

**WORKERS' COMPENSATION AND INSURANCE BAD FAITH:
IS ARANDA BACK?**

WESLEY G. JOHNSON
MARY EVELYN WHITEHURST
COOPER & SCULLY, P.C.
900 Jackson Street, Suite 100
Dallas, Texas 75202
(214) 712-9500
(214) 712-9540 (fax)
wes.johnson@cooperscully.com
maryevelyn.whitehurst@cooperscully.com

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I. INTRODUCTION

It is commonly thought that workers' compensation benefits are the exclusive remedy for workplace or on the job injuries. For many years, that was the case. But over time, the Texas courts have expanded the available remedies to include recovery under common law tort remedies through insurance bad faith claims in addition to the statutory remedies allowed under the Texas Workers' Compensation Act. To fully understand the relationship between workers' compensation and insurance bad faith, it is necessary to first understand the two distinct concepts. Following is a brief discussion of workers' compensation and insurance bad faith in Texas.

II. WHAT IS WORKERS' COMPENSATION?

In Texas, the workers' compensation program is governed by statutes found primarily in the Labor Code. For an employee covered by workers' compensation insurance coverage, benefits may be recovered for the death or work related injury sustained by the employee. If the employee dies as a result of a work related incident, his or her beneficiaries may also recover. TEX. LABOR CODE §408.001.

The Workers' Compensation Commission is a division of the Texas Department of Insurance which regulates this benefits program. Participation in the workers' compensation program is voluntary for employers. See Texas Department of Insurance at <http://www.tdi.state.tx.us/wc/index.html>. Employers who choose to participate may either purchase a workers' compensation insurance policy from a private insurance company or may self-insure. By choosing to participate in either capacity, employers receive limited liability exposure for their employees' work related injuries. The employee receives expedited recovery of benefits. This recovery is an exclusive remedy for the injured employee for recovery of damages directly related to the job related injury. *Id.*

A. Recoverable Benefits

There are four types of benefits recoverable under workers' compensation: income benefits, medical benefits, burial benefits, and death benefits. *Id.* Income benefits replace a portion of any wages lost because of a work-related injury or illness. These benefits may be temporary income benefits, impairment income benefits, supplemental income benefits, or lifetime income benefits. A maximum and minimum threshold for income benefits is set by statute and is based on the state average weekly wage. TEXAS LABOR CODE §408.041. Medical benefits pay for medical care to treat the injury or illness. Medical benefits are paid for only the medical treatment needs arising from and directly related to the work-related injury. TEXAS LABOR CODE §408.021. Other treatment, even if provided in conjunction with the work-related injury treatment, is not covered under the workers' compensation insurance coverage. Burial benefits pay for some of the deceased employee's funeral benefits. TEXAS LABOR CODE §408.186. Death benefits are paid to the beneficiary for lost family income. TEXAS LABOR CODE §408.181.

III. WHAT IS INSURANCE BAD FAITH?

The term "bad faith" is generally understood to mean 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. BLACK'S LAW DICTIONARY, Eighth Edition, p. 149. It is derived from what is commonly termed the "implied covenant of good faith and fair dealing" which is breached by acts of bad faith. This standard applies to contracts of all kinds, not just to those dealing with insurance. According to the Texas Supreme Court in 1947, every contract is accompanied by a "common law duty to perform with care, skill, reasonable expedience and faithfulness the thing agreed to be done, and a negligent failure to observe any of these conditions is a tort as well as a breach of contract." *Montgomery Ward & Co. v. Scharrenbeck*, 204 S.W.2d 508 (Tex. 1947).

The following year the Court of Appeals in El Paso further confirmed that this principle also applied to insurance contracts holding “the same duty of care and faithfulness that arises under common law contracts applies equally to insurance contracts.” *Burroughs v. Bunch*, 210 S.W.2d 211 (Tex. App.—El Paso, 1948).

The Texas Insurance Code section dealing with bad faith is entitled Unfair Methods of Competition and Unfair or Deceptive Acts of Practices. See TEXAS INS. CODE §541.003. The statute mandates that “a person may not engage in this state in a trade practice that is defined in this chapter as or determined under this chapter to be an unfair method of competition or an unfair or deceptive act or practice in the business of insurance.” The bulk of the provisions are designed to protect the insured, but there are also provisions protecting the insurer. For example, Section 541.051 prohibits an insurer from misrepresenting or making false statements regarding the policy to the insured. *Id.* at §541.051. Section 541.053 prohibits anyone from defaming the insurer or making false statements regarding the financial condition of the insurer. Section 541.060 deals with unfair settlement practices and bars the insurer from misrepresenting a material fact relating to coverage, and prohibits failing to settle or pay a claim once liability is clear. The legislature and the courts are in agreement on the general principle that acts of bad faith or deceptive trade practices within the insurance context are not acceptable. As with so many things, the devil is in the details when trying to specifically identify, define and prove acts of bad faith.

A. Recoverable Damages

If the court determines that the insurer has breached its duty to act with good faith and fair dealing, the insured may potentially recover three types of damages: (1) benefit of the bargain damages for breach of the underlying insurance contract; (2) compensatory damages for the tort of bad faith; and (3) punitive damages for an insured's "intentional, malicious, fraudulent, or grossly negligent conduct." *Transportation Ins. Co. v. Moriel*, 879 S.W.2d 10 (Tex. 1994). Each of these types of damages

requires presentation of distinct evidence in support. In a basic breach of contract action, the insured can recover the benefits allowed under the contract. The insured gets the benefit of the bargain damages. *Id.*

If the insured can prove that the insurer acted in bad faith, then the recovery can include compensatory damages. An insurer does not act in bad faith if there is a bona fide dispute about coverage or if the insurer is incorrect about the factual basis for denial of the claim. *Id.* at 17. However, bad faith is established if "the insurer had no reasonable basis for denying or delaying payment of the claim, and that it knew or should have known that fact." *Id.* at 18 (citing *Arnold v. National County Mut. Fire Ins. Co.*, 725 S.W.2d 165, 167).

Punitive damages are recoverable only if the insurer's breach of the duty of good faith and fair dealing was accompanied by gross negligence, intentional injury, fraud or malice. If the insured is likely to suffer serious injury from the denial of coverage in bad faith and with knowledge that the insured requires medical treatment, or if the insured has experienced an extraordinary degree of hardship and oppression due to the bad faith conduct by the insurer, punitive damages are recoverable. *Id.* at 24.

IV. THE BRIDGE BETWEEN WORKERS' COMPENSATION CLAIMS AND INSURANCE BAD FAITH

Recovery of medical and income benefits under Texas workers' compensation is an exclusive recovery. However, the exclusivity does not extend to damages incurred due to bad faith on the part of the insurer or covering entity. The Texas Supreme Court held, in 1987, that because of the disparity in bargaining power between the insurer and the insured, it was incumbent on the insurer to act in good faith when processing claims. *Arnold*, 725 S.W.2d at 165 (Tex. 1983). In *Arnold*, the Supreme Court addressed whether there was a duty on the part of the insurer to deal fairly and in good faith with its insureds. The insurer, National County Mutual ("NCM") refused to pay benefits due under an uninsured motorist policy owned by

Mr. Arnold. Ultimately, Arnold sued NCM and recovered damages up to the policy limit. He then brought a subsequent suit against NCM for failing to deal with him fairly regarding his claim. The holding by the Supreme Court in *Arnold* created the new common law tort duty to act fairly and deal with insureds in good faith and created a new cause of action for breach of this new duty. *Id.* The *Arnold* case opened the doors for recovery of exemplary damages “upon a showing of the same elements that permit a recovery of those damages in other tort actions.” *Arnold*, 725 S.W.2d at 168.

Although the *Arnold* case involved an auto insurance claim, the principles of good faith and fair dealing were extended by to the workers’ compensation arena. In 1988, the Texas Supreme Court decided the case of *Aranda v. Insurance Co. of North America*, 748 S.W.2d 210 (Tex. 1988). Mr. Aranda suffered from a repetitious traumatic work related injury in 1982. *Id.* at 211. He filed a claim for workers’ compensation benefits naming both of his employers and their compensation insurance carriers. The two employers disagreed as to which company was responsible for Mr. Aranda’s injuries and subsequently both denied the claim until the Industrial Accident Board could resolve the issue of the responsible party. Mr. Aranda sued both companies for failing to deal with him fairly and failing to settle his claim in a timely manner, and claimed intentional misconduct on the part of the insurance carriers. *Id.*

After a journey through the trial court and court of appeals, the Texas Supreme Court held that there was a “duty on the part of workers’ compensation carriers to deal fairly and in good faith with injured employees in the processing of compensation claims.” *Id.* at 212.

A. The Elements of the Claim

Once the court determined that a bad faith cause of action was legitimate in the workers’ compensation arena, it moved on to defining what that meant. The two primary issues addressed were the standard of care that applied

in a workers’ compensation case and the limits of the exclusivity provision.

A workers’ compensation claimant who asserts a bad faith claim for delaying payment of a claim or failure to pay a claim “must establish: 1) the absence of a reasonable basis for denying or delaying payment of the benefits of the policy; and 2) that the carrier knew or should have known that there was not a reasonable basis for denying the claim or delaying payment of the claim.” *Id.* at 213 (emphasis in original). To prove the first prong of the test, the claimant bears the burden of proving that a reasonable insurer under similar circumstances would have delayed or denied the claim. *Id.* The second prong balances the claimant’s right to sue with the insurer’s right to investigate the claim and reject an invalid claim. *Id.* If the claimant can show that the insurer knew or should have known, through a reasonable investigation, that the claim was valid, the claimant may recovery tort damages. Under the facts of *Aranda*, the adjusters determined that Mr. Aranda’s claim was for a compensable work related injury and advised the insurers to pay the claim. The insurers “made a conscious decision not to pay the claim,” thus triggering the “knowing” element for recovery of punitive damages. *Id.* at 214.

B. Exclusivity Provision

The Workers’ Compensation Act provides that an injured employee is precluded from pursuing a claim against his employer for injuries sustained “in the course of his employment.” TEX. LABOR CODE § 408.001, *et seq.* This exclusivity does not, however, limit claims for injury that are “not based on a job related injury.” *Aranda*, 748 S.W.2d at 214. The bad faith claim arises out of the insurers conduct within the contractual relationship between the carrier and the employee, which caused additional injury after the job related injury. *Id.* This distinction establishes the limit of the exclusivity provision to only those damages from the injury itself. It does not extend to subsequent damages such as mental anguish suffered as a result of the claims process, losses to credit reputation, and the

ability to maintain a job when credit is a matter of consideration to the employer. *Id.* Where penalty provisions were previously limited to those allowed under the statute, the *Aranda* court removed that barrier to allow the recovery of exemplary damages in workers' compensation bad faith claims, just as were allowed under other bad faith tort claims.

C. *Aranda* and the Reasonable Basis Standard

Although the *Aranda* court opened the door to bad faith claims arising out of workers' compensation claims, plaintiffs were still required to prove that the insurer had acted without a reasonable basis for denial and/or had denied the claim "knowing" the denial was inappropriate. Just eight weeks after the *Aranda* decision, the Texas court of appeals in *Fuentes v. Texas Employers' Ins. Asso.* cited *Aranda* holding that the carrier had a reasonable basis for denying Mr. Fuentes claim based on a medical opinion provided during the investigation. *Fuentes v. Texas Employers' Ins. Asso.*, 757 S.W.2d 31 (Tex. App.—San Antonio, 1988) The Court concluded its opinion quoting *Aranda*, "carriers will maintain the right to deny invalid or questionable claims and will not be subject to liability for an erroneous denial of a claim." *Id.* at 33. In 1991, the reasonable basis standard was again followed in *St. Paul Lloyds v. Fong Chun Huang*, a fire insurance claim. *St. Paul Lloyds v. Fong Chun Huang*, 808 S.W. 2d 524 (Tex. App.—Houston, 14th Dist., 1991). Again, the insurers right to deny questionable claims was enforced in the face of a bona fide controversy over the facts forming the basis of the claim. The insurer "need only show that it had a reasonable basis for believing the insured was at fault in order to defend a bad faith allegation." *Id.* at 526 (emphasis in original).

The following year the Court of Appeals in San Antonio again followed the *Aranda* court's "reasonable basis" standard. *State Farm Lloyds, Inc. v. Polasek*, 847 S.W.2d 279 (Tex. App.—San Antonio, 1992). In this arson and bad faith claim, the Court further defined the reasonable basis standard holding "in deciding whether a reasonable basis existed for denying an

insurance claim, the trier does not weigh conflicting evidence; it decides whether the evidence existed and whether, standing alone, it constituted a reasonable ground for denying the claim." *Id.* at 284. This means that the insured must prove a negative, that there were no facts before the insurer on which to support the denial; there was "an absence of a reasonable basis." *Id.* The Court went on to warn Texas courts that they should be reminded that the *Aranda* decision was intended to provide a remedy in the exceptional case, not to "convert first party insurance cases into tort cases." *Id.* at 287. "Courts should be careful to ensure that the bad faith action is reserved for cases of flagrant denial or delay of payment where no reasonable basis existed, and not for mere reasonable denial or delay." *Id.* The Polaseks argued that the insurer had a duty to leave no stone unturned in its investigation. However, the Court disagreed rejecting this argument and stating that "even the most thorough investigation must stop somewhere." *Id.* at 288.

V. MORE BAD FAITH, LESS REASONABLE BASIS – THE TIDE TURNS

Throughout the 1990's and early 2000's, the decisions in these sorts of bad faith cases were fairly consistent, but the tide was turning toward more favorable plaintiff verdicts in bad faith suits. In 1999 in Beaumont, Texas, a jury awarded Steve Killion \$1,877,189, including \$900,000 in punitive damages. The jury found that Cigna Insurance Company of Texas had knowingly failed to pay for Mr. Killion's back surgery to repair damages he incurred in a job related back injury, thus causing him past and future pain and suffering, mental anguish and lost past and future wages. See *Steve W. Killion v. Cigna Insurance Co.*, Case No. D 1509171999, Texas Reporter-Soele's Trial Report.

In 2001 in Dallas, a jury awarded \$1,300,000 to plaintiff Mark Bennett for Security Insurance of Hartford's delay in paying for fusion surgery to treat a job related back injury. See *Mark Bennett v. Security Insurance*

Co. of Hartford, Case No. 98-3722-A, 2001 North Texas Reports.

In 2006 alone, plaintiffs' verdicts for workers' compensation related bad faith claims were no longer the exception. In courts in Houston and Galveston, juries awarded over \$5 million in damages in just three cases. A jury in the 11th District Court of Harris County awarded just under \$250,000 to Lance Morris for Texas Mutual Insurance Co.'s "knowing" denial of medical benefits for treatment of a job related back injury. While working for the Justin Volunteer Fire Department, Mr. Morris injured his back carrying a patient to safety. Mr. Morris was able to recover damages for his delayed physical therapy and damage to his credit for his unpaid medical bills. See *P. Lance Morris v. Texas Mutual Ins. Co.*, Case No. 2004-532302006, Williford Information Corporation. In the 215th District Court in Houston, the jury awarded \$4,332,799 to Lloyd Snyder for delayed treatment for a job related back injury that lead to nerve damage. See *Lloyd Snyder v. Christus Health Gulf Coast*, 2006 Williford Information Corporation. Case No. 2004-53229. In the *Snyder* case, Defendant employer Christus Health Gulf Coast, settled with the plaintiff prior to trial. Defendants Cunningham Lindsay Claims Management, Inc. and the adjuster were ordered to pay the award which covered damages for pain and suffering, mental anguish, loss of earning capacity and punitive damages.

In June of 2006, a jury in Galveston County decided against Texas Mutual Insurance and awarded Timothy Ruttiger \$385,000 for the bad faith denial of his claim for benefits for treatment of a job related hernia. The award included recovery for past and future pain and suffering, past and future damage to Mr. Ruttiger's credit reputation, impairment, mental anguish, and \$20,000 in punitive damages. See *Timothy J. Ruttiger v. Texas Mutual Ins. Co.*, Case No. 05-CV-0796, 2006 Williford Information Corporation. Texas Mutual appealed the verdict. In the appellate court's 2008 opinion, the Court, citing *Aranda*, upheld the award for pain and suffering, physical impairment and mental anguish, affirming Ruttiger's claims that these damages were

separate and independent from the initial job related damages and thus were not excluded under the workers' compensation exclusivity provision. *Tex. Mut. Ins. Co. v. Ruttiger*, 2008 Tex. App. LEXIS 440 (Tex. App. – Houston [1st Dist.] 2008). The Court, however, overturned the award for damages to Mr. Ruttiger's credit reputation, determining that although Mr. Ruttiger and his sister testified that his "credit was shot," he did not present any actual evidence that he was denied credit or charged a higher interest rate because of his credit rating. *Id.* "To recover actual damages for loss of credit reputation, a plaintiff must show that a loan was actually denied or a higher interest rate was charged and there must be a showing of injury, as well as proof of the amount of that injury." *EMC Mortg. Corp. v. Jones*, 252 S.W.3d 857, 872 (Tex. App.—Dallas 2008, no pet..) (citing *St. Paul Surplus Lines Ins. Co., v. Dal-Worth Tank Co.*, 947 S.W.2d 51, 53 (Tex 1998) and *Provident Am. Ins. Co. v. Casteneda*, 988 S.W.2d 189, 199 (Tex. 1998). The Texas Supreme Court heard oral argument in this case on April 15, 2009 but no opinion was available at the time of this writing.

More recently in June 2008 in Dallas County Court at Law, No. 1, following closing arguments in which plaintiffs' counsel asked the jury to award \$15 million in damages, the jury awarded the plaintiff \$400,000 plus attorneys fees against Commerce and Industry Insurance Co. and Texas AIG for pain and suffering and mental anguish caused by the denial of benefits. See *Joseph Priddy v. Commerce and Industry Ins. Co.*, Case No. 0705106-A, 2008 Williford Information Corporation.

VI. STATUTORY AND COMMON LAW DEFENSES AVAILABLE

In light of the more recent trend toward support of plaintiff verdicts, a focus on more effective defenses is of heightened importance. From the decisions in the cases cited above, we can see that some changes at the claims investigation phase are tantamount.

A. Texas Insurance Code Section 541.060

Section 541.060 of the Texas Insurance Code specifically addresses Unfair Settlement Practices. The cases resulting in plaintiff verdicts tend to include conduct in violation of this provision, specifically, subsection (2) which requires a good faith effort to “effectuate a prompt, fair, and equitable settlement” of a claim when liability is clear. TEX. INS. CODE 541.060(2)(a). Subsection (3), failing to provide the claimant with a “reasonable explanation” for denial of the claim, also is grounds for a bad faith judgment. Perhaps the most commonly lodged complaint, which also has resulted in plaintiff verdicts involves subsection (7) of this same statute; “refusing to pay a claim without conducting a reasonable investigation with respect to the claim.” *Id.* at 541.060(7). At the initial stages of the claims adjustment process, particular attention to these provisions and active steps to avoid violations of these subsections, can be the basis for a solid defense should the claim escalate to a bad faith lawsuit.

B. Texas Insurance Code Section 541.061

The next statute in the Code, Sec. 541.061, Misrepresentation of Insurance Policy is also a common cited complaint. Violations of this statute may prove to be more difficult to support with valid evidence. Again, early in the claims adjustment process, clear and detailed notes of all conversations with the insured and retention of copies of all written communications will further provide a strong defense in the event of a misrepresentation complaint. TEX. INS. CODE 541.061.

C. Common Law Defenses

The *Aranda* case can be used as a valuable tool for guiding the insurer through the maze of bad faith lawsuits. The “reasonable basis” standard forms the backbone of many successful cases for the plaintiff, but if the insurer keeps this standard in the forefront of the claims adjustment process, it can also be a strong defensive tool. As defined in the *Aranda* opinion, the plaintiff must prove both prongs of the standard to prevail. *Aranda*, 748 S.W.2d at

213. For the defendant insurer, the ability to disprove either of the prongs can lead to a positive result. The key here is to have evidence of a reasonable reason for denying or delaying payment of a claim. And equally important, the reasonable reason must be one that a “reasonable insurer under similar circumstances” would have used. *Id.* With the current trend for large plaintiff verdicts and sympathetic juries, this standard is becoming somewhat more difficult to meet. Tight controls in claims adjustment are vital for success.

Under *Polasek*, the insurer has the right to investigate a bona fide dispute of the facts forming the basis of the claim. *Polasek*, 847 S.W.2d at 285. “[i]f a reasonable basis exists for questioning the insurance claim, the insurer may deny it and litigate the matter without also facing a bad faith claim. *Id.* Again, the key is the “reasonable” basis.

The failure to conduct an adequate investigation before denial of a claim was the defendant’s Achilles heel in the *Morris* case. *Morris*, 287 S.W. at 410. The adjuster in *Morris* denied the claim without discussing the claim with the insured and failed to order the insured’s medical records to help determine whether the claim was for a compensable injury. *Id.* The jury found that the defendant’s conduct warranted the imposition of punitive damages and the court of appeals concluded that “the carrier engaged in unfair or deceptive acts or practices ... and that it did so knowingly.” *Id.* at 405.

Another defense lies in the potential lack of any evidence of an “independent injury”. *Hulshouser v. Texas Workers’ Compensation Commission*, 139 S.W.3d 789, 793 (Tex. App.—Dallas 2004, no pet.) Under *Hulshouser*, Plaintiff may not pursue a bad faith cause of action if the bad faith claim is essentially a claim for workers’ compensation benefits unless the alleged bad faith caused an “independent injury” such as damage to credit reputation or mental anguish to the claimant. *Id.* at 793. In fact, the Ruttiger case discussed above, the Court of Appeals struck down part of the bad faith suit due to a failure to establish competent evidence

of the independent injury of damage to credit reputation. *Tex. Mut. Ins. Co. v. Ruttiger*, 265 S.W.3d 651 (Tex. App. – Houston [1st Dist.] 2008). *Hulshouser* is based upon well-settled Texas law that establishes that a person entitled to insurance benefits is not entitled to extra-contractual damages simply based on the mishandling of the claim.. See *Minnesota Life Insurance Co. v Vasquez*, 192 S.W.3d 774, 775 (Tex. 2006) Rather, to establish bad faith a policyholder must show damages “separate and apart from those that would have resulted from a wrongful denial of the claim” *Castaneda*, 988 S.W.2d at 198. See also *Parkans International LLC v. Zurich Insurance Co.*, 299 F.3d 514, 519 (5th Cir. 2002).

D. Ruttiger: Endgame for Aranda?

The largest challenge to the scheme of workers’ compensation bad faith is the pending case before the Texas Supreme Court, *Texas Mutual Ins. Co. v. Ruttiger*.

Ruttiger was actually just argued before the Court on April 14, 2010. In the case, Texas Mutual is taking the aggressive position that common law bad faith under *Aranda* and statutory bad faith under the DTPA and Insurance Code are abrogated by the provisions of the Texas Labor Code. In other words, the Legislature essentially ended a cause of action for workers’ compensation bad faith when it rewrote the Labor Code in 1989 to create the current system of administering workers compensation benefits.

In support of that argument, Texas Mutual, along with a plethora of industry *amici curiae*, have advanced policy arguments essentially stating that the Labor Code’s administrative process accounts for all of the protections that *Aranda* sought to deliver consumers in the following manner: limited investigative period; the power of the DWC to compel payments from carriers; financial controls, oversight by the Texas Department of Insurance, and the threat of fines and sanctions for failing to provide proper claims handling. See Brief of Amici Curiae, Liberty Insurance Co., et al, Texas Mutual Ins. Co. v. Ruttiger, 2008 TX S. Ct. Briefs 216176 (Filed Oct. 2, 2009, Oral Argument Heard, Apr.

14, 2010). Texas Mutual and amici curiae both contend that *Aranda*-like bad faith actions ignore the fact that workers compensation claims operate under far more restrictions against insurer conduct than one would encounter in a typical first-party claim. *Id.* at 11-12.

With respect to attacking the lower court decision, which awarded bad faith damages based upon an application of Chapter 541 of the Insurance Code, Texas Mutual and *amici* are arguing that claimants such as Ruttiger lack the necessary standing to raise a claim for statutory bad faith under the Insurance Code.

In support of that argument, Texas Mutual contends that the laundry list of "unfair settlement practices" in Subsection 541.060(a) do not apply to a claim by a workers' compensation claimant; as it is limited to "practices with respect to a claim by an insured or beneficiary." They further contend that Ruttiger is neither an insured under the policy nor a beneficiary under an employer's liability policy. *Id.* at 59-60.

This is an aggressive position taken by the industry without any real authority offered in support beyond policy arguments. That being said, the Texas Supreme Court has not rendered a determination on the post-1989 validity of *Aranda* and *Ruttiger* will establish the viability of workers’ compensation bad faith once and for all.

VII. CONCLUSION

From the opinions issued in the last few years, Texas courts appear to be leaning more toward supporting the bad faith claims of plaintiffs and questioning the reasonable basis arguments presented by insurers. As well, affirmation of punitive damages linked to an insurer’s denial of a claim when it “knew” the claim and coverage were appropriate seems to be occurring more often. In light of these current trends, it is in the insurers’ best interest to be aware of the courts’ trigger issues, such as specific evidence to support the reasonable basis denial or delay of benefits. From *Aranda* to the

present, the best defense is a good offense. If the decisions regarding the denial or delay of payment on a claim are well documented and supported by an appropriate and adequate investigation which shows there is a “reasonable” basis for the decisions, the insurer is more likely to prevail when defending a bad faith claim.