

STATE OF NEBRASKA

DEPARTMENT OF INSURANCE

L. Tim Wagner

Director

December 27, 2001

CB-103



Mike Johanns
Governor

BULLETIN

SUBJECT: VOLUNTARY EXPEDITED FILING PROCEDURES FOR EXCLUSIONS RELATED TO ACTS OF TERRORISM

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 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. Unfortunately, Congress has been unable to reach agreement on the terms of a temporary federal solution. As a result, insurance regulators find themselves having to consider approval of certain coverage exclusions for acts of terrorism or risk possible serious solvency concerns in the insurance industry.

The purpose of this bulletin is to inform you of the decision in this state to approve certain limited exclusions for acts of terrorism and to provide a voluntary procedure for insurers to use to expedite the filing and timely review of these limited exclusions. The Nebraska Department of Insurance was involved in recent discussions at the National Association of Insurance Commissioners (NAIC) related to this issue. In a recent conference call the members of the NAIC adopted a motion that "if the Congress adjourns without enacting federal terrorism legislation, the states should grant conditional approval to commercial lines endorsements that exclude coverage for acts of terrorism consistent with the exclusion framework developed by ISO. To the extent permitted by state law, such approvals would sunset or be withdrawn 15 business days after the President signs into law a federal backstop to address insurance losses attributed to acts of terrorism, or be subject to other conditions on the approval consistent with state law." By this bulletin, we are informing you of our decision to act in a manner consistent with the recommendation from the NAIC membership. We believe this to be the best course of action as it balances the need of insurers to have some certainty related to solvency concerns with the business consumer's concerns that their businesses not be subject to uninsured events.

To date many unacceptable exclusions have been filed by insurers to be attached to commercial lines insurance products. These endorsements will be disapproved for use in this state as inconsistent with the interests of public policy and inconsistent with Neb.Rev.Stat. § 44-7513.

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Instead of approving the very broad total exclusions of coverage for acts of terrorism, the Nebraska Department of Insurance intends to grant approval to exclusions that provide the same or better coverage than the series of optional endorsements developed by the Insurance Services Office, Inc. (ISO) and which have been approved by this Department. The endorsements developed by ISO and approved by the Department are as follows:

COMMERCIAL PROPERTY INTERLINE ENDORSEMENT: IL 09 40 01 02
COMMERCIAL PROPERTY INTERLINE ENDORSEMENT: IL 09 42 01 02
COMMERCIAL GENERAL LIABILITY ENDORSEMENT: CG 21 69 0102
COMMERCIAL GENERAL LIABILITY ENDORSEMENT: CG 31 42 01 02
COMMERCIAL GENERAL LIABILITY ENDORSEMENT: CG 31 43 01 02
COMMERCIAL LIABILITY UMBRELLA ENDORSEMENT: CU 21 29 01 02
BUSINESSOWNERS ENDORSEMENT: BP 05 12 02
BUSINESSOWNERS ENDORSEMENT: BP 05 13 01 02
FARM LIABILITY ENDORSEMENT: FL 10 30 01 02

Note that the following endorsements have NOT been approved, owing to their nonconformance with the Standard Fire Policy:

COMMERCIAL PROPERTY INTERLINE ENDORSEMENT: IL 09 41 01 02
BUSINESSOWNERS ENDORSEMENT: BP 05 11 01 02

In an unprecedented move in recognition of the seriousness of the situation, ISO has indicated that it will permit the use of its copyrighted language by any insurer, including one that is not a current licensee of ISO for policy forms. Insurers that are current licensees of ISO for policy forms can use the new language pursuant to their current ISO agreements and approval by this state of its forms. If you are properly affiliated with ISO, and have given them authorization to file on your behalf, no further action is needed on your part.

Any insurer that desires to use the language contained in the ISO forms, but that does not have a license agreement in effect with ISO for policy forms, is required to execute a short, limited license agreement that authorizes the use of the new language. ISO has indicated that there will be no fee for this limited license. You may contact ISO's Customer Service department directly for more information at 1-800-888-4ISO(4476) using option 2. You may also contact ISO at "info@ISO.com."

Instructions

- For those insurers for which ISO files on their behalf, no further action will be necessary.

- No further action is necessary for those insurers who chose not to adopt the ISO endorsements filed on their behalf, as the application of these endorsements is optional.
- Note that copies of endorsements with the ISO wording do not need to be filed by individual insurers even if the insurer reformats the text, uses a different form number, or adds the company name or logo.
- For those insurers wishing to use the language contained in ISO forms, but who do not have the appropriate licensing agreement with ISO, it will be necessary to complete the limited licensing agreement that ISO has provided at no charge. This will be between the insurer and ISO – although insurers and/or ISO may be required to produce a copy of this limited licensing agreement upon request, it is not necessary that either insurers or ISO provide the Department with any documentation relating to the adoption of ISO terrorism-related endorsements at this time.

The only filings that must be made with the Department of Insurance are when an insurer wishes to use exclusionary wording for terrorism that is different than that contained in the approved ISO endorsements.

Explanation and Instructions for Expedited Review

The policy exclusions filed by ISO and approved by this state have some significant limitations that provide coverage for acts of terrorism under certain circumstances. For policies providing property insurance coverage the following limitations apply:

- Exclusion for acts of terrorism only apply if the acts of terrorism result in industry-wide insured losses that exceed \$25,000,000 for related incidents that occur within a 72 hour period;
- Exclusions for acts of terrorism are not subject to limitations above if:
 - The act involves the use, release or escape of nuclear materials, or that directly or indirectly results in nuclear reaction or radiation or radioactive contamination;
 - The act is carried out by means of the dispersal or application of pathogenic or poisonous biological or chemical materials; or
 - Pathogenic or poisonous biological or chemical materials are released, and it appears that one purpose of the terrorism was to release such materials.

For policies providing liability insurance coverage the following limitations apply:

- Exclusion for acts of terrorism only apply if the acts of terrorism result in industry-wide insured losses that exceed \$25,000,000 for related incidents that occur within a 72 hour period; or
- The act of terrorism results in fifty or more persons sustain death or serious physical injury. For purposes of this provision serious physical injury means:
 - Physical injury that involves a substantial risk of death;
 - Protracted and obvious physical disfigurement; or
 - Protracted loss of or impairment of the function of a bodily member or organ.
- Exclusions for acts of terrorism are not subject to limitations above if;
 - The act involves the use, release or escape of nuclear materials, or that directly or indirectly results in nuclear reaction or radiation or radioactive contamination;
 - The act is carried out by means of the dispersal or application of pathogenic or poisonous biological or chemical materials; or
 - Pathogenic or poisonous biological or chemical materials are released, and it appears that one purpose of the terrorism was to release such materials.

The following definition of acts of terrorism applies:

Terrorism means activities against persons, organizations or property of any nature:

1. That involve the following or preparation for the following:
 - a. Use or threat of force or violence; or
 - b. Commission or threat of a dangerous act; or
 - c. Commission or threat of an act that interferes with or disrupts an electronic, communication, information, or mechanical system; and
2. When one or both of the following applies:
 - a. The effect is to intimidate or coerce a government or the civilian population or any segment thereof, or to disrupt any segment of the economy; or
 - b. It appears that the intent is to intimidate or coerce a government, or to further political, ideological, religious, social or economic objectives or to express (or to express opposition to) a philosophy or ideology.

Again, please note that filings need not and should not be made for endorsements using the ISO language, regardless of whether the insurer is customarily affiliated with ISO for the filing of such endorsements or if it has merely availed itself of the limited licensing which ISO is offering for these endorsements. Also note again that copies of endorsements with the ISO wording do not need to be filed even if the insurer reformats the text, uses a different form number, or adds the company name or logo. The only filings that need to be made are for endorsements that use different exclusionary language than the ISO endorsement.

As is being done generally by insurance departments as a result of the NAIC action, the Nebraska Department of Insurance will provide expedited processing and approval of an exclusionary endorsement that is more liberal to policyholders than the parallel ISO endorsement. For an insurer to receive expedited approval of an exclusion for commercial lines insurance coverages, the exclusionary endorsement must comply at a minimum with the terms and conditions set forth in this bulletin and be submitted in accordance with the instructions specified below. You must explain the manner in which your endorsement provides coverage that is at least as broad as the approved ISO endorsements.

Effective Date

This bulletin shall take immediate effect and will continue until further notice.



L. Tim Wagner
Director

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