

# Auto terrorism.

Are you covered?



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# Overview of terrorism and TRIA.

In 2002, the Federal Government enacted legislation that would provide a backstop for insurers faced with large claim costs resulting from Certified Acts of Terrorism from non-domestic sources. The “Act” has since gone through several changes over the years as it has been renewed and extended. In 2005, the Act was extended but exempted certain lines of coverage, such as auto liability, D&O, Professional Liability and Surety.



The 2007 reauthorization removed references to foreign persons or entities, thus including coverage for domestic terrorism. Through each extension and/or reauthorization changes were made and finally in 2015, congress passed the latest Terrorism Risk Insurance Program Reauthorization Act (“TRIPRA”) which is in effect through December 31, 2020. This latest version implements incremental changes that gradually reduce the federal share for insured terrorism losses and increase the threshold, or attachment, of the government backstop. These changes will increase gradually until maxing out at the 2020 anniversary of the extension. For example: The trigger that applies to certified acts with insured losses exceeding \$100 million in 2015, increases to \$120 million in 2016, \$140 million in 2017, etc. until it caps at \$200 million in 2020 and beyond.

## **Increase in activity of automobiles being used in global terrorist attacks**

Worldwide, terror attacks have gone through a shift in recent years and more often, bad actors are using vehicles as weapons. Incidents have taken place all around the globe in cities in the US, Canada, the United Kingdom, France, Spain, Sweden, Jerusalem, Germany and other countries. A few of the most notable attacks include:

- **July 14, 2016:** A 19-ton truck killed 100 people and injured 430 at a Bastille Day celebration in Nice, France.
- **November 28, 2016:** A student at Ohio State University injured 11 people with a vehicle before attacking with a knife.
- **June 3, 2017:** The London Bridge van attack killed 8 and injured 48 pedestrians.
- **August 16-18, 2017:** Two related vehicular terrorist incidents killed 12 people and injured nearly 100.
- **October 31, 2017:** A Home Depot rental truck killed 8 pedestrians and injured almost a dozen others on a Manhattan bike path.
- **April 23, 2018:** A Ryder Rental truck killed 10 pedestrians and injuring 15 others.

Since 2006, seven out of 35 of these attacks have occurred in the United States, and a substantial number of these attacks have transpired just since 2016. The frequency and severity of these incidents have made them increasingly alarming to both the public and government authorities everywhere, but especially in the U.S.

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In 2017, the Transportation Security Administration issued a six-page advisory document to truck and bus companies to be cautious of potential terrorists. Shortly after, New York City announced it would spend \$50M to install 1,500 cement protective barriers around the city to protect public ways. The city already has hundreds of permanently installed bollards around high-profile locations and frequently utilizes sand-filled dump trucks as mobile barriers for special events where permanent barricades are impractical. Las Vegas will be installing over 8,000 sidewalk barriers over the next year, all as a result of the vehicular terrorist attacks that occurred in 2017. Other cities are utilizing recessed trenches and creating more public space to put distance between attractions and thoroughfares. Along with the physical changes being implemented, legislative solutions are also being sought. New York state lawmakers have proposed the “Vehicle Ramming Prevention Act” in a proactive attempt to diminish future attacks. Under the Act, the Division of Homeland Security and Emergency Services will setup a hotline that rental companies should contact in the event of suspicious activity.

#### How will your policy respond?

Since 2005, when Auto Liability was exempted from the federal backstop, several endorsements have been written to address the extent of coverage offered by insurers for acts of terrorism. Some insurers have opted to exclude coverage for terrorism, some exclude specific incidents, yet others remain silent. It’s important to know in advance how an insurer will address this issue — especially in light of the increase in the number of events where automobiles are being used to carry out attacks. When not remaining silent, insurers are typically using one or more of the following four examples of Terrorism Exclusion endorsements. Being familiar with these forms and how insurers are addressing the issue before an event should be a part of your renewal conversation whether your client has one car or a fleet of vehicles:

1. **CA 23 84** — Exclusion of Terrorism: Excludes all losses resulting from acts of Terrorism (as defined in the endorsement) attributed to a nuclear, biological, chemical or radioactive incident or an incident that exceeds \$25M in total property damage or results in the deaths or serious injuries of 50 or more persons.
2. **CA 23 85** — Exclusion of Terrorism Involving Nuclear, Biological or Chemical Terrorism: With respect to Liability and Personal Injury Protection, if applicable, this endorsement will exclude only those acts attributed to nuclear, biological or chemical incidents (“NBC”).
3. **CA 23 86** — Exclusion of Terrorism Above Minimum Statutory Limits: Excludes the same acts of Terrorism as in CA 23 84 but only in excess of state compulsory or financial responsibility law limits for each coverage.
4. **CA 23 87** — Exclusion of Terrorism Involving Nuclear, Biological or Chemical Terrorism Above Minimum Statutory Limits: Excludes the same acts of Terrorism as in CA 23 85 but only in excess of state compulsory or financial responsibility law limits for each coverage.

A key concern for insurance professionals and insureds is whether the owner of a covered automobile, used in an act of terrorism, would or could be held responsible in any way for the incident and how the auto liability insurance would respond. While it is unlikely that an insured would be held liable, it's not so unlikely that they may still need to defend against suits. It is important that we address these issues in advance by asking relevant questions of our clients and insurers.

**A few questions you may want to ask include:**

- What actions are being taken to assure that covered autos do not fall into the hands of terrorists? For example, are garages or parking areas secured adequately when vehicles are not being used? Are strict guidelines provided to employees regarding the use of company vehicles?
- Do covered automobiles cross state borders where minimum limits may differ? If an endorsement excluding limits above statutory minimums applies, how does the umbrella address the limit gap?
- Are you aware of the options and have you discussed these with your incumbent or competing insurer(s)? Which of the endorsements does the carrier attach, if any, and are they able to remain silent on the question of terrorism?

# About the Authors.

**Jessica Cullen** is responsible for the strategy of the Casualty practice, thought leadership and acts as a resource for our clients across the U.S. She joined Gallagher in 2005 to specialize in large account casualty insurance. Her responsibilities include handling all aspects of the insured's account, including program structure design, marketing, developing strategic solutions to manage total cost of risk as well as coordinating multiple lines of coverage in an Account Executive Role. Her wide range of experience working on casualty accounts with particular emphasis on large loss sensitive primary programs and size-able excess casualty placements. In addition traditional primary and excess programs, she has a focus on non-traditional and unique alternative risk placements/projects. Jessica's experience spans across multiple industries including Real Estate, Financial Institutions, Manufacturing, Retail, Chemicals, Energy and Construction. Jessica has Bachelors of Arts Degree in History and Political Science from Ramapo College of New Jersey.

**Jessica Cullen, Managing Director Casualty Practice, Senior Vice President | 212.981.2910 | [jessica\\_cullen@ajg.com](mailto:jessica_cullen@ajg.com)**

**Christina Fama** joined the Arthur J. Gallagher Manhattan office as a Client Service Manager in 2014. Christina has 8+ years of experience working in the property and casualty insurance industry. She is responsible for marketing, renewal placement, day-to-day servicing and managing client relationships for both new and existing clients of various sizes and industries. She started her career at Arthur J. Gallagher's Long Island branch in 2009 where she was a Client Service Representative for the Public Entity Department. Prior to joining Arthur J. Gallagher's Manhattan office, Christina worked as an Assistant Account Executive at a smaller insurance brokerage in New York where she serviced clients of the Hospitality and Real Estate industries. Christina graduated from Marist College with a Bachelor of Science Degree in Business Administration, concentrating in Finance.

**Christina Fama, Area Assistant Vice President | 212.981.2466 (direct) | [christina\\_azzarone-fama@ajg.com](mailto:christina_azzarone-fama@ajg.com)**

**Dresa A. Allman, ARM** joined Arthur J. Gallagher & Co. in March 2016 with a specialty of placing and servicing loss sensitive casualty insurance programs. Her responsibilities encompass assisting new and existing clients in the development of risk management strategies and all aspects of designing, marketing and servicing those accounts. Prior to joining Arthur J. Gallagher & Co., Dresa worked at two other major insurance brokerage firms where she specialized in the placement and servicing of Fortune 500 & Fortune 1000 companies' casualty insurance programs. In the last several years, her expertise was focused on the design and placement of casualty insurance programs for insureds with heavy employee concentrations in New York and other major cities, as well as chemical manufacturers and energy-related clients. Her experience in casualty insurance program design, placement and servicing includes domestic and foreign-owned companies in chemical manufacturing, technology and communications, water treatment, textile manufacturing, temporary employment services, insurance companies, and other financial and financial services institutions. Dresa is a licensed Property and Casualty broker. She has earned an Associate in Risk Management designation and a Professional Education Certificate for studies in Workers Compensation from New York University.

**Dresa A. Allman, ARM | Area Senior Vice President | [dresa\\_allman@ajg.com](mailto:dresa_allman@ajg.com) | 212.530.7962**

