



ADVISORY NO. 482

TOPIC: TEXAS SUPREME COURT OVERRULES ARANDA, FINDING THE COMMON LAW GOOD FAITH AND FAIR DEALING CAUSE OF ACTION DOES NOT APPLY TO “NEW LAW” WORKERS’ COMPENSATION CLAIMS

This morning, June 22, 2012, the Texas Supreme Court issued its opinion in *Texas Mutual Insurance Co. v. Ruttiger*, No. 08-0751. In that claim, Texas Mutual asserted that Ruttiger was not entitled to assert certain statutory claims under the Texas Insurance Code and Deceptive Trade Practices Act, and under the common law cause of action of breach of good faith and fair dealing, aka bad faith.

In the Court’s original opinion issued August 26, 2011, the Court held that Ruttiger did not have causes of action under Insurance Code Sections 541.060 (unfair claims settlement), 542.003 (prompt investigations) and 541.061 (misrepresentation of policy provisions), as well as the Deceptive Trade Practices Act. The opinion on rehearing affirms the Court’s previous rulings on the statutory causes of action.

But in the original opinion, the Court remanded to the Court of Appeals the issue of the viability of the common law breach of good faith and fair dealing cause action. The 1988 opinion in *Aranda v. Insurance Company of North America* made that cause of action applicable at least to “old law” workers’ compensation cases. On rehearing, Texas Mutual and an Amici group argued that only the Supreme Court could overrule *Aranda* and that the Court should address the common law “bad faith” cause of action now. It chose to do so on rehearing.

The Court, in a 5-4 decision, overrules its opinion in *Aranda* as it applies to “new law” workers’ compensation claims. The Court rules that because of the detailed controls over claims handling and the delivery of benefits created by the 1989 Act the needs addressed by the *Aranda* Court no longer exist.

The Court rules that Ruttiger take nothing by his claim for breach of good faith and fair dealing.

We are proud to have been co-counsel for the Amici group and will be providing complete analysis of this case and the “bad faith” cause of action in the next FOLIO. If you have any questions in the meantime, please contact Steve Tipton at smt1@fol.com or (512) 435-2162.

FLAHIVE, OGDEN & LATSON