

Insurer Gets Early Win In \$2.2M Texas Assault Coverage Suit

By **Ganesh Setty**

Law360 (June 27, 2024, 3:35 PM EDT) -- A bar's insurer has no duty to cover a \$3.2 million personal injury judgment beyond the insurer's \$1 million policy limit, a Texas federal court ruled, rejecting arguments from the bar, its owner and underlying plaintiffs that the insurer unreasonably denied the plaintiffs' presuit settlement demand.

Granting **summary judgment** to Golden Bear Insurance Co., U.S. District Judge David Hittner found Wednesday that the October 2019 settlement demand from the underlying plaintiffs, Kacy Clemens and Conner Capel, lacked the requisite specificity to constitute a so-called Stowers demand.

"Both the Fifth Circuit and Texas Supreme Court have made clear that settlement offers must be unambiguous and demonstrative of a clear intent of a sum certain," Judge Hittner said. "Because the demand simply requested 'all policy limits of any and all insurance contracts,' it lacked the necessary specificity to invoke an obligation under Stowers."


Thus, while Golden Bear already agreed to indemnify 34th S&S LLC, which does business as Concrete Cowboy, and owner Daniel Wierck up to their \$1 million policy limit, the insurer has no duty to further indemnify them for the whole \$3.2 million judgment, the judge ruled.

Clemens and Capel had alleged in state court, per their amended January 2021 lawsuit, that bouncers at Concrete Cowboy and Wierck assaulted them. Counsel for Clemens and Capel first sent a settlement demand to Concrete Cowboy requesting "payment of all policy limits of any and all insurance contracts," though without asking for a specific sum. The demand was rejected, the case went to trial, and a jury ultimately awarded Clemens and Capel \$3.2 million.

In the ensuing coverage dispute, kicked off by Golden Bear in May 2023, the insurer argued that Clemens and Capel's settlement demand did not trigger the Stowers doctrine, which provides that an insurer unreasonably rejecting a presuit settlement demand must fully cover an adverse judgment against an insured, even if the judgment exceeds policy limits.

First finding that Golden Bear is entitled under the Federal Declaratory Judgment Act to file a lawsuit seeking a determination over whether a settlement demand triggers its Stowers duty, the judge next turned to the three criteria courts use to determine whether a valid Stowers demand was asserted.

Those criteria are whether the at-issue claim is within the scope of coverage, the presuit demand is within policy limits and that an "ordinarily prudent" insurer would accept the demand when considering its insured's potential exposure.

"Most pertinent for the present matter, 'Stowers applies only when the 'settlement's terms [are] clear and undisputed,' and 'must clearly state a sum certain,'" Judge Hittner continued Wednesday, citing the **Fifth Circuit's decision** in [American Guarantee and Liability Insurance Co. v. ACE American Insurance Co.](#) 

But Clemens and Capel "failed to provide any specificity regarding either Golden Bear's policy, or the actual amount left within the policy itself, let alone an eroding policy such as the one Golden Bear maintained," he further noted, concluding that their settlement demand did not trigger Golden Bear's Stowers obligations.

The judge also granted a motion from Concrete Cowboy, Wierck, Clemens and Capel to voluntarily dismiss their claims that Golden Bear additionally violated the Texas Insurance Code and the state's deceptive trade practices law.

While the defendants said they wanted to pursue such claims solely in state court instead, Golden Bear countered that their motion merely constituted forum shopping and that the insurer would be prejudiced given the current state of the federal coverage litigation and the resources it's expended thus far.

"On balance though, the court finds that the mere fact that a motion for voluntary dismissal is filed during the summary judgment stage is not sufficient to establish plain legal prejudice," Judge Hittner found.

Representatives of the parties did not immediately respond to a request for comment Thursday.

Golden Bear is represented by George S. McCall and Sondra S. Sylva of Phelps Dunbar LLP.

The defendants are represented by Randall O. Sorrels of Sorrels Law.

The case is Golden Bear Insurance Co. v. 34th S&S LLC et al., case number 4:23-cv-01933, in the U.S. District Court for the Southern District of Texas.

--Additional reporting by Riley Murdock and Jeff Sistrunk. Editing by Emma Brauer.