

# FLOYD LANDIS VS. USADA

## A LAWYER'S VIEW

BY ANTONIO GALLEGOS

Nine days of testimony, a score of witnesses and the Floyd Landis case will eventually be distilled to two questions: Did France's national doping laboratory depart from accepted international practices? And, if so, were such departures the reason the 2006 Tour de France winner tested positive for synthetic testosterone?

Despite the unusual open hearing and the occasional melodramatic moments, the three-member North American Arbitration Association review panel will largely base its decision on its assessment of the standards and practices employed by France's Laboratoire National de Dépistage du Dopage.

Because the LNDD has met the World Anti-Doping Agency's International Standard for Laboratories (ISL), the presumption is that the lab did comply with the practices contained within that standard. That shifts the burden of proof to show otherwise to Landis's side.

Knowing that Landis would attack, USADA also used testimony from LNDD personnel and expert witnesses to argue that LNDD complied with ISL. Even if some practices did not, USADA argued, those departures did not affect the test results: a positive sample from Stage 17 and several B-sample tests that subsequently indicated the presence of synthetic testosterone.

As expected, Landis mounted an aggressive challenge against LNDD's lab practices. Among other things, Landis emphasized problems with the chain of custody log, time gaps in lab documents, the overwriting of results from the reprocessing of electronic data files and manual corrections to results generated by the testing software. Landis's expert witnesses testified that these practices cast serious doubt on the scientific validity of LNDD's testing.

Landis and USADA debated whether LNDD's questioned practices amount to departures from the ISL. However, Landis presented enough evidence so that the panel must seriously consider that question, and whether those practices caused Landis's urine samples to test positive.

Despite the media attention generated by the dramatic testimony from three-time Tour de France winner Greg LeMond and the testimony from Landis himself, they will likely serve only as circumstantial evidence. Neither Landis's purported admission to LeMond, nor LeMond's testimony about the threatening phone call he received from



Landis's then business manager Will Geoghegan have any direct bearing on whether the LNDD's test results are accurate. The same is true for Landis's denial that he doped or admitted anything to LeMond.

In closing statements, USADA argued in support of LNDD's work and the scientific validity of the results. However, the more resonating theme was an attack on Landis as a "win at all costs" personality, as demonstrated by the LeMond episode during the hearing and Landis's Tour de France test results.

Landis's attorneys closed by arguing that LNDD's substandard lab practices and unreliable test results indicated that USADA is willing to settle for science that is merely "good enough,"

which they claimed was an unacceptable standard when a career is on the line.

If USADA were required to prove its case under the criminal standard — beyond a reasonable doubt — Landis would likely win. But the standard of proof here is whether USADA proved its case "to the comfortable satisfaction" of the panel. This standard is less rigorous than beyond a reasonable doubt, but stricter than the "preponderance of the evidence standard" that applies to civil lawsuits between private parties.

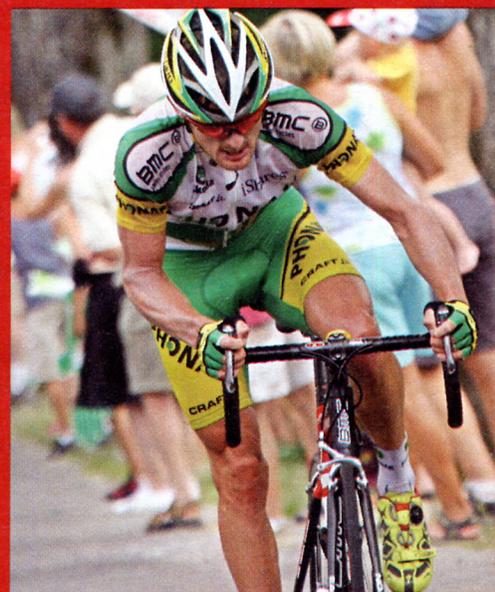
Under the "comfortable satisfaction" standard, the Landis case is too close to call. But one thing is clear; Landis presented the strongest challenge yet to USADA's unbeaten record in anti-doping enforcement actions.

*Denver-based attorney Antonio Gallegos attended the Floyd Landis arbitration hearing as an impartial observer. Gallegos works for the firm of Holland and Hart, concentrating on commercial litigation and government investigation. He is also an avid cyclist and is developing a sports law practice.*

## PROOF POSITIVE?

The lynchpin of USADA's case against Floyd Landis was the allegedly positive test results from stage 17. But the reigning 2006 Tour de France champion was tested seven other times during the race, and while only the stage 17 sample exceeded the allowable 4-to-1 testosterone-to-epitestosterone ratio, four other B samples turned up positive readings when subjected to the more thorough — and complicated — IRMS analysis testing in April.

Here's a stage-by-stage look at Landis's race and the alleged test results, which defense lawyers repeatedly called unreliable. The numbers represent T/E ratios and readings for 5-alpha and 5-beta metabolites. According to the WADA standard, 5a or 5b readings of -3.0 or below indicate the presence of synthetic testosterone. The French national anti-doping laboratory's margin of error is  $\pm 0.8$ , meaning a value must be -3.8 or less to be flagged positive (denoted in black).



STAGE	ACTION	T/E	5A,5B
Stage 2	Obernai to Esch-sur-Alzette: Landis finished in the bunch on this rolling stage.	2.8-to-1	N/A, -1.04
Stage 9	Bordeaux to Dax: Landis finished in the bunch on this flat stage.	1.3-to-1	-2.91, -1.05
Stage 11	Tarbes to Pla-de-Beret: Landis finished third on this major climbing stage, taking the overall lead for the first time.	2.5-to-1	-4.62, -4.09
Stage 12	Luchon to Carcassonne: Landis finished in the bunch on this rolling stage.	1.5-to-1	-1.01, -0.70
Stage 15	Gap to L'Alpe d'Huez: Landis was third to the top of the famed French climb.	1.8-to-1	-5.06, -3.56
Stage 17	St. Jean-de-Maurienne to Morzine: Landis's famed comeback stage where he made up eight minutes on a huge climbing day.	11-to-1	(A sample) -6.14, -2.15; (B sample) -6.39, -2.65
Stage 19	Le Creusot to Montceau-les-Mines time trial: Landis was third in the rolling 57km TT and took the overall lead for good.	2.5-to-1	-4.80, -1.67
Stage 20	Antony to Paris: Landis finished with the bunch on this flat stage, and was awarded the first-place trophy on the Champs-Élysées.	1-to-1	-4.96, -1.45