

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

MARSEILLE-KLINIKEN AG,
Chamerstrasse 67, 6300 Zug, Switzerland;

Petitioner;

v.

REPUBLIC OF EQUATORIAL GUINEA,
Presidential Palace, Rue du 12 Octobre,
Malabo, Equatorial Guinea;

Respondent.

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DECLARATION OF ULRICH MARSEILLE

1. My name is Ulrich Marseille.
2. The facts set forth in this declaration are true and correct, based upon my personal knowledge.
3. I am over the age of 18 years old and am a citizen and resident of the Federal Republic of Germany.
4. I currently serve as Consultant with Power of Attorney for Marseille-Kliniken AG ("Marseille-Kliniken") and have served in this role since November 12, 2009.
5. Marseille-Kliniken entered into the Management Contract for the Polyclinic La Paz (Bata) (the "Polyclinic") on December 14, 2009 (the "Management Contract") with the Republic of Equatorial Guinea ("Equatorial Guinea"). A true and correct copy of the Management Contract is attached as Exhibit "A-1" to this Declaration.
6. Equatorial Guinea sought this agreement with Marseille-Kliniken as part of an effort to establish an organized health-care system throughout the country at European standards.

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7. The Polyclinic, currently known as the La Paz Medical Center, is located in Bata, Equatorial Guinea. It first opened in 2007 and is the principal referral hospital in Equatorial Guinea. It was a key part of the effort by Equatorial Guinea to develop modern health care infrastructure.

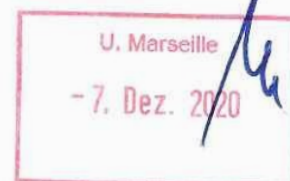
8. Pursuant to the Management Contract, Marseille-Kliniken was to become the operator of the Polyclinic, including responsibility for personnel decisions, training and continuing education for personnel, and development and supply of software for hospital administration.

9. The Management Contract contemplated a take-over process which entailed two phases: (i) Phase A, which involved taking financial control of the Polyclinic, commencing installation of new software systems, management and selection of drugs and supplies, and implementation of new personnel standards; and (ii) Phase B, which involved taking full control of technology, personnel, as well as physical management of the Polyclinic.

10. Compensation for Phase A under the Management Contract was to be an all-inclusive fixed fee of EUR 840,000, not including housing costs, water, electricity, and local transportation for employees.

11. Compensation for Phase B was to be a fixed Management Fee of EUR 700,000 per month (the "Management Fee").

12. After Marseille-Kliniken completed all of its obligations under Phase A of the Management Contract at the beginning of August 2010, Equatorial Guinea began to block Marseille-Kliniken's access to the newly installed software and IT system at the Polyclinic in December 2010. At approximately the same time, the Health Minister of Equatorial Guinea, Mr. Marcelino Oyono Ntutumo, who also served as President (Chair) of the Board of Administration



of the Polyclinic hired Frank Mensching, without informing Marseille-Kliniken, who at the time was also an IT employee of Marseille Kliniken for the Polyclinic.

13. Marseille-Kliniken attempted to continue performing under the Management Contract and expressed serious concerns about its lack of access to the Polyclinic's IT system, but was never able to regain access to the new state-of-art system it had just finished implementing.

14. In conversations during this period, including in January 2011, the Minister of Health of Equatorial Guinea, Marcelino Oyono Ntutumo, indicated to Marseille-Kliniken's local director at the Polyclinic, Fritz Kronenberger, that the government "wanted to get out of the contract." See Award at ¶¶ 179-184.

15. Just three months later, on March 14, 2011, Marseille-Kliniken's local director and the technological director of the Polyclinic – Fritz Kronenberger and Kurt Gerard, respectively – were ousted from the Polyclinic and instructed to leave the country within 48 hours by the Board of Administration for the Polyclinic together with its President (Chair) Dr. Salomon Nguema Owono, who at the time was also the new Minister of Health, having replaced Marcelino Oyono Ntutumo. See Award at ¶ 66.

16. Immediately following the expulsions of their key staff from Equatorial Guinea in March 2011, Marseille-Kliniken withdrew from the Polyclinic and Equatorial Guinea altogether later in same month.

The First Arbitration

17. Following Equatorial Guinea's breach of the Management Contract and expulsion of Marseille-Kliniken's employees from the Polyclinic, Marseille-Kliniken initiated arbitration



against Equatorial Guinea on June 20, 2011, pursuant to the arbitration agreement Article 14 of the Management Contract (the “First Arbitration”).

18. In the First Arbitration, Marseille-Kliniken asserted a partial claim for 90% of the damages it incurred, including payment of that portion of Management Fees, for the period from August 2010 through March 2011 and 90% of the complete Management Fee of EUR 700,000 per month – expenditures to be deducted – for the period from April 2011 through August 2012. Such partial claims are permissible under Swiss law and the claimant may reserve the right to seek the balance of their damages in a later proceeding.

19. The tribunal in the First Arbitration issued an award on December 5, 2014, in which it awarded Marseille-Kliniken a total amount of EUR 14,036,400, plus interest and costs.

20. On May 28, 2015, the Parties entered into a Dispute Settlement Agreement (the “Dispute Settlement Agreement”), pursuant to which they fixed a specific amount to be paid in connection with the settlement of the award issued in the First Arbitration.

The Second Arbitration

21. On January 28, 2015, Marseille-Kliniken initiated a second arbitration (the “Second Arbitration”) against Equatorial Guinea, again under Article 14 of the Management Contract, in which it sought the remaining 10% portion of the Management Fees for the period from August 2010 until August 2012, which it did not initially claim in the First Arbitration, and the full unpaid Management Fees (minus expenses) for the period from September 2012 through January 2020, which represented the full term of the Management Contract, including a 5-year additional term, because the Tribunal decided in the First Arbitration that Equatorial Guinea did not terminate the Management Contract.



22. The Tribunal, noting that the Parties conceded that Article 14 of the Management Contract – the Arbitration Clause – was enforceable and binding under Swiss law, which was the substantive law applicable to the Arbitration, found that it had jurisdiction. See Award at ¶ 139.

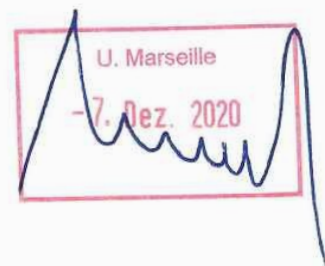
23. After the Parties – both of which were represented by counsel – had fully briefed the matter, the Tribunal conducted an Evidentiary Hearing on December 5, 2016, at which both Parties presented witness testimony.

24. The Tribunal issued the Final Award on December 19, 2017,¹ which granted Marseille-Kliniken the remaining 10% of the Management Fees for the period from August 2010 through August 2012, as described above, and the full Management Fees for the period from September 2012 through January 2015. From these amounts, the tribunal deducted the expenditures it calculated Marseille-Kliniken had saved to determine the amount of damages, which it set at EUR 7,380,611, plus interest at the default rate of 5% established under Swiss law. In addition, the tribunal in the Second Arbitration awarded costs to Marseille-Kliniken in the separate amounts of CHF 92,470.35 and EUR 27,568.58. A true and correct copy of the Award is attached as Exhibit “A-2” to this Declaration.

25. At current exchange rates, the damages and costs awarded to Marseille-Kliniken, not including interest, amount to an approximate total of USD 9,315,309.²

¹ The Final Award was sent to the parties by email on December 19, 2017, followed by a hard copy on December 20, 2017. A true and correct copy of the email communication dated December 19, 2017, from the Tribunal issuing the Final Award to the Parties is attached hereto as Exhibit “A-3” to this Declaration.

² Calculated as of November 17, 2020 using the Currency Converter available at www.OANDA.com.



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I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on December 7th, 2020, in Hamburg, Germany.

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-7. Dez. 2020
Ulrich Marseille

