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VIA ELECTRONIC MAIL TO [REDACTED]

August 17, 2012

Charles E. Talisman
Robert D. Luskin
PATTON BOGGS, LLP
2550 M. Street, NW
Washington, DC 20037

Re: *Violations of Conflict of Interest Rules by Patton Boggs*

Dear Mr. Talisman and Mr. Luskin:

I write in response to Mr. Talisman's letters dated July 27, 2012, and August 12, 2012, regarding the breaches of the Rules of Professional Conduct engaged in by Mr. Luskin and the law firm of Patton Boggs as outlined in my letter to Mr. Luskin dated July 25, 2012.

Mr. Talisman, in your letter dated July 27, 2012, you contended that Patton Boggs' representation of Lance Armstrong and the conduct of Mr. Luskin and others at Patton Boggs in connection with Mr. Armstrong's representation and while Patton Boggs was also simultaneously representing the United States Anti-Doping Agency ("USADA") was authorized by an advance waiver contained in Patton Boggs' Standard Terms of Engagement for Legal Services ("PB Terms of Engagement"). You also argued that Patton Boggs' conduct was somehow endorsed by Ethics Opinion 309 of the District of Columbia Bar. However, your recent action in terminating the legal representation of USADA demonstrates that your contention that Patton Boggs' conduct towards USADA was endorsed by Ethics Opinion 309 is far off base.

In fact, the portion of Ethics Opinion 309 which you quoted merely states the general rule that advance waivers are "presumptively . . . valid" but does not address the egregious conduct of Patton Boggs in this case. The fundamental tenet in Ethics Opinion 309 is that advance waivers "must comply with the overarching requirement of informed consent." In no sense can Patton Boggs be said to have obtained informed consent from USADA for Mr. Luskin's conduct or for the actions of others at your Firm either through the advance waiver in the PB Terms of Engagement or otherwise.

In fact, Ethics Opinion 309 relies on the ABA's opinion regarding advance waivers, which recognizes that, "[u]nlike the client issuing a specific waiver, the client issuing a prospective waiver cannot know what confidences he will in the future disclose or in what adverse representations the attorney may engage." (quoting ABA Opinion at 171). As a consequence,

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Ethics Opinion 309 states that, “a prospective waiver probably will not stand unless it identifies the opposing party or at least a class of potential opponents, as well as giving the client sufficient information to appreciate ‘the nature of the likely matter and its potential effect on the client.’” (quoting ABA Opinion at 171).

It is patently clear that Patton Boggs’ advance waiver did not identify a class of potential opponents to which it applied as required by Ethics Opinion 309. For instance, Patton Boggs never advised USADA that Patton Boggs was reserving the right to represent athletes in anti-doping proceedings involving USADA. Nor did Patton Boggs advise USADA that it intended to reserve the right to represent adverse clients in lobbying matters regarding USADA’s funding. In contrast, Patton Boggs’ advance waiver did nothing to advise USADA regarding the nature of the conflicting matter and its potential effect on USADA. Therefore, as noted in Ethics Opinion 309 the advance waiver in the PB Terms of Engagement “will not stand” and cannot be relied upon to justify the conflict of interest in which Patton Boggs engaged when Mr. Luskin began representing Lance Armstrong in anti-doping matters involving USADA and when other Patton Boggs attorneys engaged in lobbying adverse to USADA.

Furthermore, Ethics Opinion 309 goes on to state:

any decision to act on the basis of an advance waiver should be informed by the lawyer’s reasoned judgment. For example, a prudent lawyer ordinarily will not rely upon an advance waiver where the adversity will involve allegations of fraud against the other client or is a litigation in which the existence or fundamental health of the other client is at stake.

Thus, whatever adverse representations may have been authorized by the purported advance waiver in the PB Terms of Engagement, the waiver clearly does not cover Patton Boggs’ actual conduct in relation to USADA. It is, therefore, plain that Mr. Luskin and Patton Boggs have not followed the “prudent” course outlined in Ethics Opinion 309 and have gone far beyond prudence, engaging in ethical violations in conflict with the Rules of Professional Conduct to the extreme detriment of USADA.

Contrary to your obligations under the applicable ethical rules, Patton Boggs and Mr. Luskin knowingly traveled an intentionally destructive course plainly aimed at undermining USADA’s good name and reputation. Among other things, Mr. Luskin publicly accused USADA of:

1. “a vendetta, which has nothing to do with learning the truth and everything to do with settling a score and garnering publicity at Lance’s expense;”¹

¹ http://www.huffingtonpost.com/2012/06/13/lance-armstrong-usada-doping-charges_n_1594578.html



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2. “toxic obsession with Lance Armstrong and a process in which truth is not a priority,”²
3. “a corrupt bargain USADA made with other riders,”³
4. bringing charges that are “a product of malice and spite and not evidence”⁴
5. advancing “spurious allegations”⁵
6. violating “concepts of justice and fair play”⁶
7. a “readiness to employ unlawful tactics and questionable practices in its zeal to punish Mr Armstrong at all costs”⁷
8. a “craven refusal to disclose its evidence”⁸ and
9. the charge that “its officials violated federal law and the World Anti-Doping Agency code in securing testimony against Mr Armstrong.”⁹

These outrageous and false statements are directly contrary to Patton Boggs’ obligations to USADA under the ethical rules. Such statements cannot be justified by any advance waiver in the PB Terms of Engagement as you have inaccurately claimed.

Let me be frank, Patton Boggs’ conduct in this matter is shocking, totally irresponsible and directly at odds with its ethical obligations to USADA. Moreover, the scope of Patton Boggs’

² http://espn.go.com/olympics/cycling/story/_/id/8113043/usada-files-formal-doping-charges-lance-armstrong

³ http://espn.go.com/olympics/cycling/story/_/id/8050661/lance-armstrong-lawyers-want-evidence-names-usada-case

⁴

<http://www.sportsnetwork.com/merge/tsnform.aspx?c=charlotte2&page=other/news/news.aspx?id=4506612>

⁵ <http://www.foxsports.com.au/other-sports/seven-time-tour-de-france-winner-lance-armstrong-hits-back-at-doping-claims-by-us-anti-doping-agency/story-e6frf56c-1226406137393>

⁶ <http://www.foxsports.com.au/other-sports/seven-time-tour-de-france-winner-lance-armstrong-hits-back-at-doping-claims-by-us-anti-doping-agency/story-e6frf56c-1226406137393>

⁷ <http://www.foxsports.com.au/other-sports/seven-time-tour-de-france-winner-lance-armstrong-hits-back-at-doping-claims-by-us-anti-doping-agency/story-e6frf56c-1226406137393>

⁸ <http://www.foxsports.com.au/other-sports/seven-time-tour-de-france-winner-lance-armstrong-hits-back-at-doping-claims-by-us-anti-doping-agency/story-e6frf56c-1226406137393>

⁹ <http://www.foxsports.com.au/other-sports/seven-time-tour-de-france-winner-lance-armstrong-hits-back-at-doping-claims-by-us-anti-doping-agency/story-e6frf56c-1226406137393>



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misconduct has only been made more evident, and the damage to USADA intensified, through your two letters.

I thought when I sent my initial letter on July 26 that perhaps your response might be that Patton Boggs' representation of USADA had been overlooked in the conflict screening process when Mr. Armstrong was originally taken on as a client. While not justifiable, at least such a response would have indicated a possibility that Patton Boggs was not engaged in the intentional disregard of its ethical responsibilities.

However, your reliance on the advance waiver in the PB Terms of Engagement indicates that Patton Boggs consciously took on the representation of Mr. Armstrong in a matter directly adverse to USADA without authorization from USADA and without any notice to USADA. Thereafter, Patton Boggs persisted in its adverse representation, even engaging in character assassination, accusing USADA of violations of its rules and the law and attempting to undercut USADA's funding, all despite knowing that USADA was a current client. Such conduct is worse than unbecoming and detrimental to the profession, it is ethically barred and indefensible.

Your change in position from Mr. Talisman's July 27 letter in which he tries to defend Patton Boggs' conduct through reliance on the advance waiver to the August 12, 2012, letter in which you purport to terminate Patton Boggs' representation of USADA constitutes an admission of the unethical character of Patton Boggs' actions. Yet, while acknowledging through this reversal that you engaged in conflicts of interest in violation of the ethical rules, you persist in your refusal to remedy your rule violations and breaches of duty towards USADA.

As set forth in my July 27 letter, and now even more that you both acknowledge that you knowingly acted against USADA's interests while aware that USADA was a client and concede that your conduct was not actually covered by an advance waiver, USADA demands that you send an immediate written retraction, approved by USADA, of all statements to the media and Members of Congress concerning USADA that you and any member of Patton Boggs has made in the last eighty (80) days. I would also demand that you promptly identify to me every member of Congress and every congressional, executive branch or agency staff member with whom you spoke concerning USADA in the last eighty (80) days, and during which period of time, as you concede, Patton Boggs was representing USADA.

Finally, I want to address your recent termination of Patton Boggs' representation of USADA in breach of your fiduciary duty to USADA. As you know, as one of USADA's outside legal counsel you had a fiduciary duty to USADA to look first to USADA's interests and wellbeing in any matters touching on Patton Boggs and USADA. Just three weeks ago you wrote stating that you were willing to continue representation of USADA on employment matters. Yet, in plain disregard of Patton Boggs' fiduciary duty to USADA, and less than three weeks later you have now chosen to terminate your



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representation of USADA, apparently in order to facilitate what you perceive to be a more lucrative relationship with Mr. Armstrong.

This action as well has caused damage to USADA. Contrary to the statement in your letter, the matter on which Mr. Collins had been working is not “dormant.” Rather, USADA requires assistance and legal representation to ensure that legal arguments previously raised in other cases in which Mr. Collins represented USADA are adequately raised in the currently pending matter. Furthermore, Mr. Collins had always previously assured USADA of his loyalty to USADA and his availability to serve long term for USADA as its principal outside employment law counsel.

In summary, Patton Boggs’ conduct in this matter has been unethical, extremely disappointing and far below the standard of conduct expected from legal counsel. Further, Patton Boggs has exacerbated its ethical failures by failing to act promptly to rectify its misconduct and now by engaging in a further breach of fiduciary duty by terminating its representation of USADA.

While reserving all rights based on the foregoing misconduct, USADA demands that you immediately take the steps outlined in this letter, to:

1. send an immediate written retraction, approved by USADA, of all statements to the media and Members of Congress concerning USADA that you and any member of Patton Boggs has made in the last eighty (80) days; and
2. promptly identify to USADA every member of Congress and every congressional, executive branch or agency staff member with whom you spoke concerning USADA in the last eighty (80) days.

I would appreciate your immediate response to the foregoing demands.

Sincerely,

UNITED STATES ANTI-DOPING AGENCY

A handwritten signature in blue ink, which appears to read "William Bock, III".

William Bock, III
General Counsel

WB:ljm