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Hearing Entitled: The Reauthorization of the Terrorism Risk Insurance Act of 2002

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Centers of Better Insurance, LLC (CBI) is an independent and wholly self-funded organization that makes available unbiased analysis of key regulatory issues facing the insurance industry for use by insurance professionals, regulators and policymakers. In 2019, CBI published a comprehensive and practical 250-page analysis of the Terrorism Risk Insurance Act of 2002 (“TRIA”).¹

TRIA has been a successful program. From its outset, this program has enabled insurers to make coverage against losses from acts of conventional terrorism widely available at generally accessible pricing. The so-called “federal backstop” – through which Treasury partially reimburses large losses – has mitigated concerns that another major terrorism attack in the United States would immediately destabilize the insurance market.

This favorable assessment comes with one significant caveat: TRIA has never been tested by an actual act of terrorism. Hopefully, it never will be. However, data collected by Treasury over the last decade strongly suggests that should such a tragic day come the program is likely to deliver the bulk of its benefits to large multinational corporations through their captive insurer subsidiaries, while shifting the cost of those benefits onto the backs of small businesses, nonprofits and local governments through inflated surcharges.

At a minimum, a reauthorization of TRIA should equip Treasury and the public with the tools necessary to fully understand the impact of captive insurers on the program. Limited data collected by Treasury and CBI’s own research into these opaque structures reveal:

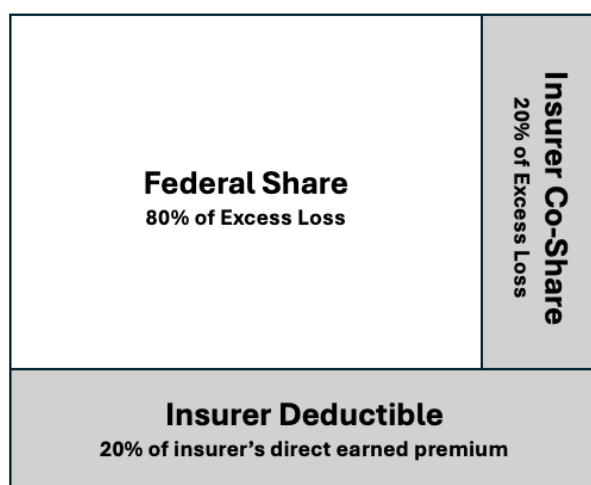
- Corporate owners of captive insurers are poised to take up to 95% of program benefits, while bearing only 5% of the burden of policyholder surcharges.
- Treasury has little understanding of the captive insurers participating in the program, including the identities of the corporations behind them.
- TRIA is not the first time captive insurers have overwhelmed a federal program.

¹ *The Terrorism Risk Insurance Act: Policies, Processes and Controls*, Centers for Better Insurance (2019).

How TRIA Works

At a high level, TRIA is the country's bargain with the insurance industry. Insurers are required to "make available" coverage for loss caused by an act of terrorism on the same terms, amounts, and other coverage limitations as loss caused by a non-terrorism event (e.g., losses caused by an accident).² As a practical matter, an insurance company must first offer a new or renewal policy without a terrorism exclusion.³ If the policyholder rejects that offer, the insurer may (but is not required) to offer a policy with a terrorism exclusion.⁴

In exchange for this "make available" obligation, Treasury will reimburse insurers for 80% of their losses exceeding an individually calculated "insurer deductible".⁵ The insurer deductible is 20% of an insurance group's prior year direct earned premium.⁶



Reimbursement under the federal backstop only becomes available to participating insurers if the Secretary of Treasury certifies an act of terrorism.⁷ The insurance industry has largely incorporated this certification requirement into its terrorism exclusions, such that if the policyholder elected to have a terrorism exclusion that exclusion would only come into play if the Secretary issued a certification. The Secretary's decision whether to certify an act of terrorism is final and cannot be reviewed by the courts.⁸

² TRIA, Sec. 103(c).

³ 31 CFR § 50.20 - .23.

⁴ 31 CFR § 50.21(c).

⁵ TRIA, Sec. 103(e)(1)(A). The program is subject to a \$100 billion annual cap on the aggregate of the insurer and federal shares of losses. TRIA, Sec. 103(e)(2)(A). If insurer and federal shares of losses together exceed the cap, claims payments to policyholders are pro-rated. TRIA, Sec. 103(e)(2)(B).

⁶ TRIA, Sec. 102(7). The backstop is also subject to a \$200 million program trigger. TRIA, Sec. 103(e)(1)(B). Treasury will make no payments under the backstop if total industry losses do not exceed the program trigger.

⁷ TRIA, Sec. 102(1).

⁸ TRIA, Sec. 102(1)(C).

Treasury Vastly Undercounts Captive Insurer Participation in the Program

A captive insurer is a special purpose insurance company typically established by a large non-insurance group. The purpose of a captive insurer is to provide insurance to its corporate parent and affiliates.⁹ When TRIA was originally enacted, Congress evidenced concern about allowing captives to participate in the program.¹⁰ However, the statutory definition of “insurer” was broad enough to (intentionally or unintentionally) sweep captive insurers licensed by any U.S. state or the District of Columbia into the program.¹¹

In the first years following the enactment of TRIA, Treasury repeatedly raised concerns that captive insurers could be structured to game the program.¹² The data Treasury has collected over the last decade has proven these early concerns prescient.

Traditional insurers (i.e., non-captive insurers) file annual reports with the National Association of Insurance Commissioners (NAIC) which are available to the public. It is easy for Treasury to use these reports to identify which insurers participate in TRIA, the owners of those insurers, and the approximate amount of each insurance group’s backstop deductible.

Captive insurers do not make any filings with the NAIC. Moreover, state regulators claim to be subject to strict “gag rules” that prevent them from sharing with Treasury or the public all but the most rudimentary information about the captive insurers they license.¹³ Accordingly, Treasury has no direct means through which it can identify how many captive insurers participate in the program, who owns them, or what their backstop deductibles may be. Based on its research, Treasury believes that captive insurers make up only 5% of the program as measured by eligible direct earned premium.¹⁴

⁹ [International Risk Management Institute, Insurance Definitions.](#)

¹⁰ TRIA, Sec. 103(f).

¹¹ TRIA, Sec. 102(6). 31 CFR § 50.4(o)(1)(i)(A).

¹² Interpretive letters of [March 2, 2004](#); [September 24, 2004](#); and [October 19, 2006](#).

¹³ See Respondent’s Brief, *Schupp v. Ohio Department of Insurance*, No. 2021-00199PQ, Court of Claims of Ohio (claiming the “General Assembly did not need to specify that the company names were confidential when the names are already protected as ‘information’ provided to the superintendent”); Motion to Dismiss Complaint for Writ of Mandamus, *Schupp v. Navarro*, C.A. No. K21M-05-020 (recounting Delaware Department of Insurance’s efforts to prevent public access to “captive insurance company licenses”); Appellee’s Brief, *Schupp v. South Dakota Division of Insurance*, No. 32 CIV21-000107, 6th Judicial Circuit of South Dakota (claiming that state law “create[es] a ‘need to know’ atmosphere around captive insurer information”); and *United States of America v. Delaware Department of Insurance*, CA No. 20-CV-829-MN-CJB (D. Del.) (resisting IRS summons that “seeks information pertaining to approximately 200 insurance certificates of authority that DDOI issued to micro-captive insurance companies”).

¹⁴ U.S. Treasury, [Report on the Effectiveness of the Terrorism Risk Insurance Program \(June 2024\)](#), page 10.

A comparison of Treasury’s data with aggregated data reported to the NAIC by states that license captive insurers reveals that Treasury significantly undercounts the number of captive insurers participating in the program.¹⁵

	Treasury Data	NAIC Data	Difference
Number of Captive Insurers	3365	4167	24%
Total Direct Premium	\$30.2 billion	\$44.9 billion	49%

In any event, Treasury only collects data from 615 captive insurers (~15% of known captive insurers).¹⁶

Even Based on Treasury’s Incomplete Data, Captive Insurers Dominate the Program

Every year since 2017, Treasury has developed hypothetical terrorism attack scenarios for different cities across the country. Participating insurers use widely available models to report their expected losses and backstop reimbursements based on those scenarios.¹⁷

Even though captive insurers represent a mere 5% of the program by total eligible premium, Treasury’s data analysis shows that captive insurers are in line to receive an average of more than 70¢ of every program dollar after a terrorist attack. In some scenarios, captive insurers claim more than 96% of total program benefits.¹⁸ Of course, these figures are conservative given that Treasury collects data from only a small fraction of participating captive insurers.

Data Call	Scenario City	Share of Program Benefits	
		Traditional Insurers	Captive Insurers
2024	Atlanta	8.7%	91.3%
2023	Las Vegas	3.6%	96.4%
2022	Miami	63.3%	36.7%
2021	D.C.	10.3%	89.7%
2020	Dallas	55.6%	44.4%
2019	San Francisco	24.0%	76.0%
2018	Chicago	4.8%	95.2%
2017	New York City	67.6%	32.4%
Average		29.7%	70.3%

¹⁵ Comparison of U.S. Treasury, [Report on the Effectiveness of the Terrorism Risk Insurance Program \(June 2024\)](#), pages 10, 66 and [NAIC, Insurance Department Resources Report \(Sept. 2023\)](#), page 12.

¹⁶ U.S. Treasury, [Report on the Effectiveness of the Terrorism Risk Insurance Program \(June 2024\)](#), page 66.

¹⁷ U.S. Treasury, [Report on the Effectiveness of the Terrorism Risk Insurance Program \(June 2024\)](#), page 80.

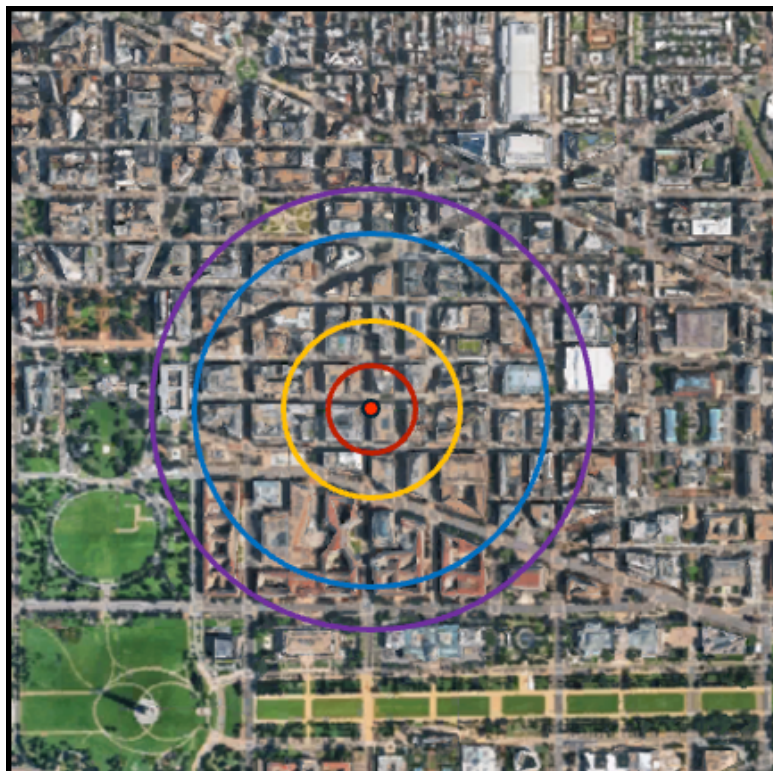
¹⁸ U.S. Treasury, [Report on the Effectiveness of the Terrorism Risk Insurance Program \(June 2018\)](#), pages 47 – 53; U.S. Treasury, [Report on the Effectiveness of the Terrorism Risk Insurance Program \(June 2020\)](#), pages 49 – 55; U.S. Treasury, [Report on the Effectiveness of the Terrorism Risk Insurance Program \(June 2022\)](#), pages 50 – 54; and U.S. Treasury, [Report on the Effectiveness of the Terrorism Risk Insurance Program \(June 2024\)](#), pages 80-84. Alien insurers are regarded as Traditional Insurers in this table.

Small Businesses, Nonprofits and Local Governments Pay the Tab for Captive Insurers

Under each of the scenarios it has tested, Treasury is required to recover 140% of backstop payments by levying a policyholder surcharge on all commercial property and casualty policyholders nationwide.¹⁹ For example, if Treasury pays out \$10 billion under the backstop, TRIA requires Treasury to recoup \$14 billion through universal policyholder surcharges. Because surcharges are based on policy premium, policyholders of traditional insurers (e.g., small businesses, nonprofits, and local governments) are responsible for 95% of these surcharges while the corporate owners of captive insurers are responsible for only 5%.

The corporate owners of captive insurers enjoy up to 96% of expected program benefits while paying just 5% of program costs. Small businesses, nonprofits, and local governments benefit from as little as 4% of expected payouts while picking up 95% of program costs.

Treasury's District of Columbia scenario provides a useful illustration of how the program diverts benefits into the hands of large corporate captive owners at the expense of small businesses, nonprofits and local governments. Under this scenario, a 5-6 ton truck bomb detonates on Wednesday, October 12, 2020, at Metro Center (12th and F Streets, N.W.).



¹⁹ TRIA, Sec. 103(e)(7). In each of the scenarios tested by Treasury, Treasury would be required to impose the policyholder surcharge under current law. In the case of extreme loss, Treasury has the discretion to waive the collection of policyholder surcharges. TRIA, Sec. 103(e)(7)(D).

According to the data collected by Treasury for this scenario, the program would reimburse traditional insurers an average of 4.2¢ per \$1 of insured loss. The program would reimburse captive insurers an astounding 74.2¢ per \$1 of insured loss. In other words, the program reimburses captive insurers at **17 times** the reimbursement rate of traditional insurers.

Further, Treasury would be required to levy policyholder surcharges totaling \$3.318 billion. 95% of that surcharge burden (\$3.15 billion) would fall on policyholders of traditional insurers, such as small businesses, nonprofits and local governments. The corporate parents of captive insurers would pay only 5% of policyholder surcharges (\$166 million).

	Traditional Insurers	Captive Insurers
Total Insured Loss	\$5809 million	\$2865 million
Backstop Payouts	\$243 million	\$2127 million
Program Payout per \$1 of Loss	4.2¢	74.2¢
Contribution to Surcharge Total	\$340 million	\$2978 million
Policyholder’s Surcharge Burden	\$3150 million	\$166 million

In sum, the D.C. scenario reveals that corporate owners of captive insurers would take in more than \$2.1 billion in federal funds but pay a mere \$166 million in policyholder surcharges. In contrast, policyholders of traditional insurers would see the benefit of only \$340 million in federal funds but be saddled with \$3.15 billion in policyholder surcharges. Every small business, nonprofit and local government across the country would see a 1.2% TRIA surcharge on their next insurance bill – even though only 0.1% could be attributed to federal payments to the traditional insurers providing them insurance. The other 1.1% of the policyholder surcharge levied on small businesses, nonprofits, and local government would result from federal benefits paid to the captive insurer subsidiaries of large multinationals.

Case Studies

Over the last five years, CBI has collected what little public information is available about captive insurers (often through state FOIA litigation). The following are some examples of how captive insurance companies exploit TRIA.

The New York Times

The New York Times once reported that captive insurance companies are “a financial strategy that sounds too good to be true.”²⁰ The New York Times is in the position to know.

²⁰ [An Insurer of One’s Own? It’s Possible, With Caveats](#), The New York Times (July 13, 2012).

The New York Times Company (“NYTC”) formed Midtown Insurance Company (“Midtown”) within 6 months after TRIA was enacted. The New York Department of Financial Regulation issued Midtown a special captive insurer license on July 10, 2003. Marsh Management Services manages Midtown.²¹

Midtown’s primary business is to sell NYTC a terrorism insurance policy (including coverage for nuclear, biological, chemical and radiological terrorism) with a \$1.3 billion limit at an annualized cost of \$10 million.²² Midtown’s current TRIA deductible is \$701,960.²³ If the entire NYTC policy paid out, the program would reimburse Midtown \$1,039,438,432. NYTC would be liable for post-event assessment of a mere \$19,600, while policyholders of traditional insurers would pay \$1,382,453,111 in policyholder surcharges.

Amazon

Amazon.com, Inc. (“Amazon”) formed Day One Insurance, Inc. (“Day One”) in March 2016. Day One holds a captive insurance license issued by the Arizona Department of Insurance and Financial Institutions.²⁴ Aon Insurance Managers (USA), Inc. manages Day One.

Day One issues Amazon a policy of terrorism insurance with a \$1.965 billion per occurrence limit with no aggregate limit.²⁵ Day One’s TRIA deductible appears to be about \$150 million. If the entire Amazon policy paid out, the program would reimburse Day One \$1,452,000,000, while policyholders of traditional insurers would pay \$1,931,000,000 in surcharges.

Aviation Industry Corporation of China, Ltd.

Aviation Industry Corporation of China, Ltd. (AVIC) is a Chinese state-owned aerospace and defense conglomerate. Through Executive Order 13959, President Trump prohibited U.S. persons from investing in AVIC. Nevertheless, AVIC’s earlier acquisition of Continental Aerospace Technologies, Inc. included a District of Columbia domiciled captive insurer.²⁶ Mangrove Cell 1 PC is a “protected cell” of the rent-a-captive Mangrove Insurance Solutions, PCC which is owned by Marsh.²⁷ Litigation currently pends in D.C. Superior Court seeking records that would shed light on Mangrove Cell 1 PC’s participation in TRIA.²⁸

²¹ <https://myportal.dfs.ny.gov/web/guest-applications/ins.-company-search>.

²² <https://www.dfs.ny.gov/system/files/documents/2021/01/11790f17.pdf>.

²³ Midtown’s Annual Report obtained via state FOIA request.

²⁴ <https://sbs.naic.org/solar-external-lookup/>.

²⁵ Day One’s Financial Statement (Dec. 31, 2022) obtained via state FOIA request.

²⁶ <https://www.hkexnews.hk/listedco/listconews/sehk/2017/1228/ltn20171228649.pdf>.

²⁷ <https://www.marsh.com/content/dam/marsh/Documents/PDF/US-en/cell-captive-facilities-mangrove-isosceles.pdf>.

²⁸ *Schupp v. Dept. of Ins. and Banking*, Case No. 2025-CAB-001457 (D.C. Superior Court).

Other Examples of Captive Insurer Exploitation of Federal Programs

The Federal Home Loan Bank system is intended to provide liquidity to financial institutions through low-cost loans. Since 1932, insurance companies have been eligible to participate in the program so long as those insurers invest in mortgage-related assets that reflect a commitment to housing finance.

About ten years ago, the Federal Housing Finance Agency (FHFA) found that:²⁹

Abundant evidence exists of a prevalent and growing practice by entities that are themselves ineligible for Bank membership using captive subsidiaries to achieve a *de facto* membership status that effectively provides them with the same access to advances that is available to the types of institutions that are eligible to become members under the Bank Act. In light of the evidence, FHFA has concluded that it must take action to prohibit that practice in order to ensure the fulfillment of one of the key elements of the statutory scheme established by Congress—limiting Bank membership to the types of institutions specified in the Bank Act.

At its peak, 40 captive insurers had borrowed a total of \$35 billion from the program.³⁰ The FHFA found evidence that Marsh, Willis, and even state insurance regulators promoted the use of captive insurers to access these low-cost loans.³¹ By 2016, FHFA promulgated a rule to kick captive insurers out of the program entirely.³²

Every year the Internal Revenue Service publishes a list of “the worst of the worst tax scams.”³³ This list has profiled the abusive use of captive insurers to create unwarranted federal income tax deductions in three of the last five years. In January 2025, the IRS promulgated a final rule declaring certain captive insurer transactions as “reportable transactions” which allows the IRS to more effectively and efficiently scrutinize the legitimacy of those transactions.

While Treasury issued stern warnings to the owners of captive insurers 20 years ago, Treasury has been silent since as captive insurers have come to similarly overwhelm TRIA. While the FHFA’s extreme solution may not yet be appropriate here, Treasury should at least follow IRS’s lead in ramping up its own surveillance of captive insurers and opening the door to public scrutiny of the role these opaque structures play in the program.

²⁹ 81 FR 3258 (Jan. 20, 2016).

³⁰ https://www.fhfa.gov/sites/default/files/2023-11/FAQs-for-Final-Rule_01-12-16.pdf.

³¹ 81 FR 3256 (Jan. 20, 2016).

³² 81 FR 3246 (Jan. 20, 2016).

³³ <https://www.irs.gov/newsroom/dirty-dozen>.

Proposal to Increase Transparency into Captive Insurer Participation in TRIA

Section 103(f) could be deleted in its entirety and replaced with –³⁴

(f) CAPTIVE INSURERS. - No payment may be made by the Secretary under this section with respect to an insured loss that is covered by a captive insurer, unless—

- (1) the captive insurer is registered with the Secretary, in a public register in a form prescribed by the Secretary (including at least the name of the captive insurer and the names of the captive insurer's policyholders) before the occurrence of an act of terrorism in which the captive insurer incurs an insured loss; and
- (2) the captive insurer has complied with the reporting requirements of Section 104(f) and (h).

Such an amendment would give Congress, Treasury, and the public tools to better understand:

- Who has access to program benefits through captive insurers;
- How many captive insurers participate in the program;
- The extent to which policyholders of captive insurers benefit from the program as compared to policyholders of traditional insurers; and
- The extent to which the use of captive insurers shift the cost of the program onto the backs of small businesses, nonprofits, and local governments.

With that information, Congress would be in a better position to decide whether captive insurers should continue to participate in the program.

Alternatively, Congress may consider whether to amend TRIA at this time to create separate policyholder surcharge calculations for policyholders of captive insurers (i.e., based on backstop payments made to captive insurers) and for policyholders of traditional insurers (i.e., based on backstop payments made to traditional insurers). Such an amendment would fairly align program benefits and program costs while eliminating the program's current subsidization of multinational corporations by small businesses, nonprofits, and local governments.

³⁴ Treasury has never used its authority to expand the program under existing Sec. 103(f) in its more than 20-year history in administering this Program. Accordingly, it would seem safe to remove it now.

To implement this change in the calculation of policyholder surcharges, Section 103(e)(8)(D) would be amended by adding sub-part (IV):

(D) ADJUSTMENT FOR URBAN AND SMALLER COMMERCIAL AND RURAL AREAS AND DIFFERENT INSUERS AND LINES OF INSURANCE.—

(i) ADJUSTMENTS.—In determining the method and manner of imposing terrorism loss risk-spreading premiums, including the amount of such premiums, the Secretary shall take into consideration—

(IV) the proportion of Federal financial assistance provided to captive insurers, alien insurers, and all other insurers, respectively, to prevent cross-subsidization of policyholders of one such classification of insurer by policyholders of another such classification of insurer.

This amendment would direct Treasury to calculate three policyholder surcharge rates:

Surcharge Rate for Policyholders of:	Formula
Captive Insurers	Program payments to captive insurers ÷ Total captive insurer premium
Alien Insurers	Program payments to alien insurers ÷ Total alien insurer premium
All Other Insurers	Program payments to all other insurers ÷ Total all other insurer premium

The term “alien insurer” refers to certain non-U.S. insurers permitted to participate in the program.³⁵ Participating alien insurers report some data to the NAIC and are somewhat less opaque than captive insurers. Alien insurers represent 6% of the program by premium.

While the program does advantage alien insurers over traditional U.S. insurers, the alien insurer advantage is less than that enjoyed by captives. For example, in the D.C. scenario Treasury’s data reveals that alien insurers only receive a 6X benefit over traditional U.S. insurers while captives receive a 32X benefit over U.S. traditional insurers.

	Total Losses	Program Payments	Federal Share per \$1 of Loss
Captive Insurers	\$2865 million	\$2127 million	74.2¢
Alien Insurers	\$868 million	\$127 million	14.6¢
All Others	\$4941 million	\$116 million	2.3¢

³⁵ TRIA, Sec. 102(6)(A)(ii).