

Oral Argument

July 22, 2026

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UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES

In the Matter of

JASON SCOTT, DVM,
Appellant.

Docket No.
9449

ORAL ARGUMENT

DATE: Wednesday, July 22, 2026

TIME: 11:01 a.m.

BEFORE: Jay L. Himes, Administrative Law Judge

LOCATION: Remote Proceeding

600 Pennsylvania Avenue, NW

Washington, DC 20580

REPORTED BY: Helen Tadesse

JOB NO.: 8343288

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1 A P P E A R A N C E S

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1 A P P E A R A N C E S (Cont'd)
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1 A P P E A R A N C E S (Cont'd)

2 ALSO PRESENT:

3 Robert Silverstein, Litigation Attorney, Office
4 of General Counsel, Federal Trade Commission (by
5 videoconference)

6 Susel Koepke, Attorney Advisor, Federal Trade
7 Commission (by videoconference)

8 Dana Gross, Legal Administration, Federal Trade
9 Commission (by videoconference)

10 LaShaon Asberry-Beach, Legal Administration,
11 Federal Trade Commission (by videoconference)

12 Michael Alonzo, Legal Intern, Federal Trade
13 Commission (by videoconference)

14 Heather Prescott, Paralegal, Brewster &
15 De Angelis, PLLC (by videoconference)

16 Jason Scott, DVM, Appellant (by videoconference)

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E X H I B I T S

NO.

DESCRIPTION

ID/EVD

(None marked.)

1 P R O C E E D I N G S

2 THE REPORTER: The time is 11:01 a.m.,
3 and we're on the record, sir.

4 THE COURT: Good morning to everybody.
5 As many of you know, I'm Judge Himes and I'm the ALJ
6 at the Federal Trade Commission assigned to this case,
7 Matter of Scott, Docket Number four -- I'm sorry --
8 9449. This is the oral argument that I have asked for
9 as part of the merits briefing in the case. I asked
10 the parties to argue whether the AMP -- and I'll use
11 the abbreviation -- found in the February 20, 2025,
12 search of Dr. Scott's SUV can properly be classified
13 as a S0 banned substance under the AD -- AMDC [sic]
14 rules, specifically here, Rule 4111.

15 So let me take the appearances of the
16 parties. Will you please identify yourself and anyone
17 attending with you, either in the same room or
18 elsewhere? I will start with the appellant,
19 Dr. Scott.

20 MR. DE ANGELIS: Your Honor, Joseph De
21 Angelis for Dr. Scott. With me is my paralegal,
22 Heather Prescott.

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1 THE COURT: Okay.

2 And for the Authority?

3 MS. FARRELL: Yes. Good morning, Your
4 Honor. Allison Farrell on behalf of the Authority.
5 And I note that General Counsel of HISA, Samuel
6 Reinhardt, is also present on this call remotely.

7 THE COURT: Okay, good. And again, you
8 are appearing for the Authority, although strictly
9 speaking, you are a HIWU person; right?

10 MS. FARRELL: Correct, Your Honor.

11 THE COURT: Okay. Obviously, this
12 argument is being conducted via video. Although we've
13 not publicly identified a feed for members of the
14 public to attend, the proceeding is not confidential.
15 So if by some stretch of the imagination, some member
16 of the public has found the link, I don't think so
17 because I don't see anybody, but they could come on,
18 and just be attentive to that.

19 I do not think there will be any issue
20 of confidentiality raised in the argument, but if
21 either counsel thinks something is or was or is about
22 to be confidential, then, you know, wave your hands,

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1 get my attention, and we will take whatever steps are
2 necessary to implement that. But that sounds pretty
3 unlikely to me.

4 The FTC's OALJ office is managing the
5 logistics of this hearing. As you see, the argument
6 is being transcribed by a court reporter. And may I
7 ask the court reporter to identify herself, please?

8 THE REPORTER: Yes. Good morning, sir.
9 I'm Helen Tadesse. I'm a court reporter.

10 THE COURT: Thank you.

11 And once the transcript is finalized,
12 it will be filed on the docket in this case.

13 Finally, we have members of the FTC's
14 Office of Administrative Law Judges attending as well
15 here today, and another member of the FTC staff.

16 I will only summarize the logistics
17 because we've already sent you instructions and
18 procedures, so I can just do this very briefly. Only
19 those individuals who are authorized to speak during
20 the argument can do so via the Teams link that we've
21 sent.

22 If you are counsel who are speaking

1 today, you must have your video on at all times, and
2 your audio on only when you are speaking. Please,
3 before speaking, Counsel, identify yourself for the
4 court reporter, just so we have that as clear as can
5 be.

6 Now, I will also only summarize the
7 review proceedings here since I'm sure you're very
8 familiar. In February 2025, HIWU searched Dr. Scott's
9 vehicle at Sunland Park Racetrack in New Mexico.

10 The HIWU investigators found two banned
11 substances, AMP and Sarapin, both of which HIWU and
12 now the Horseracing Integrity and Safety Authority on
13 this review contend are banned substances.

14 HIWU charged Dr. Scott with two
15 possession violations. And in the ensuing
16 arbitration, the arbitrator upheld both charges.
17 Dr. Scott began this review proceeding to have the two
18 violations overturned. Today's argument, however,
19 concerns only the possession of AMP.

20 Now, AMP is not expressly identified in
21 the ADMC rules as a banned substance. Instead, HIWU
22 argues that it is covered under the catchall of ADMC

1 Rule, which I previously mentioned, 4111. And that
2 rule captures non-identified substances that meet
3 certain criteria delineated in the rule. This is the
4 so-called S0 classification of banned substances.

5 And even if the rule criteria are met,
6 there are two carve-outs that can in effect negate
7 coverage. And those carve-outs relate to something
8 called AMDUCA, which is a federal statute; and
9 something else called GFI number 651 [sic], which is
10 an FDA, essentially, policy statement.

11 So we're here today to consider whether
12 AMP is indeed covered under Rule 4111. Any questions
13 before we proceed? Good. I will hear from counsel
14 for the Authority first.

15 MS. FARRELL: Thank you, Your Honor.
16 Allison Farrell on behalf of the Authority. And
17 really quick before I start, I don't want to be
18 informal, but I do want to sort of give a heads-up
19 that we've had some pretty catastrophic flooding and
20 I'm not in my office today. I can't get there. And
21 so I wanted to let you know there may be a dog barking
22 in the background. I apologize in advance. So with

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1 that said --

2 THE COURT: But you do have the HIWU
3 wallpaper up, so it's all official.

4 MS. FARRELL: It's -- it's very
5 official.

6 THE COURT: Okay. So go right ahead.

7 MS. FARRELL: Thank you. So I would
8 like to reserve five minutes for a response as allowed
9 for under your order, Your Honor. And as we're all
10 aware, there's three requirements that have to be met
11 in order for AMP to be deemed a banned substance.

12 I'll quickly run through those three
13 requirements. The first one, both sides --
14 requirement number 1, both sides agree that AMP is not
15 dealt with by Rules 4112 through 4117, as it's not
16 listed on the prohibited list. So it checks the box
17 of criteria number 1.

18 So requirement number two, it means --
19 it says there can be no current approval by any
20 governmental regulatory health authority for
21 veterinary or human use. Now, this requirement does
22 give rise to a dispute between the parties. If we

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1 look to Dr. Benson's report, in the 1970s, the FDA
2 withdrew AMP from approval, as it was deemed neither
3 safe nor effective as a vasodilator.

4 AMP has been expressly rejected by the
5 FDA, and has been that way for 50 years. This is the
6 opposite of having current approval by any
7 governmental regulatory authority. But as was
8 argued --

9 THE COURT: In the United States.

10 MS. FARRELL: Correct. Yes.

11 THE COURT: Sorry. Go ahead.

12 MS. FARRELL: And as -- oh, yeah. I
13 was just going to get to that point. As argued below,
14 the respondent argued -- the appellant here argued,
15 "But wait, AMP is approved by the Australian drug
16 regulators. So it satisfies the requirement of having
17 the approval of any governmental regulatory
18 authority."

19 The Authority's position is that the
20 fact that AMP is approved by Australian regulators is
21 irrelevant and in an absurd interpretation of a U.S.
22 federal regulation. U.S. law applies in the U.S., not

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1 Australian law. And more to the point --

2 THE COURT: Can I ask a question?

3 MS. FARRELL: Sure.

4 THE COURT: What is your best case for
5 that proposition?

6 MS. FARRELL: So my next point is that
7 the bulk drug application by Wedgewood Pharmacy to the
8 FDA, seeking to have AMP listed on the list of bulk
9 drug substances approved for compounding, which was
10 ultimately rejected by the FDA, explicitly states that
11 the Australian version of AMP was not available in the
12 U.S. That's at Appeal Book 5391.

13 And then Dr. --

14 THE COURT: I'm going to stop you there
15 on Wedgewood. But the Wedgewood nomination to the
16 bulk drug list was in 2024, and it wasn't rejected
17 until after Dr. Scott's search -- of the search of
18 Dr. Scott's vehicle.

19 MS. FARRELL: Correct.

20 THE COURT: If understanding how all of
21 this stuff works, while the nomination was pending
22 review, the substance, as a compounded substance,

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1 could be used in the U.S. Am I wrong about that?

2 MS. FARRELL: You are correct, but
3 there's also an and. So

4 THE COURT: Okay.

5 MS. FARRELL: AMP -- yes. And so AMP
6 could -- it was considered -- you could use AMP as
7 long as it was under review, but whoever compounded
8 the AMP and used it, had to follow the further
9 requirements of GFI 256. And it's the Authority's
10 position that the appellant did not comport with the
11 additional requirements necessary to get the benefit
12 of that carve-out.

13 THE COURT: Or at least that wasn't
14 proven in this case. Is that fair? There was no
15 proof that GFI 256 was satisfied in this case?

16 MS. FARRELL: Yes.

17 THE COURT: Okay. I'm sorry. I
18 interrupted you with the Wedgewood diversion, but I
19 apologize. Go right ahead.

20 MS. FARRELL: No. I mean, I
21 understand. That's basically the heart of this
22 argument, I think. And I was going to get to it when

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1 I got down to the exceptions, but we just sort of
2 skipped a little bit ahead.

3 THE COURT: Well, let me ask another
4 question. You say that the regulation -- or the rule,
5 I'm sorry -- in requirement 2, should implicitly
6 assume that it refers to U.S. veterinary authority
7 approval; correct?

8 MS. FARRELL: Yes.

9 THE COURT: Do you not sense a tension
10 between that assertion and what the Authority said
11 during the comment period when the rules were under
12 consideration?

13 MS. FARRELL: I'm not -- I don't know
14 exactly what you're referring to.

15 THE COURT: Okay.

16 Susel, you can share screen, yes?

17 MS. KOEPKE: Yes.

18 THE COURT: Can you bring up page 5018
19 from the appeal book?

20 MS. KOEPKE: Yes.

21 THE COURT: Oh, boy. Can you make that
22 bigger? Never mind. I'll -- oh, you can. So let's

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1 see. I think you have to scroll it down a little bit.
2 Yes. There is a comment on the S0 -- I'm sorry, S0
3 classification right in the middle of the page right
4 now. You see where I am, Ms. Farrell?

5 MS. FARRELL: Yes.

6 THE COURT: And if you look at the
7 response, the last sentence, "This designation can be
8 revised based on evolving use as recognized by
9 international regulators, colleges of veterinary
10 medicine, and individual board-certified specialists."
11 You see where I've read?

12 MS. FARRELL: Yes, Your Honor.

13 THE COURT: Okay. That's the tension
14 that I'm referring to. Do you have any answer? I
15 guess it's kind of unfair because you weren't aware of
16 this. Is that right?

17 MS. FARRELL: I just wasn't sure
18 exactly what you were referring to when you were
19 referring to --

20 THE COURT: Oh, okay.

21 MS. FARRELL: So I think, you know, my
22 response to this would be -- the Authority's response

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1 would be, yes, the designation can be revised on
2 evolving use as recognized by international
3 regulators, but that is in conflict with the GFI 256
4 requirements that exist under the GFI 256 enforcement
5 discretion.

6 THE COURT: But that's a carve-out.
7 You don't even get to GFI 256 unless you can get the
8 substance under, you know, requirement ii. You've got
9 to get it there first, and then you have to worry
10 about whether or not the carve-out for GFI 256
11 applies. Am I wrong?

12 MS. FARRELL: No. I mean, you have
13 to --

14 THE COURT: Do you agree you have the
15 burden of showing that the substance is banned under
16 the basic three requirements in 4111; yes?

17 MS. FARRELL: Yes.

18 THE COURT: And if you can get it in
19 there, then there are carve-outs. And I assume you
20 would agree that Dr. Scott has the burden of showing
21 the applicability of either one of the two carve-outs;
22 right?

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1 MS. FARRELL: Yes.

2 THE COURT: Because it's an exception.

3 MS. FARRELL: Correct.

4 THE COURT: You want to get out from
5 under the basic rule. Your burden is the exception.
6 So your problem is getting it into sub 2 to begin
7 with.

8 MS. FARRELL: Well, it's the
9 Authority's position that we would look to U.S. law
10 for determining whether and how to interpret -- how to
11 interpret a U.S. federal regulation. And that's the
12 Authority's position with respect to this rule.

13 I mean, if the ALJ decides to revise
14 that based on recognition of the Australian
15 international regulatory regime, that is certainly
16 your purview. But it is the Authority's position that
17 we're going to be looking to U.S. law to interpret our
18 own federal regs.

19 THE COURT: I can't accept the risk of
20 revising anything these days. Let me ask this. Are
21 there other AMP cases pending?

22 MS. FARRELL: I'm not aware of any that

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1 are pending. There is one that resolved in 2024.

2 THE COURT: And am I right that prior
3 to this case, neither the Authority nor HIWU had
4 issued any policy statement, enforcement statement,
5 interpretive understanding, that said subpart 2
6 relates to U.S. veterinary approval?

7 MS. FARRELL: I'm not aware of any such
8 alert, per se, but I couldn't swear under oath that it
9 does or does not exist. I'm not aware of any.

10 THE COURT: Fair enough. Okay. I know
11 you haven't touched on sub 3, but I can't resist
12 asking. Can you explain to me -- maybe it doesn't
13 matter here -- but how something could satisfy sub 2
14 and not satisfy sub 3? I agree. This is a hard
15 question. I

16 MS. FARRELL: I would have to -- I
17 would -- I'd like to consult with our expert on this
18 point, Your Honor, but I think that I see your point.

19 THE COURT: You can certainly bow off.
20 One of the concerns, though, is that part 3 has
21 language of universal acceptance. It doesn't -- you
22 know, that isn't even limited to the U.S.

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1 MS. FARRELL: Not by the text of the
2 rule -- of the requirement, no.

3 THE COURT: Okay. All right. I think
4 your ten minutes is up, but do you want to say
5 anything more? I don't want to cut people off because
6 I think this is important.

7 MS. FARRELL: I mean, I did have just a
8 bit about requirement number 3. And just to highlight
9 the expert evidence where Dr. Benson, you know, said
10 that there's no literature or research existing to
11 support the use of AMP to treat or prevent tying up.

12 So not only is it not universally
13 recognized as not having a valid veterinary use for
14 rhabdomyolysis, it's not recognized at all. And then,
15 importantly, Dr. Benson -- you know, we don't even get
16 to the AMDUCA exceptions because there are FDA
17 approved alternatives for treatment of tying up.

18 As Dr. Benson's evidence, you know,
19 came in, dantrolene, acepromazine, diet changes,
20 exercise changes -- there are plenty of -- there are
21 FDA approved drugs that can be used to treat
22 rhabdomyolysis, rather than just going straight to a

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1 compounded drug that has -- there's no research or
2 report supporting the treatment.

3 THE COURT: Okay.

4 MS. FARRELL: And I'm just scanning
5 here really quickly.

6 THE COURT: You've got reserve time. I
7 recognize it.

8 MS. FARRELL: Okay. That's fine. If I
9 can, I'll reserve my five minutes to respond. Thank
10 you, Your Honor.

11 THE COURT: Okay.

12 Mr. De Angelis?

13 MR. DE ANGELIS: Yes, Your Honor. I'm
14 going to -- just as a preliminary note, I'm just going
15 to refer to AMP as AMP, just because that's how we
16 talk about it.

17 THE COURT: Good, very good. Good
18 start.

19 MR. DE ANGELIS: So I think that the
20 problem here is sort of the underlying theme of our
21 entire appeal, which is that the rules are being
22 applied, I think, to circumvent the rulemaking and

1 revision process that it -- they're interpreting rules
2 broadly to avoid actually having to justify policy
3 decisions through the proper process under the statute
4 and regulations. But I think that --

5 THE COURT: But actually, here, they're
6 interpreting the rule narrowly.

7 MR. DE ANGELIS: Yeah, they are. And
8 in doing so, I think they've departed from their --
9 the explanations they provided in the rulemaking
10 process. But I think that you're right. You're
11 correct that AMP is not a banned substance because it
12 cannot be categorically -- it categorically cannot
13 meet all three criteria for an S0 prohibited
14 substance.

15 That language says that it has no
16 current approval by any governmental regulatory health
17 authority for veterinary or human use. As you noted,
18 the record shows at least two approvals, one by the
19 FDA and one by Australia. The --

20 THE COURT: Well, the FDA approval was
21 withdrawn ages ago, so that doesn't count.

22 MR. DE ANGELIS: Right. So what

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1 I'm -- but the approval I'm referring to is the
2 guidance in GFI 256 that permits the compounding of
3 bulk substances when an application is under review.

4 Both experts agreed that this was a
5 permission to use it in veterinary medicine. So to
6 whatever extent an FDA approval is required, the FDA's
7 guidance that provides that you can compound these
8 substances while a petition is pending -- an
9 application is pending -- means that they were
10 approved for use for that limited purpose.

11 THE COURT: Can I ask a question on
12 that?

13 MR. DE ANGELIS: Sure.

14 THE COURT: Okay. So you've got this
15 kind of review period. Ultimately, the FDA rejects
16 the Wedgewood nomination. Dr. Scott, if I understand
17 the evidence, didn't buy his stuff from Wedgewood; did
18 he?

19 MR. DE ANGELIS: No. There were
20 several applications for AMP under that docket number.
21 We didn't put all of them into the record. We just
22 put in one because it would have been -- I think there

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1 were about a hundred applications for AMP. And the
2 Wedgewood one was, I think, the principal one. There
3 were a lot of tack-ons under that docket number.

4 THE COURT: Well, if I -- again, if I
5 understand the record, the AMP that was seized had a
6 label that said Pharmaco Equine; right?

7 MR. DE ANGELIS: Yes.

8 THE COURT: And did Pharmaco Equine put
9 in a nomination?

10 MR. DE ANGELIS: I don't think that
11 putting in a nomination is required in order to
12 compound it. I believe this --

13 THE COURT: Well, I'm just asking.
14 Okay.

15 MR. DE ANGELIS: Yeah. But I'm -- I
16 did not find an application, but I can't confirm one
17 way or the other that it didn't exist. We grabbed the
18 application that was most recent when we got the
19 exhibits. I just made that one because --

20 THE COURT: Did you say there were
21 about a hundred applications not in the record? Were
22 they before or after Wedgewood?

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1 MR. DE ANGELIS: If we -- I believe
2 some were before or some were after. I could give you
3 the docket number for the FDA to look at. There were
4 numerous --

5 THE COURT: But that to me is a pretty
6 shocking omission if there's some were before.
7 Because if you are telling me -- and I think there is
8 some agreement on this -- that while one of these
9 nominations is pending, it's okay to use the stuff.
10 If there were earlier ones, it would have extended
11 backwards to benefit Dr. Scott. And I don't
12 understand how you could possibly leave those out of
13 the record.

14 MR. DE ANGELIS: We didn't think that
15 it was necessary because it's the -- we wanted an
16 application where it was clear that it would have
17 applied during the period of the search. And so we
18 picked -- we picked the one that had the date range
19 that just showed that --

20 THE COURT: Do you know anything about
21 Pharmaco -- Equine Pharmaco?

22 MR. DE ANGELIS: Equine Pharmaco?

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1 THE COURT: Yeah.

2 MR. DE ANGELIS: Yeah, somewhat.

3 They're a distributor of compounded medications that
4 compile and source these substances of AMP among
5 others.

6 THE COURT: Where is that in the
7 record?

8 MR. DE ANGELIS: It's not. We --

9 THE COURT: Then how do you know it to
10 represent it to me?

11 MR. DE ANGELIS: I reached out to the
12 distributor when I was trying to obtain a copy of the
13 label, and they wouldn't give it to us.

14 THE COURT: You found a phone number
15 for them, in other words?

16 MR. DE ANGELIS: I found a phone number
17 for the contact that Dr. Scott gave me, and he
18 wouldn't talk to me. At this point, the FDA's
19 nomination had been rejected, and he wouldn't talk to
20 me about it.

21 THE COURT: Was that Wedgewood or
22 Equine Pharmaco?

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1 MR. DE ANGELIS: I can't remember his
2 name. I can go -- I can look back at my
3 communications and supplement that for you if you
4 want, but it --

5 THE COURT: None of that's in the
6 record at this point.

7 MR. DE ANGELIS: It's not, but I want
8 to answer your question.

9 THE COURT: Yeah, sure.

10 MR. DE ANGELIS: Yeah.

11 THE COURT: But I don't see anything
12 public about Equine Pharmaco.

13 MR. DE ANGELIS: I -- we just didn't
14 look into that. I mean, it wasn't really important,
15 in our view, because the text of the rules are for the
16 substance. If there was an issue that was raised with
17 the sourcing of the medication, I feel like the FDA
18 would have started an action. My understanding is
19 these aren't, you know, small -- this isn't like a
20 small organization, but I -- there was just no issue
21 raised with that.

22 THE COURT: It doesn't have a website

1 that I can find.

2 MR. DE ANGELIS: Well, I don't want to
3 get too off-topic. We just thought that it
4 wasn't -- we didn't go down that road because we
5 didn't think that it was pertinent to the issues in
6 the case. And there wasn't an issue that was being
7 raised by HISA or HIWU about the source of the
8 medication.

9 It was just whether AMP was banned.
10 That's what their notice said. They just said AMP is
11 a banned substance. They didn't say the AMP you found
12 was a banned substance. They didn't make that
13 argument until six months later in their brief in
14 chief. So we were approaching this during -- when we
15 were investigating the matter as if we just needed to
16 defend whether AMP categorically is a banned
17 substance, and we took that approach.

18 THE COURT: Is it possible to
19 distribute AMP without violating federal law?

20 MR. DE ANGELIS: Yes.

21 THE COURT: Yes?

22 MR. DE ANGELIS: And yeah, GFI

1 256 -- well, so GFI 256, by its terms, says that it's
2 a technical violation of federal law to compound bulk
3 substances. But they exercise their enforcement
4 discretion to say that if you comply with certain
5 requirements, we're not going to go after you.

6 And that's been -- my understanding is
7 you can take that to the bank. You can show
8 compliance, you're not going to get in trouble with
9 the FDA, and the FDA has exclusive jurisdiction over
10 that question.

11 So that's -- and to answer your
12 question, it's -- I think that the GFI 256 says, yes,
13 it's a technical violation, but it's not an enforced
14 violation.

15 THE COURT: Okay.

16 MR. DE ANGELIS: So I want to talk
17 about the Australia approval because I think that this
18 is probably the easier question. The word "any," I
19 think it's consistently interpreted by the Supreme
20 Court to mean one or some indiscriminately of whatever
21 kind instead of referencing a subset. And I got two
22 cases for you.

1 The first is United States vs.
2 Gonzales. It's 520 U.S. 1, which specifically
3 rejected the argument that "any" other term of
4 imprisonment in a federal sentencing statute meant
5 "any" other federal term of imprisonment, and
6 concluded that it also reached state terms of
7 imprisonment.

8 And that holding was reaffirmed in
9 Ali -- well, that reading was reaffirmed in Ali v.
10 Federal Bureau of Prisons. It's 552 U.S. 214. That
11 said -- that rejected the argument that "any" other
12 law enforcement officer includes only law enforcement
13 officers acting in a customs or excise capacity.

14 The lesson from both these cases is
15 that when the word "any" is used, and wants you to
16 refer to a specific subset, it defines that subset in
17 the terms of the regulation rather than that you can't
18 read in a subset of "any" unless the language requires
19 that.

20 I also think that this -- that HISA's
21 argument --

22 THE COURT: Did Dr. Scott rely on the

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1 Australian approval in securing AMP in his practice?

2 MR. DE ANGELIS: No. That's not -- I
3 don't believe that's how that works. I think it has a
4 code that you can use to purchase it. And then the
5 approval of it goes through -- essentially complying
6 with GFI 256. And so I --

7 THE COURT: There is no actual order
8 for AMP in the record; correct -- that Dr. Scott
9 placed?

10 MR. DE ANGELIS: Are you talking about
11 the purchase of AMP?

12 THE COURT: Yeah.

13 MR. DE ANGELIS: No. We didn't -- we
14 didn't put that in the record.

15 THE COURT: Okay.

16 MR. DE ANGELIS: So I just want to talk
17 briefly about the international scope of "any." If
18 you look at the regulatory history, this definition
19 was modeled off of the World Anti-Doping Agency's
20 Code, the WADA Code. It's almost taken -- it's
21 modeled substantially off of its own definition of an
22 S0 prohibited substance, which says at page 3850 of

1 the appeal book, which reads, "Any pharmacological
2 substance which is not addressed by any of the
3 subsequent sections of the list, and with no current
4 approval by any governmental regulatory health
5 authority for human therapeutic use, is prohibited at
6 all times." So --

7 THE COURT: Well, how do you know
8 that's the model?

9 MR. DE ANGELIS: Because that's what
10 the regulatory history says. They adopted the
11 protocol, modeled it substantially off the World
12 Anti-Doping Agency's Code, the WADA.

13 THE COURT: Well, I don't think it goes
14 quite that far to say that every rule was, you know,
15 had its model in WADA. It seemed to me, frankly, that
16 the ARCI S0 classification rule looks closer. And it
17 arises in the equine industry, rather than WADA, which
18 arises in, you know, largely the human athletic
19 industry. So I'm questioning, you know, your use of
20 model here, which I think is a bit overbroad.

21 MR. DE ANGELIS: I push back on that a
22 little bit because the protocol itself directs the use

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1 of the WADA Code as a gap filler, and as an
2 interpretive aid, and not the ARCI.

3 THE COURT: Yeah. Yeah.

4 MR. DE ANGELIS: And so between the
5 two, I would agree that the ARCI has a similar
6 definition, but that is what's also taken from the FEI
7 and the WADA Code. And really, this -- WADA, I think,
8 is the older organization, and that it draws from.

9 But regardless, the point that I'm
10 trying to make here is that the rulemaking materials
11 reference WADA as sort of the inspiration for the
12 protocol. And WADA is a body of contract law based on
13 European contract law that uses the law of Switzerland
14 as a gap filler.

15 So I just don't -- I think that this
16 argument that this was necessarily intended to have a
17 purely domestic reach is contrary to what they
18 requested in their rules, or what they -- how they
19 justified the rules to begin with.

20 THE COURT: Well, I mean, I guess I see
21 some support for that proposition in this sense. Yes,
22 in proposing the ADMC rules, the Authority's study

1 group -- and I forget the exact name of it -- said we
2 looked to WADA. We looked to the ARCI. We looked to
3 the British Horseracing Authority. We looked to the
4 RMTC. All of those are international bodies.

5 So I guess I can accept that there was
6 an international perspective that informed what became
7 the ADMC rules. That much I can agree with.

8 I'm not sure about how carefully
9 modeled things were on any of those particular, you
10 know, assortments of rules, some of which were
11 substantive, some of which were procedural, some of
12 which were laboratory standards. I mean, but it was a
13 wide-ranging non-U.S. limited focus.

14 MR. DE ANGELIS: Right. I agree. I
15 agree. But the point -- the punctuation mark I want
16 to put on this point is that -- the previous answer of
17 that page you put up referenced that if FDA approval
18 is not required, the lack of FDA approval can't
19 prohibit its use, can't disqualify it from use.

20 There was a decision made that instead
21 of referencing that it's not approved by the FDA in
22 S0, they said "any" governmental regulatory authority.

1 You have to presume that decision was deliberate
2 because the FDA has exclusive jurisdiction over drug
3 approvals.

4 If they intended "any" to mean just the
5 one agency, that's what they should have said. But
6 they didn't. They said "any." And so if -- to give
7 effect to the word "any," it has to have a reach
8 beyond the United States. I only have 30 seconds
9 left, but I -- in terms of the remedy, if you find the
10 merits --

11 THE COURT: Well, I want to come to
12 that afterwards; okay?

13 MR. DE ANGELIS: Okay. Okay.

14 THE COURT: That, to me, is kind of a
15 separate consideration, not really part of the
16 argument on what do we do with AMP here; okay?

17 MR. DE ANGELIS: Okay. Oh, then the
18 last point --

19 THE COURT: I'll give you whatever time
20 you need to talk about that. So you don't even need
21 to limit yourself to a minute.

22 MR. DE ANGELIS: Okay. Okay. I

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1 just -- the last point I want to make is that I
2 disagree that the GFI 256 is an affirmative defense
3 that we bear the burden on. I think that its more
4 accurate reading is that it's an element negating
5 traverse on element 2. That is their argument is that
6 if it doesn't comply with GFI 256, it's not approved
7 for use. And they would have the burden to show
8 noncompliance.

9 And I do think that we made a
10 substantial showing of prejudice from the delay in
11 this case. That they didn't raise an issue regarding
12 the label or even argue that there was an issue with
13 the label until six months afterwards. And we had
14 actually reached out to them and asked if it would be
15 okay to purchase more AMP. And they said no. It was
16 going to be their position that it would be a
17 prohibited substance.

18 And so by that point, we couldn't
19 recover the label. And so there was a -- if the issue
20 had been raised six months prior, it's possible that
21 this could have been recovered. But and then they
22 changed their theory midstream. But beyond that, it

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1 does -- the definition of a label under the FDA does
2 include accompanying material under section
3 21 U.S.C. 321(m). And so the --

4 THE COURT: Yeah. I'm not wild about
5 the label argument; okay?

6 MR. DE ANGELIS: Okay. Well, in that
7 case, that's all I have.

8 THE COURT: I mean, I think there are
9 other problems before you ever get to labels; so --
10 okay.

11 MR. DE ANGELIS: Well, and then I'll
12 turn it back over to Ms. Farrell. And I did go over
13 by, I think, a minute. And I'm happy to share that
14 with her.

15 THE COURT: Ms. Farrell, you have reply
16 time.

17 MS. FARRELL: I know you're not crazy
18 about the label argument, but I would like to say very
19 briefly, I think it's important just to sort of
20 underscore here that Dr. Fenger speculated, you know,
21 distinctly, at the hearing, that there could have been
22 this label or additional insert.

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1 And now we find out today that, you
2 know, they tried to get it apparently, but they
3 couldn't or it doesn't exist. We don't know. But now
4 to try to shift the blame to the Authority for not
5 asking them for label materials that should have been
6 in Scott's possession --

7 THE COURT: Ms. Farrell, the labels are
8 the least of your problem; okay?

9 MS. FARRELL: All right.

10 THE COURT: I got that one; all right?

11 MS. FARRELL: Yep. I've got it. I
12 don't have anything else unless you have any specific
13 questions about our position.

14 THE COURT: No. I'm satisfied. And I
15 think -- you know, I appreciate both sides having a
16 chance to tell me exactly where they're coming from.
17 And obviously, this is a serious question. But at the
18 same time, the Authority can fix it. If they don't
19 like how I eventually come out, you've got the fix.
20 You have the pen.

21 MS. FARRELL: Understood.

22 THE COURT: Yeah. Okay. All right.

1 Let's just go to the second part, which I asked the
2 parties to discuss the relief that might emerge here,
3 if I were to determine that the issues on sanctions
4 that the Authority has raised have some merit. So
5 let's make sure that we're all on the same page
6 because I'm going to describe what I see as going on
7 here.

8 You have the arbitrator making an award
9 of 18 months ineligibility. So Dr. Scott would be
10 barred from servicing covered horses, or covered
11 horses period, at any covered racetrack for that time
12 period. The 18 months covers both the violations that
13 the arbitrator found, because he found two. And it
14 starts to run from the date of the search. That's the
15 backdating part of the award.

16 And then he also imposed a \$25,000 fine
17 that, again, covers both of the violations that the
18 arbitrator found. And I appreciate, of course, that
19 all of this is stayed pending this review. But once
20 the decision issues here, something's going to happen
21 to that stay unless it's extended; right?

22 So the Authority's position, and this

1 was the position I think that HIWU advanced in the
2 arbitration, and the Authority continues it here, is
3 that the two violations each carried 24 months of
4 suspension or ineligibility, and they should have been
5 made to run consecutively. If that had been adopted,
6 you'd have 48 months of exposure.

7 Instead, there's only one 18-month
8 period. And there's no explanation given for how the
9 arbitrator got from what the Authority would say is 48
10 months to 18. So that's the first problem the
11 Authority sees with the award.

12 The second is the backdating because
13 there is a specific rule in the ADMC that says
14 backdating is okay if the charged party proves A, B,
15 C, and D, whatever it is. And there's no arbitrator
16 determination that Dr. Scott proved the elements of
17 the backdating rule. So that's the second point that
18 the Authority raises.

19 And the third point is, again, similar
20 to the ineligibility. The fine authority is a up to
21 maximum, otherwise discretionary. And the position is
22 that if there were two violations, which the

1 arbitrator found, that there should be accumulated
2 fines. The Authority would say each in the maximum
3 amount, which would be \$50,000. Instead, there's a
4 \$25,000 fine. Again, not explained.

5 So have I got the Authority's position
6 right, Ms. Farrell?

7 MS. FARRELL: Yes.

8 THE COURT: Okay. And I know Dr. Scott
9 argues that I don't have jurisdiction to deal with any
10 of this. And so we had the motion. You got my order,
11 which said, I think I can deal with this even in spite
12 of the Serpe case, which came down amidst all of these
13 proceedings. I explained why I thought I could do
14 that.

15 I also said in that order that I was
16 not ruling on the merits of the Authority's position,
17 nor was I making any determination on what the relief
18 might be in the event I thought that there was
19 something about the sanctions that were indeed amiss,
20 and that they would have to be increased.

21 Although on reflection, it may simply
22 be that if I think there's something about the

1 sanctions that needs to be rethought, it's the same
2 problem. Because as we know, there is a no-fault
3 argument. There's a no significant fault argument. I
4 think there's even a proportionality argument. None
5 of them get met -- get addressed by the arbitrator.

6 And, you know, maybe if they were
7 addressed, the ineligibility period might come out to
8 be less than 18 months. I don't know. But that's
9 sort of what underlies my interest in talking about
10 this.

11 And that sort of changed again today
12 because the Commission issued two orders, one in
13 Overly and one in Juarez, where they said I should
14 reconsider the decisions in those two cases regarding
15 increased sanctions. And so I will have to do that in
16 those two cases, along with dealing with what happens
17 in this particular case.

18 I suspect Mr. De Angelis doesn't know
19 about the Commission orders. I don't know.

20 Ms. Farrell, you aren't in the office.
21 Maybe you don't know about them either.

22 MR. DE ANGELIS: Actually --

1 MS. FARRELL: Oh, no. I know about
2 them. My --

3 THE COURT: Oh, you know about that?
4 Word travels fast.

5 MS. FARRELL: There's no escaping my
6 email.

7 MR. DE ANGELIS: I also know about the
8 orders.

9 THE COURT: Oh, my goodness. You guys
10 really have bookmarks in someplace on the internet.
11 Okay. Anyway, you know, I knew we were going to be
12 here on AMP, so I thought that it might be useful to
13 talk a little bit about possible relief anyway.

14 And, you know, I appreciate that I've
15 got to go through the whole array of questions. Are
16 the violations -- are the two banned substances? Are
17 the violations proven? What about compelling
18 justification? And there are other defenses that
19 Dr. Scott has asserted.

20 The whole business of sanctions and the
21 award doesn't come up until I get through all of that
22 and I think something's left. And I said in my order

1 that I thought this discussion needed to be without
2 prejudice to either side. And I said that for a
3 reason.

4 You know, you're here today, and the
5 context isn't really well-defined. Once I do issue a
6 decision, if I get -- have to get to the dealing with
7 the sanctions and the relief. Now, you know, either
8 one or both of you may look at what I've done and say:
9 "Oh, my God, we can't live with this. We're going to
10 appeal to the Commission." Dr. Scott's got a federal
11 case pending at the same time. And what you might
12 think about the relief could very well be different
13 than what it is today when the context isn't defined
14 at all.

15 So it does seem to me it's fair to both
16 of you to say that what you say here is without
17 prejudice. It's not an admission, but I'd like to
18 hear what your views are; okay? I bet you're both
19 just, you know, want to go first, chafing at the bit,
20 so to speak. I'll tell you what, I'll let
21 Mr. De Angelis go first.

22 MR. DE ANGELIS: Okay. Yeah. No

1 problem, Your Honor. The way that I read Serpe is
2 that in light of your order, maybe, like, how to make
3 it work, is that you might have the jurisdiction to
4 review the sanction, but you wouldn't have authority
5 to modify it upward. And so you could potentially
6 review it for errors, but the relief would be limited.

7 I think that the relief that you could
8 provide would be a remand for an explanation. I think
9 that that would probably be the cleanest order that
10 avoids a jurisdictional problem.

11 Because there's, I think, a pretty
12 significant problem with the arbitrator's order is
13 that he never explains why he rejected our no
14 significant fault argument. We gave him two cases
15 from the Court of Arbitration for Sport -- and one was
16 he sought, actually -- that we thought were pretty
17 directly on point on the fault analysis. He doesn't
18 mention either case. He doesn't mention the factors
19 that those cases say you should consider.

20 THE COURT: No, I get that. I get all
21 of that; okay?

22 MR. DE ANGELIS: And so I think

1 that -- but why I think that's an important first step
2 is, I think that this case is on very different
3 footing depending on what that explanation is. You
4 know, does -- is this 18-month penalty, was that
5 intended to be two consecutive 9-month penalties? We
6 don't know that. There's no explanation for what he
7 was doing.

8 In terms of backdating, we don't know
9 why he did it. We do know that there was -- it
10 took -- that this process is supposed to take only 74
11 days, and it took 247.

12 THE COURT: You guys filed a bunch of
13 motions, in fairness.

14 MR. DE ANGELIS: We did.

15 THE COURT: Okay.

16 MR. DE ANGELIS: But we -- that process
17 followed our initial objection on June 24th that we
18 wanted to stick by the schedule and the rules, that
19 was overruled. And so I know -- I think that the
20 best -- I think the cleanest remedy would be to
21 explain why he did what he did so that both parties
22 can review it for potential errors, and bring those to

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1 your attention.

2 I don't think that -- because it's not
3 explained, it's difficult to say that there was no
4 record support because there's -- it's just not
5 reasoned. And that was really our problem with the
6 entire order. But I think that clarifies the posture
7 of the issues, and it would benefit the review process
8 if there was a remand for an explanation.

9 THE COURT: Okay.

10 Ms. Farrell?

11 MS. FARRELL: Yeah. First, thank you
12 for the --

13 THE COURT: Maybe you agree with
14 everything he said. I don't know. Then we'll end
15 quickly.

16 MS. FARRELL: Not -- not exactly.

17 THE COURT: Right. Go ahead.

18 MS. FARRELL: Thank you for this
19 without prejudice context because I am going to caveat
20 my response with, as of today, this is our position on
21 what we think should happen here.

22 So we do agree with Mr. De Angelis that

1 you have the -- well, I think he said this. You have
2 the jurisdiction to review the issues at issue in the
3 case. Like you said, Your Honor, that -- have
4 violations been committed? You know, the whole
5 analysis getting up to the sanction. And we believe
6 that's squarely within your purview to review the
7 merits of the case. And further, to determine whether
8 or not the sanction by the arbitrator was arbitrary
9 and capricious.

10 In looking at Serpe, it's the
11 Authority's position, you know, we have to follow the
12 guidance from Serpe that any modification to a
13 sanction must, by the Commission's definition, be
14 moderate or of a minor fashion.

15 And so what we don't know at this
16 point, because none of this is fleshed out in our case
17 law yet, you know, is it a moderate or minor change to
18 a single POI of 18 months? You know, is it the same
19 species of sanction if you add a second period of
20 ineligibility that wasn't originally imposed? Is it a
21 moderate or minor change to add a second fine or
22 increase a fine? There's so many unknowns with

1 exactly how -- what they would consider to be a
2 moderate or minor sanction.

3 And so the Authority's position is that
4 we would prefer that once you've reviewed the merits
5 of the case and made a determination as to the
6 arbitrary and capriciousness of the decision, that you
7 would remand to the arbitral body for sanctioning
8 consistent with your findings.

9 A more incremental approach is what the
10 Authority would like to see happen here. Not exactly
11 an explanation from the arbitral body, but more, you
12 know, the actual determination of the sanctions should
13 be done by the arbitral body consistent with your
14 findings on the merits.

15 THE COURT: Don't know -- well, okay.
16 Okay. I'm reluctant to comment on this in part
17 because it looks pretty clear that somewhere along the
18 way, whether it's in this case or one of the others,
19 the Commission's going to have to speak again. There
20 are open questions here.

21 Well, I do appreciate those views, and
22 you can be assured I will keep them in mind. Anyone

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1 else want to say anything else?

2 MR. DE ANGELIS: No, Your Honor.

3 MS. FARRELL: No, Your Honor. Thank
4 you.

5 THE COURT: Okay. I think then we can
6 adjourn. I have nothing more.

7 MS. FARRELL: Thank you.

8 MR. DE ANGELIS: Thank you, Your Honor.

9 THE COURT: Thanks very much.
10 Appreciate the time.

11 THE REPORTER: All right. The time is
12 11:57 a.m., and we're off the record.

13 (Whereupon, at 11:57 a.m., the
14 proceeding was concluded.)
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CERTIFICATE

I, HELEN TADESSE, the officer before whom the foregoing proceedings were taken, do hereby certify that any witness(es) in the foregoing proceedings, prior to testifying, were duly sworn; that the proceedings were recorded by me and thereafter reduced to typewriting by a qualified transcriptionist; that said digital audio recording of said proceedings are a true and accurate record to the best of my knowledge, skills, and ability; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this was taken; and, further, that I am not a relative or employee of any counsel or attorney employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.



HELEN TADESSE

Notary Public in and for the
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I, SANDRA BECK, do hereby certify that this transcript was prepared from the digital audio recording of the foregoing proceeding, that said transcript is a true and accurate record of the proceedings to the best of my knowledge, skills, and ability; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this was taken; and, further, that I am not a relative or employee of any counsel or attorney employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.



SANDRA BECK

Dated: August 3, 2026

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[& - adopted]

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