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Underwriting Terrorism Risk

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UNDERWRITING TERRORISM RISK

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Well, with the events of 9/11[1] the insurance industry was faced with a daunting challenge: how to determine its response to the emergence of catastrophic risk that we really had not ever experienced before on this scale, primarily because if you are going to insure windstorm or quake you generally know where those events are going to occur.[2] We have modeled them for quite some time to determine what their patterns and probabilities are; however, with terrorism it was a whole new thing. We had a preview of this back in 1993 with the World Trade Center bombing,[3] and of course, we had the Oklahoma City incident of domestic terrorism[4] to kind of get us thinking about this. But the events of 9/11 gave us a whole new scale beyond anything that we had contemplated in the past.

The first question is how do you underwrite this risk? I would like to comment on briefly on whether terrorism risk is insurable. What has been the impact of Terrorism Risk Insurance Act ("TRIA")[5] on underwriting - the decision-making process of

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1 *See generally* Michael Grunwald, *Terrorists Hijack 4 Airliners, Destroy World Trade Center, Hit Pentagon; Hundreds Dead; Bush Promises Retribution; Military Put on Highest Alert*, WASH. POST, Sept. 12, 2001, at A01 (detailing the terrorist attacks of September 11, 2001 where planes were flown into targets).

2 *See* Andrew S. Neuwelt, Note, *The Impact of September 11 on Terrorism Insurance: Comparing Senate Bill 2600, House of Representatives Bill 3210, and the United Kingdom's Pool Re*, 9 ILSA J. INT'L & COMP. L. 473, 476 (2003) (describing insurance industry pre-9/11 as gathering data from past experiences to "forecast future losses").

3 *See* Christine Dugas, *Attacks May Set Record for Insurers*, USA TODAY, Sept. 12, 2001, at 4B (reporting that the World Trade Center bombing in 1993 resulted in $510 million in losses for the insurance industry).

4 *See generally* Jeanne Cummings, *Ex-FEMA Official Plays New Role: Disaster Consultant*, WALL ST. J., Dec. 26, 2001, at A12 (noting that risks of further terrorist attacks have proven difficult to anticipate despite the act of terrorism in Oklahoma City and the planning that followed it).

5 Terrorism Risk Insurance Act of 2002, 15 U.S.C. § 6701 (2003).

taking risk? What are the key lines of business that we believe are most susceptible to terrorist loss? Lastly, a couple of comments on risk management in terms of what can be done to help to reduce or mitigate the risk of terrorism.

Can we actually insure terrorism? I think if you do the mathematics you can quickly determine that loss arising from the detonation of a nuclear weapon is not insurable.[6] If we take a look at the work that is being done by a number of the modeling companies that are assisting us in this work, a nuclear weapon detonated in Manhattan could produce a loss somewhere between six hundred billion and $1.6 trillion dollars.[7] The property casualty insurance industry and the commercial property casualty insurance industry in the U.S. have about $125 billion dollars in capital.[8] Now, the critical thing to understand is that the insured loss arising out of 9/11 has been paid by insurance companies out of capital, not reserves. [9] The way accounting for both insurance accounting and tax accounting in this country is structured, we are not permitted to hold reserves for future catastrophic events.[10] Essentially, the thirty to forty billion dollars, which will be the ultimate insured loss arising out of the events of 9/11 will be paid for out of insurance company

6 *See* Anne Gron & Alan O. Sykes, *Terrorism & Insurance Markets: A Role for the Government as Insurer?*, 36 IND. L. REV. 447, 449 (2003) (stating that losses from terrorist attacks involving nuclear weapons will probably continue to be uninsurable).

7 *See, e.g.*, Robert P. Hartwig, *September 11: One Year Later; Perspective*, RISK & INS., Sept. 2, 2002, at 40 (quoting Warren Buffet's comment that had a nuclear weapon been used in the terrorist attacks on 9/11 "insured losses could have been $1 trillion, an amount that exceeds the net worth of all property-casualty insurers worldwide").

8 *See generally* M. R. Greenberg, Editorial, *Government Must Be Insurer of Last Resort*, WALL ST. J., Nov. 26, 2001, at A18 (reporting that the "commercial property-casualty industry has between $100 billion and $125 billion in aggregate capital, before payment of Sept. 11 losses").

9 *See generally* Gron , *supra* note 6, at 448 (implying that insurance companies dipped into their capital to pay for the losses associated with the 9/11 terrorist attacks).

10 *See* Tom Miller, *New Protection Against Natural Disaster Losses*, Competitive Enterprise Institute, *at* http://www.cei.org/gencon/005,01629.cfm (June 1, 1999) (stating that "[i]nsurance companies only are allowed to set aside funds as reserves for losses that already have occurred").

capital,[11] and the total amount of capital available is roughly $125 billion.[12]

Once you start modeling some of the potential loss scenarios, and if you see numbers start to get up into the hundreds of billions of dollars, those events are no longer insurable.[13] That is really why the whole concept of TRIA was advanced and ultimately passed.[14]

Other terrorism risks include blowing up buildings, truck bombs, chemical and biological events, and radiological events.[15] We believe that these events are insurable,[16] but not within the traditional context. Normally when we produce a product we take risk and then ask our actuaries to study the historic losses, to trend them forward and forecast what loss probability will be going forward.[17] We take a historic base and we project it into the future, and that's how we determine our pricing.

[11] *See* Patrick Chisholm, *The Insurance Industry Storm*, *at* http://www.policycomm.com/articles/storm.htm (June 10, 2002) (quoting T.J. Crowley, the Vice President of the Insurance Information Institute) (noting "[t]he World Trade Center attack . . . will probably mean somewhere between a loss of between 40 and 50 billion dollars. And so obviously, that has taken up pretty substantial bite of available capital in the property-casualty insurance industry").

[12] *See generally Statement of the American Council of Life Insurers before the Subcommittee on Capital Markets, Insurance, and Government Sponsored Enterprises of the House Committee on Financial Services on the Effects of Terrorism on the Insurance Markets, available at* http://financialservices.house.gov/media/pdf/102401ac.pdf (Oct. 24, 2001) (discussing how the property/casualty industry has been the focus of efforts to develop a private sector/government partnership to underwrite the risks associated with expanded terrorist losses and how this would be appropriate since the property/casualty industry has had to absorb a greater impact on its available capital reserves).

[13] *See generally Federal Reinsurance for Disasters*, Congressional Budget Office, (Sept. 2002) *available at* http://www.actuaries.asn.au/PublicSite/pdf/horizonpaper030827 cbo.pdf (noting that "a shortage of risk-bearing capital leads to an inadequate supply of insurance, which keeps prices steep relatively to projected losses for low-probability, high loss events").

[14] *See generally id.* at 30, *available at* http://www.actuaries.asn.au/PublicSite/pdf/ horizonpaper030827cbo.pdf (explaining that the government should act as a residual provider of reinsurance for so-called mega-catastrophes in order to aid insurers in the burden of holding huge amounts of capital).

[15] *See* THE COLUMBIA ENCYCLOPEDIA (6th ed. 2001) *available at* http://www.bartleby. com/65/te/terroris.html (defining terrorism activities).

[16] *See generally* Jeffrey Manns, *Insuring Against Terror*, 112 YALE L.J. 2509, 2518 (2003) (noting that "insurers currently lack the tools to determine what the baseline of the probabilistic risk of terrorist attacks should be," and therefore, "the potential for misestimation for terrorism insurance may expose insurers to higher risks than other forms of insurance").

[17] *See id.* at 2515 (citing Richard A. Posner, *Theories of Economic Regulation*, 5 BELL J. ECON. & MANAGERIAL SCI. 335, 103-05 (1974)) (discussing how insurance companies use the estimated probability of an insured risk's occurrence and the economic cost of the

For terrorism, at least foreign-inspired terrorism, we have only had two events: the 1993 World Trade Center bombing[18] and the events of 9/11.[19] This is a totally insufficient number of data points to be able to do any of the traditional actuarial work to forecast what future costs might be.[20] Hence, TRIA was enacted.[21]

The insurance industry did not really get what it asked for, but it did get something that is very meaningful to its ability to function in the current marketplace. I would like to just quickly look at what TRIA's objectives were, and then we'll talk about whether or not those objectives are being met.

TRIA was designed to insure widespread availability and affordability of property and casualty insurance for terrorism risk.[22] It was also designed to allow private markets the time to stabilize, to absorb the losses from 9/11 and to build capacity to absorb future loss.[23] The objectives that have been met are obviously that coverage is now available to every commercial policyholder who wishes to purchase it because we are obligated to offer that coverage. [24] The question of affordability is a subject of great debate and probably has always been in the insurance

losses if the insured risk occurs to calculate measurement costs and in turn use these measurement costs to calculate insurance premiums).

[18] *See Recent Trends in Domestic and International Terrorism*, Center for Nat'l Security Studies (April 26, 1995) *available at* http://www.cdt.org/policy/terrorism/cnss.tre nds.html (discussing that one of the two international terrorists incidents in the United States that was highly notorious and destructive was the World Trade Center Bombing in February 1993).

[19] *See generally* Serge Schmemann, *U.S. Attacked*, N.Y. TIMES, Sept. 12, 2001, at A1 (reporting that the attacks of September 11, 2001 were terrorist operations of unprecedented proportion where four hijacked commercial jetliners were crashed resulting in the deaths of 3,040 people).

[20] *See generally* Emmett J. Vaughan & Therese M. Vaughan, FUNDAMENTALS OF RISK AND INSURANCE, at 122-26 (8th ed. 1999) (describing that the insurance rate-making process involves actuaries' use of data in the form of accumulated statistics on past losses to make predictions).

[21] *See* Terrorism Risk Insurance Program, 68 Fed. Reg. 41250, 41251 (Jul. 11, 2003) (to be codified at 31 C.F.R. pt. 50) (noting that the Terrorism Risk Insurance Act was signed into law in November 2002).

[22] *See id.* at 41251 (outlining the objectives of the Terrorism Risk Insurance Act).

[23] *See id* .at 41251 (stating the purpose of the Terrorism Risk Insurance Act is to address market disruptions resulting from acts of terrorism and to allow for a transition period during which the private insurance market can stabilize and build capacity while preserving state insurance regulation and consumer protections).

[24] *See id.* at 41251 (noting that the Terrorism Risk Insurance Act requires insurers to include terrorism coverage as a component of commercial property and casualty policies).

marketplace, and will always be.[25] We have seen wild ranges in pricing and again, it goes back to the inability to use traditional methods to determine price.[26] There are however a number of competing philosophies. If we thought that only those businesses that were really targets would buy, we would have to charge them a lot more money.[27] Insurance is a concept of spreading risk out over broad populations.[28] Therefore, some companies have adopted the philosophy that we want to sell full coverage to every one of our customers. Therefore, we have set our pricing accordingly. We have tried to design our pricing scheme so that we keep the prices as modest as we possibly can, with only a few exceptions. If you are the owner of the Sears Tower it is going to cost you a little bit more than if you own a brownstone in mid-New York. But we have done it that way so that we can generate sufficient revenue over time to finance our deductible.

The other objective that has been met by TRIA is it will protect the insurance industry from insolvency due to macro catastrophic events.[29] The caveat here is it may not protect individual companies from insolvency from such events.[30]

Shortfalls - the things that TRIA has not done. In talking with members of Congress and their staff it was clearly intended that TRIA would return the insurance industry to a pre-September

25 *See generally* Robert P. Hartwig & Claire Wilkinson, *Terrorism Insurance,* INS. ISSUES SERIES, Aug. 2003, at 6-7, *available at* http://server.iii.org/yy_obj_data/binary/743343_1_0/Terrorism.pdf (last accessed Oct. 26, 2003) (noting that even with financial support provided by the federal government as part of the Terrorism Risk Insurance Act, the insurance industry faces the potential for substantial terrorism losses).

26 *See generally id.* at 9 (discussing the predictive models introduced into the market to assist insurers in quantifying potential losses from future terrorism scenarios).

27 *See generally id.* at 8 (noting that many businesses are either retaining terrorism risk themselves and declining terrorism coverage being offered by insurers because they do not consider themselves terrorist targets and the cost of terrorism coverage is too high).

28 *See generally* Gron, *supra* note 6, at 456 (explaining that because many insurers "have more exposure relative to their capital than they would like" and are seeking to shed such coverage until they can manage the risk better)."

29 *See generally* Meg Green, *A Glass Half Full: As The Terrorism Risk Insurance Act Approaches Its First Anniversary, Demand For Terrorism Insurance Is Low, But Industry Experts Say The Backstop Is Bringing Capacity And Stability To The Marketplace,* BEST'S REV., Sept. 1, 2003, at 50 (providing the example that the "TRIA has had a psychological impact on the insurance market in New York. . . . it seems to have created a comfort level.")."

30 *See generally* Alison R. Orlans, *Anti-Terrorism Banking Issues: Terrorism Insurance and Commercial Real Estate: The New Frontier,* 7 N.C. BANKING INST. 93, 110 (2003) (stating that federal governments intervention is justified by risk of a portion of the industry becoming insolvent and not by risk of one insurance company becoming insolvent).

11th condition.[31] That has not occurred and principally it has not occurred because TRIA does not provide any protection for the reinsurance marketplace.[32] A great deal of the behavior of insurance companies that we have seen post-9/11 has been driven by the reinsurance marketplace.[33]

If you take a look at AIG, our property-casualty loss arising out of the events of 9/11 is roughly $1.8 billion dollars.[34] Our net loss after reinsurance recovery is approximately six hundred million dollars.[35] So our reinsurers are paying $1.2 billion dollars of our loss[36] and that's about the right proportion for virtually all of the loss that arose out of 9/11. Today, if we had another event of that scale, we would not have any recoveries from our commercial reinsurers.[37] We have no reinsurance today that covers terrorism as defined by TRIA.[38] Therefore, it is a huge change in the dynamic of the marketplace.

A company of our size views reinsurance very differently than a company of a much smaller size. Greater New York Mutual, a terrific company here operating essentially in the five boroughs, was a major player in the property insurance market for small to

31 *See* Green, *supra* note 29, at 50 (noting that although "TRIA has brought stability to the marketplace, it has also raised some unanswered questions. "We were all hoping TRIA would be the magic pill that would solve everything overnight, and that hasn't happened . . .").

32 *See id.* at 50 (explaining TRIA's limits in that not all companies are completely risk free from insolvency under TRIA should another terrorist attack occur).

33 *See Terrorism; Tackling a Burning Issue,* REINSURANCE MAG., Aug. 11, 2003, at 36 (noting that coverage remains low because of low demand and high costs despite reinsurers now offering coverage both under TRIA and for certain other risks).

34 *See id.* (stating "After the 11 September 2001 attack on the World Trade Centre, reinsurance for terrorism essentially disappeared "Reinsurers absorbed the bulk of the estimated $40bn in losses from the attack and, worried that another attack could threaten their solvency, most simply stopped covering terrorism."").

35 *See generally* Cynthia Beisiegel, *September 11th Revisited: The Future of The Industry,* INS. J. (Sept. 2, 2002), *available at* http://www.insurancejournal.com/magazines/west/2002/09/02/coverstory/23046.htm (discussing estimated losses of several major insurers).

36 *See generally id.* (discussing impact of losses on reinsurers).

37 *See generally,* Press Release, U. S. Chamber of Commerce, *U.S. Chamber Calls for Congressional Help to Avoid Insurance Fallout from Possible Future Terror Attacks* (Oct. 25, 2001), *available at* http://www.uschamber.com/press/releases/2001/october/01-175a.htm (asking for Congress to take steps to avoid future insurance risks from future terrorist attacks).

38 *See generally Offer of Coverage, Terrorism Risk Insurance Act of 2002, at* http://www.thehartford.com/agentsbrokers/files/C-211.doc (last visited Nov. 14, 2003) (showing how acts of terrorism tend to be excluded from insurance policies now).

medium-sized commercial enterprise.[39] They protected their capital through reinsurance.[40] It allowed them to offer the capacity necessary to meet the needs of their customers. What has happened to Greater New York Mutual? They have had to substantially scale back the limits they could afford and the coverage they offer because the reinsurance they have relied upon to protect their capital is no longer available to them with protection for terrorist loss. So it changes the behavior of companies where reinsurance is not available as it was in the past.[41] As I mentioned, when you look at the deductible, the seven percent deductible, we are now pretty sure that our deductible for 2003 for AIG will be $1.2 billion dollars. Therefore, if we had the loss – if 9/11 were repeated, instead of a six hundred million dollar net loss, our loss would be $1.2 billion plus ten percent of six hundred million.[42] In addition to another sixty million on top of that, which is substantially different than pre-9/11.

Just to mention a couple of the other shortfalls of TRIA. It does not address the question of third party liability.[43] The great uncertainty with regards to the events of the 1993 World Trade Center bombing and 9/11 is will we see successful third party liability actions against the various players.[44] If the Victims Compensation Fund[45] does not resolve itself satisfactorily in the interests of the families of the people who lost their lives, whether it was in the Pentagon or in the World Trade Center,

39 *See generally* Greater New York Insurance Companies, *GNY History, at* http://www.gny.com/history.html (last visited Nov. 14, 2003) (detailing the history of GNY and the role they play in the property insurance market).

40 *See generally* Timm Herdt, *Insurers Want Government Assurances*, VENTURA COUNTY STAR, Dec. 6, 2001, at A11 (stating that "reinsurance companies sell policies to mainline insurance companies that seek to minimize the risks they take on when writing policies to businesses and individuals").

41 *See generally* Congressional Budget Office, *Federal Reinsurance for Terrorism Risks* (Oct. 2001) (paper by Dan L. Crippen, Director of the Congressional Budget Office), *at* http://www.cbo.gov/showdoc.cfm?index=3087&sequence=0 (explaining how behavior of companies has changed following the terrorist attacks).

42 *See generally* Terrorism Risk Insurance Act of 2002, 15 U.S.C. § 6701 (2003) (giving the statutory scheme for computing losses).

43 *See generally* Terrorism Risk Insurance Act of 2002, 15 U.S.C. § 6701 (2003) (omitting from discussion any mention of third party liability).

44 *See generally* Thomas C. Homburger & Timothy J. Grant, *A Real Estate Focus: A Changing World: A Commercial Landlord's Duty to Prevent Terrorist Attacks in Post-September 11th America*, 36 J. MARSHALL L. REV. 669, 669 (2003) (discussing possible commercial landlord liability).

45 September 11th Victim Compensation Fund of 2001, 49 U.S.C. § 40101 (2001).

will we see successful third party liability actions brought, and to what extent will those damages run?

It's interesting to note that a number of third party liability actions were brought arising out of the bombing of the World Trade Center in 1993.[46] They were consolidated into the Federal Court in the Southern District of New York.[47] That court has not yet ruled on those actions. It is difficult to think about holding the Port Authority of New York liable for building two 110 story towers and impugning to them negligence for the events that occurred on 9/11. But it is an issue that deserves attention, and it really did not get that much attention in TRIA.

The other thing is that TRIA does not provide a permanent or long-term solution.[48] I would agree with Superintendent Serio that regarding the early days after 9/11 the rhetoric was we are going to go after them; we are going to take this threat away from America and solve the problem. Then, after the Administration realized how daunting that task would be, we settled into a much longer battle against the worldwide threat of terrorism.[49] If you look at the timing between the events in 1993 and 2001 we believe that the threat of terrorism will be with us for a long time.

We have done a lot in recent days to severely disrupt the ability of Al Qaeda to function. But they are very patient, they are very dedicated, they are very motivated, and they will figure it out and we will see them again some day, some place. It probably will not be within the time horizon that TRIA contemplates. Plus, if we truly are exposed to the potential of the detonation of a nuclear device in America we will always need some degree of federal government protection for that act[50]

46 *See generally* Melinda L. Reynolds, *Landowner Liability for Terrorist Acts*, 47 CASE W. RES. L. REV. 155, 156 (1996) (estimating civil claims filed as result of bombing totaled over $1.9 billion).

47 *See generally Statement on Congressional Action On Terrorism Insurance Legislation,* Public Papers of the Presidents, Nov. 25, 2002, at 2058 (explaining terrorism insurance legislation consolidated lawsuits in one Federal Court which allows for a "fair and certain resolution of claims").

48 *See* Manns, *supra* note 16, at 2509 (explaining TRIA created a temporary program which will last for three years).

49 *See generally Terror Fight on G.O.P. List for Election,* N.Y. TIMES, Dec. 29, 2002, at 26 (stating President Bush's reelection agenda contains "War on Terrorism" which "will take years to win").

50 *See generally* Orlans, *supra* note 30, at 112 (commenting that federal funding is beneficial because insurance companies would lack the capacity to pay large sums of money due to another terrorist attack).

because it goes well beyond the financial capability of the insurance industry to respond.

The key lines of business affected are obviously commercial property. There are a number of states that embedded the basic fire policy and statute.[51] The significance of that is that we are covering fire; whether we exclude terrorism or not because of the way the statutory policy coverage is mandated.[52] It just keeps some of us up at night if we thought exclusions were going to limit that exposure.

The second major line affected is workers compensation. We have done some work with Equicount, another modeling company, on a number of different scenarios. What we believe are plausible terrorist scenarios: truck bombs, biological weapons attack, and things of that nature. Needless to say the loss potential is enormous. We are looking at huge numbers coming out of those models.

Life insurance is a third line affected. Life insurers took major hits on 9/11 and yet TRIA does not cover them.[53] However, it is under review and it may come back in at some future date.

I would also agree that Congress today has no interest in talking to us about TRIA; they have done the job, it is over. But some time in the next two years we are going to have to confront the issue of extending TRIA beyond the current scheduled expiration date.[54]

I do not say this to frighten you, although it keeps me awake at night – some of the modeling that we did of a nuclear device in New York City, depending on all the variables and conditions, could produce a workers compensation loss between $8 billion and $637 billion.[55] A truck bomb in the right position in Miami

51 *See id.* at 118 (explaining that thirty states adopted standard fire policy which requires property insurance to cover losses resulting from direct fire damage even if caused by terrorism).

52 *See id.* at 118-19 (stating that since it is predictable a fire will ensue from a terrorist attack standard fire provision "negates the lack of terrorism insurance if loss is sustained from fire").

53 *See generally* Stephen P. Watters & Joseph S. Lawder, *Justice in a Changed World: The Impact of September 11th on Tort Law and Insurance*, 29 WM. MITCHELL L. REV. 809, 812 (2003) (noting recovery from The Fund for affluent people was decreased due to access to collateral sources such as life insurance).

54 *See generally* Manns, *supra* note 16, at 2523-24 (commenting that hesitant reinsurers combined with the expiration of reinsurance treaties caused increased terrorism exclusions and limited coverage availability).

55 *See generally* Joseph McCafferty, *Worker's Comp: End of an Error*, CFO.COM (Jan. 22, 2002) *at* http://www.cfo.com/article/1,5309,6542%7C%7CBS%7C12%7C45,00.

could produce a loss of $178 million to $3 billion.[56] Also, the people in Des Moines, if they think they are safe, we modeled a railroad tank car full of chlorine being detonated to spread a chlorine cloud across the downtown sector of Des Moines and forecast a workers compensation loss would between $3 billion and $46 billion dollars.[57]

I commented a lot about risk models. They are tools. They help the underwriter, but they do not make decisions for us. I think ISO made a mistake in its reliance upon the AIR model, even though the modeling work that it is done by AIR is quite good. The mistake was that they tried to translate that into a decision-making process. But, how you can charge a property owner in the District of Columbia four to five times more than what you are going to charge a property owner whose commercial structures are adjacent to the Pentagon is beyond my logic to understand. I think they got carried away with their modeling and now obviously they have been put into a position where they have had to compromise their approach.

I think we are still seeing a lot of different approaches by different underwriters with regards to pricing. Some who do not believe that they are exposed are not changing anything at all. Others are trying to charge a thousand percent. Regardless, the prices are wild and are all over the place. There has been a lot in the press recently about commercial property owners not buying terrorism coverage.[58] I think in part that is due to the fact that the market is still very chaotic.[59] Normally, if you have a property such as Rockefeller Center and its total insured value is two billion dollars, you would go into the market and find numerous insurance companies who would all agree to commit

html (tracking the recent rise in historically stable workers compensation insurance premiums after 9/11, due to new guidelines that force companies to insure for terrorism).'

56 *See generally id.* (providing an example of possible loss as a result of a single event).

57 *See generally id.* (forecasting possible workmen's compensation losses).

58 *See* Joseph B. Treaster, *Insurance For Terrorism Still a Rarity*, N.Y. TIMES, March 8, 2003, at C1 (acknowledging that although some property owners require businesses to carry terrorism insurance many do not carry terrorism insurance because of high costs or that they "don't feel their property is at risk").

59 *See generally id.* at C1 (noting the "chaotic" state of the industry where terrorism insurance is added to some customers' policies for free while others pay up to 2000% above their existing rates).

their capacity to various levels of that program.[60] Prior to 9/11 that market operated in a reasonably orderly fashion. You could anticipate that the first layer would charge you 100 points and the second layer would charge you 85 points, and the third layer 75 points and on up through the structure.[61] Today when you try to buy terrorism coverage for commercial property, that nice orderly pattern of the market does not exist.[62] You can have somebody up in the fourth or fifth layer who wants as much as the guy down in the first layer, and it just creates a lot of chaos because then the guy in the first layer says nobody above me can have better terms than I get. It really puts the buyer in a very difficult position to make an economically sound decision on coverage.

The other thing I would like to comment on is the dynamic nature of the threat of terrorist loss. On 9/11 we saw the attack against symbols of America. Al Qaeda has targeted the U.S. Government for years.[63] They are probably responsible for the attack on the Marine barracks,[64] the U.S.S. Cole attack,[65] the assassination of State Department officials,[66] and obviously the Pentagon.[67] They just broadened the scope to include the World Trade Center.[68] Essentially they were attacking symbols of

60 *See generally* Mark Hamblett, *Two Appeals, Many Results Possible In World Trade Center Insurance Suit*, N.Y.L.J., Oct. 15, 2002 at 1 (discussing layered insurance policies like the one originally structured for the World Trade Center).

61 *See generally id.* (explaining layered insurance policies).

62 *See generally S&P Won't Downgrade CMBS Deals for Terrorism Insurance*, BUS. WIRE, June 10, 2002 (noting the "evolving" state of terrorism insurance).

63 *See generally* David Ensor, *9/11 Chief's 'Plot To Use 10 Jets'*, *at* http://www.cnn.com/2003/US/09/23/mohammed/ (last visited Oct. 26, 2003) (revealing that Al Queda's 9/11 plan was originally conceived in 1996 to involve more planes and aiming for more widespread destruction).

64 *But See* Niles Latham, *Judge Slaps Iran in '83 Blast*, N.Y. POST, May 31, 2003, at A004 (stating that Hezbollah waged the Marine barracks attack).

65 *See generally* U.S. Department of State, *Patterns of Global Terrorism* (Apr. 30, 2003), *at* http://www.state.gov/s/ct/rls/pgtrpt/2002/html/19986.htm (detailing involvement of high ranking Al Qaeda mastermind Abdul Raheem Al-Nashiri in USS Cole attack).

66 *See generally* Don Van Natta, *Threats and Responses: Radical Islam; Exiled Mullah Denies Claims of Terror Ties Made by U.S.*, N.Y. TIMES, Feb. 6, 2003, at A22 (exploring suspected Al Qaeda official Abu Musab Zarqawi's link to the assassination of United States diplomat Laurence Foley).

67 *See generally* Don Van Natta, *A Nation Challenged: The Inquiry; Investigators Say Evidence Points to Bin Laden Aids as Planning Attack*, N.T. TIMES, Oct. 8, 2001, at B7 (determining that the top three Al Qaeda lieutenants planned the Sept. 11 attack on the Pentagon and the World Trade Center).

68 *See id.* at B7 (stating that Al Qaeda attacked the World Trade Center).

America to show that they are powerful.[69] To encourage their followers to rise up, not here in the United States, but to rise up in other places around the world to support them. Nevertheless, there are other dynamics to their targeting list. There are essentially three types of targets for terrorists;[70] the symbols of our power,[71] our economic infrastructure,[72] and our psychology of safety and well-being.[73] We believe that if it is made continuously difficult for terrorists to hit the U.S. Government, to hit the symbols of America, that they will shift their targeting. There are major petrochemical complexes down in the Houston ship canal area that would make spectacular explosions if properly detonated, causing grievous economic harm to the U.S. It does not take a whole lot of thought to think about shifting the targeting. If you wanted to bring about maximum psychological harm to the U.S; I would take 25 operatives, none of whom need to give up their lives in this exercise. I would ask them to go to 25 different second tier U.S. cities and at two o'clock on Thursday afternoon blow something up; anything, a gas station, a supermarket, a town hall, or a library. It does not make any difference. Think about the psychological impact that that would have on this country.

There has been a lot in discussion that with all the things that we have done to improve airport security, we can still get a news reporter through the security queue carrying all kinds of paraphernalia.[74] That makes great press, but the bottom line is

69 *See* Akel Ismail Kahera, *The Twin Towers as Martyrs: A Philosophical Idea And Some Of Its Problems*, 7 J. ISLAMIC L. & CULTURE 83, 91 (2002) (claiming the World Trade Center had international notoriety as "one of the most potent symbols of American prestige and economic power").

70 *See generally* Nicholas Berry, *Targets of Terrorists*, C.D.I. TERRORISM PROJECT, *at* http://www.cdi.org/terrorism/moretargets.html (last visited Nov. 17, 2003) (listing targets and social effects desired by terrorist attacks).

71 *See generally id.* (noting that "symbolic public monuments" are often targeted).

72 *See generally* Josh Meyer & Bob Drogin, *Bali Blast Signals Terrorist Shift; U.S. Officials Say Islamic Militants, No Longer Content to Attack Western 'Symbols of Freedom,' Are Aiming at Softer Targets'*, L.A. TIMES, Oct. 14, 2002, at 9 (calling the targeting of a nation's economic infrastructure "an old tactic that Islamic militants have undertaken over the years.").

73 *See* Siobhan Gorman, *Fear Factor*, NAT. J., May 10, 2003, (labeling the nation's homeland security system "panic-driven" and explaining terrorism's role as "psychological warfare").

74 *See* Jamie Dettmer, *Security Measures Leave Many Airsick*, INSIGHT ON THE NEWS, Apr. 22, 2002, at 24 (pointing out that in an undercover test of security at eight major airports a CBS News team found that 70 percent of the time no guard opened up lead-lined film bags that could mask a weapon or explosive).

even on 9/11 if you had looked at the list of the top ten weapons of choice of any terrorist operative to take over an aircraft, a box cutter would not have made the list. Plus, with the additional steps that we have taken since then it is incredibly unlikely that a commercial passenger airliner will ever be used again in a terrorist attack.[75] Although, that only underscores the point that we have a very imaginative, very dedicated enemy out there and they will find other ways. The perception of security is critical. The more they perceive us to be aware and to be taking appropriate actions to frustrate their ability to attack, the more innovative they will have to become. We can protect businesses by doing the things that many corporations are doing today; Perimeter security, access security, etc.[76]

The only thing to keep in mind is that if you have a dedicated enemy who is willing to give up their life, they can bring about another event. That is the world that we are going to have to live in, and that is the world that our company is going to be underwriting in for quite some time.

75 *See generally* Kent C. Krause, *Putting the Transportation Security Administration in Historical Context*, 68 J. AIR L. & COM. 233, 243-44 (2003) (explaining the renewed importance of airport security).

76 *See generally* Rina C.Y. Chung, *Hong Kong's "Smart" Identity Card: Data Privacy Issues and Implications for a Post-September 11th America*, 4 ASIAN-PAC. L. & POL'Y J. 442, 444 (2003) (noting the use of card scanners to enhance security).