STATE OF CALIFORNIA
Division of Workers' Compensation
Workers' Compensation Appeals Board

KABEER GBAJA-BIAMILA,
Applicant,

vs.

GREEN BAY PACKERS; ZURICH AMERICAN INSURANCE COMPANY; THE TRAVELERS INDEMNITY COMPANY; BERKLEY SPECIALTY UNDEWRITTING MANAGER, LLC,
Defendants.

Case No. ADJ7682212

ANAHEIM DISTRICT OFFICE

FINDINGS AND ORDER

-Leviton, Diaz & Ginocchio, by Christopher C. Ginocchio, attorneys for the Applicant.

-Tobin * Lucks, by Karisa McNamara, Esq., Attorneys for Defendant Zurich American Ins. Co. % Risk Enterprise Management Limited.

-Seyfarth Shaw, LLP, by Veronica Castillo, Esq., Attorneys for Defendant Successor in Interest by Merger to Gulf Insurance Company the Travelers Indemnity.

-Peterson, colantoni, Collins & Davis, LLP, by Rick D. Erickson, Esq., Attorneys for Defendant Berkley Specialty Underwriting Managers, LLC.

The above entitled matter having been heard and regularly submitted, the Honorable Christine Nelson, Workers' Compensation Judge, now decides as follows:

FINDINGS OF FACT

1. **KABEER GBAJA-BIAMILA,** born 09/24/77, while employed during the period 06/01/00 through 11/01/08, as a professional athlete, occupational group number 590, by the **GREEN BAY PACKERS,** insured for workers' compensation purposes by **ZURICH AMERICAN INSURANCE COMPANY; THE TRAVELERS INDEMNITY COMPANY; BERKLEY SPECIALTY UNDERWRITTING MANAGER, LLC,** did not sustained injury arising out of and occurring in the course of employment to head, neck, spine, hips, upper and lower extremities and neurological system.

2. It is found that California should not exercise jurisdiction in this matter.

ORDER

IT IS ORDERED THAT Applicant take nothing further from the Defendant in case **ADJ7682212.**

DATE: 03/28/2013

Christine Nelson
WORKERS' COMPENSATION JUDGE

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ON: 03/28/2013
BY:

RDE

STATE OF CALIFORNIA
Division of Workers' Compensation
Workers' Compensation Appeals Board

CASE NUMBER: ADJ7682212

KABEER GBAJA BIAMILA **-vs.-** **GREEN BAY PACKERS; ZURICH AMERICAN INSURANCE COMPANY; THE TRAVELERS INDEMNITY COMPANY; BERKELEY SPECIALTY UNDERWRITING MANAGER, LLC,**

WORKERS' COMPENSATION ADMINISTRATIVE LAW JUDGE: Christine Nelson

DATE OF INJURY: 06/01/00 THROUGH 11/01/08

OPINION ON DECISION

Applicant claims to have sustained injury arising out of and occurring in the course of employment to his head, neck, spine, hips, upper and lower extremities and neurological system while employed during the period 06/01/00 through 11/01/08 as a professional athlete by the Green Bay Packers.

At the time of trial Applicant testified that he played games in California 6 to 8 times during the course of his career with the Green Bay Packers. He indicates that he played in Oakland 08/31/01; in San Francisco 12/15/02; in San Diego 12/14/03; in Oakland 12/22/03 and in San Francisco 12/10/06. Applicant testified that he played no games in 2008 in California.

Applicant testified that he was born in California and lived in California until 2001. He states he attended Crenshaw High School in Los Angeles and further attended San Diego State University. Applicant testified that at the time of his first contract he resided in the San Diego area and in fact signed his first contract with the Green Bay Packers in his college apartment in San Diego. According to his testimony at trial he signed the original contract 07/17/00 and he was waived 08/27/00 and terminated 08/28/00. He was then assigned to the practice squad. He was re-signed to the regular squad 10/10/00. The second contract was a 4 year contract and was signed in Green Bay Wisconsin. All further contracts were signed in Wisconsin.

Applicant further testified that he currently resides in Wisconsin.

Applicant testified that he owns property in California and pays property taxes in Los Angeles. However, as indicted above Applicant during his employment with Defendant only played approximately 6 games in California. Applicant testified that when the team played a game out of state the team would leave on a Saturday for a Sunday game. They would check into the hotel, eat and receive treatment and then wait for the team meeting. The team members would participate in a walk-through conducted on the day of the game, and then they would play the game. The team would leave after the game after the post-game interviews and some treatment. Applicant testified that they would be at the away games for a total of about 24 hours. Applicant testified that he had stingers while playing games in California but this did not cause him to miss games or practices. He indicates he had them all the time.

At the time of trial Applicant stated that he had a California agent negotiate his contracts during his employment with Green Bay. Applicant stated that although his agent had the authority to negotiate contracts, Applicant could reject any offer presented to him by his agent. He also indicated that he never actually rejected any contracts negotiated by his agent.

Further, the contracts signed by Applicant all contained forum selection clauses indicating that the forum selected was Wisconsin.

The Court in *McKinley vs. Arizona Cardinals,* 78 CCC 23 (en banc) found in a case similar to the instant case that the Workers' Compensation Appeals Board had jurisdiction to determine if it was a proper forum to adjudicate Applicant's workers' compensation claim. The Court in *McKinley* stated,

> "... Forum selection clauses are now presumed valid under the law and they are enforced under contract principles unless they are unreasonable or contrary to a fundamental public policy."

In this case there was no showing that the forum selection provisions in Applicant's contract were in any way unreasonable. In addition, there was no showing that the forum selection clause was the product of fraud or overreaching. The Court in *Mckinley* stated,

> "When a Defendant seeks to enforce a forum selection clause, the burden of proof is on the Applicant to show that the clause and selected forum are unreasonable, and the factors involved in a traditional forum non conveniens analysis do not control. Instead, a forum selection clause is presumed valid and the Courts have placed a

substantial and heavy burden on the plaintiff to show that application of the forum selection clause would be unreasonable."

The Court went on to indicate in *McKinley* that,

"Similarly, the third ground for overriding an agreed forum is set forth in Bremen does not apply in this case because there is no evidence that it would have been gravely difficult or inconvenient to file a workers' compensation claim in Arizona. "

In this case there is no showing that it would have been "gravely difficult or inconvenient" for Applicant to file his claim in Wisconsin.

Although Applicant signed his first contract in California, it appears that that contract was for a duration of three months out of his eight years of employment with the Green Bay Packers. Therefore, as found in the case of *McKinley* the forum selection clause in this case is not contrary to California fundamental public policy.

Again as stated in *Mckinley vs. Arizona Cardinals,* the Court states,

"California courts have recognized that decisions involving forum selection have an impact upon the delivery of justice in the forum state … California has an interest in 'avoidance' of overburdening local courts with congested calendars … in cases in which the local community has little concern."

The Court went on to state,

"Our concern about court congestion and over burdening of already strained judicial resources is not based upon abstract speculation. The NFL consists of 32 teams playing in 23 states and occasionally in foreign countries. Each club is allowed a maximum of 53 players on the roster. Because three NFL teams are domiciled in California, players from all the 29 other teams could potentially claim that they incurred some portion of a cumulative industrial injury in California merely because they played one or more games in the state. In fact numerous claims have been filed in California by professional football players and other professional athletes and those claims impose a substantial burden on the WCAB's limited resources."

The Court went on to state,

"As discussed above, there is limited connection between California and the employment in the claimed cumulative injury in this case."

In the instant case there is also limited connection between California and Applicant's employment and the claimed cumulative injury alleged. Therefore, it is found that California should not exercise jurisdiction in this matter.

DATE: 03/28/2013

Christine Nelson

Christine Nelson
WORKERS' COMPENSATION JUDGE