BEFORE THE AMERICAN ARBITRATION ASSOCIATION

UNITED STATES ANTI-DOPING AGENCY,	:	
	:	
Claimant,	:	
	:	AAA Case Nos.
– v. –	:	
	:	77 190 00225 12
JOHAN BRUYNEEL, PEDRO CELAYA LEZAMA	:	77 190 00226 12
and JOSÉ MARTÍ MARTÍ,	:	77 190 00229 12
	:	
Respondents.	:	
	:	
	:	

Award

We, THE UNDERSIGNED ARBITRATORS, having been designated in accordance with the UCI Anti-Doping Rules and the USADA Protocol for Olympic and Paralympic Movement Testing , and having been duly sworn, and having duly heard the proofs and allegations of the Parties, do hereby, AWARD, as follows:

I. Introduction

1. As the only formal anti-doping prosecution to emerge from and proceed to the merits on the now infamous doping activities involving Lance Armstrong (who has now admitted his involvement in widespread, systematic doping in the sport of cycling spanning many years), this case may well be one of the most complex anti-doping prosecutions ever brought, involving multiple parties and numerous witnesses, from different countries (the counsel and arbitrators alone were as diverse as being from Los Angeles, Spokane, New York City, Indianapolis, Colorado Springs, London, and two Spanish cities, and the parties and witnesses spanned multiple jurisdictions and testified

from multiple locations), spanning several linear feet of documentary submissions by the parties, and involving multiple in-person and telephonic hearings in London on a variety of complex legal, procedural, jurisdictional, and substantive matters. Based on the evidence presented to it and the arguments and submissions of counsel, the Panel is comfortably satisfied that the United States Anti-Doping Agency ("USADA") has established multiple doping offenses by each of the Respondents and the Panel so finds as more fully set forth below. As a result, the Panel imposes on each Respondent a period of ineligibility as more fully and specifically set forth below for the reasons provided.

II. The Parties

2. The Claimant, USADA, is the independent anti-doping agency responsible for Olympic and Paralympic sports in the United States ("Claimant"). USADA is responsible for managing drug testing, investigating anti-doping rule violations, managing results, and adjudicating anti-doping rule violation disputes for participants in the Olympic and Paralympic movements in the United States.

3. The Respondents in this action are Mr. Johan Bruyneel ("Mr. Bruyneel"), Dr. Pedro Celaya Lezama ("Dr. Celaya"), and Mr. José ("Pepe") Martí Martí ("Mr. Martí") (collectively "Respondents", and individually "Respondent"). All three Respondents worked for the U.S. Postal Service and Discovery Channel professional cycling teams and have been charged with conduct stemming from their participation on those teams.

4. Mr. Bruyneel served as a team director for the U.S. Postal Service team between 1999 and 2004 and the Discovery Channel team between 2005 and 2007.

5. Dr. Celaya served a team physician for the U.S. Postal Service team in 1997, 1998, and 2004 and the Discovery Channel team between 2005 and 2007.

6. Mr. José Martí served as a team trainer for the U.S. Postal Service team between 1999 and 2004 and the Discovery Channel team between 2005 and 2007.

III. Procedural History

A. Notice Letter

7. On June 12, 2012, USADA informed Respondents, Mr. Lance Armstrong and others that a formal action was opened based on evidence that each party had engaged in anti-doping violations under the Union Cycliste Internationale Anti-Doping Rules ("UCI ADR") from 1998 to 2012, the World Anti-Doping Code ("WADC") from inception to 2012 and the USADA Protocol for Olympic and Paralympic Movement Testing ("USADA Protocol") from inception to 2012.

8. Each Respondent was given notice of the proposed charges including possession of prohibited substances, trafficking in prohibited substances, administration and/or attempted administration of prohibited substances, assisting, encouraging, aiding, abetting, covering up and other complicity involving anti-doping rule violations, and aggravating circumstances justifying a period of ineligibility greater than the standard sanction.

9. Further, USADA gave notice that the action was prosecuted as a single consolidated action due to allegations of a doping conspiracy among the Respondents and team officials, employers, doctors and elite cyclists of the United States Postal Service ("USPS") and Discovery Channel professional cycling teams.

10. The notice letter further informed Respondents that USADA would make a written submission to its Anti-Doping Review Board identifying information relative to the anti-doping violations intended to be charged.

B. Charging Letter

11. In a letter dated June 28, 2012 ("the Charging Letter"), Respondents and/or their legal counsel were informed that the USADA Anti-Doping Review Board had met June 25-27, 2012 and determined that there was sufficient evidence of anti-doping rule violations and had recommended that the adjudication process should proceed.

12. In the Charging Letter, USADA stated the charges being made against each Respondent, which had previously been specified in the notice letter of June 12, 2012. It also outlined the sanctions being sought, including a lifetime period of ineligibility, disqualification of competitive results obtained on or after the earliest date of any proven anti-doping rule violation, and costs and fines. The charging letter also notified Respondents of their right to an arbitration hearing before the American Arbitration Association ("AAA") to contest USADA's actions. Such a hearing would be heard by a three-member arbitration panel as provided under R-11 of the AAA Supplementary

Procedures for the Arbitration of Olympic Sport Doping Disputes, as set forth in Annex D of the USADA Protocol.

13. On July 9, 2012, Lance Armstrong, a USPS cyclist who had been charged with six anti-doping violations and named as part of the charged conspiracy, filed a lawsuit in the United States District Court for the Western District of Texas in Austin, Texas against USADA ("the Armstrong Action"). In the Armstrong Action, Mr. Armstrong challenged USADA's jurisdiction over him and the adequacy of due process afforded to him by AAA arbitration under the USADA protocol.

14. On August 14, 2012, Respondents Messrs. Bruyneel, Celaya and Martí requested a stay of the AAA proceeding pending resolution of the Armstrong Action.

15. On August 20, 2012, the Armstrong Action was dismissed by the U.S. District Court judge, who found that USADA and AAA procedures provided adequate due process. The court referred jurisdictional issues to the duly appointed AAA arbitration panel for resolution.[1]

[1] Among other things, Mr. Armstrong alleged that there was no adequate charging document, no guarantee of a CAS hearing on the merits, no right to cross examine or confront witnesses, no right to impartial arbitration panel, no right to disclosure of exculpatory evidence, no right to disclosure of cooperation or inducement agreements, no right to get investigative witness statements, no right to a full lab analysis or impartial review by experts, no right to judicial review of an arbitration decision by a US court. The US District Court determined, among other things, that, it "declines to assume either the pool of potential arbitrators or the ultimate Panel itself will unwilling or unable to render a conscientious decision based on the evidence before it", continuing that "Armstrong has ample appellate avenues open to him, first to the Court of Arbitration for Sport (CAS), where he is entitled to de novo review, and then to the courts of Switzerland, as permitted by Swiss law, if he so elects . . . [and the] record shows CAS routinely grants hearings in cases such as Armstrong's, and this Court declines to presume it will break with tradition in this particular instance."

16. On October 9, 2012, the AAA sent notice to all parties of the appointment by the parties of David W. Rivkin, Esq., of Debevoise & Plimpton LLP in New York and London, and Jeffrey G. Benz, Esq., of Benz Law and 4 New Square Barristers in Los Angeles and London, as the parties' arbitrators and Hon. James Murphy (Ret.), of Spokane, as chair (collectively, "the Panel"). Following submission of Panel disclosures and the expiration of time for objections to the appointments, the Panel appointment process was completed on October 23, 2012.

C. Procedural Motions and Hearing

17. A preliminary hearing was conducted via teleconference November 12, 2012 for purposes of addressing scheduling and pre-hearing motions. As a result of the preliminary hearing, the Panel issued its Procedural Order No. 1, providing for various procedural steps.

18. On December 13, 2012, Mr. Bruyneel and Dr. Celaya submitted pre-hearing motions to the Panel. On January 25, 2013, USADA filed a brief in opposition to the pre-hearing motions. On March 8, 2013, Mr. Martí presented his position on the issues.

19. On March 11, 2013, the parties, with the exception of USADA, convened in person in London and USADA convened via teleconference. At that time, the motions were heard in person by Panelists Rivkin and Benz; Panel Chair Murphy participated telephonically.

20. The issues presented at the further preliminary hearing included (1) the jurisdiction of the Panel to hear USADA's claims against the Respondents, (2) USADA's alleged breach of confidentiality owed to Respondents and implications of any alleged breach, (3) whether claims brought by USADA against Respondents were subject to any statute of limitations, and (4) Respondents' request for an interlocutory appeal of any decision made on these motions.

21. Mr. Bruyneel was represented by Mr. Mike Morgan of Squire Sanders (UK) LLP and Mr. Adam Lewis, QC of Blackstone Chambers. Dr. Pedro Celaya Lezama was represented by Mr. Jon Pellejero of San Sebastian, Spain. Mr. Pepe Martí Martí was represented by Mr. Jesús Morant Vidal of Alicante, Spain.

1. Jurisdiction

22. Mr. Bruyneel, the team manager for USPS, argues that neither USADA nor AAA has jurisdiction over him as no arbitration agreement exists between himself and USADA; USADA is not empowered to take steps against Mr. Bruyneel; and there is no legal relationship between Mr. Bruyneel and USADA that gives USADA the right to enforce UCI anti-doping rules against Mr. Bruyneel. Dr. Celaya and Mr. Martí adopted Mr. Bruyneel's positions on jurisdiction and urged the Panel to apply the arguments made by Mr. Bruyneel to their objections as well.

23. Following the preliminary hearing on March 11, 2013, the Panel issued Procedural Order No. 2 in response to the four issues raised by Respondents. In that

order, the Panel found that Mr. Bruyneel applied for and received a UCI license through his national federation in Belgium every year since 2005. As a license-holder, the UCI ADR therefore apply to him under Article 1. It was further found that he has expressly consented to the rules and regulations of the UCI, including the UCI ADR. Article 11 of the UCI ADR provides that where no sample collection is involved and an anti-doping violation is involved which is discovered by a national anti-doping organization involving a license holder who is not a national, resident, license holder or member of a sports organization of that nation, resolution of the violation shall be administered by and under the rules of that national anti-doping organization. USADA is the anti-doping organization that discovered the alleged anti-doping violations by Mr. Bruyneel. The Panel found that, as a result, jurisdiction exists for USADA to proceed to prosecute the anti-doping violation charges against Mr. Bruyneel.

24. Dr. Celaya and Mr. Martí are not license holders. Article 18(1) provides that any person who "without being a license holder, participates in a cycling event in any capacity whatsoever, shall be subject to the anti-doping rules." Article 1 of the UCI ADR states that these rules apply to other persons as provided in Article 18. As evidence showed that Dr. Celaya and Mr. Martí participated in cycling events as athlete personnel, the UCI ADR applies to them.

25. Dr. Celaya practiced as a medical doctor in cycling events. Mr. Martí participated as a trainer. The Panel found that since Dr. Celaya and Mr. Martí consented to UCI ADR

by participating in UCI cycling events, they also have consented to the possibility or arbitration of anti-doping violations under USADA protocol.

26. These findings on jurisdiction were issued tentatively by the Panel on June 7, 2013 as part of Procedural Order No. 2 (provided in full below) and subject to change following facts deduced at a full hearing on the merits in December 2013.

2. Confidentiality

27. The Respondents alleged that USADA breached its obligations to keep confidential the facts of this proceeding during its pendency by publishing extensive statements concerning their alleged anti-doping violations in the reasoned decision issued in charges against Lance Armstrong. They argued that the alleged breach amounts to a breach of any arbitration agreement that may exist between USADA and Respondents.

28. While discussing the disclosures at length, and finding that a violation of the rules had occurred, the Panel found that such disclosures did not prejudice Respondents' right to a fair hearing or the neutrality of the Panel.

3. Statute of Limitations

29. Respondents urged that Article 368 of the UCI ADR provides for an eight-year statute of limitation on any prosecution for doping violations. Therefore they could not be charged or sanctioned relative to any matter occurring eight years prior to the date that the disciplinary action was initiated by USADA. Thus no charges may be considered prior to June 12, 2004.

30. The Panel felt that the issue may be settled by facts established at the full hearing on the merits and withheld ruling on the issue until that time. At the merits hearing, USADA chose to withdraw charges that predate 12 June 2004, except those presented to corroborate acts committed thereafter.

4. Interlocutory Appeal

31. The parties further sought authority from the Panel to allow an interlocutory appeal to CAS of any decision made in the procedural order. The Panel found the request beyond the authority of the Panel and solely within the discretion of CAS.

5. Procedural Order No. 2

32. The pertinent text of Procedural Order No. 2 is as follows:

> ***I. PROCEDURAL BACKGROUND***
>
> *1. On November 19, 2012, the members of the Arbitration Panel (the "Panel") issued Procedural Order No. 1. Procedural Order No. 1 set forth the procedural agenda for the proceedings and confirmed that the Panel would address certain pre-hearing motions ("Pre-Hearing Motions") by the parties. The Panel wrote as follows:*
>
> > *Respondents have raised issues of confidentiality of these proceedings, both before appointment of the Panel and subsequent thereto, jurisdiction of USADA over the Respondents, Standing of USADA to bring this action over these Claimants and a request for leave to seek interlocutory review of any decision by the Panel on these issues by CAS. Any pre-hearing motions seeking Panel consideration of these issues will be heard January 7, 2013 via teleconference at a time to be determined by the Panel. Motions by Respondents and supporting briefs shall be filed with the Panel by December 10, 2012 with a response due by December 21, 2012.*
>
> *2. On December 13, 2012, Mr. Bruyneel and Dr. Celaya independently submitted Pre-Hearing Motions to the Panel.*

3. On January 25, 2013, Claimant, the United States Anti-Doping Agency ("USADA"), submitted a consolidated brief in opposition to the Pre-Hearing Motions of Mr. Bruyneel and Dr. Celaya.

4. On March, 8, 2013, Mr. Martí resent his prior submission dated August 30, 2012 to the Panel.

5. On March 11, 2013, the parties convened in London and via videoconference for an extensive, multi-hour hearing on the Pre-Hearing Motions that included counsel appearing in person and by telephone conference call. Panel members Mr. David W. Rivkin and Mr. Jeffrey Benz were present in London for the hearing and Panel Chair Hon. James Murphy appeared by telephone conference call.

6. On April 5, 2013, the Panel sent a letter to the parties posing the following issue:

If the Tribunal accepts as an assumption that Article 18(1) of the UCI Anti-Doping Rules ("UCI ADR") imposes the UCI ADR, including the provisions of Article 11, on any person who participates in a UCI cycling event, the Tribunal would like to consider whether Swiss law on associations permits an organization of the type that UCI is, to impose a sanction on a person who has not entered into a written contractual agreement with that organization, but has nonetheless participated in that organization's activities or associated with the organization through some other conduct.

7. On April 25, the Panel received submissions from USADA, Mr. Bruyneel, Dr. Celaya, and Mr. Martí in response to the Panel's letter dated April 5, 2013.

II. DECISION

8. The Pre-Hearing Motions and subsequent submissions raised four primary issues: i) the jurisdiction of the Panel to hear USADA's claims against the Respondents, ii) USADA's alleged breach of confidentiality obligations owed to the Respondents and the implications of the alleged breach, iii) whether the claims brought by USADA against Respondents are subject to a statute of limitations, and iv) Respondents' request for an interlocutory appeal of the decisions made in this procedural order. The Panel will address each of these issues separately.

A. JURISDICTION

9. After carefully reviewing the submissions and arguments presented by the parties, the Panel tentatively finds that it has jurisdiction to hear the present action brought by USADA against Mr. Bruyneel, Dr. Celaya, and Mr. Martí. The Panel plans to give its final decision on jurisdiction in the final Award and reserves the right to amend its tentative finding or decline jurisdiction at any point in the proceedings. See generally American Arbitration Association ("AAA") Supplementary Procedures for the Arbitration of Olympic Sport Doping Disputes R-7 (which is in accordance with a similar provision in the AAA Commercial Arbitration Rules).

10. While the Panel will provide the complete reasoning of its jurisdictional finding in the final Award, the Panel considers it prudent to address the bases for jurisdiction in this proceeding with respect to each Respondent at this time.

i) Mr. Bruyneel

a) Application of the UCI ADR to Mr. Bruyneel

11. The first question before the Panel is whether the Union Cycliste Internationale ("UCI") ADR apply to Mr. Bruyneel. The UCI is the international sports federation recognized by the International Olympic Committee as governing the sport of cycling worldwide.

12. Article 1 of the UCI ADR concerns the scope of the Rules' application. The Article provides:

These Anti-Doping Rules shall apply to all License-Holders.

They shall also apply to other Persons as provided in article 18.

Comment: a license is required to participate in the sport of cycling governed by the rules of the UCI and the National Federations (article 1.1.010 of UCI's Cycling Regulations). However if a Person participates in the sport of cycling governed by the UCI without being holder of a license as required, he will not escape application of the regulations, including these Anti-Doping Rules. Application of these Anti-Doping Rules to Persons other than License-Holders is dealt with in article 18.

13. Under Appendix 1 of the UCI ADR, a License-Holder is defined as:

A person who is a holder of a license or who has applied for a license under the UCI Cycling Regulations.

14. According to Mr. Bruyneel's December 13, 2012 submission, Mr. Bruyneel has completed and signed a UCI license application ("License Application") through his national federation in Belgium, Koninklijke Belgische Wielrijdersbond ("KBWB"), every year since at least 2005. Mr. Bruyneel's submission also indicates that he has been issued a KBWB license ("KBWB License") every year since at least 2005.

15. A relevant portion of the License Application signed by Mr. Bruyneel provides:

I hereby undertake to observe the articles of association and regulations of the UCI, its Affiliates and its national Federations.

16. A portion of the back of the KBWB License provides:

The holder is subject to the regulations of the UCI and the national and regional federations, and accepts the anti-doping controls and blood tests specified therein and the exclusive jurisdiction of the CAS.

17. Having applied for and received the KBWB License on a yearly basis, Mr. Bruyneel is a License-Holder under Appendix 1 of the UCI ADR. As a License-Holder, the UCI ADR therefore apply to him under Article 1.

18. Mr. Bruyneel's License Application and the KBWB License both record Mr. Bruyneel's express consent to the rules and regulations of the UCI, including the UCI ADR. Mr. Bruyneel's December 13, 2012 submission also confirms Mr. Bruyneel's acceptance of his submission to the UCI ADR.

b) Application of the USADA Protocol to Mr. Bruyneel

19. Having found that Mr. Bruyneel expressly consented to be subject to the UCI ADR and is subject to the UCI ADR, the Panel next considers whether Mr. Bruyneel can be subject to sanctions by USADA.

20. Article 11 and Article 13 of the UCI ADR are the two relevant articles for the Panel's jurisdictional determination on this question, which are as follows:

Article 11

If an anti-doping violation where no Sample collection is involved is discovered by another Anti-Doping Organization [other than the UCI], the anti-doping rules of that Anti-Doping Organization shall apply. . .

Article 13

Results management and the conduct of hearings for an anti-doping rule violation arising from a test by, or discovered by, a National Anti-Doping Organization involving a License-Holder who is not a national, resident, license-holder or member of a sports organization of that country shall be administered by and under the rules of that National Anti-Doping Organization.

21. In the current proceeding, USADA has brought sanctions against Mr. Bruyneel for alleged anti-doping rule violations. The Panel accepts, based on the pleadings submitted, which must be accepted as true for these purposes, that USADA is the Anti-Doping Organization ("ADO") that discovered the alleged anti-doping violations against Mr. Bruyneel. Under the plain text of Article 11 of the UCI ADR, therefore, USADA's anti-doping rules should apply to the alleged violations discovered by USADA. Similarly, under the plain text of Article 13 of the UCI ADR, the results management and conduct of hearings for the alleged anti-doping rule violations discovered by USADA should be administered and governed by the rules of USADA.

22. In coming to this determination, the Panel notes that Mr. Bruyneel has not proffered any evidence indicating that any other ADO discovered the alleged violations. The Panel also notes that Article 11 and Article 13 have no apparent limitation applicable here. They plainly provide that where the ADO discovers an anti-doping rule violation, the ADO's rules on anti-doping violations, results management, and hearings shall apply. In this case, USADA's rules on anti-doping violations, results management, and hearings are provided for in the USADA Protocol for Olympic and Paralympic Movement Testing ("Protocol"). Therefore, the Protocol shall apply to the alleged anti-doping violations brought by USADA against Mr. Bruyneel.

23. In the present proceeding, USADA has brought sanctions and administered hearings against Mr. Bruyneel for alleged anti-doping violations under its results management provisions. A plain reading of Article 11 and Article 13 of the UCI ADR establishes that it has the power to do so.

24. The Protocol also confirms that USADA has the power to administer sanctions and hearings against athlete personnel such as Mr. Bruyneel. Under Article 3 and Article 11 of the Protocol, for example, USADA may impose disciplinary sanctions against athletes, athlete personnel, and other persons for anti-doping rule violations. Under Article 11, moreover, a person may challenge such sanctions in a hearing before an AAA panel.

25. Mr. Bruyneel's arguments disputing jurisdiction here are not convincing. Mr. Bruyneel expressly consented to the UCI ADR. The UCI ADR expressly provide that any ADO that discovers a violation may administer sanctions and hearings against License-Holders. By becoming a License-Holder, Mr. Bruyneel therefore consented to be subject to the rules of any such ADO, including those of USADA. Because he agreed to the possibility of being subject to the anti-doping rules of USADA, Mr. Bruyneel therefore also agreed to the arbitration mechanism embedded in USADA's rules.

26. Having consented to the possibility of being subject to the anti-doping rules of USADA, Mr. Bruyneel cannot now claim a lack of jurisdiction to the arbitration proceedings provided for under the USADA Protocol. The Panel considers that it is not too distant or remote a relationship to find that, in accepting the UCI ADR, Mr. Bruyneel also accepted that any anti-doping organization would seek sanctions or, if its rules provided, institute arbitration proceedings against him. Indeed, Article 13 specifically provides that athletes (or athlete personnel) can be subject to such proceedings, as it states that the "conduct of hearings for an anti-doping violation . . . shall be administered by and under the rules of [the] National Anti-Doping Organization" that discovered the alleged anti-doping violation. Article 13 therefore alerts athletes and athlete personnel consenting to the UCI ADR that they may be subject to sanctions and procedural hearings under the rules of an ADO. It is reasonable to infer that such hearings conducted may include arbitration hearings. It is also reasonable to infer that the anti-doping rules of an ADO in general, which are applicable through Article 11, may contain a provision for arbitration proceedings. As noted by the Swiss Federal Tribunal in a recent decision, "there is practically no top-level sport

without consent to arbitration." Swiss Federal Tribunal 4A 428/2011, Feb. 13, 2012, Nr. 3.2.3. Here, Mr. Bruyneel expressed valid consent to be subject to the anti-doping rules of USADA, including its rules on arbitration. He therefore has no basis to dispute jurisdiction.

27. The Panel finds that Swiss law on consent to arbitration confirms the Panel's approach and does not preclude the Panel's tentative finding that Mr. Bruyneel consented to the jurisdiction of the USADA Protocol and its respective provisions on arbitration. Article 178 of the Swiss Private International Law Act (PILA) is the central provision under Swiss law on the validity of arbitration agreements. It provides:

1. The arbitration agreement is formally valid if it is made in writing, by telegram, telex, fax, or any other means of communication which allow proof of the agreement by a text.

2. Substantially, it is valid if it meets the requirements of either the law chosen by the parties, the law applicable to the dispute (in particular, but without limitation, the law applicable to the main contract) or Swiss law.

3. The validity of an arbitration agreement cannot be challenged on the grounds that the main contract be invalid, or that the dispute did not exist at the time the arbitration agreement was entered into.

28. The Panel notes that Article 178 PILA imposes few requirements on the substance and specificity of an arbitration agreement. All that is required is that the arbitration agreement be i) in writing, and ii) in accordance with the applicable law. The Panel also finds that the submissions by the parties indicate that Swiss federal courts have construed this statute liberally when examining whether there is consent to arbitration. The Swiss Federal Tribunal thus recently held that:

> *With respect to formal requirements (Article 178, paragraph 1, [PILA]), in sport cases; the Swiss Federal Tribunal reviews the agreement of the parties to submit disputes to an arbitral tribunal with a broad understanding . . . The liberal approach that characterizes federal case law in this respect appears, in particular, in the fact that arbitration clauses integrated by reference are considered as valid. Swiss Federal Tribunal, ATF 138 III 29, Nr. 2.22, Nov. 7, 2011 (emphasis added) (internal citations omitted).*

29. The Swiss Federal Tribunal additionally stated that a finding of an arbitration agreement can be made "on the basis of a legal

order determined directly or indirectly." Id at Nr. 2.2.3 (emphasis added) (internal citations omitted); see also Swiss Federal Tribunal, 4A 460/2008, Nr. 6.2, Jan. 9, 2009 (finding that Swiss "case law . . . deems a global reference to an arbitration clause included in association statutes as valid") (internal citations omitted); Roberts v. FIBA, 4P 230/2000, 2001 ASA BULL. 523, Feb. 7, 2001 ("This proof does not require the arbitration clause to be included in the actual contractual documents exchanged between the parties. In fact, in order to provide proof of the arbitration clause in the form of text, it is sufficient for it to be referred to in these documents. The reference does not have to specifically name the arbitration clause, but instead can include a global reference to a document which contains a corresponding clause.") (emphasis added) (internal citations omitted).

30. Here, the agreement to arbitrate is made in accordance with the law and in writing under the UCI ADR, which provides reference to the anti-doping rules, and therefore arbitration provisions, of ADOs such as USADA. Having consented expressly to the UCI ADR, Mr. Bruyneel therefore consented to the possibility of arbitrating anti-doping violations under the USADA Protocol in proceedings like the present one.

31. Because the Panel finds that Mr. Bruyneel agreed to arbitrate the present anti-doping violations through his express consent to the UCI ADR as a UCI License-Holder, the Panel need not consider whether Mr. Bruyneel consented to arbitrate through participation in cycling events governed by the UCI, as discussed below with respect to Dr. Celaya and Mr. Martí. However, it would appear that his participation in cycling events governed by the UCI would lead to the same conclusion even if Mr. Bruyneel was not a UCI License-Holder.

ii) Dr. Celaya and Mr. Martí

32. The Panel will next consider whether this action may be brought against Dr. Celaya and Mr. Martí. While the Panel has considered the case of Dr. Celaya and Mr. Martí independently, the Panel finds it appropriate to discuss the jurisdictional analysis with respect to the two individuals together for reasons presented below.

a) Application of the UCI ADR to Dr. Celaya and Mr. Martí

33. Again, the first question before the Panel is whether the UCI ADR apply to Dr. Celaya and Mr. Martí.

34. The Panel recalls that the text and comment of Article 1 of the UCI ADR provide:

These Anti-Doping Rules shall apply to all License-Holders.

They shall also apply to other Persons as provided in article 18.

Comment: a license is required to participate in the sport of cycling governed by the rules of the UCI and the National Federations (article 1.1.010 of UCI's Cycling Regulations). However if a Person participates in the sport of cycling governed by the UCI without being holder of a license as required, he will not escape application of the regulations, including these Anti-Doping Rules. Application of these Anti-Doping Rules to Persons other than License-Holders is dealt with in article 18.

35. Article 18 in turn provides:

1. a) Any Person who, without being a holder of a license, participates in a cycling Event in any capacity whatsoever, including, without limitation, as a rider, coach, trainer, manager, team director, team staff, agent, official, medical or para-medical personnel or parent and;

b) Any Person who, without being a holder of a license, participates, in the framework of a club, trade team, national federation or any other structure participating in Races, in the preparation or support of riders for sports competitions;

shall be subject to these Anti-Doping Rules and these Anti-Doping Rules shall apply to each such Persons as they apply to a License-Holder.

2. Where a National Federation has disciplinary jurisdiction over such Person on whichever basis, the Person shall be treated as a License-Holder of that Federation for the purpose of these Anti-Doping Rules.

3. Where no National Federation has disciplinary jurisdiction over such Person and if a breach of these Anti-Doping Rules is apparently committed by the Person, the UCI and/or any National Federation involved shall take whatever steps are necessary to take proceedings against him before the competent bodies.

4. Right to a fair hearing having granted, the UCI may ban this Person from attending a cycling Event. It may also ban any National Federation, club or trade team from making use of services offered by this Person, with breaches of such a ban being subject to a fine of between CHF 1,000

and CHF 10,000 as determined by the Disciplinary Commission. These measures and sanctions may be taken independently of the procedure noted under paragraph 3.

36. Dr. Celaya and Mr. Martí are not License-Holders under the UCI ADR. There is no dispute on this point. Nevertheless, as non-License-Holders, Dr. Celaya and Mr. Martí are still subject to the UCI ADR through Article 18(1) and Article 1. As provided above, Article 18(1) states that any person who "without being a holder of a license, participates in a cycling Event in any capacity whatsoever . . . shall be subject to these Anti-Doping Rules . . . as they apply to a License-Holder." Article 1 confirms that the UCI ADR "shall also apply to other Persons as provided in article 18." Here, USADA has presented substantial evidence, based on the pleadings, which for these purposes must be accepted as true, that Dr. Celaya and Mr. Martí participated in cycling events as athlete personnel and accordingly meet the threshold requirements to be categorized in Article 18(1). The Panel therefore finds that the UCI ADR apply to Dr. Celaya and Mr. Martí.

37. In reaching this conclusion, the Panel observes that Article 18(1) applies without any limitation. The remaining subsections of Article 18 should therefore not be read to limit the application and scope of Article 18(1).

38. The Panel also observes that there is evidence indicating that Dr. Celaya practiced as a doctor in cycling events. Therefore, even if Dr. Celaya does not have a license, it appears he should have acquired one under Regulation 1.1.010 of the UCI Cycling Regulations ("Regulations"), which provides that a license shall be required for all team doctors. While this determination is not dispositive to the Panel's tentative findings on jurisdiction, Dr. Celaya certainly cannot escape the application of the UCI ADR by virtue of not procuring a license he was required to acquire.

39. The Panel further finds that the submissions provided indicate that Swiss law grants Swiss associations such as the UCI wide autonomy in applying their rules and imposing sanctions on non-members. The submissions also indicate that Swiss law provides associations with even greater autonomy over non-members if those non-members participate in the association's events.

40. The Panel notes that the Supplemental Expert Opinion of Sebastien Besson discusses and attempts to distinguish the language of a

Swiss Federal Supreme Court decision, Roberts v. FIBA, 4P 230/2000, 2001 ASA Bull. 523, Feb. 7, 2001. In that case, the International Basketball Federation ("FIBA") had issued a ban against the appellant athlete for anti-doping rule violations despite the fact that the appellant athlete was a not member of FIBA. Id. While the appellant athlete was a member of a team in the National Basketball Association ("NBA"), the Swiss court noted that the NBA was not affiliated with FIBA. Id. In the Swiss court decision, the court upheld the validity of the arbitration agreement in question. Id. In doing so, the court held that:

It can also be assumed that a participant in a sport acknowledges the regulations of an association known to him if he requests a general starting or playing permit from the association. Id.

41. Under the evidence presented thus far, the Panel does not find that the arguments raised by the Supplemental Expert Opinion attempting to distinguish this decision are convincing. In particular, it appears wholly irrelevant that the case applied to an athlete and not athlete personnel. Both athletes and athlete personnel are covered under the UCI ADR and USADA Protocol and are therefore subject to regulation. The Roberts decision rather supports the Panel's finding that a Swiss association may impose sanctions on non-members. As the Roberts court suggests, a non-member's participation in a sport indicates that the participant "acknowledges the regulations of an association known to him." This analysis would also apply even if a request for a "playing permit from the association" did not occur. The court's logic would be the same: where a non-member participates in an association's events, it can be assumed that the participant acknowledged the regulations of the association.

42. There are strong prudential reasons for allowing associations to take action against non-members who participate in that association's events. Indeed, it can only make sense that someone cannot enjoy the benefits of participating in an association's events and at the same time avoid sanctions and the imposition of the same association's rules by failing to properly become a member of that organization.

43. Given the analysis above, the Panel finds that Swiss law supports the Panel's tentative finding that an association may implement a structure that applies the association's rules and imposes sanctions on non-members who participate in its activities, including the structure provided in Article 18(1) of the UCI ADR.

b) Application of the USADA Protocol to Dr. Celaya and Mr. Martí

44. Having found that the UCI ADR apply to Dr. Celaya and Mr. Martí, the Panel finds that the Panel's analysis provided above in Section II.A(i)(b), providing the bases for USADA's authority to impose sanctions against Mr. Bruyneel, applies to USADA's authority to impose sanctions against Dr. Celaya and Mr. Martí.

45. In coming to this determination, the Panel notes that neither Dr. Celaya nor Mr. Martí has proffered any evidence indicating that any other ADO discovered the alleged anti-doping violations brought by USADA.

46. The Panel also observes that the Panel's analysis on Swiss law on consent to arbitration does not change in the absence of a license agreement. As provided above, the agreement to arbitrate stems from UCI ADR Articles 11 and 13. Since Dr. Celaya and Mr. Martí have consented to the UCI ADR by participating in UCI cycling events, the Panel finds that they have also consented to the possibility of arbitrating anti-doping violations under the USADA Protocol.

47. The Panel again recalls that its jurisdictional findings here are tentative and subject to change upon a full examination of the facts during the merits stage of the proceedings. The Panel's interim decision to find jurisdiction at this point is based in part on allegations made by USADA regarding the participation of Dr. Celaya and Mr. Martí in cycling events governed by the UCI. Again, the Panel notes that it has assumed for jurisdictional purposes that these allegations are true and, accepting that they are true, found that it has jurisdiction over both Dr. Celaya and Mr. Martí. The Panel reserves the right to amend this decision should new facts come to light that undermine these assumptions.

B. CONFIDENTIALITY AND RIGHT TO DISCLOSURE

48. The Panel next considers USADA's alleged breach of confidentiality obligations owed to the Respondents and the implications of the alleged breach. Mr. Bruyneel and Dr. Celaya both contend that USADA has breached its obligations to keep confidential the facts of this proceeding during its pendency. Specifically, they argue that USADA breached its obligations of confidentiality by publishing extensive statements concerning the Respondents' alleged anti-doping violations in its reasoned decision against Mr. Lance Armstrong. It is further argued that the alleged breach of confidentiality undermines the rights of the

Respondents to a fair trial and that the alleged breach "amounts to a repudiatory breach of any arbitration agreement there may exist" between USADA and the Respondents.

49. The Protocol, World Anti-Doping Code ("Code"), and UCI ADR all contain confidentiality provisions limiting publication of information about anti-doping proceedings by ADOs.

50. First, Article 16 of the USADA Protocol provides:

USADA shall not Publicly Disclose or comment upon any Athlete's Adverse Analytical Finding or Atypical Finding or upon any information related to any alleged doping violation (including violations not involving an Adverse Analytical Finding) until after the Athlete or other Person (1) has been found to have committed an anti-doping rule violation in a hearing conducted under this Protocol, or (2) has failed to request a hearing within the time set forth in 10 (a), or (3) has agreed in writing to the sanction sought by USADA.

51. Second, Article 14 of the Code provides:

14.2.5 No Anti-Doping Organization or WADA-accredited laboratory, or official of either, shall publicly comment on the specific facts of a pending case (as opposed to general description of process and science) except in response to public comments attributed to the Athlete, other Person or their representatives.

52. Third, Article 350 of the UCI ADR provides:

Duty of confidentiality

350. Persons carrying out a task in Doping Control are required to observe strict confidentiality regarding any information concerning individual cases which is not required to be reported under these Anti-Doping Rules.

Such breaches of confidentiality shall be penalized by a fine of between CHF 1,000 and CHF 10,000 as decided by the UCI Disciplinary Commission, which may also suspend the person in question from specified tasks for such time as it shall determine.[1]

53. The Panel also notes, however, that the Protocol, Code, and UCI ADR all contain provisions that require disclosure following the establishment of an anti-doping violation.

54. First, Article 16 of the USADA Protocol provides:

USADA shall Publicly Report the disposition of anti-doping matters no later than five (5) business days after: (1) it has been determined in a hearing in accordance with the Protocol that an anti-doping rule violation has occurred, (2) such hearing has been waived, (3) the assertion of an anti-doping rule violation has not been timely challenged, or (4) the Athlete or other Person has agreed in writing to the sanction sought by USADA. After an anti-doping rule violation has been established USADA may comment upon any aspect of the case. In all cases, the disposition shall be reported to the USOC, NGB, IF, WADA and, if applicable, the other sporting body referring the matter to USADA.

55. Second, Article 8.3 and Article 14 of the Code provide:

8.3 Waiver of Hearing

The right to a hearing may be waived either expressly or by the Athlete's or other Person's failure to challenge an Anti-Doping Organization's assertion that an anti-doping rule violation has occurred within the specific time period provided in the Anti-Doping Organization's rules. Where no hearing occurs, the Anti-Doping Organization with results management responsibility shall submit to the Persons described in Article 13.2.3 a reasoned decision explaining the action taken.

14.2.2 No later than twenty (20) days after it has been determined in a hearing in accordance with Article 8 that an anti-doping rule violation has occurred, or such hearing has been waived, or the assertion of an anti-doping rule violation has not been timely challenged, the Anti-Doping Organization responsible for results management must publicly report the disposition of the anti-doping matter including the sport, the anti-doping rule violated, the name of the Athlete or other Person committing the violation, the Prohibited Substance or Prohibited Method involved and the Consequences imposed. The same Anti-Doping Organization must also publicly report within twenty (20) days appeal decisions concerning anti-doping rule violations. The Anti-Doping Organization shall also, within the time period for publication, send all hearing and appeal decisions to WADA.

56. Third, Articles 352 and 353 of the UCI ADR provide:

Public disclosure

352. The identity of a License-Holder who may have committed an anti-doping rule violation may be publicly disclosed by the UCI after notice has been provided to the License-Holder under article 206 or, where no Adverse Analytical Finding is involved, under article 249.

353. Once a violation of these Anti-Doping Rules has been established in a decision referred to in articles 272 or 284 or in an agreement as referred to in article 250, the UCI shall report it publicly within 20 days, including the name of the License-Holder, the anti-doping violation committed, the Prohibited Substance or Method involved and the sanctions imposed.

57. The Panel recognizes the difficulties for confidentiality presented by parallel proceedings involving multiple athletes (or athlete personnel). There are clear tensions in the text of the applicable confidentiality and disclosure provisions when the proceedings of one athlete (or athlete personnel) are closed, warranting disclosure, and the proceedings of another athlete (or athlete personnel) remain open, warranting confidentiality.

58. In the present case, Mr. Armstrong chose not to bring an AAA proceeding to contest sanctions imposed against him by USADA. USADA therefore issued a reasoned decision against him, as it may be obligated to do under Code Articles 8.3 and 14.2.2. In doing so, USADA also followed its own internal Protocol, which provides that where an anti-doping rule violation has been established (as was the case in the Armstrong case since he did not dispute USADA's sanctions), "USADA may comment upon any aspect of the case."

59. While the Panel recognizes the rights of an ADO to disclose anti-doping violations that have been established, there can be no doubt that the Protocol, Code, and UCI ADR also establish the importance of confidentiality in pending proceedings. This confidentiality is an important part of the protection of the rights of the accused against disclosure of mere allegations of anti-doping rule violations rather than disclosure of established anti-doping rule violations. An ADO can cause considerable harm on a party if it fails to maintain confidentiality during a pending proceeding. The Panel need not discuss in great depth the basic point that mere allegations of an anti-doping violation can have a lasting

impact on the future career, reputation, and wellbeing of an athlete. For this reason, USADA's own Protocol provides that:

USADA shall not Publicly Disclose or comment upon . . . any alleged doping violation (including violations not involving an Adverse Analytical Finding) until after the Athlete or other Person (1) has been found to have committed an anti-doping rule violation in a hearing conducted under this Protocol, or (2) has failed to request a hearing within the time set forth in 10 (a), or (3) has agreed in writing to the sanction sought by USADA.

60. USADA's reasoned decision of Mr. Armstrong discusses the alleged anti-doping activities of the Respondents in considerable depth. The Panel observes that USADA even devotes entire subsections to the alleged doping activities of the Respondents, discussing them by name. These allegations notably have in large part been re-alleged in these proceedings.

61. The Panel finds the extent of USADA's disclosures troubling. While the Panel recognizes that the applicable disclosure provisions allow USADA to comment on established anti-doping violations, the Panel also notes that USADA and other ADOs nonetheless have obligations to exercise restraint in making such disclosures when faced with facts that concern the merits of a parallel proceeding that is ongoing. To determine otherwise would undermine the confidentiality obligations in the UCI ADR, the Code, and the Protocol. The Panel additionally observes that USADA redacted some of the names in its reasoned decision and could potentially have redacted the names of the Respondents as well without altering the character or nature of the allegations made and the nature of the anti-doping rule violations established against Lance Armstrong. That it might have been difficult or would have taken away from the nature of the allegations against or reasoning related to Mr. Armstrong's case is of no moment, because a separate confidentiality obligation exists under the UCI ADR, Code, and Protocol as to each person accused in an anti-doping process. Accordingly, the Panel finds that USADA violated the applicable confidentiality provisions of the UCI ADR, the Code, and the Protocol.

62. The Panel notes that the UCI ADR, the Code, and the Protocol do not appear to provide a specific penalty for violation of the confidentiality provisions. However, the Panel presumably would be empowered to craft a penalty, such as interim measures, through other applicable provisions should it find an effect of the breach of

confidentiality on the proceedings before it. The Panel has not found such an effect.

63. Despite the concerns raised by USADA's disclosures, the Panel does not find that these disclosures undermine the Respondents' right to a fair hearing in this proceeding since the disclosures have no bearing on the neutrality of the Panel. The Panel also finds that, even though the disclosures did violate the confidentiality obligations placed upon USADA by the UCI, WADA, and its own Protocol, USADA's actions do not merit the relief requested by the Respondents. As it ordered in Procedural Order No. 1, however, the Panel reminds the parties "that these proceedings are confidential and the parties are to make no public reference to or about these proceedings other than saying 'no comment.'"

64. Once again, the Panel reserves the right to amend its finding on this issue and reopen the question at any point in these proceedings.

C. STATUTE OF LIMITATIONS

65. The Panel next considers whether the claims brought by USADA against Respondents are subject to a statute of limitations. Because this question may turn on the facts established at a full evidentiary hearing, the Panel determines that it will decide the statute of limitations issue when it reaches the merits of this proceeding.

66. In coming to this decision, the Panel notes that the parties have presented conflicting analyses on the applicable law with respect to this issue. The Panel therefore requests that further briefing on the statute of limitations question include more developed arguments on the governing law on this point, if requested by the Panel.

D. INTERLOCUTORY APPEAL

67. The Panel next considers Respondents' request to permit an interlocutory appeal to the Court of Arbitration for Sport of the decisions made in this procedural order.

68. The Panel holds that it is not within its powers to rule on Respondents' request. Such a decision would be beyond the discretion or authority of this Panel; it appears to the Panel fundamental that whether a tribunal is seized with appellate jurisdiction is a question for that tribunal to determine, not for the initial tribunal. The Panel reiterates for the sake of clarity, however, that its findings on jurisdiction, confidentiality, and

statute of limitations, are subject to reconsideration at any point in these proceedings. The Panel also recalls that its final jurisdictional decision will be presented in the final Award. The Panel additionally notes that the findings in this procedural order are not a partial or interim award and instead reflect the Panel's recognition of the issues presented in the Pre-Hearing Motions and at the preliminary hearing.

E. CONCLUSION

69. The Panel notes that at this point the provisions of Procedural Order No. 1 remain in full force and effect. The Panel will be issuing a request to set an additional pre-hearing conference call to discuss setting a procedural schedule for the case to proceed to a hearing on the merits shortly. A new procedural order will issue soon thereafter.

33. Procedural Order No. 2 also contained the following two footnotes as indicated:

1. Appendix 1 of the UCI ADR defines Person as: "A natural Person or an organization or other entity." Appendix 1 defines Doping Control as: "All steps and processes from test distribution planning through to ultimate disposition of any appeal including all steps and processes in between such as provision of whereabouts information, sample collection and handling, laboratory analysis, TUE's, results management and hearings."

2. The Panel recognizes that USADA's reasoned opinion temporally followed a statement by Mr. Bruyneel challenging the legitimacy of the anti-doping rule violations filed against him. It is thus arguable that Mr. Bruyneel opened the door to USADA's comments, though there is seeming indefiniteness in the rules about whether opening the proverbial door a crack allows an ADO to open the door fully. USADA, however, does not point to public statements by Dr. Celaya in the same regard in its consolidated brief in opposition to the Pre-Hearing Motions raised by Dr. Celaya and Mr. Bruyneel. Rather, it appears to justify its discussion of Dr. Celaya's alleged anti-doping rule violations through its right to present potential corroborating evidence in the reasoned decision against Mr. Armstrong.

D. Procedural Orders Nos. 3, 4, 5

34. After hearing from the parties on the issue of the hearing location, Procedural Order No. 3 was issued on July 22, 2013 simply setting the hearing on the merits in

London December 16 through December 19, 2013 and reserving the Panel's intention to issue a briefing schedule later.

35. Procedural Order No. 4 was issued August 22, 2013 following a teleconference held August 5, 2013. Mr. Jon Pellejero, counsel for Dr. Celaya had sought the issuance of an order staying the proceedings due to an alleged criminal proceeding ongoing in Spain involving the same operative facts involved herein. The Panel denied the stay due to the confidentiality of this proceeding prohibiting release of the operative facts herein. Further, the Panel found the issue presented was a generalization and non-specific assertion regarding the criminal proceeding, which failed to show any relationship with this arbitration proceeding sufficient to form the basis for a stay of these proceedings. The order also set parameters for submissions, conduct of the hearing on the merits and treatment of discovery issues. The text of Procedural Order No. 4 is set forth in pertinent part below:

> *1. The panel met via teleconference on August 5, 2013 to discuss a request made on behalf of Pedro Celaya by counsel Jon Pellejero. Therein Mr. Pellejero asserts that a criminal process in Spain is ongoing and investigation of some facts discussed in the present proceeding exists. He asserts that an arbitration cannot be held when there is a criminal process based on the same operative facts. For these reasons, he seeks a stay of the arbitration proceedings.*
>
> *Having considered the assertion made by counsel, the panel holds that the evidence elicited in the arbitration proceeding is confidential and is not available for use in a Spanish criminal proceeding. Further, the assertion made regarding the criminal proceeding is so generalized and non-specific that he has not shown a nexus between the investigation and the arbitration issues. Furthermore, the assertion regarding the Spanish criminal proceedings appears to be late, though very little information on*

timing of the investigation has been provided by Mr. Celaya. For these reasons, the Panel denies the request to stay the arbitration proceedings.

2. The parties have indicated that preliminary briefs were submitted early on in this case and that they wish to augment and supplement those briefs in order to bring the issues up to date. It is ordered that any additional briefs be fully integrated into previously submitted briefs and orders that the USADA integrated brief be submitted to the panel and parties by September 15, 2013. Further, a current designation of witnesses, and list of exhibits shall include the full name of each witness, and to expedite the proceedings, the parties shall provide the direct testimony of that disclosed witness to the panel, under oath in the form of declaration or affidavits so that at the hearing the examination of each party's disclosed witness shall consist of cross examination and redirect examination. The party sponsoring the witness may provide up to 10 minutes of additional direct examination to cover matters that have arisen since the submission of the witness statement. The witness will then be tendered to the Panel for further cross examination. The Panel may impose a time limit on cross-examination of witnesses. Failure to make available at the hearing a witness whose declaration has been proffered on direct examination shall result in the witness declaration not being considered by the panel. All submissions as well as the conduct of the hearing shall be presented in the English language. The witness statements shall designate all exhibits upon which they are relying. Respondents' briefs, witness statements and list of all exhibits shall be submitted to the Panel by November 15, 2013.

3. Any party wishing to present witnesses by videoconference shall identify such witness to the opposing party and shall first seek agreement of the opposing party for such videoconference witness appearance, and if such agreement is not obtained, the proffering party shall present the issue to the Panel for its decision no later than November 15, 2013. The party seeking videoconference capability is responsible for the arrangements to be made to equip the hearing room for such testimony. That party shall also be responsible for all costs involved in facilitating a witness testifying via video conference.

4. Mr. Vidal asserts on behalf of Mr. Martí that he has not had access to discovery of any evidence or document by USADA, and neither has USADA identified any witness despite previous requests. Pursuant to R-18, they request that production is directed of all documents and evidence in possession of USADA related to this matter and that each and every witness that USADA my produce be identified. The Panel feels that previous language in this and preceding procedural orders addresses this

> *request. If it does not, the provisions, procedures, and standards for discovery contained in the AAA arbitration rules shall apply to this proceeding. The Panel encourages the parties to resolve discovery issues between them, but if they are unable to do so the Panel will undertake a review of any discovery issues and address them as appropriate.*

36. Procedural Order No. 5 was issued October 2, 2013. Again, the Respondents sought a stay of the proceedings for a variety of reasons, including Mr. Floyd Landis's *qui tam* litigation against Mr. Bruyneel, which predated the filing of this action. In particular, Mr. Bruyneel argued that any facts adduced in this action in his defense thereto could be used against him in Mr. Landis's multi-million dollar action. Further, he alleged that USADA appears to be willing to share information with the United States Department of Justice (USDOJ) in order to entice the USDOJ into participating in a *qui tam* action. The Panel noted that while a reasoned decision in this matter would be in the public domain, the content and submissions in this action are confidential and not in the public domain. Further, the Panel noted that the arbitral rules require an expedition of process and do not provide in the USADA Protocol for stay of proceedings. The order also explained the appropriateness of using the IBA Rules of Evidence as a guideline in this arbitration. The pertinent portions of Procedural Order No. 5 are set forth below.

> *I. PROCEDURAL BACKGROUND*
>
> *1. The Panel is in receipt of the various submissions of the parties, namely those from the Respondents requesting a stay of the proceedings on various bases applying to their respective individual positions, and those from USADA requesting a) reconsideration of the Panel's procedural order, and b) responding to the requests for a stay of the proceedings from the Respondents. The Panel wishes to note that the USADA Protocol for Olympic and Paralympic Movement Testing ("USADA Protocol") and the AAA Commercial Arbitration Rules ("AAA*

Rules") provide that the Panel need only provide a final reasoned award; there is no requirement that the Panel provide interim reasoned decisions though the Panel may choose to do so at its option or it may, as the Panel noted it would do here, address the issues raised in its procedural orders including on jurisdiction in its final reasoned award. See USADA Protocol R-38-40; AAA Rules R-41-43. The Panel's views on this are in part cost-driven: A reasoned decision on all procedural aspects in this case would drive arbitrator fees up exponentially in an already arbitrator fee intensive case. Nonetheless, the Panel is providing basic reasons for some of its decisions in this order.

Having considered the submissions of the parties, and after due deliberation, the panel is of the following views:

II. REQUESTS FOR STAY OF THE PROCEEDINGS

2. The Panel denies all of the various requests for a stay of the proceedings. The Panel is not persuaded that allowing these arbitration proceedings to proceed will unreasonably burden or prejudice the position of any party in any other proceeding. The Panel notes that these proceedings are confidential. To the extent public disclosure is required concerning these proceedings, required public disclosure under the applicable rules relates to the result, not necessarily the basis, of the decision, and definitely not of the content of or submissions in the proceedings. Furthermore, the applicable arbitral rules do not provide for stays of proceedings and in fact place an obligation on the Panel to act with some expedition, which the Panel has consistently endeavored to do subject to various reasonable requests of the parties for appropriate delays to prepare their respective cases. See USADA Protocol R-19. In addition, the Floyd Landis-related qui tam litigation substantially pre-dates the procedural order of the Panel, and indeed the filing of this arbitration, and was not raised as a basis for a stay of the proceedings until the past few weeks. Finally, there is no provision in the USADA Protocol for the requested stays based on other proceedings and the Panel is mindful of the need to reach an expeditious resolution of this matter. Accordingly, the Panel denies the requests for a stay of these proceedings.

3. With respect to the request for a stay of these proceedings to permit an interlocutory appeal before the Court of Arbitration for Sport, the Panel has already expressed its views that it is not within our authority to rule on a request to permit an intolocutory appeal. There are no provisions in the USADA Protocol, the AAA Commercial Arbitration Rules, or the relevant anti-doping rules based on the World Anti-Doping

Code permitting such interlocutory appeals, there are no applicable cases that the Panel is aware of that create, contemplate, or have taken up such a right of interlocutory appeal or its procedural consequences, and there are no applicable statutes.

4. Though it has not yet been requested to do so by any CAS panel, the Panel is preliminarily of the view that even if a CAS panel accepted jurisdiction of an interlocutory appeal in this case and requested this Panel to undertake a stay of these proceedings that the Panel is unclear it could do so under any applicable rules. The Panel need not undertake this issue at this time, reserving final determination of it for such time as it becomes at issue, after briefing of the parties.

. . .

IV. REQUEST FOR RECONSIDERATION OF HEARING LOCATION IN LONDON

7. USADA has requested that the Panel reconsider its decision to have the hearing in London on the dates already set in December 2013. The Panel notes that USADA, as it recognizes in its most recent correspondence, has repeatedly objected to the hearing being held any place outside of the United States, including in numerous written submissions, on telephonic hearing calls, and in person. The Panel wishes to confirm that it fully, and repeatedly, considered those objections and arguments before determining the most appropriate hearing location under the facts and circumstances here to be in London.

8. The Panel understands that USADA first requested that the hearing be held in Colorado Springs, which apparently bears no relation to these proceedings except for it being the headquarters of USADA. The Panel is of the view that the Respondents have shown sufficient cause for the hearing to be heard outside of the United States resulting from their concern of US prosecution of various civil and possible criminal cases involving them that might also involve USADA. In addition, the Panel is of the view that when balancing the due process interests, and in particular the right to be heard, of Respondents with the desire of USADA to hold the hearing in the United States, when ittle of the activity for which they are being charged, apparently occurred in the United States, the due process rights of Respondents, guaranteed under the USADA Protocol, the UCI Regulations, and the World Anti-Doping Code, outweigh the convenience and expense factor for which USADA is arguing. Furthermore, the Panel notes that it has limited the direct testimony of

witnesses to their written statements aside from ten additional minutes of direct examination for supplementary matters, so really only to the extent there are either brief new matters for a witness' direct testimony or there has been identification of them to sit for cross-examination will those witnesses have to attend the hearing in person.

9. In light of USADA's expressed concern, the Panel orders that Respondents, in their initial hearing submissions due on November 15, 2013, provide a separate preliminary list of witnesses they desire to cross-examine in person at the hearing in London and whether they will require USADA to produce them in person or whether testimony by video conference or Skype would be acceptable. It is likely that request will yield a smaller subset of witnesses who will be required to testify in person at the hearing. USADA is ordered to provide a response to said preliminary list of witnesses no later than ten days following the submissions of the Respondents identifying any issues or concerns it has with the submissions of Respondents and any other issues regarding presentation of USADA's witnesses at the hearing,

10. Finally, the Panel notes that USADA has, perhaps for the first time in the history of anti-doping since the passage of the initial version of the World Anti-Doping Code, sought to accomplish extra-territorial application of the USADA Protocol to foreign respondents based outside of the United States, and where the conduct alleged against them arose outside the United States. While the Panel has determined that jurisdiction exists over the Respondents in these proceedings under the USADA Protocol, the UCI Regulations, and other applicable law, it is unreasonable, and could be a due process violation, for USADA to expect or require that under R_ of the USADA Protocol such individuals must appear in the United States for their hearing, especially where as here those respondents have raised serious due process concerns that could impinge upon their fundamental right to be heard when confronted with a choice of testifying or facing additional legal process from US authorities, which can easily be obviated by a hearing being held outside of the United States. Nowhere does USADA point to support in the legislative or drafting history of the USADA Protocol, or in the records of the statutorily required negotiations between USADA and the USOC Athletes' Advisory and NGB Councils to amend the AAA Commercial Arbitration Rules to apply in these cases, that such a situation was contemplated. Somewhat inconsistent with USADA's position here, in R-9 the USADA Protocol itself provides that in considering the issue of hearing locale the AAA shall make such a determination "using criteria established by the AAA but making every effort to give preference to the choice of the athlete or other

person charged with an anti-doping rule violation." The Panel cannot believe that given the facts of this case any party involved in the drafting of the USADA Protocol contemplated the application of a requirement for a hearing in the United States involving foreign nationals and residents who were alleged to engage in doping related activity almost wholly outside of the United States where there is a realistic threat of government- or civil defendant-related activity directed to them if they were to appear in the United States.

11. The Panel notes that while London only bears a relationship to a single party's counsel in this proceeding, the Panel has determined that when considering where counsel, parties, witnesses, and arbitrators are located in multiple cities throughout the United States (California, Colorado, Indiana, New York, Washington, and others), Belgium, Spain, the United Kingdom, and Canada, at least so far as we know, and that at least two members of the Panel have London offices, the convenience of any one party was not the driving consideration for London; rather the Panel considered the equities referenced above, the widely diverse geographic locales, and the various relevant calendars of availability given the repeated requests for an immediate hearing by USADA, and determined that London offers the most appropriate location under all facts and circumstances for holding the hearing on the earliest reasonable dates that could be set, which are the dates for which the hearing is set here. Putting aside the text of the USADA Protocol, USADA has argued only that the costs for it to prosecute its case in London could be high (so high that, according to USADA, it will negatively affect Olympic athletes from the United States training for the Olympic Games, a claim the Panel views with some considerable skepticism), not that USADA would be prevented from being heard or vindicating its right to be heard or that it would be impossible for USADA to meet this requirement

12. The Panel wishes to note that two of its members have conveniently located London offices, either of which could be made available for the hearing (with multiple facilities for a hearing room and breakout rooms), or for any witness or other preparation in the lead up to and during the hearing, free of charge to the parties. Accordingly, the Panel stands by its decision to hold the hearing in London on the dates already set.

. . .

E. Applicable Rules of Evidence

37. USADA had objected to use of the International Bar Association Rules on the Taking of Evidence in Commercial Arbitration. ("IBA Rules"). It asserted such rules conflict with the USADA Protocol and the modified AAA Commercial Arbitration Rules that apply when USADA Protocol is silent. The Panel clarified in its Procedural Order No. 5 that the Panel's references to IBA Rules are limited to the presentation of witness statements for direct testimony and the taking of discovery, and no conflict with the USADA Protocol or AAA Commercial Arbitration rules exists.

F. Site of Hearing on the Merits

38. USADA asserted objections to holding the hearing the matter on the merits in London or any site outside the boundaries of the United States. They urged that the hearing be held in Colorado Springs, Colorado, USA. In its Procedural Order No. 5, the Panel determined that the only nexus between any parties to the arbitration and that site is the fact that USADA is headquartered in Colorado Springs. The Order enumerated the multiple reasons for selection of London, which included the fear of some Respondents that legal action might be commenced against them if they appeared in the United States and the relative convenience of the parties, and denied USADA's requests to reconsider the decision to site the hearing in London. The Panel designated the legal seat of the arbitration to be New York, New York, USA, irrespective of the hearing location.

39. The Panel's Procedural Order No. 6 was issued October 28, 2013. Having received another request from Mr. Bruyneel to stay the proceedings, the Panel treated it

as a motion to reconsider all of Respondents' previous motions to stay and, in the absence of changed circumstances, denied it. Further, the Panel's order reminded all parties of the rules regarding confidentiality of the proceedings. The text of Procedural Order No. 6 is set forth in pertinent part below:

> *1. The Panel received a further request from counsel for Mr. Bruyneel to stay the proceedings on bases similar to those previously rejected by the Panel. The Panel also received USADA's response thereto. Essentially this latest request is a request for the Panel to reconsider its prior decision on these matters, as resolved in Procedural Order No. 5. Having considered the submissions of the parties, and after due deliberation, the Panel is of the following views:*
>
> *2. The Panel denies the further request for a stay of the proceedings and the request to reconsider its prior order thereon, for the reasons previously provided in Procedural Order No. 5, finding no basis to persuade the Panel to modify its prior decision.*
>
> *3. The Panel wishes to remind the parties of the obligations of confidentiality they are under as a result of the various procedural orders in this proceeding and that violations thereof by the parties, their counsel or their agents could result in serious negative consequences for them before this Panel. The Panel wishes to further emphasize that no part of the submissions or record in this proceeding is permitted to be used in any other proceeding by any party hereto or by any third party. Having said that, the Panel has recently been made aware that it has been reported in recent days that the hearing in this proceeding will occur in London on the dates set therefor. With due consideration for the need to manage confidentiality as well as the practical need for some response to inquiring press, the Panel orders the following: The parties are to simply respond that they have "no comment" to such inquiries.*
>
> *4. All other aspects of Procedural Order No. 4, and any other still in effect procedural orders of the Panel, not otherwise specifically modified by this Order remain in full force and effect.*

G. Hearing on the Merits

40. From December 16 through December 19, 2013, the Panel held a hearing on the merits at which it heard opening and closing arguments from the parties and received live testimony from witnesses via video conferencing. The hearing was held in the offices of Debevoise & Plimpton LLP in London, England. The Panel attended in person. USADA was represented in person by Mr. William Bock III and Mr. Onye Ikwaukor. Counsel appearing in person for Mr. Johan Bruyneel included Mr. Mike Morgan and Ms. Gina Dowling of Morgan Sports Law and Ms. Fiona Banks of Monckton Chambers. Counsel appearing in person for Mr. Pepe Martí Martí was Mr. Jesús Morant Vidal. Counsel appearing in person for Dr. Pedro Ceyala was Mr. Jon Pellejero. Mr. John Ruger attended as USOC athlete ombudsman. Mr. Benjamin Aronson of Debevoise & Plimpton LLP attended as *ad hoc* clerk to the Panel. All individuals in attendance were reminded of their confidentiality obligations resulting from their attendance at the hearings, and no one disputed those obligations.

41. Following opening statements, all Respondents renewed their request for a stay of proceedings. Mr. Bruyneel's attorney reasserted the peril of offering a defense that he asserts could be used in the *qui tam* action brought by Mr. Landis. In response to Mr. Bruyneel's refusal to appear and/or testify by affidavit or video, USADA requested that the Panel draw an adverse inference against him. Mr. Bruyneel urged that the Panel not draw adverse inferences because of the circumstances of the *qui tam action.* Mr. Martí's counsel also urged that an adverse inference not be drawn against him for failure to

appear and/or testify by video or affidavit due to concern that his testimony could be used against him in an alleged criminal proceeding pending in Spain. He was asked to provide documentation to show the peril he faced. The Panel took these requests under advisement.

42. Respondents moved for dismissal of all charges due to the failure of USADA to particularize charges against them. The Panel reasserted the position taken in previous procedural orders regarding the adequacy of the charging documents supplemented by witness affidavits and briefs, which in the view of the Panel provided Respondents with sufficient particularity and notice of charges adequate to provide a defense thereto.

43. The Panel ruled that the burden of proof lies with USADA to prove violations committed to the comfortable satisfaction of the Panel as to each element of each charge.

44. Mr. Bock sought to augment the record with a lengthy PowerPoint presentation, directed at USADA's request for an adverse inference, which documented all of the questions that USADA suggested it would have inquired of Mr. Bruyneel had he attended the hearing and testified. The Panel did not allow the introduction or presentation of the PowerPoint presentation due to the content essentially introducing new evidence at the 11th hour, particularly given that it was clear for weeks if not longer that Mr. Bruyneel would not be attending and testifying.

45. Following conclusion of the hearing, additional submissions were made dealing with issues regarding particularization of charges and positions on possible sanctions in the event that USADA prevailed on the merits.

> On February 17, 2014, the Chair informed all parties that all submissions that would be considered were in the possession of the Panel and deemed the hearing closed as of that date.

46. Due to a variety of reasons, including a suddenly arising medical issue concerning a member of the Panel, the Panel sought and obtained the consent of the parties for extending the time for issuing its reasoned award until April 21, 2014. This reasoned decision and award then followed.

IV. Factual Background

47. This dispute stems from USADA's investigation of the conduct of Mr. Bruyneel, Dr. Celaya, and Mr. Martí while working for the U.S. Postal Service and Discovery Channel cycling teams. All three Respondents are alleged to have assisted, encouraged, and facilitated the use of prohibited doping agents to the professional cyclists on these U.S.-based teams.

48. The banned doping agents and methods alleged to have been administered in this case include, *inter alia*: erythropoietin, blood transfusions, cortisone, and testosterone.

49. Erythropoietin (EPO) is naturally produced by the kidney in response to a decrease in oxygen.[2] It stimulates the production of red blood cells in the body and

[2] Expert Report of Dr. Larry Bowers (Oct. 8, 2012), p. 1.

thereby increases the blood's ability to carry oxygen to muscle tissues.[3] Because power output is directly related to the number of red blood cells in the body, athletes also use EPO to enhance performance.[4]

50. EPO can be injected subcutaneously (*i.e.* in a small bubble under the skin) or intravenously.[5] The method of injection has a direct impact on the window of detection. While the detection window for subcutaneous injections ranges between seven and ten days, intravenous injections have greatly narrowed the time of detection.[6] The dosage an athlete uses will also affect the detection window.[7] In particular, micro-doses of EPO have been administered to reduce the window of detection.[8]

51. Blood transfusions (also known as "blood doping") also increase the amount of red blood cells in the body and similarly enhance oxygen carrying capacity.[9] Transfusions can be done using one's own blood (autologous transfusion) or with blood from another person (allogeneic or homologous transfusion).[10] When autologous

[3] *Id.* at 1.

[4] *Id.* at p. 2. It is estimated that EPO can help a rider achieve a 10%-20% increase in performance. *Id.*

[5] Testimony of Dr. Larry Bowers (Dec. 18, 2013); Expert Report of Dr. Larry Bowers (Oct. 8, 2012), pp. 5-6.

[6] *Id.*

[7] Expert Report of Dr. Larry Bowers (Oct. 8, 2012), p. 4.

[8] *Id.*

[9] *Id.* at p. 1.

[10] *Id.*

transfusions are performed by an athlete, the athlete will typically extract blood during training and store the blood prior to re-infusion.[11]

52. Although the Athlete Biological Passport (ABGP) can monitor an athlete's red blood cell concentrations over time (among other blood parameters), there is no current testing method for detecting autologous transfusions.[12] Moreover, intravenous micro-doses of EPO and other techniques can be used to mask the effect of a transfusion.[13]

53. Cortisone is an anti-inflammatory that can control swelling and suppress pain.[14] While it has legitimate medical uses, it can also be used to enhance performance.

54. Testosterone is an anabolic steroid that aids the body in the construction of tissue.[15] It can be used to increase muscle mass and improve an athlete's rate of recovery.[16] Testosterone cannot be given administered orally.[17] Instead, it must be administered by injection, by patch or cream, or under the tongue.[18] Because testosterone

[11] *Id.*

[12] *Id.* at pp. 1, 3.

[13] *Id.* at p. 3.

[14] *Id.* at p. 1.

[15] *Id.*

[16] *Id.*

[17] *Id.*

[18] *Id.*

is not sufficiently soluble in water, olive and peanut oils are frequently used as a delivery fluid.[19]

V. Legal Analysis

A. Jurisdiction

55. R-7 of the American Arbitration Association Supplementary Procedures for the Arbitration of Olympic Sport Doping Disputes (2009) provides as follows:

> "R-7 Jurisdiction
>
> a. The arbitrator shall have the power to rule on his or her own jurisdiction, including any objections with respect to the existence, scope or validity of the arbitration agreement.
>
> b. The arbitrator shall have the power to determine the existence or validity of a contract of which an arbitration clause forms a part. Such an arbitration clause shall be treated as an agreement independent of the other terms of the contract. A decision by the arbitrator that the contract is null and void shall not for that reason alone render invalid the arbitration clause.
>
> c. A party must object to the jurisdiction of the arbitrator or the arbitrability of a claim or counterclaim no later than the filing of the answering statement to the claim or counterclaim that gives rise to the objection. The arbitrator may rule on such objections as a preliminary matter or as part of the final award."

56. The subject of jurisdiction was raised or preserved early on and often by the Respondents and fully briefed by the parties and ruled on by the Panel in its Procedural Order No. 2, as discussed and set forth in detail above.

57. The Respondents endeavored to appeal this ruling on an interlocutory basis to the Court of Arbitration for Sport and the Panel understands that, on the eve of the hearing on

[19] *Id.*

the merits in this case, the Court of Arbitration for Sport Panel in that proceeding declined to accept the appeal of the jurisdictional issue on an interlocutory basis.

58. While the Respondents regularly and consistently expressed their views that the Panel did not have jurisdiction throughout the course of the proceedings, the Panel received no evidence at any time in the hearing that would convince the Panel to change its views on the existence of jurisdiction as set forth in its Procedural Order No. 2. Accordingly, the Panel determines that jurisdiction is present here.

B. Applicable Rules and Standards

59. The rules applicable to this dispute span many years and three different jurisdictions or law givers, the UCI, USADA, and WADA. Rather than reprint the complete rules that were asserted by the parties, the Panel will reference specific rules it has relied on in reaching its various decisions, but the Panel relied generally on the applicable provisions of the UCI ADR, WADC, and the USADA Protocol.

C. Burden of Proof

60. The burden of proof rests with USADA to establish that an anti-doping violation occurred. WADC 3.1.[20] The standard of proof by which USADA must prove its case is whether USADA has established an anti-doping rule violation to the comfortable satisfaction of the Panel bearing in mind the seriousness of the allegation which is made.

[20] See also R-16 of the UCI ADR effective August 13, 2004. Because this version was in effect throughout most of the relevant period, all references to the UCI ADR are to this version. In some instances, only the WADC provision is noted, but in each case the Panel also considered the corresponding UCI ADR provision.

WADC 3.1. "Facts related to anti-doping rule violations may be established by any reliable means, including admissions." WADC 3.2.

61. There were no elements of the case on which the Respondents bore the burden of proof; the burden of proof was on USADA throughout.

D. Due Process Objections

62. The parties raised various due process related objections during the proceeding and its pre-hearing procedures:

1) As noted in the procedural history section, the parties challenged the particularization of USADA's charges. Specifically, the parties claimed that USADA's failure to particularize its allegations violated their due process rights and precluded them from presenting an adequate defense.

2) Mr. Bruyneel reasserted his objection that the *qui tam* action precluded him from presenting an adequate defense.

3) Dr. Celaya claimed that USADA's breach of confidentiality affected the impartiality of the Panel and precluded him from receiving a fair hearing.

63. The Panel addressed these matters in its procedural orders and correspondence with the parties. Of significance, the Panel found the charging instruments and allegations set forth by USADA through its prior released "reasoned decision" and its various submissions in this case to be sufficient for the Respondents to assert their

defenses. While the Respondents might prefer more detail to the charging documents, there is no such requirement in the relevant governing documents and rules and the Panel declined to so find. As the Tribunal noted in its procedural orders, the confidentiality of the proceeding (including that no transcription was made of the testimony) adequately protected Mr. Bruyneel from any risks of prejudice in the *qui tam* action, and a breach of the confidentiality concerning this arbitration, if any, had no impact on the ability of this Panel to provide a fair hearing to all of the Respondents.

E. Statute of Limitations

64. Article 17 of the WADC, titled "Statute of Limitations", provides that, "No action may be commenced against an Athlete or other Person for an anti-doping rule violation contained in the Code unless such action is commenced within eight (8) years from the date the violation is asserted to have occurred." UCI ADR R-307, effective August 13, 2004, contains a similar limitations period.

65. The Panel was asked by USADA here to consider applying equitable doctrines to extend the applicable statute of limitations period beyond the express period set forth in Article 17 of the WADC, in reliance on the case of *Hellebuyck v. USADA*, AAA Case No. 77 190 168 11 (January 30, 2012). In that case, Mr. Hellebuyck lied to a prior AAA panel in an earlier anti-doping case to minimize the effect of his period of ineligibility. Mr. Hellebuyck later admitted in a magazine article that he was actually doping during the period he had previously testified under oath at a hearing he was not doping during. The panel in the subsequent case, when confronted with the WADC Article 17 provided

8 years statute of limitations argument by the athlete, determined to extend that limitations period applying equitable doctrines of unclean hands and equitable tolling. As a result, Mr. Hellebuyck saw the panel award a modification of his prior anti-doping period of loss of competitive results for an additional two and one half years. The Hellebuyck panel was clear on the basis for its award:

> "In what the Panel believes is a case of first impression, the Panel determines that Hellebuyck's perjury in a proceeding before the anti-doping tribunal established by the USOC, WADA and IAAF precludes Hellebuyck from arguing for any protection under IAAF or WADA rules regarding limiting the time USADA has to pursue charges against him. Athletes' in AAA and CAS tribunals cannot be forced to testify against themselves, they can choose not to testify. However, if they choose to testify before an AAA or CAS tribunal, they have a legal duty to testify truthfully. Hellebuyck breached that duty when he testified that he never used EPO in his 2004 hearing before the AAA and 2005 hearing before CAS. But for his perjury, Hellebuyck's records would have been expunged from 2001 through 2004. Hellebuyck cannot now come before this tribunal and in essence use his perjury as a means to avoid the consequences that should have been imposed in 2004."

66. The *Hellebuyck* decision was expressly conditioned on the fact that the athlete had previously come before the prior tribunal and committed perjury; he admitted he lied and was later trying to use that lie as a basis for avoiding a proper punishment period for his anti-doping offense. Those facts are not present here. The Respondents in this case are facing their first anti-doping offense and, so far as the Panel was presented with evidence, have never been found to have lied under oath to a tribunal to escape responsibility for or the consequence of anti-doping sanctions.

67. At the merits hearing, USADA agreed that it would not seek to extend the statute of limitations and would bring charges only on the basis of acts taken within the limitations period. However, it said that it would present evidence of acts before the limitations period to corroborate the evidence of acts that occurred within the period. Respondents disputed that earlier acts could be relied upon in any way.

68. While it may not be necessary in light of USADA's later-adopted position, the Panel believes it important to state that the WADC Article 17 statute of limitations should not be extended here based on equitable principles. As a result, the Panel will only consider evidence of conduct by the Respondents occurring after June 12, 2004, eight years prior to USADA's bringing of the present action against the Respondents.

69. The Panel allowed USADA to present all of its evidence, including acts undertaken before the limitations period. The Panel did not consider that evidence in making this Award, even for corroborating the evidence of acts within the limitations period. As described below, the Panel concluded that USADA had presented sufficient evidence of acts in violation of the UCI ADR taken within the limitations period to support the charges against each Respondent.

F. Adverse Inference

70. Under WADC Section 3.2.4, adverse inferences may be taken against an accused individual as follows:

> "The hearing panel in a hearing on an anti-doping rule violation may draw an inference adverse to the Athlete or other Person who is asserted to have committed an anti-doping rule violation based on the Athlete's or other Person's refusal, after a request made in a reasonable time in advance of the hearing, to appear at the hearing (either in person or telephonically as directed by the hearing panel) and to answer questions from the hearing panel or the Anti-Doping Organization asserting the anti-doping rule violation."

71. Here, USADA requested the attendance and testimony at the hearing of all of the Respondents. Only Dr. Celaya undertook to testify at the hearing, and the other Respondents did not do so. As a result, USADA requested the Panel to take an adverse inference against them.

72. While WADC Section 3.2.4 is unclear on what kind of adverse inference may be drawn and there is no definition of its scope, it is clear that Section 3.2.4 is permissive and not mandatory. The Panel may choose to draw some kind of adverse inference from the non-attendance of certain Respondents when their testimony is requested or the Panel may choose to not do so.

73. Certain Respondents presented evidence, which was not refuted by USADA, that they faced considerable legal proceedings in other jurisdictions and that their testimony here could work an unreasonable hardship or prejudice to their defense of those actions. In the case of Mr. Bruyneel, he is a named co-defendant in a *qui tam* action being prosecuted on behalf of the United States government by one of the witnesses in this action, Floyd Landis, who is a named plaintiff in that action. In that action, Mr. Bruyneel faces a claim of over USD$100 million, and he has not yet testified in the case. In the

case of Mr. Martí, he is the subject of a criminal investigation into possible doping in Spain.

74. The legal proceedings against Mr. Bruyneel and Mr. Martí could justify their failure to testify despite USADA's request that they do so. However, in light of the substantial evidence that USADA presented against them, as described more fully below, the Panel is convinced that they committed anti-doping violations without drawing any adverse inference from their failure to testify. Therefore, the Panel does not need to rule on whether an adverse inference should be made, and the Panel has declined to draw an adverse inference against any Respondent.

G. The Case Against The Defendants

1. The Case Against Mr. Johan Bruyneel

75. USADA has brought the following charges against Mr. Bruyneel:

(a) Possession of prohibited substances and/or methods including EPO, blood transfusions and related equipment (such as needles, blood bags, storage containers and other transfusion equipment and blood parameters measuring devices), testosterone, hGH, corticosteroids and/or saline, plasma or glycerol infusions.

(b) Trafficking of EPO, blood transfusions, testosterone, hGH, corticosteroids and/or saline, plasma or glycerol infusions.

(c) Administration and/or attempted administration to others of EPO, blood transfusions, testosterone, hGH, corticosteroids and/or saline, plasma or glycerol infusions.

(d) Assisting, encouraging, aiding, abetting, covering up and other complicity involving one or more anti-doping rule violations and/or attempted anti-doping rule violations.

(e) Aggravating circumstances justifying a period of ineligibility greater than the standard sanction.

76. USADA substantiates these allegations using the sworn affidavits and testimony of eight witnesses: Michael Barry, Tom Danielson, Tyler Hamilton, George Hincapie, Floyd Landis, Levi Leipheimer, Christian Vande Velde, and David Zabriskie.[21] All eight witnesses are former or current professional cyclists who worked with Mr. Bruyneel during his tenure as team director of the U.S. Postal Service and Discovery Channel teams. Each witness testified that Mr. Bruyneel organized, assisted, and encouraged the use of doping for riders on those teams.

77. Mr. Bruyneel disputes USADA's allegations and submits that USADA has not presented any evidence of an anti-doping violation within the limitations period. Mr. Bruyneel declined to testify in this case. Mr. Bruyneel also declined to submit witness statements on his behalf. Rather, the crux of Mr. Bruyneel's case rests on the procedural and jurisdictional objections presented above. Mr. Bruyneel also attempted through cross-examination to undermine the veracity and credibility of certain riders who testified against him.

[21] USADA also submitted witness statements from Ms. Betsy Andreu, Mr. Frank Andreu, Mr. Marco Consonni, Mr. Renzo Ferrante, Mr. Jörg Jaksche, Ms. Emma O'Reilly, Mr. Jack Roberston, Mr. Paul Scott, Mr. Jonathan Vaughters, and Mr. Jean-Pierre Verdy. USADA, however, failed to produce these witnesses at hearing for live testimony. Under Procedural Order No. 4, these witness statements were not admissible evidence. Procedural Order No. 4 stated: "All witnesses to be presented by any party shall submit, by the relevant date above, a witness statement that consists of his or her direct testimony. . . . Failure to make available at the hearing a witness whose witness statement has been proffered shall result in the witness statement not being considered by the panel. . . .". The Panel reminded the parties of this requirement on multiple occasions, including a procedural conference call on December 12, 2013.

78. A summary of the parties' evidentiary submissions is provided below. For the avoidance of doubt, the Panel will only discuss the most pertinent evidence in this case. The discussion below is not meant to be an exhaustive summary of the facts presented in this case.

(a) The Evidence Against Mr. Bruyneel

(i) Michael Barry's Testimony

79. Michael Barry submitted an affidavit and sworn testimony on behalf of USADA in this action. Mr. Barry has been a professional cyclist since 1998 and was a rider for both the U.S. Postal Service (2002-2004) and Discovery Channel (2005-2006) teams.

80. In both his affidavit and sworn deposition, Mr. Barry presented ample evidence that Mr. Bruyneel organized, assisted, and encouraged doping as a team director of the U.S. Postal Service and Discovery Channel teams. Mr. Barry, however, did not present any specific evidence against Mr. Bruyneel after June 12, 2004 (*i.e.* within the limitations period). Mr. Bruyneel's counsel therefore did not address Mr. Barry's testimony or cross-examine Mr. Barry at hearing.

81. Mr. Barry's testimony is clear and credible. It is consistent with the testimony of the other witnesses in this case and was presented in detail. Nevertheless, given the Panel's statute of limitations finding, the Panel will not consider Mr. Barry's testimony against Mr. Bruyneel. Without a tolling of the limitations period, Mr. Barry's testimony cannot form the basis for an anti-doping rule violation against Mr. Bruyneel.

(ii) Tom Danielson's Testimony

82. Tom Danielson submitted an affidavit and sworn testimony on behalf of USADA in this action. Mr. Danielson has been a professional cyclist since 2002 and was a rider for the Discovery Channel team between 2005 and 2007.

83. In both his affidavit and sworn deposition, Mr. Danielson testified that Mr. Bruyneel was involved in "every aspect of the team's training and doping program."[22] Mr. Danielson testified that no one made any significant changes to a rider's doping regimen without the knowledge and approval of Mr. Bruyneel.[23]

84. Mr. Danielson provided numerous examples to support these statements. Specifically, Mr. Danielson testified that:

- There was a consistent line of communication among Mr. Bruyneel, Mr. Martí, and Dr. Celaya regarding his doping program.[24]
    - Dr. Celaya and Mr. Martí would carry out the program agreed to by Mr. Danielson and Mr. Bruyneel.[25]
    - Mr. Bruyneel seemed to be communicating with Dr. Michele Ferrari, with whom Mr. Danielson also worked, regarding his doping and training program.[26]

[22] Affidavit of Tom Danielson (Sept. 26, 2012), ¶ 76; Testimony of Tom Danielson (Dec. 18, 2013).

[23] Affidavit of Tom Danielson (Sept. 26, 2012), ¶ 76; Testimony of Tom Danielson (Dec. 18, 2013).

[24] Testimony of Tom Danielson (Dec. 18, 2013). Notably, Mr. Bruyneel confirmed to Mr. Danielson that Mr. Martí kept him informed about his program. Affidavit of Tom Danielson (Sept. 26, 2012), ¶ 57.

[25] Testimony of Tom Danielson (Dec. 18, 2013).

[26] Affidavit of Tom Danielson (Sept. 26, 2012), ¶ 57.

- Before the 2006 Tour of California (February 19-27, 2006), Mr. Martí shipped him a supply of EPO. After the shipment, Mr. Danielson spoke with Mr. Bruyneel to let him know that the EPO had arrived.[27]

- Before the 2006 Giro d'Italia (May 6-28, 2006), Mr. Danielson asked Mr. Bruyneel whether the team had an organized doping program for the 2006 Giro. Mr. Bruyneel said the team did not, but identified a rider who had organized a system for obtaining EPO during the race.[28]

- After the Giro d'Italia in 2006, Mr. Danielson spoke with Mr. Bruyneel and asked whether the team planned to assist him with blood transfusions during the 2006 Vuela a España ("Vuelta") (August 26 – September 17, 2006). Mr. Bruyneel agreed to assist him with the blood doping program.[29]

- Mr. Danielson's blood doping program began in the summer of 2006.[30] As part of this process, Mr. Danielson went to a hotel in Valencia to meet Mr. Martí and Dr. Celaya.[31] Mr. Martí and Dr. Celaya then took out two bags of his blood.[32] While Mr. Bruyneel was not present when Mr. Martí and Dr. Celaya extracted his blood, he was involved in this procedure from an "organizational standpoint."[33] For example, Mr. Bruyneel told Mr. Martí and Dr. Celaya to go to Valencia to meet Mr. Danielson, told them in Valencia where to meet, told Mr. Danielson what would occur, and set the date of the procedure.[34]

- Following the initial blood extraction by Mr. Martí and Dr. Celaya, Mr. Bruyneel suggested that Mr. Danielson could avoid drug testing by

[27] Affidavit of Tom Danielson (Sept. 26, 2012), ¶ 76.

[28] Affidavit of Tom Danielson (Sept. 26, 2012), ¶ 88.

[29] Affidavit of Tom Danielson (Sept. 26, 2012), ¶ 96.

[30] Affidavit of Tom Danielson (Sept. 26, 2012), ¶¶ 102-103; Testimony of Tom Danielson (Dec. 18, 2013).

[31] Affidavit of Tom Danielson (Sept. 26, 2012), ¶ 104; Testimony of Tom Danielson (Dec. 18, 2013).

[32] Affidavit of Tom Danielson (Sept. 26, 2012), ¶ 104.

[33] Testimony of Tom Danielson (Dec. 18, 2013).

[34] Testimony of Tom Danielson (Dec. 18, 2013).

leaving Girona – the town where he had publicly reported his residence to USADA – and staying at a hotel in Puigcerdas, Spain.

- Before the 2006 Vuelta, Mr. Bruyneel arranged for Mr. Danielson to have additional blood transfusion procedures in Valencia.[35] Dr. Celaya and Mr. Martí again performed the transfusions.[36]

85. Mr. Danielson found the blood transfusion process to be physically draining and emotionally paralyzing.[37] He suffered major anxiety issues following the Vuelta and decided to quit doping in 2007.[38] Soon thereafter, Mr. Danielson left the Discovery Channel team to work with Jonathan Vaughters on the Slipstream team.[39]

86. Mr. Bruyneel did not present any evidence that directly rebuts Mr. Danielson's testimony. Nevertheless, Mr. Bruyneel summarily claims that Mr. Danielson's testimony does not provide any evidence of an anti-doping rule violation.

87. Mr. Bruyneel's counsel also attempted to discredit Mr. Danielson's testimony by challenging the veracity and reliability of some of his statements. In particular, Mr. Bruyneel's counsel argued:

[35] Testimony of Tom Danielson (Dec. 18, 2013). *See also* D, 107.

[36] Testimony of Tom Danielson (Dec. 18, 2013).

[37] Affidavit of Tom Danielson (Sept. 26, 2012), ¶¶ 109-115; Testimony of Tom Danielson (Dec. 18, 2013).

[38] Affidavit of Tom Danielson (Sept. 26, 2012), ¶¶ 109-119; Testimony of Tom Danielson (Dec. 18, 2013).

[39] Affidavit of Tom Danielson (Sept. 26, 2012), ¶¶ 124-126.

- Mr. Bruyneel could not have been involved in every aspect of the team's doping program given that multiple riders testified that they procured doping products from one another without team assistance.[40]

- It is unlikely Mr. Bruyneel ordered the 2006 procedures since, as Mr. Danielson recognized, doping was not something that was discussed openly.[41]

- Mr. Danielson may be biased against Mr. Bruyneel given his association with Jonathan Vaughters, who manages a rival team that competed with Mr. Bruyneel.

88. The Panel additionally observes that Dr. Pedro Celaya, in response to questioning by counsel for Mr. Bruyneel, testified that he never saw Mr. Bruyneel order any riders to dope.[42] Dr. Celaya also testified that Mr. Bruyneel never asked him to assist riders in doping at any time.[43]

89. Dr. Celaya's testimony does not undermine the evidence submitted by Mr. Danielson. For the reasons presented below, the Panel does not find Dr. Celaya to be a credible witness in this case. His statements therefore need no further discussion in relation to the case of Mr. Bruyneel.

90. Mr. Bruyneel's counsel's attempts to challenge the credibility of Mr. Danielson's testimony are also unavailing. Despite Mr. Bruyneel's efforts to challenge Mr. Danielson's testimony, the Panel finds that Mr. Danielson is a credible witness and that

[40] *See, e.g.*, Affidavit of Michael Barry (Oct. 8, 2012), ¶ 56; *see also* Affidavit of David Zabriskie (Sept. 4, 2012), ¶ 57.

[41] Testimony of Tom Danielson (Dec. 18, 2013).

[42] Testimony of Dr. Pedro Celaya (Dec. 19, 2013).

[43] Testimony of Dr. Pedro Celaya (Dec. 19, 2013).

he told the truth in his sworn affidavit and testimony. The Panel finds Mr. Danielson's testimony to be clear and compelling. It was presented in extensive detail and is consistent with the testimony of the other riders who were witnesses in this case. While the Panel recognizes Mr. Bruyneel's point that team riders occasionally acquired drugs from one another without team supervision, Mr. Danielson's testimony provides extensive support that Mr. Bruyneel played a major role in organizing, encouraging, and facilitating doping on the team.

(iii) Tyler Hamilton's Testimony

91. Tyler Hamilton submitted an affidavit and sworn testimony on behalf of USADA in this action. Mr. Hamilton was a professional cyclist between 1995 and 2009 and was a rider for U.S Postal Service between 1996 and 2001.

92. In both his affidavit and sworn deposition, Mr. Hamilton presented evidence that Mr. Bruyneel organized, assisted, and encouraged doping as team director of the U.S. Postal Service team. Mr. Hamilton, however, did not present any specific evidence against Mr. Bruyneel after June 12, 2004 (*i.e.* within the limitations period). Mr. Bruyneel's counsel therefore did not address Mr. Hamilton's testimony or cross-examine Mr. Hamilton at hearing.

93. The Panel is of the view that Mr. Hamilton has previously perjured himself in the case against him, *Hamilton v USADA and UCI,* CAS 2005/A/884, and the underlying AAA arbitration proceeding, and wrote a book based on these issues, though his

testimony is consistent with the other witnesses in this case. Nevertheless, given the Panel's statute of limitations finding, the Panel will not consider Mr. Hamilton's testimony against Mr. Bruyneel. Without a tolling of the limitations period, Mr. Hamilton's testimony cannot form the basis for an anti-doping rule violation against Mr. Bruyneel.

(iv) George Hincapie's Testimony

94. George Hincapie submitted an affidavit and sworn testimony on behalf of USADA in this action. Mr. Hincapie was a professional cyclist between 1993 and 2012. He was rider for both the U.S. Postal Service (1997-2004) and Discovery Channel (2005-2007) teams.

95. In both his affidavit and sworn deposition, Mr. Hincapie presented evidence that Mr. Bruyneel organized, assisted, and encouraged doping as a team director for the U.S. Postal Service and Discovery Channel teams. The bulk of Mr. Hincapie's testimony was directed at activity outside the scope of the limitations period. Given the Panel's statute of limitations finding, the Panel need not consider this evidence.

96. Mr. Hincapie made only one allegation regarding Mr. Bruyneel that stemmed from events within the limitations period. In particular, Mr. Hincapie testified that after the Tour de France in July 2005, Mr. Bruyneel called him and asked him to go to Mr. Lance Armstrong's apartment in Girona to make sure that there was nothing in the

apartment.[44] Mr. Hincapie understood from this comment that Mr. Bruyneel wanted him to check that there were no doping materials in the apartment.[45] Mr. Hincapie clarified at the hearing that there would be no other reason to go to Mr. Armstrong's apartment.[46]

97. Mr. Bruyneel did not present any evidence that directly rebuts Mr. Hincapie's testimony. Instead, Mr. Bruyneel attempted to undermine the veracity and reliability of Mr. Hincapie's account by noting that Mr. Hincapie could not recall Mr. Bruyneel's exact words, that the call was made eight years ago, and that there is no direct evidence that Mr. Hincapie in fact found or removed doping products.

98. The Panel finds Mr. Hincapie's testimony to be clear and credible. Mr. Hincapie's account of the 2005 incident was presented in sufficient detail and evidences that Mr. Bruyneel asked Mr. Hincapie to remove doping products from Mr. Armstrong's apartment. It is immaterial whether doping products were in Mr. Armstrong's apartment. Even if true, that would not nullify the request. In light of Mr. Bruyneel's failure to provide any evidence that rebuts Mr. Hincapie's testimony, Mr. Hincapie's testimony stands uncontroverted.

[44] Affidavit of George Hincapie (Sept. 24, 2012), ¶ 89; Testimony of George Hincapie (Dec. 16, 2013).

[45] Affidavit of George Hincapie (Sept. 24, 2012), ¶ 89; Testimony of George Hincapie (Dec. 16, 2013).

[46] Testimony of George Hincapie (Dec. 16, 2013).

(v) Floyd Landis' Testimony

99. Floyd Landis submitted an affidavit and sworn testimony on behalf of USADA in this action. Mr. Landis was a professional cyclist between 1999 and 2009 and was a rider for the USPS team between 2002 and July 2004.

100. In both his affidavit and sworn deposition, Mr. Landis presented evidence that Mr. Bruyneel organized, assisted, and encouraged doping as a team director of the USPS team. The majority of this evidence concerned events outside the limitations period. Given the Panel's statute of limitations finding, the Panel need not consider this evidence.

101. Mr. Landis also presented evidence that was not clearly within the limitations period. In particular, Mr. Landis stated that in May and June 2004, Mr. Bruyneel directed USPS team personnel to perform two separate blood extractions and transfusions for him.[47] When pressed on this issue at the hearing by Mr. Bruyneel's counsel, Mr. Landis was unable to specify when in June 2004 the transfusion occurred.[48] The Panel is therefore not comfortably satisfied that the events occurred within the limitations period and will not consider the evidence.

102. Mr. Landis additionally testified that Mr. Bruyneel "oversaw the entire [U.S. Postal Service] doping program," "boasted about being a team doctor," and was the one

[47] Affidavit of Floyd Landis (Sept. 26, 2012), ¶ 37.

[48] Testimony of Floyd Landis (Dec. 16, 2013).

who "made decisions regarding who would receive EPO injections."[49] Mr. Landis made these comments without limitation. Mr. Landis also made no suggestion at any point in either his affidavit or testimony that Mr. Bruyneel ever ceased acting in this capacity. Rather, his testimony indicates that Mr. Bruyneel expressly did continue facilitating doping on the team.[50]

103. Mr. Bruyneel did not present any evidence that directly rebuts Mr. Landis' testimony. Instead, Mr. Bruyneel argued that the events described in Mr. Landis' testimony precede the limitations period. Mr. Bruyneel also argued that Mr. Landis is not a credible witness given that he is party to a *qui tam* action against Mr. Bruyneel and stands to gain pecuniary benefits in that case.

104. The Panel is of the view that the evidence of Mr. Landis is either entirely outside the limitations period or fraught with credibility issues arising from his prior admitted perjury before various arbitration tribunals and his strong personal pecuniary interest in matters affecting Mr. Bruyneel and the USPS team. Mr. Landis has previously perjured himself in the case against him, *Landis v USADA*, CAS 2007/A/1394, and in the underlying AAA arbitration proceeding, and he did not deny the possibility that he could ultimately profit from the *qui tam* action. Mr. Landis' pecuniary interest in the outcome of certain matters related to his *qui tam* proceeding in which Mr. Bruyneel is a named

[49] Testimony of Floyd Landis (Dec. 16, 2013).

[50] For example, in one instance, Mr. Landis had a blood transfusion with the help of an unnamed assistant of Mr. Bruyneel. Affidavit of Floyd Landis (Sept. 26, 2012), ¶ 40.

defendant, which interest could have a substantial effect on his testimony in this proceeding, were demonstrated by the fact that Mr. Landis was one of only two witnesses to have counsel present to "represent" him during his testimony in this arbitration, and the counsel he chose is his personal counsel and the primary plaintiff's counsel in the *qui tam* litigation. Accordingly, the Panel declines to consider Mr. Landis' testimony against Mr. Bruyneel.

(vi) Levi Leipheimer's Testimony

105. Levi Leipheimer submitted an affidavit and sworn testimony on behalf of USADA in this action. Mr. Leipheimer has been a professional cyclist since 1997 and was a rider for the U.S Postal Service (2000-2001), Gerolsteiner (2005-2006) and Discovery Channel (2007) teams.

106. In both his affidavit and sworn deposition, Mr. Leipheimer presented evidence that Mr. Bruyneel organized, assisted, and encouraged doping as team director. While some of Mr. Leipheimer's testimony concerns events that predate June 12, 2004, Mr. Leipheimer also discussed events within the limitations period. Again, the Panel will only consider the events that are within the limitations period.

107. Mr. Leipheimer testified that at the Tour of Georgia in April 2007, he told Mr. Bruyneel that it would be too stressful for him to participate in a blood doping program for the 2007 Tour without team assistance.[51] While Mr. Bruyneel initially told Mr.

[51] Affidavit of Levi Leipheimer (Sept. 21, 2012), ¶¶ 78-79.

Leipheimer that he "should do it on [his] own," Mr. Bruyneel later acquiesced and told Mr. Leipheimer: "I think we can make it work."[52] After the 2007 Dauphiné Libéré (held June 10-17, 2007), Mr. Leipheimer began a blood program with the team's assistance.[53]

108. Mr. Leipheimer also testified that Mr. Bruyneel played an integral role in managing the team's doping program. Specifically, Mr. Leipheimer stated that Mr. Bruyneel "was the boss; people who took actions only did so from his instructions."[54] In short, Mr. Bruyneel "told him what was going to happen, and then it happened."[55]

109. Mr. Bruyneel did not present any evidence that directly rebuts Mr. Leipheimer's testimony. Nevertheless, according to Mr. Bruyneel, Mr. Leipheimer's testimony does not establish that he ever witnessed Mr. Bruyneel commit any act that would constitute an anti-doping rule violation. Mr. Bruyneel also argued there was no evidence that Mr. Bruyneel had any direct involvement in Mr. Leipheimer's 2007 blood doping program.

110. Mr. Bruyneel's defenses are unavailing. Mr. Leipheimer's testimony is clear, compelling, and credible. It is consistent with the testimony of the other riders in this case and clearly demonstrates that Mr. Bruyneel initiated and organized Mr. Leipheimer's blood doping program for the 2007 Tour. Mr. Leipheimer's testimony also

[52] Affidavit of Levi Leipheimer (Sept. 21, 2012), ¶¶ 78, 80.

[53] Affidavit of Levi Leipheimer (Sept. 21, 2012), ¶¶ 81-86.

[54] Testimony of Levi Leipheimer (Dec. 17, 2013) (emphasis added).

[55] Testimony of Levi Leipheimer (Dec. 17, 2013).

establishes that Mr. Bruyneel played an active role in managing the team's doping program. As Mr. Leipheimer explained: "people who took actions only did so from his instructions."[56]

(vii) Christian Vande Velde's Testimony

111. Christian Vande Velde submitted an affidavit and sworn testimony on behalf of USADA in this action. Mr. Vande Velde has been a professional cyclist since 1998 and was a rider for the U.S Postal Service team between 1998 and 2003.

112. In both his affidavit and sworn deposition, Mr. Vande Velde presented evidence that Mr. Bruyneel organized, assisted, and encouraged doping as team director of the U.S. Postal Service team. Mr. Vande Velde, however, did not present any specific evidence against Mr. Bruyneel after June 12, 2004 (*i.e.* within the limitations period). Mr. Bruyneel's counsel therefore did not address Mr. Vande Velde's testimony or cross-examine Mr. Vande Velde at hearing.

113. Mr. Vande Velde's testimony is clear, compelling, and credible. It is consistent with the testimony of the other witnesses in this case and was presented in detail. Nevertheless, given the Panel's statute of limitations finding, the Panel need not consider Mr. Vande Velde's testimony against Mr. Bruyneel. Without a tolling of the limitations period, Mr. Vande Velde's testimony cannot form the basis for an anti-doping rule violation against Mr. Bruyneel.

[56] Testimony of Levi Leipheimer (Dec. 17, 2013).

(viii) David Zabriskie's Testimony

114. David Zabriskie submitted an affidavit and sworn testimony on behalf of USADA in this action. Mr. Zabriskie has been a professional cyclist since 2001 and was a rider for the U.S Postal Service team between 2001 and 2004.

115. In both his affidavit and sworn deposition, Mr. Zabriskie presented evidence that Mr. Bruyneel organized, assisted, and encouraged doping as team director of the U.S. Postal Service team. Mr. Zabriskie, however, did not present any specific evidence against Mr. Bruyneel after June 12, 2004 (*i.e.* within the limitations period). Mr. Bruyneel's counsel therefore did not address Mr. Zabriskie's testimony or cross-examine Mr. Zabriskie at hearing.

116. Mr. Zabriskie's testimony is clear, compelling, and credible. It is consistent with the testimony of the other witnesses in this case and was presented in detail. Nevertheless, given the Panel's statute of limitations finding, the Panel need not consider Mr. Zabriskie's testimony against Mr. Bruyneel. Without a tolling of the limitations period, Mr. Zabriskie's testimony cannot form the basis for an anti-doping rule violation against Mr. Bruyneel.

(b) Legal Analysis

117. USADA charged Mr. Bruyneel with the following:

(a) Possession of prohibited substances and/or methods including EPO, blood transfusions and related equipment (such as needles, blood bags, storage containers and other transfusion equipment and blood parameters

measuring devices), testosterone, hGH, corticosteroids and/or saline, plasma or glycerol infusions under WADC Section 2.6.2 (and R-15.6.2 of the UCI ADR that became effective on August 13, 2004, and so was in effect during most of the period under consideration here) ("the First Charge Against Mr. Bruyneel");

(b) Trafficking of EPO, blood transfusions, testosterone, hGH, corticosteroids and/or saline, plasma or glycerol infusions under WADC Section 2.7 and UCI ADR R-15.7 ("the Second Charge Against Mr. Bruyneel");

(c) Administration and/or attempted administration to others of EPO, blood transfusions, testosterone, hGH, corticosteroids and/or saline, plasma or glycerol infusions under WADC Section 2.8 and UCI ADR R-15.8 ("the Third Charge Against Mr. Bruyneel");

(d) Assisting, encouraging, aiding, abetting, covering up and other complicity involving one or more anti-doping rule violations and/or attempted anti-doping rule violations under WADC Section 2.8 and UCI ADR R-15.8 ("the Fourth Charge Against Mr. Bruyneel"); and

(e) Aggravating circumstances justifying a period of ineligibility greater than the standard sanction under WADC 10.6 ("the Fifth Charge Against Mr. Bruyneel").

118. As recounted above, given its ruling on the statute of limitations issue, the only evidence that the Panel will consider against Mr. Bruyneel is the testimony of Messrs. Danielson, Hincapie, and Leipheimer. Mr. Bruyneel did not testify himself, instead choosing to rely on his general denial of wrongdoing and various legal arguments challenging the credibility of witness testimony against him.

119. With respect to the First Charge Against Mr. Bruyneel, USADA must establish that Mr. Bruyneel had in his possession prohibited substances or the accoutrements (or paraphernalia) of prohibited methods. The Panel is unaware of and was not provided with a case addressing whether "possession" under the WADC includes constructive possession, as opposed to actual possession, but here there is no evidence that Mr.

Bruyneel had actual possession of prohibited substances. In fact, there is ample evidence that the individual cyclists had to pay for their doping substances. To read the WADC provision authorizing this charge as permitting constructive possession would read out the very different meanings of the various other doping offenses charged and existing in the WADC. Accordingly, the Panel declines to find that USADA has satisfied its burden of proof on the First Charge Against Mr. Bruyneel.

120. With respect to the Second Charge Against Mr. Bruyneel, USADA must establish that Mr. Bruyneel "trafficked" in the substances and methods referenced. Unfortunately, the anti-doping rules do not provide anti-doping tribunals with a definition of "trafficking", but it appears from the relevant rules that the offense of "trafficking" is designed not to block the sale of products for any commercial consideration but to prevent the distribution or involvement in the chain of distribution by persons otherwise prohibited by the relevant anti-doping rules from being so involved. But even considering there may be a commercial aspect to this definition (in other words, the trafficking has to be for consideration), it is clear that Mr. Bruyneel himself profited considerably from the successes of the teams and riders he managed during the relevant period. Based on the evidence of Mr. Danielson, it is clear that Mr. Bruyneel was engaged in the allocation of team-related resources and otherwise causing a variety of prohibited doping substances and methods to be used expressly for the purpose of gaining an unfair advantage for the teams and cyclists he managed in cycling events. While Mr. Bruyneel's counsel made various arguments to attack this testimony, they offered no

evidence to support their position that this did not occur. Accordingly, the Panel is of the view that USADA has met its burden of proof with respect to the Second Charge Against Mr. Bruyneel.

121. With respect to the Third Charge Against Mr. Bruyneel, USADA must establish that Mr. Bruyneel administered or attempted to administer the prohibited substances or methods to athletes. There is no case the Panel is aware of that suggests that Mr. Bruyneel may be held responsible for the conduct of others in this regard, but Mr. Danielson testified regarding the events that occurred in 2006 in Valencia that Mr. Bruyneel was directly involved in organizing various blood doping-related blood transfusions, even though Mr. Bruyneel was not present in person for the administration or attempted administration of the prohibited blood transfusions or the taking of blood for the purpose of use later in transfusions. While Mr. Bruyneel made various legal arguments challenging this testimony, he did not provide evidence to rebut this evidence of Mr. Danielson. Accordingly, the Panel finds that USADA has met its burden of proof with respect to the Third Charge Against Mr. Bruyneel.

122. With respect to the Fourth Charge Against Mr. Bruyneel, USADA must establish that Mr. Bruyneel assisted, encouraged, aided, abetted, covered up, or was complicitous in any doping offense. The testimony of Messrs. Danielson, Hincapie and Leipheimer is replete with examples of Mr. Bruyneel engaging in this kind of activity during the relevant time period. As a result, the Panel finds that USADA has met its burden of proof with respect to the Fourth Charge against Mr. Bruyneel.

123. With respect to the Fifth Charge Against Mr. Bruyneel (in fact, not a substantive charge but a request for an additional or enhanced punishment), USADA must establish that aggravating circumstances existed to permit the Panel to extend the usual period of ineligibility. WADC Section 10.6 provides as follows:

> "If the Anti-Doping Organization establishes in an individual case involving an anti-doping rule violation other than violations under Articles 2.7 (Trafficking or Attempted Trafficking) and 2.8 (Administration or Attempted Administration) that aggravating circumstances are present which justify the imposition of a period of Ineligibility greater than the standard sanction, then the period of Ineligibility otherwise applicable shall be increased up to a maximum of four [4] years unless the Athlete or other Person can prove to the comfortable satisfaction of the hearing panel that he or she did not knowingly commit the anti-doping rule violation . . ."

124. The comment to this WADC section is instructive:

> "Examples of Aggravating Circumstances which may justify the imposition of a period of Ineligibility greater than the standard sanction are: the Athlete or other Person committed the anti-doping rule violation as part of a doping plan or scheme, either individually or involving a conspiracy or common enterprise to commit anti-doping rule violations; the Athlete or other Person Used or Possessed multiple Prohibited Substances or Prohibited Methods or Used or Possessed a Prohibited Substance or Prohibited Method on multiple occasions; a normal individual would be likely to enjoy the performance-enhancing effects of the anti-doping rule violation(s) beyond the otherwise applicable period of Ineligibility; the Athlete or Person engaged in deceptive or obstructive conduct to avoid the detection or adjudication of an anti-doping rule violation.
>
> For the avoidance of doubt, the examples of aggravating circumstances described in this Comment to Article 10.6 are not exclusive and other aggravating factors may also justify the imposition of a longer period of Ineligibility. Violations under Articles 2.7 (Trafficking or Attempted Trafficking) and 2.8 (Administration or Attempted Administration) are not included in the application of Article 10.6 because the sanction for these violations (from four years to lifetime Ineligibility) already building

sufficient discretion to allow consideration of any aggravating circumstance."

125. With respect to this charge, given the evidence provided by USADA, the Panel finds the existence of aggravating circumstances. However, as discussed in more detail below, the Panel is of the view that these aggravating circumstances are of no effect on the overall sanction given to Mr. Bruyneel.

126. To summarize, the Panel finds Mr. Bruyneel guilty of violations of WADC sections 2.7 and 2.8 and UCI ADR R-15.7 and 15.8.

2. The Case Against Dr. Pedro Celaya

127. USADA has brought the following charges against Dr. Celaya:

(a) Possession of prohibited substances and/or methods including EPO, blood transfusions and related equipment (such as needles, blood bags, storage containers and other transfusion equipment and blood parameters measuring devices), testosterone, hGH, corticosteroids and/or saline, plasma or glycerol infusions.

(b) Trafficking of EPO, blood transfusions, testosterone, hGH, corticosteroids and/or saline, plasma or glycerol infusions.

(c) Administration and/or attempted administration to others of EPO, blood transfusions, testosterone, hGH, corticosteroids and/or saline, plasma or glycerol infusions.

(d) Assisting, encouraging, aiding, abetting, covering up and other complicity involving one or more anti-doping rule violations and/or attempted anti-doping rule violations.

(e) Aggravating circumstances justifying a period of ineligibility greater than the standard sanction.

128. USADA substantiates these allegations using the affidavits and sworn testimony of six witnesses: Michael Barry, Tom Danielson, Tyler Hamilton, George Hincapie,

Floyd Landis, and David Zabriskie. Each witness testified that Dr. Celaya administered or facilitated the use of doping products for team riders.

129. Dr. Celaya disputes this evidence in the entirety and provided sworn testimony rebutting the statements by the riders. In his testimony, Dr. Celaya alleged that he never "in any case administer[ed] drugs."[57] As Dr. Celaya stated: "I may have known [about doping], but I never assisted anyone." Dr. Celaya explained that he only worked as a team doctor "for a few days [per month]" "during the holidays of [his] other job" and that when he was with the team, he focused on "minimiz[ing] the impact of the drug abuse." Discussing his relationship with Mr. Hamilton, for example, Dr. Celaya stated: "Of course I explained to him not to use these substances. Beyond that there's nothing else I can do. Once he goes behind the doors of his house, there's nothing I can do. . . . Hamilton is an adult who has to live his own life and make his own decisions." Dr. Celaya acknowledged that he never reported the team's doping activity, stating that "cannot disclose any information of his patients" and is "bound by confidentiality between a doctor and [] patient."[58]

130. In addition to his own sworn testimony, Dr. Celaya also presented affidavits and sworn testimony from Mr. Carlos María Arribas Lázaro, Mr. Martin Hardie, Ms. Miren Josune Aguirre Ibarbia, Mr. Agustí Bernaus Tarantino, and Mr. José Luis Benito Urraburu.

[57] Testimony of Dr. Pedro Celaya (Dec. 19, 2013).

[58] Testimony of Dr. Pedro Celaya (Dec. 19, 2013).

131. The Panel's findings on both parties' evidentiary submissions is provided below. Again, the Panel will only discuss the most pertinent evidence in this case. The discussion below is not meant to be an exhaustive summary of the facts presented in this case.

(a) The Evidence Against Dr. Celaya

(i) Michael Barry's Testimony

132. The Panel recalls that Mr. Barry was a rider for the U.S. Postal Service (2002-2004) and Discovery Channel (2005-2006) teams.

133. In both his affidavit and sworn deposition, Mr. Barry presented credible evidence that Dr. Celaya provided him with doping products and facilitated his use of doping while he was a rider for the U.S. Postal Service team. Mr. Barry, however, did not present any evidence that clearly fell within the limitations period. Although Mr. Barry did testify about anti-doping violations by Dr. Celaya that took place in 2004, he could not specify when in 2004 these events occurred.[59]

134. The Panel is therefore not comfortably satisfied that the events occurred within the limitations period and will not consider Mr. Barry's testimony against Dr. Celaya. Without a tolling of the limitations period, Mr. Barry's testimony cannot form the basis for an anti-doping rule violation against Dr. Celaya.

[59] Testimony of Michael Barry (Dec. 16, 2013).

(ii) Tom Danielson's Testimony

135. The Panel recalls that Mr. Danielson was a rider for the Discovery Channel team between 2005 and 2007.

136. In both his affidavit and sworn deposition, Mr. Danielson testified that Dr. Celaya administered doping products to him and assisted him with doping while he was a rider for the Discovery Channel team.

137. In particular, Mr. Danielson claims:

- There was a consistent line of communication between Mr. Bruyneel, Mr. Martí, and Dr. Celaya regarding his doping program.[60] Dr. Celaya and Mr. Martí would carry out the program agreed to by Mr. Danielson and Mr. Bruyneel.[61]

- After the Vuelta Ciclista al País Vasco (Tour of the Basque Country – April 4-5, 2005), Dr. Celaya approached him about receiving a cortisone injection despite the fact that there was no medical justification for it.[62] While Mr. Danielson acknowledges that he hit his knee on his handlebars during the race, Mr. Danielson stated that the incident was "barely any injury" and that he told Dr. Celaya that he did not need cortisone.[63] Nonetheless, Dr. Celaya pushed him to accept a cortisone shot in preparation for the Tour of Georgia (April 19-24. 2005). Notably, Mr. Danielson also stated that he sustained an independent injury to his knee during the 2005 Tour of Georgia and the 2005 Giro d'Italia (May 7-29, 2005).[64] He was adamant, however, that this knee pain (which consisted of an irritation in his knee tendon) occurred only after he received the

[60] Testimony of Tom Danielson (Dec. 18, 2013).

[61] Testimony of Tom Danielson (Dec. 18, 2013).

[62] Affidavit of Tom Danielson (Sept. 26, 2012), ¶ 63; Testimony of Tom Danielson (Dec. 18, 2013).

[63] Affidavit of Tom Danielson (Sept. 26, 2012), ¶ 63, Testimony of Tom Danielson (Dec. 18, 2013).

[64] Affidavit of Tom Danielson (Sept. 26, 2012), ¶ 68; Testimony of Tom Danielson (Dec. 18, 2013).

cortisone injections and was completely unrelated to the handlebar incident during the Vuelta Ciclista al País Vasco.[65]

- During the 2005 Vuelta (August 27 - September 5, 2005), Mr. Danielson received EPO injections in Mr. Martí's hotel room in the presence of Dr. Celaya.[66]

- In 2006, Dr. Celaya and Mr. Martí gave him injectable "hormone boosters" in races before important stages.[67]

- During the 2006 Tour of Georgia, Dr. Celaya again gave him cortisone injections without any medical justification.[68]

- In August 2006, in preparation for the 2006 Vuelta (August 26 – September 17), Dr. Celaya and Mr. Martí performed a blood transfusion for Mr. Danielson by removing two bags of his blood.[69] Mr. Danielson provided a vivid account of this procedure, explaining that Dr. Celaya "put the needle in his arm, hung the bag on the wall, [and] was there to facilitate removing the blood."[70] Mr. Martí would "bring the supplies and transport the blood bags to wherever it needed to go."[71]

- In August 2006, in the weeks following the first blood extraction, Mr. Danielson "returned to Valencia twice more to have the blood reinfused and re-extracted in order to keep the blood fresher."[72] On both occasions, Dr. Celaya and Mr. Martí performed the transfusions.[73]

---

[65] Testimony of Tom Danielson (Dec. 18, 2013).

[66] Affidavit of Tom Danielson (Sept. 26, 2012), ¶ 72; Testimony of Tom Danielson (Dec. 18, 2013).

[67] Affidavit of Tom Danielson (Sept. 26, 2012), ¶ 84.

[68] Affidavit of Tom Danielson (Sept. 26, 2012), ¶ 86

[69] Affidavit of Tom Danielson (Sept. 26, 2012), ¶ 104; Testimony of Tom Danielson (Dec. 18, 2013).

[70] Testimony of Tom Danielson (Dec. 18, 2013).

[71] Testimony of Tom Danielson (Dec. 18, 2013).

[72] Affidavit of Tom Danielson (Sept. 26, 2012), ¶ 107.

[73] Testimony of Tom Danielson (Dec. 18, 2013).

- During the 2006 Vuelta, Dr. Celaya injected him with small doses of EPO to mask the effect of the prior blood transfusions.[74] Dr. Celaya also injected him with cortisone during the 2006 Vuelta without any medical need for the injections.[75]

138. Dr. Celaya denies Mr. Danielson's testimony in its entirety. As noted above, Dr. Celaya maintains that he never "in any case administer[ed] drugs."[76] The chief elements of Dr. Celaya's defense are summarized below:

- Dr. Celaya's submission does not dispute that he gave cortisone to Mr. Danielson for the April 2005 Vuelta Ciclista al País Vasco. Instead, Dr. Celaya claims that he administered cortisone to Mr. Danielson because of Mr. Danielson's knee pain, which he contends was a legitimate medical justification for the injection. Dr. Celaya submitted documentary evidence to support his statement. In particular, he cites to a news article from May 2005 which states that Mr. Danielson dropped out of the Italian Giro because of knee pain. Dr. Celaya additionally alleges that after the Italian Giro, Mr. Danielson visited a knee specialist, Dr. Juan Azofra Palacios, regarding the pain.

- Dr. Celaya testified that he did not attend the 2005 or 2006 Vuelta.[77] Therefore, he submits that could not have been present during the EPO injections alleged by Mr. Danielson. His submission further states that Mr. Danielson "is lying."[78] As support, Dr. Celaya presented the following evidence:

  - *First*, Dr. Celaya presented witness statements and sworn testimony from Mr. Carlos María Arribas Lázaro, Ms. Miren Josune Aguirre Ibarbia, Mr. Agustí Bernaus Tarantino, and Mr. José Luis Benito Urraburu. Mr. Arribas, Mr. Bernaus Tarantino, and Mr. Benito Urraburu are sports journalists who covered the

[74] Affidavit of Tom Danielson (Sept. 26, 2012), ¶ 11

[75] Affidavit of Tom Danielson (Sept. 26, 2012), ¶ 117.

[76] Testimony of Dr. Pedro Celaya (Dec. 19, 2013).

[77] Testimony of Dr. Pedro Celaya (Dec. 19, 2013).

[78] Merits Submission of Dr. Pedro Celaya (Dec. 12, 2012), ¶ 65.

2005, 2006, and 2007 Vueltas. All three witnesses testified that they did not see Dr. Celaya during those races.[79] Ms. Josune is a coworker of Dr. Celaya at his full time position at Caja Laboral's medical facility. Ms. Josune testified that Dr. Celaya worked 40 hours per week with her in August and September of 2005 and 2006 (the months of the Vuelta).[80]

- *Second*, Dr. Celaya presented documentary evidence from Caja Laboral. In particular, Dr. Celaya submitted (i) phone records of calls that were allegedly personally made by Dr. Celaya in August and September in 2005 and 2006, (ii) records of Dr. Celaya's hours from August and September 2005 and 2006, and (iii) annotated records of consultations allegedly made by Dr. Celaya in August and September 2005 and 2006.

- Dr. Celaya's submission states that Dr. Celaya does not recall whether he gave Mr. Danielson cortisone injections in 2006, but that "if injections were given, they were with a medical prescription."[81]

- Dr. Celaya's submission denied Mr. Danielson's statement that he received a "hormone booster." Dr. Celaya's submission states that this "is one more lie of Tom Danielson, it is a false accusation."[82]

- Dr. Celaya denied that he performed blood transfusions and testified that Mr. Danielson's claim is a "lie."[83]

- Dr. Celaya testified that Mr. Danielson doped without team assistance.[84]

---

[79] Affidavit of Carlos María Arribas Lázaro (Dec. 3, 2013); Testimony of Carlos María Arribas Lázaro (Dec. 17, 2013); Affidavit of Agustí Bernaus Tarantino (Dec. 2, 2013, Testimony of Agustí Bernaus Tarantino (Dec. 18, 2013); Affidavit of José Luis Benito Urraburu (Dec. 3, 2013); Testimony of José Luis Benito Urraburu (Dec. 19, 2013).

[80] Affidavit of Miren Josune Aguirre Ibarbia (Dec. 3, 2013); Testimony of Miren Josune Aguirre Ibarbia (Dec. 19, 2013).

[81] Merits Submission of Dr. Pedro Celaya (Dec. 12, 2012), ¶ 67.

[82] Merits Submission of Dr. Pedro Celaya (Dec. 12, 2012), ¶ 66.

[83] Testimony of Dr. Pedro Celaya (Dec. 19, 2013).

[84] Testimony of Dr. Pedro Celaya (Dec. 19, 2013).

- Dr. Celaya questioned Mr. Danielson's motives for testifying, claiming that he thought Mr. Danielson "is resentful against me."[85] Here, Dr. Celaya pointed to an episode during the 2007 Vuelta Catalunya in which he alleges Mr. Danielson threatened him for not letting him participate in the race on account of his high hematocrit level.[86]

139. The Panel has conducted a thorough review of both parties' evidentiary submissions and again finds the testimony of Mr. Danielson to be clear, compelling, and credible. His testimony was presented in extensive detail and, more importantly, is consistent with the testimony of the other riders in this case.

140. Conversely, the Panel finds Dr. Celaya's testimony and supporting evidence to be unpersuasive. Besides the blanket denials that he did not administer doping products to Mr. Danielson, Dr. Celaya was unable to provide any evidence that adequately rebutted Mr. Danielson's testimony.

141. As an initial matter, Dr. Celaya's submission of a May 2005 newspaper article and alleged physician report does not rebut Mr. Danielson's allegation that, at the beginning of April, Dr. Celaya injected him with cortisone without a legitimate medical purpose. In fact, as the newspaper article submitted by Dr. Celaya states, Mr. Danielson "probably injured [his] knee" during "the last day of the Tour of Georgia" (*i.e.* April 24, 2005).[87]

[85] Testimony of Dr. Pedro Celaya (Dec. 19, 2013).

[86] Testimony of Dr. Pedro Celaya (Dec. 19, 2013).

[87] Merits Submission of Dr. Pedro Celaya (Dec. 12, 2012), Ex. 7 (emphasis added).

142. The May 2005 article thus directly undermines Dr. Celaya's claim that, two weeks before the Tour of Georgia, he administered a cortisone injection to Mr. Danielson because of an alleged knee pain. As Mr. Danielson himself explained, the irritation that developed in his knee tendon during the Tour of Georgia was completely unrelated to the handlebar incident during the 2005 Vuelta Ciclista al País Vasco, which, as noted above, he felt did not require medical attention.[88] Dr. Celaya's evidence does not rebut this claim.

143. Similarly, Dr. Celaya's other documentary evidence and witness statements are not simply probative as to whether Dr. Celaya attended the 2005 and 2006 Vueltas. Even if Dr. Celaya did work 40 hours per week at Caja Laboral (as the documentary evidence and testimony of Ms. Josune attempt to demonstrate), this does not mean that Dr. Celaya did not attend the Vueltas. As Dr. Celaya himself explained, he only worked with the team "for a few days [per month]" and "during the holidays of [his] other job."[89] His submission further clarifies that he was "part time worker."[90] Contrary to his submissions, it is therefore entirely possible that Dr. Celaya attended the 2005 and 2006 Vueltas in his native country of Spain for at least a "few days" and administered doping products to Mr. Danielson during that time.

[88] Testimony of Tom Danielson (Dec. 18, 2013).

[89] Testimony of Dr. Pedro Celaya (Dec. 19, 2013) (emphasis added).

[90] Merits Submission of Dr. Pedro Celaya (Dec. 12, 2012), ¶ 34.

144. For the same reason, it is also unavailing that Mr. Arribas, Mr. Bernaus Tarantino, and Mr. Urraburu did not see Dr. Celaya at the 2005 and 2006 Vueltas. The failure of these journalists to see Dr. Celaya during these races does not mean that he was not there. Indeed, it seems unlikely that these journalists would see Dr. Celaya at the Vueltas if (i) he only worked for the team for a few days per month and, (ii) as Mr. Danielson testified to, Dr. Celaya spent his time at the Vueltas administering doping products in a hotel room in which "the blinds would always be drawn."[91]

145. The evidence thus in fact indicates that Dr. Celaya regularly attended the Vuelta a España and was present for at least part of the races in 2005 and 2006. Notably, Mr. David Zabriskie also recalls Dr. Celaya attending the Vuelta in 2004.[92] Although Dr. Celaya denies attending the 2004 Vuelta as well, the consistency in the testimony of Mr. Zabriskie and Mr. Danielson, along with the other evidence described above, causes the Panel to conclude that Dr. Celaya attended the Vueltas in 2004, 2005, and 2006.

146. More fundamentally, Dr. Celaya provided no evidence, other than his own testimony, that rebutted Mr. Danielson's testimony and supported his claim he never "in any case administer[ed] drugs."[93] Indeed, despite the fact that Dr. Celaya has been a team physician for 21 years, he failed to produce the testimony of any rider or team co-worker who could refute the riders' testimony and attest to Dr. Celaya's claim that he did

[91] Affidavit of Tom Danielson (Sept. 26, 2012), ¶ 72.

[92] Affidavit of David Zabriskie (Sept. 4, 2012), ¶ 49; Testimony of David Zabriskie (Dec. 16, 2013).

[93] Testimony of Dr. Pedro Celaya (Dec. 19, 2013).

not provide administer performance enhancing drugs. While the burden of proof rests with USADA, Dr. Celaya presented no evidence that sufficiently challenged the credible testimony of the riders in this case.

147. The Panel is also not persuaded by Dr. Celaya's attempt to challenge Mr. Danielson's motives for testifying. Again, Dr. Celaya produced no evidence other than his own testimony to support this theory. The allegation is also in contradiction with Mr. Danielson's account of the incident and appears to be nothing more than speculation.

148. For the foregoing reasons, the Panel therefore finds that Dr. Celaya's testimony is not credible and that he administered and facilitated the use of doping products for Mr. Danielson as a team physician for the Discovery Channel team.

(iii) Tyler Hamilton's Testimony

149. The Panel recalls that Tyler Hamilton was a rider for the U.S Postal Service team between 1996 and 2001.

150. In both his affidavit and sworn deposition, Mr. Hamilton presented evidence that Dr. Celaya provided him with doping products and administered doping products to him while he was a rider for the U.S. Postal Service team.

151. Mr. Hamilton, however, did not present any specific evidence against Dr. Celaya after June 12, 2004 (*i.e.* within the limitations period). Given the Panel's statute of limitations finding, the Panel will not consider Mr. Hamilton's testimony against Dr.

Celaya. Without a tolling of the limitations period, Mr. Hamilton's testimony cannot form the basis for an anti-doping rule violation against Dr. Celaya. The Panel also notes that Mr. Hamilton has committed multiple acts of perjury in prior doping-related proceedings and later used those proceedings as a basis for a book that calls into his credibility as a witness in doping matters.

(iv) George Hincapie's Testimony

152. The Panel recalls that George Hincapie was rider for both the U.S. Postal Service (1997-2004) and Discovery Channel (2005-2007) teams.

153. In both his affidavit and sworn deposition, Mr. Hincapie provided evidence that Dr. Celaya assisted and facilitated his doping as a rider for the U.S Postal Service and Discovery Chanel teams. For the avoidance of doubt, the Panel will only consider Mr. Hincapie's testimony against Dr. Celaya to the extent they concern events within the limitations period.

154. Mr. Hincapie made only one allegation against Dr. Celaya that concerns events within the limitations period. In particular, Mr. Hincapie testified that Dr. Celaya assisted him with "blood doping" in 2004 and 2005.[94] At hearing, Mr. Hincapie explained that the blood transfusion procedures typically occurred in private hotel rooms.[95]

[94] Affidavit of George Hincapie (Sept. 24, 2012), ¶ 68.

[95] Testimony of George Hincapie (Dec. 16, 2013).

155. Notably, Mr. Hincapie also expressed respect and affection for Dr. Celaya in his testimony. Mr. Hincapie explained that Dr. Celaya cared for his child when his child was ill.[96] Mr. Hincapie also noted that Dr. Celaya tried to talk him into doping less frequently.[97]

156. Dr. Celaya denies assisting Mr. Hincapie with blood doping. He testified that this "never" happened and that he "may have known about these practices, but never assisted him."[98] Dr. Celaya provided no evidence other than his own testimony to rebut Mr. Hincapie's claim. Notably, Dr. Celaya testified that he had "no conflict" with Mr. Hincapie.[99]

157. The Panel finds Mr. Hincapie's testimony to be clear, compelling, and credible. Mr. Hincapie's account was presented in sufficient detail and is consistent with the testimony of the other riders in this case.

158. Once again, the Panel does not find Dr. Celaya's denials to be persuasive. The evidence presented by Mr. Hincapie and the other riders in this case overwhelmingly suggests that Dr. Celaya did administer doping products to team riders. The Panel

[96] Testimony of George Hincapie (Dec. 16, 2013).

[97] Testimony of George Hincapie (Dec. 16, 2013).

[98] Testimony of George Hincapie (Dec. 16, 2013).

[99] Testimony of George Hincapie (Dec. 16, 2013).

therefore finds that Mr. Hincapie's testimony is truthful and accurate and that Dr. Celaya assisted him with blood transfusions.

(v) Floyd Landis' Testimony

159. The Panel recalls that Mr. Landis was a rider for the U.S. Postal Service team between 2002 and July 2004.

160. In both his affidavit and sworn deposition, Mr. Landis testified that Dr. Celaya administered a blood re-infusion for him during the 2004 Tour de France.[100]

161. Dr. Celaya denies the allegation and claims that he "certainly never gave [Mr. Landis] any drugs" and that the riders "supplied substances for themselves."[101]

162. Dr. Celaya also presented testimony from two witnesses, Mr. Carlos Arribas and Mr. Martin Hardie. Mr. Hardie is a former sports journalist and current lecturer in law at Deakin University, Australia. As noted above, Mr. Arribas is a sports journalist from Spain. Both Mr. Arribas and Mr. Hardie testified that they attended a cycling conference in Australia with Mr. Landis in 2010, where Mr. Landis stated in private that: "Pedro was there to avoid we killed ourselves with what we were taking, to avoid any kind of harm. Pedro never had any connection with the blood transfusions or with the EPO injections

[100] Affidavit of Floyd Landis (Sept. 26, 2012), ¶ 40; Testimony of Floyd Landis (Dec. 16, 2013).

[101] Testimony of Dr. Pedro Celaya (Dec. 19, 2013).

that we gave ourselves."[102] Dr. Celaya submits this evidence to show that he did not perform blood transfusions and to undermine Mr. Landis' credibility.

163. Once again, the Panel is not persuaded by Dr. Celaya's defenses. The accounts of Mr. Arribas and Mr. Hardie, while admissible in this arbitration, are far too tenuous to rely on to impeach Mr. Landis or undermine the effect of his testimony. Mr. Landis expressly denied making the statement and there is substantial evidence in the record from the testimony of Mr. Danielson and Mr. Hincapie that Dr. Celaya did perform blood transfusions.[103]

164. Moreover, the language quoted above, which Mr. Arribas contends is the "exact[]" language used by Mr. Landis, does not match the language of an email exchange between Mr. Hardie and Mr. Arribas in October 2012.[104] In fact, the exchange suggests that Mr. Landis' alleged statement conflates a conversation that Mr. Hardie allegedly had with Mr. Leipheimer on a separate occasion.[105] This is evidenced by Mr. Hardie's email in the exchange which states: "Pedro should blame hog [Bruyneel] and the riders like jv etc. [Jonathan Vaughters]. Say he just tried to make sure that they never

[102] Affidavit of Carlos María Arribas Lázaro (Dec. 3, 2013). Affidavit of Martin Hardie (Dec. 4, 2013) ("Pedro was there to make sure we didn't kill ourselves and to prevent any harm. Pedro never had any involvement with the blood transfusions or the injections of EPO which we did ourselves.").

[103] Testimony of Floyd Landis (Dec. 16, 2013).

[104] Affidavit of Carlos María Arribas Lázaro (Dec. 3, 2013); Merits Submission of Dr. Pedro Celaya (Dec. 12, 2012), Ex. 10.

[105] Merits Submission of Dr. Pedro Celaya (Dec. 12, 2012), Ex. 10.

killed themselves etc. Leipheimer said as much in Atlanta. But we can't use that."[106] The language testified to by Mr. Arribas and Mr. Hardie is also inconsistent with Mr. Arribas' email in the exchange. In particular, Mr. Arribas writes: "Think we can agree that swearing 'Floyd Landis told me that dr [sic] Celaya was never involved in EPO transactions or blood doping or transfusions logistics' is not perjury, can't we?"[107]

165. More importantly, neither Mr. Hardie nor Mr. Arribas have any firsthand knowledge regarding whether Dr. Celaya assisted riders in doping. Indeed, Dr. Celaya stated that he had never met Mr. Hardie.[108] On the other hand, Mr. Arribas does know Dr. Celaya, but did not purport to have any firsthand knowledge regarding whether Dr. Celaya engaged in doping practices. Their testimony is therefore of limited value. Certainly, they are not dispositive to the Panel's determination regarding whether Dr. Celaya administered blood transfusions to Mr. Landis and the other riders on the U.S. Postal Service and Discovery Channel teams.

166. The Panel also does not find Dr. Celaya's blanket denials of performing blood transfusions to be credible. As discussed above, Mr. Landis's allegation is supported by the accounts of Mr. Danielson and Mr. Hincapie, who both confirmed that Dr. Celaya performed blood transfusions. Dr. Celaya is not involved in Mr. Landis's *qui tam* action.

[106] Merits Submission of Dr. Pedro Celaya (Dec. 12, 2012), Ex. 10 (emphasis added).

[107] Merits Submission of Dr. Pedro Celaya (Dec. 12, 2012), Ex. 10.

[108] Testimony of Dr. Pedro Celaya (Dec. 19, 2013).

The Panel therefore finds that it may give some weight to Mr. Landis's testimony that Dr. Celaya did perform the blood re-infusion procedure during the 2004 Tour de France.

(vi) David Zabriskie's Testimony

167. The Panel recalls that David Zabriskie was a rider for the U.S Postal Service team between 2001 and 2004.

168. In both his affidavit and sworn testimony, Mr. Zabriskie testified that Dr. Celaya injected him with micro-doses of EPO during the 2004 Vuelta (September 4-26, 2004), starting at Stage 9.[109] At the evidentiary hearing, Mr. Zabriskie explained that his memory from that time was particularly strong because he won Stage 11 of the race.[110] Mr. Zabriskie described that an experience as an "emotional win."[111]

169. Dr. Celaya flatly denies the allegation and testified that he never worked with Mr. Zabriskie when he was competing.[112] At most, Dr. Celaya "maybe [] gave an aspirin," to Mr. Zabriskie, but he declared that he had no involvement in the EPO injections alleged by Mr. Zabriskie.[113]

[109] Affidavit of David Zabriskie (Sept. 4, 2012), ¶ 49; Testimony of David Zabriskie (Dec. 16, 2013).

[110] Testimony of David Zabriskie (Dec. 16, 2013).

[111] Testimony of David Zabriskie (Dec. 16, 2013).

[112] Testimony of Dr. Pedro Celaya (Dec. 19, 2013).

[113] Testimony of Dr. Pedro Celaya (Dec. 19, 2013).

170. Dr. Celaya also testified that he was not present during the 2004 Vuelta. Dr. Celaya supported this statement using (i) the witness statements of Mr. Hardie, Mr. Arribas, Mr. Bernaus Tarantino, and Ms. Josune, (ii) phone records from Caja Laboral from September 2004, and (iii) records of his alleged patient consultations from September 2004.

171. Again, the Panel finds that this evidence is not probative in determining whether Dr. Celaya attended the Vuelta in 2004. The Panel recalls that Dr. Celaya was a "part time worker" who only worked with the team for a "few days [per month]" and "during the holidays of [his] other job."[114] Thus, even if he did work 40 hours per week at Caja Laboral, this does not mean that Dr. Celaya did not attend the Vuelta. For the same reason, it is inconclusive that Mr. Hardie, Mr. Arribas, Mr. Bernaus Tarantino did not see Dr. Celaya during the Vuelta. Again, that does not mean that he was not there for at least a "few days."

172. The phone and consultation records presented by Dr. Celaya also do not contradict Mr. Zabriskie's testimony. As Dr. Celaya's own submission indicates, Stage 9 of the 2004 Vuelta fell on Sunday, September 12. Dr. Celaya's consultation records, on the other hand, only suggest that Dr. Celaya was in the office on Monday, September

[114] Testimony of Dr. Pedro Celaya (Dec. 19, 2013); Merits Submission of Dr. Pedro Celaya (Dec. 12, 2012), ¶ 34.

13.[115] This evidence thus does not rebut Mr. Zabriskie's claim that he was present with him on Sunday, September 12.

173. Dr. Celaya's denials of Mr. Zabriskie's testimony are not persuasive. Mr. Zabriskie's testimony is consistent with the other riders' testimony in this case and presents credible evidence that Dr. Celaya injected him with EPO during the 2004 Vuelta. For the foregoing reasons, the Panel accepts Mr. Zabriskie's testimony and finds that Dr. Celaya did administer EPO to him in September 2004.

(b) Legal Analysis

174. USADA has brought the following charges against Dr. Celaya:

(a) Possession of prohibited substances and/or methods including EPO, blood transfusions and related equipment (such as needles, blood bags, storage containers and other transfusion equipment and blood parameters measuring devices), testosterone, hGH, corticosteroids and/or saline, plasma or glycerol infusions under WADC Section 2.6.2 and UCI ADR R-15.6.2 ("the First Charge Against Dr. Celaya");

(b) Trafficking of EPO, blood transfusions, testosterone, hGH, corticosteroids and/or saline, plasma or glycerol infusions under WADC Section 2.7 and UCI ADR R-15.7("the Second Charge Against Dr. Celaya");

(c) Administration and/or attempted administration to others of EPO, blood transfusions, testosterone, hGH, corticosteroids and/or

[115] Notably, the phone records submitted by Dr. Celaya are completely inconclusive as to Dr. Celaya's whereabouts. While Dr. Celaya's submission states that Dr. Celaya placed a call at 8:57 am on September 13, the phone records provide no way of verifying that allegation. In particular, there is no identifying name associated with each call that allows the Panel to determine that the call was made by Dr. Celaya. While there are certain ID numbers associated with each call, Dr. Celaya failed to indicate whether the IDs represent employee IDs. The Panel therefore cannot rely on this evidence. *See* Merits Submission of Dr. Pedro Celaya (Dec. 12, 2012), Ex. 4, p. 26.

saline, plasma or glycerol infusions under WADC Section 2.8 and UCI ADR R-15.8 ("the Third Charge Against Dr. Celaya");

(d) Assisting, encouraging, aiding, abetting, covering up and other complicity involving one or more anti-doping rule violations and/or attempted anti-doping rule violations under WADC Section 2.8 and UCI ADR R-15.8 ("the Fourth Charge Against Dr. Celaya"); and

(e) Aggravating circumstances justifying a period of ineligibility greater than the standard sanction under WADC Section 10.6 ("the Fifth Charge Against Dr. Celaya").

175. As recounted above, given its ruling on the statute of limitations issue, the only evidence that the Panel will consider in assessing USADA's case against Dr. Celaya is the testimony of Messrs. Danielson, Hincapie, and Zabriskie, As noted above, Dr. Celaya himself testified, generally denied wrongdoing, and presented legal arguments challenging the credibility of the various witnesses.

176. The Panel will review each of the charges against Dr. Celaya in light of the legal standards discussed for such charges above in the discussion of the charges against Mr. Bruyneel.

177. With respect to the First Charge Against Dr. Celaya, USADA must establish that Dr. Celaya had in his possession prohibited substances or the accoutrements (or paraphernalia) of prohibited methods. The witnesses against him and considered by the Panel testified unanimously that Dr. Celaya administered various prohibited substances and methods to them. He could not accomplish this without having possession of prohibited substances or the accouterments of prohibited methods. Accordingly, the

Panel finds that USADA has satisfied its burden of proof on the First Charge Against Dr. Celaya.

178. With respect to the Second Charge Against Dr. Celaya, USADA must establish that Dr. Celaya "trafficked" in the substances and methods referenced. From the evidence considered by the Panel, it is not clear that, aside from the actual administration of various prohibited substances and methods, Dr. Celaya was involved in trafficking or distribution of prohibited substances or methods. To read this offense as the same as administration would be inconsistent with a plain reading of the WADC. Accordingly, the Panel is of the view that USADA has not met its burden of proof with respect to the Second Charge Against Dr. Celaya.

179. With respect to the Third Charge Against Dr. Celaya, USADA must establish that Dr. Celaya administered or attempted to administer the prohibited substances or methods to athletes. The witnesses considered by the Panel testified unanimously that Dr. Celaya administered various substances and blood transfusions to them for the purposes of doping. Accordingly, the Panel finds that USADA has met its burden of proof with respect to the Third Charge Against Dr. Celaya.

180. With respect to the Fourth Charge Against Dr. Celaya, USADA must establish that Dr. Celaya assisted, encouraged, aided, abetted, covered up, or was complicitous in any doping offense. The testimony of the witnesses referenced and recounted above and deemed admissible by the Panel is replete with examples of Dr. Celaya engaging in this

kind of activity during the relevant time period. While the Panel is troubled that the mere act of administration could form the basis for two offenses, it is clear that is not prohibited by the rules. As a result, the Panel finds that USADA has met its burden of proof with respect to the Fourth Charge against Dr. Celaya.

181. With respect to the Fifth Charge Against Dr. Celaya, USADA must establish that aggravating circumstances existed to permit the Panel to extend the usual period of ineligibility. With respect to this charge, given the evidence provided by USADA, the Panel finds the existence of aggravating circumstances. However, as discussed in more detail below, the Panel is of the view that these aggravating circumstances are of no effect on the overall sanction given to Dr. Celaya.

182. To summarize, the Panel finds that Dr. Celaya is guilty of violating WADC Sections 2.6.2 and 2.8 and UCI ADR R-15.6.2 and 15.8.

3. The Case Against Mr. José Pepe Martí Martí

183. USADA has brought the following charges against Mr. Martí:

(a) Possession of prohibited substances and/or methods including EPO, blood transfusions and related equipment (such as needles, blood bags, storage containers and other transfusion equipment and blood parameters measuring devices), testosterone, hGH, corticosteroids and/or saline, plasma or glycerol infusions.

(b) Trafficking of EPO, blood transfusions, testosterone, hGH, corticosteroids and/or saline, plasma or glycerol infusions.

(c) Administration and/or attempted administration to others of EPO, blood transfusions, testosterone, hGH, corticosteroids and/or saline, plasma or glycerol infusions.

(d) Assisting, encouraging, aiding, abetting, covering up and other complicity involving one or more anti-doping rule violations and/or attempted anti-doping rule violations.

(e) Aggravating circumstances justifying a period of ineligibility greater than the standard sanction.

184. USADA substantiates these allegations using the affidavits and sworn testimony of six witnesses: Michael Barry, Tom Danielson, Tyler Hamilton, George Hincapie, Levi Leipheimer, and Christian Vande Velde. All six witnesses testified that Mr. Martí provided doping products to them and assisted and encouraged doping for team riders.

185. Mr. Martí denies USADA's allegations in their entirety and claims that he did not commit any anti-doping violation while working as a trainer for the U.S. Postal Service and Discovery Channel teams. Mr. Martí also argues that USADA has not met its burden of proof and that it has failed to present any credible evidence of an anti-doping violation.

186. As support, Mr. Martí invokes the testimony of Dr. Celaya, who testified that "[he] never s[aw] him [Mr. Martí] do anything [other than act] as a trainer" and that he never heard from any rider or staff member that Mr. Martí assisted riders in doping.[116]

187. Mr. Martí additionally challenges the credibility of all the witnesses who testified against him. In particular, Mr. Martí argues that the Panel should not rely on the testimony of USADA's witnesses because the witnesses received favorable treatment and reduced suspensions by testifying on behalf of USADA.

[116] Testimony of Dr. Pedro Celaya (Dec. 19, 2013).

188. Mr. Martí also submitted four affidavits on his behalf from Joan Llaneras Rosselló, Samuel Sánchez González, Viatcheslav Ekimov, and José Luis Rubiera Vigil. Mr. Martí, however, did not produce these witnesses at hearing. Under Procedural Order No. 4, these witness statements were therefore not admissible evidence. Procedural Order No. 4 held: "Failure to make available at the hearing a witness whose witness statement has been proffered shall result in the witness statement not being considered by the panel."[117] The Panel reminded all the parties of this requirement on multiple occasions, including a procedural conference call on December 12, 2013. Accordingly, the Panel did not consider this evidence.[118]

189. A summary of both parties' evidentiary submissions is provided below. Again, the Panel will only discuss the most pertinent evidence in this case. The discussion below is not meant to be an exhaustive summary of the facts presented in this case.

(a) The Evidence Against Mr. Martí

(i) Michael Barry's Testimony

190. In both his affidavit and sworn deposition, Mr. Barry presented evidence that Mr. Martí provided him with doping products and facilitated his doping while he was a rider for the U.S. Postal Service and Discovery Channel teams.

---

[117] Procedural Order No. 4.

[118] The rule applied with equal effect to all parties. In particular, USADA submitted witness statements but failed to produce live testimony from Ms. Betsy Andreu, Mr. Frank Andreu, Mr. Marco Consonni, Mr. Renzo Ferrante, Mr. Jörg Jaksche, Ms. Emma O'Reilly, Mr. Jack Roberston, Mr. Paul Scott, Mr. Jonatahan Vaughters, and Mr. Jean-Pierre Verdy. This evidence was also not admitted into the record.

191. Mr. Barry testified that Mr. Martí provided him with EPO in 2004 and 2005.[119] Mr. Barry's sworn testimony also confirmed that Mr. Martí personally sold him EPO "many times" and that "the vast majority" of the EPO he used was purchased from Mr. Martí.[120] Typically, the EPO was stored in a bag with ice packs or in a cooler.[121] When asked by Mr. Martí's counsel if he was concerned about his health, Mr. Barry testified that the "doctors confirmed that it was safe, and I trusted them."[122]

192. Mr. Martí did not submit any evidence that directly rebuts Mr. Barry's testimony. As noted above, Mr. Martí did not testify in this case and presented no admissible witness testimony on his behalf. Instead, Mr. Martí primarily relies on the testimony of Dr. Celaya. Mr. Martí also argues that Mr. Barry himself recognizes that other riders supplied him with doping agents.

193. Mr. Martí's submissions are not persuasive. Mr. Barry presented clear and compelling evidence that Mr. Martí delivered doping products to him in 2004 and 2005. While it is clear that Mr. Barry acquired doping products "from the U.S. Postal Service team doctors and staff and from fellow athletes," this does not excuse Mr. Martí from

[119] Affidavit of Michael Barry (Oct. 8, 2012), ¶¶ 57, 62, 65.

[120] Testimony of Michael Barry (Dec. 16, 2013).

[121] Testimony of Michael Barry (Dec. 16, 2013).

[122] Testimony of Michael Barry (Dec. 16, 2013).

culpability.[123] To the contrary, Mr. Barry clearly states that "the vast majority" of the EPO he used was purchased from Mr. Martí.[124]

194. Dr. Celaya's testimony is also of no aid to Mr. Martí. As discussed above, the Panel does not find Dr. Celaya to be a credible witness in this case and therefore will not consider his testimony in assessing Mr. Martí's conduct.

195. For the foregoing reasons, the Panel finds that Mr. Barry has presented credible evidence that establishes that Mr. Martí delivered him EPO in 2004 and 2005.

(ii) Tom Danielson's Testimony

196. The Panel recalls that Mr. Danielson was a rider for the Discovery Channel team between 2005 and 2007.

197. In both his affidavit and sworn deposition, Mr. Danielson testified that provided him with doping agents and assisted him with doping while he was a rider for the Discovery Channel team.

198. Mr. Danielson provided a number of examples to support this statement:

- There was a consistent line of communication between Mr. Bruyneel, Mr. Martí, and Dr. Celaya regarding his doping program.[125] Dr. Celaya and

[123] Affidavit of Michael Barry (Oct. 8, 2012), ¶ 56

[124] Testimony of Michael Barry (Dec. 16, 2013).

[125] Testimony of Tom Danielson (Dec. 18, 2013).

Mr. Martí would carry out the program agreed to by Mr. Danielson and Mr. Bruyneel.[126]

- Mr. Martí provided him with EPO in 2005 on several occasions.[127] On one occasion, Mr. Martí delivered the product from Valencia to Girona, where Mr. Danielson and other members of the Discovery Channel team lived.[128] Mr. Martí called him, met him near a bus station, and sold him the EPO.[129] On at least one other occasion, Mr. Danielson and Mr. Barry drove together to Valencia to purchase EPO from Mr. Martí.[130]

- According to Mr. Danielson, "Pepe [] provided some instructions on the use of EPO. I was to inject the EPO intravenously in the evening and never to take it subcutaneously. I was to always try to hide from testers and was to try not to get tested. But if I was tested I was to try to pee before providing a sample."[131]

- During the 2005 Vuelta, Mr. Danielson went to Mr. Martí's hotel room for EPO injections. The injections were given intravenously, "the blinds would always be drawn, and Dr. Celaya was also sometimes present."[132]

- Before the 2006 Tour of California (February 19-27), Mr. Martí shipped EPO to Mr. Danielson when he was training in Durango, Colorado.[133]

- In 2006, Dr. Ferrari introduced Mr. Danielson to a doping product known as the "oil." He was instructed to "mix[] small testosterone balls known as Androil in olive oil" and then place the liquid under his tongue. Mr. Danielson "would get [the product] as needed from Pepe Martí."[134]

---

[126] Testimony of Tom Danielson (Dec. 18, 2013).

[127] Affidavit of Tom Danielson (Sept. 26, 2012), ¶ 50.

[128] Affidavit of Tom Danielson (Sept. 26, 2012), ¶¶ 50-51.

[129] Affidavit of Tom Danielson (Sept. 26, 2012), ¶¶ 50-51.

[130] Affidavit of Tom Danielson (Sept. 26, 2012), ¶ 56.

[131] Affidavit of Tom Danielson (Sept. 26, 2012), ¶ 52.

[132] Affidavit of Tom Danielson (Sept. 26, 2012), ¶ 72.

[133] Affidavit of Tom Danielson (Sept. 26, 2012), ¶ 76.

[134] Affidavit of Tom Danielson (Sept. 26, 2012), ¶ 78.

- In 2006, Mr. Danielson discussed the use of testosterone patches with Mr. Martí. Mr. Martí informed Mr. Danielson that he could get the product for him.[135]

- In 2006, Mr. Martí offered Mr. Danielson human growth hormone (hGH). Mr. Danielson later tried the product.[136]

- In 2006, Dr. Celaya and Mr. Martí gave him injectable "hormone boosters" in races before important stages.[137]

- In 2006, Mr. Danielson had a low hematocrit level. Mr. Martí then provided Mr. Danielson with more EPO and "tried to get [him] to be more aggressive with the EPO to boost [his] hematocrit."[138]

- In August 2006, in preparation for the 2006 Vuelta (August 26 – September 17), Dr. Celaya and Mr. Martí performed a blood transfusion for Mr. Danielson by removing two bags of his blood.[139] As noted above, Mr. Danielson provided a vivid account of this procedure, explaining that Dr. Celaya "put the needle in his arm, hung the bag on the wall, [and] was there to facilitate removing the blood."[140] Mr. Martí would "bring the supplies and transport the blood bags to wherever it needed to go."[141]

- In August 2006, in the weeks following the first blood extraction, Mr. Danielson "returned to Valencia twice more to have the blood re-infused and re-extracted in order to keep the blood fresher."[142] On both occasions, Dr. Celaya and Mr. Martí performed the transfusions.[143]

---

[135] Affidavit of Tom Danielson (Sept. 26, 2012), ¶ 81.

[136] Affidavit of Tom Danielson (Sept. 26, 2012), ¶ 82.

[137] Affidavit of Tom Danielson (Sept. 26, 2012), ¶ 84.

[138] Affidavit of Tom Danielson (Sept. 26, 2012), ¶ 103.

[139] Affidavit of Tom Danielson (Sept. 26, 2012), ¶ 104; Testimony of Tom Danielson (Dec. 18, 2013).

[140] Testimony of Tom Danielson (Dec. 18, 2013).

[141] Testimony of Tom Danielson (Dec. 18, 2013).

[142] Affidavit of Tom Danielson (Sept. 26, 2012), ¶ 107.

[143] Testimony of Tom Danielson (Dec. 18, 2013).

199. For the reasons summarized above, Mr. Martí denies Mr. Danielson's testimony in its entirety and claims that he never committed an anti-doping violation.

200. Once again, the testimony of Mr. Danielson is clear, compelling, and credible. His testimony was presented in extensive detail and is consistent with the testimony of the other riders who were witnesses in this case. The Panel therefore does not accept Mr. Martí's denials against wrongdoing and finds that Mr. Danielson's testimony establishes that Mr. Martí played a central role in the Discovery Channel team's doping operation, provided Mr. Danielson with doping products (including EPO and testosterone) on numerous occasions, and assisted Mr. Danielson in blood doping.

(iii) George Hincapie's Testimony

201. The Panel recalls that Mr. Hincapie was a rider for the U.S. Postal Service (1997-2004) and Discovery Channel (2005-2007) teams.

202. In both his affidavit and sworn deposition, Mr. Hincapie testified that Mr. Martí aided and facilitated his doping.

203. In his affidavit, Mr. Hincapie stated that between 2001 and 2005, Mr. Martí assisted him with his blood doping program by helping with the extraction and re-infusion process during blood transfusion procedures.[144] For the avoidance of doubt, the Panel will only consider Mr. Hincapie's testimony against Mr. Martí to the extent they concern events within the limitations period.

[144] Affidavit of George Hincapie (Sept. 24, 2012), ¶ 69.

204. At testimony, Mr. Hincapie also confirmed that Mr. Martí delivered him EPO and testosterone on multiple occasions.[145] Mr. Hincapie made these comments without limitation. Mr. Hincapie also made no suggestion at any point in either his affidavit or testimony that Mr. Martí ever ceased acting in this capacity. The Panel also observes that Mr. Barry, Mr. Danielson, and Mr. Leipheimer have all testified that Mr. Martí delivered doping products to them in 2005. The Panel is therefore comfortably satisfied that this conduct continued after June 2004 and is thus within the limitations period.

205. For the reasons summarized above, Mr. Martí denies Mr. Hincapie's testimony in its entirety and claims that he never committed an anti-doping violation.

206. Mr. Hincapie's testimony is both credible and consistent with the testimony of the other riders in this case. The Panel therefore accepts Mr. Hincapie's testimony and finds that Mr. Martí supplied him with EPO and testosterone and assisted him with blood doping.

(iv) Levi Leipheimer's Testimony

207. The Panel recalls that Mr. Leipheimer was a rider for the U.S Postal Service (2000-2001), Gerolsteiner (2005-2006) and Discovery Channel (2007) teams.

208. In both his affidavit and sworn deposition, Mr. Leipheimer testified that Mr. Martí provided him with doping agents and assisted him with doping between 2005 and 2007.

[145] Testimony of George Hincapie (Dec. 16, 2013).

209. Mr. Leipheimer provided numerous examples to support this statement:

- In 2005, while Mr. Leipheimer was a rider for the Gerolsteiner team, Mr. Leipheimer met Mr. Martí at a race and requested that Mr. Martí sell him EPO. Mr. Martí agreed to do so.[146]

- In 2005, Mr. Leipheimer met Mr. Martí at a rest stop south of Girona to buy a supply of EPO.[147] Mr. Leipheimer also picked up "other drugs to provide to Hincapie and Barry," which Mr. Leipheimer subsequently delivered to them.

- Mr. Martí sold Mr. Leipheimer EPO on numerous other occasions in 2005 and 2006.[148] Mr. Leipheimer typically communicated with Mr. Martí at races.[149] On one occasion, Mr. Leipheimer met Mr. Martí at a house in Girona to pick up the drugs.[150] In other instances, Mr. Leipheimer met Mr. Martí near Girona.[151]

- In 2005 and 2006, Mr. Martí also sold Mr. Leipheimer testosterone.[152]

- In 2007, after the Dauphiné Libéré (June 10-17), Mr. Leipheimer began a blood doping program with the help of Mr. Bruyneel.[153] As part of that process, Mr. Martí extracted a bag of blood from him.[154] The transfusion

[146] Affidavit of Levi Leipheimer (Sept. 21, 2012), ¶ 53.

[147] Affidavit of Levi Leipheimer (Sept. 21, 2012), ¶ 55.

[148] Affidavit of Levi Leipheimer (Sept. 21, 2012), ¶ 54; Testimony of Levi Leipheimer (Dec. 17, 2013).

[149] Testimony of Levi Leipheimer (Dec. 17, 2013).

[150] Testimony of Levi Leipheimer (Dec. 17, 2013).

[151] Testimony of Levi Leipheimer (Dec. 17, 2013).

[152] Affidavit of Levi Leipheimer (Sept. 21, 2012), ¶ 54.

[153] Affidavit of Levi Leipheimer (Sept. 21, 2012), ¶¶ 80-81.

[154] Affidavit of Levi Leipheimer (Sept. 21, 2012), ¶ 81; Testimony of Levi Leipheimer (Dec. 17, 2013).

> occurred in Mr. Leipheimer's home.[155] According to Mr. Leipheimer, it was clear that "Martí knew what he was doing and had done it before."[156]

210. For the reasons summarized above in ¶ [XX], Mr. Martí denies Mr. Leipheimer's testimony in its entirety and claims that he never committed an anti-doping violation. Mr. Martí also argued that he could not have been present for the 2007 blood transfusion after the Dauphiné Libéré because he was training with Alberto Contandor at that time. Mr. Martí additionally protested Mr. Leipheimer's testimony given that Mr. Leipheimer was a rider for Gerolsteiner in 2005 and 2006.

211. As an initial matter, Mr. Martí's argument that Mr. Leipheimer rode for Gerolsteiner is immaterial to his culpability in this case. Certainly, this fact does not affect the Panel's jurisdictional decision. The conduct discussed in Mr. Leipheimer's testimony is within the limitations period and concerns Mr. Martí's doping activity while serving as trainer for the Discovery Channel team. Mr. Leipheimer's testimony is therefore admissible evidence.

212. Mr. Martí's arguments are also not persuasive. Mr. Martí failed to present any evidence that supported his denials of wrongdoing. Mr. Martí also failed to produce any evidence (beyond the argument of his counsel) that he was not present for the 2007 blood transfusion. In light of Mr. Martí's failure to do so, Mr. Leipheimer's testimony stands uncontroverted. Mr. Leipheimer's account was clear, credible, and presented in detail. It

[155] Testimony of Levi Leipheimer (Dec. 17, 2013).

[156] Testimony of Levi Leipheimer (Dec. 17, 2013).

is also consistent with the testimony of the other riders in this case. The Panel therefore finds that Mr. Leipheimer told the truth in this proceeding and that he presented credible evidence that Mr. Martí delivered doping products to him between 2005 and 2007 and assisted him with blood doping in 2007.

(v) Tyler Hamilton's Testimony

213. The Panel recalls that Mr. Hamilton was a rider for the U.S Postal Service team between 1996 and 2001.

214. In both his affidavit and sworn deposition, Mr. Hamilton testified that Mr. Martí delivered doping products to him. Mr. Hamilton, however, did not present any specific evidence against Mr. Martí after June 12, 2004 (*i.e.* within the limitations period).

215. Given the Panel's statute of limitations finding, the Panel will not consider Mr. Hamilton's testimony against Mr. Martí. Without a tolling of the limitations period, Mr. Hamilton's testimony cannot form the basis for an anti-doping rule violation against Mr. Martí. As presented above, the Panel also recognizes that Mr. Hamilton's credibility in doping matters is called into question by his repeated prior perjury in doping proceedings and his writing of a book based thereon.

(vi) Christian Vande Velde's Testimony

216. The Panel recalls that Mr. Vande Velde was a rider for the U.S Postal Service team between 1998 and 2003.

217. In both his affidavit and sworn deposition, Mr. Vande Velde testified that Mr. Martí delivered doping products to him. Mr. Vande Velde, however, did not present any specific evidence against Mr. Martí after June 12, 2004 (*i.e.* within the limitations period).

218. Given the Panel's statute of limitations finding, the Panel will not consider Mr. Vande Velde's testimony against Mr. Martí. Again, without a tolling of the limitations period, Mr. Vande Velde's testimony cannot form the basis for an anti-doping rule violation against Mr. Martí.

(b) Legal Analysis

219. USADA has brought the following charges against Mr. Martí:

(a) Possession of prohibited substances and/or methods including EPO, blood transfusions and related equipment (such as needles, blood bags, storage containers and other transfusion equipment and blood parameters measuring devices), testosterone, hGH, corticosteroids and/or saline, plasma or glycerol infusions under WADC Section 2.6.2 and UCI ADR R-15.6.2 ("the First Charge Against Mr. Martí");

(b) Trafficking of EPO, blood transfusions, testosterone, hGH, corticosteroids and/or saline, plasma or glycerol infusions under WADC Section 2.7 and UCI ADR R-15.7 ("the Second Charge Against Mr. Martí");

(c) Administration and/or attempted administration to others of EPO, blood transfusions, testosterone, hGH, corticosteroids and/or saline, plasma or glycerol infusions under WADC Section 2.8 and UCI ADR R-15.8 ("the Third Charge Against Mr. Martí");

(d) Assisting, encouraging, aiding, abetting, covering up and other complicity involving one or more anti-doping rule violations and/or attempted anti-doping rule violations under WADC Section 2.8 and UCI ADR R-15.8 ("the Fourth Charge Against Mr. Martí"); and

(e) Aggravating circumstances justifying a period of ineligibility greater than the standard sanction under WADC Section 10.6 ("the Fifth Charge Against Mr. Martí").

220. As recounted above, given its ruling on the statute of limitations issue, the only evidence that the Panel will consider against in assessing USADA's case against Mr. Martí is the testimony of Messrs. Barry, Danielson, Hincapie, and Leipheimer, As noted above, Mr. Martí did not present any evidence himself, instead choosing to rely on his general denial of wrongdoing, the testimony of Dr. Celaya, and various legal arguments challenging the credibility of the various witnesses referenced above.

221. The Panel will review each of the charges against Mr. Martí in light of the legal standards discussed for such charges above in the discussion of the charges against Mr. Bruyneel.

222. With respect to the First Charge Against Mr. Martí, by presenting the witness statements it has that have been found admissible by the Panel, USADA has met its burden of proof to establish that Mr. Martí was in actual possession, on numerous occasions, of various prohibited substances and the accoutrements of prohibited methods, all in violation of the applicable anti-doping provisions. Mr. Martí did not rebut USADA's evidence with any credible evidence or legal challenge. Accordingly, the Panel finds that USADA has satisfied its burden of proof on the First Charge Against Mr. Martí.

223. With respect to the Second Charge Against Mr. Martí, by presenting the witness statements it has that have been found admissible by the Panel, USADA has met its burden of proof to establish that Mr. Martí was engaged in the distribution, on numerous occasions, of various prohibited substances and the accoutrements of prohibited methods in his role with the various teams with which he was employed, all in violation of the applicable anti-doping provisions. Mr. Martí did not rebut USADA's evidence with any credible evidence or legal challenge. Accordingly, the Panel finds that USADA has satisfied its burden of proof on the Second Charge Against Mr. Martí.

224. With respect to the Third Charge Against Mr. Martí, USADA must establish that Mr. Martí administered or attempted to administer the prohibited substances or methods to athletes. It is clear from the evidence deemed admitted by the Panel that Mr. Martí was present for the administration of various prohibited substances or methods, and facilitated the same by providing various substances related thereto. While Mr. Martí made various legal arguments challenging this testimony he did not provide credible evidence or legal argument to rebut any of this. Accordingly, the Panel finds that USADA has met its burden of proof with respect to the Third Charge Against Mr. Martí.

225. With respect to the Fourth Charge Against Mr. Martí, USADA must establish that Mr. Martí assisted, encouraged, aided, abetted, covered up, or was complicitous in any doping offense. The testimony of the witnesses referenced and recounted above is replete with examples of Mr. Martí engaging aiding, abetting, and complicity during the relevant

time period. As a result, the Panel finds that USADA has met its burden of proof with respect to the Fourth Charge against Mr. Martí.

226. With respect to the Fifth Charge Against Mr. Martí, USADA must establish that aggravating circumstances existed to permit the Panel to extend the usual period of ineligibility. With respect to this charge, given the evidence provided by USADA, and the extensive activity of Mr. Martí involving multiple athletes associated with a single cycling team, the Panel finds the existence of aggravating circumstances. However, as discussed in more detail below, the Panel is of the view that these aggravating circumstances are of no effect on the overall sanction given to Mr. Martí.

227. To summarize, the Panel finds that Mr. Martí is guilty of violating WADC Sections 2.6.2, 2.7 and 2.8 and UCI ADR R-15.6.2, 15.7 and 15.8.

H. Sanctions and Start Date

228. Under WADC Section 10.2 and UCI ADR R-261, the maximum penalty that may apply for a violation of WADC Section 2.6 and UCI ADR R-15.6 is two (2) years. WADC Section 10.3.2 and UCI ADR R-263.2, however, provide that the penalty for violation of WADC Sections 2.7 and 2.8 and UCI ADR R-15.7 and 15.8 shall be from four (4) years to lifetime. WADC Section 10.6, as more fully set forth above, permits an extension of the usual period of suspension to up to four (4) years for violations other than those arising under WADC Section 2.7 and 2.8 when aggravating circumstances are present. When read together, WADC Sections 10.7.1 and 10.7.4 are clear that for a first

time doping offense there is no compounding of penalties or counting of multiple charged offenses as multiple violations for purposes of imposing additional penalties for second, third or additional offenses. However, WADC Section 10.7.4 makes clear that the "occurrence of multiple violations may be considered as a factor in determining aggravating circumstances." Nevertheless, because each Respondent has been found guilty of violations of one or both of WADC Sections 2.7 and 2.8 (and UCI ADR R-15.7 and 15.8), which permit penalties from 4 years to lifetime, the presence of aggravating circumstances here has no effect on the ultimate penalty, which falls within the range permitted by Sections 2.7 and 2.8. Moreover, as noted, aggravating circumstances may not be used to enhance penalties under Sections 2.7 and 2.8, because they already permit suspensions of up to lifetime.

229. The Panel is of the view that the evidence establishes conclusively that Mr. Bruyneel was at the apex of a conspiracy to commit widespread doping on the USPS and Discovery Channel teams spanning many years and many riders. Similarly, Dr. Celaya and Mr. Martí were part of, or at least allowed themselves to be used as instruments of, that conspiracy. In addition, the Respondents committed multiple doping violations.

230. With respect to Mr. Bruyneel, the Panel has found that USADA established that he violated WADC Sections 2.7 and 2.8. For those violations, the Panel finds ten (10) years to be appropriate. Accordingly, Mr. Bruyneel's total penalty for his multiple WADC violations is ten (10) years.

231. With respect to Dr. Celaya, the Panel has found that USADA established that he violated WADC Sections 2.6.2 and 2.8. For his violation of WADC Section 2.6.2, his ineligibility period would normally be two (2) years but in the presence of aggravating circumstances the Panel finds a penalty of six (6) years to be appropriate. For his violation of WADC Section 2.8, the Panel finds eight (8) years to be appropriate, because of the multiple violations and the seriousness of the offenses. The Panel wishes to note that it has distinguished between the punishment for Dr. Celaya and Mr. Bruyneel because (1) Dr. Celaya was a mere instrument (albeit one with professional training and obligations who should have known better) as opposed to the organizer of the doping conspiracy or scheme, and (2) Dr. Celaya was found to have committed fewer offenses than Mr. Bruyneel, so the Panel was of the view that a slightly lesser, but nonetheless enhanced, period of ineligibility should apply to Dr. Celaya. Accordingly, Dr. Celaya's total penalty for his multiple WADC violations is eight (8) years.

232. With respect to Mr. Martí, the Panel has found that USADA established that he violated all the WADC Sections with which he was charged: Sections 2.6.2, 2.7 and 2.8. For his violation of WADC Section 2.6.2, his ineligibility period would normally be two (2) years, but in the presence of aggravating circumstances the Panel finds a penalty of six (6) years to be appropriate. For his violations of WADC Sections 2.7 and 2.8, the Panel finds eight (8) years to be appropriate, because of the multiple violations and the seriousness of the offenses. The Panel wishes to note that it has distinguished between the punishment for Mr. Martí and Mr. Bruyneel because Mr. Martí was a mere instrument

as opposed to the organizer of the doping conspiracy or scheme, so the Panel was of the view that a slightly lesser, but nonetheless enhanced, period of ineligibility should apply to Mr. Martí. Accordingly, Mr. Martí's total penalty for his multiple WADC violations is eight (8) years.

233. While the disparity in punishment between those who were involved in the doping conspiracy at the USPS team and the Discovery Channel team and promptly admitted doping offenses and testified against the Respondents (apparently 6 months for each under their agreements with USADA) and the requirements of the WADC here with respect to penalties for the doping offenses established by USADA appears substantial on its face, there is no basis in the WADC for the Panel to consider the disparity in setting the required punishments in this case. The punishments meted out by USADA to these athletes appear to be consistent with the applicable WADC rules permitting favorable treatment for those who assist in establishing doping offenses against others. In addition, presumably the Respondents could have obtained similar "deals" from USADA had they sought to accept a punishment early and assist in prosecuting doping offenses against others, but they chose to not do so accepting instead the risk and reward of, on the one hand, the tremendous opportunity they could obtain by fighting the charges against them and the tremendous detriment they could obtain should they be unsuccessful.

234. With respect to the applicable start date for any period of ineligibility, WADC Section 10.9, entitled "Commencement of Ineligibility Period" provides as follows:

> "Except as provided below, the period of Ineligibility shall start on the date of the hearing decision providing for Ineligibility or, if the hearing is waived, on the date Ineligibility is accepted or otherwise imposed. Any period of Provisional Suspension [whether imposed or voluntarily accepted] shall be credited against the total period of Ineligibility imposed."

235. Section 10.9.1 of the WADC, entitled "Delays Not Attributable to the Athlete or Other Person", provides for an earlier start date in certain circumstances as follows:

> "Where there have been substantial delays in the hearing process or other aspects of Doping Control not attributable to the Athlete or other Person, the body imposing the sanction may start the period of Ineligibility at an earlier date commencing as early as the date of Sample collection or the date on which another anti-doping rule violation last occurred."

236. Given its significance in every anti-doping case, WADC Section 10.9.1 is remarkably unclear, or at least devoid of meaningful guidance, in addressing the start date in doping cases arising from non-analytical evidence (in other words in cases other than those arising under WADC Section 2.1) or evidence against athlete support personnel. USADA only formally initiated its proceedings against the Respondents on June 12, 2012 after an extensive investigation of Lance Armstrong and his team, including these Respondents. The evidence shows that the last date established for any doping offense by any Respondent was several years before these proceedings were initiated by USADA. The delay in initiating these proceedings or reaching the final conclusion thereof in the form of this decision and award is not the direct result of actions of the Respondents, but also not the fault of USADA given the extensive investigation it had to undertake. Balancing the equities of the situation and the facts and the text of the WADC, and the parties' relative control over the proceedings and the process, the Panel

is of the view that the most appropriate start date for the period of ineligibility for the Respondents here is the date on which USADA notified the Respondents they were being charged: June 12, 2012.

237. The relevant portions of Annex D to the USADA Protocol, namely the AAA Supplementary Procedures for the Arbitration of Olympic Sport Doping Disputes, specifically R-47, R-48, and R-49, provide conclusively for the United States Olympic Committee to pay for all aspects of costs and expenses of the arbitration in cases like this one. The Panel notes that these specific provisions derogate substantially from the discretion permitted for arbitrators to award proceeding-related costs and expenses under the standard AAA Commercial Arbitration Rules. In addition, because the Panel has already determined that the seat of this arbitration is New York City, it is appropriate for the traditional "American rule" on party attorney's fees -- namely, that the parties shall bear their own attorney's fees in the absence of an applicable statute or contract – should apply. Accordingly, the Panel determines that it has no authority to shift any form of attorney's fees or costs in this proceeding, irrespective of any view the Panel might have on the subject independent of these very specific and, in some ways, exceptional rules.

VI. Panel's Decision

238. On the basis of the foregoing facts, legal analysis, and conclusions of fact, this Panel renders the following decision:

(a) USADA has sustained its burden of proof as to all Respondents. As a result, Respondents have each committed their first doping violations

under Article 2.1 of the 2009 version of the WADA Code, with the presence of aggravating circumstances. Therefore, the Panel imposes a period of ineligibility for each Respondent as follows:

(i) Mr. Johann Bruyneel: 10 years, starting from June 12, 2012 and continuing through and including June 11, 2022;

(ii) Dr. Pedro Celaya: 8 years, starting from June 12, 2012 and continuing through and including June 11, 2020; and

(iii) Mr. José Martí Martí: 8 years, starting from June 12, 2012 and continuing through and including June 11, 2020.

(b) The parties shall bear their own attorney's fees and costs associated with this arbitration;

(c) The administrative fees and expenses of the American Arbitration Association, and the compensation and expenses of the arbitrators and the Panel, shall be borne entirely by USADA and the United States Olympic Committee;

(d) This Award shall be in full and final resolution of all claims and counterclaims submitted to this Arbitration. The Panel has considered all of the arguments made by the parties, whether or not they are specifically referenced in this Award. All claims not expressly granted herein are hereby denied; and

(e) This Award may be executed in any number of counterparts, each of which shall be deemed an original, and all of which shall constitute together one and the same instrument.

Dated: April 21, 2014
New York, New York

Hon. James Murphy (Ret.), Chair

Jeffrey G. Benz

David W. Rivkin