

No. 09-214

IN THE
SUPREME COURT OF THE UNITED STATES OF AMERICA

MAJOR LEAGUE BASEBALL,
Defendant- Petitioner,

v.

KEVIN WILSON, and
MAJOR LEAGUE BASEBALL PLAYERS ASSOCIATION,
Plaintiff-Respondent.

APPEAL FROM THE UNITED STATE COUT
OF APPEALS FOR THE FOURTEENTH CIRCUIT

BRIEF FOR APPELLANT

TEAM NO. 36

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QUESTIONS PRESENTED

- I. 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 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 was correct 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.

SUMMARY OF THE FACTS

Appellant, Major League Baseball (“MLB”) appeals the decision of the United States Court of Appeals for the Fourteenth Circuit, in favor of Respondents, Kevin Wilson of the Minnesota Twins and Major League Baseball Player’s Association (“MLBPA”) on behalf of Kevin Wilson, 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 (“the Players”). [R. Dist. 1]. In 2007, the MLB and MLBPA entered into a Collective Bargaining Agreement (the “CBA”) that incorporated the MLB Policy on Anabolic Steroids and Related Substances (the “Policy”). *Id.* Under the Policy, MLB prohibited players from using certain substances, including different types of performance enhancing drugs and “Other Anti-estrogens, including Clomiphene, Cyclophenil, and Fluvestrant.” *Id.* The Policy holds players personally responsible for the substances they put into their bodies, and incorporates a rule of strict liability in which no positive results are excused because a player did not know that he was taking a prohibited substance. *Id.* Players who test positive for a banned substance are subject to discipline as outlined by the Policy. *Id.* The first time a player tests positive, he will be suspended for a minimum of 15 games and maximum of 25 games. [R. Dist. 2]. A player may appeal the suspension to an arbitrator, who is either the Commissioner or his designee and whose decision is considered the full, final, and complete disposition of the appeal and is binding on all parties. *Id.* The Policy also outlines an arbitration process in which a neutral arbitrator will review any action taken in accordance with the Policy and whose decision will be the full, final, and complete disposition of the appeal and will be binding on all parties. *Id.*

Dr. John Larson, a licensed physician, is the independent administrator of the drug tests and is responsible for 1) overseeing the drug testing procedures under the Policy, 2) reporting

any positive test results to the Commissioner discipline, and 3) providing education to the players regarding the implementation of the Policy. *Id.* He is assisted by Dr. Ray Finkle. *Id.*

The Policy includes the “MLB Supplemental Hotline” (the “Hotline”). *Id.* The Hotline is a confidential hotline that provides players accurate information about certain products. *Id.* Players, coaches, and trainers can use the Hotline to gain more information about certain supplements and their relation to the Policy. *Id.* However, the Hotline is only a supplemental tool to aid players. *Id.* The memorandum announcing the Policy reiterated, “You and you alone are still responsible for what goes into your body. Using the Hotline will not excuse a positive test result.” *Id.*

On November 14, 2007, David Klein, Director of the Sports Medicine Research Testing Laboratory, analyzed SpeedShot, an energy-boosting supplement that claims to provide five hours worth of energy, and discovered that it contained Clomiphene. [R. Dist. 3]. The SpeedShot label did not list Clomiphene as an ingredient. *Id.* Mr. Klein emailed Finkle and Larson his findings, and Andrew Birch, Vice President of Law and Labor Policy for the MLB, was made aware of the results. *Id.* The MLB notified the MLBPA so that it could pass the information along to the players that Mega Energy Products, the distributor of SpeedShot, was now banned company and players and teams were prohibited from doing business with that company. *Id.* The MLBPA notified all players through their agents that Mega Energy Products was now a banned company and that players were not allowed to endorse their products. *Id.* Dr. Larson also released a memorandum to all MLB players reminding them of the dangers of using Energy-Boosting Supplements, urged players not to take the products or supplements that claim to provide or boost energy, and again repeated the strict liability rule of the Policy. [R. Dist. 3-4].

Despite these warnings, Kevin Wilson took SpeedShot the morning of a scheduled preseason training camp scrimmage, and when he was drug tested, under the Policy's annual preseason provisions, Wilson tested positive for Clomiphene. *Id.* Wilson received the minimum 15 game suspension. *Id.* The players, represented in this suit by the MLBPA, also tested positive for Clomiphene and received a 15 game suspension. *Id.* Wilson and the players appealed the suspension to an independent arbitrator pursuant to the terms of the Policy. *Id.* None of the players disputed the positive test results at the arbitration hearing and even admitted that they were aware of the warnings regarding the energy boosters, the Hotline, and the Policy's stance that each player was personally responsible for the substances put in their body. *Id.* The players only argued that Dr. Larson did not specifically inform them that SpeedShot contained Clomiphene and that the Policy created a fiduciary duty between them and the MLB required disclosure of that fact. *Id.* During the hearing, the arbitrator upheld the suspensions and found that no player challenged the laboratory analysis or any aspect of the testing. *Id.* There was also no dispute about the positive results. *Id.* The arbitrator applied the strict liability rule outlined in the Policy and explained that each player was aware of this rule. *Id.* The arbitrator determined that the Policy did not impose a fiduciary duty on MLB to give specific and particular warning about products, and nothing on the record suggested that the parties had ever contemplated such a duty in the CBA. *Id.*

After the Arbitrators final award, Wilson filed suit against MLB, Dr. Larson, Dr. Ray Finkle, and Andrew Birch in a Minnesota State Court, alleging a violation of Minnesota's common law and breach of contract. [R. App. Ct. 2]. That same day the Minnesota District Court issued an injunction blocking the suspension of Kevin Wilson but not the other players. *Id.* MLB removed the case to federal court where it was consolidated with an action brought by the

MLBPA, on behalf of the players, seeking to vacate the arbitration award. *Id.* The MLBPA then amended their complaint alleging that Wilson's suspension was a violation of the Minnesota Drug and Alcohol Testing in the Workplace Act (DATWA). *Id.* at 2-3. Appellants then filed a motion for summary judgment arguing that Section 301 of the Labor Management Relations Act (LMRA) preempted Wilson's DATWA claim and that the MLB was under no duty to disclose specific information confirming that SpeedShot contained Clomiphene. *Id.* at 3. The United States District Court for the District of Tullahoma agreed and found that Section 301 preempted Wilson's DATWA claims and that upholding the Policy as interpreted by the arbitrator did not violate public policy by condoning a breach of a fiduciary duty. *Id.* On appeal, the United States Court of Appeals for the Fourteenth Circuit reversed the District Court's findings. *Id.* at 3-14.

SUMMARY OF THE ARGUMENT

PREEMPTION

Wilson's DATWA claim should be preempted by § 301 of the LMRA for four reasons. Wilson's DATWA claim is preempted because he is essentially asserting rights that arise out of the CBA. Even if the court does not find that Wilson is claiming rights founded in the CBA, his state law DATWA claim is "inextricably intertwined" with the CBA and should be preempted by § 301. Additionally, courts have determine that if an analysis of the relevant CBA is necessary to rule on the state-law claim then that claim is preempted by § 301. Wilson's claim cannot be resolved solely through DATWA, but instead calls for an analysis of the relevant CBA. Finally, it is often necessary for state law to give way to federal law when the circumstances require uniformity and predictability across the nation. In this case, the nationwide sport of baseball would be better served with a uniform and predictable application and enforcement of the CBA's between the MLB and the players, who are under different state jurisdictions.

PUBLIC POLICY

A court's review of the arbitrator's decision is governed by the Federal Arbitration Act (FAA). The FAA only allows courts to set aside arbitration awards if that award was "procured by fraud, corruption, or undue means" or in situations where there was "evident partiality" in the arbitrators. 9 U.S.C.A. §§ 10(a)(1)-(2). Appellate courts give the arbitrator great deference and must confirm the award if the "arbitrator was even arguably construing or applying the contract and acting within the scope of his authority." *Stark v. Sandburg, Phoenix & von Gontard, P.C.*, 381 F.3d 793, 798 (8th Cir. 2004). Both parties agree that the decision at issue is based on the parties' collective bargaining agreement. As a result, they must treat the arbitrator's decision as if it represented the contract agreed to by the MLBPA and the MLB. *Eastern Assoc. Coal Cos.*

V. United Mine Workers of Am., 531 U.S. 57, 62 (2000). However, if enforcement of the policy, as interpreted by the arbitrator, violates an explicit public policy the court must not enforce it. *W.R. Grace & Co. v. Local Union 759*, 461 U.S. 757, 766 (1983). The MLBPA and Wilson contend that the action taken by Major League Baseball in this case constitutes a breach of a fiduciary duty that is deeply rooted in public policy. Opposing counsel can only succeed on this claim if they show that a fiduciary duty requiring complete disclosure exists and was breached, that same duty is part of an explicit public policy, and that the Policy violates public policy by condoning a breach of fiduciary duties.

No fiduciary duty exists between the MLB and the Players. Fiduciary relationships require confidence to be reposed and then betrayed. The language of the CBA and the actions of the MLB and Dr. Larson do create the confidence necessary to establish this type of relationship. If such a relationship does, it is derived only from generalized public policy not explicit, well-defined policy as required to succeed on this type of claim. Finally, if there is a fiduciary relationship and it is supported by explicit, well-defined public policy, the actions of MLB did not violate it and the decision of the arbitrator should be upheld by this court.

ARGUMENT

PREEMPTION

I. **Wilson's DATWA claim is preempted because he asserts rights that arise from the CBA.**

Congress enacted § 301 of the LMRA in order provide federal jurisdiction over suits for violations of contracts between an employer and a labor organization, in order to resolve labor disputes in a uniform manner. *Allis-Chambers v. Lueck*, 471 U.S. 202, 209 (1985). The Supreme Court has established that § 301 preemption applies not only to contract claims, but also stretches to preempt tort claims. *Id.* at 217. However, tort claims that are independent of the collective bargaining agreement are not subject to preemption. *Lingle v. Norge Division of Magic Chef, Inc.*, 486 U.S. 399, 409-410 (1988). The Supreme Court established that any state-law claim that is founded in rights created by the CBA is preempted by § 301. *Teamsters v. Lucas Flour Co.*, 369 U.S. 95, 102-03 (1962).

Here, under the guise of his DATWA claim, Wilson essentially makes a claim that MLB breached its fiduciary duty that arises from the CBA. DATWA is a Minnesota State law that sets out certain procedures for employers' drug and alcohol testing of its employees and sets minimum information requirements for the contents of employers' drug policies. *See, Minn. Stat.* §§ 181.950-181.953. DATWA requires employers to provide employees 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.

Id. § 181.952 subdiv. 1(1)-(6). DATWA also allows for parties to a CBA to agree to a drug policy that meets or exceeds these requirements. *Minn. Stat.* § 181.955 subdiv. 1. However, in his complaint, Wilson fails to clearly establish which specific provisions of DATWA he alleges MLB violated, but in support of his claims, Wilson argued that MLB breached a fiduciary duty by failing to specifically inform him that SpeedShot contained Clomiphene. DATWA does not impose a fiduciary duty upon employers to specifically inform their employees what products will result in a positive test; thus, Wilson's claim of breach of fiduciary duty can only arise from the CBA negotiated by the MLBPA and the MLB. Additionally, at arbitration, Wilson argued that the fiduciary duty MLB violated arose from the CBA, further evidencing his true claim. Originally, Wilson claimed violations of common law breach of contract, but in an erroneous attempt to avoid § 301 federal preemption, Wilson amended his complaint to a vague DATWA violation. Evidenced by his argument at arbitration, his original claims, and the lack of fiduciary duty statutorily imposed on MLB, Wilson's DATWA claim is essentially a common law breach of fiduciary duty allegedly imposed by the CBA and is subject to § 301 preemption.

Wilson's claim is not based on rights given to him under DATWA, but instead under the rights of the CBA between the players and the MLB. Also, In *Holmes*, a professional football player alleged that a drug test to which he tested positive for marijuana, was improper and a breach of both the CBA and of state law. *Holmes v. National Football League*, 939 F.Supp. 517, 527 (N.D. Tex. 1996). At the grievance hearing, he contested the right of the offending team to drug test him under the relevant Drug Program CBA entered into by the NFL's Management Council and the player's association. *Id.* The very essence of his state-law argument consisted of the rights set out in the CBA. *Id.* Accordingly, the court found that the

state-law claims were substantially dependent upon the terms of the CBA and therefore preempted by federal law. *Id.*

Similarly, Wilson's suit arises from rights given to him under the CBA between the MLB and the MLBPA. Wilson's suit against the MLB arises from his suspension subsequent to his positive test for Clomiphene, a substance banned by the MLB. Wilson's rights after a positive test for Clomiphene are not found in DATWA, but instead are found in the CBA between the players and the MLB. DATWA sets forth an employee's rights surrounding drug testing, including the right of an employee to both explain a positive result and pay for a confirmatory test. *Minn. Stat.* § 181.952 subdiv. 1(1)-(6). However, Clomiphene is not a drug as defined by DATWA, but instead is only mentioned by the MLB in their policy. *Minn. Stat.* §§ 152.01(4), 152.02, 181.950(4)-(5), 181.951(1)(a). While the initial testing procedures may have been regulated by DATWA, Wilson's positive test result for a drug outside of the scope of DATWA pulls the matter into the CBA. Therefore, Wilson's state law DATWA claim is effectively a common law breach of fiduciary duty, and as such is subject to § 301 preemption.

II. The collective bargaining agreement is inextricably intertwined with the state law DATWA claim.

Even if the court does not find that Wilson's claims arise out of a right conferred by the CBA, his DATWA claim is still preempted because it is inextricably intertwined with the CBA and in order to resolve his claim the CBA will need to be analyzed. A state-law claim is preempted when that claim is "inextricably intertwined with consideration of the terms of the labor contract." *Allis-Chambers*, 471 U.S. at 220.

Under the similar circumstances of *Holmes*, the plaintiff's state-law claim was ruled preempted by § 301 of the NLRA. *Holmes*, 939 F.Supp. at 528. In *Holmes*, a professional football player tested positive for marijuana and was subsequently suspended by the NFL. He

then filed suit against the NFL alleging several state-law claims on the basis that the defendants knowingly misled him into believing that the drug test was for detecting steroids. *Id.* at 519. He claims that in fact the test was meant to detect the presence of marijuana, which it did, among other non-steroid drugs. *Id.* at 520. The court held that the state-law claims were preempted because the resolution of the state-law claims was “inextricably intertwined” with an analysis of the provision in the CBA authorizing the team to conduct the drug test, which originally prompted the claims. *Id.* at 527.

Similarly, Wilson’s state-law claim is inextricably intertwined with an analysis of the provision of the relevant CBA that discusses the zero tolerance policy, the consequences of banned substance use, and the appeal procedures. Wilson’s claim cannot be resolved solely under DATWA, but requires an analysis of the CBA as well. First, DATWA does not apply to energy boosting substances like Clomiphene. The CBA specifically mentions Clomiphene as a banned substance and lays out the strict liability policy for testing positively. In this situation, DATWA addresses the manner in which Wilson may be drug tested but the CBA details a more expansive list of banned substances for the MLB and the consequences for using those substances. The CBA also fleshes out DATWA’s open-ended reference to other appeal procedures available to players by discussing the strict liability policy and the option to a appeal to an arbitrator. DATWA is insufficient to resolve Wilson’s claim because it relies on the CBA to supplement and interpret the terms of DATWA. The CBA and DATWA are inextricably intertwined and so Wilson’s state-law claim should be preempted.

III. Applying DATWA requires an analysis of the CBA.

A state-law claim is preempted by § 301 of the NLRA when the claim is “substantially dependent upon analysis of the terms of an agreement made between the parties in a labor

contract.” *Allis-Chambers*, 471 U.S. at 220. However, courts have carved out a distinction between an analysis of the relevant CBA and a mere reference to it. An otherwise independent claim will not be preempted if the CBA need only be referenced during its adjudication. *Trustees of the Twin City Brick Layers Fringe Benefit Funds v. Superior Waterproofing, Inc.*, 450 F.3d 324, 330 (8th Cir. 2006).

In *Twin City*, a group of trustees brought action against a waterproofing company and its sole owner for violations of a CBA. The defendant then filed a third party complaint against a union for fraudulent inducement into that CBA. The union had given the company certain assurances regarding the extent of its fringe benefit obligations, which were relied on in the decision to enter into the CBA. An analysis of the relevant provisions of the CBA was necessary to the resolution of this claim because it reveals whether the benefit obligations were necessary for the all of the employees it affected. The court held that federal law preempted the state-law claim because it required an actual analysis of the CBA. On the contrary, *Twin City* discusses a case in which the court’s only reference to the CBA was a fact check of a wage rate provision, which was used to compute the proper damages. *Id.* at 331. In that case there was no § 301 preemption because a mere reference to a CBA is insufficient.

Wilson’s state-law claim is preempted by federal law because it requires an actual analysis of the claim rather than just a mere reference. DATWA leaves the option to include appeal procedures within a CBA that goes above and beyond the requirements of DATWA. The statute also requires that if any additional appeal procedures exist they must be disclosed to the employee. The relevant CBA lays out the appeal procedures available to the players and must be analyzed by the court to determine what the appeal procedures are and whether both sides met their duties underneath those procedures. Under the terms of this CBA, there is a strict liability

policy regarding banned substance use, but the player has a duty to exhaust any appeal possibilities underneath the CBA and the MLB has the duty to allow an independent and neutral arbitration. There must be an analysis of this provision of the CBA to make sure it at least meets or exceeds DATWA and to ensure that Wilson exhausted any appeal procedures under the CBA.

The state-law claim also requires an analysis of the CBA because DATWA does not include energy boosting substances such as Clomiphene. The CBA is the only relevant source of a ban on Clomiphene and so in determining the state-law claim, the court must analyze the additional rules under the CBA that DATWA does not include. The CBA dictates not only that Clomiphene is a banned a substance, but it provides the suspension guidelines for players who test positive. The court's decision is incomplete without an analysis of the CBA's provisions regarding appeal procedures and Clomiphene as a specifically banned substance and so the state-law claim should be preempted.

IV. State law must give way to the need for uniformity and predictability in a nationwide CBA.

Congress enacted § 301 to provide federal jurisdiction over violations of contracts between employers and labor organizations and to establish a uniform federal common law for the purpose of resolving labor disputes in a nationwide uniform manner. *Superior Waterproofing, Inc.*, 450 F.3d at 330. Without this uniformity, there exists the possibility that individual contract terms might have different meanings under state and federal law and would place a disruptive influence on the negotiation and administration of collective agreements. *Lucas Flour Co.*, 369 U.S. at 103. Negotiation would be made extremely more difficult where parties would be required to form a contract so that its provisions would be interpreted the same over two or more systems of law, and neither party would be certain of what rights it obtained or conceded. *Id.* Thus, where the application of state-law could lead to inconsistent results

between states, it is preempted by federal labor law that is uniform throughout the nation.

Lingle, 486 U.S. at 405-406.

The purpose of the Policy negotiated between the MLB and the MLBPA is to enforce uniform standards that each MLB player must adhere to regarding prohibited substances and to ensure a fair playing field for all teams by protecting the integrity of the game. This would be an impossible goal to accomplish if the MLB had to provide different teams in different jurisdictions separate protections and regulations for the use of prohibited substances. Applying a patchwork of different jurisdictional interpretations and requirements regarding the use of prohibited substances for players is precisely the type of disruptive influence on collective agreements that congress sought to avoid. *See, Lucas* at 103. Despite the Policy and its provisions agreed to by the MLB and MLBPA, players from different jurisdictions would not know what rights they are afforded, the MLB could potentially have to apply different regulations for the players in the 25 different jurisdictions. Additionally, the non-uniformity between teams would result in unfair advantages for certain players on certain teams. For example, Minnesota state law allowed Wilson to continue playing despite his positive test for Clomiphene, while the other four players from other jurisdictions had to serve their suspensions. This type of inequality threatens the fairness and integrity that the Policy was designed to protect. Thus, where parties to a nationwide CBA have agreed to one uniform policy for regulations on the use of prohibited substances, state law must be preempted by federal law to ensure the uniformity and predictability that Congress sought to protect under § 301. *See, Superior Waterproofing, Inc.*, 450 F.3d at 330.

Furthermore, preempting Wilson's DATWA claim would not be an improper broad interpretation of § 301 that preempts nonnegotiable rights conferred on individuals by state rules.

Here, Wilson asserts a violation of Minnesota's DATWA statute after he was disciplined for testing positive for a banned substance under the Policy that each player must follow. In his claims, Wilson does not clearly state which portions of DATWA he alleges MLB violated. DATWA sets requirements for employer's to provide their employees certain information regarding drug policies and certain procedures for drug testing; however, DATWA only confers these rights upon employees for the testing of illegal substances. *Minn. Stat.* §§ 181.950 Subd. 4; 152.01 Subd. 4. However, Clomiphene is not a drug as defined by DATWA, but instead is only mentioned by the MLB in their policy. *Minn. Stat.* §§ 152.01(4), 152.02, 181.950(4)-(5), 181.951(1)(a). Again, while the initial testing procedures may have been regulated by DATWA, Wilson's positive test result and subsequent discipline was for a drug outside of the scope of DATWA. Thus, Wilson's positive test result and punishment for Clomiphene is not defined as a nonnegotiable right afforded by a state statute and preemption of his DATWA claim is not an improper interpretation of § 301.

PUBLIC POLICY

I. A fiduciary relationship requiring complete disclosure does not exist between Wilson/MLBPA and Major League Baseball.

A fiduciary relationship exists between two parties when one of them has a duty to act or give advice to the other concerning matters within the scope of the parties' relationship. *Lumbermens Mut. Cas. Co. v. Franey Muha Alliant Ins. Servs.*, 388 F.Supp.2d 292, 305 (S.D.N.Y. 2005). The exact limits of what constitutes a fiduciary duty can't be defined, however, a "fiduciary relationship is found in cases where . . . 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). Courts conduct a fact-specific inquiry into whether a fiduciary relationship

existed by determining “whether a party reposed confidence in another and reasonably relied on the other’s superior expertise of knowledge. *Lumbermens*, 388 F.Supp. 2d at 305.

In this case, Major League Baseball never created a situation where the MLPBA and its players would have placed complete confidence in it. The Policy clearly stated that players were ultimately responsible for the substances that they placed in their body. The creation of the hotline was intended by both parties to the CBA to serve as a simple tool to aid players in their compliance with the policy. The hotline’s purpose was to allow players and coaches to inquire about whether specific supplements were on MLB’s banned substance list and to get information on specific supplements if they requested in order to allow them to remain in compliance with the Policy. The purpose of the hotline was not to give out the results of all the testing that MLB conducted on any given supplement. Furthermore, any player confidence in the hotline should have been belayed by Major League Baseball’s warning that reliance on the information given by the supplement hotline would not be a satisfactory excuse for a positive test of a banned substance. As a result, the operation of the hotline could not have given rise to a fiduciary duty requiring the kind of disclosure that is being sought by opposing counsel.

Walton-Floyd v. United States Olympic Comm. supports this reasoning. In that case, a Texas appellate court found that the United States Olympic Commission did not create a duty to amateur athletes through the operation of its own prohibited substances hotline. *Walton-Floyd v. United States Olympic Comm.*, 965 S.W.2d 35 (Tex. Ct. App. – Houston [1st Dist.]). In that case, the United States Olympic Commission (USOC) established a prohibited substances hotline similar to the MLB’s Supplement Hotline that provided amateur athletes with information on prohibited substances. *Id.* at 36. An amateur athlete used a substance, Sydnocarb, that the USOC hotline had informed her was not banned and was only a

carbohydrate substitute. *Id.* After competing in an international track competition, the athlete submitted a urine sample for drug testing and tested positive for amphetamines. *Id.* It was later discovered that Sydnocarb was the cause of the positive results for amphetamines and the athlete filed suit against the USOC to prevent her suspension from amateur track competitions. *Id.* After hearing the case, the appellate court ruled that the USOC did not create a fiduciary duty between itself and the athletes by operation of their substances hotline. *Id.* at 40.

The absence of a duty is “fatal” to a fiduciary duty claim. *Lumbermens*, 388 F.Supp.2d at 304. Since Major League Baseball’s operation of the supplement hotline did not establish a fiduciary duty between it and the players, there can be no breach of duty that would violate established public policy as claimed by the MLBPA and Wilson.

II. If any fiduciary duty does exist, it is not part of an explicit public policy that would be violated by the arbitrator enforcing the Policy.

The MLBPA can point to no clear authority under New York law that articulates an explicit, well-defined, public policy as required to succeed under a public policy claim. *W.R. Grace & Co.*, 461 U.S. at 766. If a fiduciary duty exists, Wilson and the MLBPA must show that the alleged public policy violation can be found by reference to “laws and legal precedents and not from general considerations of public interests.” *Id.* (quoting *Muschany v. United States*, 324 U.S. 49, 66 (1945)). The question of public policy is one for resolution by the courts. *W.R. Grace*, 461 U.S. at 767.

No specific law was referenced at the District Court or Circuit Court level that clearly establishes a fiduciary duty requiring the MLB to disclose the ingredients of supplements through the operation the Hotline. The MLBPA can cite to two cases where courts held that one party had a duty to disclose all material facts that were within the scope of their relationship to the other party. *See Grandon v. Merrill Lynch & Co., Inc.*, 147 F.3d 184, 189 (2d. Cir.

1998)(“the duty to disclose generally arises when one party has information that the other party is entitled to know because of a fiduciary or similar relation of trust and confidence between them.”); *Callahan v. Callahan*, 127 A.D.2d 298, 300 (N.Y. App. Div. 1987)(“duty to disclose may arise where a fiduciary or confidential relationship exists or where a party has superior knowledge not available to the other”).

These cases would seem to constitute the kind of specific legal precedent necessary to be more than a general consideration of public interest. However, neither of these cases deals with situations like the one currently before the court. In both *Grandon* and *Callahan*, there was no formal contract that described what was to be the relationship between the two parties. *Grandon* dealt with the relationship between a securities broker and his customer while *Callahan* dealt with the duty owed from one spouse to another in a divorce proceeding. These cases stand in stark comparison to the case currently before the court where the collective bargaining agreement described in explicit detail how the two parties would interact with one another in a number of different respects, including the administration of the Policy.

Because these cases do not speak directly to the facts in issue here, they can hardly be considered an example of an explicit, well defined, and dominant public policy that requires full disclosure of information between two parties who have a contractual agreement that describes the type and method of information to be shared. Therefore, any fiduciary duty to disclose the kind of information at issue here is derived from no more than a “general consideration of supposed public interests.” *W.R. Grace*, 461 U.S. at 766. The arbitrators award must be upheld since the Policy, as interpreted by the arbitrator, cannot be shown to violate an “explicit public policy” that is “well defined and dominant” and ascertained by “reference to laws and legal precedents.” *Id.*

III. If a fiduciary duty exists that can be derived from explicit public policy, it was not broken.

It is not a breach of fiduciary duties to give players only a general warning that energy boosters are risky and that players should not rely on the supplement's list of ingredients because that list might be incomplete. Breaches of fiduciary duties only occur when "confidence has been reposed and betrayed." *United Feature Syndicate*, 216 F. Supp. 2d at 218.

In this case, the MLB agreed to provide, through the collective bargaining agreement, the MLB Supplement Hotline to provide players with accurate information about supplements including their ingredients, effects, and adverse reactions. The MLB never portrayed the hotline as any kind of supreme authority that, if followed, would prevent them from ingesting any of the substances on the banned list. In fact, the collective bargaining agreement established a strict liability rule concerning banned substances warned the players that they were ultimately responsible for substances put into their bodies, and that adherence to the information on the hotline or simple mistake would not spare them the consequences of a positive test. As a result of this very specific language concerning the respective duties of Major League Baseball and the players under the Policy, any confidence placed in the banned substances hotline would not extend beyond the services promised.

Wilson and the MLBPA argue that the breach of fiduciary duty occurred because the League and Larson did not issue a specific warning concerning SpeedShot and the fact that it contained Clomiphene. However, no player called Larson with a direct inquiry about SpeedShot. They only asked about energy boosters generally and, as a result, only received general responses. Neither party argues that the information provided by these general responses was inaccurate in anyway. Additionally, Dr. Larson testified that had a specific inquiry about

SpeedShot actually taken place, the player would have been correctly informed that it contained Clomiphene.

The players were repeatedly and expressly warned that energy boosters could contain banned substances and were subsequently warned against their use. When the players in question made inquiries about energy boosters, they were given accurate warnings that applied to all energy boosters. No player ever specifically inquired about the SpeedShot or was given inaccurate information regarding the general use of energy supplements. Because the only duty that could potentially exist between the MLB and the players is a duty to provide accurate information, no breach could have occurred.

CONCLUSION

Wilson's state law DATWA claim does not rely on rights set out by the statute and is essentially a common law claim for breach of fiduciary duty allegedly imposed by the CBA, and as such should be preempted under § 301. Even if the court does not find that Wilson's DATWA claim asserts rights set out by the CBA, which we believe it does, his DATWA claim should be preempted because the provisions of the CBA regarding the zero tolerance policy, the discipline for violation of the Policy, and the appeal procedures are inextricably intertwined with his DATWA claim. Preemption is also necessary because in order to resolve Wilson's DATWA claim, the court must analyze the provisions of the CBA in order to determine if Wilson was afforded the same rights as required by DATWA. Also, the need for nationwide uniformity between collective agreements and labor disputes calls for § 301 preemption in this case, in order to ensure equal enforcement of the nationwide negotiated Policy.

Additionally, the decision of the arbitrator needs to be reinstated because Wilson and the MLBPA can not show that a fiduciary duty for complete disclosure exists and was breached, that the fiduciary duty is part of an explicit public policy, and that the Policy as interpreted by the arbitrator would violate that public policy by condoning a breach of fiduciary duties. Accordingly, the court should reverse the decision of the Fourteenth Circuit Court of Appeals and find that Wilson's DATWA claim is preempted by § 301 of the LMRA and reinstate the decision of the arbitrator where there was no violation of public policy.

Respectfully submitted.

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