

SCAA

January 2009

Vol. 36 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.”



James' Headlines

— by James K. Gomez, SCAA President

Has anyone gotten tired of snow, cold weather and more snow? My January 1st was spent without water...what a way to wake up to the New Year. The community pump required replacement and all households were without water for the day. Perhaps non-weather related, but not the way to begin the New Year!

It seems like so long ago (last year) we attended our SCAA Holiday party. What a wonderful event. I would like to extend a special recognition to the planners and the sponsors.

Because of everyone's hard work, participation and thoughtfulness, the party was a huge success. Thanks to all the attendees—we were almost at full capacity.

Let's not forget our next meeting is scheduled for January 16, 2009 and our guest speaker is past-president, **Keo Capestany**. Keo will be speaking on the topic entitled, “Dancing with Bailón, Adjusting Across Linguistic Gaps”. Please see page 3 in this newsletter for a brief biography on Keo Capestany and a brief outline on his presentation.

Please note the Spring Seminar and Vendor Fair is still in the discussion and planning phase. More information will be available after the next meeting. Presently in the month of March, 22-25, the PLRB/LIRB Conference, a national event is scheduled to be held in Seattle. Many of our advertisers and sponsors have already committed resources to this national event. Visit www.claimsconf.org for more information.

(See **Headlines...** continued on page 3)



Next Meeting of the SCAA

January 16, 2009

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

Program

“Dancing with Bailón”

Keo Capestany, AIC, SCAA Past President

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 James Gomez at jgomez@frontieradjusters.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



ON THE DOCKET FOR 2008-09

Date	Speaker/Topic
Jan 16	SCAA Meeting "Dancing with Bailón" Adjusting Across Linguistic Gaps Keo Capestany, AIC, SCAA Past President
Feb 20	SCAA Meeting & Annual Bowling Tournament
March 20	SCAA Meeting

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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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Headlines... *(Continued from front page)*

On Saturday, June 06, the SCAA will be having a tennis outing. **Bob Jeans**, a past-president, is organizing the event. Presently we have three courts reserved for three hours. The event will be held at Edgebrook Swim & Tennis Club. A sign-up sheet will be circulating at the next meeting. If necessary, we have the ability to add a fourth court.

Please remember to RSVP and preferably a few days prior to the day of the meeting. However, RSVPs will be accepted up to the day of the meeting. With a proper headcount the Swedish Club and the caterer's can plan for the proper seating and correct amount of food.

Thanks again for coming and please remember to invite adjusters that you work with or are associated with!

See everyone at our next meeting on January 16, 2009! ❖

Spokane Adjusters Association (SAA)
2009 Annual CE Seminar
February 26, 2009

Spokane, WA
 Mukoawa Fort Wright Institute

For more info contact
 Kathy Fromont
 kfromont@mutualofenumclaw.com
 Or visit SAA online at
 www.spokaneadjusters.org



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

SCAA Luncheon Presentation

January 16, 2009

Dancing with Bailón

Adjusting Across Linguistic Gaps

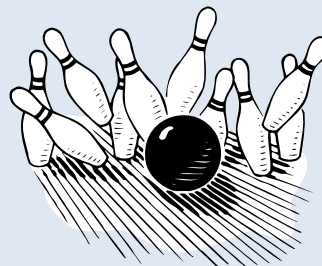
Keo Capestany, AIC, SCAA Past President

- While not knowing languages as a claims adjuster is not negligence per se, not knowing about interpreters could possibly be. Imagine being involved in an accident while visiting Lower Slobbovia.
- Everybody is capable of playing piano but very few could do it as well as Beethoven did who, nevertheless, could not dance.
- Two cases of insured's wealth in jeopardy because of the cavalier handling of the linguistic aspect of claims under their policies.
- How a convicted drug dealer could impact some of your files: The significance of *United States v. Gilberto Bailón* 429F.3rd 1258.
- How to show due diligence in the selection of interpreters and avoid allegations of having improperly handled these kinds of cases.

Keo Capestany, AIC, a past president of SCAA, has the equivalent of a Bachelor in Administrative Law from the University of Havana and an AA from Seattle Community College. He was a claims representative and later a claims supervisor for the Hartford Insurance Group and then independent adjuster. His claims career totals 25 years.

He has written hundreds of columns for our newsletter and has had articles published in Claims and other periodicals. He has lectured about negotiations, human relations and communications to insurance groups in four states and has made over 60 presentations on language issues to colleges, business groups and others all over the state of Washington.

After retiring in 1998 he started a successful career as a court certified interpreter. Since 2000 he has been one of a handful of Federal interpreters active in the Seattle area.



Get Ready for BOWLING!

SCAA Bowling
 Tournament happening in
 February!

Contact Travis Simpson of CRDN for more info:
travis.simpson@crdn.com

Case Study



Bad Faith Claim Can Exist Solely for Procedural Errors; Actual Harm Required

By Jeffrey D. Eberhard

It is now well-established law that insurers have a duty to deal with the interests of their insured fairly and conduct the insured's affairs in good faith. If insurers breach that duty, they can be held liable for damages. This is an evolving area of law and one where courts are often asked to extend the acts that will result in liability. In the case of St. Paul Fire & Marine Insurance v. Onvia, Inc., the court was asked to determine whether breaches of this duty that are purely procedural may be enough for an insured to bring a claim against an insurer. The court held that procedural breaches were enough, but with an important caveat—plaintiffs must prove actual damages.

Plaintiff Responsive Management Systems (RMS) brought a class-action suit against Defendant Onvia, Inc. for engaging in “fax blasting,” or the large-

scale delivery of unsolicited advertisements via fax machines. Onvia faxed a copy of the complaint, a tender letter, and a notice form to its insurance company, St. Paul Fire and Marine Insurance Company (St. Paul) in February 2005. After no response from St. Paul, Onvia resent the materials twice. Finally in November 2005, St. Paul sent a letter to Onvia denying coverage and defense. Onvia went on to defend itself in the lawsuit brought by RMS.

RMS and Onvia settled their lawsuit for \$17.5 million. Two conditions of their settlement agreement were that: (1) RMS agreed to execute the judgment only against St. Paul; and (2) Onvia assigned its rights against St. Paul to RMS. As a result of these conditions, St. Paul brought this action against RMS, seeking a declaratory judgment holding that it was not liable.

The trial court dismissed RMS's claims that: (1) St. Paul had breached its duty to defend, indemnify, or settle the underlying action against Onvia; and (2) that St. Paul committed bad faith when it refused to defend Onvia. The only claim remaining to be decided by the Washington Supreme Court was whether RMS could pursue claims of bad faith and violations of the Washington Consumer Protection

Membership Application for 2008-2009



SCAA Annual Membership Application

Membership Dues for the year September 1, 2008 to August 31, 2009

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

Claims Pointer: Insurers owe a duty of good faith to insureds in both first-party and third-party coverage. Breaches of that duty that are purely “procedural,” such as untimely communication with the insured, can be brought regardless of any duty to indemnify, settle or defend. However, damages under such a claim will not be presumed and are limited.

Act against St. Paul based solely on procedural missteps. St. Paul argued that without a finding that it had a duty to defend Onvia’s claim, it could not be held liable for procedural errors in processing Onvia’s claim.

The court disagreed with St. Paul. It reasoned that insurers have a “duty of good faith” that applies to both first and third-party coverage. One requirement of this duty is that insurers “act with reasonable promptness in investigating and communicating with their insureds following notice of a claim and tender of defense.” This duty “permeates the contract” and is not extinguished when a particular benefit of the insurance contract (e.g. duty to defend, indemnify) is unavailable to the insured. Therefore, a third-party party insured can bring a cause of action for bad faith claims even if there is

no duty to indemnify, settle or defend. However, claimant still has the burden of proving “actual harm.” Damages will not be presumed for purely procedural claims of bad faith. Further, damages awarded under such claims are limited to losses Plaintiff incurred as a result of the bad faith, as well as general tort damages. ❖

— Full Case Available at: <http://www.courts.wa.gov/opinions/index.cfm?fa=opinions.showOpinion&filename=803595MAJ>

— 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.

Soha & Lang Coverage Alert

Criminal Acts Exclusion Precludes Coverage After Guilty Plea

— by Paul M. Rosner, J.D., CPCU

In *Allstate Ins. Co. v. Thornton*,¹ Division II of the Washington Court of Appeals held that the criminal acts exclusion in the liability section of a mobile home policy issued to the parents of a seventeen-year old who plead guilty to a felony in connection with a fire precluded coverage under the policy.

Background

Allstate insured Mr. and Mrs. Thornton under a mobile home policy. The Thornton’s seventeen-year-old son, Nicholas Thornton, caused a fire while smoking in a barn in Ridgefield, Washington. Ashes from his cigarette fell on some hay in the barn, where he was trespassing, and he walked away without trying to put out the fire. Thornton later pleaded guilty to first degree reckless burning, which is a felony offense. In his guilty plea, he admitted that he “recklessly damaged a barn by knowingly causing a fire” to the barn.

The owner of the barn sued the Thorntons. The complaint alleged Nicholas Thornton entered the Barn without permission, allowed the cigarette ashes to fall on the hay, and then failed to extin-

(Continued on page 6)

The President’s Cup 2009 SCAA Tennis Tournament

This coming year, we are dedicating the tennis tournament to our association's president. Coincidentally, he and our vice president will be participating.

Please consider joining James Gomez, Dean West and others on SATURDAY, JUNE 6, 2009 at the EDGEBROOK SWIM AND TENNIS CLUB in Bellevue for 3 hours of indoor afternoon tennis, with an emphasis on fun, food, beverage, prizes in a doubles round robin format for 16 people. Yes, this is before the golf tournament and it is on a Saturday.

You will see a registration form in January and that will provide all the details of our event. Since there are already several individuals very interested in participating, we would like to hear from you before you see the registration materials. Let us know your interest by calling Bob Jeans (Tournament Chairman) at 425/396-4344 or send an email to bob.jeans@jmwsettlements.com. ❖

Cause & Origin... *(Continued from page 5)*

guish the embers, which caused the barn to burn down. The Thorntons settled with the owner of the Barn and assigned their claim under the Allstate policy to him.

The Declaratory Relief Action

Allstate filed a declaratory relief action asking the court to determine its defense and indemnity obligations under the mobile home policy issued to the Thorntons.² The Allstate policy contained the following criminal acts exclusion:

We do not cover any . . . property damage which may reasonably be expected to result from the . . . criminal acts of an insured person . . .

The claimant argued that the exclusion should not apply because: (1) there was no proof that Thornton intended the damage that occurred; (2) there was no proof he reasonably expected the damage to occur; and (3) a reckless act was not the type of serious criminal act that would trigger the exclusion.

Holding

The court, citing to a Washington Supreme Court decision from 1997, *Allstate Ins. Co. v. Peasley*, 131 Wn.2d 420, 932 P.2d 1244 (1997), held that the criminal acts exclusion was not limited to intentional acts. Further, after reviewing the definition of recklessness in the Washington Criminal Code, the court held that Thornton's guilty plea established that the property damage was reasonably expected to result from his criminal act:

As in *Peasley*, the recklessness of Thornton's acts establishes that he knew about and yet disregarded a substantial risk that damage would occur to the barn when he dropped his cigarette ashes into the hay in the barn and failed to extinguish them.

Accordingly, the resultant property damage to the barn and its contents was "reasonably expected" within the meaning of the policy's exclusionary clause.

The court concluded by holding that "first degree reckless burning, to which young Thornton pleaded guilty, clearly falls under the plain language of his parents' insurance policy's "criminal acts" exclusion, thus precluding coverage for Thornton's damage to [the] barn and its contents." Therefore, the court said that it did not need to address the claimant's additional argument that reckless conduct was not the type of "serious" criminal act that triggers an insurance policy's criminal act exclusionary clause. ❖

¹ 2008 Wash. App. LEXIS 2641 (Wash. Ct. App. Nov. 12, 2008) (unpublished).

² In a declaratory relief action, the court determines the rights of the parties to the action under the policy without awarding damages or ordering equitable relief. The Washington Supreme Court has repeatedly held it is appropriate for insurance companies to file declaratory relief actions to resolve coverage issues. See e.g. *Woo v. Fireman's Fund Ins. Co.*, 161 Wn.2d 43, 164 P.3d 464 (2007). However, such coverage actions may be pursued while the underlying case is pending *only* when there is *no* potential prejudice to the insured. *Mutual of Enumclaw v. Dan Paulson Constr, Inc.*, 161 Wn.2d 903, 169 P.3d 1 (2007).

— If you have any questions concerning this article or would like a copy of the decision, please contact Paul Rosner, J.D., CPCU, of Soha & Lang, P.S. at (206) 654-6601.