# STOWERS FACTS, FICTION, AND WHY WORDS MATTER

August 26, 2022

Mark A. Ticer Law Office of Mark A. Ticer 10440 N. Central Expressway Suite 600 Dallas, Texas 75231 Email: mticer@ticerlaw.com



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:

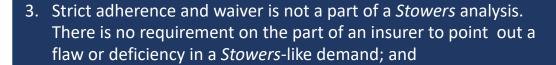
- 1. Tort based on negligence;
- 2. A duty is owed to insured and belongs to the insured, not the plaintiff or judgment creditor;
- 3. Must result from an actual excess judgment;
- 4. A cause of action that accrues when the underlying judgment becomes final and all appeals have been exhausted; and
- 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;
- K
- 2. All of its elements must be satisfied;





4. Clear and undisputed language is mandated, including the terms of the offer.

\_

## 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





Find the full text of this and thousands of other resources from leading experts in dozens of legal practice areas in the <u>UT Law CLE eLibrary (utcle.org/elibrary)</u>

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

Also available as part of the eCourse 2022 The Car Crash eConference

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