

Page 128

1 IN THE MATTER OF AN ARBITRATION
 2 BETWEEN
 3 LANCE ARMSTRONG and §
 4 TAILWIND SPORTS, INC. §
 5 §
 6 Claimants, § ARBITRATION BEFORE THE
 7 § HONORABLE RICHARD
 8 VS. § FAULKNER, RICHARD
 9 § CHERNICK, AND TED LYON
 10 SCA PROMOTIONS, INC. and §
 11 HAMMAN INSURANCE SERVICES, §
 12 Inc. §
 13 §
 14 Respondents. §
 15
 16 ARBITRATION
 17 TRANSCRIPT OF PROCEEDINGS
 18 SEPTEMBER 27, 2005
 19 VOLUME 2
 20 CONFIDENTIAL
 21
 22 On 27th day of September, 2005, at 10:37
 23 a.m., the arbitration in the above proceedings came on
 24 before Arbitrators Richard Faulkner, Richard Chernick
 25 and Ted Lyon, at the offices of JAMS, 8401 North
 Central Expressway, Suite 610, in the City of Dallas,
 County of Dallas, State of Texas.

Page 129

1 APPEARANCES
 2 FOR THE CLAIMANTS:
 3 Mr. Tim Herman
 4 Mr. Sean Breen
 5 Mr. Lawrence Temple
 6 HERMAN HOWRY & BREEN
 7 1900 Pearl Street
 8 Austin, Texas 78705-5408
 9
 10 FOR THE RESPONDENTS:
 11 Mr. Jeffrey M. Tillotson, P.C.
 12 Mr. Cody L. Towns
 13 LYNN TILLOTSON & PINKER, L.L.P.
 14 Suite 1400
 15 750 North St. Paul Street
 16 Dallas, Texas 75201
 17
 18 ALSO PRESENT:
 19 Ms. Mariela Evora
 20 Mr. Chris Compton
 21 Mr. John Bandy
 22 Mr. Jason Barnes
 23
 24
 25

Page 130

1 INDEX
 2 WITNESS PAGE
 3 ROBERT HAMMAN
 4 DIRECT EXAMINATION BY MR. HERMAN 133
 5 CROSS-EXAMINATION BY MR. TILLOTSON 195
 6 REDIRECT EXAMINATION BY MR. HERMAN 240
 7 TODD OVERTON
 8 DIRECT EXAMINATION BY MR. HERMAN 260
 9 CROSS-EXAMINATION BY TILLOTSON 265
 10 REDIRECT EXAMINATION BY MR. HERMAN 275
 11 JOE LONGLEY
 12 DIRECT EXAMINATION BY MR. HERMAN 286
 13 CLAIMANT'S EXHIBITS IDENTIFIED
 14 41 - Glossary of Insurance Terms 135
 15 44 - Article A Risky Biz by Mark Zeigler 144
 16 45 - Hole-In-One and a Whole Lot More
 17 Advertisement 150
 18
 19 46 - SCA Promotional Material 152
 20 47 - Certificate of Insurance No. 6-1329 158
 21 48 - Article by Edward O'Hare 245
 22 49 - NACA Web Page 261
 23 50 - NACA Web Page About Contingency 265
 24 51 - Gameops Dot Com Web Page 263
 25 52 - 9/2/04 Letter to William Stapleton, III
 from Robert Hamman Re: SCA Contract
 No. 331122 334
 53 - Plaintiff's Designation of Expert Witnesses,
 Joe Longley 286

Page 131

1 INDEX IDENTIFIED
 2 EXHIBITS IDENTIFIED
 3 54 - History of Article 21.21 and
 Deceptive Trade Practices Act by
 4 Joe K. Longley 294
 5 CLAIMANT'S EXHIBITS (Previously marked) IDENTIFIED
 6 2 - 12/15/00 SCA Letter to Lorenzo and
 Alexander Re: Proposal of Documented
 7 Programs with Swiss Re and AIG 165
 8 5 - 1/3/01 B. Hamman E-mail to Lorenzo
 Re: Agreement of Bonus Levels 173
 9
 10 6 - 1/4/01 Lorenzo E-mail to B. Hamman
 Re: Order to Bind the Risk 175
 11 8 - 1/6/01 B. Hamman E-mail to Lorenzo
 Re: bonus Level Agreement 182
 12
 13 10 - 1/9/01 B. Hamman E-mail to J. Bandy
 Re: Performance Bonus Contract 271
 14 14 - 1/12/01 B. Hamman E-mail to Lorenzo
 Re: Agreement Percentages for Level
 15 1 and 2 187
 16 15 - 1/14/01 Signed SCA Promotions Prize
 Contract No. 31122 and Exhibit A 251
 17
 18 16 - 7/16/03 Signed Addendum A 155
 19
 20 21 - 7/17/01 SCA Fax to Ruggiano and
 Lorenzo Re: Revised Risk Allocation
 21 Form 188
 22
 23 24 - 12/31/02 Signed Insurance Agreement 200
 24
 25 25 - 6/19/03 Michelitch E-mail to Price Re:
 Tailwind's Bonus Policies 211
 RESPONDENTS' EXHIBIT (Previously marked) IDENTIFIED
 1 - 5/9/88 State Board of Insurance Letter
 to Mr. Thompson 225

Page 132

1 INDEX
2 RESPONDENTS' EXHIBIT (Previously marked) IDENTIFIED
3 10 - 8/26/02 E-mails between Todd Overton
and Kelly Price 271
4
5 16 - Web Site, Winsurance Prize Indemnity 208
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Page 134

1 A. Well, on our floor. There are other floors.
2 Q. Right. But --
3 A. Yeah.
4 Q. -- I'm not talking about --
5 A. We have SCA affiliates.
6 Q. Okay. And SCA --
7 A. Excuse me. Let me correct that. I have a
8 couple of corporations that I am the sole owner of
9 that are not involved with SCA.
10 Q. Okay. What are those?
11 A. Robert D. Hamman, CLU, Inc.
12 Q. Certified life underwriter?
13 A. Charitable life underwriter.
14 Q. Okay. And what else?
15 A. There are a couple of very low activity
16 corporations involving software.
17 Q. Okay. You were present here in the
18 arbitration room when Ms. Price's deposition was
19 played, were you not?
20 A. Yes.
21 Q. And you heard Mr. Tillotson ask Ms. Price or
22 confirm with Ms. Price, whether it was called
23 insurance or not, what she was looking for was
24 coverage?
25 A. Yes.

Page 133

1 PROCEEDINGS
2 ROBERT HAMMAN,
3 having been first duly sworn, testified as follows:
4 MR. FAULKNER: Please proceed.
5 DIRECT EXAMINATION
6 BY MR. HERMAN:
7 Q. State your name, please, sir.
8 A. Robert Hamman.
9 Q. And you are the president and chief executive
10 officer of SCA Promotions?
11 A. Correct.
12 Q. President and chief executive officer of
13 Hamman Insurance Specialists, Inc., d/b/a SCA
14 Insurance Specialists, Inc.?
15 A. Correct.
16 Q. Managing director of Prize Indemnity Ltd
17 Insurance Company in Bermuda?
18 A. Correct.
19 Q. And you have other affiliated companies over
20 there at 8300 Douglas Avenue of which you are an
21 officer?
22 A. We have divisions of companies that I have
23 managerial authority.
24 Q. All of the 8300 Douglas Avenue companies are
25 subsidiaries of SCA Promotions, Inc.?

Page 135

1 Q. And talked to Ms. Price about coverage
2 dollars related to the SCA contract?
3 A. Yes.
4 Q. And on -- does SCA have a web site?
5 A. Yes.
6 Q. And as part of the Respondents' Exhibits
7 here, you have offered as, I think, Exhibit 19 some
8 information or class training from the Independent
9 Insurance Agents of Texas; correct?
10 A. I believe so.
11 Q. Okay. And on your web site, you talk about
12 coverage, coverage of incentive bonus, coverage of
13 other prize-related activities and so forth, do you
14 not?
15 A. I'd like to see the section that --
16 Q. All right. Well, I'll get to that in a
17 moment. Let me hand you what I've marked as Exhibit
18 41.
19 (Claimants' Exhibit No. 41 was marked.)
20 MR. HERMAN: I've marked the original as
21 Exhibit 41, but I will note that.
22 Q. (By Mr. Herman) If you'll look at the first
23 page of Exhibit 41, there's a glossary of insurance
24 terms and --
25 MR. TILLOTSON: Sorry. Tell me where

Page 136

1 this is from.
 2 MR. HERMAN: This is from the Independent
 3 Insurance AgentS of Texas, glossary of insurance
 4 terms.
 5 ARBITRATOR CHERNICK: Is it part of
 6 Exhibit 19?
 7 MR. HERMAN: No, it's not.
 8 ARBITRATOR CHERNICK: Okay. But is it --
 9 is it the same --
 10 MR. HERMAN: It's from the same -- yeah,
 11 from the same source.
 12 MR. TILLOTSON: I mean, now, I don't
 13 object to him to using this for this witness, even
 14 though I don't know where it came from or the book --
 15 I haven't seen -- on the stipulation that I've also
 16 designated certain works which he's told me he's going
 17 to object to.
 18 I want to make sure that those can come
 19 in, and I'm not -- not allowing him to use a portion
 20 of the his book, and he's later going to object to my
 21 books.
 22 MR. HERMAN: Well, I'm -- I'm not -- just
 23 as testimony which may be objected to, I've still got
 24 the right to rebut it or respond to it without waiving
 25 my objection to the testimony when he came in, and

Page 137

1 that's the same basis in which I'm offering this.
 2 So if yours comes in, this comes in. If
 3 yours doesn't come in, this doesn't come. I'll agree
 4 with that.
 5 ARBITRATOR FAULKNER: Gentlemen, let me
 6 remind you of something. The Rules of Evidence don't
 7 strictly apply to us; okay? So learning treatises, et
 8 cetera, are something we can consider, and I suspect
 9 you know the three of us are quite used to reading
 10 such things and even teaching from them occasionally.
 11 So why don't we go ahead and proceed.
 12 ARBITRATOR LYON: What he's telling you
 13 is you're wasting our time by objecting; okay?
 14 MR. TILLOTSON: Okay.
 15 ARBITRATOR FAULKNER: I'm trying to be a
 16 bit more diplomatic, but gentlemen, in so many terms,
 17 learning treatises are something we will be taking. I
 18 know you guys --
 19 MR. TILLOTSON: I assumed so. I just --
 20 he told me he was going to object to mine.
 21 ARBITRATOR FAULKNER: I know.
 22 MR. TILLOTSON: I wanted to make sure
 23 we're on the same page.
 24 ARBITRATOR FAULKNER: And that's a fair
 25 comment. Let's -- let's not have any -- we don't need

Page 138

1 any more discussions on that, guys. We're going to
 2 take what y'all bring us that qualifies as learning
 3 treatises, so if it's something off of a web page,
 4 please identify it for the witness so he knows where
 5 it comes from, and then proceed from there.
 6 Q. (By Mr. Herman) Mr. Hamman, this came from
 7 the glossary of insurance terms that's posted by the
 8 Independent Insurance Agents of Texas, which is the
 9 same source for your Exhibit 19.
 10 Tell the -- we've talked about coverage
 11 this, coverage that. What are -- the Independent
 12 Insurance Agents, how do they define coverage?
 13 A. They say it's a synonym for insurance.
 14 Q. Okay. I take it, you disagree with that much
 15 of what the Insurance Agents of Texas publish; is that
 16 right?
 17 A. Yes.
 18 Q. All right. Now, we mentioned that -- that
 19 you do have a web site. That's SCA Promotions, Inc.,
 20 is it not?
 21 A. That's correct.
 22 Q. Okay. Now, you and -- you cover -- provide
 23 coverage for fishing events. If somebody catches a
 24 whopper crappie or something and gets a prize, you
 25 insure the sponsor for whatever he may have to pay

Page 139

1 out?
 2 A. We offer promotions that involve fishing;
 3 that's correct.
 4 Q. All right. Well, you -- do you put the
 5 promotions on yourself?
 6 A. Our role varies.
 7 Q. Okay. So you might -- you might put the
 8 promotion on?
 9 A. We might.
 10 Q. So you might advertise that you would
 11 actually conduct a promotion and be the sponsor
 12 yourself?
 13 A. No. We conduct the promotion on behalf of a
 14 sponsor.
 15 Q. Okay.
 16 A. Occasionally we provide at trade shows,
 17 things of that nature. Sometimes we are a sponsor of
 18 a promotion.
 19 Q. Okay. So you have -- you have two different
 20 roles. You might have a company come to you and ask
 21 you to put on a promotion for them; you know, toss a
 22 basketball into a -- from half court of something like
 23 that or unlock a -- a box or something like that;
 24 correct?
 25 A. Correct.

<p style="text-align: right;">Page 140</p> <p>1 Q. And then you would have sponsors come to you 2 and ask for coverage for their exposure or liability 3 in connection with the contest or incentive bonus, 4 that sort of thing? 5 A. That's correct. 6 Q. Now, as to the second part of your 7 business -- that is, the coverage part of your 8 business -- when you -- your website, do you -- do you 9 seek or attract people to your web site by offering 10 business contracts? 11 A. I'm not quite sure what -- do we say we offer 12 business contracts as a method of attracting business? 13 No. 14 Q. Okay. When -- when people go on the 15 Internet, for example, there are certain -- there are 16 certain key words that would draw them to your web 17 site? 18 A. Correct. 19 Q. Okay. And so when you -- those key words, do 20 they -- you offer promotional business contracts? Is 21 that how -- is that how you attract people? 22 A. I'm not sure of all the key words we've used, 23 but basically we design key words to attract customers 24 that might be able to use our products or services. 25 Q. Okay. And so you would use key words which</p>	<p style="text-align: right;">Page 142</p> <p>1 where people type in words in their search engines, 2 and they'll bring you to this -- to this web site. 3 What is the first -- the very first phrase you use is 4 hole-in-one insurance, don't you? 5 A. Well, yes. 6 Q. And then grand prize coverage. 7 A. Correct. 8 Q. Sports promotions, which would apparently 9 refer to the other part of your business. The next 10 one is prize indemnification. 11 A. Correct. 12 Q. You would agree that indemnification is the 13 heart of insurance. That's the principal 14 characteristic of insurance, isn't it? 15 A. It is a principal characteristic. 16 Q. Okay. Now -- 17 MR. HERMAN: Jason, see if you can find 18 any insurance terms in that. 19 Q. (By Mr. Herman) Sports insurance, jackpot 20 insurance, overredemption insurance, prize coverage, 21 prize insurance, promotion insurance, sweepstakes 22 insurance. Would it be fair to say that when you're 23 doing a little fishing yourself, that it's insurance 24 that you use as bait? 25 A. No.</p>
<p style="text-align: right;">Page 141</p> <p>1 fit potential customers' needs in order to attract 2 them to your web site? 3 A. Yes. 4 Q. Okay. How long -- when did your web site go 5 online? 6 A. I'm not quite sure. It's been up for a few 7 years. 8 Q. Okay. Before this contract we're talking 9 about here -- 10 A. I'm quite sure we had some web presence. 11 It's expanded. 12 MR. HERMAN: Jason, can you get the SCA 13 web site? 14 Q. (By Mr. Herman) Now, the home page or the 15 front page of the web site talks about "Our risk, your 16 reward." You would agree that "risk" is a word that's 17 common in the insurance industry, would you not? 18 A. I would agree. It's common in the insurance 19 industry, and it certainly involves many other types 20 of arrangements, also. 21 Q. Okay. 22 MR. HERMAN: Jason, can you get the key 23 words used by SCA? 24 Q. (By Mr. Herman) Now, in the top part of 25 your -- of your -- these key words that are designed</p>	<p style="text-align: right;">Page 143</p> <p>1 Q. Now, you've also got some videos on your web 2 site -- video clips? 3 A. Sure. 4 MR. HERMAN: Jason, see if you can go up 5 top, about SCA. 6 MR. BREEN: Under our -- 7 Q. (By Mr. Herman) Do you recall being 8 interviewed by Catherine Crier for Court TV? 9 A. I don't, but I may have. 10 Q. All right. Let's -- let's just take a look. 11 This is very short. 12 (Video clip from SCA Promotions web site 13 played.) 14 MR. PHILBIN: Is this your final answer? 15 CONTESTANT: It's my final answer. 16 MR. PHILBIN: You just won a million 17 dollars? Oh, fabulous. 18 MS. CRIER: All right. When Dan Zalanski 19 (phonetic) answered that final question and won a 20 million dollars on the ABC smash hit "Who Wants to be 21 a Millionaire," he became the second man to hit the 22 jack -- 23 MR. BARNES: It's streaming. 24 Q. (By Mr. Herman) In any event -- in any event, 25 Ms. Crier repeatedly asked you about insuring these</p>

Page 144

1 kind of events, providing insurance for prizes, and so
 2 forth. You never a single time objected or protested
 3 that SCA was not an insurance company, did you, sir?
 4 A. Well, first, I'd have to see what I said
 5 but --
 6 Q. Oh, okay.
 7 A. I'll accept that I did.
 8 Q. All right. Well, we'll get a transcript or
 9 provide a copy of that video.
 10 Now, you also have provided other
 11 interviews where your status as an insurer was the
 12 subject, have you not?
 13 A. I don't know. I've conducted many
 14 interviews.
 15 (Claimants' Exhibit No. 44 was marked.)
 16 Q. (By Mr. Herman) All right. Let me hand you
 17 what I've marked as Exhibit 44, which is a story from
 18 the San Diego paper in which you're quoted rather
 19 extensively.
 20 MR. BREEN: What do you want to do
 21 with this?
 22 MR. HERMAN: Is it ready to go? What, is
 23 it buffering?
 24 (Video clip from SCA Promotions was
 25 played.)

Page 145

1 MS. CRIER: -- pot since the show's debut
 2 last year.
 3 Not everybody was celebrating the big
 4 one. The insurance company that funds the big payoff
 5 is now suing to get out of the contract because it
 6 claims the show is too easy. Joining me now to
 7 discuss the game show craze are Don Bionski, a
 8 commercial and employment litigation attorney and
 9 million dollar-winner; Bob Hamman, the founder and
 10 chief executive of SCA Promotions which covers the
 11 risk for radio and TV contest games and promotion; and
 12 Annabel Vared, associated editor of TV Guide.
 13 Robert, in fact, I think I read
 14 somewhere -- and correct me if I'm wrong -- but about
 15 32 percent of the guests actually get that initial
 16 round question, so they're going to walk away with a
 17 nice chunk of change.
 18 MR. HAMMAN: Well, we do not take the
 19 risks on that particular show, so I don't know what
 20 the percentages are but --
 21 MR. HERMAN: We're going to continue to
 22 have to deal with that.
 23 Q. (By Mr. Herman) So let's go on, Mr. Hamman.
 24 Do you have Exhibit 44 in front of you?
 25 A. Yes, I do.

Page 146

1 Q. Okay. Incidentally, Todd Overton works for
 2 you, does he not?
 3 A. Yes, he does.
 4 Q. Okay. And are you familiar with a group
 5 called the North American Contingency Association?
 6 A. I am.
 7 Q. Okay. And that is an insurance industry
 8 association specializing in the writing and covering
 9 of contingency risks, is it not?
 10 A. Actually not.
 11 Q. All right. Is --
 12 A. I know -- I know a fair amount about the
 13 North American Contingency Association.
 14 Q. All right. And is Chubb a member?
 15 A. I believe they are.
 16 Q. And Swiss Re?
 17 A. I don't know.
 18 Q. EBI?
 19 A. I'm not aware of who the members are, but
 20 they may well.
 21 Q. Okay. In any event, if you'd turn to page
 22 three of Exhibit 44.
 23 A. Page three? Okay.
 24 Q. All right. In there, it says, enter the
 25 insurer who takes the risk for you. That -- in your

Page 147

1 web site, your motto is: Our risk, your reward, is it
 2 not?
 3 A. That's correct.
 4 Q. Okay. And then in the next paragraph, Bob
 5 Hamman once said, instead of worrying about whether
 6 the million is won, companies can root madly for the
 7 contestant to win the prize. Take Bob's money and
 8 enforce me to start checking the prices on the wine
 9 list; right?
 10 A. Yes.
 11 Q. Okay. Now, a couple of paragraphs down, it
 12 says that SCA says, over its history, it has insured
 13 12 billion in prizes and paid out 126 million in
 14 claims. The company motto, our risks, your reward.
 15 Is that true? That's true, isn't? SCA has repeatedly
 16 said that it has insured 12 million in prizes.
 17 A. I believe we use the word "covered," but we
 18 certainly have described the amount of prizes we have
 19 covered.
 20 Q. And incidentally, there are certain
 21 jurisdictions which require a certificate of insurance
 22 in order to conduct a promotional event, bingo, keno,
 23 certain other things; right?
 24 A. There are some jurisdictions which view
 25 products of this nature as being the -- properly the

Page 148

1 jurisdiction of insurance.
2 Q. Okay. And do you know of any jurisdiction,
3 for example, that's been presented with a hole-in-one
4 issue directly which has held that it's not insurance?
5 A. I believe New York took that position at one
6 point.
7 Q. Well, it's certainly an insurance product in
8 New York now, isn't it?
9 A. I don't know when the change was made, but at
10 one point, the New York Insurance Department took the
11 position that prize indemnification -- that
12 hole-in-one was not an approved insurance product.
13 Q. Well, there are jurisdictions in which the
14 issue has been specifically addressed, and it has been
15 determined to be insurance -- certificate of insurance
16 required, and -- and you do business in those
17 jurisdictions, do you not?
18 A. I believe that where we do business in areas
19 that an insurance product -- well, where we do
20 business in areas where an insurance product is
21 delivered is required, we deliver an insurance
22 product.
23 Q. All right. And you and I talked about that
24 during your deposition, and we agreed that there is
25 absolutely no difference between the coverage, the

Page 149

1 price, the effect, or the indemnity in what you do at
2 SCA Promotions and what you do in jurisdictions where
3 you have to deliver an insurance product. There's no
4 difference, is there?
5 A. I believe that you have a situation where
6 insurance carriers are permitted to offer certain
7 products, and for one reason or another, in some
8 jurisdictions, it's been deemed to be an insurance
9 product.
10 Q. My question was: In those -- in those states
11 or jurisdictions where you say you deliver an
12 insurance product, the product you delivered is
13 precisely the same product as the product that you
14 would deliver under SCA Promotions, Inc., in Texas?
15 A. No. I don't agree.
16 Q. Okay. Is the price different?
17 A. No.
18 Q. Is the coverage different?
19 A. The coverage is usually not different.
20 Q. All right. And is what you promise the
21 sponsor to indemnify him against, it is the same, is
22 it not?
23 A. That's correct.
24 Q. And the risk is the same?
25 A. The risk is the same.

Page 150

1 Q. Okay. Now, on your -- on your web site, you
2 blatantly appeal to insurance brokers and agents, do
3 you not?
4 A. We certainly prospect with insurance agents.
5 Q. For example --
6 MR. HERMAN: Let me mark this as Exhibit
7 45.
8 (Claimants' Exhibit No. 45 was marked.)
9 Q. (By Mr. Herman) Are you familiar with your
10 hole-in-one and a whole lot more offerings?
11 ARBITRATOR FAULKNER: I'm sorry.
12 Which --
13 ARBITRATOR CHERNICK: 45.
14 ARBITRATOR FAULKNER: 45?
15 Q. (By Mr. Herman) Let me just direct your --
16 direct your attention to page one of Exhibit 45.
17 Among others --
18 ARBITRATOR CHERNICK: This is -- this is
19 from the web site?
20 MR. HERMAN: Yes, from the SCA web site.
21 ARBITRATOR CHERNICK: All right.
22 MR. HERMAN: Yeah. It could be from
23 promotional materials. I think it is from the
24 promotional materials that we requested and got the
25 copies of.

Page 151

1 MR. TILLOTSON: Yeah. If I could
2 clarify. This is marketing materials that we
3 produced. This is not from the web site.
4 ARBITRATOR FAULKNER: Okay. Thanks.
5 Q. (By Mr. Herman) All right. And you see where
6 it says, more than just hole-in-one coverage? To
7 that -- that paragraph. Let me direct your attention
8 to that paragraph on the front -- first page. Do you
9 see that, sir?
10 A. Sure.
11 Q. Okay. It says, the last sentence there, SCA
12 does all the work, pays for the big prize if someone
13 wins, and pays you a commission on the coverage.
14 Paying insurance agents' and brokers' commissions on
15 the coverage?
16 A. We don't believe they're precluded from
17 selling other products.
18 Q. You're referring to insurance agents and
19 brokers, are you not?
20 A. That's correct.
21 Q. Okay. And then in the next paragraph, you're
22 a proven partner. SCA pioneered the concept of prize
23 indemnity coverage and has worked with hundreds of
24 insurance brokers and agents worldwide. Since 1986,
25 SCA has paid more than 94 million in claims.

Page 152

1 Claims is a -- is a term that's common to
 2 the insurance industry, is it not?
 3 A. Among other industries.
 4 Q. Okay. And then you conclude by saying,
 5 increase your commissions this month by adding SCA's
 6 prize coverage to your product line, referring, I
 7 presume, to the insurance agent and broker's product
 8 line?
 9 A. Whatever they happen to be selling.
 10 Q. There are -- there are other similar
 11 promotional materials which you provided to us, are
 12 there not, that have the same sort of attraction of --
 13 with regard, for example, the tournament player
 14 incentives -- that is, golfers -- earning incentives,
 15 bonus for winning large events and that sort of thing?
 16 A. It's similar to materials that we produce.
 17 If I could look at a specific piece and comment about
 18 it.
 19 Q. All right.
 20 (Claimants' Exhibit No. 46 was marked.)
 21 Q. (By Mr. Herman) I'm just going to mark
 22 several of these together so that we can move along
 23 here. And I will get you to -- ask you to confirm, if
 24 you would, that this is all promotional material that
 25 is disseminated by SCA in its -- in its business. Let

Page 153

1 me hand you Exhibit 46, which is a bit smudged, and
 2 ask you to confirm that, if you would, please, sir.
 3 ARBITRATOR FAULKNER: Thank you.
 4 Q. (By Mr. Herman) Are you satisfied?
 5 A. I was waiting for you.
 6 Q. I thought you were reading it. I'm sorry.
 7 A. No, no.
 8 Q. That's -- that's all promotional material
 9 disseminated by SCA, is it not?
 10 A. Correct.
 11 Q. Is there any disclaimer on your web site that
 12 SCA is not an insurance company, does not provide
 13 insurance, is not licensed, anything like that?
 14 A. Not to my knowledge.
 15 Q. All right. That'd be bad for business,
 16 wouldn't it?
 17 A. Not particularly.
 18 Q. Now, look at -- do you have a notebook of the
 19 Claimants' Exhibits there in front of you?
 20 A. I do.
 21 Q. All right. Let's just look at exhibit -- for
 22 example, at Claimants' Exhibit 11. Claimants' Exhibit
 23 11 is an internal document at SCA, is it not?
 24 A. That's correct.
 25 Q. Okay. And this document was filled out by

Page 154

1 you or someone at SCA in connection with the Tailwind
 2 contract; correct?
 3 A. I'm told so. It certainly isn't -- well, it
 4 says, cycling incentive. I guess it can be determined
 5 that it's the -- date looks right. Yeah, I would
 6 assume so.
 7 Q. January of '01?
 8 A. Yeah.
 9 Q. And this is -- this checklist is the same
 10 checklist used whether it's a, quote, business
 11 contract or a, quote, insurance product; correct?
 12 A. I believe so.
 13 Q. All right. And up at the upper right-hand
 14 corner, there's a dark kind of box there that's
 15 difficult to read, but in that box is -- are three
 16 abbreviations: Occurrence, aggregate, and limits;
 17 correct?
 18 A. That's correct.
 19 Q. How about those terms? Do you see those in
 20 connection with the insurance business?
 21 A. I do.
 22 Q. And what about the black box down to the
 23 right there in the --
 24 MR. HERMAN: Right there, Jason.
 25 Q. (By Mr. Herman) Insurance department, do you

Page 155

1 see that?
 2 A. I do.
 3 Q. Now, let me change gears with you just a
 4 little bit and ask you about the certificate of
 5 insurance, which is referenced on addendum "A" to the
 6 Tailwind contract. Do you recall -- do you recall
 7 having seen that?
 8 A. I do.
 9 Q. That's Exhibit 16. Claimants' Exhibit 16.
 10 A. Okay.
 11 Q. This document was provided to the -- to
 12 Tailwind, was it not?
 13 A. Yes.
 14 Q. And it says, certificate of insurance on it;
 15 correct?
 16 A. That's correct.
 17 Q. And it was signed by Tailwind?
 18 A. Yes.
 19 Q. And it refers to certificate of insurance
 20 number 61329 between SCA Insurance Specialists, Inc.,
 21 and sponsor dated January 9, 2001.
 22 A. That's correct.
 23 Q. And January 9, 2001 is the date of the SCA
 24 contract that's at issue in this proceeding?
 25 A. That's correct.

Page 156

1 Q. But you don't -- you think that the insured
2 or Tailwind should have known that this was not an
3 insurance product? Is that the position you're taking
4 in this case?
5 A. That's correct.
6 Q. This addendum "A" came right out of your
7 office, did it not?
8 A. May I explain?
9 Q. Well, did this -- was this --
10 A. Yes, that's correct.
11 Q. It was prepared at your office?
12 A. That's correct.
13 Q. And it was sent to the insured by your
14 office?
15 A. It was sent to the client from our office.
16 Q. Okay.
17 A. Actually it was sent to the intermediary.
18 Maybe it was sent directly. I presume it was sent to
19 the intermediary.
20 Q. And Chris Hamman, who is your son and runs
21 pretty much the underwriting operation over there,
22 signed it on behalf of SCA?
23 A. That's correct.
24 Q. Okay. And it is signed by Mr. Osipaw, who
25 was the general manager of Tailwind?

Page 157

1 A. I believe so.
2 Q. Okay. Now, you wanted to explain that this
3 was a mistake by your office?
4 A. Yes.
5 Q. Okay. Any other explanation?
6 A. Well, what was requested was an assignment of
7 interest under a contract. What was delivered was
8 something related to the certificate of insurance,
9 which evidenced that we had purchased insurance for
10 our own account to cover part of the exposure under
11 the risk.
12 Q. Well, the -- what was actually requested --
13 if you'll look at Claimants' Exhibit 25. What was
14 actually requested was that Tailwind wanted to make
15 sure that each of Tailwind's bonus policies were
16 endorsed to recognize that Tailwind Sports had merged
17 and this endorsement was issued by the insurance
18 company. It was that request to which you were
19 responding when you issued addendum "A" isn't that
20 right?
21 A. No. Let me clarify. We were requesting a
22 request -- we were responding to a request for an
23 acknowledgment that Tailwind Sports Corporation was to
24 be the contracting party going forward.
25 Q. Well, irrespective of that, if Exhibit 25

Page 158

1 clearly refers to SCA, to Chubb, to Tailwind -- of
2 Chubb and Lloyd's, that testimony is already in the
3 record. You'd agree with that?
4 A. I agree that the communication was to get the
5 prize contracts properly recorded.
6 Q. Why don't you just claim yourself as an
7 insurance company. If it's so important considering
8 the regulation and in all the states and so forth,
9 why -- on your web site, why don't you just say, we're
10 not an insurance company instead of trolling for
11 customers using insurance?
12 A. As a matter of fact, on our contracts, we do
13 disclaim that we aren't an insurance company and in
14 communication with brokers and clients.
15 Q. Do you have anything in the SCA contract
16 which says, this is not insurance?
17 A. No.
18 (Claimants' Exhibit No. 47 was marked.)
19 Q. (By Mr. Herman) Now, let me hand you what
20 I've marked as Exhibit 47, which is the actual
21 certificate of insurance referenced on addendum "A".
22 MR. HERMAN: Oh, excuse me. I know
23 you've got several copies of that.
24 Q. (By Mr. Herman) Was this the mistake that you
25 were talking about?

Page 159

1 A. I'm not sure. This is a -- appears to be a
2 certificate of insurance under which we purchased
3 insurance from AIG to cover our liability.
4 Q. Well, we'll get to that in just a moment.
5 But this certificate was issued by SCA Insurance
6 Specialists, Inc.; correct?
7 A. Where we are issuing -- where we have --
8 where we buy coverage for our own account on large
9 cases, we issue insurance certificates to evidence the
10 transaction.
11 Q. And you instructed insurance -- SCA Insurance
12 Specialists, Inc., to issue this certificate, did you
13 not?
14 A. The certificate is pursuant to the master
15 policy. I -- I instruct them? Probably not, but it's
16 the -- it's the procedure.
17 Q. Well, SCA Promotions, Inc., instructed SCA
18 Insurance Specialists, Inc., to issue this
19 certificate. That's true, isn't it?
20 A. Well, it looks like it, yes.
21 Q. All right. And this certificate of insurance
22 has attached the -- precisely the same Exhibit "A"
23 which your people have referred to as the meat and
24 potatoes of the agreement. It has it attached and
25 incorporated by reference into this certificate of

<p style="text-align: right;">Page 160</p> <p>1 insurance, does it not? 2 A. We typically attach the conditions of the 3 contract to certificates that we issue. 4 Q. Okay. Well, I'll have to -- I'm going to ask 5 the question, I guess, separately. This is the same 6 Exhibit "A" that's attached to the contract at issue 7 in this proceeding; correct? 8 A. It is a copy of it. 9 Q. Right. Is there any difference in the 10 contents, other than the fact that this one is not 11 signed? 12 A. I don't believe so. 13 Q. All right. All right. And then secondly, 14 you use that front page of the contract that's at 15 issue in this -- in this proceeding for essentially 16 all of your promotional indemnification agreements, do 17 you not? 18 A. Our front pages are not identical, but we use 19 some front pages across several types of contracts. 20 Q. And it's true, also, that Mr. Overton, among 21 others, has testified that Exhibit "A" is the meat and 22 potatoes, as he put it, of the agreement? 23 A. SC -- I mean, Exhibit "A" describes the terms 24 of the agreement; correct. 25 Q. All right, sir. In connection with this</p>	<p style="text-align: right;">Page 162</p> <p>1 Q. Well, it's a captive in this sense. The only 2 business it does is SCA business; right? 3 A. For practical purposes. 4 Q. Okay. So -- 5 A. But it's not precluded from doing business, 6 other than SCA. 7 Q. Well, I suppose I'm not precluded from 8 traveling to Saturn, but it's not likely that I'm 9 going. 10 Your -- you haven't, at least to this 11 point, done any non-SCA business, have you? 12 A. I'm not sure. We may have. But certainly 13 the vast majority of the business that Prize Indemnity 14 does is related to SCA. 15 Q. Okay. And all of the risks that Prize 16 Indemnity reinsures are all -- are SCA primary risks, 17 are they not? 18 A. The risks that Prize Indemnity reinsures are 19 from insurance companies when it's acting as a 20 reinsurer. 21 Q. Okay. Well, let's talk about -- let's talk 22 about the first page of Exhibit 24. 23 A. Okay. 24 Q. This is described as an insurance agreement, 25 is it not?</p>
<p style="text-align: right;">Page 161</p> <p>1 certificate of insurance -- I mean, you don't dispute 2 that this certificate of insurance relates to the 3 agreement or the SCA contract with Tailwind? 4 A. No. The certificate was issued when we 5 purchased insurance for our own account. 6 Q. Right. And so when you -- on addendum "A" to 7 the contract, when you referred to certificate of 8 insurance number 61329, you may have misspoke about 9 who the parties were to it, but certainly there did 10 exist a certificate of insurance that related to this 11 risk? 12 A. That's correct. 13 Q. Okay. Now, you were present when Mr. Lorenzo 14 testified by deposition yesterday, were you not? 15 A. Yes. 16 Q. Okay. Turn to Exhibit 24 -- Claimants' 17 Exhibit 24. You heard Mr. Lorenzo refer to Prize 18 Indemnity Limited from Hamilton Bermuda as SCA's 19 captive reinsurance company? 20 A. Oh, that was a misnomer. 21 Q. Oh. 22 A. It's a -- I would clarify. It's a company 23 that SCA employees own 25 to 30 percent of, but it's 24 not a captive in the sense that the bulk of the 25 shareholders are not SCA affiliated.</p>	<p style="text-align: right;">Page 163</p> <p>1 A. That's correct. 2 Q. And the type is contingency insurance? 3 A. That's correct. 4 Q. All right. Is there such a thing as 5 contingency insurance? 6 A. Certainly. 7 Q. Okay. And do you agree with your expert that 8 Tailwind's obligation to pay Mr. Armstrong \$5 million 9 if he won those four races was a contingency? 10 A. Yes. 11 Q. Okay. Now, the assurers' maximum liability 12 is \$5 million there? 13 A. That's correct. 14 Q. And you've facilitated this insurance 15 agreement with PIL? 16 A. That's correct. 17 Q. And you were acting on behalf of both PIL and 18 SCA Promotions, Inc., when you did that, did -- were 19 you not? 20 A. That's correct. 21 Q. Okay. And you -- at -- you assessed the 22 risk; correct? 23 A. Correct. 24 Q. You delivered the insurance contract? 25 A. Correct.</p>

Page 164

1 Q. And you were in Texas when the contract was
 2 delivered?
 3 A. Probably I was.
 4 Q. All right.
 5 A. It's not automatic but --
 6 Q. Well, I mean, I don't mean necessarily you
 7 personally, but SCA Promotions is in Texas? SCA
 8 Promotions --
 9 A. Well, SCA Promotions is in Texas. Prize
 10 Indemnity is in Bermuda, and the contract is between
 11 Prize Indemnity and SCA.
 12 Q. All right. And when you at SCA Promotions,
 13 Inc., secured this Exhibit 24, you were procuring or
 14 effectuating insurance on behalf of SCA Promotions,
 15 Inc., were you not?
 16 A. That's correct.
 17 Q. Okay. And did you set the rate?
 18 A. That's correct.
 19 Q. Okay. Have you ever -- or do you regularly
 20 represent or assist Prize Indemnity Ltd. in the
 21 transaction of its insurance business?
 22 A. I am involved at some level, yes.
 23 Q. All right. And does SCA Promotions, Inc.,
 24 likewise, assist Prize Indemnity in the transaction of
 25 its business, particularly where it relates to SCA

Page 165

1 Insurance primary -- or SCA Promotions primary risk?
 2 A. The insurance -- or the -- typically Prize
 3 Indemnity acts as an reinsurer to Swiss Re or AIG, and
 4 the contract is between Swiss Re or AIG or North
 5 American Specialty and PIL.
 6 Q. Well, it sure wasn't in this case, was it?
 7 A. This was -- I said, typically.
 8 Q. Pardon?
 9 A. This is not -- this is not a typical case.
 10 Q. Right. And I'd agree with you about that.
 11 But in this case, SCA Promotions dealt directly with
 12 PIL, and SCA Promotions laid off the 5 million to PIL;
 13 correct?
 14 A. Correct.
 15 Q. All right. Now turn to Exhibit 2 --
 16 Claimants' Exhibit 2. I'm sorry.
 17 A. Exhibit 2. Okay. I have a letter to Frank
 18 Lorenzo and Richard B. Alexander.
 19 Q. Right. But this is -- well's, let's -- let's
 20 make sure that we identify what this is. This is --
 21 A. Oh, I have Exhibit 1. It says -- I was
 22 looking under 2 Tab.
 23 Q. That's all right. That's it. That's it.
 24 A. That's it? Okay.
 25 Q. Yeah. Because they're -- they're --

Page 166

1 MR. TILLOTSON: Tab 2, but it displays
 2 Exhibit 11 at the top. We're going off the tab
 3 numbers.
 4 Q. (By Mr. Herman) That's a Deposition Exhibit
 5 number. I apologize.
 6 You've got -- this is, in fact, a letter
 7 agreement between or -- among SCA Promotions, Inc.,
 8 Swiss Re America, and AIEntertainment, is it not?
 9 A. Correct.
 10 Q. And it's signed by Mr. Floerchinger on behalf
 11 of SCA Promotions?
 12 A. Correct.
 13 Q. And it originated with SCA Promotions. It's
 14 on an SCA Promotions letterhead?
 15 A. Yes, sir.
 16 Q. And it lays out the terms and conditions of
 17 the agreement, not between SCA and AIG but between the
 18 three of you?
 19 A. It is an outline of a proposal for documented
 20 programs with Swiss Re and AIG.
 21 Q. I'm -- I'm reading --
 22 A. I'm reading the letter.
 23 Q. Pardon me?
 24 A. I'm reading the letter.
 25 Q. Right. But if you look at the signature

Page 167

1 page, it is signed, agreed, a proposal which was
 2 accepted by both Swiss Re and AIEntertainment, which I
 3 understand is either an affiliate or a subsidiary of
 4 AIG; is that right?
 5 A. AIEntertainment is an affiliate of AIG;
 6 correct.
 7 Q. Okay.
 8 A. Or a division of AIG.
 9 Q. Okay. Now, I'm not going to go through this
 10 in detail, but just, for example, let's look at the
 11 first page there under your continuous contract --
 12 A. Okay.
 13 Q. -- coverage, the first paragraph. Under this
 14 agreement for the standard continuous program, Swiss
 15 Re participates at 27 and a half, AI at 20 of the risk
 16 associated with those promotions, and SCA allocates
 17 the other 52 and a half percent of the risk; correct?
 18 A. Correct.
 19 Q. Okay. And under this agreement -- under this
 20 continuous contract, for example, you collect the
 21 premiums from the consumers or the customer or the
 22 insured, if you will?
 23 A. We charge a fee to the customer. We pay the
 24 premium to AIG.
 25 Q. Well, but -- but you don't pay the premium,

Page 168

1 do you? You -- all you do is remit the premium risk;
 2 that is, the difference between what you think the
 3 claims are going to be and the actual premium
 4 collected; isn't that true?
 5 A. Well, first, we pay a premium to AIG for the
 6 risk that they are assuming.
 7 Q. Well, so Swiss Re doesn't get anything even
 8 though you-all have agreed that they participate at 27
 9 and a half percent?
 10 A. No. They get paid a premium.
 11 Q. Exactly. Of course they get paid a premium.
 12 A. Right.
 13 Q. And you collected and then remitted?
 14 A. No. We paid a premium that we were obligated
 15 to under -- in order to purchase the insurance for our
 16 own account, we have an agreement as to what it will
 17 cost and what percentage of the various type cases
 18 that they will agree to sell to us.
 19 Q. Exactly. Now that's what -- that's where I
 20 was getting at. Swiss Re is a reinsurance company,
 21 isn't it?
 22 A. Well, AIG was purchase -- yes, Swiss Re is a
 23 reinsurance company; correct.
 24 Q. Okay. Well, let's try to just focus, and
 25 we'll move along here.

Page 169

1 Swiss Re is a reinsurance company, and
 2 you have entered into an agreement here with Swiss Re
 3 and AIG; fair?
 4 A. We have agreed on underwriting standards.
 5 Q. Well, this is an agreement between you, AIG,
 6 and Swiss Re?
 7 A. It is -- yes.
 8 Q. So if you take a risk under your continuous
 9 contracts, you know that 27 and half percent of that
 10 risk is taken by Swiss Re because that's what you've
 11 agreed?
 12 A. Correct.
 13 Q. And Swiss Re's obligated to take 27 and a
 14 half percent of the risk if it fits the description in
 15 this agreement?
 16 A. They have an agreement in principle to accept
 17 risks that fit this agreement. From time to time,
 18 they have not accepted the risks which fit this
 19 agreement.
 20 Q. Well, Mr. Lorenzo confirmed that Swiss Re was
 21 obligated if the risk fit the description that they
 22 had to take the 27 and a half --
 23 A. A vast majority of cases, they do.
 24 Q. Okay. Now, I guess what you're saying,
 25 though, is that despite what this letter agreement

Page 170

1 says, that really you run the 27 and half percent
 2 through AIG down to Swiss Re; is that right?
 3 A. We pay AIG, and it is our understanding that
 4 they will buy the 27 and a half percent from Swiss Re.
 5 Q. But you've entered into an agreement with
 6 Swiss Re -- Swiss Re which obligates Swiss Re to take
 7 the 27 and a half percent. I thought we'd already
 8 covered that.
 9 A. They have agreed that they will take risks
 10 from AIG that fit these parameters.
 11 Q. You collect from the insured or the consumer?
 12 A. We charge the consumer a fee, and we, in
 13 turn, buy insurance for our own account.
 14 Q. Okay. Well, let me ask you this: In those
 15 areas -- in those -- remember you and I talked about
 16 where you might have required -- be required to
 17 furnish a certificate of insurance?
 18 A. Correct.
 19 Q. And that transaction, in substance -- that
 20 is, the risk, the fee, the participation, et cetera --
 21 is the same. What do you charge there? Do you charge
 22 a premium or a fee?
 23 A. The -- where we use a certificate of
 24 insurance, I believe the certificate of insurance is
 25 still issued to us, but -- and we issue the customer

Page 171

1 an information deal evidencing that we have purchased
 2 coverage.
 3 Q. As a practical matter, all that happens -- I
 4 mean, I mean, I don't know if this is literally the
 5 truth -- accurate. But what happens is, SCA
 6 Promotions writes a promotional or incentive bonus
 7 coverage, and somebody says, hey, that's a -- that's a
 8 jurisdiction where you have to file a certificate of
 9 insurance. You turn to the guy next to you who
 10 happens to be SCA Insurance Specialists, Inc., and
 11 say, hey, send us a certificate, just like a
 12 certificate was used here, and then you file it, and
 13 the transaction, in substance, is precisely the same.
 14 Isn't that true?
 15 A. The risk transfer is very similar.
 16 Q. So to that -- should I take that as a yes?
 17 Maybe? No? Don't know? What?
 18 A. There are many similarities.
 19 Q. All right. It's essentially the same, for
 20 all practical purposes?
 21 A. There may be some differences.
 22 Q. The customer never knows the difference, does
 23 he?
 24 A. Oh, the customer knows that one is an
 25 insurance product and the other is not.

Page 172	Page 174
<p>1 Q. In this case, did you inform the customer 2 that there was an insurance product involved from the 3 guy at the desk next to you? 4 A. Which case are we referring to? 5 Q. I'm talking about in the SCA Tailwind case. 6 A. We communicated to Tailwind's agent that this 7 was a contract. 8 Q. All right. Now, if you'll turn to page three 9 of Exhibit 2. 10 A. Okay. 11 Q. This Tailwind contract was individually 12 proposed and submitted by SCA, was it not? 13 A. Correct. 14 Q. But it was never submitted -- before the deal 15 finally was finalized, it -- AIG didn't know anything 16 about it, did it? 17 A. Probably not. 18 Q. Okay. Now, in this particular case where you 19 have gone through AIG to Swiss Re, it was -- SCA was 20 required to investigate and settle claims; correct? 21 Do you see that last sentence? 22 A. SCA, in conjunction with its business, 23 settles claims. 24 Q. Okay. Well, under this particular 25 provision -- under this particular section that</p>	<p>1 says, CL Exhibit 5, on there, disregard any stickers 2 that are on there. 3 A. Okay. 4 Q. So I want to make sure we're both on the same 5 page. 6 Now, you sent this analysis to 7 Mr. Lorenzo; correct? 8 A. That's correct. 9 Q. On January the 3rd of -- 10 A. Yes. 11 Q. All right. And this was the extent of your 12 analysis related to this particular risk as of January 13 3, 2001; correct? 14 A. I have looked at some other historical 15 information regarding the Tour de France. 16 Q. But this is all you favored, Mr. -- 17 A. This is -- 18 Q. -- Lorenzo -- 19 A. -- the information that I shared with Frank. 20 Q. When you say, Frank, you're referring to 21 Frank -- 22 A. Well, Mr. Lorenzo, yes. 23 Q. Well, I don't mean to imply that you're not 24 on a first-name basis with him, but we're talking 25 about the same guy anyway?</p>
<p>Page 173</p> <p>1 Mr. Lorenzo says the Tailwind contract fell under, 2 that section requires SCA to settle the claims, does 3 it not? 4 A. Well, it requires that SCA have a claims 5 handling process. 6 Q. So that -- it's true, isn't it, that you 7 would be investigating or adjusting a claim or loss on 8 behalf of either Swiss Re or AIG. That's true, isn't 9 it? 10 A. No. They would be entitled to our report and 11 our information. Certainly we would, as a general 12 rule, be reasonably certain that they didn't have any 13 objection to a particular claim. 14 Q. Oh, so that whether you actually made the 15 final deal, certainly you would have a responsibility 16 under this agreement to investigate the claim? 17 A. We were required to treat their money as if 18 it -- well, we purchased. They participated, and it 19 did -- investigated claims. 20 Q. Okay. All right. Now, if you would turn to 21 Exhibit 5 -- Claimants' Exhibit 5. 22 A. Okay. Well, it's Tab 5. 23 Q. Right. 24 A. Okay. 25 Q. Yeah. Disregard the -- other than where it</p>	<p>Page 175</p> <p>1 A. Yeah. 2 MR. TILLOTSON: Be careful. 3 A. We are always on a first-name basis. 4 Q. (By Mr. Herman) All right. Now, look at 5 Exhibit 6. Mr. Lorenzo replies to you and tells you 6 that he has already quoted for another company, and 7 that company -- it turns out to be Chubb; correct? 8 A. I wasn't aware of that, but I'm told that it 9 was Chubb. 10 Q. All right. And you and Chubb -- well, strike 11 that. 12 Chubb is an insurance company? 13 A. That's correct. 14 Q. And they've got -- they're in the insurance 15 business? 16 A. Correct. 17 Q. And they were competing with you apparently 18 for the Disson Furst risk that you ended up getting. 19 Isn't that true? 20 A. That's correct. 21 Q. Okay. And what you were both offering was 22 the indemnity to Tailwind for the liability that would 23 accrue for the consecutive bonuses of 2002, '3, and 24 '4; correct? 25 A. I don't know what Chubb was being asked to</p>

<p style="text-align: right;">Page 176</p> <p>1 quote on at that time. I mean, I've -- it -- it 2 involved Lance Armstrong. It involved bonuses, but -- 3 and certainly Frank did not specify that it was 4 exactly the same deal, but it may have been. 5 Q. Let me -- 6 MR. HERMAN: Jason, can you put up slide 7 13, or is that -- a problem? Slide 13. 8 MR. BREEN: From his opening PowerPoint. 9 MR. HERMAN: Slide 13. It's been 10 renamed, sorry. It's been renumbered. I'm sorry. 11 That's from our presentation yesterday. It's just a 12 little easier to read along. 13 ARBITRATOR CHERNICK: Oh, the one that 14 has the spreadsheets -- 15 MR. HERMAN: Analysis, yes. 16 ARBITRATOR CHERNICK: -- complete? 17 MR. HERMAN: Exactly, yes. 18 Q. (By Mr. Herman) Mr. Hamman -- 19 MR. TILLOTSON: You may want to flip 20 around and -- 21 MR. HERMAN: Yeah. It might be easier. 22 MR. TILLOTSON: It might be easier if you 23 want to flip your chair around. Put it up here on the 24 screen. 25 ARBITRATOR CHERNICK: It's slide 7, I</p>	<p style="text-align: right;">Page 178</p> <p>1 Q. Okay. So you figure that he had a one in 2 four chance of winning each individual race, and -- so 3 you would simply multiply those to arrive at -- his 4 chances of winning all four would have been, what, 5 about 1 in 250 or something? 6 A. That's right about on the money. 7 Q. That -- on the -- for the fourth one? 8 A. Correct. 9 Q. Okay. So in order to determine what the 10 expected pay was, you simply multiplied the 11 probability times the bonus that would be payable? 12 A. Yes. 13 Q. Okay. And you came up with a total expected 14 pay of \$160,000? 15 A. Yeah. 16 Q. And for that, you charged \$420,000? 17 A. We charge the customer -- well, the fee, I 18 would charge the customer was 420,000, that's correct, 19 less commission. 20 Q. And when I asked you in your deposition if 21 you could recall, of course, we didn't have this yet, 22 and you couldn't recall, but you said that -- you -- 23 because you recalled the margin was pretty thin. 24 Would you consider two and a half times 25 the expected loss to be a pretty thin margin?</p>
<p style="text-align: right;">Page 177</p> <p>1 think. 2 THE WITNESS: Okay. 3 Q. (By Mr. Herman) Okay. Let's just work 4 through this, just so that everyone will understand 5 what we're talking about. Your probability that you 6 calculated, did you do that mathematically, or where 7 did you pull that 6.25 percent? 8 A. Well, 6.25 is the product of -- well, it's 25 9 percent squared. 10 Q. Twenty-five percent squared? 11 A. Correct, exactly. 12 Q. And you had Armstrong basically a four to 13 one? 14 A. Three to one. 15 Q. Three to one? 16 Okay. Three to one pick in both 2001, 17 2002? 18 A. That's what we used for purposes of this. 19 Q. Okay. 20 A. Best estimate. 21 Q. And then what did you have him in 2003 to 22 arrive at the 1.56 percent? 23 A. It looks like 25 percent again. 24 Q. And what about 2004? 25 A. It looks like 25 percent again.</p>	<p style="text-align: right;">Page 179</p> <p>1 A. Considering that -- the margin to SCA was 2 quite thin because, in fact, Swiss Re charged 275,000 3 for the first two bonuses, and I'm told, for example, 4 that for that, Chubb and Lloyd's charged a combined 5 150,000 for the 2001, '2, '3 and '4 bonus. 6 Q. Uh-huh. 7 A. So that if you add the 275 and the 150 as an 8 approximate cost of goods and an agent's commission in 9 there, it appears that the margin was quite thin, 10 indeed. 11 Q. Well, the way you had it figured 12 originally -- and you had quoted -- you had quoted Ms. 13 Price on January the 3rd before you knew anything 14 about the 275,000 from Chubb -- I mean, from Swiss Re, 15 you had quoted her 420,000 on the 3rd, didn't you? 16 A. I estimated that I could get it done for that 17 number. 18 Q. Okay. Well, in any event, the -- the -- your 19 expected pay was one thing, and then the rate you 20 simply doubled your expected pay; correct? 21 A. That was the rate we were requesting from 22 Swiss Re and that's how we arrived at it; correct. 23 Q. Okay. Now, you've got comments down there, 24 Date of birth, I assume that's Mr. Armstrong's date of 25 birth.</p>

Page 180

1 A. Correct.
2 Q. Armstrong won in '99 and 2000?
3 A. Correct.
4 Q. Bookmakers, et cetera, and then Mr. Indurain
5 won -- the only other guy to win five, and two others
6 had won four.
7 A. Correct.
8 Q. Now, it is true, is it not, that whether you
9 did this deal or not was entirely dependent upon
10 whether Swiss Re was willing to do the deal?
11 A. We would not have done the deal without Swiss
12 Re being willing to offer.
13 Q. And you left it up to Swiss Re to determine
14 whether the risk was agreeable or not?
15 A. Well, they had to accept the risk, yes. It
16 was not -- it was their decision, not mine, as far as
17 to whether or not they would reinsure such a deal from
18 AIG.
19 Q. And didn't you testify that it was whether
20 Swiss Re would sell us insurance to cover most of our
21 liability. If they would, we'd probably be able to
22 proceed. If they wouldn't, we probably wouldn't be
23 able to proceed.
24 A. Well --
25 Q. Isn't that what you testified?

Page 181

1 A. -- mechanically Swiss Re would be reinsuring
2 AIG, but substantively that's the statement.
3 MR. TILLOTSON: Can I get a cite -- I'm
4 sorry -- from the deposition?
5 MR. HERMAN: Oh, sure.
6 ARBITRATOR FAULKNER: It's from -- it's
7 slide 8.
8 MR. HERMAN: It is from slide 8, but it's
9 a -- I can give you --
10 MR. TILLOTSON: I didn't mean to
11 interrupt you. I'm sorry.
12 MR. HERMAN: That's all right. It's a
13 fair question. If I can find it.
14 MR. TILLOTSON: You can provide it on a
15 break.
16 MR. HERMAN: I'm sorry. I'll have --
17 I'll give it to you when we get off the -- when we
18 take a break.
19 MR. TILLOTSON: That's fine.
20 MR. HERMAN: I don't have it.
21 MR. TILLOTSON: I apologize for not
22 taking --
23 MR. HERMAN: No problem. No problem.
24 I'm about to a spot where it'd be
25 convenient to -- to stop, but if -- if I can just

Page 182

1 finish this line of inquiry.
2 ARBITRATOR FAULKNER: Why don't you
3 finish this, and then we can take a break.
4 Q. (By Mr. Herman) You and Mr. Lorenzo reached
5 an agreement independently that Lorenzo or Swiss Re --
6 if you turn to Exhibit -- first of all, Exhibit 8. It
7 was you that came up with the idea of Swiss Re
8 covering only 2002, 2003 for 240,000; correct?
9 A. Swiss Re had indicated that they would accept
10 5 million of risk --
11 Q. Uh-huh.
12 A. -- on this bonus structure.
13 Q. All right.
14 A. And we proposed to them that instead of
15 taking 57 percent of 100 percent of the deal, that
16 they take levels one and two only at a price of
17 240,000.
18 Q. All right. Well, if you did the first deal,
19 then SCA would have to cover 40 percent of the 9 and a
20 half million; right?
21 A. We would have had to arrange for that or
22 accept it ourselves.
23 Q. Exactly. But in the second proposal, you --
24 you suggested to Mr. Lorenzo that he take essentially
25 all of the 2002 and 2003 coverage, and that way, you'd

Page 183

1 get to see what happened the first three years before
2 you had to do anything. Isn't that true?
3 A. Yes, that's true. But I would like to
4 clarify. First, these are three independent
5 transactions, and I -- I proposed to Swiss Re that
6 they accept levels one and two because it was clear to
7 me that we would have to go to the marketplace at some
8 point, and it would be easier for us to have a
9 discrete risk, i.e., level 3 to deal with, than a
10 little bit of this one. It was just a request that I
11 made. No particular reason for it, except that he had
12 indicated that he had 5 million that he was willing to
13 provide.
14 Q. But the proof is in the pudding. You didn't
15 even try to go to the market until after the 2002
16 race, until after Armstrong had won two of them.
17 Isn't that true?
18 A. The market was changing, and we never found
19 an advantageous time to go to the market. We felt
20 that it would be -- that we couldn't get it done at a
21 rate that was reasonable.
22 Q. Until Exhibit 24 came along, which is Prize
23 Indemnity Ltd., a 5 million cover dated December 31,
24 2002 where at least for some period of time, you found
25 a place to park it; correct?

Page 184

1 A. What we did is we agreed to pay up to 105
 2 percent of whatever it would cost them to reinsure it,
 3 or the lesser of 105 percent of \$4 million subject to
 4 a minimum premium of \$1 million.
 5 Q. Let me ask you this: With respect to the --
 6 at least the concept of reinsurance. Fundamental
 7 concept of reinsurance or at least one of them is that
 8 in order to avoid a catastrophic loss, in order to
 9 spread the risk, you would lay off some liability, and
 10 an insurance company would cede some of its liability
 11 in order to pool that liability with a bigger pool of
 12 risk with any reinsurance company. Isn't that a fair
 13 statement?
 14 A. It is a subset of a process that is done.
 15 Q. But that's one of the benefits, and that's
 16 one of the objectives of reinsurance, is it not?
 17 A. Reinsurance is to -- a reinsurer is in the
 18 business of selling risk services to insurers.
 19 Q. To insurers?
 20 A. To insurers. And when a reinsurer sells risk
 21 to insurers, it may be to cover a block of business;
 22 it may be to cover an individual piece of business.
 23 There is no standard as to what type of -- they're
 24 free to make deals and --
 25 Q. And a reinsurance company will deal with a

Page 185

1 risk-taker and buy or reinsure all or part of the
 2 risk-taker's risk; correct?
 3 A. Reinsurers by definition deal with insurers.
 4 Q. And what I've said -- what I've described
 5 incorrect?
 6 A. That they will take some or all or -- yeah,
 7 some or all.
 8 Q. Relieve the risk-taker of either all or some
 9 of the risk that the risk-taker has undertaken. Isn't
 10 that a fair statement?
 11 A. They are selling an insurance policy to an
 12 insurer, and in all cases -- or not -- in all cases
 13 that I'm familiar with, this relates to risk that the
 14 insurer has.
 15 Q. All right, sir.
 16 ARBITRATOR LYON: Can I ask a question?
 17 MR. HERMAN: Sure.
 18 ARBITRATOR LYON: Whose signature is that
 19 under Prize Indemnity Ltd.?
 20 THE WITNESS: Oh, that's mine.
 21 ARBITRATOR LYON: Okay. I believe you
 22 said earlier you owned one percent of Prize
 23 Indefinity.
 24 THE WITNESS: No. I own nine percent.
 25 ARBITRATOR LYON: Nine? 90 or nine?

Page 186

1 THE WITNESS: Nine.
 2 Q. (By Mr. Herman) You're the managing director
 3 or CEO essentially of --
 4 A. Well, I'm the managing director.
 5 Q. All right. And Mr. Floerchinger is the COO
 6 of SCA Promotions, Inc. and occupies some capacity
 7 with Prize Indemnity, as well?
 8 A. I don't believe he's a director at this
 9 point. He's a shareholder.
 10 Q. All right. Now, just two more -- just a
 11 couple more questions. When you proposed this risk to
 12 Swiss Re and as of the time you proposed it and left
 13 it up to Lorenzo to decide whether Swiss Re was going
 14 to take it --
 15 A. Right.
 16 Q. -- you had not done any investigation of the
 17 mainstream press, the cycling press. You had never
 18 talked to Mr. Armstrong. You had no idea who was on
 19 his team, who his teammates were, what his physical
 20 state was, what his technological state was, or any
 21 other factors related to this risk. Isn't that true?
 22 A. Well, we were aware of some factors. We had
 23 not done much in the way of an investigation of the
 24 Postal Service Team.
 25 Q. And when Mr. Lorenzo called you back or

Page 187

1 e-mailed you back and said, we'll take this for 275,
 2 you agreed to do the deal; correct?
 3 A. That's correct.
 4 Q. And when he e-mailed you back -- well, strike
 5 that.
 6 Let's move ahead. I'll just jump ahead
 7 here. If you'll go to Exhibit 14, which is an e-mail
 8 from you dated January 12, 2001.
 9 A. Okay.
 10 Q. As of that date, you had already forwarded
 11 the contract to SCA -- I mean, to Tailwind. I'm
 12 sorry. You had already agreed to do the deal. You
 13 had agreed with Swiss Re that Swiss Re would take 97
 14 and a half percent of the risk, and you had done all
 15 of that without a hint or whisper to AIG. Isn't that
 16 true?
 17 A. It's probable we knew AIG was not going to be
 18 a participant.
 19 Q. AIG was not going to be a risk-taker, were
 20 they?
 21 A. That's correct.
 22 Q. And AIG was simply used as a fronting
 23 company, and you and Mr. Lorenzo negotiated all of the
 24 material terms, the price, the risk, the terms, et
 25 cetera, directly, did you not?

Page 188

1 A. Yes.
2 MR. HERMAN: That's a -- this is a
3 convenient time, if you -- if you're inclined.
4 ARBITRATOR CHERNICK: You're -- you're
5 not -- you're not passing the witness?
6 MR. HERMAN: I'm not -- well, but I -- I
7 don't have a whole lot longer, but -- but maybe over
8 the noon hour we can cut it down some, and we can move
9 along.
10 ARBITRATOR CHERNICK: So we're just --
11 we're taking a lunch break.
12 ARBITRATOR FAULKNER: Just taking a lunch
13 break? Okay.
14 (Break from 11:59 a.m. time to 1:11 p.m.)
15 ARBITRATOR FAULKNER: Let's go again.
16 Proceed.
17 Q. (By Mr. Herman) Mr. Hamman --
18 MR. HERMAN: Jason, would you put up
19 slide 11, please, which corresponds to Exhibit 21.
20 Q. (By Mr. Herman) Now, Mr. Hamman, this
21 document, which is the second page of Claimants'
22 Exhibit 21 was described by Mr. Lorenzo as SCA's
23 session sheet. Is this a form that's utilized at SCA?
24 A. It's a form that we use to show the risk
25 allocation.

Page 189

1 Q. All right. And in this case, there is no
2 risk allocated to AIG; correct?
3 A. That's correct.
4 Q. Swiss RE has 97 and a half percent of the
5 risk?
6 A. Yes.
7 Q. And you note out to the right there the
8 premium which is a function of applying the rate,
9 which is 6.1 percent, to the amount of the risk
10 assumed; correct?
11 A. That's simply -- that reflects the risk
12 allocation.
13 Q. Right. But the way you get the \$268,125 is
14 to take 6.1 percent times 4.387 million; correct?
15 A. Yeah. Well, 97 and half percent of the 4.5
16 million.
17 Q. Right. And then, likewise, the premium to
18 SCA shows \$6,875?
19 A. Yeah. It -- it's the two and half percent.
20 In fact, I believe that went to PIL, but --
21 Q. Well, this -- this form shows that SCA's
22 keeping 112,500 of the risk and that it's keeping
23 \$6,875 of premium dollars, doesn't it?
24 A. I believe in this case that PIL was to
25 receive the 6,875.

Page 190

1 Q. I didn't ask you that. The form says --
2 A. That's what it shows, yes. I don't believe
3 that's what happened.
4 Q. Okay. And if you --
5 MR. HERMAN: Jason, I don't know if
6 you --
7 Q. (By Mr. Herman) We had -- SCA has provided no
8 document or reflection anywhere in connection with the
9 documents that have been produced in this case that
10 would show that PIL was paid any of the premium on the
11 4 and half million dollar risk. You haven't shown us
12 a single item or document that would reflect anything
13 like that, have you, sir?
14 A. Actually I'm not sure. I mean, I -- I think
15 PIL had -- maybe I'm confused that PIL had that in the
16 later transaction.
17 Q. Right.
18 A. Either SCA or PIL were accepting a percentage
19 of the risk.
20 Q. Right. But that's kind of important, though,
21 because PIL is a licensed insurance company domiciled
22 in Bermuda of which you're the managing director;
23 correct?
24 A. I am the managing director. It's a licensed
25 class "B" company domiciled in Bermuda, and its

Page 191

1 participation would have been as a reinsurer to AIG.
2 Q. But in this case, there's no indication that
3 AIG participated, except at -- I mean, even -- there's
4 no -- on your session sheet, there's no indication
5 that AIG participated at all.
6 A. The purpose of the sheet is to allocate the
7 risk participation.
8 Q. Right. And if you'll now look at the slide
9 that's up there with a diagram, it's true that of
10 the -- of the 4 and a half million dollar risk in '02
11 and '03, that AIG retained no risk?
12 A. That's true.
13 Q. And SCA did retain part of the risk, and
14 Swiss Re retained part of the risk?
15 A. Swiss Re got the risk from AIG. They had
16 part of the risk. They didn't retain.
17 Q. Well, the -- the part of the risk that AI --
18 that Swiss Re assumed was -- I think we've already
19 covered, was negotiated between you and Mr. Lorenzo
20 directly.
21 A. That's correct.
22 Q. Okay. Now, one thing I just wanted to get
23 clear, SCA Insurance specialists, Inc., is in the
24 business of insurance. There is no doubt about that?
25 A. It's a licensed insurance agent.

Page 192

1 Q. Well, is there a distinction there? Are they
 2 in the business or --
 3 A. Well, it's not an insurance company. To the
 4 extent an insurance agent is in the business of
 5 insurance, yes, it's in the business of insurance.
 6 Q. Well, you're in the business of insurance.
 7 You're a licensed insurance agent.
 8 A. When I'm acting as an insurance agent, I'm in
 9 the business of insurance.
 10 Q. All right. And SCA Insurance Specialists,
 11 Inc., and Bob Hamman perform duties and functions
 12 which operate up to facilitate SCA Promotions, Inc.'s,
 13 business?
 14 A. That's correct.
 15 Q. And in this Tailwind risk --
 16 MR. TILLOTSON: What was that last
 17 question?
 18 MR. HERMAN: I said, Hamman individually
 19 and SCA Insurance Specialists, Inc., both act to
 20 facilitate SCA Promotions, Inc.'s, business.
 21 ARBITRATOR LYON: Okay.
 22 Q. (By Mr. Herman) Now, finally, Mr. Hamman, the
 23 indemnity provided by SCA to Tailwind with respect to
 24 the '02, '03, and '04 contingencies of the Tailwind,
 25 those -- the benefits under that agreement were the

Page 193

1 same that were realized under the Chubb and Lloyd's
 2 policies that were purchased and issued. Isn't that
 3 true?
 4 A. Substantially, yes.
 5 Q. Well, how are they different?
 6 A. I haven't analyzed the Chubb and Lloyd's but,
 7 there are some contractual differences between Chubb
 8 and Lloyd's and ourselves. They're just not the same
 9 contract.
 10 Q. I'm talking about the indemnity that was
 11 undertaken by Chubb and Lloyd's for the 2004 Tour.
 12 It's precisely the same indemnity undertaken by SCA
 13 with respect to the 2004 Tour with the notable
 14 exception that they honored their obligation, and you
 15 haven't.
 16 A. I agree that it is the same obligation.
 17 Q. All right. Now, let me just ask you this:
 18 If you could go back to August of 2004 or whatever,
 19 you would do -- and you would handle this matter
 20 precisely the same way that you've handled it up to
 21 this point. Isn't that true?
 22 A. You mean if I could go approximate back to
 23 2004?
 24 Q. Right?
 25 A. Knowing what I know now, how would I --

Page 194

1 Q. How would you -- how would you -- what would
 2 you have done differently in investigating and
 3 handling this claim?
 4 A. Well, I would imagine that I would have had
 5 more information available to me with my present
 6 knowledge so I would be able to investigate at a
 7 slightly different pace.
 8 Q. But you didn't pay when it became due. You
 9 haven't paid now, and you don't intend to pay, do you?
 10 A. In fact, we've paid the money in to the
 11 registry of the Court.
 12 Q. Well, I suppose that that symbolically might
 13 have been something, but you haven't paid the money to
 14 Tailwind who has the obligation or the -- the
 15 contingency to take care of it. That's true.
 16 A. We did not pay Tailwind.
 17 Q. And if you could do it all over again, you
 18 wouldn't pay them again?
 19 A. Based on what we know now, we would deny.
 20 Q. All right. So nothing would change
 21 essentially, and you don't have any intention of
 22 paying this claim, do you?
 23 A. I don't believe it's our determination at
 24 this point.
 25 Q. I'm not asking you that. You're not going to

Page 195

1 pay it until these gentlemen up here tell you to pay
 2 it or a Court of Law tells you to pay it, are you?
 3 A. That's correct.
 4 Q. Thank you.
 5 MR. HERMAN: I have nothing further.
 6 MR. TILLOTSON: May I proceed?
 7 ARBITRATOR FAULKNER: Sure. Do you have
 8 any questions?
 9 ARBITRATOR CHERNICK: No.
 10 CROSS-EXAMINATION
 11 BY MR. TILLOTSON:
 12 Q. Mr. Hamman, normally I would want to start
 13 off by introducing you and getting some of your
 14 background. But let's jump to a few issues covered by
 15 Mr. Herman so that we can be on the same page.
 16 A. Okay.
 17 Q. You were asked a series of questions
 18 regarding the various parties' relationships,
 19 certificates of insurance, or whatnot, and I would
 20 like to -- so that we have one uniform place, I'd like
 21 to map out the parties' relationships, and then place
 22 the various documentation used in those; okay?
 23 For context, we know that Tailwind or
 24 Disson Furst had a contract with SCA Promotions, Inc.
 25 A. Yes.

<p style="text-align: right;">Page 196</p> <p>1 Q. Okay. Now, in connection with SCA 2 Promotions, Inc.'s business and this particular 3 contract, what did it actually purchase from AIG or do 4 with AIG? 5 A. We purchase insurance for our own account to 6 cover formerly and 500,000 of our liability pursuant 7 to our contract with Tailwind. 8 Q. And then AIG, in turn, did what? 9 A. They purchased reinsurance from Swiss Re. 10 Q. Now, although -- 11 A. Actually we purchased 97 and half percent of 12 4.5. 13 Q. Okay. Now, I've stairstepped it here, but, 14 in fact, tell the Panel, how did this actually come 15 about. Was it two separate transactions or -- 16 A. I negotiated with Frank Lorenzo at Swiss Re 17 to determine if he would be willing to reinsure AIG -- 18 Q. Now -- 19 A. -- to accept the risk. 20 Q. Okay. Now, this relationship or arrangement 21 here between these parties, is that relationship 22 governed or operated under what's been marked as 23 Claimants' Exhibit 2, which is the letter agreement? 24 A. That's correct. 25 Q. Okay. Now, does that letter agreement cover</p>	<p style="text-align: right;">Page 198</p> <p>1 arrangements under that letter agreement where parties 2 have already agreed to allocate their risk; is that 3 right? 4 A. Correct. 5 Q. But in this one, you have to negotiate? 6 A. Yes. 7 Q. And you negotiated in this particular case 8 with whom? 9 A. Frank Lorenzo. 10 Q. On behalf of? 11 A. Swiss Re who would, in turn, have agreed to 12 reinsure AIG. 13 Q. Why does AIG have to be in the middle here? 14 Why can't he just simply -- 15 A. Swiss Re -- that division of Swiss Re was 16 only doing business with insurers. 17 Q. Okay. Now, although in this particular case, 18 AIG took nothing, it was 100 percent reinsured by 19 Swiss Re. Under other arrangements under your letter 20 agreement, did AIG always take no risk? 21 A. No. They -- most of the time they 22 participated. 23 Q. Okay. Now, in this particular case, what 24 does SCA get from AIG based upon this transaction? 25 A. We have a master policy, and we issue a cert</p>
<p style="text-align: right;">Page 197</p> <p>1 more than just this particular transaction we're 2 looking at? 3 A. Yes. It covers several trans -- several 4 classes of transactions. 5 Q. Okay. Is what we're looking at there, is 6 that an insurance policy of some sort, or what is 7 it -- 8 A. This is an agreement to really an 9 underwriting commitment. 10 Q. -- now, this particular transaction we're 11 looking at here with the insurance with AIG and 12 reinsured through -- I put SRA, that's Swiss Re and 13 AIG? 14 A. Correct. 15 Q. What particular part of the letter agreement 16 does this transaction fall under? 17 A. It would fall under individual risks program, 18 which is also labeled 6-Certs. 19 Q. Okay. The 6-Certs here. Now, is there -- 20 based upon this letter agreement, is there any prior 21 arrangement where this has already been agreed to, or 22 does this have to be separately negotiated? 23 A. Each 6-Cert has to be negotiated 24 individually. 25 Q. And that contrasts with other types of</p>	<p style="text-align: right;">Page 199</p> <p>1 to reflect that particular case. 2 Q. So there's a certificate of insurance that 3 reflects the insurance in place between SCA and AIG? 4 A. Correct. 5 Q. And then between AIG and Swiss Re, what 6 documentation is there, or do you know? 7 A. I don't know. 8 Q. Okay. Now, in this particular case, the 9 contractual liabilities, as we've -- as we've seen, 10 there was 9 and a half million. Is that -- do you 11 remember that? 12 A. Yeah. The potential contractual liability. 13 Q. And of this part of the transaction, how much 14 was insured by AIG? 15 A. 90 -- 43875. 16 Q. So that's the 97 and a half percent of the 17 4.5 million? 18 A. Correct. 19 Q. Now, that leaves still 5 million here. What 20 did -- 21 A. Well, 5,112,000. 22 Q. Okay. What did SCA do with respect to that 23 remaining risk? 24 A. We purchased an insurance product from PIL to 25 deal with the 2000 -- the bonus that would have been</p>

Page 200	Page 202
<p>1 completed in 2004.</p> <p>2 Q. Okay. Now, if you'll take a look for a</p> <p>3 moment -- let's see a couple of the documentation. If</p> <p>4 you'll turn to what's marked as Claimants' Tab 24.</p> <p>5 Claimants' Tab 24. Is that the insurance agreement</p> <p>6 reflecting SCA purchasing insurance from PIL, Prize</p> <p>7 Indemnity Ltd.?</p> <p>8 A. Correct.</p> <p>9 Q. Now, what kind of company is Prize Indemnity</p> <p>10 Ltd.</p> <p>11 A. Class "B" insurer in Bermuda. It's a Bermuda</p> <p>12 licensed class "B" insurance.</p> <p>13 Q. And it is owned by some people who also work</p> <p>14 at SCA?</p> <p>15 A. Correct.</p> <p>16 Q. Okay. But is there a majority shareholder?</p> <p>17 A. No.</p> <p>18 Q. But you have some management?</p> <p>19 A. I was the managing director.</p> <p>20 Q. Now, can PIL engage in both insurance and</p> <p>21 reinsurance?</p> <p>22 A. Yes.</p> <p>23 Q. Is that a peculiarity of the British charger</p> <p>24 that it has -- a Bermuda charter?</p> <p>25 A. I don't know where that may be available, but</p>	<p>1 contract with Tailwind.</p> <p>2 Q. And is that a Cert number there?</p> <p>3 A. Cert 6-1329.</p> <p>4 Q. Okay. Now, does the certificate of insurance</p> <p>5 that you get reflecting you have insurance from AIG,</p> <p>6 which we now have up there, or any certificate you get</p> <p>7 or insurance you get from PILs, any of that passed on</p> <p>8 to or provided to Tailwind?</p> <p>9 A. No.</p> <p>10 Q. Okay. Now, we've seen an addendum here that</p> <p>11 was -- there was an addendum to the Tailwind contract;</p> <p>12 is that right? Do you remember that?</p> <p>13 A. Yes.</p> <p>14 Q. Okay. Let me show it to you. Here at Tab</p> <p>15 16. That's the one page that's in there. Do you see</p> <p>16 that?</p> <p>17 A. Correct.</p> <p>18 Q. Okay. And I think your testimony was that</p> <p>19 this reflected Tailwind now owned the contract, rather</p> <p>20 than Disson Furst. Now, if you look at the top. It</p> <p>21 says, certificate of insurance, and it gives that</p> <p>22 6-1329 number. Is that this reference here?</p> <p>23 (Indicating.)</p> <p>24 A. That's what it refers to, yes.</p> <p>25 Q. Okay. Is that supposed to be there on this</p>
<p>1 certainly PIL had that authority.</p> <p>2 Q. Now, not on this particular transaction, but</p> <p>3 on other transactions, what kind of role did PIL play?</p> <p>4 A. PIL would typically reinsure AIG or a Swiss</p> <p>5 Re company.</p> <p>6 Q. So although they might take liability, that</p> <p>7 might be reinsurer -- Or reinsurer of the reinsurance</p> <p>8 through PIL?</p> <p>9 A. Correct.</p> <p>10 Q. Okay. And why do you have this kind of</p> <p>11 arrangement? What's the advantage of the benefit to</p> <p>12 SCA in this kind of arrangement?</p> <p>13 A. The insurers that were to buy from us always</p> <p>14 liked us or some close affiliate of ours to have some</p> <p>15 skin in the game or have some risk involved, and</p> <p>16 consequently, if they were accepting business from us</p> <p>17 on a relatively simplified process, it was their</p> <p>18 desire that some of the risk would remain in some</p> <p>19 connection to us.</p> <p>20 Q. Now, let me show you what Mr. Herman marked</p> <p>21 as Exhibit 47, which is called Certificate of</p> <p>22 Insurance, and tell me what that is now.</p> <p>23 A. This appears to be a certificate reflecting</p> <p>24 our purchase from AIG of four and a half million of</p> <p>25 coverage relative to our contract 31122, which was the</p>	<p>1 addendum?</p> <p>2 A. No.</p> <p>3 Q. What happened?</p> <p>4 A. It was a clerical error.</p> <p>5 Q. It was a clerical error. I mean, do you know</p> <p>6 who made it or how it happened?</p> <p>7 A. I think it started with Natalie Manichec who</p> <p>8 prepared the form.</p> <p>9 Q. Okay. If you'll look at the left-hand side.</p> <p>10 It says that it's signed by SCA Insurance Specialists,</p> <p>11 Inc. You recognize that company?</p> <p>12 A. Yes.</p> <p>13 Q. And whose signature is that under SCA?</p> <p>14 A. Chris Hamman's.</p> <p>15 Q. Your son?</p> <p>16 A. Yeah.</p> <p>17 Q. What kind of company is SCA Insurance</p> <p>18 Specialists, Inc.?</p> <p>19 A. It's an insurance agent.</p> <p>20 Q. Okay. On our little schematic here, are they</p> <p>21 wholly owned by SCA?</p> <p>22 A. No.</p> <p>23 Q. Okay. Where are they? Are they outside</p> <p>24 somewhere over here? (Indicating.)</p> <p>25 A. They're wholly owned by me.</p>

Page 204

1 Q. Okay. I'm going to put "SCA I-S." Okay.
2 Now, were they in part of this
3 transaction with Tailwind in any way?
4 A. No.
5 Q. Why is SCA Insurance Specialists then listed
6 as the party to an addendum to a contract that they're
7 not on?
8 A. Well, SCA Insurance Specialists issued the
9 cert that reflected our purchase from AIG. It didn't
10 reflect any transaction with Tailwind.
11 Q. Okay. So when a mistake was made referencing
12 a certificate of insurance, that had nothing to do
13 with the actual Tailwind contract? Did they then
14 simply use the SCA Insurance -- Insurance Specialists
15 as the signing party in error?
16 A. Yes.
17 Q. Okay. Now, with respect to -- to -- to this
18 arrangement, does the letter agreement with AIG and
19 Swiss Re also include arrangements with PIL where PIL
20 will take risk?
21 A. PIL may be mentioned in here. I think PIL is
22 mentioned, but it's Exhibit 27 or wherever it is.
23 Q. It's all right.
24 A. PIL may or may not have been identified in
25 the documents specifically.

Page 205

1 Q. If you'll -- if you'll take a look here on
2 Exhibit 2 in the first paragraph, I believe.
3 A. SCA allocates the other 27 and a half
4 percent. I don't believe PIL -- oh, yeah, PIL is
5 identified on international business.
6 Q. Now, in some of these types of contracts, you
7 would deal with Mr. Lorenzo at Swiss Re. In ones
8 where AIG were -- we would have not a zero here, but,
9 say, in that particular case where AIE -- which, I
10 think, is a sub of AIG -- would take 27 percent.
11 Would they have to be involved?
12 A. Typically Frank Lorenzo would make the
13 underwriting decision.
14 Q. Okay. And what does AIG get in connection
15 with this particular transaction?
16 A. They get an issuing company fee.
17 Q. And paid by?
18 A. Swiss Re.
19 Q. Now --
20 A. Well, deducted from the remittance.
21 Effectively, Swiss Re's pricing to AIG reflects
22 provision for an issuing company.
23 Q. Now, this particular letter agreement that
24 we're looking at here covers all kinds of promotions.
25 You can see some of them: Video poker, Keno, things

Page 206

1 like that.
2 A. Correct.
3 Q. I want to focus just now on the prize
4 indemnification business.
5 A. Okay.
6 Q. All right. Is SCA Promotions, Inc., in the
7 prize indemnification business?
8 A. Yes.
9 Q. All right. Who are SCA's competitors in that
10 business?
11 A. Primary competitors would be American
12 Specialty Underwriters.
13 Q. Is that called ASU?
14 A. ASU. Insured Creativity.
15 Q. All right.
16 A. American Media, Odds On Promotions, and from
17 time to time, some miscellaneous competitors. They
18 might be Lloyd's syndicates going through other
19 wholesalers.
20 Q. Are -- are all of those -- does SCA
21 Promotions, Inc., in the prize indemnification
22 business have as competitors insurance companies?
23 A. Yes.
24 Q. Are all of your competitors insurance
25 companies?

Page 207

1 A. I don't believe so.
2 Q. We've heard of one such company that was
3 involved in the Tailwind business before you came
4 around called Global Specialty Risk. Are you familiar
5 with that company?
6 A. Yes, I am.
7 Q. Were they a competitor during that time
8 period?
9 A. I don't know if they were a competitor in
10 that time period. They had been a competitor in the
11 past.
12 Q. Is Global Speciality Risk, to your knowledge,
13 an insurance company?
14 A. It is not.
15 Q. Now, in connection with your competitors, do
16 your competitors ever -- well, let me you this: Do
17 competitors, to your knowledge, are they aware of
18 whether or not SCA Promotions, Inc., is an insurance
19 company?
20 A. All the serious competitors are.
21 Q. Okay. And just so we know. I mean, we've
22 sort of been operating under this, but SCA Promotions,
23 Inc., is not a licensed insurance company?
24 A. It is not.
25 Q. Does it operate as an insurance company?

Page 208

1 A. No.
 2 Q. And do you believe -- we're going to cover
 3 this in a moment. But do you believe it is in the
 4 business of insurance?
 5 A. No.
 6 Q. Take a moment and look, if you will, at what
 7 we have marked as Respondents' Exhibit 16. I believe
 8 it's over here. (Indicating.) You can look at this
 9 one.
 10 All right. Can you tell us what we're
 11 looking at here as Respondents' Exhibit 16?
 12 A. It's a page from American Specialty
 13 Underwriter's web site.
 14 Q. And is this a competitor?
 15 A. Yes.
 16 Q. All right. Is this an insurance company, to
 17 your knowledge?
 18 A. It's an agency.
 19 Q. If you'll look down there at the bottom, this
 20 paragraph called, ASU will created a "Winsurance"
 21 policy. Do you see that?
 22 A. Yes.
 23 Q. That covers the entire prize for the premium.
 24 It's only a fraction of the size. Winsurance is a
 25 real insurance policy with real financial guarantees,

Page 209

1 not merely a business contract. Do you see that?
 2 A. I do.
 3 Q. Have you heard that kind of competitive talk
 4 about your company?
 5 A. Yes.
 6 Q. And to your knowledge, do you believe this is
 7 aimed at you or talking about you?
 8 A. I think we're in the cross hairs.
 9 Q. Now, we know from prior testimony and from
 10 what you've said earlier this morning that sometimes
 11 in your prize indemnification business, you're
 12 competing against insurance companies. You actually
 13 deal with insurance brokers like ESIX. Is that true?
 14 A. Correct.
 15 Q. Why do you deal with insurance brokers if
 16 you're not in the business of insurance?
 17 A. They have use for our products.
 18 Q. Well, do -- do -- does SCA Promotions, Inc.,
 19 hold itself out as an insurance company to these
 20 brokers?
 21 A. No.
 22 Q. Does SCA use or imply that it is an insurance
 23 company in an effort to sell its products to insurance
 24 brokers?
 25 A. No.

Page 210

1 Q. Now, from time to time, has SCA paid
 2 commissions to insurance brokers on prize
 3 indemnification products?
 4 A. Yes.
 5 Q. Why aren't you in the business of insurance,
 6 even though you're paying commissions to insurance
 7 brokers?
 8 A. Because our product is not an insurance
 9 product.
 10 Q. How is your product -- the prize
 11 indemnification, in your understanding, not an
 12 insurance product?
 13 A. Because we're dealing with speculative risks;
 14 because we're dealing with manufactured risks. Simply
 15 it's -- it is not an insurance -- an insurance
 16 product, as we have been led to believe, deals with
 17 losses that may be incurred by the customers.
 18 Q. Okay. When you say, you've been led to
 19 believe, what sources have been drawn on for that
 20 belief?
 21 A. Communications from the State Board of
 22 Insurance in Texas, literature prepared by -- or
 23 approved by the State Board of Insurance. At one
 24 point, Lloyd's expressed the concern that prize
 25 coverage was a financial guarantee, as opposed to an

Page 211

1 insurance product.
 2 Q. And based on that concern, what is it you did
 3 at SCA? What actions did you undertake?
 4 A. We have utilized for a long time business
 5 contracts to define our obligations to our customers.
 6 Q. Does SCA call itself an insurer in public?
 7 A. No.
 8 Q. Does SCA issue or give to customers insurance
 9 policies?
 10 A. No.
 11 Q. Do you issue certificates of insurance -- SCA
 12 Promotions, Inc., issue certificates of insurance to
 13 customers?
 14 A. We do not issue certificates to customers.
 15 Q. Okay. Does SCA in its documentation have
 16 endorsements?
 17 A. No.
 18 Q. For example, we saw one e-mail that
 19 Mr. Herman asked you about that came up in this
 20 particular case that was contained at Tab 25 of
 21 Claimants' Exhibit.
 22 MR. HERMAN: What was the date on the
 23 certificate?
 24 Q. (By Mr. Tillotson) Tab 25. I'm sorry.
 25 Claimants' Exhibit 25. It's right here.

Page 212

1 (Indicating.)
2 Now, this is the e-mail that Mr. Herman
3 showed you where -- and we also had Mr. Gorski testify
4 about this where it said -- where it says, Mark called
5 wanting to make sure that each of Tailwind's bonus
6 policies were endorsed to recognize that Tailwind
7 Sports had merged.
8 Do you see that?
9 A. Right.
10 Q. First of all, is this an e-mail received by
11 SCA?
12 A. No.
13 Q. Okay. And is it physically even possible to
14 have an endorsement for your contract? Did your
15 contract have an endorsement?
16 A. Well, we could amend our contracts. We
17 wouldn't call it an endorsement.
18 Q. Well, we've seen on the Chubb and Lloyd's
19 policies where there's an endorsement page. Are you
20 familiar with that kind of provision of an insurance
21 contract?
22 A. I am.
23 Q. Okay. And is there any -- is there an
24 endorsement for your contract?
25 A. When we amend our contracts, both parties

Page 213

1 sign -- both us and the other contracting parties sign
2 the amendment.
3 Q. How is that different from an insurance
4 policy?
5 A. An insurance company, the endorsements are
6 just delivered to the customer without any signatures
7 by the customer.
8 Q. Now, are there -- there are some states out
9 there where some products that SCA Promotions, Inc.,
10 may be involved in are -- have been deemed either by
11 Statute or otherwise to be under insurance
12 regulations?
13 A. Correct.
14 Q. One such example I think Mr. Herman brought
15 up was hole-in-one product.
16 A. Yes.
17 Q. Are you familiar with that product?
18 A. Well, I'm familiar with the product, yes.
19 Q. Have some states regulated or deemed that to
20 be under the insurance regulations?
21 A. Yes.
22 Q. And in those states, how does SCA operate, if
23 it does?
24 A. We deliver a certificate of insurance off of
25 our master policy to the insured which reflects that

Page 214

1 we have purchased insurance.
2 Q. Okay. Now, when you say, we --
3 A. Meaning S --
4 Q. Who is the "we"? SCA Promotions, Inc., is
5 not issuing a certificate of insurance?
6 A. SCA Insurance Specialists issues the
7 certificate reflecting that SCA Promotions has
8 purchased the insurance.
9 Q. Okay. So the certificate is being issued by
10 a licensed insurance --
11 A. Agent.
12 Q. -- agent?
13 A. Correct.
14 Q. Reflecting that SCA Promotions, Inc., which
15 is not an insurance company or licensed insurance
16 agent, has what?
17 A. Has purchased the insurance to cover the
18 hole-in-one exposure.
19 Q. In those particular circumstances, is SCA in
20 any way issuing insurance to the particular sponsor
21 that might contract with them?
22 A. We don't believe so.
23 Q. Okay. Can SCA issue insurance -- SCA
24 Promotions, Inc.?
25 A. No.

Page 215

1 Q. Now, I want to turn to a -- to a subject
2 covered by Mr. Herman about whether or not SCA holds
3 itself out as an insurer. You were here for the --
4 for the opening presentations, were you not?
5 A. That's correct.
6 Q. And there was a portion about the web site,
7 and you were asked earlier about the web site. First
8 of all, I want to just cover the video that we saw
9 that we -- we didn't get to see the Honorable
10 Catherine Crier too much, but that was a discussion
11 about a dispute involving a company with the "Who
12 Wants to be a Millionaire" program?
13 A. I believe so.
14 Q. And you were serving, what, as kind of a
15 guest commentator on that thing?
16 A. Yes.
17 Q. Was your company involved in that promotion?
18 A. No, we were not.
19 Q. So when Ms. Crier was referring to an
20 insurance company, was she referring to you or to the
21 actual company that did the promotion?
22 A. I believe she was referring to the company
23 who did the promotion.
24 Q. Do you know the company that did the
25 promotion if they were, in fact, an insurer -- an

Page 216

1 insurance company?
 2 A. I believe they were, but I don't know that
 3 for sure.
 4 Q. Because there are some insurance companies
 5 that operate in your -- in your business?
 6 A. Absolutely.
 7 Q. Compete against you.
 8 Now, on the web site, one of the things
 9 that -- or in the opening that was represented as on
 10 your web site was -- if you'll see the second line
 11 there. I think it's slide one of the deal. Enter the
 12 insurer who takes the risk for you. Do you see that?
 13 A. Yes.
 14 Q. Okay. Now, in fact, is that taken from a --
 15 from a subheading in a -- in a newspaper article
 16 written by some guy from San Diego that's been marked
 17 as Claimants' Exhibit 44?
 18 A. Yes.
 19 Q. Okay. So when -- on the opening
 20 presentation, the PowerPoint where it's represented
 21 that -- that you wrote or your company wrote, "Enter
 22 the insurer who takes the risk," that's not words you
 23 wrote, but that's someone writing an article about
 24 you; is that fair?
 25 A. That's correct.

Page 217

1 Q. Now, there is also -- underneath that, it
 2 says, SCA says, over its history, it has insured 12
 3 billion in prizes and paid out 126 million in claims.
 4 Do you see that?
 5 A. Yeah.
 6 Q. I want to bring up your web site and compare
 7 that with what's actually on your web site, if we
 8 could. We can flash it up here.
 9 If you'll look at the top, the blue --
 10 MR. TILLOTSON: If you -- can you blow
 11 that up?
 12 Q. (By Mr. Tillotson) Okay. The sentence that
 13 I'm reading on your left side, it says about SCA -- it
 14 says, SCA has guaranteed more than 12 billion in
 15 prizes and paid more than 131 million in claims.
 16 Do you see that?
 17 A. Yes.
 18 Q. Okay. Is there any representation in -- in
 19 this page or others that you've seen that SCA wrote on
 20 its web site saying, SCA Promotions, Inc., insured
 21 these prizes?
 22 A. No.
 23 Q. Now, Mr. Herman also did a key word search.
 24 I'll confess. I'm not sure I know what that is or I
 25 can do that, but I'm going to learn. And he had

Page 218

1 insurance plus all these other things. Do you
 2 remember that?
 3 A. Right.
 4 Q. Okay. I want to show you what's been marked
 5 as Exhibit 46 by Mr. Herman, which appears to be some
 6 promotional materials, is that right, the second page
 7 of Exhibit 46?
 8 A. The second page?
 9 Q. I'm sorry. This is the second.
 10 A. This is the second page; right.
 11 Q. This is promotional materials for a whole lot
 12 more; is that right? A hole-in-one and a whole lot
 13 more.
 14 A. Correct.
 15 Q. Okay. Now, if you'll see that and a portion
 16 that says, our areas of specialties include -- and
 17 then it lists things: Sports contests, Internet
 18 promotions, media contests, fishing tournaments. And
 19 you'll confirm for us that the words "insurance" are
 20 not in front of that as they were in that key word
 21 search or whatever that was?
 22 A. Correct.
 23 Q. And do you put the words "insurance" on your
 24 promotional materials in front of these contests, to
 25 your knowledge?

Page 219

1 A. We do not.
 2 Q. Now, last on the PowerPoint used by
 3 Mr. Herman, it says there at the bottom of the first
 4 page, premiums generally range from 3 to 12 percent,
 5 and SCA will reinsure, in red, underlined.
 6 Do you see that?
 7 A. I do.
 8 Q. Okay. I want to return to your web site to
 9 see if we can find language written by SCA where it
 10 says that. All right. We've found that -- we've
 11 found the sentence. It says, SCA retains some risk
 12 while the bulk of the overall risk is placed through
 13 agreements with various commercial insurers, such as
 14 Lloyd's and North American Specialty, a Swiss Re
 15 Company.
 16 Do you see that?
 17 A. Yes.
 18 Q. Okay. And I'm taking that from the portion
 19 of your web site called -- here in front of you --
 20 about SCA, at the bottom, how it works; is that
 21 correct?
 22 A. Correct.
 23 Q. Okay. Does SCA say on its web site that it
 24 reinsures its products?
 25 A. No.

Page 220

1 Q. Okay. And the description of what we see
2 here, is that roughly a description of what we saw
3 over here on the board, yet not fully describing the
4 fact that the insurers may reinsure?
5 A. Our web site makes no reference to SCA
6 reinsuring.
7 Q. Now, earlier today we saw some videotape of
8 Ms. Price. You know who she is, don't you?
9 A. Yes.
10 Q. You've worked with her over the years when
11 she was at ESIX?
12 A. For quite a few years.
13 Q. Okay. And -- and -- and can you give us kind
14 of a sense of how many business contracts you may have
15 done through her with various people?
16 A. I don't know, but I imagine it's a
17 considerable number.
18 Q. 30, 40, 50?
19 A. At least that. 30, 40.
20 Q. Okay. And can you give us a sense of the
21 kinds of promotions they were involved in?
22 A. Most of the business has been performance
23 incentives.
24 Q. Now, of the performance incentive bonuses you
25 did with Ms. Price, how many, at the time you did this

Page 221

1 deal, had you ever done with a professional --
2 incentive bonus for a professional cyclist?
3 A. None.
4 Q. Since you entered into this deal, how many
5 others did you do?
6 A. One.
7 Q. And that was with whom?
8 A. It involved Tyler Hamilton.
9 Q. What year did you do that promotion?
10 A. It was for 2004.
11 Q. So Mr. Armstrong's incentive bonus with
12 Tailwind, Tyler Hamilton in 2004, are those the only
13 two you ever did?
14 A. I believe so.
15 Q. Now, in the course of talking with Ms. Price,
16 would you discuss with her various possible business
17 arrangements over the years?
18 A. Well, we discussed a number of possible
19 cases.
20 Q. In connection with that, did you describe the
21 kind of business SCA does?
22 A. Yes.
23 Q. What kinds of things would you tell her about
24 what SCA does?
25 A. Well, that we operated under a business

Page 222

1 contract, and we presented our full gamut of products
2 to her.
3 Q. Did you ever represent to Ms. Price or anyone
4 at ESIX that SCA was an insurance company?
5 A. No.
6 Q. That your business contract was insurance?
7 A. No.
8 Q. Did you use any of the hallmarks of insurance
9 that we've seen with Ms. Price, like group of loss,
10 claim form, things like that?
11 A. No.
12 Q. Based upon your dealings with Ms. Price, did
13 you reasonably -- did you believe her to know that SCA
14 was not an insurance company?
15 A. She knew we were not, I'm sure.
16 Q. You say she knew. How is it you know she
17 knew that?
18 A. She acknowledged it.
19 Q. Now, who do you rely on in that particular
20 case to deal with a particular client, Tailwind? Who
21 handles that?
22 A. Well, our only contact was with ESIX. We did
23 not deal directly with the client.
24 Q. Now, a little earlier you had -- I want to
25 return to the subject about not being in the business

Page 223

1 of insurance and a manufactured risk with respect to
2 prize indemnification.
3 Can you explain for us what you mean when
4 you say that you don't understand prize
5 indemnification to be insurance because it's a
6 manufactured risk?
7 A. Well, in prize indemnification, for the most
8 part, the risk is the product. It is not incidental
9 to some other activity. It's the whole magella.
10 ARBITRATOR LYON: What -- what do you
11 mean by that?
12 THE WITNESS: Well, let's suppose that
13 you -- you're running a promotion, and a good example
14 would be the promotion we did with Taco Bell in
15 conjunction -- I think it was with the All Star Game.
16 And what they did is they invited a
17 contestant to throw baseballs at a target that, I
18 think, was a 24-inch circle, and his objective was to
19 throw five strikes in 30 seconds. So there was
20 nothing else, other than the risk.
21 This is not a risk that's -- that just
22 happens to you in your normal course of business. It
23 is the entire product. So it's -- it just simply
24 is -- that's all there is to it. Now, there may be
25 other prizes. There may be -- but this is the focal

Page 224

1 point of the transaction.
2 In the case of a performance bonus, the
3 performance bonus is generally for an athlete, and the
4 best examples are in the case of golfers where a
5 clothing manufacturer cuts a deal with a professional
6 golfer. Now -- or a club manufacturer.
7 They want to see this guy in the final
8 pairing or two on Sunday afternoon because if he's
9 consistently cut, their endorsement deal is worthless.
10 He's less impressive to their customers when they want
11 to use him for an appearance. His value to the
12 company is less.
13 So they say, I'll tell you what. We want
14 to compensate you substantially on the basis of how
15 you do in significant tournaments because as an
16 endorsement, if you're relegated to the Nike Tour,
17 you're not of much value to us. So a big piece of
18 your compensation will be your performance in
19 tournaments.
20 And, therefore, when you perform well in
21 tournaments, you're creating a value for us, and we,
22 in turn, will be able to pay you some percentage of
23 that value. If you perform poorly, you don't get
24 much, and we don't get much. We're in this
25 together.

Page 225

1 Q. (By Mr. Tillotson) And in connection with
2 doing these sponsorship bonuses, are you aware that
3 the management companies, the Tailwinds of the world
4 or a management company for a golfer is -- is actively
5 participating in trying to help their particular
6 athlete or person to win the bonus?
7 A. Well, it differs with different situations.
8 For instance, a Taylor Made might supply a golfer with
9 clubs in their latest technology, and help the golfer
10 out as much as they can. Or a Titleist with a ball
11 might say, well, we'll give you the best balls we've
12 got, and you'll go on and win many tournaments with
13 them. It's hard to see how the shirt manufacturer can
14 do much to enhance -- to enhance the golfer's
15 prospects.
16 Perhaps the car company that is
17 sponsoring him will provide him with such a luxurious
18 ride that he'll be totally relaxed, and he won't get
19 the yips, but effectively some sponsors can do more
20 than others to enhance. They're all rooting for
21 him.
22 Q. Okay. Let's talk about the issue of risk and
23 how you've described it for us. If you'll turn to
24 what's been marked as Respondents' Exhibit 1, Mr.
25 Hamman. Respondents' Exhibit 1?

Page 226

1 A. I've got it.
2 Q. First, I'll ask you: Can you -- can you tell
3 us what we're looking at here?
4 A. In -- yes. It's a letter from the State
5 Board of Insurance addressed to Michael Thompson,
6 executive vice president, Equity American Insurance
7 Company.
8 Q. Okay. Do you know how this letter came
9 about?
10 A. Yes.
11 Q. Can you describe for us what caused this
12 letter to be issued by the State Board of Insurance
13 back in 1988?
14 A. In 1988, we, meaning SCA -- well, SCA's
15 predecessor, Sports Contest Association, had a
16 business relationship with Equity American Insurance
17 Company, and we requested that they file a contractual
18 liability policy with the State of Texas to see if we
19 could get it approved so that perhaps we could use an
20 insurance product for prize indemnification purposes.
21 Q. Okay. And so I've got this right, Equity
22 American Insurance Company actually makes the filing
23 with the Department of Insurance?
24 A. They're the company that would be issuing the
25 insurance.

Page 227

1 Q. And the filing is what? What kind of
2 products are we talking about? It is prize
3 indemnification?
4 A. Well, in this case, it was contractual
5 liability relating to prize indemnification or
6 anything that might fit into that bucket.
7 Q. What was the response of State Board of
8 Insurance to this filing?
9 A. They declined to approve the filing and
10 stated that insurance is designed to indemnify
11 insureds against loss, through specified perils. It
12 says that "peril" by definition is not the anticipated
13 outcome but, rather, an unfortunate and uncontrollable
14 event which may cause a loss.
15 Awarding prizes is not a peril. It is a
16 foreseen result of holding a legitimate contest.
17 Q. Now, in connection with the testimony you've
18 given us, you told us you saw this letter regarding
19 why you don't believe the prize indemnification is
20 insurance. Was it based or drawn in part upon the
21 response of the State Board of Insurance?
22 A. Yes.
23 Q. All right. Now, in response to this and your
24 knowledge and awareness of this filing, has SCA
25 Promotions, Inc., structured its business around that

Page 228

1 factor?
2 A. Correct.
3 Q. How? What -- what kinds of things have you
4 done?
5 A. Well, we -- certainly we have exposure under
6 our contract which can reach fairly high limits, so we
7 arrange to buy insurance for our own account to deal
8 with our contractual liability. And, secondly, we
9 dealt with our clients using business contracts to
10 assume prize liability. Quite frequently, we design
11 the contest themselves. In many cases, we provided
12 collateral services, such as web hosting, a wide
13 variety.
14 Q. Now, do you agree with the Department of
15 Insurance there in the last sentence, that awarding
16 prizes is not a peril. It is a foreseen result of
17 holding a legitimate contest?
18 A. I do.
19 Q. And is -- is that the point of these
20 sponsorship contracts, to hope that he wins those
21 bonuses?
22 A. In almost every case I'm aware of, unless the
23 sponsor has developed a dislike for the contestant,
24 they are rooting for the contestant. They want -- the
25 more, the merrier.

Page 229

1 Q. Now, let's move from the -- the -- the
2 general discussion of risk to the particular risk
3 involved in the Tailwind contract, if we can.
4 How is it that you became involved in a
5 possible business arrangement with Tailwind through
6 ESIX?
7 A. Kelly Price, I guess, had originally made an
8 inquiry through Todd about the case. Didn't get much
9 in the way of a positive response from Todd and/or
10 Chris Hamman, and she contacted me on the assumption
11 that I'd be a better prospect, so effectively she got
12 a negative at door one and decided she'd try door two.
13 Q. Okay. Let's fill in some of the names.
14 Kelly Price dealt with Todd, Todd Overton?
15 A. Todd Overton.
16 Q. And he's a what at SCA?
17 A. He's a sales account rep.
18 Q. So he's the front line that would be out
19 trying to enter into or sell these business contracts?
20 A. Most of Kelly's contacts were with Todd, but,
21 in fact, we'd done business with her for a number of
22 years, so she certainly was welcome to contact anybody
23 in their organization.
24 Q. Okay. And then Chris Hamman, we know, is
25 your son. His role in this was to do what?

Page 230

1 A. Evaluate risk.
2 Q. And at a first go-around, turned it down?
3 A. He didn't like the deal.
4 Q. So what happens next is Ms. Price then
5 personally contacts you?
6 A. Correct.
7 Q. Goes straight to the head and chats with you?
8 A. Correct.
9 Q. Now, you then looked at the particular risk
10 of whether or not SCA wanted to enter into the
11 business contract; is that --
12 A. Correct.
13 Q. And in looking at it, if you'll put in front
14 of you what's shown you by Mr. Herman, but it's
15 Claimants' Exhibit 5. Claimants' Exhibit 5.
16 A. Claimants' Exhibit 5. Got it.
17 Q. Okay. The attachment, which is the little
18 Tour de France XLS. That's the spreadsheet that's the
19 next two pages; is that right?
20 A. Right.
21 Q. Okay. And in looking at trying -- this is --
22 this is so that you can decide in price whether or not
23 SCA would enter into a business contract with
24 Tailwind; is that -- is that right?
25 A. That's correct.

Page 231

1 Q. And do -- do we have it -- do I have it right
2 here, that you're essentially making odds on whether
3 or not you think Mr. Armstrong can achieve those
4 event?
5 A. That was the intent.
6 Q. And, in fact, the -- the -- the -- I see
7 there you also take into account even, like, what a
8 bookmaker's odds might have been in prior years?
9 A. Yes. We were aware -- I was aware of -- that
10 bookmakers had him at six to one in 1999.
11 Q. Are you calculating odds on anyone else
12 possibly winning this -- these particular races, or
13 are you just looking at Mr. Armstrong?
14 A. I was just looking at him.
15 Q. Okay. Are you attempting here, as you look
16 at what the odds might be, as to whether or not you
17 could spread this particular risk out over other
18 cyclists or other cycling programs?
19 A. We evaluated it strictly as a won-off
20 proposition.
21 Q. And would it be fair to characterize this as
22 simply you calculating odds on this one case?
23 A. Nothing more than that. I was estimating the
24 probability.
25 Q. Now, to be fair to the other side, you -- you

<p style="text-align: right;">Page 232</p> <p>1 were a little off on your odds, were you not? 2 A. It was a -- as they say, a bad line. 3 Q. Okay. Now, once you -- did you -- once you 4 calculated the odds, at that point to decide whether 5 or not SCA wants to enter into a contractual 6 relationship with -- at that time Disson Furst, at 7 that point, does any possible insurance through AIG or 8 reinsurance through Swiss Re become a concern or an 9 issue? 10 A. Certainly we needed to know that Swiss Re 11 would be willing to participate at prices in the 12 ballpark of what we suggested. 13 Q. Okay. Now, the fee charged here, you -- you 14 charged -- you decided the odds, and the way I see 15 your little chart here is, once you decide what the -- 16 the chances of something happening are -- I mean, if 17 there's a 10 percent chance of losing \$1,000, that's 18 a -- a -- for lack of a better word, a bet you'd take 19 for 100 bucks? 20 A. Well, no. I'd have to have some profit 21 margin built into it. 22 Q. Okay. And that's the markup, the two; is 23 that right? 24 A. In this case -- let me clarify. We certainly 25 knew that the probability estimate was not an exact</p>	<p style="text-align: right;">Page 234</p> <p>1 A. Well, once we quote them a fee, they -- well, 2 first, I don't believe we gave them a -- a firm fee 3 until we had the agreement with Frank Lorenzo. 4 Q. Okay. I guess what I'm -- what I'm asking 5 is: Can -- can you -- are you free to negotiate what 6 fee you want with a particular contracting party 7 independent of maybe -- perhaps of what premium you're 8 paying to buy insurance for them? 9 A. Sure. We -- our fee to the customer, other 10 than the fact that we have to be cognizant of market 11 conditions, is not a direct function of our cost of 12 goods sold. 13 Q. Now, you know you've seen, because 14 Mr. Herman's pointed out, that in some of your 15 documentation -- for example, there in your Claimants' 16 binder in terms of Tab 21 -- Tab 21, which is an 17 internal form used. 18 A. Tab 21 in the Claimants' -- yeah. 19 Q. Okay. That's your internal form where 20 you're -- you're doing the details? 21 A. Right. 22 Q. Because Swiss Re is allocated to direct 97 23 and a half percent, and is that some reflection here 24 where AIG is, that there's been a claim somehow that 25 you, being SCA, were actually reinsuring your</p>
<p style="text-align: right;">Page 233</p> <p>1 science in this case, and what I was doing for Frank 2 is making some assumptions and presenting my 3 assumptions to him and saying, okay, if this -- this 4 is what I believe to be a plausible appraisal or a 5 reasonable appraisal, and do you wish to participate, 6 and if so, to what extent. 7 Q. And you -- you tell Mr. Lorenzo what your 8 calculations are, your odds? 9 A. Yeah. I disclose whatever information I have 10 available to me. 11 Q. Then the premium charged for buying the 12 insurance and subsequently the reinsurance, were 13 negotiated between you and Mr. Lorenzo? 14 A. Correct. 15 Q. Okay. And AIG is absent from this. Is it 16 because they're not taking any payment? 17 A. They certainly had agreed to accept Frank 18 Lorenzo's evaluations, and in the case where they're 19 not participating, they were basically getting their 20 issuing company fee out of it, and they were quite 21 happy with that arrangement. 22 Q. Now, regardless of what arrangements you 23 reach in regarding a premium, are you allowed or can 24 you, under your contract with Tailwind, negotiate 25 whatever fee you want for the contract?</p>	<p style="text-align: right;">Page 235</p> <p>1 insurance through Swiss Re directly; is that accurate? 2 A. Our check went to AIG. We paid AIG. 3 Q. And when you got paid, who paid you? 4 A. We collected from AIG. 5 Q. So is it -- is it inaccurate to say that SCA 6 purchased reinsurance from Swiss Re in the Tailwind 7 contract? 8 A. We did not purchase reinsurance from Swiss 9 Re. 10 Q. Now, you have seen here in the course of the 11 proceedings -- I'm sorry. Before I talk about that, 12 let me ask one other thing while we're on this. We've 13 heard some testimony from Ms. Price in her deposition 14 earlier this morning where she talked about Chubb and 15 Lloyd's in the Tailwind situation paying a tax, and if 16 you remember, I asked her whether or not there was a 17 tax paid on the SCA matter. Do you recall that 18 testimony generally? 19 A. I do. 20 Q. First of all, do you know what she was 21 referring to? 22 A. Yes. Well, as I understand it, Tail -- well, 23 Disson Furst paid a surplus lines tax to the broker in 24 which, in this case, was from -- based on the Lloyd's 25 and Chubb premiums.</p>

<p style="text-align: right;">Page 236</p> <p>1 Q. Okay. What is a surplus lines tax?</p> <p>2 A. Surplus lines tax is a tax that most states</p> <p>3 impose on nonadmitted insurers for business placed --</p> <p>4 not on insurers, on customers and nonadmitted insurers</p> <p>5 for business placed in their state.</p> <p>6 Q. So let's use -- let's use the examples.</p> <p>7 Well, Disson Furst is -- is obtaining insurance from</p> <p>8 Chubb, and Chubb is not an admitted insurer in their</p> <p>9 state.</p> <p>10 A. Which, in this case, was in California.</p> <p>11 Q. Where Disson Furst was at the time?</p> <p>12 A. Correct.</p> <p>13 Q. Okay. So what is it that Disson Furst has to</p> <p>14 pay because they're buying insurance from a -- a</p> <p>15 nonadmitted carrier?</p> <p>16 A. Whatever the surplus lines tax on that</p> <p>17 particular premium was in California at the time.</p> <p>18 Q. Now, in connection with -- SCA's entered into</p> <p>19 the contract with Disson Furst. Did SCA pay any</p> <p>20 surplus lines tax?</p> <p>21 A. We did not.</p> <p>22 Q. Do you know if Disson Furst paid any the</p> <p>23 surplus lines tax on your contract?</p> <p>24 A. They did not. Now, our tax -- the tax in our</p> <p>25 case would have been our responsibility because we</p>	<p style="text-align: right;">Page 238</p> <p>1 Q. And how many -- I mean, I heard this from</p> <p>2 you. I mean, I -- maybe I didn't -- maybe I knew</p> <p>3 this; maybe I didn't. But the SCA comes from Sports</p> <p>4 Contest?</p> <p>5 A. Sports Contest Association which we decided</p> <p>6 was too much of a mouthful.</p> <p>7 Q. And how many employees does SCA have?</p> <p>8 A. SCA has about 65 in the Dallas office. We</p> <p>9 have subsidiaries in London and Munich, and we have an</p> <p>10 interest in a company in Calgary.</p> <p>11 Q. Now, we've talked about SCA's business.</p> <p>12 You've mentions overseas that SCA would buy insurance</p> <p>13 from AIG or perhaps PIL. Does SCA always have to</p> <p>14 purchase insurance to -- to cover its risks on</p> <p>15 contracts it enters into?</p> <p>16 A. No. Well, some contracts are of the sort</p> <p>17 that AI -- that our insurers will not sell risk on,</p> <p>18 and the risk may be at a level where we're unwilling</p> <p>19 to undertake, so we don't market those.</p> <p>20 Q. We heard some testimony from Mr. Herman in</p> <p>21 Cross-Examining Ms. Price that we went to something</p> <p>22 called -- she went to something called the insurance</p> <p>23 market. Does -- coverage for the business contracts,</p> <p>24 is it only obtained through insurance companies, or</p> <p>25 are there other markets out there that are not</p>
<p style="text-align: right;">Page 237</p> <p>1 were buying insurance, but in the case of the AIG</p> <p>2 company that we were doing business with, it wasn't an</p> <p>3 admitted company in Texas, so the taxes fell on them.</p> <p>4 Q. Okay. So we're back on chart, with respect</p> <p>5 to this transaction, no surplus lines tax was paid,</p> <p>6 and that was because why?</p> <p>7 A. Because it was not an insurance product.</p> <p>8 Q. Now, when you bought insurance from AIG, a</p> <p>9 surplus lines tax was not paid. Why?</p> <p>10 A. Because AIG was using a company -- an AIG</p> <p>11 company that was admitted in Texas.</p> <p>12 Q. Okay. And so is there some tax on admitted</p> <p>13 companies that also is paid?</p> <p>14 A. It is, but it's paid by the company, rather</p> <p>15 than by the customer.</p> <p>16 Q. Okay. Finally, Mr. Hamman, I want to just</p> <p>17 cover a few background materials so we know who you</p> <p>18 are, and we're making you talk all this time. You are</p> <p>19 the president of SCA?</p> <p>20 A. That's correct.</p> <p>21 Q. Did you found the company?</p> <p>22 A. I did.</p> <p>23 Q. When was SCA Promotions, Inc., founded?</p> <p>24 A. SCA Promotions, Inc., was founded -- I think</p> <p>25 it was 1989.</p>	<p style="text-align: right;">Page 239</p> <p>1 insurance that people go to?</p> <p>2 A. There are other markets.</p> <p>3 Q. What kind of markets are we talking about?</p> <p>4 A. Well, it could be private individuals. For</p> <p>5 some international incentives bonuses, we use licensed</p> <p>6 bookmakers.</p> <p>7 Q. So my -- my question -- my next question was</p> <p>8 going to be -- which I think you answered it -- was:</p> <p>9 Does SCA always use insurance companies when it's</p> <p>10 attempting to -- to transfer risk?</p> <p>11 A. No.</p> <p>12 Q. So there have been cases in the past where</p> <p>13 SCA has transferred risk to -- to entities, other than</p> <p>14 insurance companies?</p> <p>15 A. Yes.</p> <p>16 Q. Now, you mentioned you were in charge or the</p> <p>17 president at SCA, and I take it, are you the</p> <p>18 individual who has made the decision not to -- to pay</p> <p>19 any amounts -- any further amounts of money under the</p> <p>20 contract with Tailwind?</p> <p>21 A. Yes.</p> <p>22 Q. Mr. Hamman, tell us -- I understand one of</p> <p>23 your passions is playing bridge. Are you an</p> <p>24 accomplished bridge player?</p> <p>25 A. I -- I would say so.</p>

Page 240

1 Q. You have been a world champion --
 2 A. Yes.
 3 Q. -- multiple times?
 4 A. Yes.
 5 Q. I know there's a lot more that you want to
 6 say in response to some of the questions Mr. Herman
 7 asked regarding why SCA has not paid the amounts of
 8 money and explain your answers. Unfortunately I'm not
 9 going to ask those questions and reserve them for the
 10 December hearing.
 11 MR. TILLOTSON: But I would pass the
 12 witness at this time.
 13 REDIRECT EXAMINATION
 14 BY MR. HERMAN:
 15 Q. Yes, Mr. Hamman, you -- you know, you keep
 16 talking about the -- the insurance issued by AIG. And
 17 do you recall in -- when I took your deposition, I
 18 asked you whether it was Frank Lorenzo's call whether
 19 you-all did this deal, that you didn't -- if SCA -- I
 20 mean, if Swiss Re would do it, that you'd do it; if
 21 Swiss Re wouldn't do it, you wouldn't do it. Do you
 22 remember my asking you those questions?
 23 A. Could I see the --
 24 MR. HERMAN: Would you give him page 132,
 25 line 24 through -- well, give him pages 132 and 133.

Page 241

1 MR. TILLOTSON: Here is your deposition.
 2 He's looking at page 132.
 3 A. Okay. So we're --
 4 Q. (By Mr. Herman) I said, it was Frank
 5 Lorenzo's call. And then tell -- tell me what your
 6 answer to that question was.
 7 A. At the time we --
 8 Q. No. Line 24 is what I asked --
 9 A. Line 24, Swiss Re was not the only company we
 10 did business with.
 11 Q. I'm talking about page 132, line 24.
 12 A. 132, oh.
 13 It was -- would Swiss Re sell us our
 14 insurance to cover most -- if they would, we would
 15 probably be able to proceed. If they wouldn't, we
 16 probably wouldn't be able to proceed.
 17 Q. And your answer was, I -- you kind of ran
 18 through it there, but it was very substantially, would
 19 Swiss Re sell us insurance to cover most of our
 20 liability. You don't work for AIG, do you? Just a
 21 second. You don't work for AIG. You weren't
 22 representing AIG. Isn't that true?
 23 A. That's correct.
 24 Q. All right. So when you say, would Swiss Re
 25 sell us insurance, you're talking about SCA

Page 242

1 Promotions, Inc., aren't you?
 2 A. Well, our deal would not be with Swiss Re.
 3 The deal was with Swiss Re, except the risk.
 4 Q. I -- I understand that --
 5 A. That's what it -- that's what I said.
 6 Q. All right.
 7 A. That's correct.
 8 Q. That's right. And that's the substance of
 9 the transaction. That's what I'm getting at. I know
 10 you had AIG in the middle there, but Mr. Lorenzo keeps
 11 referring to SCA slipping up and calling you a ceding
 12 carrier, calling your sheet a session sheet. You say,
 13 we're going to buy insurance from Swiss Re.
 14 You and Lorenzo negotiate the price, the
 15 terms, the coverage, the amount before AIG knows
 16 that -- knows "come here from sic 'em." And that's --
 17 my point is that in substance, the transaction was,
 18 you laid off 97 and a half percent of SCA's risk to
 19 Swiss Re. Isn't that right?
 20 A. Yes. I would like to clarify. SCA purchased
 21 insurance for our own account. Swiss Re was the
 22 substantive -- virtually the entire risk-bearing
 23 entity, but, in fact, the transaction was a check
 24 written to AIG who, in turn, purchased from Swiss Re.
 25 Q. So if I want to give -- if I want to contract

Page 243

1 with Mr. Temple here -- affectionally know as "LT" for
 2 this side of the table, I might add -- and he says,
 3 give me \$10, and I give it to Mr. Breen to hand to
 4 him, with Mr. Breen taking no responsibility, that's
 5 essentially what AIG did for you. Isn't that true?
 6 A. Actually they charged a fee to Swiss Re for
 7 their facility.
 8 Q. Well, if Mr. Breen wanted to charge "LT" a
 9 fee, that would be between them, but as -- as my risk,
 10 it was transferred to Mr. "LT" here, and Mr.
 11 Breen facilitated that by handing him the money. And
 12 there's no substantive difference, is there?
 13 A. Actually AIG could have elected to change
 14 their mind and decided to retain some of the risk. It
 15 wouldn't have been our problem.
 16 Q. Right. Your session sheet was designed to
 17 show who the two risk-takers were in this deal.
 18 A. That's correct.
 19 Q. Swiss Re and SCA?
 20 A. That's correct, also.
 21 Q. And you split the premium?
 22 A. No. We paid AIG a fee so that they would be
 23 able to pay Swiss Re the agreed upon amount.
 24 Q. Well, your own document says that you say --
 25 that you shared in the premium, that -- that the

Page 244

1 premium for the 112,000 to retain?
2 A. We reflected the amount that would be
3 allocatable to risk, which was per Frank Lorenzo's
4 agreement --
5 Q. Okay.
6 A. -- that we would allocate 275,000 to risk and
7 that SCA's piece of that risk deal would be two and a
8 half percent.
9 Q. Now, you and Mr. Tillotson talked a lot about
10 you telling Ms. Price that -- or mentioning to Ms.
11 Price that SCA Promotions, Inc., was not an insurance
12 company. You're Bob Hamman. Bob Hamman's not an
13 insurance company, is he?
14 A. No, not to the best of my knowledge.
15 Q. But you're in business of insurance, aren't
16 you?
17 A. Bob Hamman is a licensed agent.
18 Q. And you're in the business of insurance?
19 A. When I'm acting as an agent, I am.
20 Q. Right. But when you're acting as an agent,
21 you're not an insurance company, are you?
22 A. No, I'm not.
23 Q. Okay. So whether -- you don't have to be an
24 insurance company to be in the business of insurance.
25 We know that.

Page 245

1 A. I'm not sure exactly. You can be an agent.
2 There are some areas where you're not -- where
3 noninsurance companies can be in the business of
4 insurance.
5 Q. It all depends on what you do, what acts
6 constitute the business of insurance. Isn't that
7 true? You don't have to be an insurance company to be
8 in the business of insurance?
9 A. I'm sure you don't.
10 Q. All right. Now, you mentioned Global
11 Speciality Risks as being, I -- I -- I presume your
12 point was that it was a company like yours, not in the
13 insurance business; correct?
14 A. It was not an insurance company.
15 Q. Okay. It might have been in the business of
16 insurance, but it was not an insurance company. Can
17 we agree on that?
18 A. I believe that to be the case.
19 Q. Okay.
20 MR. HERMAN: The next exhibit is?
21 ARBITRATOR CHERNICK: 48.
22 (Claimants' Exhibit No. 48 was marked.)
23 Q. (By Mr. Herman) Let me hand you Exhibit 48.
24 Curiously enough, Exhibit 48 involves Mr. Armstrong
25 and GSR's coverage of the '99 Tailwind or Disson Furst

Page 246

1 contingency. In the second paragraph, it states:
2 McCrum has written a performance incentive policy.
3 Do you have any information contrary to
4 that?
5 A. I looked at the contract itself, and it
6 clearly was not an insurance policy.
7 Q. And in the fourth paragraph where it refers
8 to McCrum, the insurer may bet against the performer,
9 but McCrum, the fan, may delight when the prize is
10 won. You take it -- take the position that McCrum was
11 not the insurer?
12 A. The document that I looked at was Global
13 Specialty Risks' contract with Montgomery Sports. It
14 was not an insurance policy. Now, what some author
15 characterizes it as, I have no idea how he developed
16 the information, and based on my knowledge, I would
17 say, he's wrong.
18 Q. Well, GSR managed the Gulf Insurance Group
19 prize indemnity program. Do you see that?
20 A. That's what the article says.
21 Q. Okay. And I take it, then, because their
22 contract looks so much like yours, you take the
23 position that it's not insurance, but you acknowledge
24 that Mr. McCrum might take the position that it is
25 insurance?

Page 247

1 A. I don't know what -- well, actually I talked
2 to Doug McCrum about it, and he said it was written on
3 a business contract.
4 Q. Uh-huh. Let me -- let me ask you a little
5 bit about the -- about the promotional materials that
6 you and Mr. Tillotson talked about; that is,
7 hole-in-one and a whole lot more.
8 A. Yes, I've got it somewhere.
9 Q. Okay. This is directed to, I believe,
10 insurance agents. You told us that earlier; correct?
11 A. I believe this was prepared for distribution
12 to insurance agents.
13 Q. And while we don't know for sure that they're
14 all members of the Independent Insurance Agents of
15 Texas, assuming that -- assuming that coverage is
16 synonymous with insurance as the independent agents
17 confirm in their glossary, if you were to
18 substitute -- well, strike that.
19 You make reference to coverage all over
20 this document, do you not, commission on the coverage,
21 indemnity coverage, prize coverage? Would
22 you assume -- would you expect an Independent
23 Insurance Agent to construe that as being synonymous
24 with insurance if that's what their own web site
25 says?

Page 248

1 A. Coverage is a term that can be applied to
 2 insurance. It isn't necessarily exclusively applied
 3 to insurance.
 4 Q. It's not -- is it synonymous with insurance
 5 as the Independent Insurance Agents say?
 6 A. In that context.
 7 Q. Okay. Now, when you were talking to
 8 Mr. Tillotson about this certificate of insurance
 9 being issued by Insurance Specialists, Inc. --
 10 A. Correct.
 11 Q. -- Specialty, Inc. -- well, I can't remember
 12 what the name specifically -- but where you actually
 13 deliver the certificate to the sponsor or to the
 14 insured?
 15 A. The insured is SCA.
 16 Q. Yeah. But in your testimony, you said that
 17 the difference in those jurisdictions is that you
 18 deliver a certificate of insurance to the insured,
 19 that it's given to the insured, and certainly you
 20 weren't referring to the sponsor?
 21 A. It is delivered to the sponsor.
 22 Q. Right. And that's what you meant when you
 23 said, insured, isn't it?
 24 A. It -- it references insurance purchase by
 25 SCA.

Page 249

1 Q. Right. But you said that the certificate was
 2 delivered to the insured, and the insured that you
 3 were referring to was the person putting on the
 4 promotion who faced the liability?
 5 A. I misspoke.
 6 Q. You know, you misspoke there, and when I
 7 asked you about Tab 16, which is the addendum --
 8 our -- our Claimants' Exhibit 16, you misspoke there.
 9 Another mistake?
 10 A. This was a document issued in error.
 11 Q. You misspoke. When I asked you about Exhibit
 12 2, which is the reinsurance treaty where Swiss Re
 13 agreed to take 27 and a half; AIG, 20; SCA, 52 and a
 14 half; and the other percentages in there, you misspoke
 15 again?
 16 A. What did I say?
 17 Q. Well, you said, that wasn't really the case.
 18 AIG took all of it and then reinsured with Swiss Re;
 19 that is, they took all --
 20 A. I was speaking about the risk allocation,
 21 that AIG had no exposure at the end of the
 22 transaction.
 23 Q. No. I'm talking about -- okay. Let's look
 24 at -- look at the first -- the paragraph under
 25 continuous contract.

Page 250

1 A. Correct.
 2 Q. Do you see where it says, Swiss Re
 3 participates at 27 and a half percent?
 4 A. Correct.
 5 Q. AIE at 20 percent?
 6 A. Correct.
 7 Q. And SCA at 52 and a half percent?
 8 A. Correct.
 9 Q. And you said, oh, that was a mistake. Frank
 10 Lorenzo said, oh, that was a mistake. Really AGI
 11 takes 47 and a half percent, and then AIG reinsures
 12 with Swiss Re. So that was another misspoken
 13 agreement.
 14 A. This is dealing with the ultimate risk
 15 allocation, which was 27 and half percent, Swiss Re;
 16 20 percent to AIEntertainment; and 52 and a half
 17 percent, SCA.
 18 Q. Right. That's right. That's -- that's
 19 ultimately the way it went, and that's the way it was
 20 agreed going in as between the three of you.
 21 A. That's correct.
 22 Q. There's nothing in there that says, AIG takes
 23 47 and a half percent and then we'll reinsure.
 24 A. Not in this letter.
 25 Q. Right. Then we talked about Tab -- well, I

Page 251

1 don't know if we talked about it but Tab 15, the
 2 actual contract. The type of promotion is the cyclist
 3 incentive bonus program. I think you told me earlier,
 4 oh, that's not what that means really. That -- that
 5 means the Tour de France. That means the race.
 6 A. The rules of the Tour de France determines
 7 who wins the Tour de France, not SCA -- or determines
 8 the rules for officiating the Tour de France.
 9 Q. Right.
 10 A. It is not SCA, and it is not Disson Furst.
 11 Q. It's the UCI.
 12 A. Well, it's whoever is charged with
 13 officiating.
 14 Q. Whoever is in charge of officiating
 15 determines who the official winner is; correct?
 16 A. The official -- officials generally declare
 17 an official winner.
 18 Q. Right. And if one of your golf manufacturers
 19 has a golfer win the master's, you don't get to decide
 20 whether he nudged a ball on No. 7. All you know is
 21 what PGA of America or the U.S.G.A. determines. Isn't
 22 that right?
 23 A. I know what the declared results are.
 24 Q. Right. It's interesting that -- you
 25 mentioned the premium tax. SCA doesn't pay any

Page 252

1 premium tax on SCA promotions; correct?
2 A. We might.
3 Q. Well, on the business that -- on the business
4 that you write, on indemnity that you issued, you
5 don't pay any premium tax, do you?
6 A. We might well.
7 Q. Okay. In what situation?
8 A. If we're purchasing from a surplus lines
9 carrier.
10 Q. I'm not talking about what you're purchasing.
11 I'm talking about what you're selling.
12 A. Do we pay premium tax?
13 Q. Right.
14 A. No.
15 Q. But you might --
16 A. No.
17 Q. -- if you were an authorized insurance
18 carrier.
19 A. If we were an insurance company, we -- that
20 was doing business, we would have premium tax
21 liability.
22 Q. And that's one of the benefits of structuring
23 your business in a way you think skirts that
24 responsibility?
25 A. Well, again, I can comment, the State Board

Page 253

1 told us that we weren't in the -- that this was not an
2 insurance product, so if they told us that it wasn't
3 an insurance product, I guess that perhaps we should
4 listen to them.
5 Q. How has the contingency market -- the
6 contingency and promotional insurance market changed
7 in the last almost 18 years?
8 A. Insurers frequently do business that is not
9 insurance. It is defined as insurance because they
10 are insurers.
11 MR. HERMAN: All right. Can you put
12 up -- Mariela, can you put up your Exhibit 1?
13 MR. TILLOTSON: For a fee.
14 MS. EVORA: Respondents' 1?
15 MR. HERMAN: Yes.
16 Q. (By Mr. Herman) You never provided us a copy
17 of the proposed policy that was the subject of this
18 letter, have you?
19 A. No.
20 Q. And interestingly, you avoided one sentence
21 in this letter when you were talking to Mr. Tillotson.
22 If we could look at the last sentence of the first
23 paragraph, the TBI and the State Board of Insurance
24 back in those days said, such devices do not lawfully
25 constitute insurance and would be void as they are

Page 254

1 against public policy.
2 Do you see that?
3 A. I do.
4 Q. So is it your position before this Panel that
5 you rely upon this -- this letter from the State Board
6 of Insurance? Do you rely on it or not?
7 A. My position is that I relied on their -- they
8 indicated that they would not approve the policy form,
9 and they defined what was a -- and they indicated why
10 they did not consider it insurance.
11 Q. When did you decide which parts of this
12 letter you were going to rely on and which parts you
13 weren't?
14 A. Well, as a matter of fact, in the promotions
15 business, promotions business is defined and regulated
16 in virtually every state under various sections, and
17 they -- and, in fact, we do comply with promotion law
18 where applicable.
19 Q. What -- what was submitted to the State Board
20 of Insurance was a policy which constitutes a contract
21 between the insurance company and the insured. Isn't
22 that true?
23 A. Correct.
24 Q. And the Insurance -- State Board of
25 Insurance, this letter that you're relying upon, says

Page 255

1 that that policy would be void as a contract because
2 it violates public policy, because it's a wagering or
3 gaming contract; correct?
4 A. Well --
5 Q. Isn't that right?
6 A. -- it is my understanding that the State
7 Board of Insurance has no standing as to what --
8 whether to opine on whether or not something is a
9 gambling contract.
10 Q. So SCA Promotions, Inc., didn't even exist at
11 the time of this letter, did it?
12 A. It did not.
13 Q. All right. And if the policy that's the
14 subject of this letter would be void as against public
15 policy, certainly you would not be offering business
16 contracts that would do the same thing?
17 A. I would --
18 Q. That would be unconscionable, wouldn't it?
19 A. We don't believe their interpretation is
20 accurate.
21 Q. Oh. Just the highlighted sentence?
22 Everything else was accurate but the highlighted
23 sentence? Is that what you're saying?
24 A. The -- well, the highlighted sentence -- the
25 currently highlighted sentence or the previously

Page 256

1 highlighted sentence?
 2 Q. The State Board of Insurance -- after you
 3 appeared in the Austin papers so prominently under the
 4 big insurance sign in the interview about the Lance
 5 Armstrong matter, immediately thereafter SCA became
 6 and is currently the subject of a TBI investigation.
 7 Isn't that true?
 8 A. I don't believe so.
 9 MR. HERMAN: All right. That's all the
 10 questions I have.
 11 ARBITRATOR FAULKNER: Anything from the
 12 Panel members?
 13 ARBITRATOR LYON: Have something.
 14 ARBITRATOR FAULKNER: Yes.
 15 ARBITRATOR LYON: I want to get something
 16 clear in my mind. You undertook by your company, SCA
 17 Promotions, to protect Tailwind; is that right?
 18 THE WITNESS: We agreed to a contract.
 19 ARBITRATOR LYON: And part of that
 20 contract was to protect them from a loss if Lance
 21 Armstrong won the Tour de France ever how many times?
 22 THE WITNESS: Our contract was actually
 23 to pay for a certain amount of bonus liability in the
 24 event that -- we don't necessarily agree that that was
 25 a loss to Tailwind.

Page 257

1 ARBITRATOR LYON: Okay. But -- okay.
 2 But you don't agree it's a loss; okay. Let me just
 3 make sure I -- you -- you undertook for money to
 4 protect Tailwind from having to pay Armstrong if he
 5 won the Tour de France so many times; is that right
 6 rite?
 7 THE WITNESS: We agreed to pay Tailwind
 8 various amounts of money, and it was our understanding
 9 that they had an obligation to pay Armstrong.
 10 ARBITRATOR LYON: Okay. And there was a
 11 contract -- now, we have a valid contract. You got
 12 paid consideration, and they -- you assumed the risk
 13 for Tailwind after they paid you; is that right?
 14 THE WITNESS: We had a contract which
 15 stipulated that if the conditions of the contract were
 16 met, we would pay Tailwind, and, in fact, we paid
 17 Tailwind 1.5 million in 2002. We paid them 3 million
 18 in 2003. In 2004, we deposited 5 million with JP
 19 Morgan and said, we had some questions to ask.
 20 They declined to answer the questions.
 21 They responded instead with threats and a lawsuit.
 22 ARBITRATOR LYON: Let me -- let me ask
 23 you something. Under Texas law, one of the cases
 24 that's been provided, the definition of insurance is
 25 as follows.

Page 258

1 THE WITNESS: Okay.
 2 ARBITRATOR LYON: An undertaking by one
 3 party to protect the other party from loss arising
 4 from a named risk, okay, for consideration -- which
 5 means for money.
 6 How is what you did in this situation --
 7 and this is the -- the case of the Texas Association
 8 of Qualified Drivers. How is what you did in this
 9 situation any different than that sentence I just read
 10 to you out of the Texas Court of Appeals case?
 11 THE WITNESS: Well, first, I'm not
 12 familiar with the case. Second, I'm not a lawyer.
 13 ARBITRATOR LYON: And I understand you're
 14 not a lawyer.
 15 THE WITNESS: But --
 16 ARBITRATOR LYON: But you're pretty
 17 smart.
 18 THE WITNESS: We have received opinions
 19 from the State Board of Insurance as to how we should
 20 conduct -- or what -- what we should do. We've looked
 21 at their printed material. We've -- and, in fact, we
 22 believe that there are -- well, we know that there are
 23 major, major companies in the risk transfer business
 24 that are not classified as insurance companies.
 25 ARBITRATOR LYON: Okay. Can you point to

Page 259

1 me any difference at all from that language that --
 2 from what happened in this case? Just if you could
 3 point to me to any difference.
 4 THE WITNESS: Well, first, we do not
 5 believe that this is a loss.
 6 ARBITRATOR LYON: Okay.
 7 THE WITNESS: All right. And we don't
 8 believe that any of our contracts involve losses to
 9 our customers. What we are doing is we are selling a
 10 package which enables them -- generally speaking, on
 11 an athlete's -- let's take an athlete's performance
 12 bonus. If you'll --
 13 ARBITRATOR LYON: Okay. All right.
 14 That's all right.
 15 MR. TILLOTSON: I have nothing further.
 16 I pass the witness.
 17 ARBITRATOR FAULKNER: I have no
 18 questions. Thank you very much, sir. You may step
 19 down.
 20 THE WITNESS: Thank you.
 21 ARBITRATOR FAULKNER: Okay. Gentlemen,
 22 is this a good time to take a break?
 23 MR. TILLOTSON: Sure.
 24 (Break from 2:48 p.m. to 3:11 p.m.)
 25 TODD OVERTON,

Page 260

1 having been first duly sworn, testified as follows:
 2 ARBITRATOR FAULKNER: Please proceed.
 3 DIRECT EXAMINATION
 4 BY MR. HERMAN:
 5 Q. State your name, please, sir.
 6 A. Todd Overton.
 7 Q. And what do you do for a living, Mr. Overton?
 8 A. I'm a sales representative for SCA
 9 Promotions.
 10 Q. All right. You've had your deposition taken
 11 in this case before, have you not?
 12 A. Yes, sir.
 13 Q. Okay. Mr. Overton, initially do you remember
 14 when I asked you whether you had ever told anyone that
 15 everyone at SCA believes that this claim should be
 16 paid; that is, everybody but Bob Hamman? Do you
 17 recall that?
 18 A. Yes, I do recall that.
 19 Q. And you've -- you've told Terry Michelitch
 20 that, did you not?
 21 A. I don't think I said everyone, but I said a
 22 lot of people.
 23 Q. And you've repeated that to fellow employees?
 24 A. Probably.
 25 Q. All right. Are you involved with the -- with

Page 261

1 a group called the North American Contingency
 2 Association?
 3 A. Yes, sir, I am.
 4 Q. All right. And in what capacity are you
 5 involved?
 6 A. Currently I'm president of the board of
 7 directors.
 8 Q. And that -- hang on one second.
 9 (Off-the-record discussion.)
 10 (Claimants' Exhibit No. 49 was marked.)
 11 Q. (By Mr. Herman) Mr. Overton, have you got
 12 Exhibit 49?
 13 A. Yes.
 14 Q. Okay. Did you have -- do you have
 15 anything -- well, strike that.
 16 This came from the NACA web site,
 17 N-A-C-A; correct?
 18 A. Yes, sir.
 19 Q. Okay. And it's true, is it not, that there
 20 is a reference to the contingency insurance industry
 21 in that first paragraph?
 22 A. Yes, sir.
 23 Q. Okay. And you have a good many -- a good
 24 many actual insurance companies participating
 25 within -- a good many insurance companies that

Page 262

1 participate either as members or associate members or
 2 sponsors and that sort of thing, do you not?
 3 A. Yes, sir.
 4 Q. And when you are selling prize
 5 indemnification coverage or incentive bonus coverage,
 6 you compete with insurance companies, such as Chubb,
 7 AIG, Lloyd's, others, do you not?
 8 A. Yes, sir.
 9 (Claimants' Exhibit No. 50 was marked.)
 10 Q. (By Mr. Herman) Okay. Let me hand you
 11 Exhibit 50, which is also from the NACA site, and this
 12 describes the various sort of events and so forth that
 13 the contingency insurance industry is involved with,
 14 does it not?
 15 A. Yes, sir, it does.
 16 Q. Okay. Now, do you recall giving an interview
 17 to an operation known as Gameops?
 18 A. Yes, sir.
 19 Q. Tell us what Gameops is.
 20 A. Gameops is a web site. It's short for Game
 21 Operations.
 22 Q. Uh-huh.
 23 A. And it's targeted towards teams and event
 24 management staff of venue owners, arena owners that
 25 put on game oper -- put on games, concerts, et cetera,

Page 263

1 and it's a -- it's been a good source of -- a good
 2 source for them to go online and see what's going
 3 on -- what's going on within that industry, ways to
 4 make the -- the game -- the -- the event itself more
 5 entertaining to the -- to the -- to the fan.
 6 Q. Okay.
 7 A. And it's -- it's made -- a lot of the game
 8 operations staff will go there and just -- just peruse
 9 it to see -- just get -- get different idea.
 10 MR. TILLOTSON: Sorry. Let me get
 11 Mr. Compton out of the way here.
 12 (Claimants' Exhibit No. 51 was marked.)
 13 Q. (By Mr. Herman) Turn -- turn to page three of
 14 this -- of this interview, if you would, please, sir.
 15 ARBITRATOR CHERNICK: And this is Exhibit
 16 51.
 17 MR. HERMAN: Exhibit 51. Oh -- oh.
 18 MR. BREEN: We didn't give it to him.
 19 Did you mark it?
 20 MR. HERMAN: I'm sorry.
 21 Q. (By Mr. Herman) Do you recognize this as the
 22 interview that you gave to Gameops in -- on July 26,
 23 2000?
 24 A. Yes, sir.
 25 Q. All right, sir. Then on page three of -- on

Page 264

1 page three of that interview, you're talking about
2 several items.

3 But if you -- if you go down to about the
4 middle of the page, Gameops asks you if a team comes
5 to you with a new idea, et cetera, et cetera, and then
6 you describe -- and what you will do in order to
7 develop a product for that, and then you say, but if
8 they insist on a certain promotion or contest, we will
9 do our best to hammer out the details and get them a
10 price.

11 And then Gameops asks, how long does that
12 process take? And you say, we will get you pricing in
13 24 hours on almost anything. We really work hard to
14 provide the best customer service since at the end of
15 the day, insurance is insurance is insurance. Most
16 quotes from different vendors will be pretty similar,
17 so we separate our company from the others with our
18 service.

19 Is that an accurate quote of yours?

20 A. Yeah, that's pretty accurate. That was
21 really kind of said in third-person because I think to
22 the buyer, the difference between personal prize
23 indemnification and insurance is the same thing, and
24 so what I was trying to get across because the
25 traffic -- the people that go online to read this are

Page 265

1 going to be your -- your young, first-job people
2 that -- that -- they're general managers and such to
3 go get cover for this.

4 And rather than saying, prize
5 indemnification is prize indemnification is prize
6 indemnification, insurance is insurance is insurance.
7 It -- it's just a simpler way for them to kind of
8 understand.

9 Q. Because that's what everybody believes it is,
10 when they're on the buying end anyway?

11 A. Correct.

12 MR. HERMAN: I'll -- I have no further
13 questions.

14 MR. TILLOTSON: May I proceed?

15 ARBITRATOR FAULKNER: Sure.

16 CROSS-EXAMINATION

17 BY MR. TILLOTSON:

18 Q. Mr. Overton, how long have you been with SCA
19 Promotions?

20 A. Fourteen years.

21 Q. Always in sales?

22 A. Yes.

23 Q. And as part of sales, do you -- are you
24 involved in marketing and finding people that you can
25 sell the products to?

Page 266

1 A. Yes.

2 Q. Now, in connection with being the sales
3 representative for SCA Promotions, have you been
4 instructed or told by management what the nature of
5 your business is as to whether it's considered
6 insurance or not insurance?

7 A. Yes.

8 Q. And when I say, management, who is it that's
9 told you this?

10 A. Just the top staff, Bob Hamman, Tom
11 Floerchinger, John Brandy. They hammered pretty well
12 to make sure you distinguish that it's not.

13 Q. When you say, they hammered pretty well, what
14 is it that you're told?

15 A. Well, that -- that we do not sell insurance.

16 Q. Now, in connection to going out and selling,
17 do you actually have, like, person-to-person contact
18 with someone who might be doing a promotion or -- or a
19 sponsorship of some sort?

20 A. Yes, sir.

21 Q. In connection with those, I take it, you will
22 tell them about your business and what you can do?

23 A. Correct.

24 Q. And what are the important elements when
25 you're talking to someone about "let's use a prize

Page 267

1 indemnification? What are the important selling
2 items?

3 A. Well, depending on who I speak to, I think
4 the best way for me to explain this is -- let me put
5 it this way. Let's just say you and I are on an
6 airplane, and we didn't know each other. And you
7 ask -- we start small-talking. You ask me, Todd, what
8 do you do for a living?

9 I would tell you, I sell hole-in-one
10 insurance. The reason I say that is because you
11 probably know -- if you're a golfer at least, you'd
12 probably be saying, oh, okay, I understand that. Now,
13 if you had an interest in continuing the conversation,
14 I would go through and explain to you, although
15 technically, I don't sell insurance, but this is kind
16 of how it works and so on and so forth.

17 If you didn't have an interest, then you
18 understand what I do, and that probably turned you off
19 and we don't speak anymore. And I might say -- the
20 reason I do that is very such similar to kind of how I
21 might look at these gentlemen here on the Panel.
22 Whereas, you might call them arbitrators, I call them
23 judges. Well, even though there's probably a distinct
24 difference between an arbitrator and a judge, at the
25 end of the day, they're going to review all this --

Pages 264 to 267

Page 268

1 all this information and make a judgment on it.
2 So if they're sitting on that same
3 airplane with a 10-year-old boy and he may ask them,
4 sir, what do you do for a living? They're probably
5 better off saying, well, I'm a judge than I'm an
6 arbitrator because a 10-year-old boy probably doesn't
7 know what an arbitrator is.
8 And so even though they're not -- they're
9 not judges, they're arbitrators, it just kind of gets
10 to the chase because it's perceived. It sounds like
11 they're a judge, but they're not. It sounds like we
12 sell insurance, but we don't.
13 Q. Now, in connection with dealing -- do you
14 have any -- do you actually deal in the business with
15 insurance brokers?
16 A. Yes.
17 Q. Do you sell --
18 A. We work with sellers.
19 Q. And, in fact -- we'll get to it in a
20 second -- but you actually have done business with
21 Kelly Price at ESIX?
22 A. Yes, sir.
23 Q. In connection with dealing with insurance
24 brokers and selling SCA's products, do you represent
25 to insurance brokers that you are selling insurance on

Page 269

1 behalf of SCA?
2 A. No, we don't.
3 Q. Are you a licensed insurance agent?
4 A. No, sir.
5 Q. Okay. Now, let's talk specifically about
6 the -- well, let me ask it this way before I move on.
7 Are you familiar with SCA's web site?
8 A. Yes.
9 Q. Do you go on it?
10 A. Do I go on it?
11 Q. Yeah.
12 A. Yes, I do.
13 Q. Do you know -- this little article here,
14 Gameops Dot Com, do you know if there's, like, a new
15 section on SCA's web site?
16 A. If there's a new section?
17 Q. Yeah. That might have articles or links to
18 other people?
19 A. Oh, I believe we do.
20 Q. Okay. Prior to -- now, let's talk about the
21 particular case that brings us here today,
22 Mr. Overton. You were the salesperson in connection
23 with the Tailwind contract -- the SCA Tailwind
24 contract?
25 A. Correct.

Page 270

1 Q. Now, although you were the salesperson, did
2 you have any material involvement in terms of making
3 the sales pitch or negotiating the terms?
4 A. Very little.
5 Q. Who was in charge of that?
6 A. Well, at first, it was -- well, at first, it
7 was me and then Chris Hamman and then ultimately Bob
8 Hamman.
9 Q. Okay. But you weren't -- we've heard
10 testimony about Mr. Hamman talking to Ms. Price and --
11 and dealing with -- calculating a fee. Were you
12 involved in those discussions?
13 A. No.
14 Q. But although you weren't involved in the
15 Tailwind contract, had you dealt with Ms. Price at
16 ESIX previously?
17 A. Yes. Several times.
18 Q. On many different occasions?
19 A. Yes.
20 Q. In connection with those discussions and
21 meetings, had you ever represented to Ms. Price that
22 you were selling insurance or SCA was an insurance
23 company?
24 A. No, sir.
25 Q. In fact, what did you tell her about that

Page 271

1 subject?
2 A. She's very -- I think we made it pretty
3 clear. She was actually -- she was the very first
4 face-to-face client that I had, and I -- Bob Hamman
5 came with me to a meeting at Atlanta with me. We
6 explained to them who we are and what we do and how it
7 worked and so forth. We did many deals prior to the
8 Tailwind contract, did several deals after the
9 Tailwind contract.
10 It was never an issue of how we did
11 business. She's very aware of exactly how we -- how
12 we conducted our business.
13 Q. Did you tell her in connection with those
14 deals that SCA was not an insurance company?
15 A. I'm sure we did at the very beginning. You
16 know, as we work -- worked together, it wasn't
17 necessary.
18 Q. Now, at one point in time -- if you'll look
19 in front of you, what we have called Respondents'
20 Exhibits. It's in a cover-bound sort of thing. If
21 you'll look at Tab 10 -- Tab 10. Now, we've seen this
22 e-mail a bunch, but -- but you're -- this is the first
23 time we've talked to you about it.
24 You'll see below that this e-mail chain,
25 Ms. Price is sending you an e-mail in August of 2002.

Page 272

1 Do you recall that?
 2 A. Vaguely.
 3 Q. All right. Do you remember sort of generally
 4 the subject matter about how they wanted the money to
 5 go straight to Mr. Armstrong, to keep paying him
 6 directly?
 7 A. Uh-huh.
 8 Q. Now, the top, can you identify that as an
 9 e-mail you've forwarded back to Ms. Price in response?
 10 A. Yes, sir.
 11 Q. Okay. And if you'll go just up a little bit
 12 more. So you write: Kelly, see below; is that right?
 13 A. Uh-huh. Yes, sir.
 14 Q. And then what it is you've pasted there
 15 that -- the substance of the e-mail, where did that
 16 come from?
 17 A. It looks like it came from Tom Floerchinger.
 18 Q. Who is he?
 19 A. He's our COO.
 20 Q. Okay. And did you go to him regarding this
 21 particular subject matter Ms. Price had raised and
 22 then --
 23 A. I either went to him or forwarded the e-mail.
 24 Q. The first sentence says, Todd, I think Kelly
 25 misunderstands. The payment is not insurance, and he

Page 273

1 is not an insured.
 2 Was that your understanding in connection
 3 with the Tailwind arrangement?
 4 A. Yes, sir.
 5 Q. Did you ever hear back from Ms. Price
 6 contradicting or rebutting or suggesting somehow
 7 that -- that there was insurance and telling you, you
 8 were wrong?
 9 A. No, not that I recall.
 10 Q. Now, last, Mr. Herman started off by asking
 11 you whether or not you personally felt that the claim
 12 or the contract with respect to Tailwind should be
 13 paid, and I think that in your deposition you'd
 14 expressed you thought it should?
 15 A. Yes, sir.
 16 Q. Has the -- now, you didn't make the decision
 17 about whether or not to pay under the contract?
 18 A. Correct.
 19 Q. That's Mr. Hamman?
 20 A. Correct.
 21 Q. But, nevertheless, has it been an unpopular
 22 decision for you with respect to other possibilities
 23 of business?
 24 A. Yeah, it has. It's -- you know, it's not
 25 good for business to -- to do this, and as a

Page 274

1 commissioned sales rep, it has probably affected me as
 2 much or more than anyone in the company. For selfish
 3 reasons, yeah, I would say that. But I'm sure
 4 there's -- there's a lot of things I don't know about
 5 why we're doing this, but I'm outside looking in.
 6 Q. In addition to the Lance Armstrong matter,
 7 has -- has competitors out there that you compete
 8 against on a daily basis ever used as a competitive
 9 selling device that you don't work for an insurance
 10 company and don't sell insurance?
 11 A. That's -- that's a daily battle that we
 12 have -- in fact, if you want to know if we sell
 13 insurance or not, you can call our competition because
 14 they hammer that fact to our clients -- potential
 15 clients that SCA does not issue an insurance policy.
 16 They issue a standard business contract. We issue
 17 policies insured through Lloyd's of London. Do not
 18 work with them. Do not work with them. Come with us,
 19 and it's served them very well. Through the years,
 20 we've lost a lot of deals on that argument.
 21 Q. Last, just a personal note, when did you find
 22 out that Mr. Hamman wanted to call you as a witness to
 23 testify today?
 24 A. Mr. who?
 25 Q. Mr. Herman, I'm sorry. When did you find out

Page 275

1 you were going to be a witness here today?
 2 A. This morning.
 3 Q. Prior to that, had you and I had a chance to
 4 meet at all regarding any testimony that you might
 5 offer here?
 6 A. No, sir.
 7 Q. Thanks for coming over from work.
 8 MR. TILLOTSON: No further questions.
 9 Pass the witness.
 10 REDIRECT EXAMINATION
 11 BY MR. HERMAN:
 12 Q. Let me just ask you a couple of things.
 13 Mr. Overton, in connection with your testimony to
 14 Mr. Tillotson, you say that, for example, insurance is
 15 insurance is insurance because that's what people
 16 think it is; right? Is that --
 17 A. Yes.
 18 Q. Okay. And prize -- for example, prize
 19 indemnification, in most people's eyes, that's
 20 insurance, and then you have to explain to them
 21 technically why Mr. Hamman thinks it's not insurance
 22 or whatever; correct?
 23 A. Correct. I'll explain to the client. Take
 24 Kelly Price, for example. I explained to her. She --
 25 I'm sure this conversation came up when we met with

Page 276

1 them. I don't know exactly word for word, but we
2 explained to them exactly how we do business.
3 We issue a standard business contract, as
4 opposed to an insurance policy. We explained further
5 about how all that works.
6 Q. Okay.
7 A. And that's what I'd do with any client.
8 Q. Yeah. And the reason that people think
9 that -- that it's insurance is because in substance,
10 it's equivalent to insurance. By that I mean, in
11 insurance, you indemnify somebody against a
12 contingency. They pay you a fee for it. You
13 investigate the claim and either pay it or don't pay
14 it, and that's why there's this confusion or
15 misunderstanding, is because in -- in -- in substance,
16 they're equivalent products. Isn't that true?
17 A. Well, it is in the buyer's eyes. In the
18 buyer's eyes, they are really concerned about being
19 covered and being paid, and that's very similar to
20 Tailwind in this instance. I don't think they cared
21 if they got a contract or an insurance policy as long
22 as they were covered, and if they did care, they
23 certainly didn't make an issue of it because we
24 haven't heard from them since -- I mean, other than
25 this obviously. But in the buyer's eyes --

Page 277

1 Q. I wouldn't count on hearing from them, but go
2 ahead.
3 A. In the buyer's eyes, it's very similar, and
4 that's why I was saying it's kind of in the
5 third-person, that they think this is all insurance.
6 Who do we go with then if it's all insurance? Do we
7 go with the best price, the best customer service, or
8 the guy who had the best rapport on the phone? And
9 that's what I was getting at.
10 I was trying to explain to the guys that
11 go to Gameops that read this article to call me
12 because I'm going to give you the best service. My
13 fee's not going to be much lower. It's not going to
14 be much higher, but at least you're going to get some
15 service.
16 Q. Right. And if you're looking to be
17 indemnified against a contingency that would produce a
18 loss for you, we can do it. We do -- we can give you
19 the same indemnity that an insurance company can give
20 you, but we give you better service. That's basically
21 what you're saying. Is that right?
22 A. Yeah. Absolutely. We'll give him the --
23 yeah.
24 Q. Certainly you're going -- you're going to
25 give them, in substance, the equivalent of an

Page 278

1 insurance policy, but you're going to do it better.
2 Maybe a little cheaper but better service.
3 A. The thing about it, Mr. Herman, is it sounds
4 like insurance.
5 Q. Right.
6 A. But it doesn't look like insurance. It's a
7 standard business contract, just like with Tailwind.
8 That -- it sounds like insurance, but that is a
9 standard business contract. It doesn't say,
10 insurance, anywhere on that document.
11 Q. Right.
12 A. So that's a very big difference between
13 sounding like it and looking like it.
14 Q. Right. Exactly. But you would agree that --
15 and you know, for example, that Chubb and Lloyd's
16 wrote the other 5 million in 2004. SCA took 5
17 million. Chubb and Lloyd's took the other 5 million.
18 You know that.
19 A. I knew Chubb had a piece of it.
20 Q. Right.
21 A. I wasn't sure how much.
22 Q. And the basic bargain was, if you pay me
23 money or consideration, then I will assume your risk
24 and agree to pay you this, in Chubb's case, two and
25 half million if you become obligated to pay Armstrong

Page 279

1 for winning the Tour de France; right?
2 A. Can you say that one more time?
3 Q. All right. Have you got the -- have you got
4 the -- have you got the notebook there in front of
5 you?
6 A. Yeah.
7 Q. Turn to Tab 19. I think that's the Chubb
8 policy. Go to the fourth page of Exhibit 19. Do you
9 see that, Insured Events, 2001 through '4 Tour de
10 France? And they -- they were obligated to pay two
11 and a half million if Armstrong was the official
12 winner of those four races; okay?
13 A. Yes, sir.
14 Q. And SCA was obligated to pay 1.5 million in
15 2002, 3 million in 2003, and in 2004, SCA was
16 obligated to pay 5 million if Armstrong would be the
17 official winner of those four races; correct?
18 A. Correct.
19 Q. Can you tell me any, you know, essential
20 substantive difference between what Chubb promised and
21 what SCA promised?
22 A. No.
23 Q. Same -- that's the point I'm making. In
24 substance, it's -- it's the equivalent. I mean, it's
25 the same thing. You pay money for somebody to promise

Page 280

1 to bail you out if you -- if you end up owing some --
 2 owing somebody money. It's the same thing SCA does;
 3 correct?
 4 A. I'd go back to my argument, though, the
 5 judges versus the arbitrators. It's the same thing,
 6 but at the end of the day, an arbitrator has to go
 7 through this, this, and this to be an arbitrator; and
 8 a judge has to go through this, this, and this to be a
 9 judge.
 10 Whereas, if I was an insurance person,
 11 I'd have to go through this, this, and this to get my
 12 license and sell insurance. Whereas, I went through
 13 this, this, and this to be able to sell a standard
 14 contract.
 15 Q. Okay.
 16 A. It's the same argument. You're right, but --
 17 but then it's not the same.
 18 Q. Okay. Now, this competitor business, there's
 19 nothing on your web site that says SCA's not an
 20 insurance company. We don't sell insurance products;
 21 et cetera; correct?
 22 A. Not to my knowledge.
 23 Q. Do you know what key words SCA uses in order
 24 to attract people to its web site?
 25 A. Well, I mean, it's -- it's really not -- we

Page 281

1 really don't use promotional prize indemnification
 2 or -- or insurance or any of those words. It's more
 3 of -- here's your chance to -- to offer large prizes.
 4 Kind of take that angle. So if I -- you know, the
 5 words would be more in line of offer a million dollars
 6 and here's how you can do it with different -- with a
 7 million different ideas and categories of ideas for
 8 different industries to work with.
 9 Q. Right. So if you weren't -- I mean,
 10 obviously you're not selling insurance. You wouldn't
 11 put sports insurance or something like that up there
 12 on your key words so that people would come to buy
 13 sports insurance. Isn't that right?
 14 A. Correct.
 15 Q. Okay. Incidentally, this competitor
 16 business, basically if a -- a customer looking at your
 17 web site probably wouldn't know whether you were an
 18 insurance -- whether you dealt in the business of
 19 insurance or not because you direct a lot of your
 20 promotional stuff to insurance agents and brokers,
 21 don't you?
 22 A. Well, we don't direct it. It -- we receive
 23 some business through those -- through those --
 24 those -- those companies.
 25 Q. Right.

Page 282

1 A. And our targets -- our group we're targeting
 2 promotional -- promotions companies, ad agencies,
 3 teams, I mean, retail, gaming, the whole nine yards
 4 so --
 5 Q. Uh-huh. And the way that those potential
 6 customers or the way your existing customers find out
 7 you're not an insurance company is because your
 8 competitors tell them that?
 9 A. That's one way.
 10 Q. Okay. Now, let me ask you to turn just
 11 quickly to Tab 22 of that black notebook. Look at the
 12 third page. As of August 26th, 2002, you had been
 13 dealing with Kelly Price for 11 years; correct?
 14 A. I -- no, that's not correct. Probably more
 15 like nine. I don't --
 16 Q. Well, whatever. You know, close enough.
 17 Nine years. And look at the -- look at the -- her
 18 e-mail to you on August 26th.
 19 Since when was it that the obligation of
 20 the insurance company to assess taxes on bonuses
 21 earned by players? She -- she refers to Armstrong as
 22 an insured person, but you knew that Armstrong wasn't
 23 the insured person. It was Tailwind that was the
 24 insured; correct?
 25 A. Yes. They changed their name for that.

Page 283

1 Q. Right.
 2 A. But, yes.
 3 Q. Okay. Yet, you've been dealing with Kelly
 4 Price for nine years, and she's been in the insurance
 5 business, we've seen today, since 1980. She's been in
 6 the insurance business for 22 years, and she refers to
 7 SCA as an insurance company in this e-mail, doesn't
 8 she?
 9 A. That's very common. I mean, I've met guys
 10 we've worked with longer than Kelly that do the same
 11 thing because, again, it's -- it's -- it sounds like
 12 the same thing.
 13 Q. Yeah.
 14 A. They still call an insurance policy -- a
 15 standard business contract an insurance policy.
 16 Q. Okay.
 17 A. And that's just -- yeah. That's just common.
 18 Q. Okay. All right. And then let me just
 19 quickly go to Tab 29. As late -- two years later,
 20 Kelly Price again refers to the SCA agreement as one
 21 of the three incentive bonus policies; correct?
 22 A. Correct.
 23 Q. And then in 2004, after the -- contacting the
 24 UCI to confirm that all the rules were observed in
 25 the -- in the 2004 Tour de France, again she tells the

<p style="text-align: right;">Page 284</p> <p>1 UCI that there were three insurance companies 2 involved. SCA -- I mean, she doesn't mention SCA, 3 Chubb, and Lloyd's, but you know those are the three 4 insurance companies involved; correct? 5 A. Correct. 6 Q. Then Tab 31, an e-mail from Terry Michelitch 7 to Bill Stapleton talking about the way SCA's -- was 8 handling the claim. It says, it is precedented for us 9 to be completely cut out of the loop by a carrier, a 10 standard industry best practice is to allow the broker 11 to represent the insureds in these types of matters as 12 we have done on all past bonus payments. 13 And there, of course, he's talking about 14 the carrier cutting them out of the loop as being SCA; 15 correct? 16 A. Yes, that's what it states. 17 Q. And you know Terry Michelitch as a certified 18 insurance counselor, I think, or something that -- 19 A. I believe he's a broker. 20 Q. Right. But, I mean, he carries a 21 certification. He's got an MBA, Masters in business 22 and so forth, and he's referring to SCA as a carrier, 23 is he not? 24 A. Yes, he is. I -- I probably say -- and going 25 back to Kelly's letter. You know, again, if she</p>	<p style="text-align: right;">Page 286</p> <p>1 having been first duly sworn, testified as follows: 2 MR. BREEN: What exhibit are we at? 3 ARBITRATOR FAULKNER: 51 was the last 4 marked exhibit. 5 (Claimants' Exhibit No. 53 was marked.) 6 DIRECT EXAMINATION 7 BY MR. BREEN: 8 Q. Good afternoon, Mr. Longley. Will you 9 introduce yourself to the Tribunal, please? 10 A. Yes, sir. My name is Joe Longley, and I'm an 11 attorney. I practice law -- a solo practitioner in 12 Austin, Texas. 13 Q. Mr. Longley, I've marked as Exhibit 53 in 14 this matter a copy of your designation and your CV. I 15 want to just run through with you initially a little 16 bit about your background to familiarize you with some 17 of the Panel members who don't know you. 18 Obviously you went to school at 19 University of Texas and then graduated from law school 20 there? 21 A. That's correct. 22 Q. And then following law school, Mr. Longley, 23 did you have any experience in the public sector at 24 all? 25 A. I did, both before and after law school.</p>
<p style="text-align: right;">Page 285</p> <p>1 wanted to go back and say, with two insurance 2 companies and a prize indemnification company, na, na, 3 na. The same here. It's just easier and cuts -- cuts 4 a lot of it out by just saying these three insurance 5 companies because, again, I'm sure Tailwind and the 6 clients don't care if it's prize indemnification. 7 That's -- that's -- I'm guessing that's why they did 8 that. 9 Q. I hear what you're saying. Okay. 10 A. I know Terry and Kelly both knew that they 11 got a standard contract. 12 Q. I didn't mean to interrupt you. Are you 13 finished? Did you get a chance to finish your answer? 14 A. Yes. 15 MR. HERMAN: Okay. I have no further 16 questions. 17 MR. TILLOTSON: Nothing further of this 18 witness. 19 ARBITRATOR FAULKNER: Anything from the 20 Panel? I have no questions. Thank you very much. 21 You may step down. 22 (Pause.) 23 MR. BREEN: I'd like to call Joe Longley 24 as our next witness. 25 JOE K. LONGLEY,</p>	<p style="text-align: right;">Page 287</p> <p>1 Q. Okay. What did you do beforehand? 2 A. Beforehand, I worked as an assistant 3 Sergeant-at-Arms in the Texas Senate. I worked at the 4 State Department of Insurance. At that time it was 5 called the State Board of Insurance. I worked as an 6 office assistant at the Governor's office for Governor 7 John Connally. I worked as a legislative aide to 8 Representative Neil Coldwell in the House of 9 Representatives. That was before I graduated from law 10 school. 11 Q. All right. And in this particular case, 12 you've been retained on behalf of the claimants, 13 Tailwind and Lance Armstrong, to examine materials 14 pertinent to this matter and to render your objective 15 opinions in the case; is that right? 16 A. Yes, sir, that's true. 17 Q. And are you being compensated for the time 18 that you're spending, both reviewing materials, coming 19 up with opinions, meeting with lawyers, depositions, 20 things like that? 21 A. Yes, sir. 22 Q. And your rate is? 23 A. \$600 an hour. 24 Q. In looking at your professional experience 25 and activities, I note that from '69 to '70, you were</p>

Page 288

1 with the Assistant Attorney General of Texas in the
2 Antitrust and Consumer Protection Division?
3 A. Yes, sir. I was one of many assistants at
4 that time in that division.
5 Q. Okay. And then later after a stint in
6 private practice, did you return as chief of the
7 Antitrust and Consumer Protection Division under
8 Attorney General John L. Hill?
9 A. That's correct.
10 Q. Would you just briefly describe for us,
11 Mr. Longley, what some of the duties you had there, at
12 least pertinent to what your undertaking was in this
13 case from your experience at the Antitrust and
14 Consumer Protection Division?
15 A. Well, at that particular time there was --
16 there was no Deceptive Trade Practices Act in Texas as
17 we know it today nor were there any private remedies
18 in the insurance code as we know it today. And one of
19 the first jobs I had coming back as chief of that
20 division was to help draft and help nurture through
21 the Legislature what was then called "House Bill 417,"
22 which later became both of the amendments for what is
23 now the Texas Deceptive Trade Practices Act and the
24 private remedies in article 21.21 of the Insurance
25 Code which deals with the business of insurance.

Page 289

1 Q. Okay. And I see from '77 to '78, you were
2 Chairman of the Consumer Law Section of the State Bar
3 of Texas?
4 A. That's correct.
5 Q. And did any of your duties or activities
6 there interface with the -- with any of the
7 insurance-type issues that are involved in this case?
8 A. Almost -- almost every day one of the
9 continuing legal education functions of that section
10 was to keep attorneys in Texas who are interested in
11 this area apprised of both the consumer law and the
12 insurance statutes and how they affected Texas
13 consumers and policyholders.
14 Q. Any other positions that you've held in the
15 public sector, Mr. Longley, that you think would be
16 significant or important for the Panel to know about
17 in terms of your experience and ability to render an
18 opinion in this case?
19 A. Well, I've been director of State Bar of
20 Texas. I was elected by the men and women in my
21 district which was District Nine, which is the Austin
22 District. I served on the District Nine Grievance
23 Committee during that period of time. I was appointed
24 as a public member in 1988 to the Joint Committee to
25 study the Deceptive Trade Practice Act and Article

Page 290

1 21.21 of the Insurance Code.
2 I was the appointee at the Speaker of the
3 House. It was a Joint Committee with both senators
4 and house members, as well as the public members, and
5 I served on that committee with regard to the
6 revisions that might be made. I was -- in the spring
7 of 2001, I'd been an adjunct professor teaching
8 insurance law at the University of Texas School of
9 Law. I believe I'm scheduled to teach that course
10 again this next coming spring.
11 Q. And do you share duties on that, or do you do
12 it by yourself, or how does that work?
13 A. No. It rotates between three -- actually
14 three attorneys right now that are adjunct professors.
15 Myself and my former law partner, Philip Maxwell and
16 Mark Kinkade, all three are Austin attorneys.
17 Q. And what is the general focus of the course
18 you teach over at the University of Texas Law School?
19 A. Primarily just insurance law 101 sort of
20 under Texas law and how Texas judges and legislators
21 have developed that law through the years, going back
22 primarily to McCarran-Furgeson Act beginning in 1945
23 and going forward, and then the private remedies that
24 are available under the Insurance Code that have
25 developed through the years.

Page 291

1 Primarily the Article 21.21, which has
2 now been recodified in Chapter 541 of the Insurance
3 Code. There are other private remedies as well that
4 have developed through the years, but that and how it
5 interfaces with the business of insurance, what is in
6 the business of insurance, what's been interpreted as
7 being in the business of insurance in Texas, how Texas
8 courts would look at determining what is in the
9 business of insurance.
10 Q. Do you know Mr. Hector De Leon?
11 A. I do. I've known him for many years.
12 Q. Do you know Mr. De Leon's been retained by
13 SCA to be an expert? To my understanding, he is on a
14 very limited issue in this case; is that right?
15 A. Yes, sir. And I've -- I've reviewed his
16 deposition.
17 Q. Okay. Mr. De Leon De mentioned that he
18 teaches a course or what I think, if I remember right,
19 was a course or, I think, may be similar -- in a
20 position similar to yours as maybe as an adjunct
21 profession at the University. Is it the same course,
22 a different course?
23 A. It's not the same course. It's a different
24 course. His is primarily the insurance coverage
25 courses.

Page 292

1 Q. I see. And I note in 2000 on your resume
 2 here, it shows that you were named Texas Lawyer's
 3 distinguished list of "100 Legal Legends" for your
 4 impact on Texas law.
 5 A. Yes, sir. My -- my partner, Phil Maxwell,
 6 and I were both named to that list, and we were very
 7 honored to be a part of it.
 8 Q. And then I see in 2002, you were named by
 9 Texas Lawyer's for the Go-To Guide as the number one
 10 go-to lawyer for insurance law in the State of Texas?
 11 A. Yes, sir. Again, I was very privileged to
 12 receive that.
 13 Q. Now, you've mentioned a little bit already in
 14 this -- in your testimony of things like the Deceptive
 15 Trade Practices Act and Article 21.21, and I'm sure
 16 the Panel has had some experience either in Texas law
 17 in that area or maybe with some of the materials that
 18 have already been sent to them or in other intimate
 19 ways with the actual Statute itself in this case.
 20 But what I'd like to do very briefly,
 21 Mr. Longley, is if you can, please just generally
 22 outline so that we have a framework here of how
 23 21.21 -- 21.21 of the Insurance Code, the DTPA, and
 24 this issue of the business of insurance is really
 25 framed in the State of Texas so we know what the

Page 293

1 backdrop is before we move to the more specific
 2 question in this case.
 3 A. Well, as I understand the issue before this
 4 Panel is whether or not the transaction in its
 5 totality that's before this Panel was or was not in
 6 the business of insurance, and the approach that I
 7 would take that would be to go back to the
 8 McCarran-Ferguson Act when I was passed in 1945, which
 9 was basically passed by the Congress as an exception
 10 to the Federal Antitrust Laws.
 11 It took the business of insurance out of
 12 the federal regulation of Antitrust Laws and left the
 13 business of the insurance to the states. That was
 14 done in 1945 in reaction to a case that down in 1944
 15 which sent shock waves throughout the states because
 16 it -- it, first of all, threatened the state's
 17 regulation of the business of insurance, but moreover,
 18 threatened the tax resources that the states had
 19 basically with interstate commerce coming in and them
 20 not being able to uniformly tax premiums or surplus
 21 line carriers, whatever they might be taxing in those
 22 days.
 23 So the way McCarran-Ferguson Act
 24 functioned was that it gave the states -- I believe it
 25 was an initial grace period of three years in which to

Pages 292 to 295

Page 294

1 pass laws that would regulate the business of
 2 insurance, and if the states failed to pass laws which
 3 regulated sufficiently the business of insurance, then
 4 the business of insurance would be regulated by the
 5 federal government.
 6 It sent -- there's an interesting
 7 development and we have on my web site the history of
 8 Article 21.21.
 9 Q. I see that, and I've -- we've produced a copy
 10 of that or made it accessible in this case, and I've
 11 marked it -- will you remind me the number there, Mr.
 12 Longley?
 13 A. Exhibit 54.
 14 (Claimants' Exhibit No. 54 was marked.)
 15 A. And this is the history that Mr. Maxwell and
 16 I use in the course that we teach at the University of
 17 Texas Law School. It's Chapter Two of our book
 18 actually. And we used this initially to get the
 19 students involved in how McCarran-Ferguson came about
 20 and how the business of insurance functions in the
 21 State of Texas, what we look to, why -- why was it
 22 left to the states, and how it's evolved through the
 23 years.
 24 And this history gives you a pretty good
 25 idea of what happened beginning in 1944 and coming

Page 295

1 forward. We also have some of the Congressional
 2 Legislative history, as well as the legislative
 3 history of House Bill 417 and other Acts as Article
 4 21.21 evolved through the years in the Texas
 5 Legislature.
 6 Interestingly, there's been loopholes
 7 that have sort of been plugged through the years, but
 8 the Deceptive Trade Practices Act is basically a Trade
 9 and Commerce Statute that would -- that would regulate
 10 all forms of trade in commerce, including the business
 11 of insurance. It's sort of a catchall.
 12 The business of insurance is a more
 13 narrow approach. It's found in Article 21.21. Each
 14 Statute regulates unfair, deceptive and unconscionable
 15 practices either in trade of commerce or the business
 16 of insurance. The significance between those two
 17 statutes, they were both passed in the same Bill in
 18 1973, which was House Bill 417.
 19 The significance between those two
 20 Statutes is that the business of insurance got double
 21 coverage. There's a cause of action for private
 22 remedies in Article 21.21 in Section 16. There's a
 23 private cause of action for violations of the
 24 Deceptive Trade Practices Act as it applies to -- to
 25 insurance -- the business of insurance found in

Page 296

1 Section 1750 of the Business and Commerce Code which
 2 is the Deceptive Trade Practice Act.
 3 Q. Let me stop you for a second. Why did it get
 4 that level of coverage, if you know?
 5 A. Well, and that's outlined in the history.
 6 There was a -- there was a big disagreement as that
 7 Bill went through the Legislature in 1973 because the
 8 way the Bill was originally written, the Attorney
 9 General would have had rule-making authority to
 10 regulate the business of insurance, in addition to the
 11 Department of Insurance, and, of course, the insurance
 12 industry in Texas did not like having dual regulation
 13 or -- or even -- even the idea of being regulated by
 14 an elected official that had rule-making authority.
 15 And so a compromise in the Legislature
 16 was struck in which the Attorney General agreed to
 17 step aside, as far as regulatory powers,
 18 administrative remedies against the insurance
 19 industry, and that would be left to the Department of
 20 Insurance. But what would happen would be that there
 21 would be private remedies placed in the Insurance Code
 22 under Article 21.21, as well as in the Deceptive Trade
 23 Practices Act so that there'd be double coverage on
 24 the business of insurance.
 25 You could either sue under the insurance

Page 297

1 code, which had certain provisions that might not be
 2 in the DTPA, or you could choose to go under the DTPA
 3 which didn't have all of the provisions that were
 4 under the Insurance Code.
 5 Q. And, now, in your experience, at that time
 6 was the intent to apply -- the effect of these
 7 statutes to apply only to licensed in-state carriers
 8 that were doing business with the name "insurance
 9 company" in their moniker?
 10 A. No, no. The idea was not to regulate what
 11 something was called. It was to regulate the conduct,
 12 and you'd look to the conduct of the actor to
 13 determine whether or not there would be some violation
 14 of either Act.
 15 Q. And in your experience, Mr. Longley, would
 16 you be able to give us a little guidance as to why in
 17 a practical sense for the everyday consumer, it's
 18 important to have the business of insurance regulated
 19 in the manner the Texas Legislature and the Texas
 20 courts was trying to do that?
 21 A. Well, that was one of the things I was asked
 22 to look at with this particular transaction, and there
 23 are several things. If something's in the business of
 24 insurance, the insurance industry -- it's been a
 25 regulated industry ever since 1945. The business

Page 298

1 of -- of insurance has been -- has been construed
 2 many, many times both by the legislature and by the
 3 courts in Texas.
 4 And the business of insurance offers
 5 certain protections that just ordinary trade and
 6 commerce do not offer. For instance, in the
 7 business -- if you're in the business of insurance,
 8 you have statutory accounting that does not apply to
 9 what we call GAAP accounting if you're not in the
 10 business of insurance.
 11 Statutory accounting requires that
 12 insurers or people in the business of insurance set
 13 aside reserves in accounting procedure so that there
 14 would be monies there to pay claims in the event that
 15 there's some sort of loss or contingency that occurs
 16 that the insurer has agreed to reimburse or to
 17 indemnify.
 18 You don't have that over on the Deceptive
 19 Trade Practices Act side of the docket. That's --
 20 that's indigenous to the insurance business. You have
 21 taxes that are paid by insurance people, people that
 22 are in the business of insurance, licensing fees, this
 23 type of thing. You have contributions to the Guaranty
 24 Associations for insolvency because if you recall,
 25 because the business of insurance is regulated by the

Page 299

1 states, they're not regulated by bankruptcy laws.
 2 And as a result, if an insurance company
 3 goes insolvent, you don't have a trustee in bankruptcy
 4 like you would in some other type of business. You
 5 would have a receivership that would be appointed in
 6 the domiciliary state, and then all the other states
 7 would recreate ancillary receiverships in order to
 8 make sure that policyholders at least got some
 9 semblance of -- of their claims paid. There's
 10 limitations usually set on those within the Guaranty
 11 Associations from -- anywhere from \$100,000 per claim
 12 to \$300,000 per claim, but there is sort of that
 13 safety net there that you wouldn't have in the
 14 ordinary sense.
 15 You also have protections -- excuse me --
 16 with regard to what can go in the contracts, what kind
 17 of defenses can be used in connection with an
 18 insurance claim. For instance, like, I know the claim
 19 has been made here, if this were to turn out to be in
 20 the business of insurance -- which I have concluded
 21 that it is, of course, based upon the Statute and
 22 the -- and the case law -- there are other statutes
 23 that you would have to look at to see if the -- if the
 24 defendant could utilize certain defenses or certain
 25 types of -- of conduct that they can use in the

Page 300

1 investigation of claims.
2 You've got the Unfair Claim Settlement
3 Practices Act that will apply. You have rules and
4 regulations of the Texas Department of Insurance that
5 would apply. But moreover, in this particular case
6 where there's been at least a hint that there was some
7 sort of fraud involved or some sort of misconduct
8 involved on behalf of not the insured but upon a
9 third-party beneficiary, Mr. Armstrong, Article 21.17
10 of the Insurance Code would have to be looked at in
11 the terms of is this -- if this is in the business of
12 insurance, then that Statute would apply.
13 And that Statute requires that within 90
14 days of a person -- an insurer or someone in the
15 business of insurance learning of facts that would
16 create some type of defense based upon fraud or
17 misrepresentation, and application or whatever, that
18 those have to be disclosed and -- and brought to the
19 attention of the insured within that 90 days;
20 otherwise, they waive that Statute.
21 You don't have that particular defense
22 over where you just have a simple trade and commerce
23 situation.
24 Q. Let me ask you the flip side of that coin.
25 You just heard Mr. Overton in here talking about his

Page 301

1 relationship with the company and the perception of
2 the people out in public about what this really is
3 they're getting and what the consumer thinks about it.
4 And you were present in here for that testimony, were
5 you not?
6 A. Yes, sir, I was.
7 Q. What is -- you've already talked about how it
8 affects a business if they do business as an insurance
9 company, if they're really in that business. Briefly,
10 if you don't mind, Mr. Longley, can you tell us the
11 flip side of that coin? Now, Mr. Overton seemed to
12 indicate, well, the customer -- in fact, there's been
13 some testimony in this case where Tailwind didn't
14 really care as long -- whether it was insurance or not
15 as long as it got paid its money; okay.
16 And I'm assuming that in your experience,
17 you know that the consumer doesn't realize a lot of
18 the protections that are afforded to it by the very
19 fact that somebody is selling them something that
20 should be considered insurance. So I'm asking you
21 what that is.
22 A. Well, the benefits that would be to a company
23 selling a product that -- that looks like insurance,
24 sounds like insurance, probably is insurance but --
25 but for some reason or another because they don't use

Page 302

1 the word "insurance" in the name of the company or
2 whatever -- the benefits, if they can avoid
3 regulation, of course, are many.
4 They don't have certain taxes they have
5 to pay. They don't have to adhere to the Insurance
6 Code requirements with certain defenses, such as the
7 ones I've already mentioned here. They don't have to
8 worry about the Unfair Claims Settlement Practices Act
9 and the rules and regulations that have been
10 promulgated pursuant to those statutes.
11 Q. So the flip side -- what you're telling me
12 is, the flip side is the consumer loses all that, what
13 would normally be afforded to them if the insurance
14 company were aboveboard?
15 A. Absolutely. That's one of the reasons you
16 have these inherent protections in the business of
17 insurance and why there was double-coverage put there
18 back in House Bill 417, so that if somehow somebody
19 wriggled through the net and it was determined that it
20 wasn't insurance but it sure sounded like and looked
21 like it, there would be coverage over there with
22 regard to the Deceptive Trade Practices Act, but you
23 wouldn't necessarily all the protections.
24 You wouldn't have the -- you would have
25 been a safety net, for instance, of the Guaranty

Page 303

1 Association. You wouldn't the requirements of notice
2 about some defense that you might have or -- or that
3 you might think that you have that requires notice to
4 the consumer, and so the consumer would not be on an
5 equal basis that you would -- or even a better basis
6 if you were in the business of insurance.
7 Q. Now, we've marked as an exhibit your opinions
8 in this case. I want to just generally ask you, have
9 you formed -- with the broad amount -- do you have
10 some large or global opinions in this matter?
11 A. I do, and I think they've pretty well set
12 forth in the designation, but primarily the -- my
13 opinions are that the -- taking the totality of this
14 transaction here with regard to Tailwind and SCA, that
15 if you look at the conduct of what's gone on here,
16 whether you denominate it as mistakes, confusion,
17 misnomers, mistakes made in putting down different
18 names or whatever -- but just looking at the conduct,
19 for instance, the conduct that's been outlined on the
20 board, if you look at who are the risk-takers here.
21 Was there a fee taken? Was there an indemnity made
22 for a contingency event? What -- what this was
23 called, whether or not there was claims handling that
24 took place, settlement-type actions that was taking
25 place, representations made about the coverage --

Page 304

1 coverage is synonymous with the word "insurance."
 2 Q. Let me stop you for a second. Before we get
 3 to the actual substance specifically of your
 4 conclusions as to why this is in the business of
 5 insurance, I want to, first, take a step back and
 6 understand what it is the Panel should look to, in
 7 your opinion, to decide that this conduct, the
 8 totality here, is in the business of insurance because
 9 there was some comments SCA made at the beginning of
 10 this proceeding that the Panel may be operating in a
 11 vacuum or that it was on its own in the ability to
 12 decide that, and I take it from visiting with you that
 13 you disagree with that.
 14 A. I do respectfully disagree with that. I
 15 think that the Texas courts have long been guided by
 16 what is now Chapter 101.051, I believe it is, of the
 17 Insurance Code. It was -- the predecessor Statute was
 18 Article 1.14-1.
 19 Q. I think it's under -- there's been a short
 20 kind of bench brief given to the Panel with some
 21 authority that's attached to it and provided SCA, as
 22 well. A copy of 101.051 is listed under Tab 1.
 23 A. Right. That's the Statute that I referred
 24 to, and that's the Statute that traditionally Texas
 25 courts have looked to as the conduct that if one or

Page 305

1 more of those things are indigenous to a transaction,
 2 then either the company, agent, broker, entity,
 3 individual was engaged in the business of insurance.
 4 The ones that come to mind that directly
 5 have interpretations by our Supreme Court or Court of
 6 Criminal Appeals or Courts Appeals have been primarily
 7 the solicitation and obtaining of insurance sales
 8 contracts, the -- the explaining of coverage or
 9 benefits that might be available, the -- explaining
 10 what would be indemnity and what would not, acting as
 11 if you were in the business of insurance by engaging
 12 in claims handling, assisting people with obtaining
 13 coverage, taking a premium, paying a commission,
 14 issuing a contract that basically is an
 15 indemnification contract which could be construed to
 16 be in the business of insurance.
 17 Q. Now, let me ask you a question before you go
 18 too much further, Mr. Longley. Under 101.051, this is
 19 under Chapter 101 that's called The Unauthorized
 20 Insurance -- or at least that's part of the title of
 21 the chapter. And then it says, Business of Insurance
 22 Exceptions.
 23 Okay. My first question to you is: Do
 24 you have to be a business to be involved in the
 25 business of insurance in Texas?

Page 306

1 A. No.
 2 Q. Okay. What authority do you have for that,
 3 Mr. Longley?
 4 A. Well, it's -- I guess the best authority
 5 would be the case of Garrison Contractors versus
 6 Liberty Mutual Insurance Company which was decided by
 7 our Texas Supreme Court in 1998 or '99. It's a case
 8 that was handled in my office.
 9 Q. Okay. And I think we have that in here.
 10 Pardon me for not knowing which tab it is right off
 11 the -- off the top -- it's Tab 9.
 12 A. Nine, I believe. And that was a case in
 13 which the Supreme Court was faced with whether or not
 14 an individual who worked within -- an employee within
 15 an insurance company -- in this case, it was Liberty
 16 Mutual -- was that person engaged in the business of
 17 insurance with regard to Article 21:21 of the
 18 Insurance Code.
 19 Q. Okay. So was it a similar -- very similar
 20 exercise to what the Tribunal would be doing in this
 21 case?
 22 A. It was almost the exact same exercise because
 23 the Supreme Court was called upon to apply the
 24 law to -- or the facts to the law in -- in deciding
 25 whether or not this person was in the business of

Page 307

1 insurance. And what the Court did was the same thing
 2 it had done in Vail versus Texas Farm & Bureau which
 3 was look to the statutes -- the statutory law within
 4 Texas, look at the guidelines as to what the conduct
 5 was, apply those guidelines to the conduct of the
 6 individual who was the employee involved, and decide
 7 whether or not that person was in the business of
 8 insurance.
 9 Q. Is there a statutory definition of business
 10 of insurance -- pardon me, of insurance in the State
 11 of Texas?
 12 A. No, there's not. The way Texas has
 13 traditionally looked at it has been the admonition
 14 that was given by Congress in 1945. The business of
 15 insurance has been left to the states, and that broad
 16 delegation to the states is to be determined by each
 17 state by definition. Since it's left to the states,
 18 they get to determine that.
 19 Texas has taken the approach that it has
 20 no one definition of insurance. It looks to the
 21 conduct of either the company, the broker, the agent,
 22 the individual and see if that conduct is involved in
 23 something that would be construed to be in the
 24 business of insurance and then make a determination of
 25 whether or not that is in the business of insurance.

Page 308

1 Q. And are you familiar through your experience
2 with some of the court decisions or Executive Branch
3 decisions that have applied accepted definitions of
4 insurance here in the State of Texas when making a
5 determination, such as the one faced by the Panel?
6 A. Yes, I'm familiar with those decisions. I
7 believe we heard one mentioned earlier, which was the
8 Qualified Driver's Case.
9 Q. It's under tab two?
10 A. There's been other cases, as well. But I
11 should mention that -- that the Garrison Contractors
12 case was -- was, likewise, important because it looked
13 to the Department of Insurance for expertise as to
14 what's in the business of insurance and because an
15 Amicus brief was filed in that case by the Department
16 of Insurance.
17 And the court was persuaded by how the
18 Department of Insurance would treat that situation
19 and --
20 Q. All right. Let's talk about that because Mr.
21 Hamman just testified a minute ago about a letter that
22 wasn't sent to SCA, and it was, of course, sent before
23 SCA was even in business. But nonetheless, I think he
24 was testifying that he's relied on this letter or SCA
25 has for doing business. Is that what you're talking

Page 309

1 about, is relying on a letter that's sent somehow, or
2 what did you --
3 A. No, no. What -- what the -- what the Amicus
4 brief did in that case was to show how the Texas
5 Legislature covered this by reciting back to what was
6 in 1.14-1 and looking at the criteria that were in
7 that Statute, as well as what the individual did, the
8 conduct of the individual and the way the word
9 "person" has been used traditionally in the Statutes.
10 And as a matter of fact, the -- the --
11 the Court went off on an amendment to the Insurance
12 Code, and I -- I mention this because we have sent --
13 or relying on the Panel. It was a -- it was a Bill
14 which he was one of the co-sponsors of in 1985, which
15 1985 in Article 21.21, the way the Statute was worded
16 at that time, it said that the Statute -- the
17 Section formally provided, Section 16, that a cause of
18 action for Unfair Deceptive Insurance Practices were,
19 quote, against the company or companies engaging in
20 such acts or practices.
21 And what was passed in that legislature
22 was that the word "company" and "companies" were
23 changed to person or persons, and that was very
24 persuasive along with the briefing that was done by
25 the Department of Insurance. I pointed that out, that

Page 310

1 legislative history, that a person can be somebody
2 that works for an insurance company. It can be an
3 agent. It can be an individual. It doesn't have to
4 be a company or a corporation.
5 And that was part of the legislative
6 history, and that was done in 1985, prior to the
7 letter that was shown to Mr. Hamman evidently, and it
8 was not mentioned, of course, in that letter, but I
9 thought it was significant that whoever it was that
10 wrote that letter opined as to how that would be an
11 illegal contract.
12 I don't think this industry has involved
13 its contingency insurance industry insurers' illegal
14 activities at all. If they did, everything that
15 Mr. Hamman would be doing, as well as these other
16 companies, would be against the law. They'd be
17 collecting premiums for something that'd be completely
18 unenforceable, and it would be tantamount to theft.
19 Q. Now, this particular letter, which I think is
20 No. 1 in the Respondents' Exhibits. I know you've
21 seen it before. Just to finish with it, have you
22 seen -- in your experience here in the State, have you
23 seen businesses come to the Department of Insurance --
24 I don't know, maybe not 18 or 17 years later, but at
25 some point and say, well, you wrote a letter at some

Page 311

1 point in time, and we're entitled to rely on it? Even
2 if it wasn't sent to our company, we can rely on it
3 and do business in a certain manner, and that's
4 authoritative?
5 A. No. There's no attorney that would advise
6 any client that you could rely upon some letter
7 written 18 years ago that somebody -- with -- without
8 knowing what the particulars of that situation were
9 versus how the industry has evolved now. Certainly
10 you could not rely upon that.
11 And any letter from somebody in the
12 bowels of the Texas Department of Insurance would --
13 would never be relied upon by anyone. It doesn't even
14 have the authority of an AG opinion.
15 Q. Now, we've -- you mentioned 1.14-1 a little
16 bit in your testimony.
17 A. That's the predecessor Statute to what you
18 have in Tab 1.
19 Q. All right. So that's the predecessor to
20 101.051?
21 A. That's correct.
22 Q. So in any of the cases that are cited here
23 that's citing 1.14-1, that's simply the predecessor to
24 basically conduct that constitutes the business of
25 insurance in the State?

Page 312

1 A. Right. There's several cases that -- that
 2 interpret that Statute. Garrison Contractors,
 3 although it didn't mention that Statute by name, it
 4 certainly relied upon the briefing that gave the
 5 analysis of those Statutes. I mentioned Vail versus
 6 Texas Farm Bureau. I believe that is also in the
 7 materials.
 8 Q. The Vail case? It is.
 9 A. There's the Kitley case. I don't know if
 10 that's been cited, but that was --
 11 Q. That's under Tab 8, Kitley is. Let's just
 12 briefly, while we're talking about them, Vail -- the
 13 Vail case holds what, Mr. Longley?
 14 ARBITRATOR LYON: What tab is that?
 15 MR. BREEN: That's Tab 6.
 16 A. Vail held that the business of insurance --
 17 and it was construing 1.14-1 -- that the business of
 18 insurance includes investigation and adjustment of the
 19 claims.
 20 Q. (By Mr. Breen) Okay. And that particular
 21 case was an arson case, or arson was suspected, and
 22 essentially the carrier conducted an outcome or
 23 oriented investigation?
 24 A. I don't remember the exact facts of Vail. It
 25 was a first-party case. I know that Chitsey was a --

Page 313

1 was an alleged arson case which was -- but it was for
 2 that -- it was cited for another point, which was that
 3 you can't -- if you're in the business of insurance,
 4 you can't just impose things that are not in your
 5 contract upon an insured. That -- that would be
 6 something -- it would not be required to do.
 7 Q. All right. And I'll get to that in a second.
 8 But in Vail, I guess what you're saying is that the
 9 part -- I think it's on page five, your opinion where
 10 it says, the business of insurance includes the
 11 investigation and adjustment of claims and losses?
 12 A. That's correct.
 13 Q. And in this case, since we're talking about
 14 it right now, Mr. Longley, have you seen any evidence
 15 that SCA Promotions engaged in the business of
 16 insurance because it did things that included the
 17 investigation and adjustment of claims and losses?
 18 A. Yes. They've admitted that that was what
 19 they were supposed to do with regard to their
 20 reinsurance obligations that they took on with Swiss
 21 Re, that they were -- they were to settle and report
 22 back. I've seen one document to that, and they've
 23 admitted that they engaged in those types of
 24 activities.
 25 Q. Okay.

Page 314

1 A. And that they routinely did, I suppose, with
 2 other clients, as well.
 3 Q. Now, why don't we turn again to Tab 1, and
 4 just go through briefly here, Mr. Longley -- why don't
 5 we just take it in chronological order --
 6 chronological order. The provisions of 101.051 you
 7 think have been triggered, implicated, satisfied --
 8 whatever you want to call it -- by conduct of SCA in
 9 this case.
 10 And if I understand what you're telling
 11 us, your opinion is that it's not an aggregate under
 12 all these. If you commit conduct under one of these
 13 sections independently, then that gets you into
 14 conduct that constitutes the business of insurance.
 15 A. That's the way the courts have interpreted
 16 from time to time, that -- that one or more of those
 17 would be enough to trigger the business of insurance,
 18 as far as a transaction is concerned, or whether or
 19 not a person or entity or company was engaged in the
 20 business of insurance.
 21 Q. Okay. And I believe we've already talked
 22 today and heard from Mr. Hamman that SCA Insurance
 23 Specialists, Inc., obviously is -- is in and does
 24 conduct that constitutes the business of insurance in
 25 the State of Texas. So I want to focus your attention

Page 315

1 right now for the time being on SCA; okay?
 2 A. Sure.
 3 Q. Number one, making or proposing to make as an
 4 insurer an insurance contract. Do you have an opinion
 5 as to whether that -- SCA engaged in any of that
 6 conduct?
 7 A. Yes, I think that they have.
 8 Q. Why?
 9 A. Oh, I think that the -- the perception that
 10 they know -- and that has been admitted here by the
 11 last witness -- that most people think they're buying
 12 insurance when -- when they engage in a transaction
 13 with SCA Promotions. The perception is that this is
 14 backed by insurance, as we saw from the deposition of
 15 Kelly Price. By her e-mails, she's under the
 16 impression that this is insurance, that this is a
 17 carrier.
 18 There have been no denials, no
 19 disclaimers that were put up to try and dissuade any
 20 person who might be a customer from this notion. And
 21 indeed, the contracts were -- were treated as
 22 insurance contracts by the reinsureds.
 23 Q. Let's talk about the contract itself, the
 24 contract between SCA and Tailwind to indemnify
 25 Tailwind for the liability he incurred when

Page 316

1 Mr. Armstrong won his performance clause. Are you
2 familiar with what I'm talking about?

3 A. I am. I've seen them, and I've been deposed
4 about it.

5 Q. And do you believe that the liability
6 Tailwind has is clear and unambiguous; that is, Mr.
7 Armstrong has been declared the official winner of the
8 Tour de France by the UCI, has not been stripped or
9 any of that type stuff, and Tailwind's obligation is
10 clear?

11 A. Absolutely.

12 Q. Okay.

13 A. It's clear, and it's not even reasonably
14 clear. It's -- it's just clear.

15 Q. All right. Now, in terms of the actual
16 contract itself, what -- what is it, Mr. Longley, in
17 your experience in the case law, whatever you're
18 looking to that leads you to the conclusion that the
19 indemnification contract between SCA and Tailwind
20 is -- is insurance, as we're looking at in 1 of this
21 Statute?

22 A. Well, there was a -- there was a fee which
23 can be construed as a premium. There was a commission
24 paid. There was an event, that it was a contingency,
25 that if that event occurred, would trigger liability

Page 317

1 on behalf of the insured to a third party for which
2 this company said it would indemnify the insurer.

3 Q. Okay. Now, let me ask you a few questions.
4 We got this weekend something from Dearborn Career
5 Development, which my interpretation now -- I have
6 never heard of Dearborn before, but I think it's
7 something that can be Caplin or Barberry. Have you
8 have you ever heard of Dearborn?

9 A. No, I haven't.

10 Q. In any of your experience through the
11 Legislature, the Attorney General, the Department of
12 Insurance, cases, courts, anywhere here, UT, have you
13 ever heard or relied upon Dearborn Insurance
14 Fundamentals as an authoritative treatise or text?

15 A. No. And, in fact, in the State of Texas,
16 what -- what the legislature and the courts would rely
17 upon would be the Statutes of the case law.

18 Q. All right. And so then setting that aside,
19 then, the case law and case you relied upon was what?
20 The -- the information contained in Tabs 2, 3, and 4,
21 the -- the driver's case?

22 A. That's correct. And -- and Tab 1, which are
23 the -- the criteria by which you would -- you would
24 grade conduct.

25 Q. You've heard part of the argument in this

Page 318

1 case by SCA that this can't possibly be insurance
2 because somehow this \$5 million liability for Tailwind
3 is not a loss. You heard that. I may be paraphrasing
4 wrong. I'm sure you -- we all heard that.

5 A. I heard that, yes.

6 Q. Okay. Do you have an opinion at to that?

7 A. I do have an opinion.

8 Q. What is it?

9 A. I think that they're mistaken. It is a loss.
10 It's an event that -- that causes liability that they
11 chose to insure. It's a risk that they say on their
12 web site "our risk, your reward." If this isn't a
13 risk that -- that -- that results in a loss, then what
14 is it they're selling on their web site? You know,
15 what else could it be?

16 If, indeed, Mr. Armstrong was declared
17 the official winner of the 2004 Tour de France and the
18 liability became triggered under the contract that
19 Tailwind had with -- with Armstrong and had tried to
20 get insured and covered as the term has been used with
21 regard to contract and they have to pay it because the
22 insurance company or SCA has not paid it, it's a \$5
23 million loss. It's a terrible, adverse event.

24 Q. Now, part of the argument you've heard, Mr.
25 Longley, in this case, I assume, is that SCA says this

Page 319

1 can't be insurance because somehow the fact that
2 because Mr. Armstrong and/or Tailwind wanted him to
3 win the Tour de France and get this bonus, that,
4 therefore, the risk is manufactured, and that means it
5 can't be insurance. Again, I'm paraphrasing, but
6 you've heard essentially that argument?

7 A. I have heard that, and I -- I -- I, again,
8 disagree that that has anything to do with what's in
9 the business of insurance in Texas. In Texas, you
10 look at the conduct, and if it's a contingency that's
11 being indemnified against and people are taking a fee,
12 which can be a premium, again, another personal fee,
13 which can be a commission, and they're saying that
14 they will pay upon the happening of an event, that's
15 really all you need.

16 And whether you call it manufactured risk
17 or unmanufactured risk, the point of this story is
18 that SCA ain't going to pay no matter what kind of
19 risk you call it in contravention of what they say on
20 their web site, "our risk, your reward." They've
21 taken a \$420,000 payment -- whether you call it a
22 premium or whatever you want to call -- and they don't
23 want to pay -- they won't handle their end of the
24 bargain. Although, through the years, traditionally
25 those companies which really are insurance and which

Page 320

1 have embraced the thought of being insurance, they
 2 have paid under these circumstance.
 3 Q. Have you visited the SCA web site in
 4 connection with your work on this case?
 5 A. I did, several times.
 6 Q. And what conclusions have you reached, or how
 7 does that impact your opinion?
 8 A. Well, almost everything on that web site
 9 would lead an ordinary consumer seeking insurance to
 10 believe that they were buying insurance and that this
 11 was an insurance entity selling insurance. And the
 12 meta tags that have been previously shown to the Panel
 13 were intentionally put into that web site. A meta tag
 14 being certain key words that you would want to have
 15 out on Google or some search engine that would lead
 16 you to your web side.
 17 And as you can see, there were some eight
 18 or nine -- I counted eight or nine, possibly even ten
 19 that use the word insurance. And so there was every
 20 effort to make people believe this was insurance and
 21 no effort to disclaim or to lead them to some contrary
 22 notion.
 23 Q. Part of the argument SCA has raised in this
 24 case is that they believe 101.051 is somehow circular
 25 because it defines the business of insurance somehow

Page 321

1 as doing insurance or dealing in insurance, something
 2 to that effect. Do you find 101.051 to be circular?
 3 A. No. I find it to be the guidelines that are
 4 used by the Legislature and the courts to determine
 5 what is the business of insurance in Texas, and if it
 6 were circular and provided no guidance whatsoever,
 7 then this whole regulatory scheme that we have set up
 8 in Texas, the 1,400 employees we have in the Texas
 9 Department of Insurance, all of the examiners that we
 10 have that fan out all over this state to -- to examine
 11 the insurance carrier, their domicilaries of Texas
 12 every year, all their jobs would be done away with by
 13 someone simply drawing a line through the "insurance
 14 company" or "insurance agent" or "insurance broker,"
 15 and say, now, wait a minute; we're not really in the
 16 business of insurance because we don't use the word
 17 "insurance."
 18 It's not what you call it. You can be an
 19 insurance company and be in the business of insurance
 20 without using word "insurance" and vice versa.
 21 Q. Right. Just because you call it insurance
 22 doesn't necessarily make it insurance. Is that what
 23 you're saying?
 24 A. That's correct.
 25 Q. And, of course, if you call it insurance and

Page 322

1 it isn't or you create a perception that it is and it
 2 isn't, you have a whole other can of worms to work
 3 with?
 4 A. You do. And -- and, in fact, that's actually
 5 covered in 101.051 when you get down to No. 8.
 6 Q. What is that?
 7 A. Actually No. 9.
 8 Q. Number 9?
 9 A. Doing or proposing to do any insurance
 10 business that is in substance equivalent to conduct
 11 described by subdivision 1 through 8 in a manner
 12 designed to evade Statute related to insurance.
 13 Q. Have you seen any of that in this case, Mr.
 14 Longley?
 15 A. I've seen a whole lot of it.
 16 Q. What would that be, just briefly?
 17 A. Well, first of all, a year and half after the
 18 transaction has taken place, it's -- it's trying to
 19 say that this is not an insurance policy and that this
 20 wasn't insurance in the e-mail back the Kelly Price
 21 was trying to disassociate her notion that this was
 22 insurance; the -- the failure to correct anyone with
 23 regard to there being a carrier involved; the failure
 24 to correct anyone under the notion that they thought
 25 this was backed by insurance when, in fact, it was

Page 323

1 reinsured in -- to some degree. There were some
 2 insurance aspects that were initially there.
 3 But to lead people to believe that this
 4 is an insurance entity in the business of insurance
 5 and then doing this postclaim underwriting
 6 that once -- once you have an actual claim and say,
 7 oh, wait a minute, you know Kings "X." We're not
 8 insurance, and you should believe us.
 9 Q. This diagram that's up here, I take it, when
 10 we were talking about No. 9, this diagram of the
 11 transaction that Mr. Tillotson and Mr. Hamman worked
 12 on, would you be able to identify for the Panel, in
 13 your opinion, who the risk-takers are?
 14 A. Yes. It's very simple who the risk-takers
 15 are. There's only two. You've got SCA Promotions,
 16 and you've got Swiss Re. And that's -- that's how the
 17 Texas courts would look at a transaction is: Who are
 18 the risk-takers here and what -- what conduct
 19 surrounds that risk that's been taken.
 20 Q. There's been some testimony in this case
 21 referring to AIG as a front-end carrier. Have you
 22 ever had any experience with?
 23 A. I have.
 24 Q. What's that?
 25 A. A front-end carrier or a front-end company is

Page 324

1 sometimes used by reinsurers to effectuate
2 reinsurance. Usually it's done in connection with
3 some company that's not admitted or for some reason
4 can't do business in Texas, that type of thing, and
5 they use a front-end company which usually will take
6 some of the risk sometimes. Sometimes it won't.

7 In this particular case, AIG was used
8 after the fact. I mean, it had no idea that this
9 transaction was even going on, according to the
10 document we've seen. But it took zero risk, so it was
11 not a risk-taker. And so when you look at this
12 particular diagram, a court of law in Texas would look
13 at: What is the real deal? The real deal is, you've
14 got two risk-takers. You've got the SCA Promotions,
15 and you've got Swiss Re.

16 One is a reinsurer, and it's fairly
17 elementary. You can't have reinsurance without there
18 being insurance, so SCA is the primary carrier. Swiss
19 Re is the reinsurer, under this diagram.

20 Q. Now, in this particular case, have you
21 looked -- let's keep going on through the list here.
22 I think we've covered No. 1. Well, let me ask you
23 another thing about No. 1 while we're talking about
24 it.

25 Have you looked at any other types of

Page 325

1 similar products to the prize indemnity or the sports
2 incentive bonus that we're talking about here? Have
3 you looked around either within Texas or in other
4 States to see how other courts have handled basically
5 a transaction structured like this?

6 A. Yes, I have.

7 Q. Okay. And what have you concluded?

8 A. Well, I -- I've looked at some of the items
9 that are -- are included here in these other states:
10 Connecticut, New York, Georgia, I believe. I've
11 talked to people in our Texas Department of Insurance.
12 I've examined internal documents with regard to this
13 type of insurance -- hole-in-one insurance primarily
14 and came to the conclusion that this is all the same
15 as what they were doing here, that this is the same
16 thing. It's the same type of animal.

17 Q. Who did you visit with at TDI?

18 A. William O'Goodman, who is the chief of the
19 litigation section.

20 Q. And what was the gist of your conversation or
21 conclusions of visiting with him?

22 A. About the hole-in-one insurance. I think as
23 I testified in my deposition, after I had formed my
24 conclusions with regard to the engagement in this
25 matter, I called him with regard -- I was kind of -- I

Page 326

1 was enamored with the hole-in-one insurance because
2 I've seen that. I've heard of it and was just going
3 to check to see how that would be treated in Texas or
4 how it was being treated in Texas.

5 And he confirmed to me that they
6 considered it to be in the business of insurance, and
7 I ran him by the -- the facts with regard to this
8 transaction, and he thought this would be, as well.

9 Q. And, of course, a hole-in-one insurance,
10 you'd agree with me, that both the sponsor of the
11 event and, at least by all fair readings, looking at
12 SCA's promotional material, SCA wanted a particular
13 participant to do well and actually win the prize?

14 A. It appears that way, yes.

15 Q. But yet that doesn't somehow magically make
16 it not insurance, does it?

17 A. True.

18 Q. In this Connecticut opinion, I won't go into
19 it in too much detail with you here, but that opinion
20 actually addresses almost identically the arguments
21 made by a company in that case who was claiming it
22 wasn't doing business as an insurer and raised almost
23 the identical arguments as SCA has in this proceeding;
24 is that right?

25 A. That's correct.

Page 327

1 Q. And I think we touched on it briefly earlier
2 with Mr. Hamman. Some years ago -- 20-odd or however
3 many, 15 -- New York may or may not have considered
4 hole-in-one insurance or hole-in-one coverage to be
5 insurance, but your understanding, based on materials
6 you cited and we were provided with, that now it is?

7 A. That's -- that's exactly right. And the
8 reason, I think, is if you go back to 19 -- to the
9 1980s, 1985, when this contingency insurance started
10 to evolve, we didn't have web sites. We didn't have
11 fax machines. We didn't have cell phones. We didn't
12 have this instant communication where you could sell
13 your products of -- you know, just by someone sitting
14 at home and looking these things up.

15 And that industry has evolved through the
16 years, and so what New York might have done back in
17 the '80s or what somebody in the State Board of
18 Insurance may have written in '88, I mean, that's --
19 you're talking apples and oranges as to what's going
20 on out there right now and how they're being
21 regulated. Because by and large, I don't know of
22 anyone -- I can't name you one single entity that does
23 this kind of a promotion that sells this kind of
24 product where it's been submitted to a Department of
25 Insurance that it's not been determined to be in the

Page 328

1 business of insurance.
 2 Q. Now, item No. 4, receiving or collecting any
 3 consideration for insurance, including the premium or
 4 commission, do you have an opinion as to whether SCA
 5 engaged in that?
 6 A. I do, and they did.
 7 Q. In what way?
 8 A. They took a fee. With that fee, they paid
 9 commissions with regard to insurance licensees, as
 10 well as they paid fees back to reinsurers to spread
 11 the risk, and they -- that's what that was.
 12 Q. All right. The -- you mentioned --
 13 A. Whether you call it a premium or a
 14 commission, I mean, those -- those were monies that --
 15 that were done with regard to this indemnity contract.
 16 Q. You mentioned spreading the risks. One of
 17 the arguments that's been made in this case,
 18 Mr. Longley, is that there is no spreading of the risk
 19 among a like-minded number of insurers or something to
 20 that effect. Do you know what I'm talking about?
 21 A. Yes, sir, I do.
 22 Q. Number 1, in the definition that the Courts
 23 have utilized in the State of Texas for insurance, is
 24 there any requirements specifically for the spreading
 25 of risk among -- amongst this like-minded pool of

Page 329

1 insurers specifically?
 2 A. Do you mean to determine if some conduct
 3 is --
 4 Q. Right. To determine if it equals the
 5 business of insurance or if some product is insurance.
 6 A. No. There's no requirement under Texas law.
 7 Q. Okay. I think you've seen or have heard
 8 mentioned here today, even a citation from a case in
 9 this Supreme Court of Texas where some -- the -- the
 10 spreading of risk may have been discussed. Are you
 11 familiar with what I'm talking about?
 12 A. I am.
 13 Q. What case was that?
 14 A. I believe that was that municipal utility
 15 district case, if I'm not mistaken.
 16 Q. The case we've seen a lot which the justice
 17 wrote the opinion?
 18 A. Correct, correct.
 19 Q. Okay. Now, my question to you is this:
 20 First of all, it sounds like specifically to be in the
 21 business of insurance, you don't technically, in
 22 Texas, have to have this spreading of the risk among
 23 the like-minded insurers?
 24 A. That's correct. That definition was used in
 25 that case with regard to surety -- whether or not

Page 330

1 sureties -- surety bonds were within the business of
 2 insurance. As you may recall, they were specifically
 3 excluded under 1.14-1, and the -- the -- I suppose the
 4 technical difference that the Court went off on it was
 5 that this was not a true indemnity contract because
 6 you could look back to the principal that they were
 7 writing the bond for, look back to them for payment,
 8 where you can't do that in the two or three --
 9 Q. Let's -- let's that aside for a second.
 10 Let's just assume for a moment here that technically
 11 somehow you have to have this spreading of the risk;
 12 okay? Have you reached any conclusions from your
 13 examination in this case as to whether SCA spread,
 14 pooled -- whatever you want to call it -- the risk in
 15 this particular case?
 16 A. I have reached a conclusion, and my
 17 conclusion was that they did.
 18 Q. All right. Would you explain to us why you
 19 reached that conclusion?
 20 A. Well, they did it both internally and
 21 externally, as I've testified in my deposition.
 22 Internally they undertook to get reinsurance. In
 23 other words, to take themselves off of the risk or to
 24 get part of their risk indemnified by someone on up
 25 the line. They did that with Swiss Re, and it appears

Page 331

1 that they tried to do it or did do it with PIL in
 2 those two instances. So internally with regard to
 3 this particular transaction, they spread the risk as
 4 a -- a matter of function. They did it, and they --
 5 we've seen the evidence as to where they did do it.
 6 Externally within their own gambit of
 7 what they do, this -- this so-called indemnity
 8 contract business, they could not stay in business
 9 without some sort of external spreading of the risk in
 10 taking on these items knowing that they would have to
 11 make enough money off of their other like contracts,
 12 which would be prize indemnity, the generic term not
 13 necessarily cycling or hole-in-one or whatever. Just
 14 that whole contingency insurance idea. And if they
 15 didn't spread the risk externally, they wouldn't be in
 16 business very long.
 17 Q. Now, in terms of our march through 101.051
 18 here, No. 5 is issuing or delivering an insurance
 19 contract to a resident of the state or person
 20 authorized to do business in the state. Have you
 21 covered that?
 22 A. Yes, sir.
 23 Q. Okay. No. 6, directly or indirectly acting
 24 as an agent, and then all the ones that are listed up
 25 here. I won't go through them all out loud, "A"

Page 332

1 through "I." Do you have any opinions or conclusions
2 as to whether that occurred in this case?
3 A. I think it did occur.
4 Q. Okay. And how?
5 A. Well, they obviously solicited and procured
6 and helped effectuate insurance with regard to what
7 they were underwriting, what they were seeking to have
8 the risk spread for with regard the reinsurance. They
9 disseminated information. They explained what they
10 were going to do, at least in a rudimentary fashion,
11 as seen in the deposition of Kelly Price and the
12 e-mails that have gone back and forth.
13 They delivered an insurance policy or
14 contract with regard to what was agreed to. They
15 drafted the contracts. They asked -- they asked that
16 no change to be made in it, and it was entered between
17 parties.
18 Q. How -- how does PIL, what's been referred to
19 as the offshore captive reinsurer of SCA, how does
20 that fit into 6 "A" through "I"?
21 A. Well, I suppose that they -- it regard -- it
22 is with regard to setting a rate and -- and somehow
23 effectuating the reinsurance or some type of insurance
24 that they -- that was evidenced by the exhibit that we
25 saw earlier.

Page 333

1 Q. Now, you briefly talked already about the
2 fact -- I think we've seen evidence in this case of
3 "G" investigating or adjusting the claim or loss;
4 correct?
5 A. Yes, that's been admitted.
6 Q. That was in -- not only in the letter between
7 AIE, Swiss Re, and SCA, right, where it had the
8 provision set out about SCA handling the claims?
9 A. Correct.
10 Q. And, in fact, that would apply obviously to
11 the first two years of the pay-out; right?
12 A. It did. And incidentally SCA actually paid
13 the claims for the first two years.
14 Q. You've seen the checks that have been sent by
15 SCA that had the word "claim" on there?
16 A. Absolutely.
17 Q. Now, the terms of the bonus that hasn't been
18 paid, the \$5 million, do you have an opinion as to
19 whether SCA was engaged in the investigation or
20 adjusting of the claim Tailwind made in that
21 particular year?
22 A. Well, evidently they were. You heard
23 Mr. Hamman's testimony, that had he known now -- or
24 had he known then what he knows now, you know, his
25 conduct would have been the same. You know, we don't

Page 334

1 pay today. So -- but -- but evidently he continued to
2 look and investigate and -- and engage in conduct that
3 would be in the investigation of -- of a claim --
4 Q. I've grouped --
5 A. -- even though the other carriers in previous
6 years, you know, paid those claims.
7 Q. I've grouped together as Exhibit 52 in this
8 case --
9 (Claimants' Exhibit No. 52 was marked.)
10 ARBITRATOR CHERNICK: 52 or 53?
11 MR. BREEN: 53?
12 ARBITRATOR CHERNICK: Well, 55 is the
13 next in order. Did you skip 52?
14 MR. BREEN: I did. This was one that was
15 previously marked.
16 ARBITRATOR CHERNICK: 52?
17 A. Yeah. The one I -- the one --
18 Q. (By Mr. Breen) Does it have the sticker 52 on
19 there, Mr. Longley?
20 A. Yes, it does. And the others have 53 and 54.
21 MR. BREEN: I apologize for doing that.
22 ARBITRATOR CHERNICK: It's okay.
23 MR. BREEN: But it had already been
24 marked.
25 ARBITRATOR CHERNICK: It's okay.

Page 335

1 ARBITRATOR FAULKNER: We know.
2 Q. (By Mr. Breen) What 52 is, I'll represent,
3 this is a compilation of some letters that went back
4 and forth between SCA or SCA's in-house counsel and
5 the folks on Tailwind's side of the equation. And
6 you've seen these letters before, haven't you?
7 A. Yes, I have. And they were discussed, I
8 believe, as -- as part of my review at my deposition.
9 Q. Right. And in the first letter that's on --
10 SCA 62 is the Bates on the bottom. Do you see where
11 Mr. Hamman specifically talks about the investigation
12 exceeding the contractually allocated 30 business
13 days?
14 A. I do.
15 Q. And I'm -- I -- do I understand your
16 testimony correct that that is obviously conduct that
17 triggers "G" investigating or adjusting the claim or
18 loss in this case?
19 A. In my opinion, it does.
20 Q. Now, you touched briefly before on a case,
21 and I'm not sure if you said you were personally
22 involved in it, and I just want to talk about it very
23 briefly, Mr. Longley. You said it had to do with an
24 insurance company or somebody in the business of
25 insurance, whether it's an insurance company or not,

<p style="text-align: right;">Page 336</p> <p>1 requesting information from the insurer without the 2 policy giving them the right or that company or 3 business the right to do that? 4 A. Yes. That was the Chitsey versus National 5 Lloyds case. It's actually the Court of Appeals 6 opinion, but I think what you have in the -- 7 Q. I think we added -- it's been added in, the 8 Court of Appeals has been. That case was 9 ultimately -- went up to the Supreme Court and on 10 grounds that aren't -- 11 A. It was affirmed on other grounds, but in the 12 Court of Appeals opinion, it -- it outlined that in 13 the business of insurance, you -- you're bound by your 14 contract provisions as to what you can do to 15 investigate. For instance, you can ask for an 16 Examination Under Oath in some cases, like in your 17 standard homeowner's policy and some auto policies. 18 In this particular case, SCA did not ask 19 for and -- and had no contractual provisions in there 20 with regard to either, A, an application from either 21 Tailwind or Lance Armstrong, or, B, any agreements as 22 to cooperation or postclaim investigation that could 23 be done like you see in some contracts. It had 24 neither. The Chitsey case held that if you don't have 25 that in your contract, the -- the insured or the</p>	<p style="text-align: right;">Page 338</p> <p>1 It's a letter from Mr. Compton, who's here and I think 2 you've met maybe just briefly. 3 A. Okay. I'm with you. September 7, 2004 4 letter? 5 Q. That's right. Where SCA sets out that they 6 consider their right and obligation to any third 7 parties who may have participated in the underwriting 8 of this risk to thoroughly investigate the facts and 9 circumstances related to Disson Furst, Tailwind, Lance 10 Armstrong's claim for payment. Do you see that? 11 A. Is it on the first page or second? 12 Q. It's on the second, SCA 00063. 13 A. Okay. That's the first page on mine. 14 Q. Yeah. The first page of the letter. My 15 apologies. It's not the first page of your packet, 16 the last paragraph. 17 A. Okay. I'm with you. 18 Q. All right. Do you see that? 19 A. Yes. 20 Q. I take it that factors into your opinion 21 under "G," investigating or adjusting the claim or 22 loss? 23 A. Absolutely, it does. 24 Q. And then finally, just to briefly conclude on 25 this exhibit, Mr. Longley, SCA 69, which is a</p>
<p style="text-align: right;">Page 337</p> <p>1 person that you're asking this has no obligation to 2 oblige you. There's no reason to cooperate because 3 it's not part of the deal. 4 Q. So did you see in the contract between 5 Tailwind and SCA in this case anything that gave SCA 6 the right to delay or deny payment because 7 Mr. Armstrong or people that were affiliated with 8 Mr. Armstrong didn't produce drug testing records, 9 attendance procedures, complete medical history, 10 records of past contracts, et cetera, or anything like 11 that in there? 12 A. There was absolutely nothing like that in 13 there that would allow them to do that -- 14 Q. Now -- 15 A. -- if they were in the business of insurance. 16 I'm not sure they could do it otherwise, but certainly 17 if they're in the business of insurance, you've got 18 the Chitsey authority that they were way out of 19 bounds. 20 Q. Of course, on -- continuing in that 21 compilation, on 52, on -- on a document that's been 22 Bates SCA 63, if I can just direct your attention to 23 that. 24 A. 63? 25 Q. Yes, sir. Down on the bottom right corner.</p>	<p style="text-align: right;">Page 339</p> <p>1 September 10th letter by Mr. Compton. 2 A. Yes, sir. 3 Q. Do you see that? 4 A. I do. 5 Q. Do you see the second paragraph that starts, 6 at the outset? 7 A. Yes, sir. 8 Q. And it says, as you well know, we have timely 9 made all payments required under the contract in 10 consequence of Mr. Armstrong's prior Tour de France 11 victories. However, given the enormous amount of 12 recent publicity and the various allegations that have 13 recently arisen questioning the legitimacy of Mr. 14 Armstrong's Tour de France performances, it is 15 incumbent upon SCA to investigate the truth of such 16 allegations in order to safeguard our own interest and 17 those of our risk-takers. 18 A. Yes. There's only, you know, one other 19 risk-taker that I saw in the deal. 20 Q. Who would that be? 21 A. Well, it was either Swiss Re or PIL -- 22 Q. Of course -- 23 A. -- depending on what part of time you're 24 looking at. 25 Q. Right. In this particular year, in '04,</p>

<p style="text-align: right;">Page 340</p> <p>1 Swiss Re was no longer on the hook for reinsuring SCA, 2 was it? 3 A. That's correct. And I didn't see any recent 4 publicity exclusion in their contract. 5 Q. And if, in fact, what SCA was talking about 6 when they were referring to other risk-takers or some 7 euphemism like that, being PIL or SCA -- 8 A. Whichever one it was, it was an -- it was an 9 insurance company in the business of insurance that 10 was reinsuring the primary carrier, which, in my 11 opinion, is SCA. 12 Q. Now, I think we've covered 8 and 9 already, 13 have we not, Mr. Longley -- 14 A. Yes. 15 Q. -- on the list? 16 A. We have. 17 Q. The designation that I've marked and that Mr. 18 Tillotson asked you about in the deposition that you 19 gave in this case, I'm assuming that for purposes of 20 Panel here today, obviously that's a true and correct 21 representation of what your -- an outline of -- of the 22 overview of your opinions in this case? 23 A. That's correct. I'm not sure we have 24 discussed all of them, but certainly that -- that's a 25 correct statement you just made.</p>	<p style="text-align: right;">Page 342</p> <p>1 A. That they're in the business of insurance. 2 MR. BREEN: I pass the witness. 3 MR. TILLOTSON: It's 10 till 5. I'm 4 going to be at least a substantial amount of time and 5 prepared to go now for a little while or if you're 6 prepared to break. 7 ARBITRATOR FAULKNER: Do you want to 8 break or do you want to go -- how long do y'all think 9 you're going to need tomorrow morning? You've got 10 your expert. 11 MR. HERMAN: Yeah. We really do need to 12 get Mr. Longley off the stand so -- 13 MR. TILLOTSON: Well, with all due 14 respect, it is -- it is a little bit of a burden on me 15 to pass at 4:50 and say, let's get it done. 16 MR. HERMAN: Well, I mean, they've said 17 they'd stay till 6:00, you know. 18 MR. TILLOTSON: Well, you got more than 19 an hour and half -- or an hour and 15 minutes. I'll 20 leave it up to the panel guidance. We can come back 21 tomorrow, and then we'll do my expert. 22 MR. HERMAN: Well, I know, but 23 Mr. Longley has got commitments so that -- you know, 24 he lives in Austin, also. 25 MR. TILLOTSON: Well, I'm the one who's</p>
<p style="text-align: right;">Page 341</p> <p>1 Q. The -- the -- I understand there's some 2 opinion that may technically be construed in that -- 3 in your review of this case that are outside really 4 the limited scope of this particular hearing in terms 5 of covering the ones -- at least in overview of the 6 ones that are related to this hearing. Do you think 7 you and I have done that now? 8 A. Yes, I do. 9 Q. Does calling it a business contract, 10 Mr. Longley, take it out of being a business of 11 insurance? 12 A. No. And as a matter of fact, an interesting 13 comment Mr. Gorski made, I thought, was completely in 14 sync with what Judge Rose Spector asked at the -- at 15 the oral argument of the Garrison Contractor's case. 16 When -- when the argument was being made that this 17 employee had engaged in all these items, like you've 18 seen in 101.051, she asked -- she said, well, if he's 19 not engaged in the business of insurance, you know, 20 pray tell, what business is he engaged in because it 21 had all the attributes and all the characteristics of 22 what Texas uses to determine the business of 23 insurance. 24 Q. Well, Mr. Longley, do you have an opinion at 25 the end of the day, what is this?</p>	<p style="text-align: right;">Page 343</p> <p>1 been the least amount in control of the schedule for 2 accommodating whatever witnesses you wanted to call 3 and people I didn't know about, so all -- all I'm 4 bickering about is to present a witness at 4:50 and 5 say, let's go till we're done puts the burden on me, 6 but if the Panel wants to go forward -- 7 ARBITRATOR CHERNICK: Could I ask, is the 8 only other witness remaining in this case from any 9 party Mr. De Leon? 10 MR. TILLOTSON: Yes. 11 MR. TOWNS: Yes. 12 ARBITRATOR CHERNICK: And do we have an 13 estimate of the amount of time that Mr. De Leon is 14 going to take tomorrow? 15 MR. TILLOTSON: My direct of Mr. De Leon 16 is about 40 minutes long. 17 ARBITRATOR CHERNICK: And the cross might 18 be? 19 MR. HERMAN: Probably -- probably 30 at 20 the most. 21 ARBITRATOR FAULKNER: Okay. So then we 22 would have several hours tomorrow morning to conduct 23 your cross? 24 MR. TILLOTSON: Yes. 25 ARBITRATOR FAULKNER: Is it possible for</p>

Page 344

1 you to be here tomorrow morning?
 2 THE WITNESS: If the Panel wants me here
 3 in the morning, I'll be here.
 4 ARBITRATOR FAULKNER: Okay. We could --
 5 we could start earlier if that was convenient, if you
 6 had something you needed to do. At least I -- I think
 7 we can start earlier.
 8 THE WITNESS: I think probably we can get
 9 through pretty quickly. From -- from the examination
 10 I've had through my deposition, I don't anticipate it
 11 will be all morning, but I'll be happy to come back in
 12 the morning whatever time the Panel wants me to.
 13 ARBITRATOR LYON: Well, yeah. Do you
 14 have clothes for tomorrow?
 15 ARBITRATOR FAULKNER: Well, I did bring a
 16 change, yes but --
 17 MR. HERMAN: But he's wearing it.
 18 ARBITRATOR FAULKNER: Well, as long as
 19 we're upwind from you, we'll come back tomorrow
 20 morning. So if we start at 9:00 tomorrow morning,
 21 will we be able to be finished by noon?
 22 MR. TILLOTSON: Certainly.
 23 MR. HERMAN: Oh, definitely.
 24 ARBITRATOR FAULKNER: Okay. Gentlemen,
 25 we will come back tomorrow and start at 9:00 a.m.,

Page 345

1 we'll see you all in the morning.
 2 (Proceedings adjourned at 4:50 p.m.)
 3 STATE OF TEXAS)
 4)
 5 COUNTY OF DALLAS)
 6)
 7 I, Kathy E. Weldon, Certified Shorthand
 8 Reporter, in and for the State of Texas, certify that
 9 the foregoing proceedings were reported
 10 stenographically by me at the time and place
 11 indicated.
 12 Given under my hand on this the 3rd day of
 13 October, 2005.
 14)
 15)
 16)
 17)
 18)
 19)
 20 _____
 Kathy E. Weldon, Certified
 Shorthand Reporter No. 6166
 Dickman Davenport, Inc.
 Firm Registration #312
 1010 Two Turtle Creek Village
 3838 Oak Lawn Avenue
 Dallas, Texas 75219
 214.855.5100 800.445.9548
 e-mail: kw@dickmandavenport.com
 My commission expires 12-31-06
 24)
 25)

