

EXHIBIT 59

1 AMERICAN ARBITRATION ASSOCIATION

2
3
4 UNITED STATES ANTI-DOPING AGENCY,)
(Hereafter USADA))

5)
6 Claimant,)

7 vs.) No. 30 190 00847 06

8 FLOYD LANDIS,)
(Hereafter the Athlete))

9 Respondent.)
10
11
12
13
14

15 Transcript of the Proceedings,
16 Volume 1, taken at 725 South Figueroa
17 Street, Suite 2400, Los Angeles,
18 California, beginning at 9:55 a.m. and
19 ending at 5:04 p.m. on Thursday,
20 February 22, 2007, before MARIA A.
21 HASAKIAN, Certified Shorthand Reporter
22 No. 8469.
23
24
25

1 Los Angeles, California, Thursday, February 22, 2007
2 9:55 a.m. - 5:04 p.m.
3

4 CHAIR BRUNET: Welcome, everyone, to this
5 prehearing we're holding today. I think everyone's been
6 introduced.

7 We're going to get right down to business, and
8 we have an agenda that is -- that has three points. The
9 first point that I circulated was the -- regarding the
10 additional testing of the B samples or of the initial
11 samples of Mr. Landis. Second point is on discovery.
12 And the third point is format available in the hearing.

13 The last correspondence that we had regarding
14 that last third point, pointed to a possible agreement
15 between the parties, and you were discussing -- we
16 haven't been updated -- on that point.

17 So anyone want to update the panel whether or
18 not there's any progress that's been achieved.

19 MR. JACOBS: Sure. I've talked to Travis
20 Tygart, and the way we left it, there were a couple of
21 questions that you saw that I had, more logistics-type
22 things than anything. And I think there's -- there's
23 really only two questions that we didn't agree on that I
24 think need some handling, but the rest of it, unless I'm
25 misstating it, there was no problem with the proposed

1 APPEARANCES:

2 The Arbitrators: American Arbitration Association
725 South Figueroa Street, Suite 2400
Los Angeles, California 90017
(213) 622-6619
3 PATRICE M. BRUNET
Pbrunet@brunetavocats.com
4 CHRISTOPHER L. CAMPBELL
Ccampbell@chapmananddierri.com
5 RICHARD H. McLAREN
Mclaren@mckenzieclake.com
6

7 For Claimant:

8 HOLME ROBERTS & OWEN LLP
9 BY: MATTHEW S. BARNETT and RICHARD YOUNG
Attorneys at Law
10 90 South Cascade Avenue, Suite 1300
Colorado Springs, Colorado 80903-1615
11 (719) 473-3800
Matthew.barnett@hro.com
12

13 For Respondent:

14 GIBSON, DUNN & CRUTCHER LLP
BY: MAURICE M. SUH and JAMES C. HO
Attorneys at Law
15 333 South Grand Avenue
Los Angeles, California 90071-3197
16 (213) 229-7260
Msuh@gibsondunn.com
17

18 *AND*

19 LAW OFFICES OF HOWARD L. JACOBS
BY: HOWARD L. JACOBS
Attorney at Law
20 5210 Lewis Road, Suite 5
Agoura Hills, California 91301
21 (818) 292-8735
22

23 Also Present:

24 FLOYD LANDIS
25

1 order. It was just questions about things that were not
2 covered by it.

3 MR. BARNETT: My understanding was that we were
4 continuing to work towards resolution.

5 MR. JACOBS: Right.

6 MR. BARNETT: For the record, Mr. Tygart
7 apologized for not being here. His wife is in preterm
8 labor, a little bit. So -- priorities.

9 I don't know that -- what I would recommend is
10 that we not argue any issues today on that, but continue
11 to try to work to resolution. I don't believe we're at
12 such gaps that we won't be able to make substantial
13 progress.

14 MR. YOUNG: We also have some issues that we
15 want to put -- which you may or may not agree -- you
16 haven't covered at this point, but you may have by the
17 time we go.

18 MR. BARNETT: And, really, from our --

19 MR. YOUNG: Especially if they are agreeing.

20 MR. BARNETT: -- from our perspective, it
21 wasn't that we disagreed with anything. It was -- we're
22 trying to anticipate all the issues. And perhaps we've
23 anticipated some additional ones, and it sounds like the
24 panel has as well.

25 CHAIR BRUNET: Well, we'll keep the point on

1 question of whether or not we would be looking at binding
2 the UCI in some other provision, I think is -- is -- is
3 not accurate.

4 ARBITRATOR McLAREN: Does it make any
5 difference whether it's UCI that requested the test or
6 USADA? If UCI has the authority to have the test done,
7 if they have that authority, they could direct it or they
8 could -- at the request of USADA, you have USADA direct
9 it.

10 What -- what difference does it make which
11 party, assuming there's a legal foundation to it, makes
12 the request?

13 MR. SUH: Well, I think -- well, again, I think
14 the issue for us is that -- in the reality is that UCI is
15 not directing the retesting, and it's USADA. And the
16 reason is USADA is a litigant before this panel. It is a
17 party before this panel and it is -- it is -- I think
18 absolutely, I think, the panel has the ability to issue
19 orders and directives with respect to the parties and
20 their conduct with respect to the evidence in the case.
21 We're just not in a situation where UCI is independently
22 requesting the testing.

23 Leaving that issue aside, given the structure
24 of the way this arbitration and the rules are set forth,
25 I do believe that in this particular circumstances, if it

1 were to be that UCI was making a request following the
2 heels of the USADA request, that this panel could issue
3 that ruling.

4 Again, it is simply not a situation where UCI
5 initiated a retesting request on its own accord. This is
6 USADA's action. This is USADA's trial preparation. And
7 to now say that somehow the UCI has some independent
8 motivation to conduct that retesting is -- is just not
9 accurate.

10 This panel might one day be faced with an issue
11 in which the UCI, independent a proceeding, has sought
12 retesting of some sample that may have some impact on a
13 pending case, but that day isn't today. That's not this
14 case.

15 So with all -- I mean, with all the
16 consideration of the facts here, I don't believe that the
17 panel actually needs to reach that issue of whether or
18 not, if the UCI had independently requested testing,
19 that -- that we were faced with the jurisdictional issue.

20 I think in this case, to the extent that USADA
21 has made a request to UCI to -- or UCI's request is
22 directly in line with USADA's request that was initiated
23 about LNDD, the panel does have the authority to order.

24 ARBITRATOR McLAREN: On a slightly different
25 point, you're asking the panel to issue an injunction, I

1 think, to preclude them from doing the testing. That
2 would be a relief that you'd want, correct?

3 We'd prevent them -- we'd issue them an order
4 preventing them doing the testing in the circumstances of
5 this case?

6 MR. SUH: Yes.

7 ARBITRATOR McLAREN: Restricted to this case.

8 And if I understand your submissions
9 correctly -- or am I understanding your submissions
10 correctly? If I were to say, and you do that on the
11 basis of an overall construction of the rules of the UCI
12 that doesn't permit it, you don't point to any particular
13 rule that says you can't test Bs?

14 MR. SUH: Well --

15 ARBITRATOR McLAREN: Additionally, what's
16 already been done by the lab.

17 MR. SUH: We point to -- I can review the
18 rules, which I'm citing in brief. Would you like me to
19 do that?

20 ARBITRATOR McLAREN: No. I've read your brief,
21 but it still is an overall characterization of the rules.
22 That's the foundation of your submission.

23 MR. SUH: The foundation of our submission is
24 just that, is that the structure of the rules with
25 respect to the taking of A and B samples, is that there

1 are certain protocols that must be followed, which simply
2 don't exist here.

3 And to the extent that there's ambiguity in the
4 rules, which at the end of the day if the panel finds
5 there's ambiguity in the rules, that ambiguity must fall
6 in the favor of the athlete.

7 The A and the B samples, the construction of
8 the A and B samples, taking of the B samples for the
9 purpose of this is to protect the athlete. And to the
10 extent that there is ambiguity, that -- that -- that it
11 should fall in favor of the athlete.

12 I mean, these are -- again, and -- and -- and
13 to -- let me emphasize that to extent we are talking --
14 we are not basing our argument solely upon a blanket rule
15 of -- of a construct of all the various rules in place
16 here. We believe very strongly that they prohibit it.

17 However, it is those rules as applied to this
18 case, the situation that we are faced with here, where we
19 have an allegation of one single finding, abnormal
20 finding, by a lab, LNDD lab. The defense in this case
21 contests the accuracy and the validity of the LNDD lab's
22 findings.

23 And given these circumstances and given the
24 construct of the rules, should you permit a broad-scale
25 testing of two other samples at the same lab, the same

1 Mr. Landis has a sample that is an analytical positive.
 2 Now, USADA could roll the dice and say, "We're
 3 going to rest on presumptions. We're going to ignore
 4 defenses. We're not going to try to provide the panel
 5 with more information to rebut those defenses," which
 6 have broadened the case and cost USADA a lot of money.
 7 But that's not what USADA's done. USADA's made
 8 a good faith effort to say, "They've raised defenses."
 9 Well, there's very good information that can be obtained
 10 to expose whether those defenses are true or not. And
 11 they will help, one way or the other, expose whether or
 12 not Mr. Landis was engaged in a pattern of doping
 13 throughout the Tour de France, or if they come up without
 14 further confirmation, maybe they can argue that it was
 15 one incident or we'll be left to argue that.
 16 But all of their arguments, I've heard nothing
 17 to say that these aren't relevant. They have argued
 18 burden, but given their discovery requests, they really
 19 can't look the panel in the eye and say the information
 20 obtained by these further analysis would not be relevant.
 21 So are we here to search for the truth or not.
 22 And if we are, then try and create a fabric out of rules
 23 to somehow shield the panel from getting this further
 24 information doesn't seem to make any sense at all.
 25 Instead, they're seeking to use the rules as license to

1 sophisticated enough to take into consideration.
 2 ARBITRATOR CAMPBELL: How can you be
 3 sophisticated enough to take it into consideration? I
 4 mean, either they got it -- they want to get it right or
 5 they want to get it wrong.
 6 MR. YOUNG: Well, let me respond to that.
 7 First of all, we haven't heard anything in response to
 8 our offer to let the Montreal laboratory do this.
 9 ARBITRATOR CAMPBELL: Would that be blind?
 10 MR. YOUNG: No, it wouldn't be blind. But they
 11 wouldn't have this ax to grind.
 12 To deal with the blind issue, you have the
 13 opportunity for their scientists to stand and watch --
 14 stand over the person's shoulder. It's a little hard to
 15 imagine that, if their scientist is standing and watching
 16 over the analyst's shoulder, that the result would not be
 17 reliable evidence because of lack of blindness.
 18 ARBITRATOR CAMPBELL: What if they wanted the
 19 UCLA lab to do it?
 20 MR. YOUNG: That would be fine too.
 21 MR. BARNETT: Just to finish my thought. My
 22 final comment is I think you have to look at the
 23 motivation of the arguments and on -- when
 24 Mr. McLaren asks, "Do your same arguments apply to the A
 25 and the B," there's a logical gap in trying to apply all

1 fish for any technicalities that they could use to attack
 2 the lab, and we'll get to it in discovery.
 3 They're not shy. They've broaden the scope of
 4 this case to say, "Mr. Landis never took drugs. So our
 5 entire case is going to be about attacking the entire
 6 evidence of the lab." They've broaden the case.
 7 We're responding to that defense providing what
 8 I think is the best information to shed light on the
 9 truth, and they're fighting to hide that information.
 10 ARBITRATOR CAMPBELL: But, Matthew -- I'm
 11 sorry.
 12 But you're talking about presenting evidence to
 13 this panel that -- that by the very rules seem to say
 14 that -- that doesn't comport with what you think is
 15 outside scientific practice.
 16 MR. BARNETT: With scientific practice?
 17 ARBITRATOR CAMPBELL: Yeah. Sound scientific
 18 practice.
 19 MR. BARNETT: But that's something that --
 20 ARBITRATOR CAMPBELL: Independent
 21 objectivity --
 22 MR. BARNETT: You mean the blind point?
 23 ARBITRATOR CAMPBELL: Yes.
 24 MR. BARNETT: I understand what you're saying.
 25 That's something this panel is certainly

1 their arguments, which are pointing to rules that talk
 2 about the B, to suddenly shift those arguments into
 3 saying, "Yes, they also apply to the A and B." And yet
 4 the answer is, yes. It's not logical, and it all comes
 5 back to they apparently do not want this information to
 6 come out.
 7 And if we're really here about a search for the
 8 truth, which they -- that's the big wrap up to their
 9 discovery brief, then let's just apply the standard
 10 across the board. Let's get to the truth. Let's give
 11 the panel the best information.
 12 MR. JACOBS: But, briefly, I mean, if you want
 13 to look at the motivation, Mr. Barnett just said, "We
 14 want to convert this case into a pattern of doping case."
 15 ARBITRATOR CAMPBELL: Howard, I think --
 16 MR. BARNETT: I did not say that.
 17 ARBITRATOR CAMPBELL: -- you have an offer of
 18 settlement here. You guys want to talk about it or think
 19 about it?
 20 MR. JACOBS: Which offer, to do it at UCLA?
 21 ARBITRATOR CAMPBELL: I mean, with the --
 22 MR. YOUNG: UCLA cannot do it -- I mean, I've
 23 talked to Catlin. Their instrument is down. His best
 24 guess is it would not be until April, and he can't
 25 promise that. Montreal can do it immediately, and it