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Stowers at 85: A Long And Winding Road

David H. Timmins
Gardere Wynne Sewell LLP

Author contact information:

David H. Timmins
Gardere Wynne Sewell LLP
1601 Elm Street, Suite 300
Dallas, Texas 75201
dtimmins@gardere.com
214.999.4720

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A *Stowers* cause of action is a negligence claim that arises when a third party claimant offers to settle a disputed claim within the policy limits and the insurer refuses to settle. *G.A. Stowers Furniture Co. v. American Indemnity Co*., 15 S.W.2d 544, 547 (Tex. Comm'n App. 1929, holding approved). If a fact finder determines that a person of ordinary care and prudence in the insurance company's position would have accepted the settlement offer, the insurance company's refusal of such an offer is negligent and the insurance company is liable for the judgment that exceeds the policy limits. *Id.*

A. The Birth of *Stowers*

The *Stowers* doctrine was born on a "dark, rainy night" in 1920 when Mamie Bichon drove into the side of a parked furniture truck in Houston. *G.A. Stowers Furniture Co. v. Bichon*, 254 S.W. 606, 609 (Tex. Civ. App.—Galveston 1923, writ dism'd w.o.j.) ("That appellee was injured . . . on a dark, rainy night . . . is shown by the undisputed evidence."). Bichon sued Stowers Furniture Company for leaving its delivery truck, disabled after its own collision with a wagon, on the side of the road "without a light and without any one to watch it." *G.A. Stowers Furniture Co.*, 15 S.W.2d at 545. Bichon alleged that she was thrown from the "rent car" in which she was riding, suffering back and kidney injuries, cuts and bruises, a laceration in her throat, and heart damage. She initially sought $20,000 in damages, but later offered to settle her claim for $4,000. American Indemnity had issued an auto insurance policy covering Stowers Furniture Company with policy limits of $5,000. American Indemnity refused Bichon's offer and the case proceeded to trial, with the furniture company represented by an attorney appointed by the insurer (the insured also had its own counsel assisting in the defense). The jury rendered a verdict in Bichon's favor and awarded damages, including interest and costs, totaling just over $14,000. American Indemnity tendered the policy limits of $5,000, but refused to pay the excess. Stowers Furniture Company subsequently paid the full amount of the judgment and sued American Indemnity.

In the subsequent case, American Indemnity argued that it could only be responsible up to its $5,000 policy limit. The insured furniture company argued that because the claim could have been settled within policy limits, the insurer should pay the entire judgment. The case was tried. The trial judge granted judgment to American Indemnity at the close of the evidence. The judgment was affirmed by the Court of Civil Appeals, with that court concluding that the insurer was obligated only to defend, not settle, the suit against the insured.

In the Texas Commission of Appeals, however, two members of the three judge panel decided that an insurer defending an insured assumes the responsibility to act as the insured's agent in the litigation and therefore has a duty to exercise ordinary care in deciding whether to settle. *Id.* at 547. The court based this broad principle on the insurer's nearly exclusive control of the suit against its insured:

> [T]he indemnity company had the right to take complete and exclusive control of the suit against the assured, and the assured was absolutely

> prohibited from making any settlement, except at his own expense, or to interfere in any negotiations for settlement or legal proceeding without the consent of the company....Certainly, where an insurance company makes such a contract; it, by the very terms of the contract, assumed the responsibility to act as the exclusive and absolute agent of the assured ... and, as such care and diligence which an ordinarily prudent person would exercise in the management of his own business.

Id. at 547. The court also held that the trial court should have allowed Bichon and other witnesses to testify about the serious nature of her injuries because they bore on the question of the insurer's negligence. The court therefore recommended that reversal and remand for a new trial. On March 27, 1929, the Texas Supreme Court approved the holding of the Texas Commission of Appeals. At the retrial, the jury agreed that American Indemnity should have settled for $4,000. The furniture company was granted judgment against the insurer for the amounts paid to Bichon, plus interest.[1]

And so the *Stowers* doctrine was born. An insurer could thereafter be liable to pay more than its policy limits for refusing to settle a claim that a reasonable insurer would have settled.

B. Evolution of the *Stowers* Doctrine

Far from being a static rule of law, the *Stowers* doctrine has expanded and contracted over the years as courts have grappled with its elements and limits. At its core, *Stowers* requires only that an insurance company accept reasonable demands within the policy limits. But over the past 85 years, the doctrine has sometimes been interpreted to include more expansive but less defined duties, such as the duty to negotiate, the duty to solicit demands, or the duty to investigate. *See Chancey v. New Amsterdam Cas. Co.*, 336 S.W.2d 763, 764-65 (Tex. Civ. App.—Amarillo 1960, writ ref'd n.r.e.) (holding that duty to settle includes duty to negotiate). In its modern form, the more expansive duties are no longer a part of the doctrine.

The most significant, albeit short-lived, expansion of the *Stowers* doctrine occurred in *Ranger County Mutual Ins. Co. v. Guin*, 723 S.W.2d 656 (Tex. 1987). *Guin* extended the duty to settle "to the full range of the agency relationship." The Supreme Court refused an argument that an offer to settle within policy limits was a prerequisite to a *Stowers* breach, holding instead that the *Stowers* duty included the duty to investigate, prepare for the defense of the lawsuit, trial of the case, and to make reasonable attempts to settle. *Id.* at 659. Following *Guin,* the appellate courts adopted and applied the more expansive view of the *Stowers* doctrine. *See e.g., USAA v. Pennington*, 810 S.W.2d 777 (Tex. App.—San Antonio 1991, writ denied); *Wheelways Ins. Co. v. Hodges*, 872 S.W.2d 776 (Tex. App.—Texarkana 1994, no writ).

The Texas Supreme Court retreated from *Guin*'s expansive interpretation of the *Stowers* doctrine in *American Physicians Ins. Exch. v. Garcia*, 876 S.W.2d 842, 847 (Tex. 1994). The *Garcia* court rejected the proposition that *Stowers* included the duty to investigate, defend

[1] Details about the procedural twists and turns of the *Stowers* case itself can be found in the excellent article by Vince Morgan and Michael Sean Quinn entitled *"Damn Fools" – Looking Back at Stowers after 85 Years*, 12 Journal of Texas Insurance Law 3 (Winter 2014).

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