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This memorandum is uncorrected and subject to revision before
publication in the New York Reports.

No. 244 SSM 40
Superior Officers Council Health
& Welfare Fund, et al.,
Appellants,
v.
Empire HealthChoice Assurance,
Inc., &c.,
Respondent.

Submitted by Joel Spivak, for appellants.
Submitted by Randy M. Mastro, for respondent.

MEMORANDUM:

The order of the Appellate Division should be affirmed,
with costs.

The Appellate Division properly construed the plain
language of the agreement and determined that plaintiffs' failure

to adopt a drug formulary bars them from sharing in certain rebates that defendant received from prescription drug manufacturers. Additionally, plaintiffs fail to state a cause of action for breach of fiduciary duty separate and apart from their breach of contract claim.

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On review of submissions pursuant to section 500.11 of the Rules, order affirmed, with costs, in a memorandum. Chief Judge Lippman and Judges Ciparick, Graffeo, Read, Smith, Pigott and Jones concur.

Decided November 21, 2011