IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

DUSTIN FOWLER Plaintiff, v. THE ILLINOIS SPORTS FACILITIES AUTHORITY, and CHICAGO WHITE SOX LTD. Defendants.	No. _____

NOTICE OF REMOVAL

PLEASE TAKE NOTICE that, for the reasons set forth below, Defendant Chicago White Sox Ltd. (the "White Sox"), by their undersigned attorneys, and with the consent of Defendant Illinois Sports Facilities Authority (the "ISFA") (together, the "Defendants") files this Notice of Removal to remove the claims against Defendants in this action from the Circuit Court of Cook County, Illinois, to the United States District Court for the Northern District of Illinois pursuant to 28 U.S.C. §§ 1367, 1441 and 1446. Removal is made pursuant to 28 U.S.C. § 1331 on the basis of federal question jurisdiction. The grounds for removal are as follows:

I. INTRODUCTION AND BACKGROUND

1. On January 8, 2018, the White Sox, a Major League Baseball ("MLB") Club, was served by Plaintiff, Dustin Fowler ("Fowler"), with a Complaint (the "Complaint" or "Compl.") filed in the Circuit Court of Cook County, Illinois, No. 2017-L-012796. Copies of the Complaint filed in this action are annexed as Exhibit A.

2. The Complaint alleges that Fowler was employed as a professional baseball player by the New York Yankees (the "Yankees"), another MLB Club. (Compl. ¶ 4). The

Complaint alleges that on June 29, 2017, during a game against the White Sox played at Guaranteed Rate Field, located at 333 W 35th Street, Chicago, Illinois, Fowler sustained an injury to his knee by running into an exposed metal electrical box affixed at knee-level to the right field wall, while attempting to catch a foul ball. (Compl. ¶¶ 6-7, 9, 12, 14, 18-19). The Complaint further alleges that both the ISFA and the White Sox had a duty to "operate, manage, maintain and control" Guaranteed Rate Field, and that by allowing the exposed box to be affixed to the right field wall at knee-level, the ISFA and the White Sox "carelessly and negligently caused and permitted [Guaranteed Rate Field] to become and remain in an unreasonably dangerous and hazardous condition" for Fowler. (Compl. ¶¶ 22-23, 30-31). The Complaint further alleges that in breach of their duty to operate, manage, maintain and control Guaranteed Rate Field, both the ISFA and the White Sox negligently failed to "implement, maintain and operate a reasonably adequate inspection system" of Guaranteed Rate Field, to "prevent persons . . . to come into contact with the exposed box, despite installing protective padding on the railing and the right field wall," and to "pad, guard, cover and/or protect the exposed box in any way." (Compl. ¶¶ 25, 33). The Complaint alleges that as a result of his injury, Plaintiff missed the remainder of the 2017 baseball season, underwent surgery and has continued to undergo rehabilitation for the injuries sustained, and sustained past lost earnings and potential future lost earnings, pain and suffering, and medical expenses. (Compl. ¶ 20).

3. Fowler was employed by the Yankees pursuant to terms and conditions of employment contained in the "2017 – 2021 Basic Agreement," the collective bargaining agreement between the Major League Clubs and the Major League Baseball Players' Association ("the Union") (referred to hereinafter as the "Basic Agreement"). The Basic Agreement was the product of arm's-length negotiations between the MLB Clubs and the Union, the exclusive

collective bargaining representative of MLB Players. (Basic Agreement, Article II). The Basic Agreement regulates most (if not all) aspects of the terms and conditions of Players' employment, including but not limited to Player health and safety. The Basic Agreement also sets forth a grievance and arbitration procedure to resolve disputes between the Players and the Clubs. The 2017 – 2021 Basic Agreement is annexed as Exhibit B.

4. The terms and conditions of Fowler's employment are also governed by a collectively-bargained Uniform Player's Contract ("UPC"), which is annexed to and incorporated by reference into the Basic Agreement. (Basic Agreement, Article III; Appendix A). The UPC contains provisions regarding player compensation, including regulations regarding the effect of injury on a Player's right to receive his salary, a Player's entitlement to medical treatment, and the circumstances under which a Club will be responsible for the costs of a Player's medical treatment. (Basic Agreement Appendix A, at 349). The UPC also provides that it, along with the Basic Agreement, the Agreement Re Major League Baseball Players Benefit Plan and Major League Baseball's Joint Drug Prevention and Treatment Program, "fully set forth all understandings and agreements between them, and agree that no other understandings or agreements, whether heretofore or hereafter made, shall be valid, recognizable, or of any effect whatsoever, unless expressly set forth in a new or supplemental contract executed by the Player and the Club[.]" (Basic Agreement, Appendix A at 347).

II. GROUNDS FOR REMOVAL

5. This Court has original jurisdiction of this action under 28 U.S.C. § 1331 because the action is one that is founded on a claim or right "arising under the Constitution, laws, or treaties of the United States." A defendant may remove an action to federal court under 28 U.S.C. § 1441 if the complaint presents a federal question, such as a federal claim. *See Avco Corp. v. Aero Lodge No. 735*, 390 U.S. 557, 560 (1968).

6. Federal question jurisdiction exists in this case based on complete preemption of Plaintiff's claims under Section 301 of the Labor Management Relations Act ("LMRA"), 29 U.S.C. § 185 ("Section 301"). *See Sluder v. United Mine Workers of Am.*, 892 F.2d 549, 556 (7th Cir. 1989) ("'[O]nce an area of state law has been completely pre-empted, any claim purportedly based on that pre-empted state law is considered, from its inception, a federal claim, and therefore arises under federal law'. . . . Thus, state-law claims preempted by section 301 are properly removable to federal court despite a plaintiff's failure to plead explicitly a federal cause of action.").

7. Section 301 of the LMRA provides that the federal courts have original jurisdiction over all "[s]uits for violation of contracts between an employer and a labor organization." 29 U.S.C. § 185(a). The Supreme Court has held that "questions relating to what the parties to a labor agreement agreed, and what legal consequences were intended to flow from breaches of that agreement, must be resolved by reference to uniform federal law, whether such questions arise in the context of a suit for breach of contract or in a suit alleging liability in tort." *Allis-Chalmers Corp. v. Lueck*, 471 U.S. 202, 211 (1985); *see also Healy v. Metro. Pier & Exposition Auth.*, 804 F.3d 836, 841 (7th Cir. 2015) ("Section 301 preempts not only claims 'founded directly' on the collective bargaining agreement, but also state law claims that indirectly implicate a collective bargaining agreement.") (citing *Caterpillar, Inc. v. Williams*, 482 U.S. 386, 394, (1987)).

8. The Supreme Court has also repeatedly held that § 301 "completely preempts" state law causes of action that depend on interpretation of a collective bargaining agreement. "[T]he pre-emptive force of § 301 is so powerful as to displace entirely any state cause of action 'for violation of contracts between an employer and a labor organization.' Any such suit is

purely a creature of federal law, notwithstanding the fact that state law would provide a cause of action in the absence of § 301." *Franchise Tax Bd. Of Cal. v. Constr. Laborers Vacation Trust for S. Cal.*, 463 U.S. 1, 23 (1983).

9. Even where claims are styled as state-law tort claims, if they are substantially dependent on analysis of a collective bargaining agreement, such claims "must either be treated as . . . § 301 claim[s] . . . or dismissed as preempted by federal labor-contract law." *Allis-Chalmers*, 471 U.S. at 2202, 220 (holding state law claims to be completely preempted where they are "inextricably intertwined with consideration of the terms of the labor contract"); *Duerson v. NFL, Inc.*, No. 12 C 2513, 2012 WL 1658353, at *6 (N.D. Ill. May 11, 2012) (holding that plaintiff's claims that the NFL negligently caused his death by failing to fulfill its duty to ensure his safety were preempted by Section 301).

10. A plaintiff cannot avoid preemption under Section 301 by artfully pleading his claims so as to avoid mention of a collective bargaining agreement. *See Allis-Chalmers*, 471 U.S. at 211. Courts will not "elevate form over substance and allow parties to evade the requirements of § 301," and instead will look to the nature of the claims to determine whether analysis of a collective bargaining agreement is required for their disposal. *Id.*; *see also Sluder*, 892 F.2d at 556 ("The plaintiffs cannot escape the application of these principles 'and deny a defendant his right to a federal forum by artfully disguising an essentially federal law claim in terms of state law.'") (citing *Oglesby v. RCA Corp.*, 752 F.2d 272, 275 (7th Cir. 1985); *Gore v. Trans World Airlines*, 210 F.3d 944, 950 (8th Cir. 2000) (finding claims preempted even where "complaint avoid[ed] mention of the collective bargaining agreement," because "it indicate[d] that the actions took place in the course and scope of . . . employment . . . a relationship in fact governed by a collective bargaining agreement").

11. The Basic Agreement and UPCs are collective bargaining agreements within the meaning of Section 301. Here, Plaintiff's negligence claims are preempted because they are "inextricably intertwined with consideration of the terms of [the CBA]" and/or the collectively bargained UPC, and are "substantially dependent" on an analysis of the relevant provisions of the Basic Agreement and/or the UPC. *Allis-Chalmers*, 471 U.S. at 213, 220; *see also Sluder*, 892 F.2d at 552 ("[p]laintiffs[']s 'artfully pled' [negligence] claims are 'inextricably intertwined' with a construction of the collective bargaining agreement and thus preempted by Section 301 of the Labor Management Relations Act.") (alteration in original); *Duerson*, 2012 WL 1658353, at *4 (holding that "[e]ven if the NFL's duty arises apart from the CBAs . . . the necessity of interpreting the CBAs to determine the standard of care still leads to preemption"); *see also Stringer v. NFL*, 474 F. Supp. 2d 894, 909 (S.D. Ohio 2007) (wrongful death claim brought by decedent's widow against the NFL based on the NFL's alleged failure to minimize the risk of heat-related illness was preempted because the claim was "inextricably intertwined and substantially dependent upon an analysis of certain CBA provisions imposing duties on the clubs with respect to medical care and treatment of NFL players") (citing *Holmes v. NFL*, 939 F. Supp. 517, 527 (N.D. Tex. 1996).

12. Fowler purports to proceed against the White Sox under a negligence theory. Under Illinois law, the elements of a negligence cause of action are "a duty owed by the defendant to the plaintiff, a breach of that duty, and an injury proximately [caused by] the breach." *Cunis v. Brennan*, 308 N.E.2d 617, 618 (Ill. 1974). In establishing the scope of a defendant's duty and whether there was a breach of that duty, a plaintiff must establish a standard of care or standard of conduct: "What the defendant must do, or must not do, is a question of the standard of conduct required to satisfy the duty." *Jones v. Chi. HMO Ltd. of Ill.*,

730 N.E.2d 1119, 1129 (Ill. 2000) (emphasis omitted). In Illinois, "this standard or degree of care is . . . a flexible one which varies according to the particular circumstances." *Miller v. Civil Constructors, Inc.*, 651 N.E.2d 239, 244 (Ill. App. Ct. 1995).

13. The standard of care by which the White Sox must be measured in adjudicating Plaintiff's claims is a product of the particular circumstances at hand, "which necessarily includes the contractual circumstances embodied in the CBA." *Alvey v. Ball Corp.*, 162 F. App'x. 267, 271 (4th Cir. 2006); *see also Stafford v. True Temper Sports*, 123 F.3d 291, 296 (5th Cir. 1997) (dismissing claims as preempted and stating that "it is appropriate for a court to look at the collective bargaining agreement to see if an employer's actions are reasonable."). Player health and safety is a term and condition of employment that is a mandatory subject of bargaining between the Clubs and the Union under the National Labor Relations Act. 29 U.S.C. § 151, *et seq.*; *see, e.g., NLRB v. Gulf Power Co.*, 384 F.2d 822, 825 (5th Cir. 1967) ("safety rules and practices which are undoubtedly conditions of employment" are mandatory subjects of bargaining); *Library of Cong. v. Fed. Labor Relations Auth.*, 699 F.2d 1280, 1286 (D.C. Cir. 1983). Because Plaintiff's claims implicate the terms and conditions of his employment, their resolution is impossible without reference to the document that governs those terms and conditions. *Douglas v. Am. Info. Techs. Corp.*, 877 F.2d 565, 573 (7th Cir. 1989) (holding that where plaintiff's claims are "directly related to the terms and conditions of [his] employment, resolution of [his] claim[s] will be substantially dependent on an analysis of the terms of the collective bargaining agreement under which [he] is employed").

14. Indeed, Fowler's claim that the White Sox breached a duty of care owed to him can be understood only by reference to the comprehensive Basic Agreement that governs the terms and conditions of his employment and proscribes myriad obligations to the Clubs, Players

and the Union as set forth therein. *See Boogaard v. NHL*, 126 F. Supp. 3d 1010, 1019 (N.D. Ill. 2015) ("[T]he specific acts by the NHL that Boogaard insists represent a broader and more generalized commitment to protect players from harm must be interpreted in context with the hyper-specific commitments that the NHL made in the CBA itself.") Whether the White Sox were required to take the steps that the Complaint faults it for failing to take is an inquiry that is inextricably intertwined with the terms of the Basic Agreement.

15. More specifically, the relevant standard of care, and whether the White Sox's acts or omissions met that standard, will turn on an interpretation of Article XIII of the Basic Agreement, which governs player safety and health. Article XIII(A) establishes a Safety and Health Advisory Committee (the "Committee"), to "deal with emergency safety and health problems as they arise, and attempt to find solutions," and "to engage in review of, planning for and maintenance of safe and healthful working conditions for Players." (Basic Agreement, Article XIII(A)(1)). A meeting of the Committee may be called by any member "who believes that an emergency safety and health problem exists and requires immediate attention." (Basic Agreement, Article XIII(A)(2)). The Committee is empowered to "make recommendations to the Parties as to the solution of problems and the establishment of policies." (Basic Agreement, Article XIII(A)(3)). Finally, Article XIII specifically authorizes the Union to "file and pursue through arbitration a grievance concerning safety and health." (Basic Agreement, XIII(A)(4)). Likewise, the UPC states that the collectively-bargained agreements between MLB and the Union "fully set forth all understandings and agreements" between the Players and the Clubs. (Basic Agreement, Appendix A at 347).

16. Whether the acts or omissions of the White Sox constituted reasonable care under the circumstances is dependent on consideration and analysis of the parties' collectively-

bargained understanding that it was the Committee's mandate "to engage in review of, planning for and maintenance of safe and healthful working conditions for Players," and to "make recommendations to the Parties as to the solution of problems and the establishment of policies." (Basic Agreement, XIII(A)(1)-(3)); *see also Boogaard*, 126 F. Supp. 3d at 1019 (finding collective bargaining agreement must be interpreted to resolve plaintiff's claims as it "exhaustively detail[ed] each party's specific obligations to the others"); *Stringer*, 474 F. Supp. 2d at 910 ("[W]hat was reasonable under the circumstances, must be considered in light of pre-existing contractual duties imposed by the CBA . . . concerning the general health and safety of the NFL players."); *see also Duerson*, 2012 WL 1658353, at *4 (holding negligence claims could not be adjudicated without interpretation of the CBA, in part because allocation of responsibilities among Clubs and League in CBA could mean "that the NFL could reasonably rely on the clubs to notice and diagnose player health problems arising from playing in the NFL.")

17. In addition, "whether a defendant's conduct lacks reasonable care and is therefore negligent often depends on the foreseeable likelihood of the actions of other persons." (Restatement (Third) of Torts, § 19). Article XIII explicitly grants the power to each member of the Committee, which includes Union representatives, to call a meeting where they believe "that an emergency safety and health problem exists and requires immediate attention." (Basic Agreement, Article XIII(A)(2)). Article XIII also grants to the Union the power to "file and pursue through arbitration a grievance concerning safety and health." (Basic Agreement, Article XIII(A)(4)). Therefore, the Basic Agreement's language that addresses player safety concerns among and between the Committee, the Clubs and the Union must be analyzed in determining whether the White Sox acted with reasonable care. *See Duerson*, 2012 WL 1658353, at *12

(holding that provisions placing requirements on NFL member teams in CBA must be interpreted to determine whether the "NFL could then reasonably exercise a lower standard of care in that area itself."); *Dent v. NFL*, No. C 14-02324 WHA, 2014 U.S. Dist. LEXIS 174448, at *24 (N.D. Cal. Dec. 17, 2014) (finding player's negligence claims preempted where it would be impossible to determine whether the NFL acted negligently "without consulting the CBA provisions that cover the individual clubs' duties to the players.")

18. Additionally, whether and under what circumstances Fowler is entitled to receive salary in the case of injury, and whether he is entitled to payment for rehabilitation and other medical expenses, cannot be determined without analysis of the terms of the Basic Agreement and the UPC. The UPC provides that a player may receive his full salary during a disability "directly resulting from injury sustained in the course and within the scope of his employment under this contract." (Basic Agreement, Appendix A at 349). Players are also entitled to "reasonable medical and hospital expenses incurred by reason of the injury" under certain circumstances specified in the collectively-bargained contract. (*Id.*) In addition, the Basic Agreement enumerates whether and when certain items may be encompassed within the meaning of "reasonable medical expenses." (Basic Agreement, Attachment 35). These provisions must be analyzed in evaluating whether Plaintiff is entitled to the damages alleged in the Complaint. For example, a court must analyze the parties' collectively-bargained understanding of the meaning of "reasonable medical expenses" as set forth in the Basic Agreement, in determining Plaintiff's entitlement to any claimed damages arising from such expenses and whether Plaintiff met the conditions for reimbursement of medical expenses based on the factors set forth in the Basic Agreement. Therefore, the resolution of Plaintiff's claims are "substantially dependent"

on interpretation of the Basic Agreement, and are preempted by Section 301. *Allis-Chalmers*, 471 U.S. at 202, 220.

19. The Basic Agreement and UPC are not interposed as a defense to Fowler's claims. *Cf. Caterpillar*, 482 U.S. at 393 ("[A] case may not be removed to federal court on the basis of a federal defense, including the defense of pre-emption.") (emphasis omitted). Rather, establishing the standard of care to which the White Sox were required to adhere is an essential element of Fowler's claim. *Jones v. Chi. HMO Ltd. of Ill.*, 730 N.E.2d 1119, 1129 (Ill. 2000) ("The standard of care, also known as the standard of conduct, falls within the duty element."); *Duerson*, 2012 WL 1658353, at *5 ("Establishing the standard of care that a defendant must meet to avoid liability is an element of a negligence claim that the plaintiff must establish, not a defense.")

III. REMOVAL IS PROCEDURALLY PROPER

20. The Northern District of Illinois is the federal district in which the Circuit Court of Cook County, Illinois – where Plaintiff filed his Complaint – is located.

21. This Notice of Removal is timely under 28 U.S.C. § 1446(b), which states that "notice of removal of a civil action or proceeding shall be filed within thirty days after the receipt by the defendant, through service or otherwise, of a copy of the initial pleading setting forth the claim for relief upon which such action or proceeding is based."

22. Written notice of the filing of this Notice of Removal will be provided to Plaintiff, and a copy of this Notice will be filed in the appropriate state court, as required by 28 U.S.C. § 1446(d). This Notice of Removal is signed pursuant to Fed. R. Civ. Proc. 11. *See* 28 U.S.C. § 1446(a).

23. In filing this Notice of Removal, the White Sox do not waive any defenses that may be available, including, without limitation, jurisdiction, venue, standing, or procedures for

the disposition of this action in accordance with the terms of the Basic Agreement. Nor do the White Sox admit any of the factual allegations in the Complaint; rather, the White Sox expressly reserve the right to contest those allegations at the appropriate time.

24. Defendant Illinois Sports Facilities Authority's letter of consent to this removal is annexed hereto as Exhibit C.

WHEREFORE, the White Sox remove the above-captioned action brought against them in the Circuit Court of Cook County, Illinois.

Dated: February 6, 2018

Respectfully submitted,

s/ Chad D. Kasdin

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