

Page 989

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 JANUARY 11, 2006
19 VOLUME 6
20 CONFIDENTIAL

21 On 11th day of January, 2006, at
22 9:05 a.m., the arbitration in the above proceedings
23 came on before Arbitrators Richard Faulkner, Richard
24 Chernick and Ted Lyon, at 12655 North Central
25 Expressway, Suite 410, in the City of Dallas, County
 of Dallas, State of Texas.

Page 991

1 I N D E X

2 WITNESS PAGE

3 CHRISTOPHER COMPTON
4 CROSS EXAMINATION BY MR. TILLOTSON 993
5 RE-DIRECT EXAMINATION BY MR. HERMAN 1034

6 JOE LONGLEY
7 DIRECT EXAMINATION BY MR. HERMAN 1076
8 CROSS EXAMINATION BY MR. TILLOTSON 1127
9 RE-DIRECT EXAMINATION BY MR. HERMAN 1177
10 RE-CROSS EXAMINATION BY MR. TILLOTSON 1183

11 CLAIMANTS' EXHIBITS

12 1 - 10/10/00 Stapleton letter to Gorski 1085
13 re: Letter Agreement

14 5 - 1/3/01 B. Hamman email to Lorenzo re: 1089
15 Agreement of Bonus Levels

16 10 - 1/9/01 B Hamman email to J. Bandy re: 1144
17 performance bonus contract

18 17 - Unsigned SCA Promotions prize contract 1059
19 #31122 and Ex. A

20 67 - 9/7/05 memo from Compton to LTP re: 1036
21 Marty Jemison

22 69 - 7/27/04 Compton letter to I. Galloway 1003
23 re: engagement for investigation

24 74 - 10/22/05 Compton letter to Goodger re: 1054
25 Swart Interview

 90 - 9/3/04 Letter from Temple 1015

 91 - 9/7/04 Compton to Temple 1049

 94 - 9/10/04 Compton to Herman 1051

 115 - Handwritten Chart 1124

Page 990

1 A P P E A R A N C E S

2 FOR THE CLAIMANTS:

3 Mr. Tim Herman
4 Mr. Sean Breen
5 HERMAN HOWRY & BREEN
6 1900 Pearl Street
7 Austin, Texas 78705-5408

8 Ms. Lisa Blue
9 BARON & BUDD
10 1100 Centrum Building
11 3102 Oak Lawn Avenue
12 Dallas, Texas 75219

13 FOR THE RESPONDENTS:

14 Mr. Jeffrey M. Tillotson
15 Mr. Cody L. Towns
16 LYNN TILLOTSON & PINKER, L.L.P.
17 Suite 1400
18 750 North St. Paul Street
19 Dallas, Texas 75201

20 ALSO PRESENT:

21 Ms. Mariela Evora
22 Mr. Chris Compton
23 Mr. John Bandy
24 Mr. Robert Hamman
25 Mr. Michael Ashenden
 Ms. Lynn G. Bone
 Mr. Russell E. Pryor
 Mr. Kearney
 Mr. Joe Longley
 Mr. Bill Stapleton
 Mr. Lawrence Temple

Page 992

1 RESPONDENTS' EXHIBITS

2 4 - USPS Cycling Team Sponsorship 1146
3 Agreement

4 5 - 2001-4 Sponsorship Agreement 1147

5 26 - 9/2/04 Hamman letter to Stapleton re: 1014
6 SCA Contract #31122

7 27 - 9/7/04 Compton letter to Temple 1018
8 28 - 9/10/04 Compton letter to Herman 1020
9 29 - 9/22/04 Compton letter to Herman 1023
10 31 - 9/11/04 Michelitch e-mail to Stapleton 1027
11 re: surprise at SCA's handling of
12 bonus

13 84 - 12/20/04 Hearing Transcript 1021

<p style="text-align: right;">Page 993</p> <p>1 PROCEEDINGS 2 ARBITRATOR FAULKNER: Please proceed. 3 You're still under oath, sir. 4 CROSS EXAMINATION 5 BY MR. TILLOTSON: 6 Q. I'm not sure we got a proper introduction of 7 you before Mr. Herman started asking you the friendly 8 fire questions he did. So first, if you would tell us 9 what your position at SCA is. 10 A. I'm employed as an in-house attorney. 11 Q. How long have you worked at SCA? 12 A. I believe my start date is September 8th, 13 1998. 14 Q. And during that time period as an in-house 15 attorney at SCA, literally what kinds of things do you 16 do? Do you contract, provide legal work, look at 17 claims? Give us a sense of what your job duties are. 18 A. I have done -- I do intellectual property 19 management, which basically consists of keeping track 20 of our trademark and patent applications and deciding 21 which of them we will attempt to handle in-house and 22 which of them we will engage outside patent counsel 23 for. I originally did a telecard division of contract 24 management work. I do promotion mechanic overflow 25 work from John Bandy when he has more than he can</p>	<p style="text-align: right;">Page 995</p> <p>1 with 18,000 people, do y'all think that's fair? No, 2 let's give him another chance. So we have got this 3 all on videotape, offers him another chance, at some 4 point the promoter is racing up on stage, no, no, no. 5 It all gets out of control, goes another shot and, of 6 course, there wouldn't be any story if they hadn't 7 made the extra shot. 8 So another sort of thing is we get a 9 videotape in of a basketball half court shot and it's 10 done at half time and the stands are empty, so they've 11 accompanied it with an article from the Des Moines 12 Register that says, you know, here's a little story 13 from the Des Moines Register. So the stands being 14 empty is sort of a little bit of a red herring. Who 15 would spend money for a half court shot in front of an 16 empty gym. So we call the Des Moines Register and we, 17 you know, ask them about the story. They say what 18 story? We fax them a story. They say this never 19 happened. 20 Q. Now, you've given us some -- what I would 21 call somewhat blatant and outrageous examples. Are 22 there incidents that are far more subtle and closer to 23 the line, so to speak? 24 A. Sure. 25 Q. What's SCA's policy in your experience in</p>
<p style="text-align: right;">Page 994</p> <p>1 handle, and then I manage the few cases that scoot out 2 to litigation by keeping track of expenses, engaging 3 outside counsel, trying to see that we are on the same 4 page between SCA and our outside counsel. 5 Q. And you're a graduate of what law school? 6 A. University of Texas. 7 Q. Now, in connection with your work at SCA, 8 have you ever had to deal with claims made by 9 customers that appeared suspicious or perhaps even 10 fraudulent? 11 A. Yes. 12 Q. Is it a frequent occurrence? 13 A. I can think of three or four off the top of 14 my head. 15 Q. Give us an -- some examples of the kinds of 16 things that SCA sees in these sorts of claims. 17 A. Sinbad is an entertainer, he's doing the 18 Orange Peel promotion in Stillwater, Oklahoma. He's 19 got ahold of the microphone, there's a football toss, 20 so they pull someone from the stands, they offer him a 21 football, they show him a target 25 yards away, some 22 distance, and they give him a chance to take a toss. 23 So he takes the toss and he misses. 24 The contract clearly states they're 25 entitled to one toss, but Sinbad, a little over-juiced</p>	<p style="text-align: right;">Page 996</p> <p>1 looking at these claims with respect to denial of 2 claims? 3 A. The business interest in the industry demands 4 a reputation for paying anything close. I can think 5 of an example where a USC student steps a foot and a 6 half over or two feet over the half court line and 7 again it's on videotape. He's clearly signed 8 something that says he has to take a running start 9 from behind the half court line, he has to release the 10 ball from behind the half court line. He gets caught 11 up in the moment, he goes over a couple of feet and, 12 of course, as always there's no story except the shot 13 goes in and in that case, you know, I go to Mr. Hamman 14 and I say, you know, he broke the rules. Mr. Hamman 15 says, we have to pay the claim. 16 Q. You sort of levied my next question. Who is 17 it at SCA that ultimately has the authority to approve 18 or deny the claims? Is it you? 19 A. Not for anything over, say, five or \$10,000. 20 Q. So who does have that authority? 21 A. Bob Hamman. 22 Q. So in connection with your investigation that 23 you would do with claims, who ultimately would approve 24 or disapprove those? 25 A. Bob Hamman.</p>

Pages 993 to 996

Page 997

1 Q. In connection with the claim that brings us
 2 here today, does Mr. Hamman have that sole authority?
 3 A. Yes.
 4 Q. Now, you mentioned that sometimes business
 5 reasons demand you pay claims even though perhaps the
 6 kid's foot was a bit over the line or not. Let's talk
 7 about this particular claim. Has it been, in your
 8 opinion or your understanding, adverse to SCA's
 9 business interest to take and deny the claim in this
 10 case?
 11 A. Absolutely. It's been very detrimental to
 12 the business.
 13 Q. Why did SCA deny the claim in this case?
 14 A. SCA denied the claim in this case because
 15 when we rate cases, we look at essential variables.
 16 Essential variable would be the age of the rider,
 17 prior history and sort of the age of similar riders or
 18 the performance of similar riders at that age. We do
 19 not or did not know at that time to rate doping
 20 doctors, and clearly it's turned out in the sport of
 21 cycling that riding your feet in a circle is not
 22 terribly skillful as compared with, say, playing
 23 baseball or football or basketball, and that doping
 24 plays an incredibly important part of who wins. And
 25 had we known that, we would have backed off and backed

Page 998

1 out, because when we get to the cutting edge science,
 2 we realize we are not capable of keeping track of
 3 cutting edge science.
 4 Q. Now, you were not involved in connection with
 5 the underwriting or the negotiation of the particular
 6 contract in this case?
 7 A. No.
 8 Q. That was Mr. Hamman?
 9 A. Yes.
 10 Q. What was your involvement in this case --
 11 first, let me ask you this, when did you get involved
 12 in this case?
 13 A. I became involved in this case sometime
 14 shortly after we reviewed media surrounding the
 15 2000 -- well, the publication of David Walsh's book.
 16 Q. And what is it you were asked to do in
 17 connection with this case upon reviewing that medium?
 18 A. I was asked to examine the possibility that
 19 Mr. Armstrong had used performance enhancing drugs and
 20 to advise Mr. Hamman as to any evidence supporting or
 21 denying allegations that appeared -- substantially
 22 allegations that appeared in the book and
 23 surrounding -- the events surrounding those
 24 allegations.
 25 Q. Based upon what you were told in your

Page 999

1 involvement in that process, was there any discussion
 2 that SCA was prepared to or had already decided to
 3 deny Tailwind's claim if Mr. Armstrong won the Tour de
 4 France?
 5 A. Absolutely not. That would be business
 6 suicide, because the mere fact of standing up to
 7 Mr. Armstrong, right or wrong, the mere challenge, one
 8 of the reasons that letter is marked anticipation of
 9 litigation is if we start an investigation and we
 10 decide to pay and word gets out in the industry that
 11 we were suspicious, that's as bad as having not paid
 12 as far as -- virtually as bad as having not paid as
 13 far as the impact upon the business.
 14 Q. Was there discussion at that time period
 15 regarding the possible adverse publicity that might
 16 result to SCA if, in fact, it took the position that
 17 it ultimately took?
 18 A. Yes, there was significant discussion that
 19 there would be an enormous amount of destruction to
 20 the goodwill of SCA if we were to attempt to stand up
 21 to someone who was viewed as some sort of virtual
 22 super hero, especially in Texas.
 23 Q. Now, we have talked about what you were asked
 24 to do in connection with the investigation and you
 25 said evidence that both supported or tended to

Page 1000

1 disprove Mr. Walsh's allegations. Were you serious
 2 about looking for things that might undercut
 3 Mr. Walsh's credibility in his book?
 4 A. I was and I believe that I reported back on a
 5 couple or three occasions to Mr. Hamman statements
 6 that were made which would have led one -- well, would
 7 have argued against the allegations in the book.
 8 Q. Now, did you look at -- why were you looking
 9 at -- why was SCA interested in looking at allegations
 10 regarding Mr. Armstrong's alleged use of performance
 11 enhancing drugs during time periods that were not
 12 covered by your contract? For example, one of the
 13 things in the book is the Indiana hospital room in
 14 1996. Your contract covers Tour de France wins from
 15 '01 to '04. Why did that matter to you in your
 16 investigation?
 17 A. Well, with regard to both race fixing,
 18 insurance fraud and doping, it is our thought that
 19 it's extremely hard to quit. It's like mainline
 20 heroin. And more importantly, we would never have
 21 entertained entering into an indemnification agreement
 22 if the indemnitee had a reputation for insurance fraud
 23 or performance enhancing drug use.
 24 Q. Now, you mentioned race fixing. Were there
 25 allegations in Mr. Walsh's book regarding race fixing?

Page 1001

1 A. I believe, as we will hear from Mr. Swart --
 2 Q. Hang on. Before you give your testimony,
 3 just let us know first --
 4 A. Yes.
 5 Q. Okay, thank you. And who is it that
 6 Mr. Walsh says claimed Mr. Armstrong engaged in race
 7 fixing?
 8 A. Stephen Swart.
 9 Q. Okay. Why is allegations of race fixing --
 10 when is it alleged to have occurred?
 11 A. This particular -- the allegation in the book
 12 is from a 1993 pro championship three race series tied
 13 to a million dollar bonus.
 14 Q. Why is it important to you in terms of doing
 15 your investigation for a contract that is talking
 16 about '01 to '04 Tour de France wins whether
 17 Mr. Armstrong engaged in any sort of race fixing in
 18 1993? Why do you care?
 19 A. We will destroy our equity with our risk
 20 takers and our reputation if we fail to report to them
 21 something as significant as race fixing and we
 22 wouldn't go near it with a ten foot pole. We thought
 23 we were dealing with an organized sporting event, not
 24 an orchestrated event.
 25 Q. Well, you don't -- you didn't uncover any

Page 1002

1 evidence whatsoever to suggest there was race fixing
 2 in connection with the Tour de France races under
 3 contract, fair?
 4 A. A shred, but, yes, fair.
 5 Q. So why do you care whether or not
 6 Mr. Armstrong engaged in some impermissible conduct of
 7 race fixing eight years before the Tour de France?
 8 What is it about that that would change somehow
 9 whether or not this claim is due and owing?
 10 A. We would never undergo such a significant
 11 moral hazard. We would stay away from it. We
 12 wouldn't take the risk. We wouldn't want to be
 13 involved with any situation where a competitor had a
 14 history of fraud.
 15 Q. Now, did someone at SCA ultimately talk to
 16 Mr. Swart regarding these allegations?
 17 A. Yes.
 18 Q. Who was that?
 19 A. Robert Hamman.
 20 Q. Was an affidavit or statement obtained from
 21 Mr. Swart corroborating the allegations of Mr. Walsh's
 22 book?
 23 A. Yes.
 24 Q. We're going to talk about when that happened
 25 in a minute in the time frame, but I want to get back

Page 1003

1 to the investigation that you did.
 2 Now, if you'll turn in Claimants'
 3 exhibits, the black binder there, to Exhibit 69,
 4 which is your letter from July 27, 2004. If you'll
 5 get that in front of you.
 6 A. These books are different than yesterday's
 7 books.
 8 ARBITRATOR LYON: What exhibit is it?
 9 MR. TILLOTSON: 69, Claimants'
 10 Exhibit 69.
 11 MR. BREEN: We divided it into two
 12 binders to make it easier.
 13 Q. (BY MR. TILLOTSON) All right. We have put
 14 up on the board and you have in front of you -- this
 15 is a letter that you prepared in July of 2004; is that
 16 right?
 17 A. Yes.
 18 Q. And is this the beginning of your
 19 investigation?
 20 A. Yes.
 21 Q. Is this the starting point for it?
 22 A. Yes.
 23 Q. All right. Now, did this guy -- this man,
 24 Ian Galloway, did he actually do any of the work in
 25 here that you asked him to do?

Page 1004

1 A. None of it.
 2 Q. Did you ever receive a report or any
 3 information from him?
 4 A. No.
 5 Q. Okay. This is two or three days after the
 6 Tour de France; is that right?
 7 A. Yes.
 8 Q. The conclusion of it.
 9 I want to ask you about a couple of
 10 things in here regarding what you're looking for.
 11 Besides -- did you have anything other than
 12 Mr. Walsh's book at this time period as the basis of
 13 your investigation?
 14 A. I don't believe so.
 15 Q. So is it fair to say that the commencement of
 16 your investigation was to look at the allegations in
 17 Mr. Walsh's book?
 18 A. Yes.
 19 Q. All right. And was this letter an attempt to
 20 gather information regarding those allegations?
 21 A. I believe that each item in here can be tied,
 22 to my understanding, to allegations in the book.
 23 Q. Okay. Let's start at the end of the list.
 24 If you'll look at number 6, you asked for information
 25 relating to the Italian trial of Michele Ferrari.

Page 1005

1 Prior to Mr. Walsh's book, were you aware of
 2 Dr. Ferrari, who he was?
 3 A. I don't -- I'm not sure. I might have
 4 vaguely been aware of the doctor, but I don't have a
 5 recollection of knowing the evil character of
 6 Dr. Ferrari.
 7 Q. Were you aware of any relationship between
 8 Dr. Ferrari and Mr. Armstrong prior to your review of
 9 excerpts of Mr. Walsh's book?
 10 A. All the time frame runs together.
 11 There's, you know, an obvious article written by David
 12 Walsh which I'm not sure when I became aware of, but
 13 other than that, cursory awareness of that
 14 relationship, I wouldn't have any idea.
 15 Q. Well, in connection with looking at the
 16 allegations of Mr. Walsh's book, was there any
 17 understanding as you did it that SCA knew that
 18 Mr. Armstrong had an extensive training relationship
 19 with Dr. Ferrari?
 20 A. Absolutely not.
 21 Q. Now, number 5, which is -- well, let me ask
 22 you before we move on. Why is it you wanted
 23 information about Mr. Ferrari, what you were
 24 requesting in number 6?
 25 A. Well, if, as I understood it, and it was an

Page 1006

1 Italian legal system which I understood very little
 2 about, but if I understood the charges, there were
 3 allegations that Dr. Ferrari had prescribed the
 4 androsterol, and I'm not saying it incorrectly. It's
 5 spelled and said in different words, and I can say
 6 that that's the same drug that Anderson found in the
 7 Gerona, Spain apartment in '04.
 8 But basically what we are looking for is
 9 if Armstrong has a relationship with a doctor who's
 10 giving other cyclists performance enhancing drugs,
 11 it's not logically consistent for us to believe
 12 anything other than that there is at least some
 13 likelihood that he's also giving performance enhancing
 14 drugs to Mr. Armstrong.
 15 Q. Did you attempt to contact Dr. Ferrari as
 16 part of your investigation?
 17 A. I did.
 18 Q. Were you successful?
 19 A. I was successful neither with my personal
 20 e-mail nor in my request from Mr. -- of Mr. Herman
 21 that he facilitate our contacting of Mr. or
 22 Dr. Ferrari.
 23 Q. So in connection with your investigation, you
 24 have no -- were unable to obtain any response or
 25 statement from Dr. Ferrari?

Page 1007

1 A. No.
 2 Q. Let's fast forward, as long as we're on this
 3 letter. Did any other events happen with Dr. Ferrari
 4 in connection with your investigation that mattered to
 5 you?
 6 A. Yes, he was eventually convicted of the
 7 illegal practice of pharmacology and sporting fraud.
 8 Q. Do you know if that happened before or after
 9 SCA decided that this claim should be denied?
 10 A. I believe it happened before, October 4th.
 11 Q. Now, if you'll look at number 5 where you're
 12 asking for any evidence of possession by any person
 13 with that list of people there of any syringe,
 14 inhaler, transfusion equipment or blood pack during
 15 the Tour de France. Do you see that?
 16 A. Yes.
 17 Q. Okay. Why is it you want to know of any
 18 evidence of syringes, inhalers, transfusions or blood
 19 pack during the Tour de France?
 20 A. There was an allegation in the Walsh book of
 21 the use of Activogen -- it's calf's blood for lack of
 22 a better understanding of it -- by the team and a
 23 refutation of that allegation in the form of a
 24 statement that Julien de Vriese, the bike mechanic,
 25 was a diabetic and needed Activogen, evidently in very

Page 1008

1 large amounts, for the treatment of his diabetes. I
 2 later found out that Activogen --
 3 Q. Well, if you'll tell us what it is you're
 4 looking for here.
 5 A. In addition, I'm looking for any evidence to
 6 support or refute allegations of performance enhancing
 7 drug use by Lance Armstrong and secondarily by his
 8 team, his domestiques, Tyler Hamilton.
 9 Q. Well, why would it matter if Tyler Hamilton
 10 was doing something inappropriate or illegal in
 11 connection with your investigation of this claim with
 12 Tailwind?
 13 A. The book contains a recitation of a May 2000
 14 training camp in the Pyrenees with Tyler Hamilton,
 15 Lance Armstrong, and I want to say Kevin Livingston
 16 in -- with Dr. Ferrari, and so it's hard for me to
 17 imagine that the man with the fastest times and a
 18 relatively normal VO2 max for an elite athlete to be
 19 beating the other athletes who have the same
 20 relatively normal VO2 maximum and are using
 21 performance enhancing substances.
 22 Q. Now, you were questioned yesterday by
 23 Mr. Herman that you might have been looking for --
 24 that this particular request would extend to an asthma
 25 inhaler held by a receptionist at ESIX, for example.

Page 1009

1 Was that what you were looking for?
 2 A. No. According to Richard Pound in his
 3 publicity, the president of WADA --
 4 MR. HERMAN: Excuse me, Your Honor, this
 5 is --
 6 ARBITRATOR FAULKNER: Go ahead.
 7 MR. HERMAN: I mean, this is a relatively
 8 clever way, I guess, of getting the contents of
 9 triple, quadruple hearsay before the panel, but to ask
 10 Mr. Compton what Mr. Pound said and what --
 11 MR. TILLOTSON: I didn't and I'll
 12 withdraw it. I didn't ask --
 13 MR. HERMAN: -- the allegations --
 14 ARBITRATOR FAULKNER: He's withdrawing
 15 the question. Just go on to your next question,
 16 please.
 17 Q. (BY MR. TILLOTSON) I want to stick,
 18 Mr. Compton, to what you had asked for and what your
 19 rationale was in asking for that and then we will
 20 present whatever evidence we have, okay? So that's
 21 where we are headed on this particular issue.
 22 You were asked a series of questions
 23 yesterday regarding whether or not this request was
 24 too broad. Was this request tied to evidence related
 25 to the Tour de France?

Page 1010

1 A. Yes.
 2 Q. And why was it tied to that? What is it
 3 you're looking for?
 4 A. I'm looking for evidence to either prove or
 5 disprove -- there are some substances that look like
 6 medicine for diabetes, which evidently I have read
 7 there is widespread use in the Peloton. So the
 8 presence of inhalers would have been, without medical
 9 use, therapeutic use exemptions, it would have been to
 10 me evidence performance enhancing substance abuse.
 11 Q. Now, one of the things you asked for in
 12 paragraph 2 was the medical records of Lance Armstrong
 13 dating back to 1988, okay. What was your rationale or
 14 justification for asking to obtain medical records for
 15 that time period? Why is it such a long time period?
 16 A. We had read allegations that Mr. Armstrong in
 17 connection -- or we had become aware of allegations
 18 that in connection with training to be a member of the
 19 1999 Barcelona Olympic team, Mr. Armstrong had
 20 engaged -- had failed a test, and we had knowledge
 21 that there had been a surge of drug use or something
 22 related to an inordinate amount of androsterol among
 23 cyclists beginning in 1988 and so we thought that it
 24 was logical to ask Mr. Armstrong for medical records
 25 going back to as far a period in time essentially as

Page 1011

1 we had first heard of allegations of performance
 2 enhancing substance abuse by Mr. Armstrong.
 3 ARBITRATOR LYON: Let me ask a question.
 4 What kind of inhalers are you talking about that would
 5 be used as performance enhancing inhalers?
 6 THE WITNESS: Yes, there's a substance
 7 used by diabetics that's administered through an
 8 inhaler that, as I understand it, increases lung
 9 capacity or lung efficiency, and I'm not a scientist
 10 and I would defer to our scientist for a more detailed
 11 answer to that.
 12 ARBITRATOR LYON: You don't know the name
 13 of it? Like there's Flonase and all different kinds
 14 like that. Do you know what kind it is?
 15 THE WITNESS: I think now that you
 16 mention Flonase that that might have been in the
 17 media, but no, I don't recall.
 18 ARBITRATOR LYON: That's an asthma
 19 inhaler?
 20 THE WITNESS: Yes.
 21 ARBITRATOR LYON: Okay. Well, that's
 22 what you're talking about?
 23 THE WITNESS: I believe that we were -- I
 24 don't know what we wrote, how artfully it was drafted,
 25 but I believe that we had knowledge that there was an

Page 1012

1 epidemic of asthmatics in the Peloton.
 2 ARBITRATOR LYON: Okay, all right. I was
 3 just trying to -- I know a lot about inhalers. I
 4 didn't know --
 5 THE WITNESS: I did not.
 6 Q. (BY MR. TILLOTSON) Okay. I want to turn now
 7 to the people identified in this letter, Mr. Compton,
 8 which is at the bottom, that you've asked for
 9 information from this investigator about. One is
 10 Mr. Walsh, and did SCA ultimately meet with and speak
 11 with Mr. Walsh?
 12 A. Yes.
 13 Q. Were you part of that meeting?
 14 A. No.
 15 Q. Was that Mr. Bandy and Mr. Hamilton?
 16 A. Yes.
 17 Q. The next person is Ms. O'Reilly that's listed
 18 on here. Was SCA ultimately able to meet with
 19 Ms. O'Reilly?
 20 A. Yes.
 21 Q. Were you part of that meeting?
 22 A. No.
 23 Q. Who was it at SCA that did that?
 24 A. John Bandy.
 25 Q. In connection with the meeting with

Page 1013

1 Ms. O'Reilly and your investigation, were the
 2 allegations in the book corroborated by Ms. O'Reilly?
 3 A. Corroborated and surpassed.
 4 Q. We have talked about the third one is Ferrari
 5 and the fourth one is Tyler Hamilton. Did you have
 6 any contact with Tyler Hamilton?
 7 A. Mr. Jacobs won't let me talk to Mr. Hamilton.
 8 Q. Is Mr. Jacobs Mr. Hamilton's lawyer?
 9 A. Yes.
 10 Q. Now, did you talk with numbers 5 and 6, John
 11 LeBlanc?
 12 A. No, John LeBlanc would have been Thibeault
 13 and/or John Bandy.
 14 Q. Did you meet with number 7, Greg and Kathy
 15 LeMond?
 16 A. No.
 17 Q. Did someone from SCA?
 18 A. Yes.
 19 Q. Who?
 20 A. John Bandy and Bob Hamman.
 21 Q. Were you reported the results of that meeting
 22 in connection with your investigation?
 23 A. Did I report --
 24 Q. Was it told to you the results of that
 25 investigation?

Page 1014

1 A. Yes.
 2 Q. Now, once this letter goes out and this
 3 request for information between the July and the first
 4 of September time period, what things did you do in
 5 connection with the investigation?
 6 A. We began to try to establish the credibility
 7 or inquire about rather than establish, inquire about
 8 the credibility of the authors of the book and the
 9 underlying principal people involved in the
 10 allegations.
 11 Q. If you will turn now to Respondents'
 12 exhibits, which were there in the blue binder, and I'm
 13 going to put in front of you a series of letters that
 14 involve you. I'm going to start off with
 15 Respondents' Exhibit 26. Mr. Hamman has already
 16 testified about this, so I'm not going to go over it
 17 much with you, just to orient ourselves. If you'll
 18 assume with me that the payment date for the claim
 19 under the contract is September 3rd or 30 business
 20 days after the Tour de France win, and this letter is
 21 sent on September 2nd, by this date, in connection
 22 with your investigation, had any decision been made by
 23 SCA regarding whether or not to pay or deny the claim?
 24 A. No.
 25 Q. Had you been able to talk to or do you know

Page 1015

1 if SCA had been able to talk to David Walsh, Emma
 2 O'Reilly, the LeMonds or the Andreus by this time
 3 period?
 4 A. I did not.
 5 Q. Had you obtained any of Mr. Armstrong's
 6 medical records by this particular time period?
 7 A. No.
 8 Q. I notice there's a request for an execution
 9 of valid medical authorizations or releases by
 10 Mr. Armstrong to facilitate that access. Did you ever
 11 obtain that?
 12 A. No.
 13 Q. Now, did you know at this particular point in
 14 time how long your investigation was going to take?
 15 A. No.
 16 Q. All right. If you'll turn to exhibit -- let
 17 me see if I can find it. Hang on a second. Okay.
 18 Exhibit -- Claimants' Exhibit 90, and I'll put it in
 19 front of you here. Claimants' Exhibit 90. Now,
 20 Mr. Hamman's letter goes out on September 2nd and the
 21 next day this response is received. Did you get a
 22 copy of it and look at this response?
 23 A. Yes.
 24 Q. And this is from Temple & Temple by Mr. Larry
 25 Temple?

Page 1016

1 A. Yes.
 2 Q. Okay. Now, in connection with this letter
 3 was there any indication that you were aware of at
 4 this time period from Tailwind that they were going to
 5 cooperate or participate in your investigation in any
 6 way?
 7 A. Well, the second paragraph sort of answers
 8 that question. It says -- obviously the first
 9 sentence must refer to the August 16th e-mail from
 10 Kelly Price.
 11 ARBITRATOR CHERNICK: Are you referring
 12 to the third paragraph?
 13 THE WITNESS: Oh, I am. I'm sorry. I
 14 apologize.
 15 A. So after that, however, beginning with the
 16 second sentence, we can all read it, but the items you
 17 request in your letter are completely irrelevant to
 18 the issue of whether Mr. Armstrong --
 19 THE REPORTER: You're going to have to
 20 read slower.
 21 Q. (BY MR. TILLOTSON) I'm not asking you to
 22 read it, Chris.
 23 A. It's contained, as far as I can see easily,
 24 in the second paragraph, and --
 25 ARBITRATOR CHERNICK: Third paragraph?

Page 1017

1 ARBITRATOR FAULKNER: Third paragraph.
 2 THE WITNESS: Third paragraph, sorry.
 3 Q. (BY MR. TILLOTSON) Let me ask something
 4 while we're on it since you brought it up. Ms. Price
 5 did send Mr. Hamman an e-mail in August of 2004
 6 containing an excerpt from Christian Varin at the UCI
 7 regarding Mr. Armstrong's not testing positive in the
 8 2004 Tour de France.
 9 A. Yes.
 10 Q. And you are aware of that e-mail and saw it
 11 at some point in connection with your investigation?
 12 A. Yes.
 13 Q. Why isn't that enough? Why can you not
 14 assume from that e-mail and those test results that
 15 there's no truth to the allegations you're
 16 investigating?
 17 A. We had asked for test results and we received
 18 a blanket statement clipped from someone else's e-mail
 19 stating that Mr. Armstrong had never tested positive.
 20 And also the e-mails talk about things that I'm not
 21 sure the UCI actually tested for, so it's come to my
 22 attention that that's a bit odd.
 23 Q. Now, in connection with this letter from
 24 Mr. Temple, was there any threat that SCA's conduct
 25 might result in adverse publicity?

Page 1018

1 A. Yes. I believe that if you look at the top
 2 of the second page, the overflow paragraph, it's
 3 basically the first sentence of the bottom of the
 4 page. It says if we don't pay, we will consider all
 5 our legal alternatives, but we are fully prepared to
 6 consider public relations alternatives, including a
 7 press release on SCA's refusal to pay the amount it
 8 owes.
 9 Q. Now, I want to turn back to our exhibits,
 10 which is Respondents' Exhibit 27. Did you respond to
 11 this letter from Mr. Temple?
 12 A. I did.
 13 Q. All right. We have Respondents' Exhibit 27
 14 now in front of you, which is a letter dated
 15 September 7th, 2004. Is this your written response to
 16 Mr. Temple's letter that we just saw?
 17 A. Yes.
 18 Q. Okay. Now, in connection with your -- your
 19 letters back and forth with Tailwind, did you inform
 20 Tailwind that you were investigating possible
 21 misrepresentations?
 22 A. I did.
 23 Q. Is that contained in the second paragraph of
 24 this letter?
 25 A. I believe it is.

Page 1019

1 Q. You say at the bottom there of the second
 2 paragraph, further, it is our view that proof of the
 3 use of banned substances or processes might entitle us
 4 to recover any prior amounts paid to Disson Furst/
 5 Tailwind, or Lance Armstrong, under the contract. Was
 6 that SCA's position at the time?
 7 A. Yes.
 8 Q. And is that SCA's position in connection with
 9 this arbitration?
 10 A. It is.
 11 Q. Now, if you'll look at the next paragraph,
 12 can you tell us what you were notifying Tailwind about
 13 when you said -- when you wrote, the purpose is to
 14 ensure that the terms of the contract have been
 15 complied with in good faith and fair dealing and to be
 16 assured that any and all material representations made
 17 at the time of contract formation and upon which we
 18 relied were true and materially complete? What is it
 19 you're trying to notify Tailwind about?
 20 A. I'm trying to notify them that we have a
 21 misrepresentation with them if, in fact, they have
 22 failed to disclose and omitted and, in fact, lied
 23 about whether they use performance enhancing drugs.
 24 Q. Now, in connection with this letter or any
 25 letter you wrote, did Tailwind ever offer to answer

Page 1020

1 questions regarding your investigation into
 2 Mr. Walsh's book?
 3 A. I believe they not only refused to, but they
 4 told us we didn't have any right to and to stop.
 5 Q. Okay. If you'll turn to Respondents'
 6 Exhibit 28, which is the next letter, this is three
 7 days later, September 10th. And you are now
 8 responding to Mr. Herman, so I take it at this point
 9 Mr. Herman has become involved and written a demand
 10 letter?
 11 A. Yes.
 12 Q. In connection with this letter, did you
 13 also -- were you intending to notify Tailwind
 14 regarding the possibility of misrepresentation?
 15 A. Yes.
 16 Q. If you'll turn your attention to the third
 17 paragraph starting, your implications notwithstanding,
 18 our present obligations under the contract would be
 19 affected by a determination that Mr. Armstrong used
 20 banned drugs or processes to enhance his performance
 21 in the Tour de France or by determination that your
 22 client made material misrepresentations or omissions
 23 upon which SCA was intended to rely. What position or
 24 statement are you attempting to notify Tailwind
 25 regarding?

Pages 1017 to 1020

Page 1021

1 A. I'm attempting to notify Tailwind that we
 2 have credible allegations -- what appear to be
 3 credible allegations that we need time to look into,
 4 that, if proven true, constitute misrepresentations
 5 which would entitle us to declare the contract null
 6 and void.
 7 Q. Now, this was September 10th, 2004. Had SCA
 8 made a decision or determination as to whether or not
 9 it was going to pay Tailwind or deny the claim?
 10 A. No.
 11 Q. Had SCA met with the Andreus, Ms. O'Reilly or
 12 the LeMonds at this point in time?
 13 A. No.
 14 Q. Yesterday you testified that in connection
 15 with a December 20th, 2004 hearing in litigation
 16 between the parties that SCA made it clear that it was
 17 denying the claim. Do you recall that?
 18 A. Yes.
 19 Q. And that was contained in Exhibit 84. So
 20 now we have got -- by December 20th, 2004 had -- SCA
 21 had obviously made a decision that it was not going to
 22 pay the claim?
 23 A. Yes.
 24 Q. Other than these letters that we see here and
 25 Mr. -- and the statements by Mr. Lynn in the courtroom

Page 1022

1 on December 20th, 2004, did you ever sit down and
 2 actually write a letter formally denying the claim?
 3 A. No.
 4 Q. Is there a reason for why there was no
 5 exchange of correspondence with a formal denial of the
 6 claim between SCA and Tailwind, as you understand it?
 7 A. SCA was not aware that it was an insurance
 8 company. It wasn't operating under those standards at
 9 that time.
 10 Q. By the time you had written this
 11 September 10th, 2004 letter or shortly thereafter, was
 12 litigation commenced between the parties?
 13 A. Yes.
 14 Q. Was that the state court lawsuit in which
 15 Mr. Lynn ultimately made his statements?
 16 A. Yes.
 17 Q. And did that state court lawsuit lead to this
 18 proceeding?
 19 A. It did.
 20 Q. Now, I want to create a time line for a few
 21 moments with respect to the issue of notice.
 22 ARBITRATOR FAULKNER: I think we have a
 23 request from the witness to take a quick break.
 24 (Recess 9:45 a.m. to 9:51 a.m.)
 25 ARBITRATOR FAULKNER: Please proceed.

Page 1023

1 Q. (BY MR. TILLOTSON) Mr. Compton, I want to
 2 just run through a brief time line regarding a certain
 3 amount of events and I put in front of you
 4 Respondents' Exhibit 29, which is a September 22nd,
 5 2004 letter. Is this something you drafted in
 6 response to Mr. Herman?
 7 A. Yes.
 8 Q. Okay. Now, what I wanted to focus on was the
 9 fourth paragraph of this letter which says that the
 10 point is that without your client's cooperation, SCA
 11 had no alternative than to conduct its own
 12 investigation. Do you see that?
 13 A. Yes.
 14 Q. Okay. Now, no cooperation from Tailwind.
 15 Has SCA at this particular point in time begun to
 16 conduct its own investigation?
 17 A. I'm sorry, I was reading my paragraph.
 18 Q. That's all right. Had SCA begun to conduct
 19 its own investigation during this time period?
 20 A. Yes.
 21 Q. When you wrote this letter, had SCA decided
 22 to deny the claim?
 23 A. No.
 24 Q. And you'll agree with me that there is no
 25 statement of denial of claim in connection with your

Page 1024

1 letter?
 2 A. No.
 3 Q. All right. Now, assume for me for a moment
 4 that, in fact, notice was given of the denial of the
 5 claim on 12-20 of 2004, all right. I want to
 6 backtrack 90 days from that to 9-20, 2004, this 90-day
 7 time period, okay?
 8 A. Yes.
 9 Q. During that time period, that 90-day time
 10 period, which is approximately around the time you
 11 wrote Respondents' Exhibit 29 and December 20th, 2004,
 12 did SCA carry on its investigation?
 13 A. Yes.
 14 Q. Were you involved in that investigation?
 15 A. Yes.
 16 Q. Can you tell us some of the things that SCA
 17 did during that time period that were meaningful to
 18 the investigation?
 19 A. Yes.
 20 Q. All right. Go ahead.
 21 A. I went to Europe once or twice to interview
 22 witnesses.
 23 Q. Okay.
 24 A. Mr. Hamman went to New Zealand. We
 25 contacted, through our Italian counsel, we --

Page 1025

1 Q. Let me ask you before you -- in connection
 2 with the list, first, why was Mr. Hamman in New
 3 Zealand?
 4 A. To speak with Stephen Swart.
 5 Q. Why were you in Europe?
 6 A. To interview witnesses.
 7 Q. Okay. What else?
 8 A. We began to inquire into getting a copy of
 9 the -- let's see, the trial is not over until
 10 October 4th in Bologna, Italy. We began a lengthy
 11 endeavor to try to obtain copies of the transcription
 12 from the trial of Dr. Ferrari.
 13 Q. So that we are oriented, is this the trial in
 14 which Dr. Ferrari was convicted that you recounted
 15 earlier?
 16 A. Yes.
 17 Q. Was that material to your investigation?
 18 A. Yes.
 19 Q. Okay. We have got you going to Europe,
 20 Mr. Hamman going to New Zealand to confirm with
 21 Mr. Swart the Ferrari trial conviction. What else
 22 happened during this 90-day time period?
 23 A. I believe we were meeting with David Walsh
 24 and Greg LeMond.
 25 Q. Okay. Anything else? Let me ask it this

Page 1026

1 way, did you or people from SCA meet with Emma
 2 O'Reilly during this time period?
 3 A. Yes.
 4 Q. What about the Andreus, was there a meeting
 5 with the Andreus during this time period?
 6 A. I don't believe -- well --
 7 Q. Who had the meeting with the Andreus, was it
 8 you or someone else?
 9 A. It would have been Bob Hamman and John Bandy,
 10 if there was a physical meeting.
 11 Q. And did the Andreus, to your knowledge, in
 12 connection with your investigation confirm the
 13 allegations in the book regarding the Indiana hospital
 14 incident?
 15 A. Clearly.
 16 Q. Was that material to SCA's investigation?
 17 A. Absolutely.
 18 Q. Now, during this 90-day time period is it
 19 fair to say that SCA reached a decision regarding the
 20 truth or falsity of the allegations in Mr. Walsh's
 21 book?
 22 A. Yes.
 23 Q. And what was the result of these things that
 24 we have identified here: going to Europe, confirming
 25 with Mr. Swart the Ferrari conviction, the meetings

Page 1027

1 with O'Reilly, the confirming with the Andreus, what
 2 did that ultimately lead SCA to conclude?
 3 A. That by more than a preponderance of the
 4 evidence it was clear that Mr. Armstrong had engaged
 5 in insurance fraud and the use of performance
 6 enhancing substances.
 7 Q. And did that form the basis of the statement
 8 offered by Mr. Lynn in open court?
 9 A. Yes.
 10 Q. Now, after December 20th, despite Mr. Lynn's
 11 statement in open court, did SCA's investigation
 12 continue?
 13 A. Certainly.
 14 Q. At some point in time did it merge with the
 15 litigation that brings us here today and discovery in
 16 connection with that litigation?
 17 A. Yes.
 18 Q. I want to ask you about a couple of things
 19 that happened in connection with that investigation
 20 that you were questioned about yesterday, but before I
 21 do that, I'd like you to turn to Exhibit 31,
 22 Respondents' Exhibit 31?
 23 First, the file folder, is this -- what
 24 are we looking at here, this one here?
 25 A. I actually don't know what -- the first page,

Page 1028

1 arbitration matters, where that came from. I didn't
 2 have anything to do with that.
 3 Q. Okay. Fair enough.
 4 A. The second page are notes that I prepared the
 5 morning of my deposition in preparation as -- as a
 6 lawyer I just have to write things down, and not
 7 having -- at this moment not having a pad and writing
 8 things down is driving me a little -- but I did this
 9 because I wanted to make sure that I would have some
 10 chance of remembering things in case I was asked. I
 11 thought I was going to be asked about the results of
 12 the investigation.
 13 Q. Okay. I want to just identify a couple of
 14 these and place them as to whether or not you learned
 15 these during the 9-20 to 12-20 time period or
 16 thereafter. We have discussed most of them, but I
 17 want to focus on first Lance's -- Mike Anderson's
 18 admission. Do you see that?
 19 A. Uh-huh.
 20 Q. Did you recall learning about that during
 21 this 90-day time period or sometime thereafter?
 22 A. I don't recall when the hearing was -- when
 23 the -- when the pleadings were filed in that matter,
 24 but I can assure you that if we had a copy of the
 25 pleadings, which we do somewhere, that within a week

Page 1029

1 or five days -- as fast as possible I requested copies
 2 of those pleadings. So it would be -- whatever the
 3 date of filing of the Anderson pleadings would be the
 4 answer to that question.
 5 Q. Okay. And if you'll turn the page, you've
 6 got something marked admissions. Do you see that?
 7 A. Yes.
 8 Q. And this is a list of what?
 9 A. These are a list of what I believe to be
 10 Lance Armstrong's admissions of his own use of
 11 performance enhancing substances.
 12 Q. And the two pages we are looking at are
 13 handwritten notes you put together for your deposition
 14 sort of summarizing the highlights of your
 15 investigation?
 16 A. Correct.
 17 Q. There isn't really -- is there any formal
 18 report that you prepared detailing everything you
 19 found?
 20 A. No.
 21 Q. All right. In connection with your continued
 22 efforts -- and it's fair to say that you have been
 23 substantially involved in this matter since July of
 24 2004 up to today?
 25 A. Yes.

Page 1030

1 Q. In connection with your ongoing efforts, one
 2 of the things you did was you grabbed some gum
 3 discarded by Mr. Armstrong out of a trash can in Judge
 4 Canales's courtroom, true?
 5 A. Yes.
 6 Q. Now, other than collecting something to sell
 7 on eBay, what was your purpose in grabbing that gum?
 8 What allegation were you specifically trying to prove
 9 or disprove by grabbing that gum out of the state
 10 courtroom?
 11 A. Well, Mr. Armstrong continually has stated
 12 that they have samples of his from the 2000 Tour de
 13 France that have been tested for performance
 14 enhancing -- specifically for EPO and that they were
 15 clean, and we had read the allegations and inquired
 16 from the individual as to -- which had tested those
 17 samples and both the allegations in the book and the
 18 individual had told us that in their opinion as a
 19 scientist, the urine had been -- was overly clean, and
 20 that led us to the thought of urine substitution,
 21 which has been well documented in literature regarding
 22 cycling.
 23 Q. So how is grabbing some gum out of the trash
 24 can going to help you determine whether or not there
 25 was urine substitution by Mr. Armstrong in connection

Page 1031

1 with the 2000 Tour de France?
 2 A. Well, I was never going to get a sample from
 3 Mr. Armstrong of his DNA, and, in fact, this would
 4 provide me with the DNA type. At the time I grabbed
 5 it I thought I might actually be able to test it for
 6 performance enhancing substances also, but my
 7 knowledge of this whole thing being pretty limited, it
 8 was later made clear to me that the sample was
 9 insufficient for that purpose and that it could be DNA
 10 typed, but it could not be tested for performance
 11 enhancing substances.
 12 Q. Have you been able to get access to the
 13 release of the 2000 samples to try and test the DNA to
 14 see if there had been urine substitution?
 15 A. No.
 16 Q. Now, one of the other things that Mr. Herman
 17 cross-examined you on yesterday was the retention of a
 18 private investigator in connection with the 2005 Tour
 19 de France. Can you explain to the panel why SCA hired
 20 a private investigator to watch Mr. Armstrong in 2005
 21 when your contract only covered liability through
 22 2004?
 23 A. Well, Mr. Armstrong had publicly issued a
 24 press release disassociating himself from any further
 25 contact with Dr. Ferrari. Despite that, we had

Page 1032

1 received word that Dr. Ferrari and Mr. Armstrong were
 2 in Gerona, Spain in March of 2005 and the conclusion
 3 was that if Mr. Armstrong was continuing his
 4 relationship with Dr. Ferrari in the face of his press
 5 release that there could only be one reasonable
 6 explanation and that that was Dr. Ferrari was aiding
 7 him with the use of performance enhancing drugs.
 8 Q. Now, yesterday in cross-examination of you,
 9 Mr. Herman showed you some e-mails from Kelly Price.
 10 You know who she is, don't you?
 11 A. Yes.
 12 Q. She is a -- was -- worked for ESIX in
 13 connection with this matter; is that right?
 14 A. Correct.
 15 Q. Criticizing SCA's conduct, do you recall
 16 that?
 17 A. As ESIX -- as Tailwind's agent, yes.
 18 Q. Right. Now, that's my question. What's
 19 Ms. Price's relationship to Tailwind in this matter at
 20 that time?
 21 A. As stated in her deposition, she's their
 22 representative or their agent.
 23 Q. Did it surprise you that Tailwind's agent was
 24 criticizing you during that time period?
 25 A. Not only did it not, it was sort of de

<p style="text-align: right;">Page 1033</p> <p>1 rigueur.</p> <p>2 Q. Now, the basis of your investigation in the</p> <p>3 events we have seen here and as you've detailed, I</p> <p>4 want to tie that in now with the contract at issue</p> <p>5 here. What conclusions did SCA reach regarding</p> <p>6 Mr. Armstrong and Tailwind as a result of the work you</p> <p>7 and others at SCA did?</p> <p>8 A. We reached the conclusion that by greater</p> <p>9 than a preponderance of the evidence Mr. Armstrong had</p> <p>10 engaged in insurance fraud and the use of performance</p> <p>11 enhancing substances and that by doing so SCA had been</p> <p>12 defrauded.</p> <p>13 Q. Is this an effort by SCA to simply not pay</p> <p>14 the money?</p> <p>15 A. No.</p> <p>16 Q. Is this a popular position within SCA?</p> <p>17 A. It is not a popular position within our own</p> <p>18 employees, particularly our sales staff who probably</p> <p>19 are having interaction with clients. And the sales</p> <p>20 staff would just as soon we paid every claim that ever</p> <p>21 came in.</p> <p>22 Q. Why not pay this one, why challenge this</p> <p>23 claim?</p> <p>24 A. Well, you know, somebody has got to stand up</p> <p>25 and look into what's going on, and you can use public</p>	<p style="text-align: right;">Page 1035</p> <p>1 name of the French masseuse who was involved in the</p> <p>2 Festina scandal, or perhaps he's Dutch, I don't know.</p> <p>3 I don't guess that makes too much difference. Can you</p> <p>4 tell the panel why Mr. Lorenzo wasn't advised of that?</p> <p>5 A. I would be dealing with any representations</p> <p>6 made by SCA to Mr. Lorenzo.</p> <p>7 Q. That would be a deviation from the company's</p> <p>8 policy of informing your risk takers, wouldn't it?</p> <p>9 A. If that occurred in the manner you described,</p> <p>10 then I believe that Mr. Hamman would have expressed</p> <p>11 his judgment as to what should be communicated, what</p> <p>12 shouldn't be communicated and I wouldn't comment on</p> <p>13 it.</p> <p>14 Q. This is by far, by many, many magnitudes the</p> <p>15 largest risk, the largest payout that SCA has ever</p> <p>16 retained that it didn't lay off, isn't it?</p> <p>17 A. Certainly not by many magnitudes, no, but</p> <p>18 otherwise it is the largest.</p> <p>19 Q. Out of SCA's pocket I'm talking about.</p> <p>20 A. Certainly not by many magnitudes.</p> <p>21 Q. What's the next largest?</p> <p>22 A. The 3 million under the Ameritech that was</p> <p>23 alleged.</p> <p>24 Q. I'm talking about having to pay the claim --</p> <p>25 and incidentally, talking about Ameritech, that was</p>
<p style="text-align: right;">Page 1034</p> <p>1 policy reasons, you can use the business reasons,</p> <p>2 which is what SCA did, but SCA cannot take risks and</p> <p>3 allow people to materially change the risk and profit</p> <p>4 from doing so. We have to put -- everyone has to know</p> <p>5 that in egregious cases SCA has the ability to defend</p> <p>6 itself, and our risk takers would be silly to</p> <p>7 participate with us in any future risks if they</p> <p>8 thought we could allow ourselves to be run over.</p> <p>9 Additionally, we had the possibility of</p> <p>10 legal exposure to our risk takers in the form of Swiss</p> <p>11 Re, AIG, Lloyds, et cetera -- not Lloyds.</p> <p>12 MR. TILLOTSON: Thank you, Mr. Compton.</p> <p>13 Pass the witness.</p> <p>14 RE-DIRECT EXAMINATION</p> <p>15 BY MR. HERMAN:</p> <p>16 Q. Mr. Compton, I think you mentioned that the</p> <p>17 central variable that you would look at was the age of</p> <p>18 the rider, and you testified that pedaling the bike is</p> <p>19 not particularly skillful and that if there was any</p> <p>20 issue about this sport, that you would be obligated to</p> <p>21 notify your risk takers, correct?</p> <p>22 A. Yes.</p> <p>23 Q. Mr. Hamman, you heard him testify that he</p> <p>24 knew all about this issue in '98, two years before he</p> <p>25 was approached with this risk, and even down to the</p>	<p style="text-align: right;">Page 1036</p> <p>1 \$50,000 that was agreed upon as the maximum, was it</p> <p>2 not?</p> <p>3 A. Eventually, yes; not the initial pleadings.</p> <p>4 Q. All right. So the bottom line is, leaving</p> <p>5 out the many magnitudes, this is the largest where SCA</p> <p>6 itself is on the hook?</p> <p>7 A. I believe I said that, yes.</p> <p>8 Q. Now, you mentioned to Mr. Tillotson that</p> <p>9 there were a couple of occasions where you reported</p> <p>10 positive information that was received from a source.</p> <p>11 A. Uh-huh.</p> <p>12 Q. You're referring to the two instances</p> <p>13 reflected in Claimants' Exhibit 67, that is, Marty</p> <p>14 Jemison and Mark Gorski, aren't you?</p> <p>15 A. Fran Miller, Phil Anderson.</p> <p>16 Q. Do you have memos of those interviews?</p> <p>17 A. I would guess not, no.</p> <p>18 Q. And, of course, the two memos that we do have</p> <p>19 are dated July 19, 2005 and September 7, 2005, long</p> <p>20 after you made your decision not to pay, correct?</p> <p>21 A. Correct.</p> <p>22 Q. Now, you talked to Mr. Tillotson about</p> <p>23 Claimants' Exhibit 69, which is the letter of July</p> <p>24 the 27th, the request for an investigation in</p> <p>25 anticipation of litigation?</p>

Pages 1033 to 1036

Page 1037

1 A. Correct.
 2 Q. Certainly you wouldn't dispute that the
 3 object or intent of what you were looking to discover
 4 is incorporated in your letter, whether Mr. Galloway
 5 undertook it or not?
 6 A. Yes.
 7 Q. Okay. Now, your investigation has been
 8 ongoing at least since July of 2004?
 9 A. Correct.
 10 Q. Look at number 1 there.
 11 A. Yes.
 12 Q. You have no evidence of communications that
 13 are covered here that would relate to any use of
 14 performance enhancing substances by Mr. Armstrong, do
 15 you?
 16 A. I'm sorry, say it again, please.
 17 Q. You've asked for communications between those
 18 people and you have nothing after a year and a half
 19 that would fall in that category, do you?
 20 A. Not true.
 21 Q. Well, do you have communications between
 22 employees of Mr. Armstrong? Are you talking about
 23 Mr. Anderson maybe?
 24 A. I'm talking about communications between
 25 William Stapleton and Stephanie McIlvain.

Page 1038

1 Q. Okay. All right. Anything else?
 2 A. I think it's fair to say nothing -- nothing
 3 significant enough to mention.
 4 Q. And it goes without saying --
 5 ARBITRATOR LYON: I'm sorry. I didn't
 6 hear that. You're facing that way.
 7 THE WITNESS: I'm sorry, nothing
 8 significant enough to mention.
 9 Q. (BY MR. HERMAN) And it goes without saying
 10 that the only races -- the only liability that SCA
 11 insured was Tailwind's liability to Armstrong for
 12 performance awards made for four races, the Tour de
 13 France in 2001, 2002, 2003 and 2004; that's fair to
 14 say, is it not?
 15 A. Yes.
 16 Q. You've got nothing that relates to any of
 17 those four races, do you, that's requested in
 18 number 1? I mean, by definition, Mr. Compton, let me
 19 make it easy for you, this e-mail that --
 20 A. Right, I understood.
 21 Q. -- between Stapleton and McIlvain relates to
 22 something that happened in 1996?
 23 A. Correct.
 24 Q. Now, number 2, you wanted those medical
 25 records because you know as a lawyer and as anyone,

Page 1039

1 any lay person would know, that if there were medical
 2 histories taken that included any information about
 3 performance enhancing drugs, they would show up.
 4 That's why you wanted those medical records, isn't it?
 5 A. I certainly wanted to check to see if the
 6 records contained it. If you're characterizing me to
 7 believe that Mr. Armstrong's admissions were recorded
 8 in his medical records, no, I don't believe that, but
 9 I believed there was a possibility that they might
 10 have been.
 11 Q. So it's your position that a teaching
 12 hospital of the repute of Indiana University in 1996
 13 with a man with brain cancer and testicular cancer,
 14 that the doctors, attending physicians, would not
 15 record such a statement in the medical records; is
 16 that your position?
 17 A. My position would be that if the doctor felt
 18 that the use was irrelevant to the treatment, that it
 19 could be in his professional judgment not to report it
 20 in the medical records. He would know the damage he
 21 would be doing to Mr. Armstrong if the records were
 22 disclosed.
 23 Q. Well, let's be frank about it, Mr. Compton.
 24 In 1996 in October nobody expected Mr. Armstrong to
 25 ever get on a bicycle competitively again, you know

Page 1040

1 that?
 2 A. Okay. That's fair.
 3 Q. Now --
 4 A. Actually, you know, Mr. Armstrong was going
 5 to great lengths to get special treatment to maintain
 6 the capacity of his lungs. He went out of his way to
 7 cease his treatment in Austin and go to Indiana for
 8 that express purpose. So certainly your statement is
 9 not true. Mr. Armstrong himself certainly expected to
 10 get back on a bicycle again.
 11 Q. Is that why he deferred the discovery of
 12 brain tumors to his trip to Indiana?
 13 A. Deferred discovery of his brain tumor --
 14 Q. And his brain surgery until he got to
 15 Indiana?
 16 A. You brought up these brain lesions, and I
 17 looked at these brain lesions and the information I
 18 had is that the treatment could not leap the blood
 19 barrier to the brain and that in the opinion of the
 20 pathologist that I consulted with, Mr. Armstrong would
 21 be dead if he had had those brain lesions. However,
 22 there are other reported cases of such miracle cures,
 23 so we are past my knowledge.
 24 Q. Are you even suggesting that Mr. Armstrong
 25 underwent brain surgery as a charade?

Page 1041

1 A. No, I'm suggesting that medical science is
 2 not exact.
 3 Q. Okay. Well, in any event, these medical
 4 records with respect to his hospitalization have been
 5 available to you for ten days, more or less. Did you
 6 all get right on up there and review them?
 7 A. Actually, I've offered to, but we have been a
 8 little busy and we are going to do that.
 9 Q. Okay. Number 3, you have no evidence of the
 10 acquisition by Mr. Armstrong, let me just put it this
 11 way, during -- at any time -- well, strike that.
 12 At least during the races that you have
 13 some connection with, that is, SCA has some connection
 14 with, you've got no information relating to that, do
 15 you?
 16 ARBITRATOR LYON: What exhibit is this
 17 again?
 18 MR. HERMAN: Number 69, it's Claimant's
 19 69.
 20 A. Well, other than the delivery to the Tour de
 21 France on the off day in 2005, no.
 22 Q. (BY MR. HERMAN) What, an ice chest; is that
 23 what you are talking about?
 24 A. Yes.
 25 Q. Do you know what was in the ice chest?

Page 1042

1 A. No. I know it came from a pharmacology lab.
 2 Q. Okay, number 4. Do you have anything that
 3 relates to any of the four races we have talked about
 4 or that are at issue here?
 5 A. Oh, I believe we do.
 6 Q. Okay. What --
 7 A. I believe the whole Activogen -- and I've got
 8 to read this again. We are on number 4 or number 3?
 9 Sorry.
 10 Q. Number 4. We are on that now.
 11 A. Okay. Okay. Now, I'm not familiar enough
 12 with the Tour de France, but within 24 hours of the
 13 mountain stage we would have, I believe, both the
 14 Activogen for Hugues Huet and, again, the delivery of
 15 the ice chest on the off days in 2005.
 16 Q. The Activogen incident you're talking about
 17 is from 2000, is it not?
 18 A. Yes, I get confused. If I said '03, I
 19 apologize.
 20 Q. Yeah, it was in 2000, and you realize that
 21 the French investigation of the 2000 incident was
 22 widely publicized prior to the time that SCA issued
 23 this insurance contract?
 24 A. Hardly, Mr. Herman.
 25 Q. Okay.

Page 1043

1 A. Hardly was it widely publicized.
 2 Q. Okay. Do you deny it was in The Dallas
 3 Morning News?
 4 A. I wouldn't have knowledge as to whether it
 5 was in The Dallas Morning News.
 6 Q. Well, let me ask you this. The French
 7 authorities, not just the UCI, but the French
 8 authorities resolved that investigation and took --
 9 found no charges against either USPS or Mr. Armstrong;
 10 isn't that true?
 11 A. As a result -- what I believe the judge ruled
 12 was that as a result of her inability to contact the
 13 members of the team, including Mr. Armstrong, as a
 14 witness, despite repeated attempts to have him come
 15 and testify that she was unable to go any further,
 16 yes.
 17 Q. Did you mention to Mr. Hamman when you
 18 reported on this Activogen incident that of all the
 19 teams in the 2000 Tour de France, that the U.S. Postal
 20 Service team was the only team called upon and asked
 21 their permission to test their urine samples with the
 22 new EPO test that wasn't available during the 2000
 23 tour?
 24 A. I don't know that we knew of the exclusivity,
 25 but if -- you know, I would be doing an incredible

Page 1044

1 disservice to my client if I failed to tell him
 2 everything that I thought had any relevance to this
 3 matter, because I could cause him to make a bad
 4 judgment. I wouldn't do that, Mr. Herman. That would
 5 be stupid.
 6 Q. Well, didn't you tell Mr. Mionske up in
 7 Oregon or Washington that your boss, Mr. Compton, was
 8 very wealthy and he would spend five million to save
 9 five million? Did you tell him that?
 10 A. I -- Mr. Mionske called me.
 11 Q. No, I didn't ask you that. I want to know if
 12 that's what you told him and then you can explain your
 13 answer.
 14 A. I certainly have no recollection of saying
 15 anything nearly that aggressive. However, if we
 16 became convinced that we were being defrauded on this
 17 scale and that there was an enormous amount, maybe as
 18 much as \$20 million of total insurance fraud in the
 19 history, it is not inconsistent with any individual,
 20 okay, to basically say I've been cheated, I can show
 21 it, and if I have to spend a lot of money to prove it,
 22 and if I lose, I will pay. An individual is free to
 23 make that judgment.
 24 Q. All right. Well, let's get back to
 25 Exhibit 69. You have nothing, no evidence related to

Page 1045

1 2001 through 2004 as to number 5 either, do you?
 2 A. Well, I think I -- you've said either, and I
 3 think I answered the other questions that I did, but
 4 I'll answer this question specifically.
 5 Q. Okay.
 6 A. Okay. I've heard that the blood transfusions
 7 are passed along through motorcyclists in the Tour de
 8 France, that the blood packets are passed through
 9 motorcyclists in the Tour de France.
 10 Q. Well --
 11 A. You're asking me --
 12 Q. -- I've heard that -- I mean, I don't want to
 13 be flippant with you, but I want to know if you have
 14 evidence that is covered by item number 5, the stuff
 15 that you were looking for when you started this
 16 investigation.
 17 A. Okay. One time you asked me about the 2001
 18 to 2004.
 19 Q. That's what -- I'm still asking you that.
 20 A. Well, okay, but then when you repeat the
 21 question, Mr. Herman, you leave that out, okay, and
 22 the answers are different.
 23 Q. Okay. Let's take them one at a time, 2001
 24 through 2004, do you have any evidence that would be
 25 covered by your definition there in number 5?

Page 1046

1 A. I would be confused as to the years that
 2 Mr. Andreu was on the team.
 3 Q. Well, he was -- left in 2000, sir.
 4 A. I'm sorry?
 5 Q. He left in 2000, just for your purposes.
 6 A. Okay. So I would say no.
 7 Q. Okay. Now, and is the other information you
 8 have what Mr. Andreu testified about?
 9 A. Now I have to reread the question again.
 10 Q. Never mind. I'll withdraw the question,
 11 okay. Let's move on.
 12 Now, number 6, the information related to
 13 the Italian trial of Dr. Ferrari. You referred in
 14 your testimony to him as the evil Dr. Ferrari, right?
 15 A. Yes.
 16 Q. And that there was a great deal of secrecy
 17 surrounding Mr. Armstrong's association with him,
 18 et cetera, right?
 19 A. Correct.
 20 Q. Have you read Lance Armstrong's War?
 21 A. That one I read the first part of.
 22 Q. Did you read -- did you know that during the
 23 2004 tour and for the three or four months prior to
 24 the tour that Mr. Coyle was with Mr. Armstrong
 25 constantly, has chapters and chapters about

Page 1047

1 Dr. Ferrari, about the scientific work that
 2 Dr. Ferrari did? You didn't need to hire a private
 3 investigator to read Lance Armstrong's War, did you?
 4 A. No, I mean, Mr. Tillotson and Mr. Cody -- or
 5 Mr. Towns read that.
 6 Q. And even -- well, I mean, it's throughout
 7 this book.
 8 ARBITRATOR LYON: Did they charge you by
 9 the hour to read it?
 10 MR. TILLOTSON: Double for pictures.
 11 MR. HERMAN: I hope you paid that in
 12 seven days, too.
 13 MR. TILLOTSON: Mr. Herman, since -- you
 14 don't have any objection to the parties using this
 15 book in connection with --
 16 MR. HERMAN: Well, no, I might. I don't
 17 know what else is in it. Mr. Compton has taken the
 18 position that it's a big secret that Mr. Armstrong
 19 associates with Dr. Ferrari or that Dr. Ferrari trains
 20 him and that Dr. Ferrari doesn't do anything but dope
 21 people, and there are pages and pages of the
 22 scientific testing and so forth that this unaffiliated
 23 writer was privy to, so --
 24 MR. TILLOTSON: The only reason -- and
 25 I'll address it to the panel -- the book is

Page 1048

1 copyrighted 2005. I don't know when it came out. But
 2 I'm happy for him to cross-examine any witness on the
 3 book so long as I'm afforded the same opportunity.
 4 MR. HERMAN: Sure. And all I'm doing is
 5 testing, I mean, the obvious, which is that --
 6 ARBITRATOR FAULKNER: He doesn't have an
 7 objection, so why don't you ask your questions and
 8 let's move on.
 9 MR. TILLOTSON: I don't have an
 10 objection.
 11 MR. HERMAN: That's a good point, never
 12 look a gift horse in the mouth.
 13 MR. TILLOTSON: I don't know if I like
 14 being characterized that way.
 15 Q. (BY MR. HERMAN) You don't know what's in the
 16 book, I take it?
 17 A. No, my recollection is that somewhere -- I
 18 read about the first half of the book. I knew that
 19 other people in my office were reading the book and
 20 I'm only one person and I can't do everything and that
 21 I let it go.
 22 Q. Well --
 23 A. I let go finishing the book.
 24 Q. The -- there's a -- there are lengthy
 25 descriptions of Dr. Ferrari's scientific background

Page 1049

1 and the numerous athletes that he has worked with and
 2 so forth in the book. You agree with that, don't you?
 3 A. I don't have much recollection, but I don't
 4 want to be argumentative, if you say so, I'll agree
 5 with that.
 6 Q. Well, and I guess my point is, can you -- is
 7 there any rationale that you can think of or that you
 8 have arrived at that if this relationship was so
 9 secretive and all he did was provide drugs, can you --
 10 do you have a rationale for why Mr. Armstrong would --
 11 would allow Dan Coyle and many others to witness his
 12 training and to publish a book about it --
 13 A. You know, if you're suggesting that I suspect
 14 that Mr. Armstrong would have been stupid enough to
 15 ask people in to treatment for illegal performance
 16 enhancing substances, I would say no. If you're
 17 asking me do I have any evidence that Mr. Armstrong
 18 has concealed his relationship with Dr. Ferrari, I
 19 would say yes.
 20 Q. Okay. Turn to the Claimants' exhibit that
 21 you talked about with Mr. Tillotson, Claimants'
 22 Exhibit 91. You talked to Mr. Tillotson about the
 23 reference to material representations --
 24 A. Correct.
 25 Q. -- at the last -- at the bottom of the last

Page 1050

1 paragraph of that first page, and you say there
 2 material representations made at the time of contract
 3 formation and upon which we rely. Those are the
 4 representations that are contained in your pleadings
 5 in this case, I take it?
 6 A. You know, I'm glad you brought that up,
 7 because I've sort of thought about how we are getting
 8 sort of discombobulated on the pleadings. SCA has
 9 always viewed Tailwind and Lance Armstrong as one.
 10 Lance Armstrong is an employee of Tailwind, so to SCA,
 11 from the beginning, any representations by
 12 Mr. Armstrong or by Tailwind have been viewed as
 13 identical.
 14 Q. Okay. That's SCA's position?
 15 A. I think it's reality.
 16 Q. No, I mean, is that SCA's position in this
 17 case?
 18 A. That -- it is our position --
 19 MR. TILLOTSON: I'm sorry to interrupt.
 20 I mean, I think that's a question more addressed to
 21 lawyers than the witness. I have taken that position
 22 in opening, so...
 23 Q. (BY MR. HERMAN) Okay. The material
 24 representations made at the time of contracting -- of
 25 contract formation --

Page 1051

1 A. You caught me, it should say at or before.
 2 Q. -- and upon which you relied?
 3 A. (Nods head.)
 4 Q. Okay. Well, the representations upon which
 5 you rely in this case are set out in your pleadings,
 6 aren't they?
 7 A. I believe so. They should be, yes.
 8 Q. Now, as I understand it, though, Mr. Compton,
 9 as early as August 16th of 2004 you were convinced
 10 that the UCI did not adequately police by drug testing
 11 the sport?
 12 A. Convinced is a little strong, but we had our
 13 questions.
 14 Q. Well, you said there were substances that
 15 they didn't test for.
 16 A. There are -- you know, what I knew in August
 17 of 2004 on the 16th, was I aware of the information
 18 regarding the perceived corruptness of the UCI and to
 19 the extent and the detail that I am today, absolutely
 20 not.
 21 Q. Now, go to -- go to Claimants' Exhibit 94,
 22 which is your September --
 23 ARBITRATOR CHERNICK: Could I ask if
 24 you're starting a new line that we take a five-minute
 25 break?

Page 1052

1 MR. HERMAN: Sure.
 2 ARBITRATOR FAULKNER: We will take a
 3 five-minute break right now, gentlemen.
 4 (Recess 10:31 to 10:42 a.m.)
 5 ARBITRATOR FAULKNER: Please resume your
 6 questioning.
 7 Q. (BY MR. HERMAN) Mr. Compton, you talked
 8 about Mr. Swart, for example, having signed an
 9 affidavit, et cetera, and Mr. Hamman having gone to
 10 New Zealand. Do you recall that?
 11 A. Yes.
 12 Q. Mr. Phil Anderson was involved in that
 13 incident allegedly?
 14 A. I'm not sure. I'm confused.
 15 Q. In the '93 incident?
 16 A. I would have to check.
 17 Q. Well, did you interview Mr. Anderson?
 18 A. I had one very brief telephone call with him.
 19 Q. Did he repudiate or corroborate?
 20 A. The race fixing?
 21 Q. Right.
 22 A. Mr. Anderson -- the first time I talked to
 23 Mr. Anderson I realized --
 24 ARBITRATOR LYON: Is this the same
 25 Anderson in Austin?

Pages 1049 to 1052

Page 1053

1 MR. TILLOTSON: No, no, different
 2 Anderson. This is Phil Anderson.
 3 MR. HERMAN: No, no, this is Phil
 4 Anderson. This is a 1993 --
 5 A. Much like most of the witnesses, the first
 6 time I contacted him he basically said I don't have
 7 any firsthand knowledge of anything and I don't want
 8 to talk to you. I don't want you to call. I asked if
 9 I could call him back another time, and he said I
 10 could. When I called him back the second time he
 11 basically said that as far as he was concerned,
 12 Mr. Armstrong was a true sportsman.
 13 ARBITRATOR LYON: A what?
 14 A. A true sportsman.
 15 Q. (BY MR. HERMAN) Well, I suppose you
 16 contacted Mr. Petijohn who was head of the Coors Light
 17 team at the time and who has been interviewed about
 18 that incident?
 19 A. Right. There's a quote about Petijohn and
 20 something to do with that incident, and I believe that
 21 someone at SCA has attempted to contact Mr. Petijohn.
 22 Q. You did not?
 23 A. It was done a long time ago.
 24 Q. Okay.
 25 A. And it might have been me.

Page 1054

1 MR. HERMAN: Russell, would you put up
 2 Exhibit 74, please.
 3 Q. (BY MR. HERMAN) This is a letter you wrote
 4 to Mr. Swart's lawyer in New Zealand, did you not?
 5 A. I did.
 6 Q. And you've said that Mr. Hamman went over
 7 there to interview Mr. Swart and didn't -- you know,
 8 had an open mind or whatever when he went over; is
 9 that right?
 10 A. I don't think I testified as to Mr. Hamman's
 11 state of mind.
 12 Q. Okay. All right.
 13 MR. HERMAN: Well, in any event, if you
 14 go -- Russell, go down to the, I think, next to last
 15 paragraph, yes.
 16 Q. (BY MR. HERMAN) Of course, on -- at the time
 17 you wrote this letter, the -- none of the arbitrators
 18 had been appointed in this case, correct?
 19 A. Correct.
 20 Q. Other than -- other than Senator Lyon, we
 21 were waiting on SCA to appoint its arbitrator?
 22 A. Your time recollection is better than mine,
 23 if you say so.
 24 Q. Okay. Fine. And you had no idea what the
 25 rules of the arbitration were going to be?

Page 1055

1 A. Not true.
 2 Q. Okay. Did you believe that all hearsay was
 3 going to be admissible in the arbitration?
 4 A. I believed that informal proceedings of all
 5 kind, whether it's school district termination
 6 proceedings, proceedings before the bar, proceedings
 7 before the medical association, proceedings before
 8 state merit commissions, that any time there's a
 9 situation of limited subpoena power that hearsay is
 10 admissible.
 11 Q. So that it's your impression that as long as
 12 a witness can be subpoenaed, then you should be
 13 protected by the evidentiary safeguards; is that what
 14 your position is?
 15 A. I am no expert on all the different legal
 16 systems in the world. I am aware that there is a
 17 tradeoff or a balancing. This is sort of a -- I don't
 18 know that I've read anything about this. This is my
 19 impression that when you have limited subpoena power,
 20 that hearsay becomes more and more -- at this moment I
 21 would cite the UK legal system. That is the largest
 22 single example that was giving me the reason to
 23 comment on it.
 24 Q. Your statement to Mr. Swart's attorney is
 25 that you require an affidavit in support of the

Page 1056

1 statements made or attributed to Mr. Swart, correct?
 2 A. It clearly says that.
 3 Q. And that predated Mr. Hamman's visit over
 4 there?
 5 A. Yes.
 6 Q. Okay. And then in the last sentence you say,
 7 additionally, helpful hearsay from Mr. Swart is also
 8 desired because the arbitrator must read hearsay prior
 9 to ruling on its admissibility.
 10 A. Correct.
 11 Q. Correct? So did you provide an affidavit to
 12 Mr. Goodger with your correspondence?
 13 A. I don't think so. Does it say there's an
 14 enclosure? It does. Maybe I did.
 15 Q. You haven't provided that affidavit to us
 16 then?
 17 MR. TILLOTSON: If it exists, it was
 18 provided. It was not withheld.
 19 A. Swart's affidavit, I believe, was provided.
 20 Q. (BY MR. HERMAN) All right. Let me move
 21 along. You talked to Mr. Tillotson about these --
 22 MR. TILLOTSON: Well, if I could just
 23 say, I believe the enclosures relates to things that
 24 were part of the letter, like the excerpts of the
 25 book. If there was a draft affidavit included, it

Page 1057

1 would have been produced.
 2 MR. HERMAN: Okay.
 3 MR. TILLOTSON: I haven't seen it, so I
 4 don't think it exists.
 5 A. I'm confused if you were asking about whether
 6 you were asking me about whether a draft affidavit or
 7 an affidavit had been provided, Mr. Herman. You asked
 8 if an affidavit had been provided.
 9 Q. (BY MR. HERMAN) That's fair enough. We can
 10 move on.
 11 The promotions that you talked to
 12 Mr. Tillotson about that involved fraud, do you recall
 13 the basketball and Meat Loaf or whoever it was.
 14 MR. TILLOTSON: Sinbad.
 15 MR. HERMAN: They're both pretty big
 16 guys. I got them mixed up.
 17 Q. (BY MR. HERMAN) But in any event, both of
 18 those instances that you've talked about involved
 19 promotion conducted by the sponsor, right?
 20 A. You know, I want to be completely truthful.
 21 Yes, it appears to me that the promotion is conducted
 22 by the sponsor. Actually, it's implemented by the
 23 sponsor, because the guy throwing the thing is the
 24 conduct of the promotion, so it merges for me. It's a
 25 very difficult thing, but I don't want to argue with

Page 1058

1 you that the promotions in those cases look to be
 2 conducted by the sponsor.
 3 Q. Okay. And when I asked you for a definition
 4 of promotion, just tell me what your definition of
 5 promotion is.
 6 A. Well, a promotion has an incredibly wide
 7 definition. A promotion is something generally to
 8 introduce product or drive trial or move market share
 9 wherein someone, a contestant, a participant, has the
 10 opportunity to gain without consideration.
 11 Q. To gain something of value?
 12 A. Yes.
 13 Q. Paid by the sponsor?
 14 A. I think so, yes.
 15 Q. Always?
 16 A. Well, now, sometimes the payment goes
 17 directly from the risk takers to the -- to the
 18 contestants.
 19 Q. Okay. But the sponsor is responsible for
 20 paying in every instance, correct?
 21 A. Yes.
 22 Q. And in the instance that we are talking about
 23 here, the sponsor is Tailwind, correct, that is, in
 24 contract 31122?
 25 A. Correct.

Page 1059

1 Q. You don't dispute that?
 2 A. I don't believe so, but if we are going to
 3 talk about contract 31122, the way my mind works, I
 4 would like to review it. I'm sorry.
 5 Q. Okay, Exhibit 17.
 6 A. Thank you.
 7 Q. So the promotion, you would agree, involves
 8 the obligation of the sponsor to pay money to
 9 somebody?
 10 A. In a promotion, yes.
 11 Q. Okay. Now, you've gone through this time
 12 line and so forth, but when I asked you what your
 13 position as the investigator was since you've started
 14 this, you told me that what you needed to do was prove
 15 that Armstrong doped before or during the contract and
 16 that's what you tried to do since you started; isn't
 17 that right?
 18 A. Mr. Herman, if we are going to refer to my
 19 deposition, I'd like the line and page reference.
 20 Q. Page 133, line 11 through 22.
 21 ARBITRATOR FAULKNER: I'm sorry, what
 22 were those line cites?
 23 MR. HERMAN: Lines 11 through 22, page
 24 133. I have it here if you want to look.
 25 THE WITNESS: Permission to approach?

Page 1060

1 ARBITRATOR FAULKNER: Usually they're
 2 kind enough to bring it to you.
 3 MR. HERMAN: I'm sorry.
 4 ARBITRATOR FAULKNER: Good chance for
 5 extra exercise.
 6 THE WITNESS: I need the deposition.
 7 ARBITRATOR FAULKNER: I think it may be
 8 up there, too.
 9 MS. EVORA: I have it.
 10 THE WITNESS: Every now and then there's
 11 something in the follow-up that I would like to look
 12 at.
 13 Thank you. Okay, page 133?
 14 ARBITRATOR FAULKNER: Correct, 133. It's
 15 11 through 22 of what was just cited.
 16 THE WITNESS: Okay.
 17 A. I'm reading: As the investigator, I'm taking
 18 the position that what I need to do is --
 19 ARBITRATOR FAULKNER: Can you slow down
 20 for our court reporter?
 21 A. ...during the contract or before the
 22 contract, because we won't if I did do that. Now, the
 23 problem with this investigation is it's got two parts,
 24 maybe even three. It's got a part up until 12-20,
 25 according to what's been set up here, it's got a part

Page 1061

1 after 12-20 until we were ruled an insurance company,
 2 and it's got a part after it, so...
 3 Q. (BY MR. HERMAN) All I'm asking you is to
 4 confirm and I -- your deposition is up there. I mean,
 5 you don't deny that that's what you said in response
 6 to those questions?
 7 A. No.
 8 MR. HERMAN: Okay, I'll pass the witness.
 9 MR. TILLOTSON: Nothing further. No
 10 questions.
 11 ARBITRATOR FAULKNER: Any questions from
 12 either member of the panel? Senator?
 13 ARBITRATOR CHERNICK: No questions.
 14 ARBITRATOR LYON: I want you to explain
 15 some stuff to me. On Exhibit 31 of -- I believe it's
 16 Respondents' Exhibits. Yeah, 31. If somebody could
 17 put that up there.
 18 MR. TILLOTSON: It's Respondent's 31.
 19 That's --
 20 ARBITRATOR CHERNICK: Is that that
 21 handwritten list?
 22 ARBITRATOR LYON: Yes, it is. I'm trying
 23 to decipher your writing and I just want to know what
 24 some things mean.
 25 THE WITNESS: Certainly.

Page 1062

1 ARBITRATOR LYON: What does L-N-D-D mean?
 2 THE WITNESS: Labratoire Nationale du
 3 Dopage something. It's a French laboratory.
 4 ARBITRATOR LYON: What does S-Q-I-N-7-1
 5 mean?
 6 THE WITNESS: That's Squinzi,
 7 S-Q-U-I-N-Z-I. That's a fax received by Mapay, CEO
 8 Squinzi. He's the -- he had a team called the Mapay
 9 team. He got a fax on July 10th of 2000 confirming
 10 the -- that Lance Armstrong was doping.
 11 ARBITRATOR LYON: From who?
 12 THE WITNESS: It's not clear who it's
 13 from. It's -- it's unidentified. It's out of an
 14 Indiana phone number.
 15 ARBITRATOR LYON: It's out of an Indiana
 16 what?
 17 THE WITNESS: Phone number, the fax
 18 number.
 19 ARBITRATOR LYON: It just came in to him
 20 out of the blue?
 21 THE WITNESS: Yes. Actually I think
 22 other people got that fax, also.
 23 ARBITRATOR LYON: Okay, Indiana?
 24 THE WITNESS: Yes.
 25 ARBITRATOR LYON: Is that where LeMond is

Page 1063

1 from?
 2 THE WITNESS: No, sir.
 3 ARBITRATOR LYON: Okay. What's the next,
 4 previews M-E-N-T-H, what is that?
 5 THE WITNESS: Erwann Mentheour?
 6 ARBITRATOR LYON: Yes.
 7 THE WITNESS: E-R-W-A-N-N,
 8 M-E-N-T-H-E-O-U-R, that's a professional French
 9 cyclist who has commented on Ferrari's relationship
 10 and has been -- I believe he has publicly stated that
 11 he was threatened by Francesco Yeager, a Mafia man
 12 connected to Mr. Mentheour's criticisms of
 13 Dr. Ferrari.
 14 ARBITRATOR LYON: Has that been written
 15 about anywhere?
 16 THE WITNESS: I believe so.
 17 ARBITRATOR LYON: Is that in any of the
 18 documents that y'all produced?
 19 THE WITNESS: I have no idea.
 20 ARBITRATOR LYON: Okay.
 21 The eight positives, I understand that.
 22 The '92 Olympics, Barcelona, is there any evidence of
 23 that in any of the documents y'all produced?
 24 THE WITNESS: Given, again, that I don't
 25 know exactly what we produced, I don't believe so.

Page 1064

1 ARBITRATOR LYON: Is there a document
 2 that says that Lance Armstrong was positive in
 3 Barcelona?
 4 THE WITNESS: I -- I believe that's what
 5 is referred to as the run-up to Barcelona, not
 6 Barcelona.
 7 ARBITRATOR LYON: Is there a document
 8 that confirms that?
 9 THE WITNESS: I have been told --
 10 ARBITRATOR LYON: A test that confirms
 11 that?
 12 THE WITNESS: I have been told that there
 13 is by at least -- well, by --
 14 ARBITRATOR LYON: I don't care what
 15 you've been told. Is there a document?
 16 THE WITNESS: I've been told that the
 17 document exists. I do not have the document.
 18 ARBITRATOR LYON: Okay. So there is no
 19 document here in evidence, right?
 20 THE WITNESS: No.
 21 ARBITRATOR LYON: Okay. And this Mon --
 22 the next one, '99 Monsiri -- is that Monsiri?
 23 THE WITNESS: Mionske. That's the other
 24 way I've heard of it.
 25 ARBITRATOR LYON: '99 Mionske?

Page 1065

1 THE WITNESS: No, Mionske goes underneath
 2 Barcelona.
 3 ARBITRATOR LYON: Okay. And then '99 is
 4 what?
 5 THE WITNESS: The failed corticoid
 6 steroid test.
 7 ARBITRATOR LYON: Okay. And that was the
 8 one that the corticoid steroid was the cortisone cream
 9 that he was using for a butt rash allegedly?
 10 THE WITNESS: Yes, that's the same
 11 incident.
 12 ARBITRATOR LYON: Okay. All right. Read
 13 that next thing to me, because I -- aggressive --
 14 THE WITNESS: Request of September 2,
 15 aggressively doping since 1990. Wenzel, Rene Wenzel,
 16 Chris Carmichael, Junior National Teammates, Greg
 17 Strock and Erich Kaiter.
 18 ARBITRATOR LYON: Did you interview those
 19 people?
 20 THE WITNESS: We spoke with Dr. Strock's
 21 and Mr. Kaiter's attorney, briefly spoke with Dr.
 22 Strock. Yes, I guess I did interview Dr. Strock, not
 23 Mr. Kaiter.
 24 ARBITRATOR LYON: And then down at the
 25 bottom of the next page there's a Verbruggen or

Page 1066

1 something. What is that?
 2 THE WITNESS: Verbruggen spoke, Hein
 3 Verbruggen.
 4 ARBITRATOR LYON: Who's he?
 5 THE WITNESS: He's the president of the
 6 UCI.
 7 ARBITRATOR LYON: What's his quote?
 8 THE WITNESS: If the public were happy
 9 with cyclists going 25 kilometers per hour, there
 10 would be no doping in -- doping problem in cycling,
 11 but the public wants them to go 40 kilometers per hour
 12 so there will always be a doping problem in cycling.
 13 It's gone through several languages and I'm repeating
 14 it.
 15 ARBITRATOR LYON: And then this next
 16 Jean-Cyril Rubin, who is that?
 17 THE WITNESS: Jean-Cyril Rubin, I believe
 18 that's a French rider who admitted to widespread
 19 doping in the sport and was criticized by Lance
 20 Armstrong for having done so.
 21 ARBITRATOR LYON: Okay. Now, you said
 22 earlier that you had knowledge of Julien de Vriese had
 23 forged an affidavit as of July 27th, 2004. You
 24 testified to that.
 25 THE WITNESS: If you say so.

Page 1067

1 ARBITRATOR LYON: Well, I think you did.
 2 I wrote it down in my --
 3 THE WITNESS: Well, I believe it's the --
 4 ARBITRATOR LYON: As of July 27th, 2004,
 5 you had personal knowledge that Mr. de Vriese had
 6 forged an affidavit?
 7 THE WITNESS: I did not ever say that I
 8 had personal knowledge.
 9 ARBITRATOR LYON: Okay. Is the knowledge
 10 that you had what's contained in the book?
 11 THE WITNESS: I believe so, yes.
 12 ARBITRATOR LYON: So that's what you
 13 relied upon?
 14 THE WITNESS: Yes.
 15 ARBITRATOR LYON: What is in the book
 16 that says -- this man who you have testified also you
 17 have never been able to talk to forged an affidavit?
 18 THE WITNESS: Well, I -- you know, I
 19 don't want to sit here and testify without researching
 20 the book, which I can do with a search command.
 21 ARBITRATOR LYON: Well, I'm just
 22 asking --
 23 THE WITNESS: The dates are all blurred
 24 in my mind. What publicity was surrounded the book,
 25 if I had that knowledge, that knowledge would have

Page 1068

1 come only logically to my mind from publicity
 2 surrounding the book and its publication, possibly the
 3 Hugues Huet --
 4 ARBITRATOR LYON: Who?
 5 THE WITNESS: -- publicity regarding --
 6 yeah, I think that this is in the publicity regarding
 7 the 2000 Activogen stuff and with Hugues Huet.
 8 ARBITRATOR LYON: Who is that?
 9 THE WITNESS: That's the television
 10 French 3 reporter who followed the --
 11 ARBITRATOR LYON: Okay. All right. Did
 12 you talk to that television French reporter?
 13 THE WITNESS: Mr. Bandy did.
 14 ARBITRATOR LYON: Okay. What performance
 15 enhancing drugs do you allege that Lance Armstrong
 16 used before 2001?
 17 THE WITNESS: EPO, growth hormone,
 18 steroids, those that were stated in the Indiana
 19 hospital room and confirmed in the depositions of the
 20 Andreus.
 21 ARBITRATOR LYON: Okay. Steroids, EPO
 22 and HGEA or something?
 23 THE WITNESS: HGH, I think.
 24 ARBITRATOR LYON: Okay. Let me ask you
 25 this. You've talked about doping. Is that what

Page 1069

1 you're talking about, because there's some language in
 2 some of these documents that y'all have produced that
 3 doping talks about blood doping.
 4 THE WITNESS: Yeah.
 5 ARBITRATOR LYON: And that's different
 6 than -- than taking performance enhancing drugs. Are
 7 you talking about both or are you talking about just
 8 performance enhancing drugs?
 9 THE WITNESS: Yeah, I left the blood
 10 transfusion out of the list, but I don't know if we
 11 have evidence of blood transfusion.
 12 ARBITRATOR LYON: Do you have any
 13 evidence of blood transfusion?
 14 THE WITNESS: Without, as I understand
 15 it, the blood values, and that being subject to -- I
 16 believe not.
 17 ARBITRATOR LYON: Now, one of the things
 18 you've talked about was a Mr. Swart, and we are going
 19 to, I guess, hear his deposition. Are y'all taking
 20 his deposition today?
 21 MR. TILLOTSON: Yes.
 22 ARBITRATOR LYON: One of the things I
 23 wanted to ask, he alleged that there was a race fixed
 24 in '93. How many people were in that meeting with
 25 Mr. Swart, the alleged meeting between Mr. Swart and

Page 1070

1 Lance Armstrong, besides Swart and Armstrong?
 2 THE WITNESS: I would defer to the
 3 affidavit of Mr. Swart for the details of that and the
 4 book and the testimony of Mr. Swart himself.
 5 ARBITRATOR CHERNICK: Could I just ask
 6 that if we have questions of Mr. Swart, can we give
 7 them in writing to the parties to be asked at the
 8 deposition from the arbitrators?
 9 MR. TILLOTSON: Yes.
 10 ARBITRATOR CHERNICK: Is that what you
 11 want to do, Senator?
 12 ARBITRATOR LYON: I just want to know who
 13 else was there is all I want to know. I'm sure that
 14 I'll find it out later on. Isn't it in the book?
 15 MR. TILLOTSON: I'll be happy to provide
 16 a copy of also the affidavit Mr. Swart signed in
 17 connection with the investigation.
 18 ARBITRATOR LYON: Okay, that would be
 19 good.
 20 MR. TILLOTSON: He doesn't identify who
 21 was in the room. If the panel has questions for him,
 22 we can take those in writing and ask them or try and
 23 accomplish that by phone at some point after Mr. Swart
 24 leaves.
 25 ARBITRATOR FAULKNER: Yeah, we may have

Page 1071

1 questions, gentlemen, for Mr. Swart later on and so we
 2 will want to have you all make some arrangement where
 3 we can submit additional questions to you if any of
 4 the panel members choose.
 5 MR. TILLOTSON: He's also here, and I'll
 6 remake my offer to have him testify out of order, but
 7 I'll respect Mr. Herman's wish to put on his case the
 8 way he wishes.
 9 ARBITRATOR LYON: Okay. Let me ask --
 10 ARBITRATOR FAULKNER: Before you ask
 11 anything else, Mr. Herman, that's still your desire to
 12 put on your case without Mr. Swart out of order?
 13 MR. HERMAN: Yes.
 14 ARBITRATOR FAULKNER: That's fine.
 15 Please proceed.
 16 ARBITRATOR LYON: You received this
 17 e-mail from -- in August that Mr. Armstrong never
 18 tested positive in the Tour de France, is that right,
 19 in August of '04?
 20 THE WITNESS: Yes.
 21 ARBITRATOR LYON: Did you at that time
 22 make any -- any -- you profess some concerns about the
 23 validity of that e-mail.
 24 THE WITNESS: Yes.
 25 ARBITRATOR LYON: Is that still your

Page 1072

1 concern today?
 2 THE WITNESS: Yep.
 3 ARBITRATOR LYON: Have y'all taken that
 4 lady's deposition?
 5 MR. HERMAN: Yes.
 6 MR. TILLOTSON: Kelly Price. Yes, she
 7 was deposed.
 8 ARBITRATOR LYON: Were you there or have
 9 you read it?
 10 THE WITNESS: I read it.
 11 ARBITRATOR LYON: Did she confirm that
 12 the e-mail was sent?
 13 THE WITNESS: Yes, to the extent that I
 14 have the questions about the validity, it's not that
 15 it was sent by the UCI, it's the contents of the
 16 e-mail.
 17 ARBITRATOR LYON: Have you done
 18 anything -- so you don't have any questions about the
 19 validity that Mr. Armstrong did not test positive in
 20 the -- and never tested positive by the UCI?
 21 THE WITNESS: What I -- and I really
 22 would rather defer to my scientist, but I believe that
 23 the letter is overly inclusive as to talking about
 24 what it -- what UCI tests for.
 25 ARBITRATOR LYON: All right. Okay. But

Page 1073

1 you don't have any questions about the validity of the
2 letter saying he did not test positive?
3 THE WITNESS: The validity, no, but I
4 would like to see the entire letter.
5 ARBITRATOR LYON: Okay. You said that
6 the urine was overly clean, okay.
7 THE WITNESS: Correct. That's the
8 allegation.
9 ARBITRATOR LYON: What is your
10 understanding of overly clean? What does that mean?
11 THE WITNESS: Well, the rider is coming
12 out with six or eight hours of incredible exertion and
13 he gets a urine test. There's going to be certain
14 natural things that are occurring in his body which
15 should show, and my understanding is overly clean
16 urine would be that it was sort of inconsistent with
17 normal urine from a rider in that position.
18 ARBITRATOR LYON: Well, in your research
19 or anything like that, have you read about how much
20 liquid that somebody consumes in a period of time when
21 they're doing three or four hours worth of riding or
22 any type of, like, running or anything like that?
23 THE WITNESS: I think you're talking
24 about overly clear urine and I'm discussing overly
25 clean urine.

Page 1074

1 ARBITRATOR FAULKNER: Would you make the
2 distinction for me, please?
3 THE WITNESS: I would rather let
4 Dr. Ashenden do that, but I will try. Overly clean
5 urine would be urine that wouldn't have the markers
6 and the telltale signs of the body chemistry of a
7 person who has gone through an intense exercise such
8 as riding for five or six hours in a stage in the Tour
9 de France.
10 ARBITRATOR LYON: Even though they
11 consume like --
12 THE WITNESS: That would be overly clear
13 urine, and a lot of -- I mean -- have I got -- I don't
14 want to get myself confused. If you drink an enormous
15 amount of water, my understanding is that your urine
16 loses its color, among other things.
17 ARBITRATOR LYON: Right. It loses a lot
18 of stuff. Are you aware of that?
19 THE WITNESS: I'm not sure.
20 ARBITRATOR LYON: Okay. All right.
21 ARBITRATOR FAULKNER: I think the doctor
22 can address that for us.
23 ARBITRATOR LYON: I think that's it.
24 Thank you very much, Mr. Compton.
25 ARBITRATOR FAULKNER: Anything else?

Page 1075

1 ARBITRATOR LYON: No.
2 ARBITRATOR FAULKNER: Mr. Chernick?
3 ARBITRATOR CHERNICK: No.
4 ARBITRATOR FAULKNER: I have no
5 questions. Any last questions, gentlemen? If not,
6 we'll let this gentleman step down.
7 MR. HERMAN: I have nothing, Your Honor.
8 MR. TILLOTSON: Nothing, Your Honor.
9 ARBITRATOR FAULKNER: Thank you very
10 much. You may step down.
11 It's 10 minutes after 11. Who do you
12 wish to call next?
13 MR. HERMAN: Mr. Longley.
14 JOE LONGLEY,
15 having been first duly sworn, testified as follows:
16 ARBITRATOR FAULKNER: Before we get
17 underway with this testimony, are you fellows going to
18 stipulate to Mr. Longley's background or anything like
19 that? We are already quite familiar with him, and in
20 an effort to speed this along --
21 MR. HERMAN: Yes.
22 ARBITRATOR FAULKNER: We have already
23 seen Mr. Longley before, so we don't need to go into a
24 lot of his background. If you'll stipulate, let's
25 just go with the questions.

Page 1076

1 MR. TILLOTSON: I do. I do. Of course I
2 do.
3 DIRECT EXAMINATION
4 BY MR. HERMAN:
5 Q. You are Joe Longley?
6 A. That's correct.
7 MR. TILLOTSON: Well, that's the one
8 thing I wasn't prepared to say.
9 Q. (BY MR. HERMAN) You've previously testified
10 in this proceeding, have you not, Mr. Longley?
11 A. That's right.
12 Q. Okay. In connection with your appearance as
13 an expert, for which we have a stipulation, have you
14 come to certain conclusions and opinions regarding the
15 handling of this claim by SCA about the coverage
16 analysis and other matters related to the issues that
17 are joined here before the panel?
18 A. Yes.
19 Q. In that connection, you have reviewed the
20 pleadings of the parties, the exhibits from the first
21 hearing, most of the exhibits from the -- from this
22 continued hearing, the new exhibits, Mr. Compton's
23 deposition, the deposition exhibits and, of course,
24 you've been here for his testimony, correct?
25 A. Yes, sir, that's right.

Pages 1073 to 1076

Page 1077

1 Q. Mr. Bandy's deposition and exhibits?
 2 A. Yes, sir.
 3 Q. Mr. Hamman's deposition, exhibits and
 4 testimony?
 5 A. Correct.
 6 Q. And the first hearing and this hearing?
 7 A. That's correct.
 8 Q. Among other things?
 9 A. That's right.
 10 Q. Okay. Now, you're aware, Mr. Longley, that
 11 claims have been made by Tailwind that SCA has failed
 12 to comply with many statutory and common law
 13 obligations in connection with this agreement,
 14 correct?
 15 A. Yes, sir.
 16 Q. First, would you give us just a summarized
 17 background of the -- what has now come to be known as
 18 Article 21.21 of the Texas Insurance Code?
 19 A. Well, right. Actually, Article 21.21 is now,
 20 as of April 1st, 2005, been recodified into Section
 21 541, but I'll continue to refer to the 21.21
 22 designation. But it came about as a result of the
 23 passage of the -- originally of the McCarran-Ferguson
 24 Act in 1945 by the Congress, which allowed the states
 25 to opt out of federal regulations in the event they

Page 1078

1 passed something that was at least equal to or greater
 2 than the FTC Act and the Sherman Act and the Clayton
 3 Act was the original idea.
 4 And Texas ultimately did pass such a
 5 statute which took the form of Article 21.21. That
 6 came along in 1957. At that time there were only
 7 public remedies. In other words, only the -- what was
 8 then called the State Board of Insurance, upon
 9 recommendation to the state Attorney General, could
 10 take actions against those either in the business of
 11 insurance or actual licensed carriers. And from 1957
 12 until 1973, that thing -- that public enforcement was
 13 all there was.
 14 In 1973, the legislature passed House
 15 Bill 417, which contained two parts; one was called
 16 the Deceptive Trade Practice Act, the other was the
 17 private remedies for Article 21.21. Both of those had
 18 very similar provisions. They referred to each other,
 19 they adopted the sections, they cross-referenced each
 20 other. So what was in the DTPA laundry list of
 21 prohibitive conduct was adopted by 21.21(b) insurance
 22 code. What was the laundry list in Section 4 of
 23 Article 21.21, the insurance code, was adopted by the
 24 DTPA. So you had that interconnection.
 25 The remedies were for actual damages by a

Page 1079

1 consumer or the insurance buying public would have
 2 been termed and upon showing of knowingly up to --
 3 actually, it was mandatory in treble damages and
 4 then --
 5 Q. Let me stop you there. What's the idea --
 6 what's the idea with treble damages? What was the
 7 statutory purpose for that?
 8 A. Well, two things, because the
 9 McCarran-Ferguson Act basically adopted the antitrust
 10 laws as the model, treble damages had been the norm in
 11 the Clayton Act and Sherman Act for some years. So
 12 that was taken from the antitrust model when it was
 13 adopted in the private remedies.
 14 The second part of that was that the
 15 legislature wanted to make sure that there was an
 16 incentive there for people in business and in the
 17 business of insurance regardless to do the right thing
 18 rather than the wrong thing. In other words, there's
 19 an incentive -- most businesses are in their business
 20 to make a profit, and if you made fraud or unfair or
 21 deceptive acts or practices in business unprofitable,
 22 then the hope was that they would not engage in those
 23 kinds of acts and practices which might prove to be
 24 unprofitable. And the way that the profit motive was
 25 adopted was to make three times actual damages upon

Page 1080

1 showing of knowingly or intent, plus court costs and
 2 attorneys' fees, the norm, and it worked very well as
 3 it has in the antitrust area.
 4 Q. Well, you mentioned that the Deceptive Trade
 5 Practices Act and Article 21.21, at least the private
 6 remedy portion of that, was contained in the same
 7 statute. We are talking here about obviously a
 8 contract, which any insurance policy would be, any
 9 insurance contract would be. What is -- what are the
 10 differences in the prohibitive conduct under the DTPA?
 11 Just assume this wasn't an insurance contract, for
 12 example. What would -- what sort of relevance would
 13 the DTPA have to do with what's going on in this case?
 14 A. Well, the DTPA prohibits basically the same
 15 conduct as to one insurance contracts as the -- as the
 16 21.21 prohibits as to insurance contracts. So it's
 17 picked up either place. In other words, if this
 18 contract happened not to be in the business of
 19 insurance, it would still be actionable under the
 20 Deceptive Trade Practice Act for the same remedies.
 21 Q. All right. And the remedies that you
 22 mentioned, again, treble damages and so forth?
 23 A. Court costs and attorneys' fees primarily.
 24 There are other remedies as well, injunctive relief
 25 and receiverships.

Page 1081

1 Q. Of course, there are, I take it, more
 2 specific requirements in the insurance code as to you
 3 have to do this within 15 days, that within 30 days,
 4 you can't assert any misrepresentations after 90 days,
 5 that kind of thing?
 6 A. That's right. Those are in separate
 7 statutes. You'll find the misrepresentations having
 8 to be asserted within 90 days in 21.17. You'll find
 9 the deadlines for accomplishing certain purposes with
 10 regard to a claim in Article 21.55. But as far as
 11 unfair or deceptive acts or practices, either in the
 12 business of insurance or in business generally, those
 13 are found in the DTPA in 21.21.
 14 Q. All right, sir. Now, you were -- I had
 15 interrupted you there. After the passage of the DTPA
 16 and Article 21.21, in 1973, has there been -- is
 17 there -- are there common law prohibitions against the
 18 conduct such as SCA has committed in this case?
 19 A. Yes, and if you backed up, I mean, all this
 20 basically started with breach of contract back in the
 21 days of the Republic of Texas and all this sort of
 22 grew out of a contractual relationship where people
 23 contracted with one another for goods, services,
 24 whatever it might be, insurance.
 25 And originally it was kind of like

Page 1082

1 Article 21.55, which has the statutory damages for
 2 failing to meet the deadlines on claims was originally
 3 how Texas -- that was the Texas sort of bad faith
 4 approach when it went beyond just straight breach of
 5 contract, and that happened by adopting a straight
 6 percentage which was called a penalty back in the old
 7 days. It goes back as far as 1873, I believe, when
 8 you see the first statute, and it was like a four or
 9 six percent penalty if you didn't pay within a certain
 10 number of days and I believe at that time it was 60 or
 11 90 days. That evolved slowly over the days that Texas
 12 evolved to -- prior to Article 21.55 being adopted
 13 there was a 30-day time period for health and accident
 14 and life policies to be paid, and it's a 12 percent
 15 penalty under Article 3.62. Under 3.62(1) that
 16 applied to certain other kinds of policies and allowed
 17 60 days in which to pay, and attorneys' fees as well
 18 in some instances.
 19 That was all changed in -- in 1995 when
 20 Article 21.55 was adopted and that changed from that
 21 penalty to statutory damages, and it was 18 percent
 22 plus attorneys' fees and court costs. That's merely a
 23 reflection of, I suppose, inflation over the years,
 24 changing needs of society and the fact that --
 25 particularly in the insurance area, that the longer

Page 1083

1 you don't pay, the more money the insurance company
 2 makes off of your money that should have been paid,
 3 and so they had to make some sort of an adjustment
 4 there for damages or even treble damages when you get
 5 to 21.21 so that there is an incentive to pay the
 6 claims rather than to hold onto the money to the
 7 detriment of someone who really needs it
 8 Q. Well, you mentioned 21.55, the 18 percent per
 9 annum damages. Those are actual damages pursuant to
 10 the statute, correct?
 11 A. That's what the statute declares as statutory
 12 damages.
 13 Q. And even if a person -- even if an insurer,
 14 for example, had some reasonable basis for questioning
 15 the claim, but if they exceeded the applicable time
 16 limits, does that 18 percent still apply?
 17 A. It does. It's a stop sign statute. In other
 18 words, if you bust one of those deadlines, you're
 19 liable for the 18 percent statutory damages plus court
 20 costs and attorneys' fee. If it turns out you're
 21 wrong, it's basically just so you can't just hold onto
 22 money and litigate forever or not decline to -- or
 23 decline to deny the claim forever, you've got to do
 24 something.
 25 Q. Tell us what coverage analysis is.

Page 1084

1 A. Coverage analysis is basically -- I mean,
 2 it's the blocking and tackling of an insurance claim.
 3 Basically is that you look to -- when you look to see
 4 if there's coverage for a claim, the first place you
 5 go is to the contract.
 6 Q. All right.
 7 A. So you --
 8 MR. HERMAN: Throw up Exhibit 17, please.
 9 That's sort of -- I want to change my verbiage here
 10 and stop telling Russell to throw up.
 11 Would you turn to the second page,
 12 please, Russell.
 13 Q. (BY MR. HERMAN) We have seen a good deal of
 14 conversation about the meat and potatoes of this
 15 contract being Exhibit A.
 16 MR. HERMAN: Would you show paragraph 2.b
 17 please.
 18 Q. (BY MR. HERMAN) There's other language in
 19 this agreement, of course, Mr. Longley, but again, is
 20 this the meat and potatoes of what obligation SCA took
 21 on?
 22 A. Yes, this is the agreement to indemnify the
 23 sponsor in the event certain events happened.
 24 Q. All right. Now, where would you look -- in
 25 your coverage analysis, what would you do to

Page 1085

1 determine -- you've identified the risk there in 2.b.
 2 I take it that is the risk that they undertook?
 3 A. Right.
 4 Q. How would you determine whether the risk had,
 5 in fact, occurred or the -- the obligation in this
 6 case? Where would you look to see whether Tailwind
 7 actually had liability to award Mr. Armstrong the
 8 performance award?
 9 A. Well, of course, you would look to this
 10 contract to see what the events were that would be
 11 triggered, and then, of course, you would have to look
 12 to the contract between Tailwind and Mr. Armstrong.
 13 MR. HERMAN: Russell, would you -- you
 14 can either put up the slide or -- I can't remember
 15 which slide number it is, but Exhibit 1, Claimants'
 16 Exhibit 1, and go several pages in, please. Keep
 17 going. Keep going. There. Would you highlight that
 18 there?
 19 Q. (BY MR. HERMAN) We have seen this -- we have
 20 seen this several times. It's Claimants' Exhibit 1.
 21 Do you agree, Mr. Longley, that the risk which SCA
 22 insured is accurately reflected in Claimants'
 23 Exhibit 1?
 24 A. Yes.
 25 Q. So what is the risk or what is the occurrence

Page 1086

1 for which SCA is responsible?
 2 A. It's the -- it's the incurring of liability
 3 by the sponsor of -- according to the terms of the
 4 contract.
 5 Q. All right. And what is -- have you reached
 6 any opinion or conclusion with respect to whether or
 7 not Tailwind has incurred liability under this
 8 agreement?
 9 A. I have.
 10 Q. And what is it?
 11 A. That they have incurred liability and they've
 12 sustained a loss according to Ernst & Young.
 13 Q. Now, what is the significance of the term
 14 official winner?
 15 A. That would be the official winner of the Tour
 16 de France as declared by the authorities who declare
 17 the official winner.
 18 Q. And is there any provision within the SCA
 19 contract, that is Claimants' Exhibit 17, that would
 20 allow SCA as the insurer to trump either the UCI or
 21 trump Tailwind's liability as specified in their
 22 contract with Armstrong?
 23 A. Absolutely not. It's more like a life
 24 insurance policy where you have the death of the
 25 insured and then what's required is, of course, some

Page 1087

1 certification that the person is dead, like a death
 2 certificate. And here someone has to be declared the
 3 official winner. Once that certification or
 4 declaration is made, the event has occurred and the
 5 money is owed.
 6 Q. It's interesting that you brought up the
 7 analogy to a life insurance policy. Do you see any
 8 difference in the rights of the insurer or the
 9 obligation of the insured with respect to documents,
 10 information, et cetera, between the life policy that
 11 you've just described and the certification of
 12 Mr. Armstrong as the official winner?
 13 A. No.
 14 Q. What have you to say as to whether or not the
 15 liability of SCA to pay \$5 million has become
 16 reasonably clear?
 17 A. I say that it has not only become reasonably
 18 clear, it has become absolutely clear.
 19 Q. As of sundown, July 25, 2004, was there any
 20 reasonable basis in your opinion for either denying or
 21 delaying the payment of the \$5 million?
 22 A. None.
 23 Q. Let's talk a little bit about underwriting.
 24 Are you familiar with that term?
 25 A. I am.

Page 1088

1 Q. Tell the panel at least what that means to
 2 you, sir.
 3 A. Well, underwriting is what you do in
 4 determination as to whether or not you want to enter a
 5 contract of indemnity. It could be in the business of
 6 insurance or I suppose outside the business of
 7 insurance as long as it's indemnifying somebody from
 8 something. And what you do is you look at what it is
 9 you're attempting to guard against on the risk that is
 10 involved in the indemnity. If something occurs, when
 11 do you have to pay and what do you have to pay and
 12 what are the facts surrounding that. So that usually
 13 involves -- of course, in the event of insurance they
 14 have underwriting departments. In the -- even in -- I
 15 suppose in the performance indemnity contract business
 16 it was even considered not in the business of
 17 insurance, you have the same thing. People have to
 18 assess the risk and decide if they want to be
 19 involved.
 20 Q. Incidentally, were you aware that the
 21 underwriting department at SCA headed up by
 22 Mr. Hamman's son had initially rejected this proposal
 23 or bonus because, according to Chris Hamman, they
 24 didn't know enough about cycling and the bonuses were
 25 too big? Were you aware of that?

Page 1089

1 A. Not really, no.
 2 Q. Well, in any event --
 3 MR. HERMAN: Russell, would you --
 4 MR. TILLOTSON: Kindly bring up.
 5 MR. HERMAN: -- kindly project -- let's
 6 see, I've got a slide, but it's Exhibit -- Claimants'
 7 Exhibit 5, I believe. 6 -- is that 5 or 4?
 8 MR. PRYOR: This is 5.
 9 MR. HERMAN: Put the next page up. There
 10 you go.
 11 Q. (BY MR. HERMAN) You were present at the
 12 first hearing, I believe you've already said. You've
 13 seen this document that was prepared by Mr. Hamman and
 14 I believe you heard Mr. Hamman testify about it on
 15 Monday, correct?
 16 A. Correct.
 17 Q. Have you seen any evidence of any other
 18 underwriting effort on behalf of Mr. Hamman when he
 19 took on this proposition and negotiated it with
 20 Mr. Lorenzo?
 21 A. Only the January 9, 2001 e-mail.
 22 Q. Right. I'm going to get to that in just a
 23 moment. But as to the precontract formation analysis
 24 made by SCA, have you seen anything other than this
 25 document?

Page 1090

1 A. No. This appeared to be a sheet that he
 2 compiled with regard to some odds that he calculated,
 3 and that's all I've seen.
 4 MR. HERMAN: Would you put up
 5 Claimant's 10, please.
 6 Q. (BY MR. HERMAN) Now, you said that you had
 7 seen an e-mail. Is this the e-mail to which you
 8 referred, Mr. Longley?
 9 A. Yes, it is.
 10 Q. Chairman Faulkner asked Mr. Hamman, I believe
 11 it was, about moral hazard, underwriting and so forth.
 12 You see the last -- well, not the last line, the next
 13 to the last line, If titles are stripped as a result
 14 of official action, then sponsor agrees to refund any
 15 payments made.
 16 A. Yes, I see that, and I remember Mr. Hamman's
 17 testimony regarding that.
 18 Q. Okay. Have you drawn any opinions or
 19 conclusions as to whether -- well, what are your
 20 opinions and conclusions with respect to the intent of
 21 SCA, at least based upon this e-mail?
 22 MR. TILLOTSON: I would object as beyond
 23 the scope of expertise.
 24 MR. HERMAN: Okay. I'll withdraw the
 25 question.

Page 1091

1 Q. (BY MR. HERMAN) Have you drawn any opinions
 2 or conclusions as a result of the review of this
 3 particular e-mail?
 4 A. Yes, I have.
 5 Q. What are they?
 6 A. Mr. Hamman was contemplating what would
 7 happen if --
 8 MR. TILLOTSON: I'm sorry, I need to
 9 interpose. That's the same question you were trying
 10 to ask, and I don't see how this guy can be an expert
 11 in speculating as to the state of mind of Mr. Hamman.
 12 Mr. Hamman has testified to his state of mind.
 13 Bringing in a lawyer to say I think he thought
 14 something different --
 15 MR. HERMAN: Well --
 16 MR. TILLOTSON: -- is beyond expertise.
 17 ARBITRATOR FAULKNER: Wait until he
 18 finishes. Okay. Your response, please.
 19 Q. (BY MR. HERMAN) You're not -- you're not
 20 attempting to -- I'll withdraw that last question.
 21 You're not attempting to -- you're not a clairvoyant,
 22 obviously. Well, you may be in your --
 23 A. I don't think so.
 24 Q. What does the proposition that refunds are
 25 required if titles are stripped as a result of

Page 1092

1 official action, what does that indicate to you from
 2 an underwriting standpoint?
 3 A. Well --
 4 MR. TILLOTSON: I --
 5 ARBITRATOR FAULKNER: Wait. He was just
 6 about to make another objection, so --
 7 MR. TILLOTSON: I reassert the same
 8 objection, that what this means to the Claimant -- to
 9 the insured is the only relevant and competent
 10 testimony that the insurer is saying this is what this
 11 meant to me. Testimony from an expert regarding what
 12 I think this meant to them has got to be just pure
 13 speculation and not expert testimony.
 14 MR. HERMAN: Let me withdraw it.
 15 Q. (BY MR. HERMAN) You were present when
 16 Mr. Hamman testified, were you not?
 17 A. Yes. I'm basing my conclusion upon what he
 18 said.
 19 Q. Right. There you go. So based upon what
 20 Mr. Hamman said during his testimony, what conclusions
 21 have you drawn with respect to the underwriting?
 22 A. That he knew and appreciated that there was a
 23 moral hazard involved with cycling.
 24 Q. And if there was any problem, would it be
 25 taken care of by being stripped by official action?

Pages 1089 to 1092

Page 1093

1 A. That's what he said. He said he wanted
 2 Mr. Bandy to put this into the contract as a guard, I
 3 suppose, in the event that there was an official
 4 action stripping the winner of the official title. It
 5 was there as a precaution against whatever moral
 6 hazard might be out there.
 7 Q. Is there any -- would there be any avoidance
 8 of liability short of the UCI or the Tour de France or
 9 whoever stripping Mr. Armstrong of his title?
 10 A. Absolutely not.
 11 Q. Would there be any avoidance of liability on
 12 the part of Tailwind in the absence of Mr. Armstrong
 13 being stripped of his title?
 14 A. None.
 15 Q. Would you consider -- do you consider, in
 16 your opinion, that a -- any reasonable person would
 17 have to come to that same conclusion?
 18 A. If you read the documents that are the
 19 underlying agreement and what the -- the basis of the
 20 indemnity is based upon, that's the only conclusion
 21 you can come to.
 22 Q. Is there anything ambiguous about those
 23 obligations?
 24 A. Nothing.
 25 Q. And are you aware of SCA even having pled

Page 1094

1 that the provisions are ambiguous?
 2 A. As far as I know, there's no ambiguity pled
 3 with regard to these contracts.
 4 Q. Now, with respect to insurance contracts
 5 generally, even if there were ambiguity, can you tell
 6 us what the -- what rules of construction would apply?
 7 A. Well, of course, ambiguity, it's like
 8 construction of contract is a question of law which
 9 the panel would decide. If the panel were to decide
 10 that there was an ambiguity in these contracts, any
 11 ambiguity would be construed against the drafter. Of
 12 course, the drafter was SCA.
 13 Q. And particularly in the insurance business,
 14 is that rule more pronounced?
 15 A. It is more pronounced, because you can have
 16 two reasonable constructions, even one construction
 17 that would be in favor of the drafter that might be
 18 more reasonable than that of the non-drafter, but you
 19 would still construe it in favor of the person who did
 20 not draft the contract.
 21 Q. With respect to the insurance contract at
 22 issue here, are there rules respecting the implicit
 23 incorporation of statutes, rules, regulations, that
 24 sort of thing?
 25 A. Yes, there are.

Page 1095

1 Q. What precisely is the rule on that?
 2 A. Well, in Texas, the rule is that rules and
 3 regulations, particularly pertaining to the business
 4 of insurance, are incorporated in any insurance
 5 agreement.
 6 Q. You mentioned that you had been present
 7 during the testimony of Mr. Compton and, of course,
 8 you reviewed his -- reviewed his deposition and so
 9 forth.
 10 A. Yes, I have.
 11 Q. And is it true that with respect to a
 12 promotion as dealt with by SCA and as defined in the
 13 contract would refer to a transaction where the
 14 sponsor would be liable for payment, that is to say,
 15 to -- for whatever, whether it's a hole-in-one or an
 16 athletic incentive or whatever?
 17 A. The sponsor would be liable, that's correct.
 18 Q. Right.
 19 A. That's what the contract is about.
 20 Q. In your expert opinion, would any reasonable
 21 person enter into an insurance agreement where the
 22 insurer had allocated to itself the right to override
 23 the risk or determine by itself subjectively whether
 24 the risk occurred?
 25 A. No. Certainly not in the contract such as

Page 1096

1 this where you need the security of a governing body
 2 or an official such as a life insurance situation
 3 where the certification of the medical examiner that
 4 there was a death, but you would have to have that
 5 independent security.
 6 Q. Now, do you have --
 7 MR. HERMAN: For the panel's benefit, I
 8 think it would be easier if you all just took the
 9 Claimant's prehearing submission, because I'm going to
 10 go through -- I'm going to go through some of these
 11 questions that are --
 12 Q. (BY MR. HERMAN) Would you turn to page 7,
 13 please, Mr. Longley.
 14 ARBITRATOR LYON: The motion for summary
 15 judgment, partial summary judgment?
 16 MR. HERMAN: No, it's the pretrial
 17 submission, Senator. It's a blue book or a blue
 18 covered document.
 19 ARBITRATOR FAULKNER: This is what it is.
 20 It may be right there, Ted.
 21 It's about a quarter of, guys. I know
 22 mine is upstairs.
 23 ARBITRATOR LYON: I've got it.
 24 ARBITRATOR FAULKNER: Oh, you have it,
 25 okay. Oh, your staff put it in that big binder for

Page 1097

1 you.
2 ARBITRATOR LYON: No, I did that myself.
3 ARBITRATOR FAULKNER: You didn't work
4 those poor girls hard like usual.
5 Okay, why don't you proceed.
6 Q. (BY MR. HERMAN) Page 7, Mr. Longley.
7 A. I'm with you.
8 Q. In your view, did SCA fail to comply with
9 this contract, this insurance contract?
10 A. In my opinion, it did.
11 Q. Is there any -- is there any room for doubt,
12 in your view?
13 A. No, the -- the liability of Tailwind became
14 clear upon Lance Armstrong being declared the official
15 winner of the 2004 Tour de France. That was the
16 triggering event. Liability became clear at that
17 point. They were required to pay within 30 days.
18 Q. Is there anything that could be litigated or
19 resolved or decided in this proceeding that would ever
20 change that?
21 A. Nothing, in my opinion.
22 Q. Is the -- who would have to alter or relieve
23 SCA from their liability, if anyone?
24 A. Under the terms of the agreement, as I
25 understand it, it would have to be the governing body

Page 1098

1 of the Tour de France that would have to strip Lance
2 Armstrong of his title for 2004 in order for that to
3 happen.
4 Q. And that would relieve Tailwind, correct?
5 A. That would be correct. Tailwind would
6 likewise be off the hook if that occurred.
7 Q. Until Tailwind is, as you say, off the hook,
8 is there any way for SCA to wriggle off the hook?
9 A. No way.
10 Q. Go to page 8. And you're familiar with these
11 questions and where they come from, are you not?
12 A. I am. It looks to be a pattern jury charge.
13 Q. If a jury was sitting in this case, these are
14 the questions that would be submitted to a jury for
15 determination as the trier of fact, correct?
16 A. That's correct, with whatever modifications
17 would have to be made by the Court for the particular
18 facts and circumstances.
19 Q. Right, with instructions?
20 A. Right.
21 Q. Incidentally, the instructions that are -- or
22 the facts that are outlined under question 1, you've
23 reviewed those, and do you take issue with any of
24 the -- any of the facts outlined there?
25 A. No, they look accurate.

Page 1099

1 Q. Okay. Please, if you see anything on any of
2 these pages with which you disagree, I want you to
3 please speak up whether I ask the question or not,
4 okay?
5 A. Okay.
6 Q. Question 2, tell us what the purpose of
7 question 2 is in a trial of this sort.
8 A. It's to determine the amount of damages based
9 upon the benefit of the bargain.
10 Q. The benefit of the bargain in this case being
11 what SCA bargained to pay Tailwind?
12 A. Yes.
13 Q. In the event they incurred the loss?
14 A. Right, and they accepted a consideration for
15 that risk.
16 Q. \$420,000?
17 A. Yes, sir, I believe you saw it on the
18 previous contract.
19 Q. Which they still have?
20 A. That's correct.
21 Q. Now, let's talk -- go to page 9, if you
22 would, please. What is the genesis of that question,
23 did SCA engage in any unfair or deceptive act or
24 practice?
25 A. Well, again, these are taken from the pattern

Page 1100

1 jury charge books with relation to the submission of
2 Article 21.21 questions to a jury involving a 21.21
3 case. You have the same general kinds of questions
4 for a deceptive trade practice submission.
5 Q. Let's just go through these. Well, let me
6 ask you this. If the answer to any one of these
7 questions is yes, what are the consequences of that?
8 A. Then you would go to a question of producing
9 costs.
10 Q. And if that question is answered in the
11 affirmative, what is the consequence of that?
12 A. Then you go to a damage question.
13 Q. With respect to item 1, did, in your opinion,
14 SCA, based upon your knowledge of the events here,
15 engage in any false, misleading or deceptive act or
16 practice?
17 A. Yes.
18 Q. Just give us a few of them, if you can, off
19 the top of your head.
20 A. I'll not be redundant, but we discussed many
21 of them in the first hearing with regard to the
22 representations as to the business of insurance. I
23 think you brought out in this hearing that
24 representations about insurance is still up on their
25 web site and have not been removed. They're still

Page 1101

1 representing themselves as an insurance company.
 2 They've not disclaimed it in any way on the web site
 3 as far as I know. I think Mr. Hamman termed that the
 4 other day, although he said that was by oversight.
 5 We see misrepresentations with regard to
 6 the policy that was entered between Tailwind and SCA
 7 where SCA represents that they would indemnify
 8 Tailwind upon Tailwind becoming liable under its
 9 contract for the amounts on the events in the Tour de
 10 France. That was not true, they did not indemnify
 11 once those events did occur. Those bring in -- those
 12 involve a myriad of some of these prohibition, but
 13 basically it's the misrepresentation of an insurance
 14 policy that you would find in Article 21.21,
 15 Subsection 4.1. The same thing is covered in the
 16 Deceptive Trade Practices Act under Section
 17 17.46(b)(12). So either way --
 18 Q. Which states -- I mean, we can get to that in
 19 detail, but what kind of conduct is prohibited under
 20 the laundry list on number 12 particularly?
 21 A. It's basically the misrepresentation of the
 22 rights, obligations and duties under that contract or
 23 represents things that are covered and are prohibited
 24 by law.
 25 Q. And if one were to represent that if you

Page 1102

1 become liable we will pay, and then took a position
 2 that even if you become liable we won't pay, would
 3 that qualify as a misrepresentation, whether it was an
 4 insurance contract or a business contract as SCA's
 5 opined --
 6 A. It would not make any difference because it's
 7 a misrepresentation, whether it's under the Deceptive
 8 Trade Practices Act or whether it's under the
 9 insurance code; a banana is a banana.
 10 Q. Incidentally, were you present in the hearing
 11 yesterday when Mr. Compton said that in his analysis
 12 he needed to see if Tailwind had become liable? Were
 13 you here for that?
 14 A. I was here for that.
 15 Q. And were you present when Mr. Compton said,
 16 well, because if the indemnitee, Tailwind in this
 17 case, were not liable, then SCA as the indemnitor
 18 would not be liable?
 19 A. I've heard him say that, yes.
 20 Q. Well, is the converse of that also true?
 21 A. Yes.
 22 Q. So if the indemnitee is liable, the
 23 indemnitor is liable?
 24 A. That's correct.
 25 Q. The indemnitor doesn't get to be not liable

Page 1103

1 in either case?
 2 A. That's correct. It follows the form.
 3 Q. Now, item 3 there on page 9, calling this
 4 insurance contract a business contract, is that a
 5 misrepresentation?
 6 A. It is in the sense that this is in the
 7 business of insurance, it's already been decided, but
 8 you do gain some protection by it being in the
 9 business of insurance versus being a contract not in
 10 the business of insurance, such as the receivership
 11 provisions, the guaranty fund protections. In the
 12 event that SCA went under, there would be some
 13 protections there that would be afforded that wouldn't
 14 necessarily be afforded under a deceptive trade
 15 practice approach.
 16 Q. I believe that you said that you were present
 17 in the earlier hearing. You have seen numerous
 18 matters of correspondence, say, from Kelly Price from
 19 the brokers who had been in business for 25 years
 20 referring to this as insurance, et cetera. In your --
 21 have you reached any opinion or conclusion with
 22 respect to whether what SCA did with respect to this
 23 insurance contract was confusing or misleading in any
 24 way?
 25 A. Yes, it was.

Page 1104

1 Q. And is that likewise -- does that likewise
 2 violate both the DTPA and 21.21?
 3 A. It does, under several different sections.
 4 Q. If you would turn to page 10, there are A
 5 through G, whatever that is, eight, I guess,
 6 instances -- seven, of unfair claims settlement
 7 practices.
 8 Would you just briefly go through and
 9 tell us whether in your view, based upon what you've
 10 seen here, SCA violated any of those, and if so which
 11 ones and how.
 12 A. Yes. In my opinion they do violate the
 13 unfair claims settlement provisions and that's why --
 14 there's separate compartments, I suppose, of bad
 15 faith. You have the misrepresentation compartment,
 16 which we have just discussed, about saying something
 17 is one thing when it's another or saying you'll do
 18 something and then you don't do it.
 19 But in the unfair claims settlement
 20 practice, that's a second compartment. That deals not
 21 so much with the sale and the front end where you're
 22 supposed to do your underwriting and make sure of what
 23 you're saying is true, that happens on the back end
 24 and that's when there's been a claim.
 25 And as we have seen with the massive

Page 1105

1 testimony in evidence that the panel has heard is that
 2 basically the underwriting started once the claim was
 3 made. This was called post-claim underwriting, which
 4 is severely prohibited in the insurance area. You
 5 know, you're supposed to do your underwriting on the
 6 front end before you accept the risk. You can't wait
 7 until you see that you're about to incur a loss or
 8 that you have incurred a loss and say, okay, let's go
 9 do now what we should have done four years ago.
 10 And that's what's happened here. They've
 11 conducted a totally pretextual inquiry. I won't even
 12 call it an investigation. It's all one-sided. I
 13 think anyone, any rational, reasonable observer to
 14 this testimony could only conclude as Mr. Compton, I
 15 think, very candidly stated in answer to your question
 16 in his deposition, that on June the 17th, 2004, his
 17 deal was to prove your client was a cheat, and he
 18 candidly admitted that. I mean, nothing can get more
 19 pretextual than that basic, very damning admission.
 20 Q. Even before the Tour de France had started in
 21 2004?
 22 A. Exactly. But they had already started the
 23 process toward an outcome oriented conclusion. They
 24 knew where they wanted to be, which was they weren't
 25 going to pay any money at the end of the day, and they

Page 1106

1 were looking for somebody to try to help them, because
 2 the first place he looked, Mr. Compton said, was at
 3 the contract to see what the liability was. They
 4 hadn't even done that on the front end as an
 5 underwriter. They didn't know if Lance Armstrong was
 6 riding a motorcycle or doing whatever was covered in
 7 the underlying case.
 8 Q. Yeah, what do you make of the -- or do you
 9 draw any conclusions from the fact that the coverage
 10 here had been in place for three and a half years
 11 before SCA even looked at the contract which would
 12 create liability for Tailwind?
 13 A. I find that to be fairly incredible, because
 14 in your earlier question about how would you determine
 15 what -- coverage question of what was coverage, you
 16 would have to look at the underlying contract and that
 17 would be something you would do as part of the
 18 underwriting process to see, well, what is it we're
 19 going to do -- you know, what are we going to get
 20 stuck with here if something happens down here in
 21 2004. They never did that until 2004.
 22 That should have been done prior to
 23 Mr. Lorenzo's e-mail in 2001, because as we now know,
 24 there's no exclusions for performance enhancing drugs,
 25 for instance. There's no exclusion in the policy that

Page 1107

1 if someone were to use performance enhancing drugs,
 2 that they don't have to pay. The only event is that
 3 the officials of the Tour de France declare him to be
 4 the official winner. That's been done. The event has
 5 occurred. Until he's stripped of that title, game
 6 over.
 7 Q. I think we have talked about this, the
 8 supervisory capacity and who determines what the
 9 conditions of the -- of the Tour de France are and who
 10 enforces the rules and regulations of the Tour de
 11 France, and that's -- there's nothing in the SCA
 12 contract that allows SCA to interpret, apply and
 13 enforce the rules of the Tour de France.
 14 A. No. In fact, they agreed to indemnify
 15 Tailwind in the event Tailwind becomes liable on its
 16 obligations to Lance Armstrong. That has happened.
 17 Now, they didn't look to see what those obligations
 18 were until June of 2004, which I find incredible, but
 19 that's the truth. Everybody -- it's undisputed before
 20 this panel. And that's the only thing that had to
 21 happen.
 22 Q. I believe you've testified that as of the
 23 certification of Mr. Armstrong, there is no room for
 24 doubt about SCA's liability?
 25 A. No room for doubt.

Page 1108

1 Q. And they would have known that as of
 2 July 25th or 26th?
 3 A. They would have and they would have known it
 4 when they read the Tailwind/Lance Armstrong contract.
 5 They would know it in the future if he won that tour.
 6 Q. Let me ask you this, in reaching your
 7 opinions and your determination about the bad faith of
 8 SCA in their conduct of this -- in their conduct,
 9 failing to pay, et cetera, what did you find of any
 10 significance the claim which SCA made upon Prize
 11 Indemnity on July the 26th of 2004 for the payment of
 12 the 1.2 million?
 13 A. Did I find what about it?
 14 Q. Did you find that of any significance in
 15 determining whether they had a real good faith basis
 16 for denying this claim?
 17 A. Yeah. If they had a good faith basis for
 18 denying the claim, they wouldn't be making that claim.
 19 I mean, A equals B. And the point of the story here
 20 is there were two other reputable insurance companies
 21 involved in this deal and they paid exactly as their
 22 policies provided. When he was declared the winner,
 23 they paid. They weren't looking around for some other
 24 way to not pay, and that's why, in my opinion, the SCA
 25 inquiry -- I won't call it an investigation, it

Page 1109

1 doesn't rise to that level -- the inquiry was totally
 2 pretextual. It was totally outcome determinative.
 3 They showed what the outcome was going to be and tried
 4 to reach that goal and fell woefully short, from what
 5 I've heard here, but nevertheless that's what they
 6 were attempting to do with no authority to do it
 7 whatsoever. There's nothing in the contract that
 8 allows them any of these investigatory powers,
 9 nothing. There's nothing that allows them to ask
 10 Lance Armstrong anything, nothing that allows them to
 11 ask Tailwind anything.
 12 In the Chitsey versus National Lloyds
 13 case, it says you look to the policy to determine what
 14 the rights of the parties are.
 15 Q. Is there any doubt about that?
 16 A. None.
 17 Q. You've seen, of course, Claimants' Exhibit 69
 18 which Mr. Compton fired off two days after the Tour de
 19 France. Is there anything that is contained in that
 20 document that they want to recover that SCA would have
 21 been entitled to under their contract with Tailwind?
 22 A. Not one thing.
 23 Q. And beyond the death certificate, that is the
 24 certificate from the UCI, is there any relevant
 25 document or information based upon the risk that SCA

Page 1110

1 undertook to which SCA would either be entitled or --
 2 either explicitly or implicitly?
 3 A. In my opinion, none. I think the treatment
 4 of this claim by the other two reputable insurance
 5 companies shows what happened. Once they were
 6 satisfied that Lance Armstrong was the declared winner
 7 of the Tour de France, they either paid the money or
 8 committed to pay the money and that was all that was
 9 required. That was really all that was required of
 10 SCA.
 11 Q. You've seen the Lloyds policy, and I think we
 12 have had it up on the screen. It incorporated the
 13 provisions of the SCA agreement by implication, did it
 14 not?
 15 A. It did by reference, yes.
 16 Q. And it also had an express requirement that
 17 Mr. Armstrong and the Tailwind team abide by the rules
 18 or whatever?
 19 A. Under the warranties provision it did, yes,
 20 that's true.
 21 Q. And so would you say that the coverage
 22 requirements of the Lloyds policy were more or less
 23 exacting than those in the SCA policy?
 24 A. They were more exacting.
 25 Q. And let me ask you this. SCA has taken the

Page 1111

1 position that, well, they didn't receive cooperation
 2 from their insured. Well, they didn't say that, they
 3 said that they didn't receive cooperation. Is there
 4 anything in that agreement that would authorize SCA
 5 explicitly or implicitly for any of the information,
 6 for example, contained in Claimants' Exhibit 69?
 7 A. No. What you have to do is look to the
 8 policy itself or the contract itself to determine what
 9 is the level of cooperation that's required.
 10 For instance, in the Chitsey case which I
 11 cited earlier, the insurance company there in a fire
 12 loss sent some interrogatories, just some questions
 13 that they wanted answered, not under oath, just some
 14 random questions about the loss and about the guy and
 15 he answered some of them, sent them back. Some of
 16 them were erroneous. The Court threw those out saying
 17 wait a minute, it's not a failure to cooperate because
 18 he answered some of them erroneously because you
 19 didn't have the power to ask them in the first place.
 20 You had the right under the policy to take an
 21 examination under oath if you wanted to do that, but
 22 you didn't do that. Here there's nothing that's
 23 required other than showing Lance Armstrong was the
 24 declared official winner of the 2004 Tour de France.
 25 Q. In the -- in SCA's prehearing submission they

Page 1112

1 cite a case, I think Lidawi, L-I-D-A-W-I, that
 2 involved two insureds where they were required to give
 3 EUOs.
 4 A. Examination under oath, right. I'm familiar
 5 with the case.
 6 Q. Is there -- beyond the death certificate here
 7 in this case, would there -- is there any reasonable
 8 basis for asking for any other information from
 9 Tailwind or anyone else for that matter?
 10 A. None that I can see. That's all that's
 11 required is to make sure that he is the declared
 12 official winner of the 2004 Tour de France. Once
 13 that's undisputed, they've got 30 days to pay.
 14 Q. Do you consider that the, quote,
 15 investigation that was undertaken by SCA in this case
 16 was a reasonable one?
 17 A. No, it was not reasonable.
 18 Q. Why not?
 19 A. Well, it's nothing more than a fishing
 20 expedition. It's an invasion of privacy of the
 21 highest magnitude. It goes beyond the bounds of
 22 decency with regard to both Tailwind and Lance
 23 Armstrong, this flying around the world trying to find
 24 dirt on somebody when it has no possible relevance to
 25 the liability of SCA under the contract. Whatever

Page 1113

1 they would find, unless they can get it over to the
2 authorities at the Tour de France and convince those
3 authorities they need to strip Lance Armstrong of his
4 title, is of no consequence.
5 Q. Incidentally, were you aware that the
6 confidentiality order in this case was issued on April
7 the 18th of 2005?
8 A. I was aware of that.
9 Q. And is there anything that would have
10 prohibited SCA from going to the UCI at any time
11 before April the 18th, 2005 that you know of?
12 A. Nothing at all. And incredibly I heard
13 Mr. Compton testify this morning that they were aware
14 of Mr. -- or of Tailwind's insurance fraud, as he put
15 it, in September of 2004. And Article 1.10 of the
16 Texas Insurance Code requires anyone, particularly
17 lawyers, who becomes aware of an insurance fraud to
18 report it to the Texas Department of Insurance,
19 regardless of where it is. There's been no such
20 reporting of insurance fraud by Tailwind or anyone
21 else.
22 Q. Let's talk about the issue of 21.17, that is
23 the misrepresentation -- I don't know what --
24 MR. BREEN: It's in the summary judgment
25 book.

Page 1114

1 MR. HERMAN: Oh, it's in the summary
2 judgment book, all right.
3 Q. (BY MR. HERMAN) Well, in any event, has --
4 has, in your view, SCA violated the provisions of
5 Article 21.17 of the Texas Insurance Code?
6 A. In my view, they have.
7 Q. Assume with me that the first time that
8 Tailwind -- I mean, that SCA ever informed its insured
9 of misrepresentations that it was alleging was April
10 the 4th of 2005. Based upon your understanding of
11 21.17 and the facts in this case, can SCA, even if the
12 patently false allegations in their pleadings, could
13 they -- can they assert any misrepresentation or
14 fraudulent inducement defense in this case?
15 A. No, not under the provisions of 21.17. And
16 by the way, I went back and I looked at Exhibit -- I
17 believe it was 84 that was sponsored to this panel as
18 being the denial and the notice of the
19 misrepresentations. I found nothing in there about
20 the specific misrepresentations that were being relied
21 upon by SCA or anyone else.
22 Q. Have you seen anything prior to their filing
23 in this case on April the 4th of 2005 that identifies
24 what misrepresentations they're asserting?
25 A. Nothing.

Page 1115

1 Q. Have you ever seen in your years of practice
2 any alleged misrepresentation where there was no
3 application, no questionnaire, nothing like that at
4 inception of the contract?
5 A. That's the first one I've ever seen that even
6 makes that totally ridiculous allegation.
7 Q. In -- I was going to ask you this earlier.
8 You've been practicing law and authoring insurance
9 articles for 37 years?
10 A. Over 36 years, yes.
11 Q. Have you -- how would you describe --
12 MR. TILLOTSON: I apologize, you said 37,
13 he corrected you, 36.
14 THE WITNESS: I said over 36, otherwise I
15 give away my age.
16 MR. TILLOTSON: Exactly. I apologize.
17 MR. HERMAN: Well, okay. I stand
18 corrected. But you talk about a smoking gun, boy,
19 there it is.
20 Q. (BY MR. HERMAN) Anyway, Mr. Longley, in
21 those 36 plus years of practice, how would you rate
22 the conduct of SCA compared to other instances of bad
23 faith that you've seen?
24 A. I've only got one word for it. Outrageous.
25 It's outrageous conduct.

Page 1116

1 Q. Have you ever seen anything worse?
2 A. I never have.
3 Q. All right. Have you seen anything, any
4 evidence, any testimony, any -- anything explicit or
5 implicit that would indicate to you that there was a
6 shred of good faith in the denial of this claim?
7 A. There's -- there's absolutely no scintilla of
8 evidence of good faith based upon the inquiry that
9 they undertook. And as Mr. Compton candidly admitted,
10 his goal was to prove your client to be a cheat and
11 that's what he started on June 17th, 2004 and he
12 hasn't quit yet.
13 Q. Based upon what you've seen and heard and --
14 in this matter, do you have an opinion as to whether
15 or not SCA's conduct is bad faith both under -- I
16 mean, all under 21.21, the DTPA, and the common law
17 requirements was knowing or intentional?
18 A. Yes, and the evidence that I would point to
19 of that is the multiple times you've given Mr. Hamman
20 the opportunity to recant and to say that perhaps he
21 would have done some things differently had he had it
22 all to do over again, but in each case he has embraced
23 all of the actions that have taken place by SCA, up to
24 and including the present time, which are just
25 patently outrageous.

Page 1117

1 Q. Turn to page 13, if you would, please, and
 2 let's talk a little bit about 21.55.
 3 Now, you had earlier described 21.55 and
 4 the automatic imposition of 18 percent per annum
 5 actual damages in the event these time frames are not
 6 observed.
 7 A. Correct.
 8 Q. Even if there were a shred of good faith
 9 here, this would apply anyway, would it not?
 10 A. That's correct. As I mentioned earlier, this
 11 is a stop sign statute. If you blow one of these
 12 deadlines, then, you know, you're liable for the
 13 statutory damages.
 14 Q. You have reviewed -- let's talk about
 15 question 1 there on page 13, A, B and C, SCA failed to
 16 comply with those time limits, did they not?
 17 A. That's correct.
 18 Q. Question 2, for the panel, we did make a --
 19 an error there. It was the 15th business day, which
 20 would be August 13 rather than August 9. But with
 21 that modification, Mr. Longley, has SCA failed to
 22 comply with that provision as well?
 23 A. That's my understanding and I believe that's
 24 correct now.
 25 Q. Look at page 15, which is -- is that an

Page 1118

1 accurate reflection there, Mr. Longley, on those
 2 following pages of the meaning, intent and application
 3 of 21.55?
 4 A. Yes.
 5 Q. Now, we had earlier talked about the contract
 6 measure of damages, which was the benefit of the
 7 bargain. On page 17, that would be the same measure,
 8 the difference, I take it, between what was promised
 9 and what was received?
 10 A. That's correct.
 11 Q. Okay. That would be \$5 million?
 12 A. Right.
 13 Q. Now, the note -- the footnote on the
 14 \$1,205,000, is that the 18 percent actual damages
 15 which are mandatory?
 16 A. Yes, and I haven't calculated that, but I'll
 17 accept what you have there as being the amount.
 18 ARBITRATOR LYON: What date is that
 19 through, what date?
 20 MR. HERMAN: That's through the -- I
 21 think February 2, Senator -- yes, footnote 15,
 22 February 2.
 23 Q. (BY MR. HERMAN) And that's simple interest,
 24 not compound?
 25 A. That's correct.

Page 1119

1 Q. And item C, would you describe to the panel
 2 how that number was arrived at?
 3 A. That's the trebling of the actual damages
 4 that would be calculated above.
 5 Q. So it would be three times \$6,205,000?
 6 A. That's correct.
 7 Q. Now, let's move to the DTPA, which I think
 8 you've covered implicitly.
 9 ARBITRATOR FAULKNER: Mr. Herman, is this
 10 a good place to take a break, because I saw my
 11 secretary behind Mr. Longley earlier and I think she's
 12 trying to let us know that lunch may be here.
 13 MR. HERMAN: That's perfectly fine.
 14 (Recess 12:15 to 1:19 p.m.)
 15 Q. (BY MR. HERMAN) Mr. Longley, turn to page 18
 16 of the Plaintiffs' pretrial submission, please.
 17 A. I'm there.
 18 Q. You had earlier indicated the substantial
 19 overlap between the DTPA and the insurance -- and
 20 21.21. Does question 7 on page 18 and 19 reflect the
 21 liability question under the DTPA?
 22 A. Yes, they substantially overlap with the
 23 questions you see back on page 9. It's a DTPA version
 24 of those items.
 25 Q. Can you summarize it, if you can, the conduct

Page 1120

1 of SCA, which in your view violates the prohibitions
 2 in 17.46(b)?
 3 A. Well, of course, the things we went through
 4 with regard to the representations about insurance and
 5 whether they were or were not the business of
 6 insurance, the representations as to the
 7 indemnification based upon a certain event occurring,
 8 taking a premium, money for that to happen and then
 9 not doing it, those fit these. The failure to
 10 disclose material facts relating to the
 11 indemnification, that they would require different
 12 things that were not in the contract in order to
 13 obtain payment, those would all fit within this.
 14 Q. And those are all at least the kind of
 15 character and conduct which have been characterized by
 16 the courts of Texas as violating these provisions on
 17 numerous occasions; isn't that true?
 18 A. That's correct. Generically, I mean, you can
 19 refer to all of this in this genre as bad faith, but
 20 it falls into the categories we have discussed, which
 21 are misrepresentation, which are basically making
 22 statements about a product that are not true or making
 23 statements about a contract that are not true, the
 24 claims handling aspects of it, which you have to
 25 conduct a reasonable investigation, and you have to

Page 1121

1 pay once liability has become reasonably clear and
2 that falls into the common law area, too, with regard
3 to the duty of good faith and fair dealing.
4 Q. You know, you mentioned Garrison Contractors
5 in your earlier testimony during the insurance
6 hearing. Correct me if I'm wrong, did that involve
7 the personal liability of the employee of the
8 insurance company in adjusting or investigating
9 claims?
10 A. Yes, if you'll recall, it was that conduct
11 that the employee had in the -- I believe in that case
12 it was in the original representation about what was
13 in the policy as well as how it would be implemented
14 after it was -- after it was in place, and that
15 employee was sued, along with Liberty Mutual, and the
16 Court said that that -- both of those would have -- if
17 they had culpability, they could both be sued.
18 Q. So under 21.21, for example, if there had
19 been violations of 21.21 in connection with this SCA
20 business, then is it true that any employee or
21 representative of SCA involved in that conduct would
22 have personal liability?
23 A. That's correct, it would be equally culpable
24 with regard to 21.21.
25 Q. Okay. Does the duty of good faith and fair

Page 1122

1 dealing and the obligation to adhere to 21.21, does
2 that terminate once a lawsuit is filed?
3 A. No.
4 Q. Or --
5 A. The duty of good faith and fair dealing and
6 the duty to conduct a reasonable investigation and the
7 duty to pay once liability has become reasonably
8 clear, those are all continuing duty under the law,
9 whether there's a lawsuit going on or arbitration or
10 whatever is happening. If information comes to light
11 it's covered, then it has to be dealt with.
12 Q. If you look at question 8 on page 20 -- this
13 is a separate provision of the DTPA. Based upon what
14 you've seen and heard, did you come to an opinion or
15 conclusion as to whether or not SCA is engaged in an
16 unconscionable action or course of action that was a
17 producing cause of damages to Tailwind, its insured?
18 A. Yes, I have. I believe it is an
19 unconscionable action based on this definition.
20 Q. Now, if you would go to page 22, question 10.
21 The additional damages, I suppose your answer would be
22 the same as to knowing and intentional conduct whether
23 it was DTPA or 21.21?
24 A. That's correct.
25 Q. Now, the answer -- the 21.21 trebling

Page 1123

1 involves the policy proceeds which are due Tailwind
2 plus the actual damages as prescribed by 21.55,
3 correct?
4 A. Correct.
5 Q. That's a little bit different here under the
6 DTPA, is it not?
7 A. That's correct, because the DTPA does not
8 pick up 21.55.
9 Q. So you would be talking about \$15 million as
10 opposed to 18 million?
11 A. The number we saw earlier with regard to the
12 trebling fee.
13 Q. Okay. You have described the overlap between
14 the common law duty of good faith and fair dealing.
15 If I were to ask you the same questions about whether
16 SCA violated its common law duty to deal fairly and in
17 good faith with its insured, Tailwind, would your
18 answers be the same?
19 A. It would. They would.
20 Q. All right. Now, upon a violation of the
21 common law duty of good faith and fair dealing, and if
22 that is knowing and intentional, you go to a pure
23 exemplary damage standard?
24 A. Right, other than the -- the practices act,
25 that would be -- I forget the exact -- I think it's

Page 1124

1 maybe subdivision 41, chapter 41, and it would be
2 under the -- under that standard, which is a standard
3 of malice unless you can find a statutory violation
4 that would take the caps off. The caps are two times
5 actual damages.
6 Q. Similar to the DTPA?
7 A. Similar, except the DTPA and 21.21 are three
8 times.
9 Q. Right.
10 A. And there's one other difference. You have
11 proximate cause under the common law acts versus
12 producers cause.
13 Q. If you would kind of turn and look at that
14 notation on the board reflecting the conduct of SCA
15 between September 20 and December 20.
16 MR. HERMAN: Mr. Chairman, I've marked
17 that as Exhibit 115.
18 ARBITRATOR FAULKNER: Okay. Has a copy
19 been furnished to Mr. Tillotson yet?
20 MR. HERMAN: No, but Mr. Breen is taking
21 it over.
22 ARBITRATOR FAULKNER: Okay.
23 MR. BREEN: It's the same as on the
24 board.
25 Q. (BY MR. HERMAN) Assuming that that's what

Page 1125

1 was done by SCA between September 20 and December 20,
 2 what effect, if any, does that have on your opinions
 3 and conclusions here?
 4 A. Well, it would verify my conclusions
 5 basically.
 6 Q. Okay.
 7 A. It's a one-sided operation. It's
 8 predetermined that they're looking for ways to catch
 9 Lance Armstrong that they designated as a cheater and
 10 this is the implementation of that -- of that goal.
 11 Q. Is there any obligation upon SCA to exert the
 12 same amount of energy to determine ways to verify
 13 coverage as opposed to defeat coverage?
 14 A. Yes. As a matter of fact, the standard
 15 within the claims industry is basically that you rule
 16 out any exclusions. You look at a claim as if it
 17 should be paid in all respects and your investigation
 18 is to rule out any possible exclusion or taint that
 19 might be on the claim. That's their approach, is you
 20 approach it that you are going to pay the claim, not
 21 that you're not going to pay the claim.
 22 Q. How does that differ from what SCA did here?
 23 A. Well, this is all -- as I said earlier, it's
 24 post-claim underwriting. They started doing in June
 25 of 2004 what they should have done in January of 2001.

Page 1126

1 And it was all to determine a way that they could get
 2 out of paying the monies that they were obligated to
 3 pay when Mr. Armstrong won the Tour de France in 2004.
 4 ARBITRATOR FAULKNER: Before we -- we go
 5 too far, I presume you're going to offer this.
 6 MR. HERMAN: Yes.
 7 ARBITRATOR FAULKNER: Do you have any
 8 objection?
 9 MR. TILLOTSON: None.
 10 ARBITRATOR FAULKNER: It's admitted.
 11 Thank you.
 12 Q. (BY MR. HERMAN) Mr. Longley, you had
 13 mentioned that under the common law duty of good faith
 14 and fair dealing it was characterized by malice. Have
 15 you seen evidence of malice in the conduct of SCA?
 16 A. Yes, I have, and it's based on the definition
 17 contained in chapter 41 of Civil Practices and
 18 Remedies Code.
 19 Q. Is there anything -- have you heard or seen
 20 anything either in or out of the hearing here that you
 21 feel would illustrate the sort of approach and
 22 attitude of SCA in connection with this matter?
 23 A. Everything I've seen shows the total -- total
 24 presence of malice and a lack of the absence of malice
 25 as far as I can see. I've not seen anything where

Page 1127

1 they attempted to make a good faith effort to find out
 2 anything good about Lance Armstrong, SCA or anybody
 3 else involved with this.
 4 Q. You mean Tailwind?
 5 A. Tailwind, I'm sorry.
 6 Q. Is there a particular act, particular
 7 conduct, in your view which epitomizes the conduct and
 8 attitude and malice of SCA that you can recall?
 9 A. Well, there's two particular things, both
 10 were stated by Mr. Compton. One was in answer to your
 11 question in deposition as to when he started his
 12 crusade, that it was basically June the 17th of 2004
 13 to catch your client and prove him to be a cheat. And
 14 then the implementation of that goal, which we heard
 15 right here today in his testimony, which at least the
 16 implication I heard was that he was denigrating
 17 Mr. Armstrong's brain cancer as being almost something
 18 that was feigned in order to defraud insurance
 19 companies, which I thought was equally outrageous.
 20 MR. HERMAN: I'll pass the witness.
 21 ARBITRATOR FAULKNER: Mr. Tillotson.
 22 MR. TILLOTSON: Thank you.
 23 CROSS EXAMINATION
 24 BY MR. TILLOTSON:
 25 Q. Mr. Longley, we have to stop meeting like

Page 1128

1 this.
 2 A. Yes, sir.
 3 Q. I've got a few questions for you. First I
 4 want to touch on what you just discussed, which is
 5 this 90-day period which you have in front of you,
 6 Exhibit 115. I think I heard you say that what you've
 7 seen here is post-claim underwriting, that these are
 8 things they should have done in June 2001, fair?
 9 A. Correct.
 10 Q. Now, you'll, of course, agree with me that no
 11 one knew, at least publicly, that Mr. Swart's claim
 12 that he engaged in a doping program with Mr. Armstrong
 13 in the mid 1990s until it was published by Mr. Walsh
 14 in his book in June of 2004, correct?
 15 A. I don't know when that was known. I know
 16 that there were many things that were known that when
 17 SCA hired a public relations firm to gather all of the
 18 literature on the subject, there was -- much of that
 19 literature, one of them being a Toronto newspaper
 20 article that was sponsored, I believe, by SCA just
 21 yesterday, which was in 1998, which was out there in
 22 the literature which would have been available in 2001
 23 had they done in 2001 what they did in 2004.
 24 Q. Well, are you aware and can you present to us
 25 any evidence that Mr. Swart's accusations regarding

<p style="text-align: right;">Page 1129</p> <p>1 the doping program of Mr. Armstrong were publicly 2 available to anyone prior to their publication in 3 Mr. Walsh's books? 4 A. I don't even know what his accusations are, 5 nor do I care. 6 Q. Okay. How about Mr. Ferrari's trial 7 conviction in October of 2004, that certainly didn't 8 exist in 2001, correct? 9 A. I have no clue. I haven't read it, don't 10 know what you're talking about. 11 Q. Well, if Mr. Ferrari was convicted in October 12 of 2004, surely you'll agree with me those are facts 13 not known to SCA in June of 2001? 14 A. If the conditions occurred when you said, 15 that would be correct. 16 Q. And are you aware if Ms. Emma O'Reilly's 17 allegations regarding Mr. Armstrong's use of drugs 18 were publicly known to anyone prior to their 19 publication in Mr. Walsh's book? 20 A. I have no idea. 21 Q. So when you say these are things, and you're 22 pointing to the board and you're pointing to 23 Exhibit 115, these are things SCA should have done in 24 June of 2001, you'll agree with me that many of these 25 things couldn't have been done in June of 2001 because</p>	<p style="text-align: right;">Page 1131</p> <p>1 Q. All right. Now, let's talk about these 2 things. And I know I'm asking you to assume for a 3 moment that it matters whether Mr. Swart testified 4 that he engaged in a doping program with Mr. Armstrong 5 or that he was involved in race fixing. You would 6 agree with me that if it mattered, a reasonable 7 insurer would contact Mr. Swart and say, is this true? 8 A. Correct. 9 Q. Okay. That would be how you would verify it, 10 correct? 11 A. Correct. 12 Q. And even to make it better, a reasonable 13 insurer would say, we just don't want to take your 14 word for it, Mr. Swart. I want you to confirm and 15 swear to it, like a statement, correct? 16 A. That would be correct, except for the letter 17 I saw from Mr. Compton to -- I believe it was either 18 the attorney for Mr. Swart requesting that certain 19 kinds of hearsay be put into the affidavit to be sworn 20 to so it could be put before the panel in arbitration. 21 Even if it were excluded, they would have to read it. 22 I think that's something that goes beyond the pale. 23 Q. Have you seen Mr. Swart's affidavit? 24 A. No, I have not. 25 Q. Have you seen if there's any outrageously</p>
<p style="text-align: right;">Page 1130</p> <p>1 they weren't known by anyone, correct? 2 A. Well, and perhaps I stated that too broadly. 3 What I meant the things were -- what he undertook to 4 do with regard to gathering literature and going back 5 and reading what they agreed to indemnify. That was 6 not done until June of 2004. They didn't even know 7 what their deal was because they never looked at the 8 underlying contract. That was what I meant by these 9 things. 10 Q. Okay. Because you would agree that -- assume 11 for a moment that these things identified in 12 Exhibit 115 matter, and I know you dispute that, but 13 assume for a moment that they matter. You would agree 14 that investigation of those events should begin once 15 the insurer learns of them, correct? 16 A. If they mattered, I'll take your assumption 17 of that, correct. 18 Q. Okay. Because you know that in defense to a 19 fraud action, what the insurer should have known of 20 the actual fraudulent event is not a defense, correct? 21 A. Correct. 22 Q. You have to prove that the insurer actually 23 knew of the fraud, not that they should have 24 discovered it, correct? 25 A. Correct.</p>	<p style="text-align: right;">Page 1132</p> <p>1 objectionable hearsay that perhaps has been offered to 2 the panel that shouldn't have been? 3 A. No. All I saw is the request that it be 4 there 5 Q. Now, assume with me for a moment that 6 Mrs. O'Reilly's testimony mattered for purposes of 7 whether or not SCA was liable under the contract. You 8 would agree that a reasonable insurer, upon hearing 9 that Ms. O'Reilly claimed Mr. Armstrong used drugs, 10 would attempt to meet with her and verify those 11 allegations, correct? 12 A. Yes. 13 Q. And the same with the Andreus. If their 14 testimony that they were aware Mr. Armstrong had 15 admitted to drug use mattered, you would say a 16 reasonable insurer would go meet with them, correct? 17 A. If it mattered, that's correct. 18 Q. And that's how you would verify those 19 allegations, correct? 20 A. That's one way, of course. 21 Q. Because everyone knows at the point in time 22 when this conduct happened that Mr. Armstrong denied 23 these events, correct? 24 A. I don't know that, but I'll take your word 25 for it.</p>

Pages 1129 to 1132

Page 1133

1 Q. Okay. Now, by way of background, you have
 2 never worked for an insurance company as an employee,
 3 correct?
 4 A. Correct. I have as a lawyer, but not as an
 5 employee.
 6 Q. Okay. So I said employee. You have never,
 7 in fact, processed, analyzed and reviewed a claim as
 8 an employee of an insurance company?
 9 A. That's correct, because I've never been
 10 employed by an insurance company.
 11 Q. All right. And you haven't ever written
 12 policies or manuals for an insurance company, a
 13 specific insurance company, about how to handle their
 14 claims?
 15 A. That's correct. I've certainly lectured to
 16 them, but I've never written a manual.
 17 Q. All right. Now, I bet you're not even all
 18 that familiar with the Tour de France except as
 19 perhaps having seen it on TV?
 20 A. Well, and what I've read about it.
 21 Q. Have you ever read the rules of the Tour de
 22 France?
 23 A. I have not.
 24 Q. All right. Let's go over a couple of
 25 principles I hope we can agree on with respect to your

Page 1134

1 testimony. First, would you agree with me that bad
 2 faith for an insurer occurs when an insurer denies
 3 liability on a claim when liability is reasonably
 4 clear?
 5 A. That's one way, yes.
 6 Q. Okay. Would you also agree with me that the
 7 real conduct is the reasonableness of what -- the real
 8 test is what the reasonableness of what the insured
 9 did, what conduct they undertook and how reasonable
 10 was it?
 11 A. Well, if an investigation was even called
 12 for, that would be true.
 13 Q. Okay.
 14 A. I don't agree that that happened in this
 15 case, because the only investigation called for here
 16 was to get the certification of Lance Armstrong won
 17 the 2004 -- was the certified winner of that race.
 18 Q. We are going to get to that. Hang on.
 19 Would you agree with me that an insured
 20 does not breach its duty of good faith by mere -- by
 21 merely erroneously denying a claim?
 22 A. I agree.
 23 Q. So it can't just be that there's a coverage
 24 dispute and the insurer is wrong, it has to be
 25 something beyond that?

Page 1135

1 A. Correct.
 2 Q. And would you also agree with me that bad
 3 faith doesn't exist or arise simply because an insurer
 4 has a construction of the policy that turns out to be
 5 legally incorrect?
 6 A. State that again.
 7 Q. Would you agree with me that bad faith
 8 doesn't arise simply because the insurer's
 9 construction of its policy was subsequently found to
 10 be legally incorrect?
 11 A. I disagree with that.
 12 Q. Okay. So you would disagree with any court
 13 that has so ruled that; that's not the state of Texas
 14 law?
 15 A. Well, I don't necessarily agree with that
 16 either. I think that you can have a construction of a
 17 contract that's so outrageous and so frivolous that a
 18 jury -- a court could sanction the attorney for
 19 even -- you know, for offering such a program.
 20 Q. Okay. Absent an outrageous construction,
 21 would you agree with me that if the insurer takes a
 22 reasonable construction of the policy that turns out
 23 to be legally incorrect, that that in and of itself is
 24 not bad faith?
 25 A. I'll agree with that.

Page 1136

1 Q. Okay. Now, let's apply those principles to
 2 this particular case. First, would you agree with me
 3 that in order for Mr. Armstrong to be entitled to the
 4 bonus for the 2004 Tour de France, that he was
 5 required to win the race in accordance with its rules?
 6 A. Correct.
 7 Q. Okay. Now, you said you hadn't looked at the
 8 Tour de France rules, but are you aware that the Tour
 9 de France rules incorporate the rules of the UCI with
 10 respect to drug doping?
 11 A. I'm not aware of what it incorporates, but if
 12 you tell me that, I'll accept it if that's what's in
 13 there.
 14 Q. Okay. I will represent to you --
 15 MR. TILLOTSON: Mariela, why don't you
 16 bring up -- and I'll provide the cite and copies --
 17 if you'll just bring up the copy of the Tour de France
 18 rule with respect to drug testing, Article 28.
 19 Q. (BY MR. TILLOTSON) The Tour de France is
 20 subject to the rules of the Union Cycliste
 21 Internationale and the Federation Francaise de
 22 Cyclisme drug testing system that has been set up to
 23 detect riders. Do you see that?
 24 A. Yes.
 25 Q. Okay. Now, in connection with your work

Page 1137

1 here, I know you didn't look at the Tour de France
 2 rules even though you've agreed with me that
 3 Mr. Armstrong has got to win the contest in accordance
 4 with the rules, you probably didn't look at the UCI
 5 rules regarding doping, did you?
 6 A. That's correct.
 7 Q. Okay. Do you know that the UCI rules
 8 prohibit doping?
 9 A. I don't know what they prohibit, but I would
 10 assume that they do if you say they are.
 11 Q. Well, obviously one of the allegations in
 12 this case is that Mr. Armstrong doped and that would
 13 be a violation of the rules, and you've told me he's
 14 got to win the race in accordance with the rules, but
 15 you've made no assessment here at all regarding the
 16 truth or veracity of whether Mr. Armstrong, in fact,
 17 doped, correct?
 18 A. I've made no assessment of that whatsoever
 19 because he was the winner, the official winner, and
 20 that was what was called for for the indemnity in the
 21 contract.
 22 Q. Okay. We are going to get to that, hang on.
 23 Now, if you'll assume with me for a moment that the
 24 UCI rules prohibit doping -- would you agree with?
 25 A. I would accept --

Page 1138

1 Q. Let me show you the portion of the rule that
 2 I'm referring to, and Mariela will bring it up. The
 3 UCI rule is in 480. I don't think they're in the
 4 binder because we had planned on only using some
 5 portions of it, but I'll be happy to provide it for
 6 you.
 7 Okay. Article III, page 2, UCI rules,
 8 chapter 14. You agree with me that the UCI rules
 9 prohibit doping?
 10 MR. HERMAN: That's been asked and
 11 answered three times.
 12 MR. TILLOTSON: Well, indulge me just
 13 this one time.
 14 MR. HERMAN: Sure, whatever.
 15 A. Yes.
 16 Q. (BY MR. TILLOTSON) Okay. Now, it's not
 17 just -- this rule is not just getting caught doping,
 18 but doping itself is against the rules, right?
 19 A. It says doping is forbidden.
 20 Q. Okay. So it wouldn't be a defense to say you
 21 complied with the UCI rules to say, yeah, so what, but
 22 I was never tested positive for doping. I did dope,
 23 but you never caught me. That wouldn't be a defense
 24 under a plain reading of these rules, correct?
 25 A. I don't know. All I know is he was declared

Page 1139

1 the winner and obviously he couldn't be declared the
 2 winner without complying with the rules.
 3 Q. Okay.
 4 A. Until he's undeclared the winner, these rules
 5 go out the window, as far as I'm concerned.
 6 Q. Okay. Well, all right. I understand that, I
 7 think. Are you aware that under these rules that
 8 doping can be proven by any means, including
 9 presumption?
 10 A. I don't know what the implementation is.
 11 Q. Okay. So in your mind it's really irrelevant
 12 whether Mr. Armstrong, in fact, did dope in connection
 13 with the 2004 Tour de France because he's the
 14 official winner?
 15 A. That's correct. And they could have had in
 16 the underlying contract that if Mr. Armstrong won the
 17 19 -- the 2004 Tour de France and was found to have
 18 used performance enhancing drugs, he would still get
 19 the money.
 20 Q. Let's take --
 21 A. The point here is SCA didn't know what was in
 22 the contract. It couldn't make any difference to
 23 them, and then when they found out, they found out
 24 that the only event that had to occur was
 25 Mr. Armstrong had to be declared the official winner

Page 1140

1 of the 2004 Tour de France.
 2 Q. Let me make sure I understand the position
 3 you're taking as the expert on behalf of the Claimant.
 4 Your position would be or your understanding would
 5 be -- I'm going to take the most outrageous example I
 6 can think of. Even if Mr. Armstrong were to take this
 7 stand in these proceedings and say I doped in 2004 on
 8 the Tour de France and those guys were just not smart
 9 enough to catch me and I remain the official winner,
 10 even that, in your mind, is tough for SCA, they need
 11 to pay the claim?
 12 A. Absolutely. Absolutely.
 13 Q. Okay.
 14 A. Because that's what they agreed to cover.
 15 They haven't gone to the authorities at the Tour de
 16 France to try to strip him as they contemplated
 17 putting in the contract to begin with. They made no
 18 effort to strip him of any title, which is the
 19 operable event, and they haven't made any attempt to
 20 report insurance fraud that they've alleged not only
 21 against Lance Armstrong, but also against Tailwind to
 22 any of the authorities, including the Texas Department
 23 of Insurance, which is an absolute obligation under
 24 Texas law to report.
 25 Q. Even though you would agree with me that

Page 1141

1 Mr. Armstrong's statement, if such statement were made
 2 in these proceedings, would be an acknowledgment that
 3 he had not complied with the rules of the Tour de
 4 France?
 5 A. Under those circumstances, he would -- you
 6 would still owe the money until you stripped him of
 7 his title. If that were enough to strip him of the
 8 title, then perhaps you could come back and get your
 9 money back. That's exactly what was contemplated on
 10 January the 9th --
 11 Q. I don't mean to interrupt you, sir, but I'm
 12 going to try and ask you to stick to answering my
 13 questions.
 14 MR. HERMAN: Well, may the witness finish
 15 his answer, please?
 16 ARBITRATOR FAULKNER: Gentlemen, please.
 17 Ask the question, answer the question in full and if
 18 there will be an objection from the other side, then
 19 stop until we rule.
 20 Please go with your next question.
 21 MR. TILLOTSON: Thank you.
 22 Q. (BY MR. TILLOTSON) Now, I think I heard you
 23 say one of the things was that my client could have
 24 rewritten the contract to say even though you won, if
 25 we're able to prove you're doping, you don't get it.

Page 1142

1 It is true, is it not, that you understand that my
 2 contract -- my client said that Mr. Armstrong had to
 3 win the Tour de France in accordance with its rules?
 4 A. Yes.
 5 Q. You will agree with that, correct?
 6 MR. HERMAN: Excuse me. Would you ask
 7 the question again. I'm -- I didn't hear the
 8 question, I'm sorry.
 9 MR. TILLOTSON: She'll just reread it.
 10 MR. HERMAN: Okay. That would be great.
 11 Would you mind asking the question again?
 12 MR. TILLOTSON: No.
 13 Q. (BY MR. TILLOTSON) I believe I asked the
 14 witness and I believe you agreed that my -- the
 15 contract in this case required Mr. Armstrong to win
 16 the Tour de France in accordance with the rules?
 17 A. If that was my belief, but I'll take a look
 18 at the contract if you've got it.
 19 Q. Well, wait a minute now. You've opined for
 20 three hours regarding the bad faith nature of my
 21 clients and that there is absolutely no way out of
 22 this contract and all the work you did, and now my
 23 simple question is, you agree that the contract
 24 required Mr. Armstrong to win the Tour de France in
 25 accordance with the rules, and you know the answer to

Page 1143

1 that is yes, don't you?
 2 A. All I know is that I asked if I could see the
 3 contract. It's a reasonable request.
 4 ARBITRATOR FAULKNER: Why don't you try
 5 to answer his question. You're an expert witness.
 6 And then I'm sure Mr. Herman will be glad to give you
 7 a copy of the contract and then you can go ahead and
 8 point to anything else.
 9 ARBITRATOR LYON: Why don't we let him
 10 look at the contract. The other witness --
 11 ARBITRATOR FAULKNER: Well, we'll let him
 12 look at the contract in a minute, but go ahead and
 13 answer his question, if you can, then Mr. Herman can
 14 bring you the contract. Go ahead and proceed.
 15 A. That was my understanding, yes, but I would
 16 like to see the contract to verify it.
 17 Q. (BY MR. TILLOTSON) It's in front of you
 18 there in -- Claimants' Exhibit Number 17 is a copy of
 19 the contract.
 20 A. I'm sorry, can you point to me where it says
 21 enforcement? Can you tell me?
 22 Q. That was my question to you.
 23 A. I know. Could you point to where it is
 24 because I'm not finding it.
 25 Q. So are you now retracting your testimony, you

Page 1144

1 don't agree with what you said earlier?
 2 A. No, I said it was my understanding, but I'm
 3 asking you to help me. If it's there, I'll be happy
 4 to say it's there. If it's not --
 5 MR. TILLOTSON: Mariela, will you bring
 6 up Claimants' Exhibit 10, please. Claimants' Exhibit
 7 10.
 8 Q. (BY MR. TILLOTSON) Is there some problem,
 9 Mr. Longley, that you think with respect to your
 10 opinions that if you have to concede that Mr.
 11 Armstrong must win the Tour de France in accordance
 12 with its rules, that somehow the result of your
 13 opinions would be different?
 14 A. Absolutely not. All I'm saying is you've
 15 told me that it's there and I'm asking you where it
 16 is.
 17 Q. Okay. Now, you used this e-mail in
 18 connection with your testimony on direct. It's the
 19 last two lines, except "leave sponsor blank", subject
 20 to rules and if titles are stripped. You offered
 21 testimony regarding what you thought SCA was trying to
 22 get out of the contract. Do you recall that?
 23 A. I do recall that, yes.
 24 Q. And you will see it says there subject to
 25 rules?

Page 1145

1 A. I do see that.
 2 Q. And official results, right?
 3 A. Right.
 4 Q. And so you would conclude from that as the
 5 expert offering testimony here today that the contract
 6 at issue requires Mr. Armstrong to win the Tour de
 7 France in accordance with the rules?
 8 A. No, I don't conclude that. I was asking you
 9 where is it in the contract. I said my understanding
 10 was that that was what it was, but it may be I got the
 11 understanding from this document, which is not in the
 12 contract.
 13 Q. Well, did you form any opinion in this case
 14 as to whether or not Mr. Armstrong had to win the Tour
 15 de France in accordance with the rules?
 16 A. No. You asked me if that was in there and I
 17 said it was my understanding that it was. Perhaps I
 18 misunderstood because it's in something that you
 19 wanted in the contract but did not get it in there.
 20 Q. So is it your belief that if Mr. Armstrong
 21 was able to be declared the official winner, even
 22 though he took a different route than the others, that
 23 liability would be reasonably clear?
 24 A. Well, if that's what happened, if it's not in
 25 the contract. You wrote the contract, not

Page 1146

1 Mr. Armstrong or not Tailwind.
 2 Q. Okay. So to you the only material fact in
 3 the entire case with respect to liability is simply to
 4 determine the official winner and that the rules of
 5 the Tour de France and whether they were complied with
 6 is irrelevant so long as the term official winner is
 7 attached to Mr. Armstrong?
 8 A. According to the contract. Evidently that's
 9 true, because you have not pointed to me where that
 10 made it into the contract.
 11 Q. You are aware, aren't you, that Tailwind
 12 represents that Mr. Armstrong complies with the rules?
 13 A. I don't know what they -- what they
 14 represented back then.
 15 Q. And you are aware, aren't you, that Tailwind
 16 doesn't have to pay Mr. Armstrong anything if he
 17 cheats?
 18 A. I don't know about that either.
 19 Q. Have you reviewed the documents in the case
 20 with respect to Tailwind's contract with the United
 21 States Postal Service?
 22 A. Yes, I think so. Are you talking about the
 23 underlying contract?
 24 Q. No, hang on. Turn, if you will, to
 25 Respondents' Exhibit 4, and this will be in one of

Page 1147

1 these blue binders, sir, volume 1, Respondents'
 2 Exhibit 4 -- I'm sorry, 5. I apologize, Respondents'
 3 Exhibit 5.
 4 A. I'm with you.
 5 Q. This is a sponsorship agreement between --
 6 it's been previously identified in these proceedings
 7 as the sponsorship agreement between the United States
 8 Postal Service and Tailwind. Are you familiar with
 9 that?
 10 A. I think I've seen it before, yes.
 11 Q. Okay. And you know how this works with
 12 respect to Tailwind having the sponsorship agreement
 13 with the United States Postal and having a team,
 14 right?
 15 A. I think that's how it works.
 16 Q. Okay. And then the postal people pay some
 17 money to the team and they use that to help pay
 18 salaries and bonuses to people like Mr. Armstrong?
 19 A. If you say so. I'm not -- without reading
 20 it, I'm just taking your word for it.
 21 Q. Okay. All right. Now, I want you to turn,
 22 if you would, to page 4. Down at the bottom, I think
 23 the paragraph beginning, The company represents.
 24 MR. TILLOTSON: If you'd blow that up,
 25 Mariela.

Page 1148

1 Q. (BY MR. TILLOTSON) The company -- and that's
 2 Tailwind -- represents that each rider on the team has
 3 a morals turpitude and drug clause that allows the
 4 company to suspend or terminate the rider for cause
 5 and shall include all of these things. And I want to
 6 focus down now on number 4, inappropriate drug conduct
 7 prejudicial to the team which is in violation of team
 8 rules or commonly accepted standards of morality.
 9 Do you see that?
 10 A. I see that.
 11 Q. Would it be reasonable to conclude from this,
 12 in your mind as the expert here, that the fact that
 13 Mr. Armstrong might engage in inappropriate drug
 14 conduct prejudicial to the team, violated its rules,
 15 would give Tailwind cause to not either terminate or
 16 suspend Mr. Armstrong?
 17 A. Would that be used as cause or could be used
 18 as --
 19 Q. Yes.
 20 A. Yes, I think so.
 21 Q. Okay. So you would agree with me -- and this
 22 contract runs during the course of 2001 through the
 23 2004 Tour de France -- that if, in fact, Mr. Armstrong
 24 was engaging in inappropriate drug conduct according
 25 to this provision, he could be suspended by Tailwind?

Page 1149

1 A. Yes.
 2 Q. Okay. Now, assume for me for a moment that
 3 evidence that Mr. Armstrong used drugs is a violation
 4 of the UCI rules that we saw and that that violation
 5 of the rules allowed SCA to contest its liability
 6 under the contract, okay? Just assume that for me --
 7 A. I'll make that assumption.
 8 Q. -- for a moment.
 9 Would you agree that a thorough
 10 investigation, if that was true, that SCA would be
 11 required to conduct a thorough investigation of those
 12 allegations?
 13 A. Yes, sir.
 14 Q. And that that thorough investigation would
 15 include interviewing any material witness?
 16 A. True.
 17 Q. And obtaining any evidence that might support
 18 those allegations or contradictions?
 19 A. Correct.
 20 Q. So, for example, if one of the allegations
 21 was that Mr. Armstrong was involved with the trainer
 22 who was known to dope people, you would expect SCA,
 23 before they denied the claim on that basis, to try and
 24 figure out if that was true?
 25 A. Under your assumption, yes.

Page 1150

1 Q. Okay. I understand.
 2 A. Yeah.
 3 Q. You're making that assumption.
 4 A. Sure.
 5 Q. So, for example, if there was evidence that
 6 Michele Ferrari, in fact, had doped with other
 7 athletes, SCA would be required to figure out if
 8 Mr. Armstrong's relationship with Mr. Ferrari, in
 9 fact, engaged in illegal activity, correct?
 10 A. Under your assumption, that's correct.
 11 Q. And I assume -- right, okay. Now, with
 12 respect to some of the other items that you saw here,
 13 for example, there was some request for other
 14 contracts, do you remember that, by Mr. Compton and
 15 Mr. Hamman?
 16 A. Yes.
 17 Q. And other contracts, sponsorship contracts,
 18 and they were questioned hard about why you need them,
 19 why would you care, well, one of those contracts would
 20 be what we just looked at, Exhibit 5, a sponsorship
 21 contract, correct?
 22 A. I don't know.
 23 Q. Well, if my client was requesting any
 24 contract relationships for bonuses, sponsors or
 25 otherwise between Tailwind and Mr. Armstrong,

Page 1151

1 presumably Exhibit 5 that we just looked at would be
 2 one of those agreements, right?
 3 A. I thought that was the agreement.
 4 Q. Okay. And you would agree with me that it
 5 might matter to SCA to get this document to figure out
 6 whether or not there was such a clause like what we
 7 just saw to figure out if Tailwind had cause to
 8 sanction or investigate Mr. Armstrong based upon the
 9 evidence that might exist, correct?
 10 A. Sure.
 11 Q. Okay. Now, you know that Tailwind declined
 12 all requests for information from SCA, don't you?
 13 A. I don't know what they declined.
 14 Q. Well, you were here. Did you see
 15 correspondence regarding Tailwind's refusal to
 16 cooperate and provide SCA any of the information
 17 requested?
 18 A. I saw the early on correspondence where they
 19 talked about it was irrelevant, which I agree with.
 20 Q. My question isn't whether it was irrelevant
 21 or not, my question is you will agree with me that
 22 Tailwind did not supply the requested information,
 23 correct?
 24 A. That I don't know, but I'll take your word if
 25 you say that that's what the state of the evidence is.

Page 1152

1 Q. Are you aware that Tailwind not only didn't
 2 provide information, but actively worked to prove the
 3 opposite? For example, are you aware regarding what
 4 actions Tailwind took to try and interview some of the
 5 very same witnesses that SCA tried to interview?
 6 A. No.
 7 Q. All right. Would you agree with me that it's
 8 difficult to prove that a particular athlete doped?
 9 Do you have any knowledge regarding that?
 10 A. I have no knowledge with regard to the
 11 difficulty to prove.
 12 Q. How difficult it is to prove whether someone
 13 doped, which could be a violation of the rules, might
 14 bear in the kind of investigation an insurer has to
 15 undertake if that is, in fact, relevant, correct?
 16 A. If it was relevant, if it mattered, that
 17 would be correct.
 18 Q. But you would agree with me -- well, have you
 19 ever read David Walsh's book or even looked at it?
 20 A. No.
 21 Q. You would agree with me, though, that
 22 assuming that whether Mr. Armstrong doped or not
 23 mattered, that an insurer would not really be
 24 justified in simply reading a book about it and saying
 25 we are not paying because somebody has written a book

Page 1153

1 claiming you did; you would need to do more, wouldn't
 2 you?
 3 A. Absolutely.
 4 Q. Now, I want to talk for a moment about 21.17,
 5 I guess, which has not been recodified, but we are
 6 working on 21.17; is that fair?
 7 A. That's fair.
 8 Q. Okay.
 9 MR. TILLOTSON: Mariela, can you bring up
 10 our slide from -- oh, you have it right there. Okay.
 11 I got the statute here. If you'll blow that up.
 12 Q. (BY MR. TILLOTSON) All right. It says no
 13 defense based upon misrepresentation made in the
 14 applications for or in obtaining or securing the said
 15 contract. Do you see that language?
 16 A. Yes.
 17 Q. Unfortunately, I don't have it in front of
 18 you, Mr. Longley.
 19 A. I thought I might have it here in the
 20 booklet, but I do know what you're talking about.
 21 Q. I'll give you a second if you want to put it
 22 in front of you.
 23 MR. BREEN: Do you mind, Jeff?
 24 MR. TILLOTSON: Not at all. Please.
 25 ARBITRATOR CHERNICK: It's Exhibit N, I

Page 1154

1 think, isn't it?
 2 MR. BREEN: Yes, sir.
 3 A. Okay, I got it.
 4 Q. (BY MR. TILLOTSON) Okay. Says no defense
 5 based upon misrepresentation made in the application
 6 for or in obtaining or securing said contract. Do you
 7 see that?
 8 A. Correct.
 9 Q. First, you'll agree with me it's limited to
 10 misrepresentations?
 11 A. Correct.
 12 Q. And that it can be a misrepresentation made
 13 in the actual application for or in simply obtaining
 14 the insurance, right?
 15 A. Correct.
 16 Q. Okay. Now, it won't be valid unless it is
 17 shown beyond that, within a reasonable time after
 18 discovering the falsity of the representations so
 19 made, it gave notice, right?
 20 A. Right.
 21 Q. Now, so the first thing we know is you need
 22 to know -- the insured needs to decide that the
 23 representations were false?
 24 A. Correct.
 25 Q. And then you need to give notice and that the

Page 1155

1 notice is that it refused to be bound by the contract
 2 or policy. Do you see that?
 3 A. The notice of representation -- the falsity
 4 of the representations.
 5 Q. Okay. Well, it doesn't say giving notice of
 6 the falsity of the specific representations, it says
 7 that it refused to be bound by the contract or policy,
 8 correct?
 9 A. It says after discovery, the falsity of the
 10 representations so made. It gave notice to the
 11 insured.
 12 Q. If living?
 13 A. If living. That's what I'm reading, or if
 14 dead.
 15 Q. If living, or, if dead -- it's one of those?
 16 A. To the owners or beneficiaries of said
 17 contract.
 18 Q. That it refused to be bound by the contract
 19 or policy, right?
 20 A. Correct.
 21 Q. Gave notice to the insurer that it refused to
 22 be bound by the contract?
 23 A. Right.
 24 Q. In other words, I'm not paying, correct?
 25 A. That's correct. In the context of what's

Page 1156

1 said here, that's right. But there are other matters
 2 here that have to be given notice of.
 3 Q. Hang on. We are just looking at the
 4 statutory language that says it refused to be bound by
 5 the contract or policy, okay?
 6 A. Okay.
 7 Q. And that 90 days shall be a reasonable time,
 8 correct?
 9 A. Correct.
 10 Q. But you would agree with me that that's a
 11 presumption under 21.17, a reasonable time, that you
 12 can prove, for whatever particular reasons, that 92
 13 days might have been reasonable under the
 14 circumstances?
 15 A. It's possible.
 16 Q. Okay. And one way it would be possible to
 17 prove the reasonableness of the notice that you gave
 18 might be that you learned something and you later
 19 learned other additional information which extended
 20 the period of time which you had to give notice,
 21 correct?
 22 A. I'm not familiar with that ever happening,
 23 but I suppose it could happen.
 24 Q. Well, for example, an insured who refuses to
 25 cooperate in an investigation might make it difficult

Pages 1153 to 1156

Page 1157

1 for an insurer to discover the falsity of a particular
2 representation, correct?
3 A. Well, that assumes there's a duty to
4 cooperate to start with with regard to some policy
5 provision.
6 Q. Well, don't all insureds operate under a law,
7 under a general duty to cooperate with the insurer?
8 A. Absolutely not. You've got to look at the
9 policy to see what the duty of cooperation is.
10 Q. You're not suggesting that Tailwind could
11 have hid evidence from SCA in connection with trying
12 to determine whether or not there was liability or
13 not?
14 A. I'm not assuming anything. I'm just saying
15 that what Tailwind has to do is provide a certificate,
16 if called upon, that he won the 2004 Tour de France.
17 Like they did with the other two insurance companies
18 that paid.
19 Q. So Tailwind is not -- under your mind,
20 Tailwind is not required, for example, to make
21 Mr. Armstrong available for an interview or to provide
22 any documents?
23 A. That's correct, absolutely.
24 Q. But that doesn't mean that SCA is not
25 entitled to determine whether or not the claim should

Page 1158

1 be paid, correct?
2 A. They're entitled to try to determine, but
3 they've got 90 days to do it if they're going to use
4 this statute and use it as a defense.
5 Q. Well, no, 90 days to provide notice that they
6 refuse to be bound by the contract, not 90 days to do
7 the investigation.
8 A. Well, they've got 90 days to give notice
9 about the representations that were made that were
10 false.
11 Q. Okay. Under this statute, but you have to
12 know they're false, correct?
13 A. And you have to know the representations.
14 Q. All right. And the only way to know they're
15 false is you've got to conduct your investigation,
16 right?
17 A. Right. I'll give you 90 days to give that
18 notice.
19 Q. Now, another way in which notice might be
20 reasonable after 90 days is if -- if various forms of
21 notification were given regarding the representations
22 that the insured thought were false, correct?
23 A. I'm sorry, I didn't follow that.
24 Q. Well, if the insured acknowledges prior to
25 the expiration of this 90-day period that it

Page 1159

1 understood and knew that the insured was not paying
2 because of fraudulent misrepresentations and the
3 insured only later gave notice outside the 90-day
4 period, that might be one way in which the later
5 delinquent notice would be deemed reasonable, because
6 it believed the insured already knew?
7 A. No, I disagree with that. They've got 90
8 days, drop dead.
9 Q. Okay. Fair enough.
10 Now, you indicated in your direct
11 testimony with respect to bad faith that one of the
12 things that you based your conclusion that there was
13 bad faith on was that other reputable insurers, Lloyds
14 and CHUBB, paid like that. Do you recall that?
15 A. Evidently they conducted the investigation
16 that was allowed under the contract and they paid.
17 Q. Do you know if they conducted an
18 investigation?
19 A. I have no idea, but there's not much
20 investigation to make based upon being tied to the SCA
21 contract.
22 Q. Is it possible that one of the reasons that
23 CHUBB and/or Lloyds -- they have got a new name. Let
24 me try that again.
25 Is it possible that one of the reasons

Page 1160

1 CHUBB and/or Lloyds paid rather than take the route
2 pursued by SCA is because they weren't interested in
3 the adverse publicity that might have resulted from
4 such a decision?
5 A. I have no clue as to what -- I assume they
6 paid because they're a reputable insurance company and
7 they knew that they had liability and they paid their
8 claims within a reasonable time.
9 Q. You are aware that one of the insurance
10 companies here in connection with paying asked for a
11 publicity photo with Mr. Armstrong?
12 A. I do not know that, but it certainly wouldn't
13 surprise me. He's a man of great repetition.
14 Q. Are you aware that one of the insurance
15 companies, Lloyds, the syndicate was involved in
16 receivership?
17 A. I have no idea of that.
18 Q. Are you aware that when a syndicate of Lloyds
19 is in receivership, that they generally don't
20 investigate at all, but simply pay claims?
21 A. I have no knowledge of that.
22 Q. Are you aware or do you believe that one of
23 the reasons one of the insurance companies CHUBB and
24 Lloyds might not have paid was because of the
25 difficulty of conducting an investigation into the

Page 1161

1 allegations in Mr. Walsh's book?
 2 A. Why they may not have paid?
 3 Q. Why they may have paid.
 4 A. Oh, I'm sorry, repeat that again.
 5 Q. Sure. I probably made it confusing. Do you
 6 know if one of the reasons why CHUBB and Lloyds might
 7 have paid rather than conduct an investigation or
 8 taken the route SCA took was because they concluded
 9 that an investigation would be simply too difficult to
 10 undertake?
 11 A. I have no clue as to what their motives might
 12 have been, other than, you know, pure and honest.
 13 Q. Right, that's an assumption that you're
 14 milking, but you would acknowledge that there's other
 15 possible reasons why those two insurance companies
 16 paid, correct?
 17 A. Well, if a frog had six guns, they could
 18 shoot snakes. I mean, you know, sure.
 19 Q. Well, hold on, sir. I like your analogy, but
 20 you're the one that offered an opinion panel that
 21 those two insurance companies paid and that meant
 22 something, right, that that meant that the claim was
 23 reasonably clear and my clients acted in bad faith.
 24 Now, when I ask you if there's other
 25 reasons, you tell me you really have no idea why they

Page 1162

1 might have paid.
 2 A. Well, I don't have any idea as to the
 3 questions you're asking me. All I know is they paid.
 4 They had huge claims departments as well as
 5 underwriting departments and, you know, they had
 6 claims manuals like any big insurance company does.
 7 I've litigated with Lloyds, I've litigated with CHUBB.
 8 They're both reputable insurance companies. They
 9 paid, end of story.
 10 Q. I'm not disputing whether they paid or not.
 11 I'm asking you regarding whether or not you conducted
 12 any investigation to figure out that they made
 13 reasonable determinations that the claim was clear and
 14 there wasn't some other reason or reasons why they
 15 simply paid?
 16 A. The answer to that would be no.
 17 Q. Do you know or have any basis for knowledge
 18 regarding what types of performance enhancing
 19 substances or drugs can be tested for and which can't
 20 be tested for?
 21 A. No.
 22 Q. Would you generally agree with me or do you
 23 have any basis for knowledge that there are certain
 24 forms of performance enhancing substances for which we
 25 simply can't test for today?

Page 1163

1 A. I don't know.
 2 Q. If that was true, if you were to learn that
 3 you can't test for certain performance enhancing
 4 substances, then -- and it mattered, would an
 5 insurance company such as SCA be reasonable in not
 6 accepting completely an e-mail from the UCI regarding
 7 Mr. Armstrong's test results as proof that he couldn't
 8 have possibly doped?
 9 A. I'm sorry, you'll have to repeat it.
 10 Q. Okay.
 11 A. I lost it there, I'm sorry.
 12 Q. Assume for me for a moment that we were
 13 talking that it matters as to whether or not
 14 Mr. Armstrong doped in connection with whether or not
 15 my client has to pay.
 16 A. Okay.
 17 Q. It has been suggested by Tailwind that they
 18 provided my client an e-mail from the UCI in August of
 19 2004 with test results saying Mr. Armstrong passed all
 20 his tests.
 21 A. Okay.
 22 Q. If you were, as the insurer, to learn that
 23 there are certain performance enhancing substances
 24 that simply cannot be tested for, surely you would
 25 agree that the insurance company would be reasonable

Page 1164

1 in continuing to investigate and not accepting those
 2 test results as conclusive?
 3 A. No, I would disagree with that. I think that
 4 once they get the official information that he tested,
 5 you know, negative, then that's the end of the
 6 story --
 7 Q. Well, let's take an example.
 8 A. -- under your assumption.
 9 Q. In Mr. Walsh's book one of the things that's
 10 alleged is that Mr. Armstrong acknowledged the use of
 11 some performance enhancing drugs in a hospital room,
 12 one of which was growth hormone. Are you aware of
 13 that allegation?
 14 A. No, nor am I aware of the drug you've
 15 identified.
 16 Q. Are you aware if they can currently test at
 17 any time between 2001 and 2004 for growth hormone?
 18 A. No.
 19 Q. If doping -- if whether Mr. Armstrong used
 20 performance enhancing drugs mattered with respect to
 21 the liability of SCA, do you have any opinion
 22 regarding what a reasonable investigation would be for
 23 an insurance company to figure that out?
 24 A. How about asking Lance Armstrong.
 25 Q. Well, are you aware if he's ever acknowledged

Page 1165

1 it?

2 A. I don't know. That would be a reasonable

3 investigation, I suppose, is to ask him.

4 Q. Anything else?

5 A. You could possibly ask for affidavits.

6 Q. Okay. What else?

7 A. Whatever a claims manual will allow if it

8 mattered and if it was something that, you know, was

9 usually conducted in a reasonable investigation by

10 reputable insurance companies. I would take CHUBB and

11 Lloyds as being reputable.

12 Q. Would you think that any way in which -- the

13 manners in which the regulatory bodies like USADA or

14 WADA go about investigating to determine whether or

15 not an athlete used performance enhancing substances,

16 the way in which they would conduct the investigation,

17 would you agree that that would be reasonable for SCA

18 to follow those same guidelines?

19 A. I don't know.

20 Q. Okay, fair enough. You've talked about

21 the -- being the official winner of the contract as

22 being the triggering event, and you recognize -- I

23 think you were asked by Mr. Herman that a

24 confidentiality order was entered in this matter in

25 April of 2005.

Page 1166

1 A. Yes, I remember that.

2 Q. Are you aware if any depositions were taken

3 prior to that time period in this case or do you know?

4 A. I don't know.

5 Q. So if all depositions, i.e., sworn testimony

6 was taken after April 2005 and there was a

7 confidentiality order, you wouldn't blame SCA for not

8 taking those depositions and providing them to a

9 regulatory agency, correct?

10 A. I would blame them.

11 Q. Okay.

12 A. Because according to Mr. Compton's testimony,

13 they knew in September of 2004, long before there was

14 a confidentiality order, that the insurance fraud had

15 been committed according to his testimony, yet it

16 hadn't been reported. There's been no attempt to

17 rescind the contract, no premiums have been returned,

18 the authorities of Tour de France have not been

19 contacted to bring any of that information that he

20 knew in September of 2004 to their attention to start

21 any proceedings that there could be any to strip him

22 of his title. Everything that your client has done

23 has been inconsistent with claiming insurance fraud,

24 yet they get up here and blurb it under oath as if it

25 just rolls off their tongue very easily as damaging as

Page 1167

1 it might be.

2 Q. Have you reviewed any of the evidence as to

3 whether or not Mr. Armstrong doped or not in this

4 case?

5 A. As to whether or not he what?

6 Q. Used performance enhancing drugs.

7 A. I've heard the evidence that we have been

8 talking about here. I'm surprised that if there -- if

9 you think that that evidence which Mr. Compton said as

10 of September of 2004 was enough to report insurance

11 fraud, which by the way wasn't reported, then it ought

12 to be enough to go to the authorities at the Tour de

13 France and say strip him of his titles so we can get

14 our money back, but, oh, yeah, I forgot we hadn't paid

15 the money.

16 Q. Well, I guess -- I think my question was, for

17 example, have you read Greg LeMond and Kathy LeMond's

18 depositions?

19 A. No.

20 Q. Frankie Andreu and Betsy Andreu?

21 A. No.

22 Q. Okay. Now, are you aware that the UCI is

23 currently investigating Mr. Armstrong in connection

24 with drug -- performance enhancing drug use?

25 A. I have no idea?

Page 1168

1 Q. Do you know if WADA is investigating?

2 A. I have no idea.

3 Q. Okay. If there was such an investigation

4 ongoing and the possible penalty for that

5 investigation was stripping Mr. Armstrong of his

6 titles, isn't it true that SCA, as the insurer, would

7 be entitled to present that evidence to a finder of

8 fact to have that determination made?

9 A. You mean at the Tour de France?

10 Q. Well, any tribunal which was hearing the

11 claim.

12 A. Well, I'm not about to opine as to the rights

13 of SCA as to what they might do or not. I know that

14 they would need to pay the claim to their insured and

15 then they could go do whatever they want to do to try

16 to get it back if they think he's going to be stripped

17 of his title. But, you know, it's kind of like making

18 rabbit stew, first you catch the rabbit, and that

19 hasn't been done yet.

20 Q. What's the rabbit, I'm sorry?

21 A. Paying the money to the insured.

22 Q. So the problem here is they haven't paid the

23 money; is that --

24 A. That's a big problem.

25 Q. I missed the point. Is the problem that

Page 1169

1 you're saying is they haven't proven that
 2 Mr. Armstrong shouldn't be the winner?
 3 A. Well, yes. The only way they get out of this
 4 contract is if at some point, I suppose, in the future
 5 there's been some hearing about the Tour de France and
 6 they said, well, wait a minute, we heard from an
 7 arbitration over in Dallas, Texas that he's been a
 8 doper for years and we're going to strip him of his
 9 title.
 10 Now, if you had paid the money, that
 11 would give you the right to go and try to get it back,
 12 just like Mr. Hamman said in his e-mail that he wanted
 13 in the contract but never got in the contract.
 14 Q. Okay.
 15 A. That hadn't happened.
 16 Q. Okay. Thank you. I'm still looking for the
 17 rabbit in the stew.
 18 MR. HERMAN: You are.
 19 ARBITRATOR FAULKNER: Okay, guys, let's
 20 kind of focus on this, because we have got --
 21 according to the time schedule, we've got an hour and
 22 15 minutes left today and you fellows still have
 23 another deposition to take.
 24 MR. TILLOTSON: I'm sorry, I was almost
 25 done. That's why I was making jokes about the stew.

Page 1170

1 THE WITNESS: I'm sorry about the
 2 analogy.
 3 MR. TILLOTSON: That's all right. That's
 4 all right.
 5 Q. (BY MR. TILLOTSON) Now, if, in fact,
 6 you're -- the opinions you've offered here regarding
 7 whether or not SCA had the ability to investigate or
 8 not, wouldn't you agree that if SCA couldn't verify,
 9 ask for information from Tailwind regarding
 10 Mr. Armstrong's drug use, then the statements they
 11 were told or believed in entering into the contract
 12 about Mr. Armstrong's non-use of drugs were important?
 13 A. No, they weren't important. They weren't
 14 relied upon. They weren't even made to him.
 15 Q. Well, you wouldn't take -- I think you said
 16 earlier today you told me that -- that you showed
 17 Mr. Hamman's e-mail regarding the odds and you told
 18 the panel that those were the odds that they did and
 19 that there was nothing really else they relied on. Do
 20 you remember that e-mail with the odds by Mr. Hamman?
 21 A. Yes.
 22 Q. You would agree with me that if, in fact,
 23 Mr. Armstrong was using performance enhancing drugs,
 24 those odds might change dramatically?
 25 A. I don't know. Mr. Hamman didn't testify. He

Page 1171

1 might have figured those odds assuming that everybody
 2 was using performance enhancing drugs. So those would
 3 be the odds assuming everybody did, or he could assume
 4 that nobody did.
 5 Q. But if --
 6 A. But the point is he didn't go out and -- he
 7 knew about their problems with the Tour de France, he
 8 knew there was problems with performance enhancing
 9 drugs at the time that this was all being discussed,
 10 he recognized the moral hazard in this e-mail and
 11 asked one of his assistants to put it in the contract.
 12 It didn't get in there.
 13 Q. Surely in recognizing a moral hazard you're
 14 entitled to rely on statements of an individual saying
 15 that he's not engaging in prohibited conduct, aren't
 16 you?
 17 A. No. If you're recognizing moral hazard, you
 18 take whatever action you deem necessary. Obviously
 19 Mr. Hamman had an idea of what he wanted to do and you
 20 protect yourself or you go out and you do some
 21 underwriting investigation, as evidently they had an
 22 underwriting department and they chose not to do that.
 23 They chose not even to look at the underwriting
 24 contract, so they had no idea what their liability was
 25 until it's almost time to pay the 5 million.

Page 1172

1 Q. Now, I think you concluded your direct
 2 testimony saying that you thought that there was
 3 absolutely no doubt of liability?
 4 A. That's correct.
 5 Q. Which, of course, factors into a bad faith
 6 claim, right?
 7 A. Yes.
 8 Q. If it's reasonably clear, then there's no
 9 doubt?
 10 A. In my opinion, it was absolutely clear.
 11 Q. Have you been provided with a copy of the
 12 affidavit from Jean-Marie Leblanc?
 13 A. I haven't seen it. It's possibly in the
 14 record, but I haven't seen it.
 15 Q. Do you know who he is?
 16 A. No.
 17 Q. If Jean-Marie Leblanc was the general manager
 18 of the Tour de France and he expressed doubts in an
 19 affidavit regarding whether or not Mr. Armstrong
 20 really won the Tour de France in 1999 without using
 21 performance enhancing drugs, would you agree there is
 22 some doubt out there for SCA to investigate?
 23 A. Not under these circumstances, no doubt.
 24 MR. TILLOTSON: Pass the witness. Thank
 25 you, Mr. Longley.

Page 1173

1 THE WITNESS: You're welcome.
 2 ARBITRATOR FAULKNER: Mr. Herman?
 3 Either panel member have any --
 4 ARBITRATOR LYON: Yes. I want you to
 5 give me an example outside of this case of post-claim
 6 underwriting that you can think of in your past
 7 experience.
 8 THE WITNESS: I'll give you an example
 9 and I'll cite you a case, Cobb versus Underwriters
 10 Life Insurance Company. The cite is in the -- in the
 11 CV which we provided to the panel.
 12 In that case, a Dallas insurance company
 13 sent out agents with the admonition to write all of
 14 the business that they could and they did really no
 15 underwriting investigation whatsoever. These people
 16 wrote generally elderly and infirm people, people who
 17 were really the least able to take a hit on not having
 18 their claims paid with regard to recovery in an
 19 accident, and they just went all over the state and
 20 did this. And then whenever that person would have a
 21 claim, there was an application that was attached to
 22 their policy application, there was a form which gave
 23 the insurance company the right to go and get all
 24 their medical records. The insurance company would
 25 then go and get those medical records. Rather than

Page 1174

1 looking at them on the front end when their
 2 application came in, they looked at them after a claim
 3 was made. This is a classic example of the post-claim
 4 underwriting.
 5 In the instance of that case, there was a
 6 lady, she had a stroke, and ten years before she had
 7 been treated for headaches and they latched upon that
 8 and said, well, she said she had never had any kind of
 9 problems with headaches or anything like that in her
 10 application; therefore, we will rescind the policy,
 11 give her money back and we are off the risk. And they
 12 did that all over the state. That would be a classic
 13 example of post-claim underwriting. You don't look at
 14 the risk on the front end when you're selling the
 15 policy, you get the people in and when somebody has a
 16 problem, you do the underwriting at that point.
 17 ARBITRATOR LYON: And this is absolutely
 18 prohibited by the insurance code?
 19 THE WITNESS: Well, it's unfair and it's
 20 unconscionable and it was found so in that case. It's
 21 Underwriters versus Cobb. And they awarded in that
 22 case -- the claim was about \$9,000. The trial court
 23 and the jury awarded about a million-five, I think.
 24 It was appealed to the Court of Appeals and there was
 25 a \$500,000 reduction so it resulted in over a half

Page 1175

1 million dollar judgment. By the way, that insurance
 2 company later went out of business and was put in
 3 receivership.
 4 ARBITRATOR LYON: I don't have any other
 5 questions.
 6 ARBITRATOR FAULKNER: I have one for you,
 7 Mr. Longley. You used -- prior to your rabbit stew
 8 analogy, you used an analogy of life insurance.
 9 THE WITNESS: Yes, sir.
 10 MR. FAULKNER: Let me pose a
 11 hypothetical. Life insurance policy is issued with a
 12 standard application on life of person X. Person X is
 13 reputed to have died. The official agency, coroner,
 14 whomever certifies X has died. Ten, 15 years later X
 15 turns up. Can the insurance company get its money
 16 back?
 17 THE WITNESS: Yes, I think they can under
 18 those circumstances. I think they can come back in
 19 and show that whatever the circumstances were under
 20 which they paid, you know, that the death certificate
 21 was erroneous. It was bogus, or maybe it had been
 22 forged.
 23 MR. FAULKNER: Let me change the
 24 hypothetical slightly. Life insurance policy on life
 25 of X. X disappears, statutory time period of -- I

Page 1176

1 think it's -- was eight years passes, X has not been
 2 seen. Insurance company pays the life claim. 15
 3 years after the purported death, X is now discovered
 4 by the FBI in Scotland Yard in London, England. Does
 5 the insurance company get its money back?
 6 THE WITNESS: I'm unsure as to that where
 7 someone has just disappeared and there hasn't been a
 8 finding certified by an authority.
 9 MR. FAULKNER: But a death certificate is
 10 issued after -- you know, when the time period for the
 11 presumption of death has expired.
 12 THE WITNESS: If there's a death
 13 certificate that has been issued, and that was the
 14 triggering event that was in the application and the
 15 policy as to -- that would require a death certificate
 16 and they had one and it turns out that this
 17 certificate was erroneous, I'm not sure how that would
 18 be handled in those circumstances. Certainly if it
 19 was a bogus death certificate, I think you could come
 20 back in.
 21 ARBITRATOR FAULKNER: Okay. I have no
 22 other questions. Gentlemen? Mr. Herman, anything?
 23 MR. HERMAN: Yes, I do have a couple of
 24 questions. Please don't hold me to a couple.
 25 ARBITRATOR FAULKNER: I wasn't planning

<p style="text-align: right;">Page 1177</p> <p>1 to.</p> <p>2 RE-DIRECT EXAMINATION</p> <p>3 BY MR. HERMAN:</p> <p>4 Q. I think I'm going to finally get to use this</p> <p>5 thing Mr. Tillotson talked to you about -- see that</p> <p>6 line there? See that line there? Okay. Subject</p> <p>7 to -- subject to rules and official results, do you</p> <p>8 see that? Do you remember Mr. Tillotson -- that's the</p> <p>9 only part of that line he read to you.</p> <p>10 A. Yes, I do remember that.</p> <p>11 Q. Now, the question -- I suppose the ultimate</p> <p>12 question here is who gets to decide? Who enforces or</p> <p>13 determines whether the rules of the Tour de France are</p> <p>14 followed?</p> <p>15 A. Well, it's certainly not the insurance</p> <p>16 companies, it's the authority of the Tour de France.</p> <p>17 Q. Right, and assume with me that that's the</p> <p>18 UCI.</p> <p>19 A. Right.</p> <p>20 Q. And you saw Mr. Tillotson put up these rules</p> <p>21 and regulations from the UCI.</p> <p>22 A. Yes.</p> <p>23 Q. Does the SCA get to decide whether -- whether</p> <p>24 the UCI did its job or not?</p> <p>25 A. No. No. SCA gets to pay and then if it</p>	<p style="text-align: right;">Page 1179</p> <p>1 misrepresentations and within 90 days after they</p> <p>2 determined or came to some good faith belief that</p> <p>3 misrepresentations -- material misrepresentations that</p> <p>4 they relied upon had been made, they had to give</p> <p>5 notice of their refusal to abide by the contract. Do</p> <p>6 you recall that?</p> <p>7 A. Yes.</p> <p>8 Q. All right. Are you familiar with National</p> <p>9 Union v. Hudson, Mr. Longley? I believe it's attached</p> <p>10 to the Claimants' Motion for Summary Judgment.</p> <p>11 A. Yes.</p> <p>12 Q. Would a strained and unconscionable</p> <p>13 interpretation of -- advanced by SCA, would that have</p> <p>14 justified an extension of the time within which to</p> <p>15 pay?</p> <p>16 A. No, it would not.</p> <p>17 Q. If Mr. Armstrong was declared the official</p> <p>18 winner and found by the official event governing body</p> <p>19 to have abided by the rules, is there any authority,</p> <p>20 discretion or any other basis upon which SCA can go</p> <p>21 behind that?</p> <p>22 A. Absolutely not. In my judgment, that would</p> <p>23 be a frivolous allegation if it were even offered.</p> <p>24 Q. And do you understand that SCA's entire</p> <p>25 investigation has been based upon trying to do exactly</p>
<p style="text-align: right;">Page 1178</p> <p>1 turns out that UCI strips the winner of their title,</p> <p>2 as in the example the chairman just asked, then at</p> <p>3 that point you can come back in and seek your money</p> <p>4 back.</p> <p>5 Q. Is it fair to say that the rules and official</p> <p>6 results as reflected in Mr. Hamman's own e-mail are</p> <p>7 those that are certified by the official event</p> <p>8 governing body?</p> <p>9 A. That's what it is. That's what he wanted in</p> <p>10 his contract. I don't think it made it in there, but</p> <p>11 certainly that's what it appears his intent was.</p> <p>12 Q. And you're not -- you're not asserting that</p> <p>13 if the UCI were to at some point determine that their</p> <p>14 rules were not complied with in 2004, that Tailwind</p> <p>15 would not owe the money back?</p> <p>16 A. No.</p> <p>17 Q. In other words, I think you testified earlier</p> <p>18 that it is Tailwind's liability that determines SCA's?</p> <p>19 A. That's correct, they followed Tailwind's</p> <p>20 liability.</p> <p>21 Q. And if Tailwind remains liable, is there any</p> <p>22 reasonable way to say that SCA is not liable?</p> <p>23 A. None that I know of.</p> <p>24 Q. Now, you mentioned earlier in talking about</p> <p>25 21.17 that they had to give notice of the</p>	<p style="text-align: right;">Page 1180</p> <p>1 that?</p> <p>2 A. That's why I say the word that applies to</p> <p>3 this is outrageous.</p> <p>4 Q. Now, incidentally, you talk about claims</p> <p>5 manuals and so forth. Would you expect a reputable</p> <p>6 indemnitor who is obligated to deal in good faith,</p> <p>7 would you expect them to have a manual?</p> <p>8 A. Of course.</p> <p>9 Q. Would you expect them to have some guidelines</p> <p>10 which would govern dealing with their insureds?</p> <p>11 A. Certainly.</p> <p>12 Q. Would it surprise you, given what you know</p> <p>13 about SCA's conduct, to know that they have no claims</p> <p>14 manual, they have no guidelines?</p> <p>15 A. It doesn't surprise me at all. It's fairly</p> <p>16 abundantly clear that they don't.</p> <p>17 Q. Mr. Tillotson said would you agree it's</p> <p>18 difficult to prove someone was using performance</p> <p>19 enhancing substances, and I believe you agreed with</p> <p>20 that?</p> <p>21 A. Yes.</p> <p>22 Q. How hard is it to prove that you didn't? It</p> <p>23 would be impossible to prove that you didn't.</p> <p>24 A. Equally as hard, I would say, if not worse.</p> <p>25 Q. Have you ever heard the old phrase you cannot</p>

Pages 1177 to 1180

Page 1181

1 prove a negative?
 2 A. I have heard that.
 3 Q. Incidentally, would you expect a reasonable,
 4 reputable insured to base their entire claims denial
 5 upon a book that had been peddled to 19 English
 6 speaking publishers who wouldn't touch it with a
 7 ten-foot pole?
 8 MR. TILLOTSON: Well, that's not correct,
 9 so I object to that. That's not in the record.
 10 That's irrelevant.
 11 Q. (BY MR. HERMAN) Hypothetically would you
 12 expect --
 13 ARBITRATOR FAULKNER: Wait. Let me
 14 hear --
 15 MR. TILLOTSON: Object to it as
 16 argumentative, assumes facts not in evidence.
 17 ARBITRATOR FAULKNER: I'm going to go
 18 ahead and sustain it.
 19 Please rephrase your question. We know
 20 what lawyer's argument is, guys. We have all been
 21 doing this for a long time.
 22 Q. (BY MR. HERMAN) Would you expect a
 23 reasonable insurer acting in good faith to rely upon
 24 allegations in a book which could not find a publisher
 25 in the English speaking world?

Page 1182

1 A. No.
 2 MR. HERMAN: Now, put up slide 6,
 3 please, Russell.
 4 Q. (BY MR. HERMAN) I know that you've -- that
 5 you're aware of this, but I'll represent to you that
 6 slide 6 is extracted from SCA's pleadings and are the
 7 representations or misrepresentations upon which they
 8 relied in order to avoid their contractual
 9 obligations. You've read Respondents' Exhibit 84,
 10 Mr. Longley, which is the transcript of the hearing in
 11 Judge Canales's court --
 12 A. Yes.
 13 Q. -- on December 20?
 14 A. I have read it.
 15 Q. Is there anything in that transcript, first
 16 of all, that mentions any one of these?
 17 A. Nothing.
 18 Q. Is there -- as a matter of fact, the only
 19 allegation contained in that transcript is that
 20 Mr. Lynn said they were going to prove that
 21 Mr. Armstrong cheated in the 2004 Tour de France?
 22 A. That seemed to be the tenor of it and that he
 23 needed more time to get things ready.
 24 Q. Right, but it didn't have anything to do with
 25 any representations made by Tailwind, did it?

Page 1183

1 A. That's correct.
 2 Q. Now, secondly, is there anything in that
 3 transcript that unequivocally -- well, you tell me if
 4 there's anything in there that could amount to a claim
 5 denial.
 6 A. Nothing.
 7 Q. Have you read it thoroughly?
 8 A. I read all the pages before we were told that
 9 it was on pages 9, 10 and 11, I think is where the
 10 relevant language was. I went back and scoured that
 11 as thoroughly as I could. I don't think -- there was
 12 nothing of that nature. I don't think the word claim
 13 denied was used, we refuse to pay, nothing like that
 14 was said.
 15 Q. And are you familiar with Mr. Compton's
 16 testimony that as we speak their investigation is
 17 ongoing?
 18 A. Yes.
 19 MR. HERMAN: Pass the witness.
 20 MR. TILLOTSON: I just have one question.
 21 RE-CROSS EXAMINATION
 22 BY MR. TILLOTSON:
 23 Q. Mr. Longley, does Tailwind being the insured
 24 and SCA being the insurer, does Tailwind -- does SCA
 25 step into the shoes of Tailwind and have any defenses

Page 1184

1 that Tailwind would have to the claim of Mr. Armstrong
 2 if it denies it?
 3 A. Not unless it's in the contract.
 4 Q. So if Tailwind had a specific defense under
 5 its agreement with Mr. Armstrong for payment of the
 6 money, in your mind that may or may not be available
 7 to SCA?
 8 A. I don't think it is available to SCA.
 9 Q. Because that language is absent from the
 10 contract between SCA and Tailwind?
 11 A. Yes.
 12 Q. Is that your understanding --
 13 A. Yes.
 14 Q. -- and your position?
 15 A. Yes.
 16 MR. TILLOTSON: Thank you.
 17 ARBITRATOR FAULKNER: Any questions? I
 18 have no questions. Thank you very much, sir. You may
 19 step down.
 20 THE WITNESS: May I be excused, Mr.
 21 Chairman?
 22 ARBITRATOR FAULKNER: Do you fellows
 23 anticipate calling him back?
 24 MR. TILLOTSON: Not until I get a better
 25 answer on that rabbit stew thing.

Page 1185

1 ARBITRATOR FAULKNER: You can chase
2 rabbits on your own. I think you may step down, and
3 thank you very much, sir. You're excused.
4 MR. HERMAN: You can go, Joe, if you
5 want.
6 ARBITRATOR CHERNICK: Let's go off the
7 record.
8 (Recess at 2:34 p.m.)
9 (Videotape played.)
10 (Proceedings adjourned 3:30 p.m.)
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Page 1186

1 STATE OF TEXAS)
2 COUNTY OF DALLAS)
3
4 I, Nancy P. Blankenship, Certified Shorthand
5 Reporter, in and for the State of Texas, certify that
6 the foregoing proceedings were reported
7 stenographically by me at the time and place
8 indicated.
9 Given under my hand on this the 26th day of
10 January, 2006.
11
12
13
14
15 _____
16 Nancy P. Blankenship, Certified
17 Shorthand Reporter No. 7351
18 in and for the State of Texas
19 Dickman Davenport, Inc.
20 Firm Registration #312
21 1010 Two Turtle Creek Village
22 3838 Oak Lawn Avenue
23 Dallas, Texas 75219
24 214.855.5100 800.445.9548
25 e-mail: npb@dickmandavenport.com
 My commission expires 12-31-06

Pages 1185 to 1186