

Athlete's Workers' Comp Case Affects MD Employers

?By former Associate Jack Blum

Serious pro football fans may remember Darnerien McCants as a backup wide receiver who scored eight touchdowns while making 58 catches for 774 yards in four seasons with the NFL's Washington Redskins and Philadelphia Eagles. Those who more closely follow Maryland employment law, on the other hand, now know McCants as the catalyst for an expansion in the scope of Maryland worker's compensation coverage that multi-state employers need to understand.

During the 2003 and 2004 seasons, McCants suffered six injuries while playing for the Redskins. Three occurred during a game against the Bills in Buffalo, one in a Skins-Eagles contest in Philadelphia, one during practice at the Redskins' headquarters in Ashburn, VA and another during a home game at the Redskins' stadium in Landover, MD. McCants filed worker's compensation claims in Maryland for all of the injuries, but the Maryland Worker's Compensation Commission (MWCC) initially dismissed five of the claims based on the injuries occurring out of state. The Circuit Court for Prince George's County agreed with the MWCC on judicial review, pointing out that McCants' employment with the Redskins required him to be in Maryland only eight days a year (apparently the team's two home preseason games were not taken into consideration) , compared with the hundreds of days he spent at the Skins' training facility in Virginia.

McCants appealed his case, which eventually reached the Maryland Court of Appeals, the state's highest court. The Court of Appeals starkly disagreed with the Redskins' - and the Commission's and Circuit Court's - assessment that the amount of time the player spent in Virginia was controlling. The Court instead determined that the main purpose of McCants' employment with the team was to play in regular and preseason games, and not participate in the "important" but "ancillary" activities of lifting weights, watching game film and taking part in other training exercises. Since exactly half of the Redskins' 20 games per season (including preseason) took place in Maryland, the Court concluded that McCants was "regularly employed" in the state, and that his out of state activities, including the extensive time he spent practicing in Virginia, were only "incidental" or "occasional." Accordingly, Mr. McCants was held to be eligible for Maryland worker's compensation benefits for each injury, whether it occurred in Maryland or elsewhere.

At first glance, the case of an NFL football player would seem to be unique, with little or no application to other professions. There is, however, an obvious analogy that can be drawn to a salesperson that is based in one state where he or she performs administrative tasks, akin to practice, but travels to other states to make sales, similar to McCants' games, serving as the main purpose of his employment. It is not difficult to think of other scenarios where an employee's "main purpose" may take place in a state other than the one in which the company's headquarters are located. The Court pointed out that this is a fact-intensive judgment based on the facts and circumstances of each employment situation. It's also important to note that in a companion case involving former Redskins' punter Tom Tupa, the Court invalidated an agreement between the Redskins and Tupa that Virginia law would govern the employee's entitlement to worker's compensation.

The penalties for failing to carry approved worker's compensation insurance coverage or gain approval as a self-insured employer in Maryland can be steep. The MWCC cannot only seek repayment of any worker's compensation award from an uninsured employer, but can also impose an assessment of up to \$3,000 - and refer the case for criminal charges. And these penalties, both civil and criminal, can be imposed personally against individual officers of corporate employers.

The lesson to be learned here is that each state offers a different set of benefits, and injured employees will naturally try to determine which state is likely to give them the most generous award. In order to avoid civil and/or criminal penalties, it is critical for multi-state employers to carefully evaluate their operations - and obtain worker's compensation insurance in each state in which their employees may be covered.