

PULSE



THE HEARTBEAT OF RISK MANAGEMENT, MARCH 2014

President's Message Practising What We Preach

■ **By: Dave Beal**, Director, Risk Management, OSBIE

Many risk managers operate under the mantra “Prepare for the worst, but hope for the best”. Such is the case that was faced by the ORIMS Board late last year with an unexpected change in the board composition, leading to the Board asking me to step back in as Chapter President for the balance of the 2013-14 term. My thanks go out to each board member who, to a person, showed their unwavering support for me. But perhaps more important, as a group, they demonstrated a level of commitment second to none for your ORIMS Chapter.

The transitional exercise we faced provided a confirmation to me that the stewardship of your Chapter is in good hands, in spite of an unexpected turn of events.

So, where to from here?

While I don't want to oversimplify by saying “business as usual”, in essence, that is exactly what is taking place. Each year, the newly elected Board of Directors attends a “Blue Sky” meeting where the projects and plans for the upcoming year are discussed and each Director is given approval and a budget allocation to implement the plans they have brought forward to the Board as a whole. By having a “road map” in place for the coming year from the very beginning, this ensures that there is direction and continuity embedded in the operation of the Chapter throughout the course of the year. Through planning, process, and the professionalism and dedication of each Director, the regular Chapter activities, workshops and programs are able to continue without any disruption.



So, we have a few events left on our 2013-14 term, and we look forward to seeing as many members attend as possible for the upcoming workshops and social events.

With the Annual General Meeting on the horizon, it brings forward the call for anyone interested in serving as a Director

on the Board. Over the years I have served on the Board, I have gotten far more back than I have ever put in. Interested in standing for a position on the Board? Contact Paul Provis, Chair of the Nominating Committee.

David Beal, President

You Know You're a Risk Manager When....

While watching TV you point out various hazards: “Hey, they should put cones around that sinkhole!”

You notice with alarm that your budget for conferences is greater than your budget for insurance.

You are asked for opinions on insurance subjects about which you have thought little, but for which you have a ready answer.

You hear about ISO 9000 and think Insurance Services Office is about to inundate you with a bunch of new forms.

You prepare detailed requirements for contractors to follow which

the company ignores when they hire one.

You nod sagely when you hear the terms “regression analysis” and “standard deviation,” but haven't the foggiest idea what they mean.

You are unusually pleased when someone calls with a question about what's in your risk management report, indicating he has actually read it.

You are told your company is planning an event and they want you to advise about all possible problems within 2 days.

Answering queries at a cocktail party about what you do, you get blank

stares and people move quietly away.

You can't help but warn complete strangers to watch their step or tie up their shoe laces or wear winter boots.

You refuse to sign all and any waivers “just because”.

You actually listen to the flight attendant's safety demo before take-off.

You read the safety instructions before operating your new turkey fryer.

Allison Palis, Loss Control Coordinator, Ontario School Boards' Insurance Exchange

TO PROMOTE AND ADVANCE EXCELLENCE IN RISK MANAGEMENT

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FROM THE COURTS

A litigation “culture shift”: a litigant’s real chance at early resolution

■ By Ashley P. Richards, Thomas Gold Pettingill LLP

As property owners and landlords know all too well, when accidents happen, everyone gets sued. But “everyone” typically does not have the same liability exposure. Owners and landlords usually have contracts with third parties (such as property managers, service providers, and contractors), that include indemnification agreements in their favour. Despite these agreements, however, owners and landlords are routinely sued and early resolution on the indemnity agreement is rare.

In addition, and prior to 2010, it was extremely difficult to turn to the courts for early resolution. While Rule 20 of the Ontario Rules of Civil Procedure allowed for summary judgment motions – a motion brought before a judge for an early determination of a question of law or fact such as, the scope of an indemnity agreement – such motions were rare and very expensive.

In 2010, however, Ontario’s Rule 20 was re-formulated. The legal threshold was changed and judges were encouraged to hear and determine more summary judgment motions. The changes were significant. Rule 20.04(2)(a) now states that “the court shall grant summary judgment if, (a) the court is satisfied that there is no genuine issue requiring a trial with respect to a claim or defence”. The prior threshold was “a genuine issue for trial”. Further, in assessing whether there is a genuine issue requiring a trial, judges have been provided with additional powers not previously allowed at summary motions. Rule 20.04(2.1) states that the court can weigh evidence, evaluate the credibility of deponents and draw reasonable inferences from the evidence. These additional powers are to be used unless it is in the “interest of justice” to reserve such powers for the trial judge.

Notwithstanding these changes, Ontario judges were still reluctant to grant summary judgment.

However, the Supreme Court of Canada, in its decision *Hryniak v Mauldin* (2014) has clearly stated that summary judgment should now be more available in Ontario and set out in a well reasoned decision, a clear standard for judges to do so. On appeal was the Ontario Court of Appeal’s analysis of the revised Rule 20 in a decision commonly referred to as *Combined Air* (2011).

The Ontario Court of Appeal had held that summary judgment can be granted if the motion judge can achieve a “full appreciation” of the evidence and issues. The “full appreciation” test required the motion judge to determine if the evidence and issues would benefit from the trial process. If so, then summary judgment should not be granted.

The Supreme Court of Canada held that the Ontario Court of Appeal’s analysis of Rule 20 was too restrictive. The Court stated that the 2010 changes sought to provide litigants with a proportionate and fair access to “affordable, timely and just adjudication of claims”. Accordingly, the Court stated that Rule 20 must be interpreted broadly, and this breadth requires a “culture shift” amongst the judges who hear summary judgment motions to resolve the legal issues before them. The Court held that there will be no genuine issue requiring a trial when the summary process:

- (1) allows the judge to make the necessary findings of fact,
- (2) allows the judge to apply the law to the facts, and
- (3) is a proportionate, more expeditious and less expensive means to achieve a just result.

In respect of the additional powers granted under Rule 20, the Supreme Court of Canada focused on the new power to hear oral evidence. The Court encouraged judges to be actively involved in determining the scope of oral evidence



that may be beneficial to the summary process. The Court held that the use of oral evidence at summary motions can result in more proportionate, timely and affordable litigation.

Lastly, with respect to the caveat that the additional powers granted in Rule 20 should be used unless it is in the “interests of justice” for the trial judge to make these determinations, the Court was clear to point out that the Ontario Court of Appeal’s threshold of the “full appreciation” test was not the standard to be applied. The Court held that this threshold set the bar “too high” and did not promote the principles of proportionality, timeliness and affordability. The Court held that evidence at a summary judgment motion does not have to be equivalent to a civil trial, rather the motion judge must be confident that a fair resolution can be determined on the basis of the record available.

The Supreme Court of Canada’s decision in *Hryniak* will have a significant

impact on the number of summary motions heard and determined in Ontario. This is a huge benefit to defendants and third parties who find themselves unnecessarily added to litigation. The summary judgment motion will now be a more proportionate, timely and cost-effective resolution to legal disputes, including, where necessary, the early determination of indemnity agreements.

Ashley Richards is a lawyer at Thomas Gold Pettingill LLP. She practices insurance coverage law and commercial litigation.

Thomas Gold Pettingill LLP is a litigation law firm in Toronto. The firm’s lawyers act for corporate policyholders in insurance coverage claims, and also defend businesses in a wide variety of personal injury, property damage, and economic loss claims.

How a Specialist Insurance Brokerage can Grow Revenues with Receivables Insurance



■ **By Mark Attley**, Receivables Insurance Association of Canada

John Middleton, President of Millennium CreditRisk Management Ltd., a brokerage with offices in Ottawa, Toronto, Cambridge, Montreal and Calgary, says clients use receivables insurance to benefit from enhanced bank financing and as a sales expansion tool. The increased sales afforded by receivables insurance normally generate sufficient gross profit to offset the cost of the insurance. An additional benefit includes peace of mind for the owner or manager of the business, who is able to sleep at night, knowing the cash associated with the company's accounts receivable will be collected without fail.

Receivables insurance protects a company's accounts receivable from direct financial loss (bad debts) resulting from the insolvency or non-payment from a customer/buyer. Receivables insurance operates as a financial tool to enhance cash flow, bank financing, and sales performance, while also protecting the balance sheet and the security of assets. Security against risk and mitigating the loss of sales revenue also creates peace of mind for properly insured companies.

Millennium is a founding member company with the Receivables Insurance Association of Canada, an organization committed to advancing receivables insurance industry innovation and product integrity as well as solving any business problems related to government legislation for its members.

Receivables insurance is of use to small, mid-size and publicly traded entities and can provide solutions for the following problems:

- Is your company limiting sales opportunities in order to manage credit risk?
- Can your business accept the risk of a catastrophic bad debt loss?
- Has your company maximized its lending power at the bank?
- Would your company benefit from a second opinion from an experienced, industry-oriented team of credit professionals?
- Are there opportunities in other markets that your company could aggressively pursue, if receivables insurance was in place as a back stop?

management system achieves these objectives while offering owners and managers peace of mind."

A tangible example of how receivables insurance allows for better cash flow: A company with annual sales of \$20 million and estimated accounts receivable of \$2.5 million has a current accounts receivable bank line margining of 75%. The company's maximum borrowing base available is $\$2,500,000 \times 75\% = \$1,875,000$. With the purchase of receivables insurance, this company's total margining improves to 90% and its access to operating cash flow increases by 15%. The company may now be able to access \$375,000 in additional funds (before the cost of the insurance is factored in) from its bank.

Receivables insurance premiums start at approximately \$15,000 annually and can rise to \$500,000 per client. The 2012 insurers year-end financial information, reported by the Office of the Superintendent of Financial Institutions Canada (OSFI), indicates that the average premium per policy is approximately \$32,000. Brokers can earn as much as a 15% commission in this segment, and receivables insurance premiums are on average larger than property & casualty (P&C) premiums.

Traditionally behind other industries with regards to client experience, P&C insurers are trying to improve retention rates and client experience. The 2013 Temkin Experience Ratings shows steady improvement from an average experience rating of 59% in 2011 to 65% in 2013 among the top 14 U.S. P&C insurance carriers. "Yet, receivables insurance provides more benefits and options for business clients of all sizes and Millennium continues to maintain a 90% client retention rate year over year. With receivables insurance as our top policy offering, Millennium's clients are very satisfied," says Middleton.

Sharing the wealth: growing the market for receivables insurance

The Receivables Insurance Association of Canada believes the market for its

members' products can grow from \$200 million to \$350 million within five years. Because receivables insurance is more of a comprehensive financial tool than other forms of insurance, Canadian brokers are still educating themselves and their clients on its benefits. The new association is contributing to this education process, and is encouraging brokers across Canada to become members. Accounts receivable insurance underwriting experts, all members of Receivables Insurance Association, can help brokers leverage strong client relationships, enhance the services they provide and develop new, stable revenue streams.

As does the team at the Receivables Insurance Association of Canada, so does Middleton. He attracts new broker partners for Millennium based on educating them on the strength of selling receivables insurance and by providing support materials. In the first six months of Millennium's outreach, several policies from new broker partners have been sold, in which Millennium shares the commission with the originating broker as long as the policy remains active.

Middleton explains, "Millennium is actively engaging brokers across Canada to work in partnership to propel the growth of the Canadian receivables insurance market. Partnering with Millennium helps brokers grow their revenues, and the evidence is in – Millennium's team has grown from 8 to 13 staff members in three years and the company is one of the top producing receivables insurance brokerages in Canada."

The Receivables Insurance Association of Canada promotes the business opportunity for receivables insurance to Canadian insurance brokers, the banking industry and businesses engaged in domestic trade and exporting. Brokers take note: receivables insurance represents a major untapped market and an excellent source of recurring high-value premium income. That too provides peace of mind.

Mark Attley is President of the Receivables Insurance Association of Canada (www.receivablesinsurancecanada.com)



At Millennium, Middleton and his team serve companies across Canada and enjoy a client retention level in excess of 90%. Millennium's receivables insurance product solutions are responsible for growing its revenues by 40% over the last three years and expanding the brokerage from three to five offices across Canada.

- "A receivables insurance policy can insure a business for up to 90% of its accounts receivable – that's what protection against bad debt risk means," says Middleton, "In turn, this protection offers a company the ability to enter new markets aggressively and preserves equity on the balance sheet. A properly structured credit and risk

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DISTRACTED DRIVING

Now No. 1 cause of fatalities on Ontario roads

■ **Source:** Daily News at www.CanadianUnderwriter.ca Mar 3, 2014

Distracted driving fatalities in Ontario surpassed both impaired driving-related and speed-related fatalities last year, the Ontario Provincial Police said Monday.

A total of 78 people died in distracted

driving-related collisions last year, above the 57 impaired driving deaths and 44 speed-related deaths, the OPP said.

“When you consider the overall impact of these 78 fatalities last year and the 325 other distracted driving victims who have



THE DON STUART AWARD – CALL FOR NOMINATIONS

What it is: This Award was established by the Ontario Chapter of the Risk and Insurance Management Society (ORIMS) to recognize outstanding contributions to the field of Risk Management in Canada by a Deputy, Alternate, or an Emeritus Member of any of the Canadian Chapters of the Risk and Insurance Management Society (RIMS).

Eligibility: In order to be eligible to receive the award, one must be currently an Organizational or Retired Deputy, Alternate, or Emeritus member of any of the Canadian Chapters of RIMS.

Criteria: The Award is granted for outstanding contributions to the field of risk and insurance management in Canada. “Contributions”, embraces service by the nominee at the Provincial, Federal or International level and could include (but not necessarily be restricted to) such activities as:

Active participation in the activities of RIMS, RIMS Canada Council, and its Canadian Chapters.

Implementation and/or maintenance of a successful risk management pro-

gram with his/her own corporation/jurisdiction.

Contribution in the field of risk management education as a lecturer, tutor, examiner, author, etc.

Promotion of risk management ideas, practices, and principles through the publication of books, papers or articles.

Continued performance in varied aspects of risk management, insurance and general management, which has resulted in enhancement of the status of the risk management profession in Canada.

Other significant factors to be considered.

Nominations: If you would like to nominate someone for this prestigious award then please go to the ORIMS website to download the nomination form.

http://ontario.rims.org/aboutus/don_stuart_award

Contact: All nomination forms must be received by March 31st. Please contact ORIMS' Vice President Paul Provis (905-439-6889) or paulprovis.orims@gmail.com for additional information or questions.

died since 2010, the number of people these irresponsible drivers have had a profound and devastating impact on is in the thousands,” OPP Deputy Commissioner Brad Blair, Commander of Traffic Safety and Operational Support, commented in a press release.

“Everyone, from the victims’ families and friends to the police officers who attend these horrific collision scenes and have to notify next-of-kin, knows the emotional impact of one life lost to this senseless driving behavior trickles down to

so many people who, sadly, through experience, know how badly this behaviour needs to stop,” he added.

The OPP are launching a formal distracted driving campaign March 8 that will run until March 14. During that period, the OPP will be focusing enforcement on distracted driving laws province-wide.

On March 18, the current distracted driving fine of \$155 will jump to \$280, which includes the increased \$225 fine plus a \$50 victim fine surcharge and \$5 court cost, the OPP noted.



2014 RIMS Conferences

Don't forget to sign up for the upcoming RIMS Conference in Denver, Colorado, coming up soon, April 27 - 30th. While you're signing up, don't forget to sign up for the 40th annual RIMS Canada Conference. The conference will be in Winnipeg, Manitoba this

year, from September 14 - 17th.

If you've never been to a RIMS conference, don't miss out. They offer great opportunities to enhance your education, network with your fellow risk managers and discover the latest products, solutions and technologies in the exhibit hall.

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Spring Flooding – One to Get Ready for!

Just in case you didn't notice the height of the snow banks that have been building up over what has turned out to be one of the worst winters in 20 years, keep in mind that those walls of snow are about to melt. While weather forecasts are too vague to know whether we are in for a gradual spring melt or a rapid run-off, there is a good chance that spring flooding will occur this year.

Where properties are located in documented flood zones, the risks are generally seen as predictable, but are the resulting losses inevitable?

Maybe not!

Clearly, if new buildings are being planned, flood risk can be avoided by selecting locations that are not in flood zones. But for existing buildings, there are proactive steps that can be taken to minimize damage when flood conditions do occur.

To reduce the impact of flooding on your building, here are a few simple, practical steps you can take immediately to reduce your risk profile:

- Include flood hazard in your Emergency Response Plan - this includes on-going flood monitoring practices and liaison with local flood control agencies.
- Limit storage in basements and low-lying areas - if storage is necessary, make sure materials are kept 12" (30 cm) above 50 year flood levels. Avoid storing electronic equipment or valuable records in these areas. Any electrical/mechanical or boiler equipment installations should be above this level.

- Remove vehicles from low-lying parking areas.
- When flooding is imminent, shut off gas and electricity supplies to minimize fire and explosion hazards. Notify fire department if fire detection equipment is out of service and post fire watches.
- Keep sprinkler systems operational.
- Secure any equipment or objects that may be carried away or float - include above ground fuel oil storage tanks (Yes, they will FLOAT!!).



- Ensure all drains are clear of debris and pumps are operational.
- Check roof drainage systems to ensure they are clear of debris.

Recognizing the flood risks to your



premises and taking a few proactive steps will go a long way to manage and mitigate your loss exposure.



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Chapter Events



2014 Edward C. Ricketts Curling Bonspiel

On February 24th, ORIMS held its 32nd annual Edward C. Ricketts memorial bonspiel which was once again held at St. Georges Golf and Curling Club. It was a sold out event with 96 participants. A fun filled day was had by all. A special thanks and appreciation to all the members who participated and to those who generously donated prizes. As a result of the donations and the raffle draw, ORIMS was pleased to be able to present a donation of \$4,000 to WICC! (Women in Cancer Crusade)

Congratulations go out to the winning team from Allianz which included Richard Newman, Thomas Paap, Andrew Cadogan and Sheila Campbell.

ORIMS would like to thank the volunteers who helped out on the day and also to our event sponsors. RSA - title sponsor, SCM - dinner sponsor, ACE - wine sponsor, Canadian Litigation Counsel - ice sponsor, AON - lunch sponsor, SIAdvisors - beverage sponsor and First ON Site - coffee sponsor. Thank you again to everyone who helped make the day such a huge success and for your continued support of ORIMS. We look forward to seeing you again on the ice next year!



*THANK YOU:
to Deborah Robinson,
Canadian Litigation
Counsel for sharing
pictures of the event.*



Chapter Events Cont'd.



Call for Nominations – ORIMS Board of Directors



Want to be involved with your Chapter? ORIMS is the largest Canadian Chapter of RIMS, and we are seeking committed volunteers to serve on the Board of Directors for the 2014-2015 term of office. To sit as a Director on the Board, you must be either an Organization Member or a Professional Member in good standing (NOTE: these membership categories

replaced the previous Corporate and Deputy membership categories).

If you are interested in seeking a nomination for next year's Board, please contact Paul Provis, Vice President and Chair of the Nomination Committee before April 15, 2014 at paulprovis.orims@gmail.com.



2013-2014 Board of Directors

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Paul Provis
Vice-President

Agata Jamroz
Corporate Secretary

Mark Cosgrove
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Tina Gardiner
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Editorial Policy

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The opinions expressed are those of the writers and the volunteer members of the PULSE Editorial Committee. Articles submitted to the PULSE for publication are subject to the approval of the PULSE Editorial Committee. Approval of such articles is based upon newsworthiness, and perceived benefit to the readership. All decisions of the PULSE are not subject to appeal. Individuals submitting articles to the PULSE hereby acknowledge their acceptance of the PULSE Editorial Policy.

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