

# STOWERS: PAST, PRESENT AND FUTURE

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# STOWERS 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.

# 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*)
- Citgo was not defendant at time of settlement



# MULTIPLE INSUREDSD

*Pride Transportation v. Continental Cas. Co.*, 804 F.Supp.2d 520 (N.D. Tex. March 31, 2011)

## FACTS

- Pride Transportation named insured
- Harbin, the driver, is an additional insured
- Suit brought against Pride and Harbin
- Settlement demand for policy limits to Harbin only
- Carrier's alleged request to include Pride rejected
- Settlement demand accepted
- Pride files claim for indemnity against Harbin
- Release specifically excludes any claim by Pride against Harbin

# MULTIPLE INSURED

*Pride Transportation v. Continental Cas. Co.*

## HOLDING

- No violation of *Stowers*
- Relied on *Soriano*, found settlement reasonable when viewed in isolation
- Only has to release claims by and through Plaintiff

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

## 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

- August 21, 2007 – Settlement demand to Brewer for policy limits on behalf of minors.
- Brewer's corporate counsel informs Home State that he is not going to write hammer letter.
- Home State rejects demand.

# Patterson v. Home State

- September 20, 2007 – Settlement demand to Brewer for policy limits on behalf of Patterson, Individually.
- October 4, 2007 – Home State rejects demand.

# Patterson v. Home State

- February 2008 – Home State files Interpleader.
- April 16, 2008 – Settlement demand to Brewer for policy limits on behalf of all of Patterson's claims and additional party.
  - Home State rejects demand.
- October 2008 – Interpleader granted and policy limits dispensed to Patterson (all claims) and multiple other claimants.

# Patterson v. Home State

- Case tried and results in verdict in excess of policy limits.
- Home State argues on Appeal that demands were not proper Stowers Demands

# 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

## AUGUST 21, 2007 SETTLEMENT DEMAND

“This letter is sent as a settlement offer on behalf of Daniel Patterson and Danae Patterson. They will both settle their minors’ claims against Brewer Leasing, Inc. and its insurance carrier for the policy limits, 50% payable to Daniel Patterson and 50% payable to Danae Patterson ... .

Daniel Patterson and Danae Patterson will provide Brewer Leasing Company, Inc. with a full and complete release of all claims against Brewer Leasing in exchange for the payment of the policy limits.”

# Patterson v. Home State

## SEPTEMBER 20, 2007 SETTLEMENT DEMAND

“This letter is sent as a settlement offer on behalf of Marcus Patterson individually. He will settle all of his claims against Brewer Leasing, Inc. and its insurance carrier for the policy limits . . . .

Marcus Patterson will provide Brewer Leasing, Inc. with a full and complete release of any and all claims against Brewer Leasing and its insurance company in exchange for the payment of the policy limits.”

# Patterson v. Home State

## COURT'S HOLDING

“Here, Patterson’s first and second settlement offers did not propose to fully release Brewer, as it would still have been liable to an excess judgment to either Marcus Patterson, his children, or his wife’s estate, whichever was not named in the settlement demand. Indeed, by settling in the full amount of the policy limits with only one of the claimants, Home State could have potentially exposed Brewer to an excess judgment by one of the other claimants. Accordingly, we hold that the first and second settlement offers did not trigger Home State’s *Stowers* duty to settle.”

# Patterson v. Home State

## APRIL 16, 2008 SETTLEMENT DEMAND

“This letter is sent as a settlement offer on behalf of Marcus Patterson, individually, Marcus Patterson as administrator of Diane’s estate, Marcus Patterson as next friend of both Daniel and Danae Patterson, and Larry Goffney. They will settle all of their claims against Brewer Leasing, Inc. and its insurance carrier for the policy limits.

Marcus Patterson and Larry Goffney will provide Brewer Leasing, Inc. with a full, complete, total, and unconditional release of any and all claims against Brewer Leasing and its insurance company in exchange for the payment of the policy limits. They will also release any and all liens relating to them and this claim, and all funeral expenses. This also applies to any claim against Brewer Leasing by, through, or under Charles Hitchens, or based on the conduct of Mr. Hitchens in any way. But we are not releasing Mr. Hitchens, Texas Stretch, or their Insurance Carriers.”

. . .

# Patterson v. Home State

## COURT'S HOLDING

“Although the April 16, 2008 offer did include the release of all claims by Patterson against Brewer, it explicitly did not include Hitchens. Thus, Patterson’s third settlement offer did not constitute an unconditional offer to fully release the insureds in exchange for a settlement. *See Bleeker*, 966 S.W.2d at 491. . . .

Furthermore, Home State attached to its summary-judgment motion the deposition testimony of Jackson. And Michael Hays indicated to Jackson that ‘he was a personal counsel for Brewer Leasing.’ . . . Hays told Jackson that he did not want ‘any settlement demands to be accepted that didn’t involve a release of all of the Pattersons’ claims against both Brewer Leasing and Mr. Hitchens.’”

# 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.