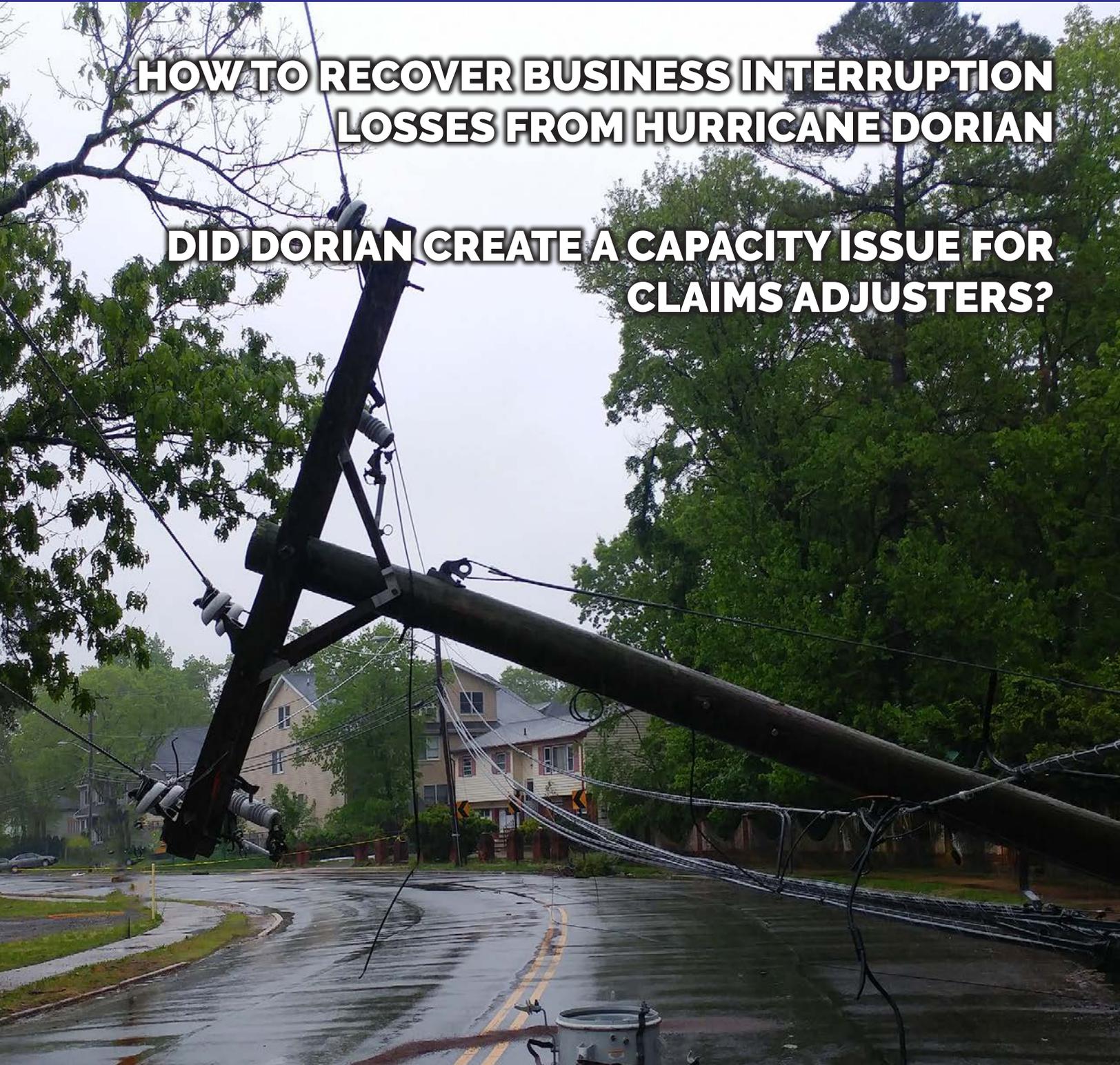




OCTOBER 2019

HOW TO RECOVER BUSINESS INTERRUPTION LOSSES FROM HURRICANE DORIAN

DID DORIAN CREATE A CAPACITY ISSUE FOR CLAIMS ADJUSTERS?



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OVAA Newsletter Publication Deadlines

If you have a submission for the newsletter, please advise the editor ASAP so space can be reserved. The actual submission content (articles, advertising changes, etc.) must then be received by the following dates:

Newsletter Issue	Submission Deadline
October 2019.....	September 15, 2019



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SEMINAR SUGGESTIONS

During the course of planning our year, we look to our members, associates, advertisers and friends either to provide guest speakers for our monthly meetings or to let us know what topics are of interest.

Should you wish to present a seminar for the OVAA Membership or should you have an idea for a seminar topic you would like to see presented, please contact:

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REP's Ramblings

President's Pen

Fall is officially here . . . I love this time of year. Leaves, in varying degrees of colour, what a beautiful sight to behold and there is a cooler breeze in the air. Great for sleeping!!

On September 18, 2019, the OIAA hosted our September Kick-Off at Archeo's in the Distillery District. What a perfect way to start off the year to meet and mingle with the OIAA Executive and colleagues.

The 2019 Past Presidents' and Honourary Members Night is scheduled to take place at the King Edward Hotel in downtown Toronto on October 23rd. The entertainment is Brian Roman, he is a singer/crooner and there will also be a Sax player for background music.

Our Christmas Party this year is being held at the Royal York on December 11, 2019. Our Professional Development Claims Conference will take place on January 22, 2020 at the Metro Claims Conference Centre. There will be a couple of other seminars throughout the year as well as secretarial elections in March. I will provide further details at a later date. It looks like an exciting year ahead!!

Finally, once again I invite anyone who might be interested in submitting an article for consideration to be published in the WP magazine, to please let me know as we are always looking for new material. I encourage all of you to visit the OIAA website and browse all the available information noting all upcoming events. I hope to see you at the upcoming events.

Take care,

Cindy Bridge, CIP, CRM
Past President/Ottawa Delegate

As we welcome in the month of October, we bid farewell to the warm summer months and long days of sunshine. According to various weather forecasts, it looks like Ontario will be hit with a cold and snowy winter in 2020! On the bright side, we have a few months before we get into all that so let's enjoy the next few months.

From an adjuster's perspective, fall weather brings a mixed bag of claims which can range from wind losses to sump failures, but as always, it is very weather dependent. Fall weather also means the beginning of the heating season which can also lead to property losses and at times, significant ones. As adjusters, we obviously don't know what lies ahead, but as always, we are up for the challenge.

As noted in our September issue, many of our executive members have changed roles and as the weeks pass by, we are getting familiar with our new roles. As a committee, we are excited to announce that we will be hosting our final Luncheon seminar of the year on Tuesday November 19th, 2019. Jean-Francois Lalonde from Vice & Hunter LLP will be presenting "Understanding the New Cannabis Laws". It will be held at the LIV Rooftop Lounge located at 207 Bell Street North. The cost is \$35.00 for members and \$40.00 for non-members. Lunch and valet parking included. It should be a great event and hope to see everyone out there!

The OVAA is also starting to plan our Past Presidents Night for 2020. More details to follow for this great event!

Please be sure to visit our website at ovaa.ca and browse our event page, photos of past events, links to our newsletters and most importantly, a list of our fantastic sponsors. You can also find us on LinkedIn and Facebook.

Take care and chat soon!

Ryan Reis, FCIP, CRM

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Canada's Anti-Spam Legislation (CASL) came into effect on July 1, 2014 and requires that we obtain your express consent to receive any communications from us sent after this date. Although we received several responses via email, we note that several are still outstanding. As our email blasts are one of the most important methods in getting information to our members, we need your help!

Please copy and send this page via email with "I Agree" in the subject line to allow us to communicate with you electronically in the future OR with "Disagree" in the subject line if you do not wish to receive further email communications.

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HOW TO RECOVER BUSINESS INTERRUPTION LOSSES FROM HURRICANE DORIAN

WRITTEN BY RSM

The Maritimes are recovering from the damages suffered as a result of Hurricane Dorian, which approached the region as a Category 2 hurricane on September 7, 2019. Many residential and commercial properties of middle market companies and others lost power in the area including over:

- 350,000 in Nova Scotia;
- 55,000 in New Brunswick; and
- 50,000 in Prince Edward Island

The winds caused severe damage including a crane collapse in downtown Halifax, uprooting trees, roof collapses, debris damage, flight delays and cancellations, closed bridges, cancelled services including Halifax Transit and downed power lines.

A relevant coverage included in many insurance policies is off-premises utility interruption which provides coverage for losses related to an interruption in utility service to a premises. For the loss or damage to be covered, the interruption must result from direct physical loss or damage by an insured peril to the type of utility property with elected to coverage. In addition, there is typically a waiting period of 24 to 72 hours before the coverage commences.

Given the complexity of insurance policy wording and coverages available, it is difficult for a business owner to know the extent of the business losses that will be covered and whether it makes sense to submit an insurance claim. In some cases, losses for a short duration can be significant to the overall profitability of a company and investigating making an insurance claim is a worthwhile endeavour.



Continued on page 9 >

HOW TO RECOVER BUSINESS INTERRUPTION LOSSES FROM HURRICANE DORIAN

WRITTEN BY RSM

Some of the more significant things to be aware of in reviewing an insurance policy for business interruption losses include the following:

- Measure of recovery – what policy form do you have? Profits, earning, business income?
- Ordinary payroll – do you have coverage for non-essential employees? How long is the coverage for?
- Increase in cost of working – have you incurred additional operating costs to mitigate your loss?
- Extra expense – do you have separate coverage for extra expense?
-

The company's insurance broker or insurer can assist the business owner in understanding what coverage is available. To assist in preparing a claim, the policy may provide coverage for professional fees, which would reimburse a policyholder for the cost of retaining an independent forensic accountant specializing in business interruption insurance.

If a policyholder is making a claim, some tips to improve claim accuracy and insurance recovery include:

- Document how the incident has affected your business including taking pictures and preparing notes of the operational and financial impacts and additional costs incurred to mitigate the loss.
- Contact your insurer or broker and understand your coverage for property loss, business interruption, extra expense, etc.
- Seek assistance from professionals familiar with insurance matters including lawyers, forensic accountants adjusters and appraisers
- Be proactive and establish regular meetings and set reasonable timelines with your insurer and adjuster to resolve the claim
- Mitigate losses to the extent possible
- Review and comply with all insurance policy wordings
- Request an advance or partial payments once sufficient proof of loss has been provided

Insurance is a requirement for most commercial businesses. This mitigates against insured perils and compensates business owners to the extent covered under their insurance policy. Although recovering losses from Dorian or other natural disasters often takes time,

resolving the claim in a reasonable and expeditious manner is the ultimate goal. At RSM our forensic accounting group has extensive experience with the preparation of business interruption claims. We assist with claim preparation and provide the credibility needed to expedite the resolution of your claim.

ARE FEDERAL POLITICIANS AND THE P&C INDUSTRY ALIGNED ON FLOOD PREVENTION?

WRITTEN BY ADAM MALIK

Leader of the Bloc Quebecois Yves-Francois Blanchet, left to right, Conservative Leader Andrew Scheer, TVA host Pierre Bruneau, Liberal Leader Justin Trudeau and NDP Leader Jagmeet Singh pose for a photo at the TVA french debate for the 2019 federal election, in Montreal, Wednesday, Oct. 2, 2019. THE CANADIAN PRESS/Joel Lemay,

Insurance Bureau of Canada (IBC) has "been very vocal" throughout the federal election campaign on the need for a national plan to reduce flood risk, Craig Stewart, the group's vice president of government affairs told Canadian Underwriter in a recent interview.

Here are the property and casualty industry's five key wants from the next Canadian government, according to IBC:

- Strategic retreat measures to move those at the highest risk out of harm's way
- A high-risk insurance pool to offer insurance to those who are deemed a high risk
- Investments in flood mitigation measures to de-risk Canada
- Investments in flood mapping to better predict risk and address it collaboratively between insurers and governments
- A prohibition on future building in flood zones

IBC won't comment during the middle of an election on which political party platform is closest to the mark regarding the industry's wants. And so Canadian Underwriter asked the four major political parties what they planned to do to mitigate flood risk.

The Liberals pointed to their climate plan, which appears to promise many of the items IBC wants. The party's said it wants to create a low-cost national flood insurance program through the Canadian Mortgage and Housing Corporation for homeowners at high risk of flooding and don't have adequate insurance protection; complete all flood maps in the country and have them available in an online database; and develop a plan to help homeowners



at risk of facing repeating flooding with relocation.

The New Democratic Party of Canada told Canadian Underwriter that, if elected, it would expand funding to help communities respond to disaster and adapt infrastructure to withstand flooding and other extreme weather events by \$2.5 billion.

"We will also work with the provinces, territories and local governments to ensure that the Disaster Mitigation and Adaptation Fund meets the needs of communities," an NDP spokesperson said in a email, adding that they would continue uploading flood plain maps and keep them updated "to ensure we have the information we need to prevent flooding and properly plan our communities."

The Green Party's platform includes items like retrofitting buildings to make them energy efficient. Under its infrastructure plan, the party wants the Canada Infrastructure Bank to invest in climate-proofing key infrastructure and make upgrades to drinking water and wastewater systems a priority in order to protect against flooding, droughts and contamination. It also includes plans to restore natural buffer zones along waterways. "The simple answer is a Green government would invest

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ARE FEDERAL POLITICIANS AND THE P&C INDUSTRY ALIGNED ON FLOOD PREVENTION?

WRITTEN BY ADAM MALIK

in infrastructure and land to minimize and prevent flood damage and our renovation programs would also cover floodproofing in appropriate areas," a spokesperson in an email.

The Conservatives did not respond to Canadian Underwriter's request to discuss their platform or policies on flood mitigation. The party has, however, released a plan for climate change, which states that it would look at government investment in infrastructure. It would include

low-cost options for enhancing or constructing wetlands to prevent floods and droughts. The party believes managing wetlands can provide protection from floods and droughts, noting that they will support the completion of the Canadian Wetland inventory.

"IBC is encouraged by the attention paid to flood so far in the election campaign. And we're encouraging voters to take a closer look at the flood measures in party platforms and use that to inform their choice," Stewart said.

HOW LIABILITY WORKS WHEN PEDESTRIAN WEARING DARK CLOTHING GETS HIT AT NIGHT IN CROSSWALK

WRITTEN BY GREG MECKBACH

The wife of an Abbotsford, B.C. insurance broker has been awarded nearly \$574,000 as a result of a vehicle accident, but the award would have been \$765,000 had the plaintiff not been found partly liable for the accident.

She was found 25% negligent mainly because she was not continuously alert about the car's approach to the crosswalk that she and her children were crossing, the court found. But she also was wearing dark clothing during a rainy evening, which she should have factored into her assessment about whether it was safe to cross, the court found.

"While it is not negligence to wear dark clothing, Ms. Parmar should have appreciated that it would be difficult for a driver on such a night to see a person dressed in dark clothing," British Columbia Supreme Court Justice Barbara Norell wrote in *Parmar v. Rink*, released this past Monday. "As a result, she had a duty to wait until she could make an assessment of the speed of the oncoming vehicle, and to ensure that the driver saw her and her children and was slowing."



Sarbjit Kaur Parmar was walking north across Huntingdon Road in Abbotsford the evening of Dec. 17, 2015 with her 11-year-old daughter and seven-year-old son.

Harold Rink, a 79-year-old retired teacher, was driving his Mercedes SUV west on Huntingdon Road on his way home from a dinner with friends. It was dark and rainy at the time.

Continued on page 12 >

HOW LIABILITY WORKS WHEN PEDESTRIAN WEARING DARK CLOTHING GETS HIT AT NIGHT IN CROSSWALK

WRITTEN BY GREG MECKBACH

Parmar and her kids were using a marked crosswalk that has an "X" painted on the road about 75 metres away, Justice Barbara Norell of the British Columbia Supreme Court wrote in *Parmar v. Rink*, released this past Monday. There are retroreflective crosswalk signs on both sides of the road. The crosswalk is beside the intersection of Huntingdon and Gladwin Rd.

Rink, who was sued by Parmar, said he first saw Parmar and her son when they were directly in front of his vehicle, a split second before his vehicle hit them. He slammed on the brakes but it was too late.

Parmar was thrown about 14 metres. The trio had been at a holiday concert at the children's school. The posted speed limit is 60 km/h with a school zone speed limit of 30 km/h that is in effect between 8 a.m. and 5 p.m.

Rink had decided to drive on Huntingdon Road instead of the highway because of the poor visibility.

Parmar said she did not know how far away Rink's car was and could not determine its speed. However she thought she could cross the intersection.

Her injuries included mild traumatic brain injury, broken left wrist, broken left shoulder and a broken right leg in two places. Her daughter, who was crossing ahead of Parmar, was not hit. Accident reconstruction evidence indicates the vehicle that hit Parmar was travelling between 41 and 48 km/h.

Rink and Parmar did not agree on liability. Rink said the visibility was "terrible" and he could only see 30 to 40 feet ahead. Rink argued that Parmar had a duty to wait until she could make an assessment of the speed of the oncoming vehicle, to ensure that the driver saw her and her children and to ensure the vehicle was slowing.

Ultimately Justice Norell ruled that Rink "failed to keep a proper look out and yield the right of way to Ms. Parmar while she was in the crosswalk." But she still found Parmar was 25% liable, reasoning that that Parmar could not make a "reasoned assessment that she could safely

proceed." Therefore, Justice Norell ruled that Parmar had an obligation to watch the approaching car until she could make a determination of its speed -and whether it was slowing - before starting out or continuing to cross.

In finding Parmar contributorily negligent, Justice Norell cited *Suedat v. Kara*, released by the B.C. Supreme Court in 2014.

"Pedestrians in crosswalks are not required to exercise 'extreme vigilance' to ensure they won't be struck," Justice Gary Weatherill wrote in *Suedat*. "To prove contributory negligence on the part of a pedestrian, the defendant must show more than inattention. A defendant must also establish (1) at what distance the pedestrian should have realized from the speed of the approaching vehicle it was not going to yield; (2) it would it have been possible for a pedestrian to avoid being impacted; and (3) that a reasonable person in the circumstances of the plaintiff should have taken evasive action to avoid the impact."

In *Parmar v. Rink*, an engineer testifying as an expert defence witness gave the court an opinion on Parmar's ability to react to seeing Rink's vehicle. That engineer told the court that Parmar's last opportunity to stop short of the car was when she was about 3.7 metres away from impact. This distance corresponds to about the middle of the eastbound lane.

Section 179 (1) of B.C.'s Motor Vehicle Act, requires a motorist to "yield the right of way to a pedestrian where traffic control signals are not in place or not in operation when the pedestrian is crossing the highway in a crosswalk and the pedestrian is on the half of the highway on which the vehicle is travelling, or is approaching so closely from the other half of the highway that he or she is in danger." Section 179 (2) states: "A pedestrian must not leave a curb or other place of safety and walk or run into the path of a vehicle that is so close it is impracticable for the driver to yield the right of way."

WHY THIS MOTORIST IS NOT ENTITLED TO COMPENSATION FOR TOWING DAMAGE CLAIM

WRITTEN BY GREG MECKBACH

A motorist seeking nearly \$4,000 for a vehicle that was allegedly damaged while being towed cannot recover the money from either the Insurance Corporation of British Columbia or BCAA Insurance Corporation, the province's civil resolution tribunal has ruled.

In October, 2018, Cornel Ardeleanu had his 2010 Volkswagen Tiguan towed to a dealer after the vehicle displayed warnings of a faulty engine. Ardeleanu claims the towing company driver improperly towed the Volkswagen on its rear wheels. As a result, Ardeleanu claims, there was \$3,721.99 worth of damage to the Haldex unit (part of the all-wheel drive system).



Neither the allegations that the vehicle was improperly towed nor the that damage occurred as a result were proven before the CRT.

BCAA Insurance Corporation responded to the recovery request and had the vehicle towed by Coquitlam Towing & Storage Co. Ltd.

Ardeleanu went to the CRT in an attempt to recover under an ICBC auto policy. He also sought recovery from BCAA and Volkswagen Group Canada Inc. Coquitlam Towing is not named in the dispute.

CRT member Trisha Apland ruled against Ardeleanu. On the issue of ICBC coverage, she found that the Autoplan Optional policy excludes damage to the client's own vehicle caused by mechanical fracture, failure or breakdown. "If the mechanical breakdown was caused by the negligence of another driver, the applicant would need to bring an action against that other driver," wrote Apland.

She also ruled Ardeleanu cannot cover from BCCA. For one thing, Ardeleanu does not have a contractual relationship with BCCA. Although a contractual relationship is not required for a company to owe a person a duty of care, even if BCCA did owe Ardeleanu a duty of care, Ardeleanu did not convince the CRT that BCAA breached a standard

of care or caused the loss.

"There is no evidence that BCAA engaged a company that it knew or should have known was not competent or trained to tow," wrote Apland.

In any case, BCAA said it had the vehicle inspected by a third-party transmission shop, which reported it saw no damage due to towing.

As for Volkswagen, the auto manufacturer provided the roadside assistance through an external provider but there is nothing in emailed correspondence between Ardeleanu and Volkswagen about indemnifying Ardeleanu from any loss caused by the recovery service, said Apland.

So Ardeleanu did not convince the CRT that Volkswagen, in giving him free roadside assistance service, had a duty of care to ensure his vehicle would not be damaged, Apland found.

WORK TO BEGIN ON REMOVAL OF HALIFAX CONSTRUCTION CRANE FELLED BY DORIAN

WRITTEN BY THE CANADIAN PRESS

HALIFAX – Work was expected to begin Sunday that would allow the removal of the mangled remains of a construction crane that collapsed in downtown Halifax during post-tropical storm Dorian.

The province said in a news release that final inspections are to be carried out before the crane is stabilized.

The structure will be strapped down and anchored before the tower is dismantled piece by piece.

The twisted remains of a building crane hang off a construction project in Halifax on Sept. 8, 2019. Hurricane Dorian brought wind, rain and heavy seas to Nova Scotia. THE CANADIAN PRESS/Andrew Vaughan

The crane collapsed Sept. 7 on a building on South Park Street, prompting an evacuation order for tenants and some businesses in the surrounding area by Halifax Regional Fire and Emergency two days later.

The removal work was supposed to have begun two weeks ago, but was held up over questions about the liability for those involved in the operation.

The provincial government stepped in Sept. 18, declaring a localized state of emergency that moved liability to the province and enabled the work to go ahead.

It's still unclear how long it will take to remove the crane or who will ultimately pay for the complex process.

"With the complexity of the project, estimated timelines and approach will likely be revised as work begins," the Department of Transportation and Infrastructure Renewal said in a news release.

The department said further updates would be provided early this week.



LAIMS EXECES WEIGH IN ON INSURERS BUYING INTO THE SUPPLY CHAIN

WRITTEN BY DAVID GAMBRILL

Insurance companies buying into the claims management supply chain are bound to face some headwinds when it comes to conflicts of interest, but ultimately the P&C industry is big enough to absorb more of these types of acquisitions in the future, panelists at the National Insurance Conference of Canada (NICC) predicted in Quebec last Monday.

At the end of the NICC panel, 'Finding an Equilibrium: The New World of Claims Management,' a panel of industry claims executives fielded a question from an audience member, who asked point-blank for their thoughts about the impact of Intact Insurance's acquisition of On Side Restoration in August.

The Intact-On Side Restoration deal is still subject to regulatory approval. Intact is Canada's largest property and casualty insurer, with a market share of almost 17% prior to announcing its intention in August to acquire The Guarantee. On Side Restoration is a national restoration firm based in Vancouver B.C., with more than 1,200 employees and 35 branches coast to coast.

Intact Financial Corporation president and CEO Charles Brindamour explained the rationale for the On Side Restoration acquisition in a public statement in August: "On Side Restoration is already an important part of our Rely Network of preferred vendors and they have a track record of providing excellent customer service and helping us deliver on that promise," he said.

"By taking ownership in the supply chain and combining our strengths we can ensure simpler, faster and consistently higher quality outcomes for property claims customers. This transaction will reduce claims-handling costs and

provide diversification to our property exposures with a new and counter cyclical earnings stream."

But other insurers have a stake in the supply chain, too, which raises the thorny issue of potential conflicts of interest. Will other insurers pull out of using the services of supply chain vendors rather than line the pockets of competitors who own them?



On Side appears to have lost Economical's business as a result of the Intact deal. "With this [deal], you are going to see companies like ours not use On Side anymore," said panelist Tim Guernsey, vice president of commercial claims at Economical Mutual. That said, Economical's business with On Side was proportionally so small that the scale of Intact's business with On Side would more than make up for the loss, Guernsey suggested.

Continued on page 16 >

LAIMS EXECES WEIGH IN ON INSURERS BUYING INTO THE SUPPLY CHAIN

WRITTEN BY DAVID GAMBRILL

"Do I think there is a conflict there [with Intact's acquisition of On Side]?" asked Guernsey. "I don't really know if there is a huge conflict there. The customer still has a choice to go elsewhere."

And in fact, the industry is large enough that it could handle more ownership consolidation in the supply chain, said the panel moderator, Patti Kernaghan, president and CEO of Kernaghan Adjusters.

"As Intact has bought a contracting firm, there could be more that go down that same route, but there is a lot of room in the insurance industry," said Kernaghan. "There are many players, many companies. I don't think that it's going to harm the industry. It's just adding a new dimension to an already-interesting industry."

Panelist Stephan Roy, national director of disaster restoration for ServiceMaster of Canada Ltd., a competitor

to On Side, said he expected the Intact-On Side deal to be approved by the regulator with no issues. He observed that insurer involvement in the supply chain is not a new phenomenon, adding that TD has initiated a program to brand its preferred auto repair centre vendors under the TD name. (TD does not actually own the repair centres, as Roy pointed out.)

While taking a "wait-and-see" approach, Roy said the Intact-On Side deal raised a number of questions for him as a competitor. "Intact is a large customer of ours, and so obviously that [raises] some concern [about] the availability of first notice of loss and fair competition," he said.

How Intact will triage claims to its various vendors in the supply chain also remains to be seen. Roy said it's still unknown "what the potential impacts could be around On Side getting what would be considered 'better losses.'"

INTACT LOSES COURT BATTLE OVER VOIDING AUTO POLICY FOR MISREPRESENTATION

WRITTEN BY GREG MECKBACH

If an Ontario auto insurer discovers a client made a material misrepresentation or non-disclosure in its application, could the insurer treat the policy as invalid to being with?

Not now. Or at least, not if the fact situation is the same as in ING Insurance Company of Canada, also known as, or formerly, ING Halifax Insurance Company v. Karla Garay Merino, et al.. The Supreme Court of Canada announced Thursday it will not hear an appeal from ING Insurance Company of Canada (renamed Intact of 2009) on this issue.

It all started in 2002 when Timothy Klue and his wife, Sonia Abou-Khalil, applied for coverage with ING for their 1994 Jeep Grand Cherokee.

At his broker's office on May 29, Klue signed a form indicating neither he nor his wife had had any accidents or insurance claims, no history of convictions for motor



vehicle related offences in the last three years, and had not had their licences suspended within the previous six years. His wife did not sign the form.

A binder valid until June 29, 2002 was issued the same day.

Continued on page 17 >

INTACT LOSES COURT BATTLE OVER VOIDING AUTO POLICY FOR MISREPRESENTATION

WRITTEN BY GREG MECKBACH

Two days later, ING received the application from the broker. Soon afterward, ING's underwriting department discovered Abou-Khalil had an at-fault accident the previous September, had been convicted of speeding twice and careless driving once, and had her driver's licence suspended for non-payment of fines.

Reasoning that the risk was outside its underwriting guidelines for new business, ING sent Klue and Abou-Khalil a registered letter July 2, telling the couple their policy is void from its inception date.

Three months later, a pedestrian was catastrophically injured after being hit by the jeep for which Klue applied for insurance. The vehicle was driven by Klue. The pedestrian, Karla Merino, sued the couple. Merino was awarded \$2 million in 2011, an award upheld on appeal in 2013.

The vehicle was considered uninsured so the plaintiff could not recover the full amount of the judgement directly from the defendants. So the plaintiff went back to court looking for compensation from ING. Initially, she was not successful.

At trial, Ontario Superior Court of Justice Gregory Verbeem ruled in favour of the insurer, finding that the vehicle was in fact uninsured. In his decision, released in October 2017, Justice Verbeem reasoned that Klue and Abou-Khalil knew that the Jeep was uninsured before the event, giving rise to the claims against them. They appreciated that the vehicle needed to be insured to operate it on a highway and they had over two months before the accident to obtain alternative insurance, the trial judge noted.

"The Jeep's uninsured status at the time of the accident did not arise from an attempt by the insurer to rescind the contract after the accident," wrote Justice Verbeem. "Instead, its uninsured status arose as a result of a volitional choice by Klue and Abou-Khalil not to insure the vehicle after they became aware that it was not insured by ING." That ruling was overturned in a Court of Appeal for Ontario ruling released April 25, 2019.

Intact applied June 21 for leave to appeal to the Supreme Court of Canada, which announced Sept 26 it will not hear

an appeal. The Supreme Court of Canada does not release reasons for dismissing leave applications.

This past April, the Court of Appeal for Ontario found that Justice Verbeem made an error in law when he found that an auto insurer is allowed to rescind an automobile policy, at common law, based on misrepresentation in the application.

The province has a regulation that sets out the statutory conditions for auto insurance. It specifies that if an insurer wants to terminate a policy for reasons other than non-payment of premium, the company must give the client 15 days notice by registered mail or five days notice by personal delivery.

If the notice of termination does not comply with that section, then the insurance contract remains in force, Justice Kathryn Feldman of the Court of Appeal for Ontario wrote. In ING, the insurer did not give Klue and Abou-Khalil 15 days' notice in its registered letter.

In a case like that, the insurer should not be able to rescind the contract at common law and make it void ab initio or invalid to begin with, wrote Justice Feldman.

The purpose of Ontario's auto insurance laws are to protect innocent victims of automobile accidents, and to provide some statutory accident benefits to everyone who is involved in an accident, added Feldman.

"If an insurer were permitted to rescind an insurance contract at common law ab initio, a person who believed they were operating a vehicle with insurance could have that contract rescinded with retroactive effect, putting the person in automatic contravention of the Compulsory Automobile Insurance Act, a result which is clearly inconsistent with the intent of the legislature."

DID DORIAN CREATE A CAPACITY ISSUE FOR CLAIMS ADJUSTERS?

WRITTEN BY JASON CONTANT

Even though post-tropical storm Dorian knocked out power to about 80% of homes and businesses in Nova Scotia, and left thousands more without power in the other Atlantic provinces, claims adjusters were well-equipped to deal with its aftermath.

"In the industry, there was tremendous capacity from an adjusting perspective, both from the insurer side and also from the independent adjuster side," reported Kumar Sivakumaran, vice president of national operations at ClaimsPro. "We had no difficulty. We had the footprint and more than enough resources on the east coast." The independent adjusting firm was able to handle the claim volume within its "local capacity and then take care of it immediately," he added.

An unidentified man trims a fallen tree outside his residence in Halifax on Sunday, Sept. 8, 2019. Hurricane Dorian brought wind, rain and heavy seas that knocked out power across the region, left damage to buildings and trees as well as disruption to transportation. THE CANADIAN PRESS/Andrew Vaughan

"We had enough adjusters to respond to the influx of claims we got from Dorian," agreed Shelley Landry, vice president of eastern Canada operations with Crawford Canada.

Dorian made landfall Sept. 7 near Halifax, with winds reaching nearly 150 kilometres per hour in the Halifax area (more than 119 km/h is considered hurricane force). The storm knocked down power lines and trees, toppled a construction crane in Halifax, and resulted in school closures. Some customers had power out for days.

What type of claims did adjusters see? For Crawford Canada, it saw mostly property damage as a result of the wind, which swept across Atlantic Canada in a much wider area than a "regular" wind storm. "We also did see some water damage, as well as some more significant commercial losses and some business interruption," Landry said. And given the strength of the winds, "we certainly saw both an increase in the number of losses, as well as more extensive damage than we would typically see from just a minor wind event."



Sivakumaran said the main exposure for ClaimsPro was business interruption for commercial losses, with almost all commercial claims having a BI component. For personal lines losses that were smaller, insurers handled the claims in-house. ClaimsPro did see some losses for things like shingles blown off roofs and fence siding damage.

Earlier this month, Catastrophe Indices and Quantification Inc. declared Dorian a cat event, meaning it will cost the industry at least \$25 million in insured damage.

The industry's capacity to handle Dorian contrasts with the May 4-5, 2018 wind storm that struck Ontario and Quebec. The costliest disaster of 2018 cost over \$600 million in insured losses and stretched adjusting resources thin. Sivakumaran said last year's storm saw a high frequency of claims (about 10 times what ClaimsPro saw for Dorian, and more personal line losses), but low severity.

But what if the industry needed to quickly move resources from province to province? "We're lucky because the majority of our adjusters across Atlantic Canada are licensed in all Atlantic provinces, so when things like that do arise, we do have the ability to move them from province to province without any blips," Landry said, added that this was not needed for Dorian.

"Most of our adjusters in Atlantic Canada are licensed for all of the provinces year-round, so we don't wait for a storm to happen to get that licensing in place. We keep those licenses active year-round so that in the event of

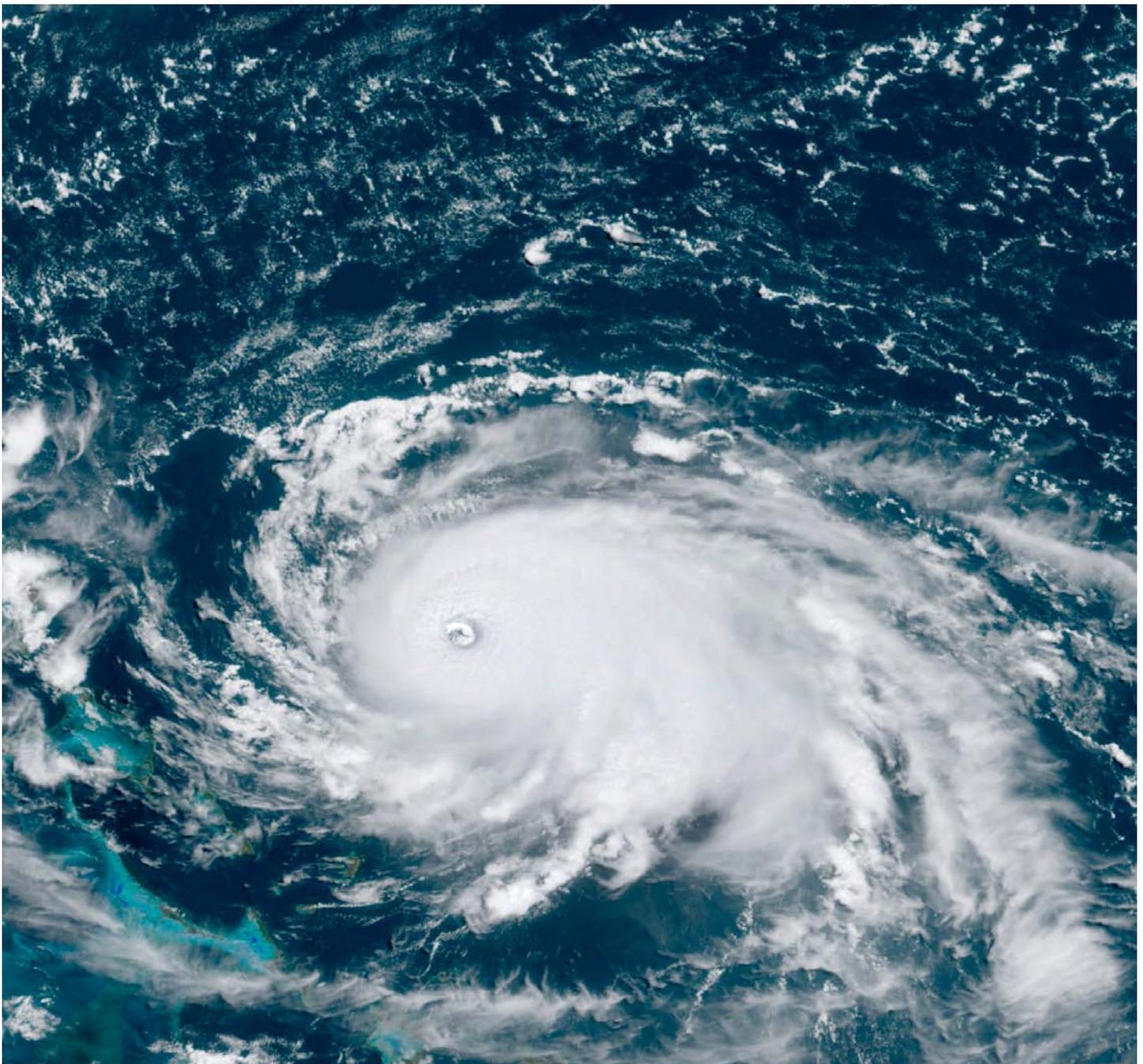
DID DORIAN CREATE A CAPACITY ISSUE FOR CLAIMS ADJUSTERS?

WRITTEN BY JASON CONTANT

something like this, we're able to respond quickly."

The only adjuster movement Crawford had to make was bringing in some adjusters from New Brunswick to help in PEI, Landry said. But that was because an adjuster in PEI was assisting in The Bahamas, where the hurricane claimed more than 50 lives.

Crawford Canada's hub in Nova Scotia luckily didn't lose power during the storm. Even if that was the case, however, a lot of adjusters can work from home or remote workstations and "we've got resources across the region that step up and help out immediately without having to wait for any delays in licensing," Landry said.



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