United States ex rel. Landis v. Tailwind Sports Corp.—Lance Armstrong Pays $5 Million Settlement to the USPS in Fraud Case

Thomas M. Eichenblatt

This discussion reviews the United States litigation against Tailwind Sports Corp. Specifically, the discussion (1) describes the facts of the case, (2) explains the damages measurement analyses and the corresponding challenges to the expert witnesses, and (3) concludes with commentary on damages measurement issues and still unanswered questions raised as a result of this litigation.

Introduction

It has been nearly seven years since former professional road racing cyclist Lance Armstrong ("Armstrong") was stripped of all seven of his Tour de France titles—after it was revealed that he had relied on performance enhancing drugs ("PEDs") during the entirety of his career.[1]

After defeating cancer in 1996, Armstrong won the Tour de France seven consecutive times from 1999 to 2005, winning six of those titles while leading the United States Postal Service ("USPS") Cycling Team.

Outside of cycling, Armstrong was a well-known philanthropist, mainly due to the non-profit he founded in 1997 known as the Livestrong Foundation, which focused on providing support for people affected by cancer.[2]

What we know today about Armstrong paints a different picture than that of the once cycling champion. In 2012, the United States Anti-Doping Agency ("USADA") concluded its investigation and announced that Armstrong had used PEDs his entire professional cycling career. USADA claimed that Armstrong was the leader of "the most sophisticated, professionalized and successful doping program that sport has ever seen."[3]

Armstrong continued to deny that he ever doped. However, he did not contest USADA's findings, claiming fighting the charges would put too much of a toll on his family.[4]

In January of 2013, Armstrong finally admitted to doping during an interview with Oprah Winfrey.

Shortly after his admission, Armstrong found himself in a legal battle with the U.S. government (the "government") over the sponsorship money he received during his time as the head of the USPS Cycling Team.

The lawsuit was originated by one of Armstrong's ex-teammates, Floyd Landis ("Landis"), who filed a claim under the False Claims Act ("FCA") on behalf of the government in 2010. Landis was a member of the USPS Cycling Team from 2002 to 2004.

Like Armstrong, Landis had his 2006 Tour de France title revoked due to the revelation that he was also doping.[5] The government took over the case from Landis in 2013, for what would become a long and tedious legal battle with Armstrong.

This discussion presents the FCA, the context of the litigation, and the facts regarding how the government's expert witnesses created a nonspeculative framework to present to a jury for how to measure the damages the USPS incurred.

Due to the long and complex history of the relationship between USPS and the USPS Cycling Team, the damages measurement is not a straightforward task. The expert witnesses in the case reviewed both (1) the positive impact of the USPS sponsorship and (2) the negative impact of the news coverage the USPS received during the scandal. That coverage followed the revelation that the USPS Cycling Team was doping.

This discussion also presents the legal precedent set in *Daubert v. Merrell Dow Pharmaceuticals, Inc.* ("*Daubert*"), which outlines what is required for an individual to be considered an expert witness.

In this case, Armstrong challenged the government expert witnesses' ability to testify credibly on the relevant topics of the case. These challenges highlight the importance of having a qualified expert who can both present and defend credible testimony.

The False Claims Act

The FCA is a federal statute that can be filed to recover damages arising from defendants knowingly presenting, or causing to be presented, a false or fraudulent claim for payment or approval from the government. Any person who is found guilty of violating the FCA is liable to the government for a civil penalty between $5,000 and $10,000, plus three times the amount of damages that the government sustains because of the act of that person.[6]

According to 31 U.S.C. Section 3730, a person may bring a civil action for a violation of the FCA for the person and the government. The action is brought in the name of the government, and the government may elect to intervene and proceed with the action within 60 days, or within an allotted extension period, after it receives both the complaint and the material evidence and information.

If the government proceeds with the action, it has the primary responsibility of prosecuting the action and is not bound by any act of the person who filed the original complaint, although they remain a party to the action.

If the government is successful with the action, the person who filed the original complaint is entitled to receive at least 15 percent and no more than 25 percent of the proceeds of the action or settlement of the claim, depending on the extent to which the person substantially contributed to the prosecution, along with an amount for reasonable expenses which the court finds to have been necessarily incurred, plus reasonable attorney's fees and costs.[7]

The FCA is often applied to reward whistle-blowers who bring cases forward where the government recuperates funds lost due to fraudulent actions.

The Defendants

The original defendants in the government's complaint were the following parties:[8]

- Tailwind Sports, LLC, and Tailwind Sports Corp. (collectively referred to as "Tailwind Sports")
- Johan Bruyneel ("Bruyneel")
- Armstrong

Tailwind Sports, LLC, was founded in 1999, and owned and operated the USPS Cycling Team from 1999 until 2002. In 2002, it merged with Tailwind Sports Corp. and transferred the ownership of the team to the new entity. Tailwind Sports was dissolved in 2007.[9]

Bruyneel was the managing director of the USPS Cycling Team from 1999 through 2004, and an employee of Tailwind Sports from 1999 to 2007. Bruyneel was originally from Belgium and did not respond to his summons for the complaint. Because of this, the court clerk entered a default judgment in favor of the government against Bruyneel.

Armstrong was the lead cyclist on the USPS cycling team from 1999 through 2004.

After Tailwind Sports was dissolved, and a default judgment was entered against Bruyneel, Armstrong was left as the only active defendant in the case.

The government asserted that the original defendants submitted or caused to be submitted false or fraudulent claims to the USPS during the time USPS sponsored the cycling team owned by Tailwind Sports.[10]

The Context

In 1995 the USPS entered into an agreement ("the 1995 Agreement") with Montgomery Sports, LLC, the predecessor to Tailwind Sports, for the rights to sponsor the cycling team owned by the entity.

The 1995 Agreement automatically renewed on an annual basis and did so every year until 2000. The 1995 Agreement required that the performance of the obligations of the parties to

be subject to compliance with all applicable rules of the major governing bodies of professional cycling, which forbade the use of performance enhancing drugs and activities.[11]

In 2000, the USPS entered into a four-year agreement for the 2001 through 2004 cycling seasons ("the 2000 Agreement"). This agreement also included clauses that required the USPS Cycling Team to adhere to the anti-doping regulations of the governing bodies of the sport.

From 1998 through 2004, the USPS paid Tailwind Sports and its predecessors approximately $40 million. Defendant Armstrong received salaries of approximately $17.9 million during that time period.[12]

Performance Enhancing Drugs and Doping

"Doping" is defined broadly as the use of prohibited substances or prohibited methods to increase athletic performance. Typical methods of doping in professional cycling include the use of erythropoietin ("EPO"), anabolic steroids, and blood transfusions.

EPO is a naturally occurring protein hormone that stimulates the production of red blood cells, which then carry oxygen to the muscles. Athletes use EPO to increase the red blood cell count in their bodies, which increases the flow of oxygen to the muscles, thus increasing their endurance during competition.

Anabolic steroids are man-made steroids that mimic the effects of testosterone by increasing the speed of muscle development, strength, and endurance. These drugs commonly come in the form of injections, patches, and gels. Anabolic steroids are classified as a Schedule III controlled substance, meaning it is illegal under federal law to distribute the drug without a prescription and a medical necessity.

Blood transfusions, also referred to as blood doping, like EPO, are used to increase the red blood cell count to increase the speed at which oxygen is delivered to the muscles. The process involves removing and storing a person's blood, allowing that person to naturally regenerate the removed blood, and then re-injecting the stored blood back into the body to artificially increase that person's red blood cell count prior to an athletic competition.[13]

The Complaint

The government's complaint cited seven counts. Four counts were filed under the FCA, which requested an order for the defendants to pay an amount equal to three times the amount of damages the United States has sustained because of the defendant's actions, plus a civil penalty between $5,000 and $10,000 for each count.

One count was of common law fraud, one count was for unjust enrichment, and one count was for a breach of contract.[14]

The Damages Claim

The government identified 41 payments totaling $32.3 million paid to the defendants during the period the USPS was sponsoring the cycling team. The government was seeking almost $100 million in damages, which is approximately three times the total amount of the USPS sponsorship payments.[15]

If successful, Landis would be entitled to up to 25 percent of the proceeds.

Armstrong argued that the government suffered no damages, stating that the USPS received benefits in excess of the $32.3 million spent on sponsoring the cycling team.

Difficulties Determining the Market Value of the Services

Typically, FCA lawsuits measure damages by applying a "benefit of the bargain" method. This method states that the government's actual damages are equal to the difference between:

1. the market value of the products or services it received and retained and

2. the market value that the products or services would have had if they had been of the specified quality.

Sometimes called "expectation damages," benefit of the bargain damages compensate an aggrieved party for the loss of the bargain for which it negotiated.

Measuring the benefit of the bargain damages becomes difficult when the market value of the product or service is not readily ascertainable. Given the unique aspects of the case, accurately identifying the market value of the subject products or services applying generally accepted valuation methods may likely be challenging.

The unique aspects of the case made the application of damage measurement methodologies difficult. For example, a generally accepted damages measurement method known as the "yardstick" method involves using a benchmark to estimate what would have occurred if the damages event had not taken place.

In a yardstick analysis, the analyst typically selects a guideline company or industry data as a benchmark for comparison.[16] Because the USPS is an entity of the government, its operations are fundamentally different than comparable companies in the parcel delivery industry. The lack of reasonable guideline companies made the application of market-based damages measurement methods such as the yardstick method difficult in this case.

Another generally accepted damages measurement method is the "but for" method. This method attempts to replicate what would have occurred but for the actions of one of the parties to the litigation. This analysis looks at any factors that would have been different absent the alleged damages event.

In other instances, this measurement method would compare sales projections for a product that were produced prior to the damages event, to the actual sales results of the damaged product.[17]

Because of the nature of the damages in this case, income-based damages measurement methods such as the "but for" method were difficult to apply. The USPS did not have projections for the revenue generated from their sponsorship of the USPS Cycling Team, therefore, they could not compare projected results to actual results.

Even if those projections existed, the damages continued to occur over a number of years after the sponsorship ended, meaning the damages period is much longer than the period that would have been projected.

Further, preparing projections for the USPS assuming a clean cycling team versus projections for the USPS assuming a PED-tainted cycling team may be considered speculative. Therefore, the government took a different method to measuring FCA damages.

The government cited a 2010 court case, *United States v. Science Applications International Corporation* ("SAIC"), where FCA damages were measured for services received.[18]

USA v. SAIC

In *USA v. SAIC*, the Nuclear Regulatory Commission ("NRC") hired SAIC to provide technical assistance and expertise to assist in researching and implementing regulations on the handling of radioactive material waste. The contract between the NRC and SAIC included conflict-of-interest provisions which required SAIC to certify that it would not conduct business with organizations regulated by the NRC to preserve the impartiality of its consulting services.

It was revealed that SAIC had violated the conflict-of-interest provisions and, therefore, the government claimed that SAIC had violated the FCA by continuing to submit invoices for payment after conflicting relationships occurred. The government requested damages equal to triple the amount that they had paid to SAIC.

Similarly to the Tailwind Sports case, the government claimed that it had received no value from the SAIC contract because, "had the NRC known about SAIC's organizational conflicts, it would have made no payments whatsoever for the consulting advice and technical assistance it received."

The jury found SAIC liable and awarded the government the full amount of the payments it made under the contract, which the court tripled.

The D.C. Circuit Court overturned the verdict on appeal. The D.C. Circuit Court stated that in order to measure FCA damages, "the fact-finder seeks to set an award that puts the government in the same position as it would have been if the defendant's claims had not been false."

The Circuit Court opined, "Where the value that conforming goods or services would have had is impossible to determine, then the fact-finder bases damages on the amount the government actually paid minus the value of the goods or services the government received or used."[19]

The Government Argument

The government applied this framework to the measurement of the damages that the USPS incurred, stating the market value of the "PED-tainted" promotional service is similarly impossible

to determine like the market value of the "conflict-tainted" consulting services of SAIC.

Therefore, instead of determining the market value of a "clean" cycling team versus the market value of a "tainted" cycling team, the precedent required the government to measure the damages by subtracting the value the government received from the total price paid to the defendants over the sponsorship period.

The government approached the issue by arguing that the positive benefits received from sponsoring the USPS cycling team were reduced or eliminated altogether by the negative publicity that accompanied the investigation and disclosure of the team's doping; therefore, the damages the USPS incurred were equal to the price it paid.[20]

The Defendant's Argument

Armstrong argued that there were no damages—because the USPS received value in excess of the $32 million paid in sponsorship fees. Armstrong claimed that the USPS saw increased revenue, among other benefits, due to the sponsorship.

The first support Armstrong cited were sales figures from a USPS presentation made in 2000, stating that the sponsorship generated $24.4 million in new revenue from 1998 to 2000.

The government argued this point by highlighting the fact that Armstrong was citing gross revenue figures, which does not account for the cost of sales associated with the increased revenue. Furthermore, the vice president of sales of the USPS released a clarifying statement that said the cycling team was "only one of many factors" that contributed to the USPS concluding any new sales.

The government further defended this stance by citing a 2003 USPS Inspector General audit which found that only $698,000 of the $18 million in revenue that the USPS itself attributed to the sponsorship from 2000 to 2004 could be verified.

The second benefit that Armstrong suggested the USPS received from the cycling team was positive media exposure.

During the time it was sponsoring the cycling team, the USPS commissioned reports from two sports marketing firms to estimate the dollar value of the press coverage that the USPS received due to the sponsorship. The two sports marketing firms attempted to assign a dollar value to the press coverage by identifying all positive impressions (i.e., unique viewers) of the team in the media.

Then the two firms discounted each piece of media coverage relative to the cost it would have incurred to place a paid advertisement or commercial with the same media outlet. The report concluded that the USPS received $103.5 million in media coverage from 2001 to 2004.

Armstrong then supported these valuations by pointing to times where the USPS used these reports to justify the costs of sponsoring the USPS Cycling Team in public forums and in internal emails.[21]

Therefore, Armstrong argued that the benefits the government received from the PED-tainted cycling team far exceeded the costs the government incurred to retain the sponsorship.

However, the sports marketing reports themselves acknowledged that their estimated figures were strictly estimates, and that there was no industry standard for calculating the value of the positive media the USPS received. Even one of the authors of the valuation reports admitted in a deposition that, "at that time no one was going to pay that amount for a cycling sponsorship even if it was Lance Armstrong."

The valuation reports in question also did not account for the negative media impressions that the USPS incurred when it was revealed that the USPS Cycling Team had used PEDs and participated in doping.

The court decided against any summary judgments after both sides had made their case. Instead, the court followed the precedent set by the *SAIC* case and allowed both sides to present their case to a jury.

Expert Testimony

The next step in the process was to have expert witnesses present their testimony to the jury. Before this occurs, both sides have an opportunity to discuss and challenge each other's experts.

In order for an expert witness to testify, he or she should first pass the two-part test laid out in *Daubert*. *Daubert* states that the court must determine "whether the expert is proposing to testify to (1) scientific knowledge that (2) will assist the trier of fact to understand or determine a fact in issue." Simply, *Daubert* states that expert testimony should be both reliable and relevant.[22]

The government was represented by three expert witnesses: Larry Gerbrandt ("Gerbrandt"), Dr. Brian Till ("Till"), and Dr. Jonathan Walker ("Walker").

Till planned to testify that "there is a general causal relationship between negative publicity about a sponsored celebrity-athlete and diminished consumer perception of a sponsoring brand."

Gerbrandt planned to testify that "there was a great deal of negative publicity."

And, Walker planned to testify about how to "estimate the harm to USPS from public disclosure of Armstrong's PED use."

Together, the government claimed these three expert witnesses would provide the jury with a framework on which to estimate the amount of damages.[23]

The defendants were represented by two expert witnesses: Douglas Kidder ("Kidder") and Dr. John Gleaves ("Gleaves").

Kidder planned to testify on the economic benefit that the USPS gained from sponsoring the cycling team, and Gleaves planned to testify that PED use was widespread in cycling, the USPS knew or should have known about the Armstrong PED use, and that the USPS failed to investigate any suspected PED use.

Both the government and the defendants filed motions to keep the opposing expert witnesses from testifying.[24]

The Armstrong Challenge to the Government Expert Witnesses

Armstrong challenged all three of the government expert witnesses on the grounds that their testimonies were not relevant to the case, and that the government was attempting to prove damages under an impermissible theory that the fair market value of the USPS sponsorship agreement was zero due to the revelation that the team was doping.

The court agreed that the government cannot argue that the sponsorship had zero value, because as previously stated in the SAIC precedent, it is impossible to place a value on the sponsorship at all. Therefore, to the extent that the government experts would attempt to make that argument, their testimony would be considered inadmissible.

Armstrong also argued that even with a permissible theory of damages, the government experts' testimony was still irrelevant because it did not give the jury a means to quantify the damages or give evidence to any amount that the damages may be.

The government responded that although the amount of the damages may be uncertain, there was certainty that damages were incurred. The government referenced *Story Parchment Co. v. Paterson Parchment Co.*, which ruled that "while a plaintiff seeking to recover must ordinarily prove the fact of injury with reasonable certainty, proof of the amount of damages may be based on a reasonable estimate."

Furthermore, the court recognized that the quantification of damages in this case was "a task no doubt made more difficult by the delay in public awareness of Armstrong's doping caused by his concealment."[25]

The three expert testimonies in tandem would provide the jury with grounds beyond a "mere speculation or guess" to measure an award of damages. Each of the expert witness testimonies was based on more than mere speculation, and was relevant to prove the government's damages.

Armstrong's argument implied that the court should consider each of the government expert witnesses individually when determining their relevance, specifically pointing out that Till and Gerbrandt did not plan on providing numerical estimates in their testimonies.

The court disagreed with Armstrong here, referencing the precedent set in *Rothe Dev. Inc. v. Department of Defense* that established "a court may not exclude an expert's otherwise reliable and relevant testimony simply because, without more, the testimony is insufficient to prove a proponent's *entire* case."[26]

Armstrong also challenged the government expert witnesses individually.

The Armstrong Challenges to Gerbrandt

Armstrong challenged Gerbrandt's qualifications to be an expert witness in the case, as well as the reliability of the methodology that Gerbrandt applied in creating his testimony.

Armstrong challenged Gerbrandt's qualifications to testify on the damages incurred by the USPS, claiming because he had no formal education in the valuation of negative publicity, he was not qualified to testify about the negative publicity the USPS incurred from the Armstrong doping scandal.

As stated in the *Federal Rules of Evidence*, for a witness to testify as an expert, he or she must be qualified based on "knowledge, skill, experience, training, or education." The court found that Gerbrandt's more than 30 years of experience as a media and entertainment analyst qualified him to testify on the subject.

Armstrong challenged Gerbrandt's methodology, stating it did not pass the *Daubert* test, because the methodology was not the product of reliable scientific methods or principles. Specifically, he argued that Gerbrandt used unreliable methodology when showing that the USPS received negative publicity from the doping revelation and when calculating the total number of negative media impressions.

The Gerbrandt expert report concluded that "the harm to USPS resulting from such a large volume of negative impressions would necessarily outweigh the value of any benefits received by USPS resulting from positive impressions during the sponsorship period." The court partially sided with Armstrong on this issue. This was because Gerbrandt mainly

focused on the calculation of the total number of negative media impressions, while not calculating the number of positive media impressions.

Therefore, the Gerbrandt statement that "negative impressions would *necessarily* outweigh positive impressions" lacks support. The court stated that Gerbrandt was free to opine that the USPS received negative publicity, but he could not argue that the negative impressions outweighed the positive impressions without a foundation for that argument.

Armstrong also challenged the reliability of the Gerbrandt methodology for calculating the total number of negative media impressions, but the court disagreed. Gerbrandt relied on the "premiere independent sources for marketing, advertising, public relations, internet and social media, and entertainment decisions and purchases" such as Nielson Co., which mainly tracks television ratings, and Cision, which focuses more on editorial coverage.

Gerbrandt analyzed data from these companies for media that connected Armstrong with PED use, and then researched the number of viewers of each source. Based on this methodology, Gerbrandt found that there were 41,912 media sources that connected Armstrong to PED use, which made approximately 154.4 billion impressions.

Gerbrandt explained his methodology, stating that he used keywords and search terms that connected Armstrong to PED use, as well as constraining the search to only articles that mention the USPS in some fashion.

The court ruled that the Gerbrandt methodology for calculating negative impressions was reliable and, therefore, admissible.[27]

The Armstrong Challenges to Till

Armstrong did not challenge Till's qualifications to testify as an expert witness. However, Armstrong did challenge the reliability of Till's methodology when showing that negative press coverage of Armstrong had harmed consumer's impressions of the USPS. Again, the court disagreed.

Armstrong argued that Till failed to apply any principles or methods to the specific facts of the case. This argument was not accepted because the court frequently allows testimony of expert witnesses on the topic of general academic or scientific principles, such as the general theory of causation.

Till cited generally accepted academic articles on the theory that negative publicity regarding a sponsor athlete tarnishes the brands that the athlete has promoted. The court accepted Till's expert testimony on this topic.[28]

The Armstrong Challenges to Walker

Finally, Armstrong challenged the validity of the Walker testimony on the possible monetary impact that negative coverage of the Armstrong use of PEDs had on the USPS. Armstrong argued that his methodology was "composed of entirely of speculation" and was not reliable. Again, the court disagreed.

Armstrong claimed that because Walker did not calculate the specific impact of the negative coverage on the USPS, his testimony was not relevant. The Walker methodology relied on information about the change in the stock price of public companies that sponsored athletes that received extreme negative press coverage like Armstrong, such as Tiger Woods. This methodology is known as an "event study," which measures the effect that an event had on the stock price of publicly traded companies affected by the event.

Because the USPS is not a publicly traded company, Walker was not able to perform an event study on the impact of Armstrong's doping scandal on the USPS. Walker instead specifically focused on event studies done on comparable companies that are in the parcel delivery industry.

The court concluded that the Walker testimony was sufficiently reliable to be admissible.[29]

Summary and Conclusion

The court stated that the government expert witnesses would provide the jury with a sufficiently nonspeculative framework for determining the damages that the USPS incurred, due to the negative publicity it received from the scandal.

This framework followed the precedent set in *USA v. SAIC*—when the market value that conforming goods or services would have had is impossible to determine, then the fact-finder should base damages on the amount the government actually paid minus the value of the goods or services the government received or used.

In this case, it was considered impossible to accurately calculate the market value of the sponsorship of a PED-tainted cycling team versus the market value of the sponsorship of a clean cycling team. Therefore, the court allowed the framework for the measurement of damages to be:

1. the price paid by the government to sponsor the team, less
2. the value the government received during the sponsorship period.

The government established that the USPS paid approximately $41 million to the defendants during the sponsorship period and hoped to establish that any benefit that the USPS received from the sponsorship was wiped out due to the negative press coverage that the USPS received from the scandal.

Because the government filed the complaint under the FCA, it was in a position to receive triple the damages that are determined to have been incurred, and because the case was originally brought by Landis, he was permitted to receive up to 25 percent of any proceeds the government received.

On April 19, 2018, Armstrong settled the case with the government and agreed to pay $5 million. The settlement came less than two weeks before a jury was to be selected for the trial. Landis was reported to expect to receive $1.1 million, or 22 percent, of the proceeds, as well as $1.7 million to cover the legal costs he incurred over the nearly eight years he was involved in the case.[30]

Because the case settled, the expert witnesses did not make their cases to a jury. However, the arguments and debates leading up to the trial revealed a variety of interesting damages measurement methods.

Given the unusual aspects of this case, the generally accepted damages measurement methods were difficult to apply. Had the trial proceeded, the experts on both sides would have been faced with the challenging task of convincing a prospective jury of a damages amount, or lack thereof.

The damages measurement complexities in this case highlight the importance of having experts who can create and defend relevant, reliable, and sometimes creative testimony. The *Daubert* challenges put forth in this case highlight the importance of having experts whose qualifications can hold up under scrutiny.

Notes:

1. Juliet Macur, "Armstrong Drops Fight Against Doping Charges," *The New York Times* (August 24, 2012).
2. Ibid.: 2–3.
3. "Statement from USADA CEO Travis T. Tygart Regarding the U.S. Postal Service Pro Cycling Team Doping Conspiracy," U.S. Anti-Doping Agency (October 10, 2012), www. usada.org.
4. Macur, "Armstrong Drops Fight Against Doping Charges."
5. Complaint for Violations of Federal Falso Claims Act, United States ex rel. Landis v. Tailwind Sports Corporation, No. 10-cv-00976, U.S. Dist. Ct. (D.C. June 10, 2010).
6. False Claims Act, 31 U.S.C. § 3729 (a).
7. Ibid., § 3730 (d).
8. United States Complaint, United States ex rel. Landis, v. Tailwind Sports Corp. Tailwind Sports LLC, Lance Armstrong, and Johan Bruyneel, No. 10-cv-00976, U.S. Dist. Ct. (D.C. April 23, 2013).
9. *Id.* at 3.
10. *Id.* at 1.
11. *Id.* at 5.
12. *Id.* at 7.
13. *Id.* at 8–9.
14. *Id.* at 24–27.
15. United States *ex rel.* Landis v. Tailwind Sports Corp., 234 F.Supp.3d 180, 186 (D.C. 2017).
16. Roman L. Weil, Daniel G. Lentz, and David P. Hoffman, *Litigation Services Handbook,* 5th ed. (Hoboken, NJ: John Wiley & Sons, 2012), 4–35.
17. Ibid.
18. United States *ex rel.* Landis v. Tailwind Sports Corp., 234 F.Supp.3d 180, 198.
19. *Id.* at 200.
20. *Id.* at 201.
21. *Id.* at 202.
22. Daubert v. Merrell Dow Pharmaceuticals, Inc., 509 U.S. 579 (1993).
23. United States *ex rel.* Landis v. Tailwind Sports Corp., No. 10-CV-009756, 2017 WL 5905509 at *6 (D.C. Nov. 28, 2017).
24. *Id.* at *1.
25. United States *ex rel.* Landis v. Tailwind Sports Corp., 234 F.Supp.3d 180, 204.
26. United States *ex rel.* Landis v. Tailwind Sports Corp., 2017 WL 5905509 at *6.
27. *Id.* at *8.
28. *Id.*
29. *Id.* at *9.
30. Juliet Macur, "Lance Armstrong Settles Federal Fraud Case for $5 Million," *The New York Times* (April 19, 2018).

Thomas Eichenblatt is an associate in our Atlanta practice office. He can be reached at (404) 475-2320 or at tmeichenblatt@willamette.com.