

ALERT

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TEXAS SUPREME COURT SEVERELY LIMITS EXTRACTIONAL LIABILITY IN WORKERS' COMPENSATION CLAIMS

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On August 26, 2011, in a highly anticipated decision, the Texas Supreme Court held in *Texas Mutual Insurance Company v. Ruttiger* that: (1) claims against workers' compensation insurers for unfair settlement practices *may not be made* under the Texas Insurance Code; but (2) claims under the Texas Insurance Code *may be made* against workers' compensation insurers which misrepresent provisions of their policies. Of critical import, however, the court emphasized that an insurer which merely disputes a claim likely has not made a misrepresentation. Finally, the court remanded to the court of appeals the issue of whether a cause of action for breach of the common law duty of good faith and fair dealing arising from an insurer's adjustment and handling of a workers' compensation claim may be asserted.

Background

Like many recent Texas workers' compensation claimants, 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 extra-contractual 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 that, "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 that, "[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 that, 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 that Section 541.061 is not at odds with the dispute resolution process of the workers' compensation system. Accordingly, the court concluded that 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 that Texas Mutual had made any untrue statements that misled him. Instead, the parties' dispute centered on the seminal 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 that such dependent DTPA claims were likewise not viable.

Common Law Duty of Good Faith and Fair Dealing¹

Finally, the court was unable to reach a consensus on Ruttiger's cause of action for breach of the common law duty of good faith and fair dealing. While a plurality of four justices ruled that its prior decision in *Aranda v. Insurance Co. of North America* should be overruled, three justices disagreed, while two abstained. In light of this, the court remanded to the appellate court for further proceedings.

In *Aranda* the court held that 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 opining that *Aranda* should be overruled, the plurality 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 that 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 plurality further noted that the tension arises because the extrastatutory cause of action provides incentive for an injured worker to delay using the Workers' Compensation Act's provisions for immediate relief, as happened in Ruttiger's case. At the same time, the plurality found that if such a claim was allowed, insurers would be discouraged from contesting suspect or questionable claims and medical treatments because of the possibility of unpredictably large damage awards if the insurer was wrong.

In dissenting, three justices reframed the issue as whether the Legislature *intended* to abrogate a common law bad faith cause of action when it enacted the 1989 Workers' Compensation Act. Insofar as the dissenters did not find support for the plurality's position in the Act's legislative history, it concluded that the Legislature intended to limit, but not abrogate, *Aranda*-type claims. Further, the dissent opined that the existence of administrative penalties that can be assessed against workers' compensation carriers does not mandate a contrary result.

Interestingly, the plurality agreed with the dissenters' finding that the Legislature did not intend to abolish the common law duty of good faith and fair dealing. Despite this, the plurality

¹ It is noteworthy that a cause of action for a breach of the common law duty of good faith and fair dealing, unlike a violation of the Texas Insurance Code or Deceptive Trade Practices Act, does not provide for attorneys' fees and is subject to the Texas punitive damages cap.

concluded that the dissent misinterpreted the Legislature's intent, insofar as "[t]here is no language in the [1989 Act] to indicate the Legislature intended to ratify or approve the *Aranda* action." Thus, *Ruttiger* is not finished and there is more to be heard from the Texas courts.

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, in remanding to the court of appeals, it left a large question looming. Moreover, a cause of action based under Texas Insurance Code Section 541.061 for a misrepresentation of a policy or even at common law under *Aranda*, should it withstand the court of appeals' additional analysis, leaves a claimant with a difficult burden of proof.

Needless to say, insurers issuing workers' compensation policies in Texas should immediately review all outstanding extracontractual lawsuits brought by Texas claimants and seek to have dismissed any unfair settlement practices claims under Insurance Code Section 541.060 or 542.003 and any dependent

DTPA causes of action. They also should have their counsel re-evaluate the viability of pending policy misrepresentation claims under Texas Insurance Code Section 541.061. Equally important, such insurers should be on the look-out for amendments to those lawsuits, as claimants who have not asserted causes of action based on Section 541.061 and *Aranda* likely will do so. Further, they should not totally rule out the possibility of either a creative DTPA claim – one that does not rely on the validity of a claimant's insurance code-based cause of action, or a claim that alleges fraud. At the same time, insurers should be mindful that Texas claimants very well may begin notifying the WCD of alleged administrative violations that could render the insurer accountable for penalties, or if brought by a claimant for violation of an order, attorneys' fees and 12 percent of the amount of benefits recovered in a judgment.

To discuss any questions you may have regarding the opinion addressed in this Alert, or how it may apply to your particular circumstances, please contact Alicia Curran (acurran@cozen.com or 214-462-3021).