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Statement of Janno Lieber
before a Hearing of
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"Examining the Terrorism Risk Insurance Program"

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Introduction:

My name is Janno Lieber. I am the World Trade Center Project Director for Silverstein Properties. On behalf of the Silverstein organization, I'd like to thank you for inviting us to participate in this important hearing today. We greatly appreciate this committee's continued support over the last several years as we have dealt with the various impacts of 9.11 -- not least in the area of terrorism insurance. I'd also like to thank Chairman Dodd and Ranking Member Shelby for scheduling this hearing early in the session, and for making TRIA extension a priority – as you both have done in the past.

Background:

As most of you know, the Silverstein organization leased the commercial office portions of the World Trade Center site from the Port Authority of New York and New Jersey just six weeks prior to September 11, 2001. Since that terrible day, our entire effort has been focused on rebuilding lower Manhattan as a dynamic mixed-use district and commemorating the lives lost with an appropriate memorial.

After several years of planning and public dialogue, all parties are united as to what will be built at the World Trade Center – and also where, when and by whom. In late 2006, the new business arrangements between Silverstein Properties and our partners at the Port Authority of New York and New Jersey were formally and finally agreed upon – with the full support of the State of New York, the State of New Jersey and the City of New York. This means that the entire World Trade Center site -- with four exceptional skyscrapers designed by world-renowned architects -- will be rebuilt by 2012. These office towers – and the retail they will house at the lower levels -- will be a magnificent addition to the rebirth of lower Manhattan, restoring the City's historic birthplace and joining the Calatrava-designed PATH Transportation Hub, the Memorial, and a new Performing Arts Center to make lower Manhattan one of the most exceptional destinations in the world.

As you know, the federal terrorism insurance program (TRIA) was enacted in the wake of the attacks on the World Trade Center in order to fill the gap left by the private market and to prevent economic disruptions due to insufficient availability of insurance. Prior to 9/11, terrorism was implicitly included as a covered peril, and not specifically excluded from coverage. After the attacks of 9/11, insurers began specifically excluding damage from terrorism from traditional all risk or special causes of loss property policies as well as from other coverage such as commercial general liability. The effect of TRIA was to make it possible once again to obtain coverage against the peril of terrorism within lines of coverage such as property -- including builder's risk -- and commercial general liability.

Over the past few years, since the enactment of TRIA, the private insurance market has rebounded -- to a degree. However, in some areas, especially densely developed areas perceived as "high risk," there is simply insufficient insurance capacity – both terrorism insurance, and other insurances that have a terrorism component, such as builder's risk insurance. Thus, the circumstances that prompted Congress to create TRIA – a shortage or unavailability of insurance, threatening market disruption – still apply. As detailed below, this is very much the case in lower Manhattan, which has suffered two terrorist attacks since 1993. Worse, there is a very real possibility that the expiration of TRIA or the program's inability to deal with lower Manhattan's unique circumstances could actually *trigger* a halt to the rebuilding of the World Trade Center and the rest of lower Manhattan.

Need for Permanent or Long-Term TRIA Extension:

The most important action Congress can take to assure availability of terrorism coverage for densely developed "high risk" areas is to extend TRIA either permanently or for a very long period, i.e., no less than fifteen years. A long-term program is necessitated by the interplay between insurance, financing, contracting and design on large-scale development projects. Large-scale development projects can take a very long time from start to finish – including a three-to-five year design, planning and approval process, followed by several years of construction, and another few years of lease-up. TRIA needs to be tailored to match the exposure that the construction industry, lenders and insurers face when making decisions about whether to build, finance or insure these large-scale projects. The failure to do so will impede new construction. And a short term renewal will not solve this problem.

Real estate loans are of course secured by the borrower's real property. However, today most large, commercial loans are securitized in order to create bonds that are purchased by institutional investors. Lenders often do not hold the loans that they originate, but usually sell all or a portion of the loans for regulatory or liquidity reasons. In order to receive investment-grade ratings from rating agencies -- ratings which are often necessary to get investors to purchase the bonds -- the underlying collateral must be secured. A lack of access to terrorism coverage may impact on a project’s ability to obtain investment-grade ratings from bond rating agencies for securitization of loans for large construction projects; this is especially true of construction projects in highly concentrated, “high-risk” areas like lower Manhattan and the World Trade Center site. The federal backstop provided by TRIA, of course, does not guarantee that terrorism insurance will be available to these and other “high-risk” areas; other changes to the program will be necessary to accomplish that goal. However, it substantially increases the likelihood that *most* projects can purchase insurance in the marketplace.

Further, the TRIA backstop must be of sufficient duration to the address the lender ‘s viewpoint. A substantial percentage of large, fixed-rate commercial loans are for terms of at least ten years -- in some cases longer. If the term of a loan exceeds the length of a TRIA extension, the lenders must assess the risk of having to terminate the loan early because the borrower defaults on the covenant to maintain specified terrorism coverage; or the lender will simply decide not to write the loans for a longer period than TRIA or not to write such loans at all. In addition, construction lenders need to know that permanent financing will be available to re-pay construction loans at the time of project completion -- financing that may not be available if TRIA has expired before the project is completed and the buildings are fully leased. Without the market certainty that a long term extension of TRIA would provide, many large, high-profile development projects are likely to be delayed indefinitely or come to a halt due to the inability to sufficiently finance such projects.

Yet another factor militating for a long term extension of TRIA is that construction project participants -- including construction managers, contractors, owners, and lenders -- require that project insurance policies be non-cancelable during the course of construction. Some insurers may reserve the right to cancel if reinsurance changes. A long term extension of TRIA is necessary to address this situation – to give all parties the confidence that terrorism insurance would *not* be cancelled as a result of the disappearance of the federal backstop.

Need for Additional Capacity:

I want to discuss one other major challenge today faced by large-scale projects in high risk areas -- a shortage of capacity. The World Trade Center rebuilding will cost in the range of $13-$15 billion in total, including the four office towers, PATH Hub, Memorial and all the infrastructure to serve this new community. But according to the leading insurance consultants and brokers in New York City, even with the current TRIA extension in place there is currently less than $750 million worth of coverage available in the entire lower Manhattan market. And, I should add, there is no viable alternative beyond the traditional private marketplace.

We strongly believe that a TRIA extension ought to address the capacity problem in lower Manhattan and other perceived areas of maximum aggregation and level of risk. Today you are hearing Arthur Coppola of the Coalition to Insure Against Terrorism and others testify today about addressing the problems to the current TRIEA relating to certified and non-certified acts – the foreign versus domestic distinction -- and so-called NBCR events. These general “fixes” to TRIA are badly needed in order to free up terrorism insurance capacity. However, even if these important corrections are made there will still be questions about whether it will be sufficient to attract more capacity to certain areas perceived as “high risk.” Therefore, we suggest that consideration given to additional actions – for example, (a) reducing the current “deductible retention” applicable to insurers under the current TRIEA for policies written to cover projects in areas that have previously experienced acts of terrorism or are otherwise judged “high-risk,” and/or (b) reducing the current $100 million TRIEA program trigger. We are not absolutely wedded to any particular mechanism. But we do need this committee’s leadership and creativity to find a way to assure that terrorism insurance is available to lower Manhattan and other areas like it, where there is now a significant capacity shortfall.

There is one other step Congress can take in order to free up terrorism insurance capacity. We also urge that a TRIA extension clarify the scope of TRIA coverage by making it clear that TRIA is a backstop for *all* proximate consequences of a terrorist attack, including a fire or collapse following an attack – as well as damages from the initial impact or explosion. Unfortunately, the scope of TRIA coverage is currently somewhat unclear, and therefore terrorism risk is bleeding into builders risk and property insurances and causing a shortage of capacity for those insurances – especially in certain highly concentrated, “high-risk” areas like lower Manhattan.

Conclusion:

Like other mega-project developers, the Silverstein organization cannot finance billion-plus dollar office buildings without adequate terrorism insurance coverage. While a substantial portion of the $8 billion needed to construct the new office towers at the World Trade Center will come from insurance proceeds, we will also need to obtain billions of dollars worth of financing in the form of Liberty Bonds. To obtain this financing, our lenders will require terrorism insurance.

The TRIA program is essential to give us any chance of obtaining the terrorism insurance which lenders and investors will require. It has been a success and it should be made permanent. However, according to our insurance professionals, it would not now be possible, even with the TRIA extension in place -- to adequately insure even one of the four office buildings now planned for construction on the World Trade Center site. Also, this doesn't account for the terrorism insurance needs of several other office buildings and a major transportation hub being constructed nearby – which will all have the effect of lessening capacity even further. In order to assure that commercial development thrives in lower Manhattan and, indeed, in all major urban centers, it is critical that the Government continue to work closely with the private sector and develop a long-term, workable solution, including some adjustments to the TRIA program.

Thank you again for allowing us to participate today.