

SCAA

October 2009

Vol. 37 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.”



Dean's Dish

— by Dean West, SCAA President

We leave a beautiful summer and enter, what appears to be, a glorious fall. With the leaves changing we know Halloween is fast approaching leading up to the other two holidays, one I won't mention because its just too early to say it.

Thanks to everyone who attended the September meeting. During the meeting, we had a very informative presentation by Whitney L.C. Smith of Wilson Smith Cochran and Dickerson.

We also formally announced the charity selection for this year: the **Juvenile Diabetes Research Foundation**. Anyone interested in learning more about this disease that mostly affects young children, teenagers and young adults, please visit their website at www.jdrf.org.



We also handed out a poll at the September meeting seeking input from the attending members for good topics and good speakers for the educational portion of our meetings. We look forward to more input from the members.

Our two winners for the monthly drawings were **Jim Postma** and **Carol Seepersad-Green**. The Blue Bucket went without a winner so the prize increases for the next drawing. Past President (1981-82) **Sharon Setzler** was the name drawn and she was not present to win. The Blue Bucket increases to \$100 for October!



(See Dean's Dish... continued on page 3)

Next Meeting of the SCAA

October 16, 2009

Special location this month only!

Acme Bowling in Tukwila

This will be a joint meeting with TCAA

Program

**“The Art of Being Deposed” with
Daniel E. Thenell of Smith Freed & Eberhard**

Followed by an afternoon of bowling!

See our website calendar for more information



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 2009

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| Date | Speaker/Topic |
|--------|---|
| Oct 16 | SCAA joint meeting with TCAA followed by a joint Bowling Tournament See our website for more details |
| Nov 20 | SCAA Meeting |
| Dec 4 | SCAA Annual Holiday Party See our website for more info and 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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Dean's Dish... (Continued from front page)

At the end of the meeting, we announced this years Chair Liaisons which are: **Lynn Perry** – Membership; **Lizzy Adkins** – Bowling Tournament; **Timothy Reid** – Case Review; **Roger Howson** – Education; **Carol Seepersad-Green** – Golf; **Debora Jette** – Holiday Event; **Jim Peterson** – Spring Seminar; and **Bob Jeans** – Tennis Tournament. If you are interested in volunteering for one of these committees, please contact the corresponding liaison.

We will have a change of venue for our October meeting. We are utilizing a large designated area at Acme Bowling in Tukwila. The speaker will be **Daniel E. Thenell** of *Smith Freed & Eberhard, P.C.* The topic will be “**The Art of Being Deposed**”. This will be an educational, interactive and entertaining event. Attendance is recommended for anyone who has not been deposed to get insight on what you can expect during this legal process. I would also recommend attendance by anyone who has gone through the process to pick up a few tips and to share any unusual deposition experiences with the rest of the members.

And now....the real Dish (again). For those of you who read last month's newsletter, I announced I will try to put together a recipe for the newsletter which I hope someone will try and actually enjoy. Last month, we included the yummy ingredients for the Beer Baked Beans but did not post the actual directions; so here they are with the entire recipe. →

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 find it inside this newsletter.

RENEW TODAY!
www.seattleadjuster.org



CPCU All-Industry Day October 26, 2009

Seattle Westin Hotel
 Featuring seminars, networking, &
 comedian Kelly Terranova

Check your chapters website for more information

Registration forms will be mailed in September

Beer Baked Beans

Ingredients:

- 1 – Large Can of Baked Beans (I use Bush's Baked Beans)
- 1 – Small Can Kidney Beans (optional)
- 6 – Slices Bacon
- 1 – Small Red Onion
- 1 – Cup of BBQ Sauce (Sweet Baby Rays is my favorite)
- ¼ - teaspoon of Ground Cayenne Pepper (optional)
- 1 – Bottle of Beer

Directions:

Preheat the oven to 300 degrees.

Cook the Bacon in a large skillet then remove from the grease (save the bacon).

Dice the onion into very small pieces and add to the Bacon grease cooking the onion until well done.

Add the baked beans to the onion/grease mixture and stir.

Dice up the saved bacon and add it in to the mix.

Add the BBQ sauce and Cayenne Pepper.

Add the ½ bottle beer and drink the other half then stir again.

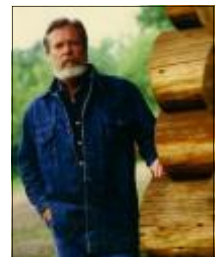
Pour the contents of the frying pan into a 9x13 glass baking dish, cover with foil and place in the pre-heated oven. Cook covered for 1 hour. Remove foil and cook an additional 15 minutes. Serve with BBQ Ribs, Hot Dogs, Hamburgers or whatever your BBQ cooks up that day.



In Memory Of...

SCAA member **Joe William Knollmueller**, of Redmond, passed away September 16, 2009. Joe served in the U.S. Air Force from 1950 to 1954; graduated from Purdue University with a Bachelor of Arts in Air Transportation; and worked as a systems analyst, small business owner, and as an insurance adjuster. Joe was buried with full military honors during a military funeral at Tahoma Nat'l Cemetery.

We are saddened to report that only recently we found out that Past President **Dewelle "Skip" Ellsworth Jr** passed away last year in August while living in the Philippines. Skip was president of SCAA in 1974-75; Fred Greiner was vice-president at the time, Bob Dailey was secretary and Gordon Everett was treasurer. Hearing of Skips passing brought back memories for many — such as the days they would get together to do the newsletter, with leftover wine from the meetings as refreshment. The newsletter back then was printed on 8.5"x14" colored paper with 24 advertisers. Some say, "Those were the good ol' days!"





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

The Risk of Appealing Arbitrators' Decisions
 — by Jeffrey D. Eberhard

Claims Pointer: When determining whether a party appealing from an arbitration award has improved its position, courts will compare the trial award against the arbitrator's award less statutory costs and fees. However, if there is an offer to compromise extended after the arbitrator's award, that offer—less statutory costs and fees—replaces the arbitrator's award for the purpose of determining whether a party improved its position.

For some civil claims, courts first require parties to pursue remuneration through mandatory arbitration. The parties may agree upon an arbitrator, or if they cannot agree, the court will appoint one. Once appointed, an arbitrator will hear the evidence and determine who is liable for any injuries and to what extent. If one of the parties does not agree with the arbitrator's final decision, that party can appeal the decision to a trial court. Although appealing a decision is allowed, it can be fraught with expensive consequences. In the case of Niccum v. Enquist, —

P.3d — (Wash App Div. 3, September 1, 2009), the parties faced one of those expensive consequences—the possibility of having to pay the other side's attorney fees if they did not improve their position at trial.

Jeffery Niccum ("Plaintiff") brought a claim against Ryan Enquist ("Defendant") for injuries he suffered in an automobile accident. At a mandatory arbitration, Plaintiff was awarded \$24,496 by the arbitrator. Defendant requested a trial de novo. Subsequently, Plaintiff made two offers of compromise for the purpose of reaching a settlement. Defendant rejected both offers, the second offer being for "\$17,350 including costs and statutory attorney fees." The case went to trial and the jury awarded Plaintiff a total award of \$16,650.

Plaintiff moved for attorney fees under Mandatory Arbitration Rule ("MAR") 7.3. Under MAR 7.3, a court must assess costs and reasonable attorney fees against a party who appealed an arbitration award and failed to improve his position. However, if an appealing party rejects an offer of compromise tendered after the arbitrator's award, the rejected offer will replace an arbitrator's award when determining whether the appealing party has improved his position. RCW 7.06.050(1)(b). In determining whether

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

Defendant in this case improved his position, the trial court subtracted \$1,061.28 from the settlement offer—the amount of statutory fees and costs. The trial court compared the amounts and found Defendant did not improve his position because the revised settlement offer (\$16,288.72) was less than the jury award (\$16,650). Thus, under MAR 7.3, the trial court awarded Plaintiff reasonable attorney fees of \$15,640 and expert fees of \$1,461. Defendant appealed.

On appeal, Defendant maintained the trial court erred by subtracting the statutory costs from the settlement offer when determining whether Defendant improved his position. Accordingly, Defendant argued his position improved because the jury awarded Plaintiff \$16,650, which is less than Defendant's settlement offer of \$17,350.

Plaintiff argued the trial court properly “compared comparables” by subtracting statutory fees from the settlement offer before comparing the award to the settlement offer. Since the judgment against the Defendant was greater under the jury award than the settlement offer, Defendant failed to improve his

position. Consequently, Plaintiff argued *he* was due reasonable costs and attorney fees under the MAR 7.3.

The appellate court agreed with Plaintiff and held the trial court properly compared the compensatory damages awarded by the jury against Plaintiff's most recent offer of compromise *after* subtracting the mandatory statutory fees and costs from the settlement offer. Consequently, since Defendant had not improved his position by rejecting an offer of compromise following an arbitration award, the appellate court affirmed the trial court's decision awarding Plaintiff reasonable attorney fees and costs.

However, the appellate court did find the trial court erred in awarding expert fees to Plaintiff because expert fees are not included under statutory costs. ❖

— Full Case Available at: <http://www.courts.wa.gov/opinions/?fa=opinions.disp&filename=275043MAJ>

— 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.

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!

www.seattleadjuster.org