

## ANADO Legal Note #5 September 14, 2008

### FURTHER ANALYSIS OF B SAMPLES: THE *MAYO* DECISION

On August 12, 2008, the Court of Arbitration for Sport released in French its decision granting the International Cycling Union's appeal of Iban Mayo's exoneration from an anti-doping rule violation and two-year suspension involving EPO. The decision is especially noteworthy because of the sequence of testing of the rider's B sample which involved, in different ways, four different WADA accredited labs. The decision makes clear that an inconclusive result need not be the end of the analytical story if there is sufficient remaining sample for further analysis. This gives Anti-Doping Organizations a further means to pursue cheating in sport. The decision also anticipates Article 6.5 of the 2009 *World Anti-Doping Code* which explicitly recognizes the authority of anti-doping organizations to re-analyze samples in accordance with the detailed requirements of the up-dated *WADA International Standard for Laboratories*.

The rider was tested during the 2007 Tour de France, then a race on the International Cycling Union's (UCI) competition calendar. The A sample was analyzed by the French WADA-accredited laboratory. The A sample showed the presence of recombinant EPO. The WADA-accredited lab in Lausanne reviewed the analytical work and agreed with this finding (describing the analytical work as "excellent" and as establishing "clearly and without ambiguity" the presence of recombinant EPO). The rider was provisionally suspended by his professional team and his salary cut-off.

According to UCI anti-doping results management rules, the rider's national cycling federation would be responsible for the results management.

The rider requested the B sample confirmation. Because of that French lab's annual summer holiday closure, and at the rider's request, the B sample was sent to the accredited lab in Ghent, Belgium for confirmatory analysis. The initial B sample analysis was "inconclusive." The WADA-accredited lab in Sydney was consulted by Ghent and supported this conclusion. However, the Sydney lab did opine that "the distribution of EPO isoforms does not follow a distribution that is consistent with endogenous EPO, on face value." Further analysis of the B sample was recommended, if sufficient sample remained.

However, the rider's national federation decided to treat the case as a negative result and proceeded to close the file.

In response, UCI requested the complete file from the national cycling federation and, now that the French lab's annual summer closure was over, made arrangements with that lab for further analysis of the remnant B sample. This was over the rider's strenuous objections. The further B sample analysis by the French lab confirmed the A sample finding of the presence of recombinant EPO. The Lausanne lab reviewed the B sample analytical documentation and again supported the French lab's finding. However, the

rider's national cycling federation issued a further decision confirming that because the Ghent lab had failed to confirm the A sample finding, it considered the rider "acquitted" and it transmitted this decision to UCI.

UCI then appealed the two national cycling federation decisions to CAS. In the proceedings, the rider challenged both the A and the B sample analyses by the French lab as being contrary to the *International Standard for Laboratories*.

The CAS Panel rejected the rider's many arguments challenging the authority of UCI to conduct the further analysis, UCI's ownership of the sample and the analytical methods used for both the A and the B samples. The Panel granted the UCI appeals.

The Panel found that while an "inconclusive" B sample analysis does not confirm an A sample as "positive," it does not mean the overall sample can automatically be considered "negative." Since the certificate of analysis from Ghent was explicitly supported by a recommendation from Sydney that further analysis of the B sample be conducted if possible, the Ghent certificate of analysis could not be considered as a failure to confirm justifying treating the rider's sample as negative." Under both the WADA *International Standard for Laboratories* and the UCI anti-doping rules, the further analysis of an "inconclusive" B sample was appropriate. The Panel commented that the approach taken in the case was perfectly compatible with the general principles of the fight against doping which require all appropriate means possible to uncover the presence of prohibited substances in an athlete's sample.

The Panel was clearly unhappy with the role of the national cycling federation in the whole matter and the cost award in favour of UCI was against the national federation alone, and not the rider.

National anti-doping organizations should always conduct further analysis of "inconclusive" B sample results if enough of the sample remains for a reliable analysis and analytical result.

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