

No. 80753-1

**SUPREME COURT
OF THE STATE OF WASHINGTON**

AMERICAN BEST FOOD, INC., a Washington
corporation d/b/a CAFE ARIZONA; and MYUNG CHOL
SEO and HYUN HEUI SE-JEONG,

Respondents,

v.

ALEA LONDON, LTD., a foreign corporation,

Petitioner.

**PETITIONER ALEA LONDON, LTD.'S
STATEMENT OF ADDITIONAL AUTHORITIES**

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BY RONALD R. CARPENTER

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STATEMENT OF ADDITIONAL AUTHORITIES

Petitioner Alea London, Ltd. respectfully submits this statement of additional authorities in accordance with RAP 10.8 to address the following issue raised during oral argument: What is the remedy if an insurer is not in bad faith, but nonetheless incorrectly declines to provide its policyholder with a defense?

Greer v. Northwestern Nat. Ins. Co., 109 Wn.2d 191, 202, 743 P.2d 1244 (1987) (“The general rule is that when an insurer breaches its contract, the insured must be put in as good a position as he would have been had the contract not been breached.”).

Truck Ins. Exchange v. Vanport Homes, Inc., 147 Wn.2d 751, 765-66, 58 P.3d 276 (2002) (“[W]hen an insurer wrongfully refuses to defend, it has voluntarily forfeited its ability to protect itself against an unfavorable settlement, unless the settlement is the product of fraud or collusion.”); see *Mutual of Enumclaw Ins. Co. v. T&G Constr., Inc.*, No. 80420-6, Slip Op. at 11-12 (Wash., Oct. 23, 2008) (an insurer that declines to participate in settlement talks must accept the fact of liability and presumptive amount of damages determined during those settlement talks, assuming there is no fraud or collusion).

Waite v. Aetna Cas. & Sur. Co., 77 Wn.2d 850, 856, 467 P.2d 847 (1970) (“[W]here an insurer wrongfully refuses to defend, it will be required to pay the judgment or settlement to the extent of its policy limits and also to reimburse the insured for his costs reasonably incurred in defense of the action.”).

Gossett v. Farmers Ins. Co., 133 Wn.2d 954, 980, 948 P.2d 1264 (1997) (the potential for an attorney fees award under *Olympic Steamship Co. v. Centennial Ins. Co.*, 117 Wn.2d 37, 811 P.2d 673 (1991), encourages insurers to satisfy fiduciary obligations, including prompt payment of claims).

McGreevy v. Oregon Mut. Ins. Co., 128 Wn.2d 26, 37, 904 P.2d 731 (1995) (“We did not suggest in *Olympic Steamship*, nor do we now, that the disproportionate bargaining position of the insurer or the frustration of the insured’s contractual right to receive the benefit of its bargain is evidence of bad faith on the part of the insurer. If such were the case, the existence of bad faith alone would support the invocation of the court’s equitable powers to award attorney fees, and there would be no need for the rule in *Olympic Steamship*.”).

RESPECTFULLY SUBMITTED this 6th day of November, 2008.

COZEN O'CONNOR

A handwritten signature in cursive script, reading "Melissa O'Loughlin White". The signature is written in black ink and is positioned above a horizontal line.

J. C. Ditzler, WSBA #19209

Melissa O'Loughlin White, WSBA #27668

Molly Siebert Eckman, WSBA #35474

Attorneys for Petitioner

Alea London, Ltd.

DECLARATION OF SERVICE

Dava Bowzer states as follows:

I am a citizen of the United States of America and a resident of the State of Washington, I am over the age of 21 years, I am not a party to this action, and I am competent to be a witness herein.

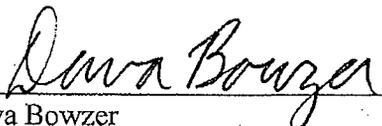
On this 6th day of November, 2008, I caused to be filed via electronic filing with the Supreme Court of the State of Washington, the foregoing PETITIONER ALEA LONDON, LTD.'S STATEMENT OF ADDITIONAL AUTHORITIES. I also served copies of said document on the following parties as indicated below:

<i>Counsel for Plaintiffs/Appellants:</i> Scott B. Easter Paul J. Miller Sandy K. Lee Montgomery Purdue Blankinship & Austin PLLC 701 Fifth Avenue, Suite 5500 Seattle, WA 98104	<input type="checkbox"/> Via Legal Messenger <input type="checkbox"/> Via Facsimile <input type="checkbox"/> Via Email <input checked="" type="checkbox"/> Via U.S. Mail
<i>Counsel for Plaintiffs/Appellants:</i> Shane Moloney Short Cressman & Burgess PLLC 999 Third Avenue, Suite 3000 Seattle, WA 98104	<input type="checkbox"/> Via Legal Messenger <input type="checkbox"/> Via Facsimile <input type="checkbox"/> Via Email <input checked="" type="checkbox"/> Via U.S. Mail

<p><i>Counsel for Amici WSTLA:</i> Bryan P. Harnetiaux 517 E. 17th Avenue Spokane, WA 99203</p> <p>and</p> <p>David M. Beninger 705 – 5th Avenue, Suite 6700 Seattle, WA 98104</p>	<p><input type="checkbox"/> Via Legal Messenger <input type="checkbox"/> Via Facsimile <input type="checkbox"/> Via Email <input checked="" type="checkbox"/> Via U.S. Mail</p> <p><input type="checkbox"/> Via Legal Messenger <input type="checkbox"/> Via Facsimile <input type="checkbox"/> Via Email <input checked="" type="checkbox"/> Via U.S. Mail</p>
<p><i>Counsel for Amici State Farm:</i> Pamela A. Okano Michael S. Rogers Reed McClure 601 Union Street, Suite 1500 Seattle, WA 98101</p>	<p><input type="checkbox"/> Via Legal Messenger <input type="checkbox"/> Via Facsimile <input type="checkbox"/> Via Email <input checked="" type="checkbox"/> Via U.S. Mail</p>
<p><i>Counsel for Amici Weaver/ILMI:</i> Karen Southworth Weaver Soha & Lang, PS 701 – 5th Avenue, Suite 2400 Seattle, WA 98104</p>	<p><input type="checkbox"/> Via Legal Messenger <input type="checkbox"/> Via Facsimile <input type="checkbox"/> Via Email <input checked="" type="checkbox"/> Via U.S. Mail</p>

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Executed at Seattle, Washington, this 6th day of November, 2008.


Dava Bowzer