NATIONAL FOOTBALL LEAGUE AND NATIONAL FOOTBALL LEAGUE PLAYERS ASSOCIATION

In the matter of the arbitration between

NATIONAL FOOTBALL LEAGUE
MANAGEMENT COUNCIL/
TENNESSEE TITANS

and

NATIONAL FOOTBALL LEAGUE
PLAYERS ASSOCIATION/
BRUCE MATTHEWS

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For the NFLPA

Calvin William Sharpe
Arbitrator/Non-Injury Panel

August 5, 2010

In a letter dated September 12, 2008, The Tennessee Titans (Club) and the NFL Management Council (NFLMC) filed a non-injury grievance against Bruce Matthews (Player) protesting the Player's "improper filing and pursuing claims against the [Club] under the workers' compensation laws of the State of California in violation of the Player's NFL Player Contract. In a letter dated September 18, 2008, The NFL Players Association (NFLPA) on behalf of the Player denied the grievance. Being dissatisfied with earlier relief the Club has brought the matter to arbitration. A hearing was held on October 9, 2009, in Nashville, Tennessee.

I.

STATEMENT OF THE CASE

A.

ISSUE

1. Did Bruce Matthews violate his Player Contract by filing a claim for workers' compensation benefits in California and requesting that the claim be processed under California law?

2. If so, what is the appropriate remedy?

B.

RELEVANT PROVISIONS OF THE 1999-2003 PLAYER CONTRACT

22 . LAW. This contract is made under and shall be governed by the laws of the State of TENNESSEE.

26D. Jurisdiction of all workers compensation claims and all other matters related to workers compensation, including but not limited to the matters recited in Numbered Paragraph 10 hereof, and including all issues of law, issues of fact, and matters related to workers compensation benefits, shall be exclusively determined by and exclusively decided in accordance with the internal laws of the State of Tennessee without resort to choice of law rules. This paragraph shall have no

application to injury, if any, sustained by Player after this contract is assigned by waiver or trade to another club domiciled outside of the State of Tennessee.

RELEVANT PROVISIONS OF THE 2006-2012 COLLECTIVE BARGAINING AGREEMENT

Article IX, Section 8. Arbitrator's Decision and Award. . . . The decision of the arbitrator will constitute full, final and complete disposition of the grievance, and will be binding upon the player(s) and Club(s) involved and the parties to this Agreement; provided , however , that the arbitrator will not have the jurisdiction or authority: . . . (b) to grant any remedy other than a money award, an order of reinstatement, suspension without pay, a stay pending the decision, a cease and desist order, a credit or benefit award under the Bert Bell/Pete Rozell NFL Player Retirement Plan, or an order of compliance, with a specific term of this Agreement or any other applicable document, or an advisory opinion pursuant to Article XIII (Committees), Section 1(c).

Appendix C

19.DISPUTES. During the term of any collective bargaining agreement, any dispute between Player and Club involving the interpretation or application of any provision of this contract will be submitted to final and binding arbitration in accordance with the procedure called for in any collective bargaining agreement in existence at the time the event giving rise to any such dispute occurs.

C.

BACKGROUND FACTS

The Player played for the Club and its predecessors, the Tennessee Oilers and the Houston Oilers for 19 NFL seasons (1983-2002) before retiring. At the end of his tenure with the Club the Player had been one of the Club's and NFL's greatest players having played in 296 NFL games, been selected to 14 consecutive Pro Bowls, and been inducted into the Pro Football Hall of Fame in 2007.

On April 8, 2008, the Player filed a workers compensation claim before the Workers' Compensation Appeals Board (WCAB) in the State of California. As already noted, the Club filed a grievance on September 12, 2008. In February 2009, the Club petitioned the WCAB to dismiss the Player's claim or defer to arbitration on the grounds that the Player's claim violated

the forum selection clause in the Player Contract. The Player opposed the Petition in a brief filed with the WCAB on March 23, 2009. This arbitration proceeds, apparently, as the California WCAB case is pending.

II.

CONTENTIONS OF THE PARTIES

A. THE CLUB'S POSITION

The Club seeks a cease and desist order that would prevent Matthews from proceeding in a California tribunal for workers' compensation benefits under California law as well as damages equal to the cost of defending his California claim. The Club contends that Matthews "breached the clear terms of his NLF Player Contract by filing a claim for workers' compensation benefits" and seeking that those benefits be determined under California law. The Club cites Paragraphs 22 and 26D of the Contract as plainly and unambiguously requiring Matthews to file such claims in Texas or Tennessee to be determined under Texas or Tennessee law. Claiming that Matthews cannot excuse his breach by arguing that the relevant contractual provisions are choice of law rather than choice of forum provisions, the Club ultimately argues that Matthews' claim for benefits under California law makes this distinction irrelevant.

Specifically, the Club cites Paragraph 26D containing language limiting the jurisdiction and determination of workers compensation claims to the laws of Tennessee "without resort to choice of law rules." The Club also cites Paragraph 22 as more generally providing that the Contract was "made under and shall be governed by the laws of the state of Tennessee." According to the Club, it is Matthews' filing for workers' compensation benefits under the laws of California that breaches both provisions.

To Matthews' claim that Paragraph 26D is only a choice of law provision and excuses his

filing in California, the Club says that Paragraph 26D is a choice of forum provision that prevented the filing in California. Moreover, the Club continues quoting the "under California law" language from Matthews' application for workers compensation benefits, Matthews is filing for benefits under California law rather than Tennessee or Texas law. As a matter of contract interpretation, the Club maintains that, construed as a choice of law provision, Paragraph 26 D would render Paragraph 22 meaningless and fail to give effect to all contractual provisions as preferred by a well-settled principle of contract interpretation.

Noting the concession of Matthews' Counsel at the hearing that Paragraphs 22 and 26D are choice of law provisions, the Club argues that Tennessee and Texas law require enforcement of the contractual choice of forum and choice of law provisions. Specifically, the Club argues that under both Tennessee and Texas law choice of forum clauses are enforced if reasonable.

The Club quotes the following language from a 2008 Tennessee appellate court case: "The validity of a forum selection clause depends on whether it is fair and reasonable in light of all the surrounding circumstances attending its origins and application." Based on the cases the Club also maintains that parties seeking to invalidate such a clause "bear a heavy burden" of presenting evidence to overcome the presumption of validity. Unreasonable or unjust agreements and invalid clauses due to fraud or overreaching are examples of the requisite evidence. The Club argues that Paragraph 26D in Matthews' agreement is reasonable, because he resided in Texas and Tennessee for 20 years, and there is no evidence of overreaching or fraud.

Similarly, the Club argues that the choice of law provision calling for the application of Tennessee and Texas law is enforceable, if made in good faith. Elaborating, the Club notes that Tennessee and Texas "bear a material" connection to Matthews and in applying the following five Restatement (Second) of Conflict of Laws factors argues that no other state has a "materially

greater interest." The five Restatement factors are [the Player's] residence, the performance of his contract, the Club's location, the locus of the negotiation and signing of the contract.

The Club challenges the Player's reliance on the California law that depriving employees of California workers compensation benefits is unenforceable under California law, claiming both that California law is irrelevant and that it would not alter the Player's obligation under the contract, even if it were relevant. The Club cites the *Alaska Packers Ass'n v. Industrial Accident Commission of California*, 294 U.S. 532 (1935), for example, as distinguishable from the instant case because of [the Player's] residency and work in Texas and Tennessee and the absence of evidence that he would be left without a remedy in Tennessee or Texas. The Club also distinguishes the *Contract Services Network, Inc. v. Aubry*, 62 F.3d 294 (9th Cir. 1995), case as considering different issues from those presented in this case.

The Club rejects the Player's argument that enforcing the two contractual provisions at issue would require him to forgo workers compensation benefits in California violating the "well-settled law that employers cannot deprive employees of minimum health and safety benefits provided by states, including workers compensation benefits." On the contrary, the Club argues that the Player's agreement is to forgo all forums except Tennessee and Texas, not to forgo the benefits.

The Club also answers the Player's argument that Paragraphs 22 and 26D lacked his assent and adequate consideration and that Tennessee law allows him to seek benefits in California. The Club's rejoinder is that the Player was a sophisticated negotiator who understood the terms of the agreement and that Hornbook law recognizes consideration, where a benefit such as the Player's receipt of tens of millions of dollars during this 20 years with the team and a detriment are sufficient consideration.

The Club's second major argument is that the Collective Bargaining Agreement (CBA) and the law of the shop require enforcement of the Player's contractual promises. The Club cites contractual language limiting the Arbitrator to the provisions of the Agreement as well as NFL/NFLPA and non-NFL/NFLPA arbitration cases addressing workers compensation issues. It argues:

> These cases make clear that state workers' compensation laws cannot interfere with the Arbitrator's enforcement of [the Player's] NFL Player Contracts. In particular, a finding that the Player has not breached the terms of his contract based on California workers' compensation law would contravene settled NFL precedent.

In the Club's view, the CBA authorizes the Arbitrator to require the Player to cease and desist from breaching his Player Contract. Again, the Club cites NFL arbitration precedent holding that a cease and desist order is appropriate, where "a party's action under a state workers' compensation law contravenes the requirements in the CBA."

B. THE PLAYER'S POSITION

On the other hand, the NFLPA on behalf of the Player urges the summary denial of the grievance claiming that Article 26D of the Player's Contract "is at most a 'choice of law' clause." In the Player's view, Article 26D only requires that Tennessee workers compensation laws be applied to a player's claim; it does not require that Tennessee be the exclusive forum for such claims. Moreover, the Player continues, since Tennessee law itself permits workers to file workers compensation claims in other states, the Player's California filing does not breach the Contract.

The Player insists that a contrary finding would contravene the law of California and federal court decisions. The Player also cites *Alaska Packers* for the proposition that "an individual employee may not waive statutory protections designed to promote the health and

safety of employees in California." (emphasis in original) In the Player's view, the statutory provision at issue in *Alaska Packers* is also applicable in this case and binds the Arbitrator in this case as it bound Chief Justice Brandeis in that case.

Detailing its choice of law argument, the Player argues that the Club's effort to deprive him of his right to file for workers compensation benefits is based on the "most flimsy grounds" that Paragraph 26D of the Player Contract is a choice of forum clause that waives the Player's right to file for benefits outside the state of Tennessee. The Player notes the difference between choice of forum (requiring filing in a particular state) and choice of law (requiring the application of a particular state's law) provisions. Quoting the language of Paragraph 26D the Player claims that the provision is on its face a choice of law rule requiring application of Tennessee law rather than a choice of forum provision. Importantly, the Player adds that as a choice of law term: "Any state court can apply the 'internal laws of the state of Tennessee,' should it choose to do so consistent with its own choice of law rules."

The Player then suggests language that could have been used to create a choice of forum provision. In the absence of such language, the Player maintains, he is entitled to file the claim in California or any other state. Under the Player's interpretation the California court would then decide whether to apply Tennessee law based on relational or other considerations as well as the policy of California. The Player also announces his intent to argue that even the choice of law provision is contrary to California public policy, and the California court's decision on this question should receive the Arbitrator's deference. The Player claims that past decisions of NFL arbitrators regarding a player's benefits entitlement are consistent with such deference.

Next, the Player argues that Tennessee law fully supports his filing of the claim in California. In support of this proposition the Player cites *Ohio v. Chattanooga Boiler 7 Tank*

Co., 289 U.S. 439 (1933)(employee filing and recovery in Ohio deemed permissible under the Tennessee statute) and *True v. Amerail Corp.*, 584 S.W. 2d. 794 (Tenn. 1979)(employee's receipt of workers compensation benefits in Virginia permissible and preclusive of recovery also in Tennessee) affirming the right of Tennessee employees to file in other states.

Finally, the Player argues that the law of the land as enunciated in *Alaska Packers* does not permit him to waive his right to workers compensation benefits in California. Citing California Code Section 5000 prohibiting a "contract, rule or regulation" exempting an employer from liability for workers compensation benefits, the Player argues that this provision in California, replicated in many states, has been interpreted by state and federal courts as an inflexible rule or minimum labor standard preventing employers, employees and unions from agreeing to prevent otherwise eligible employees from securing workers compensation benefits in California.

In support of this argument the Player cites four Supreme Court cases, *Alaska Packers* (1934)(employee who signed an employment contract in California was injured in Alaska); *Pacific Employers Insurance Co. v. Industrial Accident Commission of California*, 306 U.S. 493 (1939)(Massachusetts employee injured in California); *Metropolitan Life Ins. Co. v. Commonwealth of Mass*, 471 U.S. 724 (1985)(collective bargaining agreement did not preempt minimum health standards established under state law); and *Livadas v. Bradshaw*, 512 U.S. 107 (1994)(preemption doctrine does not extend to supplanting state employee benefits rights with collectively bargained employee benefits); a Ninth Circuit case *Contract Services Network, Inc. v. Aubry*, 62 F.3d 294 (9th Cir. 1995)(workers compensation benefits formula under a collective bargaining agreement did not preempt the California Workers Compensation statute); a professional football case *Brache vv. Tampa Bay Storm*, (Case No. ADJ1908964)(Court

disallowed waiver of benefits under California law for player injured in California, where the collective bargaining agreement purported to waive the right to workers compensation benefits outside the state of Florida); and a California Workers Compensation Judge's decision in *Vaughn Booker v. Cincinnati Bengals* (October 6, 2009)(Judge refused to enforce the Ohio choice of forum and law clauses in the player's contract to prevent the player from filing a workers compensation claim in California citing Section 5000 of the California Labor Code).

In the Player's view:

> Surely, if the state of California is willing to strike down an NFL player contract clause which purports to require a player to both file in the club's home state (choice of forum) and be exclusively governed by its laws (choice of law), it would certainly do so in [the Player's] case, where only a choice of law clause exists in his contract.

The Player concludes that a contrary arbitral ruling in this case would violate California public policy and require vacatur of the Award.

III.

DISCUSSION AND OPINION

Paragraph 26D of the NFL Player Contract

The central issue in this case is whether Paragraph 26D of the NFL Player Contract is a choice of forum clause that would prevent the Player from filing a workers compensation claim California, or a choice of law clause requiring the application of Tennessee law but not the filing of a claim exclusively in Tennessee. Both choice of forum and choice of law clauses recognize the autonomy of contracting parties to limit forum and choice of law decisions in an effort protect the parties' expectations and further predictability.[1] Choice of forum clauses specify a venue for resolving disputes and may be exclusive or non-exclusive, while choice of law clauses

[1]Eugene F. Scoles et. al. CONFLICT OF LAWS, pp. 467, 478 , and 857, 3rd ed. (West 2000)

select the law to be applied by a forum. Moreover, a choice of forum clause may be deemed to imply a choice of the selected forum's law; but a choice of law clause without more does not imply a selection of the law's forum for jurisdictional purposes.[2]

With the following observations a leading treatise makes the point that the drafting of forum clauses leads to problems of interpretation:

> With astonishing frequency, parties have drafted clumsy clauses that are unclear as to what effect is intended, leaving [decision makers] with difficult questions of interpretation.
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> Most difficulties related to the scope and interpretation of forum clauses can be avoided by careful drafting . . . .[3]

Although some of the interpretive issues focus on whether a forum clause is exclusive or non-exclusive, the current controversy presents the question of whether as a threshold matter the clause is a choice of forum or choice of law clause.

Paragraph 26D of the Player's Contract in this case provides:

> Jurisdiction of all workers compensation claims and all other matters related to workers compensation, including but not limited to the matters recited in Number Paragraph 10 hereof, and including all issues of law, issues of fact, and matters related to workers compensation benefits, shall be exclusively determined by and exclusively decided in accordance with the internal laws of the State of Tennessee without resort to choice of law rules.

Paragraph 26D makes no reference to forum. Rather, it says that "jurisdiction" and all matters related to workers compensation benefits shall be "determined by and . . . exclusively decided in accordance with" Tennessee law. While this language reflects the parties' intention to have all

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[2] *Id.* at 858-859. But see *Burger King Corp. v. Rudzewicz,* 471 U.S. 462, 482 (1985)(acknowledging that a choice of law provision standing alone is insufficient to confer jurisdiction, but holding that it may do so when combined with other factors).

questions surrounding workers compensation claims decided exclusively under Tennessee law, it does not provide that Tennessee shall be the exclusive forum for such claims. Contributing to the awkwardness of the provision is insertion of the term "jurisdiction," which normally refers to an appropriate forum rather than the applicable law. Arguably, the mere presence of the term in Paragraph 26D might suggest the parties' assent to Tennessee as the exclusive forum for workers compensation disputes.[4] However, Paragraph 26D does not say that Tennessee will have exclusive jurisdiction over workers compensation claims. Rather, it says that jurisdiction is among the issues in workers compensation cases that will be decided by and in accordance with Tennessee law.[5] As the Player points out, Tennessee law does not claim exclusive jurisdiction for itself in workers compensation cases. On the contrary, it permits workers to file workers compensation claims in other states.[6] These factors lead to the conclusion that Paragraph 26D is a choice of law and not a choice of forum provision. Accordingly, the Player is not precluded under the Contract from filing his workers compensation claim in California.[7]

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[3] *Id.* at 467, 478.

[4] *Id.* at 334-336.

[5] For an example of a clearly drafted choice of forum clause, see Addendum No. 3 of the Player Contract between Khalid Abdullah and the Cincinnati Bengals, Inc., which reads in part:

> Player further agrees that any claim, filing , petition, or cause of action in any way relating to workers' compensation rights or benefits arising out of Player's employment with the Club, including without limitation the applicability or enforceability of this addendum shall be brought solely and exclusively with the courts of Ohio, the Industrial Commission of Ohio, or such other Ohio tribunal that has jurisdiction over the matter.

[6] See *Chattanooga Boiler & Tank Co.*, 289 U.S. 439, 443 (1933)(holding that "the Tennessee statute does not preclude recovery under the law of another state.")

[7] In light of this ruling the cases cited by the Club for the proposition that Tennessee law requires the enforcement of forum selection clauses are rendered inapposite. Similarly, *Alaska Packers* and *Welch v. Nightingale Nurses, LLC,* 2009 Tex. App. LEXIS 3822, (Tex. Ct. App. 2009) grapple with questions concerning forum selection clauses rather than choice of law

Pointing to the language in Paragraph 22 providing that the contract is "made under" and "governed by" Tennessee law, the Club asserts that to treat Paragraph 26D as merely a choice of law provision would render Paragraph 22 "superfluous and fail to give effect to all of the provisions in the contract."[8] The Club cites WILLISTON ON CONTRACTS and attempts to draw support for this argument from the interpretive maxim: "an interpretation which gives effect to all provisions of the contract is preferred to one which renders a portion of the writing superfluous, useless or inexplicable."[9]

The Club's argument is grounded in well-settled contract doctrine.[10] However, issues about the Contract as well as its various terms other than Paragraph 26D may occasion the application of state law---from standards to be applied to determine questions of contract formation and validity to what might constitute a felony for purposes of Paragraph 4 of the exclusions under Appendix 1. Paragraph 22 serves a useful function beyond the parameters of Paragraph 26D by eliminating choice of law disputes whenever contractual provisions call for the application of state law. Being aware, perhaps, of another interpretive maximum–"specific terms and exact terms are given greater weight than general language"---the parties in the detailed choice of law provision of Paragraph 26D emphasize their intended resolution of the

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clauses.

[8]In its entirety Paragraph 22 reads: "This contract is made under and shall be governed by the laws of the state of Tennessee."

[9]Section 32.5 (4th ed. 2009).

[10]See Section 203 of the Restatement of Contracts (2d)(ALI 1981). Comment b states:

> Where an integrated agreement has been negotiated with care and in detail and has been expertly drafted for the particular transaction, an interpretation is very strongly negated if it would render some provision superfluous.

choice of law issue in the contentious area of recurring workers compensation cases.[11] From this perspective Paragraph 22 is hardly rendered superfluous by a finding that Paragraph 26D is a choice of law provision.

However, the finding that Paragraph 26D of the Player's Contract is a choice of law provision does not end the inquiry. As the Player argues:

> In the absence of a choice of forum provision, [the Player] is, of course, entitled to file a claim in California . . . . It is then up to the Titans to argue, in California . . . that [the Player's] claim ought to be decided 'in accordance with the internal laws of the State of Tennessee without resort to choice of law rules.' In turn, California courts may, or may not, apply Tennessee law. . . . Here, [the Player] will argue that the choice of law clause is contrary to California public policy, while the Titans will take the opposite view.

The Player also sets forth the test applied in California to determine whether it will apply the parties' chosen law of a foreign jurisdiction.

Even though the Player is correct in asserting that his California filing "does not run afoul of Paragraph 26D" and make it necessary for him to withdraw with prejudice, the Player acknowledges that Paragraph 26D creates a choice of law agreement. It is clear that California's treatment of choice of law provisions creates the real possibility that a California tribunal may reject Tennessee law contrary to the parties' intention as reflected in Paragraph 26D. While the Player's Contract does not control California's application of its own law, it does control the conduct of the parties. As the parties' contract reader, the Arbitrator's responsibility is to interpret and enforce the contractual obligations undertaken by the parties. In the instant Player Contract the Player promised to resolve workers compensation claims under

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[11] See *Id.* at Section 203(c). Paragraph 10 of the Player's Contract is another provision that seeks to addresses clearly a specific issue that recurs in workers compensation cases.

Tennessee law. Given the possibility that a California tribunal may choose to apply California law despite the parties agreement in Paragraph 26D, what does the choice of law clause require of the parties?

The Player's argument that it will fall upon the Titans to argue that Tennessee law should be applied and the Player to argue that California law and not Tennessee law should apply would be unfaithful to the Player's obligation under Paragraph 26D to apply Tennessee law. Because the promise in Paragraph 26D is a mutual obligation, the Player and Club are equally responsible for assuring the application of Tennessee law. Thus, the Player's argument before the California tribunal for the application of California law violates Paragraph 26D of the Player's Contract.[12]

Remedy

Article IX, Section 8 of the Collective Bargaining Agreement authorizes the Arbitrator to grant a cease and desist remedy, and Appendix C, Paragraph 19 of the Agreement calls for the submission of disputes under the Player Contract to final and binding arbitration under the procedure set forth in the Collective Bargaining Agreement.[13] In light of the mutual obligation of the Club and Player to apply Tennessee law under Paragraph 26D, it is appropriate for the Club and the Player to stipulate to the application of Tennessee law before California tribunals, even on the question of whether the choice of law provision itself should be enforced. If the California tribunal refuses to accept the stipulation and rules that Tennessee law will not be applied, the parties should withdraw barring the availability of further relief in the California

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[12] See *Applicant's Opposition To Defendants' Petition For Dismissal* brief to the WCAB (March 23, 2009)

[13] See *NFLPA v. NFLMC/Dallas Cowboys and Houston Texans* (where Arbitrator Das issued a cease and desist order against the Texas clubs who violated the collective bargaining agreement by taking action that conformed to the provisions of state law rather than the

judicial system.

The Player argues that the Arbitrator should defer to the California Court on the question of whether to apply Tennessee law. In support of this position the Player cites *Cincinnati Bengals, Inc. v. Khalid Abdullah, et. al.* Case No. 1:09-cv-738 (S.D. Ohio 2010). That case involved a suit by the Cincinnati Bengals against six of their former players to enjoin them from seeking workers compensation benefits in the State of California. The Bengals alleged that choice of forum and choice of law clauses required the players to file any workers compensation claim in Ohio under Ohio law. The Bengals also sought a declaratory judgment enforcing the contractual provision. An Ohio state court had granted the Bengals a temporary restraining order, preliminary injunction and default judgments against some of the players before the players removed the case to federal court.

The Player cites the following language from the Ohio federal court's opinion:

> The judgments purport to enjoin Defendants [players] from breaching their contracts by 'seeking and receiving relief' under any other states workers' compensation laws. Defendants apparently have a right to do so in California . . . While the Bengals are challenging the merits of those claims under California law, those legal challenges will be determined by the California tribunals, not by this Court.

In the Player's view, this federal court ruling supports his position that "the California courts should be allowed to determine whether the players may pursue claims for benefits in California tribunals under California law." Noting the Ohio federal court's characterization of the Bengals' suit as an improper "collateral attack on the California tribunal's favorable rulings," the Player urges that the Arbitrator not seek to overrule the California courts.

However, two other aspects of the Ohio federal court's decision are noteworthy. First, the Court set aside the default judgments against the players in part because of the applicability

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agreement).

of the contract's arbitration clause. Second the Court specifically addressed as follows the parties' duty to arbitrate the dispute about whether the players complied with the choice of forum/choice of law clause:

> . . . Addendum No. 3 to the Players Contract (the choice of law/choice of forum clause giving rise to this dispute) is separately signed by both the player and a Bengals representative. There is nothing in that addendum exempting its terms from the contract's very broad and unambiguous arbitration clause, which applies to any dispute about 'compliance' with any of the contract's terms and conditions.
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> The Bengals argue that NFL arbitrators will not decide issues of state law, which will leave them without a remedy for what they now allege is Defendants' violation of Ohio law. Addendum 3 does not refer to any Ohio legal requirements or the Ohio statute which the Bengals allege has been violated. The addendum contains the parties' agreement on the proper forum for a workers compensation claim. This Court previously concluded that the resolution of the Bengals' claims requires the interpretation of Addendum 3. The second amended complaint does not change that conclusion. In Section 301 cases, a 'strong presumption of arbitrability' applies to disputes arising under a collective bargaining agreement containing a broad arbitration clause. . . . That strong presumption fully applies here.[14]

The Ohio federal court leaves little doubt that the deference suggested in the language quoted by the Player operates judicially between the Ohio and California tribunals on the determination of workers compensation claims filed initially in California. The Ohio Court also clearly recognizes the Arbitrator's subject matter jurisdiction and grants the players' motion to compel arbitration on the question of whether players breached the player contracts by filing for workers compensation in California rather than Ohio. In this respect the Ohio federal court decision fully supports the Arbitrator's jurisdiction in this case to determine liability and the appropriate remedy.

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[14]Slip Opinion pages 24-25.

IV.

AWARD

For reasons fully set forth in the preceding section the grievance is denied in part and sustained in part. The Player is not precluded under Paragraph 26D from filing his workers compensation claim in California. However, the Player is required to proceed under Tennessee law, and accordingly shall cease and desist from attempting to persuade the California tribunals to apply California law in violation of Paragraph 26D of the Player's Contract. Further, under this order the Player is required to withdraw from the California proceeding, should the California tribunals ultimately deny the application of Tennessee law. The arbitrator will retain jurisdiction until the Player has complied with the cease and desist order and the California tribunals have determined the applicable law.

CALVIN WILLIAM SHARPE
ARBITRATOR

8/5/10
DATE