

# PRESIDENT'S MESSAGE



**January 2013**

We say goodbye to 2012 and are bringing in a brand new year. I hope that everyone had a safe and happy Holiday Season.

The KW OIAA would like to thank all of the adjusters and vendors that support our chapter, by attending events, providing articles for the bulletins and being a sponsor. Thank you for your continuous support. We have also seen many different people contribute this season with food drives, toy drives and charity fundraisers – all to help those in need this holiday season.

I look forward to 2013 and the accomplishments that we will have. I encourage everyone to come out and attend our monthly meetings, it's a great way to increase your knowledge and expand your network of contacts. If you have any questions or ideas for upcoming topics, please do not hesitate to speak to myself or an executive member. Our next meeting is January 31, 2013 at Golf Steak House.

Regards,  
Charlene Ferris, FCIP CRM  
President – KW Chapter

January 2013

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## Remediation Projects - The Value of Collaboration and Communication

**Environmental insurance claims** require responsiveness, decisiveness, and collaboration among all project stakeholders. Typical stakeholders involved in these types of projects may include the property owner, the adjuster, the spill response team, the contaminant hydrogeologist, the engineer(s), the contractor(s), the local municipality, local agencies and provincial ministries. In the following article we are going to provide an example in which collaboration and communication between the various stakeholders promoted the development of trusting relationships and resulted in a successful project.

Recently R.J. Burnside & Associates Limited and Ground Force Environmental Inc. were retained to develop and implement a remediation program to clean up a fuel oil spill at a 150 year old farm house. Unfortunately vandals broke into the dwelling when the owners were away, cut the fuel line between the above ground storage tanks and the furnace and then decided to leave taps running – just for good measure. Ten hours later when the home owners returned they found the basement flooded with a mixture of fuel oil and water.

**The 150 year old house** had been constructed with a stone foundation and the basement floor was comprised of 1 inch thick concrete that had been poured directly over the native soil. This thin concrete was old and quite porous, especially where the floor met the foundation. These features made it easy for the oil and water mixture to leak out of the basement and contaminate the soil beneath the floor and around the old stone foundation.







**Once fuel oil penetrates the soil**, the depth of contamination and the areal extent become unknown. Migration of the oil and the extent of impact are driven by 4 basic factors:

- Gravity acts to pull the oil down.
- Soil Type dictates the rate of migration. Oil, like water, will follow the path of least resistance. Since gravel bedding around foundations has many void spaces, oil will preferentially flow through this material easier than tightly packed native soil. Oil will also flow through bedding around buried utilities, within a sewer pipe if it is cracked, or through a porous seam in the native soil.
- Fluid Pressure is the force of the oil and water mixture which acts to push fluids into the soil.
- Depth of Groundwater - once oil hits the groundwater table it will float on the surface and spread out in all directions.



**After initial investigations** were completed, which included drilling and collection of soil and groundwater samples, a thorough review of the remedial alternatives was completed in consultation with the project team. The agreed upon plan was to: install a groundwater extraction system outside the home to intercept impacted water; excavate impacted soil from beneath the basement floor and from around (and below) the foundation of the building; and eventually backfilling, all while leaving the home in place.

The presence of the stone foundation required complicated structural underpinning to allow for excavation work to proceed to depths of 3.5 meters below the basement floor without jeopardizing the structure. This process required a building permit and a collaborative effort between the team and the local municipality to ensure expediency of required approvals. Always being mindful of costs and timelines, equipment was mobilized in a manner to effectively address contaminant removal in a systematic approach while navigating the very restrictive work space.



As is often the case with remedial projects, an additional area of contamination was identified during excavation work. Again, the team evaluated all options to address this inaccessible area. The final approach agreed upon was to remediate the material in-situ using a chemical injection system, which required Ministry of the Environment involvement.

**Unfortunately remediation** projects are not like typical engineering and construction projects or specifically defined property claims. Once a contaminant moves below the ground surface it is very difficult to fully assess and predict the effects. A remediation project is a very fluid process and collaboration between a multi faceted project team is extremely important. An experienced project manager whose primary responsibility is the coordination of all project activities and ensuring seamless communications between the stakeholders is paramount. The expertise of structural engineers, environmental engineers and contaminant hydrogeologists along with a very experienced contractor are needed to ensure success. It is imperative that the adjuster, policy holder, permitting municipality, agencies, and involved Ministries all be kept informed and appropriately engaged.



**Communication**  
**Collaboration**  
**Experienced**  
**Informed**

Because we do not have x-ray vision, a fuel oil excavation project will never unfold quite as it was originally imagined. To ensure project success, an effective team will be responsive and decisive using a strong foundation of communication and collaboration. When new information is obtained or decisions need to be made time cannot be wasted trying to review background information or to start building the required relationship of trust. In tackling environmental property claims, retaining a team with a proven record is a major advantage.

*Peter Hicks, P.Eng., B.A., QP<sub>ESA</sub>, is a senior environmental engineer in Burnside's Guelph office.*

*Dave Marks, P.Geo, QP<sub>ESA</sub>, is Burnside's contaminant hydrogeology group manager.*

For more information contact:  
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## Schedule of K-W Chapter Monthly Meetings 2012-2013

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

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

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



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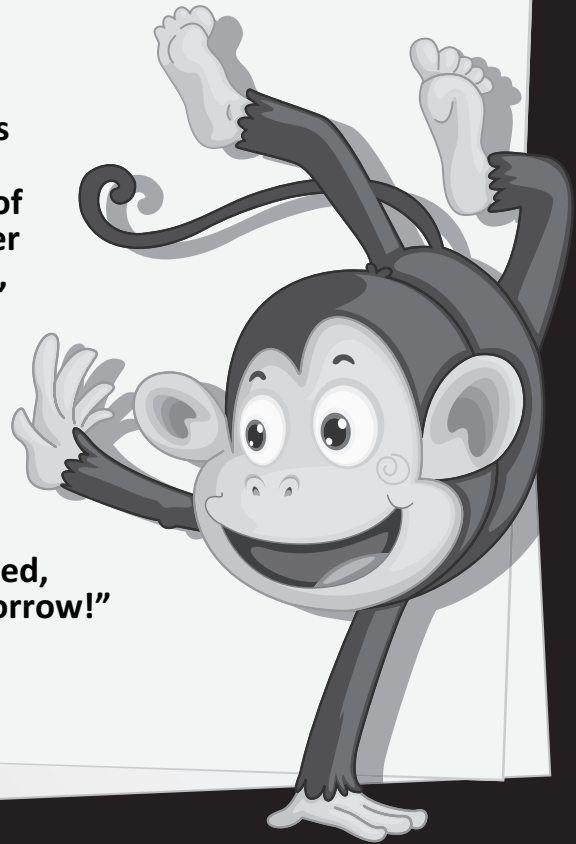
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### Monthly Funny!!!

Harry was finally a groom and was very excited about his upcoming marriage. He was on his way out of the office when his boss came over to him with an outstretched hand, "congratulations Harry, I just wanted to tell you I've been married for twenty two years, and I am sure that you will always remember this day with the fondest of memories, as the happiest day of your life." "But sir", said Harry, "a little bit confused, I'm not getting married until tomorrow!" "Yeah, I know", said his boss.



### ASSOCIATION CONTACTS AND INDUSTRY EVENT SCHEDULE

January 31st, 2013.....Educational Meeting

February 28th, 2013 .....Educational Meeting

March 22nd, 2013 .....Insurance Associations Curling Bonspiel

March 28th, 2013 .....Provincial Seminar

Insurance Brokers Association of Waterloo

Contact – Dianne Monteiro

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

K-W Ontario Insurance Adjusters Association

Contact – Randy Higgins

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

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# SOCIAL CHIT-CHAT

January 2013

Merry Christmas; Happy Kwanzaa; Happy Hanukkah; and Happy New Year!

(We finally have a little snow!)

Despite the fun and frequent festivities, FSCO (on the flip side) has found recent fraud cases to be frustrating at least one insurance company this season....

Check out this article from the Canadian Underwriter: "The Financial Services Commission of Ontario (FSCO) is warning consumers that two people are not licensed to do insurance business in Ontario. Lisa Rossi and Sam Soso claimed to sell auto insurance on behalf of Zenith Insurance Company, FSCO said in a statement on its website. Rossi and Soso directed consumers to pay premiums in cash and in person to an individual named "Jack." Zenith Insurance Company, an insurance company that is licensed by FSCO, has confirmed that it is not affiliated or associated with any of these individuals.

The following phone number has been used in relation to this scam: 1-888-915-4430. Consumers should exercise caution if they are asked to contact someone at this number about purchasing insurance."

**Daily News "FSCO warns consumers of two unlicensed individuals selling auto insurance" 2012-12-06**

As we bring in the New Year, let's aim to collectively focus on fraud reduction in 2013. Happy Resolutioning! See you all very soon!

Cheers,  
Stephanie Jermyn, CKR Global  
SOCIAL DIRECTOR

## Top Ten Strategies for Making Your New Years Resolution Stick

Start Right now

Remind yourself of your goals every day

Closely measure your progress

Visualize the end result

Trick your mind

Give yourself a trial run

Piggyback your resolution with existing habits

Set ultra specific goals

Get someone to hold you accountable

Focus on one resolution

Good Luck



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## **The Investigative Process: Tools for Determining Claim Validity**

When investigating insurance fraud, surveillance is one of the best known and most reliable methods of determining the validity of a claim. Surveillance is still a paramount means of gathering evidence to challenge insurance fraud, but the effectiveness of surveillance can be increased exponentially by combining it with effective and thorough preliminary research.

Preliminary research is an integral service that should be provided by any private investigation company that offers surveillance services. This investigation should include a thorough review of OSI (Open Source Intelligence), which includes publicly available sources such as social networking profiles, published telephone listings, and print and broadcast journalism. The private investigation company you retain should also be able to acquire information through contracts held with private sector and government databases not accessible to the general public.

When evaluating the findings of preliminary research, there are two main factors that should be considered. The first factor is the reliability of the information. Although the private investigation company that you retain may be contractually unable to provide the specific identity of their source of information, they should always be able to provide a frank assessment of the degree to which this information may be relied upon. If the reliability of the information is suspect, there is often the option to confirm it through corroborating sources.

The second factor to be remembered when assessing findings is the age of the information, which may impact upon its value. That said, the potential value of historical information should not be discounted. As the public awareness of information privacy increases, accessible information regarding the activities of claimants decreases. However, to the chagrin of many claimants and to the benefit of your investigation, historical data placed online can remain in place for years. This can still serve to provide valuable information such as previous hobbies, associates, and membership in gyms, clubs, sports teams, or other organized activities, all of which may still be relevant, despite the age of the original information.

Effective preliminary research can benefit a pending surveillance investigation in three different ways:

The first and most standard use of preliminary research is to confirm the information already in your possession. This allows surveillance to begin with the confidence that time and budget will not be wasted at the wrong house, or in following the wrong individual.

The second benefit of preliminary research is to allow for the surveillance to be targeted for times and places that will provide the most evidence in the shortest amount of time or, in other words, the most value for the least cost. Preliminary research can identify times of the day or week that the subject may be particularly active, special occasions that may be of particular interest, and locations in which the subjects of investigation may frequent away from their residences.

*As an example, multiple successful investigations have begun with the discovery that the subject had been a member of a sports league in previous seasons. From there it was possible to acquire a schedule of future games and practices, and surveillance was then targeted for these dates and times. This resulted in the acquisition of substantial video of the subject engaged in high levels of activity, entirely contradicting their claims of injury and disability.*

Conversely, effective preliminary research can also allow private investigators to avoid conducting surveillance at times and locations that will not be productive, such as when the subject is travelling or entirely inactive for another reason.

The final benefit of preliminary research is the potential to generate evidence entirely separate from the subsequent surveillance. This can include statements by the subjects regarding their activities, or images and even video of the subjects engaged in physical activity, travel, or other behaviour that may contradict their claim.

*Another marked example of a successful surveillance investigation due to preliminary research occurred last year, during which the subject was found riding a snowmobile at high speed over several jumps in a YouTube video posted online. In that the video was dated and time-stamped after the reported date of loss, this evidence was clearly of immense value and interest to the insurer.*

Surveillance is a critical tool in the investigative process; however, it is just as necessary to access research techniques and preliminary resources when determining claim validity as this can enhance the effectiveness of surveillance, as well as generate evidence of substantial value even before surveillance begins.

Gavin Phillips  
Case Manager  
CKR Global Investigations





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## Sins of Omission



Authored by:

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The October, 2012 decision of *Olivier v. Pat and Mario's Restaurant*, 2012 ONSC 5798 is a cautionary tale about the perils of failing to make adequate and timely disclosure in the context of a slip and fall. The ruling provides an important reminder to those in the insurance industry and, more broadly, those involved in any form of civil litigation, about their ongoing disclosure obligations.

### Case Summary

In the course of the five-day trial, in which both liability and damages were in issue, it became readily apparent that the defendants failed to disclose evidence and documentation material to the central issues in dispute. After all of the evidence had been entered by both parties, plaintiff's counsel brought a motion to strike the jury. In allowing the motion and striking the jury the court held that while the defendant's "theory" had been disclosed to the plaintiff prior to trial, the "evidence" in support of the theory had not been.

The plaintiff and her counsel were led to believe (from the examination for discovery of the owner of the defendant restaurant, George Moutsatsos), that there were no employees of the restaurant that witnessed the plaintiff's fall and that Ms. Jones, a waitress at the restaurant, attended to the plaintiff only after her fall. At the examination for discovery of Mr. Moutsatsos, there was also a statement made by defendant's counsel that there was not any further information with respect to the defence of the claim other than what was provided in the evidence of Mr. Moutsatsos.

At trial, Ms. Jones gave evidence that not only had she seen the plaintiff prior to her fall, but Ms. Jones' account of the circumstances leading up to the fall differed materially from the account already led by the plaintiff. Furthermore, a second witness for the defence referenced certain manuals maintained by the defendant restaurant with respect to client safety. Clearly, the manuals were material to an action based in part on occupier's liability, but were not disclosed in Mr. Moutsatsos' affidavit of documents.

Ultimately the court concluded that:

*I am not satisfied that my instructions to the jury, however clear and properly drafted, could adequately assist the jury in sifting out the nuances and complexities with the evidence and I conclude that justice to the plaintiff and to the defendant will be better served by having the court sitting alone taking over the role of trier of fact than by leaving that role with the jury.<sup>1</sup>*

### No More "Don't Ask, Don't Tell"

The court's view was that we have long since abandoned the "trial by ambush" approach and where a party would shield behind a suggestion that it was not asked or not requested to justify why disclosure was not provided. The court was clear that a party to litigation has an active, open and ongoing obligation to disclose the evidence it is going to rely on to support its position, whether this is asked for or not. Once again, the court is choosing an interpretation that favours fairness, broadly construed, over one that rewards technical compliance. Indeed, this insistence on fairness may require a defendant, through its counsel, to disclose material evidence in its knowledge or possession that the plaintiff never specifically asked for.

This disclosure obligation is complicated by the nature of the duty to defend and the duty to indemnify, under which an insurer enters the proceedings. In this context, the insurer has the right to conduct the defence and the liability to pay, subject to policy limits, any judgment rendered, but does so without first hand knowledge of the circumstances that gave rise to the action. For example, an insurer may determine that, given what it knows about the nature of the accident as well as the character of the plaintiff and the defendant, that a jury trial represents the least risk. An insurer needs to be concerned that not only will a failure to disclose result in a struck jury and a lost tactical advantage, but that it will leave the judge, now the sole arbiter of the proceedings, with a negative impression of both the insurer and the insured.

<sup>1</sup> *Olivier v. Pat and Mario's Restaurant*, 2012 ONSC 5798 at para 33.



The practical upshot is that an insurer that fails to fully investigate the circumstances surrounding the claim or to fully inform the insured of their disclosure obligations runs the risk of losing its right to choose the method of trial.

*Olivier* suggests that a failure by counsel to disclose material evidence, even if that evidence was not shared by the defendant, can result in a discharged jury. Though it will be impossible to fully eliminate the risks associated with a less than forthcoming insured, insurers and their counsel should begin to take steps to manage it. Providing the insured with a comprehensive checklist of potentially relevant documents and at least one fulsome interview of the insured, whether by an adjuster or counsel, should limit potential surprises.

*Patrick Ley is an associate lawyer in the London office of Miller Thomson LLP. Patrick has a general litigation practice with an emphasis on insurance law, focusing on the defence of insurance claims covering all aspects of general insurance liability, including occupiers' liability, property loss claims, general personal injury claims, and life and disability claims. Additionally, Patrick frequently acts for insurers in subrogated recovery matters.*



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## January 2013 Monthly Meeting

### Topic-Cargo Theft

Topics will cover both pro-active and re-active planning as well as steps relating to the prevention of, and investigation of cargo theft. We will also discuss the latest trends, technology and tools in the battle against one of the most costly crimes that for the most part goes unnoticed. Focus will be on the steps that should be taken to prevent cargo theft and also, if a theft does occur how it should be handled beyond simply calling the local police.

Through their experiences, the speakers will arm you with tips and recommendations to provide the client in moving forward with the debrief of an investigation

#### **Brad Trew, Operations Manager**

Mr. Trew began his security career working at several embroiled labour disputes. He then moved into the Transportation Loss Prevention field where he worked for 17 years from the ground up to Regional Loss Prevention Manager of Western Canada and Northwestern United States.

He is an expert interviewer, both informational and adversarial, and a surveillance instructor, having published the book "The Art of Shadowing" in conjunction with Toronto Police surveillance specialist Hal Cunningham. He has worked on many complex investigations with a local, provincial and international scope. Mr. Trew was also the custodian of the coveted Grey Cup trophy as it travelled through Purolator Courier's network in Western Canada.

As AFIMAC's Operations Manager of Corporate Investigations, Mr. Trew brings with him a wealth of experience and provides a seasoned, focused approach that combines many different disciplines from retail investigation, airport security, packaging integrity, insurance investigation, workplace theft, fraud and personal security.

#### **Chad Hanlon, Investigations Manager**

Mr. Hanlon has been involved in the security and investigations industry for over 15 years in both the private and public sectors. Previous to joining AFIMAC he spent 9 years with the Waterloo Regional Police working in the courts and the central holding cells allowing him to gain an extensive knowledge of the court system in all capacities while witnessing thousands of trials, and dealing with countless inmates. Mr. Hanlon also has a great deal of experience in the private sector having coordinated several labour disputes, executive protection detail as well as completed numerous corporate, and insurance investigations both overtly and in an undercover capacity.

Having completed both Risk and Emergency management Mr. Hanlon has provided an array of organizations with security and investigative solutions to issues they may be experiencing; anything from Bill 168 to any criminal activity within the workplace while liaising with human resource professionals and security directors. Mr. Hanlon has also assisted a number of organizations with their workplace violence policies providing advice through consultation, or information seminars with a focus on non-violence intervention, and de-escalation tactics. He is a member of ASIS assuring constant contact with the industries finest and continuous updates on the industries best practices.

#### **Todd Moore, President of CARTA Inc. / Veritas Training Consultants Inc.**

Todd Moore is the President of both Veritas Training Consultants Inc., and Canadian Armed Robbery Training Associates Inc. ([CARTA Inc.](#)), Canada's leading robbery mitigation and threat management program. Since 2005, his companies has been providing armed robbery seminar and e-learning training to financial, commercial and retail businesses across North America. Todd is currently a Police Detective with a large Municipal Police Service and has 25 years policing service with extensive experience in various specialized investigative units. Todd was a former investigator in the Robbery Unit for several years where he was responsible for the investigation of financial, commercial and transportation armed robberies. In 2003, he was the recipient of the Canadian Bankers Law Enforcement Award and Gold Medal in relation to a complex armoured truck robbery investigation. In 2009, CARTA Inc. and their US partner ARTA; LLC partnered with AFI International Group Inc. / IMAC Services and developed the online Truck Hijacking Response Training Course which is the only truck hijacking course available in North America.

Todd is a designated Certified Security Professional (C.S.P.).





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

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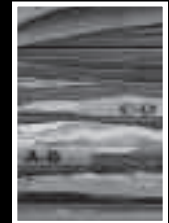
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