

BULLETIN
02-EX-3

DATE: DECEMBER 19, 2002

TO: ALL PROPERTY & CASUALTY COMPANIES LICENSED TO CONDUCT
BUSINESS IN GEORGIA
ALL LIFE & HEALTH COMPANIES LICENSED TO CONDUCT BUSINESS IN
GEORGIA
ALL INSURERS ON THE DEPARTMENT'S NAIC QUARTERLY LISTING OF
ALIEN INSURERS
ALL LICENSED RATING ORGANIZATIONS
ALL LICENSED WORKERS COMPENSATION GROUP SELF-INSURANCE
TRUST FUNDS
ALL LICENSED CAPTIVE INSURERS
ALL LICENSED INTERLOCAL RISK MANAGEMENT AGENCIES
ALL AUTHORIZED ADMINISTRATORS OF RESIDUAL MARKET PLANS
ALL FOREIGN SURPLUS LINES INSURERS WRITING BUSINESS IN GEORGIA
IN CARE OF ALL LICENSED SURPLUS LINES BROKERS

FROM: JOHN W. OXENDINE
INSURANCE AND SAFETY FIRE COMMISSIONER

RE: TERRORISM RISK INSURANCE ACT OF 2002

The purpose of this Bulletin is to inform all affected entities and interested parties of the recent passage of the federal Terrorism Risk Insurance Act of 2002. This bulletin will provide a brief summary of the provisions of the Act and outline certain requirements of insurers.

Please note that all licensed Surplus Lines brokers in receipt of this Bulletin shall forward a copy to all Foreign Surplus Lines insurers represented.

BACKGROUND

There has been much uncertainty in the markets for commercial lines property and casualty insurance coverage in light of the substantial losses experienced by the industry on September 11, 2001. Soon after the tragic events, many reinsurers announced that they did not intend to provide coverage for acts of terrorism in future reinsurance contracts. This led to a concerted effort on behalf of all interested parties to seek a temporary federal backstop to calm market fears over future terrorist attacks and the ability of the insurance industry to allocate capital to provide coverage for these unpredictable and potentially catastrophic events. Congress recently enacted and the President has signed into law the Terrorism Risk Insurance Act of 2002 (hereinafter “the Act”). This federal law provides a federal backstop for defined acts of terrorism and imposes certain obligations on insurers.

DEFINITION OF “INSURER”

Section 102(6) of the Act defines “insurer” for purposes of the Act. “Insurer” means any entity and affiliate thereof--

- (A) that is
 - (i) licensed or admitted to engage in the business of providing primary or excess insurance in any State;
 - (ii) an eligible surplus lines carrier listed on the Quarterly Listing of Alien Insurers of the NAIC, or any successor thereto;
 - (iii) approved for the purpose of offering property and casualty insurance by a federal agency in connection with maritime, energy, or aviation activity;
 - (iv) a State residual market insurance entity or State workers’ compensation fund; or
- (B) That receives direct earned premium for any type of commercial property and casualty insurance coverage.

The Secretary of the Treasury may extend the Act to other classes or types of captive insurers and other self-insured arrangements by municipalities and other entities as well as to insurers who offer group life insurance.

DEFINITION OF “PROPERTY AND CASUALTY INSURANCE”

Section 102(12) of the Act states the term “property and casualty insurance”

- (A) means commercial lines of property and casualty insurance, including excess insurance, workers’ compensation insurance, and surety insurance; and
- (B) does not include crop or livestock insurance, private mortgage or title insurance, financial guaranty insurance issued by monoline financial guaranty insurance corporations, medical malpractice, health or life insurance including group life, flood insurance provided under the National Flood Insurance Act, or reinsurance or retrocessional reinsurance.

DEFINITION OF “ACT OF TERRORISM”

Section 102(1) of the Act defines an **act of terrorism** for the purposes of the Act. Section 102(1)(A) states, “The term “**act of terrorism**” means any act that is certified by the Secretary of the Treasury, in concurrence with the Secretary of State, and the Attorney General of the United States -

- (i) to be an act of terrorism;
- (ii) to be a violent act or an act that is dangerous to -
 - (I) human life;
 - (II) property; or
 - (III) infrastructure;
- (iii) to have resulted in damage within the United States, or outside of the United States in the case of -
 - (I) an air carrier or vessel described in paragraph (5)(B); or
 - (II) the premises of a United States mission; and
- (iv) to have been committed by an individual or individuals acting on behalf of any foreign person or foreign interest, as part of an effort to coerce the civilian population of the United States or to influence the policy or affect the conduct of the United States Government by coercion.”

Section 102(1)(B) of the Act states, “No act shall be certified by the Secretary as an **act of terrorism** if

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- (i) the act is committed as part of the course of a war declared by the Congress, except that this clause shall not apply with respect to any coverage for workers’ compensation; or
- (ii) property and casualty insurance losses resulting from the act, in the aggregate, do not exceed \$5,000,000.”

Section 102(1)(C) and (D) of the Act specify that the determinations are final and not subject to judicial review and that the Secretary of the Treasury cannot delegate the determination to anyone.

MANDATORY INSURER PARTICIPATION AND COVERAGE AVAILABILITY

All insurers, as defined in the Act, are required by the Act to participate in the Terrorism Insurance Program (hereinafter, the Program) and make available coverage for **insured losses** in all of their covered commercial lines policies. The term **insured loss** means any loss resulting from an **act of terrorism** (including an act of war, in the case of workers’ compensation) that is covered by primary or excess property and casualty insurance issued by an insurer if such loss -

- (i) occurs within the United States; or

- (ii) occurs to an air carrier (as described in Section 40102 of Title 49, United States Code), to a United States flag vessel (or a vessel based principally in the United States, on which United States income tax is paid and whose insurance coverage is subject to regulation in the United States), regardless of where the loss occurs, or on the premises of a United States mission.

The Act also advises that **insured loss** excludes amounts awarded in a civil action that are attributable to punitive damages. The Act further requires insurers to make available property and casualty insurance coverage for **insured losses**, which does not differ, materially, from the terms, amounts, and other coverage limitations applicable to losses arising from events other than **acts of terrorism**.

The Act voids any terrorism exclusions in a contract for property and casualty insurance that is in force on the date of enactment of this Act to the extent that it excludes losses that would otherwise be **insured losses**. The Act also voids any state approval of any terrorism exclusion from a contract for property or casualty insurance that is in force on the date of enactment of this Act to the extent that it excludes losses that would otherwise be **insured losses**. The Act allows insurers to “reinstate a preexisting provision that is a contract for commercial property and casualty insurance that is in force on the date of enactment of this Act and that excludes coverage for acts of terrorism only” if one of two conditions are met: the insurer must have received a written statement from the insured that affirmatively authorizes such reinstatement; or, if the insurer has provided notice to the insured at least 30 days before any such reinstatement and the insured fails to pay any increased premium charged by the insurer for providing such terrorism coverage.

As a result of the definition contained in the Act, there are essentially two (2) distinct types of losses that a business might face that result from terrorism. One type of loss is the **insured loss** that is defined within and covered by the provisions of the Act. For convenience, we will adopt the moniker of **certified loss** to refer to losses resulting from certified acts of terrorism. The second type of loss that a business might face is one that does not fit within the definition of **insured loss** as described in the Act. For convenience we will adopt the moniker of **non-certified loss** to refer to losses resulting from terrorism that is not certified. The most significant difference between these losses is that the **certified losses** will always involve a foreign person or foreign interest, while the **non-certified losses** may not.

This state will not allow exclusions of coverage for acts of terrorism that fail to be **certified losses** solely because they fall below the \$5,000,000 threshold in Section 102(1)(B) on any policy that provides coverage for **certified losses**. Insurers required to file policy forms may submit language containing coverage limitations for **certified losses** that exceed \$100 billion, provided the limitations do not restrict the coverage provided by the provisions of the Standard Fire Policy.

SUBMISSION OF RATES, POLICY FORM LANGUAGE, AND DISCLOSURE NOTICES

Insurers are required to comply with the Act and with state law. Section 106(a)(2)(B) of the Act states that “...during the period beginning on the date of enactment of this Act and ending on

December 31, 2003, rates and forms for terrorism risk insurance coverage covered by this title and filed with any State shall not be subject to prior approval or a waiting period under any law of a State that would otherwise be applicable...” Please note that the preemption of this state’s form filing law, O.C.G.A. §33-24-9, applies only to contract language that is applicable to **certified losses**. If an insurer intends to reinstate an exclusion on in-force policies as allowed under the Act, it may only reinstate an exclusion that previously existed on the policy. The subsection further notes that rates remain subject to subsequent regulatory review based on whether a rate is “excessive, inadequate, or unfairly discriminatory” and other applicable state law. Similarly, policy forms are subject to subsequent review based on all applicable laws and regulations. Thus, a system is created where insurers can immediately implement prospective rate changes for coverage of **insured losses** related to **acts of terrorism** as defined in the Act. Proposed rate changes filed in Georgia should reflect the reduction in ultimate exposure provided by the Federal Program.

Supporting documentation must be sufficient for the Department to determine if the rates are excessive, inadequate or unfairly discriminatory. Policy language for terrorism risk and insurance covered by the Act (granting coverage or excluding coverage for **insured losses**) is only exempt from prior approval or waiting periods to the extent that the policy language relates to **insured losses** as defined in the Act. Other policy language changes and related pricing remain subject to current applicable state law and will be processed in accordance with standard procedures. Georgia has not allowed terrorism exclusions for widespread use in the controlled lines. We do not anticipate a significant departure from our past position for **non-certified losses** in the near future. In fact, exclusions for **non-certified losses** may be returned or disapproved.

If an insurer relies solely on a rating organization to file loss costs, related rating systems, or forms on its behalf (i.e., the insurer is a member or subscriber that has authorized the rating organization to file on its behalf), no filing is required unless an insurer plans to use a different loss cost multiplier than is currently on file for coverage for **certified losses**. The rate filing should provide sufficient information for the reviewer to determine what price would be charged to a business seeking to cover **certified losses**. This state will accept filings that contain a specified percentage of premium to provide for coverage for **certified losses**.

Insurers may also choose to use rating plans that take into account other factors such as geography, building profile, proximity to target risks and other reasonable rating factors. The insurer should state in the filing the basis that it has for selection of the rates and rating systems that it chooses to apply. The supporting documentation should be sufficient for the reviewer to determine if the rates are excessive, inadequate or unfairly discriminatory. For the convenience of insurers, this state will waive its requirements for supporting documentation for rates for **certified losses** for filings that do not increase the premium charges for any policyholder by more than 1.5%. **IMPORTANT NOTE:** Any filing which may result in an increase in premium for any policyholder must also be filed with the Governor’s Office of the Consumers’ Insurance Advocate.

Insurers subject to policy form regulation must submit the policy language that they intend to use in this state within a reasonable time after they are implemented. This state considers 30 days to be a reasonable time for purposes of completing an expedited filing of policy language. The policy should define **acts of**

terrorism and **certified losses** in words that are consistent with the Act, state law and the guidance provided in this Bulletin. The definitions, terms and conditions should be complete and accurately describe the coverage that will be provided in the policy.

The disclosure should comply with the requirements of the Act and should be consistent with the policy language and rates filed by the insurer. Disclosures are not normally required to be filed in Georgia as only those forms physically attached to and made a part of the policy need be filed. Details about the applicable requirements are contained in the following two paragraphs:

In-force business receives special consideration under the Act. Section 105(a) voids any terrorism exclusion on existing policies to the extent that it excludes losses that would otherwise be **insured losses** as defined in the Act. It details a process for insurers and policyholders to reinstate the voided exclusions.

Under that process, an insurer may reinstate a preexisting provision in a contract that is in force on the date of enactment of this Act and that excludes coverage for an **act of terrorism** only if the insurer has received a written statement from the insured that affirmatively authorizes such reinstatement or if the insured fails to pay any increased premium charged by the insurer for providing such coverage and the insurer provided notice, at least 30 days before any such reinstatement as provided by Section 105 of the Act.

There are also disclosures required to new business and renewal business. Although avoidance of contract language is not an issue, insurers must make certain disclosures to policyholders to remain in compliance with the Act. Section 103(b)(2) requires insurers to provide a clear and conspicuous disclosure to the policyholder of the premium charged for covered **insured losses** and advise that a federal program exists where the federal government will share significant portions of major **insured losses** with insurers.

Model disclosures can be found at www.naic.org/pressroom/releases/EmergencyResponse.htm

EFFECT ON WORKERS' COMPENSATION INSURANCE COVERAGE

Treatment of workers' compensation insurance under the Act is slightly different than treatment of other property and casualty insurance coverages. First, Section 102(1)(B)(i) provides that the Federal program will share the risk of loss for workers' compensation for acts of war in addition to acts of terrorism. This treatment occurs because of the statutory scheme of workers' compensation, which does not provide an exclusion for losses resulting from an act of war. Under Georgia law there is no exclusion for workers' compensation losses resulting from an act of war. There is no provision in the Act that would preempt the compulsory coverage aspects of Georgia's workers' compensation insurance policies. In other respects, however, workers' compensation coverage is treated under the

Act as any other covered line of insurance. Therefore, the notice requirements of Section 103(b)(2) and the mandatory "make available" requirements of Section 103(c) apply to workers' compensation policies.

In this connection, workers' compensation insurers are required to separately state the amount of the estimated portion of the premium being charged a policyholder for acts of terrorism, as defined in the Act.

As Georgia's workers' compensation law does not have any exclusions for terrorism or war, neither

insurers nor policyholders may use the Act's procedures to create such an exclusion.

STANDARD FIRE POLICY

In this state, the requirements for fire coverage are established by law and where applicable, must meet or exceed the provisions of the Standard Fire Policy. These legal requirements cannot be waived. Thus, a business cannot voluntarily waive this statutorily mandated coverage. Georgia's standard fire policy law is not applicable to monoline casualty, marine, and transportation insurance, or insurance on growing crops.

EXPLANATION AND INSTRUCTIONS FOR TERRORISM RATE AND FORM REVIEW

The Act preempts any state prior approval law pertaining to rates or forms, including any law that imposes waiting periods prior to use of a rate or form for purposes of terrorism coverage, as defined by the Act.

This preemption remains in effect for the first year of the Act. Consistent with these requirements of the Act, this Bulletin establishes a system for rates and forms, requiring insurers or rating organizations to file their rates and forms no later than 30 days after their first date of use. The procedure for obtaining an expedited review of such rates and forms relating to **certified losses** is set forth below. However, nothing in this bulletin shall be construed as establishing a rate or form filing review or approval requirement where one does not otherwise exist under this state's law. Policy language changes and related pricing for **non-certified losses** remain subject to current applicable state law and will be processed pursuant to O.C.G.A. §33-9-21 and O.C.G.A. §33-24-9.

FORMS WITH INSTRUCTIONS

Attached to this Bulletin is a filing transmittal form. An insurer or advisory organization wishing to receive expedited treatment of its filing shall complete the EXPEDITED FILING TRANSMITTAL DOCUMENT FOR CERTIFIED TERRORISM LOSSES. In addition, the insurer(s) or rating organization submitting the filing must certify that the filing is consistent with this Bulletin, state law and the provisions of the Act. Certification is made by signing the appropriate blank on the transmittal form. The attached expedited filing transmittal document replaces all otherwise applicable filing forms and filing transmittal forms for these filings.

To be complete, an expedited filing must include the following:

1. Required filing fees, attached to filing fee transmittal form completed in its entirety. (refer to www.gainsurance.org/Documents/FeeFormPC-FF.pdf).
2. A completed, Expedited Filing Transmittal Document for Certified Terrorism Losses for each insurer or rating organization.
3. For each insurer, one copy of each policy form or endorsement that the insurer intends to use, unless the insurer has given a rating organization authorization to file them on its behalf.
4. For each insurer, a copy of the rates and rating systems along with the supporting

documentation, if required.

5. For each insurer, a copy of the Consumer's Advocate Service Certification. This document is only required if the filing results in a premium increase for any policyholder or coverage reduction with no corresponding premium decrease. A copy of the Consumer Advocate's Service Certification form can be found at [www.gainsurance.org/Documents/attachment\(b\)FORM.pdf](http://www.gainsurance.org/Documents/attachment(b)FORM.pdf).
6. A postage-paid, self-addressed envelope **large enough to accommodate the return copy**.

If this filing is identical for multiple companies, please provide a copy of the transmittal header for each company and an extra copy for return to the company (i.e., 7 companies = 8 copies).

ADDITIONAL AUTHORITY AND RESPONSIBILITIES OF THE SECRETARY OF THE TREASURY

In addition to being responsible for administering the Program, the Act requires the Secretary of the Treasury to:

- a. issue regulations, as soon as practicable to apply the Act to State Residual Market Insurers;
- b. study, on an expedited basis, whether adequate and affordable catastrophe reinsurance for any act of terrorism is available to United States life insurers that offer group life insurance; and the extent to which the threat of terrorism is reducing the availability of group life insurance coverage for consumers in the United States; and
- c. study the potential effects of acts of terrorism on the availability of life insurance and other coverages, including personal lines.

The Secretary of the Treasury may require information regarding terrorism risk insurance premium rates annually. The Secretary may require each insurer to submit such information to the NAIC as necessary.

EFFECTIVE DATE

This bulletin shall take immediate effect. The expedited filing process outlined herein shall expire on December 31, 2003. The remainder of the bulletin shall expire on December 31, 2005, unless Congress extends the duration of the Act.

Please direct any questions to the Office of Commissioner of Insurance, Property & Casualty Division, 904

West Tower, Floyd Building, No. 2 Martin Luther King, Jr. Drive, Atlanta, Georgia 30334, 404-656-4449.

This 19th day of December, 2002.

JOHN W. OXENDINE
COMMISSIONER OF INSURANCE

NOTE: If you are an individual with a disability and wish to acquire this document in an alternative format, please contact the ADA Coordinator; Office of Commissioner of Insurance; 2 Martin Luther King Jr. Drive, Atlanta, GA 30334. Telephone No. (404) 656-2056, for the hearing or speech impaired TTY/TDD (404) 656-4031.

EXPEDITED FILING TRANSMITTAL FOR CERTIFIED TERRORISM LOSSES

NOTE: USE OF THIS FORM IS LIMITED TO FILINGS RELATED SOLELY TO CERTIFIED LOSSES

DEPARTMENT USE ONLY PC-TERR

DEPARTMENT LOG #	
ANALYST:	ACTUAL % DEPT. APP/ACK:
ACTION: WD / APP / ACK / DIS / FILED	

Will any policyholder receive a premium increase or reduced coverage with no corresponding premium decrease? If Yes, a copy of the Consumers' Insurance Advocate Certification must be attached to this filing. This form can be located at [www.gainsurance.org/Documents/attachment\(b\)FORM.pdf](http://www.gainsurance.org/Documents/attachment(b)FORM.pdf). A copy of the entire filing should be mailed to the Consumer's Insurance Advocate's Office, certified mail, return receipt requested.

SECTION A

INSURER: **New Company?:**
(if yes, check box)

Recent Name Change?: yes no If yes, former name:

TRANSMITTAL DATE: NAIC CODE NUMBER: STATE OF DOMICILE:

mo dy yr

SECTION B

TOTAL FEE SUBMITTED: \$ CHECK NUMBER: Retaliatory Fees:
(if yes, check box)

TOTAL FEE FOR ABOVE INSURER: \$ FEE BREAKDOWN FOR ABOVE INSURER: Policy Form: \$ # Forms Submitted: Rate: \$

SECTION C

INSURANCE LINE: (See Pg.3, Use Codes) Line 1: Line 2: PROGRAM TITLE:

Can be found at: www.gainsurance.org/document/PC-T1page3.pdf TYPE OF FILING: (check all that apply) RATE: FORM: RULE:

COMMERCIAL: LOSS COST:

PROPOSED EFFECTIVE DATE:

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SECTION D

BRIEF DESCRIPTION OF THIS FILING:

SECTION E

NAME AND TITLE OF CONTACT PERSON MAKING FILINGS:

TELEPHONE NUMBER:
(Provide a TOLL FREE number or a number where collect calls will be accepted.)

SECTION F

The insurer(s) submitting this filing certifies that it:
Is in compliance with the terms of the Terrorism Risk Insurance Act of 2002 and the laws of this state; and
Is in compliance with the requirements of the bulletin containing the voluntary expedited filing procedures.

Signature _____ Print Name: _____ Title: _____