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# NEW TEXAS COVERAGE CASE ALERT – April 1, 2011



## "*Stowers*" Doctrine Construed in Trucking Case Where Demand for Combined Primary and Excess Limits Made Only On Driver, not Trucking Co.

Anyone handling more than a few serious injury liability claims in Texas is probably familiar with the insurer's duty to settle within limits when it would be unreasonable not to do so, *i.e.*, the "*Stowers*" doctrine. (The name comes from the insured's name in the 1929 case where it was recognized.) Under the "*Stowers*" doctrine, if the claim is covered under the policy and the liability insurer receives an unconditional demand to settle all claims asserted by the plaintiff within policy limits but unreasonably fails to accept it, then the insurer can be held liable for the resulting excess judgment against the insured. It is fairly straightforward when there is a single plaintiff suing a single insured and a single applicable policy limit. It is more complicated, however, if there are multiple injured plaintiffs or multiple insureds being sued or more than one policy limit in play.

A recent Texas trucking accident case discusses the "*Stowers*" doctrine as applied to a settlement offer for the combined primary and excess policy limits made by the plaintiff only to the driver defendant, and not the trucking company defendant. In such a situation, if the primary carrier promptly tenders to the excess who then settles all of the plaintiff's claims against the driver and withdraws any further defense of the trucking company based on exhaustion of coverage, can the trucking company sue the insurers under *Stowers* for the multi-million dollar settlement that it is then forced to pay out of pocket? "No," said the court in *Pride Transportation v. Continental Cas. Co*., No. 4:08-CV-007-Y (N.D. Tex. March 31, 2011).

Pride had $1M primary coverage (Continental) and $4M excess coverage (Lexington). The plaintiff, rendered a paraplegic by being rear-ended by a Pride truck driven by its driver, sued Pride and the driver. Eventually, the plaintiff offered to settle all claims against the driver only for the combined policy limits of $5M. The primary tendered its limits to the excess carrier who attempted to no avail to get the plaintiff to expand the offer to settle to include Pride, as well. The excess carrier then accepted the offer and promptly withdrew from any further defense of Pride based on the standard policy language stating that its defense obligation ended once it had paid its limits in settlement. Pride ultimately settled the claims against it for $2M and then sued the carriers arguing that they improperly exhausted their limits in settling only on behalf of the driver.

In *Texas Farmers v. Soriano*, the Texas Supreme Court held that where there are multiple claimants all suing the same insured and one of them makes a demand for policy limits, the insurer can settle and exhaust its limits as long as that settlement, viewed in vacuum, was reasonable; a carrier does not have to balance the relative worth of the competing claims. Judge Means held that the same rule applied here where there are multiple insureds covered on the same policy. Thus, the insurers did not violate their settlement obligations by settling only on behalf of the driver and leaving Pride out in the cold. He further held that the insurers' policies expressly allowed them to withdraw further defense upon exhaustion so that they did not breach their contracts in doing so.

This case is also significant in what it says about demands that require both the primary and excess carrier to accept in order to settle. Previous Texas cases have repeatedly held that an excess carrier has no *Stowers* obligation to settle in response to a settlement demand that is within the combined excess and primary limits if the primary carrier has not tendered. But what if, as here, the primary carrier does tender? Can the excess carrier be "*Stowerized*?" In explaining why the excess carrier was entitled, perhaps even required, to accept the demand, Judge Means noted that once the primary carrier had tendered its limits, all that remained was for the excess carrier to accept, and thus it arguably would have been liable under *Stowers* if it had not.

**PRACTICE POINTERS:** The excess carrier here was smart in attempting to get the plaintiff to settle all claims against both defendants for the combined limits before then accepting the demand only as to the driver. That is not to say that it had any obligation to do so under current law. By doing so, however, it grabbed more of the equities for its side and possibly made it easier for the court to rule in its favor. It was careful to not reject the offer by making a counter offer though. Instead, according to the opinion, the excess carrier "sought permission" from the plaintiff's attorney to make a counter that would embrace settlement of both defendants. Only after such permission was refused, did the excess carrier then accept the original demand.

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.