

RECORD OF DECISION

of

THE SOUTH AFRICAN INSTITUTE OF DRUG FREE SPORT "SAIDS"

ANTI-DOPING DISCIPLINARY

HEARING COMMITTEE

comprising of

John Bush	lawyer member and chairperson
Nasir Jaffer	doctor member
Hasnodien Ismail	administrator member

In the matter between

SAIDS

and

ENZO LEZZI

**DECISION OF THE SOUTH AFRICAN INSTITUTE FOR DRUG-FREE SPORT
ANTI-DOPING DISCIPLINARY COMMITTEE**

In the disciplinary hearing of

ENZO LEZZI

LEGISLATIVE & LEGAL BACKGROUND / FRAMEWORK

1. The South African Institute for Drug-Free Sport, "**SAIDS**", is a corporate body established under section 2 of the South African Institute for Drug-Free Sport, Act 14 of 1997, as amended, "the Act".
2. The main objective which **SAIDS** has is to promote and support the elimination of doping practices in sport which are contrary to the principles of fair play and medical ethics in the interests of the health and well being of sportspersons.
3. On 25 November 2005 **SAIDS**, formally accepted the World Anti-Doping Code, "the Code", which the World Anti-Doping Agency, "WADA", had adopted on 5 March 2003.
4. By doing this **SAIDS**, as the National Anti-Doping Organisation for South Africa, introduced anti-doping rules and principles governing participation in sport under the jurisdiction of SASCOC, the South African Sports Confederation and Olympic Committee, or any national sports federation.
5. The Anti-Doping Rules 2009, as published by **SAIDS**, ("the **Rules**"), which are applicable to the present proceedings, incorporate the mandatory provisions of the Code as well as the remaining provisions adapted by **SAIDS** in conformance with the Code.
6. Cycling South Africa, "**CSA**", as the national federation governing the sport of cycling in South Africa, has adopted and implemented **SAIDS** anti-doping policies and rules which conform to the Code and the Rules.

PANEL CONSTITUTION

7. This **SAIDS** Anti-Doping Disciplinary Committee hearing panel, consisting of John Bush - Chairperson and Legal Representative, Nasir Jaffer - Medical Practitioner and Hasnodien Ismail - Sports Administrator, ("the **Panel**") was appointed by **SAIDS** in accordance with the provisions of Article 8 of the **Rules**, to adjudicate whether the athlete Enzo Lezzi ("**Lezzi**") had committed an anti-doping rule violation under the **Rules** and if so what the consequences should be.

CHARGE RELATING TO ANTI-DOPING VIOLATION

8. The charge against **Lezzi** is contained in a letter which **SAIDS** addressed and couriered to him on 12 January 2012.

The relevant portion of the letter relating to the charge read as follows:

"You have been charged with an anti-doping rule violation in terms of article 2.1 of the 2009 Anti-Doping Rules of the South African Institute for Drug-Free Sport (**SAIDS**).



1



On the 29 October 2012*you provided a urine sample (A2633264) during in competition test. Upon analysis, the South African Doping Control Laboratory at the University of Free State reported the presence of a prohibited substance in your urine sample.

The substance identified was 19 Norandrosterone (in a concentration of 7.8ng/ml which is above the World Anti-Doping Agency decision limit of 2.5ng/ml), which is a metabolite and/or precursor the Anabolic Agent Nandrolone. 19 Norandrosterone is categorised under **Class S1(b), "Anabolic Agents"** on the World Anti-Doping Code 2011 Prohibited List International Standard." (*later amended to 2011.)

9. Article 2.1 of the Rules reads as follows:

"2.1 Presence of a Prohibited Substance or its Metabolites or Markers in an Athlete's Sample.

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 Samples. Accordingly it is not necessary that intent, fault, negligence, or knowing Use on the Athlete's part be demonstrated in order to establish an anti-doping violation under Article 2.1.

PROCEEDINGS – INTRODUCTION & PERSONS ATTENDING

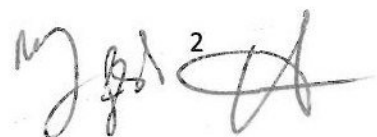
10. The prosecutor for SAIDS in this matter was Mr Nick Kock, "Kock".
11. The hearing began at 18h48 on 19 July 2012 with those present welcomed and invited to introduce themselves by the Chairperson.
12. Lezzi was represented by Advocate Frans Rautenbach, "Rautenbach", on the instructions of Attorney EQM Hunter, "Hunter", who was also in attendance and provided assistance.

The following also attended the hearing: Rahiden Cullis (RC) – SAIDS Legal Representative, Fahmy Galant (FG) – SAIDS Observer, Marius Hurter (MH) – Observer, William Newman (WN) – President of Cycling SA.

Rayanah Rezant recorded and prepared the minutes of the hearing proceedings.

ADMISSIONS - CURTAILMENT OF PROCEEDINGS

13. The Chairperson noted that the defence and prosecution had met for discussions prior to the hearing commencing and inquired about the result thereof.
14. Apart from having informed the hearing that the defence had affidavits which they would like to have tabled, Rautenbach advised that they had agreed upon the two main admissions with Kock. These were that Lezzi admitted
 1. he was guilty of the offence (the anti-doping violation as charged). In so doing Lezzi accepted the sample collection procedure and chain of custody, as well as the testing procedure which had established the presence of the prohibited substance in his urine, were in order;



2. the manner in which the substance had entered his system by way of a double injection given to him by his sister Dr Marisa Lezzi on 2 August 2011 pursuant to an injury relating to arthritis in the knees.
15. **Kock** on behalf of the prosecution added that it was also accepted that it was Deca Durabolin which had been injected.

PROCEDURE TO BE FOLLOWED, PRELIMINARY EVIDENTIARY MATTERS & EXHIBITS

16. The Chairperson mentioned that doctor on the **Panel** (Dr Jaffer) would cover the medical aspects and advised that the hearing would follow a very informal procedure.
17. **Rautenbach** confirmed **Lezzi's** admission of guilt and proceeded with his submissions (with regard to sanction) as he introduced and handed in two affidavits that of **Lezzi** himself and his sister Marisa Lezzi.
18. **Lezzi's** affidavit included the letter report of Dr Deon Engela, the doctor who diagnosed **Lezzi's** the arthritic condition, as contained in Annexure EL1. That of Marisa Lezzi was the translated version with the original document which Marisa Lezzi had signed in Italian. These were passed around and handed to the Chairman for consideration.
19. As there were not enough copies for distribution it was decided that the hearing be adjourned. This was for to allow for sufficient copies to be made and time for the **Panel** and the prosecution to consider these.

The hearing reconvened at 19h18

20. The Chairman advised that the **Panel** had considered and noted that the injection had been administered by a paediatrician, it was not clear whether this was into the knee joint or muscle. Dr Jaffer pointed out that he had concerns with this from a clinical safety and efficacy point of view.
21. **Rautenbach's** response was that cognizance be taken that the injection was administered by a paediatrician but that it was the athlete, rather than the doctor, who was under question.
22. The hearing then considered the x-rays which were handed in as "Exhibit A". Dr Jaffer of the **Panel** stated that he found it amazing that the athlete (**Lezzi**) could compete with the condition of his knees.

EVIDENCE IN MITIGATION OF SANCTION

Evidence-in- chief

23. **Rautenbach** then proceeded to question **Lezzi** (specifically to place evidence, in line with what was stated in the affidavits and LS1 on record.)

The following matters of an evidentiary nature - although not fully exhaustive of all the answers provided by **Lezzi**, or extracted from his affidavit and LS1 - are considered relevant, as **Lezzi**

- having admitted his guilt, stated that he felt like a criminal and stupid
- is 48 years old
- an amateur

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- does not do doping
- trusted his Doctor sister
- participated in both karate and football when he was younger
- stopped participating in these sports in 1990 because "his freaking knees could not take it anymore"
- advised that his knee problems started in 1982 with his left knee ligaments torn, whilst playing for the South African Defence Force Currie Cup side and then operated on (by way of a Mac Intosh procedure); further surgery in 1987 - to his right knee also as a result of football and in 1988 - to the anterior cruciate ligaments to his left knee (intra-articular ACL reconstruction)
- started cycling after he stopped playing football. He felt sorry for himself, was depressed and despondent. This followed some spinning on a bike at gym and a friend giving him a bike to go and do the Argus in 2004
- needed knee replacements but was too young
- saw Dr Deon Engela, the orthopaedic surgeon after the test on the 24 November 2011
- was assessed to have

"longstanding ligamentous instability of both his knees, as well as varus alignment, which is what he was genetically born with. Due to these two factors he now has osteoarthritic change in his knees at a relatively young age."

- was recommended to
 - "at this stage to continue with his sporting activities as long as he would like to, to take the occasional anti-inflammatory such as Coxflam (1 three times a week), as and when required, and only when he gets to the point where he feels he is not prepared to cycle anymore and he has too much pain, I will review him with a view to a total knee replacement."*

24. Regarding his visit to Italy Lezzi's responses revealed that

- his sister and parents live there
- his sister is a paediatrician
- he visited once a year
- he took his bike with him to get very fit
- the older he gets the more difficult he finds it to climb the hills, as he couldn't get out of his seat on the and has to pull which has become a problem
- he did not race there .

25. In reply to questions relating to the injections administered by his sister Marisa Lezzi, Lezzi answers revealed that

- he told her he had pain in both of his knees. The discussion went along the lines that when he walked and after a ride his knees swelled up a bit, and it was difficult to bend or straighten them
- she had suggested an injection in both knees to relieve the arthritis and pain
- these were administered out of season
- in winter the pain gets worse
- he did not know what he was been injected with
- he did not tell her that he could be tested
- he admitted that he was negligent in not asking her what was in the injection
- he had been tested twice before with negative results
- he did not take any stimulants or other prohibited substances

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- he did take any substance to mask these
 - he had not expected to ride better when he took the injections as he wanted something specifically for the pain
 - he did not question his sister because he trusted her. This he stated was due to her having diagnosed him as having Graves Disease in 1990 whereafter Milpark had given him radioactive iodine.
26. In dealing with questions surrounding the event on 29 October 2011, where he had provided the test sample and following the announcement of the results **Lezzi's** responses were such that he
- was not a professional athlete
 - was probably targeted for the test as he was a strong rider and finished 11th in the Fun Ride ("Open event") on that day
 - had not participated in any races since his suspension
 - was himself aware of and had been around colleagues who made him aware of other athletes taking banned substances
 - had not heard of Deca Durabolin.
27. In his statement to the Panel in closure **Lezzi**
- reiterated he was negligent in not asking his sister about the injection, which was for pain and not to enhance his performance
 - apologised for his negligence
 - stated that he really did want to ride his bike, being with people racing and enjoying himself
28. In response to a question by his attorney Earl Hunter, **Lezzi** advised that he was 100% against doping in sport and felt that it was dishonest.

Prosecutor's cross-examination

29. **Kock** established from answers to questions posed to **Lezzi** in his cross-examination that **Lezzi**
- had played competitive football at South African Schools and Currie Cup levels and professionally for Bloemfontein Celtics
 - had achieved a 3rd Dan at Karate
 - was aware of doping and the transgressions at the Tour d' France among professional cyclists but not amateurs
 - had competed as a veteran cyclist for South Africa
 - had not had any formal anti-doping education
 - read about cases in cycling in Cycling News but was not interested in going into the details of the articles
 - had not been on either the SAIDS or WADA websites
30. **Lezzi** also confirmed in response to **Kock's** questions in referred to the DCF – Doping Control Form 262/11, that over the last seven days before the event **Lezzi** had taken Eltroxin 200mg for his Thyroid, as well as
- Regmaker, which was caffeine
 - Hammer Powder and Gel for endurance
 - Multivitamins every day
 - Iron and Magnesium tablets
 - Animal Pack

5

31. Further evidence of a clinical nature which was provided by **Lezzi** under questions posed by **Kock**, was to the effect that

- the Eltroxin was prescribed by his new doctor, Dr Gerber
- Dr Engela is the orthopaedic surgeon who **Lezzi** consulted with in November
- **Lezzi**, whose x-rays showed deterioration of the knees had provided no long term evidence of seeing a doctor on a regular basis.

This prompted **Kock** to state "you have a history with your knees but no history"

Lezzi

- did not see any medical practitioner for eight years whilst participating in cycling
- had not seen anyone until after he had spoken to his sister
- did not see anyone because he knew what they would say about his knee condition
- had self-medicated with taking Panado but was not then taking anything for pain
- advised that the Coxflam* at 3 x a week had not worked
(*Dr Jaffer advised that Coxflam was an anti-inflammatory which reduces inflammation of the joints)

Lezzi

- did not want to have the knee replacements
- did not go to Italy to have the injection
- went to ride, experienced a lot of pain and asked his sister for help
- was 110% against anti-doping but took all other meds to enhance performance legally
- had not injected himself with Dura Durabolin
- knew that he was indeed responsible as an athlete for what went into his body
- admitted once again that he was negligent in not being careful about what went into his body
- did not tell the doctor he was participating in sports
- had the injection because his sister knew best.

Questions by the Panel & Re-Examination

32. In response to questions posed by the Mr Ismail as member of the Panel **Lezzi** provided evidence that



- his vacations in Italy lasted 6-8 weeks
- he took his bicycle to ride in a beautiful country
- he worked as a property consultant in Camps Bay and "took off" in the winter
- did not participate in any competitions in Italy as he was not in good shape
- he had not been tested in the only other race after he returned to South Africa which was one week before the race he was tested at.

(This was because it was sought to establish whether the levels may have been higher if **Lezzi** had been tested earlier)

33. On the Chairman's question seeking clarity on the reason for the affidavit by **Lezzi's** sister Marisa Lezzi not being in English but in Italian the hearing was advised that this was because, although she was prepared to do the affidavit in English, the Italian authorities were not – and required it to be in Italian.

34. In dealing with the clinical safety and efficacy concerns Dr Jaffer noted the following concerns deriving from his own observations as were established from **Lezzi's** replies to his questions.

- A **paediatrician** had administered the injections into both knee joints.
- The administration of an injection into the **knee joints** is technically not easy, even for a doctor who is more adept at giving these injections.

 6 

- No *X-Rays* were done, which meant that the injections were given without the benefit of visualisation.
- No *other specialist* (with more experience in this field of medicine) was consulted for advice prior to giving this injection.
- The choice of the injected material was entirely *inappropriate*.
- The medication had to be ordered, thus it was mystifying that a doctor with experience and expertise in giving joint injections would request *Deca-Durabolin* instead of cortisone.
- Deca-Durabolin has **NO** clinical indication for use as an intra-articular agent.

Lezzi advised that his sister had

- examined the knees and did some physical movements ("stuff")
- administered the injections at her practice rooms. This was not done at the time of the examination but five days after it as the injections had to be ordered.

Lezzi then stated that the problem was that these injections had not made the difference

35. In response to final questions posed by **Kock**, **Lezzi** advised that

- when he saw the orthopaedic surgeon he did not tell him that his sister had given him the injections
- the orthopaedic surgeon had not offered any injections.

36. In taking further questions towards providing clarity regarding the clinical basis for the use of Deca Durabolin Dr Jaffer gave his professional opinion indicating that


- it was not recommended for use as a pain killer for arthritis
- as an anabolic steroid it was used in chronic patients
- used in cancer for a boost to the system
- it was given intramuscularly and not into the joints
- was not standard practice for knee joints
- it could be used when hormone levels were low
- the standard treatment for an injection into a joint, is an anaesthetic administered combined with a steroid, usually cortisone, which suppresses inflammation and reduces joint pain.

FINAL SUBMISSIONS & PROPOSED SANCTION

Prosecutor

37. **Kock's** submission on behalf of the SAIDS prosecution, before his recommendation concerning the appropriate sanction, can be summarised as follows.

- ✓ There have been other cases before involving injections into the knees, usually in an illicit scenario.
- ✓ In this case the injection was given by a doctor, a specialist paediatrician not an orthopaedic surgeon.
- ✓ What makes this case difficult is that it was **Lezzi's** sister.
- ✓ **Lezzi** failed to question his sister.
- ✓ He also failed to refer and/or consult with any other doctor
- ✓ He also failed to disclose the fact that he did have the injections to his knees to his other doctors - such as Dr Engela.

by JFS 7 

- ✓ He is a competitor competing successfully so, pushing himself to the limit. No matter what the age or scenario he is competitive and although not for the money he ought to have done his homework.
(Today's athlete uses nutritionists and sports psychologists for optimum performance)
- ✓ Anti-doping is constantly in the press. A slew of cyclists are in the media.
- ✓ One would have expected that **Lezzi**, given his stature and experience, would have made his sister aware that he was still competing and what was required.
This cost him more than he put in.

Lezzi responded by stating that

- he was aware that he did not do his homework
- it was difficult to get a reduction of sentence
- respected everything that **Kock** had said
- what had happened was not to enhance performance
- he had suffered by not being able to compete for 8 months.

Kock closed his submission for the prosecution by requesting that the **Panel** consider a 2 year period of ineligibility as an appropriate sanction with the time already served under provisional suspension to be taken into account.

Defence

Rautenbach – for **Lezzi**

38. In his submission **Rautenbach** stated that the facts presented

- the injections were given to both knees in August 2011
- the doctors report as supported by the x-rays recognised the state of the knees
- the condition was serious
- the injection was given for the pain
- it was not intended or expected to enhance performance

At this point the Chairperson intervened as he was concerned that the defence was inappropriately seeking a reduction of sanction under Article 10.4 rather than 10.5 of the Rules.

He explained what it was that the **Panel** looked for in determining fault or negligence on the part of the athlete. He did so with emphasis on the extent to which any athlete may have sought advice regarding the substance to be used or administered, in enabling the Panel to considering a reduction of any period of ineligibility under Article 10.5 for the use of a prohibited substance vs that under Article 10.4 for the use of a specified substance.

When it became clear that this was the case it was agreed that the hearing be adjourned for the defence team to consult with **Lezzi** to clarify the position and their closing submission accordingly.

Upon the hearing reconvening at 20h50 **Rautenbach** expressed his appreciation for the opportunity given to him to explain the turn of events to **Lezzi**.

39. He went on to request that the **Panel** consider the following.

- **Lezzi** was an amateur, not making money out of (cycling) competitively.
- He had no formal training with regard to anti-doping

 8 

- He was on holiday not on a camp
 - The injections were administered "out of season" (for the pain relating to his condition) not for the purpose of enhancing performance in competition
 - The nature of his person
 - He had admitted fault on his part
40. Rautenbach argued that taking all these factors into account **Lezzi's** fault was not significant for the purpose of punishment, more correctly sanction.
41. He submitted that an appropriate sentence, taking into account the 8 months already served, which has been hard on **Lezzi**, should reflect an effective suspension encompassing the competitive winter season and allowance for **Lezzi** being 48 and being able to participate for his health in a humanitarian sense.

PANEL DECISION & REASONS

Verbal decision

42. A short adjournment for deliberation by the **Panel** members followed, after which the hearing was re-convened for the delivery of the **Panel's** verbal decision by the Chairman.

In acknowledging

- the anti-doping violation admitted by **Lezzi**
- providing a brief rationale for the **Panel's** findings that **Lezzi** had established on a balance of probability to the **Panel's** satisfaction that he had not been significantly at fault or negligent (Article 10.5.2),

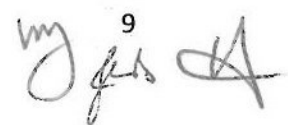
the Chairperson delivered the following decision on the understanding that the full written decision of the **Panel**, with reasons, would be delivered in due course.

" Mr Enzo Lezzi serve an 15 month period of ineligibility commencing from the date of notification of the "AAF" - adverse analytical finding - ie 21 November 2011. Such period to run to 22 February 2013, on the understanding that time served under the provisional suspension from the date of notification of the adverse analytical finding on 21 November be credited to such period."

43. What follows records the **Panel's** full finding and decision with regard to **Lezzi's** admission of the anti-doping rule violation, the applicable law / governing rules and reasons relating to what the **Panel** considered to be the appropriate sanction.

GUILTY FINDING – ANTI DOPING VIOLATION

44. The **Panel** having accepted that **Lezzi's** violation of Article 2.1 of the **Rules** had been admitted by **Lezzi** at the outset of the hearing accordingly found **Lezzi** had in fact committed the anti-doping violation referred to in the charge.

9


SANCTION

Introduction

45 In the light of such finding the **Panel** was thus required to consider and decide

45.1 what the appropriate sanction ought to be having regard with Articles 10.1 and 10.2 of the **Rules**;

45.2 whether, once this was determined, there was any basis for any possible elimination or reduction of any period of ineligibility imposed upon **Lezzi**, under either of Articles 10.5.1, or 10.5.1.2 of the **Rules**, provided that the totality of the evidence before the **Panel** supported there being, either

45.2.1 no fault or negligence - (Article 10.5.1)

or

45.2.2 no significant fault or negligence – (Article 10.5.2)

on the part of **Lezzi**, what this period, or such periods should be.

This the **Panel** did in making its further findings through the evaluation of all the evidence within the totality of the circumstances giving rise thereto having regard to all applicable laws - governing rules, precedent and South African law, as follows.

Applicable law/ governing rules

46. The governing **Rules** and definitions which the **Panel** was obliged to consider- in the light of the South African Constitution, common law and decided cases (precedent) concerning these matters - in reaching its decision - are as follows:

46.1 **Article 3.1**

Burdens and Standards of Proof

SAIDS has the burden of establishing that an anti-doping rule violation has occurred. The standard of proof shall be whether SAIDS has established an anti-doping rule violation to the comfortable satisfaction of the hearing panel bearing in mind the seriousness of the allegation that 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.

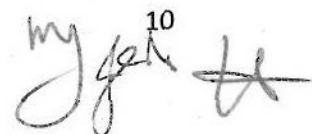
Where these Anti-Doping Rules place the burden of proof upon the Athlete or other Person alleged to have committed an anti-doping rule violation to rebut a presumption or establish specified facts or circumstances, the standard of proof shall be by a balance of probability, except as provided in Articles 10.4 and 10.6 where the Athlete must satisfy a higher burden of proof.

46.2 **Article 10.5**

Elimination or Reduction of Period of Ineligibility Based on Exceptional Circumstances.

10.5.1 *No Fault or Negligence*

If an Athlete establishes in an individual case that he or she bears *No Fault or Negligence*, the otherwise applicable period of *Ineligibility* shall be eliminated. When a *Prohibited Substance* or its *Markers* or its *Metabolites* is detected in an *Athlete's*

10


Sample in violation of Code Article 2.1 (Presence of Prohibited Substance), the *Athlete* shall also establish how the *Prohibited Substance* entered their system in order to have the period of *Ineligibility* eliminated.

In the event that this Article is applied and the period of *Ineligibility* otherwise applicable is eliminated, the anti-doping rule violation shall not be considered a violation only for the limited purpose of determining the period of *Ineligibility* for multiple violations under Article 10.7.

10.5.2 No Significant Fault or Negligence

If an *Athlete* or other *Person* establishes in an individual case that he or she bears *No Significant Fault or Negligence*, then the period of *Ineligibility* may be reduced, but the reduced period of *Ineligibility* may not be less than one-half of the period of *Ineligibility* otherwise applicable. If the otherwise applicable period of *Ineligibility* is a lifetime, the reduced period under this section may be no less than 8 years. When a *Prohibited Substance* or its *Markers* or *Metabolites* is detected in an *Athlete's Sample* in violation of Code Article 2.1 (Presence of Prohibited Substance), the *Athlete* shall also establish how the *Prohibited Substance* entered their system in order to have the period of *Ineligibility* reduced.

10.5.3 Substantial Assistance in Discovering or Establishing Anti-Doping Rule Violations

The SAIDS *Anti-Doping Disciplinary Committee* or SAIDS *Anti-Doping Appeal Board* may, prior to a final appellate decision under Article 13 or the expiration of the time to appeal, suspend a part of the period of *Ineligibility* imposed in an individual case where the *Athlete* or other *Person* has provided Substantial Assistance to an *Anti-Doping Organization*, criminal authority or professional disciplinary body which results in the *Anti-Doping Organization* discovering or establishing an anti-doping rule violation by another *Person* or which results in a criminal or disciplinary body discovering or establishing a criminal offense or the breach of professional rules by another *Person*. After a final appellate decision under Article 13 or the expiration of time to appeal, the SAIDS *Anti-Doping Disciplinary Committee* or SAIDS *Anti-Doping Appeal Board* may only suspend a part of the applicable period of *Ineligibility* with the approval of WADA and the applicable International Federation.

The extent to which the otherwise applicable period of *Ineligibility* may be suspended shall be based on the seriousness of the anti-doping rule violation committed by the *Athlete* or other *Person* and the significance of the *Substantial Assistance* provided by the *Athlete* or other *Person* to the effort to eliminate doping in sport.

No more than three-quarters of the otherwise applicable period of *Ineligibility* may be suspended. If the otherwise applicable period of *Ineligibility* is a lifetime, the non-suspended period under this section must be no less than 8 years. If the SAIDS *Anti-Doping Disciplinary Committee* or SAIDS *Anti-Doping Appeal Panel* suspends any part of the period of *Ineligibility* under this Article, it shall promptly provide a written justification for its decision to each *Anti-Doping Organization* having a right to appeal the decision. If the SAIDS *Anti-Doping Disciplinary Committee* or SAIDS *Anti-Doping Appeal Panel* subsequently reinstates any part of the suspended period of *Ineligibility* because the *Athlete* or other *Person* has failed to provide the *Substantial Assistance* which was anticipated, the *Athlete* or other *Person* may appeal the reinstatement pursuant to Article 13.2.

46.3

Article 10.9
Commencement of *Ineligibility* Period

10.9.1 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

10.9.2 Any period of *Provisional Suspension* (whether imposed or voluntarily accepted) shall be credited against the total period of *Ineligibility* to be served.

10.9.3 Delays Not Attributable to the *Athlete* or other *Person*.

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 SAIDS *Anti-Doping Disciplinary Committee* 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.

10.9.4 Timely Admission.

Where the *Athlete* promptly (which, in all events, means before the *Athlete* competes again) admits the anti-doping rule violation after being confronted with the anti-doping rule violation by SAIDS, the period of *Ineligibility* may start as early as the date of *Sample* collection or the date on which another anti-doping rule violation last occurred. In each case, however, where this Article is applied, the *Athlete* or other *Person* shall serve at least one-half of the period of *Ineligibility* going forward from the date the *Athlete* or other *Person* accepted the imposition of a sanction or the date of a hearing decision imposing a sanction.

10.9.5 If a *Provisional Suspension* is imposed and respected by the *Athlete*, then the *Athlete* shall receive a credit for such period of *Provisional Suspension* against any period of *Ineligibility* which may ultimately be imposed.

10.9.6 If an *Athlete* voluntarily accepts a *Provisional Suspension* in writing from SAIDS and thereafter refrains from competing, the *Athlete* shall receive a credit for such period of voluntary *Provisional Suspension* against any period of *Ineligibility* which may ultimately be imposed. A copy of the *Athlete's* voluntary acceptance of a *Provisional Suspension* shall be provided promptly to each party entitled to receive notice of a potential anti-doping rule violation under *Code* Article 14.1.

10.9.7 No credit against a period of *Ineligibility* shall be given for any time period before the effective date of the *Provisional Suspension* or voluntary *Provisional Suspension* regardless of whether the *Athlete* elected not to compete or was suspended by his or her team.

46.4

Article 18.2
Interpretation

18.2.1 The headings used in these Anti-Doping Rules are for convenience only and shall not be deemed part of the substance of these Anti-Doping Rules or to affect in any way the language of the provisions to which they refer.

18.2.2 The INTRODUCTION and the APPENDIX 1 DEFINITIONS shall be considered integral parts of these Anti-Doping Rules.

18.2.3 These Anti-Doping Rules have been adopted pursuant to the applicable provisions of the *Code* and shall be interpreted in a manner that is consistent with

applicable provisions of the *Code*. The comments annotating various provisions of the *Code* shall be referred to, where applicable, to assist in the understanding and interpretation of these Anti-Doping Rules.

46.5 **Article 20.3**
Governing Law

South African law governs these Anti-Doping Rules.

46.6 **DEFINITIONS**

No Fault or Negligence:

The *Athlete's* establishing that they did not know or suspect, and could not reasonably have known or suspected even with the exercise of utmost caution, that they had *Used* or been administered the *Prohibited Substance* or *Prohibited Method*.

No Significant Fault or Negligence:

The *Athlete's* establishing that their fault or negligence, when viewed in the totality of the circumstances and taking into account the criteria for *No Fault or Negligence*, was not significant in relationship to the anti-doping rule violation.

Substantial Assistance:

For purposes of Article 10.5.3, a *Person* providing *Substantial Assistance* must: (1) fully disclose in a signed written statement all information he or she possesses in relation to anti-doping rule violations, and (2) fully cooperate with the investigation and adjudication of any case related to that information, including, for example, presenting testimony at a hearing if requested to do so by an *Anti-Doping Organization* or hearing panel. Further, the information provided must be credible and must comprise an important part of any case which is initiated or, if no case is initiated, must have provided a sufficient basis on which a case could have been brought

47. THE PANEL'S FINDINGS & DECISION

The **Panel's** findings relating to its consideration of whether any grounds existed for the possible elimination, reduction or increase in any period of ineligibility under the **Rules**, as well as the **Panel's** decision with regard to what the appropriate period of ineligibility should be, if such grounds be found to exist, are dealt with as follows.

47.1 *No fault or negligence –Article 10.5.1*

47.1.1. **THE PANEL'S FINDINGS** are that **Lezzi**

- ✓ was at fault or negligent;
- ✓ is therefore not entitled to the elimination of the applicable period of ineligibility as envisaged under Article 10.5.1 of the **Rules**.

47.1.2. This is because **Lezzi** admitted that he was at fault or negligent.

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47.2 *No significant fault or negligence –Article 10.5. 2*

47.2.1 **THE PANEL'S FINDINGS**, in the light of decided cases and the distinguishing facts of the admissible and probative value of all the evidence provided by **Lezzi** in mitigation of sanction, are that

- **Lezzi's** fault or negligence was not significant in relationship to his admitted and accepted anti-doping violation.
- **Lezzi** is therefore entitled to a reduction of the otherwise applicable period of ineligibility in accordance with the provisions of Article 10.5.2 of the **Rules**.
- the 2 (two) year period of ineligibility which the **Panel** was obliged under Article 10.2 of the **Rules** to impose upon **Lezzi** for a first anti-doping rule violation is accordingly reduced by 9 (nine) months to 15 (fifteen) months.

Such findings are in line with numerous CAS - Court for Arbitration in Sport cases and awards which the chairperson was able to consider in formulating this decision and reasons on behalf of the **Panel**.

These include those referred to in Annexure X of which the following are specifically noteworthy -

- ✓ the *Lund case in CAS 06/001*,
- ✓ the *Jessica Hardy case in 2009/A/1870*;
- ✓ the *Squizzato case 2005/A/830*
- ✓ the *Knauss case 2005/A/847*.

47.2.2. The findings were reached because the **Panel** is satisfied that **Lezzi**, upon whom the evidentiary burden and thus onus of proof rested by virtue of the anti-doping violation having been admitted, had established to the **Panel's** satisfaction on a balance of probability,

- ✓ how the Prohibited Substances entered his system
- ✓ that he bore No Significant Fault or Negligence.

The basis upon which the **Panel** reached its findings concerning how the Prohibited Substances entered **Lezzi's** system and that **Lezzi** bore No Significant Fault or Negligence are dealt with paragraphs 47.2.3 and 47.2.4 below.

47.2.3 **How the Prohibited Substances entered Lezzi's system ?**

Lezzi's evidence

- a. This is set out in paragraphs 13/15 – admissions /curtailment of proceedings, 16/22 procedure to be followed, preliminary evidentiary matters & exhibits 23/28 - evidence-in-chief, cross-examination and other, including submissions - 29/41.
- b. **Lezzi's** testimony and that of his sister Dr Marisa Lezzi was accepted.
- c. Furthermore the **Panel** is satisfied in finding in addition that **Lezzi** was a credible witness whose testimony, as a single witness and as corroborated by the evidence of his sister Marisa Lezzi in her affidavit was of a significantly high probative value and could also be relied upon to verify what had been agreed.

What remains then is for the Panel to consider and determine the answer to the following question.

47.2.4 **Whether Lezzi was able to establish that he bears No Significant Fault or Negligence ?**

47.2.4.1 *Applicable law & Introduction*

Article 10.5.2 of the **Rules** provides for the reduction of any period of ineligibility as follows

If an Athlete or other Person establishes in an individual case that he or she Bears *No Significant Fault or Negligence*, then the period of *Ineligibility* may be reduced, but the reduced period of *Ineligibility* may not be less than one-half of the period of *Ineligibility* otherwise applicable.....

The definition of *No Significant Fault* or negligence provides

The *Athlete's* establishing that their fault or negligence, when viewed in the totality of the circumstances and taking into account the criteria for *No Fault or Negligence*, was not significant in relationship to the anti-doping rule violation

The comments to Article 5 of the **Rules** read

[Comment to Articles 10.5.1 and 10.5.2

SAIDS Anti-Doping Rules provide for the possible reduction or elimination of the period of Ineligibility in the unique circumstance where the Athlete can establish that he or she had No Fault or Negligence, or No Significant Fault or Negligence, in connection with the violation.

This approach is consistent with basic principles of human rights and provides a balance between those Anti-Doping Organizations that argue for a much narrower exception, or none at all, and those that would reduce a two year suspension based on a range of other factors even when the Athlete was admittedly at fault.

These Articles apply only to the imposition of sanctions; they are not applicable to the determination of whether an anti-doping rule violation has occurred. Article 10.5.2 may be applied to any anti-doping violation even though it will be especially difficult to meet the criteria for a reduction for those anti-doping rule violations where knowledge is an element of the violation.

Articles 10.5.1 and 10.5.2 are meant to have an impact only in cases where the circumstances are truly exceptional and not in the vast majority of cases.

To illustrate the operation of Article 10.5.1, an example where No Fault or Negligence would result in the total elimination of a sanction is where an Athlete could prove that, despite all due care, he or she was sabotaged by a competitor. Conversely, a sanction could not be completely eliminated on the basis of No Fault or Negligence in the following circumstances:

- (a) a positive test resulting from a mislabelled or contaminated vitamin or nutritional supplement (Athletes are responsible for what they ingest (Article 2.1.1) and have been warned against the possibility of supplement contamination);*
- (b) the administration of a Prohibited Substance by the Athlete's personal physician or trainer without disclosure to the Athlete (Athletes are responsible for their choice of medical personnel and for advising medical personnel that they cannot be given any Prohibited Substance); and*
- (c) sabotage of the Athlete's food or drink by a spouse, coach or other person within the Athlete's circle of associates.*

(Athletes are responsible for what they ingest and for the conduct of those persons to whom they entrust access to their food and drink). However, depending on the unique facts of a particular case, any of the referenced illustrations could result in a reduced sanction based on No Significant Fault or Negligence. (For example, reduction may well be appropriate in illustration (a) if the Athlete clearly establishes that the cause of the positive test was contamination in a common multiple vitamin purchased from a source with no connection to Prohibited Substances and the Athlete exercised care in not taking other nutritional supplements.)

For purposes of assessing the Athlete or other Person's fault under Articles 10.5.1 and 10.5.2, the evidence considered must be specific and relevant to explain the Athlete or other Person's departure from the expected standard of behaviour. Thus, for example the fact that an Athlete would lose the opportunity to earn large sums of money during a period of Ineligibility or the fact that the Athlete only has a short time left in his or her career or the timing of the sporting calendar would not be relevant factors to be considered in reducing the period of Ineligibility under this Article.

mg *gr* *ll*

While minors are not given special treatment per se in determining the applicable sanction, certainly youth and lack of experience are relevant factors to be assessed in determining the Athlete or other Person's fault under Article 10.5.2, as well as Articles 10.4 and 10.5.1.

Article 10.5.2 should not be applied in cases where Articles 10.3.3 or 10.4 apply, as those Articles already take into consideration the Athlete or other Person's degree of fault for purposes of establishing the applicable period of Ineligibility.]

47.2.4.2 Precedent

The following CAS – Court for Arbitration in Sport – cases and the advisory opinion have been considered by the Chairperson in determining the Panel's findings and making its formal written decision.

1. **Arbitration CAS 98/208 N., J., Y., W. / Fédération Internationale de Natation (FINA), award of 22 December 1998***
2. **Arbitration CAS 2002/A/432 D. / Fédération Internationale de Natation (FINA), award of 27 May 2003**
3. **Arbitrage TAS 2007/A/1252 Fédération Internationale de Natation (FINA) c. M. & Fédération Tunisienne de Natation (FTN), sentence du 11 Septembre 2007**
4. **Arbitration CAS ad hoc Division (OG Turin) 06/001 World Anti-Doping Agency (WADA) v. United States Anti-Doping Agency (USADA), United States Bobsled & Skeleton Federation (USBSF) and Zachery Lund, award of 10 February 2006**
5. **Arbitration CAS 2008/A/1488 P. v. International Tennis Federation (ITF), award of 22 August 2008**
6. **Arbitration CAS 2005/A/847 Hans Knauss v. FIS, award of 20 July 2005**
7. **Arbitration CAS 2005/A/830 S. v. FINA, award of 15 July 2005**
8. **Arbitration CAS 2005/A/918 K. v. FIS, award of 8 December 2005**
9. **Arbitration CAS 2009/A/1926 International Tennis Federation (ITF) v. Richard Gasquet & CAS 2009/A/1930 World Anti-Doping Agency (WADA) v. ITF & Richard Gasquet, award of 17 December 2009**

10. Arbitration CAS 2009/A/2012 Doping Authority Netherlands v. N., award of 11 June 2010
 11. Arbitration CAS 2009/A/1870 World Anti-Doping Agency (WADA) v. Jessica Hardy & United States Anti-Doping Agency (USADA), award of 21 May 2010
 12. Advisory opinion CAS 2005/C/976 & 986 Fédération Internationale de Football Association (FIFA) & World Anti-doping Agency (WADA), of 21 April 2006.
-

47.2.4.3 Principles to be applied

The guiding principles gleaned from such cases and advisory opinion which the **Panel** has considered in determining whether or not there had been significant fault or negligence on the part of **Lezzi** are.

1. The **Panel** must assess whether **Lezzi's** fault or negligence was not significant when viewed in the totality of the circumstances of his particular case.
2. The **Panel** ought to weigh the efforts and precautions undertaken by **Lezzi** in their totality, in determining whether these meet the threshold of "*no significant fault or negligence*" and if they do not, how far short they fall.
3. The **Panel** has to determine the reasons which prevented **Lezzi** in a particular situation from complying with his or her duty of care.
For this purpose, the **Panel** has to evaluate the specific and individual circumstances. However, only if the circumstances indicate that the **Lezzi's** departure from the required conduct under the duty of utmost care was *not significant*, may the **Panel** apply article 10.5.2 of the Rules and depart from the standard sanction.
4. The **Panel** has the discretion to depart from the standard laid down in reducing any period of ineligibility.
5. Other than as illustrated in the commentary to Article 10.5 "*truly exceptional circumstances*" have not been defined.

6. The Panel is not required to distinguish between whether these circumstances are “objectively” or “subjectively”, determined, although it is obvious that these must be *specific* and *relevant* to explain the athlete’s departure from the expected standard of behaviour.
7. Anti-Doping Organisations are “waging a war” against those athletes who infringe the rules relating to doping in sport. The Panel ought to bear policy in mind ...for.....

“If an athlete who competes under the influence of a prohibited substance in his body is permitted to exculpate and reinstate himself in competition by merely pleading that he has been made the unwitting victim of his or her physician’s (or coaches) mistake, malfeasance or malicious intent, the war against doping in sports will suffer a severe defeat.”

47.2.4.4 Panel’s Findings - assessment and application of the evidence in line with precedent and guiding principles.

Having established that Lezzi was negligent (paragraph 45.1) the Panel gave consideration to whether such negligence in the totality of the circumstances was significant in relationship to the anti-doping violation.

This was done in accordance with the decided cases and advisory opinion, quoted above in - 47.2.4.2, as well as guiding principles - 47.2.4.3, anti-doping policy, the article written by Olivier Niggli and Julien Sieveking, titled “*Selected Case Law Rendered Under the World Anti-Doping Code*” written for *Jusletter*, as well as other decided cases including those referred to therein.

THE PANEL’S FINDING IS THAT

the Panel is satisfied that Lezzi has established on a balance of probability that he did not bear significant fault or negligence in the totality of the circumstances in relationship to the anti-doping violation.

This finding is based on the Panel’s finding relating to the credibility and thus reliability of Lezzi’s testimony and the corroboration thereof. Such evidence was not disputed and remained uncontroverted throughout the hearing proceedings.

It is also given in spite of there being no evidence before the **Panel** that, **Lezzi**, upon whom the duty of care rested to exercise utmost caution ie the very highest standard of care, had indeed done so in order to ensure that no prohibited substance entered his system.

In this regard **Lezzi** failed to take any steps to consult - or provide evidence that he had consulted - more widely with recognised sports physicians and in particular orthopaedic practitioners for the purpose of the diagnosis and/or appropriate treatment for his arthritic knee condition- with specific reference to the WADA Prohibited List.

The comments to Article 10.5 of the **Rules** suggest that the elimination or reduction of sentence, as provided under Article 10.5.1 and 10.5.2 of the Rules, have an impact only *in truly exceptional circumstances*.

The **Rules** do not define "exceptional circumstances". The comments or explanatory notes as *Niggli and Skieveling* referred to them, provided limited illustrative positions, some of which are equivocal, as a guide to interpreting what may or may not amount to fault or negligence, or significant fault or negligence.

It is clear that the **Panel** is therefore not limited or bound by such examples

The **Panel** reached its findings and decision by applying the more rigorous approach adopted by the panels in some of the decided cases, as supported by *Niggli* and *Sieveking*, under the following two-fold test.

1. Whether, within the circumstances giving rise to **Lezzi's** negligence such negligence can be considered to fall within the bounds of exceptional circumstances, in order for such negligence to then be considered as possibly not being significant, for the purpose of any reduction in the sanction; and
2. If so, whether such negligence fell to be considered as ordinary negligence – allowing for a possible reduction of up to one half of any period of ineligibility, or as significant negligence – not allowing for any reduction at all, or somewhere in between.

The comments to Article 10.5 of the **Rules** provide that the evidence which ought to be considered for such purposes *must be specific and relevant to explain the Athlete's departure from the expected standard of behaviour*.

The **Panel** is satisfied that **Lezzi** established on a balance of probability that truly exceptional circumstances did exist to support **Lezzi's** departure from such expected standard.

The following specific and relevant evidence, arising from the **Panel** having considered all the evidence are the Panel's reasons for this.

- Dr Engela's subsequent corroborative diagnosis of **Lezzi's** condition, as evidenced by his report in "EL1" in which he stated, inter alia, that **Lezzi** had

"longstanding ligamentous instability of both his knees, as well as varus alignment, which is what he was genetically born with. Due to these two factors he now has osteoarthritic change in his knees at a relatively young age."

and recommended that **Lezzi**

"at this stage .. continue with his sporting activities as long as he would like to, to take the occasional anti-inflammatory such as Coxflam (1 three times a week), as and when required, and only when he gets to the point where he feels he is not prepared to cycle anymore and he has too much pain, I will review him with a view to a total knee replacement."

- The supporting X-Rays handed in at the hearing, which although not introduced by an expert and analysed as such, further corroborating **Lezzi's** knee condition;
- **Lezzi's** age at 48, as well as his being a veteran amateur cyclist;
- The fact **Lezzi** had taken the time and the trouble to have had his "B Sample" tested as he was "shocked" about the result and could not explain at that time how it was possible for any prohibited substance to have entered his system;
- It was not being unreasonable to have expected and thus understood that **Lezzi** - having regard to his past medical history and the pain he was experiencing in his knees - would have
 - turned to and implicitly trusted his sister, as a medical practitioner, even though she was a paediatrician, to administer appropriate pain relieving injections into his sore knees when he was in Italy and that these would not have caused him any harm;
 - not believed it necessary- even naively and negligently so, as he himself admitted - to have had to tell her, what she would have known already, namely that he was a competitive cyclist and questioned her as to what she

intended to administer as an injection, especially for what was "once off" possible pain relief, whilst he was training out-of-season, not competing and on holiday in Italy ;

- certainly tried to postpone the likelihood of further knee surgery, even knee replacement surgery;
- not seen any medical practitioner for eight years whilst participating in cycling;
- not have consulted with any medical practitioner about his condition until he had spoken to his sister, following his being notified about the test results;
- not seen anyone because he knew what they would say about his knee condition;
- not taken further pain killers such as Coxflam, especially if such medication had not worked;
- sought to "live with the pain as long as possible.

Panel's Findings - No Significant Fault or Negligence

It follows from the same reasoning- by which the Panel was able to find the circumstances as truly exceptional - that the Panel was thus able to reach its finding that Lezzi has established on a balance of probability that he did not bear significant fault or negligence in the totality of the circumstances in relationship to the anti-doping violation.

DETERMINATION OF APPROPRIATE SANCTION

In considering the appropriate sanction the Panel turned its attention to the following


1. "Setting the bar"

The Panel considered how much of the period of ineligibility should be reduced.

This was based on the Panel's evaluation of the degree of Lezzi's negligence, as it "set the bar" for such negligence as falling somewhere between ordinary and significant.

It was noted in particular by the panel in the **Knauss award** that

"The higher the threshold is set for applying the rules, the less the opportunity remains for differentiating meaningfully and fairly within the range of the sanction. But the low end of the threshold for the element "no significant fault" must also not be set too low; for otherwise the period of



ineligibility of two years laid down in article 2 FIS rules would form the exception rather than the general rule(s) sic"

CAS 2005/A/847 Hans Knauss v. FIS, award of 20 July 2005

By assuring harmony and thus consistency of decision making, by reference to the following decided cases, and the recent SAIDS case of Gideon Muller as local precedent, the **Panel** was satisfied that the degree of **Lezzi's** negligence was fairly set at 66% (sixty six per cent) allowing for a 9 (nine) month reduction in the applicable 2 (two) year period of ineligibility.

See in this regard the following cases.

CAS 2009/A/1870 WADA v Jessica Hardy & USADA, award 21 May 2010; CAS 2005/A/830 S. v. FINA, award of 15 July 2005; CAS 2002 A 385 T v FIG 23 January 2003.

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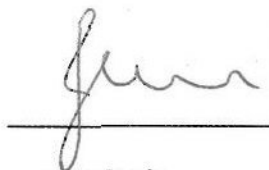
The Panel's decision as regards the appropriate sanction is as follows.

THE PANEL'S DECISION

Mr Enzo Lezzi, having admitted the anti-doping violation and all the elements thereof, serve an 15 month period of ineligibility commencing from the date of notification of the "AAF" - adverse analytical finding - ie 21 November 2011. Such period to run to 22 February 2013, on the understanding that the time served under provisional suspension from the date of notification of the adverse analytical finding on 21 November 2011 shall be credited to such period.

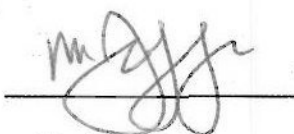
NOTE: It is understood as a given, but mentioned nevertheless that during such period Lezzi

- is not entitled to participate in any capacity under any other SASCOC affiliated sporting code, other than authorised anti-doping education or rehabilitation programs, in compliance with Article 10.10;
- will be required as a condition of regaining eligibility to make himself available for out-of-competition testing in compliance with Article 10.11.



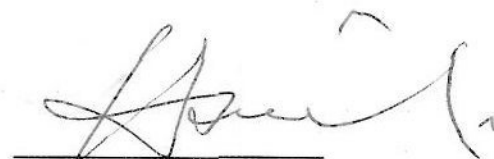
John Bush

Chairman



Nasir Jaffer

Member



Hasnodien Ismail

Member

28 September 2012

EXHIBIT 'A'

E.Q.M. HUNTER

From: Enzo Lezzi [enzo@sircampsbay.co.za]
Sent: 02 July 2012 12:51 PM
To: 'E.Q.M. HUNTER'
Subject: FW: LEZZI,GIUSEPPE

Hi Earl

As discussed herewith the x-rays.

Regards

Enzo

From: marisa lezzi [mailto:marisalezzi@virgilio.it]
Sent: 22 December 2011 12:09 AM
To: Enzo Lezzi
Subject: Fwd: LEZZI,GIUSEPPE

Inizio messaggio inoltrato:

Da: yolanda.j@tuft.co.za
Data: 28 novembre 2011 12.15.10 GMT+01.00
A: marisalezzi@virgilio.it
Oggetto: LEZZI,GIUSEPPE

Attached are the images as requested.

Regards

Yolanda Jacobs
Head Radiographer
Dr Tuft & Partners Inc.
Radiologists
P O Box 461, Plumstead, Cape Town, South Africa, 7801

Tel: +27 21 761-0036 (board)

Fax: 086 567-7219

www.tuft.co.za

(See attached file: LEZZI,GIUSEPPE V,GV,MR.Ser1.Img1.jpg)

(See attached file: LEZZI,GIUSEPPE V,GV,MR.Ser3.Img1.jpg)

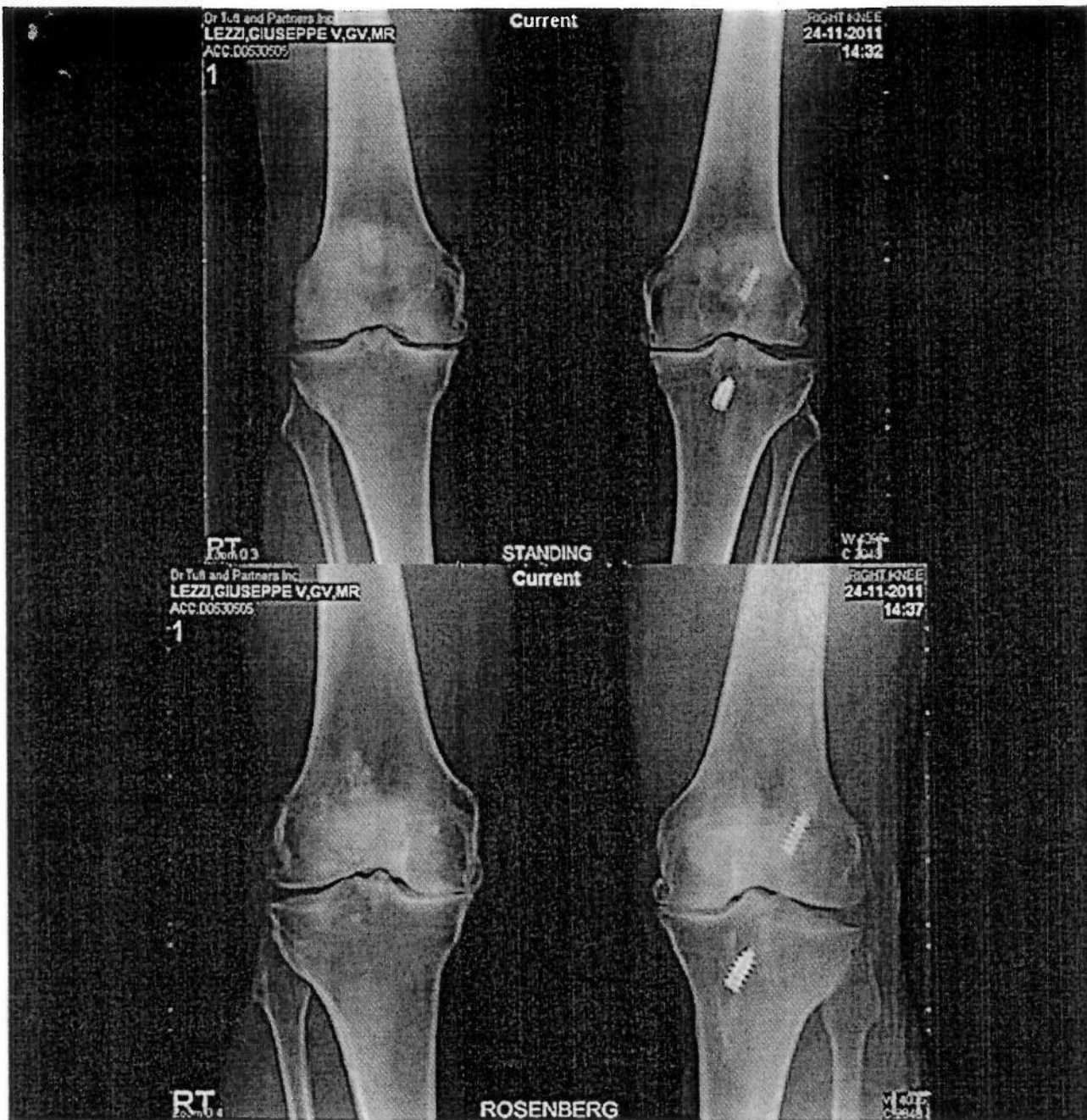
(See attached file: LEZZI,GIUSEPPE V,GV,MR.Ser4.Img1.jpg)

(See attached file: LEZZI,GIUSEPPE V,GV,MR.Ser5.Img1.jpg)

(See attached file: LEZZI,GIUSEPPE

V,GV,MR.Ser6.Img1.jpg)

Exh. B.7 "A"



Dr Tull and Partners Inc
LEZZI, GIUSEPPE V, GV, MR
ACC D0530505

Current

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2011

LT
WAS 25
2011

Dr Tull and Partners Inc
LEZZI, GIUSEPPE V, GV, MR
ACC D0530505

Current

RIGHT KNEE
24-11-2011
14:40

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Zoom 0.3

WAS 25
2011

Dr Tull and Partners Inc Current
LEZZI, GIUSEPPE V, GV, MRC
ACC. D0530505

RIGHT KNEE
24-11-2011
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W.4036
C.2049

BEFORE THE SAIDS ANTI-DOPING DISCIPLINARY COMMITTEE

In the matter between:

THE SOUTH AFRICAN INSTITUTE FOR DRUG-FREE SPORT SAIDS

and

ENZO LEZZI Athlete

AFFIDAVIT

I, the undersigned,

ENZO LEZZI,

do hereby make oath and say that:

1. I am the athlete charged in this matter, and the facts hereinafter stated are within my personal knowledge, save where the context indicates otherwise.
2. At the outset I wish to make it clear that I do not dispute that I am guilty as charged. The purpose of this affidavit is to provide evidence assisting the disciplinary committee in this matter to come to a finding about the sanction to be imposed on me in this case, having regard to the particular set of circumstances which uncannily resulted in the prohibited substance entering into my body, without, and I state at the



outset hereof, any intent, on my behalf to transgress the ethics which pertain to my sport and in particular, the anti-doping rules regulating not only my sport of cycling but all other sports as well.

3. I furthermore wish to place on record and cannot underscore enough my respect for the anti-doping rules and regulations, my abhorrence for doping in sport and my personal intent to achieve and compete in sports, albeit on a non professional level, at the highest ability capable to me on a physical level, without being reliant on any stimulant or prohibited substance whatsoever. I have prided myself on this attitude and the manner in which I have handled by persona in my sporting career to date.

4. The relevant history of the matter is briefly as follows:

4.1 I am 48 years old.

4.2 In my youth I participated in a number of sports, including football (soccer) and karate.

4.3 My football career was terminated in 1990 as the result of injuries to both my knees, more details about which I provide below.

4.4 During 1982, 1988 and 1990 I underwent various surgical

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procedures for the treatment of my knees, including treatment and removal of cartilage, attachment of ligaments and ligament cruciate treatment.

4.5 I annex hereto marked "EL1" a medical report by Dr Deon Engela, a qualified orthopaedic surgeon, stating that:

"This patient has had longstanding ligamentous instability of both his knees, as well as varus alignment, which is what he was genetically born with. Due to these two factors he now has osteoarthritic change in his knees at a relatively young age."

4.6. During August 2011, I visited my relatives in Italy where my sister is based. I visit my Italian relatives on an annual basis during the continental summer, at which time I normally participate in cycling training in preparation for the South African cycling season which starts during approximately November every year. I pride myself in keeping my body in peak physical condition and particularly enjoy cycling as a means to furthering my aim in this regard.

4.7 At the time I was suffering from the symptoms described by Dr Engela in paragraph 4 above, resulting in severe pain in my knees when I cycled.



4.8. I consulted my sister in her capacity as a doctor and asked whether she could provide me with some treatment or medication to relieve my discomfort and pain over the medium to long term, as I was having difficulty cycling and even walking at the time.

4.9. My sister accordingly suggested that she would have a look at my knees and then advised me that she would administer an injection to both my knees which would mediate and limit the pain I was currently experiencing at the time.

4.10. At the time, and I admit to it being negligent on my behalf, it did not occur to me that the injection which was being administered by my sister could be and in fact contained a prohibited substance, that substance being Deca Durabolin and if I had known that the substance being administered was indeed a prohibited substance, I would rather have endured the pain and sought an alternative remedy in order not to be in contravention of the anti doping rules which apply to my sport of cycling. I am indeed a lay person and did not know what the substance was and to say the least, trusted my sister as a medical practitioner in this regard, deferring to her better knowledge regarding my medical condition.

4.11. In my entire sporting career I had been tested twice before the

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particular incident in this matter, and on both occasions the test result was negative. I reiterate that I frown upon and abhor participants who dope in order to obtain an advantage in certain sporting spheres, which is simply put, dishonest and unfair.

4.12. To the best of my knowledge I have never taken any prohibited substance before the particular occasion in question.

4.13. The injections administered by my sister, which occurred on 2 August 2011, to some extent relieved my pain. I did not repeat the treatment.

4.14. On 29 October 2012, a day before the South African International Qualifying Championships, I participated in a fun race held in Bellville.

4.15. I was asked to provide a urine sample at the conclusion of the race.

4.16. At the time I had no suspicion whatsoever that there would be any difficulty and that the urine sample would test positive for any prohibited substance.

4.17. Nevertheless, to my surprise a result was issued on 15 November 2011 to the effect that 19-Norandrosterone, a



metabolite of Nandrolone and/or its precursors, was present in my blood in a concentration of 7.8 ng/ml, which was above the WADA decision limit of 2.5 ng/ml.

Sister dr knows he does sport.

- 4.18. To say the least, I was absolutely shocked and at that stage had absolutely no idea as to how the prohibited substance had entered my blood stream if at all and I thus decided to call for a B sample to ensure the accuracy of the A-sample result.
- 4.19. On 29 November 2011 the result of the B-sample was issued, once again confirming the positive result of the test, which then lead me to take action and to ascertain as a matter of certainty as to the nature of the substance that had entered my body and under what circumstances the said prohibited substance had obtained entry into my blood system.
- 4.20. In the circumstances I decided to do some research, and in conjunction with consulting my sister it became apparent that the injections which she had administer, which she revealed to me being Deca Durabolin, indeed contained the Nandrolone metabolite which is a prohibited substance and thus in all likelihood the said cause of the metabolite entering my system was indeed the injections administered and received in August 2011. I refer to the Affidavits filed evenly herewith in this regard..

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5. I positively state that the administration of the Deca Durabolin injections by my sister in ²August 2011 was for purely medical reasons, namely to relieve the pain in my knees as a result of the ongoing arthritic condition from which I was suffering and still do suffer.
6. At no stage did I intend the substance so administered to enhance my sports performance or to mask the use of any prohibited substance.
7. At this juncture, I wish to openly apologise for my negligence in not having taken matters more seriously and to having in fact ascertained as a precaution, before the administration of the injections by my sister, that the said injections contained a prohibited substance. I reiterate my apology in this regard, however, emphatically point out that I in no way intended to in any way enhance my sports performance, the cause for the injections being solely my extensive arthritic conditions experienced in my knees, which ultimately lead directly to the prohibited substance finding its way into my system. I can confirm that I certainly know better at this juncture and have learnt a very valuable lesson going forward, so as to ensure that any medication which I may receive for my arthritis or any other cause whatsoever, does not contravene the very rules and regulations which pertain to my sport of cycling and the prohibited banned substances which one is prevented from taking.
8. In the circumstances I respectfully submit that I did not receive the treatment in order to enhance my sport performance or to mask the



presence of any prohibited substance. I have never intended to flout the very rules and regulations which ascribe to my sport regarding the use of prohibited substances and at no stage during my sporting career have I ever been reliant on any means or substance to enhance my performance.

9. In addition, I wish to point out the following facts:

8.1 I am not a professional cyclist, and I make no money from the sport of cycling.

8.2 The reason why I cycle is purely for social and health reasons, and in order to maintain healthy body conditioning and I utilise fund races and league events to this end.

8.3 I am 48 years of age and have never been tested positive for any prohibited substance in sport.

8.4 At the time when I received the injections I question, I can confirm that I was out of competition and was purely at that juncture riding by way of training firstly to keep fit and secondly, to prepare for the South African Cycling season and its events in which I compete.

8.5 In the result the issue of doping was not foremost in my mind

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at the time. Although I fully understand that I was negligent in that I did not make enquiries as to whether the substance with which I was injected was a prohibited substance, I respectfully ask the Tribunal to take into account my particular circumstances and facts, in assessing my degree of negligence.

9 Having regard to the foregoing and the circumstances of my negligence, I submit that the said negligence, albeit admitted, was of a low degree and is solely consistent with my ignorance in relation to the identity of the prohibited substance and the manner in which same entered my body.


10 I have endured a suspension from competing in any cycling events with effect 21 November 2012 which suspension pertained to me competing and participating in any authorised or organised sport by any professional league or any international, national, regional level, event organiser. I confirm that that suspension is still in force and I have abided thereby in each and every respect.

11 In the result I have been unable to participate in my sport of choice or any other organised sport since 21 November 2011, which is 8 months ago. I have in effect already been punished for my negligence.

12 In the circumstances I humbly and respectfully submit that, given the degree of my negligence, coupled together with the circumstances


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prevalent in this particular matter, an appropriate sanction would be a declaration of ineligibility with retrospective effect to coincide with the period of my suspension served to date.



ENZO LEZZI

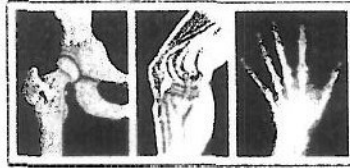
Signed and sworn to before me at CAPE TOWN on this the 19TH day of JULY 2012, the deponent having acknowledged that he/she knows and understands the contents of this affidavit, has no objection to taking the prescribed oath and considers the prescribed oath binding on his/her conscience.



COMMISSIONER OF OATHS

DAVID WAYNE BLOCH
Attorney at Law
7th Floor Commerce House
55 Shortmarket Street, Cape Town
Commissioner of Oaths





"ELI"

Dr Deon Engela

Deon Engela FCS(SA)ORTH. Orthopaedic surgeon/Ortopediese chirurg
PR. NO. 2805715

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24 November 2011

Dr E Burger
Hout Bay Medical Practice
34 Victoria Avenue
7806 HOUT BAY

Fax No: (021) 790-9174

Dear Eugene

RE: **Giuseppe Vincenzo Lezzi** Ref No: **15 712** Diagnosis: **Painful knees**
Date of Birth: **23 April 1964** ICD10 Code: **M25.56**

Thank you for referring this 47-year old gentleman with a longstanding history of knee problems. He was a professional soccer player and had multiple injuries to both knees. He has also had multiple surgeries to both knees. He is now a very competitive cyclist and has found that his knees are starting to hurt him. He has difficulty with pain in his knees after activity, often whilst sitting with his knees in a fixed position, and even sometimes when he has to walk his dogs. He has no other joints that are involved and he mentioned that the two things that bother him most about his knees are the discomfort in his knees and the intermittent swelling that he might have after activity.

Past medical history: He is on Eltroxin for his thyroid that gave him trouble a number of years ago. He is not allergic to anything and he is not on any regular medication.

On examination: This patient was of normal build and has varus alignment of both his knees. He had multiple scars surrounding both his knees. He had decreased internal rotation of both his hips but this was pain free, normal external rotation and normal flexion. His right knee was in varus alignment and had complete laxity of his anterior cruciate ligament. He had pain along the medial joint-line, McMurray test created some pain but no specific crepitus. The left knee had multiple larger scars; he had a previous Macintosh procedure as well as an intra-articular ACL reconstruction. There was a loose body palpable on the medial joint-line and he had pain throughout the range of motion. Both knees had restricted flexion; on the right he was able to flex about 15° and on the left he could only flex to about 95° - 100° without pain. For the rest, he had normal circulation, normal feet and ankles and normal sensation.

X-rays that were taken today demonstrated medial compartment joint-space narrowing and, on Rosenberg views, he actually has no joint-space in the medial compartment of both the knees. He has osteoarthritic change in the patellofemoral joint and, on the left knee, he also has some osteoarthritic change in the lateral compartment.

ASSESSMENT:

This patient has had longstanding ligamentous instability of both his knees, as well as varus alignment, which is what he was genetically born with. Due to these two factors he now has osteoarthritic change in his knees at a relatively young age. He still wants to be active and competitive in cycling and therefore he would not be a suitable candidate for total knee replacements, as he is still functioning better than he would with total knee replacements. My suggestion for him, at this stage, was to continue with his sporting activities as long as he

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would like to, to take the occasional anti-inflammatory such as Coxflam (1 three times a week) as and when required, and only when he gets to the point where he feels he is not prepared to cycle any more and he has too much pain, I will review him with a view to total knee replacement. The only other surgical procedure that could be considered before knee replacement is an arthroscopic debridement if he develops locking symptoms due to loose bodies in his knee or some mechanical problem. I did, however, mention to him that an arthroscopy *per se* would not give him more time or mileage on his knee before he requires a knee replacement. I did mention that some people advise hyaloronic injections into the knee, but I am not keen on those injections as there is not enough proper scientific evidence that they make any difference.

Yours sincerely

Deon

Deon Engela
ORTHOPAEDIC SURGEON

Copy to: enzo@sircampsbay.co.za (check this e-mail address on the file)

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AFFIDAVIT

I, the undersigned,

MARISA LEZZI,

Do hereby confirm and state as follows:

1. I am a duly qualified practicing Doctor, currently resident at Contrada Maiorana, Viggiano (P2), 85059, Italy.
2. I hold a Bachelor of Medicine Degree obtained from the University of Witwatersrand in 1985.
3. I currently practice as a Pediatrician and confirm further that I have been practicing medicine in Italy since 1994 where I am resident.
4. Mr Enzo Lezzi is my brother who visits Italy annually during the Summer, his last visit being during the Summer of 2011.
5. During Mr Lezzi's visit to Italy, he complained to me of the severe knee pains that he was enduring, indicating to me that his knee problems were worsening and that he persistently suffered severe pain, brought upon by the years of competing in football and sport which he played for many years in South Africa.
6. Pursuant to x-rays of Mr Lezzi's knees having been carried out, I have viewed the said x-rays which to me revealed an advanced state of osteo-arthritis, bilaterally, which in this particular case would equate to a patient radiography, who was approximately 70 years of age.

1 | Page



7. I am aware that Mr Lezzi has been advised that a total knee replacement for both his knees is inevitable, however, at his current age, it is suggested that he is too young for this medical procedure.
8. In order to relieve the pain symptoms experienced by Mr Lezzi, I administered to him, and as a purely palliative treatment for the symptom relief, an intra articulate steroid injection, being a 50 ml of deco dera durabolin 50mg vial bilaterally. This was administered during mid August 2011.

Marisa Lezzi

MARISA LEZZI

I certify that the above signature is the true signature of the deponent and that she has acknowledged that she knows and understands the contents of this Affidavit which Affidavit was signed and sworn to before me in my presence at _____ on this _____ day of

2012, in accordance with the Government Gazette Notice No. R1258 dated 21 July 1972, as amended by Government Notice No. R1648 dated 19 August 1977, as further amended by Government Notice No. R1428 dated 11 July 1980, and by Government Notice No. R774 of 23 April 1982.

COMMISSIONER OF OATHS

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