BEFORE THE AMERICAN ARBITRATION ASSOCIATION

North American Court of Arbitration for Sport Panel

UNITED STATES ANTI-DOPING AGENCY, Claimant, v. MICHELLE COLLINS, Respondent.	**ARBITRAL AWARD** AAA No. 30 190 00658 04

WE, THE UNDERSIGNED ARBITRATORS, having been designated by the above-named parties, and having been duly sworn and having duly heard the proofs and allegations of the parties, FIND AND AWARD as follows:

I. Introduction

1.1. In this case, USADA seeks for the first time to sanction an athlete who has not tested positive in any of her in-competition or out-of-competition drug tests. Thus, on the one hand, the case involves issues that have not previously had to be decided by Arbitral Tribunals. On the other hand, the straightforward application of legal principles to essentially undisputed facts leads to a clear resolution of this matter.

1.2. The United States Anti-Doping Agency ("USADA") seeks a lifetime ban of Michelle Collins ("Collins") for participating in a wide-ranging doping conspiracy

implemented by the Bay Area Laboratory Cooperative ("BALCO"). USADA charges that, for a period of several years, Collins used various performance-enhancing drugs provided by BALCO. Collins has never had a single drug test found to be a positive doping violation, but USADA's charges are based, in part, on all of the blood and urine tests at IOC-accredited laboratories that she has had in recent years. USADA also relies upon documents seized by the U.S. government from BALCO that have been provided to USADA; statements made by BALCO officials; documents obtained by other law enforcement means; and other documents about Michelle Collins.

1.3. For the reasons described in this Award, the Arbitral Tribunal holds that USADA has proven beyond a reasonable doubt that Collins was guilty of doping through the use of prohibited substances and techniques for more than a year. This conclusion is based principally on two sets of documents: emails from Collins in which she admits to using some of the prohibited substances and techniques, and undisputed blood and urine test results that together provide solid evidence of a pattern of doping. For these violations of the relevant rules, the Arbitral Tribunal suspends Collins for a period of eight years from the date of this Award.

II. Facts

A. The BALCO Conspiracy

2.1. This dispute stems from the U.S. Justice Department's investigation of BALCO. According to USADA, BALCO was involved in a conspiracy, the purpose of which was the distribution and use of doping substances and techniques that were either

undetectable or difficult to detect in routine drug testing. The president of BALCO was Victor Conte ("Conte"). Conte has been indicted along with several alleged BALCO co-conspirators and is awaiting trial. Notwithstanding several recent very public media interviews, Conte asserted his Fifth Amendment rights in this matter and did not appear at the hearing, despite a subpoena issued to him.

2.2. BALCO is alleged to have distributed several types of banned doping agents to professional athletes in track and field, baseball and football. Among these were tetrahydrogestrinome ("THG"), otherwise designated as "the clear" or "L" by BALCO. THG is a designer steroid that could not be identified in testing until 2003, when a track and field coach provided a sample of it to USADA. THG is administered by placing several drops under the athlete's tongue. According to testimony presented at the hearing, THG is formulated so that it breaks down when exposed to the chemical agents used in urine testing. Nonetheless, it is undisputed that it is prohibited under the IAAF Procedural Guidelines as a "related compound." THG's chemical nature and history of use were fully discussed in at least two previous AAA Panel awards. *See USADA v. McEwen*, AAA No. 30 190 01107 03 (2004); *USADA v. Price*, AAA No. 30 190 01126 03 (2004). In both of these cases, the athletes tested positive for THG after a test had been developed that could detect it. In this case, Collins has not tested positive for THG use in any drug test. However, it should be noted that, because of injuries, Collins did not race after the THG test was created but before it was announced to exist.

(Exs. 25, 26). She did not participate in the world outdoor championships in July 2003, when other athletes first tested positive for THG.

2.3. BALCO also distributed a testosterone/epitestosterone cream, usually called simply "the cream" and referred to in BALCO documents as "C". The cream contained testosterone, a prohibited substance under the IAAF Procedural Guidelines. IAAF Procedural Guidelines for Doping Control (2002), Schedule 1, Part I(a)(I), Schedule 2(iii); IAAF Procedural Guidelines for Doping Control (2003), Schedule 1, Part I9a)(I), Schedule 2(b). The use of a steroid like THG reduces the amount of testosterone in an athletes' body, because when the human body detects the higher levels of a steroid, it shuts down its own production of testosterone. *See, e.g., USADA v. Thomas,* AAA No. 30 190 00505 02 (2002). Therefore, the testosterone cream was applied by athletes using THG to mask its effects. The use of a masking agent such as the cream is also prohibited under the IAAF Procedural Guidelines.

2.4. Because testosterone is produced naturally in the human body, its quantities are tested in conjunction with the amount of epitestosterone, another naturally occurring substance. As has been described in many AAA and Court of Arbitration for Sport ("CAS") panels, a doping offense may occur if the testosterone/epitestosterone ratio ("T/E Ratio") exceeds 6-1. IAAF Procedural Guidelines for Doping Control (2003), Schedule 1 Part I(a)(I); IAAF T/E Protocol (2003). Thus, the epitestosterone was added to BALCO's cream in order to keep the T/E Ratio within testing norms. As noted, such a masking technique is prohibited.

2.5. BALCO distributed erythropoietin, otherwise known as "EPO" or, in BALCO's shorthand, "E." EPO increases the number of red blood cells capable of carrying oxygen in an athlete's circulatory system, thus enhancing performance. The use of EPO is a prohibited technique under the IAAF Procedural Guidelines. IAAF Procedural Guidelines for Doping Control (2002), Schedule 1 Part I(d), Schedule 2(i); IAAF Procedural Guidelines for Doping Control (2003), Schedule 1 Part (I)(d), Schedule 2(a)(ii); *see also IAAF v. Boulami*, CAS 2003/A/452 (2003); *Union Cycliste Internationale v. Hamburger*, CAS 2001/A/343 (2002).

2.6. It is alleged that BALCO also distributed legal vitamins and supplements to be used in conjunction with these banned agents and techniques. Moreover, in its June 24, 2004 letter, USADA also accused Collins of using Modanafinil, a stimulant that is banned under the IAAF Procedural Guidelines. However, USADA decided not to press this charge, and no evidence concerning it was presented at the hearing. The alleged use of Modanafinil therefore does not affect the decision in this case.

B. Government Action Against BALCO

2.7. On September 3, 2003, FBI agents searched BALCO's premises pursuant to search warrants. Approximately twenty-four agents searched BALCO's offices and seized hundreds of documents there and at other locations maintained by BALCO. The agents also seized samples of THG, the cream and other substances distributed by BALCO. During this raid, agents interviewed Conte and other BALCO officials, who spoke about its activities and its customers. Conte named fifteen track and field athletes

whom he alleged were clients of BALCO, including Collins, as well as other athletes from the NFL and Major League Baseball. Similar statements were made by Jim Valente, a vice president of BALCO. (Exs. 1, 2)

2.8. Following the BALCO raid, government agents obtained other documents, such as emails, through the use of subpoenas and other law enforcement mechanisms. Additional records were produced and created as part of the Grand Jury investigation. None of the exhibits or testimonial evidence in this case derived from the Grand Jury proceedings.

2.9. The Grand Jury investigation led to the indictment of Conte, Valente and two trainers, Greg Anderson and Remi Korchemny, in the United States District Court for the Northern District of California. (Ex. 39) This case is scheduled to go to trial in 2005.

2.10. The BALCO documents were subsequently obtained by the United States Senate, which in turn provided the documents to USADA. After receipt of these documents, USADA analyzed their content and considered charges against the track and field athletes who had been implicated by them. As a result of these investigations, four athletes have accepted sanctions imposed by USADA: Kelli White, Alvin Harrison, Kevin Toth and Regina Jacobs. (Exs. 20-23) In addition, other athletes connected to BALCO have been found guilty of doping and have been sanctioned for the use of one or more illegal substances. *See USADA v. McEwen*, AAA No. 30 190 01107 03 (2004);

USADA v. Price, AAA No. 30 190 01126 03 (2004); *USADA v. Harrison*, AAA No. 30 190 00091 04 (2004); *UK Athletics v. Chambers*, Decision of Disciplinary Committee (2004). Similar charges are pending against Tim Montgomery and Kristi Gaines; their hearings before a CAS panel are scheduled for 2005.

C. The Case Against Michelle Collins

2.11. Collins is a world-class sprinter. In 2000, she principally competed in the 400 meters, but in 2002, she began to compete more in 200-meter races. On March 15, 2003, she won the world indoor championship in that event. After that race, Collins was injured, and she did not race again in 2003. In 2004, she ran the 200 meters twice in May, but she has otherwise not competed. (Exs. 25, 26)

2.12. On May 10, 2004, USADA told Collins in a letter that it was investigating her for the use of banned substances and procedures.

2.13. The parties met on May 23, 2004 to discuss the allegations against Collins, but no resolution was reached.

2.14. On June 24, 2004, USADA sent a letter to Collins charging her with violations of the IAAF anti-doping rules. USADA seeks a lifetime ban from competition against Collins.

D. The Arbitration Proceedings

2.15. The June 24, 2004 letter initiated this arbitration under the Supplementary Procedures for Arbitration Initiated by the United States Anti-Doping Agency (the

"Supplementary Procedures"). The arbitration is further governed by the USADA Protocol on Olympic Movement Testing.

2.16. Collins had previously filed a Demand for Arbitration under the AAA's Commercial Arbitration Rules. On June 25, 2004, Collins filed an action in the United States District Court for the Northern District of California, Case No. C 04 02573 CW, which requested that Court to order that the arbitration proceed under the AAA's Commercial Arbitration Rules. Collins later voluntarily withdrew her petition.

2.17. Pursuant to the Supplementary Procedures, USADA appointed as arbitrator Hon. Peter Lindberg of Eden Prairie, Minnesota. Collins did not name an arbitrator, despite requests from the AAA to do so. Therefore, pursuant to the Supplementary Procedures, the AAA appointed as arbitrator Perry S. Toles, Esq., of Roswell, New Mexico. The AAA also appointed, as Chair of the Arbitral Tribunal, David W. Rivkin, Esq., of Debevoise & Plimpton LLP, in New York, New York. All of the arbitrators filed disclosures pursuant to the Supplementary Procedures and to California law, and the parties made no objection to their serving as arbitrators.

2.18. USADA is represented by Travis T. Tygart, Director of Legal Affairs at USADA, and Richard R. Young, of Holme Roberts & Owen LLP, in Colorado Springs, Colorado.

2.19. Collins is represented by Brian H. Getz, Esq., an attorney practicing in San Francisco, California.

2.20. On October 1, 2004, the Arbitral Tribunal and the parties held a telephone conference to set the procedures for the case. USADA requested that the Arbitral Tribunal issue various documentary and testimonial subpoenas, to which Collins did not object (although she reserved the right to object to any evidence offered that might be obtained from such subpoenas). The Arbitral Tribunal therefore issued the requested subpoenas. To our knowledge, these subpoenas – whether for documents or testimony – were not complied with, but USADA did not take any steps to compel enforcement of them.

2.21. USADA and Collins entered into two separate stipulations of uncontested facts and issues. These stipulations are important to the determination of this case, and so they are summarized below:

- The USADA Protocol for Olympic Movement Testing governs the hearing.
- The IAAF definitions of doping, prohibited substances list and sanctions are applicable to this matter.
- Testosterone, THG, epitestosterone, EPO and Modanafinil are prohibited substances or techniques under the applicable IAAF rules.
- Certain documents submitted by USADA are authentic copies of documents seized by the government from BALCO. These documents include many FedEx airbills showing shipments from BALCO to Collins.
- Collins asserts her Fifth Amendment privilege against self-incrimination with respect to the matters at issue in the arbitration. USADA reserves the right to ask that adverse inferences be drawn from this assertion. (See Section III. C, below.)
- More than three dozen laboratory analyses for specified blood and urine tests conducted on Collins (most of them official in-competition or out-of-competition tests) were conducted appropriately and without error, and their accuracy is not challenged.

- Collins sent a check to Victor Conte in the amount of $480. The parties also agreed that documents provided by the U.S. Senate to USADA did not include all of the financial documents seized at BALCO.
- Collins's competition results submitted by USADA are accurate.
- Certain exhibits were found in BALCO's offices in a folder labeled "Michele Collins." Other exhibits contained documents hand-written by Collins.
- Finally, documents containing email messages accurately reflect that the individual emails were sent from the email account designated in the "From" field, and were received by the email account designated in the "To" field.

2.22. Each party submitted a pre-hearing brief setting forth its position on the facts and the law. Collins submitted a supplementary brief on burden of proof at the hearing. USADA submitted two volumes of 62 exhibits and authorities, to which Collins opposed no objection. Collins did not present any documentary evidence.

2.23. The Arbitral Tribunal held a hearing on November 17 and 18, 2004, in San Francisco, California. At the hearing, the Tribunal heard oral argument from both parties. The Tribunal also heard testimony from four witnesses, all presented by USADA: Dr. Larry D. Bowers, the senior managing director for USADA, who testified about the BALCO investigation and about Collins's blood and urine testing; Kelli White, a world-class sprinter who has admitted to engaging in doping through BALCO (Ex. 20); Dr. Michael Sawka, an expert with the U.S. military who analyzed Collins's blood testing results; and Dr. Richard Clark, an expert witness who is a senior director at GlaxoSmithKline, who analyzed Collins's urine testing results. Despite having previously stated that she would present expert evidence, Collins put on no witnesses, either to dispute the facts or to offer expert opinions contrary to USADA's experts. (Her

attorney, of course, cross-examined each of USADA's witnesses.) Collins asserted her rights under the Fifth Amendment of the U.S. Constitution and did not appear or testify at the hearing.

III. Legal Standards

A. Substantive Rule

3.1. According to USADA rules and by stipulation, the IAAF rules provide the substantive law in this case. Because the alleged doping offenses occurred before March 1, 2004, the IAAF's 2004 Anti-Doping Regulations do not apply.[1] Instead, the applicable rules can be found in the IAAF's 2002 regulations:

> Rule 55.2
>
> The offense of doping takes place when either:
>
> (i) a prohibited substance is present within an athlete's body tissues or fluids; or
> (ii) an athlete uses or takes advantage of a prohibited technique; or
> (iii) an athlete admits having used or taken advantage of a prohibited substance or a prohibited technique.
>
> Rule 56.3:
>
> Any person assisting or inciting others, or admitting having incited or assisted others, to use a prohibited substance, or prohibited techniques, shall have committed a doping offence and shall be subject to sanctions in accordance with

[1] The 2004 regulations (Ex. 37) expressly provide that they apply only to "all samples provided or ... to all anti-doping violations committed on or after" March 1, 2004.

Rule 60. If that person is not an athlete, then the Council may, at its discretion, impose an appropriate sanction.

Rule 56.4:

Any person trading, trafficking, distributing or selling any prohibited substance otherwise than in the normal course of a recognized profession or trade shall also have committed a doping offence under these Rules and shall be subject to sanctions in accordance with Rule 60.

Rule 60.1

For the purpose of these Rules, the following shall be regarded as "doping offences"...

(i) the presence in an athlete's body tissues or fluids of a prohibited substances;
(ii) the use or taking advantage of forbidden techniques;
(iii) admitting having taken advantage of, or having used, or having attempted to use, a prohibited substance or a prohibited technique;
* * *
(vi) assisting or inciting others to use a prohibited substance or prohibited technique, or admitting having assisted or incited others;
(vii) trading, trafficking, distributing or selling any prohibited substance.

B. Burden of Proof

3.2. The burden of proof rests with USADA to show that Collins intentionally used a prohibited substance or technique.

3.3. The IAAF Rules were amended as of March 1, 2004 to change the standard for the burden of proof from "beyond a reasonable doubt" to the lower burden of "comfortable satisfaction of the relevant hearing body, bearing in mind the seriousness of the allegation which is made." (IAAF 2004 Rules 33.2, 38.9.) The parties disagreed which standard should apply here.

3.4. The comfortable satisfaction standard was adopted by the WADA Code in 2003, before the IAAF adopted it in 2004. This standard had previously been used by various CAS panels. It derives from court decisions in Australia and other Commonwealth countries that created a standard for cases involving personal reputation more stringent than balance of the probabilities but less burdensome than beyond a reasonable doubt.

3.5. Even though the IAAF adopted this standard in its new rules effective March 1, 2004, and the 2004 rules apply to cases like this one brought after that date, those rules also specifically provide in their introduction that they apply only to "all samples provided or ... to all anti-doping violations committed on or after" March 1, 2004. Furthermore, Rule 45.3 makes clear that "the Introduction and Definitions in Chapter 3 shall be considered an integral part of these Anti-Doping Rules." The rules do not differentiate between procedural and substantive rules in terms of retroactive application. Because the violations are alleged to have been committed before March 1, 2004, the standard in the IAAF's 2002 regulations shall apply to these charges. Under the 2002 regulations, any offense must be proven "beyond a reasonable doubt." IAAF Official Handbook 2002-2003, Rule 59.6.

3.6. Because we hold that the 2004 rules do not apply, we do not need to determine whether application of the comfortable satisfaction standard in those rules to conduct occurring prior to their effective date would constitute an improper *ex post facto* application of that standard, as had been urged by Collins.

C. Collins's Refusal to Testify

3.7. Before turning to our decisions on the issues presented, it is necessary to deal with one other procedural issue. Collins has asserted her right to refuse to testify for fear of self-incrimination, as granted by the Fifth Amendment to the U.S. Constitution. There have already been several criminal indictments against individuals involved in the BALCO scandal, although no athletes have yet been indicted.

3.8. USADA has asked the Arbitral Tribunal to draw an adverse inference from Collins's refusal to testify. In a criminal proceeding no adverse inference may be drawn from a witness pleading the Fifth, but USADA argued that this rule is inapplicable outside of criminal trials. *See Baxter v. Palmigiano*, 425 U.S. 308, 318 (1976) ("Fifth Amendment does not forbid adverse inferences against parties to civil actions when they refuse to testify in response to probative evidence offered against them."). USADA also noted that adverse inferences may be drawn in the context of disciplinary hearings. *In re Disciplinary Proceedings Against Schalow*, 131 Wis. 2d 1, 14 (Wis. 1986) (Fifth Amendment does not protect against adverse inference in attorney disciplinary hearing); *State v. Robnett*, 859 P.2d 872, 875 (Colo. 1993) (same); *State v. Postorino*, 193 N.W.2d 1, 3 (Wis. 1972) (same); *Arthurs v. Stern*, 560 F.2d 477, 478 (1st Cir. 1977) (proper for disciplinary board to draw adverse inference in hearing against doctor); *Saculla v. Medical Examining Board*, 205 Wis. 2d 111 (Wis. Ct. App. 1996) (same).

3.9. The Arbitral Tribunal finds that *Baxter* applies to civil arbitrations, so that the Tribunal *may* draw certain adverse inferences against Collins. *See Sanders v.*

Gardner, 7 F. Supp. 2d 151, 163 (E.D.N.Y. 1998) (an arbitral panel may draw an adverse inference from a witness's refusal to testify under the Fifth Amendment). However, there is no rule obligating a Tribunal to draw an adverse inference, and in this case no adverse inference is necessary. As described below, USADA presented substantial evidence of Collins's guilt, including her own statements in emails. As the Arbitral Tribunal repeatedly indicated to Collins's counsel at the hearing, because Collins has not provided an exculpatory explanation of her own statements and other documents evidencing her guilt, the Tribunal can only rely on the ordinary meaning of those documents and the other explanations of those documents provided by USADA's witnesses, to the extent that the Tribunal finds such explanations credible. The weight of these documents is already adverse to Collins, so no further adverse inference need be drawn.

IV. Analysis

4.1. As described more fully below, USADA presented two volumes of exhibits and authorities. The evidence against Collins fell into several categories. In particular, the evidence included emails between Collins and Conte; results of blood and urine tests conducted on Collins, both by accredited laboratories during and outside competition and also by other laboratories retained by BALCO itself; expert analyses of those test results; memoranda of FBI interviews with Conte and Valente; documents collected from BALCO, including handwritten calendars with the initials MC, handwritten notes, and FedEx airbills evidencing shipments from Conte to Collins; and additional documents from BALCO's files concerning other athletes, including Kelli

White. In addition to this documentary evidence, as noted above, USADA presented the testimony of four witnesses.

4.2. Two of these categories of documents, independently and collectively, prove Collins's use of prohibited substances and techniques beyond a reasonable doubt: the emails, which are admissions of such use by Collins, and the undisputed blood and urine test results.

4.3. In the emails, Collins admitted the use of banned substances or techniques. In an August 2002 email exchange with Conte, Collins wrote, "I have access to a testosterone gel... I'm wondering can I use this with the cream [sic] that I already have?" Conte responded, "Do not use the testosterone gel. It will cause a positive result by elevating the T/E ratio.... You are already getting what you need from the cream, which will not elevate the ratio and you know why." (Ex. 7(a).)

4.4. In the same email exchange, Collins stated,

> "you have to understand the person who gave me this didn't know I already had the cream. I haven't used it so don't worry. ...The reason I was asking is because I haven't used the cream in a while since before and after Zurich, so I thought it wouldn't interfere with the cream since it wasn't used on the same day or around the same time. It is just another trick from Europe that I just found out about. I will find out my testosterone results today. Oh, they informed me that I had some liver enzymes that were a little bit abnormal. I figured it was because of the liver pills I was taking. Also they said that they thought I was a little dehydrated from what they could tell about the blood results. ...I will let you know the results of the testosterone soon." (Id.)

Conte responded on August 28, 2002:

> "If you take testosterone by any delivery system, i.e. oral, injection, patch or cream, it contains only testosterone and no epitestosterone, therefore it will

> increase the T/E ratio and cause a positive test result. Cream is the safest form to use simply because it will not cause a 'spike' in the testosterone level, it will gradually increase and gradually decrease. . . You already have a safe and effective program, so why take the risk? Best regards, Victor. P.S. the lab said that you appeared to be dehydrated because you have an elevated hematocrit and you know the reason why. You are going to run very fast on Friday!" (Id.)

4.5. These emails constitute admissions by Collins that she was using BALCO's testosterone/epitestosterone cream. The use of that cream constitutes doping because it contains a prohibited substance and because its use was designed to mask the use of prohibited substances. Because BALCO's documents uniformly show that the "cream" was used in conjunction with THG (the "clear") as part of BALCO's "program" (as stated by Conte), these admissions also prove that Collins used THG.

4.6. As noted above, Collins did not contest the authenticity of these emails or that they were sent to and from the email accounts indicated; nor did she provide any alternative explanation of them. Collins's counsel only urged that there was no evidence that the emails from Collins's account were in fact sent by her. However, Collins presented no evidence that the emails were or could have been sent by anyone else; if they had been sent by someone else, one would expect to see an email from Collins to Conte when she had discovered someone was using her email account stating that emails previously sent had not come from her. No such emails or other documents were presented.

4.7. The emails themselves provide further evidence of their authenticity and of their origin. When Collins said that she had not used the cream since "before and after

Zurich," she was referring to her race in the 400 meters in the Zurich meet on August 16, 2002. (Ex. 25.) Similarly, Conte's reference in his August 28 email to her running very fast "on Friday" referred to her race in Brussels in August 30, 2002. Moreover, the references in Collins's emails to being dehydrated and to having elevated hematocrit levels correspond with test results she was receiving from the private laboratory in that same August 2002 time period (Exs. 14, 15.) *See* ¶¶4.11-4.15, below. Indeed, the initial results reported by that lab, which did not include testosterone results, were consistent with her remark that she would be receiving the testosterone levels soon. (Id.)

4.8. Similarly, Collins's emails constitute admissions, and prove beyond a reasonable doubt, that she used EPO, also a prohibited substance and technique. In another email exchange, Collins asked Conte, "How much was the E? I'm prepared to pay the amount now." In a responsive email, Conte informed Collins that "the bottles are $65 each. Three times $65 is $195.00. Send a total of $200.00 and I will make the iron, Vitamin E, Folic Acid and B-12 supplements plus the shipping charges complimentary." (Ex. 7(c).) USADA's experts testified that these vitamins aided with the administration of EPO and its effects. Other documents submitted by USADA demonstrate that "E" in BALCO documents referred to EPO, and that the prices quoted by Conte are consistent with the price at which he was selling EPO. (*See, e.g.*, Exs.6(c), 7(b), 7(e).)

4.9. Collins's use of EPO was also referenced in the emails mentioned above referring to "elevated hematocrit and you know the reasons why." (Ex. 7(a).) Elevated hematocrit levels – the percentage of one's blood that are red blood cells – are the desired

effect of using EPO. Similarly, a document in handwriting identified by Kelli White to be that of Victor Conte, which contains dates consistent with this August 2002 time period, included Collins's birth date, her fax number, an hematocrit level matching a test on Collins of the same date, *and* the notation "65x = 195" – identical to the purchase terms spelled out in Conte's email. (Ex. 3.) FedEx airbills show a shipment from BALCO to Collins shortly following this exchange of emails. (Ex. 9.)

4.10. These written admissions by Collins of her use of EPO are confirmed by the results of her blood tests, which independently prove the use of EPO. As explained in testimony by Dr. Bowers, USADA did not test for EPO in sprinters in 2002-2003. EPO is used to increase the number of red blood cells in the blood stream. At the time, this was not considered to be advantageous to sprinters; it was thought that EPO was used by long-distance runners to improve their endurance. It is now known that sprinters were using EPO to lessen their recovery time and to extent their training sessions. Kelli White, a sprinter, testified about these beneficial effects of EPO in her training.

4.11. While drug testing agencies were not testing Collins for potential EPO use at this time, she and BALCO in fact arranged for repeated tests by independent laboratories of, among other things, her hematocrit and hemoglobin levels (Ex. 14). These tests showed the following hematocrit levels in 2001 – 2003:

Date	Hematocrit Percentage
3/30/01	41.0
5/31/02	44.9
6/12/02	43.2
8/7/02	44.2
8/20/02	45.0
9/23/02	48.0
2/10/03	49.5
4/9/03	45.7
6/23/03	39.6

Id. As described above, Collins has stipulated to the accuracy of these results.

4.12. Both Dr. Bowers and Dr. Sawka testified about these results. They stated that the normal hematocrit range for women is 35-45%, and athletes were generally at the lower end of that range. However, they noted that an individual's hematocrit level will usually not vary more than 1-2%. This variation is usually caused by changes in altitude or potentially by infections. There was no evidence that Collins traveled to high altitudes or was suffering from any infections. Dr. Sawka testified about experiments conducted by the U.S. Army in which volunteers were blood doped by being given additional quantities of their own blood. He said that even when soldiers were blood doped in this manner and then had to perform rigorous exercise at the top of Pike's Peak (approximately 14,000 feet), he had not seen hematocrit levels as high as 49.5%, which Collins achieved in the month before her world indoor championship performance in the 200 meters in March 2003.

4.13. It is noteworthy that these increases in Collins's hematocrit levels occurred during the same time period as her emails indicate that she was purchasing EPO from Conte. (Ex. 7(c).) Her levels increased from 44.2% in early August 2002 to 48.0% just six weeks later. This is also consistent with the laboratory's finding that she was dehydrated due to elevated hematocrit levels. (Exs. 7(a); 14, 15.) It is also noteworthy that, as soon as she stopped racing because of injury in March 2003, when presumably she would no longer have had an incentive to continue to take EPO, her hematocrit levels returned to her 2001 level.

4.14. Dr. Sawka also explained that the increase in hematocrit levels from 45.0 to 48.0 in only a month from August to September 2002 was substantially beyond what anyone could do with physical training in such a short time period. A person would need to have lost 12% of her body water to explain such an increase. In a person the size of Collins, this would mean a loss of approximately 10 lbs. of water or 7.6 total lbs. of body weight. Dr. Sawka explained that while this could be done for a short term by multiple hours of heavy exertion, such as a wrestler striving to make weight, an athlete doing so would need immediate rehydration. Otherwise, a person would be hospitalized if she suffered such levels of dehydration. He added that, in running dehydration studies for the U.S. Army, he would not cause any participant to lose more than 5% of one's body water, because arrhythmias and other serious effects occur with 7% water loss.

4.15. Dr. Sawka also noted that even when blood doping with one's own blood, one cannot expect more than a 10% increase in hematocrit levels (i.e., 40% to 44%), and

one would normally expect less. By contrast, Collins achieved a nearly 25% increase in hematocrit levels from March 2001 to February 2003, and then experienced an even greater decline in less than 5 months to June 2003.

4.16. These test results prove beyond a reasonable doubt that Collins used EPO in 2002 and 2003.

4.17. Similarly, urinalysis conducted on samples from Collins by accredited laboratories show a pattern of testosterone and epitestosterone levels that can only be explained by the illegal use of BALCO's cream.

4.18. A normal T/E ratio is 1/1, although the specific ratio will vary from person to person. The WADA Code sets an abnormal T/E ratio at 6/1, which is above what one would expect normally to occur. Regardless of a person's own baseline ratio, his or her ratio will generally stay consistent, with a normal variation in women of up to 60%. The variation in Collins's T/E ratio in 2003 alone, on the other hand, was more than 1000%.

4.19. The urinalysis from these accredited labs showed Collins's testosterone and epitestosterone levels and her T/E ratios as follows:

Date	Testosterone	Epitestosterone	T/E
10/20/03	2.0	11.7	0.20
07/29/03	1.2	4.1	0.30
03/02/03	9.1	10.6	0.90
02/25/03	3.5	2.9	1.12
02/15/03	4.5	3.9	1.50
02/02/03	10.7	6.0	2.30
01/20/03	3.3	5.4	0.80

10/30/02	Unquantifiable	13.6	<.20
06/23/02	2.1	4.9	0.50
06/08/02	2.1	2.4	1.00
05/26/02	1.0	3.3	0.30
05/05/02	3.8	9.9	0.40
02/19/02	8.2	14.6	0.54
02/17/02	4.1	12.5	0.40
10/22/01	7.1	9.5	0.76
07/31/01	4.3	8.1	0.29
06/23/01	1.4	4.3	0.30
05/16/01	2.2	3.7	0.23
01/23/01	Unquantifiable	1.6	0.47
07/23/00	1.2	2.1	0.60
07/16/00	6.6	6.6	1.00
05/15/00	12.0	2.7	4.50
10/30/99	8.1	21.7	0.37
06/26/99	295.9	69.3	4.41
03/07/99	1.9	2.7	1.20
02/27/99	276.5	47.5	5.23

4.20. These urine tests, while individually negative for testosterone doping (because the T/E ratio was below 6/1), show extreme fluctuations in testosterone levels. According to Dr. Bowers and Dr. Clark, while some fluctuation in testosterone level is a natural part of human physiology, Collins's fluctuations were so extreme that they can only be explained by use of "the cream."

4.21. In addition to the wide variation in the T/E ratio, the results were also remarkable for the levels of testosterone and epitestosterone. Dr. Clark testified that it is unusual to see such a low measure of testosterone that it is unmeasurable, as occurred on October 30, 2002, at the same time as an unusually high level of epitestosterone. The generally low levels of testosterone, even in a woman, are consistent with the use of

steroids, according to both experts, since steroid use causes the body to shut down its own production of testosterone.

4.22. Collins's use of anabolic steroids is also indicated by unusually low counts of HDL, the "good" cholesterol. In one test conducted on Collins in February 2003 (a month before she won the world indoor championships), she had an HDL of only 25. (Ex. 14.) The ordinary range is 40-70, and athletes tend to have higher HDLs than the general population, because exercise raises its level. However, anabolic steroids reduce HDL levels. In April 2003, another test showed that her HDL had risen to 39. (Id.) Because the best drugs will only increase HDL by about 30%, according to Dr. Clark, this increase of approximately 60% in only two months indicates the cessation of anabolic steroids following her injury, which caused her body to readjust to more normal levels.

4.23. Collins relied extensively on the fact that no single test had been found to be doping. The Arbitral Tribunal recognizes that, except in rare instances, athletes have only been found guilty of doping when there has been such a positive test. *But see Mayer v. IOC*, CAS 2002 A/389-393 (sanctions upheld based on admissions of athletes and the presence of instruments and chemicals necessary for blood doping discovered in the Austrian ski team chalet after the Salt Lake City Olympics). Nevertheless, the Tribunal believes that in the circumstances in this case, all of these blood and urine tests taken together demonstrate a pattern of doping. Doping is the only potential explanation for the extreme variations in both hematocrit levels and T/E ratios. The testimony provided by

all three of USADA's experts was credible and supported. On the other hand, Collins did not present any expert's testimony or any other evidence to provide an alternative explanation of these test results. At the hearing, Collins's attorney pointed only to the fact that some of the test results individually were within normal ranges. He could not explain the extreme variation or the results outside the normal range. Given the extensive weight of the evidence, including USADA's expert testimony, that fact alone is not sufficient to rebut the evidence of doping in these tests.[2]

4.24. In addition to the evidence described above, USADA presented substantial evidence corroborating the finding of doping. None of this evidence by itself would be sufficient to find doping, but it is consistent with the charges and the other proof presented by USADA. It therefore supports the Tribunal's ruling that Collins has been guilty of doping beyond a reasonable doubt.

4.25. In summary, this evidence includes the following:

- Interview memoranda and affidavits by IRS Agent Jeff Novitzky, who originally searched the BALCO compound, in which Agent Novitzky stated that Conte told him specifically of fifteen track and field athletes, including Collins, who had been given "the clear" and "the cream." According to Agent Novitzky's report, Conte also told Kelli White that Collins's use of BALCO's "Program" was responsible for Collins's success in the 200-meter event.

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2 In any event, even if these tests were found not to prove doping on their own under IAAF Rules – a conclusion with which the Tribunal does not agree – these tests provide further support for the conclusion of doping that stems from Collins's own admissions.

- Documents from BALCO's file labeled "Michelle Collins." (Ex. 3.) These documents include a calendar with Collins's initials on the monthly pages, which contain the letters "L", "C", and "E" on different dates. (Ex. 4.) White's testimony and other evidence provided by USADA demonstrate that BALCO and athletes used these calendars to keep track of the careful regimen of THG ("L"), the testosterone/epitestosterone cream ("C") and EPO ("E"). The Collins calendars are not only consistent with White's calendars that she explained, but also with the calendars for other athletes who have admitted their participation with BALCO and have accepted sanctions. (Exs. 5, 17.) Conte would keep the originals of these calendars, and the athletes would take the copies. The handwriting, which is identical on both White's and Collins' calendars, was identified by White as belonging to Conte. Moreover, the dates of races on the Collins calendars match the races in which she competed (Ex. 25), and calendar notations of "C" for the cream are consistent with her admission that she used the cream "before and after Zurich" in August 2002. (Exs. 4, 7(a).)

- Extensive copies of FedEx airbills showing shipments from Conte to Collins. (Ex. 9.) Collins's addresses on the airbills match the addresses that she had provided to USADA in her athlete location forms. (Ex. 16.) As noted above, there is also a single check showing a payment by Collins to BALCO. Collins presented no evidence regarding the nature of these shipments. There was also evidence of shipments from BALCO to Collins in "trash reports" submitted by investigators who pulled evidence from BALCO's trash. (Ex. 10.)

- Analytical reports on samples of THG and the cream that were provided by White to investigators and other samples that were seized by the FBI in its raid of BALCO's headquarters. These tests show the illegal substances being distributed by BALCO. Documents, including invoices and emails, show Conte ordering testosterone and epitestosterone. (Exs. 6(j)(k).)

- Emails between Conte and various trainers and others discussing THG, EPO and the cream, and the efforts of anti-doping authorities in uncovering them. (Ex. 6.)

- The fact that Collins was repeatedly having her blood and urine samples tested by independent labs. (Exs. 13, 14, 15.) Some of these test results have been described above. Collins presented no explanation of why she and BALCO were so frequently testing her levels. A reasonable explanation can be that she wanted to make sure that she had not reached levels that would be found to be doping.

- Other BALCO documents showing references to Collins.

- Kelli White's testimony about her own association with BALCO. White testified that when Collins beat her in a race in February 2003 and thanked Conte on

television after the win, White then approached Conte about starting a program similar to Collins's. White also testified that she had noticed that Collins had grown bigger in the period of time before her February 2003 win. Conte allegedly told White directly that Collins was using EPO, THG, and "the cream."

4.26. The Arbitral Tribunal therefore finds that USADA has proved, beyond a reasonable doubt, that Collins took EPO, the testerone/epitesterone cream, and THG, and that Collins used these substances to enhance her performance and elude the drug testing that was available at the time. The Tribunal further finds that Collins's use of EPO, testosterone and epitestosterone, and THG were violations of the IAAF's prohibitions of banned substances and banned techniques, as set forth in IAAF Rules 55.2(i)(ii) and (iii) and 60.1(i)(ii) and (iii).

V. Sanctions

5.1. Under the applicable IAAF rules, Collins's competitive results must be voided from the commencement of her doping violations. According to IAAF Rule 60.5, "where an athlete has been declared ineligible, he shall not be entitled to any award or addition to his trust fund to which he would have been entitled by virtue of his appearance and/or performance at the athletics meeting at which the doping offense took place, or at any subsequent meetings." As described above, the evidence presented by USADA, such as her T/E ratios, raises suspicion that Collins may have used prohibited techniques or substances as long ago as 1999. However, the Tribunal believes that proof beyond a reasonable doubt begins in early 2002 -- when her hematocrit levels began to rise, proving the use of EPO – and was further confirmed by her admissions of use later

in 2002. USADA requested that her competitive results be voided from February 1, 2002, and that date seems correct in light of all this evidence.

5.2. In addition, USADA seeks the imposition of a lifetime suspension by alleging that she engaged in the trading, trafficking, distributing or selling of a prohibited substance. Such an offense requires a lifetime suspension. See IAAF Rule 60.1(vii); Rule 60.2(c). However, USADA has presented no evidence that Collins encouraged others to participate in the BALCO scheme or that she distributed or sold prohibited substances to other athletes. Therefore, we do not find that the requirements of these rules have been met.

5.3. The IAAF Rules provide that Collins's use of prohibited substances and prohibited techniques requires a sanction for "a minimum of two years." IAAF Rule 60.2(a)(i). The Arbitral Tribunal may impose a sanction of longer than two years if it finds that the circumstances warrant.

5.4. In this case, the Tribunal finds that a longer suspension is justified. The nature and extent and Collins's doping are severe. She engaged in a pattern of doping involving multiple drugs over a substantial period of time, during which she engaged and succeeded in many competitions. The steroids she took – such as THG – and the complex and coordinated timing of her doping were designed, even more than the usual doping offenses, not to be detected.

5.5. In addition, the Tribunal believes that guidance may be derived from rules regarding athletes who cover up doping offenses. The BALCO scheme was elaborately designed to hide the doping offenses of its athletes. Under the WADA Code, covering up a violation of an anti-doping rule requires a minimum ineligibility of four years, because of the seriousness of that offense. *See* WADA Code Section 10.4.2. As the Code states in its notes, "those who are involved in. . . covering up doping should be subject to sanctions which are more severe than the athletes who test positive."

5.6. In considering the proper sanction, it is also important to consider how other similarly situated athletes have been treated. Those who have admitted their participation with BALCO and have agreed to cooperate, such as Kelli White, have received a two-year suspension. Other BALCO athletes, such as Alvin Harrison and Regina Jacobs, who admitted their guilt but did not agree to cooperate, were given suspensions of four years.

5.7. Because Collins did not admit to her guilt and has not agreed to cooperate, because her participation in the BALCO conspiracy amounted to a cover up of these activities, and because her doping took place over an extended period of time during which she competed in many events, we believe that it is appropriate to double the four years received by other BALCO athletes or those who engage in cover-ups, and to suspend her for eight years.

VI. Findings and Decision

6.1. This panel therefore rules that the following sanctions shall be imposed on Collins:

- The retroactive cancellation of all awards or additions to Collins's trust fund to which Collins would have been entitled by virtue of her appearance and/or performance at any athletics meeting occurring between February 1, 2002 and the date of this Award;
- A period of ineligibility under the IAAF Rules for eight years beginning on the date of this Award, including from participating in U.S. Olympic, Pan American or Paralympic Games, trials or qualifying events, being a member of any U.S. Olympic, Pan American or Paralympic Games team and having access to the training facilities of the United States Olympic Committee ("USOC") Training Centers or other programs and activities of the USOC including, but not limited to, grants, awards, or employment pursuant to the USOC Anti-Doping Policies.

6.2. The Administration fees and expenses of the American Arbitration Association and the compensation and expenses of the Arbitrators shall be borne by USADA.

6.3. The parties shall bear their own costs and attorney's fees.

6.4. This Award is in full settlement of all claims submitted in this Arbitration. All claims not expressly granted herein are hereby denied.

6.5. 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 December 9, 2004

12/9/04
Date

David W. Rivkin
David W. Rivkin, Chair

Date

Hon. Peter Lindberg, Arbitrator

Date

Perry S. Toles, Arbitrator