WP
Without Prejudice

Official Journal of the Ontario Insurance Adjusters Association

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A Celebration of 90 Years of Presidents

Go to page 14 to see who these Past Presidents are.

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Get to know the **Ottawa Chapter**

THE WP RADIO

PODCAST NETWORK

The OIAA won't be left behind in 2020. If 2020 has shown us anything, it is the need to continue to launch new projects and ventures. We continue to improve and build on the WP Radio.

WP Radio has turned into a podcast network, which will host five shows, all with different topics, themes and engagements. The podcast continues to be a great opportunity for people in the industry to share stories and ideas.

The shows 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 excited to be working with these great companies and can't thank them enough for their support.

The WP Radio Podcast Network will be filled with stories, engagement and interviews with 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 there is no better time to adjust then now.

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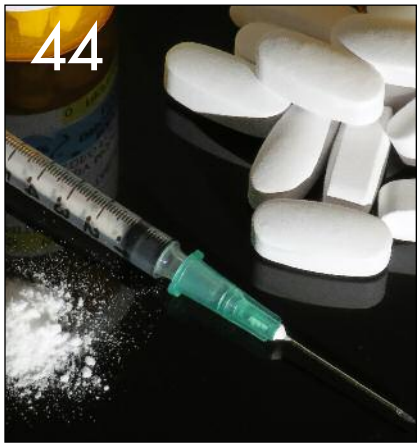

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What's Happening

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Simone Cybulski
President, OIAA

OIAA CELEBRATING 90 YEARS

President's Message

"Lest We Forget"

We as Canadians are extremely fortunate to live in our beautiful country of Canada. We are afforded many opportunities, democracy, peace and most importantly freedom. November is the month of remembrance; it reminds us to take the time to honour and thank the extraordinary men and woman who have chosen to serve to protect; who have given up health and life for us. We honour those who have served overseas and who have served at home. We thank and honour their families, who stayed behind, watching their loved ones leave, not knowing if, when or who may come back to them.

This November 11th may look a bit different than years past; but one thing remains the same – please take the time to remember; please take two minutes of silence to pay tribute to those who lost their lives fighting for our beautiful country.

In Flanders fields the poppies blow
Between the crosses, row on row,
That mark our place; and in the sky
The larks, still bravely singing, fly
Scarce heard amid the guns below.

We are the Dead. Short days ago
We lived, felt dawn, saw sunset glow,
Loved and were loved, and now we lie,
In Flanders fields.

Take up our quarrel with the foe:
To you from failing hands we throw
The torch; be yours to hold it high.
If ye break faith with us who die
We shall not sleep, though poppies grow
In Flanders fields.

By John McCrae

OIAA

Monthly Webinar Series
November Edition

A Practical Guide to the Deduction & Assignment of Collateral Benefits in Tort Actions

Presented by: Carolyn Seaquist of RSM Canada and Barry Cox of Boghosian + Allen LLP

Date: November 19th – 10am

Member Cost: Free Non-Member Cost: $50.00

This interactive presentation will provide an updated guide, based on recent court decisions, as to the deductibility and assignment of collateral benefits including - long-term disability benefits, are they deductible on a net or gross basis, what is the "private insurance exemption" and when does it apply, does the matching of "apples to apples" still apply, treatment of non-earner benefits, pension gains, employment insurance, WSIB benefits and pension gains. Presentation will provide examples based on Cadieux v Clothier, Farrugia v Ahmadi, Carrol v McEwan, Demers v Monty, Mikolic v Tangay and Waterman v IBM."

A partner in the litigation and valuation services group, Carolyn came to the firm from an international accounting firm as a specialist in dispute analysis and investigation, supervising and conducting assignments in a lead capacity on behalf of both plaintiff and defense counsel. Her practice is split between plaintiff and defense assignments. Her expertise includes economic loss and damages quantification, business valuations, economic research, forensic investigation, and critiques of other expert reports, in both personal injury and commercial contexts.

Barry has been certified as a specialist in Civil Litigation since 2013. In addition to representing the firm's municipal clients, he also has a diverse insurance defence practice encompassing personal injury, products liability and professional negligence matters. Barry practiced with another prominent Toronto litigation firm before joining Boghosian + Allen LLP in February 2016. He has acted for architects and engineers, insurance brokers, property developers, commercial property owners, paramedics, trucking companies and nursing homes over the course of his career.

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Vehicle Damage Photos: Are they Relevant to the Issue of Damages in Personal Injury Trials? (page 8)

Jim Davidson is a Certified Specialist in Civil Litigation. Jim's practice is unique in that he represents both insurance companies and individual clients in a variety of insurance-related areas including, personal injury, property losses, and subrogated claims.

Daniel Strigberger

Insured's Coverage Claim Knocked Out (page 16)

The son of a plaintiff lawyer, Dan Strigberger decided early in his career that he wanted to work for insurers. He loves coverage. Want to know if something is an "automobile"? Ask Dan. Want to know if a "house" is a "home"? Ask Dan. Want to know the best toppings to cover a pizza? Don't ask Dan: He can't eat gluten.

Glenn Gibson

The Appraisal Process (page 22)

Glenn Gibson has published over 250 articles in his lengthy career as a loss adjuster. He has also delivered +500 lectures to the police, fire and insurance communities on a wide range of topics.

Andrew Eckart

The Appraisal Process (page 22)

Andrew Eckart is the principal of Eckart Mediation - providing online and in-person dispute resolution services of civil disputes, including property losses. He is also the Staff Lawyer at the Class Action Clinic, North America's only legal clinic focused exclusively on class member rights.

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Design of Damage Restoration (page 38)

Jeffrey Martin is a partner and Professional Engineer with Element Forensic Engineering. Element Forensic Engineering is a firm that provides a range of engineering services including damage assessment, structural, environmental, mechanical and electrical design, as well as investigations into the cause and origin and fires.

Bob Caskanette

Fentanyl and Narcotics Contamination Assessments in Buildings and Vehicles (page 44)

Bob Caskanette is an Environmental Specialist with a Licensed Engineering Technologist (LET) with the Professional Engineers of Ontario (PEO) who has over 12 years of experience in the field of consulting and engineering.

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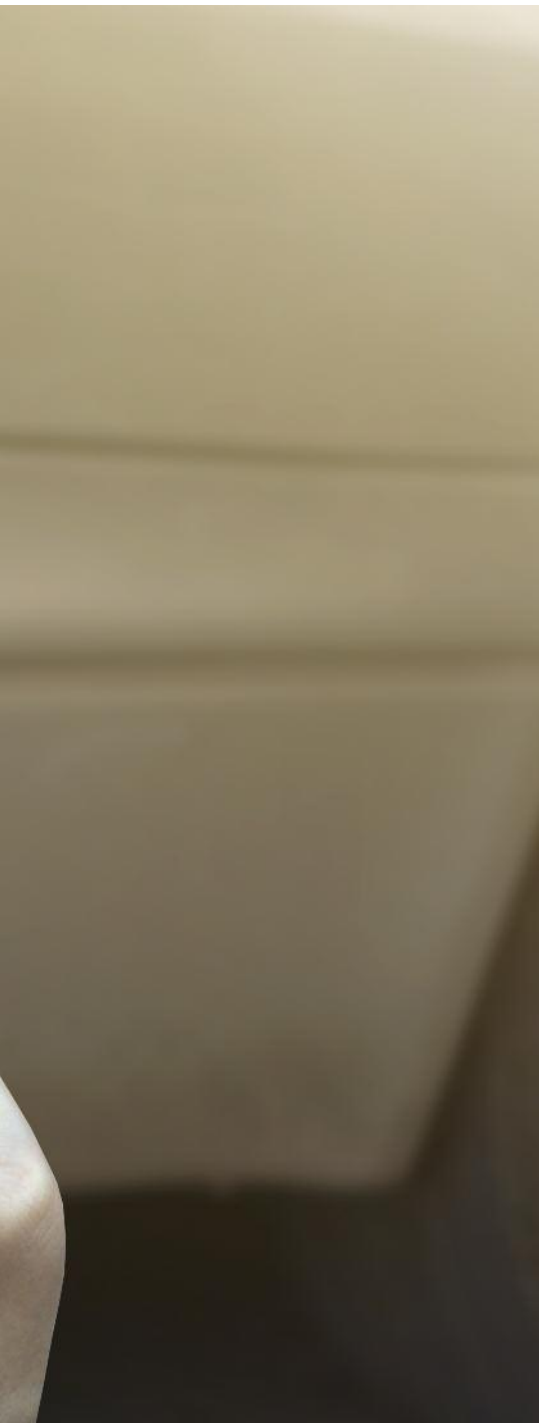
Vehicle Damage Photos: Are they Relevant to the Issue of

Damages in Personal Injury Trials?



Insurance defence lawyers know that a picture is worth a thousand words, particularly when that picture shows little or no vehicle damage. Such photos are a powerful response to a plaintiff's claim for significant personal injuries. For this reason, it is not surprising that plaintiffs work hard to try and get such photos excluded from evidence, especially in jury cases. The primary argument is that such photos can be misleading to the jury as they provide little insight into the actual bio-mechanical forces experienced by the occupants of the vehicle involved in the collision and can therefore be misleading.

By Jim Davidson, Partner,
Will Davidson LLP

The law regarding the admissibility of photos generally

The late Justice Sopinka stated in his text "*The Law of Evidence in Canada*" that evidence is relevant if it tends to prove the proposition for which it is advanced.[1]

As far as photos are concerned, the courts have held that their admissibility depends upon the following:

a. Their accuracy in truly representing the facts

b. Their fairness and absence of any intention to mislead; and

c. Their verification on oath by a person capable of doing so.[2]

Once it is determined that a photo is relevant, the analysis then turns to whether the photo has the potential to prejudice the jury. The Supreme Court of Canada has noted in *Draper v. Jacklyn* that a photograph may be relevant based on its probative value [its ability to prove a point] but still excluded as evidence based on its prejudicial effect [its tendency to mislead].[3] In the context of motor vehicle cases, the concern is that the jury will simply conclude that it is not possible to sustain serious injuries in a collision involving little or no property damage despite other evidence (medical or engineering) to contrary. Accordingly, the trial judge must determine whether the probative value outweighs any potential prejudice before allowing the jury to see the photos.

The procedure for determining probative value vs. prejudicial effect

The procedure for balancing probative value against prejudicial effect has been set out in a number of criminal cases and requires the trial judge to undertake the following:

1. The judge must determine the probative value of the evidence in assessing its tendency to prove a fact in issue in the case including the credibility of witnesses.
2. The judge must determine the prejudicial effect of the evidence because of its tendency to prove matters which are not in issue…. or because of the risk that the jury may use the evidence improperly to prove a fact in issue.
3. The judge must balance the probative value against the prejudicial effect having regard to the importance of the issues for which the evidence is legitimately offered against the risk that the

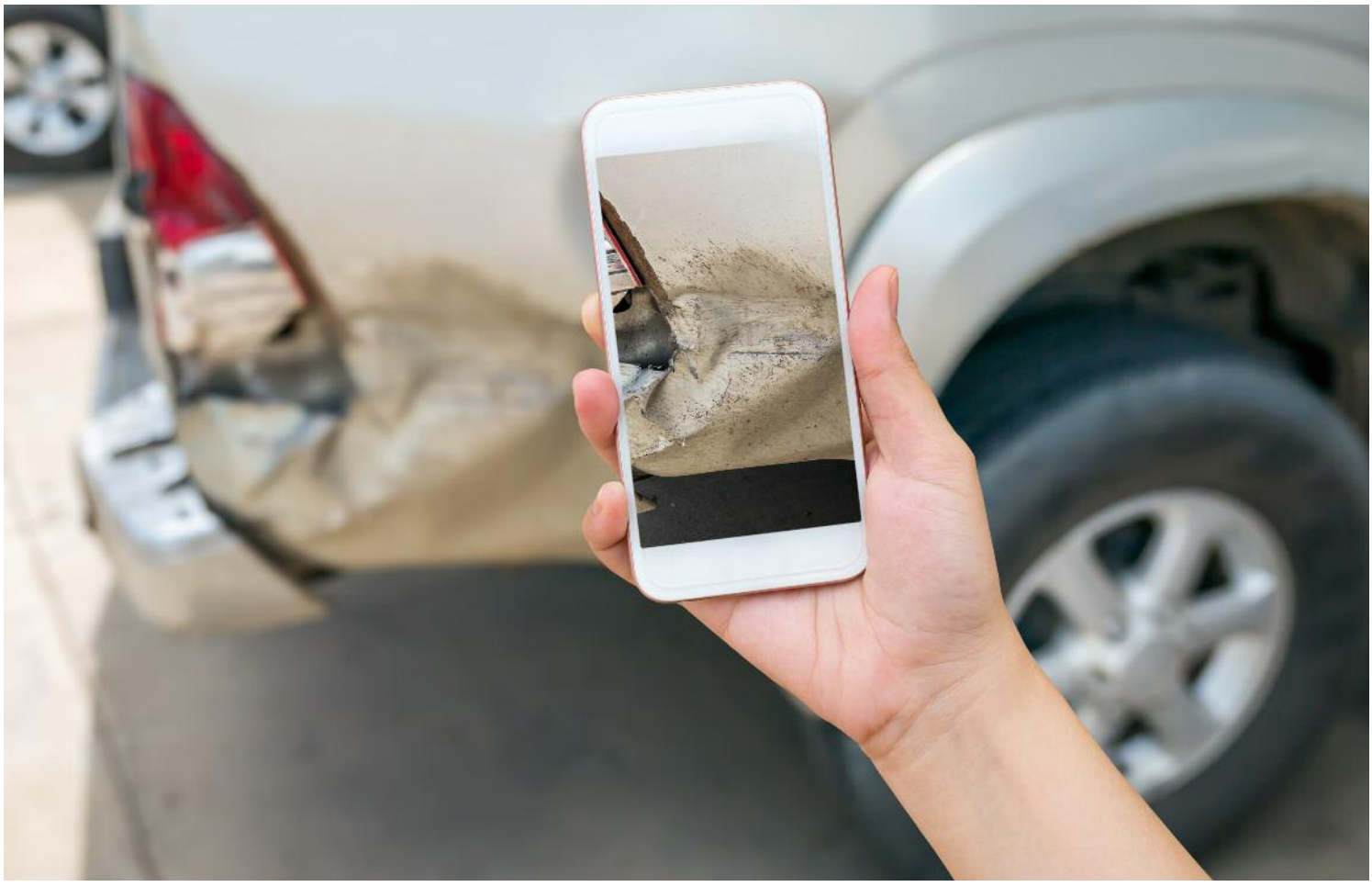
jury will use it for other improper purposes taking into account the effectiveness of any limiting instructions.[4]

Photos depicting little or no vehicle damage

Earlier cases in British Columbia appeared more willing to exclude such photos on the basis that their potential prejudice outweighed their probative value. For example, in *Sloane v. Hill*, the defendant asked to show the jury photos depicting a minor collision. The court stated that the "only purpose in leaving the [photos] with the jury would be to have them speculate on matters often counterintuitive" and for this reason excluded them.[5]

However, more recent decisions have come to the opposite conclusion. In *Deventer v. Woods*, the defendant again asked to put photos to the jury that showed little damage to the vehicles involved. The defendant argued that the photographs were relevant because they provided evidence about the force of the collision, on the basis that there is a connection between the physical damage to the vehicle, and the injury to the occupant. The court agreed stating the following:

> *In any event, I am of the view that photographs showing the extent of the damage to the vehicles are relevant and therefore admissible. They are relevant because it is a matter of common sense and common understanding that the greater the force with which two vehicles collide, the more likely it*



is that the occupants of those vehicles would be injured.[6]

A recent Ontario case dealing with this issue is *Ismail v. Fleming*[7]. In this case, the trial judge agreed with the Deventer decision (among others) and stated:

I share the view, expressed in numerous decisions of the British Columbia Supreme Court, that the extent of damage to motor vehicles involved in a collision has relevance and probative value, notwithstanding an admission of liability, where remaining issues such as causation and damage assessment make it so.

Importantly, the trial judge also specifically rejected the view that expert biomechanical evidence or similar expert testimony is a pre-condition to the admission of vehicle damage photos.

Any risk of prejudice, the court found, could simply be addressed by way of appropriate instructions to the jury. For example emphasizing that a motor vehicle accident resulting in little or no vehicle damage does not mean that the plaintiff cannot sustain serious injuries and that vehicle damage evidence is but one piece of the total evidence the jury must consider in making their determination on damages.

Conclusion

The current state of law in Ontario is that photographs depicting little or no property damage are relevant to the issue of the plaintiff's damages and should be shown to the jury. Plaintiffs are entitled to respond to such photographs with other evidence that establishes the nature and extent of the injuries sustained in the collision. Any remaining concerns regarding the potential prejudicial effect of the photos is to be dealt with by way of proper instructions to the jury.

[1] Sopinka, "*The Law of Evidence in Canada*" Section 12.56
[2] *R. v. Creemer and Cormier* [1968] 1 C.C.C. 14
[3] *Draper v. Jacklyn* [1970 S.C.R. 92
[4] R. v. R.P. 91990), 58 C.C.C. (3d) 334
[5] *Sloane v. Hill* 2008 BCSC 1931
[6] *Deventer v. Woods* 2009 BCSC 1546
[7] *Ismail v. Fleming* 2018 ONSC 6140

Jim Davidson is a Certified Specialist in Civil Litigation. Jim's practice is unique in that he represents both insurance companies and individual clients in a variety of insurance-related areas including, personal injury, property losses, and subrogated claims. Called to the bar in 1993, Jim has represented individual and insurance clients as lead counsel in numerous jury and non-jury trials. He is an extremely experienced negotiator and is regularly retained by some of Canada's leading insurers to resolve complex and multi-party disputes.

Jim has a Masters of Law in Dispute Resolution from the University of Sydney, Australia. He is frequently asked to speak at legal conferences in the area of insurance law and is the Subject Matter Expert (Civil Litigation) to Ryerson University's Law Practice Program.

Jim has been selected by his peers for inclusion in Best Lawyers in Canada, for his work in personal injury and insurance litigation.

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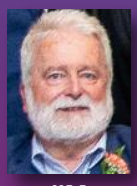
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OIAA 90 CELEBRATING YEARS

Insured's Coverage Claim Knocked Out

The Ontario Court of Appeal has overturned a lower decision that found an insurer owed a duty to defend an insured in a sexual assault claim, under a commercial general liability policy.

By Daniel Strigberger,
Strigberger Brown Armstrong LLP

Insured's Coverage Claim Knocked Out

The Claim

In *Southside Muay Thai Academy Corp. v. Aviva*, Raul Fontalvo was the co-owner and employee of Southside. PF was a minor athlete and student of the Southside kickboxing team. Southside was responsible for supervising her while she was in their care. PF claimed she was sexually assaulted by Fontalvo on May 1, 2017 while she and Fontalvo were on a return flight from Thailand after a kickboxing competition. She sued Southside and Fontalvo for damages.

In her Statement of Claim, PF made several allegations against Southside and Fontalvo arising from the May 1, 2017 incident. Among other things, she claimed:

> On or about May 1, 2017, while on a flight back to Canada from Thailand, the Plaintiff was sexually assaulted by the Defendant Fontalvo, which is the subject matter of this action.
>
> 16. The Plaintiff states Southside Muay Thai Academy was negligent in its failure to supervise the Plaintiff, ensure she was safe while on their premises and under their care and control, in particular on the flight from Thailand on or about May 1, 2017.

Meanwhile, on September 7, 2018, Fontalvo was found guilty of sexual assault and sexual interference with a minor with whom he was in a position of trust and authority. The convictions arose from the incident on May 1, 2017.

The Policy

Southside was insured with Aviva under a CGL policy. The policy provided indemnity for "sums that the insured becomes legally obligated to pay as "compensatory damages" because of "bodily injury" or "property damage" to which this insurance applies." It also contained the following exclusions:

> This insurance does not apply to:
> Abuse
> a. Claims or "actions" arising directly or indirectly from "abuse" committed or alleged to have been committed by an insured, including the transmission of disease arising out of any act of "abuse".
> b. Claims or "actions" based on your practices of "employee" hiring, acceptance of "volunteer workers" or supervision or retention of any person alleged to have committed "abuse".
> c. Claims or "actions" alleging knowledge by an insured of, or failure to report, the alleged "abuse" to the appropriate authority(ies).

Although the claims against Southside fell under the basic coverage for bodily injury, Aviva relied on the abuse exclusions to deny coverage to Southside for PF's claims.

Coverage Dispute

Southside brought a court application against Aviva for coverage under the policy. It focused, among other things, on paragraph 16 of the Statement of Claim and, in particular, the allegations that Southside "was negligent in its failure to supervise the Plaintiff, ensure she was safe while on their premises and under their care and control…." It argued

Although the claims against Southside fell under the basic coverage for bodily injury, Aviva relied on the abuse exclusions to deny coverage to Southside for PF's claims.

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the paragraph was broad enough to trigger coverage under the policy because it could apply to situations not arising directly or indirectly from the alleged abuse on May 1, 2017. The application judge agreed with Southside on that argument and found Aviva had a duty to defend. Of note, the application judge also applied *contra proferentem* in finding that the allegation in paragraph 16 was not caught by the exclusion.

The Court of Appeal disagreed with the application judge's interpretation of the exclusions. It stated the issues, as follows:

> The question is whether the Statement of Claim makes any (a) claim other than the claim arising from the sexual abuse and if so, (b) whether that claim(s) is covered by the policy.

Looking at the Statement of Claim, the Court found that the subject matter of the claim, including the damages claimed, was the sexual abuse that occurred on May 1, 2017. The Court held:

> Therefore, while we agree with the Application judge that coverage is to be interpreted broadly and exclusion clauses narrowly, there is no claim for damages resulting from Southside's negligence other than the claim arising from the subject matter of this action, that is, the May 1, 2017 incident.
>
> Since there is no claim or action in the Statement of Claim other than the claim arising from the sexual abuse that took place on May 1, 2017, which is excluded from coverage under the policy, there is no need to assess whether those claims would be covered by the policy.

The Court also found that the wording of the abuse exclusions was clear and unambiguous, so there was no reason to invoke the concept of *contra proferentum* to the exclusion clause. Accordingly, there was no coverage for this claim under the policy.

This relatively short decision provides a useful guide to interpret duty to defend disputes. Look at the Statement of Claim. Although a claim might properly fall within a broad coverage provision in the policy, a clear and unambiguous exclusion clause should negate coverage for claims that are not intended to be covered.

See *Southside Muay Thai Academy Corp. v. Aviva Insurance Company of Canada*, 2020 ONCA 385 (CanLII)

Dan Strigberger

The son of a plaintiff lawyer, Dan decided early in his career that he wanted to work for insurers. He loves coverage. Want to know if something is an "automobile"? Ask Dan. Want to know if a "house" is a "home"? Ask Dan. Want to know the best toppings to cover a pizza? Don't ask Dan: He can't eat gluten. Dan is a techie. He was articling in Ottawa when the dot-com bubble burst. He began considering the legal implications of cyber technology one night while eating a Beavertail. Over the years, Dan has become a leader when it comes to cyber liability, cyber coverage, cyber risk, and Cyber Monday.

WP

The Appraisal Process

The Statutory Conditions are mandatory in policies of insurance issued in Canada. There are, however, some subtle differences in the wording for the requirement for "Appraisal" if demanded by either party to the insurance contract.

By Glenn Gibson, ICD.D CIP FCIAA FCLA CFE, President & CEO, The GTG Group and Andrew Eckart, B.A. LLB, Mediator and Lawyer, Eckart Mediation Incorporated

Many of the differences relate to a requirement in some jurisdictions to ensure the appointed appraisers and umpire are "disinterested" parties.

This means that the insurer needs to engage an outside party to be their appraiser. It also means that the policyholder must retain an outside party to represent them.

What has not changed in various provincial statutes is the "process" of Appraisal. One would expect that a uniform process exists across Canada – it does not!

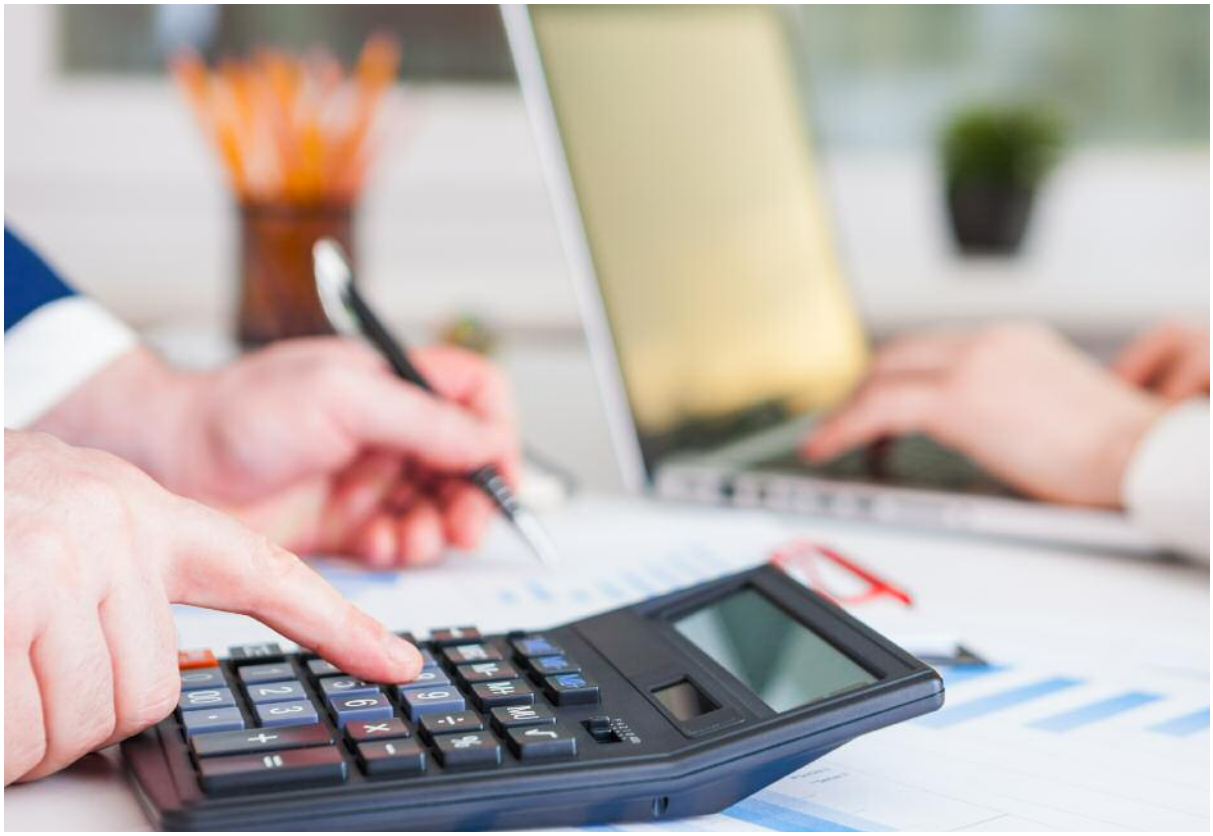
My article on the "*Appraisal Process - an Update*" was first published in 1994. It has now gone through 15 iterations as I've tried to keep it current with references to new court judgments that provide us with guidance. That article primarily addresses the process in Ontario which has had a significant uptick in the usage of this ADR procedure. The case I'm highlighting in this article describes a process that is used in Nova Scotia. And, of interest, the judge referenced a 2017 version of my research paper in writing his judgment.

New Dawn Enterprises Limited V. Northbridge General Insurance et al., 2020 NSSC 150

Supreme Court of Nova Scotia, J.M. Arnold, May 4, 2020

Background Facts

On March 17, 2017, a sprinkler line failure caused extensive water damage to a convent located in Sydney, Nova Scotia.



The convent was originally built in 1885 with an addition added in 1907. It had last been used as a convent 7-8 years prior to the loss. The building was originally listed for sale after the convent closed. They were seeking up to $1.6 million for the property but eventually sold it in 2013 to New Dawn Enterprises for $250,000. The intention was to redevelop the property. Some of the space was rented out to community groups but by the fall of 2016 the convent was vacated and building systems were shut down to avoid heating costs in the winter.

The insurance policy was written to provide indemnity based upon the "Actual Cash Value" (ACV) of the loss. Of interest, the policy did not contain a definition of ACV.

To determine an ACV, the insurer turned to a firm of "Real Estate Councilors, Brokers, and Valuers". They provided a report within a month of the loss. Their appraiser used two different approaches to determining ACV. The direct cost approach using the traditional 'Replacement Cost (RC) less Depreciation' formula and also the 'Direct Sales Method' where one compares sales of similar properties. Eventually, the insurer-appraiser took note of both approaches and came to a determination that the ACV was $230,000.

Meanwhile, the named insured hired their own consultant / appraiser who purported to provide "expert advice for the commercial real estate industry". The appraiser primarily used the cost approach using the services of a quantity surveyor. The

surveyor's replacement cost price was about $14.5 million which included design and contingency prices. They applied a 72.7% depreciation rate to reach a net ACV of about $1.6 million.

After seeing the gap that was emerging from the different approaches, the insurer engaged another firm to look at the replacement cost price (RC) provided by the insured. Their first cut at the building suggested an RC of $11.2 million. But, a week later this number dropped to $8.9 million after this firm dropped several cost items including design and contingency allowances.

The Appraisal Process

The differences of opinion were determined to be resolved in the appraisal process. The insurer chose their original consultant to be their appraiser. The appraiser for the named insured selected their construction expert. These two appraisers then reached agreement on the choice of an Umpire who, in this instance, was a very experienced real estate appraiser.

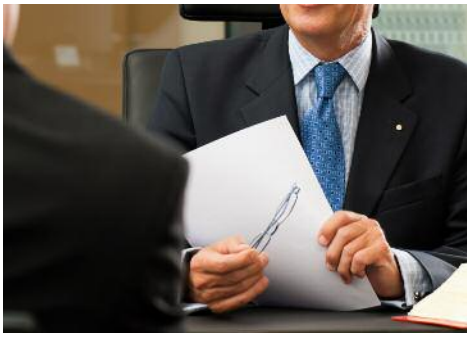
Worthy of note is that it appears that neither appraiser nor the umpire were actively engaged in the insurance claims community on a daily basis.

Under the provisions of the various provincial *Insurance Acts*, the umpire is granted great latitude to establish the process he or she wishes to follow in the appraisal process. In this case the umpire chose to:

1. Send out a request for detailed information from both appraisers.
2. Requested both appraisers set out their differences in writing on their opinions.
3. Advise both appraisers that following receipt of their briefs he would "interview both appraisers" and also teleconference with them.
4. This would all lead to the "*preparation and submission of the umpire's decision*".

As matters unfolded the umpire wanted to directly speak to the second consultant hired by the insurer. He got permission after alerting the lawyers who were acting for both the insurer and named insured.

The trial judge goes into extreme detail in highlighting what took place in the process set up by the umpire. Ultimately, the umpire determined the building ACV was $258,000, a figure which the appraiser for the insurer agreed with.



The Application for Judicial Review

On the surface of things, this was a majority decision of the process so that matter should have been concluded at that point. However, the insured was not happy with the process or the result which resulted.

A party that is unsatisfied with the appraisal process cannot appeal the decision. The only avenue by which they may challenge an umpire's decision is by bringing an application for judicial review. We have covered how this process unfolds in Ontario in a previous article (Property Loss Update August 2018) and a similar procedure occurs in Nova Scotia.

In this case, the insured filed an application for judicial review on the following bases:

1) That the umpire breached its duty to ensure procedural fairness by corresponding with the insurer's representatives and relying on information he received from them without sharing it with the insured or giving them an opportunity to respond;
2) That the umpire's conduct raised a "reasonable apprehension of bias" in that he appeared not to be impartial and therefore could not decide the matter fairly; and
3) That the resulting decision from the umpire was unreasonable because the meaning of ACV under the policy was ambiguous. An ambiguous term in the policy ought to be interpreted against the insurer rather than the insured.

With respect to the first ground of review, the judge's exploration on the appraisal process zoomed in on

the umpire's action in contacting the second consultant and then the loss adjuster to discuss in detail their report. These discussions were not fully revealed to the named insured's appraiser. The judge found that:

> *"[N]ew Dawn did not have a meaningful opportunity to present its case fully and fairly. The moderate duty of fairness that applied in this case would have been met by sharing the information obtained from NC and SW with Altus, New Dawn's appraiser, and allowing it to respond briefly in writing. This would not have been an onerous or time-consuming exercise."*

The judge goes into significant detail providing case law and his views on *procedural fairness*. His view was that the umpire was required to employ a fair and open procedure. Each side should have an equal opportunity to put forward their opinions. In this instance, he was critical of contact made by the umpire to the loss adjuster without telling the insured's appraiser. This only came out after the umpire had made its final decision. There was no opportunity for the insured's appraiser to counter or even discuss the results of this interview.

Likewise, with respect to the allegation that the umpire's decision could be described as containing a reasonable apprehension of bias, the judge determined that "an informed person, viewing the matter realistically and practically, and having thought the matter through, would conclude that [the umpire], whether consciously or unconsciously, had shown a preference for the insurer and did not decide fairly". This conclusion does not mean that the umpire was actually biased, only that a reasonable onlooker would view the umpire as showing an unfair preference for one party over the other.

The judge refused to comment on whether or not he felt the decision of the umpire was "reasonable" or not because his findings that the procedure was unfair resulted in the case being remitted for a decision by a different umpire in any case.

Summary

In Ontario, it is highly unlikely the process used by this umpire in Nova Scotia would be utilized. Conference calls between the umpire and appraisers would be common and those calls would involve discussions about the items in dispute. Arguments would be raised and discussion held about any ancillary steps the umpire may have to engage in which could include inspecting the site or content items.

The vast majority of the time there would be no direct discussions about the loss unless all three parties to this process were present. There would be no gaps in the sharing of information for all the reasons highlighted by the judge in this matter.

A big difference is that any process in Ontario will culminate into a face-to-face Tribunal where witnesses are present to state their facts or opinions. This would morph eventually into the three parties to the process discussing all the issues until they reached a majority decision. That decision would be contained in an Appraisal Agreement. There would be NO reasons given to the arrival at the amount of loss.

In this case in Nova Scotia, the umpire put out lengthy 'reasons' behind his opinion. If one party agrees with the umpire the matter is deemed resolved. In this case, the matter would have been resolved but for the fact that the umpire unfairly did not involve the insured in some discussions with the insurer's appraisers. If he had, the process would likely have been considered a fair one. There is nothing to say this process cannot be used anywhere else in Canada, nonetheless, the process is not one that is consistent with other jurisdictions such as Ontario.

Glenn Gibson has published over 250 articles in his lengthy career as a loss adjuster. He has also delivered +500 lectures to the police, fire and insurance communities on a wide range of topics.
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Andrew Eckart is the principal of Eckart Mediation - providing online and in-person dispute resolution services of civil disputes, including property losses. He is also the Staff Lawyer at the Class Action Clinic, North America's only legal clinic focused exclusively on class member rights. He lives in Windsor, Ontario.
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OIAA Ottawa Chapter

It's amazing to see how things have changed in just one year. Last year seemed like it couldn't have been more busy for the Ottawa Chapter of the OIAA. The Ottawa Valley Adjusters Association (OVAA) had the opportunity to co-host the 2019 Provincial Claims Conference "KO in the Capital" along with the Thousand Islands chapter to create a wildly successful event held at the Ottawa Shaw Centre. It was no small feat for our two chapters to pull together and organize this event and a big thanks goes out to TIAA for their time and effort. The event hosted speakers on topics relating to medical & recreational marijuana, sports injury panel, AB-BI CAT injuries and investigator vs Engineer panels. Guests were able to spend the night right next door at the Westin hotel downtown Ottawa.

In the background of organizing the claims conference, the Ottawa chapter continued to host sold out events whether it be from the 18th storey rooftop lounge overlooking the city, or down on the water at Dow's Lake. We continued to run various events, including our educational luncheons, past-president night and annual golf tournament throughout the year.

Most OVAA events are run to support charities, from local charities such as Camp Quality which offers free camping experiences for children with cancer or blood disorders, to the Red Cross who's response during the 2017/2019 flooding and 2018 tornado events in the Ottawa region gave financial aid to families in immediate need. We support other local charity events such as the Inter-Industry Christmas Dinner hosted by Michael Cherrie, which raised money for Shepherds of Good Hope, as well as educational events like the Annual Summit for Adjusters hosted by Marc Forget-Smith. We hope to continue affiliating the OVAA with local organizations to support our industry, community and improve the networking and educational experiences of our members.

I'm sure Ottawa's not the only chapter to have experienced a hold on events with the arrival of COVID-19 and the board has gone from hastily organizing events to a complete standstill and postponing all physical gatherings until we've determined when and how we can host events safely for our patrons and members.

The OVAA has been serving the insurance industry for over 50 years and much like the differences from 2019 to 2020 it has seen lots of changes. Current positions are occupied by Conar Marcoux (President), Ryan Reis (Past President), Cindy Bridge (OIAA Delegate), Sarah Smith (Treasurer), and Patricia Martin (Secretary). We would be helplessly overwhelmed without the dedication of our social directors Vas Kanellos, JC Plante and Grant Boyce, with a special mention to Jeff King who recently retired from the committee after 4 years of hard work. I've personally been working as a field adjuster in the Ottawa region for 10 years now and I love to see the energy and professionalism these individuals bring to our board.

Over the past few years our committee has worked hard to revert to a paperless branch, focusing on the development of our website and social media platforms. Our branch is supported by 10 sponsors, and is reaching a community of over 200 members.

Although social meetings might currently be on hold with COVID-19, don't despair, the OVAA board is continuing to plot and plan many social and educational events to serve the Ottawa valley region. We would like to ensure our community knows to stay safe and stay tuned for upcoming events once circumstance allows our community to come together once more.

Looking forward to seeing everyone. Stay safe!

Conar Marcoux, *BA FCIP*
OVAA President

OIAA

Monthly Webinar Series

December Edition

New School vs. Old School Appraisals: The When and Why

Presented by: Dave Vrbetic Vice-President of Golden Horseshoe Appraisals

Date: December 8th – 11am

Member Cost: Free **Non-Member Cost:** $50.00

January Edition

Compassionate Leadership – What it means in the context of dealing with the customer, our teams and ourselves

Presented by: Tammie Kip,
National Casualty Director,
Allstate Group of Companies

Date: January 14th – 10am

Member Cost: Free **Non-Member Cost:** $50.00

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Design of Damage Restoration

Whether on television, by a homeowner, contractor, building inspector or engineer, we have all heard the sweeping phrase “this is not to code” or “we need to upgrade this to code”. What does this mean to us in the insurance industry and when dealing with a loss?

By Jeff Martin, P. Eng.,
Element Forensic Engineering

Firstly, the building code is a set of rules and standards to protect the health and welfare of the general public where it pertains to the construction and occupancy of buildings.

The building code has been in effect since 1941. At first, it was a nationwide, all-encompassing document. Over time, select provinces enacted their own, slightly modified, versions of the code with regional specificity. Construction in conformance with the building code is law as enacted through the Building Code Act.

Code related issues predominantly originate in the construction process, wherein the person who conducted the work ignored, did not know of, or misinterpreted the specified requirements. While this is not an exhaustive list, amongst the most popular are: undersized structural members, inadequate means of egress (escape in the event of an emergency), inadequate ventilation, and misuse of an occupancy. In select instances, code related issues can also originate in the periodic revisions to the code. A popular example of a deficiency relating to a revision in the building code is the once common, now banned, use of knob-and-tube wiring.

Non code compliant construction is not only illegal, in many instances, it presents a clear safety concern to the public.

After discovery of an issue of this nature, it is highly probable that one of the parties involved will state "*to address the loss related repair, it must be brought up to code*". While it is unquestionable the issue must be addressed, it is critical to understand the role the Building

Code Act and the Ontario Building Code plays in determining the nature and extent of the rectification.

The building code can be broken down into two main categories: new construction, and renovation of an existing building.

New construction can be further divided into small and large buildings. Part 9 of the code addresses small buildings and part 3 of the code addresses large buildings. While most houses are considered a "small building", the term also applies to all buildings that have a footprint less than 6,500 sqft, are less than or equal to 3 stories, and meet specific occupancy requirements as defined in the building code. Large buildings include the outliers.

Renovation (and restoration) can be further divided into basic and extensive renovation. Part 11 of the code addresses renovation/restoration. It is here where the confusion tends to be introduced. Initially counterintuitive, the overall restoration is not categorized, rather each component is (such as walls, ceiling, and roof assembly). Upon further consideration the rationale begins to make sense. You do not want a small repair to be prohibitively costly whereas if you are already repairing the bulk of an element, why not do it all right?

Basic restoration pertains to localized repair wherein the majority the component is maintained and unaltered. Basic renovations allow the reinstatement of the component to match the existing performance

Do we need to upgrade the walls to include for additional insulation?

level, provided it will not adversely affect the early warning and evacuation systems, fire separations, the structural adequacy, or will not create an unhealthy environment in the building.

A perfect example that many insurance professionals have dealt with is a project that requires the removal and replacement of all interior finishes, vapour/air barrier, insulation, leaving just the "shell" or "bones" of the building remaining. Although the cost of a project this large is significant, it still meets the definition of basic renovation under the building code. So when the question is inevitably asked, "do we need to upgrade the walls to include for additional insulation?", now with knowledge of basic renovation requirements of the code, you can answer with confidence, knowing that the insulation can be replaced to match existing thermal performance.

Extensive renovation pertains to the widespread repair wherein the majority of the component is removed or altered. Extensive restoration transfers you to a modified version of the new construction achieved through the introduction of "compliance alternatives".

Expanding on the previous example, say the project in question involved a roof fire, where the roof framing is predominantly consumed while the remainder of the structural framing was otherwise undamaged. In this instance, the roof would require extensive renovation while the remainder of the building would require basic renovation.

Now let us say there was a loft, tightly fit into the roof framing, with low ceiling heights. While not possible with the limitations of "new construction", it can be reinstated with the modified limitations on "new construction" implemented through the "compliance alternatives" found in Part 11 of the code.

It is important when conducting restoration efforts to engage the services of an appropriately qualified code specialist. They can ensure a safe and legally conforming building.

Jeffrey Martin is a partner and Professional Engineer with Element Forensic Engineering. Element Forensic Engineering is a firm that provides a range of engineering services including damage assessment, structural, environmental, mechanical and electrical design, as well as investigations into the cause and origin and fires. Jeff has over ten years of industry experience. He has personally conducted more than a thousand forensic investigations varying in nature from structural, building science, materials failure and environmental perspectives. Over the past decade, Jeff has played a leading role in the damage resolution of the majority of natural catastrophes in Ontario. He is also experienced in the appraisal process, providing the supporting expert engineering opinion on numerous occasions.

WP

Fentanyl and Narcotics Contamination Assessments

in Buildings and Vehicles

There is an ever growing awareness and concern of Fentanyl use and the resultant contamination in buildings and vehicles from illicit drug use. Fentanyl is a highly potent synthetic opioid which rapidly acts to depress the central nervous system and respiratory function. Opioids interact with opioid receptors in the brain and elicit a range of responses within the body; from feelings of pain relief, to relaxation, pleasure and contentment.

By Bob Caskanette,
Caskanette Udall Consulting Engineers

Fentanyl and its analogues pose a potential hazard to persons who could come into contact with these drugs.

Possible exposure routes to fentanyl and its analogues can vary based on the source and form of the drug. Persons are most likely to encounter illicitly manufactured fentanyl and its analogues in powder, tablet, and liquid form. Potential exposure routes of greatest concern include inhalation, mucous membrane contact, ingestion, and percutaneous exposure (e.g., needle puncture). Any of these exposure routes can potentially result in a variety of symptoms that can include the rapid onset of life-threatening respiratory depression.

Skin contact is also a potential exposure route, but is not likely to lead to overdose unless large volumes of highly concentrated powder are encountered over an extended period of time. Brief skin contact with fentanyl or its analogues is not expected to lead to toxic effects if any visible contamination is promptly removed.

Currently, there are no established federal or consensus occupational exposure limits for fentanyl or its analogues. However, the Canadian Centre for Occupational Health and Safety (CCOHS) states the lethal dose of fentanyl is approximately 2 milligrams (mg) of pure fentanyl, roughly equivalent to four grains of salt, which would kill the average adult. However, this varies and is subject to many other factors, such as the persons weight and opioid tolerance.

A building or vehicle can become easily contaminated with fentanyl and other illicit narcotics from drug

users. This is a concern for all persons entering a building or vehicle where such drug use has taken place and those environments need to be assessed prior to entry to ensure the safety and wellbeing of those persons. A small accidental exposure can lead to significant adverse health effects which could be fatal in persons unaware there is a hazard or who are not properly safeguarded against the hazard.

We have recently begun a working relationship with a specialty narcotics restoration company and have access to real-time portable scanning equipment to test for a library of narcotics in a building or vehicle, including fentanyl. Swab samples can be collected on surfaces and analyzed within one minute in real time down to the nanogram in detection sensitivity. Additional narcotics that can be assessed and identified include but are not limited to; amphetamine, buprenorphine, cocaine, ephedrine/pseudoephedrine, heroin, ketamine, MDA, MDMA, methamphetamine, morphine, papaverine, pethidine, THC, tramadol, acetylfentanyl, butyrfentanyl, carfentanyl, furanylfentanyl, 3-methylfentanyl and W-18. There is also the capability to test for the qualitative presence or absence of fentanyl and other compounds in the air in addition to surface samples. This is key in identifying if contamination is present within a building or vehicle so proper safeguards can be put into place for persons that may be exposed.

We undertake assessments of buildings and vehicles for fentanyl and other narcotics contamination and can fully scan all areas of either to determine if concerns are present. We can also collect additional samples to be submitted to the laboratory if required for additional

confirmation. We provide professional reports with detailed remediation and abatement protocols to be followed by certified contractors which are based on industry best practices currently available.

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There are currently no established standards or guidelines in place for Fentanyl, although some are to be developed shortly. We have reviewed the drafts of some of these proposals, but cannot reference them at this time as more work is required to finalize this framework.

In general, there are three levels of required work procedures, depending on the level of fentanyl contamination present:

- Level I – Low Level of Contamination
- Level II – Moderate/Medium Level of Contamination
- Level III – High Level of Contamination

Following our report outlining the required remedial scope of work, we undertake any additional inspections required throughout the project until it is completed. We then re-attend at the site to reassess the building or vehicle involved and collect additional swab samples to analyze in real time to ensure no remaining contamination or hazards are present on any surface, including building HVAC systems. Additional clearance samples are also typically collected as an additional measure and are submitted to a laboratory for analysis to ensure the remediation was fully completed. A final clearance report is then authored outlining the results of our assessment and testing and the project is complete when the environment is deemed safe. This is critical to protect the future liability of homeowners, insurers and other stakeholders involved. We are always here to answer any questions you may have. Our team looks forward to assisting you on your next project.

Bob Caskanette is an Environmental Specialist with a Licensed Engineering Technologist (LET) with the Professional Engineers of Ontario (PEO) who has over 12 years of experience in the field of consulting and engineering. He is a certified Environmental Professional (EP) and a certified Radon measurement professional. He manages designated substance survey (DSS) projects and hazardous material project management and abatement (i.e. Asbestos, Lead, PCBs, Mercury and Mould), clandestine drug labs and marijuana grow ops, as well as other industrial/environmental hygiene related work.

WP

Final Report

Zohair M. Nassur, BBA, GIE, Toronto Delegate

One of the cities I travelled to in 2017 was the Lebanese capital, Beirut which came across to me as a fast-paced, fashion-conscious and overwhelmingly friendly city that is full of energy, soul, diversity and an intoxicating atmosphere. Exploring the charm of the different districts, strolling the waterfront and pitching into the city's wonderful restaurants was my highlight. Truly, the place where East-meets-West in the Middle East.

The recent blast on 4th August has made things complicated and even worse following the coronavirus pandemic, ongoing economic struggle and social unrest.

The blast at the city's port, which has killed more than 200 people, sources say. Significant structural damage up to three kilometers from the blast site with collateral damage extending up to potentially 7 kilometers was seen.

One of the Reinsurance brokers said that damage to steel portal frames and masonry suggested that the blast was equivalent to a 100-ton TNT explosion, whereas the 2015 hazardous chemical explosion in the Chinese port of Tianjin was equivalent to a 75-ton TNT explosion. The explosion was reportedly caused by 2,750 tonnes of ammonium nitrate that had been stored in a warehouse since 2013

In 2016 Swiss Re estimated that insured losses from the Tianjin explosion were between $2.5 billion and $3.5 billion, although it is unclear whether this means the insured losses from the Beirut explosion will be larger.

Lebanon has said it expects losses of up to $15 billion from the blast, but industry sources said they expected insured losses of nearer $3 billion, most of it in property. Claims stemming from an event of this nature are typically difficult to assess, and the Beirut explosion has its own complications given the mix of insured and uninsured property. A trade body for Lebanese insurers said the economic cost could fall between $5 billion and $10 billion and that about 30% of that figure would be insured, according to a report. The discrepancy is partly because emerging market countries like Lebanon may have lower levels of insurance coverage.

The sheer scale of the devastation is likely to trigger claims across a range of business lines, property and business interruption losses, along with marine hull, machinery and cargo.

The explosion also sparked anti-government protests in Beirut, further complicating the picture as distinction between damage due to the explosion and damage which may be related to the protests would need to be established.

Insurance claims toward the massive explosion at the Port of Beirut have so far reached $425 million, according to a minister. The Caretaker Economy Minister said 2,500 claims have been filed, according to the presidency's Twitter account. The ministry expects claims to reach 10,000.

Insurance industry sources also said the major share of losses would be in property damage rather than in

marine exposure to ships or the port itself.

One insurer in Lebanon told news agencies that it doubted that all of the 60 insurance companies operating there would survive given the coronavirus, financial turmoil and the blast.

My thoughts and prayers are with the people of Lebanon and hope they will heal and build back this beautiful city.

Reminiscing memories from my trip, below are two photos. One at a 'Hammam' in Downtown Beirut, an ancient Eastern spa treatment where you first soak in a steam room, thereafter which you are rinsed, exfoliated, and massaged. The other, located Beirut's westernmost tip is the famous Pigeons' Rock, also known as the Rock of Raouché.

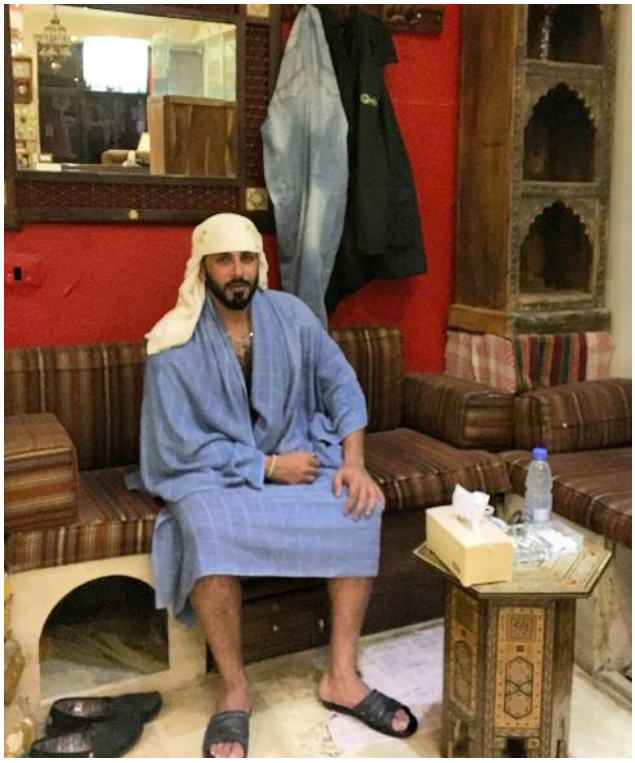
Early days

Bart said Crawford has "picked up a number of claims already," but less than a week after the event, it remains highly uncertain how much the blast will cost the world's insurers and reinsurers. Executives from Hannover Re and Munich Re said in earnings calls that the explosion was likely to cost them more than €10 million each, although they also cautioned that it was unclear by how much the loss would exceed the €10 million mark.

Others have been more reluctant to give an indication at this early stage. Spokespeople for two other major European reinsurers, Swiss Re AG and SCOR SE, both said it was too early to estimate claims from the explosion when contacted by S&P Global Market Intelligence for comment. AXA SA CEO Thomas Buberl said on an Aug. 6 earnings call that it was "far too early to say anything" about the company's exposure.

In 2016 Swiss Re estimated that insured losses from the Tianjin explosion were between $2.5 billion and $3.5 billion, although it is unclear whether this means the insured losses from the Beirut explosion will be larger. Guy Carpenter said in the bulletin that there was "substantial uncertainty" around insured losses, but added that its early analysis suggests combined hull, cargo and port facility losses "should be within $250 million."

Although the level of insurance penetration is unclear, the market is expecting it will be high. Sven Althoff, Hannover Re's head of prop-



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erty and casualty reinsurance, said on an earnings call that because the blast had hit an industrialized port area, "we have to assume there is a good level of penetration here."

Bart at Crawford said: "It's a sophisticated environment. Beirut is a commercial hub and there will be some corporates there, there will be local businesses, there is a strong [small and medium-sized enterprises] market there."

Chris Wylie, regional managing director for the Middle East at Charles Taylor Adjusting, said via email that the initial focus would be on "It is likely that political violence, trade credit and contingent/supply chain business interruption losses will also be of significance," he added.

A challenging loss

Brogden said: "The magnitude of the blast area will pose its own problems, and the mix of insured and uninsured property, the types of damage etc. will all provide unique challenges."

In addition, Lebanon was struggling both economically and with the coronavirus pandemic before the explosion, which Brogden said "will impact potential BI claims and the amount of actual insurance in place."

The pandemic is also creating operational challenges for loss adjusters. Bart said the current challenge is logistics, relating to "the sheer scale of the devastation, and also another complicating factor at the moment is that in a COVID environment we need to ensure that our personnel are absolutely safe."

The explosion was reportedly caused by 2,750 tonnes of ammonium nitrate that had been stored in a warehouse since 2013. On Aug. 7, Lebanon's National News Agency quoted Lebanese President Michel Aoun as saying the government was seeking aerial photos to determine whether there was "external aggression" or "if what happened was caused by negligence."

Brogden said: "The cause of the explosion is still under investigation and this will be key to the policy coverage."

The explosion has also sparked anti-government protests in Beirut, further complicating the picture. Wylie at Charles Taylor Adjusting said adjusters "will have to make the distinction between damage due to the explosion and damage which may be related to the protests."

While there is uncertainty about claims, more clarity is likely in the

coming weeks.

"As the debris removal continues, estimated conservatively for a minimum of three weeks, we anticipate that the insurers and their insureds will begin the process of collating claims information/reports and appointing the necessary experts," Brogden said.

"Much of it (the risk) may be covered by local markets," the source said, which could include insurers in Dubai.

A Lloyd's of London spokeswoman said it was too early to quantify the insured losses.

The Lloyd's market source said: "There will be a lot that isn't insured and unfortunately business interruption is often an area where interpretations of wordings can be an issue."

Another insurance industry source said losses on the marine hull and cargo side were expected to be limited.

Two shipping companies with vessels close to the port told Reuters their ships sustained minor damage and their crews were unharmed.

Zurich Insurance said on Thursday it had clients which operated in Lebanon but did not expect the blast to be a major loss event for the company.

Others such as Allianz, AXA and Munich Re said it was too soon to give estimates.

(Editing by Jane Merriman)

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Final Report

Cindy Bridge, CIP, CRM, Ottawa Chapter Delegate

Today marks the first day back to school for the new 2020/2021 year and let me say it doesn't look anything like prior years. 2020 started out just like every other year. You watched the ball drop in Times Square, the clock strike midnight and made your New Year's resolutions. Full of hopes, dreams and making plans to improve your life, with a new lease on life as this year was going to be your year!! No one would ever have predicted that in just 3 short months our world would come to a halt, be turned upside down and backwards. It would look nothing like life as we have always known it to be.

Suddenly, out of the blue they announce that there is a super bug that is spreading quickly across the world, cases are being reported in hundreds, then thousands. Doctors were trying to determine the source, the connection and how to fight this unknown highly contagious and deadly virus as medications being administered to patients were not working. Just as everyone was preparing for March break, a statement was released warning people not to travel as it wasn't safe and those that didn't adhere to the warning may have to be quarantined upon their return to Canada.

The Prime Minister and President were closely monitoring the number of cases being reported, hospitalizations and deaths to determine the best course of action to take. The unthinkable happened.... It was declared a pandemic and provinces individually declared they were in a State of Emergency. Then much of the world was in lock down, confined to their homes and with minimal interaction with people outside of their own household. Only essential services were to remain open and precautionary measures were being taken to protect our front-line workers. At first, people were led to believe that this was only going to be for a short time two weeks to a month at the most.

The government took this drastic approach to try to stop the spread of the virus later referred to as the corona virus or Covid-19. The numbers had been spiraling out of control, the hospitals were overflowing and the death toll was rising. After the first month, it was clear that this would not be over as quickly as they had first insinuated. The world was like a ghost town no vehicles on the road and so very quiet. It seemed so surreal. COVID-19 was all the talk, more safety measures were put into place and further restrictions. People were advised to wear masks, wash their hands frequently, practice social distancing by leaving 6ft between each other and don't touch your face with their hands in fear of contacting the disease through the mouth or eyes.

By month two, other precautionary measures were being taken for the protection of the frontline workers as they were being exposed to people continually. Their safety was essential so that they could continue to provide the services necessary to the world. Mask, gloves, sanitizer, protective barriers and social distancing was our new norm. People had to line up outside of the stores

remaining 6 ft apart wearing face masks at all times when out in public and only a limited number of people were allowed indoors at one time. All grocery carts, keypads and check-outs sanitized between customers. There were whispers that the State of Emergency was going to be extended to the end of the school year. The government was realizing that this wasn't going to be over anytime soon and that people that were not essential services were suffering financially. Measures were quickly put into place to assist people financially, mortgage payments, credit cards payments, loan payments were being deferred and the government passed a bill to provide some financial relief of $2,000 a month per household.

Then the State of Emergency would be extended until the end of June. The students would finish their school year online and there would be no graduations or prom for the graduating students of 2020. This announcement devastated the students, parents, family, teachers and friends. This is a milestone that each and every child looks forward to throughout all the school years and due to COVID-19, it was not to be realized for the 2020 graduating students. My heart goes out to each and every one of them but it didn't just affect them.

The ripple effect has touched everyone, marriages postponed, all events cancelled, celebrations everything cancelled. The new reality had become, being confined to your home 24/7 with your family and no interaction with anyone else was allowed. Steps were put into place for people that were essential services to work at home. People are not meant to be segregated from each other, the interaction with others is necessary, the ability to come and go and do the things that they love to do, so the adjustment to the restrictions has taken a toll on the entire world. The borders were closed, travel shut down and parks and recreational areas cordoned off. That was a sight that reinforced our reality and made this …. real. It's a sight I never want to see again.

Finally, we receive some good news, as of May 19, 2020 we were entering into stage 1 of 3 stages of Ontario's gradual reopening plan. An announcement was made that all construction, as well as certain health and medical services, seasonal, recreational activities, household and animal services would reopen, all adhering to the new restrictions pertaining to protocol and limited number of people allowed at one time. We have since completed stage 2 and entered into stage 3 where is now evident that our new reality or norm for the remainder of 2020 has been planned and implemented.

Today, as the kids return back to school wearing masks, assigned to a certain group of people that will be in your classroom bubble for the entire school year, in class and virtual classes alternated every week and confined to a certain quad in the school, segregated from each other outside of the bubble. Universities declared the first semester will be all virtual with the possibility that it could be extended for the entire year…. Again another disappointment for all the first year students, no frosh week or a chance to meet all the people that will be in your classes or develop new friendships with people that could very well may be an integrate part of your adult like in University and afterwards. These friendships for now will have to be developed virtually. Will there be another wave before this all ends and a vaccine is available only time will tell.

Hopefully, fingers crossed that this is it. We have all worked together over the entire world in order to ensure the safety and health of everyone in it and I'm sure that life will gradually go back to normal. One thing is certain though, that these safety measures will remain in place going forward so that a pandemic like this never happens again. Stay healthy and safe everyone!!

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