

7/9/12  
4:15 pm

Bill—

We are still without access to internet, servers, etc. Our lights are on, however.

Attached is the letter modified as we agreed. Thanks for your cooperation.

Regards—  
John Herman

Bill Boetz  




*Preserving the integrity of competition. Inspiring true sport. Protecting the rights of athletes.*

VIA ELECTRONIC MAIL TO [REDACTED]

July 9, 2012

Tim Herman  
[REDACTED]

Re: *Lance Armstrong v. United States Anti-Doping Agency ("USADA"), et al.*

Dear Tim:

I write in response to your two letters this morning and following our phone call. At 9:37 a.m. Eastern time earlier this morning you forwarded to me an email with 151 pages of pleadings to which you are requesting a response by 2:00 p.m. today. As I stated in our phone call at approximately 9:00 a.m. this morning, your demand for a nearly instantaneous response is not reasonable. Indeed, it is now past 2 p.m. eastern and we still have not received the attachments to your affidavit promised in your 9:37 a.m. email.

In any case, it is apparent from even a cursory review of your pleadings that for numerous reasons Mr. Armstrong's claims are entirely without merit. For instance:

1. Mr. Armstrong's claims are pre-empted by the Ted Stevens Olympic and Amateur Sports Act, 36 U.S.C. §220509, et seq. (the "Sports Act"). See *Jacobs v. USA Track & Field and USADA*, 374 F.3d 85 (2<sup>nd</sup> Cir. 2004); *Gatlin v. USADA, et al.*, 2008 WL 2567657 (N.D.Fla.), and *Graham v. USADA*, 2011 WL 1261321 (E.D.N.C.). As the foregoing cases and a host of others provide, Mr. Armstrong's exclusive remedy is binding arbitration pursuant to the Sports Act.
2. Because Mr. Armstrong has not exhausted his remedy in arbitration he is barred from seeking judicial review. Therefore, no jurisdiction lies in any court to consider Mr. Armstrong's claims which are subject to binding arbitration.

The foregoing identification of defects in your pleadings is not an exclusive list but merely serves to demonstrate how clearly deficient your claims are. By attempting to avoid arbitration Mr. Armstrong is seeking for himself an entirely new process and a different set of rules than those which apply to every other U.S. athlete in the sports in which he has chosen to compete.

By his legal counsel Robert Luskin Mr. Armstrong recently requested a five day extension of the time period in which he could indicate to the United States Anti-Doping Agency (USADA) his desire to contest the charges against him by electing arbitration before a panel of American

**United States Anti-Doping Agency**

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Arbitration Association (AAA) arbitrators. Therefore, Mr. Armstrong currently has until July 14, 2012, at 5:00 p.m. eastern in which to indicate his desire to contest the charges against him by requesting that his case proceed to arbitration. Were Mr. Armstrong to elect to proceed to arbitration he would be entitled to select an arbitrator, USADA would select an arbitrator and these arbitrators would select a third arbitrator to hear USADA's case against Mr. Armstrong. Mr. Armstrong would further be entitled to the extensive protections and due process provided for in the AAA Supplementary Procedures for the Arbitration of Olympic Sport Doping Disputes. In an arbitration hearing the burden of proof would be on USADA to prove its case, and Mr. Armstrong would have a full opportunity to contest the charges and evidence against him and to present any case he might choose to make on his own behalf.

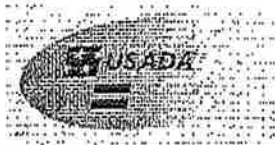
Today, you requested that USADA agree to extend beyond July 14, 2012, the time in which Mr. Armstrong may elect to contest the charges against him by making a request for his case to proceed to AAA arbitration. USADA is willing to agree with you to an extension of the date by which Mr. Armstrong may request arbitration in order to give the Court the opportunity to evaluate Mr. Armstrong's claims and USADA's response.

USADA will agree to extend by thirty (30) days or to a date five (5) days after the Court rules on Mr. Armstrong's motion for preliminary injunction (and/or USADA's responses thereto, including any motion to dismiss USADA may file), whichever comes first, the time in which Mr. Armstrong may contest the charges against him pursuant to clause 11(e) of the USADA Protocol for Olympic and Paralympic Testing (the "USADA Protocol"). Please indicate your agreement to this proposed extension by signing this letter as indicated below and returning a copy to me.

Please understand that by offering to agree with you to extend the time in which your client may choose arbitration to contest the charges against him USADA is not agreeing that Mr. Armstrong's claims have merit, that the Court has any jurisdiction over this matter, when in fact, your client's exclusive remedy is arbitration, or that venue is appropriate in the Western District of Texas. Nevertheless, without waiving any defense and in order to provide the parties a full opportunity to present their positions to the Court, and in order to afford the Court adequate time to evaluate the parties' legal positions, USADA will agree to an extension of the time in which Mr. Armstrong may respond to the charges against him, thereby eliminating the need for a temporary restraining order ("TRO") or for a hearing on your motion for TRO.

I believe this proposed agreement moots your motion for a TRO. Should you disagree please contact me. Otherwise, please sign this letter below to indicate your agreement to extend the time in which your client may choose AAA arbitration to contest the charges against him.

USADA is in the process of identifying local counsel. Once local counsel has been identified and has entered an appearance we will contact you about jointly communicating with the Court to get your motion for preliminary injunction and USADA's anticipated responses on the Court's calendar.



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My mobile number is [redacted] and my office numbers are [redacted] and [redacted].  
[redacted] Feel free to contact me at any time.

Regards,

UNITED STATES ANTI-DOPING AGENCY

William Bock, III  
General Counsel

WB/ljm

On behalf of Lance Armstrong, I agree that the time in which Mr. Armstrong may contest USADA's charges of anti-doping rule violations shall be extended as provided above.

Timothy J. Herman

*This agreement does not, and shall not be construed to, waive any right or remedy any party may pursue during or after the thirty-day period set forth above. TH*