

2021

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### Repository Citation

Mark Dodds and Barbara Osborne, *Using the Law to Combat Sport Business Corruption*, 32 Marq. Sports L. Rev. 229 (2022)

Available at: <https://scholarship.law.marquette.edu/sportslaw/vol32/iss1/12>

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# USING THE LAW TO COMBAT SPORT BUSINESS CORRUPTION

MARK DODDS\* & BARBARA OSBORNE\*\*

## INTRODUCTION

Corruption is the misuse of entrusted power for private gain.<sup>1</sup> It is perceived to be common in the sports world. Research studies indicate that a majority of sport fans consider sport to be corrupt.<sup>2</sup> The United Nations sees corruption to be an international issue.<sup>3</sup> It states that all businesses should work against corruption in all its forms, including extortion and bribery.<sup>4</sup> The United Nations

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1. *What is Corruption?*, TRANSPARENCY INT'L, <https://www.transparency.org/en/what-is-corruption> (last visited Dec. 1, 2021).

2. See Mark Dodds et al., *Impact of NCAA Corruption on the Adidas Brand*, 16(1) SPORT MGMT. INT'L J. 1, 1-9 (2020) [hereinafter *Adidas Brand*]; Mark Dodds et al., *Corruption Impact on Sport Sponsorship Strategy*, 14(1) SPORT MGMT. INT'L J. 21, 21-33 (2018) [hereinafter *Sponsorship Strategy*]; Mark Dodds, *Consumer Impressions of Sport Corruption*, 13(2) SPORT MGMT. INT'L J. 1, 8 (2017) [hereinafter *Consumer Impressions*].

3. United Nations Convention Against Corruption, Oct. 31, 2003, 2349 U.N.T.S. 4.

4. *Id.*

Convention Against Corruption (“UNCAC”) calls on nations to outlaw, at a minimum: bribery of public officials; embezzlement; trading in influence; abuse of function; illicit enrichment by public officials; bribery and embezzlement in the private sector; money laundering; and obstruction of justice.<sup>5</sup> The UNCAC also encourages member nations to cooperate with corruption investigations.<sup>6</sup> Furthermore, the UN specifically addressed corruption in sport with the creation of a best practices document specifically tailored to prevent the activity in sport sponsorship.<sup>7</sup> Corruption in sport has become so problematic that global corruption watchdog non-governmental organization Transparency International published its research-based *Global Corruption Report: Sport* to better define and understand this issue.<sup>8</sup>

Initially, sport corruption was focused on the game play and outcome and the administration of sport.<sup>9</sup> Maennig defined sport corruption within two contexts: competition corruption and management corruption.<sup>10</sup>

Competition corruption involves the athletes, match officials, sport organization personnel to influence the match itself.<sup>11</sup> Match-fixing is behavior that seeks to influence the final outcome of the competition.<sup>12</sup> For instance, a player who purposefully plays poorly to win a game by less than the point spread (point shaving), an official making specific calls to cause one team to lose a match, or an athlete using a prohibited item (equipment, performance enhancing drug, etc.) to win game.<sup>13</sup>

Perhaps the most infamous example of match-fixing is Tim Donaghy.<sup>14</sup> Donaghy was a long-time National Basketball Association referee.<sup>15</sup> A two-year investigation uncovered Donaghy conspiring to influence the outcomes of the games that he officiated by calling less fouls for the team on which Donaghy

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5. *Id.*

6. *Id.*

7. United Nations Global Compact, *Fighting Corruption in Sport Sponsorship and Hospitality: A Practical Guide for Companies*, U.N. GLOB. COMPACT OFF. (2014), [https://d306pr3pise04h.cloudfront.net/docs/issues\\_doc%2FAntiCorruption%2FSportsSponsorshipHospitalityGuide.pdf](https://d306pr3pise04h.cloudfront.net/docs/issues_doc%2FAntiCorruption%2FSportsSponsorshipHospitalityGuide.pdf).

8. See TRANSPARENCY INTERNATIONAL, *GLOBAL CORRUPTION REPORT: SPORT* (Gareth Sweeney & Kelly McCarthy eds., 2016).

9. Wolfgang Maennig, *Corruption in International Sports and Sport Management: Forms, Tendencies, Extent and Countermeasures*, 5(2) EUR. SPORT MGMT. Q. 187, 187 (2005).

10. *Id.* at 189-90.

11. *Id.* at 190.

12. *Id.* at 189.

13. *Id.*

14. See Scott Eden, *From the Archives: How Former Ref Tim Donaghy Conspired to Fix NBA Games*, ESPN (July 9, 2020), [https://www.espn.com/nba/story/\\_/id/25980368/how-former-ref-tim-donaghy-conspired-fix-nba-games](https://www.espn.com/nba/story/_/id/25980368/how-former-ref-tim-donaghy-conspired-fix-nba-games).

15. See *id.*

placed bets.<sup>16</sup> Donaghy pled guilty to gambling charges and was sentenced to fifteen months in prison.<sup>17</sup>

Spot-fixing is behavior designed to impact the game play but not the final outcome.<sup>18</sup> Examples include a soccer player kicking the ball out of bounds within the first minute to cover a proposition or prop bet or a tennis player committing a specific number of double faults within a match.<sup>19</sup> In a spot-fixing situation, any player has an equal opportunity to influence the game.<sup>20</sup> Although these activities may not have a direct effect on the final outcome, many spot wagering organizations allow bets for these types of actions.<sup>21</sup>

Management corruption focuses on the administration of sport. It involves the host venues, allocation of rights, media, intellectual property, nomination for positions, and commissioning constructions works for sports arenas focusing on the administration of sport.<sup>22</sup> For example, the Salt Lake Organizing Committee (“SLOC”) was accused of providing more than \$1.2 million in cash and gifts (including Disneyland trips, free college scholarships, Super Bowl trips, money for a mayoral campaign, jobs for kids, and two knee surgeries) to International Olympic Committee (“IOC”) members for their vote to host the 2002 Winter Olympics.<sup>23</sup> Two members of the SLOC, Thomas Welch and David Johnson, were charged with conspiracy, violations of the Travel Act, mail fraud, and wire fraud.<sup>24</sup> Although the IOC expelled six committee members because of their participation in the scandal,<sup>25</sup> neither Welch nor Johnson was

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16. *Id.*

17. Tom Hays, *NY Judge Sentences Tim Donaghy to 15 Months in Prison*, SEATTLE TIMES (July 29, 2008, 12:00 AM), <https://www.seattletimes.com/sports/nba/ny-judge-sentences-tim-donaghy-to-15-months-in-prison/>.

18. Tom Serby, *The Council of Europe Convention on Manipulation of Sports Competitions: The Best Bet for the Global Fight Against Match-Fixing?*, 15(1-2) INT’L SPORTS L.J. 83, 84 (2015).

19. *Id.* at 85-86.

20. *Id.* at 85.

21. *Id.*

22. Maennig, *supra* note 9, at 190.

23. United States v. Welch, 327 F.3d 1081, 1085 (10th Cir. 2003); Duncan Mackay, *Olympic Bribery Scandal Refuses to Lie Down: Two Face Corruption Trial over Bid to Secure Salt Lake Games*, GUARDIAN (Apr. 23, 2003, 9:37 PM), <https://www.theguardian.com/world/2003/apr/24/sport.duncanmackay>; Amy Shipley, *Report Implicates More IOC Members*, WASH. POST (Feb. 10, 1999), <https://www.washingtonpost.com/archive/politics/1999/02/10/report-implicates-more-iocmembers/1e620c80-484f-4478-8661-bef8977dbcb6/>; Associated Press, *Despite 2002 Bribery Scandal, Salt Lake City Aims to Host 2030 Winter Olympics*, CANADIAN BROAD. CORP. (Dec. 18, 2018, 6:33 PM), <https://www.cbc.ca/sports/olympics/salt-lake-city-2030-winter-olympics-1.4951389>.

24. *Welch*, 327 F.3d at 1086.

25. Jere Longman, *Olympics; Head of Olympics Expels 6 Members in Payoff Scandal*, N.Y. TIMES (Jan. 25, 1999), <https://www.nytimes.com/1999/01/25/sports/olympics-head-of-olympics-expels-6-members-in-payoff-scandal.html>.

convicted on the charges.<sup>26</sup> Despite overwhelming evidence, the Utah jury was reluctant to find the defendants guilty of fear of losing the games,<sup>27</sup> and rationalized that it's the IOC's behavior that caused this issue so why should Utah citizens be punished for their response.<sup>28</sup>

Sport business corruption includes conduct with entities tangentially related to the sport itself, such as sponsors.<sup>29</sup> In this type of corruption, the action is not directly related to sport, but sport provides a context or opportunity for the corruption to occur. Bribery is a common action within the sport business corruption context. Bribery is the directly or indirectly offering, giving, accepting, or soliciting of an advantage as an inducement for an action.<sup>30</sup> Inducements can take the form of gifts, loans, fees, rewards, or other advantage (taxes, services, donations, etc.).<sup>31</sup> There are two types of bribery: active and passive.<sup>32</sup> Active bribery is the act of making a bribe to another person.<sup>33</sup> Active bribery is illegal in both state and federal law, as well as most international law. In most of those jurisdictions, active bribery is illegal in the public sector (involving a government or foreign official). Conversely, many jurisdictions permit active bribery within the private sector (does not involve a government or foreign official). Passive bribery is the act of requesting a bribe from another person (as seen with the SLOC scandal above).<sup>34</sup> Most jurisdictions<sup>35</sup> do not criminalize passive bribery, especially passive bribery from non-governmental officials.

This paper focuses on sport business corruption. It provides case studies that show how the law is enforced to regulate this behavior.

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26. Paul Foy, *Judge Throws Out Salt Lake City Case*, WASH. POST (Dec. 6, 2003), <https://www.washingtonpost.com/archive/sports/2003/12/06/judge-throws-out-salt-lake-city-case/505c4d94-2a03-462f-836c-961adcaf15e0/>.

27. *Id.*

28. CLARE SAMBROOK & ANDREW JENNINGS, *THE GREAT OLYMPIC SWINDLE* (2000).

29. *Adidas Brand*, *supra* note 2.

30. 18 U.S.C. § 201 (2022).

31. Michael Volkov, *Navigating Through the FCPA Minefield, Debunking Myths, and Addressing Red Flags*, WORLD COMPLIANCE (Oct. 7, 2010), [https://www.mayerbrown.com/public\\_docs/FCPA\\_Powerpoint.pdf](https://www.mayerbrown.com/public_docs/FCPA_Powerpoint.pdf).

32. Transparency International UK, *Global Anti-Bribery Guidance*, TRANSPARENCY INT'L UK, <https://www.antibriberyguidance.org/guidance/5-what-bribery/guidance#2> (last visited Dec. 1, 2021).

33. *See id.*

34. *Id.*

35. Most jurisdictions including the United States and international jurisdictions.

## I. LEGAL TOOLS TO PREVENT SPORT BUSINESS CORRUPTION

*A. Foreign Corrupt Practices Act*

The main US legal deterrent used against international bribery is the Foreign Corrupt Practices Act (FCPA). The FCPA was created in 1977 by the US Congress to criminalize US persons and businesses from making corrupt payments to foreign officials in order to obtain or retain business.<sup>36</sup> Although most countries have anti-bribery laws of their own officials on their books, this was the first law to extend the criminalization of bribery into a foreign country's borders. The FCPA criminalizes individual actors and corporations when the actors are within the scope of employment, even if the action is contrary to company policy.<sup>37</sup> The corrupt payments requirement includes event tickets, travel, and entertainment, all of which are common benefits associated with corporate hospitality activities of a sport sponsorship.<sup>38</sup> Sport sponsors should note that the Department of Justice will be active in pursuing FCPA sport hospitality violations in the future.<sup>39</sup>

The FCPA was applied against Weatherford International for a corrupt hospitality activation of the 2006 FIFA World Cup in Germany.<sup>40</sup> First, the FCPA established jurisdiction because despite being a Swiss oil services corporation, Weatherford had substantial operations in Houston, Texas.<sup>41</sup> Weatherford was accused of authorizing bribes with improper travel and entertainment (including match tickets) to representatives in charge of Algerian oil contract renewals.<sup>42</sup> Ultimately, Weatherford agreed to pay penalties more than \$120 million,<sup>43</sup> fined another \$1.875 million for lack of cooperation with the investigation,<sup>44</sup> and spent almost \$115 million on the investigation.<sup>45</sup>

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36. Foreign Corrupt Practices Act, 15 U.S.C. §§ 78dd-1 (2021).

37. RICHARD CASSIN, *BRIBERY ABROAD: LESSONS FROM THE FOREIGN CORRUPT PRACTICES ACT* (2008).

38. *Id.*

39. Jon Jordan, *World Tours and the Summer Olympics: Recent Pitfalls Under the Foreign Corrupt Practices Act in the Area of Gifts, Entertainment, and Travel*, 21(2) *FORDHAM J. CORP. & FIN. L.* 296, 297 (2016).

40. Complaint, U.S. Sec. and Exch. Comm'n v. Weatherford Int'l Ltd., No. 4:13-cv-3500 (S.D. Tex. 2013).

41. *Id.*

42. *Id.*

43. *Id.*

44. Press Release, U.S. Sec. and Exch. Comm'n, SEC charges Weatherford Int'l with FCPA Violations (Nov. 26, 2013), <https://www.sec.gov/news/press-release/2013-252>.

45. Richard L. Cassin, *Weatherford Pays \$152.6 Million for FCPA Violations, \$100 Million for Trade Sanctions*, FCPA BLOG (Nov. 26, 2013, 5:08 PM), <https://fcpublog.com/2013/11/26/weatherford-pays-1526-million-for-fcpa-violations-100-million/>.

Another example is BHP Billiton, an Australian mining company but trades on the New York Stock Exchange.<sup>46</sup> BHP Billiton supplied the materials for the gold, silver, and bronze medals at the 2008 Summer Olympic Games in Beijing, China.<sup>47</sup> Here, BHP Billiton provided event tickets, luxury hotel accommodations, and sightseeing to Chinese officials and guests of China state-owned steel-making firms.<sup>48</sup> BHP Billiton had compliance protocols in place to help prevent any bribery violations, but the compliance applications were never reviewed by anyone outside the business unit, and the company failed to train their employees on bribery risks and prevention.<sup>49</sup> However, BHP Billiton self-reported these violations to outside counsel to conduct an intensive internal investigation, created a compliance group within the legal department that is separate from its business units, and paid a \$25 million fine.<sup>50</sup>

The outcomes of the cases are significant. Both foreign companies were under the FCPA jurisdiction despite the corruptive activity occurring at an international mega-event away from the United States and the bribery itself did not involve any US citizens.<sup>51</sup> Both cases featured common corporate hospitality elements albeit the benefits were not considered reasonable or bona fide.<sup>52</sup> Perhaps the main difference between the two situations that led to the drastically different financial penalties was BHP Billiton had compliance procedures in place, cooperated with the SEC investigation, and made significant improvements to prevent future corrupt behavior.

Overall, the FCPA had been very aggressive to prevent foreign bribery. This changed dramatically during the Trump administration. Rucker and Leonnig (2020) quoted the former President saying, "It's just so unfair that American companies aren't allowed to pay bribes to get business overseas."<sup>53</sup> The Trump administration continued to prosecute foreign companies but less inclined to investigate US-based ones.<sup>54</sup>

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46. Press Release, U.S. Sec. and Exch. Comm'n, SEC Charges BHP Billiton with Violating FCPA at Olympic Games (May 20, 2015), <https://www.sec.gov/news/pressrelease/2015-93.html>.

47. *Id.*

48. *Id.*

49. *Id.*

50. Administrative Proceeding, *In re* BHP Billiton Ltd., No: 3-16546 (2015).

51. *See* Press Release, U.S. Sec. and Exch. Comm'n, *supra* note 44; *see* Press Release, U.S. Sec. and Exch. Comm'n, *supra* note 46.

52. Reasonable or bona fide hospitality expenses are not considered bribery under the FCPA. FOLEY, FCPA BEST PRACTICES: GIFTS, MEALS, AND ENTERTAINMENT 2, [https://www.foley.com/en/files/uploads/GRS/GRS\\_FCPA\\_Best\\_Practices\\_Gifts\\_Meals\\_and\\_Entertainment.pdf](https://www.foley.com/en/files/uploads/GRS/GRS_FCPA_Best_Practices_Gifts_Meals_and_Entertainment.pdf) (last visited Dec. 1, 2021).

53. PHILIP RUCKER & CAROL D. LEONNIG, A VERY STABLE GENIUS (2020).

54. Renae Merle, *Trump Called Global Anti-bribery Law 'Horrible.' His Administration is Pursuing Fewer New Investigations*, WASH. POST (Jan. 31, 2020), <https://www.washingtonpost.com>

*B. Federal Crimes and Honest Services Fraud*

In 2017, the college basketball world was rocked when the FBI announced two scandals. The first scandal involved NCAA college basketball coaches who accepted bribes from financial advisors to influence current players to be clients.<sup>55</sup> The coaches were charged with bribery, conspiracy to commit wire fraud, Travel Act conspiracy, and honest services fraud.<sup>56</sup> The money that passed from the financial advisors to the NCAA college basketball coaches was not used to influence the game, but to induce the basketball coaches to use their relationships with their players to influence the players' future choice of an advisor.<sup>57</sup> The coaches did not disclose to the players that they were being compensated for their endorsements providing an excellent example of sports business fraud.<sup>58</sup>

The second scandal focused on the Adidas sportswear company funneling bribe payments to high school basketball players enticing the players to attend Adidas sponsored colleges in hopes of signing an endorsement contract with Adidas in the future. It was alleged that Jim Gatto (former Adidas head of global sports marketing), Merl Code (former Adidas consultant), and Christian Dawkins (agent for ASM Sports) agreed to pay \$100,000 to a recruit's father for a player to attend an Adidas school.<sup>59</sup> Here, the Adidas executives were charged with honest services fraud, among other charges.<sup>60</sup> The trial ended with convictions for the three defendants.<sup>61</sup> Gatto was sentenced to nine months in prison, and Dawkins and Code were each sentenced to six months.<sup>62</sup>

The bribery charge is specific to bribery concerning programs receiving federal funds, which includes almost every college or university, public or

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/business/2020/01/31/trump-fcpa/ (quoting Kristen Savelle, managing director of the Rock Center for Corporate Governance, Stanford University).

55. Complaint at 6-8, *United States v. Evans*, No. 19-3643 (S.D.N.Y. 2017).

56. *Id.*; 18 U.S.C. § 666 (2018) (defining that bribery concerning programs receiving federal funds may involve corrupt solicitation of anything of value intending to influence a transaction with the organization or corruptly offering or giving anything of value to an agent of the organization); 18 U.S.C. § 1343 (2008) (defining wire fraud as a scheme to defraud which uses wire communication); 18 U.S.C. § 1952 (2010) (explaining the interrelations of traveling or using the mail in interstate commerce with intent to distribute the proceeds of any unlawful activity).

57. Complaint at 6-8, *United States v. Evans*, No. 19-3643 (S.D.N.Y. 2017).

58. *Id.*

59. Complaint at 7, *United States v. Gatto*, No. 19-0783 (S.D.N.Y. 2017).

60. *Id.*

61. Mark Schlabach, *Court Upholds Convictions Against James Gatto, Merl Code, Christian Dawkins in NCAA Hoop Scandal*, ESPN (Jan. 15, 2021), [https://www.espn.com/mens-college-basketball/story/\\_/id/30717983/federal-appeals-court-upholds-convictions-college-hoop-scandal](https://www.espn.com/mens-college-basketball/story/_/id/30717983/federal-appeals-court-upholds-convictions-college-hoop-scandal).

62. *Id.*

private, in the United States.<sup>63</sup> Bribery under this statute involves corrupt solicitation of anything of value intending to influence a transaction with the organization or corruptly offering or giving anything of value to an agent of the organization.<sup>64</sup> The payments from Adidas representatives to the families of high school basketball players were found to be solicitation of a recruit to influence their attendance at a federally funded university.<sup>65</sup> The financial advisor payments directly to coaches satisfied the criteria for giving value to a representative of the organization.<sup>66</sup>

The honest services fraud claim requires a scheme or artifice to defraud or deprive another of the ‘intangible right’ of honest services.<sup>67</sup> Initially the law was designed to prevent corruption by government officials but the “‘intangible right’” component gives Federal prosecutors wide discretion to criminalize conduct in private industry that may not otherwise be illegal.<sup>68</sup> The honest services fraud makes it illegal for executives of a private company to deny the people they serve the intangible right to honest services occurring as a part of a scheme where the harm is foreseeable.<sup>69</sup> By enticing recruits to attend a specific school, the Adidas executives and their associates potentially increased the value of Adidas’ sponsorship of that school, as the program would potentially be more successful. While the defendants’ claimed the schools benefited from these actions, the court found the institutions were the victims of the honest services fraud.<sup>70</sup> Each of the schools that were specifically identified through testimony at trial suffered damage to reputation, and subsequently paid the tangible costs of investigating the accusations regarding potential violations of NCAA rules and incurring NCAA penalties for playing athletes that were not eligible.<sup>71</sup>

It is interesting that none of the universities reported a crime in these incidents and none of them dropped Adidas as a sponsor. One school, the University of Kansas, extended their sponsorship agreement during the scandal.<sup>72</sup>

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63. 18 U.S.C. § 666 (2018).

64. *Id.*

65. *See* Schlabach, *supra* note 61.

66. *See id.*

67. 18 U.S.C. § 1346 (2018).

68. Los Angeles Criminal Defense Attorney, *What is Honest Services Fraud?*, WERKSMAN JACKSON & QUINN LLP, (July 7, 2019), <https://werksmanjackson.com/blog/what-is-honest-services-fraud/>.

69. *Id.*

70. *United States v. Gatto*, 986 F.3d 104, 129 (2d Cir. 2021).

71. *Id.* at 111.

72. Paul Steinbach, *Despite Adidas Controversy, Kansas Re-Ups for \$196M*, ATHLETIC BUS. (Apr.

### C. False Claims Act

Although it is not sport business corruption per se, the Lance Armstrong doping scandal provides an opportunity to see how sport business corruption theory might impact competition corruption. During his reign of seven Tour de France victories, Lance Armstrong injected erythropoietin (EPO).<sup>73</sup> EPO increases the amount of red blood cells in the bloodstream to deliver more oxygen to fatigued muscles.<sup>74</sup> Armstrong denied the blood doping behavior into his retirement until finally admitting to using the performance enhancing drug on television to Oprah Winfrey.<sup>75</sup>

In response to this admission, Armstrong rival, Floyd Landis, used the private action provision of the False Claims Act to assist Armstrong's long time sponsor the United States Postal Service (USPS) to recover its sponsorship money.<sup>76</sup>

The False Claims Act ("FCA") was passed in 1863 to prevent Civil War supply companies from defrauding the government.<sup>77</sup> The FCA creates liability for any person who knowingly submits a false claim to the government or causes another to submit a false claim or statement to get a false statement claim paid by the government.<sup>78</sup> The FCA allows private persons to file suit for violations of the FCA on behalf of the government and if the government intervenes in the *qui tam* action, the relator is entitled to receive between 15-25 percent of the amount recovered by the government through the *qui tam* action.<sup>79</sup> If the government chooses to obtain recovery in certain types of proceedings other than the relator's FCA suit, then the relator is entitled to the same share of the recovery as if the recovery was obtained through the relator's FCA suit.<sup>80</sup> It is

25, 2019), <https://www.athleticbusiness.com/college/despite-adidas-controversy-kansas-re-ups-for-196m.html#:~:text=KU%20first%20partnered%20with%20Adidas,signing%20an%20eight%20year%20agreement.&text=Former%20Adidas%20employee%20T.J.%20Gassnola,Preston%20and%20Silvio%20De%20Sousa>.

73. Interview by Oprah Winfrey with Lance Armstrong, Former American Cyclist (Jan. 18, 2013).

74. *Blood Doping: Types, Risks, and Tests*, WEBMD, <https://www.webmd.com/fitness-exercise/blood-doping#1> (last visited Dec. 1, 2021).

75. Interview by Oprah Winfrey with Lance Armstrong, *supra* note 73.

76. Press Release, Dept. of Just., Off. Pub. Affs., U.S. Joins Lawsuit Alleging Lance Armstrong and Others Caused the Submission of False Claims to the U.S. Postal Serv. (Feb. 22, 2013), <https://www.justice.gov/opa/pr/united-states-joins-lawsuit-alleging-lance-armstrong-and-others-caused-submission-false>.

77. The False Claims Act, 31 U.S.C. §§ 3729-3733 (2018); see *The False Claims Act*, U.S. DEP'T OF JUST., <https://www.justice.gov/civil/false-claims-act> (last visited Dec. 1, 2021).

78. 31 U.S.C. §§ 3729-3733.

79. *Id.*

80. *Id.*

important to note that under an FCA lawsuit, damage awards may be trebled.<sup>81</sup>

In the present case, Armstrong consumed the EPO despite existing competition penalties associated with blood doping.<sup>82</sup> However, the suit alleges that Armstrong violated the USPS sponsorship contract by using the performance-enhancing drugs.<sup>83</sup> Landis brought the False Claims Act lawsuit against Armstrong on behalf of the government (USPS).<sup>84</sup> “Lance Armstrong...took more than \$30 million from the U.S. Postal Service based on [his] contractual promise to play fair and abide by the rules- including rules against doping,” said Ronald C. Machen Jr., U.S. Attorney for the District of Columbia.<sup>85</sup> “The Postal Service has now seen its sponsorship unfairly associated with what has been described as ‘the most sophisticated, professionalized, and successful doping program that sport has ever seen.’<sup>86</sup> Ultimately, Landis and the USPS sued Armstrong and his cycling team for more than \$90 million.<sup>87</sup>

### CONCLUSION

Sport events (especially mega-events) provide opportunities for sponsors to commit bribery and other types of corruptive behavior. Corporate hospitality is a common element of a sport sponsorship, which contains elements that could easily be used to bribe someone. This situation is important enough that the United Nations has taken numerous steps to try and prevent it. This paper showed how US law can be applied to address it. Ultimately, the law, sponsors, and mega-events need to clean up this behavior.

The simplest recommendation would be an active, and independent, compliance department within the sponsor. This department should review all contracts, expenses, and third-party agencies to ensure that proper procedures are being followed. Unfortunately, because of the Covid impact, many companies decreased budgets and staff of compliance departments.<sup>88</sup>

Another recommendation would be including passive bribery into bribery laws, both US and internationally. The failure to include this element leads to

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81. *Id.*

82. Press Release, Dept. of Just., Off. Pub. Affs., *supra* note 76.

83. *Id.*

84. *Id.*

85. *Id.*

86. *Id.*; see *Sponsorship Strategy*, *supra* note 2; see *Consumer Impressions*, *supra* note 2.

87. Press Release, Dept. of Just., Off. Pub. Affs., *supra* note 76 (representing the trebled equivalent of the sponsorship total).

88. Kristin Broughton, *Compliance Layoffs, Budget Cuts Raise Prospect of Looser Internal Oversight*, WALL STREET J. (May 25, 2020, 7:00 AM), <https://www.wsj.com/articles/compliance-layoffs-budget-cuts-raise-prospect-of-looser-internal-oversight-11590404400>.

the corruptive behavior. To paraphrase the Utah court in the Salt Lake City Olympic scandal, why should the persons asking for bribes be allowed to do that, when the persons responding to the requests are committing an illegal action?<sup>89</sup> Individual sport governing bodies need to take a zero-tolerance policy when they deal with passive bribery.

Unethical business organizations will continue to behave corruptly unless there is a significant deterrent (financial penalty or incarceration). Currently the FCPA is one such deterrent. Perhaps an enterprising party might create a legal case using the False Claims Act on behalf of the USOPC against a corrupt sponsor following the path begun by Floyd Landis and the USPS.

Finally, the mega-events need to police their hospitality areas for bribery activity. Sponsors who have committed corrupt activities in the past (in sport or otherwise) should be reviewed extensively prior to creating a business relationship. Further, properties should only partner with reputable organizations.

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89. *See generally* United States v. Welch, 327 F.3d 1081, 1087-99 (10th Cir. 2003).