

# PULSE



THE HEARTBEAT OF RISK MANAGEMENT, MARCH 2013

## President's Message

By: **David Beal**, Director, Risk Management, OSBIE

It is amazing how quickly the time has passed since my term as President began last May, and it seems impossible to believe that it is time to write my "farewell" article for the newsletter.

While the year has passed quickly, it has been a year of learning, a year of team building, but perhaps most importantly, it has been a year of pride for me in what our Board has been able to accomplish. Over the past year, I was given the privilege of working with a group of Directors who were fairly new to the ORIMS Board, and, almost instantly, I was impressed by the enthusiasm, dedication and commitment that everyone has demonstrated. We have all had a steep learning curve over the past year, and we certainly have been up for the challenge, as our initiatives and efforts start to gain traction.



Our golf tournament in June/12 was the first official event under my term as President, and it was my privilege to address over 260 attendees at one of the most popular ORIMS events of the year. We also saw some records broken this year with over 700 people attending our annual Christmas Lunch and 86 attending our full-day Professional Development Day. These accomplishments are a tribute to the hard work of the

Board members and their volunteer Committees. As I have said on previous occasions, these people are the real heroes!

We have also begun to see success materializing with our Professional Development workshops, led by Tina Gardiner. Last September we introduced a new format to appeal to novice and veteran risk managers alike, which has resulted in a significant growth in attendance numbers at our monthly sessions.

Of course, I would be remiss if I didn't mention the support from you, our ORIMS Members, in making this year a very successful year for the Chapter. Without Membership engagement through attending workshops, social events, employer support for volunteers, and Member input on current and evolving issues, our Chapter cannot remain strong

and move forward. I would like to express my thanks to the ORIMS Membership for your support and the part you have played in making this past year successful.

So, now it is time to pass on the baton. I first joined the ORIMS Board in 2004 as the Director of Communications, and with my service next year as Past President; I will have completed 10 years on the Board. I want to thank all of the Board members whom I have had the privilege of working with over the years for your hard work, but most important of all, I want to thank you for your friendship, because for me, that has truly been the best part of it all!

Sincerely,  
**David Beal**, President (2012-13)

# CELEBRATING

# 1



# Years

TO PROMOTE AND ADVANCE EXCELLENCE IN RISK MANAGEMENT

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# When innocence is no defence: The legacy of the Kawartha Lakes Decision

■ By: **Gabrielle Kramer and Aimee Collier**, Borden Ladner Gervais LLP

## Are You Green About

### *The Remediation Order*

**T**he background to the Divisional Court decision in *The Corporation of the City of Kawartha Lakes v. Director (Ministry of the Environment)* will be common to many insurers of rural residential properties, fuel haulers and home heating service companies. However, few insurers of property owners with no on-site environmental risks will be making adequate provision for off-site accidental risks, particularly outside industrial areas. As an underwriting problem, the court's decision presents exponential risk.

The background facts, while serious, are unremarkable. In December 2008, a residential property leaked fuel oil from its home heating fuel oil tank. The property was located in the City of Kawartha Lakes (the "City"). The spill was reported to the Technical Standards and Safety Authority ("TSSA"), and an order was issued. Almost two weeks passed and no steps were taken by anyone to contain the spill. By the time the remediation company was retained, the leaked fuel oil had sunk into the ground, migrated across the homeowners' property into the City's storm sewers under its right-of-way, and from there, the spill seeped into Sturgeon Lake.

The spill was reported to the Ontario Ministry of the Environment ("MOE"). The MOE initially issued a fault based order against the homeowners. Unfortunately, the \$1 million dollars of insurance coverage held by the home owners was not enough to pay for the entire clean up, and they lacked the means to make up the difference. The MOE accepted the homeowner's alleged inability to fund additional work and did not issue an order against the fuel supplier.

Instead, the MOE issued a no-fault order against the City requiring it to step in to remediate the contaminated public property (the "Order"). The City appealed the administrative Order to the Environmental Review Tribunal (the "Tribunal") on the basis that it was not a cause of the pollution. The appeal was denied by the Tribunal. The Tribunal held that fault was not rele-

vant when considering whether or not an Order should apply. While earlier decisions of the Tribunal had taken fairness into account, it was determined that the need to protect the environment trumped considerations of fairness.

The City had applied to the Divisional Court to review the tribunal's decision, and in June 2012, the Divisional Court dismissed the City's application concluding that the City was unable to establish how relieving it of the Order would be consistent with the *Environmental Protection Act's* (the "EPA") purpose. The City failed to show how relieving it from the Order would be fair to the environment or those affected by the pollution.

Therefore, even though the City never owned the oil, never had control of the oil, and did not cause the spill, the well-known "polluter pays principle" was not offended because the EPA and the MOE's Compliance Policy together specifically contemplated holding innocent owners responsible for clean-up if it furthered the primary purpose of the legislation: protecting the natural environment. The Divisional Court confirmed that the evidence pertaining to the fault of other parties was not relevant or admissible to the Tribunal's mandate of protecting the environment. While the Divisional Court did not rule out fairness arguments in future clean-up order appeals, the importance of environmental response must be taken into account. Protecting the natural environment after the oil spill was not furthered if the City was let out, because it had the ability to pay for cleaning up the public lands.

### *The City's Cost Recovery Actions*

The City is currently pursuing two other avenues to recuperate the clean-up costs. First, it issued its own orders pursuant to Section 100.1(1) of the EPA against the residential property owners, the Technical Standards and Safety Authority and the fuel company, requiring reimbursement of the \$471,691.00 incurred by it to clean-up its own property. The EPA provides a



mechanism for municipalities to receive prompt compensation for clean-ups such as the one in issue.

The City issued these orders on June 15, 2010, which were appealed by all parties to the Tribunal (the "s. 100.1(1) Appeals"). Secondly, it commenced a civil action a month and a half later in the Ontario Superior Court of Justice in Lindsay, Ontario to recover its clean-up costs (the "Civil Action"). The ERT, in recognition of the multiplicity of proceedings, deferred to the court and stayed its proceedings, pending the civil outcome. The ERT was critical of the City for having commenced multiple proceedings stating that it ought to have pursued its statutory rights first. Section 100.1 of the EPA was intended to provide speedy relief and recourse to the courts could have been delayed. Four years later, the civil proceedings are ongoing and the City has been unable to recover its costs at the Tribunal.

In the civil action, the City named the home owners, fuel supplier, the Technical Standards and Safety Authority, the MOE, the remediation contractor, the adjuster directing the clean-up, the homeowner's insurer and the tank manufacturer. The City alleged that each of these parties either contributed to the spill or failed to ensure that the spill was cleaned up as cost-effectively as possible. The insurer, adjuster and remediation contractor all brought summary judgment motions. In denying the motions, the court held that it was not plain and obvious that a duty of care to the City did not exist. It was arguable that damage to the City as the adjacent property owner was foreseeable if the clean-up was not properly managed.

Accordingly, that action has been permitted to continue and may create new law with respect to the duty of insurers, adjusters and their contractors to manage clean-up of spills (The proper management of complex damages issues in fuel spill cases is a challenge to insurers responding to a loss, and a fertile ground for criticism by defendants, if inappropriate decisions are made).

The further appeal from Divisional Court to the Ontario court of Appeal is pending. The principal issue raised on appeal is whether the MOE must have regard to the *Polluter Pays* principle in exercising its discretion to issue clean-up orders. The City will be arguing that both the Tribunal and Divisional Court erred in concluding that evidence of actual fault was not relevant to the issue of an environmentally responsible solution. The outcome will be closely watched by parties living next door to environmental risks and seeking to manage their prospective liabilities.

*Gabrielle Kramer is a partner in the Toronto office of Borden Ladner Gervais LLP. Ms. Kramer litigates and advises a number of leading insurers related to the risks of environmental losses. She regularly defends environmental consultants, contractors, waste haulers and fuel oil distributors. Ms. Kramer also provides environmental coverage and underwriting advice.*

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*Aimee Collier is a lawyer practicing in the Toronto office of Borden Ladner Gervais LLP. Ms. Collier brings her experience involving contaminated sites, environmental offences, renewable energy approval appeals and waste management to the defence of environmental claims for a number of insurers.*

# And what can your safety office do for you?

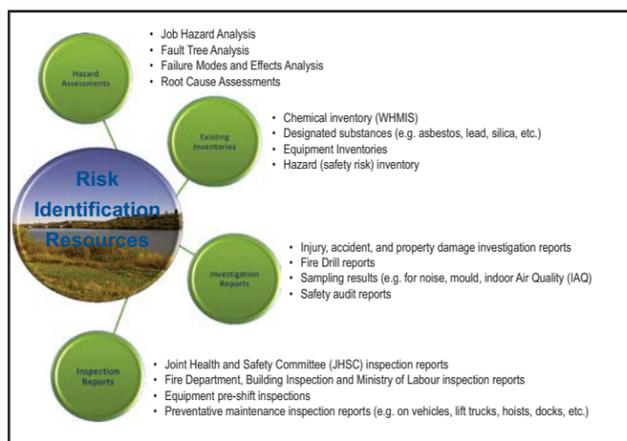
By: **Geeta Sharma, MPH, CRSP, CRM**

**A**s an old safety professional, but a new risk manager, I am starting to realize that the words “being at risk” leave people feeling threatened and nervous, conjuring up images of doom. On the flip side, the reference to “being safe” often gives rise to feelings of security, protection, and well-being. Being the escapists as we can sometimes be, we will often avoid things that don’t give us the warm fuzzies.

Given the above, I can’t help but wonder if it may be easier for Risk Managers to broach the topic of risk in the context of safety whenever we can. Particularly in Ontario, where stringent safety legislation (e.g. the *Ontario Occupational Health and Safety Act*, *Workplace Safety and Insurance Act*, *the Ontario Fire Code* etc.) has ensured that many of the issues we hold dear in risk management - risk identification, evaluation and analysis - are often already firmly in place and accepted throughout our organization’s “Safety Office”. This practice is also made easier for us because both offices require many of the same tools and information; some of which are highlighted below.

## 1. Risk Identification:

Risk identification is a process that is used to find, recognize, and describe the risks that could affect the achievement of objectives. This is a standard function for most Risk Managers often conducted by developing a risk register. It is likely that your safety office already has a repository of some of the risks that have been accumulated for various functions:



**Hazard Assessments:** Most safety offices have a list of high risk work; e.g. work involving chemicals, assessments for workplace violence, work with lift trucks, etc. These assessments will include risk and most likely potential controls; so instead of introducing a new risk assessment template, Risk Managers may wish to consider building upon this existing resource, which will likely allow for

quantifying the level of “hazard” or “risk” by frequency (probability) and severity (consequence).

**Existing Inventories:** The Workplace Hazardous Information Materials System (WHMIS) requires employers to have an inventory of their chemicals and corresponding Material Safety Data Sheets (MSDS). This means that you already have information about corrosives, flammables, compressed gases, etc. available for your taking in your organization. A second type of inventory that would be useful is one for equipment and machinery. The safety office will likely have information on the manufacturer, preventative maintenance schedules, existing safety controls (e.g. machine guarding, Lockout Tagout procedures, etc.). This allows the Risk Manager to forecast values, replacement needs, and potential service interruption gaps.

**Investigation Reports:** The Risk Manager can gauge where risks have already been both in terms of injury or property damage through these reports. Investigations of these are legislatively required, so there is a strong possibility that corrective measures have been identified and implemented. Further, these reports are helpful when you are working with your adjustors.

**Maintenance and Inspection Reports:** Site inspection reports as well as recommendations made by the Joint Health and Safety Committee highlight areas of safety concerns. For instance, these inspection reports indicate areas where a door mat might reduce the probability of a slip injury, or uncover exposed wiring

that could lead to fires, or highlight improper storage of chemicals that could result in explosions. Maintenance reports can identify the state of equipment, dock levellers, hoists, etc., but also support the Risk Manager in defending potential claims.

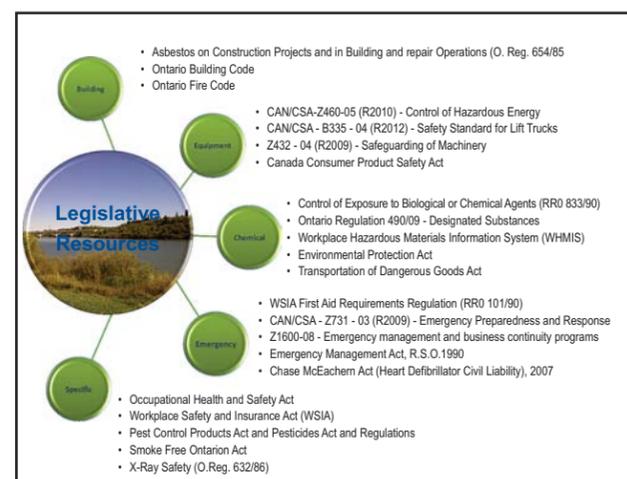
## 2. Risk Evaluation:

Risk evaluation determines whether or not a specified level of risk is acceptable or tolerable.

Determining acceptable risk for negative exposures to human health (mould, asbestos, chemicals, biological agents, etc.) can be difficult. I recall being called to

assist during an ammonia leak. While most people had quickly evacuated themselves, thanks to the pungent and irritating ammonia gas, an electrical contractor continued to work comfortably in the area without a respirator! While we put a stop to that immediately, I was amazed that a person could be exposed to that level of ammonia and still stay put. It raises the question of when dealing with issues of individual susceptibility how is an employer to define acceptable safe exposure values? In the occupational safety arena, many of these values are legislatively determined.

**Exposure Values for Chemicals and Biological Agents:** In Ontario, there are exposure limits set for chemical and biological hazards. While these limits do not take into effect individual susceptibility



or underlying medical conditions, they identify concentrations and time spans at which most people will not experience adverse health. In Ontario, our reference is:

- Control of Exposure to Biological or Chemical Agents Regulation (*Ontario Occupational Health & Safety Act O. Reg. 654/86*).
- Permissible Exposure Levels (PELs) of the USA Occupational Safety and Health Administration (OSHA).
- Threshold Limit Values (TLVs) of the American Conference of Governmental Industrial Hygienists (ACGIH).

**Mould:** Moisture is necessary for mould growth, and we often fight our battle with mould following a flood. We are conditioned to become concerned when we see black or green mould. The fact, however, is that mould is present in ambient air and is not all dangerous at every concentration. For the Risk Manager involved with mould abatement, your safety colleague can assist with identifying the abatement requirements outlined into the two main guidelines for Ontario:

- Canadian Construction Association: Mould Guidelines for the Canadian Construction Industry, Guide 82, Ottawa, ON (2004)
- Environmental Abatement Council of Ontario: Mould Abatement Guidelines, (Edition 2, 2010)

**Asbestos:** Asbestos is a carcinogen and a designated product in Ontario. The sampling of asbestos, its remediation, documentation, and notification procedures are heavily legislated. Risk Managers involved in contract reviews of older buildings that may contain asbestos, or are involved in discussions about constructions projects where asbestos is present, would be wise to visit their safety office before committing to a final decision. They will clarify your obligations under the *Occupational Health and Safety Act*, *Ontario Regulation 278/05*,

Asbestos on Construction Projects and in Buildings and Repair Operations.

*Canada Consumer Product Safety Act:* in relation to potential health or safety incidents with consumer products for an individual or organization that manufacture, import or sell consumer products in Canada.

The “incident” encompasses an occurrence that may reasonably have been expected to result in an individual’s death or have serious adverse effects on their health, including a serious injury, e.g. due to a defect in the product, or incorrect or insufficient information on a label or in instructions. The reporting must occur to Health Canada within 2 days after the day on which they become aware. Persons who manufacture or import also need to provide Health Canada with a written report with specific information within 10 days after the day on which they become aware of an incident.

## 3. Risk Analysis:

Risk analysis is a process that is used to evaluate the impact and consequences of identified risk and examine the controls that currently exist.

**Legislative Requirements:** For a Risk Manager, it is significant to note that the primary role of the Safety Office is prevention programs in reference to injury and property loss.

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# Rising Longevity Risk is finally being recognized

By **George Graziani**, Swiss Re, Head Longevity, North America

Corporate Canada is starting to manage the risks and investigate the rewards associated with the global trend of increased longevity. Canadians are living longer, this is an indisputable fact. Life expectancy in the developed world has risen from 65 years in 1950 to over 75 years today, or one extra year every six years. In Canada, the estimated life expectancy at birth is expected to rise to over 90 years by 2100(\*ref<sup>1</sup>).

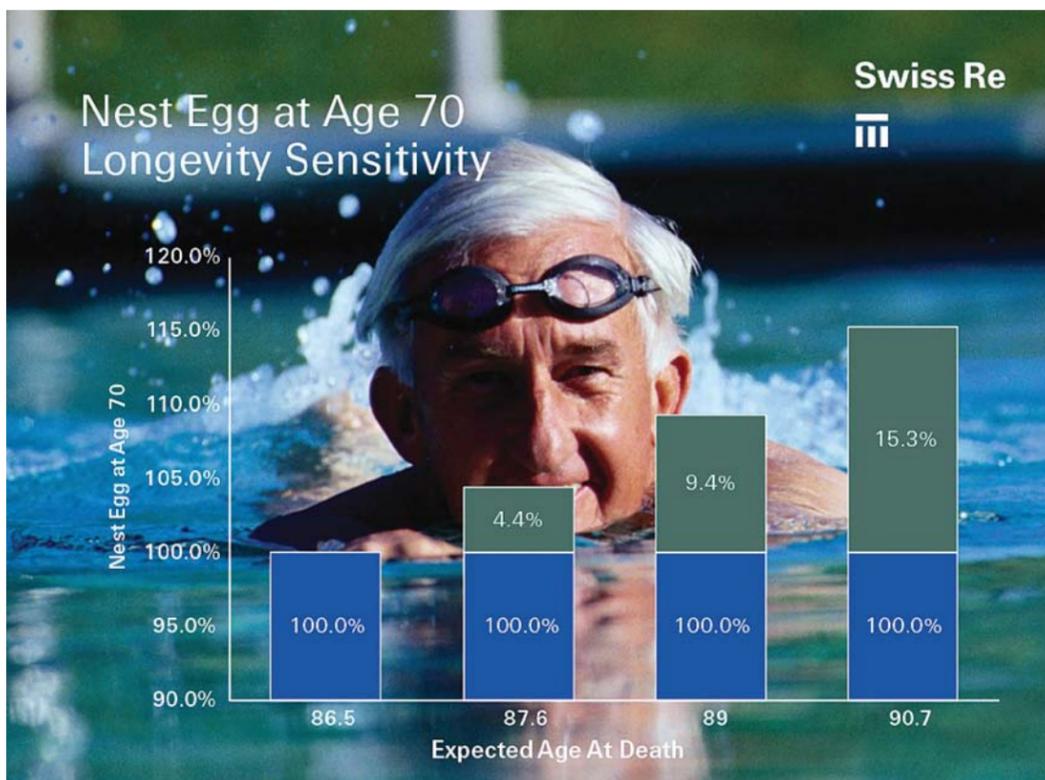
Corporate risks here include the more obvious such as financing associated with Defined Benefit (DB) pensions and other retirement benefits, which cause additional strain to CFO's tasked with meeting revenue targets. Pension assets in Canada, as of 2010, were at CAD 1 trillion and a longevity assumption that is out by just one year- so if a 70 year old expected to die at 86, has an improvement in mortality to 87, they will need a 5% larger nest egg.

In addition to the above, there are also the less obvious costs of retooling and retraining to remain relevant to an aging customer and retaining talent that is also aging and/or has increased pressures associated with long-term care for aging family members.

There is a growing recognition of both the risks and opportunities that an ageing population presents. The Society of Actuaries' Retirement Plans Experience

Committee (RPEC) recently released a report which introduces a new mortality improvement scale that may be used in pension valuations. This new improvement scale, Scale BB, has been developed as an interim table that may be used until the work on a new set of retirement plan mortality tables and mortality improvement rates, which would be the successors to the RP-2000 tables and Scale AA, is completed. We have consistently underestimated how long people are expected to live and this is an important step in addressing the issue.

Age sensitive regulations such as the Accessibility for Ontarians with Disabilities Act (AODA) impact a growing number of people with 56% of over 74 year olds registered as disabled in some way, according to Statistics Canada. Know Your Client (KYC) investment suitability requirements for an investor base with a very real risk of outliving their assets are also expected to add to compliance related costs.



In the Statistics Canada Participation and Activity Limitation Survey (2001) we see that disability rates increase dramatically with age. For 65 to 74 year old males (females) there is a 30.2% (32.0%) disability rate, and for 75 and older these rates go up to 52.1% (54.1%). Thus with an aging population, we would expect a significant increase in persons with disabilities. So what does this mean for Corporate Risk Managers? In Ontario, for example, where

we have AODA (\*ref<sup>2</sup>), the Accessibility standards for Customer Service apply to all providers of goods and services in Ontario, effective January 1 2012. This standard addresses business policies, practices and procedures, and stipulates employee training needed to provide better customer service to people with disabilities. Ontario's next three accessibility standards will remove barriers in three areas: transportation, employment, and information and communication. These will be phased in between 2011 and 2021. The final standard is The Accessibility Standard for the Built Environment and is intended to help remove barriers in buildings and outdoor spaces for people with disabilities. This standard is under development and is expected only to apply to new construction and extensive renovation. Corporations in Ontario are focused on not only the compliance costs associated with these standards, but also the business opportunity implicit in providing products and services for this growth market segment.

Similarly, the Long Term Care (LTC) market presents Canadian corporations with a number of issues and opportunities. First, it is worth noting that the costs of long term care, for a majority of Canadians who do not satisfy the means test, are not covered by our health care system.

Further, Canadians generally are unaware

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## AND what can your safety office do for You?

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Most safety programs are aligned with legislative requirements, which set out minimum standards. Some of these standards include the Ontario Fire Code, Ontario Building Code, and CSA standards. CSA standards are guidelines only; however, those referenced in the *Ontario, Occupational Health and Safety Act* must be complied with. These standards span Construction Safety, Electrical Safety, Emergency Preparedness, Equipment and Machinery Safety, Ergonomic/Human Factors, and Personal Protective Equipment.

**Control Programs:** Reasonable efforts taken by organizations in preventing injury to visitors and employees is a good defence in addressing claims. Your safety team can probably shed light on some existing safety controls in place that can assist you with building your case:



- Safe operating procedures and hazard assessments
- Safety signage (e.g. "Authorized personnel only", "Head Protection must be worn")
- Safety rules, for instance "Use pedestrian walkways only", or "hold the handrail" while taking the stairs
- Presence of engineering controls (e.g. machine guards, fume hoods, ventilation systems, noise reduction materials)
- Manufacturers' specifications and user information (e.g. for hoists, fork lifts, elevators)
- Adequacy of emergency systems (e.g. emergency lighting, sprinkler systems, fire-extinguishers, eyewash stations)

Having worked in the safety, and now in the risk management offices, I appreciate the convergence of the two arenas almost every day. There are many shared commonalities, and this particular pairing makes sense, if only to avoid duplication of work and lighten the workload for both offices with the collaboration.

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of this and so are potentially underfunding for these future expenses. Employers will feel the effects here as often long term care falls on the shoulders of a family member, who is then required to take time off work. There is also a substantial business opportunity to provide products and services. Insurers offer financial products, like LTC insurance, as a way for their customers to manage this risk. The Canadian Life and Health Insurance Association (CLHIA) is currently preparing a policy paper on LTC, providing stakeholders with a view of the current state and some important recommendations, for release later this summer.

Where there are risks there are also rewards, and the more forward thinking Canadian corporations will be positioned to capitalize on them. For example, adapting to an older customer base, understanding what they want and how they want it will prove critical. Product development in the pharmaceutical, leisure, medical equipment, technology, diet and wellness, transportation and real estate areas are where there is much activity. Less obvious areas are education suggesting the new Mantra of “reirement” as opposed to retirement.

Many companies have corporate wellness programs designed to increase productivity and reduce the health care costs of their employees. Johnson and Johnson’s “Healthy People” program has the goal of creating a “Global Culture of Health” for their employees through employee assistance, occupational health, health promotion and wellness services. They use a system of confidential employee questionnaires that identify health and lifestyle risks like tobacco use, blood pressure, cholesterol and inactivity to measure the performance of “Healthy People”, set goals and measure health care cost savings. They track, for example, how their US employees compare to a national average in terms of risk factors, and how these employees are changing over time. In dollar terms they estimate that the savings in 2008 attributable to “Healthy People” was \$15.9 million. Johnson and Johnson take a very proactive approach to addressing specific health risk factors for their employees:

In the financial services sector increased longevity is both a risk and an opportunity. Investment advisors are very familiar with the KYC requirements related to suitability of investments, failure to adequately assess risk tolerance, and investments inconsistent with customers’ profile. Errors and omissions insurers are also familiar with these risks as claims tend to be very focused around these issues. When we layer in longevity risk, suitability becomes a more complex question, as noted in the January 2012 Brandes Institute Report(\*ref<sup>1</sup>), where

retiring Boomers are warned against taking “a much too defensive position with their assets, just at the time when their long-term returns are most important”, and further invited to consider “longevity insurance” in certain cases where, for example, the retiree “believes themselves to be relatively healthy, with odds more in their favor than the average person”.

Swiss Re, as the world’s largest reinsurer of mortality, is seen as the natural home for longevity risk. The company provides longevity solutions to clients interested in transferring the longevity risks associated with their liabilities. With longevity insurance, Swiss Re offers Pension Plans a way to transfer their longevity risk and indemnify themselves against future, unexpected increases in longevity.

In December, leading UK insurer, Liverpool Victoria (LV=), ensured its pension fund is



less exposed to longevity risk thanks to a unique USD 1.3 billion transaction with Swiss Re. Swiss Re has provided insurance cover for 1,000 former employees who are yet to retire – a first agreement of its kind. This means that LV=s pension fund has transferred the risk that 5,000 of its members aged over 55 live longer than expected.

As the transactions are very long dated – many 55-year-olds in the UK are expected to live to 90 or more\* – it’s essential that the party taking the risk is financially strong. This transaction is a further demonstration of Swiss Re’s strong track record in the longevity market.

In the financial services sector, there are many opportunities for companies to develop products focused on an aging baby boom demographic. The first baby boomers are now 66 and within the next 16 years the whole baby boom generation will move into retirement. Many boomers are wrestling with what this will look like for them, and how to prepare financially.

Many corporations choose to partner with MIT’s AgeLab for their research

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- Aerospace
- Architects & Engineers
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- Directors & Officers
- Employment Practices Liability
- Energy
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- Errors & Omissions
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- Excess Casualty
- Fine Art & Valuables
- Fiduciary Liability
- Financial Institutions
- General Liability
- Healthcare Liability
- Hull
- Inland Marine
- International Casualty
- Jewelers’ Block
- Political Risk
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# ACQUISITIONS: HOW TO HANDLE INSURANCE ASPECTS

■ By **Leslie Stewart, B.A., C.R.M.** Vice-President, Corporate Risk Management & Insurance, The Bank of Nova Scotia

**M**anaging a corporate insurance program can be challenging enough in the face of evolving conditions affecting both the markets from whom we purchase insurance coverage and the exposures for which we purchase insurance. Just when you, as risk manager, think you have the situation under control, everything changes – you have been invited to participate in a Due Diligence exercise as your corporation is in the process of bidding to acquire another corporation.

There are no set rules to follow for managing through such a process but, based on my experience, there are some fundamentals that apply no matter what the situation or environment. At the end of the day, your responsibility as Risk Manager is to ensure that your corporate insurance program:

1. is in compliance with all related regulatory requirements; and
2. continues to provide the broadest coverage at the least cost.

One of the most frustrating parts of working through the Due Diligence process is the lack of information typically provided about the target company's insurance program. It is fairly usual to be supplied with a one or two page summary of insurance coverage but, in most cases, the information provided is not complete (i.e. does not provide policy numbers, insurer names, annual premium, termination provisions, etc.). Loss information that I've seen provided is typically either not current or is not very complete/fulsome.

In many cases, and due to the confidential and competitive nature of buying and selling companies, your counterpart at the target company may not even be aware that their company is up for sale. Insurance information housed in data rooms may be provided by other sources and may reflect prior periods and be very out-dated. The best we can do is to review the information we are provided and request additional information to assist in our analyses. If no further information is provided, your Due Diligence report must highlight the information/data deficiencies as well as the assumptions you've made and upon which the recommendations in

your final Due Diligence report are based.

To keep things fairly simple, let's adopt the view that the Risk Manager's role in the Due Diligence process is comprised of three basic steps:

1. evaluation/analysis of the insurance and loss information you have been provided
2. assembly of a Due Diligence Report that summarizes your analysis, the related caveats and assumptions you've made and presents recommendations for moving forward should the acquisition proceed
3. implementation of recommendations you've made in your Due Diligence Report

**Step 1** will obviously be affected by the scope and quality of information provided about the target company's insurance program. The table below provides a listing of what items should (ideally) be reviewed and why:

**Step 2** involves production of a Due Diligence Report to summarize the information/data you have been able to review and which provides your recommendations for moving forward on the Corporate Insurance front. Ideally, this report should be structured to outline whatever information limitations you encountered and what caveats/assumptions you used to deal with any information/data deficiencies. The report format I've been using for years consists of the following major sections:

**Scope/Objectives:** to state the information that was reviewed and to present the hypotheses tested throughout your analysis of the information that was reviewed

**Business Profile/Philosophy:** to summarize how operations/exposures of the target company compare with your company and how the insurance programs compare in terms of structural sophistication and management

**Strengths/Opportunities:** to summarize any learnings from your



review (i.e. using your best professional judgment/experience, is there an opportunity to rationalize coverages and save on annual premium spend?)

**Weaknesses/Risks:** to summarize material information deficiencies and your recommendations for handling of same (i.e. if loss information not available/fulsome enough for proper analysis, recommend appropriate limitation of liability/hold harmless clauses for insertion into Purchase Agreement)

**Integration Issues:** to outline how you propose to integrate/blend the two insurance programs and what potential cost savings are estimated to result therefrom

**Projected Profitability Impact:** to summarize potential annual cost savings you project are possible from integrating the target insurance exposures into your corporate insurance program and to highlight what liabilities could arise from claim situations for which current data was not provided

**Issues Requiring Follow-Up:** to outline what additional steps and/or information is required to proceed with acquisition

**Recommendation:** to present your final recommendations and the insurance-related issues that require addressing before proceeding with acquisition Step 3 involves the implementation of recommendations

you've made, assuming, of course, that the acquisition proceeds. To keep things organized, and as straightforward as possible, over the years I've created a number of template reports to outline the activities that are required and who has responsibility for ensuring each action is completed within what timeframe. These reports also provide you with a concise means of communicating to your Due Diligence Team Leaders what progress you've made and what challenges you are facing with respect to Corporate Insurance issues.

The three basic reports I've adopted to communicate and summarize Insurance-Related Due Diligence issues and recommendations are as follows:

“Integration of Target's Exposures Under Existing Corporate Insurance Program – Activities Worksheet”: this report outlines the activities that are required, who has responsibility for each and when completion is required

“Target's Insurance Program – Instructions to Broker”: a concise report detailing on a policy by policy basis what the Target's incumbent insurance broker is required to do (i.e. cancel coverages, process premium refunds, etc.) and when completion of each activity is required

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“Financial Impact – Target Insurance Program Integrated into Existing Corporate Insurance Program”: to summarize cost synergies resulting from the Insurance Integration Strategy you recommended. When dealing with acquisitions, a few realities should be recognized:

- the activity typically comes without much warning
- analysis is required within a relatively short time period
- in the usual case, you are supplied with less than perfect information

The best advice I can offer to my colleagues is to adopt a consistent approach and develop templates/checklists of information you need to analyze. This will ensure that you don't have to re-invent the wheel each time and despite the fact that you are not provided with perfect information, you have the tools at hand to evaluate what you are provided. Highlight the unknowns and the assumptions you've made in your analyses. Don't be shy about clearly stating what information you did not receive and explain how you went about estimating the financial impacts and your rationale for deriving same.

Not much in this world remains static any longer. As a risk manager, your role is to react to the changes impacting your organization and to develop and implement consistent methodologies for analyzing these changes and how they affect the corporate insurance program you have been entrusted to manage. Your best resource for dealing with Acquisition activity is to rely on information templates that provide you with an outline of what you need to review and how to review it. Keep things clear, simple and concise. Remember, the recipients of your Due Diligence report are not insurance experts. Above all, keep in mind you may be working on your own. Many of these deals contain confidentiality agreements which preclude you from consulting with external third parties for advice and counsel. Thinking you can rely on your insurance broker to advise you may not be an available option so be prepared to act independently.

Item	What to Review/Why
Policy Wordings (in force)/or Coverage Summaries	<ul style="list-style-type: none"> <li>• termination and change in control provisions in both your existing and the target's insurance policies; to determine who needs to be notified and how to collapse the target's coverages and integrate into your program</li> <li>• compare target's coverage levels/scope with your corporation's coverage levels/scope; to determine optimal integration strategy</li> <li>• premiums; to calculate potential insurance cost savings through integration of target company insurance program into your insurance program</li> </ul>
Claims	<ul style="list-style-type: none"> <li>• to assess liabilities and potential financial impact of outstanding matters upon purchase valuation</li> </ul>
Insurance Program Structure Details	<ul style="list-style-type: none"> <li>• to determine if policies are fronts, deductible infills, reinsured through captives, etc. in order to assess how to integrate/structure into your own program</li> </ul>
Insurance Brokerage Arrangements	<ul style="list-style-type: none"> <li>• what are target company's insurance brokerage arrangements; commission or fee-based governed by Agreement</li> <li>• to determine cancellation provisions and potential cost savings through integration</li> </ul>
Claim Handling Arrangements	<ul style="list-style-type: none"> <li>• is there a TPA; if so, what are cancellation provisions and potential for integrating this function into your own claims handling arrangements</li> </ul>
Regulatory Requirements	<ul style="list-style-type: none"> <li>• to determine what insurance is required, in what amounts, jurisdictions and potential for integration into your existing program</li> </ul>
Contractual Requirements re: Insurance	<ul style="list-style-type: none"> <li>• to determine Insurance Certificate requirements so that re-issuance under surviving program is coordinated</li> </ul>
Assets/# of Employees	<ul style="list-style-type: none"> <li>• to review whether any materiality thresholds have been exceeded which require immediate reporting to insurer(s) and to calculate/estimate premium consequences (additional premiums under your program vs. return premiums through cancellation of target's policies possibly mid-term)</li> </ul>
Structure of Acquisition	<ul style="list-style-type: none"> <li>• asset purchase or share purchase? The nature/structure of the purchase will dictate what hold harmless and indemnification provisions should be included in the Purchase Agreement</li> </ul>
Draft of Purchase Agreement	<ul style="list-style-type: none"> <li>• To ensure hold harmless, indemnity and insurance provisions are correctly appearing</li> </ul>

**Rising Longevity Risk is finally being recognized**

... from page 3

into product development for an aging population. The AgeLab sits within MIT's Engineering Systems Division and uses its multi disciplinary team of researchers, business partners, universities, and the aging community to design and develop products for an aging population, and move towards their vision of "100 years of Quality Living". A broad range of corporate sponsors, in a variety of sectors, are embracing this vision and the implicit commercial opportunities.

One of their most interesting tools is AGNES, the Age Gain Now Empathy System, which is a suite designed to better understand the physical challenges associated with aging. Developed by AgeLab researchers and students, AGNES has

been calibrated to approximate the motor, visual, flexibility, dexterity and strength of a person in their mid-70s. AGNES has been used in retail, public transportation, home, community, automobile, workplace and other environments.

According to Statistics Canada, by 2036 the number of seniors is projected to reach between 9.9 million and 10.9 million, more than double the level of 4.7 million in 2009. In percentage terms this means that "seniors would account for between 23% and 25% of the total population by 2036, nearly double the 13.9% in 2009". (\*ref<sup>5</sup>). When an already large market is poised to double, based on the relatively sober science of demography, well managed corporations pay attention. Specifically, Canadian corporations in all sectors with a sustainable business model will be managing the risks and developing the opportunities associated with longevity.

Given Canadians enjoy one of the highest life expectancies in the world (\*ref<sup>7</sup>), and our significant retirement liabilities are over one trillion CAD (\*ref<sup>8</sup>), Canada has the potential to be a centre of excellence for longevity risk and opportunity management. Given that increased longevity is a global phenomenon, building Canadian expertise in this area will serve well, not simply as a domestic competitive advantage, but also as a global export down the road.

\* \* \*

*George Graziani is responsible for longevity risk for North America and the English Caribbean. He is based in Toronto, Canada and works on both transactional and developmental aspects of longevity. George helps clients understand and hedge their longevity exposures through customized value added solutions. He is a frequent speaker at industry events and is regularly published in the media.*



# Changing the Practice of Medicine

By: **Adam Marsh** MSc; MBA – Associate Product Manager

**K**inetic Concepts, Inc. (KCI) is a global medical technology company based in San Antonio, Texas. With a more than 35-year history serving patients, the company strives to make a positive impact on patient care by developing customer-driven innovation to meet the evolving needs of healthcare professionals.

KCI is the industry leader in Negative Pressure Wound Therapy (NPWT). Proprietary KCI negative pressure technologies have revolutionized the way in which caregivers treat a wide variety of wound types.

KCI is best known for its Vacuum Assisted Closure® (V.A.C.®) Therapy product. V.A.C.® Therapy uses negative pressure wound therapy to help heal wounds that are difficult to treat due to their size or severity or due to an underlying medical condition,

range from complex traumatic wounds and post-surgical wound complications to infections and chronic non-healing wounds, such as pressure ulcers. The V.A.C. Therapy System is used in a variety of health care settings, including hospitals, home care, nursing homes and the Canadian military.

V.A.C.® Therapy works like a vacuum to remove fluid from the wound site, draw wound edges together and simultaneously stimulate wound healing. V.A.C. Therapy and the portfolio of KCI Negative Pressure products use the same mechanisms of action:

- Remove exudate and potentially infectious material
- Stimulate perfusion
- Reduce edema
- Promote formation of granulation tissue
- Protect the wound bed, and
- Provide a closed, moist wound-healing environment



missions. With growing costs associated with caring for those in the community, it is getting increasingly difficult for clinicians to receive V.A.C. Therapy for their patients at home,” says Dr. Fred Brenneman, trauma surgeon at Sunnybrook Health Science Centre and Associate Professor of Surgery at U of T. “The resulting risk involved here revolves around longer healing times, decreased quality of life and possible readmission to hospital.” More and more patients in the community are trying to turn to private insurance for help in receiving NPWT treatment.

Effective wound management is vital to helping create positive patient outcomes, reduced healthcare expenditures and effective resource utilization,” explains John Andonoff, Regional Vice President, KCI Canada. “Clinically proven wound closure using V.A.C. Therapy helps improve patient outcomes and lowers the cost of care.”

In the last few years, KCI has introduced new products to its NPWT portfolio in response to the evolving needs of its clinicians. V.A.C.Ultra™ Negative Pressure Wound Therapy, the latest evolution in V.A.C.® Therapy technology, was launched in Canada in November 2012. This therapy combines V.A.C.® Therapy with instillation – the automated, controlled delivery and removal of topical wound solutions in the wound bed.

V.A.C.Ultra™ Therapy is the first therapy on the Canadian market that offers the flexibility of administering negative

pressure wound therapy with or without instillation. The therapy has been very well received in other markets around the world due to its potential to save time and money. This system will give clinicians in Canada an opportunity to treat a wide variety of wounds that would benefit from the instillation of topical solutions. V.A.C.Ultra™ Therapy is currently being used nationwide by a wide range of surgical specialties and will service the growing patient population in need of this therapy.

In addition to V.A.C.® Therapy, KCI offers products for physicians in the surgical setting. The Prevena Incision Management System helps manage closed surgical incisions. This device has been used to help manage incisions that are at a risk of post-operative complications in orthopedics, cardiovascular, vascular, and OB/GYN (e.g., caesarian section) settings, as well as in plastic and general surgeries.

To be able to prevent or reduce the likelihood of occurrence of something before it happens is more cost efficient than treating it after it happens. This approach is part of the changing landscape in health care. The Public Health Agency of Canada suggests that the fiscal sustainability of the health care system can potentially be enhanced by investing in more cost-effective intervention approaches to achieve health objectives.<sup>1</sup> By investing in products like the Prevena™ Incision Management System, healthcare providers may



such as diabetes. To date, more than 7 million wounds worldwide have been treated using V.A.C.® Therapy. V.A.C.® Therapy is supported by a significant degree of clinical evidence, with more than 90% of published NPWT literature being V.A.C.® Therapy specific.

First introduced to Canada in 1994, V.A.C. Therapy has helped change the practice of wound care. Many of the wounds treated by V.A.C. Therapy

Treating patients in the community via CCAC nursing care in Ontario has become an extremely successful option in providing treatment outside of the acute care setting and allowing expedited integration back into the community. Continuous transitional healing and therapy from the hospital to the patient's home is important. “There has been a growing need for V.A.C. Therapy to be used in the Ontario homecare community in order to expedite healing time, shorten time away from work and to reduce hospital re-ad-

potentially transition the patient out of the hospital more quickly, thus freeing up resources and lowering the cost of care for that particular patient.

Another device by KCI, the ABThera Open Abdomen Negative Pressure Therapy System, helps surgeons manage abdominal wall openings where primary closure is not possible and/or repeat abdominal entries are necessary. The ABThera™ System separates the abdominal wall and viscera, and removes fluid and infectious materials from the abdomen. It does not require sutures for placement, so it allows rapid access when additional surgery is required.

The demand grows for negative pressure products as more physicians learn of its value; however, this growing demand is overwhelming the ability of the Canadian healthcare system to provide the necessary resources to fund this treatment.

This is a challenge that undoubtedly needs to be overcome in order to meet the needs of patients and physicians and provide long-term cost efficiencies in the Canadian health care market.

For more information about KCI and their healing therapies, please go to .

### Clinical evidence

More than:

- > 7 million wounds treated worldwide with V.A.C.® Therapy
- > 775 peer-reviewed articles
- > 40 randomized controlled trial publications
- > 875 abstracts presented at clinical conferences
- > 70 medical textbook citations

### Economic evidence

Clinical studies have shown that V.A.C.® Therapy has the potential to help reduce:

- > need for emergency care or readmission<sup>2,3</sup>
- > length of hospital stay<sup>4,5</sup>
- > cost of care<sup>6,7</sup>
- > need for outpatient visits<sup>6</sup>
- > overall medical costs for treatment of wounds<sup>6,7</sup>
- > hospital staff time<sup>7,8,9</sup>

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*Adam completed his education in Halifax, Nova Scotia at Dalhousie University. He completed his MSc in anatomy and neurobiology with a research focus in spinal cord injury. This was followed by a MBA in marketing. He has been working with KCI for nearly four years in both a sales and marketing capacity. Adam is currently working in a marketing role as an Associate Product Manager for the Canadian region of KCI.*

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# CHAPTER EVENTS

## Chapter Achievement Award




**R**IMS is always striving to provide leading educational materials for our members, and the Quaterly Pulse newsletter is no exception. We hope that our members enjoy reading the Pulse and we attempt to include a large variety of topics, representative of the wide variety of knowledge that risk managers need to draw upon on a daily basis. We are sure that you feel good whenever you are recognized by your peers. ORIMS feels the same way amongst our RIMS chapter peers around the world. We are proud to inform you that the Pulse has been recognized amongst the 80 RIMS chapters. ORIMS has been selected as winner of a Chapter Achievement Award as part of the 2012 RIMS Chapter Award Program (CAP). The RIMS Member and Chapter Services Committee congratulated ORIMS on the exemplary work in the creation, design and publication of the Pulse newsletter. The ORIMS Communications Committee has worked vigorously on raising the bar as to form and content since 2009. This hard work has paid off as ORIMS will be formally recognized with this prestigious honour at the upcoming RIMS conference this April in Los Angeles.

# Professional Development continues....

By: **Tina Gardiner** ORIMS Director – Professional Development



Many thanks go to Kathryn McBey, Roman Parzei, David Beal and Lovel Vining for their wisdom, humour and advice.

The Continuing Steps topic in January was “Raising the Profile of RM- Could You Be a CRO” with our very special guest Carol Fox of RIMS. Carol gave us a thought- provoking, engaging and interactive look at where we have to go to be all we can be in our approach to risk management. The excitement and enthusiasm of the crowd was great to see and we all left feeling invigorated in our chosen profession.

Building Blocks for February featured Joy Jackson, Risk Manager for the City of London focusing on Regular Risk Reporting. Joy outlined seven tips to successful reporting and shared the outline of her annual Risk Management report for London. Her broad risk management background and practical experience in the municipal world made her presentation

**R**ecently I shared a post on Facebook.....**Don't be delicate... be vast and brilliant!** For some reason this struck a cord with me and seems to be a good summary of this year's Professional Development Program.

In January, during the Building Blocks session, we were treated to a panel of Past ORIMS Presidents who discussed broker and insurer relationships. The lucky attendees gleaned “tips and tricks” that come from so many years of experience.



valid and valuable for all risk professionals from all industry segments.

The Continuing Steps session that followed considered the topic of Crisis to Opportunity and was lead by Tim Peterson and Catherine Taylor of Kinross Gold. They shared Kinross' many years of crisis management experience, their philosophy, and savvy protocols with a series of real life

disaster examples. Key messaging included System+training+rehearsal= crisis preparation. We thank them for their P.E.A.R.L.s of wisdom! (if you had attended you would know what that stands for!!!)

Don't forget.....the slide deck from each presentation is uploaded on the ORIMS

*Continued on page 12 ...*

# 2013 Edward Ricketts Curling Bonspiel

**O**n February 25<sup>th</sup>, ORIMS held the 31st annual Edward C. Ricketts memorial curling bonspiel. It was once again held at the beautiful St. George's golf and country club, and was another sold out event with 96 curlers. It was an enjoyable

day had by all. Special thanks to all the members who participated and to those who generously donated to the prizes. As a result of the generous donations and from those who dug deep into their pockets for the raffle draw, ORIMS was

pleased to be able to present a donation in the amount of \$5,000 to Women in Cancer Crusade (WICC)!

Congratulations go out to the Aon team who captured this year's trophy. The team was comprised of Breckon Husband, Annette Smith, Melissa Ferriera, Jason Hutchings.

ORIMS would like to specifically thank our event sponsors. Allianz- Title sponsor, SCM-Dinner sponsor, ACE - Wine sponsor, McCague Borlack - Ice sponsor, Aon - Lunch sponsor and First ON Site - Coffee sponsor. Thank you for your continued support of ORIMS.



**Professional Development Continues ...**

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website for your reference.

March 19<sup>th</sup> was our spectacular all day Professional Development Day featuring a mock auto liability trial, your choice of 3 break-out sessions from a total of nine options, and an engaging lunch plenary speaker to discuss dealing with the media. The day was a potpourri or **Melange** of cutting edge topics.

April 16<sup>th</sup> is our final Professional Development Session for the 2012/13 term. Both the Building Blocks and the Continuing Steps sessions will be fun-filled and surprising sessions. The focus is on "Who is responsible for Risk Management"

followed by "Tying it all together with ERM". Don't miss out on these!

Our goal as a Board was to respond to membership needs and comments with regards to Professional Development. We have offered our membership good value for the fees charged, a wide array of topics featuring subject management experts from our own profession, monthly sessions in the same location for continuity, fantastic food. ....an overall awesome opportunity to network and learn. We were bold in our approach.... encompassed a plethora of topics .....and addressed many needs. We were not Delicate.....and we were Vast and Brilliant! Hopefully you have joined our journey...and if not.....it has truly been at your loss. Thanks to all of you that have supported our efforts! See you on April 16!



## 2012-2013 Board of Directors

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## 2012 Marsh Branding Award

Two of our high profile volunteers, Ann Hildreth and Nancy Lacroix, recently won an award recognizing them for their volunteer work with ORIMS. Ann and Nancy are both tireless & dedicated volunteers on ORIMS' Social Committee, and are frequently the people who are there to greet all of our members as they arrive for the various functions.

Both Nancy and Ann have been long time volunteers for our Chapter, so on behalf of the ORIMS' Board, please join us in extending a sincere "congratulations" to both of them, and our heartfelt thanks for all they do to help us out!



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### Editorial Policy

The PULSE is a publication of the Ontario Risk and Insurance Management Society and is published periodically throughout the calendar year.

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.