

# SCAA

February 2008

Vol. 35 No. 6

## 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

Here it is February and we continue to survive the bad weather. At least we have Valentines Day to look forward to, in addition to our **Bowling Tournament immediately following the February 15 meeting.** Please contact **Travis Simpson** of CRDN to sign up; cost is \$25 per person. [See page 3 for more info.]

My thanks to the Spring Seminar Committee, headed by **James Gomez**, for all their hard

work in making this educational event happen. Also, my sincere gratitude to Barb Tyler for her never-ending guidance and advice in organizing our functions.

Please remember to sign up to be on our two teams for the Relay for Life Cancer Walk in early June.

Also, we are still taking donations for Kyle's unit in Iraq. They are freezing; we have purchased pocket warmers, underwear and socks to send along with the treasured coffee.

See you at the February 15 meeting! I hope you remembered to RSVP. You can always email me directly or call me. See my contact info on page 2.

#### Next Meeting of the SCAA

**February 15, 2008**

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

#### Program

**Richard Floyd of Infrared Insights**  
**Subject: Using Infra Red Technologies to Detect Moisture in Buildings**

#### 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](mailto:gail.tuomi@grange.com). Thank you!

♥ **Happy Valentine's Day!** ♥



#### **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 2008

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Date	Speaker/Topic
Feb 15	SCAA Meeting Richard Floyd with <i>Infrared Insights</i> on Using Infra Red Technologies to Detect Moisture in Buildings Also, Elena Call with Prepaid Legal Services Followed by the SCAA Bowling Tournament
March 14	SCAA-TCAA Annual Spring Seminar & Vendor Fair See pages 11-14 for registration & other info
April 18	SCAA Meeting Patrick DeLangis with <i>Matson Driscoll &amp; Damico</i> on Employee Theft & Fraud cases
May 16	SCAA Meeting Paul Rosner with <i>Soha &amp; Lang</i> on Depreciation & Recent Case Law Relative to "Actual Cash Value"

### 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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## Comments from the VP Table

— by James K. Gomez, SCAA Vice President

To kick off the start of the new year, a special thanks to attorney **Tim Reid** who provided case review on two recent cases at our January meeting. One of the cases involved the “Timber Trespass Statute, RCW 64.12.030. This case may warrant a review if you handle liability claims involving tree damage. I have copies of both cases and can email them to you if needed.

Our guest speaker was **Colin Murphy**, an expert with Trinity ERD. Colin provided information on wood rot and history of construction as related to moisture in wood framed walls. We thank him for an excellent presentation!

We had our second raffle and drawing. **Shelley Butler** with *Certified Restoration Drycleaning Network (CRDN)* won the raffle. Everyone please buy a ticket(s) to participate.

(See Comments... continued on page 4)

## SCAA February Guest Speaker

**Richard Floyd** with **Infrared Insights** will be providing information on **Using Infra Red Technologies to Detect Moisture in Buildings**

Topics for discussion include:

- ✓ Infra Red Moisture Detection in Buildings
- ✓ Science behind detecting moisture inside walls and in buildings.
- ✓ Tools and equipment used in moisture detections
- ✓ Accuracy and reliability
- ✓ Benefits of the service to the insurance and construction industry
- ✓ Case Studies (Examples). Photos, reports, cost to benefit studies, financial savings, etc.

Attend the SCAA meeting on February 15, 2008 to hear this presentation.



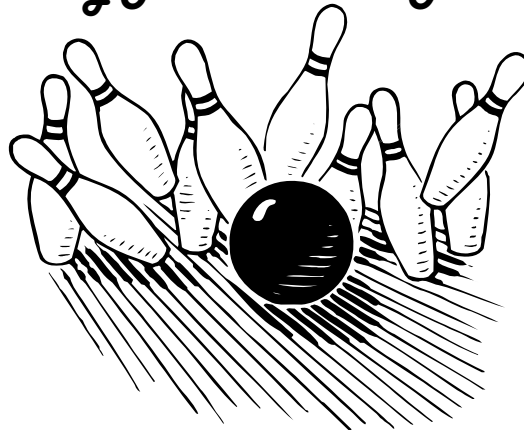
### DON'T FORGET TO RSVP!

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)

## 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](mailto: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**



## Comments... (Continued from page 3)

We had two \$25.00 drawings. Our vendor drawing went to **Allison Brown** with *ServiceMaster of Seattle*. Our adjuster drawing went to **Sharon Setzler** with *Justher* (an independent adjustment firm). Congratulations are in order!



After several attempts to find a winner for the “**Blue Bucket**” drawing, our final winner was **Sharon Setzler** with *Justher*. It was just her day to win!

Our next meeting will be on February 15, 2008. We will have two speakers in February. **Richard Floyd** with *Infrared Insights* will be speaking on Infra Red Technologies that are used in moisture detection; and, **Elena Call** will be speaking briefly on her business, *Pre-Paid Legal Services*.

**See everyone at the February meeting and don't forget the bowling afterwards.....**

**Remember to register early for the Spring Seminar!**



### Case Study

## Sales Tax Not Included in ACV Coverage Unless Incurred

— by **Jeffrey D. Eberhard**

When a homeowner's policy uses “fair market value” (FMV) to calculate a property's “actual cash value” (ACV) for reimbursement purposes, what does that mean? What factors go into discerning this ever changing number? Typically several methods are used to calculate FMV, including depreciating the cost of a new item, surveying local markets using the internet and newspapers, hiring an appraiser, or agreeing with the insured as to the value of the property. Another method is to generate a replacement value for the damaged property. But what must be legally included in calculating a replacement value?

The Division I Court of Appeals recently addressed whether sales tax is included in calculating a re-

placement value for ACV purposes when the sales tax is not in fact incurred. The case is *Holden v. Farmers Insurance Co. of WA*, Civ. No. 59024-3-I (January 22, 2008). In *Holden*, the plaintiff filed a claim with the defendant, Farmers Insurance Company of Washington, for property loss due to a fire under the plaintiff's ACV coverage. Farmers reimbursed her for the ACV of the property, but the plaintiff sought additional reimbursement for sales tax, even though she had not replaced her property. Farmers advised her that she could only claim the replacement cost, including applicable sales tax, if she submitted proof of her incurred replacement costs. Instead of complying, the plaintiff filed a class action claim against Farmers.

Plaintiff's homeowner's policy stated that “covered loss to property will be settled at actual cash value.” The policy defined ACV as the “fair market value of the property at the time of loss.” The policy did not define fair market value. Furthermore, in addition to her ACV coverage, the plaintiff also had replacement coverage, though she never utilized it (presumably because she never replaced the property).

At the trial court level both plaintiff and Farmers filed summary judgment motions. The trial court ruled in favor of the plaintiff because it found the ACV provision to be “ambiguous”. The impact of this finding was for the policy to be construed against Farmers, thereby including sales tax in the ACV coverage calculation. Farmers appealed.

**Claims Pointer:** An actual cash value (ACV) policy indemnifies an insured for actual loss sustain, thereby placing the insured in the same financial condition prior to the damage. In calculating the fair market value under ACV coverage, insurers sometimes use a replacement value calculation. According to Washington courts, sales tax is not included in the replacement value calculation unless the sales tax was actually incurred by the insured.

The Court of Appeals analyzed whether the ACV, defined as fair market value, included sales tax on all amounts claimed under a homeowner's insurance policy. The Court reasoned that an ACV clause only acts to indemnify an insured, or to place the insured in the same financial condition that he or she would have been in if the damage had not occurred. By applying a “lens of indemnification”,

the Court ruled that sales tax was not included in reimbursement for ACV coverage purposes unless the insured actually incurred the tax. Because the plaintiff chose to utilize her ACV coverage, and not her replacement coverage, she was not eligible to receive payment for sales tax she had not incurred. The Court of Appeals reversed and remanded for summary of judgment in favor of Farmers.

While each policy or claim remains factually unique, the important principle of the *Holden* case is that an ACV policy does not entitle an insured to any more than what is required to return the insured to pre-loss status. If ACV coverage uses a replacement value calculation, sales tax is not included unless the insured actually incurs the tax. ❖

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



**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)



March 14, 2008 • DoubleTree Hotel

See page website for agenda and registration

### Defects, Rejects, & Other Subjects

- 7:30 am ..... Registration & Continental Breakfast
- 8:30 am ..... Welcome from the Presidents
- 8:45 am ..... Session I - Property/Casualty
- 10:00 am ..... Session II - Property/Casualty
- 12:00 pm ..... Lunch
- 1:00 pm ..... Session III - Combined Session
- 2:15 pm ..... Session IV - Combined Session
- 3:30pm ..... Closing Ceremonies

**7:30 am to 4:00 pm ..... Vendor Trade Fair**

## Membership Application for 2007-2008



### SCAA Annual Membership Application

Membership Dues for the year September 1, 2007 to August 31, 2008

**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](mailto:npassist@msn.com)