

# SCAA

June/July 2010

Vol. 37 No. 10

## Seattle Claims Adjusters Association

**Celebrating over 75 years of service to the claims community — Founded in 1930**

*“A professional organization dedicated to the ongoing education of the claims community.*

*Providing an arena for member interaction and the sharing of resources.”*



### Dean's Dish

— by Dean West, SCAA President

It's officially summer and the forecast is calling for sunshine. This is great news as the day before I sat down to write this article it was the longest rainy day of the year. Enough with the rain and bring summer on in full force.

Our May meeting was a success and a great way to finish out the year. Many of our Past Presidents attended and it was nice to see everyone relaxed, conversing and catching up on the past year. Thank you to all who attended. [See photos on page 19.]

This year SCAA donated \$1,500 to the Juvenile Diabetes Research Foundation (JDRF). Brad Benson, a representative from the local JDRF chapter in Tacoma, and Sandy O'Neil, a mother with a child affected by Type 1 Diabetes, were present to accept the donation. They each gave a short presentation on what Type 1 Diabetes is and what JDRF is doing in the way of research to combat this disease. For more information or to make a donation, please visit [www.jdrfnorthwest.org](http://www.jdrfnorthwest.org).

The Golf Tournament was a success. This year we held it at the Echo Falls Golf Course in Snohomish, Washington. The teams were

*(See Dean's Dish... continued on page 3)*

### Next Meeting of the SCAA

**September 17, 2010**

The Swedish Club, 1920 Dexter Ave North, Seattle, WA

#### Program

**Membership Drive**

**Bring a Friend! Speaker TBA**

#### Cost

**\$15 Members \$20 Non-Members**

#### Time

**11:30am to 1:00pm**

It is important for you to RSVP if you are going to attend our luncheon meetings. Please do so through our website or contact Deborah Jette at [deborah.jette@grange.com](mailto:deborah.jette@grange.com). Thank you!

This year's President's Charity: **JDRF**  
**Juvenile Diabetes Research Foundation Int'l**  
**Dedicated to finding a cure**

**[www. JDRF.org](http://www.JDRF.org)**



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# ON THE DOCKET FOR 2010

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Date	Speaker/Topic
Sept 17	SCAA Meeting / Membership Drive
Oct 15	SCAA Meeting
Nov 19	SCAA Meeting



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### Meeting Information

Please keep in mind that we'd like to start and end promptly during our monthly meetings. Here is the timeline for each meeting:

- 11:30 a.m. Registration
- 11:45 a.m. Buffet
- 12:00 p.m. Meeting Called to Order
- 1:00 p.m. End of Meeting

Please arrive on time and have your cash or check (payable to SCAA) ready. We appreciate your cooperation and assistance.




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## Dean's Dish... *(Continued from front page)*

ready to play and the Vendors pulled out all the stops for this year's theme: "The 70's Style". Without fail, it was a lot of fun for those playing and those watching. [See photos on page 21.]

This has been a great year and I want to thank all the members of SCAA for the support and contributions that made 2009-2010 such a success. I will tender the Presidency to **Jim Peterson** and the support he will get from the new SCAA Board. Please line up behind Jim to make this next year the same success.

And now...the real Dish! Hope you cooks out there have enjoyed this portion of my article each month. Here's the last recipe from Dean's Dish — we'll be serving up Cedar Plank Steelhead.

### BBQ's Cedar Plank Steelhead.

#### *Ingredients:*

Cedar Planks (soaked in water for minimum 1 hour before cooking – 2 hours is better)

One Steelhead Filet (Costco carries Steelhead but better if you catch your own)

2 Tablespoons of Mayonnaise

4 Tablespoons of Capers

1 tablespoon of Olive Oil

Seasoning (I use Celery Salt; Garlic Powder and White Pepper)



#### *Directions:*

Preheat the BBQ. Baste the Steelhead with Olive Oil. Season one side of the filet with the seasonings. You can use my suggested seasonings or make up your own. Bay Seasoning is also good. Place the filet on the soaked Cedar Plank. Spread the mayonnaise evenly over the filet. Spread the capers over the entire filet so they are stationary in the mayonnaise. Turn the BBQ to low or medium. Place the Cedar Plank with the filet onto the BBQ. Cook for 15-20 minutes until fish flakes and appears thoroughly cooked. Enjoy and have a great summer! ❖

## Benefits of SCAA Membership Join or Renew Today!

We can't say enough about the advantages of membership in the Seattle Claims Adjusters Association. The benefits are numerous, for example:

- **Newsletter** — Receive a copy of the SCAA newsletter September through June, packed full of educational articles and other information of interest to adjusters. It is also a resource guide to goods and services provided by our industry vendors — who also support our Association.
- **Monthly Meetings** — Attend these meetings to hear local presenters on topics that are pertinent to today's adjuster — always educational and sometimes entertaining!
- **Spring Seminar & Vendor Fair** — An entire year's worth of work goes into planning and hosting this annual educational event held in the spring — touching on all the hot topics and providing you an opportunity to meet with industry vendors face-to-face outside of your office. A joint venture with TCAA.
- **Golf** — Not much educational about golf, but what adjuster today doesn't need a little relaxation and fun — held in the summer each year.
- **Website** — Stay in touch with local happenings and other claims associations in the Pacific Northwest. Open a web version of our newsletter. Find contact information for SCAA board and committee members. Or find a new job from the employment listings. And there's more.....

Membership in SCAA is open to all claims adjusters, and should be a priority on your list of things to do! Print the application from our website, or see inside this issue.

**JOIN or RENEW TODAY!**

[www.seattleadjuster.org](http://www.seattleadjuster.org)



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## Claims Conversation

with Roger Howson, Claims Dispute Resolution, TCAA President, SCAA/  
TCAA Education Coordinator

An attorney once told me that the best advice he ever got about practicing law came on his first day of Law School.

Right at the start of his very first class of his very first day as a law student, his professor warned her students that from now on and for as long as they practice law they will be ambushed by family, friends, and acquaintances to answer legal questions. She said that as legal professionals they will be expected to have immediate answers for questions of law regarding matters of criminal, corporate, environmental, employment, tax, real estate, personal injury, probate, insurance, and every other conceivable significance.

This law professor warned them that even though they're only one day into Law School that to their family, friends, and acquaintances they now KNOW the law. She cautioned her students that even the very best criminal lawyer probably knows next to nothing about probate law, just as environmental lawyers probably know very little about em-

ployment law. She said that lawyers are all expected to be able to solve any kind of legal problem... regardless of their areas of expertise.

The law professor told them that most lawyers are proud of their profession, confident in their abilities, and inclined to help those in need. She said that this is what gets them in trouble. She told them that giving someone wrong legal advice is worse than giving them no legal advice. She said that people looking for free legal advice actually get less value than what they paid.

She told her law students that even if they tell people "I'm only in Law School, so I'm not yet qualified to answer that question," they'll be no more successful at shutting down the questioner than the lawyer who tells the indiscriminant moocher of legal services, "That's not my area of expertise."

She informed her class that there is one perfect answer to every legal question they will ever be asked. She explained that this one two-word answer



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## Membership Application for 2010-2011



### SCAA Annual Membership Application

Membership Dues for the year September 1, 2010 to August 31, 2011

**DUES ARE NOT PRO-RATED**

Please print neatly, one application per person

Industry Vendors  
Please do not fill out this application. You do not qualify for this type of membership.

Applicant \_\_\_\_\_ Company \_\_\_\_\_

Mailing Address \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ Zip+4 (Required) \_\_\_\_\_

Phone \_\_\_\_\_ Email \_\_\_\_\_

Check the appropriate boxes:  Renewal, year first joined \_\_\_\_\_  Change of Address  New

Active Member — Adjusters & Claims Persons **\$25**  Life Member — Past President or Retired **No Money Due**

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Send payment and completed application to: **The Seattle Claims Adjusters Association**  
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will prove their legal brilliance, and it will bring no legal harm to the person asking for their help. She said that this answer is legally correct in every circumstance regardless of the area of law, jurisdiction, adversaries, or facts of the case.

The law professor promised the class that if they remember nothing else from their study and practice of the law—these two words would enable them to provide the most accurate and useful legal advice anytime, anywhere, anyhow. She instructed her class to write down the one correct answer to every legal question they would ever be asked...

### IT DEPENDS.

It depends on so many variables that no legal scholar or practicing attorney can accurately answer an ambush question. There's no way to know all of the relevant facts, relationships, history, context, nuances, assumptions, biases, and everything else that complicates a seemingly simple legal matter.

We claims professionals should consider defaulting to the same "It depends," answer whenever OUR family, friends, and acquaintances are complaining to us about their insurance claim.

I can't tell you how many times that I've been called upon to mediate, arbitrate, or appraise an insurance claim wherein the policyholder or claimant is (ineffectively) arguing their claim based on incomplete, inaccurate, inappropriate, and/or incompetent feedback they claim to have received from someone they know who is "in the business".

We can do a lot of damage to someone else's good faith claims process when we're advising others how to resolve their disputed claim without us knowing for sure the insurance policy, the cause of loss, the extent of the damage, the service providers involved, and/or the circumstances of the claim. We don't know what we don't know. Too often the situation is misrepresented (either innocently or intentionally) or our feedback is misunderstood.

I sometimes overhear people casually commenting on the claims practices of other insurance companies, insuring agreements written by other agents or brokers, coverage decisions made by other adjusters, repair protocols suggested by other engineers and/or contractors, and defense (or plaintiff) strategies practiced by other attorneys.

Like you, I'm occasionally asked for advice or commentary on a claims situation. I've learned to preface every conversation with "It depends," because I've become much more aware of how much wrong information gets passed back and forth in casual conversation whenever anyone is complaining about how their insurance claim is being handled. Too many bad results come from good intentions.

It depends. ❖

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## Bi-Economy Market, Inc. v. Harleysville Ins. Co.

— by C. Donald Smith, Financial Forensics, LLC

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10 NY3d 890, 891 NE2d 295, 2008

Bi-Economy contends that the courts (Appellate & Superior) erred in dismissing its breach of contract claim seeking consequential damages for the collapse of its business resulting from Harleysville's failure to fulfill its obligations under the contract of insurance. The New York Supreme Court agreed and overturned the Appellate Court Ruling.

Bi-Economy Market, a family-owned wholesale and Retail meat market located in Rochester, New York, suffered a major fire in October 2002, resulting in the complete loss of food inventory and heavy structural damage to the building and business-related equipment. At the time of the fire, Bi-Economy was insured by defendant Harleysville Insurance Company under a "Deluxe Business Owners" policy that provided replacement cost coverage on the building as well as business property or "contents" loss coverage.

The policy also provided coverage for lost business income, what is commonly referred to as "business interruption insurance," for up to one year from the date of the fire. Specifically, the contract stated that Harleysville would "pay for the actual loss of Business Income ... sustained due to ... the necessary suspension of Bi-Economy's 'operations' during the 'period of restoration.'" Business income is defined as the "(1) Net Income (Net Profit *or* Loss before income taxes) that would have been earned or in-

(See *Financial Forensics... continued on page 6*)

## Financial Forensics... *(Continued from page 5)*

curred; and (2) Continuing normal operating expenses incurred, including payroll." "Period of restoration" is defined as the period of time that "begins with the date of direct physical loss or damage" and "ends on the date when the property ...should be repaired, rebuilt or replaced with reasonable speed and similar quality."

Following the fire, Bi-Economy submitted a claim to Harleysville pursuant to the terms of the contract. Harleysville disputed Bi-Economy's claim for actual damages, and advanced only the sum of **\$163,161.92**. More than a year later, following submission of their dispute to alternative dispute resolution, Bi-Economy was awarded the additional sum of **\$244,019.88**. During all this time, Harleysville offered to pay only seven months of Bi-Economy's claim for lost business income, despite the fact that the policy provided for a full 12 months Bi-Economy never resumed business operations. In October 2004, Bi-Economy commenced this action against Harleysville, asserting causes of action for bad faith claims handling, tortious interference with business relations and breach of contract, seeking consequential damages for "the complete demise of it's business operation in an amount to be proved at trial." Bi-Economy alleged that Harleysville improperly delayed payment for its building and contents damage and failed to timely pay the full amount of its lost business income claim. Bi-Economy further alleged that, as a result of Harleysville's breach of contract, its business collapsed, and that liability for such consequential damages was reasonably foreseeable and contemplated by the parties at the time of contracting. ❖

## Medical Notes



## Occupational Noise Induced Hearing Loss

By **Richard A. Hodgson, M.D.**  
Article provided by Health Cost Management


Occupational noise induced hearing loss has become the number one cause for filing a workers' compensation claim in the United States. In recent years, industry has become aware of this problem and has addressed it with the use of noise protectors, engineering controls and hearing conservation programs. However, there have been many workers who predated this new policy, or work in areas where noise is not monitored or there is no hearing conservation program in place.

As a result, claims for work related hearing loss continue to be filed and the cost to employers and workers compensation insurance carriers has become staggering.

Noise is measured in decibels of loudness and the decibel (dB) scale is logarithmic. There is a doubling of sound pressure every three dB, meaning that 83 DB has twice the sound pressure of 80 decibels, and 87 DB has half the sound pressure of 90 decibels. The average human ear can hear frequencies between 16 Hz at the low end to about 12,000 Hertz at the high end. Some individuals, usually in their younger years, can hear up to 18 or 20,000 Hz. Clinically speaking, the frequencies at which we hear spoken voice is from a 500 to 3000 Hz. Middle C on the piano is 256Hz. The higher frequencies in this range is where we hear the high pitched consonants, such as SH, CH, K, etc. When the higher frequencies of hearing are lost due to noise exposure or any cause, it becomes more difficult to understand words correctly, especially in background noise situations.

The normal range of hearing on an audiogram is between 0dB (the faintest any normal ear can hear) to 25dB, the upper limit before a hearing deficit is noticed by the patient. Noise causes damage only to the cochlea, or inner ear, or organ of hearing. The hearing loss produced is termed "sensorineural".

The first requirement for making a diagnosis of occupational noise induced hearing loss is that it must



**Tacoma Claims Adjusters Association**  
— Upcoming Meeting —

**September 10, 2010**  
11:30 am - 1:00 pm  
LaQuinta Inn  
1425 East 27th Street, Tacoma, WA  
For more information visit:  
[www.tacomaadjusters.org](http://www.tacomaadjusters.org)

be of sufficient magnitude and present for a long enough period of time to be injurious. Many studies have been performed in the past when hearing conservation programs were not yet in place and the results have shown that noise 85 decibels (dB) or greater for 8 hours a day and for five or more years can cause some minor permanent damage to the nerve endings in the inner ear. For reference, a typical noise level in a car at highway speeds is 65dB, a vacuum cleaner runs 60 to 86dB, a chain saw 103 to 116dB. The louder the noise exposure, the greater hearing loss results and the shorter amount of time is required to cause permanent hearing loss.

The second requirement to make the diagnosis of occupational noise induced hearing loss is the shape of the audiometric curve. The typical pattern on the audiometer test shows fairly good hearing in the frequencies between 500 and 2000 Hz, then the hearing loss increases at 3000 Hz and hits the peak at 4000 Hz, and then there is a improvement of hearing at 6000 to 8000Hz. This is the “noise notch” configuration that must be present at least earlier in the employment. This notch pattern to the audiogram is not specific to noise as other conditions can cause it also, such as head injury and viral infections. As the worker gets older, age related causes start to affect the higher frequencies at 6000 Hz and 8000 Hz so that they drop down. However, there is still a bulge below a line between 1000 and 8000 Hertz that indicates the previous noise notch was present.

There are many industries that are capable of producing injurious noise levels during a working day. Examples are the wood product industries, machinists, heavy equipment operators, construction workers and aluminum plants. Frequently seen are police officers who are required to qualify with weapons several times a year. Earlier they were not required to use noise protection or would use cotton or shell casings, which of course were quite ineffective. The noise level of a typical handgun is in the range of 168 decibels. The use of noise protectors, which reduced the exposure by about 15 decibels, still may not protect them from progressive noise induced hearing loss. The use of noise protectors in the other above mentioned workplaces will often reduce the noise levels sufficiently to prevent hearing loss. For instance, working next to a paper machine is about 95 DB, but if proper earplugs or ear-

muffs are worn, the noise level can be reduced to 80 decibels or less, which is well within the non harmful range.

When all of the information available is gathered by the independent medical examiner, the decision must be made as to the various causes to the hearing loss and their amount of contribution. There is no set method to determine this and it must be based upon the amount of noise exposure, the shape of the hearing curve, non work causes, and the development of hearing loss over the working years. The latter is a very helpful. When that occupational noise is the major cause, there is a rapid development in the first 5 to 10 years and then there is a tapering off of the increase in hearing loss. The greatest amount of noise induced hearing loss occurs in the first 10 to 15 years. By contrast, if age is the major cause we will see a slow development of hearing loss in the first 20 to 25 years, and then a more rapid acceleration of the hearing loss as a person gets into their sixties and seventies.

If life-long employment is determined to be responsible for the hearing loss, the “last injurious exposure rule” comes into play. The last employer that exposes the worker to potentially injurious noise becomes responsible for all of the hearing loss, even though it may have contributed very little, if any. One way for an employer to avoid this is to have hearing tests at the beginning of employment and immediately after employment which shows no change in hearing. This rarely happens. The other way is to have noise level surveys already in place that show exposure levels below the harmful range. Occasionally an employer will get a survey after a claim is filed to dispute their responsibility in the claim.

The amount of hearing impairment is determined by formulas that are not the same in all states. Oregon has their own method in which they use the frequencies of 500, 1000, 2000, 3000, 4000 and 6000 Hz. There is an age deduction of 150 decibels and the remaining amount of hearing loss is divided by four in order to determine hearing handicap. If the age tables show more than 150dB for an individual, this additional amount is subtracted. Washington and Alaska as well as the Longshore Act and many other states use the AMA Guides to the Evaluation of Permanent Impairment, usually the most recent

*(See Medical Notes... continued on page 8)*



Case Study  
 SMITH FREED & EBERHARD P.C.  
*Your Litigation Partner*

## Winning a Premise Liability Case at Summary Judgment is No Easy Task for Business Owners

By Jeffrey D. Eberhard

**Claims Pointer:** A business owner that provides employees and patrons wet floor signs for aisle clean-ups and knows that the signs are often knocked over, but does not have a mode of operation to inspect and ensure that the signs have not been knocked over, may be liable to an injured patron that slips and falls on a fallen wet floor sign.

Generally, in premise liability cases, business owners may be liable for injuries to patrons if the business owner had actual or constructive notice of a dangerous condition that caused a patron's injury. A business owner may be liable if it is reasonably foreseeable that a business owner's mode of operation could be hazardous and cause injuries to a patron. In a recent Washington Court of Appeals case, Dupuy v. Petsmart, Inc., the court discussed whether a business's mode of operation was hazardous. (Case No: 64944-2-I, May 3, 2010).

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### Medical Notes... *(Continued from page 7)*

edition, which is number six. This uses the frequencies of 500, 1000, 2000 and 3000 Hz and there is no age deduction. The allocation of causes is left up to the opinion of the clinician. The AMA guides also allow for tinnitus to be rated if there is a ratable hearing loss. This will range from 0 to 5 percent depending upon the severity and the discretion of the clinician.

In the final analysis, the allocation of causes is frequently not easy and requires a considerable amount of thought, and each case must be individualized. This requires knowledge of the mechanism of noise induced hearing loss, its characteristics and requirements, non work factors such as age and medical conditions, and keeping abreast of the world literature on this subject, which is voluminous. ❖

Petsmart allows pet owners to bring their pets into the store. Consequently, pets will often urinate or defecate on the sales floor 5-10 times on a busy day. In order to combat the messes, Petsmart's policy requires stores to have at least three "Oops Stations," which are self-service clean-up stations, for pet owners and employees to clean up messes on the sales floor caused by pets urinating and defecating on the floor. Each "Oops Station" includes items necessary for cleaning messes, including wet floor signs.

In February 2007, Edward Dupuy entered Petsmart. While browsing products in the dog-toy aisle, Dupuy saw something yellow on the floor. However, because he was paying attention to the products on the shelves in front of him, Dupuy did not recognize the yellow object. Dupuy eventually stepped on the yellow object, which was a fallen wet floor sign, slipped and fell, injuring himself. Dupuy sued Petsmart for negligence in a premise liability action. Deposition testimony from a Petsmart manager indicated that the wet floor signs are knocked over by dogs or customers running into them "all the time," and that it would not be unusual for a wet floor sign to be knocked over. In addition, Petsmart admitted that it did not have a formalized floor inspection procedure, other than hourly rounds by the manager – though cashiers, in between customers, will often straighten up aisles and floors. Petsmart moved for summary judgment arguing it was not on notice of the fallen wet floor sign and thus not liable for Dupuy's injuries. The trial court agreed with Petsmart and granted the motion for summary judgment. Dupuy appealed to the court of appeals.

On appeal, Dupuy argued that he had presented sufficient evidence demonstrating that "Petsmart's mode of operation made it reasonably foreseeable that unsafe conditions, such as a fallen sign, would exist," even though Petsmart may not have had actual or constructive notice of the dangerous condition. Petsmart argued that Dupuy lacked evidence of the relationship "between the hazardous condition and the self-service mode of operation." The Washington Court of Appeals agreed with Dupuy. The court held that the issue was whether or not Dupuy provided sufficient evidence for a factfinder to determine that, in light of Petsmart's mode of operation, it was reasonably foreseeable that the fallen sign could be a hazard. Since Dupuy pro-

## SCAA Past Presidents ~ May 2010



### Case Study... *(Continued from page 8)*

vided evidence that Petsmart was aware that the signs got knocked over “all the time” and that Petsmart did not have a wet floor inspection policy, a reasonable trier of fact could determine that Petsmart’s mode of operation regarding the wet floor signs failed to use reasonable care, and thus was negligent. Therefore, the court of appeals held that summary judgment was not appropriate and reversed the trial court’s opinion. ❖

NOTE: This opinion has not been published. It is provided to demonstrate how the court approaches the issues involved in the case. It cannot be cited as authority to a court of law.

— *If you would like to be notified of these new cases, please send an email to [caseupdate@smithfreed.com](mailto:caseupdate@smithfreed.com).*

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