



Tribunal Arbitral du Sport
Court of Arbitration for Sport

CAS 2014/A/3598 – Johan Bruyneel v. United States Anti-Doping Agency
CAS 2014/A/3599 – Jose Martí Martí v. United States Anti-Doping Agency
**CAS 2014/A/3618 – World Anti-Doping Agency v. Johan Bruyneel, Pedro Celaya Lezama,
Jose Martí Martí & United States Anti-Doping Agency**

PARTIAL ARBITRAL AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition

President: The Hon. L. Yves Fortier QC, attorney-at-law in Montreal, Canada
Arbitrators: Prof. Philippe Sands, QC, barrister in London, United Kingdom
Dr. Hans Nater, attorney-at-law in Zurich, Switzerland
Ad hoc Clerk: Ms Annie Lespérance, attorney-at-law in Montreal, Canada

in the consolidated arbitrations between

JOHAN BRUYNEEL, Belgium Appellant
Vs.
UNITED STATES ANTI-DOPING AGENCY, Colorado Springs, USA Respondent

and

JOSE MARTÍ MARTÍ, Spain Appellant
Vs.
UNITED STATES ANTI-DOPING AGENCY, Colorado Springs, USA Respondent

and

WORLD ANTI-DOPING AGENCY, Montreal, Canada Appellant
Vs.
JOHAN BRUYNEEL, Belgium Respondent
DR. PEDRO CELAYA LEZAMA, Spain Respondent
JOSE MARTÍ MARTÍ, Spain Respondent
UNITED STATES ANTI-DOPING AGENCY, Colorado Springs, USA Respondent

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I. INTRODUCTION

A. CONSOLIDATION OF THE APPEALS TO THE AAA DECISION BEFORE CAS

1. On 21 April 2014, the American Arbitration Association (“AAA”) issued an award in the case of *USADA v. Johan Bruyneel, Pedro Celaya Lezama and Jose Martí Martí*, in AAA Cases Nos. 77 190 00225 12/77 7 190 00226 12/7 190 00229 12 (the “AAA Award” or “AAA Decision”).
2. The AAA imposed a period of ineligibility of 10 years for Mr. Bruyneel and 8 years for each of Dr. Celaya and Mr. Martí.
3. Three appeals were launched before the Court of Arbitration for Sport (CAS) in respect of the AAA Decision:
 - a) CAS 2014/A/3598 *Johan Bruyneel v USADA* (“Bruyneel’s Appeal”);
 - b) CAS 2014/A/3599 *Jose Martí Martí v USADA* (“Martí’s Appeal”); and
 - c) CAS 2014/A/3618 *WADA v Johan Bruyneel, Pedro Celaya Lezama, Jose Martí Martí and USADA* (“WADA’s Appeal”).
4. While both Messrs Bruyneel and Martí seek a reduction of their sanction, WADA seeks a lifetime ineligibility sanction against Messrs. Bruyneel, Martí and Celaya. Dr. Celaya has not appealed the AAA Decision.
5. These three interrelated appeals have proceeded on a consolidated basis before CAS (the “Consolidated Appeals”). Accordingly, the present Partial Award is issued in all three appeals.

B. PARTIES

1. Mr. Bruyneel

6. Mr. Bruyneel is a Belgian national and has been a resident of the United Kingdom for three years. Until October 2012, he was the manager/sporting director of the Radioshack Nissan Trek team. Prior to that, Mr. Bruyneel was a manager of the following teams:

Year	Team
2010-2011	Team RadioShack
2008-2009	Astana
2005-2007	Discovery
1999-2004	US Postal

7. Mr. Bruyneel is represented in these proceedings by Mr. Mike Morgan of Morgan Sports Law LLP located in London, UK.

2. Mr. Martí Martí

8. Mr. Martí, a Spanish national, was involved as a team trainer with various cycling teams:

Year	Team
2008-2010	Astana
2005-2007	Discovery Channel
1999-2005	US Postal Services

9. Mr. Martí is represented in these proceedings by Mr. Jesús Morant Vidal, attorney-at-law in Elche, Alicante, Spain.

3. Dr. Celaya Lezama

10. Dr. Celaya served as team physician for the US Postal Services team in 1997, 1998 and 2004 and for the Discovery Channel team between 2005 and 2007. During the 1993-2003 time period, Dr. Celaya served in the same capacity for the UCI team ONCE.
11. As noted, Dr. Celaya did not appeal the AAA Decision.
12. In respect of WADA's Appeal in which Dr. Celaya is a named Respondent, by a letter to CAS dated 17 June 2014, Dr. Celaya's counsel, Mr. Jon Pellejero, attorney-at-law in San Sebastián, Spain, indicated that Dr. Celaya would not take part in the appeal.

4. USADA

13. The United States Anti-Doping Agency (“**USADA**”) is the independent anti-doping agency for Olympic Sports in the USA based in Colorado, USA. It is responsible for conducting drug testing and adjudication of positive test results pursuant to the USADA Protocol for Olympic Movement Testing (“**USADA Protocol**”).
14. USADA is represented in these proceedings by its General Counsel, Mr. William Bock, III.

5. WADA

15. The World Anti-Doping Agency (“**WADA**”) is a Swiss private law foundation whose headquarters is in Montréal, Canada, but whose seat is in Lausanne, Switzerland. WADA is the global regulator of the World Anti-Doping Agency Code (“**WADA Code**”).
16. WADA is represented in these proceedings by Messrs. Richard Young and Brent Rychener of Bryan Cave LLP in Colorado Springs, USA.

II. FACTUAL BACKGROUND TO THE DISPUTE

A. BACKGROUND FACTS

17. Below is a summary of the main relevant facts and allegations based on the parties’ written and oral submissions and adduced evidence. Additional facts and allegations may be set out, where relevant, in connection with the discussion of jurisdiction and merits that follows. Although the Panel has considered all the facts, allegations, legal arguments and evidence submitted by the parties in the present proceedings, it refers in its Partial Award only to the submissions and evidence it considers necessary to explain its reasoning.
18. This is the last chapter of the saga involving as its main actor Lance Armstrong and the US Postal Services (USPS) and Discovery Channel cycling teams.
19. The Panel recalls that Lance Armstrong, the winner of seven Tour de France cycling titles, after denying for many years that he had ever used prohibited substances, admitted in January 2013 that he had been using doping products for many years in order to enhance his performance. Lance Armstrong received the highest possible sanction: the imposition of a lifetime ban.
20. According to USADA, Mr. Bruyneel, Dr. Celaya and Mr. Martí, with Lance Armstrong and many other riders, were involved in a doping scheme that took place on the USPS and Discovery Channel cycling teams between the years 1997 and 2007.
21. They encouraged the use of doping products by riders on the team, to enhance their performances and avoid detection.
22. According to USADA and WADA, in carrying out this doping scheme, Mr. Bruyneel, Dr. Celaya and Mr. Martí and others engaged in numerous violations of the Union Cycliste Internationale Anti-Doping Regulations (“**UCI ADR**”).
23. Lance Armstrong is not involved in these proceedings as he unsuccessfully challenged USADA’s jurisdiction over him in U.S. federal court and subsequently declined to seek review of USADA’s charges against him in accordance with the USADA Protocol.

24. On 10 October 2012, USADA issued its Reasoned Decision on Disqualification and Ineligibility (the “**Reasoned Decision**”) setting forth the evidence it would have introduced had the case against Lance Armstrong proceeded to a hearing.
25. The UCI and WADA did not appeal USADA’s Reasoned Decision. Consequently, as noted above, Lance Armstrong was banned for life from sport and all his competitive results since 1 August 1998 were disqualified.
26. On 12 June 2012, USADA put Mr. Bruyneel, Dr. Celaya and Mr. Martí as well as Dr. del Moral¹ and Dr. Ferrari² on notice of anti-doping rule violations (the “**Notice Letter**”). The Notice Letter consists of 15 pages. For present purposes, the Panel cites the five introductory paragraphs of the Notice Letter:

Dear Mr. Bruyneel, Dr. Celaya, Dr. del Moral, Dr. Ferrari, Mr. Martí, and Mr. Armstrong:

This letter is to notify each of you (collectively referred to as the “Respondents”) that the United States Anti-Doping Agency (“USADA”) is hereby opening a formal action against each of you based on the evidence that, as described below, you engaged in anti-doping rules violations under the Union Cycliste International (“UCI”) Anti-Doping Rules from 1998 to present (“UCIADR”), World Anti-Doping Code from inception to present (the “Code”) and USADA Protocol for Olympic and Paralympic Movement Testing from inception to present (the “USADA Protocol”) (collectively, the “Applicable Rules”).

This notice letter describes a portion of the evidence gathered by USADA in its investigation of potential doping on the United States Postal Service (USPS) (1996-2004), Discovery Channel (2005-2007), Astana (2009) and RadioShack (2010) cycling teams. The witnesses to the conduct described in this letter include more than ten (10) cyclists as well as cycling team employees.

An important aspect of USADA’s investigation has been face to face meetings between USADA representatives and riders on the above referenced cycling teams. USADA sought to give the riders an opportunity to be a part of the solution in moving cycling forward by being truthful and honest regarding their past experiences with doping in cycling.

With the exception of Mr. Armstrong, every other U.S. rider contacted by USADA regarding doping in cycling agreed to meet with USADA and to truthfully and fully describe their involvement in doping and all doping by others of which they were aware. Mr. Armstrong was likewise contacted through his legal counsel and given the opportunity to meet with USADA to fully and truthfully disclose all knowledge of anti-doping rule violations committed in the sport of cycling. However, Mr. Armstrong declined USADA’s offer.

Information set forth herein also comes from a number of other eyewitnesses to the conduct described. In every instance the conduct described in this letter has only been relied upon by USADA and described in this letter if the witness has confirmed to USADA that the information is based on his or her first hand knowledge.

¹ Dr. del Moral was the team physician for the USPS cycling team between 1999 and 2003. On 12 July 2012, he received a lifetime period of ineligibility sanction. Dr. del Moral testified in the present proceedings.

² Dr. Ferrari was a consulting doctor to numerous USPS and Discovery Channel Cycling Team riders during the period between 1999 and 2006. On 12 July 2012, he received a lifetime period of ineligibility sanction.

27. In the closing paragraphs of the Notice Letter, USADA wrote that it “*was forwarding this matter to a panel of the USADA Anti-Doping Review Board for its consideration and recommendation as set forth in the USADA Protocol*” and continued as follows:
- If this case proceeds beyond the Anti-Doping Review Board, USADA will recommend a sanction under the Applicable Rules which may include up to **a lifetime period of ineligibility from participation in sport**. If you choose to contest the consequence recommended by USADA, you will have the right to request a hearing. If a hearing is held in the regular course, you should anticipate a hearing date before November, 2012.³*
28. Accordingly, on 28 June 2012, USADA sent a ten-page letter (the “**Charge Letter**”) to Mr. Bruyneel, Dr. Celaya and Mr. Martí as well as Dr. del Moral⁴ and Dr. Ferrari⁵ informing them that its “*Review Board had determined that there was sufficient evidence of anti-doping rules violations and recommended that the adjudication process proceed*” and that they were being charged with “*anti-doping rules violations under the Union Cycliste Internationale (“UCI”) Anti-Doping Rules 1997 to present (“UCI ADR”), World Anti-Doping Code 2003 to present (the “Code”) and USADA Protocol for Olympic and Paralympic Movement Testing 2000 to present (the “USADA Protocol”), the USOC National Anti-Doping Policies 1997 to present (the “USOC NADP”), and the USA Cycling Anti-Doping Rules 1997 to present (collectively, the “Applicable Rules”)*”. There followed a summary of such anti-doping rules violations.

B. PROCEEDINGS BEFORE THE AMERICAN ARBITRATION ASSOCIATION

29. On 31 July 2012, USADA initiated arbitral proceedings before the AAA against Mr. Bruyneel, Dr. Celaya and Mr. Martí for alleged multiple doping rule violations.
30. A pre-hearing teleconference was held on 12 November 2012 during which Mr. Bruyneel, Dr. Celaya and Mr. Martí requested that the proceedings be bifurcated so that the following issues could be determined at the outset :
- d) the jurisdiction issue;
 - e) the effect of USADA’s breach of confidentiality;
 - f) the application of the Statute of Limitations; and
 - g) the right of Mr. Bruyneel, Dr. Celaya and Mr. Martí to appeal any interim decision of the Panel to the CAS upon issuance of such decision.
31. Following the receipt of written submissions on these issues, a hearing was held in London, United Kingdom, on 11 March 2013.
32. On 7 June 2013, the AAA Panel, composed of Messrs. David Rivkin, Mr. Jeffrey Benz and the Honourable James Murphy (Chairman), issued Procedural Order No. 2 (the “**PO2**”) which provides as follows in respect of the jurisdictional and confidentiality issues:

JURISDICTION

³ Emphasis in original.

⁴ See *supra* footnote 1.

⁵ See *supra* footnote 2.

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

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

[...]

CONFIDENTIALITY AND RIGHT TO DISCLOSURE

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

[...]

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

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

The Panel notes that the UCI ADR, the Code, and the Protocol do not appear to provide a specific penalty for violation of the confidentiality provisions. However,

the Panel presumably would be empowered to craft a penalty, such as interim measures, through other applicable provisions should it find an effect of the breach of confidentiality on the proceedings before it. The Panel has not found such an effect.

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

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

C. MR. BRUYNEEL'S FIRST APPEAL TO CAS

33. On 2 August 2013, Mr. Bruyneel filed an appeal before the CAS in respect of the AAA Panel's decision on jurisdiction set out in its PO2. USADA objected to the jurisdiction of the CAS.
34. On 16 December 2013, the CAS Court Office issued the operative part of the CAS decision in CAS 2013/A/3285 *Johan Bruyneel v USADA*. The CAS found that "it has no jurisdiction to deal with the appeal filed on 2 August 2013 by Mr. Johan Bruyneel against USADA with respect to Procedural Order No. 2 rendered by the AAA on 12 June 2013".
35. The reasoned CAS award was communicated to the parties on 13 May 2014. It provided that the AAA decision on jurisdiction:

[...] is no more than a provisional view or tentative finding by the AAA Panel, it is not an "award", a "final award" or a "partial, interim or non-final award" within the USADA Protocol or the Appeal Rules of the CAS Code. CAS has therefore no jurisdiction to hear this appeal.

D. AAA HEARING AND DECISION

36. On 16-19 December 2013, a hearing on the merits was held before the AAA Panel. Mr. Bruyneel did not attend and did not present any evidence or information in his defence against anti-doping rule violations due to his concern that such evidence would end up in the hands of Floyd Landis and/or the US Department of Justice for the purposes of a Qui Tam action. In this respect, Mr. Bruyneel submits that USADA refused to give any assurances that it would not disclose to third parties information or documents filed by him.
37. On 21 April 2014, the AAA Panel issued its Decision. Its operative part reads, in relevant part, as follows:

USADA has sustained its burden of proof as to all Respondents. As a result, Respondents have each committed their first doping violations under Article 2.1 of the 2009 version of the WADA Code, with the presence of aggravating circumstances. Therefore, the Panel imposes a period of ineligibility for each Respondent as follows:

- (i) *Mr. Johan Bruyneel: 10 years, starting from June 12, 2012 and continuing through and including June 11, 2022;*
- (ii) *Dr. Pedro Celaya: 8 years, starting from June 12, 2012 and continuing through and including June 11, 2020; and*
- (iii) *Mr. Jose Martí Martí: 8 years, starting from June 12, 2012 and continuing through and including June 11, 2020.*

III. PROCEDURAL HISTORY BEFORE CAS

- 38. On 12 May 2014, Messrs. Bruyneel and Martí filed separate appeals of the AAA Decision to the CAS. On 2 June 2014, WADA also appealed the Decision. Dr. Celaya has not appealed.
- 39. These three appeals constitute the Consolidated Appeals.
- 40. On 19 August 2014, the Parties were notified of the constitution of the Panel to decide the Consolidated Appeals:
President: The Honourable L. Yves Fortier, QC, attorney-at-law in Montreal, Canada
Arbitrators: Prof. Philippe Sands, QC, barrister in London, United Kingdom
Dr. Hans Nater, attorney-at-law in Zurich, Switzerland
- 41. The Parties did not raise any objections as to the constitution and composition of the Panel at any time in these proceedings.

A. FIRST PHASE OF THE CONSOLIDATED APPEALS BEFORE CAS

- 42. In view of the fact that USADA had not objected to Mr. Bruyneel's request that the proceedings be bifurcated, the CAS Court Office confirmed by letter of 3 June 2014 that the proceedings were bifurcated and invited the parties to address preliminarily in their briefs issues pertaining to USADA's result management jurisdiction and the AAA's disciplinary authority.
- 43. By letter dated 9 February 2015, after having considered the parties' submissions including expert reports, the Panel scheduled a telephonic hearing on the preliminary issues of USADA's result management jurisdiction and the AAA's disciplinary authority for 2 March 2015 with counsel only.
- 44. The following persons attended the 2 March 2015 telephonic hearing:

FOR JOHAN BRUYNEEL

- Mr. Mike Morgan Counsel
- Dr. Sébastien Besson Counsel

FOR JOSÉ MARTÍ MARTÍ

- Mr. Jesús Morant Vidal Counsel
- Ms. Sonsoles Arroyo Interpreter

FOR DR. PEDRO CELAYA

- Dr. Celaya and his counsel did not participate

FOR THE WORLD ANTI-DOPING AGENCY

- Mr. Richard Young Counsel
- Mr. Brent Rychener Counsel

FOR THE UNITED STATES ANTI-DOPING AGENCY

- Mr. William Bock Counsel
- Mr. Onye Ikwuakor Counsel

45. The Panel was assisted by Mr. William Sternheimer, Deputy Secretary General of the CAS and Ms. Annie Lespérance, *ad hoc* clerk of the Panel.
46. On 11 March 2015, the Panel issued a partial decision determining that USADA had result management jurisdiction and the AAA had disciplinary authority over Messrs Bruyneel, Celaya and Martí. The decision reads as follows:

Dear Sirs,

Following the telephonic hearing held on 2 March 2015 in respect of the substantive issue of USADA's results management jurisdiction and the AAA's disciplinary authority over Messrs Bruyneel, Celaya and Martí, the Panel, having deliberated, has decided that USADA had results management jurisdiction and the AAA the disciplinary authority over Messrs Bruyneel, Celaya and Martí.

The present decision is a partial decision on a substantive issue and not a preliminary decision on the jurisdiction of CAS within the meaning of Article 190 of the Swiss Private International Act. The reasons for the Panel's decision will be included in its Final Award, together with its findings on the remaining substantive issues.

In view of this decision, the Panel shall now proceed with the remaining substantive issues of the case and a deadline of 10 days from the receipt of the present letter is granted to the Parties to agree a procedural calendar (exchange of submissions on the remaining substantive issues which have been suspended pending the present decision, hearing location and possible hearing dates). In the absence of any agreement between the Parties within the prescribed deadline, the Panel will fix the procedural calendar.

[...]

B. MR. BRUYNEEL'S APPEAL TO THE SWISS FEDERAL TRIBUNAL

47. On 27 April 2015, Mr. Bruyneel appealed the 11 March 2015 partial decision to the Swiss Federal Tribunal.
48. On 26 May 2015, USADA and WADA submitted their response to the Swiss Federal Tribunal. The CAS also participated in these proceedings.
49. On 8 October 2015, the Swiss Federal Tribunal issued a decision staying the CAS proceedings pending Mr. Bruyneel's appeal before it.
50. On 28 January 2016, the Swiss Federal Tribunal declared Mr. Bruyneel's appeal inadmissible. It found as follows at para. 3.3.4 of its decision:

3.3.4. Finally, this Court would engage in an artificial and perilous exercise if it speculated as to the Panel's reasons on the basis of the more than concise explanations in the March 11, 2015, letter and the answer to the appeal submitted by the CAS, by trying to supplement the pertinent factual findings as case law authorizes (see aforesaid judgment 4A_600/2008 at 3), only to compare these reasons to the numerous arguments raised by the Appellant in his appeal brief and in his reply. Therefore, it is in the well-understood interest of all parties to the dispute to wait for the notification of the final award in order to examine, only once, the arguments that the Appellant and the other parties involved may submit in a possible appeal against the aforesaid award.⁶

C. SECOND PHASE OF THE CONSOLIDATED APPEALS BEFORE CAS

51. USADA and WADA filed their pre-hearing submissions on 30 September 2015.
52. On 26 May 2016, Mr. Bruyneel and Mr. Martí filed their Briefs on the Merits.
53. The English translation of Mr. Martí's submission was filed on 2 June 2016.
54. Dr Celaya did not file any submissions.
55. A hearing on the merits was held between 10 and 14 October 2016 at the CAS Headquarters in Lausanne, Switzerland.
56. The following persons attended the hearing:

FOR JOHAN BRUYNEEL

- Mr. Johan Bruyneel Appellant
- Mr. Mike Morgan Counsel
- Mr. Jim Bunting Counsel
- Ms. Lisa Jones Counsel

FOR JOSÉ MARTÍ MARTÍ

- Mr. José Martí Martí Appellant
- Mr. Jesús Morant Vidal Counsel
- Mr. Javier Sempere Counsel
- Mr. Santos Gonzalez Counsel
- Ms. Sonsoles Arroyo Interpreter

FOR DR. PEDRO CELAYA

- Dr. Pedro Celaya Respondent (videoconference) – only appearing as a witness
- Mr. Jon Pellejoro Counsel (only present for Dr. Celaya's testimony)

FOR THE WORLD ANTI-DOPING AGENCY

- Mr. Richard Young Counsel
- Mr. Brent Rychener Counsel

⁶ English translation found on <http://www.swissarbitrationdecisions.com>

FOR THE UNITED STATES ANTI-DOPING AGENCY

- Mr. William Bock Counsel
- Mr. Jeff Cook Counsel

57. The Panel was assisted by Mr. William Sternheimer, Deputy Secretary General of the CAS and Ms. Annie Lespérance, *ad hoc* clerk of the Panel.
58. At the hearing, the Panel heard the detailed submissions of counsel as well as the evidence of the following witnesses in the following order:

Witnesses called by Mr. Bruyneel

- Mr. Dirk Demol (by videoconference), sports director on the USPS team as of 2000 who also worked with Mr. Bruyneel on the Discovery Channel, Astana and Radioshack teams.
- Dr. Pedro Celaya (by videoconference), USPS/Discovery Channel (and later Astana and Radioshack) team doctor from 1997-1998 and from 2004-2012.

Witnesses called by WADA/USADA

- Johan Bruyneel (in person), USPS team manager between 1999 and 2004, Discovery Channel team manager between 2005 and 2007, Astana team manager between 2008 and 2009 and RadioShack team manager between 2010 and 2011.
 - Michael Barry (by videoconference), rider on the USPS team, between 2002 and 2006.
 - George Hincapie (by videoconference), rider on the USPS/Discovery Channel Team between 1999 and 2006.
 - David Zabriskie (by videoconference), rider on the USPS Team between 2000 and 2004.
 - Tom Danielson (by videoconference), rider on the Discovery Channel Team between 2005 and 2007.
 - Tyler Hamilton (by videoconference), rider on the USPS team between 1996 and 2001.
 - Levi Leipheimer (by videoconference), rider on the USPS team in 2000-2001, the Discovery Channel team in 2007, the Astana team in 2008-2009 and the Radioshack team in 2010 – 2011.
 - Dr. Luis Garcia del Moral (in person), USPS team doctor between 1999 and 2003.
 - Dr. Pedro Celaya (by videoconference), USPS/Discovery Channel (and later Astana and Radioshack) team doctor from 1997-1998 and then from 2004-2012.
 - Christian Vande Velde (by videoconference), rider on the USPS team between 1998 and 2003.
59. At the conclusion of the hearing, the parties confirmed that they were satisfied as to how the hearing and proceedings had been conducted.
60. During the last day of the hearing, the Panel instructed the parties to obtain and transmit a transcript of the hearing on jurisdiction and the hearing on the merits.
61. On 18 October 2016, the CAS Court Office sent copies of the audio recordings of the hearings to the parties and members of the Panel.

62. On 30 January 2017, WADA wrote to CAS as follows:

“[W]e would request again that CAS provide an audio-recording of the first part of the proceedings from day three of the hearing, 12 October 2016 (which consisted primarily of Mr Bock beginning his cross-examination of Mr Bruyneel.) If CAS is not able to provide an audio tape of this portion of the proceedings, we would appreciate confirmation to that effect.

In the event there is no audio tape recording available for the missing portion of the proceedings from 12 October 2016, we believe it would be appropriate to provide the parties with an opportunity to address the Panel as to the propriety and fairness of utilizing an incomplete written transcript that does not contain a critical portion of the testimony heard by the Panel during the hearing.”

63. On 1 February 2017, the CAS Court Office wrote to the parties as follows:

“By letter of 31 January 2017, the CAS Court Office confirmed that “even if the recording was going on, there seem to have been a technical problem with the recording of the first hours of the hearing on 12 October 2016.”

In the circumstances, WADA requested that the parties be provided “with an opportunity to address the Panel as to the propriety and fairness of utilizing an incomplete transcript that does not contain a critical portion of the testimony heard by the Panel during the hearing.

WADA’s request is granted. The parties are invited to submit, simultaneously, written submissions of no more than 5 pages each on this issue by 8 February 2017.”

64. Following Mr. Bruyneel’s request that his submission be filed consecutively to WADA/USADA’s submission rather than simultaneously, which the Panel granted, WADA/USADA filed their submission, including their joint proposal for the preparation of a final written transcript on 8 February 2017. Mr. Bruyneel filed his response on 16 February 2017.

65. On 21 February 2017, under the control of the Panel, the CAS Court Office wrote to the parties as follows:

“[T]he Panel decides as follows.

While it is possible that the Parties may not agree a common position with respect to the contents of the missing portion of the transcript, the Panel believes that the experienced counsel representing the parties should be given the opportunity of agreeing a common position.

If they cannot reach a common position, each party is invited to provide the Panel with its/his separate submission and the Panel will then review the parties’ submissions, refer to its own notes as well as the notes of Mr Sternheimer and Ms Lespérance, and issue a ruling.

In the meantime, the Panel directs the parties to seek to agree a procedural calendar as to the revision of the transcript and report to the Panel within the next 10 days.”

66. By letter of 3 March 2017, WADA wrote to the Panel setting out the parties’ agreed procedural calendar for the revision of the transcript. The parties informed the Panel that a final transcript and summary of the missing portion of Day 3 (to include any unresolved disagreements, if applicable) would be submitted to the Panel by 8 May 2017.

67. On 12 May 2017, WADA/USADA wrote to the Panel as follows:

“[T]he parties anticipate they will be able to submit the revised and corrected transcript to CAS during the first half of June 2017, along with an agreed-upon summary of Mr Bruyneel’s testimony or separate submissions for the Panel’s consideration.

During the process of reviewing the transcript, the parties also discovered there is no audio-recording of the closing arguments made by WADA and USADA on Day 5 of the hearing. WADA and USADA have determined they are unable to recreate their closing arguments from their notes with any accuracy, and if they attempted to do so, the result would essentially be the same as some of the arguments they will make in their written closings. For this reason, WADA and USADA proposed to opposing counsel that for the sake of fairness all closing arguments be excluded from the final hearing transcript. Counsel for Mr. Bruyneel objected to this proposal and did not consent to excluding their closing arguments from the final transcript. Given that the Panel has requested post-hearing briefs from the parties, WADA and USADA trust that the Panel will rely on its notes of WADA and USADA's oral closing arguments in addition to their post-hearing briefs."

68. On 26 May 2017, under the Panel's control, the CAS Court Office wrote to the parties seeking a progress report in respect of the transcripts by 1 June 2017.

69. On 1 June 2017, WADA wrote to the Panel as follows:

"[I]t is expected that the parties will be ready to submit the final transcript to CAS on or before 16 June 2017.

With respect to the missing audio recording from Day 3 of the hearing, [...] the parties determined that it would not be possible to reach agreement on a summary of the missing testimony, and that the most efficient use of the parties' time and resources would be to submit separate summaries of the missing testimony to the Panel for its considerations. The parties' summaries of the missing testimony will be submitted along with the final hearing transcript.

[...] Subject to the Panel's approval, the parties propose that the deadline for post-hearing briefs be forty-five days after the final transcript is submitted to CAS. Assuming this occurs on 16 June 2017, this would mean that the deadline would be 31 July 2017." (Panel's emphasis.)

70. On 2 June 2017, the CAS Court Office, on behalf of the Panel, wrote to the parties endorsing their proposed calendar.

71. On 16 June 2017, the parties filed the transcripts and, since they had been unable to reach agreement on a summary of the missing testimony, their respective summaries in respect of Mr. Bruyneel's cross-examination.

72. On 22 November 2017, the parties, after having been granted several extensions, filed their respective Post-Hearing Briefs.

73. By letter of 20 June 2018, the CAS Court Office wrote to the parties confirming that, in view of the parties' agreement, the issue of the costs will be dealt with following the issuance of the present Partial Award.

IV. REQUESTS FOR RELIEF

A. MR. BRUYNEEL

74. In his Statement of Appeal filed on 12 May 2014, Mr. Bruyneel requests, in relevant part that:

[...] the Panel rule that there is no valid arbitration agreement between Mr. Bruyneel and USADA and that consequently:

- (a) neither USADA nor the AAA have jurisdiction over Mr Bruyneel;
- (b) the AAA Decision (at least as far as it pertains to Mr Bruyneel) is to be annulled since it has no legal foundation.

Alternatively, if the Panel were to find that there was a valid arbitration agreement [...], the Appellant [...] requests:

- (a) the annulment of the AAA's Decision relating to USADA's anti-doping charges (at least as far as the decision pertains to Mr Bruyneel);
- (b) a ruling that Mr Bruyneel should not be sanctioned.

B. MR. MARTÍ

75. In his Statement of Appeal filed on 12 May 2014, Mr. Martí requests, in relevant part, that the Panel issue a decision:
- 1. *Upholding the request of the stay due to criminal prejudiciality as invoked by this party, the stay of this appeal proceeding to CAS is declared until there is a sentence on the criminal proceedings conducted by Number 2 Justice's Court of Denia (Spain) or said proceedings are discontinued.*
 - 2. *In the absence of the above, this appeal is given leave as legally provided so that CAS, upholding the arguments of this submission, eventually revokes the award rendered by the AAA Panel on April 21, 2014 notified by email to this party on April 22, 2014.*

C. USADA

76. USADA requests that the Panel reject Mr. Bruyneel's and Mr. Martí's appeals and impose a lifetime ineligibility on Messrs. Bruyneel, Martí and Celaya.

D. WADA

77. WADA requests that a lifetime ineligibility should be imposed on Messrs. Bruyneel, Martí and Celaya.

V. JURISDICTION AND ADMISSIBILITY

A. JURISDICTION OF CAS AND ADMISSIBILITY OF THE APPEALS

78. Article R47 of the Code of Sports-related Arbitration (the "**CAS Code**") provides as follows:
An appeal against the decision of a federation, association or sports-related body may be filed with the CAS insofar as the statutes or regulations of the said body so provide or as the parties have concluded a specific arbitration agreement and insofar as the Appellant has exhausted the legal remedies available to him prior to the appeal, in accordance with the statutes or regulations of the said sports-related body.
79. Section 15b and Article 13 of Annex A to the USADA Protocol provide that a final award rendered by the AAA/CAS in accordance with the USADA Protocol may be appealed to the CAS by either the Appellant or Respondent. Section 15b provides that the "*CAS shall*

conduct a review of the matter on appeal, which among other things, shall include the power to increase, decrease, or void the sanctions imposed by the previous AAA/CAS Panel regardless of which party initiated the appeal". Article 13.2 provides that "[a] decision that an anti-doping rule violation was committed" or "a decision imposing Consequences for an anti-doping rule violation" may be appealed to the CAS.

80. The Panel notes that neither Mr. Bruyneel nor Mr. Martí contest the jurisdiction of CAS to hear their appeals. Rather, they contest the jurisdiction of USADA, the anti-doping organization which launched proceedings against them, and the AAA, the arbitration body which issued a decision in the first instance. The issues of USADA's result management jurisdiction and the AAA's disciplinary authority go to the merits and are therefore discussed in Section VII A of this Partial Award.
81. USADA does not contest the jurisdiction of CAS in respect of Messrs Bruyneel and Martí's appeals.
82. The Panel further notes that Mr. Bruyneel contests the jurisdiction of CAS to decide WADA's appeal. For the reasons set out in the following section entitled "WADA's Appeal", the Panel is of the view that it has jurisdiction over WADA's appeal.
83. Consequently, the Panel determines and confirms that it has jurisdiction over all three appeals.
84. Article R49 of the CAS Code provides as follows:
In the absence of a time limit set in the statutes or regulations of the federation, association or sports-related body concerned, or of a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against. After having consulted the parties, the Division President may refuse to entertain an appeal if it is manifestly late.
85. Pursuant to Article 15(b) of the USADA Protocol, a "*final award by the AAA/CAS arbitrator(s) may be appealed to the CAS within twenty-one (21) days of issuance of the final reasoned award [...]*".
86. The Panel notes that the AAA Decision is dated 21 April 2014. The Decision was issued and transmitted to the parties on 22 April 2014.
87. Mr. Bruyneel and Mr. Martí both filed their respective Statement of Appeals with the CAS on 12 May 2014. Accordingly, the Panel finds that their appeals are admissible.
88. WADA filed its Statement of Appeal on 2 June 2014. Pursuant to Article 13.2.3 of the WADA Code, WADA's deadline for filing an appeal shall be "*the later of twenty-one (21) days after the last day on which any other party in the case could have appealed, or twenty-one (21) days after WADA's receipt of the complete file relating to the decision.*" This same deadline is incorporated in Article 13.2 of Annex A to the USADA Protocol.
89. Accordingly, the Panel finds that WADA's appeal is also admissible.

B. WADA'S APPEAL

1. Mr. Bruyneel's Position

90. In his Answer Brief, Mr. Bruyneel submits that the Panel has no jurisdiction to hear or determine WADA's appeal.

91. Firstly, he argues that WADA does not have any right of appeal under the UCI ADR since the AAA Award is outside the scope of decisions that can be appealed under the UCI ADR.
92. Pursuant to Article 330 of the UCI ADR, different parties, including WADA, have the right to appeal the decisions listed at Article 329 of the UCI ADR. Those decisions are:
1. *A decision of the hearing body of the National Federation under article 272;*
 2. *A decision of the National Federation not to instigate disciplinary proceedings;*
 3. *A decision of the UCI not to go forward with an apparent anti-doping violation;*
 4. *A decision of the UCI not to bring forward an Atypical Finding as an Adverse Analytical Finding;*
 5. *The final decision at the level of the National Federation regarding a License-Holder that was referred to his National Federation according to article 203;*
 6. *A decision of the Anti-Doping Commission granting suspension of the period of Ineligibility;*
 7. *A decision of the UCI's disciplinary commission concerning a violation of the prohibition of participation during Ineligibility imposed under these anti-doping rules.*
93. Mr. Bruyneel avers that UCI ADR 329.2 to 329.7 obviously do not apply, and that UCI ADR 329.1 also does not apply for the following reasons.
- (i) Under UCI ADR 329.1, only decisions “*taken by the hearing body of the National Federation under article 272*” are appealable.
 - (ii) Article 272 is found at Chapter IX of the UCI ADR and is reached following this process:

Chapter IX

249. When, following the results management process described in chapter VII, the UCI makes an assertion that a License-Holder committed an anti-doping rule violation, it shall notify the License-Holder's National Federation and request it to instigate disciplinary proceedings. It shall also send a copy of the test analysis report and/or other documentation. A copy of the request may be sent to the License-Holder and/or the License-Holder's club or team.

A copy of the request is sent to WADA and to the License-Holder's National Anti-Doping Organization.

[...]

License-Holder called before his National Federation

251. The License-Holder's National Federation shall call the License-Holder before it to hear his grounds and explanations.

[...]

Rights of the defense

256. The License-Holder shall be heard and the case investigated by the hearing panel having jurisdiction under the rules of the License-Holder's National Federation.

[...]

Decision

272. The decision of the hearing panel shall note the identities of the parties called or heard and shall contain a brief summary of the procedure.

(Emphasis added)

- (iii) Mr. Bruyneel argues that no decision under UCI ADR 329.1 has been made since (a) USADA refused to cede results management to the UCI despite UCI's protests and thus Chapter VII of the UCI ADR was never activated; (b) Mr. Bruyneel's case was consequently not processed in accordance with Chapter IX; and (c) there is no question that the AAA is not "*the hearing panel having jurisdiction under the rules of the License-Holder's National Federation*".
 - (iv) According to Mr. Bruyneel, WADA cannot rely on the UCI ADR to appeal the AAA Decision.
 - (v) The fact that the AAA Award does not fall within the scope of decisions that can be appealed under the UCI ADR is further evidence that the UCI ADR was not intended to be applied in the manner proposed by USADA, avers Mr. Bruyneel.
94. Secondly, Mr. Bruyneel submits that he has never consented to the application of the USADA Protocol and has therefore never consented to a CAS arbitration with WADA as the result of any decision arising from the AAA.
95. Thirdly, the decision of Ullrich II cannot save WADA's appeal as the facts of that case are incomparable to those of the present case.
- (i) In Ullrich II, the UCI's appeal was admissible under UCI ADR 280 and 283. In the present case, the AAA Award does not fall within the scope of decisions that WADA can appeal under the UCI ADR (see above).
 - (ii) The CAS panel in Ullrich II concluded that "*the UCI has demonstrated that it has concluded a specific arbitration agreement with Ullrich that is enforceable*". There is no such agreement in the present case between Mr. Bruyneel and USADA avers Mr. Bruyneel.
 - (iii) A first instance decision had been made in Ullrich II by a body – the Disciplinary Chamber – that did have jurisdiction. If the Panel agrees that the AAA decision is invalid for lack of jurisdiction, then the doping charges would fall away and WADA's appeal would have no object argues Mr. Bruyneel. WADA is not empowered to initiate disciplinary proceedings on its own initiative.
96. The Panel therefore has no jurisdiction to hear any appeal between Mr. Bruyneel and WADA relating to the merits of the underlying doping dispute arising from the AAA proceedings submits Mr. Bruyneel.

2. WADA's Position

97. WADA submits that the Respondents are bound by the UCI ADR - whether by license (for Mr. Bruyneel), by participating in UCI-governed competition (for Messrs Bruyneel, Marti

- and Celaya), by admission that the UCI ADR applies (for Dr. Celaya) or by specific agreement to arbitrate under the USADA Protocol (for Mr. Martí).
98. The UCI ADR make clear that WADA has the right to appeal in every conceivable situation involving alleged anti-doping violations by any UCI licensee or participant (see UCI ADR Articles 329.1, 329.2, 329.3, 330 (f) and 342).
 99. In addition, according to UCI ADR Article 344 and CAS Article R57, the Panel shall have “*full power to review the facts and the law*”. WADA avers that this standard was interpreted in CAS jurisprudence as allowing CAS to conduct a *de novo* hearing, no matter the nature of the decision (or lack of decision) at the initial stage of anti-doping proceedings. (See CAS 2007/A/1396 &1402).
 100. Therefore, argues WADA, when Messrs Bruyneel, Martí and Celaya submitted themselves to the UCI ADR, they agreed CAS would have jurisdiction, in a *de novo* hearing, in any case where WADA exercised its right to appeal from the initial proceedings involving alleged anti-doping violations by Messrs Bruyneel, Martí and Celaya.
 101. According to WADA, regardless of whether USADA had jurisdiction to initiate and arbitrate anti-doping proceedings against Messrs Bruyneel, Martí and Celaya, the UCI ADR provides an independent basis for CAS jurisdiction to hear WADA’s appeal.
 102. This principle that the UCI ADR provides independent CAS jurisdiction for WADA’s appeal was confirmed in Ullrich II, avers WADA. There, the UCI appealed against a decision by Swiss Olympic’s Disciplinary Chamber that Antidoping Switzerland did not have jurisdiction to initiate proceedings against Ullrich. Based on the Disciplinary Chamber’s conclusion that the anti-doping organization lacked jurisdiction, there had been no hearing or decision on the merits. The CAS panel held that, regardless of whether Antidoping Switzerland had lacked jurisdiction to initiate anti-doping proceedings against Ullrich, CAS had independent jurisdiction to hear UCI’s appeal, including on the merits, based on its explicit right of appeal in the UCI ADR. The CAS panel concluded Ullrich committed anti-doping violations and imposed a two-year period of ineligibility.

3. Panel’s Analysis

103. The Panel recalls that, at the hearing on jurisdiction, WADA asserted its right of appeal to CAS under the USADA Protocol, rather than the UCI ADR, should the Panel find that USADA had result management jurisdiction as the NADO which discovered the violation.
104. In view of the Panel’s finding that USADA had result management jurisdiction⁷, the Panel has no need to address the parties’ submissions on whether WADA has a right of appeal under the UCI ADR.
105. The Panel confirms WADA’s right of appeal under the USADA Protocol.

C. SCOPE OF THE APPEAL RATIONE MATERIAE

1. Parties’ Positions

106. Mr. Bruyneel agrees that this appeal is proceeding on a *de novo* basis.

⁷ In this respect, see Section VII A below.

107. However, he submits that this appeal is not a brand new proceeding and that the CAS Panel can only revisit the AAA decision. In effect, he submits that only violations which fell within the scope of the AAA Final Decision can be considered in this Appeal.
108. Accordingly, Mr. Bruyneel submits that charges relating to acts pre-dating **12 June 2004** and **all charges other than the “complicity” element of the UCI ADR, namely the possession, trafficking and administration charges** should be excluded from the present appeal.
109. Mr. Bruyneel argues that acts pre-dating 12 June 2004 are inadmissible in the present appeal since, at the merits hearing before the AAA Panel, “*USADA agreed that it would not seek to extend the statute of limitations and would bring charges only on the basis of acts taken within the limitations period.*”⁸ As a result, the AAA Panel only considered “*evidence of conduct by the Respondents occurring after June 12, 2004, eight years prior to USADA’s bringing of the present action against the Respondents.*”⁹
110. WADA submits that it is clear that the AAA Panel admitted substantial evidence about anti-doping rule violations that occurred prior to 12 June 2004.¹⁰
111. Mr. Bruyneel also argues that USADA withdrew the possession, trafficking and administration charges before the AAA Panel and that therefore those charges are inadmissible before CAS. In this respect, he invites the Panel to note the following points:
- (i) USADA/WADA withdrew the possession charge against Mr. Bruyneel during the merits hearing before this Panel. Accordingly, the issue of whether the possession charge was withdrawn before the AAA has now become moot.
 - (ii) USADA did make a written undertaking during the AAA hearing that it would not rely on its fraudulent concealment argument anymore. During the hearing on the merits, USADA said that it would keep this undertaking before the CAS. However, USADA denied having ever withdrawn charges before the AAA.
 - (iii) There is no mention in the AAA Award that the possession, trafficking and administration charges were dropped. In fact, the AAA made findings on the basis of those charges.
 - (iv) Mr. Bruyneel says that the AAA Panel dealt with the possession, trafficking and administration charges when it had no jurisdiction to do so because they were withdrawn orally.
 - (v) Mr. Bruyneel sent letters to USADA to the effect that the possession and trafficking charges had been withdrawn orally:
 - (a) By letter dated 10 January 2014, Mr. Bruyneel wrote:

2.5 Mr Bruyneel notes that the starting sanction for a violation of Article 21.8 of the UCI ADR (which is the only rule violation now pursued by USADA against Mr Bruyneel) is four years.
 - (b) By letter dated 22 January 2014, Mr. Bruyneel recorded that “*USADA conceded at the outset of the hearing that it was not pursuing any possession or trafficking charges against Mr. Bruyneel*”.

⁸ Para. 67 of the AAA Decision.

⁹ Para. 68 of the AAA Decision.

¹⁰ WADA’s Post-Hearing Brief, p. 14. See AAA Decision, paras. 80, 92, 95, 100-102, 106, 112, and 115.

(c) By letter dated 28 January 2014, Mr. Bruyneel wrote:

1.2 [...] USADA conveniently overlooks the fact that Mr Bruyneel pleaded with USADA to particularise its charges on numerous occasions over the months leading up to the hearing. USADA refused to do so and pursued its twenty six (26) charges against Mr Bruyneel, ranging from possession to trafficking, to administration. The distinction between “administration” and “complicity” for the purposes of the 2015 Code was, therefore, somewhat immaterial at that point. The Panel will recall that it was not until the hearing itself that USADA effectively dropped all but one of its twenty six charges*, to focus solely on the complicity element of Article 2.8 of the WADA Code. It is only then that the distinction between “administration” and “complicity” took on any meaning.

*Footnote *: USADA dropped the trafficking and possession charges in its opening and neither pursued nor presented any evidence relating to the “administration” element of Article 2.8 of the WADA Code.*

In its response to these letters, USADA never challenged or took issue with Mr. Bruyneel’s repeated presentations that, at the AAA hearing, USADA dropped all trafficking and possession charges.

- (vi) USADA recalls that it had asked to strike Mr. Bruyneel’s letters as outside the scope of the request made by the AAA Panel for limited post-hearing submissions. Accordingly, USADA did not specifically reply to each of the points raised by Mr. Bruyneel in his letters. WADA submits that the letters do not show a clear and unequivocal waiver or withdrawal of any charges by USADA and emphasizes that the AAA Panel reached the same conclusion because, after receiving the parties’ letters, the AAA Panel determined in its Decision that Mr. Bruyneel had committed possession, administration and trafficking offenses.
- (vii) As to the administration charge, Mr. Bruyneel submits that USADA focused all of its time at the AAA hearing on the “complicity” element of Article 2.8 of the 2004 version of the WADA Code. USADA did not allege that Mr. Bruyneel had, in fact, administered anything to anyone. Nor did it suggest that the term “administration” meant anything other than a physical act. Mr. Bruyneel submits that, on this basis, USADA has never pursued an administration charge.
- (viii) In any event, WADA submits that Mr. Bruyneel’s position on the scope of the proceedings ignores Articles 13.1.1 and 13.1.2 of the 2015 WADA Code which provides as follows:

13.1.1 Scope of Review Not Limited

The scope of review on appeal includes all issues relevant to the matter and is expressly not limited to the issues or scope of review before the initial decision maker.¹¹

13.1.2 CAS Shall Not Defer to the Findings Being Appealed

¹¹ Emphasis added by WADA.

In making its decision, CAS need not give deference to the discretion exercised by the body whose decision is being appealed.

[Comment to Article 13.1.2: CAS proceedings are de novo. Prior proceedings do not limit the evidence or carry weight in the hearing before CAS.]

- (ix) On this basis, WADA argues that it is not limited to the facts, legal theories and charges advanced below.
- (x) Mr. Bruyneel, in response to WADA's submission, submits that Article 13.1.1 of the WADA Code refers to "issues" and not "violations". The WADA Code does make a distinction between those two terms. In other words, WADA is not limited to the facts, evidence and arguments heard by the AAA Panel (except for Article R57 of the CAS Code) but is limited to the charges which were made before the AAA.

2. Panel's Analysis

- 112. Mr. Bruyneel submits that only violations which fell within the scope of the AAA Decision can be considered by the Panel. Accordingly, he submits that charges relating to acts pre-dating 12 June 2004, and all charges other than the "complicity" element of the UCI ADR, namely the possession, trafficking and administration charges, must be excluded from the present appeal.
- 113. The issue of whether the charges relating to acts pre-dating 12 June 2004 should be considered by the Panel is submitted by Mr. Bruyneel as both a *ratione materiae* and a *ratione temporis* issue. In this section of the Partial Award, it is addressed as a *ratione materiae* issue. In the following section of the Partial Award, it is addressed as a *ratione temporis* issue. In view of the Panel's findings in respect of its competence *ratione temporis* in the following section of the Partial Award, the Panel sees no need to make a determination on this issue in the present section.
- 114. In respect of Mr. Bruyneel's submission that all charges other than the "complicity" element of the UCI ADR, namely the possession, trafficking and administration charges should be excluded from the present appeal, the Panel notes that USADA has withdrawn the possession charge against Mr. Bruyneel during the hearing on the merits. The issue of whether the Panel has jurisdiction over this charge is therefore moot, and the Panel so rules.
- 115. In respect of the trafficking and administration charges, Mr. Bruyneel submits that those charges were withdrawn by USADA before the AAA Panel and therefore should be excluded from the jurisdiction of the Panel. USADA denies ever having withdrawn those charges.
- 116. The Panel notes that Mr. Bruyneel has not submitted any evidence to the effect that those charges were withdrawn by USADA, apart from his own letters to the AAA Panel in which he sets out his personal belief that those charges were withdrawn. It is noteworthy that there is no mention in the AAA Award of any withdrawal of charges by USADA. In fact, the AAA Panel made findings on the basis of those charges.
- 117. In view of this lack of evidence on the withdrawal of charges before the AAA Panel, and for the sake of procedural economy, the Panel need not determine whether, should such evidence have existed, it would have had jurisdiction over those charges on appeal.

D. SCOPE OF THE APPEAL RATIONE TEMPORIS

1. Arbitration Agreement

118. Mr. Bruyneel submits that the Panel has no jurisdiction in respect of events which precede 3 January 2005 since, on USADA/WADA's own case, the arbitration agreement between WADA, USADA and Mr. Bruyneel cannot have come into existence until 3 January 2005 (the date of first signature of his license with his national federation, the Koninklijke Belgische Wielrijdersbond ("KBWB")).

119. In its Answer Brief on Jurisdiction, USADA submitted as follows:

*[...] since the UCI's adoption of the Code on **13 August 2004**, all participants in the sport of cycling have been on notice that they were potentially subject to the results management authority of "Anti-Doping Organizations," such as USADA, not just to the results management authority of the UCI and/or their national federations*

(Emphasis added by Mr. Bruyneel)

120. Mr. Bruyneel submits that on USADA and WADA's own construction of jurisdiction (which is disputed), Mr. Bruyneel could only have consented to the application of UCI ADR 11 and 13 when he signed his license application form on 3 January 2005.

121. According to Mr. Bruyneel, the Panel, therefore, does not have any jurisdiction to make any determination in relation to any dispute between Mr. Bruyneel, WADA and USADA which relates to events that occurred prior to 3 January 2005.

122. WADA submits that Mr. Bruyneel's argument should be rejected. WADA writes as follows:

[I]n his application for a UCI license in 2005, Mr. Bruyneel agreed to "observe the articles of association and regulations of the UCI" and agreed "to lodge any disputes regarding doping with the 'Tribunal Arbitral Du Sport' (TAS) or another authorised appeal body, and I accept that they will make a decision in the final instance." Moreover, Mr. Bruyneel had signed similar license applications as a mandatory requirement for membership in the UCI for many years prior to 2005. By agreeing to be bound by the UCI ADR, Mr. Bruyneel cannot dispute that UCI had the power to amend the UCI ADR, and that he would be bound by such amendments if he remained a member without making any objection to the amendments.

[T]he plain language of the 2004 UCI ADR (which Mr. Bruyneel accepted in his UCI license application) does not limit the results management jurisdiction of USADA or other anti-doping organizations that discover anti-doping rule violations to events occurring after the date of the amendment. While UCI could have chosen to amend its rules to allow other anti-doping organizations to assume results management jurisdiction only for anti-doping rule violations based on events occurring after the amendment, it did not choose to do so. Instead, the only limitation included by the UCI for its 2004 UCI ADR was, "These Anti-Doping Rules shall not apply retrospectively to matters pending before the date these Anti-Doping Rules come into effect." As this matter was not pending prior to 13 August 2004, the UCI ADR provides no basis to conclude that USADA's jurisdiction would be limited to events occurring after the

effective date of the amendments (13 August 2004) or the subsequent date that Mr. Bruyneel signed his next UCI license application.

Moreover, Mr. Bruyneel's interpretation of the UCI ADR would defy common sense in its application. If Mr. Bruyneel's argument were accepted, any anti-doping violation committed by an individual participant of the USPS and Discovery Channel teams that occurred prior to the date such participant signed his license application after the UCI ADR was amended on 13 August 2004 could only have been adjudicated by UCI, while USADA could have adjudicated only anti-doping violations committed by an individual participant occurring after the date such participant signed his application subsequent to 13 August 2004 (even though USADA had discovered the earlier violations as well). This would have created an untenable hodge-podge of jurisdiction resulting in multiple arbitration proceedings for the same participants on the same team involving the same scheme of doping events.

2. Statute of Limitations

123. Article 368 UCI ADR provides:

No action shall be commenced under these Anti-Doping Rules against a License-Holder for a violation of an anti-doping rule contained in these Anti-Doping Rules unless such action is commenced within 8 (eight) years from the date the violation occurred.

Any request for investigation or for disciplinary action and any act of investigation or disciplinary action in relation with the violation shall be considered as commencement of the action for the purpose of this article.

124. This provision became effective on 13 August 2004 and remained unchanged through the 2015 version of the UCI ADR. Therefore, this statute of limitations was in effect at the time USADA began its investigation, at the time the AAA proceedings were initiated, and at the time each appeal in these proceedings was filed.
125. The parties disagree as to when the limitation period begins to run, and when the statute is interrupted.

A Statute of Limitations for Each Act or a Pattern of Acts

126. On the one hand, Mr. Bruyneel submits that each individual act that USADA/WADA claims to be an anti-doping rules violation is subject to its own Statute of Limitations.
127. On the other hand, WADA submits that:

Swiss law dictates that, in cases involving a continuous pattern or scheme of illegal activity, the statute of limitations commences only on the date of the last wrongful act by the offender.

*When applying limitation provisions contained in the regulations of an association, the Court of Arbitration for Sport has considered the character of doping sanctions and referred to the general provisions regarding limitation periods in criminal law (CAS 2001/A/318, *Virenque v. Fédération Cycliste Suisse*, 23 April 2001, Nr. 25):*

The Panel considers that [Virenque] committed “several acts, each a criminal offence, considered as a single act in the sense of a continuous offence”, as recognized by Federal Tribunal case-law connected with Article 71 of the Swiss Criminal Code (see in particular ATF 120 IV 6, recital 2 b). In such cases, the limitation period does not commence while the continuous offence is being committed (BJP 1981 No.181), but only “from the time when the last offence was committed” (ATF 119 IV 73).

Article 98[b] of the Swiss Criminal Code currently reads as follows:

The statute of limitations shall begin to run [...] on the date of the last act if the offender has exercised an activity liable to punishment on several occasions.

The same principle applies to Swiss civil law cases: “In the case of repeated or continuous harmful behavior, the [limitations] deadline starts to run, according to the [Swiss Federal Tribunal] and the prevailing doctrine, from the day of the last tortious act or from the day when the harmful behavior stops.”¹²

Thus, under Swiss law, the statute of limitations period commences from the date of the last doping violation connected to the Respondents’ continuous doping scheme.

128. In response, Mr. Bruyneel submits that this argument was first made by WADA at the hearing. Further to Article R56 of the CAS Code¹³, the Panel should reject the argument argues Mr. Bruyneel. In this respect, WADA notes that the argument was made by Professor Philippin, USADA’s expert on Swiss law, in one of his statements in which he described the last act/continuous scheme doctrine and cited the *Virenque* decision.
129. Mr. Bruyneel further opines that since the 2001 *Virenque* decision relied on by WADA, the CAS has repeatedly held that sport disciplinary proceedings are governed by civil law rather than by criminal law. The CAS position is summarized as follows in 2010/A/2268:

99. Many CAS panels as well as the Swiss Federal Tribunal have stated that sports disciplinary rules are civil law rules and not criminal rules and that judging bodies must apply civil law principles, rather than criminal law principles.

100. For instance, in the advisory opinion CAS 2005/C/841 CONI, the CAS panel stated as follows: “Anti-doping rules are not intended to be subject to or limited by requirements and legal standards applicable to criminal proceedings”.

[...]

108. As a result, the Panel cannot accept the Appellant’s arguments based on analogies with criminal law.

¹² Franz Werro, *Commentaire Romand du Code des Obligations*, art- 1-529, 2d ed., ad art. 60 CO, p. 554, ¶ 26.

¹³ Article R56 of the CAS Code provides as follows: “Unless the parties agree otherwise or the President of the Panel orders otherwise on the basis of exceptional circumstances, the parties shall not be authorized to supplement or amend their requests or their argument, to produce new exhibits, or to specify further evidence on which they intend to rely after the submission of the appeal brief and of the answer. [...]”

10 October 2004¹⁴

130. In the alternative, Mr. Bruyneel submits that the Statute of Limitations can only be interrupted in relation to an alleged violation, if the particulars of that alleged violation have been notified to the respondent and that, until then, the Statute of Limitations continue to run.
131. Mr. Bruyneel explains that he was not presented with any evidence in support of USADA's charges until 10 October 2012, the date on which USADA published its Reasoned Decision, along with the affidavits of its witnesses. Consequently, argues Mr. Bruyneel, the Statute of Limitations for any alleged offending act arising from that evidence cannot be deemed to have been interrupted until 10 October 2012 at the very earliest.
132. Accordingly, submits Mr. Bruyneel, the Panel should only consider alleged anti-doping rule violations within eight years from 10 October 2012, to wit 10 October 2004.

31 July 2004¹⁵

133. Mr. Bruyneel submits, in the alternative, that since no action was actually commenced until 31 July 2012, when USADA referred the matter to arbitration, the Statute of Limitations for any alleged offending act arising from USADA's investigation cannot be deemed to have been interrupted until 31 July 2012.
134. Accordingly, submits Mr. Bruyneel, the Panel should only consider alleged anti-doping rule violations within eight years from 31 July 2012, namely 31 July 2004.

12 June 2004

135. Mr. Bruyneel reminds the Panel that, up until 13 March 2015, USADA itself considered the date on which it had initiated an action under the UCI ADR to be 12 June 2012, as per its Notice Letter. In fact, USADA expressly chose to withdraw charges that predated 12 June 2004 (8 years prior to 12 June 2012) during the course of the AAA proceedings.¹⁶
136. Mr. Martí also argues that every act before 12 June 2004 is time-barred and cannot be considered by the Panel.

12 April 2002

137. USDA/WADA now submit that Article 368 UCI ADR is to be interpreted to mean that any act of investigations is enough to interrupt the Statute of Limitations. According to WADA/USADA, the Panel should consider all violations of any anti-doping rule occurring within eight years from the date of USADA's first act of investigation.
138. USADA submits that its first act of investigation in relation to the USPS doping conspiracy occurred with the interview of Paul Scott by Dr. Eichner on 12 April 2010. Mr. Scott was

¹⁴ This argument appears to have been raised for the first time by Mr Bruyneel in his Post-Hearing Brief.

¹⁵ Id.

¹⁶ See para. 67 of the AAA Final Award.

close to Floyd Landis and provided detailed information regarding an organized doping program on the USPS pro cycling team.

139. As a result, submit USADA/WADA, Messrs Bruyneel, Martí and Celaya may be sanctioned for any anti-doping rule violation occurring within eight years prior to April 2010; therefore, the relevant time period extends back to 12 April 2002.

140. Mr. Bruyneel responds, *inter alia*, as follows:

- (i) USADA's own CEO is clear that a party cannot simply commence an action against an individual based on speculation.
- (ii) USADA/WADA's interpretation of Article 368 UCI ADR would mean that the Statute of Limitations could be interrupted by unsubstantiated allegations, rumours or even just thoughts.
- (iii) In accordance with the principle of legal certainty, Article 368 UCI ADR can only be interpreted to mean that a written notification has to be communicated to a respondent, such that it is clear that the Statute of Limitations has been interrupted. That is presumably why Article 17 of the 2015 version of the UCI ADR (on which WADA/USADA rely) now expressly provides that:

No anti-doping rule violation proceeding may be commenced against an Athlete or other Person unless he or she has been notified of the anti-doping rule violation as provided in Article 7, or notification has been reasonably attempted, within ten years from the date the violation is asserted to have occurred.

- (iv) Mr. Bruyneel is not aware of any law in any country in which a Statute of Limitations can be interrupted without either the imitations of court proceedings or notification of charges to the Respondent.

12 June 2002

141. USADA recalls that, effective 1 January 2015, the statute of limitations in the UCI ADR was amended to provide, at Article 17, that:

No anti-doping rule violation proceeding may be commenced against a Rider or other Person unless he or she has been notified of the anti-doping rule violation as provided in Article 7, or notification has been reasonably attempted, within ten years from the date the violation is asserted to have occurred.

142. USADA submits that, if the current UCI ten year limitations period is applied retroactively to this case it would mean that acts occurring prior to 12 June 2002 (10 years prior to USADA's notification to Messrs Bruyneel, Martí and Celaya), fall outside the statute of limitations unless application of the statute of limitations is tolled or otherwise extended.

143. The 2015 Code and UCI ADR both provide that the new statute of limitations rule is a "procedural rule" and "should be applied retroactively." Article 25.2 of the 2015 UCI ADR provides as follows:

Article 25.2 – Non-Retroactive except for Articles 10.7.5 and 17 or Unless Principle of “Lex Mitior” Applies

The retrospective periods in which prior violations can be considered for purposes of multiple violations under Article 10.7.5 and the statute of limitations set forth in Article 17 are procedural rules and should be applied retroactively; provided, however, that Article 17 shall only be applied retroactively if the statute of limitation period has not already expired by the Effective Date.

144. Therefore, USADA submits that the net effect of application of the new statute of limitations is that it diminishes the time frame of acts within the limitations period by 2 months. In other words, whereas, immediately prior to the effective date of the new WADA Code, the limitations period extended back to 12 April 2002; now, under the new limitations provision, it extends back only until 12 June 2002.
145. Mr. Bruyneel submits that USADA has misread the rule. He argues that Article 25.2 of the 2015 UCI ADR has no impact on any alleged violations pre-dating 1 January 2007, since the limitation period applicable to any such alleged violation would already have expired by 1 January 2015 under the previous 8-year statute of limitations and relies on CAS 2015/A/4304 in support of his argument.

Evidence prior to the limitations period

146. Nevertheless, as tacitly recognized by the AAA panel, USADA submits that evidence of acts which occurred prior to 12 June 2002 may be admissible, *inter alia*, to provide evidence on important background questions relating to the doping scheme, to corroborate or explain evidence of anti-doping rule violations that occurred within the limitations period.
147. WADA agrees with USADA that the Panel may consider Messrs Bruyneel’s, Martí’s and Celaya’s anti-doping rule violations going back to 1999 or earlier based on legal doctrines such as continuing conspiracy, and the continuing duty of athlete support personnel to stop or prevent anti-doping rule violations.
148. Finally, for purposes of determining the appropriate length of sanctions for Messrs Bruyneel, Martí and Celaya, WADA submits that the Panel should consider the totality of the evidence, including Messrs Bruyneel’s, Martí’s and Celaya’s earliest involvement in the USPS team’s anti-doping program going back to the late 1990s. WADA argues that there is nothing in the WADA Code that suggests that the Panel may not consider all misconduct by athlete support personnel in the penalty phase of the proceedings in the Panel’s discretionary power between the minimum of four years to a lifetime ban.

3. Panel’s Analysis

149. In this section the Panel considers its jurisdiction *ratione temporis*.
150. Mr. Bruyneel has made several submissions in this respect. In the first instance, Mr. Bruyneel asserts that the Panel has no jurisdiction in respect of events which precede 3 January 2005 since the arbitration agreement between USADA and Mr. Bruyneel cannot have come into existence before that date.

151. The Panel recalls that the date of 3 January 2005 corresponds to the date on which Mr. Bruyneel first signed his license with the KBWB. This was after the amendments made to the UCI ADR, which allow for result management jurisdiction by a third party institution, as found above, entered into force.¹⁷
152. Prior to that date, although an arbitration agreement existed between Mr. Bruyneel and the UCI, as well as between Mr. Bruyneel and his Belgian Federation, no arbitration agreement existed between USADA and Mr. Bruyneel. Accordingly, prior to that date, the Panel finds that USADA could not have initiated an arbitration proceeding against Mr. Bruyneel.
153. However, the relevant question is whether the arbitration agreement between USADA and Mr. Bruyneel of 3 January 2005 is broad enough to encompass disputes relating to events which occurred prior to the conclusion of the arbitration agreement.
154. As the Panel concluded above, the basis for the arbitration agreement between USADA and Mr. Bruyneel is reached through two global references. The first reference is found in the License Application (and the License) which refers globally to the UCI Regulations. The second reference is found in the UCI Regulations which globally refer to the anti-doping rules of the Anti-Doping Organization that “discovered” the violation (Article 11 UCI ADR). The arbitration agreement is then incorporated into the Anti-Doping Rules of the Anti-Doping Organization that discovered the violation, namely in the USADA Protocol.
155. Accordingly, the Panel must address whether there are any temporal restrictions in the License Application and the 2004 UCI Regulations.
156. Mr. Bruyneel’s License Application does not contain any express temporal limitations. It simply states, in relevant part, that Mr. Bruyneel undertakes to “*observe the articles of association and regulations of the UCI, its Affiliates and its national Federations*” and to “*lodge any disputes regarding doping with the ‘Tribunal Arbitral du Sport’ (TAS) or another authorized appeal body*” (Panel’s emphasis).
157. However, the 2004 UCI ADR does contain the following temporal restriction: “*These Anti-Doping Rules shall not apply retrospectively to matters pending before the date these Anti-Doping Rules come into effect.*” (Panel’s emphasis)
158. The Panel considers that the ordinary meaning of terms “matters pending” (before the date these Anti-Doping Rules come into effect) refers to claims that are subject to a process but which have not yet been decided.
159. In other words, this clause, sometimes known as the single exclusion clause, explicitly excludes from the jurisdiction of the result management body claims which arose before the entry into force of the 2004 UCI ADR. Accordingly, as of 13 August 2004, when the new version of the UCI ADR entered into force, USADA had result management and the AAA the disciplinary authority over claims arising after 13 August 2004.
160. This does not mean, however, that the substantive provisions of the 2004 UCI ADR are applicable to all anti-doping rule violations alleged by USADA. Indeed, by virtue of the principle of non-retroactivity, which is well-established in CAS jurisprudence,¹⁸ the

¹⁷ The amendments entered into force on 13 August 2004.

¹⁸ See *inter alia*, CAS 2000/A/289, Award of 12 January 2001.

applicability of the substantive provisions of anti-doping regulations is determined by reference to the date on which the anti-doping violation occurred, and not the point in time when the dispute arose.

161. Only if the alleged anti-doping violation is subsequent to the entry into force of the anti-doping regulations will the substantive provisions of the anti-doping regulations be applicable to that anti-doping violation.
162. In the present case, Mr. Bruyneel only accepted USADA's offer to arbitrate disputes when he signed his license application on 3 January 2005. Accordingly, in the view of the Panel, USADA has no jurisdiction to prosecute Mr. Bruyneel for any alleged anti-doping rule violation that occurred prior to that date.
163. The Panel is of the view that USADA cannot reach back beyond the point in time of the contractual foundation which confers jurisdiction on this Panel to raise allegations that predate the contractual jurisdictional arrangement between Mr. Bruyneel and USADA. As a result, the Panel finds that the charges which predate 3 January 2005 are excluded from its jurisdiction.
164. The Panel finds however that it may consider evidence as to alleged facts which pre-date 3 January 2005 and which it considers to be materially related to - and relevant to - the assessment of the evidence as to the alleged facts relating to alleged anti-doping rule violations which occurred after 3 January 2005.

VI. APPLICABLE LAW

165. Article R58 of the CAS Code provides that:

"The Panel shall decide the dispute according to the applicable regulations and the rules of law chosen by the parties or, in the absence of such a choice, according to the law of the country in which the federation, association or sports-related body which has issued the challenged decision is domiciled or according to the rules of law, the application of which the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision".

166. The rules applicable to this dispute span many years and three different jurisdictions, namely the UCI, USADA and WADA. The Panel will reference specific rules it has relied on in reaching its various decisions. Generally, the Panel relied on the applicable provisions of the UCI ADR, the WADA Code and the USADA Protocol.

VII. MERITS

167. In this section of the Partial Award, the Panel will consider and determine (A) whether USADA had result management jurisdiction and the AAA the disciplinary authority over Mr. Bruyneel, Mr. Martí and Dr. Celaya, (B) the scope of USADA's mandate, (C) whether USADA/WADA have breached any confidentiality obligation and (D) whether USADA/WADA have sufficiently particularized the charges against Mr. Bruyneel, Mr. Martí and Dr. Celaya.

A. USADA RESULT MANAGEMENT JURISDICTION AND AAA DISCIPLINARY AUTHORITY

1. Relevant Procedural History

168. On 2 March 2015, a telephonic hearing on jurisdiction was held.

169. On 11 March 2015, the Panel wrote to the parties as follows:

Dear Sirs,

Following the telephonic hearing held on 2 March 2015 in respect of the substantive issue of USADA's results management jurisdiction and the AAA's disciplinary authority over Messrs Bruyneel, Martí Martí and Celaya Lezama, the Panel, having deliberated, has decided that USADA had results management jurisdiction and the AAA the disciplinary authority over Messrs Bruyneel, Martí Martí and Celaya Lezama.

The present decision is a partial decision on a substantive issue and not a preliminary decision on the jurisdiction of CAS within the meaning of Article 190 of the Swiss Private International Act. The reasons for the Panel's decision will be included in its Final Award, together with its findings on the remaining substantive issues.

[...]

170. On 24 April 2015, Mr. Bruyneel appealed the Panel's decision before the Swiss Federal Tribunal. Mr. Bruyneel sought the following conclusions from the Tribunal:

- I. Le recours est admis;*
- II. Le recourant n'est pas lié à USADA par une convention d'arbitrage valable;*
- III. La Décision attaquée de la Formation arbitrale TAS est annulée;*
- IV. La Formation arbitrale TAS n'est pas compétente pour statuer sur le fond du présent litige en matière de dopage entre le Recourant et USADA;*
- V. La Formation arbitrale TAS n'est pas compétente pour statuer sur le fond du présent litige en matière de dopage entre le Recourant et l'AMA;*
- VI. La Sentence AAA est annulée pour défaut de compétence du Tribunal AAA; subsidiairement, l'affaire est renvoyée à la Formation arbitrale TAS pour que celle-ci annule la Sentence AAA pour défaut de compétence du Tribunal AAA;*
- VII. Les Intimés sont condamnés aux frais de la procédure devant le Tribunal fédéral et aux dépens (honoraires d'avocat) du Recourant.*

171. On 28 January 2016, the Swiss Federal Tribunal issued a reasoned decision concluding that "le recours est irrecevable".

172. Of particular relevance are the following parts of the Swiss Federal Tribunal's decision:

- 1.2.1 Du point de vue formel déjà, en particulier pour ce qui est de la manière dont elle a été communiquée aux intéressés, la décision attaquée revêt un aspect pour le moins singulier, si on la compare avec les sentences notifiées d'ordinaire par le TAS. Il s'agit d'une simple lettre par laquelle un conseiller juridique du TAS, d'une part, indique aux destinataires de celle-ci quelle a été la décision prise par la Formation, à la suite d'une conférence téléphonique tenue le 2 mars 2015, sur deux des points litigieux – la compétence de l'USADA pour gérer les résultats et le pouvoir disciplinaire du Tribunal AAA à l'égard du recourant, entre autres personnes – en précisant que les*

motifs de cette décision seront inclus dans la sentence finale, et, d'autre part, leur fixe, au nom de la Formation, un délai de 10 jours pour s'entendre sur un calendrier procédural en vue du traitement des autres questions de fond en suspens. Contrairement à ce que prévoit l'art. 59 par. 1 du Code de l'arbitrage en matière de sport, la lettre en question ne comporte aucune motivation et n'a pas été signée par le Président de la Formation. Sans doute le caractère atypique de la décision entreprise ne suffit-il pas à exclure que la Formation, en communiquant cette décision sous une forme inusuelle, ait d'ores et déjà statué définitivement sur sa propre compétence. De même, le fait que ladite décision émane bien de la Formation et non, quoi qu'en disent les intimées, du conseiller juridique qui s'est borné à en communiquer le contenu aux intéressés, ressort clairement de la formulation de la lettre en question. Toujours est-il que le mode de communication de la décision litigieuse constitue un élément à prendre en considération pour déterminer si l'on a affaire ou non, en l'espèce, à une décision incidente sur la compétence du TAS, au sens de l'art. 186 al. 3 LDIP.

1.2.2 *Le contenu de la lettre du 11 mars 2015 est un autre élément dont il faut tenir compte. En effet, dans cette missive, la Formation qualifie elle-même la décision litigieuse de décision partielle sur une question de fond, en excluant la possibilité d'y voir une décision préliminaire sur la compétence du TAS visée par l'art. 190 LDIP. Semblable qualification est confirmée sous ch. 7 de la réponse du TAS où l'on peut lire ce qui suit : « En l'espèce, la Formation considère qu'il ne s'agit pas d'une sentence sur compétence et que la question de la Compétence du Tas n'a pas encore été formellement examinée dans le cadre de cet arbitrage ». Que le Tribunal fédéral ne soit pas lié par cette qualification est une évidence. Cependant, confronté à une déclaration non motivée, il ne peut pas non plus faire abstraction totale de l'avis exprimé par l'auteur de cette décision quant à la nature juridique d'icelle, puisqu'aussi bien, jusqu'à preuve du contraire, la Formation est encore la mieux placée pour fournir des précisions touchant la portée de la décision qu'elle a rendue, et ce indépendamment du nom dont elle l'a baptisée. A cet égard, l'argument du recourant selon lequel la qualification retenue par la Formation « est manifestement destinée à tenter d'éviter un recours à ce stade » (recours, no 106) relève du procès d'intention. Il appert, au contraire, des circonstances exceptionnelles propres à la cause en litige que la Formation pouvait avoir de bonnes raisons de ne vouloir trancher définitivement la question de sa propre compétence qu'en même temps que le fond de la cause. De toutes façons, sa décision de joindre l'incident au fond échappe à toute sanction, comme on l'a vu [...]*

1.2.4 *[...] Considérée dans ce contexte procédural, la situation du recourant ne s'apparentait guère à celle, ordinaire, d'un cycliste professionnel poursuivi disciplinairement par la commission ad hoc de sa fédération nationale, sur délégation de l'UCI, pour avoir absorbé des substances interdites par le RAD. Elle était bien plus complexe que cela à maints égards : d'abord, la personne visée n'était pas un cycliste professionnel, mais un directeur sportif d'équipes cyclistes; ensuite, la violation du règlement antidopage qui lui était reprochée ne concernait pas un prélèvement d'échantillon; par ailleurs, il s'agissait d'une ressortissant belge, non domicilié aux États-Unis d'Amérique, membre de la KBWB et titulaire d'une licence délivrée par l'UCI, lequel était recherché devant un tribunal arbitral américain par une organisation antidopage américaine (USADA), et ce contre la volonté de l'UCI qui lui avait délivré sa licence. Dans ces conditions, la question de la compétence du Tribunal AAA, en lieu et place de l'organe juridictionnel de la KBWB, pour rendre une décision disciplinaire à*

l'encontre de cette personne pouvait effectivement se poser, d'autant plus que le principal protagoniste de cette affaire de dopage, à savoir le cycliste professionnel américain Lance Armstrong, septuple vainqueur du Tour de France, refusant de se laisser entraîner dans cette procédure arbitrale bien qu'il fût domicilié aux Etats-Unis d'Amérique, avait préféré ouvrir une action civile contre l'USADA et son CEO devant un tribunal étatique du Texas. Aussi n'est-il pas surprenant que le recourant ait contesté d'entrée de cause la compétence du Tribunal AAA à son égard, au même titre qu'il déniait à l'USADA le droit d'exercer son pouvoir disciplinaire contre lui.

Il convient de s'arrêter ici un instant sur le comportement procédural adopté par le recourant, alors représenté par un avocat londonien, face au rejet de son exception d'incompétence, pour le comparer avec la position que l'intéressé a prise devant le Tribunal fédéral par le truchement de l'avocat genevois chargé de déposer en son nom le recours en matière civile soumis à la Cour de céans.

[...]

Comme le TAS le souligne à juste titre dans sa réponse au recours (ch. 4), le recourant n'a pas contesté la compétence en tant que telle du TAS, mais a exprimé le souhait que celui-ci se déclarât compétent afin de traiter son appel et d'annuler la sentence finale du Tribunal AAA pour manque de compétence. [...]

Devant le Tribunal fédéral, le recourant, changeant son fusil d'épaule, soutient que la Formation était saisie non seulement de la question de la compétence du Tribunal AAA, mais encore du point de savoir si elle-même était compétente pour statuer sur le fond du litige, ces deux questions dépendant, selon lui, de la réponse à donner à la question préalable suivante : existe-t-il une convention d'arbitrage valable entre le recourant et l'USADA? [...]

Dans ces conditions, eu égard au caractère évolutif, sinon contradictoire, de l'argumentation développée par le recourant sur la question controversée, d'une part, et à l'avis même exprimé par la Formation quant à la portée de sa décision dormant l'objet de la lettre du 11 mars 2015, d'autre part, on ne saurait donner raison au recourant lorsqu'il affirme péremptoirement que la Formation a indiscutablement rendu une sentence sur compétence au sens de l'art. 190 al. 3 LDIP.

[...]

3.3.2 [...]

En réalité, la Formation a rendu une sentence préjudicielle ou incidente [...] par laquelle elle a réglé définitivement une question préalable de fond. [...]

- 3.3.3 *La Formation ne pouvait certes pas rendre cette sentence préjudicielle ou incidente sans admettre à tout le moins implicitement, sur la base d'un examen prima facie, qu'elle était compétente pour le faire. Le comportement procédural adopté par le recourant devant elle, singulièrement la demande que lui faisait ce dernier d'annuler la sentence du Tribunal AAA, était de nature à la conforter dans l'idée que sa propre compétence de jugement n'était pas véritablement contestée par cet appelant.*

Cependant, pour quelque raison que ce fût [...], la Formation a décidé de n'admettre que provisoirement sa compétence pour ne traiter formellement et définitivement cette question que dans sa sentence finale à venir. [...]

3.3.4 [...] *Aussi se justifie-t-il, dans l'intérêt bien compris de toutes les parties au litige, d'attendre la notification de la sentence finale pour examiner, alors seulement et en une seule fois, les moyens que le recourant et les autres parties concernées pourraient soulever dans un éventuel recours dirigé contre ladite sentence.*

3.4 *Cela étant, le grief d'incompétence [...] formulé par le recourant à l'encontre de la décision incidente ou préjudicielle de la Formation [...] est irrecevable, dès lors que ladite décision ne règle pas de manière définitive la question de la compétence du TAS.*

173. The Panel notes that while Mr. Bruyneel's counsel submitted to the Swiss Federal Tribunal that he was objecting to the CAS Panel's jurisdiction (contrary to his written submissions before the CAS Panel as noted by the Swiss Federal Tribunal), before the Panel, Mr. Bruyneel appeared to confirm the CAS' jurisdiction. His counsel, in his concluding remarks, said the following:

Mr. Bruyneel is happy to be here in front of this Independent International Court, and he was happy to have the opportunity to be heard. However, he is not happy with how he got here. The context for that is that the United States Anti-Doping Agency took jurisdiction over a Belgium national. And that is fundamentally the basis for our jurisdictional argument on there being no arbitration agreement. USADA should not be the party that prosecuted this case. And Mr. Bruyneel was not happy and was not agreeable to having the American Arbitration Association decide his case at first instance, and he's not happy that he got here through that process.

174. In fact, in the pleadings submitted to this Panel, all parties to the Consolidated Cases agreed that CAS has jurisdiction to decide whether the AAA panel had jurisdiction to issue its decision pursuant to the UCI ADR, the USADA Protocol and the WADA Code. The parties disagreed however on whether CAS has jurisdiction to decide the merits of the doping disputes between USADA and Messrs. Bruyneel and Martí.

175. Mr. Bruyneel has reserved his right to resubmit the question of jurisdiction to the Swiss Federal Tribunal pursuant to Article 190(2) PILA once the Final Award in respect of his appeal has been issued.

176. Mr. Bruyneel maintains that there is no valid arbitration agreement between him and WADA/USADA, that USADA has no results management authority over him and that the AAA did not have jurisdiction over him.

2. Relevant Facts

177. Mr. Bruyneel is a Belgian national. Each year since 2005, he completed and submitted an "Affiliation Form and Application for License" ("**License Application**") to his national federation, the KBWB in Belgium, not USA Cycling. By signing the License Application, Mr. Bruyneel gave a number of undertakings (listed on the back of the form); these included an undertaking that he has not applied to the UCI or any other federation or club for a license that same year.

178. Once Mr. Bruyneel's License Application is processed, the KBWB issued a license in his name (the "**KBWB License**").

179. Mr. Bruyneel's License Application and KBWB Licence record his acceptance to submit himself to UCI Regulations which, Mr. Bruyneel accepts, includes the UCI ADR.
180. Mr. Martí does not hold any license.
181. Mr. Bruyneel was the team director for various US-based, US-sponsored and significantly US-owned cycling teams, namely USPS, Discovery Channel and RadioShack. These teams competed not only in Europe but also in the US and held training camps in the US. Mr. Bruyneel was also on the board of directors of and/or had an ownership interest in several of these teams. Mr. Martí was also employed by these teams.
182. USADA contends that Messrs. Bruyneel and Martí committed anti-doping rule violations on the territory of the US.
183. In respect of Dr. Celaya, as he did not appeal the AAA Decision, that Decision stands in respect of the issues of USADA's result management jurisdiction and the AAA's disciplinary authority, and the Panel need only address the appeals of Messrs. Bruyneel and Martí on these issues.

3. Relevant Rules

184. Article 10 UCI ADR provides that:

10. The UCI has jurisdiction for and these Anti-Doping Rules shall apply to any anti-doping violation committed by a License-Holder where no Sample collection is involved and that is discovered:

(i) by the UCI, by one of its constituents or member Federations, by one of their officials, officers, staff members, members, License-Holders, or any other body or individual that is subject to the regulations of the UCI or one of its member Federations; or

(ii) by a body or individual that is not an Anti-Doping Organization. [...]

Discovery means the finding of elements that turn out to be evidence for facts that apparently constitute an anti-doping rule violation, regardless of the Anti-Doping Organization who qualifies that evidence as such.

185. Article 11 UCI ADR provides that:

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

186. The 2004 UCI ADR Article 12 provides that if another anti-doping organization opens a results management process, "UCI may decide to leave the case to the Anti-Doping Organization concerned."

187. Article 13 UCI ADR provides:

"Results management and the conduct of hearings for anti-doping rule violations arising from a test by, or discovered by, a National Anti-Doping Organization involving a License-Holder who is not a national, resident, license-holder or member

of a sports organization of that country shall be administered by and under the rules of that National Anti-Doping Organization.”

188. Article 15.3 of the WADA Code provides that:

“Except as provided in Article 15.3.1 below, results management and hearings shall be the responsibility of and shall be governed by the procedural rules of the Anti-Doping Organization that initiated and directed Sample collection (or, if no Sample collection is involved, the organization which discovered the violation). If that Anti-Doping Organization does not have the authority to conduct results management, then results management authority shall default to the applicable International Federation. Regardless of which organization conducts results management or hearings, the principles set forth in Articles 7 and 8 shall be respected and the rules identified in the Introduction to Part One to be incorporated without substantive change must be followed.”

4. USADA’s Position

189. According to USADA, Articles 11 and 13 UCI ADR specifically provide that results management and conduct of hearings for a rule violation discovered by a NADO, such as USADA, is to be conducted by the discovering NADO in accordance with that NADO’s own rules even as to foreign or non-resident license-holders such as Messrs. Bruyneel and Martí.
190. Therefore, USADA avers that the lack of USA cycling license or membership for Messrs. Bruyneel and Martí is irrelevant if the UCI ADR provides for the jurisdiction of the USADA to conduct results management.
191. The premise of jurisdiction, asserts USADA, is not the existence of a USA Cycling license or membership but whether the UCI ADR invests USADA with jurisdiction over the cases of Messrs. Bruyneel and Martí. In this respect, USADA recalls that Messrs. Bruyneel and Martí conceded that they are subject to the UCI ADR.
192. Mr. Bruyneel argues that USADA cannot be said to have discovered his violations any more than did the authors of certain books. However, asserts USADA, he never suggests that any anti-doping organization other than USADA discovered any of the conduct alleged by USADA against Mr. Bruyneel. The discovery rule in the UCI ADR only assigns the responsibility for conducting hearings amongst anti-doping organizations.
193. USADA submits that its factual assertion that it is the anti-doping organization which discovered these violations is un-rebutted.
194. Mr. Bruyneel also argues that Articles 11 and 13 UCI ADR do not confer jurisdiction but rather merely allocate disciplinary authority or jurisdiction between two bodies, each of which already has such authority or jurisdiction on another basis, whether it be through license or through membership. However, if Mr. Bruyneel’s argument were to be accepted by the Panel, USADA argues that Article 13 UCI ADR would never apply because Article 13 UCI ADR expressly applies only to cases involving a license-holder “*who is not a national, resident, license-holder or member of a sports organization of that country*” (emphasis added).
195. USADA concludes that the UCI ADR confers upon USADA results management jurisdiction over the cases of Messrs. Bruyneel and Martí as the anti-doping organization which discovered their rule violations.

196. One of the virtues of the WADA Code, asserts USADA, is that results management of anti-doping rule violations is no longer subject to the rule enforcement of the athlete's or support personnel's home countries. By virtue of their participations in international sport subject to the WADA Code, athletes and their support personnel submit themselves to the results management of Anti-Doping Organizations. Under the WADA Code, the term "Anti-Doping Organizations" is defined as including National Anti-Doping Organizations. USADA, as a National Anti-Doping Organization ("NADO"), is therefore recognized in the WADA Code. Since the UCI's adoption of the WADA Code on 13 August 2004, all participants in the sport of cycling have been on notice that they were potentially subject to the result management authority of Anti-Doping Organizations such as USADA.
197. Article 12 UCI ADR provides that if another anti-doping organization opens a results management process that "*UCI may decide to leave the case to the Anti-Doping Organization concerned.*"
198. Therefore, according to USADA, any dispute about who may conduct results management in a particular case is only between the UCI and "*the Anti-Doping Organization concerned*". Messrs. Bruyneel and Martí do not have standing to challenge USADA's results management authority.
199. Because the UCI has not challenged USADA's results management authority and has permitted these cases to proceed, it has in effect confirmed USADA's results management jurisdiction, avers USADA.
200. USADA's assertion of jurisdiction over Messrs. Bruyneel and Martí is founded upon a logical application of the UCI ADR that has now been endorsed by the AAA panel, WADA, and the UCI, avers USADA. (Under its previous leadership, the UCI opposed USADA's assertion of jurisdiction over these matters for an approximate six week period in the summer of 2012 during the pendency of Lance Armstrong's federal lawsuit against USADA. Since that time, however, the UCI has backed off its assertions on jurisdiction and did not appeal the AAA Decision. The UCI has also now also publicly added its support to WADA's appeal.)
201. Mr. Bruyneel contends that the UCI ADR does not constitute a written arbitration agreement binding him to arbitration with anti-doping organizations as specified in the UCI ADR.
202. In response, USADA submits that, pursuant to CAS authority, any defects in the prior hearing process are irrelevant once the case reaches the CAS.
203. While Mr. Bruyneel cites Ullrich I in support of his argument that the AAA Panel lacked jurisdiction, USADA submits that Mr. Bruyneel ignores its companion case, namely CAS 2010/A/2083 ("**Ullrich II**"). In that case, the CAS panel concluded that the UCI could appeal the decision of the lower level body and, even though jurisdiction had not existed in the lower level disciplinary proceeding brought by Anti-doping Switzerland, on appeal the UCI was entitled to a hearing *de novo* on the merits of the claims concerning Jan Ullrich's anti-doping rule violations. The panel found that "*for reasons of procedural economy it would be in the interests of all parties for this matter to be resolved without the need for further proceedings*".
204. According to USADA, in Ullrich II, the panel recognized that a written agreement to arbitrate between an athlete and his international federation was not necessary to permit the international federation to initiate an arbitration proceeding against the athlete where a sufficient relationship with the federation could be implied from the rights and obligations set forth in the athlete's license agreement with his national federation.

205. Therefore, according to USADA, by agreeing to be bound by the UCI ADR, Mr. Bruyneel created a valid and enforceable arbitration agreement between Mr. Bruyneel and those entities, including USADA, having authority to prosecute anti-doping rule violations under the UCI ADR.
206. Remanding the cases of Messrs. Bruyneel and Martí to a national level would run counter to the interests of procedural economy which factored into the designation of the CAS as the final appellate body in the UCI rules, says USADA.
207. USADA further submits that pursuant to Swiss law, an agreement to arbitrate may be found based on any written document. The relevant test is whether the parties have expressed an intention to have an arbitral tribunal, rather than a court, decide their disputes. Having reviewed Mr. Bruyneel's representations and license agreement with the KBWB, Prof. Philippin, USADA's expert on Swiss law, opines that, from a Swiss law perspective, "*Mr. Bruyneel has validly agreed to settle all disputes regarding doping through arbitration.*"
208. Prof. Philippin considers that Swiss law permits the UCI's delegation of results management of anti-doping cases to third party institutions like USADA. He observes that because the institutions to which UCI delegates disciplinary authority are signatories of the WADA Code, due process guarantees an equality of treatment along the same lines as must be provided by the UCI is provided through delegation.
209. Prof. Philippin concludes that the "*delegation of disciplinary powers, as set out in the UCI Cycling Regulations, does not conflict with ... any... provision of Swiss law*".
210. In response to Dr. Besson's objections that, under Swiss law, the lack of specificity regarding the delegation of disciplinary authority and the atypicality of the delegation prevent result management jurisdiction by USADA under the UCI ADR, Prof. Philippin offers a number of arguments.
211. First, Prof. Philippin asserts that Mr. Bruyneel's contracting counterpart has been adequately identified according to Swiss agency principles. When acting in the name of a third party, Swiss law does not require that the third party be named. It is sufficient that the contract set forth an objective mechanism to designate a nominee at a later stage. In addition, if at the time the agreement is entered into, the agent is not formally empowered to act on behalf of the nominee, subsequent ratification is possible. According to Prof. Philippin, the UCI regulations gave Mr. Bruyneel adequate notice that the UCI was acting thereunder to nominate other agents to conduct disciplinary proceedings and that USADA has sufficiently ratified the delegation through the case USADA has initiated against Mr. Bruyneel.
212. Second, Prof. Philippin opines that the delegation of disciplinary authority to USADA is not atypical within the meaning of Swiss law. He notes that such delegation is authorized by Articles 15.3 and 15.3.1 of the WADA Code and that the "*Swiss Federal Tribunal has acknowledged that the [WADA] Code ... [is] the worldwide standard for anti-doping.*" In addition, because "*all anti-doping organizations apply the same rules and observe the same standards of due process, the delegation of powers set out in Articles 11 and 13 ... [is not] significantly outside the statutory framework applicable in sanctions issues by sports organizations in doping matters.*" Prof. Philippin thus concludes that, far from being atypical, the delegation of powers to USADA "*appears to be typical of the international regulation of sports. The validity of such provisions under Swiss law must therefore be upheld.*"
213. Finally, Prof. Philippin addresses the question of whether a separate arbitration clause from the UCI ADR is necessary to authorize the proceedings before the AAA and concludes that no such separate agreement is necessary.

214. In respect of Mr Martí, USADA submits the following:

[T]here is no dispute that Mr. Martí entered an arbitration agreement with USADA by which he agreed to have the merits of USADA's charges against him and the merits of his defenses heard "in a AAA arbitration hearing conducted under the USADA Protocol." Mr. Martí confirmed in his Statement of Appeal to CAS, "As this party intended to appeal against Mr. Martí's sanction before an AAA arbitration panel, an agreement was reached between the parties [USADA and Mr. Martí] to reopen the case and allow for an AAA arbitration so that the AAA arbitrators would hear and decide on the merits of the claims by USADA against Mr. Martí and on the merits of Mr. Martí's defences."

Mr. Martí's agreement with USADA provided for "a AAA arbitration hearing conducted under the USADA Protocol." Thus, Mr. Martí clearly agreed in writing to arbitration in accordance with the terms of the USADA Protocol concerning USADA's claims against him, and USADA's "claims against Mr. Martí" were that he had violated the provisions of the UCI ADR. Accordingly, there can be no dispute that Mr. Martí agreed to arbitrate under the USADA Protocol the merits of USADA's claims that he had violated the UCI ADR.

Article 15 of the USADA Protocol explicitly provides for a right of appeal to CAS of any AAA arbitration decision. Therefore, Mr. Martí agreed to the competence of CAS to hear the merits of USADA's claims of anti-doping rule violations against him. The written arbitration agreement between USADA and Mr. Martí, accordingly, leaves Mr. Martí without any argument that he has not agreed in writing to the appellate jurisdiction of CAS.

Although Mr. Martí contends that he did not have a license with the Spanish national cycling federation, this does not control the question of whether he is bound by the UCI ADR. As he apparently recognizes, Mr. Martí can be bound by the UCI ADR by virtue of his employment with a UCI licensed pro tour team. UCI ADR, Article 18 provides in relevant part:

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

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

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

Article 18 of the UCI ADR thus makes clear that the UCI Anti-Doping Rules apply to coaches, trainers, doctors, managers, team directors and team staff of any sort who work with UCI teams, regardless of whether they have ever had a license. This rule merely restates the legal principle that consent to a membership organization's rules can be implied from participation in the organization's activities. Thus, athlete support personnel on UCI pro tour teams have always been subject to the UCI's rules even before Article 18 was adopted.

There is no question that Mr. Martí was employed by a UCI pro tour team and therefore bound by the UCI ADR. Mr. Martí has confirmed his employment as a "team trainer" for USPS during 1999-2005 and Discovery Channel during 2005-2007. Therefore, Mr. Martí is subject to, and bound by, the UCI ADR.

Mr. Martí contended for the first time in his appeal to CAS that the fact that UCI ADR Art. 18 was added in 2009 means that it cannot subject him to discipline for the rule violations

in which he engaged prior to 2009. However, Ullrich I indicates otherwise.¹⁴ Ullrich I recognizes that anti-doping regulations can be amended and a participant's tacit agreement to an amendment is inferred from a lack of objection by the participant.¹⁵ Here, Mr. Martí continued to work for a licensed UCI pro tour team for some three and half years after Article 18 came into effect. Therefore, he is presumed to have consented to the explicit provision in the 2009 version of Article 18 that the UCI ADR applies to all athlete support personnel who participate on UCI pro tour teams.

5. Mr. Bruyneel's Position

215. Mr. Bruyneel submits that there is no legal relationship between Mr. Bruyneel and USADA which confers on USADA the right to apply (and enforce) the UCI ADR against him.
216. Mr. Bruyneel alleges that the adoption of rules by a sports governing body (“SGB”) in isolation does not confer any rights on the SGB as against an individual, nor imposes any obligations on the individual, in the absence of a legal relationship between the individual and that SGB. Whether under Swiss law or under US law, such a legal relationship typically takes the form of a membership to an SGB or a contractual relationship underpinned by consent.
217. Mr. Bruyneel avers that each time that the KBWB issued a KBWB License, Mr. Bruyneel entered into a year-long contract with the KBWB. By virtue of his membership, Mr. Bruyneel had to abide by the KBWB Anti-Doping Rule Regulations. Those rules expressly give the KBWB’s disciplinary committee the authority to prosecute KBWB-licensed participants, such as Mr. Bruyneel, for breaches of the UCI ADR.
218. Accordingly, by virtue of the License Application, the KBWB License and the KBWB ADR, Mr. Bruyneel argues that only the KBWB has authority over him in dealing with violations of the UCI ADR.
219. Mr. Bruyneel argues that USADA’s case for Disciplinary Jurisdiction based on Articles 11 and 13 UCI ADR and Article 15.3 of the WADA Code fails for the following reasons:
 - (i) USADA did not discover the alleged anti-doping rule violations of Mr. Bruyneel. The term “discovery” is defined as follows at Article 10 UCI ADR: “[...] *the finding of elements that turn out to be evidence for facts that apparently constitute an anti-doping rule violation, regardless of the Anti-Doping Organization who qualifies that evidence as such.*” Mr. Bruyneel submits that this definition is so broad and imprecise that it has almost no meaning: mere rumours could qualify as “elements”. Moreover, USADA’s allegations were already the subject of books that date back to 2004. USADA cannot therefore be said to have “discovered” anything within the meaning of the UCI ADR anymore than the authors of the books, those who contributed to them or those who were alerted of their contents, such as the UCI and the KBWB.
 - (ii) In fact, it is the witnesses against Mr. Bruyneel who made the discovery in the present proceedings. All of the witnesses against Mr. Bruyneel were UCI Licence-Holders. According to Article 10 UCI ADR, it is the UCI who has jurisdiction for an anti-doping rule violation that is discovered by one of UCI’s License-Holders or an individual that is not an Anti-Doping Organization. Thus, Article 11 UCI ADR is not applicable.
220. In respect of Article 15.3 of the WADA Code, Mr. Bruyneel submits the following:

- (i) The WADA Code is not referred to in either the License Application or the KBWB License. Therefore, the WADA Code is a step further removed than the UCI ADR already is.
- (ii) Article 15.3 of the WADA Code provides that:

Except as provided in Article 15.3.1 below, results management and hearings shall be the responsibility of and shall be governed by the procedural rules of the Anti-Doping Organization that initiated and directed Sample collection (or, if no Sample collection is involved, the organization which discovered the violation). If that Anti-Doping Organization does not have the authority to conduct results management, then results management authority shall default to the applicable International Federation. Regardless of which organization conducts results management or hearings, the principles set forth in Articles 7 and 8 shall be respected and the rules identified in the Introduction to Part One to be incorporated without substantive change must be followed. (Emphasis added)

- (iii) According to Mr. Bruyneel, the text underlined above makes clear that the concept of “discovery” is intended merely to allocate disciplinary authority or “jurisdiction” between two bodies, each of which already has such authority or “jurisdiction”: that is why the provision states that if the body that discovers the alleged violation “does not have the authority to conduct results management”, it reverts to the relevant international federation (this is essentially the same wording as Article 17 UCI ADR).

- 221. For the foregoing reasons, Mr. Bruyneel submits that USADA does not have Disciplinary Jurisdiction over him. According to Mr. Bruyneel, should the Panel agree, then it must also agree that the AAA Decision is invalid and unenforceable since there was no legal basis for USADA’s action to begin with.
- 222. Should the CAS Panel adopt USADA’s interpretation of Article 11 UCI ADR, Mr. Bruyneel argues that Article 11 UCI ADR is invalid and inoperative by virtue of CAS jurisprudence and Swiss Law.
- 223. Mr. Bruyneel submits that the CAS has recognised time and again the importance of establishing the existence of a valid arbitration agreement between the parties in question (See (1) CAS 2010/A/2070; (2) CAS 2009/A/1910; (3) CAS 2006/A/1190).
- 224. Mr. Bruyneel’s position is that there is no arbitration agreement between him and USADA. The relevant question is whether Mr. Bruyneel, when he signed the License Application, consented to arbitration with USADA.
- 225. The AAA panel described the source of the arbitration agreement as follows in its PO2:
 - 25. *Mr. Bruyneel’s arguments disputing jurisdiction here are not convincing. Mr. Bruyneel expressly consented to the UCI ADR. The UCI ADR expressly provide that any ADO that discovers a violation may administer sanctions and hearings against License-Holders. By becoming a License-Holder, Mr. Bruyneel therefore consented to be subject to the rules of any such ADO, including those of USADA. Because he agreed to the possibility of being subject to the anti-doping rules of USADA, Mr. Bruyneel therefore also agreed to the arbitration mechanism embedded in USADA’s rules.*
 - 26. *Having consented to the possibility of being subject to the anti-doping rules of*

*USADA, Mr. Bruyneel cannot now claim a lack of jurisdiction to the arbitration proceedings provided for under the USADA Protocol. The Panel considers that it is not too distant or remote a relationship to find that, in accepting the UCI ADR, Mr. Bruyneel also accepted that **any** anti-doping organization would seek sanctions or, if its rules provided, institute arbitration proceedings against him. Indeed, Article 13 specifically provides that athletes (or athlete personnel) can be subject to such proceedings, as it states that the “conduct of hearings for an anti-doping violation ... shall be administered by and under the rules of [the] National Anti-Doping Organization” that discovered the alleged anti-doping violation. Article 13 therefore alerts athletes and athlete personnel consenting to the UCI ADR that they may be subject to sanctions and procedural hearings under the rules of an ADO. It is reasonable to infer that such hearings conducted may include arbitration hearings. It is also reasonable to infer that the anti-doping rules of an ADO in general, which are applicable through Article 11, may contain a provision for arbitration proceedings. As noted by the Swiss Federal Tribunal in a recent decision, “there is practically no top-level sport without consent to arbitration.” Swiss Federal Tribunal 4A 428/2011, Feb. 13, 2012, Nr. 3.2.3. Here, Mr. Bruyneel expressed valid consent to be subject to the anti-doping rules of USADA, including its rules on arbitration. He therefore has no basis to dispute jurisdiction.*

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

- 1. The arbitration agreement is formally valid if it is made in writing, by telegram, telex, fax, or any other means of communication which allow proof of the agreement by a text.*
 - 2. Substantially, it is valid if it meets the requirements of either the law chosen by the parties, the law applicable to the dispute (in particular, but without limitation, the law applicable to the main contract) or Swiss law.*
 - 3. The validity of an arbitration agreement cannot be challenged on the grounds that the main contract be invalid, or that the dispute did not exist at the time the arbitration agreement was entered into.*
- 27. The Panel notes that Article 178 PILA imposes few requirements on the substance and specificity of an arbitration agreement. All that is required is that the arbitration agreement be i) in writing, and ii) in accordance with the applicable law. The Panel also finds that the submissions by the parties indicate that Swiss federal courts have construed this statute liberally when examining whether there is consent to arbitration. The Swiss Federal Tribunal thus recently held that:*

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

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

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

226. However, Mr. Bruyneel argues that the issue of consent is sensitive in the context of sports regulations:
- (i) In 2007, the First Civil Law Chamber of the Swiss Federal Supreme Court decided that a tennis player had not, by submitting to the ATP Rules (which included an express waiver of the right to apply to set aside a CAS award in a case involving him), validly waived that right (See ATF 133 III 235). The Court in that case pointed to the hierarchical structure that existed in professional sports and that athletes had no choice but to submit to an arbitration agreement where that formed part of the federation’s rules. Since players did not have the option of refusing to sign the waiver of the right to apply to set aside a future CAS award, without compromising their right to play tennis, the player there could not be said to have validly waived that right.
 - (ii) The decision in *Cañas* did not actually involve a finding that the arbitration agreement itself was invalid, but such a decision was recently made by the Munich Regional Court in the case of *Claudia Pechstein*¹⁹. The Court there found that the athlete’s agreement to arbitrate was not voluntary (for almost identical reasons to those articulated in *Cañas*) and that the alleged arbitration agreements were, as a matter of both Swiss and German law, invalid.

227. Mr. Bruyneel thus avers that the extent to which he can be said to have “consented” to arbitrate anything is, therefore, highly debatable. An even more debatable question is whether he consented to arbitration with USADA.

228. If the Panel agrees that arbitration is a matter of consent “to arbitrate particular disputes with particular counter-parties, not consent to arbitrate generally or with the entire world” (see Gary Born, *International Commercial Arbitration* (2009), Volume 1, Kluwer Law

¹⁹ The *Pechstein* decision has been overturned since the parties’ submissions on jurisdiction.

International, p 1141), then it is difficult to understand how any arbitration agreement could be said to exist between USADA and Mr. Bruyneel.

229. The Swiss Law opinion of Dr. Sébastien Besson explains as follows why Articles 11 and 13 UCI ADR cannot and do not confer result management to USADA and disciplinary jurisdiction to the AAA:

57. *Under Swiss law [...], I conclude that Article 11 UCI ADR does not constitute a valid basis for USADA's "results management jurisdiction" or "disciplinary authority" over Mr. Bruyneel in the present case.*

[...]

65. *First, the indirect reference contained in Article 11 UCI ADR to the regulations of any Anti-Doping Organization is not sufficiently specific and precise to express Mr. Bruyneel's valid consent to be bound by the regulations of any such Anti-Doping Organization. In particular, Mr. Bruyneel (and any other License Holder of UCI) could not determine or foresee at the time when he entered into the contract (the license agreement) which Anti-Doping Organization would discover the violation in the future. The counterpart, which is an obvious essential element in the contract formation, was neither determined nor determinable at the time of signing of the License Application.*
66. *The lack of certainty is aggravated by the factor taken into account by Article 11 UCI ADR, namely the fact that an Anti-Doping Organization has "discovered" a violation, which is itself uncertain and may result in controversial debate (as is the case here precisely).*
67. *USADA seems to be aware of this legal difficulty when it states that: "since the UCI's adoption of the Code which occurred on August 13, 2004, all participants in the sport of cycling have been on notice that they were potentially subject to the results management authority of "Anti-Doping Organizations", such as USADA, not just to the results management authority of the UCI and/or their national federations" (Pre-Hearing Brief, p. 11). In my opinion, USADA's arguments are invalid. Whether or not UCI License Holders or participants in the sport of cycling have been "on notice" cannot cure the lack of precision of Article 11 UCI ADR. A consent cannot be validly given to the disciplinary authority of Anti-Doping Organizations which are unknown at the time when the contract was concluded. Consent cannot be given universally to any Anti-Doping Organization of the world.*
68. *Secondly, the indirect reference contained in Article 11 UCI ADR to the regulations of any Anti-Doping Organization is, in my opinion, "atypical" within the meaning of the case law of the Swiss Federal Tribunal concerning the validity of general terms and conditions of business incorporated by reference in a contract. By submitting himself to the UCI Regulations, the License-Holder could imagine that the UCI ADR would apply and that UCI would be in a position to sanction the License-Holder in case of breach. However, it is not typical to subject oneself to the regulations of one organization (here UCI) and to be redirected to the regulations of another, unspecified, organization (as Article 11 UCI ADR purports to do). In other words, the "indirect reference" mechanism envisaged in Article 11 UCI ADR is not typical.*
69. *When athletes (or managers) subject themselves to the regulations of a sport organization or IF, it is commonly acknowledged by scholars that the principles*

governing the submission to general terms and conditions are applicable. By signing a license, the athlete refers to a set of pre-determined rules (here UCI Regulations) as it is the case when a contract refers to general terms and conditions of a seller. The case law of the Swiss Federal Tribunal considers that "atypical" provisions ("clauses insolites") of the referred general terms and conditions are invalid. As already mentioned, I consider that the indirect reference of Article 11 UCI ADR is atypical.

70. *One may add that general terms and conditions are interpreted against their drafters according to the principle "contra stipulatorem".*

71. *For all of these reasons, I am of the opinion that Mr. Bruyneel has not validly consented to the application of USADA's Protocol and to the resulting USADA's "results management jurisdiction" or "disciplinary authority" through the invoked basis of Article 11 UCI ADR.*

[...]

99. [...] *The whole analysis is the same in respect of Article 13 UCI ADR as well as Article 15.3 WADA Code, being understood that the WADA Code is not directly applicable in this matter.*

230. According to Dr. Besson, the sequence by which one document (the License Application) is signed and indirectly refers to another document (the UCI ADR) which itself refers to a group of unidentified documents (one of which later turns out to be the USADA Protocol) which contains the purported terms of arbitration is too indirect "*to establish consent to the arbitration agreement contained in the regulations*" and concludes that:

I am of the opinion that there is no valid arbitration agreement under Swiss law between Mr. Bruyneel and USADA.

231. In CAS 2010/A/2070 ("**Ullrich I**"), the CAS was required to determine whether Anti-Doping Switzerland had jurisdiction over the retired German cyclist Jan Ullrich. The key issue there was whether there was a valid arbitration agreement between Anti-Doping Switzerland and Mr. Ullrich. According to Mr. Bruyneel, three key points emerge from the decision:

- (i) First, it is absolutely essential that there be, as a matter of fact and law, an arbitration agreement between the SGB seeking to sanction the individual and the individual.
- (ii) Second, an individual could not be deemed to have consented to arbitrate a dispute with a body that was unidentified at the time the arbitration agreement (contained within a license application form) was concluded.
- (iii) Third, the fact that the UCI ADR purported to confer jurisdiction on the unidentified body could not remedy the lack of an arbitration agreement between the relevant parties.

232. Mr. Bruyneel submits that the notion of "consent" is already stretched to its limits in the context of sport arbitration. However, it is a step too far to suggest that by signing a licence application with his/her national federation, a licence-holder is somehow "consenting" to (1) the jurisdiction of any and every anti-doping organisation in the world; (2) arbitration with any anti-doping organisation in the world that chooses to initiate anti-doping proceedings against that individual, in whatever language, location and before any tribunal selected by that anti-doping organisation.

233. Mr. Bruyneel concludes that he cannot be deemed to have consented to any arbitration agreement with USADA. That being so, the AAA Decision is invalid and unenforceable since it has no legal basis.

6. Mr. Martí's Position

234. In his Statement of Appeal (to be considered as his Appeal Brief), Mr. Martí seeks a declaration that USADA lacks jurisdiction and authority to investigate and sanction him, and that the AAA Decision be annulled by the CAS Panel on that basis.

235. In brief, Mr. Martí submits that:

- (i) He is not the holder of any license.
- (ii) UCI itself recognized that USADA did not have jurisdiction on this basis. In a letter dated 3 August 2012, UCI wrote as follows:

Articles 18.2 and 18.3 of UCI's anti-doping rules (ADR) confirm that in order to sanction a non-licence-holder the latter must be subject to the jurisdiction of a competent body. A contractual basis or a basis of public law is required to grant such competence with respect to such person. As the person concerned has no licence another basis than a licence is required to vest jurisdiction. We don't see on what basis USADA can claim jurisdiction.

We are not aware that any person other than Mr. Bruyneel and Mr. Armstrong has held a UCI licence at any relevant time that could vest jurisdiction in USADA. We have no idea of what the evidence is that you are referring to in this respect.

- (iii) When USADA gave Mr. Martí his first notice of the commencement of a formal investigation by letter of 12 June 2012, it specifically stated on pp. 12-13 that USADA based its authority on the management of anti-doping results in the UCI ADR, and in particular Article 10. However, according to Mr. Martí, said article attributes jurisdiction to the UCI as the international federation not USADA.
- (iv) This is so especially since, Mr. Martí avers, it is not USADA that discovered the alleged violation (see Article 15.3 of the WADA Code). In the present case, as acknowledged by UCI in its letter of 3 August 2012, USADA was investigating on behalf of UCI.
- (v) The version of the UCI ADR on which the AAA panel based itself in reaching its decision was the one which became effective in 2009. However, argues Mr. Martí, the correct version to be applied is the one which became effective in 2004, i.e. the one corresponding to the periods when the witnesses' accusation on which Mr. Martí's sanction is based are circumscribed (from 2004-2007). The 2004 version of the UCI ADR (and versions subsequent to the 2009 version for that matter) only states in Article 1 that "*These Anti-Doping Rules apply to all License-Holders*". It does not contain the following wording which appears in the 2009 version: "*They shall apply to other Persons as provided in article 18...*". Mr. Martí is not the holder of any license.
- (vi) No arbitration agreement exists between Mr. Martí and USADA. An agreement was signed between him and USADA so that Mr. Martí could resort to the AAA arbitration since the time period to resort to arbitration had expired. However, this agreement does

not imply that Mr. Martí admitted to the validity of the USADA or the AAA jurisdiction and authority.

- (vii) Mr. Martí also relies on the report of Dr. Sébastien Besson in support of his arguments. Although it was filed in relation to Mr. Bruyneel, it is nevertheless pertinent, especially since, *a fortiori*, Mr. Martí is not the holder of any license.

7. Panel's Analysis

236. The Panel recalls that, following the telephonic hearing on jurisdiction of 2 March 2015 and further deliberations, it issued a decision on 11 March 2015. In this decision, the Panel concluded that “*USADA had results management jurisdiction and the AAA the disciplinary authority over Messrs Bruyneel, Martí Martí and Celaya Lezama.*”
237. The Panel recalls that Mr. Bruyneel appealed this decision before the Swiss Federal Tribunal. However, the Swiss Federal Tribunal ruled that the appeal was inadmissible at this time.
238. The Panel now provides reasons for its decision dated 11 March 2015.
239. As noted above, Mr. Bruyneel does not object to the jurisdiction of CAS. Rather, he contests the jurisdiction of USADA, the anti-doping organization which launched proceedings against Mr. Bruyneel, and the AAA, the arbitration body which issued a decision in the first instance.
240. Dr. Besson, Mr. Bruyneel's counsel during the hearing on jurisdiction, clearly expressed the view that Mr. Bruyneel was not objecting to the jurisdiction of CAS:
- “Mr. Bruyneel has not filed an appeal to CAS for the purposes of litigating the merits of the doping offense. He has filed an appeal in order to obtain from you, from CAS, a ruling that USADA and the AAA Panel had no jurisdiction over him, and he had no other choice but to file an appeal with CAS. And the main prayer for relief, as you well know, is to obtain from you the annulment of the AAA award for lack of jurisdiction.”*
241. In fact, in his appeal brief on jurisdiction, Mr. Bruyneel requested “*the Panel to issue an award annulling the AAA Award for lack of ‘jurisdiction’*”.
242. The Swiss Federal Tribunal's Decision also noted that Mr. Bruyneel was not objecting to the jurisdiction of CAS. It wrote as follows:

1.2.4 [...]

Comme le TAS le souligne à juste titre dans sa réponse au recours (ch. 4), le recourant n'a pas contesté la compétence en tant que telle du TAS, mais a exprimé le souhait que celui-ci se déclarât compétent afin de traiter son appel et d'annuler la sentence finale du Tribunal AAA pour manque de compétence. [...]

Devant le Tribunal fédéral, le recourant, changeant son fusil d'épaule, soutient que la Formation était saisie non seulement de la question de la compétence du Tribunal AAA, mais encore du point de savoir si elle-même était compétente pour statuer sur le fond du litige, ces deux questions dépendant, selon lui, de la réponse à donner à la question préalable suivante : existe-t-il une convention d'arbitrage valable entre le recourant et l'USADA? [...]

3.3.2 *En réalité, la Formation a rendu une sentence préjudicielle ou incidente [...] par laquelle elle a réglé définitivement une question préalable de fond. [...]*

3.3.3 *La Formation ne pouvait certes pas rendre cette sentence préjudicielle ou incidente sans admettre à tout le moins implicitement, sur la base d'un examen prima facie, qu'elle était compétente pour le faire. Le comportement procédural adopté par le recourant devant elle, singulièrement la demande que lui faisait ce dernier d'annuler la sentence du Tribunal AAA, était de nature à la conforter dans l'idée que sa propre compétence de jugement n'était pas véritablement contestée par cet appelant.* (Panel's emphasis)

243. In any event, Mr. Bruyneel has clearly accepted the jurisdiction of the CAS as the final instance arbitration institution for anti-doping matters. Mr. Bruyneel's consent to arbitration, to the exclusion of state jurisdiction and the jurisdiction of CAS, is found in the following two documents:

(i) Mr. Bruyneel's License Application which he signed every year. The License Application reads as follows in relevant part:

"I state that I have not applied to the UCI, or any other federation or club for a license for the same year.

[...]

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

I shall assist in cycling competitions and cycling events in a fair and sporting fashion.

I shall submit to any sanctions awarded against me and shall lodge any appeals and disputes with the authorities listed in the regulations.

Under this reserve I will bring any disputes with the UCI exclusively before the district courts where UCI has its head office.

If I take part in a cycling competition where anti-doping tests are being organized under the terms of the UCI's Anti-doping regulations, I agree to submit to the anti-doping tests.

I accept that the results of the test will be published and that my club/team/sport group or my physician or doctor will be informed in detail.

I hereby undertake to lodge any disputes regarding doping with the 'Tribunal Arbitral du Sport' (TAS) or another authorized appeal body, and I accept that they will make a decision in the final instance. (Panel's emphasis)

(ii) Mr. Bruyneel's UCI License as "Directeur Sportif". On the back of his License card, it is mentioned that *"the holder is subject to the regulations of the UCI and the national and regional federations, and accepts the anti-doping controls and blood tests specified therein and the exclusive jurisdiction of the CAS."* (Panel's emphasis)

244. The Panel also notes that Mr. Bruyneel has consented to be bound by the UCI Regulations.

245. The relevant questions before the Panel are therefore not whether Mr. Bruyneel has consented to arbitration for anti-doping matters, or whether CAS has jurisdiction over the present case. The relevant question is rather whether USADA had results management jurisdiction, and whether the AAA is the disciplinary authority over Mr. Bruyneel in the first instance. In this context, the Panel has to examine whether the UCI Regulations may validly, in certain circumstances, delegate the management of anti-doping cases and the conduct of hearings to third party institutions such as USADA.
246. In brief, Mr. Bruyneel submits that the UCI anti-doping regulations, which he acknowledges he has undertaken to observe, do not provide for such delegation and that, should the Panel find otherwise, such delegation is invalid under Swiss law. USADA submits that such delegation is provided for under the UCI regulations and is valid under Swiss law.
247. The Panel will first analyse the question of whether the UCI regulations permit delegation of management of anti-doping cases and the conduct of hearings to third party institutions.

Whether USADA had result management jurisdiction and the AAA disciplinary authority under the UCI regulations

248. Of particular relevance are Article 11 and Article 13 UCI ADR, quoted above.
249. In the Panel's view, it is clear from a plain reading of Articles 11 and 13 UCI ADR that, in a case which does not involve Sample collection, results management over foreign or non-resident license-holders may be administered by the anti-doping organization which discovered the violation. In such circumstances, it is the rules of that discovering organization that are to be applied.
250. In the present case, USADA alleges that it is the anti-doping organization which discovered the alleged anti-doping violations of Mr. Bruyneel.
251. The term "discovery" is defined by Article 10 UCI ADR as follows:
- Discovery means the finding of elements that turn out to be evidence for facts that apparently constitute an anti-doping rule violation, regardless of the Anti-Doping Organization who qualifies that evidence as such.*
252. This definition appears to the Panel to be, on its face, broad. The Panel notes that USADA is the first and only NADO to bring/have brought charges against Mr. Bruyneel for his alleged violations. It is satisfied that USADA is the anti-doping organization which discovered the alleged anti-doping violations of Mr. Bruyneel, within the meaning of Article 10 UCI ADR. The fact that Mr. Bruyneel has not proffered any evidence indicating that another NADO discovered the alleged violations supports this conclusion.
253. Accordingly, pursuant to Article 11 UCI ADR, USADA's anti-doping rules may be applied to the alleged violations discovered by USADA. Similarly, pursuant to Article 13 UCI ADR, the results management and conduct of hearings for the alleged anti-doping rule violations of Mr. Bruyneel, a foreign license-holder, discovered by USADA, are subject to and governed by the rules of USADA. USADA's rules on anti-doping violations, results management, and hearings are set out in the USADA Protocol.

254. Having determined that the UCI regulations provide for and allow the delegation of management of anti-doping cases, and the conduct of hearings to third party institutions, the Panel turns to the question of the validity of such delegation under Swiss law.

Whether the provisions of the UCI regulations are valid under Swiss law

255. Both Mr. Bruyneel's and USADA's experts on Swiss law agree - correctly, in the view of the Panel - that the validity of Articles 11 and 13 UCI ADR are to be assessed by reference to Swiss law. The UCI is an association incorporated in Switzerland and governed by Swiss law. Its regulations, and the issue of their validity, are therefore subject to Swiss law.
256. Mr. Bruyneel submits that Articles 11 and 13 UCI ADR are invalid since they cannot validly create, under Swiss law, consent on the part of Mr. Bruyneel to arbitrate anti-doping matters with third party institutions such as USADA. By contrast, USADA submits that an arbitration agreement does exist between Mr. Bruyneel and USADA and is valid under Swiss law.
257. The Panel considers that the basis for any arbitration agreement in the present case can only be reached through two global references. The first reference is found in the License Application (and the License), which refers globally to the UCI Regulations. The second reference is found in the UCI Regulations, which refer globally to the anti-doping rules of the anti-doping organization that "discovered" the violation (Article 11 UCI ADR). The arbitration agreement is then incorporated into the anti-doping rules of the anti-doping organization that discovered the violation, namely in the USADA Protocol.
258. Whether two references of this kind can create a valid consent on the part of Mr. Bruyneel to arbitrate with USADA is to be considered in the light of Article 178 PILA. This Article sets out the criteria to ascertain the validity of arbitration agreements under Swiss law.
259. Article 178 PILA provides the following:
- 1 The arbitration agreement must be made in writing, by telegram, telex, telecopier or any other means of communication which permits it to be evidenced by a text.*
- 2 Furthermore, an arbitration agreement is valid if it conforms either to the law chosen by the parties, or to the law governing the subject-matter of the dispute, in particular the main contract, or to Swiss law.*
- 3 The arbitration agreement cannot be contested on the grounds that the main contract is not valid or that the arbitration agreement concerns a dispute which had not as yet arisen.*
260. The Panel is of the view that the requirement of written form within the meaning of Article 178(1) PILA is not problematic in sports arbitration, as the arbitration agreement is included in the sports regulations or a written undertaking. In the case of a global reference to another sports regulation containing an arbitration clause, the issue is one of consent to arbitrate rather than of form.
261. The Panel notes, as did the AAA panel in its PO2, that the Swiss Federal Tribunal has taken a liberal approach within the sport context when opining on the validity of an arbitration agreement. It concluded in its decision 4A_428/2011:

3.2.3 *The arbitration agreement must be in the format prescribed by Art. 178 (1) PILA. Whilst taking into consideration that requirement in good part (judgment 4A_358/2009 of November 6, 2009 at 3.2), the Federal Tribunal reviews with "benevolence" the consensual nature of sport arbitration with a view to enhancing speedy disposition of disputes by specialized arbitral tribunals presenting sufficient guarantees of independence and impartiality, such as the CAS (ATF 133 III 235 at 4.3.2.3). The liberalism of case law in this respect (case quoted *ibid.*; on that issue, see among others: Antonio RIGOZZI, *L'arbitrage international en matière de sport*, 2005, nr 832 ff) appears clearly in the flexibility with which case law treats the issue of the arbitration clause by reference (judgment 4A_246/2011 of November 7, 2011 at 2.2.2 and the precedents quoted); it also appears tangentially in the principle of case law according to which depending on the circumstances, a certain behavior may supplement compliance with a formal requirement pursuant to the rules of good faith (ATF 129 III 727 at 5.3.1 p. 735). Thus, as two specialists of international arbitration point out, it is generally held that the CAS arbitration clause is typical of the sport requirements (KAUFMANN-KOHLER/RIGOZZI, *Arbitrage international*, 2nd ed, 2010, p. 128 footnote 150). In other words, to recall the conclusion of another specialist in this field, there is practically no elite sport without consent to sport arbitration (Pierre-Yves TSCHANZ, in *Commentaire romand, Loi sur le droit international privé - Convention de Lugano*, 2011, nr 149 ad Art. 178 PILA).*

[...] ²⁰

262. In the passage quoted, the Swiss Federal Tribunal held that CAS arbitration agreements must be considered “typical of the sport requirements” (“Brachentypisch”), thus “*practically establishing a presumption in favor of the validity of CAS arbitration agreements by reference in sports matters*”²¹.
263. In its judgement 4A_246/2011 of 7 November 2011 (ATF 138 II 329), cited in the above quotation, the Swiss Federal Tribunal, adopting a liberal approach and, being convinced that the parties wished to resolve their dispute through arbitration, affirmed the competence of the CAS, even if it was not the institution that the parties had explicitly designated in their agreement. The Swiss Federal Tribunal held that it is possible to seek a solution which takes into account the fundamental intent of the parties to submit to arbitral jurisdiction, and to go as far as to remedy to the extent possible any explicit gaps in the arbitration clause by supplementing the contract on the basis of the hypothetical intent of the parties (judgement 4A_246/2011 of 7 November 2011 at para 2.3.3).
264. Similarly, in *Ricardo “Dodô” Lucas v FIFA and WADA*, 4A-460/2008, the Swiss Federal Tribunal, again taking a liberal approach, recognized the validity of arbitration agreements entered into by reference, even if this is a global reference which mentions the applicable regulations without specifically mentioning the arbitration agreement.
265. In that case, the Swiss Federal Tribunal accepted that Dodô had agreed to be bound by the Confederação Brasileira de Futebol (“CBF”) regulations, which refer to the FIFA regulations, which in turn designate the CAS as the competent authority to hear doping cases in appeal. The global reference to the FIFA regulations, and therefore the right to appeal of

²⁰ BGer. 4A_428/2011, 13 February 2012, para. 3.2.3. (Panel’s emphasis)

²¹ Antonio Rigozzi, Erika Hasler, in: Manuel Arroyo (editor), *Arbitration in Switzerland: The Practitioner's Guide*, 2nd ed., 2018, para. 27 at Art. R-47 CAS Rules.

- FIFA and WADA to CAS, as set out in the FIFA statutes, was sufficient for the CAS to accept jurisdiction on the basis of Article 47 of the CAS Code.
266. Dr Besson, Mr. Bruyneel’s expert on Swiss law, acknowledges in his report that the Swiss Federal Tribunal’s case law recognizes the validity of arbitration agreements entered into by global reference.
267. The Swiss Federal Tribunal’s liberal approach to consent in the sports arbitration context is not surprising in view of the vertical nature of the sport disciplinary anti-doping system, as opposed to the horizontal nature of commercial transactions.
268. Accordingly, and contrary to Mr. Bruyneel’s submission, the Panel is of the view that the relevant test in a sports context according to the Swiss Federal Tribunal case law is not whether there is a specific consent to arbitrate a particular dispute with particular counterparties (such as in a commercial context). Rather, in following the liberal approach in dealing with arbitration agreements of sport anti-doping disputes concluded by global reference, the Swiss Federal Tribunal has upheld the jurisdiction of an arbitration panel if its content does not depart from what a reasonable party could, in the same circumstances, expect.²²
269. The Panel notes, however, that the issue of whether two global references can constitute a valid consent to arbitrate an anti-doping matter has apparently not yet been considered by the Swiss Federal Tribunal. It appears to be a new issue.
270. That said, the Panel sees no reason to depart from the underlying approach and fundamental principles invoked by the Swiss Federal Tribunal in its case law.
271. The sport anti-doping system set out under the International Convention of 19 October 2005 Against Doping in Sport and the WADA Code is based on a network of institutions, including international sports federations such as the UCI and national anti-doping organizations such as USADA. All such institutions are required to apply the WADA Code through implementation of regulations that mirror the WADA Code.
272. For example, and of relevance to the present case, Articles 11 and 13 UCI ADR mirror Articles 15.3 and 15.3.1 of the WADA Code.

UCI Regulations		WADA Code	
Art. 11	<i>“[i]f an anti-doping violation where no Sample collection is involved is discovered by another Anti-Doping Organization [other</i>	Art.15.3	<i>“Except as provided in Article 15.3.1 below, results management and hearings shall be the responsibility of and shall be governed by the procedural rules of the Anti-Doping Organization that initiated and</i>

²² BGE 108 II 416 para. 1b; BGE 109 II 213 para. 2; Zurich Commercial Court, decision of 30 August 1993 (cf. ASA Bull. 1993, p. 536); Zurich Commercial Court, decision of 25 August 1992 (cf. ZR 1992/93, p. 80); Girsberger/Voser, 2012, para. 307.

	<p><i>than the UCI], the anti-doping rules of that Anti-Doping Organization shall apply.”</i></p>		<p><i>directed Sample collection (or, if no Sample collection is involved, the organization which discovered the violation). If that Anti-Doping Organization does not have the authority to conduct results management, then results management authority shall default to the applicable International Federation. Regardless of which organization conducts results management or hearings, the principles set forth in Articles 7 and 8 shall be respected and the rules identified in the Introduction to Part One to be incorporated without substantive change must be followed.”</i></p>
<p>Art. 13</p>	<p><i>“Results management and the conduct of hearings for anti-doping rule violations arising from a test by, or discovered by, a National Anti-Doping Organization involving a License-Holder who is not a national, resident, license-holder or member of a sports organization of that country shall be administered by and under the rules of that National Anti-Doping Organization.”</i></p>	<p>Art. 15.3.1</p>	<p><i>“Results management and the conduct of hearings for an anti-doping rule violation arising from a test by, or discovered by, a National Anti-Doping Organization involving an Athlete who is not a national, resident, license-holder or member of a sport organization of that country shall be administered as directed by the rules of the applicable International Federation. [...]”</i></p>

273. The Swiss Federal Tribunal has acknowledged the WADA Code as the fundamental norm in addressing matters of doping around the world.²³
274. The cornerstone of the implementation of this norm is a unified system of interpretation and dispute settlement, including arbitration, “to ensure harmonized, coordinated and effective anti-doping programs at the international and national level with regard to detection, deterrence and prevention of doping”.²⁴
275. This is why all decisions made pursuant to the WADA Code, and mirroring regulations by bodies in charge of handling anti-doping cases at the international level, are subject to an appeal to the CAS, and subsequently to the Swiss Federal Tribunal.
276. Accordingly, the Panel is of the view that Mr. Bruyneel is not prejudiced if USADA exercises jurisdiction over him. The Panel finds convincing the approach of Prof. Philippin in his first report:
- “... The institutions to which the disciplinary powers may be delegated (in order to reflect the way international sport is structured)[such as USADA] are all signatories of the World Anti-Doping Code. The sanctions are therefore identical (cf. Article 10 of the World Anti-Doping Code) and the same guarantees of due process apply in all cases (cf. Article 8 of the World Anti-Doping Code). Equal treatment is therefore ensured, irrespectively of whether the disciplinary powers are exercised within UCI or not. Article 15 of the World Anti-Doping Code eventually mandates CAS arbitration in all cases (at least for international level athletes and events).”*
277. In the present case, Mr. Bruyneel was able to appeal the AAA Decision before the CAS, pursuant to Article 17 (b) of the USADA Protocol and Article R-45 of the AAA Supplementary Procedures for the Arbitration of Olympic Sport Doping Disputes.
278. Competitive sport requires a level-playing field which is safeguarded by a robust and vertical anti-doping system under the umbrella of the WADA Code and the CAS. Mr. Bruyneel, as a veteran ‘Directeur sportif’ of international cycling teams, and previously a long-time elite athlete himself, cannot have been unaware of this system.
279. In view of the harmony and uniformity of the sport anti-doping system, the Panel finds that the delegation of powers set out in Articles 11 and 13 UCI ADR does not affect Mr. Bruyneel’s legal situation. The AAA proceeding remains only one step in a procedural chain, the finality of which leads to the possibility of CAS proceeding²⁵. The disciplinary authority exercised by the AAA in the first instance as the hearing body of the NADO which discovered the violation is now being exercised on a *de novo* basis by the CAS. Moreover, the independence of the CAS has been recognized by the Swiss Federal Tribunal on many occasions,²⁶ which reflects a measure of the guarantee that before the CAS Mr. Bruyneel will have a fair and impartial hearing. The sport system is entirely distinguishable from its counterparts in the commercial field, where an arbitration award is not subject to a *de novo* appeal.

²³ ATF 129 III 445, para. 3.3.3.3.

²⁴ WADA Code, p. 11.

²⁵ With the possibility of an appeal to the Swiss Federal Tribunal.

²⁶ See *inter alia*, *FC X v. Y S.à r.l.*, 7 November 2011, 4A_246/2011; ATF 138 III 29, para. 3.2.1; 4A_260/2017, para. 3.4.

280. Consequently, the Panel finds that the delegation of powers by the UCI to USADA as the NADO which discovered the violation cannot be considered atypical, unusual or otherwise problematic within the sport disciplinary anti-doping system. Relying on the principle of confidence applied by the Swiss Federal Tribunal in the context of arbitration agreements by global reference,²⁷ the Panel concludes that USADA had result management jurisdiction, and the AAA had disciplinary authority over Mr. Bruyneel. The UCI validly delegated those powers to USADA and the AAA pursuant to Swiss law. The case law of the Swiss Federal Tribunal point unequivocally in that direction.
281. In respect of Mr. Martí, the Panel notes that Mr. Martí has, in essence, adopted Mr. Bruyneel's position on jurisdiction. In other words, Mr. Martí does not object to the jurisdiction of CAS over him, which he accepts as an Appellant, but rather contests that USADA had result management jurisdiction and the AAA the disciplinary authority over him.
282. The Panel rejects Mr. Martí's argument. Mr. Martí concluded on 25 July 2012 an arbitration agreement with USADA. This provides as follows in relevant part:
- "7. The Parties' agreement to reopen this matter and permit a AAA arbitration is being made so that the merits of USADA's claims against Mr Martí and the merits of Mr Martí's defenses may be heard and decided by AAA arbitrators.*
- 2. For the foregoing reasons, Mr Martí and Mr Martí's Legal Counsel have agreed to enter this arbitration agreement allowing Mr Martí to contest the charges against him in a AAA arbitration hearing conducted under the USADA Protocol."²⁸*
283. In this arbitration agreement, Mr. Martí voluntarily agreed in writing to arbitrate "USADA's claims" against him in accordance with the terms of the USADA Protocol. USADA's claims are set out in the 12 June 2012 Letter and concern Mr. Martí's alleged violations of the UCI ADR. Accordingly, Mr. Martí was aware of the nature of USADA's claims against him at the time he concluded the arbitration agreement.
284. The Panel concludes that, in view of this arbitration agreement, Mr. Martí cannot dispute USADA's results management jurisdiction, or the AAA's disciplinary authority exercised over him.
285. Finally, in respect of Dr. Celaya, the Panel recalls that, as stated above, while he did object before the AAA to USADA's result management jurisdiction and the AAA's disciplinary authority exercised over him, Dr. Celaya did not appeal the AAA Decision nor did he resubmit his objection as one of the Respondents in CAS 2014/A/3618. Accordingly, the AAA's finding that jurisdiction exists for USADA to proceed to prosecute the anti-doping violation charges against Dr. Celaya stands²⁹ and the Panel so finds.

²⁷ BGer 4C.44/1996 of 13 February 2012, para. 3.2.3.

²⁸ 25 July 2012 Arbitration Agreement between the United States Anti-Doping Agency and Jose "Pepe" Martí.

²⁹ AAA Decision, paras. 22-26.

B. USADA’S MANDATE

1. Mr. Bruyneel’s Position

286. Mr. Bruyneel submits that USADA is not empowered by its own rules to take steps against Mr. Bruyneel and accordingly acted *ultra vires* of its own mandate.
287. According to Mr. Bruyneel, USADA derives its powers from statutory grant of the U.S. Congress as well as its contractual arrangements with the United States Olympic Committee (“USOC”). In addition, USADA’s Bylaws govern its operation as a corporation and the USADA Protocol governs its substantive activities. Mr. Bruyneel argues that none of these controlling elements give USADA powers over him.
288. In 2002, Congress recognized USADA as “[...] *the independent anti-doping organization for the amateur athletic competitions recognized by the United States Olympic Committee*”. It further provided that USADA shall “[...] *implement anti-doping education, research, testing and adjudication programs to prevent United States Amateur Athletes participating in any activity recognized by the United States Olympic Committee from using performance enhancing drugs [...]*”. “United States Amateur Athletes” is defined under 36 U.S.C. Section 220501(b)(1) as follows: “[...] *an athlete who meets the eligibility standards established by the national governing body or paralympic sports organization for the sport in which the athlete competes.*” Mr. Bruyneel thus argues that Congress has not granted authority to USADA to bring charges against foreign nationals and residents. Mr. Bruyneel submits that he is a Belgian national, who has never lived in the United States.
289. According to Mr. Bruyneel, the USADA Protocol confirms that USADA’s activities are limited to the Olympic and Paralympic Movement in the United States. Paragraph 1 of the USADA Protocol provides that:

1. USADA’s Relationship with the United States Olympic Committee

The United States Anti-Doping Agency (“USADA”) is an independent legal entity not subject to the control of the United States Olympic Committee (“USOC”) and for purposes of the World Anti-Doping Code (the “Code”) and various international standards, including the World Anti-Doping Agency (“WADA”) International Standard for Testing (the “IST”) is the National Anti-Doping Organization (“NADO”) for the United States of America. The USOC has contracted with USADA to conduct Drug Testing, manage test results, investigate potential violations of anti-doping rules, and adjudicate disputes involving anti-doping rule violations for Participants in the Olympic and Paralympic movements within the United States and to provide educational information to those Participants. (Emphasis added)

290. Paragraph 2 defines which athletes are included in the group of “Participants in the Olympic and Paralympic movements within the United States”, for the purposes of testing:
- a. *Any Athlete who is a member or license holder of a NGB;*
 - b. *Any Athlete participating at an Event or Competition sanctioned by the USOC or a NGB or participating at an Event or Competition in the United States sanctioned by an IF;*

- c. *Any foreign Athlete who is present in the United States;*
- d. *Any other Athlete who has given his/her consent to Testing by USADA or who has submitted a Whereabouts Filing to USADA or an IF within the previous twelve months and has not given his or her NGB and USADA written notice of retirement;*
- e. *Any Athlete who has been named by the USOC or an NGB to an international team or who is included in the USADA Registered Testing Pool (“USADA RTP”) or is competing in a qualifying event to represent the USOC or NGB in international competition;*
- f. *Any United States Athlete or foreign Athlete present in the United States who is serving a period of Ineligibility on account of an anti-doping rule violation and who has not given prior written notice of retirement from all sanctioned competition to the applicable NGB and USADA, or the applicable foreign anti-doping agency or foreign sport association; or*
- g. *Any Athlete USADA is Testing under authorization from the USOC, an NGB, IF, any NADO, WADA, the International Olympic Committee (“IOC”), the International Paralympic Committee (“IPC”) or the organizing committee of any Event or Competition.*

291. The USADA Protocol then goes on to state at Paragraph 3 (c) that:

USADA shall be responsible for results management of the following: (1) tests initiated by USADA, unless otherwise referred by USADA to a foreign sports organization having jurisdiction over the Athlete or other Person, (2) all other tests for which the applicable IF rules require the initial adjudication to be done by a domestic body (if responsibility for results management is accepted by USADA), and (3) other potential violations of Annex A, IF, the USOC National Anti-Doping Policies (“NADP”), or the USADA Protocol involving any Athlete described in paragraph 2, or Athlete Support Personnel, unless otherwise referred by USADA to a foreign sports organization having jurisdiction over the Athlete or other Person Where, pursuant to an agreement, USADA executes tests initiated by an IF, regional or continental sports organization or other Olympic movement sporting body, other than the USOC or a NGB, then results management shall be governed by the USADA Protocol unless otherwise specified in the testing agreement. (Emphasis added)

292. Therefore, argues Mr. Bruyneel, to the extent that the USADA Protocol addresses a role other than one based on testing, it specifically confines that role to the group of athletes previously identified in Paragraph 2 of the USADA Protocol. It also refers to “athlete support personnel”, but self-evidently, that reference must be read as being to athlete support personnel who fall within the same group, *mutatis mutandis*, as defined in Paragraphs 1 (i.e. “Participants in the Olympic and Paralympic movements within the United States”) and 2.
293. Accordingly, avers Mr. Bruyneel, the USADA Protocol itself confines USADA’s role, in non-analytical contexts, in relation to foreign licensed athlete support personnel, to a single situation: where such athlete support personnel are present in the United States. In this respect, Mr. Bruyneel submits that there is no allegation from USADA that he committed any anti-doping rule violation on US soil.

294. In light of the above, Mr. Bruyneel argues that USADA is not empowered by its own controlling instruments to act against Mr. Bruyneel.

2. USADA's Position

295. Contrary to Mr. Bruyneel's position, USADA submits that its powers are not limited by Congress or the USOC, especially when both refer to USADA as an independent, nongovernmental anti-doping agency.
296. As a non-profit corporation organized under the Colorado Revised Non-profit Corporation Act, USADA's corporate purposes are set forth in its Articles of Incorporation and include "*develop[ing] and provid[ing] for a fair, timely and impartial adjudication system that will hear cases of alleged performance enhancing drug use and doping methods*". Thus, according to USADA, USADA's organizing documents clearly permit USADA to conduct an adjudication of a doping case against Mr. Bruyneel delegated by the UCI under the UCI ADR.
297. USADA also argues that, even if the USADA Protocol could limit USADA's corporate purposes, which it cannot, the USADA Protocol specifies at Article 3 (c) that "*USADA shall be responsible for results management of... other potential violations of Annex A, IF [rules], the USOC National Anti-Doping Policies ("NADP"), or the USADA Protocol involving any Athlete described in paragraph 2, or Athlete Support Personnel, unless otherwise referred by USADA to a foreign sports organization having jurisdiction over the Athlete or other Person*" (emphasis added). Therefore, according to USADA, there is no limitation or restriction as to the nationality or affiliations of the individual against whom a case is brought.
298. In addition, USADA submits that, as a Colorado non-profit corporation, USADA's corporate powers are controlled by the terms of Colorado law. Under Colorado law, a challenge that a Colorado non-profit corporation's action was *ultra vires* or outside the scope of its authority cannot be a defense to an action brought by the non-profit corporation. (*American Ski Ass'n*, 682 P.2d at 58; C.R.S.A. Section 7-123-104).

3. Panel's Analysis

299. The Panel notes that USADA's object and purposes are set forth in its Articles of Incorporation. These include: "*foster[ing] national and international amateur sports competition*"; "*interface[ing] with ... International Federations... on issues related to performance enhancing drugs and doping methods*"; "*develop[ing] and provid[ing] for a fair, timely and impartial adjudication system that will hear cases of alleged performance enhancing drug use and doping methods*"; "*communicat[ing] sanctions, taking into consideration the rules of the appropriate NGB and if, when improper use of performance enhancing drugs or doping methods is found to exist*"; "*enter[ing] into bilateral and multilateral agreements with other anti-doping organizations*"; and "*undertak[ing] such other activities which may be consistent with these purposes.*"³⁰
300. The Panel finds that these purposes are broad enough to encompass USADA's prosecution of a case against Mr. Bruyneel, as delegated to it through the UCI regulations.

³⁰ USADA Articles of Incorporation, Section 3.1.

301. USADA is a fully independent entity and its powers cannot be limited by its contractual responsibilities to the USOC or Congress' statutory grant.
302. Accordingly, the Panel rejects Mr. Bruyneel's argument that USADA acted *ultra vires* of its own mandate when it exercised jurisdiction over him.

C. BREACH OF CONFIDENTIALITY

1. Mr. Bruyneel's Position

303. Should the Panel decide that USADA is entitled to proceed against him and that there exists a valid arbitration agreement, which it did, Mr. Bruyneel submits that the agreement must in any event be voided on the basis that USADA has committed a fundamental breach of (i) that agreement, and (ii) its duty to arbitrate in good faith.
304. Firstly, Mr. Bruyneel argues that USADA was bound by the following express confidentiality obligations.

- (i) Article 16 of the USADA Protocol provides the following:

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

- (ii) The words "Publicly Disclose" are defined at Annex A to the USADA Protocol as: *"[...] to disseminate or distribute information to the general public or Persons beyond those Persons entitled to earlier notification in accordance with Article 14 [of the WADA Code.]"*

- (iii) Article 14 of the WADA Code provides the following:

14.2.1 The identity of any Athlete or other Person who is asserted by an Anti-Doping Organization to have committed an anti-doping rule violation, may be publicly disclosed by the Anti-Doping Organization with results management responsibility only after notice has been provided to the Athlete or other Person in accordance with Articles 7.2, 7.3 or 7.4, and to the applicable Anti-Doping Organizations in accordance with Article 14.1.2.

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

Doping Organization shall also, within the time period for publication, send all hearing and appeal decisions to WADA.

- 14.2.3 *In any case where it is determined, after a hearing or appeal, that the Athlete or other Person did not commit an anti-doping rule violation, the decision may be disclosed publicly only with the consent of the Athlete or other Person who is the subject of the decision. The Anti-Doping Organization with results management responsibility shall use reasonable efforts to obtain such consent, and if consent is obtained, shall publicly disclose the decision in its entirety or in such redacted form as the Athlete or other Person may approve.*
- 14.2.4 *For purposes of Article 14.2, publication shall be accomplished at a minimum by placing the required information on the Anti-Doping Organization's Web site and leaving the information up for at least one (1) year.*
- 14.2.5 *No Anti-Doping Organization or WADA accredited laboratory, or official of either, shall publicly comment on the specific facts of a pending case (as opposed to general description of process and science) except in response to public comments attributed to the Athlete, other Person or their representatives. (Emphasis added.)*

(iv) Articles 350 and following of the UCI ADR provide as follows:

350. *Persons carrying out a task in Doping Control are required to observe strict confidentiality regarding any information concerning individual cases which is not required to be reported under these Anti-Doping Rules.*
351. *UCI may publish reports showing the name of each Rider tested and the date of each Testing.*
352. *The identity of a License-Holder who may have committed an anti-doping rule violation may be publicly disclosed by the UCI after notice has been provided to the License-Holder under article 206 or, where no Adverse Analytical Finding is involved, under article 249.*
353. *Once a violation of these Anti-Doping Rules has been established in a decision referred to in articles 272 or 284 or in an agreement as referred to in article 250, the UCI shall report it publicly within 20 days, including the name of the License-Holder, the anti-doping violation committed, the Prohibited Substance or Method involved and the sanctions imposed.*
354. *Publication shall be made on UCI's Web site for at least one year and may also be made in the UCI Official News Bulletin and/or in the official bulletin of the National Federation of the person penalized.*
355. *In any case where it is determined, after a hearing or appeal, that the License-Holder did not commit an anti-doping rule violation, the decision may be disclosed publicly only with the consent of the License-Holder who is the subject of the decision and in such form as agreed with the License-Holder.*

- (v) Article 8.3 of the WADA Code provides in relevant part as follows:
- Where no hearing occurs, the Anti-Doping Organization with results management responsibility shall submit to the Persons described in Article 13.2.3 a reasoned decision explaining the action taken.*
- (vi) The “Persons described in Article 13.2.3” are:
- (a) the Athlete or other Person who is the subject of the decision being appealed; (b) the other party to the case in which the decision was rendered; (c) the relevant International Federation; (d) the National Anti-Doping Organization of the Person’s country of residence or countries where the Person is a national or license holder; (e) the International Olympic Committee or International Paralympic Committee, as applicable, where the decision may have an effect in relation to the Olympic Games or Paralympic Games, including decisions affecting eligibility for the Olympic Games or Paralympic Games; and (f) WADA.*
305. Mr. Bruyneel asserts that, pursuant to these provisions, there may be no publication whatsoever about a pending case other than the name of the person involved and even in determined cases, the authority to disclose and comment is very limited.
306. Secondly, Mr. Bruyneel submits that confidentiality obligations are central to the rights of a defense in anti-doping proceedings. Mr. Bruyneel argues that confidentiality of proceedings is an essential protection to an individual’s right to a fair hearing.
307. Thirdly, Mr. Bruyneel submits that, in violation of its confidentiality obligations, USADA deliberately published the entirety of its case against Mr. Bruyneel on its website.
308. On 10 October 2012, after Mr. Armstrong’s failure to appear at a hearing, USADA published on its website its Reasoned Decision against Mr. Armstrong. That document was accompanied by a number of supporting documents including the affidavits of a number of former employees of the US Postal Service Team. The Reasoned Decision was as much focused on Lance Armstrong as it was on members of his cycling team, including Mr. Bruyneel and Messrs. Martí and Celaya. According to Mr. Bruyneel, USADA thus took the unprecedented step of filing its entire case against him before he was given any opportunity to review and comment on the evidence and before he had the opportunity to present his defense at a hearing.
309. The published Reasoned Decision reaches conclusions as to Mr. Bruyneel’s involvement in doping from 1999 to 2010 on the basis solely of USADA’s own untested evidence avers Mr. Bruyneel.
310. Fourthly, Mr. Bruyneel submits that the breach of confidentiality is incurable and has prejudiced his defense in this matter for the following reasons:
- (i) Mr. Bruyneel has been and continues to be vilified in the media following USADA’s portrayal of him in its Reasoned Decision as a drug pusher.
- (ii) Any discussion about what evidence is admissible in any disciplinary proceeding involving Mr. Bruyneel is immaterial since USADA took it upon itself to publish all of it to the world at large.

- (iii) Mr. Bruyneel was forced to leave his employer due to the adverse publicity caused by the Reasoned Decision and has thus lost his only source of income on which he relied to defend himself.
 - (iv) There is a perception in the media that, based on the contents of USADA's publications, Mr. Bruyneel should never be able to return to cycling.
 - (v) In February 2013, the US Department of Justice joined a civil action against Mr. Bruyneel and others from which it seeks to recover USD 90 million (known as the "**Qui Tam**" action). The material on which the DoJ relies in the action is virtually identical to that published by USADA.
 - (vi) Mr. Bruyneel cannot defend himself in any proceedings involving USADA due to the risk that any documents or evidence filed in his defence are likely to end up in the hands of the DoJ and/or Floyd Landis for the purposes of the Qui Tam action.
 - (vii) In sum, Mr. Bruyneel has been denied the very thing that the confidentiality provisions were intended to protect: his defence rights.
311. Fifthly, Mr. Bruyneel submits that USADA has, by its conduct, repudiated the arbitration agreement the Panel may consider existed between USADA and him for the following reasons.
- (i) The AAA Panel confirmed in its Decision that "*USADA violated the applicable confidentiality provisions of the UCI ADR, the [WADA] Code and the Protocol*". However, the AAA Panel did not agree that the breach should result in a repudiation of the arbitration agreement that it construed to exist and ordered that "*the parties are to make no public reference to or about these proceedings other than saying 'no comment'*". The Decision does not address many of Mr. Bruyneel's submissions as to the impact of USADA's actions (loss of income, Qui Tam action, etc).
 - (ii) A duty of confidentiality is central to the arbitration agreement in the context of anti-doping proceedings because it protects the individual's procedural rights and right to a fair hearing in a proceeding intended to determine the civil rights of that individual. The obligations of confidentiality in anti-doping arbitral proceedings thus ensures that the individual is afforded the same safeguards guaranteed by state courts.
 - (iii) USADA's breach of its confidentiality obligations thus stripped Mr. Bruyneel of one of the most important procedural protections afforded to him by the terms of whatever arbitration agreement may be deemed by the Panel to exist.
 - (iv) It is a generally accepted principle that the "*most fundamental objective and effect of an international arbitration agreement is to obligate parties to participate in good faith and cooperatively in the arbitration of their disputes pursuant to that agreement.*" (See Gary Born, *International Commercial Arbitration* (2009), Volume 1, Kluwer Law International, p, 1004). USADA breached its duty to arbitrate in good faith by its conduct.
312. For the foregoing reasons, Mr. Bruyneel seeks a ruling that:
- (i) USADA's breach of confidentiality amounted to a repudiatory breach of any arbitration agreement deemed by the Panel to exist between USADA and Mr. Bruyneel; or alternatively;

- (ii) Whatever arbitration agreement might be deemed by the Panel to exist between Mr. Bruyneel and USADA can no longer be performed due to the Qui Tam action.
313. Mr. Bruyneel makes these requests without prejudice to his right to seek a declaration from a state court or other forum that his right to a fair hearing has been irretrievably prejudiced by USADA's actions and to seek any remedies that may be available to him.

2. USADA's Position

314. USADA submits that it did not breach any obligation of confidentiality.
315. Pursuant to Article 8.3 of the WADA Code, where no hearing occurs in a case, "*the Anti-Doping Organization with results management responsibility shall submit to the Persons described in Article 13.2.2 [i.e., the persons entitled to appeal the decision – in this case UCI and WADA] a reasoned decision explaining the action taken.*" USADA therefore argues that, because Mr. Armstrong did not go to a hearing, USADA was required to issue a "reasoned decision" setting forth the reasons for imposing sanctions of lifetime ineligibility and disqualification of competitive results from 1 August 1998.
316. USADA avers that it cannot be contended that had Lance Armstrong gone to an arbitration hearing, the AAA panel would have been required to exclude references to Messrs. Bruyneel and Martí from its reasoned decision. It would have been inconsistent with due process and have undermined the credibility of the anti-doping system had USADA not provided a full, comprehensive and complete reasoned decision in the Lance Armstrong case.
317. The AAA Panel recognized the requirement that USADA issue a public reasoned decision in the Armstrong case even though that decision would require disclosures that pertained to the pending cases against Messrs. Bruyneel, Martí and Celaya.
318. Pursuant to Article 14.2.2 of the WADA Code, USADA affirms that public disclosure of determinations that rule violations have occurred is required for transparency purposes. Thus, avers USADA, USADA handled the Reasoned Decision in the same manner as other reasoned decisions and posted it and supporting documentation on the USADA website.
319. USADA submits that given the level of involvement of each of Messrs. Bruyneel, Martí and Celaya in the US Postal Services' team doping program, it would not have been possible to provide an accurate picture of USADA's evidence of Lance Armstrong's rule violations without describing the involvement of those individuals: the Reasoned Decision would have been incomplete.
320. Pursuant to Article 16 of the USADA Protocol, "[a]fter an anti-doping rule violation has been established USADA may comment upon any aspect of the case." USADA argues that it sanctioned Mr. Armstrong on 24 August 2012, and therefore, from that date onwards, USADA was authorized to fully and in any forum "*comment upon any aspect of the case*" against Mr. Armstrong. Given the close connection of Messrs. Bruyneel, Celaya and Martí to Armstrong's doping, USADA argues that it was authorized to discuss the evidence related to those individuals because it was an aspect of the case against Armstrong.
321. In this respect, USADA affirms though that it did not publicly disclose the existence of USADA's case against Messrs. Bruyneel and Martí. In any event, since Mr. Bruyneel publicly commented USADA's actions against him, pursuant to Article 14.2.5 of the WADA

Code, USADA is allowed to “publicly comment on the specific facts of a pending case... in response to public comments attributed to the Athlete, other Person or their representatives.”

322. For the foregoing reasons, USADA submits that it did not breach any confidentiality obligation and that the AAA Panel erred in its findings.
323. Finally and in any event, USADA submits that even if it has breached any confidentiality obligation, according to Prof. Philippin, principles of Swiss law would not recommend the exclusion of evidence due to such a breach. The traditional basis for exclusion of evidence is unlawfully obtained evidence. There is no suggestion and no argument in the present case that the evidence obtained by USADA was unlawfully obtained. Nor has Messrs. Bruyneel and Martí submitted any authority for the proposition that the exclusion of evidence or the elimination of claims is a permissible response under Swiss law to the breach of confidentiality obligations.

3. WADA’s Position

324. WADA submits that the alleged breach of confidentiality by USADA cannot remove CAS jurisdiction over WADA’s appeal. There is no alleged breach by WADA and any alleged breach by USADA cannot estop WADA from exercising its own right of appeal.

4. Panel’s Analysis

325. The Panel recalls that Mr. Bruyneel raised the same grounds of challenge before the AAA, namely that USADA breached its confidentiality obligations by publishing extensive statements concerning Mr. Bruyneel’s alleged anti-doping violations in its reasoned decision against Lance Armstrong.
326. In its PO2 dated 12 June 2013, the AAA Panel found the extent of USADA’s disclosures “troubling”. It concluded as follows:

Accordingly, the Panel finds that USADA violated the applicable confidentiality provisions of the UCI ADR, the Code, and the Protocol.

327. Despite this conclusion, the AAA panel denied Mr. Bruyneel the relief he was seeking, namely that the panel declare that the breach amounts to “a repudiatory breach of any arbitration agreement there may exist” between USADA and Mr. Bruyneel. The AAA panel wrote as follows in this respect:

Despite the concerns raised by USADA’s disclosures, the Panel does not find that these disclosures undermine the Respondents’ right to a fair hearing in this proceeding since the disclosures have no bearing on the neutrality of the Panel. The Panel also finds that, even though the disclosures did violate the confidentiality obligations placed upon USADA by the UCI, WADA, and its own Protocol, USADA’s actions do not merit the relief requested by the Respondents. [...]

328. The Panel sees no reason to depart from the AAA’s finding on this issue in the circumstances of the present case.

329. USADA's issuance of its reasoned decision against Mr. Armstrong was a result of Mr. Armstrong's decision not to bring a AAA proceeding to contest the sanctions imposed against him by USADA. USADA was obligated to issue a reasoned decision pursuant to Articles 8.3 and 14.2.2 of the WADA Code.

330. Those Articles provide as follows:

2.3 Waiver of Hearing

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

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

331. However, in its reasoned decision, USADA discusses in considerable detail the alleged anti-doping activities of Mr. Bruyneel, which have in large part been re-stated and alleged in these proceedings.

332. This is clearly prohibited by USADA's own Protocol at Article 16:

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

333. This is so since any disclosure of an alleged anti-doping rule violation may have potentially severe consequences on an athlete (or athlete personnel) in the court of public opinion.

334. On the one hand, USADA had to publish a reasoned decision against Mr. Armstrong. On the other, USADA was under clear obligation not to disclose publicly, or comment upon, any information relating to any alleged anti-doping rule violation committed Mr. Bruyneel.

335. The Panel is of the view that these obligations are not mutually exclusive. The Panel considers that USADA, while fulfilling its obligation to publish a reasoned decision against

- Mr. Armstrong, could have also respected its confidentiality obligation *vis-à-vis* Mr. Bruyneel by redacting his name, as it did for other individuals.
336. Accordingly, the Panel finds that USADA violated its confidentiality obligations *vis-à-vis* Mr. Bruyneel.
337. Having found a breach, Mr. Bruyneel seeks a ruling from the Panel that:
- (i) USADA's breach of confidentiality amounted to a repudiatory breach of an arbitration agreement deemed by the Panel to exist between USADA and Mr. Bruyneel; or alternatively;
 - (ii) Whatever arbitration agreement might be deemed by the Panel to exist between Mr. Bruyneel and USADA can no longer be performed due to the Qui Tam action.
338. The Panel notes that neither the UCI ADR, nor the WADA Code nor the USADA Protocol provide for a specific penalty for a violation of the confidentiality provisions. As such, should the Panel decide to grant Mr. Bruyneel relief, any relief granted is a matter of arbitral discretion to be exercised in the circumstances of the present case.
339. The Panel is of the view that the relief sought by Mr. Bruyneel would, if granted, in effect dispose of the case. In the view of the Panel such a result would be disproportionate, far exceeding the severity of the effect of USADA's disclosures. In the Panel's view, however unsatisfactory, these disclosures did not - and could not - as such prejudice Mr. Bruyneel's right to a fair hearing, or the independence or neutrality of this Panel. Even Mr. Bruyneel confirmed at the hearing on the merits, in answer to the President's question, that he had had a fair hearing before the Panel.
340. Accordingly, the relief sought by Mr. Bruyneel is denied.

D. PARTICULARIZATION OF THE CHARGES

1. Parties' Positions

341. Messrs Bruyneel and Martí request that the Panel dismiss USADA/WADA's appeal based on their repeated failure to particularize the charges. Despite their numerous requests, USADA/WADA have failed to identify what acts allegedly committed by them constitute a violation, which specific rules were violated by the commission of each act, when and where each act took place and what evidence USADA/WADA possess in relation to each alleged act.
342. Messrs Bruyneel and Martí contend that a failure to do so is unfair, contravenes due process and is contrary to:
- (i) Article 6(1) of the European Convention on Human Rights (ECHR);
 - (ii) Article 8.1 of the WADA Code; and
 - (iii) the right to be heard under Art. 190(2)(d) of the Swiss Private International Law Act ("PILA").

343. In reply, WADA/USADA submit that they have sufficiently particularized the charges against Messrs Bruyneel and Martí.
344. They say that after four years of proceedings including a full evidentiary hearing before the AAA it is not reasonable for Messrs Bruyneel and Martí to assert that they are unaware of the charges asserted against them.
345. More importantly, USADA says that it has given, in its Pre-Hearing Brief, a more detailed description of the evidence against Messrs Bruyneel and Martí setting out the overview of evidence against them and a discussion of the rule violations charged against them. Such brief does show Messrs Bruyneel and Martí “*how the dots are connected*”.

2. Panel’s Analysis

346. The Panel recalls that Messrs Bruyneel and Martí made the same objection before the AAA panel. The AAA panel decided at paras. 62-63 of its Decision as follows:

[...] the parties challenged the particularization of USADA’s charges. Specifically, the parties claimed that USADA’s failure to particularize its allegations violated their due process rights and precluded them from presenting an adequate defense.

[...]

The Panel addressed these matters in its procedural orders and correspondence with the parties. Of significance, the Panel found the charging instruments and allegations set forth by USADA through its prior released “reasoned decision” and its various submissions in this case to be sufficient for the Respondents to assert their defenses. While the Respondents might prefer more detail to the charging documents, there is no such requirement in the relevant governing documents and rules and the Panel declined to so find. [...]

347. The Panel, having reviewed USADA’s Notice Letter of 12 June 2012, its reasoned decision, its submissions before the AAA and before the present Panel, sees no reason to depart from the AAA’s finding on this issue. In its view, having regard to the totality of the material before it and the arguments and submissions of the Parties, the charges against Messrs Bruyneel and Martí have been more than adequately particularised, especially in circumstances of allegations of widespread doping such as in the present case.

VIII. ANTI-DOPING RULES VIOLATIONS

A. INTRODUCTION

348. The Panel will now review the evidence before it with respect to the Anti-Doping Rules Violations (ADRVs) allegedly committed by Mr. Bruyneel and Mr. Martí.
349. The ADRV’s allegedly committed by Mr. Bruyneel are:

- 1) **Trafficking** of EPO, blood transfusions, testosterone, hGH, corticosteroids and/or saline, plasma or glycerol infusions.³¹
 - 2) **Administration** and/or **attempted administration** to others of EPO, blood transfusions, testosterone, hGH, corticosteroids and/or saline, plasma or glycerol infusions.³²
 - 3) **Assisting, encouraging, aiding, abetting, covering up** and **other complicity** involving one or more anti-doping rule violations and/or attempted anti-doping rule violations.³³
 - 4) **Aggravating circumstances** justifying a period of ineligibility greater than the standard sanction.³⁴
350. The ADRVs allegedly committed by Mr. Martí are:
- 1) **Possession** of prohibited substances and/or methods including EPO, blood transfusions and related equipment (such as needles, blood bags, storage containers and other transfusion equipment and blood parameters measuring devices), testosterone, hGH, corticosteroids and/or saline, plasma or glycerol infusions.³⁵
 - 2) **Trafficking** of EPO, blood transfusions, testosterone, hGH, corticosteroids and/or saline, plasma or glycerol infusions.³⁶
 - 3) **Administration** and/or **attempted administration** to others of EPO, blood transfusions, testosterone, hGH, corticosteroids and/or saline, plasma or glycerol infusions.³⁷
 - 4) **Assisting, encouraging, aiding, abetting, covering up** and **other complicity** involving one or more anti-doping rule violations and/or attempted anti-doping rule violations.³⁸

³¹ USADA charged Mr. Bruyneel with violations of the following specific rules applicable to **trafficking and attempted trafficking**: UCI ADR 3, 135, 136 (2001-04); UCI ADR 15.7 (2005-2008); UCI ADR 21.7 (2009-2014); and WADA Code Article 2.7 (2003-present).

³² USADA charged Mr. Bruyneel with violations of the following specific rules applicable to **administration** and/or **attempted administration**: UCI ADR 1, 2, 54, 93 (1997-2000); UCI ADR 3, 133 (2001-2004); UCI ADR 15.8 (2005-2008); UCI ADR 21.8 (2009-2014); and WADA Code Article 2.8 (2003-present).

³³ USADA charged Mr. Bruyneel with violations of the following specific rules applicable to **assisting, encouraging, aiding, abetting, covering up** and **other complicity** involving one or more anti-doping rule violations and/or attempted anti-doping rule violations including: each of the above listed provisions and UCI ADR 1, 2, 54, 93 (1997-2000); UCI ADR 3, 131, 133 (2001-2004); UCI ADR 15.8 (2005-2008); UCI ADR 21.8 (2009-2014); WADA Code Article 2.8 (2003-2014).

³⁴ USADA charged Mr. Bruyneel with violations of the following specific rules applicable to **aggravating circumstances**: UCI ADR 130 (4 years to life for intentional doping) (2001-2004); UCI ADR 305 (2009-2014) and WADA Code Article 10.6 (2009-2014).

³⁵ USADA charged Mr. Martí with violations of the following specific rules applicable to the **possession** of prohibited substances and/or methods: UCI ADR 52, 54, 93 (1997-2000); UCI ADR 130, 131, 135 (2001-2004); UCI ADR 15.6 (2005-2008); UCI ADR 21.6 (2009-2014); and WADA Code Article 2.6 (2003-present).

³⁶ USADA charged Mr. Martí with violations of the following specific rules applicable to **trafficking and attempted trafficking**: UCI ADR 3, 135, 136 (2001-04); UCI ADR 15.7 (2005-2008); UCI ADR 21.7 (2009-2014); and WADA Code Article 2.7 (2003-present).

³⁷ USADA charged Mr. Martí with violations of the following specific rules applicable to **administration** and/or **attempted administration**: UCI ADR 1, 2, 54, 93 (1997-2000); UCI ADR 3, 133 (2001-2004); UCI ADR 15.8 (2005-2008); UCI ADR 21.8 (2009-2014); and WADA Code Article 2.8 (2003-present).

³⁸ USADA charged Mr. Martí with violations of the following specific rules applicable to **assisting, encouraging, aiding, abetting, covering up** and **other complicity** involving one or more anti-doping rule violations and/or attempted anti-doping rule violations including: each of the above listed provisions and UCI

- 5) **Aggravating circumstances** justifying a period of ineligibility greater than the standard sanction.³⁹
351. In respect of Dr. Celaya, as he did not appeal the AAA Decision, that Decision stands in respect of his ADRVs⁴⁰ and the Panel need only address the appeal of WADA with respect to his sanction.
352. Before reviewing the evidence, for the sake of clarity, the Panel recalls the following:
- 1) In his Statement of Appeal, Mr. Bruyneel requests, should the Panel find (as it did) that there is a valid arbitration agreement between him and USADA, the annulment of the AAA Decision relating to USADA's anti-doping charges against him and that no sanction be imposed on him.
 - 2) In his Statement of Appeal, Mr. Martí requests, should the Panel decline (as it did) to stay the proceedings pending the resolution of the criminal proceedings pending against him, the "revocation" of the Award rendered against him by the AAA panel on 21 April 2014.
 - 3) USADA requests that the Panel reject Mr. Bruyneel's and Mr. Martí's appeals and impose a lifetime ban on Messrs Bruyneel, Martí and Celaya.
 - 4) In its Appeal, WADA requests that CAS issue a decision imposing a period of lifetime ineligibility on Messrs Bruyneel, Martí and Celaya.
353. USADA having withdrawn the possession charge against Mr. Bruyneel during the hearing, the Panel will review the evidence against Mr. Bruyneel with respect to trafficking, administration and complicity charges and the evidence against Mr. Martí with respect to possession, trafficking, administration and complicity charges.
354. The Panel having decided that USADA had no jurisdiction to prosecute Mr. Bruyneel for any alleged anti-doping rule violation that occurred prior to 3 January 2005, the charges against Mr. Bruyneel which predate 3 January 2005 are excluded from its jurisdiction.
355. The Panel having decided that Mr. Martí concluded an arbitration agreement with USADA on 25 July 2012, the charges against Mr. Martí which predate 25 July 2002 are excluded from its jurisdiction.
356. Finally, it is important for the Panel to recall, before it commences its review of the evidence, that it has already decided that it may consider evidence as to alleged facts which predate 3 January 2005 for Mr. Bruyneel and alleged facts which predate 25 July 2002 for Mr. Martí and which it considers to be materially related to – and relevant to – the assessment of the evidence as to the alleged facts relating to alleged anti-doping rule violations which occurred after 3 January 2005 for Mr. Bruyneel and after 25 July 2002 for Mr. Martí.
357. As noted "*in limine*" by the AAA panel, this case is one of the most complex anti-doping prosecutions ever brought. It stems from USADA's investigation of the conduct of Mr. Bruyneel, Dr. Celaya, and Mr. Martí while working for the U.S. Postal Service and

ADR 1, 2, 54, 93 (1997-2000); UCI ADR 3, 131,133 (2001-2004); UCI ADR 15.8 (2005-2008); UCI ADR 21.8 (2009-2014); WADA Code Article 2.8 (2003-2014).

³⁹ USADA charged Mr. Martí with violations of the following specific rules applicable to **aggravating circumstances**: UCI ADR 130 (4 years to life for intentional doping) (2001-2004); UCI ADR 305 (2009-2014) and WADA Code Article 10.6 (2009-2014).

⁴⁰ The AAA Panel found Dr. Celaya guilty of the following charges: possession, administration, complicity and aggravating circumstances. It dismissed the trafficking charge. He was declared ineligible for 8 years. See AAA Decision, paras. 174-182.

Discovery Channel cycling teams. Messrs Bruyneel, Martí and Celaya are alleged to have assisted, encouraged, and facilitated the use of prohibited doping agents to the professional cyclists on these U.S.-based teams whose renowned leader was Lance Armstrong.

358. For a proper understanding of this Partial Award, the Panel considers it helpful, as did the AAA panel, to define the banned doping agents and methods alleged to have been administered. They include, *inter alia*: erythropoietin, blood transfusions, cortisone, and testosterone. The Panel adopts, as its own, the definitions of the AAA panel with respect to these doping agents and methods.
359. Erythropoietin (EPO) is naturally produced by the kidney in response to a decrease in oxygen. It stimulates the production of red blood cells in the body, and thereby increases the blood's ability to carry oxygen to muscle tissues. Because power output is directly related to the number of red blood cells in the body, athletes also use EPO to enhance performance.
360. EPO can be injected subcutaneously (*i.e.* in a small bubble under the skin) or intravenously. The method of injection has a direct impact on the window of detection. While the detection window for subcutaneous injections ranges between seven and ten days, intravenous injections have greatly narrowed the time of detection. The dosage an athlete uses will also affect the detection window. In particular, micro-doses of EPO have been administered to reduce the window of detection.
361. Blood transfusions (also known as “blood doping”) also increase the amount of red blood cells in the body and similarly enhance oxygen carrying capacity. Transfusions can be done using one's own blood (autologous transfusion) or with blood from another person (allogeneic or homologous transfusion). When autologous transfusions are performed by an athlete, the athlete will typically extract blood during training and store the blood prior to re-infusion.
362. Although the Athlete Biological Passport (ABP) can monitor an athlete's red blood cell concentrations over time (among other blood parameters), there is no current testing method for detecting autologous transfusions. Moreover, intravenous microdoses of EPO and other techniques can be used to mask the effect of a transfusion.
363. Cortisone is an anti-inflammatory that can control swelling and suppress pain. While it has legitimate medical uses, it can also be used to enhance performance.
364. Testosterone is an anabolic steroid that aids the body in the construction of tissue. It can be used to increase muscle mass and improve an athlete's rate of recovery. Testosterone cannot be given administered orally. Instead, it must be administered by injection, by patch or cream, or under the tongue. Because testosterone is not sufficiently soluble in water, olive and peanut oils are frequently used as a delivery fluid.
365. The parties are in agreement that the burden of proof in this case rests with WADA/USADA throughout to establish that an anti-doping violation occurred. They also agree that the standard of proof by which WADA/USADA must prove their case is whether they have established an anti-doping rule violation to the comfortable satisfaction of the Panel bearing in mind the seriousness of the allegations which are made.
366. In this connection, the Panel notes that this standard of proof has been set consistently, in CAS proceedings, as the “personal conviction” of the members of the Panel. There is now consistent CAS jurisprudence that this standard coincides with the “comfortable satisfaction”

standard, a standard that is higher than the civil standard of “balance of probability” but lower than the criminal standard of “proof beyond reasonable doubt”.⁴¹

B. THE EVIDENCE

1. Mr. Bruyneel’s Case

367. The witnesses appearing on behalf of the Appellant Mr. Bruyneel in addition to Mr. Bruyneel himself were Mr. Dirk Demol and Dr. Celaya. The Panel will now review their evidence.

(a) Mr. Bruyneel

368. Mr. Bruyneel did not file any witness statement.

369. Before the Panel, he was sworn in, testified and was cross-examined by USADA/WADA’s counsel. He also answered questions from members of the Panel.

370. His testimony is the only testimony he has given during these proceedings. Mr. Bruyneel elected not to testify before the AAA panel because, in his submission, he did not wish to incriminate himself in view of the pending Qui Tam proceedings against him.

371. His evidence can be summarized as follows.

Introduction

372. Mr. Bruyneel is 52 years old. He became a professional cyclist in 1987. In 1990, he won the Tour de France. In 1998, he ended his professional career and in 1999, he became the sports director of US Postal team. He was hired by the team manager, Mark Gorski.

373. When he joined the USPS team, Mr. Bruyneel had no prior experience as a team director. The team was small: there were 16 riders, almost no staff, no vehicles and a small budget.

374. Mr. Bruyneel says that he had to look after everything: he decided the calendar, the races in which the team would participate and the team strategy before and during races.

375. Mr. Bruyneel says he was not involved in the team’s training, although he did have some knowledge based on his own experience as a cyclist. He says that training was the responsibility of the team trainer, Mr. Martí.

376. Mr. Bruyneel also says that he was not responsible for contracts with sponsors, contracts with riders and the staff, equipment contracts, sponsorship money and the riders’ salary. The team general manager, Mark Gorski, took care of those things.

377. In terms of hierarchy, Mr. Bruyneel says he was below the general manager.

378. Upon his arrival, Mr. Bruyneel was surprised to learn that there was no doctor on the team. Mr. Bruyneel contacted Dr. Carlos Barrios, a sports traumatology doctor and founder of the Sports Institute of Traumatology in Spain. Dr. Barrios offered to provide medical services, an on-site doctor for races and a trainer. This trainer was Mr. Martí and the on-site medical doctor was Dr. Celaya.

Experience with Doping in Cycling

379. Mr. Bruyneel testifies he first learned about doping when he was a professional cyclist in 1987. At the Tour du Limousin in France, Mr. Bruyneel heard riders talking about

⁴¹ See, in particular, CAS 2011/A/2625.

performance enhancing drugs. Mr. Bruyneel concluded then that, although he was a good cyclist, he was not winning races because he was not doping.

380. Mr. Bruyneel confirms that he used performance enhancing drugs during his career as a cyclist. He maintains that the drugs he used were not prohibited at the time.
381. According to Mr. Bruyneel, the system then prevailing helped him take the decision to dope. It was normal for riders to discuss doping openly. There was no taboo about it. If a rider did not take drugs, he could not be competitive, Mr. Bruyneel told the Panel.
382. Mr. Bruyneel began taking cortical steroids by injection in 1988. He also took testosterone in the form of a gel.
383. In the early 1990s, Mr. Bruyneel testified that members of his team were not performing well in various races because other teams were using a new drug, namely EPO.
384. Mr. Bruyneel started taking EPO in 1995 with the help of a doctor. With EPO, he says that he became more competitive. The substance was undetectable and it improved his performance significantly.
385. In 1995, Mr. Bruyneel says he also tried human growth hormone (hGH). As hGH did not improve his performance, he stopped using it.
386. In 1995, Mr. Bruyneel joined the Rabobank cycling team. On that team, he found out that all the doping products he had been using previously were also being used on his new team.
387. The Rabobank team doctor, Dr. Leinders, introduced him to blood transfusions. Dr. Leinders told him that blood transfusions were done since the 1980s and that EPO had replaced blood transfusions.
388. Mr. Bruyneel agreed to try blood transfusions with the assistance of a doctor in Holland, a hematologist.
389. Mr. Bruyneel says he also received “recovery shots” during his professional career. These are intravenous injections of a combination of vitamins and glucose. According to Mr. Bruyneel, there are no prohibited substances in a recovery shot.
390. When asked who introduced testosterone, hGH, cortisone, EPO and blood transfusions to him, Mr. Bruyneel replied that “professional cycling” did. He claimed that it was common practice in the sport.
391. Mr. Bruyneel affirmed that he did not feel he was cheating as every rider was doping using the same doping products.
392. According to Mr. Bruyneel, cortisone was not a banned substance in the 1980s. EPO and testosterone were not detectable. EPO became detectable in 2000.
393. Mr. Bruyneel testified that EPO became endemic in the peloton towards the end of his professional career in 1996-1997 and that the UCI was aware of it. This is why, said Mr. Bruyneel, the UCI introduced a new rule: the 50% hematocrit test.
394. Mr. Bruyneel explained that the hematocrit test reveals the percentage of blood by volume that is made up of red blood cells. An increase in red blood cells improves the amount of oxygen that the blood can carry to the body’s muscles. EPO stimulates the production of red blood cells.
395. The UCI came to races, collected samples and tested on the spot the hematocrit level. If the level of a cyclist was below 50%, he was allowed to race. If the level was over 50%, he was not allowed to race and he had to stay out-of-competition for 2 weeks until he was re-tested.

396. In other words, according to Mr. Bruyneel, EPO could be used as long as the riders' hematocrit level remained below 50%. Riders did not worry about taking EPO, they only worried about staying below the 50% level. The understanding in the sport was that the UCI had legalized the use of EPO below 50%.
397. Before he joined the USPS team, the team was already monitoring the riders' hematocrit level testified Mr. Bruyneel.
398. The monitoring of the riders' hematocrit level was also important for purposes of the testing by the UCI in respect of the riders' biological passports and in order to determine a rider's health condition in advance of important races, said Mr. Bruyneel.

Team Director from 1999 - 2012

399. In 1999, Mr. Bruyneel became the USPS team director. He was 34 years old. Most of the riders on his team were younger.
400. When asked to comment on the following submission by WADA in its pre-hearing brief: "*As the team director and self-described "mastermind," "CEO," "coach" and "ringmaster" for these cycling teams, Mr. Bruyneel developed, managed and concealed one of the most sophisticated and extensive team doping programs in sports history*", Mr. Bruyneel denied it vigorously.
401. He went on to affirm that, when he joined the USPS team, he found riders who, in respect to doping, were no different from riders on other teams. He did not develop, manage or conceal a team "doping program". Riders were already doping when he arrived.
402. He went on to explain that, from his perspective, there were two distinct periods of doping in cycling. The first period covered 1999 to June 2004 and the second, when there was a change in behavior and in culture, from June 2004 to 2012.

1999 – June 2004 Period

403. During that period, Mr. Bruyneel says he was aware that the riders on his team, as the riders on other teams, were doping. EPO, testosterone, cortical steroids, blood transfusions were being used by riders. He was not aware whether hGH was also used. He denies having ever helped or encouraged riders to dope. To dope or not to dope was a cyclist's own personal decision. Mr. Bruyneel says he was not involved in the riders' decisions.
404. In response to Professor Sands' question whether there was anybody on the team who did not dope, Mr. Bruyneel answered "*no - everybody doped*".
405. Mr. Bruyneel acknowledged he knew that Dr. del Moral⁴² was administering prohibited substances to the riders but, again, he was not involved in the riders' decision.
406. During his cross-examination, Mr. Bruyneel admitted that in 1999, in Andorra, he had given EUR 12 000 in cash to Dr. del Moral to purchase medical supplies from a pharmacy. In response to USADA's counsel's question whether Dr. del Moral had been authorized to purchase EPO and other drugs on behalf of the team with that money, Mr. Bruyneel responded that he never gave Dr. del Moral the authorization "*but if he decided to buy EPO with that, that's his decision.*"
407. Mr. Bruyneel denies ever having told or instructed riders to work with Dr. Ferrari.

⁴² Dr. del Moral was the USPS team doctor from 1999-2003. For a summary of his evidence, see below.

408. Mr. Bruyneel had worked with Dr. Ferrari when he was a cyclist on the ONCE team in 1995. Dr. Ferrari was the team's external doctor. Lance Armstrong also worked with Dr. Ferrari for many years.
409. Mr. Bruyneel explained that it was Lance Armstrong who invited Dr. Ferrari to the training camp in Austin in December 2000. Other riders became interested in working with Dr. Ferrari.
410. Dr. Ferrari gave instructions to the team doctor, Dr. del Moral, in respect of the riders' training program and the drugs to be taken. The riders paid Dr. Ferrari directly for his services.
411. Mr. Bruyneel confirmed that he witnessed a blood extraction in Valencia, Spain, in 2000-2001 for reinfusion at the Tour de France. Dr. del Moral, Lance Armstrong and Tyler Hamilton were also present. Mr. Bruyneel repeated that, while he did not approve the blood doping, he "accepted it"; he "allowed it" to happen. However, he reiterated that the riders were the ones who chose to dope.

1999 Tour de France

412. At the 1999 Tour de France, Lance Armstrong tested positive for cortisone. Mr. Armstrong had used cortisone prior to the Tour de France and traces were found in his urine at the Tour. A UCI *commissaire* for doping control called Mr. Bruyneel and said that there was a problem with Mr. Armstrong's urine test result. The UCI *commissaire* said it could be fixed with a prescription from a doctor for the use of the specific product found in his urine. Mr. Bruyneel then contacted Dr. del Moral who provided Mr. Armstrong with a back-dated prescription for cortisone. This was confirmed by Dr. del Moral, who also told the Panel, in response to a question, that he had never been investigated by the Spanish medical authorities for this act of back-dating a prescription in circumstances without medical justification.

2003 Girona Café Incident

413. In his affidavit⁴³, David Zabriskie affirms that at a meeting at a Café in Girona in 2003, Mr. Bruyneel, along with Dr. del Moral, encouraged him (then 22 years old) and another rider on the team, Michael Barry, to take EPO. Mr. Bruyneel, in his oral testimony, confirmed that the meeting did occur and that Dr. del Moral did give those riders EPO after the meeting. Mr. Bruyneel does not recall however whether he was present when the athletes were doped by Dr. del Moral. Dr. del Moral confirmed at the hearing that he was present at that meeting and that he injected Messrs. Zabriskie and Barry with EPO thereafter.⁴⁴
414. Mr. Bruyneel says that it was Dr. del Moral who organized the meeting. Mr. Bruyneel doesn't recall discussing doping because a doctor was present.
415. In response to the Panel's questions about the nature of his relationship with Mr. Zabriskie, Mr. Bruyneel:
 - accepted that the sports director has a pivotal role in deciding who will ride as part of the team;

⁴³ Quoted below.

⁴⁴ See below.

- said that he did not have a personal relationship with Mr. Zabriskie - the biggest relationship the riders had was with their teammates with whom they shared apartments, etc;
- accepted that Mr. Zabriskie, who had a two-year contract with the team, knew that Mr. Bruyneel had a role in deciding his future on the team;
- maintained that the riders made their own decision when it came to doping;
- accepted that, as the sports director, he was at the head of the team's hierarchy; and
- accepted that Mr. Zabriskie was "probably" looking up to him.

416. Mr. Bruyneel says Mr. Zabriskie fails to mention in his witness statement what occurred at the Vuelta race in Spain the year before in 2002. The year 2002 corresponds to the second year Mr. Zabriskie was on the team. Mr. Bruyneel, along with his assistant director Dirk Demol, entered Mr. Zabriskie's room at the end of a stage to check up on him. During that visit, Mr. Zabriskie allegedly said to Mr. Bruyneel: "*Johan, can we talk about next year*". Then Mr. Zabriskie allegedly slapped his arm and said "*boom boom – I want to do what the big guys do*". Mr. Bruyneel told him to speak with the team doctor. Mr. Bruyneel did not try to discourage him since he knew Mr. Zabriskie would have found a way to dope anyways.

June 2004 – June 2012

417. Mr. Bruyneel confirms that doping still occurred during that period. However, all the actors in the sport of cycling were more careful. They worried about being detected.
418. Mr. Bruyneel says he was not involved in nor did he encourage doping on the team during that period – to the contrary, he tried to stop it.
419. After the 2007 Tour de France, "*there was a new wind in sport*" with the introduction of the biological passport. When he went to the Astana Team, he hired an independent anti-doping expert, Mr. Rasmus Damsgaard, to be the anti-doping watchdog on the team. He paid him EUR 300,000. If he suspected that a team rider doped, he would suspend him.
420. In respect of Mr. Hincapie's affidavit⁴⁵, Mr. Bruyneel says that Mr. Armstrong retired after the 2005 Tour de France and was selling his apartment in Girona, Spain. Mr. Bruyneel's call to Mr. Hincapie was not about doping products but rather about whether the apartment was messy because it was going to be seen by potential buyers.
421. In respect of Mr. Danielson's affidavit⁴⁶, Mr. Bruyneel:
- denied that Mr. Martí and Dr. Ferrari kept him informed of Mr. Danielson's training;
 - suspected Mr. Danielson doped but didn't know for sure;

⁴⁵ Paragraph 89 of Mr. Hincapie's affidavit provides as follows: "*Lance retired after the Tour de France in 2005. I returned to Girona but Lance did not. Shortly after the Tour Johan called me up and asked me to go over to Lance's apartment to go through the apartment and the closets to make sure that there was nothing there. I understood that Johan wanted me to make sure that there were no doping materials in the apartment. I went over to the apartment and texted Johan back that I had not found anything to worry about.*"⁴⁵

⁴⁶ See below.

- denied that there was an EPO doping programme on the Discovery Channel team. EPO was detectable in 2005 so it would have been foolish to take EPO he says;
- confirmed that riders who doped organized their own doping;
- confirmed that he was informed by doctors, despite professional secrecy, of some of the riders' blood results as this could inform his decision to make a rider compete;
- denies that Mr. Danielson spoke to him about receiving a shipment of EPO from Europe to the US. Mr. Bruyneel questions the possibility of EPO being shipped as EPO needs to be refrigerated.

422. In respect of Mr. Leipheimer's allegation that Mr. Bruyneel and the team assisted him with a blood transfusion at the 2007 Tour de France,⁴⁷ Mr. Bruyneel denied ever assisting Mr. Leipheimer with his doping and ever encouraging him to do so.

423. In closing, Mr. Bruyneel testifies that the riders' affidavits were drafted by USADA. He believes they were drafted with a purpose: to portray him as a devil. He says that Mr. Zabriskie's affidavit is the worst and was drafted to convey the most dramatic effect.

Public Accusations, USADA's Reasoned Decision and the AAA Award

424. Mr. Bruyneel acknowledges that for many years he publicly denied that doping occurred on his teams. He knew his statements were not true but he still made them. He said he was being protective. There was a code of silence in the world of cycling and he participated in it. He now says he is sorry for his statements and regrets them.

425. USADA's counsel, in his cross-examination, suggested that the only reason he stopped lying was because of the issuance of USADA's Reasoned Decision.

426. Mr. Bruyneel admitted that USADA's Reasoned Decision had a severe impact on his life. Instead of being constantly on the road with his team, he remained at home. It cost him his family. He is getting divorced, doesn't see his children, and financially, it has been a disaster. He says he is almost bankrupt. This has taken a toll on his psychological and physical health.

427. Mr. Bruyneel decided to appeal the AAA Decision before the CAS because he accepts that the CAS is the only forum where he can get a fair trial. Mr. Bruyneel wanted finally to provide context and lay bare his whole life in cycling. USADA's Reasoned Decision did not include his side of the story which he has now provided.

428. Mr. Bruyneel says that the 10-year ban imposed on him by the AAA has the same effect as a lifetime ban. He doesn't have the intention to go back to cycling. However, this ban has a negative impact because people who are not in the world of cycling refuse to enter into business relationships with him. According to Mr. Bruyneel, this ban is disproportionate.

Mr. Bruyneel's Closing Statement

429. Mr. Bruyneel concluded his testimony by saying that this hearing before the CAS has been the most difficult week of his life. He wishes to put this part of his life behind him and get some sort of closure.

430. Since the release of the Reasoned Decision by USADA in October 2012, Mr. Bruyneel reiterated that the court of public opinion had banned him for life. He knew he would never

⁴⁷ See below.

be able to return to cycling. This has had a tremendous impact on the rest of his life. Nothing the Panel will decide will change that. Those facts are there and will be there forever with him.

431. He says he realized during this hearing that he retired emotionally from cycling when Lance Armstrong retired. From that date, nothing would ever be the same again.
432. During the course of the hearing he has been reminded of events for which he feels very sorry, embarrassed and ashamed of. This was an embarrassing and shameful period of his life.
433. No matter what has been said by others, Mr. Bruyneel concludes and reaffirms that he has never forced anybody to dope and that he accepts responsibility for his actions.

(b) Dr. Celaya

434. Dr. Celaya served as team physician for the US Postal Services team in 1997, 1998 and 2004 and for the Discovery Channel team between 2005 and 2007.
435. Dr. Celaya is a respondent in WADA's appeal and participated in these proceedings solely as a witness on behalf of Mr. Bruyneel. Mr. Martí relies on his evidence. He did not submit any witness statement.

Introduction

436. Dr. Celaya has worked in professional cycling since 1983. He testifies that the anti-doping culture began in 2005-2006: "*before the word used to be 'doping' and now the word is 'anti-doping'.*"

Mr. Bruyneel's involvement with the riders' doping

437. Between 2004 and 2012, Dr. Celaya denies:
- ever receiving instructions from Mr. Bruyneel to administer banned substances to riders;
 - ever feeling pressure by Mr. Bruyneel to assist riders with their doping. To the contrary, Mr. Bruyneel, when he was the director of the Astana team, hired an independent expert, a Danish doctor, to ensure that riders were not using banned drugs;
 - that Mr. Bruyneel was ever involved with the riders' doping. The riders organized their own doping.
438. Dr. Celaya says that Mr. Bruyneel always wanted to know the riders' hematocrit level since it was an indicator of the riders' health condition.

Dr. Celaya's involvement with the riders' doping

439. Dr. Celaya testified that between 2004 and 2012 he witnessed many riders doping. He says he was a mere observer and claims he was against doping. He maintains he did express his disapproval to the riders but they did what they wanted to do anyways.
440. Dr. Celaya testified that he never administered banned substances to riders. He only witnessed the riders' doping at times. The riders either doped themselves or it was another doctor who doped them (there were about 3-4 doctors on the team). The riders doped mainly with EPO.

441. Dr. Celaya says he did not report the riders' doping to Mr. Bruyneel since he is bound by professional secrecy. In any event, he says that the doping was known by Mr. Bruyneel, the peloton, USADA, and the UCI.
442. Dr. Celaya says he never performed any blood transfusions between 2004 and 2012. He did witness blood infusions (as opposed to transfusions) though. Messrs. Bruyneel and Martí were not present during those transfusions.
443. He maintains that the riders who testified that he did blood transfusions on them were all liars. They made these assertions, according to him, because they were threatened by USADA.

(c) Dirk Demol

444. Mr. Demol did not provide a witness statement but was called as a witness by Mr Bruyneel.
445. Mr. Demol met Mr. Bruyneel in 1984-1985. They are both Belgian nationals.
446. Mr. Demol joined the USPS team in 2000 as its sports director and also worked with Mr. Bruyneel on the Discovery Channel, Astana and Radioshack teams.
447. Mr. Demol confirms that he attended a meeting with Messrs Zabriskie and Bruyneel during the Vuelta in Spain in 2002. This meeting took place in Mr. Zabriskie's room. Messrs Bruyneel and Demol had a chat every day with every rider.
448. Mr. Demol recalls that, at this meeting, Mr. Zabriskie said, while tapping his inner elbow: "*boom boom*" "*I want to start with the real stuff*". Mr. Demol was very surprised that Mr. Zabriskie spoke about doping in this manner as he was the sports director and Mr. Bruyneel the team director.
449. Mr. Demol was very surprised to read an article years later to the effect that Mr. Bruyneel had encouraged Mr. Zabriskie to dope. Rather, it was Mr. Zabriskie who had asked Mr. Bruyneel to assist him with doping.
450. Mr. Demol says that he never witnessed Mr. Bruyneel encouraging a rider to dope.

3. Mr. Martí's Case

451. Mr. Martí relies on Mr. Bruyneel's and Dr. Celaya's testimonies in support of his case. He did not submit any written or oral evidence of his own in these proceedings as, according to his lawyer, he did not wish to incriminate himself in view of certain proceedings against him in Spain. Although he did not attend the hearing, he was represented throughout the proceedings by counsel.

2. USADA/WADA's Case

452. The same seven professional cyclists who testified before the AAA panel also gave evidence by video on behalf of USADA/WADA before this Panel.
453. They are, in the order in which they testified:
 - a) Michael Barry
 - b) George Hincapie
 - c) David Zabriskie
 - d) Tom Danielson

- e) Tyler Hamilton
- f) Levi Leipheimer
- g) Christian Vande Velde

454. In exchange for his cooperation with USADA, the sanction of each cyclist for having used doping products was reduced from 2 years to 6 months.
455. A summary of their evidence as it pertains to the charges against Mr. Bruyneel and Mr. Martí follows. The Panel will also summarize the evidence of the riders concerning Dr. Celaya as it is relevant to USADA/WADA's request that a lifetime ban be imposed on him by the Panel rather than the 8-year sanction imposed by the AAA panel.

(a) Michael Barry

456. Mr. Barry was a rider on the USPS team between 2002 and 2006.
457. Mr. Barry confirms that doping was predominant in the cycling culture. He denies having ever blood doped but admits having used EPO and testosterone on occasions between 2003 and 2006 as well as cortisone once in 2003 and hGH once in 2004. He obtained the doping products from USPS team doctors, staff and fellow athletes.

Evidence in respect of Mr. Bruyneel

458. At the hearing, Mr. Barry testified that Mr. Bruyneel was aware of everything in relation to the team: he was in charge of the team management and contract negotiations, he was present at races and training camps, he was aware of what the team doctor was giving to the riders and knew riders were doping. Mr. Barry said that Mr. Bruyneel was supportive of the doping and did not discourage it. In fact, the team paid for doping products during races.
459. In respect of the 2003 Girona Café incident with Mr. Zabriskie⁴⁸, Mr. Barry writes as follows in this respect:

[...] By the time the meeting took place, I had already resigned myself to the fact that I would need to start doping in order to be competitive. Still, I was surprised by the tenor of the meeting. I always thought that if and when the doping discussion took place, it would be a conversation, but Johan and Dr del Moral seemed rushed and in a hurry to be on their way. [...]

Evidence in respect of Mr. Martí

460. Mr. Barry confirms in his affidavit that he obtained EPO from Mr. Martí between 2003 and 2005.

Evidence in respect of Dr. Celaya

461. Mr. Barry confirms in his affidavit that Dr. Celaya provided him with testosterone patches in 2004.

(b) George Hincapie

462. Mr. Hincapie was a rider on the USPS/Discovery Channel Team from 1999-2006. He was Lance Armstrong's close friend.

⁴⁸ See below.

463. He explains in his affidavit the general climate of doping in cycling at the time as follows:

100. Lance and I, and our teammates, raced on the Motorola Team, on the U.S. Postal Service Team and on the Discovery Channel Team during a time period when our sport was inundated with performance enhancing drugs. The doping controls were not very good and we came to believe that we needed to use banned substances to compete at the very highest levels.

101. While I understand that the choices that we made were wrong, I understand why we made them and why, at the time, we felt justified in making them. I do not condemn Lance for making those choices and I do not wish to be condemned for the choices I made.

Evidence in respect of Mr. Bruyneel

464. At the hearing, Mr. Hincapie testified that Mr. Bruyneel never forced him to dope. In fact, Mr. Hincapie confirmed he began doping before Mr. Bruyneel became the team director.

465. He also testified that Mr. Bruyneel was aware riders on his team were doping but denied that Mr. Bruyneel was in charge of a doping program.

466. However, in his affidavit, Mr. Hincapie states that Mr. Bruyneel kept track of his blood parameters and would call him if he had concerns about his hematocrit level, such as if it was close to the 50 % cut off level over which a rider could not race.

467. Mr. Hincapie also states in his affidavit that Mr. Bruyneel facilitated his drug use by providing him drugs such as hGH and explained to him at a training camp in Austin, Texas, in late 2000 or early 2001, the team's blood doping program.

468. Although he affirmed that his affidavit was truthful, he agrees that the word "blood doping program" was put in his mouth by USADA. USADA prepared the draft of the affidavit which Mr. Hincapie signed. Mr. Hincapie testified that there is no particular reason why he referred to a "program" rather than an "activity" for example. He confirmed that if someone had asked him at the time if he was on a program, he would not have known what that person was referring to.

469. Finally, Mr. Hincapie writes as follows in his affidavit in respect of an incident in Girona in 2005:

Lance retired after the Tour de France in 2005. I returned to Girona but Lance did not. Shortly after the Tour Johan called me up and asked me to go over to Lance's apartment to go through the apartment and the closets to make sure that there was nothing there. I understood that Johan wanted me to make sure that there were no doping materials in the apartment. I went over to the apartment and texted Johan back that I had not found anything to worry about."

470. During his cross-examination, Mr. Hincapie recognized that during that conversation Mr. Bruyneel made no specific reference to doping or checking for doping products in Lance Armstrong's apartment. Rather, this was Mr. Hincapie's impression which he formed from his conversation with Mr. Bruyneel.

Evidence in respect of Mr. Martí

471. Mr. Hincapie writes that Mr. Martí provided him with testosterone and EPO in 1999. Mr. Martí also helped Mr. Hincapie with the extraction and re-infusion process necessary for blood doping between 2001 and 2005.

Evidence in respect of Dr. Celaya

472. Mr. Hincapie writes that he received EPO from Dr. Celaya beginning in 1997 and human growth hormone (hGH) in 1998. He also explains that in 2004-2005 Dr. Celaya assisted him with his blood doping.

(c) David Zabriskie

473. Mr. Zabriskie was a rider on the USPS Team from 2000-2004. He was 22 years old when he joined the team.
474. Mr. Zabriskie denies ever having blood doped but admits to having used EPO, testosterone and hGH. He was aware though that many of his fellow team mates were blood doping.

Evidence in respect of Mr. Bruyneel

475. In his affidavit, Mr. Zabriskie testifies that he looked up to Mr. Bruyneel and looked to him for guidance and insight regarding how to progress as a professional cyclist.
476. Mr. Zabriskie writes as follows in respect of an incident which occurred at a Café in Girona in 2003:

34. Soon after the [2003] Dunkirk race my teammate Michael Barry and I were asked to meet Johan Bruyneel and Dr del Moral (also known as "El Gato") at a Café in Girona, Spain.

35. I had roomed with Michael Barry on some road trips, and we both lived in Girona. Prior to this meeting Michael Barry and I had talked about performance enhancing drugs, and I had gotten the impression that Michael was of the same mindset as myself and was opposed to drugs.

36. At the café, Bruyneel quickly made clear why he and Dr del Moral were there. Johan and Dr del Moral had brought not one, but two injectable products for me and Michael. In addition to recovery, they had brought the banned oxygen booster, EPO. I was shocked. This was my third full year on the European team, and I never thought that I would be expected to dope. I certainly did not expect Johan to push me to dope. Of course, I understood that some cyclists in the peloton fueled their success with banned substances. I suspected that some of my teammates were using performance enhancing drugs. Johan always seemed to know when drug testers were coming at races. His warning that "they're coming tomorrow" came on more than one occasion.) But, until this very moment I was unaware of how involved the team leadership was in drug use by its riders on the team. Until then I had been largely shielded from the reality of drug use on the Postal Service Team.

37. I began to ask questions. I was afraid of the health risks of using EPO and I had a lot of questions, such as: was it safe? Would I be able to have children? Would it cause any physical changes? Would I grow larger ears? I persisted with many questions.

38. Bruyneel said, “everyone is doing it.” He assured me that if EPO were dangerous no professional cyclists would be having kids. Bruyneel said that everyone who beat me at the Four Days of Dunkirk was on drugs and that even guys behind me were on drugs.

39. I felt cornered. I had pursued cycling to escape a home life torn apart by drugs, and now I was faced with this. I looked to Michael for support, but it became clear he had decided to use EPO. He kept repeating Bruyneel’s opinions that EPO use was required for success in the peloton.

40. At some point I had no more questions. The fear was still there in the pit of my stomach, but I could not think of nothing else to say. Johan, Dr del Moral, Michal and I left the Café and we all four went to Michael’s apartment where Dr del Moral injected both Michael and me with EPO. Dr del Moral said that EPO should be injected just like the “recovery” which was to be injected in the vein. Bruyneel told us that if someone came to the door of the apartment after using EPO we should not answer the door. Johan and Dr del Moral told us that EPO and testosterone worked better when taken together, and they left a box of testosterone patches which Michael and I split between us.

[...]

42. I went back to my Spanish apartment and had a breakdown. I called home, crying. I had pursued cycling as an escape from drugs, and here I was, having succumbed to the pressure.

43. For that week I received EPO injections at Michael Barry’s apartment per Johan’s instruction. Johan said that it was safer to use Michael’s apartment for injections because Michael is not a U.S. rider and therefore was not generally tested out of competition while overseas. On the other hand, USADA testers sometimes showed up to test U.S. athletes in Europe. [...]

477. At the hearing, Mr. Zabriskie testified that he did not pay for the drugs he was administered during races; that he has never had any conversations about doping with Mr. Bruyneel following the Girona Café incident and that he felt he had no choice but to take the drugs for his career (otherwise he thought he would have been “kicked off” the USPS team).

Evidence against Mr. Martí

478. In his affidavit, Mr. Zabriskie testifies that in 2004, his friend and team mate Floyd Landis explained to him that members of the support staff worked with Mr. Bruyneel to facilitate doping on the team, including the team trainer Mr. Martí.

Evidence against Dr. Celaya

479. In his affidavit, Mr. Zabriskie testifies that during the 2004 Vuelta, Dr. Celaya injected him with a micro dose of EPO.

(d) Tom Danielson

480. Mr. Danielson was a rider on the Discovery Channel team from 2005 to 2007.
481. He admits using EPO, testosterone, cortisone and blood transfusions while on the Discovery Channel team.

482. He says he stopped doping in 2007 (towards the end of his tenure with the Discovery Channel team) but tested positive for the anabolic agent DHEA in 2015. He said that the positive test resulted from a contaminated product but USADA submitted that the scientific evidence was not present. USADA and Mr. Danielson signed a sanction agreement on 4 October 2016 for a 4-year sanction.
483. It appears that if Mr. Danielson had refused to testify at the hearing on the merits in this case, USADA could have re-opened his 2012 6-month sanction agreement as well as his 2015 4-year sanction agreement.

Evidence in respect of Mr. Bruyneel

484. In his affidavit, Mr. Danielson testified that Mr. Bruyneel was “*involved in every aspect of the team’s training and doping program; he was very controlling, and [Mr. Danielson] never did anything significant without [Mr. Bruyneel] knowing about it.*”
485. During his direct examination, he testified as follows in this respect:
- Mr Bock: How, how can, how can – what, what was your observations regarding the level of involvement that Johan Bruyneel had in doping, in your doping while on the team?*
- Mr Danielson: I felt like he was in control and oversaw it.*
- Mr Bock: And why did you have those, those feeling? What were the specific things that led you to those beliefs?*
- Mr Danielson: The timing around races that were in my schedule that were the priority of my, my schedule or my race season. And then also conversations. And then just the way that all the staff and everyone was around, was focused on Johan. Everyone was afraid of Johan.*
486. During his cross-examination, Mr. Danielson, in reference to Mr. Bruyneel staying on top of his hematocrit level, confirmed that a team manager or a doctor would have reasons to keep track of hematocrit levels that have nothing to do with doping, such as for an indication of an athlete’s health or how race ready an athlete is.
487. In his affidavit, Mr. Danielson also testified that, in 2006, he discussed with Mr. Bruyneel the possibility of the Discovery Channel team assisting him with blood transfusions in the 2006 Vuelta. Mr. Bruyneel allegedly agreed that the team would assist him in such doping and that it did so.
488. Mr. Bruyneel suggested that he keep his reported location at his Girona home but that he not tell USADA and stay at the Hotel Fontanals Golf in Puigcerda, Spain, where Mr. Bruyneel said Lance Armstrong had gone in the past to avoid drug testing.
489. Mr. Danielson stopped doping in 2007. He says his relationship with Mr. Bruyneel deteriorated as he was not happy Mr. Danielson was not on the doping program anymore and Mr. Bruyneel was even less happy when Mr. Danielson decided to leave the team the same year.
490. However, in answer to a question from Professor Sands, Mr. Danielson confirmed that Mr. Bruyneel never actually said anything to the effect he was not happy with Mr. Danielson’s lack of willingness to be on the doping program.

Prof. Sands: Did he ever say anything to you about your ... your lack of desire to be on what you call the doping program?

Mr Danielson: No. He didn’t, he didn’t specifically say that to me.

Prof. Sands: And how do you know, or on what basis do you write the words “he was not happy about it”? Is that actual knowledge or is that supposition?

Mr Danielson: That’s, that’s how I believed – that’s what I believed. That’s how I felt. I felt like he, he didn’t think I could handle all this, and I think that he looked down upon me being fragile. So I, I, you know, I, I assumed that he was unhappy with me for, for those reasons.

Prof. Sands: But how do you actually know that?

Mr Danielson: I don’t. I’m just assuming. That’s my belief.

Evidence in respect of Mr. Martí

491. Mr. Danielson explains in his affidavit that at a training camp in the USA in 2005 or 2006, he had his first conversation about doping with Mr. Martí. He learned that Mr. Martí would get him the drugs he needed and this would begin once the team returned to Europe.
492. In 2005, Mr. Martí provided Mr. Danielson with EPO along with instructions on how to use the EPO.
493. In 2006, Mr. Martí told Mr. Danielson over the phone while he was training in Durango, Colorado, that he was shipping him EPO. In cross-examination, Mr. Danielson said he did not remember the packaging Mr. Martí used to send the EPO (which needs to be cooled).
494. In 2006, Mr. Martí asked Mr. Danielson whether he wanted to try hGH, which he did.
495. In 2007, Mr. Martí, along with Dr. Celaya, took two bags of Mr. Danielson’s blood. In this respect, Mr. Danielson writes as follows:

109. To give your blood to a guy who places it in a plastic cooler takes it away and then comes back a few weeks later with a bag of blood that he says is yours I found to be very nerve wracking.

110. I began to worry that my blood would be mistaken for someone else’s. When I first had blood extracted Pepe asked me to come up with a symbol to put on the blood tag to make sur that it did not get mixed up with someone else’s blood and this seemed very amateurish to me.”

Evidence in respect of Dr. Celaya

496. In his affidavit, Mr. Danielson testifies that Dr. Celaya encouraged him to take cortisone for the Tour of Georgia in 2005. Mr. Danielson relented and received from Dr. Celaya intramuscular injections of cortisone for the Tour. Dr. Celaya also injected Mr. Danielson with cortisone to compete in the 2006 Tour of Georgia.
497. In his affidavit, Mr. Danielson further testifies that throughout the 2006 Vuelta, Dr. Celaya injected Danielson with small doses of EPO as well as cortisone and in 2007, Dr. Celaya, along with Mr. Martí, took two bags of Mr. Danielson’s blood.

(e) Tyler Hamilton

498. Tyler Hamilton was a rider on the USPS team from 1996 - 2001.
499. Mr. Hamilton was one of the first riders on the USPS team when it was launched in 1996. In 1996, the team found it difficult compete: “*the speed of the peloton was tremendous and it*

was generally acknowledged that doping with the banned blood boosting hormone erythropoietin (EPO) was prevalent”.

500. Mr. Hamilton admitted to using EPO and cortisone while on the USPS team. When he changed teams in 2002, he began blood doping.
501. In 2004, Hamilton tested positive for a homologous blood transfusion and served a two-year period of ineligibility for this positive test. He confirmed at the hearing that he had lied to CAS in that case.⁴⁹
502. Mr. Hamilton retired from professional cycling in the spring of 2009, following a second positive test, this one arising from DHEA contained in a supplement he was using.

Evidence in respect of Mr. Bruyneel

503. Mr. Hamilton testified that it was Lance Armstrong who suggested hiring Mr. Bruyneel as the USPS team director and that Mr. Bruyneel brought with him Dr. del Moral with whom he had worked previously. Mr. Bruyneel was “immediately very interested” in the riders’ blood tests and hematocrit levels. Lance Armstrong shared Mr. Bruyneel’s interest.
504. Mr. Hamilton recalls the incident at the 1999 Tour regarding Lance Armstrong’s positive test for cortisone. Messrs Armstrong, Bruyneel and Dr. del Moral were swearing and there was a lot of commotion. The general understanding was that they were scrambling to come up with something because Lance Armstrong had used cortisone without medical authorization.
505. In June 2000, Lance Armstrong, Kevin Livingston and Tyler Hamilton took a private jet to Valencia, Spain. Mr. Bruyneel had explained before they left that five hundred cc’s of blood would be withdrawn from each of them to be reinfused the following month during the Tour de France. Mr. Bruyneel was not on the plane. Dr. Ferrari and Dr. del Moral supervised the extraction process. Mr. Martí and Dr. del Moral would be responsible for reinfusing the blood during the Tour. Mr. Bruyneel was present when the blood was reinfused during the 2000 Tour de France.

Evidence in respect of Mr. Martí

506. Mr. Hamilton confirms in his affidavit that Mr. Martí delivered him drugs during the 1999 cycling season.

Evidence in respect of Dr. Celaya

507. In his affidavit, Mr. Hamilton testifies that in 1997, after the Tour of Valencia, Dr. Celaya offered him a testosterone capsule known as “andriol” to assist his recovery. Dr. Celaya explained at the time that “*this is not doping, this is for your health.*” However, Mr. Hamilton knew this behaviour was breaking the rules.
508. Mr. Hamilton also writes that in May 1997, Dr. Celaya gave him his first EPO injection and provided him EPO to take home.

⁴⁹ See AAA Decision, para. 151.

(f) Levi Leipheimer

509. Levi Leipheimer was a rider on the USPS team in 2000-2001, the Discovery Channel team in 2007, the Astana team in 2008-2009 and the Radioshack team in 2010-2011.
510. Mr. Leipheimer explains in his affidavit that he began taking EPO in 1999 while on the Saturn team. He had come to believe that in order to be successful in professional cycling it was necessary to use performance enhancing drugs. In this respect, he said the following during the hearing: *"I guess I had a choice but in my mind at the time, I did not have a choice to dope. In order to create a level-playing field, based on a decade of doping in cycling (this was the culture in cycling), we had to dope because everybody was doing it."*
511. Mr. Leipheimer also admitted that he blood doped in 2005 and 2006.

Evidence in respect of Mr. Bruyneel

512. In 2001, Mr. Leipheimer was second overall in the Vuelta a Castilla y Leon. Dr. del Moral called and asked if he had used performance enhancing drugs to achieve this result to which he answered he had used EPO. Shortly thereafter Mr. Bruyneel called him: *"he was not happy, Johan said 'nobody uses that stuff'"*. A few minutes later Dr. del Moral called back and gave him specific instructions on how to use EPO to prepare for an event. Mr. Leipheimer realized then that Mr. Bruyneel's and Dr. del Moral's concern was not that he had used EPO but that because they had not been told of his use, he might not be using it safely and this could lead to a positive test which could have led to problems for the team.
513. In April 2007, Mr. Leipheimer asked Mr. Bruyneel whether he was going to organize a blood doping program for the 2007 Tour de France. Mr. Bruyneel responded that Mr. Leipheimer should take care of it on his own doping to which Mr. Leipheimer responded that it was too stressful and that he would not be using blood at the 2007 Tour de France without team assistance. Eventually, Mr. Bruyneel said *"I think we can make it work"*.
514. Mr. Bruyneel was aware of Mr. Leipheimer's hematocrit level. Mr. Bruyneel would frequently discuss Leipheimer's hematocrit level with him.
515. Mr. Bruyneel did not invite Mr. Leipheimer back on the Radioshack team because Mr. Leipheimer had testified before a grand jury.

Evidence in respect of Mr. Martí

516. In his affidavit, Mr. Leipheimer testifies that Mr. Martí sold EPO to him in 2003, 2005 and 2006, when he was not on the USPS team. He also sold him testosterone in 2005 and 2006. Mr. Martí told Mr. Leipheimer not to tell Mr. Bruyneel he was providing drugs to a rider from a rival team.

(g) Christian Vande Velde

517. Christian Vande Velde was a rider on the USPS team from 1998 to 2003.
518. Mr. Vande Velde admits having used hGH, cortisone and EPO. He denies ever having blood doped.

519. After Mr. Vande Velde left the USPS team, he joined the Liberty Seguros team for the 2004 season. Mr. Vande Velde says this team as well had an organized doping program in which the team doctors were very involved in providing performance enhancing drugs.
520. Mr. Vande Velde agreed at the hearing that nobody forced him to dope. He doped because he wanted to be competitive.

Evidence in respect of Mr. Bruyneel

521. Mr. Bruyneel became the USPS team director in 1999.
522. Mr. Vande Velde received the “recovery” at the first training camp in 1999 and this was a change over the prior year when he had not been given “recovery” at all at training camps.
523. Mr. Vande Velde discussed Dr. del Moral’s doping program with Mr. Johan Bruynel: “*In response to my questions and concerns about using performance enhancing drugs, Johan told me he had done the same things as a rider. He said not to worry if I felt bad at first that I would feel good at the end.*”
524. Mr. Bruyneel introduced Dr. Ferrari to the team at the December 2000 training camp in Austin, Texas. “*It was explained that each cyclist would be given the opportunity to have individual meetings with Dr Ferrari and that if a cyclist wanted to hire Dr Ferrari to assist with his training the cyclist would be required to pay Dr Ferrari a percentage of the cyclist’s salary.*”
525. Mr. Bruyneel and the team doctors monitored closely throughout the season Mr. Vande Velde’s hematocrit level.
526. Mr. Bruyneel was present when Dr. del Moral gave Mr. Vande Velde some cortisone after his crash at the 2001 Tour de France.
527. Mr. Bruyneel offered cortisone to Mr. Vande Velde at the 2002 Vuelta.

Evidence in respect of Mr. Martí

528. In his affidavit, Mr. Vande Velde testifies that he obtained EPO on a number of occasions during each year from 2001 through 2003 from Mr. Martí. In this respect, he writes as follows: “*We called Pepe the ‘courier’ because he would frequently drive up from Valencia with doping products.*” He further says that, on occasion, Mr. Martí or Dr. del Moral delivered doping products to his room at a race.
529. Mr. Vande Velde also stated that he knew Mr. Martí was delivering doping products to others on the team.

Evidence in respect of Dr. Celaya

530. Dr. Celaya, the team physician, gave Mr. Vande Velde injections of something known as “recovery” (which, he was told, consisted of vitamins) during the Vuelta in September 1998. Mr. Vande Velde says he did not know what was being injected.

531. In 1998, Mr. Vande Velde was only 22 years old and he understood that Dr. Celaya was keeping him from drugs. In fact, while others on the team had been given “recovery” all year, Dr. Celaya only gave him the “recovery” when he thought he needed it for his health.
532. At the hearing, Mr. Vande Velde thanked Dr. Celaya for keeping him away from doping as long as he did.
533. Dr. del Moral (who was brought on the USPS team in 1999) was “*gruff, aggressive and always seemed in a hurry. He would run into the room and you would quickly find a needle in your arm. Where Dr Celaya would take time to explain things, Dr del Moral did not seem to like questions.*”

(h) Dr. del Moral

534. Another witness who gave evidence before the Panel was Dr. Luis Garcia del Moral. He was a witness on behalf of USADA and WADA.
535. The Panel notes that, before giving evidence, Dr. del Moral had entered into a Cooperation Agreement with USADA, WADA and the UCI, the relevant terms of which read as follows:
1. *“Dr. del Moral admits anti-doping rule violation involving his possession, trafficking and administration of Prohibited Substances and/or Methods, including EPO, blood transfusions, testosterone, hGH, corticosteroids and masking agents, beginning in 1999, and ending in 2005, in violation of the World Anti-Doping Code (“Code”) and the UCI Anti-Doping Rules (“UCI ADR”). Dr. del Moral does not contest that such violations have resulted in a lifetime period of ineligibility under the terms of the Code and the UCI ADR.*
 2. *In exchange for WADA/USADA/UCI agreeing to consider suspending Dr. del Moral’s lifetime period of ineligibility to a five (5) year period of ineligibility ending on July 10, 2017, on the basis of the Substantial Assistance that he could provide, Dr. del Moral agrees to cooperate fully and truthfully with WADA/USADA/UCI and further agrees as follows:*
 - a. *Any suspension of Dr. del Moral’s lifetime period of ineligibility will only be considered if he testifies truthfully in the upcoming CAS hearing in October, 2016 concerning doping on the U.S. Postal Service Cycling Team.”*

536. Dr. del Moral’s evidence can be summarized as follows:

Introduction

537. Dr. del Moral was the USPS team doctor from 1999-2003.
538. Dr. del Moral met Mr. Martí before joining the USPS team and Mr. Bruyneel in October 1999. Mr. Bruyneel wanted to organize the medical staff for the USPS team.

Doping on the team

539. Before the USPS team, Dr. del Moral says that cyclists forced him to dope them. On the USPS team, riders came to Dr. del Moral for help with doping.
540. Dr. Ferrari was Lance Armstrong’s personal doctor. He eventually became the personal doctor for other riders on the team. Mr. Bruyneel had a direct relationship with Dr. Ferrari.

541. On the team, testosterone, hgH, cortisone and EPO were used. Blood doping on the team commenced in 2000 under the recommendation of Dr. Ferrari. Blood transfusions would be safer to avoid detection as a new test had emerged at the time which detected EPO in urine.
542. At the beginning, only Messrs Armstrong, Livingston, and Hamilton blood doped. Thereafter, more riders began blood doping. In other words, the program grew while Dr. del Moral was the team doctor.
543. It was Mr. Bruyneel who decided which riders would be on the doping program. It was Dr. Ferrari who decided who would dope and when, with the input of Mr. Bruyneel.
544. Mr. Bruyneel chose the riders for doping on the basis of trust. The rider needed to be a trustful person, i.e. a rider who would stay silent, had longer contracts with the team and had good potential for performance.
545. Dr. del Moral always informed Mr. Bruyneel about the riders' hematocrit levels so that Mr. Bruyneel could decide to exclude a rider from a race or to reduce his hematocrit level.
546. The hematocrit levels had to be reported 4 times a year to the UCI by Dr. del Moral. Dr. del Moral confirms that the team was not always honest in reporting those levels to the UCI. For example, with Mr. Armstrong, Dr. del Moral often substituted someone else's blood for Mr. Armstrong's so that the hematocrit level looked more constant. Dr. del Moral did not decide to do this on his own. Mr. Bruyneel was involved.
547. All of the riders' medical information was given to Mr. Bruyneel. Mr. Bruyneel was interested in knowing everything about the riders – not just doping.
548. Mr. Martí acted as the courier: he brought drugs to Dr. del Moral and the riders' blood bags to the Tour de France.
549. During his cross-examination, Dr. del Moral admitted that he provided banned substances to athletes because it was part of the system and for money: *"I was trying to get away from all of that, I was working with young riders but 'money is money'"*.

2003 Girona Café incident

550. In 2003, Mr. Bruyneel and Dr. del Moral had a meeting with Michael Barry and David Zabriskie at a café in Girona.
551. Mr. Bruyneel talked about achieving greater success with the use of EPO on a regular basis. The riders asked a lot of questions; they were scared. Most of the talking was done by Mr. Bruyneel. After that they went to the flat where Dr. del Moral injected them with EPO, showed them how to make the injection and gave them EPO drugs. Mr. Bruyneel stayed outside the room.

How the drugs and other materials were purchased on the team

552. Initially, Dr. del Moral bought the drugs in pharmacies in Spain and thereafter on the black market. He purchased the drugs with cash provided by Mr. Bruyneel, to avoid leaving any trace. Testosterone was bought in Portugal and in Andorra. Dr. del Moral would report all the purchases to Mr. Bruyneel.
553. Proper lawful medication was paid by regular means. There were invoices for those. Accordingly, there was a clear distinction in the method of payment between regular medication and doping substances.
554. Mr. Bruyneel decided whether the drugs would be paid by the riders or the team. For competitions, all the drugs were free for all riders. Out-of-competition, some riders would

have to pay for their own drugs, while others, such as Lance Armstrong would never have to pay.

555. In 2002, Dr. del Moral purchased, under Mr. Bruyneel's instruction and with his approval, a precision refrigerator to keep the riders' blood bags safe. These bags were stored for 3-4 weeks at a time.

Dangers of doping

556. Dr. del Moral did not agree with the use of corticosteroids because they harm the bones and lead to osteoporosis.
557. The danger with EPO and blood transfusions is that they can increase blood thickness leading to blood clots.
558. EPO had to be refrigerated to 4°C when it shipped. Dr. del Moral has no experience with shipment of EPO by courier.
559. EPO can lead to cardiac malfunction but Dr. del Moral says that all drugs have side effects regardless of the reason they are administered. What is important, for any drug, is the doses used and how and when the drug is administered. Doping without medical control can be dangerous.

Doping detection avoidance

560. Detection/control was always very present on the mind of all riders and members of the team, including Mr. Bruyneel.
561. A masseur or mechanic would often inform the team when the control was imminent. Sometimes Mr. Bruyneel told Dr. del Moral when testing would be done. Sometimes Mr. Bruyneel was right, sometimes he wasn't.
562. Riders were sent to remote locations to dope and avoid detection. When the testers came to test the riders during a race, they used saline water infusions to reduce their haematocrit level.

1999 Tour de France

563. During the 1999 Tour de France, riders used EPO and testosterone.
564. Mr. Bruyneel organized the delivery of the drugs on the Tour. Dr. del Moral administered the EPO and the testosterone to the riders during the night in their hotel rooms. He had a list of the riders whom he would visit to give drugs. Mr. Bruyneel drew that list prior to the Tour. It took about 2 minutes to administer the drugs.
565. The drug quantities were advised by Dr. Ferrari, who would be administered the drugs was decided by Mr. Bruyneel, when the drugs were administered was decided by Mr. Bruyneel and Dr. Ferrari.
566. Dr. del Moral was the last one in the chain of command. Although Dr. del Moral did give his medical advice to Mr. Bruyneel and Dr. Ferrari, his advice was not always taken into account. As a medical doctor, Dr. del Moral didn't feel good about that and this is why his relationship with Mr. Bruyneel fell off the wagon.
567. At the 1999 Tour de France, Lance Armstrong tested positive with a specific type of corticosteroid. Mr. Bruyneel told Dr. del Moral: "*we have a problem and we need to fix it*". Mr. Bruyneel, Mark Gorski (the team manager) and Dr. del Moral came up with the idea to write a back-dated prescription for that type of corticosteroid for a saddle sore, despite the

absence of any medical need. Dr. del Moral gave the prescription to the doping UCI *commissaire* who was Mr. Bruyneel's friend and a fellow Belgian national.⁵⁰

568. Dr. del Moral didn't feel good about doing this. However, he did it anyways to resolve the situation because he was involved: he wanted to avoid a scandal and lose his job.
569. Dr. del Moral believes the UCI *commissaire* knew exactly what was going because he put the prescription in the doping control file of the day the prescription was dated.

2000 Tour de France

570. Dr. del Moral confirms that some of the riders on the team started blood doping in 2000.
571. It seems that the riders stopped using EPO during the Tour as a new test detecting EPO in urine had been developed.
572. Dr. Ferrari extracted blood in Valencia, Spain, from Messrs Armstrong, Livingston and Hamilton. Dr. Ferrari taught Dr. del Moral how to do blood doping.
573. Mr. Martí made the arrangements for the blood bags during the Tour. Dr. Ferrari and Mr. Bruyneel decided when the blood infusions would occur on the tour and Dr. del Moral did those infusions.

2001 Training Camp in Austin, Texas

574. Dr. Ferrari met with other riders than Messrs Armstrong, Livingston and Hamilton to control their training and to discuss their performance. Dr. Ferrari and Mr. Bruyneel decided which riders would meet with Dr. Ferrari.
575. Dr. del Moral received communications from Dr. Ferrari through Mr. Bruyneel. In those communications, Dr. Ferrari said when the blood transfusions should be done.
576. Mr. Bruyneel told Dr. del Moral that two people would check the rooms for microphones and cameras. They were scared of being caught. Mr. Bruyneel organized the blood transfusions – told him to which hotel to go for example.

2001-2002-2003 Tours de France

577. In 2001, five riders received blood transfusions during the Tour, an increase from previous years.
578. In 2002, blood transfusions were also performed during the Tour. For Mr. Armstrong, they reinfused 2 bags instead of one.
579. In 2002-2003, EPO and testosterone were still used during the regular cycling season.
580. Dr. del Moral provided the Panel during the hearing with a series of emails exchanged in 2002-2003 with Mr. Bruyneel. The Panel admitted those e-mails in the record. Dr. del Moral testified that in those e-mails, Mr. Bruyneel gives instructions to Dr. del Moral to take EPO to Lance Armstrong, communicates to Dr. del Moral a working schedule about when to do blood transfusions, shares two medical articles with Dr. del Moral about a new urine method for EPO detection and communicates with Dr. del Moral about Lance Armstrong's high red cell and hematocrit levels.

⁵⁰ Dr del Moral's evidence seems to indicate that the UCI was privy to this incident. As no one from the UCI was a party to the present proceedings, the Panel did not pursue this matter.

End of Dr. del Moral's relationship with the USPS team

581. 2003 was Dr. del Moral's last season with the team. He was told that the team was reducing its budget and that his services were no longer needed.
582. In an e-mail correspondence between Dr. del Moral and Mr. Bruyneel in Spanish in which they settle their accounts at the end of their relationship, Dr. del Moral lists amounts of money which he says are owed to him by the USPS team for having provided "materials". Dr. del Moral testified at the hearing that the term "materials" referred to doping products. Dr. del Moral also writes as follows: "*I have risked my professional future and that of my company several times for the sake of the success achieved*".⁵¹ Dr. del Moral explained at the hearing that he wrote this because he was involved in the team's doping program.

Closing

583. In answer to Professor Sands' question as to why he decided to appear and give evidence before the Panel, Dr. del Moral responded that:
- He wanted to clear his name;
 - He did something wrong but at the time it wasn't frowned upon. With time, this has changed. He understands why he did it then but this is not something he would do again now;
 - Being a sports doctor is his speciality and he wants to continue to practice sport medicine. He wants to have a choice;
 - In accordance with his agreement with USADA, he would be exonerated and his suspension reduced to 5 years if he told the truth in the present proceedings;
 - He understands that if he did not tell the truth his sentence would not be reduced.
584. Dr. del Moral affirmed in closing that he was not ashamed of what he did but that he regrets it.
585. USADA/WADA also rely on the affidavits of three other individuals: Dr. Bowers⁵², David Eichner and Paul Scott⁵³. Those individuals were not called to testify at the hearing.

C. ANALYSIS

586. The Panel has reviewed at length the evidence of Mr. Bruyneel, Dr. Ceyala, and Dr. del Moral, as well as the evidence of all seven riders. They are the principal witnesses who testified during this hearing. Their credibility must now be determined by the Panel.
587. The evidence of the seven riders and of Dr. del Moral, if accepted by the Panel as being truthful, would inevitably lead the Panel to a finding that Messrs Bruyneel and Martí have

⁵¹ Free translation by the Panel.

⁵² Chief Science Officer at USADA. He provided an expert opinion "*as to whether the absence of a 'failed' doping control test is proof that the athlete did not dope*".

⁵³ David Eichner's and Paul Scott's affidavits go to the alleged timing and nature of the commencement of USADA's investigation against Mr. Bruyneel.

committed all the anti-doping rule violations of which they stand accused. Accordingly, the Panel will, in turn, reflect on and conclude as to the credibility of these witnesses.

588. The Panel has reviewed carefully the evidence of all cyclists, including of course, their answers to Messrs. Bruyneel's and Marti's counsel's questions during their cross-examination. Their evidence before the Panel has been summarized earlier in the present Partial Award.
589. The Panel is mindful of the representation made by Messrs. Bruyneel's and Marti's counsel in their Post-Hearing Brief that the evidence of witnesses who were given "*lenient sanctions (as were all seven riders) in exchange for their testimonies*" should be treated with "*extreme caution*".
590. The Panel will analyze first the evidence of Mr. Hincapie, Mr. Danielson and Mr. Leipheimer with respect to the three events which concern Mr. Bruyneel and which occurred after 3 January 2005.
- 1) As noted earlier, Mr. Hincapie, in his affidavit, testified about an incident in 2005 as follows:
- Lance retired after the Tour de France in 2005. I returned to Girona but Lance did not. Shortly after the Tour Johan called me up and asked me to go over to Lance's apartment to go through the apartment and the closets to make sure that there was nothing there. I understood that Johan wanted me to make sure that there were no doping materials in the apartment. I went over to the apartment and texted Johan back that I had not found anything to worry about."*
- 2) Mr. Bruyneel categorically denied that his "*call to George was ... about doping products*".
- 3) In cross-examination, Mr. Hincapie confirmed that he had merely formed an impression from the conversation that Mr. Bruyneel was referring to doping materials.
591. Having regard to the close relationship between Mr. Hincapie and Lance Armstrong, the evidence of Mr. Hincapie with respect to the general climate of doping in cycling during those years as well as his evidence to the effect that Mr. Bruyneel facilitated his drug use and provided him with drugs during those years, the Panel is comfortably satisfied that, during that conversation, Mr. Bruyneel did indeed, in effect, ask Mr. Hincapie to make sure that there were no doping materials in Lance Armstrong's apartment in Girona. The Panel's findings is comforted by Mr. Hincapie's evidence that he "*texted Johan back that [he] had not found anything to worry about*" which was not contradicted by Mr. Bruyneel.
592. The summary of Mr. Danielson's evidence, including his cross-examination has been traversed earlier at length.
593. The Panel sees no reason to exclude Mr. Danielson's evidence as requested by Mr. Bruyneel.
594. Mr. Danielson affirms categorically that Mr. Bruyneel "*was involved in every aspect of the team's training and doping program*". He also testified that, in 2006, he had discussed with Mr. Bruyneel the possibility that the Discovery Channel team would assist him with blood transfusions in the 2006 Vuelta and that, in fact, it did so. Mr. Bruyneel denies Mr. Danielson's testimony.
595. In this connection, it is important to note that, according to Mr. Danielson, in 2006, Mr. Bruyneel recommended to him that he should stay at the Hotel Fontanals Golf in Puigcerda, Spain, rather than in his apartment in Girona to avoid doping control tests as Lance Armstrong often did. This was denied by Mr. Bruyneel.

596. Mr. Bruyneel's counsel argues in his Post-Hearing Brief that Mr. Danielson was an experienced doper and that "*he did not need Mr. Bruyneel if he had wanted or did dope*".
597. Again, having regard to the totality of the evidence provided by the riders and, particularly, the testimony of Mr. Danielson, whom the Panel found credible, the Panel is comfortably satisfied that Mr. Bruyneel did indeed assist Mr. Danielson with blood transfusions in the 2006 Vuelta and did recommend to Mr. Danielson in the same year to stay at the Hotel Fontanals Golf in Puigcerda "*in order to avoid doping control tests*".
598. As noted earlier in the summary of Mr. Leipheimer's evidence, he testified that in April 2007 he asked Mr. Bruyneel whether he would organize a blood doping program for the 2007 Tour de France and that Mr. Bruyneel replied: "*I think we can make it work*".
599. Mr. Bruyneel denied that he was involved in any way in Mr. Leipheimer's blood transfusion at the 2007 Tour de France. In the light of the evidence of Mr. Leipheimer that Mr. Bruyneel played an active role in managing the team's doping program, the Panel is comfortably satisfied that Mr. Bruyneel did indeed assist Mr. Leipheimer with his blood transfusion during the 2007 Tour de France.⁵⁴
600. Having reached these conclusions with respect to the three incidents which took place after 3 January 2005, the Panel, as it decided earlier, will consider the evidence of the seven riders as to facts which occurred prior to that date and which it considers to be materially related to and relevant to these three incidents.
601. The Panel's determination of the credibility of the seven riders is informed, in large part, by the credibility of Dr. Celaya and the credibility of Dr. del Moral.
602. As will be seen shortly, the Panel finds the whole evidence of Dr. Celaya untruthful and the testimony of Dr. del Moral to be generally truthful.
603. Accordingly, the Panel accepts, without any exception, the riders' testimony as truthful.
604. The Panel now comes to the credibility of the testimony of Dr. del Moral who appeared as a witness on behalf of USADA/WADA.
605. The Panel has reviewed carefully his evidence which was summarized earlier in the present Partial Award.
606. As traversed earlier, Dr. del Moral was the medical doctor on the USPS cycling team between 1999 and 2003. He had personal knowledge of how Mr. Bruyneel's doping program was organized. He is referenced in the affidavits of every rider who testified, in many cases repeatedly. One could say that he confirms the evidence of the riders who, in turn, confirm the evidence of Dr. del Moral.
607. The Panel accepts USADA's submission that, except for Mr. Bruyneel, there was no one better placed in this hierarchical "family" to testify in respect of all facets of the doping program of the USPS cycling team than Dr. del Moral.
608. Not without some hesitation, members of the Panel have decided to accept Dr. del Moral's evidence as generally truthful. He may have decided to repent at the 11th hour, for self-serving reasons; he may have struck a very advantageous cooperation agreement with the "prosecution" in exchange for his testimony; he may have appeared very cynical when he answered some of the questions put to him; and he may not have been entirely persuasive in claiming that he now regretted what he had done; but, all things considered, members of the Panel found him to be a credible witness on the limited matters he addressed.

⁵⁴ See also AAA Decision, p. 62-63.

609. The Panel now comes to the credibility of the testimony of Dr. Celaya.
610. As noted earlier, Dr. Celaya is a Respondent in WADA's appeal. He did not appeal his conviction by the AAA panel. He was called as a witness by Messrs Bruyneel and Martí. He did not submit any witness statement.
611. Dr. Celaya's evidence was summarized at length earlier in the present Partial Award.
612. The Panel recalls that the AAA panel found, in no uncertain terms, that Dr. Celaya was not a credible witness.
613. The evidence of the riders and of Dr. del Moral is overwhelming. Dr. Celaya was an active and willing participant in the widespread and systematic doping scheme which went on in the sport of cycling during all the years that he was the doctor for the many teams with which he was affiliated.
614. The Panel finds that Dr. Celaya is not a credible witness. In short, his testimony was untruthful.
615. Lastly, the Panel comes to the evidence of Mr. Bruyneel.
616. The Panel recalls that, after having denied for more than 15 years all allegations of doping in the sport of cycling including having written a book to that effect, Mr. Bruyneel voluntarily appeared as a witness in the present case and gave evidence during 2 days. It now remains for the Panel to assess the truthfulness of his evidence having regard to the totality of the record.
617. In effect, Mr. Bruyneel testified that he was "*aware of doping but not involved in it*". As noted earlier, he added that, while he could not identify a specific date when it happened, there had been a gradual change of culture in cycling that took place before the 2004 Tour de France.
618. The Panel cannot accept that Mr. Bruyneel presciently changed his stripes and ended his direct involvement in the team's doping activities just three weeks before the 2004 Tour de France and precisely eight years before the date that USADA issued formal anti-doping charges against him.
619. The Panel agrees with WADA that Mr. Bruyneel's position is "*implausible [and] defies common sense.*" The Panel finds that Mr. Bruyneel was not only aware of the doping but deeply and actively engaged in it.
620. During his cross-examination, Mr. Bruyneel indicated that winning the Tour de France was the team's main goal and that he had recognized that blood doping would help the team win. He admitted that using prohibited substances and blood doping was part of the team's preparation for the Tour and that, as team director, he had to know the doping status of each rider on the team for planning purposes. He said he knew that every rider on his Tour de France teams doped and that the team doctors, whom Mr. Bruyneel admittedly controlled, worked with the riders to manage their doping regimens. Mr. Bruyneel agreed that he had used his knowledge about the riders' doping in his planning for every Tour de France from 1999 through 2007.
621. Mr. Bruyneel also admitted in cross-examination that he was present on occasions when blood was being re-infused into Lance Armstrong for the Tour de France. He agreed that, in order to be present for those blood transfusions, he had to know the time, place and room number where the transfusion was to take place.
622. The straw that literally broke the back of Mr. Bruyneel's evidence before the Panel came towards the end of the hearing during the testimony of Dr. del Moral when a series of emails

- exchanged in 2002-2003 between Mr. Bruyneel and Dr. del Moral were admitted into the record. In those e-mails, exchanged mostly in Spanish, Mr. Bruyneel gives instructions to Dr. del Moral to take EPO to Lance Armstrong, communicates to Dr. del Moral a working schedule about when to do blood transfusions, shares two medical articles with Dr. del Moral about a new urine method for EPO detection and communicates with Dr. del Moral about Lance Armstrong's high red cell and hematocrit levels.
623. These emails are devastating in their effect. They strongly corroborate the riders' testimony and the testimony of Dr. del Moral that, in effect, Mr. Bruyneel oversaw all aspects of the team's doping activities from 1999 to 2007. They also contradict convincingly the testimony of Mr. Bruyneel and Dr. Celaya.
 624. Although Mr. Bruyneel's counsel told the Panel when those emails were filed as evidence that his client would address them the following day, the Panel notes that, when the time came, as was his right, Mr. Bruyneel chose not to provide any explanation. He remained silent about this evidence.
 625. Members of the Panel cannot accept that Mr Bruyneel's testimony was truthful. After having lied "big time" for more than 10 years, in his book, in radio and TV interviews, indeed at every opportunity he was offered, today, as the guillotine is about to fall, *in extremis*, he falls on his knees before the Panel and says: "*Yes, I did it but everyone was doing it and I am not guilty of the charges of which I stand accused.*" "*I was aware of doping but not involved in it*" was as close as Mr. Bruyneel came to admit the ADRVs against him.
 626. The totality of the evidence paints a very clear picture for the Panel: from 1997 to 2007, Messrs Bruyneel, Martí and Celaya participated in an elaborate and highly successful doping scheme with Mr. Bruyneel at the apex of a multitude of doping violations and Mr. Martí and Dr. Celaya (and Dr. del Moral) as the indispensable participants in this widespread and systematic doping program.
 627. The Panel has considered carefully the testimony of both Mr. Bruyneel and Dr. Celaya, as well as the testimony of Dr. del Moral who, it will be recalled, has not appealed the 2012 anti-doping rule violations and has been serving a lifetime period of ineligibility which commenced on 10 July 2012.
 628. The Panel's evaluation of their evidence as well as the evidence of all riders who testified has informed its conclusion that all charges against Messrs Bruyneel, Martí and Celaya within the limitation period have been established to its comfortable satisfaction.
 629. Even if evidence of conduct by Messrs Bruyneel, Martí and Celaya occurring before the limitation period was only considered by the Panel as evidence of a pattern of acts, it remains comfortably satisfied that USADA has established each and every one of the doping offences of which Messrs Bruyneel, Martí and Celaya stand accused.
 630. As the sports director ("Directeur Sportif") of the USPS and Discovery Channel cycling teams during the period from 1997 to 2007, Mr. Bruyneel was at the top of the pyramid of one of the largest doping program which ever existed in any sport on the planet. There is ample and convincing evidence in the record from the seven riders who testified and from Dr. del Moral that, in that capacity, he not only knew the doping program of every rider on his Tour de France teams from 1999 through 2007 but was also intimately involved in the active implementation of that program, from initiation to oversight.
 631. Mr. Bruyneel's measured and calibrated act of contrition was "too little too late". Having reviewed carefully and analysed the totality of the evidence against him, each and every member of the Panel is very comfortably satisfied that USADA/WADA have discharged

their burden of proof that Mr. Bruyneel has violated all the anti-doping rules of which he stands accused and which, as the Panel ruled earlier, have been more than adequately particularized. These are: administration, trafficking, complicity and aggravating circumstances in violation of Articles 2.7 and 2.8 of the WADA Code and R-15.7 and 15.8 UCI ADR.

632. The Panel is also very comfortably satisfied on the basis of the totality of the evidence against him, particularly the evidence of the riders and Dr. del Moral, that USADA/WADA have discharged their burden of proof that Mr. Martí has violated all the anti-doping rules of which he stands accused and which, as the Panel ruled earlier, have been more than adequately particularized. These are: administration, trafficking, complicity and aggravating circumstances in violation of Articles 2.6.2, 2.7 and 2.8 of the WADA Code and R-15.6.2, 15.7 and 15.8 UCI ADR.

IX. THE DOCTRINE OF LEX MITIOR

633. Mr. Bruyneel contends that his maximum sanction can be no more than four years under the doctrine of *lex mitior*. He asserts that, under the 2004 version of Article 15.8 UCI ADR, his only doping violation could be the “complicity portion” of the Administration rule, and that the complicity element is now a stand-alone anti-doping rule violation under Article 2.9 of the 2015 UCI ADR that provides for a maximum four-year sanction for a first offense. As explained below, in order to accept Mr. Bruyneel’s argument, the Panel would be required to ignore the expansive definition of *Administration* included in the 2015 UCI ADR.
634. The *lex mitior* doctrine does not support Mr. Bruyneel’s position. The doctrine applies only if the accused person can demonstrate that the rules applicable at the time of the Panel’s decision are more favourable to the accused than the set of rules applicable at the time when the anti-doping violation was committed. In conducting this analysis, the Panel must consider the current rules “as a coherent set of rules which must be considered together in order to determine whether or not a *lex mitior* exists.”⁵⁵ As another CAS panel recently explained, the *lex mitior* principle “cannot be applied in a way that creates a law that never existed, composed of a mixture of old and new rules and upsetting the rationale of both systems.”⁵⁶ In other words, the conduct of the accused must be considered under the current rules as a whole to determine whether the accused may benefit from *lex mitior*.
635. Thus, in the current proceedings, the Panel must consider Mr. Bruyneel’s conduct under the current anti-doping rules as if the entire 2015 UCI ADR had been in effect at the time the conduct occurred. The critical issue, then, is whether Mr. Bruyneel’s conduct, had it occurred under the 2015 UCI ADR, could be found to have violated the *Administration* rule (Article 2.8 UCI ADR), including the new definition of *Administration*: “Providing, supplying, supervising, facilitating, or otherwise participating in the Use or Attempted Use by another Person of a Prohibited Substance or Prohibited Method.” If Mr. Bruyneel’s conduct could have violated Article 2.8 UCI ADR, there is no *lex mitior* because the applicable sanction would be four years to life just as it would have been under earlier versions of the UCI ADR.
636. If the Panel were to accept Mr. Bruyneel’s argument and apply solely Article 2.9 (Complicity) of the 2015 UCI ADR without taking into account the newly-adopted definition of Administration, the result would be contrary to the obvious rationale of the 2015 WADA Code provisions. When the drafters of the 2015 WADA Code decided to adopt separate anti-doping rule violations for Administration and Complicity, while at the same time adopting

⁵⁵ CAS 2008/A/1572, 1632 and 1659.

⁵⁶ CAS 2015/A/4010.

an expansive definition of Administration, they clearly did not intend, as Mr. Bruyneel suggests, that athlete support personnel would be treated more leniently and could not receive a sanction of more than four years unless they actually injected a prohibited substance. To the contrary, the drafters of the 2015 WADA Code made clear that athlete support personnel who “provide, supply, supervise, facilitate, or otherwise participate” in doping activity shall receive a sanction from four years up to lifetime ineligibility.

637. Applying the plain language of Article 2.8 (*Administration*) UCI ADR, the evidence submitted to the Panel by the riders and Dr. del Moral shows that Mr. Bruyneel “participated in,” “facilitated” and “supervised” his riders’ use of prohibited substances and prohibited methods, and that he also “provided” and/or “supplied” prohibited substances and methods to his riders.

X. SANCTIONS

638. The Panel must now determine the appropriate sanctions that should be imposed on Mr. Bruyneel, Dr. Celaya and Mr. Martí. WADA and USADA submit that each one of them should receive lifetime ineligibility.
639. Before doing so, the Panel wishes to express the following in respect of Dr. del Moral. The Panel recalls, that according to his cooperation agreement with USADA, WADA and UCI, should the Panel find his evidence truthful (as it has), USADA/WADA/UCI has agreed to consider suspending his lifetime period of ineligibility to a five-year period of ineligibility. As a licensed doctor in Spain, it is within the exclusive competence of the Spanish authorities to decide whether, in the event that his sentence is reduced to 5 years, Dr. del Moral should be allowed to resume his practice of sport medicine. However, the Panel is bound to note that, having regard to the testimony he offered to the Panel and the answers he gave to questions put by the Panel with regard to his own active and extensive involvement in this far-reaching doping program, it would be a matter of considerable concern to the Panel, in the event that his sentence were to be reduced by any amount of time, if Dr. del Moral would ever be permitted to practice sport medicine again.
640. The Panel will now write what may be the closing chapter in the history of the USPS/Discovery cycling teams, mindful of the submission of USADA in the closing paragraph of its Post-Hearing Brief, which appears very persuasive in the face of the evidence that is before it:

[...] This case told a story of doping, and of denial which did not end even on the last day of the hearing when Johan Bruyneel used his concluding statement to deny personal responsibility for doping "many cyclists over many years" as previously found by the AAA. At this penultimate moment, Bruyneel told the Panel ". . . there is one thing that I would like to emphasize . . . I've never asked or encouraged or forced either a rider or a staff member on my team to dope or to be engaged in doping practices." Regrettably, Bruyneel's claim was not true. The evidence demonstrated that through words and actions Bruyneel repeatedly asked and encouraged staff members and riders to engage in doping, personally arranging for doping on the team to take place, financing with team funds purchases of doping products and ensuring the team's culture and practices would revolve around plans for doping. Bruyneel's effort to recast the evidence and minimize his level of personal responsibility directly conflicted with credible, consistent and compelling testimony of the riders and Dr. del Moral, who provided a high ranking insider account of the doping conspiracy not available to the AAA and corroborated by contemporaneous documents which together established beyond cavil the integral roles

of Bruyneel, Celaya and Martí in the USPS doping conspiracy.

Now, the parties, and in some ways the sport itself, turn this matter over to the Panel to write the final chapter in the history of the USPS/Discovery Channel team. It is an important chapter which needs to be written to confirm cycling has the capacity and resolve to find the truth and to proportionally and fairly apply firm and just penalties that will both protect cycling and help it experience a true break from its troubled past. The ADOs respectfully submit that Respondents' anti-doping rule violations have been clearly established by substantial evidence and each should receive lifetime ineligibility.

641. The Panel recalls that the AAA panel imposed suspensions of 10 years on Mr. Bruyneel and 8 years on Dr. Celaya and Mr. Martí.
642. For the purpose of determining the appropriate length of sanctions for Messrs Bruyneel, Martí and Celaya, the Panel agrees with WADA that it may consider the totality of the evidence, including the evidence of their conduct which occurred outside of the limitations period. There is no provision in the Code or UCI ADR which suggests that the Panel may not consider all misconduct by athlete support personnel in the penalty phase of the proceedings.
643. Accordingly, the Panel, having determined that anti-doping rule violations were committed by Messrs Bruyneel, Martí and Celaya, in the exercise of its discretionary determination of the appropriate sanction from the minimum of four years to a lifetime ban, will consider all of the evidence in the record relating to Messrs Bruyneel's, Martí's and Celaya's participation in the decade-long doping scheme.

A. MR. BRUYNEEL

644. The AAA panel after having concluded that "*the evidence establishes conclusively that Mr. Bruyneel was at the apex of a conspiracy to commit widespread doping on the USPS and Discovery Channel teams spanning many years and many riders*" went on to conclude, without providing any additional reasons, that "*For those violations, the Panel finds ten (10) years to be appropriate*".
645. With respect, the Panel disagrees. If a lifetime ban is a possible sanction, as it is, the Panel sees no reason why it should not be imposed in this case for Mr. Bruyneel's active involvement in widespread, systemic doping in the sport of cycling spanning many years.
646. As reviewed above, there is persuasive evidence before the Panel that Mr. Bruyneel was at the heart of this system, which was highly organized and procured significant financial and other advantages to him.
647. An emerging body of arbitral precedent in anti-doping cases suggests that a period of lifetime ineligibility may properly be imposed on athlete support personnel who use their authority to orchestrate or cover up doping programs among the athletes in their charge. These decisions recognize the special role played by coaches and team managers who act as trusted advisors to impressionable athletes, and make clear that athlete support personnel in these roles owe an especially high duty to maintain the integrity of the anti-doping system. This is especially true for athlete support personnel at the top of a team's hierarchical structure because such persons have the power either to continue and expand the team's doping activity or to end and prevent it, and because such persons are the face of the sport and stand to benefit the most from doping activity that results in team success.

648. Five recent arbitral decisions, each involving athlete support personnel, imposed periods of lifetime ineligibility. In each case, the anti-doping violations cannot be said to have been any more severe or widespread than those committed by Mr. Bruyneel.
649. In *IAAF v. Melnikov*, the panel concluded that a Russian coach had committed an *Administration* offense, as defined in the 2015 WADA Code, because he had “*supervised and encouraged*” doping activity by helping athletes avoid doping controls and “*encouraged and abetted*” athletes to commit anti-doping rule violations. The Panel imposed a period of lifetime ineligibility because the coach had been “*at the helm of [the doping] practices*” and “*had a substantial influence over athletes of the Russian national team and he was encouraging the use of prohibited substances and not only turning a blind eye to their usage.*” “*In this case it was made clear by the evidence adduced that the Coach orchestrated, along with others, the long standing scheme to ‘prepare’ athletes using various prohibited substances over a period of time.*”
650. In *IAAF v. ARAF & Portugalov*, the panel found that a Russian medical doctor had been involved in providing prohibited substances to athletes and advising them to engage in prohibited methods, thereby producing financial rewards for himself. Although the doctor made a blanket denial of the charges, the panel concluded that he had been at the centre of an organized doping system and imposed the sanction of lifetime ineligibility.
651. In *UK Anti-Doping Limited v. Skafidas*, the panel determined that the respondent track coach had administered testosterone and other prohibited substances to a single athlete and then subverted the doping control process by convincing the athlete to lie about her knowledge that she had been administered prohibited substances. The panel held that “*the right, proportionate and necessary sanction for this misconduct is a ban for life*”:
- A coach who abuses his position of responsibility and influence to induce an athlete to accept the administration of prohibited substances is committing a very serious offence which strikes at the core rationale of the anti-doping programme “to protect the athlete’s fundamental right to participate in doping-free sport and thus promote health, fairness and equality for athletes worldwide.”*
- [Respondent] held and expressed the view that doping was necessary for athletes to succeed in competition and he subordinated [his athlete’s] interest to his ambition.*
652. In *USADA v. Stewart*, the evidence showed that the respondent track and field coach trafficked in prohibited substances, aided and abetted anti-doping rule violations, and provided counsel on concealing such activities with respect to several athletes he coached. The arbitrator concluded a period of lifetime ineligibility was appropriate:
- [Respondent’s] position of coach which presents him to young men and women as a trusted advisor and confidant, as one who knows the path to gold and glory, places an inviolable responsibility on him to be a role model and leader. The rejection of this responsibility presents a personal affront to his athletes; a repudiation of USADA, WADA rules and the expectations of the sporting world, particularly when the practice involves multiple violations.*
653. In *USADA v. Leinders*, the evidence showed that the respondent, the chief team doctor for a professional cycling team, trafficked in prohibited substances, administered (or attempted to administer) prohibited substances to at least one cyclist, and was complicit in additional anti-doping rule violations involving four cyclists. The panel decided the respondent should receive a lifetime period of ineligibility:

The Panel concludes that the aggravating factors in this case are very similar to, and equal or exceed, those in Stewart, in which a sanction of lifetime ineligibility was imposed on a coach. As the chief team physician and a member of the board of directors for the Rabobank cycling team, Dr. Leinders occupied even higher positions of trust and responsibility and was “at the apex of a conspiracy to commit widespread doping ...spanning many years and many riders.” Therefore, he should receive a sanction no less severe than the coach in Stewart.

654. The rationale from these five decisions points ineluctably to a period of lifetime ineligibility for Mr. Bruyneel. Like the athlete support personnel in *Melnikov*, *Portugalov* and *Skafidas*, Mr. Bruyneel orchestrated a doping program and encouraged athletes to use prohibited substances based on his belief that it was a necessary step to team success. As the coach in *Stewart*, Mr. Bruyneel serially abused his trusted advisor role as team director to initiate young cyclists into the team’s doping program, and then worked tirelessly to conceal the teams’ prohibited conduct from anti-doping authorities. Mr. Bruyneel, even more so than the doctor in *Leinders*, held the highest position of trust and responsibility and operated at the “apex of a conspiracy to commit widespread doping.”
655. In the circumstances, the Panel concludes without hesitation that a lifetime ineligibility is an appropriate sanction for Mr. Bruyneel and it so finds.
656. Prior to closing in respect of Mr. Bruyneel’s sanction, the Panel recalls that Mr. Bruyneel asserted two mitigating factors for purposes of mitigating his sanction: that he acknowledged his misconduct and accepted responsibility for it.
657. The Panel does not accept that there is any mitigating factor which can be applied in the case of Mr. Bruyneel.
658. Having regard to the totality of the evidence, the Panel agrees with WADA that Mr. Bruyneel’s claimed acceptance of responsibility was “entirely strategic” and cannot be considered as a mitigating factor.
659. In addition, the Panel notes that Mr. Bruyneel’s acceptance of responsibility (“knowledge” but no “involvement”) was made prior to the Dr. del Moral’s testimony and the introduction in the record of the emails exchanged in 2003 between Mr. Bruyneel and Dr. del Moral.
660. As noted earlier, Mr. Bruyneel, on the day after these emails were admitted in the record chose (as was his right) not to be re-examined. As a consequence, the Panel never heard Mr. Bruyneel’s rebuttal of the evidence gleaned from these emails of his pivotal role in orchestrating the complicated logistics necessary to ensure that the riders, doctors and “equipment” were in the right place at the right time for the teams’ doping activities.
661. In this connection, the Panel recalls the candid (but highly professional) submission of Mr. Bruyneel’s counsel in his closing submission that: “*the emails that were produced after [Mr. Bruyneel] testified and provided to the [P]anel reflect his involvement during 2003 in scheduling some of the doping activities, that’s clear. So, his evidence isn’t perfect for you. But he was here. He was questioned.*”

B. DR. CELAYA

662. Because Dr. Celaya was “*a mere instrument*” as opposed to “*the organizer of the doping conspiracy or scheme*” and because “[*he*] was found to have committed fewer offences than Mr Bruyneel”, the AAA panel concluded that the total penalty for his multiple violations of the WADA Code would be eight (8) years.

663. Again, with respect, the Panel disagrees with the AAA panel. Dr. Celaya may not have been at the heart of the system but, as a medical doctor, he was a willing and indispensable participant in the implementation of a system which required medical supervision. In the words of Dr. del Moral, “*doping without medical control can be dangerous.*” In the view of the Panel, a medical practitioner has a special role as a guardian of the anti-doping rules.
664. When he testified before the Panel, Dr. Celaya did not appear the least bit contrite. Quite the contrary, he continued to maintain his innocence. As far as the Panel is aware, he is the only remaining member of the corrupt world of cycling during those many years to respect the “omerta”. His attitude offers a serious threat to a future of clean cycling and sport generally.
665. His testimony which was found not credible by the Panel (and indeed by the AAA panel) confirms his unfitness to ever participate again in any sport as an athlete support person.
666. In the circumstances, the Panel concludes, without hesitation, that a lifetime ineligibility is an appropriate sanction for Dr. Celaya and it so finds.

C. MR. MARTÍ

667. The AAA panel imposed a suspension of eight (8) years on Mr. Martí because he was “*a mere instrument*” in the vortex of the doping conspiracy in the sport of cycling.
668. The Panel accepts that it is appropriate to differentiate between Mr. Martí on the one hand and Mr. Bruyneel and Dr. Celaya on the other hand when it comes to the matter of a sanction.
669. Mr. Martí, the “runner”, was very busy as an active participant in this doping program during many years. The riders depended on Mr. Martí for their paraphernalia, including their refrigerator and their doping products. Unfortunately, for the reasons explained by his lawyer, Mr. Martí chose not to testify but the Panel, as it was invited to do, will not draw any adverse inference against Mr. Martí because of his failure to testify.
670. At the same time, there is not one iota of evidence on the record from which the Panel can infer contrition or any change of heart on the part of Mr. Martí.
671. Having deliberated, the Panel considers that a suspension of fifteen (15) years would be appropriate for Mr. Martí.
672. With respect to the applicable start date for Mr. Martí’s fifteen years of ineligibility, the Panel sees no reason to disagree with the AAA panel’s conclusion that the most appropriate start date is the date on which USADA notified Mr. Martí that he was being charged, to wit 12 June 2012.

XI. COSTS

673. As agreed by the parties, submissions on costs shall be filed after the receipt of the present Partial Award.
674. The Panel shall then rule on the parties’ requests in this respect in its Final Award.

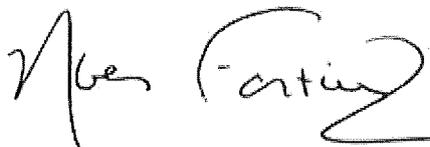
ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal of Mr. Bruyneel against the decision rendered by the AAA on 21 April 2014 is denied.
2. The appeal of Mr. Martí against the decision rendered by the AAA on 21 April 2014 is denied.
3. The appeal of WADA against the decision rendered by the AAA on 21 April 2014 is partially upheld.
4. The decision rendered by the AAA on 21 April 2014 is modified to the extent that:
 - (a) Mr. Bruyneel's period of ineligibility shall be for a lifetime;
 - (b) Dr. Celaya's period of ineligibility shall be for a lifetime;
 - (c) Mr. Martí's period of ineligibility shall be for a period of fifteen (15) years commencing on the date of this Partial Award but giving him credit for the period of ineligibility already served from 12 June 2012.
5. Costs reserved.
6. All other claims are dismissed.

Lausanne, 24 October 2018

THE COURT OF ARBITRATION FOR SPORT

A handwritten signature in black ink, appearing to read 'L. Yves Fortier', written in a cursive style.

The Hon. L. Yves Fortier, QC

President of the Panel