

1930



2005

January 2006

Vol. 33 No. 5

### Seattle Claims Adjusters Association

**Celebrating 75 years of service to the claims community — 1930-2005**

*“A professional organization dedicated to the ongoing education of the claims community.  
Providing an arena for member interaction and the sharing of resources.”*

**SCAA**



**TCAA**

**2006**

**Seminar & Vendor Fair**

**March 17, 2006 • DoubleTree Hotel**

**18740 Pacific Highway South • Seattle, WA 98188**

#### **Plan NOW to Attend!**

For the Property Adjuster topics include:

- Concrete Repair Processes**
- Structural Roof Failures**
- GeoEngineers/Landslides**

For the Casualty Adjuster topics include:

- Case Law Update**
- Subrogation — WA Statutes & Case Law**
- Avoiding Litigation Hazards & Bad Faith Claims**

Vendor Fair will be open throughout the day

Watch your mailbox for an official brochure to be mailed in January, in the meantime, visit our website for more information and early registration!

We look forward to serving your educational needs!

#### **Effective January 20, 2006**

There will be a price change for members attending our monthly meetings. Cost will be \$13 per member. Vendors and non-members will remain at \$20.

#### **Next Meeting of the SCAA**

**January 20, 2006**

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

#### **Program**

**Adjusting Property Claims for Better Claims & Litigation Results  
with Craig Evezich of Evezich Law Offices**

#### **Menu**

**To be announced**

#### **Cost**

**\$13 Members    \$20 Non-Members**

#### **Time**

**11:30 a.m.**

If you have special dietary needs, please give a 48-hour notice by calling the Swedish Club at (206) 282-5903.

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# ON THE DOCKET

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Date	Speaker/Topic
Jan 20	Adjusting Property Claims for Better Claims and Litigation Results with Craig Evezich of Evezich Law Offices
Feb 17	SCAA Meeting & Bowling Tournament See page 21
March 17	SCAA/TCAA Annual Spring Seminar & Vendor Fair See pages 12 & 13 for registration info

### 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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## Lizzy's Logic

— by Lizzy Adkins, President



### Case Study

## Waiving the Right to Binding Arbitration

— by Jeffrey Eberhard

*McKee v. Martin, Civ. No. 31696-0-II, in the Division II Court of Appeals for the State of Washington (December 13, 2005)(unpublished).*

Ulysses Martin was traveling northbound through a traffic light controlled intersection when he collided with a westbound school bus. Mr. Martin claimed his light was green and asserted that the school bus driver had run a red light. Martin was nevertheless cited for disobeying the traffic signal. He contested the citation in traffic court but was found guilty and ordered to pay a \$133 fine.

Three days later, the school bus driver, Colin McKee, filed suit. McKee moved for partial summary judgment, seeking an order preventing Martin from contesting liability because the traffic court had found him guilty. The trial court granted the motion and ordered that Martin was 'collaterally estopped' from arguing or presenting evidence that he did not violate the traffic signal statute.

The court of appeals reversed. The doctrine of collateral estoppel generally prevents relitigation of issues that were previously litigated to a final conclusion in an earlier lawsuit. When determining whether the doctrine applies, Washington courts focus on whether the parties to the earlier proceeding had a fair hearing on the exact issue to be decided in the later proceeding. The court found that the stakes in traffic court (here a \$133 fine) were substantially less consequential than those in a personal injury action. Additionally, the relatively

*(See Case Study... continued on page 4)*

### Happy New Year Everybody!

I can't believe that it's already 2006. Where has the past year gone? At any rate, I wish each and every one of you a prosperous and healthy new year.



Lizzy Adkins  
SCAA President 2005-06

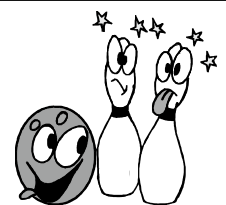
A week before Christmas, Julie Benedict and I delivered the toys you all generously provided to the Children of REWA. It felt great to be Mrs. Santa Clause! Thank you all once again for your generosity. No words could express their gratitude, only the smiles that were on their faces.

Now that the festivities and holidays are behind us, it's time once again to focus on the upcoming year. Our VP, Julie Benedict and the TCAA Board have done a fabulous job in organizing this year's Spring Seminar and Vendor Fair. In addition to our fantastic speakers, we will have vendors from all aspects of our industry, including: Insurance Overload, MDE Engineers, Argus Pacific, DMA Insurance Housing, MaxCare, OMAC, WMCI, Nordic Services, Matson Driscoll & D'Amico, ABODA (formerly NW Suites & Housing Services), Enterprise Rent-A-Car, Continental Furniture, and AMEC. Vendors...if you haven't already submitted your registration and payment for the vendor fair, do it now! Space is limited to only 35 vendors. Don't miss out!

Mark your calendar for our February 17 meeting – it will be our 2nd Bowling Tournament at Sunset Bowl in Ballard. Form your teams now and register! [See page 21 for registration.]

As you are all aware, my term as president ends in June of this year, which means that Julie Benedict, Shon O'Fallon and Gail Tuomi will move up with respect to their roles in our association. We are actively looking for another adjuster to elect to the role of Treasurer in May. If you or anyone you know would be interested in committing to our association, please contact anyone on the Board. ❖

## SCAA February Bowling Tournament



**Next opportunity to bowl will be February 17.  
See website for registration information and  
plan to join us – if not for the fun then for the  
groovy shoes!**

## Case Study... *(Continued from page 3)*

quick procedures in traffic court do not allow for the type of discovery customary in a personal injury case. The court held that for these reasons, collateral estoppel was inappropriate in the personal injury suit – even though Martin had actually defended the citation in traffic court. ❖

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### **Claims Pointer**

**Conviction of a traffic citation will not prevent the convicted party from arguing that he or she did not violate the traffic regulation in a subsequent personal injury action.**

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— *For more information visit [www.smithfreed.com](http://www.smithfreed.com).*

Case updates are 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 email without seeking professional counsel.

### Smith & Co. Newsletter

## **Contingent Business Interruption Insurance**

A. Overview When a business suffers an interruption or impairment of its business operations as a result of physical damage to property other than that owned by the insured a “Consequential Business Interruption” may occur. A “Consequential Business Interruption” can occur when a supplier of a business suffers a loss. This loss can impair the customer's business in several ways. This impairment can range from a simple increase in production costs to obtain an alternate supplier to a complete cessation of operations due to lack of availability. This also can occur by an impairment or denial of needed ingress or egress, and denial of access by civil authority.

### **Contingent Business Interruption**

Contingent business interruption insurance protects the earnings of the insured following physical loss or damage to the property of the insured's suppliers or customers, as opposed to its own property. A distinguishing characteristic is that the risk of insured

physical damage rests with the insured's suppliers or customers who have no contractual relationship with the insurer, at least with respect to the policy issued to the insured. Contingent business interruption insurance is becoming more important in today's commercial world as companies increasingly out-source component part manufacturing and rely upon so-called “just in time” inventory systems. It also protects insured's with a limited customer base by protecting the insured's earnings against the contingency of a covered loss that prevents a key customer from accepting the insured's products.

C. Business Interruption as compared to Contingent Business Interruption Coverage The major difference between Business Interruption and that of Contingent Business Interruption is the insured's relationship to the damaged or destroyed property. Business Interruption Insurance covers the impairment of business operations as a result of damage or destruction of property both real and personal that is utilized in the insured's operations. Contingent business interruption insurance however covers damage or destruction at locations other than the insured's and assets not owned or operated by the insured. These are called in the ISO form, “Dependent” Property. There are four (4) types of such dependent property. They are: (1) Contributing Locations: Contributing locations deliver materials or services to the insured or to others for the insured's account. A contributing location lies upstream in the manufacturing process and is usually an integral supplier of components, parts, raw materials, or services utilized by the insured in the production of its goods or services. An auto manufacturer would consider the supplier of the auto's engine an important supplier critical to its manufacturing process. Any major loss to that supplier would impair the auto manufacturer's operations. (2) Recipient Locations: Recipient locations are those that accept the insured's products or services. Therefore the recipient is downstream from the insured's operations. If there is limited downstream customers for the insured's products or services, then if that downstream customer suffers a loss which negates or limits its need for the insured's product, then the insured too will suffer a loss. For example, if an engine manufacturer has a customer, say General Motors, whose plant is destroyed, then that engine manufacturer will suffer at least a partial decline in

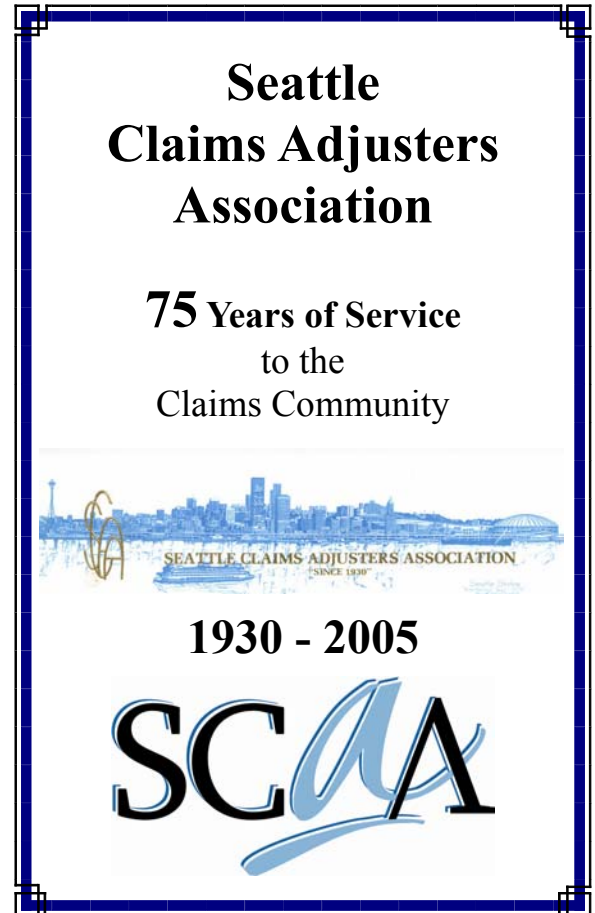
*(See Business Interruption... continued on page 5)*

## Business Interruption... *(Continued from page 4)*

business. (3) Manufacturing Locations: A manufacturing location produces a product for delivery to the insured's customers under a contracted basis. For example, an online retailer of jewelry contracts with jewelry to manufacture items that it sells. Should that jeweler suffer a loss which impairs his ability to meet the retailer's needs, and then the retailer also suffers at least a partial loss of net business income. (4) Leader Locations: A Leader location is another business that drives potential customers to the area of the insured. An example of this can be found in every neighborhood shopping centers. The "Anchor Tenant" usually a large grocery store chain, is the leader business in that customers that come to shop for their groceries there tend to patronize other retailers such as the dry cleaners, hair saloon, or pet store. The loss suffered by the "Leader Location" or Anchor Tenant will usually impairs the business of the surrounding retailers. In addition to these types of "Contingent Business Interruption" losses, which may be insured, there is also losses created by governmental actions or situations in which ingress or egress is halted, depending upon the policy and the facts and circumstances, there may be coverage. This area however is best covered by a qualified "Coverage Attorney."

**Conclusion:** Assuming that the insured has procured the correct type of business interruption coverage, there maybe a "Contingent Business Interruption" loss in which the ability to restore normal operations may be outside of the insured's control.

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 A cartoon illustration of a smiling man in a suit holding a sign that says "Support SCAA".
 

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