Talking Points Newsletter *Volume #28*

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.

Insurance Market

P&C Industry Expects To Return To Underwriting Profitability In 2024

In a recent report, S&P Global Market Intelligence is forecasting that the aggregate [combined ratio] for the U.S. Property & Casualty market for 2023 will be 101% before returning to profitability with a sub-100% combined rate in 2024.

This is a significant improvement from 2022, when the combined ratio was over 102%.

In addition, the report is also predicting double-digit premium growth across all lines of coverage in 2023, with "corrective actions" being taken by insurers in the private auto, residential and commercial property sectors.

There is good news, the Workers' Compensation sector continues its downward trend as the combined ratio ticked down more than 3% to a combined ratio of 83.9%

TSIB Talking Point: The combined ratio is a measure of profitability for insurance companies, as a percentage. It is a ratio of the premium dollars collected vs. the incurred losses plus expenses. A combined ratio over 100% indicates that the company is not profitable and under 100%, means the company is profitable. Insurers have been increasing their premiums in a push to improve their combined ratios.

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Reinsurers Cut Back Catastrophe Capacity

The Reinsurance market's access to capital bounced back in 2023 after it took a downward spike of 13.5% in 2022. Most of the reduction was due to a "paper investment loss" or a Mark to Market measure of the investment losses.

In 2023, reinsurance capital is estimated to have come back and currently is sitting at $461B for the current year. However, reinsurers are much more hesitant to utilize this capital in the property catastrophe market and are looking to push more traditional business operations.

TSIB Talking Point: CAT exposed property coverage remains to be an issue as the reinsurance markets continue to pull back their exposures to these properties. The market remains strong but due to this trend to reduce their exposure and a conscious push to pull back on deploying reinsurance capital to CAT-exposed risks, the upward pricing trend will continue.

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Construction Industry

Researcher Receives Grant For 'Psychological Safety' In Construction

Dr. Hongtao Dang was awarded a $174K grant to study and develop a training program to improve the psychological safety of workers on a construction site. Dr. Dang previously worked in the construction industry prior to his academic career and has firsthand knowledge of what it is like on a jobsite. The money is from the State of Washington's Department of Labor & Industries' Safety & Health Investment Projects grant program.

TSIB Talking Point: The goal of the training is to provide a manual to create an environment where workers will not feel threatened or humiliated to speak out when they see potential worker safety oversights. As a result, the team will create training modules based on real world data and case studies that will help to combat the actual or perceived abuse that can cause many workers to stay silent, even when they see a workplace violation. The manuals will be published in November 2024, after the study concludes.

Click here to read more.

10K Bridges Have a Similar Structure To Collapsed PA Bridge

Earlier this year, the Fern Hollow Bridge in PA collapsed. A report from the National Transportation Safety Board (NTSB) stated that the cause of this collapse was due to a drainage problem created by the lack of maintenance to clear out the debris, dirt, and leaves. This build-up, over time, caused the legs of the bridge to corrode to the point that they could no longer hold up the bridge. As a result, the NTSB would like officials nationwide to inspect the more than 10,000 bridges that are similar to the Fern Hollow Bridge structure.

It is not currently known how severe this problem is across the country, but this recommendation was bolstered when investigators found 10 additional bridges in PA that had similar maintenance problems. The Federal Highway Administration will work with the NTSB to help define the scope of the problem.

TSIB Talking Point: The Fern Hollow Bridge was inspected every year since 2005, including as recent as a several months before the collapse. In 2009, work was done to clear the debris but was not repeated in the years since. Inspectors noted the issue in every report between 2011 and 2021. There needs to be more attention paid to maintaining the existing infrastructure to prevent further collapses.

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Claims

TSIB

Courts Rule On Additional Insured Endorsements & Vicarious Liability

Last year, an Eleventh Circuit ruling in *Cincinnati Specialty Underwriters, Ins. Co v KNS Group* (11th Cir. Oct. 2022) addressed issues related to Additional Insureds (AI) and vicarious liability. In that case, the owner hired GM&P, the general contractor, to construct a new casino. In turn, the GM&P hired KNS and entered into a subcontract to perform exterior glazing and glass façade work on the project.

The owner sued GM&P for damage to the façade work performed by KNS. KNS procured an insurance policy identifying GM&P as an AI covering damage caused in whole or in part by KNS's acts or omissions. The carrier took that position that it has no duty to provide additional insured coverage because the underlying claim by the owner was not asserted against KNS.

The insurance carrier filed a declaratory judgement asking the court to opine if it owed an obligation to cover the owner's claim against GM&P as an AI. The court found that since the claims by the owner did not allege any wrongdoing on behalf of KNS that KNS's policy was not triggered. Since there was no coverage for KNS, there was no coverage for GM&P as an AI on KNS's policy. The Court focused its reasoning on whether the AI was vicariously liable for the named insured's conduct or whether the AI was liable for its own conduct. As GM&P was being sued for its own negligence, there was no basis to find that GM&P was being held vicariously liable for KNS's conduct.

Vicarious liability, also known by the Latin term "respondeat superior" is the holding of a person or entity responsible for damages or harm caused by someone else. Most commonly thought of in employee-employer relationships, it can apply in other situations in which a person or entity holds a superior position to an agent.

TSIB Talking Point: Not all AI coverage forms are created equally. If available in the marketplace, it is recommended to obtain AI coverage that contains the verbiage "arising out of" your acts or omissions, in lieu of "caused in whole or in part." *Arising out of*, can be construed more broadly.

The "caused by in whole or in part" language often defers both defense and indemnification until the case is resolved, which slows or hinders the risk transfer process. This is to determine if the loss was caused by the name insured. Courts considering AI and vicarious liability together may result in amendments to future AI endorsements that specifically contemplate vicarious liability.

It is also important to note that contractual indemnification is not the same as additional insured status. A contractual indemnification provision in an agreement can be drafted to require indemnification in situations in which only having additional insured status may not trigger coverage.

[Click here to read more.]

More Insurers Desert Net-Zero Alliance

The end of May saw an exodus of some of the world's largest insurance companies from the Net Zero Insurance Alliance (NZIA), dropping the number of member companies from 30 to 15.

The NZIA was created in conjunction with the United Nations and formed in 2021. Their mission is to create support for businesses to adopt a net-zero economy and tackle the climate emergency. The members of the NZIA are committed to transition their underwriting portfolios to net-zero greenhouse gas emissions by 2050, which is in line with the Paris Agreement.

Munich Re and then Zurich Insurance announced their plans to exit the NZIA in early March. Then in May, QBE, AXA, Allianz, Groupo Catalana Occidente, Lloyd's of London, Mapfre, MS&AD, SCOR, Sompo, Swiss Re, Tokio Marine, and QBE all left the Alliance within weeks of each other.

Some, but not all of the companies that have departed the NZIA cited concerns about becoming embroiled in a legal entanglement in the U.S. as a group of Republican Attorneys General penned a critical letter to NZIA members conveying "legal concerns." The letter expresses concerns regarding the violation of U.S. Anti-trust laws.

According to the Financial Times, the U.S. Politicians are attacking the Glasgow Financial Alliance for Net-Zero (GFANZ) and the NZIA because the net-zero underwriting goals are unfairly hitting the oil and gas industry. It is not entirely clear that the Anti-trust claims would have merit in the courts, but these insurers all have significant business in the U.S.

TSIB Talking Point: It is impossible to deny that there has been a significant uptick in the size and ferocity of the weather events experienced in the last ten years. The insurance companies that have shelled out billions of dollars in climate catastrophe claims have adopted a policy that seeks to reduce and reverse the harmful effects of climate change.

A movement in the United States that objects to companies adopting an Environmental, Social and Governance (ESG) philosophy has taken issue with this alliance and succeeded in unraveling the formal cooperation between these insurance companies. However, all the companies that announced they are leaving the NZIA indicated that they remain committed to their net-zero goals.

Click here to read more.