

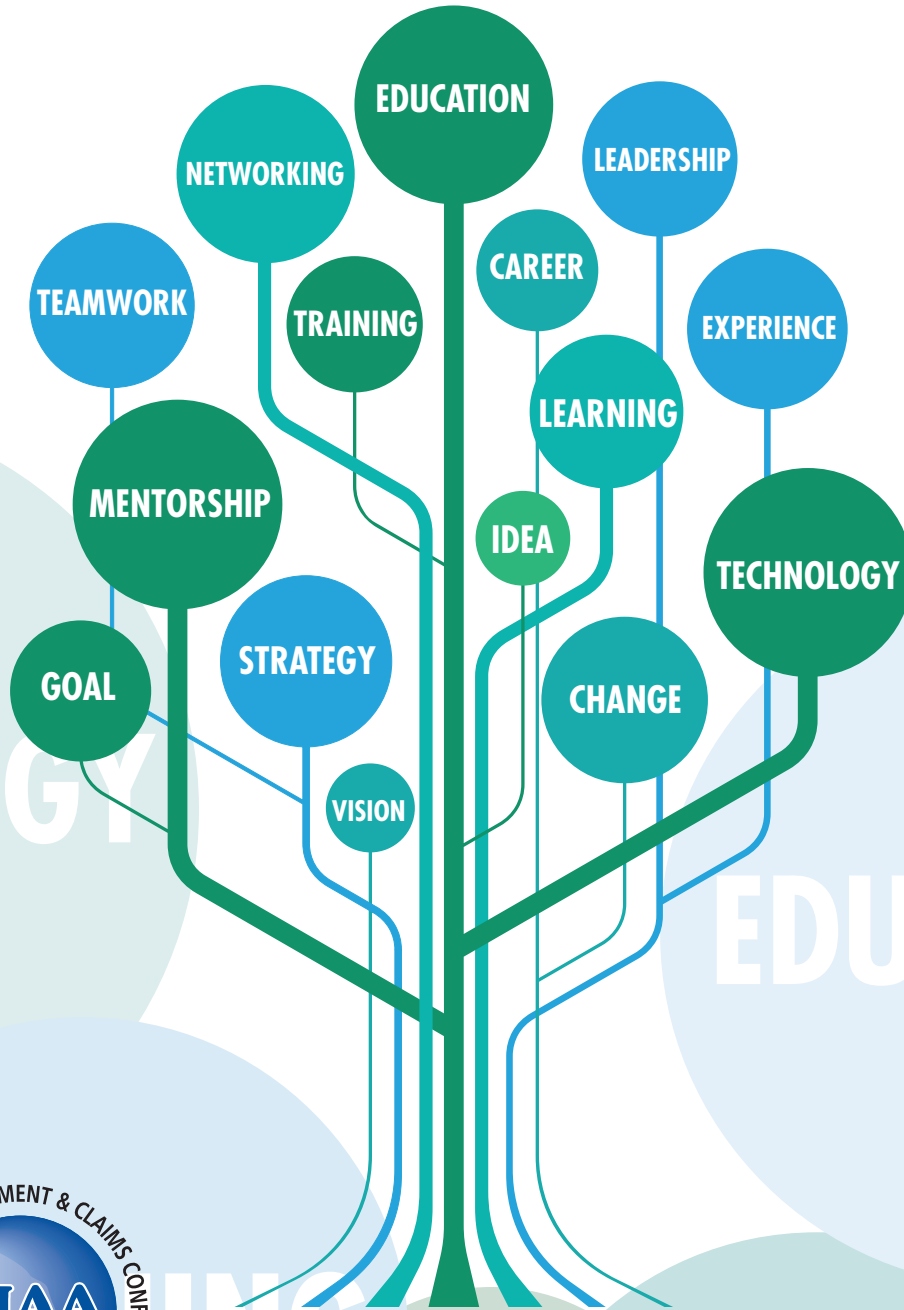
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Without Prejudice

Official Journal of the Ontario Insurance Adjusters Association

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Special Edition



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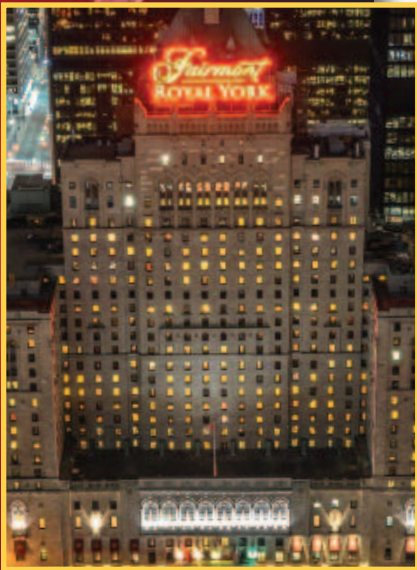
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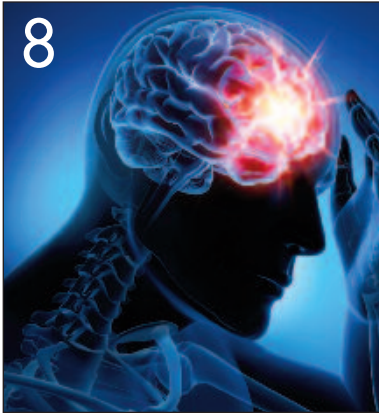
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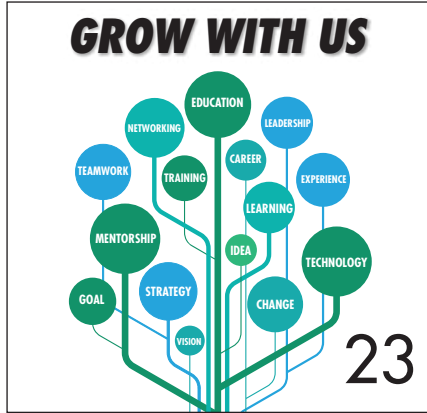
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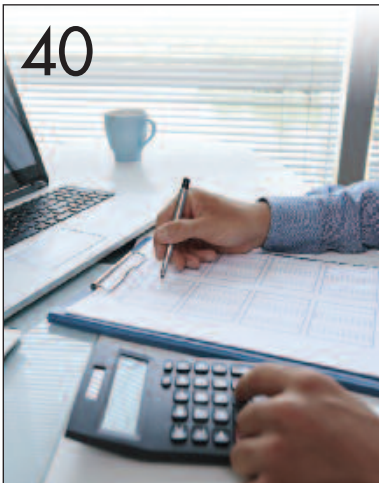
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Leanne B. Hardman
President, OIAA



President's Message

*"You'll never change your life until you change something you do daily.
The secret of your success is found in your daily routine."*

John C. Maxwell

A New Year brings with it many resolutions. I've made many in my day, very few ever saw the resolution take hold longer than a month or two. So this year rather than set myself up for disappointment, or let the demands of life vie for first place on my to-do list; I've decided instead to frame my year.

Something new to me, framing your year allows you to set mini-goals, focus on them for shorter periods of time for example one month, rather than allowing 365 days of competing priorities to get in the way of success. I will choose a resolution or theme for each month, consciously write it down on the first of each month and work towards that goal each and every day, documenting what I did to achieve or work towards it. I am hoping by the end of each month, I will have tangible evidence of working toward making myself a better human!

This month marks our annual Professional Development and Claims Conference at the Metro Toronto Convention Centre on January 22nd, 2020. Each year the OIAA also holds a Job Fair in conjunction with our conference that sees insurance program students at the colleges come in for the day for an opportunity to learn more about the Industry they've chosen, network and meet potential employers. It's always a wonderful day, full of energy and networking opportunities. We offer free seminars all day for claims professionals that cover a wide range of hot topics and the trade show floor is always buzzing with excitement and opportunities to meet with our vendor partners. WP radio will be live at the Conference again this year! If you haven't had an opportunity to listen yet, please look for us in Apple podcasts under WP Radio.

I look forward to seeing you at the Conference this year! Come grow with us!

Leanne B. Hardman, BSc. Hons. CIP
President, Ontario Insurance Adjusters Association

NEXT MEETING

Wednesday, January 22, 2020

Claims Conference 2020

Location: Metro Toronto
Convention Centre,
Constitution Hall.
See page 23 for details.

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FOR THE MAGAZINE



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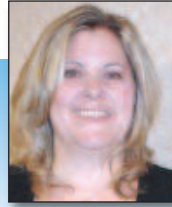
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What you Need to Know About Concussions and Insurance Law
(page 8)

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Business Interruption: Differentiating Between Extra Expense and Increase in Cost of Working (page 40)

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The Duty to Disclose Material Changes in Risk (page 44)

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What you Need to Know About



Concussions and Insurance Law



A concussion is the most common type of mild traumatic brain injury and often has serious consequences that are frequently not managed properly. Unfortunately, concussions are hard to diagnose, difficult to appreciate, and not well understood.

*By Cary N. Schneider,
Partner, Schneider Law Firm*

Make no mistake about it, the consequences of misdiagnosis or faulty manage- ment that can lead to major disability or death.

It is important to appreciate that the law does recognize the seriousness of a concussion and the impact on a claimant's entitlement to compensation. In the accident benefits world, a properly diagnosed concussion takes a claimant outside of the minor injury guidelines. In the tort regime, the existence of post-concussive symptoms have been influential in finding that a claimant has suffered a threshold injury and entitlement to damages. It is important for lawyers, adjusters, treating medical practitioners, adjudicators, and

judges to have an understanding of the medicine and the law when dealing with an allegation of a mild traumatic brain injury.

The Mechanism Of A Concussion

The exact mechanism of a concussion is unknown. Axon tearing occurs in more severe brain injuries, but proof is lacking for this mechanism in concussion. It is more likely that concussion is due to rotational acceleration of the brain (jiggling of the brain) that produces a disordered



metabolic cascade or biochemical injury such as altered metabolism of glucose or derangement of adenine nucleotides. In most people, symptoms occur within the first seven to ten days and resolve within three months. Sometimes, post-concussive symptoms may persist on an ongoing basis and lead to significant adverse consequences. ¹

Second-impact syndrome occurs when a concussed person, (especially a younger person), returns to engaging in physical activities before complete recovery and sustains a second brain injury. Also, repeated concussions may cause delayed post-traumatic brain degeneration, leading to dementia and movement disorders similar to Alzheimer and Parkinson diseases. ²

It is now well understood in the medical literature that direct impact to the head is not required to have suffered a concussion. For example, concussions can occur with a blow to the chest; which may cause a whiplash effect on the brain. Whiplash of the neck and concussions frequently co-exist. In addition, the loss of consciousness is not a requirement for a concussion and in fact only has occurred in 5% of known cases.³ It is inaccurate and dangerous to rule out a diagnosis of a concussion simply on the basis that an individual was not knocked unconscious.

The young brain is more susceptible to concussion than the adult brain and may require more time to recover. After suffering one concussion, there is greater susceptibility to sustaining further concussions. In



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The diagnosis of concussion is not easy and requires a knowledgeable physician and a cooperative patient.

addition, subsequent concussions often occur with less force and take longer to resolve. The statistics show that females are more susceptible to concussions than males, and that there may be a genetic factor underlying susceptibility to concussion.⁴

The Challenge Of Diagnosing A Concussion

The diagnosis of concussion is not easy and requires a knowledgeable physician and a cooperative patient. In the absence of both, accurate diagnosis and management may not be possible. For instance, a concussed athlete may minimize the symptoms in order to not miss playing time and a victim of a motor vehicle accident may not appreciate the nature of the injury.

A concussion is a diffuse injury without focal neurologic deficits such as pupillary dilation or limb weakness. The symptoms are usually

subtle, such as dizziness and “seeing stars.” As per the Ontario Ministry of Tourism and Culture the most frequent symptoms are headaches, dizziness, nausea, imbalance, sleepiness, slurred speech, lack of coordination, sensitivity to light / noise, confusion, and forgetfulness.⁵ The presence of just one of the latter symptoms is enough to diagnose a concussion; a person need not suffer multiple complaints.⁶

The diagnosis can be made only clinically because there is no proven biomarker based on imaging, blood tests or computerized neuropsychological screening tool. Conventional computed tomography (CT) and magnetic resonance imaging (MRI) scans almost always appear normal after concussions; even after repeated concussions. At this time there is no definitive objective test that can rule out a diagnosis of a concussion.⁷



Post-Concussion Management

Removal from play, work or school, and rest are the most important aspects of initial management. Based on the consensus of experts, “rest” now includes rest from both physical and cognitive activities. This also includes the removal of certain stimuli such as watching television. No known treatment other than rest has proven to be successful for early management. If exercise is introduced too soon, it may bring on new symptoms and worsen old ones. A return to school, sports, or work should be on a graduated basis for physical and cognitive activities.⁸

The Minor Injury Guideline and Concussions

The law has recognized that a medical diagnosis of a concussion takes a claimant outside of the Minor Injury Guideline (“MIG”). As set-out by the adjudicator in *N.K. v. Unica Insurance* (2017), “concussion, post-concussion syndrome and related sequelae are not governed by the MIG”. The Adjudicator found that “the MIG relates only to minor injuries as defined by section 3(1) of the Schedule and this does not include brain injuries”.

In support of his case, the claimant relied upon medical evidence from his family doctor, an otolaryngologist, and a neurologist. The insurer relied on a neurologist to rebut the presumption that the applicant did in fact suffer any identifiable objective neurological deficits. Among other things the Adjudicator found as follows:

“mild injuries to the brain may not be observable in routine neurological exams, and sometimes the blow can result in microscopic damage to brain cells without obvious structural damage visible on a CT scan. I find that this effec-

tively means that [*the insurer neurological examination*] Dr. Baskind’s report (and the imaging results he references) is inconclusive with respect to concussion or post-concussion diagnoses.”⁹

In *K.B. v. Echelon* (2018), the dispute centred on whether the claimant had in fact suffered a concussion based on competing medical reports. The claimant relied upon a physiatrist who had an expertise in treating brain



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The Adjudicator accepted that the diagnosis of a concussion is challenging and is not necessarily based on objective medical evidence.

injuries who diagnosed a concussion four years post loss and the insurer retained a neurologist who found that there was no evidence to support such a conclusion. The claimant physiatrist found that the nature of the impairment to be "a concussion with post-concussive symptoms and this affects his ability to concentrate and attend to tasks and affects his mood, ability and as well he has generalized fatigue." The insurer neurologist on the other hand found that there was no clear signs of ongoing post-concussion syndrome.¹⁰

The adjudicator accepted that the claimant suffered a concussion and that this by law took him outside of the MIG. He found that the IE neurologist "was looking for a clear sign of post-concussive syndrome. I do not require such a high bar". The Adjudicator accepted that the diag-

nosis of a concussion is challenging and is not necessarily based on objective medical evidence.

However, claimants are being held to a stringent medical standard to prove the existence of a concussion. In *DKD v. Aviva Insurance Canada* (2018)¹¹ the claimant relied on a chiropractor who diagnosed the claimant with suffering from a concussion while as the insurer relied on medical reports from a neurologist and physician that concluded otherwise. The Adjudicator found that "a concussion diagnosis is outside of the scope of practice for a chiropractor" and accordingly rejected this finding. As such any conclusions reached by a non-medical doctor regarding the existence of a concussion and / or post concussion like symptoms will likely not be the deciding factor to a case. The



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Adjudicator found in favor of the insurer and the claimant was not taken outside of the MIG.

The Courts’ Treatment Of Concussions

In the recent decision of *Abdulhussein v. Barbeau* (2019),¹² the defendant brought a motion after the conclusion of trial to assert that the Plaintiff had not suffered an injury that crossed the threshold. In summarizing the medical evidence, the Judge was influenced by the fact that the claimant has been diagnosed with a post-concussive syndrome and suffered from a mild traumatic brain injury. The judge found that the claimant was cognitively impaired due to the head injury, chronic pain and depression all of which were all caused by the June 2, 2015 accident. The existence of the concussion and the ongoing impact on the claimant’s cognitive ability was an important factor that resulted in the defendant’s threshold motion to be dismissed.

In *Doxtater v. Farrish*, (2014),¹³ the court accepted the evidence from an expert physiatrist with a specialty in treating brain injuries that there are rarely classic neurological signs associated with a mild brain injury. This explained why such an injury would not register on the various cognitive tests. The Court accepted the opinion of the physiatrist that “head trauma is not required for an acquired brain injury to occur”. Such an injury can be caused by the “whipping motion of the head during a collision”. When a brain injury is mild it will often not appear on an MRI, nor will it register on the Glasgow Coma Scale Test. The Court found that:

“Indeed, the myofascial soft tissue injuries that Ms. Doxtater exhibited in her neck, right shoulder, and

right upper chest, as well as bruising she exhibited on her knees, support the conclusion that significant rotational forces were exerted on her head during the collision, which more likely than not led to an acquired brain injury.”

The Judge rejected the opinion of an expert defence neurologist who testified that a brain injury requires trauma to the head and will be revealed by objective findings either on an MRI or by the appearance of small lesions on the brain. The Judge disagreed with the neurologist’s opinion that the diagnosis of a brain injury is only within the purview of a neurologist as opposed to a physiatrist. The Judge accepted that the Plaintiff has suffered a concussion from this accident and ongoing post-concussive symptoms.

The Court accepted the opinion of the physiatrist that “head trauma is not required for an acquired brain injury to occur”. Such an injury can be caused by the “whipping motion of the head during a collision”

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The law has recognized that the diagnosis of a concussion takes a claimant outside of the minor injury guideline and modern medicine tells us the best form of initial recovery is rest.

Conclusion

It is challenging to determine to what extent a claimant has suffered from consequences of a whiplash related injury or whether a mild brain injury such as a concussion has been sustained. The symptoms may appear to be similar such as headaches, dizziness, and problems with concentration. An individual need not suffer more than one symptom in order to have sustained a concussion.

In law, the decisions of *Doxtater v. Farrish* and *N.K. v. Unica Insurance* support the proposition that there is no reliable objective diagnostic test that will conclusively diagnose a concussion. Indeed, it is now recognized that an individual need not sustain a blow to the head to account for a mild brain injury; and that in only 5% of reported cases did an individual suffer an actual loss of consciousness. Despite the plethora of medical advances, the test to determine whether an individual has sustained a concussion is still based on the clinical impression of a doctor.

It is still the claimant's obligation

to prove his / her case; including the diagnosis of a concussion. In *DKD v. Aviva Insurance Canada* the Adjudicator found that a chiropractor does not have the credentials to diagnose a concussion and the claimant was therefore unable to prove that his injuries took him outside of the MIG. Lawyers and adjusters should be cognizant that an opinion of a medical doctor is required to diagnose a concussion and not a chiropractor, physiotherapist and other non-medical treatment providers.

At the same time, it should also be recognized that the diagnosis of this condition is not solely within the purview of a neurologist. In *K.B. v. Echelon* and *Fowler* opinions rendered by a psychiatrist with experience in treating brain injured patients was accepted over that a neurologist. Indeed, a treating family doctor or emergency doctor at a hospital will likely be the first medical practitioners to see a claimant shortly after an accident and their opinions will likely very influential.

While as most post-concussive symptoms resolve within three months, that is certainly not always the case. After an individual has suffered a concussion he/she becomes more susceptible to repeat injury and a protracted period of recovery. The law has recognized that the diagnosis of a concussion takes a claimant outside of the minor injury guideline and modern medicine tells us the best form of initial recovery is rest. As per the medical literature, a return to physical activities and / or substantive cognitive stimulation may not only impede a person's level of recovery, but may also cause further substantive injury.

On the accident benefits side, the diagnosis of a concussion would



often entitle a claimant at the outset to specific medical treatment to address this form of injury and in many cases support an entitlement to income replacement benefits / non-earner benefits. In circumstances where post-concussion symptoms are ongoing this may support an ongoing entitlement to income loss and evidence to support a threshold type claim.

In short, mild traumatic brain injury cases are difficult to address both from a medical and legal standpoint. It is challenging to determine whether an individual who is suffering from symptoms of soft tissue based chronic pain may also have suffered a concussion. There are likely many claimants who have suffered undiagnosed concussions who continue to struggle as they have not received the proper treatment. At the same time, adjusters are being tasked to determine to what extent a legitimate concussion has been sustained and whether there are any long-lasting repercussions from same. These are not easy issues to address from both the adjuster and claimant standpoint. While as there are many challenges inherent to the unknowns of concussions, knowledge of the medicine and the law will make us better at our jobs. We will understand the intricacies of concussions in relation to insurance law and make better informed decisions to advance our cases.

1 Post Concussion Syndrome Mayo Clinic, 2017
 2 Concussions And Their Consequences: Current Diagnosis, Management And Prevention, Dr. Charles Tator, The Canadian Medical Association Journal
 3 Ibid 2
 4 Ibid 2

5 Ontario Ministry of Tourism, Culture and Sport
 6 Ibid 2
 7 Ibid 2
 8 Ibid 2
 9 N.K. v. Unica Insurance (2017) 17-001473 LAT
 10 K.B. v. Echelon (2018) 18-000655 LAT
 11 DKD v. Aviva Insurance Canada (2018) 17-009018 LAT
 12 Abdulhussein v. Barbeau (2019) ONSC 966
 13 Doxtater v. Farrish, (2014), ONSC 4224



Cary N. Schneider is a co-founder of Schneider Law Firm who specializes in civil litigation includ-

ing personal injury litigation, real estate litigation, cyber / privacy breaches, and commercial litigation. After working on behalf of insurance companies for 19 years he now uses that inside knowledge to the benefit of his clients. He is proud to have received referrals from insurance defence lawyers and represents adjusters in their personal injury matters. If you or a loved one has suffered a personal injury contact Cary to let him assist them in their time of need.
 Email: cschneider@schneiderlawfirm.ca
 or call at 905-889-5300.
www.schneiderlawfirm.ca.

WP

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OIAA 2019 Holiday Party

December 11, 2019, Fairmont Royal York, Toronto

On December 11, 2019 over 800 members, industry partners and guests joined us at a Cirque du Soleil themed event at the Fairmont Royal York. What a grand event! Thank you to all who attended the event to make it the success that it was. Every ticket sold for this event raises \$10 for the benevolent fund, the beneficiary this year is Sick Kids Hospital a cause near and dear to our President Leanne Hardman.

Many don't realize the feat that is accomplished every year that this event runs smoothly from start to finish. The Fairmont Royal York makes it easier to accomplish this. Thank you the holiday party committee Carrie Evans and Cindy Bridge for all of their hard work and to the entire executive for all the help.

Every year we rely heavily on the support of our industry partners in order to host such a large event for the OIAA and it's members. Many thanks go out to the following for their ongoing and tremendous support.

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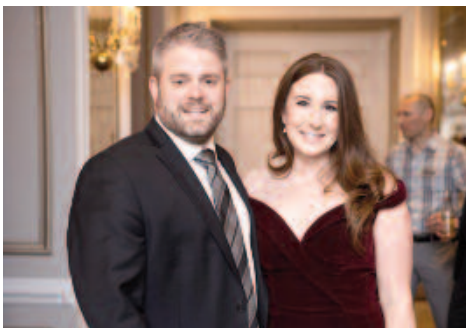
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OIAA 2019 Holiday Party December 11, 2019, Fairmont Royal York, Toronto





See more photos from the 2019 OIAA Holiday Party in the next issue of WP.

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2020 PROFESSIONAL DEVELOPMENT & CLAIMS CONFERENCE

GROW WITH US



CONFERENCE GUIDE



WELCOME TO THE OIAA 2020 28TH ANNIVERSARY PROFESSIONAL DEVELOPMENT AND CLAIMS CONFERENCE

“GROW WITH US”

On behalf of the Ontario Insurance Adjusters Association, I am honoured and privileged to welcome you to the 2020 Professional Development and Claims Conference. This is our 28th annual conference and this year's conference will provide opportunities for professional development and education, and networking with various insurance professionals, vendor partners and students enrolled in their last year of insurance programs.

This year we have a sold-out trade show with a vast variety of exhibitors in attendance. I encourage you to visit all of the booths and spend time with vendors that you already know and get to know some new ones. This is an opportunity to get to know the vendor partners that can assist you in your claims handling.

The theme for this year's conference is “**Grow With Us.**” We have nine seminars presented by industry experts and leaders. We have a panel discussing *A Claims Transformation Journey: A Roundtable Discussion with Insurance*. We also have some exciting seminars covering a variety of hot topics in our industry such as *Cyber Crime: Insuring Against an Ever-Changing Threat*, *Cannabis Legalization: Edibles, Extracts and Topicals*, *Economic Loss: Looking at Reality*, *Emerging Exposures in Property Claims*, *The Transformation of Client Experience* and *The New Simplified Rules: Investigation, Litigation Strategies and Cost Considerations*. The seminars will also feature some of your favourite topics, *AB Update: What's Hot What's Not* and *Casualty Update: A Year in Review*.

At the **Ontario Insurance Adjusters Association**, we feel that we need to focus on our future and that future is the young people entering our industry. For the conference, we bus students from insurance programs throughout the province. The students take part in a Career Fair chaired by our 1st Vice-President, Simone Cybulski. The students are our future and I encourage you to take the time to talk with them as they make their way around the trade show floor. The students entering the industry within the year are eager to establish connections that they will be able to use throughout their career.

The Exhibit Hall opens at 10:00 AM and two coffee-break stations will be located on the tradeshow floor. I would like to thank our Coffee Sponsors, Davis Martindale LLP and Moodie Mair

Walker. I encourage you to take photos at the conference and mention the OIAA in social media (Facebook, Twitter and LinkedIn) with the tag **#2020oiaaclaimsconference**. I would like to thank our Seminar Sponsors; Camelino Galessiere LLP, Larrek Investigations, and ServiceMaster Restore. We will also have a Light Lunch provided starting at 12:00 PM so be sure not to miss it and stay energized throughout the day. I would like to thank our Lunch Sponsors; Abrams Towing Group, Arcon Forensic Engineers, Bell Temple LLP, IBC Insurance Bureau of Canada, IHG, MKA Canada Inc., and Rimkus Consulting Group Canada, Inc. Please take time to thank all of our sponsors when you are attending the seminars or making your way around the tradeshow floor. Without the support of these sponsors, events such as the Claims Conference would not be possible.

The Mix & Mingle will be held from 2:00 PM to 4:00 PM and is a perfect opportunity to meet old acquaintances within the insurance industry as well as a chance to meet with new ones.

The conference will also feature **WP Radio** hosted by our Secretary, Terry Doherty. This will be the third year Mr. Doherty has broadcasted live from the conference. This was a highlight from last year's conference and is sure to be a hit again this year. WP Radio will be broadcasting from 11:00 AM to 3:00 PM so please stop by the WP Radio booth and listen in.

The task of putting the 2020 Claims Conference is a huge effort that I could not undertake it on my own. It involves the OIAA members, vendor partners, students and the OIAA Executive. I would like to thank our Business Manager, Jackie Johnston for her tireless support; my mentor for this event, Rhu Sherrard, Treasurer; my committee members, Tena Allen, the Chapter Delegate from Windsor and Mike Bottan, the Chapter Delegate from Northern; our Seminars and Education Chairperson; Carrie Evans, Toronto Delegate; Chair of the Career Fair, Simone Cybulski, 1st Vice President and our President Leanne Hardman.

I look forward to meeting and greeting all the participants and attendees, sponsors and speakers on Wednesday, January 22, 2020.

SHAWNA GILLEN, CIP – Chairperson,
2020 Professional Development and Claims Conference

OIAA 2020 Professional Development & Claims Conference

This day of education and networking is provided free to insurance professionals.

Exhibitors and sponsors are also able to register their staff with us, with a few minor restrictions. We would recommend that if you are an exhibitor to check with your marketing team to ensure that you are properly registered.

All others must pay a \$250.00 (plus HST) entrance fee for the day's activities.

Below is the definition of an Insurance Professional for the purpose of the OIAA's Claims Conference.

INSURANCE PROFESSIONAL

- Insurance brokers & agents
- Students enrolled full time at Fanshawe College, Mohawk College, Seneca College and Conestoga College
- Adjusters, managers, supervisors of insurers/self insurers
- Supervising staff of independent adjusters, business development staff of independent adjusters
- Claims managers
- Members of ORIMS
- WSIB adjudicators
- Sickness & Health care insurer adjudicators
- Risk managers
- Re-insurers
- Staff of the Financial Services Commission of Ontario
- Insurance Bureau of Canada
- Insurance Institute of Ontario/Canada

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The 2020 OIAA Professional Development & Claims Conference is organized and managed by the:

Ontario Insurance Adjusters Association 29 De Jong Drive, Mississauga, Ontario L5M 1B9 Tel: (647)457-0576

A special thank-you to the following members of the 2020 Conference Committee and Seminars and Education Committee for their efforts in organizing this event: Shawna Gillen, Carrie Evans, Simone Cybulski, Tena Allen, Mike Bottan, Jennifer Brown, Frank Castaldo, Rhu Sherrard, Leanne B. Hardman and Jackie Johnston.



Agenda at a Glance

Wednesday, January 22, 2020

Metro Toronto Convention Centre, Constitution Hall

COFFEE 10:00 a.m.

Two coffee-break stations are located on the trade show floor

Sponsors: **Davis Martindale and Moodie Mair Walker**

Seminar Sponsors: **Camelino Galessiere LLP, Larrek Investigations and ServiceMaster Restore**

10:00 a.m. - Exhibit Hall Opens

SEMINAR 9:00 – 10:00 a.m. Room 201CD

A

AB Update: What's Hot What's Not!

Presented by Philippa Samworth, B.A., LL.B., Partner and Andrea Lim, M.A., LL.B., Associate, Dutton Brock LLP

SEMINAR 9:00 – 10:00 a.m. Room 201EF

B

Emerging Exposures in Property Claims

Presented by Lori Festarini, P.GEO, Vice President of Environmental Services, Stantec Consulting Ltd.

SEMINAR 9:00 – 10:00 a.m. Room 104A

C

Economic Loss: Looking at Reality

Presented by Gary Phelps, CPA, CMA, CFF, CFE, Partner, Davis Martindale

SEMINAR 10:30 – 11:30 a.m. Room 201EF

D

The New Simplified Rules: Investigation, Litigation Strategies and Cost Considerations

Presented by Talaal Bond, Partner, Matthews Abogado LLP

SEMINAR 10:30 – 11:30 a.m. Room 201CD

E

A Claims Transformation Journey: A Roundtable Discussion with Insurance Leaders

Panel includes:

Karen Mican, HBA, CHRP, CIP,
Senior Vice President Claims, RSA

Ewen Cameron, MBA, FCIP,
Senior Vice President Claims, RSA

Bryant Vernon, MBA, B.Sc, Chief Claims Officer, AVIVA

Moderator - Leanne B. Hardman, BSc. Hons. CIP

LIGHT LUNCH 12:00 p.m.

Sponsors: **Abrams Towing Group, Arcon Forensic Engineers, Bell Temple LLP, Insurance Bureau of Canada, IHG, MKA Canada Inc. and Rimkus Consulting Group Canada, Inc.**

SEMINAR 12:30 – 1:30 p.m. Room 201CD

F

Casualty Update: A Year in Review

Presented by Ian Gold, LL.B. and Adam Bucci, B.A. (Hons), J.D., Thomas Gold Pettingill LLP

SEMINAR 12:30 – 1:30 p.m. Room 201EF

G

Cyber Crime: Insuring Against an Ever-Changing Threat

Presented by Katherine Kolnhofer, Bell Temple LLP

SEMINAR 2:00 – 3:00 p.m. Room 201CD

H

IBC Government Reforms, Driver Care Update Cannabis Legalization Edibles, Extracts & Topical Forms of Cannabis

Presented by Todd Jerry, Director, Government Relations, Ontario, Marc Lefebvre, BA, Underwriting Coordinator, IBC, and Mario Fiorino, B.A, LL.B, M.ED, Senior Legal Counsel of IBC

SEMINAR 2:00 – 3:00 p.m. Room 201EF

I

The Transformation of Client Experience

Presented by Darryl D'Silva, P. Eng., Sr. Vice President, Integricon Property Restoration & Construction Group, Ged Brady, HO Claims Specialist, RSA Canada, Greg Madill, SRD Executive General Adjuster, ClaimsPro and Colin Young, Assistant Vice President, JS Held LLC

MIX AND MINGLE 2:00 – 4:00 p.m.

4:00 p.m. - Exhibit Hall Closes

SEMINAR **A**

AB Update: What's Hot What's Not!

Presented by Philippa Samworth, B.A.,LL.B., Partner and **Andrea Lim, M.A.,LL.B.,** Associate, Dutton Brock LLP

TOP 10 cases at the Lat for 2019. The good, the bad and the very ugly. Hear about limitation periods, New Cat cases, and other exciting issues.



Philippa Samworth, B.A.,LL.B.

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 as Chair from September 1998 - September 2000, and again from December, 2001 to February 2004.

In 2000, she was asked by the Government of Ontario to Chair on Advisory Committee to make recommendations regarding the definition of Catastrophic Impairment. In March of 2004 Miss Samworth was again retained by the Minister of Finance to conduct stakeholder consultations and provide advice and recommendations on proposals to replace the DAC system. In October of 2007 Philippa was inducted into the American College of Trial Lawyers.



Andrea R. Lim, M.A.,LL.B.

Andrea R. Lim, is an associate of Dutton Brock LLP, who has practised in the area of insurance defence with an emphasis on first party accident benefits. Ms. Lim graduated from the University of Windsor Law in 2008, and articulated with Dutton Brock LLP following her call to the bar. She also received a

Master of Arts degree from Queen's University, and her Honours Bachelor of Arts from the University of Toronto, Trinity College. Ms. Lim has authored various published articles regarding first party accident benefits in Ontario, including "My Beautify Dark Twisted Fantasy: Combining Physical and Psychological Impairment", Toronto Law Journal, June 2012, and "The Fine Line Between Custodial and 'On Call' Care", Claims Canada, October 2012. Ms. Lim is currently an Executive Council Member of the Medico-Legal Society of Toronto (MLST), and the Co-Chair of the Membership Committee. She is also the Chair of Diversity and Inclusion Committee of the Canadian Defence Lawyers (CDL) – Legal Association Canada, a Board Member of the Canadian Defence Lawyers – Legal Association Canada, and the recipient of the 2016 Richard B. Lindsay Q.C. Exceptional Young Lawyer Award.

SEMINAR **B**

Emerging Exposures in Property Claims

Presented by Lori Festarini, P.GEO, Vice President of Environmental Services, Stantec Consulting Ltd.

The presentation will be an introduction to the impact of emerging contaminants, including Per-and Poly Fluorinated Alkyl Substances (PFAS), that are becoming more frequent in commercial property fires. The use of firefighting foam (or Aqueous Film Forming Foams (AFFF)) is one mechanism that has increased the presence of PFAS in the environment. Many of the PFAS compounds are extremely persistent and mobile in the environment that results in some difficulty when these contaminants result in impacts to soil, ground-water or surface water.

The presentation will discuss potential sources of PFAS (manufacturing, AFFF, landfills, waste water treatment, septic, fire losses), the chemical properties, risks to the environment associated with property claims and how to assess and subsequently mitigate the risks.

A case study will be presented to showcase a commercial property claim involving PFAS.



Lori Festarini,

P.GEO, Vice President of Environmental Services, Stantec Consulting Ltd.

Lori Festarini is a Vice President of Environmental Services at Stantec Consulting Ltd., with over 26 years of experience in environmental consulting and geoscience. She is responsible for top line revenue growth in the Commercial Sector and currently serves as a National Sector Lead for Environmental Services at Stantec.

Throughout her career, Lori has managed numerous Phase II Site Assessments and Remediation projects for clients including those in the insurance, real estate and brownfield sectors. Ms. Festarini has experience in the preparation of project work plans and specifications, developing and controlling budgets and schedules, and organizing staff and subcontractors. Lori is proficient in resolving technical and project related matters as they arise. She is a licensed Professional Geoscientist in Ontario and a recognized Qualified Person under Ontario Regulation 153/04 of the Environmental Protection Act.

SEMINAR



Economic Loss: Looking at Reality

Presented by **Gary Phelps, CPA, CMA, CFF, CFE,**
Partner, Davis Martindale

A focus on strategies to resolve economic loss claims on a timely basis, by considering reality and case facts. Topics include:

- What happens when people age?;
- Consideration of participation rates;
- Common issues with self-employed individuals; and
- Earnings statistics.



Gary Phelps, CPA, CMA, CFF, CFE,
Partner, Davis Martindale

Gary Phelps is a Chartered Professional Accountant, Certified Management Accountant, Certified in Financial Forensics and a Certified Fraud Examiner.

A practice leader with Davis Martindale since 2009, Gary has been working in the insurance and litigation industry since 1990. Gary has brought his expertise to the judicial system, appearing as an expert witness in the Ontario Superior Court and at the Financial Services Commissions of Ontario. His practice specializes in economic loss claims, commercial insurance claims, providing commercial and personal injury litigation support, fraud/forensic investigations and being an expert witness.

SEMINAR



The New Simplified Rules: Investigation, Litigation Strategies and Cost Considerations.

Presented by **Talaal Bond, Partner, Matthews Abogado LLP**

This is a discussion of the recent amendments that will encompass a review of the changes and how they will affect litigation, touching on an insured's duty to cooperate, key timelines, and the effect of capped financial risks in determining resolution choices.



Talaal Bond,
Partner, Matthews Abogado LLP

Talaal has been representing insurers and their insureds in a wide range of matters including property and casualty, and professional liability since his call to the Ontario Bar in 2001. He has appeared at all levels of court in Ontario, private arbitrations and administrative tribunals. He is currently 2nd Vice President of Canadian Defence Lawyers and chairs the Intervener Committee. He frequently gives seminars on various topics, and has been named a Lexpert Leading Lawyer in the category of Litigation – Insurance, Commercial in 2017, 2018 and 2019.

SEMINAR



A Claims Transformation Journey: A Roundtable Discussion with Insurance Leaders

Panel includes:

Karen Mican, HBA, CHRP, CIP, Senior Vice President Claims, RSA

Ewen Cameron, MBA, FCIP, Senior Vice President Claims, RSA

Bryant Vernon, MBA, B.Sc, Chief Claims Officer, AVIVA

Moderator - Leanne B. Hardman, BSc. Hons. CIP

A moderated senior leadership panel. Senior leaders will discuss their claims transformation journeys, how they are responding to the ever changing needs of their customer, what keeps them up at night and what they are doing to ensure they attract and retain top claims talent.



Karen Mican, HBA, CHRP, CIP, Senior Vice
President Claims, RSA

Karen was appointed Senior Vice President of Claims in August 2018, with responsibility for the Casualty, Legal and Complex, Legal and Property teams. Prior to joining RSA in 2017 as Vice President Casualty Claims & Auto Physical Damage Contact Centres, Karen's previous leadership roles with Aviva Canada and State Farm Insurance provided her with a diverse background on claims, underwriting and operations working with multiple distribution models. Karen has a BA (Hons.) from the University of Toronto, completed the Ivey Business Executive Program, is a Certified Insurance Professional (CIP) and is a Certified Human Resources Professional (CHRP).



Ewen Cameron, MBA, FCIP, Senior Vice President Claims, RSA

Ewen was appointed Senior Vice President of Claims in August 2018 with the responsibility for the Shared Services and Auto Physical Damage contact centre teams. Ewen has held many senior roles at RSA and Johnson since joining in 2003. In his most recent role as Vice President of Claims Shared Services, Ewen led the Vendor Management, Subrogation, Fraud and Claims Optimization teams. He has held various leadership roles throughout RSA including leading the enterprise transformation program, plan benefits and strategic products as well as operational strategy. Ewen is a Fellow Chartered Insurance Professional and holds an MBA from Richard Ivey School of Business and a BA (Hons) from Queen's University.



Bryant Vernon, MBA, B.Sc, Chief Claims Officer, AVIVA

Bryant Vernon is the Chief Claims Officer at Aviva Canada and recently joined the company this May. He is accountable for the operational and financial performance of the claims organization, including auto & property, healthcare, casualty claims, customer service, enablement, as well as the legal and anti-fraud teams. His primary areas of focus are introducing more analytical rigor to claims and transforming the culture to be more transparent, people centric, and accountable for results.



Leanne B. Hardman, BSc. Hons. CIP

Leanne began her insurance career with The Co-operators in 2001 as an Accident Benefits Adjuster. She obtained her CIP in 2009 and after a decade of handling claims, she joined Unifund Assurance as a Supervisor in their AB department. Leanne is an instructor with the Insurance Institute of Ontario and has been a subject matter expert and technical facilitator for "Understanding Serious Injury" an Insurance Institute course for experienced injury adjusters. Her passion for education led Leanne to develop a clinic for continued education and skill enhancement for adjusters at RSA/Unifund. Leanne has volunteered since 2010 for the Ontario Insurance Adjusters Association, first as a Toronto Delegate and now as the 89th President of the OIAA. She is President of a Board of Directors for a Condominium Corporation in York Region.

SEMINAR **F**

Casualty Update: A Year In Review

Presented by Ian Gold, LL.B. and Adam Bucci, B.A. (Hons), J.D., Thomas Gold Pettingill LLP

Ontario courts have rendered a number of important decisions over the past year on a variety of casualty-related issues. From highways to hallways, from motor vehicle accidents to occupier's liability and property claims, and everything in between, we hope to address a cross-section of some of the more important issues in insurance law. Regardless of your background in the insurance industry, we trust that you will find our review of the most important decisions of 2019 to be informative and helpful.



Ian Gold, LL.B

Ian Gold is a founding partner in Thomas Gold Pettingill LLP. He is a skillful civil and commercial litigator having extensive trial experience with judges and juries. His practice spans all fields but emphasizes complex insurance litigation. Ian has handled all matters of insurance and insurance coverage cases on behalf of insurers including professional malpractice, directors and officers liability, property and casualty claims, class actions, environmental litigation, subrogation, and insurance fraud.



Adam Bucci, B.A. (Hons), J.D.

Adam is a partner at Thomas Gold Pettingill, LLP. Adam joined the firm in 2013 and works primarily in the insurance defence group working on motor vehicle, property, casualty, municipal and liability claims. He is also eagerly growing his practice in insurance coverage. Adam has appeared regularly on behalf of his clients at motions court in the Superior Court of Justice, and appellate level court. He has also conducted a number of Small Claims Court trials dealing with a wide variety of issues involving insurance defence and coverage.

SEMINAR



Cyber Crime: Insuring Against an Ever-Changing Threat

Presented by **Katherine Kolnhofer**, Partner, Bell Temple LLP

Katherine Kolnhofer, Partner at Bell Temple LLP will present on the State of the Union in Canada on Cyber Crime, AI, and challenges to the insurance industry, with a discussion on Silent Cyber coverage issues.



Katherine Kolnhofer,
Partner, Bell Temple LLP

Katherine Kolnhofer is an experienced Civil Litigator and Partner in a leading Toronto law firm. She chairs the firm's Privacy, Cybersecurity and Technology Law Group, and is Harvard educated in Cybersecurity Risk Management. She focuses on identifying and managing operational, litigation and reputational risk, and data breach management. With the recent implications of the GDPR and the Canadian Mandatory Privacy Breach Notification Regulations, she is consulting for organizations on breach mitigation and preparedness. A significant portion of her practice is insurance defence in a various lines, including Property Casualty, CGL, coverage work, professional liability, and product liability. She is published in the Cybersecurity space and is a frequent speaker, including engagements at NetDiligence and Toronto Police Headquarters.

SEMINAR



IBC Government Reforms, Driver Care Update Cannabis Legalization Edibles, Extracts & Topical Forms of Cannabis

Presented by **Todd Jerry**, Director, Government Relations, Ontario, **Marc Lefebvre**, BA, Underwriting Coordinator, IBC, and **Mario Fiorino**, B.A, LL.B, M.ED, Senior Legal Counsel of IBC

An IBC update on anticipated government reforms and Driver Care. Cannabis: how we got to where we are legislatively and the latest legalization developments. The first portion of the seminar will be on the initial legalization of cannabis in Canada and the second portion will be on Edibles, Extract and Topicals.



Todd Jerry,
Director, Government Relations, Ontario

Todd brings to his role at Insurance Bureau of Canada (IBC) a decade of experience working with the federal and Ontario governments in highly regulated sectors, including auto insurance and major government procurements. He has in-depth knowledge of provincial and federal policy files and internal government processes. During his time with the federal government, Todd held a number of senior roles, including Director of Issues Management and Parliamentary Affairs to the President of the Treasury Board.



Marc Lefebvre,
B.A., Underwriting Coordinator, IBC

Marc has over thirty years of experience in the property and casualty insurance industry. In July 2010, he joined Insurance Bureau of Canada (IBC) as Underwriting Coordinator, overseeing the activities of the Wordings Advisory Group and its various wording task forces and working groups. Through these groups, industry benchmark wordings are developed as a foundation for member companies to draft their own policies.



Mario Fiorino,
B.A, LL.B, M.ED, Senior Legal Counsel of IBC

Mario Fiorino is Director, Legal Services and Assistant General Counsel for the Insurance Bureau of Canada and secretary and coordinator of the Commercial Lines Standing Committee and the Claims Advisory Group. As a lawyer author, educator, Mario has worked with insurance professionals (insurers and brokers) in all Canadian jurisdictions, the United States and Australia on technical, organizational development, change management and emerging issues.

SEMINAR



The Transformation of Client Experience

Presented by:

Darryl D'Silva, P. Eng., Sr. Vice President, Integricon Property Restoration & Construction Group,

Ged Brady, HO Claims Specialist, RSA Canada,

Greg Madill, SRD Executive General Adjuster, ClaimsPro,

and **Colin Young** Assistant Vice President, JS Held LLC

Client experience is defined by interactions between clients and their organization throughout business relationships. An interaction can include awareness, discovery, cultivation, advocacy, purchases and service. The panel will be discussing the foundation of collaboration communication and trust between all key stakeholders of the claim handling process



Darryl D'Silva,

P. Eng., Sr. Vice President, Integricon Property Restoration & Construction Group

Darryl D'Silva is the Sr. Vice President of Integricon. Darryl offers over 25 years experience in the building and construction industry specializing in project management. Darryl offers a unique blend of vision, knowledge and possess strong communication skills coupled with the ability to lead by example and with patience.



Ged Brady,

HO Claims Specialist, RSA Canada

Ged has been with RSA for over 40 years. During this time, he has held various technical and leadership roles in many countries, including UK, Chile, Saudi Arabia, Oman and Canada. He has handled some of the company's largest and most complex property claims. Ged has extensive CAT experience including 18 months in Chile following the earthquake (2010 - 11), a secondment to Canada following the 2013 flood claims and 5 months in Fort McMurray following the 2016 wildfires. Ged is Customer driven with a focus on optimal outcome



Greg Madill,

SRD Executive General Adjuster, ClaimsPro

Greg Madill is an Executive General Adjuster with ClaimsPro, operating out of the downtown Toronto office, handling large, complex and industrial commercial losses as part of the Specialty Risk Division. Greg brings more than 35 years' industry experience to his current role and holds the professional designations of CIP and CCFI-C. An Independent Adjuster since 1982, Greg has handled a wide variety of all lines losses, including high profile cases for Insurers, counsel and clients with self insured retentions. He is highly skilled in managing communications and mediation with all stakeholders. Prior to joining ClaimsPro, Greg was the founding principal proprietor of Upper Canada Adjusters Inc. He has published several articles in Without Prejudice, an OIAA publication and has delivered several lectures at industry events and conferences.



Colin Young,

Assistant Vice President, JS Held LLC

Colin Young is a construction and insurance industry expert, bringing over 19 years of both project management and estimating experience to the J.S. Held team. As Assistant Vice President working out of the Toronto office, Colin provides client-focused consulting and advisory services, with expertise in the areas of complex loss quantification and estimating, large project management and on-site project monitoring, throughout Canada and Internationally.

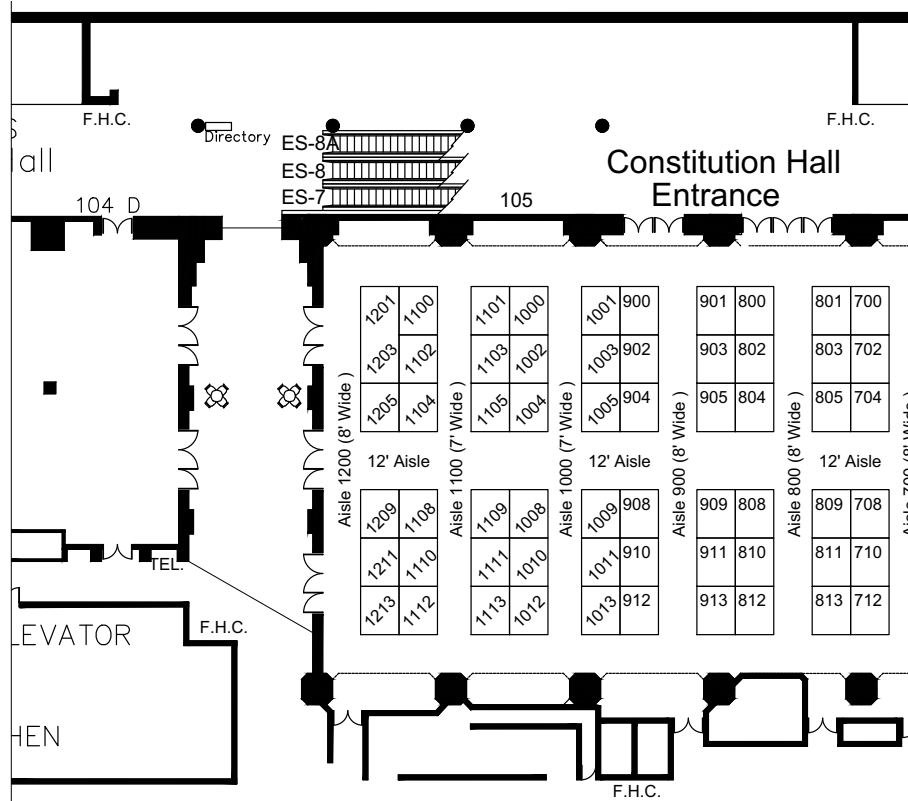
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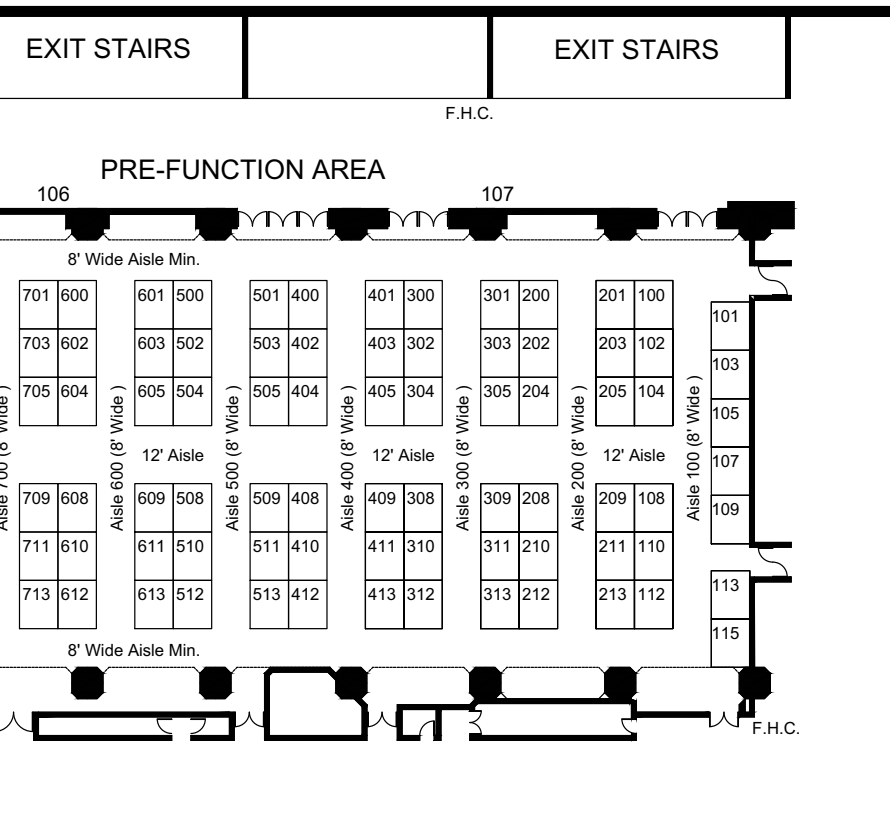
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OIAA Calendar of Events around the Province

MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY
JANUARY	HAPPY NEW YEAR!			3
		8	9	10
2020 OIAA Claims Conference, January 22, 2020 Register online at: www.oiaa.com				
13	14	15	London Chapter, Chili Cook-off, German Canadian Club Windsor Chapter, Windsor Adjuster v. Industry Partners Hockey Game at the WFCU Hockey Arena	17
20	21	OIAA 2020 Claims Conference Metro Toronto Convention Centre	23	24
27	28	29	Georgian Bay Chapter, Ski Day at the Craigeleith Ski Club Kitchener-Waterloo Chapter, Chili cook-off, Golf's Steakhouse	31

Upcoming Chapter Events around the Province

February 13, 2020

Windsor Chapter, Chili Cook-Off at the Ciociaro Club.

February 14, 2020

Georgian Bay Chapter, Curling Bonspiel, Barrie Curling Club.

February 26, 2020

Niagara Chapter, Chili Cook Off, – 3pm at the Port Colborne Bocce Ball Club.

February 27, 2020

Kitchener Waterloo Chapter, Me Too With Kadey Schultz.

UPCOMING OIAA EVENTS

Mark these dates down on your calendar -

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- January 22, 2020 2020 CLAIMS CONFERENCE
 – Metro Toronto Convention Centre
- June, 2020 OIAA Annual Golf Tournament
 – Details to follow

All events are listed in our *WP* magazine. Each event will have registration on our website prior to the event – please watch for the details on our website www.oiaa.com or in the *WP* magazine for more details.

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Please visit www.oiaa.com for more upcoming chapter events



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Laura O'Hearn, Hamilton Delegate at 289-239-6757 or email: laura@maxwellclaims.net

New Members

The following were approved as active new members in November 2019

NAME	COMPANY	CITY	CHAPTER
VAN GAALEN, Alex	Crawford & Company (Canada) Inc.	Waterloo	Kitchener/Waterloo
LESSARD, Chelsea	Economical Insurance	Waterloo	Kitchener/Waterloo
BANERJEE, Michelle	Wawanesa Insurance	Waterloo	Kitchener/Waterloo
ADAMS, Sharon	ClaimsPro	Sudbury	Northern
SANFORD, Kevin	Desjardins	Mississauga	Toronto
DAVIS, Gregory	ClaimsPro	Mississauga	Toronto



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Understanding Case Law | Two days

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Understanding Bodily Injury | Two days

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“Having the law panel was excellent. A great way to wrap up the program.”

“It makes me excited to handle BI claims!”



Business Interruption: Differentiating Between Extra Expense and Increase in Cost of Working

After a business interruption (“BI”) occurs, Insured’s often incur additional expenses in order to mitigate the loss and continue operations. Typical examples are the rental of temporary space, outsourcing of production and additional labour costs.

*By J.P. Strasler, CPA, CA • IFA, CFF, CPA (Illinois),
Principal, Insignia Forensic Group*



Under most policies, these expenses are categorized as either Increase in Cost of Working (“ICW”) under the BI coverage, or as Extra Expense (“EE”), which may be part of the BI coverage or separate coverage.

Although similar, they are treated differently when quantifying the loss.

ICW is typically defined as the additional expenditure necessarily and reasonably incurred for the sole purpose of reducing the loss of sales which, but for that expenditure, would have taken place during the indemnity period, but limited to the amount calculated by multiplying the rate of gross profit by the amount of the sales loss avoided. What this means is that the BI coverage will pay up to \$1 to save \$1 of lost gross profit.

Issues can arise when there is no clear reduction in lost gross profit, or quantifying the reduction is complicated.

Key points to remember about ICW:

- 1) It is only the additional expenditure (i.e., incremental amount) that is covered. Accordingly, if, for example, a business was incurring overtime costs before the incident (or would have incurred them during the period after the incident, had the incident not occurred), then only the amount of overtime that relates specifically to reducing the sales loss is compensable;
- 2) The expense must be incurred for the sole purpose of reducing the loss of sales. A clear example of this is when a manufacturer’s factory is shut down due to the incident and



production is outsourced in order to continue filling customer orders;

- 3) The expense must relate to the indemnity period set out in the policy, which is the period of time that the business is impacted, usually to a maximum of 12 months;
- 4) The limit is not a specified dollar amount, but rather a formula: the rate of gross profit x the sales loss avoided. For example, if a business spends \$25,000 to avoid losing \$30,000 of sales and the rate of gross profit is 35%, then only \$10,500 (35% x \$30,000) is recoverable as ICW. If the business also has EE coverage, then the remaining \$14,500 may be recoverable as EE; and
- 5) If the BI coverage includes a co-insurance requirement, any co-insurance penalty is applied to the ICW.

- 3) There is typically no co-insurance requirement.

As can be seen, although ICW and EE are both additional expenses, they are calculated differently, which can result in significant differences in terms of the amounts that are compensable. However, as a practical point, if an Insured has both ICW and EE coverage and it is unclear whether an expense reduced the sales loss or difficult to measure the amount of the reduction, it may be simpler to treat the expense as EE.



J.P. Strasler, CPA, CA • IFA, CFF, CPA (Illinois), is the Founder of Insignia Forensic Group, an independent foren-

sic accounting firm specializing in insurance loss quantification. He has 25 years of experience across a broad spectrum of claims, including business interruption, IRBs, stock, construction and employee dishonesty. J.P. is a Canadian and U.S. CPA and a designated specialist in financial forensics and investigative and forensic accounting. He has testified as an expert witness and been appointed as an Appraiser under the Insurance Act. J.P. has authored published articles on insurance claims and fraud, and is routinely invited by the legal and insurance communities to speak on these matters.

If you have any questions on this article, please feel free to contact J.P. at 905-232-2312 / 1-866-324-9688 or jpstrasler@insigniaforensic.com.

WP

EE is commonly defined as the additional expenses incurred by the Insured in order to continue normal business operations during the restoration period, which is the period required with the exercise of due diligence and dispatch, to repair or replace the damaged or destroyed property. There is normally a specified dollar limit.

Important points to keep in mind for EE:

- 1) Similar to ICW, it is the additional expenditure that is covered; however, there is no requirement that the expense must reduce the loss of sales;
- 2) If the Insured has delayed the repair/replacement of the damaged property, then extra expenses are only covered for the period of time that it should have taken, had the Insured acted with "due diligence and dispatch"; and

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The Duty to Disclose Material



Changes in Risk



There are a number of important milestones for a parent who is raising a child. Many of these milestones are celebrated with great joy.

Other milestones, however, can evoke considerable dread. For many parents, the day their child first takes the family vehicle for a drive after obtaining a driver's license is a fearful experience.

Unfortunately, those fears sometimes become reality and the child may be involved in a motor vehicle accident.

*By David Rogers,
Partner,
Rogers Partners LLP*

This unfortunate reality can in turn become a nightmare when the parents' insurer advises them there is no coverage under their motor vehicle liability policy, as they did not notify the insurer that their child had obtained a driver's license.

This is a surprisingly common scenario, and one that played out recently in *Seetaram v. Allstate Insurance Company of Canada*, 2019 ONSC 683.

Background Facts

Zalimoon Seetaram and Lakeram Sitaram were insured under a motor vehicle liability policy with Allstate Insurance. Their son, Avinash Sitaram, who lived with them, had obtained his G2 license in February of 2013.

The Allstate policy was set to expire on April 17, 2013, and Allstate sent a renewal offer to Zalimoon and Lakeram. The renewal form confirmed that the only licenced drivers in the household were Zalimoon and Lakeram.



Further, in the driver information section, Allstate asked: "Are any other persons in the household or business licensed to drive?" As Lakeram and Zalimoon had answered no to that question when the policy was first issued, a "no" was included in the policy renewal.



The policy was in turn renewed based on this information. The son, Avinash, was then involved in an accident, and Avinash and Lakeram were put on notice of a possible claim against them. They looked to Allstate for a defence and indemnity under the insurance policy.

Allstate began investigating the claim and determined that Avinash was a licensed driver in the household at that time of the policy renewal.

Ultimately, Allstate determined that, had it been aware of this fact, it would have charged an annual premium almost double what was actually charged.

The failure to advise that Avinash was licensed to drive was, according to Allstate, a violation of both the policy's Statutory Condition 1(1), which required notification to the insurer promptly of any material change in risk in the contract, and Section 233(1)(a)(ii) of the *Insurance Act*, which deals with misrepresentation on an application for insurance.

That section provides that where

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an applicant for a contract for automobile insurance *“knowingly misrepresents or fails to disclose in the application any fact required to be stated therein ... a claim by the insured is invalid and the right of the insured to recover indemnity is forfeited.”*

Allstate then sent a registered letter to the applicants with the full refunded premium and advised that Allstate declared the policy void as of April 17, 2013, due to the failure to disclose facts material to the evaluation of the risk.

Zalimoon, Avinash and Lakeram in turn brought an application seeking a declaration that the Allstate policy remained valid and, in the alternative, relief from forfeiture from any breach of the policy.

The Decision

The applicants took the position that Allstate had a duty to explain to them what constituted a material change in risk and had failed to do so.

Further, that they had an honest but mistaken belief in coverage and any breach should in turn be excused, or alternatively, relief from forfeiture should apply to relieve the breach.

What is “Material” to the Risk?

The first issue to be considered was what should be considered a fact “material” to the risk. Justice Glustein confirmed that the law in Ontario is that the duty of utmost good faith between parties to an insurance contract requires the applicant to disclose all material facts to the insurer.

A fact will be material where, if properly disclosed, it would influence a reasonable insurer either

to decline the risk or accept a different premium.

Is there a Duty to Explain what is Material to the Policy Holder?

The applicants argued that an insurer has a duty to explain to the policy holder what constitutes a material change in risk. They relied on appellate authority from New Brunswick for this position.

However, Justice Glustein rejected this argument and confirmed that in Ontario, unlike other provinces in Canada, **an insurer does not have a duty to explain to the insured what constitutes a material change in risk.** The duty is on the insured to disclose all material facts, even in the absence of questions from the insurer.

The applicants argued that an insurer has a duty to explain to the policy holder what constitutes a material change in risk.

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The failure to properly disclose material facts when applying for insurance, or to promptly notify the insurer of a material change to the risk insured, is a surprisingly common error made by policy holders.

Does an Honest but Mistaken Belief in Coverage Excuse the Breach?

The applicants then argued that their honest but mistaken belief in coverage should excuse any breach of condition.

They relied on caselaw interpreting Statutory Condition 4(1), which found that an honest but mistaken belief in coverage can in some circumstances excuse a breach of that condition.

Justice Glustein rejected this argument as well. Statutory Condition 4(1) requires an analysis of “*whether the insured acted reasonably in all the circumstances*”, thus importing a subjective view of the insured into the analysis.

However, this language is absent from Statutory Condition 1(1), which does not take into

account the subjective view of the insured.

Instead, the test under Statutory Condition 1(1) is analogous to the test under Section 233(1)(a)(ii) of the *Insurance Act*. That is, a fact will be material where, if properly disclosed, it could influence a reasonable insurer either to decline the risk or accept a different risk regardless of the subjective belief of the putative insured.

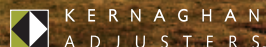
Does Relief from Forfeiture Excuse the Breach?

Finally, Justice Glustein considered the applicants’ request for relief from forfeiture.

In *Kozel v. Personal Insurance Co.*, the Ontario Court of Appeal had determined that a court may grant relief from forfeiture “*to prevent hardship to beneficiaries of an insurance contract where there has*

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been a failure to comply with the condition for receipt of insurance proceeds and where leniency in respect of strict compliance with a condition will not result in prejudice to the insurer”.

Justice Glustein clarified the important distinction, however, between imperfect compliance with a policy term and non-compliance with a condition precedent to coverage.

Where there is imperfect compliance with a policy term, such as a woman who drove without a license in *Kozel*, relief from forfeiture is available.

However, where the breach constitutes non-compliance with a condition precedent to coverage, such as non-disclosure on an application for insurance (pursuant to Section 233(1)(a)(ii)), or when the insured fails to advise the insurer of a change material to the risk (pursuant to Statutory Condition 1(1)), the contract is not properly formed and as such the insurer is not bound by it.

This is, therefore, not a breach of the nature that can be addressed by relief from forfeiture.

Based on all of the above, Justice Glustein dismissed the entire application and awarded costs to Allstate.

Key Consideration for Insureds

The failure to properly disclose material facts when applying for insurance, or to promptly notify the insurer of a material change to the risk insured, is a surprisingly common error made by policy holders.

The impact of such an error can be devastating, leaving the policy holder with no coverage at all following a serious accident.

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This underscores the unique relationship between the parties when forming an insurance contract, and the absolute obligation of good faith between those parties.

For policy holders, it is imperative that they are aware of their duty to notify their insurer of any change material to the risk, as well as their requirement not to misrepresent any fact during the application for insurance. For example, if your child lives with you and gets their driver's licence, advise your insurer.

A policy holder should never rely on the insurer to explain to them what would be material in that insurer's assessment of the risk. Instead, they must be aware that a fact is considered material where, if disclosed, it would influence their insurer to either decline the risk or accept a different risk.

The best advice to policy holders or applicants for insurance is to be thorough and completely truthful when applying for insurance and to update their insurer with any factual change that may impact their policy in any way.

The insurer can then make the decision on whether the change is material to the risk insured or to be insured.

Key Consideration for Insurers

For insurers, a thorough investigation should always be undertaken following an accident to confirm that the risk underwritten is in fact fairly represented in the policy itself and in the premiums collected.

If not, and the insurer had in fact insured a risk different than what was understood, it may be that the

A policy holder should never rely on the insurer to explain to them what would be material in that insurer's assessment of the risk.



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insurance policy was not properly formed in the first place and it is in turn voidable.

Assuming the insurer properly follows the procedures for voiding the policy, the policy will be deemed void from inception. There would be no entitlement to indemnity thereunder, and relief from forfeiture would not be available to excuse the insured's non-compliance with a condition precedent to coverage.



Mr. Rogers has a wide-ranging civil litigation practice covering almost all aspects of insurance related litigation, including Municipal Liability, Occupiers' Liability, Commercial Host, Sports & Entertainment Facilities and Events Related Liability as well as professional negligence, and automobile claims litigation. e is often called upon to advise casualty and property insurers and their insureds on insurance related issues, including improved best practices, loss control measures and coverage. Mr. Rogers acts on behalf of insurers, sports related entities, school boards, police service boards, municipalities and First Nation communities and is experienced in defending serious personal injury and wrongful death cases, large property losses and institutional sexual abuse claims. He has acted as counsel in jury and non-jury trials, appeals and administrative tribunal hearings through all levels of court in Ontario.

WP

THE WP RADIO

PODCAST NETWORK

With 2020 on the horizon, and the world entering a new decade, the OIAA shouldn't be left behind, which is why this is the perfect time to launch new projects and ventures. One major addition to the OIAA in the last couple years is WP Radio, and it's still moving forward with new ideas.

WP Radio is being turned into a podcast network, which will host under one feed five separate shows, all with different topics, themes and engagements. The podcast in the last couple years has been a great opportunity for people in the industry share stories and ideas, and WP Radio continues to build on that and give people a larger platform to do so. The list of shows launching as part of the network are:

- Out & About Presented by Genesis Rehab
- The Case Law Show Co-Presented by Templeman LLP and Dye & Russell LLP
- Audio Articles & Event Keynotes Presented by SCM Group of Companies
- Chapter Check-in Presented by WINMAR Lanark
- The OIAA Trivia Show Presented by Arcon Forensic Engineers

We are so excited to be working with these great companies, who support the OIAA and can't thank them enough for their support.

At the 2020 Claims Conference on January 22, WP Radio will be back for a third year and broadcasting live all day during the conference. This will give listeners a chance to listen to the show live and meet the guests, while having the opportunity to ask questions that will be answered on the show.

The next 12 months of the WP Radio Podcast Network will be filled with stories, engagement and interviews from people coming from all walks of life to give our listeners the best possible experience. That's why, as long as you've been listening, the OIAA Trivia Show will give you the opportunity to win tickets to your favourite sporting events, just for listening to all previous episodes. The more you know about each episode, the better chance you have of winning.

Thank you to all of our supporters and listeners of the WP Radio, and we look forward to kicking off the new year with all of you!

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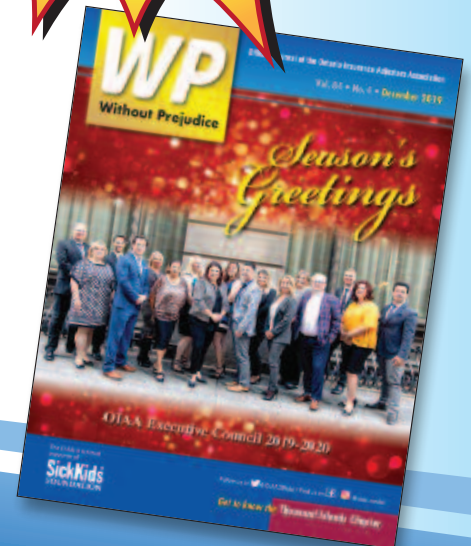
  

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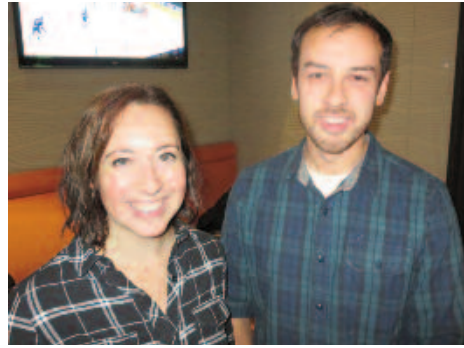


Joe Cumming – Georgian Bay Delegate

OIAA Hamilton Chapter 2019 Holiday Party

On November 14, 2019, the Hamilton Chapter hosted their annual Holiday Party at the Shoeless Joe's in Burlington. Theme: Plaid, Fur and Fizz.





OIAA Hamilton Chapter 2019 Holiday Party



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Final Report

Matthew Rienzo, BA. - Toronto Delegate

Recently, I was interviewed by Terry Doherty on WP Radio. We discussed the opportunity to work abroad on CAT Claims. During my tenure as an independent adjuster, I've been involved in three "CAT's". Two within the GTA and one abroad, in the Caribbean on the island of Providenciales, Turks & Caicos.

There is no better time than the dead of winter for me to reminisce about the three months spent island hopping about the Turk & Caicos.

This was my first time working internationally. It left me with memories I won't soon forget. Between the people in our 'office', to the people on the island, it was an adventure of a lifetime.

Hurricane Irma hit the Caribbean on September 7, 2017, causing disaster throughout the islands. On a whim, I put my hand up and offered my services to assist wherever possible. Shortly after learning that I was being dispatched to Nassau Bahamas, plans changed and I was re-routed to the island of 'Provo' in Turks & Caicos. I remember flying over 'Provo', looking out the window and thinking to myself, what did I sign up for? The destruction and damage could be seen from a thousand feet up. Buildings torn apart, power lines down across roadways, palm trees tossed all over as if

they were toothpicks. Donkeys, cattle and stray dogs roamed the streets in search of food and water, as did everyone else who called the island home.

As soon as we landed, I was greeted at the airport with a handshake and a handful of files to get me started, followed by a set of car keys for a little SUV to find my way around town. After throwing my luggage in the trunk of my rental, I walked around to the front of the car and hopped into the driver's seat, or so I thought. As if flying into a hurricane-torn island wasn't enough of a culture shock, my little SUV was a right hand drive vehicle. Embarrassingly, I crawled out of the passenger's seat while the guys at the rental company had a pretty good laugh at my expense.

By the end of day one I felt like a deer in headlights, completely dumbfounded by the extent of damage across the island and terrified of the amount of work that laid ahead. Day by day and week by week I saw more and more destruction. Houses missing roofs and exterior walls, some houses left with nothing more than a footprint of where the home used to be.

What was more incredible than the devastation to people's homes, were the smiles on their faces when I arrived at their door. Whenever I asked someone how they were



copied with their losses, their response was unanimously, "Oh boy, I am blessed!"

It was more than an infectious attitude, it was their way of life. It made me forget about the long days of working in extreme weather and living conditions. There was so much gratitude from the people of Providenciales, it turned what was an overwhelming time into an unbelievable experience.

As the weeks turned into months, I extended my stay from four weeks, to six weeks and six weeks to nine weeks. I began to work on instinct. The work became automatic, it felt like my new normal. I'd meet with insured's wherever and however possible. I remember holding a town hall meeting for an entire block while standing on top of a pick-up truck, answering questions at rapid fire. It was amazing how well everyone communicated without cell phones and email. All that was needed was a pen, paper and a voice.

After nearly three months on the island, it was almost hard to leave. I learned about the culture, the food, the beaches, the best reefs for snorkeling and the famous local watering holes, where you may run into a fellow adjuster or contractor, long after the workday had finished.

I was lucky enough to work with some of the best and brightest, learning from senior adjusters who had been on more than a dozen CAT's. There was a certain energy about working and living in such a surreal environment. It forced you to create this bond with the people around you. It was hard. It was intense. But it was the most fulfilling work of my career.

I heard somewhere that there are two types of fun. There's short term and long term fun. Short term fun is like a roller coaster ride, you get a rush and when it's over you think "Man that was fun." Then there's long term fun; where you go on a fishing trip, it rains for five days straight, you're soaked to the bone, can never get a fire going and don't catch any fish.

I understand the latter doesn't sound like any fun at all. But, years later you'll never find yourself telling stories about the time you went on that roller coaster. I guarantee that you'll look back on that rainy fishing trip



where everything went horribly wrong and think to yourself, man that was fun!

A CAT tour is the perfect combination of both. In the moment, of course it can be grueling. A total grind even. It will push you to your limits. You're away from your family without all of the luxuries of home, you're working 100+ hours a week and to top it all off, your rental cars' steering wheel is on the wrong side! Looking back on it years later, I remember the enthusiasm of the people and the resurrection of the island in those few short months. Buildings began repairs, wildlife returned and in the last few weeks tourists started to reappear.

Working a catastrophe is no small endeavor. It wasn't until my plane ride home that I reflected on my time there, realizing I would forever look back on this experience and wear it as a badge of honour. As a claims adjuster we are always meeting people on a bad day, sometimes their worst day. I never expected such a positive outcome from such incredible destruction.

It is such a unique human experience to see the impact your knowledge and skill set can have on people. I had no idea the influence Providenciales would have on me when my boots first hit the ground there. I'm not sure I understood it when I left. Years later, I'm still reminiscing on these insanely challenging times. When the opportunity arises, don't be afraid to put your hand up and offer to help. It was some of the hardest work and best long term fun I've ever had.

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WP MAGAZINE GOES DIGITAL

WP Magazine is going digital, and we want everyone to have a copy!

Starting this year, the magazine will have all ten issues online, available to **everyone. This is going to completely expand the reach of the articles published, and the advertisements!**

We want everyone to have access to education and information about the industry, and in turn grow the organization as a whole!

The OIAA is looking forward to another great year and we hope to see you all soon!