BEFORE THE AMERICAN ARBITRATION ASSOCIATION

United States Anti-Doping Agency, Claimant, v. Geert Leinders, Respondent.	)	**ARBITRAL AWARD** AAA No. 77-20-1300-0604

WE, THE UNDERSIGNED ARBITRATORS ("Panel"), having been designated by the above-named parties in accordance with the applicable rules, and having duly heard the allegations, proofs and arguments presented in this matter, do hereby find and issue this Award, as follows:

I. SUMMARY

1. Claimant, the United States Anti-Doping Agency ("USADA"), has alleged that Respondent, Dr. Geert Leinders, committed a number of doping offenses in violation of the Union Cycliste Internationale Anti-Doping Rules ("UCI ADR"), the World Anti-Doping Code ("WADC"), and the USADA Protocol for Olympic and Paralympic Movement Testing ("USADA Protocol"). Those alleged doping offenses include possession of prohibited substances and/or methods; trafficking of prohibited substances and/or methods; administration and/or attempted administration of prohibited substances and/or methods; and assisting, encouraging, aiding, abetting, covering up and other complicity involving anti-doping rule violations. USADA also asserts that the alleged doping offenses involve aggravating circumstances justifying a lifetime period of ineligibility.

2. For the reasons described more fully below, the Panel has determined that, based on the evidence presented to it and the arguments and submissions of counsel, USADA has met its burden of proof and established to the Panel's comfortable satisfaction that Dr. Leinders committed each of the alleged doping offenses within the applicable statute of limitations.

3. For the reasons described more fully below, the Panel imposes a lifetime period of ineligibility as the sanction for Dr. Leinders' doping offenses.

II. PARTIES

4. Claimant, USADA, is the independent anti-doping agency for Olympic movement sports in the United States and is responsible for conducting drug testing and adjudicating potential doping offenses pursuant to the USADA Protocol.

5. Respondent, Dr. Geert Leinders, served as the chief team doctor for the Rabobank professional cycling team from 1996–2009. Dr. Leinders also served on the team's board of directors from 2004–2009. Dr. Leinders thereafter served as team doctor for the Team Sky professional cycling team. In 2012, Dr. Leinders' contract with Team Sky was terminated, and since that date he apparently has ceased any participation in the sport of cycling. The charges at issue stem from Dr. Leinders' involvement with the Rabobank cycling team.

III. PROCEDURAL HISTORY

6. On July 8, 2013, USADA informed Dr. Leinders by letter that a formal action had been opened based on evidence that he had engaged in anti-doping violations under the UCI ADR (2002–2013), WADC (2003–2013), and the USADA Protocol (2002–2013). That letter gave Respondent notice of the proposed charges, specifically, possession of prohibited substances and/or methods; trafficking of prohibited substances and/or methods; administration and/or attempted administration of prohibited substances and/or methods; assisting, encouraging,

aiding, abetting, covering up and other complicity involving anti-doping rule violations; and aggravating circumstances justifying a period of ineligibility greater than the standard sanction.

7. In a letter dated July 11, 2013, Dr. Leinders' counsel at the Belgian law firm of Van Landuyt & Partners, Mr. Johnny Maeschalck and Mr. Kristof De Saedeleer, acknowledged receipt of USADA's July 8, 2013 letter, and admitted that Dr. Leinders previously "was working for a Dutch cycling team (Rabobank) with a Belgian license . . . ."

8. In a letter dated July 12, 2013 ("the Charging Letter"), Dr. Leinders was informed that USADA's Anti-Doping Review Board had determined that there was sufficient evidence of anti-doping rule violations and recommended that the adjudication process proceed on the following charges:

> (a) Possession of prohibited substances and/or methods including, EPO, blood transfusions and related equipment (such as needles, blood bags, storage containers and other transfusion equipment and blood parameters measuring devices), testosterone, insulin, DHEA, LH and corticosteroids under WADC 2.6 (2003–present), UCI ADR 135 (2001–2004), UCI ADR 15.6 (2005–2008) and UCI ADR 21.6 (2009–present);
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> (b) Trafficking of EPO, blood transfusions, testosterone, insulin, LH and corticosteroids under WADC 2.7 (2003–present), UCI ADR 3, 135 (2001–2004), UCI ADR 15.7 (2005–2008), UCI ADR 21.7 (2009–present);
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> (c) Administration and/or attempted administration of EPO, blood transfusions, testosterone, insulin, DHEA, LH and corticosteroids under WADC 2.8 (2003–present), UCI 3, 133 (2001–2004), UCI ADR 15.8 (2005–2008), UCI ADR 21.8 (2009–present);
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> (d) Assisting, encouraging, aiding, abetting, covering up and other complicity involving one or more anti-doping rule violations and/or attempted anti-doping rule violations under WADC 2.8 (2003–present), UCI ADR 3, 133 (2001–2004), UCI ADR 15.8 (2005–2008), UCI ADR 21.8 (2009–present); and
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> (e) Aggravating circumstances justifying a period of ineligibility greater than the standard sanction under WADC 10.6 (2009–present) and UCI ADR 305 (2009–present).

9. The Charging Letter also stated that USADA was seeking a lifetime period of ineligibility as sanction, and notified Dr. Leinders that he had the right to an arbitration hearing before the American Arbitration Association ("AAA") to contest USADA's charges and proposed sanction.

10. By letter dated July 26, 2013, Dr. Leinders' counsel informed USADA that their "client chooses to contest USADA's proposed sanction" and "elects to proceed to a hearing." That letter again confirmed that Dr. Leinders "worked with a Belgian license for a Dutch cycling team."

11. USADA transmitted Dr. Leinders' request to the AAA, and this Panel was appointed on February 24, 2014.

12. A preliminary conference was scheduled for April 3, 2014. On April 2, however, Mr. Maeschalck informed the AAA that his law firm "doesn't have any mandate to represent Mr. Leinders in the United States of America," and that "a personal invitation of Mr. Leinders seems a legal necessity and he didn't sign a convention to arbitrage (sic)."

13. At the Panel's request, USADA, by letter dated April 11, 2014, requested that Mr. Maeschalck clarify whether Dr. Leinders was withdrawing his request for a hearing before an AAA arbitration panel.

14. On April 18, Mr. Maeschalck responded that he could not "give a declaration on behalf of Dr. Leinders to stop or to continue the procedure" because "Dr. Leinders did not give us any mandate to represent him in the United States of America."

15. On May 6, 2014, USADA submitted a letter to the Panel requesting that the Panel schedule this matter for hearing because "neither Mr. Maeschalck nor Dr. Leinders have

withdrawn the request for arbitration previously filed by Dr. Leinders' attorneys on July 26, 2013."

16. On May 23, 2014, the Panel determined that good cause existed to extend the hearing date and ordered that the hearing be held on or before August 15, 2014.

17. The Panel conducted a second preliminary conference on June 18, 2014. Although notice of the conference was provided by email to Mr. Maeschalck, neither Dr. Leinders nor any representative acting on his behalf participated in the conference.

18. Given the failure of Dr. Leinders (or any representative) to appear, USADA, at the Panel's request, contacted Mr. Maeschalck by letter dated June 19, 2014. USADA requested that Mr. Maeschalck forward to the AAA Dr. Leinders' direct contact information, and stated that until such information was provided, USADA would continue to forward all documents in this matter to Mr. Maeschalck.

19. On June 30, 2014, having received no response from Mr. Maeschalck, the Panel issued a Scheduling Order setting the hearing for August 11–12, 2014, in Washington, D.C.[1] The Scheduling Order stated:

> Pursuant to Rule 26 of the American Arbitration Association Supplementary Procedures for the Arbitration of Anti-Doping Rule Violations, this arbitration may proceed in the absence of Dr. Leinders. Should Dr. Leinders wish to participate in the hearing, he should notify the AAA (c/o Jen Nilmeier, Manager of ADR Services, American Arbitration Association, Telephone: 559-490-1862, Email: JenNilmeier@adr.org) or USADA whether he intends to do so in person, by teleconference or by videoconference.

20. The Scheduling Order directed that "[s]hould Dr. Leinders intend to submit any documentary evidence in his defense, he must do so in accordance with the schedule set forth

[1] On July 7, 2014, the Panel issued a Revised Scheduling Order rescheduling, at USADA's request, the hearing for August 12–13, 2014.

below." The Scheduling Order set an August 4, 2014 deadline for pre-hearing submissions, and specifically requested that pre-hearing submissions include, "a statement addressing USADA's jurisdiction to pursue, and this Panel's authority to impose, a sanction against Dr. Leinders," and "a statement of the facts and legal authorities supporting the party's position on the merits."

21. On August 4, 2014, USADA submitted to the Panel its pre-hearing brief, exhibits and witness disclosures (including a detailed summary of the expected testimony of each of its witnesses) and provided copies to Mr. Maeschalck. Dr. Leinders did not submit a pre-hearing brief or any evidence in his defense.

22. On August 4, 2014, USADA also sent a letter to Mr. Maeschalck requesting that Dr. Leinders testify in person or telephonically at the hearing, and further stated:

> In the event that Dr. Leinders fails to appear in person or telephonically at the hearing in order to answer questions from USADA or the hearing panel, please be advised that USADA will request that the hearing panel draw an adverse inference against Dr. Leinders based on his refusal to appear and to answer as provided in UCI ADR Art. 27 and Art. 3.2.4 of the World Anti-Doping Code.

23. By letter dated August 8, 2014, Mr. Maeschalck responded to USADA's request:

> As mentioned in previous correspondence Dr. Leinders did not give us any mandate to represent him in the United States of America. In Belgium a lawyer needs a mandate for each specific case.
>
> Therefore a personal notification to Dr. Leinders is a necessity to continue any procedure.
>
> Therefore I can't accept your request through me that Dr. Leinders appear at any upcoming hearing, either in person or telephonically.
>
> You have to send your correspondence directly towards Dr. Leinders.
>
> Furthermore I can't forward any contact information for Dr. Leinders as this is prohibited by the Belgian deontological code and the privacy rules. Dr. Leinders is our client in a Belgian case

> and by no means, I can give such confidential information obtained because of a procedure to any third party without any legal justification.
>
> If you want to obtain such information you will have to ask public authorities in Belgium to give such information.[2]

24. The hearing was held in Washington, D.C. on August 12, 2014. Neither Dr. Leinders nor any representative on his behalf participated in the hearing.

25. At the outset of the hearing, the Chair of the Panel, after setting forth the procedural history of this matter, stated for the record that "[g]iven that Mr. Maeschalck's law firm initiated this arbitration on Dr. Leinders' behalf and repeatedly referred to Dr. Leinders as his client in its initial correspondence with USADA, the Panel finds its service of papers and notices on Dr. Leinders through Mr. Maeschalck's law firm is fair, reasonable and appropriate" under Rule 36 of the AAA Supplementary Procedures for the Arbitration of Anti-Doping Rule Violations. Further, "[t]he Panel concludes that pursuant to Rule 26 that Dr. Leinders has been provided due notice of this arbitration and the Panel intends to proceed in his absence."

26. The Panel received into evidence all exhibits tendered by USADA and stated that it would give those exhibits such weight as it deemed appropriate after hearing all the evidence.

27. At the hearing, USADA presented live testimony, by means of videoconference, of the following witnesses: Michael Rasmussen, Levi Leipheimer, Jack Robertson, Steven Teitler, Dr. Yorck Olaf Schumacher and Dr. Larry Bowers.

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[2] The Panel notes that Mr. Maeschalck did not assert that Belgian law would in any way prevent him from forwarding to Dr. Leinders, who apparently remains his client in other matters, all communications in this matter that have been sent by USADA and the Panel.

IV. TESTIMONY PRESENTED AT THE HEARING[3]

A. MICHAEL RASMUSSEN

28. Michael Rasmussen provided sworn testimony on behalf of USADA pursuant to a cooperation agreement he entered into on January 25, 2013. In that agreement, Mr. Rasmussen admitted to using banned performance enhancing substances and methods, including EPO, testosterone, blood transfusions and cortisone from 1998 to the date of the agreement. Pursuant to the agreement, Mr. Rasmussen undertook to provide truthful testimony regarding all anti-doping rule violations committed by other cyclists, team directors, managers, doctors and/or other team personnel, of which he has knowledge, in exchange for a 75% reduction of what otherwise would have been an eight-year period of ineligibility for his admitted anti-doping violations.

29. Mr. Rasmussen was a professional cyclist from 2001–2013, riding for CSC-Tiscali (2001–2003), Rabobank (2003–2007), Tecos de la Universidad Autonoma de Guadalaiara (2009), Miche (2010), and Christina Watches-Onfone (2011–2013).

30. Mr. Rasmussen testified that he was approached to join Rabobank in 2002 at the Tour of Lombardy. Mr. Rasmussen described a conversation he had with Rabobank representatives Theo De Rooij and Dr. Leinders in which they discussed Rasmussen's withdrawal from a race because of a high hematocrit level caused by EPO use. De Rooij told Rasmussen that such a situation "would not happen on Rabobank because they would take good care of [him]"; "[a]s a team they would make sure that it would not happen and Dr. Leinders

[3] In connection with its post-hearing submissions, USADA has submitted a Motion for Panel to Designate the Revised Transcript as the Official Record of the Proceedings. USADA's motion is hereby GRANTED, and the Panel designates the revised transcript as the official record of the August 12, 2014 hearing.

being the main [person] responsible for the medical team he would have been the one taking care of that problem." Rasmussen testified that Rabobank was aware he was using EPO "and it was not grounds for any concern."

31. Mr. Rasmussen joined Rabobank in January 2003.

32. In 2003, Mr. Rasmussen discussed the use of EPO and other performance enhancing drugs with Dr. Leinders, including quantities to take and when to take them to avoid detection during doping control tests.

33. Mr. Rasmussen testified that Dr. Leinders assisted him with the use of insulin from 2003–2005. Rasmussen testified that Dr. Leinders kept insulin on the team bus during the 2003 Vuelta a España and the 2004 and 2005 Tours de France, and while Leinders was concerned about bringing insulin into France, one of Rabobank's public relations managers was diabetic "[s]o, he felt that he could justify having it in the bus." Rasmussen stated that approximately 8-10 units of insulin were delivered to him in a syringe each night before dinner during those races, and that Dr. Leinders specifically discussed with him the risk of diabetic shock associated with insulin use.

34. After the 2003 Vuelta, Dr. Leinders and Mr. Rasmussen discussed the possibility of Rasmussen receiving a homologous blood transfusion from a family member. Rasmussen testified that Dr. Leinders gave him an academic article on homologous blood transfusions (submitted as Exhibit 51) and told him that Michael Boogerd, another Rabobank cyclist, had received such a transfusion from his brother during the 2002 Tour de France.

35. In 2004, Dr. Leinders extracted a sample of Mr. Rasmussen's father's blood for purposes of determining whether he could serve as a donor for transfusions.[4] The test revealed that Rasmussen's father's blood was not compatible so they did not proceed with the transfusion.

36. Instead, Mr. Rasmussen testified that he proceeded with an autologous blood transfusion, i.e. the process of having his own blood withdrawn for later re-infusion into his body. Rasmussen stated that he had his blood extracted in June 2004, couriered from his home in Italy to Dr. Leinders in Belgium, and re-infused by Dr. Leinders on the evening of the second stage of the Tour de France in July of 2004.

37. After the 2004 Tour de France, Rasmussen testified that teammate Michael Boogerd told him that Dr. Leinders had advised Boogerd to take 4,000 units of EPO two times/day for two days to recover from the Tour de France in preparation for the Classic Sebastian and Olympic Games which followed shortly thereafter.

38. Mr. Rasmussen testified that prior to the 2005 Tour de France he again had blood withdrawn and couriered to Dr. Leinders in Germany for re-infusion during the Tour. Mr. Rasmussen confirmed that his normal hematocrit level is approximately 39 or 40, and that his hematocrit level of 46 in July of 2005, as reflected in Exhibit 37, was a result of the blood transfusion.

39. Mr. Rasmussen stated that it "was definitely [his] impression" that other Rabobank riders were also receiving blood transfusions from Dr. Leinders at the 2005 Tour de France

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[4] USADA has submitted the affidavit of Friis Johansen, Senior Consultant for Anti-Doping Denmark, attesting that during a November 3, 2013 television interview, Finn Rasmussen, Michael Rasmussen's father, confirmed that he had met with Dr. Leinders who explained the process for a homologous blood transfusion, i.e. withdrawing blood from Finn Rasmussen and later infusing it into Michael Rasmussen. Johansen also attests that during the interview, Finn Rasmussen stated that Dr. Leinders had told him that a homologous blood transfusion "was common and not dangerous."

because Dr. Leinders had told Rasmussen that "he had a very busy night and had other clients to take care of." Mr. Rasmussen further stated that he later learned that Stefan Matschiner, an individual associated with the Human Plasma clinic in Austria, had brought blood bags to the 2005 Tour de France for use by cyclists Michael Boogerd and Denis Menchov.[5]

40. Mr. Rasmussen testified that on the first rest day of the 2005 Tour de France, UCI informed Rabobank that Rasmussen's doping control test had shown a very low reticulocyte count, suggesting improper blood manipulation through blood transfusions, and that Dr. Leinders had met with Mario Zorzoli, chief of the UCI medical commission, to discuss the issue. After his meeting with Zorzoli, Dr. Leinders told Rasmussen that "Rabobank was a team that had 'butter on its head' . . . meaning that all the problems, doping related problems the team had, would slide off. And he called me now the most protected rider in the race."

41. Mr. Rasmussen also testified that later during the 2005 Tour, Dr. Leinders gave him a subcutaneous injection that increased his luteinizing hormone ("LH") level. Rasmussen testified that a random doping control test reflected that his LH value after the injection was approximately 20X higher than it had been one week earlier, as reflected in Exhibit 44.

42. Mr. Rasmussen further testified that he spoke to Dr. Leinders after the 2005 Tour de France about receiving additional assistance with blood transfusions. Dr. Leinders suggested that Rasmussen contact Michael Boogerd about the Human Plasma clinic because the clinic had the capabilities to extract multiple blood bags and store those bags for extended periods of time before re-infusion.

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[5] An investigation of the Human Plasma clinic conducted by the Public Prosecutor's Office of Vienna revealed that the Human Plasma clinic began offering blood doping services to athletes beginning in 2003 at the request of Walter Mayer, an Austrian cross-country skiing coach. *See* Exhibit 56.

43. Mr. Rasmussen testified that he visited the Human Plasma clinic four times from late 2005–early 2006 to have blood extracted and stored. Rasmussen stated that once he was connected to the Human Plasma clinic through Michael Boogerd, "Dr. Leinders, he was informed occasionally when I had been there but he was not directly involved in the planning."

44. Mr. Rasmussen testified that in either 2004 or 2005, Dr. Leinders told him that Mario Zorzoli recommended that Leinders give Rabobank riders DHEA because "all the other teams are doing it as well." Rasmussen further testified that up until the 2005 Tour of Germany, Dr. Leinders periodically provided him with DHEA.

45. Mr. Rasmussen testified that he had two blood bags delivered to him by Stefan Matschiner from the Human Plasma clinic during the 2006 Tour de France, and that Dr. Van Mantgem, another doctor for team Rabobank, was aware Rasmussen was using blood bags during the Tour. Rasmussen further stated that while Dr. Leinders was not present at the 2006 Tour, he assumed Dr. Leinders knew he was using blood bags because Dr. Van Mantgem and Dr. Leinders were in daily contact.

46. Mr. Rasmussen explained that when the Human Plasma clinic ceased its involvement in the blood doping business, he, along with Matschiner and two other athletes, purchased the clinic's blood transfusion equipment. Rasmussen testified that he informed Dr. Leinders of the purchase.

47. Mr. Rasmussen stated that during the 2007 Giro d'Italia and in preparation for the 2007 Tour de France, Dr. Leinders, at Rasmussen's request, used Rabobank's Sysmex machine, the same machine used by UCI for doping control tests, to analyze the impact of Rasmussen infusing two blood bags during a stage race.

48. During the 2007 Tour de France, Rasmussen had two blood bags infused by Matschiner under the supervision of Dr. Van Mantgem. Dr. Leinders was not present during the 2007 Tour de France, and Rasmussen testified that Leinders "was not directly or indirectly involved in any of the transfusions in 2007. He knew that they would take place but that was about it."[6]

49. Mr. Rasmussen also testified that during his entire tenure with Rabobank, Dr. Leinders and other team doctors provided him with medical certificates for cortisone (*see, e.g.*, Exhibit 42), which they administered through intramuscular injection, although he had no legitimate medical need for cortisone.

50. Mr. Rasmussen further stated that throughout his time on Rabobank, the Rabobank doctors would provide him and other riders with testosterone pills, and that Dr. Leinders had told Rasmussen that he had the pills made at a pharmacy in Belgium for the Rabobank team. Rasmussen further stated that Dr. Leinders kept the pills in a canister labelled A-Zinc, a common vitamin in Holland, to prevent detection.

B. LEVI LEIPHEIMER

51. Levi Leipheimer provided sworn testimony on behalf of USADA pursuant to a cooperation agreement he entered into on May 31, 2012. In that agreement, Mr. Leipheimer admitted to anti-doping rule violations for his use of banned performance enhancing substances and methods over a period of more than eight years. Pursuant to the agreement, Mr. Leipheimer undertook to provide truthful testimony regarding all anti-doping rule violations committed by

[6] Mr. Rasmussen further clarified that for the 2007 Tour de France, "he had made an agreement with Jean-Paul Van Mantgem that he could bring approximately ten half liter bags of saline that I could have injected in the morning of the stages to keep the blood values stable for the UCI tests" but "that had nothing to do with Dr. Leinders."

other cyclists, team directors, managers, doctors and/or other team personnel, of which he has knowledge, in exchange for a 75% reduction of what otherwise would have been a two-year period of ineligibility. USADA also submitted Mr. Leipheimer's sworn affidavit from a prior proceeding.

52. Mr. Leipheimer was a professional cyclist from 1997–2012, riding for Rabobank from January 2002–August 2004.

53. Mr. Leipheimer testified that the first date on which he told any anti-doping organization of Dr. Leinders' involvement in doping was on June 22, 2012, during an interview with USADA in connection with the U.S. Postal Service team investigation.

54. Mr. Leipheimer testified that during his first training camp with Rabobank in January 2002, Dr. Leinders asked about his experience with performance enhancing drugs. Mr. Leipheimer told Dr. Leinders that he previously had used EPO and testosterone.

55. In preparation for the 2002 Tour de France, Mr. Leipheimer discussed and planned his use of EPO with Dr. Leinders.

56. Mr. Leipheimer testified that during the 2002 Tour, Dr. Leinders provided him with testosterone/A-Zinc tablets as well as cortisone for which he had no legitimate medical need.

57. Similarly, in preparation for the 2003 Tour de France, Mr. Leipheimer discussed and planned his use of EPO with Dr. Leinders. Mr. Leipheimer was injured on the first day, however, and thus did not complete the race.

58. Mr. Leipheimer further testified that prior to the 2003 Vuelta a España, Dr. Leinders suggested that he receive a homologous blood transfusion from his brother. After a blood test confirmed that Mr. Leipheimer's and his brother's blood types matched, Dr. Leinders performed the blood transfusion for Mr. Leipheimer. Mr. Leipheimer testified that Dr. Leinders

advised against additional blood transfusions in 2004 because WADA had developed a test for detecting homologous blood transfusions.

59. Mr. Leipheimer also testified that prior to and/or during the 2003 Vuelta a España, he used EPO and testosterone/A-Zinc.

60. Mr. Leipheimer testified that in 2004 he purchased EPO from Dr. Leinders, but could not recall exactly when in 2004 that transaction occurred. Mr. Leipheimer further testified that he used the EPO under Dr. Leinders' supervision up until five days before the Tour de France, which began on July 3, 2004.

61. Mr. Leipheimer stated that Dr. Leinders also provided him with testosterone/A-Zinc during the 2004 Tour de France.

C. JACK ROBERTSON

62. Mr. Robertson, chief investigative officer for WADA, testified that he was present at a March 22, 2013 interview of Stefan Matschiner conducted jointly by WADA, USADA and the Netherlands Anti-Doping Agency ("NAD"), and USADA has submitted his notes from that interview with its post-hearing submissions.[7] According to Mr. Robertson, the information provided by Mr. Matschiner at the interview was consistent with police reports WADA had received regarding the Human Plasma clinic, as well as the testimony Michael Rasmussen had provided to WADA.

63. At the interview, Matschiner stated that he first became involved with the Human Plasma clinic in 2004 through Walter Mayer, an Austrian cross-country ski coach who organized

[7] Mr. Matschiner previously had cooperated in the investigation of Dr. Leinders, but was no longer cooperating at the time of the hearing and declined to testify.

doping activities for athletes at the Human Plasma clinic. By 2005, Matschiner took over from Mayer as Human Plasma's primary point person for coordinating doping operations.

64. According to Matschiner, Rabobank cyclists were first put in contact with the Human Plasma clinic through Michael Boogerd who requested that Denis Menchov, Bernhard Kohl and Michael Rasmussen be given access to the clinic's blood doping facilities.

65. Matschiner told Robertson that either Walter Mayer or Michael Boogerd had told him that Dr. Leinders had on at least one occasion gone to the Human Plasma clinic to oversee the blood withdrawal of Rabobank athletes. Matschiner also claimed "it was Leinders's responsibility to determine when that blood needed to be re-infused during the competition."

66. Matschiner told Robertson that he delivered two blood bags to Dr. Leinders during the 2005 Tour de France, one for Michael Boogerd and one for Denis Menchov. Dr. Leinders paid Matschiner 500€ each for the blood bags, but took only one of the bags and sent the other back to the Human Plasma clinic with Matschiner.

D. STEVEN TEITLER

67. Mr. Teitler, manager of legal affairs for NAD, testified that UCI had provided him with the anonymous results of Rabobank riders' blood tests from 1997–2008, and that he had discussed those results with Mario Zorzoli. During those discussions Zorzoli confirmed that when a blood test reflected a suspicious result, UCI would contact a Rabobank team doctor, either Dr. Leinders or another doctor, to discuss the potential cause of the result. Zorzoli told Teitler that UCI kept in touch with team doctors so that "riders and staff would have the idea that UCI was basically on top of them and they had to be careful with what they would do in terms of doping."

68. Mr. Teitler testified that during NAD's 2013 cycling investigation, seven cyclists, including Michael Rasmussen and Levi Leipheimer, and one athlete support personnel interviewed by NAD identified Dr. Leinders as involved with doping. Mr. Teitler testified that those individuals provided the following information[8]:

(a) Former Rabobank cyclist Danny Nelissen stated that Dr. Leinders provided and injected him with EPO in 1996–1997.

(b) Rider 1 stated that in 2000, 2002 and 2003, on a total of four occasions, Dr. Leinders provided Rider 1 with EPO which Rider 1 paid for in cash.[9] On each occasion, Dr. Leinders would instruct Rider 1 how to use the EPO, when to use it, which dosage to use and how to avoid detection. Rider 1 further stated that when he first approached Dr. Leinders about doping, Dr. Leinders told Rider 1 he would not discuss doping at that time, that Rider 1 first had to discover how good he was without doping, and that they could discuss doping at a later date.

(c) Rider 2 stated that in 2001, Dr. Leinders had a meeting with all Rabobank riders to discuss the new EPO test. Rider 2 further stated that Dr. Leinders told the riders that they needed to keep their hematocrit levels below 50, and that he understood Dr. Leinders' purpose as instructing riders how to avoid getting caught for using EPO. Rider 2 believed his contract with Rabobank was not renewed because he refused to take EPO.

(d) Rider 3 stated that in 1997–1998, Dr. Leinders instructed him to take salt tablets to reduce his naturally high hematocrit level. Rider 3 also stated that Dr. Leinders provided him with a centrifuge to monitor his hematocrit level. Rider 3 believed that Dr. Leinders thought he was a risk to the team because, given his naturally high hematocrit, if he used EPO he would test positive.

(e) Rider 4 stated that when he joined Rabobank in 1996, he told Dr. Leinders he was using EPO, growth hormone and corticosteroids, and Dr. Leinders told him he could continue to use those substances. Rider 4 did not recall whether Dr. Leinders ever provided him with any prohibited substances, but did recall having many discussions about doping with Dr. Leinders, including what to use, how and when. Rider 4 also stated that from 1996–

[8] Because Michael Rasmussen and Levi Leipheimer testified directly in this proceeding, Mr. Teitler did not discuss the details of the information they had provided to him.

[9] A number of individuals provided information to NAD on the condition of anonymity, and thus were identified for purposes of this proceeding as "Rider 1", "Rider 2", etc.

1997, Dr. Leinders explained to him how blood doping worked, referred Rider 4 to a Netherlands doctor who could assist with blood doping, and explained to Rider 4 when to have blood withdrawn and re-infused.

(f) Athlete Support Personnel 1 stated that Dr. Leinders provided athletes with testosterone disguised as A-Zinc food supplements sometime between 2005 and 2008.

69. Mr. Teitler testified that NAD's investigation evidenced that "Dr. Leinders was very active in terms of doping. He had many discussions and regular discussions with riders about doping. . . . So he discussed it, doping. I mean he provided doping. He advised riders what to use, when to use, how to use and he advised riders on how to avoid getting caught. He would assist in setting up a way to engage in blood doping or even assist them to engage in blood doping." Mr. Teitler described Dr. Leinders as "the linchpin in terms of doping on team Rabobank."

70. Mr. Teitler described the levels of doping activity that occurred on the Rabobank team. For young riders, Dr. Leinders would tell them they should not dope immediately, but instead ride without doping to determine their natural ability, while leaving open the possibility for doping in the future. For more experienced riders, Dr. Leinders would either approve doping for riders who had independent access to prohibited substances, or for those without access, the riders would pay Dr. Leinders to provide them with prohibited substances. Finally, for the elite grand tour riders, Dr. Leinders would provide those riders with prohibited substances and assist them in accessing advanced doping programs.

71. Mr. Teitler testified that he had conversations with Dr. Leinders' counsel in 2013 regarding a potential assistance agreement in an effort to gain information about Rabobank team directors Jan Ras, Theo De Rooij and Erik Breukink, as well as information about sponsor Rabobank, but no agreement was reached.

E. DR. YORCK OLAF SCHUMACHER

72. Dr. Schumacher specializes in the fields of internal and sports medicine and was a cycling team physician for approximately ten years. Dr. Schumacher also was involved in the development of the athlete biological passport.

73. Dr. Schumacher testified regarding the expert report he submitted to the Panel (Exhibit 59), analyzing the anonymous results of Rabobank riders' blood tests provided by UCI for the time period from 1997–2008, and comparing it to a control group.

74. Dr. Schumacher explained that during EPO administration, reticulocyte values will be high, whereas once EPO administration has ceased reticulocytes will be low.[10] Dr. Schumacher further explained that when blood is withdrawn for an autologous blood transfusion, reticulocytes will be high; once the blood is re-infused, reticulocytes will be low.

75. Dr. Schumacher's analysis revealed that the blood data of the Rabobank group had a broader distribution and more extreme/abnormal reticulocyte values (both high and low) than the control group. Dr. Schumacher testified that Rabobank's data reflected more abnormally high reticulocyte values prior to introduction of the EPO test in 2002, and more abnormally low reticulocyte values after introduction of the EPO test, suggesting that Rabobank cyclists adjusted the timing of their EPO use—altering the pattern of administration from during competition to before competition—to avoid detection under the new test.

76. Dr. Schumacher further testified that a comparison of Rabobank's and the control group's OFF scores, a metric based on both reticulocytes and hemoglobin concentration,

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[10] Reticulocytes are non-mature red blood cells and reticulocyte values indicate whether the bone marrow is producing new red blood cells. According to Dr. Schumacher, EPO administration stimulates the production of new red blood cells and thus reticulocyte values are high during EPO use. Given the abundance of red blood cells in an athlete's system from EPO use, the bone marrow will cease producing new red blood cells after EPO use, thus resulting in a low reticulocyte value.

reflected similar results, with Rabobank having significantly more abnormal OFF scores than the control group.

77. Dr. Schumacher testified that while he would expect approximately 1 in 1000 abnormal samples absent blood doping, during the 2006 and 2007 Tours de France, the Rabobank team—consisting of nine riders per year—had several abnormal samples, suggesting blood manipulation.

78. Dr. Schumacher concluded that the Rabobank blood data reflected a significant number of abnormalities characteristic of EPO use and blood transfusions, and that blood transfusions, because of their complex nature, might have involved skilled help.

F. DR. LARRY BOWERS

79. Dr. Bowers, Chief Science Officer at USADA, has been employed in the area of anti-doping for approximately 22 years.

80. Dr. Bowers testified regarding the performance enhancing effects of EPO, blood transfusions, testosterone, corticosteroids, insulin and LH. Dr. Bowers further testified regarding the common methods of administration and available testing methods for detection of those substances. Dr. Bowers also described the significant and potentially serious health risks associated with use of the aforementioned substances without a legitimate medical need.

81. Specifically, Dr. Bowers explained that EPO "increases red blood cell mass and . . . the more dense the blood becomes the harder it is to pump it." As a result, EPO use increases the "risks of stroke" and "risks associated with cardiac function."

82. Dr. Bowers testified that blood transfusions create the risk of "transmitting some kind of an infection that could potentially be fatal." Moreover, if the transfused blood does not match the athlete's blood, the athlete risks a "blood reaction" potentially resulting in "kidney failure and other things if it's a large enough problem." Dr. Bowers explained that "there are all kinds of other

complications that could occur [from blood transfusions] mainly related to infections but significant risks to re-infusing blood that hasn't been handled appropriately."

83. Dr. Bowers stated that the use of exogenous testosterone can "increas[e] clotting that can occur in the legs," "cause[] cardiovascular issues," "increase [the] risk of heart attack" by diminishing good cholesterol, and be "the cause of or consistent with development of prostatic cancer."

84. In addition, Dr. Bowers explained that the nontherapeutic use of corticosteroids, which suppress the immune system, for repeated or sustained periods of time "could facilitate" illness, increase the risk of bone fractures, and reduce the "normal responsiveness to the things that should happen when [one's] body is exposed to stress [and that] can have very, very serious effects." According to Dr. Bowers, "you can't just take corticosteroids for a while and then suddenly stop because that can cause some serious medical side effects."

85. Dr. Bowers also testified that intravenously administered insulin can "cause . . . a precipitous drop in your blood glucose, which could put you into a diabetic coma," resulting in a loss of consciousness and possibly death.

86. Dr. Bowers further testified that the nontherapeutic use of LH increases testosterone levels and thus is associated with the same adverse health effects caused by use of exogenous testosterone, as described above.

87. Finally, Dr. Bowers testified that EPO, blood transfusions, testosterone, corticosteroids, insulin and LH have been on WADA's list of prohibited substances and methods for at least the past decade.[11]

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[11] Corticosteroids (a/k/a glucocorticosteroids), which Dr. Bowers acknowledged are substances that have legitimate uses, are designated as "specified substance[s]" under the WADC. "Specified substances" are those "particularly susceptible to unintentional anti-doping rules violations because of their general availability in medicinal products or which are less likely to be successfully abused as doping agents." *(cont'd)*

V. JURISDICTION AND RESULTS MANAGEMENT RESPONSIBILITY

88. Dr. Leinders' counsel acknowledged that Dr. Leinders held a Belgian cycling license while working for Rabobank, thus subjecting him to the UCI Anti-Doping Rules. *See* UCI ADR Art. 2 (2001–2004); UCI ADR Art. 1 (2005–2008); UCI ADR Art. 1 (2009–2014). Moreover, even if Dr. Leinders had not held a cycling license, his activities as chief team doctor for the Rabobank cycling team would cause him to be treated as a "License-Holder" subject to the UCI Anti-Doping Rules.[12] The Panel therefore concludes that Dr. Leinders was at all relevant times subject to the UCI Anti-Doping Rules.

89. USADA is the National Anti-Doping Organization of the United States and an Anti-Doping Organization for purposes of the WADC and the UCI ADR. *See* WADC Appendix 1[13]; UCI ADR Appendix 1 (2005–2008); UCI ADR Appendix 1 (2009–2014). Article 10 of UCI ADR (2005–2008) and Article 11 of UCI ADR (2009–2014) provide that, in the case of an anti-doping violation not involving a sample collection (i.e., a "non-analytical case") discovered by an Anti-Doping Organization other than the UCI, the rules of that other Anti-Doping Organization will apply to the violation. Further, when a National Anti-Doping Organization discovers an anti-doping violation by a "foreign or non-resident" individual, the UCI ADR provide that results management and the conduct of hearings for that violation are administered

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WADC Art. 10.3 (2003). A doping violation involving a specified substance may result in a reduced sanction where "the *Use* of such a specified substance was not intended to enhance sport performance." *Id.*

[12] The term "License-Holder" is defined in Appendix 1 of UCI ADR (2005–2008) to include any person who, without being the holder of a license, participates in a cycling event in any capacity, including as a team staff member or medical personnel. Provisions of similar effect are contained in Article 18 of UCI ADR (2009–2014). *See also USADA v. Bruyneel*, AAA No. 77 190 00225 12 (2014) (concluding that a Spanish physician who worked for the U.S. Postal Service and Discovery Channel cycling teams from 2004–2007 without a license from the Spanish cycling federation was subject to UCI ADR).

[13] All references to WADC are to WADC (2003) unless otherwise noted.

by and under the rules of that National Anti-Doping Organization. UCI ADR Art. 11 (2005–2008); UCI ADR Art. 13 (2009–2014).[14]

90. Dr. Leinders' alleged violations of the UCI ADR were first discovered by USADA during a June 22, 2012 interview of Levi Leipheimer in connection with its investigation of the U.S. Postal Service team. USADA's investigation of Dr. Leinders continued and culminated in the Charging Letter. The Panel is not aware of any evidence that any other Anti-Doping Organization had knowledge of the alleged doping offenses charged in this matter prior to USADA's interview of Mr. Leipheimer. Accordingly, the Panel concludes that USADA properly exercised results management authority over this case and properly exercised the right to enforce the UCI ADR against Dr. Leinders with respect to the violations alleged in the Charging Letter, subject to the applicable statute of limitations as discussed below.

[14] On January 1, 2015, UCI issued revised anti-doping rules that no longer include the cited results management provisions. The revised rules provide UCI with primary results management authority and jurisdiction "[f]or potential violations of [the UCI ADR] where no *Testing* is involved: a) for all violations involving *International-level Riders*, *Rider Support Personnel* or other *Persons* who have an involvement in any capacity in *International Events* or with *International-level Riders*, b) for all violations occurring in connection with—or discovered on the occasion of—an *International Event*." UCI ADR Art. 7.1.1.2 (2015). The 2015 UCI ADR, however, specifically state that "[t]hese Anti-Doping Rules shall not apply retroactively to matters pending before the date the *Code* is accepted by a *Signatory* and implemented in its rules," except in two limited circumstances, namely the statute of limitations under Article 17 and consideration of multiple violations under Article 10.7.5. UCI ADR Art. 24.5, 25.2 (2015). For the reasons discussed below, *see infra* note 15, the statute of limitations does not apply retroactively in this case. Further, while this case involves multiple violations, retroactive application of UCI ADR Article 10.7.5, which states that "each anti-doping violation must take place within the same ten-year period in order to be considered for multiple violations," does not alter the Panel's analysis; all anti-doping violations considered by the Panel in imposing a lifetime sanction on Dr. Leinders occurred from 2004–2007 and thus within a ten-year period. In addition, the Panel notes that the "results management" of this case, including USADA's issuance of notice and charges to Dr. Leinders, the Panel's holding of a hearing, and the closing of the evidentiary record, all occurred prior to the January 1, 2015 effective date of the new UCI ADR. The UCI ADR (2015) results management rules therefore do not govern this action.

VI. STATUTE OF LIMITATIONS

91. Any action for a violation of the UCI ADR must be "commenced within eight (8) years from the date the violation occurred." UCI ADR Art. 307 (2005–2008); UCI ADR Art. 368 (2009–2014). Moreover, "any act of investigation . . . shall be considered as commencement of the action for the purpose of this article." *Id.* These provisions went into effect on August 13, 2004; prior to that date, the UCI ADR did not provide any statute of limitations regarding the commencement of actions for anti-doping rule violations. The Panel concludes that the eight-year statute of limitations in effect since August 13, 2004 applies to the claims at issue.[15]

92. The Panel finds that USADA's first act of investigation of Dr. Leinders occurred on June 22, 2012, the date on which Levi Leipheimer first provided USADA with credible testimony that Dr. Leinders committed anti-doping violations. Accordingly, the Panel concludes that USADA is entitled to proceed against Dr. Leinders for violations of the UCI ADR that occurred on or after June 22, 2004.

VII. BURDEN OF PROOF, METHODS OF ESTABLISHING ANTI-DOPING VIOLATIONS AND ADVERSE INFERENCES

93. USADA bears the burden of proving to the comfortable satisfaction of the Panel, and bearing in mind the seriousness of the allegations made, that an anti-doping rule violation has occurred. UCI ADR Art. 16 (2005–2008); UCI ADR Art. 22 (2009–2014); WADC Art. 3.1.

[15] While Article 17 of the new UCI ADR (2015) provides for a ten-year statute of limitations, Article 25.2 states, "the statute of limitations set forth in Article 17 [is a] procedural rule[] and should be applied retroactively; provided, however, that Article 17 shall only be applied retroactively if the statute of limitation period has not already expired by the Effective Date." Because the statute of limitations for all acts occurring before June 22, 2004, the starting date for purposes of the prior eight-year statute of limitations, has already expired, the new ten-year statute of limitations does not apply retroactively to extend the statute of limitations to reach those acts.

94. USADA must establish an anti-doping violation under the substantive anti-doping rules in effect when such violation occurred; here, the UCI anti-doping rules effective from June 22, 2004 through 2007, and the corresponding provisions of the 2003 WADC.[16]

95. Pursuant to WADC 3.2, "[f]acts related to anti-doping rule violations may be established by any reliable means, including admissions."[17] Circumstantial evidence and witness testimony may be used to establish an anti-doping rule violation, which does not require proof of a positive drug test. *See, e.g., ASADA v. Wyper*, CAS A4/2007; *USADA v. Gaines*, CAS 2004/O/649; *USADA v. Montgomery*, CAS 2004/O/645; *USADA v. Block*, AAA No. 77 190 00154 10 (2011); *USADA v. Stewart*, AAA No. 77 190 110 (2010); *USADA v. O'Bee*, AAA No. 77 190 00515 09 (2010); *USADA v. Leogrande*, AAA No. 77 190 00111 08 (2009); *USADA v. Collins*, AAA 30 190 00658 04 (2004).

96. Article 3.2.4 of the 2009 WADC is a rule of evidence applicable to this proceeding[18] through its incorporation into the USADA Protocol.[19] That provision provides:

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[16] USADA has failed to present evidence to the Panel's comfortable satisfaction that Dr. Leinders committed any anti-doping rule violations after 2007, and thus the Panel need only consider the substantive rules in effect after 2007 for purposes of *lex mitior*. WADC 25.2 (2009) ("With respect to 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, the case shall be governed by the substantive anti-doping rules in effect at the time the alleged anti-doping rule violation occurred unless the panel hearing the case determines the principle of 'lex mitior' appropriately applies under the circumstances of the case."); *see also* WADC 25.2 (2015). Under the principle of *lex mitior*, when the law relevant to the offense has been amended, the accused receives the benefit of the less severe/more favorable law. *See E. & A. v. International Biathlon Union*, CAS 2009/A/1931, at ¶24.

[17] This provision is identical in the 2003, 2009 and 2015 WADC.

[18] Rules of evidence setting forth the means by which an anti-doping offense may be established are "laws and rules relating to procedural matters [that] apply immediately upon entering into force and regardless of when the facts at issue occurred." *Susin v. FINA*, CAS 2000/A/274 at ¶73; *see also Pechstein & DEG v. ISU*, CAS 2009/A/1912 at ¶109 ("As long as the substantive rule sanctioning a given conduct as doping is in force prior to the conduct, the resort to a new evidentiary method does not constitute a case of retrospective application of the law.").

> The hearing panel in a hearing on an anti-doping rule violation may draw an inference adverse to the *Athlete* or other *Person* who is asserted to have committed an anti-doping rule violation based on the *Athlete*'s or other *Person*'s refusal, after a request made in a reasonable time in advance of the hearing, to appear at the hearing (either in person or telephonically as directed by the hearing panel) and to answer questions from the hearing panel or the *Anti-Doping Organization* asserting the anti-doping rule violation.

See also WADC Art. 3.2.5 (2015).

97. Courts have ruled it is appropriate and lawful for a tribunal to draw an adverse inference against a respondent in a disciplinary proceeding who refuses to answer questions, including one in which sanctions may be imposed for the respondent's violation of a sports organization's code of conduct. In *Butler v. Oak Creek-Franklin School District*, 172 F. Supp. 2d 1102, 1126 (E.D. Wis. 2001), a federal district court explained:

> [T]he Supreme Court held in *Baxter v. Palmigiano*, 425 U.S. 308, 318, 96 S.Ct. 1551, 47 L.Ed.2d 810 (1976), that the Fifth Amendment does allow an adverse inference to be drawn against parties in non-criminal proceedings "when they refuse to testify in response to *probative evidence offered against them* " (emphasis added). *See also Harris v. City of Chicago*, 266 F.3d 750, 752–53 (7th Cir. 2001) (same, quoting *Baxter v. Palmigiano*). Thus, if a decision-maker has independent evidence that someone has engaged in misconduct, the decision-maker may constitutionally consider the person's silence as additional supporting evidence. In short, where there is other evidence of misconduct, . . . silence may properly become an additional factor pointing towards a guilty finding. *Morale v. Grigel*, 422 F. Supp. 988, 1003 (D.N.H. 1976).

98. Because Dr. Leinders refused to participate in the August 12, 2014 hearing despite his July 26, 2013 request for the hearing and USADA's August 4, 2014 written request that he appear to answer questions from USADA and the Panel, USADA asks the Panel to draw

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[19] Paragraph 3(a) of the USADA Protocol states that "Articles of the [WADC] set forth in Annex A which is incorporated by reference into the USADA Protocol shall apply in all cases." *USADA Protocol* at p. 3.

adverse inferences regarding Dr. Leinders' 1) "guilty knowledge and wrongful intent to violate the [charged] anti-doping rules;" 2) "willful disregard of the health risks to riders and coercive nature of [his] involvement in doping as a medical professional and member of the Rabobank cycling team board of directors;" and 3) "concealment and cover up of doping activities and failure to accept responsibility." USADA requests that the Panel draw these adverse inferences primarily to prove aggravating factors supporting its contention that lifetime ineligibility is an appropriate and justified sanction for Dr. Leinders' anti-doping violations.

99. Although it has valid and lawful authority to do so, the Panel finds it unnecessary to draw any adverse inferences against Dr. Leinders, including the specific adverse inferences requested by USADA, based on his refusal to appear and testify at the hearing.[20] USADA has presented uncontroverted testimonial and documentary evidence that Dr. Leinders committed each of the charged anti-doping violations, as well as direct and circumstantial evidence of aggravating factors that justify imposition of lifetime ineligibility as a sanction for those violations. Under such circumstances, where there is "uncontroverted evidence of such a direct and compelling nature, there is simply no need for any additional inference to be drawn from the Respondent's refusal to testify." *USADA v. Gaines*, CAS 2004/O/649 at ¶58; *USADA v. Montgomery*, CAS 2004/O/645 at ¶55.

[20] In an anti-doping arbitration proceeding, the panel is not required to draw an adverse inference merely from a respondent's refusal to testify. *USADA v. Bruyneel*, AAA 77 190 00225 12 (2014) at ¶72 ("While WADC Section 3.2.4 is unclear on what kind of adverse inference may be drawn and there is no definition of its scope, it is clear that Section 3.2.4 is permissive and not mandatory."); *USADA v. Collins*, AAA 30 1900000658 04 (2004) at ¶3.9 (observing "there is no rule obligating a Tribunal to draw an adverse inference").

VIII. ANTI-DOPING VIOLATIONS

100. As an initial matter, the Panel finds that both Michael Rasmussen and Levi Leipheimer provided credible testimony that Dr. Leinders committed anti-doping violations on or after June 22, 2004. The witnesses provided detailed testimony regarding specific doping occurrences and conversations, and that testimony was consistent with the information uncovered by NAD during its investigation and Mr. Robertson's interview of Stefan Matschiner.[21] Further, the testimony of Mr. Rasmussen was in several instances also corroborated by contemporaneous documentary evidence. The Panel concludes that Mr. Rasmussen and Mr. Leipheimer provided truthful testimony, and notes that their testimony stands uncontroverted.

101. The Panel also finds that EPO, blood transfusions, testosterone, insulin, DHEA, and LH were on WADA's list of prohibited substances and prohibited methods—whether used in or out-of-competition—from June 22, 2004 through 2007, the time period within the statute of limitations during which Dr. Leinders' anti-doping violations occurred. During this time period, glucocorticosteroids (a/k/a corticosteroids) were a prohibited substance when used in competition and administered intramuscularly.[22]

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[21] Moreover, while Dr. Schumacher's analysis of Rabobank's blood data does not provide direct evidence of Dr. Leinder's doping offenses, his analysis does confirm Mr. Rasmussen's and Mr. Leipheimer's testimony that doping was occurring on the Rabobank cycling team during the relevant period.

[22] WADA's Prohibited List states that "[a]ll glucocorticosteroids are prohibited when administered orally, rectally, intravenously or intramuscularly [and] [t]heir use requires a Therapeutic Use Exemption approval."

A. POSSESSION OF PROHIBITED SUBSTANCES/METHODS

102. Under UCI ADR Article 15.6 (2005–2008), possession of prohibited substances or methods constitutes an anti-doping rule violation.[23] "Possession" is defined as:

> The actual, physical possession, or the constructive possession (which shall be found only if the person has exclusive control over the *Prohibited Substance/Method* or the premises in which a *Prohibited Substance/Method* exists); provided, however, that if the person does not have exclusive control over the *Prohibited Substances/Method* or the premises in which a *Prohibited Substance/Method* exists, constructive possession shall only be found if the person knew about the presence of the *Prohibited Substance/Method* and intended to exercise control over it. Provided, however, there shall be no anti-doping rule violation based solely on possession if, prior to receiving notification of any kind that the *Person* has committed an anti-doping rule violation, the *Person* has taken concrete action demonstrating that the *Person* no longer intends to have *Possession* and has renounced the *Person's* previous *Possession*.

UCI ADR Appendix 1 (2005–2008).

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[23] Unless otherwise noted, all references to the UCI ADR hereinafter are to the UCI ADR (2005–2008), effective as of August 13, 2004, the version in effect throughout most of the relevant period. The Panel recognizes, however, that for acts occurring between June 22, 2004 and August 12, 2004, the prior version of the UCI ADR (hereinafter, "UCI ADR (2004)") applies. While UCI ADR (2004) did not specifically identify "possession" as a separate doping offense, acts of possession under those rules were prohibited under Article 3(3), Article 133 and/or Article 135. *See* UCI ADR Art. 3(3) (2004) ("Recommending, proposing, authorising, condoning or facilitating the use of any substance or method covered by the definition of doping or trafficking is also forbidden."); Art. 133 (prohibiting "complicity," defined to include any "contribut[ion] directly or indirectly to doping a rider, including inter alia recommending, proposing, authorising, permitting, tolerating or facilitating the use of a substance or method which is defined as doping"); Art. 135 (prohibiting "trafficking" defined to occur "when a person, without having expressly received prior authorisation from the competent body: (a) manufactures, extracts, transforms, prepares, stores, despatches, transports, imports, exports, handles, offers subject to payment or free of charge, distributes, sells, exchanges, brokers, obtains in any form, prescribes, markets, makes over, accepts, possesses, holds, buys or acquires prohibited substances in any manner; (b) takes any measure to this end, finances such substances or serves as an intermediary for their financing, provokes in any way the consumption or use of such substances, or establishes means of procuring or consuming such substances; (c) is party to prohibited methods").

103. The Panel heard credible testimony setting forth numerous instances when Dr. Leinders was in possession of prohibited substances and/or methods on or after June 22, 2004, including:

- Dr. Leinders possessed insulin during the 2004 and 2005 Tours de France.
- Dr. Leinders possessed blood transfusion paraphernalia during the 2004 and 2005 Tours de France.[24]
- Dr. Leinders possessed LH during the 2005 Tour de France.
- Dr. Leinders possessed DHEA in 2005 up until the Tour of Germany.[25]
- From 2004–2007, Dr. Leinders possessed corticosteroids and administered intramuscular injections to Michael Rasmussen without any legitimate medical need.
- From 2004–2007, Dr. Leinders possessed testosterone disguised as A-Zinc.

104. The Panel concludes that USADA has met its burden of demonstrating to the Panel's comfortable satisfaction that on or after June 22, 2004 through 2007, Dr. Leinders possessed prohibited substances and/or methods.

B. TRAFFICKING OF PROHIBITED SUBSTANCES/METHODS

105. Under UCI ADR Article 15.7 (2005–2008), trafficking in any prohibited substance or prohibited method constitutes an anti-doping rule violation.[26] "Trafficking" is defined as:

> To sell, give, administer, transport, send, deliver or distribute a *Prohibited Substance* or *Prohibited Method* to any *Person* either

[24] As noted by the Panel in *USADA v. Bruyneel*, AAA Case No. 77 190 0022512 at ¶177, credible witness testimony that a respondent administered prohibited substances necessarily establishes possession of prohibited substances since a respondent "could not accomplish [administration] without having possession of prohibited substances or the accouterments of prohibited methods."

[25] Because Mr. Rasmussen could not recall whether Mario Zorzoli recommended that Dr. Leinders start giving Rabobank riders DHEA in 2004 or 2005, USADA has not established to the Panel's comfortable satisfaction that Dr. Leinders possessed DHEA in 2004.

[26] *See also* UCI ADR Art. 135 (2004) (prohibiting trafficking of prohibited substances).

> directly or through one or more third parties, but excluding the sale or distribution (by medical personnel or by *Persons* other than a *Rider's Support Personnel*) of a *Prohibited Substance* for genuine and legal therapeutic purposes.

UCI ADR Appendix 1 (2005–2008).[27]

106. USADA has presented credible evidence that Dr. Leinders trafficked in prohibited substances and/or methods on or after June 22, 2004, including:

- During the 2004 and 2005 Tours de France, Dr. Leinders received courier shipments of Michael Rasmussen's blood for transfusion.
- During the 2005 Tour de France, Dr. Leinders received and paid for delivery of blood bags for Michael Boogerd and Denis Menchov.
- From 2004–2007, Dr. Leinders had a Belgian pharmacy manufacture testosterone pills disguised as A-Zinc for Rabobank riders.

107. The Panel concludes that USADA has met its burden of demonstrating to the Panel's comfortable satisfaction that on or after June 22, 2004 through 2007, Dr. Leinders trafficked in prohibited substances and/or methods.[28]

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[27] In its post-hearing brief, USADA seeks to rely on the broad definition of "trafficking" set forth in UCI ADR (2004) to argue that a trafficking "violation occurred every time Leinders as a team physician and board member became aware of doping on his team and permitted or tolerated it while failing to eliminate it or report it to the UCI." The Panel finds, however, that the trafficking definition relied upon by USADA applies only to conduct occurring from June 22, 2004–August 12, 2004, and does not apply to conduct occurring on or after August 13, 2004. Moreover, while the Panel recognizes that trafficking as defined in the UCI ADR (2005–2008), reaches acts of "giv[ing]" and "administer[ing]" prohibited substances, the Panel need not address the difficult issue of whether simple administration necessarily constitutes trafficking or whether "[t]o read this offense as the same as administration would be inconsistent with a plain reading of the WADC." *Bruyneel* at ¶178. USADA has proven to the Panel's comfortable satisfaction independent acts of trafficking, and under the relevant UCI ADR, trafficking and administration carry the same period of ineligibility of four years to life, thus negating the need for the Panel to resolve this issue.

[28] The Panel notes that while USADA also presented credible evidence that Dr. Leinders sold Mr. Leipheimer EPO in 2004, USADA has failed to demonstrate to the Panel's comfortable satisfaction that this transaction occurred on or after June 22, 2004.

C. ADMINISTRATION/ATTEMPTED ADMINISTRATION OF PROHIBITED SUBSTANCES/METHODS

108. Under UCI ADR Article 15.8 (2005–2008), administration and/or attempted administration[29] of any prohibited substance or method constitutes an anti-doping rule violation.[30]

109. The Panel heard credible testimony setting forth several instances when Dr. Leinders administered and/or attempted to administer prohibited substances and/or methods on or after June 22, 2004, including:

- Dr. Leinders administered and/or attempted to administer blood transfusions to Mr. Rasmussen at the 2004 and 2005 Tours de France.
- Dr. Leinders administered and/or attempted to administer an LH injection to Mr. Rasmussen during the 2005 Tour de France.
- Dr. Leinders administered and/or attempted to administered cortisone, by means of intramuscular injection, to Mr. Rasmussen without any legitimate medical need from 2004–2007.

110. The Panel concludes that USADA has met its burden of demonstrating to the Panel's comfortable satisfaction that on or after June 22, 2004 through 2007, Dr. Leinders administered and/or attempted to administer prohibited substances and/or methods.

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[29] "Attempt" is defined as "[p]urposely engaging in conduct that constitutes a substantial step in a course of conduct planned to culminate in the commission of an anti-doping rule violation. Provided, however, there shall be no anti-doping rule violation based solely on an *Attempt* to commit a violation if the *Person* renunciates the attempt prior to it being discovered by a third party not involved in the *Attempt*." UCI ADR Appendix 1 (2005–2008).

[30] Although UCI ADR (2004) did not specifically identify "administration" as a separate offense, acts of administration and/or attempted administration were prohibited under Article 3(3) and Article 133 ("Complicity"). As discussed above, *see supra* notes 23 & 27, UCI ADR (2004) applies only to acts occurring between June 22, 2004–August 12, 2004, and acts occurring on or after August 13, 2004 are governed by UCI ADR (2005–2008) (effective as of August 13, 2004). Because, however, violations for "complicity" under Article 133 of UCI ADR (2004) and "administration" under UCI ADR Article 15.8 (2005–2008) carry the same penalty, the effect of finding a violation under either provision is the same.

D. ASSISTING, ENCOURAGING, AIDING, ABETTING, COVERING UP AND OTHER COMPLICITY IN ANTI-DOPING RULE VIOLATIONS

111. Under UCI ADR Article 15.8 (2005–2008), assisting, encouraging, aiding, abetting, covering up or any other type of complicity involving an anti-doping rule violation or any attempted violation constitutes an anti-doping rule violation.[31]

112. USADA has presented substantial evidence that Dr. Leinders assisted, encouraged, aided, abetted, covered up and was otherwise complicit in anti-doping rule violations or attempted anti-doping rule violations on or after June 22, 2004, including:

- Dr. Leinders kept insulin on the team bus during the 2004 and 2005 Tours de France and had insulin delivered to Mr. Rasmussen each night during those races.
- Dr. Leinders supervised Mr. Leipheimer's use of EPO in preparation for the 2004 Tour de France.[32]
- Dr. Leinders assisted Mr. Rasmussen with blood transfusions during the 2004 and 2005 Tours de France.
- Dr. Leinders assisted Mr. Rasmussen with an LH injection during the 2005 Tour de France.
- Dr. Leinders assisted Michael Boogerd and Denis Menchov in receiving blood transfusions during the 2005 Tour de France.
- Dr. Leinders assisted Mr. Rasmussen with use of DHEA in 2005.
- Dr. Leinders advised Mr. Rasmussen in 2005 to contact Michael Boogerd so that he could gain access to the Human Plasma clinic for advanced blood doping.

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[31] *See also* UCI ADR Art. 133 (2004) (defining "complicity" as any "contribut[ion] directly or indirectly to doping a rider, including inter alia recommending, proposing, authorising, permitting, tolerating or facilitating the use of a substance or method which is defined as doping").

[32] The Panel notes that according to the "2004 Tour de France Stages" document provided by USADA (Exhibit 78), the Tour began on July 3, 2004. Accepting as true that Mr. Leipheimer ceased use of EPO five days prior to the beginning of the Tour, the only use of EPO by Mr. Leipheimer occurring within the statute of limitations, and thus considered by the Panel, was from June 22–28, 2004.

- Dr. Leinders assisted Mr. Rasmussen with blood doping during the 2007 Giro d'Italia by testing his blood with Rabobank's Sysmex machine to assess the impact of Mr. Rasmussen infusing two bags of blood during a single stage race.

- Dr. Leinders wrote Mr. Rasmussen false medical certificates for cortisone from 2004–2007.

- Dr. Leinders had testosterone pills manufactured, distributed them to Rabobank cyclists and disguised those pills as A-Zinc to avoid detection.

113. The Panel concludes that USADA has met its burden of demonstrating to the Panel's comfortable satisfaction that on or after June 22, 2004 through 2007, Dr. Leinders assisted, encouraged, aided, abetted, covered up and was otherwise complicit in anti-doping rule violations.

IX. SANCTION

114. Pursuant to UCI ADR Article 261 (2005–2008), as well as Article 10.2 of the 2003 WADC, Dr. Leinders is subject to a two-year period of ineligibility as sanction for possession of prohibited substances and methods.[33] However, because the Panel has found that Dr. Leinders has committed multiple doping offenses, under UCI ADR 269 (2005–2008) and Article 10.6.1 of the 2003 WADC, all offenses are, under the circumstances presented in this case, "considered as one single first violation, and the sanction imposed shall be based on the

[33] As discussed above, *see supra* note 23, for acts of possession committed by Dr. Leinders between June 22, 2004–August 12, 2004, the substantive provisions of UCI ADR (2004) apply. While UCI ADR (2004) did not specifically identify "possession" as a separate doping offense, acts of possession under those rules were prohibited under Article 3(3), Article 133 and/or Article 135. However, because Article 133 carried a minimum suspension of four years and Article 135 carried a mandatory lifetime suspension, under the doctrine of *lex mitior* Dr. Leinders receives the benefit of the lesser sanction under UCI ADR (2005–2008) for acts of possession committed between June 22, 2004–August 12, 2004. Moreover, while the 2015 UCI ADR and WADC provide for a sanction of four years of ineligibility for possession offenses unless the person who committed the anti-doping violation proves it was not intentional, these provisions do not apply retroactively. *See supra* note 14.

violation that carries the more severe sanction."[34] As described below, the sanction for Dr. Leinders' prohibited acts of trafficking and administration of prohibited substances and/or methods is more severe than the sanction for possession, and thus shall apply.

115. Pursuant to UCI ADR Art. 263(2) (2005–2008),

> For violations of article 15.7 (*Trafficking*) or article 15.8 (administration of *Prohibited Substance* or *Prohibited Method*), the period of *Ineligibility* imposed shall be a minimum of 4 (four) years up to lifetime *Ineligibility*. An anti-doping rule violation involving a *Minor* shall be considered a particularly serious violation, and, if committed by *Rider Support Personnel* for violations other than specified substances referenced in article 262, shall result in lifetime *Ineligibility* for such *Rider Support Personnel*.[35]

See also WADC Art. 10.4.2 (2003); WADC Art. 10.3.3 (2015).[36]

116. The UCI ADR and WADC allow for the elimination and/or reduction of the minimum four-year period of ineligibility in exceptional circumstances. *See* UCI ADR 265 (2005–2008); WADC Art. 10.5 (2003); WADC 10.5 (2009). Because Dr. Leinders did not

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[34] The 2015 WADC contains a nearly identical provision.

[35] Under UCI ADR 135(1) (2004), the sanction for trafficking of prohibited substances was mandatory lifetime ineligibility. The currently applicable sanction for trafficking, however, is a minimum of four (4) years up to lifetime ineligibility. Under the doctrine of *lex mitior*, Dr. Leinders receives the benefit of the lesser sanction provided by the current rules, and thus for acts of trafficking committed by Dr. Leinders from June 22, 2004–August 12, 2004, the applicable sanction is four years up to lifetime ineligibility, rather than mandatory lifetime ineligibility.

[36] Under the UCI ADR (2005–2008), this provision, by definition, also provided the sanction for prohibited acts of assisting, encouraging, aiding, abetting, covering up and otherwise being complicit in the commission of anti-doping rule violations. *See* UCI ADR Art. 15.8 (2005–2008). But under the 2015 UCI ADR, the sanction for complicity offenses "shall be a minimum of two years, up to four years, depending on the seriousness of the violation." UCI ADR Art. 10.3.4 (2015). While under the doctrine of *lex mitior*, Dr. Leinders receives the benefit of the current sanction for his complicity offenses, as discussed above, the Panel has found that Dr. Leinders has committed multiple doping offenses, and thus under UCI Article 269 (2005–2008) and WADC Article 10.6.1, the sanction imposed is based on the violation carrying the more severe sanction, i.e. the sanction for trafficking and administration of prohibited substances and methods.

provide any testimony or other evidence at the hearing, the Panel finds there are no exceptional circumstances that would justify an elimination or reduction of the minimum four-year sanction.

117. Neither UCI ADR Article 263(2) (2005–2008) nor the corresponding provisions of the WADA Code list any factors to be considered in determining the appropriate sanction to be imposed within the range of four years to lifetime ineligibility.[37] The Panel notes though that the Comment to Article 10.4.2 of the 2003 WADC states: "Those who are involved in doping *Athletes* or covering up doping should be subject to sanctions which are more severe than the *Athletes* who test positive." *Accord* Comment to WADC Art. 10.3.3 (2015).[38]

118. Anti-doping arbitration panels have determined that the following aggravating factors are relevant in determining whether a sanction longer than the prescribed four-year minimum period of ineligibility is appropriate and should be imposed on athlete support personnel: "lead[ing] an athlete into danger of using prohibited substances" rather than "being a watchdog when it comes to prohibited substances" (*USADA v. Drummond*, AAA No. 01-14-0000-6146 (2014) at p. 22-23); existence of "multiple violations and seriousness of the offenses" (*Bruyneel* at ¶¶231-232); "provid[ing] substantial help for multiple third-party anti-doping rule violations" (*Hoch v. FIS & IOC*, CAS 2008/A/1513 (2009) at ¶8.8.4); being "at the apex of a conspiracy to commit widespread doping . . . spanning many years and many riders" (*Bruyneel* at ¶229); "act[ing] in bad faith and with a view to dissimulating doping practices" (*WADA v. Jamuludin*, et al., CAS 2012/A/2791 (2013) at p. 14); "acting intentionally when undertaking the

[37] These provisions also do not indicate whether any facts and circumstances outside of the statute of limitations period may be considered in determining the appropriateness and length of an enhanced sanction. In this case, the Panel finds it unnecessary to venture outside the limitations period because there is sufficient evidence of aggravating factors within the statute of limitations period to justify imposing lifetime ineligibility on Dr. Leinders for his anti-doping violations.

[38] It is appropriate for the Panel to consider official comments when interpreting the provisions of the WADC and anti-doping rules based on the WADC. *Hans Knauss v. FIS*, 2005 CAS/A/847 at ¶7.3.4.

serious anti-doping violation he committed" (*Jamaludin* at p. 36); "long-time experience in his position" (*Jamaludin* at p. 37); "under[taking] seriously deceptive and obstructive actions" (*Jamaludin* at p. 37); being in a position "which presents him to young men and women as a trusted advisor and confidant" (*USADA v. Stewart*, AAA No. 77 190 110 10 (2010) at p. 6); "administration of highly dangerous substances, which presented a risk of grave injury or death to any athlete who used the substances" (*Stewart* at p. 6); and "the need to send a clear and deterring message to other athlete support personnel" (*USADA v. Block*, No. 77 190 00154 10 (2011) at ¶9.6).

119. In *Block*, the panel observed:

> The cases are clear that athlete support personnel owe a higher duty to the integrity of the anti-doping system than even do athletes. The athlete support personnel suspensions are generally far more severe than those for athletes because of the position of trust and commitment to integrity expected of athlete support personnel. . . .
>
> The cases, and frequently the relevant anti-doping rules, show that lifetime bans typically have involved multiple doping offenses regarding athletes and lengthy, substantial involvement in comprehensive doping activity, and efforts to cover up doping in cases involving athlete support personnel. (¶¶9.3 and 9.5)

120. Consistent with the Comment to Article 10.4.2 of the 2003 WADC, in *Jamaludin*, the CAS panel recognized that "deceptive and obstructive actions by coaches or managers aimed at covering up systematic and widespread doping practices of a serious nature (because of the type of products involved) may lead to the highest possible sanction, i.e., to a life ban." (p. 37)

121. In *Stewart*, the arbitrator imposed a lifetime suspension on a coach for trafficking, administration, and attempted administration of prohibited substances, including EPO and insulin, as well as assisting, encouraging, aiding and abetting, and complicity in connection with athletes' anti-doping violations for the following reasons:

> [A]s a coach, [he] is to be held to a higher standard of conduct due to his position of trust and responsibility. He was involved with the use and administration of highly dangerous substances, which presented a risk of grave injury or death to any athlete who used the substances, and which substances were secured and provided to them by [him]. Further, he engaged in repeated violations of anti-doping rules over a number of years.
>
> In light of Dr. Daniel Eichner's testimony regarding the potentially lethal nature of the drugs procured by Stewart . . . and provided to his charges in non-medically supervised environments, the risk to the athletes has been established. . . .
>
> These facts plus his position of coach which presents him to young men and women as a trusted advisor and confidant; as one who knows the path to gold and glory places an inviolable responsibility on him to be a role model and leader. The rejection of this responsibility presents a personal affront to his athletes; a repudiation of USADA, WADA rules and the expectations of the sporting world, particularly when the practice involves multiple violations. (p. 6)

122. "CAS's jurisprudence makes it clear that a sanction imposed on an athlete or on athlete support personnel must respect the principle of proportionality. This is particularly so where—like in the present case—the applicable rules regarding the extent of the sanction allow ample scope. In that case the sanction imposed must be in line with the seriousness of the offence." *Hoch* at ¶8.8.2.

123. Anti-doping tribunals have imposed a broad range of periods of ineligibility on athlete support personnel for trafficking and administration offenses, ranging from 6 years to lifetime ineligibility. *See, e.g.*, *Bruyneel* (6 years—trainer, 8 years—team physician, 10 years—team director); *Drummond* (8 years—coach); *Jamaludin* (10 years—coach); *Block* (10 years—coach/manager/event manager/athlete representative/agent); *Hoch* (15 years—trainer/coach); *Stewart* (lifetime ban—coach).

124. In determining the appropriate sanction to impose on Dr. Leinders, the Panel has considered the Comment to Article 10.4.2 of the 2003 WADC, the aggravating factors identified

by other anti-doping tribunals, as well as the periods of ineligibility imposed on athlete support personnel for these offenses in other cases.

125. Based on the uncontroverted evidence of numerous aggravating factors in this case, the Panel determines that the imposition of lifetime ineligibility on Dr. Leinders is an appropriate, just, and proportionate sanction for these serious anti-doping offenses, and necessary "to send a clear and deterring message to other athlete support personnel." *Block* at ¶9.6. In particular, the Panel finds that Dr. Leinders' conduct evidences the existence of the following aggravating factors:

- Obstructing conduct to avoid adjudication of anti-doping rule violations by initially requesting this arbitration proceeding and, without withdrawing his request, refusing to participate in it or to provide hearing testimony after being requested to do so;
- Having long-time experience as the chief team physician for the Rabobank cycling team from 1996–2009 and as a member of its board of directors from 2004–2009;
- As chief team physician and a director, being in positions "which present[ed] him to young men and women as a trusted advisor and confidant," (*Stewart* at p. 6), thereby enabling him to "lead . . . athlete[s] into the danger of using prohibited substances" (*Drummond* at p. 22);
- Committing multiple serious anti-doping rule violations from June 22, 2004–2007, including possession, trafficking and administration of several prohibited substances and methods, including EPO, blood transfusion paraphernalia, testosterone, insulin, DHEA, LH, and corticosteroids, as well as assisting, encouraging, aiding, abetting, and complicity in connection with anti-doping violations;
- Possessing, trafficking and administering several "highly dangerous" prohibited substances or prohibited methods without any legitimate medical need, including EPO, blood transfusion paraphernalia, testosterone, insulin, DHEA, LH, and corticosteroids, which "presented a risk of grave injury or death" to the athletes who used these substances (*Stewart* at p. 6), according to Dr. Bowers' testimony;
- Providing substantial and improper assistance to multiple athletes, including Michael Rasmussen, Levi Leipheimer, Michael Boogerd and Denis Menchov, thereby enabling them to obtain and use multiple prohibited substances and prohibited methods including EPO, blood transfusion paraphernalia, testosterone, insulin, DHEA, LH, and corticosteroids and to commit several anti-doping rule violations;

- Acting intentionally when engaging in the serious anti-doping violations he committed by, *inter alia*, possessing testosterone disguised as A-Zinc, writing false medical certificates for cortisone for Michael Rasmussen, and assisting Mr. Rasmussen with blood doping during the 2007 Giro d'Italia by testing his blood with Rabobank's Sysmex machine to assess the impact of Mr. Rasmussen infusing two bags of blood during a single stage race;

- "[U]nder[taking] seriously deceptive and obstructive actions" by engaging in the foregoing conduct (*Jamaludin* at p. 37); and

- Being "at the apex of a conspiracy to commit widespread doping . . . spanning many years and many riders" in his capacity as the chief team physician and a member of the board of directors during the time these anti-doping rules violations occurred (*Bruyneel* at ¶229).

126. The Panel concludes that the aggravating factors in this case are very similar to, and equal or exceed, those in *Stewart*, in which a sanction of lifetime ineligibility was imposed on a coach. As the chief team physician and a member of the board of directors for the Rabobank cycling team, Dr. Leinders occupied even higher positions of trust and responsibility and was "at the apex of a conspiracy to commit widespread doping . . . spanning many years and many riders." *Bruyneel* at ¶229.[39] Therefore, he should receive a sanction no less severe than the coach in *Stewart*. These facts distinguish this case from *Hoch*, in which a CAS panel imposed a fifteen-year period of ineligibility on a trainer/coach rather than lifetime ineligibility, which it acknowledged "may be appropriate if [he] was the principal or the leader of the doping conspiracy surrounding the Austrian cross-country ski team." *Hoch* at ¶8.8.4. These circumstances, along with the above numerous aggravating factors, also distinguish this case from *Bruyneel*, in which a team physician received only an eight-year period of ineligibility because he "was a mere instrument (albeit one with professional training and obligations who

[39] For this reason, this case is readily distinguishable from *Drummond* in which an AAA panel imposed an eight-year suspension on a coach for facilitating a single athlete's use of prohibited substances to recover from an injury.

should have known better) as opposed to the organizer of the doping conspiracy or scheme." *Bruyneel* at ¶231. Although the *Bruyneel* panel imposed only a ten-year period of ineligibility on a team director who "was at the apex of a conspiracy to commit widespread doping on the USPS and Discovery Channel teams" (*Bruyneel* at ¶229), the numerous aggravating factors in this case (which were not present in connection with the team director's conduct) justify a period of lifetime ineligibility for Dr. Leinders' anti-doping violations.

127. The "period of *Ineligibility* shall start on the date of the hearing decision providing for *Ineligibility*," which for purposes of Dr. Leinders' lifetime ineligibility is the date of this Award. UCI ADR Art. 275 (2005–2008); WADC Art. 10.8 (2003); *see also* WADC 10.11 (2015).

X. DECISION AND AWARD

The Arbitrators therefore rule as follows:

1. USADA has sustained its burden of proving to the Panel's comfortable satisfaction that Dr. Leinders committed the following doping offenses on or after June 22, 2004: possession of prohibited substances and/or methods; trafficking of prohibited substances and/or methods; administration and/or attempted administration of prohibited substances and/or methods; and assisting, encouraging, aiding, abetting, covering up and other complicity involving anti-doping rule violations.

2. The Panel imposes a lifetime period of ineligibility, commencing on the date of this Award.

3. The parties shall bear their own attorney's fees and costs associated with this arbitration.

4. The administrative fees and expenses of the AAA and the compensation and expenses of the Panel shall be borne as incurred.

5. This Award shall be in full and final resolution of all claims submitted in this arbitration. The Panel has considered all of the arguments made by the parties, whether or not they are specifically referenced in this Award. All claims not expressly granted herein are hereby denied.

6. This Award may be executed in any number of counterparts, each of which shall be deemed an original, and all of which shall constitute together one and the same instrument.

Dated: January 16, 2015

Jeffrey A. Mishkin, Chair
January 16, 2015

Matthew J. Mitten
January 16, 2015

Mark Muedeking
January 16, 2015