

## PROFESSIONAL LINES AND TRIA: SURPRISING COVERAGE TRIGGERS



With the recent renewal of the Terrorism Risk Insurance Act (TRIA), it seemed like a good time to look at the Management Liability and Professional Liability lines to discuss how terrorism in general can trigger coverage. While TRIA is a backstop for insurers and may not directly benefit clients from a coverage perspective, it does serve as a reminder that insurance can play a role in the recovery from terrorist events. While scenarios that trigger coverage under management and professional lines of coverage aren't always obvious, they do exist.

### FIDELITY/CRIME

Let's start with the easiest one: Fidelity/Crime insurance. This line of coverage is written to protect an organization from the financial risk of an employee stealing money or securities belonging to the organization or its customers. There are insuring agreements that provide coverage for employee theft, theft of money from outside the premises, credit card fraud, forgery or alteration, computer fraud, wire fraud, client coverage, robbery or safe burglary, theft of money or securities, funds transfer fraud, and money orders or counterfeit currency. This is a first party coverage rather than a liability coverage. The policies will often cover forensic expenses to determine how much money or securities have been embezzled so the insurer and insured can agree on an amount to be reimbursed by the insurer. The question here is how we connect the dots between a terrorist event and employee embezzlement. An employee that is working on behalf of, or in collusion with, a terrorist group to steal funds to support that organization would trigger crime coverage because the policy does not ask why they are stealing, just have they been stealing.

### DIRECTORS & OFFICERS LIABILITY (D&O)

Looking at D&O insurance from a terrorism perspective also has some somewhat obvious answers. D&O insurance is written to protect the directors and officers of an organization – not to mention the organization itself – from lawsuits alleging that the directors and officers have breached their fiduciary duty to the organization and its shareholders or other constituents. The insurance works in conjunction with the organization's bylaws to protect the personal assets of the directors and officers from the liability that arises from their business decisions and leadership of the organization. How do terrorist events come into play for D&O claims and insurance? The obvious answer is that the leaders of an organization have a duty to the organization and its constituents to protect the assets and value of the organization. If the leaders have not adequately prepared for a terrorist event with a business continuity plan, including a way to protect their employees, satisfy debt obligations, or allow the organization to continue to honor its product or service commitments, that can be viewed as a failure of leadership or a breach of fiduciary duty. In essence, that is a D&O claim arising from a terrorism event. Absent an absolute terrorism exclusion, coverage may be triggered to respond to that type of mismanagement allegation.

### EMPLOYMENT PRACTICES LIABILITY (EPL)

EPL insurance is written to protect an organization from claims by employees – and sometimes third parties – alleging harassment, discrimination, wrongful termination and retaliation. Those terms are defined more broadly in the policy to include other potential wrongful acts such as negligent hiring, negligent retention, failure to promote, employment-related infliction of emotional distress and more. How do we connect wrongful acts related to the treatment of employees to external terrorist events? We can expect to see discrimination claims or wrongful termination claims following the disparate treatment or termination of an employee from a particular ethnic group if that group is somehow connected to a terrorist event. Concerned employers may terminate people of that ethnicity out of concern for their other employees, but that is still discrimination unless there is evidence the employee is connected to those activities or has other well-documented performance issues. We could also see claims arising from employees alleging negligent hiring or hostile work environment if there are employees hired or retained from an ethnic or religious group that has been involved in terrorist activities. If those employees appear supportive of the terrorist activities, the other employees may claim that retaining them is creating a hostile work environment. There are many sticky situations that can appear on an EPL policy following a terrorist event.

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### CONTACT

To learn more about how AmWINS can help you place coverage for your clients, reach out to your local AmWINS broker or [marketing@amwins.com](mailto:marketing@amwins.com).

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### **FIDUCIARY LIABILITY**

Fiduciary coverage is similar to professional liability insurance for employee benefit plan fiduciaries, trustees and administrators. The typical claim alleges Employee Retirement Income Security Act (ERISA) violations, imprudent investment decisions, improperly advising plan participants, delinquent contributions and mishandling of funds. A fiduciary claim could arise from investing in funds that are heavily weighted in investments that would be adversely impacted by a terrorist event, such as real estate in high risk areas. It is conceivable that the retirement plans would underperform and plan participants could be harmed. A disruption from a terrorist event could interrupt the plan contributions, withdrawals or other changes. Any of those could trigger litigation.

### **PROFESSIONAL LIABILITY**

Professional Liability, or Errors & Omissions (E&O) coverage, is designed to cover people and organizations for claims alleging that they made an error or omission while providing a service to others. Within the broad spectrum of services that can be covered under an E&O policy, there are many types of businesses with a heightened risk of litigation following a terrorism event. For example, security guards may be accused of failing to provide adequate protection. Background checking firms may not have noticed someone's criminal history or affiliation with hostile organizations. Mental health professionals may have not properly diagnosed someone who turned out to be a terrorist. A flight school may have skipped a background check before training someone to fly and they used that training to hijack an airline. An insurance agent can be accused of improperly insuring a large building that is destroyed by terrorists. There are many other professions that could be at the front line or surprisingly connected after a terrorist event.

### **KIDNAP & RANSOM (K&R) INSURANCE**

This is another area where a terrorism event can trigger coverage. When a terrorist group holds hostages for ransom, K&R insurance would cover the ransom amounts, employment of consultants and negotiators, and possibly retrieval of hostages. There is even an insurer that provides evacuation services that can be used at the first sign of civil unrest, terrorist activities or even a pending storm.

### **CYBERLIABILITY**

In a previous edition of [The Edge](#), we discussed the possibility of cyberliability covering some aspects of cyber-terrorism. Cyberliability covers an organization for a variety of situations involving the use or misuse of an organization's network, website, and private data. A terrorist group may deface an organization's website with inappropriate messages that could offend people. A terrorist group may take over a bank's network and demand a ransom. A hostile group may use a network to inflict harm on others. They may use a network to gain access to other networks and spur litigation out of a lack of security. An organization might suffer a business interruption loss from a terrorist-sponsored hack of their network. If computer networks or communication devices are involved, cyberliability insurance might provide some solutions.

### **CONCLUSION**

Terrorist acts by groups acting hostilely toward our country and businesses continue to occur. As they happen, we find many different ways that insurance coverage can be triggered in response to these events. It's important to partner with a specialist in these areas of financial risk so that your clients are properly covered and prepared.

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