

SCAA

December 2007

Vol. 35 No. 4

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."



Gail's Spot

— by **Gail Tuomi**, President

Thanks to all who donated to Kyle's unit in Iraq. We are busy making blankets and then will send our first box. Donations are still being accepted. Blankets, beany babies and coffee are needed, along with money to buy these items.

There will be no meeting in December following our Holiday Party on December 7; our next meeting will be January 18.

We are currently putting together our annual SCAA/TCAA Spring Seminar and Vendor Fair. This event will be held March 14, 2008. So mark your calendar now and plan to attend. This event is an exceptional opportunity for continued education and personal/professional development. Not to mention the networking is the best there is!

Travis Simpson of CRDN is actively planning our February bowling tournament at Sunset Lanes in Ballard. Mark your calendar for February 15 and see the insert in this issue for more information.

As we close another year, I want to wish everyone and their families a wonderful holiday season and a happy new year. Remember, when making your News Years Resolution to lose weight after the holiday eating, we have a team to get together in June 2008 to "walk" for the American Cancer Society. ❖

Next Meeting of the SCAA

January 18, 2008

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

Program

To be announced

See January newsletter

Cost

\$15 Members \$20 Non-Members

Time

11:30 a.m.

It is now important for you to RSVP if you are going to attend our luncheon meetings. Do so through our website or contact Gail Tuomi at gail.tuomi@grange.com. Thank you!



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ON THE DOCKET FOR 2007

Date	Speaker/Topic
Dec	— No meeting in December —
Jan 18 2008	SCAA Meeting
Feb 15	SCAA Meeting & Bowling Tournament

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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November Meeting Comments

— by James K. Gomez, SCAA Vice President

Thank you all that attended our November meeting. On behalf of SCAA, we appreciate your attendance.

A special thanks to our guest speakers. **Tim Reid** provided information on two recent case law decisions. An out of town guest and speaker from Olympia was **Gregory McKnight**. Greg is with the Washington Department of Health. The topics of discussion were drug lab remediation, some protocols and examples of drug lab remediation cases. On a good note, the drug lab trend is down!

We had our first raffle and drawing. **Michele Shimek** with *Maxcare of Washington* won the raffle. Everyone please buy a ticket (s) to participate.

We had two \$25.00 drawings. Our vendor drawing went to **Carla Snee** with *ServiceMaster of Seattle*. Our adjuster drawing went to **Sondra Gallagher**

with *Grange Insurance*. Congratulations are in order!

Our “Blue Bucket” candidate was not present to win. In order to win the Blue Bucket drawing, you must be present when your name is called. The winnings role into the next drawing.

A special thanks and recognition to our vendors who provided door prizes, i.e. gift baskets. **Georgie Anderson** with *Grange Insurance* received a gift basket from **MDE, Inc.**

Our next official meeting will be in the New Year, January 2008! Our next guest speaker is to be determined. See everyone then! ❖



DON'T FORGET TO RSVP!

Please let us know you will be attending our next meeting by submitting an RSVP at our website:
www.seattleadjuster.org

SCAA

2008



TCAA

Seminar & Vendor Fair

March 14, 2008 • DoubleTree Hotel

18740 Pacific Highway South • Seattle, WA 98188

Mark your calendars!

Dale Mann of MDE, Inc.

will be a keynote speaker on the topic of **Forensic Investigations & Case Studies**

Welcome New Advertisers

Editor's Note: In lieu of featuring one vendor as Advertiser of the Month, we will now be featuring and introducing our newest advertisers as they come on board.

Naegeli Reporting Corporation is a full service, client focused court reporting firm. With exceedingly high standards and technology-driven products, Naegeli Reporting Corporation provides unparalleled court reporting services to attorneys, large law firms, insurance companies, government agencies and Fortune 500 companies throughout the United States and the World. Naegeli's trained staff and unsurpassed services are available 24 hours a day – every day.

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 E-mail: schedule@naegelireporting.com
 Web: www.naegelireporting.com

Naegeli Reporting began advertising with us in October 2007. We welcome them, and appreciate their support. Find their ad on page 4.

T-Scan Corporation is a full service legal and insurance support company specializing in record retrieval. Our training and experience began in 1996 through our court reporting business, Anthony J. Tamfer & Associates.

The creation of complex release of information and privacy laws, along with the increased economic pressures of claims departments and law firms to reduce costs, created a record retrieval niche in the support industry. Between 1996 and 2002 many AJT clients were asking our court reporters' assistance in obtaining much needed records.

In 2002, a subdivision of AJT was created to meet this retrieval demand. By the end of 2002, it was clear this initially small subdivision needed to be a new company apart from AJT.

In January 2003, T-Scan Corporation was incorporated. T-Scan has since evolved into the insurance and litigation support industry leader in the Pacific Northwest.

Our continued dedication to maintaining the most up-to-date technology allows us to help reduce the total cost of claims and litigation for our clients. Our commitment to open, clear, effective communication is our key to understanding the individual needs of our clients and allows T-Scan to create lasting relationships.

T-Scan provides an effective business outsourcing service that simplifies the labor and technology intensive task of record retrieval. Our goal is to make the global community as accessible to our clients as the provider around the corner.

Contact Information:

Jay Jenkins
 206.285.6322 x223

T-Scan Corporation joined us in this issue. We welcome them, and appreciate their support. See their ad on page 3.

If you are a new advertiser to this publication in the past 2-3 months, we don't want to miss you. To be featured, please submit a short article about your business. Send to npassist@msn.com. Thank you!



In Memory Of...
Merton Buckley
 SCAA Past President (1971-72)

Mert passed away on October 24. Our condolences to his family and friends.

I knew Mert when he first came to Crawford and I had the pleasure of learning from him. He loved those large losses and there was no question of who was in charge at the scene. I also remember hearing a recorded loss spec of a frozen home he went through in the Nome area (it was too cold to write and you could hear the Arctic wind in the background). Despite the odds, Mert injected his characteristic humorous remarks just to keep things interesting. He seemed to always have an answer to even the most daunting insurance loss problems. His skill, knowledge, respect from his peers and leadership were second to none. Mert was a true icon in the insurance claims community.

— Larry Garlinghouse

Mert was a great guy, one of a kind.

— Steve Reilly

I knew Mert and worked with him quite a bit in the 80's and early 90's. He was a fine man and a good teacher. I was always happy to work with him and I knew he would be a skilled, patient, thorough and kind instructor and mentor.

— Detta Hanson

Mert will be missed.

— Dennis Bergstrom

Mert was certainly one of the more colorful characters that I had the pleasure of working with. He was always there to give me test taking advice; "remember... indemnify" he'd always say! I clearly remember the yellow post-it note he had posted on the door of his office marking off the days until he was able to retire. He'll definitely be missed!

— Jeanne M. Davis

I remember when I was a new adjuster studying for the state exam. I spoke to Mert a couple of times and asked him what was on the test (that he helped write). All he would ever say was "know your co-insurance." Then as a young AIC in Olympia I had to call Mert with property claim questions. I would always start by saying "Hello? Mr. Buckley?" He would always say "Mr. Buckley is my father" in that gravelly voice. Fond memories.

— Steve Weeks



Case Study

Washington Voters Approve "Insurance Fair Conduct Act": Imposes Punitive Damages & New 20 Day Timelines

— by Jeffrey D. Eberhard

In November Washington voters approved Referendum 67, clearing the way for legislation passed by the 2007 Washington State Legislature that creates a new statutory cause of action. The new cause of action authorizes the award of attorney fees and treble damages for first party claimants that are unreasonably denied a claim for coverage of benefits or denied payment of benefits. That legislation, coined by its drafters as the "Insurance Fair Conduct Act" (ESSB 5726), is expected to have the effect of significantly increasing the number of actions brought by first party claimants against their insurers in Washington.

The Act, which applies to all lines except health, provides for the recovery of actual damages by any first party claimant for the unreasonable denial of a claim for coverage or payment of benefits by an insurer. If the trial court finds that an insurer has acted unreasonably in denying a claim for coverage or payment of benefits, or possibly for violation of one of five rules codified in chapter 284-30 of the Washington Administrative Code (WAC), the Act requires the court to award attorney fees and costs and allows for the award of up to three times the actual damages, with no statutory limit.

(See Case Study... continued on page 6)

Case Study... *(Continued from page 5)*

The five administrative rules mentioned in the new statute regulate insurer's actions in the areas of: 1.) specific unfair claims practices (WAC 284-30-330); 2.) misrepresentation of policy provisions (WAC 284-30-350); 3.) failure to acknowledge pertinent communications (WAC 284-30-360); 4.) standards for prompt investigation (WAC 284-30-370); and 5.) standards for prompt, fair, and equitable settlements (WAC 284-30-380).

Because this Act appears to be limited only to first party actions, we do not expect Washington courts to apply the coverage by estoppel doctrine to a violation of the Act or one of the administrative codes mentioned in it.

In Washington, newly enacted laws are generally presumed to apply prospectively. *1000 Virginia v. Vertecs Corp.*, 158 Wn2d 566, 146 P3d 423 (2006). See also *Washington Waste Systems, Inc. v. Clark County*, 115 Wn2d 74, 794 P2d 508 (1990). However, under the Act, it is the unreasonable denial of a claim for coverage or payment of benefits by an insurer that gives rise to the cause of action. Accordingly, an unreasonable denial that occurs after the effective date of the Act – December 6, 2007 – would be actionable regardless of when the underlying claim happened to occur.

Under the plain language of the Act, a violation of the enumerated administrative rules, without an unreasonable denial of a claim for coverage or payment of benefits, appears to have no effect. (Both the award of mandatory attorney fees discussed in section 3(3) of the Act, and the discretionary treble damages of section 3(2) appear to be triggered only through an unreasonable denial of a claim for coverage or payment of benefits pursuant to section 3(1)). However, we expect this will be a hotly contested issue.

Precisely what constitutes an “unreasonable” denial of coverage or benefits under the Act remains uncertain and must be developed through litigation. The current standard in first party common law bad faith claims in Washington for establishing reasonableness in the context of a coverage denial is whether the insurer had “reasonable justification” to deny coverage. *Industrial Indemn. Co. of Northwest, Inc. v. Kallevig*, 114 Wn2d 907, 792 P2d 520

(1990) (An insurer must make a good faith investigation of the facts before denying coverage and may not deny coverage based on a supposed defense which a reasonable investigation would have proved to be without merit); *Safeco Ins. Co. of America v. JMG Restaurants, Inc.*, 37 Wn App 1, 680 P2d 409 (1984) (An insurer acts without reasonable justification when it denies coverage based upon suspicion and conjecture).

The Act allows a court, in its discretion and after finding that an insurer has acted unreasonably in denying a claim for coverage or payment of benefits or violated a rule provided for in the Act, to “increase the total award of damages to an amount not to exceed three times the actual damages.” The term “actual damages” is not expressly defined in the Act.

Procedurally, the new law requires a claimant to provide 20-day written notice to both the insurer and the state's Office of the Insurance Commissioner before filing suit under the law. Notice may be provided by regular mail, registered mail, or certified mail. Notice under the statute is deemed received three business days after mailing, and the statute of limitations for the action is tolled during the 20-day notice period. The notice must provide for the basis of the cause of action. However, if the insurer does not resolve the claim during the 20-day period, the claimant may bring suit without further notice.

The Act does not expressly provide for any cost recoupment or fee/damages avoidance provisions for settlement offers that are made by the insurer, but refused by the insured. However, the relationship between an insurer's pre-litigation offer to settle and the eventual arbitration or jury damages award might be considered to determine whether the insurer acted reasonably. (See generally WAC 284-30-330(7), defining an unfair or deceptive act or practice in the business of insurance as “[C]ompelling insureds to institute or submit to litigation, arbitration, or appraisal to recover amounts due under an insurance policy by offering substantially less than the amount ultimately recovered in such actions or proceedings”).

Unfortunately, until Washington appellate courts examine the issue, exactly what effect, if any, pre-litigation settlement offers (including those made in

response to the first party claimant's 20-day written notice) will have on suits brought under the Act is difficult to state with any certainty.

Due to the expanded risk of mandatory attorney fees and the new uncapped punitive damages exposure, carriers operating in Washington will want to review their claims handling policies and procedures for compliance with the specified administrative rules and the new 20-day notice provision found in ESSB 5726.

Also, claims organizations should become very familiar with and develop processes and procedures that ensure strict compliance with each of the WACs mentioned in the legislation so as to avoid the discretionary award of treble damages upon a finding of violation of those rules.

Next, it will be very important for the claims departments of insurers operating in Washington to ensure that an effective process is in place for evaluating and responding to the 20-day written notice the Act requires a claimant to provide the insurer prior to filing suit under the Act. This notice must provide for the basis of the cause of action and will, therefore, provide insurers with at least some ability to respond to or resolve the issue pre-filing. Unfortunately, because these notices will almost always be served after a claimant has obtained counsel, insurers will be in a relatively weak negotiating position at that point, given the threat of attorney fees and treble damages should the claimant proceed with filing suit and succeed in showing an unreasonable denial of a claim for coverage or payment of benefits. ❖


Note As a service to our clients and other insurers operating in Washington, Smith Freed and Eberhard, P.C. has developed a short presentation and training curriculum on the Insurance Fair Conduct Act and its expected impact on Washington insurers. To schedule a presentation to your organization, please contact Desiree' Keatley at dkeatley@smithfreed.com.

— If you want to be notified of new cases, please send an email to caseupdate@smithfreed.com.

DON'T FORGET TO RSVP!

Please let us know you will be attending our next meeting by submitting an RSVP at our website: www.seattleadjuster.org





Medical Notes
**Upright Positional MRI
of the Lumbar Spine**
Article provided by Health Cost Management

hcm

— by **J. Michael Burke, D.C., Chiropractic Physician,
Board Certified Chiropractic Orthopedist**

The magnetic resonance phenomenon was discovered in 1946, but its use was limited to chemical and physical analysis. In 1971 it was found that Magnetic Resonance Imaging, or MRI, could differentiate between normal tissue and tumors. The first human MRI examination took place in 1977. Faster and more accurate imaging and computer techniques are responsible for the continuing advancement of diagnostic MRI. With respect to the spine and spinal biomechanics, interest in the effects of gravity, positioning, and movement has stimulated research into new MR methods of imaging.

Recumbent MRI (rMRI) has long been the standard positioning method. However, the function of joints and muscles is motion and weight bearing, so pathology that only occurs during activity can be missed on static rMRI examination. Clinically, spine-related symptoms such as low back pain, and numbness, weakness and pain in the legs and feet are known to be made worse with changes in body position and certain physical activities. Knowledge of normal positional changes is, of course, essential to the ability to detect pathological changes on positional MRI (pMRI). Some changes in the size of the spinal canal and the neural foramina are normal and without consequence for the individual.

The first efforts at evaluating axial loading on the spine by conventional MRI were done using compression devices to simulate the effects of gravity. However, such methods allowed a combination of weight-bearing with flexion, extension, lateral bending, or rotational movements to only a limited degree if at all.

The advent of vertical, open-configuration MR systems allows more freedom of patient positioning. These “double doughnut” systems enable examinations in true weight-bearing positions including

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

Medical Notes... (Continued from page 7)

standing and sitting. Special techniques to load the spine increase sensitivity in detecting canal stenosis. However, vertically open-configuration systems sacrifice magnetic energy efficiency when compared with conventional closed MR scanners.

Positional MRI for lumbar spine imaging is no longer experimental. A substantial body of research supports its use in the differential diagnosis of patients with presentations of mechanical back pain with neurological symptoms, and research has demonstrated validity and reliability. These techniques could potentially reduce the incidence of false positives and improve consistency with clinical findings. ❖

Note: This article was abridged from the full text version to fit the newsletter format. For a copy of the original article, with references, please contact HCM by phone, FAX or email. Just refer to the November 2007 HCM newsletter article for a quick response.

~ Wanted: Career Opportunities ~

No... we're not looking for a job! But your employer might be looking to fill a vacant position or add to the existing staff and we want to know about it!
Career Opportunity ads can be submitted to the editor for printing in the newsletter. Ads will also be posted to our website at www.seattleadjuster.org.

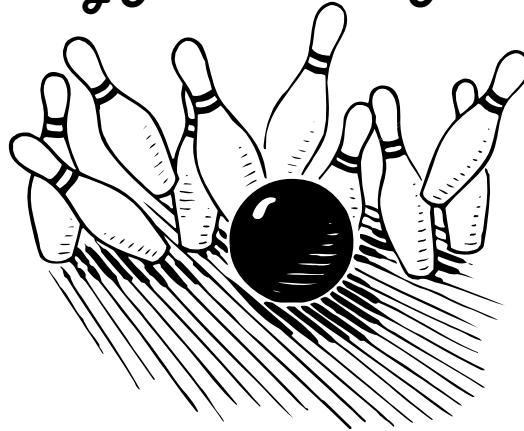
~ Wanted: Educational Opportunities ~

If you know of an educational event happening in the area, we want to hear about it. Workshop, seminar, and conference notices are what we're looking for.
We will post the event in the newsletter and on the website under Other Area Events.
Let us know what you know!

SCAA Bowling Tournament – February 15, 2008

Teams

Please have at least two adjusters on your team. If you are an individual you will be placed on a team with an opening.



Sign Up

Contact Travis Simpson, CRDN of Seattle/Western WA at 206/919-2395 or tsimpsoncrdn@q.com



Come out and join us for some lighthearted fun and your opportunity to wear some really funky shoes!

**February 15, 2008
1:30 to 5:00pm
Sunset Lanes in Ballard
Cost: \$25 per person**

