



~ Our Mission ~

"A professional organization dedicated to the ongoing education of the claims community. Providing an arena for member interaction and the sharing of resources."

Next Regular Meeting: January 15, 2016. — See page 2



Claims Conversation

with Roger Howson

— See page 3



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Your Kid Just Got a Drone...

— See page 16



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Introduction of Our January Speaker

Frances Schopick, JD, MSW, LICSW has worked for nearly 20 years as a mental health diagnostician and clinician in agency, research, and private practice. She was formerly on the faculty of Harvard Medical School in the Department of Psychiatry, and currently serves (from WA State) on the Adjunct Faculty of the Icahn School of Medicine at Mount Sinai in New York City in the Departments of Psychiatry and Preventive Medicine. Research publications, abstracts, and presentations reflect her work in Mood and Personality Disorders.

As an attorney, her focus is on Family Law dissolutions (divorces), representing counselors and licensees with complaints against Department of Health (DOH) complaints, and mediation. Ms. Schopick has presented to WA State Superior Court Judges and Administrators as well as to the WA State Bar Association Disciplinary Counsel on mental health issues. She presents to lawyers on Stress Management, Working Effectively with High Conflict People, and Bullying. She also coaches lawyers on these issues.

(See January Speaker... continued on page 3)



DON'T FORGET TO RSVP!

Please let us know you will be attending our meeting ~ submit an RSVP!
See page 2 for how/where to RSVP!





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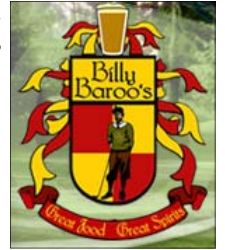
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PSAA Next Luncheon Mtg

Next Meeting: January 15, 2016

Time: 11:30am to 1:30pm

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Presentations: "Professionals Bullying Other Professionals"
with Francis Schopick, JD, MSW, LICSW

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Additional 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
- 1:30 p.m. End of Meeting

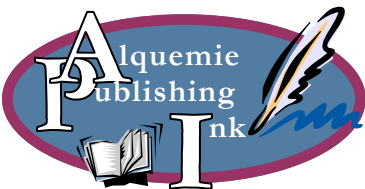
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Work to Live... Not Live to Work

By **Deborah Jette**
PSAA President, Grange Insurance

HAPPY NEW YEAR!

I don't know about the rest of you but I'm thinking 2016 will be a GREAT year. Most of us in the industry have had a bad year in claims with the abundance of wildfires and when we thought we finally were close to being caught up, the winds and rains started.

I personally got to start off the year with friends and had a nice 4½ day weekend without succumbing to the temptations to log onto my computer and work. I feel as I've worked enough in the last year to last a lifetime! So I only have one and only one resolution, to remember that I am working to LIVE and not living to WORK!

I have seen many of my friends and peers over this last year struggle to maintain a LIFE due to the fact that they are working 10+ hours a day. Not only is this unhealthy but it can lead to burn out, bad attitudes, customer complaints and be counter-productive. Yes, it may be easier to say than do when you know there is a pile of work sitting at your desk to be done but when you are well rested and happier outside of work, it is amazing how much faster you may work. I can't tell you how many times, after working long hours, I find myself staring at the computer at a loss as to what I'm reading from pure exhaustion.

So I hereby resolve that the weekends are for ME, that vacations are for ME, and I truly hope that the same can happen for all of you. And in keeping with this resolution, my article is hereby short and sweet so I can grab a cup of tea and chill.

May your 2016 be the best it can be! ❖

PSAA Annual Spring Symposium & Vendor Fair

Mark your calendar for
Friday, March 18
More info to come!

January Speaker... *(Continued from front page)*

Ms. Schopick completed her BA at Barnard College at Columbia University in New York City, a Master's Degree in Social Work (MSW) at the Hunter College School of Social Work, and a Juris Doctor (JD) at the University of New Hampshire. She holds WA licensure as both an attorney and LICSW.

Ms. Schopick's presentation "**Professionals Bullying Other Professionals**" at our January meeting is the adjuster version of her well-received WDTL topic "Lawyer Bullying". Bullying is a phenomenon that too few people are willing to discuss openly. In her "Lawyer Bullying" presentation, Ms. Schopick points out that many lawyers believe that as professional advocates not only is bullying acceptable - it's expected, and in many instances required.

Ms. Schopick is uniquely qualified to debunk this myth because, in addition to being a social worker and lawyer, she spent many years counseling people convicted of committing domestic abuse. She says that research shows that abusers are damaged by the abusing in some of the same ways as the very people they're abusing. Like domestic abuse, professionals bullying other professionals is a vicious, unhealthy cycle that needs to be broken. ❖



Claims Conversation

with **Roger Howson**, Claims Dispute Resolution, PSAA Newsletter Editor & Education Chair, TCAA Past President

By the time you read this Claims Conversations column the Seattle Seahawks will have returned from their Wild Card playoff game against the Minnesota Vikings either confidently on their way towards another Super Bowl appearance, or they will be quietly closing down a disappointing season filled with a long list of regrets and recriminations.

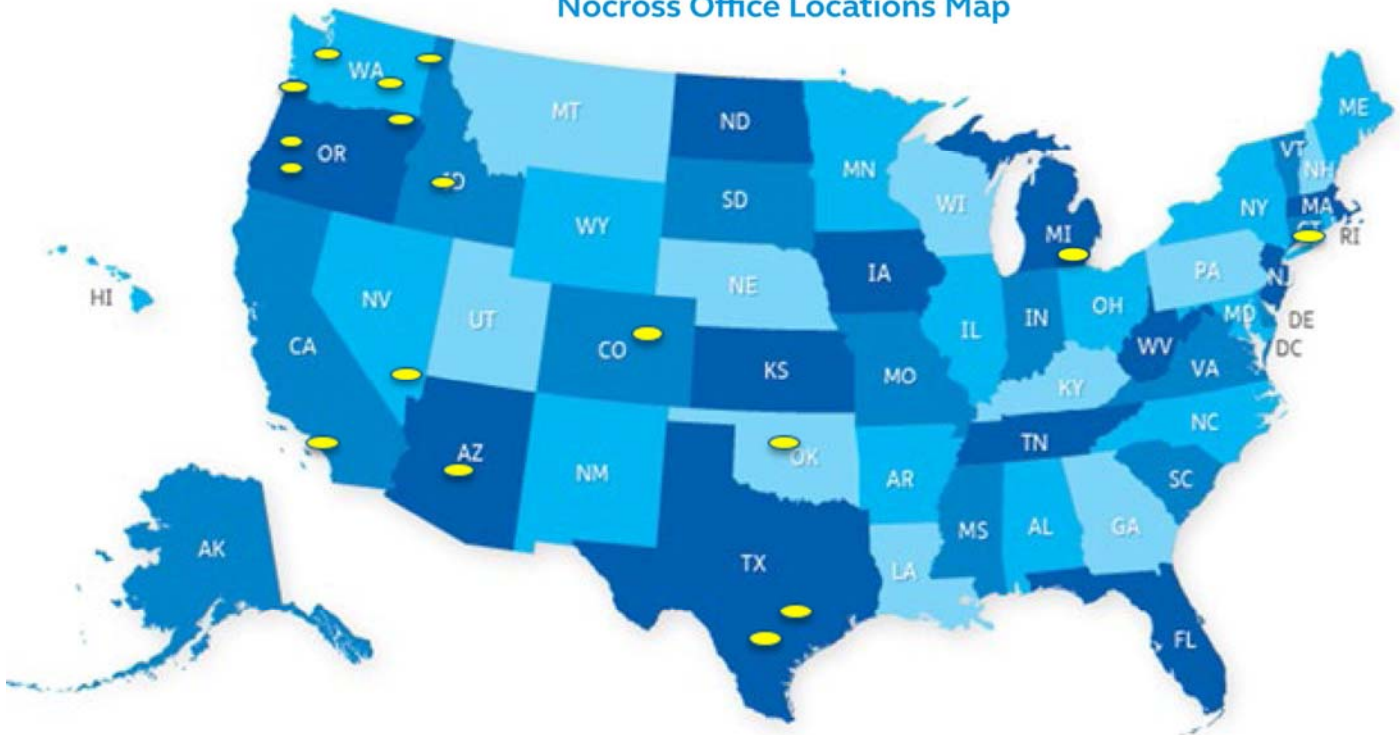
If the Seahawks perform in Minnesota as well as they did on the road against the Arizona Cardinals, not to mention the Seahawks' mid-season road win against a seemingly unbeatable Vikings team, then we will have every reason to believe in Seattle's chances to play in Super Bowl L... I mean, Super Bowl 50. (I still don't understand why after 49 years of designating the Super Bowl with Roman numerals the NFL can't suck it up and roll with the L.)

Conversely, if the Seahawks implode against the Vikings like they did in their two losses this year

(See Claims Conversation... continued on page 5)

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Claims Conversation... (Continued from page 3)

against the lowly St. Louis (Los Angeles?) Rams you can be sure that the Seattle sportswriters, bloggers, and Twelves (my wife refuses to let me call them the "12th Man" when there are clearly a huge number of 12th Women) will declare this season a wasted opportunity because of:

1. Russell Wilson throwing an interception instead of handing off to Marshawn Lynch in Super Bowl XLIX,
2. not firing Darrell Bevell immediately after Russell Wilson throws an interception instead of handing off to Marshawn Lynch in Super Bowl XLIX,
3. our failure to get Jimmy Graham involved in the offense,
4. trying too hard to get Jimmy Graham involved in the offense,
5. decimating our offensive line by trading center Max Unger for tight end Jimmy Graham,
6. Jimmy Graham getting injured,
7. Marshawn Lynch, then Thomas Rawls getting injured,
8. re-signing Christine Michaels.. how can you possibly expect to win in the NFL with a running back named *Christine?*,
9. Kam Chancellor selfishly holding out until game three of this season, or
- 10.all of the above.

As of this writing the Seattle Seahawks are calculated to have a 9% chance of winning Super Bowl L... 50. If the Seahawks prevail in Minnesota, win the next round after that, take the NFC title game for the third time in a row, and then dominate the AFC champion like they did the Denver Broncos in Super

(See Claims Conversation... continued on page 7)

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Claims Conversation... *(Continued from page 5)*

Bowl XLVIII, we can assume that conventional wisdom credits this season's success to:

1. Russell Wilson's intense motivation from the previous Super Bowl's game-ending interception.
2. Darrell Bevell's offensive genius,
3. Doug Baldwin's patience in waiting out our infatuation with Jimmy Graham,
4. Marshawn Lynch's injury kept him fresh for the playoffs,
5. Christine Michaels is the stud we always thought he was when we picked him in the second round of the 2013 draft... yeah, his name is Christine- do you have a PROBLEM with that?!?
6. Kam Chancellor's early season holdout kept him fresh for the playoffs, and
7. All the preceding six factors were part of Pete Carroll's master plan to win Super Bowl L.


A Seattle victory over Minnesota, although it hardly seems fair that a city has to play against an entire state, ensures that the January PSAA meeting will be resplendent in Seahawk colors with everyone wearing the jersey of their favorite Seahawk. (Editor's note: as an adult male I make it a policy to not wear the jersey of a team for which I do not play, displaying the number and name of another adult male who is not me... no one could ever possibly mistake me for Richard Sherman.)

If the Vikings DO defeat the Seahawks to knock us out of the playoffs then the only NFL jersey at the January PSAA meeting will be the 49er colors worn by Robert France of ServiceMaster of Seattle, and the rest of us will be talking about the sixth and final season of Downton Abbey.

How does this all relate to claims?


As claims professionals, whether we're adjusters, attorneys, service advisors, or management, our job is to respond quickly and decisively to catastrophic events wherein we're basing our actions on information that may be incomplete, inaccurate, misrepresented, misinterpreted, completely wrong, and/or exactly what it seems. When we're called out on a new claim we don't have the benefit of hindsight, and we'll be lucky to get whatever information is available at the time of the event. We keep an open mind, hope for the best, and prepare for the

(See Claims Conversation... continued on page 9)




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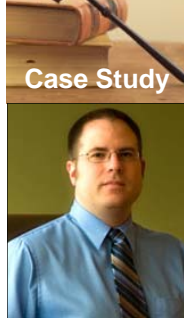


Claims Conversation... *(Continued from page 7)*

worst. We do our job to the best of our ability. The claims are played out to conclusion... settlement, compromise, denial, or litigation.

Claims shouldn't be seen as "winning" or "losing", but the managerial post-mortem is much like what will play out for the Seahawks. Too often, the evaluation of our actions and decision-making are based on the metaphorical bounce of a ball that can go one way or the other. The scoreboard doesn't care.

Play hard. Play fair. Play nice. And recognize that sports metaphors are far too simplistic an explanation for what we do... claims is more analogous to the grisly Brothers Grimm fairy tales. ❖



Co-Worker Immunity Requires Actual Work

— By Kyle Riley

From the desk of Kyle D. Riley: Is a driver immune from liability for harm to a co-worker that occurs while the driver is on his way home from work, but still on his employer's property?

Claims Pointer: In Washington, the exclusive remedy for workplace injuries is worker's compensation. This "exclusive remedy" rule provides immunity from civil liability to an employee (or employer) that causes injuries to another employee. In the following case, the Washington Court of Appeals held that an employee who injured a co-worker (while driving on a private road owned by his employer) was not immune from suit because the employee driver was not performing work duties for his employer at the time he was driving. The Court held that the relationship between the employees, rather than the location of the injury, determines whether co-worker immunity applies.

Entila v. Cook, No. 73116-5-1, Washington Court of Appeals, Division One (October 5, 2015)

On February 18, 2010, Gerald Cook, left his work at Boeing to return to his car. As he was driving on an

(See Case Study... continued on page 11)



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Case Study... *(Continued from page 9)*

access road owned entirely by Boeing, Cook accidentally struck another employee, Francisco Entila, who was crossing the access road. Entila sued Cook.

Cook filed a summary judgment motion, arguing that he was immune from suit by Entila under Washington’s workers’ compensation statute, the Industrial Insurance Act (IIA), because Entila and Cook were co-workers when Entila was injured and the injury occurred on the jobsite. The trial court granted the motion, dismissing Entila’s claims. Entila appealed.

Before the Washington Court of Appeals, Entila argued that co-worker immunity did not apply to his suit because Cook was not performing work for Boeing (their common employer) at the time of the accident. Cook argued that according to RCW 51.08.013(1) of the IIA, a worker acts “in the course of employment,” even if the worker is not doing their normal tasks at the time of the injury. Cook reasoned that he was still “in the course of employment” because he was on Boeing’s private access road when Entila was injured. The Court disagreed with Cook, explaining that for immunity to apply, the worker who causes the injury must be in the course and scope of employment.

The Court observed that there was no statute defining the “scope of employment.” As such, the Court turned to case law in order to determine what “in the scope and course of employment” means. Ultimately, the Court held that the relationship between workers, rather than their location, determines whether they are “in the scope and course of employment.” In other words, immunity only protects a worker from personal liability if that worker is actually performing his job duties. The fact that Cook and Entila were both employed by Boeing was not the reason for the injury, and therefore the injury did not fall under the IIA.

(See Case Study... continued on page 13)



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Case Study... (Continued from page 11)

The Court also criticized the trial court’s reliance on the fact that Entila actually received workers’ compensation benefits. The Court held that according to RCW 51.24.100, it was a mistake for the trial court to consider workers’ compensation benefits to determine whether co-worker immunity applies.

The Court of Appeals reversed the trial court’s grant of summary judgment and remanded the case to the trial court. ❖

— View the full opinion at: <http://www.courts.wa.gov/opinions/pdf/320006.pub.pdf>

— If you would like to be notified of new cases, please send an email to: caseupdate@smithfreed.com.

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Your Kid Just Got a Drone — Should You Get Insurance?

By Justin Bachman
 Reprinted from www.bloomberg.com

Thousands of novice pilots will be unwrapping drones for Christmas, and some are going to crash and burn

The next wave of hobby drones will be wrapped in boxes underneath Christmas trees before they fill the skies. If industry sales projections come true, the holiday season will put tens of thousands of relative novices at the controls of small unmanned aerial vehicles in densely populated cities and suburbs. All that amateurish swooping over houses and cars, spooking pets and dodging humans, will invariably lead to cracked windows and more than a few bloody injuries.

First come the toy drones; then the liability claims start flying.

"Almost no one is thinking about insurance coverage when they're opening the box," says Jeff Antonelli, a Chicago attorney who specializes in federal regulations for unmanned aerial systems. The liability protection in homeowners or renters insurance policies will sometimes cover damage or injury from a drone crashing into a neighbor's house, vehicle, or child. Yet this coverage isn't universal, Antonelli says, and some policies specifically carry an aviation exclusion that encompasses recreational drones, which the Federal Aviation Administration currently classifies as small aircraft.

There's little doubt that 2015 marks a vast expansion in hobby drone ownership. The Consumer Technology Association calls this "a defining year" for small drones, projecting total U.S. sales of 700,000 units in what would mark a 63 percent increase from 2014. The wide range of drone models available this Christmas—from the \$40 Protocol Neo-Drone Mini to a \$3,000, 15-pound DJI T6000 with a sophisticated 4K video camera—means there's now a model on the market to fit almost any budget.

Best Buy, which does a brisk business in recreational drones, has posted safety brochures in more than 1,000 stores in the hope of breeding safer rookie pilots. Shoppers bringing home a drone for the holidays can also purchase from Best Buy a one-year membership in the Academy of Model Aeronautics, an Indiana-based organization for model aircraft enthusiasts, to take advantage of group liability coverage. Another major drone retailer, Amazon.com, also posts links to a "Know Be-

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fore You Fly” educational website established by drone manufacturers to promote safe flying.

Of course, most of the affordable recreational drones are small and weigh less than two pounds—less a hazard to a window than the average errant football toss. Even so, a rash of drone accidents and injuries could lead to stiff regulations that might squelch the industry’s growth. And there have already been a scattering of high-profile examples, including an onstage mishap this year in which a lightweight drone turned pop star Enrique Iglesias’s hand into a bloody mess.

One of the only insurance policies designed to cover hobbyist drone pilots comes from membership in the Academy of Model Aeronautics, which charges adults \$75 per year. All the group’s 185,000 members enjoy \$2.5 million in personal liability coverage from Westchester Surplus Lines Insurance, part of ACE Group, and \$25,000 medical coverage.

“Most of the claims we have are small claims,” says Rich Hanson, the AMA’s director of government relations. The most common case involves an out-of-control drone flying into a car. The AMA declined to reveal how many claims on average are filed per year.

Homeowner policies at Allstate, one of the largest property insurers, will cover damage if a policyholder crashes a drone and damages someone else’s property. But a “first-party claim”—damage you do to your own home—isn’t covered, says Allstate spokesman Justin Herndon. The insurer sees a drone-mishap situation as akin to having your pet lion maul a neighbor’s furniture; Allstate would cover the big cat’s destruction of your neighbor’s stuff, but not your own.

A spokesman for State Farm says that its homeowner policies would generally cover a drone accident like any other mishap. “Damages from drones pose nothing new in this regard,” says State Farm spokesman Chris Pilcic.

Beyond insurers, regulators also are preparing for how to manage increased drone flying. Starting on Dec. 21, just ahead of the Christmas holiday, owners of small drones must register the machines with the federal government so that authorities will be able to more easily investigate crashes and illegal flights. Only the smallest toy drones weighing less than 250 grams will be exempt from the registry.

“Things can happen, and this isn’t bulletproof technology,” says Hanson of the Academy of Model Aeronautics. As drone registration increases, he

(See **Drones...** continued on page 19)



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Drones... (Continued from page 17)

and other observers predict that some states will require recreational drone operators to carry insurance coverage, much like mandatory insurance for motorists.

The current situation is "a balancing act between insurance and regulation," says Matthew Henshon, a Boston attorney whose practice covers emerging technologies. States and cities are beginning to address some of the regulatory issues that accompany drone flying, and he predicts that any surge in property damage or injuries will cause politicians to react quickly.

"If bad things are happening, someone is going to figure it out and step in from a regulatory standpoint," Henshon says. "If enough damage is being done, someone is going to call their congressman."

Someone might also call a personal-injury lawyer.

Michael Brevda, who spends most of his time pursuing nursing home neglect cases, has registered the website DronelInjuriesLawyer.com as a way to hang out a shingle for people wounded in a drone mishap. Brevda, an attorney at Domnick Law in Palm Beach Gardens, Fla., has so far settled one drone-related case for a small amount and sees the drone side of his business as still in its infancy.

Even if the skies are abuzz with drones, don't look for the kind of rampant personal-injury legal pitches that accompany auto accidents and medical malpractice, staples of television, radio, and billboard advertising. Most amateur drone enthusiasts won't have the kind of financial resources that make civil litigation worthwhile. The issue of a deep pocket is also one reason major commercial operators—be it Amazon, real estate agents, surveying companies, motion picture studios, or aerial photography firms—are likely to carry far more insurance and face greater regulation of their activities.

But the lawsuits probably won't have to wait for corporate drone disasters. Hanson and other attorneys predict that invasion of privacy claims against commercial drone operators—not personal-injury torts—will likely spur most legal work. ❖

To submit an article to this publication contact Barb Tyler at npassist@msn.com. Length of the article is not as important as its content.



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Federal Judge: Monkey Cannot Own Copyright of Selfie Photos — By Olga R. Rodriguez
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A macaque monkey who snapped clear, perfectly framed selfies that would have made the Kardashians proud still cannot own a copyright to the photos because it's an animal, not a human, a federal judge in San Francisco said.

U.S. District Judge William Orrick said that Congress did not extend federal copyright law to animals. That means the monkey cannot control the rights to the photos and profit from their distribution.

The ruling came in a novel lawsuit filed last year by People for the Ethical Treatment of Animals that sought a court order allowing PETA to represent the monkey and let it administer all proceeds from the photos for the benefit of the monkey, which it identified as 6-year-old Naruto, and other crested macaques living in a reserve on the Indonesian island of Sulawesi.

The photos were taken during a 2011 trip to Sulawesi by British nature photographer David Slater. The monkey took the photos by "purposely pushing the shutter release multiple times, understanding the cause-and-effect relationship between pressing the shutter release, the noise of the shutter, and the change to his reflection in the camera lens," PETA said in its lawsuit.

Slater said he was the brains behind the photos, setting up the tripod the camera was on and positioning and holding it throughout the shoot. He said the British copyright obtained for the photos by his company, Wildlife Personalities Ltd., should be honored worldwide. He moved to have PETA's lawsuit dismissed, arguing that "monkey see, monkey sue is not good law."

"A monkey, an animal-rights organization and a primatologist walk into federal court to sue for infringement of the monkey's claimed copyright," his attorneys wrote in court documents. "What seems like the setup for a punchline is really happening."

PETA also named as a defendant Slater's San Fran-

(See In the News... continued on page 23)

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In the News... *(Continued from page 21)*

cisco-based self-publishing company Blurb, which published a book called “Wildlife Personalities” that includes the “monkey selfie” photos.

The photos have been widely distributed elsewhere by outlets, including Wikipedia, which contend that no one owns the copyright to the images because they were taken by an animal, not a person. Slater has said he is exploring legal action against some of those outlets.

Jeff Kerr, general counsel for PETA, said the organization will continue fighting for the monkey’s rights.

“Despite this setback, legal history was made today because we argued to a federal court why Naruto should be the owner of the copyright rather than been seen as a piece of property himself,” Kerr said. “This case is also exposing the hypocrisy of those who exploit animals for their own gain.” ❖

Preliminary Estimate for Washington State Drought is at \$336M — By Shawn Selby

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Farmers in Washington state lost at least \$336 million to the drought last summer, a preliminary estimate likely to climb as more figures on yields and prices became available, according to a report by the state Department of Agriculture, the Capital Press of Salem, Ore., reported.

The report estimated specific dollar losses for only a handful of crops — wheat, apples, blueberries and red raspberries.

Losses for other commodities, including Washington mainstays such as potatoes, milk and cattle, will be tallied later as information becomes available, according to the Washington State Department of Agriculture (WSDA).

The report suggests the drought affected most growers. Nearly two-thirds who answered a WSDA survey said the quality or marketability of their crops suffered in the state’s first drought in a decade.

“I suspect in the final report the losses will be

higher,” WSDA spokesman Hector Castro told the newspaper. “This early report confirms what a lot of people knew. The drought caused a lot of harm for farmers around the state.”

WSDA will issue a final report one year from now on the drought’s impact on Washington’s farm economy, which the U.S. Department of Agriculture calculated was worth \$10.1 billion in 2014.

“This is an incomplete picture, and we know that it’s an incomplete picture,” Castro said. “We’re not through counting yet. A lot of commodity groups are not counted because the information wasn’t available.”

The report’s findings included:

- Wheat production was particularly hard-hit. The harvest was down 22% from the average yields over the previous five years. At recent prices, the lower yields could cost farmers \$212.4 million. In 2014, USDA reported Washington’s wheat crop was worth \$715 million.
- The apple industry estimated the drought or extreme heat reduced production by 280 million pounds. Based on 2014 prices, the lower yields represented a potential loss of \$86.52 million. Apples were a \$1.9 billion business in 2014. Early harvest varieties were most affected by water shortages and heat in the Yakima Valley. Apple growing regions to the north in Chelan, Okanogan and Douglas Counties were hurt less by the drought.
- Blueberries, grown primarily in northwest Washington, also lost production to the heat. Based on estimates from growers, the drought reduced yields by 8 million pounds, causing a loss in income of approximately \$12 million.
- Red raspberries, also grown in the northwest corner of state, suffered a 26% decline in production. The lower yields cost farmers an estimated \$13.9 million.
- Cherries and pears, two of Washington’s top 10 crops, were harvested early because of high temperatures in Central Washington and the Columbia Basin. The crops, however, sustained little damage.
- Some 460 growers were asked whether the drought and heat impacted the quality or marketability of their crops. About 65% said they had.
- One-third of growers said they spent money for drought-relief measures such as cloth shades, sprinklers or more efficient irrigation equipment.

The preliminary assessment did not try to put a figure on how much farmers spent to cope with drought. ❖



The peak of the 2015 drought in Washington state occurred during the last week in August, when 85% of the state was categorized as “extreme drought” — shown in red. (Image: WA State Dept. of Agriculture)



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