



October 2007

Vol. 35 No. 2

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.”

Proposition 67 SCAA October 19 Meeting Topic

Attorney **Ron Dinning** and **Roger Howson** of *CDR: Claims Dispute Resolution* will discuss, debate, and deconstruct the pros, cons, and consequences of **Proposition 67, the Insurance Fair Conduct Act**.

WSTLA (the Washington State Trial Lawyers Association) calls Proposition 67 the most critical and revolutionary legislation in over twenty years. As a claims professional, whether you are a front line adjuster, claims manager, vendor, and/or service provider, you

cannot afford to miss this meeting! Remember, Washington voters will decide this matter for ALL claims professionals on November 6.

Ron Dinning is an attorney and former shareholder in the Seattle law firm of Merrick, Hofstedt & Lindsey, P.S. Ron left Merrick Hofstedt in January 2006 to establish a solo practice providing advice and counsel to Washington insurers and mediation services. He is an honors graduate of the University of Washington Law School. Ron also has a Bachelor of Pharmacy degree from Washington State University. Ron's law practice focuses on insurance coverage and bad faith issues arising under personal lines, commercial general liability, commercial property and professional liability insurance policies. Since 2001 he has successfully mediated and settled dozens of cases involving insurance related and other disputes. Ron has also been involved in redrafting auto, homeowners, umbrella and dwelling property policies for a Washington based insurer, and is a frequent participant in insurance related CLE programs. ❖

Next Meeting of the SCAA

October 19, 2007

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

Program

Panel Discussion on Proposition 67, the Insurance Fair Conduct Act

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!



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



ON THE DOCKET FOR 2007

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Date	Speaker/Topic
Oct 19	<p>SCAA Meeting Attorney Ron Dinning, and Roger Howson of <i>CDR: Claims Dispute Resolution</i> will discuss, debate, and deconstruct the pros, cons, and consequences of Proposition 67, the Insurance Fair Conduct Act. Don't miss this meeting! Remember to RSVP!</p>
Nov 16	<p>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.</p>
Dec 7	<p>SCAA Annual Holiday Party See page 13 for details! — No meeting in December —</p>

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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Gail's Spot

— by **Gail Tuomi**, President

Thanks to all who attended the September meeting. So glad to see all of you. Those who attended the meeting saw first hand the problems caused by not knowing how many to expect for lunch. Please remember to send me your RSVP no later than October 15 for the October 19 meeting. You can send your RSVP through our website at www.seattleadjuster.org.

Kim Gillcoatt from Artemis Recruiting came to our September meeting all the way from Arizona. Please contact her about job opportunities. You can reach her by sending an email to: kgillcoatt@artemisrecruiters.com.

The adjuster cost for lunch has been raised from \$13 to \$15 effective with the October lunch. The vendor cost for lunch stays the same at \$20. SCAA pays about \$28 for each lunch, more for a special occasion such as Thanksgiving or Past Presidents lunch. We have entertained the idea of finding a new meeting place but find the Swedish Club cost is in line with the restaurants downtown. I would appreciate any ideas anyone may have.

I was pleased to welcome to our September meeting, **Chris Aversano** from the *American Cancer Society*. He will keep us updated on the Shoreline Relay. Looks like this overnight event will be sometime in June of 08. We are planning on having two teams, an adjuster team and a vendor team. I will be in charge of the adjuster team. Please let me know if you want to be included on our team, we will challenge the vendor team and raise the most money for cancer research!

Thanks again to **Dale Mann** and *MDE Forensic Laboratories* for contributing so much to our organization. As always, I receive many compliments when we have someone from MDE as our speaker.

Our holiday party will be December 7. Remember, you have to be a paid member or advertiser to attend. Please see the flyer on page 13.

Be sure to join us October 19 for an important discussion on Proposition 67, the Insurance Fair Conduct Act. You won't want to miss it! ❖

September Meeting Notes

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

It's hard to believe that we are moving into the fourth quarter of 2007 — or basically the home stretch of the year. The summer has come and gone and now the monthly SCAA meetings have begun.

For the September meeting...what a turnout and a headcount of just fewer than 80! We appreciate the great attendance! We just need everyone to RSVP so we will have an accurate head count and can inform our food caterer of the number of people we

(See Meeting Notes... continued on next page)

~ Member Activity ~

Please note the following new information regarding some of our members:

Lizzy Adkins, SCAA Past President (2005-06), is now working for Country Insurance. She can be reached by phone at 253/476-4041 or by sending email to lizzy.adkins@countryfinancial.com.

Merton Buckley, SCAA Past President (1971-72), has recently moved. He is now living at Dogwood Cottage Sunrise Senior Living of Snohomish, 1124 Pine, Apt. #414, Snohomish, WA 98290. His new phone number is 360/568-2362 and his email address is mcbuckley@aol.com.

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 for this great cause.

Meeting Notes...

will be feeding. I don't think anyone went hungry at our last meeting and after a few more tables and chairs were brought in we had places for everyone to sit. Again, we appreciate the great attendance!

The RSVP process on our website is very simple. Go to www.seattleadjuster.org; click on the *Meeting RSVP* link in the What's New box that will take you to the Meeting page; click on the RSVP link which will open a new window with a form to fill out and submit. If anyone has questions about the RSVP process, please give me or any of the officers a call or send us an email; our contact info is located on page 2 of this newsletter.

A special thanks to our guest speaker, Dale Mann with MDE Forensic Laboratories. The topic was "Retaining an Expert" and Dale provided insight and wisdom in selecting an expert. Additionally, Dale provided a case study that was very interesting and we were all guessing or attempting to predict the outcome. After a careful investigation, and analysis of the clues...the case was decided in favor of the defendant. If anyone has questions regarding the topic, please give me a call, or call MDE Forensic Laboratories directly.

We had two \$25 drawings. Our vendor drawing went to **Jana Musseau** of *Bales Cleaning and Restoration*. Our adjuster drawing went to **Lisa-Anne Glenn** of *Grange Insurance*. Congratulations!

Our "Blue Bucket" candidate was not present to win. In order to win the Blue Bucket drawing, you must be present. The winnings will roll into the next drawing.



A special thanks and recognition to our vendors who provided door prizes at the meeting; i.e. gift baskets. **Trevor Arnold** with *Engle Martin & Associates, Inc.* received a gift from **MDE Forensic Laboratories**. Some gift sacks, compliments of SCAA, went to **Catherine Borstad, Jeremy Smith, Justun Chang** and **Margaret Larkin**, all employees of *Grange Insurance*.

Our October meeting will feature a presentation by our own, Roger Howson, along with attorney Ron Dinning. They will provide an interesting debate on the advantages, disadvantages, and impact of Proposition 67, the Insurance Fair Conduct Act.

See you at the October meeting! Please remember to RSVP — even if you think it's too late! ❖



Case Study

Trial Court's Reduction of Liability Payments and PIP from Mandatory UIM Arbitration Award Held Appropriate

— by **Jeffrey D. Eberhard**

The Division I Court of Appeals recently issued an opinion that examined a trial court's reduction of liability payments and PIP from a mandatory UIM award. In *Mercier v. Geico*, 165 P.3d 375 (July 30, 2007), Ralph Mercier was injured in a motor vehicle accident with another driver. After receiving a policy limit settlement (\$25,000) from the other driver and \$10,000 in PIP benefits from his own insurer (Geico), he made a claim for underinsured motorist (UIM) benefits. When Mercier and Geico were unable to agree as to the amount he was entitled to receive for his injuries under UIM, Mercier brought suit. The case was assigned to mandatory arbitration.

In private UIM arbitrations, the arbitrator is typically limited by the insurance contract to determining the tortfeasor's liability and the calculation of total damages. Coverage issues, including the UIM insurer's right to any off-set are typically resolved by the court. Geico argued that this procedure was appropriate for mandatory arbitration as well. Mercier disagreed and argued that under Washington's Mandatory Arbitration Rules (MAR), the arbitrator is required to determine both total damages and make any deductions necessary to arrive at an award that establishes the total UIM payment owed by the insurer. The arbitrator agreed with Geico and informed both parties before the arbitration that the

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

arbitration would be limited to plaintiff's damages. Any coverage or off-set issues would need to be resolved later by the parties or determined by the court.

The arbitrator awarded plaintiff \$36,000, inclusive of medical expenses and income loss. Neither party appealed the arbitration. Mercier moved for entry of final judgment of \$36,000. Geico responded that the judgment had to be reduced by \$35,000 to account for the PIP and settlement that Mercier had already received. The trial court applied the requested off-set and entered judgment for \$1,000.

Mercier appealed, arguing that the mandatory arbitration resolved the entire controversy and that the trial court's subsequent reduction of the award was improper. The Court of Appeals for Division I first noted in dicta that nothing in the rules would have prevented the arbitrator from analyzing the coverage issues and applying set-offs to make a net award. However, the court held that because the arbitrator had previously determined that Geico's

Claims Pointer

(1) Nothing in the Washington Mandatory Arbitration Rules preclude an arbitrator from determining all issues raised by the pleadings, including off-set/set-off issues in a suit for UIM benefits. (2) A trial court may permissibly reduce a mandatory arbitration award by PIP and liability payments already received if the arbitrator places those issues beyond the scope of the arbitration.

right to set-off were coverage issues reserved for the court and did not address the issues at arbitration, the trial court did not impermissibly modify the decision of the arbitrator when it addressed those issues. The \$1,000 judgment was affirmed.

— *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.

~ 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...

John F. Fuller

SCAA Past President (1959-60)

John Frederick Fuller died on Thursday, September 6, 2007 of natural causes. Born on April 22, 1916 in Stillwater, OK to John McElroy Fuller and Elsie Kate Biswell, he was raised in Durham, NH. John



excelled as an academic, and he skipped 4 grades in school. but he was also a lifelong athlete. An alumnus of Phillips Academy in Andover, MA, John was on the championship tennis and soccer teams. After graduating from Phillips Academy in 1933, John attended the University of Wyoming where he majored in journalism and was a member of Sigma Nu fraternity.

In 1943 John joined the U.S. Navy where he studied navigation. Before he had completed his studies, he was called to active duty to board a ship as the chief navigator to find a ship in distress off the East Coast in open waters. With no radar to aid him, John guided the ship through a dense fog to within 1,000 yards of the disabled

(See Memorial... continued on next page)

Memorial...

ship. From 1943 through 1945, John served with the 96th SeaBees under Admiral Nimitz in the Philippines and China. He had the distinct honor to serve as the semaphore on his ship.

John loved the mountains and downhill skiing. He was a long-time member of the Professional Ski Instructors Association in the Pacific Northwest where he was only one of 14 PSIA professionals to receive recognition for his accomplishments. John was co-head of the Edmonds Ski School for 20 years. He was also a long-time member and past president of the Seattle Claims Adjusters Association, Masonic Century Lodge #208 where he was past Master, the Mountaineers and a member of REI since 1948. John was also on the King County Library Board and a member of a short wave radio club.

The greatest love in his life was his wife, Maxine, who preceded him in death in 1986. John and Maxine met through mutual friends who discovered they were born on the same day of the same year, and recommended they go on a date. They married in 1940, and together they shared an enthusiastic appreciation and deep respect for the outdoors and the environment with their 3 children — snow skiing, hiking, camping, fishing, sailing, kayaking, flying.

John was also known to frequently read a book a night when he didn't have a meeting or wasn't tying flies for a day of fishing. He was inquisitive with a strong desire to learn that continued throughout his lifetime.

Family and friends knew they could rely on John to consistently demonstrate values that were fundamental to his character — love and loyalty, integrity, honesty, fair-mindedness, courage, wisdom, and an ever-present sharp wit. The years with John are a gift that will always be cherished by his family and by those who had the privilege of sharing his life with him.

John is survived by his son, Jeremy and wife Debra of Federal Way, WA, twin daughter Virginia Brock and husband Jack of Houston, TX, twin daughter Roberta Frankenfield of Bellevue, WA, and sister

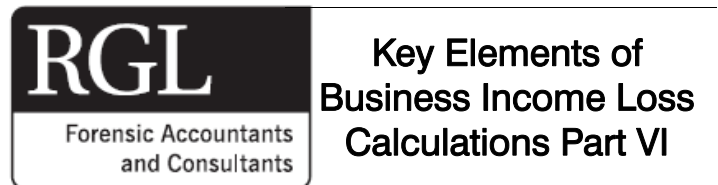
Dorothy Barboza and husband Ben of Napa, CA, 8 grandchildren and 10 great-grandchildren.

* * * * *

A Remembrance
by SCAA member Mary Jo Lovell

I met John Fuller when I went to work at Unigard in the Spring of 1969. He was a multi-line outside adjuster in the Burien office with Michael Anderson, Nelms Paris, Jim Carl and others including Art Martin, Carol Berger, and Steve Rubel.

I knew him as a very humble man, devoted to his wife and family. He was a great teacher in both sharing his adjusting skills, but also in practicing humility and kindness. He always had a smile on his face and a patient mannerism about his work style. I have great memories of him teaching me my first ski lesson in the office before I ever put on a pair of skis. ☺



Last month's column focused on expense projections and the types of documents and information that can be used to project expenses. Part VI, my final article in the series, focuses on continuing expenses.

Continuing normal operating expenses are added to projected net income (or loss) to compute the Business Income Loss. Although continuing expenses appear to be relatively straightforward, in reality they can include a variety of complex matters including cash/accrual accounting issues, as well as identifying and extracting expenses that have been submitted as property damage claims or other claims.

Before you get too far along in your analysis of continuing expenses it can be very helpful to spend some time with the insured discussing the nature of business expenses and how they might be impacted by the loss. A good tool to use in your discussion is

(See **Key Elements...** continued on next page)

Key Elements...

the insured's last income statement (or similar document) that was prepared prior to the loss incident. Spend a little time going through each expense listed on the income statement. Pertinent questions include:

- a) What would you normally expect this expense to be (a monthly average for fixed expenses or a percentage of sales for variable expenses)?

Claims for continuing expenses that exceed normal pre-loss levels should be investigated. Oftentimes, these occur due to cash/accrual accounting issues or inclusion of property damage expenses in the normal cost of operation. In such cases, it's best to seek the advice of a forensic accountant as these matters can be quite complex for someone not familiar with accounting practices.

- b) How do you think this expense will be impacted by the loss?

Simple common sense can be useful in evaluating the insured's response to this question. If the insured says that certain expenses will continue in full, even though the building was completed destroyed, find out why they believe this will occur. This is also a good time to instruct the insured to track property damage and extra expense separate from normal operating expenses. Be prepared to explain why it is important to track these expenses separately.

- c) What type of documents can you provide to support continuing normal operating expenses?

Make sure you understand what specific documents are available to verify the insured's actual continuing expenses and update the calculation as necessary. This question will also alert you to possible limitations of the insured's accounting system and get you thinking about possible solutions early in your evaluation of the loss. ❖

— Russell Matheson CPA, CFE, is a Director in RGL's Seattle office. He may be reached at (206) 682-6500 or rmathe@us.rgl.com.

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

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Associate Member — Member of Defense Bar or Former Claims Person **\$25 Due** Corporate Sponsor — Legal Firms **\$125 Due**

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