



Talking Points Newsletter *November Vol. #18*

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](#).



Hard Market Complicates Construction Coverage Extensions

When a construction project experiences a delay there are many critical issues that the project team needs to sort out to bring the project back on track. In many instances the delays are overcome, and the project can resume with little or no impact to the completion date. There is often “float” built into the schedule which are additional days meant to absorb the delays that can be quickly dealt with to get the project back on track. However, projects where the completion dates are being pushed out by a year or more are having issues obtaining extensions for their insurance programs.

The hard insurance market is complicating the extension process which used to be a formality to obtain. Underwriters are using these hard market conditions to obtain changes in coverage, increases in rate and/or increase the retentions. Of course, the brokers that have strong underwriting relationships are best situated to obtain the long-term extensions with little or no changes to the original program. However, as this market has already shown us many times before, there is a limit to how much even good relationships can mitigate any changes to the project specific placements.

Builder’s Risk policies are the most affected coverages as there are many insurers (mostly London) that are pulling out of the market as the losses from catastrophes add up. However, we are also seeing liability insurers looking to take down some of their higher limit policies as well.

TSIB Talking Points: Staying with the markets that have a long track record for writing construction projects will help when you begin to ask for extensions. In addition, it should also be possible to pre-negotiate terms of the extension(s) into the policies prior to binding.

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

Commercial Auto Underwriting Losses Continue

AM Best released a report that stated that despite the fact that we have seen Commercial Automobile rates increase for 40 consecutive quarters since the third quarter of 2011, underwriting losses continue.

In this time Commercial Automobile underwriters have seen \$22B in underwriting losses that highlight the fact that even with this upward pricing pressure, the auto insurance market is not showing any signs of reaching rate adequacy.

TSIB Talking Point: This trend is particularly disturbing in that it will most likely result in a reduction of capacity and a significant change in the policies terms and conditions. This will mostly impact companies with large fleets or an adverse loss history.

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Roads, Transit, Internet: What's in the Infrastructure Bill?

The House of Representatives passed the long awaited \$1.2T Infrastructure Bill this month by a vote of 228 to 206. The bill passed with some measure of bi-partisan support.

The bill is touted as an historic measure that President Biden has compared, by its size and impact, to the building of the Interstate Highway System or the transcontinental railroad of the 19th Century and called it “a blue-collar blueprint to rebuild America”.

The White House is projecting that this bill will add, on average, about 2 million jobs per year over the coming decade. The bill Includes:

- **Broadband Internet**- \$65B for broadband access to rural areas, low-income families and tribal areas
- **Roads and Bridges** - \$110B to repair 173,000 miles of major roads and 45,000 bridges that are in poor condition.
- **Airports**- \$25B to improve airports and aging air traffic control towers
- **Passenger and Freight Rail**- \$66B to improve the rail service in the AMTRAK's northeast corridor and other routes that were damaged after Superstorm Sandy.
- **Public Transit**- \$39B for to improve accessibility for people with disabilities, expand the transportation system and provide money for state and local governments to purchase low or zero emission buses. There is a huge backlog of buses, rail cars, stations, power stations and miles of tracks to be fixed.
- **Electric Vehicles**- \$7.5B for electric vehicle charging stations and \$5B for electric or hybrid school buses all of which helps to curb the effects of climate change.
- **Modernizing the Electrical Grid**- \$65B to improve the reliability and resiliency of the power grid. It would also boost carbon capture technologies and clean hydrogen.
- **Water and wastewater**- \$55B including \$15B to replace lead pipes and \$10B for water contamination.

The bill will be paid for by tapping \$210B in unspent COVID-19 relief funds and \$53B of unused unemployment aid that some states halted. In addition, there will be other smaller areas like petroleum reserve sales and spectrum sales for 5G services.

TSIB Talking Point: The Infrastructure Bill will be signed into law and is a long overdue measure that will address the critical areas of our infrastructure. This will be a boon for the construction industry across the country.

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10th Circuit Finds No Coverage Under All-Risk Policy for Building Damage Caused by Soil Collapse

When thinking about property damage one would think a pipe burst should result in a covered loss under an all-risk policy of insurance. This article highlights a case wherein the property sustained damage as a result of an underground pipe burst at an adjacent property which resulted in the soil shifting and compacting. The carrier opined that the damages did not meet the definition of “Collapse” and the anti-concurrent causation clause was a controlling factor.

TSIB’s TALKING POINT: Many states adopt the proximate cause doctrine. That is, if a loss results from a covered loss even if there are uncovered causes, the proximate cause of the loss prevails. Anti-Concurrent causation clauses mean if a loss is a result of covered and uncovered loss then the entire loss is not covered, regardless of proximate cause. It is important to know if anti-concurrent causation theory is adopted in your state. Currently, California, North Dakota, Washington, and West Virginia do not enforce the clause. Whereas Alabama, Arkansas, Arizona, Colorado, Indiana, Louisiana, Massachusetts, Michigan, North Carolina, New Hampshire, Nevada, New Jersey, New York, Pennsylvania, South Carolina, South Dakota, Tennessee, and Texas do acknowledge the validity of this doctrine. The courts in remaining states have yet to decide that issue.

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For additional information, [click here](#).

Written Consent Must be in Writing: Insured Breaches Consent Requirement and Loses Coverage

A Federal District Court in Georgia rendered an opinion which stated that Starr Indemnity was within their right to deny their insured’s legal costs incurred because of the failure to seek consent prior to incurring legal expenses. The insured contested the Court’s ruling since the carrier applied the \$1M sublimit contained within the policy that the consent provisions were waived.

The Court deemed the sublimit did apply as the underlying proceedings demonstrated that the claim fell within that scope of coverage. The Court also held that the consent provision was applicable and required written consent by the carrier prior to incurring legal defense costs.

TSIB’s TALKING POINT: It is critical to comply with the various provisions contained throughout the policy; for example, reporting requirements, consent provisions and voluntary payments. In many instances, defense fees can exceed the actual monetary amount of a claim. Obtaining written approval before incurring costs or taking action is critical to the claim process.

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Chip Shortage Puts a Brake on Auto industry

In 2020 we heard that there was a global shortage of computer chips, that could affect the auto industry. Last month Volkswagen and Stellantis (Peugeot/Chrysler/Fiat) each reported just how much this shortage has impacted their 2021 production. Each company reported production shortfalls from July to September of approximately 600,000 vehicles due to the lack of semiconductors for both their gas and electric models.

This translates into a 27% decrease in shipments from Stellantis and 24% reduction from Volkswagen. In addition, General Motors saw a drop in their customer deliveries of 33% while Ford is reporting a drop of 27%. The impact on these companies' bottom lines have been muted due to their ability to roll back pricing discounts that made up some of their sales deficits.

It is widely thought that the chip shortage will continue into 2022 and potentially into 2023. One estimate is that this shortage will result in 7.7M less vehicles being produced. This would translate into \$210B in lost revenue. Vehicle inventories are being stretched. For example, GM's dealer inventories are less than a third of their year-ago levels. Tesla is one company that is not affected due to their reliance on a different type of computer chip.

TSIB Talking Point: The pandemic has created a global supply chain issue. Right now, the auto industry is struggling to maintain production. What will the ripple affect be?

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

NASA Plans to Deflect an Asteroid

Oscar Wilde took issue with Aristotle's idea that "Art imitates Life" and mused that, "Life imitates art far more than art imitates life". This "chicken or the egg" philosophy has been debated for ages. Thanks to our friends at NASA, this discussion is going galactic thus adding credence to the Irish poet's argument.

In the 1998 film Armageddon, our heroes had to race against time to alter to course of a giant asteroid that was on a head-on course to hit and, of course, pulverize earth.

This month, and for real, a SpaceX Falcon 9 rocket will lift off and began the Double Asteroid Redirection Test (the DART Mission) whose sole purpose is to determine the effectiveness of crashing a spacecraft travelling at 15,000 miles per hour into an oncoming asteroid and alter its course.

The DART spacecraft is scheduled to launch on November 23rd and is due to hit Dimorphous, the target asteroid, between September 26 and Oct 1, 2022. The idea is to see if this impact can alter the trajectory of the asteroid, which will be very slight, and not destroy it.

TSIB Talking Point: Risk Management is knowing how to respond to threats before they materialize. In this case, NASA is interested in developing a Planetary Defense before there is a panic to find a solution. NASA has identified over 27,000 near-Earth asteroids with one, discovered in 1999 known as Bennu, that will pass the Earth at half the distance between the Earth and the moon in 2135.

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