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PRESIDENT'S MESSAGE

FEBRUARY 2020



February, the shortest and most misspelled month in the year. On this month we celebrate Valentine's Day, Black History Month and Family Day. 2020 is a leap year, which gives us an extra day this month.

The need for a leap year dates to Roman times and is built into the calendar to stay aligned with the earth's movement around the sun. Julius Caesar added in an extra two months and increased the days of the year to 365. This change to the calendar wasn't perfect, and the calendar was changed by Pope Gregory XIII in 1582, to bring in the leap year every four years, except for years divisible by 100 and not by 400 which last happened in 1900. The next one isn't until 2096!

Regardless if you love it or hate it, Valentine's Day happens on February 14. It has origins to a pagan fertility festival as far back as the 6th century B.C. It was called Lupercalia, and Roman priests would sacrifice animals and slap women with the bloody hides as a fertility blessing. Women would line up to receive this coveted blessing. Oh how the times have changed!

The date of February 14 is the feast of Saint Valentine, is a Catholic saint, who was executed during the third century. One of the most popular legends is that St. Valentine was a priest who would marry couples in secret after Roman Emperor Claudius II outlawed marriage for young men to make them better soldiers. Another legend stated that while in prison he wrote a letter signing it 'From your Valentine'. Whether it was a romantic intention or not, the sentiment has stuck! Valentine's Day has evolved through the years and it is now the one of the top 3 most expensive gift giving occasions, with the average person spending almost \$200.

February is also when we welcome Kadey Schultz on February 27, 2020 at Golf's Steakhouse for her discussion on the #Me Too movement. Kadey is an excellent speaker, you won't want to miss out! To get tickets to this event please visit the KW OIAA Website for further details: <https://www.kw-oiaa.ca/Events>

Last month we had our annual chili cookoff! We had 11 contestants enter their delicious chili's! I was lucky to try all of them! This year the judge's choice was the Chili Cheese Hotdog chili, entered by our Website Director and CEP Forensics' Paul Gullekson! And taking home the coveted people's choice award for another year was Donald Perry from ALTECH! Congratulations to Paul and Donald! A big "Thank You" to everyone who brought in a chili and to all those who came out! These events are successful because of all of you who continue to support the KW OIAA!

**Thank you,
Jaime Renner
President of K-W OIAA**

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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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Save the date in your calendar...**Thursday April 30, 2020!**

At **Maxwell's 35 University Avenue East, Waterloo** – enjoy the true concert experience!

2018 & 2019 Champs **Haz-Matt (DKI Golden Triangle)** are returning to defend their title.

Will they be 3-time winners? Or will a new challenger come out on top?

We are opening band registration to local K- W OIAA adjusters and industry partners first. Let us know you are interested in playing by **February 21, 2020** by contacting jennifer.brown@economical.com or ckeogh@goremutual.ca

Band registration will open to other chapters after February 21, 2020.

Are you ready for a fun night filled with music?

This means if you miss out, you'll need to get in early for next year!

Cost to attend Battle of the Bands will be \$25/person.

If you are interested in sponsoring the event, please contact

jennifer.brown@economical.com

All proceeds raised from sponsoring will be given to charity!



EVENTS SCHEDULE 2019-2020

February 27, 2020

**Educational Seminar - #METOO Discussion with
Kadey Schultz
Carrie Keogh, Matthew Bowker & Kayla
Helmond**

March 26, 2020

**Educational Seminar – Environmental
Remediation with Stantec
David Bushell & Stephanie Klages**

April 30, 2020

**Election night & Battle of the Bands
Jennifer Brown, Carrie Keogh & Matthew
Bowker**

Election for positions available on the board, Members wishing to join the board must be in good standing with the K-W OIAA.

Any member of the OIAA with a Band is encouraged to sign up to play and see if you can beat the two-time defending champs the Haz-Mats

May 28, 2020

**Educational Seminar – Property Loss Prevention
Jeff Cronk & Randy Henderson**

June 24, 2020

**John McHugh Memorial Golf Tournament
Ariss Valley Golf & Country Club
Jaime Renner & Ellie Celestine**

All events will be held at Golf's Steak House and Seafood unless otherwise noted.





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SOCIAL CHIT CHAT

February 2020



February is here!

The weather has had its ups and downs, but we still have special dates to look forward to in this, the shortest month. Valentines day and Family day, are here to add some Pizzazz to a month where all you may want to do is eat pizza.

What you may not know however, is that this a leap year. Here are some interesting facts about leap year.

Q. So...Why the extra day?

A. That's because it actually takes the Earth a little longer than a year to travel around the Sun — 365 days, 5 hours, 48 minutes, and 46 seconds, to be exact. Therefore, as hours accumulated over the centuries, an extra day was occasionally added to the calendar, and over time the practice became more or less official.

Q. Who decided on February 29th?

A. The Romans first designated February 29 as leap day, but a more precise formula was adopted in the 16th century when the Gregorian calendar fine-tuned the calculations to include a leap day in years only divisible by four - 2012, 2016, 2020, 2024, etc.

Q. How does 2020 leap year affect you?

A. In 2020, leap year lines happens to perfectly line up the major holidays so that:
Valentines Day lands on date night Friday
Cinco de Mayo lands on (Taco) Tuesday.

Christmas 2020 and New Year's Day 2021 are also on a Friday, meaning a leisurely 3-day weekend to kick off both holidays!

And finally, some famous people born on February 29th:

Born 1984 – Cam Ward, Hockey Player

Born 1976 - Ja Rule, rapper

Born 1972 - Anthonio Sabato Jr., model & actor

Born 1960 – Tony Robbins

Born 1916 - Dinah Shore, singer

Born 1904 - Jimmy Dorsey, bandleader.

Born 1792 - Gioacchino Rossini, Italian opera composer

But the best part about a Leap Year is an extra day to get your tickets for KW OIAA Battle of the Bands!

Cheers

Matthew Bowker

K-W OIAA Social Director



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PROVINCIAL DELEGATE REPORT



2020 kicked off with the annual claims conference at the Metro Convention Center on January 22, 2019. We welcomed over 1100 adjuster members and industry partners, 130 vendors booths could be found on the tradeshow floor. We hosted 9 different educational seminars covering all lines of business and welcomed students from numerous insurance programs across the province for a career fair.

The Claims Conference was great success. Thank you to the many individuals on the organizing committees for successfully hosting the largest claims conference. It truly is no small feat to host this large event.

Upcoming events:

April 8, 2020- Toronto Delegate Elections. Details of the event to follow.

Regards,
Jennifer Brown
K-W OIAA Chapter, Provincial Delegate





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THE SETTLEMENT TIES THAT BIND EVEN 'TIL DEATH DO US PART:

Mortality Considerations in Full and Final Settlements

Article by Helen D.K. Friedman

In light of recent commentary by the Superior Court of Ontario, accident benefits insurers would be well-advised when negotiating full and final settlements to evaluate and mitigate the risk of premature death of their insured, in cases where the settlement provides for significant payment toward future benefits.

In *Riggs Estate v. Intact*¹ the parties, who were in dispute at the LAT² concerning certain benefits, negotiated a full and final settlement at a private mediation, in conjunction with a settlement of the tort claim against Intact's insureds. The settlement reached on December 17, 2018 provided for a lump sum of \$350,000.00, plus payment for outstanding services to January 31, 2019. Mr. Riggs died unexpectedly on January 3, 2019, before signing the Release and SDN³. The documents were subsequently signed by Mr. Riggs' estate trustee, who then sought enforcement of the settlement. Intact argued the settlement was not enforceable based on the failure of Mr. Riggs to personally sign the SDN.

Justice Reid agreed with Intact, in light of *Stegenga v. Economical*⁴, the LAT, not the courts, had jurisdiction to determine the enforceability of the settlement. Nonetheless, Justice Reid, in *obiter*, set out the reasons why he would have found the settlement to be binding and enforceable:

- There was a meeting of the minds as to the terms of the settlement;
- The contingency regarding the tort settlement had been satisfied;
- There was a mutual intention to create legally binding relations;
- Although Mr. Riggs' imminent death was not contemplated at the time of the settlement, his life expectancy would have been a consideration when the settlement amount was established;
- The settlement was not expressly contingent on Mr. Riggs *personally* signing the Release and SDN;
- The legal capacity of the estate trustee to sign the settlement documents was not disputed;
- At most, the regulations under the *Insurance Act* create a presumption the SDN would be signed personally. There is however, no legislative requirement that this be so;
- Settlements involving minors and persons under a disability necessitate settlement documents be signed by their authorized personal representatives. It could not have been the intent of the legislature to prohibit these settlements from being effective.

Justice Reid relied in part on the Ontario Court of Appeal decision in *Wu Estate v. Zurich*⁵, which further highlights the need for risk management when settlements are subject to court approval.

In *Wu Estate*, 28-year-old Ms. Wu was severely injured in an MVA. Her litigation guardian negotiated a \$3.1 million full and final settlement of her accident benefits claims with Zurich. The Minutes of Settlement described the settlement as being "subject to court approval". At the time the settlement was negotiated, Ms. Wu had an additional 40-year life expectancy. Unfortunately, Ms. Wu died unexpectedly prior to court approval being granted. Her estate brought an application to enforce the settlement. Zurich resisted on the basis that court approval was a condition precedent which had not been satisfied and absent satisfaction of the condition precedent, there was no settlement.

While Zurich was successful at first instance, the Court of Appeal found the settlement to be enforceable, taking into account:

- Pending court approval, the settlement is a binding agreement which neither party can disavow (*Smallman v. Smallman*⁶);
- The purpose of court approval is to protect the party under a disability by insuring that party's rights are not compromised or surrendered without proper compensation;
- Rule 7.08(1) of the *Rules of Civil Procedure*⁷ provides the settlement is not binding on the person under a disability without approval of a judge. (Conversely, the rule does not say the settlement is not binding on the other party. Pending court approval, the party under a disability has an agreement from which the opposite party cannot resile and which will become fully operational once approved by the court);
- By virtue of the settlement, Ms. Wu's claim became a contractual right to an agreed amount, contingent on the court's approval of the settlement. Upon Ms. Wu's death, by operation of law the contractual right devolved to Ms. Wu's estate;
- Once Ms. Wu's contractual right passed to her estate, there was no longer a party under a disability and court approval was no longer necessary to protect the interest of the party seeking to enforce the settlement;
- The requirement/need for court approval disappeared upon Ms. Wu's death, the Minutes of Settlement became operational, and her estate could enforce the obligation to pay;
- The risk created by the enforced gap in time for the court to review the settlement to ensure it meets the disabled party's interest should not be borne by the disabled party. The court's overriding jurisdiction to protect parties under a disability should not be used to defeat those very interests it serves to protect;
- Although Ms. Wu's death would eliminate the cost of future care and thereby diminish the value of Ms. Wu's claim, life expectancy is one of many considerations the parties settling personal injury claims are bound to take into account when determining the worth of the claim. The unexpected death of the disabled party does not remove the entire foundation of the agreement. Parties under disability cannot re-open their settlements when negative contingencies materialize, fairness requires equal treatment for insurers;
- The Minutes of Settlement could have provided that Ms. Wu must be alive at the time of court approval, but they did not. It would not be just to imply a term (that she be alive) which would, after the fact, materially alter the parties' allocation of risk relating to her life expectancy;
- When the parties decided to settle the claim in the amount agreed upon, they were in possession of all relevant facts respecting the claim and had ample opportunity to assess all contingencies. There were no grounds such as mistake or misrepresentation for refusing to enforce the settlement.

With this judicial guidance in mind, there are some strategies which insurers may apply to mitigate the risk of an insured's premature death, particularly when a settlement contemplates significant future benefits. One such method is by insisting on a structured settlement, with a guaranteed reversion in favour of the insurer for a specified period. Another is to specifically negotiate and document as a term of settlement the requirement for the insured to be alive at the time the settlement documents are executed. Alternatively, if court approval is required, to stipulate the insured must be alive at the time of court approval and the settlement is null and void should approval not be granted due to the death of the insured. In this way, the settlement documentation will reflect that the parties specifically addressed the contingency of premature death and have agreed as a term that the settlement will be of no force and effect if the insured is not alive at the stipulated event.

All of this highlights the inherent risk to and leap of faith by insurers in settling future benefits. That said, had Mr. Riggs personally executed the Release and SDN on December 17, when the settlement was reached, his death only two weeks later on January 3 would still have had the same effect for Intact. The settlement funds paid to Mr. Riggs for his future care needs would devolve to his estate which could not apply them for the intended purpose. Clearly, this would not have been the intention of Intact in agreeing to the full and final settlement. Nonetheless, it is one of the risks assumed when agreeing to pay benefits into the future absent a reversion.

Insurers also need to be aware that court approval is for the benefit of the person under a disability only. It is not a condition precedent which can be raised by the insurer to defeat a negotiated settlement. According to the Court of Appeal, a settlement negotiated with the party under a disability is a binding settlement which cannot be disavowed for the insurer. For this reason, strategies to mitigate risk of premature death should be part of all settlement negotiations.

[1] *Riggs Estate v. Intact*, 2019 ONSC 6846.

[2] Licence Appeal Tribunal.

[3] Settlement Disclosure Notice prescribed by s. 9.1 of O. Reg. 664, R.R.O. 1990, as amended, made under the *Insurance Act*.

[4] *Stegenga v. Economical*, 2019 ONCA 615.

[5] *Wu Estate v. Zurich Insurance Co.* [2006] O.J. 1939.

[6] *Smallman v. Smallman* [1971] 3 A11 E.R. 717 (C.A.).

[7] R.R.O. 1990, Reg. 194, as amended, made under the *Courts of Justice Act*.

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House Explosions



By Jeff Udall

On August 14, 2019 a vehicle struck the front of a house in London, Ontario and severed the natural gas line. The gas accumulated inside the house which eventually resulted in an explosion that demolished the house and severely damaged several houses around it.

On August 22, 2018 a house exploded in Kitchener from an intentional release of natural gas into the house. The explosion demolished the house and severely damaged several houses around it.

On June 28, 2016 a house in Mississauga exploded, also from a gas release in the home. The damage to surrounding properties was extensive.

On August 10, 2008 a massive explosion in a propane storage yard in North York devastated many houses in the neighbouring residential area.

Natural gas accumulation in a house can result in a blast that has a significant energy release. In each of the cases above, the blast was enough to leave only a shattered foundation where there was once a family home. The houses immediately next door will often sustain enough damage that they are not repairable and need to be demolished. Beyond that, the amount of damage will vary and depends on various factors.

The most common damage to a property that has been affected by a blast is movement of walls and cracking drywall. The blast creates a sudden high pressure wave that acts to inflate enclosed spaces. The high pressure wave is immediately followed by a low pressure wave which reverses the affects of the inflation forces. Damage resulting from the high and low pressure waves can present in different ways depending on the location and construction features. It is not uncommon to see attic hatches lifted into the attic or aluminum soffits blown out or lifted into the attic when there is no other visible damage. These items are generally the lightest components of construction that move with a pressure wave. Other parts of the house like walls and roofs require more energy to be damaged. Damage to roof trusses is usually from uplift when the attic is inflated under positive pressures. At the same time, ceiling drywall is separated from the ceiling framing.

The pressure wave will travel throughout all the cavities in the house, including chimneys. Fireplace doors in basements can be blown open, or closed doors between rooms pushed open.

After a nearby explosion, it is essential to assess damage to a house to determine if the building has been compromised. We can also separate pre-existing problems from loss related damage. There are clear unique damage patterns that are caused from explosions. Reported damages different from these patterns can be ruled out.

Being able to determine these patterns comes from experience with reviewing several recent explosions. Also being able to identify explosion damage that may not be otherwise obvious comes from such experience. Caskanette Udall Consulting Engineers has extensive experience with explosion damage that can help with working through claims.





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