AMERICAN ARBITRATION ASSOCIATION
North American Court of Arbitration for Sport Panel

In the Matter of the Arbitration between

United States Anti-Doping Agency,

Claimant

and

Alberto Blanco,

Respondent

Re: AAA No. 77 190 00224 09

AWARD OF ARBITRATORS

WE, THE UNDERSIGNED ARBITRATORS ("Panel"), having been designated by the above-named parties, and having been duly sworn and having duly heard the proofs, arguments and allegations of the parties, and, after a hearing held on May 24 and May 25, 2010 do hereby render the Panel's full award pursuant to its undertaking to do so by July 14, 2010.

1. SUMMARY

1.1 This case involves Respondent's first anti-doping violation, which he denies.

1.2 Respondent's Sample Number 961772 tested positive for "exogenous origins of Testosterone metabolites" based on the China Laboratory's IRMS confirmation analysis. As a result, on May 8, 2009, USADA charged Respondent with an anti-doping rule violation for the presence and/or use or attempted use of an exogenous (i.e., synthetic or non-natural) anabolic agent pursuant to Articles 15.1 and 15.2 of the Union Cycliste International ("UCI") Anti-

Doping Rules ("ADR") (Articles 2.1 and 2.2 of the WADA Code). Respondent tested positive during the period when the 2003 version of the WADA Code was in effect.

1.3 The Panel is comfortably satisfied that the A and B Samples in this case show the presence of a prohibited substance in Respondent's body and therefore imposes a sanction of a two-year period of ineligibility. The Panel also finds that there were significant delays in the hearing process that were not the fault of Respondent or USADA. Therefore, this Panel exercises the discretion it is granted under the WADA Code and starts Respondent's period of ineligibility from the date of the sample collection, or December 15, 2008. Respondent's period of ineligibility will end on December 14, 2010.

2. PARTIES

2.1 Claimant, United States Anti-Doping Agency ("USADA"), is the independent anti-doping agency for Olympic sports in the United States and is responsible for conducting drug testing and any adjudication of positive test results pursuant to the United States Anti-Doping Agency Protocol for Olympic Movement Testing, effective as revised August 13, 2004 ("USADA Protocol").

2.2 At the Hearing, Claimant was represented by Richard R. Young, Esq., Attorney at Law, Holme, Roberts & Owen, 90 S. Cascade Avenue, Suite 1300, Colorado Springs, Colorado 80903 and Stephen Starks, Legal Affairs Director, of USADA, 1330 Quail Lake Loop, Suite 260, Colorado Springs, CO 80906.

2.3 The Respondent, Alberto Blanco, is a member of USA Cycling.[1]

2.4 At the Hearing, Respondent was represented by Michael Straubel, Attorney at Law and Professor of the Valparaiso University School of Law Sports Law Clinic, 510 Freeman

[1] USA Cycling is the National Governing Body ("NGB") for the Olympic sport of cycling in the United States. USA Cycling is a member of UCI and the United States Olympic Committee ("USOC").

Street, Heritage Hall, Valparaiso, Indiana 46383 and Matthew Boyer, Annica Downing and Nicole Keith, all three students of Valparaiso University School of Law Sports Law Clinic.

2.5 The Panel appreciates and commends the excellent briefing and oral presentations of counsel for both parties in this matter.

3. JURISDICTION

3.1 This Panel has jurisdiction over this doping dispute pursuant to the Ted Stevens Olympic and Amateur Sports Act ("Act"), 36 U.S.C. §220501, *et seq*., because this is a controversy involving Respondent's opportunity to participate in national and international competition representing the United States. The Act states:

> An amateur sports organization is eligible to be recognized, or to continue to be recognized, as a national governing body only if it . . . agrees to submit to binding arbitration in any controversy involving . . . the opportunity of any amateur athlete . . . to participate in amateur athletic competition, upon demand of . . . any aggrieved amateur athlete. . ., conducted in accordance with the Commercial Rules of the American Arbitration Association, as modified and provided for in the corporation's constitution and bylaws. . .[2]

3.2 Under its authority to recognize a NGB[3], the USOC established National Anti-Doping Policies, the relevant version of which was effective August 13, 2004 ("USOC Policies"), which, in part, provide:

> . . .NGBs shall not have any anti-doping rule which is inconsistent with these policies or the USADA Protocol, and NGB compliance with these policies and the USADA Protocol shall be a condition of USOC funding and recognition.[4]

3.3 Regarding athletes, the USOC Policies provide:

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[2] 36 U.S.C. §220521.
[3] 36 U.S.C. §220505(c)(4).
[4] USOC Policies, ¶13.

> . . .By virtue of their membership in an NGB or participation in a competition organized or sanctioned by an NGB, Participants agree to be bound by the USOC National Anti-Doping Policies and the USADA Protocol. [5]

3.4 In compliance with the Act, Article 10 (b) of the USADA Protocol provides that hearings regarding doping disputes "will take place in the United States before the American Arbitration Association ("AAA") using the supplementary Procedures."[6]

4. RULES APPLICABLE TO THIS DISPUTE

4.1 The rules related to the outstanding issues in this case are the mandatory provisions of the World Anti-Doping Code ("WADA Code") and the UCI Anti-Doping Rules. As the sample collection took place in 2008, the 2003 versions of the WADA Code and UCI Anti-Doping Rules control this case, unless (under the principle of *lex mitior*) the 2009 versions are more beneficial to the Respondent.[7] As the UCI and WADA provisions are virtually identical, the applicable WADA Code provisions (version 2003) will be referenced unless otherwise specified. They are as follows:

4.2 **WADA CODE (Version 2003)**

> **2.1 [**Doping is] The presence of a Prohibited Substance or its Metabolites or Markers in an Athlete's bodily Specimen.
>
> 2.1.1 It is each Athlete's personal duty to ensure that no Prohibited Substance enters his or her body. Athletes are responsible for any Prohibited Substance or its Metabolites or Markers found to be present in their bodily Specimens. Accordingly, it is not necessary that intent, fault, negligence or knowing Use on

[5] *Id.* at ¶12.
[6] The supplementary procedures refer to the American Arbitration Association Supplementary Procedures for the Arbitration of Olympic Sport Doping Disputes, as approved by the USOC's Athletes' Advisory Council and NGB Council. 36 U.S.C. §220522.
[7] UCI Anti-Doping Rules 373 state: "This version of the Anti-Doping Rules shall not apply retrospectively to matters pending before the 1st January 2009; provided, however, that: (a) Any case pending prior to the 1st January 2009, or brought after the 1st January 2009 based on an anti-doping rule violation that occurred prior to the 1st January 2009, shall be governed by the predecessor to these Anti-Doping Rules in force at the time of the anti-doping rule violation, subject to any application of the principle of lex mitior by the hearing panel determining the case. . ."

the Athlete's part be demonstrated in order to establish an anti-doping violation under Article 2.1.

3.1 Burdens and Standards of Proof.

The Anti-Doping Organization shall have the burden of establishing that an anti-doping rule violation has occurred. The standard of proof shall be whether the Anti-Doping Organization has established an anti-doping rule violation to the comfortable satisfaction of the hearing body bearing in mind the seriousness of the allegation which is made. This standard of proof in all cases is greater than a mere balance of probability but less than proof beyond a reasonable doubt. Where the Code places the burden of proof upon the Athlete or other Person alleged to have committed an anti-doping rule violation to rebut a presumption or establish specified facts or circumstances, the standard of proof shall be by a balance of probability.

3.2 Methods of Establishing Facts and Presumptions.

Facts related to anti-doping rule violations may be established by any reliable means, including admissions. The following rules of proof shall be applicable in doping cases:

3.2.1 WADA-accredited laboratories are presumed to have conducted Sample analysis and custodial procedures in accordance with the *International Standard* for laboratory analysis. The Athlete may rebut this presumption by establishing that a departure from the *International Standard* occurred.

If the *Athlete* rebuts the preceding presumption by showing that a departure from the International Standard occurred, then the Anti-Doping Organization shall have the burden to establish that such departure did not cause the *Adverse Analytical Finding*.[8]

3.2.2 Departures from the *International Standard for Testing* which did not cause an *Adverse Analytical Finding* or other anti-doping rule violation shall not invalidate such results. If the *Athlete* establishes that departures from the *International Standard* occurred during *Testing* then the *Anti-Doping Organization* shall have the burden to establish that such departures did not cause the *Adverse Analytical Finding* or the factual basis for the anti-doping rule violation.

3.2.1 Comment: The burden is on the Athlete to establish, by a preponderance of the evidence, a departure from the International Standard. If the Athlete does so,

[8] The 2009 version of the WADA Code places the burden on the Athlete to show the departure caused the Adverse Analytical Finding. USADA argued that the 2009 version should apply in this case because it is a procedural requirement. The Panel rejected this argument because the plain language of the 2003 WADA Code states that it applies to this case.

the burden shifts to the Anti-Doping Organization to prove to the comfortable satisfaction of the hearing body that the departure did not change the test result.

10.1 Sanctions On Individuals

Disqualification of Results in Event During which an Anti-Doping Rule Violation Occurs

An anti-doping rule violation occurring during or in connection with an Event may, upon the decision of the ruling body of the Event, lead to Disqualification of all of the Athlete's individual results obtained in the Event with all consequences, including forfeiture of all medals, points and prizes, except as provided in Article 10.1.1. . . .

10.2 Imposition of Ineligibility for Prohibited Substances and Prohibited Methods

Except for specified substances identified in Article 10.3, the period of Ineligibility imposed for a violation of Article 2.1 (presences of Prohibited Substance or its Metabolites or Markers). 2.2 (Use or Attempted Use of Prohibited Substance or Prohibited Method) and 2.6 (Possession of Prohibited Substances and Methods) shall be:

- First Violation: Two (2) years' Ineligibility
- Second violation: Lifetime Ineligibility. . . .

10.7 Disqualification of Results in Competitions Subsequent to Sample Collection

In addition to the automatic Disqualification of the results in the Competition which produced the positive Sample under Article 9 (Automatic Disqualification of Individual Results), all other competitive results obtained from the date a positive Sample was collected (whether In-Competition or Out-of-Competition), or other doping violation occurred, through the commencement of any Provisional Suspension or Ineligibility period, shall, unless fairness requires otherwise, be Disqualified with all of the resulting consequences including forfeiture of any medals, points and prizes.

10.8 Commencement of Ineligibility Period

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 to be served. Where required by fairness, such as delays in the hearing process or other aspects of Doping Control not attributable to the Athlete, the body imposing the sanction may start the period of Ineligibility at an earlier date commencing as early as the date of Sample collection.

4.3 There are also provisions of the International Standards for Laboratories ("ISL") that have been asserted or are relevant to this dispute. They are as follows:

Article 5.2.4.3.2.2, 2008 ISL Version 5.0[9]

A different analyst(s) shall perform those parts of the "B" analytical procedure during which the Sample or Aliquot is open and accessible. Analyst(s) involved in the analysis of the "A" Sample may participate in any activity that does not involve direct interaction with the open Sample Aliquot. For example, the same individual(s) that performed the "A" analysis may perform the instrumental performance checks and analysis, transfer sealed vials, move sealed tubes containing Sample, complete paperwork, transfer vials to and from autosamplers, enter sequence data and verify results.

Article 5.2.4.3.2.3, 2008 ISL Version 5.0

The "B" Sample result shall confirm the "A" Sample identification for the *Adverse Analytical Finding* to be valid.

Article 5.4.7.3, 2008 ISL Version 5.0

Analytical performance shall be monitored by operating quality control schemes appropriate to the type and frequency of testing performed by the Laboratory. The range of quality control activities should include:

- Positive and negative controls analyzed in the same analytical run as the Presumptive Adverse Analytical Finding Sample;
- The use of deuterated or other internal standards or standard addition;
- Comparison of mass spectra or ion ratios from selected ion monitoring (SIM) to a Reference Material or Reference Collection *Sample* analyzed in the same analytical run;
- Confirmation of the "A" and "B" Split Samples;
- For Threshold Substances, quality control charts referring to appropriate control limits depending on the analytical method employed (e.g., ±10% of the target value; +/- 3SD), should be used;
- The quality control procedures shall be documented by the Laboratory.

[9] This provision has been removed from the January 1, 2009 Version 6.0 of the ISL.

Article 5.2.6.1, 2008 ISL Version 5.0

The Laboratory shall have documented procedures to ensure that it maintains a coordinated record related to each Sample analyzed. In the case of an Adverse Analytical Finding or Atypical Finding, the record shall include the data necessary to support the conclusions reported. In general, the record should be such that in the absence of the analyst, another competent analyst could evaluate what tests had been performed and interpret the data.

Preamble, 2009 ISL Version 6.0

The World Anti-Doping Code International Standard for Laboratories is a mandatory level 2 International Standard developed as part of the World Anti-Doping Program.

The International Standard for Laboratories version 6.0 will come into effect on January 01, 2009.

Section 1.0, 2009 ISL Version 6.0

. . .

The ISL, including all Annexes and Technical Documents, is mandatory for all Signatories to the Code.

. . .

5. STIPULATION

5.1 On July 24, 2009, the parties entered into the following stipulation ("Stipulation"):

The United States Anti-Doping Agency ("USADA") and Mr. Alberto Blanco stipulate and agree to, for purposes of all proceedings involving Union Cycliste Internationale ("UCI") urine specimen number 961772, the following:

1. That the USADA Protocol for Olympic Movement Testing ("Protocol") governs the hearing for an alleged doping offense involving UCI specimen number 961772;

2. That the mandatory provisions of the World Anti-Doping Code ("Code") including, but not limited to, the definitions of doping, burdens of proof, Classes of Prohibited Substances and Prohibited Methods, and sanctions, and contained in the Protocol at Annex A, the WADA International Standard for Testing ("IST"), the WADA International Standard for Laboratories ("ISL"), and

the UCI Anti-Doping Rules are applicable to this hearing for the alleged doping offense involving UCI specimen number 961772;

3. Although the Parties agree that the rules described in Paragraphs 1 and 2 above apply to this hearing for the alleged doping offense involving UCI specimen number 961772, the Parties do not agree as to which versions, the 2008 or 2009, govern this hearing, or how the doctrine of *lex mitior* may apply;

4. That Mr. Blanco gave the urine sample designated as UCI specimen number 961772 at the Tour of South China Sea on December 15, 2008;

5. Mr. Blanco will not concede that article 9.3.1 of the 2008 IST, which provides that "the *ADO* shall authorize a transport system that ensures Sample and documentation will be transported in a manner that protects their integrity, identity and security" was followed inasmuch as Mr. Blanco had not seen documentation related to chain of custody from the time UCI specimen number 961772 was collected and processed to receipt of the sample by the World Anti-Doping Agency accredited laboratory at the China Anti-Doping Center in Beijing, China (the "China Laboratory");

6. However, with the exception of the claimed IST violation described in Paragraph 5 above, Mr. Blanco does not contest the laboratory results with respect to any claim of irregularities in any aspect of the sample collection and processing for the A and B bottles of UCI specimen number 961772. He may offer testimony related to alleged irregularities in sample collection and processing for the A and B bottles of UCI specimen number 961772, however, it is stipulated by this document that any possible irregularity did not cause the Adverse Analytical Finding;

7. That the China Laboratory's chain of custody for UCI specimen number 961772 was conducted appropriately and without error;

8. That Mr. Blanco does not contest that the China Laboratory, through accepted scientific procedures and without error, determined the sample positive for the finding of exogenous (i.e., synthetic or non-natural) testosterone using the IRMS method in both the A and B bottles of UCI specimen number 961772, except as follows:

i. Mr. Blanco contends that the China Laboratory violated article 5.2.4.3.2..2 of the 2008 ISL in that he contends that the same laboratory analyst performed parts of both the A and B analytical procedure during which the Sample or Aliquot was open and accessible;
ii. Mr. Blanco contends that the China Laboratory violated article 5.2.4.3.2.3 and 5.2.6.1 of the 2008 ISL in that he contends that the results of the A and B analyses exceed the acceptable measurement

of uncertainty; with respect to the ISL challenge, the Parties have not reached agreement on which version of the ISL applies;

9. That the Parties agree that the period of ineligibility will be a maximum of two (2) years beginning on the date of the hearing panel's decision with credit being given for the time Mr. Blanco has served a provisional suspension beginning on January 16, 2009, until the date of the hearing panel's decision so long as Mr. Blanco does not compete during the period of any provisional suspension;

10. That Mr. Blanco does not contend that there are any exceptional circumstances under the applicable rules present in this case;

11. The above stipulations do no apply to an appeal by WADA or UCI of the final decision reached by the Panel in these proceedings.

I, Alberto Blanco, acknowledge, understand and agree that the foregoing stipulation will be introduced as evidence in proceedings involving UCI specimen number 961772. I have been informed of my rights and received the advice of counsel, Michael Straubel, before entering this stipulation.

6. PROCEDURAL ASPECTS OF CASE

6.1 The Panel and the parties held a preliminary hearing by telephone conference on July 13, 2009. At the preliminary hearing, the Panel made certain rulings and resolved certain issues. The Panel issued its order on July 15, 2009 establishing the briefing schedule and the Evidentiary Hearing date and location. In particular, the Panel established that by August 18, 2009 the parties were required to exchange discovery; by August 28, 2009 Respondent was to file his pre-hearing brief, exhibits and witness list; by September 11, 2009, USADA was to file its pre-hearing brief, exhibits and witness list; by September 18, 2009, Respondent was to file his reply brief; and the Evidentiary Hearing date was set for September 24, 2009 in San Francisco.

6.2 On August 18, 2009, Respondent filed its Motion to Compel Production of Documents or, in the Alternative, Exclude Testimony and Evidence ("August 18th Motion to Compel"). The August 18th Motion Compel requested the production of the following items: (1)

The Beijing laboratory's measure of uncertainty for IRMS testing, (2) The linearity Runs of the IRMS instrument used to test Mr. Blanco's sample, (3) The standard operating procedures for the interpretation of IRMS data of the Beijing Laboratory, (4) If the IRMS testing process in the Beijing Laboratory includes manual integration, the name of the person that conducted the manual integration, the standard operating procedures for manual integration ,and records of manual integration in Mr. Blanco's case, (5) The electronic data file for the IRMS analysis of Mr. Blanco's A and B samples, and (6) The Beijing laboratory's validation of its IRMS assay.

6.3 On August 18, 2009, by letter, USADA challenged its obligation to provide the requested documentation pursuant to WADA Technical Document TD2009LDOC, but informed the Panel that it would work with Respondent to resolve any outstanding issues between the parties. In view of this, USADA stated it would not object to rescheduling the Evidentiary Hearing in order to resolve the discovery dispute.

6.4 On August 19, 2009, Respondent responded to USADA's August 18, 2009 letter. Respondent conceded that a rescheduling of the hearing may be necessary and challenged the argument that the rules did not require USADA to produce the requested documents.

6.5 On August 20, 2009, the Panel held a hearing with the parties by telephone conference to address the discovery dispute and scheduling matters. As a result of that hearing the Panel issued its First Amended Scheduling Order dated August 25, 2009. The amended order required that the parties provide a joint status report regarding the outstanding discovery issues by September 4, 2009 and vacated the September 24, 2009 Evidentiary Hearing date. The order provided that after the parties provided the Panel with their status report on the discovery dispute the Panel would "determine any additional scheduling, briefing, and hearing issues."

The September 24, 2009 hearing date was reserved for oral arguments concerning Respondent's motion to compel, if necessary.

6.6 On September 4, 2009, the parties provided their status report and USADA agreed to Respondent's discovery requests provided Respondent sign a Confidentiality & Non-Disclosure Agreement, which Respondent signed on September 7, 2009.

6.7 After review of the documents received and responses to interrogatories from USADA regarding the Beijing Laboratory, On September 21, 2009, Respondent filed a Motion to Compel Production of Documents or, in the Alternative Exclude Testimony and Evidence ("September 21st Motion to Compel"). In the September 21st Motion to Compel, Respondent petitioned the Panel to "issue and order limiting the testimony and evidence that the Claimant may introduce due to its refusal to supply requested information and further restricting the Claimant from introducing evidence that conflicts with or exceeds the information supplied by the Claimant. . ." This motion dealt exclusively with Claimant's alleged violation of ISL 5.2.4.3.2.2 (hereafter "Same Analyst Prohibition").

6.8 On September 28, 2009, the Panel held a status hearing on Respondent's September 21st Motion to Compel. The Panel had the feeling that the discovery issues were changing as additional discovery was provided. This was not the fault of any party. Rather, these difficulties resulted as a natural consequence of the complicated nature of the dispute and the language challenges presented by English speakers' communication with Mandarin speakers. During this conference call, the Panel established a final briefing schedule for the September 21st Motion to Compel. USADA was to file its opposition October 9, 2009. Respondent was to file its reply by October 16, 2009.

6.9 On October 9, 2009, USADA timely filed its Response. The Response was limited to the Same Analyst Prohibition. USADA also argued that the production of a laboratory's SOP was precluded by Technical Document TD2009LDOC.[10]

6.10 On October 16, 2009, Respondent filed its Reply. The arguments in the Reply were limited to the Same Analyst Prohibition. The Reply requested the production of the SOPs.

6.11 The Panel met and conferred regarding Respondent's September 21st Motion to Compel and issued its ruling in its Third Amended Scheduling Order dated October 29, 2010. In this order, the Panel ruled that the parties' submissions were "insufficient to answer the Panel's questions concerning the relevance, admissibility, or materiality of the documents that are not being produced pursuant to R-31 of the Commercial Arbitration Rules." The Panel requested that the parties suggest hearing dates for expert witness testimony and oral arguments on this motion.

6.12 On November 11, 2009, USADA sent the Panel an e-mail stating that the Beijing Laboratory's personnel who could testify regarding the SOPs were on vacation and would not be able to make a November 23, 2009 or earlier hearing date. Eventually, USADA stated that the Laboratory witness could be available on December 9, 2009.

6.13 By December 9, 2009, the Beijing Laboratory had agreed to release the SOPs and Respondent and the Panel executed a "SOP Confidentiality Agreement." The Panel has some doubt that the Beijing Laboratory produced its entire requested SOPs, and the Panel is disturbed that an accredited anti-doping laboratory would withhold production of documents that were subject to a confidentiality order and otherwise agreed to for production in an arbitration proceeding, but the Panel is of the view that this did not affect the outcome of this proceeding.

[10] This argument is no longer legally viable given the CAS decision in CAS 2009/A/1752 *Vadim Devyatovskiy v/ IOC* and CAS 2009 /A/ 1753 *Ivan Tsikham v/ IOC* (June 10, 2010), pp. 68-71 ("*D&T Case*").

6.14 On January 26, 2010, the Panel held an additional conference call with the parties to set an Evidentiary Hearing date and establish a briefing schedule. The resulting scheduling order was issued on February 16, 2010. Respondent was ordered to file his brief, exhibits and witness list by March 24, 2010. USADA was ordered to file it brief, exhibit and witness list by April 7, 2010. Respondent was ordered to file his reply brief, if any, by April 14, 2010. The Evidentiary Hearing was set for April 21, 2010. The order specifically stated the following:

> All discovery has been exchanged by the parties and the parties agree that there are no remaining discovery disputes. However, with respect to the SOPs, Mr. Blanco shall notify the Panel by February 15, 2010, of any objection or if further translation of the documents is required, at which point the parties will promptly notify the Panel and discuss the logistics of translating the SOPs.

6.15 On February 15, 2010, Respondent filed a "Response to Claimant's Discovery Production." In this filing, Respondent argued that the SOPs that were ultimately produced where incomplete and incompetent. In this response, Respondent outlined the essential information required as follows: (1) The SOPs regarding sample fractionation on HPLC, (2) SOPs regarding sequence file preparation, (3) SOPs regarding method file preparation, (4) AD method file for both the A and B Samples, (5) SOPs regarding peak acceptability, (6) SOPs regarding use and criteria of quality controls, (7) SOPs regarding sample preparation.

6.16 On March 9, 2010, USADA responded by arguing that discovery was closed by the Panel's February 16, 2010 scheduling order. On a more substantial issue, USADA noted the following:

> Moreover, while we are beyond arguing the substance of the new discovery request by Respondent, we would note that Respondent's request references several new issues which are outside the scope of the Parties' joint Stipulation of Uncontested Facts and Issues. . . .Respondent's new discovery request goes beyond the stipulated issues and seeks information regarding, for example, 'qualify controls" and "peak acceptability." For the foregoing reasons, this Panel should deny Respondent's attempt to reopen discovery in contravention of the Panel's Order.

6.17 On April 14, 2010, the Panel held another telephone conference hearing with the parties to address the discovery issues raised by the parties. As a result of that hearing, the Panel issued another order which required the following: (1) USADA was directed to provide a list and description of all responsive documents to Respondent's February 15, 2010 request for the Panel to rule on whether the documents should be produced; (2) the April 21st Evidentiary Hearing date was continued; (3) the Panel informed the parties that it would select the interpreter at USADA's expense; (4) any court reporter provided by USADA should be able to work for longer than eight hours; and (5) the Panel informed the parties it would take a dim view to any additional discovery requests and requests for continuances.

6.18 Thereafter, the parties filed their briefs, including a reply filed by Respondent and the Evidentiary Hearing was scheduled and conducted starting on May 24th and 25th of 2010 at the offices of the AAA. At the start of the hearing, USADA reiterated its concern, and moved to exclude evidence, based on the fact that Respondent and his counsel intended to cover matters that were otherwise precluded by the parties' Stipulation, and the Panel determined to take that objection and motion under advisement but, in the interests of economy, to otherwise hear the arguments and evidence on the points that might otherwise have been outside the scope of the Stipulation.

6.19 At the hearing, testifying on behalf of USADA[11] was Dr. Larry Bowers the Chief Science Officer for USADA. Dr. Bowers has a B.A. in Chemistry, a Ph. D. in Chemistry and did his postdoctoral study in Clinical Chemistry and Clinical/Forensic Toxicology. He has extensive experience in drug testing and drafted portions of the ISLs in use by WADA today. The Panel found Dr. Bower was qualified to provide testimony as an expert witness on the issues

[11] USADA listed Dr. Wilhelm Schänzer as a witness but did not call him to testify at the hearing.

presented in this hearing. The Panel found his testimony credible and helpful. Also testifying for USADA was Dr. Wang Jingzhu (through the aid of a translator) the Senior Chemist at the Beijing Laboratory. She has held that position for nine years. The Panel found Dr. Jingzhu's testimony credible and helpful.

6.20 Testifying on behalf of Respondent as an expert witness was Mr. Paul Scott, a former technician at the UCLA Laboratory. Mr. Scott owns a company that does anti-doping analysis. Mr. Scott has a B.A. in biology and chemistry. After working as a chemist, he obtained his law degree from Rutgers Law School. He was not functioning as an attorney in this case. The Panel found Mr. Scott was qualified to provide testimony as an expert witness on the issues presented in this hearing. The Panel found his testimony credible and helpful. Also testifying for Respondent as an expert witness was Dr. Donald Berry. Dr. Berry, is among other things, a statistician with an impressive educational background. The Panel found that his testimony involved almost complete generalization about the particular facts of this case. Therefore, limited to this case, the Panel determined that his testimony was not useful. Finally, Respondent testified on his own behalf. The Panel found Respondent to be a serious young man. However, given the history of doping in sports, particularly in cycling, and athletes who routinely confess their innocence only later to be found to have committed an anti-doping violation, the Panel placed little weight on his testimony regarding whether he intentionally or inadvertently used a prohibited substance.

6.21 The hearing was closed on June 7, 2009, after receipt of the hearing transcripts. The Panel did not request post hearing briefs. On June 14, 2010 Respondent submitted an Application to Reopen the Hearing for Submission of Recent Precedent. This request to reopen the hearing was limited to Respondent's request that the Panel consider the recent CAS case,

CAS 2009/A/1752 *Vadim Devyatovskiy v/ IOC* and CAS 2009 /A/ 1753 *Ivan Tsikham v/ IOC* (June 10, 2010). On June 15, 2010 USADA filed it submissions, with arguments. On June 22, 2010, the Panel informed the parties that given there was no dispute regarding whether the Panel could consider the *Devyatovskiy* and *Tsikham* CAS case the Panel would reopen the hearing and review the case as part of its deliberations. As a result, the Parties later agreed to extend the time for submitting this decision until July 14, 2010.

7. FACTUAL FINDINGS

7.1 Respondent, Alberto Blanco, was born in Cuba on March 7, 1981. Respondent started his competitive cycling career in Cuba and as a minor earned a silver medal in the team pursuit and a fourth place finish in the road race at the National Championships in 1999. Soon thereafter, Respondent moved to the United States. Respondent began his cycling career in the United States in 2004 by participating in Category 5 events (beginner racing events). Respondent quickly moved up to Category 2 events.

7.2 In 2005 Respondent joined the Mike Fraysse, ACT/UMPC team. In that year he won eight top ten finishes, including winning the New Jersey State Criterium Championship, the New Jersey State Road Race Championship, and the Sussex Criterium. By the summer of 2005, Respondent was competing in Professional Category 1 races.

7.3 In the 2006 and 2007 seasons, Respondent joined the GS Megoni team. In these two seasons, Respondent had twelve top ten finishes, including a victory in the Premier Circuit Bank Race in 2006. Through this entire period, Respondent was never drug tested.

7.4 In 2007, Respondent took time off from cycling to care for his newborn daughter. In 2008, Respondent competed in two events in New York, placing second in the Floyd Benet Field event. On December 14-21, 2008, Respondent competed in the Tour of the South China

Sea competition. After the second stage of the competition on December 15, 2008, Respondent provided the sample that is the subject matter of this dispute. This was his first drug test.

7.5 The Beijing Laboratory first used a screening method on Respondent's urine. This screening method is not part of the laboratory's positive analytical finding. The Isotope Ratio Mass Spectrometry ("IRMS") test is so expensive and time consuming that samples are sometimes screened to determine whether an IRMS test will be run. In Respondent's case, his DEHA (steroid) showed a concentration of 393, when corrected for dilution of the sample this amount equaled a concentration of approximately 800. The urine also tested for etiocholanolone ("Etio"). Again, this tested at an unusually high concentration of 19,700, when corrected for the dilution of the sample the concentration was 39,000. To put these numbers in context, these are the highest concentration levels that Dr. Bowers can remember observing over his many years in the testing business.

7.6 As a result of these screens, the IRMS test was performed. The IRMS test works by comparing the metabolite pathway of a steroid from an endogenous reference compound ("ERC"), in this case, 11-hydroxy with metabolite pathways that are affected by the ingestion of steroids by pill, injection or creams (prohibited exogenous steroids), in this case the two metabolites selected were androsterone ("Andro") and etiocholanolone ("Etio").

7.7 When an athlete's body does not have the presence of a prohibited substance, you would normally expect the measurements between the ERC and Andro and/or Etio to be close or similar. However, if an individual takes a prohibited steroid substance, the metabolite pathways of Andro and Etio will be more negative than the ERC. Under the WADA Code, a laboratory can pronounce a positive analytical finding when there is three units of difference, called a mil (-

3 per mil), between the ERC and Andro or Etio. The Beijing Laboratory's protocol required that a test be called positive if there was a -4 per mil difference.

7.8 Respondent's "A" Sample was tested between December 22, 2008 and December 29, 2008, when ISL Version 5.0 was in effect. Dr. Wang Zhanliang was the Operator for the A Sample. In the Beijing Laboratory, the Operator follows the SOP procedures when handling the sample analysis, including chemical preparation and then writes the report. Dr. Wang Jingzhu is listed as the Examiner for the A Sample. The Examiner's role is to see whether the operator is following the SOP. Only the Operator performs any part of the chemical preparation. For the B Sample, Dr. Zhanliang and Dr. Jingzhu's roles were reversed. On January 1, 2009, Version 6.0 of the ISL came into effect. Respondent's "B" Sample was tested between February 12, 2009 and February 16, 2009. Respondent's IRMS tests showed the following:

Respondent's Samples	Andro	Etio	11OH	11OH – Andro	11OH - Etio
A Sample	-32	-32	-21.9	-10.1	-10.1
B Sample	-33	-33.9	-21.3	-11.7	-12.6

7.9. Dr. Bowers confirmed that he had carefully reviewed the document package. He stated the lab provided a "step-by-step" list of their procedure concerning what they did. He stated he looked at the "mass 45" which tells how much background noise there was. It should be less then 100 and it was 5. So this was acceptable. The lab had a reference measurement against something with a known value. As such, they were getting sufficient CO2 gas which allows for reasonable measurement and the lab used a hydrocarbon standard, hentacosane

("C^{25}"), for their positive quality control. Respondent's expert witness, Mr. Scott did not contest Dr. Bowers' testimony regarding these matters.

7.10 The IRMS process provides a chromatogram (a printout in the form of a graph). The graphs have a reference line with peaks in various places. These peaks correspond to different compounds measured by the machine. The peaks in Respondent's sample are where you would expect them for Andro and Etio and they are large peaks. There is no background (smaller peaks) noise for those peaks. This also supports the reliability of the tests. Respondent's expert witness, Mr. Scott did not contest Dr. Bowers' testimony regarding these matters.

7.11 Dr. Bowers testified that one of the things a negative quality control does is to tell you whether you have a problem with carry-over. He looked at the first injection sequence in the document package and determined that the standards which have 5 alpha and 5 beta androstanediol (called "A-diol and "B-diol" respectively) in the injection sequence showed no problem with carry-over. There were also other athletes' samples in the injection sequence and they did not test positive. However, Dr. Bowers also confirmed that the lab did not do a negative quality control in the run of these samples. The Panel takes judicial notice that negative quality controls are a crucial part of IRMS testing because if they are conducted properly, the negative quality controls avoid the risk of a false positive.[12]

7.12 Dr. Bowers also assumed from reading the document package that no negative quality controls were run. Respondent admits that they received the document package and had an opportunity to carefully review the document package before Respondent executed the stipulation in this case. Respondent's expert witness, Mr. Scott, likewise had the document package before Respondent executed the stipulation. It does not appear that Mr. Scott ever saw

[12] *D&T* Case, at p. 66, ¶5.129.

or discussed the stipulation with Respondent's counsel before Respondent's counsel executed the stipulation. The document package contained the report that showed no negative quality controls were run.

7.13 In looking at the B Sample results, Dr. Bowers affirmed that Andro was at -33 as opposed to -32 and Etio was -33.9 instead of -32. He testified that 11-hydroxy was about the same value as the A Sample. He testified that because these values were so high, bigger than 10, there was no question in his mind that the B confirmed the A. He was not concerned about the absolute differences in the numbers for the Andro but had "a small amount" of concern for the difference in the Etio number. However, given the high concentrations represented by the numbers, Dr. Bowers had no question that the samples contained a prohibited substance.

7.14 Regarding the standard deviation (used to determine the measurement of uncertainty) Dr. Bowers testified that the document package showed a column of C^{25} determinations over a period of time with a mean and a standard deviation of .5. In that case, two standard deviations would be a standard deviation of 1. In the case of two compounds as used in the comparison of 11-hydroxy to Andro, you would predict the standard deviation for a difference between numbers as the square root of two. Thus, the standard deviation with doubling should be around 1.4 or 1.5 and you would expect 95 percent of the results to show up within this standard deviation range. Moreover, as the IRMS is not a quantitative measurement (above a certain range), but rather a qualitative measure (just shows up at any level) the ISL does not require the results to be within any standard deviation.

8. ISSUES AND ANALYSIS

ISL PROVISION 5.2.4.3.2.2

Respondent's Arguments

8.1 Respondent argues that version 5.0 of the International Standard for Laboratories ("ISL") must be strictly enforced for both the A and the B Samples even though the rules had changed when the B Sample was tested. Respondent argues that fairness, uniformity and *lex mitior* requires such a result. According to ISL 5.2.4.3.2.2, because Dr. Jingzhu performed the A Sample analysis of the IRMS, Dr. Jingzhu should not have performed parts of the B Sample analysis when the sample was open or accessible. This is pursuant to the legal precedent established in *USADA v. Jenkins*, AAA No. 30 190 00199 07, *UCI v. Landaluce* and *RFEC*, CAS 2006/A/1119, *FINA v. Oliva*, FINA Doping Panel 1/07 and *Thys v. Athletics South Africa*, CAS 2009/A/1767.

USADA's Argument

8.2 USADA argues that the Same Analyst Prohibition provision of the 5.0 Version of the ISL is not contained in the 6.0 Version of the ISL that came into effect on January 1, 2009. The WADA Code is clear that the WADA accredited laboratories must comply with the ISL when they come into effect. This is to ensure that the laboratories are performing under state-of-the-art best practices. Thus, under the January 1, 2009 ISL the Beijing Laboratory did not have a requirement to have a different analyst perform the B Sample test.

Conclusion

8.3 The Panel is of the view that USADA has the better argument on this point. First, the Same Analyst Prohibition provision of the 5.0 Version of the ISL is not present in the 6.0 Version of the ISL that came into effect on January 1, 2009. Second, by the terms of the ISL

Preamble and the World Anti-Doping Code, the application of the 6.0 Version of the ISL is mandatory as of its effective date – the Preamble states in pertinent part that, "The World Anti-Doping Code International Standard for Laboratories is a mandatory level 2 International Standard developed as part of the World Anti-Doping Program. The International Standard for Laboratories version 6.0 will come into effect on January 01, 2009." *See also* Section 1.0, 6.0 Version ISL; World Anti-Doping Code "Purpose, Scope, etc." ("Adherence to the International Standards is mandatory for compliance with the Code."). The cases of *USADA v. Jenkins*, AAA No. 30 190 00199 07, *UCI v. Landaluce* and *RFEC*, CAS 2006/A/1119, *FINA v. Oliva*, FINA Doping Panel 1/07 and *Thys v. Athletics South Africa*, CAS 2009/A/1767, all involved a prior version of the ISL and are inapplicable here. *See also D&T Case*. It would be untenable and impractical to have in place a rule that interpreted the mandatory provisions of the ISL as requiring a lab technician in a series of A and B samples spanning two different versions of the ISL to be knowledgeable of and apply two different ISLs that might be in place for both parts of the testing, or to determine which of the two might apply or how to merge the two standards. As a result, the Panel is of the view that the only interpretation of the plain reading of the ISL 6.0 Version is that it applies to tests that were administered on or after January 1, 2009, irrespective of when other tests or the A samples might have been tested.

ISL PROVISION 5.2.4.3.2.3

Respondent's Arguments

8.4 Measurement of uncertainly is a range in which you would expect the measurement of a particular test using the same sample material to be within depending on several factors including the laboratory's equipment. This range or difference in numbers is used to find the measurement of uncertainty. If a measurement falls outside that range, then that

raises questions regarding the reliability of the test result. The Etio-11OH results of 10.1 for the A Sample and 12.6 for the B Sample create a difference of 2.5 (12.6-10.1) between the two results. This differential far exceeds the Beijing Laboratory's normal accepted rate of 1.0 and creates a measurement of uncertainty problem which violates several ISL sections. This represents bad science and demonstrates unreliable and untrustworthy results. It also means that the B did not confirm the A in violation of ISL 5.2.4.3.2.3.

8.5 The Beijing Laboratory's minimum threshold value is 4 per mil. After subtracting the WADA value of 3 per mil, the Beijing Laboratory's accepted measurement of uncertainly is 1.0 per mil. In Respondent's case, the difference in the Etio-110H measurement between the A and the B Sample is 2.5. This is outside the laboratory's range. Thus, some unknown problem must have occurred and the Beijing Laboratory has not provided enough documentation to determine the problem.

8.6 In addition, by assuming the Beijing Laboratory's measurement of uncertainly is 1.0 per mil, Mr. Scott was able to determine the proper standard deviation value which he concluded was .5. That means that for the Etio, the result of the A and B Sample was five standard deviations apart. Given this number, the probability of the A Sample and B Sample originating from the same source are 1 in 1,744,278 or .0000573303%.

USADA's Argument

8.7 There are four criteria under which Respondent's tests represent a positive analytical finding.

1. Was the 11OH-Andro difference greater than 3 delta units? The answer is yes. The A Sample delta/delta value was 10.1. The B Sample delta/delta value was also greater than three delta units.

2. Was the 11OH-Etio difference greater than 3 delta units? The answer is yes. The A Sample delta/delta value was 10.1. The B Sample delta/delta value was also greater than 3 delta units.
3. Was the delta value of Andro by itself below -28 delta units? The answer is yes. Andro in the A Sample was measured at -32 delta units. The delta value of Andero in the B Sample was also below -28 delta units.
4. Was the delta value of Etio by itself below -28 delta units? The answer is yes. Etio in the A Sample was measured at -32 delta units. The delta value of Etio in the B Sample was also lower than -28 delta units.[13]

8.8 It only takes one "yes" answer above for Respondent's sample to be positive and in this case the results satisfy all four criteria. Respondent's argument only relates to Etio and not Andro so Respondent would be found positive given the delta/delta value of Andro to 11OH and Respondent has not contested that the Andro is within the range of the laboratory's measurement of uncertainty.

8.9 Second, there is no requirement in the WADA Code or the ISL that the A and B Samples must be within a certain measurement of uncertainty. This is a qualitative measurement, not a quantitative measurement (Threshold Substance)[14]. All that has to be proved is that the substance is present, not how much of it is present. The concept of uncertainty only applies to Threshold Substances in the ISL.

8.10 Although not required, the Beijing Laboratory did establish a standard deviation for the measurement of a single delta value by measuring the compound C^{25} hydrocarbon, 21 different times over a period of eight months. That amount is .5 delta units. The uncertainty figure based on a 95% confidence level would be obtained by multiplying that standard deviation times two, resulting in an uncertainty for a single delta value measurement of ±1 delta unit (‰). Thus for the Etio and 11OH, approximately 95% of the time the measured value would be within

[13] USADA's Pre-Hearing Brief, pg. 20.
[14] A substance listed on the Prohibited List for which the detection and quantification of an amount in excess of a stated threshold is considered an Adverse Analytical Finding.

2 (Dr. Bowers testified to 1.4 or 1.5) standard deviations of the mean, or in this case ± 1.0 (‰). Given these numbers the individual measurements for Etio and Andro are within the appropriate measurement. While finding two consecutive measurements at opposite ends of the two standard deviation measurement (as in the Etio in this case) is infrequent, it is not unreasonable.

Conclusion

8.11 The Panel is persuaded that USADA has the better argument here. The Panel is comfortably satisfied with and adopts as its own the points of USADA's argument summarized in paragraphs 8.7 through 8.10 hereof.

ISL PROVISION 5.2.6.1

Respondent's Arguments

8.12 The Beijing Laboratory did not provide enough information relating to the differentials to allow a competent analyst to interpret the results.

USADA's Argument

8.13 Dr. Bowers was able to interpret the results from the document package provided in this case.

Conclusion

8.14 For the reasons stated above in paragraphs 8.7 through 8.11, the Panel is persuaded that sufficient information was provided by the Beijing Laboratory to permit interpretation of the results in this case.

ISL PROVISION 5.4.7.3

Respondent's Arguments

8.15 The negative controls are absolutely a necessary part of an IRMS assay as they prevent the occurrence of a false positive. By failing to have negative quality controls in the

IRMS assay for the A and B Samples, the results are not reliable, especially considering that there are measurement of uncertainty ranges that are large for the Etio sample. This renders the entire testing process unreliable. Not having negative controls represents a failure on the part of the Beijing Laboratory to comply with ISL 5.4.7.3.

8.16 The Panel should consider this issue even though the parties stipulated that this would not be raised as an issue in this case because USADA did not disclose that no negative quality controls were run and Respondent simply made a mistake in agreeing to this limit before it had completed discovery.

USADA's Argument

8.17 ISL 5.4.7.3 does not require that the Beijing Laboratory run negative quality controls. Rather, it gives the laboratory a range of tests to run (positive and negative quality controls) to ensure the test results are reliable. In this case, Dr. Bowers identified several different factors that prove the reliability of the Positive Analytical Finding. The "mass 45" was within an acceptable range. The lab had a reference measurement against something with a known value. As such, they were getting sufficient CO2 gas which allows for reasonable measurement and the lab used a hydrocarbon standard, hentacosane ("C^{25}"), for their positive quality control which did not fail. The peaks in the chromatogram were where you would expect them for Andro and Etio and they are large peaks. There is no background (smaller peaks) noise for those peaks.

8.18 Further, one of the things a negative quality control does is to tell you whether you have a problem with carry-over. The first injection sequence in the document package determined that the standards which have 5 alpha and 5 beta androstanediol showed no problem

with carry-over. There were also other athletes' samples in the injection sequence and they did not test positive.

8.19 Moreover, the Panel does not have jurisdiction over this issue as the Stipulation of the parties precluded the Panel from addressing this issue.

Conclusion

8.20 In order to resolve this issue, the Panel had to admit some testimony regarding negative quality controls. Having carefully considered this evidence, the Panel is of the view that the parties' Stipulation answers the question. It is commonly accepted in arbitration and other types of disputed proceedings that stipulations entered into between the parties as to factual and arbitration scope matters can expedite a hearing process, considerably shorten the presentation of evidence, and allow the parties to control the costs of the proceedings and the presentation of evidence. Absent stipulations, there could be countless hours wasted in arbitrations where parties must prove facts or legal elements not really in dispute. Generally, because arbitrators' jurisdiction arises from the parties' agreement(s) on the arbitrations scope, arbitrators cannot deviate from jointly stipulated facts and issues. The United States Supreme Court recently reaffirmed these basic principles when it stated earlier this year that:

> Underscoring the consensual nature of private dispute resolution, we have held that parties are "generally free to structure their arbitration agreements as they see fit." . . . For example, we have held that parties may agree to limit the issues they choose to arbitrate, . . . and may agree on rules under which any arbitration will proceed . . . . *Stolt-Nielsen, S.A. v. Animalfeeds Int'l Corp*., 559 US __ (2010) (citations omitted).

8.21 At no time was Respondent compelled to enter into a Stipulation. This Panel would not have viewed Respondent's reluctance to enter into a Stipulation before discovery was completed and/or cross examination of laboratory technicians were concluded as anything more

than the prudent exercise of counsel's discretion in representing his client. The evidence demonstrated that neither USADA nor the Beijing Laboratory made an effort to conceal the absence of negative quality controls. Documents were produced by USADA on behalf of the Beijing Lab that showed the absence of negative quality controls being run. Respondent had hired a scientific expert to assist him in the case before executing the Stipulation and the expert stated he had carefully reviewed the documents before the Stipulation was entered. Indeed, Respondent's counsel admitted that a mistake had been made in agreeing to the Stipulation in advance of discovery being completed.

8.22 Here, the parties agreed on July 24, 2010 to the Stipulation, the pertinent part of which is set forth below:

> 8. That Mr. Blanco does not contest that the China Laboratory, through accepted scientific procedures and without error, determined the sample positive for the finding of exogenous (i.e., synthetic or non-natural) testosterone using the IRMS method in both the A and B bottles of UCI specimen number 961772, except as follows:
>
> i. Mr. Blanco contends that the China Laboratory violated article 5.2.4.3.2..2 of the 2008 ISL in that he contends that the same laboratory analyst performed parts of both the A and B analytical procedure during which the Sample or Aliquot was open and accessible;
> ii. Mr. Blanco contends that the China Laboratory violated article 5.2.4.3.2.3 and 5.2.6.1 of the 2008 ISL in that he contends that the results of the A and B analyses exceed the acceptable measurement of uncertainty; with respect to the ISL challenge, the Parties have not reached agreement on which version of the ISL applies;

This paragraph of the Stipulation precluded Mr. Blanco from arguing any issues concerning the determination of Mr. Blanco's sample as positive other than the two issues set forth in paragraphs 8 (i) and (ii). As a result, the Panel is unable to consider Mr. Blanco's negative

quality controls argument and grants USADA's motion to exclude this Panel's consideration of this issue and the evidence related thereto.

8.23 The Panel recognizes the value of stipulations and absent manifest injustice (which is not present given the lack of concealment and the other scientific evidence available in this case confirming the presence of a prohibited substance) will not disturb the parties' Stipulation. Having said this, the Panel wishes to note that it is troubled by the lack of negative quality controls being run, especially in light of the testimony from USADA's expert, Dr. Bowers, that he could not recall a case that was upheld where negative quality controls had not been run, the ISL provision that seemingly requires negative quality controls, and Prof. Schänzer's testimony in the *D&T Case* that negative quality controls are "crucial because if they are conducted properly, this avoids the risk of a 'false positive.'" The Panel recognizes that the failure to run negative quality controls are not issues of USADA's doing, but go directly to issues with the procedures of the Beijing Laboratory.

9. DECISION AND AWARD

9.1 On the basis of the foregoing facts and legal aspects, the Panel renders the following decision:

a. USADA has sustained its burden of proof in establishing that Mr. Blanco committed a doping offense and Mr. Blanco has failed to rebut USADA's charges. As a result, and pursuant to the UCI rules, Mr. Blanco shall be ineligible to compete for a period of 2 years, commencing on December 15, 2008, and ending on December 14, 2010 including his ineligibility from participating in and having access to the training facilities of the United States Olympic Committee Training Centers or other programs

and activities of the USOC including, but not limited to, grants, awards, or employment pursuant to the USOC Anti-Doping Policies only during the period of ineligibility.

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 shall be borne entirely by USADA and the USOC, and the compensation and expenses of the arbitrators shall be borne entirely by USADA and the USOC.

d. This Award is in full settlement of all claims and counterclaims submitted to this Arbitration. All claims not expressly granted herein are hereby denied.

[REST OF PAGE INTENTIONALLY LEFT BLANK]

9.2 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: July 14, 2010.

Jeffrey G. Benz, Chair

Christopher L. Campbell

John T. Wendt