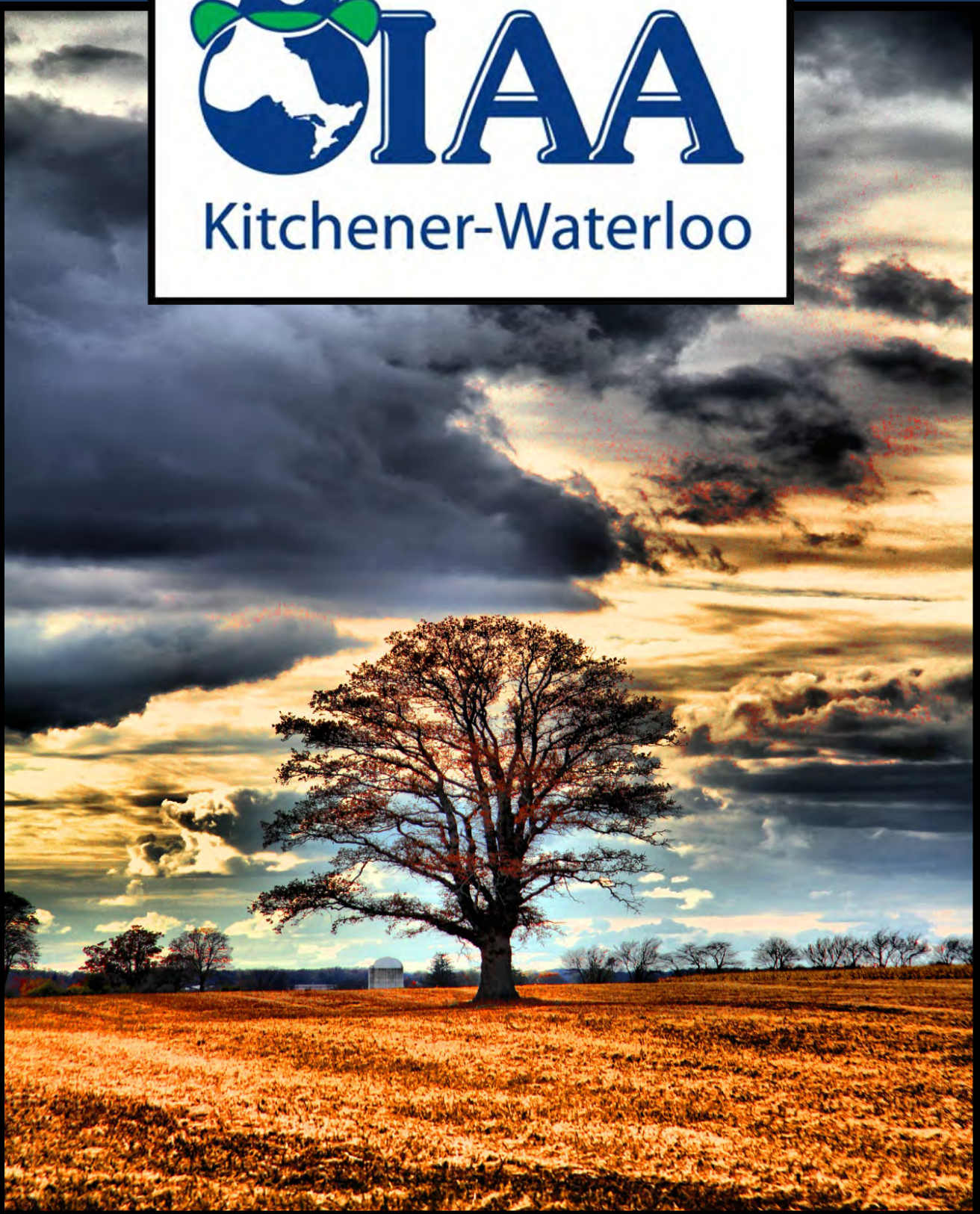




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PRESIDENT'S MESSAGE

FEBRUARY 2015



Winter is in full effect and I am counting down the days until Spring! We just had our first educational meeting of 2015. It was a great turnout with speaker Gord Robson of Miller Thomson. Gord spoke of the Anatomy of a Jury Trial and provided our group with some great information. We would like to thank our 50/50 winner Jason Dumbreck from CKRG who graciously donated his prize to our charity. I look forward to seeing everyone come out to our upcoming events to support the K-W OIAA.

We tried out a new venue for this past meeting. A survey was sent out to our members and has also been posted on our Facebook page. Please provide us with your feedback of this venue along with many other items. It is very important to us to keep our members happy and coming to our events. Without your feedback we won't be able to make this organization the best it possibly can be.

Next month we will have another educational meeting. The topic is "Regulatory Requirements and Remediation Options- A Review" with speaker Lori Festarini of Stantec. This is sure to be an interesting and informative meeting. This meeting will be back at Golf Steakhouse

Registration is now open for the 4th Annual Local Insurance Association's Charity Curling Bonspiel. This event will take place on Friday March 27, 2015 at Westmount Curling Club. We sold out last year so don't delay in signing up your team. This is a great event that brings together the Adjusters Association, Brokers Association and Insurance Institute.

Don't forget we have dinner meeting sponsors, there is still an open spot for February. For \$350.00, your company can advertise at one of our monthly dinner meetings; 2 dinner tickets are included in this cost. The advertising will include signage provided by your company along with business cards on display at each dinner table. If you are interested in sponsoring one of our meetings please let me know. We will also be increasing our dinner meeting costs to \$40 per person. The reason for this is due to increased costs of each dinner purchased by the OIAA.

Please check out our website, Facebook and Twitter to see the upcoming events that will be taking place this year. We are always looking for good articles regarding all aspects of our business and I would encourage our members to come forward with any ideas for our educational meetings. If you have any articles that you would like published in our bulletin please contact our bulletin editor Manish Patel at mpatel@larrek.com.

The executive committee and I are always available if you have any questions about our organization, we have a new email address where you can reach any of us at: kw-oiaa@yahoo.ca. I hope to see you all at throughout 2015.

Laura Potts, TD Insurance
K-W OIAA President

OIAA – EXECUTIVE COUNCIL 2014-2015

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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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SCHEDULE OF K-W CHAPTER MONTHLY MEETINGS FOR 2014-2015

Date

Topic

February 26

**Educational Meeting – “Regulatory Requirements and Remediation Options – A Review” – Lori Festarini – Stantec Consulting Ltd.
Stephen Tucker and Gillian Reain**

March 26

**Provincial Seminar
Ashleigh Leon and Stephen Tucker**

March 27

Annual Curling Bonspiel

April 30

**Election and Fun Night
Ryan Potts and Mark Potts**

May 7-9

Out of Town Meeting

June 25

**Charity Golf Tournament
Laura Potts and Jennifer Brown**



SOCIAL CHIT CHAT

February is the month of love, and love is in the air - except when it comes to Bill 15 that is. Recall in December I wrote briefly about the passage of Bill 15 and its' anticipated impact on the Ontario insurance industry. At the end of January Toronto based lawyer, Joseph Campisi, argued Bill 15 is unconstitutional in front of the Superior Court of Justice in Toronto. Not surprisingly, the main area of contention with the new legislation is the inability for insured's to sue their no-fault benefits insurer in court. According to Campisi, this restriction will have an disproportionate effect on the mentally or physically disabled. For more reading feel free to visit <http://www.canadianunderwriter.ca/news/new-ontario-auto-insurance-dispute-resolution-system-faces-constitutional-challenge/1003449651/>.



We hope that everyone enjoyed the venue change for January's meeting from Golf's Steakhouse to the Waterloo Inn. We welcome your feedback and would appreciate your comments on the monthly meetings regarding venue, food, topics or any other issues. Please send your comments to any of the executive board members!

We look forward to seeing you at our March meeting!

Your 2014-2015 Social Director

Ashleigh Leon

Miller Thomson LLP



Make the Right Move

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TORONTO DELEGATE REPORT



By the time this goes to print the 2015 Claims Conference will have already taken place at the Metro Toronto Convention Centre on February 4th. This is a great event that provides educational and networking opportunities for all claims professionals, vendor partners, students and guests in attendance. It is also a great way to meet new contacts and acquaint ourselves with old friends.

The 14th annual OIAA Curling Funspiel takes place on Tuesday March 10th in Richmond Hill. It would be great to see a few familiar faces from K/W at the event. Also, don't forget to register for the 2015 out of town meeting and claims conference with a Hockey Night in Muskoka theme taking place at the beautiful Deerhurst Resort. Registration is limited.

As always details and registration for OIAA events are available at www.oiaa.com and you can stay tuned to OIAA events by following @PresidentOIAA on twitter or on Facebook.

Upcoming events:

March 10, 2015

Curling Bonspiel - Richmond Hill Curling Club, Richmond Hill, ON

April 8, 2015

Vendor Appreciation event – TBA

May 7 – 9, 2015

Out of Town meeting – Deerhurst Resort, Huntsville, ON

June 3, 2015

Golf tournament – TBA

Regards,

Stephen Tucker

Kitchener Waterloo OIAA Chapter, Toronto Delegate

Articles



Do you have an article that you would like to submit to the bulletin? We are always looking for interesting articles relating to insurance that will help educate adjusters and vendors!!

Please submit your articles to Manish Patel at mpatel@larrek.com

Are you hosting an event that you would like photos to be included in the bulletin? Please submit them to Manish Patel.

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WATER DAMAGE CLAIMS – SOURCES & CAUSES

Water damage claims related to structures and building contents are not limited to catastrophic weather events, but rather an ongoing and increasing source of property loss claims. In this article, we will highlight some common sources of water damage, their possible cause and what opportunities for subrogation might arise based on the cause.

Damage from External Sources

This type of damage arises because water has been able to penetrate the building envelope over time or as a result of a short-term catastrophic event such as a torrential downpour. What is the *building envelope*? The physical components of the building envelope include;

- Foundation system (below grade)
- Exterior wall system (above grade), including doors & windows
- Roof system

Foundation System Breaches

Sewer Back-Up

The source of water infiltration in this type of claim is usually rather obvious but the cause might not be. A sewer back-up is often triggered by a heavy rain. In cases where a backflow valve has been installed, damage can still occur in the case of failure of the valve due to improper installation or manufacturing defect. For sump pump failures, a cause investigation includes looking at the installation, power source for the pump and volume specifications.

Foundation Leakage

Causes of water infiltration through the foundation are often the result of improperly installed or degraded weeping tile systems and grading/landscaping that channels water toward the perimeter of a house rather than away from it. In some cases, intrusions into the foundation structure such as the installation of a deck or the roots from trees that have been planted too close to the home allow moisture penetration. A heavy rain or spring thaw are not the only sources of the water in foundation leakage claims. The source can be from a leaking in-ground pool, an above ground pool that bursts, faulty piping to a fountain or in-ground irrigation system.

Window wells that have been installed without their own drainage system or where a lack of maintenance has allowed the drainage to get blocked, can cause water to leak through the basement windows.



Basement Window Well



Water Infiltration Through Exterior Walls

The exterior cladding system's purpose is to maintain a dry and stable interior space above grade. Systems are designed so that if moisture gets behind the facing such as the layer of bricks, it can be removed from the system by air circulation and drainage or weeping holes. While penetration from wind-driven rain is the most likely type of breach, a breach can be caused in conjunction with a faulty roof system or through an activity as innocent as watering a lawn or garden where the sprinkler is soaking the external wall as well as the grass.

Symptoms of a cladding system failure include;

- Damage to the floor at the base of a wall such as water stains or cupping of hardwood floors
- Damage to interior window framing such as wood rot
- Damage to wall or ceiling finish including bubbling paint or stains

Typical causes of water infiltration include:

- Cavity Wall Drainage System Blocked or Lacks Weep Holes
- Open Joints in Wall System
- Breach of Air Barrier System
- Faulty Flashing at Window and Wall Terminations
- Window Caulking – Missing or Deteriorated

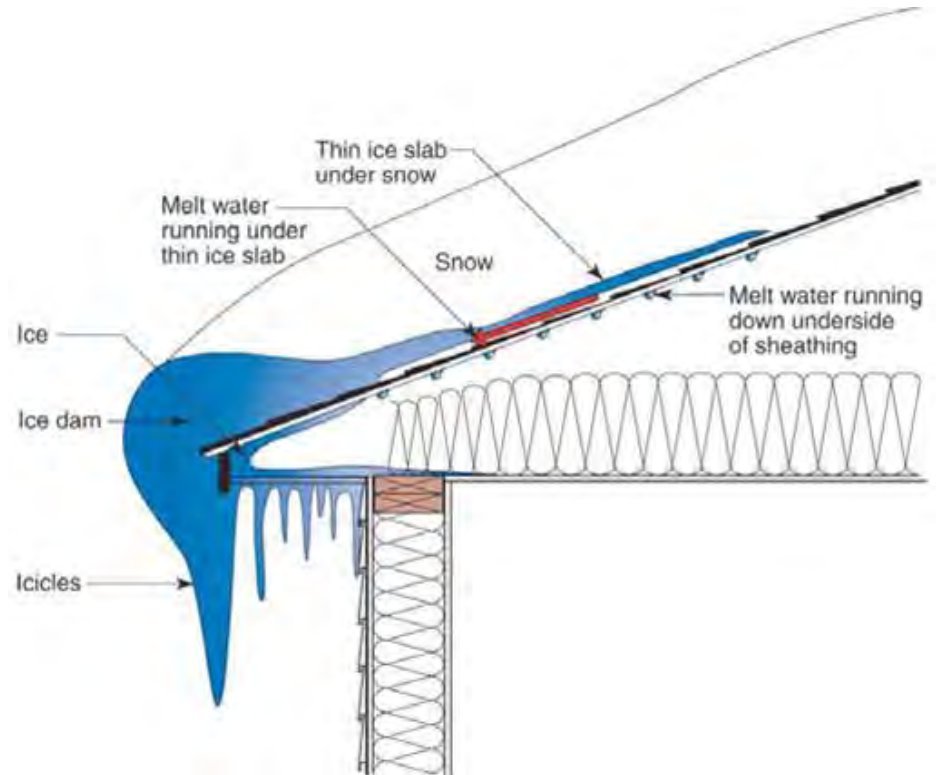
Roofing Systems

The purpose of the roofing system is much the same as the exterior wall system; preventing penetration of the building envelope by weather elements. Roofing systems take an incredible beating from a combination of wind, rain, snow, ice and the sun. The materials employed in the system are of prime importance but as with all structural systems, the installation of the materials is equally important and in roofing systems, ventilation is a critical component. Regardless of how well the roofing system has been installed, over time, weather will cause parts of the system to break down. Poor flashing around vents, poor seals around skylights, missing shingles or other roofing material can all allow water to penetrate the structure.

Symptoms of a possible roofing system failure include:

- Staining to ceiling finish (pot lights, ceiling, wall)
- Direct water entry during rain event
- Condensation forming in attic causing water damage
- Ice damming conditions

In Canada, it is common to see ice damming conditions which create a build-up of ice and snow at the overhang. This is often caused by a combination of factors such as lack of adequate ventilation in the attic including soffit ventilation that is blocked by insulation and heat loss through inadequate insulation or sealing of access points such as the entry to the attic. Melt water enters the attic area and follows the path of least resistance ultimately damaging ceilings, walls and floor finishes.



Damage from Internal Sources

As with damage from external sources, damage from internal sources can be sudden or occur over time. When water damage originates from an internal source, it is usually a result of damage, improper installation, improper use or lack of maintenance but can also be caused by poor product design. Internal sources can be categorized as follows:

- Fixtures (toilets, showers, fountains and taps or faucets)
- Appliances (fridges, dish & clothes washers, water heaters, hot tubs and aquariums)
- Mechanical systems (piping & plumbing)

Fixtures

Failure of fixtures (faucets, taps, toilets, sinks, showers, fountains) can be dramatic where there is a substantial volume of water in the fixture or the break occurs where water is under pressure. A failure can arise from impact to the fixture such as dropping something heavy into a toilet bowl or sink. It can happen as a result of wear and tear as happens with rubber and plastic washers and bushings or can be the result of incorrect installation of the fixture or product defect.

Appliances

Modern residences contain appliances such as refrigerators, water coolers, dishwashers and clothes washers that can be the source of water damage claims. As with fixtures, failure of these items can arise from one or a combination of: sudden impact to the appliance, incorrect installation including restricting proper flow or not securing hoses, incorrect use of the appliance or a manufacturing defect.

Mechanical (piping & plumbing) Systems

Homes have a remarkably complex network of pipes and valves to transport water throughout the structure and ultimately to the sewer system. These networks can fail as a result of weather conditions, improper installation, damage during renovations or a lack of maintenance over time. Winter weather conditions are a common source of failure. In a quest to save money, homeowners may lower or turn off heating systems when they are on vacation and in unique cases such as the ice storms in southern Ontario in December of 2013, power can be interrupted leaving a home without its heating source. If the temperature inside the house drops enough, water in pipes can freeze and burst the pipes. When the home

warms up, the ice melts and water leaks through cracks in the pipes causing damage. Wild temperature fluctuations cause stress on joints which can, over time, cause a failure. As more homeowners finish their basements, the network becomes hidden thus making discovery and cause analysis more difficult and costlier than ever.

Summary

Structural water damage can lead to large and complex claims. When it does, a proper investigation of how and why the damage was caused can speed resolution of the claim. If the cause of the damage originated from a change in the internal or external environment such as renovation or landscaping, subrogation may be an option.



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Beam Me Up Some Attendant Care

January 7, 2015

Ashleigh Leon



Service providers can potentially provide attendant care from across the planet, according to a new Superior Court decision in *Shawnoo v. Certas Direct Insurance Company*. Text messaging, Face Timing, emailing and telephone calls can all qualify as the provision of attendant care services for the purposes of ss 19(1), 19(2), 42(1) and 42(2) of the SABS.

Justice Garson released his decision at the end of December finding that attendant care services can be provided from a distance via electronic means. The decision also discusses ss

3(7)(e)(iii)(A) of the SABS in relation to whether or not attendant care services were provided in

the course of employment, occupation or profession in which the service provider would ordinarily have been engaged, but for the accident.

The Plaintiff, Misty Shawnoo, suffered a catastrophic brain injury as a result of a December 12, 2010 motor vehicle accident. Misty's mother, Cheryl, is a certified healthcare aid but had not been working for remuneration as a PSW for at least two years prior to the accident. Instead, she was receiving Ontario Works and spending her time assisting a relative who had been diagnosed with schizophrenia.

Misty's roommate, Chenoa, is a certified child and youth worker employed both before and after the accident with the John Howard Society.

As a result of the accident, Misty developed issues regarding impulsivity and risk-taking, such that she required constant monitoring and supervision. Both Cheryl and Chenoa provided some attendant care services to Misty including some services by way of electronic communication such as telephone calls, emails, Face Time, text messaging and other electronic means, for the years 2011, 2012 and January to July 2013. It was also noted that Chenoa provided other attendant care services (feeding and basic supervisory care) for Misty in the evenings and on weekends when she was not working.

Attendant Care Claims by Chenoa

With respect to the claim for attendant care provided by Chenoa, Justice Garson was unable to find that the services were provided in the course of her employment, occupation or profession in which should would ordinarily have been engaged but for the accident.

In Justice Garson's opinion the question to be answered was whether a professional child youth worker working to provide services to her roommate during evenings and weekends with no qualifications as a PSW or healthcare aide could provide attendant care services in the manner required for the purposes of section 3(7)(e)(iii)(A) of SABS-2010. Chenoa's curriculum vitae was reviewed along with her job duties as a child youth worker. Justice Garson specifically noted that she did not possess the qualifications of a PSW or a healthcare aide.

Justice Garson found as follows,

"Applying a broad interpretation to the legislative provisions in question and accepting that the goal of the legislation is to reduce hardship on accident victims, I am still unable to conclude that Chenoa possessed the appropriate professional qualifications to provide the attendant care required by MS in the sense require by section 3(7)(e)(iii)(A) of SABS- 2010."

Attendant Care Claims for Cheryl

The attendant care claims made for services provided by Cheryl were somewhat more problematic for Justice Garson. Certas relied on *Simser v. Aviva Canada Inc.*, a decision of Director Delegate Blackman, for the proposition that the relevant service provider must have provided goods or services in the course of the employment, occupation or profession in which he or she would ordinarily have been engaged.

Justice Garson noted that there could be little doubt that the intent of the drafters of SABS-2010 was to reduce the threshold or eligibility for attendant care benefits. He wrote that,

“Applying a broad interpretation to the legislative provisions in question and accepting that the goal of the legislation is to reduce hardship on accident victims, I am still unable to conclude that Cheryl provided her services “in the course of the employment occupation or profession she would ordinarily have been engaged in, but for the accident”.

The fact that prior to the accident Cheryl was not employed for remuneration as a PSW or healthcare aide and that there was no evidence she was actively seeking such employment or likely to receive an offer for such employment was problematic for the purposes of ss 3(7)(e)(iii) (A).

In the end, Justice Garson was not satisfied that, but for the accident, Cheryl would ordinarily have been engaged in healthcare services employment.

Electronic Attendant Care Services

The issue of whether attendant care services can be provided from a distance via electronic means had not been addressed by any court or arbitration decision. Justice Garson referred to ss 19(2) of the SABS which provides that the amount of a monthly attendant care benefit is to be determined in accordance with an “Assessment of Attendant Care Needs” form referenced in section 42. The only section in the assessment form under which attendant care is allocated for electronic services is that dealing with supervisory “custodial care” due to changes in behaviour.

According to Justice Garson, where cognitive or behavioural impairment is at issue, an attendant may be required to cue, remind or prompt a person to perform certain activities, such as attending appointments or other activities that the person would not partake of on their own. It was found that an attendant did not need to be in the immediate physical presence of the injured person to be able to provide these types of services.

“We live in a world where we can Skype our relatives across the planet and appear in court by way of closed-circuit television or telephone. Tele-health Ontario offers an array of services to Ontarians by phone and many remote communities benefit from virtual meetings with medical specialists in larger urban centres. Simply put, there is an

abundance of legal and medical services appropriately proffered and received by electronic means in 2014.”

Although Justice Garson found that the services did not meet the definition of “incurred” in accordance with ss 3(7)(e)(iii)(A) of the SABS, the attendant care was still “provided” by Cheryl and Chenoa by way of electronic means despite that at times there was no physical proximity between the provider and the Plaintiff.

Interestingly, the parties had agreed for the purposes of the motion that an economic loss had not been sustained by the service providers such as ss 3(7)(e)(iii)(B) would not apply (ie the provision that requires non-professional service providers to sustain an economic loss in order for services to be incurred). We query what would the result would have been if the cell phone/electronic device invoices had been submitted as proof of an economic loss for the services providers. In other words, does this decision open up a new potential claim for economic loss under ss 3(7)(e)(iii)(B) for non-professional services providers? If the attendant care services are being “provided” by the electronic means then would the associated cost with providing those services not be considered an economic loss and open insurers up for the full cost of attendant care services being claimed if the threshold test set out in the Court of Appeal decision of *Henry v. Gore Mutual Insurance Company*, 2013 ONCA 480 (CanLII) is followed?

See *Shawnoo v. Certas Direct Insurance Company*, 2014 ONSC 7014 (CanLII)

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News & Announcements

Do you have any announcements that you would like the K-W OIAA to publish in an upcoming bulletin? We will be publishing an "Announcements" section in future issues.

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In the world of investigations, it is of the utmost importance for the investigator to remain virtually invisible while capturing evidence as detailed as the subject's eye colour. However, quite often the most intricate part of an investigation is simply to establish identity. With our population growth and e**X**anding cultural mosaic, this task has become increasingly difficult, requiring new investigative tools as well as calling on the creativity and e**X**perience of the investigators themselves. Our present economy e**X**asperates this issue with more and more family members being forced to share a residence, again emphasizing the importance of establishing identity.

In dealing with these situations, the most advantageous precursor to surveillance is establishing a precise time when we can be absolutely certain that the subject will be attending an event or, better yet, an appointment. This, of course, while keeping an open mind and operating objectively. In other words, we want to determine the truth during an investigation, as opposed to making an attempt to prove a theory we may have been led to believe.

In a recent case, we ran into all these issues simultaneously in a very busy area in the GTA. We were to conduct surveillance on a woman who was claiming a leg injury and as a result was unable to walk without the assistance of a cane. The advantage we had in this particular case was the fact that we were armed with her assessment date. We had a physical description such as height, age, and weight. With this information, we set up outside the subject's house. We knew her appointment was at 3 p.m. and that she was at least 30 minutes (without traffic) from where her doctor was located. At appro**X**imately 3:20 p.m., she e**X**ited her home with cane in her hand; however, she was holding it like a baton rather than a support. We then observed that she walked past the car parked in the driveway and towards the nearest bus stop. Everything matched the description of the lady we were assigned to observe e**X**cept one minor detail: she was wearing a burqa, completely hiding her face. We now had to focus on other details that would prove this to be the right person in order to ensure the evidence was admissible.

As she walked towards the bus stop, she realized her bus was already waiting and people were pouring on. Her quick step immediately turned into a full out sprint. Our investigator now had the lady in question clearly breaching her alleged restrictions. The investigator continued to focus on her shoes as they were the only articles that stood out from the rest of the traditional garment. As we now had evidence of an obvious breach, all the investigator had left to do was verify was the woman's identity. We knew she was going to a doctor's appointment and we knew the location. We also knew that she would have to give her name as she entered the reception area; this would be the key factor to proving identity and matching this sprinter (and her shoes) to the subject in question. Our investigator beat the bus to her destination, and by the time the subject arrived to her appointment, he was waiting for her, covert camera in hand. Oblivious to our "invisible" investigator in the waiting room, the subject arrived and gave her name. As it turns out, the receptionist wasn't the only one taking note.

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Schedule of Events

Thursday May 7th, 2015

2:00 pm—8:00 pm	Registration in main lobby
6:00 pm—9:00 pm	Trade Show with free time following

Friday May 8th, 2015

7:00 am—9:00 am	Continental Breakfast
8:00 am—10:00 am	Registration in main lobby
9:15 am—10:15 am	Seminars <ul style="list-style-type: none"> 1 - Daniel Dooley - Dooley Lucenti Barristers & Solicitors Trying tort cases without trials 2 - Kadey Schultz - Hughes Amys LLP Getting to the bottom of Auto Reform, Accident Benefit & Tort
10:15 am—10:30 am	Coffee Break
10:45 am—11:45 am	Seminars <ul style="list-style-type: none"> 1 - Stephanie Beattie - Centre for Disaster Recovery Catastrophic Management & Handling 2 - Anthony Kunkle - Mitchell Partners Investigation Services Advanced Desktop Investigation
12:00 pm—1:30 pm	Luncheon with guest speaker Dennis Hull
2:00 pm—3:30 pm	Seminar - Outdoors (rain or shine) DKI - Burn house demonstration
3:30 pm—5:00 pm	Seminar - Outdoors (rain or shine) Kodsi Forensic Engineering - Crash demonstration
5:00 pm—6:00 pm	Free time
6:00 pm—7:00 pm	Social time
7:00 pm—9:00 pm	Dinner
9:30 pm—1:00 am	Hospitality Gathering

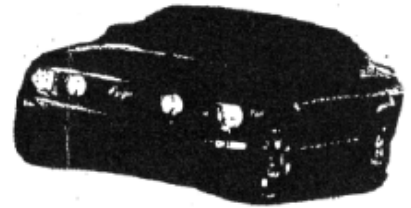
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Pestmaster: U.S. District Court affirms Fidelity Insurer's Intent on Scope of Computer Fraud and Funds Transfer Fraud Coverages

In *Pestmaster Services, Inc. v. Travelers Casualty and Surety Company of America*, the U.S. District Court for the Central District of California granted partial summary judgment in favour of Travelers on a claim advanced under its Computer Fraud and Funds Transfer Fraud coverages. The decision provides valuable guidance regarding the scope of these coverages.

The Facts

Pestmaster, a pest control business, was insured under a Travelers Wrap+ policy. In 2009, Pestmaster hired a payroll company, Priority, to handle its payroll and payroll tax obligations. Pestmaster executed an ACH authorization which authorized Priority to obtain payment of Priority's approved invoices by initiating ACH transfers of funds from Pestmaster's bank account to Priority's bank account. These amounts included both payroll and payroll taxes, the latter of which Priority was supposed to remit to the IRS.

In 2011, Pestmaster discovered that Priority had failed to remit \$373,000 in payroll taxes, and had instead diverted these funds to its own uses. Pestmaster sought indemnity from Travelers under its Funds Transfer Fraud coverage or, alternatively, its Computer Fraud coverage.

Funds Transfer Fraud Coverage

The Funds Transfer Fraud coverage indemnified Pestmaster for direct loss of money or securities, contained in its transfer account on deposit at a financial institution, directly caused by Funds Transfer Fraud. Funds Transfer Fraud was, in turn, defined as (in relevant part):

an electronic, telegraphic, cable, teletype or telephone instruction fraudulently transmitted to a Financial Institution directing such institution to debit your Transfer Account and to transfer, pay or deliver Money or Securities from your Transfer Account which instruction purports to have been transmitted by you, but was in fact fraudulently transmitted by someone other than you without your knowledge or consent;

Pestmaster contended that Priority's transferring funds from Pestmaster's bank account to its own bank account, in furtherance of Priority's fraudulent scheme, constituted a fraudulent instruction to Pestmaster's bank.

The Court rejected Pestmaster's contention, holding that the insuring agreement does not cover authorized or valid transactions, such as the authorized ACH transfers in this case, even where such transactions are associated with an underlying fraudulent scheme. The Court found that there was no evidence that Priority had gained unauthorized access to Pestmaster's bank's electronic fund transfer system or had otherwise provided any fraudulent or altered instructions to the bank in order to divert funds from the rightful recipient. As Priority wrongfully converted the funds only after they had been transferred to Priority, pursuant to Pestmaster's express authorization, the elements of the Funds Transfer Fraud coverage were not made out.

The Court accepted Travelers' position that the intention of the coverage is to protect the insured or its bank from someone breaking into the electronic funds transfer system and pretending to be an authorized representative, or altering electronic instructions to divert funds from the rightful recipient.

Computer Fraud Coverage

The Computer Fraud coverage indemnified Pestmaster for direct loss of money, securities or other property directly caused by Computer Fraud, i.e., the use of a computer to cause a transfer of money, securities or other property from inside the insured's premises or the insured's bank's premises.

Pestmaster contended that Priority's use of a computer to transfer funds from Pestmaster's bank account to Priority's bank account, in furtherance of Priority's fraudulent scheme, met the requirements of the coverage.

The Court rejected this contention as well, accepting Travelers' position that the Computer Fraud coverage is engaged when someone "hacks" or obtains unauthorized access or entry to a computer in order to make an unauthorized transfer of funds. The Court relied on *Universal American*, a 2013 New York decision in which a computer was used to submit fraudulent health insurance claims. The *Universal American* court had concluded that Computer Fraud coverage did not apply "*where an authorized user utilized the system as intended, i.e., to submit [health insurance] claims, but where the claims themselves were fraudulent.*"

The Court concluded that Priority had acted pursuant to Pestmaster's ACH authorization, and could not in any sense be considered a "hacker" or unauthorized user. Priority's fraudulent conduct occurred only after the authorized transfer had been completed and the funds had already been transferred into Priority's account.

No Direct Loss

The Court also held, as alternative bases for denying coverage, that Priority's use of its computer was merely incidental to, and not directly related to, Pestmaster's losses, and that Pestmaster had not satisfied the "direct loss" requirement in either of the coverages. Rather, Pestmaster's loss was "*entirely contingent on a series of events and decisions, including Priority 1's decision to divert the funds in its account to pay its own obligations instead of using them for their agreed upon purpose of paying Pestmaster's federal payroll taxes.*"

The *Pestmaster* decision is helpful in explaining (and endorsing) fidelity insurers' intentions as to the proper scope of the Computer Fraud and Funds Transfer Fraud coverages, confirming that the coverage is intended to be limited to unauthorized access and "hacking" situations. The decision is also helpful in rebutting arguments which attempt to create coverage by reliance on the merely-incidental involvement of a computer, or an electronic transfer, in the loss scenario.

Pestmaster Services, Inc. v. Travelers Casualty and Surety Company of America, 2014 WL 3844627 (C.D. Cal.)



Chris McKibbin joined Blaney McMurtry as a partner in 2014 after practicing for 11 years with an insurance litigation boutique. He has extensive experience in fidelity insurance law. His practice encompasses all aspects of coverage analysis and litigation, involving fidelity bonds, commercial crime policies and financial institution bonds. Chris also maintains a fraud recovery practice, and has obtained significant recoveries in claims against defaulting employees, auditors and financial institutions.

Chris has acted for subrogating insurers in pursuing construction defect claims, products recall liability claims and other subrogated claims. He also has experience in CGL coverage analysis and duty-to-defend applications, as well as the defense of insureds under liability policies. Chris has provided coverage advice to D&O insurers and has also served as defense counsel under D&O policies. He served as counsel for a D&O insurer in resisting an application for court approval of a settlement arising out of the Hollinger International-Conrad Black dispute.



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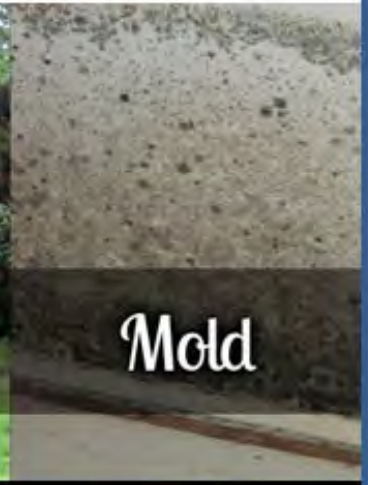
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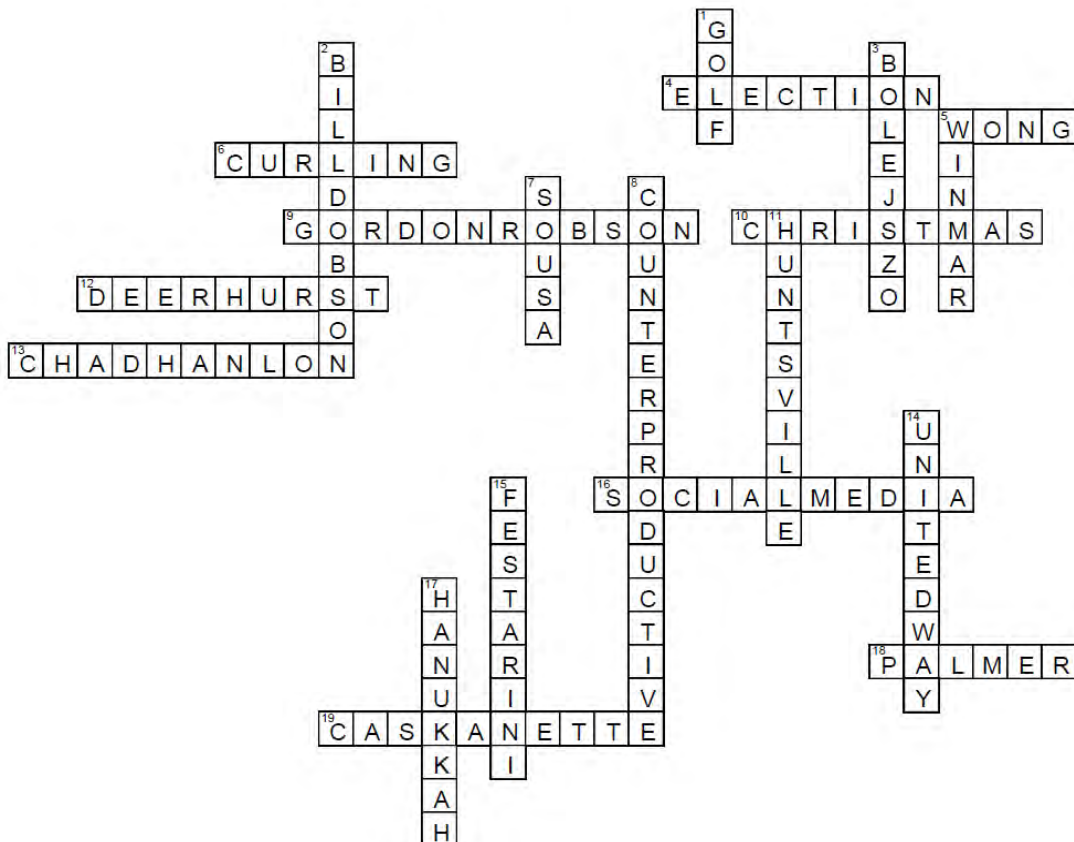
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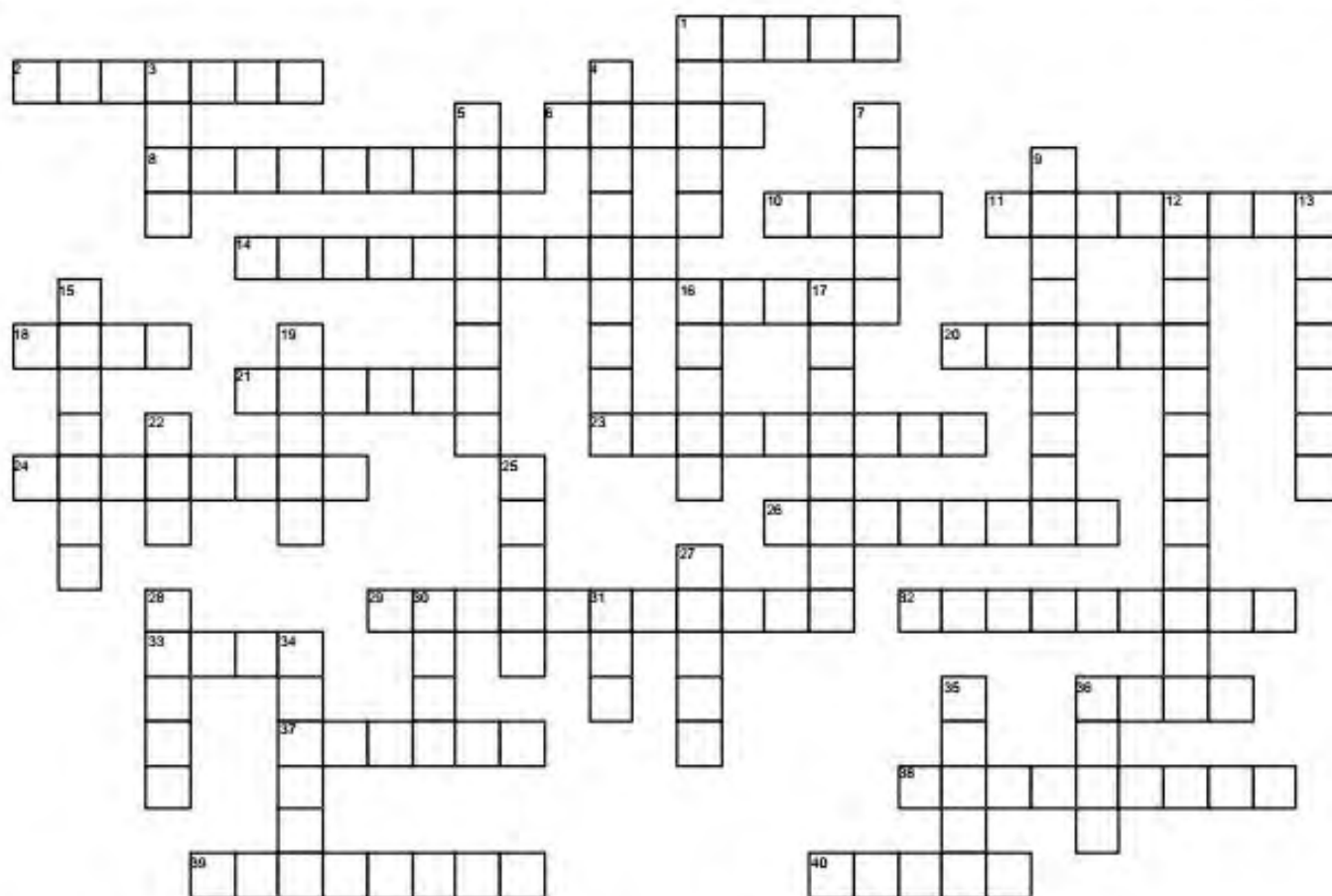


January Crossword Puzzle Solution

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Valentine's Day Crossword Challenge



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- 1 He shoots invisible arrows to make people fall in love.
- 2 Did the mail carrier leave any Valentines in your _____?
- 6 The legendary St. Valentine is believed to have lived in the _____ century after Christ.
- 8 This era is considered the golden age of the Valentine.
- 10 "Be _____."
- 11 A piece of jewelry worn around one's neck.
- 14 A safe place to store jewelry. (Two words.)
- 16 "_____ Valentine's Day!"
- 18 In "XOXOXOX," an X represents this action.
- 20 Cupid's wife.
- 21 Someone disappointed in love is said to have a _____ heart.
- 23 St. Valentine's _____ was on the eve of the Roman festival of Lupercalia.
- 24 This Valentine symbol consists of graceful loops, often in the shape of hearts, with no beginning or end. (Two words.)
- 26 Valentine's Day falls on _____ 14.
- 29 Two people in love.
- 32 _____ and girlfriend.
- 33 The Greek name for Cupid.
- 36 The most popular flower for Valentine's Day.
- 37 St. Valentine is known as the patron saint of _____.
- 38 "Will you be my _____?"
- 39 These people banned Valentine observances in Great Britain during part of the 17th century.
- 40 This popular Valentine's color symbolizes purity.

DOWN

- 1 School children often exchange these on Valentine's Day.
- 3 "I _____ you."
- 4 My friend gave me heart-shaped box full of _____.
- 5 According to one legend, St. Valentine was executed for secretly _____ young couples in defiance of the emperor's orders.
- 7 Children may read and eat _____ hearts.
- 9 A stuffed animal often given as a Valentine's gift. (Two words.)
- 12 A "disease" that affects anyone struck by Cupid's arrows.
- 13 A couple that have promised to marry one another are said to be _____.
- 15 A man often purchases this gemstone for the woman he wishes to marry.
- 16 Bees make this substance, which is also a nickname for someone who is loved.
- 17 On Lupercalia, young people drew names to find _____.
- 19 Bow and _____.
- 22 This popular Valentine's color symbolizes warmth and love.
- 25 These birds that mate for life are a symbol of love.
- 27 School children sometimes celebrate with a Valentine's Day _____.
- 28 In Roman mythology, Cupid is the son of this deity.
- 30 Husband and _____.
- 31 In "XOXOXOX," an O represents this action.
- 34 Gold and _____.
- 35 This organ of the body is the most common symbol of love.
- 36 A piece of jewelry worn on one's finger.

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