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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.”



Case Study

Bankruptcy If Plaintiff Fails to List Injury Claim, He Loses Claim — by Jeffery Eberhard

When someone files for bankruptcy, among the myriad of papers that they must file with the court are schedules listing their assets. These schedules, although often overlooked, may be the key to barring a lawsuit.

In Cunningham v. Reliable Concrete Pumping, Inc., 108 P.3d 147 (Wash. Ct. App. Div. I 3/7/05), the court addressed the importance of a person listing all potential claims in their bankruptcy schedules.

In May 2000, Richard Cunningham and his wife Marci Cunningham filed for bankruptcy. The Bankruptcy Code requires debtors to disclose all possible lawsuits that they could bring, even if the likelihood of success is un-

known. The disclosure must be made in writing, through the use of “schedules,” and filed at the same time as the bankruptcy petition. The Cunninghams, however, did not disclose a personal injury claim that they had against Reliable Concrete Pumping, Inc., arising out of a 1997 workplace injury. The bankruptcy court discharged the Cunninghams’ debts.

Eleven days after the discharge, the Cunninghams sued Reliable for the 1997 workplace injury. Reliable moved for summary judgment, arguing that the Cunninghams’ failure to disclose the claim in their bankruptcy schedules barred them from bringing this lawsuit. The trial court granted summary judgment for Reli-

(See Case Study... continued on page 3)

Next Meeting of the SCAA

May 20, 2005

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

Program

Past President’s Day

Menu

To be announced

Cost

\$10 Members \$18 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

Date	Speaker/Topic	Menu
May 20	SCAA Meeting Installation of Officers Past President's Day	TBA
June 3	SCAA Annual Golf Tournament See flyer on page 13	
Sept 16	SCAA Meeting Membership Drive	TBA

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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Case Study... *(Continued from front page)*

able and the Cunninghams appealed.

Division I of the Washington Court of Appeals affirmed, holding that the Cunninghams' failure to disclose the personal injury claim in their schedules was an inconsistent position from their lawsuit against Reliable. Although there was a question of fact as to whether the Cunninghams told the trustee about the claim during a meeting, the court found that the Cunninghams' failure to disclose the claim in their schedules—alone—was enough to bar their claim against Reliable. The court concluded that the bankruptcy court's discharge of the Cunninghams' debts was an implicit acceptance of their position that they did not have any assets that could be liquidated for the benefit of their creditors. The court also found that the Cunninghams received the benefit of complete discharge of their debts from their inconsistent position, even though upon learning of the Cunninghams' claim against Reliable the trustee re-opened the bankruptcy case and revoked her finding of no distribution. ❖

Claims Pointer: Where a plaintiff that recently went through bankruptcy files a lawsuit for an incident that occurred before the bankruptcy, check to see if the plaintiff listed the claim in its bankruptcy schedules. If the claim was not listed in the schedules, the plaintiff may not be able to maintain a lawsuit.

— *If you want to be notified of new cases, please send an email to caseupdate@smithfreed.com or visit our website at www.smithfreed.com.*

— *This case update 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 email without seeking professional counsel.*

Loss of a Member...

It has recently come to our attention that **Past President James Scott (1963-64)** passed away July 26, 2004. Per his widow, Sally, James was very proud of his years with SCAA. There were over 100 people in attendance at his memorial. We will miss you, James.



Blue Bucket Drawing



April's winner was **Kent Hansen** of Quakenbush & Hansen, HOWEVER, since Mr. Hansen was not present at our meeting, the pot increases to \$100.00 for May. Will you be the next winner? Remember, you must be present to win!

WINNERS FOR APRIL

\$50 Adjuster/Member Drawing

Yolanda Wang
Grange Insurance

\$25 Adjuster Drawing

Catherine Borstad
Grange Insurance

\$25 Vendor Drawing

Jeff Carlson
V&M Restoration, Inc.

2005 SCAA SPRING FEVER BOWLATHON

Best Bowler: Ryan Meekma, Custom Commercial Fabric Restoration Services

Winning Team: Clint Hedin, Floor Coverings International - Shelly Pond, ServiceMaster of Seattle - Carla Sneed, ServiceMaster of Seattle

Last Place: Ryan Miletich, SIR Construction - Vicki Milby, Marriott ExecuStay - Blane Weber, Residence Inn - Shelly Butler, CRDN

Lowest Score: Michelle David, Argus Pacific

Highest Score Adjuster: Phil Stahley

Lowest Score Adjuster: Jason Fehr

Help Wanted

Local independent adjusting company is looking for a self-starter with an interest in aviation to handle aviation claims. Call 425/898-8500.

Economic Insights

— by C. Donald Smith, Smith & Co. LLC, Forensic Accountants & Claims Consultants

What to ask for to evaluate a Claimants Loss of Income

While the causes of the loss may differ, the results can be the same. Accordingly, the documentation to evaluate such a loss is somewhat standard.

The following is recap of the types of information that should be requested from the claimant.

1) Brief History of Business

- a. Date founded
- b. Business Fiscal Year end
- c. Physical Location (s)
- d. Good produced or Services Provided
- e. Main Suppliers
- f. Main Customers
- g. Normal Operating Hours and days of the week.

2) Revenue – Projected and Actual

- a. Monthly income statements, preferably prepared by an independent CPA for both the period of interruption plus at least three years prior.
- b. Income Tax Returns for all the interruption period and three years prior.
 - i. 1040 – Sole Proprietor
 - ii. 1065 – Partnership
 - iii. 1120 – Corporation
 - iv. 1120S – Sub Chapter S Corporation
- c) All state and local Sales and or Business and Occupation Tax Returns for the period of the interruption and three years prior.

Adjustments

If you have any questions and/or any “Adjustments” please contact **Jay Jared**, *Cunningham Lindsey* at
 Phone: 425/672-0160 Fax: 425/672-0106
 Email: mjared@na.cunninghamlindsey.com

However, if the claimant for what ever reason not supply historical tax forms, then the following should be requested:

- d. Monthly Bank Accounts
- e. Sales Tax Returns
- f. Financial Statements not prepared by an independent CPA
- g. Accounting books and records (i.e. General Ledger)
- h. Accounting Software printouts
- i. Sales records or receipts on a daily basis or at least a monthly basis.

In addition, to the extent possible, the additional items that may assist in evaluating the claimant's expectations of sales during the interruption period should be considered.

- f. Sales Forecasts
- g. Business plans
- h. External Data – Names and addresses of Trade Associations, Industry Information and Department of Commerce Statistics. This is to obtain insights as the Macro economic expectations and actual levels of growth of like business.

3) Documentation of Expenses – Historical and Necessary Continuing

- a. Production reports for the period before the loss (at least a year, preferably three years).
 - i. This can come in a variety of modes. Number of billable hours worked by month (Service Industry), Units produced (Manufacturing), or what ever is the best common denominator to judge the level of pre and post loss operations.
- b. Operating Expenses
 1. Payroll and Payroll Tax Records for all employees – for the loss period and three years prior.
 2. Lease agreements in effect any time during the period of the loss.
 3. Franchise agreements (if applicable)

(See Economic Insights... continued on page 5)

Economic Insights... *(Continued from page 4)*

4. Copy of utility bills – during the interruption period
5. Loan agreements to verify interest expenses
6. Contractors estimates for repairs and actual invoice for this work

4) Expenses to Mitigate Damages – It is incumbent upon every claimant to mitigate his/her damages. Accordingly in so doing, they will incur expenses that otherwise would not have been incurred. This can be exemplified by the Claimant renting a temporary location to commence some level of operations.

- a. Obtain a listing of the types of such extra expenses incurred, the vendor, the amount of the expense, the date it was incurred, along with an explanation as to how it mitigated the claimants loss of income.
- b. Obtain detailed listing of like expenses to serve as a basis to determine if these Extra Expenses are also being claimed in Necessary Continuing Expenses. ❖

— C. Donald Smith, MBA, CPA, CVA, CFE has been a supporting vendor of SCAA for many years. He can be reached at 253/383-3800; or visit him on the web at: www.forensic-accountant.org. See his ad in this newsletter on page 6.



“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!”
May 20 — Be there!



OCAA Annual Golf Tournament
Scramble with Two Shotgun Starts
7am & 1pm
Rock Creek Golf Course, Portland, OR
Friday, July 22, 2005
 Visit www.oregoncasualtyadjusters.org

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