

UCI Anti-Doping Tribunal

Judgment

case ADT 02.2024

UCI v. Massimo Berlusconi

Single Judge:

Mr. Yann Hafner (Switzerland / Italy)

Aigle, 6 May 2024

I. INTRODUCTION

1. The present Judgment is issued by the UCI Anti-Doping Tribunal (hereinafter referred to as “the Tribunal”) in application of the UCI Anti-Doping Procedural Rules in force in 2021 (hereinafter referred to as “the ADT Rules”) in order to decide whether Mr. Massimo Berlusconi (hereinafter referred to as “the Rider”) has violated the UCI Anti-Doping Rules as alleged by the Union Cycliste Internationale (hereinafter referred to as “the UCI” and, together with the Rider, “the Parties”).

II. FACTUAL BACKGROUND

2. The circumstances stated below are a summary of the main relevant facts, as submitted by the Parties. Additional facts may be set out, where relevant, in connection with the legal discussion that follows. While the Single Judge has considered all the facts, allegations, legal arguments and evidence submitted by the Parties in the present proceedings, the Judgment refers only to the necessary submissions and evidence to explain its reasoning.

A. The UCI

3. The UCI is the association of national cycling federations and a non-governmental international association with a non-profit-making purpose of international interest, with a legal personality in accordance with Articles 60 et seq. Swiss Civil Code and according to Articles 1(1) and 1(2) of the UCI Constitution.

B. The Rider

4. The Rider is an Italian cyclist riding in the Master category. At the time of the alleged anti-doping rule violation (hereinafter referred to as “ADRV”) the Rider was affiliated to the “*Federazione Ciclistica Italiana*” (hereinafter referred to as “FCI”). He was, thus, a License-Holder within the meaning of the UCI Anti-Doping Rules (hereinafter referred to as “UCI ADR”).

C. The alleged Anti-Doping Rule Violation

1. The Facts and the Collection of the Sample

5. On 25 June 2022, the Rider provided a urine sample during the 2022 UCI Mountain Bike Marathon Master World Championship (Sample Number ██████ – hereinafter referred to as the “Sample”). The Rider confirmed on his Doping Control Form (hereinafter referred to as “DCF”) that the Sample had been collected in accordance with the relevant regulations and procedures.
6. The Rider did not declare having taken any medications and/or supplements on the DCF. Under the relevant section of the DFC, he specifically added “No Declarations” before signing the document on the last page.

The image shows a screenshot of a 'Doping Control Form' (DCF) from the Italian Cycling Federation (ITA). The header features the ITA logo with the tagline 'KEEPING SPORT REAL' and the text 'Doping Control Form'. Below the header, there is a section titled 'Declarations' with a text input field containing the text 'No Declarations'.

2. The Analysis of the Sample

7. The analysis of the Sample was conducted by the World Anti-Doping Agency (hereinafter referred to as “WADA”) accredited Laboratory of Lausanne, Switzerland (hereinafter referred to as “Lausanne

Laboratory”). The confirmation procedure was subcontracted to the WADA accredited Laboratory of Paris (hereinafter referred to as “Paris Laboratory”).

8. On 12 August 2022, the Lausanne Laboratory reported the Rider’s A-Sample as an Adverse Analytical Finding (hereinafter referred to as “AAF”) for Human Chorionic Gonadotrophin (hereinafter referred to as “hCG”). The Lausanne Laboratory added the following remark to the report:

“[...] The anti-doping organisation is recommended to advise the Athlete to undergo clinical investigations to exclude any pathological cause for the elevated urinary hCG.”

9. hCG is a prohibited substance listed under Section S2 (Peptide Hormones, Growth Factors, Related Substances, and Mimetics) of the 2022, 2023 and 2024 versions of the WADA International Standard Prohibited List (hereinafter referred to as “Prohibited List”). According thereto, hCG is prohibited at all times (in- and out-of-competition). hCG is not a Specified Substance as per the Prohibited List.
10. According to the WADA Technical Document – TD2021CG/LH (hereinafter referred to as “TD2021CG/LH”), hCG is prohibited in male athletes because it stimulates the production of testosterone. It is a threshold substance with a decision limit of 5.00 IU/L (immunossays) according to the same.
11. However, elevated urinary hCG can also be associated with pathologies, such as testicular cancer. Therefore, TD2021CG/LH stipulates that a pathological cause to the AAF must be excluded before an athlete is charged with an ADRV. As such, athletes are invited to undergo clinical investigations within a reasonable time frame to exclude any pathological cause for the elevated urinary hCG.

3. The UCI Results Management Procedure

12. On 22 and 23 August 2022, the UCI notified the Rider of the AAF for hCG. Furthermore, the Rider was:
 - invited to perform a full medical assessment and to conduct the appropriate investigation to exclude a pathological cause to the AAF;
 - informed about the upcoming course of action, including his status during medical evaluation and clinical investigation, course of action following medical evaluation and clinical investigation and analysis of the B-Sample;
 - informed about potential sanction and consequences; and
 - invited to confirm his intentions regarding the medical evaluation and clinical investigation within the next 5 days.
13. On 30 August 2022, the UCI unilaterally extended the deadline for the Rider to provide the information requested until 5 September 2022, as its previous communications had remained unanswered.
14. On 1 September 2022, the Rider acknowledged receipt of the notification and informed the UCI that he would consult his urologist on 6 September 2022.
15. On 18 September 2022, the Rider submitted a medical report established by Dr. Giulio Clerici stating the following:

“Mr. Berlusconi was accidentally found with high level of hCG (17,3 U.I.) during anti-doping control.

We are trying to discover if it’s a doping cause or if there is a patological [sic] cause that makes this marker high.

First step has been an [sic] urological test with ECO kidney, testis, prostate, urinary bladder: all organs were found to be normal so the Specialist asked for more exams:

- *Eco complete abdomen and pelvis with ultrasound*

- Urinary cytological examination for twice
- Blood test of : FSH, LH, gonadotropina carionica, alfa feto proteina
- Oncological consult

With the results of these further exams we will send a new feedback and news."

16. On 11 October 2022, the newly appointed Rider's representative informed the UCI that additional clinical exams would be conducted. Effective that day, all communications between the UCI and the Rider have been channeled via the Rider's representative.
17. On 25 October 2022, the Rider provided the UCI with i) a medical echography report from a urologist dated 6 September 2022 (see also para. 15); ii) a medical report issued by an endocrinologist dated 23 September 2022; and iii) the results of a blood test dated 14 October 2022.
18. On 29 December 2022, the Rider provided the UCI with three additional medical reports dated 4 October 2022, 14 November 2022, and 19 December 2022 regarding a dermatological condition and informed the UCI that he would undergo further medical examination on 12 January 2023.
19. On 24 January 2023, the Rider provided the UCI with the results of the medical examination (i.e. eco abdomen and pelvis and cytological exam) conducted on 12 January 2023.
20. On 25 January 2023, the UCI inquired as to whether the Rider intended to conduct further medical investigation and absent any, to provide his final explanation and conclusions by no later than 3 February 2023.
21. On 30 January 2023, the Rider informed the UCI that he had requested new blood tests, which would be performed on 1 and 2 February 2023.
22. On 17 February 2023, the Rider informed the UCI that he had performed a urine exam "*which resulted negative in bladder cancer*". The Rider denied having committed any ADRV and had tasked Dr Giulio Clerici to provide an explanation on the matter.
23. The UCI does not have any communication from Dr Giulio Clerici on file.
24. On 28 February 2023, the UCI notified the Rider of the AAF for hCG for the second time, having considered he had failed to associate a pathological condition with the AAF. Furthermore, the Rider was:
 - imposed a mandatory provisional suspension as hCG is not a Specified Substance as per the Prohibited List;
 - invited to communicate his intentions regarding the opening of the B-Sample as well as the A-Sample Laboratory documentation package (hereinafter "LDP"); and
 - invited to provide his explanations regarding the circumstances of the AAF within 7 days.
25. On 8 March 2023, the UCI unilaterally extended the deadline for the Rider to provide his answer, as the communication dated 28 February 2023 had remained unanswered.
26. On 13 March 2023, the Rider requested the opening and analysis of the B-Sample as well as a copy of the A-Sample LDP. He reiterated having appointed a doctor to provide an explanation as to how hCG entered his body albeit he did not have the results yet. He further denied having committed an ADRV and stressed having been tested ten times in the last ten years because he had ranked second in the Italian championship eight times, all tests returned negative.

27. On 16 March 2023, the UCI informed the Rider that the opening and analysis of the B-Sample would be performed by the Paris Laboratory in the presence of an independent witness as he would not attend the analysis in person, nor had he appointed a representative to do so. The Rider was invited to pay the advance on costs for the analysis of the B-Sample and the A-Sample LDP as well as the costs for the presence of an independent witness.
28. In the evening of the 4 April 2023, the Rider informed the UCI that he did not want the B-Sample to be analyzed nor did he request the A-Sample LDP anymore. He deemed the advance on costs too high. The Rider reiterated this intention to submit a medical report as soon as available.
29. On 5 April 2023, the Paris Laboratory performed the analysis of the B-Sample, which confirmed the presence of hCG in the Rider's urine. The analysis was performed in the presence of an independent witness.
30. On 2 May 2023, the UCI notified the Rider of the results of the analysis of the B-Sample and provided him with a copy of the A-Sample LDP. The UCI further:
 - asserted that the Rider had committed an ADRV for hCG under Articles 2.1 and/or 2.2 of the UCI ADR; and
 - invited the Rider to provide explanations regarding the asserted ADRV and/or to provide substantial assistance within the meaning of Article 10.7.1 of the UCI ADR within 14 days of receipt of the letter.
31. On 11 May 2023, the Rider informed the UCI that he denied having committed an ADRV and was looking for specialists in endocrinology in order to provide an appropriate medical report.
32. On the same day, the UCI acknowledged receipt of the Rider's communication and clarified that the deadline to provide his explanation was on 16 May 2023.
33. On 15 May 2023, the Rider confirmed the following to the UCI:
 - he denies the use of any Prohibited Substance;
 - he is not in a position to provide an explanation or supporting evidence on how the Prohibited Substance entered his body; and
 - the last possible explanation is that one of the supplements he consumed was contaminated with hCG.
34. On 24 May 2023, the UCI granted the Rider with a final opportunity to submit supplementary explanation and/or corroborating evidence by not later than 2 June 2023. On this occasion, the UCI reminded the Rider about the applicable regime of standard of proof in anti-doping proceedings. In this respect, the UCI drew the Rider's attention to the fact that concrete evidence shall be adduced. The Rider did not reply to this communication.
35. On 27 June 2023, the UCI offered the Rider with an Acceptance of Consequences (hereinafter referred to as "AoC") pursuant to Article 8.2 of the UCI ADR. Furthermore, the Rider was:
 - granted a deadline until 17 July 2023 to accept the AoC;
 - informed that he was not obliged to accept the AoC; and
 - informed that absent any reply, disciplinary proceedings would be initiated.
36. On 7 and 13 July 2023, the UCI reminded the Rider of the time limit to accept the AoC and informed him that such time limit would not be extended.

37. On 14 July 2023, the Rider firmly denied, once more, *“the use of any doping agent and/or any substance prohibited by WADA and the UCI Anti-Doping Rules”*.

III. PROCEDURE BEFORE THE TRIBUNAL

38. In accordance with Article 13.1 of the ADT Rules, the UCI has initiated proceedings before this Tribunal through the filing of a Petition to the Secretariat of the Tribunal (hereinafter referred to as the “Secretariat”) on 14 February 2024. In its Petition, the UCI has filed the following requests:
- *Declaring that Mr. Massimo Berlusconi has committed an Anti-Doping Rule Violation under Article 2 of the UCI ADR.*
 - *Imposing on Mr. Massimo Berlusconi a Period of Ineligibility of 4 years, commencing on the date of the Tribunal’s decision.*
 - *Holding that the period of provisional suspension served by Mr. Massimo Berlusconi since 28 February 2023 shall be deducted from the Period of Ineligibility imposed by the Tribunal.*
 - *Disqualifying all results obtained by Mr. Massimo Berlusconi at the 2022 UCI MTB Marathon Master WC in Pinzolo, Italy and until he was provisionally suspended (i.e. 23 February 2023).*
 - *Condemning Mr. Massimo Berlusconi to pay the costs of the results management by the UCI (CHF 2’500.-), and the costs of the A-Sample LDP (EUR 600).*
39. On 21 February 2024, the President of the Tribunal appointed Mr Yann Hafner to act as Single Judge in the proceedings, in application of Article 14.2 of the of the ADT Rules.
40. On the same day, and in application of Article 14.4 of the ADT Rules, the Secretariat informed the Rider via electronic mail that disciplinary proceedings had been initiated against him and that Mr Yann Hafner had been appointed as Single Judge of the Tribunal. Furthermore, the Rider was informed that:
- In case he wished to challenge the appointment of the Single Judge he would have to do so within seven days of receipt of the present correspondence.
 - He would be granted a deadline until 7 March 2024 to submit his statement of defence (including any exhibits or specification of other evidence upon which he intended to rely and any relief or remedy sought) in conformity with Articles 16.1 and 18 of the ADT Rules.
 - The language of the procedure in accordance with Article 8 of the ADT Rules is English and that all documents shall be remitted in said language.
 - Finally, the letter also stated that after receipt of his answer and unless otherwise agreed by the parties or ordered by the Single judge, the parties shall not be authorised to supplement or amend their submissions, nor to produce new exhibits or further evidence.
41. On 6 March 2024, the Rider submitted his Statement of Defense and annexes. In his Statement of Defense, the Rider stated the following:
- *The athlete, Berlusconi Massimo, has always firmly denied having taken doping substances, or substances not permitted by WADA and the anti-doping regulations;*
 - *[H]e is unable to give complete explanations of how it was possible that the substance – Human Chorionci Gondadotrophin (HCG) – was found following the UCI MTB Marathon Masters World Championships competition in Pinzolo – Italy, on the 25th of June 2022;*
 - *[A]ll the check carried out in the previous years, as well as the tests carried out in the last period and which are attached here, following the reported of the Prohibited Substance, tested negative;*
 - *The only possible explanation of the presence of said Prohibited Substance is that it was unknowingly present inside a supplement, completely admitted, and used by the athlete, who unintentionally took it;*
 - *[T]he proof required that that specific supplement was contaminated appears completely diabolical, if only because there is no clear idea of how much and what type of the permitted supplement was taken;*

- [T]he accusation promoted are to be rejected and we request that the Distinguished Anti-Doping Tribunal, hearing the case, reject the disciplinary proceedings, as they are completely unfunded in fact and in law.

42. With his Statement of Defense, the Rider submitted a two-pages medical report by Dr. Ambrogio Brenna dated 15 February 2023, which stated the following “*negativo per carcinoma uroteliale*” (free translation: “negative for urothelial carcinoma”), together with a copy (in Italian or English) of the medical reports submitted under para. 17, 18 and 19 above.
43. On 12 March 2024, the Secretariat informed the Parties that in view of their submissions and the evidence on record, the Single Judge had held that neither a hearing under Article 23 of the ADT Rules nor a second round of submissions was necessary.

IV. APPLICABLE RULES

44. Article 27 of the UCI ADR provides the following:

“27.1 These Anti-Doping Rules shall apply in full as of 1 January 2021 (the “Effective Date”).

27.2 Any anti-doping rule violation case which is pending as of the Effective Date and any anti-doping rule violation case brought after the Effective Date based on an anti-doping rule violation which occurred prior to the Effective Date shall be governed by the substantive anti-doping rules in effect at the time the alleged anti-doping rule violation occurred, and not by the substantive anti-doping rules set out in the Anti-Doping Rules or the Code, unless the panel hearing the case determines the principle of “lex mitior” appropriately applies under the circumstances of the case.[...]”

45. Considering that the Rider’s sample was collected on 25 June 2022, the UCI ADR 2021 apply to the merits of the case at hand.
46. As for the procedural rules applicable before the Tribunal, Article 36 of the ADT Rules provides the following:

“These Rules come into force on 4 February 2021 and apply to all procedures initiated by the Tribunal on or after such date.”

47. Considering that the present proceedings had been initiated by the Tribunal on 21 February 2024, the ADT Rules in force in 2021 apply in this case.

V. JURISDICTION

48. The jurisdiction of the Tribunal follows from Article 8.3.2 of the UCI ADR and Article 3.1 (a) of the ADT Rules according to which “*the Tribunal shall have jurisdiction over all matters in which [a]n anti-doping rule violation is asserted by the UCI based on a Results Management or investigation process under Article 7 ADR*”.

49. Furthermore, Article 3.2 of the ADT Rules provides the following:

“Any objection to the jurisdiction of the Tribunal shall be brought to the Tribunal’s attention within 7 days upon notification of the initiation of the proceedings. If no objection is filed within this time limit, the Parties are deemed to have accepted the Tribunal’s jurisdiction.”

50. Neither party raised any objection to the jurisdiction of the Tribunal within said time limit, thus the Single Judge confirms the jurisdiction of the Tribunal.
51. Part C of the Introduction of the UCI ADR addresses its scope of application as follows:

“These Anti-Doping Rules shall apply to (a) the UCI [...] (b) National Federations [...] (c) the following Riders, Rider Support personnel and other Persons: i) any License-Holder [...]”

52. Said conditions are fulfilled in the case at hand. The Rider was a UCI cycling License-Holder in 2022 within the meaning of the UCI ADR:

[picture of rider’s licence]

53. Finally, the UCI cycling license delivered by the FCI in 2022 expressly states the following:

“I AGREE TO ABIDE AND BE BOUND BY THE UCI CONSTITUTION AND REGULATIONS, IN PARTICULAR THE UCI ANTI-DOPING RULES. [...]” (emphasis added).

54. Therefore, it follows that the Tribunal has jurisdiction to decide on this matter.

VI. THE FINDINGS OF THE SINGLE JUDGE

55. The main issues for the Single Judge to decide are:

- A) Did the UCI establish that the Rider committed an ADRV within the meaning of Articles 2.1 and/or 2.2 of the UCI ADR? and, if so,
- B) What are the appropriate consequences of such an ADRV?

A. Did the UCI establish that the Rider committed an ADRV within the meaning of Articles 2.1 and 2.2 of the UCI ADR?

56. The Sample was collected on 25 June 2022.

1. The applicable provisions

57. Article 26 of the ADT Rules provides that “[...] *the Single Judge shall apply the [UCI] ADR and the standards referenced therein as well as the UCI Constitution, the UCI Regulations and, subsidiarily, Swiss law*”.

58. Article 2.1 of the UCI ADR defines the relevant ADRV as follows:

“2.1 Presence of a Prohibited Substance or its Metabolites or Markers in a Rider’s Sample

2.1.1 It is the Riders’ personal duty to ensure that no Prohibited Substance enters their bodies. Riders 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 Rider’s part be demonstrated in order to establish an anti-doping rule violation under Article 2.1.

[Comment to Article 2.1.1: An anti-doping rule violation is committed under this Article without regard to a Rider’s Fault. This rule has been referred to in various CAS decisions as “Strict Liability”. A Rider’s Fault is taken into consideration in determining the Consequences of this anti-doping rule violation under Article 10. This principle has consistently been upheld by CAS.]

2.1.2 Sufficient proof of an anti-doping rule violation under Article 2.1 is established by any of the following: presence of a Prohibited Substance or its Metabolites or Markers in the Rider’s A Sample where the Rider waives analysis of the B Sample and the B Sample is not analyzed; or, where the Rider’s B Sample is analyzed and the analysis of the Rider’s B Sample confirms

the presence of the Prohibited Substance or its Metabolites or Markers found in the Rider's A Sample; or where the Rider's A or B Sample is split into two (2) parts and the analysis of the confirmation part of the split Sample confirms the presence of the Prohibited Substance or its Metabolites or Markers found in the first part of the split Sample or the Rider waives analysis of the confirmation part of the split Sample.

[Comment to Article 2.1.2: The Anti-Doping Organization with Results Management responsibility may, at its discretion, choose to have the B Sample analyzed even if the Rider does not request the analysis of the B Sample.]

2.1.3 Excepting those substances for which a Decision Limit is specifically identified in the Prohibited List or a Technical Document, the presence of any reported quantity of a Prohibited Substance or its Metabolites or Markers in a Rider's Sample shall constitute an anti-doping rule violation.

2.1.4 As an exception to the general rule of Article 2.1, the Prohibited List, International Standards or Technical Documents may establish special criteria for reporting or the evaluation of certain Prohibited Substances."

59. Article 2.2 of the UCI ADR qualifies the "Use or Attempted Use by a Rider of a Prohibited Substance or a Prohibited Method" as an ADRV. The term "Use" is defined in the Appendix 1 of the UCI ADR as follows:

"The utilization, application, ingestion, injection or consumption by any means whatsoever of any Prohibited Substance or Prohibited Method."

60. Furthermore, Article 2.2 of the UCI ADR states as follows:

"2.2.1 It is the Riders' personal duty to ensure that no Prohibited Substance enters their bodies and that no Prohibited Method is Used. Accordingly, it is not necessary that intent, Fault, Negligence or knowing Use on the Rider's part be demonstrated in order to establish an anti-doping rule violation for Use of a Prohibited Substance or a Prohibited Method.

2.2.2 The success or failure of the Use or Attempted Use of a Prohibited Substance or Prohibited Method is not material. It is sufficient that the Prohibited Substance or Prohibited Method was Used or Attempted to be Used for an anti-doping rule violation to be committed."

61. As to the burden and standard of proof, Article 3.1 of the UCI ADR reads as follows:

"The UCI shall have the burden of establishing that an anti-doping rule violation has occurred. The standard of proof shall be whether the UCI has established an anti-doping rule violation to the comfortable satisfaction of the hearing panel bearing in mind the seriousness of the allegation which is made. This standard of proof in all cases is greater than a mere balance of probability but less than proof beyond a reasonable doubt. Where these Anti-Doping Rules place the burden of proof upon the Rider or other Person alleged to have committed an anti-doping rule violation to rebut a presumption or establish specified facts or circumstances, except as provided in Articles 3.2.2 and 3.2.3, the standard of proof shall be by a balance of probability."

[Comment to Article 3.1: This standard of proof required to be met by the UCI is comparable to the standard which is applied in most countries to cases involving professional misconduct.]"

62. As to the methods of establishing facts and presumptions, Article 3.2 of the UCI ADR provides:

"Facts related to anti-doping rule violations may be established by any reliable means, including admissions.

[Comment to Article 3.2: For example, the UCI may establish an anti-doping rule violation under Article 2.2 based on the Rider's admissions, the credible testimony of third Persons, reliable documentary evidence, reliable analytical data from either an A or B Sample as provided in the

Comments to Article 2.2, or conclusions drawn from the profile of a series of the Rider's blood or urine Samples, such as data from the Athlete Biological Passport.]

The following rules of proof shall be applicable in doping cases:

3.2.1 Analytical methods or Decision Limits approved by WADA after consultation within the relevant scientific community or which have been the subject of peer review are presumed to be scientifically valid. Any Rider or other Person seeking to challenge whether the conditions for such presumption have been met or to rebut this presumption of scientific validity shall, as a condition precedent to any such challenge, first notify WADA of the challenge and the basis of the challenge. The initial hearing body, appellate body or CAS, on its own initiative, may also inform WADA of any such challenge. Within ten (10) days of WADA's receipt of such notice and the case file related to such challenge, WADA shall also have the right to intervene as a party, appear as amicus curiae or otherwise provide evidence in such proceeding. In cases before CAS, at WADA's request, the CAS panel shall appoint an appropriate scientific expert to assist the panel in its evaluation of the challenge.

[Comment to Article 3.2.1: For certain Prohibited Substances, WADA may instruct WADA-accredited laboratories not to report Samples as an Adverse Analytical Finding if the estimated concentration of the Prohibited Substance or its Metabolites or Markers is below a Minimum Reporting Level. WADA's decision in determining that Minimum Reporting Level or in determining which Prohibited Substances should be subject to Minimum Reporting Levels shall not be subject to challenge. Further, the laboratory's estimated concentration of such Prohibited Substance in a Sample may only be an estimate. In no event shall the possibility that the exact concentration of the Prohibited Substance in the Sample may be below the Minimum Reporting Level constitute a defense to an anti-doping rule violation based on the presence of that Prohibited Substance in the Sample.]

3.2.2 WADA-accredited laboratories, and other laboratories approved by WADA, are presumed to have conducted Sample analysis and custodial procedures in accordance with the International Standard for Laboratories. The Rider or other Person may rebut this presumption by establishing that a departure from the International Standard for Laboratories occurred which could reasonably have caused the Adverse Analytical Finding.

3.2.3 If the Rider or other Person rebuts the preceding presumption by showing that a departure from the International Standard for Laboratories occurred which could reasonably have caused the Adverse Analytical Finding, then the UCI shall have the burden to establish that such departure did not cause the Adverse Analytical Finding.

[Comment to Article 3.2.3: The burden is on the Rider or other Person to establish, by a balance of probability, a departure from the International Standard for Laboratories that could reasonably have caused the Adverse Analytical Finding. Thus, once the Rider or other Person establishes the departure by a balance of probability, the Rider or other Person's burden on causation is the somewhat lower standard of proof – "could reasonably have caused." If the Rider or other Person satisfies these standards, the burden shifts to the UCI to prove to the comfortable satisfaction of the hearing panel that the departure did not cause the Adverse Analytical Finding.]

3.2.4 Departures from any other rules set forth in these Anti-Doping Rules, UCI Regulations, any International Standard or other anti-doping rule or policy set forth in the Code shall not invalidate analytical results or other evidence of an anti-doping rule violation, and shall not constitute a defense to an anti-doping rule violation; provided, however, if the Rider or other Person establishes that a departure from one of the specific UCI Regulations or International Standard provisions listed below could reasonably have caused an anti-doping rule violation based on an Adverse Analytical Finding, an Adverse Passport Finding or whereabouts failure, then the UCI shall have the burden to establish that such departure did not cause the Adverse Analytical Finding or the whereabouts failure:

(i) a departure from the UCI Testing & Investigation Regulations or International Standard for Testing and Investigations related to Sample collection or Sample handling which could reasonably have caused an anti-doping rule violation based on an Adverse Analytical Finding or an Adverse Passport Finding, in which case the UCI shall have the burden to establish that such departure did not cause the Adverse Analytical Finding;

(ii) a departure from the UCI Results Management Regulations, UCI Testing & Investigations Regulations, International Standard for Results Management or International Standard for Testing and Investigations related to an Adverse Passport Finding which could reasonably have caused an anti-doping rule violation, in which case the UCI shall have the burden to establish that such departure did not cause the anti-doping rule violation;

(iii) a departure from the UCI Results Management Regulations or International Standard for Results Management related to the requirement to provide notice to the Rider of the B Sample opening which could reasonably have caused an anti-doping rule violation based on an Adverse Analytical Finding, in which case the UCI shall have the burden to establish that such departure did not cause the Adverse Analytical Finding;

[Comment to Article 3.2.4 (iii): The UCI would meet its burden to establish that such departure did not cause the Adverse Analytical Finding by showing that, for example, the B Sample opening and analysis were observed by an independent witness and no irregularities were observed.]

(iv) a departure from the UCI Results Management Regulations or International Standard for Results Management related to Rider notification which could reasonably have caused an anti-doping rule violation based on a whereabouts failure, in which case the UCI shall have the burden to establish that such departure did not cause the whereabouts failure.

[Comment to Article 3.2.4: Departures from an International Standard or other rule unrelated to Sample collection or handling, Adverse Passport Finding, or Rider notification relating to whereabouts failure or B Sample opening – e.g., the International Standards for Education, Data Privacy or TUEs – may result in compliance proceedings by WADA but are not a defense in an anti-doping rule violation proceeding and are not relevant on the issue of whether the Rider committed an anti-doping rule violation. Similarly, the UCI’s violation of the document referenced in Article 20.7.7 of the Code shall not constitute a defense to an anti-doping rule violation.] [...]

2. The burden and standard of proof

63. It follows from Article 3.1 of the UCI ADR that the UCI bears the burden of proof to establish that the Rider committed an ADRV. The ADRV of the Rider must be established to the “comfortable satisfaction” of the Tribunal, bearing in mind the seriousness of the allegation, which is made. This standard of proof in all cases is greater than a mere balance of probability but less than proof “beyond any reasonable doubt”.
64. According to Article 3.2.2 of the UCI ADR, “WADA-accredited Laboratories [...] are presumed to have conducted sample analysis and custodial procedures in accordance with the International Standard for Laboratories”. The Rider or other Person may rebut this presumption of a valid analysis of the sample by establishing that a deviation from the International Standard for Laboratories (or other applicable regulations) occurred which could reasonably have caused the AAF (cf. Article 3.2.2 UCI ADR). “If the Rider or other Person rebuts the preceding presumption by showing that a departure from the International Standard for Laboratories occurred which could reasonably have caused the AAF, then the

UCI shall have the burden to establish that such departure did not cause the Adverse Analytical Finding” (cf. Article 3.2.3 UCI ADR).

3. The presence of a prohibited substance

65. Article 2.1 of the UCI ADR incorporates the principle of strict liability. According thereto (Appendix 1 of the UCI ADR) *“it is not necessary that intent, Fault, Negligence, or knowing Use on the Rider’s part be demonstrated by the Anti-Doping Organization in order to establish an anti-doping rule violation”*. Thus, sufficient proof of an ADRV is established – *inter alia* – by the *“presence of a Prohibited Substance or its Metabolites or Markers in the Rider’s A Sample where the Rider waives the analysis of the B sample and the B Sample is not analyzed; or, where the Rider’s B Sample is analyzed and the analysis of the Rider’s B Sample confirms the presence of the Prohibited Substance or its Metabolites or Markers found in the Rider’s A Sample”* (cf. Article 2.1.2 of the UCI ADR). According to Article 6.1 of the UCI ADR the analysis must be conducted by a WADA-accredited Laboratory or a Laboratory otherwise approved by WADA.
66. In the case at hand, the A- and the B-Sample collected from the Rider on 25 June 2022 were analysed by the Lausanne Laboratory and the Paris Laboratory, respectively, which are WADA-accredited. The analysis of the A-Sample revealed the presence of hCG. The B-Sample analysis confirmed the presence of hCG found in the Rider’s A-Sample. Consequently, according to Article 2.1.2 of the UCI ADR, there is sufficient proof of an ADRV under Article 2.1 UCI ADR. The evidence used to establish an ADRV under Article 2.1 of the UCI ADR may also be used to establish an ADRV under Article 2.2 UCI ADR for “Use of a Prohibited Substance”, since the presence of a prohibited substance in the bodily specimen of the Rider is not possible without prior use of such prohibited substance.
67. Thus, in the case at hand, the UCI has discharged its burden of proof that an ADRV for Articles 2.1 and 2.2 of the UCI ADR has been committed by the Rider by submitting the respective analyses reports for the A- and the B-Sample. Consequently, the burden of proof shifts to the Rider to rebut this presumption by showing on a balance of probabilities that (i) there was a departure from the International Standard for Laboratories (hereinafter referred to as “ISL”) or the applicable provision; and (ii) that such departure could have reasonably caused the AAF (see Articles 3.2.3 and 3.2.4 of the UCI ADR).
68. In conclusion, the Single Judge holds that the UCI successfully discharged its burden of proof that the Rider committed a violation of Articles 2.1 and 2.2 of the UCI ADR.

4. No Challenge of the Analytical Methods or of the Analytical Results

69. In the case at hand the Rider neither challenged the scientific validity of the analytical method for detecting the presence of hCG nor the analytical results of either the Lausanne Laboratory or the Paris Laboratory. In contrast, the Rider firmly denied the use of any Prohibited Substance (or substances not permitted by WADA and the anti-doping regulations) and claimed being unable to provide an explanation or supporting evidence on how the Prohibited Substance entered his body before offering an explanation nonetheless, i.e. one of the supplement he consumed was contaminated with hCG. This is not sufficient to rebut (on a balance of probabilities) that (i) there was a departure from the ISL or the applicable provision; and (ii) that such departure could have reasonably caused the AAF (see Articles 3.2.3 and 3.2.4 of the UCI ADR).
70. In conclusion, the Single Judge is comfortably satisfied that the Rider has committed an ADRV pursuant to Articles 2.1 and 2.2 of the UCI ADR.

5. A single ADRV

71. Article 10.9.3.1 of the UCI ADR provides as follows:

“For purposes of imposing sanctions under Article 10.9, except as provided in Articles 10.9.3.2 and 10.9.3.3, an anti-doping rule violation will only be considered a second violation if the UCI can establish that the Rider or other Person committed the additional anti-doping rule violation after the Rider or other Person received notice pursuant to Article 7, or after the UCI made reasonable efforts to give notice of the first anti-doping rule violation. If the UCI cannot establish this, the violations shall be considered together as one single first violation, and the sanction imposed shall be based on the violation that carries the more severe sanction, including the application of Aggravating Circumstances. Results in all Competitions dating back to the earlier anti-doping rule violation will be Disqualified as provided in Article 10.10.”

72. Consequently, both ADRV (Presence and Use) will be considered – legally – as one single ADRV.

B. What are the appropriate consequences of such an ADRV?

1. The standard Period of Ineligibility: Did the Rider commit the ADRV intentionally?

73. In the case at hand, the ADRV relating to hCG constitutes the Rider’s first ADRV. Article 10.2 of the UCI ADR reads as follows:

10.2.1 The period of Ineligibility [...] shall be four (4) years where:

10.2.1.1 The anti-doping rule violation does not involve a Specified Substance of a Specified Method, unless the Rider or other Person can establish that the anti-doping rule violation was not intentional.

[Comment to Article 10.2.1.1: While it is theoretically possible for a Rider or other Person to establish that the anti-doping rule violation was not intentional without showing how the Prohibited Substance entered one’s system, it is highly unlikely that in a doping case under Article 2.1 a Rider will be successful in proving that the Rider acted unintentionally without establishing the source of the Prohibited Substance.]

10.2.1.2 The anti-doping rule violation involves a Specified Substance, or a Specified Method and the UCI can establish that the anti-doping rule violation was intentional.

10.2.2 If Article 10.2.1 does not apply, [...] the period of Ineligibility shall be two (2) years.

74. In the case at hand, hCG is not a Specified Substance as per the Prohibited List. Accordingly, Article 10.2.1.1 of the UCI ADR provides that the standard period of ineligibility is four years, unless the Rider or other Person can establish that the ADRV was not intentional.

a) The term “intentional”

75. The term “intentional” is defined in Article 10.2.3 of the UCI ADR. The provision provides as follows:

“As used in Article 10.2, the term “intentional” is meant to identify those Riders or other Persons who engage in conduct which they knew constituted an anti-doping rule violation or knew that there was a significant risk that the conduct might constitute or result in an anti-doping rule violation and manifestly disregarded that risk. An anti-doping rule violation resulting from an Adverse Analytical Finding for a substance which is only prohibited In-Competition shall be rebuttably presumed to be not “intentional” if the substance is a Specified Substance and the Rider can establish that the Prohibited Substance was Used Out-of-Competition. An anti-doping rule violation resulting from an Adverse Analytical Finding for a substance which is only prohibited In-Competition shall not be considered “intentional” if the substance is not a Specified Substance and the Rider can establish that the Prohibited Substance was Used Out-of-Competition in a context unrelated to sport performance.

[Comment to Article 10.2.3: Article 10.2.3 provides a special definition of “intentional” which is to be applied solely for purposes of Article 10.2.]”

b) The burden of proof and the standard of proof

76. The Rider bears the burden to prove that the ADRV was not intentional pursuant to Article 10.2.1.1 of the UCI ADR.
77. The applicable standard of proof in relation to whether or not the ADRV (which does not involve a Specified Substance) was not intentional is “balance of probability” (as per Article 3.1 of the UCI ADR). Accordingly, the Rider must convince the Single Judge that the version of events presented by him (and indicating the absence of intention) appears more likely than not. Thus, the Single Judge will accept the Rider’s version of events, if he is persuaded by more than 50%.¹

c) The position of the Rider

78. The Rider denies having taken doping substances, or substances not permitted by WADA and the anti-doping regulations.
79. On two occasions (i.e. 15 May 2023 and 6 March 2024), the Rider suggests that the ADRV results from a contaminated supplement he ingested. However, the Rider also indicates that:
“there is no clear idea of how much and what type of the permitted supplement was taken.”
80. The Rider infers from the above that the proof that a specific supplement was contaminated appears completely diabolical.

d) The position of the UCI

81. The UCI states that the Rider bears the burden of proof for establishing, by a balance of probability, that the ADRV was not intentional.
82. The UCI recalls that the Rider underwent a full medical examination to exclude a pathological condition associated with the AAF, which proved unsuccessful.
83. The UCI further recalls that the Rider expressed the wish to submit a medical report but never did so and that he merely alleges the AAF was caused by the ingestion of contaminated supplements.
84. The UCI finally submits that the Rider did not provide any coherent explanation, corroborating documents and/or evidence regarding the source of the Prohibited Substance present in his body.

e) The position of the Single Judge

85. The Rider firmly denies the use of any Prohibited Substance (or substances not permitted by WADA and the anti-doping regulations), and more specifically hCG.
86. Having ruled out any pathological condition associated with the AAF, the Rider suggests the ADRV results from a contaminated supplement. However, the Rider did not adduce any concrete evidence in support of his position. On the contrary, the Rider has no idea how much and what type of supplement was taken. What is more, the Rider did not declare having taken any medications and/or supplements on the DCF, which gives even less credibility to his version of events.
87. In sum, the Rider neither established the source of the AAF nor did he establish the existence of other circumstances, which would allow the Single Judge to conclude that the Rider acted without intent.
88. Consequently, the Single Judge concludes that the Rider has failed to meet his burden of proof to establish a lack of intention. Thus, the Single Judge is of the view that the Rider did not establish that

¹ CAS 2009/A/1926 & 1930, no.31; CAS 2011/A/2384 & CAS 2011/A/2386, no. 55 et seq; BJÖRN HESSERT, «Fehlleistung des CAS im Dopingverfahren Jarrion Lawson», Causa Sport, 2020, 155 (158).

the ADRV was not intentional. The period of ineligibility shall be four years according to Article 10.2.1 of the UCI ADR, subject to the possible elimination or reduction of the period of ineligibility below.

2. Possible elimination or reduction of the Period of Ineligibility

a) The applicable provisions

89. Articles 10.5 and 10.6 of the UCI ADR read as follows:

“10.5 Elimination of the Period of Ineligibility where there is No Fault or Negligence

If a Rider or other Person establishes in an individual case that he or she bears No Fault or Negligence, then the otherwise applicable period of Ineligibility shall be eliminated.

[Comment to Article 10.5: This Article and Article 10.6.2 apply only to the imposition of sanctions; they are not applicable to the determination of whether an anti-doping rule violation has occurred. They will only apply in exceptional circumstances, for example, where a Rider could prove that, despite all due care, he or she was sabotaged by a competitor. Conversely, No Fault or Negligence would not apply in the following circumstances: (a) a positive test resulting from a mislabeled or contaminated vitamin or nutritional supplement (Riders are responsible for what they ingest (Article 2.1) and have been warned against the possibility of supplement contamination); (b) the Administration of a Prohibited Substance by the Rider’s personal physician or trainer without disclosure to the Rider (Riders are responsible for their choice of medical personnel and for advising medical personnel that they cannot be given any Prohibited Substance); and (c) sabotage of the Rider’s food or drink by a spouse, coach or other Person within the Rider’s circle of associates (Riders are responsible for what they ingest and for the conduct of those Persons to whom they entrust access to their food and drink). However, depending on the unique facts of a particular case, any of the referenced illustrations could result in a reduced sanction under Article 10.6 based on No Significant Fault or Negligence.]

10.6 Reduction of the Period of Ineligibility based on No Significant Fault or Negligence

10.6.1 Reduction of Sanctions in Particular Circumstances for Violations of Article 2.1, 2.2 or 2.6.

All reductions under Article 10.6.1 are mutually exclusive and not cumulative.

10.6.1.1 Specified Substances or Specified Methods

Where the anti-doping rule violation involves a Specified Substance (other than a Substance of Abuse) or Specified Method, and the Rider or other Person can establish No Significant Fault or Negligence, then the period of Ineligibility shall be, at a minimum, a reprimand and no period of Ineligibility, and at a maximum, two (2) years of Ineligibility, depending on the Rider’s or other Person’s degree of Fault.

10.6.1.2 Contaminated Products

In cases where the Rider or other Person can establish both No Significant Fault or Negligence and that the detected Prohibited Substance (other than a Substance of Abuse) came from a Contaminated Product, then the period of Ineligibility shall be, at a minimum, a reprimand and no period of Ineligibility, and at a maximum, two (2) years Ineligibility, depending on the Rider or other Person’s degree of Fault.

[Comment to Article 10.6.1.2: In order to receive the benefit of this Article, the Rider or other Person must establish not only that the detected Prohibited Substance came from a Contaminated Product but must also separately establish No Significant Fault or Negligence. It should be further noted that Riders are on notice that they take nutritional supplements at their own risk. The sanction reduction based on No Significant Fault or Negligence has rarely been applied in Contaminated Product cases unless the Rider has exercised a high level of caution before taking the Contaminated Product. In assessing whether the Rider can establish the

source of the Prohibited Substance, it would, for example, be significant for purposes of establishing whether the Rider actually Used the Contaminated Product, whether the Rider had declared the product which was subsequently determined to be contaminated on the Doping Control form.

This Article should not be extended beyond products that have gone through some process of manufacturing. Where an Adverse Analytical Finding results from environment contamination of a “non- product” such as tap water or lake water in circumstances where no reasonable person would expect any risk of an anti-doping rule violation, typically there would be No Fault or Negligence under Article 10.5.]

10.6.1.3 Protected Person or Recreational Rider

Where the anti-doping rule violation not involving a Substance of Abuse is committed by a Protected Person or Recreational Rider, and the Protected Person or Recreational Rider can establish No Significant Fault or Negligence, then the period of Ineligibility shall be, at a minimum, a reprimand and no period of Ineligibility, and at a maximum, two (2) years Ineligibility, depending on the Protected Person or Recreational Rider’s degree of Fault.

10.6.2 Application of No Significant Fault or Negligence beyond the Application of Article 10.6.1

If a Rider or other Person establishes in an individual case where Article 10.6.1 is not applicable that he or she bears No Significant Fault or Negligence, then, subject to further reduction or elimination as provided in Article 10.7, the otherwise applicable period of Ineligibility may be reduced based on the Rider or other Person’s degree of Fault, but the reduced period of Ineligibility may not be less than one-half of the period of Ineligibility otherwise applicable. If the otherwise applicable period of Ineligibility is a lifetime, the reduced period under this Article may be no less than eight (8) years.

[Comment to Article 10.6.2: Article 10.6.2 may be applied to any anti-doping rule violation except those Articles where intent is an element of the anti-doping rule violation (e.g., Article 2.5, 2.7, 2.8, 2.9 or 2.11) or an element of a particular sanction (e.g., Article 10.2.1) or a range of Ineligibility is already provided in an Article based on the Rider or other Person’s degree of Fault.]”

90. According to Article 26.7 of the UCI ADR, the Appendix 1 shall be considered an integral part of the UCI ADR. The terms “No Fault or Negligence” (hereinafter referred to as “NF”) and “No Significant Fault or Negligence” (hereinafter referred to as “NSF”) are defined as follows in Appendix 1 of the UCI ADR:

“No Fault or Negligence: The Rider or other Person’s establishing that he or she did not know or suspect, and could not reasonably have known or suspected even with the exercise of utmost caution, that he or she had Used or been administered the Prohibited Substance or Prohibited Method or otherwise violated an anti-doping rule. Except in the case of a Protected Person or Recreational Rider, for any violation of Article 2.1, the Rider must also establish how the Prohibited Substance entered the Rider’s system.

No Significant Fault or Negligence: The Rider or other Person’s establishing that any Fault or Negligence, when viewed in the totality of the circumstances and taking into account the criteria for No Fault or Negligence, was not significant in relationship to the anti-doping rule violation. Except in the case of a Protected Person or Recreational Rider, for any violation of Article 2.1, the Rider must also establish how the Prohibited Substance entered the Rider’s system.”

91. Therefore, for the Rider to benefit from the provisions in Article 10.5 or 10.6.1 of the UCI ADR and be able to request a reduced sanction, he must first establish the source of the Prohibited Substance.

92. Furthermore, Appendix 1 defines the term “Contaminated Product” as follows:

“A product that contains a Prohibited Substance that is not disclosed on the product label or in information available in a reasonable Internet search.”

b) The burden of proof and the standard of proof

93. According to Articles 10.5 and 10.6.1 of the UCI ADR, the Rider bears the burden of proof to establish NF or NSF. According to the definitions of NF and NSF in the Appendix, Articles 10.5 and 10.6.1 of the UCI ADR both require the Rider to establish how the prohibited substance entered his system.
94. The applicable standard of proof in relation to whether or not the ADRV (which does not involve a Specified Substance) was committed with NF or NSF is the balance of probability (Article 3.1 of the UCI ADR). Accordingly, the Rider must convince the Single Judge that the version of events presented by him (and indicating a reduced level of fault) appears more likely than not.² Thus, the Single Judge will accept the Rider's version of events, if he is persuaded by more than 50%.³
95. The above percentages, however, are not to be mistaken with objective probabilities. Instead, it is the subjective conviction of the Single Judge that is relevant when applying the standard of proof. This is not to say that the Single Judge will not take into account objective probabilities or the general likelihood of the occurrence of a given fact. Instead, it is widely accepted that general experience is an important factor when assessing the evidence and determining the facts of a case. Consequently, the Single Judge will – as a general rule – need more cogent evidence to establish a certain event in case the occurrence of the latter is unlikely.⁴

c) How did hCG get into the Rider's system?

96. The Rider claims that the source for his AAF was an unidentified contaminated supplement. The UCI objects to this scenario submitted by the Rider.

(i) The position of the Rider

97. The Rider submits – in essence – as follows:
- He is unable to provide a complete explanation as to how hCG was found in the Sample.
 - All past anti-doping tests and other tests carried out after the AAF returned negative.
 - The only possible explanation to the presence of hCG is that it was unknowingly present inside a supplement used by the Rider.
 - The proof required to prove that a supplement was contaminated appears diabolical, especially because the Riders has no clear idea of how much and what type of supplement he ingested.

(ii) The position of the UCI

98. The UCI submits – in essence – as follows:
- The Rider did not submit any coherent explanation, corroborating documents and/or evidence regarding the source of the Prohibited Substances identified in his Sample or any other medical report to that effect.

² BJÖRN HESSERT, «Fehlleistung des CAS im Dopingverfahren Jarrion Lawson», Causa Sport, 2020, 155 (158).

³ CAS 2009/A/1926 & 1930, no.31; CAS 2011/A/2384 & CAS 2011/A/2386, no. 55 et seq; BJÖRN HESSERT, «Fehlleistung des CAS im Dopingverfahren Jarrion Lawson», Causa Sport, 2020, 155 (158).

⁴ Contrary to CAS 2019/A/6313, no. 86.

- The Rider merely alleges that the AAF is due to the ingestion of a contaminated supplement without adducing any concrete evidence to demonstrate how hCG might have found its way into the Supplement. Equally, the Rider did not demonstrate that the supplement was “faulty”.
- The Rider has failed to meet his burden (and standard) of proof to establish the source of the Prohibited Substance and by the same of the AAF.
- The Rider did not put forward any other exceptional circumstances that could somehow establish a lack of intent without having proven the source of the Prohibited Substance first.
- The Rider cannot benefit from any elimination or reduction of the standard period of ineligibility considering the above.

(iii) The position of the Single Judge

99. The Single Judge does not accept – on a balance of probabilities – the version of events presented by the Rider, who claims that the only possible explanation to the presence of hCG is that the substance was unknowingly present inside a supplement used by him. The reasons are as follows:

- First, the Rider did not put forward the name, type, brand or kind of supplement used by him.
- Second, the Rider did not adduce any evidence to establish that hCG was not disclosed on the label of the supplement used by him nor that this information would not have been available following a reasonable internet search in accordance with the definition of Contaminated Product stipulated in Annex 1.
- Third, the Rider did not declare having taken any medications and/or supplements on the DCF.

100. In sum, the Rider did not take any concrete steps to discharge his burden of proof.

b) Evidentiary difficulties

101. The Rider claims that the proof required to prove that a supplement was contaminated appears diabolical.

102. From the question what needs to be established (how the prohibited substance entered the Rider’s system) one must distinguish the means of evidence available to a party to persuade the adjudicatory body from the occurrence of the event. It is a common phenomenon that a party may run into difficulties when trying to prove its case. In principle, “normal difficulties” in presenting evidence are dealt with by the onus of proof. The latter shifts the risk of not being able to prove a certain fact to the party bearing the onus of proof. This risk shifting is a political decision by the legislator that must be respected in the absence of particular circumstances. The question, however, arises what to do with evidentiary problems that exceed a certain threshold (serious evidentiary problems).

103. (Serious) evidentiary problems may have different causes. It may be that there is no direct evidence available or that the fact that needs to be proven is – by its very nature – difficult to establish (e.g. proving of negative facts). Evidentiary problems may also be due to the behaviour of the opposing party (e.g. frustration of evidence). In all these instances where the threshold of “normal difficulties” is exceeded, the legal order must react in order to ensure procedural fairness. It is well-known that in certain instances no direct evidence may exist to prove a case of contamination. However, this did not preclude the Rider from presenting indirect evidence from which one can infer whether the supplement used by him was contaminated at the time. Furthermore, the lack of direct evidence does not dispense the party (bearing the onus of proof and presentation) to prove on a balance of probability that a possible scenario actually occurred.

104. In the case at hand, the harsh reality is that the Rider did not take any concrete steps to discharge his burden of proof, such as putting forward the name, type, brand or kind of supplement used by him. The Single Judge is not prepared to disregard the rules on a mere claim of evidentiary difficulties (irrespective of the questions whether these are serious evidentiary difficulties or not) when the party bearing the onus of proof did not seek to discharge its burden. Thus, the Single Judge does not accept that the AAF of the Rider was caused by a contaminated supplement.

c) Conclusion

105. In view of all of the above, the Single Judge finds that the Rider has not discharged his burden of proof to establish how – on a balance of probability – the prohibited substance entered his system. Consequently, the period of ineligibility cannot be eliminated or reduced on the basis of Article 10.5 or 10.6.1 of the UCI ADR. The period of ineligibility shall be four years accordingly.

3. Commencement date of the Period of Ineligibility and Credit for provisional Suspension

106. In relation to the commencement of the period of ineligibility, Article 10.13 of the UCI ADR provides as follows:

"[...] Otherwise, except as provided below, the period of Ineligibility shall start on the date of the final hearing decision providing for Ineligibility or, if the hearing is waived or there is no hearing, on the date Ineligibility is accepted or otherwise imposed.

10.13.1 Delays Not Attributable to the Rider or other Person

Where there have been substantial delays in the hearing process or other aspects of Doping Control, and the Rider or other Person can establish that such delays are not attributable to the Rider or other Person, the UCI may start the period of Ineligibility at an earlier date commencing as early as the date of Sample collection or the date on which another anti-doping rule violation last occurred. All competitive results achieved during the period of Ineligibility, including retroactive Ineligibility, shall be Disqualified.

[Comment to Article 10.13.1: In cases of anti-doping rule violations other than under Article 2.1, the time required for an Anti-Doping Organization to discover and develop facts sufficient to establish an anti-doping rule violation may be lengthy, particularly where the Rider or other Person has taken affirmative action to avoid detection. In these circumstances, the flexibility provided in this Article to start the sanction at an earlier date should not be used.]

10.13.2 Credit for Provisional Suspension or Period of Ineligibility Served

10.13.2.1 *If a Provisional Suspension is respected by the Rider or other Person, then the Rider or other Person shall receive a credit for such period of Provisional Suspension against any period of Ineligibility which may ultimately be imposed. If the Rider or other Person does not respect a Provisional Suspension, then the Rider or other Person shall receive no credit for any period of Provisional Suspension served. If a period of Ineligibility is served pursuant to a decision that is subsequently appealed, then the Rider or other Person shall receive a credit for such period of Ineligibility served against any period of Ineligibility which may ultimately be imposed on appeal.*

10.13.2.2 *If a Rider or other Person voluntarily accepts a Provisional Suspension in writing from the UCI and thereafter respects the Provisional Suspension, the Rider or other Person shall receive a credit for such period of voluntary Provisional Suspension against any period of Ineligibility which may ultimately be imposed. A copy of the Rider or other Person's voluntary acceptance of a Provisional Suspension shall be provided promptly to each party entitled to receive notice of an asserted anti-doping rule violation under Article 14.1.*

[Comment to Article 10.13.2.2: A Rider's voluntary acceptance of a Provisional Suspension is not an admission by the Rider and shall not be used in any way to draw an adverse inference against the Athlete.] [...]"

107. Thus, as a general rule, the period of ineligibility shall start on the date of the final decision imposing such ineligibility, with credit given for the period of any provisional suspension if and to the extent it was respected by the Rider. The Rider has been provisionally suspended from 28 February 2023. There is no indication on file that the Rider did not observe the terms of such suspension. The Single Judge, thus, finds that the Rider must receive credit for the time so served.

4. Disqualification

108. Article 9 of the UCI ADR reads as follows:

"An anti-doping rule violation in Individual Sports in connection with an In-Competition test automatically leads to Disqualification of the result obtained in that Competition with all resulting Consequences, including forfeiture of any medals, points and prizes."

109. Under Appendix 1 of the UCI ADR, competition means "[a] single race organized separately (for example: [...] road race at the road World Championships; [...]) [...] and producing a final winner and/or general classification [...]". The Single Judge has no doubt the 2022 UCI Mountain Bike Marathon Master World Championship constitutes a competition within the meaning of the UCI ADR. Thus, the results obtained by the Rider in the 2022 UCI Mountain Bike Marathon Master World Championship held on 25 August 2022 shall automatically be disqualified.

110. Article 10.10 of the UCI ADR provides as follows:

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

111. From the information currently on file, the Single Judge notes that the Rider did not participate in any competition between the date of the sample collection on 25 June 2022 and 28 February 2023, i.e. the date he was provisionally suspended. Therefore, the Single Judge considers that there are no other competitive results of the Rider to disqualify.

5. Mandatory Fine and Procedural Costs under the UCI ADR

a) Mandatory Fine

112. Article 10.12.1.1 of the UCI ADR provides that "[a] fine shall be imposed in case a Rider or other Person exercising a professional activity in cycling is found to have committed an intentional anti-doping rule violation within the meaning of Article 10.2.3".

113. Since the Rider is not exercising a professional activity in cycling, no fine shall be imposed on the Rider according to Article 10.12.1 UCI ADR.

b) Procedural Costs under the UCI ADR

114. The UCI requests that the Rider pays the following costs:

- results management by the UCI: CHF 2'500.00; and
- A-Sample LDP: EUR 600.

115. The Rider withdrew his request for the A-Sample LDP during the UCI results management procedure, as the advance on costs was deemed too high (see para. 27 and 28).
116. The Single Judge notes that Article 10.12.2 of the UCI ADR reads as follows:

“10.12.2 Liability for Costs of the Procedures

If the Rider or other Person is found to have committed an anti-doping rule violation, he or she shall bear, unless the UCI Anti-Doping Tribunal determines otherwise:

- 1. The cost of the proceedings as determined by the UCI Anti-Doping Tribunal, if any.*
- 2. The cost of the Results Management by the UCI; the amount of this cost shall be CHF 2'500, unless a higher amount is claimed by the UCI and determined by the UCI Anti-Doping Tribunal.*
- 3. The cost of the B Sample analysis, where applicable.*
- 4. The costs incurred for Out-of-Competition Testing; the amount of this cost shall be CHF 1'500, unless a higher amount is claimed by the UCI and determined by the UCI Anti-Doping Tribunal.*
- 5. The cost for the A and/or B Sample laboratory documentation package where requested by the Rider.*
- 6. The cost for the documentation package of Samples analyzed for the Biological Passport, where applicable.*

If the Rider or other Person admits the anti-doping rule violation in accordance with the requirements provided under Article 10.8, the UCI may waive the reimbursement of these costs in whole or in part. The factors listed under 10.12.1.3 may also be considered in relation to a possible reduction of costs under this provision.

The National Federation of the Rider or other Person shall be jointly and severally liable for its payment to the UCI.”

117. The Single Judge notes that the cost of the results management by the UCI are not contested by the Rider and that the UCI did not claim an amount higher than CHF 2'500.00.
118. The Single Judges notes that the Rider withdrew his request for the A-Sample LDP during the UCI results management procedure and did not pay the relevant advance on costs despite having been invited to do so by the UCI (see para. 27 and 28). In this regard, the Single Judge further notes the following: (i) the UCI requested the A-Sample LDP from the Paris Laboratory without having secured the relevant advance on costs from the Rider; (ii) the Rider informed the UCI (albeit very late, i.e. on 4 April 2023, the night before the B Sample analysis) that he did not wish the A-Sample LDP anymore; (iii) the UCI received the A-Sample LDP (dated 24 March 2023; see Exhibit UCI_27) from the Paris Laboratory before the Rider withdrew his request for the A-Sample LDP but did not communicate this information to the Rider immediately; and (iv) the UCI did not ask for the reimbursement of the B Sample analysis. Based on the foregoing, the Single Judge dismisses the request of the UCI to have the costs of the A-Sample LDP in the amount of EUR 600 reimbursed.
119. In application of the above provision, the Single Judge holds that the Rider shall reimburse to the UCI the following amount:
- CHF 2'500.00 for costs of the results management (Article 10.12.2 (2) of the UCI ADR).

6. Costs of the proceedings

120. Article 29 of the ADT Rules provides as follows:

“1. The Tribunal shall determine in its judgment the costs of the proceedings as provided under Article 10.12.2 para. 1 ADR.

2. As a matter of principle the Judgment is rendered without costs.

3. Notwithstanding the above, the Tribunal may order the Defendant to pay a contribution toward the costs of the Tribunal. Whenever the hearing is held by videoconference, the maximum participation is CHF 7'500.

4. The Tribunal may also order the unsuccessful Party to pay a contribution toward the prevailing Party's costs and expenses incurred in connection with the proceedings and, in particular, the costs of witnesses and experts. If the prevailing Party was represented by a legal representative the contribution shall also cover legal costs."

121. In application of Article 29.2 of the ADT Rules, the Single Judge decides that the present Judgment is rendered without costs. In light of all of the circumstances of this case, the Single Judge finds it appropriate not to order the Rider (as the unsuccessful party) to pay a contribution towards the UCI's costs.

VII.RULING

122. In consideration of all of the above, the Tribunal decides as follows:

1. **Mr. Massimo Berlusconi has committed an Anti-Doping Rule Violation.**
2. **Mr. Massimo Berlusconi is suspended for a period of ineligibility of four years. The period of Ineligibility shall commence on the date of the decision, i.e. 6 May 2024. However, considering the credit for the period of the Provisional Suspension already served by Mr. Massimo Berlusconi since 28 February 2023, Mr. Massimo Berlusconi's period of Ineligibility effectively began on 28 February 2023, and shall end four years from this date, i.e. 27 February 2027.**
3. **The results obtained by Mr. Massimo Berlusconi at the 2022 UCI Mountain Bike Marathon Master World Championship on 25 June 2022 are disqualified.**
4. **Mr. Massimo Berlusconi is ordered to pay to the UCI the amount of CHF 2'500.00 for the costs of the results management**
5. **All other and/or further-reaching requests are dismissed.**
6. **This judgment is final and will be notified to:**
 - a) **Mr. Massimo Berlusconi;**
 - b) **UCI;**
 - c) **National Anti-Doping Organisation of Italy (NADO Italy); and**
 - d) **WADA**

123. This Judgment may be appealed before the CAS pursuant Article 31.2 of the ADT Rules and Article 74 of the UCI Constitution. The time limit to file the appeal is governed by the provisions in Article 13.2.5 of the UCI ADR.

Yann HAFNER
Single Judge