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Stowers and Insurance Bad Faith in Car Crash Cases

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1. What is Stowers? Elements of Stowers.

Practicing personal injury law in Texas requires an in-depth understanding of how insurance companies operate and the difficulties of navigating the fiduciary relationships between the insurance company, the insured individual, and the attorneys either assigned or hired to handle the defense of a lawsuit. In a lot of personal injury cases, there appears to be a conflict between the insurance company and the insured individual. The purpose and importance of the *Stowers* case and its application is because it eliminates the potential conflict between the insurer and the insured that arises in cases where there is a substantial risk that the insured's liability will exceed the policy limits. This risk for insurance companies should encourage prompt and reasonable settlements.

Texas has long recognized a common-law cause of action when an insured suffers an excess judgment due to the insurer's negligent rejection of a within-limits settlement opportunity. A Stowers cause of action against an insurer states that if an insurance company rejects a policy limits demand by a Plaintiff, and a judgment is awarded (either through trial or settlement) that exceeds the insured's policy limits, an insured can claim a breach of duty against the insurance company for negligently failing to settle a claim and then the insurance company could be held liable for the entire amount of the judgment, including that part exceeding the insured's policy limits. [1] Under the Stowers doctrine, an insurer has a common-law duty to settle third-party claims against its insureds when it is reasonably prudent to do so. [2] In *Stowers*, the court predicated the duty to settle on the "control" given to and exercised by the carrier under the policy terms:

The provisions of the policy giving the indemnity company absolute and

[1] Stowers Furniture Co. v. American Indem. Co., 15 S.W.2d 544, 547–48 (Tex. Comm'n App. 1929, holding approved).
[2] Phillips v. Bramlett, 288 S.W.3d 876,879 (Tex. 2009) (citing G.A. Stowers Furniture Co. v. Am. Indem. Co., 15 S.W.2d 544 (Tex.Comm'n App. 1929, holding approved)).

> complete control of the litigation, as a matter of law, carried with it a corresponding duty and obligation, on the part of the indemnity company, to exercise that degree of care that a person of ordinary care and prudence would exercise under the same or similar circumstances, and a failure to exercise such care and prudence would be negligence on the part of the indemnity company."[3]

Stated another way, an insurer whose policy does not permit its insured to settle claims without its consent owes to its insured a common law "tort duty." [4] It would seem that the Stowers doctrine is an excellent example of the rule that if a party undertakes a given duty or task, it must act reasonably in its performance.

The Fifth Circuit noted that there are three distinct requirements for "activating" the Stowers duty to settle: coverage, within limits, reasonable offer and assessing the likelihood of liability and degree of exposure. [5]

> " The Stowers duty is activated by a settlement demand when "three prerequisites are met: (1) the claim against the insured is within the scope of coverage, (2) the demand is within the policy limits, and (3) the terms of the demand are such that an ordinarily prudent insurer would accept it, considering the likelihood and degree of the insured's potential exposure to an excess judgment."

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[3] *Id*.; see also Rocor Int'l v. Nat'l Union Fire Ins. Co. of Pittburgh, PA, 77 S.W.3d 253, 263 (Tex. 2002) (noting the Stowers decision is based in part "upon the insurer's control over settlement").

[4] Ford v. Cimarron Ins. Co., Inc., 230 F.3d 828, 831 (5th Cir. 2000)(citing G.A. Stowers Furniture Co. v. Am. Indem. Co., 15 S.W.2d 544 (Tex. Comm'n App. 1929, holding approved)).

[5] OneBeacon Insurance Company v. T. Wade Welch & Associates, 841 F.3d 669 (5th Cir. 2016).

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