

SCAA

June 2007

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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



Well, it is time to pass the gavel. My term as SCAA president has come to an end. It has been a wonderful experience, and I appreciate all the assistance and guidance I received from everyone. Thanks especially to all our vendors who continue to support our organization each and every year. We appreciate all the time and effort you devote to SCAA.

I would also like to thank everyone who supported Page Ahead. In this age of television

and the internet, it is even more important to foster the love of reading in the upcoming generation. The ability to read is essential to the development of critical thinking, an important skill in this global environment we now live in. Plus, there is nothing that compares with reading a good book!

Our past president's luncheon was an enjoyable event, although, unfortunately, some of those we are used to seeing at this annual gathering, were unable to attend: **Lee McGonagle, Merton Buckley, Dick Gaither, Sharon Setzler, Milton Gustafson, Eugene Key, Thomas Ewing, Wiletta Markey, William Markey, Donna Silver, Annette Grace and Lizzy Adkins.** Get well cards were delivered to Mr. McGonagle who is recovering from a bad fall and Ms. Silver who was hospitalized the night before the meeting and is now recovering at home.

Our legal speaker, **Tim Reid**, presented the highlights of the new Insurance Fair Conduct bill recently signed into law by Governor Gregoire. The full impact of this legislation will reveal itself in the coming months. [See Case Study article above.]

Coming up on June 15 is the annual Golf and Tennis tournaments. The golfers are hoping for

(See Julz Jewels... continued on page 3)

Still running his race

Stanwood High School sophomore Matt Howard had settled on running as his chosen sport. A paralyzing accident hasn't changed that decision.

Matt Howard is the son of Blake Howard, long time employee of Grange Insurance and SCAA member. To read the complete story as printed May 13, 2007 in the *HeraldNet*, please visit the following website:

[www.heraldnet.com/
stories/07/05/13/100loc_alrun001.cfm](http://www.heraldnet.com/stories/07/05/13/100loc_alrun001.cfm)

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ON THE DOCKET FOR 2007

Date	Speaker/Topic
Sept 21	SCAA Meeting — Membership Drive Time to renew your dues!
Oct 19	SCAA Meeting
Nov 16	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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May Meeting Notes

— by James K. Gomez, SCAA Secretary

The May meeting was in honor of our past presidents and there was a very large turnout. Thank you past presidents!

Our Vendor of the Month for May was **V & M Restoration**.

We had two \$25.00 drawings at the meeting and two winners. The winner for the Adjuster drawing was **Debra Jette** with Grange Insurance. The winner for the Vendor drawing was **Patricia Mann** with MDE Forensic Laboratories. Patricia donated her winnings to the MS HAMS Team! Thank you Patricia! Everyone be sure to place your business cards in the appropriate baskets to participate in the adjuster and vendor drawing.



There was a winner for the “**Blue Bucket**” drawing this time... hallelujah! **Trevor Arnold** with Engel Martin & Associates was present and won \$200!

A special thanks and recognition to our vendors who provided door prizes, i.e. gift baskets, gift certificates, other prizes, etc. **Catherine Borstead** with Grange Insurance was drawn to win a gift from **MDE Engineers**. **Mark Jensen** also with Grange Insurance received a gift certificate from **Paul Davis Restoration**. **Thanks again Vendors!**

Our guest speaker was Dale C. Mann, with MDE Forensic Laboratories was unable to make the meeting. We did have a good presentation by Tim Reid on the new Insurance Fair Conduct bill recently signed into law by Governor Gregoire.

Below is a pic of our new officers being installed.



The following were in attendance at the Past President's Luncheon:



*Al McMahan 1965-66	*Nancy Bryant 1989-90
*Joseph Whitlow 1968-69	Sue Dahlin 1995-96
Gordon Everett 1977-78	Kathy Branett 1997-98
Norman McFarland 1979-80	Keo Capistany 1998-99
Frank Lucarelli 1984-85	*Steve DeKoekkoek 1999-00
*Walt Stolle 1985-86	*Carol Seepersad-Green 2000-01
Robert Jeans 1987-88	Fred Biehl 2001-02
Larry Garlinghouse 1988-89	Janice Howard 2002-03

(* gift card winner)

Past President Nancy Bryant would like to thank the SCAA Board for the Target gift card she won while at the luncheon. She appreciated being one of the winners!

Julz Jewels... *(Continued from front page)*

fair weather, but the tennis players need not be concerned!

Here's wishing the incoming SCAA Board, **Gail Tuomi, James Gomez, Dean West** and **Kathy Green** an exciting and fulfilling year. Our next meeting will be September 21, 2007. I'll be looking forward to seeing everyone there. ❖

Case Study

New Legislation Exposes Washington Insurers to Punitive Damages & Greater Risk of Attorney Fees

— by Jeffrey D. Eberhard

Washington has long been one of the few states in the country which disallows juries from awarding punitive damages as contrary to public policy. Upon passage of the so called “Insurance Fair Conduct Act” (ESSB 5726), however, the 2007 Washington state legislature has, in effect, bypassed this long-standing public policy in first party actions against insurers. The legislation, signed in to law by Governor Gregoire on May 15, 2007 and set to go in to effect on July 22, 2007, creates a new statutory cause of action for first party claimants who are unreasonably denied a claim for coverage or payment of benefits, or whose insurer has violated specified claims handling regulations.

Washington insureds have long been able to obtain attorney fees and costs for first party suits in breach

Claims Pointer

New Washington legislation exposes insurers to punitive damages up to three times the amount of actual damages (without any statutory limit) from first party claimants for the unreasonable denial of claims for coverage or payment of benefits or the violation of specified claim handling administrative regulations. Carriers operating in Washington should review their claims handling policies and procedures for compliance with the specified administrative rules and the new 20-day notice provision found in ESSB 5726.

of contract or bad faith actions against their insurers. They also have even been able to obtain treble damages “punishment” awards for actions brought under the Consumer Protection Act (CPA). However, the treble damages under the CPA were statutorily limited to a maximum of \$10,000. The new legislation makes the award of attorney fees mandatory any time the court finds a violation of the specified regulations or unreasonable denial of a claim or payment. In addition, the punitive damages award has no statutory limit. As a consequence, the new law is expected to significantly increase actions by first party claimants against their insurers

as well as the cost of insurance to consumers in Washington.

Specifically, ESSB 5726 provides for damages upon a finding that an insurer unreasonably denied coverage or payment, or upon a finding that the insurer violated one of five rules adopted by the Office of the Insurance Commissioner codified in chapter 284-30 of the Washington Administrative Code (WAC). The five administrative rules mentioned in the statute regulate insurer’s actions in the areas of: 1) specific unfair claims practices (WAC 284-30-330); 2) misrepresentation of policy provisions (WAC 284-30-350); 3) failure to acknowledge pertinent communications (WAC 284-30-360); 4) standards for prompt investigation (WAC 284-30-370); and 5) standards for prompt fair, and equitable settlements (WAC 284-30-370).

Upon the finding of an unreasonable denial of coverage or payment, or any violation of the administrative rules mentioned above, the law requires that the court award; 1) the actual damages sustained; 2) reasonable attorney’s fees; and 3) actual statutory litigation costs, including expert witness fees. In addition, the law grants the court discretion to increase the total award of damages to an amount up to three times the actual damages suffered by the plaintiff.

Procedurally, the law requires a claimant to provide 20 days written notice to both the insurer and the state’s Office of the Insurance Commissioner before filing suit under the law. Notice may be provided by regular mail, registered mail, or certified mail. Notice under the statute is deemed received three business days after mailing, and the statute of limitations for the action is tolled during the 20 day notice period. The notice must provide for the basis of the cause of action, however, if the insurer does not resolve the claim during the 20-day period, the claimant may bring suit without further notice.

Due to the expanded risk of mandatory attorney fees and the new punitive damages exposure, carriers operating in Washington will want to review

(See Case Study... continued on page 5)

RGLForensic Accountants
and Consultants**Key Elements of
Business Income Loss
Calculations Part IV**— by **Russ Matheson, CPA, CFE**

The focus of last month's column was on sales projections and the types of documents and information that can be used to forecast sales. Part IV focuses on mitigation and how it can impact Business Income loss calculations. Mitigation involves efforts made by the insured to reduce the Business Income loss. For example, if an insured relocates to a temporary location and continues operating this will likely mitigate (reduce) the Business Income loss. In considering mitigation there are several questions that can be asked:

1. Was anything done to reduce the loss?
2. Could anything have been done to mitigate the loss?
3. What is the financial impact of the mitigation?
4. Will the loss be made up in the post loss period either through normal or stepped-up operations?

Oftentimes, the actions taken by the insured to reduce the loss are centered on protecting long-term business interests, rather than reducing the claim to the insurance company. Even though most policies have a "duty to mitigate" clause, many insured's will choose to do everything they can to resume operations (even partially) as soon as possible. However, occasionally an insured will not attempt to mitigate the loss when clear alternatives exist. In the early stages of the claim it is wise to reference the specific policy language, which explains the obligation to mitigate, and the consequences if this requirement is ignored.

Mitigation in Business Income losses is about avoiding or minimizing the suspension of operations. This in turn reduces the revenue loss, which lessens the Business Income loss. Many times mitigation efforts temporarily increase the insured's expenses. These additional costs may qualify as Expediting Expenses or Extra Expenses. Examples of

these expenses include: temporary office space rent (and related relocation costs); temporary equipment rental; above normal wage expense; a portion of some types of advertising expenses; overtime premium paid to expedite repairs; and express freight expense (as opposed to normal freight expense).

In my experience expediting costs are those additional out-of-pocket expenses that the insured incurs during the period of restoration that serve to reduce the Business Income loss, and that would otherwise be payable. Recovery of the expediting costs is typically limited to the amount of Business Income loss they serve to reduce. Extra Expenses are typically an increase in normal business expenses, sometimes similar to expediting costs, but usually subject to a separate limitation. Extra Expenses do not necessarily need to reduce the Business Income loss to be recoverable. Typically, when it comes to Extra Expense claims, my role as an accountant is to understand the nature of the expense, determine that it is indeed "extra," document when it was incurred and confirm the amount paid by the insured. This information is then passed along to the adjuster who determines the applicability of the insurance coverage with respect to the claimed expenses.

(See **Key Elements...** continued on page 6)

Case Study... (Continued from page 4)

their claims handling policies and procedures for compliance with the specified administrative rules and the new 20-day notice provision found in ESSB 5726. ❖

— 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.

Key Elements... *(Continued from page 5)*

In reviewing Business Income loss claims it is crucial to check for duplications between claimed normal business expenses and claimed Extra Expenses. Oftentimes the insured will inadvertently claim an additional out of pocket cost as both a continuing expense and an Extra Expense. On the surface this cross-check might seem like a straightforward task; however, it is oftentimes a fairly complex process due to the accounting practices followed by the insured. If an adjuster is not familiar with how to probe into such issues it may be a good idea to consult with a forensic accountant. ❖

— *Russell Matheson CPA, CFE, is a Director in RGL's Seattle office. He has more than 20 years forensic accounting experience, including investigative auditing, financial research, damages evaluation, and litigation support. He may be reached at rmatheson@us.rgl.com or (206) 682-6500.*

— *RGL – Forensic Accountants & Consultants is an international firm with offices around the world. In the arena of Insurance Support, one of our core services is reviewing insurance claims and establishing a reliable basis on which to decide how much is owed, given the coverage interpretations provided to us by the insurance carriers or their representatives. RGL works exclusively for insurance companies, often in close partnership with loss adjusters, to ensure that a claim's factual and financial bases are sound.*

Mechanism of Action:

Low back pain is thought to be related to inflammation following an injury to the disc. Radicular pain is thought to be due to a mechanical compression and / or a chemical irritation to the nerve root. Corticosteroids are used because of their known anti-inflammatory properties.

All approaches are now performed with the aid of fluoroscopy. The performance of ESI without fluoroscopy is not recommended as studies have shown that misplacement of the needle can range from 26% to 39%, even with an experienced physician.

There are three major point-of-entry options to perform an ESI:


- **Interlaminar:** The needle is introduced directly into the epidural space. This is a less specific approach in its location and distribution of the steroids.
- **Caudal:** The needle is introduced through the sacrococcygeal ligament located over the sacrum into the epidural space. This, like the interlaminar approach, is a less specific approach.

Transforaminal: The needle is introduced into the specific nerve root foramen at a specific level, i.e.: Left L4 nerve root. The transforaminal approach is probably now the most commonly used technique because of its specificity and effectiveness.

A variation of the transforaminal injection is a “selective nerve root block,” which is even more specific because it uses a smaller amount of the steroid, and avoids overflow to other nerve roots. With multiple-level pathology, the physician may elect to utilize the interlaminar or caudal approach.

Clinical Perspective:

- **Lumbar radiculopathy:** The use of ESI in documented lumbar radiculopathy is now an accepted community standard although there is still a lack of randomized clinical studies. The role of ESI in the treatment of lumbar radiculopathy with disc protrusion / herniation should not be used in isolation, but as part of a comprehensive non-operative treatment plan including an aggressive functional restoration program.



Medical Notes

Lumbar Epidural Steroid Injections

Article provided by Health Cost Management

— by *Franklin Wong, MD, Physical Medicine & Rehab*

Injections of corticosteroids into the epidural space were first recorded in 1952 and have now become a routine treatment option for radicular and low back pain. Since then, over 40 clinical trials evaluating Epidural Steroid Injections (ESI) have been published, but reported “success rates” have varied from 18% to 90% effective. Many of the studies done prior to 2000 were done without the benefit of fluoroscopic guidance; this procedure flaw probably affected the overall success rate. Since 2000, ESIs are routinely done with fluoroscopy to confirm needle placement.

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 _____

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

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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

Medical Notes...

- Spinal stenosis: The use of ESI does appear to provide benefit for patients with a component of claudication (lameness) associated with their spinal stenosis.

Axial pain: The growing use of ESI for axial pain without radicular pain is controversial and its role is yet to be clarified. In the theory, the biochemical mechanisms that play a role in radicular pain are responsible for axial pain and thus should respond to corticosteroids.

Risk and Complications:

In addition to the usual risks and complications of such a procedure, the physician needs to also be aware of the potential of:

- Transient substantial hyperglycemia (elevated blood sugar)
- It has yet to be determined what is the accepted maximum number of ESIs that a patient can receive in one year, and what is the reasonable time period between injections. If done with fluoroscopy to as-

sure proper needle placement, no further injections are clinically indicated if there is no positive response following an injection.

Chronic steroid use: The physician does need to monitor the amount of steroid being administered and should also take into account that the patient may also be receiving other corticosteroid injections for their anti-inflammatory properties.

Summary:

ESIs do appear to provide short-term effective pain management for documented disc protrusions / herniations with nerve root compression, but they should not be used in isolation, but as a part of a comprehensive non-operative program.

The role of the repetitive use of ESI in spinal stenosis, axial pain, discogenic pain, and chronic pain syndromes is less clear and controversial. ❖



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