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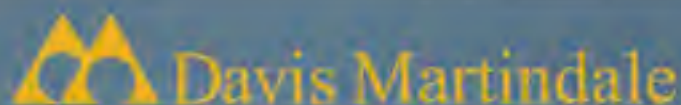
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PRESIDENT'S MESSAGE

JANUARY 2017



Happy New Year!

I hope that everyone had a fantastic holiday season and that had time to rest, relax and enjoy friends and family.

A few of us attended the OIAA Holiday party at the Royal York In December and it was a great time had by all in attendance. I'm thankful for the executive committee for organizing the event. I'm sure it not easy to organize 1000 people for such a large event and know that countless hours went into the planning of the event.

Our first chapter event for 2017 is on January 26. We are hosting a Contractor's Round Table Panel discussion at Golfs Steakhouse. I look forward to seeing everyone there.

Our chapter has the great pleasure of hosting the Provincial conference for 2017. Dust off your tracht and get ready as Maytoberfest will be happening on May 4 & 5, 2017. Registration for tradeshow booths and attendees is available at <http://www.kw-oiaa.ca/2017Provincial> and <http://www.kw-oiaa.ca> . If you are interested in sponsoring the event please contact us at sponsorship@oiaaprovincial.com

A handwritten signature in black ink, which appears to read 'Jennifer Brown'.

Jennifer Brown

President of K-W OIAA



K-W OIAA EXECUTIVE COUNCIL 2016-2017

Jennifer Brown

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Economical Insurance

519-635-3678

Email: jen.guttridge@gmail.com

Charlene Ferris

Vice President

The Co-operators / Coseco Insurance

877-682-5246 ext 272280

Email: Charlene_ferris@cooperators.ca

Carrie Keogh

Treasurer & Provincial Conference Chair

Economical Insurance

519-570-8500 ext. 43220

Email: carrie.keogh@economical.com

Jaime Renner

Secretary

Economical Insurance

519-570-8500 ext. 43031

Email: jaime.renner@economical.com

Cyndy Craig

Past President & Provincial Conference Chair

Arch Insurance Canada Ltd.

647-293-5436

Email: ccraig@archinsurance.com

Leeann Darke

Director

The Co-Operators

519-618-1230

Email: leeann_darke@cooperators.ca

Jennifer Mohr

Director

Economical Insurance

519-570-8500 ext.43017

Email: Jennifer.mohr@economical.com

Stephen Tucker

Provincial Delegate

Economical Insurance

519-570-8500 ext 43281

email: stephen.tucker@economical.com

Monika Bolejszo

Social Director

Samis + Company

1-844-SAMISKW ext 110

Email: mbolejszo@samislaw.com

Ashleigh Leon

Social Director

Miller Thomson LLP

519-593-2427

Email: aleon@millerthomson.com

Manish Patel

Bulletin Director

Larrek Investigations

519-576-3010

Email: mpatel@larrek.com

Daniel Strigberger

Web Director

Samis + Company

1-844-SAMISKW ext 127

Email: dstrigberger@samislaw.com

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

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EVENTS SCHEDULE 2016-2017

January 26, 2017- Contractor's Round Table: Stephen Tucker & Jennifer Brown

February 23, 2017- Accident Benefits- Ashleigh Leon & Leeann Darke

March 30, 2017- Liability Topic- Carrie Keogh & Dan Strigberger

March 31, 2017- Tri- Council Curling Bonspiel: Westmount Golf and Country Club

April 27, 2017- Election Night- Jennifer Mohr & Jaime Renner

May 4&5, 2017- OIAA Provincial Conference – The Inn of Waterloo

June 22, 2017- John McHugh Memorial Golf Tournament: Jennifer Brown & Charlene Ferris: Ariss Valley Golf and Country Club

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



SOCIAL CHIT CHAT

January 2017



Happy New Year!

If you're like me you've made a list of New Year's resolutions, I'm sure many of you have resolved to eat healthier. I have a great bean soup recipe that I use, it's healthy and hearty for those cold winter days.



Mixed Bean Soup.

1 1/2 cups dried beans (any variety works) they will need to be pre-soaked the night before
6 cups water
1/2 cup onion (diced)
1/2 cup sweet diced pepper
1/2 cup carrots, peeled and diced
1/2 celery, diced
3 garlic cloves, peeled and minced
4 cups vegetable stock
1 cup tomatoes, diced
1 tbsp vegetable oil
1 tbsp chili powder
1 tsp oregano
1/2 tsp salt
1/2 tsp ground black pepper
1/2 tsp cumin

In a pot, add beans and water. Bring to a boil, reduce heat and simmer until beans are soft and tender, approximately 40 minutes. Then drain.

In a pan, saute onions, garlic, peppers, celery and carrots until soft. Add to beans with remaining ingredients. Bring to a boil. Reduce heat and simmer for 40 minutes. Makes 8 cups.

Finally, registration is now open for the Provincial Conference happening May 4-5, 2017 at the Inn of Waterloo. Please visit www.oiaaprovincial.com to register. There are also sponsorship opportunities available. Please contact sponsorship@oiaaprovincial.com. We hope to see you there!

Your 2016-2017 Social Director
Monika Bolejszo



PROVINCIAL DELEGATE REPORT



The 2016 OIAA Holiday Party took place at the Fairmont Royal York in Toronto. It was a fantastic night and Ian Gallagher's Great Gatsby inspired suit was memorable to say the least. More important, the event raised \$10,000 for the Alzheimer's Society of Ontario. Congratulations to Michael Hoffman and Johanna Rienzo for organizing this very successful event.

The first major OIAA event of 2017 is the Claims Conference which takes place at the Metro Toronto Convention Centre on Tuesday January 31st. This is a milestone year as it will mark the OIAA's 25th anniversary of hosting the Claims Conference. The event features a full day of educational seminars, networking and trade show with over 150 exhibitors from across Canada. On-line registration is available at OIAA.com and is free for claims professionals.

Without Prejudice is still looking for informative articles. WP is a great way to share informative educational topics with our entire provincial membership. WP reaches 1600 claims professionals and industry partners on a monthly basis. Please feel free to contact me at stephen.tucker@economical.com if you have any questions or would like more information about publishing an article in WP. Sign up for Toronto events at OIAA.com. You can follow OIAA events on Twitter, [@OIAAOfficial](https://twitter.com/OIAAOfficial), or on Facebook.

Regards,

Stephen Tucker

Kitchener-Waterloo OIAA Chapter, Provincial Delegate

K-W OIAA Monthly Meeting Alert

Contractors Round Table



Welcome to our Roundtable Discussion! The panel will be speaking to trends, challenges, concerns, Xactanalysis / Contractor Connection, opportunities, catastrophes and the future for restoration contractors.

This will be a lively and interactive discussion with an opportunity for audience participation.

The discussion will be moderated by David Colyn of Trillium Mutual.

The panel will consist of:

- Dan Loosemoore, Contractor Connection
- Jeff Durrer, First General Service (The Durrer Group)
- Kristen McCutcheon, First On Site
- Jim Woodhouse, First Response Service
- Chuck Stewart, Golden Triangle Restoration
- Peter Douwes, Winmar

We look forward to seeing everyone at the meeting – if you know a property adjuster, make sure they have the invite!

January 2017

26

Golf's Steakhouse at 5:30 pm





OIAA 2017 Provincial Conference

Inn of Waterloo

May 4-5, 2017

Ticket prices include admission to all events on May 4 & 5
\$140+HST until January 31, 2017 • \$175+HST from February 1, 2017

**Visit www.oiaaprovincial.com or contact info@oiaaprovincial.com
for event details and registration**

May 4

Tradeshow 5-8 pm

70+ Industry Partners will be in attendance

Food and beverages will be served at this event

Industry Partners can purchase an 8'x10' booth for
\$800 + HST

Mix and mingle 8-10 pm

An opportunity to network with those in the Insurance industry

May 5

7 educational sessions

SABS and LAT Panel Discussion — Is this what anyone expected?

Hoarding — Digging out from under the exposure

Casualty Update — The Year in review

Insurance 2.0: The Sharing Economy

Fort Mac Round Table Discussion

VP Claim Panel

Drones Presentation — Outside and Interactive

**The education seminars will be followed by a
dinner and traditional fest hall.**

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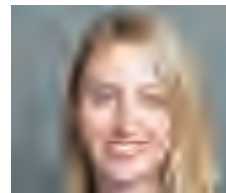
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Tired of handing out pens, paper pads, and other ordinary swag at your trade show booth?

CHECK THIS OUT!

As part of the fun of the Provincial Conference this year, we are handing out specially designed pins that reflect our chosen theme – K-W Oktoberfest! The goal is to have attendees collect customized pins from all of the booths and decorate their bags, hats or lanyards. It's a great collector item and a fun, unique way to get your company name out there *in full colour* for around two bucks each!

Here is the pin which they designed for us:



Orders need to be in by the end of January!

To have your own special event pin for this conference, please contact:

Ana Golobic
Operations Manager
Kitchener-Waterloo Oktoberfest
17 Benton Street
Kitchener, Ontario N2G 3G9

Phone: (519) 570-4267 ext. 226
Fax: (519) 742-3072
Email: anag@oktoberfest.ca
Website: www.oktoberfest.ca

Insurer May Not Deny Coverage for Business Losses, Even When Another Party Is Liable To Pay



Authored by:

Evan Bawks

Associate, Waterloo

519.593.3201

ebawks@millerthomson.com

Whether or not to deny coverage to an insured is often a complicated and nuanced decision for insurers. Insurers should remain mindful of situations in which specific language in a policy can provide for coverage, even if another party may be liable to pay the losses covered by insurance. The Ontario Court of Appeal recently determined that an insurer was required to provide coverage under a policy the included business losses.

In the recent decision in *2224981 Ontario Inc. v. Intact Insurance Company*, 2016 ONCA 870, the Ontario Court of Appeal dismissed an appeal from an insurer that had sought to deny coverage to their insured for business losses due to a fire. The appeal was from a decision of a motion judge pursuant to Rule 22 of the *Rules of Civil Procedure*. Rule 22 allows for a hearing in which parties that concur on a question of law can present a special case to the Court for a determination on that question.

The respondent 2224981 Ontario Ltd. (as “Eco-Lux”) was a commercial tenant that conducted its manufacturing operations at premises leased by the respondent landlord, 2047193 Ontario Ltd. (the “Landlord”). After a fire destroyed the premises, Eco-Lux stopped production and stopped paying rent; they had gone out of business by the time the premises was repaired some eight months later. Eco-Lux’s insurer, the respondent Intact Insurance Company, provided coverage for lost profits pursuant

to the property and business interruption policy. Coverage was based on an estimate of the gross profits the insured would have made, less expenses that would have included rent paid by Eco-Lux to the Landlord.

The Landlord sought coverage for business losses, which was particularized as the eight months of lost rental income, from its insurer, the appellant Zurich Insurance Company. Zurich denied coverage on the basis that Eco-Lux was obligated to pay rent during the period of eight months, despite the fire. In Zurich’s view, this obligation meant that there was no actual rental loss.

The motion judge found that the lease between Eco-Lux and the Landlord was frustrated by the fire and, as a result, the obligation to pay rent ceased. Thus, the Owner did suffer business losses that were covered by the Zurich insurance policy. Zurich appealed on all the findings.

The Court of Appeal determined that Zurich was required to cover the Landlord’s business losses, but for different reasons than the motion judge – in particular, they determined that it was not necessary to determine whether or not the lease was frustrated. They found (and it was not disputed) that a loss of rental income constituted a “Business Income Loss” pursuant to the policy; “business income” included “rental value”, which was defined as including the “total anticipated rental income from tenant occupancy”. As such, the Court found that the motion judge was only required to determine whether the loss of rental income resulted from the necessary interruption of the business and whether the necessary interruption was caused solely by the fire loss. The Court found that since the leased premises were largely destroyed by the fire, which caused Eco-Lux to cease operations, the “necessary interruption” was caused solely by the fire.

The Court found that Zurich was not entitled to deny coverage on the basis that Eco-Lux was liable to pay rent, despite the fire. The Court stated that the Landlord was under no obligation to pursue remedies against Eco-Lux before making a claim for business losses under the Zurich policy. Zurich was therefore obligated to cover the claim under its policy with the Landlord and then pursue Eco-Lux for the amount of rent owed as a subrogated claim, if it chose to do so. The inability of Eco-Lux to satisfy a judgment did not allow Zurich to shift the loss onto its own insured.

This appeal decision illustrates the importance of policy language in determining coverage decisions. For policies that cover business losses, insureds may be entitled to claim from their insurer without being obligated to pursue another party. The fact that another party was possibly being liable to pay the business losses did not remove the insurer's obligation to provide coverage to their insured under the policy.

Evan Bawks is an insurance defence lawyer whose litigation practice includes accident benefits disputes and tort cases involving motor vehicle accidents, property claims, and occupiers' liability claims.

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Mike Reinhardt
msreinhardt@kpmg.ca

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The Ontario Court of Appeal clarified the concept of replacement cost property coverage in the recent decision of *Carter v. Intact Insurance*.

Property insurance policies generally provide for the basis of valuation, which is the manner in which a loss will be quantified. There are two common types of valuation in property policies: actual cash value and replacement cost.

Take, for instance, the case of a fire damaging a television that is four years old. A policy providing only actual cash value would take the cost of the television when it was new and apply a reduction (usually a percentage) for depreciation. Therefore, the policyholder would not receive enough money to buy a new television. If, on the other hand, the policy provided for replacement cost coverage, the policyholder would be entitled to the cost of a new television of the same type and quality as the damaged one.

Often, replacement cost coverage is available as an endorsement (an addition to the policy providing additional coverage) to a property policy. Moreover, policies often specify that the policyholder must replace or repair damaged property within a specified time frame, such as two years, in order to qualify for the replacement cost coverage, preventing people from profiting from the insurance. The insurer will generally pay the actual cash value of the damaged property and will then pay the further amounts owing for replacement cost once the property is replaced (assuming replacement cost coverage was purchased).

In the case of *Carter v. Intact*, the policyholder owned and insured a series of small apartment buildings on one property. A fire caused substantial damage to the buildings and the owners demolished and rebuilt everything. The issue, however, is that the new apartments were very different from the old ones. Originally, there were 15 residential units in small one, two and three storey buildings with a total of 51,000 square feet of floor space. The new condo building, however, was eight and a half storeys high, contained 129 residential units, and over 193,000 square feet of floor space.

The Court of Appeal determined that the policyholder was not entitled to replacement cost coverage, despite having the endorsement, as the building was not replaced with "like kind and quality", wording that is often used in connection with replacement cost coverage. Simply put, the policyholder replaced their property with something that was bigger and better. The Court noted that the building had not been "replaced" within the meaning of the policy.

In summary, when reviewing property policies, it is important to determine whether the basis for valuation is actual cash value or replacement cost. Even if replacement cost coverage is available, there

might be certain requirements that need to be met in order to qualify for the coverage, such as making replacements within a given time period and replacing property with "like kind and quality".

See *Carter v. Intact*, 2016 ONCA 917 (CanLII)

Andrew Mercer is a lawyer at Samis+Company's Waterloo's Office.
www.samislaw.com | @samislaw | #OntInsLaw
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The poster features a cartoon character of a globe wearing a green hat with a 'KW' logo and holding a sign that says 'MAY 4-5'. The background is a wooden plank wall with a blue and white checkered border at the top and bottom. The text 'MAYTOBERFEST' is in black, 'IAA' is in large blue letters, and 'PROVINCIAL CONFERENCE 2017' is in green. Below this, a blue banner says 'REGISTER NOW!'. The main text reads 'OIAA 2017 Provincial Conference', 'Inn of Waterloo', 'May 4-5, 2017', and 'www.oiaaprovincial.com'. At the bottom, another blue banner says 'Gemütlichkeit!'.

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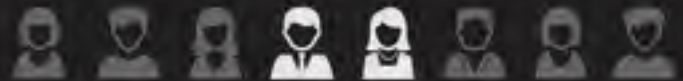
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Contacts

Chris Gray	Zainab Walji
Jim Forbes	Blake DeClark
Caitlin Harris	

Telephone

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