

1930



2005

November 2005

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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.”

Lizzy’s Logic

— by Lizzy Adkins, President



Lizzy Adkins
SCAA President 2005-06

The leaves are changing and I feel a nip in the air. November’s here and you know what that means... the HOLIDAYS are coming! Please remember to register now for our Holiday Party on December 2. There will be no payment at the door. Sorry, no exceptions. Our Holiday Committee has done a wonderful job in organizing this year’s event, so don’t miss out.

In addition to the Holiday Party, we also have our first Bowling Tournament on November 18 at Sunset Bowl — right after our SCAA meeting.

Dave Kummerlowe of CADRE, Inc was an outstanding speaker during our October meet-

ing. He was a wealth of information on the hazardous effects of meth labs. Thanks Dave for keeping us informed!

Each participant of last month’s meeting were entitled to 1 CE Credit for attending Dave’s presentation. Join us each month for more interesting topics and additional CE Credits that will be offered.

I’d like to welcome the following new members:

- Georgie Anderson, Grange Insurance
- Elton Belts, Grange Insurance
- Mark Jensen, Grange Insurance

(See Lizzy’s Logic... continued on page 3)

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Next Meeting of the SCAA

November 18, 2005

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

Program

“Medical Billing & Coding”

Menu

To be announced

Cost

\$10 Members \$20 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
Nov 18	SCAA Meeting "Medical Billing & Coding: Evaluation & Management" 1 CE Credit Hour applied for SCAA Bowling Tournament 1:30pm to 6:00 pm, Sunset Bowl in Ballard See page 12 for registration
Dec 2	SCAA Annual Holiday Party See page 13 for registration
Jan 20	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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Lizzy's Logic... *(Continued from front page)*

Sheryl Johns, Grange Insurance
 Nyssa Kittell, Grange Insurance
 Donald Missal, Liberty Northwest
 N. Morrell, WA Schools Risk Mgmt. Pool
 Hanna Oh, Grange Insurance
 Lynn Perry, Grange Insurance
 S. Scialo, WA Schools Risk Mgmt. Pool
 Elizabeth Wagner, Farmers Insurance
 Kristina Waldbillig, Metlife Auto & Home
 Yolanda Wang, Grange Insurance
 Rudy Werle, Grange Insurance
 Candace White, Grange Insurance

Everyone look for the new SCAA membership card to arrive in the mail soon. Your membership card guarantees your entry into all SCAA events and provides a discount on event fees.

Have a wonderful Thanksgiving Holiday! ❖



“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!”

November 18 — Be there!

Blue Bucket Drawing

October's winner would have been life member **Dwight Stevens**, but he was not present to win. Will you be the next winner? Remember, you must be present to win! Next drawing is November 18. Up for grabs: **\$150!**

Other Winners for October

Carol Seepersad-Green, Liberty Mutual = \$25

Erik Werner, Enterprise Rent-A-Car = \$25

Jackie Bristol, Grange Ins.
 WMCi Cookie/Candy Basket

Gail Tuomi, Grange Ins.
 MES Pumpkin/Home Depot GC

Inger Kjosnes, Grange Ins.
 MaxCare Bath Items Basket

Steve De Koekkoek, Engle Martin & Assoc.
 Paul Davis Restoration 2006 Entertainment Book

The Dreaded Default — When the Insured Does Nothing

— by **Debora A. Dunlap**, Gulliford, McGaughey & Dunlap

Editor's Note: Ms. Dunlap was the presenter at our September meeting.

The freshest cases on setting aside defaults/judgments came this year out of Pierce County Superior Court, Court of Appeals Division II in April and August 2005. They involved the same plaintiff's counsel and Allstate. They are:

Smith v. Arnold ___ Wn.App. ___, 110 P3d 257 (4/05). (refused to overturn)

Getz v. Johnson ___ P3d ___, 8/9/05, WL1869517 (overturned default/judgment)

Through these cases Division II states it takes a tougher approach from its sister divisions on what constitutes informal appearance requiring notice of a motion for default/judgment. In Arnold, *Supra* and as cited in Getz, informal appearance requires evidence of actions manifesting an unquestionable intent to appear and defend the matter in court.

(See Dreaded Default... continued on page 4)

**Case Study****Will You Marry Me So We Can Allege Loss of Consortium?**

— by **Jeffrey D. Eberhard**

In *Wallin-Bailey v. Allderdice*, Civ. No. 54618-0-I, in the Division I Court of Appeals for the State of Washington (Sept. 26, 2005)(unpublished), Marilyn Wallin-Bailey and Allan Bailey lived together for sixteen years before Allen was injured in an automobile accident with Defendant. Bailey commenced litigation against Defendant to recover for his injuries, and then two weeks later he and Wallin-Bailey were married. The Baileys then amended their Complaint, adding a loss of consortium claim on behalf of Wallin-Bailey and the marital community.

(See Case Study... continued on page 4)

Dreaded Default... *(Continued from page 3)*

Division I in *Batterman v. Red Lion* 106 Wn.App 54, 59, 21 P3d 1174 (2001) held an informal appearance is a question of intention evidenced by conduct or actions.

Each case of course turns on its own facts. And this is a factual question determined by the parties' evidence, not for a trial court abuse of discretion. From these cases though some patterns of pre and post litigation claims handling should be present.

Even if there is no formal Notice of Appearance having been filed, counsel and insurers can best ensure informal appearance requiring notice before any default entered by:

- (1) insurer contact with opc office via telephone;
- (2) log, notes, e-mail or file notes reflecting same;
- (3) hopefully a written dialogue between opc and adjuster that is (a) over a substantial period of time, (b) discusses liability, damage issues, probably even settlement negotiations;
- (4) insurer requests a courtesy copy of the summons and complaint verbally and in writing (while most plaintiff's attorneys do this as they do not want to have a potential failure to cooperate or coverage issue, not all are following this old school methodology);
- (5) written acknowledgement of receipt of summons and complaint by any adjuster with A Request for an Extension of the 20 days to File a Responsive Pleading or Answer (this should be left vague so that it is open-ended **AND** there should be a request for a notice of any motion(s), especially motions for default);
- (6) the adjuster should request copies of any and all pleadings, discovery or otherwise, served upon the insured (this covers the despicable practice of serving Requests for Admissions with the summons and complaint upon a naïve defendant);

- (7) send written correspondence regarding meritorious defenses on liability and damages expressing concern, at the very least, over the reasonableness and necessity of medical expenses, the issue of contributory negligence (essentially you are raising anything that can later be asserted as an affirmative defense, not only contributory negligence by the driver, but potentially the passenger if they are intoxicated or otherwise contributing to the circumstance, failure to mitigate damages, accord, satisfaction and set off, if any, third parties over whom the client/insured has no control caused and/or contributed to the nature and extent of the incident and/or damages, etc.)

(See Dreaded Default... continued on page 5)

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

The Court of Appeals affirmed with the trial court's holding that because the Baileys were not married at the time of the injury, the loss of consortium claim was barred under existing law. The Court also held that the Baileys' claim did not fit within the recognized limited exception to this general rule which provides that such a claim could prevail under concepts of fundamental fairness when the injured spouse either did not know or could not know of the injury, *e.g.*, a wife's difficult pregnancy caused by medications taken during her mother's pregnancy. Finally, the Court was not willing to extend this exception to encompass the long-standing marital-like relationship of the Baileys. ❖

Claims Pointer

A claimant cannot succeed on a loss of consortium claim when the injury occurred prior to the claimant's marriage to the injured party.

— 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.

Dreaded Default... *(Continued from page 4)*

It is also recommended that adjuster write a letter to the insured/future client of defense attorney, making contact with the insured, verifying address, phone number, etc. and advising them that there may be a forthcoming lawsuit, that their assistance is not only needed, but essential under the terms and conditions of their policy. You might also gingerly mention that a failure to cooperate may give rise to coverage issues and expose them to personal liability, that their assistance is necessary in this proceeding even though the insurance company is working on their behalf to resolve the same and that they need to help their assigned defense counsel to avoid further problems and possible coverage issues or personal exposure that may involve meetings, authoring declarations, etc. to establish the meritorious defenses and the excusable neglect, mistake, etc.

Finally, file materials need to be sent very promptly to immediately retained defense counsel. Efforts to set aside default/judgment orders must be very quickly made.

V. CONCLUSION

While the law still favors setting aside defaults and judgments and trying cases on their merits, not all plaintiff's counsel are interested in trying cases on the merits and some are interested in attempting to legally extort undue sums of monies for claims presented by slamming through motions for default and judgments on unsuspecting insureds/ clients. They may argue per CR 55 that the party not appearing before the default motion is filed may not respond to the pleading nor otherwise defend without leave of the court. And they may argue per CR 55(a)(3), a party not appearing before a motion for default is filed is not entitled to a notice of the motion for judgment on default. So wear belts and suspenders. Document an unquestionable intent to appear and defend the insured. And create informal notice of appearance before a lawsuit is filed to more easily set aside improper defaults and enable your insured to have their day in court with defenses in every Washington jurisdiction. ❖

About the Author

Debora A. Dunlap: A native of Seattle, Ms. Dunlap was admitted to practice in Washington in

1985. She worked for 16 years in downtown Seattle with insurance defense firms Dunlap & Soderland, P.S., and Fallon & McKinley. Ms. Dunlap became a partner with the firm in 2000. Ms. Dunlap is married and lives with her husband and three children in Issaquah.

Ms. Dunlap is a 1981 graduate of the University of Washington with a Bachelor of Arts degree in History and Social Work. She obtained her J.D. from the Seattle University School of Law, graduating in December 1984. Ms. Dunlap is a past King County Young Lawyers Association committee member and chair of its Trial Practice Group.

Ms. Dunlap practices both professional and general liability defense, with an emphasis in personal injury and school district law. Her most recent high profile sexual tort case was the multi-million dollar lawsuit by murderer Darrell Cloud against Seattle Public School District, resolved earlier this year. Her areas of expertise include civil rights, Title IX, sexual torts, negligent hire and supervision, minor to major personal injury and wrongful death actions, premises liability, product liability, construction defect and class action defense litigation. Ms. Dunlap has litigated in both state and federal courts and has appeared before appellate courts including Division 1 and II of the Court of Appeals.

Memberships: Washington State Bar Association, Defense Research Institute

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Medical Notes

Carpal Tunnel Syndrome

— by William DeBolt, M.D., Neurologist

Reprinted from Health Cost Management September 2005 Newsletter

In 1962 the term “acral paresthesia” was in use to describe symptoms later to be recognized as carpal tunnel syndrome (CTS) and awaited the development of reliable nerve conduction testing for confirmation of the neurophysiologic dysfunction. Among my neurological colleagues it was recognized that the disorder had a unique symptoms and was common among women and that a “life magazine” taped around the forearm at night to prevent flexion of the wrist during sleep would help. Night-time pain and numbness in the wrist and hand quickly relieved by shaking the hand and/or leaving it dependent below heart level were hallmarks of complaints. It was also known that patients who had suffered the symptoms for many years would develop atrophy of the thenar eminence and have difficulty turning a key in lock and develop intense numbness of the median nerve innervated finger pads. Occupations of jackhammer operators, pick and shovel workers and farmers were common in affected groups.

Skip forward to 2005 when anyone with virtually any type of hand pain and numbness is quickly sent for a nerve conduction velocity and if the motor or sensory latency across the carpal tunnel is slightly prolonged surgery is proposed.

We should be reminded that symptoms are relatively specific for CTS and include pain, numbness and tingling in the thumb, index, long and one half of the ring finger relieved by dependency and/or shaking and triggered by sleep, elevation of the hand as in putting up hair, reading a newspaper, driving a car or passive flexion of the wrist. Resting the wrist on a computer pad, repetitive motion as on a keyboard or cash register may produce CTS after prolonged exposure. Sudden trauma to the volar aspect of the wrist or unaccustomed use of the hands as in pick and shovel work may cause transient CTS and mild prolongation of the sensory latency.

The CTS is more frequent in individuals who have a propensity to peripheral neuropathy such as diabetes, uremia, those with collagen vascular diseases or toxin exposure. Any condition leading to deposition of material in the carpal tunnel such as acromegaly, hypothyroidism, rheumatoid arthritis or edema of the limb may trigger CTS. Direct trauma to the wrist produces swelling in the tunnel and evidence of CTS may be delayed for a short period. During the past decade, the concept of mild nerve injury at both the wrist and proximally without either injury severe enough to cause clear symptoms has been accepted as a cause of CTS. The issue of auto accidents where there has been forceful gripping of the steering wheel and subsequent developments of CTS often arises. In my opinion, the record must demonstrate some history of acute wrist injury in order to establish a causative relationship.

The physical examination should record the appearance of the hand, color, temperature, strength of all intrinsic hand muscles and particularly the flexor pollicis brevis. Tinels’ sign, Phelans’ sign, and sensation to light touch, pin, cold, coin identification and two-point discrimination should be recorded. This aids in subsequent insurance or disability questions. It should be recalled that the median nerve does not subserve sensation on the back of the fingers or hand proximal to the distal IP joint, the ulnar border of the hand or ulnar side of the ring finger and muscle power in the forearm for grip and tendon reflexes remain normal. Edema of the wrist and hand may be present and painful wrist motion is common. The physical examination may be completely normal but that does not exclude CTS.

A nerve conduction study with recording motor and sensory latency across the wrist is indicated if symptoms and signs suggest CTS. A motor latency greater than 4.5 milliseconds or sensory latency greater than 2.5 milliseconds support the diagnosis. However, the electrical tests may remain normal for many months. The latency findings are a rough guide to severity and type of treatment. If findings are marginal, testing the other limb for comparison is needed, particularly if medico-legal issues are involved. Usually, an ulnar nerve conduction and latency are recorded to assess the possibility of a more generalized neuropathy. Late responses (F-wave, H-reflex) are not needed. Dermatomal soma-

(See Medical Notes... continued on page 7)

Medical Notes... *(Continued from page 6)*

tosensory response is not needed. If there is any suggestion of a generalized neuropathy such as balance problems or loss of tendon reflexes, more extensive nerve conduction tests are indicated. Short segment median nerve conduction may be done within the palm for treatment failures or for more sophisticated studies.

The latency may guide treatment. If normal but clinical symptoms and signs make the diagnosis, a simple drug-store wrist splint, warm soaks of the wrist and supplemental vitamins and a short course of Diamox will help. If the latency is slightly prolonged, steroids can be added. If motor latency is prolonged and/or weakness and sensory loss is present, surgical correction is indicated. However, bad surgical outcomes occur and scarring within the nerve sheath and tunnel make further surgery more risky. Causalgia (now regional pain syndrome) can complicate a poor surgical outcome. Injection of steroids into the nerve sheath may be helpful but if injected into the nerve, severe aggravation of the problem can be anticipated. If symptoms can be tolerated and latencies are mildly prolonged, following the patient and the latencies is a reasonable course of action. ❖

Classifieds

PACCAR Financial Corporation has an opening for an **Insurance Claims Manager**. For more info on PACCAR and this position please visit the SCAA website at www.seattleadjuster.org and click on the Employment Listings in the What's New box.

PACCAR Financial Corporation has an opening for a **Area Insurance Services Manager**. For more info on PACCAR and this position please visit the SCAA website at www.seattleadjuster.org and click on the Employment Listings link in the What's New box.

WA-OR Claim Service is in need of a **property adjuster** to service the South Sound area. For more info on this position please visit the SCAA website at www.seattleadjuster.org and click on the Employment Listings link in the What's New box.



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Seattle Claims Adjusters Association Treasurer's Report
 Provided by **Gail Tuomi**, Treasurer

October 2005							Previous Balance:	\$7,757.96
<u>Income</u>								
	Dues	Misc & Int.	Lunch	Ads	Holiday	Seminar	Total	
This Period	\$420.00	0.00	780.00	3,520.00	1,680.00	0.00	\$6,400.00	
YTD	\$1,560.00	0.62	1,662.00	13,800.00	1,680.00	0.00	\$18,702.62	
<u>Expenses</u>								
	Assoc.	Prizes	Lunch	News	Holiday	Seminar	Total	
This Period	\$2,057.50	50.00	1,807.03	1,538.82	0.00	1,000.00	\$6,453.35	
YTD	\$3,156.48	100.00	3,642.06	3,048.60	200.00	1,000.00	\$11,147.14	
						Checking:	\$7,704.61	
						Savings:	\$0.00	