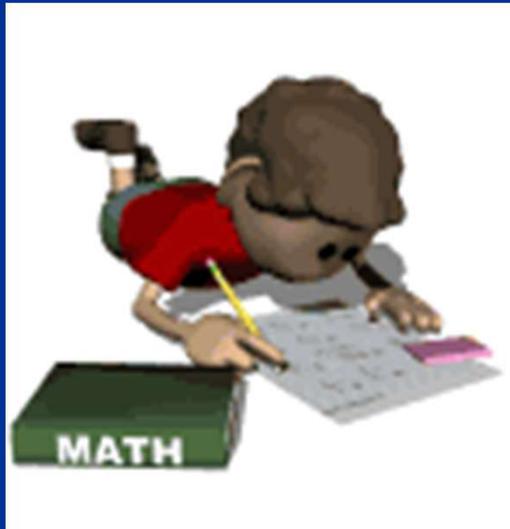


# STOWERS UPDATE

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## Math Problem

\$40,000 \_\_\_\_\_ \$78,000,000.00

- a) >
- b) <
- c) =

**WHAT TYPE OF MATH?**

**STOWER'S MATH**

# STOWERS

In *Stowers*, the insurer refused to accept the third party's offer to settle within policy limits and a judgment in excess of policy limits resulted after trial. The court imposed a duty to handle settlement demands reasonably as a result of the carrier's control over the defense and settlement.

# ELEMENTS

*American Physicians Ins. Exch. v. Garcia*, 876 S.W.2d 842 (Tex. 1994)

## THREE ELEMENTS

- (1) the claim against the insured is within the scope of coverage;
- (2) the amount of the demand is within the policy limits; and
- (3) the terms of the demand are such that an ordinary prudent insurer would accept it, considering the likelihood and the degree of the insured's potential exposure to an excess judgment.

# PROPER DEFENDANT

*Galindo v. Empower Managing General Agency*  
2020 WL 5409162(W.D.Tex)

FACTS: Wrongful Death Claim  
Remaining Claimants sued Managing Agent(Claim handler) under Stowers  
Agent moved for MSJ on no duty

HOLDING: All insurance company has Stowers' duty and is only proper defendant in Stowers lawsuit

# WITHIN LIMITS

*Amer. Guar. And Lib. Ins. Co. v. Ace Amer. Ins. Co.*, 990 F.3d 842(5<sup>th</sup> Cir. 2021)

FACTS: Demand for policy limits plus costs  
Rejected and then excess judgment

HOLDING: No Stowers because term “costs” is  
ambiguous

Opens door to argument that “within limits” includes  
supplementary payments

# EXCESS JUDGMENT

*In Re: Farmers Co. Mut. Ins. Co.,*  
621 S.W.3d 261(Tex. 2021)

FACTS: Settlement demand within policy limits  
Carrier refuses to pay entire demand and requests that insured contribute to settlement offer  
Insured contributes to settle case and then sues carrier under Stowers for the contribution

# EXCESS JUDGMENT

HOLDING: No Stowers exposure.

Stowers requires a judgment or settlement in excess of policy limits in order to apply

# FULL RELEASE

*Trinity Universal Insurance Co. v. Bleeker*, 966 S.W. 2d 489 (Tex. 1998)

## FACTS

- 14 injured parties including one death
- \$20,000 per person and \$40,000 per accident limits
- Over \$400,000 in hospital liens
- Settlement offer on behalf of 5 victims
  - Mentions *Stowers*
  - Pay policy limits into court
- \$13,000,000 judgment

# FULL RELEASE

*Trinity Universal Insurance Co. v. Bleeker*

## HOLDING

- Under property code, hospital gets dollar one
- With liens, no way to offer “full release” unless liens included
- No mention of liens, no proper *Stowers* demand

# MULTIPLE CLAIMANTS

*Texas Farmers Ins. Co. v. Soriano*, 881, S.W.2d 312 (Tex. 1994)

## FACTS

- 2 car vehicle accident with death to other driver (Medina) and insured's passenger
- \$20,000 policy
- Farmers offered to settle Medina's claim early on but refused by Medina
- At eve of trial, Farmers settled other death claim for \$5,000 and offered Medina remaining \$15,000
- Medina refused offer and demanded \$20,000
- Excess verdict

# MULTIPLE CLAIMANTS

*Texas Farmers Ins. Co. v. Soriano*

## HOLDING

- No *Stowers* exposure
- Can settle one of multiple claims, if:
  - No unreasonable refusal of other demand, or
  - Settlement of claim is reasonable when viewed in isolation.
- Sounds like “first come, first serve”

# MULTIPLE INSURED

*Travelers Ins. Co. v. Citgo Petroleum Corp.*, 166 F.3d 761 (5<sup>th</sup> Cir. 1999)

## FACTS

- Citgo additional insured under policy
- Plaintiff sues named insured but not Citgo
- Travelers settles on behalf of named insured for policy limits
- Citgo added as Defendant after settlement
- Travelers declines defense and indemnity to Citgo

# MULTIPLE INSURED

*Travelers Ins. Co. v. Citgo Petroleum Corp.,*

## HOLDING

- Travelers did not violate *Stowers*
- Settlement on behalf of named insured was reasonable in isolation (*Soriano*)

# MULTIPLE INSURERS

*Aftco Enterprises, Inc. v. Acceptance Indem. Ins. Co.*, 321 S.W.3d 65  
(Tex. App. – Houston [1 Dist] 2010, rev. denied)

## FACTS

- Insured covered by 2 primary and 2 excess policies
- Suit brought against both primary carriers and one excess carrier claiming delay in settlement
- First settlement demand within primary and one excess limits
- Second settlement demand within all policy limits
- All demands rejected

## HOLDING

- No violation of *Stowers*
- Co-primary: No demand within limits of any one policy therefore no *Stowers*
- Excess: No *Stowers* obligation until policy triggered – policy never triggered

# MULTIPLE INSURERS

## QUESTION

The demand is above a single primary limit but within the combined limits. How is a *Stowers* obligation triggered?

## ANSWER

It cannot be triggered unless one carrier tenders its limits to the other carrier or sufficient sums to bring the remainder within the limits.

# MULTIPLE INSURERS

## QUESTION

How can an excess carrier be “*Stower-ized?*”

## ANSWER

Only if the primary carrier tenders its limits and the demand is within the excess limits.

# POLL QUESTION

# **Patterson v. Home State County Mutual Insurance Company (Houston 4/24/14, rev. denied)**

## FACTS

- Mrs. Diane Patterson involved in fatal accident with vehicle driven by Hitchens, who was employed by Stretch and the 18 wheeler was owned by Brewer.
- Marcus Patterson, Individually, and as Administrator of Diane's Estate and as Next Friend of 2 children, sued Hitchens, Brewer, and Stretch.
- Home State issued policy to Brewer which provided coverage to all permissive drivers. Home State provided a defense to both Brewer and Hitchens

# Patterson v. Home State

## HOLDING

- All 3 Demands failed to qualify as proper Stowers Demands (not a full release).
- Relies on *Bleeker* and *Maldonado*
- Does not cite *Soriano*, *Citgo*, or *Pride*.

# Patterson v. Home State

## FIRST SETTLEMENT DEMAND

1. Demand of behalf of 2 out of 3 Plaintiffs
2. Full and Final Release-no mention of liens

## SECOND SETTLEMENT

1. Demand of behalf of 1 out of 3 Plaintiffs
2. Full and Final Release-no mention of liens

# Patterson v. Home State

## COURT'S HOLDING

First Two Demands failed to offer full and final release because not all Plaintiffs were part of demand

# Patterson v. Home State

## THIRD SETTLEMENT DEMAND

1. Demand to 1 out of 2 Insureds
2. Full and Final Release-mentions liens

# Patterson v. Home State

## COURT'S HOLDING

1. Not full and final release because it fails to include all the insureds
2. Insured's personal counsel informed Home State that that he did not want any settlement demands to be accepted that didn't involve a release of all of the Pattersons' claims against all insureds

# Patterson v. Home State

## PATTERSON DRAMATICALLY CHANGES STOWERS

- 1) Effectively negates *Soriano*, *Citgo*, and *Pride*.
- 2) Practically eliminates Stowers from multiple claimants and/or multiple insureds
  - Must have single attorney represent all claimants or have attorneys work together
  - Must release all insureds – eliminates strategy of releasing assetless defendant and proceeding against party with assets.
- 3) As a result, subjects insured to potential excess verdict on all claims instead of less than all claims.

# Patterson v. Home State

What could have the Patterson Court done to reach the same result but not dramatically alter the law?

# Patterson v. Home State

## First 2 Demands:

Didn't mention liens (Bleeker)  
Rejected by insured.

## 3<sup>rd</sup> Demand:

Rejected by insured.

# Patterson v. Home State

Most important lesson from  
Patterson?

Get the insured's approval for  
decision.

# PRACTICAL APPLICATIONS

- Remember that the demand letter and its response will be exhibits 1 and 2 to any subsequent *Stowers* lawsuit.
- Make sure that the letter contains an unconditional demand within the policy limits which offers a full and final release.
- If there is any question as to whether the requirements are met, Insurance Company should consider corresponding with the plaintiff's attorney to resolve any of the ambiguities in the demand letter.
- It is certainly better to clear up any ambiguities than to operate under the assumption that it was a proper *Stowers* demand and have a court subsequently tell you that you were wrong.

# PRACTICAL APPLICATIONS

- If Insurance Company needs additional time, or does not have sufficient information, request additional time and/or information from plaintiff's counsel as soon as possible.
- Plaintiff's counsel should provide additional time and/or information where reasonable. Failure to do so will certainly indicate to a jury or appellate court that the first time limit was unreasonable and the letter was merely an attempt to trap the insurance company.