

IN THE
Supreme Court of the United States

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 RESPONDENTS

Counsel for Respondents

Team # 27

QUESTIONS PRESENTED

1. Whether the Court of Appeals correctly held that a Major League Baseball player's claims under Minnesota's Drug and Alcohol Testing in the Workplace Act are not preempted by § 301 of the Labor Management Relations Act because resolution of the claims does not require interpretation or in-depth analysis of a Collective Bargaining Agreement.

2. Whether the Court of Appeals was correct in vacating an arbitration award, which endorsed a decision by Major League Baseball refusing to issue specific warnings regarding a product that contained a hidden, banned substance, because the decision contravened a well-established public policy.

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OPINIONS BELOW

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JURISDICTION

The petition for a *writ of certiorari* was granted by this Court. Pursuant to 28 U.S.C. § 1254, the United States Supreme Court may review the case.

STATUTORY PROVISIONS INVOLVED

29 U.S.C. § 185(a).

Suits for violation of contracts between an employer and a labor organization representing employees . . . 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.

Minn. Stat. § 181.952 subdiv. 1.

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) any other appeal procedures available.

STATEMENT OF THE CASE

A. Factual Background

In 2007, Petitioner Major League Baseball (“MLB”), Dr. John Larson, the “Independent Administrator” in charge of the Major League Baseball Policy on Anabolic Steroids and Related Substances (“Policy”),¹ Dr. Ray Finkle, the “Consulting Toxicologist” who aids in implementing the Policy, and Andrew Birch, the Vice President of Law and Labor Policy for the MLB, learned that: (1) SpeedShot, a legal consumable energy-boosting supplement, contained Clomiphene, a prohibited substance named in the Policy; (2) the SpeedShot label did not disclose Clomiphene as an ingredient; and (3) detection of Clomiphene in an MLB player being tested under the Policy would yield a positive result for a banned substance. *Wilson v. Major League Baseball*, No. 09-AC-0213, slip op. at 1-3 (D. Tulania).

Finkle was sufficiently concerned with SpeedShot that he asked David Klein, Director of the Sports Medicine Research Testing Laboratory, to analyze SpeedShot. *Id.* at 3. Klein informed Finkle and Larson that SpeedShot did in fact contain Clomiphene and requested that the MLB report this finding to the United States Food and Drug Administration (“FDA”). *Id.* Petitioner, however, refused to alert the FDA. *Id.* Moreover, Petitioner did not warn MLB players, teams, MLBPA, or anyone else that SpeedShot contained Clomiphene. Petitioner also did not issue a specific notification advising players not to use SpeedShot, failed to place SpeedShot on the Policy’s banned substance list, and did not release information to players through the MLB

¹ The Policy is part of a Collective Bargaining Agreement (“CBA”) entered into between MLB and the Major League Baseball Players Association (“MLBPA”).

Supplement Hotline (“Hotline”).² *Id.* at 3-4, 16-17. Instead, the MLB banned teams and players from doing business with “Mega Energy Products, which distributes SpeedShot” and merely “urg[ed] players not to take products or supplements that claim to provide or boost energy.” *Id.* at 3.

Following these events, Respondent Kevin Wilson, an employee of the Minnesota Twins, L.L.C. and a member of the MLBPA, took SpeedShot the morning of a scheduled preseason scrimmage. *Id.* at 4. Wilson was then drug tested in accordance with the Policy’s preseason provisions, and his results came back positive for Clomiphene. *Id.* The Policy imposes strict liability on players, stating that, “a positive test result will not be excused because a player was unaware he was taking a Prohibited Substance.” *Id.* at 1. The Commissioner of the MLB therefore suspended Wilson, as required by the Policy, for fifteen games. *Id.* at 1, 4.

The Policy establishes an arbitration process for the review of such disciplinary action. Wilson, four other players who also tested positive for Clomiphene (the “Players”),³ and the MLBPA thereby appealed the suspensions to an independent and neutral arbitrator. *Id.* at 4. During the arbitration proceedings, the Players argued that their positive tests should be excused because Larson and the MLB knew that SpeedShot contained an undisclosed banned substance and failed to advise MLB players of this fact. *Id.* Despite acknowledging that it did not inform the players that SpeedShot contained Clomiphene or prohibit players from taking SpeedShot, the

² The MLB players can contact the Hotline to obtain “confidential and accurate information” about certain over-the-counter products, ingredients, effects, and adverse reactions. *Wilson v. Major League Baseball*, No. 09-AC-0213, slip op. at 9 (D. Tulania). The memorandum announcing the Hotline states, “You and you alone are still responsible for what goes into your body. Using the Hotline will not excuse a positive test result.” *Id.*

³ The four other players were 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. Those players received the same fifteen-game suspension.

MLB rationalized its decision to suspend the players by citing the Policy's strict liability standard. *Id.* at 4-5.

The arbitrator found that there was no genuine dispute regarding the Players' positive results for Clomiphene. *Id.* at 5. Additionally, the arbitrator noted "that the Policy enforces a rule of strict liability – a rule that players alone are responsible for what is in their bodies" and that "the Policy does not articulate or impose an obligation to issue specific warnings about specific products...." *Id.* The arbitrator therefore upheld the suspensions. *Id.*

B. Procedural History

Following the arbitrator's decision to uphold the suspensions, Wilson filed suit against the MLB, Larson, Finkle, and Birch in Minnesota state court, alleging that the Policy violated Minnesota's Drug and Alcohol Testing in the Workplace Act ("DATWA"). *Id.* The state court granted Wilson a temporary restraining order barring his suspension. *Id.* The MLB then removed the case to federal court, where it was consolidated with an action brought by the MLBPA seeking to vacate the arbitration awards under the Labor Management Relations Act ("LMRA"). *Id.*

The Federal District Court for the Southern District of Tulania reviewed, *de novo*: (1) whether Wilson's claims, under DATWA, are subject to federal preemption pursuant to § 301 of the LMRA; and (2) whether the neutral arbitrator's award should be set aside as a violation of existing public policy. *Id.* at 6. The district court held that because a meaningful resolution of Wilson's DATWA claims would require analysis of the terms of the CBA, both § 301 and the need for a uniform nationwide enforcement of the CBA necessitated federal preemption. *Id.* at 11-12. In addition, the district court granted the MLB's motion for summary judgment and upheld the award of the neutral arbitrator finding that no fiduciary duty flowed from the MLB

and its employees to the players regarding the issuance of a specific warning. *Id.* at 19. Therefore, the court noted, “the arbitrator’s decision did not run contrary to any explicit public policy.” *Id.*

Wilson and the MLBPA subsequently appealed the decision of the district court to the United States Court of Appeals for the Fourteenth Circuit, alleging that the district court was incorrect when it held that Wilson’s DATWA claims were preempted by § 301 and that the arbitrator’s decisions did not sanction a breach of fiduciary duty. *Wilson v. Major League Baseball*, No. 09-2108, slip op. at 1-4 (14th Cir.). The Court of Appeals reversed the decision of the district court on both issues, holding that: (1) because Wilson’s claim is predicated on Minnesota law and not on any interpretation of the CBA, it is not preempted by § 301; and (2) because the arbitration award endorsed conduct by the MLB in contravention of public policy, the award must be vacated. *Id.* at 10. The Supreme Court of the United States granted the MLB’s petition for certiorari appealing the decision of the Fourteenth Circuit.

SUMMARY OF ARGUMENT

The Court of Appeals for the Fourteenth Circuit correctly held that Wilson's claims pursuant to Minnesota state law are not preempted under § 301 of the Labor Management Relations Act, and that the arbitration award against Wilson and four other players is contrary to public policy and thus invalid.

Section 301 preempts any state law claims that are intertwined with and require analysis of a collective bargaining agreement. Concomitantly, § 301 does not preempt state claims that are separate and apart from a collective bargaining agreement. Since Wilson's claims are based on protections granted by Minnesota state law, they are independent from any agreement. His claims do not require interpretation of contractual terms but only an inquiry into the circumstances surrounding Wilson's drug testing and whether the testing comported with Minnesota law. In addition, because Wilson's claims can only be brought by an employee in Minnesota under Minnesota law, his claims do not affect the terms of any nationwide labor agreements or any employees outside of Minnesota. This Court has recognized that such state claims are not subject to preemption by § 301. The Fourteenth Circuit faithfully followed this precedent here. Accordingly, this Court should affirm the appellate court's decision.

An arbitrator's decision that is contrary to an explicit public policy must be vacated. Here, Petitioner's conduct violated the well established public policy of protecting health and safety. Petitioner's own actions and pronouncements created a duty to disclose any material information regarding SpeedShot. By knowingly refusing to disclose that SpeedShot contained Clomiphene, Petitioner breached its duty and jeopardized the health and safety of MLB players. The arbitrator's decision, in favor of Petitioner and against Respondents, expressly condones Petitioner's violation of this explicit public policy. This Court has held that such arbitration

rulings cannot stand. The Fourteenth Circuit again faithfully followed this Court's precedent when it vacated the arbitration award and this Court should affirm that decision.

ARGUMENT

Petitioner contends that Wilson's claims under Minnesota's Drug and Alcohol Testing in the Workplace Act ("DATWA") are preempted by § 301 of the Labor Management Relations Act ("LMRA"). Petitioner also contends that the arbitration award against Wilson is not contrary to public policy and thus should stand. The Court of Appeals for the Fourteenth Circuit correctly rejected these contentions when it held that: (1) Wilson's DATWA claims are not preempted by federal law; and (2) the arbitration decision in favor of Petitioner violates public policy.

I. SECTION 301 OF THE LABOR MANAGEMENT RELATIONS ACT DOES NOT PREEMPT WILSON'S STATE CLAIMS UNDER MINNESOTA LAW

Section 301 of the LMRA provides:

Suits for violation of contracts between an employer and a labor organization representing employees . . . 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). Thus § 301 is clearly meant to cover disputes arising from a collective bargaining agreement.

This Court has long recognized "that the substantive law applicable to suits under § 301(a) is federal law, which the courts must fashion from the policy of our national labor laws." *Textile Workers Union v. Lincoln Mills*, 353 U.S. 448, 456 (1957). Accordingly, to ensure uniform interpretation and enforcement of collective bargaining agreements across the country, federal labor law preempts any state laws in such suits. *Teamsters v. Lucas Flour, Co.*, 369 U.S. 95, 102-03 (1962) ("The possibility that individual contract terms might have different meanings under state and federal law would inevitably exert a disruptive influence upon both the negotiation and administration of collective agreements."). This preemption is not limited to contract actions but also extends to any other action that "is inextricably intertwined with

consideration of the terms of [a collective bargaining agreement].” *Allis-Chalmers Corp. v. Lueck*, 471 U.S. 202, 213 (1985).

However, “not every dispute concerning employment, or tangentially involving a provision of a collective-bargaining agreement, is pre-empted by § 301 or other provisions of the federal labor law.” *Id.* at 211. This Court has emphasized that “§ 301 does not grant the parties to a collective-bargaining agreement the ability to contract for what is illegal under state law” and it does not “preempt state rules that proscribe conduct, or establish rights and obligations, independent of a labor contract.” *Id.* at 212. A contrary view would give “private agreements the force of federal law, ousting any inconsistent state regulation.” *Id.*

A. Wilson’s State Claims are Independent of the Collective Bargaining Agreement and are thus not Preempted by Federal Law

Section 301 preempts state law claims that are “substantially dependent upon analysis of the terms of . . . a labor contract.” *Id.* at 220. In other words, preemption hinges on whether “resolution of a state-law claim depends upon *the meaning* of a collective-bargaining agreement.” *Lingle v. Norge Div. of Magic Chef, Inc.*, 486 U.S. 399, 405-06 (1988) (emphasis added). This Court has stressed that § 301 preemption truly requires an in depth analysis or interpretation of and not merely a reference to a collective bargaining agreement. *Livadas v. Bradshaw*, 512 U.S. 107, 124 (1994). If *the meaning* of a collective bargaining agreement is not subject to the dispute, “the bare fact that a collective-bargaining agreement will be consulted in the course of state-law litigation plainly does not require the claim to be extinguished.” *Id.*; *see Lingle*, 486 U.S. at 413 n.12 (“A collective-bargaining agreement may, of course, contain information such as rate of pay . . . that might be helpful in determining the damages to which a worker prevailing in a state-law suit is entitled.”).

To determine whether interpretation of the Collective Bargaining Agreement (“CBA”)⁴ between Major League Baseball (“MLB”) and the Major League Baseball Players Association (“MLBPA”) is required to resolve Wilson’s claims, this Court begins its analysis by examining the claim itself. *See Lingle*, 486 U.S. at 406 (analyzing whether a retaliatory discharge claim under Illinois state law required interpretation of a collective bargaining agreement); *Lueck*, 471 U.S. at 213 (analyzing whether Wisconsin state law conferred certain rights on employers or employees independent of a collective bargaining agreement). Several Circuit Courts have followed the same reasoning. *See Wilson v. Major League Baseball*, No. 09-2108, slip op. at 5 (14th Cir.) (“In applying the Section 301 preemption doctrine, we begin with the claim itself.” (internal quotation marks and citation omitted)); *Trustees of the Twin City Bricklayers Fringe Benefit Funds v. Superior Waterproofing, Inc.*, 450 F.3d 324, 331 (8th Cir. 2006) (“The 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.”).

1. The Drug and Alcohol Testing in the Workplace Act Does not Require Interpretation of the Collective Bargaining Agreement

In the instant case, Wilson’s claims under DATWA do not require interpretation, or analysis of the CBA. The Drug and Alcohol Testing in the Workplace Act simply prohibits an employer from testing its employees for drugs and alcohol without first meeting certain minimum requirements. *See* Minn. Stat. § 181.950 et seq. These requirements mandate, *inter alia*, that employers’ drug testing policies include, at a minimum, 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;

⁴ As noted in the Statement of the Case, the Major League Baseball Policy on Anabolic Steroids and Related Substances (“Policy”) pursuant to which Wilson was drug tested is part of the CBA.

(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) any other appeal procedures available.

Id. § 181.952 subdiv. 1. Additionally, DATWA sets forth numerous other requirements and protections. *See id.* § 181.953 subdiv. 1 (requiring that drug testing is conducted in certain testing laboratories under certain conditions); *id.* § 181.953 subdiv. 6(b) (requiring that an employer provide an employee, who tests positive for drug use, with “written notice of the right to explain the positive test”); *id.* § 181.953 subdiv. 6(c) (requiring that the employee is provided with an opportunity “to explain that result” and the ability to “request a confirmatory retest of the original sample at the employee's or job applicant's own expense”); *id.* § 181.953 subdiv. 10(a) (precluding an employer from “discharg[ing] [or] disciplin[ing] . . . an employee on the basis of a positive result . . . that has not been verified by a confirmatory test”); *id.* § 181.953 subdiv. 10(b)(1)-(2) (prohibiting an employer from discharging first-time offenders unless the employee is first given the opportunity to participate in treatment and refuses to participate or fails to successfully complete the program).

These statutory protections are available to all employees in Minnesota regardless of whether they are party to a collective bargaining agreement. Indeed, DATWA specifically addresses collective bargaining agreements and provides that it “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.*” *Id.* § 181.955 subdiv. 1 (emphasis added). Accordingly, collective bargaining agreements can provide more protection or stricter standards than DATWA, but DATWA’s minimum safeguards are *always* available.

The Court of Appeals for the Fourteenth Circuit recognized as much. It correctly rejected the district court’s holding that because Wilson was tested pursuant to the CBA, resolution of any DATWA claims hinged on interpretation of the CBA. Thus, the Fourteenth Circuit realized that Wilson’s DATWA claims are separate from the CBA. A contrary holding would have essentially eliminated workers’ ability to file a DATWA claim if they were party to a collective bargaining agreement that was at least as protective as DATWA. Because any such claim would necessarily require review of the terms of the collective bargaining agreement, such claims would inevitably be preempted by § 301.

Congress and this Court never intended for § 301 to have such an effect. *See Livadas*, 512 U.S. at 123 (“[Section] 301 cannot be read broadly to pre-empt nonnegotiable rights conferred on individual employees as a matter of state law.”); *Lueck*, 471 U.S. at 211-12 (“There [is not] any suggestion that Congress, in adopting § 301, wished to give the substantive provisions of private agreements the force of federal law, ousting any inconsistent state regulation. Such a rule of law would delegate to unions and unionized employers the power to exempt themselves from whatever state labor standards they disfavored.”). Indeed § 301 only preempts state claims that are based on rights created or granted by a collective bargaining agreement. *Lueck*, 471 U.S. at 213. However, rights conferred by state laws that are independent from a collective bargaining

agreement (such as the ones under DATWA) are not affected. *Id.* The Fourteenth Circuit recognized this distinction:

DATWA [is not preempted by the CBA]. Rather, where there is a [collective bargaining agreement] that is at least as protective of employees as DATWA, the number of possible claims an employee has against his or her employer will be affected. Where the employer complies with DATWA but not with its [collective bargaining agreement] that provides greater protection, the employee could have only a claim for breach of contract. Where the employer does not comply either with DATWA or its [collective bargaining agreement] that provides equivalent or greater protection than DATWA, the employee could potentially have two claims, a claim for breach of contract and a DATWA claim.

Wilson, No. 09-2108, slip op. at 7. In other words, an employee in Minnesota subject to a collective bargaining agreement has potentially two claims: one under DATWA, independent of the collective bargaining agreement; and one under the collective bargaining agreement and its terms.

2. Wilson's Claims are Based on Rights Granted by the State of Minnesota and Can Be Resolved Irrespective of the Collective Bargaining Agreement

The claims brought by Wilson do not arise from the CBA but from separate conduct by Petitioner; they originate from specific rights granted by the State of Minnesota. Moreover, resolution of these claims does not require reviewing or interpreting the CBA, but rather Petitioner's actions need to be analyzed in the context of DATWA's statutory framework.

A court need only review what, when, where and how the MLB and its officials conducted the drug testing and how Wilson was treated – and not what the CBA required or allowed the parties to do. The DATWA claims are entirely separate and stand apart from the CBA. Such claims are clearly not preempted by § 301. *Hawaiian Airlines, Inc. v. Norris*, 512 U.S. 246, 261, 266 (1994) (“[P]urely factual questions’ about an . . . employer’s conduct . . . do

not ‘requir[e] a court to interpret any term of a [collective bargaining agreement].’” (quoting Lingle, 486 U.S. at 407)); *see Karnes v. Boeing Co.*, 335 F.3d 1189, 1193, 1194 (10th Cir. 2003) (determining that analogous claims under Oklahoma’s Standards for Workplace Drug and Alcohol Testing Act do not “require[] the court to interpret, or even refer to, the terms of a [collective bargaining agreement]” and thus the claims are “clearly independent of the [collective bargaining agreement] and . . . not subject to § 301 preemption”).

Accordingly, since Wilson’s DATWA claims are entirely independent of the CBA, they are not preempted by § 301 of the LMRA.

B. Resolution of Wilson’s State Claims Will Not Result in a Piecemeal Destruction of the Collective Bargaining Agreement

The Fourteenth Circuit correctly held that barring preemption of Wilson’s DATWA claims will not subject the CBA to as many different interpretations as there are states. Therefore, Wilson’s claims do not require preemption in order to secure evenhanded enforcement of the CBA and the integrity of professional baseball.

First, § 301 was never meant to allow employers and labor organizations to contract for terms that violate state laws under the auspices of a uniform nationwide agreement. *Lueck*, 471 U.S. at 211-12; *see also Cramer v. Consolidated Freightways, Inc.*, 255 F.3d 683, 696 n.9 (9th Cir. 2001) (en banc) (holding that “the LMRA certainly did not give employers and unions the power to displace any regulatory laws they found inconvenient”). Certainly, employers and their employees are free to enter into contracts regarding drug-testing, but at the same time, testing procedures need to comply with state law. *Lueck*, 471 U.S. at 211-12.

Here, allowing Petitioner to proceed on its intended course would effectively grant a private contract the power of federal law and a national organization the ability to negotiate its way out of providing individuals with safeguards required by state law. In other words, Petitioner

would be permitted to drug test Wilson, an employee of the Minnesota Twins, in the state of Minnesota, without having to comply with Minnesota laws, simply because those laws are inconvenient to Petitioner. Such a ruling would be inconsistent with the Congressional intent for § 301 and would further enhance the immense bargaining power that national organizations already have over individuals. *Lueck*, 471 U.S. at 211-12. This is not a line that this Court has been willing to toe. *Id.* (“[There is no] suggestion that Congress, in adopting § 301, wished to give the substantive provisions of private agreements the force of federal law, ousting any inconsistent state regulation.”).

Second, allowing Wilson’s DATWA claims to proceed will not have the effect of regulating conduct in other states. When deciding whether to allow state-by-state litigation in the context of a collective bargaining agreement, “the critical inquiry is whether the practical effect of the regulation is to control conduct beyond the boundaries of the State.” *See Healy v. Beer Institute, Inc.*, 491 U.S. 324, 336 (1989). There is little concern that employees will be able to use Minnesota law in a way that regulates the terms of collective bargaining agreements in other states; the facts underlying this appeal evince that the exact opposite is likely to be the case. The state court granted Wilson a temporary restraining order barring his suspension, permitting him to continue playing baseball pending the outcome of his appeal. This ruling did not apply to the other four players who are all employed in other states. Thus, claims under DATWA can only arise within Minnesota and the effects of such claims do not extend beyond state boundaries.

Furthermore, disposition of Wilson’s DATWA claims will not result in a piecemeal revisions of the CBA. To resolve the claims, the only necessary inquiry is to compare Petitioner’s procedures for testing Wilson with the requirements mandated by DATWA. The court will then examine the facts surrounding Wilson’s tests and whether Petitioner’s conduct

complies with the minimum safeguards required by DATWA. If Petitioner failed to meet these requirements then Wilson is protected by state law.

In short, resolving Wilson's claims under state law will not affect the promulgation of a nationwide labor policy or Petitioner's ability to protect the "integrity" of professional baseball. Moreover, Wilson's claims are independent of the CBA and are based on safeguards granted by state law (DATWA). Therefore, this Court should affirm the Fourteenth Circuit's holding that Wilson's DATWA claims are not preempted by federal law.

II. THE ARBITRATION AWARD MUST BE VACATED BECAUSE IT VIOLATES PUBLIC POLICY.

The arbitrator's decision to uphold the Players'⁵ fifteen-game suspensions must be vacated on public policy grounds because the suspensions condone Petitioner's intentional breach of a fiduciary duty by willfully failing to disclose the fact that SpeedShot secretly contained a banned substance. Although judicial review of an arbitration award that draws its essence from a collective bargaining agreement is deferential, "a court may not enforce a collective bargaining agreement that is contrary to public policy." *W.R. Grace & Co. v. Local Union 759*, 461 U.S. 757, 766 (1983). The public policy "must be well defined and dominant, and is to be ascertained 'by reference to the laws and legal precedents, and not from general considerations of supposed public interests.'" *Id.* (quoting *Muschany v. United States*, 324 U.S. 49, 66 (1945)). Moreover, because collective bargaining agreements do not formulate public policy and arbitrators may only consider matters encompassed by the governing agreements, "the question of public policy is ultimately one for resolution by the courts." *Id.* at 766.

It is undisputed that the arbitrator here acted within his contractual authority and that the awards at issue draw their essence from the parties' CBA. Hence, the awards are "not

⁵ The term "Players" in this section refers to Wilson and four other MLB players who tested positive for Clomiphene and subsequently appealed their suspensions.

distinguishable from the contractual agreement.” *Eastern Assoc. Coal Corp. v. United Mine Workers of Am.*, 531 U.S. 57, 62 (2000). The question, therefore, is whether the arbitrator’s decision to uphold Wilson’s suspensions pursuant to the Policy’s strict liability rule violates an explicit public policy. This Court needs to look no further than the Fourteenth Circuit opinion, which correctly held that (1) a fiduciary relationship exists between the MLB and the players; (2) the MLB wrongfully breached its duty to disclose material facts about SpeedShot, thereby seriously endangering player health and safety; (3) there is an explicit public policy of protecting health and safety; and (4) the arbitration awards themselves violate such public policy by sanctioning the MLB’s breaches of fiduciary duty. Accordingly, this Court should affirm the appellate court’s vacation of the arbitrator’s decision because it cannot withstand scrutiny under the public policy exception articulated in *W.R. Grace*.

A. Petitioner Owed Fiduciary Duties to the Players and Breached those Duties

First, the Court of Appeals correctly held that the MLB and the officials administering the Policy owed fiduciary duties under New York law to Wilson and four other players who tested positive for Clomiphene.⁶ Second, by concealing its knowledge about the ingredients in SpeedShot from the MLB players and the MLBPA, the MLB undeniably breached its duties to the Players.

A fiduciary relationship is one “founded upon trust or confidence reposed by one person in the integrity and fidelity of another.” *United Feature Syndicate, Inc. v. Miller Features Syndicate, Inc.*, 216 F.Supp.2d 198, 218 (S.D.N.Y. 2002) (internal quotations omitted). Specifically, “[u]nder New York law, 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

⁶ The CBA between the parties expressly provides that in the absence of a superseding federal law requirement, New York law governs. *Wilson*, No. 09-AC-0213, slip op. at 18 n.2.

the scope of the relation.” *Lumbermens Mut. Cas. Co. v. Franey Muha Alliant Ins. Servs.*, 388 F.Supp.2d 292, 305 (S.D.N.Y. 2005) (internal quotations and citations omitted). Thus, the determination of whether such a relationship exists, and has been betrayed, is “a fact-specific inquiry into whether a party . . . reasonably relied on the other’s superior expertise or knowledge.” *Id.* (internal quotations and citations omitted).

A fiduciary relationship existed in this case because the Players reasonably relied on the MLB’s, Dr. Larson’s, and Mr. Birch’s superior expertise and knowledge in administering the Policy openly, fairly, and in the best interests of the Players’ health and safety. The Policy is motivated by concerns of protecting player health, including the adverse health effects of using prohibited substances. *Wilson*, No. 09-2108, slip op. at 11-12. Larson, as the Independent Administrator of the Policy, had an express duty under the Policy to consult and educate MLB players about banned substances. *Id.* at 12. The Policy also provided that “Dr. Larson is authorized to respond to players’ questions regarding specific supplements.” *Id.*

After issuing a general warning about energy-boosting supplements, Larson promised that he would “continue to provide MLB Players with information on the subject throughout the year.” *Id.* Although Larson and Dr. Finkle directed a laboratory to perform tests on SpeedShot and subsequently learned that SpeedShot contained Clomiphene, Larson wholly failed to fulfill his promise. The likelihood that the Players would interpret Larson’s silence as an indication that using energy boosters would not jeopardize their health or employment status was highly apparent. Further, the consequence of such reliance was potentially so serious that the law undoubtedly imposed a fiduciary duty upon Petitioner.

In addition, unlike the MLB and the doctors under its controls, the MLB players lack the knowledge and expertise to identify every ingredient or every product that they ingest. By

declaring itself the authoritative source of information about all supplements and promising to communicate updated information about energy boosters, Petitioner undertook a duty “to give advice for the benefit of [MLB players] upon matters within the scope of the relation.” *Lumbermans*, 388 F.Supp.2d at 305. Therefore, the Players reasonably relied on the MLB and Larson’s “superior expertise and knowledge” about the safety of energy-boosting supplements. *Id.*

This fiduciary relationship imputed upon Petitioner a common duty to disclose all known material facts about SpeedShot to the Players. *See Grandon v. Merrill Lynch & Co., Inc.*, 147 F.3d 184, 189 (2d Cir. 1998) (“[T]he 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.” (internal quotation omitted)); *Callahan v. Callahan*, 514 N.Y.S.2d 819, 821 (N.Y. App. Div. 1987) (“[A] duty to disclose may arise where a fiduciary or confidential relationship exists or where a party has superior knowledge not available to the other.”). Petitioner had actual knowledge years before the Players were tested that SpeedShot secretly contained a banned substance and could potentially have “adverse effects on the health of [unwitting] players.” *Wilson*, No. 09-2108, slip op. at 13. Nevertheless, Petitioner consciously decided not to disclose to MLB players, the MLBPA, or anyone else that SpeedShot contained Clomiphene.

Shockingly, Larson testified that he deliberately withheld the vital information about SpeedShot out of fear that MLB players would expect future notifications about other banned substances in energy boosters – and not because of any concern about player health and safety. *Id.* This fear of personal liability is a meritless excuse; Petitioner had actual knowledge that ingesting SpeedShot placed MLB players’ medical health and welfare at risk, and the Players

reasonably believed that Petitioner would disclose that information. There was thus no credible basis for Petitioner to egregiously breach its fiduciary duties, especially considering the slight burden placed upon the MLB to disclose.

The MLB also breached its duties to the players through the MLB Supplemental Hotline, which gave misleading information to MLB players about SpeedShot. After Larson informed Birch that SpeedShot contained clomiphene, Birch inexplicably instructed the Hotline *not* to give players any information about SpeedShot. *Wilson*, No. 09-AC-0213, slip op. at 17. Indeed, the record indicates that at least one player only commenced using SpeedShot after the Hotline advised him that SpeedShot was not a banned substances. *Id.* If players cannot get answers to their questions, they cannot determine which supplements are permissible and which are not.

Nor can Petitioner invoke its purported need for consistent application of player “strict liability” as a shield for justifying its breaches. Petitioner’s duty to disclose information in its possession regarding matters detrimental to players’ health did not arise from the Policy but from a duty that New York law imposes on the MLB as a fiduciary, an employer, and as one (through its officials) that voluntarily undertook to act and speak on the SpeedShot issue. Yet both Larson and the Hotline only offered general warnings about energy supplements, even when questioned about SpeedShot specifically. *Id.* For these reasons, this Court should uphold the appellate court’s determination that the MLB, through its officials, wrongfully breached its fiduciary duty to the Players by concealing material information about SpeedShot.

B. There is a Well-Established Public Policy Requiring the Protection of Health and Safety

As recognized by the Fourteenth Circuit, there is an “explicit” public policy in favor protecting health and safety, which has frequently served as the basis for vacating arbitration awards. *See Wilson*, No. 09-2108, slip op. at 10. As noted above, this Court requires the finding

of a well-defined public policy and an award that conflicts with that policy. *W.R. Grace*, 461 U.S. at 766. Three cases in particular provide examples of arbitration awards that were vacated on public policy grounds where, as here, the award would endorse behavior that threatens health and safety.

In the first case, *Iowa Elec. Light & Power Co. v. Local Union 204 of Int'l Bd. of Elec. Workers (AFL-CIO)*, the arbitrator's award called for the reinstatement of a nuclear power plant machinist who had been discharged for deliberately violating important federally mandated safety regulations. 834 F.2d 1424, 1428 (8th Cir. 1987). The United States Court of Appeals for the Eighth Circuit affirmed vacation of the arbitrator's award on public policy grounds. *Id.* at 1430. The Eight Circuit opined that its decision was consistent with "the line of cases vacating arbitrators' awards that direct the reinstatement of employees whose deliberate acts have jeopardized public health or safety." *Id.* at 1428.

Significantly, the *Iowa Electric* Court cited numerous cases recognizing the "well defined and dominant" national policy of protecting public health and safety. One of those cases, *Local No. P-1236, Amalgamated Meat Cutters v. Jones Dairy Farm*, is especially pertinent to the instant case. In *Jones Dairy Farm*, the United States Court of Appeals for the Seventh Circuit vacated an arbitrator's award that allowed the employer at a meat packing plant to forbid his employees from reporting sanitation violations directly to the government because it threatened the public health. *See Id.* (citing *Jones Dairy Farm*, 680 F.2d 1142 (7th Cir. 1982)). Similar to *Jones Dairy Farm*, Larson and Birch refused to report to the Food and Drug Administration ("FDA") that SpeedShot secretly contained Clomiphene and directed the Hotline not to release that critical information to anyone. Thus, the awards here pose a serious threat to public health considering they sanction Petitioner's willful non-disclosure to both the FDA and the players.

Finally, in *Delta Air Lines, Inc. v. Air Line Pilots Ass'n, Int'l*, the United States Court of Appeals for the Eleventh Circuit affirmed vacation of an arbitration award ordering the reinstatement of a pilot who had been discharged after flying a passenger plane while intoxicated. 861 F.2d 665, 674 (11th Cir. 1988). The Eleventh Circuit reasoned that the arbitrator's award offended public policy because it condoned the pilot's illicit behavior and thus endangered the safety of passengers, crew, and the public at-large. *Id.* Thus, *Iowa Electric* and *Delta Air Lines* establish that the public policy of protecting health and safety is "explicit," "well defined," and "ascertained by reference to . . . legal precedents."

C. The Policy as Interpreted by the Arbitrator Violates Public Policy and Therefore Must Be Vacated

The arbitration awards at issue must be vacated because they violate public policy by sanctioning a wrongful breach of fiduciary duty that endangers public health and safety. It is well-settled that an arbitration award *must* be set aside where it violates a specifically defined public policy. *W.R. Grace*, 461 U.S. at 766. With this principle in mind, by permitting the award to stand, this Court would be countenancing and in fact encouraging breaches of fiduciary obligations that put public health at risk.

First, it would be contrary to public policy to permit the enforcement of the awards that condone reprehensible breaches of fiduciary duties. The officials in charge of administering the Policy undisputedly knew, but chose to conceal from MLB players, the fact that SpeedShot contained a banned and potentially dangerous substance. The arbitrator therefore upheld the Players' suspensions, even though Petitioner's own misconduct directly led the Players to believe that it was safe to use SpeedShot.

Second, considerations of public policy clearly favor the Players here because the public interest lies in ensuring that innocent people are not subject to unjust punishment. In other words,

the public's interest is not merely in enforcing drug testing policies and disciplinary procedures – but in the *proper* enforcement of such policies. Petitioner attempts to obfuscate Larson's conscious decision to conceal the fact that SpeedShot contained Climophene by citing the Policy's strict liability standard. Yet this interpretation of the Policy would allow Petitioner to recklessly endanger MLB players' lives and livelihood. The officials in charge of administering the Policy did so for personal benefit and without regard to their greater obligations pursuant to the law or the Policy.

Given the significant implications of allowing Petitioner to proceed on its proposed path, in breach of its common law fiduciary duties and in contravention of explicit public policy, this Court must vacate the arbitrator's award.

CONCLUSION

For the foregoing reasons, Respondent respectfully asks this Court to affirm the ruling of the United States Court of Appeals for the Fourteenth Circuit.

Respectfully submitted,

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Team number 27