

Talking Points Newsletter

September Vol. #16

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 current 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 or visit [our website](#).

Buyers Without Security Controls Risk Cyber Insurance Refusals

Since the start of 2021, the cyber market has been in a major correction with insurers continuing to push rates, reduce their limits. With “best in class” insureds seeing 40% to 60% increases on renewals, most insureds are experiencing difficult cyber renewals. As we move towards Q4 2021, the cyber insurance market has not shown any signs of easing.

In fact, it is more likely that insureds will face hard choices as their renewals will provide “less coverage at a higher cost” with terms and conditions narrowing, limits being pared back and rate increases accelerating.

Underwriters are now focusing on the individual account’s data security controls which may provide additional headaches for insureds as they look to renew their Cyber Insurance. Insurers are either walking away from accounts that do not have the proper security controls in place or quoting the renewal subject to as much as a 300% rate increase. In addition to individual controls, many underwriters are moving away from entire sectors such as municipalities, public entities, education, and manufacturing.

TSIB Talking Point: Cyber Insurance is a market that is under considerable stress with no signs of relief in the near future. Underwriters will often not even quote if data and network controls such as multifactor authentication, remote desktop protocol, segregation of networks and encryption are not in place.

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Reinsurance Prices to Rise in January 2022, but Rate Adequacy Nears

Reinsurance rates, which are the bellwether indicators of retail insurance rates, have been increasing significantly for the past two years. The results from the first half of 2021, reinsurance rates grew by 18.5% with continued strong demand. While capacity has also remained “abundant”, price momentum is beginning to slow down according to Fitch.

Rates are still being driven by rising social inflation and litigation costs as well as, the traditional CAT losses on the property side. Reinsurance rates are likely to increase again for the January 2022 renewals, but increases are expected to be in the high single/low double digits range as rate adequacy is approached.

The industry is still on pins and needles as it does not appear that the full impact of the pandemic is fully understood and accounted for. Wildfire losses in the Western U.S. and CAT losses may still upend the market as we face the peak months of Hurricane Season in the U.S. and Asia (i.e. Japan).

TSIB Talking Point: The insurance market is experiencing a correction. Reinsurers have been increasing rates on renewal to counter their exposure to large losses. It appears that we are approaching a level that will bring rate adequacy back. Rate adequacy is when the premiums are reasonable and sufficient to cover the company’s operating expenses, claims obligations and provide a reasonable profit.

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Why New Orleans' \$15 Billion Levee Held and What Experts Worry About Next

Sixteen years ago, Hurricane Katrina devastated New Orleans. When the dust cleared and the water receded, the damage to the city exposed a levee system that was built with cost lowering shortcuts that resulted in devastating flooding and contributed to the deaths of over 1,500 people.

The levees were redesigned with a \$15 billion investment and rebuilt to withstand the storms surges that the old levees could not handle. The levee system, known officially as the Hurricane and Storm Damage Risk Reduction System is considered the Gold Standard of levee systems in the U.S. It was put to its first significant test when Hurricane Ida came barreling through New Orleans earlier this month.

However, this system was built to the Federal standard set by Congress and the National Flood Insurance Program and estimated to withstand a 100-year storm. There was a fear that New Orleans would require a system that is better than the standard given the fact that the city is below sea level and pumps need to rely on the power grid for electricity and not gravity.

This system has an Achilles heel as it is run on two generators that are outdated and in need of a major overhaul. Ida was not as powerful as Katrina, but the system was significantly tested. Thankfully the system held.

TSiB Talking Point: Flooding across the country will continue to plague communities as the natural protections like marshlands are compromised and barrier islands disappear. Levee systems like the one in New Orleans only highlight the need for more investment in Infrastructure to help mitigate the loss of life and property.

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Never Forget: Time-Lapse Video of World Trade Center Rebuilding

Earlier this month the country marked a solemn milestone of the 20th anniversary of the attacks on the World Trade Center. 20 years later and we are still not finished rebuilding the site.

However, a company called EarthCam has been recording the significant progress that has been made at the site and compiled it into [a time-lapse video](#). Note – 3:05 begins the recording of the construction of the Transportation Hub.

TSiB Talking Point: 20 years is a generation. It is hard to believe that so much time has gone by and yet it feels as if it was, a blink of an eye. Speaking as a New Yorker, (and we were all New Yorkers on that fateful day) it will be impossible to forget.

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Federal Court Reinforces Broad Duty to Defend Additional Insured in New York Under Blanket Endorsement

It has been a general rule of thumb that the duty to defend is broader than the duty to indemnify according to New York courts. This premise has just been reinforced and upheld in *Axis Construction vs Travelers Insurance*. In the underlying action, Axis Construction retained a subcontractor AWI to perform millwork installation. The contract secured between the two parties contained the requisite hold harmless, indemnification and broad additional insured language.

An AWI employee tripped on temporary floor protection. The individual sued Axis who was an Additional Insured on AWI's Travelers Insurance General Liability policy. Axis filed suit against AWI alleging AWI was proximately responsible for the injury and sought defense from Travelers as an Additional Insured. Travelers declined, and Axis filed suit. The courts held that all pleadings must be evaluated in deciding the duty to defend and not just the underlying Complaint.

What is specifically interesting about this case is that the court made no distinction in the Additional Insured (AI) wording contained in the contract and the insurance policy. That is the long-held debate "arising out of" or "caused by" language. In this case there was no splitting hairs about the verbiage and the court simply held the duty to defend is so broad and negligence was established, that Travelers was compelled to defend Axis in the underlying case.

TSIB Talking Point: This case law substantiates the broad duty to defend. While it is interesting to note there is little discernment regarding the verbiage in the AI Endorsement "arising out of" or "caused in whole or in part", it is always recommended to obtain the broadest AI language when retaining subcontractors.

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Prior Knowledge Exclusion Bars Coverage for Entire Lawsuit Alleging Multiple Instances of Wrongdoing

United States District Court for the District of Vermont held there is no coverage under a GL and Professional Liability policy for all claims in a suit brought against a residential care facility.

Essentially, the admitted resident with dementia was allegedly injured on multiple occasions, including improper medication requiring hospitalization, an injury during an unauthorized exit of the facility and an assault by an employee later terminated. The culmination of incidents led to the death of the resident and a wrongful death lawsuit was brought by their estate.

The facility did not report any of these events as a potential occurrence under any applicable policy of insurance. The policies contained a prior knowledge exclusion. The court held the insurers had no duty to defend. It was reasonable to assume these events could give rise to a claim. The insured also did not report the incidents on the application of insurance for the subsequent policy. As such, the events were not known prior to the current policy when the claims were reported.

TSIB Talking Point: Once again, we see another case that simply reiterates the necessity to timely report claims. If an incident will likely give rise to a claim, any and all insurance policies should be noticed at the time of discovery to preserve coverage. If you are unsure, please consult your Broker, Legal Counsel, and/or your insurer to discuss.

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Smishing: The Rising Threat for Business Owners that Brings Scams to Smartphone

These days you can hardly turn around without running smack into a news report that talks about the havoc that is being created by the rash of ransomware scams. It is bad enough that our computers are susceptible to cyber criminals, now we are dealing with a new threat that will threaten consumers and small businesses with potential malware (malicious software that includes viruses, spyware, and ransomware) that will attack through using SMS or text messages to lure in their victims.

The links are embedded in text messages from bad actors pretending to text you from familiar companies such as banks, utilities, delivery services, online shopping websites, or even government agencies like the IRS. Just like the phishing schemes on your computer, once you click the link you allow the malware access to your phone that can compromise your personal information or receive malware. Smishing scams have cost Americans more than \$50 million in 2020, with incidents up over 300% in 2021.

TSIB Talking Point: Just as you have to be aware with emails, you need to think twice about clicking on links embedded in text messages. Common sense is always the best rule. If it feels wrong, it probably is, since it is highly unlikely that any company or government agency is going to ask for your information in an email or text.

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Lawsuits say SIRI and Google are listening, Even When They're Not Supposed To

Apple, Amazon, and Google are all involved in lawsuits claiming that their voice activated devices are recording private conversations even when they are not technically activated. These claims allege privacy violations by the companies' voice activated products that may be recording private conversations and using that information for marketing or other purposes.

The companies have not declined that they are recording conversations and are refuting the fact that they are not recording improperly. They all contend that they record some part of a consumer's conversation after the "wake" word is detected. Furthermore, the companies maintain that privacy settings are made available and can be set by the user.

TSIB Talking Point: Privacy issues and the way companies handle private information will be put front and center as technology companies push deeper into our everyday lives. These lawsuits are moving forward, and the outcomes should be closely monitored. By one estimate, over 128 million people use a personal assistant monthly.

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