



## ADVISORY NO. 474

### TOPIC: TEXAS SUPREME COURT RENDERS LANDMARK DECISION IN THE RUTTIGER (BAD FAITH) CASE

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This morning, August 26, 2011, the Texas Supreme Court reversed and rendered, in part, and reversed and remanded, in part, the case of *Texas Mutual Insurance Company v. Ruttiger*, No. 08-0751.

Texas Mutual and *Amicus* contributors made four main challenges to the bad faith cause of action. The first attack was based on the premise that Ins. Code Section 541.060 (“Unfair Settlement Practices”) does not apply to workers’ compensation cases. This statutory cause of action is the primary and most successful cause of action currently alleged by bad faith plaintiffs. The Court rules that Section 541.060 does NOT apply to workers’ compensation cases.

The Court does agree that Ins. Code Section 541.061 (“Misrepresentation of Insurance Policy”) could theoretically apply to a workers’ compensation case, but that there was no evidence of that in this case. The Court reverses and renders judgment in favor of Texas Mutual on the statutory causes of action.

The second challenge was that the DTPA does not apply to workers’ compensation cases. Because Ruttiger agreed the DTPA cause of action (as pled and submitted in this case) depended upon the validity of the Ins. Code cause of action, the Court holds Ruttiger may not recover on his DTPA claim.

The third challenge was to the validity and extent of the common-law cause action for breach of good faith and fair dealing. The focus was on whether the Court’s extension of that cause of action to workers’ compensation cases in its 1988 decision in *Aranda v. Insurance Co. of North America* should now be overruled. Four Justices agreed *Aranda* should be “overruled”; three believe *Aranda* should not be overruled; and two believe the Supreme Court should not consider the question until it is addressed by the Court of Appeals below. Because the court below did not address this issue, the Court remands this issue back to the court of appeals.

The fourth attack was designed to severely limit the damages available, should any of these

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causes of action survive. The *Ruttiger* court of appeals refused to follow other court of appeals on this damage dispute. The Supreme Court does not address this issue. Presumably, it would do so when the issue of the viability of the common-law breach of good faith and fair dealing issues are again presented.

In sum, the Court severely limits, if not entirely eliminates, the Ins. Code and DTPA causes of action in workers' compensation "bad faith" claims. Whether the breach of good faith and fair dealing cause of action survives will depend upon further consideration by the court of appeals below and further petition to the Texas Supreme Court –which will surely come. While there is still much to do, this decision is a giant leap forward in dealing with such extra-contractual claims.

We will be providing complete analysis of the case in the next FOLIO. If you have any questions in the meantime, please contact Steve Tipton at [smt1@fol.com](mailto:smt1@fol.com) or (512) 435-2162.