

## Talking Points Newsletter *Jan 2021 Vol. #8*

With the ***Speed of Business*** and the intensity of ***Breaking News*** it's important to stay on top of the issues!

We share insight on the most impactful stories each month and explain the importance around each topic. TSiB's Talking Points Newsletter covers the most recent industry news in the following categories:

- Insurance Market
- Construction Industry
- Trends
- Claims

After each news highlight, look for the **TSiB Talking Point** that keeps you informed as to how it can directly affect you or your clients.

If you have any questions about any of these articles, other Insurance & Surety concerns, or have specific topics you would like to learn more about, please reach out to us directly at [contact@tsibinc.com](mailto:contact@tsibinc.com) or visit [our website](#).



## U.S. Reinsurance Rates Up Sharply At January Renewals

### News Highlights

- The Reinsurance renewals for risks in the United States suffered the highest rate increases as compared to the rest of the world.
- Global property rates were up around 6%
- US CAT Exposed and Non-CAT exposures with Losses, Rates were up 5% to 25%,
- Non-CAT exposed with NO LOSSES- up 15%
- Global Casualty Rates averaged a 6% increase, doubled from last year's renewal
- US Casualty Rates increased:
  - General Liability- up 10% to 30%
  - Healthcare Liability- up 5% to 25%
  - Professional Liability- up 5% to 25%
- Terms and conditions have hardened, Cyber and Pandemic coverage at issue.
- Rate increases blamed on increased loss trends, CAT Losses and lack of investment income

**TSiB's Talking Point:** The current insurance market remains under stress. Reinsurance rate increases will almost certainly lead to higher Retail pricing. Smart clients and brokers should remain vigilant.

[Click here](#) to read further about this.

## COVID-19 Business Interruption Rulings, Most Favoring Insurers, Moving to Appeals

### News Highlights

- Of the 1,422 Business Interruption lawsuits, a small percentage have been decided, Insurers have won 83 out of 105.
- Here comes the second wave of litigation over BI losses as Plaintiffs' take their claims into the Appellate Courts.
- Businesses with policies that had no virus exclusion fared slightly better.

**TSiB's Talking Point:** The wins are good for the insurance industry as there was no premium collected for this exposure. If insurance companies were directed to pay, surplus could be impacted and potentially drive carriers to bankruptcy. However, it is important to remember that anything can happen on appeal.

[Click here](#) to read further about this.



## 2021 Outlook: 6 Trends That Will Influence Construction This Year

### News Highlight

- 68% of surveyed Engineering and Construction Execs stated the business outlook is somewhat or very positive, according to recent survey by Deloitte.
- Optimism is due to Government Aid and Vaccine.
- 6 top factors that will influence the Construction Industry this year:
  - a. Subcontractors on the skids
  - b. Staying Safe
  - c. Hiring for the surge to come
  - d. Infrastructure on the agenda
  - e. Office, manufacturing, distribution projects ahead
  - f. Renewed focus on the environment

**TSiB's Talking Point:** The coming year brings a great deal of opportunity and the smart contractors will focus on the areas that can affect their business.

[Click here](#) to read further about this.

## Modular Construction Meets Changing Needs in the Pandemic

### News Highlight

- The construction method accounts for about 5% of all new projects in both commercial and residential real estate. It can speed up construction by as much as 50% and cut costs by 20%, the estimate could grow to a \$130B industry in the US and Europe by 2030.
- Upfront building costs of modular and traditional projects may be similar, but the savings come from the accelerated building time line.
- Modular allow us to be more efficient and increase construction labor productivity but can also cut down on payroll.
- The construction method accounts for about 5% of all new projects in both commercial and residential real estate.

**TSiB's TALKING POINT:** The Pandemic has shown us that cutting costs and compressing the time it takes to deliver finished buildings without sacrificing quality has never been more important.

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## U.S. Disaster Costs Doubled in 2020, Reflecting Costs Of Climate Change

### News Highlights

- Data from the reinsurance company, Munich Re indicates that damages from the catastrophes in the US during 2020 increased by 100% compared to 2019.
- Munich Re's Chief Climate Scientist said in an interview with the NY Times, pointed to continued development in high-risk areas and indicated that "Climate Change plays a role in this upward trend in losses".
- \$95B in damages last year. Including a record breaking 30 storms this past Hurricane Season yielded \$43B in losses from Named Storms in 2020. Hurricane Laura- largest at \$13B. \$16B in Wildfire losses- across the western states, including 4,000 homes damaged or destroyed in Oregon.
- Much of this damage was insured. However, we cannot just rely on rebuilding, we need to focus on preventing this damage. Developing Countries damages are often not insured which makes it harder to bounce back.

**TSiB's Talking Point:** Climate Change is real and is wreaking havoc in the United States, causing Billions in damage. Insurance allows us to rebuild but this model may not be sustainable.

[Click here](#) to read further about this.

## Hospital Staff Revived A Man's Stopped Heart- And He Sued!

### News Highlights

- A man went into a hospital for a simple procedure and suffered a heart attack while in the restroom. He was revived and after he woke up- he "became profoundly offended and inconsolably angry".
- The hospital staff did not follow his DO NOT RESUSCITATE Order and was sued for "wrongly prolonging his life". He ultimately lived an additional two years. He won.
- The Affordable Care Act allows Medicare to pay doctors for discussing End of Life Options.
- At this point, only nine states and DC allow Terminally Ill and Dementia patients to obtain a prescription for a lethal drug to end their suffering.

**TSiB's Talking Point:** As American's live longer, the issue of End-of-Life Directives will be pushed front and center. American's will demand their rights to control their own destinies.

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## Contractual Indemnification In Labor Law §§ 240(1) and 200 Cases & the Different Applications Between Construction Contracts & Leases

### News Highlights

Indemnity Agreements in Construction Contracts and Leases are an important way to shield the Indemnitee (getting) from their own negligence in the execution of a contract by the Indemnitor (giving). However, the indemnification is not always straight forward, and it is important to know if there is a specific law that prohibits such protection.

New York's General Obligations Laws, GOL § 5-322.1 (construction) and GOL § 5-321 (Real Estate) are laws that if not dealt with correctly can in effect, void the protection you seek.

- *(GOL) § 5-322.1 prohibits a party involved in the construction, alteration, maintenance, or repair of a building from contracting with another to indemnify or hold it harmless for injuries arising out of its own negligence*
- *GOL § 5-321 does not prohibit a party to a lease from being indemnified for its own negligence. Rather, it only prevents a party from absolving itself from liability to the injured party.*

The commonality of the two statutes are the principal of indemnity and negligence. The difference between the two is how the contract will be interpreted to indemnify party in light of their negligence.

**TSIB's TALKING POINT:** Indemnification for your own negligence is against NY General Obligation's law. You can overcome this hurdle by adding simple verbiage such as, "to the fullest extent permitted by law", to your Indemnity Agreement. This results in partial indemnification. The "saving phrase" will result in the courts determining if any degree of negligence exists, thus allowing partial indemnification.

**TSIB's TALKING POINT (Risk Management):** Contractual Risk Transfer has three legs. The Additional Insured, The Waiver of Subrogation and the Indemnification and Hold Harmless Agreements. Coverage should be sought on a primary and non-contributory.

In addition to indemnity provisions, clients should be careful to review additional insured (AI) wording as well. Bear in mind not all AI forms are created equal. Verbiage such as "arising out of" or "caused by" vary in broadness of scope with arising out of the broader of the two.

[Click here](#) to read further.

PLEASE NOTE: This article applies to New York; each state may have their own set of statutes that may apply differently to the contract. When negotiating contract wording, please consult an attorney.

