



# ADVANCING OR DEFENDING MAJOR FIRE AND PROPERTY LOSS CLAIMS

The program that will give you the tools to navigate these contentious, high-stakes cases.

**Plaintiffs** who pay premiums for years only to find that coverage for losses is inadequate or non-existent.

**Insurers** alive to the real potential for fraud or arson.

**Conflicts** that generate bitter settlement discussions and trials – with significant financial risks.

Make sure you're equipped to handle the critical issues in major fire and property loss cases, including:

- Policy pitfalls facing insurers and insureds
- Proving/refuting the proof of loss
- Navigating the adjustment process
- The heavy onus of establishing fraud or arson
- Recourse against the insurance broker for negligence
- Punitive damage awards: after historic highs, are the courts backing away?

Register today at:

[osgoodepd.ca/claims](http://osgoodepd.ca/claims)

## Program Chairs

**Alfred M. Kwinter**  
Singer Kwinter

**Alexander B. Paul**  
Black Sutherland LLP

## Program Details

DATE AND TIME

April 4, 2017

9:00 a.m. – 4:15 p.m. EDT

In Person or Webcast

LOCATION

**Osgoode Professional  
Development**

1 Dundas St. West, 26th Floor  
Toronto, ON

ONLINE REPLAY

May 11, 2017

# ADVANCING OR DEFENDING MAJOR FIRE AND PROPERTY LOSS CLAIMS

Homeowners and businesses depend on insurance for peace of mind and reliable protection against losses from fire and property damage. But when a loss is sustained, they often find their claims denied on an array of grounds, or on interpretations of the policy they never considered.

This OsgoodePD program provides a rare opportunity to equip yourself with the relevant law and best practices you will need to consider next time one of these files crosses your desk.

## Topics Include

- Evidentiary hurdles to surmount in proving or defending against the claim
- Appraisals, valuations and the adjustment process
- How appropriate preparation and advocacy can generate or defeat six-figure claims for punitive or aggravated damages
- The non-standard character of the insurance policy and its hidden traps and opportunities
- Meeting the ethical, professional and E & O challenges confronting counsel in these cases

## Who Should Attend?

- Civil litigators (plaintiffs' and defendants'/insurers)
- In-house counsel
- Paralegals and litigation law clerks
- Adjusters and other insurance professionals

### What attendees said about recent OsgoodePD programs in insurance/personal injury law and practice:

“Terrific program. Great faculty. Good quality papers that address case law and legislative developments.”

Catherine Zingg, Flaherty McCarthy LLP

“As an adjuster, learning plaintiffs' and defence perspectives on file handling is a benefit.”

Christine Fizell, Trillium Mutual

“Very informative and well run. Great to have both sides, defence and plaintiffs', all in one room talking about upcoming issues.”

Emil Calixterio, Northbridge Financial Corporation

## Agenda

8:30

Registration and Continental Breakfast

9:00

Chairs' Welcome and Introductory Remarks

9:10

What's Distinctive About Major Fire and Property Loss Claims?

Alfred M. Kwinter, Singer Kwinter

Insurance policies are “contracts with a difference”. The relationship between insurer and insured is influenced by distinctive statutory requirements and by a distinct body of judge-made law. Accordingly, both plaintiffs' and insurers' counsel must be aware of the many challenges and pitfalls besetting this area. These will be highlighted in this context-setting session by the counsel who won precedent-setting awards in trial and appellate cases.

9:30

The Insurance Policy: Key Passages and Their Potential Impact

Anthony J. Bedard, Lerner LLP

As one judge has lamented, not one in 100 insureds reads the policy. But dealing effectively with a fire or property loss requires counsel to understand the extent and limits of coverage it provides.

- What has the insured actually bought?
- What are the exclusions?
- Are there additional endorsements and warranties which extend or limit coverage?
- How are ambiguities in the policy to be interpreted?
- Importance of the declaration page
- When does the limitation period under the policy start to run?

**Plus Breaking News:** the importance of the Ontario C.A.'s December 2016 decision, *Carter v. Intact Insurance Company*

10:00

## Refreshment Break

10:15

## Proof of Loss and the Adjustment Process

### *Plaintiff's perspective:*

**Jason F. Katz**, Singer, Kwinter

### *Defendant's perspective:*

**D. Keith Smockum**, Smockum Zarnett LPP

### *Adjuster's perspective:*

**David D. LeBlanc**, Licensed Adjuster, Vice President Toronto Office, National Fire Adjustment Co., Inc.

The proof of loss is a statement under oath and if intentionally exaggerated, can nullify the entire claim. This session comprehensively lays out the issues in this area:

- Critical steps in proving the claim
- Contesting the estimate of the insurer's 'preferred contractor'
- The insured's right to choose his/her own contractor
- Valuation methods: replacement vs. adjusted cash value
- Evidentiary issues, including use of experts
- Alternate living expenses coverage
- Tips on negotiations between the insured and the adjuster/insurer
- Proving damages from business interruption, including consequential damages
- When and why to retain a Public Adjuster
- Expedited appraisals: do they affect the running of the limitation period?

11:45

## Lunch

12:30

## The Scope of Available Defences

**Paul Tushinski**, Dutton Brock LLP

**Stephen MacDonald**, Stevenson Whelton MacDonald & Swan LLP

**Robert E. Sugar**, Malach Fidler Sugar + Luxenberg LLP

An overview of the defences frequently mounted by insurers, how they are constructed and how insured's counsel may attempt to counter them.

- Misrepresentation of material facts in the insurance application
- Misrepresentation in the proof of loss
- Material changes in risk
- "No insurable interest"
- "Post-loss underwriting"
- Estoppel and waiver

1:45

## Inadequate Insurance and the Liability of Insurance Brokers

**Barry Papazian Q.C.**, Papazian Heisey Meyers

**John J. Pirie**, Baker & McKenzie LLP

After a loss a property or business owner can discover that the policy fails to provide adequate insurance – or any insurance at all for the loss suffered. However, the law imposes a heavy onus on brokers to provide insureds with proper information on all necessary coverage before the policy is signed. This session explores the recourse which insureds may or may not have against their brokers.

- Establishing the applicable standard of care, the broker's negligence, and the resulting damages
- Brokers' defences, including contributory negligence
- Scope of the insured's duty to mitigate and of counsel's duty to educate the insured

2:30

## Refreshment Break

2:45

## Aggravated and Punitive Damage Awards In Fire and Property Loss Cases: Where the Law Stands Now

**Gary R. Will**, Will Davidson LLP

The law since *Fidler v. Sun Life* has seen the availability and quantum of punitive damages increase impressively. In this session, a counsel who has obtained such awards explores issues such as:

- What type of conduct invites punitive damages?
- The 'sting factor'; how large an award will courts find necessary to deter the conduct?
- Who will more likely award punitives - a judge alone or a jury?
- Are claims for punitives now encountering stiffer judicial resistance?
- To what extent are aggravated damages for mental distress available in property and fire loss cases?
- Cost consequences even where the insurer's conduct isn't sufficient to trigger punitives

3:15

## Ethical and Professional Issues For Counsel in Fire and Property Loss Cases

**Deborah Berlach**, Stieber Berlach LLP

**Roger Chown**, Carroll Heyd Chown LLP

**Frank Gomberg**, Gomberg Mediation Solutions Inc.

**Steven Rastin**, Rastin & Associates

**Lynn Turnbull** (moderator), Black Sutherland LLP

- *A client claiming under a policy advises that he is conducting a business in his home of which the insurer is unaware.*
- *A client obtains an estimate for repair of fire damage, swears to the amount in the proof of loss, then tells you his friend will do the repairs for half the amount if paid in cash.*

Ethical and professional issues for counsel can easily arise in fire loss/property damage cases. This session will explore realistic fact situations and how savvy plaintiffs' and insurers'/defendants' counsel address them.

4:15

## Program Ends

## Chairs

**Alfred M. Kwinter**  
Singer Kwinter

**Alexander B. Paul**  
Black Sutherland LLP

## Faculty Includes

**Anthony J. Bedard**  
Lerners LLP

**Barry B. Papazian Q.C.**  
Papazian Heisey Meyers

**Deborah Berlach**  
Stieber Berlach LLP

**John J. Pirie**  
Baker & McKenzie LLP

**Roger H. Chown**  
Carroll Heyd Chown LLP

**Steven Rastin**  
Rastin & Associates  
Professional Corporation

**Frank Gomberg**  
Gomberg Mediation  
Solutions Inc.

**D. Keith Smockum**  
Smockum Zarnett LLP

**Jason F. Katz**  
Singer Kwinter

**Robert E. Sugar**  
Malach Fidler Sugar +  
Luxenberg LLP

**David D. LeBlanc**  
Licensed Adjuster & Vice  
President (Toronto Office),  
National Fire Adjustment  
Co., Inc.

**Lynn Turnbull**  
Black Sutherland LLP

**Stephen MacDonald**  
Stevenson Whelton  
MacDonald & Swan LLP

**Paul Tushinski**  
Dutton Brock LLP

**Gary R. Will**  
Will Davidson LLP

## Registration Details

### Fee per Delegate

**\$595 + HST**

Fees include attendance, program materials, continental breakfast, lunch and break refreshments. Group discounts are available. Visit [www.osgoodepd.ca/groupdiscounts](http://www.osgoodepd.ca/groupdiscounts) for details. Please inquire about financial assistance.

### Program Changes

We will make every effort to present the program as advertised, but it may be necessary to change the date, location, speakers or content with little or no notice. In the event of program cancellation, York University's and Osgoode Hall Law School's liability is limited to reimbursement of paid fees.

### Cancellations and Substitutions

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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