

*Texas Mutual v. Ruttiger: The  
End of Aranda and Worker's  
Compensation Bad Faith?*

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# Insurance Bad Faith – What Is It?



An intentional dishonest act evidenced by one party not fulfilling a legal or contractual obligation, or by misleading another, entering into an agreement without the intention or means to fulfill it, or violating basic standards of honesty in dealing with others.

# *Aranda v. North American Ins. Co.* (1988)

- Established duty on the part of workers' compensation carriers
- Carriers must **deal fairly and in good faith** with injured employees in the processing of claims

# *Aranda's Progeny*

In the aftermath of the birth of workers' comp bad faith litigation, several major appellate cases upheld sizeable awards of "bad faith" damages against workers comp carriers.

# Workers' Compensation Reform

- After *Aranda*, the Joint Select Committee of the 71<sup>st</sup> Texas Legislature recommended a complete overhaul of the workers' compensation system.
- These recommendations were adopted by the 72<sup>nd</sup> Legislature in 1989 and signed into law by Gov. Ann Richards.

# A Bargain is Struck

- To combat rising costs and declining health care services available to workers, the Legislature created the basic framework of the workers compensation system used today.
- Health care is liberally granted
- Disputes over coverage are handled administratively through the TDI-Workers Comp Division

# A Bargain is Struck

- In exchange for providing expanded and relatively uniform care, the Legislature provided that subscribers to the workers' compensation system were essentially immune from civil litigation and that the dispute resolution process provided under the Texas Labor Code was the "exclusive remedy."

# Texas Labor Code

## Sec. 408.001-408.222

- Recovery is the exclusive remedy for an injured employee's work related injury
- Benefits are also payable to beneficiaries of deceased employee



# Post Reform – 1990s

- Following the passage of workers compensation reform in 1989, the 1990's showed a dramatic decrease in the amount of WC bad faith suits.
- Many believe that this is due to the perceived effect of the “exclusive remedy” provision contained in Section 408 of the Labor Code.
- It is important to note that no judicial decision ever overturned *Aranda* in light of the 1989 reforms.

# 2000's: Bad Faith Returns

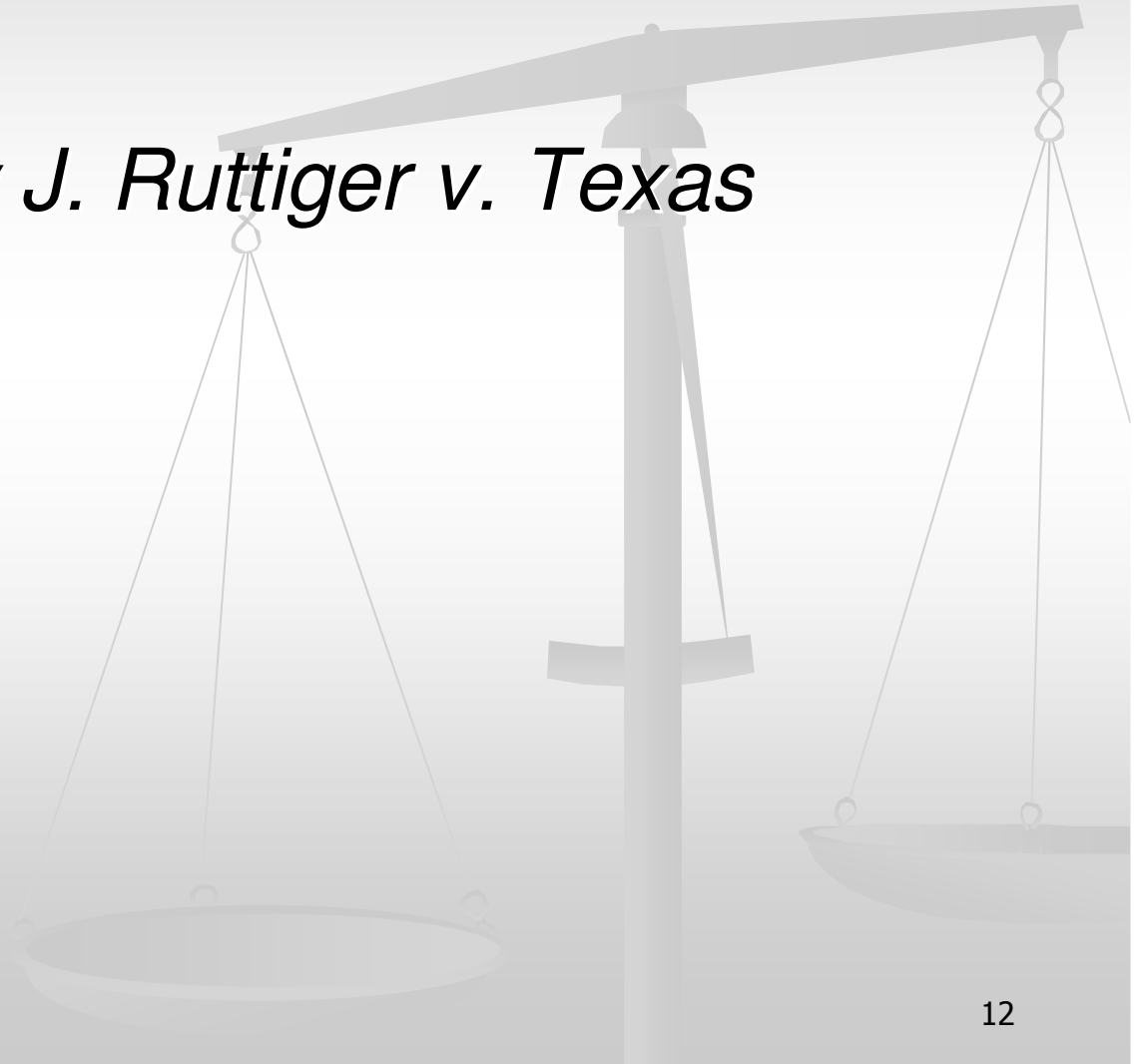
- The tide turned in the late 1990's.
- By the mid 2000's, the number of large settlements and jury awards to plaintiffs showed a dramatic rise.
- Success in workers' compensation bad faith case became more frequent.

# The Turning Tide

- **1999** -- *Steve W. Killion v. Cigna Insurance Co.*  
\$1,877,189
- **2001** -- *Mark Bennett v. Security Insurance Co.*  
\$1,300,000
- **2006** -- *P. Lance Morris v. Tex. Mutual Ins. Co.*  
\$250,000
- **2006** -- *Lloyd Snyder v. Christus Health Gulf Coast*  
\$4,332,799
- **2008** – *Priddy v. Commerce & Industry Ins. Co.*  
\$400,000

# Including This Verdict...

- **2006** -- *Timothy J. Ruttiger v. Texas Mutual Ins. Co.*  
**\$385,000**



# Ruttiger Facts

- June 2004 – Ruttiger claimed a work place injury
- TMIC initiated temporary income benefits and began investigating the claim
- Ruttiger's co-workers claimed he was injured playing softball, not at work
- TMIC's claims adjuster spoke to Ruttiger once and did not review his medical records
- July 12, 2004 – TMIC denied the claim, notified Ruttiger of the denial and discontinued benefits

# Ruttiger Facts – (cont.)

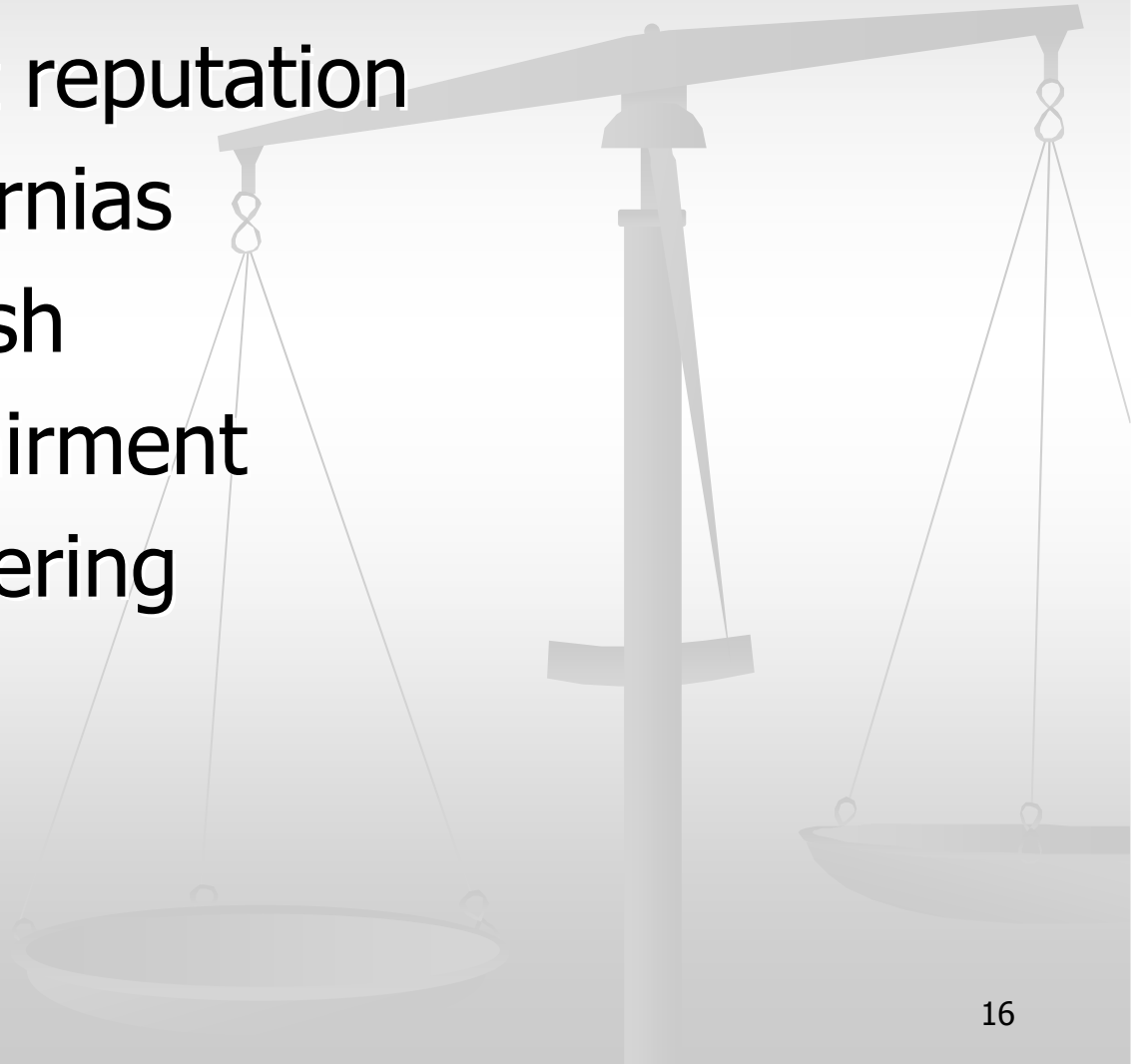
- October 22, 2004 – Ruttiger requested a Benefit Review Conference (BRC)
- January 6, 2005 – BRC held. Ruttiger and TMIC entered into benefit dispute agreement agreeing the injury was compensable
- TMIC resumed paying benefits and paid for Ruttiger's hernia surgery
- June 16, 2005 – Ruttiger filed suit while the claim was pending before the Div. of Workers' Compensation (DWC)
- August 1, 2005 – Ruttiger reached MMI with 1% impairment rating

# Allegations

- Ruttiger alleged the delay in his treatment was a violation of:
  - Tex. Ins. Code § 21.21 (Now Ins. Code 541);
  - The common law duty of good faith and fair dealing (*Aranda*); and
  - DTPA Sec. 17.41 - .63

# Claims for Damages

- Loss of credit reputation
- Worsened hernias
- Mental anguish
- Physical impairment
- Pain and suffering





# Trial Court Proceedings



- Jury based its verdict on the Ins. Code violations and found TMIC:
  - Breached its duty of good faith and fair dealing;
  - Committed unfair and deceptive trade practices; and
  - Knowingly engaged in unfair and deceptive acts.

# Trial Court Award

- \$183,500.00 for:
  - Past physical impairment
  - Past and future pain and suffering
  - Past and future loss of credit reputation
  - Past mental anguish
  - “additional damages”
  - Attorneys’ fees

# Court of Appeals

- Reversed the damages for loss of credit reputation only
- Affirmed other aspects of trial court judgment under the Ins. Code
- Did not address whether Ruttiger could recover for DTPA and common law claims

# Texas Supreme Court



- Exhaustion of Remedies
- Tex. Ins. Code § 541.060 – “Unfair Methods of Competition and Unfair or Deceptive Acts or Practices”
- Tex. Ins. Code § 541.061 – “Misrepresentation of Insurance Policy”
- Tex. Ins. Code § 542.003 – “Unfair Claim Settlement Practices Prohibited”
- Deceptive Trade Practices Act
- Good Faith and Fair Dealing

# Exhaustion of Remedies



- Ruttiger and TMIC entered into a binding benefit dispute agreement at the BRC
- The agreement addressed income and medical benefits and was approved by the DWC
- There were no additional pending disputes between Ruttiger and TMIC
- Ruttiger exhausted his administrative remedies, giving the trial court jurisdiction over the suit

# Ins. Code § 541.060: Unfair Settlement Practices

- Misrepresentation of a material fact or provision relating to coverage
- Failure to effectuate a prompt, fair, and equitable settlement in good faith
- Failure to promptly provide claimant a reasonable explanation for the denial of the claim or offer of compromise settlement of a claim

# Ins. Code § 541.060

- A cause of action under this section is “incompatible with the provisions” of the Workers Compensation Act.
- The Act provides detailed processes and deadlines for carriers to handle claims disputes.
- Penalties and sanctions under the Act help enforce a carrier’s compliance with the Act’s requirements.

# Ins. Code § 541.060

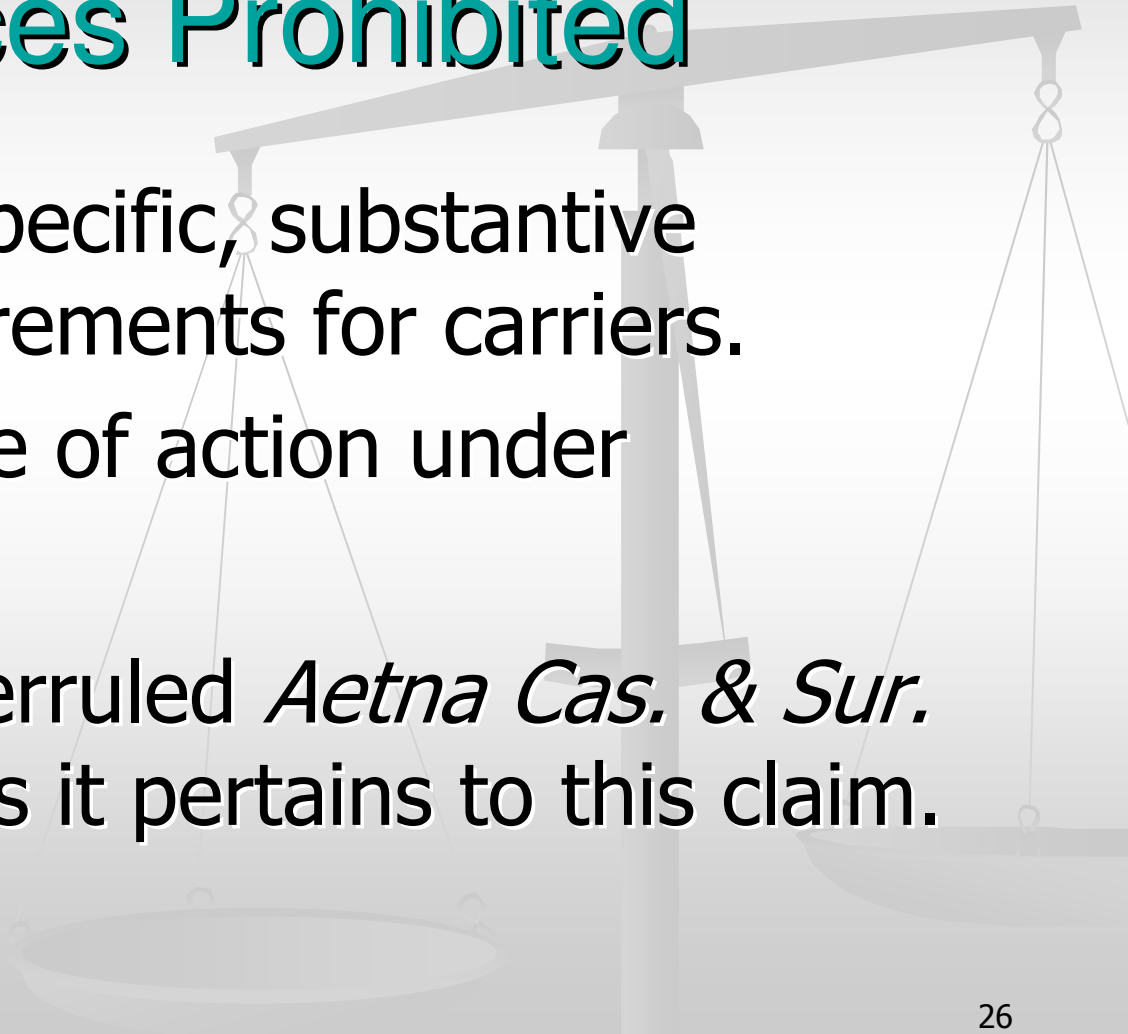
- Ruttiger based his claims on delay of his benefits and surgery.
- Ruttiger waited 3 months to seek an administrative resolution of his claim (BRC hearing)
- Ruttiger and TMIC entered into a benefit dispute agreement
- Ruttiger had not yet reached MMI or received an impairment rating – so his claim was not settled.



# Ins. Code § 541.060

- The Workers Compensation Act (WCA) dispute resolution provisions are in conflict with Ins. § 514.060
- The WCA provisions are exclusive of those in § 541.060
- There was no cause of action under the Ins. § 541.060

# Ins. Code § 542.003: Unfair Claim Settlement Practices Prohibited



- WCA provides specific, substantive procedural requirements for carriers.
- There is no cause of action under § 512.003
- Tex. Sup. Ct. overruled *Aetna Cas. & Sur. Co. v. Marshall* as it pertains to this claim.

# Tex. Ins. Code § 541.061: Misrepresentation of Ins. Policy

- It is an unfair or deceptive act to:
  - Make an untrue statement of material fact
  - Fail to state a material fact that makes other statements misleading
  - Make a statement in a way that leads an insured to a false conclusion of material fact

# Ins. Code § 541.061

- §541.061 does not specify that it applies to settling claims
- It is not at odds with the DWC dispute resolution processes
  - TMIC denied the claim based on Ruttiger not being injured at work – which was within the policy terms
  - Ruttiger had no evidence of untrue statements
- Court reversed the lower court award based on insufficient evidence to support the judgment

# DTPA

- Ruttiger based his DPTA claim on his Insurance Code claims.
- Because the Insurance Code claims are reversed, there is no recovery under DTPA

# Good Faith and Fair Dealing

- TMIC argued that *Arnold* and *Aranda* were not warranted because of the provisions of the Workers Compensation Act.
- *Arnold* - 1987: the relationship between insurer and insured requires a duty of good faith and fair dealing
- *Aranda* - 1988: Insureds may bring actions against insurers for breach of this duty
- WCA - 1989: Remedied the disparity and deficiencies that provided the basis for *Arnold* and *Aranda*

# Workers' Compensation Act

- Reduces the disparity between insurers and employees
- Removes insurers' exclusive control over processing claims
- Negates the insurers' ability to unreasonably delay claims
- Provides employees information and an ombudsman program to navigate the claim process
- Provides remedies and penalties if insurers fail to pay benefits promptly

# TMIC Seeks to Overturn *Aranda*

- *Aranda* operates outside the administrative processes provided under the Act
- *Aranda* creates tension between the goals and processes of the Act
- Actions under *Aranda*:
  - expose insurers to continued risk of liability,
  - inflate costs for all parties,
  - discourage insurers from contesting questionable claims because of the risk of large damage awards.
- The Act eliminates the need for *Aranda* actions outside the administrative processes



# Supreme Court Opinion

- Join in Parts I, II, III, IV and VI of Opinion

- Hecht
- Wainwright
- Medina
- Johnson
- Willett
- Guzman

- Join in Part V of Opinion

- Hecht
- Wainwright
- Medina
- Johnson

6 justices agreed to remand the case to the Court of Appeals for a decision on whether TMIC breached its duty to Ruttiger.

# Concurrence

- Remand to Court of Appeals for decision on whether the Act precludes common-law, *Aranda* “good faith and fair dealing” claims
  - Willett
  - Guzman

# Dissent

- The Act is not exclusive of extra-contractual claims.
- The Act precludes actions against the employer, *not* the insurer, for separate misconduct claims and damages.
  - Jefferson
  - Green
  - Lehrmann

# Conclusion



- § 541.060 – no cause of action
- § 541.061 – cause of action allowed
- § 542.003 – no cause of action
- DTPA – claims are reliant on Ins. Code claims
- Good faith and fair dealing – remanded to COA for further proceedings.
  - 4 justices would disallow *Aranda*-style good faith and fair dealing extra-contractual actions and overturn *Aranda*;
  - 2 justices waiting on COA;
  - 3 justices would allow good faith and fair dealing extra-contractual actions

# Ruttiger Moves for Re-Hearing

- Ruttiger's Motion for Rehearing was granted on October 11, 2011 by the Supreme Court
- The second Ruttiger opinion was issued by the Court on June 22, 2012

# Three Issues in Ruttiger II:

- The opinion drafted by Justice Johnson stated that there were three main issues to be determined:
  - 1: Can claims be made against WC insurers for unfair settlement practices under the Insurance Code?
  - 2: Can claims be made against WC insurers for misrepresenting policy provisions under the Insurance Code?
  - 3: Is *Aranda* still valid?

# Three Issues in Ruttiger II:

- “whether the 1989 restructuring of the Act and subsequent amendments obviate the need we found in *Aranda v. Insurance Co. of North America*, 748 S.W.2d 210 (Tex. 1988) to engraft an extra-statutory cause of action for breach of the duty of good faith and fair dealing onto the workers’ compensation system?”

*Texas Mutual Ins. Co. v. Ruttiger*, --- S.W.3d ----, 2012 WL 2361697, 55 Tex. Sup. Ct. J. 912, Tex., June 22, 2012

# Issue One: Chapter 541 and 542

- A separate cause of action under the Insurance Code alleging the untimely processing of a claim by a workers' compensation carrier is inconsistent with the Act.
- The Act contains comprehensive guidelines for the timely resolution of claims.
- Permitting a cause of action independent of the Act undermines the Act's goal of promptly resolving claims because the employee would have an incentive to delay seeking redress in the administrative system in order to increase his damages.



# Issue Two: Misrepresentation:

- Provisions of the amended workers' compensation statute do not preclude a claim against a carrier under Sec. 541.061 prohibiting misrepresentation of an insurance policy.
- Section 541.061 is not at odds with the dispute resolution process of the workers' compensation system.
- There was no evidence of misrepresentation in Ruttiger's case.

# Issue Three: *Aranda* Overruled:

- The Texas Supreme Court unequivocally overruled *Aranda*.
- The court concluded that the Legislature has substantially remedied the deficiencies that led to this Court's extending a cause of action under *Arnold* and *Aranda* for breach of the duty of good faith and fair dealing to the workers' compensation system.
- The court overruled *Aranda* holding 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.

*Texas Mutual v. Ruttiger: The End of Aranda  
and Worker's Compensation Bad Faith?*

***IMPLICATIONS?***

*Texas Mutual v. Ruttiger: The End of Aranda  
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***QUESTIONS?***

A grayscale illustration of a balance scale. The scale is tilted, with the right pan lower than the left pan. The text "THE END" is written in a bold, black, sans-serif font, centered over the left pan. The background is a light gray gradient.

**THE END**