



ADVISORY NO. 484

TOPIC: RUTTIGER'S MOTION FOR REHEARING DENIED

This morning, September 21, 2012, the Texas Supreme Court denied Timothy Ruttiger's Motion for Rehearing in the landmark case of *Texas Mutual Insurance Co. v. Ruttiger*, No. 08-0751, 2012 WL 2361697 (Tex. June 22, 2012).

In its June 22, 2012 decision, the Court held Ruttiger did not have a cause of action under Insurance Code § 541.060 (unfair or deceptive acts and settlement practices) or under § 542.003 (prompt investigations). The Court held the 1989 Act now provided remedies through penalties and waiver of rights to dispute. Moreover, Ruttiger could not recover under the Deceptive Trade Practices Act since that cause of action hinges on the ability to recover under the Insurance Code.

The Court did recognize a possible cause of action under § 541.061 (misrepresentation of policy provisions). While Ruttiger had not offered legally sufficient evidence to support that claim, that possible cause of action still survives. But, this initial decision remanded the issue of the survival of the common law breach of good faith and fair dealing back to the court of appeals. That cause of action had first been extended to workers' compensation claims in the 1988 *Aranda* decision.

Upon Texas Mutual's Motion for Rehearing on June 22, 2012, the Court reaffirmed its previous decisions on the Insurance Code violations. On the most significant issue on rehearing the Court also concluded that the common law breach of good faith and fair dealing remedy as applied to workers' compensation claims did not survive the 1989 Act. Since *Aranda*, the new law provided procedures and penalties which supplanted the purposes of the cause of action.

Ruttiger then filed a Motion for Rehearing on all the holdings against him. It is that Motion the Court overruled today. The Court's June 22, 2012 decision is final.

We are proud to have been co-counsel for the insurance industry *Amici* group in support of Texas Mutual. We will be recapping the case and its impact in the next *FOLIO*. If you have any questions about these issues in the meantime, please contact Steve Tipton at smt1@fol.com or (512) 435-2162.

FLAHIVE, OGDEN & LATSON