

PRESIDENT'S MESSAGE

August 2012

On behalf of the KW-OIAA, thank you to all who served on the Executive Committee for 2011-2012. And welcome to our new committee for the 2012-2013 term.

Thanks to all of our adjuster and social members for a great year last year – we hope that this year will be just as great!

Our first event of the year is the Annual Tradeshow. The event is scheduled for September 27 and will be held at the Concordia Club. This is a great event to mix, mingle and learn. You will find the booth and dinner registration further along in the bulletin, early submissions are appreciated.

We will be looking to launch our new website this year – so keep your eyes open for more information regarding it!

We are looking forward to the upcoming year – if you have any suggestions on ideas for the Educational Seminars, or have a topic of interest, please contact any of the executive members.

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

August 2012



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2012-2013 Executive Committee – Getting to know them!



Charlene Ferris – President

Charlene has worked for The Co-operators for 12.5 years in a variety of roles, and is currently a Region Property Adjuster handling large and complex files. She has been on the executive for 6 years. Charlene is an avid soccer player, enjoys travelling and spending time at the cottage.



Cyndy Craig – Vice President

Cyndy has 30+ yrs working in the insurance industry, handling multi-line claims and currently works for Arch Insurance as a senior examiner. This is her third year on the OIAA executive in the KW area. Cyndy enjoys the outdoors, is an avid golfer, baseball player, and gardener.



Lisa Dobson – Past President

Lisa has worked for the past 10 years in Accident Benefits for The Co-operators. She has worked in St.Catharines, Mississauga, Cambridge and most recently the London office. She was the past president for 2011-2012 and staying on for a second term.



Laura Potts – Treasurer

Laura Potts is presently an all lines Field Adjuster at Cunningham Lindsey-Guelph adjusting Property, Municipal Liability, Liability, Automobile, Bodily Injury and Accident Benefit claims. She has been in the industry for over four years. This is her second year on the KW executive council. Laura is very passionate about traveling and is an avid swimmer.



Mark Hale – Secretary

Mark Hale ACII CIP FCILA has worked in claims for 30 plus years and as an Independent Adjuster for 26 years. He began his career in the UK before moving to Canada with his family in 2004. He took a position with Crawford & Company (Canada) Inc. where he continues to work and is currently Branch Manager of their Kitchener & Owen Sound branches.



Mike McLeod – Toronto Representative

Michael sits with both the KW OIAA and on the provincial OIAA executive council. He represents KW at the provincial level and is responsible for the provincial OIAA website portfolio as well as committee work on the annual OIAA claims conference and benevolent events. He is employed with Crawford and Company (Canada) Inc. as branch manager for West GTA claims branches.



Dale Stuart – Director

This will be my second year as a Director for the KW OIAA. I am employed at Cunningham Lindsey Canada as a Road Adjuster, which I have been doing for four years. I have had the opportunity to travel to Australia twice for catastrophes, while also being involved in local CAT's such as Goderich and Hamilton.



Stephen Tucker – Director

Stephen has an undergraduate degree in political science and business and a master's degree in judicial administration. He holds CIP and CRM designations and is working towards achieving his FCIP. He has been in the insurance industry for 16 years having previously held positions in sales, marketing and claims. He has been with Economical for the past 12 years and is currently the Assistant Line Manager for Ontario Casualty/Litigations Claims. Hobbies include hockey, skiing and curling and he enjoys travelling and cottaging with his wife Kim.



Stephanie Jermyn – Social Director

Stephanie works for CKR Global, Canada's largest Risk Mitigation and Investigations company. She is responsible for Business Development across CKR's South-Western division. Stephanie joined CKR Global in the fall of 2011. She also teaches aerobics for Goodlife Fitness and is an avid rock climber. She received her Baccalaureate degree in English Literature from the Univ of Ottawa and completed post-degree courses in Economics at the Univ of Waterloo.



Dan Strigberger – Social Director

Daniel is a Partner in the Insurance Litigation Group in our Waterloo office. He has developed an expertise in inter-company priority and loss transfer disputes, representing his clients in hundreds of such disputes over the years. He also acts for insurers' interests in first party claims, coverage disputes, and tort actions. He has several years of experience being lead counsel in matters before the courts, private arbitration tribunals, and at the Financial Services Commission of Ontario. Daniel also runs a Twitter feed, @InsuranzLaw, broadcasting "tweets" about cases and news stories dealing with insurance law issues as they happen.



Randy Higgins – Bulletin Editor

Randy is a partner at Paul Davis Systems Restorations of Kitchener-Waterloo, Guelph-Wellington County and Owen Sound-Grey Bruce. Randy is responsible for Business Development in these territories. Prior to joining Paul Davis Systems in April of 2007 Randy spent 14 years as an Insurance Adjuster handling all lines of claims with Pilot Insurance Company. He has sat on the K-W OIAA executive since 2009, he spent two terms as one of the Social Directors and this will be his second term as the Bulletin Editor.



OTIP CURO CLAIMS

***Thank you to everyone who participated in the Curo SOS BBQ! What a great day we had for such a wonderful event. It's remarkable to think a three-hour barbecue can make such a difference, but we did! For 36 kids, the first day of school will be a very good day. In total, the team raised \$3,800 for SOS!*

*Christine Fizell
Curo Claims Services*

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Job Coaching
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Implementation of DAC Recommendations*

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KW OIAA JOHN MCHUGH MEMORIAL GOLF CLASSIC



Thank you to everyone who attended the golf tournament on June 28 at Ariss Golf and Country Club. It was another successful year with being sold out for teams!!! I hope everyone enjoyed themselves and didn't end up too sunburned – it was a hot day on the course!

We were able to raise \$3000 for Kids Ability

– thank you to everyone who purchased draw tickets and entered into the putting contents.

Congratulations to everyone who won prizes for longest drives,
closest to the line and closest to the pin.

Congrats as well go to First Response for being the most honest golfers!
Thank you to Larrek for taking the team photos and printing them off.

Hope to see everyone at the next tournament, and hopefully at a few meetings in between!





**If you have an ad or an article you would like to
place in the KW OIAA bulletin**

Please contact

Randy Higgins – randy@pdskw.ca -

519-570-0438 x 242

TORONTO DELEGATE REPORT

I hope everyone has enjoyed a safe and happy summer. As we gear up for the 2012- 2013 OIAA term I wanted to give you an idea of what you can expect on the Toronto event calendar this year. Here is a listing of Toronto OIAA events at a glance so you can mark your calendars. You can register for these events online at www.oiaa.com under the events menu heading.

September 19, 2012 - Meet Your OIAA Executive

October 10, 2012 – OIAA Past Presidents Night

November 14, 2012 - Seminar

December 12, 2012 – OIAA Christmas Party

February 6, 2013 - 2013 OIAA Claims Conference

March 14, 2013 – 2012 OIAA Curling Bonspiel

April 10, 2013 – OIAA Toronto Delegate Election

May 9th & 10th, 2013 – OIAA Provincial Claims Conference

June 14, 2013 - OIAA Toronto Golf Tournament

I am happy to return as the Toronto Delegate for the KW OIAA and welcome any questions or comments that you may have throughout the year. You can reach me at michael.mcleod@crawco.ca.

Regards,

Michael McLeod

Kitchener Waterloo OIAA Chapter Toronto Delegate

INSURANCE INDUSTRY EVENT SCHEDULE

SEPT

27 - K-W OIAA ANNUAL TRADE SHOW

IBAWR - INSURANCE BROKERS ASSOCIATION OF
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CONTACT - DIANNE MONTEIRO -
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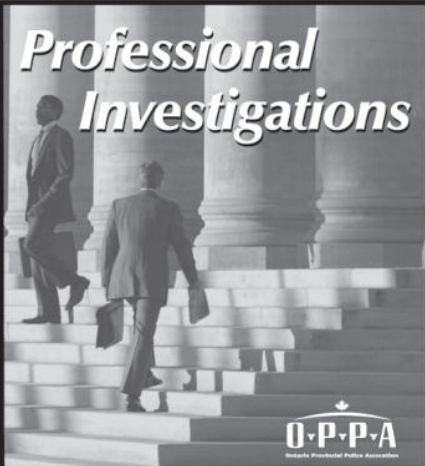
CONTACT - RANDY HIGGINS -
randy@pdkw.ca


MORE DATES TO COME AS DATES ESTABLISHED

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CONTACT - HEATHER GRAHAM -
hgraham@insuranceinstitute.ca

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More Photos of the 2012 John McHugh Memorial Golf Classic



SOCIAL CHIT-CHAT

August 2012

While you're out tanning this gorgeous summer, a few things to keep you up-to-date in the industry....

The OIAA Provincial Conference committee is currently looking for volunteers to assist with the organization and preparation of the 2013 out of town. The conference will be Vegas Themed and held in Niagara Falls on May 9 and 10, 2013. If you're interested in helping out, please email: Julie.boyse@crawco.ca

If you're looking into CECs for the fall, you may be interested to know that the Understanding Serious Injury: Adjusters' Training & Education program is coming to Southwestern, Conestoga, GTA Office, and Ottawa.

The certificate program specifically focuses on understanding the injury, the person and the impact of the injury on the person. Learning is specific to handling Accident Benefits and Bodily Injury claims. For more information:

<http://insuranceinstitute.ca/insuranceeducation/Default.aspx?DN=554466>

As your new Social Director for KW OIAA, I am very excited to bring to you monthly Social Chit Chat for our 2012/13 Bulletin. Cheers and happy bbq-ing!

Stephanie Jermyn



742-8309

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KITCHENER WATERLOO CHAPTER O.I.A.A.

TRADE SHOW BOOTH REGISTRATION

WHEN: Thursday, September 27, 2012 **WHERE:** CONCORDIA CLUB, 429 Ottawa Street
Kitchener, Ontario

FEES: Single booth: (10' x 10', including tablecloth) Booth price \$265.00 + \$34.45 HST = **\$299.45**
Dinner: **\$35.00 per meal** (HST \$4.00 included in price)
HST#: 89331 1217 RT 0001

IMPORTANT TIMES: 12:00 pm – Booth Set Up 4:00 pm – Guests Arrive 7:00 pm – Dinner

Please complete the following:

Company Name: _____	
Contact Person: _____	Telephone: _____
Email _____	
Do you Require Electrical Outlet: _____	
Do you Require a Vegetarian Meal: _____	
Email: _____	Fax: _____
# _____ Booth(s) at \$299.45 = \$ _____	
# _____ Dinner(s) at \$35.00 = \$ _____	
Cheque Total \$ _____	<i>Cheques should be made payable to: KW O.I.A.A.</i>

Registration must be accompanied by full payment

MEALS MUST BE ORDERED IN ADVANCE

Mail cheque and copy of Registration to:
KW OIAA, P.O. Box 40079,
Waterloo Square – 75 King Street South
Waterloo, Ontario N2J 4V1

Inquiries can be directed to:
Charlene Ferris, charlene_ferris@cooperators.ca
(519) 618-1212

Please RSVP by September 1, 2012



K-W O.I.A.A.



TRADE SHOW DINNER REGISTRATION

WHEN: **THURSDAY, SEPTEMBER 27, 2012**

WHERE: **CONCORDIA CLUB
429 Ottawa Street, Kitchener**

DOORS OPEN: 4:00 P.M.

DINNER: 7:00 P.M.

DINNER PRICE: **\$35.00** (HST \$4.00 included in price)
HST#: 89331 1217 RT 0001.

MEALS MUST BE ORDERED IN ADVANCE

To order your meal(s) please complete the following:

Name: _____ Telephone : () _____

Company Name: _____

of Dinner Tickets _____ X \$35.00 = \$ _____ Amount Enclosed

Cheques payable to : **KW O.I.A.A.**

Mail cheque and Registration form to:

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Waterloo, On N2J 4V1

Inquiries can be directed to:
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**Ontario Insurance
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Not All Insurer Medical Exams Are Consented Equal: The Consent Requirement in Tort Defence Medicals vs. A/B Medical Assessments



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Insurer medical examinations and assessments are a vital tool in accident benefits adjusting and in the defence of any personal injury law suit. Given the purpose for these assessments, a unique doctor-patient relationship arises, which can create difficulty when it comes to patient consent. In particular, whether the claimant must consent to such assessments and the nature by which they do so can become an issue. This article serves to highlight how decision-makers have dealt with this issue in the context of court-ordered medical examinations in the litigation process, and insurer assessments in the accident benefits context.

Tort Defence Medicals

Two decisions of Justice Valin speak to the issue of consent with respect to court-ordered medical examinations, pursuant to Section 105 of the *Courts of Justice Act* and Rule 33 of the *Rules of Civil Procedure*. In each case, the Plaintiff claimed damages for personal injuries sustained as a result of motor vehicle accidents.

In *Chapell v. Marshall Estate*,¹ the Defendant brought a motion to compel the Plaintiff to attend two defence medical exams. The Plaintiff took issue with signing the consent forms provided by each of the assessors. At issue in this case was whether a Plaintiff is required to sign any consent, authorization, or agreement demanded by a health practitioner when attending a court-ordered defence medical exam. Justice Valin noted there is no such explicit requirement in either Rule 33 or Section 105. The role of the doctor in a court-ordered medical exam was distinguished from the role of a doctor in a typical doctor-patient relationship. In particular, it was noted:

In conducting a defence medical exam, a doctor or other health practitioner is not operating within the bounds of the traditional doctor patient relationship where the doctor has been engaged by the patient whose trust and confidence in the doctor are essential to their relationship. Instead, the defence medical exam takes place in the context of an ongoing legal dispute where the examinee's adversary has

retained the examining health practitioner. The examining health practitioner is not subject to the usual confidentiality requirements which are essential to the doctor-patient relationship. Indeed, the examining health practitioner's very purpose is to report their findings to the examinee's adversary.

Justice Valin concluded a Plaintiff is entitled to refuse to sign any authorization, consent or agreement presented to them by an examining health practitioner in those circumstances.

In *Tanguay v. Brouse*,² the Plaintiff agreed to attend three defence medical assessments, however, on advice of counsel, he refused to sign the consent documents given to him by the assessor and the assessor declined to conduct the assessment. A motion was brought before Justice Valin to determine whether a party could refuse to sign a consent the examiner deems necessary before a Rule 33/s.105 examination is to proceed.

The Defendant tried to distinguish this case from *Chapell* on the basis that here, there was no court order for an exam; the Plaintiff simply agreed to attend. Justice Valin rejected this argument, indicating that Rule 33.08 implies that consent medicals are to be treated the same as court-ordered medical exams. Again, it was concluded that the role of the doctors conducting defence medical assessments are distinguishable from the role of doctors in a traditional doctor-patient relationship. As a result, an exam conducted pursuant to Rule 33/s.105 enables a health practitioner in Ontario to carry out the exam and report the findings to the Defendant, without fear of successful prosecution for professional misconduct based on the absence of written consent.

Accident Benefit Medical Assessments

In contrast, the recent decision of FSCO Arbitrator Wilson in *Luther v. Economical*³ determined an assessment under s.42 of the SABS will not be treated in the same manner as an exam in the tort context. Here, the insured was injured in a motor vehicle accident and subsequently applied for and

¹ [2001] O.J. No. 3009.

² [2002] O.J. No. 4711.

³ [2012] O.F.S.C.D. No. 82.

received certain accident benefits. The insurer required him to attend medical assessments to determine his on-going entitlement to benefits. Although the Claimant attended the exam, he refused to sign the written consents presented by the assessors. The Insurer ceased paying benefits pursuant to SABS s.37(7). The Insurer eventually found other assessors who agreed to conduct the exams using a modified consent form and these assessors determined the Claimant was entitled to benefits, which were subsequently reinstated. At issue, was whether the Insurer could deny benefits for the period between the first and second scheduled assessments pursuant to SABS s.37(7).

The Claimant argued, as in the case of Rule 33/s.105 examinations, written consents to exams mandated by SABS s.42 are superfluous and not required. However, Arbitrator Wilson refused to adopt the *Chapell/Tanguay* rationale in the SABS context.

Arbitrator Wilson distinguished the exams under the two regimes on a number of bases. First, the Rule 33/s.105 exams relate to court orders, while the SABS s.42 exams represent a mandatory request under a private contract of insurance. This was a key distinction for Arbitrator Wilson, as he found it unrealistic to expect a medical practitioner to conduct an exam without casting their mind to the authority under which it is undertaken. Although a court order provides enough bases to eliminate the need for patient consent, SABS s.42 does not reach the same level. Second, the penalty for refusing to attend such exams differs. Failure to attend a Rule 33/s.105 exam can result in prosecution for contempt of court, while failure to attend a SABS s.42 exam results in the mere suspension of benefits until the claimant makes themselves available. Third, a Rule 33/s.105 exam implies an adversarial relationship between the parties, while a SABS s.42 assessment is conducted in the context of a first-party insurance scheme in which no such relationship is implied. Finally, the provisions can be interpreted differently due to their differing purposes. The purpose of a SABS s.42 exam is to determine entitlement to benefits, whereas a Rule 33/s.105 exam is designed to extend the discovery process in litigation.

Based on the foregoing, Arbitrator Wilson refused to apply Justice Valin's reasoning to a SABS s.42 assessment. He accepted that it is reasonable for an examiner to ask for a generalized consent before undertaking a SABS s.42 exam and to document that process.

Despite this, Arbitrator Wilson held on the facts of this case that Mr. Luther did consent to the examinations, just not in the manner requested by the assessors. He found the consent forms requested in this particular case were inappropriate and Mr. Luther was reasonable and prudent in his refusal to sign. The consent forms Mr. Luther was presented with contained a waiver of liability clause, which Arbitrator Wilson stated was not in accordance with the purposes of the SABS. He further commented that consent forms used by assessors vary widely, and as the assessments are conducted under the insurers' authority, it is surprising there is no insistence on some uniformity. As verbal consent was given, and as alternative written consents were presented by Mr. Luther to the insurer, Arbitrator Wilson found Mr. Luther could not have been said to have refused or failed to attend the exam for the purposes of SABS s.37(7), and the insurer was not at liberty to discontinue benefits. The insurer was required to pay Mr.

Luther the benefits he was entitled to during the period between the first and second assessment.

Conclusion

Current law, as it stands in Ontario, is consent – written or otherwise – is not a requirement for a defence medical conducted in the context of a tort claim. The authority of the court is enough to enable the medical practitioner to carry out the assessment and provide the results to the Defendant, without the need for consent. On the other hand, medical examinations conducted under SABS s.42 still require consent to be given, however that consent may be given verbally or through the signing of a general consent. Elaborate consent forms can be refused by the insured and this refusal may not constitute a failure to attend in order to trigger a suspension of benefits under SABS s.37(7).

It is notable not all jurisdictions have taken the same approach. In a recent case of the British Columbia Supreme Court,⁴ a Plaintiff verbally consented to attend a medical exam but refused to sign the consent, which included a limitation of liability clause similar to that found in the *Luther* case. Here, the court compelled the Plaintiff to sign the consent form and undergo the exam. The implied consent given by attending the exam was deemed withdrawn by refusing to sign the consent. Without consent, the assessor would be open to charges of assault and battery. Thus, rather than compelling the Plaintiff to attend the exam with or without consent as the court does in Ontario; the BC court requires the Plaintiff to sign a written consent.

Medical practitioners in Ontario performing exams pursuant to SABS s.42 must be aware that, unlike Rule 33/s.105 exams, they are not protected from allegations of professional misconduct resulting from lack of consent. Verbal consent, in the presence of witnesses and recorded in their records, appears to be the minimum that should be accepted in order to conduct the examination.

Insurers must also be aware that accident benefits should not be suspended if the claimant raises an issue with an assessor's written consent form. The insurer has a duty to work with the claimant to find a suitable consent or alternative assessor, and to vet the policies of their chosen assessors with respect to intake procedures.

Bryan Horrigan and Katie Quinlan practice Insurance law and are associates of the Waterloo office of Miller Thomson. Bryan obtained his juris doctor from the University of Ottawa; Katie completed her JD at Western and is an alumna of the University of Waterloo.



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⁴ *Kalaora v. Gordon*, 2011 BCSC 1360.



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Brian D. King, Chairman of CKR Global, is pleased to announce that **Steven A. Dubenow, C.P.E.**, will be joining our investigation team as Manager of our **Special Investigations Unit** effective March 5, 2012. Steven brings over 15 years of industry experience as a Specialized Insurance Investigator in all lines including accident benefit, property and third party claims, bringing a considerable breadth of knowledge and expertise in fraud detection and resolution.

Mr. Dubenow, who is an expert in staged auto accident investigations, will be working from our Ontario headquarters in Toronto.



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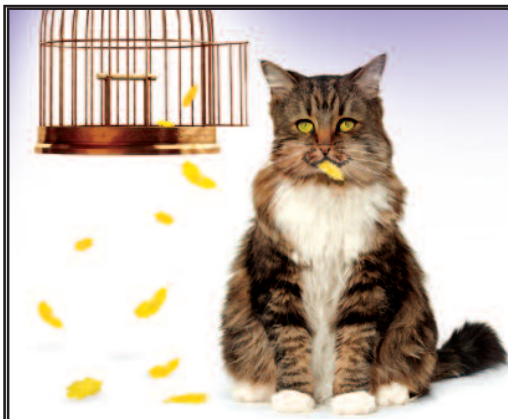
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As the summer haze continues, so does the exertion and in most organizations the volume escalates in terms of demand. With the record breaking temperatures we are experiencing this year, we will no doubt see a much greater incentive (air conditioned or not) to be away from work. It's as accurate as any formula; as the temperature raises the motivation to produce for the organization declines, and quite often as an addendum the projects at the homestead amplify, whether it is in the category of a want, or a need.

This formula was put on trial recently in a case we investigated through surveillance involving a man nearing retirement at a manufacturing facility. The individual had complained of the heat and that the workload was becoming too taxing on his almost 60 year old body, as a result the organization carried out the morally correct decision and allowed the individual a lighter load in terms of his required duties. Although the organization offered what would be considered an ethically correct gesture to the man their return was less than equated; in fact the opportunist was quick to analyze their kindness for weakness and continued to push for progressively lighter duties as the weeks went on. It got to the point where the individual just flat out told the HR department that he needed time off and regardless of the lessened duties they offered they were simply not enough to allow his tired body the rest it needed. It was clear that his plan was working and soon he would have his wish of a workless summer.

Our [investigations](#) branch was contacted to look further into this matter as they could now articulate a more 'drastic' measure to combat this issue. We were sent some images of this individual in his workplace attempting to complete his duties. At first glance it was clear this individual was either an Oscar worthy actor or he was expeditiously in need of an ambulance.

We decided we would begin surveillance as he departed the facility on his last day of work before his self-inflicted vacation. Like the famous prose "dance as though nobody is watching"; that is exactly what this individual did. As he was walking out of the building dependent on his cane he pulled his greatest Keyser Soze impression as the 'necessary' cane was quickly hoisted over his shoulder and the only weight that laboured his leg was the skip in his step as he demonstrated his victory walk to his SUV. We could now clearly see his true intention; the only thing to do now was gather further evidence of his drastic embellishment. As surveillance continued on his drive home we noticed him stopping at the side of the road; it turns out a shelving unit had caught his eye. He proceeded to lift the unit in the most un-ergonomically correct way possible as he held his keys in his mouth he maneuvered the newly found treasure deep into the back of his Rav 4.

The next day we continued the surveillance to maintain the continuity of this [workplace investigation](#). As the sun rose, so did our evidence; it turns out spring cleaning was on his list of things to. He began to load up his truck with garbage from his garage. As the surveillance continued we followed him to the dump as we witnessed him toss the tires as though he was throwing a discus in the Olympics, and yes with one hand. It was clear that either he had found a fountain of youth in the city dump or the only part of him that was fatigued at work was his integrity.



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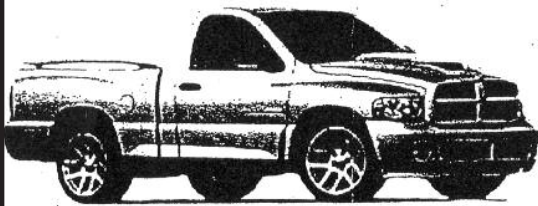
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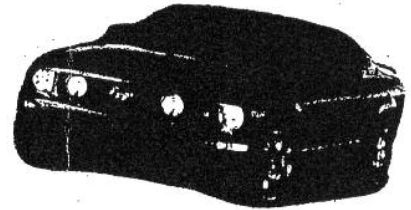
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