No. 09-214

IN THE

Supreme Court of the United States

JON SNOW ET AL.
Petitioner,

v.

NATIONAL COLLEGIATE ATHLETIC ASS'N ET AL.
Respondent.

On Writ of Certiorari To The United States
Court Of Appeals for the Fourteenth Circuit

BRIEF FOR RESPONDENT

Team 8
Counsel of Record

FEBRUARY 4, 2019

QUESTIONS PRESENTED

1. Whether NCAA bylaw 12.5.2.1 restricting student-athlete product advertisements and promotions is an improper restriction of commercial trade in violation of § 1 of the Sherman Antitrust Act?

2. Whether players' state-law claims are preempted by the Labor Management Relations Act where the allegedly breached duties arise out of collective bargaining agreements, and the agreements establish whether and to what extent the NFL has a duty to intervene in players' medical care?

TABLE OF CONTENTS

QUESTIONS PRESENTED ..... **i**

TABLE OF CONTENTS ..... **ii**

TABLE OF AUTHORITIES ..... **iii**

STATEMENT OF THE CASE **1**

SUMMARY OF THE ARGUMENT **1**

I. SHERMAN ANTITRUST ACT CLAIMS 1

II. PREEMPTION OF STATE NEGLIGENCE CLAIMS 2

ARGUMENT **3**

I. NCAA BYLAW 12.5.2.1 DOES NOT VIOLATE SECTION 1 OF THE SHERMAN ACT BECAUSE 12.5.2.1 IS NOT SUBJECT TO THE SHERMAN ACT AND THE REGULATION HAS A PROCOMPETITIVE EFFECT ON THE MARKET FOR AMATEUR ATHLETICS. 3

A. NCAA bylaw 12.5.2.1 is not a restraint on trade or commerce and is therefore not covered by the Sherman Act. 4

B. If the Court holds that the Sherman Act does apply, bylaw 12.5.2.1 satisfies the Rule of Reason and does not violate the Section 1 of the Sherman Act. 6

II. THE PLAYERS' STATE LAW CLAIMS ARE PREEMPTED UNDER SECTION 301 OF THE LABOR MANAGEMENT RELATIONS ACT BECAUSE THEY ARISE FROM COLLECTIVE BARGAINING AGREEMENTS AND CAN ONLY BE RESOLVED BY INTERPRETING COLLECTIVE BARGAINGING AGREEMENTS. 8

A. The players' claims against the NFL are preempted because they are rooted in duties that arise if at all under collective bargaining agreements. 9

B. Labor contract provisions related to the NFL's duties to players and contractual relationships to clubs must be construed in order to resolve the players' claims. . 11

1. Collective bargaining agreements must be interpreted in order to resolve players' negligence-based claims. 12

2. Collective bargaining agreements must be interpreted to determine whether the clubs, not the NFL, have a duty to police player health and safety. 15

CONCLUSION **16**

TABLE OF AUTHORITIES

Cases

Agnew v. NCAA, 683 F.3d 328 (7th Cir. 2012) 4, 7

Allis-Chalmers Corp. v. Lueck, 471 U.S. 202 (1985) .....passim

Cal. Dental Ass'n v. FTC, 526 U.S. 756 (1999).....7

Caterpillar Inc. v. Williams, 482 U.S. 386 (1987).....9, 13

Dent v. Nat'l Football League, No. C 14–02324 WHA, 2014 WL 7205048 (N.D. Cal. Dec. 17, 2014).....14

Duerson v. Nat'l Football League, No. 12 C 2513, 2012 WL 1658353 (N.D. Ill. May 11, 2012).....12

Gaines v. NCAA, 746 F. Supp. 738 (M.D.Tenn. 1990).....6

Hennessy v. NCAA, 564 F.2d 1136 (5th Cir. 1977) 4, 5, 6

In re National Hockey League Players' Concussion Injury Litigation, 189 F. Supp. 3d 856, 869-70 (D. Minn. 2016).....10, 11

Int'l Bhd. of Elec. Workers v. Hechler, 481 U.S. 851 (1987).....passim

Jones v. NCAA, 392 F. Supp. 295 (D. Mass. 1975).....5

Justice v. NCAA, 577 F. Supp. 356 (D. Ariz. 1983) 4

Lingle v. Norge Div. of Magic Chef, 486 U.S. 399 (1988).....13, 14

NCAA v. Board of Regents of the Univ. of Okla., 468 U.S. 85 (1984) 4, 5, 6, 7

Reiter v. Sonotone Corp., 442 U.S. 330 (1979).....1

Simpson v. Union Oil Co. of Cal., 377 U.S. 13 (1964).....5

Smith v. NCAA, 139 F.3d 180, 185 (3rd Cir. 1998).....6

Stringer v. Nat'l Football League, 474 F. Supp. 2d 894, 907 (S.D. Ohio 2007) 11, 12, 14

Teamsters v. Lucas Flour Co., 369 U.S. 95 (1962) 2, 8

United Steelworkers v. Rawson, 495 U.S. 362 (1990).....3, 8, 9, 10

Williams v. Nat'l Football League, 582 F.3d 863 (8th Cir. 2009).....9, 12

Other Authorities

Herbert Hovenkamp, *Antitrust Law* (1998).....7

NFL Players Ass'n, *Collective Bargaining Agreement* (2006).....13, 16

NFL Players Ass'n, *Collective Bargaining Agreement* (2011)..... 10, 13, 15, 16

R. Bork, *The Antitrust Paradox* 66 (1978).....1

STATEMENT OF THE CASE

Jon Snow and other prominent college football players entered into an agreement with Apple to be compensated for the use of their image on a new Apple Emoji Keyboard, initially receiving $1,000 for the use of their image and a subsequent royalty of one dollar for every customer download of the keyboard. Other student athletes complained to the NCAA and Snow was indefinitely suspended. NCAA bylaw 12.5.2.1. states that no student-athlete may "(a) Accept[] any remuneration for or permit[] the use of his or her name or picture to advertise, recommend or promote directly the sale or use of a commercial product or service of any kind." The players argue this restriction is a violation of Section 1 of the Sherman Antitrust Act.

The New Orleans Saints later drafted Snow. Snow and other National Football League (NFL) players took prescription medications prescribed by team doctors and trainers. Each doctor and trainer was employed by the players' respective Club and not by the NFL. The players allege that Club physicians failed to disclose the medications' side effects and risks, which allegedly include addiction to pain killers and enlarged internal organs. The players have brought state law negligence claims alleging that the NFL is liable for failing to intervene to prevent excessive painkiller prescription by Club staff.

SUMMARY OF THE ARGUMENT

I. SHERMAN ANTITRUST ACT CLAIMS

NCAA bylaw 12.5.2.1 does not violate Section 1 of the Sherman Act. Congress deliberately designed the Sherman Act as a "consumer welfare prescription" to protect consumer choice from the structural harms of diminished competition in a monopolized market. *Reiter v. Sonotone Corp.*, 442 U.S. 330 (1979) (quoting R. Bork, *The Antitrust Paradox* 66 (1978)). The Courts have regularly upheld NCAA eligibility restrictions in recognition of the fact that

preserving the unique characteristics of student-athletes also preserves consumer choice for fans and athletes. The NCAA enjoys broad leeway not because NCAA bylaws are *per se* valid as a matter of law, but because the bylaws ensure that an amateur athletic product distinct from professional sports exists at all. The bylaws, especially NCAA eligibility rules, ensure a more diverse market for sports entertainment by preserving the tradition of amateur athletics at the collegiate level.

NCAA bylaw 12.5.2.1 is an eligibility rule not subject to restrictions under the Sherman Act. The Sherman Act only applies to "restraint[s] of trade or commerce." Bylaw 12.5.2.1 is not a restriction on the trade of amateur athletic labor but rather a restriction on what characteristics are necessary to qualify as an amateur athlete. Even if the Court finds that the Sherman Act does apply, under § 1 of the Sherman Act the players must establish not only a restraint in trade but an *unreasonable* restraint in trade. Sherman Act, § 1, 15 U.S.C. § 1. In evaluating whether a restraint in trade is "unreasonable," players bear the burden of showing that an agreement or contract has an anticompetitive effect on a given market within a given geography. NCAA eligibility rules do not have an anticompetitive effect on the market for amateur football; rather the eligibility rules ensure amateur football continues to exist. Because NCAA bylaw 12.5.2.1 is therefore a reasonable restraint on trade under the Sherman Act, this Court should affirm the decision of the Fourteenth Circuit Court of Appeals.

II. PREEMPTION OF STATE NEGLIGENCE CLAIMS

Section 301 of the Labor Management Relations Act preempts the players' state-law negligence claims. Congress enacted § 301 so that rights and duties created through collective bargaining would prevail over inconsistent local common law rules. *Teamsters v. Lucas Flour Co.*, 369 U.S. 95, 104 (1962). Thus, this Court has repeatedly held that state-law tort claims are

preempted if they cannot be resolved without interpreting collective bargaining agreements. *See Allis-Chalmers Corp. v. Lueck*, 471 U.S. 202, 209 (1985); *Int'l Bhd. of Elec. Workers v. Hechler*, 481 U.S. 851, 859 (1987); *United Steelworkers v. Rawson*, 495 U.S. 362, 370-72 (1990).

In the present case, players have brought claims for relief under the common law duties of various states, all of which implicate dozens of collective bargaining agreement provisions and are therefore preempted under § 301. First, the players' claims arise directly from their collective bargaining agreements, which establish both the NFL and Clubs' duty of care regarding player health and safety. *See Rawson*, 495 U.S. at 370-72. Second, resolution of the players' claims substantially depends on analysis of the terms of the players' labor contracts. To determine whether the NFL owed players a duty to stop Clubs' alleged abuse of prescription drugs, the Court must interpret both the scope of the NFL's medical duties under collective bargaining agreements, *see Lueck*, 471 U.S. at 218-19, and whether the agreements make the Clubs and not the NFL responsible for policing players' health, *see Hechler*, 481 U.S. at 861-62. Because the players' claims both arise from and rest upon the interpretation of collective bargaining agreements, this Court affirm the decision of the Fourteenth Circuit Court of Appeals.

ARGUMENT

I. NCAA BYLAW 12.5.2.1 DOES NOT VIOLATE SECTION 1 OF THE SHERMAN ACT BECAUSE 12.5.2.1 IS NOT SUBJECT TO THE SHERMAN ACT AND THE REGULATION HAS A PROCOMPETITIVE EFFECT ON THE MARKET FOR AMATEUR ATHLETICS.

Section 1 of the Sherman Antitrust Act only applies to anticompetitive trade and commerce. If an action is not commercial it is not covered by the Act. Bylaw 12.5.2.1 is an eligibility restriction that is not regulating commercial activity and therefore is not covered by the Sherman Act. Should the Court find that the Sherman Act does apply, in order to establish a successful claim under § 1 of the Sherman Act a plaintiff must prove the existence of a contract,

combination or conspiracy, a resultant unreasonable restraint of trade in the relevant market, and an accompanying injury. 15 U.S.C. § 1. A claim will fail unless all elements are met.

In the present case, the players fail to establish an unreasonable restraint on trade under this Court's Rule of Reason analysis. The Rule of Reason requires players to establish an anticompetitive impact that overcomes any procompetitive justifications. *NCAA v. Board of Regents of the Univ. of Okla.*, 468 U.S. 85 (1984). However, this Court has indicated that most NCAA regulatory controls are procompetitive and would survive antitrust challenges. *Agnew v. NCAA*, 683 F.3d 328 (7th Cir. 2012). The players therefore fail to establish the necessary elements of a claim under § 1 of the Sherman Act.

A. NCAA bylaw 12.5.2.1 is not a restraint on trade or commerce and is therefore not covered by the Sherman Act.

Bylaw 12.5.2.1 is an eligibility rule with no direct restraint on the market for labor between student athletes and member schools and is therefore not subject to antitrust regulation. The Sherman Act requires a finding of a contract, conspiracy or combination that results in an unreasonable restraint of trade in the relevant market. 15 U.S.C. § 1. Courts have frequently drawn distinctions between commercial NCAA rules and primarily non-commercial eligibility rules in determining whether they are a restraint on trade. In *Justice v. NCAA*, the U.S District Court for the District of Arizona highlighted the differing treatment of rules that protect the amateur nature of collegiate athletics and those of an increasingly commercial nature. 577 F. Supp. 356, 383 (D. Ariz. 1983). The *Justice* court highlighted rules limiting the number of assistant coaches at member institutions in *Hennessy v. NCAA*, 564 F.2d 1136 (5th Cir. 1977), and the rule against participating in professional athletic leagues in *Jones v. NCAA*, 392 F. Supp. 295 (D. Mass. 1975), as examples of non-commercial regulations rooted in the goal to preserve amateurism.

In *Hennessy*, the U.S Court of Appeals for the Fifth Circuit held that the NCAA was "not entitled to a total exclusion from anti-trust regulations," but acknowledged the NCAA is trusted with ensuring the competitive health and amateur nature of the whole system. *Hennessy*, 564 F.2d at 1149, 1153. Similarly, the *Jones* court, in weighing the eligibility rule requiring that amateur athletes never receive compensation from professional sports clubs, held that the Sherman Act does not reach amateur eligibility rules. *Jones* 392 F. Supp. at 303. Moreover, the NCAA rules protecting amateurism differ significantly from the commercial regulations at issue in *Board of Regents*, 468 U.S. at 85, where member organization successfully challenged a NCAA agreement to televise games. This Court specifically highlighted the difference between these two categories of NCAA regulations, stating:

> The specific restraints on football telecasts that are challenged in this case do not, however, fit into the same mold as do rules defining the conditions of the contest, the *eligibility of the participants*, or the manner in which members of a joint enterprise shall share the responsibilities and the benefits of the total venture. *Board of Regents*, 468 U.S. at 117 (emphasis added).

Eligibility rules are non-commercial because they do not define the relationships between member organization, amateur-athletes, and other stakeholders. Instead, eligibility regulations determine who can in fact be classified as an amateur-athlete. Yet the District Court in the present case was correct on one count, acknowledging that the "mere fact that a rule can be characterized as an 'eligibility rule,' however, does not mean the rule is not a restraint of trade." "[C]lever manipulation of words" is not enough to avoid antitrust regulations designed purposefully broad. *Simpson v. Union Oil Co. of Cal.*, 377 U.S. 13, 21–22 (1964).

The best way to protect amateurism is to maintain a clear demarcation between college athletics and professional sports. *Hennessey*, 564 F.2d at 1153. Professional athletics are the ultimate commercialization of competition. The overriding purpose of the eligibility rules is the

"opposite extreme—to prevent commercializing influences from destroying the unique product of NCAA college football." *Gaines v. NCAA*, 746 F. Supp. 738, 744 (M.D.Tenn. 1990). Eligibility rules seeking to protect amateurism have a substance that goes directly preserving the identity of the student athlete, regardless of how the rules are characterized characterization. Other eligibility rules concern class attendance by athletes, high school GPA minimums, and high school course selection. In *Smith v. NCAA*, for example, the U.S Court of Appeals for the Third Circuit held that the post-baccalaureate bylaw limiting student athletes from participating in athletics at graduate schools other than their undergraduate school was not subject to the Sherman Act because eligibility rules are not related to the commercial or business activities of the NCAA. 139 F.3d 180, 185 (3rd Cir. 1998). In the present case, however, Bylaw 12.5.2.1 directly seeks to prevent commercializing influence in the form of product endorsements from directly changing the nature of the amateur athlete. Bylaw 12.5.2.1 does not restrain trade or commerce in the market for amateur football but rather differentiates the product offered, college football, from the professional product, and is therefore not subject to regulation under the Sherman Act.

B. If the Court holds that the Sherman Act does apply, bylaw 12.5.2.1 satisfies the Rule of Reason and does not violate the Section 1 of the Sherman Act.

The players fail to establish that bylaw 12.5.2.1 produces an unreasonable anticompetitive effect on the market. Bylaw 12.5.2.1 ensures the "preservation of the student-athlete in higher education …and is entirely consistent with the goals of the Sherman Act." *Board of Regents*, 468 U.S. at 120. The Sherman Act does not preclude all restraints on trade, only those that are unreasonable and have an anticompetitive effect. *Id.* at 98. Courts have established three categories of analysis for measuring the anticompetitive effects of an action—per se, quick-look and Rule of Reason—though the lines between the inquiries are often murky.

Cal. Dental Ass'n v. FTC, 526 U.S. 756, 779 (1999). This inquiry of "whether or not the challenged restraint enhances competition" requires an initial finding that NCAA has market power. *Id.* at 780. Neither party here is disputing that the NCAA has market power in the regulation of amateur athletics and more broadly in the distribution of sport entertainment.

The per se rule is only appropriate when "a practice facially appears to be one that would always or almost always tend to restrict competition and decrease output." *Board of Regents*, 468 U.S. at 100. The quick look rule is appropriate where there are obvious indications of anticompetitive action, but "there are nonetheless reasons to examine potential procompetitive justifications." *Agnew*, 683 F.3d at 336 (citing Herbert Hovenkamp, *Antitrust Law*, ¶1911c, at 273 (1998). The standard structure for analyzing an action's anticompetitive impact is the Rule of Reason.

Under the Rule of Reason, the plaintiff must establish that an action or policy has an anticompetitive effect on a market within a region. The players here do not establish that Rule 12.5.2.1 in fact has anticompetitive effect. Regardless, under the Rule of Reason inquiry Respondents can "show that the restraint in question actually has a procompetitive effect on balance." *Agnew*, 683 F.3d at 335-36. Like many challenged NCAA regulations, especially eligibility rules, bylaw 12.5.2.1 appears to be anticompetitive but serves to preserve the unique product that collegiate athletics. Preservation of the amateur product ensures that diversity of choice is preserved, maintaining greater diversity in the market than if the rules were not in force. Thus, contrary to what players claim, the restriction on student athletes receiving compensation for the use of their likeness to endorse products or services protects the competitive market for sports entertainment.

As the players cannot establish a violation of or an injury resulting under § 1 of the Sherman Act, we respectfully request that this Court affirm the opinion of the Court of the Appeals.

II. THE PLAYERS' STATE LAW CLAIMS ARE PREEMPTED UNDER SECTION 301 OF THE LABOR MANAGEMENT RELATIONS ACT BECAUSE THEY ARISE FROM COLLECTIVE BARGAINING AGREEMENTS AND CAN ONLY BE RESOLVED BY INTERPRETING COLLECTIVE BARGAINGING AGREEMENTS.

This Court has repeatedly held that state tort law actions that depend upon the analysis of terms in a collective bargaining agreement are preempted by Section 301 of the Labor Management Relations Act. *See, e.g.*, *Lueck*, 471 U.S. at 209; *Hechler*, 481 U.S. at 859 (1987). Recognizing that Congress enacted § 301 to protect arbitration as the primary forum for resolving collective bargaining disputes, this Court found that federal labor law should uniformly prevail over "inconsistent local rules." 471 U.S. at 210 (citing *Lucas Flour*, 369 at 104). Therefore, to determine whether a claim is preempted under a collective bargaining agreement (CBA), this Court examines the CBA to ascertain the nature and scope of the duties of the parties, 481 U.S. at 860, and whether the matter can be resolved independently under state or federal law without reference to the CBA, 471 U.S. at 213.

Though the players seek damages for injuries allegedly caused by medications prescribed by their Club physicians, the players sued neither the Clubs who employ the physicians nor the doctors who provided said medications. Instead, the players allege that the NFL owed them a common law duty to intervene in their medical care. Under this Court's well-established precedent, the players negligence claims are preempted because (A) the claims arise directly from collective bargaining agreements, *see Rawson*, 495 U.S. at 370-72, and (B) CBA provisions

related both to the NFL's duties and to the NFL's contractual relationships must be construed to resolve the players' claims, *see Lueck*, 471 U.S. at 214-16; *Hechler*, 481 U.S. at 859-62.

A. The players' claims against the NFL are preempted because they are rooted in duties that arise if at all under collective bargaining agreements.

The players' claims allege that the NFL breached health and safety duties that arise if all from collective bargaining agreements. This Court has held that Section 301 preempts state-law claims for negligence in the performance of a duty arising directly out of a labor contract. *Rawson*, 495 U.S. at 370-72; *see also Caterpillar Inc. v. Williams*, 482 U.S. 386, 394 (1987) ("Section 301 governs claims founded directly on rights created by collective-bargaining agreements"); *Williams v. Nat'l Football League*, 582 F.3d 863, 874 (8th Cir. 2009) ("a state-law claim 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") (citation and internal quotation marks omitted).

In *Rawson*, this Court held that § 301 preempted claims that a union negligently performed mine safety inspections because the union participated in the inspections pursuant to the provisions of a collective bargaining agreement. 495 U.S. at 371. The union performed the inspections because it owed a duty to miners under the CBA, this Court found, not because the union owed a general duty of reasonable care to "every person in society." *Id.* at 371-72. Specifically, this Court determined that the union assumed a duty to inspect mines when it established through the collective bargaining process a joint safety committee that bore responsibility for overseeing mine safety programs. *Id.* at 370-71.

In the present case, the alleged medical duties the NFL owes to players also arise from the collective bargaining process and not from a general duty of reasonable care owed to the public at large. The NFL imposes "uniform duties" on all clubs in the same way the union

imposed a duty on the joint safety committee to inspect mines in *Rawson*: through the bargaining process. *Rawson*, 495 U.S. at 371-72. It is through the collective bargaining process, if at all, that the NFL and its Clubs assumed health and safety related duties, including regarding the provision of medical care to players, *see* NFL Players Ass'n, *Collective Bargaining Agreement* Art. XXXIX § 1-2 (2011), team doctors' disclosure obligations, *id.*, and the receipt of players' advice and guidance on medical care, *id.* at § 3. The CBA also forms a Joint Committee on Player Safety and Welfare to address "the player safety and welfare aspects" of playing rules, *id.* at Art. L § 1, akin to the joint safety committee through which the union assumed a mine safety duty under the *Rawson* collective bargaining agreement, 495 U.S. at 370. Because these provisions expressly delineate the obligations of the NFL with respect to players' health and safety, any obligations the NFL owes to police player health and safety therefore arise under the CBAs. The players, like the miners in *Rawson*, nevertheless argue that state tort law should nevertheless govern their claims. However, as this Court made clear in *Rawson*, § 301 preemption "cannot be avoided" merely by characterizing what a party does pursuant to a bargaining agreement as a state-law tort. 495 U.S. at 372. Otherwise, the players would be able to "evade the requirements" of § 301 and the rights and duties established by labor contracts and the bargaining process. *Id.* at 369.

While several lower courts have declined to extend *Rawson* to preempt claims brought by players against professional sporting leagues, the present case differs from previous cases in several important aspects. In *In re National Hockey League Players' Concussion Injury Litigation*, for example, the U.S. District Court for the District of Minnesota found that concussion risk-related claims brought by former players did not involve duties arising from a CBA. 189 F. Supp. 3d 856, 869-70 (D. Minn. 2016). There, the district court found it significant

that the National Hockey League could not identify CBA provisions establishing a duty to warn players of the neurological damage caused by head trauma, *id.* at 869, and that the players were retired at the time they brought suit and therefore not covered by CBAs, *id.* at 870. Neither fact is true in the present case. Because Jon Snow and the other players are still in the League, they remain subject to CBAs, and the NFL has identified numerous provisions through which the alleged duty to intervene in Clubs' provision of medical care arose if it did so at all. Thus, this Court need not look beyond the pleadings or the documents they "fairly embrace" to determine that the CBAs preempt the players' claims. *See id.* at 860; *see also Stringer v. Nat'l Football League*, 474 F. Supp. 2d 894, 907 (S.D. Ohio 2007) (finding that *Rawson* preemption did not apply where the NFL did not assume duties to protect players from heat-related illnesses under CBAs).

Because the NFL's duty to police Club's health-and-safety treatment of players is created, if at all, by collective bargaining agreements, the players' claims are preempted by § 301 of the Labor Management Relations Act.

B. Labor contract provisions related to the NFL's duties to players and contractual relationships to clubs must be construed in order to resolve the players' claims.

Even if this Court finds that the players' claims do not arise from collective bargaining agreements, the claims are still preempted under Section 301 because their resolution substantially depends on the analysis of labor contract terms. The players' CBAs include numerous health and safety provisions that must be interpreted in order to determine whether the NFL breached an alleged supervisory duty over Club medical staff. Indeed, the players' claims are "inextricably entwined" with the CBAs in two ways. *Lueck*, 471 U.S. at 213. First, the Court must assess the scope of the duties the CBAs place on the NFL to supervise Club medical staff in

order to resolve players' negligence claims. Second, the Court must evaluate whether the CBAs allocated the alleged duties to Clubs and not to the NFL.

1. Collective bargaining agreements must be interpreted in order to resolve players' negligence-based claims.

The scope of the NFL's alleged duty to supervise club medical staff can only be determined by interpreting the many requirements the CBA imposes on club medical staff and player health and safety. This Court has repeatedly held that state-law tort actions that rest on the interpretation of the terms of a collective bargaining agreement are preempted by § 301. *Lueck*, 471 U.S. at 218-19; *Hechler*, 481 U.S. at 859. Accordingly, lower courts have repeatedly held in the professional sporting league context that player state-law negligence claims are preempted if their resolution depends upon an analysis of labor contracts. *See, e.g.*, *Williams*, 582 F.3d at 880-82 (finding that resolution of NFL players' negligence claims related to non-disclosure of banned substances substantially depended on interpretation of CBA provisions); *Stringer*, 474 F. Supp. 2d at 909 (finding that resolution of NFL players' wrongful death claims related to heatstroke complications substantially depended on analysis of CBA terms); *Duerson v. Nat'l Football League*, No. 12 C 2513, 2012 WL 1658353, at *4–6 (N.D. Ill. May 11, 2012) (finding that resolution of a NFL player's concussion-risk related claims substantially depended on analysis of CBA terms).

In *Lueck*, this Court found that § 301 preempted an employee's state law tort regarding disability insurance payments because resolution of the claim depended substantially upon analysis of a collective bargaining agreement. 471 U.S. at 214-16. Though the employee's claim regarding *how* the payments were made was not in express conflict with the CBA, this Court found that the claim was still preempted because it was "inextricably intertwined" with the with the terms of the CBA covering provision of the insurance program. *Id.* at 213. The same

reasoning applies here, where CBAs establish the minimum qualifications Clubs must meet in hiring physicians and trainers to protect player health and safety. Like the CBA in *Lueck*, which established an implied duty to act in good faith in handling insurance benefits, *id.* at 216, the players' CBAs established specific medical duties that are relevant to determining whether the NFL owed players an implied duty of care to police Clubs' prescription drug policies. The CBAs require club physicians to "comply with all federal, state, and local requirements," NFL Players Ass'n, *supra,* at XXXIX § 1, and to advise players in writing if a "condition could be significantly aggravated by continued performance . . . before the player is again allowed to perform on-field activity," NFL Players Ass'n, *Collective Bargaining Agreement* Art. XLIV § 1 (2006). The CBAs also obligate Club physicians to disclose "any and all information about the player's physical condition." NFL Players Ass'n (2011), *supra*, at XXXIX § 1. These provisions establish the contractual "expectations of the parties that must be evaluated under federal contract law" in order to determine whether the NFL assumed a duty to intervene to stop players' alleged mistreatment. 471 U.S. at 217. The fact that the CBAs do not expressly address disclosure of prescription drug risks is irrelevant if the parties understood that the CBAs implied that the NFL would intervene in players' in medical care. *See id.* at 216 (finding that it is "within the power of the parties to determine" what constitutes reasonable performance of a labor contract).

The present case would be different if the players' claims could be resolved without construing their labor contracts. This Court has made clear that state-law claims are "independent" of § 301 only if they can be resolved without interpreting collective bargaining agreements. *See Lingle v. Norge Div. of Magic Chef,* 486 U.S. 399, 411 (1988); *see also Caterpillar*, 482 U.S. at 396 n.10 ("claims bearing no relationship to a collective-bargaining

agreement . . . are simply not pre-empted by § 301"); *Lueck*, 471 U.S. at 210-11 ("not every dispute . . . tangentially involving a provision of a collective bargaining agreement, is pre-empted by § 301"). Thus, in *Lingle*, this Court found that an employee's retaliatory discharge claim could be resolved without interpreting her union's collective bargaining agreement because the claim rested on purely factual questions. 486 U.S. at 406. Under the state's worker compensation statute the employee needed only to prove that she was discharged and her employer's motive for doing so, this Court concluded, and neither inquiry rested on the meaning of the CBA. *Id.* at 407. The same is not true in the present case, where factual determinations alone cannot resolve the players' negligence-based claims. Rather, the players must establish that the NFL owed them a duty to curb Club medication abuse, an analysis that requires establishing the degree of care the NFL owed the players and what level of intervention was appropriate under the circumstances. *See, e.g.*, *Stringer*, 474 F. Supp. 2d at 910 (finding that "the degree of care owed" by the NFL to players cannot be "considered in a vacuum" but rather must be established in reference to CBAs). Moreover, while the employee in *Lingle* brought a claim under state worker compensation statute, *id.* at 402, no such individual cause of action exists in the present case. The players allege violations of federal statutes only to attempt to buttress their state-law claims; no right of action is "allowed or asserted" under the statutes themselves. *See Dent v. Nat'l Football League*, No. C 14–02324 WHA, 2014 WL 7205048, at *10 (N.D. Cal. Dec. 17, 2014) (discussing the lack of individual causes of action under the Controlled Substances Act and the federal Food, Drug, and Cosmetic Act). Therefore, whether or not the NFL owed or breached a duty of care still rests on the interpretation of CBAs ensuring players' access to adequate medical care.

Because the resolution of players' state-law claims requires construing CBAs to determine what duty, if any, the NFL owed players, the players' claims are preempted by § 301 of the Labor Management Relations Act.

2. Collective bargaining agreements must be interpreted to determine whether the clubs, not the NFL, have a duty to police player health and safety.

Determining whether the NFL assumed a duty of care to players requires the interpretation of collective bargaining provisions that allocate responsibilities for player medical care between the NFL, the Clubs, team doctors and trainers, and the players themselves. This Court has held that Section 301 preempts claims that rest upon a determination of which party assumed an alleged duty of care under a CBA. *Hechler*, 481 U.S. at 861-62.

In *Hechler*, this Court found that it could not resolve an electrical workers' tort claims against her union without first determining whether the union had accepted a duty of care that otherwise belonged to the state. 481 U.S. at 859-62. Because the worker's claims could not be resolved without determined whether the union had assumed the duty of care under a collective bargaining agreement, this Court held that the worker's claims were preempted under § 301. *Id.* Here, too, the Court must interpret CBAs in order to determine whether the NFL contractually assumed the duties the players allege it breached. The CBA allocates many health and safety duties to the Clubs and to Club physicians. Each Club has the responsibility under the 2011 CBA to cover "the cost of medical services rendered by Club physicians," to retain a "board-certified orthopedic surgeon," and to retain "at least one at least one board-certified internist, family medicine, or emergency medicine physician." NFL Players Ass'n (2011), *supra*, at XXXIX § 1. The CBA vests Club physicians with a responsibility to "advise the player[s] in writing" if "a serious injury or career threatening physical condition . . . significantly affects the player's performance or health." *Id*. Club physicians must also disclose "any and all information about

the player's physical condition," *id.*, and ensure that players "receive such medical and hospital care" as the physicians deem necessary, NFL Players Ass'n (2006), *supra*, at App. C. These provisions suggest that the CBAs determine whether the Clubs and not the NFL assumed the duty of care to supervise medical personnel, 481 U.S. at 861, just as the CBA in *Hechler* determined whether the union and not the state assumed an occupational safety duty for the electrical worker, *id.* at 862. While players nevertheless argue that their claims can be resolved under state tort law without completing this assumption of care analysis, this Court has disagreed, warning in *Hechler* that the "need for federal uniformity in the interpretation of contract terms" demands preemption where a CBA may allocate responsibilities among the parties. *Id.* at 862. Indeed, the players' negligence allegations "assume significance if—and only if" the NFL and not the clubs "assumed the duty of care the complaint alleges" the NFL breached. *Id.* at 861.

Because resolution of the players' claims rests on an analysis of labor contracts to determine whether the NFL or the Clubs owed players the duty of care allegedly breached, § 301 of the Labor Management Relations Act preempts the players claims.

CONCLUSION

For all the foregoing reasons, this Court should uphold the ruling of the Court of Appeals for the Fourteenth Circuit on both questions presented.

Respectfully submitted,

/s/ Team 8

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