

**IN THE APPEAL TRIBUNAL FOR THE SOUTH AFRICAN INSTITUTE FOR DRUG-FREE SPORT**

**IN THE MATTER BETWEEN**

**CASE NO: SAIDS/2017/A08**

**TRACY LUDWIG**

**Appellant**

**And**

**THE SOUTH AFRICAN INSTITUTE FOR DRUG-FREE SPORT**

**Respondent**

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**APPEAL DECISION**

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**Before the Appeal Panel of:**

Ms. Marissa Damons (Chairperson)

Dr. Ephraim Nematswerani (Appeal Board Member)

Mr. Bongani Yengwa (Appeal Board Member)

(hereafter referred to as “the Appeal Panel”)

**Appearing for the Appellant:**

Counsel: Advocate P J Combrinck

**Appearing for the Respondent:**

Attorney: Ms Wafeekah Begg

Prosecutor on behalf of SAIDS.

## A. INTRODUCTION.

1. This is an appeal brought in terms of Article 4.4.6.1 resulting from the denial of an application for a retroactive Therapeutic Use Exemption (TUE) to SAIDS for the drug *Indapamide*, dated 08 June 2016.
2. The Appellant is a National Level Athlete in the discipline of power lifting.
3. The Appellant was tested 'in-competition' on 29 May 2016, in accordance with the 2015 SAIDS Anti-Doping Rules based on the World Anti-Doping Code (WADC) adopted and implemented by the World Anti-Doping Agency (WADA).
4. The Athlete's A and B urine samples were submitted to a WADA accredited Laboratory in Qatar. The analytical report received from the Laboratory confirmed the presence of Indapamide in the Appellant's A sample. Indapamide is a Prohibited Substance appearing on the WADA Prohibited List and consequently constitutes an adverse analytical finding and a *prima facie* breach of Article 2.1<sup>1</sup> of the SAIDS Anti-Doping Rules (ADR) indicating that an Anti-Doping Rule Violation (ADRV) was committed in terms of the Prohibited Substance being present in the Athlete's sample<sup>2</sup>.
5. The Appellant waived her right to have her B sample tested and confirmed that the result would reflect the presence of Indapamide, the active ingredient in Adco Dapamax.<sup>3</sup>
6. The Appellant instead of disputing the ADRV, applied to SAIDS for a Therapeutic Use Exemption (TUE) in respect of the Prohibited Substance on 08 June 2016.<sup>4</sup>
7. SAIDS is an independent body established under Section 2 of the South African Institute for Drug-Free Sport Act 14 of 1997 (as amended).
8. The Appeal is brought in accordance with Article 13.2.2 of the ADR, with the Appeal Panel being appointed in terms of Article 13.2.2.1.1(b).

## B. THE GROUNDS FOR APPEAL

1. The appeal is brought by the Appellant against the decision of the SAIDS TUE Commission to not grant the retroactive Therapeutic Use Exemption application in respect of Indapamide<sup>5</sup>, communicated to the Appellant on 27 September 2016 .

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<sup>1</sup> Article 2.1.1: - *It is each Athlete's personal duty to ensure that no Prohibited Substance enters his or her body. Athletes are responsible for any Prohibited Substance or its Metabolites or Markers found to be present in their Samples. Accordingly, it is not necessary that intent, Fault, Negligence or knowing Use on the Athlete's part be demonstrated in order to establish an anti-doping rule violation*

<sup>2</sup> Article 2.1.2

<sup>3</sup> Page 13 of the joint bundle: Letter from the athlete to SAIDS

<sup>4</sup> Article 4.4.2 of the ADR

<sup>5</sup> In accordance with Article 4.4.6.1 read together with Article 13.4

2. The intention of the retroactive TUE application was to explain the adverse analytical finding against the Appellant.
3. To obtain exemption for the use of the Prohibited Substance going forward
4. The issue of costs of the Appeal is to be decided by the Appeal Panel.

### **C. BACKGROUND**

1. In terms of background: the matter was first heard on 28 March 2018, which had to be adjourned due to the Appellant not having filed her Heads of Argument timeously in terms of the Notice of Setdown, which is fifteen days prior to the date of the hearing, of which the Appellant was made aware well in advance of the hearing date. The Appellants Heads of Argument were filed on the day of the hearing, which did not allow the Respondent to prepare its Heads of Argument and file same seven days prior to the hearing date.
2. The Appellant did not bring an application to condone the late filing of the bundle or the Heads of Argument, leaving the Respondent and the Appeal Panel at a disadvantage in terms of not being able to prepare.
3. As a result, the Respondent made the following submissions:
  - a. That the matter be dismissed with costs;
  - b. In the alternative that should the Panel agree to proceed with the matter, that an adverse order as to costs be made against the Appellant.
4. The Appeal Panel decided as follows:
  - a. To be fair to the Appellant, and acknowledging her diagnosed conditions by the various medical professionals, the matter was postponed to allow the Appellant to properly prepare her case;
  - b. The issue of costs to be determined after the matter was fully heard;
  - c. In light of the fact that it was submitted by the Appellant that it would prove difficult to have the various medical professionals treating the Appellant at the reconvened meeting, it was decided that reports from the Appellant's Specialists needed to be sworn to in the form of affidavits.
  - d. The hearing would resume on 24 April 2018.
5. The matter was thus adjourned and agreed to be reconvened on 24 April 2018.

#### D. THE FACTS

1. The Appellant, Ms Tracy Ludwig is a 44 year old power lifting National Athlete<sup>6</sup>.
2. The Appellant competed at both national and international power lifting competitions, and is therefore taken to be aware of the ADR and given the level at which she competed, is taken to have received anti-doping awareness training.
3. The Appellant was tested on 29 May 2016, after a competition and as a winner of certain categories in such power lifting competition was tested. The therapeutic drug Adco-Dapamax was declared by the Appellant on her doping control form.<sup>7</sup>
4. The Appellant tested positive for Indapamide, a specified substance classified as a S5 diuretic on the WADA Prohibited List. The source of the Indapamide was identified by the Appellant to have originated from Adco-Dapamax which was prescribed by her Psychiatrist Dr Laurel King for her diagnosis of hypertension.
5. The Appellant did not dispute the Adverse Analytical Finding and by her own admission the Appellant knew that she would have an adverse finding in respect of the Indapamide. She waived her right to have her B sample analysed. That being the case, sufficient proof of an ADRV had therefore been established.
6. The Appellant is treated by various other specialists for other medical conditions. These include: Dr Letasha Kalideen who treats the Appellant for Diabetes and Hypothyroidism, Dr Laurel King who also treats her for Depression and Dr Colin who treats her for Diabetic Neuropathy.
7. The Appellant received a TUE for the use of insulin. However, due to work commitments the Appellant did not have time to make pro-active application for a TUE in respect of the Indapamide prior to the powerlifting competition held over the weekend of 27 May 2016 – 29 May 2016. Application was made on 08 June 2016 with reference TUE 1605-06.
8. On 21 June 2016 the Appellant was informed that her application was incomplete<sup>8</sup> and required further submissions in respect of comprehensive medical reports for both the Hypertension and Diabetes, motivating the use of the Prohibited Substance. The information requested was submitted by the Appellant on 05 August 2016, which excluded the report from Dr King.<sup>9</sup>
9. On 06 September 2016 the TUE Commission Administrator advised the Appellant on the outstanding report from Dr King<sup>10</sup>, this was not submitted by the Appellant and in a letter dated 27 September 2016 the Appellant was advised that her TUE application was denied. The reasons for such denial were set out in the said letter.<sup>11</sup> The reasons for the denial were as follows:

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<sup>6</sup> National-Level Athletes are defined in Article 1.4 of the 2016 SAIDS ADR

<sup>7</sup> Pg 1-3 of the bundle

<sup>8</sup> Pg 31 of the bundle

<sup>9</sup> Pg 46 and 47 of the bundle

<sup>10</sup> Pg 80 of the bundle

<sup>11</sup> Pg 81 of the bundle

- 9.1. That there was confusing information submitted – as the application indicated a TUE for Hypertension but blood results were provided. The neurologist stated that the diuretic was for the Benign Intracranial Hypertension which are very different conditions.
- 9.2. An alternative for the Prohibited Substance was not explored;
- 9.3. That the criteria for the granting of a TUE were not met.
10. The criteria for the granting of a TUE as per the WADA International Standards for Therapeutic Use Exemption are clear and SAIDS is obliged to adhere to them in terms of its own Rules
11. An athlete may be granted a TUE if he / she can show that each (*emphasis provided*) of the conditions are met:
- a. The Prohibited Substance in question is needed to treat an acute or chronic medical condition, such that the Athlete would experience a significant impairment to health if the Prohibited Substance were to be withheld;
  - b. The Therapeutic Use of the Prohibited Substance is highly unlikely to produce any additional enhancement of performance beyond what might be anticipated by a return to the Athlete's normal state of health following the treatment of the acute or chronic medical condition;
  - c. There is no reasonable Therapeutic alternative to the Use of the Prohibited Substance or Prohibited Method;
  - d. The necessity for the Use of the Prohibited Substance or Prohibited Method is not a consequence, wholly or in part, of the prior Use (without a TUE) of a substance or method which was prohibited at the time of such Use.
12. It is clear from an examination of the Code that each of the aforementioned conditions had to be met and that only if every criteria had been met, could a TUE be granted<sup>12</sup>.

#### **E. THE RULES PERTAINING TO TUES**

**Article 4.4.1:** The presence of a *Prohibited Substance* or *is Metabolites* or *Markers* and/or the *Use ....of a Prohibited Substance* or *Prohibited Method* shall not be considered an ADRV if it is consistent with the provisions of a TUE granted in accordance with the ISTUES.

**Article 4.4.2:** Unless otherwise specified by SAIDS in a notice (in force at the time) posted on WADA's website, any National Level Athlete who needs to *Use* a Prohibited Substance or Prohibited Method for therapeutic purposes should apply to SAIDS for a TUE as soon as the need arises and in any event (save in emergency or exceptional

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<sup>12</sup> Clause 4 of the WADA International Standard for Therapeutic Use Exemptions (2016) ("ISTUES")

situations or where Article 4.3 of the ISTUEs applies) at least 30 (thirty) days before the Athlete's next Competition....

## F. SUBMISSIONS MADE BY THE APPELLANT

1. The Appellant, while being a National Level Athlete, is also an Attorney.
2. The Appellant's counsel accurately submitted that the Appellant suffers from various medical conditions and is currently under the treatment of three specialist medical practitioners. These include:
  - i. Dr Latasha Kalideen, is a Specialist Physician and treats the Appellant for Diabetes and Hypothyroidism.
  - ii. Dr Laurel King, is a Specialist Psychiatrist, treating the Appellant for Major Depressive Disorder, Generalized Anxiety Disorder and Obsessive Compulsive Disorder, who had prescribed the Adco Dapamax.
  - iii. Dr Colin Wolpe, is a Neurologist, treating the Appellant for Diabetic Neuropathy in her feet and lower legs and for Benign Intracranial Hypertension. Dr Wolpe prescribed Azomid and Lyrica.
3. The medication prescribed by the various Specialists is taken by the Appellant on an ongoing basis which included during the power lifting competitions in which she competed.
4. The Appellant did disclose her taking of the prescribed medication in her doping control form, which included the Adco Dapamax and the Novamix (insulin).<sup>13</sup>
5. It was only after testing that the Appellant consulted with Dr Wolpe on 04 August 2016 and he prescribed Azomid. SAIDS advised the Appellant on 15 August 2016 that she was to submit a TUE application in respect of the Azomid as it contained a banned substance<sup>14</sup>. The Appellant then lodged the further TUE application in respect of the Azomid on 06 September 2016.<sup>15</sup>
6. After reminding the Appellant that the report of Dr King was still outstanding – which report was subsequently provided on 06 December 2016<sup>16</sup> - it was clear that Dr King prescribed the Indapamide and it was only at this stage that Dr King requests to be supplied with list of suitable alternatives that are not on the Prohibited List.

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<sup>13</sup> See pg 1-3 of the bundle

<sup>14</sup> See pg 79 of the bundle

<sup>15</sup> See pgs 86-92 of the bundle

<sup>16</sup> Pg 83 and Pgs 84 & 85 respectively of the bundle

7. However, the Appellant received notification of the denial of her TUE application in respect of the Indapamide on 27 September 2016, setting out the reasons for the denial<sup>17</sup>, without taking into account the report of Dr Laurel King which had been requested
8. The Appellant attempted to explain the reasons for the possible confusion caused to the TUE Commission as stemming from Dr Wolpe's reference to the Appellant's Benign Intracranial Hypertension. This condition and the Appellant's application for a TUE in respect of Azomid must not be confused with the TUE application in respect of the Adco Dapamax. Wolpe's report was put up in support of that TUE, but specifically dealing with the Appellant's Neuropathy.
9. In support of her appeal the Appellant provides a report from Dr L Kalideen dated 26 March 2018 indicating that the Appellant has been on Adco Dapamax daily prior to her first consultation with the Appellant in 2014, with it being a first line treatment for hypertension. Further, that it does not have any stimulant or performance enhancing properties and that an alternative in the form of Zartan had been prescribed.
10. According to the Appellant, the first three criteria for the TUE application have therefore been met. The fourth not being applicable in the circumstances.
11. The Appellant's counsel submitted a letter from The TUE Commission Chairperson dated 27 July 2017 which had never been sent to the Appellant<sup>18</sup>, which letter contained the same reference number as that dated 27 September 2016. The former, while still denying the TUE application in respect of the Indapamide, provided more detail than that contained in the initial letter received by the Appellant denying the TUE application and the reasons contained in the initial letter were very vague compared to those in the letter of 27 July 2017. Further, the letter takes into account the report of Dr Laurel King dated 17 July 2017 (but is referring to the letter of 10 November 2016) and it further provides reasonable first-line therapeutic alternatives to the use of Indapamide in hypertension which are not on the WADA Prohibited List.
12. Therefore the manner in which the TUE application was denied was irregular.
13. Thus in the circumstances the Appellant's appeal stands to be upheld and the use of the Adco Dapamax is not to be considered an ADRV.

## **G. SUBMISSIONS MADE BY THE RESPONDENT**

1. The Respondent submitted that the Athlete is a National Level Athlete and as such is aware of the SAIDS Anti-Doping Rules as well as the responsibilities placed on her in terms of Rule 2.1.1 of the SAIDS rules. Furthermore, the Appellant is aware of the TUE criteria that are required to be met,

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<sup>17</sup> Paragraph D9 of this decision

<sup>18</sup> This letter was agreed to be made part of the bundle as pages 94 and 95

especially in light of her TUE application to the IPF in 2014 to allow her to be eligible to compete in the IPF World Championships.

2. The Appellant was diligent in applying for the TUE to the IPF in 2014, but did not do the same when competing in 2016. She therefore failed in her duty of care to exercise the utmost caution before taking the medication; and in light of her own admission that when tested, she was aware that her sample would come back with an adverse finding given the amount of medication she was on.
3. The Appellant failed in her responsibilities as contained in Article 22 of the SAIDS Rules, which requires Athletes to take responsibility for what they ingest and Use. Further to inform their medical personnel of their obligation not to Use Prohibited Substances and Prohibited Methods and to ensure that the medical treatment/s they receive does not violate the Anti-Doping Rules.
4. There are four criteria that any athlete is required to fulfil for a TUE to be granted and it is clear that each of these criteria are to be met and have not been met.
5. Despite the confusion created by the various TUE applications placed before the TUE Committee, the Appellant did not show that there was no reasonable therapeutic alternative for the Use of the Prohibited Substance or Prohibited Method. Nothing was even tried.
6. The onus is on the Appellant to demonstrate in which way the TUE Commission erred in denying her application for a retroactive TUE.
7. Despite the denial of the of the TUE application in respect of Adco Dopamax in September 2016 and Dr King furnishing her report in November 2016, Dr King did not indicate anything further at that time for the TUE Commission to reconsider such as describe that a suitable alternative therapeutic medication to address the Appellant's Hypertension.
8. The Athlete is an Attorney and is therefore held to higher degree of account. Given her status as a National Athlete she could have applied to SAIDS in 2015 or 2016 for a TUE in respect of the medication that she was on containing Prohibited Substances, yet she only applies after she is tested 'in-competition' in May 2016. This is not the basis on which retroactive TUEs are granted.
9. It was therefore submitted that the TUE Commission did not make an error based on the information that was before them. Even after Dr King did render her report, it did not address the criteria for a TUE to be granted, specifically with regard to the use of a suitable alternative, and as such in July 2017 when the TUE Commission submitted a further letter (dated 27 July 2017 which was later established was not provided to the Athlete) there was no additional information before the Commission for them to find differently.
10. It is to be noted that Zartan, which was later prescribed by Dr Kalideen, is prescribed as a suitable alternative to Adco Dopamax since 2011
11. It is noted that the Appellant took corrective action and is on a suitable alternative to Indapamide to treat her hypertensive condition.



## H. REPLY BY THE APPELLANT

1. While the duty on the Athlete is acknowledged there is no evidence before the Appeal Committee as to what the Athlete knew or did not know regarding Prohibited Substances and what was contained on the Prohibited List.
2. At the time of being diagnosed there is no evidence that Zartan was a suitable alternative and in fact it was stated in the papers that no alternative medication would have been appropriate.
3. In the current circumstances all the criteria for the granting of a TUE have been met.

## I. DECISION

### 1. PREFACE

- 1.1 In reaching its decision the Appeal Panel considered the facts, evidence presented and conduct of the Athlete in the circumstances taken in totality.
- 1.2 While the Appeal Panel in no way questioned that the diagnoses made by the various esteemed medical professionals regarding the Appellant's medical conditions were genuine, the onus for proving that the TUE Commission erred in denying the application by the Appellant for the retroactive TUE in respect of the Indapamide, was on the Appellant.
- 1.3 In terms of discharging such onus, the Appellant was required to prove on a balance of probability that each of the criteria for granting a TUE had been met<sup>19</sup>.

## 2 ISSUES DELIBERATED

- 2.1 It is important to note that after the letter from SAIDS dated 14 August 2017 informing the Appellant of the Adverse Analytical Finding in respect of Indapamide<sup>20</sup>, the Appellant responds on 21 August 2017<sup>21</sup> indicating her various medical conditions together with the medication she has been prescribed in respect of each condition and at paragraph 9 it states that: " I was aware that there would be an adverse finding in respect of Indapamide the active ingredient in Adco Dapamax and Insulin NovoMix." Thus indicating that the Appellant had knowledge at the time that the medication she was on for her chronic condition contained a Prohibited Substance. Moreover given that she was diagnosed in 2013 with Hypertension and was prescribed Adco Dapamax<sup>22</sup> at that point, and taking in account the responsibilities placed on Athletes in terms of Article 22 of the SAIDS Rules, it was incumbent upon the Appellant to apply for the TUE prior to the tournament she competed in in May 2016 and was tested.

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<sup>19</sup> Clause 4 of the WADA International Standard for Therapeutic Use Exemptions (2016)

<sup>20</sup> See pages 4-10 of the bundle

<sup>21</sup> See pages 13-16 of the bundle

<sup>22</sup> Confirmed by Dr Kalideen in her affidavit to confirm her report to the Committee

- 2.2 It is important to state that the Appellant's representative erred in submitting that there was no evidence before the Appeal Committee as to what the Appellant/Athlete knew or did not know, in fact the SAIDS Rules place a strict liability on Athletes, especially National Level Athletes, to take responsibility for what they take and are automatically bound by the SAIDS Rules.
- 2.3 In accordance with Article 4.2.1: *All Athletes and other Persons shall be bound by the Prohibited List and any revisions thereto from the date it comes into effect without further formality. It is the responsibility of all Athletes and other Persons to familiarise themselves with the most up-to-date version of the Prohibited List and all revisions thereto.*
- 2.4 Further, given that the Athlete had applied to the International Powerlifting Federation in 2014 and declared the use of Dapamax, Adco Mirteron, Lyrica, Levenir amongst others in such application, it can be concluded that the Athlete was aware that a TUE was required to be applied for proactively. However, prior to the powerlifting competition held from 27 May 2016-29 May 2016 wherein she was tested, the Athlete states that due to work commitments she was unable to complete the TUE in respect of the Adco Dapamax and Insulin. After being tested she then applies for the retroactive TUE dated 08 June 2016. The Appeal Panel is of the firm view that the Appellant has not complied with the requirement of Article 4.4.2 of the Rules which states that '*Unless otherwise specified by SAIDS in a notice (in force at the time) posted on WADA's website, any National Level Athlete who needs to Use a Prohibited Substance or Prohibited Method for therapeutic purposes should apply to SAIDS for a TUE as soon as the need arises and in any event (save in emergency or exceptional situations or where Article 4.3 of the ISTUEs applies) at least 30 (thirty) days before the Athlete's next Competition*'.
- 2.5 The TUE Commission requested further information on 21 June 2016<sup>23</sup>, which was provided by the Appellant on 05 August 2016, however not providing the report from Dr L King, which the Commission requested again on 06 September 2016. No response was received from the Appellant in which time she indicates that she was hospitalised from 08 September 2016 to 29 September 2016 and was therefore not in a position to submit the report from Dr King. The report from Dr King is then furnished on 06 December 2016 (dated November 2016), after the TUE application was denied.
- 2.6 Due to the information it had requested not being forthcoming the TUE Commission denied the retroactive TUE in respect of Adco Dapamax, and approved the TUE in respect of the Insulin<sup>24</sup>. The reasons for such denial included:
- i. That confusing information was provided, in that the application was in respect of hypertension and there are blood recordings provided and the neurologist indicates the diuretic being for the benign intracranial hypertension, which are very different conditions;
  - ii. There has not been the use of any alternative treatment;
  - iii. The criteria for granting a TUE were not met.

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<sup>23</sup> See page 31 of the bundle

<sup>24</sup> Letter dated 27 September 2016, pg 81

2.7 In addressing each of these reasons the Appeal Panel finds as follows:

2.7.1 In respect of the confusion:

The Appellant addressed an e-mail dated 14 October 2016<sup>25</sup> in which the confusion was clarified.

2.7.2 In respect of the fact that no suitable alternative was sourced and used, the Panel is of the view that even after Dr Laurel King's report was furnished by the Appellant it did not address the possible use of a suitable alternative, when in fact as submitted by the Respondent Zartan could have been prescribed much earlier as it was on the list of suitable alternatives for Hypertension since 2011, which was not disputed by the Appellant.

2.7.3 Having regard to the four criteria that are required to be met for a TUE to be granted, it is clear that each of the criteria are required to be met and that only if every criteria had been met, could a TUE be granted

2.7.4 It is only until 26 March 2018 that Dr King confirms that a suitable therapeutic alternative, Zartan, was prescribed to treat the Appellant's hypertension.

2.8 Regarding the letter from the TUE Commission dated 27 July 2017<sup>26</sup>, the Panel is of the view that this letter, which was not sent to the Athlete, but instead provided to her just before the reconvened hearing on 24 April 2018 by SAIDS, in fact does not materially impact the decision of the Appeal Panel. Counsel made much of the detail contained therein compared to the letter from the TUE Commission of 27 September 2016, however on careful examination it is clear that the decision of the TUE Commission did not change, the reasons provided were the same as those provided in the letter of 27 September 2016 and despite the report from Dr King there was no additional information before the TUE Commission to come to a different decision having specific regard to the use of a suitable alternative.

2.9 Further, even though the TUE Commission provides alternatives in the said letter of 27 July 2017, it was incumbent upon the Appellant to ensure that her medical professional/s sought out an alternative long before. In fact, SAIDS could and should have been contacted by either the Appellant or her medical doctors to source a suitable therapeutic alternative for her.

2.10. The implication of which is that the ADRV has occurred and remains against the Appellant.

2.11. That being said the Appeal Panel concluded that the Athlete had no intention to enhance her performance in any way and that the Adco Dapamax containing the active ingredient Indapamide, classified as a Prohibited Substance. As per the various doctors' reports which are confirmed by affidavit, the prescribed Adco Dapamax is needed to treat an acute or chronic medical condition, such that the Athlete would experience a significant impairment to health if the Prohibited Substance were to be withheld.

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<sup>25</sup> See pg82 of the bundle

<sup>26</sup> Pg 94 & 95 of the bundle

- 2.12. However, in light of the submissions made, there is no basis on which to find that the TUE Commission erred in denying the TUE application by the Appellant in respect of the Prohibited Substance Adco Dopamax, based on the information before it.
- 2.13. In a similar case of *Wessel Mostert v SAIDS*<sup>27</sup>, the Appellant appealed against the denial of his application for a retroactive TUE on the basis that there was no reasonable Therapeutic alternative to the Use of the Prohibited Substance which the Appellant in that case was using. The TUE Commission further found that the Appellant had not demonstrated symptoms of a chronic medical condition. In this case the Appeal Committee found that while the Athlete had not attempted to cheat, he had failed to comply with the respective requirements for TUE applications, and could find no reason why the decision of the TUE Commission should be overturned.
- 2.14. The Appeal Panel further finds that the Appellant may make submission to the TUE Commission to reconsider her TUE application in light of the new information, and in light of the fact that an alternative has now been prescribed and is found to be a suitable alternative treatment.

### **3 COSTS**

- 3.1 In respect of the hearing of 28 March 2018, the Appellant is to pay the Respondent's wasted costs on a party and party basis given that the Appellant wasted the Appeal Panel's time.
- 3.2 In respect of the reconvened hearing on 24 April 2018, each party to pay their own costs arising from the hearing.

### **J. ORDER**

In the current premise, it is hereby ordered that:

1. The decision of the TUE Commission to deny the retroactive TUE is upheld ;
2. Each party to pay its own costs in regard to the Appeal hearing of 24 April 2018.
3. The Appellant to pay the Respondent's wasted costs for the hearing which was meant to be held on 28 March 2018.

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<sup>27</sup> Held on 09 October 2017

DATED AT Durban THIS 22<sup>nd</sup> DAY OF June 2018.



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**MS. MARISSA DAMONS**

**CHAIRPERSON**

**THE APPEALS BOARD**