

THE RACE TO FINALIZE THE CYCLE OF ARMSTRONG'S ARBITRATION

Lance Armstrong, a U.S. cyclist who was stripped of seven consecutive Tour de France titles in 2012 following a doping scandal, faces a \$10 million sanction issued by a Texas arbitration panel in favor of SCA Promotions (“SCA”), a risk management company specializing in event and sports promotions that Team Armstrong selected to protect the financial interests of team owners and sponsors. (<http://www.scapromotions.com>). This was the same Texas arbitration panel that awarded Armstrong \$7.5 million nine years earlier through an Agreed Final Arbitration Award based on a settlement agreement between Armstrong and SCA. The settlement agreement was negotiated in response to Armstrong’s 2006 claim against SCA for its failure to pay him \$5 million in satisfaction of his rights under a “Contingent Prize Contract” between the parties. Some nine years later, after Armstrong publicly acknowledged his use of performance-enhancing drugs, SCA motioned the panel to reconvene arbitration and requested sanctions and forfeiture against Armstrong. The panel then returned a \$10 million dollar sanction against Armstrong in favor of SCA.

Texas and U.S. jurisprudence offers little guidance as to when an arbitration panel may exercise jurisdiction or authority to entertain or award sanctions. However, the majority of the arbitration panel in the present case concluded that although arbitration tribunals only have jurisdiction over those parties and issues affirmatively delegated to them, the parties, through the settlement agreement and in the anticipation of potential future disputes, provided for continuing jurisdiction over this matter to this specific arbitration panel. *Stolt-Nielsen S.A. v AnimalFeeds Int’l Corp.*, 559 U.S. 662 (2010). Additionally, the fact that Armstrong affirmatively sought relief, including sanctions against SCA, from the panel on two prior occasions further evidenced his acceptance of the panel’s jurisdiction.

Although the majority could not point to a specific Texas law on point, it cited Armstrong’s “bad faith” and the “implied covenant to cooperate,” including the “the obligations of parties to be truthful, to not commit perjury and to not intentionally submit fraudulent evidence in arbitrations” as authority to issue a sanction against Armstrong. The majority found that the “employment of perjured testimony and fraudulence [sic] prevented the Tribunal from performing those obligations which were owed to all of the parties participating in the arbitration.” Based on jurisdiction delegated in the original settlement agreement and Armstrong’s failure to admit to doping prior to the original settlement, the panel awarded SCA \$7.5 million originally paid to Armstrong along with \$2 million in attorneys fees and another \$500,000 in “additional cost insusceptible of precise calculation.”

The dissenting arbitrator, Ted Lyon, labeled the sanctions as a product of the “do right” rule—“it doesn’t matter what the law is, let’s just do what is right.” SCA’s motion to reconsider was, in his opinion, foreclosed based on the language of the settlement agreement that it was the intent of the parties for the agreement to be “[f]ully and forever binding on The Parties . . .” and that both parties expressly waived any right to “challenge, appeal or attempt to set aside the Arbitrator Award.” Moreover, SCA had much motivation for the settlement to constitute a final agreement on the matter—the company was accused of engaging in selling insurance in Texas without a license, which if true would expose SCA to possible liability for treble damages and attorney fees. The Confidentiality Agreement in the settlement kept the finding that SCA had

engaged in license-less insurance sales from being disclosed to the Texas Department of Insurance.

SCA is currently seeking a declaration by a Texas court that the arbitration panel's reconsidered award is a final judgment. It is difficult to predict the outcome of this battle as such an award is unprecedented and unsupported by legal provisions or jurisprudence. There is however, a federal case on point that indicates "the district court's 'review of an arbitration award is extraordinarily narrow.'" *Antwine v. Prudential Bache Securities, Inc.*, 899 F.2d 410, 413 (5th Cir. 1990). Armstrong's legal counsel urges that the initial voluntary settlement constituted a "final and binding settlement" and preempts any ruling to the contrary – an opinion only Lyon, the dissenter in the arbitration, found convincing. The results of the Texas court's decision are bound to be contentious and cause waves in the arbitration world. Ultimately, either a former athletic champion is permitted to collect on his wrongfully procured winnings, or a license-less prize insurer is permitted to forge the way for a slippery slope of arbitration awards to be "re-litigated eight years [after the fact] or to infinity." (Lyon's dissent, the reconsidered arbitration decision).

Submitted by Lauren J. Bradberry, Jade E. Ennis, and Claire E. Sauls, law students at LSU's Paul M. Hebert Law Center, Civil Mediation Clinic, under the supervision of Paul W. Breaux, LSU Adjunct Clinical Professor and Past Chair, LSBA Alternative Dispute Resolution Section Immediate Past Chair, 16643 S. Fulwar Skipwith Road, Baton Rouge, Louisiana.