



ADVISORY NO. 496

TOPIC: The Texas Supreme Court Affirms that the Workers' Compensation Act provides the exclusive process and remedies for claims arising out of a carrier's investigation, handling, and settling of a claim for workers' compensation benefits.

In Re Crawford & Company, Crawford & Company Healthcare Management, Inc., Patsy Hogan and Old Republic Insurance Company, Relators,
In the Supreme Court of Texas,
Cause No. 14-0256, February 27, 2015

On Friday, February 27, 2015, the Texas Supreme Court again affirmed and broadened the intended scope of its conclusion in *Texas Mutual Insurance Co. v. Ruttiger*, 381 S.W.3d 430 (Tex. 2012), that the Workers' Compensation Act provides "no alternative remedies" for claims arising out of the claims-settlement process. In doing so, the Court addresses the viability of a laundry list of claims, including misrepresentation of an insurance policy, malicious prosecution and conspiracy, and claims made by the injured worker's spouse. The Supreme Court concludes the trial court does not have jurisdiction over any of the claims, ordering the dismissal of the Johnsons' lawsuit.

Edward Johnson and his wife brought tort, contract, and statutory violation causes of action against the workers' compensation carrier and its claim services contractors, collectively known as Crawford. Johnson alleged Crawford denied and delayed workers' compensation benefits. He also alleged causes of action based upon a criminal indictment for fraud against Johnson and his wife, which arose from Crawford's investigation of Johnson's extensive claims for reimbursement of travel expenses. The investigation concluded that many of the expenses had not actually been incurred. The criminal charges were dropped by the district attorney just before that trial.

The tort causes of action brought were negligence; gross negligence; negligent, fraudulent, and intentional misrepresentation; fraud; fraud by non-disclosure; fraudulent inducement; intentional infliction of emotional distress; malicious prosecution; and conspiracy. The contract causes of action were breach of contract; quantum meruit; and breach of the common law duty of good faith and fair dealing. Johnson also alleged violation of statutory duties under the Texas

FLAHIVE, OGDEN & LATSON

Advisory No. 496

March 2, 2015

Insurance Code and the Texas Deceptive Trade Practices Act.

Relying on *Ruttiger* and its progeny, Crawford countered that the trial court had no jurisdiction since the Division has exclusive jurisdiction over all of Johnson's claims, all of which arose out of the investigation, claims handling or settlement process. The trial court dismissed the claims for breach of the common law duty of good faith and fair dealing, and for violations of the Insurance Code, but refused to dismiss the other complaints. Finding that the various causes of action claimed might well be viable upon a narrow reading of *Ruttiger*, the Amarillo Court of Appeals denied Crawford's Petition for Mandamus on various grounds, including the belief that the malicious prosecution claim was outside the workers' compensation system.

The Supreme Court agrees with Crawford that *Ruttiger* should not be read so narrowly, as the Act provides the "exclusive process and remedies for claims arising out of a carrier's investigation, handling, or settling of a claim for workers' compensation benefits."

As it had in *Ruttiger*, the Court determines the negligence, gross negligence, breach of contract, quantum meruit, breach of the duty of good faith and fair dealing, and statutory violation causes of action are barred. Johnson could not skirt that bar by couching claims handling complaints in terms of other causes of action. The Division of Workers' Compensation has exclusive jurisdiction over all complaints the substance of which arises from claims handling activities, no matter what name the complaint is given.

The *Ruttiger* Court affirmed that misrepresentation of an insurance policy under § 541.061 of the Insurance Code is still a viable statutory cause of action. The Court addresses whether common law and statutory causes of action based on allegations of deception, fraud, and misrepresentation are also not barred since the Act does not expressly exclude such claims. The Court affirms that the Division has exclusive jurisdiction over any alleged misrepresentation occurring in the claims handling and settlement context.

Finally, the Court addresses Johnson's argument that his wife was not barred by *Ruttiger* from bringing causes of action for malicious prosecution, intentional infliction of emotional distress, quantum meruit, and breach of contract, since she was not an employee of the insured employer. The Court observes that her claims, like her husband's, arose out of Crawford's conduct in investigating, handling, or settling the workers' compensation claim, and are barred as well.

Conclusion: The Workers' Compensation Act provides the exclusive process and remedies for disputes arising out of a carrier's investigation, handling, or settling of a claim for workers' compensation benefits. In so concluding, the Texas Supreme Court relies upon jurisdictional grounds that cannot be waived, and can be raised at any time during a dispute. The Court did not deem it necessary to reach the exhaustion of administrative remedies issues the basis of

American Motorists Ins. Co. v. Fodge, 63 S.W.3d 801 (Tex. 2001). This opinion was issued by the Court, *per curiam*, without requesting oral argument, and in a mandamus proceeding demonstrating the depth of the Court's conviction that the courts do not have jurisdiction over such issues arising from the investigation, handling or settlement of workers' compensation claims.