THE ROLE OF ARBITRATION IN RESOLVING U.S. OLYMPIC SPORT DOPING DISPUTES

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by

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USADA took over responsibility for drug testing and sports doping matters from the United States Olympic Committee in October 2000 and is the independent, congressionally authorized, agency charged with responsibility for drug testing, anti-doping investigations and adjudicating doping offenses for Olympic and Paralympic sports in the United States. As USADA’s General Counsel, Bill is responsible for the prosecution of U.S. athletes and coaches charged with doping offenses, investigations and other legal matters pertaining to USADA.

Prior to being appointed USADA’s General Counsel, from 2001 Bill served as one of USADA’s outside legal counsel, in which capacity he handled numerous drug testing cases and investigations on behalf of USADA. In 2001 he handled the first contested USADA case heard by a full arbitration panel and in 2002 he prosecuted the first USADA case involving a member of the U.S. Olympic team.

Since 2003 Bill has been involved in USADA’s investigation and prosecution of cases arising out of the Bay Area Laboratory Cooperative (BALCO) doping scandal. In connection with the BALCO affair, Mr. Bock was interviewed for, and quoted in, the New York Times bestseller Game of Shadows: Barry Bonds, BALCO, and the Steroids Scandal that Rocked Professional Sports by San Francisco Chronicle Reporters Mark Fainaru-Wada and Lance Williams (Gotham Books, 2006). Mr. Bock is a frequent guest speaker at seminars on sports drug testing issues.

Over the past seventeen years Bill has represented athletes, officials, and sports rule enforcement agencies in matters involving athlete eligibility issues, contracts, sponsorships and sports drug testing. He has litigated sports law cases in state and federal court and has handled numerous arbitrations before the Court of Arbitration for Sport (CAS) and under the rules of the Ted Stevens Olympic and Amateur Sports Act, the United States Olympic Committee (USOC) Bylaws and the rules of various international sports federations. He has also handled athlete eligibility matters under the rules of the National Collegiate Athletic Association (NCAA) and has had clients in numerous sports including baseball, basketball, bobsled, cycling, diving, football, gymnastics, motor sports, rowing, skiing, swimming, track and field, water skiing and wrestling.

Bill received his B.A. degree, summa cum laude, from Oral Roberts University and his J.D. degree, cum laude, from the University of Michigan Law School in 1989, where he was a member of the Michigan Journal of Law Reform. Bill clerked for then United States District Judge, and current United States Court of Appeals Judge, John Daniel Tinder.

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The Role of Arbitration in Resolving U.S. Olympic Sport Doping Disputes*

By Bill Bock

A. Introduction

On September 11, 2009, the Eighth Circuit Court of Appeals issued its opinion in Williams v. National Football League, ____ F.3d ______, 2009 WL 2901928 (8th Cir. 2009), addressing a number of issues related to the exclusivity of arbitration as the remedy for disputes over athletic eligibility for National Football League (NFL) players charged with violating the NFL’s drug testing policy. In Williams the Eighth Circuit refused to vacate a league arbitrator’s decision finding several players ineligible for violating the NFL’s policy. However, the Eighth Circuit upheld the district court’s decision finding that Minnesota state statutory claims brought by the players were not preempted by the Labor Management Relations Act.

The end result of the Eighth Circuit’s decision in Williams is that a temporary restraining order preventing application of the NFL arbitrator’s decision imposing a four game suspension on two members of the Minnesota Vikings apparently remains in place pending state court consideration of the state statutory claims of the players. Thus, the NFL currently faces the prospect that the uniform application of the NFL’s drug testing policies may be interrupted by the state-by-state application of employment drug testing laws. At the time of this writing, the NFL was apparently considering an appeal of the Williams decision to the United States Supreme Court. Therefore, there appears to remain some question regarding to what forum(s) an athlete

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may resort in a sports doping dispute involving athletes and teams in the NFL and other U.S. professional sports leagues.

In contrast to the outcome in the Williams case, in Gatlin v. United States Anti-Doping Agency, 2008 WL 2567657, (N.D.Fla. 2008), a federal district court recently confirmed that U.S. courts will not involve themselves in sports doping disputes in Olympic sports. This article discusses the long history of arbitration as the exclusive remedy for eligibility disputes in Olympic and Paralympic sports and explains how that history has now been applied to disputes concerning drug testing matters involving the United States Anti-Doping Agency (USADA).

B. Formation of USADA to Undertake the Fight Against Doping in U.S. Olympic and Paralympic Sport

In 2000 USADA was formed as an independent, private, not-for-profit corporation on the recommendation of the United States Olympic Committee (USOC). USADA was given responsibility for drug testing, investigation of potential doping violations,\(^1\) results management of anti-doping rule violations, and anti-doping education and research in Olympic, Paralympic and Pan American Games sports in the United States. USADA’s creation occurred in connection with a movement within Olympic sport to “externalize” the responsibility for anti-doping matters to independent entities which did not have the responsibility to fund and train athletes, stage competitions and select and promote athletic teams as do national Olympic committees such as the USOC and the national governing bodies (NGBs) of individual sports.

\(^1\) In U.S. v. Graham, 555 F.Supp.2d 1046, 1048 (N.D.Cal. 2008), U.S. District Judge Susan Illston found that USADA has an investigatory privilege protecting the fruits of its investigations against disclosure in some contexts because USADA performs a private regulatory function.
USADA has been delegated the anti-doping responsibilities that were previously shared by the USOC and the more than forty (40+) NGBs in the United States. The procedures applicable to drug testing and the results management and adjudication of doping matters under USADA’s jurisdiction are set forth in the USADA Protocol for Olympic and Paralympic Movement Testing (the “USADA Protocol”) which can be found on USADA’s website at http://usada.org/files/active/policies_procedures/USADA%20Protocol-%202009-%20FINAL.pdf.

USADA’s formation was preceded by the creation of the World Anti-Doping Agency (WADA). WADA resulted from recommendations received at the World Conference on Doping in Sport convened by the International Olympic Committee (IOC) in February, 1999 and was established as a Foundation in November, 1999 to promote and coordinate the fight against doping in sport internationally.

A significant achievement of WADA was the drafting and adoption in 2004 of the World Anti-Doping Code (the “Code”), a consistent body of rules which inform the anti-doping rules adopted by each of the international federations (IFs) responsible for governing each individual Olympic sport. The Code was substantially revised in 2008, and the newly revised Code became effective on January 1, 2009. The Code can be found on WADA’s website at http://www.wada-ama.org/rtecontent/document/code_v2009_En.pdf.

In addition to WADA and national anti-doping organizations (NADOs) such as USADA, most of the IFs also retain responsibility for anti-doping matters within their sport. Thus, for example, WADA, USADA and the International Association of Athletics Federations (IAAF), the international federation which governs the sport of track and field, have overlapping authority to conduct drug testing on elite U.S. track and field athletes who compete in international competition. This overlapping authority helps to ensure a level playing field.
internationally and ensures the ability to test athletes in countries which may not have an 
operational NADO.

C. The Role of Arbitration in Olympic Sport Eligibility Disputes

It has long been a principle of international Olympic sport that athlete eligibility 
questions are resolved exclusively by arbitration. In the United States this principle is embodied 
in the Ted Stevens Olympic and Amateur Sports Act (the “Amateur Sports Act” or “ASA”),\(^2\) 
which provides for American Arbitration Association (AAA) arbitration of eligibility disputes 
involving athletes engaged in, or who seek to be engaged in, “protected competition”\(^3\) such as 
the Olympic Trials. When an athlete becomes a member of a NGB they agree to submit their 
eligibility disputes, including disputes concerning anti-doping rule violations, to arbitration.

Arbitration is likewise provided for in the Olympic Charter as the exclusive means of 
dispute resolution in matters concerning the Olympic Games and is the exclusive means 
provided for under the Code, under the USADA Protocol and in most IF Anti-Doping Rules for 
appealing eligibility decisions arising from anti-doping rule violations. The final arbitral body 
for disputes in Olympic Movement Sports is the Court of Arbitration for Sport (CAS) seated in 
Lausanne, Switzerland. The CAS was formed by the IOC to ensure, the swift and equitable 
resolution of disputes relating to participation in the Olympic Games. The CAS panel of 
arbitrators consists of an international group of arbitrators with recognized experience in sports 
and arbitration matters. CAS handles all appeals of eligibility questions involving the Olympic 
Games, as well as a variety of other sports and commercial disputes. The only avenue of appeal 
of a CAS arbitration award is to the Swiss Federal Tribunal, the Swiss appellate court which 
functions as Switzerland’s Supreme Court. The Swiss Federal Tribunal has expedited

\(^2\) Codified at 36 U.S.C. § 220501 et seq.

\(^3\) “Protected competition” is defined in the USOC Bylaws which can be found at 
http://assets.teamusa.org/assets/documents/attached_file/filename/17354/Bylaws_7.01.08__executed_-_final_.pdf
procedures which permit swift provisional (i.e., injunctive) relief in appeals from arbitral bodies, including the CAS.

D. The USADA Results Management Process

The USADA Protocol provides a multi-step review process for positive drug tests. Once the laboratory reports a urine sample as initially positive the athlete is given the opportunity to have another bottle of the athlete’s urine (the “B” bottle) tested and the athlete may attend in person and/or send a representative to witness the B analysis. A drug test is not considered positive unless the B analysis confirms the laboratory’s finding concerning the A bottle.

Upon notice that the B analysis confirms the A analysis, the athlete is given an opportunity to review the laboratory documentation and make a written submission to the Anti-Doping Review Board (ADRB). The ADRB is a body of experts independent from USADA who review the laboratory analysis and any submission by the athlete and recommend whether sufficient information exists for USADA to proceed with a charge of an anti-doping rule violation against the athlete.

In the event that USADA decides to proceed in the matter following receipt of the ADRB recommendation, USADA will formally charge the athlete with an anti-doping rule violation and notify the athlete of the period of ineligibility USADA is seeking as well as inform the athlete that he or she has ten (10) days to either accept the proposed sanction or contest the charge and request an arbitration hearing before a panel of the AAA. If the athlete requests an arbitration they have the right to select an arbitrator, USADA selects an arbitrator and then these two panel members select the third arbitrator who chairs the arbitration panel. The arbitration then proceeds very much like any commercial arbitration with arbitration rules which closely follow

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4 The arbitration may be handled by a single arbitrator in the event the athlete does not seek a three (3) person panel.
the model of the AAA’s Commercial Rules. Following the hearing and the closing of the arbitration the panel is required to issue a written reasoned award.

Subsequently, any party to the AAA’s award or the relevant IF and/or WADA may appeal the AAA decision to the CAS. As in the AAA process, the athlete may select an arbitrator from the CAS panel, the other party (or parties) to the appeal select the second arbitrator and the President of CAS selects the third arbitrator. The CAS hearing is a hearing de novo. The parties may introduce evidence from the prior hearing as well as any additional evidence desired by the parties and may raise new arguments for the first time before CAS should they so choose. For the convenience of American athletes, the hearing for any CAS appeal under the USADA Protocol is conducted in the United States, although the seat of CAS is in Switzerland and a CAS arbitration is an international arbitration.

E. ASA Requires Arbitration of U.S. Olympic Sport Eligibility Determinations

Athletic eligibility determinations for Olympic movement sports in the United States are addressed in the Amateur Sports Act. The ASA requires that in order for an amateur sports organization to be recognized, it must agree to binding arbitration in any controversy involving participation in competition. 36 U.S.C. § 220522(a)(4)(B).

The ASA grants the USOC and NGBs the power to determine eligibility for amateur sporting events. See 36 U.S.C. §220503(3) and 220523(a)(5). Courts have made clear that Congress established the Act “to correct the disorganization and the serious factional disputes that seemed to plague amateur sports in the United States.” San Francisco Arts & Athletics, Inc. v. USOC, 483 U.S. 522, 536 (1987) (quoting H.R. Rep. No. 1627, 95th Cong., 2d Sess. 8, reprinted in 1978 U.S.C.C.A.N. 7478, 7482); see also, e.g., Eleven Line, Inc. v. North Texas State Soccer Ass’n, 213 F.3d 198, 203 n. 10 (5th Cir. 2000) (“Congress wished to address the
disorganization and factionalism of amateur sports organizations in the United States, a
disorganization which it felt had contributed to the overall decline of American achievement in
international competition.”). “The prompt resolution of disputes was a principal purpose of the

Congress “made clear choices” to keep disputes involving the eligibility of amateur
on this score can be dispelled by the reflection that there can be few less suitable bodies than the
federal courts for determining the eligibility, or the procedure for determining eligibility, of
athletes to participate in the Olympic Games.” Michels v. USOC, 741 F.2d 155, 159 (7th Cir.
(Okla. Ct. App. 1996) (“Congress, as a general matter, intended to leave questions of eligibility
of those involved in amateur athletics to be resolved in accordance with the Act.”).

Through the ASA, Congress vested the USOC with the authority to coordinate and
regulate amateur athletics and amateur sports organizations in the United States. Barnes, 862
F.Supp. at 1543. The ASA grants the USOC and NGBs the power to determine eligibility for
amateur sporting events. See 36 U.S.C. §220503(3) and 220523(a)(5). The ASA defines
“amateur athlete” to be “an athlete who meets the eligibility standards established by the national
governing body or paralympic sports organization for the sport in which the athlete competes.”

In enacting the ASA, Congress intended to keep the regulation of amateur athletics out of
the courtroom and within the structure established by the appropriate NGB and the USOC.
Congress specifically rejected proposed legislative provisions that would have created authority
for the judicial system to become embroiled in issues related to amateur athletes, and Congress specifically identified the USOC and NGBs as having exclusive jurisdiction over eligibility for competitions.\(^5\)

Pursuant to 36 U.S.C. §220523, an NGB:

exercises jurisdiction over international amateur athletic activities and sanctions international amateur athletic competitions held in the United States and sanctions the sponsorship of international amateur athletic competition held outside the United States; conducts amateur athletic competition . . . and establishes procedures for determining eligibility standards for participation in competition; and recommends to [the USOC] individuals and teams to represent the United States in the Olympic Games, the Paralympic Games, and Pan-American Games.

Thus, under the ASA, the NGBs and USOC exercise exclusive jurisdiction, without court intervention, with regard to all matters related to a U.S. Olympic athlete’s eligibility to compete. See Slaney v. Int’l Amateur Ath. Fed’n, 244 F.3d 580, 596 (7th Cir. 2001) (“the USOC has exclusive jurisdiction, under the Amateur Sports Act, to determine all matters pertaining to eligibility of athletes”), cert. denied, 534 U.S. 828 (2001).

In Slaney, world renowned track and field athlete, Mary Decker Slaney, brought a lawsuit against the IAAF and the USOC related to her drug tests. Ms. Slaney claimed that she had been damaged because the USOC breached its contract and its fiduciary duty to her by the “unlawful manner in which the USOC conducted its doping program.” Id. at 596. The court examined each of Slaney’s claims against the USOC and reasoned that “Slaney cannot escape the fact that her state-law claims, whether framed as breach of contract, negligence, breach of fiduciary duty, fraud, constructive fraud, or negligent misrepresentation, are actually challenges to the method by which the USOC determines eligibility of athletes.” Id. at 596. The Slaney court explained

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\(^5\) In enacting the Amateur Sports Act, the House of Representatives eliminated a provision that would have provided special jurisdiction in district courts for certain injunctive proceedings and refused to include a provision that would have provided district courts with jurisdiction to enforce decisions of arbitrators. See Barnes v. International Amateur Athletic Fed’n, 862 F.Supp. 1537, 1544 (S.D. W. Va. 1993).
that “questions of athletes’ eligibility are preempted by the [ASA’s] grant of exclusive
division to the USOC over all matters pertaining to United States participation in the Olympic
Games.” Id. at 595. Relying on the broad rule that “the USOC has exclusive jurisdiction, under
the Amateur Sports Act, to determine all matters pertaining to eligibility of athletes,” the Seventh
Circuit affirmed the dismissal of Slaney’s claims. Id. at 596.

Similarly, in the Barnes case a United States district court dismissed an amateur athlete’s
claim against the IAAF, the Athletics Congress of the United States of America (the prior name
of USA Track & Field) and the West Virginia Association of Athletics Congress, in which the
athlete sought damages for his two year suspension for allegedly testing positive for a prohibited
substance. In dismissing the case, the court held that the athlete’s claim “was expressly subject
to resolution in accordance with the mandates of the . . . Act.” Barnes, 862 F.Supp. at 1543. The
court emphasized that its holding was based on “the scope of the Act, the specific statutory
mechanisms that have been established for speedy settlement of these disputes, and
congressional intent to establish a centralized, monolithic structure for coordinating amateur
athletics.” Id. at 1544.6

6 Other courts have reached the same conclusion. For example, in Dolan the court discussed the explicit dispute
resolution clauses in the ASA and the USOC Constitution as well as the broad powers of the USOC and held that
“[t]he comprehensive provisions for arbitration, as well as the legislative history, clearly demonstrates a
congressional determination that disputes shall be resolved by arbitration.” Dolan, 608 A.2d at 436 (emphasis
added). The court went on to emphasize that these matters must not be resolved by the courts: “we believe the Act
should be uniformly interpreted; that it would be inappropriate to attribute different or unique meanings to its
provisions in New Jersey and thus create a jurisdictional sanctuary from the Congressional determination that these
types of disputes should be resolved outside the judicial processes.” Id. Similarly, in Walton-Floyd v. United States
Olympic Comm., 965 S.W.2d 35 (Tex. Ct. App. 1998), the court held that the Act preempted state tort law claims
against the USOC for violation of its duty to exercise reasonable care in providing information regarding banned
substances. The court held that:

The interest of maintaining consistent interpretations among jurisdictions requires the Act to pre-
empt claims under state tort law. To hold a common law duty exists outside the scope of the Act,
thereby enabling an individual athlete to bring suit, threatens to override legislative intent and
opens the door to inconsistent interpretations of the Act.

Id. at 40.
The ASA’s exclusive dispute resolution mechanism for athletic eligibility disputes is arbitration. See Dolan, 608 A.2d at 436. The exclusive remedy of arbitration for the resolution of eligibility disputes is likewise articulated in the USOC’s Bylaws. 7

To eliminate any doubt about whether athletes could bring lawsuits involving eligibility disputes, when the ASA was amended by Congress in 1998, a provision was added to specify that “neither this paragraph nor any other provision of this chapter shall create a private right of action under this chapter.” 36 U.S.C. § 220505(b)(9). The Seventh Circuit has emphasized that “[t]he legislative history of the Act clearly reveals that Congress intended not to create a private cause of action under the Act”:

The Act as originally proposed contained an “Amateur Athlete’s Bill of Rights,” which included a civil cause of action in federal district court for any athlete against an NGB, educational institution or other sports organization that threatened to deny the athlete’s right to participate in certain events . . . Congress omitted the bill of rights provision in the Act’s final version. Congress thus considered and rejected a cause of action for athletes to enforce the Act’s provisions.

Michels v. United States Olympic Committee, 741 F.2d 155, 157-58 (7th Cir. 1984). Numerous other courts have consistently held that no private right of action exists under the Act regardless of whether the plaintiff is seeking damages or injunctive relief. See Martinez v. United States

7 The requirement that NGB members arbitrate disputes concerning athletic eligibility is not unusual. In addition to the arbitration requirement contained in the ASA, standard principles of contract law would compel most athletes to arbitrate their eligibility claims. The relationship between a voluntary association and its members is a contractual one and, by joining such an organization the member agrees to submit to its rules and regulations and assumes the obligations incident to membership. See, e.g., Stolow v. Greg Manning Auctions, Inc., 258 F.Supp. 236, 249 (S.D.N.Y. 2003) (bylaws of an association “express the terms of a contract which define privileges secured and duties assumed by those who have become members”); Maltese v. Dubinsky, 304 N.Y. 450, 455 (1952) (same). Where, as here, a person accepts the benefits of membership in a private association, the association’s constitution and rules (including any rules relating to arbitration) constitute a contract between all members of the association. See, e.g., Prudential Securities v. American Capital Corp., 1996 U.S.Dist. LEXIS 7196, *6 (N.D.N.Y. May 14, 1996) (holding that, by virtue of their membership in the NASD, the parties agreed to arbitrate disputes); Coenan v. R.W. Pressprich & Co., 453 F.2d 1209, 1211 (2nd Cir. 1972) (same); see also, Sands Bros. & Co. v. Nasser, 2003 U.S.Dist LEXIS 23406, *7 (S.D.N.Y. Dec. 31, 2003) (explaining that party agreed by virtue of its membership in the NASD, to arbitrate all disputes under the NASD Code of Arbitration). The rules of virtually all NGBs require arbitration of athlete eligibility disputes. Thus, by virtue of membership in their NGB most athletes are bound by the rules of their NGB to arbitrate these types of disputes and such a requirement for an NGB member is little different than the obligations imposed by many other membership organizations.
Olympic Committee, 802 F.2d 1275, 1281 (10th Cir. 1986) (affirming dismissal of boxer’s suit for personal injury under the Act); Oldfield v. Athletic Congress, 779 F.2d 505, 508 (9th Cir. 1985) (affirming summary judgment in favor of the USOC on claim for damages and reinstatement; “it is highly improbable that Congress absentmindedly forgot to mention an intended private action”); De Frantz v. United States Olympic Committee, 492 F.Supp. 1181, 1192 (D.D.C.) (dismissing athletes’ suit to lift 1980 boycott of summer Olympics; the legislative history of the Act is “barren of any implication that Congress intended to create a private cause of action”), aff’d without opinion, 701 F.2d 221 (D.C. Cir. 1980). Thus, it is plain that Congress did not intend for disputes regarding amateur athletic eligibility to be resolved in the courts. Instead, Congress provided such claims were to be addressed in arbitration.

F. The Gatlin Court Found that the Exclusive Remedy of Arbitration Applied to a Dispute over a USADA Eligibility Determination

Since USADA’s formation in 2000, there had been a handful of cases in which athletes had unsuccessfully challenged various aspects of USADA’s arbitration processes in court. See, e.g., Jacobs v. USA Track & Field, 374 F.3d 85, 89 (2nd Cir. 2004) (refusing to overturn arbitrator’s decision to apply USADA supplementary rules in doping dispute); Gahan ex rel. Gahan v. U.S. Amateur Confederation of Roller Skating, 382 F.Supp.2d 1127, 1130 (D.Neb. 2005) (refusing to grant athlete’s request for a temporary restraining order to permit athlete to compete in upcoming competition). However, until 2008, there was no case that directly challenged the exclusivity of arbitration as the remedy in anti-doping prosecutions brought by USADA under the USADA Protocol.

Notwithstanding the exclusive remedy for eligibility disputes provided under the ASA, the Plaintiff in Gatlin contended he could bring claims regarding his eligibility based on the Americans with Disabilities Act (ADA) and Rehabilitation Act (RA) because they are federal
anti-discrimination laws and, according to Plaintiff, federal anti-discrimination statutes are not preempted by the ASA. Mr. Gatlin’s claims were, thus, somewhat similar to those advanced in *Lee v. U.S. Taekwondo Union*, 331 F.Supp.2d 1252 (D.Hawaii 2004). In *Lee* the Plaintiff had contended that the USOC and the United States Taekwondo Union had discriminated against him on the basis of his race in violation of 42 U.S.C. § 1981 and had breached his contract for employment as coach of the 2004 United States Olympic Taekwondo Team. *Lee*, 331 F.Supp.2d at 1254. The district court, however, found that Lee’s contract claim and related state law claims were preempted by the ASA. *Lee*, 331 F.Supp.2d at 1257.

With respect to Lee’s discrimination claims, the court found that certain such claims, but not all possible claims, might be brought by Lee against the USOC and his NGB under federal discrimination statutes. *Id.* at 1259. However, the *Lee* court noted a very important exception. The court found that, “[w]hile Lee may assert claims under § 1981 that are not precluded by the Amateur Sports Act, some of the relief Lee seeks [under § 1981] would indeed be precluded.” *Id.* at 1261. According to the *Lee* court, claims falling within “the USOC's exclusive jurisdiction” are preempted regardless of whether such claims are asserted pursuant to a federal discrimination statute. *Id.* Thus, the *Lee* court agreed that eligibility claims are preempted. See *Lee*, 331 F.Supp. at 1257 (finding that claims which “essentially seek reinstatement of Lee as the coach of the 2004 United States Olympic Taekwondo Team. . . . are . . . akin to a challenge to eligibility determinations under the Amateur Sports Act” and are precluded by the ASA); accord *Shepherd v. United States Olympic Comm.*, 464 F.Supp.2d 1072, 1088 ((D. Colo. 2006) (the ADA and the RA are not preempted only “[a]s long as the remedy sought does not require [the court] to enter the realm of the USOC’s exclusive jurisdiction”), aff’d *Hollenbeck v. United States Olympic Comm.*, 513 F.3d 1191 (10th Cir. 2008), cert. denied, 129 S.Ct. 114 (2008).
Similarly, notwithstanding the Plaintiff’s alleged ADA and RA claims, the *Gatlin* court found that pursuant to the ASA, “Congress provided the . . . USOC . . . with exclusive jurisdiction over all matters concerning this country's participation in the Olympic Games.” *Gatlin v. U.S. Anti-Doping Agency, Inc.*, 2008 WL 2567657, *1 (N.D.Fla. 2008). According to the *Gatlin* court, the exclusivity of the arbitration remedy extended to an eligibility determination made through the USOC sanctioned USADA process, because “issues regarding whether an athlete is eligible to participate in the Olympic Games or any of its qualifying events are reserved solely for the USOC, and the courts have no jurisdiction to entertain a private right of action that might impinge upon an eligibility determination.” *Id.* (*citing* Slaney, 244 F.3d at 594-595; Lee, 331 F.Supp.2d at 1256-1257). Because Gatlin sought relief which was “directly aimed at lifting his current suspension in order to allow him to participate in the upcoming Olympic trials, the Court [found it was] preempted from taking jurisdiction over the matter.” *Gatlin v. U.S. Anti-Doping Agency, Inc.*, 2008 WL 2567657, *1 (N.D.Fla. 2008).

Thus, unlike the present situation in professional sports following the *Williams* decision, it is clear in Olympic and Paralympic sports that the exclusive means of addressing eligibility questions arising from USADA drug testing is through arbitration under the USADA Protocol and not through state or federal court litigation or resort to state law statutory claims.