



**Decision of the FEI Tribunal
dated 28 February 2019**

Positive Anti-Doping Case No.: 2017/BS28

Horse: ADVENTURE E

FEI Passport No: 104CT35/USA

Person Responsible/NF/ID: Colin Syquia/PHI/10040002

Event/ID: SEA Games-S – Kuang Rawang (MAS)/2017_G-SE.AS_0002_S_S_01

Date: 25 – 28 August 2017

Prohibited Substance(s): Clomethiazole

I. COMPOSITION OF PANEL

Dr. Armand Leone, chair
Mr. Henrik Arle, member
Mr. Laurent Niddam, 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 during the hearing, as also made available by and to the PR.
- 3. Hearing:** 4 February 2019, FEI Headquarters, Lausanne, Switzerland.

Present:

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

For the PR:

- Mr. Colin Syquia, PR
- Mr. Lukas Stocker, Counsel

- Dr. Stéphane Montavon, expert witness

For the FEI:

- Ms. Anna Thorstenson, Legal Counsel
- Ms. Ana Kricej, Junior Legal Counsel
- Ms. Müskat Hotin, Legal Litigation Administrator

III. DESCRIPTION OF THE CASE FROM THE LEGAL VIEWPOINT

1. Articles of the Statutes/Regulations which are applicable:

Statutes 23rd edition, effective 29 April 2015 ("**Statutes**"), Arts. 1.4, 38 and 39.

General Regulations, 23rd edition, 1 January 2009, updates effective 1 January 2017, Arts. 118, 143.1, 161, 168 and 169 ("**GRs**").

Internal Regulations of the FEI Tribunal, 2nd edition, 1 January 2012, and Internal Regulations of the FEI Tribunal, 3rd Edition, 2 March 2018 (Part I – 3.) ("**IRs**").

FEI Equine Anti-Doping and Controlled Medication Regulations ("**EADCMRs**"), 2nd edition, effective 1 January 2016.

FEI Equine Anti-Doping Rules ("**EAD Rules**"), 2nd edition, effective 1 January 2016.

Veterinary Regulations ("**VRs**"), 13th edition 2015, effective 1 January 2017, Art. 1055 and seq.

FEI Code of Conduct for the Welfare of the Horse.

2. Person Responsible: Mr. Colin Syquia, represented by Bär & Karrer AG, Zurich, Switzerland.

3. Justification for Tribunal finding:

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 – 2.8 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, allegations and arguments based on the Parties’ written submissions, pleadings and evidence adduced during the 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 Tribunal has fully 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 ADVENTURE E (the “**Horse**”) participated at the SEA Games-S in Kuang Rawang, Malaysia, from 25 to 28 August 2017 (the “**Event**”), in the discipline of Jumping. The Horse was ridden by Mr. Colin Syquia who is the Person Responsible in accordance with Article 118.3 of the GRs (the “**PR**”).
- 1.2 The Horse was selected for sampling during the Event on 28 August 2017.
- 1.3 Analysis of urine and blood sample no. 5558083 taken from the Horse at the Event was performed at the FEI approved laboratory, the Hong Kong Jockey Club (HKJC) Racing Laboratory (the “**Laboratory**”). The analysis of the urine sample revealed the presence of Clomethiazole.
- 1.4 The estimated concentration reported by the Laboratory is of 1ng/ml.
- 1.5 The Prohibited Substance detected is Clomethiazole. Clomethiazole is a sedative used in the treatment of agitation and restlessness and is classified as a Banned Substance under the FEI Equine Prohibited Substances List (the “**FEI List**”). Therefore, the positive finding for Clomethiazole in the Horse’s sample gives rise to an Anti-Doping Rule Violation under the EAD Rules.

2. Notification of alleged Rule violation

- 2.1 On 21 September 2017, the FEI Legal Department officially notified the PR, through the National Federation of the Philippines (“**PHI-NF**”), of the presence of the Prohibited Substances 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 Tribunal.
- 2.2 The Notification Letter further included notice, in accordance with Article 7.4 of the EAD Rules, that the Horse was provisionally suspended for a period of two (2) months, from the date of Notification, *i.e.*, 21 September 2017, until 20 November 2017. The Provisional Suspension of the Horse has not been challenged, and the Horse has served the entire period of Provisional Suspension.

3. The B-Sample analysis

- 3.1 Together with the Notification Letter of 21 September 2017, the PR and the Owner were also informed that they were entitled (i) to the performance of a B-Sample confirmatory analysis on the positive sample; (ii) to attend or be represented at the B-Sample analysis; and/or (iii) to request that the B-Sample be analysed in a different laboratory than the A-Sample.
- 3.2 On 20 November 2017, the FEI notified the PR of the results of the B-Sample analysis, which confirmed the finding in the A-Sample.

4. Partial and Preliminary Decisions

- 4.1 On 5 October 2017, the PR requested the lifting of the Provisional Suspension imposed on him. On 16 October 2017, a Preliminary Hearing was held via telephone conference call, and on 18 October 2017, the Preliminary Hearing Panel issued a Preliminary Decision, and decided to maintain the Provisional Suspension of the PR, as the requirements of Article 7.4.4 of the EAD Rules for a lifting had not been met.
- 4.2 On 15 January 2018, the FEI requested the Automatic Disqualification of the Results in accordance with Article 9.2 of the EAD Rules. On 2 February 2018, the Tribunal issued a Partial Decision with regard to the Disqualification of Results, which reads as follows:

"10.8 The Tribunal is therefore disqualifying the Horse and the PR combination from the Competition and all medals, points and prize

money won must be forfeited, in accordance with Article 9 of the EAD Rules.

10.9 In addition, the Tribunal finds that in accordance with Article 11.1.2 of the EAD Rules the results of the PR shall be subtracted from the team result.”

- 4.3 On 13 August 2018, the PR submitted another lifting request, and on 20 September 2018, the PR requested for another Preliminary Hearing. On 26 September 2018, a Second Preliminary Hearing was held via telephone conference call, and on 30 September 2018, the Tribunal issued a Preliminary Decision, and decided to lift the Provisional Suspension of the PR – in accordance with Article 7.4.4 (iii) of the EAD Rules - as of 30 September 2018, midnight Swiss time.

5. Further proceedings

- 5.1 On 1 October 2018, the Tribunal decided to set a deadline for final submissions by the Parties, and on 5 December 2018 – upon previous request be the PR – the Tribunal decided to prolong that deadline.
- 5.2 On 14 January 2019, the PR informed the Tribunal that he was not in a position to present any further information, which was solely caused by the refusing and unjust behaviour of third parties. Further, the PR reserved his right to submit further arguments during the oral hearing.
- 5.3 On 28 January 2019, the FEI provided its Response to the PR’s explanations received thus far.
- 5.4 On 4 February 2019, a hearing on the merits was held.

6. Written and oral submissions by or on behalf of the PR

- 6.1 On 14 May 2018, 30 August 2018, and 27 September 2018, the PR provided his written explanations for the positive finding. The PR also made further submissions and provided clarifications during the Preliminary Hearing which will be outlined in the following to the extent relevant for this Decision.
- 6.2 To start with, the PR accepted being the Person Responsible in accordance with Article 118 of the GRs.
- 6.3 Together with his submissions, the PR provided – among others – testing results, dated 12 July 2017, of a bottle of Vime-Lythe IV, which tested

negative for Clomethiazole. Furthermore, the PR provided testing results from a hair sample taken from the Horse on 29 March 2018, which analysis did not find any Clomethiazole.

- 6.4 Moreover, the PR provided a statement by Dr. Stéphane Montavon, DVM who answered to questions posed by the PR. Dr. Montavon stated that he was not aware of any equine cases of Clomethiazole. Clomethiazole was a very strong sedative drug and has no legitimate use in equine medicine. Moreover, this drug could only decrease the health status of a sport horse. Animal studies were limited to rodents, and studies in humans showed that the substance was considered to be "very toxic" and must be used with utmost caution. Clomethiazole was not FDA approved in the United States, nor was it approved in Malaysia. Clomethiazole was available in pill and syrup form in Europe.
- 6.5 In humans, Clomethiazole has a half-life of about 5 hours. It almost completely metabolized in the organism, and the main metabolite 4-methyl-5-thiazoleacetic acid had an exertion from a few hours to a maximum of one day in the urine. Furthermore, Clomethiazole itself was not a metabolite of any other substance. There was effectively a chemical and structural similarity between vitamins B1 and Clomethiazole. However, since vitamin B1 was very often administered to horses and in many galenic forms (feed additives and injection solutions such as Lime Vite), a confusion at the laboratory would certainly occur more frequently, *i.e.*, it being unlikely.
- 6.6 Dr. Montavon further stated that the concentration of Clomethiazole (1ng/ml) could not be associated with any pharmacological effect. One possible scenario would be a contamination or a trace in this regard. The hypothesis of Clomethiazole contamination by the staff in the environment of the horse or with the sampling remained for him the most plausible and the most credible hypothesis.
- 6.7 To start with the PR described the issues and delays the Horse faced travelling to the Event, and that he was mid-way ready to return home, which decision he however ultimately changed after serious deliberations with his teammates and feeling a sense of responsibility to this nation. Upon arrival of the Horse he immediately requested the FEI treating veterinarian to administer intravenously fluids to the Horse. The FEI treating veterinarian advised him to additionally administer a vitamin/electrolyte solution named Vime-Lyte IV. Upon consulting with the FEI veterinarians as well as the Horse's treating veterinarian and personally reviewing the ingredient list, the PR consented to the solution being administered to the Horse.
- 6.8 At the Event he jumped over seven rounds (2 rounds against the clock),

and the Horse did not incur a single penalty and recorded the fasted time of all the competitors in both rounds against the clock. He was the second last rider racing in the competition. The final results were announced just a few moments after the final round, at 12:55 pm. Forty-five (45) minutes thereafter, the PR was notified that the Horse had been selected for sampling. This was well after the maximum time limit of 30 minutes set by Article 1059.1 and 1060.2 of the VRs. Further, the Horse was held at 13:40 (until 14:49). In this respect, the PR wished to highlight that according to the statement of Dr. Neil, the 5th place horse was being notified and chaperoned before the three medal winners and in due time, meaning that there would have been more than ample time to correctly notify and chaperone also the Horse, even prior to the medal ceremony. Additionally, since the PR was not immediately notified of selection for testing, no supervision/security by FEI stewards upon conclusion of the final round and before the medal ceremony was provided. During this time period, the Horse was therefore exposed to non-accredited well-wishers and photo seekers.

- 6.9 Further, as confirmed by the PR's coach, Mr. Alan Patrick Griffin, who was assigned to accompany the Horse to sample collection, when the urine sample was collected the latter was not immediately divided into samples A and B and then sealed, but transported from the collection site to another site at least 20 meters away, where it was sealed and boxed in the presence of the PR's coach. This manifestly violated against two of the most fundamental principles applicable to all kinds of urine sample collections, namely as explicitly recognized in Article 7.2 of the WADA Urine Sample Collection Guidelines (i) that all steps of the procedure must be conducted under full view of the athlete; and (ii) that the sample must be placed and kept in a safe and secure location. The PR submitted that he had not made any written comments on the sample form, as he had never been informed by the testing personnel that he actually would have had such a right.
- 6.10 In addition, an FEI steward warned the PR of a possible sabotage attempt on 27 August 2018, following which the PR's team demanded to the OC and the FEI officials in charge, that their grooms shall be allowed to rotate watch on the horses all night before the final; hourly checks by the grooms on the horses were allowed, however not between 3 and 6 am. The PR's request to place wireless cameras in accordance with Article 1023.22 of the VRs was also denied.
- 6.11 Furthermore, the PR argued that the Organizing Committee of the Event (the "OC") was responsible for the violation of several FEI provisions, namely Articles 1023.17, 1025.4 of the VRs, as well as the "minimum requirements to ensure the implementation of Articles 1023 and 1025 of the VRs, as the stable area where the Horse was kept was not always

secured and was accessed by various persons without permission. Also, the boxes used for sample collection were completely unsecured. Furthermore, Articles 1023.4 and 1023.6 of the VRs were violated, as the boxes were neither clean nor disinfected, and there was even some debris inside, which had to be removed upon entering them. Thus, the PR was unable to exercise his legitimate and fundamental right to protect and ensure surveillance over the Horse. Furthermore, wild monkeys were let free to surround the whole stable area throughout the entire Event.

6.12 The PR submitted that (i) significant and apparent departures from the relevant FEI regulations occurred, (ii) the seriousness of these departures was by itself a sufficient ground for invalidating the AAF, and that (iii) in any event such departures could reasonably have caused the AAF. More specifically, the PR argued as follows in this respect:

- a) The PR had provided substantial evidence proving that the Event as well as the sampling of the Horse were affected by numerous fundamental departures from the applicable regulations. It was explicitly recognised by the Court of Arbitration for Sport ("**CAS**") that these kinds of serious violations had the effect of invalidating the adverse analytical finding ("**AAF**") at stake. Such a consequence was dictated by the so-called *quid pro quo* principle (since athletes are held to very strict standards of liability, federations must be equally strict in adhering to their rules), according to which, the fairness of the strict liability regime would be undermined, if it were allowed to test results in disregard of basic procedural safeguards to be used for sanctioning athletes. This was even more compelling in cases in which athletes are not merely by themselves subject to testing procedure, but they also have to bear responsibility for the integrity of the Horse, and where they necessarily must rely on a flawless organisation of the various events in which they competed in order to have their horses sufficiently protected from external sources and prevent any threat of doping contamination to effectively realize.
- b) Further, the PR argued that provisions such as Article 1023(23) VRs - stating that "failure of the OC to provide adequate stable security shall not be a defence to any violation brought under the EADCMRs" – stood in clear conflict with the position taken by the CAS. To comply with the jurisprudence developed by CAS, such provisions should prevent that minor and technical mistakes (and not fundamental ones) could be used to justify serious violations of anti-doping regulations.
- c) Moreover, the PR argued that besides these fundamental breaches, for all other procedural defects the *quid pro quo principle* found

expression in Article 3.2.3 of the WADA Code, which inspired Article 3.2.2 of the EAD Rules. That whenever the PR establishes that a departure from a relevant set of rules could reasonably have caused the AAF, then the burden of proof shifts to the FEI in the present case to demonstrate that such departure did not cause the AAF in question. This shift of burden of proof occurred as soon as the PR established facts from which a reviewing panel could rationally infer a possible causative link – which according to the *Campbell-Brown Decision*¹ “must be more than merely hypothetical, but need not to be likely, as long as its plausible”, meaning that it was already sufficient when the departure in question created a plausible opportunity for an intervening act, e.g., accidental contamination or deliberate sabotage - between the regulations departure and the presence of the Prohibited Substance in the incriminated sample.

- d) In general, these departures from the FEI regulations were so serious, that it could not be reasonably argued that the test results shall have any validity. This conclusion had especially to be reached when considering the peculiarity of the case at hand. The substance Clomethiazole was only known for human use, no scientific data was available about effects on horses. The substance for humans was highly sedating and therefore would have, if any, only performance inhibiting effects on horses. The substance metabolizes extremely quickly with a half-life of around 5 hours. Given the minimal traces found in the urine (1 ng/ml), it appeared highly probable that the exposure of the urine sample and/or the Horse to Clomethiazole took place during the Event. Because the substance was only known for human use, such exposure must have happened through human (direct or indirect) contact with the sample and/or the Horse. Such contact was made possible because of the various rule violations committed by the OC and the testing personnel.
- e) Alternatively, the PR argued that the burden of proof had to be shifted to the FEI in accordance with Article 3.2.2 of the EAD Rules. In this respect, the PR argued that in accordance with the principles laid down by CAS in the *Campbell-Brown decision*, the shift of the burden of proof was justified by the fact that, considering all the facts of the present case, it was truly not possible to deny that the several departures from the FEI provisions did not at least create a plausible opportunity for an intervening act – most likely contamination – to have an influence on the AAF. In this respect, had the OC not violated the applicable

¹ CAS 2014/A/3487 Veronica Campbell-Brown v. JAAA & IAAF, para. 155.

FEI provisions, the conditions facilitating contamination, *i.e.*, the most rational explanations for the AAF – as outlined further below – would not have been created. The causative link between the regulations departure and the presence of Clomethiazole in the Horse's sample appeared more than likely, and under no circumstances could the latter be deemed to be less than plausible.

- 6.13 In the alternative, the PR argued that the most plausible explanation for the presence of traces of Clomethiazole in the Horse's sample was that of a contamination of its samples. Other sources from which the Clomethiazole may have entered the Horse's body either did not exist or were less likely.
- 6.14 Scientifically speaking, Clomethiazole was excreted by humans via urine as metabolites, and in particular in form of its main metabolites *5-acetyl-4-methylthiazole* and *5-(1-hydroxyethyl)-4-methylthiazole*. While no studies had been yet conducted on horses, the excretion of Clomethiazole in form of its main metabolites as well as well as in form of the metabolite *2-hydroxy-4-methyl-thiazol acetyl-(5)-glycine* had been scientifically demonstrated in relation to rats. This allowed to formulate the plausible scientific hypothesis that the same results also applied with respect to horses. Neither the A-Sample or B-Sample analysis reports showed any trace of *5-acetyl-4-methylthiazole resp. 5-(1-hydroxyethyl)-4-methylthiazole resp. 2-hydroxy-4-methyl-thiazol acetyl-(5)- glycine* (nor any other metabolites related to Clomethiazole) in the Horse's urine. On the contrary, the presence of Clomethiazole in its purest form was clearly signaled in the spectrograms included in both analysis reports. From a scientific perspective, this finding was hardly explainable and made it per se extremely unlikely that the Clomethiazole found in the urine samples went actually through the Horse's system.
- 6.15 In addition, hair samples from the Horse's mane – which had not been removed or clipped since the Event – showed no traces of Clomethiazole.
- 6.16 From a scientific perspective it was therefore at least more than likely that the Banned Substance has never entered the Horse's system and that, accordingly, the AAF had to have been caused by a contamination of the urine samples during their collection after the competition. This theory of contamination of the samples was also supported by the uncommonly low concentration of the substance detected in the samples, *i.e.*, 1 ng/ml. In addition, the collection and sealing procedure in connection with the Horse's samples was conducted in disregard of the applicable general principles.
- 6.17 Furthermore, it came to the PR's attention that Clomethiazole was distributed in Malaysia, *i.e.*, where the Event was held, for research

purposes and that studies connected with this substance had indeed been carried out in Malaysian universities. Considering that two individuals who carried out the sampling worked for the University of Putra Malaysia, it appeared more than possible that either of them could have been a carrier of Clomethiazole.

- 6.18 The PR had therefore established how the Banned Substance entered the Horse's system/samples. Furthermore, the notion of No Fault or Negligence could not be taken apart from the prerequisite that the system of the Horse actually contained the Banned Substance at stake, nor could he be held responsible for contamination during sample collection, a procedure that is conducted by FEI testing personnel.
- 6.19 In addition, the PR put forward other possible explanations regarding the source of the Banned Substance. First, inadvertent contamination at the Event was an option. During his stay at the Event, the Horse got in contact with a considerable number of unauthorized persons, which, coming from countries in which the sale of Clomethiazole was not prohibited, may have been carrier of traces thereof, *e.g.*, on their hands or clothes. Also, the poor cleanliness conditions at the Event and the regular visits of indigenous monkeys to the stables area may have favoured accidental presence of pills or other substances containing Clomethiazole in the surroundings of the Horse, which, by ingestion, may have been contaminated. Such a scenario was however not consistent with the results of the laboratory analysis, as it could neither explain the lack of metabolites in the urine samples, nor the absence of Clomethiazole traces in the Horse's hair.
- 6.20 Second, taking into consideration the warnings received, a sabotage attempt cannot be discarded a priori. Since the PR could not place an adequate video surveillance, he was not in a position to completely exclude that someone may have entered the Horse's stable with sabotage purposes. However, no further evidence was discovered in this respect.
- 6.21 Third, he had initially deemed probable that the Vime-Lyte IV solution could have been the source of the AAF. While chemical reactions could transform vitamin B1 into Clomethiazole, different experts confirmed that these kind of reactions would only occur under laboratory conditions. Furthermore, results of the testing of the Vime-Lyte IV solution of the same batch as prescribed were negative. Therefore, he deemed it highly unlikely for the Vime-Lyte IV solution to be the source of the positive finding.
- 6.22 Fourth, he had investigated the scenario of contamination during the transportation of the Horse to the Event. This scenario however lacked scientific basis, *i.e.*, the short half-life of Clomethiazole of around 5 hours,

and the companies involved in the organisation of the Horse's transportation unambiguously excluded that anyone from their staff might be responsible for such contamination, as they neither made use of Clomethiazole nor have they noticed anything that could have led to a respective contamination.

- 6.23 Fifth, and for completeness, the PR submitted that the scenario involving a deliberate administration of Clomethiazole by him appeared absolutely unrealistic and had to be discarded, as (i) he had a good reputation as a horseman; (ii) taking into account the potential negative effects the substance has on the Horse; (iii) Clomethiazole was not available in locations connected to the PR, *i.e.*, United States and the Philippines; and (iv) taking into account the absence of metabolites and hair analysis results.
- 6.24 The PR submitted that he found himself in a position of so-called *evidence necessity* or *Beweisnotstand*, as recognised by the Swiss Federal Supreme Court, and further explicitly also recognised by CAS, which has thus become an integral part of the sports law framework. The Swiss Federal Supreme Court held that in cases in which a party must deal with serious difficulty in discharging its burden of proof, principles of procedural fairness called for an obligation of the other party to explain in detail why it deems the submitted facts to be wrong. Considering the circumstances of the present case, it became clear that it would be simply impossible for him to indicate with absolute certainty which was the source of the Clomethiazole. Against this background and in accordance with the jurisprudence developed by the CAS, the FEI was required to contribute to the clarification of the circumstances of the case by substantially contesting the facts it deems to be erroneous and by providing on its part a more plausible explanation as to the source of Clomethiazole. As specified by CAS in the *Contador case*², the alternative scenarios invoked by the parties as to the source of Clomethiazole had to be then weighted against one another. Moreover, it has taken the FEI more than three (3) months after his submission on 14 May 2018 to inform him that that the laboratory actually never looked for the metabolites; which caused further substantial delays in the proceedings. Finally, the PR requested that the Tribunal, when considering the evidence provided by him, should adopt a "cumulative effect" approach, as previously adopted by the Tribunal and confirmed by CAS. According hereto, the plausibility of the explanations presented by the PR should not be evaluated on the basis of the single pieces of evidence provided, but rather taking into account the cumulative effect generated by all evidence brought to the Tribunal's attention.

² CAS 211/A/2384 & CAS 2011/A/2386 UCI v. Alberto Contador & RFEC/WADA v. Alberto Contador & RFEC

- 6.25 Regarding fault, the PR submitted, that even assuming that the requirement of "No Fault or Negligence" could play a role in cases such as this one, *quod non*, it remained nevertheless evident that he bore absolutely no responsibility for the EAD Rule violation. Since the AAF had been caused by a contamination which took place during a procedure conducted by the FEI testing personnel, it would be unfair and irrational to require the PR to show which measures he may have taken to prevent the AAF.
- 6.26 A last condition for Article 10.4 of the EAD Rules to apply was that exceptional circumstances existed, namely that (i) the case was extraordinary in nature, as it had been caused by contamination outside his influence; (ii) since the substance had no therapeutic use in a horse, and its administration would rather have negative consequences to the Horse's performance; (iii) he was a true horseman with an impeccable reputation (with no suspension or previous warning, and who cares and respects horses); and (iv) being provisionally suspended he had already suffered extensive consequences (both personal, psychological and economic). Consequently, pursuant to Article 10.4 of the EAD Rules, any and all sanctions otherwise applicable should be eliminated and the alleged EAD Rule violation should in the future not be considered a violation for the purposes of Article 10.8 of the EAD Rules.
- 6.27 Finally, the PR submitted that, given the foregoing, there should be no financial sanctions whatsoever imposed on him, and pursuant to the FEI Guidelines the FEI shall be ordered to pay an appropriate contribution towards his legal costs and other expenses related to the present proceedings. Further, taking all the foregoing into due consideration, all and any results – including points, medals and all prize money connected therewith – affected by the present proceeding should be reinstated and awarded to him respectively.
- 6.28 On 27 September 2018, the PR further submitted additional evidence in support of human contamination. The PR argued that he had only recently become aware of the Annual Report on Prohibited Substances of the International Federation of Horseracing Authorities (IFHA) of 2004, which mentioned nine (9) positive Clomethiazole cases all originating from Thailand. During the Event, the Thai National Federation (THA-NF) was stabled next to his team and thus the Horse. In this context numerous encounters took place, some of them also being captured on photo, for example the Chef d'Equipe of the THA-NF took a picture with the PR and the Horse just after the final round and before the medal ceremony. Scientific research evidenced that in case a human being was taking a medication and during that time he or she was in regular contact with a horse (including that the horse licks the hand and arms of this person), this was already sufficient to detect such medication and the

metabolites thereof in the urine sample of the horse. The PR later on confirmed that he attempted to obtain further information with regard to those cases, but unfortunately did not receive any responses.

7. Written submission by the FEI

- 7.1 On 28 January 2019, the FEI provided its Answer to the submissions received by the PR until that day.
- 7.2 Regarding science, the FEI submitted that in cases of Banned Substances, the FEI Approved Laboratories had no obligation to screen for any metabolites. There were numerous Prohibited Substances for which only the parent substances were routinely targeted for at the laboratory and reported if confirmed. There was nothing unusual at all to report the presence of a parent drug without testing for its possible metabolite(s); this was not the same as reporting the absence of its metabolites.
- 7.3 Originally the Sample had not been screened for the presence of the metabolites of Clomethiazole, and therefore the laboratory could not conclude if any metabolite(s) was present in the sample or not.
- 7.4 Upon request by the PR twelve (12) months later, the laboratory developed a procedure and tested the sample for metabolite(s). The analysis for the metabolites of Clomethiazole was negative, however the laboratory highlighted that a negative finding at this point in time could not preclude the existence of Clomethiazole metabolites in the sample at the time of sample collection, since it was collected about one year ago.
- 7.5 Moreover, laboratory contamination during testing procedure was certainly not an issue as quality control procedures have always been implemented during all sample analysis.
- 7.6 Further, the FEI submitted that contamination during sample collection was highly unlikely as long as the sample has been collected by a qualified and experienced official, and that this was confirmed by the Testing Veterinarian Report.
- 7.7 In addition, the FEI argued that the PR had provided a negative hair sample from the Horse, but that a negative hair sample was not necessarily showing the absence of the use of a substance. These were indications from the FEI's expert Professor Toutain in several cases where negative hair samples have been provided.

- 7.8 Together with its Answer, the FEI provided a Testing Veterinarian Report of Dr. Kirsten Neil, member of the FEI Veterinary Committee, who supervised and witnessed the sampling at the Event.
- 7.9 In essence, Dr. Neil stated that there were three (3) veterinarians present when the sampling of the Horse took place. That out of four (4) horses tested on that day, the PR was the last to present the Horse to the testing box, and that she had to send another steward off to make them bring the Horse to the sampling, as the PR still had not presented the Horse half an hour after he had been notified, which she considered to be excessive.
- 7.10 Dr. Neil confirmed that the rules for testing were followed, and stated as follows in this respect:

"All people handling the samples wore gloves. There were 4 veterinary assistants (vet students) which Bashir had arranged. Protocol was the student put gloves on to hold the urine collecting stick, Bashir or Noorashimah with gloves on and opened the plastic collecting pot and put it into the collecting stick (done in front of the PR) then they took the horse into the testing box. Once urine was collected, the PR accompanied the sample taken by the student to the stable next to the testing boxes which we used as an office, Noorashimah put on new gloves to take the pot from the student. A new kit was opened by her in front of the PR, and normal procedure was followed including sealing the urine samples. For this PR, when it came time to go back to his horse (held by a steward while he was witnessing the sealing of the urine sample, his horse was 4 stables down from the testing office stable but still within his view as they were not fully enclosed stables), he was asked if he wanted to carry the sealed samples with him or leave it within view on the desk in the 'office' stable - I stood at the doorway to the 'office' stable while he was witnessing the blood collection, then he came back following Noorashimah who collected the blood and we both witnessed her sealing the blood samples, completed the paperwork and placed them in the box. This PR was polite and professional and did not declare any issues with any of the sample collection or sealing. All of the kits after the event were sent via courier to the lab which was arranged by Bashir. I didn't wear gloves but I never touched any samples."

- 7.11 Moreover, Dr. Neil stated that the facilities of the testing stables were adequate, and although these were not within the secure stable area, they were still only accessible for people who could get access to the practice arena and the entrance to the main arena.
- 7.12 Regarding the integrity of the samples Dr. Neil stated as follows:

"The samples were directly sealed after collection. As we had multiple horses being sampled at once, I did not allow any kit to be opened until the previous horse's urine and blood samples were sealed so that there were never two kits open at once.

I did not at any point, have any doubts about the integrity of the samples or of the procedure. I did not get even a slight impression from the PR that he has any concerns with anything either. He was courteous and attentive and the only part I could take fault with is that he took a very long time to bring his horse back to the testing stable to be tested and that I had to send another steward to make him bring the horse over. He was chaperoned the entire time.

Further there were no outsiders that could have interfered with the samples. They couldn't have accessed the kits or samples. I witnessed all kit opening, placing the samples into the containers, sealing etc in the presence of the PR.

I just don't see how the samples could have become contaminated during the collection or sealing process as there were three vets involved and Bashir and I watched all aspects between us so that there were no issues or mistakes."

- 7.13 The FEI highlighted that the estimated concentration of 1ng/ml was not incredible low, as submitted by the PR; nanograms (ng) was a normal unit used in concentrations of positive findings. In addition, in Banned Substance cases, the presence of any quantity was reported, since these substances should never be in the horse in the first place.
- 7.14 Considering the science, the FEI did not believe that the PR's theories that the sample was contaminated during the sample procedure or at the laboratories were plausible.
- 7.15 In essence, the FEI further submitted that:
- a) Article 3.1 of the EAD Rules made it the FEI's burden to establish all of the elements of the EAD Rule violation charged, to the comfortable satisfaction of the Tribunal. The elements of an Article 2.1 violation were straightforward. *"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"*. Instead it was a "strict liability" offence, established simply by proof that a Banned Substance was present in the Horse's sample. The results of the analysis of the A and B Samples taken from the Horse at the Event confirmed the presence of Clomethiazole, and constituted "sufficient proof" of the violation of Article 2.1 of the EAD Rules. In any event, the PR did not dispute the presence of the Clomethiazole in the

Horse's sample. Accordingly, the FEI discharged its burden of establishing that the PR had violated Article 2.1 of the EAD Rules.

- b) In accordance with Article 3.2.1 of the EAD Rules it was for the PR to show that any departure from standard procedures occurred that could reasonably have caused the AAF. The PR had not proven any such departure and the FEI had in any case rebutted all such arguments. The results of the positive finding shall therefore not by any means be invalidated.
- c) Where a Banned Substance was found in a horse's sample, a clear and unequivocal presumption arose under the EAD Rules that it was administered to the horse deliberately in an illicit attempt to enhance its performance. As a result of this presumption of fault, Article 10.2 of the EAD Rules provided that a Person Responsible with no previous doping offence, but who violated Article 2.1 of the EAD Rules was subject to a period of Ineligibility of two (2) years, unless he was able to rebut the presumption of fault. To do this, the rules specified that he must establish to the satisfaction of the Tribunal (it being his burden of proof, on a balance of probability): (i) how the Prohibited Substance 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, alternatively (iii) that he bore No Significant Fault or Negligence for that occurrence. If the PR failed to discharge this burden, the presumptive two-year ban under Article 10.2 of the EAD Rules applied.
- d) The EAD Rules stipulate and the jurisprudence of the Tribunal and the Court of Arbitration for Sport ("**CAS**") are very clear: it is a strict threshold requirement of any plea of No (or No Significant) Fault or Negligence that the PR prove how the substance(s) entered into the Horse's system. The FEI submitted that the PR has an obligation to provide clear and convincing evidence that proved how the Clomethiazole entered the Horse's system. In the case at hand, the PR has according to this submission no plausible explanation on how the substance could have entered the Horse. In the Preliminary Decision the Tribunal held that "*The PR will have to establish facts from which the Tribunal could rationally infer a possible causative link that is more than merely hypothetical (...)*". The PR has not provided any further plausible explanations since, and the FEI was therefore of the opinion that the PR has not fulfilled on a balance of probability, the threshold requirement on how the substances entered the body of the Horse.

- e) In terms of the degree of Fault or Negligence by the PR for the rule violation, the starting point of any evaluation was the “*personal duty*” of the PR following from Article 2.1.1 of the EAD Rules, *i.e.*, his personal duty to ensure that “*no Banned Substance is present in the Horse’s body*”.
- f) In the *Royal des Fontaines case*³, the Sole Arbitrator had endorsed the rationale behind the FEI’s policy of making the Athlete/rider the Person Responsible. The CAS Decision states as follows:

“No doubt the degree of care is high; but horses cannot care for themselves. As the Respondent (the FEI) put it in its skeleton argument

“The FEI believes that making the rider the responsible in this way is necessary to protect the welfare of the horse, and to ensure fair play. It strongly incentivises riders to ensure compliance with the rules, whether by caring for the horse personally or else by entrusting that task only to third parties who are up to the job. In the case of such delegation, it protects the welfare of the horse, and clean sport, by requiring the rider to stay apprised of and be vigilant with respect to the way the horse is being prepared for competition, including as to any treatments given to the horse”

The Sole Arbitrator respectfully agrees.”

- g) In the *Glenmorgan case*⁴ the Panel confirmed that the rider was best fit to control the Horse before a competition. “... *Among them (any support personnel), the rider is best able to function as the “last check” on the physical condition of the horse immediately prior to and during the race, regardless of whether he knows the horse or mounts it for the first time. An experienced rider can quite often identify with the naked eye an irregularity in the condition and behaviour of the animal both before mounting and during the competition.*”

“The Panel wishes to emphasize again that the fault or negligence which determines the measure of the Appellant’s sanction is not that of the Dr. It is the Appellant’s own fault and negligence in not having exercised the standard of care applicable to a PR which, like the non-equine Athlete, is placed at the exercise of “utmost caution”. It is the PR’s personal duty to ensure that no Banned Substance is present in the Horse’s body.”

- h) In light of the stated CAS jurisprudence on this point, the FEI

³ CAS 2015/A/4190 Mohammed Shafi Al Rumaithi v. FEI (para 57)

⁴ CAS 2014/A/3591 Sheikh Hazza Bin Sultan Bin Zayed Al Nahyan v. FEI (para 209 & 203)

respectfully submitted that making the PR prima facie responsible for the condition of the Horse while competing, subject to his ability to prove he bore No (Significant) Fault or Negligence for the Horse's positive test results was a reasonable and justifiable stance.

- i) The FEI highlighted that Banned Substances are never to be found in a competition horse, they are substances with no legitimate use and have a high potential for abuse. It was the PR's personal duty to ensure that no Banned Substance is present in the Horse's body. Equestrian sport was particular that way that is was difficult to keep control over what the horse ingests and in addition to have full control at all times. Despite this difficulty, the CAS case law has confirmed that the PR was in the best position to have this control and was naturally also the person to have strict liability in relation to a positive finding in the horse. There was always a plausible opportunity for an intervening act such as contamination to have an influence on the horse. It was therefore extremely important that the PR's duty of care was very high.
- j) The FEI had also conducted further investigation, such as contacting the persons that the PR alleged to have contaminated the sample due to the fact that they work at the veterinary hospital and were present at the sampling. The Veterinarian confirmed that she is not familiar with Clomethiazole, and has never used the substance in practice. Further, there was no research conducted on Clomethiazole at the veterinary hospital or faculty she works for.
- k) The FEI clarified that during In-Competition sampling, horses may be selected for sampling at any time during the period of an Event, in accordance with Article 1070 of the VRs. Although Notification must be given no later than thirty (30) minutes after the announcement of the Final Results of the Event, sampling may be carried out after the Period of the Event, according to Article 1071 of the VRs. The FEI believed that the reason for the delay in notification was sufficiently explained by Dr. Neil. Further, since the substance was a Banned Substance, the FEI has – according to Article 5.1 of the EADCMRs – the right to test any FEI Horse at any time.
- l) In addition, the FEI argued that it was not unusual to find substances for human use only also in horse. A sedative in small doses can have a calming effect on a very fresh horse. The FEI had seen many cases where typically human drugs have been used to calm down nervous horses.
- m) The FEI understood that the PR was a careful individual with no intention to dope his horses, and with several procedures in place in

order to avoid a positive test. The FEI found it very unfortunate that the PR so far has not found any plausible explanation or causal link to the rule violation. However, this was required under the rules. Therefore, the FEI submitted that the period of Ineligibility imposed on the PR should be two (2) years in accordance with Article 10.2 of the EAD Rules. The FEI could agree on the application of Article 10.10.2 of the EAD Rules, and thus to a start of the period of Ineligibility as early as of sample collection.

- n) The Disqualification of Results have already been decided and a Partial Decision issued.
- o) As fairness did not dictate that no fine be levied in the case at hand, the FEI requested that a fine be imposed on the PR, and that the PR be ordered to pay the legal costs that the FEI had incurred in pursuing this matter. The FEI requested that the Tribunal fine the PR in the amount of 3,000 CHF, and order the PR to pay the legal costs of 1,500 CHF, as well as order the PR to pay the cost of the B-Sample.

8. Hearing

- 8.1 During the hearing the Parties had ample opportunity to present their cases, submit their arguments and answer to the questions posed by the Tribunal. After the Parties' submissions, the Tribunal closed the hearing and reserved its Decision. The Tribunal heard carefully and took into consideration in its discussion and subsequent deliberation all the evidence and the arguments presented by the Parties even if they have not been summarized herein.
- 8.2 At the end of the hearing, the Parties acknowledged that the Tribunal has respected their right to be heard and their procedural rights.
- 8.3 During the hearing, and where not mentioned otherwise in the following, both Parties maintained their previous submissions.
- 8.4 Dr. Montavon further explained that Clomethiazole was a sedative and hypnotic drug for treating or preventing symptoms of acute alcohol withdrawal, and its side effects were among others physical dependence. Clomethiazole could be used in the treatment of agitation and restlessness in humans – as submitted by the FEI – but that was not what the drug has been registered for. The drug was dangerous, and very toxic and an overdose could lead to death. In horses it could only have adverse side effects, and no performance enhancing effects.

It being a drug used in humans, it was understandable that the substance was on the FEI List, as the FEI List contained substances with no legitimate use in horses, *i.e.*, Banned Substances.

- 8.5 In Dr. Montavon's view the search for metabolites by the laboratory should have taken place. Further, the hair analysis should have detected some traces, which was not the case, and therefore spoke for contamination. Upon request, Dr. Montavon explained that metabolites would have been found within a day after administration, but for example not where the drug entered the Horse's system twenty (20) minutes prior to sampling. He explained that, where a substance was metabolised in rats, that should also be the case in horses; he did not know of any substance where this was not the case. Regarding whether metabolites should be found if the substances entered the Horse through contact with human fluids containing the substance, such as sweat for example, Dr. Montavon stated that this would depend whether the screening limits are set high enough for the potentially small amounts; he would however expect that the hair analysis would have detected the substances. Further, studies showed that hair analysis could detect substances that were swallowed more than six (6) months ago. In Dr. Montavon's view, if the samples were stored correctly metabolites should have been detected after one year after sample collection, even taking into account degradation of samples. The FEI, on the other hand, stated that from their experience this was not the case.
- 8.6 The PR stated that he has been riding horses since he was 10 years old, and professionally since 2002. Further, that prior to the Event the Horse has been tested on 22 July 2018 with negative results. He explained that he would have never expected that this could happen to him, *i.e.*, a positive finding, and that he was now afraid to compete in FEI competitions. Since he was not familiar with the team vet, he only allowed FEI appointed veterinarians to check the Horse. The only thing he noticed was that the Horse was taking naps, but in his view the Horse was re-charging from travel.
- 8.7 The PR stated that there was no possible way that he or his team did this. The Horse jumped well with clear rounds and he won the jump-off by 4 seconds; the team ended up in second place. All teams had been shaking hands and congratulating each other, and un-accredited people had come to the waiting area, taking pictures and shaking his hands.
- 8.8 When he was asked to enter the arena for medals, that was when he was notified of testing, and the Horse was chaperoned from that point

onwards. The steward had agreed for the Horse to be washed off, and for that reason the Horse had come to the testing box late. He had to complete media obligations and met the Horse and the groom thereafter in the testing box. The groom had been with the Horse from the time after his last competition to the time of notification of sampling, and given the number of people in the arena moved the Horse to the back of the arena after some time. It had taken the Horse a while to produce the urine sample and the collector brought the sample to another box where it was split; he had been talking to other people at that point in time and proceeded behind the sample, whereas the groom had gone back to the stables. He had never seen a sample been transported anywhere, usually it was sealed immediately; looking back at it he thought that this was strange.

- 8.9 Finally, the PR explained that he was told that no one was allowed in the stables between 3 and 6 am, so the Horse was not under surveillance then. The FEI explained in this regard that it was normal to close stables for a few hours over the night. Further, that riders were permitted to have CCTV cameras installed upon prior approval by the FEI Veterinary Department; this approval was necessary for fire security reasons.
- 8.10 Given that the PR was only informed three (3) months later that the laboratory did not test for metabolites, he lost crucial time investigating, and this caused irreparable harm to him. Therefore, the FEI had to be estopped from arguing that the PR had problems with establishing the source. The source in the case at hand had to be human contamination, either during sample collection, or the substance entered the Horse's system very shortly prior to sampling. The PR did not need to identify the person who caused the human contamination. Further, science, *i.e.*, the negative hair sample, supported one theory only, namely the contamination of the sample. If there was a possibility of a false negative – as put forward by the FEI – then the PR of course could not rule out contamination because of crowds etc.
- 8.11 The PR took great care of the Horse, and could have simply not prevented such contamination; there was absolutely no fault or negligence on the PR's side. There was a difference between athletes and horses; an Athlete had to take care of his or her body, but someone else needed to take care of the Horse. The PR acknowledged that sedating substance for humans, as in the present case, could be used for horses, but in the present case the substance was not available to the PR, the Horse did not need such treatment, and he would never use such a substance. Further, he even checked

substances provided by FEI veterinarians, with his own veterinarian. Finally, he confirmed that he used Medication log books for his horses. In addition, the delay in notification for sampling was not caused by him, here it concerned an In-competition test, and chaperoning did not take place until after notification. The PR confirmed that he had reasonable expectations that the Horse would be tested having won the Competition.

- 8.12 To start with, the FEI submitted that the FEI had looked into all possible deviations of procedures at the Event, however the procedures were correct and no breaches of the rules were found. The Horse was chaperoned from the moment of notification; the testing veterinarian took precautions and decided a different stable was better for sealing of sample (separate sealing was not unusual); and all people involved had been wearing gloves. Furthermore, sample collection never took place prior to medal ceremony, and it was the PR's duty to take care of the Horse. Further, given that the 5th place did not have to go to medal ceremony it could therefore be notified earlier. Furthermore, the provision that notification of sampling should take place thirty (30) minutes after the announcement of the final results (which was unknown in this case, as the sheet was signed off at 9.30 am which was not the correct time), was put in place so riders knew when they could treat horses with Controlled Medication substances (where necessary) after a Competition. In relation to Banned Substances this was not relevant, as they had no legitimate use at any time. Therefore, the delay in distribution of medals did not have any effect on this provision. As a result, no breach of any procedures took place, and no breach that could have caused the AAF; the PR did not establish any departure that could have caused the AAF pursuant to Article 3.2.2 of the EAD Rules.
- 8.13 Regarding the source of the Banned Substance, the FEI argued that both Parties have been trying to find the source of the substance in the present case, and acknowledged the unwillingness of the THA-NF to assist the PR with its investigations. The FEI had also contacted the organisers of the Event, but was unable to find the source of the substance. The FEI argued that, given the report of Dr. Neil, it was highly unlikely that the sample was contaminated during sample collection. Furthermore, the Testing Veterinarian confirmed to the FEI that in her job, she does not have access to the substance.
- 8.14 Furthermore, the FEI argued that Clomethiazole was a chemical compound that was synthetically produced in laboratories, and was not naturally occurring in the environment. Therefore, the case at hand had to be distinguished from cases referred to by the PR which

concerned a substance naturally occurring in a flower in the region of the cases concerned.

- 8.15 The FEI did however not oppose to either of the two other explanations put forward by the PR, *i.e.* contamination by people in the stable area or warm up area, if the Tribunal found that the burden of proof by the PR has been met. Public access after the PR completed the Competition has been confirmed and human contamination would in general be plausible. As Dr. Montavon confirmed, no metabolites could be found directly after ingesting the substance, but – on the other hand - no metabolites have been tested for either. The FEI argued that every biological sample degraded naturally, even if it was properly stored, which had been the case for the sample at hand. The PR on the other hand did not contest that degradation was possible.
- 8.16 Furthermore, regarding hair testing the FEI submitted that a positive test was confirming a positive, but a negative test was not always a true test, because it was not known at how low of a concentration could be tested for. For example, if there was only a one-off use of a substance in a low concentration, this substance would not necessarily be detected in the hair. The PR argued in this respect, that if there was a possibility of a false negative in the case at hand, contamination from the crowd could therefore not be ruled out in that case.
- 8.17 Finally, the PR argued that if the contamination did not occur during sample collection, the PR believed that some sort of contamination by the Thai team had to have happened, as the substance was only to be found in Thailand, and since the only previous cases known with this substance were from Thailand. In this regard, the PR explained that the approximate time from leaving with the Horse from the stables for the Competition until the time of sampling was about 4 to 5 hours, and that the Horse had been back to the stables in between rounds. Records show a total of 13 negative tests, 2 of which concerned tests of Thai horses.

9. Jurisdiction

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

10. The Person Responsible

- 10.1 In accordance with Article 118.3 of the GRs, the PR is the Person Responsible in the case at hand, as he competed with the Horse at the Event.

11. The Decision

- 11.1 As set forth in Article 2.1 of the EAD Rules, sufficient proof of an EAD Rule violation is established by the presence of a Banned Substance in the Horse's A and B Sample. The Tribunal is satisfied that the laboratory reports relating to the A and B Sample reflect that the analytical tests were performed in an acceptable manner and that the findings of the Laboratories are accurate. The Tribunal is satisfied that the test results evidence the presence of Clomethiazole in the urine sample taken from the Horse at the Event. The PR accepts the accuracy of the test results and the positive finding. Clomethiazole is a Prohibited Substance on the FEI List and the presence of the Clomethiazole in a Horse's body is prohibited at all times under Article 2.1 of the EAD Rules.
- 11.2 As a result, the FEI has thus established an Adverse Analytical Finding, and has thereby sufficiently proven the objective elements of an offence in accordance with Article 3 of the EAD Rules.
- 11.3 Following from Article 3.2.2 of the EAD Rules, a PR who is alleged to have committed an EAD Rule violation may rebut this presumption by establishing "*by a balance of probability, that a departure from another FEI standard, FEI Rule or Regulation, FEI Manual or policy could reasonably have caused the EAD Rule violation based on the Adverse Analytical Finding or other EAD Rule violation (...)*".
- 11.4 The PR has therefore to establish by a balance of probability that a departure from an FEI standard, FEI Rule or Regulation, FEI Manual or policy occurred. In a second step, where such departure has been established, the PR has to establish by a balance of probability that such departure could reasonably have caused the AAF.
- 11.5 The Tribunal however finds that the PR has not established any departure from an FEI standard, FEI Rule or Regulation, FEI Manual or policy. The Tribunal has taken note of the PR's explanations with regard to the sampling conditions, and especially that the sample had been transported to a different stable for sealing, and timing of the notification.
- 11.6 Pursuant to Article 1068 of the VRs, the PR is responsible for the Horse at

all times, and according to Article 1071.3 of the VRs, the Horse must be chaperoned from the moment of notification, which was the case in the case at hand, and is undisputed by the Parties. Furthermore, while Article 1071.2 of the VRs requires that "*Notification must be given no later than 30 minutes after the announcement of the Final Results of the Event and sampling may be carried out after the Period of the Event.*", the Tribunal finds that firstly it has not been established when the final results were announced, as the results sheet clearly indicated the wrong time, and secondly, that it does not matter whether notification has taken place within the thirty (30) minutes, as the substance concerns a Banned Substance which should never be in a competition horse. Therefore, if the sampling was conducted after thirty (30) minutes of the announcement of the final results, it would be considered as an Out-of-Competition (OOCT) test, instead of an In-Competition test. The result is however the same, Banned Substances are prohibited at all times. Furthermore, the Tribunal finds that – while transporting unsealed samples from one box to another is certainly not desirable – the PR witnessing the sample collection and sealing was supposed to keep the sample in his sight, or even transport it himself if he had any doubts. Instead, it seems that he left the sample out of sight while talking to other people. Furthermore, if this would have been a breach in the sample collection procedure – which has not been established – the PR still had to show that this breach caused the AAF, which is not the case in the case at hand. The Tribunal takes note that all people involved in the sampling wore gloves, and the Testing Veterinarian did not have access to the Banned Substance in question at her work place, as alleged by the PR. Therefore, the PR did not establish a departure from the sampling procedures, and even if such departure would be accepted, it did not cause the AAF.

- 11.7 The PR has further alleged that no EAD Rule violation occurred in the case at hand, as the Clomethiazole entered the Horse's sample during the sampling process rather than being present in the Horse's system.
- 11.8 The Tribunal has taken note of the submission by the PR in this respect. The Tribunal does not find that the evidence provided establishes that no EAD Rule violation has occurred. As the Tribunal discusses further below, the alleged contamination of the urine sample of the Horse, is merely one explanation provided by the PR, which does not meet the burden of proof of being more likely than not. In order to establish that no EAD Rule violation occurred, the PR has however to prove that there was a contamination of the sample.
- 11.9 Pursuant to Article 10.2.1 of the EAD Rules the period of Ineligibility for an Article 2.1 EAD rule violation, *i.e.*, the Presence of a Banned

Substance in a Horse's sample, as in the case at hand, shall be two (2) years, subject to a potential reduction or suspension pursuant to Articles 10.4, 10.5 or 10.6 of the EAD Rules.

- 11.10 In cases brought under the EADCMRs, a strict liability principle applies as described in Article 2.1.1 of the EAD Rules. Once an EAD Rule violation has been established by the FEI, a PR has the burden of proving that he bears "*No Fault or Negligence*" for the rule violation as set forth in Article 10.4 of the EAD Rules, or "*No Significant Fault or Negligence*," as set forth in Article 10.5 of the EAD Rules.
- 11.11 In order for Articles 10.4 and 10.5 of the EAD Rules to be applicable, the PR must establish as a threshold requirement how the Prohibited Substance entered the Horse's system.
- 11.12 The Tribunal has taken note that the PR has by the time of closing of the hearing – in essence – put forward three (3) contamination scenarios regarding the source of the Clomethiazole, namely (i) contamination during sample collection; (ii) contamination in the stables via either sabotage, or cross-over from the Thai team who was stabled next to the Horse and his team; or (3) contamination during some period of time after the Competition with the public in the arena. The FEI, on the other hand, argued that contamination during sample collection could be excluded, but found that contamination in general could potentially be an explanation for the positive finding, depending on whether the Tribunal finds that the PR has met the burden of proof.
- 11.13 As previously decided, the Tribunal finds no material error in the sample collection, and that the sampling process was not the cause of the AAF. The Tribunal also does not find contamination by the Testing Veterinarian as the plausible explanation for the positive finding, as the Testing Veterinarian was wearing gloves and confirmed that she has no access to Clomethiazole at her work place, as alleged by the PR. No evidence to the contrary has been presented by the PR.
- 11.14 Furthermore, the Tribunal finds, while an allegation of sabotage was put forward, no evidence in this regard was presented, and thus this scenario cannot be accepted by the Tribunal.
- 11.15 However, the Tribunal finds that – on a balance of probability – the positive finding was caused by a probable human contamination. It is likely that contamination occurred in the stable area or in the warm up area. It was not possible to determine whether the human contamination occurred in the stable area before (or during) the Event or in the warm up area after the Event. The Tribunal finds this scenario of human

contamination more likely than not for the reasons as follows.

11.16 Firstly, the lack of metabolites on subsequent re-testing (one year after sample collection) and the lack of the substance by hair analysis does not prove that the substance never entered the Horse. The Tribunal takes note that the fact that there were no metabolites detected at the later date could be due to the passage of time and storage conditions and not that the substance was never in the Horse, which would make this a false negative result. Furthermore, as also confirmed by Dr. Montavon, if the contamination took place shortly prior to sample collection, no metabolites would be detected in any case. Moreover, the Tribunal has taken note that the fact that the hair testing did not demonstrate Clomethiazole could be due to the short duration and extremely low concentration of the substance in the Horse, rather than the substance not having gone through the Horse's system, which would make this a false negative result. In addition, the Tribunal takes note that Dr. Montavon confirms that hair testing could detect substances which were ingested more than six (6) months ago. The Tribunal however notes that in the case at hand the hair sample was only taken seven (7) months after sampling. It is therefore unclear whether the hair test could have detected the substance at this point in time. However, given a false negative result was a possibility, this question becomes moot.

11.17 The Tribunal further finds that there is cumulative evidence that supports the finding of human contamination that allowed the substance to enter the Horse. In this respect the Tribunal finds that the following points to contamination occurring in the stable area: (i) the Thai team was stabled next to the Horse; (ii) Clomethiazole is sold in Thailand and only available in Malaysia (country where the Event was held) for research purposes, and not available in most western countries, including the United States where the PR is based; and (iii) the only nine (9) equine doping cases with Clomethiazole known concerned Thai horses. Whereas, the following points to contamination occurring in the warm up area: (i) the public entered the horse warm up area after the Competition; and (ii) members of the public patted and touched the Horse before the groom took the Horse away.

11.18 Moreover, the Tribunal finds that there are many factors in the case at hand which point against intentional doping, such as (i) lack of access to the substance; (ii) the toxic nature of the substance; (iii) the limitations of available scientific proofs; (iv) as well as the PR's testimony during the hearing.

11.19 Therefore, the Tribunal is satisfied that the Clomethiazole entered the

Horse by way of human contamination, either in the stable area or in the warm up area. Further, given that the expected half-life of the substance is five (5) hours, the Tribunal finds that the substance must have entered the Horse's system sometime either shortly prior, during or after the Event, even though the exact time could not be established.

11.20 In a further step, the Tribunal has to decide on the PR's degree of fault and whether any of the Articles 10.4 or 10.5 of the EAD Rules, which allow for a reduction of suspension of the two (2) year period of Ineligibility, are applicable.

11.21 The Tribunal finds that, although the PR took some actions to prevent the positive finding, the PR is not without fault as he, as rider, has a responsibility to maintain a clean and protected environment for the Horse in the stable area, and has a responsibility to keep the Horse away from non-accredited persons at a Competition. Therefore, in this case, the PR is responsible for the presence of the Banned Substance in the Horse, but bears No Significant Fault or Negligence for the rule violation, and is thus entitled to a reduction of the otherwise applicable sanction in accordance with 10.5.2 of the EAD Rules, which may not be less than one-half of the period of Ineligibility otherwise applicable.

11.22 In this respect, the Tribunal takes note that the PR has been provisionally suspended from 21 September 2017 to 30 September 2018, *i.e.*, twelve (12) months and nine (9) days. The Tribunal finds that taking into account the specific circumstances in the case at hand, and the PR's degree of fault, the length of the Provisional Suspension shall be the length of the final sanction imposed, and – unless the conditions of the Provisional Suspension were not respected - the PR shall not be suspended for any additional period of Ineligibility.

11.23 All other claims and arguments are rejected. While the Tribunal has taken them into account, they were not decisive for this Decision.

12. Disqualification

12.1 The Tribunal has already previously decided with regard to Disqualification of Results, and issued a Partial Decision in this respect.

13. Sanctions

13.1 As a result of the foregoing, the period of Ineligibility imposed on the PR for the present rule violation shall be twelve (12) months and nine

(9) days.

13.2 The Tribunal imposes the following sanctions on the PR in accordance with Article 169 of the GRs and Article 10 of the EAD Rules:

1) The PR shall be suspended for a period of **twelve (12) months and nine (9) days**. The period of Provisional Suspension, from 21 September 2017 to 30 September 2018 shall be credited against the period of Ineligibility imposed in this decision. Therefore, no further period of Ineligibility shall be imposed on the PR.

2) The PR is fined **three thousand Swiss Francs** (CHF 3,000).

3) The PR shall contribute **one thousand five hundred Swiss Francs** (CHF 1,500) for the cost in these proceedings. In addition, the PR shall bear the cost of B-Sample analysis.

13.3 No Person Responsible who has been declared Ineligible may, during the period of Ineligibility, participate in any capacity in a Competition or activity that is authorised or organised by the FEI or any National Federation or be present at an Event (other than as a spectator) that is authorized or organized by the FEI or any National Federation, or participate in any capacity in Competitions authorized or organized by any international or national-level Event organisation (Article 10.11.1 of the EAD Rules).

13.4 Where a Person Responsible who has been declared Ineligible violates against participation or attendance during Ineligibility, the results of any such participation shall be Disqualified and a new period of Ineligibility equal in length up to the original period of Ineligibility shall be added to the end of the original period of Ineligibility. In addition, further sanctions may be imposed if appropriate (Article 10.11.3 of the EAD Rules).

13.5 According to Article 168 of the GRs, the present decision is effective from the day of written notification to the persons and bodies concerned.

13.6 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 twenty-one (21) days of receipt hereof.

V. DECISION TO BE FORWARDED TO:

- a. The person sanctioned: Yes**
- b. The President of the NF of the person sanctioned: Yes**
- c. The President of the Organising Committee of the Event through his NF: Yes**
- d. Any other: No**

FOR THE PANEL

A handwritten signature in black ink, appearing to read 'Armand Leone', written in a cursive style.

Dr. Armand Leone, FEI Tribunal panel chair