

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. The background is a clear sky.

Talking Points Newsletter *Volume #27*

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](#).

AI Set to Exponentially Improve Insurance Efficiency

[ChatGPT](#) launched and the consensus in the industry is that the use of Artificial Intelligence (AI) will lead to improvements in the underwriting and claims handling within the insurance industry.

The industry is already processing large amounts of data, including risk reports and loss data. The models that are being created can sort through documents, looking for specific risk factors or other information to extract the information. This will save underwriters a considerable amount of time.

AI can be used to update old code and help MGAs use data from telemetric driving to underwrite programs. This information will supplement the traditional underwriting to offer safer drivers lower rates.

TSIB Talking Point: ChatGPT will not replace insurance industry jobs, but it will drastically change them. AI is moving at a very quick pace but clearly ChatGPT is here to stay.

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Chubb Increases AI Posts

Last month, Evan Greenberg, Chairman and CEO at Chubb Insurance touted the use of AI and told the analysts of Chubb's plan to start "rolling out AI tools at scale."

Analysts were informed that Chubb's Q1 2023 net income fell 3.2%, from \$1.95 billion in the same period last year, to \$1.89 billion this quarter. Their combined ratio (losses and expenses paid vs. income) increased from 84.3% to 86.3%, showing that the company was less profitable than in the prior year's period.

Property increased as much as 27% and casualty up 9.9%. The professional lines, Workers' Comp, and large risk management accounts continued to decline on favorable loss experience.

TSIB Talking Point: Chubb's first quarter results reflect the continued push for rate increases across many lines. Property remains an issue as CAT losses are increasing.

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U.S. Contractors Urge Training

In March 2023, the Associated General Construction of America (AGC) reported that construction employment dipped by 9,000 jobs. This seasonally adjusted dip appears to be an aberration, as construction companies continue to post job openings and increased the level of pay that they were offering. This points to the fact that the labor crisis in the construction industry is continuing.

The unemployment rate for construction jobs is near its lowest rate and craft trades are seeing an increase of 6.6%. This translates into an overall 19% wage “premium” over the standard private sector production employees.

To combat this shortage of experienced labor, contractors are looking to the federal, state, and local governments for help. Contractor Associations are asking for increased investments in construction education, training, construction programs in schools, and apprenticeships.

TSiB Talking Point: The labor problem in the construction industry has been going on for some time. The demand for experienced labor will only get more intense as the infrastructure projects recently authorized by the Biden Administration start to staff up. Increasing pay rates and education will help attract good talent.

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Material Prices Are Finally Lower

The Construction input price is the cost to build a given project. For the first time in 18 months, on a YOY comparison, the construction input prices fell. However, these costs were still 39% higher than before the pandemic.

Costs for construction and nonresidential were down YOY, but inched up over the last 30 days with only 5 of the 19 categories registering price reductions when compared to the previous month.

Natural gas and unprocessed energy materials registered the greatest reduction, falling 21.4% and 11.9% respectively. Crude petroleum was down 10.2% as well. In contrast, cement jumped 17%, concrete products are up 14.5% and paving mixtures and blocks increased by 14.1%.

TSiB Talking Point: Fears of recession remain as analysts are wary of increasing interest rates and other signs of a slowing economy. Adding in the continued fluctuations of material prices, contractors will need to continue to deal with the impact that cost uncertainty may have on the profitability of their projects.

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Exclusive Remedy Bars Lawsuit over Dog Bite

In 2016, an employee of Home Depot in Pennsylvania was bitten by a customer's dog. The supervisors didn't allow the employee to talk to the dog owner and didn't record witness information. Her workers' compensation claim was \$130,000 according to legal documents, but because she couldn't identify the dog owner and file a lawsuit against her, she sued Home Depot for failing to adequately investigate the incident and allegedly resulting in her inability to identify the responsible party. She argued her claim was not for the underlying dog bite injury, but for the harm she suffered from Home Depot's failures.

In response to the lawsuit, Home Depot filed a motion to bar the claim by arguing that the workers' compensation law was the employee's exclusive remedy for the incident. The Pennsylvania trial court denied the motion and allowed the employee's lawsuit against Home Depot to proceed.

Home Depot appealed to the appellate court, which upheld the ruling by finding that an employer cannot rely on workers' compensation immunity when its actions prevented an employee from seeking redress from the person responsible. Home Depot further appealed then to the Supreme Court of Pennsylvania.

On April 19, 2023, the Supreme Court of Pennsylvania Issued its opinion and reversed the trial and appellate courts. The Supreme Court ruled that the workers' compensation law has few exceptions to it being an exclusive remedy, and even an employer's intentional acts resulting in injury does not negate immunity.

An attorney from the firm Chartwell Law defending Home Depot said if the lower court rulings had stood, employees would have lost much of the protection they have under workers' compensation law and would open the floodgates for other lawsuits alleging the employer negligently investigated a workplace accident.

TSiB Talking Point: Workers' compensation is often referred to as an exclusive remedy because it gives employees immediate coverage for work-related injuries while barring the employee from pursuing legal action against his or her employer. Workers' compensation insurance covers an employee's work-related injury immediately and without regard as to liability, so that medical care and wage loss are not contingent upon something delayed or uncertainty of fault. With limited exceptions, in exchange for providing the workers compensation, the employer has immunity from the employee taking legal action against it.

Workers' compensation laws vary from state to state, and this ruling applies only in Pennsylvania. However, the concept of the exclusive remedy is generally recognized in jurisdictions throughout the country.

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A Look Back at Boston Marathon Bombing- Insurance Claims

Back in April 2013, when multiple bombs exploded at the finish line of the Boston Marathon which caused damage to the property around the explosions in addition to killing three people and injuring over 260 others.

While the property damage from the event was being assessed, a discussion regarding if the claim would be triggered under the Terrorism Risk Insurance Act, (TRIA). If triggered, it would be the first time that the government would contribute to the paying of claims resulting from a certified act of terrorism.

TRIA is not triggered unless:

- the U.S. Treasury, the Secretary of State, and the U.S. Attorney General all certify the event is an act of Terrorism,
- has endangered life & property that will influence the public and government policy,
- and there is at least \$5M of property and casualty losses.

Claims for Life and Health Insurance do not qualify under the TRIA coverage. If TRIA was triggered, that would cause many of the commercial policies that were in place to invoke their Terrorism Exclusions so that TRIA would be the remedy for coverage under their policies.

Ultimately, the Boston Marathon Bombing did not trigger TRIA because the Treasury never certified the claim as Terrorism, the P&C losses did not exceed \$5M, and both the P&C Insureds and private carriers were on their own to settle these claims.

9 months after the attack, data was collected and showed that:

- of the 160 Commercial Property and Business Interruption claims,
 - 13.5% had standalone terrorism coverage (which does not have the same triggers as TRIA)
- no policies were impacted by a Terrorism Exclusion
- of the \$24.9M projected claim payouts,
 - \$2.5M was attributed to commercial property

TSIB Talking Point: The Terrorism Risk Insurance Act (TRIA) was put into place as response to the terror attacks on 9/11. Since then, the Boston bombing is the closest that we have come to triggering coverage under TRIA. Even though the Boston bombing occurred, it did not turn out to be a catastrophic claim. TRIA continues to remain untested, and insureds remain susceptible to potentially large claims. Companies looking for coverage should explore a standalone terrorism policy, as that may be a better solution.

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