

**Federal Court Holds that FIFRA Data Compensation
Arbitration Awards are Judicially Enforceable**

A basic principle of data compensation under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) – the enforceability of arbitration awards -- was unequivocally affirmed by the United States District Court for the District of Columbia in a twenty-one page memorandum opinion filed on January 22, 2002. *Cheminova A/S v. Griffin L.L.C.*, 2002 WL 87325 (Huvelle, J.). The *Cheminova* opinion conclusively rejects an argument by a generic pesticide company that courts lack the authority to enforce arbitration awards issued pursuant to FIFRA’s binding arbitration provisions. This important decision dispels any doubt that arbitration under FIFRA is binding and that parties must pay compensation to data owners if they rely on the owners’ data to obtain pesticide registrations. Beveridge & Diamond, P.C. represented *Cheminova* both in its successful arbitration against *Griffin* and in securing this decision confirming the award.

I. Background

FIFRA gives companies the option to obtain an EPA license or “registration” to make and sell a pesticide already registered by EPA by relying on the health and safety data that another company already has provided to EPA. Congress enacted this provision of FIFRA to avoid duplication of expensive scientific and technical work, to ensure protection of the innovative research and development activities of companies that generate these data, and to encourage competition in the pesticide marketplace. As a condition of securing a registration, Congress required those “follow-on” or “me-too” pesticide companies who choose to cite data previously generated by others to agree to compensate data owners for reliance on the owners’ data. If a me-too company chooses this route to registration, then it

must also agree to submit to binding arbitration under FIFRA to set the amount of compensation due the original registrant for use of its data if an agreement cannot be negotiated between the companies.

This binding arbitration procedure was followed in the *Cheminova v. Griffin* case after Griffin obtained a follow-on registration to sell the pesticide malathion by relying on Cheminova's data. After eighteen months of arbitration proceedings and an eleven-day evidentiary hearing, a three-member arbitration panel awarded Cheminova over \$13.6 million in June of 2001. *In the Matter of Arbitration Between Cheminova A/S and Griffin LLC* (AAA Docket No. 23-171-0002099). Griffin failed to pay the award and, as part of its efforts to obtain payment, Cheminova filed an application in federal court in the District of Columbia (the venue of the arbitration) to confirm the award as a district court civil judgment. The amount currently owed by Griffin, including interest as ordered by the arbitration panel, is now over \$14.2 million.

Griffin vigorously opposed Cheminova's application and sought to dismiss the confirmation proceeding. Griffin argued primarily that FIFRA did not expressly provide for judicial confirmation of arbitration awards and that Cheminova was relegated to petitioning EPA to revoke Griffin's registration to sell malathion. Griffin also argued that Cheminova's only potential source of monetary compensation for Griffin's reliance on Cheminova's data would be a Tucker Act claim against the United States.

II. The Court's Decision Upholding the Enforceability of Arbitration Awards Under FIFRA

The *Cheminova* opinion emphatically underscores the common understanding and practice in FIFRA data compensation arbitrations since 1978 that the proceedings are binding

and enforceable. The court relied in large part on the text of FIFRA itself in reaching this conclusion:

In light of FIFRA’s unambiguous language and because judicial enforcement is necessary to effectuate the statute’s express goals, it must be concluded that FIFRA confers jurisdiction on the judiciary to enforce arbitration awards. The statute’s language is clear: if a follow-on registrant chooses to rely on another registrant’s data, and the registrants cannot agree on compensation, FIFRA permits either registrant to initiate “binding arbitration proceedings.” 7 U.S.C. §136a(c)(1)(F)(iii) (emphasis added). This language requires the registrants to determine their respective rights and duties with respect to compensation through arbitration. FIFRA further mandates that the arbitrator’s findings and determinations are “final and conclusive.” Id.

Slip. op. at 6. The court then observed that this language in FIFRA would be superfluous if FIFRA arbitration awards are not judicially enforceable.

Judge Huvelle emphasized that the purpose of FIFRA mandates a finding of enforceability. The court reiterated the Supreme Court’s observation in its 1985 FIFRA decision in *Thomas v. Union Carbide* that “it is evident that Congress linked EPA’s authority to issue follow-on registrations to the original data submitter’s ability to obtain compensation.” *Cheminova*, slip. op. at 9 (quoting *Thomas v. Union Carbide Agricultural Products Co.*, 473 U.S. 568, 582 (1985)). The *Cheminova* opinion reasoned further that “without judicial enforcement, there would be no assurance that an original data submitter would be paid.” Id.

Griffin’s argument that data owners could perhaps bring claims under the Tucker Act against the federal government to secure compensation for data used by follow-on registrants also was rejected. In rejecting this argument, the court noted that the U.S.

Supreme Court previously had ruled that FIFRA's data sharing provisions do not affect a constitutional "taking" for data submitted to EPA after 1978; there were no data of this vintage in the case. *Ruckelshaus v. Monsanto Co.*, 467 U.S. 986, 1006-08 (1984). Slip. op. at 10.

The *Cheminova* decision also rejects the argument that a data owner, such as Cheminova, must first seek cancellation by EPA of the follow-on's registration to sell the pesticide before it seeks to enforce the monetary compensation of an arbitration award. Judge Huvelle wrote that FIFRA's plain meaning shows that cancellation of the registration is an alternate remedy if the follow-on registrant "fails to pay compensation awarded in arbitration." Slip. op. at 11. The court continued, "nothing in FIFRA indicates that this administrative remedy, registration cancellation, supplants or precludes judicial enforcement." *Id.* Moreover, registration cancellation would be an inadequate remedy that fails to meet FIFRA's goal of compensating the data owner. It would be improper, said the court, for a follow-on registrant to be allowed to sell pesticide in the time period prior to cancellation of the registration and "thus enjoy a 'free ride' at a prior registrant's expense." Slip op. at 12.

The final issue before the court was a challenge by Griffin to the constitutionality of judicial enforcement of data compensation arbitration awards. The *Cheminova* court ruled that Griffin had not challenged the merits of the arbitration award, and that therefore there was no basis for the court to address the proper scope of a court's due process review of an arbitration award. The court noted that both of the Supreme Court's decisions interpreting FIFRA in *Union Carbide* and *Monsanto* had upheld the constitutionality of FIFRA and that the Supreme Court in *Union Carbide* specifically

found FIFRA's arbitration scheme constitutionally sound, based on its allowance of judicial review of arbitration findings for fraud, misconduct or misrepresentation.

The District Court's decision in *Cheminova v. Griffin* underscores and buttresses the sound statutory and constitutional basis for binding and enforceable arbitration under FIFRA for determination of data compensation. Both data owners and me-too companies can refocus on the merits of determining appropriate compensation, unfettered by any concerns regarding the validity of the arbitration scheme.

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