



The El Paso Court of Appeals recently issued a decision in which it reversed and rendered a judgment in favor of an employee against his former employer for wrongful termination and bad faith. *Celadon Trucking Services, Inc. v. Martinez*, No. 08-07-00313-CV (Tex. App.—El Paso, Mar. 24, 2010). At the start of his employment, Martinez signed an agreement stating that his employment was “principally located in Indiana” and that Indiana workers’ compensation law would apply to any claim. After he was injured in Texas, Celadon agreed to pay benefits under the Indiana workers’ compensation scheme, which Martinez accepted. Following the allegedly wrongful termination of benefits, Martinez sued in Texas state court. The court dismissed the bad faith claims for lack of subject matter jurisdiction, finding that Indiana law governed. First, the court found that the choice of employment agreement was enforceable under Texas law pursuant to Tex. Lab. Code sec. 406.073(a) (“An employee whose work requires travel between this state and at least one other jurisdiction may agree in writing with the employer on the principal location of the employment.”). Second, under Indiana law, an employee must present bad faith and other tort claims arising out of a compensation claim to the Indiana Workers’ Compensation Board. Ind. Code sec. 22-3-4-12.1(a). Martinez failed to do so. Accordingly, the trial court lacked subject matter jurisdiction over the claims for bad faith and for wrongful termination after settlement of the workers’ compensation claim. Further, because the time for Martinez to present his claims to the Indiana Board had expired, the court held that the case had to be dismissed rather than abated, and rendered judgment in favor of Celadon.

This case is important for employers and insurers for two reasons: (1) the court enforced a choice of employment agreement despite evidence that Martinez was a Texas employee for workers’ compensation purposes and his contact with the state designated in the agreement was “minimal,” and (2) the designated state required that tort claims first be presented in an administrative proceeding whereas Texas law permits an employee to present tort claims for the first time in a lawsuit (assuming that the dispute over benefits has been administratively resolved).

LAURA J. GRABOUSKI