

SCAA

January 2008

Vol. 35 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.”



Gail's Spot

— by **Gail Tuomi**, President

Hope everyone survived the bad weather in December and had a wonderful holiday season. I know there were lots of you who put in long hours to assist those who suffered damage.

My thanks to our Holiday Party Committee for organizing the best party ever. I deeply regret being unable to attend this year but had a family illness that consumed my time.

Make sure you mark your calendar for our up-

coming Bowling Tournament after our February meeting and our great Spring Seminar and Vendor Fair the 14th of March.

My term ends in June of this year. This means the board will move up with respect to their roles in our association. If you or anyone you know would be interested in committing to our association, please contact anyone on the board. We will be electing a new treasurer in May.

Speaking of treasurer... **Kathy Green** had to resign as treasurer and **Walter Pinkerton** of Western National Assurance will be taking her place for the remainder of the term. Thank you to Kathy for the time she devoted to our association and welcome Walter, who will be a much appreciated addition to our Board.

Look forward to seeing everyone at our January 18 meeting. ❖

Next Meeting of the SCAA

January 18, 2008

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

Program

Colin Murphy of Trinity ERD

Subject: Wood Rot

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!



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



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ON THE DOCKET FOR 2008

Date	Speaker/Topic
Jan 18 2008	SCAA Meeting Colin Murphy with Trinity ERD Wood Rot Found in Building Structures
Feb 15	SCAA Meeting Richard Floyd with Infrared Insights Using Infra Red Technologies to Detect Moisture in Buildings & Bowling Tournament
March 14	SCAA-TCAA Annual Spring Seminar & Vendor Fair See website for registration & other info
April 18	SCAA Meeting

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

Happy New Year to all adjusters and supporters of SCAA!!!

Well, to begin in 2008, first and foremost, our warm thoughts and prayers go out to our President, **Gail Toumi**. Gail is understood to be taking care of an ill family member. Gail we hope to see you soon!

As the New Year comes, it is a time to plan for 2008, set goals and to also reminisce about the past and the prior year, 2007. Most recently, for those who had an opportunity to attend the 2007 Holiday Party at the Sazerac Restaurant located at Hotel Monaco, I am sure you would agree the food was excellent, the venue was perfect and the Organizing Committee... **Elissa Sime** (Paul Davis Restoration), **Lizzy Adkins** (Country Financial, Past SCAA President) and **Michelle Shimek** (Maxcare of Washington) did a fabulous job! On behalf of the SCAA officers, we appreciate the time and energy of the committee for a job well done. I would also like to thank all the sponsors who contributed time, money and resources to making the Holiday Party a success.

There has been a change among officers with SCAA. **Kathy Green**, our treasurer, has resigned and **Walt Pinkerton** has made a commitment to join SCAA as treasurer. Our thanks are extended to Kathy Green for her time as treasurer and I am sure we will continue to see her at the meetings. Please welcome Walt Pinkerton as our new treasurer.

As we look at the agenda for the next few months, our January meeting is on January 18, 2008. Our agenda will include a case update from Tim Reid, Attorney at Law. Additionally, Colin Murphy of Trinity ERD will present information on wood rot, e.g. causes of wood rot, time to develop, factors, damages, etc. Most property adjusters have surely ran across claims involving wood rot and have heard the argument that the wood rot wasn't there a few weeks ago. If you plan to attend, please remember to RSVP through our website.

Looking further down the road into the New Year and into February, teams are presently being organ-

ized for the SCAA Bowling Tournament that is after the February meeting on February 15, 2008. Please remember that each team needs to have at least two adjusters per team. Then, later in the first quarter of 2008 — in March — please plan on attending the 2008 Spring Seminar and Vendor Fair. Mark your calendars for the date of Friday, March 14. The seminar will be in lieu of a March SCAA meeting. The seminar will be held at the Doubletree Hotel as in years past. Details on both events can be found inside the SCAA newsletter and on our website.

With respect to any special requests for topics and or speakers for the seminar, please send your ideas to jgomez@frontieradjusters.com.

Best wishes for a fun and exciting year! ❖

SCAA January Guest Speaker

Colin Murphy with **Trinity ERD** will be speaking on the details of **Wood Rot Found in Building Structures**

One of the premier roofing and waterproofing consulting organizations in North America, Trinity | ERD provides consulting services through forensic analysis, design, construction observation, and expert witnessing related to the exterior building envelope.

Even if your building appears to be in perfect shape, major problems may be lurking beneath the exterior, between the outside elements and your living space. A timely inspection by Trinity | ERD's skilled personnel can maintain your warranties and add decades to your building's life.

If a problem has surfaced, Trinity | ERD will identify the problem areas and provide the necessary solutions, while being there to ensure the building envelope repair is executed correctly.

Trinity | ERD is also committed to the contribution of information and other resources to the community of roofing professionals, in order to further the industry's interest and well being, through publications (such as our Pushing the Envelope newsletter) and educational seminars.



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

Insurers Must Use Caution to Avoid Acting in Bad Faith While Defending Under a Reservation of Rights

— by Jeffrey D. Eberhard

The Washington Supreme Court recently held an insurer acted in bad faith when it interjected its coverage evaluation into an underlying liability arbitration. The finding of bad faith prevented the insurer from denying coverage, thus requiring full payment of a settlement amount negotiated in the underlying liability action, even though the settlement included non-covered claims. The ruling raises questions as to what actions an insurer can take to protect itself while defending an insured under a reservation of rights.

The case is entitled *Mutual of Enumclaw Ins. Co. v. Dan Paulson Const.*, 169 P3d 1, and was decided by the Washington Supreme Court on October 11, 2007. In 1998, the Martinellis contracted with Dan Paulson Construction, Inc. (DPCI) to build a home. The Martinellis initiated arbitration proceedings against DPCI, alleging construction defect. Insurer Mutual of Enumclaw (MOE) agreed to defend DPCI under a reservation of rights. Prior to the arbitration, MOE filed a declaratory judgment action for the purpose of resolving which claims were covered by its policy. MOE informed DPCI and the Martinellis of the filing but failed to obtain service in the declaratory judgment action.

Shortly before the insured's arbitration hearing, MOE sent an ex parte letter to the arbitrator and subpoenaed the arbitrator to obtain information needed in its investigation of coverage. MOE concluded it needed to access information through the arbitrator because DPCI and the Martinellis refused to let MOE attend the private arbitration hearing. However, MOE did not formally request permission from the arbitrator to attend the hearing. In any event, MOE concluded it needed to take the above actions because the parties had agreed that any award would be a "lump sum" award, rather than the arbitrator's usual detailed, itemized award.

MOE's insurance policy excluded coverage for DPCI's work, but provided coverage for work performed for DPCI by subcontractors. MOE's letters to the arbitrator explained its coverage issue with

DPCI and solicited information as to which parts of any arbitration award MOE would be responsible. However, during the arbitration the parties settled for \$1.3 million, which DPCI assigned to the Martinellis along with DPCI's bad faith claim against MOE. The agreement included a covenant by the Martinellis not to execute against DPCI.

The court held MOE's actions of the subpoena and ex parte communications sent to the arbitrator before and during the arbitration hearing constituted bad faith. The court, citing earlier case law, stated:

"An insurer defending its insured under a reservation of rights has 'an enhanced obligation of fairness toward its insured' because of the 'potential conflicts between the interests of the insurer and insured, inherent in a reservation of rights defense.'"

The court found MOE's actions demonstrated "a greater concern for MOE's monetary interest than for DPCI's financial risk." MOE's timing and manner of interjecting itself into the arbitration proceeding interfered with the defense it was providing. Furthermore, MOE's earlier filing of the declara-

Claims Pointer

An insurer acts in bad faith when it demonstrates greater concern for its own monetary interest than the insured's financial risk. When defending an insured under a reservation of rights an insurer may be found in bad faith when it asks the fact finder to identify what claims are covered and what are not covered by the policy.

tory judgment did not "immunize [its] bad faith conduct" nor did it provide MOE "an unfettered license" to interfere in the insured's liability defense.

The court rejected MOE's argument (and the rationale of the Court of Appeals) that had it not investigated coverage in the manner it did, MOE had no alternative but to pay the entire arbitration award regardless of whether it was based on covered

claims. Instead, the court stated that the insured has the burden of proving how much of any settlement should be allocated to covered claims. While some could argue the court's decision requires an insurer to delay coverage actions pending a "fully and satisfactorily discharge [of] its duty to defend," the court did not limit the timing for an insurer's filing or prosecution of declaratory judgment when defending an insured under a reservation of rights. Although this leaves the door open for concurrent action, insurers should take extra precautions to ensure they are acting in good faith.

MOE had the opportunity to rebut the presumption of harm created by their bad faith and the reasonableness of the settlement amount, but the court held it failed on both issues. As a result, MOE was prevented from denying coverage and held responsible for the full settlement amount. ❖

— If you would like to be notified of these new cases, please send an email to 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.

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.

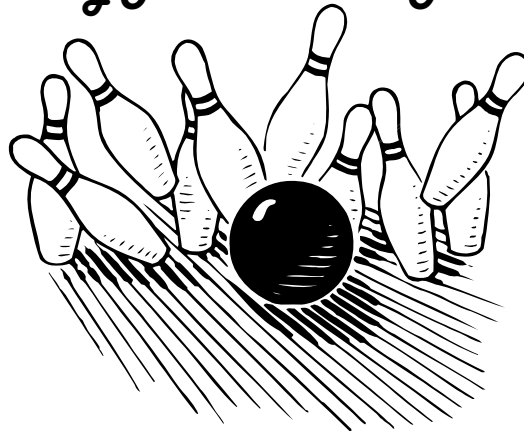
Attend the SCAA meeting on February 15, 2008 to hear this presentation.



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

