



**Arbitration CAS 2003/A/505 Union Cycliste Internationale (UCI) v. Alicia Pitts, USA Cycling, Inc. & United States Anti-Doping Agency (USADA), award of 19 December 2003**

Panel: Prof. Michael Geistlinger (Austria), President; Mr Beat Hodler (Switzerland); Mrs Anita DeFrantz (USA)

*Cycling*

*Doping (methadone)*

*CAS Jurisdiction*

*Presence of a prohibited substance in the athlete's body*

*Duty of the athlete to have knowledge of the regulations*

*Determination of the sanction in view of mitigating circumstances*

- 1. Absent any adjudication procedure consistent with the international standards in anti-doping policy provided by the competent national federation's rules, the basis for the CAS jurisdiction can be the information on the closing of a case made by a national anti-doping agency. This information can indeed be considered to be the final ruling made at the level of the national federation asked for by UCI Anti-doping Examination Regulations (AER). UCI is therefore entitled to appeal before the CAS against such ruling according to its rules and within the meaning of article R47 of the CAS Code.**
- 2. The presence of a prohibited substance such as methadone in the body of a rider constitutes an offence of doping. It does not matter whether the substance of methadone can be considered a performance enhancing substance or not. It is also not relevant whether the rider ingested any methadone in the three days prior to the event or during an unknown period before. Methadone is not allowed to be used for medical treatment under the UCI AER.**
- 3. No athlete can invoke his or her unawareness of the existence of anti-doping rules or the impossibility of having knowledge of these rules. When signing the backside of his/her licence, a rider has to declare that s/he undertakes to respect the Constitution and Regulations of the UCI, its Continental Confederations and its National Federations. It is his/her responsibility to make sure that s/he knows what s/he is signing to. Being the expression of the general principle of law that "*ignorance of law is no excuse*", art. 7 UCI AER rules that it is "*the personal responsibility of every rider to ensure that they neither use any prohibited substance or prohibited method nor permit any such substance or method to be used*". This includes the obligation to achieve knowledge on the respective provisions.**
- 4. The gravity of the medical condition of a rider, the well-documented prescription of methadone as pain reliever in his/her condition, his/her advanced age and the specific circumstances of the aims why s/he participated at the event, his/her role model for**

**youths in the fight against doping in sports over years and his/her honesty and personal integrity, constitute sufficient elements under UCI AER to reduce the duration of suspension to the minimum, which is half a year. According to UCI AER, the period of inactivity will be automatically added to the period of suspension.**

The Appellant is the International Cycling Union (UCI), which according to art. 1.1 and art. 1.2 of its Constitution, updated 1<sup>st</sup> January 2002, is the association of national cycling federations and has the status of a non-governmental international association with a non-profit-making purpose of international interest holding legal personality pursuant to Swiss civil law.

The First Respondent is Mrs. Alicia Pitts, a cyclist of the master category with a licence delivered by the national cycling federation of the United States of America (USA Cycling Inc.).

The Second Respondent is the USA Cycling Inc. (USA Cycling), the national cycling federation of the United States of America, which is a member to the UCI.

The Third Respondent is the United States Anti-Doping Agency (USADA), the anti-doping agency for the United States of America.

On 28<sup>th</sup> March 2003 Mrs. Pitts participated in the cycling race “Track World Cup Qualifier” in Hollywood, Florida, USA, a race that was included on the USA Cycling’s national calendar. Mrs. Pitts was drawn by lot for drug test. As can be seen from the Doping Control Official Record, the notification for drug test took place on 28<sup>th</sup> March 2003, 7:17 pm, and sample processing happened on 28<sup>th</sup> March 2003, 8:15 pm, that is within the required maximum period of 60 minutes after notification.

As asked for by the Doping Control Official Record, Mrs Pitts declared a number of medications, which she took within the three days preceding to the doping control. On 9<sup>th</sup> April 2003 the IOC accredited UCLA Olympic Analytical Laboratory informed USADA by confidential letter that Mrs. Pitts’ A sample contained the IOC and UCI banned narcotic analgesic methadone. This result was confirmed by the analysis of the B sample of Mrs. Pitts, taken on 28<sup>th</sup> March 2003 and analysed on 28<sup>th</sup>/29<sup>th</sup> April 2003. Methadone is included as example for a narcotic analgesic under Chapter “*Examples and Explanations I. B*”. which specifies the Prohibited Class of Substances of Chapter I. B. “*Narcotics*” of the UCI Prohibited Classes of Substances and Prohibited Methods (List no. 01/2002, as effective since 1<sup>st</sup> May 2002), based on Article 5 of the UCI Anti-doping Examination Regulations. This substance had not been declared by Mrs. Pitts on the Doping Control Official Record, whereas her statement of 14<sup>th</sup> May 2003 to USADA, the agency responsible for the doping control and respective disciplinary proceedings on behalf of USA Cycling, makes clear that Mrs. Pitts confessed having been on this medication prior to competing on 28<sup>th</sup> March 2003. In this letter, which is also attached as Exhibit A to the Statement of Case on behalf of Mrs. Pitts, Mrs. Pitts argued that she had no idea that the race of 28<sup>th</sup> March 2003 was a Worldcup Qualifier, that she had no experience in this type of event and that she “*hadn’t even thought about the medication*” she was on. On the first page of the

same letter Mrs. Pitts argued that, as she indicated in the information form, she had not taken methadone prior to the event in question as her doctor had prescribed it for her back condition, which in the past had caused her debilitating pain. When she began to ride again she first “*cut back on the methadone but ... continued using the medication as it was necessary for*” her “*to function*”. She continued:

*“When I participated in the March 28, 2003 event I was not under the influence of the methadone and I was completely unaware that methadone stays in your system for such a long period of time”.*

By letter dated 6<sup>th</sup> May 2003 the USADA informed Mrs. Pitts on the results of the analysis of the A and B sample of Mrs. Pitts by the laboratory and on the provision of Article 4 of the UCI Anti-doping Examination Regulations defining doping for UCI and USA Cycling. Mrs. Pitts was told that her case has been forwarded to a Panel of the USADA Anti-Doping Review Board for “*its consideration and recommendation*” as to whether there was sufficient evidence of doping to proceed to a hearing in her case. Mrs. Pitts was given the right to make written submittals to the Review Board by 16<sup>th</sup> May 2003, which right she used by letter dated 14<sup>th</sup> May 2003.

By letter fax dated 10<sup>th</sup> July 2003 the Chief Executive Officer of the USADA, Mr. Terrence P. Madden, informed USA Cycling, Inc., that the Panel of the USADA Anti-Doping Review Board had met by teleconference on 29<sup>th</sup> May 2003 and 1<sup>st</sup> July 2003 and attached the conclusion of the Review Panel signed by the three members of the Panel. In the conclusion the Review Panel held that Mrs. Pitts had prior to her doping control and continued to have a “*legitimate medical condition well documented by her physician that required her use of methadone*”. The Review Panel concluded that Mrs. Pitts’ treating physician “*acted within standards of medical care and in the interest of the health and safety of the athlete in administering methadone*”. The Review Panel considered Mrs. Pitts having declared “*the fact that she had administered two similar prescription medications and based on the evidence presented ..*” and found that Mrs. Pitts did not “*list methadone because she had not taken it in the preceding three (3) days as requested at the collection*”. The Review Panel further accepted that Mrs. Pitts “*would have sought a medical exemption for methadone if she had known about such a process ..*” and that “*such a request would have been granted given her well documented medical condition*”. Based on Articles 8, 64 and 89 of the UCI Anti-doping Examination Regulations the Review Panel found “*in this specific case of a narcotic ... no doping violation occurred*”.

As a consequence no hearing was recommended by the USADA Anti-Doping Review Panel and the matter was neither followed on nor any sanction recommended. On 18<sup>th</sup> August 2003 the USADA answering to a UCI – Anti-Doping Services’ fax message of 8<sup>th</sup> August 2003, which urged the starting of a disciplinary procedure against Mrs. Pitts (Exhibit 14 to the UCI Statement of Case), considered the case pursuant to the USADA Protocol as having been closed. It was stated that USADA lacking a respective recommendation by its Anti-Doping Review Panel was not empowered to go forward with this case. The UCI Anti-Doping Services held that the USADA Anti-Doping Review Panel had wrongfully applied Articles 8, 64 and 89 of the UCI Anti-doping Examination Regulations.

It has not been contested by UCI that Mrs. Pitts, a successful rider in the years 1985 – 1990, had retired from cycling from 1990 – 1997 for professional career reasons and that soon after she had started to compete again, she began to suffer from problems with her back and sciatica. In her letter dated 14<sup>th</sup> May 2003 to the USADA Anti-Doping Review Panel Mrs. Pitts states that she does not dispute the findings of the tests, but points at her serious health problems. Mrs. Pitts explains that she underwent a double laminectomy complete removal of a very large central disc herniation. Mostly due

to financial reasons she then decided to keep to the therapies and medications prescribed by Dr. Springer, who practiced in a pain management group. Mrs. Pitts held one such prescribed medication as the source of the methadone in her urine sample. This view is up to a certain degree confirmed by Dr. Springer who states in his letter dated 5<sup>th</sup> May 2003 that he prescribed methadone to Alicia Pitts on 6<sup>th</sup> February 2003 as part of her pain management treatment and that methadone remains detectable in her body system for at least a month. Neither Mrs. Pitts, nor her physician, nor the pharmacist's dispense order attached as Exhibit D, give a clear indication, how often and when for the last time prior to the race in question Mrs. Pitts in fact took this medication. The confirmation of dispense by the pharmacist, dating 7<sup>th</sup> May 2003, mentions a dispensed quantity of "90.000" and in the column "Day Sup 30", but does and cannot cover what actually happened with this dispensed quantity.

In his Statement of Case presented by Mr. Cerveny on behalf of Mrs. Pitts on 3<sup>rd</sup> October 2003 Mr. Cerveny states that Mrs. Pitts did not ingest any methadone in the three days prior to the event. As the first page of the information form asks what medication the rider has taken in the preceding three days and given that Mrs. Pitts had not taken methadone in that time period, she did not list it on the form. Mr. Cerveny argues that Mrs. Pitts used methadone as an analgesic pain reliever prescribed to be taken at night to relieve pain and help her sleep. The documents attached to the Statement of Case presented by Mr. Cerveny on behalf of Mrs. Pitts as Exhibit C give evidence of the diagnosis Lumbar herniated nucleus pulposus, central L5-S1 (North Florida Regional Outpatient Imaging Center) and of the operation which ensued to this diagnosis as well as of several follow up evaluations. Exhibit E to the Statement of Case on behalf of Mrs. Pitts contains a short explanation of the functioning of methadone by Professor and Director C. Richard Chapman, Ph. D., Pain Research Center, Department of Anesthesiology, University of Utah School of Medicine, who states that methadone remains detectable in a body system over five or six days or more and further holds that methadone is not a performance-enhancing drug. Further to this an Article by Chin B. Eap, Thierry Buclin and Pierre Baumann, Interindividual Variability of the Clinical Pharmacokinetics of Methadone. Implications for the Treatment of Opioid Dependence. Clin Pharmacokinetics 2002; 41 (14): 1153-1187 has been attached as the major of two parts of Exhibit F to the Statement of Case on behalf of Mrs. Pitts. As can be seen from the subtitle of this article, the authors focus on the treatment of opioid dependence. The article is of limited value with regard to methadone used as analgesic pain reliever, apart from general observations covering both types of use. Thus, for example, the authors conclude that methadone displays "*a large interindividual variability in its pharmacokinetics and probably also in its pharmacokinetics, a variability which is both genetically and environmentally determined*". The article does not help to answer the questions as to the facts mentioned above in paragraph 10, which were left open by Mrs. Pitts herself and by the Statement of Case on her behalf. Two neighbours give witness concerning the personal honesty and integrity of Mrs. Pitts.

On 21st August 2003 the UCI lodged an appeal against the decision of the USADA acting on behalf of USA Cycling, which was taken by the USADA Anti-Doping Review Board on 29th May 2003 and 1st July 2003 (Exhibit 12 to UCI Statement of Case). In its Statement of Appeal UCI states that the doping offence is proved and asks that Mrs. Pitts is sanctioned. In the UCI Statement of Case dated 1st September 2003 the aim of the appeal is detailed as follows:

*“- having the contested decision annulled,*

*- having Mrs. Pitts declared positive and imposed upon Mrs. Pitts sanctions in accordance with AER (and/or USA Cycling rules)” (Object of the appeal).*

By letter dated 3 September 2003 USADA informed the CAS that it does not want to participate actively in the proceedings before the CAS, but will receive a copy of all written submissions and correspondence concerning this procedure, as well as a copy of the final award, *“considering that such award will be binding on all parties”*.

Both successive versions of the Order of Procedure proposed by their number 9 an award by the Panel being issued without an oral hearing. Instead the parties were offered an Additional Statement of Case and Answer thereto, respectively. Mr. Cerveny did not use the opportunity to submit a second response in time.

The Order of Procedure was accepted and signed by Mr. Verbiest on behalf of UCI on the same day. The Order of Procedure, however, was not returned with the signature on behalf of Mrs. Pitts, confirming the acceptance, to the CAS by the deadline set with 10<sup>th</sup> December 2003. On behalf of USADA the Director of Legal Affairs, Mr. Travis T. Tygart, referred to his letter, dated 3<sup>rd</sup> September 2003 and confirmed not to be willing to have an active role in this matter and, therefore, not to sign the Order of Procedure or otherwise answer to the respective letter by fax dated 2<sup>nd</sup> December 2003. The Panel thus decided to issue a decision without a hearing based on its authority under art. R57 second paragraph first sentence of the Code of Sports-related Arbitration having found the agreement of the Appellant and the First Respondent.

## LAW

### CAS Jurisdiction

1. The Appellant launched his appeal in terms of articles 112 and 115 to 123 of the UCI Anti-doping Examination Regulations (UCI AER) (version into force from 1st July 2001). Art. 112 UCI AER reads as follows:

*“The ruling by the competent body of a licence-holder’s national federation shall not be subject to an appeal before another body (appeals board, tribunal, etc.) at national federation level, unless such an appeal is required by the legislation of the country in question or is directed against a decision which does not affect the basis of the case. The licence-holder and the national federation shall notify the UCI immediately of the lodging of such an appeal”.*

2. Due to the no show-up of the USA Cycling, Inc. as the national federation of Mrs. Pitts and the merely passive role of USADA before the Panel of the CAS, the Panel had to restrict to explore the legal situation with regard to the USA Cycling, Inc. in the context of art. 112 UCI AER to legal documents publicly available from the official homepages of USA Cycling, Inc. and USADA. According to the Amended and Restated Articles of Incorporation of USA

Cycling, Inc. this organisation is a Colorado Non-Profit Corporation registered in Colorado Springs, Colorado, USA. Section 2 of these Incorporation Articles rules that the supreme purpose of the Corporation

*“shall be the preservation, development, and administration of the sport of bicycle racing within the United States of America”.*

3. Part 2 of Section 3 of these Incorporation Rules obliges this Corporation to *“establish rules governing the conduct of bicycle races to ensure fair competition and prevent fraud”.*
4. According to Part 4 of Section 3 of these Incorporation Rules the Corporation shall through its activities inter alia *“recommend teams to represent the United States of America in international and Olympic competition”.* Part 5 of Section 5 requires the Corporation to *“represent the sport of bicycle racing in the United States of America to other national, international, and Olympic sports organizations”.*
5. Based on these Articles of Incorporation the USA Cycling, Inc. adopted Amended and Restated Bylaws which according to their Chapter B Section 3 Part 1 together with the USA Cycling Governance Policies, the Association Bylaws and the Association Governance Policies form the legal order of the USA Cycling, Inc. The Articles of Incorporation hold precedence and priority over the USA Cycling Bylaws and together with them over the USA Cycling Governance Policies and the association bylaws/policies. Both, however, are of no legal interest for this case. According to Chapter C Section 1 the Corporation is a member of the United States Olympic Committee (hereafter: USOC) and of the UCI. Chapter M Section 1 rules that *“USA cycling is designated by the USOC as the NGB for the sport of cycling as provided by the Constitution of the USOC and the Sports Act, as may be amended or restated from time to time”.*
6. The USA Cycling Governance Policy Manual entrusts the USA Cycling Board of Directors to *“direct, control and inspire USA Cycling and its associations through the careful establishment of the broadest organizational values and policies”* (Chapter *“Governing Style”*, number 2) and to *“be accountable for competent, conscientious and effective accomplishment of it’s obligations as a governing body for cycling. It will allow no officer, individual, or committee to usurp this role or hinder this commitment”.* (Chapter *“Governing Style”*, number 4). The Chapter *“Board of Directors. Role of President”*, number 1 of this Manual defines as responsibility of the President *“to ensure that the Board acts consistently within its own rules and those legitimately imposed upon it from outside the organization”.* The same Chapter (*“Board of Directors. Purpose and Outcomes. Ends”*) obliges the Board to:

*“A. Consistent excellence in cycling competition with emphasis in elite juniors and seniors*

...

*4 International and national decisions that benefit cycling.*

*a) Decisions by the International Cycling Union, U.S. Olympic Committee and lawmakers ..”.*
7. Apart from these legal documents within USA Cycling, Inc. the list of corporation documents as of 5th December 2003 does not contain any specific bylaw with regard to antidoping and/or disciplinary measures. There exist, however, two Standing Board Resolutions, both adopted at the USA Cycling Board Meeting of 26th February 1999 (S99-002 *“Medical Control”* and S99-

003 “Discipline and Hearings”). The first one authorizes and directs the Executive Director “to promulgate, implement, and enforce uniform regulations concerning the use of drugs in events sanctioned by the Corporation or any of its associations”. These regulations shall “cooperate and implement a program of drug control in concert with the UCI, the USOC and the IOC” and shall be committed “to a zero tolerance policy toward the use of illegal drugs” of the Corporation. The second one authorizes and directs the Executive Director “to promulgate, implement, and enforce uniform regulations for the resolution with due process of grievances and discipline of members”, thereby implementing “a grievance, discipline and due process hearing program which complies with The Olympic and Amateur Sports Act, as may be amended from time to time, and the pertinent regulations of the UCI, the USOC and the IOC, if any”. A third Standing Board Resolution adopted on 4th September 1998 (S98-004) reads:

*“Whereas the development of athletes to compete in all Olympic disciplines for international competition including World Championships, Pan American Games, and Olympic Games is an end of USA Cycling and transcends Associations,*

*It is Resolved that the USA Cycling Board of Directors oversee the program development of those athletes, including UCI defined category juniors, espoir, and elite athletes”.*

An Active Board Resolution of 26<sup>th</sup> February 1999 (A99-001) reads:

*“Whereas, the United States Olympic Committee has recently been developing plans to “externalize” its anti-doping program by creating a third party entity that will handle sample collection, testing, and manage a new adjudication process. While USA Cycling will be interested in reviewing the USOC externalization proposal in detail, it supports this development if a new system provides an inexpensive and swift adjudication process for athletes and NGB’s, the system of collecting and testing is enhanced, and more detection research is initiated.*

*While USA Cycling will be interested in reviewing the USOC externalization proposal in detail,*

*BE IT RESOLVED, THAT USA Cycling supports this development if a new system provides an inexpensive and swift adjudication process for athletes and NGB’s, the system of collecting and testing is enhanced, and more detection research is initiated”.*

8. Even eventually lacking a specific contract between USADA and USA Cycling, Inc., that might exist and certainly would have been disclosed if the two organisations would have actively participated at the procedure at stake, and taking into account that the link “Antidoping” on the USA Cycling, Inc.’s homepage as of 5<sup>th</sup> December 2003 does only lead to UCI Regulations and USADA and announces a “Code of Conduct” to be published in Spring 2004, it is obvious for the Panel from the full set of rules analysed above that there are no USA Cycling rules relevant for art. 112 UCI AER and establishing an appeals board or tribunal at national federation level required by any US law. At the same time the Panel holds that there are no USA Cycling Rules, emanating from the USA Cycling, Inc., in the terms of the object of appeal, which could serve as a basis for declaring Mrs. Pitts positive and impose sanctions as in event aimed at by the Appellant.
9. The Active Board Resolution of 26<sup>th</sup> February 1999 mentioned above makes clear that USA Cycling has delegated USA Cycling anti-doping matters, including disciplinary issues, to USADA. This is confirmed by art. 2 of the USADA Protocol for Olympic Movement Testing, as effective since 7<sup>th</sup> October 2002, stating that USOC and the national governing sports bodies have authorized USADA to test any athlete who is a member of the respective national

governmental body (lit. a) “*or is competing in a qualifying event to represent the USOC or NGB in international competition*”. (lit. e). Mrs. Pitts is such an athlete. It follows from art. 1 of this Protocol that “Testing” includes drug testing and results management, which has been contracted by USOC with USADA for participants in the Olympic movement within the United States. USADA is independent from USOC and according to its Mission Statement:

*“dedicated to eliminating the practice of doping in sport, including U. S. Olympic, Pan American and Paralympic athletes. USADA is the independent anti-doping agency for Olympic sports in the United States, and is responsible for managing the testing and adjudication process for the athletes. USADA is dedicated to preserving the well being of sport, the integrity of competition and ensuring the health of athletes through research initiatives and educational programs”* (included as preamble to the USADA Protocol for Olympic Movement Testing).

10. Being a member of USOC the USA Cycling, Inc. is bound to the USOC Constitution as well as to the USOC Bylaws, which implement the US Amateur Sports Act (of 21<sup>st</sup> September 1950, 36 USC Section 371, as last amended on 21<sup>st</sup> October 1998) as well as the Ted Stevens Olympic and Amateur Sports Act. This obligation of a member follows in particular from Article IV Section 4 of the USOC Constitution. The USOC Bylaws contain Chapter XIV (Anti-Doping Policy Committee), where Section 2 offers the legal basis for the USOC – USADA cooperation. It follows from the USOC Selected National Anti-Doping Policies as of October 2002 that USOC in its Anti-Doping Policies wants to supplement and not to counteract the doping policy of International Sports Federations. Art. 6 USOC Anti-Doping Policies, for example, reads with regard to out-of-competition testing):

*“Rules of International Federations. The Requirements and consequences set forth in this Policy shall be in addition to those obligations related to out-of-competition testing imposed by the various International Federations and shall not relieve any athlete of the consequence of failing to comply with the anti-doping rules of his or her International Federation”*.

11. None of the acts and regulations enumerated above include a requirement for installing an alternative appeals board system mentioned by art. 112 UCI AER. It is the USADA Protocol for Olympic Movement Testing which in art. 9 (“*Results Management*”) provides for a specific adjudication procedure. According to art. 9 lit. a the adjudication procedure starts with a recommendation by the USADA Anti-Doping Review Board. Unless it recommends to close the case, USADA shall notify the athlete in writing “*what specific charges or alleged violations will be adjudicated and what sanction, consistent with IF rules, or USOC Anti-Doping Policy*”. Within ten days following the date of such notice, the athlete must notify USADA whether he or she desires a hearing to contest the sanction. Such a hearing takes place before the American Arbitration Association (art. 9 lit. b ii.). There is a right to appeal against this decision to the North American Court of Arbitration for Sport. It may be doubted whether the USADA Protocol for Olympic Movement Testing can be conceived as fulfilling the legal requirement under art. 112 UCI AER that an appeal at national federation level “*is required by the legislation of the country in question*”. The same goes for art. 3 (“*Choice of Rules*”) lit. e. USADA Protocol for Olympic Movement Testing which rules that “*Any IF or NGB procedural rule inconsistent with this Protocol shall be superseded by this Protocol*”. It must be considered a fairly destructive behaviour towards international standards in anti-doping policy and a counterproductive position with regard to all WADA initiatives if a member federation of an International Sports Federation could escape international control and

international standards by installing priority for its internal system via delegation of its doping testing and results management to a national anti-doping organisation. According to the jurisprudence of the CAS “*the international federations enjoy the principal competence with regard to the fight against doping. The natural consequence of this is that their rules prevail over those which an NOC or national sports authority (for example an NF) might have enacted*” (see e.g. CAS 98/192, award of 21 October 1998, in: REEB M. (ed.), *Digest of CAS Awards II 1998 – 2000*, The Hague et al. 2002, pp. 205 ff.).

12. The new rule of art. 9 lit. b iii. of the USADA Protocol for Olympic Movement Testing introduced by art. R-57 allowing for bypassing the procedure of art. 9 lit. b ii. by direct appeal to the CAS reduces the inherent inconsistency, but does not eliminate it. However, this inconsistency is not material in the present case because of two reasons: (i) On the one hand USADA did not impose a sanction, but limited itself to a procedure in writing before its Anti-Doping Review Board which ended with the closing of the case. (ii) On the other hand USADA according to its Protocol for Olympic Movement Testing is bound by the rules of the respective International Federation, unless modified by an applicable USOC Anti-Doping Policy with regard to the definition of anti-doping rule violations and respective sanctions. In the event an International Federation’s rules and the USOC Anti-Doping Policy are silent on an issue, the rules set forth in the Olympic Movement Anti-Doping Code shall apply (art. 9 lit. b v.). The Panel could not see any USOC Anti-Doping Policy modifying the respective provisions of the UCI AER.
13. In fact, also the Anti-Doping Review Panel in its reasons for closing the case of Mrs. Pitts referred to no other rules than to the UCI AER (arts. 8, 64 and 89). The same goes for the arguments given by Mr. Cerveny on behalf of Mrs. Pitts in his Statement of Case dated 24<sup>th</sup> September 2003. Therefore, the Panel concludes that its jurisdiction can be based either on art. 115, which corresponds to the former art. 84 UCI AER and has been accepted by the CAS as legal basis of its jurisdiction in many previous cases (e.g. TAS 97/175, sentence du 15 avril 1998, in: REEB M. (ed.), *Digest of CAS Awards I 1998 – 2000*, The Hague et al. 2002, pp. 145 ff. (150 ff.); TAS 98/203, sentence du 20 novembre 1998, in: REEB M. (ed.), *op. cit.*, pp. 221 ff. (pp. 227 f.); CAS 98/212, award of 24 February 1999, in: REEB M. (ed.), *op. cit.*, pp. 274 ff. (p. 278); CAS 98/213, award of 24 February 1999, in: REEB M. (ed.), *op. cit.*, pp. 283 ff. (p. 286); TAS 2000/A/289, sentence du 12 janvier 2001, in: REEB M. (ed.), *op. cit.*, pp. 424 ff. (p. 425)), or on art. 123 UCI AER.
14. The Panel prefers to base its jurisdiction on art. 123 UCI AER, which must be seen combined with art. 88 UCI AER, both having been substantially modified on 4<sup>th</sup> July 2002. Whereas the decision of closing the case by USADA upon delegation by the USA Cycling, Inc. could be seen as the “*ruling made by the national federation*” in the sense of art. 112 UCI AER and UCI, therefore, would be entitled to appeal against based on art. 115 UCI AER, the Panel moreover sees as the basis of the present case a “*national procedure referred to in the second and third paragraphs of article 88*”.
15. The Appellant in its Statement of Case mentions art. 115, but then also refers to art. 123 UCI AER. The respective paragraphs of art. 88 UCI AER extend the application of the provisions of arts. 101, 103, 105, 106, 111 and 116 to 123 UCI AER to facts concerning national races. The

Track World Cup Qualifier of 28<sup>th</sup> March 2003 was a race of USA's national calendar (UCI Statement of Case). USADA, having closed the case, must, therefore also be seen as representing USA Cycling, Inc. in having opened the case in the sense of art. 88 last two phrases UCI AER. The UCI did not seize the case, but was informed by USADA on the opening and closing of the case. The information on the closing of the case by the USADA Chief Executive Officer, Terrence P. Madden, by fax dated 18<sup>th</sup> August 2003 is considered by the Panel to be "*the final ruling made at the level of the national federation*" asked for by art. 123 UCI AER.

16. The UCI paid due respect to its obligation to keep to the time limit set forth for its appeal by art. 118 second paragraph UCI AER (one month from receipt of the complete case file, which was on the 21<sup>st</sup> July 2003. The Panel feels satisfied with regard to art. R47 of the Code of Sports-related Arbitration, insofar the UCI AER so provide for an appeal of the UCI against a decision which at the end must be assigned to the USA Cycling, Inc.

#### **Quality of USA Cycling, Inc. and USADA as Second and Third Respondents**

17. USA Cycling, Inc. did not react at all to any letter by the CAS. USADA assured twice to take notice of the letters by the CAS, but not to be willing to appear or otherwise contest UCI's position regarding the appeal. USADA did not want to have any formal role in this matter, which included not signing the proposed Order of Procedure.
18. Being a member of the UCI, USA Cycling, Inc. is bound by the UCI Constitution, version updated on 1<sup>st</sup> January 2002, its Cycling Regulations and the UCI AER as well as by all other eventual UCI rules. Art. 123 UCI AER provides for an appeal of the UCI against a decision imposed by USADA on behalf of USA Cycling, Inc. Apart from this, as has been explained above, USADA also independently from the delegation by USA Cycling, Inc., based on its own USADA Protocol for Olympic Movement Testing, is bound by the UCI AER. The Panel finds that both organisations, therefore, must be considered Respondents. The UCI is correct in addressing its appeal against USA Cycling, Inc. and USADA. Both Respondents did not fulfill their obligations under art. R55 and R57 of the Code of Sports-related Arbitration.

#### **Quality of Mrs. Pitts as First Respondent**

19. Mrs. Pitts stated in her letter to USADA dated 14<sup>th</sup> May 2003 that she reapplied for a USCF licence in 2003, which should entitle her to compete in local track events at the Masters level. She "*felt shocked*" when instead receiving a licence for the Elite category. Art.1.1.006 Part I UCI Cycling Regulations (Chapter "*Licence-Holders*") first phrase leaves it to the UCI member federations to determine the criteria for issuing licences. As a result USA Cycling, Inc. delivered a licence that allowed her to participate in a World Cup Qualifier in the Elite category. By holding such a licence Mrs Pitts is committed to respect the UCI Constitution and Regulations and those of the respective UCI Continental Confederation as well as of the USA Cycling, Inc. (Art. 1.1.004 Part I UCI Cycling Regulations). Each athlete holding such a licence must sign a

respective commitment on the back side of his or her licence. The text of this commitment is laid down by art. 1.1.023 Part I UCI Regulations. Inter alia it is signed by the athlete:

*"I shall submit to disciplinary measures taken against me and shall take any appeals and litigation before the authorities provided for in The Regulations".*

20. The present procedure before the Panel aims at declaring Mrs. Pitts positive and imposing on Mrs. Pitts sanctions in accordance with the UCI AER. The Panel, therefore, holds Mrs. Pitts to be the First Respondent. This is confirmed by the counsel of Mrs. Pitts declaring that Mrs. Pitts "does not contest UCI's statement of the applicable reglementation and procedure" (Statement of Case on behalf of Mrs. Pitts).

### **Applicable Law**

21. Pursuant to art. R58 the Panel shall decide the dispute according to the applicable regulations. The applicable regulation is art. 121 UCI AER second phrase. It reads:  
*"The CAS rules according to this regulation or according to the national regulations, to the extent that the latter can be applied in accordance with this regulation. Otherwise, the CAS rules in accordance with Swiss law, unless otherwise agreed by the parties".*
22. It has been discussed above under paragraphs 30 to 32 that there are no other rules with regard to the definition of doping and imposition of sanctions than those of the UCI AER applicable in the case of Mrs. Pitts. As there is no other agreement by the parties, otherwise Swiss law is applicable.

### **Merits**

23. The Appellant requests the USADA decision concerning Mrs. Pitts having annulled and having Mrs. Pitts declared positive and imposed upon Mrs. Pitts sanctions in accordance with the UCI AER. Mrs. Pitts is asked by the UCI Additional Statement of Case to be sanctioned according to art. 130 UCI AER, to be disqualified from the track World Cup Qualifier in Hollywood, Florida, USA, to reimburse to the UCI the Court's Office fee and to pay all other costs.
24. The decision by the USADA Anti-Doping Review Board forming the basis for the USADA decision to close the case of Mrs. Pitts without imposing a sanction reads as follows:  
*"This Panel considered the written information submitted to it and concluded that the athlete, Ms. Pitts, had prior to her test and continues to have a legitimate medical condition well documented by her physician that required her use of methadone. Based on our review of the medical documents submitted by Ms. Pitts and incorporated into this recommendation, the Panel concludes that Ms. Pitts' treating physician acted within standards of medical care and in the interest of the health and safety of the athlete in administering methadone. At the time of the March 28, 2003 doping control test, the athlete declared the fact that she had administered two similar prescription medications and based on the evidence presented, this Panel concludes she did not list methadone because she had not taken it in the preceding three (3) days as requested at the collection. Further,*

*this Panel accepts that Ms. Pitts would have sought a medical exemption for methadone if she had known about such a process and this Panel believes such a request would have been granted given her well documented medical condition.*

*In this specific case of narcotic, and in accordance with Article 8, Article 64 and Article 89 of UCI Antidoping Examination Regulations, this Panel finds no doping violation occurred”.*

25. The Appellant holds that the laboratory results and reports show that Mrs. Pitts was positive for methadone and that methadone is a prohibited substance from the “I. B” class, the narcotic analgesics. Mrs. Pitts and her counsel do not contest this fact.

26. Art. 3 para. 2 UCI AER, which according to art. 2 UCI AER applies to all licence-holders and all cycle races, forbids doping, which is defined by art. 4 UCI AER as follows:

*“Doping is.*

*1. the use of an expedient (substance or method) which is potentially harmful to athletes’ health and/or capable of enhancing their performance, or*

*2. the presence in the athlete’s body of a prohibited substance or evidence of the use or attempted use thereof or evidence of the use or attempted use of a prohibited method”.*

27. The Panel finds that by presence of the prohibited substance of methadone in the body of Mrs. Pitts she committed the offence of doping. It does not matter whether the substance of methadone can be considered a performance enhancing substance or not. It is also not relevant for this fact whether Mrs. Pitts ingested any methadone in the three days prior to the event or during an unknown period before.

28. The USADA Anti-Doping Review Board found a legitimate medical condition well documented by her physician which required the use of methadone and therefore declared no doping violation having occurred by referring to arts. 8, 64 and 89 UCI AER. The counsel of Mrs. Pitts does not refer to these provisions, but to the aims and purposes of the UCI AER. He argues that:

*“one of the primary purposes for which the Anti-Doping Rules were created is to promote fairness in competitive sport. It does not serve this purpose to penalize an athlete who has struggled to overcome the debilitating effects of a severe medical condition and resulting surgery ... Common sense and reason should prevail in applying the AER, especially in cases where the activity is outside the class of activities which the Rules were created to combat ... It is ironic that bicycling was therapeutic in helping her cut down on painkillers such as methadone and now she is threatened with sanctions due to the presence of a substance of which she was not, and could not be reasonably expected to be aware ... The Board’s decision finding no doping violation is a reasonable interpretation and application of the AER Rule, given the circumstances”.*

29. The UCI Statement of Case holds that Mrs. Pitts’ argument having taken methadone for medical reasons does not exonerate Mrs. Pitts. It is argued that methadone may not be used for medical treatment under the UCI AER and is forbidden under all circumstances in competition. Mrs. Pitts is held, therefore, being guilty of an antidoping offence. Her arguments could at best serve

to constitute mitigating circumstances under articles 124 and 125 UCI AER. In the UCI Additional Statement of Case dated 17<sup>th</sup> November 2003 it is argued that

*“If the medical conditions of Ms. Pitts did not allow for methadone being replaced by another, non-prohibited, analgesics, even temporarily, Ms. Pitts had to refrain from participating in cycling competitions (which would not prevent her from cycling for fun and for training). Otherwise, she had to interrupt the methadone medication and wait for the substance being eliminated from her system, before participating in the competition”.*

30. The Panel wants to underline the reasoning of another CAS Panel with regard to the UCI AER. In CAS 2002/A/384 of 24 September 2002, at para. 65, the Panel held that the UCI Anti-doping Commission and all other bodies holding authority under the UCI AER to be bound to pay respect to general methods of interpretation of legal norms. The Panel holds that the wording of the provisions of the UCI AER dealing with medical treatment is clear and does not give any room for interpretation by adducing history, systematics, common sense or aims and purposes. Art. 8 UCI AER dealing with medical treatment reads as far as relevant for the present case:

*“No substance belonging to a prohibited class or doping method may be used for medical treatment, except where specified otherwise in the list: ...”.*

31. The list referred to by this article is the UCI Prohibited Classes of Substances and Prohibited Methods. The list corresponds to Appendix A of the Olympic Movement Anti-Doping Code (Prohibited Classes of Substances and Prohibited Methods). Part I.B of Chapter “*Examples and Explanations*” lists methadone as a substance without any specification for medical treatment. Methadone, therefore, is not allowed to be used for medical treatment under the UCI AER. The list is clear. In the same chapter it rules for morphine, that a sample shall be deemed positive if the concentration exceeds 1 microgram/ml, and it allows codeine, dextromethorphan and other substances listed exhaustively. Part I. A of the same Chapter (“*Stimulants*”) mentions, for example, that:

*“Formoterol, salbutamol, salmeterol and terbutaline are permitted in the form of aerosols for the purpose of preventing and/or treating asthma and stress-related asthma”.*

32. The Panel, therefore, finds that under art. 8 UCI AER Mrs. Pitts was not allowed to use methadone for medical treatment and that there is no legal basis for any authority which has to apply the UCI AER of allowing her to use methadone for medical treatment. As a consequence the further dispositions of art. 8 UCI AER dealing with the burden of proof do not apply. The same goes for art. 64 UCI AER which is not applicable because Mrs. Pitts was no rider authorised to use a banned substance and because she even could not be authorised to do so.
33. The Panel also finds no reason to be allowed to apply art. 89 UCI AER, which is reserved for possible use by the UCI Anti-doping Commission, even under the new reading of art. 88 UCI AER.
34. The finding that methadone is not allowed to be used for medical treatment by the UCI AER does not make UCI appear as a hardliner beyond any common sense. Also the USADA Guide to Prohibited Classes of Substances and Prohibited Methods of Doping 2003, on page 13, lists

methadone as a prohibited narcotic, included in table 5, and, therefore, covered by the introductory phrase at the same page: *“Evidence exists indicating that narcotics have been and are abused in sport, and therefore all products in this class are prohibited except for those indicated in Table 6 (p. 14)”*.. This is underlined by reference *“pain”* on page 31 in the Chapter *“USADA Guide to Permitted Medications”*, which does not include table 5 on page 13.

35. The USADA Restricted Substance Medical Notification Form as in effect since 1<sup>st</sup> January 2003 says accordingly: *“The purpose of the USADA medical notification form is to notify the relevant medical authorities of the prescribed medical use of prohibited substances that are permitted under certain circumstances”*. Methadone, also under USADA provisions, obviously is no such substance.
  
36. This said, the Panel also cannot follow the argument of the counsel of Mrs. Pitts that a *“literal, legalistic application of the Rules to Ms. Pitts is impermissibly overbroad as the blanket prohibition of methadone, without a procedure for obtaining an exception for medical usage unreasonably prohibits medically necessary, legal and legitimate conduct ... Furthermore, such an application is arbitrary and capricious in that there is no rational basis to justify sanctioning the mere presence of medically prescribed methadone in an athlete’s system”*. The UCI belongs to those few international sports bodies, that prior to the adoption of the World Anti-Doping Code and its art. 4.4 already had a formal therapeutic use exemption procedure laid down by arts. 8 and 64 UCI AER. This procedure is linked to the List of Prohibited Substances and Methods and restricted to those substances that are opened for medical treatment by the list itself. Only when the World Anti-Doping Code will have been implemented by the international sports bodies (before the first day of the XXVIII Olympiad in Athens) it will become evident, whether art. 4.4 of the World Anti-Doping Code and the International Standard for Therapeutic Use Exemptions based on this article in practice will lead to an expansion of the list of prohibited substances allowed for medical treatment under the control of WADA. The wording of art 4.4 World Anti-Doping Code and the International Standard for Therapeutic Use Exemptions can be understood as in principle allowing a therapeutic use exemption from any prohibited substance or prohibited method. On the other hand, the WADA 2004 Prohibited List follows the model of Appendix A of the Olympic Movement Anti-Doping Code (Prohibited Classes of Substances and Prohibited Methods) for 2003. The WADA 2004 Prohibited List explicitly mentions the possibility of being granted a Therapeutic Use Exemption with regard to a number of substances (e.g. S6.Beta-2 Agonists falling under the abbreviated process when inhaled; S8. Masking Agents such as diuretics falling under the standard process). Methadone like all other *“S.2 Narcotics”* is not linked to such a Therapeutic Use Exemption reference, but remains prohibited. The Panel, thus, cannot see any deviation of the current UCI Therapeutic Use Exemption system from common practice and common sense in international and Olympic sports.
  
37. Mr. Cerveny on behalf of Mrs. Pitts and Mrs. Pitts herself further raise the argument that she never has been provided with a copy of the new anti-doping regulations nor the list of prohibited substances. Mr. Cerveny emphasizes that *“Ms Pitts was never put on notice at any time that a list of substances existed whose mere presence in her body would constitute a doping violation”*. The counsel finds this *“Kafkaesque”* and a violation of due process. The UCI by Exhibits 5 and 6 to the UCI Statement of Case and Exhibit 17 to UCI Additional Statement of Case gives evidence that methadone was already included in the Prohibited List in the years 1991, 1992 and 1987, id est

in the time when Mrs. Pitts had been competing as the Captain of the Chevrolet/LA Sheriff's Women's Team according to her letter to USADA dated 14<sup>th</sup> May 2003. Even if such clear evidence would not exist for Mrs. Pitts having had to know the illegality of methadone since the starting of her competing at least in 1985, the Panel holds that no athlete can invoke his or her unawareness of the existence of anti-doping rules or the impossibility of having knowledge of these rules. When signing the backside of her licence under art. 1.1.023 of Chapter I UCI Cycling Regulations Mrs. Pitts had to declare that she undertakes to respect the Constitution and Regulations of the UCI, its Continental Confederations and its National Federations. It is her responsibility to make sure that she knows what she is signing to. Being the expression of the general principle of law that "*ignorance of law is no excuse*", art. 7 UCI AER rules that it is "*the personal responsibility of every rider to ensure that they neither use any prohibited substance or prohibited method nor permit any such substance or method to be used*". This includes the obligation to achieve knowledge on the respective provisions and is emphasized also by USADA on page 6 of its Guide to Prohibited Classes of Substances and Prohibited Methods of Doping. Under "Important facts" it is stated there: "*Ignorance is never an excuse. It is the personal responsibility of each athlete to ensure that he or she does not allow any prohibited substance to enter his or her system or use or allow the use of any prohibited method ... Certain international federations (IFs) have their own lists of prohibited substances. It is the athlete's responsibility to know the rules of his or her IF*".

38. Finally Mrs. Pitts and her counsel raise the issue of the form of Doping Control Official Record used by USADA. The form asks for declaration of medications and nutritional supplements taken during the preceding three (3) days and does not provide for a place on the form to declare medications having been taken earlier. The Panel does not consider this form in full line with art. 64 paragraph 1 UCI AER. This provision requires a rider "*who has used a substance or method included on the list of classes of banned substances and methods but who is authorised to do so under the conditions there specified*" to indicate the fact on the testing form. The provision does not limit this obligation to a period of three days prior to the testing. The Panel holds that the form should be amended accordingly. The inconsistency of the form used by USADA with the rule of the UCI is not considered by the Panel to be material in the case of Mrs. Pitts. But it is also not material as the indication of the medication would not have changed the finding of a doping, as the medication was not and could not be considered to be authorised under UCI regulations.
57. The Panel, thus, authorised by art. 121 UCI AER to consider the case as a whole feels bound to apply art. 130 paragraph 1 UCI AER. This provision reads:
- "In cases of doping other than those covered by Article 129, the rider shall be penalised as follows:*
- 1. first offence, other than intentional doping:*
- suspension for at least two years".*
58. Methadone is a substance not covered by art. 129 UCI AER. The Panel does not find any elements in the facts that could point at an intentional doping with methadone. The statement of Mrs. Pitts and the medical documentation attached to the Statement of Case on her behalf give sufficient evidence for the use of methadone, admitted by Mrs. Pitts, for treatment of heavy pain. UCI did not contest the fact that this was the first offence of doping having been committed by Mrs. Pitts.

59. Mr. Cerveny on behalf of Mrs. Pitts asks in his Statement of Case the following:

*“If the panel, nevertheless, insists on a literal and rigid application of the Rules, Ms. Pitts would ask the Panel to consider all the foregoing mitigating circumstances, and to defer or suspend a(nd) sanction imposed. Given the circumstances, any suspension, fine, or imposition of costs would be unjust”.*

60. The UCI in its Statement of Case obviously can agree to such a finding by saying: *“Her arguments, if taken into consideration by the panel, constitute at best mitigating circumstances justifying a reduction of the two year suspension under articles 124 and 125 AER”.*

61. Art. 124 UCI AER reads as follows:

*“Within the limits set by the present regulations, the penalties imposed must be proportionate with the offence committed, taking account of both the specific details of the case in hand and the characteristics of cycle sport and its various disciplines. Therefore the following elements, inter alia, will be considered:*

- the circumstances surrounding the offence,*
- the character, age and experience of the transgressor,*
- the gravity of the consequences of the penalty for his social, sporting and economic position,*
- the risk to a professional career,*
- the rider’s normal discipline and programme, particularly as regards the length of the season for that discipline and the number and importance of the events”.*

62. Art. 125 UCI AER reads as follows:

*“The duration of suspension from all competition may be reduced below the minimum laid down hereafter as long as a reduction is expressly based on the aspects covered by article 124.*

*In no case may the duration of the suspension from all competition be reduced to less than a quarter of the minimum laid down hereafter.*

*The minimum length of the suspension under point 1 of article 129 may not be reduced”.*

63. The Panel, considering the gravity of medical condition of Mrs. Pitts, the well-documented prescription of methadone as pain reliever in her condition, her advanced age and the specific circumstances of the aims why she participated at the Track World Cup in Hollywood, which obviously were more for fun and training as well as for physical well-being than for qualification or competition results, her role model for youths in the fight against doping in sports over years and her honesty and personal integrity, finds sufficient elements under art. 124 UCI AER to reduce the two-year duration of suspension to the minimum under art. 125 UCI AER, which is half a year. According to arts. 150 and 151 UCI AER read together with art. 152 lit. a UCI AER and art. 157 UCI AER the period of inactivity will be automatically added to the period of suspension (1<sup>st</sup> November to 31<sup>st</sup> January). The suspension, therefore, will last from 20<sup>th</sup> December 2003 to 31<sup>st</sup> July 2004. The Panel regrets not finding any rule in the UCI AER that allows for exclusion of a suspension in cases of extraordinary circumstances. The provisions of

arts. 150 to 152 and 157 UCI AER are strict and do not give room for flexibility in exceptional situations.

64. The Panel further states that according to art. 143 UCI AER Mrs. Pitts is automatically disqualified from the Track World Cup Qualifier of 28<sup>th</sup> March 2003 in Hollywood, Florida, USA.

**The Court of Arbitration for Sport rules:**

1. The appeal filed by the UCI on 21 August 2003 is upheld.
  2. The decision of USADA of 29 May 2003, 1 July 2003 and communicated on behalf of USADA on 3 July 2003 is annulled.
  3. Mrs. Pitts is sanctioned as follows:
    - disqualification from the Track World Cup Qualifier of 28 March 2003 in Hollywood, Florida, USA;
    - suspension for six months from 20<sup>th</sup> December 2003 to 31 July 2004.
- (...).