

DOCKET NO. 12-345

THE SUPREME COURT OF THE UNITED STATES
SPRING TERM, 2010

IN THE MATTER OF:

KEVIN WILSON; MAJOR LEAGUE BASEBALL PLAYERS ASSOCIATION

Plaintiff-Appellee

versus

MAJOR LEAGUE BASEBALL,

Defendant-Appellant

Appeal from the United States Court of Appeals for the Fourteenth Circuit
USCA No. 09-2108

Team 42 (Plaintiff)

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Wilson v. Major League Baseball, Docket No. 09-AC-0213 (D.C. Tulecia)

Williams v. Major League Baseball, Docket No. 09-2108 (14th Cir.)

QUESTIONS PRESENTED

1. Whether the Fourteenth Circuit correctly held that Respondent's claim under Minnesota's Drug and Alcohol Testing in the Workplace Act was not preempted by § 301 of the Labor Management Relations Act.
2. Whether the Fourteenth Circuit correctly determined that the arbitrator's decision to suspend baseball players who unknowingly consumed a banned substance, when the MLB knew that a popular product contained the substance and refused to inform the players, violates public policy.

STATEMENT OF THE FACTS

On the morning of a preseason training camp scrimmage, plaintiff Kevin Wilson, a member of the Minnesota Twins baseball team, drank a SpeedShot, a popular energy beverage made by Mega Energy Products. *Wilson v. Major League Baseball*, Docket No. 09-AC-0213 (D.C. Tullia), at 3-4.¹ Like all edible products, SpeedShot's ingredients must be listed on its label. Although the label did not list any substances banned by Major League Baseball (MLB)'s Policy on Anabolic Steroids and Related Substances (the "Policy"), the bottle contained a small amount of Clomiphene, a "recovery drug" that steroid users occasionally take at the end of a steroid cycle. *Id.* at 3 n.1. Kevin and four other players who happened to drink SpeedShot were randomly drug tested and tested positive for the Clomiphene that they unknowingly ingested. *Id.* at 4.

Their positive test results placed the players in violation of the "Policy. D.C.at 4.Dr. John Larson, the Independent Administrator in charge of implementing the Policy, reported their tests results to the MLB Commissioner for discipline. *Id.* As a result, the MLB suspended the players for fifteen games. *Id.*

The Policy is part of a Collective Bargaining Agreement (CBA) entered in 2007 between the Major League Baseball Player's Association (MLBPA), of which Wilson is a member, and the MLB. D.C.at 1.The Policy takes a zero-tolerance approach to prohibited performance-enhancing substances, sanctioning players with positive test results whether the player intentionally or accidentally, knowingly or unknowingly,

¹ Because the District and Circuit Court opinions do not contain dates or publication information, the long form citations to these documents throughout this brief will follow the format of case name, docket number, court name in parenthesis, and page number. Short form citations will appear as "D.C." for the District Court opinion and "14th Cir." for the Circuit Court opinion.

ingested the substances. *Id.* at 2. First-time offenders face a suspension of up to twenty-five games. *Id.*

Because of the severe consequences of positive test results and the importance of protecting players' health, the MLB established a Supplement Hotline to provide players access to "confidential and accurate information about these products, including their ingredients, effects, and adverse reactions." D.C. at 2 (quoting the Policy). The Policy states that the Independent Administrator—in this case, Dr. Larson—is responsible for supervising laboratory testing of the players, reporting positive test results to the Commissioner, "consult[ing] with players and Club physicians; oversee[ing] violated protocols; oversee[ing] the development of education materials; [and] participat[ing] in research on steroids." *Williams v. Major League Baseball*, Docket No. 09-2108 (14th Cir.) at 12. The Policy advises players that the Policy's administrators will make a "special effort to educate and warn players about the risks involved in the use of supplements." *Id.* at 13. It also actively directs players to use the Hotline to ask Dr. Larson any questions about potentially prohibited substances. *See id.* at 12 (quoting the Policy) ("If you have questions or concerns about a particular supplement or other product, you should contact Dr. Larson. As the Independent Administrator, Dr. Larson is authorized to respond to players' questions regarding specific supplements").

Dr. Larson works with several individuals to implement the Policy and administer the Hotline, including Dr. Ray Finkle, the Policy's Consulting Toxicologist. D.C. at 2. Testing may involve outside laboratories and their Directors. *Id.* at 3. The MLB's Vice President of Law and Labor Policy may be apprised of findings that certain products contain banned substances. *Id.*

Although neither Wilson nor any other players had any reason to suspect that SpeedShot contained Clomiphene, the MLB and its network of specialists implementing the Policy and the Hotline had known about it since 2007. *Id.* at 3. When the MLB learned that SpeedShot contained Clomiphene, it contacted Dr. Larson, who then conveyed the information to Finkle. *Id.* Noting that “there should be some concern about the potential adverse effects on the health of players who may be taking this drug without proper medical supervision,” 14th Cir. at 13, Finkle had David Klein, Director of the Sports Medicine Research Testing Laboratory, analyze SpeedShot. D.C. at 3. The tests were positive for the presence of Clomiphene. *Id.* Klein told Dr. Larson and Finkle and requested that the MLB report these findings. *Id.*

No report was ever issued, however. D.C. at 3. Dr. Larson spoke to Birch, the Vice President of Law and Labor Policy, about SpeedShot. Birch asked how many calls the Hotline had received regarding SpeedShot, but never issued a directive that Dr. Larson inform players about the presence of Clomiphene. *Id.* at 17. Instead of warning its players about the potentially dangerous banned substance hidden in the popular energy drink, the MLB sent two general memos. The first informed the MLBPA that Mega Energy Products was on the MLB’s banned list of companies that players may not endorse. *Id.* at 3. The warning did not mention SpeedShot, the Policy, or banned substances. The second memo was an unspecified warning to players about energy supplements generally. *Id.* at 3-4. Like the first memo, the second statement did not mention SpeedShot. *Id.*

Dr. Larson later testified that “he decided not to disclose to MLB players the presence of this potentially dangerous chemical secretly contained in SpeedShot because he feared that MLB players might then in the future come to expect that he would notify them

about other harmful banned substances in energy-boosting supplements.” 14th Cir. at 13-14. The MLB, Birch, Finkle, and Dr. Larson were all aware of the presence of Clomiphene in SpeedShot, yet none disclosed this fact to the players. D.C. at 3.

The five players suspended after drinking SpeedShot appealed their suspensions to an arbitrator under the terms of the Policy, arguing that the MLB, as a fiduciary, owed them a duty to disclose all material facts about specific products of which they have actual knowledge contain substances prohibited by the Policy. D.C. at 4. The arbitrator upheld the suspensions. Wilson then filed suit against the defendants in Minnesota state court alleging that the MLB’s actions violated Minnesota’s Drug and Alcohol Testing in the Workplace Act (“DATWA”), a Minnesota state law designed to protect employees from unfair drug testing in the workplace. Minn Stat. § 181.950. After the court issued a preliminary injunction staying Wilson’s suspension, the MLB removed the case to federal court and filed a motion for summary judgment on the grounds that Wilson’s DATWA claim is preempted by §301 of the Labor Management Relations Act (“LMRA”) and that the arbitrator’s award should be upheld. D.C. at 5-6. The District Court granted the defendant’s motions for summary judgment on both the preemption and arbitration award issues. *Id.* at 14, 20. The Fourteenth Circuit Court of Appeals reversed, holding for Wilson on both issues. 14th Cir. at 14.

SUMMARY OF ARGUMENT

By the defendant’s own admission, the MLB’s actions in testing Wilson and suspending him for a positive drug test violated the letter of Minnesota state employment law. Wilson’s DATWA claim is not preempted by § 301 of the LMRA because resolution of that claim does not require reference to the CBA or the Policy. Even if

reference must be made to the CBA or the Policy, Wilson's DATWA claim is not substantially dependent upon an interpretation or construction of the CBA or the Policy, nor is the claim inextricably intertwined with the terms of those agreements. In resolving Wilson's DATWA claim, any necessary reference to those agreements would be no more than cursory, and would not rise to the level necessary to trigger § 301 preemption. Since § 301 does not preempt Wilson's DATWA claims, the defendant's motion for summary judgment with respect to that issue must be denied and the state claim for violation of Minnesota's DATWA statute should be allowed to continue.

The defendant MLB's expertise, the level of trust between the parties, and plaintiff's reliance on the defendant for medical advice establishes a fiduciary relationship. As a fiduciary of the plaintiff, the MLB owes the plaintiff the highest duty of care and good faith. This duty encompassed a responsibility to provide accurate and complete advice by disclosing all material facts they knew within the scope of that relationship, including those regarding banned substances that could endanger a player's health or ban him from playing. Public policy favors protection of the plaintiff's reasonable expectations that he will receive honest and complete advice from his fiduciary. The arbitrator's decision to suspend the players, which supports the MLB's refusal to inform them about SpeedShot's unsafe contents, also violates well-established public policy favoring protection of individual health and safety. The defendant's breach of fiduciary duty resulted in numerous harms to the plaintiff.

STANDARD OF REVIEW

Both the decision on the motion for summary judgment, *McLean v. Gordon*, 548 F.3d 613, 616 (8th Cir. 2008), and the Section 301 preemption matter, *Bogan v. General*

Motors Corp., 500 F.3d 828, 832 (8th Cir. 2007), are subject to de novo review. Because the parties filed cross motions for summary judgment, there are no disputed issues of material fact. *Coca-Cola Bottling Co. of St. Louis v. Teamsters Local Union No. 688*, 959 F.2d 1438, 1440 (8th Cir. 1992). Arbitration awards, however, require a hybrid analysis. Conclusions of law are reviewed de novo, while conclusions of fact must withstand a heightened “clear error” standard. *Stark v. Sandberg, Phoenix, & Von Gontard, P.C.*, 381 F.3d 793, 798 (8th Cir. 2004).

ARGUMENT

I. Section 301 of the LMRA Does Not Preempt Plaintiff’s DATWA Claim

The Fourteenth Circuit correctly held that Wilson’s DATWA claim is not preempted by Section 301 of the LMRA. The LMRA confers jurisdiction to “any district court of the United States having jurisdiction of the parties” in “[s]uits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce.” 29 U.S.C. § 185(a). Accordingly, this Court has determined that federal law exclusively governs suits involving an alleged breach of a collective bargaining agreement. *See Textile Workers Union of Am. v. Lincoln Mills of Alabama*, 353 U.S. 448, 456 (“the substantive law to apply in suits under § 301 (a) is federal law, which the courts must fashion from the policy of our national labor laws”); *see also United Steelworkers of Am. v. Rawson*, 495 U.S. 362, 368 (1990) (“only the federal law fashioned by the courts under § 301 governs the interpretation and application of collective bargaining agreements”). These holdings serve to preserve a uniform system of CBA interpretation nationwide because “there could be as many state-law principles as there are States . . .” *Lingle v. Norge Div. of Magic Chef, Inc.*, 486 U.S.

399, 406 (1988); *see also Anderson v. Ford Motor Co.*, 803 F.2d 953, 955 (8th Cir. 1986) (“[U]niformity in the interpretation of collective bargaining agreements is considered essential to the federal scheme favoring collective bargaining”). State law claims may be preempted by the LMRA if they are “‘inextricably intertwined with consideration of the terms of a labor contract’ or ‘substantially dependent upon analysis of the terms of an agreement made between the parties in a labor contract.’” D.C. at 10 (citing *Allis-Chalmers Corp. v. Lueck*, 471 U.S. 202 at 213, 220 (1985)). This does not, however, mean that all state cases involving employees subject to a CBA are preempted by the LMRA. *See Lueck* at 216 (“it would be inconsistent with congressional intent under that section to pre-empt state rules that proscribe conduct, or establish rights and obligations, independent of a labor contract”).

Minnesota’s DATWA statute establishes “minimum standards and requirements” for employers regarding employee testing for drugs and alcohol. Minn. Stat § 181.955. DATWA imposes limitations on when employers may request or require drug tests of current employees (Minn. Stat. § 181.951, subd. 1) or job applicants (*id.* at subd. 2), when employers may “request or require an employee to undergo drug or alcohol testing as part of a routine physical examination” (*id.* at subd. 3), when random drug or alcohol testing is permitted (*id.* at subd. 4), and when employers may test based on reasonable suspicion (*id.* at subd. 5). Under DATWA, employers must use testing laboratories that meet certain requirements. Minn. Stat. § 181.953, subd.1, 3. Employers must notify employees “[w]ithin three working days” of a negative initial test result, or of a negative or positive test result of a confirmatory test. *Id.* at subd. 7. Importantly, DATWA prohibits employers from discharging or disciplining an employee on the basis of a

positive test that has not been verified by a confirmatory test. *Id.* at subd.10(a). In subdivision 1 of § 181.955, DATWA affirms the ability of parties to enter into a CBA that addresses drug testing provided that the CBA drug testing policy “meets or exceeds, or does not otherwise conflict with, the minimum standards and requirements for employee protection provided in [DATWA].” Additionally, under DATWA, Minnesota employer drug policies 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) any other appeal procedures available.

14th Cir.at 5 (citing Minn. Stat. § 181.952 subd. 1(1)-(6)). The MLB does not dispute that its actions relating to this dispute violated the plain language of Minnesota law. 14th Cir.at 4.

A. *The Plaintiff’s DATWA Claim is not Inextricably Intertwined with the Terms of the CBA, nor is it Substantially Dependent on an Interpretation or Construction of the CBA*

The applicable preemption test in this case is whether the “resolution of [Plaintiff’s DATWA] claim is substantially dependent upon analysis of the terms of the” CBA or the Policy agreed to by the MLB and the MLBPA. *Lueck* at 220; *see also Trustees of the Twin City Bricklayers Fringe Benefit Funds v. Superior Waterproofing, Inc.*, 450 F.3d 324, 331 (8th Cir. 2006) (“state law claims will be preempted under § 301 is their resolution depends on interpretation of a CBA”). Wilson’s DATWA claim in the case *sub judice* is predicated only upon the actions of the MLB, rather than on any terms

of the CBA or the policy agreed upon by the MLB and the MLBPA. As the Circuit Court below correctly held, “[a court] would compare the facts and the procedure that the MLB *actually followed* with respect to its drug testing of Wilson with DATWA’s requirements in order to determine if Wilson is entitled to prevail.” 14th Cir. at 7.

The fact that the MLB tested and suspended Wilson pursuant to the CBA and the Policy to which the MLB and the MLBPA agreed does not require an interpretation of those agreements to determine liability with respect to DATWA. The CBA’s language regarding testing procedures and disciplinary actions that the MLB takes against players with positive drug test results is irrelevant in determining whether the League’s *actual* behavior violated the letter of Minnesota state law. *See Hawaiian Airlines, Inc. v. Norris*, 512 U.S. 246, 261 (1994) (“purely factual questions about an . . . employer’s conduct and motives do not require a court to interpret any term of a [CBA]”). In cases regarding § 301 preemption doctrine, the underlying “claim itself” is the starting point. *Superior Waterproofing* at 331. Here, Wilson’s DATWA claim turns on issues such as whether the MLB followed proper testing procedures or suspended him without verifying positive test results with a confirmatory test. Minn. Stat. § 181.951 *et seq.* The MLB’s actions, notwithstanding the contents of the CBA or the Policy, are at issue in the current case. *See Karnes v. The Boeing Co.*, 335 F.3d 1189, 1194 (10th Cir. 2003) (“this case is ‘independent’ of the [CBA] in the sense that . . . for § 301 pre-emption purposes . . . resolution of the state-law claim does not require construing the [CBA]”). The MLB has failed to point to any part of the policy that requires interpretation in order to determine whether its actions were in violation of DATWA. To the contrary, the MLB has admitted that its actions *were* a violation of Minnesota state employment law, which is all that is

required in determining whether Wilson has stated a valid claim for relief under DATWA.

B. Any Necessary Reference to the CBA would be Cursory at Most

The MLB's and the District Court's observation that DATWA explicitly mentions collective bargaining in its language is inapposite. Although subdivision 1 of Minn. Stat. § 181.955 states that parties shall not be limited by the previous sections with respect to collective bargaining, it only permits drug testing policies that meet, exceed, or do "not otherwise conflict with, the minimum standards and requirements for employee protection in those sections." Minn. Stat. § 181.955, subd. 1. The Circuit Court correctly determined that this section only bears on which claims an employee may bring before a court with proper jurisdiction. 14th Cir. at 7. Subdivision 1 of § 181.955 says nothing to the effect that DATWA claims are unavailable to employees who are subject to a CBA. This subdivision merely asserts that parties may still enter into collective bargaining agreements as long as they are as protective as DATWA. *Id.*

To hold otherwise would be to determine that no "employee has [a] DATWA claim if he or she is a party to a CBA..." *Id.* Such a determination would fly in the face of long-established Supreme Court jurisprudence:

Section 301 on its face says nothing about the substance of what private parties may agree to in a labor contract. Nor is there any suggestion that Congress...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. Clearly, § 301 does not grant the parties to a collective-bargaining agreement the ability to contract for what is illegal under state law.

Lueck at 211-12. The LMRA does not give labor organizations and employers carte blanche to dispense with inconvenient state law requirements. “[T]he question of whether a certain state action is pre-empted by federal law is one of congressional intent. ‘The purpose of Congress is the ultimate touchstone.’”

Lueck at 208.

Congress did not state explicitly whether and to what extent it intended § 301 of the LMRA to pre-empt state law. In such instances courts sustain a local regulation unless it conflicts with federal law or would frustrate the federal scheme, or unless the courts discern from the totality of the circumstances that Congress sought to occupy the field to the exclusion of the States.

Id. at 208-209.

If the LMRA allowed for the preemption of claims such as Wilson’s current DATWA claim, employers and unionized employees could completely avoid state-law restrictions such as minimum wage requirements, discrimination prohibitions, safety regulations, and overtime laws provided that made *some* reference to collective bargaining in their language, as DATWA does. This would be an outcome that Congress certainly did not intend when it passed § 301. If Congress wishes to enter into the field of regulating employer drug tests, they may do so by statute. The fact that Congress has not spoken on the issue of employee drug testing counsels deference to Minnesota state employment law in this case.

Additionally, the District Court pointed out that DATWA requires an “employee or collective bargaining agent” to exhaust grievance or arbitration procedures under a collective bargaining agreement prior to bringing a DATWA claim. Minn. Stat. § 181.956, subd. 1. While accurate, this observation is

irrelevant with regard to § 301 preemption analysis. The interpretation or construction of a CBA is not necessary if a state law claim only requires mere reference to the contract. *Superior Waterproofing* at 330. “[T]he bare fact that a [CBA] will be consulted in the course of state-law litigation plainly does not require the claim to be extinguished.” *Livadas v. Bradshaw*, 512 U.S. 107, 124 (1994); *see also Norris* at 261 (citing *Lingle* at 413, n. 12).

In this case, the CBA and the Policy do contain arbitration procedures for the resolution of disputes where the arbitrator’s determinations are binding upon the parties. Determining whether Wilson exhausted these procedures, however, requires no more than a cursory reference to the Policy to find out what those procedures were. A reference to the CBA or the Policy to determine the presence of grievance or arbitration procedures and whether they were satisfied is not is merely a threshold question that is not of substantive import. The clause of DATWA requiring employees to exhaust grievance and arbitration procedures does not entail the sort of analysis or construction that cases such as *Livadas* and *Lingle* require to allow for the invocation of § 301 preemption doctrine.

C. Case Law supports Plaintiff’s Position that his DATWA Claim is not Preempted

Many courts have held that federal law does not preempt state claims in a number of areas similar to this case. In *Hawaiian Airlines v. Norris*, this Court held that the Railway Labor Act, 45 U.S.C. § 151 *et seq.*, did not preempt an employee’s right to bring a state tort action for wrongful discharge. 512 U.S. 246 (1994). This Court has also held that the National Labor Relations Act, 45 U.S.C. § 151 *et seq.*, did not extinguish an employee’s state law claim regarding

the prompt payment of wages. *Livadas v. Bradshaw*, 512 U.S. 107 (1994). The Minnesota District Court has similarly held that an employee's DATWA claims were not preempted by § 301 of the LMRA because the claims asserted that the employer "violated . . . non-negotiable state law rights [that did] not require an interpretation" of the relevant CBA. *Thompson v. Hibbing Taconite Holding Co.*, 2008 U.S. Dist. LEXIS 87045, *11 (D. Minn. Oct. 24, 2008).

This Court has held state law claims to be preempted when they involved state law claims that specifically entail contractual interpretation that is not present in this case. *See, e.g., Rawson* (holding that a cause of action for breach of contract and fraud was preempted by the LMRA). Claims such as breach of contract, by their very nature, involve contractual interpretation. As discussed above, such contractual interpretation is not necessary in this case.

Similarly, a claim of fraud is a common law state claim that does not assert an independent statutory cause of action such as that created by DATWA. In *Gore v. Trans World Airlines*, 210 F.3d 944, the Eighth Circuit held that a plaintiff's claims were preempted because the CBA was the defining source of duties specifically owed by the defendant for each claim asserted. This case is distinguishable because the duties owed by the MLB to Wilson under DATWA originate exclusively from the text of the statute itself. Any duty owed to Wilson under the CBA or the Policy is entirely distinct from those owed under DATWA. In sum, these cases all suggest that this Court should affirm the holding of the Fourteenth Circuit in this case.

Since the resolution of Plaintiff's DATWA claim is not substantially dependent on interpretation or construction of the CBA or the Policy, nor is it inextricably intertwined with the terms of those agreements, Wilson's DATWA claim is not preempted by § 301 of the LMRA.

II. The Court of Appeals Correctly Vacated the Arbitrator's Decision to Suspend Kevin Wilson because the Decision Condoned the Defendant's Breach of their Fiduciary Duty to Disclose Products that they Knew Contained Substances Banned by the Drug Policy

A. Deference to an Arbitrator's Decision is not Absolute and Cannot Stand in the Face of a Violation of Public Policy

Although labor arbitrators have expansive authority, their decisions do not escape judicial review. *See, e.g., Stark v. Sandberg, Phoenix, & Von Gontard, P.C.*, 381 F.3d 793, 799 (8th Cir. 2004) (“The deference owed to arbitration awards, however, ‘is not the equivalent of a grant of limitless power,’ and ‘courts are neither entitled nor encouraged simply to ‘rubber stamp’ the interpretations and decisions of arbitrators’”) (internal citations omitted). Courts vacate awards if they violate or condone a violation of public policy, arise without consideration of the CBA, ignore the provisions of the CBA, or were procured by dishonesty or fraud. *See, e.g., Coca-Cola Bottling Co. of St. Louis v. Teamsters Local Union No. 688*, 959 F.2d 1438, 1440, 1442 (8th Cir. 1992) (listing factors that may invalidate a labor arbitration award). The Federal Arbitration Act (FAA) lists a number of bases on which an arbitrator's award can be overturned. 9 U.S.C. § 10(a) (including “corruption, fraud . . . undue means,” “evident partiality or corruption in the arbitrators,” misconduct or misbehavior, or “where the arbitrators exceed[] their powers”).

This Court described and applied the public policy exception requiring vacation of arbitration awards in *W.R. Grace & Co. v. Local Union 759*, 461 U.S. 757 (1983). “As with any contract . . . a court may not enforce a collective bargaining agreement that is contrary to public policy.” *Id.* at 766. Neither the CBA itself or the arbitrator’s interpretation of the CBA may violate public policy. *Id.* The public policy at issue 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.* at 766 (quoting *Muschany v. United States*, 324 U.S. 49, 66 (1945)). In *Grace*, the CBA did not conflict with the public policies of obedience to judicial orders and voluntary compliance with Title VII. *Id.* at 766, 770. *See also Ace Elec. Contractors, Inc. v. Int’l Bhd. of Elec. Workers, Local Union No. 292*, 414 F.3d 896, 900 (8th Cir. 2005) (“[a]lthough we are bound to give deference to the arbitrator, . . . an exception arises when the contract ‘violates some explicit public policy’”) (construing *Grace*).

B. Common Law Protects and Enforces Duties Owed by Parties within Fiduciary Relationships

Courts have long recognized a public policy that protects the expectations of parties within fiduciary relationships. *See, e.g., Lumbermens Mut. Cas. Co. v. Franey Muha Alliant Ins. Services*, 388 F. Supp. 2d 292, 304 (2005) (noting that a lowered standard for liability exists in breach of fiduciary duty cases, compared to breach of contract cases, because the courts wish to “remove all incentive to breach” one’s fiduciary obligations). Such relationships are characterized by heightened trust, confidence, and reliance. Fiduciaries owe each other the highest duty of care, loyalty, good faith, honesty, and fair dealing. *Id.* at 301. Protecting the expectations of parties in fiduciary relationships is important to maintain confidence in fair business dealings.

Because this duty encompasses both actions and omissions, a fiduciary may be liable for its affirmative statements as well as its failure to disclose material facts related to the scope of the relationship. “Nondisclosure is tantamount to an affirmative misrepresentation where a party to a transaction is duty-bound to disclose certain pertinent information.” *Callahan v. Callahan*, 127 A.D.2d 298 (N.Y. App. Div. 1987) (citing 24 NY Jur, Fraud and Deceit, § 107, at 161).

C. New York law, which Governs this Case, Broadly Imposes Fiduciary Duties in a Wide Variety of Relationships

New York law controls this issue because the CBA states that New York law will govern to the extent that federal law does not. D.C. at 18 n2. To determine if a fiduciary duty exists under New York law, courts conduct a fact-specific inquiry into “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. A fiduciary relationship may be found in any case in which “influence has been acquired and abused, . . . confidence has been reposed and betrayed,” or one “party has superior knowledge not available to the other.” *Callahan v. Callahan*, 127 A.D.2d 298, 300 (N.Y. App. Div. 1987). For example, a specific situation that gives rise to fiduciary obligations occurs when one person “is under a duty to act for *or to give advice for the benefit of another upon matters within the scope of the relation*”). *United Feature Syndicate, Inc. v. Miller Features Syndicate, Inc.*, 216 F.Supp.2d 198, 218 (S.D.N.Y. 2002) (emphasis added) (quoting *Restatement 2d of Torts* § 874 cmt. a).

D. By the Nature of their Relationship, the Defendant Owed the Plaintiff a Fiduciary Duty under New York State Law

As a preliminary matter, the MLB is responsible for Dr. Larson's, Birch's, and Finkle's bad acts and omissions because of the legal doctrines of agency and *respondeat superior*. As MLB employees administering the Policy, Dr. Larson, Birch, and Finkle acted under the MLB's authority and within the scope of their employment, making the MLB directly liable for their acts and omissions. *United Feature Syndicate, Inc.*, 216 F.Supp.2d at 218. Larson and Finkle's alleged lack of affiliation with the MLB is of no consequence, as the existence of an agency relationship depends not upon the terms by which the parties define their relationship, but the facts surrounding the relationship. *Lumbermens*, 388 F.Supp.2d at 302. New York law states that agency requires a showing of (1) the manifestation of the principal that the agent shall act for him, (2) the agent's acceptance of the undertaking, and (3) the parties' understanding that the principal is to be in control of the undertaking." *Id.* at 301-02. By hiring Larson and Finkle to implement the Policy, the MLB (the principal) manifested a desire for these employees to act on its behalf. Dr. Larson and Finkle accepted the position and carried out their job duties subject to the MLB's oversight. They are, therefore, agents of the MLB.

The collective defendants occupied a fiduciary relationship with the players for several reasons. First, the relationship had the traditional fiduciary characteristic of trust. *See, e.g., Lumbermens*, 388 F.Supp.2d at 302 (discussing the importance of trust in fiduciary relationships). The players trusted the advice they received from the Hotline at the risk of suspension or removal from the MLB. They reasonably expected accurate, truthful, and complete information. Indeed, Dr. Larson and Finkle were charged with taking "special effort to educate and warn players about the risks involved in the use of supplements." 14th Cir. at 13 (quoting the Policy).

Second, Dr. Larson and Finkle’s expertise and “superior knowledge” warrant a finding of a fiduciary relationship. *See, e.g., Callahan*, 127 A.D.2d at 300 (noting that one party’s “superior knowledge” with regard to the other establishes a fiduciary relationship). It is beyond dispute that Dr. Larson and Finkle’s knowledge of banned substances, products, and the Policy greatly exceeded that of the players. This knowledge differential entrusts unequal power to the Hotline operators and dependency by the players.

Third, the relationship required the Hotline operators “act for *or to give advice for the benefit of another upon matters within the scope of the relation*,” a responsibility that creates fiduciary obligations. *United Features Syndicate*, 216 F.Supp.2d at 218 (emphasis added) (quoting *Restatement 2d of Torts* § 874 cmt. a). Much like a lawyer providing legal advice to clients, Dr. Larson gave medical advice to players who called the Hotline. The responsibility inherent in his position required him to use best efforts on behalf of the players who relied upon him.

The players’ trust in the MLB and those charged with implementing its Drug Policy, the heightened knowledge of the Hotline operators, and the counseling responsibility of the Hotline operators establish a fiduciary relationship. The Circuit Court correctly determined that “[a] fiduciary relationship existed in this case because the Players reasonably relied on Dr. Larson’s, Mr. Birch’s, and the MLB’s superior expertise and knowledge in administering the Policy—which states that it is motivated by concerns of protecting player health—as the authoritative source of information on potentially harmful ingredients in dietary supplements banned by the Policy.” 14th Cir. at 11.

E. By Virtue of their Fiduciary Relationship, the Defendant owed Wilson a Duty to Disclose the Names of Products of which they had Actual Knowledge Contained Substances Banned by the Policy

As fiduciaries of the players, the MLB and its employees owed a duty of the highest care to act honestly, fairly, openly, in good faith, and in the players' best interests. As applied to the Policy and the Hotline, the MLB undertook a duty to provide accurate and complete advice by disclosing all material facts they knew within the scope of that relationship, including those regarding banned substances that could endanger a player's health or ban him from playing. This duty of disclosure furthers the public policy goal of protecting individuals' health and safety.

F. Protecting Individual Health and Safety is a Well-Established Public Policy of the Highest Order

The Circuit Court correctly determined that “[c]ourts have frequently ordered arbitration awards to be vacated on public policy grounds where . . . an award would sanction behavior that threatens health and safety.” 14th Cir. at 10. In *Iowa Elec. Light & Power Co. v. Local Union 204 of Int'l Bhd. of Elec. Workers (AFL-CIO)*, 834 F.2d 1424, 1428 (8th Cir. 1987), for example, the 8th Circuit affirmed the vacation of an arbitrator's award reinstating a nuclear power plant employee who was discharged for intentionally violating a federal safety regulation. In a similar case, *Delta Air Lines, Inc. v. Air Line Pilots Ass'n, Int'l*, 861 F.2d 665, 674 (11th Cir. 1988), the 11th Circuit affirmed the vacation of an arbitration award ordering reinstatement of a pilot who had flown a passenger plane while intoxicated. In both cases, upholding the arbitrator's award and reinstating the employee would have set unwanted and dangerous precedent that workers may threaten health and safety and still maintain their jobs. Here, too, the

arbitrator's decision endorses the unsafe principle that employees hired to dispense medical advice can choose to conceal critical information that has health implications for the advisees.

By its own language, the CBA's Drug Policy exists to further health and safety goals by protecting players from ingesting potentially dangerous substances at the detriment to their health. 14th Cir. at 11 (discussing the Policy's aims). The stated responsibilities of the Policy's administrators also mention these health concerns. 14th Cir. at 12 (noting the Policy's instructions that administrators must use "special effort to educate and warn players about the risks involved in the use of supplements").

Moreover, the fact that steroids are illegal substances under federal law also demonstrates the public policy in favor of protecting individuals from consuming them. *See, e.g., Iowa Elec. Light & Power Co.*, 834 F.2d at 1428 (citing the "panoply of federal regulations" to demonstrate the existence of a public policy favoring the safe operation of nuclear power plants).

G. The Defendants Breached their Fiduciary Duty and Violated Public Policy by Deliberately Avoiding Warning Players about SpeedShot, Even Though they had Actual Knowledge that it Contained a Banned Substance

The parties do not dispute that the defendants knew that SpeedShot contained Clomiphene, a substance banned by the Policy due to its potential health risks. 14th Cir. at 13. Nor do they dispute that the defendants intentionally withheld this information from the players, at least one of whom called the Hotline to ask about SpeedShot's contents specifically. *Id.* at 14. The fiduciary duty owed by the defendants required them to disclose all material facts that they knew about products containing banned substances. Rather than act on the players' behalf, however, the defendants were motivated by self-

interest and fear of incurring personal liability. Dr. Larson admitted that he intentionally avoided disclosing the contents of SpeedShot because he feared that players would expect him to disclose more products containing banned substances in the future. *Id.* Of course, giving this advice was precisely the purpose of his position as the Policy’s Independent Administrator. *Id.* at 12-13. The defendant’s bad faith refusal to give honest and complete advice defeated the very purpose of the Hotline and endangered the players’ safety.

H. The Policy and its Method of Implementation Both Violate Public Policy

The Policy itself violates the public policy in favor of protecting health and safety because it does not require that the MLB or the Independent Administrator inform the players about products that contain banned substances. *See* D.C. at 15 (“The question is not whether any behavior by the parties to the Policy violates public policy, but rather whether the Policy itself violates public policy”) (citing *MidAm. Energy Co. v. Int’l Bd. Of Elec. Workers Local 499*, 345 F.3d 616, 620 (8th Cir. 2003)). Nothing in the Policy requires the Hotline administrators to disclose any information about substances that they know to contain banned substances. By its own terms, the Policy gives the Hotline administrators unbridled discretion to keep secret or disclose substance information as they see fit. The Policy should mandate disclosure to protect players from the errors of lazy or incompetent MLB employees.

Furthermore, the Policy affords inappropriate power to the Independent Administrator to report or refrain from reporting players in violation of the Policy. By authorizing only one person with the decision of whether to report individuals with positive test results, the Policy lends itself to a high likelihood of abuse. No checks or

balances exist to prevent the Independent Administrator from arbitrarily reporting some violations to the Commissioner and ignoring others because of personal biases, bribes, or corruption. Finally, the arbitrator's decision contravenes public policy because it protects the careless actions of employees who avoid dispensing critical medical advice to those who seek it.

I. The Defendant's Refusal to Warn also Amounted to Actual or Constructive Fraud, both of which Provide Grounds for Vacation under Common Law and the Federal Arbitration Act

“To plead a cause of action for fraud, a plaintiff must allege a misrepresentation of a material existing fact, falsity, scienter, deception and injury.” *Callahan*, 127 A.D.2d at 300. “Nondisclosure is tantamount to an affirmative misrepresentation where a party to a transaction is duty-bound to disclose certain pertinent information,” as where a fiduciary or confidential relationship exists. *Id.* To establish constructive fraud, a “plaintiff need not prove actual knowledge of falsity, but only that a fiduciary or confidential relationship existed between [the plaintiff and the defendant].” *Id.*

The record is clear that all of the defendants knew that SpeedShot contained Clomiphene and deliberately withheld this fact from the players, even though some of whom called the Hotline to ask specifically about Speedshot. 14th Cir. at 14. Dr. Larson even professed self-interested reasons for the failure to disclose. *See id.* (“[Larson] decided not to disclose to MLB players the presence of this potentially dangerous chemical secretly contained in SpeedShot because he feared that MLB players might then in the future come to expect that he would notify them about other harmful banned substances in energy-boosting supplements”).

Both case law and the FAA provide that reviewing courts may vacate an arbitration award when it is based upon fraud. *Coca-Cola Bottling Co. of St. Louis*, 959 F.2d at 1440, 1442; 9 U.S.C. § 10(a)(1). The defendant's failure to disclose the presence of SpeedShot to the players, a group with whom they occupied a fiduciary relationship, amounts to actual and/or constructive fraud. *Callahan*, 127 A.D.2d at 300. As such, the arbitrator's decision based upon such fraud must be vacated.

J. The Plaintiff was Injured as a Direct Result of the Defendant's Breach of Fiduciary Duty to Warn

The defendant's breach of their fiduciary obligations to the players by failing to disclose their knowledge about SpeedShot—and in at least one instance, by affirmatively misrepresenting that SpeedShot was safe to take—caused the Wilson and the players harm. *See* 14th Cir. at 14 (“[i]ndeed, one of the players only commenced using SpeedShot after the MLB Supplement Hotline advised him that SpeedShot was not on the banned substances list”). If the MLB or Dr. Larson had informed the players that SpeedShot contained Clomiphene, the players would not have ingested it, endangered their health, tested positive for banned substances, and been suspended for violating the Policy. D.C. at 18. Wilson has suffered damage to his baseball career, his reputation, his team, and his livelihood as a direct result of the defendant's breach of fiduciary duty.

CONCLUSION

For the foregoing reasons, Petitioner respectfully requests that this Court uphold the decision of the Fourteenth Circuit.

Respectfully submitted,

/s/ _____
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CERTIFICATE OF SERVICE

I hereby certify that a copy of this brief was sent, on January 11, 2010, to each of the following via First Class Mail and/or electronic mail:

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