



57 of 62 DOCUMENTS

**JAMES C. GARDNER, JR., Plaintiff-Appellant, vs. HEARTLAND EXPRESS,  
INC., and NATIONAL UNION FIRE INSURANCE COMPANY,  
Defendants-Appellees.**

**No. 5-984 / 05-0037**

**COURT OF APPEALS OF IOWA**

*2006 Iowa App. LEXIS 172*

**March 1, 2006, Filed**

**NOTICE:**

NO DECISION HAS BEEN MADE ON PUBLICATION OF THIS OPINION. THE OPINION IS SUBJECT TO MODIFICATION OR CORRECTION BY THE COURT AND IS NOT FINAL UNIL THE TIME FOR REHEARING OR FURTHER REVIEW HAS PASSED. AN UNPUBLISHED OPINION MAY BE CITED IN A BRIEF; HOWEVER, UNPUBLISHED OPINIONS SHALL NOT CONSTITUTE CONTROLLING LEGAL AUTHORITY.

**SUBSEQUENT HISTORY:** Reported at *Gardner v. Heartland Express, Inc.*, 2006 Iowa App. LEXIS 836 (Iowa Ct. App., Mar. 1, 2006)

**PRIOR HISTORY:** Appeal from the Iowa District Court for Johnson County, Marsha M. Beckelman, Judge. Appeal from the district court's grant of summary judgment in favor of the defendants.  
*Heartland Express v. Gardner*, 675 N.W.2d 259, 2003 Iowa Sup. LEXIS 228 (Iowa, 2003)

**DISPOSITION:** AFFIRMED.

**COUNSEL:** D. Brian Scieszinski and Michael L. Mock of Bradshaw, Fowler, Proctor & Fairgrave, P.C., Des Moines, and Donald G. Beattie of Beattie Law Firm, P.C., Des Moines, for appellant.

John W. Wharton and Joseph M. Barron of Peddicord, Wharton, Spencer & Hook, P.C., Des Moines, for appellee Heartland Express, Inc.

Webb L. Wassmer of Simmons, Perrine, Albright & Ellwood, P.L.C., Cedar Rapids, for appellee National Union Fire Insurance Co.

**JUDGES:** Heard by Sackett, C.J., and Vogel and Mahan, JJ.

**OPINION BY:** SACKETT

## OPINION

### SACKETT, C.J.

Plaintiff-appellant, James Gardner, a resident of Georgia, appeals from the district court's grant of summary judgment in his tort action for bad faith denial of [\*2] workers' compensation benefits. He contends (1) his tort claim is independent of the workers' compensation claim and is not extinguished by a determination Iowa does not have jurisdiction over the workers' compensation claim, and (2) he may bring the tort claim in Iowa because the employer is an Iowa resident and the bad faith denial occurred in Iowa. We affirm.

#### Background facts and proceedings.

Appellant is a Georgia resident who, at the time of his injury, was employed as an over-the-road truck driver by appellee Heartland Express, Inc. (Heartland), an Iowa corporation. Appellee National Union Fire Insurance Company (National) is Heartland's excess insurance carrier. He was injured in Georgia in 1994. In February of 1999, Gardner filed for workers' compensation benefits with the Iowa workers' compensation commissioner. The claim worked its way through the agency and judicial review by the district court to an appeal in 2002. In 2001, appellant filed the instant bad faith claim in Iowa district court. The bad faith case was stayed pending resolution of appellant's claim for workers' compensation benefits. The supreme court examined an amendment to *Iowa Code section 85.71* [\*3] in 1997 and determined Iowa had no subject matter jurisdiction over the claim at the time it was filed in 1999. *Heartland Express v. Gardner*, 675 N.W.2d 259, 269-70 (Iowa 2003).

Heartland moved for summary judgment in the instant case. Heartland alleged that:

As Iowa lacks subject matter jurisdiction over [Gardner's] workers' compensation action, [Gardner] cannot prevail in this first-party bad faith proceeding. If no obligation to pay [Gardner] any workers' compensation benefits under Iowa law existed, there cannot be any "bad faith" in refusing to pay any such benefits or for refusing to authorize medical treatment.

In granting the motion for summary judgment and dismissing the bad faith suit, the district court ruled:

The court finds [Gardner's] bad faith claims cannot be maintained. This is because jurisdiction cannot be established over [Gardner's] workers' compensation claim by an Iowa judicial body. The court agrees with [his] assertion that a plaintiff does not have to obtain a workers' compensation *award* in order to recover in a bad faith lawsuit; however, the court finds *jurisdiction* over the workers' compensation [\*4] proceedings is necessary for a plaintiff to maintain a bad faith claim. Because [Gardner] is not able to establish jurisdiction in Iowa with regard to his workers' compensation claim, the bad faith claims for denial of benefits must also be dismissed.

(Emphasis in original.)

#### Scope of review.

We review the district court's grant of summary judgment for errors at law. *Bailey v. Batchelder*, 576 N.W.2d 334, 336 (Iowa 1998). We review jurisdictional questions for correction of errors at law. *Heartland*, 675 N.W.2d at 262. "Thus our review is limited to whether the district court correctly applied the law." *Greenwood Manor v. Iowa Dep't of Pub. Health*, 641 N.W.2d 823, 830 (Iowa 2002).

#### Analysis.

**A. *Survival of an independent tort claim.*** Appellant first contends the district court's jurisdiction over a bad faith suit was not extinguished by the statutory amendment limiting the workers' compensation commissioner's jurisdiction to

hear the underlying claim for benefits because the tort claim accrues at the time of the wrongful conduct. The claim "accrues upon receipt of notification that the carrier [\*5] has denied the claim." *Brown v. Liberty Mut. Ins. Co.*, 513 N.W.2d 762, 764 (Iowa 1994). Appellant argues the denials of benefits all occurred on or before December 11, 1996, the date he reached maximum medical improvement, so his bad faith claim accrued as of that date--prior to the 1997 amendment to *Iowa Code section 85.71*. He also argues the tort claim is independent of his workers' compensation claim and is not limited by the exclusivity principle in *section 85.20*. See *Tallman v. Hanssen*, 427 N.W.2d 868, 870-71 (Iowa 1988). The Tallman court reasoned the "exclusivity principle is limited to matters surrounding a job-related injury and does not extend to subsequent dealings during which a tort may arise by reason of bad faith on the part of the employer's insurer." *Id.* at 870. "The exclusivity provision of the Workers' Compensation Act does not bar an action by the employee against the insurance carrier for the commission of an intentional tort." *Id.* at 871 (quoting *Southern Farm Bureau Cas. Ins. v. Holland*, 469 So. 2d 55, 59 (Miss. 1984)). Appellant asserts the district court [\*6] erred in requiring that he have a present entitlement to workers' compensation benefits instead of an entitlement at the time of the alleged bad faith denials of benefits. See *Brown*, 513 N.W.2d at 763-64 (noting a district court may entertain a bad faith action before the extent of an insurer's liability is determined administratively). He asserts the amendment to *section 85.71* did not alter the district court's jurisdiction over bad faith claims and did not provide any immunity for bad faith conduct that occurred before the amendment's effective date. He also asserts the amendment cannot operate retrospectively to eliminate jurisdiction over a cause of action that already had accrued.

Heartland and National respond that the appellant has no cognizable bad faith claim without an underlying cognizable claim for workers' compensation benefits. They assert we must look to the "state of things" at the time the bad faith action was filed in 2001, rather than the date of any action denying benefits. *Heartland*, 675 N.W.2d at 266 (citations omitted). "This 'state of things' . . . includes and requires an application of the jurisdictional law *at the time* [\*7] *the suit is filed.*" *Id.* (emphasis in original). They argue that, based on *Heartland*, the clear "state of things" at the time the appellant filed his bad faith action in 2001 was that he had no right to workers' compensation benefits under Iowa law. If he had no right to workers' compensation benefits under Iowa law, he had no cognizable claim for bad faith denial of benefits under Iowa law. If the appellees had no obligation to pay workers' compensation benefits under Iowa law, there cannot be any claim for bad faith or for refusal to pay Iowa workers' compensation benefits. Cf. *Midamar Corp. v. National-Ben Franklin Ins. Co.*, 898 F.2d 1333, 1337 (8th Cir. 1990) ("The jury's finding of no coverage compels the conclusion that [the insurers] had a 'reasonable basis for denying benefits of the policy,' and hence [they] could not be held liable for bad faith conduct under Iowa law.").

The appellees further argue that, even if the appellant had a claim prior to the 1997 statutory amendment, any such claim was extinguished by his failure to file suit prior to the amendment's effective date, July 1, 1997. Any conclusion that the appellant's bad faith claim [\*8] survived the July 1, 1997, amendment cannot logically stand after the *Heartland* decision. If the appellant had a vested right or accrued cause of action for bad faith prior to July 1, 1997, he had a vested right or accrued cause of action for workers' compensation benefits prior to that date. Since the supreme court held that Gardner had no vested right or accrued cause of action for workers' compensation benefits after July 1, 1997, he had no vested right or accrued cause of action for any bad faith denial of benefits.

The district court examined *Brown* and its application to the facts of this case. It noted *Brown* "appears to be premised on the plaintiff being entitled to recover workers' compensation benefits in Iowa. The case at bar is distinguishable because Plaintiff does not have that entitlement." See *Brown*, 513 N.W.2d at 763-64. The court in *Brown* recognized a claimant does not necessarily have to wait for the agency's decision on a workers' compensation claim before filing a tort claim for bad faith denial of benefits. *Id.* at 763. The court, however, considered it desirable and encouraged district courts to wait for the agency [\*9] decision. *Id.* at 764. The court did not address the potential viability of a bad faith suit in the absence of a cognizable claim for workers' compensation benefits.

Appellant argues a bad faith claim exists in Iowa for conduct that occurred before the workers' compensation claim was filed in Iowa, regardless of the outcome of the workers' compensation claim. Appellees do not contend a bad faith claim cannot be filed before a workers' compensation claim is filed or decided. See *id.* at 763. By appellant's rationale, however, a bad faith claim would exist even if the underlying workers' compensation claim ultimately was decided in

favor of the employer because the injury was not compensable. We do not see how a bad faith claim can stand when it is determined there is no liability to pay the claim at all.

In the instant case, there never can be a determination in Iowa that appellees are liable to appellant for workers' compensation benefits. The supreme court held in *Heartland* that Iowa has no jurisdiction to consider appellant's claim. Consequently, it makes no sense to us to conclude appellant has a claim in Iowa for bad faith failure to pay workers' [\*10] compensation benefits when he does not, and will never have, any right in Iowa to receive such benefits. It would be anomalous to recognize a claim in Iowa alleging bad faith denial of workers' compensation benefits that do not exist in Iowa and to which appellant has no entitlement here. The supreme court noted in *Heartland*, 675 N.W.2d at 270, n.7, that appellant had a potential workers' compensation claim under Georgia law. See Richard C. Kissiah, *Georgia Workers' Compensation Law* § 2.02, at 97 (2d ed. 2002) ("Georgia has long recognized that there is Georgia workers' compensation jurisdiction with regard to any injury that occurs within the territorial limits of Georgia.").

**B. Employer and wrongful conduct in Iowa.** Appellant next contends his tort claim for bad faith denial of benefits should be pursued in Iowa because the employer is an Iowa corporation providing workers' compensation benefits under Iowa law and the tort occurred in Iowa. Appellant argues that, even if Georgia law applies to his workers' compensation claim, Iowa's bad faith law should apply because *Heartland* made the decisions alleged to constitute [\*11] bad faith in Iowa. He cites *Jackson v. Travelers Ins. Co.*, 26 F. Supp. 2d 1153, 1162 (S.D. Iowa 1998) for the proposition that the governing bad faith law should be the jurisdiction where the bad faith conduct occurs.

Appellees contend we should not follow *Jackson*. They argue *Jackson* ignores some of the considerations of the *Restatement (Second) Conflict of Laws* § 6, at 10 (1989). First, the decision ignores "the protection of justified expectations." *Id.* An insured should reasonably expect that the laws of his or her residence will govern how an insurance company processes the insured's claim. Second, the decision ignores "certainty, predictability, and uniformity of result" and the "ease in the determination and application of the rule to be applied." *Id.*

In the instant case, *Heartland* is an Iowa corporation. National is a Pennsylvania corporation whose primary administrative offices are in New York, but whose workers' compensation offices are in Texas. Following the principles of the *Restatement*, the logical, rational choice of law would be to apply Georgia law to a Georgia resident whose injury occurred [\*12] in Georgia.

Appellees note that Georgia does not recognize a common law tort claim for bad faith denial of benefits or treatment. See *Bright v. Nimmo*, 253 Ga. 378, 320 S.E.2d 365, 368 (Ga. 1984) ("The intentional delay of workers' compensation payments does not give rise to an independent cause of action against the employer or its insurer when the penalties for such delay are provided by the act."); *Doss v. Food Lion, Inc.*, 267 Ga. 312, 477 S.E.2d 577, 577 (Ga. 1996) (holding no common law cause of action exists for an intentional refusal to authorize medical treatment). Since Georgia, not Iowa, has jurisdiction over appellant's claim for workers' compensation benefits, it seems to us the better choice of law to apply in a suit for denial of those benefits also is Georgia's law, and any claim should be pursued there. Since Georgia does not provide for an independent tort claim for bad faith denial of benefits, appellant cannot maintain such a claim here.

### **Conclusion.**

Iowa does not have jurisdiction over appellant's workers' compensation claim. He has no claim for workers' compensation benefits in Iowa. Although Iowa recognizes a common [\*13] law bad faith claim for denial of benefits, we hold it cannot stand independent in Iowa from Iowa jurisdiction over the underlying workers' compensation claim. Georgia has jurisdiction over appellant's workers' compensation claim since he is a Georgia resident and the injury occurred in Georgia. Applying choice of law principles, we hold appellant cannot maintain a common law suit for bad faith in Iowa when he cannot bring such a suit in Georgia. The district court correctly applied the law in granting summary judgment and dismissing the bad faith suit.

**AFFIRMED.**