

# IN THE SUPREME COURT OF TEXAS

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No. 08-0751  
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TEXAS MUTUAL INSURANCE COMPANY, PETITIONER,

v.

TIMOTHY J. RUTTIGER, RESPONDENT

=====  
ON PETITION FOR REVIEW FROM THE  
COURT OF APPEALS FOR THE FIRST DISTRICT OF TEXAS  
=====

JUSTICE WILLETT, joined by JUSTICE GUZMAN, concurring.

I join all but Part V of the Court’s opinion, which addresses whether the Texas Workers’ Compensation Act precludes Ruttiger’s common-law “good faith and fair dealing” claim. On this point, the Court is divided 4-3-2. JUSTICE JOHNSON (joined by three colleagues) contends the TWCA’s comprehensive regime removes any basis for allowing *Aranda*-type suits.<sup>1</sup> CHIEF JUSTICE JEFFERSON (joined by two colleagues) responds that such suits are limited but not abrogated, noting the TWCA (1) eliminates certain bad-faith claims, meaning others survive, and (2) limits exemplary damages in “good faith and fair dealing” suits specifically, meaning other damages remain

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<sup>1</sup> \_\_\_ S.W.3d at \_\_\_.

recoverable.<sup>2</sup> My view (shared by JUSTICE GUZMAN) is decidedly agnostic: As the court of appeals never addressed this issue,<sup>3</sup> I would remand it rather than resolve it.

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Don R. Willett  
Justice

**OPINION DELIVERED:** August 26, 2011

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<sup>2</sup> \_\_\_ S.W.3d at \_\_\_ (Jefferson, C.J., dissenting).

<sup>3</sup> 265 S.W.3d 651, 667 n.22 (not reaching the issue given the affirmance of Insurance Code liability).