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## Armstrong fallout affects many areas

On Oct. 10, the U.S. Anti-Doping Agency (USADA) released a sweeping report detailing its conclusion that former Tour de France winner Lance Armstrong coordinated a doping program for his cycling team over the course of many years. While the conclusions reached in the USADA report are clear, more complex to sort through are the various lawsuits, appeals and investigations related to the issue of whether Armstrong and his cycling teammates engaged in a vast doping plan. Here is a summary to provide some context for the legal proceedings related to the Lance Armstrong saga.

USADA. Much attention has focused on the inquiry by the USADA. USADA has a unique status within the broader United States legal system. On its face, the USADA appears to be a government agency, however, it is not part of the United States federal government and is funded through both private and public contributions. Commentators have described it as a nonprofit, nongovernmental organization created by the U.S. Olympic Committee to test and investigate athletes in connection with the use of illegal or prohibited performance enhancing drugs.

It also serves to civilly "prosecute" athletes found to have engaged in such prohibited activity. The Olympic and Amateur Sports Act also gives the USADA exclusive authority to test any U.S. Olympian. USADA does have limits on its investigatory authority and commentators have debated whether those limitations hurt or help implicated athletes. Like other nongovernmental entities, USADA does not have the power to subpoena information, which critics argue prevents it from obtaining a full set of facts.

Relatedly, it cannot compel witnesses to testify under oath and its proceedings are not "trials," but rather arbitration hearings where the accused does not enjoy

the procedural rights existing in, for example, the criminal context.

Instead, USADA hearings are governed by the American Arbitration Association rules.

In terms of its sanctioning authority, the USADA is authorized to declare an athlete ineligible and has the authority to strip away achievements. If the USADA does enter sanctions, an athlete can appeal the decision to the Court of Arbitration for Sport, an international body, but not to a United States court.

In July 2012, Armstrong filed an action in U.S. District Court in Austin, Texas, attempting to halt the USADA from continuing its inquiry. Generally speaking, Armstrong attacked the inquiry on due process and constitutional grounds. As part of that complaint, Armstrong argued that the USADA coordinating its efforts with the U.S. Department of Justice and the FBI and, as a result, Armstrong was entitled to additional procedural safeguards. The district court, however, dismissed those claims.

In August of this year, Armstrong declined to participate in the arbitration proceeding that would have contested the charges brought by USADA. Commentators describe this decision as a "no contest" plea which was to be followed by an automatic ban and loss of his Tour de France titles.

It would take a couple of more months, however, before the USADA issued its report.

As we know, that report was issued on Oct. 10. The report contains about 1,000 pages of testimony setting forth what is described as a "massive doping scheme more extensive than any previously revealed in professional sports history." It characterizes the case against Armstrong as the strongest that has been brought before the USADA during its 12-year existence.

The USADA maintained blood samples from 2009 and 2010 that purport to exhibit that Armstrong manipulated his blood through

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transfusions and erythropoietin (EPO) hormone that is used as a performance enhancer. In addition to the physical evidence purporting to reflect tests indicative of blood manipulation, the report also relies on information provided by about 20 of Armstrong's former teammates and employees of the U.S. Postal and Discovery Channel cycling teams.

Upon issuance of the USADA report, Armstrong waived his right to contest the findings and, subsequently, the International Cycling Union also stripped him of the Tour de France titles that he won from 1999 to 2005.

Federal criminal investigations. As reported, Armstrong apparently was the subject of an earlier criminal investigation into his alleged doping. Federal prosecutors were believed to be examining potential doping-related crimes, including defrauding the government, drug trafficking, money laundering and conspiracy. Investigators from the U.S. Food and Drug Administration, the FBI and the U.S. Postal Service were believed to be focused on whether government money was used to finance any of the alleged doping.

However, in February, the U.S. attorney for the Central District of California announced that he closed his investigation into Armstrong, but no explanation was provided. It is not clear whether there are any other pending investigations.

SCA Promotions bonus litiga-

tion. Armstrong and the postal service team had a bonus arrangement that was triggered if Armstrong won the Tour de France in 2004, which he did.

Apparently, the postal service guarded its bonus exposure through a policy with SCA Promotions, a company that assumes risks associated with prizes. Following allegations in 2004 that Armstrong was doping, SCA initially withheld the bonus payment. A drawn-out arbitration process resulted, wherein the insurer reportedly agreed to settle with Armstrong for \$7.5 million.

Following issuance of the USADA report, however, a lawyer for SCA announced that his client was evaluating attempts to retrieve the \$7.5 million payment, plus interest. Its theory likely will be based on a claim that Armstrong lied under oath during the arbitration with the Dallas-based insurer, as set forth in the USADA report. Armstrong's lawyers have maintained their denial of doping throughout his career and, more specifically, have issued statements setting forth that the full and final release that SCA signed as part of the arbitration prevent it from reopening the case or retrieving its payment.

Whistle-blower litigation. Former Tour de France winner Floyd Landis, who now has been stripped of his title, filed a whistle-blower suit charging that Armstrong improperly used taxpayer dollars to finance his cycling team's doping program. Landis filed his lawsuit under the False Claims Act, which, generally speaking, provides citizens with the right to bring lawsuits on the government's behalf. Commentators noted that because that lawsuit has been filed under seal, many details are not currently known.

Unfortunately for both fans and cycling enthusiasts, this unfortunate chapter of sports history will continue to play out in the courts.