

INSURANCE DISPUTES AND LITIGATION 2021

Are you up-to-date on the 'post-pandemic' trends and emerging issues?

Insurance disputes raise distinctive challenges and can lead to significant awards and settlements. Get the inside track on disputes over general liability and other policies.

Get valuable tips on a host of issues including:

- Coverage issues arising from COVID-19
- What stymies most court applications on coverage?
- The scope of the duty to defend and the duty to indemnify
- When will an insurer's conduct attract punitive damages?
- Solving the thorny problems raised by priority disputes and apportionment
- Cyber insurance: emerging issues and solutions
- Techniques and trends when quantifying business interruption claims

Register today at:

osgoodepd.ca/insurance-disputes

Program Chairs

Gord McGuire
Adair Goldblatt Bieber LLP

Deborah Berlach
Stieber Berlach LLP

Date and Time

March 24, 2021
9:00 a.m. – 4:30 p.m. EDT

Online Replay: May 18, 2021

Format

Online - Live, Interactive

*Can't make a date?
You will have online access
to the program for 120 days.*

Insurance Disputes and Litigation 2021

This one-day intensive OsgoodePD program was developed by legal and industry experts, for civil litigators, insurance counsel, in-house counsel and others who are already involved in insurance disputes, or who wish to explore the practice opportunities they represent.

Get the context and the tools necessary for success in this highly technical and evolving area.

Topics Include

- Concise overview and update on the current law on the interpretation of general liability, auto and homeowner policies
- Understanding non-obvious issues in coverage, grants and exclusions
- Drafting and the strategic amendment of pleadings
- Impact of the duty of good faith and its significant potential impact on damages
- Trends in quantifying business interruption claims
- Cyber insurance coverage, E & O coverage, D & O coverage, losses arising from the pandemic
- Ethical and professional issues for insurance litigators

Who Should Attend

- Civil litigators (plaintiffs' and defendants'/insurers')
- Personal injury litigators with a broader interest in insurance litigation
- In-house counsel
- Litigation law clerks
- Insurance professionals

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Agenda

9:00 a.m.

Chairs' Introductory Remarks

9:05 a.m.

Anatomy of an Insurance Policy and Principles of Interpretation: Fundamentals Under Current Law

Katherine Di Tomaso

Stieber Berlach LLP

Thomas J. Donnelly

Thomas Gold Pettingill LLP

What makes the insurance policy different from other contracts and what are the practical implications for counsel?

- Navigating the constituent parts of insurance contracts
- Coverage, grants and exclusions
- What constitutes ambiguity?
- What trips up most court applications on coverage?

9:35 a.m.

Duty to Defend Applications

Deepshikha Dutt

Dentons Canada LLP

Andrea Sanche

Ricketts Harris LLP

- The duty to defend distinguished from the duty to indemnify
- Avoiding common pleading pitfalls in this area – and amending pleadings strategically
- The effect of denial and/or reservation of rights: how may this affect both the duty and who controls the defence

10:05 a.m.

The Duty of Good Faith and Punitive and Aggravated Damages

Alfred M. Kwinter

Singer, Kwinter

- How courts are currently thinking about punitive/exemplary and aggravated damage awards
- Effect of breaching the duty (including voiding of the contract)
- The extent of the obligation to exercise good faith in settlement discussions
 - Extent of the duty to settle within policy limits

- How the duty applies in the course of litigation
- Advocacy tips in framing claims for punitive damages

10:35 a.m.

Break

10:50 a.m.

A Litigator's Checklist of Practical Tips

Elizabeth Bowker

Stieber Berlach LLP

Concise guidance on a variety of often-encountered problems, in such areas as

- Action vs. applications: which to choose?
- Arbitration and the choice of forum
- Practical tips on handling exclusions from coverage
- When is it appropriate to sue the broker and how to argue broker's negligence
- Insurance policy timelines for suing the insurer
- Special considerations for property policies
- Over-limits claims
- Bringing in third parties

11:35 a.m.

Priority Disputes and Apportionment

Robyn Campbell

Senior Vice President, Claims Solutions,
Marsh Advisory, Marsh Canada | FINPRO Claims
Advocacy Practice

Marcus Knapp

Counsel, Ricketts Harris LLP

- Coverage limits generally and aggregate limits – what do they mean and what is their potential impact?
- Competing claims that may affect the limits available
- When is the insurer obliged to pay out a claim while others are still ongoing?
- Apportionment of defence costs between covered and uncovered claims
- Allocation or apportionment of the indemnity payment

12:05 p.m.

Lunch Break

12:50 p.m.

Insurance Coverage Issues for COVID-19 Pandemic Related Claims

Jason P. Mangano

Blaney McMurtry LLP

- First Party Insurance Policies Issues
 - Business interruption Coverage
 - Civil Authority Coverage

- Third Party Liability Policies Issues

- CGL Coverage Issues
- D&O Coverage Issues

- What can be learned from the caselaw in other jurisdictions?

1:20 p.m.

Distinctive Features of the Errors and Omissions Policy In the Post-Pandemic Litigation Landscape

Grace Leung

Senior Claims Specialist (Financial Lines),
Allianz Global Corporate & Specialty (AGCS)

Joyce Tam

Thomas Gold Pettingill LLP

- How the grant of coverage in E & O policies differs
- What is comprehended by 'economic loss'?
- The broad grant of coverage vs. the important 'clawbacks' created by exclusions
- Duties of insureds under the policy and the insured's role in the defence and settlement of claims

1:50 p.m.

Quantifying Business Interruption Claims: Techniques and Trends

Tim Gillibrand

Strigberger Brown Armstrong LLP

Tim Zimmerman

RSM Canada

- What's needed to prove (or refute) the claim?
- What if the documents have been destroyed?
- Role of accountants and other financial experts
 - Selecting the appropriate accountant for the claim
 - Making optimal use of accountants' reports
- How long can the interruption persist?

2:30 p.m.

Break

2:40 p.m.

Directors' and Officers' Coverage and Liability in 2021

Mary Jane Stitt, FCI Arb.

Insurance Coverage Counsel & Arbitrator
Mary Jane Stitt Professional Corporation

Brian Rosenbaum

Senior Vice-President & National Claims Director
Aon Reed Stenhouse Inc.

- Coverage in the context of both civil and regulatory proceedings
- Public company vs. private company forms of D & O
- Common exclusions
- Priority disputes in the D & O context
- D & O coverage for economic loss arising from the pandemic

3:05 p.m.

Cyber Insurance Coverage: Current Issues and Solutions

Mouna Hanna

Dolden Wallace Folick LLP

- Understanding cyber insurance standalone policies and extensions of coverage under other policies
 - When do you have to get a standalone policy?
 - How the nature of the enterprise affects the availability of coverage under non-standalone policies
- What's covered and what's excluded?
- Which kinds of privacy breaches attract coverage?
- Does the policy provide coverage for 'ransomware' attacks?

3:30 p.m.

Ethical and Professional Issues For Counsel in Insurance Disputes

Deborah Berlach (moderator)

Stieber Berlach LLP

Nina Bombier

Lenczner Slaght Royce Smith Griffin LLP

Jason F. Katz

Singer Katz LLP

Jamieson Halfnight

Halfnight Arbitration

Christopher Martyr

Dutton Brock LLP

An expert panel will discuss realistic fact situations that raise ethical and professional issues you are likely to encounter in day-to-day practice, with appropriate reference to the Law Society of Ontario's Rules of Professional Conduct and relevant caselaw.

4:30 p.m.

Program Concludes

Chairs

Gord McGuire
Adair Goldblatt Bieber LLP

Deborah Berlach
Stieber Berlach LLP

Faculty

Nina Bombier
Lenczner Slaght Royce Smith
Griffin LLP

Alfred M. Kwinter
Singer, Kwinter LLP

Elizabeth Bowker
Stieber Berlach LLP

Grace C.Y. Leung
Senior Claims Specialist
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Insurance Coverage Counsel
& Arbitrator
Mary Jane Stitt Professional
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Jamieson Halfnight
Halfnight Arbitration

Mouna Hanna
Dolden Wallace Folick LLP

Joyce Tam
Thomas Gold Pettingill LLP

Jason F. Katz
Singer Katz LLP

Tim Zimmerman
Litigation Support Services
Group, RSM Canada

Marcus Knapp
Counsel, Ricketts Harris LLP

Registration Details

Fee per Delegate: \$695 plus HST

Newly Licensed (2018 – Present): \$347.50 plus HST

Fees include online attendance, electronic program materials, and 120-day access to the program archive. Group discounts are available. Visit www.osgoodepd.ca/group-discounts for details. Please inquire about financial assistance.

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Substitution of registrants is permitted at any time. If you are unable to find a substitute, a full refund is available if a cancellation request is received in writing 14 days prior to the program date. If a cancellation request is made with less than 14 days notice, a \$75 administration fee will apply. No other refund is available.



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