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**IN THE SUPREME COURT OF THE UNITED STATES  
FEBRUARY 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 49  
Counsel for the Petitioner

## **QUESTIONS PRESENTED**

1. Whether Kevin Wilson's challenge to his suspension claim pursuant to the drug policy explicitly defined in a collective bargaining agreement requires an extensive analysis of such collective bargaining agreement and is therefore preempted by Section 301 of the Labor Management Relations Act.
2. Whether an arbitration award validating MLB's decision to issue a general warning on energy boosting supplements violates a dominant, well defined public policy, despite the fact that the collective bargaining agreement entered into by MLB and the MLBPA imposes a strict liability rule on drug policy violations and gives the Policy administrator discretion to determine how best to educate the players about the Policy.

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## STANDARD OF REVIEW

The standard of review for resolving issues involving the preemption of a state law claim by federal law is *de novo*. Bogan v. General Motors Corp., 500 F.3d 828, 832 (8th Cir. 2007). The standard of review of an arbitrator's decision, as prescribed by the Federal Arbitration Act, allows a court to set aside an arbitration award only if the 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).

## STATEMENT OF THE CASE

### I. Factual History

The plaintiffs in this case are Kevin Wilson and the Major League Baseball Players Association (the “MLBPA”). In 2007, the MLBPA and Major League Baseball (the “MLB”) entered into a Collective Bargaining Agreement (the “CBA”) which included the MLB’s policy on anabolic steroids and related substances (the “Policy”). This Policy is run by Dr. John Larson and Ray Finkle. The Policy imposes a strict liability rule on violations making each player solely responsible for his use of a prohibited substance. Players were specifically warned that unintentional violations would not be excused. Under the terms of the Policy, any positive test result indicating the presence of a “prohibited substance” will result in a minimum fifteen game suspension by the Commissioner. The Policy does allow any player to appeal this decision to a neutral arbitrator for a final decision.

The MLB Supplement Hotline (the “Hotline”) was created in conjunction with the Policy to provide players with a reliable source of information on supplements and how they relate to the Policy. Although the Hotline was intended to provide players and coaches with reliable information, players were specifically warned that use of the Hotline would not excuse a violation of the Policy. In 2007, the MLB was informed that some bottles of the energy-boosting supplement SpeedShot contained Clomiphene, a prohibited substance under the Policy. Since Clomiphene was not listed on the bottle, a laboratory test was required to determine its presence. Although this information was not reported to the Food & Drug Administration, the MLB explicitly and repeatedly warned the MLBPA and its players about the dangers of energy boosting supplements. First, the MLB notified the MLBPA that the distributor of SpeedShot, Mega Energy Products, was a banned company which players were prohibited from doing business with. As requested by the MLB, the MLBPA notified its players that all Mega Energy

Products were now prohibited. Second, Dr. Larson sent a memorandum to all MLB players warning them not to take any products that were labeled as energy-boosting supplements, and reminded them of the Policy's strict liability rule. Third, the Hotline was instructed to warn all players not to take energy-boosting supplements because of the danger of undisclosed ingredients.

Although Kevin Wilson was warned repeatedly about the dangers of energy boosting supplements, understood the Policy's strict liability rule, and knew that the maker of SpeedShot was a prohibited company, he nevertheless chose to take SpeedShot before a preseason game. Pursuant to the policy for preseason games, Wilson was tested, and the test indicated he was positive for Clomiphene. Wilson and four other players, who also tested positive for Clomiphene, were suspended for fifteen games as mandated by the CBA. Although they were aware that the maker of SpeedShot was a prohibited company and that energy boosting supplements may have undisclosed ingredients, none of the players contacted Dr. Larson to obtain more information about Speedshot. Dr. Larson testified that if a player had contacted him about SpeedShot he would have told them that it contained a prohibited substance.

At the arbitration proceeding all five players admitted to using SpeedShot. In addition, the players acknowledged that they were aware of the warning against using energy boosting supplements, the availability of the Hotline to request additional information, and the Policy's strict liability rule. The players argued, however, that since Larson was aware of the presence of Clomiphene in SpeedShot, he was required to issue a product-specific warning to all MLB players. This argument was premised on the player's belief that the Policy created a fiduciary duty between the players and the MLB.

The arbitrator upheld all five suspensions based on the following findings: (1) the Policy does not articulate or impose an obligation to issue product-specific warnings and the record provides no indication that the bargaining parties ever contemplated imposing such a requirement; (2) the Policy unquestionably imposed a strict liability rule on violations that makes players solely responsible for the use of a prohibited substances regardless of whether it was intentional or not; (3) all of the players were aware of the strict liability rule and what it meant; (4) under the terms of the Policy Dr. Larson was given discretion to carry out his responsibility to educate the players by issuing a general warning rather than a product-specific warning; and (5) none of the players disputed taking a banned substance.

## **II. Procedural History**

Wilson filed suit in state court claiming that the Policy violated the Minnesota Drug and Alcohol Testing in the Workplace Act (“DATWA”). The case was removed to federal court by the MLB and was consolidated with MLBPA’s claim against the MLB to vacate the arbitration award under the Labor Management Relations Act. The Southern District of Tullahoma granted summary judgment in favor of the MLB on both claims. The Court of Appeals for the Fourteenth Circuit reversed the decision and granted summary judgment to the plaintiffs.

This court is being asked to reverse a judgment by the United States Court of Appeals for the Fourteenth Circuit which reversed the Southern District of Tullahoma’s decision to preempt Minnesota’s Drug and Alcohol Testing in the Workplace Act by the Labor Management Relations Act and to uphold the arbitrator’s decision. The first issue on appeal is whether the plaintiffs challenge to his suspension claim is preempted by Section 301 of the Labor Management Relations Act. The second issue is, if the claim is preempted, whether or not the

arbitrator's decision to enforce the terms of the collective bargaining agreement violates a well-defined, dominate public policy.

## SUMMARY OF THE ARGUMENT

Supreme Court precedent requires that Wilson's claim under the Minnesota Drug and Alcohol Testing in the Work Place Act must be preempted by Section 301 of the Labor Management Relations Act. The Court of Appeals for the Fourteenth Circuit incorrectly upheld Wilson's state law claim against the MLB. Preemption is necessary because Wilson's claim is based on the explicit terms of the CBA. Court precedent clearly establishes that when a state law claim cannot be analyzed independently from a CBA it must be preempted by federal law. Preemption furthers Congress' goal of avoiding a fragmented approach to CBA's, thereby providing consistency in the resolution of federal labor disputes. Resolving Wilson's claim requires an extensive analysis of the CBA in order to determine whether or not the MLB drug policy violated an explicit duty, subsequently requiring his claim to be preempted. Although a state law claim based on a CBA may stand on its own, it must not require an extensive analysis of the CBA itself. Wilson's state law claim cannot stand independently since it requires an analysis of both the Policy and its strict liability rule for violations. Furthermore, Wilson's claim does not set forth a separate or additional duty on which a valid state law claim could stand without consulting the terms of the CBA.

The arbitrator's decision to uphold the suspension of players who violated the terms of the CBA should be restored. Since the arbitration award at issue in this case drew its essence from the CBA the Fourteenth Circuit Court of Appeals was required to be highly deferential in reviewing it. The appeals court failed to meet this obligation because in finding a violation of fiduciary duty it engaged in an impermissible exercise of fact finding, improperly rejecting the arbitrator's interpretation of the contract in favor of its own. Generally, a court reviewing an arbitration award is not permitted to engage in the fact-based inquiry necessary to determine a

fiduciary duty. Even if this were permissible the appeals courts' findings were flawed. Fiduciary duty requires reasonable reliance. In this case the player's reliance on the MLB and Larson was entirely unreasonable. The CBA adopted a strict liability rule on Policy violations making players solely responsible for the use of any substance, and imposed no obligation to issue product-specific warnings. Finally, a fiduciary duty is not the sort of dominant well-defined public policy on which the reversal of an arbitration award may be based. The players had the opportunity to negotiate for product-specific warnings. Having failed to do so, they should not be permitted to revise the CBA under the guise of a tenuous fiduciary duty claim.

## ARGUMENT

**I. Kevin Wilson’s claim challenging his suspension under Minnesota’s Drug and Alcohol Testing in the Workplace Act is inextricably intertwined with the collective bargaining agreement and therefore must be preempted by section 301 of the Labor Management Relations Act.**

Whenever a claimant brings a challenge in connection with a CBA, executed between an employer and labor union, Section 301 of the Labor Management Relations Act requires a “resort to federal rules of law in order to ensure uniform interpretation of collective bargaining agreements...to promote the peaceable, consistent resolution of federal labor disputes.” Lingle v. Norge Div. of Magic Chef, Inc., 486 U.S. 399, 404 (1988); 29 U.S.C. § 185 (a). CBA’s have long been the domain of the federal court system, since adherence to a solid body of uniform federal law is paramount to resolving any dispute that may arise out of that agreement. Allis-Chalmers Corp. v. Lueck, 471 U.S. 202, 210 (1985) (citing Teamsters v. Lucas Flour, Co., 369 U.S. 95, 103-04 (1962)).

Due to the importance of adhering to a uniform governing body of law when interpreting a CBA, the Supreme Court held that when resolution of a state-law claim is either “inextricably intertwined with consideration of the terms of the labor contract” or 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 pre-empted by federal labor-contract law.” Allis-Chalmers Corp., 471 U.S. at 220.

**A. Wilson’s challenge to his suspension must be preempted because his claim requires an extensive analysis of a collective bargaining agreement.**

The test derived from Allis-Chalmers Corp. is straightforward; if a state law claim cannot be analyzed independent from the contractual terms of a CBA, it must be preempted by section 301 of the Labor Management Relations Act. Lingle, 486 U.S. at 408. Allowing a claim that is

dependent on the analysis of a CBA to be resolved under state law would undermine the “interpretive uniformity and predictability which Congress intended to foster with its passage of § 301.” Trustees of Twin City Bricklayers Fringe Ben. Funds v. Superior Waterproofing, Inc., 450 F.3d 324, 334 (8th Cir. 2006) (citing Allis-Chalmers Corp., 417 U.S. at 211.)

The ability of a reviewing court to independently analyze the claim apart from the terms of a CBA is the predominate factor in determining whether or not Section 301 preemption is necessary. Allis-Chalmers Corp., 417 U.S. at 213. Section 301 preemption applies whenever the claim substantially relies upon the terms of the CBA itself even if there is a valid parallel state claim. Anderson v. Ford Motor Co., 803 F.2d 953, 956 (8th Cir. 1986); Allis-Chalmers Corp., 417 U.S. at 213 (“Therefore, state-law rights and obligations that do not exist independently of private agreements, and that as a result can be waived or altered by agreement of private parties, are pre-empted by those agreements.”). Mere *reference* to the CBA, however, will not result in Section 301 preemption - *interpretation* of the terms of the CBA is necessary. Livadas v. Bradshaw, 512 U.S. 107, 124-25 (1994); Twin City Bricklayers, 450 F.3d at 330.

Section 301 preemption often occurs when a claim involving a CBA appears on its face as a pleading of a purely state law issue. United Steelworkers of Am., AFL-CIO-CLC v. Rawson, 495 U.S. 362 (1990) (holding that a state law claim for fraud and negligence was preempted under section 301 of the Labor Management Relations Act since the claims were not independent of the CBA); Gore v. TransWorld Airlines, 210 F.3d 944 (8th Cir. 2000) (holding that an employee’s state law tort action for false arrest and negligence was preempted by federal law); Thompson v. Hibbing Taconite Holding Co., Civ. No. 08-868, 2008 WL 4737442 (D. Minn. Oct. 24, 2008) (holding that an employee’s state law claims were “interwoven” with the CBA and preempted by federal law). Whether it is fraudulent misrepresentation, bad faith, or

tortious breach of contract, the reviewing court must decide if the claim can stand on its own under relevant state law, or if the relief sought is based on an interpretation of the terms of the CBA, regardless of how the claims were termed when the complaint was filed. Allis-Chalmers Corp., 417 U.S. at 211.

In Allis-Chalmers Corp., plaintiff Lueck filed a complaint against his employer and their insurer Aetna Life and Casualty Company alleging bad faith for failure to pay non-occupational disability payments as negotiated under the union's CBA. Allis-Chalmers Corp., 417 U.S. at 206. In reversing the Wisconsin Supreme Court's decision to allow a state claim to proceed against Allis-Chalmers Corp., the United States Supreme Court explained that the fact that "the tort was independent from a contract claim apparently was intended to mean no more than that the implied duty to act in good faith is different from the explicit contractual duty to pay." Id. at 216. Ultimately, both duties depended on an interpretation of the terms of the parties' agreement, and therefore required resolution under federal law. Id. The Allis-Chalmers Corp. decision pointed to a concern echoed by many other courts that to allow "any other result would elevate *form over substance* and allow parties to evade the requirements of § 301 by relabeling their contract claims as claims for tortious breach of contract." Id. at 211 (emphasis added).

In Twin City Bricklayers, Superior Waterproofing brought claims against their union alleging fraudulent and negligent misrepresentation and fraudulent concealment, arguing that the union misrepresented the extent of the employer's contractual fringe benefit obligations. 450 F.3d at 334. The nature of the state law claim - fraudulent misrepresentation of the CBA terms - could not be properly determined without construing key terms located within the CBA. Id. at 335. An important policy underlying this reasoning, as explained by the Eighth Circuit, is that allowing worker's unions to construe CBA terms independent of federal labor law would

undermine the importance and necessity that the CBA serves in the first place. Id. “If state tort law could be used to determine the meaning and effect of CBA’s to evade compliance with their terms under federal law, the uniform system envisioned by Congress for their interpretation and enforcement would be disrupted.” Id.

Claims directly implicating labor unions within the sports industry are often resolved in favor of federal preemption. In Stringer v. Nat’l Football League, the decedent Kory Stringer’s estate brought a wrongful death suit against the NFL alleging that the league had failed to exercise reasonable care when implementing their hot-weather guidelines as they pertained to players practicing on the field, and that Stringer had died from heat stroke as a result of this failure. 474 F. Supp. 2d 894, 910 (S.D. Ohio 2007). The court in Stringer concluded that since the basis of the claim dealt with reasonable care on behalf of the league and the trainers, it was necessary to interpret that standard through the CBA that governed each party. Id. at 911. Since the standard of care created by the hot-weather guidelines was “inextricably intertwined with the terms of the CBA,” Stringer’s claim was preempted by Section 301. Id.; See also, Holmes v. Nat’l Football League, 939 F. Supp. 517, 527 (N.D. Tex. 1996) (noting that plaintiff’s claim of intentional infliction of emotional distress regarding a drug test required the court to “analyze the CBA and the collectively-bargained Drug Program to ascertain whether the Lions defrauded Holmes, or instead had the right to request that he submit to a pre-employment drug test”).

Wilson’s claim before this court simply cannot be resolved without undertaking an extensive interpretation and analysis of the CBA executed between the MLBPA and the MLB. Both his cause of action and access to redress flow directly from the terms of the CBA itself. While DATWA offers a minimum procedure for drug testing in the work place and expressly

references CBA's, it still remains that Wilson's claims are ultimately dependent on a more detailed CBA executed by the parties to this action.

The language of DATWA itself suggests that Wilson's claim should be preempted. Under DATWA parties have the right to negotiate their own drug-testing policies as long as they "meet or exceed" the minimum standards established under the DATWA statute. M.S.A. § 181.955 (1) (2009). It is impossible to determine whether the CBA meets this threshold requirement without extensive interpretation and analysis of its terms, thus making it inextricably intertwined with a congruent state claim under DATWA. This is no different from Lueck's claim in Allis-Chalmers Corp., where the definition of "bad faith" could not be formulated without an analysis of the rights afforded by the CBA. This claim is also analogous to Stringer, where the failure of the duty of care on behalf of the defendant trainer's first required extensive analysis of the CBA to determine what specific extent of care was owed to the decedent. Absent an interpretation of the CBA drug policy, the determination of whether or not the terms of the drug policy "meet or exceed" DATWA standards is rendered impossible.

**B. Wilson's challenge to his suspension is not an independent claim since it fails to create an additional or separate duty apart from the express terms of the collective bargaining agreement.**

Claims are not preempted by Section 301 when a state law obligation creates an additional or separate duty, apart from the terms of the CBA. Hawaiian Airlines, Inc. v. Norris, 512 U.S. 246, 257 (1994). In Hawaiian Airlines a discharged airline mechanic had been fired as a result of his refusal to sign off on a maintenance record for a plane he considered unsafe, and reporting his concerns to the Federal Aviation Administration. Id. at 248. While the Railway Labor Act required arbitration to resolve what the airline had termed "minor working

conditions,” the Supreme Court held that the essence of Norris’ claim rested on state-afforded whistleblower’s protection. Id. at 257. Justice Blackmun, writing for the majority, explained:

Here, in contrast, the CBA is not the “only source” of respondent's right not to be discharged wrongfully. In fact, the “only source” of the right respondent asserts in this action is state tort law. Wholly apart from any provision of the CBA, petitioners had a state-law obligation not to fire respondent in violation of public policy or in retaliation for whistle-blowing. The parties' obligation under the RLA to arbitrate disputes arising out of the application or interpretation of the CBA did not relieve petitioners of this duty.

Id. at 258.

Similarly, in Anderson, the claimant brought an action in state court alleging, *inter alia*, fraudulent misrepresentation. 803 F.2d at 954. The claimant was a laid-off worker for Ford who had been re-hired only to be fired a short time afterward and replaced by those on Ford’s preferential hiring list. Id. at 955. Distinguishing this case from Allis-Chalmers Corp., the court found that Anderson’s claims hinged not on the kind of bad faith that was derivative of the rights afforded by an insurance policy, but rather fraud as defined by Minnesota common law (most of the negotiations were done orally, and were therefore not subject to a CBA at all). Id. at 957. The claim of fraud did not derive from nor was it dependent on any contract. Id. at 958. The Ninth Circuit stated that “[u]nder Minnesota law, proof of fraud does not depend on the existence of any contractual relationship, nor do the standards for judging fraudulent misconduct derive from any contractually-established expectations of the parties.” Id. Based on this reasoning the court held that Anderson’s claims for fraudulent misrepresentation were not dependent on the terms of the CBA, and thus were not preempted by Section 301. Id.

The Court of Appeals incorrectly held that Wilson’s claim was purely “fact-specific,” and created a duty independent from the terms of the CBA. The mere existence of a parallel state claim under DATWA, combined with what the Appeals Court termed “independent facts,” does

not remove the preemptive power of Section 301. The need to analyze the rights and requirements of the Policy in order to find any alleged violation in suspending Wilson clearly indicates that his claim is ‘inextricably intertwined’ with the terms of the CBA. Most of the cases relied on by the Court of Appeals involved claims that were much more clearly isolated from a pre-existing CBA. For example, in Hawaiian Airlines the airline attempted to circumvent Norris’ whistleblower claim by labeling it a dispute over “minor working conditions” as defined in their CBA. This argument was transparent, and as the Ninth Circuit pointed out, did nothing to remove Norris’ common law protection against retaliatory discharge. There was no need to refer to the CBA since the claim stood entirely on its own. In Anderson, the claim of fraud did not have to be channeled through a federal regulatory scheme; the whistleblower claim stood on its own under Minnesota State law. Opposite to the claim in both these cases, Wilson’s claim cannot proceed without direct interpretation of the CBA since he is challenging a suspension that was made pursuant to its explicit terms.

The Court of Appeals incorrectly held that Wilson’s claim was independent from the CBA. The claim flowed directly from the CBA – in particular its drug policy - and therefore cannot be fully analyzed without construing its terms. For this reason Section 301 preemption is required. Preemption is necessary in Wilson’s claim to ensure that the spirit of the policy behind Section 301 will continue to be reinforced. Parties subject to CBA’s must be keenly aware of what they are bargaining for, and what body of law will govern any and all disputes that rightfully develop as a result of this agreement. A finding to the contrary would bolster the fear announced by the Court in Allis-Chalmers Corp. that by “elevating form over substance” parties to a CBA will be able to avoid the necessary application of Section 301. Allis-Chalmers Corp., 417 U.S. at 211.

**II. The arbitration award should be upheld because the decision to issue a general warning on the dangers of energy-boosters did not violate public policy since the collective bargaining agreement gave the MLB broad discretion on how to educate players about the drug policy and players were strictly liable for any violations of this policy.**

Arbitration awards determined pursuant to an arbitration provision in a collective bargaining agreement warrant an extraordinary degree of deference from reviewing courts, W.R. Grace & Co. v. Local Union 759, 461 U.S. 757, 764 (1983), because federal law strongly favors the resolution of labor disputes through arbitration. United Paperworkers Int'l Union v. Misco, Inc., 484 U.S. 29, 37 (1987); Coca-Cola Bottling Co. of St. Louis v. Teamsters Local Union No. 688, 959 F.2d 1438, 1440 (8th Cir. 1992). As long as the award draws its essence from the CBA a reviewing court is precluded from considering the merits of the contract dispute, even if the award is ambiguous. W.R. Grace, 461 U.S. at 764. If there is any possibility that the arbitrator was interpreting and applying the agreement while acting within the scope of his authority a court must enforce the decision, even if it is convinced that the arbitrator committed serious error. United Paperworkers, 484 U.S. at 38. A court may not overturn an arbitrator's decision simply because it believes that its own interpretation of the contract is better than arbitrator's interpretation. W.R. Grace, 461 U.S. at 764. Fact-finding is beyond the authority of a court engaged in the review of an arbitration award. United Paperworkers, 484 U.S. at 45. The privileged status of arbitration awards is subject to a narrow exception covering instances in which the award violates a dominant, well-defined public policy, ascertainable by reference to laws and legal precedents rather than the general considerations of supposed public interests. Muschany v. United States, 324 U.S. 49, 66 (1945); W.R. Grace, 461 U.S. at 766. The public policy exception, however, does not convey a broad judicial power to set aside arbitration awards. United Paperworkers, 484 U.S. at 43.

**A. A reviewing court cannot set aside an arbitration award even if an alleged fiduciary duty was violated since it would be an impermissible encroachment upon the authority of the arbitrator.**

When a CBA includes an arbitration requirement, the parties have explicitly agreed to accept the arbitrator's view of the facts and interpretation of the contract in lieu of those of a court. United Paperworkers, 484 U.S. at 37. Accordingly, a reviewing court cannot reject an arbitrator's factual findings or interpretation of the contract simply because it disagrees with them as long as the arbitration award draws its essence from the agreement. United Paperworkers, 484 U.S. at 38; W.R. Grace, 461 U.S. at 766. A reviewing court is not authorized to consider the merits of an award even though the parties may allege that the award rests on errors of fact or a misinterpretation of the contract. United Paperworkers, 484 U.S. at 36.

Determining the existence of a fiduciary relationship, as illustrated in New York State law, requires a fact-specific inquiry. Lumbermens Mut. Cas. Co. v. Franey Muha Alliant Ins. Services, 388 F.Supp.2d 292, 305 (S.D.N.Y. 2005). Therefore, in order to set aside an arbitration award based on a violation of a fiduciary duty, a reviewing court must reach a different conclusion than the arbitrator on the facts, the proper interpretation of the contract, or both. Id. Since the public policy exception does not empower a reviewing court to engage in otherwise impermissible fact finding, the mere possibility that a violation of fiduciary duty has occurred does not permit the reviewing court to engage in the fact-based inquiry needed to definitely establish that it did in fact occur. United Paperworkers, 484 U.S. at 45.

In this case both parties agreed to resolve challenges to action taken pursuant to the Policy through binding arbitration, and both parties acknowledge that the arbitrator's decision draws its essence from the CBA. The arbitrator found that "...the Policy does not articulate or impose an obligation to issue specific warnings about specific products, and nothing in the

record suggests that the bargaining parties have ever contemplated imposing such a requirement.” The parties bargained for this interpretation and the CBA was entitled to much greater deference than was shown by the United States Court of Appeals for the Fourteenth Circuit.

Rather than deferring to the factual findings and contractual interpretation reached by the arbitrator, as required by precedents like W.R. Grace and United Paperworkers, the Appeals Court cut directly to the merits of the arbitrator’s award and reached its own factual findings and interpretation of the contract. For example, the Appeals Court’s assertion that the league’s failure to act was a violation of the Policy directly contradicts the arbitrator’s finding that the Policy does not impose or articulate an obligation to issue specific warnings about specific products. Since the Appeals Court’s probing inquiry surpassed the limited role a court is allowed to play when reviewing an arbitration award, its decision to set aside the arbitration award should not stand.

**B. In the absence of reasonable reliance there can be no fiduciary duty to disclose.**

Generally, a fiduciary relationship exists if one party reposes confidence in another and reasonably relies on the other’s superior expertise and knowledge. United Feature Syndicate Inc. v. Miller Features Syndicate, Inc., 216 F.Supp.2d 198, 218 (S.D.N.Y. 2002); Lumbermens, 388 F.Supp.2d at 305. The existence of a fiduciary relationship will then give rise to a duty to disclose. Callahan v. Callahan, 127 A.D.2d 298, 300 (N.Y. App. Div. 1987). For example, in Callahan the court concluded that the plaintiff adequately established an actionable breach of duty based on the failure of one of the defendant’s to disclose information pertaining to a separation decree. Id. at 299. Although the defendant represented the plaintiff’s former husband (the other defendant), his friendship with the plaintiff was enough to justify her reasonable reliance on his advice. Id. Similarly, in Grandon v. Merrill Lynch, the court noted that securities

brokers have an implied duty to disclose excessive markups that results from presenting themselves as trusted professionals to investors. 147 F.3d 184, 192 (2d Cir. 1998). However, the establishment of a hotline providing information on prohibited substances does not give rise to a duty to disclose. See Walton-Floyd v. U.S Olympic Comm., 965 S.W.2d 35 (Tex. Ct. App. 1998).

In this case there was no fiduciary relationship because the players' alleged reliance upon the expertise of Dr. Larson and the MLB was unreasonable. The players' own union negotiated the CBA that set forth a strict liability rule on violations of the Policy. Players were warned repeatedly and explicitly about the strict liability rule, and the dangers of taking energy-boosting supplements in light of the possibility that there may be undisclosed ingredients that are included in the Policy's list of prohibited substances. Kevin Wilson (along with every other player in the MLB) was warned, albeit in a general way, that SpeedShot might have undisclosed ingredients that appear on MLB's prohibited substances list and that they would be strictly liable for using it if it contained any of these substances. Despite being fully aware of the risk he was taking - and his liability in the event of a violation - Wilson declined to take advantage of the opportunity to avail himself of Dr. Larson's expertise. Dr. Larson confirmed in his testimony that if a player had called him about Speedshot he would have notified them that it contained a prohibited substance. Kevin Wilson simply had to make a phone call. Since the CBA gave Dr. Larson discretion in carrying out his responsibility to educate players about the Policy, it was unreasonable for Wilson to rely on the assumption that Dr. Larson would provide product-specific warnings for every prohibited substance. The MLBPA could have insisted on a CBA mandating specific disclosure, but having failed to do so, the players must accept the consequences. The players' reliance on the Hotline was also unreasonable since it provided a

general warning that energy-boosting supplements may include undisclosed ingredients that don't appear on the label. They were also warned that using the Hotline would not excuse a positive test.

**C. There is no dominant well-defined public policy mandating specific rather than general disclosure when the disclosing party is given discretion by the explicit terms of the collective bargaining agreement.**

Courts very rarely set aside arbitration awards because of a violation of public policy since an arbitrator's award can be unsupported, poorly reasoned, foolish, or simply wrong and still not be susceptible to judicial interference. Delta Air Lines, Inc. v. Air Line Pilots Ass'n, Int'l, 861 F.2d 665, 670 (11th Cir. 1988). In order to set aside an arbitration award a court must review existing laws and legal precedents to determine whether they demonstrate a "well-defined and dominant" public policy. United Paperworkers, 484 U.S. at 44 (rejecting appeals court's decision to set aside an arbitration award because of a failure to conduct the requisite review of law and precedent while acknowledging that the decision was firmly rooted in common sense). For example, in Delta Air Lines the court found that an arbitration award mandating the reinstatement of a commercial airline pilot who flew while intoxicated violated a clear public policy evidenced by laws in almost every state prohibiting the practice. Delta Air Lines, 861 F.2d at 672. In a similar vein, the Eight Circuit found that an arbitration award requiring the reinstatement of a nuclear plant machinist who had deliberately violated federally mandated safety procedures violated a "well defined and dominant" national policy requiring strict adherence to nuclear safety rules. 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). The conclusion that these two precedents establish that an arbitration award that enables behavior which threatens health and safety is more likely to be set aside confuses correlation with causation. The same court that

decided Iowa Elec. Light & Power Co. found that an arbitration award requiring the reinstatement of a natural gas storage facility employee who violated safety regulations should not be set aside because natural gas is not regulated as extensively as nuclear power even though it is a hazardous substance that raises significant safety concerns. MidAmerican Energy Co. v. Int'l Bd. of Elec. Workers Local 499, 345 F.3d 616, 621 (8th Cir. 2003). Unlike the well-defined regulatory regimes at issue in Delta and Iowa Electric, the concept of a fiduciary relationship defies precise description. United Feature Syndicate Inc., 216 F. Supp. 2d at 218 (quoting Penato v. George, 383 N.Y.S.2d 900, 904 (2nd Dep't 1976)).

This is not a case where information was misrepresented or wholly withheld in violation of a duty to disclose. Wilson, along with every other player in the MLB, was repeatedly warned about the danger of taking energy-boosting supplements in light of the possibility of undisclosed ingredients that appear on the Policy's list of prohibited substances. Furthermore, the players voluntarily entered into a CBA in which they bore sole responsibility for violations of the Policy. Fiduciary duty may require disclosure, but even if it is assumed to apply in this case, more is needed in order for Wilson and the MLBPA to prevail. They must show that Dr. Larson and the MLB had an obligation not just to disclose, but to disclose specific particularized detail - despite the fact that the Policy imposes no such obligation. Meeting this burden requires overcoming the arbitrator's finding that Larson was acting within his discretion under the Policy when he chose to issue a warning on all energy-boosting supplements rather than a specific warning regarding SpeedShot. Since this conclusion was a matter of fact-finding and contractual interpretation a reviewing court must defer to it.

Fiduciary duty is a nebulous concept, and in this case its dictates are further clouded by additional complications. It cannot be said that the arbitrator's award violated a dominant well-

defined public policy. The MLBPA voluntarily entered into a CBA that imposed certain obligations on players like Kevin Wilson. The time to reject those obligations was during collective bargaining negotiations. This Court should not allow renegotiation of contractual terms and reallocation of contractual obligations to be pursued under the guise of a fiduciary duty claim presented under the public policy exception.

### **CONCLUSION**

For the aforementioned reasons, this court should reverse the decision by the Court of Appeals for the Fourteenth Circuit.

Respectfully submitted,

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