DECISION of the FEI TRIBUNAL
dated 6 August 2014

Positive Anti-Doping Case No.: 2013/BS07

Horse: CLIFTON PROMISE

FEI Passport No: NZL01162

Person Responsible/NF/ID: Jonathan Paget/NZL/10016860

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
Ms. Jane Mulcahy, Panel Member
Dr. Armand Leone, Panel Member

II. SUMMARY OF THE FACTS

1. Memorandum of case: By Legal Department.

2. Summary information provided by Person Responsible (PR):
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. Jonathan Paget, PR
Mr. Jeremy Dickerson, Legal Counsel
Mr. James Pheasant, Legal Counsel
In order to streamline the proceedings it was agreed at the request of the PR and Mr. McNab to hold consolidated hearings in the cases of the PR and Mr. McNab, whose horse CLIFTON PINOT had also tested positive for Reserpine at the same event as CLIFTON PROMISE.

**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, 143.1, 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.


   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. Jonathan Paget
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 PROMISE (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. Jonathan Paget 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 8 September 2013, after the Jumping test of the Event.

1.3 Analysis of urine and blood sample no. 5524994 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 Sports New Zealand (“NZL-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 25 October 2013, the PR explained that he did not request a Preliminary Hearing at this point in time, and that he might ask for a Preliminary Hearing in the future if it appeared appropriate.

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. Further, the PR requested that a representative attended the B-Sample analysis.

3.3 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 seventy (70) pictogram/ml.

3.4 On 13 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. The representative of the PR, Dr. Dunnett, and the representative of the FEI, Prof. Michel Audran, witnessed the identification, opening and analysis of the B-Sample.
3.5 The B-Sample analysis confirmed the presence of Reserpine.

3.6 On 25 November 2013, the results of the B-Sample analysis were provided to the PR and to the owner of the Horse through the NZL-NF.

4. Written submissions by the PR

4.1 On 17 January 2014, the PR submitted his explanations for the positive finding. Together with his explanations, the PR submitted expert reports by Dr. Mark Dunnett, BSc PhD MChromSoc, consulting equine toxicologist with Independent Equine Nutrition (“IEN”), and by Dr. Julie Marie Evans, MRSC CChem MFSSoc, Consultant Forensic Toxologist with (ROAR) Forensic Ltd, Chorley Business and Technology Centre. The PR also submitted witness statements by himself, by Ms. Anke Hoyer, Head Groom at the PR’s stable; Ms. Hollie Swain, working pupil and rider at the PR’s stable; Dr. Oliver Pynn, Team Veterinarian for the New Zealand Three Day Eventing Team; and Mr. Eric Duvander, Eventing High Performance Leader and Coach for the NZL-NF.

4.2 In his witness statement, the PR explained that he was a member of the New Zealand Eventing Team and the NZL-NF High Performance Squad. That the pinnacle of his career so far had been winning a Bronze medal with the Team at the 2012 London Olympic Games. Further, that he had moved from New Zealand to the United Kingdom in February 2011, and that his competition horses (approximately fifteen (15), including the Horse), were currently stabled at Red Leaf Farm, in Surrey, United Kingdom. That he had started training the Horse around August 2007, when he had started working as principal rider for the Clifton Eventers venture in New Zealand, and that it had been a lot of work to turn the Horse into one of the highest performing horses in Eventing. That the Horse was highly strung and had often been quite anxious when it had not been challenged. That it had the tendency to refuse its feed – particularly around competition periods, especially at major competitions, such as the Event - which made him worry because as a thoroughbred horse competing at the highest level, the Horse required a great amount of energy in order to duly perform.

4.3 The PR further explained that the following supplements had been used in general at the stables around the Event: Outshine, Technyflex and Cortaflex, Strom, Zylkéne, Apple Lytes, Cartrophen and LessstressE, and that the Horse had been administered Technyflex, Storm, Zylkene and LessstressE. Further that all of the supplements had been submitted to IEN for testing after he had learned about the positive finding, and that LessstressE had been found to contain Reserpine. That once he had learned that LessstressE had been identified as the source of the Reserpine found in the Horse’s sample, he had stopped using it. That he and his friend and fellow rider, Mr. McNab, whose horse had also tested positive for Reserpine at the Event after having been administered LessstressE, had started investigations together.
4.4 That he had administered the product LesstressE - a liquid supplemental feed - to some horses, including the Horse, which tended to suffer from stress particularly at major competitions. That therefore, he had given LesstressE to those horses on the day of the Dressage competition, and to the Horse and some other horses also on the night before that competition. That on occasion he had also used the product on specific training days where he had tried to replicate competition conditions. The PR further explained that he had started using LesstressE in 2010 on recommendation of Mr. Joe Meyer, a fellow member of the New Zealand Eventing Team, who had previously used it, and that it had resulted in negative testing results for FEI Prohibited Substances. That he had tried the product on the Horse at an event in Aachen in 2010 where the Horse had tested negative, and that this had reassured him that the product was safe to use and did not contain any Prohibited Substances. That in the following the Horse had tested negative on several occasions between July 2010 and September 2013, always after having been administered LesstressE. That in addition, he had also contacted Mr. Roger Hatch, Director of Trinity Consultants - the company producing LesstressE - who had recommended LesstressE (in addition to another product) to him in order to reduce the stress of the Horse. That Mr. Hatch had further unequivocally confirmed that neither product contained any Prohibited Substances. Additionally, the PR submitted that he always checked with Dr. Pynn whether any new product he intended to use contained any Prohibited Substances. That Dr. Pynn had also helped to ensure that the supplements administered to the Horse would be tailored to fit the rest of the Horse’s diet, and would enhance the Horse’s health. That Dr. Pynn had also approved LesstressE.

4.5 In her witness statement, Ms. Hoyer confirmed that the PR had been using LesstressE for many years, and that the product had been the standard competition diet for a few horses, including the Horse. That on the packaging of LesstressE one twenty-five (25) ml dose on the night before the competition had been recommended, and two twenty-five (25) ml doses on the morning of the competition. That it was however also recommended to adjust the amount given to bodyweight and the nature of the individual horse. Further that whereas LesstressE was designed to be added to the feed, she had given it into Horse’s mouth by means of a plastic syringe, as it did not taste particularly nice. That she had administered twenty-five (25) ml of LesstressE orally to the Horse on the evening before the Dressage test, around 9 pm, and that she could not recall whether she had administered more LesstressE to the Horse on the same day. That she had however most likely administered another twenty-five (25) ml three hours prior to the start of the Dressage test, and another twenty-five (25) ml one and a half hours prior the start of that same test. She further stated that she was not able to recall exactly which bottle(s) of LesstressE she had used, but that she was certain that it was a small two hundred fifty (250) ml bottle. That in order to establish which bottle exactly she had used she had tried to establish how much LesstressE she had used for the different horses at various competitions. That based on those calculations she had been able to conclude that most likely she had
used a two hundred fifty (250) ml (small) bottle manufactured on 14 August 2013 (which had been used up and thrown away) for the first administration of twenty-five (25) ml of LessstressE on the evening before the Dressage test. That for the second and third LessstressE administration on the day of the Dressage test, she had either used the same two hundred fifty (250) ml bottle, or one of two five hundred (500) ml bottles manufactured on 27 August 2013 (with either three hundred fifty (350) ml or four hundred fifty (450) ml remaining in it). Finally that she had not deliberately or knowingly administered any Reserpine to the Horse. Together with her witness statement, Ms. Hoyer provided copies of several invoices by Trinity Consultants for LessstressE issued as designated for the Horse and for an additional horse.

4.6 Ms. Swain explained in her witness statement that she was responsible for feeding the Horse, and for ordering feed and supplements, including LessstressE, according to instructions by the PR and Ms. Hoyer. That there had been no routine in ordering, but that she had ordered quite a lot of LessstressE at the start of the 2013 season. Further, that LessstressE had been stored in the feed room, which itself had not been kept locked, but that the gates to the stables had been kept locked at all times. Lastly, that no Reserpine had been kept in the PR’s stables, and that she had not administered any Reserpine to the Horse. Together with her witness statement Ms. Swain provided a list of feed and supplements for all horses, including the feed and supplements used for the Horse. The list did not include LessstressE.

4.7 Dr. Pynn in his witness statement explained that he was an FEI permitted treating veterinarian and that he had become the New Zealand Eventing Team veterinarian in 2009. That he had seen the Horse regularly and that he had examined the Horse at the beginning of the year 2013 and in the run up to, during and after big competitions, such as the Event, in order to ensure that it was fit for competition and that any problems could be detected and managed early. That in the interim periods the PR had called him regularly, i.e. once or twice a month, requesting information in relation to administering certain remedies and with the aim of ensuring that the treatments administered to the Horse did not contravene the FEI Rules. Dr. Pynn further stated that he did not have control over everything the PR had given to the Horse, but that he had specifically checked all the supplements given to the Horse and the other horses. That in May 2012, upon his request, the PR had provided him with a list of all supplements, feeds and other products the Horse had been given, and that the list received by the PR also included LessstressE. That he had checked the ingredients of LessstressE and had determined that it only contained benign herbs and tryptophan, and that he had not been aware that the latter had been scientifically proven to have any calming effect in horses. That insofar as none of the ingredients of the supplements was listed on the FEI Prohibited Substances List, he had confirmed to the PR that he could continue using them. Dr. Pynn further explained that he only knew Reserpine in the context of a product called Rakelin, a liquid preparation for intra-muscular injection.
containing Reserpine. That Rakelin had been used as a long-acting sedative in horses but was not licensed for use in the UK. That he had never administered Rakelin to the Horse or any other horses within the New Zealand Eventing Team.

4.8 In his witness statement Mr. Duvander explained that in terms of feed and nutrition, each High Performance squad rider trained and worked its horses slightly differently, and that each horse had different nutritional needs. That nonetheless a team nutritionist was at the disposal of each rider of the squad. That in the summer of 2010, the PR had informed him that he had been recommended a herbal product called LesstressE, and that since the product had already been used by another Olympic rider within the team, and as the ingredients of LesstressE had been within the FEI Rules, he had been comfortable with the PR using it. Finally, that he was certain that the PR would not have deliberately or consciously competed with the Horse having a Banned Substance in its system.

4.9 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 twelve (12) bottles of LesstressE, obtained from the stables of the PR, of Mr. Adam Trew, Mr. McNab and Ms. Jonelle Richards. That Reserpine had been detected in ten (10) 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-ruwolcine and corynanthine), and that further analyses were on-going. Dr. Dunnett also explained that two out of the twelve (12) bottles (one dated 29 April 2013 and the other one dated 16 October 2013) obtained from the PR’s stables did not contain any or very low levels of Reserpine. It furthermore followed from Dr. Dunnett’s report that a bottle of LesstressE produced by Trinity Consultants for the PR 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.
4.10 In her expert statement Dr. Evans explained that in her view the levels of Reserpine detected in the Horse’s sample were consistent with the Horse being administered three twenty-five (25) ml doses of LesstressE - contaminated with Reserpine at the levels as identified by Dr. Dunnett - two to three days prior to sample collection.

4.11 The PR also provided an email of Mr. Hatch. In his email Mr. Hatch confirmed that (i) he had invoiced the PR for several orders of LesstressE made in 2013, i.e. four two hundred fifty (250) ml bottles invoiced on 3 May 2013, five two hundred fifty (250) ml bottles on 4 April 2013, three two hundred fifty (250) ml bottles invoiced on 7 May 2013, two two hundred fifty (250) ml bottles invoiced on 21 August 2013, and two five hundred (500) ml bottles invoiced on 2 September 2013, (ii) he supplied products including LesstressE to other top equestrian riders, owners and trainers, (iii) Hydrocotyl asiatica, Glycyrrhiza glabra, Melissa officinalis, Passiflora incarnata, Scutellaria lateriflora (herbal ingredients) and L-tryptophan were used in the manufacture of LesstressE, and the batches of LesstressE manufactured for the PR contained the same ingredients, (iv) Herbal Apothecary and Panacea provided the five herbal ingredients and Premier Nutrition provided L-tryptophan, (v) these suppliers had been chosen based on their reputation and the quality of the ingredients they supplied; that no other (than the three) suppliers had supplied ingredients to him in 2013 for the manufacture of LesstressE, (vi) LesstressE should not contain any Reserpine, and Trinity Consultants did not store, use or supply any Reserpine, Indian Snakeroot or any products containing them, and (vii) he had issued a recall of LesstressE.

4.12 The PR also submitted letters sent by him to Herbal Apothecary and Panacea informing them of a potential contamination of the five herbal ingredients provided by them, and asking them to cooperate in investigating and identifying the source of the contamination. Until the end of the proceedings, the PR has not provided any answers to his letters, neither from Herbal Apothecary nor from Panacea.

4.13 The PR further submitted an email by Mr. Thomas William Glasse, Risk Manager for AB Agri Ltd dated 16 January 2014. Mr. Glasse explained that Reserpine had been detected in L-tryptophan batch no. ACAC121216, retained by AB Agri Ltd. That he believed that the suspected presence of Reserpine in batch no. ACAC121216 had been confirmed by means of confirmatory analysis, but that he did not have certainty, and that AB Agri Ltd. did not yet have any definite information on the level of Reserpine contained in the retained sample, and had not yet received a certificate of analysis for the tests performed. Furthermore that samples of L-tryptophan from that same batch had been delivered to Trinity Consultants on 13 February 2013, 26 March 2013 and 21 May 2013, and that CJ Europe was the supplier. Lastly that the presence of Reserpine had not yet been known to occur in L-tryptophan.
4.14 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; Reserpine was a Banned Substance according to the FEI Prohibited Substances List and that therefore, the positive finding constituted a prima facie violation of Article 2.1 of the EAD Rules.

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 Dr. Pynn had knowingly administered any Reserpine to the Horse.

d) the tests carried out by Dr. Dunnett had revealed the presence of Reserpine at concentrations between 0.08 and 0.11 mg/ml in bottles of LesstressE manufactured from May to August 2013. That LesstressE manufactured on either 14 or 27 August 2013 had been administered to the Horse at the Event (on 5 September 2013 in one dose of twenty-five (25) ml on the evening prior to the Dressage test and on 6 September 2013 in two doses of twenty-five (25) ml each, at respectively three and one and a half hours prior to the Dressage test). Further that - as confirmed by Dr. Evans – the levels of Reserpine detected in the Horse’s sample were consistent with the Horse having been administered three twenty-five (25) ml doses of LesstressE – contaminated with Reserpine at the levels identified by Dr. Dunnett – two to three days prior to sample collection.

e) the Reserpine must have entered LesstressE as a contaminant at the manufacturing stage, as (i) Trinity Consultants had confirmed that L-tryptophan was used in the manufacture of LesstressE and that it was the primary ingredient, and (ii) Premier Nutrition had confirmed that Reserpine had been identified in a batch of L-tryptophan (ACAC121216), and that deliveries to Trinity Consultants up to and including May 2013 had come from the contaminated batch.

f) he bore No Fault or Negligence in relation to how the Reserpine had entered the Horse’s system, as the presence of Reserpine in the Horse’s system had arisen as a result of exceptional circumstances and entirely beyond his control. That those exceptional circumstances included that usually, LesstressE did not contain any medications or ingredients that would be expected to give rise to a risk of contamination or Banned Substances being present in it. That the contamination of LesstressE with Reserpine had been a one-off, exceptional event which was limited to specific batches, and that due to an unknown manufacturing/processing error, the principal ingredient of LesstressE, L-tryptophan had been contaminated and caused contamination in batches of LesstressE manufactured between May and September 2013. That all those
individuals involved in the manufacture and supply of LesstressE had an excellent reputation and integrity. Further that the product had been administered to the Horse out of concerns for its wellbeing. Specifically, that the product was aimed at managing stress and tension experienced by the Horse in the run up to the competition, and that the stress would cause the Horse to refuse its feed. That further he had acted with utmost caution when administering LesstressE to the Horse. That amongst others he had carried out due diligence to ensure that the product did not contain any Prohibited Substances, such as (i) only using LesstressE after having been specifically recommended the product by an Olympic competitor of the NZL-NF Eventing team, who had confirmed that he had been using the product on his horses during competition and had never tested positive for any Banned Substances whilst using it, (ii) speaking to the manufacturer to obtain specific assurances that the product did not contain any Banned Substances, and (iii) having the Team veterinarian reviewing the product and approving its use. Lastly that he could not reasonably have known or suspected that batches of LesstressE manufactured from May to August 2013 had been contaminated with Reserpine, and that therefore he bore No Fault or Negligence in relation to the presence of Reserpine in the Horse’s system.

4.15 On 10 April 2014, the PR further provided a picture of a LesstressE plastic bottle on the label of which the date of 27 August 2013 was printed and which was covered by a simple “flip-top” lid.

5. The further proceedings

5.1 On 7 April 2014, the PR requested the Tribunal to rule on the Automatic Disqualification from the Event, including the consequent forfeiture of all medals, points and prize money, in accordance with Article 9 of the EAD Rules and in advance of a full hearing. In support of his request the PR argued that in light of the fact that he had accepted that Reserpine had been identified in the Sample, and that this constituted a prima facie violation of Article 2.1 of the EAD Rules, the Tribunal would inevitably have to automatically disqualify him from the Event, regardless of whether or not the Tribunal accepted his claim of No Fault and No Negligence for the positive finding. That furthermore, a ruling on the Automatic Disqualification from the Event in advance of a full hearing was of importance for the reputation and integrity of the sport, and in order to gain clarity over the winner of the Event in advance of the Mitsubishi Motors Badminton Horse Trials, scheduled to commence on 7 May 2014.

5.2 On 22 April 2014, the Tribunal issued a Partial Tribunal Decision, in which it disqualified the Horse and the PR combination from the Competition and ruled that all medals, points and prize money won had to be forfeited, in accordance with Article 9 of the EAD Rules.
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. Glasse, 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 the PR, 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 of Premier Nutrition 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 LessstressE - to the PR on 14 February 2012. That he however believed that Trinity Consultants might have delivered various formulae to the PR prior to that date via an owner of some of the PR’s competition horses. That he also recalled that the PR, as well as Mr. McNab, had contacted Trinity Consultants to inquire about the product LessstressE 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 LessstressE, he was able to confirm that no Reserpine, Indian Snakeroot, or Poison Devil’s Pepper had been used to manufacture LessstressE, 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. McNab 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 is 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 Mr. McNab and manufactured on 17 July 2013 had been delivered to the PR’s stable, whereas the two five hundred (500) ml bottles of LesstressE ordered by Mr. McNab and manufactured on 27 August 2013 had been delivered to Mr. McNab’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 Snakerooot, 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 it 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 Snakerooot had to be prescribed by a doctor or a dentist but that both Reserpine and Indian Snakerooot 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 Rauvolfia alkaloids, including yohimbine, ajmaline, ajmalicine, alpha-rauwolscine and corynanthine. That all of those alkaloids were also found to be present in the Indian Snakerooot 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 Snakerooot 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 Snakerooot, 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 LessstressE, the dose of Reserpine administered to the Horse by means of administration of the allegedly contaminated LessstressE 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 did not dispute the report of Dr. Evans, but that the overall analytical data provided by the PR did not support the PR’s claim that the Reserpine had entered the LessstressE as a contaminant of one of the six separate ingredients of LessstressE. 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, and that L-tryptophan of that Reserpine containing sample might have possibly been used in the manufacture of bottles of LessstressE 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 LessstressE 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 LessstressE. 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 LessstressE 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 LessstressE obtained by IEN directly from Trinity Consultants, (iii) that insofar as a new sample of LessstressE had been mixed by hand by Mr. Hatch for each individual order, it would be expected that the level of Reserpine in the LessstressE 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 for contamination during the manufacturing process: (i) the possible trace levels of Reserpine in the samples of the
five herbal ingredients of LessstressE provided by Trinity Consultants to IEN, and (ii) that the LessstressE 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 LessstressE with Reserpine after the product had left Trinity Consultants. That insofar as Trinity Consultants had shipped the LessstressE 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 LessstressE 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 LessstressE 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 LessstressE 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. That this would also be reflected in the Partial Award of 22 April 2014.

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; Alabar 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 - appeared to be “highly strung”. 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 been able to produce any contemporaneous records of when the allegedly contaminated LesstressE had been administered to the Horse. That insofar as Ms. Hoyer had not used specific bottles of LesstressE for specific horses (e.g., bottles labelled with the horse’s name), had not kept any record of the bottles used or for which horse at a specific time, and had not followed any routine use of bottles (such as a “first in, first out” approach), it was not possible to identify with any degree of certainty which bottle of LesstressE had been administered to the Horse at the Event. The FEI noted that even if it was assumed that Ms. Hoyer had guessed correctly which bottle of LesstressE had been used for the Horse at the Event, and that this had indeed been the two hundred fifty (250) ml bottle manufactured on 14 August 2013, that bottle had been used up and discarded, and had not been available for testing.

e) That – 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 lead to the far higher (similar to therapeutic) levels of Reserpine found in the LesstressE bottles.

f) 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.

g) 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 Mr. McNab during the period from May to September 2013 had been delivered to the PR’s stables, i.e. Red Leaf Farm.

h) That 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.

i) 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 no less than seven different supplements to the Horse, and that therefore he was excluded from denying any responsibility (by pleading No Fault or Negligence).

j) 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.

k) 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 30 April 2014, the FEI informed the PR that due to personal reasons, the FEI Tribunal Panel member, Mr. Pierre Ketterer, was not able anymore to attend the Final Hearing, and that he could be replaced by Ms. Jane Mulcahy. The PR confirmed that he did not have any objections to the reconstitution of the FEI Tribunal Panel.

7.2 On 13 May 2014, the NZL-NF requested for the President of the NZL-NF to “attend and to be heard” at the Final Hearing. The President of the NZL-NF was further endeavouring “to be of assistance to the Tribunal by way of submissions and/or as may be requested”.

7.3 On 20 May 2014, the PR requested the Tribunal to consolidate the Final Hearing of his case together with the Final Hearing in the case of Mr. McNab, 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.”

7.4 On 21 May 2014, Mr. McNab explained that he supported the PR’s request for consolidation of the hearings. On the same day the FEI declared not to oppose such request.

7.5 On 22 May 2014, the Tribunal decided to consolidate the Final Hearings in the case at hand with the case of Mr. McNab.
7.6 On 23 May 2014, the Tribunal granted the request of the President of the NZL-NF, under the condition - as requested by the FEI- that (i) he did not call any witnesses, and (ii) that the NZL-NF provided a summary of the submissions that it intended to make at the hearing.

7.7 On 27 May 2014, the President of the NZL-NF submitted that he had been an administrator in Equestrian sports, including Eventing, since 1988, and that he had been elected Second Vice President of the FEI in 2006. That in this role he had worked on improvements to the processes for and Rules of Equine Anti-Doping. That further, in sixteen (16) years as Chair of the Judicial Committee of the NZL-NF, the Committee only had to rule over three national Level (non-FEI) doping cases, and no FEI case. He further submitted that the NZL-NF was supporting the view both that the PR had done “all that can be expected of him, and more” in demonstrating how the Prohibited Substance had entered the Horse’s system, and in his submission of No Fault.

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.

8.2 Together with his Rebuttal submission, the PR also provided witness statements by five riders, who had returned remaining LesstresseE 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 LesstresseE bottles. Further, two of them – Ms. Arabella Spilman and Ms. Patricia Andrews – explained having never met the PR or Mr. McNab in person.

8.3 Dr. Dunnett explained that he had analysed seven additional samples of LesstresseE 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 LesstresseE 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. McNab. 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 LesstresseE 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 essence, the PR further submitted:

a) That 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, given that the burden was “on a balance of probabilities”, he only had to show that the fact or circumstance advanced by him was more probable than any other possible explanation, i.e. that there was a fifty-one percent (51 %) chance that the relevant fact was true or the relevant circumstance occurred. That the cumulative effect of all evidence in the case at hand was sufficient for him to establish, on the balance of probabilities, how the Prohibited Substance had entered the Horse’s system.

b) That whereas he accepted that he had to demonstrate - on a balance of probabilities - how the Reserpine had entered the Horse’s system, he did not have to demonstrate – and this would be an
unreasonable burden - the particular circumstances in which the LesstressE itself had become contaminated and the reasons for this contamination. That nevertheless, he had overwhelmingly (and not merely on the balance of probabilities) established that the presence of Reserpine in LesstressE bottles had been caused by contamination during production at Trinity Consultants. To support this allegation the PR mainly underlined that he had discovered that one of the ingredients used to produce LesstressE (L-tryptophan) had been found to contain Reserpine (the same contaminant as had been found at Trinity Consultants and in his bottles of LesstressE) and that deliveries of that ingredient had been made to Trinity Consultants during the apparent period of contamination.

c) That insofar as Trinity Consultants had not retained samples of either its products or the ingredients used in the manufacturing process, it was impossible to establish precisely how the product had become contaminated. The PR accepted in this context the FEI position that the analytical data provided by him regarding the testing of the ingredient samples from the ingredients’ suppliers did not indicate that the cause of the contamination had been the particular ingredients that had been tested by Dr. Dunnett.

d) That the further evidence obtained by him showed that the contamination of LesstressE with both Reserpine and Indian Snakeroot extended to bottles possessed by riders and owners and other participants in the sport throughout the equine field, with no connection to himself or Mr. McNab (e.g. Ms. Andrews and Ms. Spilman). That moreover, levels of Reserpine clearly below therapeutic levels had been detected in the respective samples. Furthermore that he had proven that Indian Snakeroot, as well as Reserpine, had been present as a contaminant at Trinity Consultants’ premises. That further, the lack of tamper evident seals for the LesstressE bottles did not in itself automatically lead to the conclusion that he was responsible for the contamination.

e) In response to the FEI submission the PR took the position that the FEI had not submitted any evidence for its allegation that the levels of Reserpine detected in most of the LesstressE bottles could not be qualified as trace levels, and are therefore inconsistent with inadvertent contamination. That the FEI had neither provided any evidence for its theory of conspiracy involving several riders deliberately doctoring their LesstressE bottles.

f) In addition, that it would not have made any sense for him to administer to the Horse, on the day prior to riding the same horse over a challenging and difficult cross-country course, an alleged therapeutic dose of a sedative such as Reserpine, a – as confirmed by Dr. Paine - long-acting equine tranquilizer. Furthermore that prior to the case at hand, he had not even heard of Reserpine or Indian Snakeroot.

g) Regarding the question of No Fault or Negligence, the PR argued
that the Tribunal had itself previously expressly recognised that supplements had to be treated differently in the context of Equestrian sport, as the proper care of elite horses used for Equestrian sport on a high level required the use of feed supplements. That - in accordance with FEI requirements - the welfare of the horse had to be paramount at all times. That furthermore in the equine context, the line between “feed” and “supplements” was blurred since also feed often contained additives (i.e. supplements) and therefore the risk of contamination in hard feed could not be ruled out altogether, and could not be ruled out for supplements either. That therefore the Tribunal could not interpret the threshold of No Fault or Negligence as restrictive as to require him to have taken unrealistic or impracticable steps to avoid the Horse coming into contact with Reserpine.

h) Alternatively, that if the Tribunal did not make a finding of No Fault or Negligence, then the level of Fault or Negligence in the case at hand was, at the most, very low and that therefore the Tribunal should exercise its discretion to reduce the otherwise applicable sanction by the full fifty (50) percent under Article 10.4.2 of the EAD Rules.

i) That he accepted the imposition of a fine depending on whether the Tribunal would conclude that he bore No Fault or Negligence for the rule violation. That it was however unfair to levy a fine on him in the circumstances of the case at hand, i.e. inadvertent contamination.

j) Finally, that the Parties should bear their own costs regardless of the outcome of the case, and that, if the Tribunal choose to make an award on costs, the costs awarded should be nominal.

9. Final Hearing

9.1 A consolidated Final Hearing, together with the case of Mr. McNab, 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 Reserpin 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 LessstressE. Mr. Hatch further explained that apart from the LessstressE re-call letter, Trinity Consultants had not conducted any other investigations into the alleged Reserpine contamination. That Trinity Consultants had stopped producing LessstressE during the period of time during which the PR had conducted investigations into the potential contamination of the LessstressE. That it was nowadays selling a herbal product containing L-tryptophan with a formula similar to the one of LessstressE, 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 LessstressE, 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 LessstressE.

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 LessstressE 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 LessstressE had been administered orally at a dose of two times twenty-five (25) ml, in total five mg of Reserpine (0.1 mg per ml x 50 ml = 5 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 LessstressE 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 LessstressE 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 LessstressE bottles had been covered by tamper evident tops he would agree that the contamination of LessstressE 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 LHC 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 were 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 Rauvolfia 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 Snakerooot 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 LessstressE 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 had not changed any supplements, including LesstressE, in the last three to four years, and that previously, the Horse had not tested positive for any Prohibited Substances – including Reserpine. The PR insisted that LesstressE had not been produced for “calming” purposes, but for “regulating” purposes. The PR nonetheless agreed with Ms. Miles’ statement that the use of “calmers” during competitions was common; that he had however administered LesstressE in order to avoid that the Horse got stressed, and therefore stopped eating and drinking, as a stressed horse which did not eat and drink got sure muscles very quickly, and one could therefore not work that horse properly. The PR stated further that if he had known the way by which Trinity Consultants was run he would not have used any products of that company. That at the time he had expressly informed Mr. Hatch that the Horse was subject to anti-doping testing and that Mr. Hatch had assured him that LesstressE did not contain any Prohibited Substances. Finally, that he had never purchased any feed of which he had not known brand and reputation, and that he had relied on his veterinarian to check everything used by him. Lastly, the PR claimed that if he and the other customers of Trinity Consultants would have deliberately doctored their LessstressE bottles with Reserpine, they would not have returned those bottles to Trinity Consultants, following its recall letter. That however nine people had returned their bottles to Trinity Consultants.

9.9 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 was “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 LessstressE. That furthermore insofar as therapeutic doses of Reserpine had been found in ten of the LessstressE 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 LessstressE of those two persons with no connection to the PR and Mr. McNab - 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. McNab, and that those levels had only 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 LessstressE in question, Mr. Hatch had underlined having used the same process for producing LessstressE for eighteen (18) years, and that none of the bottles of LessstressE 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 LessstressE the FEI underlined that there had been no Reserpine in L-tryptophan - the main ingredient of LessstressE. 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 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 LessstressE 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 LessstressE. 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.

9.10 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 or when re-producing competition conditions, when the Horse had been getting stressed. The FEI highlighted in this context that even if the PR had administered the LessstressE 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 it had not been enough to simply rely on his veterinarian, and 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.

9.11 At the Final Hearing, the PR argued 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 LessstressE 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 LessstressE, which had been contaminated with Reserpine. Specifically, that his groom had established that it was more likely than not that contaminated LessstressE 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 LessstressE 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 LessstressE 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 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, 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, as – as accepted by Dr. Paine – some of that tranquilizer would still have been present at the day of the cross-country competition.
9.12 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 he had used LesstressE on the Horse anytime it had been stressed, also in training. Finally that the supplement had changed the Horse’s system back where it should have been without being submitted to stress, and prior to the point of not eating anymore. 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 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.

9.13 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 only learned the day prior to the Final Hearing that in order to qualify for the 2014 FEI World Equestrian Games, he still had to compete in at least one three star event prior to the qualification deadline of 14 July 2014, 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 such qualifying 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 As already held in the Partial Tribunal Decision issued by the Tribunal on 16 April 2014, the PR has accepted the positive finding, both in the A- as well as in the B-Sample, and has furthermore accepted having committed a violation under Article 2.1 of the EAD Rules.

13.2 In cases brought under Article 2.1 of the EADCMRs, 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”.

13.3 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 three doses of twenty-five (25) ml of the allegedly contaminated LesstressE to the Horse on the night prior to and on the day of the Dressage test at the Event. The Tribunal takes further note that analysis of twelve (12) bottles of LesstressE manufactured by Trinity Consultants between May and August 2013 revealed Reserpine in ten (10) of those bottles, and that the level of Reserpine detected in 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, but at much lower levels. Relying on the expert opinions by Dr. Evans and Dr. Dunnett the Tribunal finds that the levels of Reserpine detected in the Horse’s sample are consistent with the Horse having been given three twenty-five (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 LesstressE administered to the Horse at the Event has caused the positive finding of Reserpine.

13.4 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.

13.5 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, which apparently was unknown to both the FEI and the PR until Mr. Hatch testified in the hearing, the Tribunal finds that there was 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, and most importantly, 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 unlikely. 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. As a result the Tribunal finds that on a balance of probabilities, the contamination of LesstressE had more likely than not occurred at Trinity Consultants.

13.6 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.

13.7 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. But the Tribunal 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.

13.8 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 requesting and receiving confirmation from his veterinarian that the product was safe to use, 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 four times before. On the other hand the Tribunal understands that the PR had not 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
at 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 numerous times in the past, and multiple testing for Prohibited Substances, 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.

13.9 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 confirming its previous decision to disqualify 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

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THE CHAIR, Mr. Erik Elstad