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Statement of
Jill Dalton, Managing Director and Leader of the Terrorism Specialty Practice, Marsh Inc.

On
The Terrorism Risk Insurance Act

Before the
House Financial Services Subcommittee on Capital Markets, Insurance and Government Sponsored Enterprises

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Washington, D.C.

Chairman Kanjorski, Ranking Member Pryce and members of the subcommittee, thank you for the opportunity to testify on this critical legislation. My name is Jill Dalton. I am a managing director in the Global Property & Multinational Practice of Marsh Inc. One of my roles is leader of Marsh's Terrorism Risk Specialty group.

Marsh is the world's leading insurance broker and risk advisor with over 26,000 employees that provide advice and transactional capabilities to clients in over 100 countries. The Council of Insurance Agents and Brokers represents the nation's leading, most productive and most profitable commercial property and casualty insurance agencies and brokerage firms. Council members specialize in a wide range of insurance products and risk management services for business, industry, government and the public. Operating in the US and internationally, Council members conduct business in more than 3,000 locations, employ more than 120,000 people, and annually place approximately 80 percent – well over $200 billion - of all U.S. insurance products and services including the administration of billions of dollars of employee benefits. Since 1913, The Council has worked in the best interest of its members, securing innovative solutions and creating new market opportunities. Marsh is The Council's largest member and, as you know, has been actively involved with this committee since immediately following 9-11. We are very appreciative to the Committee for including us and considering our views and those of our fellow members of The Council of Insurance Agents and Brokers.

In our position as the world's leading insurance broker, no other organization understands the markets as deeply as we do as respects terrorism risk – including the appetites, the capabilities and the financials that drive their behavior. Also, no other organization wanted the market to re-emerge to write terrorism more than us. And, unfortunately, we also understand the devastating effects of a terrorist attack as do many of our clients, the insurers with whom we place business and our competitors.

When TRIA was first discussed, we recommended a short-term and temporary solution as was stated by our former chairman, Jack Sinnott in his 2002 testimony. We instinctively do not support the federal government having a large position in our business and we thought that a short-term solution would be adequate. The Act has been successful in that it has given our clients options. However, the input we received from Guy Carpenter about the reinsurers' appetite for terrorism risk and the data from our Marketwatch reports and our customers' demand for coverage tells us we must think differently.

According to the Reinsurance Association of America there is approximately $6-8 billion of reinsurance capacity available in the market. While this is significantly more than what was available in 2002, it is not nearly enough to satisfy the demand. Without adequate support from the reinsurers the retail insurance companies cannot offer adequate capacity to policyholders.

And, our clients are demanding the coverage. The data from our 2006 Marketwatch report (which is attached) shows that nearly 60% of our clients bought the coverage in 2006. In the first quarter of 2007 that take-up rate was 64% compared to 57% for the same period last year.   And, the data also debunks the myth that this coverage is only purchased by those types of businesses (big banks and big real estate developers) that were most affected on 9-11 in large cities like NY.

It is true that business such as financial institutions and real estate firms have the highest take-up rates at 81% and 77% respectively. Yet, in 2006 we saw the take-up rates for other industries such as educational institutions, retailers and energy companies go up by more than 8%.

While it is true that businesses in the Northeast have the highest take-up rates at 66% for the year 2006 and 70% for the first quarter of 2007, for the second year in a row, every region which we measure had a take up rate greater than 50% in 2006. In the first quarter of 2007 those take up rates are at 60%.

And, it's true companies with total insured values greater than $100 million had a higher take up rate at 63%, but 49% of smaller companies (those with values under $100 million) also bought the coverage and this is not an insignificant amount.

There are even situations where, although take-up rates are high, not every client is able to secure all the coverage that they need or desire. This is due to the still limited capacity and the concerns of the insurers as respects their accumulations and the fire-following laws in some states which require coverage for loss by fire even if the cause of that such fire (i.e. terrorism) is excluded. For example, due to the high concentration of buildings and employees in mid-town Manhattan, some insurers will either offer reduced limits for fire perils or simply decline a risk due to the potential for a "clash" event affecting multiple policyholders and multiple lines of coverage and the potential for being legally forced to pay a fire-following terrorism claim under the NY State Standard Fire Policy Law despite an exclusion for terrorism.   They will also, at times, depending on the exposure and their underwriting guidelines, decline to quote because they do not want to be required to offer terrorism coverage as mandated by TRIA.

On several of the specific points of the draft extension bill, our comments are as follows:

10 year extension

Initially, and as stated in previous Marsh testimony to the Committee, Marsh felt very strongly that the Terrorism Risk Insurance Act should be a temporary measure because the private market would eventually be able to take over. We believed that once insurers became more accustomed to the elevated terrorism exposures and developed underwriting customs and strategies, they would be able to offer terror coverage under the traditional underwriting mechanisms. We also thought reinsurers would begin to offer the coverage again. Unfortunately, in the years since TRIA was enacted, we have not seen this private sector growth.

We also felt, at that time, that the threat of terrorism losses would diminish. Unfortunately, that has not been the case and many feel that we are more vulnerable than ever to another attack. Given the fact that our clients' facilities remain vulnerable to attack, they expect the federal government to support the protection of their properties and their employees as long as the threat remains viable. The actions by the Department of Homeland Security support this and are evidenced by the formation of the National Infrastructure Protection Plan (NIPP). The goal of the NIPP is to

> "build a safer, more secure, and more resilient America by enhancing protection of the Nation's critical infrastructure and key resources to prevent, deter, neutralize, or mitigate the effects of deliberate efforts by terrorists to destroy, incapacitate, or exploit them; and to strengthen national preparedness, timely response, and rapid recovery in the event of an attack, natural disaster, or other emergency."[1]

Representatives from the banking and finance sectors, including the insurance industry, have partnered with the Department of Treasury in this plan. The Department of Treasury also oversees TRIA, so there is a convergence of interests and authority. As long as the government sees a threat, policyholders, lenders and others see the need for coverage, and because the markets are neither willing nor able to provide the coverage without the Act, we believe that TRIA should be extended. Given the facts of the current insurance marketplace, we support the proposal for a 10 year extension.

Elimination of distinction between acts of domestic and foreign terrorism

We strongly support the elimination of the distinction between acts of domestic and foreign terrorism. We believe that if another event were to occur, it may be very difficult to determine who committed the act and it is further possible that it will be difficult to determine if the individual(s) were, as defined in the bill, *" … acting on behalf of any foreign person or foreign interest, as part of an effort to coerce the civilian population of the US or to influence the policy or affect the conduct of the US government by coercion."*[2] The bombing of the transit system in London was conducted by British citizens who may or may not have been acting on behalf of a foreign interest. Two months after the bombing, al-Qaeda claimed responsibility. Since Pool RE, the UK's terrorism plan, does not distinguish between foreign and domestic acts it was not relevant. However, the same certainty of coverage might not have applied had a similar loss occurred in the US. Given the fact that potential terrorist attacks may be made on behalf of religious groups in lieu of a secular entity, we feel that this distinction should be removed.

The exposures and loss potential for our clients and the insurers is the same regardless of who commits the act. It was never clear why the distinction was made in the original Act and we believe it should be removed.

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[1] Department of Homeland Security, Executive Summary, National Infrastructure Protection Plan, 2006
[2] Terrorism Risk Insurance Act of 2002

$50 million trigger

We recognize that the current trigger of $100 million is potentially onerous for smaller insurers to absorb. Marsh does business with many different insurers and we understand that most insurers want this trigger reduced so on that basis we support this lower trigger.

Maintain current recoupment formula

The current recoupment provisions in the Act allow for discretion on the part of the Department of Treasury based upon the size of the event, the location of the event, general economic conditions and insurance market conditions. We believe this a rational approach and that the discretion is warranted. We support maintaining the current flexibility.

Addition of Group Life

On this topic, we conferred with colleagues from our sister company at Mercer. We support the proposal to extend TRIA to cover group life insurance. In contrast to property and casualty insurance, there has been no appreciable reduction in the availability of group life insurance, but it often comes at a higher price because companies that offer group life coverage have had to increase risk charges and purchase increasingly expensive catastrophic reinsurance. We believe that including group life insurance in a TRIA extension could help reduce these costs and potentially make this important workplace benefit more widely available.

Keeping costs down is especially important given that employer-provided group life insurance represents nearly half of all life insurance in force. Because workers are likely to be concentrated geographically, any catastrophic event could affect many lives under a group plan and generate significant exposure to loss for the insurers of those groups. Group life is often the only life insurance coverage an individual has during his or her working years, so it is critical that group life insurers be able to pay promised benefits when due. Including group life in an extension of TRIA will help achieve this goal.

Require Treasury reports to Congress on market conditions and program operations at 3, 6 and 9 years out

We believe that it is sensible and responsible for Congress to receive regular updates on conditions in the insurance markets and we hope that our data will be of continued use. Marsh has communicated regularly with members of the Department of Treasury as respects market behavior and we will be honored to continue to provide this important information.

Mechanism for Treasury Reports and formation of Blue Ribbon Commission

We strongly support the bill’s provisions requiring the formation of a Blue Ribbon Commission to devise a long term plan to deal with terrorism insurance coverage. We would welcome the opportunity to be a part of any commission that is formed. We think that, like the House bill that was proposed in 2005, there should be a mandate to construct a plan whereby the insurance industry and the federal government can work together more efficiently to provide the coverage needed by consumers and businesses while eventually reducing the role of the federal government. This mandate should be posed to the insurance industry and the National Association of Insurance Commissioners with the formation of an oversight committee led by Treasury Department and with clearly identified benchmarks. The proposed timing of the reports at 5 years (interim) and 8 years (final) is logical. This is very similar to what is being implemented in the National Infrastructure Protection Plan and we view the insurance industry as a key provider of financing and infrastructure.

In our opinion, TRIA has been successful in that it has provided our clients with options for coverage and pricing. Secondly, it will be excellent method for distribution of federal funds if an event does occur. Compare this with the many stories in the media about the inefficient distribution of funds from FEMA to people and businesses in need. Months after the event, FEMA asked some recipients to refund money that was inadvertently paid out while others waited many months for their checks. It is taxpayer-efficient in that it uses virtually no taxpayer resources unless needed, and, if needed, the taxpayer is reimbursed for the expenditure of funds in an appropriately broad-based national mechanism that collects only what is needed to pay back the loss. It is a focused response to a specific problem. Many people assume that if TRIA is not extended and if there is another event, the federal government will likely bear the burden for the relief. Use of the commercial insurance market to adjust the losses and distribute these funds is one of the most efficient ways that the federal government and business can work together.

On making offering of Nuclear, Biological, Chemical and Radiological (NBCR) mandatory

For our clients, we strongly support the proposal for a mandatory offering of coverage for NBCR terrorism events. We recognize that insurers view this as uninsurable (except for Workers Comp where it is already provided) and we understand this position. If it is to be mandatory, the Act should be structured so that the federal government's share for these perils is greater than for other perils. This could be done with a lower deductible and/or a smaller or zero vertical participation. We are pleased that these recommendations are included in the draft bill – both the 7.5% retention (in lieu of 20% for conventional terrorism) and the step-down mechanism depending on the magnitude of the loss.

We are concerned that without such separate treatment, insurers may limit or reduce the All-Risk limits that they provide for perils such as fire, explosion and windstorm, and this could have the unintended consequence of creating a severe shortage of core property capacity due to aggregation concerns and possibilities of adverse selection for perceived target risks.

We also believe that, if mandatory, the offering for NBCR perils must be priced separately than the offering for the other perils and that policyholders can choose whether or not it is to be purchased. If it is made mandatory, we expect the insurers' pricing to vary wildly and to be very high, which is what we experienced with TRIA pricing when the Act was first passed in 2002. It is important that policyholders are able to choose separately between purchasing conventional terrorism and NBCR terrorism.

- **Apply TRIA's original rate and form implementation standards –** clearly including NBCR into TRIA will entail significant administrative management and a transition plan will be necessary. The more time that brokers and insurers have to implement this change the smoother and less disruptive it will be for consumers and our clients.

- **Clarify that Pollution and Nuclear Exclusions Will Not Apply to NBCR Terrorism Events -** We support this clarification and feel it is a critical distinction. In effect, it is the existing pollution and nuclear exclusions that nullify the coverage now on most policies and without this clarification there could be ambiguities.

Provide Additional Legal Certainty to Insurers

If insurers view the current Act as ambiguous in certain areas and if it appears that there are inconsistencies, we are agreeable to amendments that will provide the Act with more legal certainty.

Modify Language to More Clearly Limit the Liability of Insurers and the Government to the $100 billion Cap

If the current Act is not clear on this point or how it is implemented, we support any language that will limit any confusion in the event of a loss and expedite payment to policyholders and repayment to insurers. We have always treated this cap as a true limit on liability and if this wording solidifies this language then it will be consistent with our communications to our clients.

Update Findings and Purposes to Reflect Group Life and NBCR changes

This is a logical amendment to make if Group Life is added into the Act.

Add a Reset Mechanism for Areas Impacted by Significant Terrorist Attacks to Lower the Deductibles and Triggers in Such Areas.

We believe that the deductibles and triggers for all the losses should be treated equally regardless of where they occur. We do not support lower deductibles or lower triggers in areas that may be more impacted by significant terrorist attacks. As we saw in the wake of the attacks on 9-11-01, many businesses around the country suffered financial losses due to their reliance upon the financial markets (as suppliers or customers) which were physically damaged in New York, and as a result of the actions taken by the government (i.e. the F.A.A. shutdown of all air travel). If deductibles are reset due to a significant event they should be reset universally for all areas. The wording in the current draft could be construed to apply to losses occurring in New York City because of the events of 9-11-01 and not as a result of future events and we do not see that as equitable.

Modestly Rebuild Capacity by Providing Clarity that the $100 billion cap is Net of Insurance Industry Obligation

We support this clarification in that it will provide for the maximum payout for policyholders in the event of a loss and it eliminates certain ambiguity in the current bill.

Conclusion

The Council and Marsh agree with the Committee that protection for our nations' businesses against the risks of terrorism is extremely important. We commend you for your leadership by holding this hearing today and for strongly supporting the extension of this legislation which is so important to our clients and to the vitality of our nation's economy. If there is another event, we want and need the insurance industry to respond positively with financial support and technical expertise and to continue to be financially viable to compensate for other types of losses. With the continuation of TRIA and by incorporating these changes we feel it will be well-poised to do so.

ABOUT MARSH

Marsh, the world's leading insurance broker and risk advisor, has 26,000 employees and provides advice and transactional capabilities to clients in over 100 countries. Marsh is a unit of Marsh & McLennan Companies (MMC), a global professional services firm with approximately 55,000 employees and approximately $12 billion of annual revenues. MMC also is the parent company of Guy Carpenter, Kroll, Mercer Human Resource Consulting, Oliver Wyman, and Putnam Investments. MMC's stock (ticker symbol: MMC) is listed on the New York, Chicago, and London stock exchanges. MMC's Web Site is www.mmc.com. Marsh's Web site is www.marsh.com.