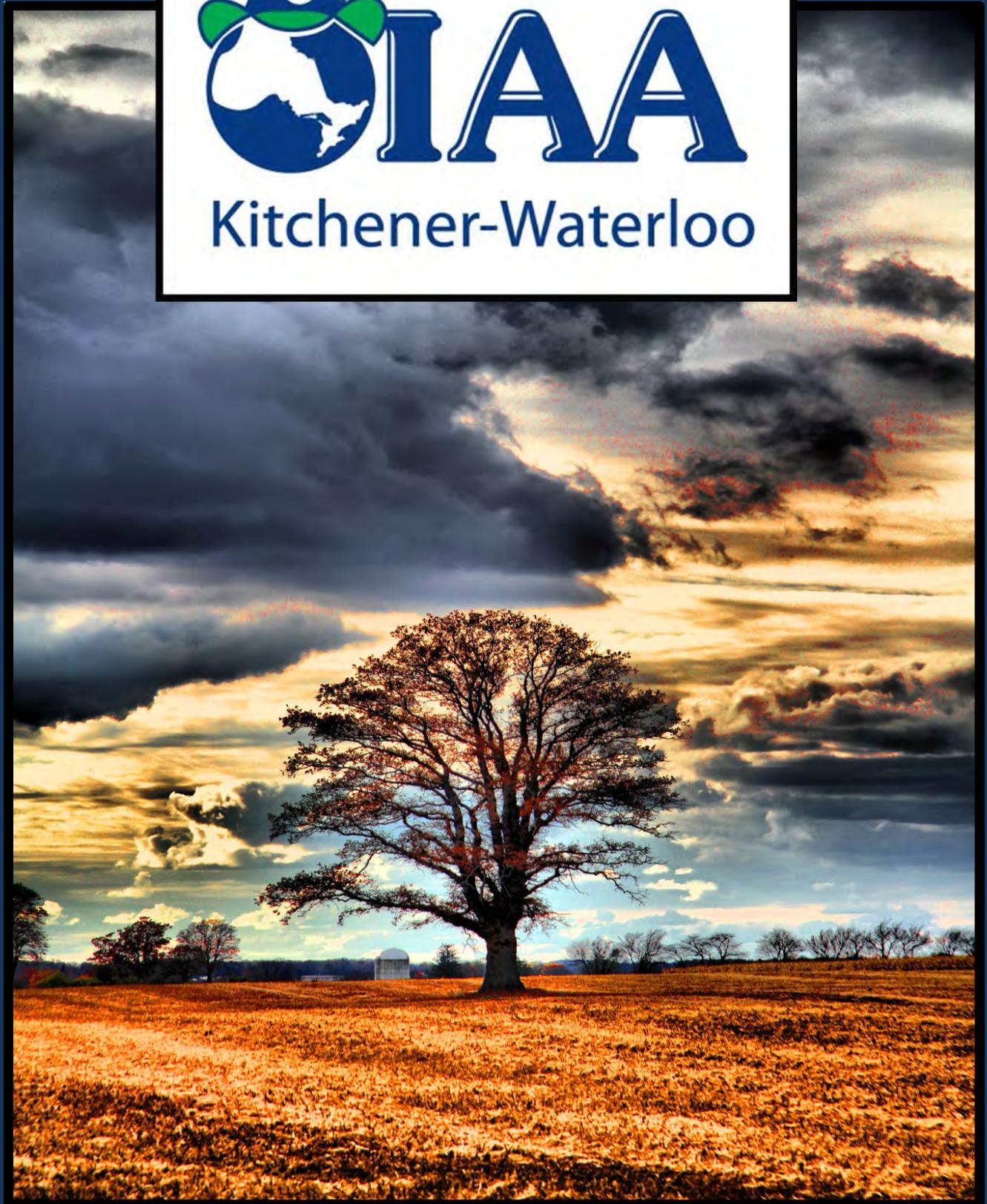




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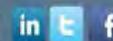
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PRESIDENT'S MESSAGE

JANUARY 2015



It's the start of a New Year, I hope that everyone enjoyed their holidays and had a Happy New Year. We have many new changes to the K-W OIAA and have many exciting events coming up in 2015. I look forward to seeing everyone come out to our events to support the K-W OIAA.

We had a great Children's Christmas Party this year. The Adults Christmas Party and Past Presidents night had a big turnout. Thank you to all of the Past Presidents who came out. It was great to see some old and new faces. We are currently working on building our Past Presidents list so next time we can have a bigger turn out. Congratulations to all of the door prize winners! The 50/50 prize winner took home \$55.

Next month we will have an educational meeting with Gord Robson from Miller Thomson speaking. The topic of his discussion will be "The Anatomy of a Jury Trial". This is sure to be an interesting and informative meeting. We also have an exciting announcement. We will be trying out a new venue for this meeting. **The meeting will take place at the Waterloo Inn located at 475 King Street in Waterloo.** The time and format for the meeting will be the same, cocktail hour starting at 5:30pm followed by dinner and the speaker at 6:30pm. We hope this venue will be a great change for our organization and welcome any feedback or questions.

As mentioned before starting in January 2015, we are pleased to introduce dinner meeting sponsors. 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.

Don't forget to 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 Pater 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 the first meeting of 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

<u>Date</u>	<u>Topic</u>
January 29	Educational Meeting – “Anatomy of a Jury Trial” – Gordon Robson – Miller Thomson Dan Strigberger – Cyndy Craig *NEW VENUE – WATERLOO INN
February 26	Educational Meeting – “Regulatory Requirements and Remediation Options – A Review” – Lori Festarini – Crawford & Co. 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

We want to hear from you!

How can we increase participation in our Chapter?

What changes would you like to see?



NEWS! NEWS! NEWS!

Next month we are changing our venue location – our educational meeting will be held at Waterloo Inn instead of Golf Steakhouse. We are trying out a new venue for January in order to freshen up our monthly meetings and our dinner menu. We welcome your feedback!

We are also looking for any feedback from our members on ways to improve and increase participation overall in this Chapter. We have some exciting new events already planned for 2015, but we also want to hear from you!

Please email myself stephanie.storer@ckrglobal.com or Ashleigh aleon@millertomson.com with your feedback!

Stephanie Storer

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Landmark Case Changes Contract Law in Canada



Authored by:

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Traditionally, the job of interpreting a contract involved applying legal definitions, rules, and principles to the contractual document. The rights and obligations of parties to contract were determined by the document. Interpreting the meaning of a contract or contractual term meant determining questions of law, not conducting a factual analysis. However, on August 5, 2014, the Supreme Court of Canada released its decision in *Sattva Capital Corp. v Creston Moly Corp.*, 2014 SCC 53 (*Sattva*).

The notion of interpretation of a contract as being strictly a question of law rather than fact grew out of necessity, in another age. As described by the Honourable Justice Rothstein in the *Sattva* decision:

“This rule originated in England at time when there were frequent civil jury trials and widespread illiteracy. Under those circumstances, the interpretation of written documents had to be considered questions of law because only the judge could be assured to be literate and therefore capable of reading the contract.”

In *Sattva*, it was confirmed that times have changed. Now, courts must go beyond the words of a contract to determine contractual rights and obligations. The Court determined that it was appropriate to look at additional facts to better understand “the mutual and objective intentions of the parties as expressed in the words of the contract”. The “surrounding circumstances” or

“factual matrix” for any contract includes all objective knowledge that both parties had or reasonably ought to have had at or before the date of the contract.

There are some limits. The factual matrix consists only of objective evidence of the facts the parties were aware of at the time of contracting. The factual matrix does not include subjective intentions or prior drafts of the contract. However, the surrounding circumstances do otherwise include “absolutely anything which would have affected the way in which the language of the document would have been understood by a reasonable man”.

The task of interpreting a contract now requires one to consider objective evidence of the development of the transaction, its commercial purpose, and the market in which the parties are operating. No longer can one simply look at a contract, apply the law, and conclude what the contract means. Questions of contractual interpretation are no longer questions of law alone but rather mixed questions of both fact and law. The implications are many. For example, for an appeal court to overrule a decision on a contract, there must now have been a palpable and overriding error in a decision, because decisions of lower courts must always be given great deference on questions of mixed fact and law, as opposed to questions of law alone.

It does not take much creativity to imagine how the need to consider surrounding circumstances, and all

the objective knowledge that a party had or reasonably ought to have had will create opportunities and fertile ground to dispute the meaning of contractual terms. It will be interesting to watch the impacts of this case on policy interpretations and coverage issues as time goes by.

Tim McGarrin is a partner in Miller Thomson's Waterloo office, representing clients throughout Ontario. As a litigator, Tim has significant experience in managing claims and disputes and is adept at leveraging his knowledge to the benefit of individuals, businesses and insurance companies.

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TORONTO DELEGATE REPORT



The 2014 Christmas Party took place on December 10th at the Westin Harbour Castle in Toronto. The event and food were fantastic and overall it was a great way to wrap up the 2014 event calendar.

The first major OIAA event of 2015 is the Claims Conference which takes place at the Metro Toronto Convention Centre on February 4th. The event is a full day of seminars; networking; luncheon, with keynote speaker Jim Ralph, and trade show with over 150 exhibitors. Registration for the conference is open and I encourage you to register if you have not already done so.

I am coordinating the OIAA Curling Bonspiel in March and I would love to see a few teams registered from the Kitchener-Waterloo chapter.

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.

February 4, 2015

2015 Claims Conference - Metro Toronto Convention Centre

March 10, 2015

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

April 8, 2015

Vendor Appreciation event – TBA

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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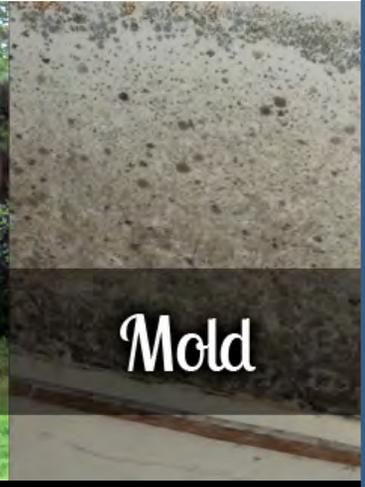
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Detecting Staged Collisions: When Should You Be Suspicious?

Jillian Leblanc, H.B.Sc.



Detecting fraudulent collisions can be very tricky. The damage used to be obviously fake – crude tools such as baseball bats and hammers would leave telltale dents, and sometimes the damage was not even located in the right areas for the stories to make sense. Nowadays though, fraudsters almost always crash the cars into each other, resulting in quite plausible damage in comparison to their stories. So when the claim ends up on an adjuster’s desk, what can the collision evidence tell you?

There are a number of red flags to look for in the vehicle photographs and witness statements that could help signify a possible case of fraud.

Should the Frontal Airbags Have Deployed?

The issue of whether or not the airbags should have deployed is somewhat complicated. Frontal airbags inflate to slow down the front seat occupants’ forward motion during a frontal type of collision. Airbags are a predictive system; the control module makes the decision to deploy the airbags before the initial contact is over, based on how quickly a vehicle is decelerating or accelerating. Sometimes the crash turns out to be less severe than the control module predicted, or more severe than it predicted. The criteria used to deploy airbags (such as the rate of deceleration) are kept confidential by the manufacture of the vehicle. That being said, there is a lot of research and data available that tells us an expected minimum range of severity for frontal airbag deployment. Most Owner Manuals will state that if the vehicle strikes a brick wall, the threshold level for deployment is an impact speed of around 16 to 26 km/h (this can vary from vehicle to vehicle and can be slightly higher or lower than this range). In other words, the damage will probably be noticeable. If there is only very minor damage to the vehicle in question and the airbags appear to be deployed, the deployment may not be legitimate.

Which Airbags Deployed?

Another factor to take into consideration is the direction of damage. When a crash is purely frontal in nature, the side airbags should not deploy. Similarly, if a vehicle is rear-ended, the frontal airbags should not deploy. Other combinations of collision forces are not so straightforward. For example, an offset frontal impact could cause the vehicle to rotate, and if the vehicle is being accelerated to the side at a high enough rate, the side airbags may deploy. A collision reconstruction expert could download the black box, examine the airbags and/or conduct computer simulations to determine if the airbag deployment was warranted.

One Occupant, Two Frontal Airbags Deployed

This issue really depends on the year/make/model of the vehicle. Newer vehicles (starting from about the 2006 model year) have advanced airbag systems with occupant sensors in the front seats, and if a front passenger is not detected (or if it senses a small amount of weight on the seat, such as the weight of a child), the front passenger airbag may not deploy in a frontal collision. Older vehicles are not as sophisticated, and may deploy both frontal airbags even if there is only one occupant. A quick check with the Owner Manual of the vehicle might tell you what to expect.

“I Don’t Remember if the Airbag Deployed”

Airbag deployment happens so quickly – faster than the blink of an eye – that it is impossible to actually see it inflate. Yet airbag deployments are very memorable. They are loud, there is a strong smell from the gasses that are used to

inflate the airbag, and the ignited gasses themselves are hot. Most airbags will also release powder that is visible in the air (which may look like smoke) and on the interior of the vehicle immediately following a deployment. (This powder is actually cornstarch or talcum powder, in case you were wondering!) Provided the occupant did not suffer a head injury from the collision, they should probably not have any trouble remembering whether or not an airbag deployed in front of them.

Instrument Panel Warning Lights

Once an airbag has deployed, the Airbag Readiness symbol in the instrument panel should stay illuminated when the vehicle is turned on, warning that the airbag cannot be deployed again. If you have a photograph of the instrument panel that was taken while the vehicle was running, check to see if this symbol is illuminated and compare its status with whether the airbags appear to be deployed.

Belted Occupant Strikes Their Head on the Windshield

Seatbelts are primarily designed for frontal collisions; they restrict the occupant's forward motion during impact. Seatbelts are therefore very good at preventing an occupant from striking their head on the windshield during a frontal collision. Most newer vehicles are also equipped with seatbelt pre-tensioners, which, working in conjunction with the airbag system, will tighten and lock the seatbelt in place during a moderate to high severity collision. If the damage to the vehicle is relatively minor or even moderate in severity, and a belted occupant claims that they struck their head on the windshield, this could be suspicious.

Are the Seatbelts Slack or Tight?

Seatbelt pre-tensioners will be deployed mainly during frontal collisions and sometimes for side impacts. Certain higher-end vehicles will also be equipped with pre-tensioners for the rear outer seatbelts. If you have a photograph of the interior of the vehicle, have a look at the state of the seatbelts. An occupant wearing a seatbelt when the pre-tensioner was fired will result in the seatbelt being slack, as it will be locked in the position it was in while in use. When a seatbelt is not being worn at the time of the pre-tensioner firing, the seatbelt will be very straight and tight against the pillar, locked in the fully retracted position. If it is reported that there was a belted driver and belted front passenger, yet you see that the driver's seatbelt is completely slack and the front passenger's seatbelt is fully retracted, somebody is not telling the truth.

One or more of these issues could indicate that something is amiss, and further investigation by a collision reconstructionist may be needed.

Do you have a collision reconstruction related question? What do you want to read about? I would love to hear from you! Feel free to contact me at jillian.leblanc@arconforensics.com or 416-491-2525 x34.

Jillian Leblanc is an established collision reconstructionist at Arcon Forensic Engineers. She has extensive experience in insurance fraud investigations as well as multi-vehicle, pedestrian, motorcycle and bicycle collisions.



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Huntsville, ON
May 7th - 9th, 2015**

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OIAA Georgian Bay Chapter · OIAA Northern Chapter



2015 OIAA Provincial Claims Conference Huntsville, ON May 7th - 9th, 2015

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
- 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
- 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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36th Annual IIO, Conestoga Chapter Speaker's Luncheon

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- 2) What does the insurance landscape look like for you in 2020/2025?
- 3) What do you feel are the 3 most critical components to leadership?
- 4) How are demographics changing the insurance workplace?
- 5) What are the best ways for the industry to mitigate the cost of natural disasters?

Whether you are an organizational leader or an upcoming insurance professional, you will find value in hearing from prominent insurance figures, as:

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Ed Berko, Senior Vice President & Chief Risk Officer, Economical Insurance
Barb Taylor, CIP, Director, Policy-Ontario Region, Insurance Bureau of Canada

This exciting line up of speakers will address the wide variety of opportunities in the property & casualty insurance industry. Doors open at 11:00 with a mini trade show reception. Lunch served promptly at noon.

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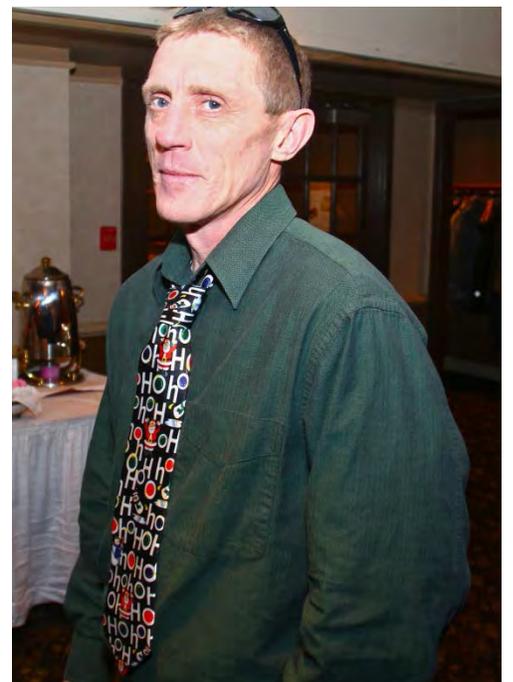
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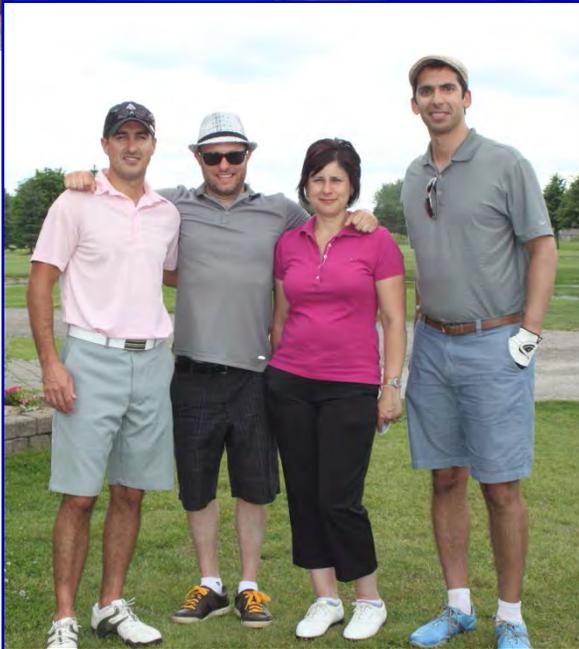
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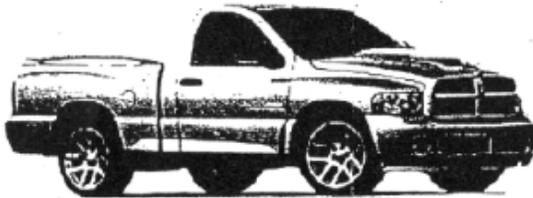




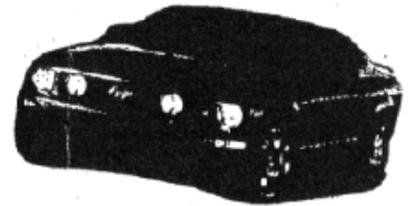


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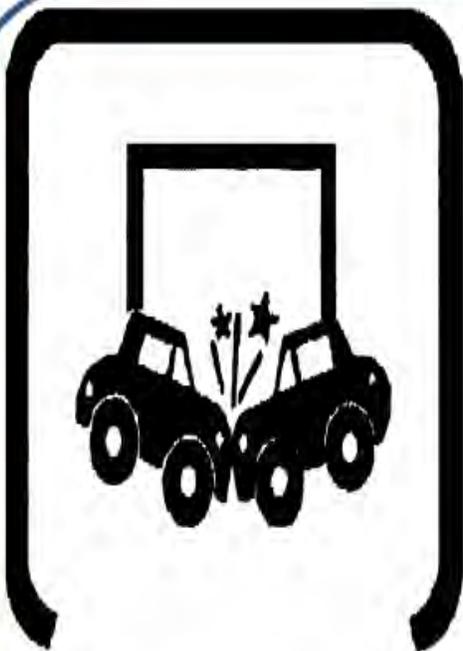
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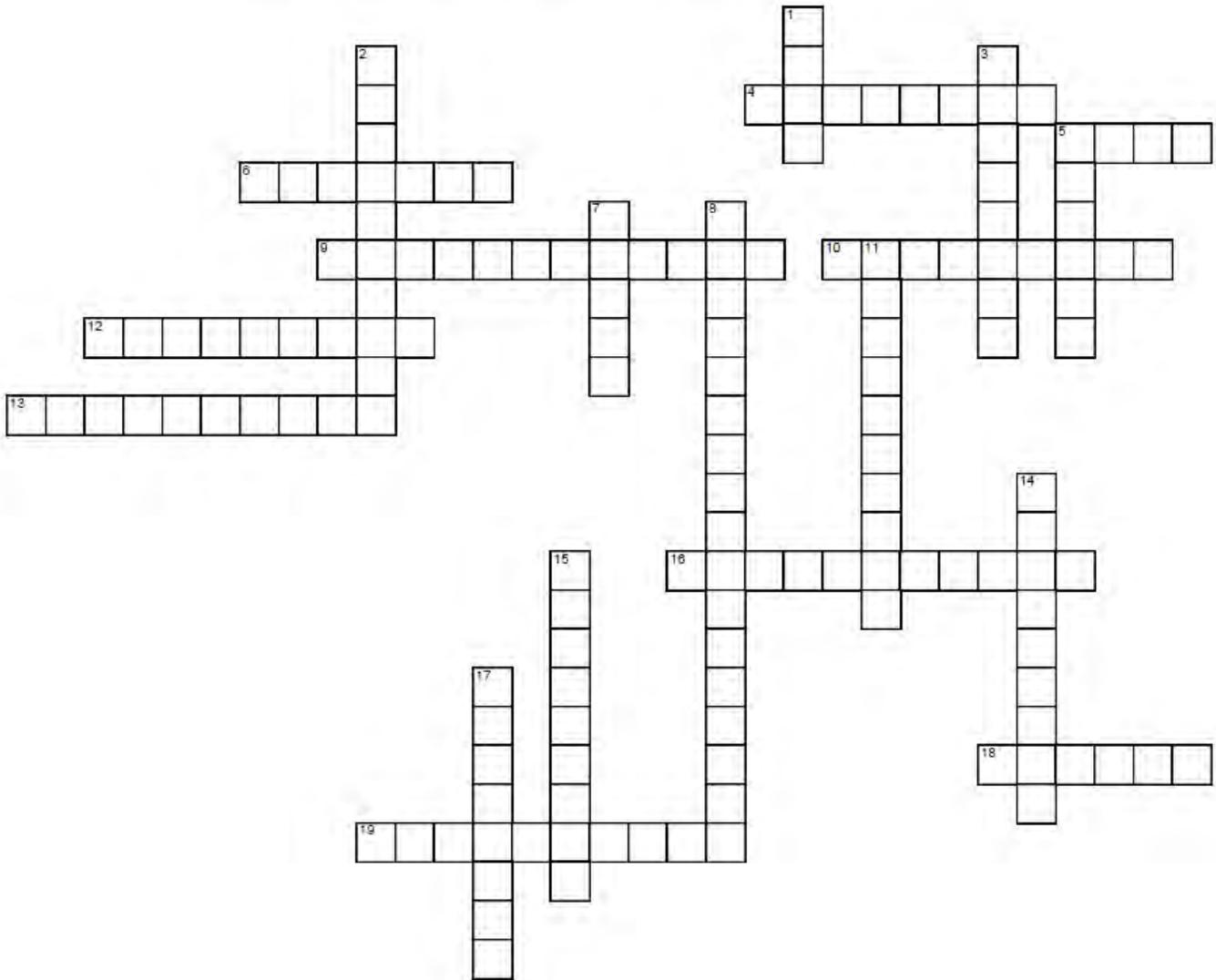
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ASK FOR DAVE

January Crossword Puzzle

How well did you read the December bulletin?



ACROSS

- 4 April 30 _____ and Fun Night.
- 5 One of two new MT SWO litigators Audrey _____.
- 6 Sport to be played on Friday March 27.
- 9 January 29 guest presenter.
- 10 December crossword theme.
- 12 Resort for 2015 Provincial Conference.
- 13 Author of the CKR Global Article.
- 16 Main topic of the Blaney McMurtry Article.
- 18 James Bromiley's article Elbakhiet v. _____.
- 19 Article providers and Consulting Engineers _____ Udall.

DOWN

- 1 June 25 sport.
- 2 Chili cook-off Chef's Choice Winner.
- 3 One of two new MY SWO litigators Monika _____.
- 5 Chili cook-off People's Choice Winner.
- 7 Ontario Finance Minister Charles _____.
- 8 Perfection can be _____.
- 11 City where the 2015 OIAA Provincial Conference will be held.
- 14 Receivers of proceeds from 2015 bonspiel.
- 15 February 26 guest presenter Lori _____.
- 17 Festival of Lights.

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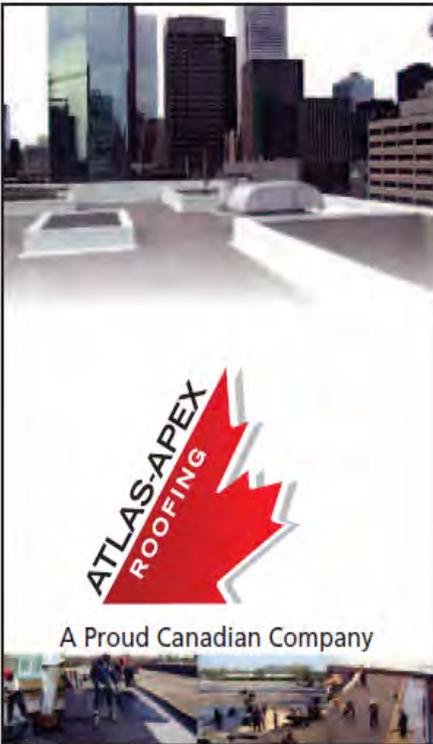
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