

## ANADO Legal Note #4 July 21, 2008

### LEGAL LESSONS FROM THE *LANDIS* DECISION

On June 30, 2008, the Court of Arbitration for Sport dismissed Floyd Landis' appeal. He had challenged the 2007 decision of the North American AAA-CAS Panel which determined him to have committed an anti-doping rule violation. Thus likely ends the saga of the 2006 Tour de France and what seems to have been the most expensive anti-doping litigation in history.

The recent CAS decision contains a number of decisions, rulings, findings and observations important to the anti-doping community apart from the outcome itself. This summary of some "legal" aspects of the decision may be useful in addressing similar issues in other cases that have nothing to do with cycling, with exogenous testosterone, with laboratory procedures or accreditation, with IRMS analysis or with alleged violations of WADA International Standards:

- Even when there has been a full hearing (for nine days) to determine a violation, an appeal to CAS remains a "de novo" proceeding involving a full review of grounds of appeal, including new grounds, and a new hearing (in this case for five days). As the tribunal put it: "...it is the duty of the present Panel to make its independent determination of whether the Appellant' [sic] contentions are correct, not to limit itself to assessing the correctness of the AAA award." (for example, see paragraphs 21, 46 and 91). But note the willingness of another CAS Panel sitting in an appellate capacity to consider "the full record of the Doping Tribunal proceedings [which determined the athlete to have committed a violation]": *Adams*, CAS 2007/A/1312 (May 16, 2008), paragraph 27.
- Allegations of fraud, forgery, lies, deceit and cover-ups are extremely serious and will require substantial evidence to be proven (for example, see paragraphs 256-264).
- There is a clear distinction between error, deficiency or honest inadequacy, on one hand, and dishonesty or bad faith on the other. Laboratory errors or bad laboratory practice will not necessarily rebut the presumption set out in Article 3.2.1 of the *World Anti-Doping Code* (2003 and 2009) that accredited laboratories are presumed to have met the requirements of the *International Standard for Laboratories* (for example, see paragraphs 189 and 259)
- "Expert" witnesses are expected to be objective and fair-minded in lending their expertise to a hearing and assisting the tribunal, and must not act as advocates (for example, see paragraphs 50, 76, 259, 261). Compare to other recent CAS decisions involving experts: *Adams*, CAS 2007/A/1312 (May 16, 2008) and *Pistorius*, CAS 2008/A/1480 (May 16, 2008).

- Evidence that is unchallenged by cross-examination or contradictory evidence is likely to be accepted by the tribunal (for example, see paragraphs 46 and 92).
- Anti-doping rules will be applied as they are written, and not as they should have been written (according to one of the parties) (for example, see paragraph 53).

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