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**STATE OF WASHINGTON COURT OF APPEALS  
DIVISION TWO**

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**JAMES A. RYFFEL and LINDA B. RYFFEL, husband and wife, and  
the marital community composed thereof; and RYFFEL FAMILY  
SPRINGRIDGE LP, a foreign entity**

*Appellant,*

v.

**THE HUDSON COMPANY, INC.**

*Respondent.*

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APPEAL FROM THE SUPERIOR COURT FOR KITSAP COUNTY

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**BRIEF OF RESPONDENT**

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## **I. INTRODUCTION**

Appellants challenge the trial court's award of attorney's fees calculated under the lodestar method, claiming an abuse of discretion in the setting of the hourly rate and in applying a 1.5 multiplier.

Appellants challenge none of the substantive findings of fact or conclusions of law entered in this lien foreclosure case.

The homeowners, appellants Ryffel, chose to pull away from the alternative dispute resolution process in their remodel contract with The Hudson Company, Inc., respondent herein, and vigorously litigated their dispute through trial (February 8, 2008; RP 62). They want relief now from their bad choice.

Appellants misstate the facts, misquote the cases and posit no law that would justify overturning the trial court's sound exercise of its discretion in awarding statutory and contract-allowed, reasonable attorney's fees.

The trial court's decision should be affirmed.

## **II. COUNTER-STATEMENT OF THE CASE**

The Hudson Company, Inc. ("THC") is a fully qualified Washington general contractor which contracted with Linda Ryffel, on

behalf of her marital community, to extensively remodel the Ryffel older log home on Bainbridge Island. (CP 121-122)

Jim Ryffel's primary business is development, construction, remodeling, and the ownership of real property (RP 357). He has a master's degree in business administration (RP 389), and has a 25-year history of reviewing and signing these kinds of contracts (RP 373). He was a bank director and has founded award-winning companies (RP 389). He read the contract before his wife signed it (RP 389- 390).

Linda Ryffel likes remodeling and has done several house remodel projects (RP 401). This remodel was Linda's idea, and was her project (CP 122, RP 362-363). Linda did not want her husband to know what the project was costing (RP 118). Linda did not testify at trial (CP 123).

The Ryffels bought the property for \$812,500 in 2005 (CP 23, Exhibit 16, No. 7; RP 390); received the improvements provided by The Hudson Company in 2006 (CP 122); and then listed the property for sale at \$1,499,000 (RP 390; CP 23, Exhibit 11), but refused to pay as agreed, even though THC did the work requested and billed them at its usual billing rates (CP 123). THC's work ended May 20, 2006; yet the first concern about THC labor billing rates was May 31, 2006 (CP 123; CP 24,

Exhibit 27).

Essentially, Jim Ryffel wanted THC to bill labor at its cost (plus a 15% mark-up), even though that was not what was agreed upon. Neither was it customary on Bainbridge Island, nor would it have covered THC's actual overhead (CP 123, RP 125-127). The trial court found that THC's usual hourly billing rate for labor was what the contract allowed (CP 123).

The contract provided for an alternative dispute resolution process that began with mediation at JDR in Seattle (CP 23, Exhibit 1, ¶ 9). The complaint (CP 23, Exhibit 12, ¶ 4.5) provided:

THC agrees to mediate this matter as provided in paragraph 9 of the contract if Ryffel agrees forthwith.

Ryffels' answer (CP 23, Exhibit 15, ¶ 4.5) simply stated "Deny" in response to the offer to mediate. They declined to even answer interrogatories about a willingness to mediate (CP 23, Exhibit 17, No. 9). The trial court noted Ryffel had pulled away from mediation from the very beginning (February 8, 2008, RP 62). The Ryffels had the choice to mediate or litigate. They knew they were facing an attorney's fee claim under the contract (CP 23, Exhibit 1, ¶ 11), or by statutes (CP 23, Exhibit 12, ¶ 9.2, citing RCW 60.04.181 and RCW 18.27.040 (for having third-party sued THC's bonding company)).

The Ryffels chose to aggressively defend what started out as a \$28,856.26 claim (CP 23, Exhibit 12, ¶ 5.1). The Ryffels sued THC's bonding company; invoked defensive equity theories; and claimed breach of contract, fraud, misrepresentation and the filing of a frivolous lien. (CP 23, Exhibit 15, ¶¶ 3.1 - 3.12). The Ryffels' counsel, pursuant to CR 11, certified by his signature on the answer that the acts and omissions of THC affected the public interest and violated the Consumer Protection Act, entitling the Ryffels to treble damages and reasonable attorney's fees (CP 23, Exhibit 15, ¶¶ 3.4, 4.4 and 4.5).

The case was tried to the court, December 4 - 6, 2007. The amount sought by THC was voluntarily reduced due to inadvertent overcharges totaling \$3,551.25, which voluntarily reduced the lien claim to \$25,305.01 (CP 123). The trial court reduced the charges another \$500 (CP 123), and entered judgment for \$24,805, plus contract interest of \$6,899.19, plus \$445.05 costs, and reasonable attorney's fees (CP 123 - 125). It is the award of the attorney's fees pursuant to the lodestar method that is the sole subject of this appeal. (*See*, appellants' opening brief, pages 1 - 2).

The trial court found THC's counsel's usual hourly rate of \$350 to be reasonable (February 1, 2008, RP 8 and 9; February 8, 2008, RP 58; CP

127). After reading submissions (CP 25 - 120) and having heard from counsel on February 1, 2008, the trial court reduced the number of hours of time from 194.75 hours, for a variety of reasons, to 170.28 (February 8, 2008, RP 59-60; CP 128). The court reduced the requested multiplier of 2 to 1.5 (February 8, 2008, RP 60-63). The final award was \$89,397 (CP 128).

### **III. Argument**

#### **A. The standards for awarding attorney's fees.**

##### **1. Was there authority to award reasonable fees?**

Yes. The case was a contract claim for monies due a general contractor which had properly and timely recorded a lien pursuant to RCW 60.04.091 (CP 23, Exhibit 12; CP 125). The contractor's lien statute provides for the award of reasonable attorney's fees in the superior court (as well as on appeal). RCW 60.04.181(3). The parties' contract also provided for the award of attorney's fees (CP 23, Exhibit 1, ¶ 11). The Ryffels unsuccessfully sued THC's bonding company which further entitled the court to award reasonable attorney's fees. RCW 18.27.040(6).

##### **2. Was the lodestar method used to calculate fees?**

Yes. The lodestar method of determining the reasonableness of

attorney's fees is best set forth in *Bowers v. Transamerica Title Insurance Co.*, 100 Wn.2d 581, 675 P.2d 193 (1983), and its progeny. The trial court acknowledged having followed this method (February 8, 2008, RP 57).

*Bowers* was a Consumer Protection Act case which used a .5 multiplier for the contingent fee nature of the action, and another .5 multiplier to reflect the high quality of the legal work. *Id.* at 594.

**3. Did the court determine the number of hours reasonably expended in the litigation?**

Yes. THC's counsel provided detailed and contemporaneously made billings (CP 29-38). These records are minutely detailed and more than adequately document the work performed. *Bowers* at 597. The accompanying declaration of THC's counsel explained that some of the Ryffels' actions increased the time needed to prosecute the case:

- the urgency of filing and serving suit before the defendants left the state, which complicated service issues;
- the early refusal to use LR 87 mediation or contract paragraph 9 ADR methods to resolve the dispute;
- the unnecessary third-party claim against plaintiff's bonding company;
- responding to the comprehensive discovery requests from the defendants;

- the unnecessary time I spent calculating labor burden rates with my client when same were not necessary for the regular operation of the plaintiff's business and were solely required by the defendants' discovery requests;
- the continued insistence that service was improper, requiring testimony from the process server;
- preparing for and attending the depositions of Thomas A. Hudson and Cheryl Feldtman;
- responding (successfully) to defendants' motion seeking to allow a late-filed summary judgment motion;
- analysis of the legal issues associated with defendants' CR 68 offer which did not say whether it included attorney's fees and costs (I hired and paid a separate attorney on an hourly basis to analyze this issue; and
- the zealous style of proceeding at trial, requiring an unusually high level of evidentiary proof to be presented for such a modest claim

(CP 29 - 30).

The trial court reviewed all of the Ryffels' fee-related pleadings (February 1, 2008, RP 8; CP 66-76; 77-94; 95-98; 99-100; 101-102; 103-107; and 108-118).

The trial court then heard from both counsel on many of the itemized time entries (February 1, 2008, RP 8-44). The trial court reduced

THC's counsel's request for 194.75 hours down to 170.28 hours (February 8, 2008, RP 59-60).

**4. Did the court determine a reasonable hourly rate?**

Yes. The trial court concluded THC's counsel's usual hourly billing rate of \$350 was reasonable (February 8, 2008, RP 58):

Where the attorneys in question have an established rate for billing clients, that rate will likely be a reasonable rate.

*Bowers* at 597.

The trial court *is allowed* (not required) to supplement its analysis by referring to the fee factors set out in RPC 1.5(a) which guide Washington lawyers as to the reasonableness of their fees. *Mahler v. Szucs*, 135 Wn.2d 398, 433 fn. 20, 957 P.2d 632 (1998). Here, the trial court did consider RPC 1.5(a) in determining the base lodestar amount (February 8, 2008, RP 58). These fee factors are not exclusive. RPC 1.5, comment 1.

The additional factors include the following:

(1) The time and labor required, the novelty and difficulty of the questions involved, the skill requisite to perform the legal service properly and the terms of the fee agreement between the lawyer and client;

(2) The likelihood, if apparent to the client, that the

acceptance of the particular employment will preclude other employment by the lawyer;

(3) The fee customarily charged in the locality for similar services;

(4) The amount involved in the matter on which legal services are rendered and the results obtained;

(5) The time limitations imposed by the client or by the circumstances;

(6) The nature and length of the professional relationship with the client;

(7) The experience, reputation, and ability of the lawyer or lawyers performing the services; and

(8) Whether the fee is [fixed or contingent].

*Mahler, supra*, p. 433, ftn 20.

### FACTORS

(a) The fee agreement with THC was *contingent*, albeit not in writing (CP 29; February 1, 2008, RP 12-13). Nor was it required to be in writing when the representation began. Effective September 1, 2006, RPC 1.5(c)(1) was added requiring contingent fee agreements to be written. This action was commenced July 25, 2006, *before* the RPC's were amended (CP 124). Ryffels' counsel was in error in their opening brief to suggest a contingent fee agreement had to be in writing. (*See*, appellants'

opening brief, p.19; *see, also*, February 8, 2008, RP 65.)

The trial court asked why the fee agreement was not in writing and was satisfied to learn there had been writings in past cases but the long lawyer/client history of prior legal dealings and doing whatever was fair at the end of a case satisfied the court's inquiry (February 1, 2008, RP 48-49 and 12-13). No fee would have been charged THC if its claim had not prevailed (February 1, 2008, RP 12).

(b) The *time* and labor involved. The hours spent have been explained and that some of the time incurred was directly due to the Ryffels' method of proceeding to full litigation. See §3. above. Other examples of the defensive vigor which the Ryffels applied in resisting this claim can be seen in the unreasonable denial of some of the requests for admission (CP 23, Exhibit 16) [RFA Nos. 1 and 2: Ryffels even denied being served with full copies of the summons and complaint], and unreasonable answers to interrogatories (CP 23, Exhibit 17) [see, for example, interrogatory Nos. 10, 11 and 18]. Jim Ryffel admitted this case was not about the money (RP 381; February 8, 2008, RP 62).

(c) Novelty and difficulty. The primary issue of defining "time" in the time and materials section of the contract work was somewhat novel.

No case was found by either side, from any jurisdiction, that was dispositive. It was clearly the focus of the trial (December 10, 2007, RP 4 - 12). The cumulative impact of the wide-ranging defenses added to the difficulty of the case. The Ryffels claimed violations of the Consumer Protection Act, that THC's conduct was fraudulent, that the lien was frivolous, and so on (CP 23, Exhibit 15, ¶¶ 3.1 - 3.12).

(d) Accepting any contingent fee case is inherently risky and will obviously *preclude accepting some other employment by counsel*. This case had to be analyzed for the facts and applicable law and filed with only one day's notice because of the Ryffels' previously undisclosed intention to immediately leave the state (RP 182-183, 394-395). THC knew its counsel had to drop everything else to immediately spend over four hours learning the facts and law sufficiently to prepare a lien and foreclosure complaint. CP 32.

(e) Ryffels' counsel believed the *customary fee agreement* charged for this kind of case would be contingent fee or charging on an hourly basis (February 1, 2008, RP 46). Hourly, even at Ryffels' counsel's rates, would have completely consumed, and even exceeded, the amount in

controversy. Ryffels' counsel charged \$200/hour<sup>1</sup> and spent 102.8 billable hours (CP 108-118). THC's counsel's number of billable hours found appropriate by the trial court was 170.28 (February 8, 2008, RP 60). 170.28 hours x \$200 = \$34,056. The trial court realized this fact (February 8, 2008, RP 58-59).

(f) THC obtained all but \$500 of the amount sought at trial (CP 123). The *amount sought was small* but the *results obtained* were excellent.

(g) Time limitations imposed only really relates to the commencement of the action (see §(d) above).

(h) THC's principal and its counsel have had a *long time social and legal relationship* (February 1, 2008, RP 12-13; 48-49; February 8, 2008, RP 58).

(i) THC's counsel's *experience and reputation* was considered by the trial court (February 1, 2008, RP 9-10; February 8, 2008, RP 58). Briefly, THC's counsel has been a civil litigator since 1972, never disciplined, selected a "Super Lawyer" by Law & Politics Magazine for

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<sup>1</sup> The court can, but is not required to, consider opposing counsel's hourly rates. *Absher Construction Co. v. Kent School District*, 79 Wn. App. 841, 847, 905 P.2d 1229 (1995).

the last several years, been a Washington State Bar Examiner since 1980, chair of various Bar committees, a Washington state delegate to the ABA House of Delegates, a WSBA seminar speaker and a member of the William Dwyer Inn of Court (CP 29).

**5. Did the trial court properly assess whether the lodestar fee should be adjusted upward or downward?**

Yes (February 8, 2008, RP 60-63). The trial court emphasized the contingent fee arrangement.

. . . hourly work on this type of case would not have produced a recovery because the amount, if it was going to trial, the time required would have never been able to match the amount that was at issue. Consequently, merely recovering attorney's fees from the plaintiff [sic] by the hour, the plaintiff would result in nothing.

(February 8, 2008, RP 60-61)

The contingent nature of the success and the quality of the work performed are two of the approved factors for adjusting a fee award.

The purpose of the contingency adjustment is well stated by Berger in 126 U. Pa. L. Rev. at 324-25.

Unless an attorney has some agreement with the client guaranteeing compensation regardless of the outcome, the attorney will receive no fee in the event that the suit does not succeed in some manner. In these cases counsel bear the risk that they will not be compensated at all for their time and effort.

The experience of the marketplace indicates that lawyers generally will not provide legal representation on a contingent basis unless they receive a premium for taking that risk.

*Bowers*, 100 Wn.2d 581, 598, 675 P.2d 193 (1983)

The Ryffels' answer, counterclaims and third-party complaint against THC's bonding company, together with their early backing away from contract-provided mediation, made it clear from the beginning that fully prevailing was problematic (CP 14-19; February 8, 2008, RP 62).

The contingent fee arrangement did not assure payment of legal fees (February 1, 2008, RP 12-13).

The trial court properly exercised its discretion in awarding the prevailing party its attorney's fees based on articulable grounds, including the contingent nature of success in the case. *Bowers, supra*, 100 Wn.2d at 593 - 594.

**B. The standards for reviewing a trial court's lodestar fee award.**

The trial court has broad discretion in determining an appropriate attorney's fee award. *Boeing v. Heidy*, 147 Wn.2d 78, 90-91, 51 P.3d 793 (2002); *Ethridge v. Hwang*, 105 Wn.App. 447, 460, 20 P.3d 958 (2001). Appellate review is simply a supervisory role to ensure the discretion was

exercised on articulable grounds. *Eagle Point Condominium Owners Association v. Coy*, 102 Wn.App. 697, 715, 9 P.3d 898 (2000). The fee award may only be overturned for manifest abuse of discretion. *Boeing Co. v. Sierracin Corp.*, 108 Wn.2d 38, 65, 738 P.2d 665 (1987).

In order for the Ryffels to establish that the trial court abused its discretion, they must show that the fee decision was manifestly unreasonable, based on untenable grounds or that no reasonable person would take the position adopted by the trial court. *Allard v. First Interstate Bank of Washington, N.A.*, 112 Wn.2d 145, 148-149, 768 P.2d 998, 773 P.2d 420 (1989).

The trial court is in the best position to evaluate the quality of the attorney's work. *Ethridge, supra*, at 462.

In contingent fee cases like this one, our supreme court acknowledges the business necessity to recover up to twice the normal hourly rate in successful cases to offset the cases lost. *Bowers, supra*, 100 Wn.2d at 600. If doubling a reasonable hourly rate can be appropriate, certainly this 1.5 multiplier cannot be manifestly unreasonable, untenable or something no reasonable person would award.

The fee awarded here is reasonable and is in relationship to the

results obtained. *Ethridge, supra*, at 461. In *Ethridge*, there was an award of \$3,000 damages, but an attorney's fee award of nearly \$50,000, including a multiplier of .25. In the present case, THC prevailed on all but \$500 of what was sought, resisted every affirmative defense and counter-claim, and successfully defended the third-party action against THC's bonding company. The results were excellent.

The reviewing court is not to overturn a large fee award merely because the amount at stake was small. *Mahler, supra*, 135 Wn.2d at 433. The amount in controversy is only one of the relevant considerations, not a conclusive factor. *Mahler, supra*, 135 Wn.2d 433, fn 20.

Minuscule damage awards can still justify large fee awards. *Banuelos v. TSA Wash. Inc.*, 134 Wn. App. 603, 141 P.3d 652 (2006) [\$4.27 actual damages for violating the anti-bushing statute, \$90,125 fees awarded based on litigation risks, contingent fee, quality of work and lack of prior controlling authority. *Id.* at ¶ 33.] All that need be shown is that there are tenable grounds for the fees awarded. *Id.* at ¶ 33.

**C. Locale is only one of the factors in determining a lodestar amount. No one factor is controlling.**

Appellant claims, erroneously, a trial court *must* use an hourly rate based on the relevant community's market rates. Opening brief, p. 14.

The Ryffels cite *Mahler*, 135 Wn.2d at 433-34, fn 20 and RPC 1.5(a)(3). All that *Mahler* says is that a trial court *can* (*not* must) supplement its lodestar calculation by considering the RPC 1.5(a) factors.

In fact, limiting an attorney's fee award to the amount customarily charged in the county, without a trial court's written basis for the limitation was reversible error in *Crest, Inc. v. Costco Wholesale Corp.*, 128 Wn. App. 760, 773-74, 115 P.3d 349 (2005). In *Crest*, the trial court limited Seattle counsel to Whatcom County customary rates and the fee award was reversed and remanded. The appellate court noted that local fees are just one factor in determining the reasonableness of fees. *Id.* at 774.

The trial court in this case heard evidence regarding local Port Orchard rates, but preferred a more regional approach in defining locale. (February 8, 2008, RP 59.) The trial court, therefore, did consider locale and simply defined locale more broadly than the Ryffels preferred. The trial court did not abuse its discretion in so defining locale. The "Puget Sound locale" is not manifestly unreasonable, based on untenable grounds, or one that no reasonable person would use. Those are the criteria for finding an abuse of discretion. *Allard v. First Interstate Bank of Washing-*

*ton, N.A., supra*, 112 Wn.2d at 148-9.

The court knew the contract provided for alternative dispute resolution processes that would have occurred in Seattle, had the Ryffels agreed. (CP 23, Exhibit 1, ¶ 9.) The Ryffels did not. (February 8, 2008, RP 62.) Rhetorically, had the dispute been decided in Seattle would Ryffels' counsel have been entitled to boost his hourly rate to a Seattle standard? Locale is broad enough to warrant a trial court's discretion in fitting the facts and circumstances to the specifics of the case.

No purpose is served by forcing litigants to retain lawyers solely on a geographic basis, if they will be seeking an award of attorney's fees. Litigants should be free to retain counsel of their choosing, knowing that a trial court will properly consider all of the relevant factors fairly when establishing a lodestar fee award.

**D. None of appellant's authority mandates a different result.**

Appellants reach a smidgen too far in seeking to overturn the trial court's fee award. As pointed out above, they misstated the then applicable RPC 1.5, claiming contingent fee agreements had to be in writing. (See § A. 4. (a) above.) Appellants similarly mislead with various case analyses and their heavy reliance on non-Washington law. Examples

follow.

1. Appellants cite *Sintra, Inc. v. City of Seattle*, 131 Wn.2d 640, 935 P.2d 555 (1997). Opening brief at p. 13. Sintra was awarded \$3 for a violation of his civil rights under 42 U.S.C. § 1983. Sintra had sought an award of millions. *Id.* at 665. The trial court awarded \$196,381.87 in attorney's fees. It was the downward adjustment of the fee award that was error. *Id.* at 666. Under the peculiarities of 42 U.S.C. § 1988, the trial court should have given primary consideration to amount of damages sought, not awarded. *Id.* at 666.

Our case is not an action under 42 U.S.C. § 1983 or 1988.

2. Appellants give inappropriate weight to the *Fetzer* opinions. Opening brief at p. 13. *Scott Fetzer Co. v. Weeks*, 122 Wn.2d 141, 859 P.2d 1210 (1993) (*Fetzer II*) only has to do with the standards applicable in awarding attorney's fees under the long-arm statute, RCW 4.28.185.

The court distinguishes other fee shifting statutes and notes:

. . . the fee award is meant only to compensate for the added litigative burdens resulting from the Washington litigation . . .

*Id.* at 149, citing, *Scott Fetzer Co. v. Weeks*, 114 Wn.2d 109, 123, note 7, 788 P.2d 265 (90) (*Fetzer I*).

The rest of the reference in *Fetzer II* to lodestar fee awards and tangential explanations of the *Bowers* opinion must be taken in the context of the court's narrow approach to awarding fees in a motion challenging long arm jurisdiction.

In *Fetzer II*, the court noted that the trial court did no examination of the reasonableness of the hours claimed. *Fetzer II, id.*, at 152. The court then held:

. . . we must zealously circumscribe the scope of advocate activity which will be reimbursed under the long arm statute.

*Fetzer II, id.* at 153.

Our case does **not** involve the long arm statute and the special concerns attendant to keeping attorney's fees low in those particular cases.

3. Appellants misquote *Mahler* as **requiring** a trial court to use local attorney rates. Opening brief, page 14. In *Mahler v. Szucs*, 135 Wn.2d 398, 433, fn. 20, 957 P.2d 632 (1998), the supreme court specifically said a trial **can, not must**, supplement its lodestar analysis by considering RPC 1.5(a) factors, among which is number (3):

The fee customarily charged in the locality for similar legal services.

4. Appellants cite other courts for the general proposition that

locale means where the court sits (Opening brief, p. 15) and conclude that using the Puget Sound area was reversible error (Opening brief, p. 16). In fact, our court has held it to be reversible error to limit a lodestar fee to a single county's customary hourly rate, absent some written basis for the limitation. *Crest Co. v. Costco Wholesale Corp.*, 128 Wn. App. 760, 773-74, 115 P.3d 349 (2005). (See, § C. above at p. 17 above for more analysis.)

5. Appellants claim travel time is generally not compensable. Opening brief at p. 17. Appellants cite *Roberson v. Perez*, 123 Wn. App. 320, 346, 96 P.3d 410 (2004), which imposed fees as part of discovery sanctions and held travel time was a compensable part of the attorney's fee application. The court cited to a Florida court that also awarded travel time in a similar fact pattern. No Washington case supports appellants' proposition that travel time is generally not compensable.

The Ryffels chose to keep this case in Kitsap County, knowing their contract provided for Seattle mediation followed by Seattle arbitration (CP 23, Exhibit 1, ¶ 9), and knowing THC's counsel's pleadings indicated he practiced law in Seattle. The court noted this pulling away from mediation in its ruling (February 8, 2008, RP 62). The

Ryffels chose to litigate in Kitsap County rather than mediate and, if needed, arbitrate in Seattle. The imposition of travel time on THC's counsel was the proximate and foreseeable result. For having caused the dilemma, the Ryffels should suffer its natural consequences.

6. Appellants claim a "garden variety contract claim" does not support a large attorney's fee award. *See*, for example, Opening brief at p. 23. Yet Ryffels' counsel filed a counterclaim under CR 11, claiming the extent of the alleged misdeeds were sufficiently of public interest to warrant imposing treble damages and fees pursuant to RCW 19.86.010 (CP 23, Exhibit 15, ¶ 3.4). When it was to their advantage to claim this was not a garden variety contract but was a violation of statutory and common law public policies, they did so. It is within that context this court should be reluctant to conclude the trial court acted manifestly unreasonable, on untenable grounds, or in a fashion no reasonable person would act when it set the prevailing party's fees. *Allard, supra*, 112 Wn.2d at 148-49.

**E. THC should be awarded its reasonable attorney's fees and costs on appeal pursuant to RAP 18.1.**

The parties' contract, paragraph 11, provides for reasonable attorney's fees (CP 23, Exhibit 1, ¶ 11). RCW 60.04.181(3) provides for

the award of reasonable attorney's fees at trial as well as on appeal. RCW 18.27.040(6) provides for reasonable attorney's fees also, since the defense of the bond claim was part of THC's contingent fee arrangement (February 1, 2008, RP 18). This appeal is possibly frivolous with so little merit that the chance of reversal is slim. That, too, allows attorney's fees to be awarded. RAP 18.9; *Kearney v. Kearney*, 95 Wn. App. 405, 416, 974 P.2d 872, *review denied*, 138 Wn.2d 1022, 989 P.2d 1137 (1999).

#### IV. CONCLUSION

The trial court articulated its reasons for both the lodestar award and the multiplier after a considerable evidentiary presentation. Its oral decision, contained in the report of proceedings, may be considered by this court. *Womble v. Local Union 73*, 64 Wn. App. 698, 702, 826 P.2d 224 (1992).

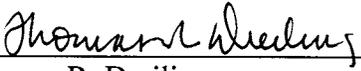
It is clear from a review of all of the facts, claims and results obtained that the Ryffels knowingly subjected themselves to litigation for a cause other than money (RP 381-382).

The trial court's fee decision, like any other finding, is entitled to be considered presumptively correct and the Ryffels bear the burden of showing the award was not supported by substantial evidence. *Fisher*

*Properties, Inc. v. Arden-Mayfair, Inc.*, 115 Wn.2d 364, 369, 798 P.2d 799 (1990). On review, the appellate court need only consider the adequacy of the evidence that is favorable to the prevailing party. *Bland v. Mentor*, 63 Wn.2d 150, 155, 385 P.2d 727 (1963).

The trial court's fee award is entitled to be affirmed and The Hudson Company, Inc. is entitled to its fees on this appeal.

DATED this 27 day of August, 2008.

  
\_\_\_\_\_  
Thomas R. Dreiling  
WSBA #4794  
Attorney for Respondent

**DECLARATION OF SERVICE**

The undersigned declares under penalty of perjury, under the laws of the State of Washington, that the following is true and correct:

That on this date I arranged for service of the foregoing Brief of Respondent to the court and counsel for the parties to this action by depositing a copy in the United States Mail, First Class postage pre-paid, addressed as follows:

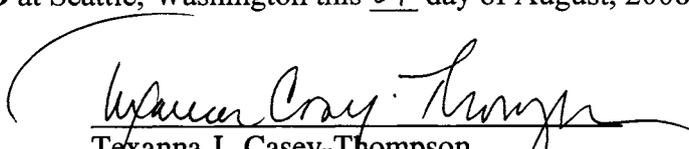
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BY  DEPUTY

**DATED** at Seattle, Washington this 27<sup>th</sup> day of August, 2008.

  
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