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NEWS

Winston & Strawn LLP Announcement: IAAF Appoints Advisory Panel to Review Whether to Permit Double-Amputee Blake Leeper to Compete Against Non-Disabled Athletes, Including in the 2020 Olympics

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On July 3, 2019, double-amputee athlete Blake Leeper filed an application with the International Association of Athletics Federations (IAAF), along with a scientific report of a study led by Dr. Alena Grabowski establishing that Mr. Leeper's use of prostheses do not provide him with a competitive advantage over non-disabled athletes. Dr. Grabowski is an expert on the effects of running-specific leg prostheses at the University of Colorado, Boulder.

The IAAF advised Mr. Leeper that, pending the determination of his application, the IAAF's position is that no mechanical aid is permitted to be used in IAAF competitions, but that Mr. Leeper may compete with mechanical aids in accordance with IAAF rules, i.e., only in certain competitions (but not in the World Championships or Olympic Games) and only on the condition that Mr. Leeper's results are listed separately to those of non-disabled athletes. [1]

On July 27, Mr. Leeper competed and finished in fifth place in the 400-meter final at the 2019 USA Track & Field (USATF) Outdoor Championships—a result that, for a non-disabled athlete, would qualify him for a spot on the USA relay team and permit Mr. Leeper to compete in the 400-meter relay competition at the upcoming IAAF World Championships beginning on September 27, 2019 in Doha, Qatar. The final entry deadline for the World Championships is September 16, 2019.

Mr. Leeper requested the IAAF to permit him to compete in the World Championships on the relay team, without restriction, pending determination of his application. The IAAF has advised Mr. Leeper that it will not permit Mr. Leeper to race using his prostheses in the World Championships unless and until the IAAF is satisfied that Mr. Leeper's prostheses do not give him an overall advantage over his competitors, and that Mr. Leeper would have the burden of proof on the question. The IAAF made this determination notwithstanding the potential for irreparable harm that Mr. Leeper will suffer in the meantime—a potential harm that USATF recognized when it permitted Mr. Leeper to participate in the 2019 Outdoor Championships. The IAAF placing the burden of proof on Mr. Leeper is also inconsistent with the precedent of Oscar Pistorius, in which the IAAF had the burden of proof to show that Mr. Pistorius's prostheses provided him with an overall competitive advantage, a burden that the IAAF failed to establish which enabled Mr. Pistorius to compete in IAAF events and the 2012 London Olympics.

Following the IAAF's determination, Mr. Leeper requested that the IAAF provide further information regarding the process under which his application will be reviewed, requested that the review be completed with sufficient time for him to compete at the World Championships and protested the IAAF shifting the burden of proof to Mr. Leeper.

The IAAF has now advised Mr. Leeper that it has appointed an advisory group to consider his application, but the advisory group's review of Mr. Leeper's application will not be completed, even in draft form, until October at the earliest. This means that the IAAF will not permit Mr. Leeper to compete at the World Championships in Doha.

The IAAF advisory group is comprised of various persons who are members of IAAF committees and commissions, and has engaged scientists to assist its review of Mr. Leeper's application and the underlying research submitted. As to the process, the IAAF has advised Mr. Leeper that the advisory group will prepare a recommendation (no earlier than October), and that Mr. Leeper will be able to comment on the recommendation.

Mr. Leeper is hopeful that the advisory group, the IAAF's CEO, and the IAAF Council will have an open mind in this process. If they do so, they will be compelled to conclude that Mr. Leeper has no overall competitive advantage and that he must be permitted to compete against non-disabled athletes. If they do not make a just decision, Mr. Leeper will be prepared to pursue his right to compete before the Court of Arbitration for Sport.

At the same time, Mr. Leeper will continue to fight for his rights and the rights of other athletes with disabilities to compete against non-disabled athletes. Mr. Leeper stated: "The IAAF placing the burden on disabled athletes to prove that their prostheses do not provide an overall advantage is wrong and unlawful. Not all athletes with disabilities will have the same opportunity I have had to find scientists such as Dr. Grabowski who has been willing to devote the time and resources to conduct a study of my prostheses on a pro bono basis. If the IAAF believes that a person without legs has an advantage in competing against someone with legs it should be their burden to demonstrate why this would be true."

Mr. Leeper is represented in this matter by partners Jeffrey Kessler and David Feher of Winston & Strawn LLP, who previously represented double-amputee 400-meter runner and 2012 Olympian Oscar Pistorius in successful proceedings before the Court of Arbitration for Sport establishing that Mr. Pistorius had no overall competitive advantage against non-disabled runners and thus was entitled to compete.

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[1] A release Winston & Strawn issued on July 25, 2019, described the IAAF's position in broader terms that the IAAF subsequently advised Mr. Leeper did not accurately state its position, and that prior release is hereby corrected as stated above.

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