No. 20-1252

In The
Supreme Court of the United States

STEPHEN J. SIMONI,

Petitioner,

v.

JERSEY SHORE UNIVERSITY MEDICAL CENTER and HACKENSACK MERIDIAN HEALTH,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Third Circuit

RESPONDENTS' BRIEF IN OPPOSITION TO THE PETITION

WILLIAM M. HONAN
Counsel of Record
FOX ROTHSCHILD LLP
1301 Atlantic Avenue
Suite 400
Atlantic City, NJ 08401
T: (609) 572-2218
F: (609) 348-6834
bhonan@foxrothschild.com
Counsel for Respondents

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COCKLE LEGAL BRIEFS (800) 225-6964
WWW.COCKLELEGALBRIEFS.COM

QUESTION PRESENTED

Did the District Court properly dismiss Petitioner's complaint for: (1) failing to plead any of the "exclusive grounds" for modification of an arbitration award under the Federal Arbitration Act (the "FAA"), 9 U.S.C. §§ 1, *et seq.*, *see Hall Street Assocs., LLC v. Mattel, Inc.*, 552 U.S. 576, 583–84 (2008), and (2) failing otherwise to plead facts stating a plausible basis for modification?

CORPORATE DISCLOSURE STATEMENT

Pursuant to Rule 29.6, Jersey Shore University Medical Center is a non-governmental corporate party that is a wholly-owned subsidiary of Hackensack Meridian Health. Hackensack Meridian Health is a non-governmental corporate party that has no parent corporation, and no publicly held corporation owns 10% or more of its stock.

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STATEMENT OF THE CASE

At all times relevant hereto, Respondents Jersey Shore University Medical Center and Hackensack Meridian Health (together, the "Hospital") operated a hospital in Monmouth County, New Jersey. In 2010, the Hospital employed Petitioner as a nurse in its Cardiac Catheterization Laboratory for sixty-nine days. (App. at 3, 9.) On October 18, 2010, the Hospital terminated Petitioner's employment for poor performance and insubordination. (App. at 10.)

At the time, the Hospital was party to a collective bargaining agreement ("CBA") with the Health Professionals & Allied Employees, Local 5058, AFT, AFL-CIO (the "Union"). (App. at 3.) Petitioner sought to grieve his termination under the CBA, and the Hospital initially denied the grievance. (App. at 3.) Thereafter, the Union erroneously believed that Petitioner, who was a new hire still within the provisional period of his initial employment, was not covered by the CBA. (App. at 3–4.) Citing past practices, the Union declined to pursue Petitioner's grievance in arbitration; at the time, the Hospital agreed with the Union's decision and reasoning.[1] (App. at 4.)

On December 28, 2010, Petitioner filed a Complaint against, *inter alia*, the Hospital and the Union in the United States District Court for the District of New Jersey. (App. at 10.) After an intervening

[1] The Petition repeatedly, and incorrectly, states that the Hospital's position was "unilateral" at the time. (*See*, *e.g.*, Pet. at 2, 4, 7.)

dismissal and appeal, (App. at 10–11), the United States Court of Appeals for the Third Circuit reinstated Petitioner's complaint, holding that Petitioner had plausibly pled a Section 301 claim insofar as he alleged the Union had improperly declined to pursue his grievance. *Roe v. Diamond*, 519 Fed. Appx. 752, 753–54 (3d Cir. 2013). In doing so, the Third Circuit held that ***the Union*** acted "irrationally" when it deemed Petitioner not to be covered by the CBA.[2] *Id.* at 757–58.

On September 27, 2013, Petitioner filed a Second Amended Complaint asserting a "hybrid" claim under Section 301 of the Labor Management Relations Act, 29 U.S.C. § 185(a) and various state law claims. (App. at 10.) Regarding Section 301, Petitioner alleged that the Hospital breached the CBA by denying him access to the grievance procedure and that the Union breached its duty of fair representation in declining to pursue the grievance to arbitration. (App. at 10, n.2.) This Section 301 claim forms the heart of the instant Petition.

On February 21, 2014, Petitioner settled his Section 301 claims against the Union. (App. at 17, n.6; Pet.

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[2] The Petition suggests that this language describes the Hospital's conduct, (*see* Pet. at 6–7); however, *Roe* solely addressed Petitioner's allegations against the Union and did not address the Hospital's conduct. *Roe*, 519 Fed. Appx. at 757–58. The fact that the Hospital contemporaneously relied upon the Union's position is immaterial. *Bowen v. United States Postal Serv.*, 459 U.S. 212, 225 (1983) ("The employer, for its part, must rely on [a] union's decision not to pursue an employee's grievance.").

at 6.) One year later, the District Court granted summary judgment to Petitioner on his Section 301 claim against the Hospital and ordered the parties to brief whether the proper remedy for the Hospital's breach should be determined by the CBA's grievance procedure or by the District Court. (App. at 11.) On January 9, 2017, the District Court held that Petitioner's Section 301 remedy, along with the merits of several of Petitioner's state law claims that were preempted by federal labor law, must be determined by the grievance procedure. (App. at 11.)

Thereafter, the parties promptly submitted Petitioner's Section 301 claim and preempted state law claims to arbitration. (App. at 4.) On August 31, 2018, the arbitrator issued an opinion and award; the arbitrator found that credible evidence supported the Hospital's performance concerns about Petitioner and that the Hospital had just cause to terminate Petitioner for insubordination. (App. at 11, 42–43, 45.)

Adopting the District Court's ruling on the Section 301 claim, the arbitrator awarded Petitioner $81,338 (approximately fourteen months' salary plus interest) as a remedy for Petitioner's inability to access the grievance procedure. (App. at 11, 52.) The arbitrator denied Petitioner's request for attorneys' fees on the grounds that "such fees are not typically awarded for breach of contract claims, and the CBA does not provide for an award of attorney's fees." (App. at 53, 11.)

On November 29, 2018, Petitioner filed a complaint to modify the arbitrator's award to add his

attorney's fees in New Jersey Superior Court. (App. at 12.) The Hospital timely removed, and Petitioner amended his complaint. (App. at 12.) On December 30, 2019, the District Court granted the Hospital's motion to dismiss the amended complaint for failure to state a claim. (App. at 9.); *see* Fed. R. Civ. P. 12(b)(6).

The District Court held that Petitioner had failed: (1) to plead any ground for modification under the Federal Arbitration Act, 9 U.S.C. § 1, *et seq.* (the "FAA"); (2) plausibly to plead a manifest disregard of the law of Section 301; and, (3) plausibly to plead any other basis on which to modify the award. (App. at 15–25.) Petitioner appealed; the Third Circuit affirmed and denied Petitioner's request for rehearing *en banc*. (App. at 2, 5–6, 56–57.)

Petitioner now seeks a writ of certiorari. He insists that the precedents of this Court and numerous Circuit Courts of Appeals create a *per se* entitlement for him to receive attorney's fees from the Hospital. (*See generally*, Pet.) Therefore, he argues, the District Court's dismissal was improper. But that is neither the law of Section 301 nor the law of arbitration.

REASONS FOR DENYING THE PETITION

The Court should deny the Petition for three reasons. First, the Petition mischaracterizes the Third Circuit's decision in this case. Second, the Petition identifies no urgent federal question or split in circuit

authority requiring resolution by this Court. And third, the decisions below were correct on the merits.

I. Petitioner Mischaracterizes The Third Circuit's Decision.

Petitioner argues that the Third Circuit failed to "acknowledge" or to "apply" what the Petitioner describes as "decades-old United States Supreme Court precedent that calls for an award of attorney's fees to union members who were denied" arbitration of a grievance. (Pet. at 11.) The Third Circuit did no such thing.

Instead, the Third Circuit merely affirmed the District Court's finding that Petitioner had failed to state any plausible ground to modify the arbitrator's award. (App. at 5–7.) In doing so, the Third Circuit correctly upheld the District Court's finding that Petitioner pled no express ground to modify the arbitration award under the FAA. (App. at 5, 15.) And the Third Circuit found that Petitioner's complaint did not plausibly plead a manifest disregard of the law of Section 301 as stated by *Ames v. Westinghouse Elec. Corp.*, 864 F.2d 289, 292 (3d Cir. 1988), or any other basis for modification. (App. at 5–7, 15–25); *see also Ashcroft v. Iqbal*, 556 U.S. 662, 678–79 (2009).

As the Third Circuit explained, an employee's Section 301 claim that an employer "breached a [CBA] is 'contractual in nature,'" involving contractual remedies. (App. at 5–6 (citing *Ames*, 864 F.2d at 292).) As such, the American Rule mandates that attorney's fees

are not usually recoverable against an employer under Section 301 "unless some exception applies."[3] (App. at 6.) Rather, attorney's fees may be an appropriate remedy against the union as consequential damages in a Section 301 case, as where a union's unreasonable failure to pursue a meritorious grievance (*i.e.*, a breach of its duty of fair representation) requires an employee to pay for alternate representation to vindicate the employee's rights under the CBA. (App. at 6); *see also Ames*, 864 F.2d at 292–94. As explained more fully below, this analysis and application of *Ames* is consistent with this Court's decisions. *See infra*, at § II-A.

More critically, though, Petitioner fundamentally misunderstands the procedural posture of this case—arguing the substance of Section 301 while failing entirely to address the applicable pleading standard. *See Iqbal*, 556 U.S. at 678–79. Indeed, Petitioner presents no meaningful argument to explain to why his Complaint states a plausible basis for relief or why the pleading deficiencies identified by the District Court and affirmed by the Third Circuit are reversible as a matter of law. *Id.* Because this case comes to this Court on appeal of a Rule 12(b)(6) motion to dismiss, Petitioner's failure to present material argument on this point is fatal, and this Court should deny the Petition. *Id.*

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[3] The District Court correctly found that Petitioner's complaint failed to plausibly plead any such exception. *See infra*, at § III.

II. Petitioner Identifies No Important Federal Question Or Split In Circuit Authority For This Court To Resolve.

Petitioner fails to present any compelling grounds to grant certiorari for two reasons. First, despite Petitioner's insistence, Petitioner fails to identify a federal question of overriding importance for this Court to resolve. Indeed, this case is far from such a question, as the Third Circuit applied well-established Section 301 principles in its analysis. And second, the Third Circuit's decision does not conflict with the decisions of other courts of appeals cited by Petitioner; it is entirely consonant with those decisions. For these reasons, the Court should decline to grant certiorari.

A. The Petition Mischaracterizes This Court's Precedents And Fails To Identify A Compelling Federal Question Requiring This Court's Intervention.

Petitioner argues that the decisions below conflict with the well-established precedents of this Court. Specifically, Petitioner suggests that this Court's previous decisions create a *per se* entitlement for an employee to recover attorney's fees from an employer in a successful Section 301 claim. Petitioner identifies *Bowen v. United States Postal Serv.*, 459 U.S. 212 (1983), *Vaca v. Sipes*, 386 U.S. 171 (1967), and *Clayton v. Int'l Union, United Automobile, Aerospace & Agric. Implement Workers of Am.*, 451 U.S. 679 (1981), in support of his argument that Section 301 creates an ironclad entitlement for employees to receive attorney's

fees and that, therefore, the arbitrator's award must be modified. (Pet. at 3–5.) But these cases stand for no such proposition.

Bowen involved termination of a postal service employee after a workplace altercation with another employee. 459 U.S. at 214. The employee alleged that the termination lacked just cause under the CBA. *Id.* At trial, the record revealed that the local union officer had "at each step of the grievance process . . . recommended pursuing the grievance but that the national office, for no apparent reason, had refused to take the matter to arbitration." *Id.* at 215. As a result, the jury awarded the employee lost wages and benefits. *Id.* at 216–17. Although damages were apportioned between the union and the employer, the majority of the damages were charged against the union for breaching its duty of fair representation by unreasonably failing to pursue the grievance. *Id.* at 216–17.

At issue in *Bowen* was "whether a union may be held primarily liable for that part of a wrongfully discharged employee's damages caused by [the] union's breach of its duty of fair representation." *Id.* at 214. Answering in the affirmative, the Court reasoned that by breaching its duty of fair representation, a union "cause[s] the grievance procedure to malfunction, resulting in an increase in the employee's damages" and that thus the union is chargeable for "'those damages caused by the union's refusal to process the grievance. . . .'" *Id.* at 223–24 (citing *Vaca*, 386 U.S. at 197–98).

Here, the Third Circuit cited *Ames* in denying Petitioner's request to modify the arbitration award to add attorney's fees, stating that where a "union has breached [its] duty [of fair representation], forcing the employee to sue the employer under Section 301, the employee can recover those attorney's fees *from the union.*" (App. at 6 (citing *Ames*, 864 F.2d at 293) (emphasis in original).) In other words, the Third Circuit's reasoning is consistent with *Bowen*.

Vaca is inapplicable. In *Vaca*, this Court reversed the Supreme Court of Missouri's decision upholding a jury verdict on the grounds that "as a matter of federal law, the evidence [did] not support a verdict that the Union breached its duty of fair representation." 386 U.S. at 171. In reaching this conclusion, the Court held that the union had "diligently supervised" and pursued the employee's grievance until the union, in good faith, concluded "that it could not establish a wrongful discharge" and that "arbitration would be fruitless." *Id.* at 194. This Court held that the union had not breached its duty of fair representation as a matter of law and no damages could be apportioned against the union. *Id.* at 195, 197–98. This holding is wholly inapplicable where, as here, there is no dispute that the Union breached its duty of fair representation to Petitioner by failing to pursue Petitioner's grievance to arbitration.

Moreover, the portion of *Vaca* Petitioner cites merely states general estoppel principles—*i.e.*, an employer cannot obstruct an employee's ability to exhaust an internal grievance procedure and then argue the

employee's failure to exhaust precludes Section 301 relief. (Pet. at 4 (citing *Vaca*, 386 U.S. at 185).) But this principle of *Vaca* is not at issue here, as the Hospital has not contended Petitioner failed to exhaust CBA remedies in the applicable District Court or Third Circuit proceedings and does not do so now.

So, too, is *Clayton* inapplicable. In *Clayton*, this Court addressed whether an employee alleging that his union breached its duty of fair representation must first "attempt to exhaust any exclusive grievance and arbitration procedures established [by a CBA] before he may maintain" a Section 301 suit. 451 U.S. at 681. This Court held that where an employee "cannot obtain either the substantive relief he seeks or reactivation of his grievance, national labor policy would not be served by requiring exhaustion of internal remedies." *Id.* at 693. Again: in proceedings relevant to this Petition, the Hospital has not and does not argue Petitioner failed to exhaust internal remedies. Moreover, the language from *Clayton* Petitioner cites is merely a general statement of Section 301 policy and has nothing to do with the applicability of fee awards in such cases. (Pet. at 5 (citing *Clayton*, 451 U.S. at 687).)

Petitioner's citations to this Court's precedents either support the Hospital's position or are inapplicable. Thus, the Petition identifies no compelling question of federal law for this Court to resolve, and this Court should deny certiorari.

B. The Petition Fails To Identify Any Actual Split In Circuit Authority Requiring Resolution By This Court.

Petitioner insists that the Third Circuit's decision departs from well-established principles of federal law, and cites several cases for the proposition that "numerous Circui[t]" courts of appeals have awarded attorney's fees against employers in similar scenarios. (Pet. at 7.) In Petitioner's view, these cases create a conflict with the Third Circuit that this Court must resolve. (Pet. at 7–11.) This purported circuit split centers around the Third Circuit's application of *Ames* to Petitioner's case. (Pet. at 7–11.)

The cases themselves tell a different story. Indeed, none actually conflicts with the Third Circuit's decision in this case or in *Ames*, as careful examination of these cases reveals common principles of law and/or plainly distinguishable facts.

Cases Petitioner cites from the First, Fourth, Fifth, and Ninth Circuits as purported evidence of a circuit split are actually consistent with *Ames—i.e.*, they confirm that attorney's fees may be awarded ***against a union*** in a Section 301 claim as consequential damages flowing from a union's breach of its duty of fair representation.[4] *See, e.g.*, *Dutrisac v. Caterpillar*

[4] Even assuming that Petitioner pled a plausible entitlement to attorney's fees from the Union, Petitioner settled his claims against the Union in 2014. (App. at 17, n.6.); *see*, *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992) (standing requires, *inter alia*, an injury that is "fairly trace[able] to the challenged action of the defendant, and not . . . th[e] result [of] the independent

Tractor Co., 749 F.2d 1270, 1275–76 (9th Cir. 1983) (stating that while attorney's fees were appropriate as consequential damages ***against the union***, no exception to the American Rule as applied to the employer was "justified solely on the ground that a losing defendant's wrongful conduct forced the plaintiff to resort to litigation."); *Seymour v. Olin Corp.*, 666 F.3d 202, 208–12 (5th Cir. 1982) (confirming attorney's fees ***against the union*** were appropriately awarded where "Union officials informed [the employee] that he must fire his attorney before they would press the grievance. . . ."); *Self v. Drivers, Chauffeurs, Warehousemen and Helpers Local Union No. 61*, 620 F.2d 439, 444 (4th Cir. 1980) (holding that attorney's fees were chargeable ***to the union*** for its failure "to properly press th[e] initial grievance. . . ."); *De Arroyo v. Sindicato de Trabajadores Packinghouse, AFL-CIO*, 425 F.2d 281, 293 (1st Cir. 1970) (declining to award attorney's fees but generally observing that, where appropriate, attorney's fees "should be charged ***against the union***, for its failure to utilize the grievance procedure on the employee's behalf. . . .") (emphasis supplied).

Moreover, Petitioner's cases from the Sixth and Seventh Circuits confirm that employers are liable for attorney's fees in a Section 301 claim only upon substantial evidence that the employer instigated or actively participated in the union's breach of duty. *Allen v. Allied Plant Maintenance Co. of Tenn.*, 881 F.2d 291, 293–99 (6th Cir. 1989) (holding attorney's fees

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action of some third party not before the court.") (internal quotations and citations omitted).

chargeable to the employer where employee termination was accomplished "pursuant to [a] conspiracy between [the employer] and [the international union] to get rid of him" and a further "conspiracy" between employer and union "to select an arbitrator who would be favorable" to the employer's position); *Bennett v. Local Union No. 66, Glass, Molders, Pottery, Plastics and Allied Workers Int'l Union, AFL-CIO, CLC*, 958 F.2d 1429, 1431–41 (7th Cir. 1992) (holding attorney's fees appropriately assessed against the employer where employer and union secretly colluded retroactively to extend an employee's probationary period, then summarily terminated her, which constituted "bad faith" and "fraudulently deprived [the employee] of her protected status").[5]

Notably, *Allen*, *Bennett*, *De Arroyo*, *Dutrisac*, and *Seymour* each involved Section 301 remedies ***at trial***; as such, review of the trial courts' application of Section 301 was *de novo*. *Allen*, 881 F.2d at 293–94; *Bennett*, 958 F.2d at 1341; *De Arroyo*, 425 F.2d at 283; *Dutrisac*, 749 F.2d at 1271–72; *Seymour*, 666 F.2d at 204–205. As an attempt to modify an arbitration award, Petitioner's complaint involves a far more circumscribed standard of judicial review. *See infra*, § III.

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[5] Petitioner also cites *Holodnak v. Avco Corp.*, 514 F.2d 285 (2d Cir. 1975), but *Holodnak* involved an allegation of obvious partiality by the arbitrator–an express ground of the FAA that Petitioner failed to plead. 514 F.2d at 286 (citing 9 U.S.C. § 10); (App. at 15.)

III. The Third Circuit's Decision Was Correct.

Having failed to present a compelling federal question or meaningful split in circuit authority, the Petition merely argues the merits of the arbitrator's decision. Even so, the Court should decline to grant certiorari because the courts below correctly decided the case.

A. Petitioner Failed To Plead Any Ground To Modify An Arbitration Award Under The FAA.

In *Hall Street Assocs., LLC v. Mattel, Inc.*, 552 U.S. 576, 583–84 (2008), this Court considered whether an arbitrator's "'manifest disregard' was meant to name a new ground for review" of an arbitration award or whether manifest disregard was simply "shorthand for § 10(a)(3) or § 10(a)(4)" of the FAA. 552 U.S. at 585. Rejecting the notion that a litigant may seek "general review [of] an arbitrator's legal errors," *id.*, the Court held that the FAA provides the "exclusive grounds for . . . vacatur and modification" of arbitration awards. *Id.* at 583–84.[6]

In dismissing the complaint, the District Court found that Petitioner failed to "challenge the arbitration award pursuant to the four explicit grounds set forth in the FAA." (App. at 15.) Petitioner declined to

[6] While the Third Circuit has not yet expressly addressed whether manifest disregard of the law survived *Hall Street* as a ground to modify an arbitration award, *Hall Street* itself addresses this point. (App. at 5); *Hall Street*, 552 U.S. at 583–85.

challenge this finding in the Third Circuit, and he does not challenge it here. Because the FAA provides "exclusive grounds" to modify Petitioner's arbitration award, his failure to plead any such grounds is dispositive, and his complaint was properly dismissed. *Hall Street*, 552 U.S. at 583–84.

B. Petitioner Failed To Plead A Plausible Claim That The Arbitrator Manifestly Disregarded The Law Of Section 301.

Notwithstanding *Hall Street*, Petitioner's complaint in the District Court failed to plead plausible facts entitling him to modify the arbitration award on the grounds that the arbitrator manifestly disregarded the law of Section 301.[7] *Iqbal*, 556 U.S. at 678–79; Fed. R. Civ. P. 12(b)(6).

Manifest disregard of the law is a "judicially-created [doctrine] that is to be used only [in] those exceedingly rare circumstances where some egregious impropriety on the part of the arbitrato[r] is apparent but where none of the provisions of the [FAA] apply." *Black Box Corp. v. Markham*, 127 Fed. Appx. 22, 25 (3d Cir. 2005) (internal citation and quotation omitted). Because federal courts apply "a strong presumption" in favor of enforcing arbitration awards, *Brentwood Med.*

[7] The District Court found that Petitioner's complaint failed to plead any other plausible grounds for relief, such as bad faith. (App. at 22–25.) Petitioner failed to challenge this finding in the Third Circuit, and he does not challenge it here. (App. at 6; *see generally*, Pet.)

Assoc. v. United Mine Workers of Am., 396 F.3d 237, 241 (3d Cir. 2005), the scope of the manifest disregard doctrine is "severely limited." *DiRussa v. Dean Witter Reynolds, Inc.*, 121 F.3d 818, 821 (2d Cir. 1997).

In considering allegations of manifest disregard of the law, the court must "not . . . correct factual or legal errors made by an arbitrator," because federal courts "are not authorized to review the arbitrator's decision on the merits. . . ." *Major League Umpires Assoc. v. Am. League of Prof'l Baseball Clubs*, 357 F.3d 272, 279 (3d Cir. 2004) (internal quotation omitted). Indeed, an "arbitrator's improvident, even silly, fact-finding does not provide a basis" to find a manifest disregard of the law. *Id.* at 279–80.

Rather, manifest disregard is limited to situations where "(1) the arbitrato[r] knew of a governing legal principle yet refused to apply it or ignored it altogether, and (2) the law ignored by the arbitrato[r] was well defined, explicit, and clearly applicable to the case." *Merrill, Lynch, Pierce, Fenner & Smith, Inc. v. Millar*, 274 F. Supp. 2d 701, 706 (W.D. Pa. 2003) (internal citation and quotation omitted); *see also Dluhos v. Strasberg*, 321 F.3d 365, 269 (3d Cir. 2003) (explaining that a "manifest disregard of the law" differs from merely "erroneous interpretation"); *Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Bobker*, 808 F.2d 930, 933 (2d Cir. 1986) (holding that manifest disregard required "more than [an arbitrator's] error or misunderstanding with respect to the law" but rather a flagrant disregard for an obvious, thoroughly-settled legal principle). Put another way, the law at issue must be so clear and so

well-established that an arbitrator's disregard would be both egregious and immediately apparent—akin, albeit perhaps in a simplistic way, to an arbitrator finding a tort without an injury or finding a contract lacking any indicia of mutual assent.[8]

Petitioner failed plausibly to plead facts showing a manifest disregard of the law. (App. at 25.) Indeed, both the District Court and the Third Circuit found that the arbitrator's decision was consistent with *Ames*, insofar as the CBA did not authorize fee-shifting and Petitioner failed to plead any plausible exception to the American Rule. (App. at 15–25, 5–6.)

On appeal, Petitioner argued for the first time that the Hospital "instigated or took part in the Union's breach of its duty of fair representation." (App. at 6; App. at 17, n.5.) However, the District Court properly found that Petitioner's complaint lacked plausible fact allegations in support of this theory of relief. (App. at 17, n.5.) And the Third Circuit correctly noted that because it had not yet decided "whether an employee could recover attorney's fees in those circumstances," there was "no clear [Third Circuit] law [on this point]

[8] Petitioner initially argued below that the recoverability of attorney's fees against an employer under Section 301 presented a question of first impression in the Third Circuit. Opening Br. of Appellant Stephen J. Simoni, *Simoni v. Jersey Shore University Medical Center, et al.*, Case No. 20-1024, Docket No. 28 (3d Cir. Apr. 24, 2020) at pp. 3, 6, 12. By definition, a question of first impression cannot conceivably present a principle of law so clear and well-established as to constitute a manifest disregard of the law.

that the arbitrator could have manifestly disregarded" in the first place. (App. at 6.)

Ultimately, the arbitrator, the District Court, and the Third Circuit correctly applied the law on the facts presented. Although Petitioner clearly disagrees with the arbitrator's decision, mere disagreement—however impassioned—provides no basis to modify an arbitration award. Therefore, this Court should deny the petition.

CONCLUSION

The Court should deny the petition for a writ of certiorari.

Respectfully submitted,

WILLIAM M. HONAN
Counsel of Record
FOX ROTHSCHILD LLP
1301 Atlantic Avenue
Suite 400
Atlantic City, NJ 08401
T: (609) 572-2218
F: (609) 348-6834
bhonan@foxrothschild.com
Counsel for Respondents