

No. 09-214

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

**October Term, 2010**

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MAJOR LEAGUE BASEBALL,  
*Petitioner,*

v.

KEVIN WILSON;  
MAJOR LEAGUE BASEBALL PLAYERS ASSOCIATION  
*Respondent.*

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

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BRIEF FOR PETITIONER

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Team 44

*Counsel for the Petitioner*

## I.

### **QUESTIONS PRESENTED**

1. Under Section 301 of the Labor Management Relations Act, does federal law preempt Respondent's claim that Major League Baseball's Policy on Anabolic Steroids and Related Substances violates Minnesota's Drug and Alcohol Testing in the Workplace Act when Minnesota law does not cover performance-enhancing drugs, Section 301 preempts claims that depend on interpretation of the Collective Bargaining Agreement, and Congress intended to preempt claims arising out of a collective bargaining agreement?
2. Whether the arbitrator's decision interpreting the Collective Bargaining Agreement to apply a standard of strict liability against the players should be vacated on public policy grounds when Major League Baseball and the Major League Baseball Players Association agreed that the arbitrator's decision will be the full and final ruling on any conflict arising out of the agreement and there is no explicit, well defined, and dominant public policy violated by interpreting the contract as one of strict liability.

**II.**

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**IV.**

**OPINIONS BELOW**

The opinion of the United States District Court for the Southern District of Tulsania begins on page 1 of the district court record. (See Appendix B)

The opinion of the United States Court of Appeals for the Fourteenth Circuit begins on page 1 of the circuit court record. (See Appendix C)

**V.**

**JURISDICTIONAL STATEMENT**

Major League Baseball timely filed a writ of certiorari following the Fourteenth Circuit's judgment for Respondent. Petitioner invokes this Court's jurisdiction under 28 U.S.C.A § 1254(1) (West 2008).

**VI.**

**STATUTORY PROVISIONS**

The following statutes are relevant to the disposition of the present case and the pertinent sections of each are set forth in Appendix A: Minnesota's Drug and Alcohol Testing in the Workplace Act, the Labor Management Relations Act, and the Federal Arbitration Act.

**VII.**

**STATEMENT OF THE CASE**

Major League Baseball (the "MLB") is a national organization of teams operating in several states. To maintain fair play and regulate the use of performance-enhancing substances, the MLB adopted a Policy on Anabolic Steroids and Related Substances (the "Policy") as part of its

Collective Bargaining Agreement (the “CBA”) with the Major League Baseball Players Association (the “MLBPA”). DR at 1<sup>1</sup>. The Policy places the burden of avoiding the use of prohibited performance enhancers squarely on each athlete and explicitly acknowledges, “players are responsible for what is in their bodies.” DR at 1.

To assist players in understanding and complying with the Policy, it contains a specific list of prohibited substances. DR at 1-2. One of the explicitly prohibited substances is Clomiphene, DR at 1, found in many energy-boosting supplements such as Speedshot, DR at 3. To ensure compliance with the Policy’s terms, Dr. John Larson independently implements the Policy, aided by toxicologist Dr. Ray Finkle. DR at 2. Dr. Larson oversees “drug-testing procedures,” reports “any positive test results,” and provides “education to the players regarding the Policy’s implementation.” DR at 2. Players are strictly liable for violation of the Policy’s terms and a one-time violation results in a 15-25 game suspension. DR at 1-2.

The MLB provides resources to assist players in complying with the Policy. Through the “MLB Supplemental Hotline” (the “Hotline”), players, coaches, and trainers may call with questions about potentially prohibited substances. DR at 2. Use of the Hotline does not affect a player’s responsibility to refrain from using prohibited substances. DR at 2. The Policy does not expressly require the MLB to research, test, and report on all products that may contain a prohibited substance. DR at 2. Instead, players are expressly responsible for monitoring their individual intake of banned substances. DR at 1.

Although the MLB has no express duty to notify players of all products it finds to contain a prohibited substance, it explicitly warned players of the risks posed by energy-boosting supplements. DR at 3. Additionally, Dr. Larson testified that had a player asked him

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<sup>1</sup> All references to the decision of the United States District Court for the Southern District of Tulania are “DR” for “District Court Record.”

specifically about Speedshot, he would have informed the player that it contained a banned substance. Despite repeated warnings regarding energy-boosting products, Respondent took SpeedShot at his own, informed risk. DR at 3-4.

After testing positive for SpeedShot prior to a preseason training camp scrimmage, Respondent and several other offenders appealed their suspensions. DR at 4. The Policy establishes that a neutral arbitrator will settle all conflicts and the decision of the arbitrator will be “the full, final and complete disposition of the appeal and will be binding on all parties.” DR at 2. During arbitration, the suspended players openly admitted receiving multiple warnings about energy supplements, the availability of the Hotline, and their own responsibility to monitor intake of prohibited substances. DR at 4. The suspended players argued, unsuccessfully, that the Policy created a fiduciary duty to notify players when the MLB knew a product contained banned substances. DR at 4. The arbitrator ultimately held that the Policy’s strict liability rule regarding positive tests foreclosed the player’s argument because “players alone are responsible for what is in their bodies” and “the Policy does not articulate or impose an obligation to issue specific warnings about specific products.” DR at 5.

Following his unsuccessful arbitration hearing, Respondent filed suit against the MLB in Minnesota state court. DR at 5. Respondent’s complaint requested damages and an injunction to block enforcement of the suspension. The Minnesota court granted the temporary injunction. DR at 5. The MLB subsequently removed the case to federal court where the court consolidated it with an MLBPA action to vacate the arbitration award. DR at 5.

The United States District Court for the Southern District of Tulania granted summary judgment in favor of the MLB on two grounds. DR at 20. First, the court held that Section 301 of the Labor Management Relations Act (the “LMRA”) preempted Respondent’s state law claim

under Minnesota’s Drug and Alcohol Testing in the Workplace Act (“DATWA”) because resolution of the claim requires “interpretation and application of the CBA and the drug-testing policy.” DR at 19. The court found that it would have to interpret the CBA to determine whether the terms of the Policy complied with all of DATWA’s requirements. DR at 10-11. The court also held that allowing Respondent to challenge, in state court, a decision resulting from a nationally negotiated CBA would undermine the “fairness and integrity” of the MLB because each state could rule differently on similar issues. DR at 12. The court found that such inconsistent results could have a negative effect on collective bargaining agreements generally and would undermine the purpose of the LMRA. DR at 13.

Second, the court upheld the arbitration award because the MLB had no fiduciary obligation to warn players about specific products containing banned substances, and offering a general warning regarding supplements was reasonable. DR at 19. The court highlighted the Policy’s explicit strict liability rule as significant proof of players’ individual duty to comply with the Policy. DR at 8-9. The court also found that there was no “explicit, well defined, and dominant public policy” that the MLB would violate if it did not notify the players of specific products containing banned substances. DR at 18.

On appeal, the Fourteenth Circuit reversed the district court, finding that Respondent’s claim would not require interpretation of the CBA. CR at 8<sup>2</sup>. The Fourteenth Circuit found that resolution of the claim would require only a factual comparison of the MLB’s procedures contained in the CBA with the DATWA requirements without any substantive examination of the CBA. CR at 7. The court also countered the district court’s holding that applying different state regulations to the Policy would cause inconsistent results by simply noting that parties

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<sup>2</sup> All references to the decision of the United States Court of Appeals for the Fourteenth Circuit are “CR” for “Circuit Court Record.”

cannot use collective bargaining agreements to displace certain state laws. CR at 9. The court also held that the MLB owed players a fiduciary duty to notify them that Speedshot contained a banned substance. CR at 11. The court further held the arbitrator's ruling condoned this breach endangering the players, and should be vacated on public policy grounds. CR at 14.

This Court granted certiorari to review the Fourteenth Circuit's ruling on Respondent's preemption claim and the MLBPA's challenge of the arbitrator's ruling.

## **VIII.**

### **SUMMARY OF ARGUMENT**

Major League Baseball has a keen interest in protecting the health of its players and the integrity of the sport by testing for substances that negatively affect fair competition. States also have a strong interest in protecting employees from inequitable drug testing procedures. These interests seamlessly co-exist in the MLB's Policy and DATWA. DATWA provides minimum, generic protection to all employees subject to drug testing and allows employers, like the MLB, to collectively bargain with employees for more intensive, industry-specific testing policies. Performance-enhancing substances are a problem unique to professional sports and DATWA does not include them. The Policy sets forth the testing procedures for these substances, including Clomiphene, and solely governs disputes regarding a positive test. Therefore, the LMRA preempts any state law claims arising out of a test for performance-enhancing substances because DATWA does not cover such substances, adjudication of a challenge to the Policy's testing procedures substantially depends upon the terms of the Policy, and Congress intended to create a uniform body of federal law to govern labor disputes arising from a collective bargaining agreement.

Additionally, parties to a collective bargaining agreement and the court system have a strong interest in promoting the arbitration of conflicts arising out of the agreement. The FAA

provides only a few limited grounds on which a party may challenge an arbitrator's decision, and the role of the court is generally limited to enforcing the arbitrator's decision. Allowing for judicial review of an arbitrator's decision would undermine the efficient private resolution of disputes and lead to costly litigation. This Court may only consider vacating the decision on policy grounds when an arbitrator's decision would bring the agreement into direct conflict with some explicit, well defined, and dominant public policy. The arbitrator's finding that the CBA applies a standard of strict liability against the players does not conflict with any explicit public policy. Therefore, the arbitrator's finding that the MLB did not breach a fiduciary duty is beyond review of this Court. If reviewed, the arbitrator correctly held that the MLB met all of its duties under the CBA. Furthermore, even if this Court does find the agreement condones a breach of fiduciary duty, there is no law suggesting that such an agreement would be in direct conflict with any explicit, well defined, and dominant public policy.

This Court should find that the LMRA preempts Respondents' claim that the MLB's Policy on Anabolic Steroids and Related Substances violates DATWA because DATWA does not apply to performance-enhancing substances, any challenge to a positive test requires interpretation of the Policy, and Congress specifically intended for federal law to govern disputes arising out of a CBA. Furthermore, the arbitrator's award should be upheld because the arbitrator correctly found that the MLB owed the MLBPA no duty to notify the players of the existence of a banned substance in Speedshot. If the MLB owed such a duty and breached it, Respondent has presented no demonstrable public policy rationale to overturn the arbitrator's decision.

## IX.

### ARGUMENT

#### **A. Federal Law Preempts Wilson’s Claim Because DATWA Does Not Cover Performance-Enhancing Drugs, Analysis of Claims Regarding the Rights Protected by the MLB’s Drug Testing Policy is Substantially Dependent Upon the Terms of the Collective Bargaining Agreement, and Congress Intended Federal Law to Govern Disputes Arising Out of a Collective Bargaining Agreement.**

As performance-enhancing drugs have become more prevalent in baseball and steroid use has marred the careers of many high-profile players, the integrity of the game is in jeopardy. To counteract this trend and to protect players’ short and long-term health, in 2007 Major League Baseball (the “MLB”) and the Major League Baseball Players Association (the “MLBPA”) agreed to an intensive performance-enhancing substance testing program. Included in its Collective Bargaining Agreement (the “CBA”), the Policy on Anabolic Steroids and Related Substances (the “Policy”) strictly regulates the use of energy-boosting substances including Clomiphene.

When a player challenges a test conducted pursuant to the Policy, it is critical that this Court apply a uniform set of laws to his claims because uncertainty in the application of disparate state laws to the terms of a collective bargaining agreement would have highly disruptive results for labor relations in all multi-state industries. More importantly, subjecting players to varying state laws would jeopardize the effectiveness of the Policy’s testing program because the results of a positive test would have a different outcome in each state. Therefore, this Court should reverse the Fourteenth Circuit and find that Section 301 of the LMRA preempts Respondents’ general claim that the Policy violates DATWA.

**i. The LMRA Preempts DATWA Claims Arising Out of Collective Bargaining Agreements That Provide Testing Policies and Procedures Beyond the Scope of DATWA’s Minimum Requirements.**

In Minnesota, the Drug and Alcohol Testing in the Workplace Act (“DATWA”) provides only basic requirements employers must follow when implementing drug and alcohol testing programs and policies for employees. See Minn. Stat. §§ 181.951, 181.952. For example, employees have the right to explain a positive test, Id. § 181.953 subdiv. 6, and employers may not discipline an employee unless a confirmatory test validates an initial positive test, Id. § 181.953 subdiv. 10. DATWA does not cover performance-enhancing substances like Clomiphene because Clomiphene is not a drug for testing purposes. See Id. §§ 181.950 subdiv. 4, 152.01 subdiv. 4.

DATWA provides only minimum requirements and certain industries may require additional testing procedures because of the nature of their work. To accommodate industry-specific testing needs, DATWA allows parties to collectively bargain with respect to a drug and alcohol testing policy that meets or exceeds the minimum standard provided in § 181.950-954 and does not conflict with the statute’s provisions. Id. § 181.955 subdiv. 1. Thus, DATWA contemplates that employers and employees may privately contract for different rules. The Policy contains those unique rules for professional baseball and expands the scope of testing to include performance-enhancing substances. Testing for such substances is a particularly important component of regulating the fairness of competition. For substances covered by a collective bargaining agreement and which DATWA does not address, federal labor law governs the adjudication of disputes arising out of the testing procedures for those substances.

In 1947, Congress enacted the Labor Management Relations Act (the “LMRA”) to ensure uniformity among states in resolving claims based on the terms of collective bargaining

agreements. Teamsters v. Lucas Flour Co., 369 U.S. 95, 104 (1962). Section 301(a) of the LMRA gives federal courts jurisdiction over matters arising out of a collective bargaining agreement. 29 U.S.C. § 185(a). However, its reach is more than just jurisdictional, as Section 301 authorizes federal courts to fashion a substantive body of law to resolve claims arising from collective bargaining agreements. Textile Workers v. Lincoln Mills, 353 U.S. 448, 450-51 (1957). The purpose of creating a federal body of law is “to encourage the making of agreements and to promote industrial peace through faithful performance by the parties” and “collective agreements affecting interstate commerce should be enforceable in the Federal courts.” Id. at 454. The LMRA is a “congressional mandate to the federal courts to fashion a body of federal common law to be used to address disputes arising out of labor contracts.” Allis-Chalmers v. Lueck, 471 U.S. 202, 209 (1985). To uniformly apply this federal body of law, Section 301 necessarily preempts claims arising out of collective bargaining agreements. Lucas Flour, 369 U.S. at 104. Otherwise, each state would apply its own divergent law when interpreting the terms of the agreement, leading to uncertainty in collective bargaining and disrupting labor relations nationwide. Allis-Chalmers, 471 U.S. at 210.

**ii. Section 301 Preempts Wilson’s DATWA Claim Because DATWA Does Not Apply to Testing Procedures for Performance-Enhancing Substances.**

The MLB differs from many industries in that players compete directly against each other. To ensure fair competition, it is imperative that the MLB regulate players’ intake of any substance that enhances his performance on the field. Conversely, DATWA’s testing procedures apply only to illegal drugs, prescription drugs, precursors to illicit drugs, and other substances that *negatively* affect a person’s ability to perform basic functions such as those required to complete traditional job tasks. See Minn. Stat. §§ 152.01 subdiv. 4, 152.02 subdiv. 2.

Performance-enhancers, which do not fall into any of the aforementioned categories, are explicitly excluded from DATWA's exhaustive schedules of controlled substances and are not subject to DATWA's requirements. Therefore, DATWA and the Policy cover entirely different categories of substances, so federal law must preempt Respondent's claim because the CBA alone governs testing for performance-enhancing substances.

**iii. The LMRA Preempts Claims That Arise Out of or Are Substantially Dependent Upon Interpretation of a Collective Bargaining Agreement.**

A claim is preempted if the rights a collective bargaining agreement confers are negotiable, or if evaluation of the underlying claim is "inextricably intertwined" with the terms of the CBA. Allis-Chalmers, 471 U.S. at 213. No bright line rule governs whether claims are preempted. See Cramer v. Consolidated Freightways Inc., 255 F.3d 683, 691 (9th Cir. 2001) ("The demarcation between preempted claims and those that survive § 301's reach is not, however, a line that lends itself to analytical precision."). Instead, this Court developed a multi-step approach to guide preemption analyses.

Initially, this Court applied preemption only to claims directly involving breaches of contract. See Lincoln Mills, 353 U.S. 448 (union brought a suit to compel arbitration based on arbitration procedures specifically set forth in a collective bargaining agreement). In Allis-Chalmers, this Court extended Section 301's preemptive reach to cases when a "state-law claim is substantially dependent upon analysis of the terms of an agreement made between the parties in a labor contract." Allis-Chalmers, 471 U.S. at 220.

Determining whether a claim is sufficiently dependent upon a collective bargaining agreement is not an exact science and this Court must make preemption determinations on a case-by-case basis. Anderson v. Ford Motor Co., 803 F.2d 953, 957 (8th Cir. 1986). To guide

the analysis, this Court must first look to the underlying claim to determine the rights at issue. Trustees of the Twin City Bricklayers Fringe Benefit Funds v. Superior Waterproofing, Inc., 450 F.3d 324, 331 (8th Cir. 2006). If the rights arise out of the collective bargaining agreement, then Section 301 preempts the claim in accordance with Congress' intent to create a uniform national labor law. Lingle v. Norge Division of Magic Chef, 486 U.S. 399, 405-06 (1988). If the collective bargaining agreement does not create the right, Section 301 still preempts the claim if its resolution is "substantially dependent" on interpreting any term of the CBA. Allis-Chalmers, 471 U.S. at 220.

A right arises out of a collective bargaining agreement when the contract creates the right at issue. If the court must look to the collective bargaining agreement to find those rights, Section 301 preempts the claim. For example, in Gore v. Trans World Airlines, an airline employee brought several claims against the airline, including negligence, stemming from an employee's report that another employee said that he planned to kill himself and others. 210 F.3d 944, 947 (8th Cir. 2000). The collective bargaining agreement required the airline to provide a safe working environment and to investigate claims like this one. Id. at 947-48. The Eighth Circuit found that whether the airline was negligent necessarily arose out of the specific duty the collective bargaining agreement created between the airline and the employees and, therefore, the claim was preempted. Id. at 950-51. Similarly, in Twin City Bricklayers, the Eight Circuit held Section 301 preempted claims for fraudulent and negligent misrepresentation because proving an element of the claims (justifiable reliance) depended upon "the nature of the relevant provisions of the CBA. Twin City Bricklayers, 450 F.3d at 332.

Claims also substantially depend on the collective bargaining agreement when the agreement defines the parameters of the duties at issue. For example, in Allis-Chalmers, this Court held

that Section 301 preempted an employee's tort claim for bad faith delay in the payment of an insurance claim because the parties collectively bargained for rights "to receive benefit payments for non-occupational injuries." Allis-Chalmers, 471 U.S. at 215. In Gore, the Eighth Circuit held that Section 301 preempted a violation of the right to privacy claim because "[t]he extent of the plaintiff's privacy rights...were legally negotiated by the terms of the collective bargaining agreement." 210 F.3d at 951. Also, in United Steelworkers v. Rawson, a miners union contracted with employees regarding the "nature and scope of the Union's duty" to inspect for mine safety. 495 U.S. 362, 370 (1990). Section 301 preempted claims for negligence in conducting mine safety inspections because this Court had to examine the scope of the duty provided by the CBA to assess the union's negligence. Id. at 371. Thus, Section 301 preempts claims when this Court must interpret the collective bargaining agreement to determine the scope of the right at issue or the duty owed.

When a claim does not directly arise from the collective bargaining agreement, Section 301 preempts it if the claim's resolution is "substantially dependent" upon interpreting a term of the agreement. Allis-Chalmers, 471 U.S. at 220. Analyzing whether an underlying claim is "substantially dependent" upon a collective bargaining agreement is highly fact-specific, requiring this Court to evaluate whether resolution of the underlying claim is "inextricably intertwined" with the terms of the agreement. Allis-Chalmers, 471 U.S. at 220. A state law claim is inextricably intertwined with the terms of a collective bargaining agreement when the claim cannot be evaluated without interpreting the agreement. See Lingle, 486 U.S. at 405-06. For example, in Stringer v. National Football League, the court held that a wrongful death claim stemming from a player's death from heat exhaustion was inextricably intertwined with the National Football League's Hot Weather Guidelines. 474 F.Supp.2d 900, 910 (S.D. Ohio 2007).

There, the court had to interpret the duties owed by trainers and team physicians because the collective bargaining agreement contained provisions outlining certification of athletic trainers and physicians' responsibility to notify players of potentially serious health conditions. Id. at 910-11.

Respondent's claim that the Policy's testing procedures for performance-enhancing substances violates DATWA's minimum drug-testing provisions requires this Court to interpret the terms of the Policy to determine whether it meets, exceeds, or conflicts with DATWA. Respondent did not allege a specific DATWA claim, so it is impossible for this Court to adequately evaluate the elements of the underlying claim. Instead, this Court must determine whether Section 301 preempts any hypothetical DATWA claim. This Court should reverse the Fourteenth Circuit and hold that Section 301 preempts Respondent's claim because analysis of many claims for violation of DATWA are substantially dependent upon interpreting the Policy.

DATWA contains various substantive and procedural protections for employees who are subject to drug tests. The district court discussed several of the substantive rights guaranteed by DATWA, including a player's rights during arbitration and his chance to "explain a positive test" under Minn. Stat. § 181.953 subdiv. 6. This Court must analyze whether the Policy's provisions for explaining a test conform to DATWA's requirements. Similarly, it is impossible to determine whether the MLB violated DATWA's requirement that employees take a confirmatory retest pursuant to Minn. Stat. § 181.953 subdiv. 10 without first interpreting the CBA to decide whether Respondent was subject to discipline under that statute. This Court cannot evaluate substantive DATWA claims independently from the agreement without interpreting the means by which the Policy protects those rights.

The Fourteenth Circuit focused exclusively on procedural DATWA rights. The court noted that whether the MLB complied with DATWA's testing requirements would only require it to "compare the facts and the procedure that the MLB actually followed with respect to its drug testing...with DATWA's requirements." Id. Such factual inquiries may be appropriate for claims such as whether the MLB used the appropriate testing facilities, but would not resolve claims involving whether the CBA's procedure for explaining a positive test complied with DATWA or whether Wilson was subject to discipline. Resolution of those claims are inextricably intertwined with the CBA because they require this Court to interpret the meaning of the terms of the agreement to determine whether the Policy complies with DATWA.

Parties can avoid preemption only when this Court can evaluate the claim independently of the agreement. Lingle, 486 U.S. at 409-10. A claim is independent only if it requires no reference at all to the collective bargaining agreement or if reference to the agreement is merely a factual inquiry. Twin City Bricklayers, 450 F.3d at 330. For example, in Livadas v. Bradshaw, Section 301 did not preempt a claim for willful failure to pay an employee after termination because this Court only had to look to a calendar and wage rates contained in the collective bargaining agreement to resolve the claim. 512 U.S. 107 at 124-25 (1994). Independent claims generally involve basic constitutional protections, such as the right to privacy, Cramer, 255 F.3d at 694, or nonnegotiable state rights, Allis-Chalmers, 471 U.S. at 213. For example, claims stemming from use of surveillance cameras in a restroom were preempted "based on California's constitutional and statutory rights of privacy guaranteed to *all persons*, whether or not they may happen to work subject to a CBA." Cramer, 255 F.3d at 694 (emphasis added). However, Section 301 preempts a claim if the trier of fact must interpret relevant language in a CBA to resolve a claim. Twin City Bricklayers, 450 F.3d at 332.

Respondent attempts to avoid the preemptive effect of Section 301 by characterizing a breach of contract claim as an independent violation of state statute. However, Respondent's claim involves negotiable state rights that depend on the CBA for resolution. Protection for testing for performance-enhancing substances is not guaranteed to all persons because DATWA does not cover them. This differs significantly from Cramer where the court found *all* citizens enjoyed a right to privacy because DATWA does not provide minimum requirements for professional baseball players subject to industry-specific, performance-enhancing substance testing. Also, unlike Livadas, where this Court only had to refer to numbers in the collective bargaining agreement to calculate an appropriate penalty, analysis of claims such as whether a player had an adequate opportunity to explain his test requires this Court to evaluate the Policy's provisions regarding explanation of positive tests. Therefore, Section 301 preempts Respondent's claim because it requires interpretation of the Policy.

**iv. Preempting Respondents' General Claim That The Policy Violates DATWA Is Consistent With Congress' Intent in Passing the LMRA.**

The competitive nature of multi-state professional sports requires courts to uniformly apply rules governing fair play. Therefore, this Court should find that Section 301 preempts Respondents' claim that the Policy generally violates DATWA because holding otherwise would frustrate Congress' intent to create a uniform body of national law to govern disputes arising out of a collective bargaining agreement. See Lucas Flour, 369 U.S. at 103-04.

The temporary relief Respondent obtained merely because he plays in Minnesota (while other players were immediately suspended) exemplifies the detrimental effect the application of individual state laws can have on the MLB. As this Court first observed in Lucas Flour, application of disparate law may "substantially impede" the willingness of parties to collectively

bargain. Id. at 104. Such a result would lead to prolonged resolution of claims and inefficient adjudication of minor labor disputes. See Id. Here, if the MLB and MLBPA cannot collectively bargain for the rules governing players who ingest performance-enhancing substances, the League will be unable to protect its players and maintain its integrity when litigation leads to different results in each state. More importantly, allowing Minnesota law to govern Respondent's claim furthers no state objective because DATWA does not cover Clomiphene because performance-enhancers are an industry-specific problem unique to competitive sports. Federal law, with jurisdiction over all states, is better equipped to fashion a body of law to govern these substances. It would be nearly impossible for the MLB to develop adequate testing procedures if it had to consider the laws of each state in which games are played, potentially leading to omission of a testing policy at all. This would seriously threaten the future of America's pastime.

Section 301 preempts Respondent's claim because DATWA does not protect employees subject to performance-enhancing substance testing. Furthermore, resolution of Respondent's claim requires interpretation of the terms of the Policy and Congress intended federal law to govern contractual labor disputes.

**B. This Court Should Uphold the Arbitrator's Award Because the Arbitrator Correctly Ruled that the MLB Met Any Fiduciary Duty it May Have Owed to the Players, and a Breach of a Fiduciary Duty Does Not Allow This Court to Apply the Public Policy Exception.**

Due to the legal system's strong interest in developing and promoting private settlements, courts review an arbitrator's decision only in rare instances. According to the Federal Arbitration Act (the "FAA"), this Court may set aside an arbitration award only if that award "was procured by fraud, corruption, or undue means," or when "there is an evident partiality in the arbitrators." 9 U.S.C.A. §§ 10 (a)(1)-(2). This Court must give an arbitrator's decision an

extraordinary level of deference. Stark v. Sandburg, Phoenix von Gontard, P.C., 281 F.3d 793, 798 (8th Cir. 2004). “As long as the arbitrator is even arguably construing or applying the contract and acting within the scope of his authority, that a court is convinced he committed serious error does not suffice to overturn his decision” United Paperworkers Int’l Union v. Misco, Inc., 484 U.S. 29, 36 (1987). Both federal law and precedent strongly support courts upholding arbitrators’ decisions because judicial review of awards would undermine the purpose of agreeing to arbitration. Id. at 37. This Court must not reconsider the merits of an award based on errors of fact or a misinterpretation of the contract. Id. at 36. “Unless the arbitral decision does not draw its essence from the collective bargaining agreement a court is bound to enforce the award and is not entitled to review the merits of the contract dispute.” W.R. Grace & Co. v. Local Union 759, 461 U.S. 757, 764 (1983). Only in rare instances in which the court finds that an arbitrator’s decision violates some explicit, well defined, and dominant public policy may the court apply the public policy exception to vacate an arbitrator’s award. Id. at 766.

The MLBPA’s claim is limited solely to whether the arbitrator’s decision implicates the public policy exception, as both parties agree that the arbitrator’s decision drew its essence from the contract and the MLBPA does not allege a violation of the FAA. To prevail on the claim that the arbitrator’s award violates public policy, the MLBPA must first demonstrate that a fiduciary duty existed between the MLBPA and the MLB, and that the MLB breached that duty. This Court should uphold the arbitrator’s ruling because the arbitrator is the sole interpreter of the facts and his finding that the MLB did not breach a fiduciary duty is beyond judicial review. Moreover, if this Court does review the arbitrator’s factual decision, it will find the MLB breached no fiduciary duty it owed to the players, and according to the CBA the players are strictly liable for any positive test result. Finally, even if the MLBPA can demonstrate that the

MLB did breach a fiduciary duty to the players, this does not implicate the public policy exception because such a breach violates no explicit and well defined public policy.

**i. The Arbitrator Has the Sole Discretion to Determine Whether a Fiduciary Relationship Exists, and the Arbitrator Correctly Held That the MLB Did Not Breach Any Fiduciary Duty to the Players.**

Under New York law,<sup>3</sup> “in order for liability to exist on a breach of fiduciary duty claim, a plaintiff must demonstrate: 1) the existence of a fiduciary relationship; and 2) breach of a fiduciary relationship.” Lumbermans Mut. Cas. Co. v. Franey Muha Alliant Ins. Servs., 388 F.Supp.2d 292, 304 (S.D.N.Y. 2005). “While the exact limits of what constitutes a fiduciary relationship are impossible of statement,” a fiduciary relationship exists where one party has acquired and abused influence over another. United Feature Syndicate Inc. v. Miller Features Syndicate, Inc., 216 F.Supp.2d 198, 218 (S.D.N.Y. 2002).

A fiduciary relationship is a “fact specific” inquiry that the trier of fact must determine. Lumbermans, 388 F.Supp.2d at 305. The duties of the parties in a fiduciary relationship are often developed through statute, regulations, or common law. See Callahan v. Callahan, 127 A.D.2d 298, 300 (N.Y. App. Div. 1987) (Finding a breach of a fiduciary duty owed under common law when an attorney misrepresented the value of a piece of property to an unrepresented party) and Grandon v. Merrill Lynch and Co., Inc., 147 F.3d 184, 189 (2d Cir. 1998) (Finding a fiduciary duty to disclose the markup costs on stock transactions, the duty stemming from Security Exchange Commission and LMRA trade regulations). However, the trier of fact may also find an express fiduciary duty in a written contract, or may read in a fiduciary duty where the contract establishes a relationship of trust or confidence between the parties. Lumbermans, 388 F.Supp.2d at 305.

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<sup>3</sup> New York law governs this issue because the CBA states that to the extent that federal law does not govern, New York State law will. (CR at 18.).

According to the CBA, the arbitrator is the sole interpreter of the CBA and all decisions regarding conflicts arising from the CBA are final. Therefore, it was the arbitrator's duty to consider the language of the CBA to discern what fiduciary duties existed and whether a breach occurred. It is irrelevant whether this Court believes the arbitrator ruled incorrectly in deciding there was no breach. In this case, the arbitrator properly found that the MLB did not owe a fiduciary duty to notify the players that Speedshot contained a banned substance.

Pursuant to the Policy, players are strictly liable for a positive test, and being unaware they are taking a prohibited substance or lacking intent to take a prohibited substance will not excuse a positive test result. The arbitrator interpreted the CBA to mean that regardless of the actions or omissions of the MLB, the players were ultimately responsible for any positive test results. If this Court believes that the arbitrator misinterpreted the Policy as one of strict liability, it does not have the power to review or challenge the arbitrator's decision. The inquiry should stop here because this Court may not review the arbitrator's interpretation of the CBA. The district court properly decided this case upon summary judgment because it is beyond the power of this Court to retry the facts of the relationship and determine the degree and extent of the fiduciary relationship absent some breach of the FAA.

If this Court does review the arbitrator's findings, it will discover that the MLB properly met any fiduciary duty to educate and warn the players about the risks of taking energy-boosting supplements. The MLBPA presents no authority that creates a fiduciary relationship between the doctors and the players. Therefore, the MLBPA must rely entirely on the CBA to develop the fiduciary relationship. Dr. Larson did not breach any duty to the players, because unlike the parties in Callahan or Grandon, Dr. Larson did not withhold information from the players regarding the ingredients in Speedshot. Dr. Larson stated that if he were asked about the

contents, he would have disclosed that Speedshot contained a banned substance. Dr. Larson's sole duty to the players was to educate and warn players with regard to the use of supplements as he saw fit. Just because the MLB was aware that Speedshot contained a banned substance does not create a duty to notify the players. Dr. Larson had the discretion to decide how best to educate the players and believed it better to continue to warn against the use of all energy supplements. He feared that to specifically identify Speedshot may lead some players to assume that other energy supplements did not contain banned substances, and lead the players to rely on the MLB to notify them of all products containing banned substances. The CBA contains no duty to notify the players of any supplements that contained banned substances and it would be impossible for the MLB to be required to notify the players of all supplements that may contain banned substances. Dr. Larson took the steps he thought would most adequately warn and protect the players against the use of harmful substances, and this does not breach a fiduciary duty.

The Hotline also satisfied any fiduciary duty that may exist because it continued to offer accurate information discouraging the use of any kind of energy-boosting supplement. It is irrelevant whether this Court believes that it would have been preferable for the Hotline to notify the players of the findings regarding Speedshot. As the district court correctly held, the MLB's choice not to specifically notify the players was "not a breach of the MLB's duties to its players." Dr. Larson and the MLB made a calculated decision on how best to educate and warn the players about the use of supplements. If the MLBPA now wishes to require the MLB to disclose each product it tests and finds to have banned substances within it, then the MLBPA should properly bargain for such a policy.

**ii. Even If the MLB Did Breach a Fiduciary Duty to the Players It Would Not Give Rise to the Narrow Public Policy Exception and Allow this Court to Vacate the Arbitrator's Award.**

The public policy exception applies only if the arbitrator's interpretation of the Policy violates "some explicit public policy" that is "well defined and dominant" and can be "ascertained by reference to the laws and legal precedents and not from general considerations of supposed public interest." Grace, 461 U.S. at 766. This Court should uphold an arbitrator's decision unless the public policy exception applies. Id.

An arbitrator's decision rarely violates public policy. Delta Air Lines, Inc. v. Air Line Pilots Ass'n, Int'l, 861 F.2d 665, 671 (11th Cir. 1989). The public policy exception is not to be lightly invoked and "judicial review of an arbitrator's award is extremely limited." Iowa Elec. Light & Power Co. v. Local Union 204 of Int'l Bd. Of Elec. Workers (AFL-CIO), 834 F.2d 1424, 1426 (8th Cir. 1987). This Court should not consider whether the actions of the parties violate public policy, but rather whether the arbitrator's interpretation of the contract makes the contract itself violate public policy. MidAmerican Energy Company v. International Brotherhood of Electrical Workers Local 499, 345 F.3d 616, 620 (8th Cir. 2003).

Courts consider two primary factors when deciding if an agreement gives rise to the public policy exception. First, courts look to specific statutes and regulations to ascertain an explicit well defined public policy. While the public policy exception is not limited to instances where the arbitrator's award violates positive law, the public policy is to be "ascertained by reference to positive law" such as statutes or regulations. Eastern Assoc. Coal Cos. v. United Mine Workers of Am., 531 U.S. 57, 63 (2000). Each of the cases the Fourteenth Circuit discusses as being proper applications of the public policy exception ascertain the public policy from statutes and regulations. In Delta, the court vacated an arbitrator's decision that forced

reinstatement of a pilot who flew a passenger plane while intoxicated. 861 F.2d at 672. The court looked to laws in nearly all 50 states against flying while intoxicated and federal regulations to demonstrate an explicit and well defined public policy against the arbitrator's decision to reinstate the pilot. *Id.* at 673. Similarly, in Iowa Electrical, the court vacated an arbitrator's decision that forced reinstatement of an employee who had purposefully violated federal safety regulations at a nuclear power plant because the regulations outlined an explicit, well defined public policy that nuclear power plants must uphold rigorous safety standards due to the inherent danger of nuclear power. 834 F.2d at 1428. These cases are distinguishable from this Court's ruling in Eastern Assoc., in which the arbitrator's decision was upheld because it could not be shown to violate any "specific provision of any law or regulation." 531 U.S. 57, 63. Likewise, in MidAmerican, because there were no statutes mandating safety regulations at a natural gas plant, the Eighth Circuit could derive no explicit and well defined public policy to vacate an arbitrator's decision to reinstate an employee who had purposefully breached the privately imposed regulations. MidAmerican, 345 F.3d 616. While case law may be used to help define and support application of the public policy exception, Delta, 861 F.2d at 673, the MLBPA presented no court decisions that solely used case law to ascertain the public policy exception.

The second factor courts consider when deciding whether to apply the public policy exception is the degree to which an arbitrator's decision threatens the public's health and safety. In both Iowa Electrical and Delta, the threat to public health and safety of having intoxicated pilots or ignoring nuclear power plant safety regulations were strong reasons for the court to vacate the arbitrators' decisions to reinstate the employees who had endangered the public. Conversely, in MidAmerican, the court found the degree of danger that a natural gas plant posed

to the public insufficient to raise the public policy exception. 345 F.3d at 621. There, the court specifically differentiated the threat of a natural gas plant to the threat of a nuclear plant in Iowa Electrical, and found that the laws regarding natural gas plants did not contain the same explicit public safety concerns and, therefore, did not meet the public policy exception. Id.

Here, the issue is not whether any of the MLB's actions or omissions amount to public policy violations, but whether the arbitrator's interpretation of the CBA violate some explicit, well defined, and dominant public policy. Importantly, the MLBPA cannot point to a single statute, regulation, or case that creates an explicit public policy that the arbitrator's interpretation of the CBA as one of strict liability against the players would violate. Respondent's claim for public policy rests solely on an interpretation of the CBA that was not accepted by the arbitrator who the MLBPA agreed to decide the full and final disposition of any conflict. Such an interpretation has no basis in positive law.

The arbitrator's interpretation of the CBA also lacks any kind of public safety or health concerns. Unlike the pilot flying while intoxicated in Delta or the employee ignoring safety regulations at a nuclear plant in Iowa Electrical, the Policy not requiring the MLB to notify the players when a specific product contains a banned substance is in no way a danger to the public. Any danger would be solely isolated to the adult players who decide what products and substances to ingest into their bodies. It is not the duty of the doctors to police or protect the players from banned performance-enhancing substances. The MLB's choice to warn the players against all energy supplements and not to specifically identify Speedshot would likely make the players more safe by encouraging them to not take any energy supplements that may contain harmful substances. While a policy of strict liability may not be preferable for the players, it is

the policy they negotiated and it violates no explicit well-defined public policy that threatens the public or the players.

Furthermore, there are no statutes, regulations, or case law indicating that an arbitrator's award can ever be overturned using the public policy exception for a breach of a fiduciary relationship. To support finding a public policy violation, the Fourteenth Circuit combined a number of cases that dealt only with fiduciary relationships generally, and referenced no statutes or regulations. No cases the court discussed vacated an arbitrator's decision on policy grounds for breach of a fiduciary duty. Striking down an arbitrator's ruling that ignored a breach of a fiduciary relationship would likely lead to countless challenges to arbitrators' decisions, and undermine the purpose of parties agreeing to private resolution of conflict. Allowing an alleged breach of a fiduciary relationship to serve as proper grounds to apply the public policy exception would likely lead to many unnecessary and costly judicial appeals in arbitrated matters because many contracts contain some kind of fiduciary relationship. Such a decision is contrary to the FAA's stated goal to bring about private resolutions and against this Court's interest in promoting arbitration.

A court cannot apply its own general considerations of supposed public interest to enact the public policy doctrine. Grace, 461 U.S. at 766. This Court recognizes only a very narrow exception to the general rule that an arbitrator's ruling should be upheld absent a breach of the FAA. Here, the MLBPA suggests that any arbitrator decision that ignores a breach of a fiduciary duty could meet the requirements of the public policy exception. Such a proposition has no support in statutes or case law and would greatly undermine the purpose of allowing parties to negotiate and agree to privately settle of contract disputes.

**X.**

**CONCLUSION**

For the foregoing reasons, Petitioner respectfully requests that this Court reverse the Fourteenth Circuit and uphold the District Court for the Southern District of Tulania's ruling that Section 301 preempts all DATWA claims and that the arbitrator's decision should be enforced.

# Appendix A

## Statutory Provisions

Minnesota Drug and Alcohol Testing in the Workplace Act

Minn. Stat. § 152.01:

**Subd. 4. Controlled substance.** “Controlled substance” means a drug, substance, or immediate precursor in Schedules I through V of section 152.02. The term shall not include distilled spirits, wine, malt beverages, intoxicating liquors or tobacco

Minn. Stat. § 181.950:

**Subd. 4. Drug.** “Drug” means a controlled substance as defined in section 152.01, subdivision 4.

Minn. Stat. § 181.951:

**Subdivision 1. Limitations on testing.** (a) An employer may not request or require an employee or job applicant to undergo drug and alcohol testing except as authorized in this section.

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

(c) An employer may not request or require an employee or job applicant to undergo drug and alcohol testing on an arbitrary and capricious basis.

**Subd. 2. Job applicant testing.** An employer may request or require a job applicant to undergo drug and alcohol testing provided a job offer has been made to the applicant and the same test is requested or required of all job applicants conditionally offered employment for that position. If the job offer is withdrawn, as provided in [section 181.953, subdivision 11](#), the employer shall inform the job applicant of the reason for its action.

**Subd. 3. Routine physical examination testing.** An employer may request or require an employee to undergo drug and alcohol testing as part of a routine physical examination provided the drug or alcohol test is requested or required no more than once annually and the employee has been given at least two weeks' written notice that a drug or alcohol test may be requested or required as part of the physical examination.

**Subd. 4. Random testing.** An employer may request or require employees to undergo drug and alcohol testing on a random selection basis only if (1) they are employed in safety-sensitive positions, or (2) they are employed as professional athletes if the professional athlete is subject to a collective bargaining agreement permitting random testing but only to the extent consistent with the collective bargaining agreement.

**Subd. 5. Reasonable suspicion testing.** An employer may request or require an employee to undergo drug and alcohol testing if the employer has a reasonable suspicion that the employee:

(1) is under the influence of drugs or alcohol;

(2) has violated the employer's written work rules prohibiting the use, possession, sale, or transfer of drugs or alcohol while the employee is working or while the employee is on the employer's premises or operating the employer's vehicle, machinery, or equipment, provided the work rules are in writing and contained in the employer's written drug and alcohol testing policy;

(3) has sustained a personal injury, as that term is defined in [section 176.011, subdivision 16](#), or has caused another employee to sustain a personal injury; or

(4) has caused a work-related accident or was operating or helping to operate machinery, equipment, or vehicles involved in a work-related accident.

**Subd. 6. Treatment program testing.** An employer may request or require an employee to undergo drug and alcohol testing if the employee has been referred by the employer for chemical dependency treatment or evaluation or is participating in a chemical dependency treatment program under an employee benefit plan, in which case the employee may be requested or required to undergo drug or alcohol testing without prior notice during the evaluation or treatment period and for a period of up to two years following completion of any prescribed chemical dependency treatment program.

**Subd. 7. No legal duty to test.** Employers do not have a legal duty to request or require an employee or job applicant to undergo drug or alcohol testing as authorized in this section.

Minn. Stat. § 181.952:

**Subdivision 1. Contents of the policy.** 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.

**Subd. 2. Notice.** An employer shall provide written notice of its drug and alcohol testing policy to all affected employees upon adoption of the policy, to a previously nonaffected employee upon transfer to an affected position under the policy, and to a job applicant upon hire and before any testing of the applicant if the job offer is made contingent on the applicant passing drug and alcohol testing. An employer shall also post notice in an appropriate and conspicuous location on the employer's premises that the employer has adopted a drug and alcohol testing policy and that copies of the policy are available for inspection during regular business hours by its employees or job applicants in the employer's personnel office or other suitable locations.

Minn. Stat. § 181.953:

**Subd. 6. Rights of employees and job applicants.** (a) Before requesting an employee or job applicant to undergo drug or alcohol testing, an employer shall provide the employee or job applicant with a form, developed by the employer, on which to acknowledge that the employee or job applicant has seen the employer's drug and alcohol testing policy.

(b) If an employee or job applicant tests positive for drug use, the employee must be given written notice of the right to explain the positive test and the employer may request that the employee or job applicant indicate any over-the-counter or prescription medication that the individual is currently taking or has recently taken and any other information relevant to the reliability of, or explanation for, a positive test result.

(c) Within three working days after notice of a positive test result on a confirmatory test, the employee or job applicant may submit information to the employer, in addition to any information already submitted under paragraph (b), to explain that result, or may request a confirmatory retest of the original sample at the employee's or job applicant's own expense as provided under subdivision 9.

**Subd. 10. Limitations on employee discharge, discipline, or discrimination.** (a) An employer may not discharge, discipline, discriminate against, or request or require rehabilitation of an employee on the basis of a positive test result from an initial screening test that has not been verified by a confirmatory test.

Minn. Stat. § 181.955:

**Subdivision 1. Freedom to collectively bargain.** Sections 181.950 to 181.954 shall not be construed to limit the parties to a collective bargaining agreement from bargaining and agreeing with respect to a drug and alcohol testing policy that meets or exceeds, and does not otherwise conflict with, the minimum standards and requirements for employee protection provided in those sections.

Labor Management Relations Act, Section 301(a)

29 U.S.C.A. § 185(a):

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

Federal Arbitration Act

9 U.S.C.A. § 10:

**(a)** In any of the following cases the United States court in and for the district wherein the award was made may make an order vacating the award upon the application of any party to the arbitration--

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

## Appendix B

United States District Court for the Southern  
District of Tullahoma

**UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TULANIA**

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KEVIN WILSON; MAJOR LEAGUE BASEBALL PLAYERS ASSOCIATION,  
Plaintiffs,

Versus

MAJOR LEAGUE BASEBALL,  
Defendant.

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I. Introduction

The Plaintiff, Kevin Wilson, is an employee of the Minnesota Twins, L.L.C., which is not a party here, and a member of the Major League Baseball Players Association (the “MLBPA”), the other plaintiff in this suit. In 2007, the MLBPA and Major League Baseball (the “MLB” or the “League”) entered into a Collective Bargaining Agreement (the “CBA”) that incorporates the MLB Policy on Anabolic Steroids and Related Substances (the “Policy”). The Policy prohibits MLB players from using a number of “Prohibited Substances,” including a variety of performance enhancing drugs and “Other Anti-estrogens, including Clomiphene, Cyclophenil,

and Fulvestrant.” The Policy provides that “players are responsible for what is in their bodies,” and further explains that “this Policy adopts an approach of strict liability, meaning that a positive test result will not be excused because a player was unaware he was taking a Prohibited Substance.” The Policy further states, “a positive test result will not be excused because it does not result from an intentional use of a Prohibited Substance.”

Players with confirmed positive test results will be subject to discipline by the Commissioner as outlined in the Policy. The first time a player violates the Policy by testing positive for a banned substance the Policy states he will face at least a 15-game suspension, but not more than a 25-game suspension. Additionally, the Policy provides that “Players subject to disciplinary action may appeal to an arbitrator, who is either the Commissioner or his designee, whose decision constitutes a full, final, and complete disposition of the appeal that is binding on all parties.” The Policy also establishes an arbitration process for the review of any action taken in accordance with the Policy, and provides that the decision will be made by a neutral arbitrator whose decision will be “the full, final, and complete disposition of the appeal and will be binding on all parties.”

The Policy is directed by Dr. John Larson, a licensed physician, as its Independent Administrator. Dr. Larson is in charge of implementing the terms of the Policy, including overseeing the drug-testing procedures under the policy, reporting any positive test results to the Commissioner for discipline, and providing education to the players regarding the Policy’s implementation. Dr. Ray Finkle is the “Consulting Toxicologist” to aid in the implementation of the Policy. Larson and Finkle have no affiliation with either the Commissioner’s office or any Major League Baseball club.

The Policy also created the “MLB Supplement Hotline,” (the “Hotline”) a confidential hotline provided to players in order to obtain “confidential and accurate information about these products, including their ingredients, effects, and adverse reactions.” The purpose of the Hotline was to provide MLB players, coaches, and trainers with an opportunity to inquire and obtain information about certain supplements and their relation to the Policy. The memorandum announcing the Policy, however, goes on to caution players “You and you along are still responsible for what goes into your body. Using the Hotline will not excuse a positive test result.”

In 2007, the MLB learned that some bottles of SpeedShot, an energy-boosting supplement that claims to provide five hours worth of energy, contained Clomiphene,<sup>4</sup> a prohibited substance named in the Policy. The SpeedShot label does not disclose Clomiphene as an ingredient. When Dr. Larson was alerted to a possible connection between the positive results for Clomiphene and SpeedShot he informed Dr. Finkle. Dr. Finkle asked David Klein, Director of the Sports Medicine Research Testing Laboratory, to analyze SpeedShot. On November 14, 2007, Klein emailed Finkle and Larson, informing them that SpeedShot did in fact contain Clomiphene. Andrew Birch, Vice President of Law and Labor Policy for the MLB, was then made aware of this finding. Despite the lab director’s request that the MLB report the information about SpeedShot to the Food & Drug Administration, Birch and Larson refused to do so.

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<sup>4</sup> Clomiphene is commonly used by male anabolic steroid users to bind the estrogen receptors in their bodies, thereby blocking the effects of estrogen. It also restores the body's natural production of testosterone. It is commonly used as a "recovery drug" by steroid users and is taken toward the end of a steroid cycle. At the end of a steroid cycle, steroid users often experience a post-steroid "crash," which can quickly eat up much of the steroid user's newly acquired muscle. Clomiphene can help prevent this crash and thus help the steroid user maintain the muscle growth caused by the steroid.

The MLB notified the MLBPA that “Mega Energy Products, which distributes SpeedShot” had become a banned company with which teams and players were prohibited from doing business and asked the MLBPA to pass that information on to players. The Union responded by notifying all players, through their agents, that the company that “distributes SpeedShot has been added to the list of prohibited energy-boosting supplement companies” and, as a result, “players are prohibited from endorsing any of their products.” In addition, Dr. Larson sent a memorandum to all MLB players reminding them of the dangers posed by Energy-Boosting Supplements and “urging players not to take products or supplements that claim to provide or boost energy.” The memoranda also reiterated the strict liability rule of the Policy that “if you test positive for a banned substance this constitutes a positive test, regardless of intent to do so.” All of these communications, however, failed to specifically mention that SpeedShot in fact contained a banned substance.

Despite multiple warnings against the use of energy-boosting supplements, Kevin Wilson took SpeedShot the morning of a scheduled preseason training camp scrimmage. Pursuant to the Policy’s annual preseason provisions, Wilson was drug tested, and his results came back positive for Clomiphene. As required by the Policy, the plaintiff was suspended for fifteen games for testing positive for a prohibited substance. Additionally, four other players, Pat Wilson of the Houston Astros, Manny Rogers of the Boston Red Sox, Al Peterson of the St. Louis Cardinals, and Bradley Melton of the Florida Marlins, also tested positive for Clomiphene and received the same suspension. Plaintiff, the four additional players, and the MLBPA appealed the suspensions to an independent and neutral arbitrator pursuant to the terms of the Policy.

During the arbitration proceedings, all five players, including Wilson, did not dispute their positive tests or the presence of Clomiphene in their system. The players admitted that they

were aware of the warnings regarding energy boosters, the Hotline, and the Policy's rule that each player is responsible for what is in his body. The players argued, however, that their positive results should be excused because Dr. Larson and the MLB knew, as of September 2007, that at least some SpeedShot shots contained Clomiphene—an undisclosed banned substance—and did not specifically advise MLB players of this fact. The players argued that the sanctions should be lifted because, notwithstanding the explicit and repeated warnings about the dangers of energy-boosting supplements and the Policy's strict liability rule, the Policy created a fiduciary duty that required the MLB to give a more particularized warning about SpeedShot once it was found to contain Clomiphene.

After a full hearing, the arbitrator upheld the suspensions pursuant to the Policy's strict liability rule. The arbitrator found that "none of the players challenged the laboratory analysis or any other aspect of the test." Thus, there was "no genuine dispute regarding the positive test of each player's urine sample." "There is no question," the arbitrator further ruled, "that the Policy enforces a rule of strict liability—a rule that players alone are responsible for what is in their bodies; that supplements are used at the player's own risk, and each player clearly understood that rule and what it means." Moreover, the arbitrator found, "the Policy does not articulate or impose an obligation to issue specific warnings about specific products, and nothing in the record suggests that the bargaining parties have ever contemplated imposing such a requirement." Thus, the "players used SpeedShot at their own risk, did so in the face of repeated warnings about the risks inherent in using supplements in general and energy-boosting supplements in particular, and did so knowing that a positive test would result in a suspension that would not be excused based on a claim of unintentional or inadvertent use."

Wilson then filed suit against the MLB, Dr. Larson, Dr. Ray Finkle, and Andrew Birch in Minnesota state court. The complaint alleged that the Policy violated Minnesota's Drug and Alcohol Testing in the Workplace Act (DATWA) and sought both damages and an injunction against enforcement of the arbitration award. The state court granted Wilson a temporary restraining order barring his suspension. This temporary injunction, however, applied only to Wilson as the other four suspended players were not employed in the state of Minnesota and thus could not obtain protection from that state's employment laws.

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 (the "LMRA"). MLB now moves for summary judgment on all claims, arguing that Wilson's DATWA claims are preempted by Section 301 of the LMRA and that the arbitrator's award should be upheld. We will discuss each argument in turn.

## II. Preemption Under Section 301 of the Labor Management Relations Act

Wilson argues that because he is employed in the state of Minnesota, the MLB must comply with the provisions set forth in DATWA, Minnesota's state law regulating employer drug-testing procedures of employees. Wilson contends that the provisions of the Policy do not comply with the mandates established in DATWA, and thus his suspension cannot be upheld. The MLB asserts that Wilson's DATWA claim is preempted by Section 301 of the Labor Management Relations Act (LMRA).

### A. Statutory Framework

## 1. Labor Management Relations Act

Section 301 of the LMRA provides that “suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce...may be brought in any district court of the United States having jurisdiction of the parties.” 29 U.S.C. § 185(a). Federal law governs the resolution of labor disputes under Section 301. *See Textile Workers v. Lincoln Mills*, 353 U.S. 448, 456 (1957). Accordingly, “a suit in state court alleging a violation of a provision of a labor contract must be brought under § 301 and be resolved by reference to federal law.” *Allis-Chambers v. Lueck*, 471 U.S. 202, 210 (1985). Likewise, “when resolution of a state-law claim is substantially dependent upon analysis of the terms of an agreement made between the parties in a labor contract, that claim must either be treated as a § 301 claim...or dismissed as preempted by federal labor-contract law.” *Id.* at 220.

## 2. Drug and Alcohol Testing in the Workplace Act (DATWA)

The Drug and Alcohol in the Workplace Act, Minn. Stat. § 181.950, establishes certain procedures for an “employer’s” drug and alcohol testing of “employees” in Minnesota. The statute applies to testing for specified drugs, including cocaine, marijuana, and methamphetamines. *Id.* §§ 152.01(4), 152.02, 181.950(4)-(5), 181.951(1)(a). The substances covered by the statute do not include energy boosters, performance enhancing drugs, or Clomiphene. *Id.*

DATWA lists minimum information requirements for the contents of employers' drug policies. *Id.* § 181.952 subdiv. 1. Pursuant to DATWA, the drug policies of Minnesota employers must provide:

(1) the employees or job applicants subject to testing under the policy; (2) the circumstances under which drug or alcohol testing may be requested or required; (3) the right of an employee or job applicant to refuse to undergo drug and alcohol testing and the consequences of refusal; (4) any disciplinary or other adverse personnel action that may be taken based on a confirmatory test verifying a positive test result on an initial screening test; (5) the right of an employee or job applicant to explain a positive test result on a confirmatory test or request and pay for a confirmatory retest; and (6) any other appeal procedures available.

*Id.* § 181.952 subdiv. 1(1)-(6). DATWA also sets forth criteria that a testing laboratory must meet in order for an employer to use its services. *Id.* § 181.953 subdiv. 1.

The Act expressly provides that its terms “shall not be construed to limit the parties to a CBA from bargaining and agreeing with respect to a drug and alcohol testing policy that meets or exceeds and does not otherwise conflict with, the minimum standards and requirements for employee protection provided in” the Act. *Id.* § 181.955(1). In addition, the Act authorizes random drug and alcohol testing for “professional athletes if the professional athlete is subject to a CBA permitting random testing but only to the extent consistent with the collective bargaining agreement.” *Id.* § 181.951(4).

## B. The CBA and Policy

A comprehensive CBA between the MLB and the MLBPA governs the terms and conditions of plaintiff Kevin Wilson's employment and establishes procedures for the resolution

of disputes pertaining to that employment. That Agreement incorporates the Policy, which was jointly negotiated by the MLBPA and the MLB Commissioner, the sole and exclusive collective bargaining representative of the MLB's thirty member clubs. The collectively bargained Policy bans a variety of "Prohibited Substances" including steroids and performance enhancers. Clomiphene is one such prohibited substance.

The Policy establishes that those banned substances "have no legitimate place in professional baseball," and makes clear that the use of any prohibited substance violates the player's contractual duties and "threatens the fairness and integrity of the athletic competition on the playing field" by giving players artificial advantages that "threaten to distort the results of the game and League standings." Furthermore, the CBA prescribes a form player contract, the language of which was incorporated in the plaintiff's contracts, pursuant to which each player agrees not to take performance-related drugs because of "the detriment to the League and professional baseball that would result from impairment of public confidence in the honest and orderly conduct of MLB games or the integrity and good character of MLB players."

The Policy includes a collectively bargained for and explicitly stated rule of strict liability under which "Players are responsible for what is in their bodies. This Policy adopts an approach of strict liability, meaning that a positive test result will not be excused because a player was unaware he was taking a Prohibited Substance." Section 8 of the Policy emphasizes that "a positive test result will not be excused because it does not result from the intentional use of a Prohibited Substance. Players are responsible for what is in their bodies."

Appendix C to the Policy is a letter from the MLBPA and the MLB that addresses the "Use of Supplements" and "strongly encourages players to avoid the use of supplements

altogether” warning “if you take these products, you do so AT YOUR OWN RISK!” The letter also advises that “several players have been suspended even though their positive test result may have been due to the use of a supplement,” and underscores that if you test positive or otherwise violate the Policy you will be suspended because “you and you alone are responsible for what goes into your body.”

The MLB also provides players the opportunity to contact the Hotline to obtain “confidential and accurate information” about certain over-the-counter products, including their ingredients, effects, and adverse reactions. The memorandum announcing the Hotline states: “Although we strongly discourage the use of supplements of any kind and for any reason, we understand that an informed decision is the best one.” The memorandum goes on to state “You and you alone are still responsible for what goes into your body. Using the Hotline will not excuse a positive test result.”

C. The DATWA Claims Are Preempted Because the Statute Expressly Requires Analysis of the CBA.

Section 301 of the LMRA “mandate[s] resort to federal rules of law in order to ensure uniform interpretation of collective-bargaining agreements, and thus to promote the peaceable, consistent resolution of labor-management disputes.” *Lingle v. Norge Division of Magic Chef, Inc.*, 486 U.S. 399, 404 (1988). Because “uniformity in the interpretation of collective bargaining agreements is considered essential to the federal scheme favoring collective bargaining,” *Anderson v. Ford Motor Co.*, 803 F.2d 953, 955 (8th Cir. 1986), Section 301’s preemptive power covers any state law claim that is “inextricably intertwined with consideration

of the terms of the labor contract” or “substantially dependent upon analysis of the terms of an agreement made between the parties in a labor contract.” *Allis-Chambers*, 471 U.S. at 213, 220; *see also Trustees of the Twin City Bricklayers Fringe Benefit Funds v. Superior Waterproofing, Inc.*, 450 F.3d 324, 330 (8th Cir. 2006)(finding that a claim is preempted if it requires “interpretation or construction” of a CBA).

The test for preemption is whether state law requirements can be enforced without any reference to an interpretation of the CBA. *Twin City Bricklayers*, 450 F.3d 330. Wilson’s claims cannot. By its plain terms, DATWA predicates relief on interpretation and application of the CBA and its drug-testing Policy. Because interpretation of the CBA would underlie any finding of statutory liability in this case, the claims are preempted regardless of whether a court “chooses to define the [claim] as ‘independent’ of any contractual questions.” *Allis-Chambers*, 471 U.S. at 218. Accordingly, Wilson’s DATWA claim is preempted because it requires interpretation and analysis of the CBA and Policy, and it is inextricably intertwined with the CBA’s enforcement.

DATWA mandates reference to an analysis of the Policy. The statute expressly provides that “parties to a collective bargaining agreement can bargain and agree” to a drug-testing policy as long as that policy “meets or exceeds, and does not otherwise conflict with DATWA’s minimum standards.” Minn. Stat. § 181.955(1). Wilson’s claim thus cannot succeed “without interpreting certain terms of the collective bargaining agreement,” to determine whether the terms of the Policy “meet or exceed” DATWA’s threshold. *Gore v. Trans World Airlines*, 210 F.3d 944, 951 (8th Cir. 2000).

For example, a court would have to determine whether the testing procedures established by the Policy constitute a form of discipline. The court would also have to analyze the rules

under the Policy for challenging a positive test result to decide whether Wilson properly exhausted his claim, as mandated by DATWA. *See* Minn. Stat. § 181.956(1). In addition, the court would have to analyze and define the nature of both the player's rights in arbitration and the Independent Administrator's review following a positive test to see if they meet or exceed DATWA's requirement of an opportunity to "explain the positive test." *See* Minn. Stat. § 181.953(6). Analysis of the Policy's operation as compared to DATWA's provisions would be complicated even further by the fact that the Policy tests for numerous substances, including the Clomiphene at issue here, that are not even subject to DATWA's protections.

In short, because DATWA commands courts to analyze and interpret the twenty-seven pages of the Policy so that it can meaningfully compare them to the numerous requirements in DATWA's twenty-four separate subdivisions, the DATWA claims are "inextricably intertwined with consideration of the terms of the Policy" and are therefore preempted. *Lueck*, 471 U.S. at 213; *Zupanich v. United States Steel Corp.*, No. 08-5847, 2009 U.S. Dist. LEXIS 44504, at \*8-9 (D. Minn. May 27, 2009)("[T]he plain language of the statute requires the Court to examine the CBA to determine whether the agreement negotiated by the parties resulted in conditions that are not more favorable to employees. As such, the claim is inextricably intertwined with the CBA."); *Stringer v. National Football League*, 474 F.Supp.2d 894, 910 (S.D. Ohio 2007) (holding that a wrongful-death suit arising from death of player in hot weather conditions was preempted because the suit intertwined with collective bargaining agreement provisions regarding certification of team trainers and responsibilities of team trainers and physicians); *Holmes v. National Football League*, 939 F.Supp. 517, 527 (N.D. Tex. 1996) (finding that a claim for invasion of privacy arising from mandatory participation in the league's drug-testing

program was preempted because an analysis of the CBA was required to determine whether the test was authorized).

Additionally, preemption is warranted because Wilson challenges a nationwide CBA establishing necessarily uniform rules that must be evenhandedly enforced against individuals working in multiple jurisdictions. Allowing state-by-state litigation to revise the CBA piecemeal would make it impossible for the MLB to maintain a single, nationwide Policy against the use of prohibited substances by MLB players. While Wilson is a member of the Minnesota Twins, his career and professional advancement depends upon the operation of a nationwide league that allows him to play games in approximately twenty-five different states. Neither Minnesota nor any other State has the right to use its domestic laws in a way that has the practical effect of regulating the physical condition and terms of competition in each of the two dozen other States in which players play. *See Healy v. Beer Institute, Inc.*, 491 U.S. 324, 336 (1989)(“The critical inquiry is whether the practical effect of the regulation is to control conduct beyond the boundaries of the State.”).

The purpose of the Policy is to enforce a single uniform standard of player conduct that ensures an even playing field for all players and protects the “integrity” of the game. Fair competition could not exist if a patchwork of state laws imposed different rules and policies for the use of prohibited substances every time players crossed into or out of a jurisdiction to play. In this case, for example, while the Minnesota law claims allowed Wilson to keep playing despite an admittedly positive test, four other teams in other jurisdictions played without the help of one of their players who also tested positive after taking SpeedShot. Such disparate enforcement of the Policy threatens the “fairness and integrity” of the athletic competition on the

playing field, threatens to distort the results of games and League standings, and is obviously unfair to those players who do not wish to use these substances.

Congress enacted Section 301 precisely because “[t]he 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.” *Teamsters v. Lucas Flour, Co.*, 369 U.S. 95, 103 (1962). By the same token, the already difficult process of bargaining for and enforcing prohibited-substance policies, which are critical to the integrity of professional sports, “would be made immeasurably more difficult by the necessity of trying to formulate contract provisions in such a way as to contain the same meaning under two or more systems of law which might someday be invoked in enforcing the contract.” *Id.* at 103-04.

Furthermore, the Supreme Court has recognized:

[I]f the resolution of a state-law depends upon the meaning of a collective-bargaining agreement, the application of state law...might lead to inconsistent results since there could be as many state-law principles as there are States...[and] is pre-empted and federal labor-law principles—necessarily uniform throughout the Nation—must be employed to resolve the disputes.

*Lingle*, 486 U.S. at 405-06. Contrary to the principle of uniformity set forth in *Lingle*, any decision against preemption in this instance would authorize players for different teams to find protection under the rules of the state in which they play instead of requiring that the players adhere to the uniform collective bargaining rules set forth in the Policy. In fact, the present case has already engendered inequality, as the other players who tested positive for Clomiphene

cannot bring a claim under DATWA as they happen to play for teams outside the state of Minnesota.

The unique and necessarily national character of the rules governing nationwide athletic competition means that federal law—“necessarily uniform throughout the Nation,” *Lingle*, 486 U.S. at 406—can govern the interpretation and enforcement of the Policy and prevent “[f]ragmentation of the league structure on the basis of state lines.” *Partee v. San Diego Chargers Football Co.*, 668 P.2d 674, 678 (Cal. 1983). Accordingly, in the context of a nationwide drug-testing policy adopted as part of a nationwide CBA governing the interstate play of professional athletes, state law must give way to the need for “interpretive uniformity and predictability” that Section 301 of the LMRA enforces. *Twin City Bricklayers*, 450 F.3d at 334.

Consequently, Section 301 must preempt Wilson’s DATWA claims because the claim is it is “inextricably intertwined” with the enforcement of the Agreement and Policy. Furthermore, the application of Minnesota’s state law would lead to inconsistent results since there could be as many state-law principles as there are States. Therefore, this court is granting the MLB’s motion for summary judgment and dismissing Wilson’s DATWA claims against the league.

### III. The Arbitration Award

Next, the MLBPA and Wilson contend that this Court should reverse the arbitrator’s award upholding Wilson and the other players’ suspensions. The Policy requires the parties to submit appeals of discipline decisions to arbitration. Thus, this Court’s review of the arbitrator’s decision is circumscribed by the Federal Arbitration Act, which allows a court to set aside an arbitration award only if that award “was procured by fraud, corruption, or undue means,” or

when “there was evident partiality in the arbitrators.” 9 U.S.C.A. §§ 10(a)(1)-(2). The MLBPA and Wilson argues that this court should set aside the arbitration award at issue because of the MLB’s alleged bad conduct in not informing the players about the presence of Clomiphene in SpeedShot. They contend that public policy mandates that arbitration awards that condone breaches of fiduciary duties be vacated. The MLB moves for summary judgment, contending that they owed the players no duty to inform them of the presence of banned substances in SpeedShot, and thus that the arbitrator’s award cannot be vacated.

An arbitration award that does not “draw its essence from the collective bargaining agreement” is not entitled to deference from the reviewing Court. *United Paperworkers Int’l Union v. Misco, Inc.*, 484 U.S. 29, 36 (1987). However, a court’s authority to reverse an arbitration award for failure to comply with the Policy is “exceptionally narrow.” *Coca-Cola Bottling Co of St. Louis v. Teamsters Local Union No. 688*, 959 F.2d 1438, 1440 (8th Cir. 1992). This court must afford the arbitrator “an extraordinary level of deference” and must confirm the award as long as “the arbitrator is 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). Further, this court may vacate the decisions of the arbitrator “only for the reasons enumerated in the FAA.” *Crawford Group, Inc. v. Holekamp*, 543 F.3d 971, 976 (8th Cir. 2008).

Both parties concede that the decisions at issue draw their essence from the parties’ CBA. Consequently, the Court must treat the decisions as to whether the Policy requires disclosure as if they represented the agreement between the MLBPA and the MLB, as the players contend was required here. *Eastern Assoc. Coal Cos. v. United Mine Workers of Am.*, 531 U.S. 57, 62 (2000). Put differently, the decisions are “not distinguishable from the contractual agreement.” *Id.* This

court must then decide whether the Policy as interpreted by the arbitrator “violates some explicit public policy” that is “well defined and dominant” and can be “ascertained by reference to the laws and legal precedents and not from general considerations of supposed public interests.” *W.R. Grace & Co. v. Local Union 759*, 461 U.S. 757, 766 (1983). 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. *MidAm. Energy Co. v. Int’l Bd. Of Elec. Workers Local 499*, 345 F.3d 616, 620 (8th Cir. 2003). If the Policy does violate an explicit public policy, the Court is obligated to refrain from enforcing it. *W.R. Grace*, 461 U.S. at 766. In order to prevail on this claim, the MLBPA and Wilson must show that a fiduciary duty exists and was breached, that those fiduciary duties are explicit public policy, and that the Policy as interpreted by the arbitrator violated that public policy by condoning a breach of fiduciary duties.

First, the MLBPA contends that the League and Larson breached a fiduciary duty to the players and Larson’s duties as a physician because Larson did not issue a specific warning regarding SpeedShot and the fact that it contained Clomiphene. Larson testified, however, that had a player called him to inquire specifically about SpeedShot, Larson would have told that player that SpeedShot contained Clomiphene. Consequently, there can be no claim of a breach of fiduciary duty arising out of Dr. Larson’s alleged refusal to divulge that information. In addition, Larson’s decision to not issue a specified warning concerning SpeedShot does not violate his duties to players. Larson testified that he decided to send a general warning about energy-boosting supplements rather than about SpeedShot specifically because the whole energy-boosting supplements industry is a problem. Thus, as the arbitrator found, Larson exercised his discretion under the Policy to educate players, and did so in a general way because he believed that all energy-boosting supplements, not just SpeedShot, carried potential risks.

The MLBPA and the players may disagree with Larson's conclusion, but under the terms of the Policy, the decision on this issue was Dr. Larson's to make. Absent a showing that the decision was outrageous or without any foundation, the Union and the players cannot establish that the decision constituted a violation of whatever fiduciary duties Larson may have had.

The MLBPA also alleges that the Hotline gave inaccurate information to the players regarding SpeedShot, that Birch knew the Hotline was giving inaccurate information and did nothing to correct the situation, and that this constitutes a breach of the MLB's fiduciary duties to the players. In 2007, after the discovery that SpeedShot contained Clomiphene, Birch had asked the Hotline about how many calls it had received regarding SpeedShot, yet did not tell the Hotline to dispense any more information about SpeedShot other than the fact that while it was not on the banned substance list, players should avoid taking any energy supplement because the label might not list all its ingredients. While the information that the Hotline gave inquiring players concerning SpeedShot was undisputedly accurate, the MLBPA contends that the Hotline should have informed players inquiring about SpeedShot about the presence of Clomiphene in SpeedShot once the MLB was aware that SpeedShot did in fact contain a banned substance.

While this specific warning might have been preferable to the Union and players, it is not a breach of fiduciary duties to tell players only that energy boosters are risky and that players should not rely on any supplement's list of ingredients because that list might be incomplete. The MLB's decision regarding the general warning to give players is not unreasonable. The administration of the Hotline presents squarely the troubling issues brought forward by this case. There is no doubt that it would have been preferable for the MLB to communicate with players specifically about the presence of Clomiphene in SpeedShot; however, while the MLB's failure to do so is baffling, it is not a breach of the MLB's duties to its players. Through the Hotline, the

MLB was attempting to tell players what they already knew: that players should not take energy-boosting supplements. MLB players are adults. They have been warned repeatedly not to take energy-boosting supplements because such energy boosters may cause a positive test for a banned substance. *See Walton-Floyd v. United States Olympic Comm.*, 965 S.W.2d 35 (Tex. Ct. App.—Houston [1st Dist.]) (finding that the USOC did not voluntarily assume a duty under state law through the operation of a hotline service available to athletes to check to status of all medications as to the list of prohibited substances).

It is no doubt true that none of the players here would have taken SpeedShot if the MLB had issued a specific statement saying that SpeedShot contained Clomiphene. It is also likely that those players, having been warned not to take SpeedShot in particular, would have turned to a different energy booster in order to obtain the desired results. There is certainly no guarantee, however, that any other energy booster is less likely to have a banned substance than is SpeedShot. Therefore, despite the MLB's and Larson's repeated warnings about energy boosters, the players would most likely have continued to use them, although not SpeedShot specifically. Most importantly, the MLBPA has offered no authority clearly articulating what public policy was violated under New York law.<sup>5</sup> Because the Union has failed to demonstrate an explicit, well defined, and dominant public policy requiring such a disclosure, this argument does not provide a basis for vacating the awards. *See W.R. Grace*, 461 U.S. at 766.

The arbitrator determined that the Policy makes players responsible for what is in their bodies. He noted that if the Union disagreed with this apportionment of strict liability, it is free to bargain for a different Policy. The MLBPA is, in fact, free to bargain for a clause that requires

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<sup>5</sup> New York law governs this issue because the Policy is part of the MLB Collective Bargaining Agreement, which states that to the extent that federal law does not govern, New York State law will govern the CBA.

the MLB to inform players specifically when an energy-boosting supplement, or any supplement for that matter, is found to contain a banned substance. The Policy as written, however, does not contain such a requirement. More importantly, the absence of such a requirement does not sanction any breach of fiduciary duty.

Having failed to establish that a genuine issue as to a material fact exists about whether the MLB or Larson breached any fiduciary duties, the MLBPA and Wilson cannot succeed on their claim that the arbitrator's decisions must be set aside as contrary to public policy. Thus, the MLB's motion for summary judgment is granted, the MLBPA's claim must be dismissed, and the arbitrator's award upholding the suspension is upheld.

#### IV. Conclusion

Wilson and the MLPBA's claims must fail on both counts. First, Section 301 of the LMRA preempts Wilson's DATWA claim because the DATWA claims are inextricably intertwined with an interpretation of the CBA. By its plain terms, DATWA predicates relief on interpretation and application of the CBA and the drug-testing Policy. Because interpretation of the CBA would underlie any finding of statutory liability in this case, the claims are thus preempted. Furthermore, Section 301's preemption is required in order to enforce a uniform national drug-testing policy for players of the MLB. Allowing the application of DATWA would lead to more players seeking relief from the MLB's drug-testing program by invoking their specific state laws regarding this subject. This in turn would undermine the uniform drug-testing policy, lead to unfair results and suspensions as already demonstrated in this case, and undermine league's reputation to the public at large. We may even go so far to say that without the application of uniform federal labor law policies, players may be allowed to escape the

League's drug-testing program altogether and legally take performance-enhancing substances that would unfairly effect the outcome of the League's games and pose a detrimental threat to the already hurting reputation of the MLB. Accordingly, this court holds that Wilson's DATWA claims preempted by Section 301 of the LMRA and summary judgment is granted.

Secondly, this court holds that the arbitrator's decision must be upheld because the MLB did not owe the players a fiduciary duty to issue product specific warnings concerning the presence of banned substances, and thus the arbitrator's decision did not run contrary to any explicit public policy. The MLB and Larson did issue general warnings regarding all energy boosters, and did so properly within their discretion. While it may have been more favorable for the League and Larson to issue a specific warning concerning the presence of Clomiphene in SpeedShot, the League and Larson were not under any obligation to do so. Additionally, the Policy's explicit application of strict liability provided enough warning to the players that they are the one's responsible for what goes into their body. Consequently, the presence of a strict liability policy and the general warnings regarding energy-boosting supplements were enough to put the players on notice that their actions could lead to their subsequent suspensions. Accordingly, the arbitrator's suspensions must be upheld and the MLB's motion for summary judgment is granted.

SO ORDERED,

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The Honorable Judge Rick Vaughn

## Appendix C

United States Court of Appeals for the  
Fourteenth Circuit

**UNITED STATES COURT OF APPEALS FOR  
THE FOURTEENTH CIRCUIT**

IN THE MATTER OF:

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KEVIN WILSON;  
MAJOR LEAGUE BASEBALL PLAYERS ASSOCIATION,  
PLAINTIFF-APPELLANT

versus

MAJOR LEAGUE BASEBALL,  
DEFENDANT-APPELLEE.

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Appeal from the United States District Court  
for the Southern District of Tulania  
USDC No. 09-AC-0213

Before SCOTT, SHRUTE, and DORN, Circuit Judges.

SCOTT, Circuit Judge:

I. Introduction

In this appeal, Kevin Wilson of the Minnesota Twins and the Major League Baseball Players' 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 Bradly Melton of the Florida Marlins (collectively "the Players"), appeal the district court's granting of a summary judgment in favor of Major League Baseball (MLB), Dr. John Larson, Independent Administrator of the Policy of the MLB Policy on Anabolic Steroids and Related Substances (the "Policy"), and Andrew Birch, the MLB's Vice President of Law and Labor Policy, holding that claims brought under Minnesota's Drug and Alcohol Testing in the Workplace Act (DATWA) claims were preempted by Section 301 of the Labor Management Relations Act (LMRA) and that the arbitrator's decision upholding the plaintiffs' suspensions was not in violation of public policy.

II. Statement of the Facts

This case involves a rather lengthy set of facts concerning the establishment of the Collective Bargaining Agreement between the two parties, the drug testing Policy agreed upon between the two parties, and the subsequent developments that arose concerning the league's response to its discovery that Speedshot, an energy-boosting supplement, contained Clomiphene, a banned substance under the Policy. As there is no dispute to the facts asserted in the District Court's decision, this court adopts that court's statement of the facts as its own.

### III. Prior History

In response to the arbitrator's award, Kevin Wilson filed suit against the MLB, Dr. Larson, Dr. Finkle, and Birch in Minnesota District Court, alleging numerous violations of Minnesota common law and breach of contract. That same day, the state court issued a preliminary injunction blocking the suspension of Kevin Wilson because the MLBPA established a likelihood of success on its claim that the Policy is in violation of Minnesota's Drug and Alcohol Testing in the Workplace Act (DATWA). This injunction, however, only blocked the suspension of Kevin Wilson, as he is the only player employed in the state of Minnesota and subject to that court's jurisdiction. The MLB then removed the case to federal district court. Thereafter, the MLBPA, on behalf of the five players, initiated a separate suit in federal court against the MLB and the Commissioner seeking to have the arbitration awards upholding the suspensions vacated as a violation of public policy. The MLBPA then amended their complaint in federal court, asserting that Wilson's suspension was a violation of Minnesota's Drug and Alcohol Testing in the Workplace Act (DATWA).

The MLB filed a motion for summary judgment claiming that Section 301 of the LMRA preempted Wilson's DATWA claim and that the League had no duty to disclose that SpeedShot contained Clomiphene. The United States District Court for the Southern District of Tullahoma agreed, concluding that Section 301 preempted the Players' DATWA claims. Additionally, the court concluded that the MLBPA's argument—that the MLB and Dr. Larson violated public policy by failing to disclose that SpeedShot contained Clomiphene—failed because Dr. Larson warned players about the energy boosting supplements in general and testified that had a player

asked him about SpeedShot he would have disclosed that it contained Clomiphene. The court determined that Dr. Larson's decision not to provide an ingredient-specific warning was within his discretion. The court further decided the MLB had no duty to specifically inform players when an energy booster supplement is found to contain a banned substance. Therefore, the court granted the league's motion for summary judgment and upheld the arbitrator's suspensions.

#### IV. Analysis

The Players appeal the district court's decision that Section 301 preempts Wilson's Minnesota statutory claim. Additionally, the MLBPA and Wilson appeal the district court's order refusing to set aside the arbitrator's decisions because they claim that the arbitrator's decision sanctions Larson's and the MLB's breaches of fiduciary duty. Whether the district court properly granted the MLB's motion for summary judgment is a question of law that this Court will review *de novo*. *McLean v. Gordon*, 548 F.2d 513, 516 (8th Cir. 2008). The district court's ruling that the DATWA claims are preempted by Section 301 is also subject to *de novo* review. *Bogan v. General Motors Corp.*, 500 F.3d 828, 832 (8th Cir. 2007).

##### A. Wilson's DATWA Claim is Not Preempted by Section 301 of the LMRA.

We first consider the DATWA claim. The MLB asserted, and the district court agreed, that the DATWA claim is preempted because: (1) the claim turns on analysis of the Policy in order to determine whether it "meet or exceeds" DATWA's requirements and (2) uniform interpretation of the CBA/Policy is necessary to preserve the integrity of the MLB's business as

a national organization. The MLB concedes that its steroid testing procedures do not comply with the letter of Minnesota law, but argues that the differences are negligible and do not require the Court to invalidate Wilson’s positive test for Clomiphene.

Section 301 applies to “suits for violation of contracts between an employer and a labor organization,” in other words, suits for breaches of CBAs. 29 U.S.C. § 185(a). The Supreme Court of the United States has held that federal law exclusively governs suits for breach of a CBA and that “the pre-emptive force of [Section] 301 extends beyond state-law contract actions.” *United Steelworkers v. Rawson*, 495 U.S. 362, 369 (1990); *see also Textile Workers Union v. Lincoln Mills*, 353 U.S. 448, 456 (1957); *Allis-Chalmers Corp. v. Lueck*, 471 U.S. 202, 210 (1985). Section 301 preempts state-law claims that are “substantially dependent upon analysis” of a CBA. *Allis-Chalmers*, 471 U.S. at 220. This is so because “the application of state law...might lead to inconsistent results since 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). Rather, “federal labor-law principles—necessarily uniform throughout the nation—must be employed to resolve the dispute. *Id.* However, the Supreme Court has established that Section 301 does not preempt state law claims merely because the parties involved are subject to a CBA and the events underlying the claim occurred on the job. *See Allis-Chalmers*, 471 U.S. at 211 (“Of course, not every dispute concerning employment, or tangentially involving a provision of a collective-bargaining agreement, is preempted by § 301....”).

In applying the Section 301 preemption doctrine, we begin with the “claim itself.” *See Trustees of the Twin City Bricklayers Fringe Benefit Funds v. Superior Waterproofing, Inc.*, 450 F.3d 324, 331 (8th Cir. 2006). The court then applies a two-step approach in order to determine if the claim is sufficiently “independent” to survive Section 301 preemption. *Bogan*, 500 F.3d at

832. First, a “state-law is preempted if it is ‘based on’ [a]...provision of the CBA[,]” meaning that “[t]he CBA provision at issue” actually sets forth the right upon which the claim is based. *Id.* Second, Section 301 preemption applies where a state-law claim “is dependent upon an analysis’ of the relevant CBA,” meaning that that state-law claim requires interpretation of a provision of the CBA. *Id.*

DATWA governs drug and alcohol testing in the Minnesota workplace by imposing “minimum standards and requirements for employee protection” with regard to an employer’s drug and alcohol testing policy. *Minn. Stat.* § 181.955 subdiv. 1. DATWA lists minimum information requirements for the contents of employers’ drug policies. *Id.* § 181.952 subdiv. 1. Pursuant to DATWA, the drug policies of Minnesota employers must provide:

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

*Id.* § 181.952 subdiv. 1(1)-(6). DATWA also sets forth criteria that a testing laboratory must meet in order for an employer to use its services. *Id.* § 181.953 subdiv. 1.

Additionally, DATWA requires that an employer provide an employee, who tests positive for drug use, with “written notice of the right to explain the positive test,” an opportunity “to explain that result,” and the ability to “request a confirmatory retest of the original sample at the employee’s job or applicant’s own expense...” *Id.* §§ 181.953

subdiv. 6(a)-(c). DATWA precludes 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(a). Specifically, with respect to first-time offenders, an employer cannot discharge an employee unless the employee is first given the opportunity to participate in treatment and refuses to participate or fails to successfully complete the program. *Id.* § 181.953 subdiv. 10(b)(1)-(2).

DATWA expressly addresses CBAs. Subdivision two of § 181.955 mandates that DATWA applies to all CBAs in effect after passage of the law in 1987. *See id.* § 181.955 subdiv. 2. Subdivision one, however, provides that DATWA “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....” *Id.* § 181.955 subdiv. 1.<sup>6</sup>

First, the district court found that because Wilson was tested pursuant to a collectively bargained-for drug policy, DATWA liability hinges on whether the Policy affords protections that are equivalent to or greater than DATWA’s mandatory protections. The court asserted that this would necessarily require it construe the terms of the Policy in order to determine whether its protections for the players “meets or exceeds” DATWA’s protections such that any DATWA claim alleged by the Players is preempted by section 301. Thus, the court essentially held that an employee has no

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<sup>6</sup> We note that it is unclear which specific violations of DATWA the Player’s are alleging, other than the failure to use certified laboratories. The amended complaint does not flesh out the claim but generally states that “the defendants have violated the Player’s substantive and procedural rights under the Minnesota Drug and Alcohol Testing in the Workplace Act.”

DATWA claim if he or she is a party to a CBA that is at least as protective of the employee as DATWA. We disagree.

DATWA does not state that an employee who is a party to such a CBA cannot bring a claim under DATWA. Rather, where there is a CBA 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 CBA 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 CBA 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.

Here, a court would have no need to consult the Policy in order to resolve Wilson's DATWA claim. Rather, it 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. Such a claim is not preempted. *See 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 [CBA].’”) (quoting *Lingle*, 486 U.S. at 407); *see also Thompson v. Hibbing Taconite Holding Co.*, No. 08-868, 2008 U.S. Dist. LEXIS 87045, 2008 WL 4737442, \*1, \*4 (D. Minn. Oct. 24, 2008) (holding that a terminated employee’s multiple DATWA claims alleged “violat[i]ons [of] such non-negotiable state law rights [which] d[id] not require an interpretation of the CBA, and would not be preempted under the LMRA.”).

The United States Court of Appeals for the Tenth Circuit considered an analogous fact situation in *Karnes v. Boeing Co.*, 335 F.3d 1189 (10th Cir. 2003). There, a former employee brought an action against Boeing under Oklahoma’s Standards for Workplace Drug and Alcohol Testing Act. *Id.* at 1192. The court observed that “in order to establish a violation of this section, [the plaintiff] must show that Boeing (1) discharged him based on his drug test, and (2) failed to confirm the result through a second test. Neither inquiry requires the court to interpret, or even refer to, the terms of a CBA.” *Id.* Therefore, the court found that the state statutory claim was “clearly independent of the CBA and...not subject to § 301 preemption.” *Id.* at 1194.

Section 301 preempts a state law claim if its “resolution...depends upon the meaning of a collective-bargaining agreement.” *Lingle* 486 U.S. at 405-06. “[T]he Supreme Court has distinguished those which require interpretation or construction of the CBA from those which only require reference to it.” *Superior Waterproofing*, 450 F.3d at 330; *see also Livadas v. Bradshaw*, 512 U.S. 107, 124-25 (1994)(holding there was no section 301 preemption because a wage rate provision of the CBA only had to be referenced to compute the proper damages). “An otherwise independent claim will not be preempted if the CBA need only be consulted during its adjudication.” *Superior Waterproofing*, 450 F.3d at 330. In sum, Section 301 does not preempt every employment dispute, and it does not preempt all other disputes concerning CBA provisions. *Miner v. Local 373*, 513 F.3d 854, 865 (8th Cir. 2008). “Rather, the crucial inquiry is whether ‘resolution of a state-law claim depends upon the meaning of a [CBA].’” *Id.* (quoting *Lingle*, 486 U.S. at 405-06). The MLB does not point to a specific provision of either the CBA or the Policy that must be interpreted.

Finally, the District Court found that denying preemption and subjecting the Policy to divergent state regulations would render the uniform enforcement of the MLB's drug testing policy, on which it relies as a national organization for the integrity of its business, nearly impossible. The United States Court of Appeals for the Ninth Circuit has rejected a similar argument. *See Cramer v. Consolidated Freightways, Inc.*, 225 F.3d 683, 695 n.9 (9th Cir. 2001)(en banc). In *Cramer*, the employer, a large trucking company, "argue[d] that the terms of the CBAs affecting employees in multiple states should supersede inconsistent state laws." *Id.* at 688, 695 n. 9. The Ninth Circuit observed, "This contention overreaches, however, because the LMRA certainly did not give employers and unions the power to displace any state regulatory laws they found inconvenient." *Id.* at 695 n.9.

We think this is the proper result in light of the Supreme Court's observation that:

[T]here [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. Clearly § 301 does not grant the parties to a [CBA] the ability to contract for what is illegal under state law. In extending the pre-emptive effect of § 301 beyond suits for breach of contract, it would be inconsistent with congressional intent under that section to preempt state rules that proscribe conduct, or establish rights and obligations, independent of a labor contract.

*Allis-Chalmers*, 471 U.S. at 211-12; *see also Livadas*, 512 U.S. at 123 (cautioning that section 301 "cannot be read broadly to pre-empt nonnegotiable rights conferred on individual employees as a matter of state law"). Therefore, the district court's reasoning fails.

In sum, Wilson's DATWA claim is predicated on Minnesota law, not the CBA or the Policy, and the claim is not dependent upon an interpretation of the CBA or the Policy. Thus, Wilson's DATWA claim is not preempted by section 301.

B. The Arbitration Award Must Be Vacated Because It Violates Public Policy.

The MLBPA seeks to vacate the arbitration awards that suspended the players because the suspensions violate public policy. The MLBPA acknowledges that a party seeking to set aside an arbitration award bears a very high burden. This court must afford the arbitrator "an extraordinary level of deference" and must confirm the award as long as "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). However, "if the [Policy] as interpreted by the arbitrator violates some explicit public policy, [the Court is] obliged to refrain from enforcing it." *W.R. Grace & Co. v. Local Union 759*, 461 U.S. 757, 766 (1983). It is not enough for the MLBPA to argue that the award violates a general public policy. Rather, the relevant public policy "is to be ascertained 'by reference to the laws and legal precedents and not from general considerations of public interests.'" *Id.* (quoting *Muschany v. United States*, 324 U.S. 49, 66 (1945)).<sup>7</sup>

An arbitration award must be vacated where it runs counter to public policy. *See Ace Elec. Contractors, Inc. v. Int'l Bd. of Elec. Workers, Local Union No. 292*, 414 F.3d 896, 903 (8th Cir. 2005). Courts have frequently ordered arbitration awards to be vacated on public policy

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<sup>7</sup> New York law governs this issue because the Policy is part of the MLB Collective Bargaining Agreement, which states that to the extent that federal law does not govern, New York State law will govern the CBA.

grounds where, as here, an award would sanction behavior that threatens health and safety. *See, e.g., Delta Air Lines, Inc. v. Air Line Pilots Ass'n, Int'l*, 861 F.2d 665, 674 (11th Cir. 1988)(affirming vacation of an award ordering reinstatement of pilot who had been discharged after flying passenger plane while intoxicated); *Iowa Elec. Light & Power Co. v. Local Union 204 of Int'l Bd. of Elec. Workers (AFL-CIO)*, 834 F.2d 1424, 1428 (8th Cir. 1987)(affirming vacation of an award ordering reinstatement of nuclear power plant machinist discharged for deliberately violating a federally mandated safety regulation).

The arbitrator's awards at issue here violate public policy because they sanction the MLB's knowing and intentional breach of a fiduciary duty and willful failure to disclose the fact that SpeedShot secretly contained a banned substance. The league's failure to act was both a violation of the Policy and was potentially harmful to the Players' health. Permitting the arbitration award to stand would endorse this wrongful conduct by the MLB and the officials appointed by the League to supervise the Policy.

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. “A fiduciary relation exists between two persons when one of them is under a duty to act or give advice for the benefit of the other upon matters within 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). A fiduciary relationship “may be found in any case in which...confidence has been reposed and betrayed.” *United Feature Syndicate Inc. v. Miller Features Syndicate, Inc.*, 216 F.Supp.2d 198, 218 (S.D.N.Y. 2002). In order to determine if a fiduciary duty exists,

New York courts conduct a fact-specific inquiry “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.

One of the primary factors underlying the Policy is the concern with the adverse health effects of using prohibited substances. Dr. Larson, as the Independent Administrator of the Policy, had an express duty to educate players about prohibited substances. The Policy specifically provided: “In addition, the Independent Administrator will make himself available for consultation with players and Club physicians; oversee violated protocols; oversee the development of education materials; participate in research on steroids.” The MLB Players were expressly directed to Dr. Larson to ask for information about energy-boosting supplements. Furthermore, while discretionary provisions are important parts of the Policy, Dr. Larson expressly promised in a memorandum sent to all players that he would “continue to provide MLB Players with information on the subject throughout the year.” Dr. Larson failed to live up to that duty by withholding critical information he learned about SpeedShot that was directly relevant to the health of MLB players.

In addition to Dr. Larson’s promise to continually provide MLB players with relevant information on energy-boosting supplements, the MLB held itself and Dr. Larson out to the MLB players as the authoritative sources for information about the ingredients in supplements and energy boosters. The Policy explicitly provides “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.” By declaring itself and Dr. Larson the authoritative sources of information about all supplements, the MLB undertook a duty “to give advice for the benefit of [MLB Players]

upon matters within the scope of the relation,” and the players reasonably relied on the MLB and Dr. Larson’s superior expertise and knowledge about the safety of energy-boosting supplements. *Lumbermans*, 388 F.Supp.2d at 305. These facts alone give rise to a fiduciary duty under New York law. Furthermore, the Policy also 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.” Dr. Larson testified that this “special effort to educate and warn players” was a continuing obligation that is included within the scope of his duties under the Policy.

As their fiduciaries with respect to information about dietary information, Dr. Larson and the MLB owed the players the duty to disclose all material facts they knew within the scope of that relationship, especially facts about banned substances, which would endanger a player’s health. *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 other 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”). In this case there is no dispute that Dr. Larson and Mr. Birch knew that Speedshot contained a banned substance years before the players were tested. Further, it is indisputable that they both deliberately withheld this vital health information from the players.

Dr. Finkle, the toxicologist under the Policy, testified that he informed Dr. Larson that Clomiphene had been identified in SpeedShot, although it was not included in the list of ingredients, and 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.” Despite this knowledge, Dr. Larson deliberately chose not to inform any MLB player or the MLBPA about

these critical facts that threatened the health of MLB players. Shockingly, Dr. Larson 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. This fear of personal liability caused Dr. Larson to conceal his knowledge about the ingredients in SpeedShot from the MLB players and also from the MLBPA. In addition to Dr. Larson, Mr. Birch, the Vice President of Law and Labor Policy at the MLB, also knew of the banned substance in SpeedShot because Dr. Larson told him about it. Birch, however, did nothing to inform the MLB players or the MLBPA.

Had either Dr. Larson or any MLB official informed the Players that SpeedShot contained a banned substance, the players would not have taken it, would not have risked their health, and would not have been suspended. Indeed one of the players only commenced using SpeedShot after the MLB Supplement Hotline advised him that SpeedShot was not on the banned substances list. Rather than denounce Dr. Larson and Mr. Birch's willful failure to disclose the presence of Clomiphene in SpeedShot, the arbitrator expressly condoned and encouraged this behavior by finding that the Policy does not articulate or impose an obligation on the League to issue product specific warnings. The arbitrator's award, therefore, violates public policy because it sanctions and in fact encourages breaches of fiduciary duty which jeopardized the health of MLB players and upheld suspensions for actions that were the direct result of the League's and Dr. Larson's own misconduct. As a result, the district court's ruling is reversed the arbitration awards must be set aside.

V. Conclusion

For the foregoing reasons, we REVERSE the judgment of the district court.