CIAT COALITION TO INSURE AGAINST TERRORISM
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STATEMENT OF

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ON BEHALF OF

THE COALITION TO INSURE AGAINST TERRORISM

BEFORE A HEARING OF

THE SENATE BANKING, HOUSING AND URBAN AFFAIRS COMMITTEE

REGARDING

REAUTHORIZING TRIA: THE STATE OF THE TERRORISM RISK INSURANCE MARKET, PART II

FEBRUARY 25, 2014

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Good morning Chairman Johnson, Ranking Member Crapo and members of the Committee. My name is Ed Walter, and I am the President and CEO of Host Hotels & Resorts. Host owns or has interests in more than 140 hotel properties in 15 countries, 24 States and the District of Columbia and is one of the largest owners of hotels in the world. I am a member of the Executive Board, and just recently concluded my tenure as the Chair of the National Association of Real Estate Investment Trusts, the worldwide voice for REITs and publicly traded real estate companies with an interest in the U.S. real estate and capital markets. I also serve on the Board of Directors of The Real Estate Roundtable.

Today though, I am testifying on behalf of the Coalition to Insure Against Terrorism, or CIAT. CIAT is a broad coalition of commercial insurance consumers, formed after the September 11, 2001 attacks to ensure that American businesses could obtain comprehensive terrorism insurance. The diverse CIAT membership covers virtually every sector of the private economy as well as public sector buyers of insurance. For example, the U.S. Chamber of Commerce, the National Association of Manufacturers, and the National Retail Federation are members. So are, to name a few sectors, transportation interests (e.g., the Association of American Railroads, the General Aviation Manufacturers Association, and the Taxicab, Limousine and Paratransit Association), utilities (e.g., American Gas Association, American Public Power Association, Edison Electric Institute, and National Rural Electric Cooperative Association), finance (e.g., American Bankers Association, America's Community Bankers, Mortgage Bankers Association of America), real estate (American Resort Development Association, National Association of REALTORS, Building Owners and Manufacturers International, International Council of Shopping Centers, and National Association of Industrial and Office Properties) and sports (e.g., the Baseball Commissioner, NCAA, NBA, NFL, and NHL). Simply put, CIAT is the true consumer voice on terrorism risk insurance, as we are comprised of the principal policyholders of commercial property and casualty lines of insurance in the United States.

I am here to strongly urge that Congress renew the Terrorism Risk Insurance Act, or TRIA, as soon as possible, and certainly prior to its currently scheduled expiration at year end. Without adequate terrorism insurance coverage, our economy, our jobs and our well-being become more vulnerable to terrorism. Maintaining a workable federal terrorism insurance mechanism is vital for our nation's economic security. The clear record of this Committee's previous hearing last September amply demonstrated that.

My own company was deeply and personally affected by the terrorist acts of September 11. Host lost our Marriott World Trade Center Hotel, which was destroyed by the collapses of the two World Trade Center towers, and our Marriott New York Financial Center Hotel located two blocks away was also heavily damaged. Much more importantly, we suffered the loss of two hotel employees.

Economic Impact of 9/11 and the Enactment of TRIA

As you know, the September 11th terrorist attacks cost insurers about $36 billion. For those of us who had commercial insurance policies, the financial losses suffered as a result of the attack were covered by the insurance policies in force at the time. All of this changed after September 11. The potential for extraordinary terrorism-related damages and a heightened awareness of the magnitude of future risk caused a downward spiral in the insurance market. First, reinsurers left the market, and then many primary insurance carriers effectively stopped providing coverage of terrorism-related losses. After the September 11th attacks, Host's property insurance costs nearly tripled, while the amount of coverage declined by 70%.

The uncertainty surrounding the future of terrorism insurance contributed significantly to a paralysis in the economy, particularly in construction, tourism, business travel and real estate finance. According to a study by the Real Estate Roundtable, in the 14 months between the 2001 attacks and the enactment of TRIA, over $15 billion in real estate-related transactions in seventeen states were stalled or canceled because of a lack of terrorism risk insurance. Perhaps more troubling, the White House Council of Economic Advisors found there was an immediate and direct loss of 300,000 jobs in that same period from deferred construction.

With the entire private sector exposed, the federal government took action by enacting TRIA, in November 2002. TRIA provided a limited government risk-sharing mechanism, while requiring private commercial insurers to offer terrorism coverage for certain acts, and requiring insurers and policyholders to participate in the costs of any eventual claims through both upfront retentions and a post-event recoupment mechanism.

Risk sharing partnerships are the standard among developed nations for the management of terrorism risk. At least fourteen other nations, including most of the major OECD economies, have permanent terrorism insurance laws in place because they too recognize that private insurers and reinsurers alone cannot be responsible for underwriting terrorism insurance.[1] A critical consideration for any future investment will be whether terrorism insurance is available in that country.

<u>The Continuing Economic Need for TRIA</u>

In addition to having stabilized our economy following 9/11, TRIA continues to support our economy by providing a plan to survive a future terrorist event without losing stability or continuity. It requires the insurance industry to bear a significant amount of any claims and also provides a mechanism for the government to recoup from policy holders the cost of governmental outlays. The continuing need for TRIA is apparent: when TRIA was previously set to expire, private insurers routinely wrote exclusions into policies that would void terrorism coverage in the event TRIA was not renewed. A 2005 poll by Marsh & McLennan of 50 commercial property insurers found that 68% of insurers would have excluded terrorism coverage after December 31, 2005 if TRIA was not extended. Similarly, a 2013 study by Aon found that if TRIA is terminated, there would be an 85% reduction in insurance capacity for property risks.[2] Because the standalone market would not be able to fill the void, the economic impact of TRIA's expiration would be significant.

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[1] *See* U.S. Gov. Accountability Office, *Catastrophe Risk: U.S. and European Approaches to Insure Natural Catastrophe and Terrorism Risks,* 39 (2005); Airmic Technical, *Terrorism Insurance Review*, 5 (2013), *available at* http://www.willis.com/Documents/Publications/Services/Political_Risk/Terrorism_2013_FINAL_web.pdf.

[2] *Response to U.S. Treasury and President's Working Group: Terrorism (Re)Insurance*, Aon, September 2013, at 9, *available at* http://www.aon.com/attachments/risk-services/2013-Aon-Response-to-Presidents-Working-Group.pdf.

The issuance of similar "sunset" clauses that would exclude terrorism risk coverage after year end are again likely to result from a failure to quickly extend TRIA well beyond 2014.

TRIA protects both the capital and property markets from considerable disruption. Most existing loans require that borrowers maintain terrorism insurance as part of their overall insurance program. In fact, in 2005, as the expiration of the original Act approached, Host began receiving letters from lenders notifying us that they would require us to obtain terrorism insurance even if TRIA was not renewed. If, as anticipated, the standalone market proves inadequate to satisfy demand created by the non-renewal of TRIA, companies would face widespread technical loan defaults throughout various industries.

In the current climate, banks and other capital providers have indicated they will not provide new financing without terrorism insurance. As a result, even today, borrowers are being forced to confront the question of what options will exist after year-end 2014. The lack of clarity around this issue will likely slow the pace of new financing, especially in the case of properties that are perceived to be at a higher risk of terrorist attacks such as high profile buildings and real estate generally located in key gateway urban markets.

This problem would be even more troublesome in the case of new construction projects, which are already properly viewed as presenting additional risk to a lender. Construction lenders could back away from lending for these projects because of a concern that takeout financing would be difficult to arrange if terrorism risks cannot be offset by insurance. It is important to add that these uncertainties create delays, which only serve to slow the momentum of our already tepid recovery.

Risk Mitigation: A Priority for Policyholders

It is important to note that policyholders retain the incentive to mitigate risk under TRIA. Building owners and businesses across the nation have spent hundreds of millions of dollars on enhanced security measures and risk management since 9/11. In fact, reducing real estate's vulnerability to terrorism and other threats — through information sharing, risk mitigation, and building security emergency response planning — continues to figure prominently in the prudent management of commercial real estate. Such efforts include a full range of counterterrorism and target hardening techniques to reduce the vulnerability of real estate as part of the nation's critical infrastructure and key resources.

Mitigating against the risk of terrorism today is a focus for all building owners and, whether a federal terrorism insurance plan does or does not exist, it will continue to be an important aspect of managing any facility where people gather to work, shop, play or simply enjoy recreational opportunities.

The Future of TRIA

Some critics argue there is no longer a need for TRIA, stating that the private insurers and reinsurers should have found ways to manage the risk of terrorism and offer the commercial sector coverage for it. But we have seen no credible evidence that the private market alone can satisfy the economy's demand for terrorism insurance, now or in the immediate future. Indeed, from our perspective as policyholders, no one has provided us any evidence or made an effective case that there will be any real market for terrorism insurance at all should TRIA be allowed to expire at year end.

There is, however, plenty of evidence to the contrary. The April 2013 report issued by Marsh states this outright when it says, "In the absence of the TRIA backstop, the needs of policyholders are not expected to be met with regards to terrorism insurance." Similarly, the September 2013 report by Aon states "If TRIA were to expire in 2014 the vast majority of the existing insurance market for terrorism risk would disappear." Additionally, last September, this Committee heard from an array of major insurance brokers, academics and policy analysts expressing belief that private risk markets cannot provide sufficient capacity without TRIA or something very much like it.

Other critics have expressed concern that TRIA only benefits major metropolitan cities, like New York, Chicago and San Francisco. But terrorism is not just a big city problem. The 1995 Oklahoma City bombing made this clear. According to an April 2010

Heritage Foundation report, at least 30 terrorist attacks have been thwarted in the United States since September 11. Among these, terrorists have targeted a shopping mall in Columbus, Ohio, gas pipelines in Wyoming, a federal building in Springfield, Illinois and a Christmas tree lighting ceremony in Portland, Oregon. Anywhere that people gather – sporting events, schools and universities, hospitals, shopping centers, a utility or a place of worship – is a potential target for terrorism.

We believe one of the strengths of TRIA is the manner in which it utilizes the private insurance marketplace to manage terrorism risk – indeed, all exposure under TRIA starts with private insurance contracts and, due to both significant retentions and the recoupment mechanism, the ultimate risk-bearers under TRIA are the policyholders and the private insurers. We are always willing, however, to consider ways to further limit taxpayer exposure under the program, which we know is your focus as well.

Overall, we support the current structure of TRIA and are wary of major structural changes since the impact of such changes on the continued availability of terrorism insurance in the marketplace is speculative. We are open to modifications so long as they do not have the effect of restricting the availability of terrorism insurance. We understand that reinsurance capacity for even the existing retention levels under TRIA is limited.[3] This fact alone demonstrates that TRIA is not "crowding out" the private sector.

It is important to point out that the policyholder community bears significant burdens or exposure under TRIA's design, in addition to their normal policy deductibles or self-insurance retentions. First, TRIA caps the total liability of the private insurance industry <u>and</u> the Federal Government at $100 billion, so that if a major attack or series of attacks produced total insured losses above that figure, commercial policyholders with claims would suffer a proportionate "haircut" of their compensable coverage even as they were direct sufferers from an attack. Second, under TRIA any Federal share of

[3]According to Eric Smith of Swiss Re, "Based on the most recent estimate, the total amount of reinsurance capacity available for terrorism in the United States is approximately $6-10b -- well below the $27.5b insurance marketplace aggregate retention under TRIA and the $34-35b cumulative insurer loss retentions." *The Terrorism Risk Insurance Act of 2002; Hearing Before the H. Comm. on Financial Services*, 113th Cong. (2013) (statement of J. Eric Smith, President & CEO, Swiss Re Americas, at 4).

compensation is to be recouped in subsequent years through retrospective assessments imposed on all commercial policies in covered lines, so policyholders essentially make the taxpayers whole. TRIA is no handout to anyone.

Conclusion

The ongoing risk of terrorism remains acutely apparent to my company: The thwarted 2010 Times Square bombing attempt happened directly in front of our Marriott Marquis, and the Boston Marathon bombings took place just two blocks from our Boston Marriott Copley Place and Sheraton Boston hotels. Because terrorist events follow no pattern, the location and magnitude of losses cannot be reasonably predicted through modeling software as is currently done for hurricane and earthquake risks. Consequently, industry experts have suggested that in the aftermath of another large terrorism event, without TRIA, we would likely face the same situation we confronted after 9/11, with insurance capacity limited, if available at all.

That leads to perhaps the strongest argument for extending TRIA: it's working and at virtually no cost to the taxpayer. After the enactment of TRIA, costs stabilized. And today, commercial insurance consumers have access to comprehensive terrorism insurance, directly as a result of the extension of TRIA. Enacting the Terrorism Risk Insurance Act was the right thing to do in 2002. And Congress did the right thing when it extended and amended TRIA in December 2005 and again in December 2007. TRIA remains the best method to address the cost and uncertainty of terrorism – Congress should once again extend TRIA. Thank you for the opportunity to address the Committee – we applaud your concern regarding this very important issue.