



May 2008

Vol. 35 No. 9

## 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.”*

### Comments from the VP

— *by James K. Gomez, SCAA Vice President*

Thank you to everyone who attended the April Vendor Appreciation meeting. A prize drawing was held for all vendors who returned their invitation. **Gail Toumi**, our President, did the shopping and provided many nice prizes for the vendors.

Our new treasurer nominee, **Jim Peterson** was recognized and also got first hand training at working the meeting registration desk. Thanks Jim and congratulations.

Our guest speaker was Patrick DeLangis with Matson, Driscoll & Damico. Pat spoke on employee dishonesty and employee fraud cases. A hand out was provided that lists “*what to look for*” and the “*documents to request*” when handling these types of cases. Please let me know if you need a copy of Pat’s handout. I would be glad to email you a copy. Thanks Pat for the great presentation.

We had two \$25 drawings. Our vendor drawing went to **Matthew F. Morgan** with RGL Forensic Accountants and Consultants. Our adjuster drawing went to **Catherine Borstad** with Grange Insurance. Congratulations are in order!

It’s seems so long ago we had a Blue Bucket Winner.....but for this meeting we had a winner.....Past President **Sue Dahlin** was our winner and went home with the prize of \$100.00. Congratulations Sue!

Our next and last meeting will be on May 16, 2008. The meeting will honor our past presi-

*(See April Meeting... continued on page 3)*

#### Next Meeting of the SCAA

**May 16, 2008**

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

#### Program

**Paul Rosner** with *Soha & Lang* on **Depreciation & Recent Case Law Relative to “Actual Cash Value”**  
**SCAA Past President’s Luncheon**

#### 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 Gail Tuomi at [gail.tuomi@grange.com](mailto: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](http://www.seattleadjuster.org)



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# ON THE DOCKET FOR 2008

Date	Speaker/Topic
May 16	SCAA Meeting Paul Rosner with <i>Soha &amp; Lang</i> on Depreciation & Recent Case Law Relative to "Actual Cash Value" SCAA Past President's Luncheon
June 7-8	American Cancer Society RELAY FOR LIFE Sign up NOW!
June 20	SCAA Annual Golf Tournament

### 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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## Run for a Good Cause!

Can you believe that more than 1.3 million new cancer cases are expected to be diagnosed in the United States this year? Those are staggering statistics, but there is hope. Each of us can do something to save lives and help those already fighting this disease. That's why SCAA has decided to take action against cancer by supporting the American Cancer Society Relay For Life® event right here in our community.

Relay For Life is an overnight event that brings our community together to help support the American Cancer Society and its lifesaving mission to eliminate cancer as a major health problem. The Society works hard every day to prevent cancer and save lives by supporting groundbreaking research, affecting public policies that protect us from cancer, and educating people on how to prevent or detect cancer early. The Society helps people with cancer right here in our own community. And our efforts at Relay For Life can help the American Cancer Society to keep working toward a cancer-free future.

SCAA would like to invite you to show your support in the ongoing fight against cancer by joining us for this year's event. Please visit our website at [www.seattleadjuster.org](http://www.seattleadjuster.org) and click on the Relay For Life link. There you can click on a link for more information, including details on the inspirational Survivors' Lap and the moving Luminaria Ceremony.

We hope to see you there! If you can't join us, will you please visit the site and make a donation to support our efforts? Either way, you will make a real difference in the lives of people facing cancer and in the lives of the people who love them. Thank you! ❖

— If you need assistance on filling out the form to join the team, please see Gail Tuomi or Deborah Jette. If you would like to donate, click on *Donate to a Team* and type in *Seattle Claims Adjusters Association*.



### 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](http://www.seattleadjuster.org)

## April Meeting... (Continued from front page)

dents. Our guest speaker will be Paul Rosner with Soha & Lang. Paul will discuss Depreciation and Recent Case Law Relative to "Actual Cash Value".

Additionally, for those planning to attend, mark your calendars for the 2008 SCAA Golf Tournament on Friday, June 20, 2008 — and get your registrations in early! The registration form can be found on page 13 of this newsletter. The golf event will be located at the Maplewood Golf Course. Who knows, maybe this long winter will finally end and spring may finally arrive for the golf tournament!

See everyone at the May Meeting! ❖

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### Case Study

## WA Court of Appeals Rules Attorney Fees Subject to Policy Limits

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By Paul M. Rosner and Misty Edmundson, Soha & Lang

On April 7, 2008, in *Great Am. Ins. Co. v. Assurance Co. of Am.*, No. 58173-2-I (Washington Court of Appeals, Div. I April 7, 2008), Division 1 of the Washington Court of Appeals held that amounts allocated for an underlying claimant's attorneys fees were subject to the primary policy's liability limits and not "costs taxed" under the supplementary payments provision of the policy. The court also held that an excess carrier had no obligation to drop down in the event of a primary insurer's insolvency where the policy specifically provided it would not do so. In addition, the court addressed equitable reapportionment between excess carriers arising from the settlement of an underlying construction defect claim as well as the availability of prejudgment interest and *Olympic Steamship* fees in equitable contribution actions.

### Background

This case involved a dispute between three excess insurers over the funding of the settlement of claims against their mutual insured Polygon Northwest

(Continued on page 4)

## Case Study... *(Continued from page 3)*

Company (“Polygon”). Two of the excess carriers, Assurance Company of America (“Assurance”) and Ohio Casualty Insurance Company (“Ohio”) sought equitable contribution from the third, Great American Insurance Company (“Great American”). During the period Assurance and Ohio provided excess coverage, Polygon maintained two million dollars in primary coverage. During each of the two years Great American provided excess coverage, Polygon purchased an additional million dollars in primary coverage from United Capital; however, United Capital became insolvent.

Polygon’s settlement of the underlying claim included an allocation of \$1,486,000 for the underlying plaintiff’s litigation costs, which was paid the primary insurers in addition to policy limits as Supplementary Payments. Assurance, Ohio, and other insurers contributed to the settlement; however, Great America claimed its policy had not been triggered due to the insolvency of the primary insurer.

### Excess Policy Triggered, But Insurer Not Required to Drop Down

Great American argued that based upon the language of its insuring agreement, limits of insurance

provision, and insolvency provision, its coverage could not be triggered until the amount of the underlying policy limits were actually paid by the insolvent insurer, by Polygon or by Polygon’s other carriers. The Court of Appeals noted that the policy provided that in the event an underlying insurer’s insolvency, Great American had no obligation to “drop down” to cover the insolvent insurer’s obligations. Thus, the Great American excess policy was triggered once the loss exceeded the limits of the underlying (insolvent) policy in that year. However, Great American could not be made to contribute in equity for a loss that it did not owe in the first place, and thus it was only jointly and severally liable in each of the years in which it provided excess coverage for the amount in excess of the limits of all the collectible underlying policies plus the limits of the underlying insolvent policy in each year. Thus, for each of the two excess policy periods, Great American was jointly and severally liable for the portion of the settlement exceeding the \$3M even though \$1M was uncollectable. On the other hand, the Assurance and Ohio excess policies were each excess of all underlying collectible insurance. Thus, Assurance and Ohio were jointly and severally liable for loss in excess of \$2M.

## 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 \_\_\_\_\_

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

## Subrogation & the “Made Whole” Requirement

Next, the court addressed the parties’ subrogation rights. Based upon the requirement that an insured be “made whole” before an insurer can subrogate, the court held Great American would not have subrogation rights until Assurance and Ohio recover a total of \$1M. Thereafter, the insurers would have equal subrogation rights that could be equitably allocated between them. The court’s reasoning for this result was that Assurance and Ohio paid the first million of excess, while Great American did not (due to the underlying insolvency).

## “Supplementary Payments” Coverage Does Not Encompass Litigation Costs

Assurance contended that the supplementary payments provision in its policy, which obligated it to pay “[a]ll costs taxed against the insured in the ‘suit,’” had a specific meaning that did not include all legal fees or costs incurred by the insured in a lawsuit and that the plaintiff’s litigation costs were subject to policy limits.

## Olympic Steamship Fees Unavailable to an Insurer Seeking Equitable Contribution

The court found that because an equitable contribution claim does not involve an assignment of rights from the insured to its insurer, an insurer has no independent standing under *Olympic Steamship* to seek fees. The court reasoned that the “right of equitable contribution belongs to each insurer individually. It is not based on any right of subrogation to the rights of the insured, and is not equivalent to standing in the shoes of the insured[,]” and that the “equitable basis established in *Olympic Steamship* for attorney fee awards is limited to efforts necessary to establish coverage for claims against the insured and is based on the rights of the insured.” The court stressed that Polygon’s only right under its policies was to full recovery; thus, in the equitable contribution action, Assurance was not asserting Polygon’s rights. Therefore an award of *Olympic Steamship* fees would be inappropriate. ❖

— If you have any questions concerning this article please contact any Paul M. Rosner or Misty Edmundson of Soha and Lang at (206) 624-1800.

### ~ Classified Ads ~

**Mutual of Enumclaw Insurance is seeking a Casualty Claims Adjuster** for their Bothell WA branch office. Prefer 3+ years experience handling moderate to complex casualty claims. Email resume with position title and location in subject line to moeresumes@mutualofenumclaw.com.

**Geico - Claim Adjusters needed in Seattle Metro area.** 1 yr. automotive liability experience required. Good understanding of investigation, evaluation and negotiation of automobile liability claims. Excellent organization and communication skills. Travel for training required. Resumes with salary to sbrust@geico.com.

**Mutual of Enumclaw Insurance Company (home office Enumclaw WA) is seeking an experienced Litigation Analyst/Reserve Caseload Examiner.** 9+ years extensive and specialized claims examining/litigation analysis, adjusting, underwriting and/or related insurance experience in the P&C industry required. Required skills include in-depth knowledge of claims handling, statutory requirements, claims adjusting theory/principles and mastery of insurance terminology. Email resume with location in subject line to moeresumes@mutualofenumclaw.com.