By Robert E. Valdez

IMPORTANT CONSIDERATIONS FOR NEW CIVIL DEFENSE LAWYERS

My perspective is that of a civil defense lawyer. I have spent most of my 42 years of practice representing insureds in third-party cases and insurers in first-party cases (both contractual and extra-contractual). I relish my time tutoring and mentoring young (and inexperienced) lawyers in the practice. What I include in this article are some of the fundamentals for new civil defense lawyers to consider—and the list is certainly not exhaustive.

1. A lawyer cannot serve two masters.[1]

My firm represents a lot of trucking companies and plenty of insurance companies, but this first rule is not limited to either type of litigation. The rule is often illustrated in routine auto accident cases in which the lawyer is assigned, most often by an insurer, to defend the driver and owner of a vehicle (or the trucking company and its driver). The question to ask when receiving such an assignment is, "Who is my client?" You would be surprised at how few lawyers review the assignment with attention to potential conflicts in the representation of multiple defendants.

Factual Considerations

Are there factual issues that pit one client against another? In a trucking company case, does the driver contend that there was some problem with the maintenance of the equipment or some malfunction in the equipment itself of which his employer was aware? Are there issues involving the use of the vehicle? Another question to consider in a typical auto accident case is whether there is an issue involving "permissive use" of the vehicle thereby potentially compromising insurance coverage? For example, there are coverage implications in a lawsuit in which a son uses his father's car without permission and gets drunk and causes an accident and damages to plaintiff. The lawsuit against both the father (for negligent entrustment) and the son (for negligently driving the auto) may create divergent interests. The father can defend against the negligent entrustment theory by proving that he did not give his son permission to drive the car (i.e., no "entrustment"). This factual defense may well affect insurance coverage for the son. This type of conflict is not reconcilable: the defense of one client is to the detriment of the other—and the lawyer can maintain his or her loyalty to one client only by withdrawing from the representation of the other.[2]

Insurance Considerations

Further, with respect to insurance issues, *Employers Casualty Co. v. Tilley*[3] is required reading. The legal (and ethical) dilemma posed by this case may have been avoided if the insurance defense lawyer understood that one may not serve two masters. Employer's Casualty Company (ECC) filed a declaratory judgment action against its insured, Joe Tilley, to obtain a declaration that his late notice of suit to the insurer relieved it from any obligation to defend Tilley in an underlying personal injury case (*Starky v. Tilley*). ECC secured a nonwaiver agreement[4] and hired an attorney to represent Tilley in the *Starky* lawsuit. The court noted:

> For a period of nearly 18 months, the attorney not only performed such services for Tilley in defending against Starkey, but *he also performed services for Employers which were adverse to Tilley on the question of coverage*. Tilley claimed that he had no knowledge of the Starky accident which occurred on November 25, 1967, until he was sued on September 19, 1969. This was his excuse for not notifying Employer before the suit was filed.[5]

The Court laid the conflict out specifically:

> Knowing of Tilley's contention, the attorney did not advise him of the apparent conflict of interest between Tilley and Employers. *Instead, he continued to act as Tilley's attorney while actively working against him in developing evidence for Employers on the coverage question.* Such evidence subsequently became the basis for this suit, filed by another attorney for Employers against Tilley, seeking to deny coverage on the grounds of late notice. Tilley filed a cross-action, alleging among other things, waiver and estoppel.[6]

The duty of loyalty to the client-insured—and not the insurance company—is clearly stated in the case:

> [The attorney for the insured] becomes the attorney of record and the legal representative of the insured, and as such he owes the insured the same type of unqualified loyalty as if he had been originally

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> employed by the insured. If a conflict arises between the interests of the insurer and the insured, the attorney owes a duty to the insured to immediately advise him of the conflict.[7]

The Court's colorful language is memorable: "An attorney employed by an insurer to represent the insured *simply cannot take up the cudgels of the insurer against the insured* as was done in the Starky case at Employers behest."[8] The Supreme Court of Texas held that the attorney's conduct was prejudicial to Tilley as a matter of law. The Court also held that ECC could not "[deny] the responsibilities under its policy for defense of the Starky suit."

Upon assignment of the case, make certain you understand whom you represent. If there are multiple parties, then ascertain whether there are conflicts that will potentially pit one client against the other. If there is a potential conflict of interest, you must choose which client you want to represent. In this regard, whether upon assignment (or usually later in the case as it develops), understand your ethical obligations—as the defense lawyer, you owe your loyalty to the insured even though the insurer pays your bills. As the defense lawyer, you may not offer coverage advice and you certainly may not work for the specific purpose of defeating coverage for your client.

2. Know the *Stowers* case and its iterations (*Bleeker*, *Soriano*).

Stowers: Negligent Failure to Settle within Limits

Next, I examine another required reading—the *Stower*s doctrine.[9] This case involved Bichon's third-party claim against Stowers Furniture Company, which was defended by an insurer. The insurer received a demand of $4,000 for settlement of the plaintiff's claim. The applicable policy limit was $5,000. The insurer declined settlement. The trial court ruled, and the appellate court agreed, that the insurer's obligation was only to defend the insured under the policy. The Commission disagreed and recommended a reversal and remand, holding the insurer to the "degree of care and diligence which a man of ordinary care and prudence would exercise in the management of his own affairs."[10] The Commission also noted the evidence indicating that the insurer had a rule "never to make a settlement for more than one-half of the amount of the policy" should have been admitted during the trial.[11]

The Supreme Court of Texas later in explained in *Garcia* that an insurer's *Stowers* obligations are not activated by a settlement demand unless three prerequisites are met:

> (1) the claim against the insured is within the scope of coverage,
>
> (2) there is a demand within policy limits, and
>
> (3) the terms of the demand are such that an ordinarily prudent insurer would accept it, considering the likelihood and degree of the insured's potential exposure to an excess judgment.[12]

Stowers is not a case decided by the Supreme Court of Texas, although with the Texas judiciary's reliance upon the case since its publication in 1929, it might as well have been.[13] The import of *Stowers* is unmistakable and all new defense lawyers must know its rule—upon receiving a demand within an insured's policy limits, an insurer that negligently fails to settle within those policy limits is responsible for the payment of an excess judgment against the insured.[14]

The Iterations

Bleeker: Demand Must Be for All Claim Including Liens

Trinity Universal Insurance Co. v. Bleeker[15] gives defense lawyers critical guidance regarding the elements of a proper *Stowers* demand. Therefore, it too is required reading. The case involved a drunk driver who caused a fatality and significant bodily injuries to several people. An attorney representing five of the several injured plaintiffs wrote to the insurer demanding that the applicable $40,000 policy limit be placed into the registry of the court. The plaintiffs' attorney did not offer a release nor did he offer to pay any outstanding hospital liens. The attorney later came to represent all the plaintiffs in the case, but never made another demand. The trial resulted in a verdict of $11,500,000. The insured defendant then assigned any claim it had against its insurer to the plaintiffs. That trial resulted in a judgment of $13,000,000 plus attorneys' fees (total judgment some $38,500,000). The Supreme Court of Texas reversed and ordered that plaintiffs take nothing because there was not a proper *Stowers* demand triggering extra-contractual liability.[16]

The lesson of *Bleeker* as it relates to *Stowers* claims: make certain that the demand offers to release all claims against the insured, including hospital liens.[17]

Soriano: First Come, First Served

The control that causes such danger in cases like *Stowers* also provides an out: when faced with a reasonable demand for settlement within (or at) policy limits, the insurer is free to accept such a demand without extra-contractual exposure to its insured even if it diminishes available policy limits for

other claimants. The next case for required reading: *Texas Farmers Insurance Co. v. Soriano*.[18]

Soriano involved a wrongful death lawsuit in which Farmers chose to accept a demand from one family (wrongful death beneficiaries) for a total of $5,000, thereby reducing the available policy limits for another group of wrongful death beneficiaries to a total of $15,000 (the policy's aggregate limit was $20,000). Farmers offered the second group of wrongful death beneficiaries the remaining $15,000. They rejected that offer and demanded full aggregate limit of $20,000. Farmers declined this demand. These plaintiffs tried the case and obtained a judgment for $520,577.24 in actual damages and $5,000,000 in punitive damages. The court of appeals affirmed with some modifications and remittitur. The Supreme Court of Texas reversed and rendered judgment that plaintiffs take nothing.[19]

The rule:

> We conclude that when faced with a settlement demand arising out of multiple claims and inadequate proceeds, an insurer may enter into a reasonable settlement with one of the several claimants even though such settlement exhausts or diminishes the proceeds available to satisfy other claims.[20]

3. Know your role and stay in your lane.

Once you get your assignment and you know which client you will represent, then represent the client and do not confuse your roles. You have seen already how one may confuse his or her role in a conflict situation or a *Tilley* situation. Now it is your job to stay in your lane and do the job you were hired to do. It truly is easier said than done.

For all the talk one may hear from institutional clients who insist that they want to "build a relationship" with defense counsel, my experience in the last decade (or more) is that most institutional clients believe that lawyers are simply another set of vendors from whom they need to secure services at the lowest price possible. Vendors, such as honest folks who sell paper, computers, pencils, and other products, mostly offer fungible goods. That is, one pencil is pretty much like another. The same simply is not true of lawyers—but that is lost on most of the non-lawyers who presently serve the various industries who secure the services of the legal profession.

Treating a lawyer like a vendor often expresses itself in the blurring of lines that affect a lawyer's professional obligations, principally, the duty of loyalty. Let me begin with a question: who is responsible for *defending* the case (*i.e.*, discovery, development of admissible evidence, trial)—and who is responsible for *placing a monetary value* on the case (*i.e.*, setting reserves, establishing settlement values, responding to *Stowers* demands)? I believe the answer to this inquiry comes when the lawyer knows his or her role and stays in his or her lane: the lawyer is responsible for the former. The claims adjuster is responsible for the latter.

The Defense Lawyer Defends the Case and Owes the (Insured) Client Fiduciary Duties

It seems a simple declaration: the defense lawyer defends the insured-client in the third-party case. While the insurer may pay the bills, the client is the insured. The defense attorney owes that insured the fiduciary duties of loyalty and candor.[21] The attorney is not hired to give insurance coverage advice to the insurance company—or for that matter to the insured. Many adjusters (and lawyers) do not understand that it is the role of the adjuster to adjust the claim! That means it is the adjuster's job—not the lawyer's job—to assign a value to the claim.[22] There will be persistent attempts throughout the litigation to shift this responsibility.[23]

What is the role of the defense lawyer when presented with a demand?

Every defense lawyer defending a client in a third-party lawsuit has received a so-called "*Stowers* demand" from a plaintiff's attorney.[24] This is a critical point in the defense of your client (the insured under the insurance policy). What is the responsibility of the defense lawyer at this juncture and who responds to this demand letter?

At this point (and many times it comes very early in the assignment), I believe the defense lawyers obligations are met by the following:

- Inform the insurance adjuster, in writing, of the demand and provide a copy of the demand letter.[25]
- Stay in your lane: resist the temptation to be pulled into the dilemma presented by the demand letter. While an insurer may ask you to draft or respond to the demand letter, the decision to accept or decline the demand belongs *to the insurer*—not to you or even to the insured client. As the defense attorney, you can offer your evaluation of liability and damages as presented at a particular point in the case, but it is not your job (and not with-

in your scope of authority) to accept or decline a settlement offer. It is your obligation to provide the insurer with the information necessary to allow it to make a decision concerning the demand. As the defense lawyer, you then simply communicate the insurance company's decision to the party making the demand.[26]

4. Understand the legal definition of "bad faith."

It is a fair question to ask your new associate (or experienced lateral attorney): what is bad faith? During my practice, I prepare plenty of corporate representatives for insurers giving testimony on this topic—and they have no idea of the Texas definition of bad faith.

Texas imposes on insurers a common law duty of "good faith and fair dealing" with its insureds in the first-party context.[27] The Supreme Court of Texas has clarified (and simplified) the elements of this common law duty by adopting the standard presented in the Texas Insurance Code: the bad faith claimant must prove that "a carrier failed to attempt to effectuate a settlement after its liability has become reasonably clear . . . [T]his solution unifies the common law and statutory standards for bad faith."[28] What is bad faith in Texas? It is the denial or delay of the payment of a claim after liability for the claim becomes reasonably clear. All attempts by opposing counsel to get non-lawyer corporate representatives to discuss the vagaries of bad faith law fade when the witness states this simple definition.[29] Instead of having a corporate representative or an adjuster argue with a lawyer about the nuances of bad faith law in Texas, the focus can then shift to the factual record—and those facts that provided a reasonable basis for the conduct of the insurer.

It is important to note that a dispute between the parties concerning contractual liability under the policy does not necessarily translate into bad faith. The Supreme Court of Texas explained:

> We also distinguished the insurer's liability under the contract of insurance from the insurer's liability for the tort of bad faith. "[C]arriers," we stated, "will maintain the right to deny invalid or questionable claims and will not be subject to [bad faith] liability for an erroneous denial of a claim." In other words, if the insurer has denied what is later determined to be a valid claim under the contract of insurance, the insurer must respond in actual damages up to the policy limits. But as long as the insurer has a reasonable basis to deny or delay payment of the claim, *even if that basis is eventually determined by the factfinder to be erroneous*, the insurer is not liable for the tort of bad faith.[30]

A reasonable basis may include the insurer's reasonable reliance upon expert witnesses.[31]

Recall also that individuals (*i.e.*, adjusters) are not liable for the breach of duty of good faith and fair dealing. That "non-delegable" duty is imposed on the insurer by virtue of its contractual relationship with the insured. The duty is not imposed on the insurer's employees or agents.[32]

5. Let your "Yes" mean "Yes" and your "No" mean "No."[33]

It was not too long ago that we did not need formal mediation in the personal injury arena. I began my practice of law in El Paso, Texas (in the early 80s), at a very fine law firm with some excellent teachers. New lawyers in the trial section had a docket of worker's compensation cases and low-exposure casualty cases. We did not have mediators, but we routinely settled our case with plaintiff's counsel —over the phone (or at lunch)!

What I remember fondly is that the leaders of our trial department had such a good reputation among the plaintiff's bar that I was cloaked with a wonderful indicia of credibility. The plaintiff's bar treated me like they would treat my senior partner in this sense: they knew I had the ability and resources (of the firm) to try a case, but they trusted that I would tell them the truth in our professional dealings regarding settlement and trial. This was because of the ground already ploughed by my senior partners.[34] The tradition was that my "yes" would mean "yes", and my "no" would mean "no." That credibility was mine to destroy, and although I am certain I have fallen short on occasions, I have spent the last four decades of my life trying to live up to a standard first set by my very fine teachers in El Paso, Texas.

How does this indicia of credibility express itself? In my opinion, in the following ways:

- **Show up**: at the office, at depositions, at hearings, and at trial. Show up on time *and prepared*. Your *physical* presence is required in our profession. Model the behavior you desire.

- **Be competent**. Take pride in continuing your education with focused CLE. Become adept at Westlaw (or Lexis) and the Microsoft Office suite, including PowerPoint and other programs that will make you a better advocate. Recently, an experienced lawyer assisting me

with a case told me, "I don't know anything about PowerPoint," and simply left that work to me. He was dropped from that serious litigation. Do what you need to do to keep abreast of technology so you will be a trusted advocate.

- **Communicate with others clearly and carefully**. Words do matter. Email, text messages, and the like blur effective communication. Email and texts are often composed in a hurry and are sloppy in grammar and construction. The result: unclear communication. It is the responsibility of the senior lawyer to review not only the pleadings and briefs of the less experienced lawyer, but any letter or other communication to clients or opponents. Personal communication (you can always follow up with a letter) is the best: in-person meetings, phone calls (or now video calls) with your clients, adjusters, and opposing counsel improve the process. Answer the phone. Respond timely to correspondence.

- **Do not make off-the-cuff promises (that you cannot deliver)**. "Oh, you will have that report on Monday." "My client will certainly go higher (or lower) on that offer." "Yes, I will agree to your third request for a continuance." Once a lawyer develops a reputation for empty promises, no one will trust him or her.

- **Sometimes the truthful answer is, "I don't know, but I'll find out."** When the answer is "yes," say so. The same is true when the answer is "no." Too often because of our lack of clarity and commitment, "yes" and "no" both mean "maybe." When that happens, you lose all credibility and no one really knows what you mean.

Conclusion

My list of considerations for new lawyers is by no means exhaustive—but it is a good start. Follow up with focused CLE (the State Bar's Advanced Personal Injury Course and the Advanced Insurance Course are good resources). I did not begin to feel comfortable in my role as a defense lawyer until I had about 30 years of practice behind me. These are challenging times for the civil defense lawyer, but I have a feeling we will make it.

1 I am particularly fond of Justice Gonzalez's concurring opinion in *State Farm Mutual Automobile Insurance Co. v. Traver*, 980 S.W.2d 625 (Tex. 1998). While the majority opinion dealt with whether an insurer is vicariously liable for malpractice committed by an independent defense lawyer it hired to represent the insured, in Justice Gonzalez's concurring opinion he explained the dilemma (or "uneasy alliance") in the "tripartite" relationship existing among the insurer, the insured, and the defense lawyer:

> The duty to defend in a liability policy at times makes for an uneasy alliance. The insured wants the best defense possible. The insurance company, always looking at the bottom line, wants to provide a defense at the lowest possible cost. The lawyer the insurer retains to defend the insured is caught in the middle. There is a lot of wisdom in the old proverb: He who pays the piper calls the tune. The lawyer wants to provide a competent defense yet knows who pays the bills and who is most likely to send new business. This so-called tripartite relationship has been well documented as a source of unending ethical, legal, and economic tension.

Id. (Gonzalez, J., concurring in part and dissenting in part). Justice Gonzalez noted lawyers "are under tremendous pressure to serve two masters" and "[a]lthough it has perhaps become trite, the biblical injunction found in Matthew 6:24 retains a particular relevancy in circumstances such as these, '[n]o man can serve two masters.'" *See id*. at 634 (quoting *U.S. Fid. & Guar. Co. v. Louis A. Roser Co*., 585 F.2d 932, 938 n.5 (8th Cir. 1978)).

2 It is better to pick your client early to avoid such a conflict. Aside from raising ethical issues, as a practical matter you may obtain confidential information from one or both clients that may then prevent you from representing either one. *See* Tex. Disciplinary Rules Prof'l Conduct R. 1.06(b)(2), *reprinted in* Tex. Gov't Code Ann., tit. 2, subtit. G, app. A (Tex. State Bar R. art. X, §9). As Bob Dylan once sang (about picking up loan proceeds): "But you'd better hurry up and choose which of those bills you want. Before they all disappear." Bob Dylan, *The Ballad of Frankie Lee and Judas Priest*, *on* John Wesley Harding (Columbia Records 1967).

3 496 S.W.2d 552 (Tex. 1973).

4 The court defined a "standard non-waiver agreement" as an agreement "that no action heretofore or hereafter taken by Employers shall be construed as a waiver of the right, if any, of Employers to deny liability under the policy." *Tilley*, 496 at 557.

5 *Id.* at 554 (emphasis added).

6 *Id*. (emphasis added).

7 *Id*. at 558.

8 *Id.* at 560 (emphasis added). We just do not get the opportunity to use the word "cudgel" often enough. I echo the lament of Elle Driver, also known as California Mountain Snake (Darryl Hannah) in the movie Kill Bill Vol. 2 when she reflected upon the use of the word "gargantuan" when she said, "you know, I've always

liked that word . . . 'gargantuan' . . . so rarely have an opportunity to use it in a sentence." *Kill Bill: Volume 2* (Miramax Films 2004).

9 *G.A. Stowers Furniture Co. v. Am. Indem. Co*., 15 S.W.2d 544 (Tex. Comm'n App. 1929, holding approved).

10 *Id.* at 548.

11 *Id.*

12 *Am. Physicians Ins. Exch. v. Garcia*, 876 S.W.2d 842, 848–49 (Tex. 1994).

13 This is a case from the old Texas Commission of Appeals. Texas established appellate commissions "to alleviate the workload of its high courts." Texas Rules of Form: The Greenbook Ch. 5 (Tex. L. Rev. Ass'n ed., 14th ed. 2018) (hereinafter Texas Rules of Form). The significance of an opinion with the designation "holding approved" is that the Supreme Court of Texas adopted the judgment and approved the specific holding of the Commission discussed in the opinion but did not necessarily approve its reasoning. Texas Rules of Form §§ 5.2.2–5.2.3. In *Stowers*, the reasoning of the Commission of Appeal's decision was based upon the insurer's sole control of the third-party litigation. *See Stowers*, 15 S.W.2d at 547–48 ("Such exclusive authority to act in a case of this kind does not necessarily carry with it the right to act arbitrarily."). The Supreme Court of Texas, for all intents and purposes, now has adopted or approved the *Stowers* opinion. *See Garcia*, 876 S.W.2d at 846 ("These contractual obligations [to defend and indemnify the insured within policy limits], along with language in the insuring clause granting control over the insured's defense to an insurer . . . give rise to a third, generally recognized, implied duty of liability insurers—the duty to accept reasonable settlement demands within policy limits.") (quoting *Stowers,* 15 S.W.2d at 547–48). *The Greenbook* informs us that the designation of "Opinion Adopted or Approved" means that the opinion has the full authority of a Supreme Court of Texas decision. *See* Texas Rules of Form §§ 5.2.2–5.2.3.

14 The court held: "[W]e are constrained to believe that the correct rule under the provisions of this policy is that the indemnity company is held to that degree of care and diligence which a man of ordinary care and prudence would exercise in the management of his own business. *Stowers*, 15 S.W.2d at 548.

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

16 *See id*. at 491.

17 Note also that the release offered must be "unconditional." A release which calls for a defendant to represent that there is no other insurance is conditional and therefore does not provide a basis for *Stowers* liability. *See Ins. Corp. of Am. v. Webster*, 906 S.W.2d 77, 80 (Tex. App.—Houston [1st Dist.] 1995, writ denied).

18 *Tex. Farmers Ins. Co. v. Soriano*, 881 S.W.2d 312 (Tex. 1994).

19 *See id*. at 314.

20 *Id.* at 315

21 *See Tilley*, 496 S.W.2d at 558.

22 *Employers Nat'l Ins. Co. v. Gen. Accident Ins. Co.* illustrates this proposition. Although it is cast in terms of an excess carrier's suit against a primary carrier for equitable subrogation (i.e., *American Centennial Insurance Co. v. Canal Insurance Co.*, 843 S.W.2d 480 (Tex. 1992)), the case demonstrates that the opinion of the defense lawyer concerning the value of the case will not get the insurer "off the hook." *See Employers Nat'l Ins. Co. v. Gen. Accident Ins. Co*., 857 F. Supp. 549, 553 (S.D. Tex. 1994).

23 As Michael Corleone (Al Pacino) noted in Godfather III: "Every time I think that I'm out, they pull me back in!" *The Godfather Part III* (Paramount Pictures 1990).

24 A detailed presentation on the intricacies of the *Stowers* doctrine and the demand letter are outside the scope of this article.

25 The insured is not in control of the litigation under the insurance policy. *See Employers Cas.*, 496 S.W.2d at 558. The insured-client may be advised of the right to retain separate counsel to make demands upon the insurance company to settle the case, but since the insurance company is in control of the settlement of the case, the opinion of an insured's separately retained lawyer is just that—the opinion of another lawyer. The insurance company controls the response to a settlement demand—not the attorney.

26 Beware of efforts to shift the responsibility for placing a monetary value on plaintiff's case to you, the defense lawyer. If the responsibility is shifted, your evaluation easily may become the reason for the rejection of the demand. *See infra* n.12. This situation presents itself often when the demand comes early in the assignment and the defense attorney has not yet had the time to review the file, conduct discovery, or assess the relative strengths and weaknesses of the case. I know from the experience in our firm that many insurers (or their third-party administrators) try to force an artificial value from an attorney upon the assignment of the case (or shortly thereafter). Nancy Reagan's slogan may come in handy here: "Just say no."

27 *See Arnold v. Nat. Cnty. Mut. Fire Ins. Co*., 725 S.W.2d 165, 167 (Tex. 1987) (" A cause of action for breach of the duty of good faith and fair dealing is stated when it is alleged that there is no reasonable basis for denial of a claim or delay in payment or a failure on the part of the insurer to determine whether there is any reasonable basis for the denial or delay.")

28 *Universe Life Ins. Co. v. Giles*, 950 S.W.2d 48, 55 (Tex. 1997).

29 As the court explained: "The 'reasonably clear' standard recasts the liability standard in positive terms, rather than the current negative formulation. Under this standard, an insurer will be liable if the insurer knew or should have known that it was reasonably clear that the claim was covered." *Id.* at 56. This is a question for the jury. *Id*.

30 *Lyons v. Millers Cas. Ins. Co.*, 866 S.W.2d 597, 600 (Tex. 1993) (emphasis added) (internal citations omitted).

31 *See id*. at 601 (finding the plaintiff offered no evidence that the insurer's expert reports were not objectively prepared, or that the insurer's reliance on them was unreasonable, or any other evidence that it knew or should have known that it lacked a reasonable basis for its actions.).

32 *See Natividad v. Alexsis, Inc*., 875 S.W.2d 695, 698 (Tex. 1994).

33 *Matthew* 5:37.

34 A plaintiff's lawyer complaint to my senior partner concerning some misconduct on my part was more threatening to me than any motion for sanctions.

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