

March 22, 2004

Dear Mr. W:

This letter is in response to your request for an interpretation concerning the application of the Terrorism Risk Insurance Act of 2002 (the “Act”)¹ and Treasury’s regulations implementing the Act to handset or electronic device insurance that provides coverage against the risk of loss, theft, or damage to mobile electronic devices (*e.g.*, cell phones).² Your client, an insurer participating in the Program, issues this insurance to wireless service providers who in turn allow their customers (individual consumers) to benefit from the coverage by being added to the service provider’s insurance policy as additional insureds in exchange for paying a fee. You have asked whether premium received from such insurance can be excluded from the calculation of the insurer’s direct earned premium for purposes of the Program. In response to your question, while we consider the insurance you have described as being within the Act’s definition of property and casualty insurance, the insurer can allocate and exclude from its calculation of direct earned premium the premium it can allocate to personal rather than commercial exposures.

Section 102(12)(A) of the Act defines the term “property and casualty insurance” as meaning commercial lines of property and casualty insurance, including excess insurance, workers’ compensation insurance, and surety insurance other than the insurance exempted under Section 102(12)(B).

Within the parameters of the Act, our implementing regulations use, as a reference point, certain lines of business listed on the NAIC’s Exhibit of Premiums and Losses (commonly known as Statutory Page 14). If the insurance is reported on a line included among the commercial lines identified in the regulations and is not specifically excluded by the Act, the insurance is included in the Program. You have informed us that handset or electronic device insurance is generally reported on Line 9 – Inland Marine, which under § 50.5(l)(1) of our regulations is one of the lines of business considered to be commercial lines of property and casualty insurance for purposes of the Program.³ Moreover, handset or electronic device insurance is not excluded by the Act.

If a property and casualty insurance policy covers both commercial and personal risk exposures, our regulations provide that premiums received for the personal coverage portion of the policy should be excluded from the calculation of the insurer’s direct earned premium and Program Year deductible. Premium information on the commercial property and casualty lines of Statutory Page 14 should be included in calculating an insurer’s direct earned premium only to the extent that coverage is provided for commercial property and casualty exposures.⁴ In the

¹ Public Law 107-297, 116 Stat. 2322, 15 U.S.C. §6701, *et. seq.*

² 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.

³ 31 C.F.R. § 50.5(l)(1).

⁴ 68 Fed. Reg. 41256-7 (Jul. 11, 2003)

situation you present, the insurer can allocate the portion of the premium attributable to the personal risk exposures. We note that Treasury expects the insurer to clearly be able to document how premium income was allocated among the coverages.⁵

Thank you for your inquiry. For additional information or if you have any specific questions, please call the Program office at 202/622-6670.

* * *

This response addresses the application of the Act and regulations to the specific situation set forth in your request, as you have presented the facts to Treasury. If there is a change in any of the facts or assumptions presented, and such facts or assumptions are material to a conclusion presented in this response, then the requestor may not rely on the conclusion generally or as support for any proposed or subsequent activity. 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 enactment of amendments to the Act or regulations.

Sincerely,

Jeffrey S. Bragg
Executive Director

⁵ Id.