

TEXAS INSURANCE LAW NEWSBRIEF

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AUSTIN COURT OF APPEALS AFFIRMS DISMISSAL OF EC AGAINST COMP CARRIER BASED ON PREEMPTION

Last week, the Austin Court of Appeals affirmed a trial court's granting of summary judgment in favor of a worker's compensation insurance carrier. In *Donna Hopper, et al. v. Argonaut Insurance Company, et al.*, No. 03-12-00734-CV, Tex. App.—Austin, Oct. 18, 2013, Plaintiffs sued Argonaut Insurance Company for falsely disputing and improperly delaying processing of their claims for worker's compensation death benefits.

Plaintiffs were the widow and children of a worker that suffered a wrist injury in 2004. Plaintiffs filed a claim for workers' compensation death benefits asserting the worker became addicted to and overdosed on pain medications which had been prescribed as a result of his wrist injury. Plaintiffs alleged Argonaut mishandled and unreasonably delayed payment of their claims by suggesting the worker intentionally overdosed on pain medication and the Plaintiffs were not the workers legal beneficiaries. Plaintiffs further argued Argonaut failed to control the medications prescribed to the worker and failed to offer the worker a detoxification program for drug abuse, which had been recommended by his treating physician.

Argonaut disputed Plaintiffs' claims for benefits and filed notices of disputing coverage with the Workers' Comp Division of the Texas Department of Insurance. Two years after the worker's death, the disputed claims were resolved following a Benefit Review Conference and the execution of a Benefit Dispute Agreement in which it was determined the wife and children of the worker were his intended beneficiaries, and the worker's wrist injury was the producing cause of his death.

After the administrative determination, Plaintiffs filed suit against Argonaut alleging common-law claims for fraud, negligent misrepresentation, unconscionability, common law bad faith, and statutory claims under the Texas Insurance Code and Deceptive Trade Practices Act (DTPA) for failure to comply with the Texas' Comp Act.

The trial court granted Argonaut's Motion for Summary Judgment based on the decision in *Texas Mutual Insurance Co v. Ruttiger*, 381 S.W.3d 430 (Tex. 2012). The Austin Court of affirmed the trial court's application of *Ruttiger* noting the Texas Supreme Court abolished the common-law duty of good faith and fair dealing in workers' compensation cases and held the provisions of the Comp Act govern dispute resolution and provide remedies for an insurer's failure to comply with its provisions which are exclusive of independent causes of action based on unfair claims-settlement practices.

The Court evaluated each of Plaintiffs' causes of action and noted Plaintiffs' Insurance Code claims could potentially exist had Argonaut misrepresented the terms of the policy. However, like *Ruttiger*, there was no evidence of any misrepresentation of the policy. Rather, Plaintiffs alleged Argonaut's misrepresentations concerned whether the worker's death resulted from a compensable injury and whether the worker's family members were beneficiaries. The Court concluded these disputes were resolved during the administrative BRC.

The Court also applied the holding in *Ruttiger* to Plaintiffs' common-law claims for fraudulent and negligent misrepresentation because there was no evidence of fraudulent or negligent conduct outside of the claim-settlement process. The Court noted that the Worker's Compensation Act effectively eliminated the need for judicially imposed causes of action outside of the administrative process. The Court further held that because the Plaintiffs' claims and supporting evidence were limited to complaints about delays, claim handling and complaints regarding the entitlement of benefits, and because *Ruttiger* eliminated all common law causes of action in this area, summary judgment was proper.

Wayne Pickering - Presenter



Our next First Friday will be held on November 1, 2013 at noon **Central Time**.

Wayne Pickering, a partner in the Houston office, will present Legislative Changes to Surplus Lines Insurance Regulations. Legislation from the 2013 Regular Session of the Texas Legislature significantly revises Chapter 981 of the Texas Insurance Code regarding several aspects of surplus lines insurance regulation. This legislation brings Texas into compliance with the mandates imposed by Congress in the “Non-Admitted and Reinsurance Reform Act” (NARRA) of 2010 in regulating surplus lines insurance. This presentation summarizes pertinent parts of the Texas legislation and NARRA that most significantly impact Texas insurers. Several potential issues are likely to arise as to the interpretation of this legislation. These issues are likely to transcend state boundaries, however, and may be issues for insurers in all states to consider.

Mr. Pickering’s legal experience includes many years of experience at both the trial and appellate level in numerous facets of insurance litigation, including coverage issues, bad faith and extra-contractual claims, as well as litigating professional liability claims against insurance agents, brokers and claims adjusters. Mr. Pickering’s experience also includes the representation of automobile manufacturers and manufacturers of commercial equipment and consumer products in products liability actions and warranty claims. Mr. Pickering also has authored or co-authored numerous articles and edited treatises in the field of insurance law.

We have applied to the Texas Department of Insurance for one hour of Texas CE credit. Insurance professionals accredited by the Texas Department of Insurance should have their license number available during the training in order to request credit for the course.

Register for this webinar at: <https://student.gototraining.com/r/8614551911724824576>. After registering you will receive a confirmation email containing information about joining the training. We have a limit of 200 participants for the webinar.