STOWERS FACTS, FICTION, AND WHY WORDS MATTER

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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).

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.

3



Stowers is:

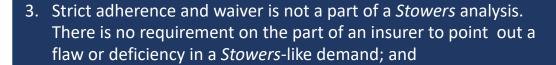
- 1. Tort based on negligence;
- 2. A duty is owed to insured and belongs to the insured, not the plaintiff or judgment creditor;
- 3. Must result from an actual excess judgment;
- 4. A cause of action that accrues when the underlying judgment becomes final and all appeals have been exhausted; and
-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

1



Stowers requires:

- 1. Technical compliance a must substantial compliance is not good enough;
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- 2. All of its elements must be satisfied;





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.

6





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Title search: Stowers Facts, Fiction, and Why Words Matter

Also available as part of the eCourse 2022 Car Crash Updates: Texas Auto Policies, Uninsured Motorists, Medical Expenses, and More

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