

SCAA

January 2007

Vol. 34 No. 5

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."

JULZ JEWELS

— by **Julie Benedict**, President



What a wild and windy end to 2006! This is the time when both adjusters and vendors step up to help all those affected by nature's devastation. I'm sure there were lots of you who put in long hours to assist those whose homes suffered damage, even though your own homes were also affected. Hopefully everyone survived this major storm, and managed to have a good holiday.

I had many happy comments about our Holiday Party. I want to thank **Lizzy Adkins** and **Shelly Pond** and their committee for organizing a wonderful event. I believe it is safe to say a good time was had by all! As a result of the generosity of many of you, we collected \$500 and a box full of children's books for Page Ahead. Thanks to everyone who made our Holiday Book Drive such a success!

Make sure you mark your new 2007 Calendar for our upcoming Spring Seminar and Vendor Fair on March 23. This year's topics include *Fire/Arson & Diminished Value* and *Adjuster Burn Out*. We will also have Carol Sureau, Deputy

Insurance Commissioner, Legal Affairs Division who will speak about Insurance Fraud. And of course, there will be the Vendor Fair. An invitation to participate will have been sent in early January to all current paid advertising vendors. We will fill the limited spaces (only 35) on a first come, first paid basis, so get your registration in early to be sure to get a spot. In addition, if you are interested in sponsoring Breakfast or note pads and pens, please let me or Lizzy know.

Looking forward to seeing everyone at our January 19 meeting. ❖

GET READY!

Coming Soon!!!

SCAA



TCAA

2007

Spring

Seminar & Vendor Fair

March 23, 2007 • DoubleTree Hotel

18740 Pacific Highway South • Seattle, WA 98188



ON THE DOCKET

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Date	Speaker/Topic
Jan 19	SCAA Meeting See details below
Feb 16	SCAA Meeting and Bowling!!! (More info to come)
March 23	SCAA/TCAA Spring Seminar & Vendor Fair Please note NEW DATE!
April 20	SCAA Meeting Vendor Appreciation Luncheon
May 18	SCAA Meeting Past President's Luncheon

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.

Next Meeting of the SCAA

January 19, 2007

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

Program
TBA

Cost
\$13 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 Julie Benedict at julie.benedict@grange.com. Thank you!



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Defendant's Economic Analyst Supported Jury's Lost Future Earning Capacity Award

— by C. Donald Smith, Smith & Co., LLC

In *Norma Romero v. Murray J. McClelland*, No. E035919 (Cal. App. 4 Dist. March 20, 2006), unpublished, the California Court of Appeals, Fourth District, affirmed the jury's award of \$304,000 for lost future earning capacity. Romero was severely injured in an automobile accident. McClelland, who was drunk at the time of the accident, admitted liability. Prior to the accident, Romero was self-employed as an interior decorator. She claimed to earn \$4,000 per month, but only had financial records for the eight months preceding the accident, which indicated a \$20,672 profit between January and August 2000. After the accident, Romero did not return to work and remained unemployed.

The matter went to trial on the issue of damages. Romero testified regarding the amount of her compensation before and after the accident as well as to the extent of her injuries. McClelland introduced

expert testimony from an accountant regarding the extent of her future lost earning capacity. Based on the paucity of financial information provided by Romero, he could not verify that she earned \$4,000 per month from her business. He did testify that she had a remaining work-life expectancy of 16 years. Furthermore, based on a hypothetical posed by Romero's counsel, the accountant concluded that if Romero's 2000 financials were annualized, her business would earn a profit of \$31,000, which correlated into total loss of \$401,075. He further testified that if the business earned profit of only \$27,000 per year, the total loss would be \$350,000. Both total figures represented the present value using a 3-percent discount rate. The jury awarded Romero \$304,000 in lost future earning capacity. McClelland appealed.

On appeal, McClelland argued that the lost future earning capacity award was not supported by substantial evidence. The appellate court disagreed. It noted, "There is no requirement that expert testimony about future earning capacity be presented before the jury is entitled to determine compensation for loss of future earnings," which is an element of general damages and within the understanding of the jury. Here, it noted that the defendant put forth evidence from an accountant that calculated the amount of her loss. The economist's lowest value exceeded the amount awarded by the jury; therefore, the award was supported by the evidence when the accountant's testimony was considered together with the testimony regarding the extent of Romero's injuries. Furthermore, it noted that McClelland did not introduce evidence showing that Romero was able to return to work or had any residual earning capacity as a means of mitigating the future lost earning capacity damage. ❖



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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



Case Study

When Does the Statute of Limitations Really Run in CD Cases?

— by Jeffrey D. Eberhard

The Washington Supreme Court recently brought some much needed clarity to the application of the statute of limitations in construction defect cases in the case of *1000 Virginia Ltd. P'ship v. Vertecs Corp.*, Civ., 146 P.3d 423 (November 9, 2006). Back in 1992, 1000 Virginia acted as its own general contractor and began construction of an apartment building. The subcontractor responsible for the stucco work on the project was Vertecs. Although the project was substantially completed on December 31, 1992, occasional leaks began occurring over the next few years eventually leading to cracks in the stucco by 1997 or 1998. Despite 1000 Virginia's periodic corrective actions, by the end of 1998 it knew substantial repairs would be required to correct systematic defects in the construction. On September 3, 2002, 1000 Virginia brought a CD claim against Vertecs and several other subcontractors, which the trial court dismissed as untimely filed. After a Division I panel of the Court of Appeals reversed, the Washington Supreme Court took the case as part of a consolidated appeal.

The Supreme Court addressed three arguments made by the subcontractor/defendant: (1) that the court of appeals should not have used the discovery rule to determine when plaintiff's claims accrued for statute of limitations purposes; (2) that RCW 4.16.326(1)(g), a statute enacted on July 27, 2003 (barring application of the discovery rule to breach of written construction contract claims) should be applied retroactively to bar plaintiff's claims; and (3) that even if the discovery rule applied, summary judgment was still appropriate on under the facts of the case.

First, the Supreme Court examined the discovery rule and held that it only applies to contract claims involving latent construction defects. Here, the defects were latent so the rule applied, meaning plaintiff's claim did not accrue for statute of limitation purposes until the plaintiff discovered, or in the reasonable exercise of diligence should have discovered, the elements of the cause of action (i.e. that

the other party breached the construction contract). The plaintiff's claim was timely because the defect was discovered no later than the end of 1998, before the six-year statute of ultimate repose expired. Additionally, plaintiff filed suit within six years after it's claim accrued (discovery of the defect). Thus, the claim was also timely under the six year statute of limitations (which requires that a claim be filed within 6 years after the claim "accrues").

Claims Pointer

(1) The "discovery rule" applies to breach of contract claims for latent construction defects; (2) However, RCW 4.16.326(1)(g) will bar the application of the discovery rule for claims of breach of written construction contracts - but only if the defendant pleads it as an affirmative defense. In other words, if properly defended, breach of contract claims for written construction contracts will become untimely 6 years from substantial completion regardless of when the defect is discovered; (3) However, RCW 4.16.326(1)(g) does not apply retroactively to claims filed before July 27, 2003.

The court next examined RCW 4.16.326(1)(g), which provides an affirmative defense precluding application of the discovery rule for claims of breach of written construction contracts. The legislature passed this statute to cut off CD claims filed more than six years after substantial completion. However, the court held that RCW 4.16.326(1)(g) did not apply retroactively, and therefore, would not apply to 1000 Virginia's claims (which arose before the statute took effect on July 27, 2003). Finally, the court found sufficient questions of fact to preclude summary judgment under any of Vertecs' other theories.

Thus, 1000 Virginia was remanded for a new trial.

❖

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

Smith Freed & Eberhard is a mid-sized Portland law firm that has a primary focus on insurance defense litigation. The firm provides quality legal services in all areas of insurance, including personal injury, product liability, construction defect, business torts, first-party claims and subrogation. Our firm handles cases throughout the state of Oregon and Southwest Washington. For additional information, please visit our website at 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.



Medical Notes

Hidden Clues in the ER Report

Article provided by Health Cost Management

— by **Judy Kidd, R.N.**, and **Tami Rockholt, R.N.**, Nurse Consultants

Blood Alcohol Test



You may see the notation **ETOH** on the ER flow sheet or in the ER report. This indicates that an **alcohol test** has been performed. The amount of alcohol in one's system can

be measured by taking a sample of blood for analysis by a laboratory. The laboratory test can be referred to in a number of ways: as blood alcohol, ethanol, ethyl alcohol, or as ETOH. The amount of alcohol present in the bloodstream is measured in milligrams of alcohol per deciliter of blood, and is identified as "mg / dL." (A deciliter is one tenth of a liter, or 100 milliliters, a little less than one half of a cup). The legal driving limit in most states is 100mg / dL, noted as "0.1 percent;" some states have lowered the limit to 0.08 percent.

The following blood alcohol levels will produce the symptoms noted:

- 50mg / dL (0.05%) – sedation or tranquility
- 50 – 150mg / dL (0.05% – 0.15%) – a lack of coordination
- 150 – 200mg / dL (0.15% – 0.2%) – intoxication
- 300 – 400mg / dL (0.3% – 0.4%) – unconsciousness
- Greater than 400mg / dL (0.4%) – may be fatal

Narcan

If you see the notation **ih** on the ER flow sheet, look in the medication administration records to see if **Narcan** has been administered. The notation **ih** is medical shorthand for a reversible reaction. If the ER doctor suspects that the patient is under the influence of narcotics, he or she may order Narcan to

be administered by injection or IV. If the patient is under the influence of narcotics, Narcan will reverse the effects, hence the reversible notation. Examples of narcotics whose effects can be reversed by Narcan are:

Codeine, heroin, hydrocodone, methadone, morphine, oxycodone and narcotic cough medicines.

CPK Tests – Heart Attack or Air Bag Injury

Certain blood tests are read as "abnormal" after **damage has occurred to the heart**. When cells in the heart muscle die, the chemicals in the cells are released into the blood over a period of several hours. One of these chemicals (or markers) that is commonly used along with EKGs and other tests to diagnose a heart attack is Creatine Phosphokinase or **CPK**.

The normal range for CPK in the blood is from 35 to 190 units per liter. When a heart attack occurs, the CPK level begins to rise after about four to eight hours and typically remains elevated for two to three days. If the physician suspects that a patient in an automobile accident may have experienced a heart attack immediately before or after the accident, he or she may order a series of CPK tests spaced several hours apart to see if the duration of elevated CPK is indicative of heart attack.



Why else would a CPK test be ordered for a patient involved in an automobile accident? In the case of air bag deployment, there is potential for damage to the heart muscle and surrounding tissues due to the air bag impact. The physician will often order a CPK test to rule out heart damage due to air bag deployment. In the case of air bag injury, the CPK will rise quickly and fall off more quickly than in the case of heart attack. There have been many cases when patients have been discharged after relatively minor accidents, only to develop problems several hours later due to air bag induced damage to the heart. ❖

Membership Application for 2006-2007



SCAA Annual Membership Application

Membership Dues for the year September 1, 2006 to August 31, 2007

DUES ARE NOT PRO-RATED

Please print neatly, one application per person

Applicant _____ Company _____

Mailing Address _____ City _____ State _____ Zip+4 (Required) _____

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

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“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 19 — Be there!



DON'T FORGET TO RSVP!

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