

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

VIJAY SINGH,

Plaintiff,

vs.

PGA TOUR, INC.,

Defendant.

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)
)
) Index No. 651659/2013

)
) Hon. Eileen Bransten

VIDEOTAPED DEPOSITION OF OLIVIER RABIN
Washington, D.C.
Friday, January 16, 2015

Reported by: John L. Harmonson, RPR

Job No. 88867

1 O. RABIN

2 Mr. Young?

3 A. Well, he's been a member of the
4 co-project team at WADA, so one of the leading
5 people involved in the preparation of the initial
6 WADA anti-doping code and the two subsequent
7 revisions of the code. And Mr. Young visited
8 offices on several occasions. He also has been,
9 I believe, a member of our foundation board, so I
10 had opportunities to meet with Mr. Young on
11 several occasions.

12 Q. Has Mr. Young ever served as your
13 legal counsel?

14 MR. BENNETT: Personally, he means.
15 Right?

16 MR. GINSBERG: Yes.

17 THE WITNESS: Personally? No. No,
18 absolutely not.

19 BY MR. GINSBERG:

20 Q. Are you aware of whether Mr. Young has
21 ever provided legal representation to WADA?

22 A. I believe he did, but I cannot be
23 specific on this.

24 Q. To the best of your knowledge, during
25 what time period did Mr. Young serve as legal

1 O. RABIN

2 A. It was adopted in March 2003 at the
3 second world conference on doping in sports in
4 Copenhagen, and it came into force on
5 January 1st, 2004.

6 Q. Did the initial WADA anti-doping code
7 have a prohibited substance list?

8 A. It did. In fact, the first official
9 list, the prohibited list prepared by WADA, came
10 into force as of January 1st, 2004, at exactly
11 the same day as the code.

12 Q. Is the prohibited substance list
13 modified or amended periodically?

14 A. At least annually, yes. This is --
15 under the code, this is one of WADA's duty, to
16 provide a revised list or provide a new list
17 every year. In fact, we release it at the latest
18 on October 1st every year, and it comes into
19 force on the 1st of January the following year.
20 We need to allow sufficient time for all
21 stakeholders to adopt the list.

22 Q. Has IGF-1 been on the prohibited
23 substance list since initially enacted?

24 A. I do not recall specifically, but it's
25 been on the list for many, many years.

1 O. RABIN

2 Q. What criteria are used for determining
3 whether a particular substance should be included
4 in the list?

5 A. The criteria are pretty much
6 established in Article 4 of the World Anti-Doping
7 Code, and namely two out of the three following
8 criteria at least need to be fulfilled to
9 consider a substance or method to be included on
10 the list of prohibited substances or methods.

11 The first one is capacity to enhance
12 performance. The second one is the risk for the
13 health of the athlete. And the third one is the
14 violation of the spirit of sport.

15 And as I said, two out of these three
16 criteria, at least, need to be fulfilled to
17 consider a substance or method to be included.

18 Q. Why are those the three criteria?

19 MR. DREYER: Objection as to the
20 foundation.

21 THE WITNESS: Pardon me?

22 BY MR. GINSBERG:

23 Q. Why are those the three criteria that
24 are used to determine if a substance should be on
25 the prohibited list?

1 O. RABIN

2 MR. DREYER: You can answer.

3 THE WITNESS: I would say it depends
4 upon the nature of the information. If this
5 is public information, like a scientific
6 paper, we provide the reference, because for
7 copyright reasons we cannot provide copies
8 of even published articles. So we simply
9 provide the reference to our stakeholders.

10 If this is in the form of confidential
11 information that we have received, for
12 example from a pharmaceutical company, we
13 cannot publish this information. So this is
14 not made available to our stakeholders.

15 BY MR. GINSBERG:

16 Q. Dr. Rabin, are you aware of PGA in
17 2011 seeking any information from WADA about
18 either IGF-1 or deer antler spray?

19 A. I cannot answer this question because
20 I'm not WADA. I'm the science director.

21 Q. I'm just asking if you're aware of any
22 such inquiry.

23 A. Not that I -- not that I recall. Not
24 coming to me that I can recall.

25 Q. And in 2012 or 2013, was any such

1 O. RABIN

2 inquiry made, to the best of your knowledge?

3 A. About which product specifically?

4 Q. Either about the substance IGF-1 or
5 the product containing deer antler spray.

6 MR. HANNER: I would object on grounds
7 that the question could call for privileged
8 materials and litigation preparation
9 materials, but will let the witness answer
10 to the extent he cannot reveal privileged
11 communications.

12 BY MR. GINSBERG:

13 Q. Let's just start out with yes or no.

14 A. I do recall a telephone call from
15 Mr. Young on deer antler velvet spray. And
16 that's about it.

17 Q. When did that telephone conversation
18 occur?

19 A. I think towards the end of April 2013,
20 I believe. I couldn't give the specific date,
21 but I think it was around the end of April 2013.

22 Q. Did Mr. Young telephone you?

23 A. He did.

24 Q. Was Mr. Young, to the best of your
25 knowledge, engaged in legal representation of

1 O. RABIN

2 Q. Is that internal legal counsel or is
3 that external?

4 A. He's -- at the time, no, I think his
5 status was WADA legal counsel. So consider it
6 internal, yes.

7 Q. And before you sent to Mr. Young a
8 response, did you share with those two people
9 what you had written?

10 A. Well, there was a two-step process.
11 The first one was I informed them about the
12 request. And the second one, of course, was when
13 I drafted an official response on behalf of WADA,
14 I shared this response with my two colleagues.

15 Q. Before drafting the response for
16 Mr. Young, did you review any scientific
17 literature?

18 A. I did not have to.

19 Q. Why is that?

20 A. Because when Mr. Young contacted me --
21 that was, as we discussed, at the end of
22 April 2013 I believe -- WADA has already issued a
23 statement, public statement, on deer antler
24 velvet spray as well as in the past a question
25 and answer on colostrum, which we consider from a

1 O. RABIN
2 scientific perspective and, in regards of the
3 list of prohibited substances, as similar
4 products in a sense, natural products.

5 MR. DREYER: Move to strike the answer
6 on colostrum as beyond the scope of proper
7 discovery consistent with the court's
8 ruling.

9 BY MR. GINSBERG:

10 Q. Explain your testimony just now.

11 MR. DREYER: Objection to the form.

12 MR. GINSBERG: Excuse me. Excuse me,
13 Mr. Dreyer.

14 MR. DREYER: There was a long pause.
15 I thought you were done. Please continue.

16 BY MR. GINSBERG:

17 Q. I believe you just testified that you
18 consider colostrum and deer antler spray to be
19 similar. Is that correct?

20 MR. DREYER: Objection to the form of
21 the question. It seeks testimony the judge
22 has already ruled is irrelevant to this
23 case.

24 You can answer.

25 THE WITNESS: To some extent, yes.

1 O. RABIN
2 They are not the same products but they fall
3 in the same global concept of natural
4 products coming from animal extracts, if you
5 will, and containing minute amounts --
6 naturally containing minute amounts of
7 prohibited substances. But because they are
8 natural and --

9 MR. BENNETT: Just answer the
10 question. Don't give him a scientific
11 lecture.

12 BY MR. GINSBERG:

13 Q. Well, I would actually like a
14 scientific lecture. If you could continue,
15 please.

16 MR. BENNETT: Well, I instruct him not
17 to give a scientific. Just --

18 MR. GINSBERG: Then I will ask you a
19 question.

20 MR. BENNETT: -- ask questions.

21 BY MR. GINSBERG:

22 Q. What were you about to say?

23 MR. BENNETT: Objection, obviously,
24 Peter. Come on.

25

1 O. RABIN

2 BY MR. GINSBERG:

3 Q. In what ways are IGF-1 and colostrum
4 similar?

5 MR. DREYER: Same objection as to
6 questions regarding colostrum as beyond the
7 scope of proper discovery in this case.

8 BY MR. GINSBERG:

9 Q. Go ahead. You can answer.

10 A. They are not the same. In fact, a
11 minute amount of IGF-1 is contained in colostrum.

12 Q. I misspoke. I'm sorry.

13 In what ways are colostrum and deer
14 antler spray similar?

15 MR. DREYER: Same objection as to
16 colostrum.

17 MR. BENNETT: You can answer.

18 THE WITNESS: Because they are natural
19 products, extracts from animal body parts or
20 production, that do contain minute amounts
21 of prohibited substances, and namely for the
22 case of colostrum and deer antler velvet
23 extract, IGF-1.

24 BY MR. GINSBERG:

25 Q. When is the first time, as far as you

1 O. RABIN

2 A. It doesn't ring a bell. I'm sorry.

3 Q. Do you recall the football player Ray
4 Lewis?

5 A. Not really, no.

6 Q. Is it fair to say that dating as far
7 back as 2004 WADA's position has been that the
8 ingestion or use of colostrum is not a per se
9 violation of the WADA anti-doping code?

10 MR. DREYER: In addition to objection
11 to form and mischaracterizing the witness's
12 testimony, I'll object as to the relevance
13 of colostrum.

14 You can answer.

15 THE WITNESS: As far as 2007, 2008,
16 the position of the list expert group, in
17 line with WADA's management position, is
18 that colostrum containing small amounts
19 of -- minute amounts of IGF-1 as a natural
20 product should not be considered as a
21 prohibited product.

22 BY MR. GINSBERG:

23 Q. Is that similar to WADA's position
24 with regard to deer antler spray?

25 MR. DREYER: Objection to the form of

1 O. RABIN
2 back to the attention of the list expert group
3 members, and we did in August 2013 to have a
4 confirmation by our expert members that deer
5 antler would be considered similarly to colostrum
6 and should not be considered prohibited.

7 Q. Did WADA take the position prior to
8 August 2013 that the use of deer antler spray was
9 not per se prohibited?

10 A. We did.

11 Q. When is the first time WADA took that
12 position?

13 MR. DREYER: Objection to the form of
14 the question.

15 You can answer.

16 THE WITNESS: I believe there was a
17 statement publicly released by WADA at the
18 very beginning of February 2013, and as far
19 as I recall, I was consulted by my
20 colleagues, in particular from the
21 communications department --

22 MR. BENNETT: He didn't ask you who
23 you consulted. Just answer the question.

24 THE WITNESS: Okay. So that would
25 have been the end of -- or January 2013 to

1 O. RABIN

2 the beginning of February 2013.

3 BY MR. GINSBERG:

4 Q. We're going to look at that statement
5 shortly.

6 A. Okay.

7 Q. Has WADA ever taken the position that
8 deer antler spray could enhance performance, was
9 dangerous to health, or against the spirit of
10 sport?

11 MR. DREYER: Objection to the form of
12 the question. Relevance.

13 THE WITNESS: Here we have to be very
14 clear. When WADA took a position on deer
15 antler spray and the possibility to enhance
16 performance or fulfill two out of the three
17 criteria under of the World Anti-Doping Code
18 was strictly referring to natural deer
19 antler velvet extract that, as I said, does
20 contain minute amounts of IGF-1 and probably
21 other growth factors, and that natural
22 product -- and I insist on the fact that
23 this is a natural product, unprocessed,
24 unmodified -- is not considered prohibited.

25

1 O. RABIN

2 BY MR. GINSBERG:

3 Q. Under the procedures of WADA, is it
4 your responsibility as the head scientist to
5 assure the accuracy of information published in
6 the question-and-answer portion of the website?

7 MR. DREYER: Objection; foundation.

8 Calls for a legal conclusion.

9 You can answer as to your
10 understanding.

11 THE WITNESS: It is one of my
12 responsibilities.

13 BY MR. GINSBERG:

14 Q. The answer to the question about
15 colostrum reads: "Colostrum is not prohibited
16 per se, however it contains certain quantities of
17 IGF-1 and other growth factors which are
18 prohibited and can influence the outcome of
19 anti-doping tests. Therefore WADA does not
20 recommend the ingestion of this product."

21 Is that accurate?

22 MR. DREYER: Same objection as to
23 colostrum.

24 You can answer.

25 And objection to form.

1 O. RABIN

2 THE WITNESS: Is your question from a
3 scientific standpoint, or is that accurate
4 in terms of wording?

5 BY MR. GINSBERG:

6 Q. From a scientific standpoint.

7 MR. DREYER: Same objection.

8 THE WITNESS: This reflects WADA's
9 position and the position of the list expert
10 group members.

11 BY MR. GINSBERG:

12 Q. If a person accessing the WADA website
13 wanted to understand the basis for that answer,
14 were articles or other information available
15 regarding the issue of colostrum?

16 MR. DREYER: Objection as to
17 foundation and the overall relevance and
18 admissibility of colostrum under the court's
19 ruling.

20 THE WITNESS: Not that I recall.

21 BY MR. GINSBERG:

22 Q. Has there ever been any information
23 available on your website regarding colostrum?

24 MR. DREYER: Same objections.

25 You can answer.

1 O. RABIN

2 before as a document.

3 Q. Have you seen it on WADA's website?

4 A. I've certainly seen part of it, but
5 not necessarily all of it.

6 Q. On the second page under the bold
7 heading "What is the status of colostrum?" there
8 is the statement, "Colostrum is not prohibited
9 per se," et cetera.

10 Do you see that?

11 A. Do you mean point 8 on this document?
12 Because you mentioned page 2, if I'm not
13 mistaken.

14 Q. I'm sorry. It's in a different form.
15 Yes, on page 4.

16 A. On page 4, yes. Point 8 on page 4.
17 Yes, I'm with you.

18 Q. Is that the official position of WADA
19 regarding colostrum?

20 MR. DREYER: Objection as to the
21 relevance and admissibility of colostrum
22 under the court's ruling.

23 You can answer.

24 THE WITNESS: Yes, it is.

25

1 O. RABIN

2 BY MR. GINSBERG:

3 Q. And for how long has that been the
4 official position of WADA?

5 MR. DREYER: Same objection.

6 You can answer.

7 THE WITNESS: For many years.

8 BY MR. GINSBERG:

9 Q. Approximately how long?

10 MR. DREYER: Same objection.

11 You can answer.

12 THE WITNESS: I would say at least
13 five or six years.

14 BY MR. GINSBERG:

15 Q. Dr. Rabin, I would like to mark as
16 Exhibit 89 a document produced I believe by WADA
17 Bates-stamped A1994 --

18 MR. DREYER: That's our third 89,

19 Peter?

20 MR. GINSBERG: Sorry?

21 MR. DREYER: You said Exhibit 89?

22 MR. GINSBERG: No, I meant to say
23 Exhibit 91. A1994 through 1995.

24 (Plaintiff's Exhibit 91 marked for
25 identification and attached hereto.)

1 O. RABIN
2 me -- Maybe I'm not asking the question
3 correctly.

4 (Whereupon, the requested portion was
5 read back by the Reporter.)

6 THE WITNESS: Oh, children. Okay.
7 I'm sorry. That was the word I was missing.

8 Human growth hormone is used for
9 growth retardation, and IGF-1 is used for
10 children who are resistant to human growth
11 hormone. It's a product on the market.

12 BY MR. GINSBERG:

13 Q. That product is delivered to the
14 children through injection, correct?

15 MR. DREYER: Objection as to
16 foundation.

17 THE WITNESS: As far as I'm aware of,
18 yes.

19 BY MR. GINSBERG:

20 Q. Are you aware of any other method for
21 delivering the IGF-1 in order to stimulate
22 growth?

23 MR. DREYER: Objection to the form.

24 Asked and answered.

25 You can answer.

1 O. RABIN

2 THE WITNESS: Other than injection, I
3 assume? That's your question, other than
4 injection?

5 BY MR. GINSBERG:

6 Q. Yes, sir.

7 A. The pharmaceutical preparations I'm
8 aware of are injectable preparations.

9 Q. And it's the same for insulin,
10 correct?

11 A. No. Insulin can be inhaled as well.
12 There has been formulations that have been
13 developed on inhaled insulin.

14 Q. Let's stick with IGF-1, then.

15 A. Okay.

16 Q. Can IGF-1 be inhaled?

17 MR. DREYER: Objection to the form of
18 the question.

19 THE WITNESS: Technically speaking, it
20 can be inhaled.

21 BY MR. GINSBERG:

22 Q. Would it have any effect in terms of
23 human growth?

24 MR. DREYER: Objection as to
25 foundation. Asked and answered.

1 O. RABIN

2 THE WITNESS: This I cannot say. I
3 haven't read anything on that aspect.

4 BY MR. GINSBERG:

5 Q. Are you aware of children who are
6 being administered IGF-1 inhaling rather than
7 receiving injection of the product?

8 A. No, I am not.

9 Q. Is there a difference between IGF-1
10 and inactive IGF-1?

11 MR. DREYER: Objection to the form of
12 the question. Foundation.

13 THE WITNESS: Could you specify what
14 you mean by inactive IGF-1?

15 BY MR. GINSBERG:

16 Q. I was going to ask you that question.
17 Are you aware of something described as inactive
18 IGF-1?

19 A. Not in the technical terms, no.

20 Q. Is IGF-1 an active substance?

21 A. It is an active --

22 MR. DREYER: Objection to the form of
23 the question.

24 Go ahead. Sorry.

25 THE WITNESS: Excuse me. It is an

1 O. RABIN

2 active substance released by the liver, yes.

3 BY MR. GINSBERG:

4 Q. Describe what you mean by that.

5 A. Well, you and I as we speak, we've got

6 IGF-1 circulating in our body released by the

7 liver. That is what is happening endogenously.

8 Exogenously, as we know, IGF-1 is a

9 product that is sold for growth retardation for

10 kids that are resistant to human growth hormone,

11 and pharmaceutical studies for products like

12 Increlex, for example, have shown that yes --

13 (Reporter clarification.)

14 THE WITNESS: Increlax. It's

15 I-n-c-r-e-l-a-x. Increlex has shown that

16 there is a benefit on growth for these

17 children. So exogenous IGF-1 can be active,

18 at least in children having such a growth

19 retardation.

20 BY MR. GINSBERG:

21 Q. And you used the term "endogenous."

22 What do you mean by that?

23 A. Endogenous, what is naturally produced

24 by the body.

25 Q. Is there a scientific analysis or test

1 O. RABIN

2 judgment.

3 Q. I wish I had paid more attention when
4 I went to college in my science courses.

5 Is the promotion of some growth
6 required in order to be considered IGF-1?

7 MR. DREYER: Objection to the form of
8 the question. Foundation.

9 THE WITNESS: Could you be more
10 specific on what you're referring to when
11 you say "some growth," please?

12 BY MR. GINSBERG:

13 Q. Some biological effect in the human
14 body.

15 A. That could be an element to be taken
16 into account by the scientist assessing the
17 impact of a drug on the body.

18 Q. When WADA included IGF-1 in its banned
19 substance list, did it assume that the substance
20 it was banning had some biological effect?

21 MR. DREYER: Objection to the form of
22 the question and lack of foundation.

23 THE WITNESS: Yes, it assumed that,
24 knowing the impact of IGF-1 on the body,
25 that it would have an effect.

1 O. RABIN

2 question. You left out part of the
3 document.

4 MR. GINSBERG: Why don't you let me
5 finish the question at least before you
6 interrupt me and make a speech.

7 BY MR. GINSBERG:

8 Q. "The method of ingestion is also
9 significant and substances taken by injection or
10 even by way of a spray may have a more powerful
11 effect."

12 Do you see that?

13 A. I do.

14 MR. DREYER: Objection;
15 mischaracterizes the document.

16 BY MR. GINSBERG:

17 Q. Is it correct that a product can
18 differ bottle by bottle in terms of whether it is
19 or is not tainted with a substance?

20 A. Absolutely, yes. If we refer to
21 dietary supplements or nutritional supplements,
22 the answer is clearly yes.

23 Q. So is it fair to say that if somebody
24 purchases six bottles of Product A, bottles 1 --
25 Bottle 1 may be different in substance than

1 O. RABIN

2 A. Yes. I believe the date is correct
3 judging from the document in front of me.

4 Q. Okay. "WADA takes a very similar
5 approach for deer antler as we do for colostrum
6 or some other dietary supplements."

7 Did you write that?

8 A. I believe I did.

9 Q. And as of February 1st, 2013, was that
10 an accurate statement?

11 MR. DREYER: Objection with respect to
12 colostrum.

13 You can answer.

14 THE WITNESS: I believe it was.

15 BY MR. GINSBERG:

16 Q. "Insulin-like growth factor 1 (IGF-1)
17 is prohibited under Section 2.4 of the list of
18 prohibited substances and methods."

19 Do you see that?

20 A. I do.

21 Q. Did you write it, and is it accurate?

22 A. I believe I did write it, and I
23 believe it is accurate.

24 Q. "Deer antler spray is not prohibited
25 per se."

1 O. RABIN

2 Did you write that and was that
3 accurate?

4 A. As written here with a nuance that I
5 had in mind natural deer antler spray extract --
6 I'm sorry, deer antler velvet extract, when I
7 wrote this.

8 Q. Was it accurate then and is it
9 accurate today?

10 A. With the information I just specified,
11 yes.

12 Q. "WADA recommends athletes be extremely
13 vigilant with this supplement because it may
14 contain IGF-1." Correct?

15 A. Correct.

16 Q. And that was accurate on February 1st,
17 2013, correct?

18 A. I do believe so, yes.

19 Q. "There is no absolute guarantee in the
20 scientific literature that IGF-1 taken orally
21 will not influence the plasma levels of IGF-1,
22 which may influence the result of anti-doping
23 tests."

24 Did you write that?

25 A. I believe I did.

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2 MR. DREYER: Objection to the form.

3 The documents speak for themselves.

4 THE WITNESS: If I may correct, I
5 believe your question is about deer antler
6 or velvet extract.

7 BY MR. GINSBERG:

8 Q. Yes, sir.

9 A. So deer antler velvet extract and
10 colostrum, is WADA's position the same?

11 Q. Yes, sir.

12 A. Yes, it is.

13 Q. And it was the same on February 1st,
14 2013, correct?

15 MR. DREYER: Same objection.

16 THE WITNESS: I believe so, yes.

17 BY MR. GINSBERG:

18 Q. And did that position remain the same
19 throughout February, March and April of 2013 with
20 regard both to colostrum and with regard to deer
21 velvet?

22 MR. DREYER: Same objection.

23 THE WITNESS: As far as I'm aware,
24 yes, our position remained the same.

25

1 O. RABIN

2 BY MR. GINSBERG:

3 Q. As the head of science at WADA, are
4 you aware of any athlete ever being disciplined
5 for using deer velvet -- deer antler velvet other
6 than Mr. Singh?

7 MR. DREYER: Asked and answered. Lack
8 of foundation as to prosecution.

9 You can answer.

10 THE WITNESS: Not that I'm aware of.

11 BY MR. GINSBERG:

12 Q. Did WADA make any change in its
13 position with regard to deer antler spray at any
14 time prior to April 30, 2013?

15 MR. DREYER: Objection. The public
16 positions speak for themselves.

17 You can answer.

18 THE WITNESS: No.

19 BY MR. GINSBERG:

20 Q. No?

21 A. No. Not that I recall, no.

22 Q. Did WADA ever -- did WADA make any
23 clarification or modification of its position
24 regarding deer velvet -- deer antler velvet
25 during that time period?

1 O. RABIN

2 MR. DREYER: Same objection. WADA's
3 documents speak for themselves.

4 THE WITNESS: Sorry. Could you
5 specify the time period to be accurate?

6 BY MR. GINSBERG:

7 Q. January 1st, 2013, through April 30th,
8 2013.

9 A. Well, there was a clarification by
10 WADA in the form of a press release, I believe.
11 Not a press release, sorry. A communique from
12 WADA sent to all stakeholders at the very
13 beginning of February 2013; on February 5th, if
14 my memory doesn't fail.

15 Q. No, you're correct, February 5th. And
16 we're going to look at that.

17 Was the February 5th statement -- did
18 the February 5th statement modify WADA's position
19 regarding deer velvet -- deer antler velvet?

20 MR. DREYER: Objection. The
21 statements speak for themselves.

22 THE WITNESS: It did not modify. It
23 clarified for the benefit of all
24 stakeholders.

25

1 O. RABIN

2 BY MR. GINSBERG:

3 Q. And from February 5th, 2013, through
4 April 30th, 2013, was there any modification or
5 clarification of WADA's position regarding deer
6 velvet -- deer antler velvet?

7 MR. DREYER: Could you read the
8 question back?

9 (Whereupon, the requested portion was
10 read back by the Reporter.)

11 MR. DREYER: Objection to the form.

12 The positions speak for themselves.

13 You can answer.

14 THE WITNESS: No, not to my knowledge,
15 there was no modification.

16 MR. GINSBERG: I would like to mark as
17 Exhibit 95 Bates stamp A358 through A360.

18 (Plaintiff's Exhibit 95 marked for
19 identification and attached hereto.)

20 THE WITNESS: Okay. Yes.

21 BY MR. GINSBERG:

22 Q. Do you recognize the communications
23 between you and Mr. Howman?

24 A. I do.

25 Q. And who is Mr. Howman?

1 O. RABIN
2 case is the first time I saw this document as it
3 is presented here.

4 Q. Did anyone ever inform you that
5 Exhibit 55 did not contain the per se language?

6 A. Not that I recall.

7 Q. Did anyone ever ask you about the fact
8 that Exhibit 55 does not have the per se
9 language, other than perhaps yesterday with your
10 attorneys?

11 A. No. Again, I probably read before
12 it's been released, but not after. And there was
13 no point that I do remember specifically about
14 this per se language.

15 Q. And is it fair to say -- Strike that.
16 Do you recall ever speaking with
17 anyone about the fact that the per se language is
18 not set forth in Exhibit 55?

19 A. No, no specific recollection on this
20 point.

21 Q. Does the omission of the per se
22 language in Exhibit 55 have any effect or vary in
23 any way WADA's position regarding deer velvet --
24 deer antler velvet?

25 MR. DREYER: Objection to the form of

1 O. RABIN

2 the question.

3 THE WITNESS: Are you asking me my
4 personal opinion?

5 BY MR. GINSBERG:

6 Q. Yes, sir.

7 A. With all the caveats of my lack of
8 full knowledge of the English language and its
9 intricacies, I would say to me it's a detail.

10 Q. Without substance?

11 MR. DREYER: Objection --

12 THE WITNESS: Yeah, not much
13 substance.

14 MR. DREYER: -- mischaracterizes his
15 testimony.

16 BY MR. GINSBERG:

17 Q. I'm sorry. I'm trying to skip a
18 couple of things.

19 Dr. Rabin, let me show you what
20 previously was identified as Exhibit 86.

21 (Plaintiff's Exhibit 86, having been
22 previously marked for identification, is
23 attached hereto.)

24 THE WITNESS: Thank you.

25

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2 BY MR. GINSBERG:

3 Q. Let me ask for you to clarify one
4 thing, Dr. Rabin. I'm sorry. Do you have
5 Exhibit 55 before you?

6 A. I do have it, yes.

7 Q. Exhibit 55, the statement.

8 A. The WADA. Okay.

9 Q. I was asking you questions using the
10 term "deer antler velvet" but the heading itself
11 says "deer antler velvet spray." Do you see
12 that?

13 A. Okay.

14 Q. Were your answers to those questions
15 that I asked you relating to the spray itself?

16 Let me ask you this way: Does
17 Exhibit 55 accurately set forth WADA's position
18 regarding deer antler spray?

19 MR. DREYER: Objection to the form of
20 the question.

21 You can answer.

22 THE WITNESS: Assuming we talk about
23 natural deer antler velvet spray or extract,
24 yes.

25

1 O. RABIN

2 what you said to Mr. Young?

3 A. No.

4 MR. DREYER: Objection to the form.

5 BY MR. GINSBERG:

6 Q. In what way?

7 A. Well, this is his understanding of
8 what I said. But I do not recall mentioning, and
9 I'm going to say I clarified these points
10 subsequently to Mr. Young that WADA's position
11 has never evolved.

12 Q. WADA's position has always been with
13 regard to deer antler spray, colostrum and other
14 products containing very small amounts of IGF-1,
15 that use of those products was not prohibited per
16 se, correct?

17 MR. DREYER: Objection to the form of
18 the question. Mischaracterizes documents
19 and the witness's prior testimony.

20 You can answer.

21 THE WITNESS: I would say since 2007
22 or 2008 onwards, the position hasn't changed
23 at all about the status of these products.

24 BY MR. GINSBERG:

25 Q. And what is that position regarding

1 O. RABIN
2 deer antler spray, colostrum and other products
3 containing small amounts of IGF-1?

4 MR. DREYER: Objection to the form of
5 the question. The positions speak for
6 themselves. And object with respect to
7 colostrum.

8 You can answer.

9 THE WITNESS: That natural products or
10 extracts containing small amounts of IGF-1
11 are not considered prohibited by WADA.

12 BY MR. GINSBERG:

13 Q. That is correct for colostrum,
14 correct?

15 A. Correct.

16 Q. It is correct for deer antler spray,
17 correct?

18 A. Correct.

19 MR. DREYER: Objection to the form.

20 BY MR. GINSBERG:

21 Q. And it is correct with regard to other
22 products containing very small amounts of IGF-1,
23 correct?

24 MR. DREYER: Objection to the form.

25 THE WITNESS: As long as they are

1 O. RABIN

2 natural, yes.

3 BY MR. GINSBERG:

4 Q. Why did you ask Mr. Young to provide
5 to you a formal request before you could issue a
6 statement setting forth WADA's position?

7 A. It's a fairly standard procedure at
8 WADA when we receive requests. In particular
9 when documents are requested from us, and from me
10 in particular, that I request to avoid any
11 misinterpretation and make sure that we've got
12 trustability on the request, to request a written
13 either letter or message specifying the nature of
14 the request.

15 Q. I'm going to show you what was
16 previously marked as Exhibit 56.

17 (Plaintiff's Exhibit 56, having been
18 previously marked for identification, is
19 attached hereto.)

20 THE WITNESS: Thank you. Okay.

21 Uh-huh.

22 BY MR. GINSBERG:

23 Q. I apologize. Let me go back for a
24 second. Would you take a look again at
25 Exhibit 34.

1 O. RABIN

2 A. Yes, it is.

3 Q. Does Exhibit 56 accurately reflect
4 WADA's position as of the beginning of 2013 as
5 well?

6 MR. DREYER: Objection to the form.

7 The positions speak for themselves.

8 You can answer.

9 THE WITNESS: Yes, it did reflect
10 opposition at the time and does today.
11 Still I must bring this precision on natural
12 deer antler velvet extract.

13 BY MR. GINSBERG:

14 Q. Dr. Rabin, I'd like to show you what
15 previously was identified as Exhibit 59.

16 (Plaintiff's Exhibit 59, having been
17 previously marked for identification, is
18 attached hereto.)

19 THE WITNESS: Thank you. Do you
20 expect me to read this document?

21 BY MR. GINSBERG:

22 Q. No.

23 MR. DREYER: You may not make your
24 flight after all.

25

1 O. RABIN

2 BY MR. GINSBERG:

3 Q. I represent to you that this is an
4 interview granted by Commissioner Finchem on
5 April 30, 2013.

6 A. Okay. Uh-huh.

7 Q. Let me direct your attention to the
8 first page, the second column.

9 A. Okay.

10 Q. The paragraph from which I'm going to
11 ask my question starts with "Mr. Singh's
12 subsequent appeal..." Do you see that first
13 paragraph?

14 A. Yes, I do.

15 Q. The second sentence says: "During the
16 appeal process, PGA Tour counsel contacted WADA
17 to confirm a number of technical points."

18 Do you see that?

19 A. Yes, I do.

20 Q. Are you aware of WADA -- I'm sorry, of
21 PGA Tour counsel contacting WADA at any time
22 before the end of April of 2013?

23 A. On the specific point of deer antler?

24 Q. Yes, sir.

25 A. Not that I'm aware of.

1 O. RABIN

2 BY MR. GINSBERG:

3 Q. I would like to show you what was
4 previously identified as Exhibit 61.

5 (Plaintiff's Exhibit 61, having been
6 previously marked for identification, is
7 attached hereto.)

8 THE WITNESS: Thank you. Okay.

9 BY MR. GINSBERG:

10 Q. This is another interview with
11 Commissioner Finchem on May 8, 2013.

12 A. Uh-huh.

13 Q. The top of the second column under the
14 question, "Is it true that the Tour did suspend
15 Vijay for 90 days" --

16 A. Okay. I'm with you.

17 Q. Commissioner Finchem told the world
18 that WADA had changed its list and, as a result,
19 the PGA Tour dropped its action against
20 Mr. Singh.

21 Do you see that?

22 A. I do.

23 Q. Was that true? Did WADA change its
24 list?

25 A. If you infer that we changed the

1 O. RABIN

2 status of IGF-1 on the list, the answer is no.

3 Q. And did the list itself change
4 regarding IGF-1?

5 A. Pardon me?

6 Q. Did the list itself change regarding
7 IGF-1?

8 A. Well, there can be some reformatting
9 of the list and -- as it happened recently for
10 IGF-1, but the status doesn't change.

11 Q. Has WADA ever expressed any opinion
12 regarding the Ultimate Spray one way or the
13 other?

14 A. Regarding the -- pardon me?

15 Q. The deer Ultimate Spray.

16 MR. DREYER: Objection to the form of
17 the question.

18 THE WITNESS: Sorry. I'm --

19 MR. HANNER: I would also object and
20 caution the witness not to reveal any
21 privileged communications in his response.

22 BY MR. GINSBERG:

23 Q. Have you ever heard of a company
24 called S.W.A.T.S.?

25 A. Now, as we speak, I saw the name of