

UNITED STATES OLYMPIC COMMITTEE

LYNN PEARCE WOOLDRIDGE-THURSBY	)	
	)	
Complainant	)	
	)	REPORT, DECISION
v.	)	AND
	)	RECOMMENDATION
USA JUDO	)	
	)	
Respondent.	)	December 1, 2015

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I. THE PARTIES

1. Lynn Pearce Wooldridge-Thursby (“Wooldridge-Thursby”) is a member of USA Judo (“USAJ”).

2. USAJ is the National Governing Body (“NGB”) for the sport of Judo in the United States, as recognized by the United States Olympic Committee (“USOC”) pursuant to the Ted Stevens Olympic and Amateur Sports Act (36 USC §§ 220501-220529) (the “Act”) and Section 8 of the USOC Bylaws.

II. COMMENCEMENT OF PROCEEDING

3. On February 27, 2015, Wooldridge-Thursby filed a Complaint against USAJ pursuant to Section 220527 of the Act and Section 10 of the USOC Bylaws.

4. Section 220527 of the Act and Section 10 of the USOC Bylaws collectively provide that a person who belongs to an NGB may seek to compel the NGB to comply with the requirements of Sections 220522 - 220525 of the Act and Section 8 of the USOC Bylaws. Those provisions set forth the obligations and requirements of an NGB.

5. USAJ filed an answer to the Complaint on March 25, 2015.

### III. PANEL COMPOSITION

6. In accordance with Section 220527(a)(2) of the Act and Section 10.6 of the USOC Bylaws, USOC Chief Executive Officer Scott Blackmun appointed a Hearing Panel of three members for the purpose of hearing this matter. The Hearing Panel members are:

- Max Cobb, Chair – USOC National Governing Bodies Council, US Biathlon;
- Steve Mesler – USOC Board of Directors; and
- James Gillenwater – USOC Athletes Advisory Council, USA Rugby.

7. The Hearing Panel made disclosures to the Parties concerning conflicts. No Party objected to the appointment of the Hearing Panel.

### IV. REASONED DECISION

8. Pursuant to Section 10.18 of the USOC Bylaws, the Hearing Panel in a Section 10 proceeding is required to issue a reasoned decision of its findings and make a recommendation to the USOC Board of Directors.

9. This Report, Decision and Recommendation provides a report of this proceeding and serves as the Hearing Panel's reasoned decision. It also serves as the Hearing Panel's recommendation to the USOC Board of Directors.

### V. JURISDICTION

10. The Hearing Panel has authority to hear the Complaint pursuant to Section 220527 of the Act and Section 10 of the USOC Bylaws.

## VI. WOOLDRIDGE-THURSBY'S COMPLAINT

### A. General

11. Wooldridge-Thursby sets forth ten independent counts in her Complaint.<sup>1</sup>

However, the subject matter of many of these counts, such as USAJ's financial well-being or managerial effectiveness, overlap. Similarly, some of the alleged violations of the Act and USOC Bylaws are repeated in multiple counts. For ease of discussion, the Hearing Panel has grouped the counts into six categories, set forth below.

12. Generally, Wooldridge-Thursby's Complaint centers on allegations of USAJ's financial mismanagement, the CEO's conflicts and USAJ's unwillingness or inability to deal with these issues.

### B. Financial Capability

13. Wooldridge-Thursby alleges that USAJ is unable to meet its financial obligations. Also, Wooldridge-Thursby claims that USAJ lacks proper financial controls, has manipulated its financial statements and has failed to keep restricted funds segregated. Further, Wooldridge-Thursby alleges that USAJ failed to maintain accurate accounting records in accordance with generally accepted accounting principles (GAAP).

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<sup>1</sup> The counts as listed in the Complaint are as follows: 1) Self-dealing/conflict issues and USAJ's failure to adequately respond or address them; 2) Managerial issues and USAJ's failure to adequately respond or address them; 3) USAJ has failed to be financially and operationally transparent and accountable to its members and to the corporation; 4) USAJ has failed to maintain accurate accounting records in accordance with accounting principles generally accepted in the USA (GAAP); 5) USAJ has failed to demonstrate the managerial and financial capability to execute its NGB obligations; 6) USAJ has failed to be responsible to the persons and amateur sports organizations it represents; 7) USAJ has failed to keep amateur athletes informed of policy matters; 8) USAJ has failed to demonstrate that it is autonomous in the governance of its sport; 9) USAJ has failed to post required financial documents on its website; and 10) USAJ has failed to maintain at least 20% athlete representation on designated committees.

C. Managerial Capability

14. Wooldridge-Thursby alleges that USAJ's management has failed or refused to address USAJ's financial and managerial incompetence. Further, the Complaint alleges that USAJ has "taken no steps to replace the management and leadership that created the numerous financial and managerial deficiencies and permitted them to continue unabated."

D. Self-Dealing/Conflict

15. Wooldridge-Thursby alleges that USAJ's CEO is involved with companies/organizations that do business with USAJ, raising issues of self-dealing and conflict of interest. Further, the Complaint alleges that these issues have not been dealt with by USAJ, but have been allowed to continue. Additionally, Wooldridge-Thursby alleges that USAJ has allowed USAJ's CEO to continue in his capacity as CEO without making a managerial or leadership change.

E. Communications with Members and Transparency of Activities

16. Wooldridge-Thursby alleges that USAJ has failed to keep its membership apprised of its financial difficulties, including USAJ's failure to post its most recent IRS 990 forms on its website. Further, the Complaint alleges that USAJ has failed to inform its members and Judo athletes of the CEO's self-dealing and conflict of interest.

F. Autonomy

17. Wooldridge-Thursby claims that USAJ transferred significant assets to the American Judo Fund, an independent entity created by the USAJ Board in 2007 to shield these assets from liability, thereby improperly delegating control of matters central to USAJ's governance to that organization.

G. Committee Appointments

(a) Athlete Representation

18. Wooldridge-Thursby alleges that USAJ does not have 20% athlete representation on its Judicial and Ethics Committees.

(b) Nominating Committee

19. Wooldridge-Thursby alleges that USAJ has failed to nominate, appoint and maintain a Nominating Committee, as required under its Bylaws.

VII. USAJ's ANSWER

A. General

20. USAJ generally denies the allegations set forth in the Complaint and asserts that it is not deficient in fulfilling its responsibilities under either the Act or Section 8 of the USOC Bylaws.

21. USAJ asserts that Wooldridge-Thursby is on a mission to discredit and harm USAJ and its leadership and management, in particular its CEO. USAJ states that although it attempted to work with Wooldridge-Thursby to deal with the issues she raised, she had no interest in resolving those issues.

22. USAJ points out that it sought assistance from an outside consultant, TSE Consulting, to review its management and financial operation, that it cooperated with its independent auditor, Osborne, Parsons & Rosacker, to address financial concerns and rewrite financial policies, and that it has worked with the USOC Membership Working Group in an effort to address any operational concerns. Based on this effort, USAJ states that it has taken active and important steps to address its financial, operational and management issues.

B. Financial Capability

23. USAJ asserts that it has adopted steps to improve and address any material deficiencies in its finances and that it has reduced its debts and payables. USAJ denies engaging in financial mismanagement or improprieties or that it has manipulated its financial statements. Additionally, USAJ represents that it has addressed and corrected any financial issues raised by its independent auditor, Osborne, Parsons & Rosacker, in the September 19, 2014, auditor's management letter by implementing various recommendations provided in that letter.

C. Managerial Capability

24. USAJ indicates that it has established financial policies and procedures that conform to the established principles and best practices of nonprofit organizations and that USAJ's management was instructed to implement and adhere to those policies and procedures. Further, USAJ states that there is no justification for USAJ to replace its leadership or senior management.

D. Self-Dealing/Conflict

25. USAJ asserts that the CEO's alleged self-dealing and conflict of interest activities were disclosed by the CEO and that the CEO has taken steps to avoid future appearances of conflict of interest.

E. Transparency

26. USAJ states that it has published on its website its IRS 990 forms for the three most recent years. Further, USAJ represents that it has communicated with Wooldridge-Thursby on a regular basis, providing her with information pertaining to the matters she has complained about and taking action to address such matters.

F. Autonomy

27. USAJ denies that it has transferred control over matters central to its governance or delegated any such control to the American Judo Fund.

G. Committee Appointments

(a) Athlete Representation

28. USAJ states that it has taken action to ensure that all of its committees, including its Judicial and Ethics Committees, have 20 percent athlete representation.

(b) Nominating Committee

29. USAJ points out that after certain irregularities were pointed out by Wooldridge-Thursby, but prior to the filing of her Complaint, USAJ took prompt action to address the composition of its Nominating Committee. USAJ states that the Committee is now constituted pursuant to USAJ's Bylaws.

VIII. PROCEDURAL BACKGROUND

A. Preliminary Conference

30. The Hearing Panel held a preliminary conference on April 29, 2015.

(a) Amendment of Complaint

31. At the preliminary conference Wooldridge-Thursby notified the Hearing Panel that she was not proceeding with the article of her Complaint alleging a violation of Section 8.7(s) of the USOC Bylaws, which requires an NGB to post on its website its IRS 990 forms for the three most recent years, given that USAJ had posted the required IRS 990 forms subsequent to the filing of the Complaint.

32. The Complaint was amended accordingly by Order of the Hearing Panel dated May 11, 2015.

(b) Request for Dismissal

33. At the preliminary conference USAJ requested that the Hearing Panel dismiss the Complaint with prejudice.

34. After hearing argument from the Parties and considering the issue, the Hearing Panel denied the Motion by Order dated May 11, 2015.<sup>2</sup>

B. Mediation

35. Section 10.8 of the USOC Bylaws provides that upon the request of a party the Hearing Panel may order mediation.

36. The Hearing Panel ordered the Parties to mediate by Order dated May 11, 2015.

37. Pursuant to Section 10.8 of the USOC Bylaws, Jeff Benz was appointed as mediator by the USOC CEO. Benz attempted to assist the Parties in resolving the dispute. An in-person mediation session was held on August 4, 2015. Additionally, Benz had discussions with the Parties prior to and after the in-person session.

38. Mediation efforts did not prove successful.

C. Exchange of Information

39. Section 10.15 of the USOC Bylaws provides that the Hearing Panel may direct the production of documents and other information either on its own directive or at the request of a party.

40. The Parties advised the Hearing Panel during the preliminary conference that they most likely would seek the production of documents. Accordingly, the Hearing Panel set forth a discovery schedule by Order dated May 11, 2015.

41. The Parties exchanged documents and other information pursuant to the Order.

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<sup>2</sup> For a discussion of the reasons for the Hearing Panel's decision, see the May 11, 2015, Order.



D. Pre-Hearing Order

42. On September 4, 2015, the Hearing Panel issued a Pre-Hearing Order. The Order confirmed the hearing date for September 23 and 24, 2015. The Order also set forth deadlines for the filing of pre-hearing briefs, the submission of exhibits and the disclosure of witnesses. Further, the Order set forth procedures for having the hearing recorded by a stenographer, if requested by a Party.

43. The Parties followed the scheduling set forth in the Pre-Hearing Order. Wooldridge-Thursby determined to have the hearing recorded by a stenographer and made arrangements to do so.

IX. PRELIMINARY MOTIONS

44. On September 21, 2015, two days before the hearing, USAJ submitted three preliminary motions: 1) a Motion for Protective Order, 2) a Motion to Strike Claims and Exhibits, and 3) a Motion to Prohibit or Limit Testimony.

45. The Hearing Panel took up the Motions at the commencement of the hearing. The Parties were provided with an opportunity to present argument on the Motions.

A. Motion for Protective Order

46. USAJ pointed out that as Wooldridge-Thursby intended to have a stenographer record the hearing, USAJ was concerned that Wooldridge-Thursby would publish portions of the hearing transcript on social media for the “purpose of discrediting or otherwise harming USAJ and its volunteer and executive leadership.”

47. In its Motion for Protective Order USAJ requested that the Hearing Panel:

issue an Order directing that the transcript of the hearing, in whole or in part, not be disseminated, published or otherwise distributed publicly or privately to any third person or party, in any manner or medium, by Complainant (or anyone acting for or on behalf of

Complainant) except solely for purposes of this proceeding and any matters, processes or proceedings referred to in Section 10 of the Bylaws of the USOC.

48. USAJ reminded the Hearing Panel that it previously had been concerned about Wooldridge-Thursby's public comments regarding USAJ and the Section 10 proceeding and had brought that matter to the attention of the Hearing Panel on September 3, 2015. In response to such concerns, the Hearing Panel had issued the following directive to the Parties on September 4, 2015:

In the spirit of respectful advocacy, the Hearing Panel urges that the Parties refrain from posting or making any type of public comment about one another or the issues at hand while this case is being adjudicated. The Panel believes that engaging the public or making comments about the character of the organization or the individuals, or the issues in controversy, will only serve to complicate matters between the Parties rather than to assist in the resolution of this matter. The Parties will have a full opportunity to present their evidence and make their arguments at the time of the hearing and the Panel is committed to resolving this matter in a fair and impartial way. The Panel requests that the Parties conduct themselves in a respectful manner in order to assist in this process.

49. At the hearing, Wooldridge-Thursby responded that there was no legal authority for a protective order as requested by USAJ. Moreover, Wooldridge-Thursby emphasized that such an order was overbroad and sought to preclude public dissemination of information by any medium without temporal limitation. Further, Wooldridge-Thursby asserted that such an order would serve no useful purpose other than to shield USAJ from criticism. Finally, Wooldridge-Thursby indicated that such an order was unnecessary as she would continue to abide by the Hearing Panel's September 4 directive and would not engage in social media concerning the Section 10 complaint during the pendency of this proceeding.

50. The Hearing Panel denied USAJ's Motion for a Protective Order. The reasons, although not specifically explained during the hearing, were two-fold. First, the Hearing Panel

did not believe it had authority to issue such an order and none was cited by USAJ. Second, the Hearing Panel found that prohibiting a party from making comments about perceived inadequacies of an NGB, commenting on a Section 10 proceeding, or making public the transcript of the proceeding was contrary to the Act and the USOC Bylaws as it improperly curtailed transparency and abridged a person's freedom to express his or her views and opinions on the welfare of an NGB.

51. The Hearing Panel reminded the Parties of its September 4 directive and requested that the Parties abide by that directive during the pendency of the Section 10 proceeding.

B. Motion to Strike Claims and Exhibits

52. USAJ asserted in its Motion to Strike Claims and Exhibits that Wooldridge-Thursby made certain claims in her Pre-Hearing Brief that were not contained in her Complaint. According to USAJ, those claims were: 1) that USAJ's CEO made improper use of his corporate credit card for personal expenses in 2005; 2) that USAJ failed to pay rebates that were promised to its state associations; and 3) that USAJ failed to capitalize on the widespread growth of mixed martial arts. USAJ argued that including new matters not pled in the Complaint was improper. Further, USAJ stated that it did not have an opportunity to seek discovery regarding these allegations pursuant to Section 10.15 of the USOC Bylaws.

53. USAJ requested that these claims be struck from this proceeding and not be considered by the Hearing Panel. Also, USAJ requested that any exhibits submitted in support of the claims not be admitted into evidence.

54. Wooldridge-Thursby responded that, as her Section 10 Complaint centers on claims of financial mismanagement and improper accounting, the credit card and rebate issues

are properly within the scope of the Complaint, are relevant, and should be heard. As to the failure to capitalize on the growth of mixed martial arts, Wooldridge-Thursby indicated that she did not intend to introduce evidence on that allegation and agreed that any reference to it could be ignored.

55. The Hearing Panel denied USAJ's Motion to Strike Claims and Exhibits. The Hearing Panel was of the opinion that any additional matters set forth in Wooldridge-Thursby's Pre-hearing Brief—with the exception of the withdrawn allegation regarding USAJ's failure to capitalize on the growth of mixed martial arts—were merely additional factual allegations in support of her properly pled claims. The Hearing Panel informed the Parties that it would give whatever weight the Hearing Panel considered appropriate to any evidence submitted pertaining to improper credit card use and to a failure to pay rebates.

C. Motion to Prohibit or Limit Testimony

56. USAJ stated that Wooldridge-Thursby had listed Kenneth Waugh of Waugh and Goodwin on her witness list. USAJ pointed out that the firm of Waugh and Goodwin had served as independent certified public accountants and auditors of USAJ. USAJ asserted that Waugh's testimony would necessarily include confidential and privileged information. USAJ also claimed that an accountant-client privilege existed.

57. Wooldridge-Thursby indicated that she was not going to call Waugh as a witness.

58. Since Waugh would not be called as a witness by Wooldridge-Thursby, the Hearing Panel did not rule on the Motion, but considered it moot. The Hearing Panel made no determination on whether Wooldridge-Thursby should be prohibited from questioning Waugh because such testimony would include confidential and privileged information, nor did the Hearing Panel make a determination as to USAJ's claim of an accountant-client privilege.

X. BURDEN OF PROOF

59. Section 10.17 of the USOC Bylaws provides that a complainant has the burden of proof. Accordingly, Wooldridge-Thursby is required to establish by a preponderance of the evidence that USAJ does not meet the requirements of the Act and USOC Bylaws.

XI. LEGAL COUNSEL

60. The Parties were represented by able legal counsel throughout this proceeding. Wooldridge-Thursby was represented by Howard L. Jacobs of the Law Offices of Howard L. Jacobs. USAJ was represented by Thomas M. James of the Law Office of Thomas M. James.

61. The Hearing Panel appreciates the professional manner in which counsel conducted themselves throughout this proceeding. Counsel were prepared, cooperated with each other in resolving issues and ably and capably presented their respective client's cases.

XII. HEARING

62. On September 23 and 24, 2015, the Hearing Panel held a hearing on Complainant's claims.

63. Prior to commencement of the hearing the Parties submitted pre-hearing briefs. The parties also provided opening and closing statements and gave arguments on various issues that arose during the hearing. Additionally the Parties submitted numerous exhibits as documentary evidence.

64. The Hearing Panel heard from the following witnesses:

- Lynn Pearce Wooldridge-Thursby – Complainant;
- Jose Rodriguez – USAJ CEO;
- Lance Nading – USAJ President;
- Rick Adams – USOC Chief of Paralympic Sport and NGB Organizational Development; and
- Morane Kerek – USOC Managing Director of Audit.

65. Each party was afforded the opportunity to cross-examine the witnesses. The Hearing Panel also questioned the witnesses, pursuant to the authority granted them by Section 10.17 of the USOC Bylaws.

66. As further provided by Section 10.17, the rules of evidence were not strictly enforced and rules of evidence generally accepted in administrative proceedings were applied.

### XIII. ANALYSIS

#### A. Background

67. Wooldridge-Thursby has had an association with the sport of Judo going back for at least ten (10) years. During that time she made significant financial contributions to USAJ. She loaned USAJ funds. Wooldridge-Thursby has also assisted USAJ in promoting events and developing fundraising programs. Additionally, she has participated in various volunteer activities.

68. Approximately two years ago, Wooldridge-Thursby considered making a loan to USAJ. This caused her to review various financial documents of USAJ. She also started making inquiries into USAJ's management practices. Eventually, Wooldridge-Thursby's attitude towards USAJ changed, and she became an opponent of the organization, rather than a proponent, while continuing to care about the sport.

69. In April 2014, Wooldridge-Thursby collected her grievances into one document and filed an internal complaint with USAJ.<sup>3</sup> As a result, USAJ hired TSE Consulting to review Wooldridge-Thursby's allegations, conduct an investigation and compile a report. As part of this

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<sup>3</sup> Article 14 of USAJ's Bylaws provides that its Judicial Committee shall appoint a Hearing Panel to hear and rule on administrative grievances such as was filed by Wooldridge-Thursby. However, it appears that this was never done.

process, both USAJ and Wooldridge-Thursby provided information to TSE Consulting. TSE Consulting issued its report in July 2014.

70. Wooldridge-Thursby also made a number of inquiries directly to USAJ, to which USAJ responded.

71. In September 2014, Wooldridge-Thursby filed a second complaint with USAJ concerning the composition of USAJ's Nominating Committee.<sup>4</sup> Because of this complaint, USAJ took actions to correct any irregularities concerning the Nominating Committee.<sup>5</sup> As a result, elections were timely held allowing new Board members to be seated by January 1, 2015.

72. Also in 2014, the USOC, working through its Membership Working Group, commenced a review of USAJ's activities. The USOC Membership Working Group met with USAJ and followed up with USAJ on a number of the recommendations made in the TSE Consulting report. The USOC Membership Working Group also inquired into USAJ's financial well-being and suggested that USAJ implement a plan to address its financial situation.

73. In September 2014, Osborne, Parsons & Rosacker, USAJ's independent certified public accountant, issued its independent auditor's report for the year ending December 31, 2013. The auditor's management letter made a number of comments and recommendations concerning USAJ's financial management.

74. As a result of the TSE Consulting report, the recommendations made by Osborne, Parsons & Rosacker, and the assistance provided by the USOC Membership Working Group, USAJ made a number of changes to its financial practices. It also reviewed certain management

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<sup>4</sup> It is unclear if this complaint was filed pursuant to Article 14 of USAJ's Bylaws, or if it was just a request asking that USAJ address issues with its Nominating Committee prior to the scheduled 2014 elections.

<sup>5</sup> For a more detailed discussion of this issue see Paragraphs 127 – 130 of this Decision, Report and Recommendation.

decisions and revised or adopted a number of policies and procedures, including its conflict of interest procedure and whistleblower policy.

75. On February 27, 2015, Wooldridge-Thursby filed this Section 10 Complaint against USAJ. Among other requests, in her Complaint Wooldridge-Thursby requested that USAJ be decertified, i.e., that its status as the NGB for the sport of Judo be revoked by the USOC.

B. General

76. After considering all of the evidence presented, the Hearing Panel has determined that USAJ is not meeting its requirements as an NGB in a number of areas. This finding does not mean, however, that USAJ has not made improvements over the past year. Nor is it meant to be absolute—the Hearing Panel found that in many respects USAJ was in compliance with its obligations as an NGB. Yet, even so, USAJ faces a number of financial and managerial issues that need to be addressed going forward.

C. Financial Capability

77. Section 220522(a)(2) of the Act provides that an NGB must have the financial capability to execute its obligations as an NGB. Section 8.7(m) of the USOC Bylaws states that an NGB must seek to generate revenue, in addition to any resources provided by the USOC, sufficient to achieve financial sustainability. Additionally Section 8.7(o) provides that an NGB adopt a budget and maintain accurate accounting records in accordance with generally accepted accounting principles.

78. Wooldridge-Thursby provided evidence on USAJ's financial shortcomings. This included evidence that USAJ has a negative net asset value in that its expenditures exceed revenues, that for the last six years it has been operating under severe debt, that it is unable to



adhere to a balanced budget and that it has to borrow extensively from the American Judo Fund in order to keep afloat. Wooldridge-Thursby primarily relied on USAJ's audited financial statements for the year ending December 31, 2013, to support her claims.<sup>6</sup> Further, Wooldridge-Thursby pointed out that in the notes to the financial statements Osborne, Parsons & Rosacker included a "going concern" statement questioning USAJ's ability to carry out its existing activities and commitments.

79. Additionally, Wooldridge-Thursby provided testimony and documentary evidence regarding a number of specific instances that were indicative of USAJ's financial mismanagement: 1) the CEO's use in 2005 of USAJ's corporate credit card for personal expenses; 2) the use of restricted funds that were dedicated for athlete support to pay overhead expenses; 3) the inability of USAJ to pay promised stipends to Paralympic athletes who medaled at the 2012 London Paralympic Games; 4) USAJ's release of inaccurate statements of its account payables; 5) USAJ's inability to obtain a corporate credit card, presumably after 2010; and 6) USAJ's practice of having its employees cover corporate expenses on their personal credit cards because USAJ did not have a corporate credit card, nor did it have cash or credit to handle the expenses.

80. USAJ responded by providing testimony and documentary evidence that it has taken steps to address deficiencies in its financial situation. These include implementing budget cuts and seeking to increase revenue. Further, USAJ indicated that it has executed measures to reduce its debt. Additionally, USAJ indicated that it has approved new financial policies and procedures that will assist it in assessing its financial situation and ensuring that proper financial information is available to its Board.

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<sup>6</sup> The financial statements ending December 31, 2013, were the most recent audited financial statements available. The financial statements for the year ending December 31, 2014, had not yet been issued at the time of the hearing.

81. As for the specific situations put forward by Wooldridge-Thursby, USAJ responded that many of these happened years ago and were corrected. USAJ pointed out: 1) that the CEO repaid personal expenses placed on USAJ's corporate credit card; 2) that restricted funds are no longer used for other purposes; 3) that USAJ now has a corporate credit card; and 4) that USAJ employees no longer utilize personal credit cards to cover USAJ corporate expenses.

82. After considering the evidence presented, the Hearing Panel finds that USAJ is not meeting its financial obligations as an NGB. USAJ's overall financial picture is unpromising. USAJ needs to seriously consider how it can improve in this area and address what has been an issue for the organization a number of years.

83. A review of USAJ's December 31, 2013, audited financial statements indicate that USAJ had negative net assets of \$535,839. This means USAJ has spent half a million more dollars than it has earned since the beginning of the organization. At roughly one sixth of its annual revenue, this large deficit affects USAJ's ability to function. The only way to fix this is for USAJ to reverse the trend of spending more than it makes by one of two methods: it either needs to raise more revenue or cut spending.

84. The cash flow hardship this deficit creates is impeding USAJ's ability to provide services to its athletes and membership—one notable example being USAJ's inability to pay promised stipends to medalizing Paralympic athletes. Moreover, management is spending larger amounts of time than should be necessary to manage cash flow, which is detracting from time spent running the business. Further, limitations on USAJ's cash flow hinder its ability to operate its business and obtain goods and services when needed.

85. Osborne, Parsons & Rosacker also included a going concern note in the 2013 audited financial statements, indicating a concern regarding USAJ's future sustainability. As

part of its audit, Osborne, Parsons & Rosacker requested that USAJ assess the company's ability to operate for the next 12 months. According to the note in the audited financial statements, USAJ indicated that it plans on cutting expenditures and having a positive change in net assets for 2014. USAJ's Board passed a motion to reduce current obligations to below \$100,000. However, this was implemented by a \$300,000, seven-year loan from the American Judo Fund, which served to keep USAJ operational but failed to address the underlying problem. USAJ also presented testimony that the American Judo Fund had forgiven the loan. Further, USAJ represented that, at USAJ's request, the American Judo Fund is in the process of dissolving and that it has transferred its remaining assets to USAJ.<sup>7</sup> Although this dramatically improves USAJ's financial position, it depletes funds that were held in safekeeping by the American Judo Fund.

86. Also in the 2013 audit, Osborne, Parsons & Rosacker issued an auditor's management letter outlining numerous internal control issues. USAJ had a significant number of material weaknesses identified, which, if not already corrected, need to be addressed.

87. Accordingly, the Hearing Panel finds that USAJ has failed to meet its obligations as an NGB as required by Section 220522(a)(2) of the Act and Sections 8.7(m) and (o) of the USOC Bylaws.

D. Managerial Capability

88. Section 220522(a)(2) of the Act provides that an NGB must have the managerial capability to plan and execute its obligations as an NGB, which includes ensuring that the NGB has the financial capabilities to operate as a sound and going concern and that its offices and staff operate in an effective and productive manner.

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<sup>7</sup> For a more detailed discussion of the American Judo Fund see Paragraphs 113 – 119 of this Decision, Report and Recommendation.

89. Wooldridge-Thursby asserted and presented evidence that USAJ's Board and upper management have not given the necessary attention to USAJ's financial situation, nor given proper direction to ensure that USAJ has the financial capabilities to operate in a sound and fiscally prudent manner. Further, Wooldridge-Thursby presented evidence that USAJ's leadership has not presented a clear and reasonable plan going forward to put USAJ's financial house in order, which includes reducing debt, increasing revenues and operating with sufficient cash flow.

90. Additionally, Wooldridge-Thursby asserted that USAJ's decision to have its executive office and CEO located in Miami, Florida, while USAJ's national office and the rest of the staff is located in Colorado Springs, Colorado, is financially and managerially unsound. Wooldridge-Thursby asserted that this is a costly, unproductive arrangement that limits USAJ's ability to effectively operate as an NGB.

91. USAJ responded through testimony and documentary evidence that its Board has turned its attention to USAJ's financial situation and that it has implemented a plan to correct any of the organization's financial deficiencies. Further, USAJ responded that the Board has instituted financial policies and practices to deal with many of the financial irregularities that may have existed in the past.

92. Moreover, USAJ responded that its Board carefully considered whether its executive office and CEO should be located in Miami even though its national office is located in Colorado Springs. Following such consideration, the Board determined that the advantages of this arrangement outweighed any disadvantages. For example, USAJ stated that having its executive office and CEO in Miami allowed the CEO to focus on relationship building with the International Judo Federation and the Pan American Judo Confederation. Additionally, because

of the interest in Judo in the Florida area and Latin American regions, USAJ's witnesses testified that the Miami office affords USAJ a stronger position to hold international events and increase involvement and participation of athletes. Also, USAJ's witnesses testified that the expense of having an executive office in Miami was not significant. USAJ further noted that it has a Chief Operating Officer located in Colorado Springs who handles day-to-day affairs with the national office.

93. The Hearing Panel agrees that one of the responsibilities of an NGB's board and of its upper management is to ensure that the organization has the financial capability to perform its responsibilities as an NGB. This includes making sure that the NGB has funds to operate, has a well thought out budget that it can adhere to, can pay its bills, is able to borrow money as needed, can provide proper support to athletes, and has a long-range financial plan. USAJ's Board and upper management need to give these matters increased attention.

94. Further, an NGB's board and upper management should also ensure that proper financial policies and controls are in place. Although improvements have been made during the past year, USAJ has not proven that it has the managerial capability to deal with these issues on a consistent and ongoing basis. In order to turn USAJ's financial situation around and come into compliance with the managerial capabilities mandated by the Act, USAJ must not only have a financial plan in place, but the Board and upper management must ensure that the plan is implemented.

95. With respect to the specific issue of the separation of the executive office from the national office, while this arrangement is not ideal and creates challenges, it does not, in itself, rise to the level of managerial failure. The arrangement was entered into with some thought as it was discussed and approved by USAJ's Board. USAJ believes that the presence of the CEO and

executive office in Miami provides benefits to the organization. That being said, having two offices creates an added financial burden on USAJ. Also, it presents management challenges. USAJ should revisit this issue periodically to determine if splitting the executive office from the national office remains in the best interests of USAJ and the Judo community.

96. Accordingly, on the issue of whether USAJ has met its managerial responsibilities relating to its finances, the Hearing Panel finds that USAJ is not in compliance with Section 220522(a)(2) of the Act.

E. Self-Dealing/Conflict

97. Section 8.7(d) of the USOC Bylaws requires that an NGB “adopt a code of conduct for its employees, members, board of directors and officers.” Additionally, as noted above, Section 220522(a)(2) of the Act provides that an NGB must have the managerial capabilities to plan and execute its obligations as an NGB. This includes not only having a code of conduct, but ensuring that conflict and ethical matters are reviewed and dealt with as appropriate.

98. Wooldridge-Thursby presented evidence that USAJ’s CEO was affiliated with an organization that purchased merchandise from USAJ and resold that merchandise to the Pan American Judo Confederation. Further, Wooldridge-Thursby presented evidence that the CEO was affiliated with and spent time working for other organizations that were involved in sporting activities, including Judo activities.

99. USAJ countered with evidence that when the CEO was hired in 2005, there was an agreed upon arrangement that he could spend time on outside business activities. Also, USAJ produced conflict of interest disclosure statements for 2011, 2012, and 2013 in which the CEO disclosed organizations with which he had outside personal business activities. Additionally,

USAJ provided testimony that these affiliations were known by USAJ's President. Finally, USAJ indicated that, subsequent to the Complaint, it had adopted new conflict and disclosure policies and that in the future disclosure statements would be submitted to a three person Conflict of Interest Review Committee.

100. It is evident to the Hearing Panel that USAJ was not particularly diligent in ensuring that employee or Board conflicts were disclosed and dealt with. There is no indication that prior to Wooldridge-Thursby's Complaint either USAJ's Board or management were conscientious in ensuring that conflict statements were filled out. No evidence was presented that the disclosure statements were reviewed.

101. Although USAJ's President may have known about the outside personal business interests of USAJ's CEO, there is little evidence that this was ever communicated to USAJ's Board. Further, even if these interests were disclosed, at the very least they indicated a perceived conflict of interest that should have given rise to a discussion regarding their propriety.

102. Also, allowing a CEO or an employee to have financial interests in and spend time working for organizations that are involved in activities that could be in competition with or contrary to the interests of the NGB raises the question of whether the CEO or employee is putting him or herself in a conflict situation, or at the very least carrying out activities that are not in the best interests of the NGB. This is true even though there is no intended wrongdoing on the part of the CEO or employee.

103. Further, these activities reduce the time, effort and commitment that the CEO or employee should be giving to the NGB.

104. Although USAJ has taken some steps to deal with these ethical and conflict issues, the Hearing Panel finds that further effort is needed. No clear evidence was presented

that USAJ's ethics and conflict procedures have been implemented or followed. Although, USAJ has created a Conflict of Interest Review Committee, no evidence was presented that the Committee has met, that the Committee ensured that all employees and Board members actually submitted conflict statements or that the Committee actually reviewed the conflict statements that were submitted.

105. Further, USAJ's Board needs to give further consideration to allowing its CEO, or any employee, to conduct personal business activities that could be in competition with or contrary to the interests of USAJ.

106. Accordingly, the Hearing Panel finds that USAJ has failed to meet its obligations as required by Section 8.7(d) of the USOC Bylaws and Section 220522(a)(2) of the Act.

F. Communications with Members and Transparency of Activities

107. Section 220524(1) of the Act provides that an NGB shall be responsible to the persons and amateur sports organizations it represents. Further, Section 220524(3) of the Act provides that an NGB shall keep its athletes informed of policy matters. Finally, Section 8.7(n) provides that an NGB be financially and operationally transparent and accountable to its members.

108. Wooldridge-Thursby's claim in this regard is based on USAJ's alleged failure to inform its membership and its athletes of its financial situation and the purported self-dealing and conflicts of its CEO. Additionally, Wooldridge-Thursby asserts that USAJ's failure to nominate, appoint and maintain a Nominating Committee is indicative of a violation of the above cited sections.



109. However, Wooldridge-Thursby provided no direct evidence at the hearing that USAJ had intentionally or neglectfully kept information from its members or from its athletes regarding its financial difficulties or organizational conflicts.

110. It is important that an NGB fully and diligently communicate with its members, and it is possible that USAJ should expand on its efforts in this regard. However, Wooldridge-Thursby has failed to meet her burden of proof regarding this allegation as is required by Section 10.17 of the USOC Bylaws.

111. Accordingly, the Hearing Panel does not find that USAJ is in violation of Sections 220524(1) and (3) of the Act and of Section 8.7(n) of the USOC Bylaws.

G. Autonomy

112. Section 220522(a)(5) of the Act provides that an NGB must be autonomous in the governance of its sport in that it: 1) independently decides and controls all matters central to its governance; 2) does not delegate decision making and control; and 3) is free from outside restraint.

113. Wooldridge-Thursby alleges that USAJ has delegated governing authority and control to the American Judo Fund, especially relating to funding and control of assets.

114. Evidence was presented that the American Judo Fund was created in 2007 by action of USAJ's Board of Directors. When the Fund was created, USAJ entrusted to it monies USAJ had received from the 1984 Los Angeles Olympic Organizing Committee.<sup>8</sup>

115. Wooldridge-Thursby asserts that by creating the American Judo Fund and transferring assets to it, USAJ has ceded control of its finances to an independent entity. Wooldridge-Thursby presented evidence that, in order to remain solvent, USAJ has had to

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<sup>8</sup> The 1984 Los Angeles Olympic Organizing Committee as part of its legacy distributed monies it received from hosting the Olympic Games to all NGBs.

borrow money from the Fund and pay interest to the Fund for use of those monies. Otherwise, USAJ could have used these funds for operating and other expenses at its own discretion.

116. USAJ presented testimony that the American Judo Fund was created to protect USAJ's assets from possible attachments or judgments. Also, having a separate financial entity allowed expert management of assets and guarded against unwise expenditures of the funds. Further, USAJ represented that it had access to the funds either through grants or loans.

117. It is not unusual for an NGB to place its Los Angeles distribution under the control of a separate entity. Often those funds are restricted so that only income is distributed, and the principal of the fund remains intact. The funds cannot be used indiscriminately; rather, distributions have to be approved by a separate Board. Also, if the funds are placed under the control of a separate entity, it also protects them from possible attachments or judgments against the NGB.

118. The Hearing Panel does not find that USAJ's creation of the American Judo Fund and transfer of the Los Angeles funds to it to be contrary to the USOC Bylaws or the Act. Rather, this can be a good management practice to protect funds and ensure their availability in the future.

119. Additionally, USAJ presented testimony that USAJ's Board had made a request to the American Judo Fund to dissolve and return control of its funds to USAJ. Further, USAJ represented that the American Judo Fund was, in response to USAJ's request, in the process of dissolving and had transferred its funds to USAJ. USAJ also indicated that it was setting up a new non-profit organization that would be under the control of USAJ and that the funds from the American Judo Fund would be transferred to that new organization.

120. The Hearing Panel finds no violation by USAJ of Section 220522(a)(5) of the Act by the creation of the American Judo Fund or the transfer of assets to it.

H. Committee Representation

(a) Athlete Representation

121. Section 220522(a)(10) of the Act provides that athletes must have representation on and comprise at least twenty (20) percent of the voting power on an NGB's Committees. Further, Section 8.8 of the USOC Bylaws sets forth certain standards defining this representation.

122. Wooldridge-Thursby specifically alleges that USAJ's Judicial and Ethics Committees do not have the required athlete representation.

123. USAJ provided a list of its Committees, including its Judicial and Ethics Committees, with the names of those individuals on each Committee. Further, the list indicated those committee members who were athletes. From a review of the list, all of USAJ's Committees have twenty (20) percent athlete representation. Wooldridge-Thursby did not provide evidence to the contrary.

124. Specifically when Wooldridge-Thursby was asked about this during her testimony, she did not refute USAJ's affirmation that all USAJ committees had the required percentage of athlete representation.

125. Thus, the Hearing Panel finds no violation of Section 220522(a)(10) of the Act or of Section 8.8 of the USOC Bylaws.

(b) Nominating Committee

126. As noted above, Section 220522(a)(2) of the Act requires that an NGB have the managerial capability to execute its obligations as a corporate entity. Those obligations include

abiding by its Bylaws, ensuring that Committee positions are filled and requiring that Committees fulfill their responsibilities. This is especially true of a Committee as important as a Nominating Committee.

127. In 2014, Wooldridge-Thursby brought to USAJ's attention that its Nominating Committee was not properly convened pursuant to Section 9.12 of USAJ's Bylaws. The Nominating Committee was populated by four members who had served continuously since 2008. It is undisputed that USAJ had failed to pay attention to the composition of the Nominating Committee or ensure that Section 9.12 of USAJ's Bylaws were being followed.

128. After being notified of this shortcoming, USAJ's Board took action to rectify the situation. The Nominating Committee was properly populated with five members. Also, the Nominating Committee was directed to take action as it determined "necessary and appropriate to identify and present nominees for election to Board positions to be filled in the 2014 elections and to conduct and complete the election process so that newly elected Directors can be seated as of January 1, 2014."

129. Although USAJ was remiss in failing to ensure that the Nominating Committee was properly convened, it took action to rectify this situation.

130. No evidence was presented by Wooldridge-Thursby that the Nominating Committee as presently constituted does not comply with Section 9.12 of USAJ's Bylaws, or that the Nominating Committee is currently failing to fulfill its responsibilities.

131. Therefore, the Panel finds no violation by USAJ of Sections 220522(a)(2) of the Act in this respect.

XIV. RECOMMENDATION

132. Section 10.18 of the USOC Bylaws provide that if a Hearing Panel determines that an NGB is not in compliance with the Act and USOC Bylaws, it shall notify the USOC Board and the Parties of its findings. It is also required to issue a reasoned decision and make a recommendation to the USOC Board regarding the action to be taken with respect to the NGB.

133. Pursuant to Section 220527 of the Act and Sections 10.18 - 10.20 of the USOC Bylaws, if a Hearing Panel finds an NGB not in compliance it may recommend: 1) that the recognition of the NGB be revoked or 2) that the NGB be placed on probation for a period of six months. If placed on probation, the period of probation can be extended if the NGB is not yet in compliance, but is making significant progress in meeting its compliance issues. Otherwise, the NGB's recognition can be revoked after the six month probationary period.

134. As set forth in the Analysis portion of this Report, Decision and Recommendation, the Hearing Panel finds that USAJ is not meeting its NGB requirements and obligations as set forth in the Act and USOC Bylaws. However, the Hearing Panel believes that USAJ can meet the challenges before it and rectify its financial and managerial issues.

135. Therefore, the Hearing Panel recommends that USAJ be placed on probation for a period of six months.

136. Additionally, the Hearing Panel requests that the USOC Membership and Working Group and the USOC Audit Department assist the Hearing Panel by working with USAJ and by reporting to the Hearing Panel on USAJ's efforts to come into compliance.

137. The USOC Membership Working Group is requested to:
- (a) review USAJ's financial condition and determine if USAJ has a long-range financial plan to reduce its debt and improve its financial well-being;
  - (b) assess whether USAJ's management is giving the attention and guidance necessary for USAJ to improve its financial situation;
  - (c) review USAJ's conflict and ethics policies and procedures and determine if those policies and procedures are being complied with;
  - (d) communicate with and provide advice to USAJ's Board and upper management; and
  - (e) do whatever else the USOC Membership Working Group deems advisable or necessary in assisting USAJ.
138. The USOC Audit Department is requested to:
- (a) conduct an audit of USAJ and report to the Hearing Panel on the results of that audit;
  - (b) review USAJ's financial policies and procedures and determine if those policies and procedures are being complied with;
  - (c) meet with USAJ Board members and upper management and with USAJ's staff person assigned to financial matters, on an as needed basis; and
  - (d) do whatever else the USOC Audit Department deems necessary advisable or necessary in assisting USAJ.
139. The USAJ shall:
- (a) provide a copy of its audited financial statement for the year ending December 31, 2014, to the USOC Membership Working Group, the USOC Audit Department and the Hearing Panel;
  - (b) assess its financial situation and implement programs to address its long term financial health and well-being;
  - (c) correct its management deficiencies;
  - (d) pay funds promised to athletes;
  - (e) address the issue of monthly board oversight of finances;
  - (f) cooperate with the USOC Membership Working Group and the USOC Audit Department;
  - (g) utilize the USOC Membership Working Group and the USOC Audit Department's expertise and advice on issues relative to USAJ's financial health and managerial capability; and
  - (h) keep the USOC Membership Working Group and USOC Audit Department informed of USAJ's efforts to meet its compliance objectives.

140. The Hearing Panel requests that the USOC Membership Working Group and USOC Audit Department report to it on an ongoing basis as they consider advisable.

141. USAJ shall report to the Hearing Panel in forty-five day intervals on its progress in addressing its compliance issues commencing January 15, 2016.

142. The Hearing Panel will retain continuing jurisdiction over this matter and after six months report back to the USOC Board on USAJ's progress in coming into compliance.

XV. USOC BOARD ACTION

143. This Report, Decision and Recommendation provides a report of this proceeding, serves as the Hearing Panel's reasoned decision and serves as the Hearing Panel's recommendation to the USOC Board.

144. The Hearing Panel finds that USAJ is not meeting its NGB requirements and obligations as set forth in the Act and USOC Bylaws. Specifically, USAJ is non-compliant with the following:

- (a) Section 220522(a)(2) of the Act, which requires that an NGB have the financial capability to execute its obligations as an NGB, Section 8.7 (m) of the USOC Bylaws, which requires that an NGB generate revenue sufficient to achieve financial sustainability and Section 8.7(o) of the USOC Bylaws, which requires that an NGB adopt a budget and maintain accurate accounting records in accordance with generally accepted accounting principles;
- (b) Section 2205022(a)(2) of the Act, which requires that an NGB have the managerial capability to create and administer a financial plan that allows the NGB to operate in a fiscally sound manner and is able to generate sufficient revenue to meet its financial obligations; and
- (c) Section 220522(a)(2) of the Act and Section 8.7(d) of the USOC Bylaws, which require that an NGB have the managerial capability to adopt a code of conduct and ensure that conflict and ethical matters are reviewed and dealt with as appropriate.

145. Accordingly, the Hearing Panel requests that the USOC Board adopt the Hearing Panel's finding regarding USAJ's non-compliance.

146. Further, the Hearing Panel recommends and requests that the USOC Board place USAJ on probation for a period of six months, which may be extended if USAJ is not yet in compliance, but shows that it is making sufficient progress in addressing its compliance issues.

147. Additionally, the Hearing Panel requests that the USOC Board adopt the recommendations outlined by the Hearing Panel, which USAJ must address in order to fulfill its obligations as an NGB.

Dated this 1st day of December, 2015.

A handwritten signature in cursive script that reads "Max Cobb".

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Max Cobb, Chair

Steve Mesler, Panel Member  
James Gillenwater, Panel Member