

A black and white photograph of two construction workers on a lift. One worker is on a higher platform, and the other is on a lower platform. They are both wearing safety harnesses and hard hats. The lift is made of metal and has a chain hanging from it. The background is a clear sky.

Talking Points Newsletter *Volume #26*

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 or visit [our website](#).

Commercial Insurance Price Hikes Continue in Most Lines

Risk Strategies, Inc. recently stated that commercial insurance rates will continue to increase across many major commercial lines. Here are some expected coverage rates:

- Casualty and Excess rates are expected to increase 1% to 10%
- Non-CAT properties are expected to increase 10%
- CAT-exposed properties are expected to increase 50%+
- Cyber rates are expected to see an increase from 10% to 15%
- Automobile Liability rates are expected to increase 20% to 25%

TSiB Talking Point: The upward pricing pressures remain a force to reckon with in 2023. However, the outcome of these renewals is dependent upon the quality of the risk.

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

Government Saved Insurers from Significant D&O Claims

By catering to high-risk startup companies, Silicon Valley Bank (SVB) became a victim of its own aggressive nature.

As interest rates rose, capital became harder to access. Due to the bank's focus on startups, venture capital firms began to pull their deposits from the bank. The bank invested in bonds and tried to sell some of their investments, which had lost value due to the rise in interest rates.

When other clients saw what was happening, they started to withdraw their funds from the bank as well. The State and the Federal Deposit Insurance Corporation (FDIC) stepped in and took over the bank. The FDIC promised that all deposits would be made whole.

TSiB Talking Point: The mix of clients and the high percentage of startup companies at SVB created a potential disaster for Director's and Officer's Liability (D&O) insurers, had the government not stepped in.

At this point, the major rating agencies all concluded that the U.S. Insurers have a relatively low risk to any major issues from SVB. Even though there is a current class-action lawsuit, the broader issue would be the claims coming from their clients. This all comes as the broader D&O market is reporting a rate reduction after several hard years.

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



45 States See Year-over-Year Construction Job Gains

The Associated General Contractors (AGC) analyzed the Bureau of Labor statistics and issued a report saying from February 2022 to February 2023, 45 states reported an increase in construction employment. The top gainers according to this report are:

- Texas – +37,900 jobs (+5%)
- New York – +20,400 (+5.3%)
- Florida – +19,700 (+3.3%)
- Nevada – +12,100 (+11.8%)
- Georgia – +11,700 (+5.5%)

According to the AGC, even though there is a downturn in the residential construction sector, this data highlights the “strong, ongoing demand for construction workers”. There is still concern that a limited labor pool may hold back many construction companies.

The AGC also indicated that many contractors do not have the available workforce and are not able to bid on construction projects. They are asking the federal government to “increase funding for career & technical education and to permit more skilled workers to legally enter the country”.

TSiB Talking Point: The construction industry continues to expand, as we are seeing larger and more complex projects move off the drawing board and into the bid phase. Unfortunately, it is getting harder to find quality trained construction workers. Less qualified workers can lead to more critical faulty construction issues or lead to more accidents.

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After 6 MD Deaths, Risk Seen in Roadwork Boom

An unfortunate accident on Interstate 695 in Maryland last month resulted in the deaths of 6 construction workers putting a spotlight on the hazards highway construction workers face.

Prior to this incident, federal agencies and construction industry representatives have been working on ways to reverse the rising trend of fatalities and improve worker safety. The American Road and Transportation Builders Association urged the U.S. Department of Transportation to do more to protect highway workers, two days before the crash.

TSiB Talking Point: Speeding through work zones, distracted driving, and following too close are all contributors to the increases in work zone crashes. With the slew of infrastructure projects that comes with the Infrastructure Bill, officials are very concerned about the safety of the workers.

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What Does the Future Hold for the Scaffold Law in New York?

New York's scaffold law has been in effect since 1885. It holds owners and contractors nearly strictly liable to plaintiffs who are injured in construction accidents where a gravity risk was involved. This applies to falling objects from above or an injury sustained from falling.

There are very few defenses a defendant can raise to avoid the liability imposed. Some of defenses focus on whether the worker was recalcitrant and whether the plaintiff's actions were the sole proximate cause of the injury.

Judge DiFiore's retirement from the New York Court of Appeals may impact future interpretation of the scaffold law as he frequently issued dissenting opinions on that issue. Judge DiFiore dissented in *BiacaNeto v Boston Rd. II Hous. Dev. Fund Corp.*, 34 NY3d 1166 (2020).

In that case, the plaintiff was given the appropriate safety equipment and was instructed not to enter a building through a window cut out. The plaintiff removed his safety harness and entered the building through the cut out and opted to not use the stairs. Judge DiFiore disagreed with the majority opinion and felt that there was a question of fact as to whether the plaintiff's actions were the sole proximate cause of his injuries.

There are several other cases cited in the article in which Judge DiFiore had a differing opinion as to the application of the scaffold law. With his retirement and the addition of new Judges to the Court, the application of the scaffold law may lean further towards strict liability.

TSIB Talking Point: There are many organizations that still consistently lobby for change in the scaffold law. It is important to be aware of the varying sections and requirements of the scaffold law. Partnering with defense counsel, insurance carriers and brokers who specialize in construction programs is a key component to managing this risk.

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Munich Re Quits Net-Zero Insurance Alliance

In January 2023, the Net-Zero Insurance Alliance (NZIA) launched its first target setting protocol which has a goal of collectively reducing their underwriting portfolio to net-zero greenhouse gas emission by 2050.

Last month, Munich Re announced that they were going to discontinue their membership in the NZIA citing antitrust risks as limiting the scope of their decarbonization goals. Munich Re CEO Joachim Wenning explained that they now view this alliance as being “restrictive to his company’s climate targets going forward”.

In addition, as of April 2023, the company will not insure new projects involving oil and gas fields, or new midstream oil infrastructure in its primary insurance.

TSIB Talking Point: It’s not clear the impact this will have on the larger alliance. However, it is important to note that there is a significant effort by the world’s largest insurers to reduce the exposures of greenhouse gases to combat climate change. Munich Re remains committed to the concept of decarbonization and reducing their exposures to greenhouse gas emissions but are taking necessary steps to also protect their company from potential anti-trust lawsuits. It is hard to argue with their logic.

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\$625M Largest Civil Settlement State History

In April 2014, Flint, Michigan switched its drinking water supply from the Detroit River and Lake Huron to the Flint River. The water was not handled correctly, and residents of Flint were exposed to lead, bacteria, and other contaminants.

A final settlement of \$625M was reached and became the largest settlement in the state of Michigan’s history. Claimants are eligible if they owned or lived in a residence or owned a business that received water from the Flint Water Treatment plant. In addition, a person can be eligible if they came into contact or ingested water from this plant for at least 21 days during a 30-day period or was diagnosed with Legionnaires’ Disease.

TSIB Talking Point: The actions of both the City of Flint and the state of Michigan have created serious health effects for families. The water was not declared lead free until 2017 and thousands of residents are still suffering psychological and physical effects of this crisis. Issues surrounding the mismanagement of water will become more prevalent in the future. Climate change and corporate/government interventions will continue to add new risks to water management.

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