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. 18-cv-00964

MEMORANDUM OF LAW IN SUPPORT OF CHICAGO WHITE SOX LTD.'S MOTION TO DISMISS

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PRELIMINARY STATEMENT

Dustin Fowler (the "Plaintiff"), a professional Major League Baseball player, claims that the Chicago White Sox (the "White Sox") negligently caused him to injure himself during a professional baseball game played at Guaranteed Rate Field. That claim is preempted by Section 301 of the Labor Management Relations Act, 29 U.S.C. § 185 ("Section 301") and, accordingly, should be dismissed.

The Complaint alleges that during a game played between the White Sox and the New York Yankees on June 29, 2017, Plaintiff injured his knee after running into an "exposed box" near the right field foul line. (Compl. ¶18). The Complaint alleges that the White Sox are responsible for his injuries, because they 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. ¶ 33).

All aspects of Plaintiff's employment as a professional baseball player, including but not limited to the health and safety of Major League Baseball Players (the "Player" or "Players"), are governed by the terms of a collective bargaining agreement (the "Basic Agreement") between the Major League Baseball Clubs and the Major League Baseball Players Association (the "Union"), the exclusive collective bargaining representative of all Major League Baseball Players. The terms and conditions of Plaintiff's employment are also governed by a collectively bargained Uniform Player Contract (the "UPC"), the form of which is an exhibit to and specifically incorporated in the Basic Agreement. Not surprisingly, these comprehensive agreements contain a myriad of provisions concerning Players' health and safety, right to

medical treatment, and compensation in the event of injury – issues that are central to resolution of Plaintiff's purported negligence claim.

The Basic Agreement and UPC, like all collectively-bargained agreements, are governed by Section 301. Section 301 ensures that the resolution of disputes requiring interpretation of collectively-bargained agreements proceeds under a uniform body of federal labor law, free from the interference of state law. Thus, Section 301 completely preempts all state law claims – including tort claims – that require an analysis of the terms of a collective bargaining agreement for resolution.

Plaintiff's negligence claim is preempted by Section 301 because it requires interpretation of the terms of the Basic Agreement and the Uniform Player Contract. Plaintiff's claim here is premised on allegations that the White Sox negligently failed to address Player safety and that Plaintiff suffered harm because of his injury. This claim will require the Court to ascertain the scope of the White Sox's duty to address issues of Player safety, and to evaluate whether the White Sox acted reasonably under the circumstances alleged in the Complaint.

This inquiry is substantially dependent on an analysis of the Basic Agreement, which allocates responsibility for identifying and addressing issues of Player safety to a number of different constituents, including a joint Safety and Health Advisory Committee comprised of an equal number of members representing the Union and the Clubs (the "Joint Committee"), the Union, and the Clubs. A court cannot make a determination of the standard of care the White Sox were required to exercise in a vacuum. It is hornbook tort law that a court must consider the potentially foreseeable actions of others in evaluating the standard of care by which the White Sox's actions should be measured. Indeed, it is for this very reason, as discussed in detail below, courts have held in analogous contexts that negligence claims brought by professional athletes

required interpretation of the terms of collectively-bargained agreements, and thus were preempted by Section 301.[1]

Because Plaintiff's claim against the White Sox is completely preempted by Section 301, Plaintiff is first required to exhaust the required grievance and arbitration procedures in the Basic Agreement. As plaintiff did not – and cannot – plead the requisite exhaustion, the Complaint must be dismissed.

STATEMENT OF FACTS

A. The Basic Agreement

Plaintiff Dustin Fowler ("Fowler" or "Plaintiff") was employed as a baseball player by the New York Yankees Limited Partnership (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. (Compl. ¶4; *see also* Basic Agreement).[2] The Basic Agreement was the product of

[1] *See, e.g., Duerson v. NFL,* No. 12 C 2513, 2012 U.S. Dist. Lexis 66378 (N.D. Ill. May 11, 2012); *Dent v. NFL*, No. C 14-02324 WHA, 2014 U.S. Dist. LEXIS 174448 (N.D. Cal. Dec. 17, 2014) (appeal pending); *Williams v.* NFL, 582 F.3d 863 (8th Cir. 2009); *Stringer v. NFL*, 474 F. Supp. 2d 894, 909 (S.D. Ohio 2007).

[2] The Basic Agreement is attached as Exhibit A to the Declaration of John Corvino. The Court can consider the Basic Agreement in deciding this motion to dismiss. In the Seventh Circuit, a court may consider judicially noticed documents, even if they are outside of the pleadings, without converting a motion to dismiss into a motion for summary judgment. *Menominee Indian Tribe v. Thompson*, 161 F.3d 449, 456 (7th Cir. 1998), *cert. denied*, 526 U.S. 1066 (1999). A court may "take judicial notice of . . . documents contained in the public record." *520 S. Mich. Ave. Assocs., Ltd. v. Shannon*, 549 F.3d 1119, 1137 n.14 (7th Cir. 2008). The Basic Agreement is publicly available on the official site of the Major League Baseball Players Association, (http://www.mlbplayers.com/pdf9/5450407.pdf), and its contents cannot reasonably be questioned. Therefore, the Basic Agreement may be judicially noticed as a document[ ] contained in the public record. *See, e.g., Hughes v. City of Chicago*, No. 10 C 7765, 2012 U.S. Dist. LEXIS 8714, at *2 (N.D. Ill. Jan. 25, 2012) (taking judicial notice of a city collective bargaining agreement as a "document contained in the public record."); *see also Densmore v. Mission Linen Supply*, 164 F. Supp. 3d 1180, 1187 (E.D. Cal. 2016) (holding that the court "may take judicial notice of a CBA in evaluating a motion to dismiss . . . [as] such documents properly are considered [] materials not subject to reasonable dispute because they are capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned"); *Dent v. NFL*, 2014 U.S. Dist. LEXIS 174448 (N.D. Cal. Dec. 17, 2014) (appeal pending) (taking judicial notice of the parties' collective bargaining agreement).

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 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. (Basic Agreement, Article XI).

The terms and conditions of Fowler's employment are also governed by a collectively-bargained Uniform Player's Contract, 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).

However, if the Court determines that the Basic Agreement is not properly subject to judicial notice, the Court may consider the Basic Agreement and convert this motion to dismiss into a motion for summary judgment. *Robinson v. Roney Oatman, Inc*., No. 97 C 8964, 1999 U.S. Dist. LEXIS 1866, at *6 (N.D. Ill. Feb. 18, 1999) (holding that "[where] parties have submitted various documents outside of the pleadings . . . the court may choose to consider those documents and convert the motion to dismiss into a motion for summary judgment.")

Additionally, Article XIII of the Basic Agreement is specifically devoted to issues concerning Player safety and health. Article XIII(A) establishes a Joint 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 Joint 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 Joint 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 requires the Commissioner's Office to investigate health and safety issues in certain situations. (Basic Agreement, Article XIII(B)).

Finally, Article XI of the Basic Agreement contains a broad arbitration clause requiring the arbitration of any "grievance" – defined as "a complaint which involves the existence or interpretation of, or compliance with, any agreement, or any provision of any agreement, between the Association and the Clubs or any of them, or between a Player and a Club[]." (Basic Agreement, Article XI). Article XIII specifically authorizes the Union to "file and pursue through arbitration a grievance concerning safety and health." (Basic Agreement, XIII(A)(4)).

B. The Complaint

The Complaint alleges that on June 29, 2017, during a game between the Yankees and 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 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 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, 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. ¶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).

ARGUMENT

I. Plaintiff's Claims Are Preempted by Section 301

A. The Law of Section 301 Preemption.

Section 301 of the LMRA governs "violation of contracts between an employer and a labor organization representing employees[.]" 29 U.S.C. § 185(a). Section 301 grants federal courts exclusive jurisdiction over claims asserting violations of a collective bargaining agreement. *Livadas v. Bradshaw*, 512 U.S. 107, 121-22 (1994). The Supreme Court has held that Section 301 is not just a grant of jurisdiction to federal courts over such claims, but is also an exclusive grant of authority to the federal courts to fashion a federal "common law" to resolve disputes concerning collective bargaining agreements and to avoid conflicting interpretations.

The Supreme Court explained the policy underpinning this grant of authority in *Local 174, Teamsters v. Lucas Flour Co.*, 369 U.S. 95, 103 (1962):

> The possibility that individual contract terms might have different meanings under state and federal law would inevitably exert a disruptive influence upon both the negotiation and administration of collective agreements. Because neither party could be certain of the rights which it had obtained or conceded, the process of negotiating an agreement would be made immeasurably more difficult by the necessity of trying to formulate contract provisions in such a way as to contain the same meaning under two or more systems of law which might someday be invoked in enforcing the contract. Once the collective bargain was made, the possibility of conflicting substantive interpretation under competing legal systems would tend to stimulate and prolong disputes as to its interpretation.

Id. at 103-04.

The fear of conflicting substantive interpretations of collective bargaining agreements and the concomitant prolonging of labor disputes, fueled the creation of a line of Supreme Court case law, which firmly established that "the 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." *Franchise Tax Bd. v. Constr. Laborers Vacation Tr.* , 463 U.S. 1, 23 (1983) (citing *Avco Corp. v. Aero Lodge No. 735*, 390 U.S. 557 (1968)); *see also United Steelworkers of Am. v. Rawson*, 495 U.S. 362, 368 (1990) (concluding that Section 301 is "a potent source of federal labor law . . . and indeed any state-law cause of action for violation of collective-bargaining agreements is entirely displaced by federal law under § 301."); *Allis-Chalmers Corp. v. Lueck*, 471 U.S. 202 (1985).

The sweep of Section 301 preemption is so broad that 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 . . . Section 301 claim[s] . . . or

dismissed as pre-empted by federal labor-contract law." *Allis-Chalmers Corp.* 471 U.S. at 220 (1985) (holding state law tort claims to be completely preempted where they are "inextricably intertwined with consideration of the terms of the labor contract."); *In re Amoco Petroleum Additives Co.*, 964 F.2d 706, 709 (7th Cir. 1992) ("If the resolution of a state-law claim depends upon the meaning of a collective-bargaining agreement, the application of state law…is pre-empted and federal labor-law principles--necessarily uniform throughout the Nation--must be employed to resolve the dispute."); *see, e.g. Duerson v. NFL*, 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); *Brown v. Keystone Consol. Indus., Inc.*, 680 F. Supp. 1212, 1217 (N.D. Ill. 1988) ("If resolution of a state law tort claim is substantially dependent upon analysis of the terms of a labor agreement, then that claim is inextricably intertwined with consideration of the terms of the labor contract.")

A plaintiff cannot avoid preemption under Section 301 by artfully pleading his claims so as to avoid mention of an operative collective bargaining agreement. *See Allis-Chalmers Corp.*, 471 U.S. at 211. Courts will not "elevate form over substance and allow parties to evade the requirements of § 301," by doing so, 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 v. United Mine Workers*, 892 F.2d 549, 556 (7th Cir. 1989) ("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."), *cert. denied*, 498 U.S. 810 (1990); *Gore v. TWA*, 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[.]"), *cert. denied*, 532 U.S. 921 (2001); *Young v. Anthony's Fish Grottos, Inc.*, 830 F.2d 993, 999 (9th Cir. 1987) ("The key to determining the scope of preemption is not how the complaint is cast, but whether the claims can be resolved only by referring to the terms of the collective bargaining agreement.").

Plaintiff alleges that he was injured as a result of an incident that took place only because he was employed as a Major League Baseball Player pursuant to a highly regulated contractual employment relationship that specified all of the rights and duties of the respective parties – including with respect to Players health and safety. (Compl. ¶4). Although Plaintiff attempts to artfully plead around mentioning that his employment was governed by the Basic Agreement and the UPC, his state-law claim against the White Sox is nonetheless subject to Section 301's preemptive force because its resolution necessarily involves interpretation and analysis of the Basic Agreement's and UPC's health and safety provisions, and provisions regarding entitlement to salary continuation and medical expenses, contained within these collectively-bargained agreements.

B. Plaintiff's Negligence Claim is Preempted Because Resolution of the Claim Requires Interpretation of Collectively-Bargained Agreements.

Plaintiff's claim that the White Sox negligently caused the injury to his knee rests on a handful of allegations about actions that the White Sox took or should have taken to ensure Plaintiff's safety. (Compl. ¶¶ 22-23, 30-31, 33). Plaintiff alleges that the White Sox "improperly operated, managed, maintained and controlled" the Field and the electrical box, "failed to implement, maintain and operate a reasonably adequate inspection system" of the Field and the electrical box, and "failed to take reasonable precautions to prevent persons…to come into contact" with the electrical box. (Compl. ¶33). To resolve Plaintiff's negligence claim, a

court would need to determine whether the White Sox's alleged acts and omissions were reasonable in light of all of the circumstances, which cannot be done without interpreting the Basic Agreement and the UPC.

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*, 56 Ill. 2d 372, 374 (Ill. 1974). The element of duty encompasses a "standard of care" or "standard of reasonable conduct" against which a defendant's acts and omissions must be measured. *Jones v. Chicago HMO Ltd.*, 191 Ill. 2d 278, 295 (Ill. 2000). As the Illinois Supreme Court has explained, "[a] duty, in negligence cases, may be defined as an obligation, to which the law will give recognition and effect, to conform to a particular standard of conduct toward another … *[w]hat the defendant must do, or must not do, is a question of the standard of conduct required to satisfy the duty*." *Id.* (quoting W. Prosser, Torts, at 324 (4th ed. 1971)) (emphasis in original). In Illinois, as in other jurisdictions, "this standard or degree of care is. . . . a flexible one which varies according to the particular circumstances." *Miller v. Civil Constructors*, 272 Ill. App. 3d 263, 269 (Ill. App. 1995); Restatement (Third) of Torts, § 3 (2010) ("A person acts negligently if the person does not exercise reasonable care under all the circumstances."). As such, Plaintiff must establish "not that the defendant's conduct was wrongful in some abstract sense, but wrongful under the circumstances." *Alvarez v. UPS*, 398 F. Supp. 2d 543, 553 (N.D. Tex. 2005) (citation omitted).

To determine the standard of care by which the White Sox must be measured in resolving Plaintiff's claim, this court must take into account 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."). 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 Dent*, 2014 U.S. Dist. LEXIS 174448, at *19-20 ("As demonstrated by the scope and development of these provisions…[t]he union and the league have bargained extensively over the subject of player medical care for decades.")

As the UPC states, the collectively-bargained agreements between the Clubs and the Union "fully set forth all understandings and agreements" between the Players and the Clubs. (Basic Agreement, Appendix A at 347). Whether the White Sox were required to take the steps that the Complaint faults them for failing to take is an inquiry that is inextricably intertwined with the terms of the Basic Agreement. *Duerson*, 2012 U.S. Dist. Lexis 66378, at *12 (holding that "the necessity of interpreting the CBAs to determine the standard of care… leads to preemption"); *see also Stringer v. NFL*, 474 F. Supp. 2d 894, 909 (S.D. Ohio 2007) (player's claim 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").

For these reasons, courts have routinely held negligence-based claims brought by professional athletes subject to collectively-bargained employment agreements to be preempted, even where the duty allegedly breached was not rooted in a collective bargaining agreement. So long as the league or team's standard of care as here was substantially dependent on an analysis of the collective bargaining agreement, the claim was preempted by Section 301.

The decision in *Duerson*, 2012 U.S. Dist. LEXIS 66378, at *16, is on point. In *Duerson*, the court held that Section 301 preempted state law negligence claims, in particular, claims that defendant NFL had "fail[ed] to implement policies to prevent David Duerson from returning to play with his injuries." *Id.* at 4. The court so held because, even if the alleged duty owed by the NFL to Duerson arose independently of the CBA, resolution of the claim would still require interpretation of multiple CBA provisions concerning player health and safety to determine the standard of care – an essential element of plaintiff's negligence claim. *Id*. at 5. The court emphasized that the CBA provisions – which assigned various safety-related responsibilities to NFL club physicians and trainers – had to be interpreted to ascertain the NFL's standard of care, noting that one plausible interpretation of these provisions

> would tend to show that the NFL could reasonably rely on the clubs to notice and diagnose player health problems arising from playing in the NFL. The NFL could then reasonably exercise a lower standard of care in that area itself.
>
> *Id*. at 11.

As such, the court found 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." *Id.* at 12.

Likewise, in *Dent*, 2014 U.S. Dist. LEXIS 174448 (appeal pending), the court found that claims of negligence based on allegations that the NFL failed to "proper[ly] disclos[e] … the medical side effects and risks" of prescription pain medication, and negligently hired and retained doctors and trainers that prescribed said medications, were preempted by Section 301, because resolution of the claims were inextricably intertwined with the terms of the CBA governing player health and safety. *Id.* at 4-5, 25-26. The court assumed without deciding that the duty allegedly owed by the NFL to players ("to police the health-and-safety treatment of

players by the clubs") was a common law duty. It held the players' claims to be preempted because it had to interpret the CBA to determine whether the NFL acted reasonably – *i.e.*, whether the NFL breached the duty of care. *Id.* at 11-12. After reviewing the health and safety provisions of the CBA, and observing that they allocated responsibility for player health and safety largely to the clubs and club doctors, the court found that the reasonableness of the NFL's behavior could not be ascertained without an analysis of these provisions. *Id.* at 20-21. Specifically, the court noted that the CBA terms were susceptible of the interpretation that the allocation of responsibility to the clubs represented an equal reduction in responsibility to the NFL, and as a result, Section 301 preempted the claims:

> "[B]ecause the CBAs expressly and repeatedly allocate so many health-and-safety duties to the clubs, the CBAs can fairly be interpreted, by implication, to negate any such duty at the league level. Even if this interpretation were ultimately rejected, it is a fair one and that is sufficient for Section 301 preemption."

Id. at 25.

Ultimately, the court concluded that "[g]iven the regime in place after decades of collective bargaining over the scope of these duties, it would be impossible to fashion and to apply new and supplemental state common law duties on the league without taking into account the adequacy and scope of the CBA duties already set in place." *Id.* at 39.

The court's decision in *Dent* followed the same reasoning in *Stringer v. NFL*, where the court dismissed a wrongful death claim arising out of Stringer's death from heatstroke during training camp. The plaintiff in *Stringer* alleged that the NFL had negligently failed to "use ordinary care in overseeing, controlling, and regulating practices, policies, procedures, equipment, working conditions and culture of the NFL teams…to minimize the risk of heat-related illness." *Stringer*, 474 F. Supp. 2d at 899. After first determining that the source of the duty of care arose independently of the CBA, the court nonetheless held the negligence claim to

be preempted because, even though the duty alleged by Plaintiff was a "common law duty," *id.* at 905, the question of whether the NFL had been negligent was "inextricably intertwined with certain key provisions of the CBA." *Id.* at 910. The court noted that the CBA "places primary responsibility" for treating players on the club physicians and that those provisions "must…be taken into account in determining the degree of care owed by the NFL and what was reasonable under the circumstances." *Id*. at 910-11. In other words, "the degree of care owed cannot be considered in a vacuum." *Id.* at 910. The court concluded that "[t]he degree of care owed by the NFL…and what was reasonable under the circumstances, must be considered in light of pre-existing contractual duties imposed by the CBA on the individual NFL clubs concerning the general health and safety of the NFL players." *Id*. at 910.

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. As in *Duerson*, *Dent* and *Stringer*, even if the *source* of a duty of care can be discerned independent of the Basic Agreement and UPC, "the necessity of interpreting [the agreements] to determine the standard of care…leads to preemption." *Duerson*, 2012 U.S. Dist. Lexis 66378, at *12.

With respect to Plaintiff's allegations that the White Sox supposedly "failed to implement, maintain and operate a reasonably adequate inspection system" of Guaranteed Rate Field, and "improperly operated, managed, maintained and controlled" Guaranteed Rate Field, (Compl. ¶33), the Joint Committee created by Article XIII is tasked with "engag[ing] in review of, planning for and maintenance of safe and healthful working conditions for Players." (Basic Agreement, Article XIII(A)(1)(b)).

Additionally, in adjudicating a negligence claim, "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 (2010). To determine whether these allegations of malfeasance and nonfeasance were unreasonable, the Court would have to determine whether in light of the delegation in the Basic Agreement of responsibility to the Joint Committee to, for example, "plan[] for and maintain[] safe and healthful working conditions for Players," it was reasonable for the White Sox to rely on the Joint Committee to do just that. *See Duerson*, 2012 U.S. Dist. Lexis 66378, at *11 (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.")

As to the related allegation that the White Sox were negligent in "fail[ing] to take reasonable precautions to prevent persons…to come into contact" with the electrical box, and "failing to pad, guard, cover and/or protect the exposed box in any way," Article XIII delegated to the Joint Committee the task of "deal[ing] with emergency safety and health problems as they arise, and attempt[ing] to find solutions," and "mak[ing] recommendations …as to the solution of problems and establishment of policies." (Basic Agreement, Article XIII(A)(1)(a), (A)(3)). As such, in determining the standard of care owed by the White Sox under the circumstances, and in resolving whether the White Sox's alleged acts and omissions met that standard, the Court must consider the fact that pursuant to Article XIII, the Joint Committee had the power to, for example, recommend that the White Sox change the location of the exposed box, or install padding around it.

Therefore, Plaintiff's claims cannot be resolved without examining the Clubs' and the Union's collectively-bargained understanding regarding player safety, as set forth in the Basic Agreement. *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.").

In addition to the Joint Committee, Article XIII allocated health and safety responsibilities among other constituents. For example, Article XIII explicitly grants the power to each member of the Joint 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)). Article XIII also requires the Commissioner's Office to investigate health and safety issues in certain situations. (Basic Agreement, Article XIII(B)). Determining whether the White Sox were negligent in, for example, "failing to pad, guard, cover and/or protect the exposed box," would require deciding whether the White Sox could reasonably rely on the Union to alert them to a safety issue that "requires immediate attention." *See Duerson,* 2012 U.S. Dist. Lexis 66378, at *11 (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."); Restatement (Third) of Torts, § 19 (2010) ("whether a defendant's conduct lacks reasonable care and is therefore negligent often depends on the foreseeable likelihood of the actions of other persons.")

Therefore, the Basic Agreement's language that addresses player safety concerns among and between the Joint Committee, the Clubs and the Union must be analyzed in determining whether the White Sox acted with reasonable care. *See Dent,* 2014 U.S. Dist. LEXIS 174448, at *24 (appeal pending) (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.")

C. Ascertaining Plaintiff's Potential Damages Also Requires Interpretation of the Basic Agreement and the UPC.

The Complaint alleges that, due to his injuries, Plaintiff missed the remainder of the 2017 baseball season, and as such is entitled to past lost earnings, potential future lost earnings, and medical expenses. (Compl. ¶20). However, 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" when certain preconditions are met. (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. Additionally, whether Plaintiff is entitled to continue to receive his salary during his period of disability will require analysis of the UPC

provisions addressing this very issue. (Basic Agreement, Appendix A at 349) (discussing right of Player to "receive his full salary for the period of such disability or for the season in which the injury was sustained (whichever period is shorter)"). Therefore, whether Plaintiff is entitled to the specific types of damages alleged in the Complaint is "substantially dependent" on an interpretation of the Basic Agreement and his UPC. His claim is preempted by Section 301 for this reason as well.[3] *Allis-Chalmers Corp.*, 471 U.S. at 202, 220.

D. The Preempted Claims Must Be Dismissed Due to Failure to Exhaust the Grievance Arbitration Requirements in the Basic Agreement.

Once a claim is held to be preempted by Section 301, that claim must either be treated as a Section 301 claim, or dismissed. *See Allis-Chalmers Corp.*, 471 U.S. at 220. Before commencing an action alleging a breach of the labor contract, the employee is required to exhaust any contractual grievance and arbitration procedures provided for in the collective bargaining agreement that governs his employment. *See Republic Steel Corp. v. Maddox*, 379 U.S. 650, 652 (1965); *Mitchell v. Pepsi-Cola Bottlers, Inc*., 772 F.2d 342, 347 (7th Cir. 1985) ("The federal law governing section 301 claims also includes…a general requirement that employees must attempt to exhaust grievance and arbitration procedures before bringing suit in federal or state court."), *cert. denied*, 475 U.S. 1047 (1986); *see also Allis-Chalmers Corp.*, 471 U.S. at 219-21. Plaintiff's Complaint is devoid of any allegation that he has attempted to invoke the grievance procedure set forth in Article XI of the Basic Agreement to resolve his claim, as required by Section 301. As such, his claim must be dismissed.

[3] In the event the Court finds that Plaintiff's claim is not preempted, Defendant preserves and does not waive any and all available defenses to Plaintiff's claim under state law.

CONCLUSION

For the reasons set forth above, the White Sox respectfully submits that Plaintiff's claim should be dismissed in its entirety.

Dated: February 13, 2018

Respectfully submitted,

/s/ Chad D. Kasdin

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