

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

SUSAN HAYWOOD,

Plaintiff,

vs.

Civil Action No. 2:05-cv-78

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

Defendant.

**MEMORANDUM IN SUPPORT OF MOTION FOR PARTIAL SUMMARY JUDGMENT
ON BEHALF OF SUSAN HAYWOOD**

Susan Haywood, by her counsel, John C. Cooper, Cooper and Preston, PLLC and William Wilmoth and James Wright, Steptoe and Johnson, PLLC, hereby tenders this Memorandum in Support of her Motion for Summary Judgment filed contemporaneously.

The heart of this case deals with USA Cycling's (sometimes referred to as "USAC") failure to transmit to the Union Cycliste Internationale ("UCI") the finish earned by Sue Haywood at a mountain bike race held in Sand Point, Idaho on July 25, 2003. Specifically, it is undisputed that Ms. Haywood finish position at July 2003 NORBA¹ National "Short Track Cross Country" event at Sand Point, Idaho entitled her 15 "UCI points."² Because of USA

¹NORBA or "National Off-Road Bicycle Association" was the "off-road" affiliate of USA Cycling, Inc.

²As background, "UCI points" are earned commensurate with a race finish at mountain bike races. The actual number of points earned per finish depends on the different "level" of event which is determined by a number of factors considering the level of competition at the particular event.

Cycling's failure to follow UCI Regulations for the timely transmission of race results, Sue Haywood was not credited with these 15 critical UCI points which, ultimately, led to an arbitration ruling ordering that Ms. Haywood's nomination to the 2004 Olympic Games be withdrawn and, instead, awarded to another athlete.

A. Procedural Facts

This case was initiated by the filing of a Complaint in the Circuit Court of Tucker County, West Virginia. At the time the Defendant filed its Answer, the Defendant timely removed this matter to this Honorable Court. Discovery has proceeded, with the Plaintiff and Defendant exchanging written discovery and with the Plaintiff deposing numerous USA Cycling (hereinafter sometimes "USAC") officials. Counsel for USAC has also deposed the Plaintiff.

The Court should note that prior to the filing of this civil lawsuit, the Plaintiff was initially nominated by USAC to be the sole female representative of the United States for the mountain bike event at the 2004 Summer Olympics in Athens, Greece. Shortly after receiving this nomination, her closest competitor Mary C. McConneloug, filed a Demand for Arbitration claiming, *inter alia*, that she should be the nominee as opposed to Ms. Haywood because USAC did not have the authority, under the Selection Criteria authored by USAC, to include the 15 UCI points earned by Ms. Haywood for the NORBA National Short Track Cross County event at Sand Point, Idaho on July 25, 2003 in the tally for Olympic nomination. An Arbitration was convened and on July 20, 2004, Arbitrator David W. Rivkin agreed and awarded the sole Olympic nomination for the female mountain bike event to Ms. McConneloug stating that "[i]t is unfortunate that Ms. Haywood has to bear the burden of USA Cycling's errors. She legitimately

earned the 15 points at the Sandpoint race, and she apparently expected that those 15 points would always be added to her totals in the UCI rankings.” *See* Award of Arbitrator attached hereto as Exhibit A.

B. Operative Facts

Susan Haywood is a professional cyclist competing, primarily, as a mountain bike competitor in the “endurance” disciplines of the sport which includes cross-country events. After discovering the sport while a student at West Virginia University in the early 1990s, Ms. Haywood turned professional in 1998 and is sponsored athlete of the Trek-Volkswagen bicycle team. As a professional cyclist one of her main goals, particularly as a mountain bike competitor, is to participate in the Olympic Games as a representative of her country. While there are many events that she competes in throughout the World, nomination and participation in the Olympics would be a pinnacle moment in her (and any mountain bike competitor’s) career. In short, participation in the Olympics is to mountain bike competitors what the Tour de France is to road cyclists.

The Union Cycliste Internationale (hereinafter “UCI”) is the world-wide governing body for cycling and is the association of national cycling federations. Defendant USA Cycling, Inc. is a “member” of the UCI and is the UCI-recognized “national federation” governing the sport of cycling in the United States. *See* Amended and Restated Bylaws of USA Cycling, Inc., Part C, Section 1, attached hereto as Exhibit B. In USA Cycling’s own words it describes itself as “the official cycling organization recognized by the USOC [United States Olympic Committee] and is responsible for identifying, training and selecting cyclists to

represent the United States in international competitions. USA Cycling, doing business as the USCF, NORBA, NCCA and USPRO, controls nearly two dozen major events each year and issues permits for up to 3,000 more.” *See* USA Cycling, Inc. website materials attached hereto as Exhibit C.

The Constitution of the UCI specifies that member national federations, such as USA Cycling, “shall comply with the Constitution and Regulations of the UCI, as well as all decisions taken in accordance therewith. Likewise, they shall have the Constitution, Regulations and decisions of UCI complied with by all persons concerned.” *See* UCI Constitution, Chapter II, Article 6, part 1, attached hereto as Exhibit D

The UCI Constitution also mandates that “[t]he Regulations of the UCI shall be incorporated in the corresponding regulations of the federations.” *Id.* at Article 6, part 2. Further, “[t]he constitution and regulations of the federations shall not run counter to the Constitution and Regulations of the UCI. In case of divergence, only the Constitution and Regulations of the UCI shall apply. The constitution and regulations of the federations must contain an express clause that in case of divergence with the constitution and regulations of the UCI, only the latter shall apply.” *Id.* at Article 6, part 3.

One of its 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 the various cycling disciplines including mountain bike. As described on USAC’s website, “[t]he corporation's business is conducted by a paid professional staff, which is overseen by the executive director. Staff members are responsible for administration, coaching and athlete services, Olympic preparation, technical services, membership services, corporate development,

sport science research, event planning, media coverage and public relations.” See Exhibit C. As part of this Mr. Steve Johnson of USA Cycling personally authored the “Selection Criteria” to be used in selecting members to the U.S. Olympic Team in the cycling disciplines, including mountain bike.

The 2004 Selection Criteria relevant to the issue at hand (the nomination of the female mountain bike competitor] was as follows:

Women’s Cross Country

(a) Start Positions: Maximum of 3 start positions

(b) Automatic Nomination Criteria (in order of priority):

(I) Any athlete placing in the top-three (3) at the 2003 World Mountain Bike Championships, Lugano, SUI, August 31 — September 7, 2003 provided that athlete continues to demonstrate the ability to perform at a similar level based on performances in international UCI World Cup competition during the 2004 calendar year.³

(ii) The top ranked rider on the UCI Mountain Bike rankings⁴ on July 12, 2004⁵

³ Automatic Nomination Criterion (ii) was applicable in this case because no United States female mountain bike competitor finished in the top three at the World Championships.

⁴The UCI Mountain Bike Rankings refers to “points” that can be earned at events with a UCI sanction. The UCI maintains its rankings on a rolling basis for a period of one year. Points older than one year, are continuously removed from the list on a rolling basis throughout the calendar year. As such, the time span for points applicable for this nomination criteria could be accumulated between July 12, 2003 and July 12, 2004.

⁵Please note that the 3 “start positions” identified were the maximum number that could be allotted to any country at the Olympic Games. Ultimately, by country rankings it was determined that the United States would only have one (1) start position available for female mountain bike. The Selection Criteria were authored and published before the final start position number was known. Please further note that Selection Criteria (iii), (iv), and (v) were not cited above as they were ultimately not applicable in this case.

No competitor qualified for automatic nomination under criterion (I) by placing in the top 3 at the World Championships. Therefore, in order to earn Olympic nomination under criterion (ii), a UCI points chase ensued resulting in a quest to earn and accumulate as many UCI points as possible to obtain the top U.S. ranking on the UCI Mountain Bike points tally.

The heart of this case deals with USA Cycling's failure to transmit to the UCI the finish earned by Sue Haywood at a race held within the United States. Specifically, it is undisputed that Ms. Haywood's finish position at July 25, 2003, NORBA National Sand Point, Idaho "Short Track Cross Country" event entitled her to 15 "UCI points."

Specifically, USA Cycling, Inc. as a national federation, failed to follow the mandate of UCI Cycling Regulations relating to the transmission of race results. Specifically, UCI Cycling Regulations, Part IV Mountain Bike Races, Chapter X, Regulation 10.11 states as follows:

10.11 National Federations and organisers are required, immediately following any race, to transmit to the UCI offices by fax, the complete results on results sheets supplied in advance by the UCI. These must be signed by the UCI Chief Commissaire in attendance at the event. Should such information not be transmitted as indicated, the UCI Management Committee may exclude it from the UCI International Calendar, notwithstanding any other penalties provided for in the regulations.

See UCI Cycling Regulations, Part IV Mountain Bike Races, attached hereto as Exhibit E.

C. Law and Argument

1. Standard of Review

Summary judgment is appropriate where no genuine issue of material fact exists, and the moving party is entitled to judgment as a matter of law. FED. R. CIV. P. 56©. The moving party has the burden of showing an absence of evidence to support the non-moving party's case. Once this burden is met by the moving party, it then shifts to the non-moving party to show the court that a genuine issue of fact does indeed exist. *See Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586-87 (1986). Unless a jury could return a verdict in favor of the non-moving party based upon the evidence presented, summary judgment should be granted. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249 (1986). Importantly, the existence of an insignificant question of fact is insufficient to avert summary judgment. Indeed, "[t]he mere existence of a scintilla of evidence in support of the [non-movant's] position will be insufficient; *there must be evidence on which the jury could reasonably find for the ... [non-moving party].*" *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 253 (1986) (emphasis added).

2. USAC Owed Susan Haywood an Affirmative Duty to Timely Submit Results and Failed to Fulfill this Obligation

There is no genuine issue of material fact and it is undisputed that USA Cycling, as national federation, never submitted the finish results for the July 25, 2003, Short Track Cross Country event at Sand Point, Idaho. Further, there can be no genuine issue of material fact that USA Cycling, Inc. under the then-applicable Mountain Bike Regulation 10.11 that it was "required, immediately following any race, to transmit to the UCI offices by fax, the complete results on results sheets supplied in advance by the UCI. These must be signed by the UCI Chief Commissaire in

attendance at the event.” The Regulation goes onto to warn that “[s]hould such information not be transmitted as indicated, the UCI Management Committee may exclude it from the UCI International Calendar, notwithstanding any other penalties provided for in the regulations.”

The West Virginia Supreme Court of Appeals has held that:

[i]n order to establish a prima facie case of negligence in West Virginia, it must be shown that the defendant has been guilty of some act or omission in violation of a duty owed to the plaintiff. No action for negligence will lie without a duty broken.”
Syl pt. 3, Aikens v. DeBow, 541 S.E.2d 576 (W.Va. 2000) (citations omitted).

Further, and most important for this Motion, the West Virginia Supreme Court has also held:

The determination of whether a defendant in a particular case owes a duty to the plaintiff is not a factual question for the jury; rather the determination of whether a plaintiff is owed a duty of care by a defendant must be rendered by the court as a matter of law. *Id.* at Syl. pt. 5. (citations omitted)

Representatives of USA Cycling, Inc., including its Technical Director, Shawn Ferrell, (who has been disclosed as an expert witness on rule issues by USA Cycling), have admitted that the Regulation at issue presented an affirmative duty and obligation upon USA Cycling, Inc. to transmit results to the UCI. Specifically, when confronted with the language of that Regulation during deposition, Mr. Ferrell acknowledged:

Q. All right. I would like you to look at Exhibit 1, if you would please. You would agree with me, would you not, that is an excerpt, Chapter X, of the UCI Regulations that were in effect in 2003 pertaining to mountain biking?

A. These are excerpts from a portion of the UCI rule book for 2003 that was in effect in 2003.

Q. Would you look at 10.11, which is on the last page?

A. Uh-huh.

Q. And are you familiar with that particular rule?

A. Yes, I am.

Q. And does that provide who is to provide result reporting of events in mountain biking to UCI?

A. It provides part of the responsibility, yes.

Q. Would you agree with me that it requires that the national federation and the organizer provide the race results immediately after the event to UCI?

A. That's what it says.

See April 25, 2007, Deposition of Shawn Farrell at pages 11 – 13 attached hereto as Exhibit F.

Compounding this error is the fact that not only did USAC fail to “immediately transmit” the Sand Point results to the UCI after the July 25, 2003, event but that USAC even had a second opportunity to correct this mistake – yet failed again to transmit results. On October 10, 2003, the UCI sent a facsimile letter directly to USA Cycling, Inc. President Jim Ochowicz seeking results for all cross-country events, male and female, taking place at Sand Point as well as other events that same year. The letter even specifically went so far as to highlight the importance of proper crediting stating:

“...the reason we contact you, as some events have still not been entered on to the UCI points’ [sic] allocation ranking system. That ranking will be of prime importance for the number one criterion of that quotas’ [sic] calculation to participate in the next Olympic Games in Athens. Out of regard for athletes having taken part in those events and in order to obtain a correct

ranking on 31 December 2003, we allow ourselves to insist so that we can receive, as soon as possible the results of the events mentioned in the table below . . .”

See October 10, 2003, Fax Message attached hereto as Exhibit G. Despite this second opportunity and specific directive to comply with the above regulation, USA Cycling again failed to transmit the results of the female Short Track Cross Country result.

Wherefore, for all of the foregoing reasons, plaintiff Susan Haywood respectfully requests that this Court grant her a partial summary judgment on the issue of duty and negligence for the failure of USA Cycling, Inc. as there is no genuine issue of material fact that USA Cycling, Inc. failed to meet its affirmative obligation to timely transmit race results as mandated by the Regulation cited above.

Dated this 17th day of August, 2007.

SUSAN HAYWOOD

By

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CERTIFICATE OF SERVICE

I hereby certify that on the 17th day of August, 2007, I served the foregoing "*Memorandum in Support of Motion for Partial Summary Judgment on Behalf of Susan Haywood*" with the Clerk of the Court using the CM/ECF system which will send electronic notification of such filing to the following:

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