



Talking Points Newsletter *Volume #30*

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 Rates

According to data provided by Marsh, here are current insurance rates compared to the previous quarter:

- Composite rates rose 4% in the U.S.
- Property rates reduced 14%
- Casualty rates increased 2%
- The professional/financial lines fell 6%
- Cyber rates fell 6%

TSiB Talking Point: The markets continue to push for rate increases; however, the hard market is showing signs of slowing down. There are some indications that market share will become important, and pricing will begin to stabilize as they feel the rate environment is adequate. Insureds who have a strong broker can push the markets to take advantage of their good loss history and strong controls.

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AM Best P&C Downgrades Outpacing Upgrades

AM Best downgraded 32 companies in the first half of 2023. This consisted of 21 personal lines insurers, 10 commercial insurers, and 1 reinsurer compared to the 18 downgrades seen during the same period in 2022.

Upgrades in the first half of 2023 slightly outpaced the 2022 level with 22 upgrades in 2023 and 19 upgrades in 2022 respectively.

AM Best stated that:

“Carriers that are slow to address challenges or do not have the means, expertise, or technological capabilities to keep pace with changes in the environment will likely face ratings pressure,” referring to personal lines’ insurers. While commercial carriers face headwinds, the segment remains solidly capitalized with “conservative investment portfolios, sound reserve positions and enhanced risk management discipline...”

TSiB Talking Point: AM Best is a leading rating agency that has become a vital resource to assess the financial strength of the insurance industry. Ratings are assigned on a grading scale with any rating below A- deemed too risky for brokers to use.

The ratings are showing that this hard market is having an impact on the insurance companies and shows the need for rate increases.

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Backlog Dips, but Contractor Confidence Remains High

There is a decline in the backlog that is tracked by ABC's Construction Confidence Index. However, the key indices that are tracked (sales, staffing levels and profit margins) remain above the key threshold of 50, pointing to continued growth over the next six months.

Sales and staffing levels increased but profit margins fell slightly in September. This is particularly notable since the economic indicators are still showing signs of a recession. ABC's Economist blames the political disfunction in Washington, rising costs of financing, labor issues, and supply chain issues. However, the construction market continues to grow, but these conditions may eventually catch up to the industry.

TSiB Talking Point: Contractor confidence remains high and there does not seem to be any shortage of major projects. However, it would not be wise to discount these indicators as the backlog health is the key to a strong construction market.

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Harnessing the Power of AI for Construction Disputes

Construction can take advantage of the innovations in [artificial intelligence](#) (AI) by tackling productivity challenges, and drive efficiency & safety, in addition to other benefits.

AI can enhance safety with AI powered drones and robots to find potential hazards and inspect the sites. These systems can be used in brick laying or other labor-intensive tasks that can be replicated with these machines.

The predictive nature of these systems is useful in maintenance and monitoring for a view of project progress, performance metrics, and scheduling bottlenecks.

In addition, data can be analyzed by AI systems that will help speed up the resolution of disputes and potentially prevent them. Given the speed at which these AI systems can process data, these systems are useful for legal research in litigation, facilitate mediation & negotiations, and other legal issues.

TSiB Talking Point: There is a lot of noise around the use and potential dangers of AI. In this instance, we can see a clear benefit to using AI to process huge amounts of data on a construction site. Once it is clear how AI can help, contractors will most likely stop resisting AI and look to adopt it in their daily work routines.

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South Capitol Bridgebuilder V. Lexington Ins. LEG-3 BR Lawsuit

In recent years, large Builder's Risk policies have included coverage terms from the London Engineering Group (LEG) that expand coverage by redefining how the policy will pay for claims involving construction defects. The broadest of these endorsements is called LEG-3 which excludes coverage only for the cost of the insured to improve the original material workmanship design, plan, or specification.

These policies have not been truly tested in the U.S. courts.

TSIB Talking Point: To date, there has been little litigation or case law established regarding LEG-3 coverage. Carriers often narrowly interpret the exclusion. However, the precedent established under *South Capitol Builders* case is a great win for the construction industry. In this case, the carrier treated the endorsement as an exclusion. Essentially, the carrier viewed the rectification as an improvement, and it deemed there was no damage other than the faulty work itself. It argued, for coverage to be triggered, the defective work must affect other works. The defective work in question was synonymous with the damages being claimed. The insured viewed the coverage as an enhancement. The court opined both parties were correct in their interpretations.

What is important is that the courts distinguished between the defective workmanship and the resulting damage (property damage was not defined). The defective workmanship for the loss of the load bearing capabilities constituted direct physical damage to the bridge and yielded coverage as determined by the courts. There is also clarity around the rectification that it does not yield a betterment, as the repairs would bring the structure to the original state without defect (here the honeycombing). This distinction is important because all remedial work could be construed as betterment. This precedent will be relied upon when contractors litigate this matter in the future.

Considering this decision, carriers may look to revise and clarify wording within their endorsements. The courts are consistent in construing ambiguity in the favor of the insured. True LEG coverage, if possible, should be procured. Doing so can lead to standardized language and create more favorable case law in the future. The applicable endorsements can vary widely. Carriers issue endorsements that mimic LEG wording but may include additional conditions or exclusions. For instance, these endorsements all have varying wording with similar intent:

- Extension for Repairing or Replacing Defective Covered Property (LEG-3) Endorsement
- Amendment to Excluded Causes of Loss—Cost of Making Good
- Faulty, Inadequate, or Defective Workmanship or Design Exclusion Amendment
- Defects Exclusion—Betterment (LEG-3)
- Faulty, Inadequate, or Defective Conditions and Cost of Making Good Changes
- Modified Cost of Correcting or Making Good Exclusion
- Amendment to Cost of Making Good Exclusion



When a broker presents a claim, it is important to distinguish between improvements and rectification. The language of the endorsements is often silent on this distinction. Demonstrating that remedial work is different than the original work would also be beneficial. From an agency perspective, careful analysis of the forms attached to the policy including any added sublimit or conditions is important to eliminate mistakes or inconsistencies. As the coverage originated from the London Engineering Group the wording being utilized in the U.S. has many inconsistencies which is evidenced in this case. There are also varying challenges with this coverage across the pond.

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Economic Losses from Extreme Weather Could Hit \$5T

Lloyd's of London looked at a five year period and created multiple scenarios based on major, severe, and extreme weather changes in a report with Cambridge Centre for Risk Studies. These extreme weather scenarios affected crop failures, food, and water shortages.

This will help Lloyd's improve their business and understanding of exposures to these threats. The scenario's losses ranged from \$3T to \$18T, with an average of \$5T. They also looked at specific regions to see how each was affected. China had the greatest loss at \$5T and Caribbean was estimated to lose 19% of its gross domestic product (GDP) over five years.

TSIB Talking Point: As insurance professionals we are aware of the potential of a global crisis. The insurance issues surrounding climate change demonstrate this. We often see these issues in terms of underwriting profits or losses, rather than the human effects. A report like this one should be a wake call for all of us to the idea that any extreme weather events will cost more than money ultimately.

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Music Publishers Sue AI Company Anthropic

In another lawsuit filed by artists who are concerned that Artificial Intelligence (AI) will violate their copyright protections, a group of music publishers have filed a federal lawsuit against the AI company, Anthropic. The lawsuit alleges that the company is using large amounts of copyrighted lyrics to train their product.

Anthropic is a multi-billion-dollar company, that has attracted the interest of Amazon, who is expected to invest up to \$4B. The Anthropic has a Chatbot, Claude, that can process huge amounts of language examples and bases their answers on what they have "read."

The lawsuit claims that when Claude is asked to provide lyrics to a song, it provides all or a significant amount of the lyrics. Since Anthropic does not pay royalties or have a license for commercial use of the material, it is potentially in violation of copyright laws.

TSIB Talking Point: As AI becomes more popular and prevalent in the mainstream, copyright infringement cases will continue to define the way that AI is used. Artists and content creator cases will continue fighting in court until the precedent is clearer.

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