

Statement of
Penny Pritzker
before the
Subcommittee on Capital Markets, Insurance
and Government Sponsored Enterprises
regarding
“The Future of Terrorism Insurance”

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Thank you very much for the opportunity to be here today. My name is Penny Pritzker.

I am the founder and chairman of Classic Residence by Hyatt, a national leader in luxury senior living. Classic Residence by Hyatt owns, manages and operates luxury senior living communities coast to coast. I also serve as president and CEO of Pritzker Realty Group, L.P. headquartered in Chicago, Illinois. Pritzker Realty Group manages a diverse portfolio of assets across the United States, including land developments, industrial parks, apartments, offices, and off-airport parking.

I am also Treasurer and a Member of the Board of Directors of The Real Estate Roundtable.

I want to begin by thanking you Chairman Baker and Ranking Member Kanjorski for conducting today’s hearing on the future of terrorism insurance. I am pleased that Chairman Oxley, and so many members of this Committee, support the continuation of a federal terrorism insurance program. I also want to specifically note my appreciation for the focus and attention given to this issue by Representatives Kelly, Frank, Israel, Crowley and Capuano.

I am honored to offer my perspective today as you craft legislation in this area.

Immediately following 9-11, Congress was called upon to develop many new public policies to reflect the changed world. This Committee, led by Chairman Oxley, quickly grasped the enormous potential economic problems that could develop if the government did not step into the terrorism insurance marketplace. You led the Congress in developing the legislative solution that became known as TRIA -- the Terrorism Risk Insurance Act. Thank you for your hard work in this area then, and thank you for recognizing the need to focus intently on this issue once again.

Like many of you, I had hoped that the government's role in terrorism insurance could be ended. I am in a highly competitive, market-based business. And, like the real estate business that I am in, I was hopeful that the private insurance markets could fully handle the issue of terrorism insurance, as it had prior to 9-11.

Unfortunately, that does not seem to be the case. From my perspective, the reasons that caused this Committee to work daily to enact the terrorism risk insurance act have not significantly changed. And, because of this reality, I strongly believe that our economy continues to need a federal terrorism insurance backstop . . . and we need it to be in place well before TRIA sunsets at the end of this year.

Obviously, as recent events in London, and around the world indicate, the threat of terrorism continues to be strong. Where terrorists might strike, and how they might attempt to do so, continues to be an evolving picture. Notice I said "where" they might decide to strike . . . not "who" they might decide to strike. As I see it, terrorism is an act against our governmental policies. It is an act against our "way of life". It is not an attack on an individual business or property owner. It is an attack on all of us. It is, as the President has stated, war.

Not only does the terrorist threat continue, but the potential economic costs of a terrorist attack are almost limitless.

You correctly saw this problem in 2002. You enacted TRIA. I believe it has been a tremendous success.

A survey conducted during the post 9-11, pre TRIA time period showed that more than \$15 billion of real estate related transactions had been either stalled or cancelled because of a lack of terrorism insurance. Studies further showed that approximately 300,000 jobs were lost during this period.

Almost overnight TRIA provided capacity to insurance markets which in turn yielded the economic confidence for transactions to resume. I am personally familiar with stalled construction projects that moved forward immediately to the benefit of countless workers in the construction trades.

Having noted the benefits of TRIA, I am also aware that few laws are perfect and, as Members of Congress, you are the ones who must review the technical way in which the federal backstop functions. While I personally do not share the optimism expressed in the Treasury Report concerning the ability of private insurers to effectively model terrorism risk, I will say that if reforms to the program, along the lines suggested by Treasury Secretary Snow, can be crafted to increase the role of the private market in providing terrorism insurance to the economy, then they should be done.

Alternatively, in addition to solely focusing on TRIA, and the various recommended reforms to TRIA, I understand that this Committee might be interested in crafting a longer-term solution to the terrorism insurance problem. I certainly would not discourage this Committee

and Congress from exploring a more permanent way to ensure that terrorism insurance is available in our country. There are several models that may be instructive in this area including the Pool Re approach taken in the United Kingdom and the pooling approach to catastrophic risk taken by Florida.

But I urge you to proceed cautiously whether looking at TRIA reforms, or at a longer-term solution. In general I would urge that you make sure that whatever the approach, you do not unintentionally penalize the policy holding community. The economy does not need a situation where terrorism insurance is once again only available in limited supply and then only at extremely exorbitant prices. The resulting illiquidity would not be a functioning marketplace.

During your coming deliberations, I respectfully offer a few points for you to consider.

First, one of the most important aspects of TRIA was the so-called "make available" provision. It ensured that terrorism coverage was offered to businesses. I strongly urge that this provision be included in whatever federal backstop program this Committee recommends.

Second, the distinction under current law between domestic and foreign terrorism should be eliminated. In today's world, having to determine whether a terrorist strike is at the direction of a foreign entity is obviously very difficult and seems somewhat meaningless. Even today little is known about the origins of the anthrax attacks of a couple of years ago.

Third, nuclear, biological, chemical and radiological exposures are truly limitless. It seems that they should be somehow treated differently than other forms of terrorism risk, if for no other reason than to provide an even greater incentive for insurers to offer this type of coverage. As you know, TRIA currently backstops these events if in fact a primary insurer will write the coverage. I see no evidence that such coverage is being written today. A strong incentive is needed to ensure that this very real risk is covered.

And, finally, I would urge you to act in this area quickly. According to a Moody's report . . . 50 percent to 75 percent of all property and casualty insurance policies written since January 1st have adopted "conditional endorsements" that will automatically void terrorism coverage if a federal terrorism insurance backstop is not in place on January 1, 2006.

Also, new projects will face increasing difficulties because, in many cases, terrorism insurance coverage will not extend into next year and therefore the financing will not be available to go forward. The sooner Congress acts on this issue the less dysfunction will occur in the marketplace.

I would also urge caution on two additional areas.

First, there is great discussion about what lines of business are to be included and excluded from backstop coverage. For example, general liability is an important line of business coverage by itself. It also gives support to our officers and director insurance. I urge you to carefully review the justifications to exclude it from future backstop coverage. Obviously, if the

decision is to move toward a pooling approach to address the problem, which will bring with it a "pay to play" aspect, then I would strongly urge all existing lines be covered in the successor program.

Second, the issue of tort reform is one that is very important but one that could overwhelm the prospects for this important legislation if not carefully crafted. First, through regulation, the Treasury Department already has established strong litigation safeguards against runaway verdicts and excessive settlements. These regulations, of course, expire with TRIA. I think reauthorizing these regulations would address the concerns of unwise lawsuits arising in this area. These regulations make sure that federal funds are not to be used for punitive damages; they ensure that federal funds will not be utilized to subsidize excessive, bad faith, collusive, or otherwise untoward settlements, and the regulations also require claims to be consolidated into federal court. Importantly, the regulations also institute an important brake on excessive attorney's fees. Treasury is instructed to take an active role in evaluating the appropriateness of attorneys' fees and expenses, applying the same factors weighted by federal courts regarding the reasonableness of fees and expenses, including time and labor expended, novelty and difficulty of the questions, the skills required to pursue the claims, the customary fee, whether the fee is fixed or contingent, the amount of fees and results obtained, and the lawyers' ability, awards in other states, and whether the fees have resulted in over stated insured losses under the underlying policies.

Rational litigation management rules are needed in this area, but the debate should not serve as a hurdle to achieving the most important goal here and that is a workable terrorism insurance program.

In conclusion . . . the real estate industry is one of the most competitive, market-oriented industries in America. We want markets to operate freely. But sometimes they can't.

As Alan Greenspan testified last week to this Committee. . . "so long as we have terrorism that has the capability of a very substantial scope of damage, there is no way you can expect (the) private insurance system to handle that".

Given this situation, I am pleased that a bipartisan group of members of this Committee support the continuation of a federal terrorism insurance program. Without a backstop, the terrorism insurance market is very likely to once again become highly unstable, with potentially very harmful effects on the economy.

TRIA was successful. Perhaps it can be made more market oriented without causing market disruption, and, perhaps, a long-term solution is within grasp. The most important action, however, is to "act" by putting a program in place long before the year ends.

Thank you again for the opportunity to comment today.