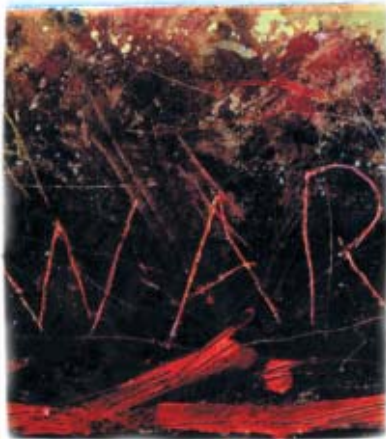


# War Bulletin

As professional advisors in the insurance industry, we feel that it is our responsibility to investigate, pursue and attempt to obtain answers to the many questions that have arisen since September 11, 2001.

This special edition of our CommuniK is intended to provide you with the known facts about the insurance industry and your benefit plan, as it relates to the tragic events of September 11, 2001. We will also provide our opinion about the insurance industry's initial and subsequent reaction and suggest potential courses of action as a concerned employer.



"We must be clear in our minds that it is a new kind of struggle against a new kind of enemy. And we must not allow ourselves to be trapped by the rhetoric or experiences of past wars to define our tactics. Or measure our success."

*Prime Minister Jean Chretien*

## What we know

- Group benefit contracts include a clause that if invoked, would release the insurance company from any liability resulting from an act of war, declared or undeclared, insurrection, riots etc. The decision to invoke a clause rests solely with the insurance company.
- These clauses can be found in the limitations and exclusions portion of insurance contracts for all benefits except Basic and Optional Life. The basis of the clause can be traced to the late 1940's, after World War II.
- The main purpose for group benefits is to provide reasonable financial security in the event of loss both, expected (i.e. drug claims) and unexpected.
- Given the estimated \$30 - \$75 Billion financial impact to the insurance industry, the immediate response by the insurance companies in the United States was to invoke the war exclusion clause contained within their contracts. They subsequently reversed that decision.
- Group benefits are not rated to cover unpredictable risks such as war or terrorism.
- Insurance company actions have now raised concern about the lack of defined terms and how such restrictive yet overlooked clauses are invoked.

The Oxford Dictionary definition of "terror" is: organized intimidation. "Terrorist" is: a person using organized violence against a government.

*The Oxford Dictionary*

- Current limitations and exclusions do not mention terrorism as a reason to deny payment of claims.
- The Oxford Dictionary definition of "war" is: 1a) armed hostilities between nations; conflict. 1b) specific instance or period of this. 1c) suspension of international law etc. during this.
- The Oxford Dictionary definition of "terror" is: organized intimidation. "Terrorist" is: a person using organized violence against a government.
- To date, insurers have not responded to the growing concern about the lack of clarity that exists within their contract.
- Reinsurance arrangements between insurance carriers exist and the purpose is to transfer risk to the re-insurer.
- A legal opinion as stated by Aird & Berlis LLP; For an event to be construed as an "act of war" it must occur within the context of war. American jurisprudence indicates that for an event to have been an "act of war" it must be clearly understood to have been such by the ordinary person. It has been held that war must be declared by Congress.
- The Federal Government is currently proposing legislation that will define terrorist activity.

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## What we believe

The events of September 11th have changed the world. Feelings about our security have changed and society is beginning to evolve recognizing the new threats that exist. Insurance companies are no different.

Understanding the enormous financial liability facing the insurance industry ensuing from a catastrophic event, one can appreciate the reluctance by the insurance industry to absorb such losses. That being said, we understand why the insurance companies' initial response was to invoke an archaic clause that would release them from the potential, massive financial losses. The entire U.S. nation was in shock from what had happened and for insurance companies to then stand up and state that they were "waiving" this clause was viewed as a compassionate move and was applauded. Insurance companies now looked like "the good guys".

**But why did they move from their initial position?**

It is our belief that the insurance companies had no choice but to accept and pay any and all claims related to this tragedy.



"A formal declaration of war kicks in all kinds of international law obligations (the Geneva convention on the treatment of prisoners, for example), special powers for governments, even special insurance rules for shipping or other infrastructure."

*David Charters  
Center for Conflict Studies  
University of New Brunswick*

The subjectivity of interpretation surrounding this war exclusion clause is immense and we believe the insurance companies realized they could not defend their initial position in a court of law.

As previously mentioned, insurance companies are businesses. As a business, it is reasonable to have clauses that would protect the liabilities of that business. If insurance companies were to be fully liable for catastrophic claims from war, terrorism, etc., the incredible costs could decimate the industry. Costs for insurance coverage would be exorbitant, as insurance companies would pre-fund their liabilities and attempt to recover costs from previous pay-outs.

Clauses that are in place to protect a company from certain liabilities should not be subjective to the point that the officers of the company can arbitrarily invoke a clause to serve their own purpose. With acts such as terrorism taking on many different forms, it stands to reason that words of this nature be clearly defined based on modern day society, for insurance contract-holders. This would eliminate debates questioning if coverage is to be provided for any given incident. We believe insurance companies should be moving towards modifying today's contract wording to accurately reflect the society we now live in.

As previously mentioned, insurance companies have reinsurance arrangements in place as another method of limiting their financial exposure from catastrophic events. This means a contract-holder's insurance company has an overall maximum limit for financial pay-outs, per catastrophic event, which may prevent 100% payment of the incurred claims. What we don't know is if this arrangement is specific per individual contract, what criteria must be met before the reinsurer becomes involved. Also, if claims are not paid at 100%, is there a liability to the client to pay the difference, or does the reinsurance contract preside over any employment contract that exists?

Krieger + Associates has requested that Canadian insurance companies provide their course of action as a result of the September 11th events. This matter is still under debate and, to date, none of the insurers surveyed have provided a clear response about the definition and application of their contractual war exclusions. We will make available future insurer responses once we have obtained them.

The September 11th tragedy has done more than awaken a sleeping giant; it has made us acutely aware that the world today is a dramatically different place.

*Krieger + associates*

## What is there to do?

As a result of the current anti-terrorist activity in Afghanistan, led by the United States and England, and Canada's supporting role to that coalition, employees may be very concerned about retaliatory action made by terrorists on Canadian soil. It is important to make your staff aware of the current status of their benefit plan and how it would affect them should terrorist activity take place here in Canada. The information provided to the employees should be factual, as it relates to your benefit plan, and advise that efforts are being made to update applicable contract wording.

As a reminder, anyone who willingly travels to a recognized war or "hot" zone risks not having insurance coverage as has been outlined within the insurance contract. For assistance in determining if a destination is a recognized "hot" zone, you can call your insurer or Travel Assistance provider or check the following government website.

[www.voyage.gc.ca/destinations/menu\\_e.htm](http://www.voyage.gc.ca/destinations/menu_e.htm)

## Check List

1. Educate yourself with the help of your professional advisor, about where "war" exclusions exist in your policy and what they mean.
2. Contact your insurer to help resolve the matter of these vague exclusions and determine how they affect you.
3. Review your travel policies to ensure your employees are safe and protected.
4. Gauge the mood of your employees and be sure to respond to any concerns.

Companies may want to review their corporate travel policies and make revisions if necessary. The basis of the review might include the frequency of travel, the destinations traveled to and any employee rights to refuse to travel for security reasons.

As your benefit advisors, we are available to discuss and assist you with any needs you may have, including communication material for your employees.

Please do not hesitate to call us should you have any questions about this bulletin.

CommuniK is written, designed and produced by Team Krieger. We want to know what you think! Please email us your benefits, pensions and communications questions or suggestions to:

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