

SCAA

November 2007

Vol. 35 No. 3

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.”



Gail's Spot

— by **Gail Tuomi**, President

Thanks to all for remembering to RSVP for our October luncheon! Please remember to let us know if you are planning on attending by the Monday before the Friday meeting. The Swedish Club is not a restaurant, they need this count in order to purchase food, hire service people and set up tables.

We have pondered the amount that SCAA subsidizes on the lunch and came up with a fun

idea to get a little of this money back. We have decided to do a raffle at our November meeting. Half the money collected will be the prize, the other half will be put back into our treasury. It's called a 50/50 drawing. Tickets will be sold at the door for \$1 each or six for \$5. The more people that buy in, the larger the winning pot!

My sister-in-law's nephew is currently deployed in Iraq. In reading his letters I felt our organization could do a little something to make our service people a bit more comfortable, especially during this holiday season. Please read his letter below and if you are able to help I will be accepting the needed items or money at our next meeting. [The items being requested are in italics.]

Next Meeting of the SCAA

November 16, 2007

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

Program

**Remediation of Meth Labs with
Larry Stone of A Best Construction**

Cost

\$15 Members \$20 Non-Members

Time

11:30 a.m.

It is now 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. Thank you!



Here is a letter from Kyle, a Marine currently deployed in Iraq. He wrote it in response to the question "What can we do for you? What do you need?". His response was interesting, and tells quite a bit about the current attitude of the Iraqi people (as well as the attitude of the Marines; they didn't ask for much for themselves, you'll note). It's winter there, and even though it's desert, it's

(See Kyle's Letter... continued on page 3)



ON THE DOCKET FOR 2007

Date	Speaker/Topic
Nov 16	SCAA Meeting Larry Stone with <i>A Best Construction</i> will provide a presentation related to the remediation of Meth Labs, Meth Lab Trends in the State of WA, Government Protocols, and more.
Dec 7	SCAA Annual Holiday Party See page 13 for details! — No meeting in December —
Jan 18 2008	SCAA Meeting
Feb 15	SCAA Meeting

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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
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Kyle's Letter... (Continued from front page)

freezing after sunset this time of year.

From Kyle:

If you intend to send us things, **don't** send the following: candy, hygiene gear (except razor-blades), toys, junk food, cold weather clothing containing any synthetic materials—even just 5% (don't ask).

We have ready access to all of that, in such great quantities it would boggle your mind. What we do want is *unground coffee, darkest roast preferred*, in as massive amounts as is possible to send. Convoys are very long, and even the ones that are short are exhausting. Between me, Barkley, and a few others, we have French presses to make engine block coffee with. You would not believe how fast we go through it.

We roll through some pretty poor and shot up areas fairly regularly; Al Anbar has spent the last 5 years getting XXXXed up. We've expended all of our candy on the kids already, but we'd like to have *small blankets, coats, stuffed animals (beanie baby sized), and soccer balls* and stuff to throw out when we roll through towns. This serves a few purposes, besides making us feel good. Our convoys are identifiable. People are less likely to look the other way on somebody planting a roadside bomb when a convoy has established a reputation for handing out blankets instead of shooting flares. Since Anbar Awakening (google it) we've got a lot less to worry about from nationalist groups and more from jihadists. It's actually a pretty good deal; Ramadi alone has a ton of Iraqi police and Iraqi army, and they're going at it something fierce with the mostly foreign jihadist groups. Oh, and as far as toys go, soccer balls are really it. They sure won't care about footballs, you know?



I have to go. I won't be able to call or write for about a week, but you should have a letter on the way. Love, Kyle

In a quick, follow up conversation with his Mom, we learned that there are things the guys could use in addition to coffee. It's cold for them at night too,

so those *small hand and toe warmer packets* are really helpful. They're also short on *medical supplies* because they're not a medical unit. Apparently there's such a thing as a tourniquet you can apply to yourself—very useful—and cold compresses that get cold when you break/bend them, and don't need to be refrigerated.

Now is the time to submit your applications for membership in SCAA, if you have not done so already. Our mailing/membership list will be purged of all those who have not renewed by the December newsletter mailing — so get your application in! You need to be a paid member to attend our activities such as the annual Holiday Party on December 7; and the SCAA/TCAA spring seminar will be held in March — more information will be coming on this educational event.

See you at the November 16 meeting. We will be having Turkey with all the fixins! See page two for speaker/topic information. ❖

~ Career Opportunity ~

Enumclaw Insurance Group, is seeking a **General Property Adjuster** for their Tacoma, WA office. Must possess ability to manage highly complex and/or high value claims. Advanced level of competence utilizing claims estimating software. Strong investigation, writing and verbal communications skills essential. Occasional out of area travel. Competitive benefits package. Email your resume with position title and location in the subject line to: moeresumes@mutualofenumclaw.com or fax 866/570-3292. EOE



President's Choice Charity

Join SCAA President Gail Tuomi in supporting the American Cancer Society Relay for Life. Visit the SCAA website and click on the Relay for Life logo for more information about the event; and throughout the year watch your newsletter and our website for SCAA sponsored fundraisers.

☆☆☆☆☆

Update: June 7-8 will be the date for the next Relay for Life. Mark your calendars and plan to join the SCAA team!
For more info contact Gail.

October Meeting Comments

— by James K. Gomez, SCAA Vice President

Wow! Our second meeting was another packed house....folks came for good food, great guest speakers...an excellent topic by the way..... and of course to see our SCAA Officers hard at work! I believe the turnout exceeded the September meeting. On behalf of SCAA, we appreciate your attendance — and thank you for your RSVP!

For this meeting we had the luxury of hosting an out of town guest....Barb Tyler with Alquemie Publishing Ink, the editor of our newsletter and our website coordinator came up from the Eugene, Oregon area. Barb was able to see first hand what SCAA is all about!

A special thanks to our guest speakers, Roger Howson of Claims Dispute Resolution and Ronald S. Dinning, Attorney at Law. Let the jousting begin! Both Roger and Ronald presented excellent arguments both in favor and against Proposition 67, The Insurance Fair Conduct Act. A handout was provided during the meeting. If anyone who missed the presentation has questions regarding the topic of discussion or would like to request a copy of the

handout, please call Roger Howson or myself. I can email you a scanned version of the handout.

We had two \$25.00 drawings. Our vendor drawing went to Jeff Roach with **ServiceMaster of Seattle**. Our adjuster drawing went to **Lisa-Anne Glenn** with Grange Insurance. Congratulations are in order!



Our “Blue Bucket” candidate was not present. In order to win the Blue Bucket drawing, you must be present. The winnings role into the next drawing.

A special thanks and recognition to our vendors who provided door prizes, i.e. gift baskets. **Donna Silver** with Grange Insurance received a spot removal kit from **ServiceMaster**.

Our next speaker for November is Larry Stone with A Best Construction. Mr. Stone will provide a presentation related to the remediation of Meth Labs, Meth Lab Trends in the State of Washington...are they up or down (?)...and Government (regulatory) Protocols, etc. Additionally, Tim Reid will be providing a legal review.

See everyone at the November meeting! ❖



Case Study

Personal Injury Claim Not Limited to Value Estimate on Bankruptcy Asset Schedule

— by Jeffrey D. Eberhard

The doctrine of judicial estoppel is intended to preserve respect for judicial proceedings and avoid inconsistency, duplicity, and waste of time by precluding a party from asserting a position in one court proceeding and later seeking an advantage by taking a clearly inconsistent position in another proceeding. In Washington, the doctrine of judicial estoppel has been held to prohibit bankruptcy petitioners who fail to list a claim among their assets from later pursuing that claim after the bankruptcy discharge. *Cunningham v. Reliable Concrete Plumbing, Inc.*, 126 Wn. App. 222, 108 P.3d 147 (Div 1, 2005). However, the doctrine has been held to not apply to prohibit a bankruptcy trustee from

pursuing the omitted claim on behalf of the bankruptcy creditors. *Arkison v. Ethan Allen, Inc.*, 160 Wn.2d 535, 160 P.3d 13 (2007). According to a recent Division I Court of Appeals decision, the doctrine will also not apply to limit a plaintiff’s personal injury recovery to the estimated value of the claim as listed on a bankruptcy asset schedule, even in circumstances when the claim is severely undervalued.

In *Ingram v. Thompson*, --- P.3d ---, WL 3054021 (Wash. App. Div. 1, October 22, 2007), Curtis Ingram sustained injuries a result of a traffic accident caused by Craig Thompson. Two years later, In-

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

gram filed for chapter 7 bankruptcy. As part of that proceeding, Ingram was required to list the value of everything he owned. Specifically, Ingram was required to estimate a value for “contingent and unliquidated claims of every nature.” Ingram listed his claim against Thompson as a “personal injury lawsuit, value unknown, but believed to be less than \$5,000.” The bankruptcy trustee did not pursue Ingram’s claim against Thompson and the court discharged Ingram’s debts.

A few months later, Ingram filed a personal injury lawsuit against Thompson, claiming almost \$150,000 in damages. Thompson moved for partial summary judgment, asking the court to cap the amount of damages recoverable to \$5,000, the amount Ingram had estimated the claim was worth on his bankruptcy asset schedule. Thompson argued that Ingram’s markedly different valuations of his claim between the two proceedings violated the principle of judicial estoppel because they amounted to inconsistent positions that permitted Ingram to gain an advantage by ascribing a relatively low value to his personal injury claim in order to avoid debts, but then actually pursue an amount more than thirty times his estimate after his debts had been discharged. The trial court granted Thompson’s motion to cap damages at \$5,000. Ingram appealed.

Noting the uncertainty inherent in the valuation of personal injury claims, and the fact that Ingram had disclosed the existence of his claim during his bankruptcy proceedings, the Court of Appeals for Division I held that Ingram did not take clearly inconsistent positions in the two proceedings such that the doctrine of judicial estoppel should apply to limit his recovery. Distinguishing between non-disclosure of an asset and disclosure that simply undervalued an asset, the Court of Appeals held that the trial court abused its discretion when it applied the doctrine of judicial estoppel to limit Ingram’s recovery. ❖

— *If you want to be notified of new cases, please send an email to caseupdate@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.



— by **Thomas W. Albert, MD, DMD**

In [September], we discussed “What is TMJ?” and learned the basics about injuries to the Temporomandibular Joint and also about diagnosis and treatment. This month we are going to learn about TMJ and motor vehicle accidents. In this context, the letters are sometimes thought to stand for “The Money Joint,” since there has been so much litigation centered on these injuries that may or may not have anything to do with the accident in question.

The relationship between TMJ and MVA is controversial and can only be understood by digging into the following key elements:

- Direct trauma vs. no direct trauma
- Vectors of force
- Time relationship between the accident and onset of symptoms
- Litigation

In the case of an injury, the onset is unexpected and occurs in a discrete period of time. Disease of the joint is usually more gradual in onset.

Direct injury to the jaw is easy to recognize using historical and objective evidence, such as lacerations, bruising and swelling. The objective evidence is found by physical examination and documented in the following records:

- ER notes
- Ambulance records
- Timely physician and dental notes
- Imaging studies

Incidence of long term TMJ complaints is low in patients with significant trauma. A study by Kolbinson, et. al. in 1998 found that patients with direct trauma required less treatment than those with no direct trauma and minimal vehicular damage.

TMJ ‘Whiplash’, the question of whether it is real or not is a very controversial topic. Symptoms of

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

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

facial and/or jaw soreness are commonly reported in patients with cervical whiplash. Are the facial and jaw complaints a separate entity? Is there a true extension/flexion injury within the temporomandibular joint itself? There are a lot of studies that support either point of view on the topic, too many to list in this short article.

My interpretation, based on a great deal of study and over thirty years of practice in the field, is that the following is needed in order to establish a 'more probable than not' relationship between an MVA and TMJ complaints:

- Direct trauma
- Discrete time relationship
- Clear objective findings
- Adequate management of cervical issues
- The 'it makes sense' rule

In order to perform a good file review or independent medical examination for an insurance claim that involves TMJ, the following information is needed:

- Analysis of MVA dynamics
- Legible records
- Previous dental treatment notes
- Pertinent imaging studies

Some relevant questions to be answered by the reviewing physician are:

1. What is your diagnosis of the current condition? Is this supported by objective findings?
2. In your opinion, on a more probable than not basis, is the diagnosis related to the reported injury? Please explain.
3. Were there any pre-existing conditions identified? In your opinion, did these pre-existing conditions have a material (50% or less) or major (51% or more) effect on the diagnosis? Please explain.
4. Is the claimant medically stationary at the present time? At what point do you feel they became medically stationary?
5. Is the treatment delivered by the provider

related to and reasonable for the diagnosis? Are there any parts of the treatment that you feel are not related or not reasonable?

6. If the claimant is not medically stationary, please explain why not. Also, what treatment do you feel would be reasonable to achieve a medically stationary status? What would be a reasonable time frame within which one would expect significant improvement?
7. Do you have any further comments or suggestions?

Each case is unique and requires careful evaluation.
❖

Certified Restoration Drycleaning Network Assists ABC-TV's "Extreme Makeover: Home Edition" in 5th Season

CRDN of Seattle & Western WA has it's turn at helping those in need on the show! — *Submitted by Shelley Butler of CRDN*

BERKLEY, MI, September XX, 2007 – After participating in 17 episodes of the ABC-TV hit show "Extreme Makeover: Home Edition" in its fourth season (2006-2007), the Certified Restoration Drycleaning Network (CRDN) has been named a season-long participant for the show's fifth season.

The vast geographic coverage and extensive experience helping tens of thousands of homeowners recover from fires and floods has made CRDN the perfect participant for ABC-TV's hit show, "Extreme Makeover: Home Edition."

For season five, CRDN already has assisted with shows in Oregon, Idaho, New Jersey, Wyoming, Vermont, Maine ***and now Washington!***

A home in Kirkland WA was the recent focus of all the excitement created by the transformational process that Extreme Makeover brings to its lucky recipients. **CRDN of Seattle & Western Washing-**

ton's CSR crew headed in and pulled all of the textiles out of the house in just two hours. They were then cleaned and pressed, boxed or hung, according to the room they had come from (though in this case they certainly did not go back to the *SAME* room!), and returned all items in five days.

"We are extremely proud of the opportunity to help 'Extreme Makeover: Home Edition' provide a fresh start for so many deserving families," said Wayne Wudyka, CEO of CRDN, an international organization of textile restoration specialists serving the insurance industry. "Our organization was founded on the concept of assisting those who have experienced an accident or disaster by restoring garments and textiles—those items that are very personal. CRDN's involvement with the show has been a natural fit for us, from the corporate level down to the local communities where we live and work," Wudyka added.

CRDN of Seattle & Western WA's whole plant crew and Restoration Field teams were honored to be a part of making a difference for the Chapin family here in our own backyard. "Just as Extreme Makeover is committed to making a dramatic difference in the lives of well-deserving families, CRDN is dedicated to playing a valuable role when called upon to serve those in need," concluded Wudyka, echoing the feelings of our local staff completely!

To see a complete list of CRDN participants and photos from many of the episodes, go to www.tacomaadjusters.org and click on the CRDN banner at the top of the page; then follow the link under the "About Us" section.

Extreme Makeover: Home Edition, which has won back-to-back Emmy Awards as Best Reality Program (non-competitive), is in its 5th season on ABC. The program airs at 8/7c on ABC. The Kirkland episode featuring the Chapin family is set to air in January of 2008. ❖

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



Smith & Co. Newsletter

Defendant's Economist Supported Jury's Lost Future Earning Capacity Award

— by C. Donald Smith, Smith & Co. LLC

Reprinted from Smith & Co., LLC October 2007 Newsletter

In *Norma Romero v. Murray J. McClelland*, No. E035919 (Cal. App. 4 Dist. March 20, 2006), unpublished, the California Court of Appeals, Fourth District, affirmed the jury's award of \$304,000 for lost future earning capacity. Romero was severely injured in an automobile accident. McClelland, who was drunk at the time of the accident, admitted liability. Prior to the accident, Romero was self-employed as an interior decorator. She claimed to earn \$4,000 per month, but only had financial records for the eight months preceding the accident, which indicated a \$20,672 profit between January and August 2000.

After the accident, Romero did not return to work and remained unemployed. The matter went to trial on the issue of damages. Romero testified regarding the amount of her compensation before and after the accident as well as to the extent of her injuries.

McClelland introduced expert testimony from an economist regarding the extent of her future lost earning capacity. Based on the paucity of financial information provided by Romero, he could not verify that she earned \$4,000 per month from her business. He did testify that she had a remaining work-life expectancy of 16 years. Furthermore, based on a hypothetical posed by Romero's counsel, the economist concluded that if Romero's 2000 financials were annualized, her business would earn a profit of \$31,000, which correlated into total loss of \$401,075. He further testified that if the business earned profit of only \$27,000 per year, the total loss would be \$350,000. Both total figures represented the present value using a 3-percent discount rate.

The jury awarded Romero \$304,000 in lost future earning capacity.

McClelland appealed. On appeal, McClelland argued that the lost future earning capacity award was not supported by substantial evidence.

(See *Romero vs. McClelland...* continued on page 8)

Romero vs. McClelland... *(Continued from page 7)*

The appellate court disagreed. It noted, "There is no requirement that expert testimony about future earning capacity be presented before the jury is entitled to determine compensation for loss of future earnings," which is an element of general damages and within the understanding of the jury. Here, it noted that the defendant put forth evidence from an economist that calculated the amount of her loss. The economist's lowest value exceeded the amount awarded by the jury; therefore, the award was supported by the evidence when the economist's testimony was considered together with the testimony regarding the extent of Romero's injuries. Furthermore, it noted that McClelland did not introduce evidence showing that Romero was able to return to work or had any residual earning capacity as a means of mitigating the future lost earning capacity damage. ❖

~ Wanted: Career Opportunities ~

No... we're not looking for a job! But your employer might be looking to fill a vacant position or add to the existing staff and we want to know about it!

Career Opportunity ads can be submitted to the editor for printing in the newsletter. Ads will also be posted to our website at www.seattleadjuster.org.

~ Wanted: Educational Opportunities ~

If you know of an educational event happening in the area, we want to hear about it. Workshop, seminar, and conference notices are what we're looking for.

We will post the event in the newsletter and on the website under Other Area Events.

Let us know what you know!



In Memory Of...

Merton Buckley

SCAA Past President (1971-72)

In the last newsletter we mentioned that Merton Buckley had moved to the Dogwood Cottage Sunrise Senior Living Center in Snohomish. Since that time we have received word that Mert passed away on October 24. All of his daughters and grandchildren were at his side. A full obituary will be run in our December newsletter. Our condolences to his family and friends.