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5th Circuit Court of Appeals: Trucking Liability Carrier Entitled to Exhaust Policy Limits, and Withdraw From Further Defense of Named Insured, Following Reasonable Policy Limits Settlement Paid Solely On Behalf of Additional Insured Driver

On February 6, 2013, the 5th Circuit Court of Appeals held that, under Texas law, a trucking company's primary and excess carriers validly exhausted their policy limits by accepting and paying out a policy limits settlement solely on behalf of the insured driver, and owed no further defense obligations to the named insured trucking company thereafter. *Pride Transportation v. Continental Cas. Co. and Lexington Ins. Co*., No. 11-10892 (5th Cir. Feb. 6, 2013). The court's holding was based principally on the Texas Supreme Court's 1994 *Soriano* opinion in which the court held that an insurer faced with multiple competing claims under the same policy can accept a reasonable settlement offer made by one claimant even if doing so depletes or reduces the remaining policy limits available to satisfy the other claims. That same *Soriano* principle was extended to the single claim v. multiple insureds context in 1999 by *Travelers Indemnity v. Citgo*, 166 F.3d 761 (5th Cir. 1999).

In *Pride Transportation,* a Pride truck, driven by Pride driver Harbin, struck a pickup driven by Hatley in October 2006 in Wise County, Texas resulting in catastrophic injuries to Hatley. Hatley sued Pride and Harbin. Pride had a $1M primary policy and a $4M excess policy. The primary carrier defended both Pride and Harbin with a single lawyer initially who estimated that the case was worth between $8M and $10M. In January 2007, defense counsel advised the primary carrier to explore an early settlement, although more investigation was still needed. In April 2007, Harbin was deposed and admitted to falsifying her driver logs. At that point, the primary carrier hired separate counsel for her and split the defense. Pride's counsel concluded that Harbin was now a bigger target than Pride. In May 2007, the excess carrier advised Pride that the claim could exceed its excess policy limits. In June 2007, Hatley made a time-limited settlement demand solely to Harbin for the entire $5M limits of the two policies combined, specifically noting that the offer to settle did not include Pride. Pride requested that the primary tender its limits to the excess hoping that such would result in the excess carrier then making a counter offer that would include settlement of Pride's exposure as well. Three days before the time demand to Harbin expired, the primary carrier formally tendered its limits to the excess carrier and the excess carrier immediately requested that Hatley make a new offer that would release Pride as well. Hatley's counsel refused. So the excess carrier accepted the policy limits settlement demand on the last possible day and shortly thereafter notified Pride that no further defense would be provided since the policy provided that the defense obligation ended upon exhaustion of policy limits by settlement or judgment.

Pride then sued the insurers and also filed a cross action in the injury case against Harbin for indemnity. After noting that in Texas insureds "have limited recourse against insurers in Texas for the handling of third-party insurance claims" solely under the *Stowers* doctrine (based on the insurer's failure to reasonably accept an offer to settle within policy limits), and that *Soriano* had established that an insurer is entitled to settle one of multiple claims as long as that settlement is reasonable without any requirement that it weigh or balance the other competing claims, the court held that the insurer's decision to accept the settlement offer made solely to Harbin was reasonable. Pride argued that the limits demand made on Harbin was unreasonable because it

was not a valid "Stowers" offer because a valid "Stowers" offer must offer a complete release, and here the settlement left Harbin still exposed to Pride on Pride's indemnity claim. The court concluded, however, that it did not matter whether the demand was an invalid or valid "Stowers" demand since it was still reasonable for the insurer to have accepted it given the liability facts and damages. The court further noted that the policy excluded coverage, in any event, for a claim by one insured against another insured so that the carrier could ignore the indemnity exposure in making its settlement evaluation. Accordingly, under the terms of the policy, the carrier owed no further defense obligation since it had reasonably exhausted its policy limits.

Practical Pointers—This decision is helpful to both insurers and Plaintiffs. Helpful to insurers in allowing them to settle as much of a case as they can without fear that they will be liable for failing to settle the other parts of the case that they cannot. It is potentially helpful to Plaintiffs in allowing Plaintiffs to potentially "Stowerize" an insurer by making a "Stowers" demand to settle solely as to individual or otherwise poor Defendants who have no ability, beyond insurance, to satisfy any judgment without also having to offer as part of that settlement to release claims against a more solvent, *i.e.*, rich defendant insured on the same policy. As long as the liability facts and damages support payment of the full limits of coverage in settlement of the claims against just the one Defendant, the Plaintiff and insurer are free to proceed with that partial settlement even if it means that other insureds on the same policy will be left without any further insurance. In fact, should the insurer refuse an otherwise valid settlement demand made on one insured simply because it does not include an offer to release the other insured, then the insurer, potentially, then is "Stowerized" as to the defendant to whom the offer was made. However, if the carrier artificially or otherwise unreasonably exhausts or partially depletes the policy limits by the earlier settlement, this decision is of no protection from the other now uninsured or underinsured defendant as it assumes, as the court found, that the payment of the entire policy limits solely on behalf of the driver was completely reasonable under the catastrophic injury and horrible driver liability facts involved. So caution and care are still in order before entering into a settlement on behalf of one insured that will result in other insured's being underprotected.

If you wish to discuss any insurance-related issues or needs, please feel free to contact Schubert & Evans, P.C. at 214.744.4400 or visit our website at www.schubertevans.com.