



February 2010

Vol. 37 No. 6

## 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*

### Attorneys' Fees: Determining which Claims Arise Under a Contract

— by Jack Levy

**Claims Pointer:** If a contract awards attorneys' fees to a prevailing party on a contract dispute, attorneys' fees may only be awarded for claims that arise under a specific term of the contract. An award of attorneys' fees must reflect a proper segregation between time spent on claims that arise under the contract and those claims that do not, unless the claims are so intertwined and related

that there is no reasonable manner to separate those claims.

Even though a contract may exist between two parties, claimants will often allege claims in addition to their contract claims. Although most contracts provide attorneys' fees to the prevailing party, the prevailing party is not necessarily entitled to attorneys' fees for every claim alleged. A recent Washington Court of Appeals case, Boguch v. Landover Corp., discussed which claims arise under a contract when determining the proper amount of attorneys' fees. No: 624466-1 in the Court of Appeals in the State of Washington, Division One (December 21, 2009).

In February 2001, Geoff Boguch entered into an exclusive sale and listing agreement with two real estate brokers (the “realtors”). Pursuant to the agreement, the realtors were respon-

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

#### Next Meeting of the SCAA

**February 19, 2010**

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

#### Program

Joint meeting w/TCAA

**“How to Deal with a PA or Plaintiff Attorney  
on 1st Party Claims**

#### 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](mailto:deborah.jette@grange.com). Thank you!

**SCAA** Friday, March 19, 2010

**2010**  
**SPRING SYMPOSIUM**  
**& VENDOR FAIR**

**TCAA**  
See website for brochure



# ON THE DOCKET FOR 2010

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Date	Speaker/Topic
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 next page for more info
March 19	SCAA-TCAA Annual Spring Symposium & Vendor Fair See centerfold for more info & registration
April 16	SCAA Meeting ~ Vendor Appreciation Month
May 21	SCAA Meeting ~ Past President's Luncheon

### 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  
 Email: npassist@msn.com*

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

sible for listing Boguch's property in exchange for 5 percent sales commission. After nearly a year without any offers, the realtors posted on the internet an aerial photograph with lines depicting the property's boundary superimposed onto the photograph. The lines depicting the property's boundary inaccurately depicted the property as being smaller than it actually was, and made the property appear unevenly narrow at points with limited waterfront views. More than two years passed before anyone noticed the error. Boguch sued the realtors and their firms for negligence, breach of statutorily mandated professional duties and breach of contract. The trial court granted the realtors' motion for summary judgment, and the realtors subsequently moved for attorneys' fees pursuant to the terms under the listing agreement, which the trial court awarded. Plaintiff appealed to the court of appeals.

On appeal, Plaintiff argued the trial court erred in awarding attorneys' fees for two reasons: (1) the negligence and statutory duty claims did not arise under the listing agreement; and (2) the attorneys' fees award failed to separate time the realtors' attorneys spent on defending the tort claims versus the contract claims. The court of appeals agreed.

First, the court held that a prevailing party may only recover attorneys' fees under a contract if the claim arose from a specific contractual provision. If the claim was based on a duty imposed by an external source (i.e., a statute or common law), the action

does not arise on the contract and attorneys' fees cannot be granted—even if the duty imposed by the external source would not have existed without the contract. The court held that since Plaintiff only claimed a breach of duty under a statute and common law, Plaintiff's claims did not arise under the contract and the trial court erred in awarding attorneys' fees for the negligence claims.

Second, the court held that when attorneys' fees are only recoverable for some of a party's claims, the award must reflect a proper segregation of time spent between issues where attorneys' fees may be granted and time spent on issues not allowing attorneys' fees. However, the court noted that if the claims are so intertwined and related that there is no reasonable manner to separate those claims, then segregation is not necessary. In this case, the court found that Plaintiff's claims were not so intertwined to qualify for the exception because the claims could be resolved without referring to the terms of the original listing agreement. Thus, the court remanded the case back to the trial court to segregate the time spent on each issue and recalculate the amount of attorneys' fees owed for only those claims arising on the contract. ❖

— Full case available at: [www.courts.wa.gov/opinions/index.cfm?fa=opinions.showOpinion&filename=624466MAJ](http://www.courts.wa.gov/opinions/index.cfm?fa=opinions.showOpinion&filename=624466MAJ)

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



### Employment Opportunities

**Field Claims Specialist** position in Seattle area with Farrell & Associates. See our website for more information.

**Field Claim Adjuster** position in western WA with Partners Claim Service. See our website for more information.

To submit a job opening send your information to: [info@seattleadjuster.org](mailto:info@seattleadjuster.org)

*Let's work together to put our adjusters back to work!*