

Leonard B. Gabbay, Attorney
Leonard B. Gabbay, P.C.
600 West 12th Street
Austin, Texas 78701

512-472-0404
Fax: 512-472-1180

WWW.LBGLAW.COM

The Effective Demand Letter

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ABSTRACT:

An effective demand package will set your client's case apart from all of the other demand letters on the insurance adjuster's desk. The effective demand package will increase the monetary amount of the offers in your clients' cases, and it will let the other side know that you have thought about your case and that you know your client's story.

This paper aims to give the lawyer a different way of presenting the client's claim early in the process of a personal injury case. The paper encourages the attorney to view their client's circumstance as a story and as a visual image instead of a bulk of writing, reports, medical records, and charts.

The elements of a good story (including photographs, witness statements, drawings, and other items) that give your client's story life are incorporated into the demand package to give a clear and concise picture to the insurance carrier of the compensable elements of your client's claim. The effort made by the attorney to find the choice pieces of information that set the client's case apart from the others will be rewarded.

Please Note: This paper does not mean to encompass all of the elements of a proper *Stowers* demand in Texas these days; however the concepts of the *Stowers* doctrine are discussed and alluded to throughout the paper.

I. INTRODUCTION:

Many demand letters these days seem to be carved out of other demand letters that the attorney has seen in a CLE or received from a fellow lawyer. These demand letters are

100% prose – just a bunch of black and white. Adjusters look at these demand packages all day, and one wonders if some adjusters even read the demand letters sent to them by Plaintiffs' lawyers.

Well, technology came to the rescue of the boring prose demand letter; technology gives the Plaintiff's attorney the tools to make the insurance companies take note and think twice about the decisions these adjusters make about the claims that come across their desks.

II. The Effective Demand Package

An effective demand package is one that will show the insurance company (and their insureds in some instances) that there exists enough RISK to the insured defendant driver that a tender of the insured's policy limits is what a prudent insurance company would do given the circumstances of the individual case. See *Rocor International, Inc. v. National Union Fire Ins. Co. of Pittsburgh, Pa.*

A. A Brief Yet Incomplete¹ Tour of Stowers:

Most of the demand packages that we write for our clients should contain the proper language and elements to create a valid *Stowers* demand. I say this because even the

¹ This section is far from a definitive treatise on the *Stowers* Doctrine, and the reader is well advised to obtain a current paper/treatise on the *Stowers* Doctrine to supplement the brief outline this author has provided herein.

small case that may not be a policy limits case on its face may be tried to a jury, and for one reason or another, the jury may come back with a verdict in excess of the insured defendant's automobile liability policy limits. You are therefore better off with a valid *Stowers* demand rather than no *Stowers* demand.

For an offer to hold water as a valid *Stowers* offer the following elements must exist:

- The offer to settle must be within policy limits.
- The offer must seek damages that are covered by the policy.
- The offer must be a *reasonable* one.

Whether a settlement offer within policy limits is a reasonable one "is determined by an objective standard based on an assessment of the likelihood that that insured will be found liable and the range of potential damages for which the insured may be held liable, including 'the likelihood and degree of the insured's potential exposure to an excess judgment.'" *American Physicians Ins. Exchange v. Garcia*, 876 S.W.2d 842 (Tex. 1994).

The *Garcia* Court described the duty of the insurance company to settle as:

1. the duty to accept reasonable settlement demands within policy limits;
2. the duty to exercise that degree of care and diligence which an ordinarily prudent person would exercise in the management of his own business in responding to settlement demands within policy limits; and

3. the duty of ordinary care which includes reasonable attempts to settle within their insured's coverage after the carrier receives a formal settlement demand within policy limits. *Id.* at 849.

- The demand must provide a reasonable time to respond. Reasonableness can be 24 hours or 30 days depending on the circumstances known to the parties or carrier. For example, with the proper documentation provided by a claimant in a wreck in which the claimant has amassed \$400,000.00 in hospital bills resulting from the collision, a carrier does not reasonably need 30 days in which to evaluate the policy limits offer – especially if the insured's limits are minimal.

- The offer must fully release the insured. The insurer's *Stowers* duty is only triggered by a settlement demand that offers a full release to the insured. *Trinity Universal Ins. Co. v. Bleeker*, 966 S.W.2d 489, 491 (Tex. 1998); see also *Texas Farmers Ins. Co. v. Soriano*, 881 S.W.2d 312, 314 (Tex.1994); *Garcia*, 876 S.W.2d at 848.

- The demand must not only be within policy limits, but it also must be *unconditional*. *Bleeker*, 966 S.W.2d 489, 491 (Tex. 1998).

Once you have the required elements of a *Stowers* demand, you may begin to put together your client's demand letter and *show* the carrier why they should pay their insured's policy limits to your client.