FINAL ARBITRATION AWARD

ARBITRATION TRIBUNAL

Sitting in the following composition:

Chariman: Hon. Richard D. Faulkner, J.D., LL.M., FCIArb, Dip. Intnl. Comm. Arb.,
Dallas, Texas

Arbitrators: Mr. Richard Chernick, Esq., FCIArb, JAMS
Los Angeles, California

Hon. Ted Lyon, Esq., Attorney-at-Law
Dallas, Texas

Secretary to the Tribunal: Mr. Charles Bennett, Esq., Attorney-at-Law
Dallas, Texas

In the Matter of an Arbitration Between

LANCE ARMSTRONG and TAILWIND SPORTS CORP.
Represented by: Mr. Timothy J. Herman, Esq
Austin, Texas

Claimants

and

SCA PROMOTIONS, INC., SCA INSURANCE SPECIALISTS, INC.
Represented by: Mr. Jeffrey M. Tillotson, Esq.
Dallas, Texas

Respondents

TABLE OF CONTENTS

TABLE OF CONTENTS i

I. SUMMARY OF FINAL ARBITRATION AWARD 1

II. THE PARTIES, COUNSEL AND ARBITRATION TRIBUNAL 2

III. THE ISSUES IN DISPUTE 2

IV. THIS ARBITRATION HAS AFFORDED THE PARTIES A FULL HEARING 3

V. BACKGROUND 3

VI. SECOND AND THIRD ARBITRATION PROCEEDINGS 4

VII. FOURTH ARBITRATION PROCEEDING 4

VIII. INDEPENDENT ARBITRATION 5

IX. ISSUES PRESENTED 5

A. The Compromise Settlement Agreement Arbitration Provisions 6

B. Prior Party Actions Significant to Tribunal Jurisdiction 6

C. Party Assertions Regarding Tribunal Jurisdiction 6

D. Prior Partial Final Award of Jurisdiction and Court Review 7

X. ARBITRABILITY AND JURISDICTION DISPUTES 7

A. Proper Parties Before This Tribunal 7

B. This Tribunal Has No Jurisdiction Over William Stapleton 8

C. This Tribunal Has Jurisdiction Over Claimants and Respondents 9

D. *Functus Officio* Doctrine Inapplicable 9

E. Facts and Circumstances 9

XI. LEGAL ANALYSIS 10

A. Facts 10

B. Jurisprudence 10

C. Analysis 12

D. Conclusion 13

XII. SANCTIONS 13

A. Background 13

B. Facts 14

C. Party Obligation Not to Frustrate or Impede Contracts 14

D. Claimants Frustrated and Impeded SCA Contract Performance 16

E. Claimants Frustrated and Impeded Arbitration Tribunal Performance 16

XIII. DETERMINATION OF SANCTIONS 17

XIV. CLAIMANTS' COUNSEL DID NOT KNOW OF CLAIMANTS PERJURY AND DID NOT KNOWINGLY PERPETRATE A FRAUD UPON THE TRIBUNAL 18

XV. THE STATUS OF TAILWIND SPORTS CORP 18

XVI. SEPARATE CONCURRENCE IN PART AND DISSENT 19

XVII. CONCLUSION 19

Signatures 20

DISSENT FROM FINAL AWARD 21

IN THE MATTER OF AN ARBITRATION BETWEEN

LANCE ARMSTRONG and TAILWIND SPORTS CORP.	§	
	§	
Claimants,	§	**BEFORE AN ARBITRATION**
	§	**TRIBUNAL CONSISTING OF THE**
	§	**HONORABLE RICHARD**
v.	§	**FAULKNER, CHAIRMAN,**
	§	**MR. RICHARD CHERNICK AND**
	§	**HONORABLE TED LYON, ASSISTED**
	§	**BY TRIBUNAL SECRETARY**
	§	**MR. CHARLES BENNETT**
SCA PROMOTIONS, INC., SCA INSURANCE SPECIALISTS, INC.	§	
Respondents.	§	

FINAL ARBITRATION AWARD

I. SUMMARY OF FINAL ARBITRATION AWARD

Perjury must never be profitable. Justice in courts of law and arbitration tribunals is impossible when parties feel free to deliberately deceive judges or arbitrators. The case yet again before this Tribunal presents an unparalleled pageant of international perjury, fraud and conspiracy. It is almost certainly the most devious sustained deception ever perpetrated in world sporting history. Tailwind Sports Corp. and Lance Armstrong have justly earned wide public condemnation. That is an inadequate deterrent. Deception demands real, meaningful sanctions. This Arbitration Tribunal awards sanctions of Ten Million Dollars ($10,000,000.00) against Mr. Lance Armstrong and Tailwind Sports Corporation.

II. THE PARTIES, COUNSEL AND ARBITRATION TRIBUNAL

Pursuant to the multiple agreements of the parties, this Arbitration Tribunal consisting of Messrs. Richard Chernick, Esq., appointed by Respondent SCA Promotions, Inc. et al, former Senator Ted Lyon, Esq., appointed by Claimants, Tailwind Sports Corp. and Mr. Lance Armstrong, and the neutral Chairman, former Judge Richard Faulkner, Esq. was appointed as the exclusive Tribunal to determine all disputes between the parties. Participating, subject to continuing objection to the Tribunal's jurisdiction over Tailwind Sports, Inc. and Mr. Lance Armstrong, were the former counsel for Tailwind Sports, Inc. and previous and current counsel for Mr. Lance Armstrong, Messrs. Timothy J. Herman, Esq. and Sean Breen, Esq. and the Respondents through counsel, Mr. Jeffery Tillotson, Esq.

III. THE ISSUES IN DISPUTE

These parties return to this Arbitration Tribunal yet again to consider the parties' latest disputes raised in SCA Promotions, Inc.'s ("SCA") Motion to Reconvene Arbitration and Request for Sanctions and Forfeiture Against Claimants ("Motion"), Lance Armstrong ("Armstrong") and Tailwind Sports Corp. ("Tailwind") (collectively "Claimants"). Respondents make multiple assertions which effectively present for decision four discrete issues:

1.) Does this Arbitration Tribunal have the jurisdiction or authority to decide and resolve the existing disputes between the named parties?

2.) Which parties are properly subject to this Tribunal's jurisdiction?

3.) What jurisdiction, if any, does this Tribunal have to award sanctions? and

4.) If sanctions are appropriate, what sanctions should this Arbitration Tribunal award?

IV. THIS ARBITRATION TRIBUNAL HAS AFFORDED THE PARTIES A FULL HEARING

This Arbitration Tribunal has permitted the parties substantial pre-hearing discovery, issued multiple subpoenas, conducted a full hearing on the merits of the issues during which the testimony of multiple witnesses, extensive documentary evidence and significant briefing were received and considered. The Tribunal also directed the parties to provide supplemental briefing analyzing particular jurisprudence and then thoroughly reviewed all party submissions and the applicable law. The issues in dispute are now appropriate for decision and award.

V. BACKGROUND

The history of the numerous disputes between these parties is very well-known to this Arbitration Tribunal. The complicated reality is that this Tribunal was originally empanelled to determine if SCA was required to honor the commitment it made to Claimants in Contingent Prize Contract 31122 ("CPC") in connection with the Tours de France in 2004.

SCA denied liability under the CPC asserting that Armstrong won the 2004 Tour de France using prohibited means. Claimants strongly controverted that assertion. The Tribunal entertained extensive evidence at trial and was prepared to rule. However, before this Tribunal rendered its own Final Award on the merits, the parties privately resolved their disputes. Their agreement was memorialized in the private Compromise Settlement Agreement ("CSA") and the public "Consent" arbitration Award. The Award provided for SCA to pay $7,500,000.00 to Claimants in satisfaction of their rights under the CPC. The CSA addressed multiple additional issues. Most importantly to the continuing jurisdiction and authority of this Tribunal, the CSA by its own terms anticipated future additional disputes would inevitably arise. The CSA affirmatively maintained the agreed arbitration Tribunal by individually naming each of the arbitrators, granting the Tribunal exclusive jurisdiction to resolve any future disputes arising

under or in connection with the CSA and CPC, and waiving any challenges to the jurisdiction of the Tribunal. As the parties anticipated and expressly provided for in the CSA, the parties subsequently returned to this Tribunal multiple times to contest additional disputes after the public "Consent" Award was issued.

VI. SECOND AND THIRD ARBITRATION PROCEEDINGS

Questions persisted concerning whether Armstrong won fairly and within the rules the various "Tours de France." On two occasions after the entry of the consent award, Armstrong and Tailwind affirmatively sought relief from this Tribunal, including sanctions, for SCA conduct they claimed violated their rights. (App. 19-20; 276-289). Notably, neither Claimants, nor SCA objected to the Tribunal's jurisdiction or authority in either arbitration. In each instance, after the Tribunal resumed action, the parties subsequently resolved their disputes. Neither dispute resulted in the Tribunal issuing a Final Award.

VII. FOURTH ARBITRATION PROCEEDING

Recently, Armstrong's status as the "official" winner of the various "Tours de France," was revoked by the United States Anti-Doping Agency, known as "USADA." The evidence established that after the first arbitration, SCA provided extensive information to USADA. SCA also provided information to the United States Department of Justice. Claimants asserted that those actions violated the Confidentiality Order issued by the Tribunal in the first arbitration. Respondents denied that assertion noting that providing information to the Department of Justice was completely proper. Claimants' argument that an arbitration Confidentiality Order could be used to conceal perjury and fraud from the very Tribunal that issued the Order was innovative, but completely unpersuasive.

Armstrong also tried to enjoin USADA from investigating him. He asserted in the

United States District Court that the actions of USADA, particularly the process leading to USADA's "revocation" of his status, were inconsistent with due process or natural justice. The United States District Court declined to enjoin USADA. However, it issued scathing comments highly critical of USADA's motives and actions. Those were noted and considered in light of Tribunal members' significant judicial and prosecutorial experience. *Lance Armstrong v. Travis Tygert & United States Anti-Doping Agency*, USDC WDTX, Case No. A-12-CA-606-66, Order, 20 Aug. 2012.

VIII. INDEPENDENT ARBITRATION

This Arbitration Tribunal has taken great care to determine completely independently of, and without any reliance upon USADA's report, what, if any, sanctions against Claimants were appropriate for their actions before this Tribunal. The parties have been afforded a full, fair and complete opportunity to present their positions. This Tribunal has ensured that the parties all received a full, complete hearing consistent with all modern conceptions of due process and natural justice.

After the "revocation" of Armstrong's Tour de France victories SCA timely proceeded to seek relief in court. Eventually the parties returned yet again to this Tribunal.

IX. THE ISSUES PRESENTED

The questions presented for determination now are:

1.) Does this Arbitration Tribunal have the jurisdiction or authority to decide and resolve the existing disputes between the named parties?

2.) Which parties are properly subject to this Tribunal's jurisdiction?

3.) What jurisdiction, if any, does this Tribunal have to award sanctions? and

4.) If sanctions are appropriate, what sanctions should this Arbitration Tribunal

award?

A. <u>The Compromise Settlement Agreement Arbitration Provisions</u>

The key for determination of these issues is the language of the arbitration provisions of the CSA which states:

"This SETTLEMENT AGREEMENT shall be governed by, construed, interpreted and the rights of the parties determined in accordance with the laws of the State of Texas, without regard to conflict of law principles thereof. The Arbitration Panel consisting of Richard Faulkner, Richard Chernick and Ted Lyon **<u>shall have exclusive jurisdiction</u>** over the parties hereto with respect to any dispute or controversy among them arising under or in connection with this SETTLEMENT AGREEMENT or Contingent Prize Contract #31122 and, by execution and delivery of this SETTLEMENT AGREEMENT**, each of the parties hereby submits to the jurisdiction of that Panel and <u>waives any objection to</u> such jurisdiction on the grounds of** venue or *forum non conveniens* **the absence of <u>*in personam*</u> or subject matter <u>jurisdiction</u> and any similar grounds**, consents to service of process by mail or any other manner permitted by law, and irrevocably agrees to be bound by any order or award issued or rendered thereby in connection with this SETTLEMENT AGREEMENT." emphasis added. *See* CSA, p.5, § 5.6.

B. <u>Prior Party Actions Significant to Tribunal Jurisdiction</u>

The Claimants' previous pursuit of multiple claims in two separate post-award arbitration proceedings, and specifically their filing the Request for Sanctions, conclusively demonstrate acceptance of this Tribunal's continuing jurisdiction as further explained below.

C. <u>Party Assertions Regarding Tribunal Jurisdiction</u>

SCA asserts that the parties' agreements, the language of the CSA and CPC arbitration provisions together with Claimants own actions seeking relief from this Tribunal, including

Claimants Request of Sanctions, admitted and re-verify the continuing jurisdiction of this Tribunal to determine the latest disputes between these parties. SCA also claims that the Tribunal has jurisdiction over Mr. William Stapleton who executed the CSA, though he was identified when doing so as acting in a corporate capacity or as an agent of Armstrong.

Claimants deny this Tribunal has any jurisdiction to entertain or decide SCA's claims. They each and all specifically contest and deny that this Tribunal has jurisdiction to entertain any of SCA's claims and deny the Tribunal has any authority to assess sanctions against them.

D. Prior Partial Final Award on Jurisdiction and Court Review

The Tribunal separately considered the issues of jurisdiction in an effort to provide the parties an opportunity to have that determination expeditiously reviewed by the courts. A Partial Final Award on Jurisdiction was issued on October 29, 2013, the findings and conclusions of which are further supplemented by the jurisdictional findings and conclusions of this Final Award on the merits. Claimants attempted to stay the arbitration proceedings and to vacate the Partial Final Award on Jurisdiction in the 116th District Court of Dallas County Texas. Cause No.: DC13-01564. Claimants were unsuccessful and sought review of the District Court decision in the Court of Appeals, Fifth District of Texas at Dallas in Case No. 05-14-00300CV where in a Memorandum Opinion the court concluded that it dismissed the appeal for want of jurisdiction. Claimants thereafter sought temporary relief and a writ of mandamus in the Supreme Court of Texas. The Texas Supreme Court declined to intervene and denied the Motion for Temporary Relief and denied the petition for a writ of mandamus.

X. ARBITRABILITY AND JURISDICTION DISPUTES

A. Proper Parties Before This Tribunal

The issue of which parties are properly before this Tribunal is easily addressed.

Arbitration Tribunals only have jurisdiction of those parties and issues affirmatively delegated to them. *Stolt-Nielsen S. A. v. AnimalFeeds Int'l Corp.*, 559 U.S. 662 (2010); *AT&T Mobility LLC v. Concepcion*, 131 S. Ct. 1740 (2011). The language of the CSA states that this Tribunal, "**shall have exclusive jurisdiction** over the parties hereto with respect to any dispute or controversy among them arising under or in connection with this SETTLEMENT AGREEMENT or Contingent Prize Contract #31122 and…**each of the parties hereby submits to the jurisdiction of that Panel and waives any objection to such jurisdiction on the grounds of** venue or *forum non conveniens* **the absence of *in personam* or subject matter jurisdiction and any similar grounds**… " The arbitration provisions grant this Tribunal the exclusive authority to interpret and define its own jurisdiction. Claimants are further estopped by the language they agreed to from legitimately claiming otherwise as they affirmatively waived the jurisdictional challenge they now attempt. That view is buttressed by Claimants' own subsequent actions. Thus, this Tribunal's interpretation of the agreements' language is entitled to appropriate deference. *Oxford Health Plans LLC v. Sutter*, 133 S. Ct. 2064 (2013). We recognize that the United States Supreme Court has warned arbitration Tribunals that they are not common law courts of general jurisdiction. *Stolt-Nielson S.A. v. AnimalFeeds Int'l Corp.*, 559 U.S. 662 (2010). We recognize that arbitration Tribunals hold no roving commission to determine or vindicate public policy and we do not assert one here. However, as all adjudicators, arbitration Tribunals must have the authority to regulate, control and, if necessary, sanction parties for conduct in connection with the proceedings before them.

B. This Tribunal Has No Jurisdiction Over William Stapleton

The evidence before this Tribunal clearly establishes that Mr. Stapleton acted in a disclosed capacity as a corporate officer or as the authorized agent of Armstrong. In neither case

did Mr. Stapleton agree to any jurisdiction of this Tribunal over himself as an individual. Whatever, if any, relief SCA may be able to obtain against him must be pursued in a forum with jurisdiction. This Tribunal is not that forum. The evidence and law do not provide any basis for this Tribunal to assert jurisdiction over Mr. Stapleton. We dismiss and deny SCA's request for sanctions from this Tribunal against Mr. Stapleton. We express no opinion concerning what, if any, claims may be pursued against him in any other forum.

C. This Tribunal Has Jurisdiction Over Claimants and Respondents

The documents in evidence before this Tribunal specify the parties who have agreed to be parties to the CSA and CPC. The listed parties are Tailwind Sports Corp., Lance Armstrong, SCA Promotions, Inc. and SCA Insurance Specialists, Inc. The evidence unquestionably establishes that those persons and entities agreed directly, or by authorized agent, to arbitrate any disputes between any or all of them before this Tribunal, all as defined in these agreements.

D. Functus Officio Doctrine Inapplicable

SCA asserts various theories seeking remedies that have been characterized by Claimants as attacking the 2006 Award. Claimants argue that the doctrine of *functus officio* bars such remedies. We find that doctrine to inapplicable here. The claims at issue now are but the newest set of disputes between these parties and ones substantially similar to claims previously asserted by Claimants against SCA. The doctrine of *functus officio* is inapplicable to deprive this Tribunal of jurisdiction.

E. Facts and Circumstances

The facts and circumstances of this case are unusual and distinct from virtually all of the jurisprudence presented by Claimants and considered by the Tribunal. The language of the CSA was drafted to empower the Tribunal to address future disputes, which the parties perceived as

virtually inevitable. The acrimonious history of these parties mandated the creation of a private mechanism for resolution of any additional disputes that would arise after issuance of the original Award. The parties' agreements anticipated that disputes were likely to arise in the future and provided for the continuing jurisdiction of this Tribunal to arbitrate them. They did indeed arise, and without contemporaneous objection, the parties submitted all of those disputes to this Tribunal for decision.

XI. LEGAL ANALYSIS

A. Facts

The facts clearly demonstrate that contrary to Claimants' new position, they affirmatively asserted that this Tribunal had the authority and jurisdiction to sanction SCA after the issuance of the "consent" Award for conduct Claimants believed violated their rights. The validity of that view of the Tribunal jurisdiction was confirmed by the fact that SCA never contested Claimants' right to proceed before this Tribunal on those occasions. Critically, all of the parties agreed the CSA was to be interpreted as creating and maintaining the jurisdiction and authority of this Tribunal to determine any disputes between the parties relating to the CSA whenever those disputes might arise. Thus, the authority and jurisdiction of this Tribunal is directly analogous to that of the arbitration tribunal agreed between Germany and the United States of America in *Lehigh Valley Railroad Company v. Germany*, 8 R.I.A.A. 84 (1930) (rehearing 8 R.I.A.A. 222 (1936)) (rehearing 8 R.I.A.A. 225 (1939)).

B. Jurisprudence

The many parallels between that Tribunal and this one are patent. Both arbitrations involve awards procured by a party with a "win by any means" view of arbitration; both arbitrations involve perjury and fraud perpetrated upon the Tribunals that remained unknown and

unknowable for many years. Each arbitration Tribunal was specifically created to address future disputes which the parties reasonably expected would have to be determined after the agreement of an armistice. The CSA and original consent Award were merely these parties' private equivalent of a temporary "cease-fire." Hostilities between them continued precisely as expected. The resumption of hostilities upon discovery of Claimants' perjury and deception of the arbitration Tribunal in the instant case simply occurred within five years of the issuance of the Consent Award, rather than nine years as in *Lehigh, supra.* The jurisdiction, imperium and authority of an arbitration tribunal to address and determine disputes within the parameters of the parties' carefully crafted contract language, and their actions consistent with that language, is unquestionable, whether the arbitration Tribunal is created by an international treaty or by a domestic contract. This basis for jurisdiction was expressed in the Partial Final Award, p. 4, supra; we assume the Texas courts considered that authority in declining to intervene in this proceeding.

This contractual identity of both forms of arbitral jurisdiction and the relevance of treaty jurisprudence to domestic arbitration jurisprudence was recently reaffirmed by the United States Supreme Court in *BP Group vs. Republic of Argentina, 134 S. Ct. 1198; 188 L. Ed. 2d 220.* There the Court held that, "As a general matter, a treaty is a contract, though between nations. Its interpretation normally is, like a contract's interpretation, a matter of determining the parties' intent. *Air France v. Saks, 470 U. S. 392, 399, 105 S. Ct. 1338, 84 L. Ed. 2d 289 (1985)*" "Treaties are to be interpreted upon the principles which govern the interpretation of contracts in writing between individuals…" *Wright v. Henkel, 190 U. S. 40, 57, 23 S. Ct. 781, 47 L. Ed. 948 (1903)* Thus the jurisprudence construing the jurisdiction and authority of arbitration tribunal in

Lehigh Valley Railroad Company v. Germany, *supra*, is directly relevant to any review or evaluation of this Tribunal's jurisdiction.

The U. S. Supreme Court further noted that courts presume parties to an arbitration agreement intend arbitrators to determine if the preconditions for arbitration have been complied with. Thus, "**parties** normally **expect arbitrators to decide . . . claims of "waiver**, delay, or a like defense to arbitrability." *Moses H. Cone Memorial Hospital v. Mercury Constr. Corp., 460 U. S. 1, 25, 103 S. Ct. 927, 74 L. Ed. 2d 765 (1983).* (emphasis added) The same expectation applies to disputes relating to "time limits, notice, **laches, estoppel**, and other conditions precedent to an obligation to arbitrate.'" *Howsam v. Dean Witter Reynolds*, 537 U.S. 79, 85, 123 S. Ct. 588, 154 L. Ed. 2d 491 (2002) (emphasis added). The arbitration provisions chosen by the parties here affirmatively waived any such challenges to the jurisdiction of this Tribunal.

The facts of the parties' disputes reveal that they fit within the parties' agreements, the language of the CPC and within the broad arbitration provision of the CSA. The fact that now SCA, rather than Claimants, seeks sanctions does not alter the outcome of the jurisdictional issue consistently applied to **all** post-consent award disputes between these parties. That is emphatically true in light of the undisputed fact that Claimants acknowledged the jurisdiction of this Tribunal to issue sanctions previously when they sought precisely that relief. The latest disputes fall within the parties' agreements, the CSA and CPC. The parties' prior conduct confirms that interpretation of their agreements. No fair reading of these agreements supports the view that only Claimants could seek sanctions from this Tribunal.

C. Analysis

Claimants' attacks upon the jurisdiction of this Tribunal are fairly characterized as addressing issues of waiver, laches and estoppel. These issues are clearly within the jurisdiction

they themselves granted this Tribunal. The actions of Claimants in bringing prior post-Consent Award disputes to this Tribunal requesting relief almost identical to that now sought by SCA are strong proof that Claimants are precluded from contesting the jurisdiction and authority of this Tribunal in this proceeding. APP 19-20, 276-287. *Rachal v. Reitz*, 403 S.W.3d 840 (Tex. 2013), *In Re FirstMerit Bank*, 52 S.W.3d 749, 754. [1]

D. Conclusion

The Tribunal finds and holds that Claimants are precluded and estopped from contesting the Tribunal's jurisdiction now. If Claimants ever had any valid argument concerning the jurisdiction and authority of this Tribunal to award sanctions, they also waived that dubious challenge by themselves seeking the award of sanctions from this Tribunal against SCA.

XII. SANCTIONS

A. Background

The Tribunal accepts that the authority of arbitrators to award monetary sanctions is not universally accepted. The Dissent eloquently explains why Senator Lyon is not alone in asserting that arbitrators lack such authority. However, arbitrators have long been accepted as having the authority to take actions that fit well within the rubric of "sanctions." Tribunals have assessed or transferred the allocation of arbitration fees, administrative fees and costs upon arbitral miscreants, assessed attorney's fees upon disruptive parties and even threatened to or actually drawn "adverse inferences" against parties refusing to produce evidence thereby effectively penalizing and sanctioning parties in arbitrations before them. The Majority is satisfied that this Tribunal has the jurisdiction and authority, indeed, the duty to award sanctions

[1] The knowledge of Mr. Armstrong that the jurisdiction of this Tribunal includes authority to issue sanctions is further buttressed by the fact that throughout his long cycling career he, like all high level athletes, was subject to the jurisdiction of the Court of Arbitration for Sport. The jurisdiction and willingness of CAS Arbitration Tribunals to sanction parties to arbitrations for improper actions in arbitration is well known and unquestioned. *Floyd Landis v. USADA, CAS 2007 A/1394, Award, 30 Jun. 2008.*

against Claimants for the egregious breach of their contractual obligations to SCA, their obligations to this Tribunal and their calculated affront to the integrity of the arbitration process which Claimants themselves initiated.

B. Facts

The Majority believes that the conduct at issue is subject to the power of this Panel to remedy or punish because it was part of the arbitral proceedings, occurred in the presence of the Panel and was directly related to the issues submitted to the Panel for determination. There is ample authority that arbitrators have inherent power to remedy such conduct. *E.g., Reliastar Life Ins. Co. of New York v. EMC National Life Co., 564 F.3d 81* (2d Cir. 2009) (agreement to arbitrate confers inherent authority on arbitrators to sanction a party who participates in arbitration in bad faith).

The jurisdiction of governmental adjudicatory bodies to manage and control the process and the parties before them is unquestioned. Arbitration Tribunals are different in that they draw their authority and jurisdiction from the contractual agreements of the parties. *Stolt-Neilsen, supra.* The jurisprudence of Texas and of the United States offer little guidance concerning the basis for any jurisdiction or authority of arbitration tribunals to entertain or award sanctions. Such authority as exists is often based upon the rules of an administering agency, however obtuse and unclear. This Tribunal does not have the luxury of resort to that evasion as this arbitration is purely ad hoc or "non-administered." Consequently, we must analyze this issue and explain our conclusions.

C. Party Obligation Not to Frustrate or Impede Contracts

Claimants object to jurisdiction and correctly advise that Texas does not accept or follow the contract doctrine of "good faith and fair dealing." *English v. Fischer, 660 S.W.2d 521, 522,*

27 Tex. Sup. Ct. J. 74 (Tex. 1983). Therefore, Claimants assert that no jurisdiction to sanction wrongdoing exists. Fortunately, Texas, and other jurisdictions, recognize and accept the more limited subsidiary concept of an implied covenant that parties must not "frustrate or impede" any other parties' performance of their contract. Though disfavored in Texas law, application of an implied covenant is appropriate where necessary to effectuate the parties' intentions where the obligation is "so clearly within the contemplation of the parties that they deemed it unnecessary to express it." *Bank One, Tex., N.A. v. Stewart, 967 S.W.2d 419, 434 (Tex. App.-Houston [14th Dist.] 1998, pet. denied)*. (quoting *Nalle v. Taco Bell Corp., 914 S.W.2d 685, 687 (Tex. App.-Austin 1996, writ denied)*). We conclude that the obligations of parties to be truthful, to not commit perjury and to not intentionally submit fraudulent evidence in arbitrations of their disputes arising from their agreements are precisely such implied covenants and obligations.

Thus parties' duty to cooperate is implied in every contract in which cooperation is necessary for performance of the contract. Where applicable, this implied duty requires that a party to a contract may not hinder, prevent, or interfere with another party's ability to perform its duties under the contract. *Id. at 435*; *Hallmark v. Hand, 833 S.W.2d 603, 610 (Tex. App.-Corpus Christi 1992, writ denied)*. Furthermore, as explained by the Fifth Circuit Court of Appeal, an implied covenant to cooperate differs from the broader covenant of good faith and fair dealing that the Texas Supreme Court rejected in *English v. Fischer, supra.*

> "An implied covenant of good faith and fair dealing places duties of "good faith," "fairness," "decency," and "reasonableness" upon all parties in regard to actions construing the contract, and components, terms and conditions of the contract. Implying a promise on the part of one party not to prevent the other party from performing the contract falls far short of implying a covenant of good faith and fair dealing.

Tex. Nat'l Bank v. Sandia Mortgage Corp., 872 F.2d 692, 698-99 (5th Cir. 1989) (emphasis added)."

The Dallas Court of Appeals adopted that analysis in *Case Corp. v. Hi-Class Business Systems of America, Inc. and HBS Systems, Inc., 184 S.W.3d 760*; *2005 Tex. App. LEXIS 10549 (Tex. App. Dallas 2005)* and recently reiterated its continuing support for that analysis in *Lemon v. Hagood, 2014 Tex. App. LEXIS 8113.*

D. Claimants Frustrated and Impeded SCA Contract Performance

The Tribunal here affirmatively finds that Claimants' actions improperly prevented SCA from performing its duties under the parties' contracts and the agreements to arbitrate. Claimants further intentionally breached their obligations to arbitrate their disputes with SCA. Breach of a party's contractual duty to honor an agreement for use of a dispute resolution process or arbitration has been recognized in Texas as imposing liability and damages for over 160 years. *Owens v. Withee, 3 Tex. 161 (1848); Brown v. Eubank, 443 S.W.2d 386 (Tex. Civ. App. -- Dallas 1969, no writ) Standard Fire Insurance Company v. Melvin L. Fraiman, dba Jamaican Apartments, 588 S.W.2d 681; 1979 Tex. App. LEXIS 4228.*

E. Claimants Frustrated and Impeded Arbitration Tribunal Performance

This Tribunal further affirmatively finds that Claimants also intentionally prevented this arbitration Tribunal from properly discharging the contractual duties it was obligated to perform for the benefit of all of the parties by knowingly presenting perjury and fraudulent evidence. A thorough analysis of arbitration reveals the reality is that every contract with an arbitration clause is a primary contract containing within it multiple subsidiary agreements imposing additional sets of obligations upon the parties and the arbitrator(s). There is first the agreement of the parties to arbitrate with their counterparty. Breach of that obligation can lead to damages. *Owens v. Withee, supra; Brown v. Eubank, supra, Standard Fire Insurance Company v. Melvin L. Fraiman, supra.* There are also agreements between the parties and the arbitrator(s) to participate

in any arbitration according to any agreed rules, to comply with validly issued awards and to pay the arbitrators for their services. Those obligations of the parties are reciprocated by the arbitrators' agreeing to dedicate sufficient time and judgment to resolving the parties' dispute according to their agreement consistent with the designated law. The Claimants' employment of perjured testimony and fraudulent prevented the Tribunal from performing those obligations which were owed to all of the parties participating in the arbitration.

XIII. DETERMINATION OF SANCTIONS

Ample evidence was adduced at the hearing through documents and witnesses that Claimants commenced this proceeding knowing and intending to lie; committed perjury before the Panel with respect to every issue in the case; intimidated and pressured other witnesses to lie; or influenced others to help them lie and to hide the truth; used a false personal and emotional appeal to perpetuate their lies to the Panel; used perjury and other wrongful conduct to secure millions of dollars of benefits from Respondents; used lies and fraud to falsely claim that the Panel exonerated them, thereby further allowing them to profit further from additional endorsements and sponsorships; expressed no remorse to the Panel for their wrongful conduct; and continued to lie to the Panel throughout the final hearing even while admitting to prior falsehoods and other wrongful conduct. Claimants admitted in substantial part the substance of all (but the last) of the foregoing conduct.

The evidence placed before the Tribunal established that SCA paid Claimants $7,500,000.00 pursuant to the "Consent" Final Award of February 8, 2006. The evidence adduced in the recent arbitration hearing established that SCA has reasonably incurred attorneys' fees and costs in excess of $2,000,000.00, which fees and costs continue. Claimants' actions have further imposed upon SCA additional costs insusceptible of precise calculation. These

figures are not cited as a calculation of "damages" but rather as one measure of the harm generally caused by Claimants' conduct. Considering that the Claimants must take full responsibility for the consequences of their actions, sanctions in the sum of $10,000,000.00 are appropriate and are awarded against Claimants.

XIV. CLAIMANTS' COUNSEL DID NOT KNOW OF CLAIMANTS PERJURY AND DID NOT KNOWINGLY PERPERTRATE A FRAUD UPON THE TRIBUNAL

The sad facts of this case required that the Tribunal receive and consider evidence relating to whether Claimants counsel were aware of the perjury or participated in perpetrating a fraud upon this Tribunal. The Arbitration Tribunal affirmatively concludes, determines and finds that Claimants counsel, Mr. Tim Herman, Esq. and Mr. Sean Breen, Esq. did not know of Claimants perjury, misrepresentations or the conspiracy to present fraudulent claims to the Tribunal. Counsel were also victims of Claimants' conspiracy and did not knowingly participate in Claimants' schemes. Mssrs. Herman and Breen at all times acted properly, professionally and ethically.

Despite the mutual animosity and hostility of the parties in this matter towards each other, all counsel always acted with the utmost civility, ethics and professionalism towards each other and this Tribunal.

XV. THE STATUS OF TAILWIND SPORTS CORP.

Tailwind Sports, Corp. ("Tailwind") asserted that this Tribunal has no jurisdiction because it was dissolved consistent with Delaware law. We need not do more than to note that the existence or nonexistence of Tailwind is, in our view, an issue relating to the possible enforcement of this final award. Tailwind is a party to the CSA and CPC and this Tribunal has jurisdiction over it.

XVI. SEPARATE CONCURRANCE IN PART AND DISSENT

Senator Lyon concurs in the following Dissent of this Award determining that this Tribunal has no jurisdiction over Mr. William Stapleton. For the reasons separately stated in his Dissent to this Award, he does not join the majority decision.

XVII. CONCLUSION

Based upon the law and evidence received and analyzed above, the interpretation of the parties' agreements, CSA and CPC, this Tribunal concludes, determines and issues this Final Award on Jurisdiction and Sanctions as follows:

1. This Tribunal has no jurisdiction over Mr. William Stapleton; and

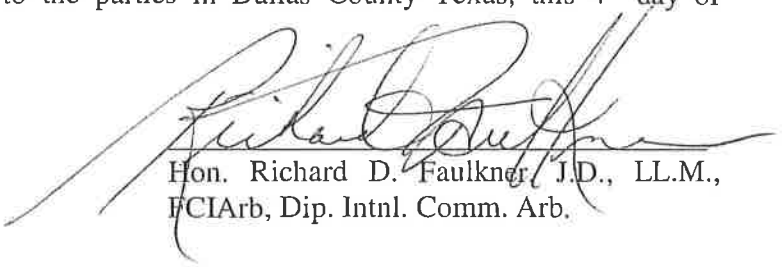
2. This Tribunal, by the agreement of the parties and the express terms of the CSA and CPC, does have jurisdiction to determine and make a final award resolving any disputes between or among only the named parties to the original arbitration, to wit: Tailwind Sports, Corp., Lance Armstrong, and SCA Promotions, Inc.; and

3. This Tribunal has jurisdiction to determine SCA's Request for Sanctions and finds that the defenses asserted by Claimants disputing the continuing jurisdiction of this Tribunal are not established and were waived, and Claimants are estopped by both the language of the parties' agreements and by their actions in their previous submissions of multiple other disputes to this Tribunal; and

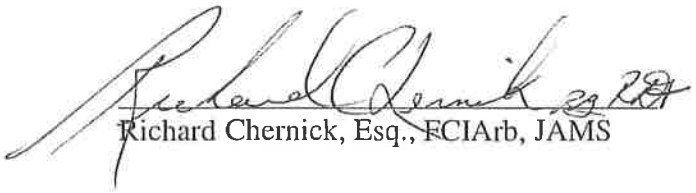
4 That Claimants, Tailwind Sports Corp. and Mr. Lance Armstrong jointly and severally shall pay the sum of Ten Million Dollars ($10,000,000.00) as Sanctions to SCA Promotions Inc. and SCA Insurance Specialists, Inc.

This Award resolves all issues submitted for decision in this proceeding. Any claim that is not directly addressed in the Award is deemed denied.

This award executed and published to the parties in Dallas County Texas, this 4th day of February, 2015.



Hon. Richard D. Faulkner, J.D., LL.M., FCIArb, Dip. Intnl. Comm. Arb.



Richard Chernick, Esq., FCIArb, JAMS

Senator Lyon dissents from this Award for the reasons he independently assigns below, this the 4th day of February, 2015.

Hon. Ted Lyon, Esq., Attorney-at-Law

DISSENT FROM THE FINAL AWARD

In Book III of his *Politics*, Aristotle wrote that it is well that we have a government of laws and not of men because even the best men are overruled by their passion.

I respectfully dissent from the sanctions awarded to SCA Promotions, Inc. ("SCA") in this case because I believe the majority's award is not based on the law. In Texas, arbitration is favored as a means of dispute resolution, and courts indulge every reasonable presumption in favor of upholding the award as a binding final settlement of the claims and/or issues submitted to arbitration. *Wetzel v. Sullivan, King & Sabom, P.C.*, 745 S.W.2d 78, 81 (Tex.App.—Houston [1st Dist.] 1988, no writ).

SCA and Lance Armstrong ("Armstrong") entered into a settlement agreement nine years ago. That settlement agreement was followed by an Agreed Final Arbitration Award negotiated

at arm's length by extremely competent and seasoned lawyers. SCA entered the settlement agreement with an expressed understanding of the risks and an expressed waiver of reliance on any testimony given or representations made by Armstrong.

At the time of the settlement, SCA had been found by the Panel to have engaged in the business of selling insurance in Texas without a license, a fact which at the time of the settlement exposed SCA to possible liability for treble damages and attorney fees.

Armstrong was seeking $10,000,000.00 in damages and attorney fees, opening SCA up to potential liability of over twenty-two million dollars. No party in this case came here with clean hands. Texas law provides that (1) an unlicensed insurer can have a penalty imposed on them of up to $10,000.00 for each day of violation, and (2) an insurer may be enjoined from continuing the violation. The Texas Insurance Code makes it clear that to do what SCA did is a third degree felony. Tex. Ins. Code Ann. § 101.106 (West); Tex. Pen. Code §12.34.

Further, under the Texas Insurance Code, SCA was precluded from raising any defenses to payment under the Contingent Prize Contract that was the subject of Claimants' cause of action. There were sound reasons for SCA entering into the agreement to settle, including the Confidentiality Agreement, which kept the finding that SCA had engaged in the unauthorized business of insurance from being disclosed to the Texas Department of Insurance, which could have instituted actions against SCA itself.

The plain language of the settlement agreement between SCA and Armstrong shows the parties' intent that the settlement be final and binding. The Settlement Agreement includes the following language:

1. "Fully and forever binding on The Parties and their heirs, executors, administrators, successors and assigns."
2. Both parties expressly waived any right to "challenge, appeal or attempt to set

aside the Arbitrator Award."

3. The parties further agreed that "No promise or representation of any kind has been made to any Party or to anyone acting for a Party, except as is expressly stated in this Settlement Agreement, and the parties execute this Settlement Agreement without any reliance on any representation of any kind or character not expressly stated in this Settlement Agreement."
4. The Agreement further stated "before executing this Settlement Agreement, the Parties became fully informed of the terms, contents, conditions, and effect of this Agreement."
5. The Agreement further states "The parties each acknowledge that this instrument constitutes the entire agreement between them with respect to the matters being compromised and settled in this Settlement Agreement, and this Settlement Agreement supersedes any and all prior agreements and understandings relating to the subject matter hereof."

The Agreed Final Arbitration Award ordered SCA to pay Tailwind and Armstrong seven million five hundred thousand dollars. The Arbitration Panel did not rely on any testimony or pleadings and simply implemented the parties' Settlement Agreement into an Agreed Final Arbitration Award, and as such the Panel was not defrauded in any way that would merit reopening the arbitration. Further, both sides agreed to the Final Arbitration Award.

Under governing Texas law, the parties' agreement is clear, it is comprehensive, and it should be binding. As both sides' attorneys expressed during their opening statements to the Panel, for this Panel to reopen this arbitration and sanction Armstrong would be unprecedented.

It is in fact unprecedented. No arbitration panel in Texas or our nation has ever stretched back so far in time to issue such a sanction. This Panel has no authority to sanction Armstrong

under the Contract signed by the Parties. The agreement to arbitrate any disputes between the parties contains no language that would allow the arbitrators to sanction Armstrong after their negotiated settlement waived all rights to challenge the award and expressly disclaimed any reliance on any prior statements or conduct by the parties.

The arbitration provision of the Contingent Prize Contract states "The Settlement Agreement shall be governed by, construed, and interpreted in accordance with the laws of the State of Texas, with regard to conflict of law principles thereof." The Contingent Prize Contract #31122 between the parties provided for arbitration pursuant to the Texas General Arbitration Act and there was no agreement to incorporate the rules for any arbitration association that allowed for sanctions. There is no Texas case or statute that allows for this type of sanctions motion nine years after the award was given. The majority attempts to support its result with *Lehigh Valley Railroad Company v. Germany,* R.I.A.A., VIII, 84 (1930). I simply note that the Lehigh Valley Railroad case was based on the Treaty of Versailles after World War I- the present matters (by express agreement) is governed by the law of Texas and no Texas law can be cited that supports the majority's decision.

The majority's ruling - that because Tailwind and Armstrong moved for sanctions based on conduct to enforce the Settlement Agreement and based upon the Panel's ongoing order concerning confidentiality, which occurred after the arbitration concluded, somehow opened the proceedings to be re-litigated eight years or to infinity after a Final Settlement Agreement was made and effectuated - is unprecedented and farfetched and (as the majority freely admits) not based on any Texas law.

SCA filed a Motion to Reconvene in June of 2013. That is seven years and four months after the Settlement Agreement and Final Order were agreed to by the parties and the panel signed the Agreed Final Arbitration Award. Under the Texas Arbitration Act, Texas Civil

Practice & Remedies Code §171.088, SCA had 90 days to challenge the arbitration award but they failed to do so. The amount of the sanction is almost exactly that which SCA paid to settle with Claimants and what SCA paid in attorney's fees and costs. To say that this is a sanction when it mirrors almost exactly what SCA paid is incorrect. In substance, the majority's sanction is an unwarranted, unlawful reversal of a settlement agreement that was made and effectuated nine years ago. There is an old saying that if it looks like a duck, walks like a duck and quacks like a duck, it's a duck. This is a duck and it is no more or less than SCA trying to overturn an agreement SCA voluntarily entered into in February 2006 to get its money back because Armstrong lied about performance enhancing drugs in the 2005-2006 proceedings.

In closing, I respectfully dissent from the majority's ruling. I concur in the Tribunal's ruling that it has no jurisdiction over William Stapleton and disagree that the Tribunal has jurisdiction over Tailwind Sports Corp. since it was dissolved under Delaware law and does not exist. I further agree with the Panel in its conclusions concerning the attorneys for Lance Armstrong and agree that we found no evidence or testimony that Mr. Tim Herman and Mr. Sean Breen had knowledge of Armstrong's perjury or the conspiracy to present fraudulent claims to the Tribunal. I also agree that SCA's counsel, Jeffrey Tillotson, was diligent and deserves full credit for exposing the perjury.

The final decision by the Panel reminds me about the "do right rule." It doesn't matter what the law is, let's just do what is right. Arbitrators, like judges, don't have that luxury, and the Panel exceeded its authority by indulging itself here.

If one accepts this sanction for what it is, it could only be done in equity. Equity demands that one will not suffer an injury for lack of a remedy at law, but equity also demands clean hands from one seeking to invoke it. As neither party comes with clean hands then equity should not provide a remedy.

With respect, the Panel's decision fundamentally violates Texas public policy by (1) frustrating the policy of our law favoring voluntary disputes; (2) rendering irrelevant disclaimers of reliance; and (3) substituting international precedent for governing Texas law.