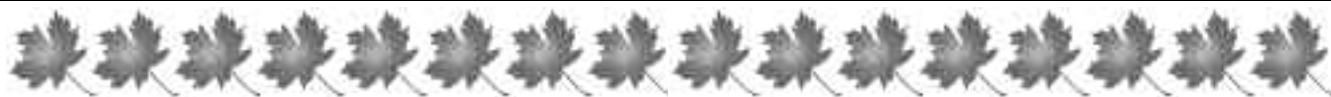


# PRESIDENT'S MESSAGE



November 2012

We ended October with Hurricane Sandy hitting the KW Region. With the high winds and rains that swept through the area, it kept contractors, bodyshops, rental companies and the adjusters busy so that they could help all of the clients that were impacted. Everyone will be busy through the month of November ensuring that all the clients needs are taken care of. Hopefully this is not the start of the trend for the coming winter months.

Did you know that the KW OIAA association has been around for over 50 years! Without all of you, this organization would not be able to exist and your monthly involvement is appreciated. We look forward to the coming years that we can spend together.

I attended the Toronto OIAA meeting in October, and I would recommend that anyone who gets a chance to hear Frank O'Dea, co-founder of Second Cup, speak, do so. He truly motivated the crowd and everyone was engaged during his presentation.

Charlene Ferris, FCIP CRM

President

KW Ontario Insurance Adjusters Association



November 2012

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If you have any questions, concerns or comments, please do not hesitate to contact any of the above committee members.



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Dale Stuart or Mark Hale**

**Please submit your team by Monday November 12, 2011**

**BE THERE!**





# K-W CHAPTER O.I.A.A. PRESENTS

## THE ANNUAL KID'S CHRISTMAS PARTY!!

**DATE:** Sunday, December 9<sup>th</sup>, 2012

**PLACE:** Fun Works Indoor Playland  
425 Bingemans Centre Drive  
Kitchener, Ontario

**TIME:** 5:30 p.m. to 8:30 p.m.

**CONTACT:** Randy Higgins – Paul Davis Systems of Kitchener – Waterloo  
519-570-0438 ext. 242  
Dale Stuart – Cunningham Lindsay – Kitchener  
519-578-5020

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Contact Number:	_____	Email:	_____
Child's Name:	_____	Gender:	_____
	_____	Age:	_____
	_____		_____
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	_____		_____
	_____		_____



**Join us for the Annual Christmas Mix and Mingle!!**

**Date: Thursday December 13**

**Time: 5:30 to 8:30**

**Location: Golf's Steakhouse**

**Cost: \$35.00**

**We look forward to seeing all our members out to celebrate the  
Christmas Season.**

**Come and enjoy the live music and the chance to win a prize!!**

**Please RSVP to Stephen Tucker or Charlene Ferris by  
Wednesday December 5.**



The KW OIAA hopes that everyone has a safe and happy holidays, as the Christmas parties start earlier every year, please drive safely.



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Cognitive Demands Analysis  
Job Coaching  
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## Schedule of K-W Chapter Monthly Meetings 2012-2013

<b>Date</b>	<b>Topic</b>	<b>Contact</b>
2012		
SEPTEMBER 27	TRADE SHOW	Charlene Ferris Cyndy Craig
OCTOBER 25	BAD FAITH	Stephanie Jermyn Laura Potts
NOVEMBER 29	CHILI COOK-OFF	Dale Stuart Mark Hale
DECEMBER 9	KIDS CHRISTMAS PARTY	Randy Higgins Dale Stuart
DECEMBER 13	CHRISTMAS PARTY <i>**NEW THIS YEAR**</i>	Stephen Tucker Charlene Ferris
2013		
JANUARY 31	CARGO THEFT	Lisa Dobson Dan Strigberger
FEBRUARY 28	PANEL DISCUSSION	Stephen Tucker Mike McLeod
MARCH 28	PROVINCIAL SEMINAR	Mike McLeod
APRIL 25	FUN NIGHT & ELECTIONS	Stephen Tucker Laura Potts
MAY	<b>**NO MEETING AS PROVINCIAL CONFERENCE**</b>	
JUNE 27	GOLF TOURNAMENT	Charlene Ferris Cyndy Craig

**\*\* All meeting dates, topics and contacts are subject to change**

**\*\*Cost for meeting is \$35 per person**



## Building Code Changes

By Micheka Kostyniuk, P. Eng.

Micheka is an engineer with Cascanette Udall Consulting Engineers. Micheka's 18 years of work experience has included forensic engineering, structural engineering, environmental engineering, and transportation engineering.

On January 1, 2012 some changes came into effect with the 2006 Ontario Building Code. There are now two new supplementary standards to be complied with. They relate to energy efficiency requirements. One supplementary standard is for Part 1 buildings (small buildings like houses), and one is for Part 3 buildings (larger buildings).

So, what do these changes mean and how will they affect your claims? The answer is, it depends on the claim, but in general should not make much of a difference if you need to comply with the code.

The supplementary standards offer compliance packages to choose from for buildings to achieve the required energy efficiency ratings. The packages allow you to focus your energy efficiency, and the components include items such as various building assemblies (walls, roof, basement, etc), windows and doors, and mechanical systems such as furnace and hot water heating. Alternatively, you can create your own custom compliance package.

**When you are repairing a building, in a lot of cases you aren't changing windows, appliances, etc. Sometimes you're changing insulation, but not necessarily in all areas of the building. The new insulation requirements require more insulating value. Generally, when you're repairing a small area of a building, Part 11 of the OBC protects you from having to bring the entire building to meet the current OBC requirements, though there are some exceptions.**

In general, the supplementary standards apply only to new building construction. Repairs generally do not require all items within these standards, with some exceptions. The main exception is insulation. It is common practice to upgrade to the new R50 (up from the previous R40 requirement) where it can be done.

If you have a building that has been heavily damaged and you plan on demolishing and rebuilding, be prepared that you will need to comply with the new star compliance package, though!

So, the good news is that the recent OBC changes should not significantly affect your claims. The cost impact should be minimal.



# TORONTO DELEGATE REPORT

On October 10, 2012 we celebrated the OIAA Past President and Honorary members' night at the King Edward Hotel in Toronto. This is a special event that pays tribute to the significant contributions made by past OIAA executives throughout the 80+ year history of the association. The evening's speaker was the co-founder of The Second Cup coffee company and had a message of Hope, Vision and Action as he recounted his rags to riches story and discussed some of his amazing benevolent initiatives.

On November 14<sup>th</sup> please join us at the Sheraton Centre in Toronto for a legal panel of plaintiff and defense lawyers for a discussion on "Raising the Bar Higher". Registration is at 1:45 and will be followed by a mix & mingle at 4pm.

Registration opened October 24, 2012 for the OIAA Christmas Party at the Westin Harbour Castle on December 12, 2012. This is a hot ticket as the event sold out online in less than one hour.

The OIAA now has a face book page so if you have a moment please take the time to visit:

<https://www.facebook.com/OntarioInsuranceAdjustersAssociation?ref=hl> and "Like" us. Feel free to invite other industry friends to do the same.

Don't forget to "Like" the Kitchener OIAA new website at our new face book page <https://www.facebook.com/KwOiaa>

You can also join our LinkedIn group at: <http://www.linkedin.com/groups?gid=4578135> or follow our Twitter handle <https://twitter.com/KWOIAA>.

The OIAA publication WP – Without Prejudice is always looking for articles from it's membership. If you would like to contribute or have any feedback please feel free to contact [Michael.mcleod@crawlco.ca](mailto:Michael.mcleod@crawlco.ca).

Regards,

Michael McLeod

Kitchener Waterloo OIAA Chapter Toronto Delegate

## **ASSOCIATION CONTACTS AND INDUSTRY EVENT SCHEDULE**

**November 29th 2012 .....KW-OAA Chilli Cook Off**

**December 9th 2012 .....KW-OIAA Kids Christmas Party**

**December 13th 2012 .....KW-OIAA Adults Christmas Party**

Insurance Brokers Association of Waterloo

Contact – Dianne Monteiro

[dmonteiro@donovaninsurance.com](mailto:dmonteiro@donovaninsurance.com)

K-W Ontario Insurance Adjusters Association

Contact – Randy Higgins

[randy@pdkw.ca](mailto:randy@pdkw.ca)

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Contact – Heather Graham

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# SOCIAL CHIT-CHAT

Happy Halloween Association members!

It has been an interesting month with “Super Storm” Hurricane Sandy recently sweeping across North America, affecting about 60 million people and reaching an estimated \$10 Billion in insured losses, according to the *Canadian Underwriter* (Oct 29 2012: <http://www.canadianunderwriter.ca/news/insured-losses-from-hurricane-sandy-could-reach-10-billion-eqecat/1001802773/>)

Some **Emergency preparedness tips for hurricanes** to share with your clientele (as recommended by The Insurance Bureau of Canada):

Check with your insurance representative to make sure you have appropriate coverage

- Remove valuable items from your basement to higher levels in your home
- Make sure downspouts are clear to direct water away from the home
- Secure any loose patio furniture or barbecues
- Ensure water does not collect on your window sills
- Prepare a detailed home inventory;
- Create an emergency preparedness plan for your family

(Canadian Underwriter Oct 29 2012 <http://www.canadianunderwriter.ca/news/claims-adjusters-insurers-ramp-up-resources-for-hurricane-sandy/1001802837/>)

The changing atmospheric pressure and weather patterns never ceases to keep us on our toes.

Something to remember during this busy time of year as we head into the Christmas season: there are many associative resources

in the province that provide ongoing support to our ever-changing industry. I’ve included some links below for your reference and continuing education.

Insurance Resources:

Ontario Insurance Adjusters Association [www.Oiaa.com](http://www.Oiaa.com)

Ontario Mutual Insurance Association [www.Omia.com](http://www.Omia.com)

Insurance Institute of Canada [www.insuranceinstitute.ca](http://www.insuranceinstitute.ca)

Insurance Brokers Association of Ontario [www.Ibao.org](http://www.Ibao.org)

For a list of Legal Resources:

<http://www.lawpro.ca/links/default.asp>

Have a safe and “dry” November.

Cheers,

Stephanie Jermyn, CKR Global

OIAA Social Director 2012

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## THE GOOD OLD DAYS

On Thursday, September 13, 2012, 33 former players in the Golden Triangle Slo-pitch League gathered for a reunion at the Edelweiss Sports Bar. Faces that hadn't been seen in quite awhile were brought together for hours of exaggerations, white lies, food and drink.

All or most of the league's trophies and plaques were on display as were a number of uniforms. Uniforms from Woodhouse, Adjusters Canada, and Dickson's Dusters were worn by the players while uniforms from Thrifty Wheels [Holiday Wheels], P-K Restorations and First Response Restorations were on display. Don Dickson and Dennis Murray brought some memorabilia. Gossip and catching up were the main conversations throughout the room.

All in all, it was a fun evening. It was suggested that a reunion happen again in a few years.





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## Use of Summary Judgment Motions in BI Claims



Authored by:

**Talaal F. Bond**

Partner  
London

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When the balance of the liability evidence is weighed clearly in favour of one or more defendant, explore the use of Summary Judgment with your counsel. The new Summary Judgment Rule governing these motions has allowed courts to weigh evidence more broadly than before and is now being used in the context of BI claims. Success at this type of motion will stop an action dead in its tracks. Failure will lead to cost consequences, but these are not as punitive as those mandated by the previous version of the Rule. When balancing risk exposure associated with litigation costs, one should recognize the benefit of eliminating the overall claims exposure in exchange for risk of failure.

### The Old Rule And Why We Did Not Use It Very Much.

Traditionally, insurers have been reticent to instruct counsel to proceed with Summary Judgment motions. The old Rule required a responding party, the plaintiff, to show the court that there was a “genuine issue for trial”. Typically, this meant that in a “he said, she said” situation, a court would defer the matter to trial. After all, what could be more of a genuine issue for trial than assessing credibility? But even where credibility was not an issue, courts showed an aversion to dismissing actions without hearing from the parties. Over time, the practical application became narrower and narrower. To make matters worse, failing at the old motions carried very heavy costs consequences (designed to prevent parties from bringing frivolous motions and tying up valuable resources). Accordingly, insurers generally instructed counsel in these types of motion only if the issue was a “slam dunk” such as missed limitations.

### The New Rule

The Summary Judgment Rule changed in 2010, but it took some time for the Court to interpret it. The new Rule<sup>1</sup> allowed judges to weigh the evidence and importantly, evaluate the credibility of a witness. Judges could draw any reasonable

inference from that evidence. The fact that courts could now evaluate credibility meant that this might no longer be a “genuine issue for trial”: cases could theoretically be dismissed at Summary Judgment when credibility is a live issue. Given that Summary Judgment motions are primarily decided by courts based upon written materials, such as affidavits and transcripts of cross-examination of those affidavits, deciding credibility issues could be difficult, but possible.

### What Did It Mean?

Guidance came in the seminal case of *Combined Air Mechanical Services v. Flesch*<sup>2</sup>. The Court of Appeal stated judges must ask the following question, “...can the full appreciation of the evidence and issues that is required to make dispositive findings be achieved by way of summary judgment, or can this full appreciation only be achieved by way of a trial?”<sup>3</sup>

The Court went on to instruct that a full appreciation could be made in a Summary Judgment where there is limited testimonial evidence or limited contentious findings. Judges must be able accurately assess the evidence and draw inferences without actually hearing live witnesses (which may be used in some limited circumstances).

### Applied In a Personal Injury Action Where Liability Was In Dispute

In the recent case of *Clarke v. Arena*<sup>4</sup> the Plaintiff, Clarke, sued a number of people involved in a multiple vehicle collision including one Mr. Beggs. The Dominion of Canada was added in respect of unidentified vehicle coverage. The core issue was whether or not one of the several defendants would attract 1% liability thereby relieving the Dominion of its exposure. The Dominion then brought a Summary Judgment motion. The Dominion specifically argued that Mr. Beggs

<sup>1</sup> Rule 20.04(2.1), *Rules of Civil Procedure*, R.R.O., Reg. 194.

<sup>2</sup> (2012), 108 O.R. (3d) 1

<sup>3</sup> *Idem.*, at para 50

<sup>4</sup> (CanLII 2012ONSC5557, October 2, 2012)

caused the collision. Mr. Beggs argued it was not him but a mystery vehicle. All other witnesses more or less agreed it was likely Mr. Beggs' vehicle. The Plaintiff and all the co-defendants, except Mr. Beggs, consented to the motion.

The judge had to decide whether or not the conflict between Mr. Beggs' version and the other witnesses' versions was a genuine issue for trial. This required the judge to assess credibility in the absence of a live hearing. Under the previous Rule, Dominion's chance for success would have, for all intents and purposes, been nil. But under the new Rule, the judge examined the affidavits and transcripts of the cross-examinations and concluded that Mr. Beggs' version had "little, if any, chance of being believed or accepted by any trier of fact, be it a jury or a justice of this court."<sup>5</sup> A trial on this issue would have been unnecessary and consume resources needlessly. Accordingly, Summary Judgment was granted.

### What This Means for Us?

*Clarke v. Arena* is instructive since it demonstrates that conflicting evidence including credibility can be reconciled at a Summary Judgment motion in the context of a BI claim. It is

---

<sup>5</sup> Idem, para 12

noted that the Plaintiffs' claims were not dismissed; only the action as against the identified vehicle insurer, and thus the decision should be read with some caution. However, since issues of liability are often quite limited in BI claims, Summary Judgment motions should be considered more often where the bulk of the evidence clearly weighs in favour of or more defendants.

Talaal Bond is a Partner in the Insurance Group in our London office. He has extensive experience in insurance litigation, including motor vehicle claims, both accident benefits and tort. In addition, he has defended taverns in relation in liquor licence related liability. He has handled numerous occupiers' liability and property claims as well as farm losses, including feed toxicity and environmental crop losses. Talaal prides himself on his straight forward approach to finding solutions for his clients in an efficient and cost-effective manner.



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## October meeting wrap up

Thank you to everyone who came out to October's dinner meeting. We had a turnout of over 85 people, which is excellent for our first dinner meeting of the 2012/2013 year! We would like to thank Teneil McNeil and James Prior of Miller Thomson Waterloo for their speech on Bad Faith. We hope that everyone has gained new information and tips that they can use when handling Bad Faith claims. Congratulations to our 50/50 winner Jason Dumbreck of CKRG winning \$115.00. Hopefully we can have this kind of turn out for next month's Chili Cook Off!

Regards,

Laura Potts, Cunningham Lindsey Guelph  
KW OIAA Treasurer

---

## YOU'RE GOING TO LOVE THIS ONE!!

Sherlock Holmes and Dr Watson were going camping. They pitched their tent under the stars and went to sleep.

Sometime in the middle of the night Holmes woke Watson up and said:  
"Watson, look up at the stars, and tell me what you see."

Watson replied: "I see millions and millions of stars."

Holmes said: "and what do you deduce from that?"

Watson replied: "Well, if there are millions of stars, and if even a few of those have planets, it's quite likely there are some planets like earth out there. And if there are a few planets like earth out there, there might also be life."

And Holmes said: "Watson, you idiot, it means that somebody stole our tent."





**Patrick Leonard**, *VP Southwest Ontario*

**Jason Dumbreck**, *VP Southwest Ontario*

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## **Some Interesting facts.....**

**In 1938, Time Magazine chose Adolf Hitler for *man of the year*.**

**Twelve people have walked on the moon.**

**Other than the Earth, the moon is the only other known natural astrological object ever walked on.**

**The average human with a full head of hair contains between 85,000 to 150,000 hairs.**

**Humans and giraffes both have seven vertebrae bones in the neck. It's not unusual for a mammal to have 7 vertebra bones in the neck but it's interesting that the long neck of a full grown giraffe has the same amount.**

**Did you know the first bullet proof vest and windshield wiper blades were both invented by women? Cool!**

**Over 3 million people globally every month search for something online with the words interesting facts in it according to the most popular search engine.**

**There are no land snakes in New Zealand. It's part of New Zealand's bio security to keep all snakes out and if a person is aware of a snake, by law it must be reported.**

**New Zealand is free of heartworm disease and rabies.**

**Buttermilk does not contain any butter.**

**Did you know Disneyland does not sell chewing gum? Walt Disney did not want guests inconvenienced by stepping on gum purchased in the park.**

**Each year Disneyland uses over 5,000 gallons of paint to maintain the clean appearance of the park.**

**George Washington died on December 14, 1799.**

**Giraffes can go without water longer than a camel. That's wild!**

**The price of the Titanic cost about \$7 million to build and the price of the Titanic movie was about \$200 million to make. Unbelievable**

**January 30, 1933 was the day the words Hi ho silver! Away! Were first heard as the lone ranger debuts on radio channel WXYZ of Detroit.**

**Many people who read the word yawn or yawning begin to feel the urge to yawn.**

**The 2nd president of the United States (John Adams) and 3rd president of the United States (Thomas Jefferson) both died within just a few hours apart of each other on the same exact day of July 4th 1826. They are the only two presidents to die on the same day of the same year. It's true!**

**When the Titanic departed from port it was documented to have carried approximately 1000 loaves of bread, 86,000 pounds of meat, 40,000 eggs and 36,000 apples to feed the passengers and crew on the 7 day voyage. Now those are some interesting facts!**

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