

## Victor Conte BALCO book battle raging on release date

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Thursday, September 4th 2008, 8:07 PM

Nasty legal warfare has broken out over Victor Conte's forthcoming tell-all book about his leading role in the world's biggest steroid conspiracy.

Skyhorse Publishing originally hoped to release "BALCO: The Straight Dope on Barry Bonds, Marion Jones and What We Can Do To Save Sports" in September, but Conte's book may not hit shelves until 2009, said Skyhorse president Tony Lyons.

Conte has submitted the manuscript, but the imminent presidential election and other intervening factors have led Skyhorse to reconsider the timing of the book's release.

Among the factors is an expensive barrage of defamation litigation launched against Conte by boxer Shane Mosley, one of the athletes whose BALCO doping regimens Conte promises to describe in detail, and Mosley's threats to sue the book's publisher.

Mosley's defamation suits have been a "distraction," says Conte, who has promised to retell anecdotes proving Mosley knowingly used performance-enhancing drugs, including steroids and EPO. (Mosley has said he thought BALCO's products were legal.)

In Mosley's corner is the aggressive New York attorney Judd Burstein, who narrowly escaped a hefty court sanction eight years ago for what a federal judge called "Rambo lawyering."

The most recent of Burstein's actions against Conte is a motion filed Wednesday asking a U.S. District Court in California to sanction Conte's defense attorney for submitting what Burstein called an "outrageous and entirely frivolous" motion to recover \$75,654 in attorney fees from a defamation suit that Burstein initiated and withdrew.

Burstein showed the Daily News an Aug. 14 e-mail from Lyons in which the publisher floated the idea of canceling Conte's publicity tour and giving Mosley two or three pages in the book to "explain his side of the story."

"This is NOT a firm offer," Lyons wrote.

Burstein rejected Lyons' overtures. He has promised to sue Skyhorse and its insurers.

Conte, meanwhile, says his contract offers final approval over his book's contents and would never include a rebuttal because he and other witnesses stand by the Mosley allegations.

On Aug. 5, Burstein filed a \$12million defamation suit on Mosley's behalf in a New York state court, simultaneously withdrawing a similar claim that had been working its way through a federal court in San Francisco for four months.

Conte's attorney, James Wagstaffe, had argued that federal claim violated California's anti-SLAPP statutes, which protect individuals against legal harassment and intimidation that stifles free speech.

Wagstaffe also argued Mosley had "intentionally misled the Court" when Mosley claimed, in a July 9 deposition, to be a citizen of Nevada. Wagstaffe pointed out that two days earlier Mosley had sworn to be a California resident in a separate case involving a \$50,000 playground set.

On Aug. 28, Wagstaffe cited these arguments while asking Judge Jeffrey White, who oversaw the now-abandoned federal case, to order Mosley to reimburse the \$75,654 Conte spent during months of motions and depositions.

Burstein has not responded to that motion, but on Wednesday he filed the separate motion asking White to sanction Wagstaffe for filing the request for attorney fees.

In response to the false testimony allegations, Burstein claimed Wagstaffe had set a trap for Mosley.

"While Mosley - who has a limited education and is plainly not at home in the witness chair - had an unfortunate failure of recollection under pressure (not the least bit unusual) that failure of recollection cannot credibly be called perjury," Burstein wrote.

Burstein listed Mosley's links to Nevada, but declined to make Mosley available for an interview because Mosley is in training for a Sept. 27 fight.

Famous for his aggressive tactics, Burstein has represented Don King, Lennox Lewis and Oscar De La Hoya - the latter in a case involving photographs, their authenticity disputed, in which De La Hoya appeared to wear a tutu and fishnet stockings.

In 1999, Judge Denny Chin hit Burstein with a \$50,000 sanction, objecting to a letter Burstein had written promising to conduct the "legal equivalent of a proctology exam" on a rival lawyer's finances. That sanction was overturned on appeal.

Among the athletes who have used defamation suits in response to doping accusations in recent years are Marion Jones, cyclists Kayle Leogrande and Lance Armstrong, Roger Clemens, and swimmer Ian Thorpe. None has won a jury trial, and Jones dropped her \$25 million suit against Conte two years before she began serving a six-month prison sentence in Texas for lying to investigators about steroid use. She is scheduled to be released from a Texas prison Friday.