

***Stowers* Is the Only Common Law Third-Party Claims Handling Cause of Action in Texas**

July 2011

A federal district court, applying Texas law, has held that the only common law cause of action against an insurer for bad faith claims handling in the third-party context is provided by the Texas Supreme Court's decision in *G.A. Stowers Furniture Co. v. American Indemnity Co.*, 15 S.W.2d 544 (Tex. 1929). *Mid-Continent Cas. Co. v. Eland Energy, Inc.*, 2011 WL 2417158 (N.D. Tex. June 14, 2011). The court therefore granted the insurer judgment as a matter of law on the insured's non-*Stowers* common law claim for breach of the duty of good faith and fair dealing concerning the insurer's investigation and defense of third-party claims arising out of Hurricanes Katrina and Rita.

After a jury returned a verdict in favor of the insured on its claim for breach of the duty of good faith and fair dealing, the insurer renewed its motion for judgment as a matter of law, arguing that *Stowers* provided the only common law cause of action against an insurer for handling a third-party claim and, therefore, the insured's non-*Stowers* claim should be dismissed. The insured argued that two other Texas Supreme Court decisions, *Republic Insurance Co. v. Stoker*, 903 S.W.2d 338 (Tex. 1995), and *State Farm Mutual Automobile Ins. Co. v. Traver*, 980 S.W.2d 625 (Tex. 1998), recognized additional grounds on which an insurer could be found to have breached a common law duty of good faith and fair dealing in the third-party claims handling context. The court reviewed *Stoker* and *Traver* and concluded that the passages on which the insured relied were *dicta* that did not alter the *Stowers* rule. Accordingly, the court granted the insurer judgment as a matter of law on the insured's claim for breach of the duty of good faith and fair dealing.