

November 9, 2005

Dear Mr. C:

Thank you for your letter requesting an interpretation of the Terrorism Risk Insurance Act¹ (“TRIA” or the “Act”) as to whether the ABC Agency (“ABC”), an intergovernmental cooperative of Illinois school districts, is an insurer under TRIA. After careful review and consideration of your request, we have concluded that ABC is not an insurer within the meaning of TRIA section 102(6) and our implementing regulations.

Background

You indicate that ABC is an intergovernmental cooperative arrangement created in 1986 pursuant to the Illinois Constitution and the Illinois Intergovernmental Cooperation Act (“IICA”).² Its purpose is to implement joint self-insurance of property and casualty risks among participating Illinois school districts. Presently 179 of the approximately 200 Illinois school districts in the state are members of ABC. ABC is managed by HHH Professional Insurance Program Managers, an entity which underwrites risks, prices coverage and settles claims covered by ABC.

ABC indemnifies each member school district for covered property and casualty insurance losses in accordance with its Property and Casualty Plan of Coverage (“Plan”). Each ABC member pays its share of the cost of the Plan in the form of a member contribution or premium. Members maintain a self-insured retention of \$250,000 per occurrence for property losses and \$500,000 per occurrence for liability losses. The Plan provides coverage above the self-insured retention for commercial property, inland marine, general liability, commercial auto, crime, and umbrella risks.

You have asked whether ABC qualifies as an insurer under the Terrorism Risk Insurance Program and thus is eligible to receive payments of the Federal share of compensation for insured losses under the Act. Under section 102(6) of TRIA, an “insurer” is an entity that falls within one of the categories described in section 102(6)(A); that receives direct earned premiums for any type of commercial property and casualty insurance coverage, with certain exceptions (not applicable here); and that meets any other criteria that the Secretary may reasonably prescribe.³ One of the categories of insurer in section 102(6)(A) is “any other entity described in section 103(f), to the extent provided in

¹ Public Law 107-297, 116 Stat. 2322, 15 USCS § 6701 note.

² 5 ILL. COMP. STAT. 220/1 *et. seq.*

³ TRIA section 102(6). As of this date, no other criteria have been prescribed by the Secretary.

the rules of the Secretary issued under section 103(f).”⁴ To date, no rules under section 103(f) have been issued.

TRIA Insurer Analysis

You suggest that ABC falls within the scope of section 103(f) of the Act as a self-insurance arrangement of school districts. Section 103(f) generally provides that the Secretary may apply TRIA to other classes or types of captive insurers and other self-insurance arrangements by municipalities and other entities, but only if such application is determined before the occurrence of an act of terrorism in which such an entity incurs an insured loss and all of the provisions of TRIA are applied comparably to such entities. To date, Treasury has not promulgated regulations that would expand TRIA program participation to self-insurance arrangements by municipalities and other such entities under section 103(f) of the Act. Treasury has carefully considered the issue of including self-insurance arrangements under TRIA, but has found it difficult to meet the standard of applying the provisions of TRIA comparably to these entities. Thus, in the absence of such regulations, ABC does not qualify as an insurer under section 102(6)(A)(v) of the Act by virtue of section 103(f).

We have also considered whether ABC might qualify under any of the other categories of “insurer” specifically identified in the other provisions of section 102(6)(A) of the Act or our regulations. The only other category that appears to be relevant is section 102(6)(A)(i), which is the category for an entity that is “licensed or admitted to engage in the business of providing primary or excess insurance in any State.”⁵

We recognized in our Final Rule of July 11, 2003 that some pooling arrangements did not fit neatly within the traditional notion of a state licensed or admitted insurer.⁶ To provide more clarity to the category of “State licensed or admitted,” the Final Rule provided that a joint underwriting association or other pooling arrangement qualifies as insurers if:

(A) It is licensed or admitted to engage in the business of providing primary or excess insurance in any State ... and, if a joint underwriting association, pooling arrangement, or other similar entity, then the entity must:

⁴ *Id.* section 102(6)(A)(v).

⁵ None of the other categories of insurer are relevant to the circumstances of an intergovernmental cooperative such as ABC. ABC is not a surplus lines insurer (category (ii)), is not an approved Federal insurer in connection with maritime, energy, or aviation activity (category (iii)), and is not a State residual market entity (category (iv)).

⁶ See 68 FR 41250, 41261 (July 11, 2003).

- (1) Have gone through a process of being licensed or admitted to engage in the business of providing primary or excess insurance that is administered by the State's insurance regulator, which process generally applies to insurance companies or is similar in scope and content to the process applicable to insurance companies;
- (2) Be generally subject to State insurance regulation, including financial reporting requirements, applicable to insurance companies within the State; and
- (3) Be managed independently from other insurers participating in the Program.⁷

After reviewing the facts and circumstances surrounding ABC, we have concluded that ABC fails to meet the foregoing criteria for state licensed or admitted pooling arrangements.

You indicate that the Illinois insurance regulations require intergovernmental risk-sharing pools, such as ABC, to register each year with the Illinois Director of Insurance. This requirement does not qualify as a “process of being licensed or admitted” because no license or certificate of authority is issued.⁸ In addition, the process authorizing ABC’s activities in Illinois does not generally apply to insurance companies and is not “similar in scope and content to the process applicable to insurance companies”⁹ as required by our regulations. Although we note that ABC is required to file audited financial statements with the Illinois Director of Insurance, a comparison of the regulatory provisions of the IICA with the provisions of the Illinois Insurance Code reveals that intergovernmental pools are generally not subject to insurance regulation applicable to insurance companies in Illinois.¹⁰ Also, ABC is not licensed or admitted to engage in the business of providing primary or excess insurance in any State. Thus, ABC also does not qualify as a state-licensed or admitted insurer under section 102(6)(A)(i) of TRIA.¹¹

Conclusion

Our conclusion that ABC is not an insurer under TRIA is based on the application of the Act and Treasury regulations to the specific facts set forth in your request, as you

⁷ 31 C.F.R. § 50.5(f)(1)(i)(A)(1)-(3).

⁸ See 5 ILL. COMP. STAT 220/6. Compare Ill. Admin. Code, tit. 50, § 2405.30, with 215 ILL. COMP. STAT. 5/121 *et. seq.* (certificate of authority required), 5/13(2) (capital and surplus requirements), 5/155.04 (plan of operation required; character and fitness of management reviewed).

⁹ *Id.* at § 50.5(f)(1)(i)(A)(1).

¹⁰ Compare 5 ILL. COMP. STAT. 220/6, 220/16 with 215 ILL. COMP. STAT. 5/35A-1 (risk based capital), 5/132 (market conduct examination), 5/132.3 (financial condition examination), 5/136 (Annual Statement filing), 5/143 (policy form filing), 5/144 (risk limitation), and 5/154.6 (claims practices). Note also that criterion #3 (managed independently) is not an issue or is not being addressed in light of our findings above.

¹¹ Because the facts and circumstances of ABC fail to meet the criteria for an insurer under TRIA section 102(6)(A), we do not address the issue raised in your letter whether the contributions ABC receives from its members are the equivalent of direct earned premiums under TRIA section 102(6)(B).

have represented those 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 you may not rely on our conclusion to support 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 implementing regulations. The Program may revise or revoke this interpretation upon its own initiative or upon the enactment of amendments to the Act or regulations.

Sincerely,

Jeffrey Bragg
Executive Director
Terrorism Risk Insurance Program