

CAUSE NO. 04-9557

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LANCE ARMSTRONG AND  
TAILWIND SPORTS, INC.

V.

SCA PROMOTIONS, INC.

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§

IN THE DISTRICT COURT OF

DALLAS COUNTY, TEXAS

M-298th JUDICIAL DISTRICT

JIM HAMLIN  
DISTRICT CLERK  
DALLAS COUNTY, TEXAS  
DEPUTY

**PETITION TO APPOINT ARBITRATOR(S)**

Lance Armstrong ("Armstrong") and Tailwind Sports, Inc. ("Tailwind") file this Petition to Appoint Arbitrator(s) pursuant to §171.041 of the Texas Civil Practice and Remedies Code, requesting that this Court appoint an arbitrator for the above-referenced dispute and in support thereof would respectfully show the Court the following:

**JURISDICTION**

1. Armstrong is an individual who resides in Austin, Travis County, Texas; Tailwind is a Texas corporation with its principal office in Austin, Travis County, Texas.
2. SCA Promotions, Inc. is a Texas corporation with its principal offices located at 8300 Douglas Avenue, Dallas, Dallas County, Texas. It may be served by serving its registered agent, Robert Hamman, at the above address.

**BACKGROUND**

3. SCA is engaged in business of insuring and indemnifying sponsors and team owners against certain risks of payment for prizes and performance awards, primarily in sporting events. For example, SCA regularly provides insurance to indemnify sponsors against competitors making a hole-in-one in a golf tournament and performance awards payable to professional athletes under contracts with team owners.

4. Tailwind is the owner of a professional cycling team of which Armstrong is a member. Pursuant to written agreements between and Armstrong, Tailwind was obligated to pay certain performance awards to Armstrong based upon achievements and results primarily in the world's premier cycling event, the Tour de France. Under his contract with Tailwind, Armstrong was to receive \$1,500,000 in the event he won the 2001 and 2002 Tour de France competitions; he was to receive a performance award of \$3,000,000 should he win the 2001, 2002 and 2003 Tour de France competitions; and, should he win the 2001, 2002, 2003 and 2004 Tour de France events, he would earn a performance award of \$5,000,000.

5. On or about June 9, 2001, prior to commencement of the 2001 Tour de France event, Tailwind (through its predecessor in interest, Disson Furst & Partners) purchased Contingent Prize Contract Number 31122 (the "Insurance Contract") from SCA. Upon the payment of \$420,000 in cash to SCA, SCA issued the Insurance Contract which obligates SCA to pay, within 30 business days following the end of the respective events for which the award is won, the awards described in paragraph 4 above. Thus, on September 3, 2004, SCA was unconditionally obligated to pay the amount of \$5,000,000 in cash.

6. The only conditions precedent to the creation of SCA's obligation to immediately perform its obligation to pay are proof that: a) Tailwind is obligated to pay the award; and b) that Armstrong win the four Tour de France events from 2001-2004. There is no dispute between the parties that Tailwind was so obligated or that Armstrong won the 2004 Tour de France.

7. Pursuant to Section 9 of the Insurance Contract, the also parties agreed that any dispute arising under the Contract will be resolved by binding arbitration pursuant to the Texas General Arbitration Act and that the location of such arbitration will be in Dallas, Texas. (A

copy of the Insurance Contract, together with Exhibit A and Addendum A is attached hereto as Exhibit 1 to this Motion and incorporated herein by reference.)

8. SCA was required to pay \$1,500,000 in 2002 and \$3,000,000 in 2003. SCA did so as required under the Insurance Contract and did not request nor demand additional information or documentation.

9. However, SCA has thus far failed and refused to make payment of the \$5,000,000 2004 performance award, even though SCA does not and cannot contend that Mr. Armstrong did not win the 2004 Tour de France or that Tailwind is not contractually obligated to remit the performance award. As noted above, there are no other conditions or obligations upon Tailwind or Mr. Armstrong in order to trigger SCA's obligation.

10. Rather than remit the full sum of such award as clearly required under the terms of the Contract, SCA requested, by letter dated September 2, 2004, a broad range of documents and information which are immaterial to the clear contractual obligation of SCA to pay the \$5,000,000.00; have nothing to do with Mr. Armstrong's undisputed victory in the 2001-2004 events; and deal with issues which have been fully addressed by those whose responsibility it is to address them.

11. SCA, incredibly, and in stark contrast to the undisputed terms of the Contract and SCA's own interpretation in 2002 and 2003, requested all of Armstrong's medical records, all records of any performance awards Armstrong has earned during his career and all of Armstrong's contractual relationships and those of Tailwind. Additionally, SCA insisted that Armstrong provide a written authorization enabling SCA to secure and review all his medical records and test results.

12. Tailwind and Armstrong attempted to resolve this matter, and extended the payment deadline to September 10, 2004. SCA again refused to pay.

13. Instead, SCA claimed it must "investigate" the "legitimacy of Mr. Armstrong's Tour de France performances" - the same legitimacy which has been examined in excruciating detail on numerous occasions by sanctioning bodies, International Cycling Federation and medical professionals whose duty it was to test, investigate and insure compliance. Mr. Armstrong's conduct and conditions have never deviated from applicable medical requirements nor detailed testing standards. Mr. Armstrong's hard-earned and inspirational victories could only be addressed by the appropriate sanctioning body.

14. As noted above, SCA insured the awards which were payable in 2002 and 2003 in the amounts of \$1,500,000 and \$3,000,000, respectively. This guaranty and insurance was provided under the same insurance contract as that which has been made the subject of this Motion. In both instances, SCA paid money that was required to be paid by Tailwind without the imposition of any conditions precedent, additional requirements which are not provided for or required by the Contract and which appropriately were conditioned only upon the official results of the Tour de France event.

15. Mr. Armstrong is specifically identified as the third-party beneficiary of the Insurance Contract as the "Designated Cyclist Professional" in the agreement. He thus is a proper and indispensable party to this proceeding and the subject arbitration.

#### STATEMENT OF CLAIMS

16. **Violations of the Texas Insurance Code:** Armstrong and Tailwind assert that SCA has, among other things, violated §4(10) of Article 21.21 of the Texas Insurance Code which defines unfair methods of competition and unfair or deceptive acts or practices in the

business of insurance. Specifically, SCA has engaged in unfair settlement practices including, but not limited to, the following:

- a) misrepresenting to Tailwind and Armstrong material facts or policy provisions relating to coverage at issue;
- b) failing to attempt in good faith to effectuate a prompt, fair, and equitable settlement of a claim with respect to which SCA's liability has become reasonably clear;
- c) failing to provide promptly to Tailwind and Armstrong a reasonable and plausible explanation of the basis set forth in the policy (which basis does not exist), for SCA's failure to pay the claim;
- d) failing within a reasonable time to affirm or deny coverage of the Tailwind and Armstrong claim; and
- e) imposing unreasonable and impermissible requirements, documents and information which are not explicitly or implicitly permitted by the Insurance Contract under the guise of "investigating" the claim.

SCA has also misrepresented the Insurance Contract by:

- a) making untrue statements of material facts;
- b) making statements in such a manner as to mislead a reasonably prudent person to a false conclusion of a material fact; and
- c) making material misstatements of law.

17. **Unconscionable Conduct:** SCA's conduct as described above violates the provisions of Articles 21.21, Texas Insurance Code and, thus, likewise violates §17.50(a)(4) of the DTPA. The conduct of SCA in the handling of the Insurance Contract and this claim is unconscionable as that term is utilized in §17.50(a)(3) of the DTPA.

18. **Deceptive Trade Practices Act (Laundry List):** SCA's conduct has violated the specific provisions or "laundry list" violations contained in the DTPA as follows:

- a. SCA represented that the Insurance Contract had sponsorship, approval, characteristics, ingredients, uses, or benefits which it did not have;
- b. SCA represented that the goods and services sold were of a particular standard, quality, grade, or style when, in fact, they were of another;
- c. SCA advertised goods or services with intent not to sell as advertised;
- d. SCA represented that the Insurance Contract conferred or involved rights, remedies, or obligations which it did not have;
- e. SCA failed to disclose information concerning goods or services which were known to SCA at the time of the transaction with the intent to induce Tailwind into a transaction into which Tailwind would not have entered had the information been disclosed.

19. **Good faith and fair dealing:** SCA's conduct violates its duty to deal with its insureds fairly and in good faith.

#### **REMEDIES**

20. The conduct of SCA in failing to pay the award is without any basis or foundation in the Insurance Contract; or arising from the parties' course of dealing; or as found in Texas or Federal law. SCA's conduct in violating the various provisions of DTPA and Article 21.21 are clearly knowing and intentional, thus entitling Tailwind and Armstrong to their respective economic damages which are not less than \$5,000,000, plus accrued pre-award interest. In addition, if such acts on the part of SCA are demonstrated to be knowing and intentional, Tailwind and Armstrong are entitled to additional damages of two times their economic

damages, i.e. an additional \$10,000,000 plus accrued pre-award interest.

21. In addition, Tailwind and Armstrong are entitled to the award of court costs, expert witness fees and reasonable and necessary attorney's fees. As a result of SCA's conduct described hereinabove, it has become necessary for Tailwind and Armstrong to retain the undersigned attorneys and have agreed to pay any attorney's fees which are reasonable and necessary to securing the relief to which Tailwind and Armstrong are entitled. Such attorney's fees are recoverable under the provisions of the DTPA, as well as pursuant to §38.001 *et. seq.* of the Texas Civil Practice and Remedies Code.

#### **APPOINTMENT OF ARBITRATOR(S)**

22. The Insurance Contract specifies arbitration located in Dallas, Texas but does not specify the number or method of selecting arbitrators.

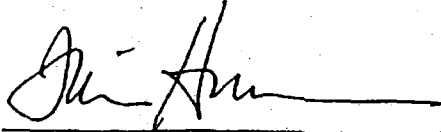
23. Under Sec. 171.041, Texas Civil Practice and Remedies Code, Tailwind and Armstrong respectfully request this Court to determine the number and name of arbitrator(s) to hear and determine this controversy and that such arbitrator(s) be ordered to conclude such arbitration within no more than sixty (60) days from the date of the filing of this petition.

#### **CONCLUSION**

WHEREFORE, PREMISES CONSIDERED, Tailwind and Armstrong request the appointment of an arbitrator(s) in accordance with the terms of the Insurance Contract and accordingly described herein above.

Respectfully submitted,

HERMAN, HOWRY & BREEN, L.L.P.



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Timothy J. Herman  
State Bar No. 09513700  
1900 Pearl Street  
Austin, Texas 78705-5408  
(512) 474-7300  
(512) 474-8557 FAX

**ATTORNEYS FOR PLAINTIFFS**



Jan-14-01 01:05pm From-ESIX

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### SCA PROMOTIONS, INC. CONTINGENT PRIZE CONTRACT #31122

SPONSOR NAME: **Disson Furst & Partners**

INTERMEDIARY: **ESIX Entertainment and Sports**

INTERMEDIARY ADDRESS: **1898 Powers Ferry Road Suite #375  
Atlanta, GA 30339-5655**

TYPE OF PROMOTION: **Cyclist Incentive Bonus Program**

DATE(S) OF PROMOTION: **July 1, 2001 - August 31, 2004**

CONTRACT FEE: **\$428,000.**

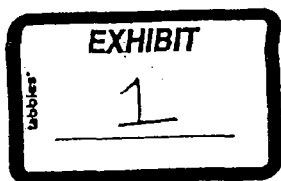
1. This contract is issued for the sole benefit of the Sponsor by SCA Promotions, Inc. ("SCA"), 8300 Douglas Avenue, Suite 525, Dallas, Texas 75225. SCA's liability is limited to the actual cost to Sponsor of the performance award(s) scheduled under this contract ("Performance Award(s)") and payable to the Designated Cyclist Professional as described in the attached Exhibit A. SCA shall incur no liability unless Sponsor and the Designated Cyclist Professional have complied with the terms of this contract. Such compliance by Sponsor and the Designated Cyclist Professional is a condition precedent to SCA's reimbursement of the performance award(s) scheduled in this contract.
2. SCA has no liability hereunder unless the Contract Fee is received prior to commencement of the first scheduled event of Sponsor's PGA Cyclist Incentive Bonus Program.
3. SCA is not a party to Sponsor's contract with the Designated Cyclist Professional nor is SCA involved in the conduct of Sponsor's PGA Cyclist Incentive Bonus Program. Sponsor shall indemnify SCA for any claims against SCA initiated as a result of Sponsor's implementation or conduct of said PGA Cyclist Incentive Bonus Program.
4. Exhibit A - Terms & Conditions attached hereto is an integral part of this contract.
5. Sponsor is responsible for any performance awards payable under Sponsor's contract with the Designated Cyclist Professional which are not in compliance with or payable under the terms of this contract.
- \*6. If the actual conditions of the Promotion differ in any way from those represented by Sponsor to SCA, this contract is null and void unless such changes have been approved in writing by SCA prior to commencement of the promotion.
7. SCA is not a party to or involved in the conduct of the Promotion and Sponsor shall indemnify SCA for any claims initiated as a result of Sponsor's implementation or conduct of the Promotion.
8. All copyright, trademark and other intellectual property rights currently owned by the Sponsor or SCA shall remain the property of the respective owner, with each party to this contract giving due respect and notice to such ownership, and each party to the contract retaining all legal rights and enforcement powers inherent in the ownership of said intellectual property.
9. Sponsor agrees that any dispute arising under this contract shall be resolved by binding arbitration pursuant to the Texas General Arbitration Act. The site of such arbitration shall be Dallas, Texas.
10. This contract, including exhibits and attachments, represents the entire final agreement between Sponsor and SCA, and supercedes any prior agreement, oral or written. Any modification hereto must be in writing and signed by the parties.
11. This contract does not cover any loss, damage, cost, claim or expense, whether preventative, remedial or otherwise, directly or indirectly arising out of or relating to: a) the calculation, comparison, differentiation, sequencing, or processing of data involving the date change to the year 2000, or any other date change, including leap year calculations, by any computer system, hardware, program or software and/or any microchip, integrated circuit or similar device in computer equipment or non-computer equipment, whether the property of Sponsor or not; or b) any change, alteration or modification involving the date change to the year 2000 or any other date change, including leap year calculations, to any such computer system, hardware, program or software or any microchip, integrated circuit or similar device in computer equipment or non-computer equipment, whether the property of Sponsor or not. This clause applies regardless of any other cause or event that contributes concurrently or in any sequence to the loss, damage, cost, claim or expense.

SCA PROMOTIONS, INC.  
 BY: *Michelle Green*  
 TITLE: Partners

DISSON FURST & PARTNERS  
 BY: *Mark B. Furst*  
(Sponsor Representative)  
 TITLE: CEO  
 DATE: Jan. 14, 2001

Date Issued: January 9, 2001 at Dallas, Texas  
 Sponsor Contact: Kelly Price  
 SCA Contact: Todd Overton  
 SCA Tel. (214) 860-3700 / Fax (214) 860-3740

R1/DB



**EXHIBIT A  
TERMS & CONDITIONS**

Contest Form #28.pg

SCA Promotions, Inc. agrees to reimburse Sponsor for the full amount of any Performance Awards scheduled hereunder and awarded to the Designated Cyclist Professional pursuant to this agreement. Designated Cyclist Professionals are eligible to receive Performance Awards if the conditions of the events scheduled herein and Sponsor's Cyclist Incentive Bonus Program comply with the terms and conditions of this contract.

**1. SPONSOR'S PRECONTRACT DUTIES:**

- a. Cover page and Exhibit A - Terms & Conditions (page 2) signed and returned to SCA; and
- b. Payment of contract fee to SCA.

**2. SPONSOR'S OBLIGATIONS AND SCA'S REQUIREMENTS FOR REIMBURSEMENT OF PERFORMANCE AWARDS:**

- a. A Performance Award for the Event Category set forth in paragraph 3 below will be payable if the Designated Cyclist meets the objective with respect to such Performance Award as provided in paragraph 3 below.
- b. SCA indemnifies Sponsor in respect of Sponsor's liability to award such Performance Awards to the Designated Cyclist Professional to the extent provided for in this contract.
- c. It is understood and agreed that SCA's liability for reimbursement of Performance Awards is limited to the events and amounts scheduled in paragraph 3 below. Performance Award(s) for additional events may be purchased, subject to prior agreement.
- d. The Contract Fee is refundable to Sponsor only upon written notice of cancellation received by SCA prior to commencement of the first event scheduled hereunder.
- e. In the event the Designated Cyclist Professional wins any Performance Award scheduled hereunder, SCA agrees to fully reimburse Sponsor for such Performance Award within thirty business days following the end of the event(s) for which the award is won.

**3. SCHEDULE OF REIMBURSABLE PERFORMANCE AWARDS:**

DESIGNATED CYCLIST PROFESSIONAL: Lance Armstrong

# of Events	Event Category	Award
2001 & 2002 Tour De France	1 <sup>st</sup> Place Win	\$1,500,000.
2001, 2002 & 2003 Tour De France	1 <sup>st</sup> Place Win	\$3,000,000.
2001, 2002, 2003 & 2004 Tour De France	1 <sup>st</sup> Place Win	\$5,000,000.

Maximum Aggregate:

\$5,500,000.

I HAVE READ THE TERMS & CONDITIONS OF THIS CONTRACT AND AGREE TO ABIDE BY EACH ITEM.

SIGNATURE

*[Handwritten Signature]*  
(Sponsor Representative)

TITLE

CEO

DATE

Jan. 14, 2001

**ADDENDUM A**  
**Certificate of Insurance #6-1329**

The terms of this Addendum shall supersede the respective terms of Certificate of Insurance #6-1329 between SCA Insurance Specialists, Inc. and Sponsor, dated January 9, 2001.

1. Sponsor, Dixon Furr & Partners, has merged and should now be known as Tailwind Sports Corporation.

This addendum, in its entirety, shall become a part of Certificate of Insurance #6-1329 issued by SCA Insurance Specialists, Inc., by and between SCA Insurance Specialists, Inc. and Sponsor. All other terms, conditions and limits shall remain unchanged.

I HAVE READ THE TERMS AND CONDITIONS OF THIS ADDENDUM TO CERTIFICATE OF INSURANCE #6-1329 AND AGREE TO ABIDE BY EACH ITEM CONTAINED HEREIN.

SCA INSURANCE SPECIALISTS, INC.

By         CL          
Title:         UP          
Date         6-20-03        

TAILWIND SPORTS CORPORATION

By         LWB by Dan Osipov          
Title:         General Manager          
Date         July 16, 2003        

Date Issued: June 30, 2003  
SCA Contact: Todd Overton

