



The Weekly Update of Texas Insurance News

# TEXAS INSURANCE LAW NEWSBRIEF



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## **TEXAS SUPREME COURT OVERRULES ARANDA; ELIMINATES COMMON LAW BAD FAITH CLAIMS AGAINST WORKERS' COMPENSATION CARRIERS**

On Friday, the Texas Supreme Court decided *Texas Mut. Ins. Co. v. Ruttiger*, No. 08-751, 2011 WL 2361697, --- S.W.3d --- (Tex. June 22, 2012), withdrawing and superseding its opinion from last August, when the Court decided that worker's compensation insurers are not subject to statutory claims for unfair settlement practices under the Texas Insurance Code. In its original opinion, the Court did not reach the question regarding whether common law bad faith claims were still viable in the worker's compensation context following the legislature's wholesale revision of the Texas worker's compensation scheme in 1989.

The Texas Supreme Court granted the motions for rehearing filed by both Ruttiger and Texas Mutual Insurance Company ("TMIC"), overruled *Aranda v. Insurance Co. of North America*, 748 S.W.2d 210 (Tex. 1988), and held that 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. As it did in its original opinion, the Texas Supreme Court also held that claims against workers' compensation insurers for unfair settlement practices may not be made under the Texas Insurance Code, but claims under the Texas Insurance Code may be made against those insurers for misrepresenting provisions of their policies, although in this case the Court found no evidence the insurer did so.

In overruling *Aranda* and holding that workers' compensation claimants may not assert a common-law claim for breach of the duty of good faith and fair dealing, the Court examined the reasons for its holding in *Aranda* to allow such a claim outside the workers' compensation dispute resolution system: (1) the disparity of bargaining power between compensation insurers and employees, (2) the exclusive control that an insurer exercises over processing of claims, and (3) arbitrary decisions by carriers to refuse to pay or delay payment of valid claims leave the injured employees with no immediate recourse. The Court concluded the Legislature substantially remedied those deficiencies with its revisions to the Act in 1989 such that the Act effectively eliminated the need for a judicially imposed cause of action outside the administrative processes and other remedies in the Act.

The Court also determined that the provisions of the current version of the Workers' Compensation Act, as amended by the Legislature in 1989, indicate legislative intent that its provisions for dispute resolution and remedies for failing to comply with those provisions in the workers' compensation context are exclusive of those in section 541.060. Likewise, the Court found the Legislature did not intend for workers' compensation claimants to have a cause of action against the carrier under the general provision of section 542.003 related to a carrier's failure to adopt and implement reasonable standards for prompt investigation of claims arising under its policies.

The Court concluded section 541.061, on the other hand, was not at odds with the dispute resolution process of the workers' compensation system. Section 541.061, which prohibits misrepresentations of insurance policies, did not specify that it applies in the context of settling claims. Nevertheless, the Court ruled there was insufficient evidence to support a finding that TMIC misrepresented its policy in this case as Ruttiger had not pointed to any untrue statement made by TMIC regarding the policy or any statement about the policy that misled him. The dispute between Ruttiger and TMIC was over whether Ruttiger's claim was factually within the policy's terms – whether he was injured on the job. Thus, while the Court disagreed with TMIC's assertion that Ruttiger's claim under section 541.061 was precluded by the Workers' Compensation Act, it agreed with TMIC's legal sufficiency challenge to the evidence supporting a finding based on section 541.061.

## **FEDERAL DISTRICT COURT GRANTS INSURER'S MOTION FOR SUMMARY JUDGMENT FINDING EARTH MOVEMENT AND WATER EXCLUSIONS UNAMBIGUOUSLY APPLIED TO CLAIM**

Last Monday, Judge David Hittner of the Southern District of Texas, granted Hartford Lloyd's Insurance Company's motion for summary judgment on all claims brought by its insured, Texas Renegade Construction Company, Inc., in *Texas Renegade Construction Company, Inc. v. Hartford Lloyd's Insurance Company*, C.A. No. H-11-1730 (S.D. Tex. June 18, 2012) (Hittner, J.).

Hartford insured a commercial building owned by Plaintiff Texas Renegade. A leak was discovered in an underground water pipe connected to a city main and leading to the building that had caused a large pooling of water on the property grounds near the building. Repairs were made and the water leak ceased. Nearly two years later, Plaintiff began noticing foundation and structural damage, which Plaintiff attributed to the underground water leaks. Plaintiff made a claim. Hartford's outside claims representative inspected the building and concluded that the damages were consistent with and caused by a leak under the ground in the main water supply, which had caused the surrounding soil to heave. Consequently, Hartford denied Plaintiff's claim, citing various exclusions under the Hartford policy.

On the same day as the inspection of the building by Hartford's outside claims representative, Plaintiff sued Hartford in state court alleging various claims, including breach of contract and violations of the Texas Deceptive Trade Practices Act and the Texas Insurance Code. Hartford removed the case to federal court and moved for summary judgment on all contractual and extra-contractual claims. Plaintiff filed its own motion for partial summary judgment on coverage, which the court denied.

The court found that two of the exclusions Hartford relied upon - the Earth Movement and Water exclusions – unambiguously excluded coverage. Specifically, the claimed foundation and structural damage to the building was caused by an underground water leak that oversaturated the soil surrounding the building causing it to heave, which then resulted in the claimed foundation and structural damage. The court concluded this series of events fell within the plain language of the Earth Movement and Water exclusions. The court rejected Plaintiff's contention that these exclusions only applied when the damage is the product of natural events rather than man-made or artificial events such as leaking water pipes. Relying on the exclusions' lead-in statement that states such losses were excluded regardless of any other cause or event that contributes concurrently or in any sequence to the loss, the court found the plain language of the Earth Movement and Water exclusions, combined with the lead-in statement, unambiguously and independently operated to exclude coverage. The court also ruled Plaintiff's DTPA and Texas Insurance Code causes of action, as well as its other causes of action, failed as a matter of law.

**Editor's Note:** MDJW congratulates Hartford on this summary judgment. Robert Dees, Julie Kirkendall, and Leslie Pitts of MDJW represented Hartford in this matter.

## **HARRIS COUNTY DISTRICT JUDGE GRANTS INSURER'S MOTION FOR SUMMARY JUDGMENT ON LIMITATIONS IN HURRICANE IKE CASE**

In *Theodore Herring et al v. Homeowners of America Insurance Company et al*, Harris County District Judge Mike Miller granted summary judgment in favor of an insurer in a Hurricane Ike case, dismissing all but the plaintiff's claims for fraud and conspiracy. Following Hurricane Ike, Homeowners of America Insurance Company ("HOAIC") proceeded with adjustment of the claim, and issued payment in two checks along with a final claims decision on October 14, 2008. There was no further contact from the insureds until suit was filed on January 21, 2011. In the litigation, HOAIC moved for summary judgment based on its two-year contractual limitations period and the two year limitations provided by the Texas Insurance Code. Plaintiffs – represented by the Mostyn Law Firm – responded with affidavits and check receipts indicating that they had not cashed the checks until January 7 and January 26, 2009. These responses directly contradicted their prior verified interrogatory responses indicating that the checks had been received "on or about October 13, 2008." HOAIC argued that regardless of when the checks were issued or cashed, the insureds knew or should have known of its final claims decision on October 14, 2008. Following oral argument, the Court granted summary judgment as to Plaintiff's claims for breach of contract, common law bad faith, and violations of Texas Insurance Code sections 541 and 542.

**Editor's Note:** Jeff Farrell and Christopher Avery of our firm had the privilege of representing HOAIC in this case. We congratulate HOAIC on this victory, appreciate its willingness to move for summary judgment, and recognize the invaluable assistance provided by the entire HOAIC team during briefing and argument of this motion.

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