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President's Message

TERRY DOHERTY, CFEI
President, OIAA

March Madness has started, the clocks have changed, and the birds are coming home. So much is happening and has happened lately. I feel like every month I could write about tragedy and terrible things happening around the globe. I would be remiss if I didn't mention how my heart hurts every time, I turn on the news. So I am turning off the news today and I want to tell you about some great things that have happened in March and that are coming up in April and May.

The OIAA and TIAA are really great in so many ways, we have such great people in our organization. As a very proud Irish Canadian, I must tell you that this years OIAA St. Patrick's Day party was over the top. We have the best vendor partners we could ask for, Winmar Kingston built an amazing stage for this event and even had it painted up for us in time. We had other sponsors such as, Rebuild-Response, Arcon Forensic Engineering, Hudson Restoration, Xpera Investigations, OnSide Restoration, and our very own TIAA, who sponsored all of the food that was prepared by Go Italian and Chef Jess.

The night was amazing, we had the "Celtic Kitchen Band" performing throughout the night. Singing and dancing and we even had Lynn from Malcolm Bros., on stage playing the spoons with the band on more than one occasion. I can't thank everyone who attended, sponsored, and helped make this event the success it was.

We are only days away from our annual OIAA Claims Conference, all of the speakers are in place. Every booth is sold, and all of the prep work is nearly done. A huge thank you to Kyle Case, Jennifer Brown, Christine Andrews, and all of the other team members who have worked tirelessly on making this the event of the year. We have another great line up of speakers, and we once again have the Career Fair and Employer Fair happening alongside this one day extravaganza for the insurance industry.

Please make sure you stop by all of our vendors, speak with new perspective colleagues as we mix and mingle throughout the day. I will be taking my normal position on stage doing the Live to Air "WP Radio" insurance podcast. If you are looking for a little downtime and want to hear from some interesting people, please stop on by and have a listen. I will be live from 10:30 to 3:30.

Last but not least, we have our Annual Golf Day happening on May 31, 2024, at Cardinal Golf and Country Club. Tickets and sponsorship open up on April 1, 2024, with only 144 spots for golfing and little opportunity to be a part of the OIAA's last event of my presidential year. And what a year it has been, I will be doing a full recap in the June edition as I say "Goodbye" to the OIAA Executive and join an esteemed alumnus of Past Presidents.

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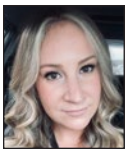

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Without Prejudice

Official Journal of the Ontario Insurance Adjusters Association

OIAA

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ISSN 0833-1278

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1:30 - 2:30 PM ..... Panel discussion in partnership with CABIP and LINK

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SABS Priority Disputes 101

Reflection on Deflection

By: Daniel Strigberger | Oct 29, 2019 | Coverage, Priority Dispute

In our first article in the Priority Dispute Series, I provided an overview of Ontario's accident benefit priority dispute scheme and the process necessary to pursue and dispute priority.

To recap:

1. The priority pecking order is found in subsections 268 (2) to (5.2) of the Insurance Act.
2. All priority disputes are resolved in accordance with a Regulation named Disputes Between Insurers, Reg. 283/95.
3. The first insurer that receives a completed Application for Accident Benefits must handle and pay the claim pending the resolution of any priority dispute.
4. The insurer pursuing priority must give the other insurer(s) a priority dispute notice within 90 days after it receives a completed Application. Failing to do so will bar the dispute unless the insurer proves that the saving provisions under the Regulation should apply to save it.
5. If the insurer given notice wants to implicate another insurer, it must give that other insurer a priority dispute notice.
6. The insurer paying benefits can ask the claimant to submit to an examination under oath, to assist in its priority investigations.
7. If the insurers cannot agree on priority, the dispute is resolved in a private arbitration, pursuant to the Arbitration Act, 1991. Any appeals are resolved in court.

In this article, I review the insurer's obligations to respond to a completed application for accident benefits, pursuant to section 2.1 of the Regulation. As discussed below, section 2.1 is perhaps the most important section under the Regulation, as it seeks to shield claimants from the priority dispute scheme, which is the underlying intent of the entire priority dispute scheme.

Section 2.1: The Younger Brother of Section 2

To understand and appreciate the meaning behind section 2.1, it is necessary to review its predecessor.

Prior to September 2010, there was no section 2.1. There was only a section 2, which read like this:

2. The first insurer that receives a completed application for benefits is responsible for paying benefits to an insured person pending the resolution of any dispute as to which insurer is required to pay benefits under section 268 of the Act.

The wording in section 2 appeared to be relatively straightforward: The first insurer who received a completed application was required to pay the benefits pending the resolution of a priority dispute. The purpose and intent of section 2 was to ensure that injured claimants received their benefits in a timely manner without getting caught with no benefits while insurers disputed priority.[1]

However, shortly after the Regulation came into force, some insurers were still refusing to pay benefits. This was on the basis that, in their respective opinions, there was no coverage/priority for the claims. This would usually happen when the claimant submitted an application to an insurer under a policy that was not in force at the time of the accident. In a creative play on words, those insurers would argue that they were not "insurers" under section 2 because they did not have a policy that could respond to the claim. It is somewhat interesting to read these older cases and try to understand how an insurance company can argue that they are not an "insurer" when they clearly are an "insurer", as that word is not only defined in the Insurance Act to include an insurance company, but also there was no question that these insurers were insurers!

But I digress. From the insurer's perspective, the argument was that there was no policy in force, so it could not be compelled to pay any benefits under a policy that did not exist anymore. This makes sense and, as discussed in the first article, would be a valid position under other, non-auto insurance policies.

Unfortunately, what happened in practice was that the claimant would apply to Insurer A for benefits, and Insurer A would deny benefits on the basis that there was no policy. The claimant would then apply to Insurer B (for example, the insurer of the vehicle they were in). Insurer B would refuse to respond to the claim on the basis that it was not the first insurer to receive a completed application, relying on the plain wording of section 2. The claimant would return to Insurer A and would be told "there's no policy". The claimant would be in a black hole.

The act of refusing to accept an application for accident benefits became known in the industry as "deflection". Still used today, "deflection" could happen in different ways. For example, in some cases insurers refuse to accept an application from a claimant, leaving the claimant with no other choice than to apply to another insurer. In other cases, the insurer would assist the claimant with completing the application and then direct the claimant to send it to another insurer (I had a case once where the road adjuster sat with the claimant at her dining room table, completed the application for her, and then gave her an envelope that was already addressed to another insurer). In some cases, the insurer would refuse

to send the claimant an application form, prompting the claimant to apply elsewhere.

Whatever the case was, the term deflection was used when an insurer did anything to cause the claimant to apply somewhere else. The purpose and intent of section 2 would be frustrated.

Case law on section 2 developed shortly after,[2] starting in 1998 with the seminal case of Allstate v. Brown[3]. This was the first case where the term "sufficient nexus" was used. In a nutshell, the Divisional Court upheld that an insurer's obligations under section 2 were triggered as long as there was a "sufficient nexus" between the claimant and the insurer. The idea was that the nexus test would cover a wide spectrum where, on one end there was absolutely no connection between the claimant and the insurer and, on the other end, the connection was so obvious (for example, the claimant was the named insured on a valid policy with that insurer).

The Nexus Test – What Nexus?

Having said that, almost every decision that followed Brown found that there was a sufficient nexus in the circumstances of each case. For example, in *Her Majesty the Queen (MVACF) vs. Royal & SunAlliance, Economical Insurance, CGU Insurance Company and Zurich Insurance* (2003), Arbitrator Jones found a sufficient nexus existed where the claimant applied to an insurer under a policy that had expired some four years before the accident.

Later cases also clarified that the sufficient nexus test is a subjective test, determined through the eyes of the claimant. The question is whether the claimant's application to the insurer was random or arbitrary. Put another way, the question is whether the claimant, before applying, turned her mind to the question of whether the insurer would be required to pay accident benefits in the circumstances. An example of arbitrariness (used a lot before smartphones became mainstream) was where the claimant opened a telephone book[4] and randomly chose an insurer's name from the listings. The consensus was that the application would be arbitrary. Otherwise, it didn't matter if the application was sent to an insurer who had never issued such policy (for example, where the claimant applied under a fraudulent/fake policy). So long as the claimant turned their mind to where the application was going and why, a nexus was found.[5]

The most recent and authoritative nexus decision is Zurich v. Chubb[6]. In this case, the claimant rented a vehicle and was involved in an accident. She first submitted a completed application to Chubb, who had issued an accident policy (not an automobile policy) to the rental company. Chubb denied the claim on the basis that there was no Chubb automobile policy at play. Chubb was correct: It was Zurich that insured the rental company under an automobile policy. To its credit, Zurich eventually started paying the claimant benefits and then pursued a priority dispute against Chubb.

The arbitrator held that there was no nexus between the claimant and Chubb to trigger the insurer's obligations under section 2. In his view, no nexus existed because Chubb had never issued an automobile policy to either the rental company or the claimant.

On appeal, the Superior Court judge disagreed and held that there was a sufficient nexus between the claimant and Chubb to trigger the insurer's obligations under section 2. Of note, the appeal judge found that the

Chubb policy was an automobile policy.

On further appeal, the Court of Appeal disagreed with the Superior Court judge and held there was no nexus in the case because the Chubb policy was not an automobile policy. The Court found that Chubb was, at best, a "non-motor vehicle liability insurer" (i.e., not an automobile insurer). Although the claimant's application to Chubb was not random or arbitrary, there was no nexus between the claimant and Chubb because there was never an automobile policy at play.

However, Juriansz J.A. dissented, finding that there was a sufficient nexus between the claimant and Chubb. He disagreed that a distinction should be drawn between an automobile insurer and a non-automobile insurer, especially since Chubb did regularly write motor vehicle liability policies in Ontario. Chubb was not a "non-motor vehicle liability insurer" in the broad sense. Juriansz J.A.'s opinion was that the Court's decision was inconsistent with the jurisprudence to date on nexus.

The Supreme Court of Canada agreed with Juriansz J.A. and allowed the appeal. The end result was that there was a sufficient nexus between the claimant and Chubb, requiring the insurer to respond to her claim pending the outcome of a priority dispute with Zurich.

If it wasn't already clear (as mud), the Zurich decision highlights how low the nexus test really is. There will always be a "nexus" unless there is evidence that the claimant's application was random or arbitrary. Accordingly any auto insurer who refuses to respond to an application for accident benefits and pay benefits does so at their peril.

What Completed Application?

Nexus issues aside, the obligation under section 2 was triggered when the insurer received a "completed application". Unfortunately, the Regulation did not define the term "completed application". Neither did the SABS. Section 32 of the SABS required the insurer to send a potential claimant the appropriate application forms, which would include an OCF-1. But otherwise it was somewhat unclear whether a completed application meant a completed OCF-1.

The "completed application" issue was first addressed at the Ontario Insurance Commission (predecessor to FSCO). Arbitrators had held that an application does not need to be on any specific form. An insurer was deemed to have received a completed application for benefits if the form (letter or other form) provided sufficient particulars to assist the insurer to identify the benefits that an applicant might be entitled to receive[7]

In Liberty Mutual v. The Commerce Insurance Company (2001, Guy Jones), Arbitrator Jones adopted the same reasoning and found that an insurer is deemed to have received a completed application once it received enough information to process the claim. The form used was irrelevant. This decision was upheld on appeal[8] and followed in a number of cases[9]

In short, before September 2010, an insurer was deemed to have received a "completed application" when it received enough information about the claimant to process the claim. There was no need to receive a completed OCF-1.

We Breached Section 2: So What?

Section 2 required the first insurer who received a completed application to respond and pay the claim, pending the outcome of a priority dispute. However, it did not contain any guidance on the consequences of breaching the provision.

In *Liberty Mutual*, it was The Commerce who had breached section 2 by refusing to respond to the claimant's application. Subsequently, the claimant applied to Liberty Mutual, which started handling the claim. Liberty Mutual then realized that priority would lie with The Commerce. Unfortunately for Liberty Mutual, it had given The Commerce a priority dispute notice past the 90-day deadline in section 3. The Commerce argued that Liberty Mutual's notice was late and that accordingly, the dispute was barred.

Arbitrator Jones disagreed, finding that it was not open to The Commerce to rely on Liberty Mutual's breach of section 3 when it had first breached section 2. What followed was a principle that an insurer who breached section 2 could not raise a late notice defence against the insurer who had received the application essentially because the first insurer refused to accept it.

But in many cases, the insurer who received the second application and started paying benefits did manage to give a priority dispute notice to the deflecting insurer within the 90 days. Also, in many cases, the deflecting insurer was not the priority payor on the merits of the case. For example, if Insurer A actually didn't have a valid policy in force at the time of the accident and refused to respond to the claim, the claimant would apply to Insurer B. If so, Insurer B would lose its priority dispute because it would never be able to prove that the claimant had recourse first against Insurer A. In other words, Insurer B would have priority over Insurer A on the merits of the claim.

So, what was Insurer B to do? It could:

1. Refuse to accept the claim on the basis that it was

the second insurer to receive the application (I call this the "High Risk" option); or
2. Accept the claim and then pursue priority against Insurer A (I call this the "Low Risk" option).

The problem with #2 was that, as noted above, Insurer B would lose the priority dispute because there was actually no coverage for the claimant with Insurer A. It would have no remedy against Insurer A and, put another way, Insurer A would get away with its breach of section 2 without penalty.

Arbitrator Bruce Robinson tried to deal with this issue in Kingsway v. Ontario (MVACF), finding that the deflecting insurer (Kingsway) would be saddled indefinitely with the claim because it had breached section 2 of the Regulation. However, the appeal judge held that it was not appropriate to sanction Kingsway like this before determining whether Kingsway would otherwise be liable to pay benefits to the claimant. On further appeal, the Court of Appeal agreed with the appeal judge and held that before an arbitrator could compel Kingsway to handle the file forever, he would first need to determine whether Kingsway had a valid policy in force at the time of the accident (i.e., that the claimant would be able to claim benefits from Kingsway):

1. If there was a valid policy, Kingsway would have priority and it didn't much matter whether it had breached section 2.
2. If there was no valid policy, it was then open to the arbitrator to decide the appropriate remedy to impose in the circumstances of the case. In doing so, the Court directed the arbitrator to consider not only Kingsway's breach of section 2, but also Kingsway's breach of section 3 of the Regulation (not giving MVACF a priority dispute notice within 90 days after it received a completed application).

In a somewhat unfortunate turn of events, Arbitrator Robinson held that there was a valid policy in force at the time of the accident and that Kingsway had priority over the Fund. I say this is unfortunate because had he found that there was no valid policy, we might have seen a decision in 2007 or 2008 determining the appropriate remedy in light of a breach of section 2 and 3.

Section 2.1: A More Robust Section 2

Section 2.1 applies to accidents occurring on or after September 2010. Recall that section 2 contained one provision?

Section 2.1 contains 8:

2.1 (1) This section applies in respect of benefits that may be payable as a result of an accident that occurs on or after September 1, 2010.
(2) An insurer shall promptly provide an application and any other appropriate forms in accordance with the Schedule to an applicant who notifies the insurer that he or she wishes to apply for benefits.

The purpose of this subsection is to make sure insurers send a blank application and any other appropriate forms to a potential claimant. Of note, a new section 0.1 of the Regulation now defines "application" to mean "an application for accident benefits (OCF-1) approved by the Superintendent for the purposes of the Schedule".

(3) The application provided by the insurer must

include the insurer's name, mailing address and telephone and facsimile numbers.

The purpose of this subsection is to make it clear to the claimant that if they choose to submit the application to the insurer, they can do so. It is also meant to deter an insurer from providing application forms addressed to other insurers, or taking any steps to interfere with the claimant's right to apply to that insurer (it might be harder for an insurer to deflect an application if it is addressed to them).

(4) The applicant shall use the application provided by the insurer and shall send the completed application to only one insurer.

This subsection seeks to avoid multiple applications to multiple insurers, which among other things makes determining who received it first somewhat tricky. Unfortunately, we still see claimants applying to more than one insurer.

(5) An insurer that provides an application under subsection (2) to an applicant shall not take any action intended to prevent or stop the applicant from submitting a completed application to the insurer and shall not refuse to accept the completed application or redirect the applicant to another insurer.

This subsection deals directly with deflection practices.

(6) The first insurer that receives a completed application for benefits from the applicant shall commence paying the benefits in accordance with the provisions of the Schedule pending the resolution of any dispute as to which insurer is required to pay the benefits.

This subsection mirrors section 2, with some subtle changes in wording. Note that section 0.1 also defined "completed application" to mean "a completed and signed application". Together with the definition of "application", it is clear that a "completed application" now means a completed and signed OCF-1. This significantly narrows the meaning of "completed application" that was applied in the section 2 era. It likely means that the old cases on "completed application" have limited precedential value now to the extent they meant that an application did not need to be in any specific form to trigger an insurer's obligations under section 2 of the Regulation.

Having said that, a signed OCF-1 could still be incomplete. In 2012, the Court of Appeal[10] had a chance to discuss the meaning of "completed

application" in the context of a late application under section 3 of O. Reg 283/95 (future article!). The Court held that a "completed application" is one that is either genuinely complete, functionally adequate for its legislated purpose, or deemed complete based on the insurer's actions. Arbitrator Novick applied this reasoning to a post-2010 accident case in RBC v. ACE INA (2018) and found that a signed OCF-1 was not complete because two relevant (in the circumstances of that case) boxes on the form were left blank.

(7) An insurer that fails to comply with this section shall reimburse the Fund or another insurer for any legal fees, adjuster's fees, administrative costs and disbursements that are reasonably incurred by the Fund or other insurer as a result of the non-compliance.

This subsection created a remedy in the event an insurer breached section 2.1.

(8) In subsection (7),

"insurer" does not include the Fund.

Much of the section 2 case law continues to apply under the new section 2.1. The nexus test remains the same. As noted above, the term "completed application" is now defined, but there will be issues as to whether an application is "completed" for the purpose of section 2.

There is some debate as to available remedies for breach of section 2.1. Feel free to contact me directly for my thoughts on this issue.

Takeaways

Section 2 was the most important provision under O.Reg. 283/95 because it was meant to ensure that injured claimants were not caught in an endless black hole while insurers disputed priority. Arbitrators and judges repeatedly stressed that insurers were supposed to "pay now, dispute later". And still it is quite remarkable the number of times insurers would refuse to respond to applications for benefits on the basis that there was no coverage under their policies.

Section 2.1 tried to enhance and enforce the obligations under section 2 by creating step-by-step rules for the application process, starting with first contact up to receipt of the application. The goal is still to make sure injured accident claimants receive benefits as quickly as possible and to protect them from disputing insurers.

Insurers who write and sell automobile insurance in Ontario must comply with section 2.1. Failure to do so will often cost more than accepting the claim and pursuing a priority dispute.

Stay tuned for the next article in this series.

[1] Kingsway General Insurance Company v. Ontario, 2007 ONCA 62 (CanLII), http://canlii.ca/t/1qdb0

[2] For an excellent review of the nexus test, and the interplay between section 2 of the Regulation and section 32 of the SABS, see Vieira v. Royal & SunAlliance and Chubb, (2005), (FSCO Appeal 3616, P04-00016)

[3] 1998 CanLII 18877 (ON SC)

[4] See https://en.wikipedia.org/wiki/Telephone_directory

[5] See Valauskas v. Wawanesa (2009), (FSCO Appeal 3579, P07-00021); Danilov v. Unifund (2009), (FSCO Arb 809, A07-001441)

[6] Zurich Insurance Company v. Chubb Insurance Company of Canada, 2014 ONCA 400 (CanLII), http://canlii.ca/t/g6vrk, rev'd 2015 SCC 19 (CanLII), http://canlii.ca/t/gh85t.

[7] See H'ng v. Allstate, [1997] OICD No. 34, aff'd on appeal.

[8] [2001] O.J. No. 5479 (SCJ). The Commerce arbitration decision provides a detailed review of the "completed application" and nexus issues.

[9] For example, see Valauskas v. Wawanesa (2007), (FSCO Arb A05-B001749).

[10] Ontario (Finance) v. Pilot Insurance Company, 2012 ONCA 33 (CanLII), http://canlii.ca/t/fpp37

Daniel Strigberger

Daniel loves coverage. Want to know if the "your work" exclusion applies? Ask Dan. Want to know if a "house" is a "home"? Ask Dan. Want to know the best toppings to cover a pizza? Don't ask Dan: He can't eat gluten. But he does digest various insurance policy definitions, wordings, and exclusions without any heartburn.

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Chapter Spotlight

Get to Know the...

HAMILTON CHAPTER

OIAA Hamilton President's Message

Greetings from beautiful Hamilton Ontario!

It has been an exciting and busy year for our chapter. We've added some new faces to the executive team and held several fun events - our annual golf tournament, bowling, Christmas party, wine tasting and more.

These events aren't just for marketing, networking and having fun, each one has been a significant fundraising opportunity for local charities. This year we have proudly supported the local Ronald McDonald House at McMaster Children's Hospital. Giving back to the community has been one of our driving principles at our chapter and our group is proud to have been able to support such great local organizations.

None of these events would be possible without the support from sponsors and the local insurance community - we truly appreciate everyone coming together. They also wouldn't have been possible without collaboration from our neighboring chapter in Niagara who we have done some joint ventures with.

As we turn the page into spring, we look forward to new opportunities and preparing for the next round of events. We look forward to seeing you again and supporting the local insurance industry!

We would also like to put the call out to anyone interested in joining our chapter. Please reach out to us at info@oiaahamilton.ca for more information if you are curious.

Thank you for your continued support of the OIAA Hamilton chapter!

Aidan McCardle
President
Hamilton Chapter

Chapter Spotlight

A look at the...

HAMILTON CHAPTER HOLIDAY PARTY

Chapter Spotlight

A look at the...

HAMILTON CHAPTER GOLF TOURNAMENT

Misson Experience

$1000 Donation

See first-hand how RMHC®SCO helps families. Come for an immersive House tour and then roll up your sleeves and help our culinary team prepare the dinner that you have adopted for the entire House! This social in-person engagement is a great team building experience and has a lasting memorable impact for everyone involved.

Mission Experiences Tuesdays & Thursdays.

Mission Experience Itinerary

12:30 PM	**LUNCH** With your team *(If your time permits)*
1:00 PM	**HOUSE TOUR** See first-hand how we help families as a home away from home
1:45 PM	**CULINARY EXPERIENCE** Prepare dinner for 50+ house guests
3:15 PM	**DEPART WITH A SMILE** Share your photos on Social!

Mission Experience

- Recommend 4-8 people per group
- Participants must be at least 16 yrs old
- Program runs Tuesdays & Thursdays
- Timing: 12:30 p.m. - 3:25 p.m*
- Immersive house tour included
- Includes dinner adoption that night with signage in the dining room.

Limited availability. Advance booking recommended.
Some flexibility on timing

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South Central Ontario

To schedule a mission experience or to adopt a meal please contact us: 905.521.9983 ext. 2114 or email: krorison@rmhcsco.ca

Keeping Families Close®

The Adventures of an Independent Adjuster 1971-2011 (Part 1 of 2)

By: DA Smith

The young adjuster, upon his initial visit to a prestigious Bay St. law firm, provides his business card on request. Counsel is taken aback when noting the corporate identity applies to a meat packing firm.

When getting up to leave at the close of the meeting, the young adjuster closes his briefcase on his neck-tie and doesn't realize it until he assumes a standing position.

He attends a rural home positioned at the end of a long driveway, to investigate a small auto claim. An enormous outlaw biker in full colours opens the door, escorting him into a large central room festooned with Nazi flags and weaponry in glass showcases, wherein thirty or more comrades are present. Upon refusing the offer of a beer, he was cautioned by the insured party this would be interpreted as a slight and hence extremely unwise.

Some years later the adjuster attends a residential fire scene, whereupon it was determined the fire, deemed incendiary in nature, was the home of an outlaw biker. The authorities in turn identified the individual responsible as a rival gang member, who, during the course of the crime, killed two Doberman Pincher

guard dogs with a shovel. The animals were discovered in the bathtub.

The adjuster pursues recovery of damages on a small auto claim through correspondence and repeated telephone demands. The offending third party motorist attends unexpectedly at his office, unceremoniously throwing a quantity of cash on the adjuster's desk.

Upon demanding alternate payment, in the form of a cheque or money order payable to his principals, the adjuster provokes a heated discussion bordering on hostility exhibited by the attendee. However, the individual relents, returning shortly thereafter with the required money order. The following week a local newspaper reports the same individual, when brandishing a pistol on his front porch in confrontation with the police, is in turn shot to death.

The adjuster inherits control of an account involving claims arising out of short term auto rentals offered by a particular firm. He investigates a single vehicle accident, wherein the driver and sole occupant of the vehicle leaves the road colliding with the base of a street light. The adjuster reaches the driver by phone, scheduling a meeting to obtain an accident report the following day.

When the driver fails to attend, contact results in an acknowledgement from a family member, at which time it was learned the absent party had died in his sleep hours after the brief telephone discussion. Further enquiries revealed his nose had struck the top of the steering wheel during the collision. He complained of a headache to family members in the afternoon and, in an effort to seek relief, drank a quantity of rum and retired to his room, where he was discovered the next morning.

When dealing with the same account it was common to encounter day to day " fender benders" sometimes a particular lessee had more than one accident. One individual, a polite young man and ardent soccer fan, was cooperative when providing a statement on a minor loss when met at his modest apartment. Months later, the adjuster was summoned to an accident scene where an automobile carrying several people had left the road at a high rate of speed, catapulting over a guardrail, whereupon it landed on its roof in a parking lot positioned several feet below. The driver, the same soccer fan, was killed along with two other occupants. On the way to the scene the adjuster views a flatbed truck carrying what appears to be a strange load of scrap metal. It was later learned this constituted the remnants of the rental vehicle.

During an early evening social gathering high in the boardroom of a downtown office tower, a young executive verbally champions the tensile strength of the exterior glass cladding. He, on apparent impulse, suddenly throws himself bodily against the nearest window, whereupon it shatters into pieces causing him to fall over 40 stories to the ground.

The investigation reveals his body landed in close proximity to a mother having a relaxing moment with her young daughter, seated on the lawn exterior to the building.

Statements reveal the extent of horror and turmoil

ensuing in the gathering, with attendees retching and screaming. The victim was said to have enjoyed a yearly income approximating $450,000.

The call to a fire scene within a large stable reveals over fifty thoroughbreds had perished. The carcasses, for the most part intact, suggest the animals expired due to smoke inhalation. This is further exemplified when each one is brought into daylight in the bucket of a frontend loader, invariably displaying nasal deterioration rendering the appearance of melted flesh, brilliant pink in colour.

The adjuster over the years becomes involved in other livestock claims, some pertaining to business servicing the fast food industry. Commonly, power outages, resulting in the lack of ventilation, are seen to cause the asphyxiation of several hundred "Roaster" hens. Extremely high levels of ammonia gas emitted preclude a lengthy physical site examination without breathing apparatus. In instances where ventilation remains operable but " huddling" occurs, very often due to the intrusion of an owl on the upper floors of a barn, only a few perished. It is as well noted the flash of a camera causes chicken stock to retreat in moderate alarm, while one is cautioned to remove any rings or bright shiny objects positioned lower on one's person while inspecting a crop of turkeys, as their curiosity would be stimulated.

Various incidents involving animals include the impromptu attack of a family's Russian Wolf Hound on a nearby woman, exercising in a prone position on the floor in front of the television in her dwelling.

Invariably, when investigating injuries suffered by hired handlers, the claimant is reluctant to place any responsibility on the pet in their custody.

Some attacks display unbridled ferocity, such as two pit bulls escaping their pen area, running to the neighbouring property where a small pony was chased to an open shed. When questioning the attending officer, the adjuster learns the dogs were seen ravaging the collapsed equine. One is subsequently shot and the other subdued by impact of the blunt end of an axe on the back of it 's skull. Sadly, the heroic efforts of the Constable fail to save the unfortunate victim.

The spectre of death at times proves pervasive, especially when investigating liability claims pertaining to the funeral home industry. In one instance the ne'er-do-well family of a deceased elderly lady initially refuse any preparation of the corpse other than legally required. Subsequent to the burial they demand exhumation, due to a minor error of the burial site.

The deceased is seen to have been interned wearing a hospital gown and displaying a stent in the nasal passage. In attending a century old funeral home in a small town following a tornado, a deceased gentleman is seen in an open casket behind a hastily erected wall of polyurethane.

In one instance the adjuster comes upon a scenario reminiscent of a " film noir", necessitating the early morning attendance at a grave yard while mist rose among the tombstones. Making way to the area of the cremation facility and, upon entry confronted with a row of waiting caskets, the investigation commences. Enquiries reveal the prospect of successful subrogation in that a funeral home had failed to remove the pacemaker from a deceased, resulting in a minor explosion within the furnace, damaging the refractory lining.

Upon reviewing contractual data and securing statements from managerial staff, observations include the presence of an accumulation of metal prosthetic joints and a machine employed to grind remnants of bone not fully reaching a powder like state in the process of cremation.

The continuing presence of death assumes other forms, such as viewing smoke soiled handprints on

the bedroom walls of an unfortunate victim attempting to exit the area during a fire.

Both gruesome demise and dementia seem palpable when the sole occupant of a detached home creates three points of incendiary origin within his dwelling, subsequently driving his vehicle onto the front walk in wait of the fire department. On their arrival the vehicle proceeds into the flaming structure, adding a fatality to the total property loss.

Thankfully, not every day in the adjuster's itinerary proves as morose. Offhanded incidents included moderate electric shock experienced by a bank patron using the pen at the teller's window, when the connecting chain touched the partially inserted plug of an adjacent adding machine. An entire wedding party suffers food poisoning shortly after a catered reception. An apparently affluent cottage owner, suspected of impairment and accompanying domestic difficulties, goes berserk with a golf club causing significant uninsured damage. A lagoon harbouring human waste breaches it's bounds in the vicinity a trailer park. An oil delivery firm attends the wrong address, inserting 200 gallons of fuel into an obsolete fill pipe, thereby destroying all interior finishes on the lower level of the dwelling. A golf club advances a claim seeking indemnity for an advertised prize following a "hole in one" during a tournament.

The adjuster, as his colleagues can certainly attest, may have cause to visit an undesirable residence of questionable repute in the morning, followed by an exquisite mansion in the afternoon. In one former instance there is a reluctance to be seated due to the presence of flies, cat excrement and open sores on the legs of the policyholder. In another, the somewhat deranged insured leads one through narrow isles of rubbish piled high within the home, ending oddly with an array of wieners placed in a toilet bowl. In yet another, while securing a statement, the living room holds a child retching into a bowl seated by his mother, with a large German Shepard simultaneously throwing itself against the exterior of the sliding glass doors close by, with the obvious intent of attack.

In one latter instance a world weary, lonely, dispirited, sole occupant of a mansion following a break in brings to light the presence of cigar burns on an antique Indian carpet, the damage thought to be wrought by local teens. After declining an offer of fine Scotch Whisky an impromptu tour of the home becomes his insistence, whereupon the policyholder is moreover adamant in revealing the presence of hidden cash and firearms. Three luxury vehicles of identical manufacture are seen to be parked in the front drive, the first exhibiting decay and abandonment, the second moderate wear and tear, with the third being in show room condition. The gentleman encountered that day, although clearly affluent, months later suffers a close personal loss.

In summation, the adjuster, in viewing all aspects of life, perceives a common denominator escaping no one.

D.A. Smith Biography
S.J. Kernaghan Adjusters Limited, Toronto and Newmarket
Branch Manager, 1970
Adamsons Ltd. And Graham Miller Canada Ltd., 1974
Lowthian, Smith & Sharoun Insurance Adjusters Limited
1988
D.A. Smith Insurance Adjusters Limited
1994-2011

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ONTARIO, CANADA - WP Radio, the premier insurance adjusters podcast in Ontario, is excited to announce the upcoming season of guests, episodes and interviews for 2023.

The new season will feature a wide range of industry experts, including insurance adjusters, industry leaders, and policy experts, providing valuable insights and information to listeners.

"We are thrilled to bring our listeners a new season of engaging and informative content," said Terry Doherty, host of WP Radio. “We’ve been doing this for more than half a decade now and we’re still just as excited and looking forward to speaking with all of our guests every time we record an episode.”

WP Radio will continue rolling out MyKey’s series ‘Home Away From Home’, on the podcast network and will additionally be at all Ontario Insurance Adjusters Association events, recording live with guests, sponsors and other members of the industry.

In 2023, WP Radio has focused on expanding their production of branded content shows, as part of their mission to constantly grow and enhance their roster of episodes.

"We are committed to providing our listeners with the most valuable and up-to-date information in the insurance industry," said Doherty. "The new season of WP Radio will be an essential resource for anyone working in the insurance industry or interested in learning more about it."

Listeners can tune in to the podcast on all major platforms, including Spotify, Apple Podcasts, and Google Podcasts.

For more information on all branded content productions, options for sponsorship, and guest spots on interviews, please contact Kieran Doherty by phone or email.

Kieran Doherty
Executive Producer, WP Radio Podcast Network
Email: Kieran@Doherty664.com
Phone: (315) 771-8499

2024 Claims Conference Agenda & Seminar Schedule

TUESDAY, APRIL 9, 2024

12:00pm – 4:00pm.....Exhibitor arrival and booth set up

WEDNESDAY, APRIL 10, 2024

10:00am – 4:00pm..... Trade show floor open

SEMINAR **A**

9:00- 10:00 AM

Top 10 AB Cases of 2023

Presented by: Philippa Samworth, B.A.,LL.B., Partner, Dutton Brock LLP

Location
Room 104 A

Review of the Top 10 AB cases from 2023 and the impact the decisions may have on future handling.

"Philippa G. Samworth is a partner at Dutton Brock and her area of practice is in insurance defence (Accident Benefits), as well as providing Mediation and Arbitration services. Miss Samworth has a number of achievements and was retained by the Ministry of Finance of Ontario as a consultant to provide analysis and technical advice to the Ministry on its preparation and drafting of the new Automobile Insurance Legislation: Bill 59 and its regulations.
In May 1997, Philippa was appointed to the Minister's Committee for Designated Assessment Centres and chaired that Committee in 1998, 2000 and 2001-2004.
In March of 2004 Miss Samworth was again retained by the Minister of Finance to conduct stakeholder consultations and provide advice and recommendation on proposals to replace the DAC system.

Philippa is the recipient of numerous awards including:

1. First recipient of the Lee Samis Award for Excellence (Canadian Defence Lawyers);
2. First recipient of the Ontario Bar Association Award for Excellence in Insurance Law;
3. The Medical-Legal Society Award;
4. The Advocate's Society Medal.

In October of 2007 Philippa was inducted into the American College of Trial Lawyers and in 2020 Philippa was inducted into the Canadian Academy of Distinguished Neutrals (mediators.ca)."

Cont'd...

SEMINAR **B**

10:00- 11:00 AM

Location
Room 104 D

Tort Update

Presented by: M. Edward (Ted) Key, Agro Zaffiro LLP

Review of recent cases and the impact on future handling.

"M. Edward (Ted) Key practices insurance-related litigation and has appeared as counsel before all levels of courts in Ontario, handling matters through to appeal. Ted specializes in the defence of motor vehicle tort claims, product liability, personal injury, municipal liability and first party property damage matters. As well, Ted is regularly asked by clients to provide coverage opinions in relation to automobile, homeowner, CGL, and professional liability policies Ted also organizes ROKTOBERFEST which is a fundraiser for charitable causes that showcases the musical talents of the Hamilton bar and insurance industry. Save the date! October 11, 2024.

SEMINAR **C**

11:15 AM - 12:15 PM

Location
Room 104 A

How to Use Structures to Help Settle AB and Tort Claims at Mediation

Presented by: Phil R Thorpe, McKellar Structured Settlements
Rohit Trivedi – Executive General Adjuster – Liability, Allianz Commercial
Ivan Luxenberg - Malach Fidler Sugar + Luxenberg
Brent McQuestion B.A., M.A., J.D. – The Morris Law Group

Structures continue to be the gold standard for valuing Accident Benefit claims and providing tax-free paycheques to injured clients. In tort claims, they help bridge the gap by eliminating tax gross-up due to tax-free payments and preserving other valuable income-tested benefits. Do not underestimate the power of structures in creating a total cash flow that can't be matched by other investments.

Phil R Thorpe

Phil has a high level of technical expertise in the area of Accident Benefits and has been involved with structured settlements since 1994.
Before joining McKellar in 2006, Phil spent 19 years with Co-operators General Insurance Company.

Phil's casualty background and expertise in structured settlements makes him well suited for attendance at mediations and settlement meetings. His forthright manner and ease with figures has been of benefit in helping injured plaintiffs understand the value of structured settlements.

In addition, Phil has conducted many training sessions dealing with Accident Benefits and regularly conducts structured settlement training seminars. He is also a member of McKellar's Marketing and Management Committees.
When he's not working, Phil looks forward to his family vacations around the globe with his two children, and lovely wife, Suzanne.

Rohit Trivedi

Rohit joined the Allianz Claims team as Executive General Adjuster with thirty plus years of claims experience throughout North America and internationally, managing highly complex claims for GL, Excess, Umbrella, Auto and EIL risks.

He has a proven track record in providing the vision, functional leadership, and technical expertise to establish and build valuable business networks with Brokers and MGAs. He has several professional designations, including two Fellowship Majors with the Insurance Institute of Canada.

Rohit has been awarded the prestigious Fellow of Distinction Award by the Insurance Institute of Ontario's CIP Society for demonstrating excellence in the P&C industry, including areas of strategy, leadership, financial and enterprise risk management.

Cont'd...

Ivan Luxenberg

Ivan Luxenberg is a partner at Malach Fidler Sugar + Luxenberg LLP. He was called to the Ontario Bar in 1983. As a litigator, his practice was primarily focused on insurance and personal injury matters on behalf of insurers and Plaintiffs. He made the decision to become a full time mediator in 2010 and enjoys helping resolve disputes involving SABS, tort, LTD, employment, medical malpractice and other personal injury matters.

Ivan has a unique style of mediating and is known for his sense of humour and extensive collection of props. He also throws some stoicism into the mix.
In addition to mediating, Ivan also speaks at various conferences and provides guest lectures at Osgoode Hall.

When he's not mediating, Ivan enjoys drumming and performing at various gigs with his bands, as well as spending time with his wife and four kids (2 human, 2 canine).

Brent McQuestion

Brent McQuestion articled with The Morris Law Group and joined the firm as an associate following his call to the Ontario Bar in 2014. Brent practices exclusively in plaintiff civil litigation, with a strong focus on accident benefits, as well as claims resulting from auto accidents, slip and falls, and disability insurance claims.

Brent received an Honours Bachelor of Sociology degree from McMaster University, a Master of Arts degree from the University of Guelph, and his Juris Doctor degree from the University of Western Ontario. Brent is a member of the Ontario Trial Lawyers Association, Hamilton Law Association and Hamilton Medical-Legal Society.

SEMINAR **D**

11:15 AM - 12:15 PM

Location
Room 104 A

Arson

Presented by: Mazen Habash P.Eng, Origin and Cause
Clive Hubbard, Fire Investigator for the Office of the Fire Marshal
Mike Bottan, CIP, CFEI Crawford & Company (Canada) Inc.

A panel discussion with a Fire Investigator for the Office of the Fire Marshal and Private Fire Investigator where they will discuss the key differences in their roles and responsibilities then they will answer all of your burning questions.

Mazen Habash

Mazen is the president of Origin and Cause and specializes in fire investigation, electrical and electronic failures, product liability and alarm system analysis. With over 38 years of experience in the industry, he has performed over 3,600 fire, product liability and alarm system investigations. Mazen is a licensed professional engineer and designated consulting engineer, and has qualified as an expert witness in both civil and criminal courts in four Canadian provinces and in the Commonwealth of Massachusetts, USA. He is also certified at two levels by the Canadian Alarm and Security Association as an alarm technician.

Clive Hubbard

Clive Hubbard has been employed as a certified fire and explosion investigator (CFEI) by the Office of the Fire Marshal (OFM) in Ontario since December of 2013. During his time with the OFM he has investigated over 350 fires and explosions. Clive has been qualified as an expert in the origin, cause and circumstance of fires and explosions in both the Ontario and Superior Court of Justice in Ontario. Prior to joining the OFM Clive enjoyed a full career with the Halton Regional Police Service spending time in uniform, criminal investigations, and intelligence.

Michael A. Bottan

Michael A. Bottan CIP, CFEI Currently manages the GTA North and Northern Hub of offices with Crawford and Company. Starting his independent Adjusting Career, with Adjusters Canada Inc, in 1990. Mike is a graduate of the ATF fire investigation program in Brunswick Georga, along with the Crawford emerging leaders' program. Mike practices large loss adjusting, specializing in fire loss investigations. He has provided evidence at trial and led investigative teams through all lines of claims.

SEMINAR

E

1:30 - 2:30 PM

Location
Room 104 A

Finding Wellness Through Compassion In partnership with FIHT

Presented by: Tammie Kip

Welcome to "Finding Wellness Through Compassion", a transformative seminar designed to guide you on a journey to personal well-being by embracing the powerful force of compassion. During this seminar, we will embark on a holistic exploration of wellness, delving into the profound connection between self-compassion and the impact of compassion on your overall well-being – mentally, emotionally and socially. During our time together, we will explore:

- **The difference between sympathy, empathy and compassion.**
- **Why self-compassion is so important to our mental well-being.**
- **The three pillars of compassion and the things that get in our way.**
- **What compassion looks, sounds and feels like.**
- **The benefits of infusing more compassion into our lives.**

Tammie Kip, is a distinguished Insurance leader, published author and a passionate mental health advocate with 28+ years in the insurance, education, and not-for-profit sectors. Tammie has proven success in the realms of claims, digital transformation, strategic and innovative leadership, as well as mentoring and training. As the author of "Your Extraordinary Self", "Developing the Leader Within" and "Finding Wellness Through Compassion" Tammie is devoted to helping individuals and organizations achieve results by championing leaders and increasing awareness within one's self and of others.

Past recipient of the CIP Society Emerging Leader Award and noted one of the Top 35 Most Influential Women in Insurance by Insurance Business Canada, Tammie is renowned for her leadership excellence and contributions to industry growth.

Tammie currently serves as Chair of the Ethics Committee for the IIC and recently co-Founded a not-for-profit mental health organization, aiming to bridge the gap between people and mental health services while fostering a sense of community. Tammie's legacy includes past roles as Past President and Board Member of the Jennifer Ashleigh Childrens Charity and the Ontario Insurance Adjusters Association, underscoring her enduring commitment to influential leadership and community service.

SEMINAR

F

1:30 - 2:30 PM

Location
Room 104 D

Panel discussion in partnership with CABIP and LINK.

Adjusting for Cultural and Lifestyle Needs of Underserved Communities.

A panel of speakers from CABIP and LINK will explore the following; Are we pivoting our claims adjusting practices to address the cultural and lifestyle needs of underserved / underrepresented communities?

Khadisha Thornhill, CIP, TD Insurance

With a career spanning over 27 years in the insurance industry, Khadisha Thornhill embarked on this journey in May 1997 as a personal lines insurance broker. However, in the year 2000, a pivotal moment led to her recruitment into a national claims call center, marking the beginning of an eventual transition into the dynamic role of a claims specialist.

Over the course of her career, she's navigated diverse casualty claims environments, starting with a prominent independent adjusting firm. This journey led to a role at a niche specialty risk insurer where she honed her skills, evolving into a senior litigation specialist while simultaneously earning

In 2011, she seized an opportunity to contribute her expertise at TD Insurance/Meloche Monnex, initially as a senior bodily injury advisor. After two years, she was handpicked to join the Major Claims Technical Team as a Specialist, a role that has captivated and fueled her professional passion ever since.

Embracing the wisdom gained from a career in risk management she understands that perfection is elusive in this field. She's found satisfaction in the variety of roles undertaken, cherishing the privilege of continuous growth and anticipating the exciting prospects that lie ahead.

Before attaining her Chartered Insurance Professional Designation, she held RIBO and adjuster's licenses across various provinces. During her downtime, she's pursued diverse interests, obtaining certification as a spin instructor and dedicating time to coach her son's flag football team for several rewarding years. Currently, she channels her trainer expertise into the adult-use and medical cannabis space, serving as an educator.

Her multifaceted journey reflects a commitment to excellence, a passion for continuous learning, and an eagerness for the future chapters yet to be written.

Dave Dhillon, Clyde & Co Canada LLP
Dave is an experienced cybersecurity and insurance lawyer and advises insurers, commercial clients and healthcare units on their privacy and regulatory obligations following a cyber incident.

As part of his cybersecurity practice, Dave acts as breach counsel to provide immediate incident response advice while moving quickly to mitigate any potential business income losses. He works closely with commercial clients and insurers to achieve best outcomes for both.

Dave also provides coverage advice and defence to insurer clients in the financial and professional lines. He regularly works on matters involving liability of directors and officers, insurance brokers, architects and engineers, lawyers and accountants. He is also asked to provide advice on insurance policy wordings in these areas.

Called to the Bar in 2015, Dave has a B.A. from Simon Fraser University (Honours Degree. 2010), and a J.D. from the Schulich School of Law at Dalhousie University (2014).

He is proudly a founding Co-Chair of Link Canada (the 2SLGBTQ+ Insurance Networking Group).

Andrew Munroe – Sr. VP Operations
Andrew has over 25 years' experience working within the insurance industry, covering areas such as Administration/Adjudication Systems, Cost Containment, Group Health, Stop Loss, Travel Insurance, Specialty Insurance Program Management and pharma Patient Support Programs.

Responsible for managing NexgenRx's Operations along with Pharma and Payor partnerships, Andrew leads both internal and client facing teams with an objective to continually improve efficiencies. He also assists with the acquisition of clients and strategic partners such as Insurance Carriers, TPAs/TPPs, Patient Support Programs and Benefit Consultants.

When not grinding it out at work Andrew enjoys good BBQ and sports events."

Moderator: Joel Bobb, HDI Global Specialty SE – Canada
Joel's background is in compensation analytics, however he migrated to Canada and was fortunate enough to get his first exposure to insurance in 2017 working at Desjardins in the operations department. In 2018 he moved to Intact Insurance where he continued in operations before becoming an Accident Benefits Adjuster. During this time, he completed his CIP designation while also participating in multiple projects geared towards making the claims process more efficient for customers and employees alike. In 2021 Joel became a liability adjuster, handling a combination of Auto and Commercial General Liability claims. In December 2022 he joined HDI Global Specialty SE's claims department and has quickly established himself as a reliable resource to his peers and colleagues within the industry. This is evident by his involvement as an ambassador for the Young Insurance Professionals of Toronto, a volunteer for Canadian Association for Black Insurance Professionals and most recently being elected as a Toronto Delegate for the Ontario Insurance Adjusters Association.

Darcie Daines, SVP, Claims – HUB International

In the insurance industry for over 20 years, Darcie has spent most of that with HUB International. Her areas of practice have encompassed Underwriting, Service Management, Quality Assurance, and Claims. Darcie started as an auto claims adjuster with The Personal/CIBC Insurance in 1999. She was promoted to After Hours Call Centre Team Leader for the National Claims Centre and then recruited by HUB International Ontario Limited to work with their in-house claims team. Upon joining HUB, she also handled property claims adjustment. Darcie obtained her Registered Insurance Broker of Ontario license in 2005 and Chartered Insurance Professional designation in 2016. She continued to be promoted within HUB to Underwriting Team Leader, Service Supervisor and Service Manager. Darcie now oversees the Ontario Claims team, primarily based in the Toronto office. Acting as a client advocate in claims scenarios, Darcie is able to assist clients in their greatest time of need. She has received accolades from Personal and Commercial clients alike for the service she has provided them. Darcie is past chair and committee participant for the United Way campaign with HUB, a past President of Business Network International, as well as a volunteer with Ancaster Community Services.

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The K-W OIAA Battle of the Bands is Back!

... and we plan to rock the roof off of Maxwell's!

Thursday, April 25, 2024
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Please note that the ticket costs does not include food. As it is a concert venue, no food is available for purchase

Visit https://kw-oiaa.ca/upcoming-events/ to purchase tickets

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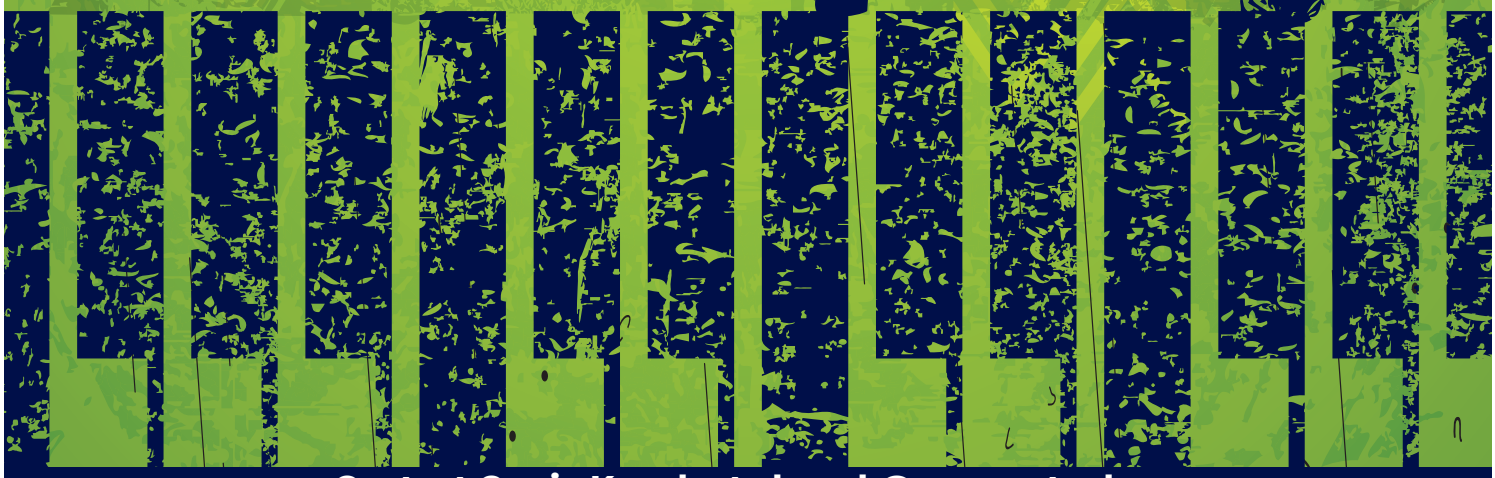
- **Rock Star Level Sponsorship at $1000 each (shout-outs in future WP editions, social media and our website as well as signage at the event) **ONLY 2 REMAINING****
- **Groupie sponsorship opportunities available at $500 each (Social media shout outs and event signage)**



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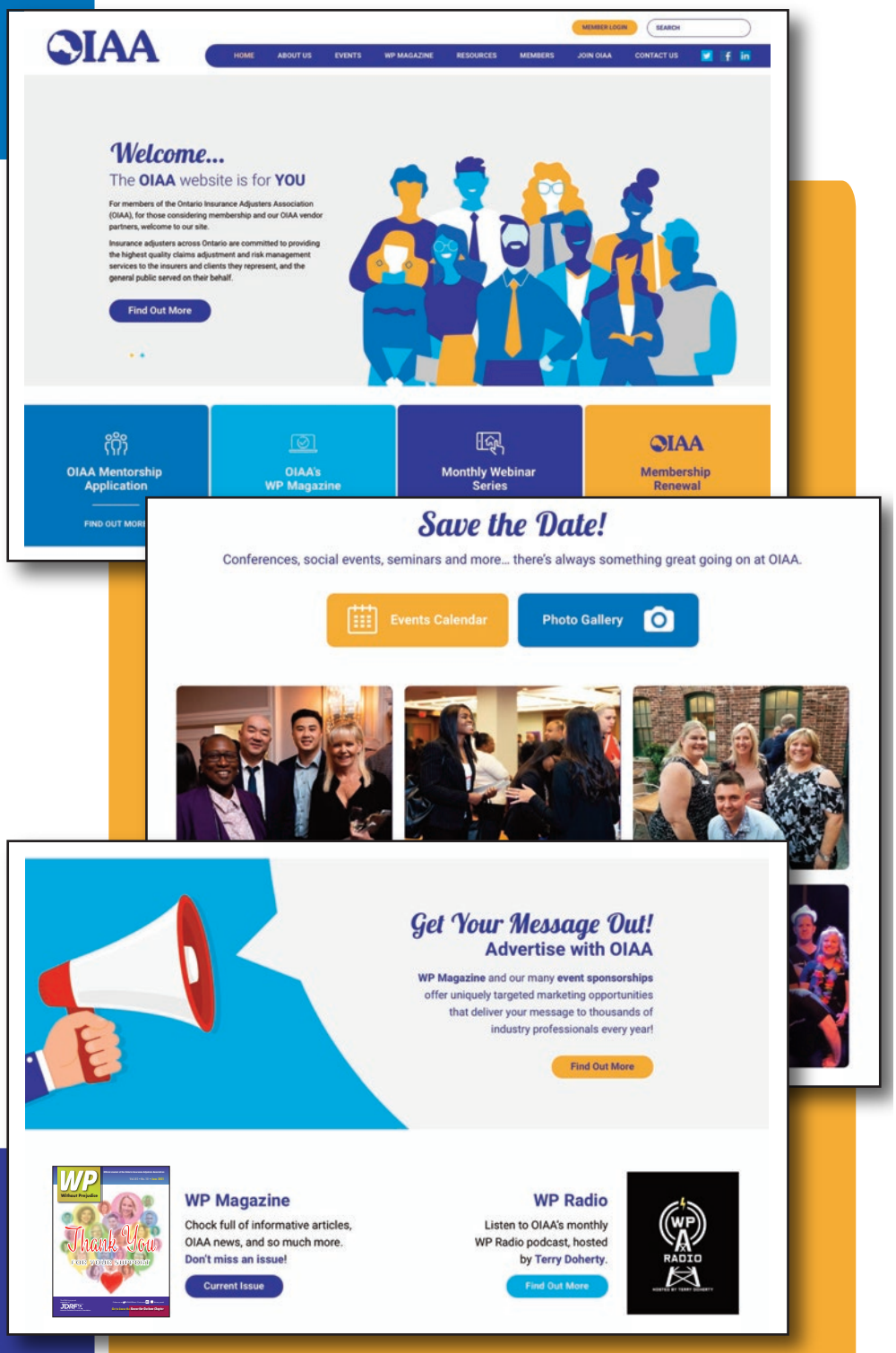

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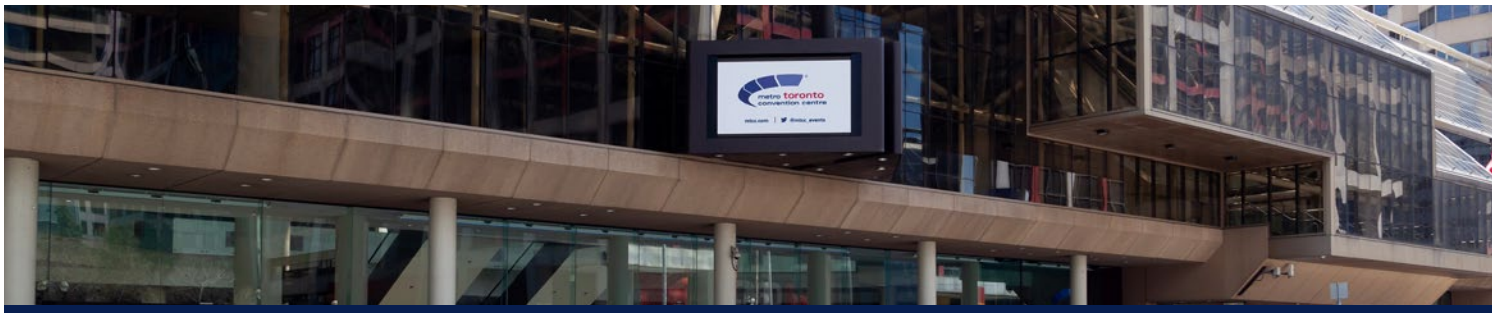

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We are seeking nominations for two Toronto Delegates. The role is a 2-year term beginning July 31, 2024.

As a Toronto Delegate you will be responsible to actively recruit, engage, and educate adjusters in the GTA as to the benefits our organization provides. You will be eligible to work on a variety of committees such as our monthly WP publication, Canada's largest Claims Conference, Holiday Party or Training and Education to name a few.

If you are an OIAA member or know of an OIAA member interested in running for this position, please contact **Kyle Case** at kyle_case@cooperators.com.

Elections will be held on **April 10, 2024**.
Go to oiaa.com for details.

Ontario Insurance Adjusters Association

GET IN TOUCH

We would love to hear from you! If you have any inquiries or comments, please contact us.

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