

# ALERT

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## **Texas Supreme Court Revisits *Ruttiger* Extracontractual Liability in Workers' Compensation Claims All But Vanquished**

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On June 22, 2012, the Texas Supreme Court, in *Texas Mutual Insurance Company v. Ruttiger*, withdrew its original August 26, 2011 opinion, substituting it with an opinion that even further limits a claimant's extra-contractual rights in a workers' compensation matter. *Texas Mutual Insurance Company v. Ruttiger*, --- S.W.3d ---, 2012 WL 2361697 (Tex.2012). On September 21, 2012, rehearing was denied, making this opinion final. The court's new opinion overrules its 1988 *Aranda v. Insurance Co. of North America* decision, 748 S.W.2d 210 (Tex.1988), which created the bad faith claims handling tort in workers' compensation.

### **Background**

Timothy Ruttiger sought workers' compensation benefits after an on-the-job injury he sustained while carrying a pipe and was diagnosed with bilateral inguinal hernias. Texas Mutual, the workers' compensation carrier, initially denied the claim as non-compensable, but later entered into a benefit dispute agreement agreeing to pay workers' compensation benefits. Claiming that Texas Mutual delayed his income payments and medical treatment, Ruttiger filed both common law and statutory bad faith causes of action. Ruttiger asserted that because his claim was initially denied, even though later paid under Workers' Compensation Division (WCD) rules, Texas Mutual committed statutory and common law bad faith giving rise to extracontractual liability. According to Ruttiger's lawsuit, the insurer's unreasonable delay damaged his credit, exacerbated his injury, and caused mental anguish, physical impairment, and pain and suffering over and above what he would have suffered had Texas Mutual timely accepted liability and provided medical and indemnity benefits. Notably, Ruttiger did not claim that Texas Mutual had failed to comply with the parties' benefit dispute

agreement or properly pay income and medical benefits after the benefit review conference.

### **Exhaustion of Remedies**

Initially, the Texas Supreme Court rejected Texas Mutual's contention that Ruttiger did not exhaust his administrative remedies by not continuing through all four possible dispute resolution steps. The court found that insofar as the parties had engaged in a benefit review conference and entered into a benefit dispute agreement that the WCD approved, there were no remaining disputed issues to be resolved. The court further observed that the Texas Workers' Compensation Act (the Workers' Compensation Act) does not require a claimant to seek review of issues not in dispute. Thus, the court held, a benefit dispute agreement can confer a district court with subject matter jurisdiction over the issues resolved.

### **Unfair Settlement Practices – Texas Insurance Code Section 541.060**

The Texas Supreme Court then examined the interplay of the Texas Insurance Code and the Workers' Compensation Act. In so doing, the court considered the purposes, policies, procedural requirements and remedies of each statute in order to determine whether the Texas Legislature intended to provide two different remedies to injured workers. Upon its review, the court found that a cause of action under Texas Insurance Code section 541.060 is incompatible with the provisions of the current Workers' Compensation Act.

According to the court, the Workers' Compensation Act and WCD rules (1) set specific deadlines and procedures for paying and denying workers' compensation claims, and (2) impose administrative penalties for failing to comply with

them. The court noted, “Permitting a workers’ compensation claimant to additionally recover by simply suing under general provisions of Insurance Code section 541.060 would be inconsistent with the structure and detailed processes of the Act.” The court continued, “[i]t is conceptually untenable that the Legislature would have erected two alternative statutory remedies, one that enacts a structured scheme ... and carefully constructs rights, remedies and procedures ... and one that would significantly undermine that scheme.” Thus, the court ruled that allowing recovery under the Insurance Code would be inconsistent with what the Legislature deemed to be adequate protections for workers. It further noted that such a recovery could reward an employee who is dilatory in utilizing the Workers’ Compensation Act’s detailed dispute resolution procedures, regardless of whether the delay was intentional or inadvertent.

#### **Standards for Prompt Investigation of Claims – Texas Insurance Code Section 542.003**

Using the same logic, the Texas Supreme Court addressed whether there is a viable extracontractual cause of action under Insurance Code section 542.003(a), (b)(3) based on an insurer’s failure “to adopt and implement reasonable standards for prompt investigation of claims.” The court held, in light of the substantive and procedural requirements built into the Workers’ Compensation Act, the detrimental effects on insurers flowing from, and the penalties that can be imposed for a failure to comply with those requirements, the Legislature did not intend for workers’ compensation claimants to have a cause of action under the general provision of section 542.003.

#### **Misrepresentation of a Policy – Texas Insurance Code Section 541.061**

Turning to Ruttiger’s cause of action under Texas Insurance Code Section 541.061 alleging misrepresentation of an insurance policy, the court found that unlike Section 541.060, Section 541.061 does not specify that it applies in the context of settling claims. As such, the court determined Section 541.061 is not at odds with the dispute resolution process of the workers’ compensation system. Accordingly, the court concluded a cause of action could arise for violation of

Insurance Code Section 541.061 during the adjustment of a workers’ compensation claim.

As to the facts before it, the court held the evidence presented was insufficient to support a finding that Texas Mutual misrepresented its policy, and Ruttiger did not allege Texas Mutual had made any untrue statements that misled him. Instead, the parties’ dispute centered on the question of whether Ruttiger was injured in the course of his employment. The Texas Supreme Court placed emphasis on the fact that the dispute between Ruttiger and Texas Mutual was over whether Ruttiger’s claim was factually within the policy’s terms – whether he was injured on the job – and not over any of Texas Mutual’s policy terms. Because there was no evidence to support a finding that Texas Mutual violated Texas Insurance Code Section 541.061 by misrepresenting its insurance policy, this extracontractual cause of action failed.

#### **Deceptive Trade Practices Act**

Recognizing Ruttiger’s admission that his claim under Texas’s Deceptive Trade Practices Act (DTPA) depended on the validity of his Insurance Code claim, the court held such dependent DTPA claims were likewise not viable.

#### **Common Law Duty of Good Faith and Fair Dealing**

Finally, the court in revisiting the cause of action for the common law duty of good faith and fair dealing concluded that the issue was ripe for its decision. The court held an injured employee may not assert a common-law claim for breach of the duty of good faith and fair dealing against a workers’ compensation carrier and overruled its decision in *Aranda*.

In *Aranda*, the court held an injured employee is entitled to assert a claim against a workers’ compensation carrier for breach of the duty of good faith and fair dealing based on the parties’ disparity in bargaining power and other factors. In overruling *Aranda*, the court found that the public policy concerns addressed by the *Aranda* court were remedied when the Texas Legislature enacted the 1989 Workers’ Compensation Act. Moreover, the plurality proposed a common law bad faith claim operates outside the WCD’s administrative processes and other remedies in

the Workers' Compensation Act and is in tension with – and in many instances works in direct opposition to – the Workers' Compensation Act. The court found that the Act effectively eliminates the need for a judicially imposed cause of action outside the administrative processes and other remedies in the Act. Recognizing and respecting the Legislature's prime position in enacting, studying, analyzing and reforming the system, the court concluded *Aranda* should be overruled.

### **Conclusion**

With *Ruttiger*, the Texas Supreme Court substantially curtailed a workers' compensation claimant's extracontractual remedies. Although it did not go as far as holding that the Texas Workers' Compensation Act is the exclusive remedy for all work-related injuries, the only remaining bad faith claim against a workers' compensation insurer is a claim under Texas Insurance Code Section 541.061 for a misrepresentation of the policy.

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