who added the DWI arrest to a pending motion for revocation prior to its final adjudication.

[3] Further, we have noted with approval the Eighth Circuit's holding that an original decision not to issue a revocation warrant in response to a probation violation may be reasonable and is not made unreasonable by a reevaluation in light of additional violations that the probationer later committed. *Cortinas v. United States Parole Comm'n*, 938 F.2d 43, 45 (5th Cir.1991)(citing *White v. United States Parole Comm'n*, 856 F.2d, 59, 61 (8th Cir.1988)). Thus, even if we were to assume that Bexar County knew about the DWI in November 1996 but had originally decided not to revoke Jones's parole based on the DWI arrest, it would not be a due process violation to partially rely on the DWI in a 1998 motion for revocation based on his later violations.

Because we find that the revocation proceedings in this case comport with due process requirements, it is not necessary to consider the second COA issue concerning whether Travis County's probation officer was an agent of Bexar County in the circumstances of this case.

Based on the foregoing, we affirm the district court's denial of Jones's § 2254 petition.

AFFIRMED.

Steve FORD, Etc.; et al., Plaintiffs,

Steve Ford, d/b/a H&F Cotton Co.; Geneva Ford, Plaintiffs–Appellants,

v.

CIMARRON INSURANCE COMPANY, INC., Defendant–Appellee.

No. 99–10684.

United States Court of Appeals, Fifth Circuit.

Nov. 1, 2000.

Insured sued his liability insurer under Texas law for negligently handling his claim after letter from insurer stating that insured was partially negligent in causing fire was obtained by fire extinguisher certification company that insured was suing. After entering jury verdict against insurer, the United States District Court for the Northern District of Texas, Jorge A. Solis, J., 1999 WL 184126, granted insurer's motion for judgment as matter of law. Insured appealed. The Court of Appeals, Carl E. Stewart, Circuit Judge, held that Texas did not recognize claim against liability insurer for negligently handling or investigating claim.

Affirmed.

1. Federal Civil Procedure ⚿2601

A motion for judgment as a matter of law in an action tried by jury is a challenge to the legal sufficiency of the evidence supporting the jury's verdict.

2. Federal Courts ⚿776

The Court of Appeals reviews de novo a motion for judgment as a matter of law, applying the same legal standard as did the trial court.

3. Federal Civil Procedure ⚿2601, 2608.1

Judgment as a matter of law is proper after a party has been fully heard by the jury on a given issue and there is no legally sufficient evidentiary basis for a

reasonable jury to have found for that party with respect to that issue.

4. Negligence ⚿202

To prevail on a negligence claim under Texas law, a plaintiff must establish: (1) a legal duty owed by one person to another; (2) a breach of that duty; and (3) damages proximately resulting from the breach.

5. Negligence ⚿210

Duty is the threshold inquiry of any negligence case under Texas law.

6. Negligence ⚿1692

The question of whether a duty exists, for purposes of a negligence claim under Texas law, is a question of law for the court to decide from the facts surrounding the occurrence in question.

7. Insurance ⚿3350

Under Texas law, a liability insurer may be held liable in damages upon refusing an offer of settlement when it appears that an ordinary prudent person in the insured's situation would have settled; however, a settlement demand triggers the insurer's duty only upon meeting three prerequisites: (1) the claim against the insured is within the scope of coverage; (2) the demand is within the 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.

8. Courts ⚿90(2)

One panel of the Court of Appeals cannot disregard, much less overrule, the decision of a prior panel, even when the prior panel's decision involved the interpretation of state law; such interpretations are no less binding on subsequent panels than are prior interpretations of federal law.

9. Courts ⚿90(2)

A prior panel's interpretation of state law has binding precedential effect on other panels of the Court of Appeals absent a subsequent state court decision or amendment rendering the prior decision clearly wrong.

10. Insurance ⚿3347, 3350, 3355

Liability insurer breached no duty owed to insured under Texas law based on its alleged negligent handling of claim by stating in letter, that was obtained by fire extinguisher certification company insured was suing, that insured was partially negligent in causing fire; by settling third-party claim against insured arising from fire, insurer satisfied duty it owed insured under Texas law, notwithstanding any adverse effect its actions had on insured's suit against certification company.

11. Insurance ⚿3349, 3350, 3353

Texas law does not impose a duty on liability insurers to handle, investigate, and settle third-party claims against insureds using the standard of care of any reasonable and prudent person in the insured's position.

Arthur W. Stone (argued), Law Office of Art Stone, Forney, TX, for Plaintiffs–Appellants.

Peter Thomas Martin (argued), Marlow James Muldoon, III, Martin, Farr, Miller & Price, Dallas, TX, for Defendant–Appellee.

Appeal from the United States District Court for the Northern District of Texas.

Before POLITZ, JONES and STEWART, Circuit Judges.

CARL E. STEWART, Circuit Judge:

The issue before us is whether the district court erred in granting Defendant–Appellee's, Cimarron Insurance Company, Inc. ("Cimarron"), renewed motion for judgment as a matter of law regarding an insured's right under Texas law to recover for an insurer's alleged negligent investigation, handling, and settlement of an in-

sured's claims. For the reasons set forth below, we affirm the district court's ruling.

FACTUAL AND PROCEDURAL HISTORY

On July 29, 1994, a fire occurred at the place of business of Plaintiffs–Appellants, Steve Ford d/b/a H&F Cotton Company and Geneva Ford ("Ford"). Ford tried to end the blaze with portable fire extinguishers, but they did not work. Consequently, the flames destroyed the premises and contents of Ford's company as well as damaged those of the neighboring business, Novatech Corporation ("Novatech").

Ford sued Action Fire and Equipment ("Action"), the company that had certified the extinguishers before the fire, and its liability carrier. Novatech sued Ford for its resulting damages. Accordingly, Ford notified his liability carrier, Cimarron, of Novatech's claim. In handling and settling this claim, Cimarron sent a letter to Novatech stating that Ford was partially negligent in causing the fire. Action then acquired a copy of Cimarron's letter to Novatech.

Following Action's acquisition of the letter, Ford filed suit against Cimarron in the district court of Dallas County, Texas, alleging that Cimarron negligently handled and settled the Novatech claim against Ford. According to Ford, this negligence damaged him by diminishing the value of his suit against Action from a policy limit case to a nuisance value case. Cimarron then removed the suit to federal district court.

After Ford presented evidence on the merits of his negligence claim, Cimarron moved for judgment as a matter of law. The district court instructed the parties that it would hear motions for judgment as a matter of law only after the jury had the opportunity to return a verdict. The jury returned a verdict for Ford and the district court rendered judgment thereon. Cimarron then filed a renewed motion for judgment as a matter of law arguing that Texas law does not recognize a negligence cause of action for an insurer's handling, investigating, and settling of an insured's claim. The district court granted Cimarron's motion and Ford now appeals.

DISCUSSION

I. Standard of Review

[1–3] "'A motion for judgment as a matter of law . . . in an action tried by jury is a challenge to the legal sufficiency of the evidence supporting the jury's verdict.'" *Jones v. Kerrville State Hosp.,* 142 F.3d 263, 265 (5th Cir.1998) (quoting *Harrington v. Harris,* 118 F.3d 359, 367 (5th Cir. 1997)). This Court reviews a motion for judgment as a matter of law *de novo,* "applying the same legal standard as did the trial court." *Omnitech Int'l, Inc. v. Clorox Co.,* 11 F.3d 1316, 1322–23 (5th Cir.1994). Accordingly, "judgment as a matter of law is proper after a party has been fully heard by the jury on a given issue, and 'there is no legally sufficient evidentiary basis for a reasonable jury to have found for that party with respect to that issue.'" *Foreman v. Babcock & Wilcox Co.,* 117 F.3d 800, 804 (5th Cir.1997) (quoting FED. R. CIV. P. 50(a)).

II. Negligence Under Texas Law

A. Elements

[4–6] To prevail on a negligence claim in Texas, a plaintiff must establish three elements: "(1) a legal duty owed by one person to another; (2) a breach of that duty; and (3) damages proximately resulting from the breach." *Greater Houston Transp. Co. v. Phillips,* 801 S.W.2d 523, 525 (Tex.1990) (citing *El Chico v. Poole,* 732 S.W.2d 306, 311 (Tex.1987)). Duty is the threshold inquiry of any negligence case. *See Phillips,* 801 S.W.2d at 525. In Texas, moreover, whether a duty exists is a question of law for the court to decide from the facts surrounding the occurrence in question. *See id.*

B. *Stowers* Duty

[7] Texas courts have recognized only one tort duty regarding third party insurance cases, that being the duty stated in *Stowers Furniture Co. v. American Indem. Co.*, 15 S.W.2d 544 (Tex. Comm'n App.1929, holding approved). *See Maryland Ins. Co. v. Head Indus. Coatings & Serv., Inc.*, 938 S.W.2d 27, 28 (Tex.1996). According to this duty, an insurer may be held liable in damages upon refusing an offer of settlement when it appears that an ordinary prudent person in the insured's situation would have settled. *See Stowers*, 15 S.W.2d at 547. However, a settlement demand triggers the *Stowers* duty only upon meeting three prerequisites: "(1) the claim against the insured is within the scope of coverage; (2) the demand is within the 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." *American Physicians Ins. Exch. v. Garcia*, 876 S.W.2d 842, 849 (Tex. 1994).

Although this precedent outlines the Texas Supreme Court's current view and treatment of the *Stowers* duty, Ford chose to base his third party insurance claim on an older case, *Ranger County Mut. Ins. Co. v. Guin*, 723 S.W.2d 656 (Tex.1987), involving liability of an insurance company for negligence in the handling of a claim against its insured.[1] He particularly relied on the language "[a]n insurer's duty to its insured is not limited to ... narrow boundaries, ... rather it extends to the *full range of the agency relationship*. ... [T]hat includes investigation, preparation for defense of the lawsuit, trial of the case and reasonable attempts to settle." *Id.* at 658 (emphasis added). Under this expansive view of the *Stowers* duty, Ford alleges that as his agent, Cimarron had a duty to exercise ordinary and prudent care in handling the Novatech claim. As such, Ford further argues that he has met the threshold requirement of a negligence claim in Texas.

III. Analysis

The present dispute is not this court's first occasion to address the issue of negligence actions available under Texas law in third party insurance cases. In *Saint Paul Fire & Marine Ins. Co. v. Convalescent Servs., Inc.*, 193 F.3d 340 (5th Cir. 1999), the insured, Convalescent Services, Inc. ("CSI"), alleged that its insurer, Saint Paul Fire and Marine Insurance ("Saint Paul"), had a duty to handle claims against CSI in a non-negligent manner.[2] Like Ford, CSI based its allegations on the sweeping language of *Ranger*.

Upon reviewing the facts of *Ranger* and subsequent Texas Supreme Court cases, this court discerned the fallacy of CSI's reliance. While *Ranger* does contain language that seems to expand the *Stowers* duty, the case itself contained " 'no contention that [the insurer] was negligent in investigation or trial of the ... lawsuit.' " *Saint Paul*, 193 F.3d at 344 (quoting

1. *Ranger* involved an automobile collision. A jury found John Wesley Guin ("Guin"), an independent contractor who was hired to drive a dump truck insured by Ranger County Mutual Insurance Company ("Ranger"), to be 100% negligent. After the trial court rendered a $225,000 judgment against Guin, he filed suit against Ranger under the *Stowers* doctrine alleging that the claim was within policy limits and should have been settled.

2. Saint Paul insured CSI against damages arising from its negligence. But the contract specifically excluded coverage for punitive damages. While in the care of a CSI owned nursing home, Jacob Schultz developed severe decubitus ulcers that allegedly resulted in serious personal injury and near death as a result of CSI's negligent acts and omissions. Before trial, Saint Paul rejected Schultz's $250,000 settlement demand despite its being well within the CSI policy limits. The jury award against CSI included $850,000 in punitive damages. CSI claimed Saint Paul was responsible for paying these punitive damages because Saint Paul had negligently handled the investigation and settlement negotiations by refusing the initial $250,000 settlement demand.

Ranger, 723 S.W.2d at 659). Because the expansive language was not dispositive of an issue at bar in *Ranger*, this court reasoned that it was not the case's holding. *See Saint Paul*, 193 F.3d at 344.

Furthermore, this court recognized that the Texas Supreme Court had treated the dubious *Ranger* language even more narrowly, specifically referring to it as "dictum." *Id.* (citing *Garcia*, 876 S.W.2d at 849); *see also State Farm Mut. Auto. Ins. Co. v. Traver*, 980 S.W.2d 625, 628 (Tex. 1998) (stating that the language in *Ranger* "about the scope of the insurer's responsibilities was dict[um]"). The court explained that "[i]n the context of a *Stowers* lawsuit, evidence concerning claims investigation, trial defense, and conduct during settlement negotiations is necessarily subsidiary to the ultimate issue of whether the claimant's demand was reasonable under the circumstances, such that an ordinarily prudent insurer would accept it." *Garcia*, 876 S.W.2d at 849.

CSI premised its arguments against the aforementioned reading of *Ranger* on the *Garcia* dissent, which impugns the majority for its retroactive reformation of the *Ranger* holding "into mere 'dictum.'" *Saint Paul*, 193 F.3d at 344 (quoting *Garcia*, 876 S.W.2d at 863 n. 7). Nonetheless, this court clearly concluded that "the Texas Supreme Court drastically curtailed the broad language of *Ranger*." *Saint Paul*, 193 F.3d at 344. Thus in making its *Erie* [3] prediction of how the Texas Supreme Court would hold in CSI's case, we respected the constraints of the court's more recent precedent and held that St. Paul did not breach any tort duty to CSI. *See id.* at 345.

[8, 9] We are a "strict *stare decisis* court. [Thus], . . . one panel of this court cannot disregard, much less overrule, the decision of a prior panel." *F.D.I.C. v. Abraham*, 137 F.3d 264, 268 (5th Cir.1998). This rule remains immutable even when the prior panel's decision involved the interpretation of state law because, "[s]uch interpretations are no less binding on subsequent panels than are prior interpretations of federal law." *Id.* (citing *Broussard v. Southern Pac. Transp. Co.*, 665 F.2d 1387, 1389 (5th Cir.1982) (*en banc*)). Therefore, a prior panel's interpretation of state law has binding precedential effect on other panels of this court absent a subsequent state court decision or amendment rendering our prior decision clearly wrong. *See Abraham*, 137 F.3d at 269.

[10] No Texas Supreme Court decision nor amendment has so subsequently rendered this court's decision in *Saint Paul* clearly wrong. Accordingly, *Saint Paul* binds us regarding the Ford and Cimarron dispute. While Ford makes a persuasive argument for requiring insurance companies to handle, investigate, and settle claims using the ordinary care of a reasonable and prudent person in the insured's position, the *Stowers* duty is the only common law tort duty Texas currently recognizes in third party insurance claims.[4] Thus in handling Novatech's claim against Ford, Cimarron can only be held liable in tort for not accepting a settlement offer that any reasonable person in Ford's position would have accepted. Cimarron fulfilled this duty, however, when it settled Novatech's claim against Ford. As such, we hold that Cimarron breached no tort duty to Ford.

3. *Erie R. Co. v. Tompkins*, 304 U.S. 64, 58 S.Ct. 817, 82 L.Ed. 1188 (1938).

4. Ford's contention that insurers should be liable for third party insurance claims in which they negligently handle, investigate, and settle claims presents an issue that is simply improper for this court to decide. *See Saint Paul*, 193 F.3d at 345 (stating "[w]hen making an Erie guess, it is not our role to create or modify state law . . . ." and feeling constrained by the more recent precedent of the Texas Supreme Court to conclude that the *Stowers* duty did not give rise to a cause of action for an insurers negligent handling, investigation, and settlement of a third party claim). Accordingly, the Texas Legislature is the appropriate forum for advocating Ford's position.

CONCLUSION

[11] Our holding in *Saint Paul* is controlling. We therefore find that the district court properly concluded that under Texas law, *Stowers* does not impose a duty on insurers to handle, investigate, and settle claims against insureds using the standard of care of any reasonable and prudent person in the insured's position. Accordingly, we AFFIRM the district court's ruling.

AFFIRMED.

Ralph NADER, et al., Plaintiffs–Appellees,

v.

J. Kenneth BLACKWELL, Ohio Secretary of State, Defendant–Appellant.

No. 00–4274.

United States Court of Appeals, Sixth Circuit.

Oct. 19, 2000

The District Court entered an order enjoining the Ohio Secretary of State from enforcing a statute insofar as it prohibited him from placing a political party designation on the ballot for candidates of the Green Party, and requiring his best efforts to add such designation, and Secretary sought a stay pending appeal. The Court of Appeals held that stay was warranted.

Motion for stay granted.

1. Federal Courts ⚿684

The factors to be considered by the court in determining whether a stay pending appeal should issue are: (1) whether the applicant has demonstrated a likelihood of success on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other interested parties; and (4) where the public interest lies, and these factors are not prerequisites that must be met, but are interrelated considerations that must be balanced together.

2. Federal Courts ⚿685

Stay pending appeal would be granted as to order enjoining Ohio Secretary of State from enforcing statute insofar as it prohibited him from placing a political party designation on the ballot for candidates of the Green Party, and requiring his best efforts to add such designation; without a stay, the ballots would not be uniform, disruption to election processes by modification of ballots by various means would likely be extensive, heavy burden on the Secretary and the taxpaying and voting public was not outweighed by the associational interest of the public in knowing the affiliation of the candidates, which was mitigated by recent publicity, and the candidates' reliance on the inaction of the Secretary in responding to their initial letter was unreasonable in light of the looming election deadline. Ohio R.C. §§ 3505.03, 3509.01.

Terry J. Lodge, Toledo, OH, David H. Thomas, Law Office of Samuel H. Shamansky, Columbus, OH, Jonathan Bailey, Cleveland Heights, OH, for Plaintiff–Appellee.

Arthur James Marziale, Jr., Office of the Attorney General of Ohio, Columbus, OH, for Defendant–Appellant.

Before: MARTIN, Chief Judge; DAUGHTREY and GILMAN, Circuit Judges.

ORDER

The defendant, the Ohio Secretary of State, appeals a district court order per-