

CI Arb YMG

Writing Competition 2020



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Case Material
and Rules

Case Material

You are the Chair of a Tribunal in which a hearing is scheduled for 5 October 2020. Following a pre-hearing conference call to discuss how the hearing will take place in light of the COVID-19 crisis, your Tribunal Secretary has prepared the note below, which includes (I) an overview of the case, (II) the Parties' positions expressed during the conference call and in submissions to the Tribunal, and (III) the next steps you must take.

I. Case Overview

The Claimant, Carrousel Technologies Inc. ("Carrousel"), is a U.S. biotechnology company. The first Respondent, Fleuron S.A. ("Fleuron"), is a French pharmaceutical company. The second Respondent, Saudi Chemicals L.L.C. ("Saudi Chemicals"), is a Saudi pharmaceutical manufacturer.

In June 2015, the Parties signed a partnership agreement (the "PA") with a view to developing, manufacturing and commercializing in Saudi Arabia a vaccine to counter a rare coronavirus, COVID-14. The first cases of COVID-14 were reported in October 2014 in Saudi Arabia and the disease continues to be prevalent there, although no major clusters have been reported outside of Saudi Arabia. While initial tests for a vaccine proved promising, further clinical trials did not produce any breakthroughs.

On 24 December 2019, Fleuron issued a termination notice pursuant to the PA, seeking to wind up the Parties' partnership on grounds that attempts to develop a vaccine for COVID-14 had proven unsuccessful.

Carrousel commenced this arbitration on 2 January 2020, seeking a declaration that the Respondents' termination of the PA was invalid and specific performance of the PA or, alternatively, damages for wrongful termination. It claims that the Parties were on the verge of a COVID-14 breakthrough, but that Fleuron sought to terminate the partnership agreement so that it could use the research conducted pursuant to the Parties' partnership agreement in order to develop and commercialize a vaccine for COVID-19 on its own account. Carrousel also claims that, at around the time of the termination notice, Saudi Chemicals entered into an agreement with a Chinese company to sell the Parties' research to that company – based on little more than press articles reporting that the two companies had entered into a strategic partnership for COVID vaccines.

Carrousel has produced the expert report of Dr. Julie Jordan purporting to show that the Parties' COVID-14 research would play a crucial role in developing a COVID-19 vaccine. It has also produced the witness statement of Billy Bigelow, its Managing Director, who argues that the Parties' COVID-14 research was on the verge of a major breakthrough, and a quantum expert report from Carrie Pipperidge CPA. All Carrousel's witnesses and experts are based in California.

Fleuron claims that it sought to termination because the Parties' COVID-14 research was going nowhere. It has produced witness statements from its chief researcher, Christophe Maé, who explains why this was the case, and its commercial director, Nolwenn Leroy, who alleges that Fleuron's and its efforts to develop a COVID-19 vaccine were in no way related to the PA. Both witnesses are based at Fleuron's headquarters in Toulon. Fleuron also produces the expert reports of epidemiologist Dr. Didier Raoult (based in Marseilles) and quantum expert Reginaldo Rossi (based in Brazil).

Saudi Chemicals' sole witness Dr. Majid Al-Majid, its chairman who lives in Riyadh, rejects any suggestion of Saudi Chemicals' wrongdoing and hints that Fleuron may have been behind the press reports of its partnership

with a Chinese company (which he says are false). Saudi Chemicals also produces a quantum expert from Dr. Nancy Ajram, who is based in Dubai.

The arbitration is seated in Riyadh and is being held under the CIArb Arbitration Rules. The PA is subject to English law. Given the importance of the issues in dispute, the Parties have agreed to a fast-track arbitration “drawing inspiration from the Expedited Procedure Rules Appendix to the SCCA Arbitration Rules” (as recorded in the Terms of Reference).

II. The Parties’ Positions on the Hearing

A hearing is scheduled for the week of 5 October 2020 in Riyadh, Saudi Arabia. On a pre-hearing conference call, the Parties advanced the following positions:

Carrousel maintains that the Tribunal and the Parties must hold an in-person hearing and disregard the evidence of any witness or expert’s failure to attend in person. It advances four arguments: (i) Article 28 of the CIArb Arbitration Rules requires an in-person hearing, (ii) holding an in-person hearing is also required because this is consistent with the substantive law, English law, and Article 33 of the Saudi Arbitration Law, (iii) only an in-person hearing would allow it to put forward its case, particularly in this case where the Respondents’ defences rely heavily on witness and expert evidence, without any underlying documents, and (iv) the Respondents’ claims that their witnesses and experts are not available are not convincing given that Carrousel’s witness and experts are prepared to travel from California to Riyadh.

Fleuron argues that the hearing should be held entirely via videoconference, noting that Article 9(1) of the Expedited Procedure Rules of the SCCA Arbitration Rules provides that a hearing may take place “in person or via video conference, telephone or other suitable means.” In addition, while it concedes that Mr. Maé and Ms. Leroy can easily travel to Riyadh, Fleuron argues that it would be impossible for its experts to attend the hearing because Dr. Raoult recently lost his wife to COVID-19 and is currently in mourning and also that attending the hearing in-person would put an undue burden on Mr. Rossi because Saudi Arabia requires all individuals entering the country from Brazil to enter a 30-day quarantine in full isolation. Should the Tribunal be minded to hold an in-person hearing, Fleuron suggests (i) that the Tribunal allow any witness or expert with a reasonable justification for failing to attend to do so via video conference or, (ii) that the Tribunal does not hear such witnesses or experts, but nonetheless take into consideration their evidence.

Saudi Chemicals maintains that no hearing is necessary and that the case should be decided on the written submissions. If, however, the Tribunal is minded to hold a hearing, Saudi Chemicals seeks an in-person hearing and wishes to postpone until an in-person hearing would be feasible. It suggests that this would certainly be when a COVID-19 vaccine is identified and mass-produced but does not specify whether an in-person hearing would be feasible at any time before a vaccine is discovered. It argues that this is necessary because Dr. Al-Majid is over 90 years old and Ms. Khoury suffers from acute asthma – making both of them risky profiles for COVID-19. Should the Tribunal nonetheless decide to hold a virtual hearing, Saudi Chemicals insists that to ensure the equality of arms, all witnesses and experts must appear virtually (i.e. the Tribunal may not hold a partial virtual hearing and hear some witnesses and experts in person while hearing others via virtually).

III. Next Steps

You have agreed to prepare a draft Procedural Order on the hearing along with a brief note explaining the reasoning for your Procedural Order.

Rules

1. Instructions

- a. You are the Chair of a Tribunal. Following a pre-hearing conference call, your Tribunal Secretary has sent you the foregoing document (the “Case Material”).
- b. On the basis of the Case Material, please draft a procedural order addressing the issues in dispute between the parties in relation to the upcoming hearing (“Procedural Order”) as well as an explanatory note to your co-arbitrators explaining your Procedural Order (“Explanatory Note”) (together, a “Submission”).

2. Participants

- a. All participants must be under the age of 40 years old as of 15 September 2020.
- b. All Submissions must be the original work of their authors.
- c. Only one Submission may be made by a competitor.
- d. No submissions may be co-authored.

3. Editorial Guidelines

- a. Submissions must be in the English language and use British English spelling.
- b. Submissions must use Arial font size 12 for the text and Arial font size 10 for footnotes and be double-spaced with a one-inch margin on all sides.
- c. The Explanatory Note must not exceed two pages. There is no page limit for the Procedural Order.

4. Deadline

- a. All Submissions must be sent in word format to essay@ciarb.org by midnight London time on 1 October 2020.
- b. Each participant should include his or her name, affiliation, location, and title on a separate cover page. The Submission itself should begin on the next page without the participant’s name, affiliation or any other identifying details.

5. Selection of the Winner

- a. Submissions will be judged inter alia on their ability to spot and resolve relevant issues, their succinctness, and their reasoning.
- b. An Editorial Jury composed of **Alexander G. Leventhal ACI Arb**, **Mercy Okiro MCI Arb**, **João Marçal Martins ACI Arb**, **Rainbow Willard**, and **Dharam Jumaní FCI Arb** will select five finalists.
- c. An Honorary Jury composed of **Funke Adekoya FCI Arb**, **Mohamed Abdel Wahab MCI Arb**, and **Michael McIlwrath** will choose the winning submission from among the five finalists selected by the Editorial Jury.

6. Prize

- a. The winner will be invited to speak at the CI Arb YMG virtual seminar held in November 2020.
- b. The winner will also be profiled in the CI Arb YMG newsletter.
- c. The five finalist Submissions shall be published on the CI Arb YMG website.

7. CI Arb YMG Policy

- a. The CI Arb YMG Steering Committee reserves the right to amend, modify, supplement, or interpret these rules at its sole discretion.
 - b. The Case Material, including all people, companies, locations and events, is fictional. Any resemblance to actual persons, places or events is unintended and coincidental.
 - c. The Case Material may not be reproduced without the prior written consent of the CI Arb YMG Steering Committee.
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