

A black and white photograph of two construction workers on a scissor lift. One worker is on the upper platform, and the other is on the lower platform. They are working on a large metal structure, possibly a bridge or a large building frame. The lift is extended upwards.

# Talking Points Newsletter *Volume #24*

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

- Insurance Market
- Construction Industry
- Claims
- Trends

This newsletter is a guide to assist you on the most important current events. We share insight on each topic and how it can affect you directly.

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

## Looking Forward to 2023: Top Trends Shaping Insurance

Our world is constantly changing, as we look to address new challenges. Some top trends for the Insurance industry include:

- New and Shifting Risk
- Digital Underwriting
- Shifting from Product Centric to Customer Centric
- Risk Management and Resilience
- Channels
- Technology Investment Accelerates

All aspects of the insurance industry are being reshaped to meet the challenges that the future holds. It is clear that technology will be vital to meet those needs. In the past, the industry's instinct was to pull back during times of disruption. This time, the instinct is to accelerate its investment in technology.

**TSiB Talking Point:** Challenges such as rising demand for reinsurance capacity, claims costs, lack of talent, and high retirement rate are demanding that the insurance industry meet the challenges of a changing market.

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## January 1 Renewal Stress Should Disappear

January 1<sup>st</sup> reinsurance renewals are difficult for both the sellers and buyers of reinsurance. These renewals try to rebalance the reinsurance market with both pricing and wording. In turn, this affected the retrocession (reinsurance for reinsurers) market so deals could not be completed.

The head of Property & Specialty Underwriting at Swiss Re says that the rest of the year's reinsurance renewals should make for a more orderly renewal process going forward. However, the pricing pressures for CAT exposures, the war in Ukraine, and COVID will remain at the forefront of the earnings conversations for these companies.

**TSiB Talking Point:** The increased exposures to large insurance losses that have been in the news, continue to remain at the heart of the issue. Market correction was needed, and the heavy lifting was done. The rest of the year's reinsurance renewals should not be as stressful. However, the market remains fragile and pricing pressure will continue to push premiums upwards.

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## Increase in December to Total Construction Starts

Dodge Construction Network reports that total construction starts jumped 27% in December to an adjusted annual rate of \$1.2 trillion. The overall data for 2022 shows total construction starts increased by 15% compared to 2021. This breaks out further showing:

- nonresidential construction up 38%
- a decrease of 3% for residential construction
- nonbuilding starts up 19%

Nonbuilding starts were boosted by the increase in utility/gas projects.

**TSiB Talking Point:** 2022 was a strong year for construction despite the economic challenges that the U.S. Economy faces in 2023. It is the momentum in manufacturing and infrastructure sectors from 2022 that the industry will start 2023 on a positive note.

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## Recession: Why the Next One Will be Different

The economy will most likely suffer a slowdown in 2023. Inflation, workforce, and material shortages are already affecting projects. Reports from electrical manufacturers and distributors show there is a \$1.5 billion backlog on components that provide power on projects.

Supply chain issues will remain a concern in 2023. Fortunately, structural & architectural product lines are improving, but mechanical and electrical equipment backlogs are still at unprecedented levels.

**TSiB Talking Point:** Industry experts agree that the hospitality and retail sectors will be impacted by the current environment while manufacturing, healthcare, life sciences, and infrastructure will help the nimble contractor endure the downturn.

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## Contra Proferentem & the Sophisticated-Insured Exception In New York

Contra Proferentem is a legal doctrine in New York governing contracts. Essentially, if there is any legal dispute about the terms of the contract due to ambiguity the courts will rule against the drafter. This means that ambiguities found in an insurance policy will typically be construed in favor of the policy holder. That is because insurance companies typically employ a team of experts to draft their policies and the insured usually has no command over any of the language contained therein.

Some courts have recognized an exception to contra proferentem known as the sophisticated-insured exception. Under that exception, contra proferentem will not apply to an insured that has sophisticated understanding and knowledge of insurance policies and products. Sometimes, the insured must participate in negotiating the policy language for the exception to apply.

This exception was addressed in a May 2022 decision by a New York State trial court in Brooklyn Union Gas vs. Century indemnity Co. In that case, the insured unsuccessfully argued that contra proferentem should be applied without the sophisticated-insurer exception. However, the Court disagreed and applied the sophisticated-insurer exception because the insured held a high SIR and it employed risk managers & insurance professionals to guide its decisions.

**TSiB Talking Point:** As a result of the trial-level decision in Brooklyn Union Gas Co., the applicability of contra proferentem when the insured is a sophisticated party will likely be tested in other cases overtime. It is important to always speak with your broker or lawyer regarding policy language impacting coverage.

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## Businesses Face Elevated Levels of Disruption in 2023

According to the Allianz Risk Barometer, Cyber events is the top risk facing businesses, followed by Business Interruption. The concern for “elevated levels of disruption” was identified by Allianz’s customers.

While Cyber remained in the top spot, it did so only by a handful of votes. This lays credence to the economic and financial market volatility caused by the war in Ukraine and the pandemic are still concerns for 2023.

**TSIB Talking Point:** It is interesting that Business Interruption placed at number two since all of the other risks discussed in this report can also trigger a business disruption. Supply chain issues, political, or economic issues, all highlight just how interconnected our economies are.

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## FEMA shrinks NFIP reinsurance program by over 50%

The Federal Emergency Management Agency (FEMA) has completed its 2023 reinsurance placement for the National Flood Insurance Program (NFIP) and transferred an additional \$502.5 million of flood risk to the private reinsurance market for a premium of \$90.2 million.

There are three CAT Bonds in place and with this renewal, FEMA has transferred \$1.9 billion to NFIP flood exposure to the private reinsurance market. The attachment point rose to \$7 billion with the reinsurance triggered to cover 8.6% of losses between \$7 billion and \$9 billion, with 16.6% of the losses between \$9 billion and \$11 billion.

Compared to last year’s placement, premiums are down by 50% with ten less insurers participating in the renewal. Losses above \$11 billion will trigger the full \$1.9 billion of reinsurance coverage.

**TSIB Talking Point:** Given the fact that storms have been increasing in intensity and frequency from the change in weather patterns due to the effects of climate change, the NFIP is challenged to make sure they maintain consumer confidence in the federally backed flood insurance program. As a result, FEMA is committed to using reinsurance as a Risk Transfer strategy to ensure that the NFIP can in fact pay claims.

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