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Beyond the Limits: The *Stowers* Doctrine in Texas

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This article attempts to impart some practical considerations regarding the construction and utility of an effective *Stowers* demand within the context of personal injury litigation in Texas. It is in no way meant to be used as a definitive resource in this burgeoning area of law and the active reader should recognize that the complexity of the *Stowers* doctrine, which is often underestimated, prophesizes its continuing evolution in Texas case law.

Simply, the *Stowers* Doctrine imposes a duty on an insurance carrier to act reasonably in settling third-party claims against its policyholders. The carrier must proceed with "that degree of care and diligence which an ordinarily prudent person would exercise in the management of his own business." [1] This duty of 'ordinary care' is a negligence standard and establishes a cause of action for an insured who has sustained damages as a result of an insurance carrier that, in the course of defending its insured in third-party claims, has failed to act as any prudent carrier would in the same or similar circumstances.

I. The Case

The *Stowers* doctrine is derived from the 1929 case *G.A. Stowers Furniture Co. v. American Indemnity Co*. The underlying cause of action arose from a motor vehicle collision that occurred in Houston, Texas, wherein a disabled vehicle operated by an agent of and belonging to the G.A. Stowers Furniture Company was negligently abandoned on the side of the roadway at night without lights or other warning mechanism. Shortly thereafter, another vehicle, in which claimant was a passenger, collided with the abandoned vehicle causing serious injury to claimant. Claimant thereafter brought suit against the furniture company, seeking recovery for her injuries and damages concomitant with same.

Pursuant to the terms of an indemnity policy held by the G.A. Stowers Furniture Company with the carrier, American Indemnity Co., the insurer assumed absolute and exclusive control over the defense of a suit brought by any third-party claimant and expressly reserved the right to settle any such claim or suit brought against their insured. Accordingly, American Indemnity provided the defense and, in spite of unambiguously high damages and the apparent jeopardy to its insured of an excess verdict at trial, refused, in the ensuing negotiations, to tender the policy or settle the case within it's limits. Despite prior offers by the claimant to accept a settlement within the limits of the indemnity policy, the case proceeded to trial on the merits where an excess verdict was in fact returned against the furniture company in an amount that equaled nearly three times the policy limits.

G.A. Stowers Furniture Co. subsequently brought suit against the indemnity company, alleging that American Indemnity had failed to act in good faith or otherwise as a prudent

[1] *G.A. Stowers Furniture Co. v. American Indemnity Co.,* 15 S.W.2d 544 at 547 (Tex. Comm'n App. 1929).

person would have done in like circumstances, and that its failure resulted in damages to the furniture company in excess of the policy. The Court, reviewing the terms of the indemnity policy, observed that the contractual language of the policy created a relationship wherein the carrier operated as the sole agent for the furniture company with respect to the litigation and held that, out of that agency relationship, arose the duty to act with reasonable care.[2] Thus, when considering the conduct of the insurance company in settling the claim, or in this case failing to do so, the pertinent inquiry was what an ordinary and prudent insurer would have done in a similar instance.

Notably, the *Stowers* Court qualified their holding to the extent that the carrier had actual or constructive knowledge regarding the damages and particulars comprising the claim against its insured. Hence, an insurance company would only be found negligent for failure to settle when it could be shown that it knew or, with ordinary care should have known, that the claim was one that an ordinary and prudent carrier would have settled. Accordingly, the *Stowers* Court reasoned that the facts and circumstances surrounding the claimant's original injury were necessarily relevant to the question of whether the carrier had acted reasonably in refusing to accept a settlement demand within its limits and, therefore, material to the jury's determination of negligence. [3]

II. The Duty: Reasonable Care

The duty of reasonable care imposed on the insurance carrier under *Stowers* is distinct from and should not be confused with the statutory duty of good faith and fair dealing. The *Stowers* duty is a negligence standard. The doctrine essentially requires an insurance company to defend and settle third-party claims in a manner akin to that it would if its liability were not limited by the contractual terms of the policy.

The contract between the insurance carrier and the insured is the basis from which this duty arises and the foundation of the court's decision in *Stowers*. Generally, the insurance contract is defined by the maximum level of indemnity provided, i.e. the policy limit, and the carrier's duty to defend. The confluence of these two contractual duties, where the insurer retains primary control in both the defense and settlement of the claim but only to the extent of the contracted level of liability, provides the foundation for the *Stowers* doctrine.

The reasonableness standard is viewed from the standpoint of the insurer. "All the facts and circumstances surrounding [the] injury are material as bearing on the question of negligence on the part of the indemnity company in failing and refusing to make the

[2] "That contract created a relation out of which grew the duty to use care when action was taken…it is difficult to see upon what ground [the carrier] could escape responsibility when its negligence resulted in damage to the party it had contracted to serve." *Id.* at 547.

[3] Interestingly, the *Stowers* Court expressly admitted evidence as to the apparent business practice of American Indemnity Co. to never offer settlement for more than one half of the amount of the policy as underwritten. By the admission of same, the Court impliedly determined that such a business practice, as applied, was fundamentally unreasonable. *Id.* at 548.

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