TRIGGERING *STOWERS* UNDER MULTIPLE POLICIES

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5TH ANNUAL INSURANCE LAW SYMPOSIUM

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I. INTRODUCTION

Despite the fact that the *Stowers* doctrine has existed and been interpreted many times in the State of Texas since 1929, there are still issues in the application of the doctrine that have yet to be determined. Two of the increasingly significant issues that come up on a constant basis are how a claimant can trigger a *Stowers* obligation when there is either two or more concurrent primary policies or a primary policy and at least one excess policy that potentially cover an insured. The possibility of a claimant in creating a *Stowers* obligation under those circumstances will control whether or not a carrier may face potential liability beyond the limits of liability contained in its policy.

The purpose of this article will be to explore the current state of Texas law on the ability of a claimant to trigger a *Stowers* obligation among multiple carriers. Thus far, the Texas Supreme Court has avoided providing clear answers, or even strong guidelines, that would allow parties to know the effect of certain demands for policy proceeds under multiple policies. This article will review the limited guidance provided to date and attempt to discuss strategy for claimants and insurers in dealing with settlement demands involving multiple policies.

II. OVERVIEW OF *STOWERS* DOCTRINE

A. The *Stowers* Doctrine

The Texas Supreme Court, in the case of *G. A. Stowers Furniture Co. v. American Indemnity Co.*, set out its landmark doctrine in the following paragraph:

> As shown by the above-quoted provisions of the policy, the indemnity company had the right to take complete and exclusive control of the suit against the assured, and the assured was absolutely prohibited from making any settlement, except at his own expense, or to interfere in any negotiations for settlement or legal proceeding without the consent of the company; the company reserved the right to settle any such claim or suit brought against the assured. Certainly, where an insurance company makes such a contract; it, by the very terms of the contract, assumed the responsibility to act as the exclusive and absolute agent of the assured in all matters pertaining to the questions in litigation, and, as such agent, it ought to be held to that degree of care and diligence which an ordinarily prudent person would exercise in the management of his own business; and if an ordinarily prudent person, in the exercise of ordinary care, as viewed from the standpoint of the assured, would have settled the case, and failed or refused to do so, then the agent, which in this case is the indemnity company, should respond in damages.

15 S.W.2d 544, 547 (Tex. Comm'n App. 1929, holding approved).

In other words, if a carrier decides to reject a settlement demand within the policy's limits, and that decision leads to a judgment against the insured in excess of the policy's limits, that decision will be measured against that degree of care and diligence that an ordinarily prudent person would exercise in the management of their own business. *Id.* at 544-46; *American Physicians Insurance Exchange v. Garcia*, 876 S.W.2d 842, 848 (Tex. 1994). Breach of the duty by a carrier may subject it to a claim for damages exceeding policy limits.

B. Limitations on Doctrine

There are a number of limitations that have been placed on the *Stowers* doctrine. The duty only applies to an insurer's refusal to pay on a demand for settlement; an insurer is not obligated to make or request a settlement offer. *Garcia* at 849-51; *Birmingham Fire Insurance Co. v. American National Fire Insurance Co.*, 947 S.W.2d 592 (Tex.App.—Texarkana 1997, writ denied) (no duty to negotiate under *Stowers*);

Insurance Corporation of America v. Webster, 906 S.W.2d 77 (Tex.App.—Houston [1st Dist.] 1995, writ denied). Another basic premise is that the duty to settle only extends to covered damages. An insurer does not insure damages not covered by the policy, and has no duty to settle such damages. *Garcia* at 848. The federal Fifth Circuit has held that an insurer does not have a duty to consider an insured's potential exposure to non-covered claims during settlement negotiations. *St. Paul Fire & Marine Insurance Co. v. Convalescent Services, Inc.*, 193 F.3d 340, 343 (5th Cir. 1999). For a *Stowers* claim to arise, there must also be an offer to settle by the claimant and provide a full and complete release to the insured. *Trinity Universal Insurance Co. v. Bleeker*, 966 S.W.2d 489 (Tex. 1998). A *Stowers* duty also does not apply to settlements made within the limits of the policy. *Dear v. Scottsdale Insurance Company*, 947 S.W.2d 908, 915 (Tex.App.—Dallas 1997, pet. denied). Finally, exhaustion of policy limits by payment of settlements or judgments ends a carrier's duty to defend or indemnify an insured and also precludes any further *Stowers* exposure. *Travelers Indemnity Co. v. Citgo Petroleum Corp.*, 166 F3d 761 (5th Cir. 1999); *Mid-Century Insurance Co. v. Childs*, 15 S.W.3d 187 (Tex.App.—Texarkana 2000, no writ); *American States Insurance Co. v. Arnold*, 930 S.W.2d 196, 200-01 (Tex.App.—Dallas 1996, writ denied).

C. Triggering the *Stowers* Duty

The *Stowers* obligation is triggered by a claimant when they make a demand on the insured to settle a claim and the following exist:

> 1) the claim is within the coverage of the policy;
>
> 2) the settlement demand is for policy limits or for a sum certain within the available policy limits;
>
> 3) the claimant agrees to fully and completely release the insured, including the satisfaction of any outstanding liens or obligations; and
>
> 4) the settlement demand is reasonable, that is, that it is on terms that an ordinarily prudent insurer would accept it, based on the insured's potential exposure to greater liability.

See, Rocor International, Inc. v. National Union Fire Insurance Co., 77 S.W.3d 253, 262 (Tex. 2002); *Texas Farmers Insurance Co. v. Soriano*, 881 S.W.2d 312, 314 (Tex. 1994); *American Physicians Insurance Exchange v. Garcia*, 876 S.W.2d 842, 848-49 (Tex. 1994). The foregoing elements must all be present to trigger a *Stowers* obligation on the carrier. The *Stowers* duty actually involves the obligation placed on the insurer to respond to the settlement demand.

III. *STOWERS* AND MULTIPLE POLICIES

A. Concurrent Policies

In some cases, there may be multiple policies available to pay the claim but instead of the policies being stacked, they may apply on a concurrent primary basis. The Texas Supreme Court has not yet directly addressed issues that may arise when multiple insurers are presented with a settlement demand by a plaintiff. As a matter of fact, in Footnotes 13 and 25 of *American Physicians Ins. Exchange v. Garcia*, the Supreme Court specifically refrained from addressing the situation presented where funding from multiple insurers would be required to settle a case.

In a situation involving multiple insurers, there are at least two scenarios in which *Stowers* issues may arise. The first would be one in which a plaintiff makes a settlement demand which exceeds the policy limits of each carrier, but the demand is less than the total limits under all available policies. The second situation would be a demand made by a plaintiff which is within the policy limits of each carrier providing coverage.

To address these questions, one must first reconcile the other insurance clauses of the relevant policies. If the policies have other insurance clauses typical of most general liability policies, they will provide for a contribution by limits or equal shares. While an insurer's duty to defend is not limited by the existence of other insurance, the insurer's duty to indemnify is. The

obligation of an insured to contribute toward a judgment or settlement is restricted by the "Other Insurance" clause. The insurer has no legal obligation to contribute toward a settlement more than its percentage of the settlement as determined by the "Other Insurance" clause. For example, if there were two primary policies which apply to a lawsuit and each have policy limits of $1 million and a settlement offer was received for $1.5 million, each would have a contractual obligation only to contribute $750,000 to the settlement if the policies provided for contribution by limits of equal shares. The obligation under the policy would be for each carrier only to contribute $750,000. Likewise, if two carriers have policy limits of $1 million and a settlement demand was received for $750,000, each carrier would be contractually obligated only for $375,000.

1. Demand Within Each Policy's Primary Limits

The more difficult question presented in this situation is where there is a demand within the limits of any of the concurrent policies. Clearly in this situation, the insurer would have the ability to settle the case. However, under the contractual terms of the policy, it is only obligated to pay its pro rata share of the judgment or settlement. Since there has been no guidance provided by the Supreme Court in this situation, the more prudent course of conduct for the insurer would appear to be to go ahead and pay the limits to settle a case and seek subrogation against the other insurer who was recalcitrant. Unfortunately, a new Supreme Court case may make this option much less desirable. *See*, *Mid-Continent Insurance Co. v. Liberty Mutual Insurance Co.*, 236 S.W.3d 765 (Tex. 2007).

Although not technically a *Stowers* decision, the *Mid-Continent* decision should impact the issues stated above and the Supreme Court does discuss the *Stowers* scope within the opinion. In *Mid-Continent*, the Supreme Court was presented issues on certified questions from the federal Fifth Circuit Court of Appeals. The case arose out of an automobile accident in which members of the Boutin family were injured after their vehicle was struck by a car being driven by Tony Cooper when his vehicle crossed lanes of traffic narrowed by highway construction. Kinsel Industries was the general contractor on the project and Crabtree Barricades was its subcontractor. The Boutins sued those companies and others for their injuries. Kinsel was the named insured of Liberty Mutual and an additional insured under the CGL policy issued to Crabtree by Mid-Continent. Both Liberty Mutual and Mid-Continent had general liability limits of $1 million and jointly agreed to defend Kinsel. Liberty Mutual also provided Kinsel with an excess policy with limits of $10 million. Both of the primary policies also contained identical "other insurance" clauses that had the effect of requiring each to contribute by equal shares. During settlement negotiations, Liberty Mutual evaluated the settlement value as to Kinsel was $1.5 million, but Mid-Continent believed that the settlement value was only $300,000. Liberty Mutual agreed to settle the case against Kinsel for the sum of $1.5 million and demanded that Mid-Continent contribute half. Mid-Continent refused, and would only contribute the sum of $150,000, or half of the settlement value it placed on behalf of Kinsel. Liberty Mutual funded the remaining $1.35 million and reserved the right to seek recovery from Mid-Continent.

After the federal district court held that Mid-Continent's evaluation of the settlement value was unreasonable, it ordered that Mid-continent pay its share of the settlement, which was $750,000 minus the $150,000 already paid. The Fifth Circuit certified the following questions to the Texas Supreme Court:

> 1. Two insurers, providing the same insured applicable primary insurance liability coverage under policies with $1 million limits and standard provisions (one insurer also providing the insured coverage under a $10 million excess policy), cooperatively assume defense of the suit against their common insured, admitting coverage. The insurer also issuing the excess policy procures an offer to settle for the reasonable amount of $1.5 million and demands that

the other insurer contribute its proportionate part of the settlement, but the other insurer, unreasonably valuing the case at no more than $300,000, contributes only $150,000, although it could contribute as much as $700,000 without exceeding its remaining available policy limits. As a result, the case settles (without an actual trial) for $1.5 million funded $1.35 million by the insurer which also issued the excess policy and $150,000 by the other insurer.

In that situation is any actionable duty owed (directly or by subrogation to the insured's rights) to the insurer paying the $1.35 million by the underpaying insurer to reimburse the former respecting its payment of more than its proportionate part of the settlement?

2. If there is potentially such a duty, does it depend on the underpaying insurer having been negligent in its ultimate evaluation of the case as worth no more than $300,000, or does the duty depend on the underpaying insurer's evaluation having been sufficiently wrongful to justify an action for breach of the duty of good faith and fair dealing for denial of a first party claim, or is the existence of the duty measured by some other standard?

3. If there is potentially such a duty, is it limited to a duty owed the overpaying insurer respecting the $350,000 it paid on the settlement under its excess policy?

The Supreme Court disagreed with ruling of the district court and answered no to certified question 1. That prevented the court from reaching the other two questions. The Supreme Court noted that the primary policies provided equal coverage and contained pro rata clauses, such that each insurer contractually agreed to pay a proportionate share of the covered loss up to the policy limit. They did not contract with each other to create any obligations between themselves. There was thus no contractual right of contribution and the presence of the "other insurance" clauses precluded an equitable contribution claim. The Supreme Court disapproved the case of *General Agents Insurance Co. of America v. Home Insurance Co. of Illinois*, 21 S.W.3d 419 (Tex.App..—San Antonio 2000, no writ) to the extent it implied the existence of a common law duty between co-primary insurers to reasonably exercise their rights under an insurance policy. Further, because the insured was fully indemnified, the insured had no contractual rights that could be asserted by Liberty Mutual by way of subrogation. Mid-Continent also did not breach any *Stowers* duty because there was never any settlement demand within its policy limits. Finally, the Court held that Liberty Mutual's payment was not a debt for which another was primarily liable, so there was no right of equitable subrogation.

Again, this is not technically a *Stowers* case as the Supreme Court properly ruled that no demand was ever made within the policy limits of either primary policy. However, the Court discarded any idea that one primary carrier owes any direct duty to another when both policies contain "other insurance" provisions. When that is the case, the carriers' duty to contribute is contractually limited to their proportionate share of the loss. Only if the insured has a right of action against the recalcitrant insurer can the paying insurer step into the shoes of the insured and seek reimbursement for any amount paid beyond its contractually agreed upon proportion. But once a settlement demand is paid and the insured is fully indemnified, the insured will never have a claim against the recalcitrant insurer and no claim for equitable subrogation will ever arise.

This creates an uncomfortable *Stowers* scenario for a carrier faced with a reasonable settlement demand that is less than the limits of

both its policy limits and the limits of the recalcitrant insurer and the recalcitrant insurer is unwilling to pay its proportionate share. Can the paying insurer escape *Stowers* liability simply by tendering its proportionate share of such a *Stowers* settlement demand while refusing to pay any portion of the other carrier's obligation? And, if the paying insurer does do just that, would only the recalcitrant insurer face exposure under the *Stowers* doctrine or would the paying insurer also face such exposure to an excess judgment? The *Mid-Continent* case is problematic because it does not appear to recognize any mechanism in which the paying insurer can protect its insured and also be reimbursed for its payment of sums greater than its proportionate share. If the Supreme Court's answer is that the paying insurer escapes liability under *Stowers* by tendering payment of its proportionate share, even though that will not accomplish a settlement, then the Court appears to be placing a strong burden on the insured to have to go to trial and face an excess judgment just so that it can later sue the recalcitrant insurer for the excess amount.

Although *Mid-Continent* does not present pure *Stowers* issues and the Supreme Court does state that it must be read in the context of the facts of that case, the rulings in the case appear to create a situation in which an insurer, willing to pay its share of a reasonable *Stowers* demand, will be forced to make a difficult decision on how to respond to a *Stowers* demand with little guidance from the Supreme Court regarding its rights and obligations.

It is interesting to note that the holding in *Mid-Continent* has already been rejected by a federal district court in Louisiana. *American Home Assurance Co. v. Liberty Mutual Insurance Co.*, 2008 U.S. Dist. LEXIS 10281 (E.D.La., Feb.12, 2008). The court in that case held, in a situation similar to the one in *Mid-Continent,* that when one of two or more carriers potentially liable for a loss pays the loss by itself, whether to satisfy a judgment or simply to settle the case, it may seek reimbursement from the other carriers for their proportionate share of the loss. (citing, *Couch on Insurance,* 15 Couch on Ins. §217: 4 (3d Ed. 2007). "The payment sought is referred to as 'contribution.'" *Id.* at 11.

It is possible that creative settlement demand techniques by the plaintiff's counsel may be helpful, especially in situations where there are multiple claimants asserting the right of recovery. A demand could, for example be made to each insurer separately offering to fully settle out one or more claimants (but not the same claimants) for an equal sum within each insurers' limits. For example, if there are four claimants, and one claimant has significantly greater potential damages, a demand for policy limits could be made on behalf of the other three claimants aimed at carrier A and a separate policy limit demand can be made on behalf of the more injured claimant against Carrier B. This may not totally avoid the "other insurance clause issue, but it does force each carrier to evaluate its potential *Stowers* obligations.

2. Demand in Excess of Limits

An easier situation is presented where the demand is in excess of any of the concurrent primary policies but within the limits of all the policies. In that case, none of the insurers have the ability to settle the case by paying their limits and, similar to the situation which exists with respect to stacked policies, no *Stowers* duty is triggered. However, if the carrier does believe that the settlement demand is reasonable and that the case should be settled, we still believe that the more prudent course of action would be for the willing carrier to tender its percentage of the settlement. At least one commentator believes that in this situation the company who refused to contribute its share would be responsible and that the carrier who agreed to contribute its share would have no excess liability. Robert Keeton, *Liability Insurance and Responsibility for Settlement*, 67 Harv. L. Rev. 1136, 1152 (1954). That conclusion is far from definite after the decision in *Mid-Continent.*

It should also be noted that a Texas court has held that a demand above policy limits, even if reasonable, does not trigger a *Stowers* duty to settle. *Westchester Fire Insurance Co. v. American Contractors Insurance Company Risk Retention Group*, 1 S.W.3d 872 (Tex.App.—

Houston [1st Dist.] 1999, no writ); *West Oaks Hospital v. Jones*, 2001 Tex.App. Lexis 718 (Feb. 1, 2001).

As previously noted, Texas has not imposed any duty to negotiate on a carrier when there is a demand that exceeds its limits. *American Physicians Insurance Exchange v. Garcia*, 876 S.W.2d 842, 849-51 (Tex. 1994). This is inconsistent with the majority rule in other states. *See*, Windt, *Insurance Claims and Disputes* §5:2 (5th Ed. 2007); Leitner, Simpson and Bjorkman, *Law and Practice of Insurance Coverage Litigation* §29:23 (2005). This position taken by the Texas courts makes it even more difficult to force a primary carrier to actively pursue settlement when no demand has been made within its limits, even though a demand may be less than the total limits available under all available policies. This is also true when one or more of the other policies involved are excess policies.

B. Stacked Policies

Another area that is problematic to both the plaintiff and the insurer is the situation where there is a primary policy with excess policies stacked on top. First, it should be noted that the Supreme Court, in *American Physicians Insurance Exchange v. Garcia*, 876 S.W.2d 842 (Tex. 1994), specifically refrained from addressing this situation. There the Court held that:

> Nor do we address the *Stowers* duty when a settlement requires funding from multiple insurers and no single insurer can fund the settlement within the limits that apply under its particular policy.

The Supreme Court in *Garcia* further stated, in Footnote 25, that:

> Although we have discussed the process of allocating indemnity or settlement costs among multiple insurers, this opinion does not address what responsibilities a *Stowers* duty imposes when two or more insurance companies, excess insurers, or reinsurers must jointly fund a settlement.

Based on the analysis in the previous section, it is certainly possible to argue that an excess carrier will never face *Stowers* exposure, even if all underlying insurers have stated their willingness to pay all of their limits and a settlement demand can be satisfied within the limits of the excess carrier's policy. At the very least, it can be argued that an excess insurer cannot be subjected to *Stowers* exposure unless the underlying insurers have stated a willingness to pay their remaining limits, the demand is within the policy limits of the excess carrier and the excess carrier has taken charge of the handling of the litigation from the underlying carriers. If this exposure is a possibility, then it would certainly discourage excess carriers from taking charge of litigation even where it is clear that the insured's exposure easily exceeds the limits available under all underlying policy coverages.

Still, it seems counter-intuitive that an insured has no recourse against an excess carrier that refused to respond to a demand that exceeded the primary limits but could have been settled within the excess carriers limits, but was not and verdict is eventually entered that exceeds the combined limits of both the primary and excess policies. There should be some balance in the process.

Claimants have tried in certain cases to trigger a *Stowers* on the part of an excess carrier. In *Keck, Mahin & Cate v. National Union Fire Insurance Co.*, 20 S.W.3d 692, 700 (Tex. 2000), the Supreme Court adopted the majority rule that "where the insured maintains both primary and excess policies,…the excess liability insurer is not obligated to participate in the defense until the primary policy limits are exhausted." *See also, Schneider National Transport v. Ford Motor Corp.*, 280 F.3d 532, 538 (5th Cir. 2002). In a concurring opinion in *Keck, Mahin* Justice Hecht stated that he was not sure that an excess carrier would never have a duty to defend or settle prior to exhaustion of the primary limits, but there have no cases since then in which such a duty was recognized.

This reluctance to place any *Stowers* obligation on an excess carrier appears to be based on the Court's strict application of the doctrine. In a case consistent with this philosophy, an appellate court refused to allow an excess carrier to sue a primary insurer for equitable subrogation under a *Stowers* theory where there was never a demand within the primary limits. *Westchester Fire Insurance Co. v. American Contractors Insurance Company Risk Retention Group*, 1 S.W.3d 872 (Tex.App.—Houston [1st Dist.] 1999, no writ). This was despite the fact that the primary carrier refused to respond to an initial $1.8 million demand with any amount beyond a $5,000 offer. The primary carrier also refused to negotiate, even though liability appeared to be reasonably clear and defense counsel believed that it would take at least $750,000 to settle the case. *Id*. at 4-5.

The key to activating any *Stowers* duty on the part of an excess carrier centers on triggering its coverage. That can, presumably, only be done by exhausting the primary limits. Where there are multiple claimants, one strategy that may be effective would be to fully settle one or more plaintiffs' claims with the primary carrier, exhausting its limits by settlements, and thus triggering the coverage of the excess carrier to respond to the remaining claims. Unfortunately, this strategy would not work where there is only one claimant.

C. Willingness of Insured to Contribute

A related issue, although it need not involve multiple policies, is one in which a demand is made that exceeds the primary carrier's policy limits, but the insured is willing to pay the difference between the limits and the total of the demand. As a general rule, a demand in excess of the policy limits will not trigger a duty under the *Stowers* doctrine. However, this does not mean that a settlement offer in excess of the policy limits could never trigger a *Stowers* duty. In Footnote 13 of the *Garcia* opinion, the majority noted that:

> We do not reach the question of when, if ever, a *Stowers* duty may be triggered if an insured provides notice of his or her willingness to accept a reasonable demand above the policy limits, and to fund the settlement, such that the insurer's share of the settlement would remain within the policy limits.

American Physicians Insurance Exchange v. Garcia, 876 S.W.2d at 849. According to *Keeton*, if the insured is willing to contribute the difference between the insurance policy limit and the total settlement demand, then the *Stowers* duty on the part of the insurer would be triggered. Keeton, *Insurance Law*, § 7.8(d).

This interpretation has been followed by at least one Texas court. The San Antonio court of appeals held that a jury's finding that the insurer was negligent in failing to settle constituted an implied finding that a demand for $1 million in addition to the policy limits was a "demand within policy limits. *State Farm Lloyds Insurance Co. v. Maldonado*, 935 S.W.2d 805, 815-16 (Tex.App.—San Antonio 1996, no writ). In *Maldonado*, the underlying suit involved Maldonado's claims against Robert for defamation arising out of Robert's statements accusing Maldonado of being a thief and prostitute. *Id.* at 808. The trial court rendered judgment for Maldonado for $2 million plus prejudgment interest. Robert and Maldonado sued State Farm for breach of its *Stowers* duty regarding settlement of the defamation suit. *Id.*

During the underlying suit, Maldonado's attorney orally offered to settle the suit for State Farm's policy limits of $300,000 plus $1 million from Robert's own pocket, and that the offer would expire in thirty days. *Id.* at 809. On the 29th day, State Farm made a written offer to settle for $50,000 and informed Robert that Maldonado had made a demand in excess of the policy limits, and advised Robert to seek advice of a personal attorney. Eleven days later, Maldonado again extended the demand for $1.3 million for another 3 days. *Id.* Although State Farm did not accept the settlement offer, Robert entered into an agreement to pay Maldonado $1 million, and did not assign his causes of action against State Farm. After the settlement deadline passed, Maldonado denied State Farm's request for an extension of time to accept the settlement

offer. Later, State Farm offered its policy limits, but Maldonado declined the offer. *Id.* at 810.

The court concluded that the "bifurcated nature" of the demand brought it within policy limits, triggering the Stowers duty. *Id.* at 815. The court explained that the demand was tendered both orally and in writing, although the bifurcation of the demand was not reduced to writing. The court characterized the demand as "an offer of a policy limits settlement . . . made to State Farm if Robert would pay $1 million out of his own pocket." The court stated:

> We note that the present case presents an unusual factual situation. However, the supreme court, while not reaching the merits of the applicability of *Stowers* in such a circumstance, acknowledged that such a situation was feasible. . . . We find little distinction between a demand such as this one made in the present case and a more traditional *Stowers* demand. In both cases, the demand to the insurer is limited to the coverage provided in the policy. As such, a demand such as the one in the present case places no additional burden on the insurer. If the insured is amenable to funding the portion of the demand in excess of policy limits, as he was in the present case, the demand to the insurer falls within those limits.

Id. at 816. The Supreme Court disagreed with the application of the law of the facts in that case. The court noted that in *American Physicians*, the Supreme Court had left open the question of whether a *Stowers* duty is triggered "if an insured provides notice of his or her willingness to accept a reasonable demand above the policy limits, and to fund the settlement, such that the insurer's share of the settlement would remain within the policy limits." *Id.* However, in this case, the court went on to state that:

> Because State Farm did not know that Robert made an unconditional offer to pay the $1 million excess, we are not confronted with the situation, and we therefore decline to decide it here.
> *Id.*

IV. CONCLUSION

The issues involving multiple policies, or the willingness of an insured to contribute in order to effectuate a settlement, are complicated and The Texas Supreme Court has provided little guidance on how to navigate through the complexity. The only consistency has been the unwillingness of the court to consider any extension of the *Stowers* doctrine in the cases decided to date. The court's reluctance to extend a common law duty is understandable, but the effect may unfortunately be to reward recalcitrant insurers when it comes time to negotiate a settlement of a case in which liability and damages are evident. The decisions thus far also appear to place an unfair burden on insurers that are ready and willing to comply with their contractual duties to an insured to make decisions on settlement without any clear guidance from the Supreme Court as to how such decisions may create *Stowers* exposure or cause them to not have any right of reimbursement when a payment is made beyond their contractual obligation. Although the court often indicates that it is in favor of rules that encourage reasonable settlements, recent rulings have not been helpful in realizing this philosophy.

Until the Texas Supreme Court has an opportunity to analyze the issues presented in this article, claimants, insureds and insurers must act carefully in order to achieve the settlement results they are seeking.