

STOWERS FACTS, FICTION, AND WHY WORDS MATTER

August 26, 2022

Mark A. Ticer
Law Office of Mark A. Ticer
10440 N. Central Expressway
Suite 600
Dallas, Texas 75231
Email : mticer@ticerlaw.com

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Premise of *Stowers*
Liability is based on the
Insurer's Exclusive
Control of the
Litigation/Claim

*G.A. Stowers Furniture Co. v. American
Indem. Co.*, 15 S.W.2d 544, 547 (Tex.
Comm'n App. 1929, holding approved).

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The Three Cs

- Control – the amount of the demand for payment must be exclusively within the insurer's control.
- Clarity – must be crystal clear where there is no reasonable dispute about what the *Stowers* demand says and what is being offered.
- Covered Claims – *Stowers* only applies to covered claims and not exposure to damage not covered by the particular liability policy.

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***Stowers* is:**

1. Tort based on negligence;
2. A duty is owed to insured and belongs to the insured, not the plaintiff or judgment creditor;
3. Must result from an actual excess judgment;
4. A cause of action that accrues when the underlying judgment becomes final and all appeals have been exhausted; and
5. Assignable and subject to a turnover order absent public policy or where the insured states there was no breach of the *Stowers* duty.

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***Stowers* requires:**

1. Technical compliance a must - substantial compliance is not good enough;
2. All of its elements must be satisfied;
3. Strict adherence and waiver is not a part of a *Stowers* analysis. There is no requirement on the part of an insurer to point out a flaw or deficiency in a *Stowers*-like demand; and
4. Clear and undisputed language is mandated, including the terms of the offer.



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***Stowers* must:**

1. Propose to unconditionally release the insured fully in exchange for a stated sum of money;
2. Be within the scope of coverage when the offer is made;
3. Be within policy limits; and
4. Given the exposure to the insured and the likelihood of an excess judgment, a reasonably prudent insurer would accept the offer.

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First appeared as part of the conference materials for the
2022 The Car Crash Seminar session
"Stowers Doctrine: An Update "