

# Talking Points Newsletter *July Vol. # 14*

TSiB's Talking Points Newsletter covers recent top industry articles in the following categories:

- Insurance Market
- Construction Industry
- Claims
- Trends

This newsletter is meant to be a guide to assist you on the most important events that are going on. We share insight on the importance around each topic and how it can affect you directly.

If you have any questions about any of these articles, other Insurance & Surety concerns, or have specific topics you've like to learn more about, please reach out to us directly at [contact@tsibinc.com](mailto:contact@tsibinc.com) or visit [our website](#).



## Commercial Rates Rise Across All Lines

Rates are continuing to rise according to Market Scout Corp.

- Property rates rose 9.6% in Q2 with other lines also reporting increases as well.
- Excess Liability rates continue their upward trend with rate increases of 11.6%
- Director's & Officer's rates up 11%
- Employment Practices Liability up around 7%
- Commercial Auto increased 9%
- General Liability rates up 6.3%
- Energy and contracting each rose by 6.3%

On an account size basis, the average increase for mid-market accounts (premiums of \$25,000 to \$250,000) was 6.3%. Large accounts (premiums of \$250,000 to \$1,000,000) up 8.3% and jumbo accounts (over \$1,000,000) were up 6.6%.

**TSiB Talking Point:** The market is still challenging and rate increases are still prevalent. However, the increases are slowing as we are seeing single digit increases on many lines.

[Click here](#) to read further about this.

## P/C Sector Positioned For a Strong Year

Standard and Poor's analyzes over 2,600 financial statements filed by US-domiciled P&C companies filed with the National Association of Insurance Commissioners and is reporting that the growth in direct premiums written is forecasted to increase 5.8% this year.

In addition, the industry is projected to post a combined ratio of 99.7 for this year which would be the fourth consecutive year of posting a combined ratio under 100. Should this trend hold, it would be the first time in the 25 years of reporting that the industry reported an underwriting profit.

The previous ratios were:

- 98.7 in 2020
- 98.9 in 2019
- 99.2 in 2018
- 103.8 in 2017

**TSiB Talking Point:** The pandemic was not kind to all companies, but the massive influx of COVID-19 claims did not really materialize in the U.S. and the exclusions held. As a result, for the most part the P&C industry weathered the pandemic well.

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## NJ Makes Largest Combined U.S. Offshore Wind Power Award

New Jersey has a state goal of developing 7,500 MW of offshore wind capacity by 2035. Last month NJ awarded the largest single award in the U.S. to date by selecting two developers to build a 2,568 MW facility. Both projects will be at least 10 miles offshore.

Atlantic Shores, a consortium of EDF and Shell New Energies U.S. will build the larger portion of 110 turbines (1,500 MW) off the coast of Atlantic City and Orsted will build Ocean Wind 2 which is 82 turbines (1,148 MW) and is the second phase of wind farm project off the coast of Cape May. Ocean 1 is currently under a federal environmental review and is set to start construction in 2022 with energy generation starting in 2024 with an output of energy to power over 500,000 homes.

There will be significant investment in new manufacturing plants in Paulsboro and Lower Alloways Township which are both located on the NJ side of the Delaware River. The economic impact to the state is impressive as Orsted estimates that their efforts will generate \$4.8 Billion in net economic benefit.

The developers are committed to put NJ at the heart of the American offshore wind industry and will fund new workforce training and research efforts to protect wildlife and fishing. As more states begin offshore wind projects there will need to be better coordination of the states and grid operators and the federal government. The transmission lines must be coordinated.

**TSiB Talking Point:** NJ is taking a stand against climate change and has found a way to capitalize on this by taking the lead in decreasing the dependency on fossil fuels. Large investments will be made to support the increasing interest in building high-capacity wind farms.

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## Lumber Prices Dive More Than 40% In June

The price per thousand feet of Lumber dropped over 40%. Effectively popping the price bubble created by the supply void, which was created by the pandemic. This increased the demand since people started to focus on home improvement projects. Resulting in the supply of lumber plummeting due to the mills closing from the pandemic.

The price per thousand board feet rocketed to \$1,675.50 in May 2021 which was more than 600% higher than the pandemic low in April of 2020. As of today's writing the price of the Sept Futures is \$625.90 (down another 3.69%).

**TSiB Talking Point:** This sudden drop in price seems to point to the easing of the inflationary pressures that we are seeing as this country recovering from the lockdowns. This points to a "mismatch of supply and demand" and will not last forever.

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## Delaware Supreme Court Holds That Fraud Is Insurable

In their recent ruling, The Delaware Supreme Court [has held that fraudulent](#) conduct by a Corporate Officer and/or Director is insurable under Delaware law (case *RSUI Indemnity Company v. Murdock*).

In addition, this case is likely to impact Directors' and Officers' (D&O) Liability policies across the country. There is also a second ruling by the court arising from a coverage dispute under a D&O policy issued to a Delaware Company. Even though the policy was negotiated and issued in California and its Headquarters and Directors/Officers reside in California. The case involved a claim for breach of fiduciary duty and a federal securities law violation.

In 2013, the CEO of Dole Foods, David Murdock, took the company private where Murdock acquired all of the outstanding stock of the company. The lawsuit was filed on behalf of the shareholders and named Murdock and Michael Carter, alleging their intentional and fraudulent acts to drive down the company's stock price before the takeover.

These suits were settled and Dole filed a claim with their D&O carriers for its defense and settlement costs which was denied. After the insurers filed for declaratory judgement in the Superior Court of Delaware asking that no coverage was available for defense and claims settlement based on two arguments:

- 1). California law applied barring coverage
- 2). Even if Delaware law applied, paying these claims was against public policy that are due to fraud.

The Superior Court ruled in favor of Dole, even though the court acknowledged that there is a solid connection to California. The Supreme Court of Delaware affirmed that Delaware Law applied and confirmed that Fraud is insurable under Delaware Law. The Supreme Court indicated that in analyzing the language of the policy it concluded that the allegations of fraud in the underlying litigation "fit comfortably" within the scope of what may be covered.

In addition, the fraud/profit exclusion required a determination of fraud to be "established by a final a non-appealable adjudication. Although the Chancery Court (Court for Corporate disputes) found fraudulent behavior, Dole was seeking coverage for a securities class action and no finding of fraud was made. Therefore, there was reason to deny based on Delaware law or the policy language.

**TSIB Talking Point:** It is important to remember that regardless of where companies are headquartered, companies that are registered as corporations in the state of Delaware will be governed by Delaware law, absent any Choice of Law provision.

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## NASA Warns: Wobbly Moon Orbit Will Increase Flood Risks Over Next Decade

As we know, the moon cycles affect the tides on earth. However, there is a concern that the tides will start to increase flooding and impact global coastlines. The moon's orbit around the earth is not a set path or perfect spiral, it actually has an orbit that fluctuates, as NASA states, "wobbles."

This wobble creates an 18-year cycle that either amplifies or suppresses the tides on earth. During mid-cycle, or the amplification phase, the high tides are higher, and the low tides are lower. The amplification phase is expected to return around 2030.

There is a great deal of concern for this next amplification phase as the sea levels are already rising due to climate change. The fear is that we will be in for a decade of increased flooding. To make matters worse, the flooding is expected to occur in clusters depending on the positions of the Earth, sun, and the moon- which all affect the gravitational pull on the oceans.

As a result, it is quite possible that we will be seeing cities flooding three to four times per week while the relative positions of the moon and Earth align in a particular position.

**TSiB Talking Point:** We are starting to see flooding increase in some areas, and the fate of low-lying coastal areas are being threatened. This natural phenomenon is particularly distressing as there is little that can be done to stop it.

[Click here](#) to read further about this.

## Olympics Ban on Spectators to Cost Reinsurers Far Less Than Cancellation

The 2020 Summer Olympics in Tokyo, Japan was pushed to 2021 due to the global pandemic. There has been a surge in COVID cases in Japan, so the decision was made to proceed with the games but largely without spectators.

If the games were cancelled, analysts expected the cancellation cost to be about \$2.5 Billion. With the decision to go forward without spectators, it appears that the reinsurance payouts will be between \$300MM and \$400MM.

**TSiB Talking Point:** Traditionally there has been coverage under Cancellation Policies. However, the pandemic has highlighted the fact that these mass cancellations are possible and new policies will contain a pandemic exclusion. Many of these policies are written on a multi-year basis, so it will take a few years for the coverage to be fully excluded.

[Click here](#) to read further about this.

