WORKERS' COMPENSATION

CALIFORNIA LAWYERS ASSOCIATION

presents

2023 Spring Education Conference

MCLE: 6 Hours

Legal Specialization: 6 Hours in Workers' Compensation Specialization

The Ongoing Jurisdiction Battle in the Field of Sports Law

Saturday, May 20, 2023

1:55 p.m. – 2:55 p.m.

Speakers:

Orlando Ruff, Retired NFL Player, Applicant's Attorney, Pro Athlete Law Group

Danny Benavides, Hanna Brophy

Conference Reference Materials

ONGOING JX BATTLE IN FIELD OF SPORTS LAW

PANELISTS

ORLANDO RUFF, ESQ. (APPLICANT)

DANNY BENAVIDES, ESQ. (DEFENDANT)

BIOGRAPHIES

ORLANDO RUFF, ESQ.

Orlando Ruff, a former professional athlete, and experienced trial attorney has represented athletes before the California Division of Workers' Compensation for the last ten years.

The focus of his practice throughout the years, has consisted of counseling and representing retired athletes from all major league sports leagues, including in the NFL, MLB, NBA, WNBA and NHL. He has worked extensively in matters involving complex personal and subject-matter jurisdictional issues, contractual choice of law issues, and statute of limitations issues.

Having worked in the field since 2010, Orlando has gained valuable experience in negotiating complex settlements, controlling forensic medical evaluations, perfecting apportionment-related issues pertaining to cumulative trauma injuries, and protecting employees' rights and remedies under collective bargaining agreements.

Before beginning his legal career, Orlando played seven seasons as an NFL linebacker with the San Diego Chargers, New Orleans Saints, and Cleveland Browns — where he was fortunate enough to be a member of some of the top defenses in the NFL while with the Chargers. Upon retirement, Orlando served as vice president of the National Football League Players' Association (NFLPA) for the Los Angeles area.

Equipped with firsthand understanding of employment-related issues unique to the highest level of professional sports, Orlando leverages his insight and experience to offer superior counsel and representation to his clients.

DANNY BENAVIDES, ESQ.

Danny Benavides, graduated from California State University, Fullerton, Class of 2008, B.A. University of LaVerne College of Law, Class of 2011, J.D., magna cum laude.

He has nearly 20 years of experience representing employers and insurance carriers in all aspects of workers' compensation matters. In particular, he defends various major league baseball and national football league teams in professional sports claims. He regularly appears before the California Workers' Compensation Board and has managed every aspect of claims, from start to finish-reviewing case facts, speaking with claims adjusters and employers, analyzing circumstances of alleged injuries, and using relevant case law to reach the most favorable resolutions for his clients.

During law school, Danny clerked for the San Bernardino Public Defender in the Homicide Defense Unit, where he focused on immigration and criminal law matters. In 2009, he was a law-camp counselor for the Hispanic National Bar Foundation in Washington, D.C., where he prepared high school students for their mock trials.

He presently is employed at Hanna Brophy.

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<u>LIFE OF A SPORTS CLAIM</u> – *Ongoing JX Battle in Sports Claims*

I. <u>Is it a cumulative trauma or specific injury claim</u>?

1. Article XIV Section 4 of the California Constitution provides that the administration of the Workers' Compensation Act shall accomplish substantial justice in all cases expeditiously, inexpensively, and without incumbrance of any character.

2. California workers' compensation laws are to be "liberally construed by the courts with a purpose of extending their benefits for the protection of persons injured in the course of their employment." (*Labor Code Section 3202.*) Notably, the California Supreme Court has interpreted Section 3202 as governing "all aspects of workers' compensation; it applies to factual as well as statutory construction." (*Arriaga v. County of Alameda* (1995) 9 Cal.4th 1055, 1065; *see also*, *Lundberg v. WCAB* (1968) 69 Cal.2d 436.)

i. **Labor Code section 3208.1 provides as follows**:

An injury may be either: (a) "specific," occurring as the result of one incident or exposure which causes disability or need for medical treatment; or (b) "cumulative," occurring as repetitive mentally or physically traumatic activity extending over a period of time, the combined effect of which causes any disability or need for medical treatment. The date of cumulative injury shall be the date determined under section 5412.

Most sports claims are filed at the conclusion of the athlete's career and will be a traditional cumulative trauma claim by the very nature of the athlete's career spanning over multiple years. However, depending on the athlete's injury history, it is not uncommon to have a specific injury claim filed simultaneously when a cumulative trauma claim is filed, or during the life of a previously field cumulative trauma claim.

1. **<u>Joint and several liability</u> –** with most athlete claims, being field at the conclusion of an athlete's career, they will usually incorporate multiple defendants.

ii. **Labor Code section 5500.5 provides as follows**:

Liability for an industrial cumulative trauma injury is limited, pursuant to section 5500.5 to those employers who employed the employee during a period of one year immediately

preceding either the date of injury, as determined pursuant to Labor Code section 5412, or the last date on which the employee was employed in an occupation exposing him to cumulative injury, whichever occurs first.

II. Does the WCAB have jurisdiction over the claim?

1. **Subject Matter Jurisdiction**

   i. **Labor Code section 3600.5 subsection (a)** - establishes California subject matter jurisdiction where an employee is regularly working in the state and receives a personal injury by accident arising out of and in the course of employment outside of the state. Pursuant to Labor Code section 3600.5 subsection (a), if an employee who is regularly working in the state receives a personal injury by accident arising out of and in the course of employment outside of the state they are entitled to compensation. There exists no ambiguity to the legislature's intent to protect all California employees regardless of where their work takes place.

      1. **The statute's purpose is to establish the scope of the WCAB's jurisdiction, and it reflects a legislative determination regarding California's legitimate interests in protecting industrially injured employees.**

         a. The WCAB may assert its subject matter jurisdiction in any given workers' compensation injury claim when the evidence establishes that an employment related injury, which is the subject matter, has an significant connection or nexus to the State of California.

   ii. **Labor Code section 5305** - provides that the WCAB has jurisdiction over all controversies arising out of injuries suffered outside the territorial limits of this state where the injured employee is a resident of this state at the time of injury or the contract of hire was made in the state. The WCAB may only exercise jurisdiction when it can be established that an employment related injury has some nexus to the State or that there is a California contract for hire pursuant to Labor Code section 5305.

Labor Code section 5305 provides as follows:

"The Division of Workers' Compensation, including the administrative director, and the appeals board have jurisdiction over all controversies arising out of injuries suffered outside the territorial limits of this state in those cases where the injured employee is a resident of this state at the time of the injury and the contract of hire was made in this state. Any employee described by this section, or his or her dependents, shall be entitled to the compensation or death benefits provided by this division." Cal. Labor Code §5305 (Emphasis added.)

2. **Personal Jurisdiction**

   i. **"All Purpose Jurisdiction"** – In the California Court of Appeal case *Young et al. v. Daimler AG* (2014) 228 Cal. App.4th 855, it determined that an corporation's place of incorporation and principal place of business are "paradigm all-purpose forums."
   Only "in an exceptional" case will a foreign (non-California) cooperation's operations outside of these paradigm forums be deemed substantial and of such nature as to render the corporation at home in the state.

   ii. **"Specific Personal Jurisdiction"** - In the U. S. Supreme Court case, *Bristol-Myers Squibb v. Superior Court* (2017) 1 Cal. App 5th 783, the court held that for a state court to exercise specific jurisdiction, the suit must arise out of or relate to the defendant's contacts with the forum. In other words, there must be an affiliation with the forum and the underlying controversy, principally, an activity or an occurrence that takes places in the forum State and is therefore subject to the State's regulation. ***For this reason, specific jurisdiction is restricted to adjudication of issues deriving from, or connected with, the very controversy that establishes jurisdiction***. Where there is no such connection, specific jurisdiction is lacking regardless of the extent of a defendant's unconnected activities in the state.
      a. **Purposeful Availment**
      b. **Substantial Nexus**
      c. **Reasonable and Foresseable**

III. <u>Is jurisdiction established via regular employment in the state/contract formation?</u>

1. **Contract formation via an oral agreement –**
   <u>**Rohrbach v. Colorado Rockies**</u> – 2022 Cal. Wrk. Comp. PD LEXIS 102 (WCAB Panel Decision)
   Oral contract for hire found despite important contract terms not being determined until employee/applicant was outside of CA, and despite their being an integration clause contained within K of hire.

   - ***Laeng v. WCAB*** (1972) 6 Cal. 3d 771, 37 Cal. Comp. Cases 185 - "is not confined...to finding whether or not the [defendant] and [applicant] had entered into a traditional contract of hire. The *Laeng* court also indicated that "Given the broad statutory contours of the definition of employee,...an 'employment' relationship sufficient to bring the California Workers' Compensation Act into play cannot be determined simply from technical contractual or common law conceptions of employment but must instead

be resolved by reference to the history and fundamental purposes underlying the Act."

- ***Reynolds Electrical & Engineering Co v. WCAB*** *(Egan) (1966) – despite several out-of-state contingencies in NV, oral K was deemed formed in CA.* In the *Reynolds* case, the Court of Appeal indicated the contract for hire was made in California when the applicant accepted the employment offer in California even though he was required after his acceptance, to perform certain significant activities outside of California in Nevada. After accepting his contract in California, applicant was required to go to Nevada and fill out a lengthy questionnaire, obtain a security clearance and the employer retained the exclusive power to reject the applicant when he actually reported to work in Nevada.
- ***Travelers Ins. Co. v. WCAB*** *(Coakley) (1967) – despite employer's further requirements outside of CA, oral K was deemed formed in CA.*
- ***Bowen v. WCAB*** *(1993)- written K sent by mail to player in CA for execution, further ratification by MLB Commissioner not needed.*

The principles set forth in *Laeng* were affirmed and expanded in *Bowen v. WCAB* (1999) 73 Cal. App. 4th 15, 64 Cal. Comp. Cases 745, where the court found that conditions subsequent to the acceptance of the MLB contract where unnecessary conditions for the formation of a contract for workers compensation purposes. In *Bowen*, specific terms required the contract to be approved and signed by the Commissioner of Baseball in New York and also signed by the employer baseball team who were both outside California before a valid contract was formed. The fact Bowen accepted the terms and conditions of his contract in California was sufficient standing alone to establish subject matter jurisdiction even though he suffered his injuries or injury outside California.

- ***Soward v. Jacksonville Jaguars*** (2014) 2014 Cal. Wrk. Comp. P.D. LEXIS 140 (WCAB panel decision) - the issue was whether a player had to sign an enforceable written NFL player contract that is recognized by the NFL within California in order for the WCAB to have subject matter jurisdiction over applicant's claim. **The answer was no.** The *Soward* court held: Under long established California case law and under Labor Code sections 3600.5 (a) and 5305 there is no requirement that an enforceable written contract be executed in California to confer WCAB subject matter jurisdiction. The court went on to say that, an enforceable contract could be formed in a variety of ways including telephonically. Written employment contracts and other documents following an acceptance and formation of an oral contract in California are construed to be a condition subsequent. Moreover, the specific location where a contract is signed is not determinative of the actual place of origin or acceptance of the contract

under Labor Code sections 3600.5 (a) and 5305. Neither 3600.5(a) nor 5305 require the signing of an employment contract in California to be valid and binding.

2. Contract formation via signature agreement –

Tripplett v. WCAB, Indianapolis Colts, et al. (2018) – Cal. App. 5th 556, Oral contract for hire was not found until both the applicant and his agent/contract advisor signed the written employment agreement when both of them were outside of CA. Agent, despite beginning preliminary negotiations while in CA did not possess the ability to bind applicant to employment agreement or to accept on his behalf.

Penrose v. Denver Gold (2018) – Cal. Wrk. Comp. PD LEXIS 290 (WCAB Panel Decision)

WCAB held there was California subject matter jurisdiction over applicant's entire cumulative trauma claim for the period of 1976 to the beginning of 1985.

During the cumulative trauma period, applicant signed two of his employment contracts with two different teams in California. The court held that Applicant's hiring in California was a sufficient connection standing alone to support WCAB subject matter jurisdiction pursuant to Labor Code sections 3600.5(a) and 5305.

This allowed allocation of liability in accordance with Labor Code section 5500.5(a) to different employers for which applicant played for during his entire period of cumulative trauma injurious exposure including the Denver Gold even though his contract with the Denver Gold was not signed in California.

IV. <u>Despite Subject Matter Jurisdiction being established does an exemption exist?</u>

Labor Code Section 3600.5 subsections (b) - **Reciprocity**

<u>Carroll v. Cincinnati Bengals, PSI, et al.</u> (2013) – Cal.Wrk.Comp. LEXIS 102 (WCAB en banc decision)

Both an employer and employee (applicant) are exempt from California subject matter jurisdiction and California workers' compensation laws when all of the enumerated statutory conditions of Labor Code section 3600.5(b) are established.

(1) The employee is temporarily within California doing work for the employer,

(2) The employer furnished coverage under the workers' compensation or similar laws of another state that covers the employee's employment while in California,

(3) The other state recognizes California's extraterritorial provisions, and

(4) The other state likewise exempts California employers and employees covered by California's workers' compensation laws from the application of its workers' compensation or similar laws.

Labor Code Section 3600.5 subsections (c) and (d) – **Exemption from Division 4 of Labor Code**

- **Hansell v. Arizona Diamondbacks, et al. (2022)- Cal.Wrk.Comp. PD LEXIS 83 (WCAB PANEL DECISION)**

WCAB had to determine whether an applicant's claim was exempt and barred under Labor Code Section 3600.5 subsections (c) and (d).

At play were whether subdivion (c) and (d) overrode the general jurisdiction provisions of subsection (a) and 5305.

Court ultimately decided that subdivion(c) and (d) are not applicable to a claim where a California hire has occurred.

- **Wilson v. Florida Marlins, et al.** (2020) – Cal.Wrk.Comp. PD LEXIS 30 (WCAB Panel Decision)

WCAB affirmed the WCJ's decision that applicant's cumulative trauma claim was not exempt from California subject matter jurisdiction pursuant to Labor Code § 3600.5 subdivisions (c) and (d) since they do not override the general subject matter jurisdiction provisions of sections 3600.5(a) and 5305 which provide the basis for California WCAB subject matter jurisdiction where there is a California hire during the alleged CT period. The Board held that section 3600.5 subdivisions (c) and (d) only apply when there is no hire in California.

The WCAB also held that the language in 3600.5(c) exempting a professional athlete who has was hired outside of California as well as his or her employer is ambiguous when applied to a claim where the applicant has contracts of hire formed in California but not with the particular employer who is claiming the exemption from subject matter jurisdiction.

Based on principles of statutory construction as well as the legislative history and intent, as well as the public policy behind the statutes, the WCAB held that the most reasonable interpretation of sections 3600.5(c) and (d) is that they were intended to apply only to professional athletes who cannot establish subject matter jurisdiction under sections 3600.5(a) and 5305. Since the applicant in this case was hired in California by multiple teams during the alleged cumulative trauma period and was regularly employed by California

based teams, the WCAB may properly exercise subject matter jurisdiction over the alleged CT claim.

- **Neal v. San Francisco 49ers, et al** (2021) – Cal. Wrk. Comp. PD LEXIS 68 (WCAB Panel Descision)

Whether an alleged lack of WCAB personal jurisdiction over the last two employers during the applicant's last year as a professional athlete precludes the exercise of WCAB subject matter jurisdiction over applicant's cumulative trauma claim based on the exemptions in Labor Code Sections 3600.5 subdivisions (c) and (d). In denying defendant's Petition for Reconsideration, the WCAB upheld the Findings and Order of the WCJ that applicant's cumulative trauma claim could be brought in California since Labor Code section 3500.5 subdivisions (c) and (d) only apply to applicant's who have not been hired in California. In this case applicant was hired by defendant in California during the alleged cumulative trauma period which is sufficient in itself to establish WCAB subject matter jurisdiction over applicant's entire alleged cumulative trauma claim.

- **Grahe v. Philadelphia Phillies, et al.** (2018) – Cal. Wrk.Comp. PD LEXIS 480 (WCAB Panel Descision)

Whether in a situation where an employer establishes an exemption pursuant to Labor Code §3600.5 and that employer is in the Labor Code §5500.5 liability period, are they alone exempt from liability or if the exemption is established, whether the applicant's entire claim is barred by Labor Code §3600.5(d).

The WCAB held there was subject matter jurisdiction over the applicant's entire cumulative trauma claim based on the fact he played for a period of time for a California based team, and it also appeared he signed at least one of his employment contracts in California with the California Angels. The Board also held that the Philadelphia Phillies who employed the applicant during the applicable Labor Code §5500.5 liability period, were exempt from liability based on the fact the Phillies met all of the conditions for an exemption pursuant to Labor Code §3600.5(c). Moreover, since there was no other team other than the Phillies liable under Labor Code §5500.5, the WCAB held that applicant's claim could still advance before the WCAB and while liability could not be assessed against the Phillies, liability could "rollback" and be assessed against the previous employer over whom California could assert jurisdiction, pursuant to the *Patterson* case and establish precedent.

V. Due Process Considerations

- **Federal Insurance Company v. WCAB** (Johnson) (2013) 221 Cal. App. 4th 1116, 78 Cal. Comp. Cases 1257

  In this case, the Court of Appeals opined that despite having jurisdiction over the claim, California's interests in the claim was not stronger than the state wherein most of applicant's activity took place, Connecticut. In making their decision, they established that constitutional due process had to take precedent. Accordingly, if an employer or the insurer are made to defend claims in states where a claim does not have an sufficient connection to the matter, they are essentially being deprived of due process.

  The court concluded that from a constitutional standpoint, as a matter of due process, California did not have the power to entertain Johnson's claim.

- **Farley v. San Francisco Giants; Ace American Insurance** 2020 Cal.Wrk.Comp. P.D. LEXIS 173 Farley I (WCAB panel decision)

The WCAB held that there was no statutory basis for California to exercise subject matter jurisdiction because there was no California contract, nor did any of applicant's injuries occur in the state. In the absence of both, subject matter jurisdiction cannot be based solely on an California based employer exercising supervision and control over the employee while he is working for various affiliates outside of California.

VI. Other considerations in sports claims?

- Statute of Limitations
- Contractual Choice of Forum/Law Provisions