



# Grain Dryers: Understanding & Investigating Agricultural Systems



*Plus...*

**Air BNB Income... How should it be treated in a personal injury matter**

*and...*

**An Update on EDR "Black Box" Sources from Passenger Cars**



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**W**e are already done January; can you believe it, I can't. It feels like time is just flying by. So much happened this month. The weather has been crazy to start the year off, and I got to get on the slopes for the 1st time in 5 years. I felt pretty good, I didn't fall or crash but they were pretty small runs (just don't tell anyone).

We are in planning mode yet again, we have so many things happening in all of the chapters and the OIAA & Kawartha Durham Chapter are co-hosting a Family Fun Night in Oshawa, where the Oshawa Generals are playing the Kingston Frontenacs. I am very excited to see the Fronts and Generals play, I love College Football and the OHL, because these guys are still trying so hard to make it to the Big Show.

The players give 110% every shift and the excitement is through the roof. So please come join us on Tuesday, February 6, 2024, at 6.30 PM, in Oshawa. Details and tickets are available on OIAA.com.

We are having a 50/50 draw, a raffle for free tickets and a Jersey raffle as well. Also an all you can eat buffet in the suite.

After Tuesday, you are going to be able to buy tickets, sponsor and attend our next event. The Celtic Kitchen Party. This event is happening in the wonderful

Kingston, Ontario. We will be kicking it up at the Hardway Cider Company, on Wednesday, March 13th, doors open @ 6.30 PM.

Live music throughout the night and the Main Event is The Celtic Kitchen Party, they put on an amazing show with Traditional Celtic Rock. You are definitely not going to want to miss this event. You will have the Luck of the Irish.

Then we have our Claims Conference, Blue Jays game, and lastly our Golf Tourney, those details are just around the corner. Until February 5th, stay safe and stay warm.

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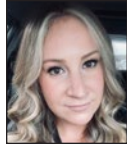
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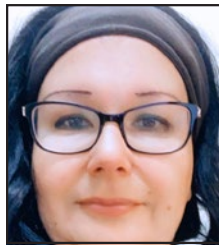
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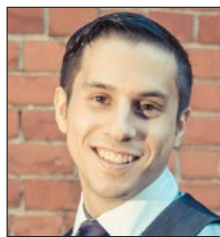


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# Grain Dryers: Understanding & Investigating Agricultural Systems

By: : Owen Langford, Fire & Explosion Investigations



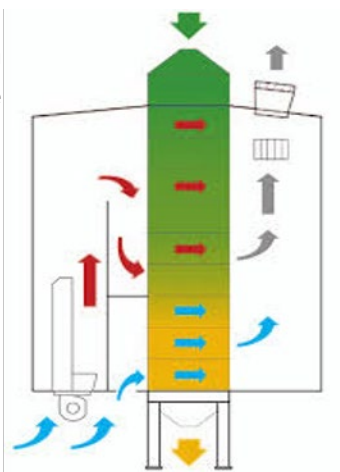
**G**rain drying is an integral part of the agricultural business - it plays a vital role in preserving grain quality during storage, thus maintaining its market value during storage and transportation. Grain dryers also allow farmers to continue harvesting operations for extended periods despite the high moisture content of grain during wet seasons.

There are multiple styles of grain dryers, most with the capability to dry all different grain varieties. Millions of tons of wheat, soybeans, and corn are dried yearly. The steady operation of this equipment through harvesting season requires proper maintenance and knowledge of these systems to avoid failures, fires, and explosions.

## Grain Dryer Operations

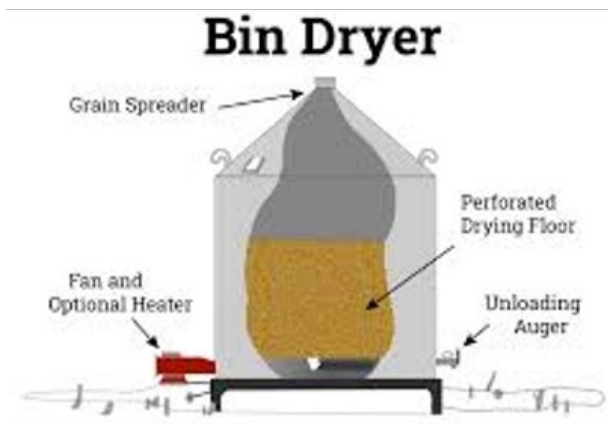
Multiple styles of grain drying cater to the individual operator's workload, budget, and size of operation.

**Continuous Flow:** Most commonly used at medium to large scale grain storage facilities where large amounts of commodity are stored. The constant flow is typically in operation for days to weeks by consistently feeding the dryer from the top and letting gravity and warm air do the work. Corn, for

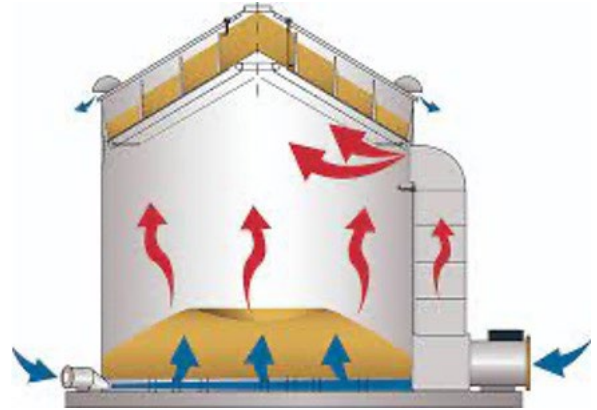


example, would be introduced at the beginning of the drying process with a moisture content between 18% and 30%, and the process would be finished with the goal of a 14-15% moisture content. Different moisture and temperature goals can be reached by varying the heat and speed at which the grain is dried.

**Batch Drying:** As the name states, these systems only process a grain batch per drying cycle. There are multiple types of batch dryers, including circulating batch dryers, high-temperature bin dryers, batch column dryers, roof dryers, and batch dryers with stirring devices. These operations require more supervision and labor per bushel than the other dryer types.



**In Storage Drying:** These drying operations have a drying chamber at the top of the storage bin. Wet grain is loaded into the drying chamber, and moisture is forced up and exhausted through roof vents through both heated and ambient air. Once the grain has been dried to the specific moisture level, it is released to the storage and cooling area.



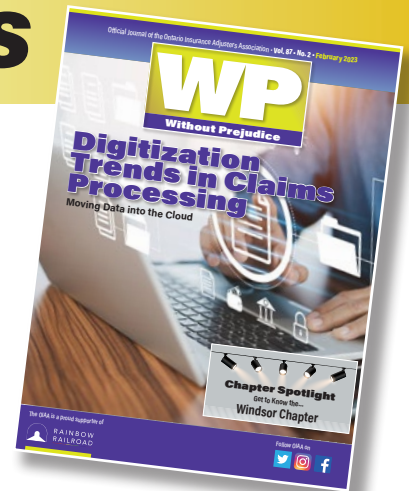
### Grain Dryer Construction

No matter the design, all grain dryers use the same principle: Heat air and force that air through the product to remove moisture and circulate cold air to return grain to a storable temperature. It is a simple concept that requires a complex control system to

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operate, monitor, and maintain safety.

**Heating System:** Burning chambers are typically fueled with either propane or natural gas. Biomass is being explored as a potential alternative, but due to supply requirements, they often cannot sustain the constant fuel requirement during busy drying seasons.

**Air Handling:** All dryers will have fans to circulate air throughout. Depending on the size of the equipment, these motors can range from 0.5 to 50hp.

**Control System:** These complex electrical designs control and monitor all aspects of the grain dryer. It comprises relay logic, motor control, temperature control, network monitoring, safety, and data collection. Often controlled by a PLC, it is responsible for the status of the grain being processed by monitoring temperature probes relaying air temperature and grain temperature. These automated systems help control flow and temperature to maintain the desired moisture goal.

**Programmable Logic Controller (PLC):** PLCs are industrial computers designed and configured to control manufacturing processes. They provide feedback on the grain drying process and monitor safety and alarms.

**Variable Frequency Drive (VFD):** Controlled by the PLC, the VFD can operate motors at precise speeds to maintain proper grain flow. In continuous flow systems, the VFD is an integral component to maintain the amount of time grain moves through the dryer's heating and cooling portions.

**Heat Monitoring:** Temperature probes provide feedback to the PLC and operator by monitoring temperature at the beginning and end of the drying cycle. The PLC also monitors temperature probes to identify unsafe temperatures that often generate fires.

## Causes of Fires & Explosions

Grain drying systems pose inherent risks, notably fires and explosions, due to combustible dust, high temperatures, and confined spaces. Understanding causes like dust accumulation, electrical failures, thermal decomposition, and spontaneous combustion is crucial for protecting people and property.

## What Is Thermal Decomposition?

The process in which organic matter undergoes chemical breakdown or decomposition due to exposure to high temperatures. Regarding corn, this involves the breaking down of organic molecules present in corn into simpler compounds when exposed to heat. The heat-induced decomposition can lead to the release of gasses and the formation of simpler substances, which, when combined with oxygen, may contribute to combustion and the generation of heat and flames.

## Common Electrical Failures

The grain-drying electrical systems are complex and are a common source of ignition. Because the equipment is installed and operated outdoors, there



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are frequent failures to be aware of. Corrosion and physical damage due to weather conditions may develop weaknesses and failure points throughout the electrical system, resulting in arcing. This equipment runs for days to weeks with constant vibration due to motors, augers, belts, moving grain, and high concentrations of airflow. Although manufacturers design equipment to resist these effects, failures occur with age and improper preventative maintenance. Loose wire connections, resulting from vibration, invite high-resistance heating and arcing. Pair that with loose cable seals and pass-throughs to electrical junction boxes, and you introduce liquids and dust into the ignition equation. Equipment in rural environments has a high probability of rodent activity. Rats, mice, and even raccoons commonly chew wires, which can result in arcing and the disconnection of sensing, which may remove safety features integrated within the equipment.

Along with chewed wires, rodents are often attracted to the heat and shelter that the dryer provides. Look for nests and other foreign materials that may provide fuel or ignition sources within the dryer. And finally, power surges & lightning. The control system comprises many electrical devices using both high voltage (600VAC) and sensitive low voltage equipment (0-24VDC). Although most systems are installed with surge protection, this equipment is susceptible to damage and failures. It is essential to inspect all control panels for signs of equipment failure and check PLC faults and alarm reports to identify the first location of potential failure.

### **Other Failures to Consider:**

- ◆ *Combustible Dust: Accumulation of fine particles, such as corn dust, which can ignite and lead to explosions.*
- ◆ *High Temperatures: Excessive heat during drying may trigger thermal decomposition and combustion.*
- ◆ *Mechanical Failures: Equipment failures, such as overheating bearings or friction, create fire conditions.*
- ◆ *Poor Ventilation: Inadequate airflow leads to the buildup of combustible gases and increased fire risk.*

- ◆ *Ignition Sources: The presence of open flames, hot surfaces, or sparks that can initiate combustion in a dust-laden environment.*
- ◆ *Lack of Maintenance: Insufficient cleaning and maintenance increase the likelihood of hazardous conditions.*
- ◆ *Flammable Gas: The release of flammable gases during the drying process, posing an explosion risk.*
- ◆ *Equipment Overloading: Overloading the drying system beyond capacity, causing stress and potential electrical or mechanical failures.*
- ◆ *Human Error: Improper operation, negligence, or inadequate training contributing to safety lapses.*

### **Grain Dryer Safety Practices**

To prevent grain dryer fires, regularly clean and maintain equipment to avoid dust buildup, ensure proper ventilation, and use effective dust management systems—train personnel on safety procedures to reduce human errors and promptly address electrical issues. Adhere to recommended drying capacities and avoid overloading the system to prevent mechanical stress and failures. These measures collectively contribute to a proactive and streamlined approach to fire prevention in grain dryers, protecting people and property.

### **About the Author**



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Owen, raised on a grain farm in Bradford, Ontario, established a strong work ethic and agricultural expertise early on. With an electrical engineering technician diploma, he embarked on a successful career as a licensed electrician. Owen's professional journey evolved further into fire and explosion investigations with Roar Engineering, where he seamlessly integrates rural

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# Air BNB Income:

## How should it be treated in a personal injury matter when calculating Income Replacement Benefits ("IRB's") or Income Losses though tort?

By: Amanda Henderson and Katrina Zalenko



Since its founding in 2008 Air BNB has grown to have a net worth of \$95.76 billion ; it has over 4 million listings worldwide – more than the top five hotel brands combined . Its market presence is unprecedented and only continues to grow.

What happens when one of a claimant's sources of income is from Air BNB for an IRB or income loss. How is this treated for the purposes of determining income and/or income losses.

Conceptually, Air BNB income is different than rental

income generated by a typical landlord/tenant relationship due to the services provided. Air BNB hosts provide an accommodation hosting service that includes fully furnished lodging, linens, cleaning services and washroom/kitchen supplies whereas a landlord generally provides a vacant property for use.

This begs the question, should Air BNB income be considered active self-employment income as if the claimant is running a business or is Air BNB income simply passive rental income?

As accountants, we typically refer to the Canada Revenue Agency (CRA) to determine how income is reported for income tax purposes which is used to guide our understanding of how to correctly interpret this income for the purposes of determining a loss of income calculation.

The CRA is not clear on whether Air BNB income is rental income or self-employment income. Rather they set out guidelines for the business owner to determine which category they fall under. Per the CRA website, the test depends on the services that are provided to the tenants:

- ◆ "In most cases, you are earning an income from your property [rental income] if you rent space and provide basic services only. Basic services include heat, light, parking and laundry facilities.
- ◆ If you provide additional services to tenants, such as cleaning, security and meals, you may be carrying on a business [self-employment income]. The more services you provide, the greater the chance that your rental operation is a business.
- ◆ The operator of a rooming or lodging house, hotel or motel would normally be considered to be carrying on a business where, in addition to the basic services that relate to the operation and maintenance of the property, extra services such as the supply of cleaning and maid services, linens, washroom supplies, dining facilities, etc., are provided for the convenience and comfort of guests.
- ◆ In most cases, the CRA will consider your income

<sup>1</sup> <https://stockanalysis.com/stocks/abnb/market-cap/>

<sup>2</sup> <https://thespaces.com/airbnb-now-bigger-worlds-top-five-hotel-brands-put-together/>

<sup>3</sup> CRA source: [https://www.canada.ca/en/revenue-agency/programs/about-canada-revenue-agency-cra/compliance/platform-economy/sharing-economy.html#toc2\\_2](https://www.canada.ca/en/revenue-agency/programs/about-canada-revenue-agency-cra/compliance/platform-economy/sharing-economy.html#toc2_2)

to be **rental income from property** if you rent space and provide only basic services such as:

- heat
- utilities
- parking
- laundry facilities

However, your income may be considered to be **self-employment business income** if you provide other services to tenants, for example:

- meals
- security
- cleaning<sup>3</sup>

When we think of rental income in the passive nature, we think of a landlord renting an empty unit to tenants. The tenants furnish the unit (in most cases), supply their own cleaning services, supplies, etc. This is typically clear cut both from the CRA's perspective and when calculating both IRB's and income losses.

Let's consider a motel. A motel is generally considered to be operating a business, income from which would be reported as self-employment income not rental income. Now let's consider the similarities between an Air BNB and motel considering the above CRA definition. Both provide fully furnished lodgings, linens, washroom supplies and cleaning services. Thereby implying that Air BNB income may be self-employment income.

However, we also need to consider the differences between Air BNB and a motel operation. The following are other considerations that need to be considered for Air BNB income;



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- ◆ What space is being rented? Is the owner renting;
  - A completely furnished home;
  - A portion of a home; or,
  - Just a room?
- ◆ Does that change what services are provided?
- ◆ Is the unit being rented only when the owners are away or is it available for the entire year?
- ◆ Does the owner's involvement in the operations play a role?
  - The owner of an Air BNB can still work full time while operating the Air BNB unit, similar to that of the landlord / tenant relationship.
- ◆ How is the income being reported for tax purposes.
  - If Air BNB income is reported as rental income, should we consider it to be passive?

Answers to the questions above, may lead you to determine that the income is passive in nature and, therefore, excluded from the analysis.

Sometimes the claimant is unable to continue to operate their Air BNB business due to their injuries such that the income or profitability is impacted. If that is the case, one may argue that the losses from this impact should be considered in the calculations despite potentially being more passive in nature. This argument is more easily considered in a personal injury tort matter where each situation is analyzed based on the impact the injuries have on the claimant and where projections are changed to reflect what would have occurred but for the incident. However, under an IRB situation, pre-loss and post loss income are defined based on a set formula with no ability to distinguish between the impact the injuries had on the income earned, except for distinguishing between passive and active income. Therefore, this impact may only be captured if the income is considered active.

## Summary

Currently, there do not appear to be any cases that deal directly with this issue and how this income should be treated is not clear, so we leave the decision in the hands of the insurers or litigators we report to; but we expect that this issue will arise in the courts at

some point. Whichever method is considered (include Air BNB income or exclude) it is important to stay consistent and understand how this will impact future matters.

If you have any questions or wish to discuss personal injury matters with a Forensic Accountant, please feel free to contact the writers or any representative at MDD Forensic Accountants.



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**Senior Manager/Vice President**

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Amanda has a wealth of experience in forensic accounting and damage quantification. She specializes in

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Amanda has a wide range of industry experience and has worked in the retail and wholesale, healthcare, real estate, restaurant, agriculture and hotel and hospitality sectors. In addition, she has been engaged on assignments related to business owners such as contractors, tradespeople, taxi drivers and teaching professionals.

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# Chapter Spotlight

## Get to Know the... WINDSOR CHAPTER

### OIAA Windsor President's Message

I would like to give thanks to Laurie Walker and Peter Riediger for their time and contributions to our chapter. We could not have pulled off our events without your help! While we had a successful year with good turnouts at our events, we are still looking for volunteers to fill our Chapter executive. Please contact Peter, Laurie or me if you are interested in joining our Chapter executive team. It would be a rewarding experience.

Our Christmas lunch had a great turnout with over 100 attending singing Christmas carols and sharing claim stories and laughs. We were able to raise \$1,000.00 for the Downtown mission and we also donated a truckload of canned food goods.

The Windsor Chili cookoff was an interesting event with a new champion from a local pub being crowned. Hooligans took the trophy, but they will be hard pressed to retain it at our next cookoff! There were many different styles of chili and all the cooks left having had a good time and empty crock pots. It was a real toot!

Our biggest event as always was our Golf Tournament. We sold out and all the holes filled with foursomes. The Drivin for Deb Tournament raised \$11,611.11 for the Windsor Hospice. It is always a fun tournament, and I am so proud of our chapter for their

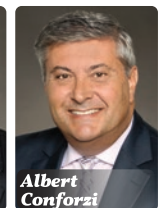
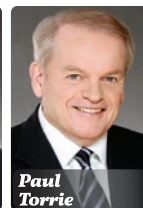
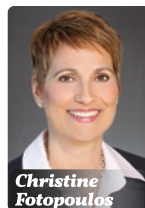
generous donations. We played at the Kingsville Golf and Country Club. The course was very challenging and in mint condition. The food was fantastic, and we will be returning July 24, 2004. Mark your calendars!

We look forward to seeing you at our events and please contact us if you have any ideas for events and or would like to help our chapter.

**William Humphrey**  
Windsor Chapter President

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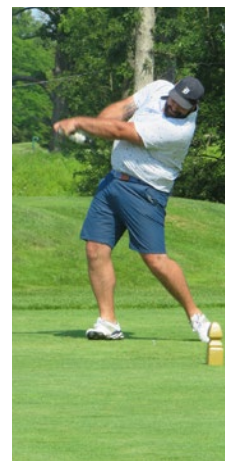
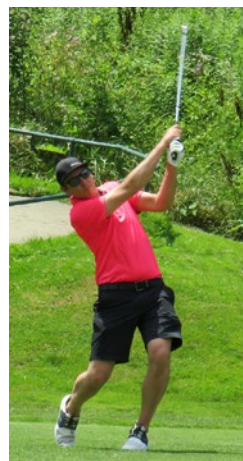
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# Chapter Spotlight

A look at the...

## WINDSOR CHAPTER GOLF OUTING



# Chapter Spotlight

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## WINDSOR CHAPTER CHILI COOK OFF





# Chapter Spotlight

A look at the...

## WINDSOR CHAPTER HOLIDAY LUNCHEON



# An Update on EDR “Black Box” Sources from Passenger Cars

By: Eric Edwards & Matthew Arbour



Passenger cars have contained electronic data within their airbag control modules (ACM) since the mid 1990's and vehicle coverage has only increased as time has gone on to the point that today, almost every new vehicle on the road can be imaged (downloaded). In addition to ACMs, passenger cars have also contained fault information or diagnostic trouble codes (DTC) information that can be imaged using diagnostic tools for many years. More recently, some passenger cars are now able to have their infotainment systems imaged. This newer infotainment data now allows investigators to determine whether there was a cell phone connected to the vehicle and whether or not it was in use at the time of an accident.

## Airbag Control Modules (ACM)

Airbag control modules (ACM) have been the main source of EDR data for passenger cars for over 30 years. Since these data sources first arrived on the scene, vehicle coverage for ACMs has increased with almost every new vehicle on the road today being supported to be imaged. The type and volume of data stored within these modules has also increased and become more sophisticated over time.

Originally, only delta-V data was available which shed some light on the actual impact experienced by the vehicle. Pre-crash data then began to appear and would normally provide approximately 5 seconds of information regarding vehicle speeds, brake status,

accelerator pedal % and more which assisted in explaining what the vehicle was doing leading up to a collision. More recently, some systems have begun to provide Advanced Driver Assistance Systems (ADAS) information and some ADAS modules are even able to be imaged through the same tools used for ACM imaging.

Pre-Crash Data, -5 to 0 seconds (Most Recent Event, TRG 6)

Time (sec)	-4.9	-4.4	-3.9	-3.4	-2.9	-2.4	-1.9	-1.4	-0.9	-0.4	0 (TRG)
Vehicle Speed (km/h)	51 (RZ)	51 (RZ)	51 (RZ)	51 (RZ)	51 (RZ)	51 (RZ)	51 (RZ)	51 (RZ)	51 (RZ)	51 (RZ)	51 (RZ)
Accelerator Pedal % Full (%)	14.5	14.5	14.5	14.5	15.0	15.0	15.0	15.0	15.0	15.0	15.0
Percentage of Engine Throttle (%)	7.5	7.5	7.5	7.5	8.0	8.0	8.0	8.0	8.0	8.0	8.0
Engine RPM (RPM)	1,400	1,400	1,400	1,400	1,400	1,300	1,400	1,300	1,300	1,300	1,300
Major RPM (RPM)	Invalid	Invalid	Invalid	Invalid	Invalid	Invalid	Invalid	Invalid	Invalid	Invalid	Invalid
Service Brake, On/Off	OFF	OFF	OFF	OFF	OFF	OFF	OFF	OFF	OFF	OFF	OFF
Brake Oil Pressure (MPa)	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Longitudinal Acceleration - VSC Sensor (m/sec <sup>2</sup> )	0.000	-0.215	-0.215	-0.144	-0.144	0.000	0.000	-0.072	-0.072	Invalid	Invalid
Yaw Rate (deg/sec)	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Steering Input (degrees)	1.5	1.5	1.5	1.5	1.5	1.5	1.5	1.5	1.5	1.5	1.5

Figure 1: Example of ACM Pre-Crash Data

Bosch Crash Data Retrieval (CDR)

Bosch Crash Data Retrieval (CDR) is a single tool consisting of software and hardware which allows the user to image ACM data either on a vehicle through its onboard diagnostics (OBD) port or by connecting directly to the module. This tool covers the majority of vehicles with ACMs which can be imaged. There are very few vehicles which are not supported by the Bosch CDR kit.



Figure 2: Bosch CDR Kit

Hyundai/Kia

Hyundai and Kia vehicles first began to have their ACMs supported to be imaged in the 2013 model year. Hyundai and Kia each have their own EDR tools known as Hyundai EDR and Kia EDR. These two tools are very similar and are required to image ACMs from Hyundai and Kia vehicles, respectively.



Figure 3: Hyundai and Kia EDR



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Subaru/Mitsubishi/Nissan

Some Subaru and Mitsubishi ACM coverage was recently added to the Bosch CDR tool, however, there are some older model Subaru and Mitsubishi vehicles which require special tools to image ACM data.

Many Nissan vehicles which are not listed as being covered within the Bosch CDR tool are able to have their ACMs imaged by Nissan.

Jaguar/Land Rover

Jaguar and Land Rover have taken the approach that to access data from their ACMs you need to contact them directly. They will then image data from the vehicle itself or will ask to have the ACM sent to them for imaging.

Tesla

Tesla vehicles have their own EDR tool which is used to image data from their ACMs.

Infotainment Systems

The term “infotainment systems” refers in general to the equipment that is usually found in the center of the dashboard-mounted touch screen systems which allow access to climate control, radio controls, navigation, and other similar systems. Some of these systems have the ability to store data related to phone usage, text messages, GPS location tracking, hard brake type events and more. Each vehicle OEM provides differing types of data and coverage. Some vehicles are supported to have their infotainment systems imaged and some are not.

4/16/2019 12:38:13 PM	Local	17343238881	+18002032841	[Auto-Play] The driving experience is just back to you faster.	BTStamp_20190419_140320_726
4/16/2019 1:36:58 PM	Local	17343238881	+12089681263	One minute please.	BTStamp_20190419_140320_726
4/16/2019 10:56:57 AM	Local	17343238881	+19415440285	Radio Blast will be out shortly.	BTStamp_20190419_140320_726

Figure 4: Example of Infotainment Text Message Data

SEAT BELT EVENTS							
EVENT TIME	SEVERITY	ACTION	DATE TIME	TIMESTAMP TYPE	LATITUDE	LONGITUDE	ALTITUDE
Seat Belt	Seatbelt Reminder is True	Is buckled and/or detection activated	5/20/2019 10:51:16 PM	Local	42.231177	-83.486023	
Seat Belt	Seatbelt Reminder is True	Is buckled and/or detection activated	5/20/2019 7:37:34 AM	Local	42.231168	-83.486027	
Seat Belt	Seatbelt Reminder is True	Is buckled and/or detection activated	5/20/2019 7:38:47 AM	Local	42.231321	-83.486071	
Seat Belt	Seatbelt Reminder is True	Is buckled and/or detection activated	5/20/2019 7:39:47 AM	Local	42.231321	-83.486071	
Seat Belt	Seatbelt Reminder is True	Is buckled and/or detection activated	5/20/2019 8:06:24 AM	Local	42.231321	-83.486071	

Figure 5: Example of Infotainment Seat Belt Data

HARD BRAKING EVENTS							
EVENT TIME	SEVERITY	ACTION	DATE TIME	TIMESTAMP TYPE	LATITUDE	LONGITUDE	ALTITUDE
Hard Braking	Hard Braking: Wheel speed > 41.2 MPH, Decel > 0.45 Gs (implied)	Above > 0.45 Gs	5/10/2019 2:13:16 PM	Local	42.230851	-83.4868	
Hard Braking	Hard Braking: Wheel speed > 37.3 MPH, Decel > 0.55 Gs (implied)	Above > 0.45 Gs	5/10/2019 2:13:17 PM	Local	42.230851	-83.4868	
Hard Braking	Hard Braking: Wheel speed > 26.5 MPH, Decel > 0.55 Gs (implied)	Above > 0.45 Gs	5/10/2019 2:13:17 PM	Local	42.230851	-83.4868	
Hard Braking	Hard Braking: Wheel speed > 25.4 MPH, Decel > 0.45 Gs (implied)	Above > 0.45 Gs	5/10/2019 2:13:17 PM	Local	42.230851	-83.4868	

Figure 6: Example of Infotainment Hard Braking Data

Currently, software and hardware provided by the Berla Company is the primary tool for accessing data from infotainment systems. Some systems can be imaged directly through a USB port within the vehicle while others require the removal and disassembly of

the infotainment ECU in order to directly access the circuit boards to access the data. To determine the likelihood that a vehicle’s infotainment center can be imaged, you can download the Berla iVe mobile app. The vehicle’s VIN or the year, make, model, and trim level will be necessary to determine if the vehicle is supported to be imaged or not.

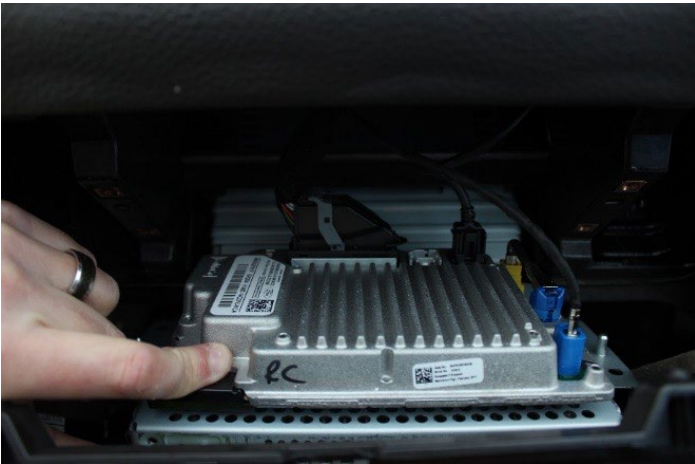


Figure 7: Infotainment ECU Removal from Back of Screen

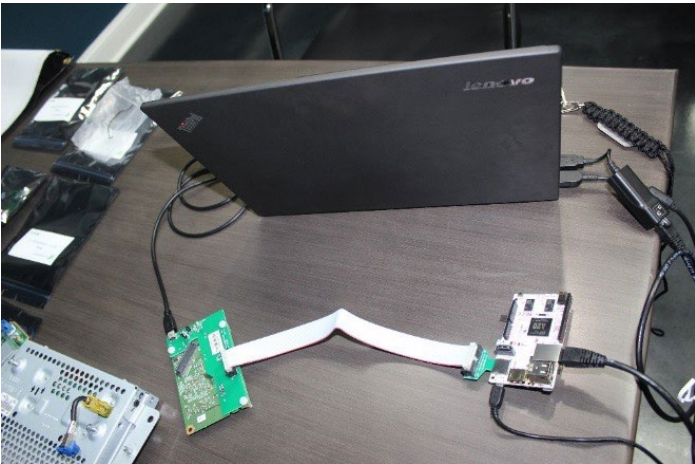


Figure 8: Imaging of Infotainment ECU

Cameras & Forward Camera Modules (FCM)

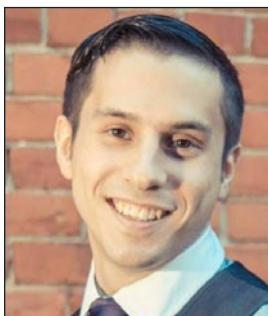
As cameras become more and more prevalent within vehicles as part of ADAS systems manufacturers such as Toyota, GM and Tesla have made video and/or video frames available from their camera systems. Data from these cameras can obviously be very helpful in determining what really happened during the course of an accident. Being able to determine if somebody really was cut off by the vehicle they rear ended or who changed lanes into who are more easily answered with video evidence. The video from different manufacturers is accessed in different ways. GM vehicles use the Bosch CDR tool, Toyota vehicles use the Toyota TechStream tool and Tesla vehicles use an SD card installed within the vehicle as one of their methods for accessing data from their cameras. It is expected that more and more manufacturers will begin to provide access to data from their cameras in the near future.



**Figure 9: Example of Video From 4 Tesla Cameras**

It is clear that as technology within passenger cars continues to evolve with an aim by manufacturers to produce more autonomous driving vehicles that data sources will continue to also evolve and assist for uses they may have never been intended for. Accident reconstruction and product failure analysis definitely will welcome these additional data sources as they become available.

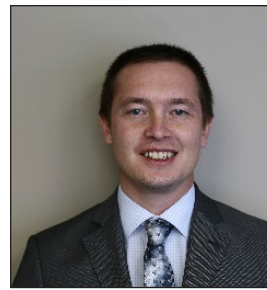
***HRYCAY Consulting Engineers Inc. is based out of Windsor, ON with additional offices in Toronto, ON, Abbotsford, BC and Dartmouth, NS. The firm has investigated and analyzed many types of motor vehicle accidents in all of the Canadian provinces, the Northwest Territories and all 48 of the contiguous US States. The firm's engineers have been qualified and have given expert testimony for both the defense and plaintiff in various cases.***



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**Matthew Arbour, P.Eng.,**

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# Material Change in Risk

## A Warning for Insurers

By: Pearl Rombis, Senior Litigation Counsel at Snowden Law Prof. Corp.



**An insurer considering coverage denial for material change in risk must review all facts and have a strong factual basis required to meet test for “material” change.**

**I**n April 2023, the Saskatchewan Court of Appeal heard and dismissed with costs an insurer’s appeal in *Wynward Insurance Group v. Smith Building and Development Ltd.*, 2023 SKCA 57, affirming the trial decision at 2021 SK QB 54.

### Facts

Policyholder Smith Building and Development Ltd. (“Smith Ltd.”) owned a commercial building insured at the date of loss by Wynward Insurance Group (“Wynward”). Smith Ltd. rented units out to various tenants, including Regens Disposal. In 2012, before

vacating the premises, Regens subleased part of its premises to two subtenants, one being a motorcycle club called the Reapers Riders, which at some point, changed its name to the Heretics Motorcycle Club (the “Heretics”). When Regens vacated, the Heretics provided Smith Ltd. with three post-dated rent cheques but they never entered into a written lease agreement.

In February 2016, Smith Ltd.’s principal and business manager did a walkthrough of the premises. He found nothing out of the ordinary; the property was clean and in good order.

On April 13, 2016, the building was destroyed by fire. An investigation concluded the fire had been caused by an unknown arsonist. Nothing in the fire investigation implicated either Smith Ltd. or the

Heretics. Smith Ltd. submitted a claim to Wynward pursuant to its policy seeking indemnity for its losses. The maximum coverage under the policy was \$640,000.

Wynward assigned a senior claims examiner (the "examiner") to investigate and adjust the loss. He conducted certain post-loss internet and local media searches where he learned of alleged links between the Heretics and the Hell's Angels Motorcycle Club. He concluded the Heretics were affiliated with the Hells Angels, which he described at trial as a notorious motorcycle club with suspected links to criminal activities.

In a May 30, 2016 letter based on his investigation, and apparently without consulting the underwriter, the examiner denied coverage. The letter asserted Smith Ltd. (1) failed disclose a material change in risk due to the tenancy of "a motorcycle club related to the outlaw biker club 'Hells Angels'", and (2) failed to provide details of the subleases it entered into with the Heretics and another subtenant.

Smith Ltd. commenced an action against Wynward in contract and negligence for (a) the value of the

insured property, (b) business interruption losses, and (c) various costs and expenses.

As of the date of trial, the building had not been rebuilt.

### Saskatchewan King's Bench Trial Decision

The principal issues at trial were:

1. *Whether a material change in risk was shown by the act of Smith Ltd. allowing the Heretics to be a subtenant; and*
2. *If not, given Smith Ltd. had taken no steps to rebuild, whether it was entitled to actual cash value ("ACV") or the more generous replacement cost value ("RCV").*

For trial purposes, the parties agreed that ACV was \$406,000, RCV was \$812,000, the cost of debris removal was \$18,290, and the maximum coverage under the policy was \$640,000.

The trial evidence showed Wynward's underwriters prepared an inspection report in 2012. The underwriter expressed no concern with the presence of a motorcycle club on the premises and concluded



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“Renew normally.” When she testified at trial, the underwriter advised the Court that Wynward had no policies in place to ask about, nor had it queried Smith Ltd. about motorcycle clubs generally. Wynward also did not ask for criminal records or explore the character of Smith Ltd.’s tenants or subtenants.

In reviewing all of the insurer’s evidence, the trial judge noted the examiner’s testimony asserted Wynward only discovered Smith Ltd. had a motorcycle club tenant after the fire. This testimony was directly contradicted by both the underwriter’s oral evidence and the written records. The examiner’s fire investigation consisted of an internet search, the review of newspaper articles, and visits to specific weblogs. It seems he either overlooked the underwriting file or chose to ignore it. The denial was therefore based solely on social media research leading to the examiner’s conclusion that the Heretics were an “outlaw motorcycle gang”

The trial judge found that Wynward had not led admissible evidence required to meet its onus to show if and when the Heretics were involved in the illegal activity which supported its coverage denial. The trial judge also concluded that Smith Ltd. was entitled to postpone rebuilding given the coverage denial until entitlement to coverage was determined in the litigation. Smith Ltd. was therefore granted judgment for the maximum RCV limit under the policy (namely \$640,000) and costs in the total amount of \$693,690.

## **Saskatchewan Court of Appeal**

### ***A. Material Change in Risk***

On appeal, the Panel reviewed the evidence in the context of both the historic and as updated in 2020 Statutory Condition 4 of Saskatchewan’s Insurance Act which requires a policyholder to “promptly give notice in writing to the insurer or its agent of a change that is:

- (a) material to the risk; and
- (b) within the control and knowledge of the insured.”

The Panel cited the well-known legal principle established by the Supreme Court of Canada that a fact material to the risk is shown where “if the facts had been truly represented they would have caused

a reasonable insurer to decline the risk or required a higher premium.” The Panel, quoting from a Canadian Underwriter article, went on to state the objective nature of the test to be applied, as follows:

“The test of materiality is not what is material to the particular insurer, but what a reasonable insurer would have done or how a reasonable or prudent insurer would have reacted to the true facts...Thus, the fact that a particular insurer regards a fact as being material does not necessarily determine its materiality in objective terms.”

The Panel upheld the trial judge in finding that Wynward had not demonstrated through admissible evidence that the presence of the Heretics in the insured premises was a fact material to the risk.

### ***B. Obligation to Rebuild the Insured Premises***

As noted, the trial judge awarded Smith Ltd. full RCV to the extent of the policy limit, or \$640,000. On appeal, Wynward argued that the trial judge erred in law when he concluded that Smith Ltd. was not required to rebuild within a reasonable period of time after the fire. Wynward argued that unless an effort to rebuild was shown, a policyholder could only recover ACV.

The Panel disagreed with Wynward and confirmed the trial judge’s finding that Smith Ltd. was not obliged to rebuild the premises until it received confirmation of entitlement to proceeds under the insurance policy. In practical terms, the policyholder’s rebuilding obligation was postponed until it received confirmation of the applicable basis for indemnity.

## **Takeaways**

- 1. Claims personnel should always review the underwriting file and/or discuss with the underwriter(s) on the account before concluding that there was a failure to disclose a material change in risk.***
- 2. An insurer denying coverage for this reason should have a strong factual basis for doing so, including both (a) subjective evidence from its underwriting department and (b) preferably independent objective evidence***

*from a knowledgeable broker or competing underwriter, to best meet its onus for showing that the change in risk is “material”*

3. *Depending on the wording and facts in evidence, a policyholder denied coverage based on a failure to disclose a material change in risk may not be required to rebuild until litigation confirms entitlement under the policy.*

Wynward Insurance Group v Smith Building and Development Ltd., 2023 SKCA 57 (CanLII),  
<https://canlii.ca/t/jx86s>.



**Pearl Rombis**

**Senior Litigation Counsel at Snowden Law Prof. Corp.**

Over the years, Pearl has practiced in many areas of civil, commercial, and insurance litigation. Since 2004, her practice has focused on a diverse range of insurance defence and coverage litigation. Her clients have included Canadian, US & UK insurers and re-insurers, LawPRO, self-insured corporations, hospitals, and individuals (professionals & dismissed employees). Pearl also enjoys handling commercial

litigation and employment dispute & wrongful dismissal claims.

When wearing the hat of coverage counsel, Pearl drafts opinions, reservation of rights and position letters, and defence cost-sharing agreements. She has also represented clients in court applications, at trial and on appeal, in cases involving duty to defend, additional insureds, equitable contribution, breach of condition(s) and non-compliance, relief from forfeiture issues, and bad faith claims against insurers and independent adjusters. She has secured several very favourable costs awards for her insurer clients, at motions, applications, and trial.

As defence counsel, Pearl has defended a wide array of complex and large loss casualty, property, and professional liability claims. Her caseload has included defending liability in wrongful death, occupiers' taverners, municipal and road design, product, construction/building developer/contractor negligence, defamation, property fire and water damage, railway derailments, environmental contamination, aviation and marine claims, and motor vehicle accidents. Pearl also defends insurers in commercial first-party property, Builder's Risk/COC, equipment breakdown, and professional liability/mitigation claims.

Pearl is an active learner and regularly attends and speaks at CLE events. She keeps abreast of legal trends by actively participating in various professional organizations, including CDL, WLAO, Lincoln Alexander School of Law, TMU's Law Placement Program, and LSO's Coach and Advisor Network.

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**Paul M. Iacono**

Paul has over 50 years of experience in the field of Insurance litigation and dispute resolution. He served as a Deputy Judge of the Toronto Small Claims court for 25 years. In 2014 the International Academy of Mediators awarded him its highest honour, making him a Knight.



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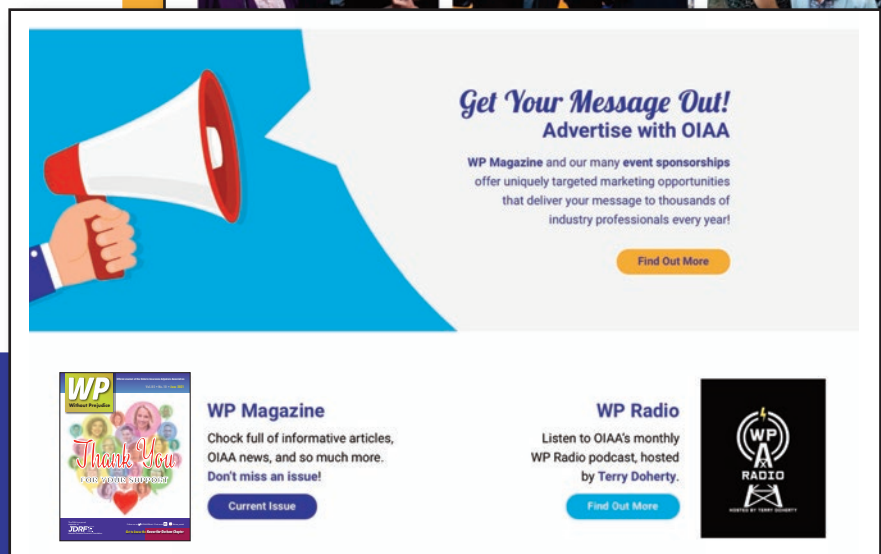
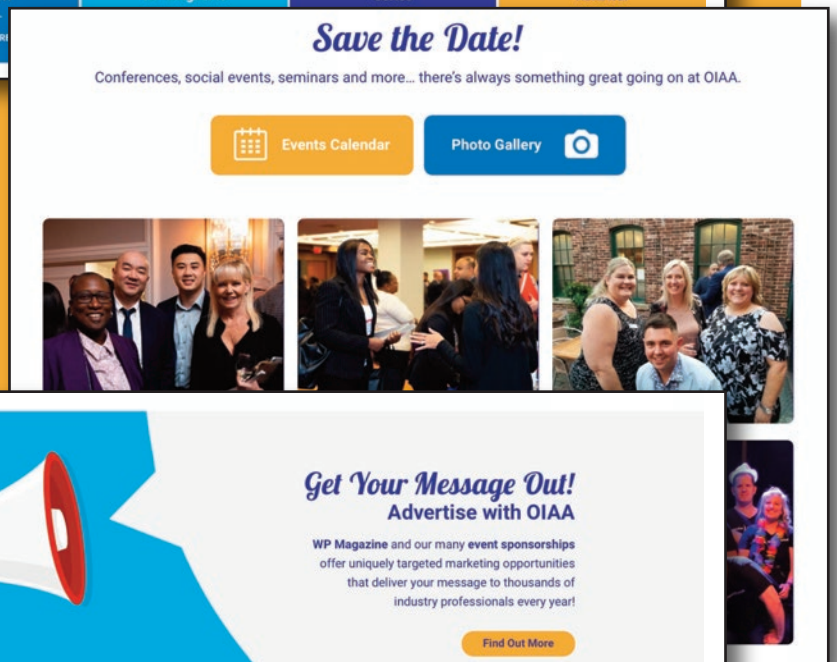
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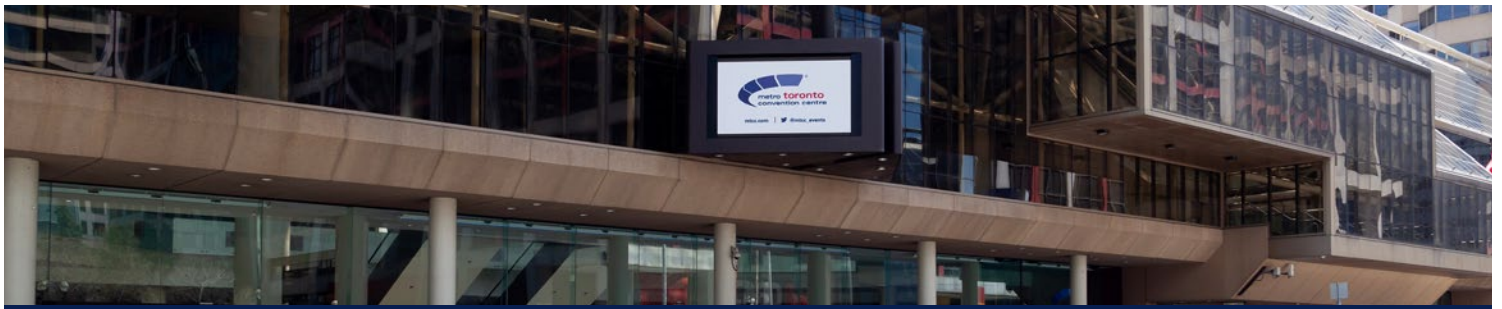


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WP Radio will continue rolling out MyKey's series 'Home Away From Home', on the podcast network and will additionally be at all Ontario Insurance Adjusters Association events, recording live with guests, sponsors and other members of the industry.

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.

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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.

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