β Case

Object of Claim:

Red Corp. ("Red") shall provide the β-7 series to Blue Corp. ("Blue"). In addition, Red shall pay US$5 million as liquidated damages for its breach of obligation to provide the β-7 series.

I. RED SHALL PROVIDE THE β-7 SERIES TO BLUE

Blue submits that:

A. Red is under obligation to provide the β-7 series to Blue (Issue 1);
   a. Red is under obligation to provide the β-7 series to Blue pursuant to the Memorandum of Understanding [Exh.6];
   b. Red is under obligation to provide the β-7 series to Blue pursuant to the Maintenance Agreement [Exh.5];
      i. Red is under obligation to provide the β-7 series to Blue free of charge;
      ii. Even if Red is not obligated to provide the β-7 series to Blue free of charge, it is under obligation to provide them to Blue for value; and

B. Provision of the β-7 series is neither impossible in law or in fact, nor unreasonably burdensome or expensive (Issue 2).

A. Red is under obligation to provide the β-7 series to Blue (Issue 1)

a. Red is under obligation to provide the β-7 series to Blue pursuant to the Memorandum of Understanding [Exh.6]

1. Red will provide the new version as the test version to Blue when Red upgrades the β series using the feedback and data collected at the Blue Village [Exh.6.4].

2. In this case, Red's staff stayed in Blue Village and obtained the feedback and data on α and β series, with which β-7 resolved bugs found in β-6 and the visibility of the display screen which shows the analyzed results was improved [¶33]. Therefore, Red clearly upgraded the β-6 series to the β-7 series using the feedback and data collected at Blue Village.

b. Red is under obligation to provide the β-7 series to Blue pursuant to the Maintenance Agreement [Exh.5]

i. Red is under obligation to provide the β-7 series to Blue free of charge

3. The upgrade from β-6 to β-7 is included in the Services [Exh.5.2] of the Maintenance Agreement provided for the fee as set forth in Exh.5.3, because it contained only the replacement of parts and the program updates. In examining whether the provision of the β-7 series is included in the Services, it is necessary to determine the scope of the term "replace parts and offer program updates".

4. A contract shall be interpreted according to the common intention of the parties having regard to preliminary negotiations between the parties [U4.1(1), 4.3(a)]. Regarding the scope of the Services, Swan, Red's employee, told Sapphire, Blue's employee, that improvements involving only parts or sensor replacements or program updates would be done free of charge [¶22]. Therefore, both Parties had a common intention that the scope of the Services includes improvements which involve only parts or sensor replacements or program updates.

5. In this case, the improvement from β-6 to β-7 involves only the removal of physical sensors and the acquisition of real-time data transmission, whereas the function of AI-driven analytics equipment has been unchanged [¶33]. Therefore, the improvement involves merely the replacement of sensors and program updates.

6. Red may deny its obligation to provide the β-7 series free of charge, claiming that the β-7 series is excluded from Exh.5.2 and Exh.5.6(e) shall be applied, on the ground that the upgrade involves "significant changes to the specifications of the equipment" [¶22]. The point of issue is whether β-7 is equivalent to "the new version of the equipment" as is stipulated in Exh.5.6(e).

7. A contract shall be interpreted according to the common intention of the parties [U4.1(1)] having regard to preliminary negotiations between the parties [U4.3(a)]. In this case, Swan told Ruby, Blue's employee, that "Some improvements are major changes requiring significant changes to the specifications of the equipment, but many improvements only involve improvements on select parts or select sensor replacements or program updates", and "we will replace parts and offer program updates free of charge, … But we will still charge you for any major change" [¶22]. In light of these remarks, "significant changes to the specifications of the equipment" refers to the services excluded from Exh.5.2 and provided under Exh.5.6 "Exclusions". Considering that Exh.5.6(e) is the only paragraph relevant to version updates requiring an extra fee, it could be inferred that both Parties had a common intention that "the new version of the equipment" involves "significant changes to the specifications of the equipment".

8. The next point of issue is the concrete meaning of the term "significant changes to the specifications of the equipment". This statement of Swan shall be interpreted according to Red's intention if Blue knew or could not have been unaware of that intention [U4.2(1)]. During the preliminary negotiation, the Parties recognize the β series as, in essence, an "analytical equipment" [¶21]. Moreover, Red never charged any fees for the previous version upgrades on β series, which involved replacements of the sensors and amended programs [¶34]. Thus, according to the preliminary negotiations [U4.3(a)] and the conduct subsequent to the conclusion of the Maintenance Agreement [U4.3(c)], both Parties had a common understanding that the fundamental component of β series is not the sensors but the analytics. Therefore, "significant changes to the specifications of the equipment" shall be interpreted as significant changes not to the sensors but to the analytics.

9. In this case, the improvements from β-6 to β-7 involve the removal of the sensors and acquisition of real-time transmission of the result of AI-driven analyses [¶33]. As proven above, this change to the sensors could not be considered a significant change for β series, whose essential component is the analytics. As to real-time transmission of the result of analyses, it is not a significant change in comparison with previous introduction of AI to β-6 [¶27], which was done free of charge [¶34]. Introducing AI is a direct improvement on the analytical function, while real-time transmission

of the results of analyses is not an improvement on the analytical function itself. Therefore, this version upgrade does not involve any significant changes to the analytics.

10. Red might still insist that Red is in a position to decide whether or not to grant an update to Blue [¶34] by saying that the last sentence of Exh.5.6 stipulates that "If Red determines that … pursuant to the above". However, Red's such discretion shall be restricted in terms of reasonableness because limitless discretionary power renders the contract grossly unfair by giving Red an excessive advantage. Not only do both Parties not have a common intention on the interpretation of the last sentence of Exh.5.6, but also reasonable persons of the same kind as the Parties would not grant such unfair meaning to the sentence [U4.1(2)].

ii. Even if Red is not obligated to provide the β-7 series to Blue free of charge, it is under obligation to provide them to Blue for value

11. Even if the provision of the β-7 series was under Exh.5.6(e) and was excluded from the regular fee set forth in Article 3, Red would be still obligated to provide the β-7 series to Blue for value pursuant to Exh.5.6 and Exh.5.10.

12. If Red determines that the service requested by Blue is excluded pursuant to Exh.5.6(e), and Blue requests Red to perform such service, the service will be provided under Exh.5.10 [Exh.5.6 the last sentence]. Pursuant to Exh.10, Red is obligated to provide such service by using reasonable efforts to make the price 90% of its then current and standard hourly rates.

13. In this case, Sapphire requested Hawk, Red's employee, that Red provide the β-7 series even if it is not free of charge [¶34]. Since the provision shall be covered by Exh.5.6(e), Red is under the obligation to provide the β-7 series to Blue by making reasonable efforts to make 10% discount from its then current and standard hourly rates.

B. Provision of the β-7 series is neither impossible in law or in fact, nor unreasonably burdensome or expensive (Issue 2)

14. Although Red may argue that the provision of the β-7 series is impossible in law or in fact [U7.2.2(a)], it is neither impossible in law or in fact. The provision is not impossible in law because mere directive [¶34] does not have a legal binding force. Furthermore, the provision is not impossible in fact. Given that export of β-7 is currently not under restriction, Hawk stated that the Ministry of External Trade would stop the export if Red dares to supply the β-7 series to Blue [¶34]. It is merely Hawk's speculation on the possibility of embargo and there is no credibility in the statement [¶34]. Therefore, Red's performance is not virtually impossible and U7.2.2(a) shall not be applied.

15. Furthermore, performing Red's obligation is neither unreasonably burdensome nor expensive [U7.2.2(b)]. Red could have asked or consulted with the Sports Agency for reconsideration of the directive, mentioning the strong and continuous relationship established between Red and Blue. It is neither unreasonably burdensome nor costly to ask for no further enforcement, given that Red has built a very good relationship with the Sports Agency [¶13]. Red could also have asked the Ministry of External Trade for permission at the time when a ban should be imposed [¶34]. Mere consultation

neither is unreasonable burden nor cost. Therefore, the performance of providing Blue with the β-7 series cannot be unreasonably burdensome or expensive, and U7.2.2(b) shall not be applied.

II. RED SHALL PAY US$5 MILLION TO BLUE AS LIQUIDATED DAMAGES FOR ITS BREACH OF OBLIGATION TO PROVIDE THE β-7 SERIES

Blue submits that:

A. Red is liable to pay US$5 million as liquidated damages for having failed to perform its obligation to provide the β-7 series to Blue under the Memorandum of Understanding or the Maintenance Agreement; and
B. Red is not allowed to set off Blue's obligation of US$3 million to Red against its obligation to pay liquidated damages (Issue 3);
    a. Red may not use arbitration to set off its obligation for the damages; and
    b. Even if Red is allowed to use arbitration for the set-off, Blue sets off the US$3 million debt with its claim toward Red.

A. Red is liable to pay US$5 million as liquidated damages for having failed to perform its obligation to provide the β-7 series to Blue under the Memorandum of Understanding or the Maintenance Agreement

16. If Blue's claim for Red's provision of the β-7 series were not granted, Blue would claim for Red's payment of US$5 million as liquidated damages [Exh.5.7] as "other remedy" [U7.2.5(1)].

17. In case Red fails to perform its obligation under Agreement of Exh.5, Red shall pay US$5 million to Blue as liquidated damages [Exh.5.7]. Red has not provided the β-7 series to Blue and there is the non-performance of the obligation based on Exh.5. The harm is predictable as a result of the non-performance [U7.4.4]. Therefore, Red is liable to pay US$5 million as liquidated damages due to its non-performance.

B. Red is not allowed to set off Blue's obligation of US$3 million to Red against its obligation to pay liquidated damages (Issue 3)

a. Red may not use arbitration to set off its obligation for the damages

18. A party may not use arbitration to set off its obligation unless such obligation derives from a contract which has an arbitration clause. The purpose of an arbitration clause is to allow the parties in advance to entrust a dispute to the arbitrator's judgement based on both parties' agreement. If a party was allowed to set off its obligation which stemmed from a contract *without* an arbitration clause, the party would be able to use arbitration to take advantage of the other party by circumventing judicial procedures. In other words, the other party would be forced to resolve a dispute including a dispute on the propriety of a set-off outside judicial procedures, even if the other party did not have such intention.

19. In this case, the right which Red insists on setting off stems from the Purchase Agreement [Exh.7]. However, there is no arbitration clause in this Agreement. Therefore, Red may not use arbitration to set off its obligation for the damages. The arbitral tribunal does not have jurisdiction on

Red's claim for the set-off [Article 23, Section 2 of UNCITRAL Arbitration Rules (as revised in 2010)].

b. Even if Red is allowed to use arbitration for the set-off, Blue sets off the US$3 million debt with its claim toward Red

20. Blue may exercise against Red the available right of set-off up to the time notice of assignment was received; October 1, 2017, pursuant to U9.1.13(2).

21. In order to invoke U9.1.13(2), the requirement is that the right of set-off exists up to the time notice of assignment was received. In this case, it may seem that U9.1.13(2) cannot be applied because the actual right of set-off does not exist in its form at the time of the assignment notification; October 1, 2017 [¶31]. Yellow's non-performance of the Services [Exh.8.2] resulted in the harm for Blue in January 2018 at the latest, when Blue was forced to remove the cameras and sensors and re-install old ones [¶32].

22. However, Blue may invoke U9.1.13(2) and set off its obligation to Red with its claim for the damages toward Yellow, as long as the claim for performance exists up to the time notice of the assignment was received and has changed into claim for damages currently available. In principle, Blue's claim for damages stems from its right to claim for the maintenance because a party alternatively exercises claim for damages when the other party's obligation is not performed. Thus, claim for damages is a changed form of a right to claim for performance, and the two types of rights are essentially the same in terms of being credit.

23. This argument is applied to this case in light of the purport of U9.1.13; to safeguard the obligor from harm due to the assignment of credit [see Comment 1 and 2 of U9.1.13]. In this case, it is hard for Blue, the obligor, if Blue cannot require indemnification when the maintenance work is not provided. Meanwhile, Red would not be unfairly affected by allowing Blue to set off, given that Red and Yellow had been in a close relationship in performing their maintenance [¶23, 30]. Therefore, it suits the purport of U9.1.13 to allow Blue to set off its obligation to Red with its claim for the damages toward Yellow, as long as the claim for performance exists up to the time of the notice and has changed into the right of set-off currently available.

Event Case

Object of Claim 1:
Blue is not under obligation to pay US$2.1 million to Red.

I. BLUE IS NOT IN BREACH OF OBLIGATION UNDER THE AGREEMENT [EXH.9] BY FAILING ITS PROMISES OF APPEARANCES OF BOLT, WILLIAMS AND HOSSZU TO NEGO-ABU CUP (FORMER PART OF ISSUE 1)

Blue submits that:

A. The extent of Blue's obligation to have the athletes appear in Nego-Abu Cup in good condition is not the duty to achieve a specific result, but the duty of best efforts; and
B. Blue did not breach the obligation regarding all of the three athletes.

A. The extent of Blue's obligation to have the athletes appear in Nego-Abu Cup in good condition is not the duty to achieve a specific result, but the duty of best efforts

24. To the extent that an obligation of a party involves a duty of best efforts in the performance of an activity, that party is bound to make such efforts [U5.1.4(2)]. In determining the extent, regard shall be had to the degree of risk normally involved in achieving the expected result [U5.1.5(c)], and the ability of the other party to influence the performance of the obligation [U5.1.5(d)].

25. Regarding U5.1.5(c), for an athlete management company like Blue, to have their athletes participate in a tournament normally involves a high risk of non-performance. It is unjust to impose Blue the duty of achieving a specific result, because unexpected physical/mental disorder of athletes or other harsh circumstances beyond the scope of the management contract normally occurs.

26. Regarding U5.1.5(d), Red was highly capable of having influence on the performance of Blue's obligation; participation of the athletes of track & field, tennis and swimming (the speciality of Bolt, Williams and Hosszu respectively). This is because; (1) those games at issue were to be held in Negoland [Exh.9.2(4)], and (2) Red was responsible for the management of those games [Exh.9.3(1)]. These facts show that Red had a huge influence on the performance of Blue's obligation.

27. For these reasons, there was a high risk regarding the participation of athletes for Blue, and Red does have a huge influence on Blue's performing its obligations to have the players participate. Therefore, Blue's obligation involves only the duty of best efforts.

B. Blue did not breach the obligation regarding all of the three athletes

a. Bolt

28. Blue's obligation is to make best efforts which a reasonable entity would do to have Bolt participate in the Cup as scheduled. Blue made best efforts to have Bolt participate in the Cup.

29. To define Blue's obligation, following two factors shall be considered: (1) The time of performance [U6.1.1], and (2) The scope of the term "good condition".

(1) The time of performance is determinable to the day when Bolt was supposed to appear in the Cup, because Blue is obligated for his "participation" in good condition [U6.1.1(a)].
(2) "Good condition" includes only the athletes' good physical/mental health. A contract shall be interpreted according to the common intention of the parties [U4.1(1)] with regard to the meaning commonly given to terms and expressions in the trade concerned [U4.3(e)]. In sports management business, the term "good condition" is commonly used to mention athletes' sound health condition physically and mentally, because it is necessary and sufficient to ensure their good performance. Meanwhile, it is uncommon to include their good public image in this term. Public image is so vague to determine a party's obligation that it could expand the

scope of the obligation, imposing an excessive obligation on the party. Accordingly, Red and Blue have had the common intention that "good condition" includes only the athletes' sound physical/mental health and not their public image.

30. Following the aforementioned factors, Blue realized Bolt's good condition at the time of his expected participation.

(1) Blue filed a petition for an emergency arbitration for Bolt to mitigate the penalty, resulting in the reduction of the suspension period to just one month from April 16, 2018 [¶40]. At the time of his expected participation, the suspension period was already over and he was able to participate in sound health condition [¶40].
(2) Blue also made a reasonable suggestion to Red that it wait for the arbitral award, however Red obstinately rejected it [¶40] although there was a reasonable measure to wait for it while looking for alternative athletes as well. Since it was against the contract to overrule Red's decision because the game was to be held in Negoland [Exh.9.3(1)], Blue had no choice but to respect Red's opinion. In other words, it was beyond Blue's duty of best efforts to actually prevent Red from cancelling. Therefore, Blue has made best efforts to the same extent that would be made by a reasonable company conducting athlete management in the same circumstances [U5.1.4(2)].

Therefore, Blue performed its duty of best efforts and there is no breach of the obligation.

31. Bolt remained in "good condition" even if the term "good condition" should include public image. The reasons are as following:

(1) Bolt's public image did not experience serious deterioration. The society, which determines Bolt's public image, would understand that Bolt's violation was extremely slight, because Bolt was neither intentional nor negligent about doping [¶40]. In addition, if Red had held a press conference for Bolt to explain as Blue suggested [¶40], Bolt's public image would have recovered even more quickly.
(2) Even if doping undermined Bolt's public image more seriously than other violations, Bolt recovered his public image sufficient to maintain the solemnity of the Cup. Arbitria's Anti-Doping Rules are presumably strictly applied like the World Anti-Doping Code considering their resemblance [¶40]. On that account, the lift of suspension pursuant to the Rules means that the recipient's status meets the rigid standard of doping. In this case, the suspension on Bolt was already lifted a month and a half before the commencement of the Cup [¶40]. Therefore, his participation would no more harm the solemnity of the Cup.

32. Even if Blue's obligation involved a duty to achieve a specific result, Red may not rely on Blue's non-performance of the failure to have Bolt appear to the extent that such non-performance was caused by Red's act [U7.1.2]. When the Article applies, the failure loses the quality of non-performance [Comment 1 of U7.1.2]. In this case, the direct cause of Bolt's non-appearance was Red's decision for his cancellation [¶40]. Blue reasonably proposed to wait for the arbitral award as mentioned above, but Red refused it and hastily cancelled nonetheless [¶40]. Blue could not have prevented Red from cancelling his participation, because Red was responsible for the management of

track & field [Exh.9.2(4), 9.3(1)]. Therefore, Blue's failure loses the quality of non-performance and therefore Blue still did not breach the obligation.

b. Williams

33. Blue performed the duty of best efforts to have Williams appear in the Cup. As an athlete management company, it is impossible for Blue to force her to participate in the Cup if her claim, not to participate, is based on reasonable grounds. In this case, she refused to participate because she was concerned about her health hazards due to the forecasted 40-degree-heat [¶43]. Her determination was quite reasonable for protecting herself, considering that (1) Playing tennis under extreme heat is highly likely to cause heatstroke, (2) Weather forecast expected that the temperatures of Nego-Town, where the venue for tennis is located, would be over 35 degrees Celsius for 10-15 consecutive days and 40 degrees for some days, with the possibility of temperature nearing 40 degrees 50% or more [¶42], and (3) Two Negoland athletes also withdrew from the tournament due to the heat [¶43]. Considering these facts, Blue had no choice but to follow her determination as an athlete management company in the situation that Red decided not to alter the venue for tennis.

34. Even if Blue's obligation involved a duty to achieve a specific result, Red may not rely on Blue's non-performance of the failure to have Williams appear to the extent that such non-performance was caused by Red's act [U7.1.2]. When the Article applies, the failure loses the quality of non-performance [Comment 1 of U7.1.2]. In this case, Red rejected Williams' request to change the venue even though it recognized her firm intention not to play tennis at a temperature near 40 degrees [¶42]. Considering that Blue owns no power to compel her to participate, Williams' non-appearance was actually caused by Red's decision. Therefore, Blue still did not breach the obligation.

c. Hosszu

35. Blue did not breach the obligation to Red regarding a flight-booking for Hosszu, because the obligee to book a first-class flight is not Red but the steering committee. By adding her to the list of Exh.9.2(8) [Exh.10], Blue came under the obligation to Red to have Hosszu participate in the Cup in good condition [Exh.9.3(2)] as a duty to make best efforts. However, the obligation to arrange a first-class flight for her is not included within Blue's obligation to Red, because the notice in Exh.10 was toward the steering committee and Blue mentioned the condition regarding the first-class flight therein, whereas Red was merely the recipient of the notice [Exh.10]. In this case, Emerald, a committee member seconded by Blue, failed to book a first-class flight once [¶44]. However, this mistake itself is not a breach of the obligation to Red, because Red is not the obligee.

36. Even if Red were to be the obligee of Blue's obligation to arrange a first-class flight, Blue made best efforts to perform its obligation to Red. Blue's obligation in regards of Hosszu is to make best efforts to have her appear in the Cup and thereby to enable her to participate on the date of the Cup. In this case, Emerald rearranged a next-day flight, which was still supposed to arrive at Nego-Town in time [¶44]. This complementary measure is an effort as would be made by a reasonable member of the steering committee in the same circumstances [U5.1.4(2)]. However, the volcanic eruption occurred at that night and it is why Hosszu was unable to participate by any means [¶44].

Therefore, Emerald made best efforts by making Hosszu's participation possible, and to avoid or overcome the uncontrollable volcanic eruption was beyond Blue's duty.

II. EVEN IF BLUE IS IN THE BREACH, THE NON-PERFORMANCE SHALL BE EXCUSED OR THE AMOUNT OF DAMAGES SHALL BE REDUCED (LATTER PART OF ISSUE 1)

Blue submits that:

A. Bolt: Regarding Bolt, the amount of damages shall be reduced;
B. Williams: the amount of damages shall be reduced; and
C. Hosszu: Blue shall be excused from the liability for the damages.

A. Bolt: the amount of damages shall be reduced

37. The amount of damages shall be reduced to the extent that the act of the aggrieved party has contributed to the harm [U7.4.7]. U7.4.7 can be applied using the following factors; (1) Red's decision to cancel Bolt's appearance, and (2) The failure to put a note on tickets and/or posters about possible cancellations.

(1) Blue's effort did help shorten the suspension period [¶40] and enabled Bolt's participation. However, despite Blue's several proposals to wait for the arbitral decision and avoid an immediate cancellation, Red persisted in declaring it immediately. This action rendered it impossible for Blue to have Bolt participate, which caused harm including ticket sales and broadcasting rights. Therefore, Red's declaration of Bolt's appearance cancellation has contributed to the harm, and pursuant to U7.4.7, Blue is not responsible for any harm to the extent of Red's contribution to the harm.
(2) Both Red and Blue failed to put a note on tickets, while also recognizing that damages from refund could occur without a note [¶45]. Considering that putting a note would have prevented the incurrence of the obligation for refund, it was reasonable that both Parties put a note to prevent the occurrence of refund. However, both of them failed to put a note, which means Red and Blue evenly contributed to the harm. Therefore, pursuant to U7.4.7, the harm of US$250,000 from the ticket refund will be equally borne by Red and Blue, reducing US$125,000 and making Blue's compensation amount US$625,000.

38. Moreover, "[T]he non-performing party is not liable for harm suffered by the aggrieved party to the extent that the harm could have been reduced by the latter party's taking reasonable steps" [U7.4.8]. In this case, Red caused the harm by giving refund to ticket holders. Even though Red had a possibility to win a lawsuit had it gone to court, Red gave refund without even consulting Blue, considering the reputation risk [¶41]. However, the occurrence of reputation risk was not certain, and even in a lawsuit, Red could have reduced the reputation risk by having other athletes join the tournament and enliven the event. Thus, Red's reasonable action here is to avoid the harm from refund, and Red could have avoided the whole harm by not giving refund. Therefore, pursuant to U7.4.8, Blue is not liable for US$250,000, making the compensation amount US$500,000.

B. Williams: the amount of damages shall be reduced

39. U7.4.7 and U7.4.8 shall also be applied to Williams' case. The cause of harm in this case is the following: (1) The decision not to alter the venue, (2) Failure to give a note on possible cancellation, and (3) The decision to give refund to ticket holders.

(1) Exh.9.3(1) stipulates that "Planning, organization, management… at venues located in Negoland will be the responsibility of Red". Under such situations that could harm the athletes' health, however, Red was obligated to change the venue to where Red could implement anti-heat measures [¶42], which it did not execute. This decision is what caused Williams' cancellation. It is Red's inaction that rendered it impossible for Blue to have Williams participate and caused all the harm. Therefore, Red contributed to the entire harm, and pursuant to U7.4.7, Blue is not responsible for any harm to the extent of Red's contribution to the harm.
(2) As with the case of Bolt, the harm from the refund was also caused by Red's inaction to put a note. Therefore, pursuant to U7.4.7, the harm of US$250,000 from the ticket refund will be equally borne by Red and Blue, reducing US$125,000 for Blue and making the compensation amount US$625,000.
(3) As with the case of Bolt, the harm could have been relieved if Red did not give refund. Therefore, pursuant to U7.4.8, because Red could have avoided the entire harm, Blue is not liable for US$250,000, making the compensation amount US$500,000.

C. Hosszu: Blue shall be excused from the liability for the damages

40. Indeed, the harm from cancellations of tickets and broadcasting rights was caused by Hosszu's absence. However, Hosszu's absence was caused by a volcanic eruption, a natural disaster [¶43], and there is no causal link between Blue's breach of obligations and the harm. Therefore, even if Blue was in the breach of the obligation, the missing of causal link excuses Blue from any liability for the harm.

Object of Claim 2:
Red shall pay US$500,000 to Blue.

III. RED IS OBLIGED TO SHARE THE PROFIT OF US$1 MILLION FROM INTERNET STREAMING WITH BLUE (ISSUE 2)

Blue submits that:

A. "Profits from Event telecasting" [Exh.9.3(8)], which are to be shared equally, include the profit from Red's Internet streaming; and
B. Red's effort to minimize the harm does not justify Red's monopolizing the profit.

A. "Profits from Event telecasting" [Exh.9.3(8)], which are to be shared equally, include the profit from Red's Internet streaming

41. The profit from Red's Internet streaming shall be shared equally with Blue because it is included within the purport of "Profits from Event telecasting" [Exh.9.3(8)]. A contract shall be interpreted according to the common intention of the parties [U4.1(1)] with regards to the nature and

purpose of the contract [U4.3(d)], as well as to the contract or statement as a whole [U4.4]. Red's Internet streaming is included within Exh.9.3(8) because (1) There was a common intention of Red and Blue to include both profits from sales of broadcasting rights and from Internet streaming within Exh.9.3(8), and (2) Exh.9.3(8) involves profits generated within both Arbitria and Negoland, which in this case is the profit from Internet streaming.

(1) Three types of sources of profits; ticket sales, broadcasting rights, and Internet streaming are shown in Exh.13, the table of income and expenses of the 1st Nego-Abu Cup. Since the Parties have agreed on the division of profit in Exh.9.3, the article should entail agreements regarding division of profit on above three types of sources of profits. It shall be understood that division of profit of ticket sales is stipulated on Exh.9.3(4), while division of profits from Internet streaming as well as from selling broadcasting rights is stipulated on Exh.9.3(8) [U4.4].
(2) Taking Exh.9.3 into account as a whole [U4.4], there are two methods to divide cost or profit. If the cost or profit was generated within both countries, it is to be shared equally [Exh.9.3(6)(8)], while if the cost or profit was generated within one of the countries, it is to be owned by that country [Exh.9.3(4)(5)]. In this case, the tournament was videotaped in both countries, and the TV programs were viewed by both people of Arbitria and Negoland [¶48]. Therefore, the profit from Internet streaming was generated within both countries.

Therefore, Red's Internet streaming is included within the purport of Exh.9.3(8) and Red owes the obligation to share the US$1 million with Blue equally.

42. Red may argue that profit from Blue's cable TV channel, Blue TV, should be shared equally as well, because from ¶48 it can be inferred that its contents were acquired through both Arbitria and Negoland. However, Red's statement shall not be granted, because only the profits that could be calculated of amount shall be equally distributed between Red and Blue [U4.4]. In this case, Blue TV did not make any direct profit from contents of Nego-Abu Cup because Blue TV did not make pay-per view services, and the profit cannot be calculated [¶48]. Furthermore, Exh.13 does not show revenue from Blue TV; it shall be understood that both Parties recognized Blue TV not as a means of "Event telecasting" which would generate any calculable profit. Thus, profits to be shared equally in Exh.9.3(8) only include the profits that could be calculated of amount. Therefore, profits from Blue TV shall not be shared.

B. Red's effort to minimize the harm does not justify Red's monopolizing the profit

43. Red may argue that the profit from Internet streaming was a result of Red's efforts to minimize the harm and that they do not have to share it [¶48] because there is a common intention that profits from each Party's independent efforts shall belong to the Party [U4.1(1)] having regard to the purpose of the contract [U4.3(d)]. However, although this principle itself could be valid, this counterargument does not stand because the profit from Red's Internet streaming is not gained by Red's independent efforts. Red used not only the videos of the sports events held in Negoland videotaped by Red but also the videos of the sports events held in Arbitria videotaped by Blue for its Internet streaming [¶48]. Therefore, Red is still obliged to share the profit equally according to the Agreement.

[End]