

12-14-04

COPY

CAUSE NO. 04-9557

LANCE ARMSTRONG AND
TAILWIND SPORTS, INC.

V.

SCA PROMOTIONS, INC.

§
§
§
§
§
§

IN THE DISTRICT COURT OF
DALLAS COUNTY, TEXAS
M-298TH JUDICIAL DISTRICT

FILED
DEC 14 PM 5:24
JIM HAMLIN
CLERK
DALLAS COUNTY, TEXAS

**FOURTH SUPPLEMENTAL MOTION TO APPOINT ARBITRATOR AND MOTION
TO STRIKE DEFENDANT'S ARBITRATOR**

TO THE HONORABLE JUDGE OF SAID COURT:

COME NOW, Lance Armstrong ("Armstrong") and Tailwind Sports, Inc. ("Tailwind") and file this, their Fourth Supplemental Motion to Appoint Arbitrator and Motion to Strike Defendant's Arbitrator, and in support thereof would respectfully show the Court the following:

1. The parties to the above-referenced proceeding have agreed to an arbitration panel of three, with Claimants appointing one arbitrator, Defendant appointing a second arbitrator, and those two either choosing or agreeing on a third arbitrator, or submitting that issue to the Court for appointment of a third arbitrator.

2. The parties agreed to appoint their arbitrators promptly; in keeping with such agreement, Claimants appointed Mr. Ted Lyon of Ted B. Lyon & Associates, P.C., 18601 LBJ Freeway, Suite 525, Mesquite, Texas 75150, (972) 279-6571, as an arbitrator on September 28, 2004 (see confirmation letter attached hereto as Exhibit "A").

3. Defendant, on or about November 2, 2004, notified Claimants of its arbitrator appointment which is reflected on the confirmation letter attached hereto as Exhibit "B". Defendant's appointed arbitrator, Thibault de Montbrial, is a lawyer who resides in France and is attorney of record for Defendants in active and ongoing litigation instituted by Armstrong and

currently pending in France. Mr. David Walsh authored a book, "LA Confidential", which is highly critical of Mr. Armstrong and is the subject of two ongoing slander and libel proceedings in Europe. Thus, SCA's "arbitrator" represents a party or parties who are actively adverse to Mr. Armstrong in existing and ongoing litigation. In addition to being the antithesis of a fair judge, SCA's arbitrator has no experience, much less expertise, in Texas contract or tort law, which is involved in this arbitration. The French arbitrator does not reside in Texas, has an active law practice in France and his participation in this arbitration proceeding will be cumbersome, at best. SCA's appointment has not been made in good faith, is clearly intended to unduly prolong the arbitration proceedings and is absurd on its face.

4. The discovery and other procedural limitations in the French proceeding (and in a companion proceeding which has been instituted and is currently pending in the United Kingdom) differ significantly from those in Texas. It is clear that SCA, in its appointment of its arbitrator, is simply making available to him procedures for discovery, cross examination and other information gathering chores which the Defendants in the appropriate forums are unable to do on their own.

5. While an arbitration procedure in which the parties appoint arbitrators is, by its very nature, partisan in certain respects, the arbitrators nonetheless have an obligation to exercise independent judgment and avoid using the proceeding for personal gain other than the fee to which they are entitled for their service. This appointment flies in the face of all such obligations, legal and moral, and should be set aside.

6. It is, however, imperative that this matter proceed expeditiously. It is important, therefore, that the Court, as soon as is practicable, appoint a third arbitrator to serve. On or about November 9, 2004, the parties exchanged lists of three persons each who would be

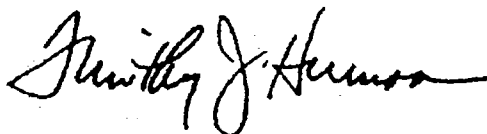
acceptable as a third independent arbitrator to serve on the panel. Copies of those letters are attached hereto as Exhibits "A" & "B", respectively. None of the three names suggested by Defendant was acceptable to Claimants. Harlin Martin, one of the persons suggested by Claimants has since notified Claimants of a conflict which would prevent his service. Claimants subsequently provided another name as reflected on Exhibit "C". Claimants request that the Court appoint a third independent arbitrator from the two lists submitted by the parties. Such appointment is authorized under the Texas Arbitration Act, Sec. 171.041(b), Civil Practice and Remedies Code.

7. Claimants respectfully request the Court to strike the arbitrator previously appointed by Defendant and order that Defendant appoint its arbitrator on or before December 31, 2004

8. The undersigned has conferred with counsel for Defendants and the relief requested herein is opposed.

Respectfully submitted,

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



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

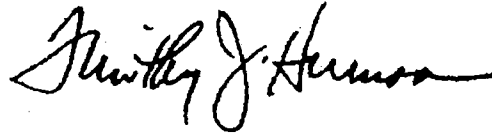
NOTICE OF HEARING

Please take notice that the foregoing Fourth Supplemental Motion to Appoint Arbitrator and Motion to Strike Defendant's Arbitrator is set for hearing before the Hon. Adolph Canales on December 20, 2004 at 2:00 p. m.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been served on counsel listed below via facsimile on December 14, 2004.

Michael P. Lynn, P.C.
Lynn Tillotson & Pinker, L.L.P.
750 N. St. Paul Street, Suite 1400
Dallas, Texas 75201



Timothy J. Herman

Herman Howry & Breen
LLP.

1900 Pearl Street
Austin, Texas 78705-5408

(512) 474-7300

(512) 474-8557 Fax

Direct Dial: (512) 474-9483

E-MAIL: therman@hermanhowry.com

Timothy J. Herman

November 11, 2004

Via Facsimile

Mr. Michael P. Lynn, P.C.
Lynn Tillotson & Pinker, L.L.P.
750 North St. Paul Street, Suite 1400
Dallas, Texas 75201

RE: Cause No. 04-9557; *Lance Armstrong and Tailwind Sports, Inc. v. SCA Promotions, Inc.*: In the M-298th Judicial District Court, Dallas County, Texas

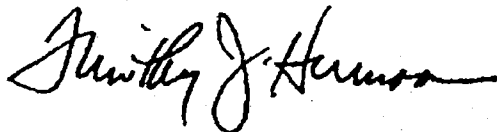
Dear Mike:

The three names submitted by my clients are as follows:

1. Marc Stanley – Dallas practicing attorney
2. Hon. Glenn Ashworth – Dallas and former District Judge
3. Hon. Harlin Martin – Dallas and former District Judge

Please let me know what dates in the next two weeks you or your firm are unavailable, as I want to set my motion for hearing in the unlikely event we are unable to agree on a third arbitrator.

Very truly yours,



Timothy J. Herman

TJH/jkm

Exhibit "A"

LYNN TILLOTSON & PINKER, L.L.P.

ATTORNEYS AND COUNSELORS

Michael P. Lynn, P.C.
Direct Dial (214) 981-3801
mlynn@lynnlp.com

750 NORTH ST. PAUL STREET
SUITE 1400
DALLAS, TEXAS 75201

Telephone: (214) 981-3800
Telecopier: (214) 981-3839

November 11, 2004

VIA FACSIMILE

Timothy J. Herman
HERMAN, HOWRY & BREEN, L.L.P.
1900 Pearl Street
Austin, Texas 78705-5408

Re: *Lance Armstrong and Tailwind Sports, Inc. v. SCA Promotions, Inc.*;
Cause No. 04-9557; in the 298th Judicial District Court; Dallas County, Texas.

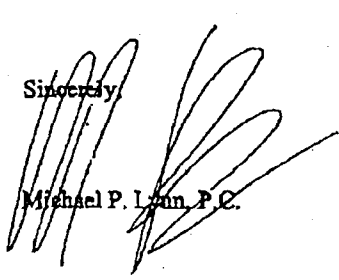
Dear Tim:

Our proposed selections are:

1. Jay Madrid
(Winstead Sechrest)
2. Earl Hale
(Arbitrator/Mediator)
3. Layn Phillips
(former U.S. District Judge
Western District of Oklahoma
Now with Irell Manella)

Thank you.

Sincerely,



Michael P. Lynn, P.C.

MPL/kl
cc: Lisa Blue (via facsimile)

\\ODMA\PC\DOCS\DOCS\11306141

Exhibit "B"

Herman Howry & Breen

1900 Pearl Street
Austin, Texas 78705-5408

(512) 474-7300
(512) 474-8557 Fax

Direct Dial: (512) 474-9483
E-MAIL: therman@hermanhowry.com

Timothy J. Herman

December 14, 2004

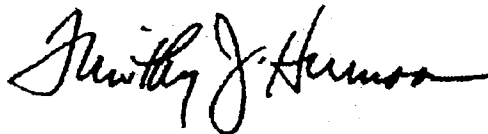
Via Facsimile
Mr. Michael P. Lynn, P.C.
Lynn Tillotson & Pinker, L.L.P.
750 North St. Paul Street, Suite 1400
Dallas, Texas 75201

RE: Cause No. 04-9557; *Lance Armstrong and Tailwind Sports, Inc. v. SCA Promotions, Inc.*; In the M-298th Judicial District Court, Dallas County, Texas

Dear Mike:

We have contacted Harlin Martin and he has declined to serve because of a conflict of interest. We suggest Mr. Dicky Grigg of Austin, Texas in Mr. Martin's stead.

Very truly yours,



Timothy J. Herman

TJH/jkm

Exhibit "C"