

1 **WORKERS' COMPENSATION APPEALS BOARD**

2 **STATE OF CALIFORNIA**

3
4 **LARRY WATKINS; GORDON BELL;**
5 **DANIEL BUGGS; JAMES STIENKE;**
6 **WILLIAM BRYANT; RONALD JOHNSON;**
7 **ROBERT HYLAND; WALKER GILLETTE;**
8 **REGGIE RUCKER; ANDREW SELFRIDGE;**
9 **DOUG VAN HORN; ANANIAS CARSON;**
10 **JACK GREGORY; THOMAS MULLEN;**
11 **WILLIE YOUNG; JOHN HICKS,**

12 *Applicants,*

13 *vs.*

14 **NEW YORK GIANTS; NEW YORK STATE**
15 **INSURANCE FUND, et al.,**

16 *Defendants.*

17 **Case Nos. ADJ6710001 (ANA) MF**
18 **ADJ7803228 (ANA)**
19 **ADJ8017966 (ANA)**
20 **ADJ8064588 (ANA)**
21 **ADJ8262934 (ANA)**
22 **ADJ9093396 (ANA)**
23 **ADJ9076943 (ANA)**
24 **ADJ9083545 (SDO)**
25 **ADJ6925792 (ANA)**
26 **ADJ8907815 (ANA)**
27 **ADJ8819925 (ANA)**
ADJ9087879 (ANA)
ADJ9093460 (ANA)
ADJ8443963 (ANA)
ADJ6829099 (ANA)
ADJ6843222 (ANA)

**OPINION AND DECISION
AFTER RECONSIDERATION**

18 We previously granted the petition of insurer New York State Insurance Fund (NYSIF) for
19 reconsideration of the September 20, 2014 Findings And Award of the Arbitrator regarding several
20 consolidated cases, as served by mail on October 2, 2014. In his decision the Arbitrator found that there
21 was a contract of workers' compensation insurance between NYSIF and employer New York Giants
22 (Giants) from September 24, 1975 to January 1, 1977, that requires NYSIF "to indemnify [the Giants] for
23 any benefits awarded and to present a defense to the claims" that were consolidated for hearing of the
24 coverage issue by the Arbitrator, and that NYSIF "does not have a valid claim of sovereign immunity
25 with respect to the claims." Based upon those findings, the Arbitrator ordered NYSIF to indemnify the
26 Giants for all reasonable legal expenses and costs incurred in defending the claims and to indemnify the
27 Giants against any award made in favor of its former employees.

28 NYSIF contends that it was created under New York law and has sovereign immunity from suit
29 in California, and that the New York statutes preclude it from defending or paying claims for workers'
30 compensation filed outside of New York for injuries sustained outside of New York. NYSIF further

1 contends that it is not authorized to write insurance in California, that the decision of the Arbitrator is not
2 supported by the evidence, that the Arbitrator should have applied the principle of comity to determine
3 that NYSIF is not liable, and that the limited connections between the consolidated cases at issue and the
4 state of California does not support WCAB jurisdiction over the claims.

5 An opposition to the petition was received from the Giants.

6 The Arbitrator provided a Report and Recommendation on Petition for Reconsideration (Report)
7 recommending that reconsideration be denied.

8 We granted reconsideration in order to allow sufficient time to carefully study the record, the
9 pleadings and applicable statutes. Having completed our review, we conclude that we would have denied
10 reconsideration for the reasons expressed by the Arbitrator in his Report and below if the additional time
11 for review had not been required. Based upon our review of the record, the pleading, and the Arbitrator's
12 Report, and for the reasons expressed in the Report, which is adopted and incorporated by this reference,
13 and for the reasons below, the September 20, 2014 Findings And Award of the Arbitrator is affirmed as
14 our Decision After Reconsideration.

15 DISCUSSION

16 As discussed by the Arbitrator in his Report, the language of an insurance policy must be clear in
17 describing exclusions and limitations on coverage, and the specimen policy placed into evidence does not
18 clearly limit NYSIF to only defending and paying workers' compensation claims filed in New York.
19 Moreover, any such limitation would be inconsistent with the fact that during the coverage period at
20 issue, the vast majority of employment duties performed by the covered employees were outside of New
21 York.

22 NYSIF acknowledges in its petition that the "Giants secured workers' compensation insurance
23 coverage through NYSIF for a period between September 24, 1975 to January 1, 1977." (Petition, 2:21-
24 22.) However, during that time approximately one-half of the Giants' games were away games that
25 were played on the opponents' home fields outside of New York. Moreover, we take permissive judicial
26 notice that *all* home games from October 10, 1976 to the end of NYSIF's period of coverage, two full
27 seasons worth of home games, were played at the Giant's newly built stadium located at the

1 Meadowlands Sports Complex in East Rutherford, New Jersey, which is where the team was
2 headquartered and the players practiced and trained.¹ (Evid. Code, § 452(h).)

3 In light of the fact that most of the Giants' employment activities occurred outside of New York,
4 it is reasonable to infer that NYSIF knew or should have known that industrial injuries to Giants'
5 employees during the period of coverage would occur primarily outside of New York. However, there is
6 no evidence of any express limitation or exclusion of coverage for injuries occurring outside of New
7 York or for claims filed in other states.

8 NYSIF correctly notes that Coverage A in the specimen insurance contract by its own terms
9 applies only to "business operations and locations conducted by this employer in New York State."
10 (Giants Exhibit 3.) If that was the only coverage provided under the contract, there would be some
11 support for NYSIF's contentions. However, Coverage B of the policy further provides that NYSIF will
12 "indemnify" the Giants "against loss by reason of the liability imposed upon [it] by Law for damages on
13 account of *such injuries to such employees wherever such injuries may be sustained...*" (*Id.*, emphasis
14 added.) As discussed in the Report, there is no evidence of any limitation or exclusion from the
15 Coverage B provisions. In the absence of any such limiting or exclusionary language, Coverage B
16 supports the Arbitrator's determination that NYSIF provided insurance coverage for injuries sustained by
17 Giants' employees outside of New York and for claims filed in other states.

18 Lastly, we agree with the Arbitrator that NYSIF may raise its contentions that it has no authority
19 to write compensation insurance in California and that there is not sufficient connection between
20 California and each of the injury claims to support WCAB jurisdiction over the Giants at the trial level
21 for determination by a WCJ at the time each individual claim is adjudicated.

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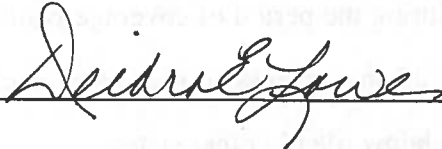
25
26 ¹ We also take permissive judicial notice that the Giants' first four games during the 1976 season were away games played
27 outside of the state of New York. (See e.g. two web sites : <http://en.wikipedia.org/wiki/1976_New_York_Giants_season>;
<http://en.wikipedia.org/wiki/New_York_Giants>, as of April 7, 2015.)

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1 For the foregoing reasons,

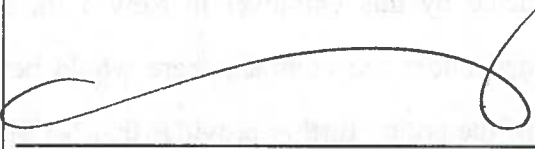
2 **IT IS ORDERED** as the Decision After Reconsideration of the Workers' Compensation Appeals
3 Board that the September 20, 2014 Findings And Award of the Arbitrator is **AFFIRMED**.

4 **WORKERS' COMPENSATION APPEALS BOARD**

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7 **DEIDRA E. LOWE**

8 **I CONCUR,**

9 
10 _____

11 **MARGUERITE SWEENEY**

12 
13 _____

14 **DEPUTY RICK DIETRICH**



15 **DATED AND FILED AT SAN FRANCISCO, CALIFORNIA**

16 **MAY 07 2015**

17 **SERVICE MADE ON THE ABOVE DATE ON THE PERSONS LISTED BELOW AT THEIR**
18 **ADDRESSES SHOWN ON THE CURRENT OFFICIAL ADDRESS RECORD.**

19 **NAMANNY BYRNE & OWENS**
20 **LAW OFFICES OF RONALD MIX**
21 **THE COHEN FIRM**
22 **TOBIN LUCKS**
23 **COLANTONI COLLINS MARREN PHILLIPS & TULK**
24 **WALL McCORMICK & BAROLDI**
25 **SCOLL & ASSOCIATES (2)**
26 **SEYFARTH SHAW**
27 **LAUGHLIN FALBO ET AL. (2)**
ARBITRATOR GEORGE MASON



JFS/abs

WATKINS, Larry et. al.