



THE BASSETT FIRM
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UNDERSTANDING A *STOWERS* DEMAND

This two-part newsletter is designed to give you the history of the *Stowers* demand, your responsibilities as an insurer when you receive such a demand, and the requirements of a proper *Stowers* demand.

The first part of this article will give you the history of *Stowers* and explain how a *Stowers* demand works, who can bring a *Stowers* action, and what kind of damages an insured can get from a *Stowers* action. Our next issue will discuss the list of requirements for a proper *Stowers* demand and five important tips to remember when you are dealing with such a demand.

Often times, clients and carriers receive a *Stowers* demand and may get a little anxious. This article is designed to give you the knowledge you need to alleviate some of that anxiety and help you understand your responsibilities under *Stowers*.

WHERE DID IT ALL START?

Some people do not realize that a *Stowers* demand stems from a case decided by the Texas Court of Appeals in 1929, named *G.A. Stowers Furniture Co. v. American Indemnity*. It began with a motor vehicle accident involving a driver for a furniture company and another driver, Miss Bichon.

The accident occurred on January 23, 1920, when a driver from G.A. Stowers Furniture Company (“Stowers Furniture”) was hauling and delivering furniture in Houston, Texas. The driver for Stowers Furniture struck Miss Bichon’s Ford coupe, which seriously injured Miss Bichon. Miss Bichon eventually brought suit for personal injury damages against Stowers Furniture.

Before the trial date, Miss Bichon made a demand to Stowers Furniture’s insurance company (American Indemnity Company) for \$4,000.00 in full settlement for her damages. American Indemnity Company refused to pay more than \$2,500.00, although Stowers Furniture’s policy limit was \$5,000.00. American Indemnity Company *knew* that the case with Miss Bichon was a “dangerous one,” in that Miss Bichon was likely to get a judgment for far more than \$5,000.00.

This case was eventually tried to a jury. The jury returned a verdict for Miss Bichon for the sum of \$12,207.00. Stowers Furniture appealed this judgment; however, the judgment was affirmed. The total owed to Miss Bichon was \$14,107.15, which included interest and court costs.

Stowers Furniture, after this initial case was concluded, brought an action against its insurer, American Indemnity Company, alleging that American Indemnity did not act in good faith because it refused to settle the underlying lawsuit. Stowers Furniture argued that American Indemnity Insurance refused to accept a settlement demand within the policy limits.

Stowers Furniture argued that this case could have been resolved pre-suit and for less than \$5,000.00. However, because American Indemnity did not settle for an amount within the \$5,000.00 policy limit, the judgment by the jury resulted in Stowers Furniture being liable for the amount in excess of the \$5,000.00 policy limit. This dispute went through an appeal and eventually to the Texas Supreme Court. The issue then became did American Indemnity act as an ordinary prudent insurer by rejecting Miss Bichon's original demand?

After the Texas Supreme Court remanded the case and a new trial was ordered on this issue, a jury found that American Indemnity did *not* act as an ordinary prudent insurer and it was responsible for the entire amount of the jury's verdict of \$14,107.15. American Indem. Co. vs. G. A. Stowers Furniture Co., 39 S.W.2d 956, 957 (Tex. App. 1931).

The demand that Miss Bichon originally made to American Indemnity Company for \$4,000.00 formed what we know today as a *Stowers* demand.

HOW DOES A *STOWERS* DEMAND WORK?

An insurance provider, when defending an insured against a claim, has a duty to exercise reasonable care when deciding to accept or reject a settlement demand that is within the policy limits. A breach of this duty gives the named insurer a cause of action for damages. This is a *Stowers* action.

As discussed above, an insurance provider, when defending an insured against a claim, needs to exercise reasonable care when deciding to accept or reject a demand. This duty is determined by looking at the degree of care and diligence that ordinary, prudent persons would exercise in the management of his/her own business.

However, an insurance provider has no duty to make or solicit a settlement proposal. Therefore, this only comes into play when an insurance carrier receives a demand.

WHO DO INSURANCE COMPANIES HAVE A DUTY TO?

A *Stowers* demand is only effective if the insurer owes its insured a duty. In addition, the insured is primarily the individual who initiates a *Stowers* action.

However, under the theory of equitable subrogation, an excess carrier is entitled to enforce this cause of action against the primary carrier. Therefore, an excess policy insurer can bring an action against the insurer of the first level of insurance if a verdict gets into the second level of insurance and could have been settled within the primary level.

Additionally, the insured may also assign his or her rights to the claim to a third party. For example, should a Plaintiff's attorney get a verdict in excess of the policy limits, the insured can assign their rights to the original Plaintiff and let the Plaintiff's attorney go after the insurance company for the amount in excess of the policy limits.

DAMAGES?

If an insured person or company is successful in their *Stowers* action, the measure of damages includes the amount of the judgment that exceeds the liability limits of the insurance policy.

In the above case, Stowers Furniture got \$14,107.15 (total award) minus \$5,000.00 (Stowers Furniture's policy), which is \$9,107.15.

In our next article, we will discuss the requirements of a proper *Stowers* demand. We will explore important issues when it comes to deciding whether an insurer has a duty to respond to such a demand. We will also discuss important points to remember when a *Stowers* demand is received.

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