

THE TEXAS "STOWERS" LIABILITY WORKSHEET*

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SIDE A
Does Stowers
Apply?

INSTRUCTIONS: Fill in the information as requested, starting with Step 1. As you proceed through worksheet, recommendations are provided based on the responses given. If this sheet is being used to assess the appropriateness of making a *STOWERS* demand, counsel should direct discovery to the Defendant which will answer the information required in Step 2. Responses to *STOWERS* demands typically require the involvement of all persons on the defense team for input and recommendations.

Claimant(s): _____ **Claim #:** _____

Insured: _____ **Date of Incident:** _____ **Adjuster** _____

1. DEMAND RESPONSE INFORMATION

- A. Amount of Demand \$ _____
- B. Date Demand made : _____
- C. Date Demand received: _____
- D. # of Days given to respond to Demand: _____
- E. **Date Response to demand is due:** _____
- F. Do you have enough information to reasonably assess *Stowers* demand? Yes No
- I. If No, what information is needed? _____

If No, consider whether it is appropriate to advise Plaintiff's counsel of information needed to reasonably assess claims and demand.

2. IDENTIFY THE POLICY LIMITS APPLICABLE TO THE CASE

\$ _____

To answer this consider the following:

- A. Does the claim arise out of a continuing occurrence which causes an indivisible injury; triggering more than one insurance policy or period? Is so, identify the highest single amount of coverage for any one of the triggered policy periods. This is the policy limit applicable to the claim.
- B. Does the claim involve an occurrence which took place at a specific time but to which more than one policy coverage applies? If so, and the policies are primary and have no prohibitions against stacking, then the policy limits of each policy may be stacked. (Check updated case law if this applies).
- C. Have there been any other claims arising out of the same occurrence which have already been paid from the same policy? If so, identify what amount remains from the policy limits after the payment of the other claims.
- D. Have any other claims been paid by the insurer arising out of different occurrences during the same policy period such that the aggregate limits of the policy are invoked and reduce the amount of policy limits available to the current claim? If so, indicate what is left under the policy to pay this claim.

3. KEY QUESTIONS. If an answer to any of the following questions is "No", then the demand does not likely give rise to potential *Stowers* Liability. If you are unsure as to any particular answer, seek help. If Answer to question 3A is unknown, seek coverage opinion immediately. If all answers to questions below are yes, not applicable, or you don't know the answer, then proceed to Case Evaluation to see if it is reasonable to accept the demand.

- | | YES | NO |
|--|--------------------------|--------------------------|
| A. Is any part of any claim pled against insured covered under policy?
<i>If unknown - get coverage opinion.</i> | <input type="checkbox"/> | <input type="checkbox"/> |
| B. Is demand (Step 1A) the same as or less than applicable policy limits (Step2)? | <input type="checkbox"/> | <input type="checkbox"/> |
| C. Does demand offer to release insured(s) fully from all claims? | <input type="checkbox"/> | <input type="checkbox"/> |
| D. Is demand unconditional offer of settlement? | <input type="checkbox"/> | <input type="checkbox"/> |
| E. In case alleging personal injuries where hospital lien(s) exist(s), does demand include settlement of hospital lien | <input type="checkbox"/> | <input type="checkbox"/> |
- Identify other liens that may exist that should be also be considered: _____

4. SELF-INSURED RETENTION AND ISSUES RELATED TO DEMAND ABOVE PRIMARY INSURANCE

- A. Does the insured have a self-insured retention (SIR)? Yes No Amount: \$ _____
- B. Has the insured offered the SIR? Yes No
NOTE: If applicable but self-insured retention has not been offered, consultation with insured regarding response to demand is necessary.
- C. Other situations which require careful consideration :
- Any demand above the primary policy limits, where the primary insurer is advised that excess carrier or insured is willing to pay difference.
 - Where insurer has both primary and excess policies covering insured on the claim.

5. CASE EVALUATION - REASONABLENESS OF ACCEPTING STOWERS DEMAND Evaluations of liability and damages as to each claim against the insured(s) should be obtained from defense counsel once a *Stowers* demand is received. Additionally, defense counsel should be asked for evaluations of any potential joint and several liability.

A. IDENTIFY:	CLAIMS PLEAD AGAINST INSURED	RANGE OF % CHANCE OF LIABILITY	COVERED UNDER POLICY?
1. _____		% _____ - _____	<input type="checkbox"/> Yes <input type="checkbox"/> No
2. _____		% _____ - _____	<input type="checkbox"/> Yes <input type="checkbox"/> No
3. _____		% _____ - _____	<input type="checkbox"/> Yes <input type="checkbox"/> No
4. _____		% _____ - _____	<input type="checkbox"/> Yes <input type="checkbox"/> No
5. _____		% _____ - _____	<input type="checkbox"/> Yes <input type="checkbox"/> No
6. _____		% _____ - _____	<input type="checkbox"/> Yes <input type="checkbox"/> No

B. Considering all covered claims, what is the range of damages that may potentially be found against insured if case goes to trial : \$ _____
Make sure to consider all elements of damages that may be recoverable including: punitive damages if covered under policy, interest, attorney's fees, joint and several liability, and treble damages if applicable.

C. Considering all covered claims, what is the range of percentage chance the insured will be found liable for any damages above policy limits? _____% - _____%

D. Determine if it is more likely than not, that the insured will be found liable for damages above policy limits? (Is any part of the range found in 4C above more than 51%?) Yes No

Guide: In situations where insured is given valid STOWERS demand within policy limits, and it is later found that Insurer did not act reasonably in the rejection of the demand, the insurer can be held liable for all damages found against insured, even those above policy limits. In this worksheet 50% is offered as a guide to determine the reasonableness of accepting the offer. If the answer to this question is YES, consider carefully the offer, and lean towards acceptance of the offer. If the answer is NO, then lean towards not accepting policy-limits settlement demand.

E. Based on above considerations, is acceptance of this *STOWERS* settlement offer reasonable based on potential liability and damages that may potentially be awarded against the Insured?
 Yes No Explain special considerations: _____

6. Communication with Insured - Indicate Insured's preference regarding policy limits settlement: _____

