RMF

RUSKINMOSCOUFALTISCHEK P.C.

Counselors at Law

Insuring Against Terrorism: New Coverage, New Problems

By Eric C. Rubenstein and David P. Leno

The events of September 11 have changed the way that people view everyday life, including real estate professionals and attorneys. Lenders and landlords are demanding terrorism insurance protection, and the availability or prohibitive cost of coverage is causing increasing concerns in the industry.

Prior to September 11, terrorism coverage was often free, since the risk of terrorist attack on United States soil seemed remote. Since September 11, some insurance companies have elected to stop providing basic property coverage because certain states, like New York, compel licensed insurers to provide terrorism insurance. Insurers in other jurisdictions (and unlicensed New York companies) began to offer limited terrorism coverage at inflated cost. For example, the maximum terrorism coverage policy available to the authority operating the Golden Gate Bridge was $100 million, far short of the $2 billion replacement cost for the bridge. Most importantly, the annual premium for this fractional amount of coverage was $1.7 million.

Recently, ratings of loans securitized by high profile New York City buildings (*e.g.*, Rockefeller Center, Citicorp Center and the Marriott Marquis Hotel), as well as a Seattle tower, were downgraded by a leading rating agency citing the absence of sufficient terrorism insurance. The impact of this downgrading on a pool of properties may extend beyond notable properties in major United States cities: other properties in the pool, which are not likely to be terrorism targets, may suffer the effects of downgrading, including higher financing costs. The clamor over terrorism insurance is becoming louder, and the economic pinch is being felt. A court recently decided that the lender on 4 Times Square was reasonable in requiring a multimillion dollar increase in insurance escrows to cover the risk of terrorist attacks, and co-ops and condos are reporting as much as a 400% increase in premium.

Yet, there may be alternatives to direct terrorism coverage. Landlords may get sufficient protection under more traditional insurance coverage options, such as business interruption insurance. Compelling tenants to obtain business interruption insurance is designed to ensure that rent payments to owners are not interrupted, but is terrorism actually covered in those policies? Insurance companies may deny claims under ordinary business interruption insurance policies under the “act of war” exclusion. “Act of war” excludes insurance coverage due to wars, acts of war, revolutions, rebellions, civil wars, civil commotions, riots, blockades, revolts and

Ruskin Moscou Faltischek, P.C.
East Tower, 15th Floor
1425 RXR Plaza, Uniondale, NY 11556-1425
516.663.6600
www.rmfpc.com

mutinies. Because the attack upon the World Trade Center was not a "state-sponsored action," the "act of war" exclusion will not likely apply. Owners may therefore enjoy certain protection against terrorist attacks even without requiring tenants to obtain prohibitively expensive terrorism coverage.

Recently proposed federal legislation would mandate the US government to either cover losses due to terrorism over a certain amount, or make loans to insurers liable for such excess sums. Either approach would make terrorism coverage more readily available and cheaper. Whatever happens in Washington, terrorism insurance issues will be in the forefront of substantial sales, financing and leasing transactions in major US cities in the near future.

Eric C. Rubenstein is a partner and Co-Chair of the Real Estate Department of Ruskin Moscou Faltischek, P.C., and can be reached at 516-663-6513 or erubenstein@rmfpc.com. David P. Leno is an associate in the Real Estate Department, and can be reached at 516-663-6544 or dleno@rmfpc.com.