

Contracting Considerations for Professional Cyclists and Teams: Understanding Some Basic UCI Regulations

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Professional cyclists in the United States are often very satisfied to have a salaried job as a professional cyclist. Typically, U.S. professional cyclists have ridden for years to finally “make it.” Not surprisingly, many professional cyclists may be tempted to give only passing consideration to the provisions in their team contracts. The economic principles of supply and demand appear to control the contracting situation. For each professional cyclist, there are dozens of other amateur riders ready to take his or her place. So, rather than ruffling any feathers, the professional cyclist may be inclined to sign the team contract without any negotiation of its provisions.

On the other hand, many U.S. based professional teams have limited budgets, making it difficult to provide extensive benefits to riders and to hire attorneys for contracting advice. Teams, like all businesses, must comply with various laws and regulations. Teams also potentially face liabilities in a dangerous sport. Disputes may arise over confusing provisions in a contract. Well-drafted rider contracts are important for the Team. And, while the riders’ contracts must comply with UCI regulations, those regulations do not guarantee a well-drafted contract.

Economic realities, however, need not control this situation. In fact, in a typical business negotiation outside of the professional team context, requests for reasonable and fair alterations to a contract often will be discussed accepted. Even provisions of so-called “form” agreements often can be (and should be) tailored to each particular situation.

In U.S. professional cycling, more consideration to contract terms by the riders and the teams may be needed.

From the team’s perspective: Does the contract establish the proper employee or independent contractor relationship between the team and rider? If not, for example, will the IRS impose penalties and back taxes upon the team because your supposedly independently contracted rider should have been treated as an employee of the team? If the rider is injured while racing, can he or she hold the team responsible?

From the cyclist’s perspective: It is this author’s understanding that many U.S. professional cyclists receive traveling and race expenses, equipment, and prize money (if any), but their contracts may lack important details for the rider, such as: when and how expenses will be reimbursed, whether equipment is the property of the rider upon receipt or only after completion of the full-season, and when and how prize money will be distributed. Even for salaried professional cyclists, the cyclists often have very little, if any, protection in the contracts against teams that do not make salary payments or make those payments late. Further, despite exposing themselves to serious injury on a daily basis, many professional cyclists’ contracts do not discuss whether there will be a continuation of salary or other payments in the event of injury. Further, many of the contracts do not provide health care insurance,

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disability insurance or life insurance benefits for the cyclists, even though such benefits may be common for employees working for the cycling manufacturers and the other companies that sponsor the teams. Moreover, because many U.S. professional cyclists are contracted as independent contractors, their teams are not required to provide workers compensation insurance, and the independently contracted cyclists cannot form a traditional employee “union.”

In my view, professional cyclists and their teams deserve better. Each side should be willing, during team contract review and negotiation, to require reasonable, fair and professional treatment. Most importantly, making reasonable and fair requests should not (and probably will not) ruffle the feathers of reasonable and fair individuals.

At a minimum, all U.S. professional cyclists who ride for UCI ProTeams or UCI Professional Continental Teams should understand the basic contracting regulations imposed by the Union Cycliste Internationale (“UCI”). And, all U.S. cyclists on a UCI registered Mountain Bike Team should be aware that the UCI imposes less onerous contract provisions, when compared to the required provisions for a UCI ProTeam or Professional Continental Team contract.

In addition, U.S. cyclists on a UCI Continental Team or a UCI road Women’s Team should be aware that, beginning in 2005, the UCI has imposed almost NO mandatory contract provisions. Instead, the UCI allows USA Cycling (and the other national federations) to set their own mandatory contract regulations for riders on these teams. To the author’s knowledge and as of the date of this article, USA Cycling has not established any mandatory rider contract regulations for Continental and Women’s Teams.

No matter what type of team, professional cyclists and teams should NOT rely on the UCI or USA Cycling to ensure that their contracts comply with applicable UCI and USA Cycling regulations and contain well-drafted provisions.

This article outlines several issues that are addressed in the UCI regulations that professional cyclists and their teams should consider before signing their contracts. Although the UCI regulations discussed below govern only teams that are registered with the UCI, the principles could be applied to any professional team contract. This is not a comprehensive list of important issues, but it is a good start:

- Is there a minimum salary for professional cyclists?
- Should the cyclist be an employee of the team or an independent contractor? Does it matter?
- What contract provisions will allow salary payments to be paid and received on time?
- If the rider is not getting paid on-time or at all, can the rider’s contract have a provision that allows him or her to terminate the contract and ride for another team?
- What contract provisions can benefit a rider that is injured or disabled while racing or training? Can an injured rider still get paid? What about the injured rider’s medical bills?
- What contract provisions can address a situation in which the rider signs a contract before the team registers with the UCI, but later, the team is not able to complete that registration?
- What other fringe benefits are discussed in the UCI regulations?

Is there a minimum salary for professional cyclists?

ProTeam and Professional Continental Team riders? For ProTeam riders, the minimum annual salary under UCI regulations for 2005 is 24,000 Euros¹ for a first year rider and 30,000 Euros² for all other riders. For Professional Continental Team riders, the minimum annual salary under UCI regulations for 2005 is 20,000 Euros³ for a first year rider and 23,000 Euros⁴ for all other riders. Because independent contractors are no longer allowed, the UCI regulations no longer contain a different minimum salary for employee v. independent contractor riders.

Continental Team riders? Neither USA Cycling nor the UCI has imposed a minimum required salary for Continental Team riders.

Women Team riders? Neither USA Cycling nor the UCI has imposed a minimum required salary for Women Team riders.

UCI Mountain Bike Team riders? For UCI Mountain Bike Team riders, the minimum salary under UCI regulations is the minimum legal wage. In most states in the U.S., the minimum legal wage is the federal minimum of \$5.15 per hour. At 40 hours per week for 50 weeks per year, the annual minimum UCI Mountain Bike Team wage in most states would be \$10,300. In California, the minimum wage is \$6.75, so for those UCI Mountain Bike Teams that are based in California, the annual minimum UCI Mountain Bike Team wage would be \$13,500.

Should the cyclist be an employee of the team or an independent contractor? Does it matter?

Beginning in 2005, the UCI regulations provide that a rider of a UCI ProTeam, Professional Continental Team or Mountain Bike Team must contract with a team as an employee (not as an independent contractor).⁵ On the other hand, it appears that most riders on U.S. based Continental Teams and Women Teams are independent contractors, and as such, some of the considerations regarding being an independent contractor are discussed below.

Independent Contractors Pay More Taxes. An independent contractor in the U.S. will pay more federal medicare and social security taxes than an employee. An example illustrates this best.

Let's assume we have a rider whose salary and other earnings from the team total \$30,000. If the rider is an employee of the team, the team will deduct medicare and social security taxes from each of the rider's payments at a rate of approximately 7.5%. So, the rider will pay approximately \$2,250 for the year ($\$30,000 \times 7.5\%$). The employer team (not the rider) will pay an additional \$2,250 in medicare and social security taxes to the government, for a total of \$4,500 being paid (half paid from the employee's salary and half paid from the employer's coffers). If, on the other hand, the rider is an independent contractor of the team, the team will not deduct any medicare and social security taxes from the rider's payments, and the team will not make any additional payments of their own. Instead, the rider must pay a self-employment tax of approximately 15%. So, the independently contracted rider will pay \$4,500, which is \$2,250 more than he or she would have paid as an employee.

Independent Contractors Have More Tax Paperwork. Periodically throughout the year, an independently contracted rider must make income and self-employment tax payments to the federal and state governments. An employee rider, on the other hand, avoids this hassle because the employer (the team) makes these payments for the employee as part of the paycheck process. Also, an independent contractor must file more paperwork with his or her tax return (such as Schedules SE and C) than an employee rider.

Independent Contractors Are Not Covered Under Workers' Compensation Insurance. Workers' compensation insurance provides payments to a worker who is injured on the job without regard to whether the worker is at fault. Under the various state laws, nearly all employers must pay for workers' compensation insurance to cover their employees. Thus, if a rider is an "employee" of a U.S. team, the team is probably required to provide workers' compensation insurance for the rider. If, on the other hand, a rider is an "independent contractor" for a U.S. team, the team is not required by state laws to purchase workers' compensation insurance to cover the rider.

Independent Contractors Cannot Form a Traditional Employee Union. Perhaps one of the severest consequences (for the independent contractors) of being an independent contractor in the United States is that a group of independent contractors cannot legally form a union to advocate for better pay, to advocate for better work conditions, or to undertake a work stoppage. The U.S. labor relations laws give *employees* the right to "self-organization, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collectively bargaining or other mutual aid or protection." Under such laws, both sides (the union and management) must bargain in good faith. These union laws interplay with anti-trust laws. The U.S. anti-trust laws prohibit all combinations that restrain interstate commerce, unless the particular type of combination is exempted from the coverage of the Act. Traditional employee unions are combinations that restrain trade, but employee union activity is exempted from anti-trust laws.

With those laws in mind, here is the issue: a group of independent contractors (such as professional cyclists) cannot form a traditional union under the U.S. union laws because they are not *employees*. In the alternative, if a group of independently contracted professional cyclists formed some sort of association to advocate for better pay or better work conditions, those professional cyclists could be in violation of the anti-trust laws. Thus, because any association formed by independently contracted professional cyclists must be very careful that the activities of the association do not violate U.S. anti-trust laws, the usefulness of such an association to its independent contractor members will be very limited when compared to usefulness of a traditional union to its employee members.

What contract provisions will allow salary payments to be paid and received on time?

Direct Deposit. A requirement for direct deposit of salary payments seems like a reasonable addition to the contract of any professional cyclist. Direct deposit may be the single most effective way to ensure regular payment of salary and other benefits. Direct deposit usually is not difficult for a team to set-up, the fees are minimal for the team, and it will save the team (and the rider) the time and hassle of writing checks each month, especially while traveling. The ProTeam and Professional Continental Team model contracts require that the rider must be paid his or her salary (and all other remuneration) by transfer to the bank account of the rider (i.e. by direct deposit), but the model contract for UCI

Mountain Bike Team riders has no such requirement. Neither USA Cycling nor the UCI has adopted mandatory salary payment regulations for riders on Continental Teams and Women Teams.

Monthly Salary Payments. All contracts should clearly set forth the timing of the salary, bonus and prize money payments. A typical salary provision might require that the rider's salary be paid "in equal monthly payments on or before the last day of each month." A monthly payment provision may not seem very like an important provision, but at least the timing of the payments is clearly set forth in writing, allowing both the rider and team to rely on regular payments when making budgeting and financial decisions. The UCI ProTeam and Professional Continental Team model contracts require that the rider's salary must be paid in equal monthly payments on or before the last day of each month. The UCI Mountain Bike Team model contract requires that the rider's salary must be paid in no less than four installments on or before the last day working day of each three-month period. Neither USA Cycling nor the UCI has adopted mandatory contract salary payment regulations for riders on Continental Teams and Women Teams.

Late Payment Penalty Fees. The UCI ProTeam, Professional Continental Team and Mountain Bike Team regulations require that all rider contracts contain specific penalty fees to be automatically due to the rider in the event of a late payment of salary by the team. Make sure these provisions are in those contracts. Neither USA Cycling nor the UCI has adopted mandatory contract late payment regulations for riders on Continental Teams and Women Teams.

Race Prizes/Winnings. As with salary, setting forth the timing of prize payments in the contract allows the rider and team to rely on the timing payments and reduces stress associated with getting paid. UCI regulations require that prize money is paid to national governing bodies, in accordance with applicable racing regulations. UCI regulations also require that a Mountain Bike Team contract contain a provision that premiums and prizes won during competitions be transferred from team to the rider as promptly as possible, but at the latest, on the last working day of the month following that in which the premiums and prizes were won. So, for example, prize money won in August must be paid to the rider by the last day of September. Neither USA Cycling nor the UCI has adopted mandatory contract regulations regarding race prizes for riders on Continental Teams and Women Teams.

Other Possibilities. Riders and teams might consider requesting that other provisions be added to the contract to ensure timely payment. From a rider's perspective, these other provisions may be important when the team manager, owner or sponsor have not paid riders on-time in the past. These other provisions might include: (i) increasing the late payment penalty fees (although, the UCI may set a maximum), (ii) requiring that the team pay your entire year's salary (or something less than your entire year's salary) to a third-party trustee at the beginning of the contract, then the trustee would make the regular salary payments to you, (iii) requiring that payments be made in a particular currency such as US dollars or Euros (currency values fluctuate), and (iv) expressly allowing the rider to terminate the contract if the non-payment continues over a specified period of time. This final provision regarding termination would be need to be carefully drafted because UCI regulations place limitations on a rider's ability to transfer to another team before the end of the planned term of the contract, even if the contract has been validly terminated by the rider, as discussed below.

If the rider is not getting paid on-time or at all, can the rider's contract have a provision that allows him or her to terminate the contract and ride for another team?

Riders generally do not have any control over the team's funding, so it seems reasonable that riders should not bear the risk of a sponsor short-changing the team. The team is in control of the relationships with sponsors, and as such, it seems reasonable that the team should bear the risk of sponsor funding unexpectedly drying up. However, the various UCI model contract provisions do not contain an express provision giving the rider the option of terminating the contract in the event of non-payment of salary. It appears that such a provision could be added to the contract, subject to the UCI regulations about transferring to another team, which are noted below.

Various UCI regulations discourage riders from changing to another team in mid-season for any reason. In general, UCI regulations do not allow a rider to transfer to another team before the expiration date set forth in his or her contract (even if that contract is validly terminated before that expiration date), unless the rider has received prior authorization from the UCI to make the transfer.⁶ In addition to the UCI's approval, the current team (the team that has not been paying the rider's salary) must agree to the switch. Thus, even if you have a right to terminate your current contract for non-payment, the UCI and your current team must approve your transfer to a new team.

What contract provisions can benefit a rider that is injured or disabled while racing or training? Can an injured rider still get paid? What about the injured rider's medical bills?

Clarify the Continuation of Salary Payments. In my opinion, all contracts of professional cyclists should expressly state what happens to salary and other payments in the event of temporary or permanent injury, illness or accident. Injury is common, so such a provision seems advisable for both rider and team. At a minimum, something regarding this situation (even if it states that very little or no payments will continue in this situation) should be set forth in writing in the contract in order to avoid unnecessary confusion, ill-will and delayed payments. The UCI ProTeam and Professional Continental Team regulations require that, in the event of rider injury, accident or illness of no fault of his own, the rider must be paid 100% of his salary for 3 months and 50% of his salary for 3 additional months, but payments will not be made past the expiration date of the contract. During the 3 months of 50% payments, the salary payments cannot be less than the minimum salary for ProTeam riders. The UCI Mountain Bike Team model contract vaguely provides that the employer must secure insurance to ensure that salary benefits of "an acceptable level" are paid in the event of an unforeseen injury or illness. Neither USA Cycling nor the UCI has adopted mandatory contract payment regulations in the event of injury of riders on Continental Teams and Women Teams.

What about Health Insurance? Because of the injury prone nature of cycling, this author strongly suggests all professional cyclists procure medical insurance to pay for medical bills in the event of temporary injury. Moreover, group health insurance benefits are common for the employees of the cycling manufacturers and other companies that sponsor the teams, so in some situations, it may be reasonable for a rider to ask for such benefits. A rider might request that the team acquire group health insurance and that the team pay all or some portion of the rider's insurance premiums. Regulations covering ProTeam and Professional Continental Team riders require that each employee rider must receive medical insurance from the team for health care costs, and the team must pay for all medical

insurance premiums.⁷ The UCI Mountain Bike Team regulations do not contain any required provisions regarding medical bills or health insurance coverage. Neither USA Cycling nor the UCI has adopted mandatory regulations requiring medical insurance benefits for riders on Continental Teams and Women Teams.

Consider Disability and Life Insurance. From the cyclist's point of view, a request that a team provide disability insurance or life insurance benefits for the cyclist might be a reasonable request, particularly considering that such benefits are provided for employees working for the cycling manufacturers and the other companies that sponsor the team. Under UCI regulations, ProTeams and Professional Continental Teams must acquire insurance to be paid to any rider that suffers a total and permanent disability due to an accident not involving cycling. In addition, ProTeams and Professional Continental Teams must acquire and pay for a 100,000 Euro life insurance policy for each of their riders. The UCI imposes no such requirements for UCI Mountain Bike Team riders, and neither USA Cycling nor the UCI has adopted mandatory regulations requiring disability or life insurance benefits for riders on Continental Teams and Women Teams.

Determine Whether Riders Are Covered By Workers' Compensation. Another consideration is lurking here: workers' compensation insurance. In the United States, workers' compensation insurance provides payments to a worker who is injured on the job without regard to whether the worker is at fault. Under the various state laws, nearly all employers must pay for workers' compensation insurance to cover their employees. Thus, if a rider is an "employee" of a U.S. team, the team is probably required to provide workers' compensation insurance for the rider. If, on the other hand, a rider is an "independent contractor" for a U.S. team, the team is not required to purchase workers' compensation insurance to cover the rider.

What contract provisions can address a situation in which the rider signs a contract before the team registers with the UCI, but later, the team is not able to complete that registration?

The UCI ProTeam and Professional Continental Team model contracts require that the rider may terminate the contract if UCI team registration is not obtained. The UCI Mountain Bike Team model contract contains no express provisions for this situation. In my opinion, however, all professional cyclist contracts should expressly state that the rider can terminate the contract, at the rider's sole option, in the event that UCI registration as a particular type of team is not obtained. This helps protect the rider from continuing with a team that cannot satisfy his personal sporting goals. It may also help the team avoid paying a rider when the registration (and probably also the sponsorship) has failed. Practically, it seems that most teams would not expect a rider to continue under contract if the expected UCI registration is not obtained, so putting this option in writing should not be objectionable.

What other fringe benefits are discussed in the UCI regulations?

Vacation Days. UCI regulations require that ProTeam and Professional Continental Team riders receive a minimum of 35 vacation days per year, and holidays must be allowed, subject to racing schedules. Neither the UCI nor USA Cycling has imposed vacation or holiday requirements for UCI Mountain Bike Teams, Continental Teams and Women's Teams.

Retirement Benefits. UCI regulations require ProTeams and Professional Continental Teams to purchase an annuity or other policy that provides a payment to the rider upon his retirement. Neither the UCI nor USA Cycling has imposed retirement benefit requirements for UCI Mountain Bike Teams, Continental Teams and Women's Teams.

Requirement to Allow Necessary Rest/Recovery. UCI regulations require that a ProTeam and Professional Continental Team rider's racing schedule allow for the recovery periods needed for the rider to enjoy the necessary rest for his physical balance. Neither the UCI nor USA Cycling has imposed rest requirements for UCI Mountain Bike Teams, Continental Teams and Women's Teams.

Requirement to Allow Studies/Schooling. UCI regulations prohibit a ProTeam and Professional Continental Team from objecting to the continuation of studies, provided that the studies do not interfere with the planned racing schedule. Neither the UCI nor USA Cycling has imposed schooling regulations for UCI Mountain Bike Teams, Continental Teams and Women's Teams.

Conclusion

Reasonable and fair negotiation is an accepted part of business contracting. Professional cyclists and team representatives should not hesitate to make and accept reasonable and fair contracting requests.

About the author:

Gregg K. Stepan practices law in Sandy City, Salt Lake County, Utah with Stepan, Lewis & Paxman, LC. Prior to starting Stepan, Lewis & Paxman, LC, Mr. Stepan practiced as an associate attorney in the corporate law practice group of the Washington, D.C. office of Duane Morris LLP, an international law firm with more than 500 total attorneys. Gregg has substantial experience negotiating and drafting contracts and addressing other issues relevant to cyclists and other athletes. Gregg is an active member of the Sports Lawyers Association and is a graduate of The George Washington University Law School in Washington, D.C. Gregg also holds an Elite level coaching license issued by USA Cycling, and he coaches a handful of elite amateur and professional cyclists. Gregg also finds time to occasionally race in road and mountain bike races. You can contact Gregg by visiting his law firm web site at <http://www.stepanlewis.com> or toll-free by telephone at 1-800-572-1069 or by email at gstepan@stepanlewis.com. Gregg looks forward to any opportunity to speak with any professional cyclist or team representative about the issues they face. Brief initial consultations are free of charge.

¹ The equivalent of US\$31,258 in April 2005.

² The equivalent of US\$39,071 in April 2005.

³ The equivalent of US\$26,047 in April 2005.

⁴ The equivalent of US\$29,955 in April 2005.

⁵ The UCI regulations for Mountain Bike Teams are not very clear regarding whether independently contracted riders are allowed. Nonetheless, the UCI's apparent elimination, in 2005, of independent contractors for Proteams and Professional Continental Teams is an indication that independent contractors may not be allowed on Mountain Bike Teams.

⁶ The UCI regulations for Mountain Bike Teams are not explicit on the matter of a rider transfer to another registered team prior to the expiration of the current contract. The UCI regulations for Continental Teams provide for a transfer period each year from June 1 through June 25.

⁷ UCI regulations found in Article 22 of the "Joint Agreements" regarding health insurance could be interpreted, with regard to U.S. based ProTeams and Professional Continental Teams, to require that the team provide worker's compensation insurance, rather than health insurance. The author does not have knowledge of exactly how the UCI enforces this provision for such U.S. based teams.