



Talking Points Newsletter *Volume #31*

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](#).



Gaps Between Agents & Commercial Clients on Weather

Nationwide Insurance Company commissioned a study that says that many of their independent agents believe that their clients are not adequately insured from adverse weather.

Of the [surveyed agents](#), 52% of them believe that less than half of their clients are appropriately insured for property damage against severe weather.

The majority of property owners have sought some kind of advice on wind, roof or water damage issues, yet the study shows that 42% of these agents prioritize this coverage, with 53% of the insureds ok with spending more to increase their resiliency.

TSIB Talking Point: Severe weather is a reality and as this survey shows, there are a lot of insureds that have experienced claims. It is important to talk to your agent/broker about values and proper coverage.

[Click here](#) to read more.

Insurance Prices Rise Overall, But D&O Rates Fall

The Council of Insurance Agents and Brokers is reporting that premiums for commercial insurance rose again in the third quarter of 2023 by an average of 8.1%. Property rates continue to push higher with Workers' Compensation and Director's & Officer's rates falling.

Rate hikes have slowed and are down from an average of 8.9% in the second quarter. Some notable changes are:

- Property rates increased 17.1%
- Auto rates increased 8.8%
- Excess rates increased 7.4%
- Primary General Liability increased 4.2%

All of these lines, while pricing still increased, were down off of their second quarter increases.

D&O rates were down slightly but this was the first quarterly decrease reported by the CIAB since they started the survey in 2017. Rate for Cyber and Employment Practices were also up slightly.

TSIB Talking Point: The hard market conditions persist. Property will remain the hardest hit as climate change impacts are realized around the world. Casualty pricing is still rising but there seems to be some relief for the insured.

[Click here](#) to read more.



Progressive Design-Build Gains Ground in U.S.

Early in November, there was a design-build Conference in Washington, DC. According to panelists at this conference, there is a growing acceptance of the progressive design-build delivery method.

This delivery method is gaining traction across the country for Transportation and Water projects as public entities are passing legislation to allow the use of progressive design-build. Most notable is the work done in California to pass a bill that expands the authority to use Progressive design-build for CALTRANS and other agencies in California.

TSIB Talking Point: Progressive design-build is useful because it allows the owner and the contractor to collaborate on the design of the project and potentially shorten the time to finish the project. It is not without its detractors since many public agencies are not set up to work as closely with the contractors and there is no fully defined price that can also be problematic for the agencies. Overall, from an insurance standpoint, progressive design-build can cut down on professional liability claims, if handled correctly.

[Click here](#) to read more.

Infrastructure Law has Funded 40,000 Projects

Two years after the Infrastructure Investment and Jobs Act (IIJA) was signed into law, Construction Dive is reporting on the progress of the \$1.2 trillion investment.

At this point, about one-third of the money has [been announced](#) (not formally allocated) for over [40,000 projects](#) across the country. The funding is preliminary and is not binding until they become awarded jobs.

Construction employment has increased since January 2021 in all aspects of the construction sector. Street and road growth has exploded in the most recent months. Recently, there was an update to the Davis Bacon Act that sets the prevailing wage for contractors on Federal jobs, with the intent to improve the quality of the construction project. This update is being challenged in court by the Associated General Contractors of America in the U.S. District Court in Texas.

TSIB Talking Point: The increase in activity due to the IIJA is largely positive. Construction employment will be something that we need to focus on, as this is an industry-wide problem. However, the American Society of Civil Engineers gave the U.S. Infrastructure a grade of “C-” on its most recent report card. The IIJA is a net positive as it seeks to improve our infrastructure.

[Click here](#) to read more.



NotPetya Cyberattack Case Settled

Merck and its insurance companies have settled their lawsuit involving a 2017 cyberattack. The litigation involved a dispute about whether a war exclusion applied to a NotPetya cyberattack.

On June 27, 2017, a malware attack, that was traced back to Russian's GRU (aka KGB) triggered a worldwide event that is estimated to have caused over \$10B in economic losses. This attack was aimed at disrupting the Ukrainian economy, and hit many companies including Merck, Mondelez, and Maersk.

Merck had limits of \$1.75B and claimed damages of \$1.4B from this attack. Half of Merck's insurers argued the war exclusion in the policy excluded coverage.

In May 2023, a New Jersey appellate court ruled that the war exclusion did not apply to the claim. The case was then appealed to the Supreme Court of New Jersey, but the parties have now reached a settlement.

TSiB Talking Point: The appellate court ruled that the language in the War Exclusion [did not apply as](#), *"Coverage could only be excluded here if we stretched the meaning of 'hostile' to its outer limit in an attempt to apply it to a cyberattack on a noncombatant firm that provided accounting software updates to various noncombatant customers, all wholly outside the context of any armed conflict or military objective."*

It is important to note that this ruling applies to property policies, not standalone cyber insurance policies. These exposures are currently being addressed on standalone policies and insureds are encouraged to work with their brokers to ensure that they are properly covered.

[Click here](#) to read more.



DuPont Defeats Massive Class Action over Forever Chemicals

Manufacturers of toxic chemicals, per- and polyfluoroalkyl substances (PFAS), also known as “forever chemicals,” have received a favorable ruling in a class action suit from the Sixth Circuit Court of Appeals in Cincinnati, Ohio.

In that class action case, the circuit court found that the lead plaintiff’s complaint against the manufacturers was too broad and had not shown that these chemicals that were found in his body could be directly traced back to these companies. The court noted that there were thousands of companies that manufactured these chemicals and the suit only singled out 10 manufacturers. The suit was filed on a class action basis and seeks to establish a fund to assist the citizens of Ohio with any health impacts from these chemicals.

TSIB Talking Point: The PFAS problem is a major issue and one that is not easily addressed with insurance coverage. The chemicals are everywhere and are not easily disposed of or cleaned up. 3M has already paid over \$10B and DuPont has paid \$1.19B to settle claims with U.S. Water providers. At some point, it is possible that these companies will settle all claims with immunity for future claims and that such an event will create a rush to find the next set of deep pockets.

[Click here](#) to read more.

