

criteria is vague and ambiguous, as the drafters – WADA – used the incredibly poor and imprecise description “<sup>13</sup>C/<sup>12</sup>C value measured for the **metabolite(s)**.”<sup>9</sup>

It is well settled law that ambiguities in a document or contract must be construed against the drafter of the document. See, e.g., 2 Restatement Contracts, 2d, § 206, p 105 [“In choosing among the reasonable meanings of a promise or agreement or a term thereof, that meaning is generally preferred which operates against the party who supplies the words or from whom a writing otherwise proceeds.”]; United States v. Seckinger, 397 U.S. 203, 216 (1970) [“our interpretation adheres to the principle that, as between two reasonable and practical constructions of an ambiguous contractual provision, such as the two proffered by the Government, the provision should be construed less favorably to that party which selected the contractual language. This principle is appropriately accorded considerable emphasis in this case because of the Government’s vast economic resources and stronger bargaining position in contract negotiations.”]<sup>10</sup>; USA Shooting & Q./International Shooting Union (UIT) (CAS 94/129) [““The fight against doping is arduous, and it may require strict rules. But the rule-makers and the rule-appliers must begin by being strict with themselves. Regulations that may affect the careers of dedicated athletes must be predictable ... They should not be the product of an obscure process of accretion.”]; USOC et al. v. IOC et al. (CAS 2004/A/725) [“The rationale for requiring clarity of rules extends beyond enabling athletes in given cases to determine their conduct in such cases by reference to understandable rules. As argued by Appellants at the hearing, clarity and predictability are required so that the entire sport

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<sup>9</sup> Which description was clarified by Baume, supra, as requiring all tested metabolites to be positive under this criteria.

<sup>10</sup> The only basis for the application of the UCI anti-doping regulations, and the WADA Technical Document that WADA and the UCI will assert is incorporated as binding in this case, is the contractual relationship between the parties. The analogy of the Government’s vast economic resources and stronger bargaining power is particularly apt in the context of athletes vs. anti-doping authorities.