

September 30, 2003

RE: XYZ Mutual Indemnity

Dear Mr. T

Thank you for your letter requesting an interpretation of the Terrorism Risk Insurance Act¹ “TRIA” with regard to the status of XYZ Mutual Indemnity “XYZ Mutual” as an insurer under the Act [116 Stat. 2322, section 102(6)].

Background

According to your letter and accompanying background material, XYZ Mutual is a mutual insurer created in 1982 under the laws of a foreign jurisdiction. XYZ has elected to be taxed as a United States company under 28 USC § 953(d) and files an annual corporate tax return with the United States Internal Revenue Service. XYZ was formed as a “multi-employer, multi-industry group insurer” to provide workers’ compensation coverage for employers subject to the federal Longshore and Harbor Worker’s Compensation Act.²

You also report that XYZ Mutual provides workers’ compensation insurance to more than 190 member employers in a wide range of maritime-related industries. You further state the company offers coverage in the same way that any typical insurer would – by providing quotations for coverage through traditional insurance brokers and charging premiums to member employers based on risk factors, including the employer’s claims history, workplace safety and number of workers covered.

You seek an interpretation from Treasury to determine whether XYZ Mutual meets the definition of “insurer” under TRIA section 102(6)(A)(iii). You seek guidance as to whether Treasury considers XYZ Mutual an insurer eligible for terrorism reinsurance because it is “approved for the purpose of offering property and casualty insurance by a Federal agency in connection with maritime, energy, or aviation activity.”

You indicate XYZ Mutual “is the largest payer of workers compensation benefits for longshore employers and related maritime industries approved by the Labor Department” and have provided us with an opinion from that Department’s Branch of Insurance and Financial Management that XYZ Mutual appears to qualify as a “federally approved insurer” under TRIA.

You explain the basis for the Labor Department’s approval of XYZ Mutual as a provider of workers’ compensation insurance under the Longshore and Harbor Worker’s Compensation Act is 20 CFR 703.301, the provision permitting employers to self-insure their workers’ compensation obligations. This apparently has led to some uncertainty as to XYZ Mutual’s status as a federally approved insurer under TRIA section

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

² 33 USC §§ 901.

102(6)(A)(iii), particularly in view of language in the commentary to our recent Final Rule that “self insurance arrangements approved by Federal Agencies are not included” as insurers under 31 CFR 50.5(f)(1)(C). You thus seek guidance from Treasury on this matter by requesting an interpretation as to whether XYZ Mutual meets the requirements for a federally approved insurer under TRIA section 102(6)(A)(iii).

Status As Insurer

After reviewing the materials you provided and analyzing the requirements under the Act, we conclude that XYZ Mutual qualifies as a federally approved insurer within the meaning of TRIA § 102(6)(A)(iii). Thus, assuming other TRIA requirements are met, insured losses arising from acts terrorism under workers’ compensation coverages written by XYZ Mutual pursuant to the federal Longshore and Harbor Worker’s Compensation Act are eligible for federal compensation under TRIA.

We base our conclusion that XYZ Mutual is a federally approved insurer within the meaning of TRIA section 102(6)(A)(iii), and not a self-insurer excluded from participation in the Terrorism Risk Insurance Program, on the following:

1. XYZ Mutual is a separate incorporated entity authorized to carry on the business of insurance on a mutual basis under enabling legislation governing insurers.
2. The company reports its assets, liabilities, premiums and losses consistent with the reporting practices of an insurer.
3. The company offers workers’ compensation insurance to maritime employers through traditional insurance distribution channels.
4. The company calculates premiums for its workers’ compensation insurance based on employer risk factors, including claim history, number of workers covered and employer safety record.

While no single factor leads to our conclusion that XYZ Mutual is a federally approved insurer which “offers” insurance to maritime employers, collectively the foregoing support the conclusion that XYZ Mutual is a federally approved insurer and not a “self-insurer” for purposes of TRIA.

Please recognize this response addresses the application of the Act and regulations only to the specific situation set forth in your request. If there is a material change or inaccuracy in any of the facts or assumptions presented, or if amendments are made to the Act or regulations promulgated pursuant to the Act, this conclusion may change.

Sincerely,

Jeffrey Bragg
Executive Director
Terrorism Risk Insurance Program