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

CASE NUMBER: ADJ7373667



WILLIAM DEMPS JR

-vs.-

**BALTIMORE RAVENS;
NEW YORK GIANTS;
HOUSTON TEXANS; GREAT
DIVIDE INSURANCE
COMPANY c/o BERKLEY
SPECIALTY
UNDERWRITING
MANAGERS, LLC; ACE
AMERICAN INSURANCE
COMPANY; TRAVELERS
INSURANCE**

WORKERS' COMPENSATION JUDGE: Nancy M. Gordon

DATE: 5/8/2017

OPINION ON DECISION

The applicant, William Demps, born 11/7/1979, while employed during the period 4/26/2002 to 2/25/2009, as a professional football player, occupational group number 590, by the Baltimore Ravens; the New York Football Giants, Inc; and the Houston NFL Holdings, LP, a Delaware Limited Partnership, dba Houston Texans, claims to have sustained injury arising out of and in the course of his employment.

At the time of the claimed injury, the insurance carrier for the Baltimore Ravens until 6/30/2005 was Travelers Insurance and thereafter, ACE American Insurance. Great Divide Insurance administered by Berkley Specialty Underwriting Management insured the New York Football

Giants, Inc for the period 3/15/2006 to 9/6/2007 and Houston NFL Holdings, LP, for the period 9/11/2007 to 2/25/2009.

The named defendants deny that California has personal or subject jurisdiction to adjudicate the applicant's claim of injury and award benefits, if applicable. This trial proceeded on the issues of jurisdiction and the applicability of the choice of forum in defendants' contracts.

Although the court was not asked to address whether the applicant had sustained injury AOE/COE, it was requested that it make findings pursuant to Labor Codes §5500.5 and §5412. The court cannot make findings as to Labor Code §5500.5 and 5412 at this time, as it was not asked to decide whether the applicant sustained the claimed continuous trauma injury.

Mr. Demps testified that he was born in Charleston, South Carolina, and that he had been a resident of California since about 1992. He obtained a California Drivers' License around 1996, registered to vote in California, actually voted in California, and filed taxes in California. He attended Vanderbilt Middle School, Palmdale High School, and San Diego State University, all within California.

Baltimore Ravens

Mr. Demps testified that he was a free agent in 2002 and invited to the Combine. Mr. Demps further testified that he hired sports agent Steve Feldman in Beverly Hills, CA, where Mr. Feldman had his office. Scott Feldman was the sports agent who negotiated all four of the applicant's one year contracts with the Baltimore Ravens. The address for Mr. Feldman on his contracts with Mr. Demps have an address in Laguna Niguel, CA. Mr. Feldman was not a witness at this trial.

Applicant's Exhibit 5 is the applicant's first contract with the Baltimore Ravens, which was from 4/26/2002 to 2/28/2003. Mr. Demps dated his signature 4/22/2002, Mr. Feldman's signature is dated 4/23/2002, and the Baltimore Ravens on 4/26/2002. Paragraph 22 has as a term of the contract that it "shall be governed by the laws of the State of Maryland."

Applicant's Exhibit 4, is his contract with the Baltimore Ravens for 2003 until 2/29/2004. Applicant's Exhibit 3 is the 2004 contract until 2/28/2005. Applicant's Exhibit 2 is the contract for 2005 until 2/28/2006. The terms of the contracts are the same except that the amount of compensation varied. There is no forum selection clause as to workers compensation claims in any of the four Baltimore Ravens contracts. The copies of a couple of the contracts reflect 949 area code fax numbers involving Mr. Feldman. The court will take judicial notice that 949 telephone numbers are located in southern California.

Mr. Demps' testimony that he was always in California when he accepted the contract offers from the Baltimore Ravens is credible. The contracts were signed in the off-season by the applicant in San Diego where he was a resident. There is both personal and subject matter over the Baltimore Ravens. There is California jurisdiction for the applicant's claim of injury against the Baltimore Ravens pursuant to Labor Code §3600(a) due to his entering into the contracts in California. There is also jurisdiction in Maryland. California chooses to exercise jurisdiction.

New York Football Giants, Inc

After four seasons with the Baltimore Ravens, Mr. Demps chose to change sports agents. He was a free agent at that time. He hired Tony Agnone who negotiated a contract with the New York Giants. The terms of the contract were from 3/1/2006 to 2/28/2011. Mr. Demps, Tony Agnone, and New York Giants all executed the contract on 3/15/2016. The applicant's one contract with the New York Giants is marked and admitted as Applicant's Exhibit 1.

Mr. Agnone testified at the trial. He is the president of Eastern Athletic Services and has been a sports representative for thirty-seven years. His offices are currently in Sparks, Maryland.

Mr. Agnone testified that he would negotiate with teams and communicate offers to the applicant. As an agent, he advises what is fair but it is up to the player to decide whether or not to accept an offer. The new collective bargaining contract came into effect around 2001. He described players as usually only concerned with playing time, opportunities to play, and money.

Mr. Agnone appeared to be testifying honestly and to the best of his ability but he could not remember several of the facts associated with the signing of the New York Giants contract. He remembered that Mr. Demps did not have a contract offer when he came to New Jersey to meet with the Giants. In fact, Mr. Demps had first gone to Cincinnati. The applicant would not have continued on to New Jersey if he had been offered, and accepted an offer, in Cincinnati from the Bengals.

The New York Giants made an offer that was communicated to Mr. Demps while in New Jersey. Mr. Agnone could not remember where he was located when he executed the contract. He also could not recall where the applicant was located when he accepted the contract offer. He "had no idea where the applicant was located when he signed the contract." Mr. Agnone did recall that the contract with the New York Giants included a forum clause requiring litigation of workers compensation claims in the State of New Jersey.

Mr. Demps was adamant that he executed the contract with the New York Giants while in San Diego, CA on 3/15/2006 after having flown back from New Jersey earlier in the day. His testimony was that he wanted to think about the contract and discuss it first with his family. He claimed that after seeing his family in San Diego later that day that he communicated his acceptance and executed the contract all on 3/15/2006.

Unfortunately, the applicant did not continue to play five years for the New York Giants due to his being cut after suffering an injury on 8/19/2007 while playing against the Baltimore Ravens in Baltimore. An MRI and x-rays were taken of the right elbow on 8/20/2007 documenting the injury. He was placed on injured reserve on 9/1/2007. His sports agent, Tony Agnone, negotiated an injury settlement on 9/6/2007.

No weight can be given to applicant's testimony that he flew from New Jersey back to San Diego on 3/15/2006 before executing and Faxing his contract back to New Jersey before it was recorded that day. Mr. Demps' version of the facts is not physically possible. Defendant's Exhibit N is a copy of the flight times for the flight arranged by the New York Giants for the applicant's flight back to San Diego on 3/15/2006. The non-stop flight left Newark at 1:15pm arriving in San Diego at 4:15pm which would be 7:15pm Eastern Time.

The applicant's record of NFL Transactions marked and admitted as Defendant's Exhibit E identifies the applicant's contract with the New York Giants as being signed on 3/15/2016. Mr. Christian E. Olsen, the Vice President of Football Operations for the Houston Texans, testified that a team must submit a notice of contract signing by 4:00pm Eastern Time to be recorded on that day. If reported as of 4:01pm Eastern Time on a particular day, the contract is deemed entered the following day.

Mr. Demps acknowledged that of the 109 games in which he played in the NFL that only 3.7% of those games were played in California. He played no games in California and participated in no practices or training camps in California while employed by the New York Giants. There is no evidence of fraud in the applicant's executing the contract with a forum selection requiring any workers compensation claim filed by him against the Giants be filed in the State of New Jersey. The New York Giants forum selection clause is reasonable.

Although the applicant used his Maryland address when signing the contract with the Giants, the record supports a finding that the applicant was a resident of San Diego, California when he executed this contract in New Jersey on 3/15/2006. The applicant was never employed in California during his employment with the Giants. There is no evidence of a specific injury sustained while employed in California. As argued by counsel the New York Giants, the State of California has no jurisdiction over the applicant's claim of a workers compensation injury against the New York Giants. The New York Giants Football, Inc is dismissed as a party defendant.

Houston Texans

Tony Agnone continued to represent to applicant after he was released by the New York Giants. The applicant and Mr. Demps executed two contracts with the Houston Texans. Defendant's Exhibit H is the contract with the Houston Texans with signatures dated 9/10/2007 recorded 9/11/2007. Defendant's Exhibit I is the 2008 contract with signatures dated 3/20/2008 recorded that same day.

Mr. Agnone testified to having been the applicant's sports agent since 7/5/2005. During that time, the applicant was always known to him as living in San Diego, California. Mr. Agnone knew that the applicant returned to San Diego after he was released by the New York Giants. Mr. Agnone also testified that the applicant was physically in California when he accepted the contract offer from the Houston Texans in 2007 although he doesn't remember in which state he physically signed it. He specifically remembered that both he and the applicant were present in San Diego when the Houston Texans' offer was accepted in 2008. He was pretty sure that he and the applicant then flew to Houston to discuss playing time for the 2008 contract.

Mr. Agnone described teams usually drawing up contracts and then faxing them. He acknowledged that sometimes teams want to see a player before finalizing a contract but denied that was the case for the 2008 contract because "they already had a deal". That deal included a \$1,000,000 signing bonus. He described the usual procedure as first signing a contract that has exclusions and then there is the physical. Teams are described as still wanting players even if they fail the physical because the real question is whether they can play during the season, not on the day the contract is signed.

Mr. Christian E. Olsen testified that he negotiated the two contracts with the applicant on behalf of the Houston Texans. He had been employed in the NFL League office in 1994 before he began his employment ten years ago with the Houston Texans. In 1999, his duties for the NFL included labor management operations. In his opinion, a contract becomes enforceable when the parties sign the contract. It is undisputed that either the team or the player can back out of the offer at any time before the contract is signed. No legal action would be initiated if a player decided to not sign the contract after agreeing in principal. However, both the applicant and Mr. Agnone testified that if you give your word, you have a contract. If you don't keep your word and sign after agreeing in principal, you will not have an NFL career.

Mr. Olsen was interested in signing the applicant after he was cut by the New York Giants. The "general parameters" were agreed to on the telephone. Mr. Olson could not remember if any terms were changed in the signed contract from the offer on the telephone. Mr. Olson testified that Mr.

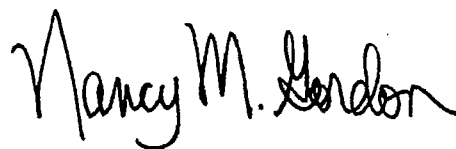
Demps signed both contracts with the Houston Texans while physical y present in Texas. The court finds that testimony credible and supported by the record.

The applicant's address was not identified in his 9/10/2017 contract with the Houston Texans marked and admitted as Defendant's Exhibit H. A copy of the applicant's 2007 1040 Form Federal Income Tax date 4/8/2007 was marked and admitted as Applicant's Exhibit 18. Based on the weight of the evidence, the applicant was still holding himself to be a California resident at the time he signed this contract.

When Mr. Demps executed his 3/20/2008 contract, he identified an address in Miami Beach, Florida as his address. He had purchased an individual unit in a condo/hotel project in Miami Beach. Although he has no memory of doing so, he registered to vote using his Miami Beach, Florida address on 4/6/2007. All his checks from the Houston Texans in 2008 and 2009 identify a home address on James Ave in Miami Beach, Florida. Based on the weight of the evidence, the applicant was using his property in Miami Beach, Florida, as a basis to declare himself a resident of Florida as of early 2008 even though he continued to own property in San Diego, California.

The Houston Texans offered no evidence that any of the exceptions contained in Labor Code §3600.5(b) were applicable. Even though this court holds that the applicant was a resident of Florida for the 2008 contract, both contracts were accepted on the telephone in California even though they weren't signed until the applicant travelled to Houston Texas. There is California jurisdiction pursuant to Labor Code §3600(a) due to the applicant having been hired in California. There were forum selection clauses mandating the applicant file his workers compensation claims in Texas on behalf of the Houston Texans. As the applicant was a long time resident of the State of California who entered into his contracts with the Houston Texans, California will exercise jurisdiction over the applicant against the Houston Texans.

DATE: 5/8/2017



Nancy M. Gordon
WORKERS' COMPENSATION JUDGE

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

WILLIAM DEMPS JR,

Applicant,

vs.

**BALTIMORE RAVENS, NEW YORK
GIANTS, HOUSTON NFL HOLDINGS, LP,
dba HOUSTON TEXANS, GREAT DIVIDE
INSURANCE COMPANY administered by
BERKLEY SPECIALTY INSURANCE
COMPANY, TRAVELERS INSURANCE;**

Defendants.

Case No. ADJ7373667
ANAHEIM DISTRICT OFFICE

FINDINGS AND ORDERS

LEVITON, DIAZ & GINOCCHIO. INC
By: MODESTO DIAZ, Esq.
Attorneys for Applicant

SEYFARTH SHAW, LLP
By: GREGORY KANTER, Esq.
Attorneys for Defendants Baltimore Ravens and
Travelers Insurance Company

HANNA BROPHY
By: ALAN A. KRAUSE, Esq.
Attorneys for Defendants Baltimore Ravens and ACE American
Insurance Company

COLANTONI, COLLINS, MARREN, PHILLIPS & TULK, LLP
By: J. BARRY COLLINS, Esq.
Attorneys for Defendants New York Giants and
Great Divide Insurance Company c/o Berkley
Specialty Underwriting Managers

PEARLMAN, BORSKA & WAX
By: CHRISTINE L. RENTEN, Esq.
Attorneys for Defendants Houston NFL Holdings, LP,

dba Houston Texans and Great Divide Insurance
Company c/o Berkley Specialty Underwriting Managers

The above entitled matter having been heard and regularly submitted, the Hon. Nancy M. Gordon, Workers' Compensation Judge, now finds and orders as follows:

FINDINGS OF FACT

1. The applicant, WILLIAM DEMPS JR, born 11/7/1979, while employed during the period 4/26/2002 to 2/25/2009 as a professional football player, Occupational Group Number 590, by the BALTIMORE RAVENS, NEW YORK GIANTS FOOTBALL, INC, and HOUSTON NFL HOLDINGS, LP, a Delaware Limited Partnership dba HOUSTON TEXANS, claims to have sustained injury arising out of and occurring in the course of his employment..

2. The State of California has both physical and subject matter jurisdiction in this case over the Baltimore Ravens, which it elects to exercise, as the applicant entered into his four contracts with this defendant in California while being a California resident.

3. The State of California has no jurisdiction over the New York Football Giants, Inc in this case as its contract was executed in New Jersey, the applicant having never worked in California during that employment, and there being a reasonable forum selection clause in the 3/15/2006 contract mandating that all workers compensation disputes be litigated in New Jersey.

4. The State of California has jurisdiction over Houston NFL Holdings, LP, dba Houston Texans, pursuant to Labor Code §3600(a) as the contracts were entered into in California

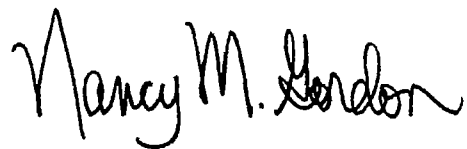
5. California has a sufficient interest to exercise its jurisdiction as to the Houston Texans.

ORDERS

IT IS ORDERED that the New York Football Giants, Inc, and their insurance carrier are dismissed as party defendants for the claim against this team.

IT IS FURTHER ORDERED that all remaining issues are off calendar.

DATE: 5/8/2017

A handwritten signature in black ink that reads "Nancy M. Gordon". The signature is written in a cursive, flowing style.

Nancy M. Gordon
WORKERS' COMPENSATION JUDGE