

SCAA

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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.”



Case Study

SMITH FREED & EBERHARD P.C.

Your Litigation Partner

Compelling Independent Medical Examinations and Commingling UIM and PIP Files

— by Jeffrey D. Eberhard

Claims Pointer: Recently, the Washington Court of Appeals provided non-binding guidance on 1st party bad faith claims. The court stated that UIM insurers do not act in bad faith by compelling their insureds to submit to an independent medical examination. The court also stated that when insurers commingle a PIP and UIM file by including the same independent medical examination report in both files, insurers will not be liable for bad faith claims if the report is used only for the purpose of determining the severity and nature of their insureds' injuries.

Insurers must always be weary of bad faith claims when investigating and denying claims. A simple and perhaps relatively inexpensive claim can quickly mutate into an ugly and expensive mess. Bad faith claims often arise because of the different duties insurers owe insureds. For example, when insurers defend their insureds under a “reservation of rights,” insurers have an enhanced obligation to defend their insureds. But when an insured has a UIM claim, the UIM insurer and its insured appear to be in an adversarial and arm's length relationship. Nonetheless, UIM insurers still owe a duty of good faith and fair dealing to their insureds because insureds still believe their insurers will treat them fairly and in good faith. In order to avoid bad faith claims, generally we recommend insurers maintain UIM and PIP claims in separate files and with separate adjusters. However, in a recent Washington Court of Appeals case, Kim v. Allstate, the court provided non-binding but persuasive insights into the proper handling of first party claims. No. 37256-8-II, in the Court of Appeals of the State of Washington (November 24, 2009).

Ki Sin Kim was allegedly injured when she was involved in a head-on collision after an uninsured motorist crossed the center line and struck her vehicle. An ambu-

(See Case Study... continued on page 3)

Next Meeting of the SCAA

January 15, 2010

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

Program

Dr. Dale M. Calkin, DC will be conducting a Mock IME

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. Please do so through our website or contact Deborah Jette at deborah.jette@grange.com. Thank you!

SCAA

Friday, March 19, 2010



2010

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ON THE DOCKET FOR 2010

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Date	Speaker/Topic
Jan 15	SCAA Meeting Dr. Dale M. Calkin, DC will be conducting a Mock IME
Feb 19	Joint Meeting with TCAA "How to Deal with a PA or Plaintiff Attorney on First Party Claims" with Thomas Lether of Cole, Lether, Wathen, Leid & Hall PC Followed by Bowling! See website to register
March	SCAA-TCAA Annual Spring Symposium & Vendor Fair See website for more info & registration

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

lance took Kim to the hospital where she received x-rays and computed axial tomography (CAT) scans. The hospital records indicated Kim suffered a 3-4 inch laceration on her scalp, soft tissue swelling on the right side of her head and contusions on her left knee and left ankle. Kim filed a claim with her Insurer, Allstate Insurance Company, for medical expenses and lost wages under the PIP and UIM provisions in her automobile insurance policy. In her proof of loss statement, the Insured maintained she had not been able to return to work after the accident due to her injuries. The Insurer suspected the Insured made misrepresentations about her claim and investigated the severity and nature of the Insured's injuries. The Insurer compelled the Insured to undergo an IME. The doctor conducting the IME concluded the Insured "feigned her physical injuries...during [the] examination." The Insurer included the IME report in both the PIP and UIM file and denied the Insured's claim for the misrepresentations. Even though the Insured admitted to making misrepresentations about her claim, the Insured sued the Insurer for, among other things, bad faith. Both parties moved for summary judgment. The trial court denied the Insurer's motion but granted the Insured's motion finding the Insurer had acted in bad faith by, among other things, commingling her PIP and UIM claim file. The Insurer appealed to the court of appeals.

On appeal, the court of appeals held that the Insured's misrepresentations about her claim prohibited her from successfully maintaining a bad faith claim against her Insurer. Since the court had already determined the Insured could not bring a bad faith claim, the court's analysis regarding the compelled IME and the commingling of the PIP and UIM files was not necessary for the court's decision. Nevertheless, the court of appeals decided to discuss both of these issues. Unfortunately, the court's analysis is only persuasive and not binding. The court of appeals disagreed with both of the Insured's arguments that the Insurer acted in bad faith by: (1) requesting the insured undergo an IME as the UIM provider; and (2) commingling the UIM and PIP files by including the results of the IME in both the PIP and UIM file.

First, the court of appeals suggested that since a third party tortfeasor can compel an IME, and because a UIM Insurer "stands in the shoes" of a third party tortfeasor, a UIM Insurer could require the Insured to submit to an IME. Additionally, the UIM Insurer could compel the IME because it was a condition of coverage under both the UIM and PIP policies. Thus, the Insurer did not act in bad faith by requiring the Insured to submit to an IME.

Second, the court of appeals stated that the Insurer did not act in bad faith by commingling the PIP and UIM files. The court of appeals distinguished the present case from Harris v. Drake where the court held a third party claimant could not compel discovery of an IME report because there was an expectation that the information obtained by the insurer was confidential. 152 Wash 2d 480, 99 P3d 872 (2004). In the present case, even though the Insurer was "standing in the shoes" of a third party, there was no actual third party who was seeking confidential information about the Insured that was provided to the Insurer in confidence. Rather, the Insured sought coverage from her Insurer and the Insurer was only trying to establish the extent and nature of the Insured's injuries. Thus, the principles of confidentiality in Harris were distinguishable. Similarly, the court of appeals distinguished this case from Ellwein v. Hartford ACC. & Indem. Co. where the Washington Supreme Court held the Insurer acted in bad faith when it used an accident reconstructionist in its liability investigation to assert the Insured was not at fault, but then used the same expert to demonstrate the Insured was solely liable in its UIM claim. 142 Wash 2d 766, 15 P3d 640 (2001)(*overruled on other grounds by Smith v. Safeco Ins. Co.*, 150 Wash 2d 478, 78 P3d 1274 (2003)). In the present case, the court of appeals stated that the IME report was not analogous to an accident reconstructionist. Since the Insurer only used the IME to determine the severity and nature of the Insured's injuries and not their cause, the court of appeals suggested that the Insurer did not act in bad faith by placing the IME report in both the UIM and PIP files. ❖

— If you would like to be notified of these 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.



Treasurer's Report

Submitted by **Deborah Jette, Treasurer**

Beginning Balance: \$17,766.30

Income: \$987.76

Expenses: \$8335.93

Ending Balance as of 1/4/10: \$10,418.13

We are looking for someone to fill a new position under Committees called **Association Photographer**. This person would be responsible for taking pictures at all TCAA events and getting them to our publisher for use in the newsletter. If you are interested please contact any board member.



SCAA

Friday, March 19, 2010



2010
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See website for brochure

Medical Notes



Neuromuscular Reeducation

Article provided by Health Cost Management

Are hospital bills all the same? The answer is "NO" depending on who the payer is, they may look quite different and the charges may be totaled up in completely different fashion. See the word attachment for information on concise clear explanations of definitions of DRG's, UB-04, outliers, & PPS. There are also several web site that can be quite helpful in deciphering some of the "medical billing and coding jargon."

There is much discussion right now about "reasonable and necessary" medical bills. I am personally encouraging each person to not only review their medical provider bills for their occupation (job), but also to become an educated consumer and review your own medical bills. An example is to ALWAYS, when reviewing for accuracy, get an Itemized Billing rather than a UB-04 (Summary Billing).

There is much information on the internet regarding hospitals. If you are in need of surgery, it is a good idea to research not only the reputation of your local hospital, but also to compare the amounts in their Chargemaster. Some hospitals may charge three times the amount charged by neighboring hospitals. It really pays to research all the public information and become an educated consumer.

Hospital bills are all the same, right? Not exactly. Depending on who the payer is, they may look quite different and the charges may be totaled up in completely different fashion.

The Medicare Prospective Payment System (PPS) was introduced in October, 1983, as a way to change hospital behavior through financial incentives that encourage more cost-efficient management of medical care. Under PPS, hospitals are paid a pre-determined rate for each Medicare admission. Each patient is classified into a Diagnosis Related Group (DRG) on the basis of clinical information. Except for certain patients with exceptionally high costs (called outliers), the hospital is paid a flat rate for the DRG, regardless of the actual services provided.

Since that time, many payers, including Workers' Compensation in several states, health insurance companies, preferred provider organizations (PPOs) and health maintenance organizations (HMOs) have established contracts with hospitals to utilize DRG codes as a basis for payment.

Most DRGs are assigned based on the principal diagnosis at the time of discharge and are modified if there are major complications or co morbidities involved. In some cases, the DRG is based on a specific surgery being performed, rather than the diagnosis code.

This all sounds very simple: check into the hospital, get a diagnosis and have a bill that is a flat rate based on the diagnosis. It is not quite that simple. First of all, an individual won't get a bill based on the PPS system; instead they will receive a much higher bill. The second part is the calculation for outliers. If the costs incurred by the hospital go above a certain

Membership Application for 2009-2010



SCAA Annual Membership Application

Membership Dues for the year September 1, 2009 to August 31, 2010

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

threshold, they can calculate the amount over the threshold and bill for a percentage of that amount in addition to the DRG flat rate.

The Medicare DRG amounts are public information and the total amounts billed and total amounts paid by Medicare for various DRGs by county, across the country, for the most common DRGs, may be found on-line at: http://www.cms.hhs.gov/HealthCareConInit/02_Hospital.asp

Most hospital bills are now submitted using a UB-04 form which replaced the previous UB-92 form, effective March 1, 2007. The UB-04 is a summary bill and is not itemized. The amounts on the bill represent totals for individual revenue codes, such as pharmacy, radiology, laboratory, room and board, operating room, etc. If the UB-04 is submitted for PPS payment, then the DRG code is entered in the PPS Code box. In that case, the total charge on the bill represents the amount for that DRG.

The downside of a UB-04 form is that it has so little detail that it cannot be audited for accuracy. However, you can request and are entitled to receive, an itemized bill that lists each and every individual item that was provided during your hospital stay. An itemized bill can be compared to the medical records to determine if the bill accurately represents the services that were provided and if those services were coded and billed correctly.

If you are in need of surgery, it is a good idea to research not only the reputation of your local hospitals, but also to compare the amounts in their Chargemaster. Some hospitals may charge three times the amount charged by neighboring hospitals. It really pays to research all the public information that is available and be an educated consumer. ❖

Empty that Inbox!

Manage your messages—with a system

Reprinted from BlackBerry Connection. ©2006 Research In Motion Ltd

Your inbox is constantly full, despite your best efforts to keep up. Messages seem to arrive faster than you can read and reply to them. A sinking feeling turns to panic when you realize that you are days late replying to a critical message from an important client or a high priority project. If this sounds familiar, it may be time for a new way to manage your messages and a new way to manage your *time*.

Consider how much of your productive working time is eroded each day by replying to emails. What could happen if important messages continue to be lost in the sludge of your inbox? If only you had a system that helped you to organize and streamline your inbox management, a system that accelerated replying, deleting, and properly filing every message. Fortunately, there *is* such a system, and it is based on two simple-but-radical guidelines:

1. Avoid reading and managing your email first thing every morning.

2. Strive to leave your inbox empty at the end of every working day.

Does this suggest ignoring messages or deleting with maniacal glee everything in your inbox every day? Though these guidelines seem so contrary to common practice, let's back up a moment and investigate the sources.

Getting Things Done: “The Four Ds”

Productivity expert David Allen's book *Getting Things Done: The Art of Stress Free Productivity* promotes a method of organizing everything in your inbox so that you deal with each item once—and only once. Allen recommends quickly reviewing each item, instantly deciding its priority, and immediately filing each into one of four categories called the “Four Ds”: Delete, Do, Delegate, and Defer. Once sorted by the action required, only the important messages get your immediate attention. A mammoth inbox suddenly becomes manageable.

Known to productivity enthusiasts as “GTD” (Get Things Done), David Allen's system offers a powerful method to organize and manage information, commitments, and communications. “Allen's GTD system of organizing and prioritizing your inbox, to-do lists, and daily tasks can be extended to your entire workflow and whole life,” says Kelly Forrister, Senior Facilitator with David Allen Company. Forrister coaches clients on how to harness this integrated system to get their inboxes—and their lives—under control so they enjoy peace of mind and a stress-free working day.

Break the “first-thing-in-the-morning” habit

Do you find yourself reading and replying to emails every day from morning to noon? Julie Morgenstern's *Never Check E-Mail In the Morning: And Other Unexpected Strategies for Making Your Work Life Work* warns against immersing yourself in email as your first task in the morning. The morning hours are often the most productive time of the working day and it's far too easy to fritter away these “peak hours” by reading and managing your email.

Morgenstern suggests pursuing some other task or project during your first hour at work and save reading and replying to email when you're more focused on your goals for the day. Forwarding your important emails to your BlackBerry® device alerts you to anything urgent, and enables you to reply to lower priority emails as you have spare time between tasks.

Smaller is better

Some people measure their organizational importance or productivity by the size of their inbox. However, equating a bulging inbox with personal busyness may be a notion no more valid than associating a messy desk with being organized. How many of those messages really require your attention or even merit a reply? Do you allow your inbox to swell to a size that strains your BlackBerry device?

Keep it small, advises Kelly Forrister, who says that maintain-
(See **Empty that Inbox...** continued on page 6)

Empty that Inbox... *(Continued from page 5)*

ing thousands of emails in your inbox makes no more sense than keeping thousands of voicemails on your answering service. Consider weeding through those old emails, sort them by the “Four Ds” (Delete, Do, Delegate, and Defer) and cut your email inbox down to size.

Empty that inbox!

Is actually *emptying* your inbox before the end of each day a realistic goal? Yes, says Kelly Forrister, who recommends a short checklist of questions to help you quickly sort through your messages and tame an unruly inbox:

- Can you safely delete the item? If the item doesn’t need to be read, saved, or require a response, then consider deleting it.
- Can you do the action that the email requires be done in less than two minutes? If you can, try to do the action required immediately.
- If *you* cannot do it, can you delegate it? Delegate can also mean handing it off sideways—consider whether a colleague could better handle it.

- If you cannot take care of it immediately, can you defer it? Be aware, however, that “deferring” does not mean allowing the item to sink beneath your notice forever!

Forrister recommends streamlining your inbox management by sorting all your remaining messages between just two folders: one labeled ACTION, the other labeled WAITING FOR. Items requiring more time than is immediately available can go into the ACTION folder. Items requiring you to confer with someone else before responding can into the WAITING FOR folder. Forrister suggests applying this system to your entire inbox, or starting fresh today with an empty inbox by moving all your old messages into an old email folder.

Either way, Forrister maintains that being disciplined about filing your messages and limiting your inbox processing to only a few times per day can dramatically improve email management. Your BlackBerry device is ideal for inbox processing when you have some downtime away from your desk, and can be configured to automatically forward urgent messages from designated priority senders such as your boss, client, or assistant. With practice, your newfound “GTD” organizational skills will deliver deep satisfaction—and an empty inbox at quitting time—so you go can home feeling worry-free! ❖

Benefits of Membership in SCAA — Join or Renew Today!

We can’t say enough about the advantages of membership in the Seattle Claims Adjusters Association. The benefits are numerous, for example:

- **Newsletter** — Receive a copy of the SCAA newsletter September through June, packed full of educational articles and other information of interest to adjusters. It is also a resource guide to goods and services provided by our industry vendors — who also support our Association.
- **Monthly Meetings** — Attend these meetings to hear local presenters on topics that are pertinent to today’s adjuster — always educational and sometimes entertaining!
- **Spring Seminar & Vendor Fair** — An entire year’s worth of work goes into planning and hosting this annual educational event held in the spring — touching on all the hot topics and providing you an opportunity to meet with industry vendors face-to-face outside of your office.
- **Golf** — Not much educational about golf, but what adjuster today doesn’t need a little relaxation and fun — held in the summer each year.
- **Website** — Stay in touch with local happenings and other claims associations in the Pacific Northwest. Open a web version of our newsletter. Find contact information for SCAA board and committee members. Or find a new job from the employment listings. And there’s more.....

Membership in SCAA is open to all claims adjusters, and should be a priority on your list of things to do!
Print the application from our website, or use the one on the previous page.

JOIN or RENEW TODAY!

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