

# SCAA

December 2009

Vol. 37 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.”*



### *In Memory Of...*

**Lee S. McGonagle**  
SCAA Past President  
(1949-50)



Lee passed away November 24, 2009 in Edmonds. He was born January 23, 1914, the son of Joseph Sargent and Grace Farmer McGonagle in Duluth, Minnesota. He graduated from Dartmouth College in 1936 and moved to the Puget Sound area in 1941 and worked in the insurance industry as claims manager of Mutual of Enum-

claw Insurance Company and later in sales and as an independent adjuster/agent, owning and operating his own company, West Coast Claims Service. In 1949/50 he was the president of the Seattle Claims Adjusters Association, and in the 1950s he was president of the Western Washington Dartmouth Alumnae Club.

Lee was loyal and devoted to an ever-widening circle of friends and an avid reader with many interests.

Lee is survived by his two children Lee Anne McGonagle Malott (Ralph) and William Sargent McGonagle (Sara); step-son Darwin Taylor; a granddaughter, several step-grandchildren, step-great grandchildren, cousins, nieces and nephews. He was preceded in death by his wife, Mary Frances Clarke McGonagle, in July 2009. A memorial service was held Sunday, December 6 at Christ Episcopal Church in Seattle. In lieu of flowers, donations may be made to the Memorial Fund at Christ Episcopal Church or to Providence Hospice of Snohomish County. ❖

#### Next Meeting of the SCAA

**January 15, 2010**

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

#### Program

Topic & Speaker to be announced  
See the upcoming January newsletter  
or visit our website

#### Cost

**\$15 Members    \$20 Non-Members**

#### Time

**11:30 a.m.**

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



#### **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](http://www.seattleadjuster.org)



# ON THE DOCKET FOR 2009

## SCAA OFFICERS

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## SCAA Liaisons

**Lynn Perry** ..... Membership Liaison  
*Grange Insurance* Office: 206/448-4911 x2458  
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**Barb Tyler** ..... Membership List  
*Alquemie Publishing* Publisher/Advertising  
 Website Coordinator  
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**Lizzy Adkins** ..... Bowling Tournament Chair  
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**Timothy Reid** ..... Case Review  
*Attorney at Law* Office: 425/313-9414

**Roger Howson** ..... Education Chair  
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*Liberty Mutual* Office: 206/459-2345  
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**Lizzy Adkins** ..... Job Finder  
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**Jim Peterson** ..... Spring Seminar Chair  
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**Bob Jeans** ..... Tennis Tournament Chair  
*JMW Settlements Inc.* Office: 425/396-4344  
 Email: bob.jeans@jmwsettlements.com

Date	Speaker/Topic
Jan 15	SCAA Meeting Speaker/Topic TBA
Feb 19	SCAA Meeting Speaker/Topic TBA
March	SCAA-TCAA Annual Spring Seminar & Vendor Fair

### 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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## The Seattle Adjuster

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 Email: npassist@msn.com*



— by **Lizzy Adkins**,  
SCAA Past President

Simply said... this year's holiday party was a BLAST! The weather was brisk and sunny. Downtown Seattle was beautifully decorated for the holidays and Sazerac at the Hotel Monaco outdid themselves with the decorations and feast they provided our guests.

There was, however, one thing missing... our beloved and dearly departed Santa Claus, **Tom Bishop**. Many of us reflected on his caring and joyful personality, his friendship and presence as Santa Claus for SCAA for countless years. Our dear and past-president **Sue Dahlin** along with Halo Construction's **Gale Delisio** headed up a wonderful donation drive in honor of Tom's Kirkland Little League Foundation, which he served as umpire for many years. SCAA members, guest and vendors donated over \$500 and the SCAA agreed to match that donation for a net total of \$1,000. We miss you, Tom!

Now... for the crazy stuff! **Huge thanks to ALL of our sponsors:**

#### **WA-OR Claim Service Inc.**

Our beverage sponsor...Cosmic Cosmos! They were a pretty holiday red, tasty and quick to take over the extremities! Hee! Hee!

#### **Paul Davis Restoration, Casualty Adjuster's Guide and Damage Consultants**

Our valet sponsors... Thank you! Thank you! Thank you!

#### **Belfor, RGL Forensics, AMEC, Nordic Services, Medreco, and McKinley Homes**

Our gift bag sponsors... the red Santa fury bag filled with sparkling mini champagne, truffles, personalized candy bar, lottery scratch ticket and Starbucks gift card was deeply appreciated!

#### **Matson, Driscoll & Damico, Servicemaster of Seattle, Abeton, Restorx and Superior**

Our dessert sponsors... gingerbread man cookies... need I say more?!

#### **Pacific Engineering, DMA Insurance Housing, MCN, McBride Construction, SIR Construction**

Our lunch sponsors... mushroom soup, prime rib, organic turkey, cauliflower mash! It all went straight to the hips!

#### **Servpro of Central Seattle**

Our Santa Claus sponsor... huge thanks to our new Santa and photos provided by Servpro. It was instant magic!

#### **Halo Construction and MaxCare of WA**

Our champagne sponsors... what a festive feeling, to be greeted at registration with a glass of champagne, which seemed bottomless!!

#### **BC Investigative Engineers and NWIC**

Our hors d'ouvres sponsors... red rock feta stuffed peppers and spicy coppa, arugula and blue cheese. That alone was a meal!

So...for those of you who missed us this year, make sure you mark your calendar for next year! Because, rest assured, we strive to make each year better than the last!

Have a wonderful holiday and Happy New Year everyone! ❖



#### **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](http://www.seattleadjuster.org)

#### **~ Employment Opportunities ~**

**Mutual of Enumclaw** has an opening for a Sr. Claims Adjuster III (Property) at their Tacoma Branch Office. Visit our website for more info.

**Mutual of Enumclaw** has an opening for a Claims Adjuster II in their Bothell and Tacoma Branch Offices. Visit our website for more info.

**GEICO** has an opening for a Field SIU Investigator in Portland or Salem, Oregon. Visit our website for more info.

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)**

## Expert Witness

— by **Tim Heinson**, Lachenmeier, Enloe, Rall & Heinson

Expert witnesses can be expensive, and the decision whether to employ one in a particular case depends upon the facts of that case. A good expert, however, can go a long way toward getting a favorable result.

A recent trial emphasized the value of a medical expert. Plaintiffs' had their chiropractor testify to permanent impairment and non-ending treatment. My expert, also a chiropractor, was very knowledgeable and, I thought, testified effectively, although as he testified I was concerned that he might be going into too much detail. We received a very good result and, since this was a Washington case, I had the opportunity to interview the jury after the verdict was returned. All of the jurors said that they were very impressed with my expert. When asked if they thought he had spoken too long or in too much detail, the answer was an emphatic "no." By contrast, they all said that they were eager to hear factual information that they could use in making their decision.

Not all experts are as good as that one, but some considerations in hiring an expert are as follows:

### 1. Do You Need an Expert?

Washington Evidence Code Rule provides:

If scientific, technical or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training or education may testify thereto in the form of an opinion or otherwise.

### 2. Know your Expert

The most important attribute of an expert witness is integrity. Although often accused by plaintiffs' counsel of simply selling their opinions to the highest bidder, my experience has been that most defense experts are honest in their analysis and testimony. In fact, the only questionable testimony I have seen in the courtroom has been from the other side. Lawyers, can acquire reputations. Make sure yours has a reputation for truthfulness.

Before hiring an expert, find out if she is willing to testify in court, if that is where the case is likely headed. Communication with your expert is obvi-

## Membership Application for 2009-2010



### SCAA Annual Membership Application

Membership Dues for the year September 1, 2009 to August 31, 2010

**DUES ARE NOT PRO-RATED**

Please print neatly, one application per person

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 Due**  Life Member — Past President or Retired **No Money Due**

Associate Member — Member of Defense Bar or Former Claims Person **\$25 Due**  Corporate Sponsor — Legal Firms **\$125 Due**

Send payment and completed application to: **The Seattle Claims Adjusters Association**  
Barb Tyler—Alquemie Publishing  
PO Box 87  
Dexter, OR 97431

If you have any questions on type of membership or membership status, contact Barb Tyler at 541/937-2611, or by email: npassist@msn.com

ously very important, so make sure she is willing to work with you and your attorney in case and trial preparation.

### 3. Speak the Language

Experts are, by definition, experts in their field of expertise, not necessarily in effective communication. A good lawyer can assist with this, but the expert must be able to speak in plain language that an average juror will understand. An effective expert also speaks directly to the jury. Some of the jurors in my recent case remarked on how professorial my expert appeared as he looked at them, took off his glasses, and explained his findings and opinions.

### 4. Help with Case Preparation

A good expert can assist in identifying weaknesses in your case, and what she expects the plaintiff's witness to say. Hiring such an expert early on, even pre-litigation, may be beneficial in building a defense strategy, or determining a settlement posture.

### 5. Stand up for Themselves

Experts are generally well-educated and fairly sophisticated, so they may enjoy the intellectual challenge of testimony. In doing so, they may appreciate the nuances of opposing counsel's questions without an equal appreciation of the danger the question poses. For instance, the opposing attorney may carefully limit a question to a specific fact, in order to build a theory for closing argument. The expert may agree with that specific fact, but at that point must be willing and able to stand up for her opinion and explain why this fact is irrelevant or otherwise does not affect her analysis. The expert has to remember that she, not opposing counsel, is the expert on this particular subject.

### 6. Experienced or Hired Gun?

The obvious advantage to having an expert with lots of litigation experience is that she is familiar with the proceedings and comfortable testifying under oath. The obvious disadvantage is that your opponent can characterize the expert as being a hired gun, just providing favorable opinions to the other side in hopes of more referrals. It is helpful if the expert provides services to both sides, but in reality, the defense is far more likely to need an independent expert, particularly in an injury claim. After all,

the plaintiff already has a treating doctor to testify. In my experience, juries seem to understand that experts (on both sides) are paid pretty well and don't penalize an expert for earning a good living doing IMEs.

### 7. Anything We Should Know About?

An experienced expert witness will be aware of methods of cross-examination used against her in the past. This will sometimes involve disciplinary proceedings or other potentially damaging information. Ask your expert about these, and any other issues that would be potentially embarrassing should it come out. Discuss how best to handle it if it does come up.

Having an effective expert at trial is a dream-come-true, and having one fall apart is a nightmare. Carefully researching your expert before you hire her will maximize the chances of the former and minimize the risks of the latter. ❖

— Please direct any questions in this area of law to the author, Tim Heinson, at 503-768-9600, or by email to [tim@lerlaw.com](mailto:tim@lerlaw.com).



#### Tacoma Claims Adjusters

— Upcoming Meeting —

**January 8, 2010**

11:30 am - 2:00 pm

LaQuinta Inn

1425 East 27th Street, Tacoma, WA

For more information visit:

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



#### Treasurer's Report

Submitted by **Deborah Jette, Treasurer**

*Beginning Balance: \$16,449.85*

**Income: \$15,980.74**

**Expenses: \$14,664.29**

**Ending Balance as of 12/14/09: \$17,766.30**

Medical Notes

## Neuromuscular Reeducation

Article provided by Health Cost Management

One of the most commonly misused and abused CPT code is 97112 - Neuromuscular Reeducation. It is such a hot topic that HCM has received opinion letters from three highly respected physicians.

### **Daniel Mangum, D.O., Internal Medicine**

CPT code 97112 is called “Neuromuscular Reeducation,” and as the name implies, it is to be utilized when there has been an injury that has prevented normal communication between a nerve, hence the “neuro,” and a muscle “muscular” group. This could be a brain injury (typically a stroke, but could include closed-head traumas, near drowning, or similar brain insult and damage) or spinal cord damage (trauma again, but infection such as tuberculosis abscess, polio...etc, or poor blood flow and damage like a stroke but in the spinal cord could all occur) or an injury to a nerve or group of nerves (like under the armpit and brachial plexus).

Nerve injury, as you can see, can occur at many levels and with various outcomes, many of which are disabling and can be permanent. Nerves that can no longer communicate with a muscle area means that region (an entire side in many with strokes) may not work at all (complete paralysis) or have partial movement. Often individuals need help in trying to regain some control with basic movements or with posture and balance. The AMA has provided similar examples and makes it clear that it is used as a way to try and re-train a body part or region to basically make it re-learn (hence “re-education”) and perform a task it could do in the past. This might include trying to button a shirt or grasping a cup, for example.

What is quite clear is that this code is not to be used for muscle strains and sprains and without evidence of nerve damage (muscle wasting or atrophy, muscle weakness that follows a nerve injury). Such coding and use in injuries limited to soft tissue either represents a complete failure to understand the reason or pathophysiology of neuromuscular disorders, or represents inappropriate coding or fraud.

### **William DeBolt, M.D., Neurology**

Neuromuscular reeducation is a therapeutic procedure provided to improve balance, coordination, kinesthetic sense, posture and proprioception to a person who has had muscle paralysis and is undergoing recovery or regeneration. The goal is to develop conscious control of individual muscles and awareness of position of extremity. The procedure may be considered medically necessary for impairments which affect the body's neuromuscular system that is poor static or dynamic sitting/standing balance, loss of gross and prime motor coordination, hypo/hypertonicity that may result from disease or injury such as severe trauma to the nervous system, cerebral vascular accident or systemic neurologic disease. Standard treatment is 12 to 18 visits within a four to six week period. It is not considered medically necessary to provide neuromuscular reeducation, kinetic therapy, and/or therapeutic exercises on the same day.

It is my interpretation of this definition that a clear cut neurologic injury supported by objective findings and/or history is necessary before neuromuscular reeducation can be employed as a therapeutic measure.

### **Thomas Freedland, D.C. Chiropractor**

97112 (neuromuscular re-education) is a form of physical therapy generally used following a neurological insult such as a stroke. It is designed to overcome a neurological deficit as a result of damage to the brain or the nervous system. It is intended to reconfigure certain nerve pathways so that normal daily tasks may be performed. For example, a patient with diminished sensation would learn to identify coins hidden behind a barrier. Another example would be a patient with impaired grip strength and sensation who learns to move clothes pins from one string to another to regain grip strength, depth perception, and functional skills.

Neuromuscular re-education is not a form of massage therapy and is not within the scope of practice for a massage therapist. Therapy performed by a massage therapist or a chiropractic assistant is more appropriately billed using CPT code 97124 or 97140. While neuromuscular re-education may include post isometric relaxation (PIR) or proprioceptive neuromuscular facilitation (PNF) - both a form

of specific muscle stretching with the assistance of the therapist or physician providing resistance to the contraction of a muscle - their inclusion would be limited to issues following neurological injury. If PIR or PNF are employed in the rehabilitation of soft tissue injuries it would be more appropriate to bill using other CPT codes. These would include therapeutic exercise (97110) or therapeutic activities (97530). Both of these procedures require direct one on one provider/patient interaction for a 15 minute period. The chart notes should document that this contact was made and provide a brief synopsis of the activities or procedures performed during the 15 minute time frame. The other alternative is to include them within other soft tissue therapies such as myofascial release or trigger point therapy which can be billed using the more recent CPT code 97140.

As outlined above, 97112 (neuromuscular re-education) would not be compensable in conjunction with a soft tissue injury such as a sprain/strain unless a distinct and specific neurological deficit such as a stroke were present. If other coding to document procedures performed is billed it must be accompanied by chart notes that specifically identify the nature of the procedure, the time frame involved, and who performed the one on one provider/patient contact. ❖

— For a copy of a direct response from the American Medical Association regarding the appropriate use of CPT Code 97112, please contact Health Cost Management by email at [hcm@healthcostmanagement.com](mailto:hcm@healthcostmanagement.com).

CPT® - Copyright American Medical Association

“What has two legs and can be seen running fast every third Friday of the month? An adjuster on their way to an SCAA meeting!”

**January 15 — Be there!**



### **DON'T FORGET TO RSVP!**

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



Case Study

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## **Undefined Policy Terms: How to Interpret Contested Meanings**

— by Jeffrey D. Eberhard

**Claims Pointer:** When a contested term is not defined in an insurance policy, but has a clear and unambiguous meaning, courts will apply the ordinary meaning of the contested term before construing the contested term in light of the language surrounding the contested term.

When an insured seeks coverage for a loss and is denied coverage, an insured will often sue the insurer for breach of contract. Washington State courts will first apply the ordinary meaning of an undefined policy term before relying on methods of contract interpretation. A recent Ninth Circuit Court of Appeals case, Terminal Freezers Inc., v. U.S. Fire Ins., employed Washington State law to determine the meaning of the undefined terms “ice” used in an insurance policy. United States Court of Appeals, Ninth Circuit, No. 08-35623 (September 11, 2009).

Terminal Freezers Inc. ran a cold storage business using two large freezer warehouses. The two freezer warehouses were defectively constructed in several respects, which included improper installation of vapor retarders. The improperly installed vapor retarders caused excessive ice formation on the walls of the warehouses causing damage. Terminal had three commercial “all risk” property insurance policies with U.S. Fire Insurance and filed a claim for damages. The Insurer denied Insured’s claim because the cause of loss, the faulty workmanship, was excluded under the policies. The Insured sued for breach of contract. The Insurer brought a summary judgment motion arguing ice damage caused by faulty workmanship was not covered under the policies and the district court granted the Insurer’s motion and dismissed the claim. The Insured appealed to the court of appeals.

On appeal, the court of appeals noted that although the policies excluded faulty workmanship as a cov-

(See Case Study... continued on page 8)

## Case Study... *(Continued from page 7)*

ered peril, the policies did provide coverage if the faulty workmanship led to a “covered cause of loss.” Although the policies excluded “ice” as a covered cause of loss, the Insured argued the term “ice” was unclear and ambiguous because it was not defined in the policies and only applied to naturally occurring “ice”. Since the term “ice” was surrounded by words describing natural causing elements (i.e., rain, snow, sleet, and sand), the Insured argued only naturally occurring ice was excluded from coverage. Because the faulty workmanship caused the ice, the Insured argued, the damage was not precluded under the policy.

The court of appeals disagreed with the Insured and affirmed the district court’s ruling. The court of appeals held that under Washington State law, when interpreting whether a loss is covered under an insurance policy, a court must not resort to methods

of contractual interpretation when the contract language is clear and unambiguous. Here, “ice” is undefined, but the court of appeals held “ice” is commonly understood as “water reduced to the solid state by cooling.” The court of appeals refused to modify the contract and create an ambiguity by defining “ice” in light of the surrounding terms when no ambiguity existed. Thus, the loss resulting from the faulting workmanship was not covered under the policies and the Insurer did not breach its contract by denying coverage. ❖

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). For additional information, please visit our website at [www.smithfreed.com](http://www.smithfreed.com).*

This article is intended to inform our clients and others about legal matters of current interest. It is not intended as legal advice. Readers should not act upon the information contained in this article without seeking professional counsel.

## Benefits of Membership in SCAA — 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.
- **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 use the one on the previous page.

**JOIN or RENEW TODAY!**

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