

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA**

**SUSAN HAYWOOD,**

**Plaintiff,**

**CIVIL ACTION NO. 2:05-CV-78**

**vs.**

**USA CYCLING, INC, a  
non-resident corporation,**

**Defendant.**

**Response of the Defendant**

Now comes the Defendant, USA Cycling, Inc. and in response to the Plaintiff's motion for partial summary judgment states the following:

**I. UNDISPUTED FACTS**

The Defendant submits that the following facts are undisputed:

The Union Cycliste Internationale, (hereafter referred to as "UCI") is the worldwide governing body for cycling and is the association of national cycling federations. Defendant, USA Cycling is a member of UCI and is the UCI-recognized "national federation" governing the sport of cycling in the United States. USA Cycling is the official cycling organization recognized by the United States Olympic Committee and is responsible for identifying, training and selecting cyclists to represent the United States in international competition, including the Olympics. In carrying out its responsibilities to nominate cyclists to be member of the United States Olympic Team in the various cycling disciplines, including mountain biking, Mr. Stephen Johnson, the current Chief Executive Officer, of USA Cycling authored the Selection Criteria to be used in selecting members to the United States Olympic Team in the cycling disciplines including mountain biking for the 2004 Olympics to be held in Athens, Greece. Because no woman cyclist met the Automatic Criteria set for in the 2004 Selection Criteria, the US Olympic Nominee was

the top-ranked rider on the UCI mountain bike rankings as of July 12, 2005. (See Plaintiff's Memorandum at Page 5 for a description of the Nomination Criteria

On July 16, 2004, USA Cycling selected Plaintiff Haywood to represent the United States at the Olympic Games in the Women's Mountain Biking. In doing so, USA Cycling adjusted the UCI rankings as of July 12, 2004 to account for a July 2003 race held in Sandpoint, Idaho (hereinafter, referred to as the Sandpoint and/or Mt. Schweitzer Race). (See Paragraph 8 on Page 3 of the Arbitrators Decision Attached as Exhibit A to Plaintiffs memorandum and Steve Johnson's Email dated July 16, 2004, and Defendants' Exhibit A) USA Cycling's decision to nominate Plaintiff Haywood was based on the fact that on July 12, 2004, according to USA Cycling's calculations, Ms. Haywood had 1489 points including 15 points from the Sandpoint Race and the second place finisher Mary McConnelough finished with 1488 points.

On July 17<sup>th</sup>, 2004, Ms. McConnelough filed a demand for arbitration with the American Arbitration Association challenging USA Cycling's point calculation since on July 12<sup>th</sup> 2004, the official UCI Mountain Bike ranking showed Ms. McConnelough as second in the world with 1488 points, behind a Norwegian rider and Ms. Haywood was ranked third with 1474 points. (See Arbitrator's Decision Paragraphs 9 and 12 on Pages 3 and 4 of Plaintiff's Exhibit A) The UCI refused to include the Sandpoint Race points since they could only do so if the results were submitted in the same calendar year in which Ms. Haywood's race occurred. Since the reporting time expired on December 31, 2003 and USA Cycling did not ask the UCI to include the Sandpoint results until early 2004, the 2003 Sandpoint results were not included in the UCI Point Calculation. (See Arbitrators Decision Paragraph 15 Page 4 Plaintiff's Exhibit A.) Using the point total calculated by the UCI and not the point total calculated by USA Cycling, the Arbitrator declared that Ms. McConnelough would be the United States representative for the

Women's Cross Country Mountain Bike Race at the 2004 Summer Olympics in Athens, Greece.  
(See Plaintiff's Exhibit A: Arbitrator's Decision: Paragraph 33, Page 9)

At a meeting at the World Cup Championships in Ecuador in April, 2004, Stephen Johnson and Matt Cramer from USA Cycling and various potential Olympic candidates, including Ms. Haywood and Ms. McConnelough discussed the Olympic Selection Process including the fact that the Sandpoint/Schweitzer race points had not been reported to the UCI. (See Johnson's Deposition Testimony Pages 30 – 33 attached hereto as Defendants Exhibit B and Cramer deposition pages 23 – 25 attached hereto as Defendant's Exhibit C and Haywood Deposition Pages 27 – 32 attached hereto as Defendant's Exhibit K)

Mr. Johnson testified as follows:

“It was at that meeting where it first came to my attention that there were some points that had not been accounted for from 2003, from the Schweitzer event in July 2003. So we had some discussion in the group, as you can imagine, about the problem and about the general problem of how reliable the UCI actually was in terms of accounting for all the points.

So you know out of that discussion it grew – our philosophical approach was if you earn points you should get those points.” (Exhibit B: Page 30 Lines 20-21 and Page 31 Lines 1-5)

Q.. “Was an agreement reached among the competitors as to how to deal with it at that meeting.

A.. In my recollection, there definitely was. Everybody felt it was fair to get credit for the points they had earned.” (See Exhibit B: Page 31 Line 15 – 20)

Mr. Cramer testified as follows:

Q.. Was that the sum and substance of what was said; that if you earned the points at Sandpoint, you would be given credit for those in the calculations needed to make the Olympic selection process?

A.. Correct

Q.. Was Mary McConnelough present throughout that discussion

A.. Yes

Q.. Was it your understanding that she and the other athletes were in agreement that that's what would happen?

A.. Yes (Exhibit C: Pages 23 Lines 16 – 23)

Mr. Cramer went on to testify:

Q.. So in your opinion and understanding when you left that meeting that day it was the unanimous view of all persons present that that's how the race would be counted.

A.. That was my understanding, yes.

Q.. At any time between then and the date of the announcement of Sue Haywood as the candidate to represent the United States in the Olympics, did anyone express any disagreement with that method?

A.. I don't recall, no. (Exhibit C: Page 24 Lines 19 – 25, Page 25 Lines 1 – 5)

After Ms. Haywood was nominated as the US Olympic Candidate, Ms. McConnelough sent an email to Matt Cramer advising that she was not part of the decision making at the Ecuador meeting and asking that the points for the Sandpoint, Idaho dirt track cross country race be kept out of the points consideration. (Defendant's Exhibit D) Both Mr. Johnson and Mr. Cramer were surprised by the position that Ms. McConnelough took in the July 15, 2004 email. (See Exhibit B: Johnson Deposition: Page 72 Lines 21 – 25 and Page 73 Lines 1-5 and Exhibit C: Cramer Deposition: Page 25 Lines 14 – 22). As set forth above, Ms. McConnelough did not comply with the agreement made at the Ecuador meeting and filed the successful Arbitration Demand.

On October 10, 2003, the UCI sent a fax message to Mr. Jim Ochowicz, who was President of USA Cycling, Inc. in which it listed numerous races including the Schweitzer race for which they had not received the race results (Defendant's Exhibit E) UCI's request was somewhat confusing in that it requested results for two Women's cross country races under the symbol "XC" The Sandpoint race was a short track Cross Country race and the symbol for those results would have been "XCSC" (See Exhibit F: Cramer Deposition: Page 41 Lines 3 – 21, Page 43 Lines 22-25) Mr. Cramer testified that he sent the results that the UCI requested

(See Exhibit F: Cramer Deposition: Page 42 Lines 1-4, Page 44 Lines 1-8) Since there was no request from the UCI for the results of the Schweitzer “XCSC” Race, these results were not submitted to the UCI in response to the October 2003 request. As indicated by the testimony set forth above, it was the understanding of all the Olympic Candidates, including Ms. McConnelough that all points earned, including those in the Sandpoint race would be counted by USA Cycling to determine who the United States Nominee would be for the 2004 Athens Olympics. (See also Exhibit K: Haywood Deposition: Page 32 Lines 11-19).

## **II. ARGUMENT**

### **A. Standard of Review**

The Defendant, USA Cycling, agrees with the Standard of Review as set forth in the Plaintiff’s Memorandum In Support of Her Motion for Partial Summary Judgment

### **B. USA Cycling Carry Out Its Duty to Nominate Susan Haywood as the Olympic Candidate for Women’s Cross Country Cycling for the 2004 Olympics.**

In her Memorandum, the Plaintiff does not include any discussion of the only duty that the defendant, USA Cycling had to Plaintiff Haywood, which was to nominate her as the Candidate for the US Olympic Team in 2004. Plaintiff places her focus on the failure to report the Sandpoint Race results to the UCI in a timely manner and argues that this was a duty owed by USA Cycling to the Plaintiff and that this duty that was breeched by USA Cycling. As will be set forth below, the Sandpoint race results report was merely one step in a long process to select the Olympic Candidates.

Plaintiff acknowledges USA Cycling’s selection duty at Page 4 of their brief in which she states:

“One of the most important duties is that USA Cycling has been entrusted to nominate riders to be members of the United States Olympic Team in the various cycling disciplines including mountain biking.” (Emphasis supplied)

USA Cycling clearly complied with their duty to nominate Ms. Haywood to the United States Olympic Team. USA Cycling's philosophical approach was "If you earn points, you should get those points." Following the meeting in Ecuador, everybody including Ms. McConnelough felt it was fair to get credit for the points that they had earned. USA Cycling complied with its "most important duties" according to Plaintiff's own claim by nominating Sue Haywood to the 2004 US Olympic Team. The fact that Ms. Haywood was not able to represent the United States is not the fault of USA Cycling, since USA Cycling had no control over the action taken by Ms. McConnelough in requesting the arbitration. Ms. McConnelough's actions were contrary to the Agreement that USA Cycling worked out at its Ecuador meeting. Ms. Haywood testified at her deposition that up until the time that Ms. McConnelough filed for arbitration, USA Cycling did everything they promised Ms. Haywood that they would do in regard to counting points and, if Mary had not challenged the point total, Sue Haywood would have gone to the Olympics based upon the way the points were calculated by USA Cycling. (See Exhibit G: Haywood Deposition: Page 34 Lines 1-13). Thus, USA Cycling has demonstrated that a genuine issue of fact exist as to the duty owed to Ms. Haywood as required to under Matsushita Elec. Indus. v. Zeneth Radio Corp. 475 US 574, 586, 587 (1986). Accordingly, Plaintiff's Partial Motion for Summary Judgment should be denied.

**C. THE FAILURE TO REPORT THE SANDPOINT/SCHWEITZER POINTS WAS NOT THE FAULT OF USA CYCLING**

In the Plaintiff's brief, they argues that USA Cycling owed Susan Haywood an affirmative duty to submit results from the Sandpoint/Schweitzer race and failed to fulfill that obligation, thus breaching an alleged duty owed to her. As stated above, USA Cycling's duty was to nominate Ms. Haywood to the United States Olympic Team with which they complied. Thus there is a question of fact as to whether any duty, was breached. In support of their argument, in regard to

the alleged duty to report the race results, Plaintiff relies exclusively on Mountain Bike Regulation 10.11 of the UCI Regulations. This regulation states in part:

“10.11: National Federations and organizers are required, immediately following any race, to transmit to the UCI Office by fax, the complete results on results sheets supplied in advance by the UCI. These results must be signed by the UCI Chief Commissaire in attendance at the event.”

The application of this regulation was substantially addressed in all the discovery and depositions taken in this case. Plaintiff’s reliance on this regulation is clearly misplaced since as a matter of practice, the regulation is not applicable since the reporting responsibility for the race result was actually placed upon the Chief Commissaire who was assigned to a particular race. Shawn Farrell is the Technical Director for USA Cycling and has been a Cycling Race Official for 27 years and a Commissaire since the fall of 1989. (See Exhibit H: Farrell Deposition: Page 5 Lines 12 – 16, Page 6 Lines 23 – 25, Page 7 Lines 1 – 12). Mr. Farrell testified that the responsibility for submitting results remain primarily with the Chief Commissaire of the event. (See Exhibit H: Farrell Deposition: Page 23 Lines 4 – 19) Mr. Farrell provided a detailed explanation of his review of the UCI Regulation, other than 10.11, which, in his opinion, placed the reporting responsibilities for race results on the Chief Commissaire at the event. (See Exhibit H: Farrell Deposition: Pages 26 – 29) Although Mr. Farrell and USA Cycling admitted at their depositions, that the literal reading of rule 10.11 places a shared responsibility on the Federation which would be USA Cycling, to report the results, the standard operating procedure in 2003 required the Commissaire to report the results. (See Exhibit H: Farrell Deposition: Page 18 Lines 13 – 17) In fact, Mr. Farrell admitted that in 2003, he was not aware of Section 10.11 (Exhibit H: Farrell Deposition: Page 18 Lines 18 – 21) It was also Matt Cramer’s, who has been the National Mountain Bike Development Director for USA Cycling since 2003, understanding that the race reporting requirement was the responsibility of the UCI Chief Commissaire (See Exhibit I: Cramer Deposition: Page 8, Lines 8 – 10, Page 47 Lines 11 – 17, Page 52 Lines 1 - 5)

Stephen Johnson who is the Chief Executive Officer for USA Cycling and was previously the USA Cycling's Athletic Director and Chief Operation Officer also testified that it was his understanding that the reporting of the race results, in particular, the Sandpoint/Schweitzer Race was the responsibility of the Commissaire (See Exhibit J: Johnson Deposition: Page 6, Lines 20 - 25, Page 7 Lines 1 - 12, Page 32 Lines 22 - 25, Page 33 Line 1, Page 35 Lines 2 - 10.) Mr. Johnson also testified that USA Cycling's role in the race reporting result comes into play at a later time in doing the reconciliation process (See Exhibit J: Johnson Deposition: Page 35 Lines 7 - 21). This procedure is actually what occurred in this case. UCI did request a reconciliation of points earned at the Sandpoint/Schweitzer Race in October 10, 2003 fax message (Defendant's Exhibit E). Unfortunately, the UCI did not request the results from the Cross Country Short Track (XCSC Race) at Sandpoint and therefore, those results were not provided to the UCI in the response to the October 10, 2003 fax message. Sean Petty, who is a USA Cycling Chief Operating Officer, also testified that it was his understanding that reporting the race results was the responsibility of the Chief Commissaire, since that is the procedure followed in all disciplines. (See Exhibit M: Petty Deposition: Page 9 Line 2 and Page 14 Lines 4 - 18) Even Ms. Haywood acknowledges that the Commissaire, at least in part is responsible for reporting the race results. In a Press Release issued by Ms. Haywood on July 22, 2004, she states the following,

“...yet due to a clerical error on both USA Cycling's part, as well as the UCI Chief Commissaire at the race, these points were never received by the UCI.”  
(Exhibit K: Haywood Deposition: Page 37 Lines 16 - 19) (Emphasis supplied)

In the Press Release it should be noted that Ms. Haywood characterizes the failure to report the results as a clerical error and not as any breach of duty on USA Cycling's part.

Based upon the argument set forth above, it is clear that there is a question of fact as to the type of duty that was owed to Ms. Haywood. USA Cycling's position is that the duty owed



to Ms. Haywood was to nominate her for US 2004 Olympic Team as acknowledged by Plaintiff in her Memorandum. USA Cycling honored the commitment made at the Ecuador meeting to count all points earned and nominated Ms. Haywood as it's Olympic candidate to the UCI. even though in June of 2004, Ms. McConnelough was in fact, riding better than Sue Haywood in June 2004. (Exhibit L: Johnson Deposition: Page 66 Line 25, Page 67 Lines 1 – 2) Even if Court accepts the Plaintiff's narrow interpretation of that duty was owed to Sue Haywood regarding the reporting of the Sandpoint/Schweitzer Race results, there clearly is a question of fact as to interpretation of Regulation 10.11 and who, ultimately was responsible for reporting race results in 2003. Accordingly, the Plaintiff's motion for partial summary judgment should be denied.

#### **D. CONCLUSION**

In summary, USA Cycling did not breach any duty owed to Plaintiff since USA Cycling selected Ms. Haywood as the Olympic Candidate. Accordingly, Plaintiff's Motion for Partial Summary Judgment should be denied.

Respectfully submitted,

/s/ William A. Kolibash

William A. Kolibash, Esq.

Counsel for Defendant

USA Cycling, Inc.

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**CERTIFICATION OF SERVICE**

I hereby certify that the foregoing Response to the Plaintiff's Partial Motion for Summary Judgment was filed with the Clerk of the Court on the 31st day of August, 2007, using the CM/ECF system, which will send notification of such filing to the following:

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