



## **Insuring Against Terrorism — 5 Years Later** **Terrorism Risk Insurance Extension Act of 2005**

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If you purchase aviation insurance you probably have heard talk about "TRIA" in the last few years. Well, now there's a new and improved version called the *Terrorism Risk Insurance Extension Act of 2005*, or TRIEA for short. But what is TRIEA and how does it differ from TRIA?

With respect to the aviation insurance buyer, there is really very little difference. TRIEA simply extends the provisions of TRIA from the original program termination date of December 31, 2005 through December 31, 2007. Although there are a number of other changes under the extension, this is the primary change affecting the insurance consumer.

That being said, in order to make an educated decision with respect to this coverage, most of us probably need to revisit TRIA (the Terrorism Risk Insurance Act of 2002) and the benefits it offers to the insurance buyer.

If you've asked your insurance agent to explain TRIA in the last year or so, you may have been met with a little bit of stammering and stuttering. Although the basics of TRIA are quite simple, our experience in the aviation arena is that few have purchased the coverage and, consequently, it's not always easy to keep the facts straight, much less be able to explain them with any clarity.

### ***Re-visit of TRIA***

Losses that result from acts of terrorism, both foreign and domestic, have traditionally been excluded from coverage under the war risk exclusion in aviation insurance policies. Several perils are included under the war risk exclusion, only one of which is *acts of terrorism*. In many cases war risk coverage can be purchased which means that the insured would then have coverage for acts of terrorism. Most light aircraft operators do not carry this coverage, but many turbo-prop and jet operators do.

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On November 26, 2002, President Bush signed into law the **Terrorism Risk Insurance Act of 2002**. This legislation was implemented to assure the availability of insurance coverage for an act of terrorism (1) by requiring that the insurance companies make this coverage available to commercial insurance buyers, and (2) by providing a "backstop" to the insurance companies through which the federal government would reimburse the insurance companies for losses exceeding certain levels.

Under the law 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:

- to be an act of **terrorism**.
- to be a **violent act** or an **act that is dangerous** to human life, property, or infrastructure.
- to have **resulted in damage within the United States**, or outside the United States in the case of an air carrier or vessel or the premises of a United States mission.
- to have been committed by an individual(s) **acting on behalf of any foreign person or interest**, as part of an effort to coerce the civilian population of the U.S. or influence or affect the conduct of the U.S. government by coercion.

However, no act shall be considered an Act of Terrorism if:

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

Did you catch that? Not only must an event meet the rather narrowly defined criteria, including the fact that the identified offices must certify it as an "Act of Terrorism", but the losses must exceed \$5,000,000 in total. If this threshold is not met, this law and the coverage provided will not apply.

### ***Benefits of TRIA***

In the event that an act is so declared and meets all of the above criteria, and you have elected to purchase the corresponding TRIA insurance coverage, the insurance company would be required to honor the terms of your policy despite any exclusion for terrorism that might otherwise exist.

If you DO NOT carry war risks coverage, purchasing TRIA means you will receive the benefit of coverage for any loss arising out of an act of terrorism as defined. This coverage will be an extension of the coverage you have already purchased (liability and physical damage) and will be accomplished by removing the applicable exclusions in your current policy. Beware; this coverage is only triggered by an act meeting the specific definition above!

If you DO carry war risks coverage, you already have terrorism coverage. You have TRIA protection and more under the war risk endorsement including *war, invasion, acts of foreign enemies, hostilities, civil war, rebellion, revolution, strikes, riots, civil commotions, labor disturbances, malicious acts or acts of sabotage*, and more. But there are still a few additional benefits derived from TRIA.

- **War sub-limits removed** – if you carry a liability limit of more than \$50,000,000, your policy also includes a sub-limit for 3<sup>rd</sup> party war liability. By purchasing TRIA the aggregate limits and sub-limits for a terrorism loss can be removed.
- **Cancellation provisions improved** – war risk coverage generally provides 7 days Notice of Cancellation or a lesser period for certain events. If you elect to buy TRIA, the cancellation provisions will revert to your standard policy provisions which usually will be between 30 and 90 days. If, for example, you operate a corporate flight department, this extra notice may give you the time needed to use your aircraft to retrieve company personnel from remote locations before the coverage ceases.

These are a few of the benefits. There may be additional areas of coverage but this is, quite simply, an area that has never been tested. Since the enactment of TRIA, there has not been an event declared as an Act of Terrorism. It's uncharted territory!

### **Cost of TRIA**

In considering the option to buy TRIA, an obvious factor will be the cost. What you will find is a wide variation in pricing by the different underwriters. Take a look at the following examples:

Falcon 2000 with a \$200,000,000 limit of liability and an insured value of \$27,000,000

- Company A – TRIA annual cost: \$21,357
- Company B – TRIA annual cost: \$1,550

Piper Saratoga PA32R-301 with a \$1,000,000 limit of liability and an insured value of \$495,000

- Company A – TRIA annual cost: \$417
- Company B – TRIA annual cost: \$10

The moral of the story...ask your insurance broker to provide this option and the associated cost.

## ***Back to TRIEA***

As mentioned earlier, TRIEA is simply an extension of the original Terrorism Risk Insurance Act through December 31, 2007. The primary relevance of this legislation is that TRIA coverage will be made available to insurance buyers for the next two years.

The other changes in the terrorism insurance program under TRIEA serve to increase the financial responsibility of the insurance companies and reduce the participation in terrorism losses by the federal government. If you are interested in learning more about that aspect of the legislation, go to [www.ustreas.gov/offices/domestic-finance/](http://www.ustreas.gov/offices/domestic-finance/) or the search engine of your choice and do a search for "Terrorism Risk Insurance Extension Act."

## ***Should I Purchase TRIEA?***

Like other buying decisions, you need to be aware of your options and make an educated decision. If you already purchase war risk coverage, TRIEA offers only limited benefit. However, if the cost is insignificant, it might make sense to purchase the coverage. If you do not carry war risk coverage, then TRIEA would provide a limited protection for terrorism losses that you do not have now.

Our best advice is that you consider the available options and purchase the highest level of coverage that you can afford. Yes, this advice is purposely ambiguous. We want you to carry the best and broadest coverage available. However, we would also prefer that you do not go broke doing so!