Lawyers Call for Reviving Terrorism Risk Insurance

By Oscar Rivera

In a move that caught many of those in the real estate and insurance industries by surprise, the U.S. Senate adjourned Dec. 16 without a vote on a bill to extend the Terrorism Risk Insurance Act for six years. The program will now expire Dec. 31, and the negative repercussions for the real estate industry are expected to be significant.

The TRIA program has served as the backstop for insurance companies' losses from acts of terrorism ever since it was ratified with widespread bipartisan support after the 9/11 terrorist attacks, which caused the private market for terrorism insurance to collapse.

Once the program is allowed to lapse at the end of the year for the first time since its inception, insurers will have the right to cancel terrorism policies. Insurance industry analysts believe that is exactly what many of the carriers will do, as they would be at risk of insolvency without the government backup if a massive terrorist attack were to take place.

Under the TRIA law, the federal government covers 85 percent of all losses after the first $100 million in damages from a terrorist attack. Thankfully, the government has never had to pay out to the insurers under the law, but unfortunately the need for this type of insurance is as strong today as it was when the program was enacted in 2002.

The reauthorization bill would have renewed the program for six years and decreased the government's exposure by gradually increasing the threshold to $200 million in losses before the federal funds are allocated. In addition, the government's share of the catastrophic losses would have been gradually lowered to 80 percent.

U.S. Sen. Charles Schumer, D-N.Y., who negotiated the current reauthorization bill in the Senate and helped to get the original law ratified in 2002, has said that billions of dollars in new real estate developments and hundreds of thousands of jobs are at risk due to the expiration of TRIA.

Insurance and real estate industry analysts tend to agree, as terrorism insurance coverage is required for practically all of types of loans and financing options that are available for major real estate developments such as shopping centers, office towers, residential towers, stadiums, arenas and public sector infrastructure projects. Indeed, once the program lapses and insurers begin to cancel these policies, the loans for these projects that lose their terrorism coverage will be in technical default.

The instability that the loss of the TRIA coverage is going to cause in the insurance and real estate industries will be significant. When the U.S. Congress reconvenes Jan. 6, it should make the reinstatement of this insurance program one of its foremost priorities.

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