

9-30-04

CAUSE NO. 04-9557

LANCE ARMSTRONG AND
TAILWIND SPORTS, INC.

Plaintiff,

v.

SCA PROMOTIONS, INC.

Defendant.

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IN THE DISTRICT COURT OF

DALLAS COUNTY, TEXAS

M-298TH JUDICIAL DISTRICT

**DEFENDANT'S OBJECTIONS TO PLAINTIFFS'
FIRST REQUEST FOR PRODUCTION OF DOCUMENTS**

NOW COMES Defendant SCA Promotions, Inc. ("SCA") and files this its Objections to Plaintiffs' First Request for Production of Documents and would respectfully represent as follows:

1. **Summary** - Plaintiffs are not entitled to the documents they seek. Plaintiffs are not entitled to the extraordinary relief they seek of a temporary injunction to enjoin SCA from its \$5 million JP Morgan custodial account. Plaintiffs cannot show, among other things, that they have no adequate remedy at law. To the extent Plaintiffs allege that SCA is insolvent, Plaintiffs' allegation is belied by SCA's \$5 million account, which shows that it has the ability to pay and that it is solvent.

2. In a desperate attempt to show insolvency, Plaintiffs allege that certain unnamed, unidentified "SCA employees" recently told Plaintiffs that SCA's financial viability will be impaired if SCA is required to pay Plaintiffs \$5 million. Plaintiffs' allegation is inadmissible, unreliable, and even if it were true (which it is not), it does not show that SCA is unable to pay the \$5 million.



3. Nevertheless, Plaintiffs rely on their unsubstantiated, vague allegation as a justification for demanding improper, overly broad discovery against SCA on the issue of solvency on an expedited basis. Plaintiffs attempt to shift the burden, to make SCA prove solvency. The Court should not allow Plaintiffs to shift the burdens on account of their own unsupported allegation. The Court should deny Plaintiffs' improper attempts to take post-judgment discovery against SCA, when Plaintiffs have shown nothing more than their own unsubstantiated and vague allegations.

4. Moreover, Plaintiffs seek arbitration, which is inconsistent with demanding extensive discovery in the state court law suit.

5. **Plaintiff's Document Request.** Plaintiffs make an extensive request for SCA's business and financial documents. Plaintiffs requests include, but are not limited to:

- (a) SCA's Financial Statements, Balance Sheets, and Profit and Loss Statements for calendar year 2003 and 2004;
- (b) all of SCA's actuarial materials or studies which reflect SCA's indemnity or other exposure or liabilities, and the schedule of such exposures or liabilities;
- (c) a complete description of all of SCA's reserves or other assets dedicated to the payment of any exposures or liabilities;
- (d) all of SCA's reinsuring or other risk shifting arrangements or agreements relating to exposures or liabilities;
- (e) all of SCA's reinsuring or risk-shifting agreements which relate to the Tailwind contract;

(f) copies of claims or petitions received from SCA or filed against SCA which contain claims or request for money from SCA which are not reflected on SCA's books or balance sheets;

(g) SCA's entire underwriting file relating to the Tailwind contract; and

(h) SCA's latest available audited financial statements with Notes and audit opinions.

6. Plaintiffs requests seek production of the documents by September 30. Accordingly, Plaintiffs provide SCA with only three (3) days to respond.

7. **SCA's Objections.** SCA asserts the following objections:

(a) Improper Post-Judgment Discovery. SCA objects because Plaintiffs' document requests seeks discovery relating to SCA's post-judgment ability to pay a judgment. Plaintiffs' requests are improper because Plaintiffs have not obtained a judgment and they may never obtain a judgment. Therefore, they are not entitled to post-judgment discovery.

(b) Insufficient time to respond. SCA objects because Plaintiffs provided SCA with only three (3) days to respond, in violation of TRCP 196.2(a).

(c) Matter subject to arbitration. SCA objects because the contract at issue requires the parties to arbitrate. In fact, Plaintiffs have filed their Petition Seeking Appointment of an Arbitrator. If arbitration is ordered, it is the panel of arbitrators who shall determine the procedure and scope of any discovery conducted in this matter.

(d) No showing of insolvency. To the extent Plaintiffs seek discovery of SCA's financial condition to show insolvency, Plaintiffs' requests are misplaced and not made in good faith. Plaintiffs make no claim that SCA is insolvent. In fact, Plaintiffs

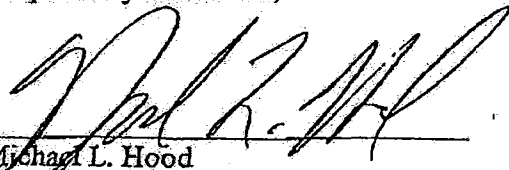
cannot, in good faith, make any such claim that SCA is insolvent. SCA deposited \$5 million in a custodial account with JP Morgan. Plaintiffs have independently verified that account. The existence of the \$5 million account belies any claim that SCA is insolvent.

The only allegation that Plaintiffs raise is that, "Since the time that the \$5,000,000.00 in funds was deposited into the JP Morgan account, Tailwind has received information from SCA employees that SCA's financial viability will be impaired if SCA is required to pay the \$5,000,000.00 as required under the [Contract]." That allegation is insufficient justification for seeking extensive financial information and business records that Plaintiffs are not entitled to. That allegation is inadmissible, indefinite, hearsay, vague, speculative and unreliable. Moreover, even if the statement were admissible and true (which it is not), it does not show that SCA is insolvent.

(e) The requests are overly broad. Incredibly, Plaintiffs seek production of such business records as "SCA's entire underwriting file relating to the Contract." Plaintiffs seek documents relating to the merits of the matter, which is clearly improper and objectionable.

WHEREFORE, PREMISES CONSIDERED, SCA Promotions, Inc. respectfully requests that the Court deny all of Plaintiffs' requests set forth in their First Request for Production of Documents, and for any other relief to which SCA may be entitled.

Respectfully submitted,



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**ATTORNEYS FOR
SCA PROMOTIONS, INC.**

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing SCA Promotions, Inc.'s Objections to Plaintiffs' First Request for Production of Documents was delivered to the following in accordance with the Texas Rules of Civil Procedure on this the 30th day of September 2004:

Via Facsimile & U. S. Mail

Timothy J. Herman
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Michael L. Hood