

Armstrong case rolls through twists, turns

Cyclist's deal with Postal Service could cost him after Winfrey interview

BY ROY STROM
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During Lance Armstrong's twisting career arc, many things turned out to be not as they initially seemed.

Armstrong's seven Tour de France titles, once a lasting testimony to a cancer survivor's perseverance, no longer exist. And his years-long denying of doping evaporated in seconds when he answered "yes" to Oprah Winfrey's questions about his drug use.

So it comes as no surprise that lawsuits involving Armstrong can take some unusual turns.

One turn happened last month when the New York Daily News reported details of a lawsuit filed under a protective seal in 2010 alleging Armstrong defrauded the U.S. Postal Service to the tune of more than \$80 million. A treble damages claim could raise the stakes of the suit to \$90 million.

Armstrong's former teammate, Floyd Landis, brought the case as a whistle-blower under the federal False Claims Act (FCA), which seeks to recover money defrauded from the government. Landis alleges that fraud occurred when the Postal Service sponsored Armstrong's team under the false pretense that it did not break the law or rules of the sport by doping.

While news reports predict an imminent settlement in the case, lawyers said the complicated rules

ARMSTRONG, Page 5

Armstrong

Continued from Page 1

of the FCA and some flaws in Landis' lawsuit make the potential outcome for Armstrong uncertain.

"It is unusual that an entire (FCA) complaint is posted in a newspaper," said Michael C. Rosenblat, a private practitioner who focuses on FCA cases.

"They are filed under seal and usually the government wants to keep it under seal because it helps them investigate the case."

The government typically negotiates a settlement with the alleged defrauder — in this case Armstrong and a few other defendants — before it decides whether or not to join a whistle-blower suit, Rosenblat said.

The government's decision on whether or not to join the lawsuit could be a make-or-break moment for both the case and Landis.

As a relator, or whistle-blower, in the FCA charge, Landis stands to receive up to 30 percent of the money recovered by the lawsuit.

But whistle-blowers typically win or reach settlement only in the cases where government attorneys assist them, which happens about 20 percent of the time, U.S. Department of Justice statistics say. The remaining 80 percent of cases where the government decides not to intervene are dismissed at an 85 percent rate.

"Statistically, it's very important that the government takes your case," Rosenblat said.

Lester E. Munson Jr., a senior writer and legal analyst for ESPN, said the government indicated it would pursue Landis' FCA case — which is also referred to as a qui tam lawsuit — and that Armstrong was interested in settling.

"I think he has a sufficient net worth to settle with just about everybody who has a claim against him, including the qui tam with the Postal Service," Munson said.

Still, other lawyers said holes exist in Landis' lawsuit. Those holes are widened by the fact that Landis himself may have defrauded the government as a member of the Postal Service team and a stripped-for-doping Tour de France champ.

"It wouldn't be the first time that snitches have dirty hands," said Eldon L. Ham, an IIT Chicago-Kent College of Law adjunct professor of sports law and society.

Regardless, Landis' role in Armstrong's doping scheme is important for his chance to recover money, said David J. Chizewer, a partner in Goldberg, Kohn Ltd.'s practice representing whistle-blowers.

"There is a provision in the federal False Claims Act that allows the government to take into consideration whether or not the whistle-blower was an active participant in the fraud when determining what, if any, reward that whistle-blower should get," Chizewer said.

Scott A. Andresen, chairman of The Chicago Bar Association Sports Law Committee, said questions also exist about whether or not Armstrong's admitted doping satisfied the damages that must exist in an FCA case.

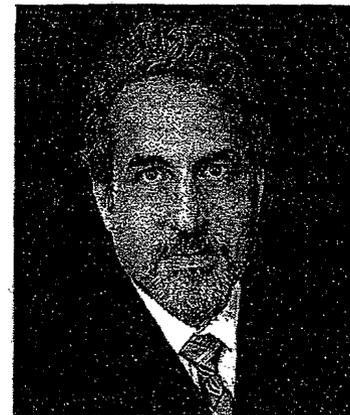
"The (Postal Service) got all the exposure they paid for and more," Andresen said. "I would love to get defrauded into a contract that pays me two to three times more than it was supposed to."

Chizewer disputed that stance, saying the Postal Service likely paid for "a high level of integrity" in addition to the media attention.

If Chizewer is right, Armstrong could pay up to three times any amount he is found to have defrauded the government under rule of the FCA.

Rosenblat said a typical settlement in FCA cases involves paying twice the amount the government lost to fraud, but that can fluctuate depending on the fraud and the defendant's ability to pay.

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