

Settlement at Policy Limits and the Duty to Settle: Evidence from Texas

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Abstract

All liability insurance policies have coverage limits, and insurers usually control whether a case is settled or tried. If the insurer rejects a within-limits settlement offer, the insured bears the risk of an above-limits verdict. In response, virtually every state has imposed a “duty to settle” on insurers, which creates incentives for plaintiffs to make at-limits offers and for insurers to accept those offers when expected damages exceed limits. We study the association between the duty to settle, settlement at limits, claim duration, and defense costs using detailed data from Texas for 1988–2005 on closed, commercially insured personal injury claims. We focus principally on medical malpractice suits against physicians, but find consistent evidence for other types of cases. We find strong evidence that the duty to settle affects settlement dynamics. Essentially, all physician-defendant cases that settle at limits are preceded by an at-limits demand. Roughly 20 percent of physician-defendant cases settle at 90–100 percent of policy limits (broad at-limits) and 13 percent settle exactly at limits (exact at-limits). Broad- and exact-at-limits cases close about five months faster than similar “below-limits” cases—a roughly 20 percent shorter time from suit to settlement, controlling for payout and type of harm. Broad- and exact-at-limits cases also have substantially lower defense costs, controlling for case duration and complexity. More broadly, as the payout/limits ratio approaches 1 from below, duration declines (controlling for payout) and defense costs decline (controlling for payout and duration). Payouts above limits are uncommon; when they occur, insurers are the primary payers. Policy limits alone cannot explain these results; most likely they reflect a combination of policy limits and the duty to settle.

REFERENCES

Baker, Tom (2001) “Blood Money, New Money, and the Moral Economy of Tort Law in Action,” 35 *Law & Society Rev.* 275.

 | [Web of Science®](#) | [Google Scholar](#) |

Black, Bernard, David Hyman, & Charles Silver (2009) "The Effect of 'Early Offers' in Medical Malpractice Cases: Evidence from Texas," *6 J. of Empirical Legal Studies* 723.

[Web of Science®](#) | [Google Scholar](#)

Black, Bernard, David Hyman, Charles Silver, & William Sage (2008) "Defense Costs in Medical Malpractice and Other Personal Injury Cases: Evidence from Texas, 1988–2004," *10 American Law & Economics Rev.* 185.

[Web of Science®](#) | [Google Scholar](#)

Black, Bernard, Charles Silver, David A. Hyman, & William M. Sage (2005) "Stability, Not Crisis: Medical Malpractice Claim Outcomes in Texas, 1988–2002," *2 J. of Empirical Legal Studies* 207.

[Google Scholar](#)

Bradley, Beth D. (2003) "Is the Pendulum Swinging on *Stowers*," September 2 *Insurance J.* Available at <<http://www.insurancejournal.com/magazines/southcentral/2003/09/22/legalbeat/32646.htm>>.

[Google Scholar](#)

Brown McCarroll L.L.P. (2000) *Stowers: Back to Basics*. Available at <http://www.brownmccarroll.com/article_s_detail.asp?ArticleID=19>.

[Google Scholar](#)

Browne, Mark J., Ellen S. Pryor, & Bob Puelz (2004) "The Effect of Bad-Faith Laws on First-Party Insurance Claims Decisions," *33 J. of Legal Studies* 355.

[Web of Science®](#) | [Google Scholar](#)

Chandler, Seth J. (1993) "Reconsidering the Duty to Settle," *42 Drake Law Rev.* 741.

[Google Scholar](#)

Frank, Theodore H., & Marie Gryphon (2009) Negotiating in the Shadow of "Bad Faith" Refusal to Settle: A Game Theory Model of Medical Malpractice Pre-Trial Settlements and Insurance Limits. Working paper.

[Google Scholar](#)

Hawken, Angela, Stephen J. Carroll, & Allan F. Abrahamse (2001) The Effects of Third-Party, Bad Faith Doctrine on Automobile Insurance Costs and Compensation. Rand Institute for Civil Justice.

[Google Scholar](#)

Hyman, David A., Bernard Black, Kathryn Zeiler, Charles Silver, & William Sage (2007) "Do Defendants Pay What Juries Award?: Post-Verdict Haircuts in Texas Medical Malpractice Cases, 1988–2003," *4 J. of Empirical Legal*

[Google Scholar](#)

Keeton, Robert E. (1954) "Liability Insurance and Responsibility for Settlement," *67 Harvard Law Rev.* 1136.

[Web of Science®](#) | [Google Scholar](#)

Silver, Charles (1991) "A Missed Misalignment of Interest: A Comment on Syverud, The Duty to Settle," *77 Virginia Law Rev.* 1585.

[Web of Science®](#) | [Google Scholar](#)

Stempel, Jeffrey W. (2006) *Stempel on Insurance Contracts*. Aspen Publishers.

[Google Scholar](#)

Studdert, David M., & Michelle M. Mello (2007) "When Tort Resolutions Are 'Wrong': Predictors of Discordant Outcomes in Medical Malpractice Litigation," *36 J. of Legal Studies* s47.

[Web of Science®](#) | [Google Scholar](#)

Studdert, David M., Michelle M. Mello, Atul A. Gawande, Tejal K. Gandhi, Allen Kachalia, Catherine Yoon, Ann Louise Puopolo, & Troyen A. Brennan (2006) "Claims, Errors, and Compensation Payments in Medical Malpractice Litigation," *354 New England J. of Medicine* 2024.

[CAS](#) | [PubMed](#) | [Web of Science®](#) | [Google Scholar](#)

Sykes, Alan (1994) " 'Bad Faith' Refusal to Settle by Liability Insurers: Some Implications of the Judgment-Proof Problem," *23 J. of Legal Studies* 77.

[Web of Science®](#) | [Google Scholar](#)

Syverud, Kent (1990) "The Duty To Settle," *76 Virginia Law Rev.* 1113.

[Web of Science®](#) | [Google Scholar](#)

Thornton, Russell G. (2002) "Settling a Case Within Policy Limits," *15 BUMC Proceedings* 336. Available at <http://www.baylorhealth.edu/proceedings/15_3/15_3_thornton.pdf>.

[PubMed](#) | [Google Scholar](#)

Yousefi, Kowsar, & Bernard Black (2010) *Settlement Bargaining with Insurer Duty to Settle: Theory and Evidence from Texas Medical Malpractice Claims*. Working paper.

[Google Scholar](#)

Zeiler, Kathryn, Charles Silver, Bernard Black, David A. Hyman, & William M. Sage (2007) "Physicians' Insurance Limits and Malpractice Payments: Evidence from Texas Closed Claims, 1990–2003," 36 *J. of Legal Studies* s9.

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