Stowers For The 21st Century

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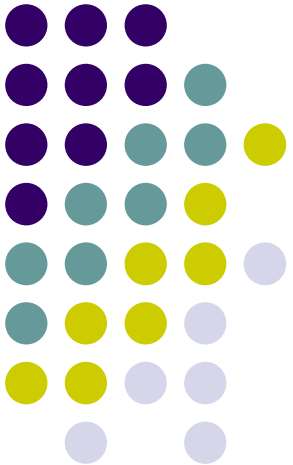
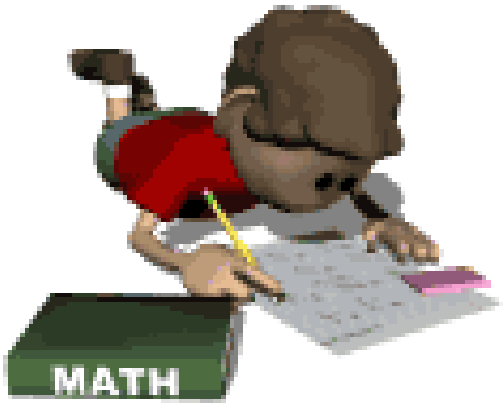


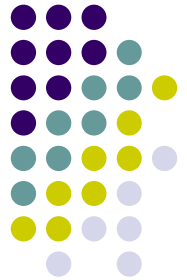
Math Problem



$40,000_____$78,000,000.00

a) >
b) <
c) =

WHAT TYPE OF MATH?



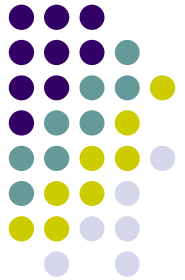
a) New Math

b) Defendant Math

c) IRS Math

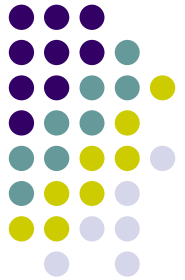
d) Stower’s Math

STOWERS



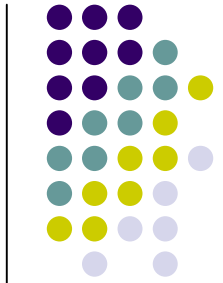
Genesis of the *Stowers* extra contractual claim is the 1929 decision in ***G. A. Stowers Furniture Co. v. American Indemnity Co., 15 S.W.2d 544 (Tex.Comm'n.App. 1929)***.

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.

FULL RELEASE

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

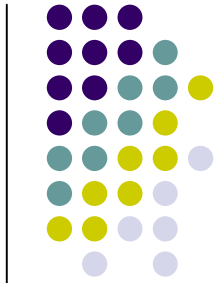
FACTS

- 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

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)

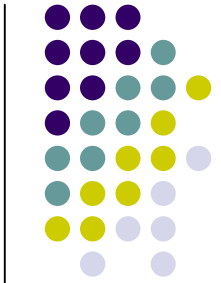
FACTS

- 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 at trial

HOLDING

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

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

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.

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.

COVERAGE DISPUTE

American Western Home Ins. Co. v. Tristar Convenience Stores, Inc., 2011 WL 2412678 (S.D. Tex. June 2, 2011)

FACTS

- Carrier provided coverage for 4 defendants
- Carrier disputed coverage
- Settlement demand for policy limits for all defendants
- Carrier rejected demand because of coverage issues
- 2nd settlement demand for policy limits for 2 defendants
- Carrier accepted 2nd demand
- Carrier brings suit seeking declaration that policy exhausted and no duty to defend
- Insured argued that failure to accept 1st demand violates *Stowers*

HOLDING

- Carrier not entitled to summary judgment
- *Garcia* states no *Stowers* if no coverage
- *Garcia* does not mean no *Stowers* if coverage dispute
- Existence of coverage dispute relevant to whether carrier acted reasonably
- Settlement of less than all claims creates fact issue whether rejection of same demand for all claims was reasonable

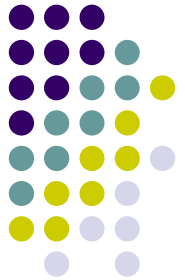
REASONABLE REJECTION

Bramlett v. Medical Protective Co., 2013 WL 796725 (N.D. Tex.)

FACTS

- Patient dies from post-operative bleeding
- Incident & medical records provided to carrier shortly after accident and carrier meets with insured
- Plaintiff sues and provides expert report (does not attack insured)
- December 17, 2003 – Stower's Demand to insured – declined
- March 23, 2004 – 2nd Stower's Demand setting April 9, 2004 deadlines
- March 31, 2004 – Carrier receives expert report implicating insured
- 2nd Demand declined – excess judgment
- Carrier moves for summary judgment that rejections of both demands were reasonable as a matter of law

REASONABLE REJECTION



FIRST DEMAND

Argument: Carrier argued that reasonable to reject because expert placed blame on other Defendants and report failed to explain complaints against insured

Holding: Court denies Summary Judgment because there is a fact issue

Even without expert report, Carrier knew:

1) Insured performed surgery and Plaintiff died from complications

2) Insured was suspicious that patient had internal bleeding and ordered tests

3) Insured's office notified of positive internal bleeding test

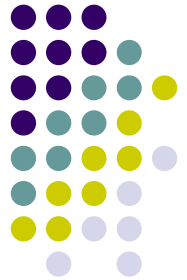
4) Insured went to work out before checking on test results

5) By the time insured found out about test results, it was too late

6) Based on medical records and meeting with insured, carrier knew it was serious case

7) Carrier had policy limits authority at time of demand

THE NEW – REASONABLE REJECTION



SECOND DEMAND

Argument: Carrier had insufficient time to respond. 17 days limit was not reasonable

Holding: Court denies Summary Judgment because that is a fact issue

Although some time period may be too short as a matter of law, vast majority is a question of fact

DAMAGES

Yorkshire Ins. Co. v. Seger, 407 S.W.3d 435 (Tex.App.—Amarillo 2013, rev. denied)

FACTS

- Worker killed in oilfield accident when rig collapsed
- Suit tendered to Carrier in 1998
- Tender denied
- Plaintiff demands policy limits and insured tenders demand to Carrier
- Carrier declines demand
- Case is “tried” after defense counsel withdraws
- Insured presented no witnesses or opening or closing
- Excess judgment entered
- In *Stowers* lawsuit, only evidence of damages introduced was Judgment in Underlying Lawsuit
- Carrier appeals asserting Court erred in admitting judgment in Underlying Lawsuit

THE NEW – DAMAGES

Yorkshire Ins. Co. v. Seger, 407 SW3d 435
(Tex.App.—Amarillo 2013, rev. denied)

HOLDING

- General rule is that Stowers damages are set by amount of judgment in excess of policy limits and judgment is conclusive evidence of damage
- Exception where Stowers claim assigned without fully adversarial trial (Gandy)
- Trial was not adversarial and therefore judgment should not have been admitted
- No evidence of damage requires rendition of take-nothing judgment