

ADVISORY NO. 453
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TOPIC: SUPREME COURT GRANTS PETITION IN RUTTIGER

The Texas Supreme Court has granted the carrier's petition for review in *Texas Mutual Ins. Co. v. Ruttiger*, No. 08-0751. The case has been scheduled for oral argument in Austin on April 14, 2010.

In *Ruttiger*, the 1st Court of Appeals held that the carrier was liable for bad faith damages totaling \$183,500. The court concluded that the carrier's claims adjuster "should have been highly suspect of the veracity of the unsubstantiated allegations he was hearing from" a representative of the policy holder in a case the court described as involving critical facts that were "hotly contested."

The petition for review in *Ruttiger* argues that a bad faith cause of action has no place in present day workers' compensation practice because of the Division of Workers' Compensation's enhanced enforcement authority. Alternatively, the petition contends that the court of appeals failed to apply the proper standard in evaluating whether the carrier violated the Texas Insurance Code or its common law duty of good faith and fair dealing. Finally, the petition contends that the measure of damages awarded by the trial court in *Ruttiger* was incorrect.

Steve Tipton, Flahive, Ogden & Latson's Managing Partner, co-authored an amicus brief in support of the carrier's petition for review in *Ruttiger*. That briefing focused on the arguments the Insurance Code claims handling violations do not apply to workers' compensation and that such an application directly conflicts with existing workers' compensation law, regulation and practice.

The Supreme Court argument in *Ruttiger* will be available to view by live Webcast on the day of the oral argument at the following link:

<http://www.stmarytx.edu/law/index.php?site=supremeCourtWebcasts>

If you have questions about the *Ruttiger* case, please direct them to Steve Tipton at smt1@fol.com.