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UNDERSTANDING A *STOWERS* DEMAND (PART TWO)

This second article will cover the requirements of a proper *Stowers* demand. It is important that the demand meets these requirements. If it does not, then there is no duty to accept or reject the Plaintiff's *Stowers* demand.

THE REQUIREMENTS

A *Stowers* duty is activated when a third party seeking to impose liability on an insured makes the demand to settle the claim. However, that demand from the third party has to meet specific requirements.

Here are four things that must be present before a duty arises under *Stowers*:

1. The claim against the insured must be within the scope of the policy's coverage;
2. The demand must be within the policy limits, or it can be for the entire amount of the policy;
3. The proposed settlement must be one that results in a full release of the insured; and
4. The proposal to settle must be on such terms that an ordinary, prudent insurer would have accepted it, considering the likelihood and degree of the insured's potential exposure to an excess judgment.

We will discuss each of these in more depth below.

IS THE CLAIM WITHIN THE POLICY'S COVERAGE?

Before you decide whether there is a duty to accept the *Stowers* demand, you need to read the Petition to see if the facts alleged in the Petition are within the scope of coverage of the insurance policy.

An insurer is not legally required to defend a suit against the insured if the insured is not covered for the type of accident or injury alleged. This is known as the "Complaint Allegation Rule" or the "Eight Corners Rule." The duty to defend an insured depends on the "four corners" of the Petition and the "four corners" of the insurance policy. This means that you must read the policy to find out what it covers. If the allegations in the Petition do not fall into the coverage provision of the insurance policy, then no duty arises.

However, an insurer needs to be cautious before it concludes that there is no coverage and therefore no duty. Courts are required to resolve disputes on coverage in favor of the insured. If there are any doubts as to the facts of the pleadings being covered by the insurance policy, make sure you research your position thoroughly. Remember, courts tend to lean toward the insured in coverage disputes.

Here's another thing to remember. Even if it's clear in the first set of pleadings that there is no coverage, if the Plaintiff's pleadings are eventually amended to cover causes of action that do fall under the policy, a duty to defend arises. On the other hand, if those causes of action that triggered a duty to defend are later dropped, a duty as an insurer to defend the case is also extinguished.

IS THE SETTLEMENT DEMAND WITHIN POLICY LIMITS?

On occasion, Plaintiff's attorneys will send what they call a *Stowers* demand and ask for a monetary amount in excess of the policy limits of the insurance policy. If the demand that you receive is above the policy limits, then this is not a proper *Stowers* demand and the insurer's duty to accept or reject the demand is not triggered.

As such, you should be cognizant of this fact when receiving such a demand. However, although this is not a proper *Stowers* demand, make sure you convey that information to the Plaintiff's attorney in writing to protect yourself.

WILL THERE BE A FULL RELEASE FOR YOUR INSURED?

A *Stowers* demand cannot leave the insured with any residual exposure. A *Stowers* duty does not arise unless the proposed settlement will result in a full release of the insured's liability to the claimant. For example, if the Plaintiff has a hospital lien, and the *Stowers* demand does not mention that the Defendant will be released from any claims against any hospital liens, no *Stowers* duty is created.

In order to effectively "Stowerize" an insurance company, Plaintiff's counsel must ensure that the offer sent is for a complete release of all potential liability that the Defendant may incur. You should inspect with zeal whether there are potential impediments that keep the demand from constituting a full release.

Often times, clients and carriers will have cases that involve more than one claimant. If you receive a *Stowers* demand from one claimant, what happens to the other claimants? When there is more than one claim against the insured, the duty to accept a reasonable settlement offer is examined by viewing each claim separately. The insurer, without breaching the *Stowers* duty, may enter into a reasonable settlement with one of the several claimants. This can happen even if the settlement exhausts or diminishes the proceeds available to satisfy other claimants. This is allowed because it promotes settlement of lawsuits and encourages claimants to make their claims promptly.

WOULD AN ORDINARY, PRUDENT INSURER HAVE ACCEPTED THIS DEMAND?

This is where the *Stowers* demand goes into a gray area. How would an ordinary and prudent insurer handle this demand? What is the standard by which this is measured?

Here are some things to think about with your attorney when deciding the reasonableness of the demand. What are the chances that the insured will be found liable? What are the chances that the insured is able to assert affirmative defenses? What is the range of potential damages to the Plaintiff? What venue are you in? What kind of witnesses do you have? What is your exposure?

All of these things need to be taken into account before you decide to accept or reject an offer. This is where your attorney will play a big role in your evaluation of the case. You and your attorney should work together to evaluate all of these things.

This is also where it is important for depositions to be taken and medical records to be reviewed. It's important to track down witnesses to see what everyone is going to say about the case. Getting the big picture helps you in considering the likelihood and degree of the insured's potential exposure to an excess judgment.

WHERE DOES THIS LEAVE US?

Here are five tips to remember when dealing with *Stowers* demands.

1. Research whether or not the facts of the pleadings fall under the insurance policy.
2. Monitor the Plaintiff's pleadings. If you have received a *Stowers* demand and you think that the facts of the pleadings may not be covered under the insured's policy, keep tabs to see if something changes in the Plaintiff's pleadings.
3. Have you been released? Has the Plaintiff's attorney met all of the requirements releasing you of all potential liability? If not, then the Plaintiff's attorney has not effectively issued a valid *Stowers* demand.
4. Don't procrastinate. There is typically a deadline to respond. If you need additional time, ask for it, but do not put it off. The deadline will come up faster than you think.
5. Finally, respond in writing. Are you not responding because you don't think the Plaintiff's attorney met all of his requirements? Are you not responding because you think you need more time to respond? If so, protect yourself and the insured by responding to each demand in writing. If there is a flaw in the Plaintiff's *Stowers* demand, respond in writing, about your analysis.

CONCLUSION

Stowers' demands can get tricky. Even though people sometimes feel anxious when they get them, they can be successfully handled. If you know the rules and requirements behind the *Stowers* demand, you can handle them effectively for yourself and the insured.

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