

---

IN THE  
**Supreme Court of the United States**

FEBRUARY TERM, 2010

---

MAJOR LEAGUE BASEBALL,

*Petitioner,*

v.

KEVIN WILSON;  
MAJOR LEAGUE BASEBALL PLAYERS ASSOCIATION

*Respondents.*

---

*On Writ of Certiorari  
to the United States Court of Appeals  
for the Fourteenth Circuit*

---

BRIEF FOR THE PETITIONER

---

Team Number 13  
Counsel for Petitioner

---

## **QUESTIONS PRESENTED**

- I. WHETHER KEVIN WILSON'S CLAIM UNDER MINNESOTA'S DRUG AND ALCOHOL TESTING IN THE WORKPLACE ACT SHOULD BE PREEMPTED BY SECTION 301 OF THE LABOR MANAGEMENT RELATIONS ACT IN ORDER TO UNIFORMLY INTERPRET THE COLLECTIVE BARGAINING AGREEMENT.
  
- II. WHETHER AN ARBITRATOR'S AWARD UPHOLDING MAJOR LEAGUE BASEBALL'S SUSPENSION OF PLAYERS GIVEN GENERALIZED WARNINGS ABOUT SUPPLEMENTS CONSTITUTES A VIOLATION OF PUBLIC POLICY.

**TABLE OF CONTENTS**

QUESTIONS PRESENTED ..... ii  
TABLE OF CONTENTS ..... iii  
TABLE OF AUTHORITIES ..... v  
SUMMARY OF THE FACTS ..... 1  
SUMMARY OF THE ARGUMENT ..... 2  
ARGUMENT ..... 4

I. WILSON’S CLAIM UNDER MINNESOTA’S DRUG AND ALCOHOL TESTING IN THE WORKPLACE ACT IS PREEMPTED BY SECTION 301 OF THE LABOR MANAGEMENT RELATIONS ACT BECAUSE THE MINNESOTA STATUTE CANNOT BE ENFORCED WITHOUT AN INTERPRETATION OF THE COLLECTIVE BARGAINING AGREEMENT ..... 5

    A. The Express Language of Minnesota’s Drug and Alcohol Testing in the Workplace Act Requires an Analysis of the Collective Bargaining Agreement Entered into by Wilson ..... 6

        1. Minnesota’s Drug and Alcohol Testing in the Workplace Act requires an interpretation of the Collective Bargaining Agreement to determine whether the agreement meets or exceeds the protections provided in the statute ..... 7

        2. Minnesota’s Drug and Alcohol Testing in the Workplace Act requires an interpretation of the Collective Bargaining Agreement to determine the extent to which the players’ are subject to random drug testing ..... 8

    B. Wilson’s Claim under Minnesota’s Drug and Alcohol Testing in the Workplace Act is Inextricably Intertwined with the Terms of the Collective Bargaining Agreement ..... 9

    C. Wilson’s Claim Requires Uniform Interpretation of the Collective Bargaining Agreement in order to be Consistent with Congress’ intent in passing the Labor Management Relations Act ..... 12

II. THE AWARD SUSPENDING PLAYERS FOR USING A BANNED SUBSTANCE MUST BE UPHELD BECAUSE IT DOES NOT VIOLATE PUBLIC POLICY ..... 15

    A. Under New York Law a Fiduciary Duty to Disclose Is Not Explicit, Dominant, or Well-Defined Public Policy ..... 16

1. <u>The public policy is not explicit or well-defined</u> .....	17
2. <u>The public policy is not dominant</u> .....	19
B. The Policy As Interpreted By the Arbitrator Does Not Condone a Breach of Fiduciary Duties .....	20
C. The Players Association Cannot Demonstrate the Policy Created a Fiduciary Duty to Disclose Information About Specific Products .....	21
1. <u>The League does not have a duty to disclose information about specific products</u> .....	21
2. <u>Alternatively, the League did not breach this duty because the League warned players not to use supplements including SpeedShot</u> .....	24
CONCLUSION .....	25

## TABLE OF AUTHORITIES

### United States Supreme Court Cases

<i>Allis-Chalmers Corp. v. Lueck</i> , 471 U.S. 202 (1985) .....	6, 7, 8, 10
<i>E. Associated Coal Corp. v. United Mine Workers of Am., Dist. 17</i> , 531 U.S. 57 (2000) .....	16, 20, 21
<i>Hawaiian Airlines, Inc. v. Norris</i> , 512 U.S. 246, 260 (1994) .....	10
<i>Healy v. Beer Institute, Inc.</i> , 491 U.S. 324 (1989) .....	13
<i>Lingle v. Norge Div. of Magic Chef, Inc.</i> , 486 U.S. 399 (1988) .....	4, 7
<i>Livadas v. Bradshaw</i> , 512 U.S. 107 (1994) .....	10
<i>Muschany v. United States</i> , 324 U.S. 49 (1945) .....	19
<i>Local 174, Teamster, Chauffers, Warehousemen &amp; Helpers of Am. v. Lucas Flour Co.</i> , 369 U.S. 95 (1962) .....	passim
<i>Textile Workers Union of Am. v. Lincoln Mills of Ala.</i> , 353 U.S. 448 (1957) .....	6
<i>United Paper Workers Int'l Union v. Misco, Inc.</i> , 484 U.S. 29 (1987). .....	5, 15, 16, 20
<i>U.S. Steelworkers of Am. v. Rawson</i> , 495 U.S. 362, 368 (1990) .....	6
<i>W.R. Grace and Co. v. Local Union 759, Int'l Union of United Rubber, Cork, Linoleum</i> 461 U.S. 757 (1983) .....	4

## United States Circuit Court Cases

<i>Ace Elec. Contractors, Inc. v. Int'l Bhd. of Elec. Workers, Local Union No. 292,</i> 414 F.3d 896 (8th Cir. 2005) .....	17
<i>Anderson v. Ford Motor Co.,</i> 803 F.3d 953 (8th Cir. 2006) .....	11
<i>Bogan v. Gen. Motors Corp.,</i> 500 F.3d 828 (8th Cir. 2007) .....	6, 7
<i>Coca-Cola Bottling Co. of St. Louis v. Teamsters Local Union No. 688,</i> 959 F.2d 1438 (8th Cir. 1992) .....	19
<i>Cramer v. Consol. Freightways, Inc.,</i> 225 F.3d 683 (9th Cir. 2001) .....	12
<i>Crawford Group, Inc. v. Holekamp,</i> 543 F.3d 971 (8th Cir. 2008) .....	15
<i>Delta Air Lines, Inc. v. Air Line Pilots Ass'n, Int'l,</i> 861 F.2d 665 (11th Cir. 1988) .....	14, 17, 18
<i>Grandon v. Merrill Lynch &amp; Co., Inc.,</i> 147 F.3d 184 (2nd Cir. 1998) .....	16, 17, 22
<i>Iowa Elec. Light and Power Co. v. Local Union 204 of Intern. Bhd. of Elec. Workers (AFL-CIO),</i> 834 F.2d 1424 (8th Cir. 1987) .....	17
<i>Karnes v. Boeing Co.,</i> 335 F.3d 1189 (10th Cir. 2003) .....	10
<i>MidAm. Energy Co. v. Int'l Bhd. of Elec. Workers Local 499,</i> 345 F.3d 616 (8th Cir. 2003) .....	16
<i>McLean v. Gordon,</i> 548 F.3d 613(8th Cir. 2008) .....	6
<i>Stark v. Sandburg, Phoenix &amp; Von Gontard, P.C.,</i> 381 F.3d 793 (8th Cir. 1994) .....	15

<i>Trustees of the Twin City Bricklayers Fringe Benefit Funds v. Superior Waterproofing, Inc.</i> , 450 F.3d 324, 330 (8th Cir. 2006) .....	10
--	----

**United States District Court Cases**

<i>Holmes v. Nat’l Football League</i> , 939 F. Supp. 517 (N.D. Tex. 1996) .....	11
<i>Lumbermens Mut. Cas. Co. v. Franey Muha Alliant Ins. Servs.</i> , 388 F. Supp.2d 292 (S.D.N.Y. 2005) .....	passim
<i>Stringer v. Nat’l Football League</i> , 474 F. Supp. 2d 894 (S.D. Ohio 2007) .....	7
<i>United Feature Syndicate, Inc. v. Miller Features Syndicate, Inc.</i> , 216 F. Supp. 2d 198 (S.D.N.Y. 2002) .....	passim
<i>Zupancich v. U.S. Steel Corp.</i> , No. 08-5847, 2009 U.S. Dist. LEXIS 44504 at 9 (D. Minn. May 27, 2009) .....	9

**State Court Cases**

<i>Callahan v. Callahan</i> , 127 A.D.2d 298 (N.Y. App. Div. 1987) .....	18, 23
<i>Partee v. San Diego Chargers Football Co.</i> , 668 P.2d 674 (Cal. 1983) .....	5, 13
<i>Walton-Floyd v. U.S. Olympic Comm.</i> , 965 S.W.2d 35 (Tex. Ct. App—Houston [1st Dist.] 1998) .....	19, 24

**Statutes**

9 U.S.C.A. § 10(a) (2009) .....	16
29 U.S.C.A. § 185(a) (2008) .....	5, 6
Minn. Stat. § 181.951 (2005) .....	9
Minn. Stat. § 181.953 (2005) .....	8, 11
Minn. Stat. § 181.955 (2005) .....	7

## SUMMARY OF THE FACTS

In 2007, the Major League Baseball Players Association (“Players Association”) and Major League Baseball (“League”) entered into a Collective Bargaining Agreement (“CBA”) that incorporated the League’s Policy on Anabolic Steroids and Related Substances (“Policy”) (Record at 3). The Policy prohibits players from using “Prohibited Substances”, including Clomiphene (R. at 3). The Policy holds players “responsible for what is in their bodies” and clearly states a positive test result will not be excused because a player was unaware he was taking a Prohibited Substance (R. at 3). A player’s first confirmed positive drug test results in a suspension (R. at 4). A player facing disciplinary action may appeal to an arbitrator (R. at 4).

As part of the Policy’s required testing program, five League players’ test results returned positive for Clomiphene (R. at 6). The League Commissioner suspended all five players for the minimally required length of 15 games and the players and the Players Association appealed the decision to a neutral arbitrator (R. at 6). The Players Association argued that the League knew that some samples of a product, SpeedShot, taken by players, contained Clomiphene and withheld that information (R. at 6). They believed the Policy created a fiduciary duty requiring the League to give a particularized warning about SpeedShot to all players (R. at 6).

The arbitrator upheld the suspensions pursuant to the Policy’s strict liability standard (R. at 7). The arbitrator reasoned that “the Policy does not articulate or impose an obligation to issue specific warnings about specific products, and nothing in the record

suggests that the bargaining parties have ever contemplated imposing such a requirement (R. at 7).” The arbitrator concluded the players knowingly took SpeedShot despite “repeated warnings about the risks inherent in using supplements in general and energy-boosting supplements in particular and did so knowing that a positive test would result in a suspension that would not be excused based on a claim of unintentional or inadvertent use (R. at 7).”

Kevin Wilson, a suspended player employed by the Minnesota Twins, L.L.C., filed suit against the League in Minnesota state court, alleging that the Policy violated Minnesota's Drug and Alcohol Testing in the Workplace Act (“DATWA”) (R. at 7). The League removed Wilson's case to federal court where it was consolidated with an action brought by the Players Association seeking to vacate the arbitration award under the Labor Management Relations Act (“LMRA”). The district court granted the League’s summary judgment motion, finding that Wilson's DATWA claim was preempted by Section 301 of the LMRA, and that the arbitrator's award should be upheld (R. at 22). The United States Court of Appeals for the Fourteenth Circuit reversed and held that Wilson's DATWA claim was not preempted, and also vacated the arbitrator's award stating that the award violated public policy (R. at 36).

### **SUMMARY OF THE ARGUMENT**

Section 301 of the Labor Management Relations Act (“LMRA”) preempts Kevin Wilson’s claim under Minnesota’s Drug and Alcohol Testing in the Workplace Act (“DATWA”) because DATWA cannot be enforced without an interpretation of the

Collective Bargaining Agreement (“CBA”). If the meaning of a CBA must be analyzed to resolve a state-law claim, then the claim is preempted and federal labor law principles govern the dispute. DATWA expressly mandates interpretation of the CBA by requiring an analysis of whether the CBA is in conflict with DATWA’s protections, and by requiring that random drug testing of professional athletes be administered consistent with the CBA. Alternatively, Wilson’s claim under DATWA is substantially dependent upon the CBA. A claim is dependent upon the CBA if it cannot be resolved without an interpretation of the CBA, as opposed to requiring only a reference to a CBA. Finally, preemption is consistent with the policy concerns underlying the LMRA that favors national uniformity in interpreting CBA’s and the unique structure of professional sports leagues. Correct the appellate court’s error and hold that Wilson’s DATWA claim is preempted by Section 301 of the LMRA.

After failing to heed Major League Baseball’s (“League”) numerous warnings about the dangers of energy supplements and unhappy with the arbitrator’s award, the suspended players attack the award by using the courts’ narrow public policy exception. The League’s failure to disclose product information did not violate an explicit, well-defined, and dominant public policy as ascertained by reference to laws or legal precedents. Further, the Major League Baseball Players Association (“Players Association”) cannot invoke the public policy exception because under New York law, the League did not have a fiduciary duty to disclose information about SpeedShot to the players not covered by the terms of the CBA. Alternatively, the duty was not breached

because the League gave generalized warnings that product labels may not contain a full and accurate list of ingredients.

### **ARGUMENT**

The ability to negotiate and enforce drug testing policies is essential to the integrity of professional athletic leagues. Major League Baseball (“League”) is an international organization that combines teams in twenty-five states and Canada (Record at 14). The League and the Major League Baseball Players Association (“Players Association”) implemented the League Policy on Anabolic Steroids and Related Substances (“Policy”), a zero tolerance drug policy, to ensure an even playing field for all players and to protect the integrity of the game (R. at 14). The League and the Players Association agreed to the Policy because it reinforces personal responsibility, strongly discourages the use of banned substances, and does not tolerate excuses for positive test results (R. at 3). This approach makes practical sense. The League hires and monitors thousands of players at the professional and minor league level, thus making it extremely difficult for the League to monitor every health product available to players. To ensure compliance with the Policy, the players carry the burden of accounting for prohibited substances in their body (R. at 3). The collective bargaining agreement (“CBA”) placed this unavoidable burden on the players. *See W.R. Grace and Co. v. Local Union 759, Int’l Union of United Rubber, Cork, Linoleum*, 461 U.S. 757, 770 (1983).

The application of state law to a CBAs leads to inconsistent results “since there could be as many state-law principles as there are States.” *Lingle v. Norge Division of*

*Magic Chef, Inc.*, 486 U.S. 399, 405-406. Also, “national ‘uniformity [is required] in a regulation of baseball and its reserve system.’” *Partee v. San Diego Chargers Football Co.*, 668 P.2d 674 (Cal. 1983) (quoting *Flood v. Kuhn*, 407 U.S. 258, 284). Any drug policy the League bargains for with the Players Association would be hampered by potentially differing interpretations of several dozen jurisdictions. This is just the disruption that Congress sought to prevent in enacting Section 301 of the Labor Management Relations Act (“LMRA”). See *Local 174, Teamster, Chauffers, Warehousemen & Helpers of Am. v. Lucas Flour Co.*, 369 U.S. 95, 103 (1962); 29 U.S.C.A. § 185(a) (2008). Congress has fostered additional efficiency by shielding labor relations from state law and encouraging alternative dispute resolution through the Federal Arbitration Act (“FAA”). *United Paper Workers Int'l Union v. Misco, Inc.*, 484 U.S. 29, 36–38 (1987).

The current litigation by Kevin Wilson and the Players Association against the League is a ploy to undermine federal labor policy and the intent of the CBA. Wilson’s claim under Minnesota’s Drug and Alcohol Testing in the Workplace Act (“DATWA”) must be dismissed because the claim is preempted by Section 301 of the LMRA. The Players Association’s attempt to vacate the arbitrator’s award is a weak effort to assist the players in deflecting personal responsibility for failing to listen to the League’s warnings. Reverse the Fourteenth Circuit Court of Appeals and uphold the arbitrator’s award to ensure that players remain responsible for their actions.

The district court’s ruling that the Minnesota Drug and Alcohol Testing in the Workplace Act (“DATWA”) claims are preempted by Section 301 is reviewed de novo.

*Bogan v. Gen. Motors Corp.*, 500 F.3d 828 (8th Cir. 2007). Whether the district court properly granted Major League Baseball’s motion for summary judgment is a question of law that this Court also reviews de novo. *McLean v. Gordon*, 548 F.3d 613, 616 (8th Cir. 2008).

I. WILSON’S CLAIM UNDER MINNESOTA’S DRUG AND ALCOHOL TESTING IN THE WORKPLACE ACT IS PREEMPTED BY SECTION 301 OF THE LABOR MANAGEMENT RELATIONS ACT BECAUSE THE MINNESOTA STATUTE CANNOT BE ENFORCED WITHOUT AN INTERPRETATION OF THE COLLECTIVE BARGAINING AGREEMENT

Congress’ power to preempt state law is derived from the Supremacy Clause of Art. IV of the Federal Constitution. *Allis-Chalmers Corp. v. Lueck*, 471 U.S. 202, 208 (1985). Congress exercised its authority to govern the resolution of labor disputes by enacting Section 301 of the Labor Management Relations Act (“LMRA”). *Textile Workers v. Lincoln Mills*, 353 U.S. 448, 456 (1957); *U.S. Steelworkers of Am. v. Rawson*, 495 U.S. 362, 368 (1990). Not all areas in the field of labor legislation have been preempted by Congress, but claims alleging violations of labor contracts must be brought under Section 301 of the LMRA.<sup>1</sup> *Allis-Chalmers*, 471 U.S. at 208. “Thus the question whether a certain state action is pre-empted by federal law is one of congressional intent.” *Id.* The enactment of Section 301 demonstrates congressional intent for doctrines of uniform federal labor law to prevail over “inconsistent local rules.” *Local 174, Teamster, Chauffers, Warehousemen & Helpers of Am. v. Lucas Flour Co.*, 369 U.S.

---

<sup>1</sup> Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce... may be brought in any district court of the United States having jurisdiction of the parties.” 29 U.S.C. § 185(a) (2008).

95 (1962). Local regulations may exist to the extent that they do not conflict with the federal labor contract scheme. *Allis-Chalmers*, 471 U.S. at 209.

If a CBA's meaning must be analyzed to resolve a state-law claim, then that claim is preempted and federal labor law principles govern the dispute instead. *Lingle*, 486 U.S. at 405–406. Section 301 of the LMRA preempts state law claims that are based on a CBA or require interpretation of CBA. *Bogan*, 500 F.3d at 832; *Stringer v. Nat'l Football League*, 474 F. Supp. 2d 894, 900 (S.D. Ohio 2007). Congress favors preemption because negotiating CBAs is “immeasurably more difficult” when parties attempt to agree about contract provisions that have different meanings under different systems of law. *Teamsters*, 369 U.S. at 104. Wilson's claim is preempted by Section 301 of the LMRA because DATWA expressly mandates interpretation of the CBA and, alternatively, any claims under the statute are substantially dependent upon the CBA.

A. The Express Language of Minnesota's Drug and Alcohol Testing in the Workplace Act Requires an Analysis of the Collective Bargaining Agreement Entered into by Wilson.

Section 181.955 of DATWA directly addresses the freedom to enter into CBAs. Minn. Stat. § 181.955(1) (2005) (“[parties may collectively bargain] with respect to a drug and alcohol testing policy that meets or exceeds, and does not otherwise conflict with, the minimum standards and requirements for employee protection provided in these sections.”) The express language of DATWA requires an analysis of whether the CBA is “in conflict with” the protections set up by Minnesota. *Id.* The express language of the statute requires the CBA to be analyzed; therefore, Section 301 of the LMRA preempts Wilson's DATWA claim.

1. Minnesota's Drug and Alcohol Testing in the Workplace Act requires an interpretation of the Collective Bargaining Agreement to determine whether the agreement meets or exceeds the protections provided in the statute.

Congress intended for federal labor law to prevail uniformly over inconsistent state law, allowing for any question relating to the CBA to be resolved by federal law regardless of whether the claim is a breach of contract or alleging liability in tort. *See Allis-Chalmers*, 471 U.S. at 211 (recognizing preemption, under Section 301 of the LMRA, of an employee's state tort action for bad faith handling of a disability plan included in a CBA). Wilson's claim is a Minnesota tort claim that is preempted by federal law because the claim requires an analysis of the CBA.

Section 181.955(1) of DATWA requires that a CBA meet or exceed, and not conflict with, the minimum standards provided in DATWA. Minn. Stat. § 181.955(1) (2005). Thus, the plain language of DATWA commands an analysis of a CBA's provisions in order to determine whether the terms of those agreements violate the requirements in DATWA.

Section 181.953 addresses the rights of employees to explain a positive drug test. *See* Minn. Stat. §181.953(6). The Policy does not expressly state that a player will be given an opportunity to explain a drug test yielding a positive result, but does expressly require a strict liability approach to positive test results (R. at 3). As a result, if the CBA is not interpreted, it may be construed to indicate that the Policy does not allow an explanation for tests yielding positive results, and would therefore not comply with DATWA.

To explain a positive test, the Policy does allow any player subject to disciplinary action to appeal in arbitration (R. at 4). A neutral arbitrator reviewed the positive test result in Wilson's case (R. at 13). Thus, an extensive analysis of the CBA is required to determine whether the arbitrator's review of the positive test result meets or exceeds the minimum requirements under DATWA to explain the positive test. Thus, DATWA expressly requires an interpretation of the CBA to determine whether the terms of that agreement meet or exceed DATWA's requirements.

2. Minnesota's Drug and Alcohol Testing in the Workplace Act requires an interpretation of the Collective Bargaining Agreement to determine the extent to which the players' are subject to random drug testing.

When the plain language of a statute requires courts to examine a CBA and compare it to the requirements of a statute, the claim is inextricably intertwined with the agreement. *Zupancich v. U.S. Steel Corp.*, No. 08-5847, 2009 U.S. Dist. LEXIS 44504 at 9 (D. Minn. May 27, 2009). Section 181.951(4) of DATWA creates an exception to the prohibition of random drug testing of employees for professional athletes, if such testing has been included in a CBA. Minn. Stat. §181.951(4). The exception only allows the random drug testing "to the extent consistent with the CBA." *Id.* Wilson was drug tested the morning of a scheduled preseason scrimmage, but an ambiguity exists regarding whether Wilson was given the two week notice required by DATWA (R. at 6). *Id.* Section 181.951(4), therefore, requires an analysis of whether Wilson was subjected to a random drug test, and whether the CBA allows random drug testing. *Id.* Thus, the DATWA claim cannot be adjudicated or enforced without first analyzing the CBA. The

requirement to analyze CBAs inextricably intertwines any claim brought under DATWA with the terms of the agreement. *Allis-Chalmers*, 471 U.S. at 213. Because DATWA requires its provisions on random drug testing to first analyze the extent of the CBA, any claim brought under DATWA is preempted by Section 301 of the LMRA.

B. Wilson’s Claim Under Minnesota’s Drug and Alcohol Testing in the Workplace Act is Inextricably Intertwined with the Terms of the Collective Bargaining Agreement.

Not only does the language of the Minnesota statute plainly require an analysis of the CBA, but Wilson’s claim is so inextricably intertwined with the CBA that it must be interpreted in order to adjudicate the claim.<sup>2</sup> Cases that require an interpretation of a CBA have been distinguished from those requiring only a reference to a CBA. *Trustees of the Twin City Bricklayers Fringe Benefit Funds v. Superior Waterproofing, Inc.*, 450 F.3d 324, 330 (8th Cir. 2006). If a CBA is only referenced in connection with an otherwise independent claim then the claim is not preempted. *Id.*; *Hawaiian Airlines, Inc. v. Norris*, 512 U.S. 246, 260 (1994). If the claim cannot be resolved without an interpretation of the CBA that claim is dependent upon the agreement and is preempted by Section 301 of the LMRA. *Bricklayers*, 450 F.3d at 331.

---

<sup>2</sup> The Court must first determine whether the claim asserted is a negotiable right or an independent and nonnegotiable state law right, either of which that can be waived. *See Allis-Chalmers v. Lueck*, 471 U.S. 202, 213 (1985); *See also Livadas v. Bradshaw*, 512 U.S. 107, 123–124 n.18 (1994) (“in other instances, the argument is different, that a plaintiff’s claim cannot be ‘resolved’ absent collective-bargaining agreement interpretation, *i.e.*, that a term of the agreement may or does confer a defense on the employer (perhaps because the employee or his union has negotiated away the state-law right)”).

In *Holmes v. National Football League*, a professional athlete in the National Football League (“NFL”) was involuntarily enrolled in the NFL’s Drug Program, included in a CBA between the NFL and the players association. 939 F. Supp. 517, 520 (N.D. Tex. 1996). Holmes argued that although his claims were intertwined with the CBA, they were not so inextricably intertwined as to merit preemption by Section 301 of the LMRA. *Id.* The court ruled that in order to ascertain whether Holmes had been wrongfully induced into taking the original drug test an interpretation of the CBA must be conducted to understand each party’s rights. *Id.*

As in *Holmes*, an interpretation of the CBA is necessary to determine whether Wilson’s rights were violated under Section 181.953 of DATWA. Minn. Stat. §181.953(10)(preventing an employer from discharging, disciplining, or discriminating against an employee on the basis of a positive test that has not been verified by a confirmatory test). The CBA does not articulate the procedure for issuing a confirmatory test (R. at 3). The Policy states that players with confirmed positive test results will be subject to discipline as outlined in the Policy (R. at 3). A court must analyze the CBA to determine whether confirmed positive test results under the agreement are sufficient to meet and exceed DATWA’s requirement of verification by a confirmatory test.

This interpretation of the Policy differs from a mere factual inquiry to determine if the tests comply with the statute. *See Karnes v. The Boeing Company*, 335 F.3d 1189 (10th Cir. 2003) (ruling that compliance with Oklahoma drug testing statute only required court to determine whether a second test had been administered which did not require it to consult CBA). The present CBA only allows the League to suspend players

with confirmed positive test result (R. at 3). The question becomes whether a confirmed positive test result under the CBA meets or exceeds the verification by a confirmatory test requirement in DATWA. The CBA must be interpreted to determine what a positive test means whether meets or exceeds the requirements under the DATWA statute, the claim is preempted by Section 301 of the LMRA.

Furthermore, the CBA considers numerous substances in its drug testing policy including legal drugs, such as Clomiphene (R. at 13). DATWA targets the drug testing of employees for illicit drug use (R. at 9). Clomiphene is not even subject to DATWA's protections (R. at 9). DATWA does not expressly contemplate testing for legal substances, making claims under DATWA more dependent upon an analysis of the CBA, which targets substances such as Clomiphene (R. at 5)

C. Wilson's Claim Requires Uniform Interpretation of the Collective Bargaining Agreement in order to be Consistent with Congress' Intent in Passing the Labor Management Relations Act.

In addition to the intertwining interpretation of DATWA and the CBA, there is also a clear federal scheme favoring uniformity in the interpretation of CBAs. *Anderson v. Ford Motor Co.*, 803 F.3d 953, 955. The players are employees of individual teams in an international athletic league, playing games in twenty-five different states within the United States and Canada (R. at 14). Section 301 of the LMRA uniformly applies federal labor law and promotes Congress' intent to create national uniformity within an industry. *Teamsters*, 369 U.S. at 104 ("The ordering and adjusting of competing interests through a process of free and collective bargaining is the keystone of the federal scheme to promote industrial peace.") A uniform interpretation of the CBA is necessary to give effect to

Congress' intent in creating a federal scheme to promote such agreements, thus Wilson's claim should be preempted by Section 301 of the LMRA.

Doctrines of federal labor law should uniformly prevail over inconsistent local rules. *Id.* The appellate court rejected this argument, stating the contention that uniform interpretation of CBAs affecting multiple states is overreaching (R. at 31). *Cramer v. Consolidated Freightways, Inc.*, 225 F.3d 683, 688-695 (9th Cir. 2001) (holding that a uniform interpretation of a CBA simply because it involved employees from several different states would give employers and unions the power to ignore those state laws they found inconvenient).

The present case is materially different from the issues presented in *Cramer*. *See Id.* In *Cramer*, the surveillance of employees was not contemplated or negotiated as part of the CBA. *Id.* Further, such surveillance was not only a violation of the California Penal Code but also a violation of the fundamental right to privacy protected by the Constitution. *Id.* Here, however, the Policy for drug testing was agreed to by both the League and the players (R. at 3). The Policy was integrated into the CBA, unlike the unconsidered surveillance in *Cramer*. *Id.* The players have voluntarily agreed to a drug testing policy that suits the needs of their profession and protects the integrity of the game.

The critical inquiry to determine if state law violates the commerce clause is whether the practical effect of the state law is to control conduct beyond the boundaries of the state regardless of whether such an extraterritorial reach was intended by the state legislature. *Healy v. Beer Institute, Inc.*, 491 U.S. 324, 336

(1989). No state has the right to use its laws to control the conduct of a professional athletic league in other states. *See id.* The practical effect of allowing DATWA to revise the terms of the CBA would be to allow Minnesota to control the conduct of the League in the twenty five other states in which its teams compete. Minnesota's statute is potentially inconsistent with the laws in the other jurisdictions in which the CBA reaches, as evidenced by Kevin Wilson escaping his suspension while the other players did not (R. at 7). This is precisely the inconsistent treatment that uniform interpretation under Section 301 of the LMRA prevents. *Teamster*, 369 U.S. at 103-104. Congress intended to curtail such unfavorable results by implementing a federal scheme to create uniformity in interpretation of CBAs. *Id.* In order to be consistent with the intent of Congress in creating this scheme, Wilson's claim under DATWA must be preempted by Section 301 of the LMRA.

The unique structure of a professional athletic league causes it to extend over several states and an individual state's interest in antitrust regulation is not of particular urgency. *Partee v. San Diego Chargers Football Co.*, 668 P.2d 674, 678 (Cal.1983) (holding that state antitrust law affecting professional football should be preempted by federal law because the state law would impermissibly burden interstate commerce). The ruling in regard to antitrust regulation is analogous to the area of collective bargaining. In both contexts regulation requires preemption in favor of a federal scheme to assure a uniform application when dealing with the necessarily national character of a

professional athletic league. The league structure should not be severely fragmented on the basis of state lines. *Id.*

Part of the unique structure of the League is that it does not employ the athletes. The employer of an individual athlete is the team with which that athlete has an employment contract. The team, not the League, defines the terms of an athlete's employment. To allow state statutes regulating drug testing to extend those requirements to professional athletic leagues that do not employ individual players further frustrates Congress' intention to create a scheme providing for uniform interpretation of CBAs that is not divided by state lines.

## II. THE AWARD SUSPENDING PLAYERS FOR USING A BANNED SUBSTANCE MUST BE UPHELD BECAUSE IT DOES NOT VIOLATE PUBLIC POLICY

“An arbitrator's result may be wrong; it may appear unsupported; it may appear poorly reasoned; it may appear foolish. Yet, it may not be subject to court interference.” *Delta Air Lines, Inc. v. Air Line Pilots Ass'n, Int'l*, 861 F.2d 665, 670 (11th Cir. 1988).

The Players Association agreed to the full benefits of arbitration with its speedy resolution and flexibility to “avoid the complex, time-consuming and costly alternative of litigation” in exchange for the understanding and full awareness that arbitration provides “almost none of the traditional protections that fundamental fairness and due process require....” *Stark v. Sandburg, Phoenix & Von Gontard, P.C.*, 381 F.3d 793, 803 (8th Cir. 1994). Even if the “result may seem draconian” the award must be upheld in deference to the arbitrator's opinion. *Id.* Whether the moving party is right or wrong is a question of contract interpretation for the arbitrator.” *United Paper Workers Int'l Union v. Misco*,

*Inc.*, 484 U.S. 29, 36–37 (1987). The League should not be “deprived of the arbitrator's judgment,” because the League and the Player's Association bargained for “the arbitrator’s judgment and all that it connotes.” *Id.*

A. Under New York Law a Fiduciary Duty to Disclose is not Explicit, Dominant, or Well-Defined Public Policy.

The courts are limited in their ability to vacate an arbitrator’s award upon statutory grounds . 9 U.S.C.A § 10(a) (2009); *Crawford Group, Inc. v. Holekamp*, 543 F.3d 971, 976 (8th Cir. 2004) (holding the court may vacate arbitrator’s decision for reasons enumerated in the FAA).<sup>3</sup> Additionally, the courts may overturn an arbitration award if the award greatly offends public policy. *See E. Associated Coal Corp. v. United Mine Workers of Am., Dist. 17*, 531 U.S. 57, 63 (2000). The facts of the present case do not justify the appellate court invoking the “narrow” public policy exception. *Id.*

The public policy exception to vacate arbitration awards does not apply because the Players Association cannot show that the alleged public policy is “explicit, well defined, and dominant as ascertained by reference to the laws and legal precedents and not from general considerations of supposed public interests.” *Id.* at 62. The concern is whether the arbitrator's award violates public policy, and not the underlying conduct of the League. *Id.* The award does not violate public policy because the Players Association cannot conclusively demonstrate that the laws explicitly highlight a dominant policy

---

<sup>3</sup> The Players Association did not attack the validity of the arbitration under 9 U.S.C.A. § 10(a) (2009).

against condoning breaches of a fiduciary duty to disclose that threatens health and safety.

1. The public policy is not explicit or well-defined

An arbitration award is unenforceable if it contravenes an "explicit public policy." *MidAm. Energy Co. v. Int'l Bhd. of Elec. Workers Local 499*, 345 F.3d 616, 620 (8th Cir. 2003). The arbitrator's award was vacated because the appellate court believed the award sanctioned the League's "knowing and intentional breach of a fiduciary duty and willful failure to disclose the fact that SpeedShot secretly contained a banned substance" which was potentially harmful to the players' health (R. at 33). However, the appellate court failed to articulate whether a breach of a fiduciary duty to disclose constitutes a well-defined and dominant public policy under New York law. The lower court created a broad public policy exception loosely based upon New York common law, typically only applied to the financial services industry. *See generally Grandon v. Merrill Lynch & Co., Inc.*, 147 F.3d 184 (2nd Cir. 1998) (sellers of securities are liable under federal regulation for omitting facts concerning sale of a security); *Lumbermens Mut. Cas. Co. v. Franey Muha Alliant Ins. Servs.*, 388 F. Supp. 2d 292 (S.D.N.Y. 2005) (holding that a fiduciary duty may exist between brokers and company seeking recovery for economic losses); *United Feature Syndicate, Inc. v. Miller Features Syndicate, Inc.*, 216 F. Supp. 2d 198 (S.D.N.Y. 2002) (agents may have a duty to newspaper distributor seeking recovery of funds). The law of [New York] "does not provide the necessary clarity to invoke the public policy exception to overcome the strong policies in upholding arbitration awards." *Ace Elec. Contractors, Inc. v. Int'l Bhd. of Elec. Workers, Local Union No. 292*, 414 F.3d

896, 907 (8th Cir. 2005) (Murphy, dissenting). The Players Association cannot point to a single case or law that explicitly condones a breach of a duty to disclose all ingredients in a legally available supplement.

Rather than be guided by general considerations of public policy, the appellate court should have determined New York law does not explicitly forbid the League's conduct. The appellate court relied upon misleading case law to impose a duty upon the League found normally in financial services industry. *See Lumbermens*, 388 F. Supp.2d 292; *Miller*, 216 F. Supp.2d 198; *Callahan v. Callahan*, 127 A.D.2d 298, 300 (N.Y.App. Div. 1987)(“an attorney who induces a nonclient to forego the advice of separate counsel in reliance on his own advice may be liable”). Relationships arising from financial transactions, which are heavily regulated and scrutinized by the government, would have explicit and well-defined regulations insisting upon the disclosure of information between parties. *See Grandon*, 147 F.3d at 184 (conferring a duty to disclose as ascertained by federal regulations concerning securities industry). But, the circuit court failed to demonstrate how this alleged duty is applicable to the circumstances of this case as evidenced through the law.

In contrast, the Eleventh and Eighth Circuits conduct comprehensive analysis of the controlling law and regulations to determine whether arbitration awards violate explicit and well-defined public policy. *See Delta*, 861 F.2d at 672 (recognizing that statutes prohibiting flying while intoxicated have been adopted by nearly every state and the federal government); *Iowa Electric Light and Power Co. v. Local Union 204 of*

*Intern. Bhd. of Elec. Workers(AFL-CIO)*, 834 F.2d 1424, 1427 (noting the exhaustive federal regulations governing nuclear power plants).

2. The public policy is not dominant

Only dominant public policy would justify invalidating the arbitrator's award. *Muschany v. United States*, 324 U.S. 49, 66 (1945). The appellate court and respondent fail to raise a dominant public policy which condemns the League's behavior. The appellate court vacated the award under the pretense that there is a dominant policy against violating a fiduciary duty to disclose information pertinent to health without citing any case law or statutes (R. at 32). The appellate court analogized their concern to those raised in *Delta* and *Iowa Electric*, holding that all three cases involve vacating an award that would sanction behavior that threatens health and safety (R. at 32). However, those cases involved dominant policies against individual action that threatens the safety of the general public. *See Delta*, 861 F.2d at 674 (failing to discover any statute or court precedent to the effect that flying under the influence of alcohol is consistent with public policy); *Iowa Electric*, 834 F.2d at 1427 (finding strict adherence to nuclear safety rules to be a matter of public concern). In both of those cases there was near universal condemnation or total absence of dissent of the public policy violation. *Delta*, 861 F.2d at 674. The same is not true of the League's actions, considering sports drug testing regulated by Congress expressly does not excuse a positive test for failure to disclose. *See Walton-Floyd v. U.S. Olympic Comm.*, 965 S.W.2d 35, 36 (Tex. Civ. App—Houston [1st Dist.] 1998).

B. The Policy as Interpreted by the Arbitrator Does not Condone a Breach of Fiduciary Duties

If the League has a fiduciary duty to disclose and breached that duty, the question becomes whether the appeals court could properly set aside the award because in its view excusing the positive test was the correct remedy. *United Paper Workers Int'l Union v. Misco, Inc.*, 484 U.S. 29, 41 (1987). After evaluating the circumstances of the suspension the arbitrator determined the suspension was appropriate because the players used SpeedShot at their own risk and “did so in the face of repeated warnings about the risks” (R. at 7). The arbitrator could have increased the suspension to the maximum of 25 games allowed by the Policy, but determined 15 games was an appropriate remedy (R. at 4). Or had the Commissioner given the players a 25 game suspension, the arbitrator could have reduced it to 15 games to take into account the League’s conduct with regard to SpeedShot (R. at 2). *Coal Corp.*, 531 U.S. at 66 (recognizing that reasonable people can differ as to what is the appropriate remedy).

The appellate court decided that the arbitrator's judgment was invalid and substituted its own, depriving the League and the Players Association of the arbitrator's review for which they bargained. *Id.* “Where parties have a bargained-for agreement to resolve disputes via arbitration, courts ordinarily must defer to the resolution reached by the mutually agreed-upon arbitrator who typically has special knowledge of the arena in which the dispute arose.” *Coca-Cola Bottling Co. of St. Louis v. Teamsters Local Union No. 688*, 959 F.2d 1438, 1440 (8th Cir. 1992). Instead of focusing on the League’s conduct, the arbitrator balanced that with the conduct of the players when reviewing the

suspensions (R. at 7). The arbitrator interpreted the policy as placing a heavy burden on the players to account for the use of supplements (R. at 7).

C. The Public Policy Exception Does not Apply Because the Players Association Cannot Demonstrate the Policy Created a Fiduciary Duty to Disclose Information About Specific Products

In order to successfully invoke the public policy exception, the Players Association must demonstrate that the League had to disclose information about SpeedShot to the players, because to do otherwise would breach their fiduciary duty created as a result of the relationship between them. *Lumbermens*, 388 F. Supp.2d at 305 ([a] fiduciary relation exists between two persons when one of them is under a duty to act or to give advice for the benefit of the other upon matters within the scope of the relation). The Players Association cannot demonstrate that the League had an obligation to disclose specific details about SpeedShot to players, thus preventing them from raising the public policy exception.

1. The League does not have a duty to disclose information about specific products

To determine whether the arbitrator's award violates public policy, the Players Association must show that the League had a fiduciary duty to disclose information it had about SpeedShot to the Players Association. *Coal Corp.*, 531 U.S. at 63. New York law governs the issue of whether a fiduciary duty exists because the Policy is part of the CBA, which states that to the extent that federal law does not govern, New York state law will govern the CBA (R. at 32).

Fiduciary obligations in New York can arise either as a result of an express fiduciary relationship or “*may* be found in any case in which influence has been acquired and abused, in which confidence has been reposed and betrayed.” *Lumbermens*, 388 F. Supp. 2d at 305.

Absent an express agency relationship, the Players Association must prove that fiduciary obligations toward the players arose as a result of Dr. Larson's “role as *sole* intermediary” for the disclosure of information regarding supplements. *See Id.* (holding that fiduciary obligations arose as a result of defendant's role as sole intermediary between parties to contract). Under New York law a fiduciary duty exists between two persons when one of them is under a duty to act or give advice for the benefit of others upon matters within the scope of the relation. *Id.* A fiduciary relationship *may* be found in any case in which confidence has been reposed and betrayed. *Id.*; *Miller*, 216 F.Supp.2d at 218. To determine if this duty exists New York law requires a fact-specific inquiry of “whether a party reposed confidence in another and *reasonably relied* on the other's superior expertise of knowledge.” *Lumbermens*, 388 F. Supp.2d at 305 (emphasis added).

The facts of the Players Association’s case demonstrate that the League did not owe the players a duty to disclose. The Fourteenth Circuit focused significant attention on Larson’s role, as the Independent Administrator of the Policy (R. at 34). Larson was charged with making himself available for consultation with players and was authorized to respond to questions about specific supplements (R. at 34). The appellate court extrapolated a duty to disclose merely because Larson promised to continually provide

information about energy supplements (R. at 34). However, the appellate court overlooked the betrayal component referenced in *Lumbermens*, and failed to conduct a fact-specific inquiry to determine whether the players *reasonably relied* on Larson's promise. *Id.* Not a single player asked Larson specific questions about SpeedShot (R. at 6). Thus, because the Players Association claims a betrayal of confidence when the suspended players never sought Larson's superior expertise, the Players Association do not meet the reliance component necessary under New York law.

It is outrageous to believe that highly paid and well-informed athletes, with access to sophisticated medical resources, relied solely on the advice of Larson to decide to use SpeedShot. *Contra Callahan*, 127 A.D.2d at 301 (N.Y. App. Div. 1987) (emphasizing that the nonclient treated the attorney as a close personal friend and, as such, relied on his opinion when signing documents). The players' failure to ask questions should not obligate Dr. Larson to fiduciary duties.

The Hotline operators explicitly told the players that while SpeedShot may not be on the banned substance list, the label might not list all of its ingredients (R. at 17). The hotline operated as an educational tool for the players to use but did not purport to provide a relation of trust. *See Grandon*, 147 F.3d at 189 (2nd Cir. 1998) (generally a duty arises "when one party has information that the other party is entitled to know because ... [a] relation of trust and confidence between them).

This Court should not assume MLB voluntarily assumed a duty because it provided a bargained for service to help the Players make informed decisions (R. at 11). The League made clear that the Hotline's information was not 100 percent accurate and

players should not and could not use it as an excuse for a positive result (R. at 11). *See Walton-Floyd*, 965 S.W.2d 35 (holding that USOC did not voluntarily assume a duty to athletes by operating a hotline service).

2. Alternatively, the League did not breach this duty because the League warned the players not to use supplements including SpeedShot.

If the Court determines the League had a fiduciary duty, the Players Association must demonstrate that the League breached its duty by failing to give specific warnings about SpeedShot. *See Miller*, 216 F. Supp. 2d at 216. There is not a breach if Larson did not betray the players' confidence and the players failed to reasonably rely upon his superior expertise. *Lumbermens*, 388 F. Supp. 2d at 305. Larson notified the Players' Association that players were banned from doing business with the manufacturer of SpeedShot, Mega Energy Product (R. at 5). All players were notified that Mega Energy Products had been added to the list of prohibited energy-boosting supplement companies (R. at 3). Larson sent a memorandum to all players urging them to avoid supplements that claim to provide or boost energy and reminded them about the strict liability standard of the Policy (R. at 3-4). Larson was under no obligation under the CBA to give product specific warnings about SpeedShot (R. at 5). It is well settled that the same conduct which constitutes a breach of contractual obligations may give rise to a breach of a duty found independent of the contract. *Miller*, 216 F. Supp. 2d at 218.

The Players Association bargained for the terms of the Policy, which did not articulate whether Dr. Larson needed to give general warnings or product-specific warnings (R. at 3). “As the arbitrator found, Larson exercised his discretion under the

Policy to educate players, and did so in a general way because he believed that all energy-boosting supplements, not just SpeedShot, carried potential risks (R. at 16).”

Larson determined it was best to give general warnings to ensure players’ compliance with the Policy. It was reasonable for Dr. Larson to be hesitant to give specific warnings for fear players would become less diligent in checking products as they might come to expect Larson to check all products on the market.

The district court correctly held that the League's information about SpeedShot given through the Hotline was indisputably accurate (R. at 19). The Hotline is an educational tool that prefaced information given to players with the fact that a product's ingredients may be incomplete and players should avoid all supplements (R. at 19). The Players Association would like this Court to hold the League fully responsible for the players' choices to ignore the League’s multiple warnings about the dangers of supplements. A betrayal of trust this was not.

### **CONCLUSION**

For all the above reasons the Petitioner requests that this Court reverse the holding of the Fourteenth Circuit Court of Appeals and reinstate the arbitrator’s award.

Respectfully Submitted,

Team Number 13  
Counsel for Petitioner