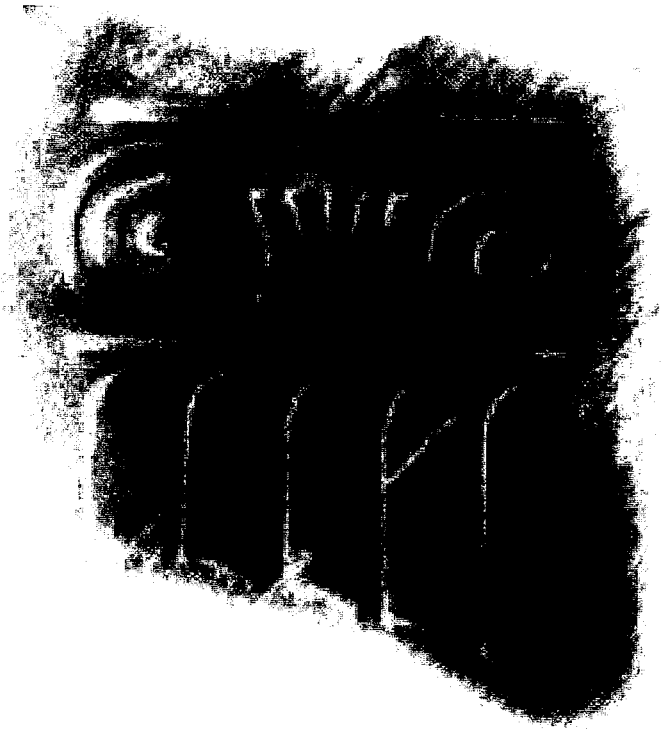
Tribunal Arbitral du Sport

Court of Arbitration for Sport



ARBITRAL AWARD

World Anti-Doping Agency (WADA), Lausanne, Switzerland

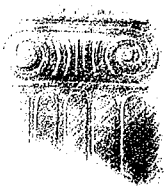
v/

Angela Covert, Saint-Lazare, Québec

&

Fédération Equestre Internationale (FEI), Lausanne, Switzerland

CAS 2012/A/2960 - Lausanne, January 2014



Tribunal Arbitral du Sport
Court of Arbitration for Sport

CAS 2012/A/2960 World Anti-Doping Agency (WADA) v. Angela Covert & Fédération Equestre Internationale (FEI)

ARBITRAL AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

President:	Mr. David W. Rivkin, Attorney-at-law, New York, United States
Arbitrators:	Professor Massimo Coccia, Attorney-at-law, Rome, Italy
	Mr. Graeme Mew, Barrister, Toronto, Ontario, Canada
Ad hoc Clerk	Ms. Nwamaka G. Ejebe, Attorney-at-law, New York, United States

in the arbitration between

World Anti-Doping Agency (WADA), Lausanne, Switzerland
Represented by Mr. Olivier Niggli and Mr. Ross Wenzel, Carrard & Associés, Lausanne, Switzerland

Appellant

vs.

Angela Covert, Saint-Lazare, Québec
Represented by Mr. Timothy S.B. Danson and Ms. Marjan Delavar, Danson Recht LLP, Toronto, Canada

First Respondent

Fédération Equestre Internationale (FEI), Lausanne, Switzerland
Represented by Mr. Jonathan Taylor, Bird & Bird LLP, London, United Kingdom

Second Respondent

I. PARTIES

1. The World Anti-Doping Agency (the "Appellant" or "WADA") is a Swiss private law foundation. Its seat is in Lausanne, Switzerland, and its headquarters are in Montréal, Canada. Its address is Stock Exchange Tower, 800 Place Victoria Square, Montreal, Quebéc, H4Z 1B7, Canada. WADA is the international regulator of the World Anti-Doping Code ("WADA Code").

2. Ms. Angela Covert (the "Athlete" or the "First Respondent"), born on 29 May 1976, is an athlete affiliated with Equine Canada, the Canadian national federation for equestrian sports.

3. Fédération Equestre Internationale (the "Second Respondent" or "FEI") is the international governing body of equestrian sports. It has its registered seat in Lausanne, Switzerland.

II. FACTUAL BACKGROUND

4. The following is a summary of the relevant facts and arguments based on the parties' written and oral submissions, pleadings and evidence. Although the Panel has considered all the facts, legal arguments and evidence submitted by the parties in the present case, it refers in its Award only to the submissions and evidence it considers necessary to explain its reasoning.

5. On 19 June 2011, the Athlete had a jumping accident during a competition in the Grand Prix at the Continental Tournament at Spruce Meadows in Alberta, Canada. As a result of the accident, the Athlete suffered some injuries, including a fracture to her nose, and was rushed to the hospital.

6. From 30 June to 3 July 2011, the Athlete participated in the discipline of Jumping at the CS14*-W event in Spruce Meadows AB (Calgary) (the "Event").

7. Further to an in-competition test performed on a urine sample provided by the Athlete on 30 June 2011, analysis conducted by the WADA-approved Montreal laboratory, Institut Armand Frappier ("INRS laboratory"), showed the A-sample tested positive for methylhexaneamine (dimethylpentylamine) ("methylhexaneamine" or "DMAA").

8. According to the 2011 WADA Prohibited List, in full force at the time of the collection, methylhexaneamine (dimethylpentylamine) is a prohibited substance. Methylhexaneamine (dimethylpentylamine) is classified under "S6 (b)" (Specified Stimulants) on the 2011 WADA Prohibited List. It is prohibited in-competition.

9. Through Equine Canada, the Athlete was notified of the positive test on 23 August 2011.

10. The B-sample analysis was conducted by INRS laboratory on 12 September 2011, which confirmed the presence of methylhexaneamine. The Athlete was notified of this result on

20 September 2011. On the same day, the Athlete received the Laboratory Documentation Package for both the A and B samples.

11. On 25 August 2011, the Athlete requested a hearing with the FEI Tribunal. This hearing was ultimately scheduled for 24 July 2012. However, on 23 July 2012, the FEI Tribunal notified the FEI and the Athlete that an oral hearing would not be necessary because the Tribunal could render a ruling based on the written materials in the case file.

12. The FEI Tribunal issued a written decision on 4 September 2012 (the "Appealed Decision"). The FEI Tribunal sanctioned the Athlete with a reprimand and a fine of 500 CHF. The FEI Tribunal also invalidated any award the Athlete may have received at the Event. WADA now appeals this decision.

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

13. On 24 October 2012, WADA filed its Statement of Appeal/Appeal Brief and exhibits with the Court of Arbitration for Sport (the "CAS") requesting it to rule:

> *1. The Appeal of WADA is admissible.*
>
> *2. The decision rendered by the FEI Tribunal in the matter of Ms. Angela Covert on 4 September 2012 is set aside.*
>
> *3. Ms. Angela Covert is sanctioned with a period of ineligibility of between two and four years starting on the date on which the CAS Panel's award enters into force. Any period of ineligibility, whether imposed on, or voluntarily accepted by, the Athlete before the entry into force of such award, shall be credited against the total period of ineligibility to be served.*
>
> *4. All competitive results obtained by the Athlete from 30 June 2011 through the commencement of the applicable period of ineligibility shall be annulled.*

14. In its Statement of Appeal/Appeal Brief, WADA challenged the Athlete's explanation, which the FEI Tribunal had accepted, that the methylhexaneamine detected in her sample came from the geranium oil in Euvanol, a nasal spray she was using prior to the Event. WADA's exhibits included the results of an experiment it had conducted using Euvanol obtained from Merck, the manufacturer of Euvanol.

15. On 2 November 2012, the Athlete requested discovery from WADA. The Athlete requested all documents related to WADA's exhibits analyzing Euvanol, all WADA materials on methylhexaneamine, and all communications between WADA and Merck. On 8 November 2012, WADA produced documents in response to the request. On 9

November 2012, the Athlete supplemented her discovery requests and alleged that WADA's response was insufficient.

16. On 16 November 2012, the FEI filed its Answer with the CAS.

17. On 4 January 2013, the CAS Court Office advised the parties that the Panel to hear the appeal had been constituted as follows: Mr. David W. Rivkin, President of the Panel; Professor Massimo Coccia, arbitrator nominated by the Appellant; and Mr. Graeme Mew, arbitrator designated by the First Respondent.

18. On 12 March 2013, the Athlete filed her Answer. The Athlete asked for the following relief:

> *1. That her production/disclosure motion be granted or in the alternative, that there be a telephone conference to hear the motion orally.*
>
> *2. That WADA be given 30 days to satisfy the respondent's production/disclosure request, failing which its appeal be dismissed.*
>
> *3. That the herein appeal be dismissed with costs.*

19. From November 2012 to May 2013, WADA and the Athlete submitted multiple communications disputing the relevance and appropriateness of the Athlete's discovery requests as well as disclosed documents. On 15 May 2013, pursuant to Article R44.3 of the Code of Sports-related Arbitration (the "CAS Code"), the Panel ruled on the Athlete's disclosure requests.

20. In a letter dated 28 May 2013, the Athlete requested that WADA deliver the Athlete's urine sample so the Athlete could independently re-test the sample. In a letter dated 6 June 2013, WADA responded that it understood that the Athlete's sample had been disposed of by the INRS laboratory. In an email dated 3 July 2013, the FEI confirmed to the Athlete's counsel that the sample was indeed destroyed on 18 December 2012.

21. The Panel permitted the parties to file significant supplemental submissions and evidence before the hearing. It is sufficient to note that WADA filed an expert report by Dr. Oliver Rabin on 12 April 2013 and filed, on 3 May 2013, a letter from Dr. Christiane Ayotte, as well as a scientific opinion by Dr. Mahmoud ElSohly and Dr. Ikhlas Khan. On 20 August 2013, the Athlete also filed a supplemental submission, along with an expert report by Dr. Sarah Kimmins, Dr. Laurent Lecanu, and Dr. Paul Simone. FEI filed a supplemental submission on 18 September 2013.

22. The parties executed and returned the Order of Procedure in this appeal, and a hearing took place on 23-24 September 2013 in New York at the law offices of Clyde & Co. The

Panel was assisted by Ms. Nwamaka G. Ejebe, *Ad hoc* Clerk, and Mr. Brent J. Nowicki, Legal Counsel to the CAS.

23. On the second day of the hearing, the Athlete requested that she be allowed to enter into the record the results of laboratory tests she had commissioned on the geranium oil obtained from Merck's geranium oil supplier. Finding that extraordinary circumstances existed, the Panel allowed the Athlete to enter the laboratory results into the evidentiary record along with all background documents pursuant to Article R44.3 of the CAS Code. The Panel also permitted the parties to file short post-hearing submissions, principally related to this new evidence.

24. At the close of the hearing, the parties expressly stated that they had no objection to the constitution of the Panel and that, following the hearing, their right to be heard and to be treated equally had been fully respected.

25. The Athlete filed her post-hearing submissions on 7 October 2013 and 9 October 2013. WADA and FEI filed their post-hearing submissions on 20 November 2013.

IV. SUBMISSIONS OF THE PARTIES

A. THE APPELLANT'S SUBMISSIONS

26. In these proceedings, WADA supported its submissions with written and oral evidence, including scientific studies, expert opinions, articles, and the hearing testimony of:

- Dr. Oliver Rabin – Director of WADA Science,
- Professor Christiane Ayotte – Director of INRS laboratory,
- Professor Mahmoud ElSohly – Professor of Pharmaceutics at the University of Mississippi,
- Professor Ikhlas Khan – Professor of Pharmacognosy at the University of Mississippi,
- Dr. Françoise Lasne – Director of the WADA-accredited French anti-doping laboratory of Châtenay-Malabry ("AFLD laboratory"), and
- Nathalie Mechin – Head of the Chemistry Department in the AFLD laboratory.

27. In summary, the Appellant submitted the following in support of its appeal:

Anti-Doping Violation:

28. Article 4.1 of the FEI Anti-Doping Rules for Human Athletes ("ADRHA") incorporates the WADA's "Prohibited List." Methylhexaneamine (dimethylpentylamine) is a

prohibited substance under the 2011 WADA Prohibited List. It is a specified substance and prohibited in-competition.

29. The Athlete did not challenge the presence of the prohibited substance in her sample within the context of the proceedings before the FEI Tribunal. The presence of the prohibited substance in the Athlete's sample is therefore established, and the Athlete, therefore, has violated Article 2.1 of the FEI ADHRA (presence of a prohibited substance or its metabolites or markers in an athlete's sample).

Athlete's Explanations:

30. Eleven days before the Event, the Athlete competed in the Grand Prix at the Continental Tournament at Spruce Meadows, Calgary (Canada). During this competition, on 19 June 2011, the Athlete's horse stopped suddenly before a jump and the Athlete was thrown off the horse into the jump.

31. The Athlete experienced, among other things, injuries to her nose. The Athlete was treated at Rockyview General Hospital in Calgary. At the hospital, the Athlete refused to take certain prescription medications, ostensibly due to concerns that such medication might contain prohibited substances.

32. The Athlete claims that during the period between the accident and the Event, she took a nasal spray called Euvanol to stem nasal bleeding resulting from the accident.

33. Geranium oil is listed as one of the ingredients in Euvanol. In front of the FEI Tribunal, the Athlete filed a statement by Professor Sellers, who submitted that the presence of methylhexaneamine in the Athlete's body "is fully explained by the use of Euvanol nasal spray." Professor Sellers argued that "about 0.66-1% of geranium oil is methylhexaneamine."

Determining the Sanction:

Athlete Failed to Establish the Origin of the Prohibited Substance

34. WADA submits that the Athlete failed to establish the origin of the prohibited substance in her body.

35. In its Appeal Brief, WADA argued that, on the basis of the information available to it at the date of the brief, the Athlete failed to establish on the balance of probabilities that she had consumed Euvanol. However, WADA amended this argument on the last day of hearing by accepting on the balance of probabilities that the Athlete did consume Euvanol during the relevant period. WADA argued that this concession did not impair its appeal because even if the Athlete had taken Euvanol containing geranium oil, this intake did not explain the methylhexaneamine found in her sample for the reasons listed below.

Geranium Oil Does Not Contain Methylhexaneamine

36. Recent studies have established that geranium oil does not contain methylhexaneamine. Moreover, in 2011, Health Canada concluded that methylhexaneamine was not a natural constitute of geranium oil. In December 2011, the United States Defense Department removed products containing methylhexaneamine from stores at its army bases. And in 2012, the United States' Food and Drug Administration circulated letters to companies notifying them that products with methylhexaneamine should be taken off the market or reformulated to remove methylhexaneamine.

37. In his expert opinion, Dr. Rabin explains that the large majority of recent scientific literature establishes that geranium oil does not naturally contain methylhexaneamine. (ElSohly et al, J. Anal Toxicol 26:457-471, 2012; Lisi et al, Drug Test Anal. 3 (11-12): 873-6 DOI: 10.1002/DTA.392, 2011; Zhang et al., Pet Manag Sci. 2012 Aug 28. doi: 10.1002/ps.3411; Zhang et al. Drug Test Anal DOI 10.1002/dta. 1391, 2012.) Moreover, Dr. Rabin disputes the reliability of the two papers on which the Athlete relied in her Answer to establish that geranium oil does contain methylhexaneamine. (Li et al. and Fleming et al.) Dr. Rabin argues that independent reviews of the Li et al. and the Fleming et al. papers have revealed serious problems in the papers, including the fact that the papers were funded by supplement manufacturers, who have an interest in establishing that methylhexaneamine derives from a natural source such as geranium oil.

38. In sum, Dr. Rabin explains "the weight of the scientific literature concludes that methylhexaneamine is not found naturally in geranium oil. Furthermore, there are serious doubts as to the independence and scientific credibility of the two studies cited by the athlete in support of her contention."

The Geranium Oil in Euvanol Does Not Contain Methylhexaneamine

39. The geranium oil in Euvanol does not contain methylhexaneamine. WADA requested that the WADA-accredited AFLD laboratory conduct specific tests on Euvanol and the urine sample of a volunteer who had used Euvanol. These tests categorically confirmed that Euvanol does not contain methylhexaneamine. Consequently, the Athlete's intake of Euvanol did not result in the methylhexaneamine found in her sample.

40. The AFLD laboratory also received geranium oil from Merck, and it ran additional tests on this geranium oil. No methylhexaneamine was found in these tests either, which had a limit of detection below 50 ng/ML (fifty times lower than the amount found in the Athlete's sample).

The Methylhexaneamine in the Athlete's System Was Not of Natural Origin

41. The methylhexaneamine detected in the Athlete's system must have been of synthetic origin and consequently not from geranium oil. As Dr. ElSholy explained in a post-hearing email:

> *My testimony was and is that, in over 30 years of working with natural products, I have never encountered nor been made aware of any natural product that contains two asymmetric centers where all four different enantiomers (i.e. optical isomers) were present, not to mention in equal amounts. If MHA [methylhexaneamine], which contains two asymmetric centers, did occur in any plant (let alone Pelargonium) in all four enantiomers, it would be unprecedented. On that basis, I conclude that the presence of the four enantiomers in the MHA [methylhexaneamine] in Ms. Covert's urine sample is evidence of synthetic origin.*

Geranium Oil in Euvanol Could Not Have Resulted in the Significant Concentration of Methylhexaneamine Detected in the Athlete's Sample

42. Assuming for argument purposes only that Professor Sellers' opinion that geranium oil contains as much as 1% of geranium oil is accurate, basic math calculations establish that it would be impossible for Euvanol to be the source of the methylhexaneamine in the Athlete's sample.

43. In his expert opinion, Dr. Rabin explained that the urinary concentration in the Athlete's sample was 2.8 µg/mL. The specific gravity of the Athlete's urine sample was 1.007. This number means that the Athlete's sample was significantly diluted and underestimated the real concentration of methylhexaneamine. If the concentration is corrected using the population mean urinary specific gravity of 1.020, the estimated concentration of methylhexaneamine in the Athlete's urine would be approximately 8,000 ng/ml (8 µg/ml).

44. A concentration of 8,000 ng/ml is approximately the same concentration found in scientific studies of urine samples of individuals who had orally consumed supplements containing methylhexaneamine. (Lisi et al., Drug Test Anal 3 (11-12) 873-6. doi: 10.1002/dta 392, 2011; Perrenoud et al., J. Chromatog B, 877:3767-3700, 2009.)

45. The International Standard for Testing establishes that the minimum suitable volume of urine for testing is 90mL. Therefore, if the minimum urine volume was 90 mL, the amount of methylhexaneamine in the Athlete's sample was 252 µg (not corrected for specific gravity) or 720 µg (corrected for specific gravity).

46. Assuming the maximum concentration of methylhexaneamine in geranium oil postulated by Professor Sellers (1%), there would be a maximum of 450 µg methylhexaneamine in a 15mL bottle of Euvanol. The amount of methylhexaneamine in an *entire* Euvanol bottle is *smaller* than the amount of methylhexaneamine in the Athlete's sample corrected for specific gravity.

47. And although the amount of methylhexaneamine in an entire Euvanol bottle is larger than the amount of methylhexaneamine in the Athlete's sample not corrected for specific gravity, based on excretion pharmacokinetics and methylhexaneamine extraction studies,

it would be impossible for 252 µg of methylhexaneamine to all come from one bottle of Euvanol consumed throughout the seven-day period prior to the Event.

48. Dr. Rabin concludes his expert opinion by noting that "all these scientific elements, even when calculated with the most favourable assumptions for the athlete, demonstrate that, even if a significant concentration of methylhexaneamine were to be found in Euvanol (which is absolutely not demonstrated to date), the urinary concentration of methylhexaneamine in the Athlete's sample cannot have resulted from the administration of Euvanol."

49. In response to the Athlete's submissions that the INRS laboratory analysis may be incorrect, Dr. Ayotte testified that the overloaded nature of the peak is indicative of an underestimate of the methylhexaneamine concentration. At the hearing, Dr. Ayotte also presented methylhexaneamine concentrations of urine samples analyzed at the INRS laboratory between 2009-2012. Dr. Ayotte explained that the Athlete's urine is entirely consistent with the ingestion of a nutritional supplement containing methylhexaneamine as an ingredient.

Reply to the Athlete's Submissions

Destruction

50. The Athlete submits that the destruction of her sample was a violation of WADA's International Standard for Laboratories ("ISL") and a prejudicial affront to her right to a fair hearing.

51. However, Dr. Ayotte testified that her laboratory follows the ISL in testing and maintaining samples. Pursuant to the ISL, negative samples are destroyed after three months. Samples with adverse analytical findings are kept for a minimum of three months, and are only kept longer if anyone contacts the lab and requests the samples be maintained. No one ever contacted the laboratory to inform it that the Athlete's sample should be maintained. Therefore, as a matter of course, the laboratory destroyed the sample on 18 December 2012.

52. Moreover, the Athlete suffered no prejudice as a result of the destruction. Whatever tests the Athlete claims she might have sought to conduct on her urine sample, she would have always needed to satisfy the Panel that the geranium oil in Euvanol contained methylhexaneamine. This was a question that was present and fundamental in these proceedings from the time that WADA filed its Statement of Appeal.

IRCM Tests

53. The Athlete instructed the IRCM laboratory to run multiple tests on geranium oil allegedly obtained from the supplier of geranium oil for Euvanol. From the perspective of WADA, and notwithstanding the lack of its experience with the IRCM laboratory, the results of these tests support WADA's position that geranium oil does not contain

methylhexaneamine. The IRCM laboratory tested at least ten different samples, and all the samples tested negative for methylhexaneamine.

Sanction

54. In the event that the Athlete is sanctioned, she has requested, with reference to Article 10.8 of the FEI ADRHA, that her period of ineligibility be back-dated and that her results (during that back-dated period of ineligibility) be maintained. This request is inconsistent with the very nature of ineligibility and contradicts CAS case law. The request is also inconsistent with the language of Article 10.8, which clearly deals with the period between sample collection and the commencement of the ineligibility period.

55. In its Appeal Brief, WADA submitted that if the Athlete could not establish that she had consumed Euvanol, the sanction period should be aggravated under Article 10.6 of the FEI ADHRA. On the last day of the hearing, WADA amended its requested relief on the basis that the Athlete had established on the balance of probabilities that she had consumed Euvanol. WADA now submits that the Athlete should receive a two-year sanction.

B. THE ATHLETE'S SUBMISSIONS

56. To make her submissions, the Athlete relied on written and oral evidence, including scientific studies, expert written opinions, articles, a patent application, and the hearing testimony of:

- The Athlete,
- Koen Aerts – the Athlete's business partner and horse agent,
- Dr. Sarah Kimmins – Associate Professor of Physiology and Pharmacology at McGill University,
- Dr. Laurent Lecanu – Pharmacist with four years of clinical residency and scientific expertise, and
- Dr. Paul Simone – Assistant Professor at the University of Memphis in Analytical Chemistry.

57. In summary, the Athlete submitted the following in her defense:

Overview of Facts

58. On or about 19 June 2011, the Athlete had an accident during a jumping competition. She was taken to the Rockyview General Hospital by Koen Aerts.

59. At the hospital, the Athlete was treated for a fractured nose, a septal hematoma, lacerations to the bridge of her nose and a concussion. Due to her injuries, the Athlete

has limited recollection of what medical treatment she received at the hospital. However, the Athlete recalls declining the prescription drugs that doctors were insisting she take for the significant pain to avoid the very situation she now finds herself in. At the time she was discharged, hospital personnel advised her to use a nasal spray once the swelling had abated, so as to decrease the dryness in her nose and thus decrease nasal bleeding.

60. Mr. Aerts, who travels frequently with bottles of Euvanol as a result of his own nasal issues, provided the Athlete with a bottle. The Athlete started using the Euvanol around June 22 or June 23, and used the spray multiple times a day for the next week until she had used the entire bottle.

61. The Athlete, a first-time offender, is an honest and elite athlete committed to athletic excellence and fair play. The Athlete has never knowingly consumed any product containing a banned substance, and was shocked to learn that she had tested positive for methylhexaneamine, a substance she had never heard of before.

Proceeding Before the FEI Tribunal

62. In front of the FEI Tribunal, the Athlete submitted the expert opinion of Dr. Sellers, who stated that geranium oil was an extract of the flower of pelargonium graveolen, a member of the geranium family. One of the elements in geranium oil is methylhexaneamine, and typically about 0.66-1% of geranium oil is methylhexaneamine. Dr. Sellers explained that the 2.8 µg/ml of methylhexaneamine found in the Athlete's sample was extremely low and consistent with accidental exposure. The FEI's expert, Dr. Peter Whitehead, agreed with Dr. Sellers. In its decision, the FEI correctly decided to accept the Athlete's explanation as to how the prohibited substance entered in her body and to sanction her with a reprimand.

Argument

Destruction

63. Fifty-five days after WADA filed its appeal, unbeknownst to the Athlete, the Athlete's urine sample was destroyed. The destruction of the Athlete's sample was a violation of WADA's own ISL. Article 5.2.2.8 of the ISL provides that "if the laboratory has been informed by the testing authority that the analysis of a Sample is challenged, disputed or under longitudinal investigation, the Sample shall be stored frozen and all the records pertaining to the Test of that Sample shall be stored until completion of any challenge."

64. The Panel should give this article a "purposive" or "principled" interpretation, so as to require laboratories to retain samples as long as litigation around the sample is pending.

65. The INRS laboratory failed to retain the Athlete's sample even though litigation around the sample was still pending. This violation of the ISL must result in a dismissal of WADA's appeal. Anything less than a dismissal would harm the CAS justice system and bring into question its integrity.

66. Even if the Panel fails to find that there was a violation of the ISL, the right of the Athlete to have a fair hearing was destroyed with the destruction of her sample. The Athlete was only made aware of the destruction in July 2013. The destruction took away the Athlete's ability to make certain strategic decisions for her defense. If the Athlete had access to the sample, she would have confirmed that the methylhexaneamine was of natural not synthetic origin, run a quantitative analysis, looked for markers related to the Athlete's daily multivitamin, or looked for other sources of contamination.

67. The destruction of the sample should result in a dismissal of the appeal, even if there was no prejudice to the Athlete. Public confidence in the CAS system requires it.

Athlete's Explanation

68. In her Answer, the Athlete submitted that the origin of the methylhexaneamine in her system was the Euvanol she took following her accident. At the hearing, the Athlete contended that the methylhexaneamine might have also come from the daily multivitamin that she was taking at the time. The Athlete expanded on this new explanation in a post-hearing letter and argued that the Panel should find that the source of the methylhexaneamine was (i) the Euvanol; (ii) the multivitamin; or (iii) both.

Studies Establish that Geranium Oil Contains Methylhexaneamine

69. Two independent studies published in peer-reviewed journals have detected methylhexaneamine in geranium oil from plants. (Li et al. in "Identification and Quantification of Dimethlamylamine" in Geranium in Liquid Chromatography Tandem Mass Spectrometry, Analytical Chemistry Insights, 2012: 7, 47-58; Fleming et al., in Analysis and Confirmation of 1,3-DMAA and 1,4-DMAA in Geranium Plants Using High Performance Liquid Chromatography with Tandem Mass Spectrometry at ng/g Concentrations, Analytical Chemistry Insights, 2012: 7, 59-78.) These studies used rigorous methodologies to reach their conclusions.

70. By contrast, the studies relied upon by WADA that conclude geranium oil does not contain methylhexaneamine were deeply flawed in their experimental design and conclusions. Moreover, these studies only tested fifty samples of geranium oil and plants, which is not a significant enough sample size to determine conclusively that all geranium does not contain methylhexaneamine. There are many different sources of naturally occurring geranium oils in the world, and the plant content of methylhexaneamine can be affected by multiple factors such as the site of growth, soil quality, storage and handling.

AFLD Laboratory Experiments Flawed

71. There are many variables and limitations to the AFLD laboratory experiments that highlight why WADA's over-reaching conclusions from them are unfounded. For example, the Euvanol was not tested and analyzed directly. The volunteer did not administer the Euvanol over a course of a few days like the Athlete did. The laboratory

made no effort to compare and control for the physiological differences between the volunteer and the Athlete. Moreover, the experiment was not submitted to review by an independent review board, which would have checked the ethics and the design of the experiment.

72. With regard to the tests on the geranium oil, the experimental details indicate that 75 ng/ml of geranium oil was used for analysis but the total amount injected was not reported. This makes it impossible to judge whether enough geranium oil was loaded to detect methylhexaneamine, and thus it is entirely plausible that the negative result is a reflection of too little starting material. Moreover, the supplier of geranium oil to Merck has confirmed that there are several geographical sites from which it obtains its oil. Based on this information, analysis of multiple batches of oil supplied to Merck would have been required to conclude that no methylhexaneamine was in the geranium oil in the Euvanol consumed by the Athlete.

Methylhexaneamine Found in Athlete's Sample Was from a Natural Source

73. The qualitative mass spectrometry analysis of the urine sample at the INRS laboratory identified methylhexaneamine that is consistent with it being of natural origin from geranium oil. Although the methylhexaneamine mass spectrum of the urine revealed four peaks, the abundance profile was not comparable with the profile seen with the standard of chemical origin for which the profile was expected—25/25/25/25. Instead, in the Athlete's urine analysis, the highest abundance was 500,000 and the lowest 250,000, which means that one of the enantiomers was twice as abundant as the other.

74. There exist plants in nature that produce enantiomeric mixtures of chemical species with a high degree of variability. The fact that the methylhexaneamine in the Athlete's sample displayed all four stereoisomers does not mean it is of synthetic origin.

The Methylhexaneamine Concentration Detected in the Athlete's Sample Does Not Preclude Euvanol as the Source

75. The analytical protocol used in the INRS laboratory to test the Athlete's sample was only qualitative and therefore cannot be used, as Dr. Rabin purported to do, to measure the methylhexaneamine concentration in the Athlete's sample. Any data presented as a quantification of the methylhexaneamine amount found in the urine sample is flawed and irrelevant.

76. Moreover, the INRS laboratory deviated from its standard operating procedures in its preparation of the Athlete's urine sample and violated the guidelines. This calls into question the reliability and accuracy of the results.

77. A patent has been filed explaining that it is possible to extract up to 3% of methylhexaneamine from geranium.

78. Finally, there are pharmacokinetic explanations for the high concentration of methylhexaneamine in the Athlete's sample. In their expert report, Dr. Kimmins, Dr. Lecanu, and Dr. Simone explained that:

> *[I]t appears that two factors concurred to artificially increase the amount of methylhexaneamine present in Angela's Covert's urine. The first being an inhibition of methylhexaneamine degradation by the liver due to birth control pill which led to an accumulation of methylhexaneamine in the blood stream, and the second being the acidic urine pH which led to an increase of the excretion rate and an accumulation of methylhexaneamine present in the blood stream transferred to the urine. We are confident stating that the amount of methylhexaneamine present in Angela Covert's urine is not related to the absorption of a high dose of methylhexaneamine, but is a consequence of the above described pharmacokinetic factors.*

Sanction

79. Pursuant to Article 10.9.2 of the FEI ADRHA, the period of ineligibility ought to run from the date of the sample collection. Further, because the Athlete has suffered significant prejudice in these proceedings and has been financially devastated by them, pursuant to Article 10.8, fairness requires that there be no disqualification of results and prize money.

C. THE SECOND RESPONDENT'S SUBMISSIONS

80. The FEI made limited submissions in these proceedings and focused most actively on the destruction question. In summary, FEI submitted the following arguments:

81. The FEI does not support the Athlete's submission that WADA's appeal should be dismissed without consideration of the merits because the Athlete's sample was destroyed.

82. The INRS laboratory did not violate the ISL when it destroyed the Athlete's sample. A "purposive" interpretation of the ISL is not appropriate in this context. ISL Article 5.2.2.11 states that where "*no challenge, dispute or longitudinal study is pending, the Laboratory shall either make the Samples anonymous for research purposes (with proper consent from the Athlete) or dispose of the Samples.*" As of December 2011, there was no challenge, dispute or longitudinal study pending because all of the parties concerned, including the Athlete, had accepted the reliability of the INRS laboratory's findings with respect to the Athlete's sample. The INRS laboratory properly destroyed the sample per the ISL.

83. Moreover, the Athlete has not been prejudiced by the destruction of her sample. The Athlete relied on the sample to make her case. Additionally, re-testing the sample would

not have assisted the Athlete in determining if geranium oil contains methylhexaneamine and if geranium oil in Euvanol contains methylhexaneamine. The Athlete's expert, Dr. Lecanu, testified that re-testing the sample would not provide the Panel with any new information about the synthetic or natural origin of methylhexaneamine. And although the methylhexaneamine concentration amount in the Athlete's sample from the INRS laboratory's analysis may not be precise, it is reliable, and consequently there is no prejudice.

V. JURISDICTION OF THE CAS

84. Article R47 of the CAS Code provides as follows:

> *An appeal against the decision of a federation, association or sports-related body may be filed with the CAS insofar as the statutes or regulations of the said body so provide or as the parties have concluded a specific arbitration agreement and insofar as the Appellant has exhausted the legal remedies available to him prior to the appeal, in accordance with the statutes or regulations of the said sports-related body.*

85. The Appealed Decision was issued pursuant to the FEI ADRHA.

86. Article 13.1.1 of the FEI ADRHA states as follows:

> *In cases arising from participation in an International Event or in cases involving International-Level Athletes, the decision may be appealed exclusively to CAS in accordance with provisions applicable before such court.*

87. The Event is an International Event. In Article 13.2.3, WADA is listed as one of the bodies that are entitled to appeal in cases under Article 13.2.1.

88. Accordingly, the Panel finds that CAS has jurisdiction in this dispute and WADA has standing to appeal.

VI. ADMISSIBILITY

89. Article 13.6 of the FEI ADRHA provides that:

> *[T]he filing deadline for an appeal or intervention filed by WADA shall be the later of:*
>
> *(a) Twenty-one (21) days after the last day on which any other party in the case could have appealed, or*

(b) Twenty-one (21) days after WADA's receipt of the complete file relating to the decision.

90. In accordance with Article 13.6 of the FEI ADRHA, the Athlete and FEI could have filed an appeal against the Appealed Decision within 30 days of 4 September 2012. Consequently, WADA was required under Article 13.1.1 of the FEI ADRHA to file within 21 days of that last day on which either the Athlete or FEI could have appealed the decision.

91. WADA filed its decision within this time frame, and the Panel finds the Appeal admissible.

VII. APPLICABLE LAW

92. Article R58 of the CAS Code provides as follows:

> *The Panel shall decide the dispute according to the applicable regulations and the rules of law chosen by the parties or, in the absence of such a choice, according to the law of the country in which the federation, association or sports-related body which has issued the challenged decision is domiciled or according to the rules of law, the application of which the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision.*

93. The parties agree that the present dispute is subject to the CAS Code (2013 edition), and that the provisions of Chapter 12 of the Swiss Private International Law Act (PILA) shall apply to the exclusion of any other procedural law, given that the seat of the arbitration is in Switzerland (Article R28 of the CAS Code) and the Athlete is neither domiciled nor habitually resident in Switzerland (Article 176.1 PILA).

VIII. THE PANEL'S FINDINGS ON THE MERITS

A. Destruction Issue

94. The Athlete avers that the Panel should dismiss WADA's appeal before reaching the merits of the case because the Athlete's urine samples were destroyed. The Athlete submits that dismissal is warranted on three independent grounds. First, the INRS laboratory's destruction of the urine samples was a violation of the ISL. Second, the destruction severely prejudiced the Athlete's ability to put forward a full defense. And third, even if the destruction was not prejudicial, it was a fundamental infringement of the Athlete's right to a fair hearing, such that dismissal is still warranted.

95. Considering first the question of the standards infringement, the Panel finds that the destruction of the Athlete's samples was not a specific violation of the ISL. The ISL provides in relevant part that:

5.2.2.7

The Laboratory shall retain frozen the "A" and "B" Sample(s) with an Adverse Analytical Finding or Atypical Finding for a minimum of three (3) months after the final analytical report is transmitted to the Testing Authority or as long as necessary pending the conclusion of a longitudinal study.

5.2.2.8

If the laboratory has been informed by the testing authority that the analysis of a Sample is challenged, disputed or under longitudinal investigation, the Sample shall be stored frozen and all the records pertaining to the Test of that Sample shall be stored until completion of any challenge.

[. . .]

5.2.2.11

In cases where both "A" and "B" Samples have been reported with an Adverse Analytical Finding(s) and no challenge, dispute, or longitudinal study is pending, the Laboratory shall either make the Samples anonymous for research purposes (with proper consent from the Athlete) or dispose of the Samples.

96. The ISL rules clearly require laboratories to retain samples of adverse findings for at least three months. If the laboratory has been informed by the testing authority that the analysis of a sample is "challenged" or "disputed," the laboratory is required to hold onto the sample until "completion of any challenge." However, if no such notification has taken place, the laboratory shall either use the sample for research purposes or dispose of it.

97. Dr. Ayotte testified that the INRS laboratory was not informed by the FEI or the Athlete's counsel that the analysis of the Athlete's samples was being challenged or disputed. Therefore, the INRS laboratory destroyed the sample on 18 December 2012, long after the three-month retention period had expired; in fact, the destruction occurred more than one year after the transmission of the final analytical report to the FEI and to the Athlete (see *supra* para. 10). Given these facts, it is evident that the INRS laboratory complied with the requirements of the ISL. In addition, the Panel finds that the FEI may not be blamed for not having timely advised the INRS laboratory to keep the Athlete's samples. The Athlete did not challenge or dispute any aspect of the INRS laboratory's analytical findings during the FEI proceedings, and the FEI sanctioned the Athlete only with a reprimand, based in part on the FEI's expert agreeing in that proceeding with the Athlete's expert that the level of methylhexaneamine in her sample was very low. Perhaps because of that result and because of the length of time of the FEI proceeding,

the Athlete also did not challenge the INRS laboratory findings in her Answer to the appeal, filed with the CAS on 12 March 2013. In her Answer, the Athlete even relied on those findings, and in particular on the estimated concentration of methylhexaneamine, to support her case that the methylhexaneamine in the samples derived from her use of Euvanol. It was only in a letter dated 28 April 2013 that the Athlete questioned for the first time some aspects of the analytical findings, such as the estimated concentration of methylhexaneamine in the samples. At that time, regrettably, the samples had already been destroyed.

98. The Athlete has requested that the Panel give Article 5.2.2.8 of the ISL a "purposive" interpretation, so as to find that the INRS laboratory was required to retain the sample even though the laboratory had not been given notice to do so. A "purposive" reading of the ISL would only be appropriate if the ISL provision in question contained some ambiguity so that consideration of the underlying purpose of the text would help to clarify the meaning of the provision. However, this is not the case here. Article 5.2.2.8 is clear as to what laboratories are required to do. The Athlete's proposed "purposive" reading would in fact be an inappropriate re-writing of the article.

99. Next, the Athlete requests that the appeal be dismissed because the destruction of the sample prejudicially prevented the Athlete from re-testing the sample and potentially establishing new facts to help in her defense.

100. As the Award explains below, the determinative question on the issue of an appropriate sanction is whether the Euvanol taken by the Athlete was the source of the methylhexaneamine found in the Athlete's sample. The Athlete contends that she might have been able to strengthen her case in this regard by re-testing the sample and producing a quantitative analysis demonstrating that the methylhexaneamine concentration in her sample was lower than the estimate derived from the INRS laboratory's qualitative analysis. In turn, this lower concentration amount would make her case that Euvanol was the source of the methylhexaneamine more plausible.

101. However, besides the fact that the Athlete did not ask for a re-testing during the period of fifteen months when it would have been possible, the Panel is persuaded, as explained in greater detail below, that the INRS laboratory's original analysis and concentration estimate are sufficiently reliable. As a consequence, re-testing the sample would not have provided the Panel with any new evidence that could alter the Panel's finding on this central question. The Athlete has not offered the Panel any compelling evidence or theories that re-testing the sample might elicit new critical findings. The destruction of the sample did not prevent the Athlete from developing any new determinative facts, and therefore the Athlete has not suffered the type of prejudice that warrants a dismissal.

102. Finally, the Athlete submits that destruction of the sample was a violation of substantive justice that alone warrants a dismissal of the appeal. The Panel disagrees. The Athlete has no standalone right to retain her sample. The potential harm that could be visited on an athlete as a result of a premature sample destruction comes only from *actual prejudice* to her right to a fair hearing, not from an inherent right to retain her sample. In other

words, because the Athlete failed to demonstrate prejudice there was no violation of substantive justice.

103. There can be no question that the destruction of the Athlete's sample was an unfortunate occurrence. As the Panel made clear to the parties at the hearing, the best practice for testing authorities would be to ask laboratories to maintain samples from adverse analytical findings for *all* cases as long as there is *any* pending action related to the samples. Without such a rule, an athlete might one day be prejudiced by the destruction of the sample. However, this is not what the ISL currently requires, and this Athlete was not prejudiced by the destruction of the sample. Because the Athlete has failed to establish that the INRS laboratory violated the ISL or that she suffered any prejudice from the destruction, the Panel finds that the appeal cannot be dismissed on the destruction issue. The merits of the case must be reached.

B. Anti-Doping Violation

104. According to Article 2.1 of the FEI ADRHA, the following constitute Anti-Doping Rule Violations:

> *The presence of a Prohibited Substance or its Metabolites or Markers in an Athlete's Sample*
>
> *2.1.1 It is each Athlete's personal duty to ensure that no Prohibited Substance enters his or her body. Athletes are responsible for any Prohibited Substance or its Metabolites or Markers found to be present in their Samples. Accordingly, it is not necessary that intent, fault, negligence or knowing Use on the Athlete's part be demonstrated in order to establish an anti-doping violation under Article 2.1.*
>
> *2.1.2 Sufficient proof of an anti-doping rule violation under Article 2.1 is established by either of the following: presence of a Prohibited Substance or its Metabolites or Markers in the Athlete's A Sample where the Athlete waives analysis of the B Sample and the B Sample is not analyzed; or, where the Athlete's B Sample is analyzed and the analysis of the Athlete's B Sample confirms the presence of the Prohibited Substance or its Metabolites or Markers found in the Athlete's A Sample.*

105. The Athlete does not contest that both her A Sample and B Sample from the in-competition test of 30 June 2011 were positive for methylhexaneamine.

106. Article 4.1 of the FEI ADRHA provides that:

> *These Anti-Doping Rules incorporate the Prohibited List which is published and revised by WADA as described in Article 4.1 of the Code. The FEI will make the current Prohibited List available to each National Federation by means of publication on the www.fei.org website, and each National Federation shall ensure that the current Prohibited List is available to its members and constituents.*

107. Methylhexaneamine is a prohibited substance, and its presence in the Athlete's A and B Samples establishes an anti-doping violation. In particular, methylhexaneamine is a Specified Stimulant included in class S6.b of the Prohibited List.

C. Determination of Sanction

108. Pursuant to Article 10.2 of the FEI ADRHA, because this is the Athlete's first violation, her period of ineligibility would be two years unless the conditions for eliminating or reducing the period as provided by Articles 10.4 (as methylhexaneamine is a "Specified Substance") and 10.5 are met.

109. The relevant language in Articles 10.2, 10.4 and 10.5 provide that:

> *10.2 Prohibited Substances and Prohibited Methods Ineligibility for Presence, Use or Attempted Use, or Possession of*
>
> *The period of Ineligibility imposed for a violation of Article 2.1 (Presence of Prohibited Substance or its Metabolites or Markers), Article 2.2 (Use or Attempted Use of Prohibited Substance or Prohibited Method) or Article 2.6 (Possession of Prohibited Substances and Prohibited Methods) shall be as follows, unless the conditions for eliminating or reducing the period of Ineligibility, as provided in Articles 10.4 and 10.5, or the conditions for increasing the period of Ineligibility, as provided in Article 10.6, are met:*
>
> *First violation: Two (2) years' Ineligibility.*
>
> *[. . .]*
>
> *10.4 Elimination or Reduction of the Period of Ineligibility for Specified Substances under Specific Circumstances*
>
> *Where an Athlete or other Person can establish how a Specified Substance entered his or her body or came into his or her Possession and that such Specified Substance was not intended to enhance the Athlete's sport performance or mask the Use of a performance-enhancing substance, the period of Ineligibility found in Article 10.2 shall be replaced with the following:*

First violation: At a minimum, a reprimand and no period of Ineligibility from future Events, and at a maximum, two (2) years of Ineligibility.

To justify any elimination or reduction, the Athlete or other Person must produce corroborating evidence in addition to his or her word which establishes to the comfortable satisfaction of the hearing panel the absence of an intent to enhance sport performance or mask the Use of a performance enhancing substance. The Athlete's or other Person's degree of fault shall be the criterion considered in assessing any reduction of the period of Ineligibility."

[. . .]

10.5 Elimination or Reduction of Period of Ineligibility Based on Exceptional Circumstances

10.5.1 No Fault or Negligence

If an Athlete establishes in an individual case that he or she bears No Fault or Negligence, the otherwise applicable period of Ineligibility shall be eliminated. When a Prohibited Substance or its Markers or Metabolites is detected in an Athlete's Sample in violation of Article 2.1 (Presence of Prohibited Substance), the Athlete must also establish how the Prohibited Substance entered his or her system in order to have the period of Ineligibility eliminated. In the event this Article is applied and the period of Ineligibility otherwise applicable is eliminated, the anti-doping rule violation shall not be considered a violation for the limited purpose of determining the period of Ineligibility for multiple violations under Article 10.7.

10.5.2 No Significant Fault or Negligence

If an Athlete or other Person establishes in an individual case that he or she bears No Significant Fault or Negligence, then the otherwise applicable period of Ineligibility may be reduced, but the reduced period of Ineligibility may not be less than one-half of the period of Ineligibility otherwise applicable. If the otherwise applicable period of Ineligibility is a lifetime, the reduced period under this Article may be no less than eight (8) years. When a Prohibited Substance or its Markers or Metabolites is detected in an Athlete's Sample in violation of Article 2.1 (Presence of a Prohibited Substance or its Metabolites or Markers), the Athlete

must also establish how the Prohibited Substance entered his or her system in order to have the period of Ineligibility reduced.

110. To obtain the benefit of an ineligibility period reduction or elimination under Article 10.4 or 10.5, the Athlete is required to establish how the Prohibited Substance entered her system. Article 3.1 of the FEI ADRHA requires the Athlete to establish this particular fact on the balance of probabilities.

111. In her Answer filed on 12 March 2013, the Athlete submitted that the prohibited substance entered her system through her use of Euvanol nasal spray. After having initially challenged the Athlete's actual use of Euvanol, at the hearing WADA accepted that the Athlete did use Euvanol in the days after her incident; however, WADA continued to dispute the Athlete's argument that the geranium oil in Euvanol was the source of the methylhexaneamine found in her urine. The Athlete's submission in this regard changed in the late stages of these proceedings, when on the first day of the hearing in September 2013, the Athlete suggested that the multivitamin the Athlete took could have also been the source of the methylhexaneamine.

112. In her post-hearing submission, dated 7 October 2013, the Athlete submitted that if the Panel were to believe that she had been true and frank, the Tribunal would have to find that the source of the methylhexaneamine was from either (1) the geranium oil in Euvanol; (2) the multivitamins; or (3) both.

113. CAS Code R56 provides that "parties shall not be authorized to supplement or amend their requests or their argument . . . after the submission of the appeal brief and of the answer" unless the parties agree otherwise or the President of the Panel orders it on the basis of exceptional circumstances.

114. The Athlete's new submission on the potential role of the multivitamin was not a submission consented to by the parties, nor was it ordered by the Panel. The submission was not timely and therefore cannot be considered by the Panel. Even if the submission had been properly made, the Athlete's arguments pertaining to the multivitamin were devoid of any supporting evidence.

115. Consequently, the central question in this proceeding was whether the Athlete was able to establish on the balance of probabilities that the prohibited substance entered her system through the geranium oil in Euvanol. The Panel concludes that she has not.

116. The Panel is not persuaded by the Athlete's expert opinions and scientific studies that, on the balance of probabilities, geranium oil contains methylhexaneamine. The weight of the scientific evidence is credible and points in the other direction.

117. Furthermore, assuming for a moment that geranium oil does contain methylhexaneamine, the Panel has not been persuaded that the Athlete's use of just one Euvanol bottle over several days before the Event could have produced the high concentration of methylhexaneamine found in the Athlete's system.

118. The Panel has confidence in the analysis conducted by the INRS laboratory. The analysis from the INRS laboratory established that the urinary concentration in the Athlete's sample was 2.8 µg/mL. The Athlete's experts in their written opinion alleged that this amount may be inaccurate because it was generated from a qualitative analysis, not a quantitative one. However, during the hearing, one of the Athlete's experts, Dr. Simone, explained that if he were to re-test the sample, he would expect to find a methylhexaneamine concentration between 1 to 10 µg/mL.

119. Even if the concentration of methylhexaneamine in the Athlete's sample was as low as 1 µg/mL, methylhexaneamine excretion studies establish it is highly unlikely that the methylhexaneamine could come from one bottle of Euvanol consumed through the Athlete's nostrils over the course of a week. The Athlete's arguments relating to possible pharmacokinetic and genetic explanations are too speculative and unsubstantiated to explain this high concentration level.

120. As a result, the Athlete has failed to establish the source of the methylhexaneamine in her sample and cannot rely on Articles 10.4 or 10.5 to reduce or eliminate her sanction. It is therefore a mandatory consequence of Article 10.2 of the FEI ADRHA that the Athlete be sanctioned with two years' ineligibility. The Panel recognizes that the source of the methylhexaneamine remains a mystery and that the Athlete was originally comforted by the fact that the FEI's expert agreed with her expert's analysis of the INRS laboratory results. Even if the Panel was inclined to shorten this period of ineligibility because of the particular circumstances of this case, however, it has no discretion to do so. Without the flexibility to craft an alternative sanction, the Panel sanctions the Athlete with two years' ineligibility.

D. Starting Point of Ineligibility

121. Article 10.9 of the FEI ADRHA establishes when the ineligibility period should commence. In relevant part, Article 10.9 provides that:

> *10.9 Commencement of Ineligibility Period*
>
> *Except as provided below, the period of Ineligibility shall start on the date of the hearing decision providing for Ineligibility or, if the hearing is waived, on the date Ineligibility is accepted or otherwise imposed. Any period of Provisional Suspension (whether imposed or voluntarily accepted) shall be credited against the total period of Ineligibility imposed.*
>
> *10.9.1 Delays Not Attributable to the Athlete or other Person*
>
> *Where there have been substantial delays in the hearing process or other aspects of Doping Control not attributable to the Athlete or other Person, the FEI or Anti-Doping Organization imposing the sanction may start the period of Ineligibility at an earlier date*

commencing as early as the date of Sample collection or the date on which another anti-doping rule violation last occurred.

122. Article 10.9 requires that the period of ineligibility start on the date of the hearing decision, or at an earlier date, as early as the date of sample collection, if there have been substantial delays in the hearing process not attributable to the Athlete.

123. The Athlete's sample was collected on 30 June 2011, but the FEI Tribunal did not issue its decision until 4 September 2012. Because of the Athlete's requests for disclosures as well as other procedural issues, this present Award was issued over one year after the Appealed Decision. The Panel finds that most of the delay in the hearing process cannot be attributed to the Athlete, particularly with respect to the FEI Tribunal, so that it is appropriate that the date of period of ineligibility commence on 30 June 2011.

E. Disqualification of Results

124. Referencing Article 10.8 of the FEI ADRHA, the Athlete has requested that the Panel allow her to maintain her prizes and money that she obtained during her period of ineligibility.

125. Article 10.8 provides that:

In addition to the automatic Disqualification of the results in the Competition which produced the positive Sample under Article 9 (Automatic Disqualification of Individual Results), all other competitive results obtained from the date a positive Sample was collected (whether In--Competition or Out--of--Competition), or other anti--doping rule violation occurred, through the commencement of any Provisional Suspension or Ineligibility period, shall, unless fairness requires otherwise, be Disqualified with all of the resulting Consequences including forfeiture of any medals, points and prizes.

126. Article 10.8, as well as the discretion it provides not to disqualify results, only relates to the period between sample collection and the commencement of the ineligibility period. In this case, there is no such period because the period of ineligibility commences *on* the date of the sample collection.

127. No article in the FEI ADHRA permits athletes to retain the results that they acquired during a period of ineligibility. In fact, Article 9 of the FEI ADHRA provides that "*an anti-doping rule violation in Individual Sports in connection with an In-Competition test automatically leads to Disqualification of the result obtained in that Competition with all resulting Consequences, including forfeiture of any medals, points and prizes.*"

128. In addition, Article 10.10.1 ("Prohibition against Participation during Ineligibility") of the rules explains that:

> *No Athlete or other Person who has been declared Ineligible may, during the period of Ineligibility, participate in any capacity in a Competition or activity (other than authorized anti-doping education or rehabilitation programs) authorized or organized by the FEI or any National Federation or a club or other member organization of the FEI or any National Federation, or in Competitions authorized or organized by any professional league or any international or national level Event organization.*

129. It would be incongruous to this definition of ineligibility if the Panel were to permit the Athlete to retain her results, including medals, points and prizes, during any period of ineligibility, even during a period that has been backdated.

130. Consequently, in accordance with Articles 9 and 10.9 of the FEI ADRHA, the Panel finds that all competitive results obtained by the Athlete from 30 June 2011, including the results of the Event, to 30 June 2013 shall be disqualified with all the resulting consequences including forfeiture of any medals, points, and prizes.

IX. COSTS

131. This appeal is against a ruling of an international federation and thus is governed by Article R65 of the CAS Code.

132. Article R65.2 provides that these proceedings shall be free for the parties, except for initial appeal filing fee, and the fees and costs of the arbitrators, together with the costs of CAS, are borne by CAS. The Court Office filing fee of CHF 1,000, which was paid by WADA, shall be retained by CAS.

133. Article R65.3, in relevant part, provides that:

> *Each party shall pay for the costs of its own witnesses, experts and interpreters. In the arbitral award, the Panel has discretion to grant the prevailing party a contribution towards its legal fees and other expenses incurred in connection with the proceedings and, in particular, the costs of witnesses and interpreters. When granting such contribution, the Panel shall take into account the complexity and the outcome of the proceedings, as well as the conduct and financial resources of the parties.*

134. In the present case, the Panel takes the view that it is reasonable to order that each party shall bear its own legal and other costs.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by the World Anti-Doping Agency on 24 October 2012 is partially upheld.

2. The decision of the Fédération Equestre Internationale Tribunal dated 4 September 2012 is set aside.

3. Ms. Angela Covert is sanctioned with a two-year period of ineligibility, which shall commence on 30 June 2011.

4. All competitive results obtained by Ms. Angela Covert from 30 June 2011 to 30 June 2013, including the results of the CS14*-W event in Spruce Meadows AB (Calgary, Canada), shall be disqualified with all the resulting consequences, including forfeiture of any medals, points and prizes.

5. This award is pronounced without costs, except for the Court Office fee of CHF 1'000 paid by the World Anti-Doping Agency, which shall be retained by the Court of Arbitration for Sport.

6. Each party shall bear her/its own legal costs and other expenses incurred in connection with this arbitration.

7. All other prayers of relief are dismissed.

Seat of Arbitration: Lausanne, Switzerland
Date: 31 January 2014

THE COURT OF ARBITRATION FOR SPORT

President of the Panel
David W. Rivkin

Massimo Coccia
Arbitrator

Graeme Mew
Arbitrator

Nwamaka Ejebe
Ad hoc clerk