

PRESENTED AT

20th Annual Insurance Law Institute

November 12-13, 2015

Dallas, Texas

Gandy/Seeger: Assignments and Actual Trials
Development of the Case Law

John Smithee

Author Contact Information:

John Smithee
Templeton, Smithee, Hayes,
Heinrich & Russell, LLP
Amarillo, Texas

john@tshhr.com

806.324.0324

Gandy/Seeger: Assignments and Actual Trials
Development of the Case Law

***G.A. Stowers Furniture Co. v. Am. Indem. Co.*, 15 S.W.2d 544 (Tex. Comm'n App. 1929)**
– Action against insurer for negligent refusal to accept settlement offer within coverage limits.

Key Holding:

- “[Insurer] 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; the company reserved the right to settle any such claim or suit brought against the assured. 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 in all matters pertaining to the questions in litigation, and, as such agent, it ought to be held to that degree of care and diligence which an ordinarily prudent person would exercise in the management of his own business; and if an ordinarily prudent person, in the exercise of ordinary care, as viewed from the standpoint of the assured, would have settled the case, and failed or refused to do so, then the agent, which in this case is the indemnity company, should respond in damages.”

***Ranger Ins. Co. v. Rogers*, 530 S.W.2d 162, (Tex. Civ. App. – Austin 1975, writ ref'd n.r.e.)** – Insurer that fails to defend its insured is bound by the underlying damage award against its insured.

Key Facts:

- Duty to defend.
- Insurer offered to defend under a reservation of rights; insured refused.
- Prejudgment settlement and assignment.
- Plaintiff's damages awarded by agreed judgment with no evidentiary trial.
-

Key Holdings:

- “A consent judgment has the same degree of finality and binding force as does one entered by the court at the conclusion of an adversary proceeding.”
- “Had [insurer] accepted the defense, it would have had, of course, the opportunity to conduct the defense in the manner most likely to have defeated the plaintiffs' claim or at least to have reduced the amount.”
- “[Insurer] would accept the defense of the case only with a ‘reservation-of-rights’ agreement. [Insureds] were not obligated to accept appellant's effort to limit its responsibility under the contract of insurance, and they ultimately settled the case and obtained the consent judgment. Under these circumstances [insurer] will not be regarded as a stranger to the consent judgment.”

***Allstate Ins. Co. v. Kelly*, 680 S.W.2d 595, 610 (Tex. App. – Tyler 1984), writ ref’d n.r.e.) – Stowers damages established in the amount of underlying excess judgment as a matter of law; Stowers claims generally assignable.**

Key Holdings:

- “In this case no actual damage issue was required to be submitted because the actual damages sustained by the [insured] under each cause of action asserted herein were fixed as a matter of law in the amount of the excess of the judgment rendered against her in favor of [plaintiff] over the applicable policy limits in [insurer’s] policy.”
- “[Insured] assigned two-thirds of her cause of action against [insurer] to her judgment creditor, Kelly, with an agreement to share certain expenses. This she had a right to do.”

***Block v. Employers Cas. Co.*, 723 S.W.2d 173 (Tex. App. – San Antonio 1986), *aff’d*, 744 S.W.2d 940 (Tex. 1988) – Insurer that wrongly refuses to defend barred from collaterally attacking damage amount.**

Key Facts:

- Contractual duty to defend.
- Wrongful refusal to defend.
- Prejudgment settlement and assignment.

Find the full text of this and thousands of other resources from leading experts in dozens of legal practice areas in the [UT Law CLE eLibrary \(utcle.org/elibrary\)](http://utcle.org/elibrary)

Title search: Gandy/Seeger: Assignments and Actual Trials – Development of the Case Law

Also available as part of the eCourse

[Insurance Litigation Strategies](#)

First appeared as part of the conference materials for the
20th Annual Insurance Law Institute session
"Gandy/Seeger: Assignments and Actual Trials"