

A black and white photograph showing two construction workers on a scissor lift. One worker is on the upper platform, and the other is on the lower platform, both working on a large metal structure. The background is a clear sky.

Talking Points Newsletter *October Vol. #17*

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](#).

U.S. P/C Price Increases Tick Back up in Third Quarter

MarketScout has released its report on the third quarter Property and Casualty price trends posting an average price increase of 6.8% in Q3, compared to the second quarter's average of 5.9%.

- Excess Liability rates increased by 11.7% across the board
- Director's and Officer's Liability rose by 11.3%
- Commercial Auto, Employment Practices, and Property all posted an average increase of 9%
- Large accounts (\$250,001 to \$1,000,000 in premium) saw an average increase of 8%
- Medium and "jumbo" accounts increasing 7.3%
- Small accounts (\$25,000 in premium) rose an average 6%
- Property rates reduced slightly in the third quarter to 9%
- High-risk CAT or Fire Zones remain very difficult to place

TSIB Talking Points: Rate remains a concern for Insureds as we continue to live in a hard market. However, it is important to remember that these are average rate increases which highlight the importance of a solid submission and a positive loss history.

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

Insurers Settle Nearly 70% of COVID-19 BI Claims

A TSIB Talking Point Article from [September 2020](#), reported on a landmark decision by the United Kingdom's High Court, the Financial Conduct Authority (FCA). The court ruled that the sixty insurers involved, had to review the claims on 370,000 policyholders for non-physical damage Business Interruption (BI) claims, as a result of COVID-19 and pay all eligible claims.

In January 2021 all appeals were dismissed which paved the way for these payouts to begin. As a follow up to that story, the FCA recently indicated that 68%, worth \$1.3 Billion (USD), of claimants whose BI policies have been accepted and are eligible Business Interruption claims, have been paid.

TSIB Talking Point: The relevance of this decision centers on policy language that typically indicates that a Business Interruption claim could only be triggered by direct and physical loss to an insured's property. A condition that most U.S. insurers are using to prevail in litigation in the U.S.

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



Construction Inclusion Week: Why Top CEOs Are Drawing a Line on Hate

It has become common for contractors to coordinate with each to show solidarity to their commitments in the safeguarding of life and property. They order their projects to stand-down and stop working for a day or a morning to raise awareness to maintain a safe workplace.

During the week of October 18th a group of six leading general contractors participated in the very first Construction Inclusion Week to show solidarity to their commitment to eradicate hate and push to create a more diverse and inclusive working environment for their workers and trade partners.

The six firms, led by Turner and Gilbane, also include DPR, Clark, Mortensen and McCarthy, represent over 200,000 workers and trade partners with over \$42.6 billion in revenue. Over a thousand firms have agreed to participate in the one-week [program](#).

This idea began with a conversation between Turner and Gilbane in the wake of the social upheaval created by the George Floyd murder in 2020. It gained traction after the media grabbed onto the disturbing trend of nooses (a racist trope) and hateful or sexist graffiti being reported on jobsites. Soon after, the other four contractors joined the group and the discussions turned into an action plan.

Turner and Gilbane have taken steps which may lead to terminating workers or defaulting subcontractors who are involved in jobsite related racist incidents. Turner has inserted language in their subcontracts to hold their subcontractors accountable for this behavior.

These efforts are also designed to support an effort to “move the needle” on the demographics of the construction industry’s workforce. Currently the workforce is 88.6% Caucasian, compared to 78% in the general workforce. Other statistics: African Americans make up 6% of the workforce compared to 12.1%, Asians, 2% compared to 6.4% and Women, 10.9% compared to 46.8%. Hispanics or Latino workers (which is an ethnicity and not a race) are 30% of the workforce versus 17.6% of all occupations.

All of these companies are making strides to bring equity into the workplace. Turner is doing an internal equity audit, to be published next year, that tracks recruitment efforts at colleges. As a result, African American recruitment rose from 10% in 2020 to 18% this year.

TSiB Talking Point: Construction Inclusion Week is modeled after the industry’s annual Safety Week, which has been influential in reducing the Lost Days due to injuries by 48%. The hope is that with the continued commitment to diversity, equity, and inclusion, there will be similar results in creating a more diverse and equitable workplace.

[Click here](#) to read more.



Mind the Gap: Coverage Gaps Created by Commercial General Liability Policies

Coverage gaps exist within the CGL policy and there was specific ideology in carving out coverage or adding certain exclusionary language. For instance, typical exclusions contained in the CGL exist for professional services, automobile, aircraft, virus, and pollution. The intent is to eliminate bifurcation of coverage as other policies may prove to have more defined and broader coverage.

TSIB Talking Point: It is critical to always discuss the intricacies of your business and your risk with your Broker. Rounding out insurance coverage to adequately protect business operations is key to avoiding lengthy and expensive coverage disputes with the insurance carrier. There are areas of grey to keep in mind while minding the gap. In an instance where two policies have been procured, such as a professional services policy and a CGL, the insurance carriers may play a game of hot potato. It is critical to rely on your Broker with a strong claims department to assist in advocating on your behalf to help ensure the appropriate carrier takes the lead in that particular case.

[Click here](#) to read more.

Who's to Pay? Trade Contract Rather than Insurance Policy Controls Priority of Insurance Coverage under New York Law

October 5, 2021, a three judge panel of the U.S. Court of Appeals for the Second Circuit unanimously held that “the indemnity contract between a contractor and subcontractor governs the priority of coverage as an additional insured on the subcontractor’s commercial general liability policy rather than the “Other Insurance” clause contained in the policy.”

This ruling is significant as it opposes prior rulings wherein the “other insurance” clauses in an insurance policy were prevailing. Typically, all primary policies were to be exhausted before attaching to the Excess carriers of an insured. In addition, this will have an impact on horizontal exhaustion.

TSIB Talking Point: This ruling is critical. Contractual obligations will be the dictating factor in deciding priority of coverage. It is essential that clients work closely with their attorneys to craft well written and defined contracts. Equally important is building a relationship with a Broker who understands contractual indemnity, priority of coverage and risk transfer.

This ruling will be impactful in the excess marketplace as there is potentially greater exposure to loss which can impact pricing. It can be expected there will be fewer cross claims for contractual indemnity where a trade contractor is required to exhaust all their insurance prior to another policy being triggered.

[Click here](#) to read more.



How Hackers Exploited a Password Policy Problem

Remember last May when the Colonial Pipeline was hit with ransomware? Their operations were shut down for six days. This caused a spike in gasoline prices, followed by widespread panic buying and then a declaration of a State of Emergency in 17 states and Washington DC.

Turns out that the damage that was heaped on Colonial and the United States appears to have been enabled by a single computer account which was no longer in use at the time of the attack. The password was still enabled and the hackers were able to use that to get into Colonial's system and extract a \$4.4 million ransom, in addition to creating chaos.

Cyberattacks are a major threat to businesses in the U.S. with ransomware payouts increasing over 311% in 2020. It's clearer than ever that following three simple cybersecurity measures could have stopped this one from happening. They are:

- Ensure that employees do not reuse their passwords and refrain from reusing passwords on multiple websites
- Employ multifactor authentication
- Delete old accounts

TSIB Talking Points: Cybercriminals exploit an unsuspecting public to gain access to their victim's networks. Basic cybersecurity standards can be very effective and necessary if you are looking to buy Cyber Liability insurance.

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

RIMS Received \$7.6M Event Cancellation Insurance Payout

The Risk and Insurance Management Society (RIMS), a major insurance industry association, has reported receiving \$7.6 million event cancellation insurance payout on their 2020 annual report.

The insurance proceeds were for the cancellation of two major events for RIMS, The Annual RIMS Conference and their NextGen conference.

RIMS was also able to cut costs by utilizing a hiring and travel freeze as well as obtaining a \$1.3 million loan under the Paycheck Protection Program from the Federal Government. These measures helped RIMS to post an 8.5% increase in net assets in 2020 in spite of the impact of the pandemic.

TSIB Talking Point: RIMS was very fortunate to have emerged from a potentially disastrous 2020 through good risk management and sound planning. Fortunately for them, they are a Risk Management organization.

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

