Talking Points Newsletter *Volume #37*

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

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Commercial Property Rates Remain Flat, Other Lines Increase

According to the Ivans Index, the year-over-year premium for Commercial Auto, Small Business Owner's Policy (BOPs), General Liability, Commercial Property, and Umbrella still show that there were notable increases in each line.

Apart from Property, which remained flat, the month-over-month review shows increases in all lines including:

- Commercial Auto increased to 9.97%
- General Liability increased to 5.76%
- Excess/Umbrella rates jumped to 11.09%

TSIB Talking Point: The insurance market is still volatile, and rates are continuing to increase. Pricing remains a concern going into the second half of the year.

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P&C Underwriting Results: Two Years In A Row Over $20B In The Red

AM Best's recently issued a report that stated that for the second consecutive year, the Property & Casualty industry's results showed an underwriting loss of over $20B.

In 2023, the loss was roughly $21.6B, which was slightly better than the 2022 results of $25.8B. The personal lines, homeowners, and personal auto were the worst lines by far, as these two segments booked an underwriting loss of $32.B, compared to 2022's posted a loss of over $40B.

The Commercial lines fared a bit better as they posted an underwriting income of $10.3B. This was almost 30% lower than the results from 2022.

TSIB Talking Point: Premium increases continue as losses and expenses outpace the collected premium. Some lines are getting better, and some lines are still languishing. Personal lines will still be a drag on these results. Even though the movement is slow, it seems to be moving in the right direction.

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Construction Industry

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Construction Starts Increase 10%

Dodge Construction Network recently issued a report stating the total construction starts rose 10%, or a seasonally adjusted annual rate of $1.24T. Due to the start of a $10B offshore wind facility near Virginia Beach, VA and an $11B liquid natural gas plant in Port Arthur, TX, the nonbuilding starts gained a notable 49%.

On a year-to-date basis, the May-to-May comparison shows that there was an overall increase of 11%.

- Nonresidential construction was up 3%
- Residential construction increasing 16%
- Nonbuilding construction up 17%

As Richard Branch, chief economist of Dodge Construction Network noted, the increase in construction starts was mostly from a “handful of large projects.” added that single-family starts have increased in 8 of the last 12 months, despite the high mortgage rates.

TSIB Talking Point: The optimism around the construction industry seems to be across the board. Construction starts, particularly for residential construction, has long been a key bellwether for the industry’s growth statistics. Although these statistics seem to be skewed by several large projects, this data is taken as a positive.

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Construction Activity “Phenomenal” Despite Labor Shortage

The shortage of qualified labor is a well-known issue for contractors looking to grow their businesses. However, according to the Associated General Contractor’s Association, the construction industry is very strong, with overall spending increasing by over 10% compared to last year.

There are two outliers that are still causing issues for contractors looking to buy project insurance: Builder’s Risk, particularly residential frame construction, and Excess Liability. Residential Builder’s Risk losses have doubled in 2023 compared to 2022.

The Excess Casualty market has calmed over the years. However, it remains difficult for contractors particularly with high hazard risks, large auto fleets, residential, New York Construction, or wildfire exposures.

The limits purchased have been decreasing, as prices are increasing. These price increases are happening because of the social inflation trend, mixed with the claims costs, pushing through the first layer of excess.

According to Lyndsey Christofer, Chubb's Executive Vice President, "Infrastructure started to pick up and Chubb is finally starting to see money from the Infrastructure Bill trickle in and are starting to see really large mega projects in the pipeline." Christofer added that she is hopeful that they will see more activity in the second half of the year.

TSIB Talking Point: Insurance capacity is not a barrier to contractors looking to grow their businesses. The two areas that are problematic are only problems due to cost. Moreover, the insurance companies are looking to take advantage of the increase in construction projects and look to the Infrastructure Bill to fuel this uptick in their business.

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Vertical Exhaustion Rule Applies Before Depletion of All Primary Coverage

Insurance carriers have cited the *Montrose* decision since the 1995 California Supreme Court ruling in *Montrose Chem Corp. v. Admiral Insurance Company*. That case involved environmental damage that spanned many years. The court held that Montrose could seek indemnification under any excess policy only after all underlying policies that are applicable in the same policy period were exhausted. This became known as horizontal exhaustion.

Since this decision, courts have examined the applicability of this ruling. The most recent decision until now, was contemplated and decided in 2020, known as *Montrose III*. There, the court held that it is fair to require exhaustion of direct underlying insurance, in lieu of all policies. However, it also held that the excess carriers could seek contributions from all other carriers. This is contrary to horizontal exhaustion and is known as vertical exhaustion.

Montrose III did not opine on two issues of fact. First, was exhaustion of policy limits sufficient, or was carrier payments of underlying limits required? Second, the court did not address the question of jurisdiction and where the policy was issued.

Recently, on June 7, 2024, the California Supreme Court issued an opinion regarding the rule of vertical exhaustion in continuous exposure cases. In *Truck Ins. Exch v Kaiser Cement & Gypsum Corp,* Cal. 5th No. S273179 (June 17, 2024), the court upheld *Montrose III* by holding confirming that vertical exhaustion was logical. Confirmation was given that excess insurance can be accessed whenever the policy holder has exhausted the direct underlying insurance policy for the same policy period.

Still to be contemplated is how contribution claims will be handled as well as policy jurisdiction. This is a win for policy holders.

TSIB Talking Point: Understanding other insurance clauses and the interplay between policies while keeping abreast of current case law are key considerations when partnering with a broker.

Decisions on contribution claims while also triggering the immediate excess tower takes strategic planning. It is important to have strong legal guidance and claims advocacy.

Click below to read more:
California Supreme Court Confirms Vertical Exhaustion Rule Applies
California Supreme Court Dumps Excess Insurers' Horizontal Exhaustion Argument

Trends

Lightning-Related Home Insurance Claims Soar To $1.2B in 2023

The Insurance Information Institute is reporting that insurance claims caused by lightning rose 30% in 2023. The claims increased to $1.2B compared to 2022 where they were $950M.

A closer review, of the year-over-year comparison shows:

- Policyholders that filed claims & received a payout increased by 13.8%
- The average cost per claim increased by 14.6%
- 19 states contributed to 57% of the total number of claims
- Florida remained the top state with more than 6,000 claims
- Texas was the state with the highest average claims at $41,654

TSIB Talking Point: There is no question that the rising inflation impacted these results, as construction labor and materials have increased. However, severe convective storms were listed as the most common & damaging conditions we are facing. This data demonstrates how the insurance industry is facing an uphill battle with more frequent and severe weather.

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New Class Of Standalone Business Interruption Coverage

In May, the New York State Senate introduced the bill S9481, which would amend the NY State Insurance law to allow insurers the ability to offer Business Interruption insurance that is not tied to physical damage.

The bill is designed to provide coverage for the loss of business revenue in the event of a future pandemic or other events like an active shooter threat that shuts down a business but does not cause any physical damage.

This became a hot topic during the lockdowns from COVID. Businesses began filing thousands of lawsuits against their insurance companies looking to recover their loss of revenue. However, most of the judges issued rulings siding with the insurers as the courts confirmed that there is only a Business Interruption loss when there is a covered peril, like fire that results in “a direct and physical loss or damage to” the insured’s property.

It is not clear as to the limits, deductibles, or other terms that would be offered. However, if the State of NY has its way, this coverage will most likely only be available in the excess and surplus market, according to the bill which has currently been referred to the Senate Insurance Committee.

TSIB Talking Point: One of the insurance industry's fears during the height of COVID was the unknown financial impact that the pandemic would have on the losses. These fears were alleviated as it became clear that most policies would not cover these losses since there was only a loss of income and not any direct and physical damage.

The most common talking point from the insurers was that these policies were not designed to provide business income without any direct damage, which is why the State of NY is looking to change this. The underwriting models did not price for that, and the insurers did not collect any premium for that risk.

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