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1           IN THE MATTER OF AN ARBITRATION  
2           BETWEEN  
3 LANCE ARMSTRONG and       §  
TAILWIND SPORTS, INC.     §  
4       Claimants,           § ARBITRATION BEFORE THE  
                                  § HONORABLE RICHARD  
5 VS.                        § FAULKNER, RICHARD  
                                  § CHERNICK AND TED LYON  
6 SCA PROMOTIONS, INC. and §  
HAMMAN INSURANCE SERVICES, §  
7 INC.                       §  
                                  §  
8 Respondents.           §  
9  
10  
11           ARBITRATION  
12           TRANSCRIPT OF PROCEEDINGS  
13           JANUARY 9, 2006  
14           VOLUME 4  
15           CONFIDENTIAL  
16  
17  
18  
19           On 9th day of January, 2006, at 9:17  
20 a.m., the arbitration in the above proceedings came on  
21 before Arbitrators Richard Faulkner, Richard Chernick  
22 and Ted Lyon, at 12655 North Central Expressway, Suite  
23 410, in the City of Dallas, County of Dallas, State of  
24 Texas.  
25

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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  
9       Ms. Lisa Blue  
10      BARON & BUDD  
11      1100 Centrum Building  
12      3102 Oak Lawn Avenue  
13      Dallas, Texas 75219  
14 FOR THE RESPONDENTS:  
15      Mr. Jeffrey M. Tillotson  
16      Mr. Cody L. Towns  
17      LYNN TILLOTSON & PINKER, L.L.P.  
18      Suite 1400  
19      750 North St. Paul Street  
20      Dallas, Texas 75201  
21  
22 ALSO PRESENT:  
23      Ms. Mariela Evora  
24      Mr. Chris Compton  
25      Mr. John Bandy  
          Mr. Robert Hamman  
          Mr. Michael Ashenden  
          Ms. Lynn G. Bone  
          Mr. Russell E. Pryor  
          Mr. Lance Armstrong  
          Mr. Bill Stapleton  
          Mr. Lawrence Temple  
          Ms. Marianne Ross

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1           I N D E X  
2           WITNESS                       Page  
3           ROBERT HAMMAN  
4           DIRECT EXAMINATION BY MR. HERMAN       680  
5  
6 CLAIMANTS' EXHIBITS  
7 1 - 10/10/00 Stapleton letter to Gorski 683  
          re: Letter Agreement  
8  
9 5 - 1/3/01 B. Hamman e-mail to Lorenze re: 696  
          Agreement of Bonus Levels  
10 17 - Unsigned SCA Promotions prize contract 624  
          #31122 and Exhibit A  
11  
12 24 - Signed Insurance Agreement       717  
13  
14 58 - PIL Approval Notice for \$1,200,000 715  
15  
16 59 - PIL Offset Notice               715  
17  
18 69 - 7/27/04 Compton letter to I. Galloway 731  
          re: engagement for investigation  
19 111 - Bandy Deposition Exhibit 4, SCA 702  
          Contract #31640 - Golfer Incentive  
20  
21  
22  
23  
24  
25

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1           P R O C E E D I N G S  
2           ARBITRATOR FAULKNER: Good morning,  
3 gentlemen. Do we have everyone present for this  
4 morning?  
5           MR. HERMAN: We do for the Claimants,  
6 Mr. Chairman.  
7           ARBITRATOR FAULKNER: Mr. Tillotson?  
8           MR. TILLOTSON: We do.  
9           ARBITRATOR FAULKNER: Okay, great. I see  
10 that we have Claimants' response to the Emergency  
11 Motion for Protective Order. Part of the reason why  
12 we have taken a little time in advance was for the  
13 arbitrators to meet and look at some of these issues  
14 that have come up with preliminary motions, et cetera.  
15 So with that, we have an existing confidentiality  
16 order. Have you all verified that whoever is present  
17 are actually people who have, in fact, signed the  
18 appropriate documents to insure the confidentiality of  
19 these proceedings?  
20           MR. HERMAN: We have.  
21           MR. BREEN: The Claimants have.  
22           ARBITRATOR FAULKNER: Y'all have?  
23           MR. TILLOTSON: We have, yes.  
24           ARBITRATOR FAULKNER: Okay, great. All  
25 right. First things we are going to deal with are

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1 going to be these Motions in Limine, Motions for  
 2 Emergency Protective Order. Let's start with the  
 3 Motions in Limine. Mr. Herman, you filed one, and  
 4 would you please proceed to tell us what you think we  
 5 need to know concerning the Motion in Limine?  
 6 MR. HERMAN: Yes, Your Honor, I would.  
 7 ARBITRATOR FAULKNER: Not on the bench  
 8 this time, Mr. Herman. Please just call us  
 9 arbitrators.  
 10 MR. HERMAN: Okay. Do you want me to  
 11 stand?  
 12 ARBITRATOR FAULKNER: Whatever is  
 13 convenient for you.  
 14 ARBITRATOR CHERNICK: Whichever you're  
 15 comfortable with.  
 16 MR. HERMAN: All right. Arbitrators, let  
 17 me take this -- I'll take it in the order in which  
 18 they're laid out in our motion for the most part. The  
 19 Claimants filed a Motion for Summary Judgment, Motion  
 20 for Partial Summary Judgment. The deadline for  
 21 response to that motion and presumably the filing of  
 22 affidavits, counter-affidavits and so forth was  
 23 Friday. No response has been filed on behalf of the  
 24 Respondents.  
 25 So the first item in our -- in our Motion

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1 in Limine has to do with the bases set forth in the  
 2 Motion for Summary Judgment. The contract at issue  
 3 here is a contract solely between SCA and Tailwind.  
 4 That contract with Tailwind -- you'll see there are  
 5 two separate contracts here, one between Tailwind and  
 6 Lance Armstrong, which contains the risk that was  
 7 insured by SCA and then Tailwind's contract with SCA.  
 8 Armstrong is not a party to the contract with SCA.  
 9 SCA owes him no contractual obligations. Armstrong  
 10 owes SCA no contractual obligations and the same is  
 11 true for Federal and Lloyds.  
 12 Now, the liability -- the liability of  
 13 Tailwind is totally determinative of the liability of  
 14 SCA. Tailwind's contract with Armstrong, which is  
 15 only tangentially related to the insurance contract,  
 16 provides unambiguously that if Armstrong wins -- is  
 17 the official winner of the Tour de France in '1, '2,  
 18 '3 and '4, he's entitled to a bonus of \$10 million.  
 19 He's been paid \$5 million of that. The liability of  
 20 Tailwind is unambiguous. SCA has expressly disavowed  
 21 any involvement in the contract between Tailwind and  
 22 Armstrong. They can't assert some defense on behalf  
 23 of Tailwind, they can't assert that Tailwind is not  
 24 liable.  
 25 Now, the question then becomes under a

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1 Motion for Summary Judgment, is the obligation of SCA  
 2 unambiguous? And it clearly is. Tailwind is  
 3 obligated to pay -- I mean, SCA is obligated to pay  
 4 Tailwind, pay the \$5 million, if sponsor -- if  
 5 Tailwind is liable to award that performance award to  
 6 Armstrong. And that's it from a contractual point of  
 7 view. It's not ambiguous. It couldn't possibly be  
 8 ambiguous. Is Tailwind liable? Yes.  
 9 What is -- what was it that SCA agreed to  
 10 insure and indemnify? SCA specifically indemnified  
 11 Tailwind in respect of Tailwind's liability to award  
 12 Armstrong the performance award. So because under  
 13 Texas law and all other law that I know of the  
 14 contract obligations are unambiguous, they cannot be  
 15 interpreted any other way. Because they are  
 16 unambiguous, the liability of Tailwind presents purely  
 17 a question of law to this panel. The panel -- it's  
 18 not a question of the panel's discretion. It's a  
 19 question of whether Texas law would allow any parole  
 20 evidence or any testimony about the meaning and intent  
 21 of this contract. So as a matter of law, the  
 22 liability of SCA to Tailwind cannot be the subject of  
 23 any parole evidence, because Tailwind is liable  
 24 unambiguously to Armstrong, consequently SCA is liable  
 25 unambiguously to Tailwind.

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1 Now, that's the -- that's the first issue  
 2 in our Motion in Limine. Any parole evidence as to  
 3 the contract's interpretation or application to this  
 4 dispute is prohibited as a matter of law.  
 5 Secondly, with respect to the proposed  
 6 testimony of David Walsh, with the proposed testimony  
 7 of anything having to do with Mr. Armstrong, other  
 8 than whether or not he was the official winner, which  
 9 is outcome determinative of Tailwind's liability is by  
 10 definition irrelevant to any issue pending before this  
 11 panel. That's the first thing.  
 12 A review of the Texas Arbitration Act  
 13 reveals the following. Under Section 47, 171.047, the  
 14 parties at a hearing have the right to call witnesses  
 15 and the parties have the right to cross-examine those  
 16 witnesses. Under Section 50 the panel has the  
 17 authority to issue subpoenas for depositions and to  
 18 authorize depositions for evidentiary and discovery  
 19 purposes for those persons beyond the subpoena power  
 20 of this panel, and the bases for vacating an award of  
 21 this panel are set out in Section 88, one of which is  
 22 if the panel refuses to hear evidence material to the  
 23 dispute, that's a -- one reason for reversing. The  
 24 other -- one of the other reasons and the one  
 25 pertinent here is that if the panel conducts a hearing

1 in a manner which prejudices the right of any party  
 2 that is the basis for the vacation of an award.  
 3 So keeping those -- keeping those issues  
 4 in mind, let me first address David Walsh. David  
 5 Walsh is the author of a book called LA Confidential.  
 6 It has been published by a French publisher, la  
 7 Martiniere. The book has been peddled to 14 American  
 8 publishers, none of whom will touch it with a ten foot  
 9 pole. It's been peddled to at least five UK  
 10 publishers who won't touch it with a ten foot pole.  
 11 David Walsh confirmed in his deposition on page 32  
 12 that he has no personal knowledge of anything; that  
 13 he's simply a messenger. And in his interviews, he  
 14 says the witnesses are in the book.  
 15 Well, the panel will recall that during  
 16 SCA's request for a continuance of this proceeding  
 17 that issues were raised about the deposition of  
 18 material witnesses, depositions of material witnesses.  
 19 Let me address Mr. Walsh's deposition. We agreed to  
 20 go to the UK and agreed on a date of either  
 21 December 28th or 29th. We were going to do Emma  
 22 O'Reilly on one day and David Walsh the other day.  
 23 David Walsh came to New York voluntarily  
 24 and we ultimately deposed him on January the 3rd. On  
 25 December 9th, we notified Mr. Tillotson on behalf of

1 documents that were required to be produced by the  
 2 subpoena. I produced a copy of three or four pages  
 3 out of the British documents and he refuses to answer  
 4 questions about them, and confirms that he will not  
 5 answer any questions about any document from the  
 6 British proceeding.  
 7 Now, those documents are, for example,  
 8 e-mails going back and forth, certain notes that Walsh  
 9 has taken, many things that contradict his proposed  
 10 testimony. It is -- of course, I don't want to insult  
 11 the panel, because this rule goes back seven or 800  
 12 years to the beginning of Anglo-american juris  
 13 prudence, but the right to a meaningful cross  
 14 examination, which Ms. Blue will address in a moment,  
 15 is absolutely fundamental. The fact that the  
 16 arbitration act gives you the right to cross-examine  
 17 doesn't mean that you get to cross-examine on what  
 18 they -- on what Mr. Walsh wants you to ask him. It's  
 19 the crucible from which truth normally emerges.  
 20 Further, the fact that we have not had --  
 21 been able to meaningfully discover Mr. Walsh's  
 22 testimony is reason to exclude him entirely. Keep in  
 23 mind that the -- that it was SCA that wished for the  
 24 continuance so that the -- this discovery could take  
 25 place and so forth.

1 SCA and told him that we were going to issue or  
 2 request a subpoena duces tecum for David Walsh and  
 3 that we would be happy for him not to produce the  
 4 documents, you know, required by the duces tecum if he  
 5 would agree simply to use the documents which he had  
 6 already produced in connection with a British  
 7 proceeding. Copies of those documents have been  
 8 provided to us by the British solicitors. We said if  
 9 we -- please let us know if Walsh consents, or if he  
 10 doesn't -- or if this is not okay, something like  
 11 that.  
 12 So we get to the deposition on January  
 13 the 3rd, having heard nothing from SCA and having  
 14 issued the subpoena. About halfway through Walsh's  
 15 deposition, I hand him a copy of the subpoena that  
 16 duces tecum which requires the production of these  
 17 documents. He said, well, I've never seen this  
 18 before. They had not -- not only had he not been  
 19 served, they hadn't even provided him a copy and he's  
 20 one of their volunteers who has been working hand in  
 21 glove with SCA for a year and a half.  
 22 Then I produced one of the documents,  
 23 assuming that we are going to use the British  
 24 documents, because he said he had never seen the  
 25 subpoena, and he had made no effort to locate

1 Now, let me address globally, first of  
 2 all and then with respect to Mr. Walsh specifically,  
 3 the issue of hearsay. It is not a rule, as the panel  
 4 knows, that hearsay is admissible in arbitration  
 5 proceedings. It is for the panel to determine what is  
 6 admissible. Perhaps many of -- perhaps some of you  
 7 have tried administrative cases before agencies and  
 8 quoting from the Administrative Procedure Act, I  
 9 submit that this is the kind of hearsay that's  
 10 appropriate before a panel such as this. It does not  
 11 satisfy the strict requirements of 801, et seq, 803,  
 12 the evidence or testimony, but it is information or  
 13 testimony upon which men reasonably rely in the  
 14 conduct of their affairs. I submit that that sort of  
 15 hearsay is appropriate before this panel, but where we  
 16 have, as we have here, an extensive amount of  
 17 discovery where personal knowledge is perfectly  
 18 attainable or obtainable and where you have hearsay of  
 19 the rankest order and hearsay about topics which are  
 20 scurrilous, where you have hearsay involving the  
 21 reputation and interests of more than just one person,  
 22 but one person in particular, it is that kind of  
 23 hearsay that has no place in an evidentiary hearing  
 24 before this panel. And Mr. Walsh has absolutely  
 25 confirmed that he has no personal knowledge of

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1 anything, and the kind of information Mr. Walsh would  
2 bring to this hearing is not the kind of information a  
3 reasonable person would rely upon in the conduct of  
4 any of his affairs, which is evidenced by the fact  
5 that 19 English language publishers refused to publish  
6 this book.  
7 Now, let's talk about Emma O'Reilly.  
8 Emma O'Reilly was the subject of a good bit of  
9 conversation at the hearing on the Motion for  
10 Continuance. The chairman asked us to memorialize the  
11 agreements that we had entered and provided to the  
12 chair, that is the dates and times of depositions,  
13 locations and so forth. I provided -- I talked to  
14 counsel for SCA. We reached agreements with respect  
15 to numerous items. I sent him a letter the next week  
16 and -- asking him to make sure and let me know if  
17 there was any inaccuracy in that letter, because I  
18 needed to respond to the chairman. I heard nothing.  
19 I've made a -- sent an e-mail, said please let me know  
20 so that I can get the letter to the chairman. I heard  
21 nothing. So it was submitted in connection with  
22 something that we have done here recently. But in any  
23 event, the agreement was to take Ms. O'Reilly's  
24 deposition the 28th or 29th, as I mentioned.  
25 I purchased plane tickets to go to the

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1 UK. SCA submitted, if the chairman will recall, a  
2 request for judicial assistance to be submitted to the  
3 United Kingdom. The subpoena and the request for  
4 judicial assistance was revised by the chairman and at  
5 the insistence of SCA prepared for SCA to pick up. To  
6 my knowledge, the subpoena was never provided to  
7 Ms. O'Reilly, either. There's certainly no  
8 indication -- there's certainly no indication that any  
9 judicial assistance was ever requested in the UK. We  
10 have no documentation about that at all.  
11 Then on the eve of trial, I believe it  
12 was Thursday night, maybe Thursday or Friday night, we  
13 get another request for judicial assistance  
14 incorporating all of the very same offensive language  
15 that the chairman redacted from the original on the  
16 basis that now, even though there has been a total  
17 absence of diligence, no way for the Claimants to  
18 discover what Ms. O'Reilly intends to say, they want  
19 to bring her and have her testify by video in this  
20 proceeding. That violates Section 50 of the  
21 Arbitration Act, it violates our right to a meaningful  
22 cross examination under Section 4, and it certainly  
23 violates the provision which prohibits the conduct of  
24 the hearing in a way that would prejudice the rights  
25 of the Claimants.

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1 There's another issue here. We have no  
2 documents. The chairman authorized the duces tecum  
3 for Ms. O'Reilly that to my knowledge she's never even  
4 seen the subpoena and she certainly -- no documents  
5 have ever been provided. That's been an ongoing  
6 issue, however. But in any event, her testimony  
7 should clearly be excluded under any circumstances,  
8 but certainly excluded on some televideo basis.  
9 David Howman, he's a lawyer with the WADA  
10 in Montreal. Now, this is the biggest -- one of the  
11 biggest fiascoes in a case of fiascoes. If the  
12 chairman and the members of the panel will recall, at  
13 the hearing on the telephone on the Motion for  
14 Continuance --  
15 ARBITRATOR LYON: What date was that, do  
16 you recall?  
17 MR. HERMAN: I'm going to say the 14th,  
18 as I recall.  
19 ARBITRATOR FAULKNER: It was on a  
20 Saturday morning. That was the first chance we could  
21 get everybody together.  
22 Go ahead and proceed. We remember the  
23 conference quite well.  
24 ARBITRATOR CHERNICK: It was the 6th of  
25 December, if that's a Saturday.

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1 ARBITRATOR FAULKNER: Right before the  
2 scheduled hearing date.  
3 MR. HERMAN: Right. Well, in any event,  
4 I can't recall the sequence of events necessarily, but  
5 I do remember this, that I had to pack up in a hurry  
6 and leave my office at 1:00 or 2:00 to get to Montreal  
7 for the next day. That was to be on a Thursday.  
8 MR. BREEN: Thursday was the 15th.  
9 MR. HERMAN: Yeah. We had a -- we had a  
10 hearing on the 14th, though, as I recall. But in any  
11 event, the deposition of Howman was set on the 15th in  
12 Montreal, so I get on a plane for Montreal and I make  
13 it to Cleveland where I'm supposed to change planes,  
14 when there's a flurry of phone calls and, in fact,  
15 Howman, despite SCA's representation that he agreed to  
16 appear on Thursday, he's not appearing on Thursday.  
17 So I get on a plane and go back to Austin and tell my  
18 wife that I'm moonlighting as an air marshal.  
19 So that didn't happen and it hasn't been  
20 rescheduled or attempted to be rescheduled, and now  
21 they want to bring Howman by video conference.  
22 Without going through the same reasons, I will -- that  
23 apply to Ms. O'Reilly, Mr. Howman should not be  
24 allowed to testify.  
25 LeMond, if you'll -- if the panel will

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1 recall, SCA said, oh, we need this certain LeMond  
 2 tape. We had issued a notice with a duces tecum for  
 3 LeMond where we asked for not just that tape but all  
 4 the tapes and, according to SCA documents, he's got 70  
 5 or 80 pages of transcripts of supposed conversations,  
 6 many of which are presumably, you know, exculpatory to  
 7 the extent that he's got anything to add to anything.  
 8 Well, when we went up to Minneapolis to  
 9 depose LeMond, he refused to produce anything. So if  
 10 the panel will recall, SCA said, well, we want this  
 11 one tape to be subpoenaed. Well, you can't, under any  
 12 reasonable evidentiary standard, whether it's  
 13 arbitration or, you know, peer counseling in junior  
 14 high, you can't just produce something without someone  
 15 to sponsor it. So I said, well, that's fine, if  
 16 that's what they want to do, we don't want just the  
 17 one tape, but we want all the tapes and somebody has  
 18 got to authenticate the tapes and sponsor them.  
 19 So we set the LeMond depositions for  
 20 December 22nd. Again, all of these subpoenas came  
 21 through the panel, came through the chairman's office  
 22 and the chairman issued orders and signed the  
 23 subpoenas. And frankly, Your Honor, in an incredibly  
 24 prompt way to accommodate what was impressed upon you  
 25 all as a time sensitive -- as time sensitive, but the

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1 LeMonds did not show up. I understand from SCA that  
 2 there have been some court proceedings up in  
 3 Minneapolis about the enforceability of the subpoena.  
 4 I've never been informed of any proceeding involving  
 5 the subpoena.  
 6 But in any event, they now want to,  
 7 despite the fact that the LeMonds have cooperated with  
 8 them, now they're saying, well, we want to submit the  
 9 tape without any sponsorship, without any  
 10 authentication, and without the Claimants having the  
 11 opportunity to review all of the many, many other  
 12 tapes and the many, many pages of transcription. So  
 13 it violates every rule, every rule of fairness, not  
 14 just every rule of evidence, but every rule of  
 15 fairness, fundamental fairness. So any documents that  
 16 have not been produced in conjunction with the  
 17 LeMonds' depositions should not be permitted into  
 18 evidence.  
 19 Now, all of -- all of --  
 20 ARBITRATOR CHERNICK: I'm sorry,  
 21 Mr. Herman.  
 22 MR. HERMAN: Yes.  
 23 ARBITRATOR CHERNICK: There was a  
 24 deposition of Mr. LeMond?  
 25 MR. HERMAN: Yes.

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1 ARBITRATOR CHERNICK: And was the subject  
 2 of the tape that SCA wants to offer the subject of  
 3 examination during that deposition?  
 4 MR. HERMAN: It was not the subject of  
 5 examination, because they refused -- we had subpoenaed  
 6 all of the tapes that he had, that they had taken of  
 7 conversations that -- without the consent of the other  
 8 party, and no tapes, no transcripts were produced at  
 9 his deposition. They were served in advance of that.  
 10 ARBITRATOR CHERNICK: Not the ones you  
 11 wanted to see, not the one that SCA had -- is going to  
 12 try and offer in this proceeding?  
 13 MR. HERMAN: Right. Nothing.  
 14 ARBITRATOR CHERNICK: So there's never  
 15 been any testimony in deposition about any tapes?  
 16 MR. HERMAN: Oh, there's been -- there's  
 17 been some testimony that they exist and so forth, but  
 18 there's -- they've never been produced nor  
 19 authenticated by anyone.  
 20 ARBITRATOR CHERNICK: Thank you.  
 21 MR. HERMAN: Finally --  
 22 ARBITRATOR LYON: Let me stop you right  
 23 there. Never been authenticated by anyone?  
 24 MR. HERMAN: Sure.  
 25 ARBITRATOR LYON: Who says that they took

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1 the tape?  
 2 MR. HERMAN: Well, I don't know who took  
 3 the Stephanie McIlvain -- the two tapes of Stephanie  
 4 McIlvain. It's either Greg or Kathy LeMond.  
 5 ARBITRATOR LYON: But they didn't  
 6 authenticate it?  
 7 MR. HERMAN: No. But -- I mean, there's  
 8 no tape to authenticate. There's no -- I mean, we  
 9 don't know -- you know, they haven't sponsored any  
 10 tapes. And without someone sponsoring -- it's just  
 11 like -- it's just like you'll hear about later, some  
 12 report from some French lab done without adherence to  
 13 any of the protocols, they're going to want to  
 14 introduce that, even though they've known about it  
 15 since August, the lab people could have authenticated  
 16 it, but they just want to put it in evidence but with  
 17 no sponsorship, no authentication, and so -- and  
 18 that's the -- and I suppose that they'll try to get it  
 19 in through Dr. Ashenden, who lives in Australia.  
 20 And that brings me to Dr. Ashenden and  
 21 the substance of his testimony. He was deposed --  
 22 now, as an expert he refused to disclose the basis of  
 23 some of his opinions. Who did you talk to? Well, I  
 24 talked to somebody. Well -- and they said this and  
 25 they said that. Well, who are they? Well, I'm not

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1 going to tell you that.  
 2 So there we are saying -- understanding  
 3 that under certain circumstances hearsay can form the  
 4 basis of an expert's opinion, but under Texas law,  
 5 under Birchfield Hospital and the rest, an expert  
 6 cannot come in here and repeat hearsay conversations  
 7 and cloak those conversations with the mantle of  
 8 truth. You cannot do indirectly what you can't do  
 9 directly. So that's the ploy, I suppose, because  
 10 Ashenden has said, oh, I talked to a guy at the French  
 11 lab and he said everything was jake on that test.  
 12 Great. That doesn't authenticate the test, because  
 13 what Ashenden is going to try and do, I suppose, is  
 14 somehow bless this test on, you know, five-year-old  
 15 samples and so forth. But that's another more -- I  
 16 wouldn't -- it's darn sure not minutia, but it doesn't  
 17 address the general basis for our motion to exclude  
 18 Ashenden; that until he discloses the bases of his  
 19 opinions, you know, he's not entitled to testify.  
 20 So without burdening the panel further, I  
 21 want to reiterate that none of this, if you read the  
 22 paperback sensational novel that was entitled SCA's  
 23 prehearing brief, nothing in there is relevant to any  
 24 issue before this panel. And if you'll recall back in  
 25 May when we had the first -- our first sort of

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1 get-together for a hearing on the scope of issues and  
 2 so forth or dispositive motions, I guess it was, and  
 3 you'll see it throughout this hearing. The whole deal  
 4 is that they forgot to buy -- they forgot to insure  
 5 this last part, they don't want to pay, and they want  
 6 to do whatever they can to -- to threaten the -- to  
 7 ruin the reputation of a guy who since he's 14 has  
 8 been spending seven hours a day training to be  
 9 arguably the greatest athlete in the world. But  
 10 they're prepared to do that so they can save some  
 11 money. And you'll see the only time they have had  
 12 lawsuits is when they didn't insure it, where they  
 13 have to pay, where they shot the dice and it didn't  
 14 come up right.  
 15 So they know they owe the money,  
 16 everybody knows they owe the money. Because -- and  
 17 why, because Tailwind owes the money. So anything  
 18 that attempts to alter that fact is an attempt to vary  
 19 or contradict the terms of the contract which was  
 20 prepared solely by them, refused to have any  
 21 modification to it, and to allow that testimony,  
 22 Mr. Chairman, with all due respect would be to conduct  
 23 this hearing in a manner that was so fundamentally  
 24 prejudicial to the Claimants' rights that it would be  
 25 reversible. This award, whatever it is, could be

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1 vacated and I can tell you on behalf of the Claimants  
 2 that to grant the summary judgment, which I hope we'll  
 3 have an opportunity to discuss since -- particularly  
 4 since there's been no response --  
 5 ARBITRATOR FAULKNER: You might note that  
 6 we ordered them not to respond unless we chose to  
 7 subsequently inform them to do so.  
 8 MR. HERMAN: Right. But as I understood  
 9 your order that -- responses to all outstanding  
 10 motions were due by Friday.  
 11 ARBITRATOR FAULKNER: Right, but we  
 12 specifically addressed the MSJ.  
 13 MR. HERMAN: Okay. All right. In any  
 14 event, under Mr. Chernick's learned article as well as  
 15 Rising Star, which is a case involving the Texas  
 16 Arbitration Act in particular, the granting of a  
 17 Motion for Summary Judgment based upon affidavits,  
 18 particularly where Texas law prohibits you from taking  
 19 any testimony, I'm -- believe me, since it's on this  
 20 side of the table that would be prejudiced by vacating  
 21 that order, I can tell you that we are perfectly  
 22 content with going to the District Court in Dallas  
 23 County or any place else and defending the grant of  
 24 this summary judgment. We are not concerned, because  
 25 the statute requires you to hear evidence that is

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1 material and any evidence or testimony would by  
 2 definition be immaterial.  
 3 Now, Your Honor, I know I've taken a lot  
 4 of time, but Ms. Blue would like to address the issue  
 5 of what this right of ours under Section 47 of the  
 6 Arbitration Act to cross-examine witnesses really  
 7 means and how allowing Walsh, O'Reilly, Howman to --  
 8 any of them to testify would deprive us of that right.  
 9 MS. BLUE: Thank you. Good morning,  
 10 gentlemen. If I could stand if that would be all  
 11 right. Perhaps the first thing we should do if it  
 12 would be all right with the panel is find out from SCA  
 13 if they're really going to call these people as of  
 14 right now. If that -- I mean, if they're not going to  
 15 be called, then maybe it's -- Senator?  
 16 ARBITRATOR FAULKNER: Mr. Tillotson, are  
 17 we going to -- are you all going to attempt to call  
 18 all of these people or any of them or none of them?  
 19 MR. TILLOTSON: Yes, we intend to call  
 20 David Walsh, we intend to call Emma O'Reilly, we are  
 21 uncertain about David Howman.  
 22 ARBITRATOR FAULKNER: I'm sorry, what was  
 23 the last one?  
 24 MR. TILLOTSON: David Howman. David  
 25 Walsh is the author of the book LA Confidential.

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1 ARBITRATOR FAULKNER: I know who he is.  
 2 MR. TILLOTSON: Emma O'Reilly is a former  
 3 member of the Postal team and was a source in the  
 4 book. We wish to call her. David Howman is the  
 5 general counsel for the World Anti Doping Association.  
 6 I don't know if we're going to be -- if it's going to  
 7 be necessary to call him. So he's the only one I put  
 8 in the category of we may be fighting about nothing.  
 9 ARBITRATOR CHERNICK: Dr. Ashenden?  
 10 MR. TILLOTSON: Dr. Ashenden is our  
 11 expert. I apologize. We certainly plan on calling  
 12 him. And we plan on either having live or playing  
 13 videotape testimony of Greg LeMond. And we plan on --  
 14 ARBITRATOR FAULKNER: What about  
 15 Mrs. LeMond?  
 16 MR. TILLOTSON: Well, the only way we can  
 17 call Mrs. LeMond is -- it's possible we will call  
 18 Mrs. LeMond either live or by videotape. She was  
 19 deposited to corroborate certain statements made by  
 20 Mr. LeMond and/or to authenticate the tape.  
 21 ARBITRATOR FAULKNER: Any others?  
 22 MR. TILLOTSON: There's other witnesses  
 23 but those are the only ones I've seen that -- we plan  
 24 on calling Mike Anderson. It's the individuals we  
 25 disclosed by and large. Obviously our clients,

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1 Mr. Armstrong, Mr. Stapleton, Betsy Andreu, Frankie  
 2 Andreu.  
 3 ARBITRATOR LYON: I want to ask you a  
 4 question.  
 5 MR. TILLOTSON: Yes, please.  
 6 ARBITRATOR LYON: What personal knowledge  
 7 does David Walsh have about any fact that's relevant  
 8 to this panel?  
 9 MR. TILLOTSON: Well, two areas, I  
 10 believe that make a relevant difference. One is that  
 11 he's the source of the -- what began our investigation  
 12 regarding denial of the claim. So to the extent that  
 13 there's an argument by them, of course in my view  
 14 there's been no indicate of bad faith because we were  
 15 foolish enough to rely on the book which has no basis  
 16 in substance or value, I think Mr. Walsh is extremely  
 17 important.  
 18 Second, he's going to corroborate some  
 19 testimony offered by other witnesses to support or to  
 20 defend against their claim that these witnesses have  
 21 fabricated these stories. Example, Mr. Walsh is going  
 22 to say Stephanie McIlvain confirmed that the incident  
 23 occurred at the University of Indiana she told him in  
 24 connection with his book, a story she later denied  
 25 under sworn testimony. So it's going to be instances

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1 such as that that Mr. Walsh is going to play a role  
 2 in.  
 3 We are not attempting to attempting to  
 4 prove our case by the allegation through Mr. Walsh  
 5 saying Betsy Andreu told me about what happened in the  
 6 hospital room; however, to the extent that they're  
 7 arguing bad faith and he spent 20 minutes saying  
 8 Mr. Walsh is a liar, his book is a piece of trash,  
 9 it's been turned down by 14 people. He's going to  
 10 link that and say my guys committed bad faith. Yet  
 11 when I try and offer the author of the book to support  
 12 that and show that there's a reasonable basis why  
 13 these guys would suddenly say, wait a minute there's a  
 14 need to investigate, he says no, no, that guy's not  
 15 right, he's worthless. So that's the basis for his  
 16 testimony is to contradict and confront the bad faith  
 17 claim but also to corroborate -- contradict certain  
 18 testimony from other witness regarding fabrication.  
 19 MR. TILLOTSON: This is a conversation  
 20 that occurred -- allegedly occurred in a hospital room  
 21 in 1996?  
 22 MR. TILLOTSON: Yes, sir.  
 23 ARBITRATOR LYON: And that's what --  
 24 okay. Assuming that conversation is correct, okay.  
 25 How does that go and affect Tailwind's obligation to

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1 pay Mr. Armstrong? How does that conversation from --  
 2 1996 conversation about somebody who says they may or  
 3 may not have used some performance enhancing drug  
 4 relevant from '96 to 2001?  
 5 MR. TILLOTSON: Well, in the ways in  
 6 which we argued in our trial brief. First with  
 7 respect to fraudulent misrepresentation and/or  
 8 omission with respect to the contract.  
 9 ARBITRATOR LYON: From Tailwind?  
 10 MR. TILLOTSON: Yes. Yes. My guys --  
 11 ARBITRATOR LYON: Let me take it a little  
 12 further. Let's assume that the subject of the  
 13 contract is a drug addict, okay?  
 14 MR. TILLOTSON: Okay.  
 15 ARBITRATOR LYON: We are not saying  
 16 that's the case here. Totally a drug addict.  
 17 MR. TILLOTSON: Okay.  
 18 ARBITRATOR LYON: He goes in and uses all  
 19 kinds of various drugs and everything, how would that  
 20 affect a contract that's made five or six years later  
 21 involving whether or not an individual that they  
 22 insured won an event? How would that --  
 23 MR. TILLOTSON: Well, I'll confess I'm  
 24 not sure I exactly followed your hypothetical, but  
 25 I'll respond in this way. My clients are going to

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1 testify that they took a gamble on whether or not  
 2 Mr. Armstrong would win a certain amount of Tour de  
 3 France races. Inherent in taking that gamble and  
 4 entering that contract with Tailwind, they believed  
 5 some public statements and assurances made both by  
 6 Tailwind and Mr. Armstrong regarding the non-use, the  
 7 absence of drugs. In fact, that may be -- we argue,  
 8 that's untrue and the knowledge of those facts, my  
 9 clients are going to testify, would have changed their  
 10 mind that they would not have touched this bet with a  
 11 ten foot pole much less put nine and a half million  
 12 dollars on it. That's the essence of the case.  
 13 Now, the challenge to me is those are  
 14 strong words; prove them. And I've gathered evidence  
 15 that I believe shows the truth of the allegations that  
 16 we are making. Every time I attempt to gather that  
 17 evidence or line up the witness that would support  
 18 that statement, that harsh truth, I get met with this.  
 19 These guys calling up Mike Anderson saying why would  
 20 you voluntarily come down and testify? You don't need  
 21 to do that.  
 22 ARBITRATOR FAULKNER: We are going to  
 23 address Mr. Anderson in a minute.  
 24 MR. TILLOTSON: Those are the substance  
 25 of the issues. That's it. It's as simple as that.

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1 My clients are going to testify that when they entered  
 2 into this contract, they assumed what the Claimants  
 3 were saying about themselves was true. If that's not,  
 4 then I believe we made out a fraudulent inducement  
 5 claim with respect to this particular contract. I  
 6 agree with you, proof of drug use -- and I tried to  
 7 say this in my brief so that I would avoid what I knew  
 8 would be an unfair characterization by Mr. Herman.  
 9 Proof of drug use by Mr. Armstrong in  
 10 1995 does not in and of itself mean he didn't win the  
 11 2004 Tour de France race. It does not. And so the  
 12 relevance of that evidence isn't -- I'm not trying to  
 13 slander him in hopes that he'll give up on this  
 14 contract, but to show fraudulent misrepresentation  
 15 and/or omission.  
 16 Now, one way in which it does matter is  
 17 under WADA and USADA rules, if, in fact, there is  
 18 evidence of doping, then a sanction for that evidence  
 19 of doping is the elimination of any prizes or awards  
 20 from the dates that you sanction them retroactively  
 21 back to the date of the offense. So it is conceivable  
 22 that we could argue that if the 1999 positive test  
 23 results from the Tour de France, if this panel finds  
 24 those as credible evidence of doping under the USADA  
 25 and the WADA rules, it would, in effect, nullify or

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1 invalidate anything that happened in 1999 to 2006.  
 2 But the basic thrust of this evidence is fraudulent  
 3 misrepresentation and/or omission in respect to --  
 4 ARBITRATOR FAULKNER: Okay. Before you  
 5 all go any further let's get -- keep this back in an  
 6 orderly process. I want get back to Ms. Blue's  
 7 argument now that we know who the witnesses are --  
 8 MR. TILLOTSON: I'm sorry. I apologize.  
 9 ARBITRATOR FAULKNER: I understand where  
 10 you were trying to come from. We're going to proceed  
 11 with this as orderly as we possibly can, knowing how  
 12 many motions, cross motions, et cetera, y'all have all  
 13 filed. Ms. Blue, please.  
 14 MR. TILLOTSON: Before she starts, I just  
 15 want to make sure with respect to witnesses they are  
 16 seeking to exclude we definitely wish to call  
 17 Ms. O'Reilly, Mr. Walsh, Dr. Ashenden, Greg LeMond,  
 18 Cathy LeMond possibly, and David Howman is a  
 19 possibility.  
 20 MR. HERMAN: We're not trying to --  
 21 MR. TILLOTSON: I included my request for  
 22 Mr. Howman because I don't know if I'm to going call  
 23 him, but he falls under to the general category I  
 24 think.  
 25 MR. HERMAN: We are not attempting --

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1 we're not attempting to exclude Mr. or Mrs. LeMond or  
 2 Mr. Anderson. All we are saying is that with respect  
 3 to the document or the tangible items that the LeMonds  
 4 refused to produce when they were subpoenaed to do it,  
 5 should not be accepted by this panel, particularly  
 6 where the chairman authorized and issued a duces tecum  
 7 requiring the LeMonds to appear and they refused to do  
 8 so on that topic.  
 9 I guess we probably ought to take this  
 10 page and line business up later. I submitted mine, I  
 11 don't know how long ago. I haven't gotten anything  
 12 from them, so I don't know what they're proposing to  
 13 offer.  
 14 ARBITRATOR FAULKNER: The only thing you  
 15 want to exclude are the tapes and any transcripts; is  
 16 that correct --  
 17 MR. HERMAN: Right.  
 18 ARBITRATOR FAULKNER: -- regarding the  
 19 LeMonds?  
 20 MR. HERMAN: Exactly.  
 21 ARBITRATOR CHERNICK: And your view would  
 22 be that even if Mr. LeMond showed up and authenticated  
 23 the tape, you are prejudiced by the fact that he did  
 24 not do so and did not respond to any request for other  
 25 tapes at the time his deposition was taken and so you

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1 weren't able to prepare for or deal with that issue  
 2 for purposes of this hearing?  
 3 MR. HERMAN: No, I wouldn't say -- I  
 4 would say that's partially correct, but the most --  
 5 but the most significant thing is that they refused to  
 6 show up when they were served with the subpoena issued  
 7 by the chairman for their supplemental depositions  
 8 where we were going to discuss not only the tape that  
 9 they want to use but all of the tapes.  
 10 So whether he shows up live or not, they  
 11 shouldn't be allowed to strip mine the relevant  
 12 evidence and protect their witnesses from producing  
 13 what else is relevant. So, yeah, I would say the more  
 14 significant issue is that they refused to abide by the  
 15 chairman's subpoena.  
 16 MR. TILLOTSON: Well --  
 17 ARBITRATOR FAULKNER: Okay. We will wait  
 18 before you go. And you're not objecting to Mike  
 19 Anderson?  
 20 MR. HERMAN: No.  
 21 ARBITRATOR FAULKNER: Okay, we are going  
 22 to address that one later on because we have separate  
 23 issues on that.  
 24 Anything briefly in response before we go  
 25 to Ms. Blue?

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1 MR. TILLOTSON: Just to complete the  
 2 record, Mr. LeMond -- the LeMonds are represented by  
 3 their own lawyer from the Robbins Kaplan firm in  
 4 Minnesota. He did file objections to the subpoena  
 5 that was served.  
 6 ARBITRATOR FAULKNER: What's been done  
 7 with that?  
 8 MR. TILLOTSON: I engaged in the process  
 9 of negotiation with them, trying to get him to produce  
 10 an appeal.  
 11 ARBITRATOR LYON: Who did he file  
 12 objections with?  
 13 MR. TILLOTSON: He just served them on  
 14 us.  
 15 ARBITRATOR LYON: Not us?  
 16 MR. TILLOTSON: Correct.  
 17 ARBITRATOR FAULKNER: Was there any  
 18 action to quash it in the Court?  
 19 MR. TILLOTSON: I believe it was issued  
 20 from the Minnesota court. We had to go to court to  
 21 get a subpoena that they would follow so we took your  
 22 order and took that to court and then that was served  
 23 on them and his lawyer, Chris Madel filed objections  
 24 to that. He might have filed them with the Minnesota  
 25 court. I don't recall. I got copies of that. And

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1 then I engaged in the process of trying to talk with  
 2 them to resolve those objections, the essence of which  
 3 is Mr. Greg LeMond may show up voluntarily and  
 4 testify, the same as for Kathy LeMond.  
 5 ARBITRATOR FAULKNER: Were those  
 6 objections furnished to Plaintiffs' counsel?  
 7 MR. TILLOTSON: Yes.  
 8 MR. HERMAN: No, no, never.  
 9 MR. TILLOTSON: They were served on you  
 10 and --  
 11 MR. HERMAN: No, never.  
 12 ARBITRATOR FAULKNER: We have a  
 13 disagreement about that.  
 14 MR. HERMAN: Never. And plus, as you  
 15 will recall, I specifically requested that we be  
 16 advised of any proceedings and we were advised of  
 17 none.  
 18 MR. TILLOTSON: There hasn't been any  
 19 court proceedings. Keep in mind --  
 20 ARBITRATOR FAULKNER: So nobody filed a  
 21 motion to quash the subpoena in Minnesota?  
 22 MR. TILLOTSON: Correct. He filed  
 23 objections to our notice, to our subpoena.  
 24 ARBITRATOR LYON: With you, not a court?  
 25 MR. TILLOTSON: I don't recall, Senator,

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1 if he filed it with the Minnesota court. I got a  
 2 letter from the Robbins Kaplan firm stating  
 3 objections. I thought it was addressed to both  
 4 parties.  
 5 ARBITRATOR FAULKNER: Since I don't  
 6 recall ever seeing it, gentlemen, I don't think either  
 7 of y'all have, too, would you please have copies made  
 8 of all that and provide that to the panel and to  
 9 Plaintiffs' counsel. I don't know whether you guys  
 10 got them or not, but we are going to make sure they  
 11 get them now, and then we will take that into  
 12 consideration when we decide what we're going to do  
 13 with those particular witnesses. So if you could have  
 14 that made, we would appreciate it.  
 15 Anything else?  
 16 MR. HERMAN: I would note for the  
 17 chairman --  
 18 ARBITRATOR FAULKNER: I'm sorry. Speak  
 19 up a little bit.  
 20 MR. HERMAN: Yes. Mr. Madel, who  
 21 represents the LeMonds in response to our subpoena  
 22 said that they would not produce anything and that  
 23 they would produce only if there was a subpoena issued  
 24 by a Minnesota court and then they wouldn't produce  
 25 them until there was a motion to compel. I don't know

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1 if I furnished a copy of that exchange to the panel.  
 2 So he made it very clear that there was not going to  
 3 be anything furnished.  
 4 ARBITRATOR FAULKNER: Just as  
 5 Mr. Tillotson furnishes what he has, we want y'all to  
 6 furnish what you have. I don't think we've seen it.  
 7 MR. HERMAN: That was in a deposition.  
 8 ARBITRATOR FAULKNER: Oh, it was in a  
 9 deposition?  
 10 MR. HERMAN: Yes. That was their  
 11 response in the deposition to our request.  
 12 ARBITRATOR FAULKNER: All right, then.  
 13 MR. HERMAN: Now, finally Mrs. Blue. We  
 14 have had her on --  
 15 ARBITRATOR FAULKNER: Ms. Blue, you can  
 16 stand up or sit down as you please, if you're ready to  
 17 go now.  
 18 MS. BLUE: I want to start by saying  
 19 this, because I'm going to tell you my biggest fear  
 20 that I have. My biggest fear is that you -- the three  
 21 of you might be thinking, well, because it's not a  
 22 jury, because it's not something that jurors could  
 23 hear and be told to disregard we are going to let  
 24 everything in. And that's my biggest fear, because  
 25 none of the witnesses that we have just been

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1 discussing are relevant.  
 2 And, Senator, I think you asked the best  
 3 question of all when you asked defense counsel, well,  
 4 what personal knowledge does Mr. Walsh have? He has  
 5 none. I don't know if he even answered you directly,  
 6 but he has none. And I want to make sure that it's  
 7 clear because, Chairman, I heard you talk about well,  
 8 do you have any objections to the witnesses testifying  
 9 other than the tapes, and I want to make sure  
 10 everybody understands we object to these witnesses  
 11 because they're not relevant, because they have no  
 12 personal information and because all of what they have  
 13 to say is just innuendo. That's it. And my biggest  
 14 fear, again, is for you to say, well, we are a panel,  
 15 we can hear it and then decide if it's relevant.  
 16 Gentlemen, it's not relevant.  
 17 So now I'm just going to turn very  
 18 briefly to the short part that I've been asked to do  
 19 and that's how our side has been extremely prejudiced  
 20 about the witnesses that we have discussed, how we did  
 21 not have a chance to fully examine these people and  
 22 even the case, an arbitration case that we have, which  
 23 is the Pacilli versus Appell, et al. and I can give  
 24 you a case -- give you the actual case. That was an  
 25 arbitration case that the panel, the arbitration

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1 panel, didn't allow full cross examination and it was  
 2 reversed.  
 3 So let me start briefly with Mr. Walsh.  
 4 There's no dispute gentlemen, none, that when  
 5 Mr. Herman asked him about the documents that were in  
 6 England that were produced to us, what Mr. Walsh said  
 7 is that he wasn't going to answer any of the questions  
 8 based on the documents. The documents that the book  
 9 is written about. Okay. Now, if you just take that,  
 10 his testimony is -- of course, it's irrelevant anyway,  
 11 but if Mr. Herman wasn't allowed to cross-examine him  
 12 with the documents, with the notes, with the diary,  
 13 everything that the book was made up of, then  
 14 Mr. Herman did not have a chance to fully  
 15 cross-examine Mr. Walsh, and it is totally unfair.  
 16 Number one, it's unfair because, Senator,  
 17 you asked again does this man have any personal  
 18 knowledge? No, none. So it would be unfair for --  
 19 respectfully for the panel to allow Mr. Walsh to walk  
 20 in here knowing that on the record Mr. Walsh says I'm  
 21 not answering anything about the notes, about the  
 22 diary, about all the documentation. In other words,  
 23 he could get up and lie or say anything, and he wasn't  
 24 allowed to respond to Mr. Herman's questions. So that  
 25 clearly would be unfair.

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1 Again, as far as the LeMonds, totally  
 2 speculation, innuendo, not relevant to anything and,  
 3 gentlemen, if this case were John Doe versus SCA,  
 4 Mr. or Mrs. Anybody, I think the judge as the  
 5 arbitration panel would say clearly hearsay, not  
 6 coming in. But it's unfair for the LeMonds to talk  
 7 about any conversations knowing that there have been  
 8 tapes made. The tapes were subpoenaed, they weren't  
 9 produced and now it's too late and it clearly falls  
 10 under the constitutional right to a full cross  
 11 examination.  
 12 So in closing, based on the arguments  
 13 that Mr. Herman has made, again, I think it is a  
 14 simple case. It can either be a long or a short case.  
 15 But, again, please consider this fact, if you do let  
 16 in the hearsay because you think, well, it's not going  
 17 to harmful because we can look at it and then reject  
 18 it, please consider that what has happened is this is  
 19 going to be a lot longer than a regular jury trial, a  
 20 lot more costly, a lot more painful. You know it's  
 21 not fair to torture Mr. Armstrong just because it's  
 22 hearsay and it's something you can hear and later  
 23 reject. So based on the arguments made, we weren't  
 24 able to look at the documents with Mr. Walsh, the  
 25 tapes, we are going to ask that these witnesses be

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1 excluded.

2 ARBITRATOR LYON: The tape that

3 Mr. LeMond would not produce is a tape that he

4 allegedly made between himself and Mr. Armstrong?

5 MS. BLUE: No, I think there were other

6 people to the conversation.

7 MR. HERMAN: It's supposed to be between

8 Kathy LeMond, I think, or Greg LeMond and Stephanie

9 McIlvain, who's a witness.

10 ARBITRATOR LYON: Okay. And that was

11 never --

12 MR. HERMAN: And, again, it has to do

13 with the 1996 event which, you know, I guess we will

14 get to in opening. But, let me just say --

15 ARBITRATOR LYON: Let me stop you.

16 MR. HERMAN: I'm sorry.

17 ARBITRATOR LYON: I want to make sure

18 I've got this. So this is a tape-recording between

19 one of the LeMonds and another witness --

20 MR. HERMAN: Uh-huh.

21 ARBITRATOR LYON: -- made in 1996?

22 MR. HERMAN: No, the tape wasn't made in

23 1996. I think the tape was made in 2003 or '04 or

24 something like that.

25 MS. BLUE: Hearsay within hearsay by

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1 phone.

2 MR. HERMAN: Right. But, Senator, at the

3 risk of, you know, going somewhat -- digressing

4 somewhat, but still, it's very -- it's critical to the

5 issue of what evidence and testimony the panel deems

6 material to the dispute in front of you, keep in mind

7 that under Texas law this -- this is an insurance

8 contract and clearly they -- SCA did not give notice

9 that they were refusing to be bound by their contract

10 until much, much later than 90 days after the payment

11 was due and certainly much, much later than July 25th,

12 2004 when the Tour de France concluded. And after the

13 post Tour de France events Mr. Armstrong was declared

14 the official winner, which then Tailwind incurred this

15 liability. And you'll hear evidence that Ernst &

16 Young, Tailwind's auditors, have forced them to book

17 this \$5 million as a loss. So if you allow testimony

18 or evidence which varies or contradicts the terms of

19 this agreement and the terms of Tailwind's liability,

20 you are, as a matter of law, prejudicing the rights of

21 the Claimants because Texas law forbids the reception

22 of any such testimony or evidence.

23 Now, under 21.17 of the Texas Insurance

24 Code, it is SCA's burden -- we have shown you that the

25 notice of refusal came much more than 90 days later.

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1 So it is SCA's burden as a threshold matter to prove

2 to you, first of all, when they first became aware of

3 alleged misrepresentations by Tailwind, their insured,

4 and secondly, when they became reasonably convinced

5 that the alleged misrepresentations were, in fact,

6 misrepresentations. That is the absolute fundamental

7 threshold burden. As we sit before you, they have no

8 right to any misrepresentation defense or any

9 fraudulent inducement defense or any fraud defense to

10 this contract until they come forward with evidence to

11 prove that they did not exceed 90 days. Because those

12 are the only defenses that they've asserted are

13 misrepresentation and fraud.

14 Now, of course, there's no evidence to

15 support it, which we will demonstrate in spades, but

16 it wasn't -- Mr. Hamman didn't rely on anything, SCA

17 didn't rely on anything and certainly they can't even

18 point to a Tailwind -- to any statement that their

19 insured made of which they were even aware before

20 the -- before they issued this insurance contract. So

21 I don't know how they're going to do it. I don't know

22 how they're going to do it, but they're going to have

23 to prove to you that there were misrepresentations,

24 they were false. We discovered them, then within 90

25 days of that date of discovery, we unequivocally

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1 refused -- gave notice that they refused to be bound

2 by their contract. If they can't do it, the only

3 thing left, as Mr. Tillotson almost stumbled into, but

4 I give him credit for being sharp enough to not fall

5 all the way in the hole, but it's a bad faith case.

6 That's all this panel has in front of it is a bad

7 faith case. No doubt unequivocally, unambiguously SCA

8 owes the money.

9 Now, the only question is did their

10 refusal to pay the money they owe, was it

11 characterized by bad faith as that term is defined by

12 Texas common law, by the Deceptive Trade Practices Act

13 and by Article 21.21 of the Insurance Code. They've

14 got no -- there is no defense to an unambiguous

15 contract. So the thought even of sitting here for two

16 weeks while people come in and talk about issues that

17 have no relevance -- I mean, even if you indulged

18 the -- the grossly unreasonable interpretation of this

19 agreement that is urged by SCA about what promotion

20 means, that's their only defense is that they say that

21 the conditions of the Tour de France were incorporated

22 by reference, by implication into this contract and

23 that -- and that despite the integration clause, which

24 prohibits any such item and, of course, promotion

25 doesn't mean the Tour de France, it's obvious.

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1 But even if you indulge all of that,  
 2 Senator Lyon is exactly right, that means that if they  
 3 can prove that -- of course, this is not a valid  
 4 defense, but even under the strained construction they  
 5 have, anything that happened before 2001 is totally  
 6 irrelevant. If they can show that the wins of 2001  
 7 through 2004 were ill gotten, then under their  
 8 construction of the agreement, you might have a fact  
 9 issue, but, of course, because it is a strained and  
 10 unreasonable construction and it is an insurance  
 11 contract, you're prohibited by law from adopting their  
 12 interpretation. You must -- under Texas law you must  
 13 adopt the interpretation advanced by the insured, not  
 14 the insurer.  
 15 ARBITRATOR LYON: Let me stop you right  
 16 there and ask you a question.  
 17 MR. HERMAN: I apologize.  
 18 ARBITRATOR LYON: Is there any evidence  
 19 at all of any performance enhancing drugs in 2001  
 20 through 2004?  
 21 MR. HERMAN: No, none.  
 22 MR. TILLOTSON: I'm sorry. I think there  
 23 will be. Mr. Anderson will offer testimony. I think  
 24 Mr. Ashenden will offer testimony. I think there will  
 25 be.

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1 ARBITRATOR FAULKNER: Okay, gentleman, we  
 2 understand where you're coming from on that. Is there  
 3 anything else you wish to add and, Ms. Blue, anything  
 4 further from you?  
 5 MS. BLUE: No.  
 6 MR. HERMAN: Your Honor, you misphrased  
 7 that question. There is plenty that I wish to add.  
 8 ARBITRATOR FAULKNER: I'm sure of that.  
 9 I'm absolutely certain of that.  
 10 MR. HERMAN: I don't have anything.  
 11 MS. BLUE: I do. I just have one thing.  
 12 You said something in the beginning that you really  
 13 wanted to keep order in this process.  
 14 ARBITRATOR FAULKNER: Yes, we are moving  
 15 it along.  
 16 MS. BLUE: Right. And so my question,  
 17 because I think Mr. Herman has a very strong argument  
 18 on the insurance, which you found -- you gentlemen  
 19 found that SCA was in the business of doing insurance,  
 20 and my question to you is since this will be organized  
 21 and proceed along -- I guess it's more of a procedural  
 22 question. If y'all were to decide that issue today,  
 23 that would be it, number one. Number two, does the  
 24 panel think that they would be willing to consider and  
 25 let us know today about summary judgment issues? And

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1 number three, how you in your minds want to see this  
 2 arbitration proceed.  
 3 ARBITRATOR FAULKNER: We have already  
 4 chatted. That's the reason why we started 15 minutes  
 5 late rather than exactly at 9:00.  
 6 MS. BLUE: And I'm sorry if you've  
 7 discussed this --  
 8 ARBITRATOR FAULKNER: Well, we have  
 9 already got some ideas on some of these things. We  
 10 needed to have you all have an opportunity to try to  
 11 tell us whatever you thought was important regarding  
 12 these motions, and there's also a motion from the  
 13 Respondents as well to exclude certain items that we  
 14 need to deal with. But we are going to hopefully be  
 15 able to chat amongst ourselves and come up with a  
 16 response on this so you all then know how the rest of  
 17 this case will proceed.  
 18 MS. BLUE: Okay. That's what I was  
 19 asking.  
 20 ARBITRATOR FAULKNER: We want to move  
 21 this in as organized a fashion as possible. And I  
 22 will say, having done several hundred of these I have  
 23 never seen as many motions, cross motions, and whatnot  
 24 back and forth in one of these cases. But y'all have  
 25 briefed all of them well so, you know, they've been

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1 helpful.  
 2 Anything else on your motion to exclude?  
 3 MR. HERMAN: No, Mr. Chairman, there is  
 4 not.  
 5 ARBITRATOR FAULKNER: Mrs. Blue?  
 6 MS. BLUE: No, thank you.  
 7 ARBITRATOR FAULKNER: Mr. Tillotson, you  
 8 have one.  
 9 MR. TILLOTSON: Yes.  
 10 ARBITRATOR FAULKNER: Let me switch to  
 11 your documents now...  
 12 MR. TILLOTSON: May I respond to his -- I  
 13 didn't feel like I got an opportunity.  
 14 ARBITRATOR FAULKNER: I'm getting a  
 15 request for a quick break. Why don't we take a quick  
 16 ten-minute break, since one of the panel members would  
 17 like to, and we'll come back in ten minutes and then  
 18 we'll proceed with Mr. Tillotson.  
 19 MR. TILLOTSON: I would like the  
 20 opportunity to respond in more detail to his motions  
 21 if that's permissible.  
 22 ARBITRATOR FAULKNER: You can as soon as  
 23 we resume. Let's start at quarter of 11:00. That  
 24 gives you a little more than 15 minutes.  
 25 (Recess 10:24 a.m. to 10:47 a.m.)

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1 ARBITRATOR FAULKNER: Mr. Tillotson, we  
2 were about to hear from you.  
3 MR. TILLOTSON: First, I would like to  
4 respond to Mr. Herman's and Ms. Blue's statement on  
5 the Motion in Limine. My understanding from the panel  
6 was that their Motion for Summary Judgment had been  
7 denied and that no response needed to be filed by us  
8 and, therefore, we did not. Obviously, we contest the  
9 issues in there, and I took their first Motion in  
10 Limine and the discussions and arguments regarding the  
11 exclusion of evidence based on Articles 21.17 of the  
12 insurance code as simply reurging that Motion for  
13 Summary Judgment. I'm happy to respond to those  
14 arguments in the form of -- either through my opening  
15 or now, but I'm going to table that for a second and  
16 talk about the specific mechanics of the individual  
17 witnesses.  
18 ARBITRATOR CHERNICK: Could I just say I  
19 don't think it's accurate to say that we denied the  
20 motion. I think it's accurate to say that we denied  
21 them the right to file and have heard the motion  
22 before the hearing. We didn't address the merits of  
23 the motion in any way.  
24 MR. TILLOTSON: Correct. I didn't --  
25 that no response was necessary.

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1 ARBITRATOR CHERNICK: Correct.  
2 MR. TILLOTSON: That the motion can be  
3 raised at any time and that the panel would accept  
4 argument on that motion during the course of the  
5 hearing.  
6 With the Motion in Limine regarding the  
7 exclusion of evidence, which merges with this notion  
8 that, well, we don't have a case anyway because of the  
9 reasons for the summary judgment to me is part and  
10 parcel to the summary judgment motion and I'm prepared  
11 to argue that. I would prefer to do it as a response  
12 to the motion so that I can be more detailed as to the  
13 Motion in Limine, but I will deal with that at the  
14 end.  
15 With respect to the witnesses, Mr.  
16 Faulkner, you are correct, there have been a lot of  
17 motions back and forth, and the reason for that is  
18 twofold. First, this case has a variety of witnesses  
19 located in every jurisdiction except the one in which  
20 we are here now which has made it incredibly  
21 problematic in dealing with the law, not just in  
22 several states but countries. Second, with all due  
23 respect, a lot of witnesses don't want to have  
24 anything to do with this case and don't want to  
25 testify and are scared to testify for a variety of

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1 reasons. And every effort by me and my team to obtain  
2 testimony from witnesses has been met with fierce  
3 opposition from the other side, both in this  
4 proceeding and privately.  
5 As the panel may recall, Mr. Herman has  
6 opposed every discovery request I've made. Even when  
7 the panel has said go forward and I've submitted the  
8 subpoenas, Mr. Herman has objected as well. The last  
9 act that happened was when discovery was going  
10 forward, Mr. Herman decided to graft on my discovery  
11 and add his own, and the panel even required me to put  
12 his document request on my subpoena.  
13 Now, there was a point to that. One is I  
14 guess he wanted the documents, but, two, he knew that  
15 by asking for those documents, that that was going to  
16 further agitate witnesses who didn't want to be part  
17 of this proceeding. That's what happened with  
18 Mr. LeMond. What happened with Ms. O'Reilly was she  
19 refused to cooperate and appear absent a court order,  
20 which is difficult to get, because this is an  
21 arbitration and you have to go through the UK court  
22 system under their arbitration act.  
23 We had to have specific things in that  
24 filing to obtain it, and the problem lies in the fact  
25 that the British law, according to the UK lawyers we

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1 have retained, does not allow us to do a pure  
2 discovery deposition. It has to be for testimony and  
3 you have to identify the need for the testimony, not  
4 the discovery. That was the reason for the language  
5 that we had to put in that statement in order to  
6 obtain it. We were unable to -- based upon what our  
7 UK lawyers told us, there is no chance to obtain a  
8 deposition of Ms. O'Reilly based upon the order that  
9 you have.  
10 We then converted it, because of the time  
11 frame and the notices required to -- well, if we can't  
12 get her for a deposition, can we get her for live  
13 testimony, which is easier to obtain, and that was  
14 ultimately the sum of our -- the request that we made  
15 to the panel. Keep in mind, all we are trying to do  
16 is get her to testify in this proceeding. They know  
17 all about Ms. O'Reilly. She's part of the U.S. Postal  
18 cycling team for years. They know she's a source for  
19 Mr. Walsh's book, and they've sued her in the UK and  
20 the writer of the book, Mr. Walsh. And so they know  
21 more about Ms. O'Reilly and her testimony than I'll  
22 ever know. So their notion that somehow she should be  
23 precluded from testifying, presenting that testimony,  
24 because they haven't had a chance to depose her is, in  
25 my opinion, without merit.

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1 Now, that explains the story of  
2 Ms. O'Reilly. I would have loved to have gotten her  
3 deposition. I would have loved to have gone to the  
4 United Kingdom over Christmas and taken her  
5 deposition. The simple fact of the matter is she and  
6 her lawyers said absolutely no way will they  
7 cooperate. It has to be a court order, and they  
8 insist on a strict compliance with the rules, so every  
9 effort by Mr. Herman to make that compliance more and  
10 more difficult has precluded my ability to bring her  
11 except for this last bastion of effort, which is if I  
12 can't get her for a deposition, why can't she just  
13 testify live in front of the panel and be subject to  
14 cross examination?  
15 With respect to David Walsh -- Mr. Walsh  
16 who is obviously the author of LA Confidential. He's  
17 the centerpiece of the allegations we have put on, not  
18 necessarily with respect to the truth of those  
19 allegations but with respect to what alerted my  
20 clients that there may be problems, misrepresentations  
21 in connection with the contractual relationship they  
22 had with Tailwind. Mr. Walsh has also been sued by  
23 Mr. Armstrong in the United Kingdom. He sued everyone  
24 in connection with the book in two different  
25 countries, France and the United Kingdom, and my

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1 understanding -- we're not a party to that lawsuit.  
2 We have had limited access to that lawsuit. My  
3 understanding is that the parties have engaged in  
4 discovery in that lawsuit, exchanged documents. I  
5 don't think they do depositions there, because that's  
6 the problem with Ms. O'Reilly, but there has been  
7 ongoing pleadings and motions and rulings from the  
8 courts there.  
9 The problem was or is that -- well, let  
10 me back up. And I also believe that Mr. Herman has  
11 gotten those documents from Mr. Armstrong's UK  
12 lawyers, because he used at least one of them at  
13 Mr. Walsh's deposition which was diary excerpts from  
14 Ms. O'Reilly and attempted to confront and impeach  
15 Mr. Walsh regarding the veracity of Ms. O'Reilly.  
16 Mr. Walsh objected and said during the deposition,  
17 you're not supposed to have those, you're not supposed  
18 to be trading documents with the UK case, and I'm not  
19 going to answer any questions until I understand how  
20 you got those and whether or not you can use them.  
21 That was the problem.  
22 ARBITRATOR LYON: This was a witness  
23 objecting on his own?  
24 MR. TILLOTSON: Who was there  
25 unrepresented by counsel. I don't represent

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1 Mr. Walsh, and I should point out -- although we can  
2 contact Ms. O'Reilly and we can contact Mr. Walsh and  
3 we can ask Mr. Walsh questions and he'll respond to  
4 them, and Ms. O'Reilly, I don't control them. As I  
5 made clear to the panel, although we can agree on  
6 dates, unless I can get the cooperation of the  
7 witnesses to appear, I could not make Mr. Walsh, Mr.  
8 LeMond, Ms. O'Reilly appear. I did everything I can  
9 to facilitate that. I convinced Mr. Walsh to come to  
10 New York for his deposition, and I convinced these  
11 guys to pay for it. But he came unrepresented by  
12 counsel, but he was in contact with his UK counsel.  
13 I asked him in connection with the  
14 deposition, they want you to be able to use all the  
15 documents that they have gotten from lawyers in the UK  
16 case, and he said he would call his British lawyer and  
17 make his own judgment, and he came back and said he  
18 was not comfortable because it appeared to him that  
19 they already had them and he wanted to know how. So  
20 there was no cross examination regarding some  
21 documents which I don't even know what they are or  
22 what role they play in the testimony we plan on  
23 putting on with Mr. Walsh, because I don't have them.  
24 Now, the reality is that Mr. Walsh is  
25 coming to testify voluntarily. I've asked him to

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1 come. The only reason he was being deposed is because  
2 Mr. Herman wanted to depose him in advance of the  
3 trial, which obviously is his right to do so; however,  
4 somehow in the process the burden got shifted and put  
5 on me to go out and obtain the guy and make sure he  
6 had all these documents and do all the things that you  
7 would do with your client or your witness, and  
8 Mr. Herman was able to escape having to serve  
9 Mr. Walsh with a subpoena, escape having to fight over  
10 or obtain approval from the UK courts to get  
11 documents, and then now wants to use that, even though  
12 he had the documents because they are suing the guy in  
13 British courts, he would exclude this witness from  
14 coming to testify. Then he's going to link that and  
15 say these guys engaged in bad faith because Mr.  
16 Walsh's book is a piece of crap. Mr. Walsh will  
17 explain why the book hasn't been published in the  
18 United States. Mr. Walsh will explain the sources and  
19 the credibility of the book, and we would bring in  
20 other witnesses who are going to corroborate the  
21 foundations for the allegations in Mr. Walsh's book,  
22 so I believe it's fair to allow Mr. Walsh to come and  
23 testify. We will ask him again whether he will  
24 consent to allowing the use of documents from the UK  
25 proceedings. He may well if he understands that he

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1 will not be allowed to testify. At least he would  
 2 know that that's the condition of his testimony, the  
 3 use of the UK documents.  
 4 ARBITRATOR CHERNICK: Are you aware of  
 5 any stipulation or protective order in the UK  
 6 proceedings against Mr. Walsh that would prevent those  
 7 documents from being used other than by the consent of  
 8 the parties?  
 9 MR. TILLOTSON: I don't think there's a  
 10 protective order in the UK proceeding. I think it's  
 11 UK law that precludes their dissemination, is my  
 12 understanding. So there's not a formal protective  
 13 order but there's restrictions with regard to what  
 14 litigants can do with materials obtained as a result  
 15 of court cases. So it's my understanding that  
 16 Mr. Herman needs to obtain consent to use material  
 17 produced by Mr. Walsh to Mr. Armstrong in the British  
 18 case.  
 19 ARBITRATOR FAULKNER: Is that the genesis  
 20 of the correspondence from Adelshaw and Goddard, which  
 21 I presume you gentlemen have been copied in on?  
 22 MR. TILLOTSON: I believe so, yes.  
 23 So I think with respect to Ms. O'Reilly  
 24 and Mr. Walsh, they are important witnesses to us,  
 25 particularly at the very least if Mr. Herman is right

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1 and this is solely a bad faith case, then they are  
 2 critical witnesses, frankly, and the procedural  
 3 defects or problems are not roadblocks we have created  
 4 to preclude them from adequately cross-examining  
 5 and/or confronting these witnesses, and, indeed,  
 6 they're involved in other litigation against these  
 7 witnesses and have ample knowledge and ability to  
 8 cross-examine them as the case may be.  
 9 I will point out that we lose if we don't  
 10 have evidence, and they know that. The absence of  
 11 people coming in and testifying and corroborating  
 12 allegations is materially disadvantageous to our case  
 13 both in defending of the contract and on the bad faith  
 14 allegations. So there's this game being played where  
 15 the effort by Mr. Armstrong's camp is to dissuade  
 16 witnesses from coming here, and that's where these two  
 17 witnesses fall.  
 18 ARBITRATOR LYON: Let me ask you a  
 19 question about Mrs. O'Reilly. When did she stop being  
 20 a part of the U.S. Postal team or whatever team it was  
 21 that Mr. Armstrong was with?  
 22 MR. TILLOTSON: 2000 or 2001 time period.  
 23 MR. ARMSTRONG: 2000.  
 24 MR. TILLOTSON: 2000.  
 25 MR. HERMAN: Prior to the 2000 Tour de

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1 France.  
 2 ARBITRATOR FAULKNER: Go ahead and  
 3 proceed, Mr. Tillotson.  
 4 MR. TILLOTSON: Thank you.  
 5 So those two witnesses that are critical  
 6 to our case in my opinion and we typically -- if they  
 7 lived in Cleveland, this would have been a much  
 8 simpler process, but they don't, and we think that  
 9 there has been a fair opportunity to be prepared for  
 10 those witnesses.  
 11 Mr. Howman works for the general counsel  
 12 of WADA, and we want his testimony with respect to the  
 13 1999 test results that were conducted, and this is  
 14 going to be the subject of argument so I'm going to  
 15 attempt to do it very briefly so the panel knows what  
 16 we are referring to, but there were 1999 urine samples  
 17 from the Tour de France that were tested as ongoing  
 18 research by a French laboratory in 2005. Some of  
 19 those test samples tested positive for EPO and a  
 20 reporter in France was able to put together the test  
 21 results with a code and wrote an article published in  
 22 l'Equipe that those urine samples were Mr. Armstrong's  
 23 and he had tested positive for EPO in connection with  
 24 the 1999 Tour de France. And it was front page  
 25 headlines around the world. It is disputed vigorously

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1 by Mr. Armstrong, both publicly and in these  
 2 proceedings, so I want to get that out on the table.  
 3 The resulting allegations from the news  
 4 story have turned into a giant investigation in  
 5 connection by the UCI, WADA, French authorities and a  
 6 bunch of lawyers apparently involved in the  
 7 investigation. They know a lot more about what's  
 8 going on than we do because our ability to get  
 9 information regarding the subject matter is somewhat  
 10 hampered and limited by French law.  
 11 That said, we do know that WADA sought to  
 12 investigate this matter and made document requests and  
 13 information requests to many of the parties, including  
 14 Mr. Armstrong's camp. We have been told by WADA that  
 15 Mr. Armstrong provided no information and basically  
 16 questioned WADA's jurisdiction to even be involved.  
 17 We do know that WADA did some investigation regarding  
 18 what went on at the French lab. The French lab won't  
 19 talk to us, and it's extremely difficult to get any  
 20 testimony from anyone in France, particularly  
 21 regarding this matter which is under investigation, so  
 22 we sought to obtain from Mr. Howman from WADA  
 23 testimony regarding the test results.  
 24 Now, Mr. Howman agreed to voluntarily  
 25 comply with the U.S. subpoena, even though he's in

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1 Montreal at WADA's headquarters because WADA's stated  
 2 position is they don't run from testifying.  
 3 Mr. Howman called me, and his lawyer, who's an outside  
 4 lawyer, Steve Weinberg, with a firm in Montreal,  
 5 called me and said that he had been contacted by  
 6 Mr. Herman, and Mr. Herman was sending a substantial  
 7 subpoena for documents, and Mr. Herman reminded them  
 8 or told them that they need not comply with the U.S.  
 9 subpoena. Mr. Herman disputed saying that. At the  
 10 very least I was confronted and met with witnesses who  
 11 had been told that they need not comply with  
 12 deposition subpoenas in this case.  
 13 Mr. Herman could only be available on one  
 14 day to depose this man, a Thursday, and as you may  
 15 recall, I pushed the panel to issue a subpoena because  
 16 people were literally getting on a plane. Mr. Towns  
 17 flew out there; he flew out there. After they left  
 18 for the plane Mr. Howman's lawyer called and said it  
 19 was impossible for Mr. Howman to be available on  
 20 Thursday -- this was Wednesday afternoon -- but he  
 21 could be available on Friday. Mr. Herman said, no, we  
 22 are not doing it on Friday; I'm not available. As it  
 23 turns out, who wasn't available was their DC lawyer,  
 24 Mark Levinstein, who apparently represents Mr.  
 25 Armstrong in connection with disputes regarding WADA.

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1 And since then Mr. Howman has been traveling, making  
 2 rescheduling of his deposition difficult.  
 3 We have sought to figure out how to get  
 4 that evidence on without respect to Mr. Howman, but  
 5 that is the problem with respect to Mr. Howman. We  
 6 haven't decided whether or not we need him. If we do  
 7 need him, we would request the same procedure, which  
 8 is that simply he be allowed to testify via video  
 9 conference. We have done at least four depositions  
 10 that way between the parties; that the panel could  
 11 hear his testimony; he could be sworn in and he could  
 12 be cross-examined.  
 13 Again, they are light years ahead of us  
 14 in terms of what's going on with WADA. The materials,  
 15 the investigation and those details and have been much  
 16 more involved than us. That the Claimants are somehow  
 17 surprised or prejudiced because they are going to have  
 18 to cross-examine a witness for which they've already  
 19 been dealing with in an organization which they are  
 20 intimately familiar with is simply not correct.  
 21 Next, Greg LeMond. Kathy LeMond was  
 22 deposed first. Greg LeMond was deposed after Kathy  
 23 LeMond. In connection with their depositions it was  
 24 revealed that Mr. LeMond had taped a variety of people  
 25 in connection with not our dispute but his dispute

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1 with Mr. Armstrong. They apparently had a row in 2001  
 2 regarding the revelation of Mr. Armstrong's  
 3 relationship with Dr. Ferrari. They had cross words.  
 4 Mr. LeMond has testified in his deposition that  
 5 Mr. Armstrong acknowledged to him that he used EPO in  
 6 response to the fight they had over the phone. That  
 7 conversation was not recorded.  
 8 Mr. LeMond also testifies that he was  
 9 under a lot of pressure from his bike sponsor who  
 10 incidentally also is a bike sponsor for Mr. Armstrong  
 11 to retract his statements, and he became concerned and  
 12 he began taping people. He has a bunch of tapes, or  
 13 so he says.  
 14 ARBITRATOR LYON: I'm sorry. You said  
 15 after he had an argument with Mr. Armstrong, he then  
 16 began taping everything?  
 17 MR. TILLOTSON: I don't think it's that  
 18 strong, Senator. He says that he made some public  
 19 comments regarding Mr. Armstrong and Dr. Ferrari for  
 20 which he says he received a tremendous amount of  
 21 pressure from a variety of people in the Armstrong  
 22 camp to recant, and he became concerned and he became  
 23 concerned that things people had told him, they would  
 24 later deny, making him look out to be a liar and,  
 25 therefore, he taped various conversations, not

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1 everything. I don't know the inventory of who he  
 2 taped or what he taped.  
 3 Mr. Herman did -- I think he did a broad  
 4 subpoena request for Mr. LeMond, and I believe -- I  
 5 didn't attend the deposition, Mike Lynn attended the  
 6 deposition, but I believe in the course of the  
 7 deposition Mr. Herman did ask for all tapes, and  
 8 Mr. Madel said, we are not producing them. But  
 9 apparently the issue is that Mr. LeMond is concerned  
 10 that if all these tapes come out, he will be adversely  
 11 affected on matters unrelated to our proceeding, that  
 12 there will be all these adverse consequences to him.  
 13 That's at least what his lawyer has told me when we  
 14 asked about these tapes.  
 15 I let it sit, because it didn't appear to  
 16 me during the course of the discovery that there was  
 17 any taped conversations with Mr. Armstrong, and I  
 18 wasn't particularly interested in taped conversations  
 19 between Mr. LeMond and his bike sponsor. Something  
 20 changed. Stephanie McIlvain, who was at the  
 21 University of Indiana Hospital when Mr. Armstrong  
 22 allegedly acknowledged use of performance enhancing  
 23 drugs to a doctor, denied in her deposition that she  
 24 heard that statement. We have been told from other  
 25 witnesses that she had previously told people that she

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1 heard it. We became concerned regarding possible  
 2 perjury. We learned that Mr. LeMond and --  
 3 MS. BLUE: I'm sorry, can you speak up a  
 4 little bit. We are having a hard time hearing you.  
 5 MR. TILLOTSON: Sure. We learned that  
 6 Mr. LeMond had a tape of Ms. McIlvain saying in 2003  
 7 or 2004 -- in which he taped her and she told him that  
 8 the incident did happen and that Chris Carmichael was  
 9 there and that he heard it and he looked around to see  
 10 who was in the room to make sure that they were safe.  
 11 Now, I haven't heard the tape, but Mr. LeMond's lawyer  
 12 has confirmed such a tape exists and has read to us  
 13 the transcript of the tape to us, because I'm not  
 14 interested in a bunch of tapes that have nothing to do  
 15 with this dispute, except if they relate to material  
 16 relevant evidence, and I can think of nothing more  
 17 material or relevant to the dignity of these  
 18 proceedings than outright perjury by Stephanie  
 19 McIlvain.  
 20 It's not just that tape. I have a reason  
 21 to believe that this individual is lying about a key  
 22 event. I've been told by David Walsh who has  
 23 testified in his deposition that Ms. McIlvain  
 24 confirmed that story to him. I located a reporter, an  
 25 American living in Paris, who says the same thing,

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1 that in 2004 Ms. McIlvain confirmed the incident  
 2 happened to him, and we'll offer the testimony of  
 3 Betsy Andreu who will also say she was in the room and  
 4 Ms. McIlvain was there, heard it and they have  
 5 discussed this incident previously. And I think that  
 6 we are allowed to obtain that tape for purposes of  
 7 showing that Ms. McIlvain was lying, to offer  
 8 corroboration and credibility to what happened in the  
 9 university hospital room and to bring to account the  
 10 witness who I believe has chosen the easy way out or  
 11 lie about what happened.  
 12 Now, I have spoken to Chris Madel, and he  
 13 has continued to express his client's objection to  
 14 producing all the tapes, and I told Mr. Herman when  
 15 this happened and when he grafted his document request  
 16 onto my subpoena -- I just subpoenaed that tape --  
 17 that this was going to happen and that the fight for  
 18 all these tapes was his, not mine. I don't care about  
 19 all those other tapes. I don't even think they're  
 20 relevant to this proceeding. If he can get them,  
 21 fine. If he can't, I don't think that should impact  
 22 my ability to get them.  
 23 Now --  
 24 ARBITRATOR LYON: The first tape, this --  
 25 this tape between Mr. LeMond and Ms. McIlvain has

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1 never been produced for anybody?  
 2 MR. TILLOTSON: That's correct.  
 3 ARBITRATOR LYON: Okay.  
 4 MR. TILLOTSON: Keep in mind that I  
 5 didn't know such a tape existed until after his  
 6 deposition and had no reason to think I needed it  
 7 until after Stephanie McIlvain had said something  
 8 different than we had been told and we began  
 9 investigating how we could prove that she was being  
 10 untruthful. That's how this came about.  
 11 ARBITRATOR CHERNICK: She's been deposed  
 12 in this case?  
 13 MR. TILLOTSON: She has been deposed in  
 14 this case.  
 15 ARBITRATOR CHERNICK: Is she going to be  
 16 a live witness?  
 17 MR. TILLOTSON: She is not.  
 18 MR. HERMAN: She'll be here by videotape.  
 19 ARBITRATOR LYON: She went to USC, I  
 20 think.  
 21 MR. TILLOTSON: She works for Oakley, as  
 22 does her husband. They make the sunglasses and  
 23 equipment. We deposed her at the company headquarters  
 24 out in California. Mr. Armstrong is the major  
 25 spokesman or sponsor for Oakley and I believe she

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1 has -- I believe she has heard other witnesses say  
 2 they heard -- and I can't think of any other -- to me,  
 3 this is the most relevant piece of evidence regarding  
 4 this witness's testimony, and they plan on offering  
 5 her testimony denying the IU hospital room incident as  
 6 a way of impeaching our witnesses. It's absolutely  
 7 material.  
 8 MR. HERMAN: That -- seriously now, she  
 9 didn't deny it.  
 10 ARBITRATOR FAULKNER: Wait, wait. I'll  
 11 give you an opportunity to respond later.  
 12 MR. HERMAN: I apologize.  
 13 MR. TILLOTSON: I will be fair. She said  
 14 she was in the room, everyone was there. She just  
 15 didn't hear anything because she was watching a  
 16 football game. Four of the witnesses are going to say  
 17 that she's told them she heard it, and I've heard a  
 18 transcript read to me of the tape where she apparently  
 19 tells Mr. LeMond it happened, she heard it, and I  
 20 think that is critical testimony.  
 21 Now, Mr. Madel recognizes the seriousness  
 22 of what I'm alleging and what has happened and has  
 23 agreed that he would provide me or produce that tape,  
 24 but his position with respect to the other tapes is  
 25 that they are not necessary or relevant. Again,

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1 that's not my fight. That is a fight that can be  
 2 brought up between Mr. Herman or this panel, anyone.  
 3 That should not preclude what I view to be  
 4 extraordinarily pertinent, relevant, significant,  
 5 devastating testimony.  
 6 That's the issue with Greg LeMond. Greg  
 7 and Kathy LeMond were deposed; you'll see them by  
 8 videotape -- Kathy LeMond. Greg LeMond may show up.  
 9 I don't control him. Last I heard from Mr. LeMond he  
 10 wasn't going to voluntarily appear. He goes from day  
 11 to day as to whether or not this is a process he wants  
 12 to be involved in any more than he already is. I  
 13 believe that the tape can be authenticated through a  
 14 variety of ways through Kathy LeMond or from any  
 15 witness who can recognize the voice of the two  
 16 speakers. I'm prepared to deal with authentication  
 17 issues. I have the tape; that's the authentication  
 18 evidence I have. If I cannot, we have the tape and we  
 19 know what it says, I'll ask the panel for leave of a  
 20 way to produce -- put that tape in evidence, but I'll  
 21 only deal with authentication issues if I, in fact, am  
 22 able to get the tape in and am told by the panel if I  
 23 can authenticate it, it can be produced. Then we will  
 24 scramble for ways to authenticate it.  
 25 The last witness that they moved to

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1 oppose was Dr. Ashenden. Dr. Ashenden is our expert.  
 2 He's from Australia. He's extremely well regarded and  
 3 knowledgeable for drug doping, drug testing and serves  
 4 as a consultant to various organizations that are  
 5 involved in this. As a footnote, he was the  
 6 individual who helped develop the test that Tyler  
 7 Hamilton, former teammate of Mr. Armstrong's,  
 8 registered positive on, and he's extremely  
 9 knowledgeable about drug testing, doping, the ways of  
 10 doping, et cetera.  
 11 One of the things that Dr. Ashenden had  
 12 intended on testifying about was this issue that was  
 13 raised by Claimants that a fellow named Dr. Coyle from  
 14 the University of Texas had tested Mr. Armstrong over  
 15 the years or done testing of him and had been able to  
 16 scientifically, mechanically, physiologically explain  
 17 Mr. Armstrong's remarkable success in winning seven  
 18 straight Tour de Frances whereas previously he has  
 19 not. It was largely a scientific endeavor by  
 20 Dr. Coyle to explain how an individual goes from not  
 21 winning to destroying competition year after year  
 22 physiologically speaking.  
 23 Dr. Ashenden and others in the community  
 24 have serious, serious doubts about Dr. Coyle's work,  
 25 anywhere from the math and the science to some of the

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1 factual statements in the report. It's a publicly  
 2 available document. It wasn't done for this  
 3 litigation. It was done as part of scientific work.  
 4 Some of that information regarding  
 5 contradicting Dr. Coyle's report came from  
 6 conversations Dr. Ashenden had with former assistants  
 7 to Dr. Coyle who contradicted certain things that  
 8 Dr. Coyle had said factually that mattered that he did  
 9 the math and science. Dr. Ashenden was -- despite  
 10 requests from us, was unwilling to disclose the names  
 11 of those individuals to the other side. The reason is  
 12 he fears that those individuals who gave him that  
 13 information in confidence will be retaliated against  
 14 in a brutal manner, and not without some justification  
 15 frankly, given some of the things that have gone on in  
 16 this case and witnesses who have been contacted. I  
 17 mean he has a valid concern that revealing some of his  
 18 sources may lead to seriously compromising those  
 19 individuals' careers because no one wants to call one  
 20 of their former professors a liar.  
 21 Now, I agree with Mr. Herman, you're  
 22 entitled to go after an expert and know everything  
 23 about him so long as it's reasonable, and if my guy is  
 24 going to rely on that someone told him something,  
 25 they're entitled to know that, so I'm prepared to

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1 accept the penalty that Dr. Ashenden will not be able  
 2 to use that evidence or rely on that or say that and  
 3 he will attack Dr. Coyle's report on the basis of  
 4 anything he has revealed and he has his documents, his  
 5 papers, and we will exclude that. This came up during  
 6 the course of a deposition, and I concur that he  
 7 should either reveal the source or be barred from that  
 8 particular testimony.  
 9 Now, that should not invalidate the vast  
 10 majority of his expert testimony. The Coyle report is  
 11 only a small part of that, and within that Coyle  
 12 report his reliance on these unnamed sources is just a  
 13 small fraction of his problems with that report, and,  
 14 therefore, I think that's an easy one, which is he  
 15 just simply is not allowed to offer that testimony,  
 16 and if there's something about Coyle contradicted  
 17 testimony that somehow relates to those guys that I  
 18 don't know, you can certainly take that up and it  
 19 would, of course, not come in, but everything else  
 20 about Dr. Ashenden would.  
 21 So that's the sum and substance of our  
 22 response to those witnesses and the reasons why they  
 23 should be allowed under the circumstances that we  
 24 have.  
 25 I did want to respond just globally to

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1 the Motions in Limine. This notion that there should  
 2 be a Motion in Limine excluding hearsay testimony, I  
 3 can't deal with that. I can't respond to that. I  
 4 mean, the rules are the rules. When people offer  
 5 testimony, they can make their own objections. Much  
 6 hearsay is admissible, with the exception or  
 7 otherwise. We just went through an entire hearing  
 8 where the parties were told don't sweat objections  
 9 because the panel is sophisticated and can deal with  
 10 them. And I think it is now their effort to sort of  
 11 say that anything that's hearsay should not be in as a  
 12 way of somehow trying to taint our evidence is  
 13 meaningless as a Motion in Limine. Of course, there's  
 14 going to be hearsay testimony. Of course, it can be  
 15 objected to, and I believe the testimony we offer is  
 16 admissible under the rules, either as exceptions or  
 17 otherwise. The real point is they don't want other  
 18 witnesses coming in and talking about Mr. Armstrong,  
 19 and they have reurged their argument that the contract  
 20 is clear and, therefore, who needs any testimony about  
 21 misrepresentation and that Article 21.17 is clear and,  
 22 therefore, even if we had evidence of  
 23 misrepresentation, we would be barred from asserting  
 24 that.  
 25 With all due respect, I believe that the

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1 latter issue, the effect of 21.17, is an issue in  
 2 serious dispute between the parties, and I believe and  
 3 am prepared to offer evidence that we have satisfied  
 4 the requirements of 21.17, and to the extent that we  
 5 have not, it is not the fault of my clients, but of  
 6 the Armstrong camp. 21.17 requires that you give  
 7 reasonable notice of your intent not to be bound by  
 8 insurance contract when you learn of or believe there  
 9 have been misrepresentations in the procuring of the  
 10 insurance. As we will see and no doubt argue about,  
 11 the statute later says 90 days is a reasonable period,  
 12 but it is -- it does not say 90 days is the cap.  
 13 Also, the statute does not require oral  
 14 or written notice. It just says notice. We plan on  
 15 putting on evidence that we provided notice within 90  
 16 days of when my clients reasonably believed that there  
 17 had been misrepresentations made and that that  
 18 reasonable belief was incredibly hampered by  
 19 Claimants' refusal to cooperate in any investigation  
 20 by my clients. At the outset, notice was given.  
 21 Everyone agrees that notice had to have been given  
 22 when we filed our counterclaims in this very  
 23 arbitration proceeding.  
 24 ARBITRATOR LYON: When was that?  
 25 MR. TILLOTSON: April 4th, 2004.

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1 MR. HERMAN: 2005.  
 2 MR. TILLOTSON: Good point. April 4th,  
 3 2005.  
 4 But I will also put on evidence of other  
 5 forms of notice that were given through letters and  
 6 court hearings that the Claimants were put on notice  
 7 regarding my client's position that they were not  
 8 going to pay under the contract and why. Indeed, I  
 9 know they had notice and I know they knew, because  
 10 Mr. Stapleton ran an ad on October 4th in a business  
 11 journal saying these guys won't pay because they claim  
 12 we used drugs. So I think this notice issue is one  
 13 which we are going to prevail on and will allow us to  
 14 present a defense of misrepresentation.  
 15 To the extent that you count the days and  
 16 you deem notice on X day and we knew on Y day and  
 17 that's 94 days, we are still going to argue that it's  
 18 reasonable notice period under the circumstances  
 19 considering what transpired between the parties and  
 20 our ability to gather information to learn of these  
 21 allegations.  
 22 I've already sort of in response to the  
 23 Senator's question regarding the contract laid out our  
 24 arguments regarding the contract and why this evidence  
 25 is admissible and there are two, of course. The first

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1 one is the fraudulent misrepresentation. The second  
 2 one is, under paragraph 6 of the parties' contracts,  
 3 it requires that certain representations be true with  
 4 respect to the promotion. The parties are going to  
 5 argue whether the promotion is the Tour de France or  
 6 whether the promotion is Mr. Armstrong's contract with  
 7 Tailwind, but I would suggest to the panel at this  
 8 stage that that inquiry is irrelevant because those  
 9 two roads lead to the same location, which is whether  
 10 we're talking about Mr. Armstrong's contract with  
 11 Tailwind or whether we're talking about the actual  
 12 Tour de France. The representation or  
 13 misrepresentations are the same, and the standards are  
 14 the same, which is that if Mr. Armstrong is using  
 15 drugs in violation of the rules, he's in violation of  
 16 his contract with Tailwind and there would be  
 17 violations of paragraph 6.  
 18 Last, regardless of the panel's  
 19 deposition on the contract, under the claim of bad  
 20 faith, this testimony, like I said, is relevant. The  
 21 standard for bad faith is whether or not the claim was  
 22 reasonably clear and whether or not our investigation  
 23 was a pretext for denial, whether or not we acted in  
 24 good faith. The only way I know you can assess the  
 25 good faith of my clients is what they knew and when

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1 they knew it and how it impacted them. Right or  
 2 wrong.  
 3 We can be wrong and in good faith. I  
 4 believe we are right and we were well within our  
 5 rights to take the actions we did, but the essence of  
 6 it is that you can be wrong and have all this  
 7 information and the panel may reject it for purposes  
 8 of the contract, but still find us acting in good  
 9 faith in terms of what we did. Otherwise, there would  
 10 be no standard for good faith or bad faith. It would  
 11 be if you denied the claim and you're wrong, you lose,  
 12 and that's clearly not the standard for bad faith. So  
 13 that's why I think this testimony is relevant and  
 14 necessary, and I believe it is occasioned by a bad  
 15 faith claim that they've brought and the submission of  
 16 jury instructions that were made a part of the  
 17 pretrial brief demanding \$18 million, that we are  
 18 materially prejudiced in this proceeding if I couldn't  
 19 present that testimony.  
 20 That's subject to our response to their  
 21 Motions in Limine and those issues.  
 22 I'm happy now to address my Motions in  
 23 Limine.  
 24 ARBITRATOR FAULKNER: Please do.  
 25 MR. TILLOTSON: We brought two motions,

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1 one of which I'm happily prepared to drop. We moved  
 2 to exclude Eddie Coyle because he had not produced his  
 3 work papers. He produced them on Friday at his  
 4 deposition. I still have quarrels about what he did  
 5 or didn't produce, but I will make that the subject of  
 6 cross examination. I certainly won't seek to exclude  
 7 him on that basis.  
 8 The other Motion in Limine I've brought  
 9 is medical records, which I haven't seen. We have  
 10 been asking for medical records for a long time,  
 11 September 2nd, 2004 was the first request by my client  
 12 for medical records. Every single time we have been  
 13 told to pound sand. And in fact, we have been told  
 14 our mere request for those medical records was proof  
 15 of our bad faith. We asked for them in a deposition  
 16 subpoena to Mr. Armstrong; he refused.  
 17 I asked him at his deposition, would you  
 18 be willing to produce the Indiana University Hospital  
 19 medical records under restriction; he refused. Then  
 20 the roof caved in on some of these witnesses and facts  
 21 turned bad, and suddenly the week of the hearing, a  
 22 sanitized version of the medical records appears and  
 23 was submitted to the panel.  
 24 ARBITRATOR FAULKNER: Is that what is  
 25 locked up in my office?

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1 MR. TILLOTSON: I don't know.  
 2 MR. BREEN: It's certainly not a  
 3 sanitized version, no, Mr. Chairman. There's no  
 4 sanitized version; that's an outright --  
 5 ARBITRATOR FAULKNER: I'll consider it  
 6 argument.  
 7 MR. HERMAN: And they've had notice  
 8 that they're up there.  
 9 ARBITRATOR FAULKNER: That's what was  
 10 delivered to me?  
 11 MR. HERMAN: They've chosen not to go  
 12 look at them.  
 13 ARBITRATOR FAULKNER: They're locked in  
 14 my office at the moment.  
 15 ARBITRATOR LYON: Didn't you send a  
 16 letter saying they were --  
 17 MR. BREEN: Sure. That's exactly what he  
 18 asked for.  
 19 ARBITRATOR FAULKNER: So if you wish to,  
 20 you could review them in the office upstairs.  
 21 MR. TILLOTSON: Of course, but here's  
 22 what I don't know and what I can't do. First of all,  
 23 I don't know where they came from, under what  
 24 measures. I have no guarantee that this was a  
 25 subpoena issued for all medical records. There's no

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1 chain of custody as to where these came from and this  
 2 is the complete records, things are either there or  
 3 not there. I'm told it's a binder. Is that true? I  
 4 find that hard to believe that those are the full  
 5 amount of the medical records.  
 6 MR. HERMAN: They are accompanied by  
 7 affidavits which satisfy the business records under  
 8 803, so you know, if you would take the time to go up  
 9 there and look at them, you may be able to satisfy  
 10 yourself.  
 11 ARBITRATOR FAULKNER: Let's not have too  
 12 much quibbling back and forth.  
 13 MR. TILLOTSON: If they were produced a  
 14 year ago, I probably would have reviewed them, but I  
 15 don't have the opportunity to retain an expert or look  
 16 at them or find anything that would allow us to put on  
 17 testimony as to whether the existence or absence of  
 18 something in those records is meaningful to this  
 19 panel.  
 20 Here's where this is going, they're going  
 21 to argue that there's no mention that Mr. Armstrong  
 22 disclosed he used performance enhancing drugs in his  
 23 medical records in connection with his stay in the  
 24 hospital as proof that it didn't happen, despite  
 25 witnesses who are going to say they heard it.

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1 Now, the normal way to attack that would  
2 be to first assure that you have all the records, then  
3 find out whether or not it's likely that such a  
4 comment would have been recorded, and if so, where it  
5 would be for purposes of determining whether or not  
6 it's meaningful that it is or isn't in there. I'm  
7 unable to do that due to the way the records are  
8 produced and no one can see them except for me, and  
9 the late date at which they were produced, even though  
10 they knew this was an issue, and I am at a material  
11 disadvantage to demonstrate that those records, either  
12 the absence or inclusion, means anything. So  
13 therefore, I think the penalty for that ought to be  
14 barring the use of those records and no inference  
15 taken by this panel with respect to any issue in these  
16 records, and I think that's fair, because otherwise  
17 two lawyers are going to be arguing about what medical  
18 records mean and it's going to have zero evidentiary  
19 value in this case.  
20 They're going to attempt to impeach the  
21 credibility of witnesses who say they heard it by  
22 saying, it's not in his medical records, and I'm  
23 entitled to have at least a doctor say that's the kind  
24 of stuff you wouldn't find in medical records. And  
25 the reason it's fair to exclude it is because this is

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1 not some request I made on Thursday; it's been ongoing  
2 for over a year and they've pounded me and briefed me  
3 in saying that the fact that you want them is proof  
4 that your clients are engaged in a fishing expedition  
5 and they magically appear in a binder so I can look at  
6 them the week before the hearing and then somehow  
7 that's going to be conclusive proof involving a  
8 central allegation in the case, and, therefore, I  
9 think a Motion in Limine that those records not come  
10 in should be granted.  
11 ARBITRATOR CHERNICK: Have you concluded  
12 your --  
13 MR. TILLOTSON: I have. Those are my  
14 motions.  
15 ARBITRATOR CHERNICK: Could I just ask,  
16 based on what you now know about what you believe to  
17 be the scope of testimony and the witnesses who will  
18 be called, how much hearing time do you think is going  
19 to be required to present your side of the case?  
20 MR. TILLOTSON: I want to say between --  
21 I want to say approximately three days for my  
22 witnesses.  
23 ARBITRATOR CHERNICK: Could I ask  
24 Mr. Herman the same question?  
25 MR. HERMAN: Well, that would depend on

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1 what's -- on what the scope of the inquiry is  
2 obviously, but --  
3 ARBITRATOR CHERNICK: Assume your Motion  
4 in Limine is denied and that we defer to after the  
5 hearing the issue of assessing your arguments on --  
6 contained in the dispositive motion.  
7 MR. HERMAN: I would say probably three  
8 days of testimony as well.  
9 ARBITRATOR CHERNICK: So we have a  
10 reasonable chance of finishing within the ten days?  
11 MR. HERMAN: Oh, yes.  
12 MR. TILLOTSON: Absolutely.  
13 MR. HERMAN: There's no doubt about that.  
14 I mean --  
15 ARBITRATOR CHERNICK: Okay.  
16 MR. HERMAN: -- assuming we start this  
17 afternoon with openings or whenever you all decide and  
18 then go into the evidence right away, which is, you  
19 know, our normal -- would be the more comfortable  
20 practice, I guess, and we get on on one or two --  
21 ARBITRATOR LYON: Do you have a witness  
22 here to put on this afternoon?  
23 MR. HERMAN: Right over there,  
24 Mr. Hamman.  
25 MR. TILLOTSON: We have supplied them --

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1 they're calling my clients first.  
2 MR. HERMAN: I mean, you know, I could  
3 have subpoenaed him.  
4 MR. TILLOTSON: I'm making a joke.  
5 ARBITRATOR LYON: Is there any way --  
6 y'all don't feel constricted to do this. Is there any  
7 way that with your openings, you could, say, do it in  
8 20 minutes a side? I'm not telling you to.  
9 MR. HERMAN: I would say -- well, I'll  
10 make it fit whatever you want, but 30 minutes a side  
11 would be adequate for sure.  
12 ARBITRATOR FAULKNER: Would y'all both  
13 agree 30 minutes?  
14 MR. TILLOTSON: Sure.  
15 ARBITRATOR FAULKNER: We will try to hold  
16 you to 30 minutes each.  
17 MR. TILLOTSON: It's going to be tougher  
18 for him.  
19 ARBITRATOR LYON: I'm wanting to get to  
20 witnesses.  
21 MR. HERMAN: I take that personally. May  
22 I respond?  
23 ARBITRATOR FAULKNER: Don't worry about  
24 it. We have already seen y'all enough to have our own  
25 opinions on all of those things. Guys, how many

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1 witnesses do you think you can call today?  
2 MR. HERMAN: Two, just depending on the  
3 cross.  
4 ARBITRATOR FAULKNER: Okay. I'm trying  
5 to get a feel for this so we know how to --  
6 MR. HERMAN: May I respond to  
7 Mr. Tillotson?  
8 ARBITRATOR FAULKNER: Go ahead, while I'm  
9 making my notes.  
10 MR. HERMAN: If you don't want to hear  
11 it, Mr. Chairman.  
12 ARBITRATOR FAULKNER: No, go ahead. I'm  
13 trying to do both at the same time.  
14 You had something you needed to add?  
15 MR. HERMAN: I was just going to respond  
16 briefly to Mr. Tillotson's motion.  
17 ARBITRATOR FAULKNER: Oh, go ahead. I  
18 hadn't even called on you for that. I thought you  
19 were just responding to his quip.  
20 MR. HERMAN: Oh, no, no.  
21 ARBITRATOR FAULKNER: Okay. Please  
22 respond to his motion. I took it as a response to his  
23 quip.  
24 MR. HERMAN: I spent enough time in the  
25 principal's office, Mr. Chairman, to know not to talk

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1 unless I was called on.  
2 ARBITRATOR FAULKNER: You're called on  
3 now.  
4 MR. HERMAN: I am -- this -- if you'll --  
5 if you will notice all of the comments, all of the  
6 sort of commentary from SCA referred to the Armstrong  
7 camp and to claimants. They do not want to talk about  
8 their insured. They do not want to talk about the one  
9 entity with which they have any contractual  
10 relationship, which is Tailwind, which has been stuck  
11 with the 5 million that they're trying to dodge which  
12 would leave the burden on Tailwind. So when  
13 Mr. Tillotson says, well, they were strong-armed by  
14 the Armstrong camp, there is not going to be any  
15 evidence of strong-arming anybody. To the contrary --  
16 well, there is going to be some evidence when  
17 Mr. Compton called Ms. McIlvain and said, you better  
18 cooperate or it's going to be bad for the McIlvain  
19 family. You'll hear evidence of that, but here are  
20 the witnesses that have been deposed by SCA: Frankie  
21 Andreu, Betsy Andreu, Stephanie McIlvain, Greg LeMond,  
22 Kathy LeMond, the aborted David Howman, the aborted  
23 Emma Walsh, the aborted David Walsh -- I mean Emma  
24 O'Reilly, the aborted David Walsh and the aborted  
25 Stephen Swart, although we didn't even try to depose

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1 him.  
2 The only evidence of any one of those  
3 witnesses talking to Mr. Armstrong or people from the  
4 Armstrong camp was Frankie Andreu who Lance Armstrong  
5 called three days before his deposition to relate to  
6 him some of the false testimony that Kathy LeMond had  
7 attributed to Mr. Andreu's wife.  
8 Now, Mr. Tillotson refers to this  
9 incident in Indianapolis as a central allegation in  
10 the case. It's not. It doesn't have anything to do  
11 with anything in this case. SCA would, of course,  
12 love to divert the eyes from the prize. They would  
13 love for the case to come down to some he said/she  
14 said about something that happened nine years ago and  
15 five years before anyone ever heard of SCA. That's  
16 what they would like to have happen, but if you'll  
17 recall during our -- during the motion for continuance  
18 where Mr. Tillotson was complaining about the absence  
19 of medical records, it was Mr. Tillotson who suggested  
20 that he would accept the provision of those medical  
21 records tendered in camera to the chairman, presumably  
22 accompanied by an adequate affidavit, which is  
23 precisely what we did. We notified SCA two weeks ago  
24 that they would be available in your office to review,  
25 under 803.7 or whatever the hearsay rule is with

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1 respect to business records, which have been properly  
2 authenticated. No one from SCA has taken the time to  
3 go up there. It is really a -- I wrote this down, his  
4 complaint and reason for not even bothering to go up  
5 there to look at them had to do with the chain of  
6 custody, which made them inherently unreliable. We  
7 will hear that phrase again.  
8 Now, he says that the request for medical  
9 records was bad faith. Well, it was bad faith,  
10 because the letter which you will see -- the letter of  
11 September 2, 2004, again totally disregarded who their  
12 contract was with. They said we require not  
13 Tailwind's medical records, it was Tailwind's  
14 employee, Mr. Armstrong. Mr. Armstrong is only in  
15 this case because he's a third-party beneficiary of  
16 the contract. He does -- he's got no contractual  
17 relationship with SCA, and anything Mr. Armstrong said  
18 or did is not actionable by SCA. They want to totally  
19 ignore the fact that they have an unambiguous  
20 obligation to Tailwind, and for us to sit here for two  
21 weeks with what Mr. Tillotson says is the central  
22 allegation in the case is a conversation in a  
23 conference room in a hospital in Indianapolis in 1996  
24 is -- really turns the arbitration process on its  
25 head.

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1 Now, the issue about misrepresentation  
 2 has to do with the misrepresentation and the only  
 3 basis upon which SCA could avoid their obligations on  
 4 the basis of misrepresentation -- I mean, it is two  
 5 white horse cases, National Union and -- well, maybe  
 6 that second one was a little spotty, but I'll remember  
 7 it in -- Union Insurance, I think.  
 8 But in any event, here are the five  
 9 elements that they have to prove --  
 10 MR. BREEN: Union Bankers.  
 11 MR. HERMAN: Union Bankers.  
 12 -- a representation by the insured,  
 13 Tailwind; two, falsity of the representation; three,  
 14 actual and justifiable reliance by SCA; four, the  
 15 express intent by Tailwind to deceive SCA; and, five,  
 16 the materiality of the representation.  
 17 Actually, they fail on all five, but just  
 18 for starters, the absolute undisputed evidence is that  
 19 Mr. Hamman didn't rely on any representation of  
 20 anyone, and Mr. Compton affirmed two weeks ago during  
 21 his abbreviated deposition, which we were never able  
 22 to finish, that they knew they didn't even have  
 23 knowledge of any representation by Tailwind, and I'll  
 24 submit it is an impossibility logically for them to  
 25 prove Tailwind's intent to deceive SCA when any

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1 statements they made were made without the knowledge  
 2 that SCA even existed.  
 3 So taking the position that -- which SCA  
 4 has done here that it was reasonable for SCA to base  
 5 its business decisions on any statement made by  
 6 Armstrong is absurd on its face, and it fails because  
 7 the representation is not made by the insured. And,  
 8 number two, they can't prove that -- they can't --  
 9 they don't even take the position that they knew of  
 10 any statements, much less relied upon it, but I can  
 11 assure you Bob Hamman didn't win all those bridge  
 12 championships by entering into a nine and a half  
 13 million dollar contract without cover from Swiss Re.  
 14 It's Swiss Re's deal. It was Swiss Re that made the  
 15 underwriting analysis. They evaluated the claim, and  
 16 whatever they did, he was happy with as long as he got  
 17 to keep \$170,000 of the 420 which Tailwind paid and  
 18 has operated under and has conducted their business  
 19 relying upon SCA's promise to pay when they could have  
 20 gotten insurance someplace else from a reputable  
 21 insurance company, such as Lloyds or CHUBB. And when  
 22 you see the evidence, the Lloyds policy itself, it  
 23 actually requires Armstrong to abide by the rules. It  
 24 requires the entire Tailwind team to abide by the  
 25 rules of the UCI in 2004, and we all know Lloyds of

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1 London is a reasonable insurance company. That's the  
 2 proof in the pudding. What would a reasonable  
 3 insurance company do under the same or similar  
 4 circumstances? Well, it's very seldom you get a case  
 5 where you have three insurance companies, two of them  
 6 pay and one of them doesn't solely because the CEO  
 7 dropped the ball and didn't reinsure his risk. He did  
 8 the same thing with Ameritech, and he's doing the same  
 9 thing right now in the Southern District of New York,  
 10 so the medical records -- the medical records ought to  
 11 be admitted. They were pursuant to their invitation.  
 12 ARBITRATOR FAULKNER: Anything else?  
 13 MR. HERMAN: No, thank you.  
 14 ARBITRATOR FAULKNER: Ms. Blue, anything?  
 15 MS. BLUE: No.  
 16 ARBITRATOR FAULKNER: You're sitting  
 17 there, do you have anything you wish to add?  
 18 MR. BREEN: No, Mr. Chairman.  
 19 ARBITRATOR FAULKNER: Any brief response,  
 20 Mr. Tillotson?  
 21 Do you have a question, Senator?  
 22 ARBITRATOR LYON: Could you give us those  
 23 cases?  
 24 MR. BREEN: They've been submitted as  
 25 tabs to the summary judgment motion.

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1 MS. BLUE: Tell him which tab.  
 2 MR. BREEN: That would be P and O, or O  
 3 and P if you're going alphabetically.  
 4 ARBITRATOR FAULKNER: Any brief response,  
 5 Mr. Tillotson?  
 6 MR. TILLOTSON: Just briefly, my effort  
 7 to obtain the medical records was designed to make it  
 8 easy for the parties, and I didn't expect to be  
 9 cornered at the very end with production of records,  
 10 and, frankly, although I had made an offer to allow  
 11 them to be used in camera, I was turned down flat at  
 12 Mr. Armstrong's deposition, and we evaluated whether  
 13 or not we should move to compel to allow us to go  
 14 subpoena them. So I think it's -- essentially they  
 15 gamed the system to wait until the very end when I  
 16 couldn't do anything about it, and unlike other  
 17 matters where things happened at the end, this was  
 18 something they were in complete control of, because we  
 19 have been asking for medical records for a long period  
 20 of time. So I think it puts me in an unfair position.  
 21 I think there's no other way for me to effectively  
 22 deal with those records except to exclude them.  
 23 Then with respect to the other matters  
 24 regarding paperback novels and fiction, I mean, I'm  
 25 just not going to respond to as much barbs as he wants

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1 to hurl toward my clients until we put on the  
2 evidence. Bringing up some lawsuit in the Southern  
3 District of New York that is not what he says it is  
4 and has nothing to do with anything in this case is  
5 not the basis for granting a Motion in Limine  
6 excluding testimony. I think we have put on enough  
7 argument regarding what the witnesses will say, and I  
8 think there's good faith defenses and we will present  
9 them. The only way we can't present them is if  
10 witnesses are excluded.

11 Because this is a difficult situation  
12 with logistics and jurisdictions, we are prepared to  
13 do whatever it takes, and if the panel allows  
14 Ms. O'Reilly to testify and we can somehow get a  
15 deposition, I'm prepared to have a morning deposition  
16 and present that testimony to the panel in submission  
17 form. I'm willing to accommodate them in whatever  
18 manner if the process is fair to both sides. What is  
19 not fair is to allow them to use the system and the  
20 difficulties inherent in putting on testimony to  
21 preclude us from putting on evidence. I don't have  
22 anything more specific to say than that unless the  
23 panel wishes to hear something more.

24 ARBITRATOR FAULKNER: All right,  
25 gentlemen. I think we've heard all of these issues.

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1 We have been ignoring Mr. Anderson, and let's turn to  
2 that now. We have actually a motion or a request by  
3 Mr. Gillespie, who is apparently Mr. Anderson's  
4 counsel.

5 MR. HERMAN: Do you have our response,  
6 sir?

7 ARBITRATOR FAULKNER: Yes, I do. I'm  
8 trying to flip to the tabs. And I have shared the  
9 information with the other members of the panel. Has  
10 anyone spoken to Mr. Gillespie? Does anyone think  
11 there is a need for us to hear from Mr. Gillespie?

12 MR. HERMAN: Well -- oh, there are two  
13 questions there. The answer to the first one is no  
14 and the answer to the second one is no.

15 ARBITRATOR FAULKNER: With respect to  
16 that, Mr. Tillotson --

17 MR. TILLOTSON: Well, I don't know. I'm  
18 sorry the answer to the question is, yes. I've spoken  
19 to Mr. Gillespie when he notified me he planned on  
20 filing this motion, and I basically told him to do  
21 whatever he thought was necessary. I don't know all  
22 the facts because there were certain things he told me  
23 he couldn't tell me.

24 ARBITRATOR FAULKNER: Okay.  
25 MR. TILLOTSON: But I was given

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1 notification -- well, let me back up.

2 Mr. Gillespie called me very agitated and  
3 upset based on what transpired and told me he planned  
4 on filing a motion and did I have an objection or  
5 problem with that, and I told him, do whatever you  
6 need to do. I've not spoken with him since he filed  
7 this motion. I do believe it raises some serious  
8 issues, and I'm sure Mr. Gillespie would like to see a  
9 response today. And Mr. Gillespie can tell you what  
10 his position is. I'm troubled by what took place.  
11 It's not my Motion for Protective Order, but I'm  
12 troubled that a witness was apparently told that he  
13 didn't need to show up and was told if he did, it  
14 might result in being sued or whatever apparently  
15 transpired, and those allegations disturb me, but  
16 that's Mr. Gillespie's motion.

17 MR. HERMAN: I'm not going to get into  
18 the characterization of this -- of the underlying  
19 lawsuit, but it speaks for itself. All of the claims  
20 were denied.

21 But in any event, I think you've been  
22 furnished the correspondence between Mr. Gillespie and  
23 me.

24 ARBITRATOR FAULKNER: Yes, we have.  
25 MR. HERMAN: And I've got to confess

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1 that -- that was as difficult a litigation dealing  
2 with Mr. Gillespie as I've had in the 30 years I've  
3 been practicing law, but be that as it may, we came to  
4 the conclusion that in order to avoid further defense  
5 costs and to avoid having to deal with Mr. Gillespie  
6 ever again, we would pay them money at a mediated  
7 settlement agreement, in a mediation, and so part of  
8 the mediated settlement agreement included -- I mean,  
9 what we bought was peace, so as I -- and I think I  
10 mentioned it here is that -- yeah, having had to deal  
11 with Gillespie for over a year, Mr. Breen in order to  
12 ensure -- oh, Anderson and his lawyers received  
13 \$100,000 solely for the avoidance of what the  
14 undersigned is doing right now, addressing frivolous,  
15 unfounded and harassing litigation, which is precisely  
16 what it was.

17 So all I did with Mr. Gillespie,  
18 albeit -- I would have to say it was not with the  
19 kindest verbiage. If I had it to do over again, I  
20 might write it a little differently, but all I did was  
21 tell Mr. Gillespie that Anderson, for valuable  
22 consideration, agreed, among other things, not to say  
23 anything disparaging about my client, which is  
24 standard in a mediated settlement agreement. It's not  
25 hush money or anything, and pointed out some other

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1 issues that were undisclosed at the mediation.  
2 But if Mr. Anderson wants to come and  
3 testify, that's fine. We have got no problem with  
4 that, but the consequences of him disparaging our  
5 client, my client may be a breach of his agreement,  
6 which carries, you know, some liquidated damages and  
7 so forth. But we don't care if he comes and  
8 testifies. We don't have any problem at all with his  
9 testimony.  
10 But this panel doesn't have jurisdiction  
11 to give Mr. Gillespie a declaratory judgment that if  
12 he comes and testifies it's not a breach of his  
13 agreement. The agreement itself has an arbitration  
14 provision in it where Judge Hart in Austin is to  
15 arbitrate any dispute that comes up about the  
16 agreement. If you look at my correspondence, I told  
17 Mr. Gillespie that we should get Judge Hart on the  
18 phone as the mediation agreement says and for him to  
19 please give me a convenient time to do that, and I  
20 never heard back from him. So if he wants to come and  
21 testify, he just comes and testifies at his own risk.  
22 It's simple, just like anybody else who has some  
23 contractual arrangement.  
24 ARBITRATOR CHERNICK: Is it your view  
25 that if a party enters into a mediated settlement

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1 agreement with a mutual nondisparagement provision,  
2 that that would prevent him from being compelled to  
3 testify if properly subpoenaed either in Court or in  
4 an arbitration where he has relevant testimony to  
5 offer and would be expected to testify truthfully,  
6 however one might characterize that testimony.  
7 MR. HERMAN: Well, you know, I would take  
8 the position that if someone were subject to an  
9 enforceable subpoena, that they would be obligated to  
10 come and if they were placed under oath, they would  
11 have to tell the truth in response to questions.  
12 MR. CHERNICK: And they would -- they  
13 would say, I don't want to testify because I've got  
14 this agreement, and the panel or the court would say,  
15 we don't care about that, that doesn't limit our -- in  
16 any way limit our authority. We are simply ordering  
17 you to provide truthful testimony in this proceeding,  
18 and then whatever effect that has on the contractual  
19 arrangement between the parties is what it is.  
20 MR. HERMAN: Absolutely. I could not  
21 agree more with that statement. The issue here was  
22 that Mr. Anderson, in violation of his agreement, had  
23 agreed with SCA prior to the time he entered the  
24 mediated agreement to come up and disparage  
25 Mr. Armstrong and so that's part of the issue here.

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1 ARBITRATOR CHERNICK: That's not our  
2 issue.  
3 MR. HERMAN: No, it's not your issue.  
4 ARBITRATOR CHERNICK: Mr. Anderson is  
5 going to be called. He's going to be asked a  
6 question. He's going to say, I don't want to testify  
7 because I have this agreement, and the panel could  
8 say, we're requiring you to testify because you're  
9 properly here under subpoena if, in fact, that's the  
10 case.  
11 MR. HERMAN: Certainly and, as you know,  
12 I'm sure, as anybody who has ever entered a mediated  
13 settlement agreement, most of the time those contain  
14 an exclusion for conversations with your accountant or  
15 your financial advisor and pursuant to a lawful  
16 subpoena. Our agreement doesn't contain that  
17 language.  
18 ARBITRATOR CHERNICK: It doesn't, but the  
19 last part of that would be something that would be  
20 inherent in any kind of arrangement that people would  
21 make because you can't ask -- you can't contractually  
22 bind a party not to testify truthfully in a court  
23 proceeding.  
24 MR. HERMAN: No, no.  
25 ARBITRATOR CHERNICK: And you wouldn't

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1 want to do that because that would be unethical.  
2 MR. HERMAN: No, no, and we've never  
3 asserted that. All we have said is that he's agreed  
4 to come voluntarily and that breaches the agreement.  
5 That's all we've said, period.  
6 MR. BREEN: If I might, that was just  
7 half of it, too, for the panel, because at the time we  
8 mediated the case, we asked for specific  
9 representations as to whom he had communicated  
10 information, and he had, either himself or through his  
11 lawyer, to SCA and he specifically did not disclose  
12 that. That is what -- the substance of Mike  
13 Anderson's testimony is not going to move the ball  
14 down the field in our view for this panel. The  
15 dispute we had with him was that we mediated a case,  
16 specifically asked him and his lawyer to make a  
17 truthful representation that wasn't made. In fact,  
18 just the opposite, it wasn't disclosed. And then with  
19 him not being subpoenaed, he had already been  
20 complicit to come back up here and disparage  
21 Mr. Armstrong. So it's not the substance per se of  
22 his testimony, it's the actions they took at the  
23 mediation that were troubling and that we are trying  
24 to raise. So, please, that was the gist of this, and  
25 it's probably more --

<p style="text-align: right;">Page 620</p> <p>1 ARBITRATOR FAULKNER: Let me ask a 2 question, gentlemen. If Mr. Anderson shows up in 3 Dallas County and he is validly served with an 4 enforceable subpoena, or anywhere within 150 miles as 5 required by the rules, you then don't have any 6 objection to him testifying; is that correct? 7 MR. HERMAN: Well, I don't know -- no, we 8 are not going to -- 9 ARBITRATOR FAULKNER: Under a valid 10 subpoena. 11 MR. HERMAN: But we have never tried to 12 prohibit him from testifying. So, no, we are not 13 going to do anything. Now, whether him voluntarily 14 coming within the subpoena would constitute a breach 15 of the agreement, I don't know. 16 ARBITRATOR FAULKNER: Okay. This has 17 come up in other arbitrations. We are domiciled in 18 Dallas County. If we go to Austin to hear 19 Mr. Anderson's testimony, he's within our subpoena, we 20 can hear from him and we will expect to hear the 21 truth. 22 MR. TILLOTSON: Sure. 23 ARBITRATOR FAULKNER: Is there any 24 problem, in your view, with doing that? 25 MR. HERMAN: No.</p>	<p style="text-align: right;">Page 622</p> <p>1 a way to eliminate the technical issue, get him in a 2 position where he can testify with the protection, 3 whatever protection there might be with a subpoena, 4 get the testimony on the record and let the parties do 5 whatever they want to do in other proceedings. 6 MR. BREEN: I don't anticipate there 7 being a problem with that. 8 ARBITRATOR FAULKNER: Okay. That answers 9 the question we have on that. Gentlemen, it is about 10 three minutes of noon. Why don't we take our luncheon 11 break. 12 Is there anything useful we can do in 13 about 30 minutes from either side? 14 MR. HERMAN: If it's okay if the floor is 15 open, I would inquire as to where the page and line 16 designations are. I think I sent mine a week or two 17 ago and I -- I've no idea what sort of deposition 18 testimony you're going to try and elicit. 19 MR. TILLOTSON: Well, part of it is who 20 shows up and who doesn't, but we will provide you 21 today with a binder that highlights the deposition 22 testimony that we are going to use. 23 ARBITRATOR FAULKNER: Is that something 24 you can do in the next 30 minutes? 25 MR. TILLOTSON: Well, I can't do it in</p>
<p style="text-align: right;">Page 621</p> <p>1 ARBITRATOR FAULKNER: Okay. We will 2 decide amongst ourselves later on what we are going to 3 do with regard to Mr. Anderson. 4 MR. BREEN: I can already tell you, Mr. 5 Chairman, we don't need anyone to go to Austin to hear 6 Mr. Anderson, so if the question is, are we worried 7 about him coming to Dallas County and getting 8 subpoenaed, the answer to that is no. 9 ARBITRATOR CHERNICK: So that we can 10 either deem this to be a proceeding that is taking 11 place within whatever proper jurisdictional limit 12 there is or get him here and give him a subpoena when 13 he's here which would then be treated as a valid 14 subpoena and no one would object to that procedure? 15 MR. BREEN: Correct. I'm not sure I 16 understood the whole thing, but the gist of it is 17 certainly we are not asking the panel to go to Austin 18 to hear from Mr. Anderson. 19 MR. CHERNICK: There's actually an 20 international arbitration convention that because 21 arbitration awards have to be entered in certain 22 countries to be enforceable, under the New York 23 convention, wherever the hearing might be conducted, 24 it's deemed to be conducted in a country that is 25 kosher, and so what we are trying to do is figure out</p>	<p style="text-align: right;">Page 623</p> <p>1 the next 30 minutes. We don't anticipate playing 2 those depositions until Wednesday or Thursday, so it's 3 not -- 4 MR. HERMAN: Well, the idea was -- I'm 5 not going to call them unless they call them and -- 6 you know, by deposition, so... 7 MR. BREEN: Maybe we can visit with 8 Mr. Tillotson off the record. 9 THE COURT: Why don't you visit and solve 10 that problem. We are anticipating about a 30-minute 11 opening statement. Do you want to take a crack at 12 your opening statement now or wait until after lunch? 13 MR. HERMAN: I would just as soon wait 14 until after lunch, but if it suits the panel, I've got 15 my -- some audio/visual stuff I need to get set up and 16 so forth. 17 ARBITRATOR FAULKNER: So you need the 18 time for that. 19 MR. HERMAN: Yes. 20 ARBITRATOR FAULKNER: Go ahead and spend 21 your time doing that. We will go into recess. 22 (Recess 11:57 a.m. to 1:30 p.m.) 23 ARBITRATOR FAULKNER: Mr. Herman, why 24 don't you proceed with your opening statement, please. 25 MR. HERMAN: All right. I'll try not to</p>

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1 cover too much ground that we covered this morning,  
 2 but I apologize in advance if I do. The liability of  
 3 SCA is not reasonably clear. It is crystal clear and  
 4 it's indisputable. The contract exists in this case  
 5 between SCA and Tailwind, and Tailwind alone. The  
 6 contingent prize contract, this insurance contract, is  
 7 between, as it's reflected there, Disson Furst, I'll  
 8 call it Tailwind from now on. Everyone agrees that  
 9 Tailwind is the appropriate party.

10 This contract was prepared by SCA alone  
 11 it was forwarded to -- it was forwarded to the  
 12 sponsor, to Tailwind, with instructions not to change  
 13 a word in it. The promotion -- the type of promotion,  
 14 as reflected on the face of what is a clean copy which  
 15 is marked as Claimants' Exhibit 17, the promotion is  
 16 the cyclist incentive bonus program. That cyclist  
 17 incentive bonus program is the contract between  
 18 Tailwind and Armstrong. That's where the incentives  
 19 for Armstrong, who is Tailwind's employee, are  
 20 contained. That is the only incentive bonus program  
 21 there is in this case.

22 If you look at the first phrase of the  
 23 first paragraph, the contract is issued for the sole  
 24 benefit of the sponsor, that is of Tailwind, by SCA  
 25 Promotions, Inc. Now, SCA has taken the position now

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1 that rather than promotion meaning the cyclist  
 2 incentive bonus program it now means the Tour de  
 3 France bicycle race. You will see no evidence  
 4 anywhere that Tailwind has anything to do with either  
 5 the implementation or conduct of the Tour de France.  
 6 If you look at paragraph 7 of the agreement, it refers  
 7 to Tailwind holding SCA harmless as a result of  
 8 Tailwind's implementation or conduct of the promotion.  
 9 To incorporate SCA's interpretation that would read  
 10 Tailwind's implementation or conduct of the Tour de  
 11 France, which SCA has affirmed repeatedly Tailwind has  
 12 nothing to do with. So for Tailwind to argue that the  
 13 promotion of the Tour de France is a blatant  
 14 misrepresentation to the panel, it is a strained and  
 15 totally nonsensical interpretation.

16 Here is the risk that Tailwind agreed to  
 17 indemnify. Is Tailwind obligated to pay a performance  
 18 bonus of \$10 million to Lance Armstrong in 2004? Yes,  
 19 they are. They've already paid five because of the  
 20 reputable insurance companies involved having paid  
 21 promptly as they're required to do under their  
 22 contracts and under Texas law. So there is nothing  
 23 that SCA can do to inject itself in this contract.

24 As I said earlier, you'll hear evidence  
 25 that Ernst & Young has obligated or made Tailwind book

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1 the \$5 million as a loss. So to accept SCA's  
 2 interpretation, the panel will have to say yes,  
 3 Tailwind, you paid \$420,000 to insure this risk, the  
 4 risk occurred, it has been imposed upon you, but SCA  
 5 doesn't have to pay despite the fact they can point to  
 6 nothing that you did wrong. This illustrates the two  
 7 agreements -- actually, I guess four agreements that  
 8 are at issue here, but, of course, the liability under  
 9 the first agreement is what triggers the liability  
 10 under the other three.

11 Likewise, Federal and Lloyds have both  
 12 paid promptly and SCA took the \$420,000 and they were  
 13 happy to pay in 2002 and 2003 with no investigation  
 14 despite having informed the panel that this  
 15 affiliation with Dr. Ferrari which they take such  
 16 umbrage at now was made public in 2001 and they were  
 17 happy to pay in 2002 and 2003 because they weren't  
 18 paying, because Swiss Re was paying.

19 The sole contracting party is Tailwind,  
 20 so please do not be diverted into talking about the  
 21 Armstrong camp, quote, or Claimants, quote. The only  
 22 contractual obligations at issue in this case exist  
 23 between Tailwind on the one hand and SCA on the other.

24 As you'll see, the obligation or the  
 25 indemnity obligations of SCA are absolutely

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1 indisputable and they are unambiguous. SCA  
 2 indemnifies Tailwind in respect to Tailwind's  
 3 liability to pay Armstrong the designated performance  
 4 awards as set out in the contract. There was no  
 5 mystery about precisely what the obligations of SCA  
 6 were. Let's see what SCA -- how SCA viewed their  
 7 obligations at the time this contract was entered.

8 This is Mr. Hamman who was the sole  
 9 person at SCA responsible for negotiating this deal.  
 10 He sends out on January 9 of 2001 instructions to  
 11 Mr. Bandy, one of his in-house lawyers, that says that  
 12 they need to draw up a contract, an incentive contract  
 13 with the following understanding. It goes through,  
 14 obviously you can read it for yourself, but the  
 15 important -- the important provisions here are that  
 16 this contract is subject to the rules and official  
 17 results as certified by the official event governing  
 18 body. If titles are stripped as a result of official  
 19 action, then Tailwind agrees to refund any payments  
 20 made, which is precisely what Tailwind has been saying  
 21 since this case began. This tribunal can do nothing  
 22 to alter the liability of Tailwind, which -- which  
 23 applies immediately upon Armstrong becoming the  
 24 official winner of the respective events.

25 Now, in your contract analysis and in

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1 your determination who owes what, keep in mind there  
2 is nothing in this contract that allows SCA to second  
3 guess the official event governing body and there's  
4 nothing that allows SCA to withhold payment. Their  
5 own understanding at the outset was that if he's the  
6 official winner, they have to pay, noting that if  
7 titles are stripped, then there's an obligation to  
8 return the money, so -- and we don't dispute that. As  
9 we -- as I went into in some detail this morning on a  
10 purely contract basis this is an unambiguous  
11 agreement. Any evidence offered for the purpose of  
12 altering, modifying or contradicting any provision in  
13 this agreement is specifically prohibited.

14 Now, the insurance issue. We came and  
15 had an extensive hearing on the issue of whether this  
16 contract constituted an insurance contract and whether  
17 SCA was in the business of insurance. The  
18 consequences of the panel's award -- partial award are  
19 significant, because even if SCA can suggest a  
20 construction of their agreement which may be ambiguous  
21 under Texas law, the panel is obligated to adopt the  
22 interpretation placed upon the agreement by the  
23 insured, which is Tailwind.

24 SCA has defenses that are available to  
25 insurance companies. SCA's conduct is governed by,

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1 among other things, Articles 21.17, 21.21 and 21.55 of  
2 the Texas Insurance Code. The only defenses that SCA  
3 has asserted to their obligation consist of  
4 misrepresentation, fraud and fraudulent inducement.

5 As I mentioned this morning, Article  
6 21.17 bars those defenses from being asserted by SCA.  
7 SCA has the burden of proof to demonstrate that they  
8 notified Tailwind of the alleged misrepresentations  
9 and of the date upon which SCA became reasonably  
10 certain that those misrepresentations were actually  
11 made by the -- by Tailwind. If there is a  
12 misrepresentation made in connection with the issuance  
13 of an insurance contract, the insured has to have a  
14 specific intent to defraud the insurance company and  
15 there has to be actual and justifiable reliance upon  
16 the alleged misrepresentation.

17 This is -- I just pulled this out of one  
18 of SCA's pleadings that was filed with Judge Canales'  
19 court while we were trying to force them to  
20 arbitration. And if you look in the first paragraph,  
21 it is clear, at least at that time when they perhaps  
22 had a different view of what they were going to assert  
23 in this case, thus SCA agreed as the agreement  
24 expressly provides to reimburse Tailwind in the event  
25 Tailwind became obligated to pay Armstrong the

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1 performance incentive. I mean, I don't know how much  
2 clearer a judicial admission you could find of SCA's  
3 liability here than that.

4 Here's the important thing, though, SCA  
5 frankly has treated this panel with outright contempt.  
6 They know and have admitted judicially numerous times  
7 that Tailwind never made any representation to them,  
8 direct or indirect. They admit under oath that they  
9 knew of no statement ever made by Tailwind when they  
10 entered this agreement. Yet they -- they filed with  
11 the -- they filed with the panel pleadings which say  
12 the following, that the representations were made by  
13 Tailwind prior to January 9, 2001. They were false,  
14 and they were not only actually and justifiably relied  
15 upon but in their pleadings they actually say these  
16 were critical to SCA when they issued their insurance  
17 contract.

18 Now, they were -- they have alleged that  
19 Tailwind represented that Armstrong had never used  
20 PEDs during his career and was not using them during  
21 the event, didn't associate with trainers, et cetera,  
22 and that the TDF and UCI properly policed the sport.  
23 Well, that's just false. That is a blatant  
24 misrepresentation to this panel, because Tailwind  
25 never told SCA anything directly or indirectly. They

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1 were not even aware of any statement Tailwind had ever  
2 made, so they clearly could not have relied upon it,  
3 much less have been critical to them if they had no  
4 idea what Tailwind had said ever. And the undisputed  
5 proof is Tailwind had no idea who SCA even was until  
6 after this agreement was even signed.

7 Here's further proof in spades of the  
8 failure of SCA to rely upon anything anyone said, much  
9 less Tailwind. This is the -- this is the extent of  
10 SCA's underwriting. Mr. Hamman who's a mathematician,  
11 calculates a mathematical -- mathematical probability  
12 and an expected pay and then he doubles it and quotes  
13 it to -- I think he had an expected pay total of about  
14 \$160,000 and he quoted the broker \$420,000 for the  
15 coverage.

16 7 -- I mean, 8. This is Mr. Hamman's  
17 testimony in his deposition. He didn't speak to  
18 anyone. He wasn't aware of anything. He didn't  
19 review the press, he didn't look at anything, other  
20 than would Swiss Re reinsure him? If they would, he  
21 would do it. If they wouldn't, he wouldn't.

22 9. So he passes the ball to Swiss Re.  
23 And Frank Lorenzo -- you've already seen his  
24 testimony -- didn't do any independent research, knew  
25 of nothing, made his own decision, performed no

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1 calculations, did not look at anything relating to  
 2 Mr. Armstrong, including his training, physical  
 3 make-up, team, teammates or anything else, and never  
 4 had any discussion at any time with anybody about the  
 5 issues they try to raise now.  
 6 10. On July the 25th of 2004, the Tour  
 7 de France concluded. On July 26th, the notice of  
 8 claim was made with SCA as it had been in 2002 and  
 9 2003. What SCA did after that -- really before that,  
 10 you will hear from Mr. Longley, is the most egregious  
 11 and the most heinous bit of bad faith that he's seen  
 12 in 37 years of practicing insurance law in the state  
 13 of Texas.  
 14 Now, keep in mind that the Tour de France  
 15 concluded on July 25, a Sunday. By Tuesday  
 16 Mr. Compton had hired an international intrigue  
 17 commercial fraud investigator and -- under the -- on  
 18 the basis that it was attorney-client privilege and  
 19 that they anticipated litigation of this claim. He  
 20 says, we request the investigation to be -- in  
 21 anticipation of litigation with regard to the claims  
 22 made or anticipated -- expected to be made under their  
 23 insurance contract. So what do they ask for? Do they  
 24 go about an objective analysis and attempt to, as  
 25 they're obligated under Texas law to do, to find ways

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1 to affirm coverage.  
 2 Incidentally, I asked Mr. Compton, did  
 3 you do a coverage analysis? He said, I don't even  
 4 know what that is, although he was in charge of the  
 5 investigation.  
 6 So what did they ask this investigator to  
 7 do? Nothing but dig up as much dirt as he possibly  
 8 can so that SCA can, after the fact, avoid their  
 9 obligations, even though they have -- no  
 10 representations had been made to them prior.  
 11 11. They asked this investigator to get  
 12 a complete medical history of Lance Armstrong from  
 13 1988 forward (that, of course, would have been since  
 14 the time he was 16 years old) among other things. He  
 15 also retains this investigator to get any evidence of  
 16 possession by any person associated, not with their  
 17 insured but with the USPS, with Disson Furst and ESIX  
 18 Entertainment and Sports. So if there's a -- so if  
 19 there's a clerk at ESIX with diabetes who's purchasing  
 20 syringes and inhalers, then that would be something  
 21 that would -- that Mr. Compton wanted this guy to dig  
 22 up. They have no right. They have literally no right  
 23 to request anything from a non-insured and certainly  
 24 not to delay payment based on it.  
 25 But in any event they had decided long

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1 before this letter went out that they weren't going to  
 2 pay.  
 3 12. They know they intend to litigate  
 4 this from the very beginning, two days after the tour,  
 5 they inform this guy that they do. Then they say, we  
 6 recognize that we have requested a complex  
 7 investigation that may prove time consuming and  
 8 expensive. Well, they have no regard for their  
 9 obligation to give acknowledgement of the claim in 15  
 10 days, to pay the claim or deny the claim in 60 days,  
 11 to ask for documents that are reasonably necessary.  
 12 As soon as Mr. Armstrong was declared the  
 13 official winner, their liability was clear but they  
 14 weren't going to pay because Mr. Hamman hadn't been  
 15 able to reinsure that risk for the last year. I can  
 16 assure you that they would have paid like a slot  
 17 machine if they had had Swiss Re on the hook, just  
 18 like they did in 2002 and 2003.  
 19 Now, he sends a letter -- 13 -- on  
 20 September 2nd. Now, they claim that this is a  
 21 reasonable request for cooperation. They've got a  
 22 contract with Tailwind, they require all of the  
 23 contracts for not just Tailwind but Armstrong, USPS,  
 24 Capital Sports Entertainment, as well as any related  
 25 or affiliated individuals. But perhaps the most --

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1 the most offensive of all, they ask for Armstrong to  
 2 provide his complete medical history, including all of  
 3 his cancer treatment and every other time he's been to  
 4 the doctor since, I guess, he was 16.  
 5 But it is clear that they never intended  
 6 to pay. The investigation, the, quote, investigation  
 7 was a predetermined outcome. There will be evidence  
 8 that Compton said they're going to pay 5 million not  
 9 to pay the 5 million. But as it turns out, after this  
 10 letter I write them a letter saying, you know, this  
 11 is -- this is not good. I gave them a DTPA demand  
 12 letter and -- alleging violations of the insurance  
 13 code, 21.21, et cetera. And then Mr. Compton,  
 14 after -- two days after the tour engaging someone to  
 15 dig until the world went square he tells the USA Today  
 16 that really they're just withholding the money until  
 17 they get test results from the 2004 tour which should  
 18 be very easily obtained. He did that on September 24.  
 19 14. What he didn't tell the USA Today  
 20 was that on August the 16th, in response to a request,  
 21 although they were not entitled to it, we secured from  
 22 the UCI the test results that he claimed were holding  
 23 up payment of the \$5 million. It is the prototypical  
 24 post claim underwriting where they -- faced with  
 25 payment, they just figured out they're going to figure

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1 out some way not to have to pay.  
 2 So they go to Detroit and meet with Walsh  
 3 on September the 20th, at which time you'll see the  
 4 memo in evidence. It is absolutely obvious that  
 5 they've decided they're not going to pay long before  
 6 that. That, for example, Betsy Andreu and Frankie  
 7 Andreu -- Frankie used to be a teammate of  
 8 Mr. Armstrong's -- they would be a home run for us,  
 9 they would say all sorts of scurrilous things about --  
 10 and Walsh refers them to a myriad of other sources and  
 11 refers them to a French lawyer named Thibeault  
 12 Montbrial, who astonishingly, probably -- in the  
 13 one -- if I had to pick out an example of the most --  
 14 the worst example of bad faith. After we finally  
 15 forced them, through Judge Canales' court, to appoint  
 16 an arbitrator so we could get the arbitration going,  
 17 they appoint Thibeault Montbrial, who had been told --  
 18 who Walsh had represented to them had an in with the  
 19 French police who were out to get Armstrong. Of  
 20 course, Montbrial was representing the French  
 21 publisher at the time, so we had no choice, but even  
 22 where a party arbitrator was involve, Judge Canales  
 23 struck Montbrial summarily.  
 24 All right. Let's see what the -- let's  
 25 see what the professionals say about SCA's conduct.

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1 Where are we? 15. The 25 years in the business,  
 2 SCA's position is ludicrous.  
 3 16. 25 years in the business, SCA's  
 4 conduct unprecedented.  
 5 17. SCA's conduct, a first for both of  
 6 us in the contingency arena and not appreciated on  
 7 that end. That's without even consideration of the --  
 8 of the payment by CHUBB and Lloyds.  
 9 So we set up a meeting in Dallas for  
 10 September 30th. Mr. Hamman has been unavailable,  
 11 little did we know because he was collaborating with  
 12 Mr. Walsh who -- and with others. But we get a notice  
 13 of the cancellation of the meeting because in  
 14 Mr. Hamman's words, nothing could be accomplished to  
 15 resolve this matter.  
 16 19. That's the -- actually the --  
 17 that's 18, but that's the letter canceling the meeting  
 18 which had been scheduled where we were to attempt to  
 19 resolve this matter. But they had no interest in  
 20 resolving the matter, because they had been committed  
 21 to litigation since July 27th.  
 22 I'll give you another example of the  
 23 contempt with which they had treated the entire  
 24 arbitration process. 21. This is a letter that  
 25 Mr. Compton wrote to a guy named Stephen Swart who

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1 lives in New Zealand. And Hamman was headed over to  
 2 New Zealand to dig up some more dirt, getting him to  
 3 sign an affidavit that they provided him copies of LA  
 4 Confidential. And then Mr. Compton tells the  
 5 lawyer -- Mr. Swart's lawyer we require an affidavit  
 6 with names, facts and dates, et cetera, but the last  
 7 sentence is the most telling: Additionally, helpful  
 8 hearsay from Mr. Swart is also desired, because the  
 9 arbitrator must read hearsay prior to ruling on its  
 10 admissibility. So they've never made any bones about  
 11 it. They don't have legitimate personal knowledge,  
 12 but they're willing to stoop to that. That is even  
 13 before the arbitration panel is appointed and long  
 14 before any rules governing the admissibility of  
 15 evidence.  
 16 Now, 22. This, perhaps, takes the cake.  
 17 In February, Mr. Compton, again, writes to Orchid  
 18 Cellmart, which is some lab here in Dallas, I think.  
 19 It says, this letter acknowledges receipt by you of  
 20 the following materials: one trash can liner bag  
 21 containing a piece of chewing gum, saying they're  
 22 going to compare the DNA and want it tested for  
 23 performance enhancing substances, et cetera. So I'm a  
 24 little bit intrigued by that when I first see this  
 25 document. So I ask Mr. Compton whose chewing gum was

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1 that, that was Mr. Armstrong's. I said, really, well  
 2 where did you get the trash can liner. Well, he took  
 3 it out of Judge Canales's state district courtroom  
 4 after a hearing, without consent, either of Judge  
 5 Canales -- I'm sure Judge Canales is going to indicate  
 6 some extreme interest in that when he finds out about  
 7 it.  
 8 23. They send detectives to follow  
 9 Mr. Armstrong at the 2005 Tour de France. Of course,  
 10 they don't have any contract, even with Tailwind, in  
 11 2005. So the -- the detectives, I don't think they  
 12 actually highlighted the appropriate part of this, but  
 13 the detectives are quite apologetic that they haven't  
 14 been able to get inside the rooms of the Discovery  
 15 team, including Mr. Armstrong, which is criminal. And  
 16 when I asked Mr. Compton about that, he said, well, it  
 17 wasn't my idea. Thibeault hired them for us over  
 18 there, so they were doing whatever he told them to do.  
 19 Now, they've made a disparagement -- this  
 20 business disparagement claim against Tailwind. It's  
 21 not even worth discussing, but I feel obligated to.  
 22 24. This is the Lloyds of London  
 23 insurance policy for two and a half million dollars  
 24 that was purchased for \$75,000. If you look at the  
 25 warranties there, actually this contract does contain

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1 a warranty that Armstrong and his team must comply  
2 with the Tour de France rules, subject to the rules of  
3 the UCI, et cetera, and, of course, they paid  
4 promptly. They paid promptly, which is really the  
5 best measuring stick of what a reasonable insurance  
6 company would do under the same or similar  
7 circumstances. You can look at Lloyds and you can  
8 look at CHUBB and the -- their circumstances are  
9 precisely the same as SCA.

10 25. You know the basis of their  
11 disparagement claim is that this ad in the Street and  
12 Smith magazine ran, I think, October 1st, and in that  
13 ad we -- I think Capital Sports Entertainment, not any  
14 of the parties to this proceeding, said that Lloyds  
15 had paid as of October 1.

16 Well, technically Lloyds, as you will  
17 see, they have ten syndicates, they had to collect  
18 \$250,000 from each of them, but the point is that as  
19 of September 2nd, 2004, Lloyds had unequivocally  
20 confirmed that they had approved the claim and that  
21 they had begun the process of collecting from the  
22 syndicates.

23 26. This is in -- September 22nd the  
24 brokers confirming that their syndicate is to be  
25 collected from and confirming that the claim has been

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1 unequivocally approved. But you won't see any  
2 evidence of any harm in this case as a result of that  
3 ad in Street and Smith, which was entirely truthful  
4 incidentally. The commitment of Lloyds which I think  
5 would be bankable anywhere had been received a month  
6 before that ad ran.

7 All right. So here we are. You've got  
8 an absolute -- all you've got is a bad faith case.  
9 There is no way around their liability, because  
10 Tailwind is obligated and you can't -- no one can  
11 change that, except the UCI. As Mr. Tillotson  
12 mentioned in his earlier remarks, the UCI has an  
13 investigation going and if they -- they're -- they  
14 have the authority to strip people of their titles and  
15 require the repayment of prize money, and I agree.  
16 And if that were to happen, and it could only happen  
17 there, then -- well, Tailwind wouldn't have any  
18 repayment to make, I guess, if it hadn't been paid,  
19 but that would be stripped by official action, just as  
20 Mr. Hamman said, the only way to recover payments made  
21 back on the day this agreement was made.

22 Now, Mr. Armstrong is a -- you know, we  
23 have decided -- we are not going to bring 500 people  
24 in here. Mr. Armstrong has been a professional  
25 cyclist for 14 years and he didn't have one masseuse,

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1 he didn't have one teammate. He had hundreds of  
2 teammates, he had lots of masseuses, he had a lot of  
3 sponsors, he had a lot of contemporaries, and we are  
4 not going to parade five or 600 people in here. But  
5 to take SCA's view, everybody that has had anything to  
6 do with Armstrong will be here, four or five of them,  
7 whatever it is.

8 Now, keep in mind what Mr. Tillotson  
9 informed you about chain of custody and that sort of  
10 thing. They'll try to -- try to foist off a test done  
11 in 2005 of some frozen urine samples from --  
12 presumably 1999 that have no chain of custody. The  
13 other -- other samples were spiked as part of a  
14 research process. There is absolutely nothing  
15 reliable whatsoever. But Mr. Tillotson in his brief  
16 did mention one important fact, there was no EPO test  
17 until 2001 and in the 2000 tour, all of the samples  
18 were frozen, all of the samples were tested pursuant  
19 to the appropriate protocols, all of the samples had  
20 verifiable chain of custody and all of the samples are  
21 clean and negative.

22 Now, they can pooh-pooh the fact that  
23 this man who's acknowledged in some quarters as the  
24 world's greatest athlete has been tested three or 400  
25 times and has never had -- has never been DQ'd, has

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1 never had a positive test. They can pooh-pooh that  
2 all they want, but that's where the proof is, that's  
3 where the pudding is, not only in competition, but  
4 they show up at his door at 8:00 in the morning. He's  
5 in New York, they show up at an apartment at 8:00 in  
6 the morning and say you're not going anywhere until  
7 you give us a sample. So he's had numerous  
8 out-of-competition tests. They'll say, oh, my God,  
9 times at the Tour de France got so much faster in  
10 the '90s because everybody was doping.

11 Well, I challenge you to find any  
12 endurance athlete or otherwise since 1978 that the  
13 times haven't gotten faster. But you'll see in  
14 evidence that the times between 1998 and 2004 were 6  
15 percent faster than they were from '78 to '87. The  
16 technology alone, the lighter bikes, the better  
17 equipment and so forth, that would account -- that  
18 could account for it by itself. But what really  
19 accounts for it is -- is like Bear Bryant used to say,  
20 hell, everybody, everybody has got the will to win.  
21 That's no problem. You get 160 lead athletes like  
22 these professional cyclists, and I wish you could see  
23 them in person, it's just unbelievable. Everybody has  
24 got the will to win. They all do. But there are only  
25 a few that have the will to prepare to win. And what

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1 you will see here, what you'll hear is that there's  
 2 never been an athlete in the experience of these  
 3 trainers and professionals that has the will to  
 4 prepare to win like that man right there. When a  
 5 professional cyclist from the Tour de France calls him  
 6 on a cold January day from Europe and he says -- and  
 7 Lance answers from his bicycle and the guy says what  
 8 are you doing, and he says, well, I'm riding, I'm  
 9 training. Oh, God, I'm at the pub. All right.  
 10 That's where -- that's where the tours were won.  
 11 When he's 15 on a lonely six-hour  
 12 training ride or run, that's what he's getting  
 13 compensated for, and it's a -- it's an abomination  
 14 that SCA would, after the fact, attempt to diminish  
 15 his achievements.  
 16 The incident in the hospital is -- the  
 17 proof is in the pudding there. It's not material to  
 18 anything, but I can assure you a man who's been  
 19 admitted into a cancer -- a teaching cancer hospital  
 20 and has been there ten days and had brain surgery for  
 21 brain tumors three days before this alleged  
 22 conversation, I can assure you physicians would not be  
 23 taking a medical history three days after they did  
 24 brain surgery.  
 25 Now, you know, Mr. Faulkner, I guess

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1 you've seen the affidavit and I guess you've seen the  
 2 medical records, but you will note that it wasn't just  
 3 once, it was 20 times more or less that this man was  
 4 asked what his -- what his history was of any, you  
 5 know, foreign substances or stimulants; uniformly, I  
 6 occasionally have -- I have an occasional beer,  
 7 something to that effect. So I suggest that you  
 8 keep -- that you read the prehearing submission of SCA  
 9 from time to time. You just see how much they're  
 10 delivering on that's legitimate evidence.  
 11 And in that regard, let's not kid  
 12 ourselves. What happens in here will find its way  
 13 out. Mr. Compton is fond of talking to the San  
 14 Francisco newspapers who published our hearing dates  
 15 and the other matters at issue here. He's fond of  
 16 calling witnesses and telling them what happened in a  
 17 deposition. So they're shooting the moon here. If  
 18 you let -- it's obviously your decision, but if you  
 19 let a bunch of scurrilous hearsay in here, it will  
 20 find its way out and the damage will be  
 21 disproportionate. You know, it will hurt  
 22 Mr. Armstrong certainly and it may, you know, hurt the  
 23 millions of people to whom he's an inspiration. But I  
 24 just encourage you with all my heart to think long and  
 25 hard before you decide in your wisdom that it would be

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1 better to let what has got to be irrelevant,  
 2 immaterial testimony in when it can't have an impact  
 3 on SCA's liability. It's SCA's bad faith that's at  
 4 issue here, either they violated article 21.21 or they  
 5 didn't, but certainly they're liable for the policy  
 6 limits.  
 7 ARBITRATOR FAULKNER: Anything else?  
 8 MR. HERMAN: That's it. I'm sorry.  
 9 ARBITRATOR FAULKNER: All right.  
 10 Anything from you or from Mr. Breen?  
 11 MR. BREEN: I don't think so.  
 12 ARBITRATOR FAULKNER: Okay. All right.  
 13 MR. TILLOTSON: I request just a  
 14 two-second break to make sure my electronics are up  
 15 and running.  
 16 MR. TILLOTSON: Members of the panel, I  
 17 represent, together with Cody Towns, SCA Promotions,  
 18 the Respondents in this case and I will -- I will  
 19 confide in you up front that I do not like what I have  
 20 to say. I do not like saying it. I do not like what  
 21 I'm going to have to prove, what I'm going to have to  
 22 ask witnesses and I most of all do not like having to  
 23 call people untruthful, but over the course of a year  
 24 and a half you would be stunned at the amount of  
 25 information, evidence, documents, conversations that

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1 have come my way suggesting, proving, demonstrating  
 2 that statements made by the other side are untrue.  
 3 Much of that I have left on the cutting  
 4 room floor, too difficult to chase down, too hard to  
 5 convince witnesses to come forward. Indeed one such  
 6 person was last week who declined and said no. We  
 7 have elected to choose and focus on three or four  
 8 cornerstone events through the course of  
 9 Mr. Armstrong's career which we contend had we known  
 10 would have mattered to us, would have changed our  
 11 mind, would have altered the arrangement we entered  
 12 into which, as you know, was essentially a bet on  
 13 whether or not Mr. Armstrong could win a series of  
 14 Tour de France races.  
 15 Inherent in any bet I suggest to this  
 16 panel, fundamental to any bet, is that it is fair,  
 17 that you know what the terms are of the bet. Our  
 18 position is simple, we didn't know at the time we  
 19 entered into this bet that Mr. Armstrong's past  
 20 included the evidence that we are going to present to  
 21 you. Had we known that, we wouldn't have entered into  
 22 this contract.  
 23 Now, fundamental to this case is what  
 24 were those representations and assurances, what were  
 25 we told? This sample here taken off the Pace Line,

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1 which is a web site contains a statement by  
 2 Mr. Armstrong in January 2005 I picked because it's  
 3 one of the more recent ones, but it also perfectly  
 4 summarizes the representations, assurances and  
 5 statements made by Mr. Armstrong to the public that he  
 6 does not use and has never used performance enhancing  
 7 drugs, period; zero tolerance; not with people that  
 8 dope; don't do it.  
 9 You will also find out in the course of  
 10 this testimony this it's not just Mr. Armstrong that  
 11 says that, but it's the people around him, Tailwind,  
 12 Mr. Gorski, who was head of Tailwind, will testify in  
 13 his deposition which you will see that he also made  
 14 such statements and assurances.  
 15 For example, in light of the 2000 French  
 16 investigation into Mr. Armstrong Mr. Gorski said there  
 17 was nothing to it, publicly. In light of the  
 18 revelation of Mr. Armstrong's relationship with  
 19 Ferrari, again Mr. Gorski made public statements that  
 20 it meant nothing. Mr. Stapleton who later became head  
 21 of Tailwind made the same kinds of assurances and  
 22 representations together, collectively. Why?  
 23 Well, first was the reputation and  
 24 integrity of Mr. Armstrong and second was the ongoing  
 25 business relationships, sponsorships, affairs that

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1 they had. They knew in addition to the thousands and  
 2 the millions of adoring fans who put their faith in  
 3 Mr. Armstrong there was a certain amount of companies  
 4 and businesses who put their hard cash behind  
 5 Mr. Armstrong, in the form of sponsorships, insurance,  
 6 prizes, you name it. Central to that is that those  
 7 individuals know what they're getting into.  
 8 You'll see the U.S. Postal contract among  
 9 the many that contains in effect a doping morals  
 10 clause; if you're near it, we ditch you. You'll see  
 11 Tailwind's contract with Mr. Armstrong that says in  
 12 effect positive drug test, you're out of here.  
 13 There's a reason for that and those representations  
 14 are made so that clients like mine who are going to  
 15 gamble on the integrity of the event and Mr. Armstrong  
 16 know what they're getting into.  
 17 Now, the issue is whether or not these  
 18 representations were, in fact, false and whether or  
 19 not my clients conducted a good faith investigation to  
 20 determine whether or not they should have to pay based  
 21 upon Mr. Armstrong's win. I want to briefly overview  
 22 for you the evidence that we are going to present on  
 23 this.  
 24 Prior to -- Mr. Herman made a big deal  
 25 that my clients paid in connection with the bonuses in

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1 2002 and 2003 but only in 2004 did they not pay and he  
 2 implies -- not implies, he says that it's quite  
 3 sinister because this time it's our own money. So  
 4 what was different between 2002 and '03 when the  
 5 contract was paid and 2004 when we put the money in  
 6 escrow and said we want to investigate it. The answer  
 7 you'll find from the testimony was the publication of  
 8 a book called LA Confidential by David Walsh, a  
 9 respected sports writer who writes for the Sunday  
 10 London Times.  
 11 That book came out right before the 2004  
 12 Tour de France and it alleged numerous statements,  
 13 issues, incidences regarding Mr. Armstrong. It was a  
 14 hotly contested book. There was a lawsuit filed in  
 15 two different countries over it. But it essentially  
 16 outlines six allegations of drug use by Mr. Armstrong  
 17 that my clients learned about for the first time, a  
 18 mid 1990's doping program supposedly engaged in by  
 19 Mr. Armstrong; his admission to the use of performance  
 20 enhancing drugs at the Indiana Hospital, his detailed  
 21 relationship with Ferrari which had only become public  
 22 for the first time in 2001, but this detailed a  
 23 greater relationship.  
 24 Allegations of drug use by Emma O'Reilly  
 25 a former masseuse of the team, an admission of EPO use

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1 by Mr. Armstrong to Greg LeMond in a phone  
 2 conversation and allegations that Mr. Armstrong  
 3 participated in race fixing in 1993 in order to win a  
 4 bonus.  
 5 Now, claimants acknowledge, admit, that  
 6 with the exception of the allegations regarding  
 7 Michele Ferrari that all of those other allegations  
 8 were revealed for the first time by Mr. Walsh, and it  
 9 is certainly the first time my clients ever had  
 10 knowledge of those specific allegations.  
 11 Now, Mr. Herman is right, the book has  
 12 not been published in America. You'll hear Mr. Walsh  
 13 explain why the thread of relentless litigation by  
 14 Mr. Armstrong keeps publishers from thinking they can  
 15 sell enough of this book to justify the litigation  
 16 fees, but it was published in France. My clients  
 17 obtained a copy of that book, translated the material  
 18 provisions and began to have serious concerns  
 19 regarding Mr. Armstrong and the integrity of the bet  
 20 they made and they commenced an investigation.  
 21 While they commenced their  
 22 investigation -- if you'll bring up all of those -- a  
 23 variety of incidents also happened. One was  
 24 Mr. Armstrong's urine from the 1999 Tour de France  
 25 tested positive. Mike Anderson who you'll hear from

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1 detailed use of drugs by Armstrong. In September,  
 2 October 2004 Tyler Hamilton, one of Mr. Armstrong's  
 3 former teammates and lieutenants tested positive.  
 4 You'll meet the man who developed the test that caught  
 5 Mr. Hamilton. And last, Dr. Ferrari was convicted of  
 6 sporting fraud in Italy in October 2004 requiring  
 7 Mr. Armstrong to sever his essentially decade long  
 8 relationship with Dr. Ferrari.  
 9 My clients with that information and from  
 10 the allegations of the Walsh book began an  
 11 investigation about those allegations and we're going  
 12 to present that evidence to you as to what happened  
 13 and what it meant to my clients in terms of their  
 14 actions.  
 15 First, they investigated the mid 1990's  
 16 doping program. Stephen Swart, who was a teammate of  
 17 Mr. Armstrong during that time period had told  
 18 Mr. Walsh that they plotted in the mid 1990's a doping  
 19 program for their team. My clients talked to  
 20 Mr. Swart and he confirmed it's true; what I said to  
 21 Mr. Walsh is true. That explains the letter you saw  
 22 from my client to the lawyer asking for an affidavit.  
 23 Mr. Swart will be here live. You can judge for  
 24 yourself his credibility.  
 25 Moreover, I deposed Frankie Andreu, a

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1 teammate, and he also confirmed in a roundabout way,  
 2 because he was uncomfortable admitting to drug use,  
 3 himself, confirmed that such discussions took place.  
 4 Next my clients also investigated and  
 5 you'll see evidence regarding the hidden relationship  
 6 with Ferrari and Mr. Armstrong. You'll find out, as  
 7 my clients did, that it began in 1995, tying into this  
 8 same time there was this secret program of doping.  
 9 You'll find out it was not disclosed by Mr. Armstrong  
 10 ever. They're going to claim it was and that it was  
 11 public knowledge, but there's a very simple way to  
 12 prove it. Mr. Gorski, who ran the Tailwind team and a  
 13 former gold medal winner himself who you met and saw,  
 14 testified at his deposition he had no idea that  
 15 Mr. Armstrong was training with Mr. Ferrari until he  
 16 found out about it in 2000. It was publicly revealed  
 17 for the first time by David Walsh in 2001. And even  
 18 then the details from Mr. Armstrong remained murky,  
 19 how many times they met, what they did.  
 20 You'll find out that the relationship  
 21 with Mr. Ferrari was a source of concern for everyone  
 22 who knew about it. Even Mr. Gorski warned  
 23 Mr. Armstrong, this is bad. Why? Why is everyone so  
 24 concerned about this? You'll hear evidence that  
 25 Dr. Ferrari is the notorious doping doctor, with

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1 allegations that the training methods he used involved  
 2 doping.  
 3 You'll also find out that Mr. Armstrong,  
 4 although forced to admit the relationship, downplayed  
 5 it for those reasons and the end of the story was  
 6 Dr. Ferrari was convicted of sporting fraud in October  
 7 of 2004. That matter -- that relationship matters to  
 8 my clients, as you will find out, because who your  
 9 trainer is and the methods he uses tends to suggest,  
 10 support or prove whether or not you're engaging in  
 11 illegal tactics. One of the best proofs of this is  
 12 the fact that the Armstrong camp continues to deny and  
 13 downplay the relationship that they had with Ferrari.  
 14 In his deposition, and I suspect in  
 15 testimony, Mr. Armstrong told me that he barely met  
 16 with the man and it wasn't really all that important,  
 17 but in published reports where Mr. Ferrari talks, he  
 18 talks about meeting for six weeks before the Tour to  
 19 train in daily contact, and other people who are part  
 20 of Mr. Armstrong's team talk about how important  
 21 Mr. Ferrari is.  
 22 Next and perhaps the most significant and  
 23 stunning testimony that my clients -- evidence that my  
 24 clients investigated was the Indian University  
 25 Hospital admission. As the panel knows, there was

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1 written in Mr. Walsh's book that Mr. Armstrong in  
 2 connection with his cancer treatment revealed to a  
 3 doctor that he used performance enhancing drugs prior  
 4 to his admission there in the hospital and that there  
 5 was a variety of people around in the room actually  
 6 with a conference room who heard it. Mr. Walsh  
 7 reported on this for the first time. My clients  
 8 investigated that and found out that it was, in fact,  
 9 confirmed by Frankie and Betsy Andreu who were there.  
 10 Frankie is a former teammate, Betsy was his fiancée at  
 11 the time, his wife now. They both testified in their  
 12 deposition, not happily, but testified that, in fact,  
 13 they were there and heard Mr. Armstrong admit to use  
 14 of performance enhancing drugs.  
 15 Now, the story sat dormant from when it  
 16 happened in '96 until 2004 when was first revealed in  
 17 Mr. Walsh's book. At the time it came out, there was  
 18 a huge brouhaha over this book itself, but this  
 19 particular incident in general and Mr. Stapleton and  
 20 Mr. Knaggs, another member of the Tailwind team,  
 21 sought to in effect undercut the veracity of the book,  
 22 show that Mr. Walsh was lying, show that he didn't  
 23 have the sources he did, show that what he had written  
 24 was untrue. And at the 2004 Tour de France they  
 25 literally went around to people and tried to obtain

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1 statements from the people who were alleged to have  
 2 been there saying this wasn't true, it didn't happen.  
 3 They couldn't get any such statements.  
 4 One person that turned them down, and  
 5 you'll see an e-mail not produced to us, but obtained  
 6 by us in this case was from Stephanie McIlvain who  
 7 said no, she was not going to give such a statement.  
 8 The other person they approached was  
 9 Frankie Andreu who they asked to possibly get a  
 10 statement from his wife, either that it didn't happen  
 11 or that she wasn't the source for Walsh's book.  
 12 Unbeknownst to Mr. Stapleton and  
 13 Mr. Knaggs, Mr. Andreu was concerned and tape-recorded  
 14 the conversation in the parking lot somewhere in  
 15 France during the race. We have both the tape and the  
 16 transcript that will be shown and played here.  
 17 Among other stunning things, Mr. Andreu  
 18 says on the tape -- and you'll hear it -- I mean, the  
 19 Indiana Hospital incident, it happened. There was no  
 20 contradiction from Mr. Stapleton, what are you talking  
 21 about? Everybody knows that's untrue.  
 22 He later says in the tape I've protected  
 23 Mr. Armstrong for a long time. Again, no  
 24 contradiction or confrontation from Mr. Stapleton.  
 25 Instead they focus on the technical detail, can you

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1 get your wife to say she wasn't the source of the  
 2 story? How can she deny it?  
 3 Later at the end of the conversation  
 4 Mr. Andreu talks about Mr. Armstrong to Mr. Stapleton  
 5 to thank Mr. Armstrong for calling me to tell me that  
 6 you guys were going to come see me and talk to me  
 7 about this and warn me about what's going on.  
 8 Mr. Armstrong in his deposition, of  
 9 course, denied he knew anything about this and that he  
 10 directed them in anyway to do it. That's evidence of  
 11 a strong cover-up in my opinion and I believe -- and  
 12 I'll ask you to draw that inference that this incident  
 13 happened.  
 14 But perhaps the most shocking thing was  
 15 when we went to depose Ms. McIlvain. In her  
 16 deposition, as I told you at the beginning, she  
 17 testified that she was there. Everyone else was  
 18 there, they were in a conference and the football game  
 19 was on. And by the way, all the witnesses that have  
 20 testified about this incident generally agreed that  
 21 they were in a conference room at the Indiana  
 22 University Hospital in October of 1996 and that a  
 23 football game was on TV. Ms. McIlvain says that  
 24 perhaps doctors came in and perhaps there was some  
 25 talking but she didn't hear anything. She was too

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1 busy watching the football game on TV. She also  
 2 acknowledged in her deposition that she happens to  
 3 detest football.  
 4 Well, we smelled a rat because we had  
 5 been told by others that Ms. McIlvain had, in fact,  
 6 previously confirmed this conversation and my client's  
 7 investigation, in fact, revealed that she was lying.  
 8 She had confirmed the incident to David Walsh for his  
 9 book when he wrote it, she had confirmed it to James  
 10 and that says Swart -- I apologize that should say  
 11 Startt, S-T-A-R-T-T. Mr. Startt is a reporter who  
 12 covers cycling, an American that lives in Paris,  
 13 France.  
 14 In connection with Walsh's book in 2004  
 15 he approached Ms. McIlvain at one of the events and  
 16 asked her if the allegations about what had been said  
 17 about the Indiana Hospital room were true and she told  
 18 him they were and confirmed them. He never wrote  
 19 about it because, like many journalists, he chooses  
 20 not to write about doping with respect to cycling, but  
 21 we were able to take his deposition and you will see  
 22 it.  
 23 You've heard Ms. Andreu who had numerous  
 24 conversations with Ms. McIlvain in which they talked  
 25 about the incident and you'll hear that Ms. McIlvain

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1 also told it to Mr. LeMond in a tape recording that  
 2 Mr. LeMond made of Ms. McIlvain where she acknowledged  
 3 it. Now, here's the hard part, why is she lying if it  
 4 didn't happen? This incident clearly happened. I  
 5 think the evidence will clearly show it.  
 6 The next part that you'll hear will be  
 7 with respect to since Mr. Walsh's book came out, more  
 8 evidence with respect to what my clients had suspected  
 9 with respect to David Walsh's book. First, you'll  
 10 find out and hear evidence about the test of the 1999  
 11 Tour de France urine specimen from Mr. Armstrong.  
 12 You'll hear that there were six positive tests.  
 13 You'll hear an expert, Mr. Ashenden, conclude that  
 14 this is conclusive evidence of drug use, that the test  
 15 had significant credibility, and Mr. Ashenden has  
 16 matched up the testing with the performance in the  
 17 race to show you how certain test results strongly  
 18 suggest use of EPO in the way in which the race is  
 19 ongoing. These were revealed in l'Equipe.  
 20 Now, what had happened was there was a  
 21 lab in Paris that's WADA accredited that was doing  
 22 research on frozen -- was doing research on EPO to  
 23 refine EPO testing and to help figure out if there's  
 24 positive specimens with EPO in it. You go back to the  
 25 days when in effect everyone doped because there was

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1 no testing and look for it. That's what they were  
2 doing. Typically when there's testing, there's a  
3 sample -- what's called an A sample and a B sample,  
4 and if the A sample is a confirmed, you then go to the  
5 B sample. If the B sample is confirmed, you have a  
6 positive test result. Because these were samples from  
7 1999 there was not an A and a B, there was just one  
8 sample left over and that is what they tested.  
9 You'll hear testimony that when the lab  
10 does the testing, they don't know whose urine they're  
11 testing. That is kept through a control form with  
12 respect to the athlete so that the lab has no idea who  
13 they are, in fact, testing. And indeed this lab had  
14 no idea who they were, in fact, testing.  
15 A French reporter for l'Equipe was able  
16 to get the control forms from the 1999 Tour de France  
17 stating I'm giving this urine specimen signed by  
18 Mr. Armstrong or whomever it is. Those were actually  
19 voluntarily agreed to be released by the Armstrong  
20 camp to the reporter. It turns out they were told by  
21 the reporter that he was looking to see whether or not  
22 Mr. Armstrong had medical clearance to use some kind  
23 of drug in connection with the 1999 Tour de France  
24 based upon his cancer treatment. He was able to  
25 obtain them. He was also able to obtain the test

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1 results and match them up. So that this test result  
2 matches to this control form number and that means  
3 that this individual tested positive and he reported  
4 those in an article for l'Equipe magazine.  
5 Now, one of the attacks which we -- which  
6 we acknowledge up front is that this is not in  
7 accordance with the rules in an event for positive  
8 testing. In other words, positive test under the  
9 rules for Tour de France requires a confirmation of  
10 the A and the B sample. No doubt about it. Second of  
11 all, this is not supposed to be known. The lab is not  
12 supposed to release it and this is generally not  
13 supposed to be known, but what this shows and what  
14 this evidence means we believe is that it is credible  
15 evidence of use of performance enhancing drugs, and  
16 had my clients known this prior to their considering  
17 the contract in 2001, they would not have touched this  
18 sport. It is not clean. It is not reliable. You  
19 can't be certain.  
20 In addition, you'll also hear other  
21 testimony from other people regarding the drug use.  
22 In the other allegations Ms. O'Reilly, Mr. Anderson,  
23 who will also corroborate and provide additional  
24 information regarding what my clients found out. Now,  
25 that's strong stuff. Better question you're probably

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1 asking is, what difference does it make in your  
2 party's contractual relationship? Why does this  
3 matter? And that I want to turn to next.  
4 The issues before the panel the way SCA  
5 sees them are, first, whether or not we were  
6 fraudulently induced into a contingent contract;  
7 second, whether or not Tailwind made a material  
8 misrepresentation and/or omission in connection with  
9 procuring insurance from SCA. Those are two separate  
10 things, by they way. First, whether we were  
11 fraudulently induced and second material  
12 misrepresentation.  
13 If you conclude that the contract is  
14 valid, then the next one is whether or not under its  
15 terms we owe the money. Fourth, whether or not we  
16 exercised bad faith in denying the claim, and last  
17 whether or not Tailwind disparaged SCA in connection  
18 with the parties' ongoing dealings. I want to talk  
19 about those issues and summarize the evidence with  
20 respect to it.  
21 First, I want to clear up this very  
22 dancing on the head of the pin by the Claimants' side.  
23 Tailwind was who we entered into the contract with.  
24 Given. However, we will put on evidence and I believe  
25 the law will allow you to conclude that

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1 representations made by Mr. Armstrong regarding his  
2 performance were adopted, manifest, endorsed by  
3 Tailwind allowing us to rely on anything Mr. Armstrong  
4 said in connection with our dealing with Tailwind.  
5 Indeed the very basis of our dealing with Tailwind, as  
6 you'll find out, is whether or not Mr. Armstrong is  
7 going to win the Tour de France and whether or not  
8 Mr. Armstrong is not using performance enhancing  
9 drugs, but second since we are now an insurance  
10 company, as ruled by this panel, although we obviously  
11 disputed it, what that means is we have available to  
12 us as the insurer any defense the insured has. If  
13 Mr. Armstrong under his contract is lying to Tailwind  
14 about performance enhancing drug use, that is a  
15 defense we can assert.  
16 Third, in addition to the representations  
17 made by Mr. Armstrong, you're also going to hear  
18 evidence that Tailwind made those same kinds of  
19 representations and assurances. Now, it is true we  
20 never picked up the phone or wrote a letter to  
21 Tailwind or Mr. Armstrong and said, oh, by the way,  
22 please confirm to us you don't do drugs, and they  
23 never called us. However, there are scores and scores  
24 of public statements made by both Tailwind and  
25 Mr. Armstrong that we contend that we are legally able

<p style="text-align: right;">Page 664</p> <p>1 to rely upon because we fall within the law, because 2 those statements, as you will see, were made with the 3 expectation and the intent that clients like mine 4 would hear them and rely upon them. 5 Now, based upon that law and the evidence 6 of the misrepresentations and omissions, we believe 7 that the panel will be able to conclude that we were 8 fraudulently induced into this contract regarding what 9 the landscape of professional cycling and 10 Mr. Armstrong was. It's as simple as that. But if 11 the panel looks at the actual contract and what the 12 actual terms of the contracts are, if you'll bring up 13 the next slide, we do intend upon focusing upon -- go 14 ahead -- these issues, and think that the evidence 15 will show with respect to each of them that we satisfy 16 our burden. You'll hear about the representations 17 made and the information omitted that we can rely on 18 them, that we did rely on them and that the 19 information was material. 20 Now, Mr. Hamman makes a big deal about 21 this particular issue and you're going to hear 22 testimony about it with respect to what was in 23 Mr. Hamman's mind at the time he took on this deal and 24 they're going to focus on whether he had backside 25 protection from Mr. Lorenzo who was the reinsurer. We</p>	<p style="text-align: right;">Page 666</p> <p>1 ARBITRATOR LYON: Do you have a case on 2 this public statements issue and how you can rely upon 3 it? Do you have any case law on that? 4 MR. TILLOTSON: I don't have the case off 5 the top of my head. It was cited -- the leading case 6 was cited. 7 ARBITRATOR CHERNICK: It's the Ernst &amp; 8 Young. 9 MR. HERMAN: Ernst &amp; Young v. Pacific. 10 I've got a copy of it right here for you. I'll be 11 happy to give it to you. 12 ARBITRATOR FAULKNER: I think it's 13 attached in there if I remember correctly. 14 MR. TILLOTSON: Senator, this law 15 obviously develops not in our context, it develops in 16 the context of accountants who make public statements 17 like an auditing statement and whether or not the 18 general public can rely on that because it's not 19 actually directed to them, and also comes from 20 security fraud cases where companies make public 21 statements as to whether or not shareholders can later 22 claim that they relied on those. That law applies 23 here in regard to third-party statements and public 24 assurances. 25 Now, in terms of the actual contract</p>
<p style="text-align: right;">Page 665</p> <p>1 thought insurer, but now reinsurer. And that was his 2 only concern. 3 However, you're going to hear Mr. Hamman 4 say, and I think it's a fundamental principle, that no 5 businessman would enter into a contingent contract 6 dependent upon the payment of the nine and a half 7 million dollars if they thought someone was cheating 8 to win, anyone, any business, simple as that. No one 9 would take a bet as to whether or not Barry Bonds was 10 going to break the home run record in light of what 11 you now know concerning Mr. Bonds association with 12 BALCO. We are going to fit in the evidence with 13 respect to that kind of claim with respect to my 14 clients' state of mind when they entered this 15 contract. Of course, they assumed Mr. Armstrong 16 didn't use performance enhancing drugs, of course they 17 assumed that there was integrity to the 18 representations made, of course, they assumed he was 19 clean. Why? Because it's all publicly stated by 20 Tailwind and Mr. Armstrong. 21 Next -- 22 ARBITRATOR LYON: Can I ask you at this 23 point, just one question, Mr. Tillotson, if you don't 24 mind? 25 MR. TILLOTSON: Yes.</p>	<p style="text-align: right;">Page 667</p> <p>1 itself, there's a paragraph here that also comes into 2 play with respect to misrepresentations and omissions 3 and it talks about if the actual conditions of the 4 promotion differ in any way from those represented by 5 sponsor to SCA this contract is null and void. 6 Now, what's that provision intended to 7 do? It's intended to say if we get ourselves into 8 something like a hole-in-one or a Tour de France or a 9 throw the ball through the middle during the Big 12 10 game with the Dr. Pepper thing, we make sure we know 11 what the event is so that we have some assurances that 12 when we enter into it it's what we are told or know it 13 to be. 14 Now, promotion is not a defined term in 15 this contract; it's just not. It's a very simple 16 two-page contract. It's not complicated. It is not. 17 Promotion is hereby defined as whatever. Mr. Herman 18 wants to claim that the promotion isn't the Tour de 19 France, meaning that the Tour de France race can be 20 anything regardless of what we thought it was or were 21 told it was but that the promotion is really the 22 contract between Tailwind and Mr. Armstrong, that that 23 is what they're telling us that we can rely on 24 representations and assurances from. 25 Now, I disagree with that and I think the</p>

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1 evidence will show it differently, but I would posit  
 2 that it doesn't really matter whether promotion is  
 3 determined to be the Tour de France race or Tailwind's  
 4 contract with Mr. Armstrong, because in either case  
 5 compliance with the rules and not cheating are  
 6 essential conditions for both.

7 Mr. Armstrong will acknowledge and  
 8 Mr. Stapleton will acknowledge in their testimony that  
 9 they can't break the rules, cheat or use drugs and  
 10 still be owed money under his contract with Tailwind.  
 11 He obviously disputes that he has done such but they  
 12 don't disagree that the consequences if, in fact, the  
 13 evidence is developed the way in which I suggest it  
 14 is.

15 Now, the last aspect of their response to  
 16 all of this is, well, okay, great, you've got a  
 17 misrepresentation but you can't assert it because  
 18 you're an insurance company and you didn't comply with  
 19 the requirements of the notice. This is 21.17, which  
 20 we are operating under that's since been recodified by  
 21 the Texas Insurance Code, and it provides that we have  
 22 to in effect give notice within a reasonable time  
 23 after discovering the falsity of the representation  
 24 and it provides that 90 days is presumed to be a  
 25 reasonable period of time.

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1 Now, as we go through the evidence and  
 2 present whether or not we complied with this  
 3 particular statute, and I'll ask the panel to keep  
 4 three things in mind. First, it just says notice,  
 5 which means written or oral. I don't have to send  
 6 them a letter. I can tell them.

7 Second, the period starts only after we  
 8 know of the falsity of the representation. So not  
 9 when we suspect or I would say we were investigating  
 10 to reach a conclusion, but after we know. And third,  
 11 90 days is presumed reasonable, but is not an absolute  
 12 cap, and so if I -- if you conclude that I gave notice  
 13 after 90 days, then I would have to prove that that  
 14 was reasonable, even though it was beyond the 90-day  
 15 period.

16 Now, I think the evidence is going to  
 17 show overwhelmingly that we satisfied this statute  
 18 even though we didn't know that we needed to comply  
 19 with it until this panel ruled so in late November of  
 20 this year. This is a timberline and we will just  
 21 bring up all the dates. Mr. Armstrong was the winner  
 22 of the Tour de France in 2004 on July 24th.

23 Now, under the contract, payment is due  
 24 30 business days after the event. Even Mr. Herman's  
 25 letter to my client says payment was due on

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1 September 3rd. So that's the payment due date for the  
 2 particular contract in question.

3 We wrote them a letter on September 2nd,  
 4 giving them notice that we are going to investigate  
 5 the claim based upon the allegations as we were aware  
 6 of them. So this deals with whether or not payment  
 7 was made in a timely manner. Mr. Herman is going to  
 8 try and graft on the prompt payment provisions of the  
 9 insurance code as to whether we paid the claim timely  
 10 under the law or give them notification, but I believe  
 11 that the evidence will be that the parties  
 12 contractually agreed to a different payment period and  
 13 there's no doubt that we complied with that by  
 14 providing notice that we would investigate.

15 Now, the very first thing that happens in  
 16 connection with our letter that we are going to  
 17 investigate is SCA says -- I'm sorry, Tailwind says  
 18 get lost. You have no right to investigate. We are  
 19 not cooperating. Buzz off. Pay now or else. And in  
 20 fact, they refused in any way, the testimony will  
 21 show, to cooperate with any investigation. They're  
 22 going to try and justify that by saying, oh, gosh, you  
 23 asked for a lot and it was rude and you didn't have a  
 24 right to do it, but the fact of the matter is they  
 25 didn't offer one drop of information, anything.

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1 They're going to claim they provided us  
 2 with the test results and you'll see from the  
 3 testimony of Kelly Price, the insurance broker, and  
 4 also SCA witnesses that, in fact, we didn't get the  
 5 test results, we got a cut-and-paste e-mail from Kelly  
 6 Price saying Mr. Armstrong had passed all of the tests  
 7 for the 2004 Tour de France. It's materially untrue  
 8 that we were provided with a grouping of test results  
 9 saying here's how we passed and here are the test  
 10 results. To this day we have never seen those or been  
 11 provided with them.

12 Now, from this point on litigation was  
 13 threatened and the parties exchanged more letters.  
 14 SCA during this time period tells TSI the basis for  
 15 its concerns and why we want to investigate. Also,  
 16 money, the \$5 million, was placed in escrow during  
 17 this time period. You'll find that there was a letter  
 18 written on September 21st from Mr. Herman where he  
 19 says Tailwind not only says we are not going to  
 20 cooperate with you but don't contact another person,  
 21 stop your investigation in its entirety.

22 Shortly thereafter Tailwind ran an add  
 23 saying SCA refuses to pay. SCA began at that point in  
 24 time to continue to undertake its investigation  
 25 because it had to start trying to figure out the truth

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1 or falsity of what it had gathered at that point in  
 2 time.  
 3 The litigation process took over during  
 4 this time period and a hearing was held on  
 5 December 20, during which at that point in time,  
 6 myself and Mike Lynn were engaged. We have the  
 7 transcript of the hearing and we will make it a part  
 8 of the evidentiary record here, but if, in fact,  
 9 notice has not been given by that point in time and it  
 10 needed to be, Mr. Lynn gave notice that SCA was not  
 11 going to pay under the contract and even said why  
 12 during that time period.  
 13 Finally, notice was given without any  
 14 dispute or doubt on April 4th, 2005 when we filed our  
 15 counterclaims in this preceding. That's written  
 16 notice. We, of course, had a hearing before then with  
 17 the members of the panel in which, I believe, our  
 18 defenses were outlined, but at the very outset you  
 19 would have to count back 90 days from that date to  
 20 January 4th and figure out whether or not my clients  
 21 had reasonable belief or had formed a reasonable  
 22 belief as to the falsity of the representations and I  
 23 believe that notice will be pushed back further and we  
 24 will be able to demonstrate that we gave that notice  
 25 within the statutory time period.

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1 Now, I believe that the evidence will  
 2 also show that no matter what, when the deadline was  
 3 and what the 90 days were that with respect to the  
 4 reasonable nature of the notice that is required that  
 5 my clients complied with that, that shortly after this  
 6 issue blew up that SCA gave notice to Tailwind that  
 7 they were not going to pay the claim and what the  
 8 basis for that was, and the reason why perfect notice  
 9 was not given was because of Tailwind's refusal to  
 10 cooperate in any investigation whatsoever. I believe  
 11 that will excuse us from it.  
 12 Now, the last issue that I want to just  
 13 briefly outline the evidence for is with respect to  
 14 our claim for business disparagement. It is curious  
 15 to me that Tailwind argues that notice was never given  
 16 in this case that my clients were not going to pay the  
 17 claim within the 90-day statutory period when somehow  
 18 during the first week of October 2004 Mr. Stapleton  
 19 was able to run an ad in which he said that very fact,  
 20 SCA won't pay because they claim that there's  
 21 allegations regarding Mr. Armstrong's drug use, and he  
 22 ran it in a large business trade journal designed to  
 23 cause embarrassment and difficulty to my client.  
 24 First, I think the ad effectively proves  
 25 notice, because the other side has acknowledged that

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1 they knew what we were doing and why. But second,  
 2 curiously, the ad turned out to be untrue in two  
 3 material respects. First, it claimed that everyone  
 4 had paid but my client on October 7th. The panel will  
 5 hear testimony from Ms. Price that that was materially  
 6 untrue. Second, the ad wrongly claimed that we had  
 7 been provided test results. In fact, all they had  
 8 done was provide us with a protocol of how you do the  
 9 test. They never actually provided us with the test  
 10 results.  
 11 If you'll bring up the next slide of  
 12 Ms. Price's testimony. What you'll hear from  
 13 Ms. Price when I asked her, so as of November 12th,  
 14 Lloyd's the other insurer had not fully paid. That ad  
 15 was run on October 7th. She says that's the way it  
 16 appears. She's looking at e-mails to reconstruct the  
 17 payment table. So I asked her the ultimate question,  
 18 if someone said publicly Lloyds had promptly paid  
 19 prior to November 12th, 2004, which is what  
 20 Mr. Stapleton had said in that ad, it would not be a  
 21 true statement and she agrees. In fact, Lloyds was so  
 22 delinquent that the broker actually had to front some  
 23 of the payment out of their own money; that's how  
 24 delinquent Lloyds was.  
 25 Now, you'll hear testimony regarding the

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1 nature of that ad and how it improperly hurt my  
 2 client's business, and really, what it goes to show is  
 3 the brutal tactics used in connection with this case  
 4 as both sides geared up for what was litigation.  
 5 The last issue that I want to briefly  
 6 address is bad faith. The standard for bad faith is  
 7 whether or not an insurance company, in light of the  
 8 fact that the claim and liability on the claim is  
 9 reasonably clear, engages in ill-suited tactics as a  
 10 pretext for denial. That standard is not whether or  
 11 not the parties engage in discovery that's difficult,  
 12 onerous and tough. It's premised on the liability.  
 13 Whether or not in light of the evidence I'm going to  
 14 present the three arbitrators as you sit here would  
 15 say that SCA had a reasonable belief that there might  
 16 not be liability here.  
 17 Most of the other things that Mr. Herman  
 18 is going to try and bring up in the hopes to embarrass  
 19 or cause Mr. Compton to lose his temper on the stand  
 20 miss the mark, because they were involved in  
 21 connection with the investigation of ongoing  
 22 litigation and they dealt directly with issues that  
 23 are blatant. Example, why would Compton want the DNA  
 24 from Mr. Armstrong? Well, for the exact reason  
 25 Mr. Herman alluded to in his opening, because

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1 Mr. Armstrong always points to the fact that his urine  
 2 from the 2000 Tour de France was tested and tested  
 3 clean, and Mr. Herman knows that one of the  
 4 individuals involved with the testing has publicly  
 5 stated that the urine was too clean suggesting the  
 6 possibility of impropriety with that specimen. One  
 7 way to match up the specimen to ensure it's  
 8 Mr. Armstrong's is to match it up with the DNA.  
 9 That's why gum was obtained by Mr. Compton after it  
 10 had been abandoned by Mr. Armstrong. Tough stuff?  
 11 Oh, yeah. Forceful litigation? You betcha. But in  
 12 light of the allegations made by them and the bad  
 13 faith claim made against these clients and every  
 14 possible epithet thrown against them that they're  
 15 simply trying to avoid a claim. I think it's unfair  
 16 to criticize them for trying to prove their case in a  
 17 way that I do not believe violates the law or the  
 18 ethics.

19 Tough stuff is intimidating witnesses,  
 20 getting people to lie, calling people and telling them  
 21 that they don't have to appear, and if they do they  
 22 might get sued. That's bad faith, not gathering facts  
 23 for evidence. The hiring of an investigator for the  
 24 2005 Tour de France, that was done because  
 25 Mr. Armstrong had severed his relationship with

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1 Michele Ferrari but there were reports that  
 2 Mr. Ferrari was in the region and there was still  
 3 communications going on between them.

4 An investigator was retained by the  
 5 client for one day to find out if, in fact,  
 6 Mr. Ferrari and Mr. Armstrong had contact. Nothing  
 7 more. The rest of it is old-fashioned witness  
 8 gathering in light of some of the most strenuous  
 9 tactics and techniques I have ever seen brought by the  
 10 other side in the hopes that people wouldn't testify,  
 11 wouldn't produce documents and wouldn't tell the  
 12 truth.

13 This is a case about bad faith.  
 14 Mr. Herman is right, but it is not this client's  
 15 honest efforts to gather evidence to show that it's  
 16 not making up these allegations, it is the strenuous  
 17 efforts by the other side to keep us from finding that  
 18 out. Mr. Armstrong just didn't contact Frankie Andreu  
 19 right before his deposition, he also contacted  
 20 Mr. Startt, the reporter, the night before he was  
 21 deposed and apparently talked to him for quite some  
 22 period of time. Coincidentally between the time that  
 23 Mrs. LeMond was deposed revealing the Indiana  
 24 University admission testimony and the fact that  
 25 Mr. Andreu was going to testify about it and the

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1 possible existence of the tape, Mr. Armstrong during  
 2 that same time period contributed \$1.5 million to the  
 3 Indiana University Hospital. These are the kinds of  
 4 techniques and tactics that I think suggest more bad  
 5 faith than what my clients have done.

6 Now, I will point out and suggest that  
 7 it's awful difficult for Mr. Herman to claim that we  
 8 don't have a shred of evidence to prove our case and  
 9 criticize us for the efforts which we had to go to to  
 10 gather that testimony and proof and we are going to  
 11 present it.

12 In conclusion, I'm going to state the  
 13 obvious, my client is not a sympathetic one. What  
 14 they're doing is not popular. What I've done is not  
 15 popular or easy. We have attempted to put together  
 16 the key allegations in this case which I believe a  
 17 reasonable tribunal of fact can conclude that where  
 18 there's smoke there's fire and in some cases you're  
 19 going to see the flames, and tie that evidence to our  
 20 understanding and belief under the contract. And I'm  
 21 going to ask the panel to do the most difficult thing  
 22 I can, which is to invalidate this contract and tell  
 23 SCA that it didn't know what it was getting into but  
 24 should have.

25 That concludes my opening remarks and

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1 unless the panel has questions, I'm prepared to  
 2 proceed.

3 ARBITRATOR LYON: Can I ask a question?  
 4 ARBITRATOR FAULKNER: Go ahead.  
 5 ARBITRATOR LYON: The medical records and  
 6 the affidavit of Dr. Nichols, are those what's locked  
 7 upstairs? Is that's what --  
 8 ARBITRATOR FAULKNER: I have not looked  
 9 at it, gentlemen. It was sent me to me in a sealed  
 10 form. It is sitting locked upstairs and we have not  
 11 reviewed it.  
 12 ARBITRATOR LYON: I have.  
 13 ARBITRATOR FAULKNER: You have? I have  
 14 not.  
 15 ARBITRATOR LYON: The medical records,  
 16 all right.  
 17 ARBITRATOR FAULKNER: All right. That's  
 18 all I have.  
 19 It's 3:00, y'all. Let's take about a  
 20 15-minute break and then I'll ask you to call your  
 21 first witness, Mr. Herman.  
 22 ARBITRATOR CHERNICK: We are going to  
 23 break today at 5:00.  
 24 (Recess 2:57 p.m. to 3:15 p.m.)  
 25 ARBITRATOR FAULKNER: Mr. Herman, are you

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1 ready?  
 2 MR. HERMAN: I am.  
 3 ARBITRATOR FAULKNER: Please call your  
 4 first witness.  
 5 MR. HERMAN: Bob Hamman.  
 6 ARBITRATOR FAULKNER: Mr. Hamman, would  
 7 you please take the witness stand over there.  
 8 ROBERT HAMMAN,  
 9 having been first duly sworn, testified as follows:  
 10 DIRECT EXAMINATION  
 11 BY MR. HERMAN:  
 12 Q. Would you state your name, please sir.  
 13 A. Robert Hamman.  
 14 Q. Mr. Hamman, you are the same Bob Hamman that  
 15 testified previously in this matter back in September,  
 16 are you not?  
 17 A. That's correct.  
 18 Q. You're the CEO of SCA Promotions, Inc.?  
 19 A. Correct.  
 20 Q. Are you the majority shareholder?  
 21 A. No.  
 22 Q. Who is the majority shareholder?  
 23 A. There is no majority shareholder.  
 24 Q. You are a shareholder?  
 25 A. I am the substantial shareholder.

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1 Q. Let me go through a few of the employees and  
 2 see if we can get their roles and titles straight,  
 3 okay?  
 4 A. Okay.  
 5 Q. John Bandy sitting against the wall over  
 6 there, he's an in-house lawyer for SCA?  
 7 A. Correct.  
 8 Q. Chris Compton sitting over there is an  
 9 in-house lawyer for SCA?  
 10 A. Correct.  
 11 Q. Chris Compton was, for lack of a better word,  
 12 in charge of the investigation of this matter?  
 13 A. He played a substantial part.  
 14 Q. Mr. Tom Floerchinger, is he employed by SCA?  
 15 A. Correct.  
 16 Q. He is also a director of Prize Indemnity  
 17 Limited?  
 18 A. I believe he is, yes, sir.  
 19 Q. Prize Indemnity Limited is an insurance or  
 20 reinsurance company domiciled in Bermuda?  
 21 A. Yes.  
 22 Q. Mr. Floerchinger was in request -- in  
 23 response to our request for a corporate representative  
 24 of Prize Indemnity Limited, he was produced and was  
 25 deposited in that capacity, was he not?

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1 A. Yes.  
 2 Q. Mr. Hamman, were you the only person at SCA  
 3 involved in the negotiation of the insurance contract  
 4 that we are litigating in this case?  
 5 A. In the negotiation, yes.  
 6 THE WITNESS: Can I have this? Is this  
 7 the same thing for reference?  
 8 ARBITRATOR CHERNICK: Do you have  
 9 notebooks for the panel?  
 10 MR. HERMAN: We do. This is a -- this  
 11 contains all of the exhibits from the -- from 1  
 12 through 110. I don't know if we -- Marianne, do we  
 13 have -- they've got the slides, but they want to know  
 14 if we have exhibit books.  
 15 MS. ROSS: I do.  
 16 MR. BREEN: Does the panel want one that  
 17 has all of the old ones in it already, too, because we  
 18 have one that has the new ones in it.  
 19 ARBITRATOR CHERNICK: I think that we  
 20 have the old exhibits. How did you number the new  
 21 exhibits?  
 22 MR. BREEN: Starting after the old ones,  
 23 so it's consecutive.  
 24 ARBITRATOR CHERNICK: Oh, so, for  
 25 example, this Exhibit 1, this is from the old.

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1 ARBITRATOR FAULKNER: This is from the  
 2 original.  
 3 ARBITRATOR CHERNICK: Actually, I don't  
 4 have my prior exhibits with me, so it would be helpful  
 5 for me to have the full notebook, if you have one.  
 6 ARBITRATOR FAULKNER: Actually, why don't  
 7 you get them for all of us.  
 8 MR. HERMAN: Why don't you get those,  
 9 then I'll give one of the panel my copy.  
 10 If you're looking for a corresponding  
 11 exhibit, you can turn to Claimants' Exhibit 17, which  
 12 is -- although it's an unsigned copy, it's the most  
 13 easily readable of the copies of that that we have.  
 14 Q. (BY MR. HERMAN) Do you recognize Claimants'  
 15 Exhibit 17 to be the insurance contract entitled  
 16 contingent prize contract number 31122?  
 17 A. Yes, I'll presume that it is.  
 18 Q. Okay. Did SCA prepare this contract?  
 19 A. Yes.  
 20 Q. And were there any changes or modifications  
 21 for negotiation over the verbiage of the contract?  
 22 A. I don't believe so.  
 23 Q. This proposal from Disson Furst was rejected  
 24 by your son because he felt SCA didn't know enough  
 25 about bicycling and there was too much money involved,

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1 right?  
2 A. I believe so.  
3 Q. And then the broker came back to you and you  
4 negotiated a deal with her only after you became  
5 certain that Swiss Re was going to reinsure, correct?  
6 A. Yes. And if I may clarify, I gave her an  
7 indication that we would try to fit it within their  
8 parameters.  
9 Q. But it's true that you weren't going to do  
10 it -- a deal unless Swiss Re participated  
11 substantially?  
12 A. Unless we had downstream coverage we were not  
13 going to do the deal.  
14 Q. And when you say downstream coverage you mean  
15 insurance or reinsurance, depending on --  
16 A. Correct.  
17 Q. This is a template, is it not, that's up here  
18 on the -- on the screen that is page 1 of Exhibit 17?  
19 That's a template that you used in your business at  
20 SCA, is it not?  
21 A. Well, not -- no. It -- it has components of  
22 a template.  
23 Q. Well, there is a template and then you have  
24 filled in certain items that are unique to Disson  
25 Furst and this particular matter?

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1 A. Correct.  
2 Q. I believe that the Exhibit A to Exhibit 17  
3 has been described as really the meat and potatoes of  
4 the deal, that document right there?  
5 A. Correct.  
6 Q. Now, going back --  
7 MR. HERMAN: Russell, if you would go  
8 back to slide 1.  
9 Q. (BY MR. HERMAN) The sponsor is Disson Furst  
10 Partners, correct?  
11 A. Correct.  
12 Q. And you don't -- you take no issue with the  
13 proposition that Tailwind is the sponsor for the  
14 purposes of our discussion here?  
15 A. Correct.  
16 Q. The type of promotion is described as what?  
17 A. It is reimbursement for an award contingent  
18 on outcome of the Tour de France.  
19 Q. How did SCA describe -- if you look at the  
20 first page there, it's true, is it not, that SCA when  
21 it prepared this agreement it described the type of  
22 promotion as a cyclist incentive bonus program,  
23 correct?  
24 A. What segment are you referring to?  
25 Q. Look up at the very top where it says type of

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1 promotion.  
2 A. Type of promotion. It should have read  
3 contract type, but...  
4 Q. I'm sorry?  
5 A. It should have read contract type, but  
6 that's...  
7 Q. In other words, you would not use this sort  
8 of template in an incentive bonus program; is that  
9 right?  
10 A. We did.  
11 Q. No, I know you did here and we will get to  
12 that in a minute, but as a rule at SCA you would not  
13 use this for an incentive program; is that what you're  
14 saying?  
15 A. I would say that an incentive is tied to the  
16 outcome of an event or series of events. It's tied to  
17 a sporting event if it's an athlete's incentive bonus.  
18 It could be some other type of -- but it's directly  
19 related to a sporting event.  
20 Q. All right, but my question is this: Whether  
21 or not this template showing type of promotion and  
22 you've got a cyclist incentive bonus program, would  
23 that template using the term promotion not normally be  
24 used for an athletic incentive program?  
25 A. It may have been. It would not be currently.

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1 Q. I understood you to say earlier that that --  
2 where it says type of promotion it shouldn't really  
3 say that, it should say type of contract. Did I  
4 misunderstand you?  
5 A. I said it should show type of contract.  
6 Q. Look at paragraph 1. This contract is issued  
7 for the sole benefit of the sponsor by SCA Promotions,  
8 Inc. Do you see that?  
9 A. Correct.  
10 Q. Is it true that this contract is for the sole  
11 benefit of Tailwind?  
12 A. Yes.  
13 Q. Do you have a contract with anyone other than  
14 Tailwind?  
15 A. No.  
16 Q. I understand that SCA takes the position that  
17 promotion doesn't mean cyclist incentive bonus  
18 program; is that right?  
19 A. Please clarify.  
20 Q. Well, I'm looking at your contract. It says  
21 type of promotion, cyclist incentive bonus program.  
22 Are you saying that that's not what promotion means as  
23 used in the contract?  
24 A. What it means is that sponsor has an  
25 incentive bonus arrangement with typically, in this

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1 case, an athlete and that our contract is to reimburse  
 2 or indemnify bonuses earned pursuant to the contract.  
 3 Q. Okay.  
 4 MR. HERMAN: Throw up 2, please, Russell.  
 5 Q. (BY MR. HERMAN) I'll represent to you,  
 6 Mr. Hamman, that this slide is an excerpt from  
 7 Claimants' Exhibit 1. You've seen this before, have  
 8 you not?  
 9 A. I have.  
 10 Q. And you agree that Mr. Armstrong was the  
 11 official winner of the Tour de France in those four  
 12 years?  
 13 A. That is correct.  
 14 Q. You're not disputing that at all?  
 15 A. That's correct.  
 16 Q. And that because he's the official winner  
 17 Tailwind owes him \$10 million for 2004. Do you  
 18 dispute that?  
 19 A. The contract -- as such I don't strictly  
 20 agree.  
 21 Q. You don't strictly agree?  
 22 A. No.  
 23 Q. Okay. When you're looking at Exhibit 17  
 24 there, is there anything in Exhibit 17 that permits  
 25 SCA -- explicitly permits SCA to withdraw coverage for

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1 its insured Tailwind, even if Mr. Armstrong is the  
 2 official winner, and if so, please point it out?  
 3 A. Not in this contract -- not in the contract,  
 4 but implicit in contracts of this -- this type.  
 5 Q. Before SCA entered into Exhibit 17, did it  
 6 request an application?  
 7 A. No.  
 8 Q. Did it pose a questionnaire?  
 9 A. No.  
 10 Q. Did it talk to anyone at Tailwind?  
 11 A. No.  
 12 Q. Was it aware of any comment that was made by  
 13 Tailwind that you know of that you can identify?  
 14 A. I cannot identify a specific one.  
 15 Q. Well, tell me as of January 9th, 2001 of any  
 16 comment by Tailwind that you can identify that you  
 17 knew of at that time?  
 18 A. There were numerous comments that were made.  
 19 Q. By whom?  
 20 A. By Mr. Armstrong.  
 21 Q. Perhaps you misunderstood my question.  
 22 A. By Tailwind, no.  
 23 Q. It's true, is it not, and I asked Mr. Compton  
 24 about this in his deposition -- it's true, is it not,  
 25 that you had no knowledge of any comment ever made by

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1 Tailwind about anything prior to entering this  
 2 contract?  
 3 A. Correct.  
 4 MR. HERMAN: Number 6, Russell.  
 5 Q. (BY MR. HERMAN) If you would look up at the  
 6 screen, this is an excerpt from the pleadings that you  
 7 have filed that you have told this panel, you say that  
 8 SCA says that the following representations were made  
 9 by Tailwind prior to the issuance of the insurance  
 10 contract, they were false and SCA actually and  
 11 justifiably relied upon them in its decision. I think  
 12 your pleadings say to enter into a business  
 13 relationship with Tailwind, but what the truth is is  
 14 that no one at Tailwind told you anything that's  
 15 listed there on A through D, did they?  
 16 A. I -- may I comment on this?  
 17 Q. Well, if you would attempt to answer my  
 18 question.  
 19 A. Tailwind to the extent Mr. Armstrong is a  
 20 representative of Tailwind certainly somebody at  
 21 Tailwind did.  
 22 Q. So answered a different but equally correct  
 23 way is that you were aware of statements that  
 24 Mr. Armstrong or responses Mr. Armstrong had made  
 25 publicly, but you're unaware of any discussion with

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1 Tailwind?  
 2 A. I was not aware of Mr. Armstrong's status  
 3 with Tailwind.  
 4 Q. Well, let me ask you this. You took on an  
 5 obligation of nine and a half million dollars,  
 6 correct?  
 7 A. Correct.  
 8 Q. And the risk that SCA indemnified was that  
 9 Tailwind would become obligated to pay Mr. Armstrong  
 10 that nine and a half million dollars, am I right?  
 11 A. Correct.  
 12 Q. Before you entered into this agreement, you  
 13 had never seen the agreement between Tailwind and  
 14 Armstrong, had you?  
 15 A. Correct.  
 16 Q. You had never asked for it?  
 17 A. Correct.  
 18 Q. You didn't know what the conditions of that  
 19 agreement were, did you?  
 20 A. I knew that it was contingent on  
 21 Mr. Armstrong winning the Tour de France in 2001, '02,  
 22 '03 and '04.  
 23 Q. Did you know anything else?  
 24 A. I knew that the amount of the obligation was  
 25 represented to be nine and a half million dollars that

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1 we were indemnifying and there was an additional  
 2 amount of money that was being sought from other  
 3 sources.  
 4 Q. Did you -- you issued an indemnity for nine  
 5 and a half million dollars covering a risk the terms  
 6 of which you knew only the barest essentials, correct?  
 7 A. We knew -- no. We knew a lot.  
 8 Q. What did you know about that agreement  
 9 between Tailwind and Armstrong, other than he was  
 10 entitled to these bonuses if he won -- if he won those  
 11 races?  
 12 A. Well, the -- you have a sporting event which  
 13 is being conducted in accordance with conditions of  
 14 contests, and that is what we bargained for.  
 15 Q. Well, a long story short is that -- long  
 16 story short is that you never saw how the obligation  
 17 of Tailwind to Armstrong would be created, that is you  
 18 never saw the contract?  
 19 A. That's correct.  
 20 Q. But you did know that you owed the money if  
 21 he won the races?  
 22 A. We knew that if he won the races pursuant --  
 23 well, not strictly.  
 24 Q. Pardon me?  
 25 A. Not strictly.

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1 Q. Well, did you know, for example, that  
 2 Tailwind would be obligated to pay Armstrong if he was  
 3 the official winner? You didn't know that until after  
 4 the 2004 tour, did you?  
 5 A. Did I see the Tailwind contract, no.  
 6 Q. Well, my -- what my question really is, and I  
 7 think there's an e-mail in here on June the 17th of  
 8 2004, that SCA requested a copy of the contract  
 9 between Armstrong and Tailwind, and until that time  
 10 you didn't know that Tailwind was obligated if  
 11 Armstrong was the official winner, did you?  
 12 A. We had not seen the contract.  
 13 Q. So the answer to my question is no, you  
 14 didn't know that?  
 15 A. Correct.  
 16 Q. Now, I asked Mr. Compton the following  
 17 questions. Let me just see -- I'll ask you the same  
 18 questions. You may answer them any way you wish.  
 19 It's true, is it not, that Tailwind never told SCA  
 20 either directly or indirectly that Lance Armstrong  
 21 never used PEDs during his career and was not using  
 22 them during the TDF event?  
 23 A. I disagree.  
 24 Q. Mr. Compton said, no, we would have assumed  
 25 that, but, no, nobody told us that; would he be in

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1 error in that?  
 2 A. He would be in error.  
 3 Q. So who at Tailwind told you that?  
 4 A. Mr. Armstrong publicly and often.  
 5 Q. Mr. Armstrong did not associate with or use  
 6 trainers, doctors or others who helped obtain or  
 7 facilitate the use of PEDs; who told you that?  
 8 A. Mr. Armstrong.  
 9 Q. When?  
 10 A. In numerous public declarations.  
 11 Q. Can you name one?  
 12 A. There were many of them.  
 13 Q. Well, can you name one?  
 14 A. No.  
 15 Q. Which one did you rely on?  
 16 A. The general tenor in virtually every article  
 17 on Mr. Armstrong or every television show where the  
 18 subject or any question of doping came up, was that  
 19 Mr. Armstrong did not use performance enhancing drugs,  
 20 did not condone the use of them and would have nothing  
 21 to do with anybody who used them, and that a man would  
 22 be crazy to use PEDs after he had cancer.  
 23 Q. Okay. Now, you understood that Mr. Armstrong  
 24 was Tailwind's employee, did you not?  
 25 A. No. I don't --

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1 Q. Well, how was it that you -- how was it that  
 2 they were going to owe him an incentive bonus if he  
 3 wasn't an employee?  
 4 A. He might have been a subcontractor, he might  
 5 have been an employee, we were not aware of the exact  
 6 relationship.  
 7 Q. You have no contractual relationship with  
 8 Mr. Armstrong at all, do you?  
 9 A. We have no contractual relationship with  
 10 Mr. Armstrong.  
 11 Q. And have you ever?  
 12 A. No.  
 13 Q. When was it and who with Tailwind told you  
 14 that the Tour de France and the UCI properly policed  
 15 the sport? Who told you that?  
 16 A. It was a general assumption that this was a  
 17 major league sporting event and that it was policed.  
 18 Q. Who at Tailwind made the misrepresentation to  
 19 you of any of those items up there?  
 20 A. Mr. Armstrong stated publicly and often that  
 21 he had never tested positive, that the testing worked,  
 22 that -- and his general -- it was a constant drumbeat  
 23 every time the subject came up in any article.  
 24 Q. Is there any reason that there was no  
 25 mention, no article, no shred of document in the SCA

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1 file that had anything to do with any representations  
 2 by anyone, ever --  
 3 A. Could you restate that?  
 4 Q. Well, Mr. Compton said that he went and  
 5 looked in the file when you put him in charge of this  
 6 investigation and there wasn't a single shred of  
 7 information about any representation by anyone. Do  
 8 you dispute that?  
 9 A. No.  
 10 Q. Now, you did -- you say or you represented to  
 11 this panel that these issues were critical to you in  
 12 your consideration of this agreement. Look at  
 13 Claimants' Exhibit 5.  
 14 A. Exhibit 5?  
 15 Q. Claimants' Exhibit 5, yes.  
 16 A. That's correct.  
 17 Q. Can you point to anything that you did, other  
 18 than what's reflected up there on the screen?  
 19 A. Yes.  
 20 Q. Can you tell me -- first of all, did you  
 21 review any mainstream press --  
 22 A. No.  
 23 Q. -- in analyzing this matter?  
 24 A. No.  
 25 Q. Did you analyze or review any cycling press?

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1 A. No.  
 2 Q. Did you examine the recesses of your  
 3 consciousness?  
 4 A. We were operating under the presumption that  
 5 it was a fair and honest game.  
 6 Q. So it's true, just as Mr. Compton said in  
 7 answer to my question, nobody told us, we would have  
 8 assumed such and such; that's really what the  
 9 situation was, wasn't it?  
 10 A. I disagree.  
 11 Q. Well, can you point to any investigation, any  
 12 underwriting work that you did on behalf of SCA, other  
 13 than what's reflected on exhibit -- on the slide  
 14 number 7 which is up there?  
 15 A. No.  
 16 Q. You referred this matter to Swiss Re, did you  
 17 not?  
 18 A. Correct.  
 19 Q. And you negotiated with Swiss Re?  
 20 A. We sent them the case and asked them if they  
 21 were interested in it at these prices.  
 22 Q. And what sort of information did you provide  
 23 them, other than what's reflected up there on  
 24 Claimants' Exhibit 5?  
 25 A. Well, I did my -- I -- I'm sure I sent them

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1 my odds calculation.  
 2 Q. Which was a mathematical --  
 3 A. It was based on formulas.  
 4 Q. Well, it was a three-to-one for every year,  
 5 2001 through 2004, wasn't it?  
 6 A. I put up and assessed odds, that's correct.  
 7 Q. Okay. And your analysis was based solely  
 8 upon the mathematical or exponential multiplying of  
 9 .25 times .25 times .25, et cetera?  
 10 A. We looked at the -- his age, we looked at  
 11 past Tour de Frances and we concluded that that was a  
 12 fair price.  
 13 Q. Which was \$420,000?  
 14 A. Including our commission allowance for ESIX.  
 15 Q. How do you define promotion? What's a  
 16 promotion?  
 17 A. A promotion typically is in the context of a  
 18 sales or a product promotion. This is not a  
 19 promotion.  
 20 Q. Neither the contract nor the Tour de France?  
 21 A. Correct.  
 22 Q. But you defined it -- SCA, whoever prepared  
 23 this contract, defined it as a promotion; didn't they?  
 24 A. It was -- those were the words in the  
 25 contract, that's correct.

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1 MR. HERMAN: Go back to number 1,  
 2 Russell.  
 3 Q. (BY MR. HERMAN) Do you agree that Tail -- in  
 4 paragraph 7, for example, do you agree that Tailwind  
 5 has nothing to do with the implementation or conduct  
 6 of the Tour de France?  
 7 A. Other than entering a team they have nothing  
 8 to do with it.  
 9 Q. Well, let's say -- let's substitute the --  
 10 let's substitute what you all are now taking the  
 11 position is the promotion in this -- of paragraph 7.  
 12 So that it would read SCA is not a party to or  
 13 involved in the conduct of the Tour de France and  
 14 Tailwind shall indemnify SCA for any claims initiated  
 15 as a result of Tailwind's implementation or conduct of  
 16 the Tour de France. Now, does that make sense to you  
 17 at all?  
 18 A. We have a cyclist incentive bonus program and  
 19 the idea is that Mr. Armstrong would participate in  
 20 the Tour de France and if he won it and Tailwind was  
 21 liable that we would reimburse them.  
 22 Q. Okay. What I'm asking -- let's get back to  
 23 my question, if you don't mind. The -- I have  
 24 substituted for the word promotion what SCA now takes  
 25 or now is asserting is the -- is the definition of

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<p>1 promotion in this agreement, which is the Tour de 2 France. But you know and SCA has confirmed that 3 Tailwind has nothing to do with the implementation or 4 conduct of the Tour de France? 5 A. Tailwind has something to do with how their 6 cyclists conduct themselves within the Tour de France. 7 Q. Are you taking the position, which would be 8 the third one taken by SCA -- do you take the position 9 that Tailwind has any responsibility for the 10 implementation or conduct of the Tour de France? 11 A. They have responsibility for their conduct 12 within the Tour de France. 13 Q. Do they have any responsibility for the 14 implementation or conduct of the Tour de France -- of 15 the Tour de France? 16 A. No. 17 Q. And conversely, a sponsor would have a great 18 deal to do with the implementation and conduct of a 19 hole-in-one contest, for example? 20 A. They might. 21 Q. Well, the sponsor would provide to SCA the 22 rules that would govern their hole-in-one contest, 23 correct? 24 A. It depends. 25 Q. Well, would you all be interested in selling</p>	<p>1 regulations or conditions of the Tour de France, did 2 it? 3 A. That's correct. 4 Q. Look at Exhibit 111. This is probably the 5 very last exhibit in the book. Do you see it? 6 SCA Promotions, Inc. Contingent Prize 7 Indemnification Contract Number 3164? 8 MR. TILLOTSON: Keep going, Bob. I think 9 it's the last exhibit. 10 A. 111, I've got, which is -- it's a golf -- I'm 11 looking at the same one. 12 Q. (BY MR. HERMAN) Okay. This, likewise, is an 13 athletic incentive, correct? 14 A. Correct. 15 Q. Now, you have redacted the sponsor's name, 16 but can we agree that just for the simplicity of 17 talking about this particular document let's say 18 Calloway as a sponsor; would that be all right? 19 A. We will presume it's Calloway for purposes of 20 this discussion. 21 Q. Okay. The sponsor name may be Calloway, as a 22 golf equipment or clothing manufacturer? 23 A. Correct. 24 Q. The type of promotion is PGA golfer 25 incentive?</p>
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<p>1 coverage for a hole-in-one contest the rules of which 2 you had no idea about? 3 A. No. 4 Q. All right. Well, tell me the circumstance 5 where you wouldn't be informed by a sponsor. 6 A. In the case of a major sporting event. 7 Q. I'm talking about a hole-in-one contest. 8 A. A hole-in-one, you would certainly be aware 9 of numerous details regarding the hole-in-one. 10 Q. Well, but the sponsor is under an obligation 11 to represent to SCA the rules and conditions under 12 which the promotion is going to be implemented and 13 conducted, isn't that true? 14 A. Typically. 15 Q. And the sponsor may not change the rules or 16 conditions without notifying SCA in advance? 17 A. That's correct. 18 Q. Now, let's look at paragraph 6. Paragraph 6 19 is designed for precisely what I just hypothetically 20 presented to you, isn't it? Where the sponsor 21 controls the conduct and implementation of the 22 promotion, the sponsor must adhere to those rules as 23 represented or SCA is not liable, isn't that true? 24 A. Yes. 25 Q. And Tailwind had no control over the rules,</p>	<p>1 A. Correct. 2 Q. Now, where would you find the conditions of 3 the golfer incentive, the PGA golfer incentive? 4 A. Typically page 2. 5 Q. Okay. Would you review the contract between 6 Calloway and this particular golfer prior to entering 7 into this agreement? 8 A. I might not. 9 Q. Well, I mean, I don't mean you personally. 10 A. Somebody would. 11 Q. Somebody would? 12 A. Presumably. 13 Q. But nobody took the time to review the 14 contract -- the cyclist incentive bonus program in the 15 Tailwind matter; do I understand that correctly? 16 A. I don't -- do not know who reviewed it. 17 Q. Or if anyone did? 18 A. Or if anyone did. 19 Q. If you had the contract, there wouldn't be 20 much point in asking for the contract on June the 17th 21 of 2004, two weeks before the start of the Tour de 22 France, would there? 23 A. If we had the contract? 24 Q. Yes, sir. 25 A. No -- well, if we had it, there certainly</p>

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1 wouldn't be much point in that.  
 2 Q. Well, but you know that SCA requested a copy  
 3 of the Tailwind contract on June the 17th of 2004 --  
 4 A. I believe we did.  
 5 Q. -- three days after Mr. Walsh's article in  
 6 the Sunday Times ran?  
 7 A. Correct.  
 8 Q. Now, if you'll look at paragraphs 6 and 7.  
 9 MR. HERMAN: Russell, if you go back to  
 10 the first page.  
 11 THE WITNESS: Are we on --  
 12 Q. (BY MR. HERMAN) We are still on Exhibit 111.  
 13 A. 3164?  
 14 Q. Well, first of all, let's go up to  
 15 paragraph 1. If we are going to just use Calloway as  
 16 an example, the contract would be issued for the sole  
 17 benefit of Calloway, correct?  
 18 A. Correct.  
 19 Q. In the next sentence this says, this is not  
 20 an insurance policy and SCA is not an insurance  
 21 company. Do you see that?  
 22 A. Correct.  
 23 Q. That does not appear in the Tailwind  
 24 contract, does it?  
 25 A. That's correct.

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1 Q. Despite the fact that this contract,  
 2 Exhibit 111, was issued approximately one month later?  
 3 A. Well, two months later, but approximately one  
 4 month later, yes, sir.  
 5 Q. All right. Now, if you look at paragraph 6  
 6 and 7, they are identical to the -- paragraph 6 and 7  
 7 in the Tailwind --  
 8 A. Correct. I mean, I'll accept that  
 9 representation. I haven't compared them.  
 10 Q. Okay. Well, I mean, if you come up with  
 11 something different, let me know, because I --  
 12 A. Okay. We will assume they are.  
 13 Q. Okay. Tell me what the promotion is.  
 14 A. Promotion is the tournaments that are  
 15 covered.  
 16 Q. Okay.  
 17 A. For example, let's suppose that the  
 18 tournament suddenly had two golfers in it and was  
 19 shortened or none of the regular PGA tour players  
 20 could appear and suddenly you had local amateurs  
 21 filling out the field. Things would be different if  
 22 you're incenting somebody for that.  
 23 Q. They would be different, that's true. But  
 24 let's talk about that for just a moment.  
 25 Again, using our example of Calloway, and

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1 if you'll look at page 2, let's just take the Bay Hill  
 2 Invitational.  
 3 A. Okay.  
 4 Q. Sentimentally I'm a big Arnie fan, so let's  
 5 talk about that.  
 6 A. Okay.  
 7 Q. So what you're saying is that with no idea  
 8 what the terms or conditions under which Calloway  
 9 would be liable to the designated golf professional  
 10 for the \$10,000? That if the field were reduced, that  
 11 SCA would have no liability, even if its insured had  
 12 liability; is that what you're saying?  
 13 A. The conditions would change dramatically.  
 14 Q. I didn't ask you that. I asked you --  
 15 A. We might not.  
 16 Q. Well, so where in the contract does it say  
 17 that -- and if you'll look at paragraph 2.b on  
 18 Exhibit A it says, SCA indemnifies Calloway in respect  
 19 of Calloway's liability to award such performance  
 20 awards to the designated golf professional to the  
 21 extent provided for in this contract. Do you see  
 22 that?  
 23 A. Item 6 on the front page.  
 24 Q. Okay. So it's your position that even if  
 25 Calloway is obligated to pay this gentleman \$10,000,

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1 that SCA does not have to pay; is that what you're  
 2 saying?  
 3 A. If the game is dramatically changed from what  
 4 it is reasonable for SCA to believe the game is, that  
 5 would affect our liability. I would expect it to be  
 6 their responsibility to advise us that this is a  
 7 different sort of tournament.  
 8 Q. Where in this agreement, Exhibit 111, does it  
 9 give you the right to independently determine whether  
 10 your insured is liable to its golf professional?  
 11 A. It says if the actual conditions differ in  
 12 any way from those represented to the sponsor -- I  
 13 mean by the sponsor.  
 14 Q. Okay. Now, is it your position that Calloway  
 15 has anything to do with the implementation or conduct  
 16 of the Bay Hill Invitational?  
 17 A. If the Bay Hill Invitational conditions were  
 18 other than a PGA tour event, we would expect them to  
 19 notify us.  
 20 Q. No, no, no, I didn't ask you that. Does  
 21 Calloway have any authority or any responsibility for  
 22 the implementation or conduct of the tournament known  
 23 as the Bay Hill Invitational?  
 24 A. Presumably not.  
 25 Q. Well, you know not, don't you?

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1 A. No. They may have some input into it. I  
 2 would presume not that they -- you know, I couldn't  
 3 totally rule it out.  
 4 Q. Well, do you know of any tournaments where  
 5 the PGA allows equipment manufacturers to implement  
 6 and conduct the tournament?  
 7 A. There may be situations where they're able to  
 8 have some input on some elements of the tournament. I  
 9 would suspect not. It's usually standard tournament  
 10 and we pretty much know what a PGA tournament is going  
 11 to look like.  
 12 Q. So it's your position with respect to  
 13 Exhibit 111 that despite the agreement defining the  
 14 type of promotion as PGA golfer incentive that that's  
 15 not what it means at all, that it means the  
 16 tournaments that are listed back here for which the  
 17 equipment manufacturer has no responsibility?  
 18 A. No, but the equipment manufacturer has  
 19 responsibility for what their liability might be.  
 20 Q. When did the -- when did this little  
 21 sentence, this is not an insurance policy and SCA is  
 22 not an insurance company, when did that get in here?  
 23 MR. TILLOTSON: We are not supposed to  
 24 object, but I do on relevance. The insurance issue  
 25 has been decided, and I don't see the relevance of

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1 that particular --  
 2 MR. HERMAN: There's a very big issue  
 3 about a knowing and intentional violation here, so I  
 4 think I'm entitled to find out when it was that they  
 5 decided to put that in there.  
 6 ARBITRATOR FAULKNER: Objection  
 7 overruled.  
 8 Answer the question.  
 9 A. At some point I guess between the two  
 10 contracts.  
 11 Q. (BY MR. HERMAN) Between January 9, 2001 and  
 12 February 22, 2001?  
 13 A. Correct.  
 14 Q. Do you agree with Mr. Compton's testimony  
 15 that he suggested that be put in there because he had  
 16 heard that insurance companies are responsible for  
 17 treble damages?  
 18 A. I hadn't heard that.  
 19 Q. Well, I didn't -- I didn't mean to imply that  
 20 you had heard it, but do you -- if Mr. Compton  
 21 testified that way, do you agree with that?  
 22 A. The reason to put it in there is we believed  
 23 at the time and we still believe that our products are  
 24 not insurance products, though the panel has ruled  
 25 otherwise.

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1 Q. Okay. So if the rationale was that it needed  
 2 to go in there because insurance companies are  
 3 responsible for treble damages, then that would not  
 4 comport with your recollection, true?  
 5 A. The purpose for the clause is to clarify to  
 6 the customer that we are not an insurance company and  
 7 be sure that they understand that that's the case.  
 8 Q. Getting back to my question, if it's been  
 9 represented that the reason the clause went in the  
 10 contract was because of fear of treble damages, do you  
 11 disagree with that?  
 12 A. I disagree.  
 13 Q. Are your lawyers normally responsible for  
 14 preparing these contracts, or do you do that yourself?  
 15 A. I believe that it was my desire to use that  
 16 clause in the contract.  
 17 Q. Whose -- I didn't mean to interrupt you. I'm  
 18 sorry.  
 19 A. It was my desire to put that clause in the  
 20 contract.  
 21 Q. So that was your idea, it didn't originate  
 22 with your lawyers?  
 23 A. I don't believe it did.  
 24 Q. And you do have in-house lawyers. I believe  
 25 we have met Mr. Bandy and Mr. Compton.

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1 A. That's correct.  
 2 Q. Was it your decision not to put that on your  
 3 web site?  
 4 A. I certainly don't believe we say we are an  
 5 insurance company on the web site.  
 6 Q. Do you say you're not an insurance company?  
 7 A. We believe we are not an insurance company.  
 8 Q. I understand, and I don't want to rehash that  
 9 argument, but do you say you're not an insurance  
 10 company on your web site?  
 11 A. Not to my knowledge.  
 12 Q. Any reason for that?  
 13 A. It didn't get done.  
 14 Q. Oversight?  
 15 A. I would assume so.  
 16 Q. Now, it's been said, Mr. Hamman, you've  
 17 been -- been described by some of your employees as  
 18 someone who religiously reads the sports pages. Is  
 19 that true?  
 20 A. No.  
 21 Q. Well, I didn't mean to bring up religion or  
 22 anything, but -- of course, in Texas these days it's  
 23 close. So you don't really pay much attention to the  
 24 sports page, right?  
 25 A. No, I read them from time to time.

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1 Q. But you're not a -- you're not a regular --  
2 A. I'm not an everyday reader.  
3 Q. Do you agree with your counsel that the  
4 relationship of Mr. -- of Dr. Ferrari -- do you know  
5 who Dr. Ferrari is?  
6 A. I believe I do.  
7 Q. You do now, right?  
8 A. Yes.  
9 Q. You know he trains and has trained hundreds  
10 of the lead athletes over the years?  
11 A. That's not the word I would use.  
12 Q. What do you mean?  
13 A. I think he has helped them in doping  
14 programs.  
15 Q. Well, irrespective of your characterization  
16 of it, you know who he is, right?  
17 A. I'm aware of who Dr. Ferrari is.  
18 Q. And do you agree with your counsel that his  
19 assistance to either Mr. Carmichael or Mr. Armstrong  
20 was made public in 2001?  
21 A. Do I agree that it was made public in 2001?  
22 Q. Yes, sir.  
23 A. I believe it was made public in 2001.  
24 Q. All right. Now, in 2001 when it was made  
25 public did SCA move to rescind this agreement?

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1 A. No.  
2 Q. Did SCA refund the \$420,000?  
3 A. No.  
4 Q. Did SCA give Tailwind an opportunity to go  
5 place this coverage with other reputable insurers?  
6 A. No.  
7 Q. It's true, is it not, that in 2002 and 2003,  
8 Swiss Re covered 97 and a half percent of the exposure  
9 here?  
10 A. That's correct.  
11 Q. And did you, on behalf of SCA, attempt to  
12 secure coverage for the remaining five million?  
13 A. I'm not sure when we started looking at it,  
14 but we looked at the marketplace at various points in  
15 time at the marketplace had changed since 2001. We  
16 never identified an opportunity --  
17 Q. You never what?  
18 A. -- to place it at favorable terms.  
19 Q. Well, favorable terms being what?  
20 A. Any number that would make sense to us. It  
21 basically wasn't available.  
22 Q. So you could have insured it, but the premium  
23 would have been too high; is that what you're saying?  
24 A. I'm not aware that we could get an offer at  
25 any price.

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1 Q. Who did you talk to?  
2 A. We looked at -- on a couple of occasions we  
3 looked at posted odds from bookmakers to get a frame  
4 of reference.  
5 Q. Are you in a habit of reinsuring your risks  
6 with bookmakers?  
7 A. No, we use that as a basis for purchasing  
8 insurance, knowing that they would be higher priced.  
9 Q. Knowing that insurers would be higher priced?  
10 A. Correct.  
11 Q. Well, you would expect the market to change  
12 after at least two and perhaps three consecutive wins,  
13 wouldn't you?  
14 A. We were dealing with the environment we found  
15 ourselves in and we determined that --  
16 Q. I think everybody does that. But who -- what  
17 insurance companies did you approach or what  
18 reinsurance companies did you approach?  
19 A. None.  
20 Q. I believe we talked about Mr. Floerchinger  
21 earlier as being the corporate representative for  
22 Prize Indemnity Limited. Do you recall that?  
23 A. Correct.  
24 Q. Have you read Mr. Floerchinger's deposition?  
25 A. I will amend my prior response that we did

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1 place some coverage with Prize Indemnity Limited.  
2 Q. Okay. Okay. A million two?  
3 A. We purchased a million two and --  
4 Q. Now, let me ask you --  
5 MR. HERMAN: Russell, would you throw up  
6 Exhibit 58, please.  
7 Q. (BY MR. HERMAN) Do you recognize Claimants'  
8 Exhibit 58 that -- as a corporate resolution or  
9 whatever of PIL?  
10 A. Correct.  
11 Q. And is that your signature there, Robert D.  
12 Hamman, director?  
13 A. Yes, it is.  
14 Q. And is that Mr. Floerchinger's --  
15 A. Yes, sir.  
16 Q. And you would agree that Mr. Floerchinger --  
17 well, PIL would produce the first and most  
18 knowledgeable about its business and did so when it  
19 produced Mr. Floerchinger for his deposition?  
20 A. He would be as knowledgeable as anyone.  
21 Q. Okay. Now, it says -- well, strike that.  
22 Let's go to 59.  
23 MR. HERMAN: Please, Russell, Exhibit  
24 59.  
25 Q. (BY MR. HERMAN) Incidentally, that

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1 Exhibit 58 was dated June 1, 2004, which predated the  
 2 2004 Tour de France by approximately one month,  
 3 correct?  
 4 A. Correct.  
 5 Q. Now, Exhibit 59 is a document dated  
 6 July 26th, 2004, which refers to the claim payable of  
 7 whatever, correct?  
 8 A. Correct.  
 9 MR. HERMAN: Okay. Now, would you put up  
 10 Mr. Floerchinger's excerpts, if you have them.  
 11 Q. (BY MR. HERMAN) I'll represent to you that  
 12 on page 50 of Mr. Floerchinger's deposition I asked  
 13 him did PIL take on a million-two in liability risk in  
 14 exchange for \$200,000?  
 15 Answer: In exchange for \$200,000.  
 16 That is on page 50.  
 17 Question: So if SCA made a claim on PIL  
 18 for that million two that PIL had assumed this  
 19 obligation, correct?  
 20 And the answer is, that's correct.  
 21 Question: PIL paid the claim?  
 22 Answer: Yes.  
 23 Question: In the amount of a million  
 24 two?  
 25 Answer: That's correct.

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1 Did I read that correctly?  
 2 A. Yes.  
 3 Q. Okay. Now, do you know what date the Tour de  
 4 France in 2004 was over?  
 5 A. Some date in late July.  
 6 Q. I'll represent to you that it was July 20th.  
 7 A. Okay. I'll accept that.  
 8 Q. And look, if you will, Mr. Hamman, at  
 9 Exhibit 24.  
 10 A. Exhibit 24?  
 11 Q. Claimants' Exhibit 24.  
 12 A. Okay. I can do that. Correct.  
 13 Q. All right. That's an insurance agreement  
 14 between Prize Indemnity Limited and SCA Promotions, is  
 15 it not?  
 16 A. Correct.  
 17 Q. Dated December 31, 2002?  
 18 A. Correct.  
 19 Q. Where it says the -- it says period,  
 20 December 2002 through 31 August, 2004 terminating  
 21 concurrently with the termination of SCA's obligations  
 22 under SCA contract number 31122. Did I read that  
 23 correctly?  
 24 A. Correct.  
 25 Q. Now, it says in the interest -- it says the

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1 interest is to reimburse SCA the amount to be paid by  
 2 SCA not to exceed SCA's maximum liability under the  
 3 terms of arrangement, the terms of which are specified  
 4 in contract 31122 entered into and declared during the  
 5 agreement period under which the insured with Disson  
 6 Furst Partners as an agent for USPS is to pay the sum  
 7 of \$5 million if Lance Armstrong wins the 2003 and  
 8 2004 Tour de France, correct?  
 9 A. Correct.  
 10 Q. I read that correctly, correct?  
 11 A. Yes.  
 12 Q. Now, one day after the conclusion of the 2004  
 13 Tour de France, the insurance for which SCA has  
 14 refused to pay, SCA makes demand on their reinsurer,  
 15 PIL, for the sum of \$1.2 million; isn't that true?  
 16 A. Not strictly.  
 17 Q. Well, isn't that what Mr. Floerchinger  
 18 testified to?  
 19 A. We collected the 1.2 million, but it has to  
 20 be looked at in conjunction with the other  
 21 transaction.  
 22 Q. Okay. Well, what it -- whether it is looked  
 23 at in conjunction with the other transaction or in  
 24 conjunction with anything else, SCA as soon as  
 25 Mr. Armstrong crossed the finish line -- well, they

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1 might have waited a reasonable amount of time for the  
 2 body to get cold, but in any event, it didn't -- it  
 3 was less than 24 hours that you all were making demand  
 4 on your insurance company for the \$1.2 million, isn't  
 5 that true?  
 6 A. Not strictly.  
 7 Q. Well, that's what Mr. Floerchinger said,  
 8 isn't it?  
 9 A. Yes, we collected.  
 10 Q. Now, how much of that 1.2 million that you  
 11 collected because Mr. Armstrong won this 2004 Tour de  
 12 France -- how much of that 1.2 million did you remit  
 13 on to Tailwind, your insured?  
 14 A. We put it on deposit.  
 15 Q. I didn't ask you that, Mr. Hamman. We know  
 16 about the deposit and we will get into that in some  
 17 more detail.  
 18 A. Okay.  
 19 Q. What I asked you was: You took the 1.2. Did  
 20 you pass it on to your insured?  
 21 A. No.  
 22 Q. All right. And you would not be entitled to  
 23 the 1.2 million unless SCA had a liability under  
 24 contract 31122, that's precisely what that insuring  
 25 agreement says, isn't it?

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1 A. That's correct, but I need to clarify.  
 2 Q. Well, I'm sure Mr. Tillotson will have  
 3 questions for you on this issue.  
 4 MR. HERMAN: Russell, would you put up 6  
 5 again?  
 6 Q. (BY MR. HERMAN) Let's talk a little bit  
 7 about what was happening around SCA at or around the  
 8 time of the 2004 Tour de France. The book came out.  
 9 A. Correct.  
 10 Q. That is, LA Confidential, correct?  
 11 A. Correct.  
 12 Q. You don't read French, do you?  
 13 A. I took it in high school and in college, but  
 14 the answer to your question is no.  
 15 Q. I mean no offense, I don't either. But in  
 16 any event, the book is not available in English, is  
 17 it?  
 18 A. No.  
 19 Q. It wasn't available in 2004 and it's not  
 20 available today in English, is it?  
 21 A. Correct.  
 22 Q. After you read the book -- well, strike that.  
 23 Let me back up a little bit.  
 24 Mr. Bandy is the more sophisticated,  
 25 obviously, of the three of y'all, he does read French

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1 and translated portions of the book, did he not?  
 2 A. Correct.  
 3 ARBITRATOR CHERNICK: Mr. Herman, could  
 4 you just establish a point in time when the book was  
 5 either published or when Mr. Hamman first  
 6 understood -- when he was aware of it so we can fit it  
 7 into the time line?  
 8 MR. HERMAN: Okay, I'll try to do that.  
 9 Q. (BY MR. HERMAN) On June 14th, more or less,  
 10 an article appeared in the Sunday Times that was  
 11 written by Mr. Walsh, was it not? Do you recall?  
 12 A. June 14th, I don't recall the -- I'm aware of  
 13 the publication of the book on or about June 14th.  
 14 Q. Did you read the Sunday Times article?  
 15 A. I don't have a recollection.  
 16 Q. Okay. So when -- when was the translation by  
 17 Mr. Bandy made available to employees of SCA?  
 18 A. I believe I saw some excerpts late July,  
 19 early August.  
 20 Q. Okay. Once you read that -- well, strike  
 21 that.  
 22 Did you have any recollection -- I  
 23 remember in your deposition you said within your  
 24 consciousness somewhere was this idea that  
 25 Mr. Armstrong had responded to accusations. Within

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1 that -- those recesses of that consciousness, did you  
 2 call upon a knowledge that in 2001, as Mr. Tillotson  
 3 has said, the relationship or training relationship  
 4 between Mr. Armstrong and Dr. Ferrari was made public?  
 5 A. I don't recall being aware of that.  
 6 Q. You were certainly aware of that in -- by the  
 7 end of July of 2004?  
 8 A. By the end of July. As soon as I reviewed  
 9 the book contents, yes.  
 10 Q. And as soon as you reviewed the book content,  
 11 you were aware of the training relationship, whatever  
 12 it was, between Dr. Ferrari and Mr. Armstrong,  
 13 correct?  
 14 A. We were aware of the contents of the book.  
 15 We certainly were not -- we possess more information  
 16 now.  
 17 Q. Pardon me?  
 18 A. We have more information at this point than  
 19 we had at that time.  
 20 Q. Well, you certainly knew as of -- before the  
 21 end of the Tour de France most likely, of the  
 22 association with Dr. Ferrari, did you not?  
 23 A. We knew as soon as I reviewed excerpts in the  
 24 book, that was one of the -- I believe that was one of  
 25 the items that was in John's translation.

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1 Q. Well, and you also know that the, quote,  
 2 credibility or status of Mr. Ballester and Mr. Walsh  
 3 were, again, quote, verified by members of your staff  
 4 prior to September 1, 2004?  
 5 A. We believed them to be credible, yes.  
 6 Q. So it's true at least as of September 1, 2004  
 7 you were aware of who Dr. Ferrari was and his  
 8 association with Mr. Armstrong; that's true, isn't it?  
 9 A. That's correct.  
 10 Q. And September 1, 2004 was more than 90 days  
 11 prior to April 4, 2005, wasn't it?  
 12 A. Correct.  
 13 Q. So at least as to the alleged  
 14 misrepresentations up here, you were aware of B, had  
 15 satisfied yourself as to the truth of B before you  
 16 ever wrote your letter of September 2nd; that's true,  
 17 isn't it?  
 18 A. Not completely.  
 19 Q. Well, what's incomplete about it?  
 20 A. Dr. Ferrari was convicted in late September.  
 21 We were not aware of that.  
 22 ARBITRATOR CHERNICK: Late September of?  
 23 MR. HERMAN: 2004.  
 24 ARBITRATOR CHERNICK: '04.  
 25 Q. (BY MR. HERMAN) Well, just for the purposes

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1 of discussion, by the end of September certainly you  
 2 had verified B, right?  
 3 A. We were not aware of the particulars of the  
 4 charges against him. We only saw that he had been  
 5 convicted. We had not received any documentation on  
 6 what all was really involved.  
 7 Q. So you were still up in the air on  
 8 Dr. Ferrari by then; is that what you're saying?  
 9 A. Well, it certainly didn't look like  
 10 Dr. Ferrari was anything other than a doping doctor,  
 11 but we certainly did not -- we had not reviewed the  
 12 trial transcript. We had not translated the exact  
 13 nature of the conviction.  
 14 Q. Okay. Well, let me put it to you a little  
 15 bit different way. As of the end of September, if you  
 16 had known in January 2001 what you knew at the end of  
 17 September 2004, would you have entered into this deal?  
 18 A. No.  
 19 Q. All right. And that would hold true for all  
 20 four of those, wouldn't it, that is A, B, C and D  
 21 shown up there on slide 6?  
 22 A. That if we were aware that Lance Armstrong  
 23 had used PEDs during --  
 24 Q. No, no, no. I don't mean the interrupt you.  
 25 ARBITRATOR LYON: Would you restate the

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1 question?  
 2 MR. HERMAN: Yes, I'll be happy to  
 3 restate it and if it was not understandable, I  
 4 apologize.  
 5 Q. (BY MR. HERMAN) If you've answered me that  
 6 if the state of knowledge that you had at the end of  
 7 September, if you had known that in January 2001, you  
 8 claim you would have never done this deal; is that  
 9 right?  
 10 A. For sure.  
 11 Q. For sure. Okay.  
 12 A. I mean, not even close.  
 13 Q. Okay. All right. Fair enough.  
 14 And that level of knowledge and  
 15 understanding and belief that you had as of the end of  
 16 September would have prevented you doing this deal  
 17 pursuant to any one of those four alleged  
 18 misrepresentations; isn't that true?  
 19 A. Well, if you could go through them one at a  
 20 time.  
 21 Q. Well --  
 22 A. I mean --  
 23 Q. Whatever you had -- whatever stated belief or  
 24 knowledge you had reached as of the end of September  
 25 was enough for you to have -- for you to take the

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1 position that you would not have done the deal if you  
 2 had that knowledge; that's true?  
 3 A. By the end of September --  
 4 Q. Yes, sir.  
 5 A. -- 2004 --  
 6 Q. Yes, sir.  
 7 A. -- if we had the information that we had at  
 8 that point, we certainly would not have done the deal.  
 9 Q. Okay. Now, you were present here when  
 10 Mr. Tillotson said that Mr. Lynn gave notice that you  
 11 all weren't paying on December 20th. What information  
 12 did you have on December 20th -- well, strike that.  
 13 Let me back up. Let me just withdraw that question.  
 14 As of the end of September, it's true, is  
 15 it not, that your claim that these issues had they  
 16 been disclosed -- now, I've got myself all tied up  
 17 here, Mr. Chairman.  
 18 ARBITRATOR FAULKNER: Do you want to take  
 19 a quick recess to reorganize?  
 20 MR. HERMAN: No, I don't need that. I  
 21 just need to make sure I ask the question in a  
 22 semi-intelligent way.  
 23 Q. (BY MR. HERMAN) Whatever you had discovered  
 24 by the end of September was enough to confirm that had  
 25 you discovered it before January 2001, you would have

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1 never issued this insurance contract, correct?  
 2 A. Correct.  
 3 Q. Now, when do you say that SCA began their  
 4 quote investigation of this claim?  
 5 A. Well, the -- well, as soon as we became aware  
 6 of the publication of the book, we felt it was  
 7 necessary to ascertain exactly what was said in the  
 8 book and that our objective was not to wait until  
 9 Mr. Armstrong won the Tour de France, but to concede  
 10 it was a likelihood and attempt to look at whatever  
 11 factors that we could identify absent the book and see  
 12 if we noted any problems.  
 13 Q. So I take it that as the CEO, and I believe  
 14 you confirmed this in your deposition, that the  
 15 conduct of the investigation was while not undertaken  
 16 by you necessarily personally was certainly under your  
 17 direction, correct?  
 18 A. I was aware -- well, I was aware that the  
 19 book apparently contained some information that was  
 20 hitherto not available to me, or I was unaware of  
 21 whether it was available. It may have been available  
 22 but I just -- I wasn't aware of it. That raised some  
 23 questions. And the objective was to initially see  
 24 that -- if we could meet our September 3rd date to pay  
 25 the claim.

1 Q. So what did you -- so your objective was to  
 2 meet the September 2 date for paying the claim?  
 3 A. Well, September 3, I believe, was the date,  
 4 but we won't --  
 5 Q. Well, I don't want to split hairs with you  
 6 so -- but September 2 or 3 anyway?  
 7 A. Correct.  
 8 Q. So I guess you went out and looked for as  
 9 much information as you could that would confirm  
 10 coverage and confirm SCA's obligation to pay, right?  
 11 A. We thought it would be useful to see if we  
 12 could identify any problems that we felt might be in  
 13 the book or might be pursuant to the book so that we  
 14 would have at least looked at them without -- we  
 15 were -- we were, one, trying to contact the authors.  
 16 We were very unsuccessful at that. We were --  
 17 Q. Your success rate has picked up pretty good  
 18 over the last year in terms of contacting Mr. Walsh,  
 19 hasn't it?  
 20 A. Yes.  
 21 Q. All right, go ahead.  
 22 A. So the book gave rise to concerns. That's  
 23 what happened.  
 24 Q. That's kind of the long and short of it right  
 25 there?

1 that's correct.  
 2 Q. Well, really the question was after we got  
 3 out of the way the fact that Bandy and you and Compton  
 4 were involved in an investigation, I asked you, have  
 5 there been any internal memoranda as to what we ought  
 6 to be looking for, et cetera?  
 7 Answer: It's pretty clear what we ought  
 8 to be looking for.  
 9 I said, you said it's pretty clear what  
 10 you're looking for. Obviously you were looking to  
 11 confirm the allegations that were made in LA  
 12 Confidential; isn't that right?  
 13 Your answer: That's correct.  
 14 And along those lines, you referred  
 15 Mr. Compton to Mr. Flannery, did you not?  
 16 A. I don't --  
 17 Q. Clarence, does that ring a bell with you?  
 18 A. Ian Galloway.  
 19 Q. Is that not Mr. Galloway?  
 20 A. I thought you said Flannery.  
 21 Q. Who was --  
 22 MR. BREEN: You said Flannery.  
 23 Q. (BY MR. HERMAN) My mistake, Mr. Galloway.  
 24 A. Correct.  
 25 Q. An Irishman.

1 A. Yeah. And we felt we should investigate it,  
 2 one, to determine our liability under -- for 2004 and,  
 3 two, to determine if we had correctly paid 2002 and  
 4 2003, because if we hadn't, we were possibly exposed  
 5 to Swiss Re.  
 6 Q. Let me ask you this, your investigation was  
 7 headed up by Mr. Compton; is that right?  
 8 A. Mr. Compton played a prominent part in  
 9 investigating.  
 10 Q. At your direction?  
 11 A. I sent him on some trips.  
 12 Q. Well, I mean, you've been referred to as the  
 13 big cheese over there at SCA and that -- you know,  
 14 pretty much what you say goes; is that -- maybe they  
 15 don't do that to your face over there, but they're not  
 16 reluctant to tell me that.  
 17 A. I wish it were that way, but I would say I'm  
 18 the -- at least a reasonable figurehead.  
 19 Q. Okay.  
 20 MR. HERMAN: Would you put up the Hamman  
 21 depo?  
 22 Q. (BY MR. HERMAN) I asked you in your  
 23 deposition, do you recall, what the objective of the  
 24 investigation was?  
 25 A. We were looking to confirm the allegations,

1 But in any event, you referred  
 2 Mr. Compton to Mr. Galloway, did you not?  
 3 A. Correct.  
 4 Q. And when Mr. Compton contacted Mr. Galloway,  
 5 was he following your instructions?  
 6 A. We anticipated that there was a strong  
 7 possibility that we would need to gather information  
 8 on the case.  
 9 MR. HERMAN: Exhibit 69, Russell,  
 10 please.  
 11 Q. (BY MR. HERMAN) Let's look at this first  
 12 page.  
 13 A. Okay.  
 14 Q. Let's put this in the context for the members  
 15 of the panel. The Tour de France runs essentially  
 16 from July 1 through July 25, 2004, correct?  
 17 A. Correct.  
 18 Q. July 25 is a Sunday. That's when the Tour de  
 19 France ends. July 26th SCA makes its claim on PIL and  
 20 collects its \$1.2 million, and then the very next day,  
 21 July the 27th, 2004, Mr. Compton, presumably with your  
 22 knowledge and blessing, contacted Mr. Galloway,  
 23 correct?  
 24 A. I believe so.  
 25 Q. Now, what litigation was it that you were

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1 anticipating 48 hours after the end of the Tour de  
 2 France?  
 3 A. We felt that if the blurbs on the book were  
 4 confirmed, that we would have a problem, and we  
 5 decided to approach the investigation in as timely a  
 6 fashion as we could, so that we would be prepared if  
 7 indeed there was a problem. The idea was to  
 8 accelerate the process, not to delay it.  
 9 Q. Your earlier comment was that you thought it  
 10 would be useful to identify problems that were  
 11 mentioned in the book?  
 12 A. It would be useful to know exactly what was  
 13 said. We knew from the blurb that there were some  
 14 allegations in the book that were definitely  
 15 unfavorable to Mr. Armstrong, but we -- we did not  
 16 know the specifics. I mean, we -- we had what we read  
 17 in the overview.  
 18 Q. All right. Well, by this time, by July  
 19 the 27th, you had received -- you had gotten around to  
 20 looking at the contract that contained a description  
 21 of the risk and the conditions of the risk under which  
 22 SCA would be called to indemnify Tailwind, correct?  
 23 A. I believe so, yes.  
 24 Q. And as of July the 27th, 2004, it had become  
 25 reasonably clear that Mr. Armstrong was the official

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1 winner of the 2004 Tour de France?  
 2 A. Correct.  
 3 Q. And as of July the 27th, 2004, it had become  
 4 reasonably clear that under the terms of the agreement  
 5 which you got around to looking at in 2004 that  
 6 Tailwind was obligated and liable to pay Mr. Armstrong  
 7 \$10 million, wasn't it?  
 8 A. That's what the contract said, yes.  
 9 Q. Well, that's an interesting point, because  
 10 it's important what a contract says, don't you  
 11 think -- don't you agree?  
 12 A. I don't believe Tailwind would be obligated  
 13 if Mr. Armstrong had cheated in the 2004 Tour de  
 14 France.  
 15 Q. Well, let me ask you this. Who decides who  
 16 the official winner is?  
 17 A. I don't --  
 18 Q. Well, the UCI or the TDF or somebody?  
 19 A. Amaury Sport Organization, the TDF, the  
 20 on-site officials.  
 21 Q. And at any time between January the 9th, when  
 22 you made your promise to Tailwind and July the 27th,  
 23 at any time did you ever inform Tailwind that even if  
 24 they were liable that you were not?  
 25 A. No.

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1 Q. You didn't know what was in the Tailwind  
 2 contract, did you? There could have been a provision  
 3 in there where if Armstrong had facial hair, they  
 4 might not have to pay them, or some George  
 5 Steinbrenner type deal, right?  
 6 A. We were not familiar with the contract.  
 7 Q. You were not?  
 8 A. We were not. We had not seen the contract.  
 9 Q. And you foreswear any involvement in that  
 10 contract between Tailwind and Armstrong, it's got  
 11 nothing to do with SCA; isn't that true?  
 12 A. I believe we have rights if we pay Tailwind,  
 13 we would inherit this -- Tailwind's rights against  
 14 Mr. Armstrong.  
 15 Q. Where is that? Show me in this contract  
 16 where that's the case.  
 17 A. I just believe it to be the case.  
 18 Q. Do the contents of the contract mean -- the  
 19 literal contents of the contract, do they mean  
 20 nothing, or -- or are your clients supposed to divine  
 21 rights that SCA has that are not contained in the  
 22 contract?  
 23 A. No.  
 24 Q. Well, let's talk about this communication  
 25 with Mr. Galloway as of July 27, as you all are on the

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1 search for items that you think would be useful.  
 2 First of all --  
 3 A. What page is that?  
 4 Q. That's Exhibit 69. Have you got it there?  
 5 A. Yes.  
 6 Q. Okay. In the first paragraph Mr. Compton  
 7 asks Mr. Galloway -- incidentally, Mr. Galloway is a  
 8 specialist in commercial fraud, is he not?  
 9 A. I'm not sure exactly what his speciality is.  
 10 We've used him in a variety of capacities.  
 11 Q. And it was your idea to contact Mr. Galloway?  
 12 A. I believe it was.  
 13 Q. Okay. So let's go through what it is that  
 14 Mr. Compton asks Mr. Galloway to do in anticipation of  
 15 litigation. Number one, Mr. Galloway is asked to  
 16 gather written, electronic or verbal communications  
 17 related in any manner whatsoever to the actual or  
 18 suspected use of performance enhancing substances or  
 19 processes by Lance Armstrong. Did you feel that was a  
 20 good objective sort of approach where your  
 21 investigator was asked to gather only information  
 22 relating to actual or suspected use?  
 23 A. I believe this letter was to lay out the  
 24 maximum scope of the engagement.  
 25 Q. I didn't ask you about that really. I just

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1 asked you whether that was, in your view, a good,  
 2 objective way to evaluate a claim having been made  
 3 under the policy.  
 4 A. I felt that we were entitled to investigate.  
 5 Q. Was that -- that's as good an answer as I'm  
 6 going to get?  
 7 A. I mean, the -- you know, the exact scope of  
 8 the investigation --  
 9 Q. The truth of the matter is Mr. Galloway was  
 10 not asked to investigate or recover or obtain any  
 11 information or any evidence which would tend to  
 12 confirm SCA's obligation to pay this claim, was he?  
 13 A. Correct.  
 14 Q. Now, what made it -- you believe, if you look  
 15 at item 2, what made SCA believe that it was entitled  
 16 to the complete medical history of Lance Armstrong  
 17 from the time he was 18 years old? What in the  
 18 contract between you and Tailwind entitled you to that  
 19 kind of information?  
 20 A. We felt that the medical history might supply  
 21 us with confirmation or denial with respect to  
 22 performance enhancing drugs.  
 23 Q. What was it, Mr. Hamman, what contractual  
 24 right or other right or divine right gave you -- gave  
 25 SCA, an insurance company, the right to the complete

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1 medical history of someone you had no contract with  
 2 and no obligation to and vice versa since he was 18  
 3 years old? Seriously, what in the world gave you that  
 4 right?  
 5 MR. TILLOTSON: I don't object to the  
 6 question, but I do object to the colloquy and the tone  
 7 and the nature of it.  
 8 If you have a question, ask him. If you  
 9 want to argue with him -- argue with me.  
 10 MR. HERMAN: I'm not trying to argue with  
 11 him. Point well taken.  
 12 MR. TILLOTSON: I assume all your  
 13 questions are serious.  
 14 Q. (BY MR. HERMAN) What's the genesis of the  
 15 right?  
 16 A. We were trying to ascertain if Mr. Armstrong  
 17 had used performance enhancing drugs.  
 18 Q. You were really trying to confirm, as you  
 19 testified under oath, the allegations contained in  
 20 Mr. Walsh's book, weren't you?  
 21 A. Correct.  
 22 Q. Now, item 3, locate all evidence, again of --  
 23 of medical items. Four, again, attempting to --  
 24 attempting to recover items by not your insured but by  
 25 a variety of other people, correct?

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1 A. We were trying to ascertain if Lance  
 2 Armstrong had cheated.  
 3 Q. You were trying to confirm that he cheated,  
 4 right?  
 5 A. We certainly were trying to determine if he  
 6 had cheated.  
 7 Q. Now, number 5 is interesting, possession by  
 8 any person associated with the U.S. Postal Service  
 9 cycling team, including any employee of Tailwind  
 10 sports or Disson Furst Partners or ESIX Entertainment  
 11 and Sports of any syringe, inhaler, transfusion  
 12 equipment or bloodpack during the Tour de France.  
 13 Would that exclude an asthmatic or  
 14 diabetic employee of ESIX Entertainment? And if so,  
 15 where does it exclude them?  
 16 A. It doesn't.  
 17 Q. Now, number 6, you seem to be pretty up to  
 18 date on the trial of Dr. Ferrari in asking  
 19 Mr. Galloway for information in that regard. Was that  
 20 designed to help you confirm your obligation to pay  
 21 Tailwind?  
 22 A. We were attempting to determine what was  
 23 going on in the Tailwind physician trial.  
 24 Q. Now, on this third page after you go through  
 25 the various persons you want Mr. Galloway to

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1 contact -- incidentally, you don't mention anybody  
 2 with the UCI there, do you?  
 3 A. Correct.  
 4 Q. And you've never attempted to contact anybody  
 5 at the UCI, have you?  
 6 A. I believe we have.  
 7 Q. Well, since your deposition?  
 8 A. I think some attempts have been made to  
 9 contact some people at UCI.  
 10 Q. All right.  
 11 A. At the time of my deposition I was unaware  
 12 of --  
 13 Q. On page 3, the third to last paragraph,  
 14 additionally, find enclosed a copy of the contract  
 15 between Tailwind Sports Corporation and Lance  
 16 Armstrong. Why was that provided to Mr. Galloway?  
 17 A. I'm not sure.  
 18 Q. The next paragraph we recognize that we have  
 19 requested a complex investigation that may prove time  
 20 consuming and expensive. So how much time -- well,  
 21 how much time was contemplated with -- under the term  
 22 time consuming?  
 23 A. We didn't know what the scope would be. We  
 24 assumed that Mr. Galloway would give us an indication  
 25 of what he felt his requirements of it would be. We

<p style="text-align: right;">Page 740</p> <p>1 felt it might be extensive. 2 Q. Let me ask you this, does it seem odd to you, 3 sir, that you have a contract with your insured, 4 Tailwind, the -- Tailwind's liability, I think we have 5 already agreed is reasonably clear as of the time 6 Mr. Armstrong crosses the finish line and two days or 7 one day after you collect your million two, you don't 8 make a request for information or documents to which 9 you're entitled from your insured, do you? 10 A. We had not yet spoken to Mr. Walsh and we 11 felt that we should try to gather as much information 12 as we could so that if we could determine that there 13 was little or nothing in the book, we would be able to 14 pay the Claimant without creating any aggravation for 15 anybody. 16 Q. Well, my question is, on the 27th of July, 17 you don't contact your insured, you contact an 18 international commercial fraud expert? 19 A. Correct. 20 Q. Why didn't you contact Tailwind? 21 A. We felt that the money was due on 22 September 3rd and we did not desire to create any ill 23 will if, in fact, it was going to be our determination 24 to pay the claim of -- independent of talking to 25 Tailwind.</p>	<p style="text-align: right;">Page 742</p> <p>1 A. We weren't sure. 2 Q. Well, did you think that you would be 3 entitled to all of the stuff that you asked this 4 private international investigator to get for you? 5 A. Again, we weren't sure. 6 Q. Well, why did you ask him to do it, then? 7 A. We sought to gather whatever information we 8 could relatively painlessly so that we could evaluate 9 the situation. 10 Q. Well, maybe I didn't make my question clear. 11 If you didn't know whether you were entitled to the 12 information that's requested in Claimants' Exhibit 69, 13 why did you ask an outside international investigator 14 to go get it for you if you didn't know whether you 15 were entitled to it? 16 A. Well, I could -- we assumed that he would 17 advise us what he could get and what he couldn't. 18 Q. Well, certainly -- so the issue was what he 19 could get and what he couldn't get, not what you were 20 entitled to or not entitled to? 21 A. That was an issue. 22 Q. What was an issue? 23 A. What he could get, what he couldn't get, what 24 he was able to get. 25 Q. The idea --</p>
<p style="text-align: right;">Page 741</p> <p>1 Q. Let me ask you this. What was it -- what 2 information or documents would have been necessary for 3 Tailwind to supply to confirm or deny Tailwind's 4 obligation to pay Mr. Armstrong the performance 5 awards? 6 A. We didn't know. 7 Q. Well, you had the contract. 8 A. We didn't have the underlying contract with 9 U.S. Postal. 10 Q. Well, you don't have any -- you don't have 11 any relationship, privity or otherwise with the United 12 States Postal Service, do you, ever? 13 A. We certainly are entitled to a player 14 request. 15 Q. Do you agree or disagree that Tailwind's 16 contractual liability to Armstrong is reflected in the 17 Claimant's -- this Claimants' Exhibit 1 is what you 18 insured? 19 A. Correct. 20 Q. All right. 21 A. But -- 22 Q. So what was it, other than confirmation that 23 Mr. Armstrong was the official winner -- what was it, 24 what kind of documents do you think you would be 25 entitled to from Tailwind?</p>	<p style="text-align: right;">Page 743</p> <p>1 A. What was available to him. 2 Q. The idea was for him to get as much of what 3 you asked him to go get as possible that is in this 4 July 27th letter; isn't that true? 5 A. I presume that we were seeking information in 6 the -- yes, we were seeking information. 7 Q. Without regard to whether you had any 8 contractual right to it or any right to it under any 9 theory; isn't that true? 10 A. No. 11 Q. Well, what investigation did you do that led 12 you to the belief that you were entitled to all of 13 this information, including Mr. Armstrong's entire 14 medical history since he's 18 years old? What 15 investigation did you do? 16 A. We did not review what we were entitled to 17 do. We relied on our claims investigator to 18 ascertain -- to determine what he could provide. We 19 assumed that he would adhere to the standards that are 20 customary for him. 21 Q. You were not -- there was no reason to 22 anticipate litigation unless you anticipated denying 23 the claim, correct? 24 A. We didn't know. 25 Q. No, no, no. If you paid the claim, certainly</p>

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Page 744	Page 746
1 there wasn't going to be any litigation, right?	1 STATE OF TEXAS )
2 A. If there was going to be litigation, we	2 COUNTY OF DALLAS )
3 wished to be prepared for it.	3
4 Q. But what you tell Mr. Galloway is that the	4 I, Nancy P. Blankenship, Certified Shorthand
5 investigation is -- is in anticipation of litigation	5 Reporter, in and for the State of Texas, certify that
6 and, of course, there would be no litigation if you	6 the foregoing proceedings were reported
7 paid the claim; isn't that true?	7 stenographically by me at the time and place
8 A. I don't know why that term was used. I	8 indicated.
9 presume a significant amount of it may have been to	9 Given under my hand on this the 26th day
10 create a lawyer client privilege.	10 of January, 2006.
11 Q. Why?	11
12 A. Because we didn't know what our action on the	12
13 claim was going to be and we certainly didn't want to	13
14 cause disruption if we were going to make the	14
15 determination to pay.	15 Nancy P. Blankenship, Certified
16 Q. Well, it's true -- this part is true, there	16 Shorthand Reporter No. 7351
17 wasn't going to be any lawsuit or any litigation if	17 in and for the State of Texas
18 you paid the claim?	18 Dickman Davenport, Inc.
19 A. Not necessarily.	19 Firm Registration #312
20 Q. Who did you anticipate suing if you paid the	20 1010 Two Turtle Creek Village
21 claim, anyone?	21 3838 Oak Lawn Avenue
22 A. Perhaps Tailwind for recovery.	22 Dallas, Texas 75219
23 Q. Incidentally, you saw that e-mail that you	23 214.855.5100 800.445.9548
24 wrote?	24 e-mail: npb@dickmandavenport.com
25 MR. HERMAN: Russell, if you would put up	25 My commission expires 12-31-06

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1 Claimants' 10.	
2 ARBITRATOR FAULKNER: Mr. Herman, is this	
3 a new line, because it's about two minutes of 5:00,	
4 the Senator needs to leave at 5:00, and so is this a	
5 good time to break?	
6 MR. HERMAN: It is, and I'll -- I should	
7 be finished with Mr. Hamman in 30 minutes or so in the	
8 morning. Okay?	
9 ARBITRATOR FAULKNER: Okay. We will be	
10 in recess until 9:00 tomorrow morning.	
11 (Proceedings recessed at 4:57 p.m.)	
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