



DECISION of the FEI TRIBUNAL

dated 6 August 2014

Positive Anti-Doping Case No.: 2013/BS06

Horse: CLIFTON PINOT **FEI Passport No:** NZL40594

Person Responsible/NF/ID: Kevin McNab/AUS/10004707

Event/ID: CCI4* - HSBC, Burghley – The Land Rover Burghley International Three Days Event (GBR)/2013_CI_0076_C_SA_01_01

Date: 5-8 September 2013

Prohibited Substance: Reserpine

I. COMPOSITION OF PANEL

Mr. Erik Elstad, Chair
Dr. Armand Leone, Panel Member
Ms. Jane Mulcahy, Panel Member

II. SUMMARY OF THE FACTS

1. Memorandum of case: By Legal Department.

2. Summary information provided by Person Responsible (PR) and the member of the Support Personnel: The FEI Tribunal duly took into consideration all evidence, submissions and documents presented in the case file and at the oral hearing, as also made available by and to the PR.

3. Oral hearing: 3 - 4 June 2014 – London, United Kingdom

Present:

The FEI Tribunal Panel
Ms. Erika Riedl, FEI Tribunal Clerk

For the PR:

Mr. Kevin McNab, PR
Mr. Rory MacNeice, Legal Counsel

Dr. Mark Dunnett, Expert Witness

For the FEI:

Mr. Jonathan Taylor, Legal Counsel
Ms. Carolin Fischer, FEI Legal Counsel
Mr. Mikael Rentsch, FEI Legal Director
Ms. Lauren Pagé, Legal Counsel
Dr. Stuart Paine, Expert Witness
Mr. Roger Hatch, Witness (by telephone)

Others:

Mr. Chris Hodson, NZL-NF President
Ms. Frances Stead, Owner of CLIFTON PINOT
Mr. Jonathan Paget, PR CLIFTON PROMISE
Mr. Jeremy Dickerson, Legal Counsel of Mr. Paget
Mr. James Pheasant, Legal Counsel of Mr. Paget
Ms. Georgina Shaw, Legal Counsel of Mr. Paget

In order to streamline the proceedings it was agreed at the request of the PR and Mr. Paget to hold consolidated hearings in the cases of the PR and Mr. Paget, whose horse CLIFTON PROMISE had also tested positive for Reserpine at the same event as CLIFTON PINOT.

III. DESCRIPTION OF THE CASE FROM THE LEGAL VIEWPOINT

1. Articles of the Statutes/Regulations which are applicable or have been infringed:

Statutes 23rd edition, effective 8 November 2012 ("Statutes"), Arts. 1.4, 38 and 39.

General Regulations, 23rd edition, 1 January 2009, updates effective 1 January 2013, Arts. 118, 14é3.1, 161, 168 and 169 ("GRs").

Internal Regulations of the FEI Tribunal, 2nd edition, 1 January 2012 ("IRs").

FEI Equine Anti-Doping and Controlled Medication Regulations ("EADCMRs"), 1st edition, effective 5 April 2010, updates effective 1 January 2013.

FEI Equine Anti-Doping Rules ("EAD Rules"), 1st edition, effective 5 April 2010, updates effective 1 January 2013.

Veterinary Regulations ("VRs"), 13th edition, effective 1 January 2013, Art. 1055 and seq.

FEI Code of Conduct for the Welfare of the Horse.

2. Person Responsible: Mr. Kevin McNab

3. Justification for sanction:

GRs Art. 143.1: "Medication Control and Anti-Doping provisions are stated in the Anti-Doping Rules for Human Athletes (ADRHA), in conjunction with The World Anti-Doping Code, and in the Equine Anti-Doping and Controlled Medication Regulations (EADCM Regulations)."

EAD Rules Art. 2.1.1: "It is each *Person Responsible's* personal duty to ensure that no *Banned Substance* is present in the *Horse's* body. *Persons Responsible* are responsible for any *Banned Substance* found to be present in their *Horse's Samples*, even though their *Support Personnel* will be considered additionally responsible under Articles 2.2 – 2.7 below where the circumstances so warrant. It is not necessary that intent, fault, negligence or knowing *Use* be demonstrated in order to establish an *EAD Rule* violation under Article 2.1."

IV. DECISION

Below is a summary of the relevant facts and allegations based on the Parties' written submissions, pleadings and evidence adduced at the Final Hearing. Additional facts and allegations found in the Parties' written submissions, pleadings and evidence may be set out, where relevant, in connection with the legal discussion that follows. Although the Panel has considered all the facts, allegations, legal arguments and evidence in the present proceedings, in its decision it only refers to the submissions and evidence it considers necessary to explain its reasoning.

1. Factual Background

- 1.1 CLIFTON PINOT (the "Horse") participated at the CCI4* (HSBC, Burghley – The Land Rover Burghley International Three Days Event) in Burghley, Great Britain from 5 to 8 September 2013 (the "Event"), in the discipline of Eventing. The Horse was ridden by Mr. Kevin McNab who is the Person Responsible in accordance with Article 118.3 of the GRs (the "PR").
- 1.2 The Horse was selected for sampling on 6 September 2013, the day of the Dressage test of the Event.
- 1.3 Analysis of urine and blood sample no. 5524990 taken from the Horse at the Event was performed at the FEI approved laboratory, the Horseracing Forensic Laboratory Sport Science Ltd. (UK) ("HFL"). The analysis of the blood sample revealed the presence of Reserpine.
- 1.4 The Prohibited Substance detected is Reserpine. Reserpine is a tranquiliser with behavioural modification effects. Reserpine is classified as a Banned Substance under the FEI Equine Prohibited Substances List (the "Prohibited Substances List"). Therefore, the

positive finding for Reserpine in the Horse's sample gives rise to an Anti-Doping Rule Violation under the EAD Rules.

2. The Further Proceedings

- 2.1 On 14 October 2013, the FEI Legal Department officially notified the PR, through Equestrian Australia ("AUS-NF"), of the presence of the Prohibited Substance following the laboratory analysis, the possible rule violation and the consequences implicated. The Notification Letter included notice that the PR was provisionally suspended and granted him the opportunity to be heard at a Preliminary Hearing before the FEI Tribunal. Together with the Notification Letter the PR also received the Laboratory Documentation Package for the A-Sample.
- 2.2 On 18 October 2013, the PR requested for a Preliminary Hearing to take place, but later on withdrew his request.
- 2.3 The Notification Letter further included notice to the owner of the Horse – Ms. Frances Stead – that in accordance with Article 7.4 of the EAD Rules, the Horse was provisionally suspended for a period of two months, from the date of Notification, i.e. 14 October 2013, until 13 December 2013. The above Provisional Suspension of the Horse has not been challenged by the owner, and the Horse has served the entire period of Provisional Suspension.

3. The B-Sample analysis

- 3.1 Together with the Notification Letter of 14 October 2013, the PR was also informed that he was entitled to request (i) the performance of a B-Sample confirmatory analysis on the positive sample; (ii) attend or be represented at the B-Sample analysis; and/or (iii) request that the B-Sample be analysed in a different laboratory than the A-Sample.
- 3.2 On 23 October 2013, the PR requested the B-Sample analysis to be performed in a different laboratory than the A-Sample analysis.
- 3.3 On 12 November 2013 the PR informed the FEI that he did not wish to be represented during the B-Sample analysis.
- 3.4 Further on 12 November 2013, following request by the PR, the FEI explained that whereas no qualitative analysis had been performed, according to HFL, the estimated concentration in the A-Sample was approximately 1 ng/ml.
- 3.5 On 19 November 2013, the B-Sample analysis was performed on the blood sample at the Laboratoire des Courses Hippiques ("LCH"), France, under the supervision of Dr. Yves Bonnaire, Director of LCH. Mr. Frédéric Balssa witnessed the identification and the opening of the B-Sample. The PR did not attend the B-Sample analysis and chose not to send a representative on his behalf.

- 3.6 The B-Sample analysis of the blood confirmed the presence of Reserpine.
- 3.7 On 28 November 2013, the results of the B-Sample analysis were provided to the PR and to the owner of the Horse through the AUS-NF.
- 3.8 On 14 January 2014, upon request by the PR, the FEI explained that the estimated concentration in the B-Sample was 400 pg/ml.

4. Written submissions by the PR

- 4.1 On 28 February 2014, the PR submitted his explanations for the positive finding. Together with his explanations, the PR submitted an expert report by Dr. Mark Dunnnett, BSc PhD MChromSoc, consulting equine toxicologist with Independent Equine Nutrition ("IEN") and a witness statement by himself.
- 4.2 In his witness statement, the PR explained that he had been riding and growing horses for his entire life and that his sporting career had been "treading water" until about 2011, as he had always taken the decision to develop and sell his good horses. That Mr. Paget – the PR in the CLIFTON PROMISE case - had been his pupil, and that he had started riding and competing with Clifton horses, including the Horse, in 2008, when Mr. Paget had already been well established with the Clifton horses in New Zealand.
- 4.3 The PR further explained that he had brought three horses, including the Horse, to the United Kingdom in May 2012, and that he had stabled them in Mr. Paget's stables. That insofar as Mr. Paget had replicated as near as possible the feed regime learnt from himself at the time for his stables in the UK, he had adopted Mr. Paget's suppliers and the feed selected by him. That he believed that it was very important to maintain the Horse's equilibrium when it was in a competition environment where stress levels were much higher and where it became difficult for the Horse to maintain a normal diet. That Mr. Paget had felt that LesstressE, manufactured by Trinity Consultants, would have helped under those conditions. That the Horse had been administered three supplements prior to the Dressage test at the Event, namely LesstressE, Nupafeed Calmer and So-Kalm, with the aim of assisting the Horse in remaining as relaxed as possible during the Dressage test. That LesstressE had also been administered to the Horse with the aim of improving its appetite as the Event had moved into the cross-country and jumping phases. The PR further explained that his groom Ms. Lucy Miles had administered two 25 ml doses of LesstressE to the Horse on 6 September 2013 (the first dose three hours prior to the Dressage test, and the second dose one and a half hours prior to the Dressage test). That the first dose of LesstressE had been from a nearly empty bottle (with approximately 25 ml of LesstressE remaining) and that the second dose had been from a bottle manufactured on 27 August 2013, which had been submitted to

IEN for testing and which – as confirmed by Dr. Dunnett – had contained Reserpine at a concentration level of 0.11 mg/ml.

- 4.4 Finally that he had been using LesstressE on the Horse since the Bramham event in 2012, and that since then he had used it also for certain of his other competition horses with similar temperaments to the Horse, i.e. a typical thoroughbred, bred to gallop and jump. That the Horse was further similar in temperament to Mr. Paget's horse CLIFTON PROMISE. That the Horse had tested negative for Prohibited Substances at an event in Luhmulen in 2012 where it had previously been administered LesstressE, and that he had also been aware that CLIFTON PROMISE had also tested negative on several occasions.
- 4.5 In his expert statement Dr. Dunnett explained that screening analyses performed by him on all complementary feeds fed to the Horse had indicated the presence of Reserpine in the complementary feed LesstressE. That therefore he had tested a total of thirteen (13) bottles of LesstressE, obtained from the stables of the PR, of Mr. Adam Trew, Mr. Paget, Ms. Jonelle Richards and Georgette Bales. That Reserpine had been detected in eleven (11) of those bottles labelled as manufactured across various dates between May and August 2013, and that the concentration of Reserpine in those bottles ranged from 0.08 to 0.11 mg/ml. That initial screening analysis of a bottle of LesstressE dated 27 August 2013 had further indicated the presence of other (in addition to Reserpine) material deriving from Indian Snakeroot (yohimbine, ajmaline, ajmalicine, alpha-rauwolcine and corynanthine), and that further analyses were on-going. Dr. Dunnett also explained that two out of the thirteen (13) bottles (one dated 29 April 2013 and the other one dated 16 October 2013) obtained from Mr. Paget's stables did not contain any or a very low levels of Reserpine. It furthermore followed from Dr. Dunnett's report that a bottle of LesstressE produced by Trinity Consultants for Mr. Paget on 16 October 2013 and obtained directly from Trinity Consultants by IEN did not contain any Reserpine. Dr. Dunnett further explained that he had also undertaken screening analyses on samples of six ingredients of LesstressE, which he had collected from the premises of Trinity Consultants in October 2013. That very low levels of Reserpine had been identified in five (*Hydrocotyl asiatica*, *Glycyrrhiza glabra*, *Melissa officinalis*, *Passiflora incarnate* and *Scutellaria lateriflora*) of the six herbal ingredients stored at Trinity Consultants. That however Reserpine had not been detected in samples of the five herbal ingredients that had been supplied directly to IEN by Herbal Apothecary and Panacea, the two suppliers of those ingredients which had been contracted by Trinity Consultants. That lastly Reserpine had not been detected in the sample of the sixth ingredient, L-tryptophan, supplied to Trinity Consultants by Premier Nutrition, a Business Unit of AB Agri Ltd.
- 4.6 Moreover the PR submitted a screenshot of a webpage from Trinity Consultants - featuring LesstressE as not containing any Prohibited Substances as defined by the FEI, and copies of invoices from Trinity Consultants addressed to the PR dated 20 August 2012, 30 May 2013

and 2 September 2013, including the relevant statutory statements. Finally, the PR submitted a sample recall letter for LesstressE dated 8 January 2014 from Trinity Consultants-, signed by Mr. Roger Hatch, Director of Trinity Consultants.

4.7 In summary, and relying on the evidence produced by him, the PR submitted that:

- a) Reserpine had been found to be present in a blood sample collected from the Horse at the Event. That he accepted that the analytical tests with respect to both the A- and the B-Sample had been performed in an acceptable manner and in terms of current recognised practices.
- b) as rider of the Horse at the Event, he accepted to be the Person Responsible for the Rule violation.
- c) neither he nor any member of his staff or the Horse's veterinarians had knowingly administered any Reserpine to the Horse.
- d) the bottle of LesstressE used by his groom to administer the second dose of LesstressE to the Horse at the Event had been manufactured on 27 August 2011 and had been found to contain Reserpine at a concentration of 0.11 mg/ml.
- e) the Reserpine had to have entered the LesstressE as a contaminant at the manufacturing stage, probably due to a contaminated ingredient. That – as confirmed by Dr. Dunnett – the five herbal ingredients of LesstressE collected from Trinity Consultants had contained trace levels of Reserpine, and that he had been informed by Mr. Paget that testing carried out by AB Agri Ltd had detected the presence of Reserpine in retained samples of L-tryptophan.
- f) he bore no Fault or Negligence for the administration of Reserpine (or an unknown contaminant of LesstressE) to the Horse and that he could not reasonably have known or suspected that batches of LesstressE manufactured from May to August 2013 had been contaminated with Reserpine. That the steps he had taken in satisfying himself that LesstressE could be administered to the Horse in compliance with the FEI Rules - including carrying out due diligence to ensure it did not contain any Prohibited Substances - had been appropriate, reasonable, considered and proportionate. That these steps particularly included: (i) asking Mr. Paget, who had recommended LesstressE to him, specific questions regarding the product; checking on Trinity Consultants' website; speaking directly to the manufacturer verifying that the product did not contain any substances prohibited by the FEI (ii) being aware that the New Zealand team veterinarian had reviewed the ingredients of the product and had confirmed that it did not contain any Prohibited Substances, and being aware that CLIFTON PROMISE had previously tested negative after having been fed LesstressE, and (iii) the Horse

had previously tested negative for Prohibited Substances after having been fed LesstressE, at the Luhmuhlen event in 2012.

5. The further proceedings

- 5.1 On 23 April 2014, the PR requested that “the Tribunal hands down its decision (with reasons to follow if necessary) on 5 June 2014” if the PR is found not in breach of an Anti-Doping Rule violation, and in order to provide the PR with the opportunity of competing at an event in Luhmuhlen, from 12 to 15 June 2014.
- 5.2 On 6 May 2014, the Tribunal informed the Parties that in accordance with 19.45 of the Internal Regulations of the FEI Tribunal, a decision in writing would be issued as soon as practicable after the end of the hearing. That the Tribunal would abide by this rule but could however not guarantee a decision within 24 hours after the final hearing (at the time the hearing had been set for 4 June 2014), as requested by the PR.

6. Written submissions by the FEI

- 6.1 On 25 April 2014, the FEI provided its Response to the PR’s submission. Together with its Response, the FEI provided witness statements by Mr. Hatch and Mr. Thomas William Glasse, Risk Manager for AB Agri Ltd, as well as an expert report by Dr. Stuart Paine BSc (Hons), PhD, MRSC, CCHEM, CSci, ACS.
- 6.2 In his witness statement Mr. Glasse explained that upon request by Mr. Paget, AB Agri Ltd had arranged for testing by IEN of retained samples of L-tryptophan, specifically samples of batches numbered ACAC12126, ACAC121215 and 201302701. That samples of batches ACAC121215 and 201302701 had not been found to contain Reserpine, and that according to the Certificate of analysis for samples from batch ACAC12126, screening analysis had indicated the presence of Reserpine in the respective samples. That according to the Certificate of analysis, no confirmatory analysis had been undertaken. Mr. Glasse further explained that following inquiry by the FEI as to why the amount of Reserpine found in batch no. ACAC121216 of L-tryptophan had not been quantified by IEN, Dr. Dunnett had explained that quantification had been nearly impossible as firstly, the level of Reserpine in the sample had been extremely low, and as secondly, the molecular structure of Reserpine was similar to that of L-tryptophan. Mr. Glasse further stated that he did not believe that any alleged contamination of L-tryptophan with Reserpine, Indian Snakeroot or Poison Devil’s Pepper had taken place at Premier Nutrition’s premises, as the company had not stored, used or supplied any of those substances or any products containing them. That additionally, L-tryptophan had been stored at Premier Nutrition’s premises in exactly the state in which it had been received from CJ Europe and Tennants – suppliers to Premier Nutrition – one of the five business units of AB

Agri Ltd - of L-tryptophan, i.e. in unopened bags, with the exception that Premier Nutrition had taken and retained samples by spear of each batch of L-tryptophan. That those bags had then been delivered to the customer upon receipt of an order, without undergoing any repacking before.

- 6.3 In his witness statement Mr. Hatch stated that, according to Trinity Consultants' record, Trinity Consultants had first supplied products – including LesstressE - to the PR on 3 August 2012. That he also recalled that the PR, as well as Mr. Paget, had contacted Trinity Consultants to inquire about the product LesstressE prior to ordering it, but that he could not remember the exact date of this inquiry or what exactly had been discussed. Mr. Hatch further explained that insofar as he had been the only person at Trinity Consultants involved in the production of LesstressE, he was able to confirm that no Reserpine, Indian Snakeroot, or Poison Devil's Pepper had been used to manufacture LesstressE, or any other product manufactured by Trinity Consultants. In addition that none of these substances or any products containing these substances had been kept on the premises of Trinity Consultants, and that he had never experienced any other instance of contamination for any of Trinity Consultants' products since 1996, when he had started working at Trinity Consultants. That insofar as Trinity Consultants itself had not knowingly put it into the bottles in question either and had taken numerous steps to avoid cross-contamination with any substances prohibited by the FEI he did not have any explanation as to how the Reserpine could have entered the LesstressE. Mr. Hatch further stated that he did not know for sure whether or not the L-tryptophan used in the manufacture of LesstressE in August 2013 had been taken from the apparently contaminated batch no. ACAC121216, but that it was more likely than not that it had. He noted in this context that L-tryptophan was also used in other products of Trinity Consultants and that only a very small amount of L-tryptophan was used in the manufacture of LesstressE. As to the exact quantities of the six ingredients used in the manufacture of LesstressE Mr. Hatch explained that the five herbal ingredients constituted eighty-two point five (82,5) percent of the product, and L-tryptophan seventeen point five (17,5) percent. Mr. Hatch further explained that LesstressE had been manufactured by hand in small batches (not exceeding one litre) upon receipt of a respective order by a customer (i.e. batches were made-to-order and not manufactured in advance). That therefore he was also able to confirm that the two five hundred (500) ml bottles of LesstressE mixed for the PR on 27 August 2013, and the two five hundred (500) ml bottles of LesstressE mixed for Mr. Paget on the same day, had been made individually following order, i.e. that he had not first mixed a batch of two litres together and then filled it into four bottles. That no samples of those two batches had been retained. Furthermore that neither the five hundred (500) ml bottles nor the two hundred fifty (250) ml bottles were tamper-evident, but that the five hundred (500) ml bottles were child-proof. That for each product – including LesstressE - Trinity Consultants also produced a "Statutory Note" setting out certain details about the product, including (among other things) the composition of the

product, directions for use, price, and date of manufacture. That in addition, a label stating the name of the customer, and the name(s) of the horse(s) if provided by the customer was put on each bottle. That the label did not contain a batch number, but that it did contain the date of the Statutory Note accompanying the bottle, and that that date corresponded to the date of manufacture. Further that orders were usually sent by courier or first class post on the same day, or the day following the day the product was manufactured. That a few days following dispatch of the order, Trinity Consultants would issue an invoice for the respective order, and that the invoice did not contain the date of manufacture either. That upon his request, Trinity Consultants had submitted retained copies of Statutory Notes to the PR, as well as copies of invoices for each of the products delivered to the PR. Mr. Hatch also explained that the six two hundred fifty (250) ml bottles of LesstressE ordered by the PR and manufactured on 17 July 2013 had been delivered to Mr. Paget's stable, whereas the two five hundred (500) ml bottles of LesstressE ordered by the PR and manufactured on 27 August 2013 had been delivered to the PR's home address. That upon request by the PR, on 16 October 2013 he had produced a bottle of LesstressE in the normal manner, and that IEN's tests on that bottle had not revealed any Reserpine. Lastly, Mr. Hatch explained that out of abundance of caution, Trinity Consultants had stopped manufacturing LesstressE while investigations continued into the source of the Reserpine detected by IEN in the ten LesstressE bottles. Together with his statement Mr. Hatch provided a screenshot of one of Trinity Consultants' website pages, featuring LesstressE as not containing any Prohibited Substances as defined by the FEI, as well as photographs of a two hundred fifty (250) ml LesstressE plastic bottle covered by a simple "flip-top" lid.

- 6.4 In his expert report Dr. Paine explained that Reserpine was a bioactive substance found in the roots of plants growing in India (Indian Snakeroot, or *Rauvolfia serpentina*) and Africa (Poison Devil's Pepper, or *Rauvolfia vomitoria*), and that it lead to relaxation and calmness of the Horse. That whereas Reserpine was not licensed for use in horses in the UK, it was licensed in Australia and New Zealand, and was used as a long-acting equine tranquilizer. That Reserpine mainly appeared in the form of a product called Rakelin. That in the UK, Indian Snakeroot had to be prescribed by a doctor or a dentist but that both Reserpine and Indian Snakeroot were readily available for purchase via the Internet, and in many countries over the counter. That Rakelin was marketed as being "useful as an aid when unfamiliar surroundings and/or unaccustomed stress create anxiety" in a horse. Dr. Paine further explained that Reserpine might have a performance-enhancing effect for a competition horse, particularly in the discipline of Dressage, as that discipline required a horse to be calm, composed and focused. Lastly that Reserpine had been reported to be used illicitly to sedate show horses, sale horses, or in other circumstances where a "quieter" horse was desired.
- 6.5 Regarding the tests conducted by IEN, Dr. Paine stated that he considered the analytical methods and approach to be appropriate in

the circumstances, and therefore its findings reliable. Dr. Paine further underlined that the initial screening analysis performed by IEN on the bottle of LesstressE manufactured on 27 August 2013 had indicated the presence not only of Reserpine, but also of other Rauwolfia alkaloids, including yohimbine, ajmaline, ajmalicine, alpha-rauwolscine and corynanthine. That all of those alkaloids were also found to be present in the Indian Snakeroot plant. Dr. Paine concluded that therefore, the LesstressE could not have only been contaminated with Reserpine alone, but that in addition, also an excerpt of Indian Snakeroot must have been the cause of contamination. That all of the six ingredients of LesstressE had purported calming effects, and that in his opinion one obvious calming agent was missing, namely Indian Snakeroot, which contained Reserpine. In addition, that in his opinion, the levels of Reserpine found in most of the bottles of LesstressE were highly significant (except in one bottle manufactured on 26 June 2013 in which a very small level had been detected and one bottle that had been found to contain no detectable Reserpine). That these levels could be considered as being far from trace levels, which would normally be seen in a case of inadvertent contamination. That rather, based on the standard recommended dose of two times twenty-five (25) ml of LesstressE, the dose of Reserpine administered to the Horse by means of administration of the allegedly contaminated LesstressE would equate to approximately five mg, which was equivalent to an intramuscular injection of 1.5 mg of Reserpine, which on turn was similar to a therapeutic dose of Reserpine contained in Rakelin. That to him, this was a strong indicative of intentional use. Further that he was of the opinion that the levels of Reserpine detected in the Horse's blood sample were consistent with the ingestion of 50 ml of LesstressE (containing Reserpine at a concentration of 0.11 mg/ml in the second dose) assuming that the first dose administered to the Horse had also been contaminated at a concentration of between 0.08 and 0.11 mg/ml, i.e. ingestion of approximately 4.75 - 5.5 mg of Reserpine) within 2-6 hours prior to sample collection. That however the overall analytical data provided by the PR did not support the PR's claim that the Reserpine had entered the LesstressE as a contaminant of one of the six separate ingredients of LesstressE. Dr. Dunnett underlined in this context that although Reserpine had been found in a sample of one of those ingredients (L-tryptophan) from a batch that had been supplied to Trinity Consultants by Premier Nutrition, and that L-tryptophan of that Reserpine containing sample might have possibly been used in the manufacture of bottles of LesstressE supplied to the PR by Trinity Consultants, the level of Reserpine in the sample of L-tryptophan in question had been so low that IEN had not been able to quantify it. Dr. Paine further highlighted in this context that IEN had only performed screening analyses on the samples in question, and that screening analyses only indicated the "possibility of a drug being present", but did not allow any finding whether or not the respective substance was indeed present. That a confirmatory analysis was necessary to confirm the presence of the substance, and that only a full confirmatory analysis would allow quantification of a drug in a given sample. Dr. Paine therefore concluded that in light of the very low level of Reserpine detected in the L-tryptophan, the fact that L-

tryptophan only constituted seventeen point five (17,5) percent of LesstressE and the fact that the other five herbal ingredients had either tested entirely negative for Reserpine or that screening analysis of them had only resulted in the “possible presence” of very low concentrations of Reserpine, the PR’s submission did not explain the significant (therapeutic) levels of Reserpine found in the LesstressE. Dr. Paine therefore concluded that contamination with Reserpine resulting from Trinity Consultants using contaminated ingredients had to be excluded. As regards the possibility of Reserpine having been added to the LesstressE during the manufacturing process at Trinity Consultants, Dr. Paine underlined that no conclusive factors had been presented in this respect. That furthermore the following elements spoke against contamination during the manufacturing process: (i) that according to Mr. Hatch, no Reserpine or Indian Snakeroot had been kept on Trinity Consultants’ premises, (ii) that no Reserpine had been detected in the only bottle of LesstressE obtained by IEN directly from Trinity Consultants, (iii) that insofar as a new sample of LesstressE had been mixed by hand by Mr. Hatch for each individual order, it would be expected that the level of Reserpine in the LesstressE tested by IEN and produced over a period of a couple of months would vary from one to another sample, which was however not the case, and (iv) that in case of inadvertent contamination, generally only trace levels of the contaminant would be detected, and not therapeutic levels. That on the other hand the following elements had to be taken in consideration weighing in favour of contamination during the manufacturing process: (i) the possible trace levels of Reserpine in the samples of the five herbal ingredients of LesstressE provided by Trinity Consultants to IEN, and (ii) that the LesstressE was manufactured made-to-order and by hand in small batches, which increased the risk of potential contamination with other products.

- 6.6 Dr. Paine further stated that no conclusive factors had been presented with regard to any possible contamination of LesstressE with Reserpine after the product had left Trinity Consultants. That insofar as Trinity Consultants had shipped the LesstressE to its customers in plastic bottles covered by a simple “flip-top” lid, i.e. without any tamper-evident seal, and insofar as the PR had denied having knowingly administered Reserpine to the Horse, any contamination by other individuals would have required the involvement of several individuals, given that Reserpine had been found in bottles of LesstressE provided by five different customers of Trinity Consultants. Dr. Paine concluded that this was a factor weighing against the possibility of Reserpine/Indian Snakeroot extract having been added to LesstressE after it had left Trinity Consultants. On the other hand Dr. Paine noted that no Reserpine had been found in the only bottle obtained by IEN directly from Trinity Consultants, that riders of competition horses had an interest in ensuring that their horses were not stressed and anxious prior to competition, and that the levels of Reserpine found by IEN in the samples of LesstressE had amounted close to therapeutic levels.

6.7 In essence the FEI submitted that:

- a) the PR had not disputed that the Banned Substance Reserpine was present in the sample collected from the Horse at the Event, and that it had therefore discharged its burden of establishing that the PR had violated Article 2.1 of the EAD Rules.
- b) where a Banned Substance was found in a horse's sample, a clear and unequivocal presumption arose under the EAD Rules – which mirrored the World Anti-Doping Code – that it had been deliberately administered to the horse in an illicit attempt to enhance its performance. That, as a result of this presumption of fault, and unless a PR was able to rebut this presumption of fault, according to Article 10.2 of the EAD Rules a period of Ineligibility of two years applied to a first time offender of the EADCM Regulations in case of an Article 2.1 of the EAD Rules violation. That the PR had to establish to the satisfaction of the Tribunal – on a balance of probabilities – (i) how the Reserpine had entered the Horse's system, and (ii) that he bore No Fault or Negligence for that occurrence, i.e., that he did not know or suspect, and could not reasonably have known or suspected even with the exercise of utmost caution, that he had administered to the Horse (or the Horse's system otherwise contained) a Banned Substance, or (iii) that he bore No Significant Fault or Negligence for that occurrence. Relying on previous case law (For example IWBF v UKAD & Gibbs, CAS 2010/A/2230, Award dated 22 February 2011; Alabbar v FEI, CAS 2013/A/3124, Award dated 27 September 2013; Al Eid v FEI, CAS 2012/A/2807, Award dated 17 July 2012; and UK Anti-Doping Limited v Kenneth Anderson, SR/0000120082, Decision dated 16 May 2013) the FEI argued that the PR had to adduce specific objective and "persuasive" evidence, not only of "the route of administration" of the substance (e.g., oral ingestion) but also of the factual circumstances in which the substance had entered the Horse's system. That therefore – to sustain his plea of No (or No Significant) Fault or Negligence – the PR had to provide clear and convincing evidence establishing not only that LesstressE administered to the Horse at the Event had been contaminated with Reserpine, but also how and when the Reserpine had entered the LesstressE. That this was an important precondition as otherwise, an athlete's degree of diligence or absence of fault would be examined in relation to speculative circumstances, which could even be invented.
- c) there were strong indications of intentional administration. Further that the PR had had a clear motive to put therapeutic doses of Indian Snakeroot/Reserpine into the LesstressE, as the Dressage test of the Eventing discipline required a horse to be calm, composed and focused whereas the Horse – according to the description by the PR himself – was a typical thoroughbred that was bred to gallop and jump. That the Horse became increasingly uptight until after the Dressage test when it would relax, as it found the competition to follow, i.e. the Cross-Country test, more natural. That the PR had also described the Horse as similar in temperament to CLIFTON PROMISE, which the FEI understood to be "high strung" and "anxious". That the

product description for LesstressE indicated that it may be given to horses that are prone to anticipatory stress “prior to showing and dressage competition when it is important to maintain composure and avoid uncharacteristic behaviour”, and that the timing of the administrations showed that the product had only been used for purposes of the Dressage test.

- d) Regarding the explanation provided by the PR on how the Reserpine had entered the Horse’s system, the FEI argued that the PR had not provided any direct evidence from the PR’s groom with respect to the administration of LesstressE to the Horse at the Event. Moreover, that the PR had not identified the date of manufacture of the bottle (which had presumably been thrown away) used by his groom to administer the first 25 ml dose of LesstressE to the Horse.
- e) if the Horse had ingested 50 ml of LesstressE on the day of the Dressage test of the Event containing Reserpine at levels as alleged by the PR, the FEI agreed – as confirmed by Dr. Paine – that the levels of Reserpine found in the Horse’s sample collected at the Event were consistent with such ingestion. That this however did not establish that the LesstressE which had been given to the Horse at the Event had contained any Reserpine, and nor did it establish when, how, and by whom Reserpine might have been added to the LesstressE.
- f) - as explained by Dr. Paine – the contamination with Reserpine (or extract of Indian Snakeroot) of one of the six ingredients used by Trinity Consultants in the production of LesstressE had to be excluded as cause of the Reserpine positive as the trace levels of Reserpine found by IEN on screening analysis in certain samples of those ingredients could not have led to the far higher (similar to therapeutic) levels of Reserpine found in the LesstressE bottles.
- g) Further that even if according to Dr. Dunnett, contamination of LesstressE during the manufacturing process at Trinity Consultants could not be entirely excluded, Trinity Consultants’ motivation to undertake such contamination appeared to be negligible as Trinity Consultants’ reputation would suffer if a positive test was traced back to an undeclared ingredient in one of its products.
- h) Finally – as confirmed by Dr. Paine - that the Reserpine (or extract of Indian Snakeroot) could have been introduced into the LesstressE after it had been shipped from Trinity Consultants. The FEI underlined in this respect that the LesstressE had been shipped in plastic bottles with a simple “flip-top” lid only, and that therefore, no secure chain of custody had been guaranteed. That as a result it would have been a simple task for anyone to add Reserpine (e.g. through Rakelin) or powdered Indian Snakeroot to the LesstressE after receipt from Trinity Consultants. Further, that levels of Reserpine close to therapeutic levels had been found in the LesstressE. That finally it appeared that all riders whose bottles of LesstressE had tested positive for Reserpine had been related to each other, and that – as explained by Mr. Hatch

- most of the bottles of LesstressE ordered by the PR during the period from May to September 2013 had been delivered to the stables of Mr. Paget, i.e. Red Leaf Farm.

- i) therefore, and assuming that the LesstressE given to the Horse at the Event had indeed been contaminated with Reserpine, the evidence adduced by the PR did not show that it was more likely than not that the Reserpine had entered the LesstressE during the manufacturing process, or otherwise in circumstances unrelated and unknown to the PR. That as a result, and insofar as the presumption of intentional administration had not been rebutted, the Article 10.4 plea had to be rejected and the standard two-year sanction prescribed by Art. 10.2 of the EAD Rules had to be applied.
- j) The FEI further argued that even if the PR had established that it was more likely than not that the Reserpine (or Indian Snakeroot) had been added to the LesstressE during the manufacturing process, the PR had nonetheless accepted the risk of contamination and could therefore not plead No Fault or Negligence. The FEI argued in this context that under the World Anti-Doping Code, athletes had been warned of the risk that supplements may be contaminated with Prohibited Substances, and that if despite this warning they took supplements, they were deemed to have assumed that risk. That the FEI had specifically warned riders, including through the FEI Athlete's Guide to the EADCMRs, that supplements could contain (or be contaminated with) Prohibited Substances. Further that athletes exposed themselves to even higher risks when using not only one, but several supplements. The FEI underlined that in the case at hand, the PR had administered a number of different supplements to the Horse, including three that were specifically used to calm the Horse in relation to the dressage test (i.e. LesstressE, Nupafeed Calmer and So-Kalm), and that therefore he was excluded from denying any responsibility (by pleading No Fault or Negligence).
- k) The FEI further argued that provided the Tribunal accepted the PR's account of the precautions taken by him prior to using LesstressE, and even though the PR could have taken further steps, it was open to agree to a No Significant Fault or Negligence finding.
- l) Regarding fine and costs, the FEI requested that a fine of fifteen thousand (15,000) Swiss Francs (CHF) had to be imposed on the PR according to Article 2.1 of the EAD, as fairness did not dictate otherwise. Further that the PR had to be ordered to pay the legal costs that the FEI had incurred in pursuing this matter. Lastly that in accordance with the FEI Veterinary Regulations and the FEI Standard for Laboratories, the PR was liable to pay the costs of the B-Sample analysis at the amount of five hundred eighty-four (584) Euros.

6.8 In a second witness statement of 9 May 2014 Mr. Glasse further explained that following his first witness statement, he had been informed that CJ Europe had carried out testing of samples of L-tryptophan batch no. ACAC121216 retained by it, and that no

Reserpine had been detected in those retained samples. He also stated that he understood from CJ Europe that the test results had not been made available earlier as the analytical method used to test the L-tryptophan sample had been quite sophisticated and the analysis had therefore to be repeated several times. Together with his second witness statement Mr. Glasse provided a copy of the test report, dated 15 April 2014, by CJ Research Institute of Biotechnology, in Seoul, Korea.

7. Further proceedings

- 7.1 On 20 May 2014, Mr. Paget requested the Tribunal to consolidate the Final Hearings of his case together with the Final Hearing in the case of the PR, arguing that the consolidation was "in the interests of procedural efficiency" and "in order to avoid the risk of prejudice posed by the FEI's witnesses giving evidence in concurrent hearings which both PR's would not ordinarily have the right to attend."
- 7.2 On 21 May 2014, the PR explained that he supported Mr. Paget's request for consolidation of the hearings. On the same day the FEI declared not to oppose such request.
- 7.3 On 22 May 2014, the Tribunal decided to consolidate the Final Hearings in the case at hand with the case of Mr. Paget.
- 7.4 On 27 May 2014, the PR requested that the owner of the Horse, Ms Frances Stead, be permitted to attend the Final Hearing as an observer.

8. Rebuttal submission by the PR

- 8.1 On 23 May 2014, the PR provided his Rebuttal submission. Together with his submission the PR submitted a further expert statement by Dr. Dunnett, and an expert statement by Dr. Julie Marie Evans, MRSC CChem MFSSoc, Consultant Forensic Toxicologist with (ROAR) Forensic Ltd, Chorley Business and Technology Centre.
- 8.2 Together with his Rebuttal Submission, the PR also provided witness statements by five riders, who had returned remaining LesstressE bottles (partly used or in full) to Trinity Consultants following the latter's recall. All witnesses confirmed that they had not added any Reserpine or Indian Snakeroot to their LesstressE bottles. Further, two of them – Ms. Arabella Spilman and Ms. Patricia Andrews – explained having never met the PR or Mr. Paget in person.
- 8.3 Dr. Dunnett explained that he had analysed seven additional samples of LesstressE manufactured in 2013, which had been received by Trinity Consultants by seven different riders following its recall of the product in 2014. That screening analysis had indicated the presence of Reserpine in all (in total five) samples manufactured between June and October 2013, whereas samples from two bottles of LesstressE from

batches labelled as manufactured in February and March 2013 had not shown any Reserpine. That confirmatory analysis of the five samples that had shown Reserpine on screening analysis had revealed significantly varying levels of Reserpine. It further follows from the report by Dr. Dunnett that the levels detected in bottles manufactured for Ms. Andrews on 27 June 2013 and Ms. Spilman on 3 September 2013 only amounted to approximately between fifteen percent (15 %) and thirty percent (30 %) of the levels detected by IEN in batches used by the PR and Mr. Paget. Further that all other bottles analysed at this later point of time contained levels of Reserpine that were even lower. Dr. Dunnett further explained that analysis of the variation of the levels of Reserpine between the batches of LesstressE manufactured on different dates indicated two significant periods of contamination that had occurred around May and August/September 2013. That in addition, three samples (from Ms. Andrews manufactured on 27 June 2013; Ms. Spilman manufactured on 03 September 2013 and Ms. Georgette Bales manufactured on 28 June 2013) had also been tested for Rauvolfia alkaloids, and that screening analysis of those samples had revealed the presence of respective alkaloids, including yohimbine, ajmaline, ajmalicine, alpha-rauwolscine and corynanthine. That insofar as the results of the screening analysis clearly demonstrated the presence of Rauvolfia alkaloids in LesstressE that contained comparatively high and low concentrations of Reserpine, he would conclude that the Reserpine was not indicative of the presence or not of Rauvolfia alkaloids. Dr. Dunnett further contended that the finding of yohimbine, ajmaline, ajmalicine, alpha-rauwolscine and corynanthine suggested the presence of material derived from plant species within the Rauvolfia genus, such as *R. Serpentina* (Indian Snakeroot).

- 8.4 Dr. Dunnett further explained that he had also conducted screening analysis for Indian Snakeroot on the five ingredients of LesstressE (*Hydrocotyl asiatica*, *Glycyrrhiza glabra*, *Melissa officinalis*, *Passiflora incarnata* and *Scutellaria lateriflora*) previously collected from Trinity Consultants' premises on 16 October 2013. That the screening analysis had indicated the presence of Rauvolfia alkaloids only in *Glycyrrhiza glabra* (Liquorice; batch # 03985), which had been in use by Trinity Consultants and had been sampled by him during his visit on 16 October 2013. That this result had been confirmed by confirmatory analysis. Lastly that no Rauvolfia alkaloids had been detected in any of the retained samples of four of the five herbal ingredients of LesstressE (no samples of Brahmi (*Hydrocotyl asiatica*) had been retained) that had been supplied to Trinity Consultants by Herbal Apothecary and the Botanical Extract Co. Ltd. (Panacea) between May and October 2013.
- 8.5 In her expert statement Dr. Evans explained that in her view, the levels of Reserpine detected in the plasma of the Horse's sample could be entirely explained by the administration of LesstressE in the doses advised, i.e. two twenty-five (25) ml doses of LesstressE, as being administered on 6 September 2013, provided that the bottle from which the first dose had been drawn had been contaminated with a

level of Reserpine similar to that seen in the bottle utilised for the second dose (LesstressE bottle manufactured on 27 August 2013 and contaminated with Reserpine at the levels as identified by Dr. Dunnett).

- 8.6 In addition, the PR provided a witness statement by Ms. Miles. Ms. Miles explained that she had been a professional groom for eight (8) years, and that she had been a freelance groom for the PR at major competitions as well as at the Event. She further confirmed that following instructions by the PR she had administered the Horse two 25 ml doses of LesstressE – together with two more supplements called So Kalm and Nupafeed - on the morning of the Dressage test of the Event (the first dose three hours prior to the Dressage test, and the second dose one and a half hours prior to the Dressage test). Ms. Miles further explained that the first dose of LesstressE had come from a bottle that had been almost empty (with approximately 25 ml of LesstressE remaining) and that the second dose had come from a bottle which had seemed unopened. Ms. Miles did however not provide any information regarding the date on which the second bottle had been manufactured.
- 8.7 In addition, the PR also provided witness statements by Ms. Frances Stead, Dr. Nathan Anthony BVScs (Hons) MANZCVS, former veterinarian for the PR, Mr. Victor Nichols, owner of horses ridden by the PR and former President for Equestrian Queensland, Australia. All witnesses confirmed the good integrity, honesty and the fact that the PR was a hard worker, and further confirmed that the PR's priority was the Horses' wellbeing. In addition, Dr. Anthony stated that the PR had always followed veterinary advice, and in particular followed treatment instructions as per his label recommendation provided, and that he had abided by the advised "withdrawal periods". That the PR had further frequently inquired as to whether over the counter (non-prescription) treatments or supplements would be allowed under FEI rules, and in particular whether any associated "withdrawal period" had to be applied. Lastly, Dr. Anthony explained that the PR had called him immediately following his notification of the positive finding, and had specifically asked him what kind of substance Reserpine was and the reasons for which it was used in sports horses. That the PR had further informed him that he had at no time administered Reserpine to the Horse or any other horses in his care.
- 8.8 In essence, the PR further submitted that:
- a) he had established – on a balance of probabilities, i.e. the applicable burden of proof in this context - that the presence of Reserpine in the Horse's sample had been caused by the administration of contaminated LesstressE to the Horse at the Event. That, as confirmed by Dr. Evans and Dr. Paine, the levels of Reserpine detected in the Horse's sample were consistent with the Horse having been administered two 25 ml doses of LesstressE – contaminated with Reserpine at the levels as identified by Dr. Dunnett.

- b) That insofar as the bottle of the first dose of LesstressE administered to the Horse at the Event had been discharged when empty, he did not know for sure the date of manufacture of the respective bottle. That however, as he had reordered LesstressE once his existing stock had become low, and as he had used the bottles in date order, he considered it more likely than not that the empty bottle had been purchased in late May 2013.
- c) Regarding the question as to how the contamination had occurred the PR contended that ingredients held at Trinity Consultants' premises had been contaminated with Reserpine, and that Trinity Consultants, on a balance of probability, i.e. more likely than not, had used Reserpine contaminated ingredients to manufacture LesstressE.
- d) That Dr. Dunnett had conducted further testing of samples of the LesstressE ingredients collected at Trinity Consultants on 16 October 2013, and that one of those ingredient samples, Glycyrrhiza Glabra, (Liquorice) had tested positive for Indian Snakeroot. That however all analyses of samples of Glycyrrhiza Glabra that had originated from the contract manufacturer, The Botanical Extract Co Ltd, had tested negative. That further - as confirmed by Dr. Paine - in light of the fact that at Trinity Consultants, there was no effective quality control with respect to a batch being analysed for the constituent ingredients, the risk of potential contamination with other products would be increased.
- e) That two further bottles of LesstressE (as well as other bottles of LesstressE) provided by Trinity Consultants to two individuals (Ms. Spilman and Ms. Andrews) on or about 27 June and 3 September 2013 had tested positive for Reserpine and Indian Snakeroot, and that both individuals' evidence was absolutely clear, as neither had ever met either the PR or Mr. Paget.
- f) In addition that it would not have made sense for him to put an alleged therapeutic dose of a sedative, a long-acting equine tranquilizer - as described by Dr. Paine - into a horse the day before riding it over a challenging and difficult cross-country course, and that even the press had reported the cross country course at the Event as being "typically tough and testing", and that the course designer Captain Mark Philips had been quoted as having stated that the course would contain "rider frighteners".
- g) Regarding the question of No Fault or Negligence, the PR argued that the Tribunal had previously accepted a difference between "feed" and "supplements" as feed often contained additives (i.e. supplements) which might be contaminated, and that moreover even feed generally free of additives may be contaminated. Further, that this finding by the Tribunal was entirely consistent with the nature of the FEI warnings that Persons Responsible had to bear in mind the possibility that feed, herbal products and additives may be contaminated. That as a consequence, riders

were advised to have appropriate discussions with the supplier before feeding any of those items to horses, to ensure that the products were certified free of Prohibited Substances, and that he had complied with this advice in the case at hand. That further – as previously found by the Tribunal - Persons Responsible were not the proper party to bear the risk of supplements that had been contaminated at manufacturer level. That as a result, and as he had taken several steps in assuring that the product LesstressE did not contain any Prohibited Substances, he was entitled to a finding of No Fault or Negligence, taking into account the cumulative effect of all evidence. That the test applied by the FEI, i.e. the position that generally, a decision to use a supplement (in the context of equine sport governed by FEI Regulations) would exclude the finding of circumstances in which contamination of that supplement with a Prohibited Substance could result in a No Fault finding, had to be not only objectively reasonable, but also achievable, which did not apply to the FEI approach.

9. Final Hearing

- 9.1 A consolidated Final Hearing, together with the case of Mr. Paget, took place from 3 to 4 June 2014, in London, United Kingdom.
- 9.2 At the start of the Final Hearing, the Parties agreed to waive the right to cross-examine the witnesses (with the exception of Mr. Hatch, the PRs and the expert witnesses).
- 9.3 The FEI further provided a product page for Rakelin Injection (twenty (20) ml), describing Rakelin as a long-acting non-sedating injectable calmative agent, which contained Reserpine at 0.5 mg/ml. According to the product page, Rakelin “produces a prolonged calming effect without sedation, drowsiness, or loss of coordination, and vicious or dangerously anxious horses will become relaxed, sociable and co-operative with continued treatment”.
- 9.4 During the Final Hearing Mr. Hatch explained that he had been involved in food and nutrition most of his life. That Trinity Consultants produced a range of supplements for horses in general, not only competition horses, and that supplements had become necessary for horses, as natural products had disappeared over the years due to rainfall, flooding, pollution and similar. Mr. Hatch further stated that Trinity Consultants had had around fifteen thousand (15,000) costumers since 1996, but that only a small number of those had been buying LesstressE, many of which competed in the discipline of Eventing. Mr. Hatch confirmed that the main ingredient of LesstressE, L-tryptophan, was an essential amino acid, which was a mood regulator and which could act either as a calmer or as a stimulator. Mr. Hatch explained that LesstressE had been described to customers as a regulator, but that customers had been buying it for its calming purposes. Further that one symptom of stress in a horse was that it was refusing its food and drinks. That stress was causing physical

metabolic malfunctions, and that certain minerals would slow down in their passage through a horse's body. Mr. Hatch further explained not recalling having spoken to the PR prior to the latter's use of LesstressE. That this was however likely as his customers would usually call first prior to ordering a product.

- 9.5 Mr. Hatch further confirmed that he had not kept any Reserpine on Trinity Consultants' premises, and that "Valeria" was the only substance of the FEI Prohibited Substances List which Trinity Consultants used and stored. Further that the vast majority of products used by Trinity Consultants was of herbal and mineral basis. With respect to Trinity Consultants' suppliers, Mr. Hatch explained that he had chosen them according to cost, quality and ability to provide ingredients, and that not all suppliers guaranteed the availability of herbal ingredients. That he had requested suppliers not to deliver any ingredients containing Prohibited Substances, but that he was not sure to what extent suppliers were aware of the FEI Prohibited Substances List. Further that he had acted in good faith when buying ingredients from the suppliers, and that he was not able to recall which bag of each ingredient exactly he had used to produce which batch of LesstressE. Regarding the production of LesstressE, Mr. Hatch explained that he had produced it in the kitchen, using a wooden spoon and a plastic bowl, both of which had been washed once every day at night, with a liquid. Further that for the overall manufacturing process, he had been using one and the same scoop, which had been tipped into various bags (ingredients), and that the content of all scoops together had then been mixed together. That he had been the only person producing LesstressE, and that he could not recall his son Simon mixing LesstressE; but if Simon had done so, he would have used the same procedure as him. Mr. Hatch further confirmed that there was no quality control in place for LesstressE at Trinity Consultants. That such quality control would however be impossible, as he would have had to retain samples of each and all bottles of LesstressE produced, as production was individual for each bottle; that further recording each and all bottles - and even testing them - was therefore not feasible. Mr. Hatch also admitted that Trinity Consultants had not applied or required a traditional herb certification, and that no good manufacturing policies had been in place. That Trinity Consultants' premises had however been checked by various official people in the past. Mr. Hatch further clarified that the ingredient "Bacopa monniera" listed on some statutory statements was the same ingredient as Brahmi - Gotu Kola FE, the term used on the online product page for LesstressE. Mr. Hatch further explained that apart from the LesstressE re-call letter, Trinity Consultants had not conducted any other investigations into the alleged Reserpine contamination. That Trinity Consultants had stopped producing LesstressE during the period of time during which the PR had conducted investigations into the potential contamination of the LesstressE. That it was nowadays selling a herbal product containing L-tryptophan with a formula similar to the one of LesstressE, but under a different name, the "Evenkeel" product line. Finally, Mr. Hatch expressed his view that the riders could not be blamed for the

contamination of LesstressE, and that the Reserpine must have passed through Trinity Consultants, i.e. through the ingredients used, as Trinity Consultants itself did not store any Reserpine on its premises. That however he had no explanation of the origin of the Reserpine, as he had not retained any samples of the ingredients used at the time, nor of the relevant bottles of LesstressE.

- 9.6 During the Final Hearing Dr. Paine explained that Rakelin was administered by intramuscular route with a therapeutic dose of between 2 to 4 ml, which contained 0.5 mg per ml of Reserpine. That therefore, a standard dose would contain in total 1-2 mg of Reserpine. Further that in case of intramuscular administration, hundred percent (100 %) of the Reserpine was delivered to the blood and therefore 1-2 mg of Reserpine reached the circulatory system. That on the other hand the LesstressE analysed by IEN (as determined by IEN for several bottles) contained 0.1 mg of Reserpine per ml, and that if – as submitted in the case at hand – the LesstressE had been administered orally at a dose of two times twenty-five (25) ml, in total five mg of Reserpine ($0.1 \text{ mg per ml} \times 50 \text{ ml} = 5 \text{ mg}$) would have been administered. That however, in case of an oral administration, not necessarily the entire dose would go to the circulatory system as an oral dose had to be first swallowed, then pass across the gut wall and then pass through the liver, where it could be metabolised, prior to finally entering the blood circulatory system. That therefore – as also confirmed by Dr. Evans – the estimated bioavailability would be at thirty percent (30 %), i.e. only thirty percent (30 %) of a drug administered by the oral route would arrive in the circulatory system. That thirty percent (30 %) of an oral dose of five mg of Reserpine was equal to approximately 1.5 mg of Reserpine, which was equivalent to the amount of Reserpine contained in a therapeutic dose of Rakelin. With regards to the test results produced by the PR with his Rebuttal submission Dr. Paine confirmed that the level of Reserpine detected in most of the bottles was far below therapeutic levels. That however a level of twenty-six (26) ng/ml as detected in one of the samples would have a partial therapeutic effect. Dr. Paine further explained that even the lower levels of Reserpine detected in the new samples could not be explained by the low levels of Reserpine detected in the various ingredients of LesstressE analysed by Dr. Dunnett, and that his would be the same even if the Reserpine detected in the ingredients had been confirmed by confirmatory analysis. With regards to the term “tranquilizer” Dr. Paine explained that it was a generic term, and that a tranquilizer, such as Reserpine, could – depending on the amount administered to the horse – have a large range of effects, from simple reduction of stress and anxiety to causing sedation or even unconsciousness. That Rakelin, administered in a dose as foreseen, would only lead to reduction of stress and anxiety in the horse and that a much higher dose was required to sedate a horse. Dr. Paine further explained that Reserpine had a long effect, approximately 48 hours for a dose of 1.5 mg, but that its effect would decay over time. That therefore in the case at hand, the LesstressE administered to the Horse would have had (only) stress and anxiety reducing effect on the day of the Dressage test, and the same effect on the day of the cross-

country test, but at a lower degree. Dr. Paine further explained that three different types of analyses existed. That the first analysis to be performed was a screening analysis, during which screening was performed for a series of substances. That if during screening analysis a signal for a particular substance, such as Reserpine, would be obtained, this indicated the possible presence of that substance. That in order to determine whether or not the substance found on screening analysis was indeed present in the sample in question, a confirmatory analysis was to be performed. That for the confirmatory analysis, a fingerprint of the substance detected during the screening analysis was matched with the substance detected during the screening analysis. That in the following, a quantitative analysis could be performed on the sample, in order to determine the level of the substance detected. That therefore, only a confirmatory analysis confirmed the presence of a substance, whereas a screening analysis only allowed the conclusion that the presence of a certain substance was possible. Dr. Paine underlined that therefore a confirmatory analysis was necessary in all cases, to avoid eventual "false positives". Dr. Paine further underlined in this context that Dr. Dunnett had admitted not having been able to confirm, by means of confirmatory analysis, the presence of Reserpine as detected on screening analysis in the ingredient L-tryptophan supplied by Premier Nutrition. That from his own experience with the British Horseracing Authority he could say that a significant amount of substances were found on screening analysis, but that many of them were not confirmed upon confirmatory analysis, and therefore no further action would be taken. Further that in order to draw any conclusions regarding the likelihood of the presence of a certain substance in a sample which had been detected on screening analysis, but not confirmed by confirmatory analysis, Dr. Paine explained that it would be necessary to analyse the relevant raw data from the analysis. Dr. Paine further explained that insofar as the reason for which Dr. Dunnett had not been able to confirm the Reserpine detected in the L-tryptophan sample provided by Premier on screening analysis was the inability to distinguish between Reserpine and L-tryptophan, it would have been absolutely necessary in the case at hand to indeed confirm the presence of Reserpine in the L-tryptophan sample, in order to ensure to not produce a false positive. Lastly, Dr. Paine confirmed that if the LesstressE bottles had been covered by tamper evident tops he would agree that the contamination of LesstressE had had to have taken place before the respective bottle of LesstressE left Trinity Consultants. That however in the case at hand, there had been opportunities for contamination of LesstressE after it had left Trinity Consultants. That the Reserpine found in the relevant bottles of LesstressE could have either originated from Trinity Consultants or not, but that in either case, the amounts of Reserpine/Indian Snakeroot added to the product had to be large, in order to lead to the Reserpine levels as detected by Dr. Dunnett in the relevant LesstressE bottles, i.e. therapeutic levels.

- 9.7 During the Final Hearing Dr. Dunnett explained that the testing technology applied by him was mass spectrometry, a very refined method that was applied both to screening analyses and confirmatory

analysis. Further that two different types of screening analysis existed: a general screening analysis and a targeted screening analysis. That the general screening analysis was an initial test for a large number of substances, and that this general screening analysis provided an indication whether something was present in the sample. That during the general screening analysis only one fragment was looked for. That conversely, in the targeted screening analysis, one would look for only one specific substance, and use optimised analysis methods for that particular substance. That therefore the level of confidence in the screening was rather high, i.e. at about ninety-five percent (95 %), due to the targeted screening performed by him. Dr. Dunnett at the same time conceded that the reason for which he had not been able to obtain confirmation of a substance detected on targeted screening analysis was the level detected, i.e. it was too low. That furthermore, whereas during screening only one selective fragment was looked for during confirmatory analysis, more specific fragments were looked for. That for any analysis performed by him he would seek to at least match with the standards applied by FEI approved laboratories, such as HFL and LCH for testing of urine and blood samples, and would try to even exceed those standards, looking for more fragmentations than HFL or LCH would do. That he had conducted seven hundred (700) targeted screening analyses since January 2014, and fifteen hundred (1500) in 2013. That whereas his focus was examining feed for Natural Occurring Prohibited Substances (NOPS), he had also dealt with about nine cases of Non Natural Occurring Prohibited Substance (NNOPS) in supplements, feed or medication over the past three years. With regards to the tests performed by him on the bottles of LesstressE manufactured on 29 April and 16 October 2013, Dr. Dunnett conceded that the levels of Reserpine detected in those bottles was not only below the level of quantification, but also below the level of detection. With regards to the ingredients of LesstressE held by Trinity Consultants and analysed by him Dr. Dunnett conceded that no Reserpine had been detected in the L-tryptophan, and that only following modifications to the extraction procedure used for screening analysis he had been able to determine the "possible presence of very low concentrations" of Reserpine in all five herbal ingredient. Dr. Dunnett further confirmed that screening analysis of the same LesstressE ingredients had only revealed Rauwolfia alkaloids in one of the ingredients, the liquorice. That however he had not been able – on confirmatory analysis – to confirm the presence of those alkaloids by the standards used by him, but that he would have been able to confirm the presence if he had applied the standards used by HFL and LCH. Dr. Dunnett further explained having been told by Mr. Hatch that the ingredient samples he had taken on 16 October 2013 from Trinity Consultants most likely were not the ones Mr. Hatch had used to produce the LesstressE in August 2013 (with the possible exception of Brahmi). That further he had not seen any Reserpine or Indian Snakeroot on Trinity Consultants premises, and that he agreed that the findings in the samples of ingredients tested by him did scientifically not account for the levels of Reserpine found in the LesstressE analysed by him. Lastly, that he could not comment on the chain of custody of the samples analysed by him, as he had no

information about it.

- 9.8 During the Final Hearing the PR explained that he was thirty-six (36) years old, and that he had sixteen (16) horses stabled in the United Kingdom; three of which were owned by him and his partner. That the key point to succeeding with young horses was patience and that he would therefore always set a long-term strategy.
- 9.9 The PR further explained that the Horse had been stabled in a livery stable equipped with a security camera for around six weeks prior to the Event, and that the LesstressE bottles had been kept in a lockable tack room. That the door had however been locked only at night and that the livery stable had been accessed by different people, and that therefore there had been the opportunity for any of these people to add Reserpine or Indian Snakeroot to the LesstressE bottles. That he had only administered LesstressE to the Horse in the morning of the Dressage test, not also the night before as recommended on the product description, as already when giving this reduced dose he had seen an improvement on the Horse, i.e. less stressed.
- 9.10 Further that he agreed with the description of the cross-country course at the Event as "rider frightener", as the course possessed big fences, and that therefore a "perfect horse", i.e. sharp, quick thinking and athletic, was needed.
- 9.11 Finally the PR stated being aware of the FEI Athlete's guide, that he had made himself familiar with the FEI List of Prohibited Substances, and that in case of any changes to the List he was informed through emails of the AUS-NF. That he always called his veterinarian first, and also used the search engine on the FEI website (rather than going through the entire List) to check whether specific ingredients or substances were prohibited, prior to using them.
- 9.12 During the Final Hearing the FEI stressed that because of the presumption of fault, the PR had to establish how the Reserpine got into the Horse's system, and that he had to show that his explanation "more likely than not". That in the case at hand a number of possible explanations existed, i.e. contamination at manufacturer level, or contamination thereafter, but that no actual evidence had been presented that translated a possible explanation into a probable one. That it was not sufficient for the PR to assert lack of deliberate use, but that he had to prove inadvertent administration of a Prohibited Substance on specific, competent and persuasive evidence. That conclusively the PR also had to show when and how the Reserpine had arrived in the LesstressE. That furthermore insofar as therapeutic doses of Reserpine had been found in ten of the LesstressE bottles, and even taking into account the possibility of a coincidence, it was rather unlikely to find those levels caused by inadvertent contamination. In addition, that the bottles of LesstressE of those two persons with no connection to the PR and Mr. Paget - Ms. Spilman and Ms. Andrews - had been found to only contain one quarter of the amount of Reserpine found in the bottles of the PR and Mr. Paget, and

that those lower levels only had limited therapeutic effect. The FEI further argued that Mr. Hatch had underlined having kept only certain ingredients on Trinity Consultants' premises, and in particular no Reserpine. That even though Mr. Hatch had confirmed that no system had been in place at Trinity Consultants to record the ingredients used in the manufacture of products, and that therefore he did not know which batches of ingredients he had used to produce the LesstressE in question, Mr. Hatch had underlined having used the same process for producing LesstressE for eighteen (18) years, and that none of the bottles of LesstressE produced before had contained any Reserpine. That finally the only bottle specifically produced by Trinity Consultants for IEN testing purposes had not tested positive for Reserpine either. With respect to the analytical findings of Reserpine in the ingredients of LesstressE the FEI underlined that there had been no Reserpine in L-tryptophan - the main ingredient of LesstressE. That moreover, whereas there had been a possible finding of Reserpine in four of five herbal ingredients on screening analysis, this could however not be confirmed, and that Dr. Dunnett had finally admitted during the Hearing that he had not been able to confirm the Reserpine in the liquorice - the fifth herbal ingredient - either. That therefore it believed that the PR had not presented any evidence that the ingredients had been contaminated with Reserpine. That finally, even if there had been Reserpine at trace levels in the ingredients, and even if those ingredients would have been used to produce the LesstressE administered to the Horse at the Event, it was scientifically not possible that those small levels would have amounted to the level of Reserpine detected in the LesstressE. Lastly, the FEI further argued that the chain of custody of any and all samples tested by the PR had not been established, and that therefore all testing results needed to be disregarded.

- 9.13 With respect to the question of Fault or Negligence for the rule violation, and provided that the Tribunal accepted that the PR had established how the Reserpine had entered the Horse's system, the FEI took the position that the PR had not established that he bore No Fault or Negligence, as he could have reasonably done more to avoid the positive finding. The FEI accepted that certain types of supplements may be needed for the daily welfare of horses, but underlined that in the case at hand, the supplement had been taken for performance enhancing purposes, only during periods of competition, when the Horse had been getting stressed. The FEI highlighted in this context that even if the PR had administered the LesstressE in order to make the Horse eat properly during competition phases as suggested by the PR, this had to be considered as establishing the intent to enhance performance, as held by the FEI Tribunal in its decision regarding the horse CROMWELL (FEI Tribunal Decision dated 5 March 2013). That the PR furthermore had a choice to either use the supplement or not to do so. That furthermore he had to undertake any steps reasonably necessary, including a due diligence check of Trinity Consultants, which would have revealed the lack of professionalism of that company. That the certification by the manufacturer of the product to be used was not enough, but that

additionally, independent (third party) certification of the product had to be sought. That as a result, it would only accept a plea of No Significant Fault in the case at hand, as whereas the PR had taken some measures to avoid the positive finding, he had not done enough for a No Fault plea.

- 9.14 At the Final Hearing, the PR further relied on the argumentation by Mr. Paget, mainly arguing that insofar as the presumption of guilt was very demanding, the burden of proof had to be very low, i.e. 51 %, and that in the case at hand the administration of contaminated LesstressE had been demonstrated by a balance of probability. That as the PR, he only had to prove how a substance had entered a horse's system, and that in the case at hand he had established that the Reserpine had entered the Horse's system via administration of LesstressE, which had been contaminated with Reserpine. Specifically, that his groom had established that it was more likely than not that contaminated LesstressE had been administered to the Horse, and that - as confirmed by Dr. Evans and agreed to by Dr. Paine - it had been scientifically plausible that the application of contaminated LesstressE was the explanation for the Reserpine in the Horse's sample. That this was sufficient proof against deliberate contamination, and towards inadvertent contamination, and that he had therefore provided much more than only speculation in favour of inadvertent contamination. Further that insofar as the FEI had argued that there was an alternative explanation, it was for the FEI to prove that alternative explanation. That further - as Dr. Dunnett had confirmed - the targeted screening analysis performed by him provided a level of certainty of ninety-five percent (95 %), which was more than the fifty-one percent (51 %) required for him to prove applying the test of "on a balance of probability". That he accepted that it was not known which ingredients specifically Mr. Hatch had used to produce the LesstressE bottles administered to the Horse at the Event, but that he did not have to establish that, as the burden of proof had already been shifted to the FEI. That the only common nominator for contamination was Trinity Consultants, and that Mr. Hatch himself had confirmed that contamination must have taken place either at Trinity Consultants or beforehand, at the level of the ingredients, and that given the manufacturing processes applied by Trinity Consultants - which was unknown to both the FEI and the himself until Mr. Hatch testified in the hearing -, in particular the absence of quality control procedures, there was at least a probability of fifty-one percent (51 %) that contamination had taken place at Trinity Consultants. That lastly he did not have any motive to administer any type of tranquilizer to the Horse on the day prior to the cross-country phase of the Event and especially on this difficult cross-country as - as accepted by Dr. Paine - some of that tranquillizer would still have been present at the day of the cross-country competition. Further that he had not been aware what Reserpine was, and that had only learned what it was when calling Dr. Anthony following his notification of the positive finding.
- 9.15 With regards to Fault and Negligence the PR argued that a finding of No Fault or No Negligence had to be achievable, and that - as

confirmed by Mr. Hatch - supplements were an essential part of horses' nutrition; that he did not know any competitor that did not use any supplements on its horses. Further that he had complied with the FEI feed warning requirements as outlined in the FEI Athletes Guide. Specifically that he had used supplements "certified free" of Prohibited Substances, that he had avoided supplements on which specifications were unclear as well as retailers which he did not know very well. That in case the FEI required riders to do more, it had to list that in the FEI Athletes Guide, and that other International Sporting Federations, i.e. Athletics and Rugby, did so. That he had had no other choice but to administer LesstressE to the Horse, as prior to the cross-country phase of an Eventing event, it had gotten stressed, had not eaten, and its metabolic function had therefore changed. That - as also confirmed by Mr. Hatch - a stressed horse was an unhappy horse, and that from a welfare of the Horse point of view, it did not matter that the LesstressE had been administered to the Horse only at certain points in time, i.e. around competitions. That the Tribunal had to take into account the steps taken by him prior to the Event to avoid the presence of Prohibited Substances in the Horse's system, and not only those steps taken by him when he had started using LesstressE. That he had conducted due diligence, and that in addition the Horse had tested negative for Prohibited Substances at the Luhmuhlen event in 2012, and that further Mr. Paget's horse CLIFTON PROMISE had already tested negative four times following the use of LesstressE. That alternatively, his plea was for a finding of No Significant Fault or Negligence, and that any potential period of Ineligibility had to be deemed to commence on the date of sample collection.

- 9.16 At the end of the Final Hearing the PR requested the lifting of the Provisional Suspension, stating that it was not possible for him to await a Final Decision. The PR argued that he had to compete in Luhmuhlen, from 12 to 15 June 2014, in order to qualify for the 2014 FEI World Equestrian Games, and that in case the Tribunal came to a finding of No Fault or Negligence in its Final Decision only, it would not be possible anymore for him to compete at the aforementioned event.

10. Provisional Suspension

- 10.1 On 6 June 2014, the Tribunal took the decision to grant the request of the PR to lift the Provisional Suspension. As a result, the Provisional Suspension was lifted with immediate effect.

11. Jurisdiction

- 11.1 The Tribunal has jurisdiction over this matter pursuant to the Statutes, GRs and EAD Rules.

12. The Person Responsible

- 12.1 The PR is the Person Responsible for the Horse, in accordance with Article 118.3 of the GRs, as he was the rider of the Horse at the Event. The Tribunal takes note that the PR has accepted to be the Person Responsible in the case at hand.

13. The Decision

- 13.1 The Tribunal is satisfied that the laboratory reports relating to the A-Sample and the B-Sample reflect that the analytical tests were performed in an acceptable manner and that the findings of both HFL and LCH are accurate. The Tribunal is satisfied that the test results evidence the presence of Reserpine in the blood sample taken from the Horse at the Event. The PR did not contest the accuracy of the test results or the positive findings. Reserpine is classified as a Banned Substance under the Equine Prohibited Substances List.
- 13.2 The FEI has thus established an Adverse Analytical Finding, and has thereby sufficiently proven the objective elements of an offence in accordance with Article 2.1 of the EAD Rules.
- 13.3 In cases brought under Article 2.1 of the EAD Rules, the so-called strict liability principle, as described in Article 2.1.1 of the EAD Rules, applies. This means that once a positive finding of a Prohibited Substance has been established, an EAD Rule violation has been established by the FEI and the PR has the burden of proving that he bears "No Fault or Negligence" for the positive findings as set forth in Article 10.4.1 of the EAD Rules, or "No Significant Fault or Negligence," as set forth in Article 10.4.2 of the EAD Rules. However, in order to benefit from any elimination or reduction of the applicable sanction under Article 10.4 of the EAD Rules, the PR must first establish how the Prohibited Substance entered the Horse's system. This element is a "pre-requisite" to the application of Article 10.4 of the EAD Rules. The standard of proof is that the PR must establish "specified facts or circumstances" "by a balance of probability".
- 13.4 To start with the Tribunal takes note of the PR's explanations on how the Reserpine had entered the Horse's system, namely by administering two (2) doses of 25 ml of the allegedly contaminated LesstressE to the Horse on the day of the Dressage test at the Event. The Tribunal further takes note that analysis of thirteen (13 bottles of LesstressE manufactured by Trinity Consultants between May and August 2013 resulted in eleven (11) of those bottles testing positive for Reserpine, and that the level detected in most of those bottles was found to be at therapeutic dose levels. In addition, the Tribunal takes note that five out of seven bottles of LesstressE manufactured by Trinity Consultants between June and October 2013 and received upon recall also tested positive for Reserpine. Relying on the expert Dr. Evans, which had also been excepted by the FEI expert, the Tribunal finds that the levels of Reserpine detected in the Horse's sample are consistent with the Horse having been given two 25

ml doses of LesstressE at the Event - provided however that those doses had been contaminated with Reserpine at the levels identified by Dr. Dunnett in the first round of bottles analysed by him. As a result, the Tribunal finds that on a balance of probability, the PR has established that the LesstressE administered to the Horse at the Event has caused the positive finding of Reserpine.

- 13.5 Regarding the question as to how the Reserpine had entered into the LesstressE, the Tribunal is of the opinion that the PR had to first and foremost demonstrate how the Reserpine had entered the Horse's system. It further believes that it would be an unreasonable burden on the PR to be obliged to also demonstrate -as requested by the FEI - the particular circumstances in which the LesstressE itself had become contaminated, and the reasons for this contamination.
- 13.6 The Tribunal however also believes that it is more likely than not that the LesstressE contamination had occurred at the manufacturing stage, i.e. at Trinity Consultants. The Tribunal comes to this conclusion as firstly, Mr. Hatch had admitted - even though emphasizing at the same time that Trinity Consultants did not store, use or supply any - that Reserpine must have passed through Trinity Consultants at some point in time. Furthermore, in light of the manufacturing procedures at Trinity Consultants the Tribunal finds that there is a possibility of contamination at the level of Trinity Consultants. In particular the Tribunal is of the opinion that the fact that no good manufacturing policies existed and that no quality control had been in place at Trinity Consultants increased the likelihood of contamination of any products, including LesstressE, during the manufacturing process. Moreover, the Tribunal finds that the manufacturing process employed by Mr. Hatch for producing the LesstressE as described in Mr Hatch's witness statement, (see above par 9.5), did neither foresee any procedures to avoid contamination. The likelihood of contamination is also increased by the fact that LesstressE was manufactured made-to-order by hand, and in small batches. Secondly the Tribunal takes into consideration that targeted screening testing performed by Dr. Dunnett had revealed trace levels of Reserpine in ingredients used to produce LesstressE and stored at Trinity Consultants. In this context the Tribunal on the other hand also understands that those ingredients which had shown trace levels of Reserpine on targeted screening testing were most likely not the actual ingredients used to produce the LesstressE. The Tribunal furthermore understands that the Reserpine found in the first LesstressE bottles analysed by IEN had shown therapeutic levels of Reserpine, and that the presence of those Reserpine levels in the LesstressE in question could therefore not have resulted from the ingredients potentially contaminated at trace levels only. Nonetheless, the Tribunal finds that - relying on the ninety-five percent (95 %) certainty of the targeted screening analysis as performed by Dr. Dunnett - there is some indication that contaminated ingredients had been present at Trinity Consultants at some point in time, and that therefore, contamination of the LesstressE with Reserpine at Trinity Consultants had been possible. Thirdly, the Tribunal takes note that multiple riders based at various locations, and not necessarily

connected to each other, had received bottles of LesstressE by Trinity Consultants that were contaminated with Reserpine at various levels. The Tribunal is therefore of the opinion that contamination of LesstressE after it had left Trinity Consultants was less likely. The Tribunal takes this position also in light of the fact that even Dr. Paine had confirmed in this context that only if the LesstressE bottles had been tamper-evident, he would be certain that the Reserpine had to have entered the LesstressE at the manufacture stage. The Tribunal therefore finds that on a balance of probabilities, the contamination of LesstressE had more likely than not occurred at Trinity Consultants.

- 13.7 As a result, the Tribunal holds that the cumulative effect of all evidence in the case at hand is sufficient for the PR to establish on a balance of probability the first prerequisite of Article 10.4 of the EAD Rules, i.e. how the Prohibited Substance had entered the Horse's system.
- 13.8 With regards to the question of Fault or Negligence, in line with one of its previous decisions, case No 2009/25 CJS GAI FOREST, the Tribunal is of the opinion that the prerequisite of No Fault or Negligence has to be achievable and that therefore a "reasonableness test" has to be applied. To start with the Tribunal understands that Equestrian sport on a high level requires the use of supplements to properly care for such elite horses. And in the Tribunal's opinion the Persons Responsible should not be the proper party to bear the risk of supplements contaminated at the manufacturer's level. The Tribunal however also believes that there has to be a distinction between those supplements necessary for the welfare of horses, and those supplements used on the horses with the mere intention of improving their performance. With respect to the case at hand, and based on the PR's testimony during the Final Hearing, the Tribunal believes that indeed, when using LesstressE the PR had the intention to enhance the Horse's performance as he had administered the product in order to prevent the Horse from refusing its feed and drinks, and from changing its metabolic function, especially around competition times, when the Horse was stressed. The Tribunal however believes that the fact that the PR had used the supplement for its performance enhancing effect does not necessarily mean that he is ipso facto barred from establishing the absence of fault or negligence. In particular, in the case at hand, the PR did not know that the LesstressE contained Reserpine. The question is whether he could or should have known so.
- 13.9 In this context the Tribunal takes note of the steps taken by the PR in order to avoid a positive finding for Prohibited Substances; namely confirming with the manufacturer that the product was free of Prohibited Substances, and checking the product's representation on the manufacturer's website. In addition, the Tribunal takes note that the PR had used LesstressE around competitions prior to the Event since 2012, and that the Horse had tested negative for Prohibited Substances once before. Further that the PR knew that Mr. Paget's horse CLIFTON PROMISE had tested negative four times before despite the fact that it had been administered LesstressE prior to competing. On the other hand

the Tribunal understands that the PR had not consulted any veterinarian prior to the use of LesstressE, nor had he acquired any third party (independent) certification in order to confirm the purity (absence of contamination) of LesstressE. The Tribunal finds that if the administration at the Event would have been the first time the PR had used the product, or the first time he had been tested on the product, then it might have found that without independent third party guarantee, the PR might have to assume the risk of contamination, and might therefore have found him to be at fault. The Tribunal however finds that in the case at hand, the PR had used LesstressE at the Event after having used it in the past, and multiple testing for Prohibited Substances of the Horse and the horse CLIFTON PROMISE, which the Tribunal considers to be comparable to an independent third party testing authority. The Tribunal therefore believes that the PR had the right to rely on the product, and in particular to expect that the product did not contain any Prohibited Substances. The Tribunal therefore comes to the conclusion that given the specific circumstances in the case at hand, the PR could not have reasonably known or suspected that certain subsequent batches of LesstressE would be contaminated with Reserpine.

- 13.10 In conclusion, the Tribunal finds that the PR has succeeded in establishing that he bears No Fault or Negligence for the rule violation. The Tribunal further finds that any otherwise applicable sanctions (except disqualification) with regard to the PR shall be eliminated.

14. Disqualification

- 14.1 For the reasons set forth above, the FEI Tribunal is disqualifying the Horse and the PR combination from the Competition and all medals, points and prize money won must be forfeited, in accordance with Article 9 of the EAD Rules.
- 14.2 The Tribunal further holds that each Party shall bear its own costs and expenses.

15. Sanctions

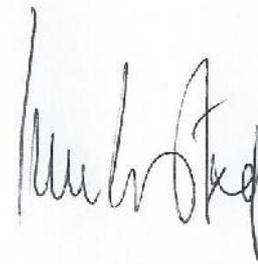
- 1) The Tribunal is not imposing any sanctions on the PR.
 - 2) The PR shall not contribute towards the legal costs of the judicial procedure before the Tribunal.
 - 3) The PR shall cover the costs of the confirmatory analysis in the amount of five hundred eighty-four (584) Euros.
- 15.2 According to Article 168 of the GRs, the present Decision is effective from the date of written notification to the persons and bodies concerned.

15.3 In accordance with Article 12 of the EAD Rules, the Parties may appeal against this decision by lodging an appeal with the Court of Arbitration for Sport ("CAS") within thirty (30) days of receipt hereof.

V. DECISION TO BE FORWARDED TO:

- a. The Person Responsible: Yes**
- b. The President of the NF of the Person Responsible: Yes**
- c. The Organising Committee of the Event through his NF: Yes**
- d. Any other: the owner of the Horse**

FOR THE PANEL

A handwritten signature in black ink, appearing to read 'Erik Elstad', is centered on the page. The signature is written in a cursive, flowing style.

THE CHAIR, Mr. Erik Elstad