Washburn University, Johnson County Community College, Cornell University, public school districts in New York State, Ohio, California and many others.

Our company owes its existence to the federal Risk Retention Act Amendments of 1986. Those amendments opened new options for entities that were struggling with then-skyrocketing liability insurance rates and limited capacity. A group of educational institutions, collaborating through a task force of the National Association of College and University Business Officers, decided to form their own insurance carrier.

Throughout this history our mission has been to:

- Meet the specific liability insurance needs of educational institutions on a long-term basis.
- Price coverage predictably and rationally based on education's own losses, avoiding the high-risk exposures of commercial insurance.
- Identify emerging liability issues and assist administrators in formulating sound policies and practices to manage risk and reduce loss.
- Handle claims fairly, quickly and proactively to support the cost-effective resolution of disputes.
- Partner with institutions and brokers to manage risk and catastrophic losses.

Today we are strong in terms of member loyalty and involvement, financial position, and, most importantly, expertise in the risks facing educational institutions.

B. The Need for the Federal Government to partner with private industry to provide adequate terrorism insurance

You have heard from many insurers about the need for ongoing, long-term federal terrorism reinsurance protection for the workers compensation system, our commercial real estate markets, and many other aspects of our nation's economy. The Government Accountability Office agrees that, given the challenges faced by insurers in providing coverage for, and pricing, terrorism risks, any purely market-driven expansion of coverage, in the absence of a federal role, is highly unlikely in the foreseeable future. I also believe without the federal government's role as reinsurer of insurance companies, many small to mid-sized insurance companies would not be able to offer the terrorism insurance needed by businesses and non-profits.

However, I also want to use this time to tell you about my company and why this issue is so important to us. Today, we insure over 1,200 universities, colleges, and schools. These schools enroll approximately 7 million students, served by approximately 500,000 faculty and teachers. We are committed to helping our member educational institutions advance their missions of teaching, research, and service to our country. We insure all types of colleges and schools, from large public universities to small rural K-12 schools. We insure institutions all over the country, including California Institute of Technology, MIT, University of Michigan, Notre Dame, Tulane and school districts throughout the country. Our company exists solely for the purpose of assisting these institutions manage the risks they face.

To the casual observer, the idea that terrorists might strike an educational institution may seem implausible. The 9/11 attacks, after all, targeted the federal government and American business interests. Consider, though, some attributes of the American educational system that illustrate the vulnerabilities our members face:

- *Well-known Symbols.* Many American universities are known throughout the world for their research, teaching, and role in the community. They are strong symbols of an ordered and free American society. Experts tell us that Al Quaeda is particularly interested in attacks on symbols of American society. As such, our universities must be recognized as potential targets.
- *Mass Gatherings.* Colleges and universities host many large gatherings. A graduation may involve thousands of students, family members, and invited dignitaries. Presidential and vice-presidential debates, televised nationally, are held on campuses. Athletic competitions, such as NCAA Division 1A football and basketball, attract huge audiences and worldwide attention. The University of Alabama football stadium, for example, holds 84,000 spectators and the University of Nebraska, Lincoln, football team plays before 74,000 fans. The "Big House" at the University of Michigan in Ann Arbor seats even more. Educational institutions sponsor mass gatherings in urban and rural settings. Given the nature of many of these events – open to the public and as major expressions of our national culture – it is impossible to wall them off or protect them completely against terrorist attacks.

- *Wide-ranging Political Expression.* American educational institutions promote the free expression of ideas, including political ideas. They invite controversial speakers who sometimes spark dissent and confrontation. Campus disputes regularly make national and even international news.
- *Research with Dangerous Substances.* Higher education laboratories conduct research using many dangerous substances. Much of this research is done under contract with the federal government. Working on the cutting edge of science, investigators probe pathogens such as botulism, anthrax, and ebola. It is not unthinkable that a terrorist might steal harmful biological agents from a university laboratory. In anticipation of this possibility, Congress imposed new requirements on dangerous research in the 2002 USA PATRIOT Act. Nevertheless, universities engaged in this type of research clearly feel that they are at risk from this type of attack.
- *Students as Past Terror Victims.* In September 2004, Chechen rebels seized a school in the Russian town of Beslan. More than 300 children and adults died in this terrible attack. While international terrorists have not struck an American school to date, the possibility is very real. Domestic terrorists such as the Unabomber and some extreme animal rights activities have targeted universities in the past. We cannot dismiss the possibility of facing this type of threat in the future here in our country.
- *"Soft" Targets.* Security experts often distinguish between hard and soft targets based on their vulnerability. A hard target is well-protected against attack. The White House, for example, has very limited entry points and rigorous screening and identification procedures for access. It is walled off, well guarded, and set back from a street. In the past several years, American facilities such as airports, government structures, and commercial buildings have increased their security. Educational institutions, in contrast, remain relatively soft and vulnerable targets. They often lack perimeter security and impose few, if any, restrictions on entry. As other potential targets increase security, educational institutions may become more attractive to terrorists. As one observer has noted, "Like the flow of water, terrorists follow the path of least resistance."

In each of these cases, our member institutions face the possibility of workers compensation, significant property damage and liability losses should they ever be the victims of such an attack. These institutions are today being asked to prepare for and protect against risks they did not face before 9/11 and for which there are often no good security procedures available. How, for instance, can an institution change the fact that a graduation ceremony will attract thousands of citizens to a single facility at a single point in time, thus making them a potentially attractive target for a terrorist organization. Obviously, it can't.

Faced with these disturbing realities, United Educators has been working to protect our member institutions should a terrorist event occur. Since the company's founding in 1987, we have offered broad "all risks" general liability coverage with very high limits of liability coverage that included acts of terrorism. After the tragedies of 9/11, our reinsurers questioned our terrorism coverage, seeking to understand our plans for underwriting and pricing the exposure. We knew that we needed to act in order to continue having reinsurance coverage for this important liability risk. We embarked on a process to identify key terrorism exposures, aid our member institutions in better managing those exposures, and underwriting for the risks. Throughout the process we maintained close contact with our reinsurers. Ultimately the reinsurers were satisfied that the underwriting and risk management steps we were taking, combined with the added protection of the Terrorism Risk Insurance Act, would allow continuation of our reinsurance.

Securing long term, affordable property insurance for terrorist risks is a significant problem for universities. We have been successful, because of TRIA, to have our reinsures continue to support our high limits of liability insurance, providing stability and competition to the liability insurance market. This option doesn't exist for property insurance, making appropriate coverage difficult to secure for universities.

When TRIA's extension was being considered almost two years ago, we supported modifications to enhance the existing public private partnership and, over time, increase the private role in providing this coverage. At the same time, we felt strongly that the program must remain in place and more encouragement should be in place for the private sector to join with the public sector in creating long term solutions.

C. The Goals of the Risk Retention Act Amendments of 1986

Congress passed the 1986 Amendments to the Risk Retention Act to address the challenges that municipalities, universities, small businesses, and other entities were then facing in obtaining liability insurance. The House Committee on Energy and Commerce vividly described the bleak national landscape for insurance:

> "During the 99th Congress, the country has been shaken by a crisis in the availability and affordability of commercial liability insurance. Congress has been besieged with complaints regarding huge rate increases, mass cancellations of coverage, and entire lines of insurance virtually unavailable at any price. Crucial activities and services have been hard hit. Such activities include, among others, those of municipalities, universities, child daycare centers, health care providers, corporate directors and officers, hazardous waste disposal firms, small businesses generally, and many others."

House Report 99-8655, page 7.

The 1986 Amendments built upon the 1981 legislation that permitted risk retention groups, which are groups of similarly situated entities in a common line of endeavor, to offer product liability insurance. The 1986 amendments were designed to allow such groups to offer all lines of liability insurance other than workers' compensation. It expanded the opportunity for groups of schools, businesses, professionals, and others to shape their own destinies in the insurance marketplace.

Supporters of the 1986 Amendments expressed the belief that allowing risk retention groups to provide all types of liability insurance would foster rational underwriting and insurance pricing. They anticipated a positive, overall increase in the nation's insurance capacity and some moderation of the painful cycles in the availability of insurance from commercial carriers.

The House Committee report explained the expected benefits of the proposed amendments:

> "Since a risk retention group is simply a group of businesses or others who join together to set up their own insurance company only to issue insurance policies to themselves, it was believed that by encouraging such groups, the subjective element in underwriting could be reduced. The risk retention group would know its own loss experience and could adhere closely to it in setting rates. It was also believed that the 1981 Act, by providing alternatives to traditional insurance, would promote greater competition among insurers to "encourage private insurers to set rates to reflect experience as accurately as possible."

House Report 97-190, page 4.

> "…the Committee believes that creation of self-insurance groups can provide much-needed new capacity. Additionally, according to the Department of Commerce, "[t]he knowledge that substantial insurance buyers can create their own alternative insurance mechanisms will be an incentive to commercial insurers to avoid sharp peaks and valleys in their costs."

July 17, 1986, Congressional Record, pages S9229-S9230, letter of Douglas A. Riggs, General Counsel, Department of Commerce, dated June 25, 1986.

D. A new crisis

Now is the time for Congress to take the next step and help to solve a current insurance capacity and stability problem by expanding the Risk Retention Act again to include property insurance and creating a long term extension of the Terrorist Risk Insurance Act.

The federal Liability Risk Retention Act currently limits Risk Retention Groups (RRGs) to providing only liability insurance to its members. The ability to expand into property insurance, using the principles of member owned and controlled risk management, broad coverage, stable pricing and coordinated claims services would help fill a significant need of educational institutions.

The Present

Today, through UE, liability coverage works for educational institutions. UE emphasizes stable pricing and risk management, and coverage aimed to members' needs. UE covers risks often unavailable through other insurers but are basic to educational institutions, such as sexual harassment, sexual molestation, international study and athletic injuries.

UE works with institutions to minimize risks through workshops, roundtable discussions, computer-based learning tools, and other types of training. UE's risk management and education address campus topics including fire safety, sexual harassment training, dealing with students with severe mental health problems, disaster planning, athletics, discrimination prevention, bullying prevention, and substance abuse.

The Future

An expansion of the Risk Retention Act that enables United Educators to provide property insurance to educational institutions would add additional capacity and make that coverage more affordable, available, and as we are owned by and committed to only serving the educational market, more responsive to their needs. With an annual member renewal rate of 95%, United Educators' members clearly value the existing products and services.

Advantages of the expansion into property would include:

Coordinated training and claims management: Liability risks are closely linked to property risks. One insurance company could provide coordinated in-depth training and coverage for all risks that encompass liability and property claims.

Pricing: Educational institutions would be judged on their own experience, so costs would not reflect extraneous factors. An RRG offering property coverage including a terrorist event will support sharing the risks across institutions throughout the country.

Loss control: United Educators would provide guidance specific to institutions regarding, for example, helping colleges establish mutual aid agreements to help each re-open and serve students as quickly as possible following a terrorist event.

Commitment: United Educators makes a long-term commitment to its members. It works with them to reduce their losses and doesn't drop them simply because there has been a major loss. As a member-owned company, UE is committed to helping educational institutions and the members are committed to supporting their investment in the RRG.

Combined knowledge: UE members benefit from one another's experience. The company serves as an information clearinghouse so one institution's experience can help another prevent a loss.

E. Support for the expansion of the Risk Retention Act

A wide range of consumer groups, insurance brokers, state insurance commissioners, real estate investment trusts (REITs), and RRGs representing public housing authorities, non profit organizations and businesses support the expansion of the RRA. It is also a bipartisan effort.

F. Government Accountability Office Report on Risk Retention Groups

The Government Accountability Office ("GAO") issued a report in August, 2005 entitled *Risk Retention Groups: Common Regulatory Standards and Greater Member Protections Are Needed.* The GAO found that while "RRGs have had a small but important effect in increasing the availability and affordability of commercial liability insurance for certain groups," "widely varying state standards" and limited governance protections against potential conflicts of interest created the potential for problems in the industry.

Prompted by the GAO Report, the National Association of Insurance Commissioners ("NAIC") has undertaken a two-year process that has resulted in creation of corporate governance standards and requirements for the accreditation of the RRG states of domicile. While United Educators has none of the problems reflected in the GAO's concerns, we heartily endorse these proactive actions by the NAIC and, further, believe that any amendment to the LRRA expanding the scope of permissible insurance should include similar provisions or an affirmation of actions that have been taken at the state level.

Conclusion

We believe a long-term program should replace TRIA when it expires this year. We believe insurance policyholders and insurance markets will benefit significantly from the predictability and structure a long-term program would provide. We also believe that the expansion of the Risk Retention Act to include property insurance will allow businesses and non-profits with a federal government terrorism backstop to add much needed capacity and competitiveness to the terrorism insurance market for many years into the future.

The genius of Congress' enactment of the Liability Risk Retention Act in 1986 is vividly demonstrated by the successes of United Educators and other risk retention groups, including the Housing Authority Risk Retention Group, ALPS and Nonprofit's Insurance Alliance of California. They have succeeded because Congress recognized that commercial insurance purchasers know better than anyone else their own risks and needs. In requiring that Risk Retention Groups be owned and controlled by their policyholders, Congress also assured that the operation of the groups would consistently be in the best interests of their members.

Risk Retention Groups can not solve all of the problems that exist in the terrorism insurance market in America today. It is not a solution for homeowners and will not instantaneously provide all the capacity needed to provide coverage for the thousands of this country's schools, colleges and universities. If the federal government's role, under TRIEA, as reinsurer of risk retention groups and commercial insurance companies diminishes significantly, the needed capacity for terrorism insurance will evaporate. Nevertheless, expansion of the Liability Risk Retention Act to include property insurance will have an important and significant role in adding capacity and stability as part of a comprehensive solution.

Having successfully addressed the hazards of a hard liability market, risk retention groups, if given the opportunity, can be part of a strong public private partnership to meet on of the greatest risk sharing challenges of 2007 and beyond.

Thank you very much for the opportunity to address the committee on this important issue.