

No. 09-214

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IN THE  
SUPREME COURT OF THE UNITED STATES  
SPRING TERM 2010

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MAJOR LEAGUE BASEBALL,  
Petitioner,

v.

KEVIN WILSON; MAJOR LEAGUE BASEBALL PLAYERS ASSOCIATION,  
Respondents.

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

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**BRIEF FOR PETITIONER**

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Team No. 22

**ORAL ARGUMENT REQUESTED**

## **QUESTIONS PRESENTED FOR REVIEW**

- I. Whether the Court of Appeals erred in holding that a Major League Baseball player's claims under Minnesota's Drug and Alcohol Testing in the Workplace Act challenging a suspension under a collectively bargained for drug policy are not preempted by Section 301 of the Labor Management Relations Act.
  
- II. Whether the Court of Appeals erred in setting aside an arbitrator's award sanctioning Major League Baseball's refusal to issue warnings regarding the presence of a banned substance in specific products because such an award was in violation of public policy.

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## **OPINIONS AND ORDERS BELOW**

The decision of the of the United States District Court for the Southern District of Tullahoma (“District Court”) granting summary judgment is unreported and is in the Record. The decision of the United States Court of Appeals for the Fourth Circuit (“Court of Appeals”) is also unreported and in the Record.

## **JURISDICTIONAL STATEMENT**

This Court has granted certiorari. Accordingly, jurisdiction by this Court is authorized by 28 U.S.C. § 1254, which states that “[c]ases in the courts of appeals may be reviewed by the Supreme Court . . . [b]y writ of certiorari granted upon the petition of any party to any civil . . . case.”

## STATEMENT OF THE CASE

Kevin Wilson (“Wilson”) is a member of the Major League Baseball Players Association (the “MLBPA”) and a player for the Minnesota Twins, LLC (“Minnesota Twins”), who is not a party to this case. District Court Opinion (“Dist. Ct. Op.”) at 1. Wilson and the MLBPA, (collectively “Respondents”), initiated this suit against Major League Baseball (the “MLB” or the “League”), the Petitioner. *Id.*

In 2007, MLB and MLBPA entered into a Collective Bargaining Agreement (the “CBA”), which incorporates the MLB Policy on Anabolic Steroids and Related Substances (the “Policy”). *Id.* The Policy restricts the players’ use of “Prohibited Substances,” including Clomiphene<sup>1</sup> and expressly states that the Policy “adopts an approach of strict liability” which mandates that “players are responsible for what is in their bodies” and that positive test results “will not be excused because a player was unaware he was taking a Prohibited Substance.” *Id.* The Policy also maintains that a positive test for a Prohibited Substance will result in first time offenders receiving between a 15-game and 25-game suspension. *Id.* at 1-2. The Policy states that any player who chooses to appeal their suspension may appeal to an arbitrator, “whose decision constitutes a full, final, and complete disposition of the appeal that is binding on all parties.” *Id.* at 2.

The Policy is directed by Dr. John Larson as its independent administrator. *Id.* Dr. Larson is in charge of implementing the terms of the Policy, overseeing the drug-testing process, reporting positive tests results to the League’s Commissioner, and providing education to the

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<sup>1</sup> Clomiphene is commonly used by male anabolic steroid users toward the end of a steroid cycle to prevent a post-steroid crash and to maintain the muscle growth caused by the steroids. *Id.* at 3.

players regarding the Policy's implementation. *Id.* Dr. Larson is aided by Dr. Ray Finkle, who is the "Consulting Toxicologist." *Id.*

In addition to the services provided by Dr. Larson, the Policy also created the "MLB Supplement Hotline" (the "Hotline") to provide players an opportunity to obtain "confidential and accurate information about these products, including their ingredients, effects, and adverse reactions." *Id.* The memorandum accompanying the Policy reiterates to the players that "You and you alon[e] are still responsible for what goes into your body. Using the Hotline will not Excuse a positive test result." *Id.*

In 2007, MLB was informed that an energy-boosting supplement, SpeedShot, contains Clomiphene, although the label of the supplement does not declare Clomiphene as an ingredient. *Id.* at 3. Dr. Larson, Dr. Finkle, and Andrew Birch, the Vice President of Law and Labor Policy for MLB, were made aware that SpeedShot did in fact contain Clomiphene, but did not report these findings to the Food & Drug Administration. *Id.* However, MLB did notify the MLBPA that "Mega Energy Products, which distributes SpeedShot" was a company with which the teams and players were prohibited from doing business and asked the MLBPA to share that information with the players, which they did. *Id.*

Additionally, Dr. Larson sent a memorandum to players reminding them of the dangers of taking energy-boosting supplements and "urging the players not to take products or supplements that claim to provide or boost energy." *Id.* The memoranda reinforced the Policy's strict liability stance in regards to prohibited substances and stated that "if you test positive for a banned substance this constitutes a positive test, regardless of intent to do so." *Id.* at 3-4. Although the communication did not specifically mention that SpeedShot contained Clomiphene,

MLB notified the MLBPA that SpeedShot was a banned company and Dr. Larson warned the players not to take Energy-Boosting Supplements. *Id.* at 4.

Regardless of the multiple warnings issued to the players about energy-boosting supplements, Wilson took SpeedShot and tested positive for Clomiphene. *Id.* Wilson received the Policy’s minimum 15-games suspension for testing positive for a Clomiphene. *Id.* Four other players, Pat Wilson of the Houston Astros, Manny Rogers of the Boston Red Sox, Al Peterson of the St. Louis Cardinals, and Bradley Melton of the Florida Marlins, also tested positive for Clomiphene and received the same suspension as Wilson.<sup>2</sup> *Id.* Wilson, the four other players, and the MLBPA appealed the suspensions to an independent and neutral arbitrator, as allowed for under the Policy. *Id.* During the arbitration proceeding, each of the five players admitted that they were aware of the warnings given by Dr. Larson, the availability of the Hotline, and the Policy’s strict liability rule concerning Prohibited Substances. *Id.* Furthermore, they did not contest the result of the positive drug tests. *Id.*

The arbitrator upheld MLB’s suspensions, finding that “the Policy enforces a rule of strict liability – a rule that players alone are responsible for what is in their bodies; that supplements are used at the player’s own risk, and each player clearly understood that rule and what it means.” *Id.* at 5. Additionally, 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.” *Id.*

Wilson filed suit against MLB, Dr. Larson, Dr. Finkle, and Andrew Birch, alleging that the Policy violated Minnesota’s Drug and Alcohol Testing in the Workplace Act (“DATWA”).

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<sup>2</sup> These four additional athletes are not parties to this lawsuit.

*Id.* The complaint sought damages and an injunction against enforcement of the arbitration award. *Id.* The court granted Wilson a temporary restraining order, staying his 15-game suspension. *Id.* The case was removed to federal court, where it was consolidated with an action brought by the MLBPA, seeking to vacate the arbitration award under the Labor Management Relations Act (the “LMRA”). *Id.*

MLB filed a motion for summary judgment, arguing that Wilson’s DATWA claims are preempted by § 301 of the LMRA and that the arbitrator’s award should be upheld. *Id.* at 5-6. The District Court granted MLB’s motion, finding that Wilson’s DATWA claims are preempted because they are intertwined with an interpretation of the CBA. *Id.* at 19. Additionally, the District Court found that the arbitrator’s award must be upheld because it did not run contrary to any explicit public policy. *Id.*

On appeal, the Court of Appeals reversed the District Court’s decision, finding that Wilson’s DATWA claim was predicated on Minnesota law and that the claim is not dependent upon an interpretation of the CBA or the Policy. Cir. Ct. Op. at 10. Also, the Court of Appeals found that the arbitrator’s award must be set aside because it encourages breaches of fiduciary duty in violation of public policy. *Id.* at 14. Petitioner now appeals to this Court, which has granted its petition for writ of certiorari.

## SUMMARY OF ARGUMENT

This Court should reverse the decision of the Court of Appeals and allow summary judgment for MLB because it is federal law, not state law, which determines whether the league has acted lawfully with regards to the CBA and the Policy.

Because Wilson's claim under Minnesota's DATWA is preempted by § 301 of the LMRA, the state law claim cannot stand. Instead, any challenges Wilson may have against the Policy must be analyzed pursuant to federal law.

Wilson's state law claim is inextricably intertwined with the terms of the CBA and Policy. In order for § 301 to preempt a state law claim, it is not necessary that a violation of a collective bargaining agreement has been alleged. Instead, § 301 preemption will apply whenever a state law claim is dependent upon the interpretation or analysis of the terms in a collective bargaining agreement.

It is not possible to resolve Wilson's state law claim without analyzing multiple provisions of the CBA and the Policy. Minnesota's DATWA expressly states that it is not to be construed to prohibit the parties to a collective bargaining agreement from implementing a drug testing policy that meets or exceeds the standards of the statute. Accordingly, multiple provisions of the Policy must be analyzed in order to determine, *inter alia*, whether it meets or exceeds the statute's guidelines for explaining a positive test result and whether Wilson properly exhausted his claims pursuant to the terms of the CBA.

This Court should also reverse the decision of the Court of Appeals because the arbitrator's award sanctioning MLB's actions in carrying out the Policy was not against public policy because MLB had no fiduciary duty to issue warnings regarding specific products which contain banned substances.

MLB owed no fiduciary duty to the Respondents because the Policy, which was collectively bargained for amongst the parties, explicitly states that the athletes alone are responsible for what is in their bodies. Additionally, Respondents were repeatedly reminded of the Policy's strict liability approach.

Even assuming that MLB did owe Respondents a fiduciary duty, any actions required by such a duty were met and exceeded by the conduct of MLB. MLB took various precautions including, but not limited to, issuing warnings regarding the dangers of all energy-boosting supplements.

This Court should find that Wilson's claim under Minnesota's DATWA is preempted by § 301 of the LMRA and that the Arbitrator's award sanctioning MLB's conduct was not against public policy. Accordingly, this Court should reverse the decision of the Court of Appeals and allow summary judgment for MLB.

## STANDARD OF REVIEW

The Court of Appeals incorrectly reversed the judgment of the District Court which had granted summary judgment in favor of MLB. A lower court's decision on summary judgment is reviewed *de novo*. *McLean v. Gordon*, 548 F.2d 613, 616 (8th Cir. 2008). A lower court's ruling regarding preemption of the Minnesota's DATWA by § 301 of the MLRA is also subject to *de novo* review. *Bogan v. Gen. Motors Corp.*, 500 F.3d 828, 832 (8th Cir. 2007).

## ARGUMENT

This Court granted certiorari to address whether MLB has acted lawfully and in accordance with public policy with respect to both the CBA and the Policy. Specifically, MLB contends that § 301 of the LMRA preempts an athlete's state law claim that the League's Policy, which prohibits the use of banned substances, violates Minnesota's DATWA. Additionally, MLB contends that an arbitrator's award, which sanctioned its actions with regards to implementing the policy, was not in violation of public policy. The District Court granted MLB's motion for summary judgment and the Court of Appeals reversed. Because Wilson's state law claim is inextricably intertwined with the CBA and the Policy, and because MLB had no fiduciary duty to issue warnings regarding specific products which contain banned substances, this Court should reverse the decision of the Court of Appeals.

### **I. SECTION 301 OF THE LMRA PREEMPTS WILSON'S CLAIMS UNDER MINNESOTA'S DATWA BECAUSE THE STATE LAW CLAIM IS INEXTRICABLY INTERTWINED WITH THE CBA AND BECAUSE WILSON CHALLENGES A NATIONWIDE COLLECTIVE BARGAINING AGREEMENT WHICH MUST BE UNIFORMLY APPLIED IN MULTIPLE JURISDICTIONS.**

Section 301 of the LMRA states:

Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

29 U.S.C. § 185(a). This statute was originally intended to grant jurisdiction to federal courts over controversies involving collective bargaining agreements. However, § 301 has additionally been held to authorize federal courts to fashion "a body of federal law for the enforcement of these collective bargaining agreements." *Textile Workers v. Lincoln Mills of Ala.*, 353 U.S. 448, 451 (1957); *see also Lingle v. Norge Div. of Magic Chef, Inc.*, 486 U.S. 399, 404 (1988) (stating

that “§ 301 mandate[s] resort to federal rules of law in order to ensure uniform interpretation of collective-bargaining agreements, and thus to promote the peaceable, consistent resolution of labor-management disputes”). Accordingly, “a suit in state court alleging a violation of a provision of a labor contract must be brought under § 301 and be resolved by reference to federal law.” *Allis-Chalmers Corp. v. Lueck*, 471 U.S. 202, 210 (1985).

The purpose of § 301 is to further federal labor policy which “favors collective bargaining between labor and management.” *Anderson v. Ford Motor Co.*, 803 F.2d 953, 956 (8th Cir. 1986). Because “[u]niformity in the interpretation of collective bargaining agreements is considered essential to the federal scheme favoring collective bargaining,” § 301 has been held to preempt not only state claims which allege violations of the provisions of a labor contract, but also any state law claims which are “inextricably intertwined with consideration of the terms of the labor contract” or “substantially dependent upon analysis of the terms of an agreement made between the parties in a labor contract.” *Id.* at 955; *Local 174, Teamsters v. Lucas Flour Co.*, 369 U.S. 95 (1962); *Lueck*, 471 U.S. at 213, 220.

**A. Wilson’s Claims Under Minnesota’s DATWA Require an Analysis of the Policy’s Provisions and are thus Inextricably Intertwined with Consideration of the Terms of the CBA.**

Minnesota’s DATWA expressly requires an analysis of the CBA. Accordingly, Wilson’s claims under the DATWA are preempted by § 301 because the DATWA claims are inextricably intertwined with consideration of the terms of the CBA.

Over 60 years ago, the Supreme Court realized that “if unions can break agreements with relative impunity, then such agreements do not tend to stabilize industrial relations.” *Textile Workers*, 353 U.S. at 454 (quoting S. Rep. No. 80-105, at 15 (1947)). Accordingly, the Supreme Court has ruled that § 301 must be viewed as a source of federal law to be applied to labor

controversies. *Textile Workers*, 353 U.S. at 451. The Supreme Court first applied § 301 preemption policies to cases involving straightforward questions of contract interpretation.

In *Lucas Flour Co.*, the Court was faced with the issue of whether a collective bargaining agreement implicitly prohibited a labor strike that had been called by a union. 369 U.S. 95. The Court held that the collective bargaining agreement must be interpreted pursuant to federal law and that “incompatible doctrines of local law must give way to principles of federal labor law.” *Id.* at 102. In making its decision, the *Lucas Flour Co.* Court expressed the importance of collective bargaining agreements as the “keystone of the federal scheme to promote industrial peace.” *Id.* at 104. Accordingly, “[s]tate law which frustrates the effort of Congress to stimulate the smooth functioning of that process thus strikes at the very core of federal labor policy” and must be preempted by § 301. *Id.*

In its seminal opinion in *Lueck*, the Supreme Court extended the scope of § 301 preemption beyond cases which simply involve violations of collective bargaining agreements. *Lueck*, 471 U.S. at 210 (stating that “[i]f the policies that animate § 301 are to be given their proper range . . . the pre-emptive effect of § 301 must extend beyond suits alleging contract violations”). The *Lueck* Court was mindful that “in enacting § 301 Congress intended doctrines of federal labor law uniformly to prevail over inconsistent local rules.” *Id.* at 209-10 (quoting *Lucas Flour Co.*, 369 U.S. at 104). Accordingly, issue related to the intentions of the parties to a collective bargaining agreement, legal consequences of the breach of such agreements, or claims which are “inextricably intertwined with consideration of the terms of the labor contract” must be resolved by reference to federal law because “[a]ny other result would elevate form over substance and allow parties to evade the requirements of § 301 . . . .” *Lueck*, 471 U.S. at 213, 211.

In *Lueck*, the Court considered whether a state tort remedy for bad faith handling of an insurance claim could be applied to a claim arising from disability benefits provided for in a collective bargaining agreement. *Id.* at 203. The Court determined that the collective bargaining agreement provided not only the right to the benefits, but also the right to have the benefits paid in a timely manner, which was the basis of the claim. *Id.* at 218. Accordingly, the Court concluded that because the “parties’ agreement as to the manner in which a benefit claim would be handled [would] necessarily [have been] relevant to any allegation that the claim was handled in a dilatory manner[,]” the state law tort claim must be preempted by § 301. *Id.* The *Lueck* Court noted that although the state law claim did not allege a violation of the collective bargaining agreement, the claim involved “questions of contract interpretation . . . regardless of the fact that the state court may choose to define the tort as ‘independent’ of any contract question.” *Id.*

The Court of Appeals for the Eighth Circuit, in *Trustees of the Twin City Brick Layers Fringe Benefit Funds v. Superior Water Proofing, Inc.*, further extended the scope of § 301 preemption to state law claims which do not, on their face, appear to allege a violation of a collective bargaining agreement or require the interpretation of a collective bargaining agreement. 450 F.3d 324 (8th Cir. 2006). In that case, an employer brought a state law claim against a union alleging that the union had fraudulently and negligently misrepresented the nature of the employer’s obligations under a collective bargaining agreement and had fraudulently concealed relevant facts. *Id.* at 328. The employer asserted that because there were no allegations of a violation of a collective bargaining agreement, the agreement did not need to be interpreted and thus its state law claims were not preempted by § 301. *Id.* at 329.

While acknowledging that the torts on which the employer based its state law claims may, under certain circumstances, give rise to an independent cause of action in state court, the *Trustees* Court determined that the employer's claims were preempted by § 301. *Id.* at 334. The Court began its analysis by stating that “state law claims will be preempted under § 301 if their resolution depends on interpretation of a CBA” and “[t]he proper starting point for determining whether interpretation of a CBA is required in order to resolve a particular state law claim is an examination of the claim itself.” *Id.* at 331. The Court went on to state that although the state law claims did not allege a violation of a collective bargaining agreement, the meaning of the agreement's terms were relevant because the issue of whether the employer justifiably relied on the union's assurances was dependent on whether the relevant provisions of the agreement were susceptible to multiple interpretations. *Id.* at 332. In other words, the mere fact that a state law claim may give rise to an independent cause of action absent a collective bargaining agreement, does not mean that, when a collective bargaining agreement is present, the state law claim is not “substantially dependent on analysis” of the collective bargaining agreement and thus “inextricably intertwined” with the agreement. *Id.* at 334.

Wilson's state law claim alleges that the Policy violated Minnesota's DATWA. Dist. Ct. Op. at 5. The DATWA establishes procedures for drug and alcohol testing of employees in Minnesota. Minn. Stat. § 181.950 *et seq.* The DATWA applies to testing for specific drugs, including cocaine, marijuana, methamphetamines, heroin, and opium. *Id.* §§ 152.01 subd. 4, 152.02, 181.950 subd. 4 and 5, 181.951 subd. 1(a). Clomiphene is not one of the substances covered by the statute. *Id.*

The DATWA provides that the drug policies of Minnesota employers must provide:

- (1) the employees or job applicants subject to testing under the policy;
- (2) the circumstances under which drug or alcohol testing may be requested or required;

(3) the right of an employee or job applicant to refuse to undergo drug and alcohol testing and the consequences of refusal; (4) any disciplinary or other adverse personnel action that may be taken based on a confirmatory test verifying a positive test result on an initial screening test; (5) the right of an employee or job applicant to explain a positive test result on a confirmatory test or request and pay for a confirmatory retest; and (6) an other appeal procedures available.

*Id.* § 181.952 subdiv. 1(1)-(6). The statute also states that testing laboratories used by employers must meet certain requirements. *Id.* § 181.953 subdiv. 1.

The DATWA authorizes random drug and alcohol testing of “professional athletes if the professional athlete is subject to a collective bargaining agreement permitting random testing . . . .” *Id.* § 181.951 subdiv. 4. Furthermore, the statute states that its terms “shall not be construed to limit the parties to a collective bargaining agreement from bargaining and agreeing 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” the statute. *Id.* § 181.955 subdiv. 1.

Following the logic of *Trustees*, the Court should view Wilson’s state law claim as requiring interpretation of the Policy and as thus being “inextricably intertwined” with an analysis of the terms of the CBA. *Lueck*, 471 U.S. at 213. The facts of the case at hand, when viewed in combination with the express language of the DATWA, require a holding that Wilson’s state law claim is “substantially dependent on analysis” of the Policy and is thus preempted by § 301. *Id.* at 220. Any other conclusion would allow Wilson “to sidestep available grievance procedures [and] would cause arbitration to lose most of its effectiveness . . . .” *Id.*

Wilson’s state law claim does not specify which provision of the DATWA that the Policy allegedly violates. *Dist. Ct. Op.* at 5. Consequently, because the DATWA provides that parties to a collective bargaining agreement can bargain and agree to a drug testing policy as long as the

policy “meets or exceeds, and does not otherwise conflict with, the minimum standards and requirements” provided by the statute, Wilson’s state law claim cannot be resolved “without interpreting certain terms of the collective bargaining agreement” to determine whether the terms of the Policy meet or exceed the DATWA’s minimum standards. Minn. Stat. § 181.955 subdiv. 1; *Gore v. Trans World Airlines*, 210 F.3d 944, 951 (8th Cir. 2000).

For example, because the DATWA requires that employees be given an opportunity to explain a positive test result, it is necessary to analyze Wilson’s arbitration rights under the Policy to determine whether the rights meet or exceed the DATWA’s standards for explaining a positive test result. Minn. Stat. § 181.953 subdiv. 6(b). Additionally, the DATWA forbids parties to a collective bargaining agreement from initiating actions under the statute until all grievance procedures under the collective bargaining agreement have been exhausted. *Id.* § 181.956 subdiv. 1. Accordingly, a court would be required to analyze the Policy’s grievance procedures to determine if Wilson has properly exhausted his claim according to the terms of the CBA. Furthermore, because Clomiphene is not one of the substances which falls under the scope of the DATWA, a court would first have to analyze the scope of the Policy in order to determine whether Wilson’s claims fall within the ambit of the DATWA.

Given that multiple provisions of the Policy must be analyzed before Wilson’s claim under the DATWA can be resolved, it is clear that the DATWA claim is in fact preempted by § 301. *See Zupanich v. U.S. Steel Corp.*, No. 08-5847, 2009 U.S. Dist. LEXIS 44504, \*9 (D. Minn. May 27, 2009) (holding that § 301 preemption must occur where “the plain language of the statute requires the Court to examine the CBA to determine whether the agreement negotiated by the parties . . . resulted in conditions that are more favorable to the employees”).

In a contrasting case, *Karnes v. Boeing Co.*, the Tenth Circuit held that an employee's state law claim, that his employer's drug testing policy violated Oklahoma's Standards for Workplace Drug and Alcohol Testing Act, were not preempted by § 301. 335 F.3d 1189, 1194 (10th Cir. 2003). The employee's claims cited specific sections of the Oklahoma statute which had allegedly been violated by the employer's drug testing policy. The *Karnes* court determined that no interpretation of the underlying collective bargaining agreement was required to determine whether that specific section had been violated. *Id.* at 1193.

The case at hand is easily distinguished from *Karnes*. In *Karnes*, in order to establish that the specific section of Oklahoma's statute had been violated, the employee was required to establish merely that he was discharged based on a drug test and that the employer did not confirm the results through a second test. *Id.* In the instant case, Wilson has not alleged any specific violations of the Policy. Instead, Wilson merely states in general terms that the Policy violates the DATWA. Dist. Ct. Op., 5. Accordingly, because the DATWA does not extend to the claims of employees who are parties to collective bargaining agreements which meet the minimum requirements of the DATWA, a court will have to analyze every provision of the Policy to determine whether the Policy meets or exceeds the DATWA's standards.

Wilson's claim that the Policy violates the DATWA are dependent upon an analysis of the terms of the Policy and are thus inextricably intertwined with the CBA and thus preempted by § 301. To resolve Wilson's claim, a court will have to determine whether the Policy meets or exceeds the DATWA's standards for explaining a positive test result, whether Wilson has properly exhausted grievance procedures under the terms of the Policy, and, given the fact that the Policy extends to testing for substances not covered by the DATWA, whether the DATWA even applies to Wilson's claim. For these reasons, the Court should defer to the federal policy of

uniform interpretation of collective bargaining agreements and reverse the decision of the Court of Appeals.

**B. Preemption is Warranted Because the Policy is Part of a Nationwide Collective Bargaining Agreement Which Must be Uniformly Applied in Multiple Jurisdictions.**

Wilson is challenging a nationwide collective bargaining agreement which establishes rules which must be uniformly applied to employers and employees in multiple jurisdictions. Cases similar to the one at hand are precisely what the Supreme Court was referring to when it stated that “in enacting § 301 Congress intended doctrines of federal labor law uniformly to prevail over inconsistent local rules.” *Lueck*, 471 U.S. at 209-10 (quoting *Lucas Flour Co.*, 369 U.S. at 577). Section 301 preemption must apply to Wilson’s claim in order to correspond with Supreme Court precedent which holds that no individual state has the authority to enact legislation which has the effect of regulating activities that occur outside of its borders. *See Healy v. Beer Inst., Inc.*, 491 U.S. 324, 336 (1989) (stating that “[t]he critical inquiry is whether the practical effect of the regulation is to control conduct beyond the boundaries of the State.”).

MLB is comprised of thirty individual organizations, located throughout the United States and Canada, which compete with one another and must be required to comply with a single set of rules. Although Wilson is employed by the Minnesota Twins, his livelihood depends on cooperation amongst each of the thirty teams. It is this unique national character of the League that compels a holding that federal labor law, “necessarily uniform throughout the Nation,” *Lingle*, 486 U.S. at 406, governs interpretation of the Policy in order to prevent “[f]ragmentation of the league structure on the basis of state lines . . . .” *Partee v. San Diego Chargers Football Co.*, 668 P.2d 674, 678 (Cal. 1983); *see also id.* at 383 (stating that “[w]here the nature of an enterprise is such that differing state regulation . . . requires the enterprise to

comply with the strictest standard of several states in order to continue an interstate business extending over many states,” federal law must control).

Tellingly, the legislative history of Minnesota’s DATWA leaves no doubt that the statute was not intended to interfere with the drug policies of professional sports leagues. When discussing a 2005 amendment to the DATWA which allows the random testing of professional athlete, Minnesota’s Senator Rest made clear that the statute was not intended to “interfere with labor agreements between athletes and their employers[,]” but was intended to “clarify management’s right to require drug testing.” Rep. Minn. S. Comm. on Jobs, Energy and Community Development, 84th Leg. (Apr. 11, 2005). During that same Senate Committee meeting, Jerry Bell, president of the Minnesota Twins, confirmed with the Minnesota Senate that the purpose of the amendment was to “ensure[] no conflict exists between the provisions of the Major League Baseball labor agreement and state law.” *Id.*

The uniqueness of MLB, along with other professional sports leagues, must be taken into consideration when this Court considers whether § 301 preempts an athlete’s claims under a state drug testing statute. The Policy was enacted to eliminate the use of banned substances which “have no legitimate place in professional baseball,” and which threaten “the fairness and integrity of the athletic competition on the playing field” by giving players unfair advantages and which “threaten to distort the results of the game and League standings.” Dist. Ct. Op. at 8. Never before has this Court dealt with the issue of § 301 preemption and its effect on an industry in which the parties to a collective bargaining agreement compete against each other on a playing field that must be equal.

By allowing players on individual teams to abide by separate drug testing policies, it is inevitable that the level of uniformity which must be present in professional sports leagues will

be severely inhibited. The impact of such a result can be clearly seen in the case at hand. A total of five players, from five different teams, challenged the suspensions they had received, all of which resulted from drug tests which tested positive for Clomiphene. *Id.* at 4. However, because Minnesota happens to have a stricter statute in place regarding employee drug testing, Wilson was able to continue playing while the remaining four players had to serve their suspensions. *Id.* at 5.

The facts of this case demonstrate how, absent a uniform body of federal law, the process of negotiating collective bargaining agreements “would be made immeasurably more difficult by the necessity of trying to formulate contract provisions in such a way as to contain the same meaning under two or more systems of law which might someday be invoked in enforcing the contract.” *Lucas Flour Co.*, 369 U.S. at 103. Accordingly, Wilson’s state law claim must be preempted by § 301.

**II. THE COURT OF APPEALS WAS INCORRECT IN SETTING ASIDE AN ARBITRATOR’S AWARD SANCTIONING MAJOR LEAGUE BASEBALL’S REFUSAL TO ISSUE WARNINGS REGARDING THE PRESENCE OF CLOMIPHENE IN SPEEDSHOT BECAUSE SUCH AN AWARD WAS NOT IN VIOLATION OF PUBLIC POLICY WHERE (1) THERE WAS NO FIDUCIARY DUTY TO ISSUE WARNINGS, OR ALTERNATIVELY, (2) THERE WAS NO BREACH OF A DUTY TO ISSUE WARNINGS.**

The arbitrator’s award did not violate any explicit, well defined and dominate public policy by permitting MLB to suspend athletes for violating the terms of the Policy. Although Respondents allege that the arbitrator’s award violates public policy because it condones breaches of fiduciary duty, such a duty did not exist in this case.

In general, a court must give “an extraordinary level of deference” to an arbitrator’s award. *Stark v. Sandburg, Phoenix & von Gontard, P.C.*, 381 F.3d 793, 798 (8th Cir. 2004). A court may set aside an arbitration award only if the award was procured by fraud, corruption, or

undue means; does not draw its essence from the collective bargaining agreement; or is in violation of public policy. 9 U.S.C. § 10(a)(1)-(2); *see also United Paperworkers Int'l Union v. Misco, Inc.*, 484 U.S. 29, 36 (1987); *W.R. Grace & Co. v. Local Union 759*, 461 U.S. 757, 766 (1983). In assessing whether an arbitration award violates public policy, a court must decide whether the award “violates some explicit public policy” that is “well defined and dominate” and can be “ascertained by reference to the laws and legal precedents and not from general considerations of supposed public interests.” *MidAm. Energy Co. v. Int'l Bd. of Elec. Workers Local 499*, 345 F.3d 616, 620 (8th Cir. 2003).

If the court finds that an arbitration award violates an explicit public policy, then the court is “obliged to refrain from enforcing it.” *W.R. Grace & Co.*, 461 U.S. at 766. New York law, which governs issues not covered by federal law as agreed to under the CBA, makes clear that to establish a breach of fiduciary duty, a plaintiff must demonstrate: (1) the existence of a fiduciary relationship; and (2) breach of a fiduciary duty. *Lumbermens Mut. Cas. Co. v. Franey Muha Alliant Ins. Services*, 388 F. Supp. 2d 292, 305 (S.D.N.Y. 2005).

**A. A Fiduciary Duty did not Exist Between the Respondents and MLB Because MLB Repeatedly Warned the Players About the Risks of Consuming Energy-Boosting Supplements and the Parties Agreed to a Strict Liability Rule.**

Respondents have failed to establish that a fiduciary duty existed between Respondents and MLB. “[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.” *Lumbermens*, 388 F. Supp. 2d at 305 (internal quotation and citation omitted). “While the exact limits of what constitutes a fiduciary relationship are impossible of statement, a fiduciary relationship may be found in any case in which influence has been acquired and abused, in which confidence has been reposed and betrayed.” *United Feature Syndicate, Inc. v. Miller Features*

*Syndicate, Inc.*, 216 F. Supp. 2d 198, 218 (S.D.N.Y. 2002) (internal quotation and citation omitted).

“New York courts conduct a fact-specific inquiry into whether a party reposed confidence in another and reasonably relied on the other’s superior expertise or knowledge.” *Lumbermens*, 388 F. Supp. 2d at 305 (internal quotation and citation omitted). In other words, it is the “ongoing conduct between parties” that must be considered when assessing “whether a party reposed confidence in another and reasonably relied on the other’s superior expertise or knowledge.” *United Feature Syndicate, Inc.*, 216 F. Supp. 2d at 218. Without the presence of a duty between the parties, any fiduciary duty claim cannot survive. *Lumbermens*, 388 F. Supp. 2d at 304 (internal quotation and citation omitted).

In a contrasting case, *United Feature Syndicate, Inc.*, the court found that the plaintiff had stated a claim for breach of a fiduciary duty where the defendants knowingly used funds for their personal benefit which were held in trust for the plaintiff. 216 F. Supp. 2d at 219. The plaintiff and the defendant had entered into contractual agreements whereby the defendant would market the plaintiff’s features in newspapers. *Id.* at 202. Under the terms of the agreement, the defendant collected the funds from the marketing campaigns in Canada, and then turned over those funds to the plaintiff. *Id.* at 202. However, the defendant later fell behind in relaying the funds to the plaintiff and the plaintiff subsequently filed suit alleging breach of fiduciary duty. *Id.* at 204. The court reasoned that regardless of any contractual obligations, the defendant owed the plaintiff a fiduciary duty based on the confidence placed in the defendant. *Id.*

Unlike *United Feature Syndicate, Inc.*, the conduct between MLB and Respondents indicates that there was no fiduciary relationship. While MLB provided information for the benefit of athletes, the terms of the Policy made it clear that the players were not to rely on

information from MLB. The Policy states that “*players* are responsible for what is in their bodies, “and that a positive test result will not be excused because a player was unaware he was taking a Prohibited Substance.” Dist. Ct. Op. at 1 (emphasis added). While it is true that the creation of the Hotline provided an opportunity for players to obtain information about supplements, the memorandum announcing the Policy warns players by stating “[y]ou and you alon[e] are still responsible for what goes into your body. Using the Hotline will not excuse a positive test result.” *Id.* at 2.

Additionally, upon learning that SpeedShot contained Clomiphene, MLB notified the MLBPA that the company which makes SpeedShot was added to the banned company list. *Id.* at 3. Accompanying that notification was a memorandum warning players of the dangers of using supplements like SpeedShot and “urging players not to take products or supplements that claim to provide or boost energy.” *Id.* That memorandum went on to restate the Policy’s strict liability rule and that “if you test positive for a banned substance this constitutes a positive test, regardless of intent to do so.” *Id.* at 4.

These warnings placed the responsibility squarely on the players to determine the content of the supplements they were consuming. Pursuant to the terms of the Policy, which was agreed upon by the MLBPA, it was up to each individual player to acquire the necessary information. Thus, a fact-specific inquiry into the conduct of these parties indicates that MLB had no fiduciary duty to provide specific product information to the players, either through the memorandum or the Hotline, because it was made clear that the players were responsible for educating themselves about the risks associated with their supplements.

**B. Assuming, Arguendo, that this Court Should Find that a Fiduciary Duty did Exist, MLB's Conduct Met any Duty it Owed to the Respondents.**

Even if this Court were to find that there was a duty created by the players' reliance on MLB's expertise and knowledge, despite their consistent stance stating otherwise, MLB met any duty by issuing general warnings to the players. "The duty to disclose generally 'arises when one party has information that the other [party] is entitled to know because of a fiduciary or other similar relation of trust and confidence between them.'" *Grandon v. Merrill Lynch & Co., Inc.*, 147 F.3d 184, 189 (2d Cir. 1998) (internal quotation and citation omitted). Dr. Larson and MLB properly disclosed information to the players by issuing general warnings regarding energy-boosting supplements.

**1. Dr. Larson Fulfilled any Duty he May have Owed to the Players when he Issued General Warnings Regarding the Dangers of Consuming Energy-Boosting Supplements.**

Dr. Larson fulfilled any duty he may have owed to the players because he made a general disclosure about the risk of taking energy-boosting supplements and would have given specific disclosures about SpeedShot had a player asked. The duty to disclose may arise where "a fiduciary or confidential relationship exists or where a party has superior knowledge not available to the other." *Callahan v. Callahan*, 127 A.D.2d 298, 300 (N.Y. App. Div. 1987).

In a contrasting case, *Callahan v. Callahan*, which dealt with fiduciary duties in the context of attorney representation in a divorce, the plaintiff alleged that the defendant's duty to disclose was breached when the defendant, who had superior knowledge about the property in question, failed to disclose such information. *Id.* at 300. On review, the Court found that a cause of action existed for failure to disclose the information because the underlying fiduciary duty between the parties involved and the defendant's superior knowledge would require such disclosure. *Id.* at 301.

Unlike in *Callahan*, MLB sufficiently disclosed information to athletes and satisfied any fiduciary relationship that may have existed between the parties. The MLBPA argues Dr. Larson breached a fiduciary duty to the players because Larson did not issue a specific warning concerning the fact that SpeedShot contained Clomiphene. Dist. Ct. Op. at 4. Yet, Dr. Larson went beyond what was required of him by, not only issuing a warning regarding SpeedShot, but also by issuing, a general warning about the dangers of all energy-boosting supplements. *Id.* at 3-4. Dr. Larson even testified that had a player called about SpeedShot, he would have told that player that SpeedShot contained Clomiphene. *Id.* at 16. Instead of causing confusion by issuing specific warnings about SpeedShot, and not about all energy-boosting supplements, Dr. Larson sought to provide a general warning that avoided the possibility of players assuming that other energy-enhancing supplements were safe, and by doing so, fulfilled any fiduciary duty he had to the players.

**2. The MLB did not Breach a Fiduciary Duty to the Players by Issuing General Warnings over the Hotline about the Dangers of Consuming Energy-Boosting Supplements.**

The MLBPA also alleges that MLB breached a fiduciary duty in that the Hotline gave inaccurate information, that Birch was aware of such information, and that Birch did not correct the information. However, contrary to the MLBPA's assertions, the existence of a hotline does not conclusively establish the assumption of a duty. *See Walton-Floyd v. United States Olympic Comm'n*, 965 S.W.2d 35, 23 (Tex. Ct. App. 1998) (finding that an organization did not voluntarily assume a duty by operating a hotline service for athletes).

In *Walton-Floyd v. U.S. Olympic Commission* the Texas Court of Appeals dealt with the exact issue that is presently before this Court. In that case, the plaintiff was an athlete who challenged her suspension from amateur sports after she tested positive for a banned substance.

*Id.* at 1. The plaintiff claimed that by providing a hotline service for athletes, the United States Olympic Committee (“USOC”) voluntarily assumed a duty to inform and warn athletes of the effects of various supplements. *Id.* at 21. The plaintiff and her husband used the hotline on several occasions to inquire about a specific supplement, Sydnocarb, and the hotline operators stated that the supplement was not on the banned list of substances. *Id.* at 5-6. However, the plaintiff later tested positive for a banned substance and Sydnocarb was the apparent source of the positive test results. *Id.* at 7.

Even though the USOC had voluntarily formed the hotline, court found that the USOC did not voluntarily undertake a duty to the plaintiff by providing the hotline. *Id.* at 22. The court reasoned that the Amateur Sports Act did not create a statutory duty upon the USOC, and in the interest of maintaining consistency, a common law duty could not exist outside the scope of the Act. *Id.* at 22-23.

The facts of the case at hand are analogous to the facts which were presented in *Walton-Floyd*. Here, as in that case, the Respondents are challenging suspensions that resulted from a positive drug test. *Id.* at 7. In both cases, the athletes claim that the organizations owed them a duty to inform them of the banned substances. Additionally, they claim that by not providing this information over the hotline, the organizations breached their duty to the athletes. In fact, in *Walton-Floyd*, the athlete actually phoned the hotline to ask specific questions regarding a specific supplement and any banned substance that it may contain. Here, not one player phoned the Hotline to inquire specifically about SpeedShot. This Court, should follow the reasoning of the court in *Walton-Floyd* and should consider the protections already provided by the Policy in alleging such grievance. The Policy states that it “adopts an approach of strict liability, meaning that a positive test result will not be excused because a player was unaware he was taking a

Prohibited Substance.” Dist. Ct. Op. at 1. To impose a duty on MLB outside of the scope of the Policy would create inconsistency and ambiguity as to the strict liability terms specified in the Policy.

The parties contractually agreed to, and specifically bargained for, the terms in the CBA. The MLBPA’s argument that MLB had a duty to disclose a specific warning fails to consider that if the players and the MLBPA wanted to receive specific warnings, they certainly could have bargained for that position in the CBA. Even if this Court decides that MLB did owe the players a fiduciary duty, MLB fulfilled such a duty when it issued a general warning about energy-boosting supplements through Dr. Larson and the Hotline. Therefore, the arbitrator’s award must be upheld because it does not violate an explicit, well defined and dominate public policy.

**CONCLUSION**

For the foregoing reasons, Major League Baseball respectfully requests that this Court reverse the decision of the Court of Appeals.

Respectfully Submitted,

MAJOR LEAGUE BASEBALL,

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Attorney for Petitioner

## APPENDIX

Section 301 of the Labor Management Relations Act, 29 U.S.C. § 185(a):

Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

Minnesota Drug and Alcohol Testing in the Workplace Act, Minn. Stat. § 181.950 *et seq.*:

‘Drug’ means a controlled substance as defined in section 152.01, subdivision 4.

Minn Stat. § 181.950 subdiv. 4.

An employer may not request or require an employee or job applicant to undergo drug and alcohol testing except as authorized in this section.

Minn. Stat. § 181.951 subdiv. 1(a).

An employer may not request or require an employee or job applicant to undergo drug or alcohol testing unless the testing is done pursuant to a written drug and alcohol testing policy that contains the minimum information required in section 181.952; and is conducted by a testing laboratory which participates in one of the programs listed in section 181.953, subdivision 1.

Minn. Stat. § 181.951 subdiv. 1(b).

An employer may request or require employees to undergo drug and alcohol testing on a random selection basis only if (1) they are employed in safety-sensitive positions, or (2) they are employed as professional athletes if the professional athlete is subject to a collective bargaining agreement permitting random testing but only to the extent consistent with the collective bargaining agreement.

Minn. Stat. § 181.951 subdiv. 4.

An employer’s drug and alcohol testing policy must, at a minimum, set forth the following information: (1) the employees or job applicants subject to testing under the policy; (2) the circumstances under which drug or alcohol testing may be requested or required; (3) the right of an employee or job applicant to refuse to undergo drug and alcohol testing and the consequences of refusal; (4) any disciplinary or other adverse personnel action that may be taken based on a confirmatory test verifying a positive test result on an initial screening test; (5) the right of an employee or job applicant to explain a positive test result on a

confirmatory test or request and pay for a confirmatory retest; and (6) an other appeal procedures available.

Minn. Stat. § 181.952 subdiv. 1.

Sections 181.950 to 181.954 shall not be construed to limit the parties to a collective bargaining agreement from bargaining and agreeing 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 those sections.

Minn. Stat. § 181.955 subdiv. 1.

If an employee or job applicant tests positive for drug use, the employee must be given written notice of the right to explain the positive test . . . .

Minn. Stat. § 181.953 subdiv. 6(b).

An employee or collective bargaining agent may bring an action under this section only after first exhausting all applicable grievance procedures and arbitration proceeding requirements under a collective bargaining agreement . . . .

Minn. Stat. § 181.956 subdiv. 1.

9 U.S.C. § 10(a):

In any of the following cases the United States court in and for the district wherein the award was made may make an order vacating the award upon the application of any party to the arbitration--(1) where the award was procured by corruption, fraud, or undue means; (2) where there was evident partiality or corruption in the arbitrators, or either of them; (3) where the arbitrators were guilty of misconduct in refusing to postpone the hearing, upon sufficient cause shown, or in refusing to hear evidence pertinent and material to the controversy; or of any other misbehavior by which the rights of any party have been prejudiced; or (4) where the arbitrators exceeded their powers, or so imperfectly executed them that a mutual, final, and definite award upon the subject matter submitted was not made.