TSiB committed to our clients

# Talking Points

December Bulletin - Vol. 7

## Wonder what 2020 would taste like as a drink?

## Here's your answer.

If 2020 was a drink, what would it taste like? Experts at Flavorman, a Louisville-based beverage development company, got together to find out.

First, you need to pick a theme(s)- Here are a few for thought.

- Seeking Comfort
- Consciousness around Health,
- Must have Hope
- The unpredictable series of events that have defined this historic period,

Creating the 2020 mocktail, free from the occasional side effects of alcohol, the mocktail allows for guiltless indulgence (though given the circumstances, a shot or two of the real stuff would make an understandable addition)

So what's in the drink?

- Pink grapefruit flavor for its tart taste and boost of immunity; but grapefruit can leave a bitter taste in your mouth, just like the year 2020,
- Mask that by pairing it with a sweet, silky honey — a reminder that life is sweet.

Together, the bittersweet combination provides a bright, uplifting profile to mirror the sense of hope which has carried us through every challenge faced this year.

After a series of absurdly unfortunate events — wildfires triggered by gender reveal parties, murder hornets, a toilet paper shortage, to name a few, the overwhelmingly harsh realities of this year,

Mirroring the unusual circumstances, the drink's label is positioned upside down on the can, just like the year 2020. When poured, its color is revealed as a gaudy orange — appropriate for 2020.

Or make your own 2020 mocktail (or really a cocktail) and share with all!

To review the full article, click here.

## 3 Barriers That Lead to Misreported Property Values & Why Accuracy Matters More Than Ever!

Underreporting of property values is a chronic problem for the commercial insurance industry. Underwriters cannot accurately evaluate the size and scope of a risk or price it appropriately, if risk managers submit incorrect estimates of their property's worth.

Property valuations account for the physical structure, contents and equipment, and business interruption impact. Many businesses fail to submit accurate valuations because risk managers do not use the right valuation tools, leadership undervalues transparency in insurer relationship, and, aggregate limits provide a false sense of security in underreporting values.

There is a variety of tools available to Risk Managers to help their clients provide the most accurate real time valuation, some of which are:

- Reputable appraisal firm with experience in the insured's industry
- Marshall & Swift Valuation cost manual to develop replacement costs and depreciated values of commercial structures.

- Business impact analysis for Business interruption costs, and use a business interruption and extra expense worksheet
- Forensic accountants (depending on the size of the organization)

While the primary purpose of property valuations is to supply underwriters with data, they also demonstrate a spirit of collaboration when done accurately and transparently. They are the bedrock of a trusting relationship that yields long-term benefits for insurers and insureds alike.

To read the article, click here.

## How Lloyd's Underwriters Are Viewing Today's U.S. Casualty Insurance Environment

Today's Lloyd's of London market for casualty insurance is marked by rising prices, reduced capacity, and buyers embracing more self-insurance. However, it is also marked by underwriters who still believe in the value of long-term relationships with brokers and clients and who are somewhat worried they may not have adequately messaged these brokers and clients about what to expect in today's market.

According to the underwriters, there are the usual suspects responsible for today's market conditions, including years of poor results, social inflation, litigation funding, the current economic recession and uncertainty over the effects of COVID-19. "The tort environment has suddenly become very challenged. In addition to that, we've got a lot of back year loss deterioration on people's portfolios," said Aspen's Bland. What's noteworthy is that at the same time they are adjusting their pricing, carriers are also reconfiguring their portfolios and, in some cases, withdrawing capacity.

Bland explained that a “lot of carriers have been performing a lot of underwriting reviews” and establishing new appetites so that they can make their portfolios more resistant to the severe loss trends that they are seeing.

Along with the pricing and capacity adjustments has come a change in buyer behavior. According to Marsh’s Paulson, 2020 has seen a “large spike” in insureds purchasing lower limits than in previous years mainly due to cost, however, there is a surprising increase in self-insurance which is being used to supplement the lower limits.

The extent to which brokers and their clients may be surprised by what’s going on in today’s market depends on whether conditions have been adequately communicated. That kind of communications, in turn, depends on the relationships with the brokers and clients, underwriters agreed.

To read the article, click here.

## Home Depot to Pay $17.5 Million Over 2014 Data Breach Claims

Stats:

- ✓ 6 years = Insurance $27m to Home Depot $17.5m
- ✓ 40 million customers credit card info exposed
- ✓ 52 million customers email data exposed
- ✓ 46 states
- ✓ Bank Account Fraud
- ✓ Self-checkout terminals

Home Depot Inc., the largest U.S. home improvement retailer, on Tuesday reached a $17.5 million settlement to resolve a multistate probe into a 2014 data breach where hackers accessed payment card data belonging to 40 million customers.

Home Depot did not admit to any liability in agreeing to the settlement, which required that they hire a chief information security officer and upgrade its security procedures and training.

For full article, click here.

# What US Insurers Should Keep in Mind about Climate Change Regulations

There has been a marked increase in public announcements from regulators in recent months, both in the United States and internationally, relating to climate change and about embedding consideration of climate change-related risks into regulation of financial institutions.

So, what exactly is going on with respect to insurers? The recent significant insurance regulatory initiatives, developments and announcements regarding climate change-related risks, starting with international climate change financial disclosure initiatives cut across industry sectors (noted below) that recognize rising air, water temperatures and rising sea levels, combined with increasing frequency and severity of natural catastrophe(s) events, integrate sustainability factors into the regulation of insurers.

- **Financial Stability Board (FSB)—**created the Task Force on Climate-related Financial Disclosures (TCFD) to "develop a set of voluntary, consistent disclosure recommendations for use by companies in providing information to investors, lenders and insurance underwriters about their climate-related financial risks."

- **International Association of Insurance Supervisors (IAIS)** integrate sustainability factors into the regulation of insurers

- **Federal Reserve System (FSR, the Fed**)—Staff at the Fed is currently focused on identifying and assessing the channels through which climate change risks will impact regulated entities.
- **National Association of Insurance Commissioners**—have established a new "Climate Change and Resiliency Task Force" that will be active during 2021

- **California Department of Insurance**— on the radar since 2009, with their Climate Risk Survey

- **Washington State Insurance Department**- NAIC's claim Risk and Resilience working group started in 2007

- **New York Department of Financial Services (NYDFS)** DFS expects all New York insurers to start integrating the consideration of the financial risks from climate change into their governance frameworks, risk management processes and business strategies

To read full article, click here.

TSIB committed to our clients

# U.S. property/casualty net underwriting income plunges 86%

The US P&C Industry's net income fell 86% in the first nine months of 2020 as compared to the same timeframe a year ago.

The drop in underwriting income has been attributed mostly to COVID-19 related increases in underwriting expenses and dividends to policyholders.

The Combined Ratio rose slightly from 98% in 2019 to 98.7% in 2020. AM Best estimates that 8.3% of the 2020 Combined Ratio comes from CAT Losses compared to 4.4% in 2019.

To read more about this, please click the links below:

Business Insurance
Advisen

# Pandemic, cat losses push up commercial prices: Moody's

Commercial insurance prices are accelerating as U.S. property/casualty insurers hit by pandemic and catastrophe headwinds seek to offset rising loss costs and low interest rates, Moody's Investors Service Inc. said in a report Thursday.

Rates are increasing by almost 10% on average, with some 83% of the commercial lines market — which reported $169 billion of direct premiums written for the first half of 2020 — experiencing increases, Moody's said in the report.

"We expect price increases to continue into 2021 based on continuing adverse loss cost trends and low market interest rates,"


To read more, click here.

# Construction starts in Iceland on world's biggest CO2-sucking plant

A trio of companies has begun building the world's first large-scale CO2 capture and storage plant in Iceland, which they say will remove 4,000 tons of CO2 from the atmosphere a year.

The plant, called "Orca", uses fans to suck in air and filter out some 90% of its CO2, which is turned into carbonate minerals for storage underground.

Developing the plant are company Climeworks, which makes the CO2 collectors; Carbfix, which owns the CO2 mineralizing technology; and Iceland's ON Power, which will power the plant with geothermal energy.

Construction began last month, and they say the plant will be running in the spring of 2021.

To read the full article, click here.

## Do you want to save the world? Are you looking for a Holiday Gift? Why not do both?

Climeworks sells subscriptions that allow subscribers to claim to do their part in removing CO2 from the atmosphere. They currently have 3,000 subscribers and have raised over $110MM

See the science by clicking here.

TSIB committed to our clients

*Claims Corner*

# Various Defendants Summary Judgment Motions Upheld on Appeal Due to Statute of Repose (state of WA)

A matter of interpretation- exposure to Asbestos going back to 1972-

During the construction of Atlantic Richfield Corporations petroleum refinery at the Cherry Point refinery Mr. Brown alleges exposure to asbestos. Brand was the insulation subcontractor who installed asbestos –containing insulation and gaskets during construction.

The trial court granted summary judgment in favor of both parties based on statutes noted which provide a six-year statute of repose for claims arising from the construction of improvements upon real estate property.

The Browns argued

A question of fact regarding application of the construction statute of repose to their claims against both parties. RCW 4.16.300 must be interpreted narrowly, and that the legislature enacted the construction statute of repose only to protect defendants from the liability of others and forces beyond their control. *They suggest that the statute of repose is inapplicable when a plaintiff seeks to hold a defendant liable for its own negligence.*

The Browns also argued that the construction statute of repose is inapplicable here because

- Their claims arose from Parsons' and Brand's sale of the insulation rather than their construction activities; and
- The asbestos-containing insulation giving rise to their claims did not involve an "improvement"

December 2020

The court noted that RCW 4.16.300 states that the construction statute of repose applies if a claim arises from the construction, alteration, or repair of an improvement upon real property, both of which were met here.

Parsons and Brand argued

- The language of RCW 4.16.300 is broad and sweeping and should be applied expansively.
- They emphasized that the construction statute of repose was designed to protect contactors from stale claims.

The court ruled that regardless of a narrow or broad interpretation, the statute of repose applies to "**all claims or causes of action of any kind against any person, arising from such person having constructed, altered or repaired any improvement upon real property.**"

The appeals court ultimately held that:

- Both Parsons and Brand satisfied the "construction activities" requirement of RCW 4.16.300 because there is no evidence that the Browns' claims arose from Parsons' and Brand's sale of asbestos-containing insulation rather than from their construction activities;
- Both Parsons and Brand satisfied the "improvement upon real property" requirement of RCW 4.16.300 because the installation of the insulation occurred during the construction of the Cherry Point refinery, which was an improvement upon real property; and
- The Browns' argument based on the 2004 amendment to RCW 4.16.300 has no merit because the 1967 version of the statute applies in this case.

Therefore, the court affirmed the trial court's grant of summary judgment in favor of Parsons and Brand.

For full article, click here.

TSIB committed to our clients

# Connecticut Supreme Court Decision Expands "Duty to Defend" to Include Legal Uncertainty

Whether an insurance carrier has a duty to defend its insured in an underlying lawsuit is perhaps the most critical determination of a coverage investigation and can be a highly contested issue. A carrier's allegedly wrongful breach of this duty can have substantial ramifications, including potential bad faith exposure and forfeiture of policy-based coverage defenses that would otherwise apply to limit or preclude the insurer's indemnity obligation.

Accordingly, when Connecticut law governs the interpretation of a liability policy, a carrier would be wise to consider the impact of a recent Supreme Court of Connecticut decision, Nash St., LLC v. Main St. Am. Assur. Co., before reaching a determination regarding its duty to defend

**Key Takeaways:**

The Connecticut Supreme Court expanded a liability carrier's "duty to defend" to apply to situations where the allegations of an underlying complaint create what the court referred to as "legal uncertainty."

- The court applied this new legal principle to the policy's so-called "business risk" exclusions, which generally bar coverage for claims involving the insured's faulty work, and evaluated whether a legal uncertainty existed concerning those exclusions that created the possibility of coverage
- The decision expands the duty to defend and reaffirms prior Connecticut jurisprudence holding the "breach of that duty" can strip an insurer of its coverage defenses, effectively compelling the insurer to pay claims not otherwise covered by the policy

To review full article, please click here.

December 2020