

SCAA

May 2011

Vol. 38 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.”

Stuff

By Jim Peterson, SCLA, SCAA President

In Jim’s absence I will attempt to fill his shoes this month and write about our last meeting!

~ Tanya Padur, Secretary

As many of you know April was Vendor Appreciation Month at SCAA. We had a great turnout of over 50 for the meeting! (It is amazing what happens when you send out invites that say “Free Lunch!”) Seriously, it was great to see so many of our vendors attend who have supported us all year long.

Each vendor received a personal thank you note from SCAA and a gift bag with scone mix

and jam. I hope each office found someone to bake them for their respective teams to enjoy!

Bales Restoration were our guest speaker for April. They shared some great pictures and lots of information about what can be done to dry out a building following a water loss. The days of just tearing out everything wet are long gone with today’s technology.

The blue bucket drawing name was an adjuster not in attendance so for May the drawing winner will receive \$450! As it is the last meeting of the year (other than the golf tournament) we will draw until a winner found — but remember... you MUST be present to win!

(See Stuff... continued on page 3)

Next Meeting of the SCAA

May 20, 2011

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

Program

SCAA Past Presidents Luncheon
All are welcome

Cost

\$15 Members \$20 Non-Members

Time

11:30am to 1:00pm

It is important for you to RSVP if you are going to attend our luncheon meetings. Please do so through our website or contact Todd Clirehugh at toddc@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 2011

Date	Speaker/Topic
May 20	SCAA Meeting & Past President's Luncheon Special Announcement to be made at this meeting, all members should attend!
June 17	SCAA Golf Tournament See our website to register



Now accepting credit cards!

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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The Seattle Adjuster

Published monthly September—June for the
 Seattle Claims Adjusters Association
 By **Alquemie Publishing Ink**
 541/937-2611 Fax: 541/937-4286
 Email: npassist@msn.com

SCAA Past Presidents

SCAA was founded in 1930

1930-31 Wendell Bonesteel	1970-71 Don Long
1931-32 Arthur E. Campbell	1971-72 Merton Buckley
1932-33 Kenneth M. Elliott	1972-73 Dick Cuff
1933-34 G.F. Fitzgerald	1973-74 Lee Marjnarich
1934-35 G.J. Fitzgerald	1974-75 DeWelle Ellsworth
1935-36 R.N. Brown	1975-76 Robert Dailey
1936-37 R.N. Brown	1976-77 Fred Greiner
1937-38 E.A. Eastman	1977-78 Gordon S. Everett
1938-39 Otto Kleeson	1978-79 Ronald M. Abraham
1939-40 O.R. Martin	1979-80 Norm McFarland
1940-41 C.B. Mooney	1980-81 Richard Gaither
1941-42 C.H. Tandy	1981-82 Sharon Setzler
1942-43 Earl Holmes	1982-83 Charles Bingham
1943-44 Donald Husted	1983 Gene Key
1944-45 J.W. Goulder	1983-84 Milton Gustafson
1945-46 E.E. Hilton	1984-85 Frank Lucarelli
1946-47 Sutton Scanlon	1985-86 Walt Stolle
1947-48 Robert Cummins	1986-87 Thomas G. Ewing Jr.
1948-49 H.C. Tingvall	1987-88 Robert W. Jeans
1949-50 Lee McGonagle	1988-89 Lawrence E. Garlinghouse Sr.
1950-51 Russell T. Paderson	1989-90 Nancy V. Bryant
1951-52 Alden Thompson	1990-91 Patrick F. Wasser
1952-53 W. Nelms Paris	1991-92 E. Michael Radcliff
1953-54 W.W. Laughlin	1992-93 Willie Markey
1954-55 George Walmsley	1993-94 Myron (Jay) S. Jared, III
1954-55 E.A. Paulson	1994-95 Bob Haggerty
1955-56 Granville Jordan	1995-96 Sue Dahlin
1956-57 M.P. Warner	1996-97 William R. Markey
1957-58 Robert C. Keating	1997-98 Kathy Johnson Barnett
1958-59 R.H. Thompson	1998-99 Keo Capestany
1959-60 John F. Fuller	1999-00 Steve DeKoekkoek
1960-61 John E. McMahon	2000-01 Carol Seepersad Green
1961-62 Allan C. Parker	2001-02 Fred Biehl
1962-63 Richard C. Hourigan	2002-03 Janice Howard
1963-64 James Scott	2003-04 Donna Silver
1964-65 Dale Easley	2004-05 C. Annette Grace
1965-66 A.P. McMahan	2005-06 Lizzy Adkins
1966-67 Wm. Caton	2006-07 Julie Benedict
1967-68 Harry M. Kelsey	2007-08 Gail Tuomi
1968-69 Joseph Whitlow	2008-09 James Gomez
1969-70 Ted Bullard	2009-10 Dean West

Thank you for your years of service and dedication to SCAA

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

At the May meeting, there will be an important announcement made about next year. All active SCAA members should plan to attend!

Also, our May meeting is when we honor our Past Presidents for their service and dedication to this great organization. Join us for a celebration of our history and thank those who have consistently made things happen! ❖

Announcement!

Hagen Streiff Newton & Oshiro PC have moved effective April 29

Please make a note of their new address as follows:

1325 4th Avenue, Suite 1730
Seattle, WA 98101

Phone numbers, email addresses and website remain the same



Case Study
 SMITH FREED & EBERHARD P.C.
Your Litigation Partner

Impairment is in the Eye of the Beholder: Negligent Entrustment of a Vehicle

by Bob Smith

Claims Pointer: A rental vehicle company cannot be held liable for negligent entrustment of a vehicle to a person who provides an unexpired, facially valid driver's license, and who does not display signs and symptoms of impairment at the time of the rental.

In order to establish that a person or entity is liable for negligent entrustment of a vehicle, a plaintiff must prove the person or entity providing the car knew, or should have known, at the time the vehicle was provided that the driver was not competent to drive. A recent Washington Court of Appeals, Weber v. Budget Truck Rental, LLC, case discussed what evidence is required to establish a driver is incompetent, and whether there is a duty to electronically verify out-of-state driver licenses. (Case No 65021-1-1, April 18, 2011).

Timothy Turner rented a moving van from Budget Truck Rental. Although Turner had smoked methamphetamine several hours prior to entering the rental company premises, no Budget-agents noticed any unusual behavior or signs of intoxication from Turner. Turner also presented an out-of-state unexpired, facially valid driver's license to rent the vehicle. The following afternoon, while driving the rented van, Turner ran over Gretchen Weber while she was in a crosswalk, causing her serious injury. The responding police officer observed several signs of methamphetamine use by Turner, including fast heart rate, bloodshot eyes, droopy eyelids, little pupil reaction to light, and two fresh red injection marks on his arm. A blood draw performed that day showed the presence of methamphetamine and amphetamines in Turner's system. Following his arrest, it was discovered that Turner's license was suspended for failure to pay a traffic ticket. Weber filed a negligent entrustment suit against Budget arguing that Budget knew or should have known that Turner was unfit to drive. Budget moved for summary judgment.

Although initially denying Budget's motion, the trial court granted Budget's motion after a request for reconsideration. Weber appealed.

On appeal, Budget argued that Turner did not appear to be intoxicated or impaired, and he presented a facially valid and unexpired license at the time of the rental. Weber argued: (1) Turner must have appeared intoxicated, and Budget-agents were not properly trained to recognize his impairment; (2) due to tattoos and injection marks on Turner's arms, Budget-agents should have recognized Turner as an addict who was likely to drive the rental van while intoxicated; and (3) Budget violated a Washington statute and its own policies by not requiring Turner to present a valid license and two forms of identification.

The Court of Appeals disagreed with Weber holding the evidence did not support Weber's argument that Turner appeared intoxicated at the time of the rental. The court explained that even though Weber's expert testified Turner should have exhibited signs of impairment, the direct observations of the Budget employees at the time of the rental was determinative.

The court also disagreed with Weber's argument that Budget employees should have recognized Turner's appearance indicated he would have used the vehicle while impaired. The court reiterated that even if Turner's appearance suggested past or future drug use, it did not prove that Turner was impaired at the time of the rental.

Finally, the Washington Court of Appeals determined that Budget's failure to electronically verify Turner's license status did not constitute a violation of the statute to check for valid licenses. The court explained there was no evidence that Budget could have electronically checked the validity of Turner's out-of-state license. Additionally, the court held the failure to electronically verify Turner's license was not the proximate cause of Weber's injuries because Weber also failed to present facts demonstrating that doing so would have precluded the rental. Thus, the court affirmed the trial court's decision. ❖

NOTE: This opinion has not been published. It is provided to demonstrate how the court approaches the issues involved in the case. It cannot be cited as authority to a court of law.

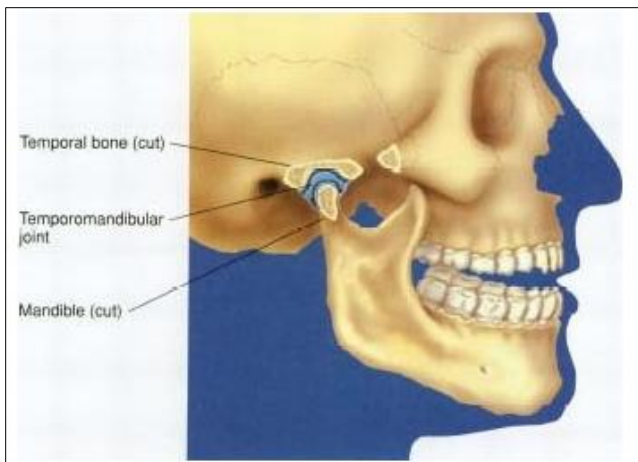
ExamWorks

Medical Notes

What is TMJ?

By Thomas W. Albert, MD, DMD

What is TMJ? The anatomical definition is the Temporomandibular Joint, which is a defined anatomic structure with multiple parts where the top of the mandible (lower jaw) moves against the temporal bone of the skull. The mandible and temporal bone are separated by a cartilage or “disc” within the joint, as shown below.



Common usage of the term TMJ is to describe a symptom complex of fascial pain and dysfunction.

The first 25 mm of the jaw opening swings just like a door hinge. After that, the mandible moves forward as well as rotates. Measuring the range of motion in several directions may help define a specific injury with the joint itself. TMJ clicking may be due to abnormal or irregular movement of the disc. Locking of the jaw occurs when the disk is out of position and blocks translation.

A common conception is that any of the following indicates that a patient may have TMJ:

- some type of facial pain,
- clicking and popping of the jaw,
- headaches,
- biting problems,
- tinnitus,
- earaches

The TMJ concept, beyond objective anatomy, is not well defined and has multiple definitions. Many textbooks have been published with very different

descriptions of TMJ. In actual practice, almost any facial pain or dysfunction may be called TMJ. However, only those with truly objective findings upon examination should have a diagnosis of TMJ. Objective findings are verifiable indications of injury or disease that are reproducible, measurable and observable.

A physical examination for the purpose of diagnosing TMJ includes the following:

- Facial – symmetry / asymmetry
- Location of symptoms
- Palpation of structures – bony landmarks, muscles
- Range of motion – straight opening, protrusion, lateral
- Noises – palpitation, auscultation (listening), what part of movement
- Occlusion
- Condition and state of repair of teeth
- Wear patterns of teeth – evidence of grinding or clenching
- Neurologic examination (cranial nerves)
- Condition of mucosa (mouth tissue) - looking for tumors

The following diagnostic studies are also important for the purpose of diagnosis:

- Arthrograms – dye injected into the joint spaces – dynamic view
- MRI – open and closed views
- Plain radiographs

Diagnostic Indicators of TMJ

The position of the discs as shown in the diagnostic studies may be important to the diagnosis. The position of the discs should be assessed in both the open and closed positions. It is common and not necessarily pathologic to have anterior disc displacement in the closed position. Displacement of the discs in the open position may provide objective evidence of a TMJ derangement. Degenerative changes of the joint may also be visible in the studies. Studies should always be correlated with physical examination.

Subjective findings are much less conclusive and may be derived from many other causes besides true derangement of the joint itself. Most commonly, symptoms are from muscle related soreness.

(See **Medical Notes...** continued on page 6)

Medical Notes... *(Continued from page 5)*

Problems requiring surgery are statistically very uncommon as less than 3% of cases of TMJ will have consideration of surgery. Most cases resolve with nonsurgical treatment.

Treatment Modalities

Initial treatment for TMJ consists of a soft, non-chew diet, NSAIDS and relaxation techniques. Following that, more focused modalities such as a bite guard / night guard may be useful. Physical therapy focused on muscles of mastication (chewing) and neck also helps in most cases. The therapy must be based on clear goals with timely reassessment and be of limited duration with emphasis on home maintenance. Successful physical therapy for TMJ requires a therapist who is experienced specifically in this area.

Surgery is reserved for well-defined problems where there are clinical and imaging findings of internal derangements. It should be applied when the patient is unresponsive to reasonable non-surgical modalities. Surgery is rarely adequate by itself and should be applied only after weighing the potential benefits against the risks.

Most individuals will respond within three to six months with simple non-surgical modalities and should be medically stationary by that time. If the non-surgical modalities are not effective, surgery may be considered. Most patients requiring surgery should be medically stationary within four to six months. ❖



Claims Conversation

with Roger Howson, Claims Dispute Resolution, TCAA Past President, SCAA/TCAA Education Coordinator

You never know.

The homeowner's claim was a fire followed by a burglary, or a burglary followed by a fire. The agent didn't know which, but he wanted us to assist his policyholder with his claim.

The adjuster had no concerns about either the fire or the burglary, and the insurance company decided to charge the policyholder only one deducti-

ble regardless of which occurrence followed the other.

The local fire department ruled the cause of the fire as "undetermined" and closed their file.

The local police department took a burglary report over the phone, assigned a case number, told the homeowner to send in a list of whatever was taken, and filed the case report away with all of their other unresolved burglaries.

One of the familiar insurance restoration contractors wrote the scope, estimated the cost of repairs, and completed repairs per the settlement amount agreed upon with the adjuster.

Our contents inventory team dug through the fire debris to compile an inventory list, and the insured added a list of the contents he was claiming as stolen. One of our inventory specialists priced the items, and then met with the homeowner to determine age and condition for purposes of depreciation.

When she turned in the completed contents inventory, our inventory specialist mentioned that she thought there was a lot of jewelry for a young, single male. She was also amused that such a small, un-athletic, city-type would have so much allegedly authentic cowboy paraphernalia.

I asked if we should be concerned about fraud. I'd met the policyholder only once, and he was so nondescript that I had no real impression of him—either positive or negative. The inventory specialist spent a lot more time with this person. She didn't especially like or dislike him, but she found him odd.

She observed that he was noticeably timid and submissive in the presence of men. When there were just women around (such as the cleaners and inventory team) he hovered unobtrusively on the outskirts of their activities, but he inserted himself into their conversations whenever possible.

Our lead inventory specialist later met with the insured one-on-one to go over the preliminary inventory. She was bothered when he asked if she had children. He seemed even more interested in her upon finding out that her daughters were four and six, but his interest obviously and immediately dis-

appeared when she quickly (and very intentionally) mentioned her husband.

So, I repeated my question to her about whether or not we should be concerned about this being a fraudulent claim. The inventory specialist hesitated before telling me that there's nothing concrete she can put her finger on, and that everyone else is satisfied that the claim should be paid as presented.

The claim was paid as presented.

I didn't remember any of this until an attorney called me to inquire about a fifteen year old claim they said I'd handled. I told the attorney that we are required to keep our claim files for only seven years, so there was no way I'd be able to track down the information on a claim that old.

The attorney asked if I would take the time to meet with her about this particular claim, and I realized that for some strange reason I recognized the name without remembering anything about the claim.

The attorney thanked me for meeting with her and acknowledged that there's no reason for me to remember much, if anything, about a fifteen year old claim. But when she handed me the contents inventory list it didn't take me long to recognize the addendum listing jewelry and cowboy paraphernalia. While the attorney was still there I called the inventory specialist to ask what she remembered about this claim.

Our inventory specialist recognized the name, and she remembered the circumstances of the claim, the jewelry and cowboy items, and her vivid impression of the policyholder.

The attorney asked the inventory specialist the same question that I'd asked her fifteen years earlier. Was this a fraudulent claim? The inventory specialist answered that if she wasn't sure at the time, she certainly wasn't going to be sure after fifteen years have passed. But she did tell the attorney that she definitely remembers the attorney's client as odd.

"Odd, how?" the attorney asked. Our inventory specialist couldn't articulate the specifics of how this person was odd, but she was able to clearly

express the discomfort and wariness she experienced in his presence. She said that she was constantly on guard with him even though he was small, weak, and docile. He was never threatening or aggressive with her or any of the other women on the inventory and cleaning crews, but they were all quietly cautious whenever he was around.

Who knows if the claim was fraudulent or not? There's no doubt this policyholder was odd.

It wasn't until later in the week that the inventory specialist and I figured out why the policyholder's name was familiar even though the claim was a faded fifteen year old memory.

We read his name on the front page of the newspapers when he was sentenced to fifty years in prison for drowning the three year old daughter of his fiancée. He'd drowned the little girl to collect on a several hundred thousand dollar Life Insurance policy he'd convinced the mother to take out on her.

This guy murdered a sweet little girl to collect on an insurance claim.

What's worse is that he'd run this scam several times before. Prosecutors were able to prove that he preyed on single women with young children. He'd lavish attention on the mother, initiate a relationship, and then convince the mother that they should take out an insurance policy on her little tyke. He'd explain that it's for the child's own financial well-being, and that he could handle all of the insurance details.

Many little children mysteriously suffered serious injuries while in his care and custody. As soon as that happened the mothers took their children, and got as far away from this monster as they could. Prosecutors said he ran this play over and over for fifteen years until this innocent little girl got fatally caught up in this guy's life insurance scheme.

Fifteen years earlier this policyholder found insurance claims to be a quick and easy payoff.

You never know. ❖