

October 19, 2006

Dear Mr. X:

This letter is a response to your request on behalf of XYZ for an interpretation of the application of the Terrorism Risk Insurance Act of 2002¹ (“TRIA” or the “Act”), as amended,² and Treasury’s regulations implementing the Act,³ to a captive insurance program (Captive) insuring the ABC.

Captive is eligible for federal compensation for an insured loss if: it is an “insurer” under TRIA; its insured loss arises from “property and casualty insurance” coverage within the meaning of TRIA; the captive program for ABC is not a means of avoiding the purposes of the Act and Treasury’s implementing regulations; and all other conditions for payment are met. Based on your description, Captive appears to be an “insurer” under TRIA and is providing a type of coverage that meets the definition of “property and casualty insurance” under TRIA.

In previous interpretative letters and public comments we urged caution in structuring a captive insurance program as a means of avoiding the purposes and requirements of the Act and Treasury’s regulations. For example, with regard to a captive issuing a stand-alone policy, we have said:

The *post*-enactment formation or utilization of a captive insurer that will only provide stand-alone, single-risk *TRIA-only* coverage for losses from acts of terrorism raises questions regarding the integrity of the Program. We believe that an entity considering forming a captive insurer for stand-alone, single risk terrorism insurance should be strongly cautioned and advised against undertaking such proposed action if it is doing so in order to avoid the Act’s deductible requirements.⁴

After review of the facts you have provided concerning the structure and role of the captive insurance program you contemplate for ABC, it does not appear that the program is an attempt to avoid the deductible requirements of TRIA and Treasury regulations.

While this letter is intended to provide some guidance, a definitive determination of Captive’s status and its eligibility for any Federal share of compensation under TRIA cannot occur until a claim for federal compensation is actually made. Section 50.50(d) of Treasury’s regulations sets out certain conditions for payment of the Federal share of

¹ This response is being issued pursuant to 31 C.F.R. §50.9, which sets forth a procedure whereby persons actually or potentially affected by the Act or regulations may request an interpretation.

² The TRIA Program was recently extended through 2007 by Pub. L. 109-144, 119 Stat. 2660, 15 USCS § 6701, note.

³ See 31 CFR Part 50.

⁴ See TRIP Interpretative Letter of March 2, 2004 (Stand-Alone Terrorism Coverage & Captive Insurer).

compensation. Under Section 50.50(d)(4), Treasury shall pay the appropriate amount of the Federal share of compensation to an insurer upon a determination that:

Neither the insurer's claim for Federal payment nor any underlying claim for an insured loss is fraudulent, collusive, made in bad faith, dishonest or otherwise designed to circumvent the purposes of the Act and regulations.

Treasury's determination as to whether the conditions for Federal payment have been met, including whether any captive program established by XYZ circumvents the purposes of the Act and Treasury's regulations, will be made at time of the presentment of Captive's claim for federal compensation for any insured losses it may incur, and not before.

Based on the facts you have provided, we conclude that Captive is an insurer under the Program and may be eligible for any Federal share of compensation provided by the Act for insured losses if other applicable conditions required under the Program, such as claims and limits, are otherwise met. This response addresses the application of the Act and regulations to the specific situation set forth in your request, as you have represented the facts to Treasury. If there is a change in any of the facts or assumptions presented or other facts become known to Treasury, and such facts or assumptions are material to a conclusion presented in this response, then you may not rely on that conclusion generally or as support for any proposed or subsequent course of action.

This response is provided by the Terrorism Risk Insurance Program as a means of stating its current interpretation of the Act and regulations. The Program may revise or revoke this interpretation upon its own initiative or upon the enactment of amendments to the Act or regulations. As provided in 31 CFR § 50.9, a redacted version of this response may be made publicly available as soon as practicable.

Jeffrey S. Bragg
Executive Director
Terrorism Risk Insurance Program