

**FIFTEENTH ANNUAL**

**WILLEM C. VIS  
INTERNATIONAL COMMERCIAL ARBITRATION MOOT**

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Organized by:

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and

**FIFTH ANNUAL**

**WILLEM C. VIS (EAST)  
INTERNATIONAL COMMERCIAL ARBITRATION MOOT**

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Horace Fasttrack  
Advocate at the Court  
75 Court Street  
Capitol City, Mediterraneo  
Tel. (0) 146-9845  
Telefax (0) 146-9850

18 June 2007

JAMS  
280 Park Avenue  
West Bldg., 28<sup>th</sup> Floor  
New York, NY 10017  
United States of America

Subject: Request for Arbitration

Dear Sirs:

I represent Mediterraneo Wine Cooperative, which, pursuant to Article 2 of the JAMS International Arbitration Rules, hereby submits its arbitral claim against Equatoriana Super Markets S.A. in five copies. I enclose a copy of my power of attorney to represent Mediterraneo Wine Cooperative in this arbitration.

A copy of the arbitral claim has been sent to the respondent. A copy of the receipt from the courier service is attached.

The total claimed is US\$1,360,000. The filing fee of US\$2,000, i.e. US\$1,000 per party, will be transferred to your account upon receipt of your invoice indicating the bank account to which it should be transferred.

Mediterraneo Wine Cooperative nominates Ms. Arbitrator 1 as arbitrator in this dispute. Her curriculum vitae is attached.

The place of arbitration is Vindobona, Danubia, which I understand to be acceptable under Article 14 of your International Arbitration Rules.

Sincerely yours,  
(Signed)  
Horace Fasttrack

Encl:  
Power of Attorney  
Arbitral Claim  
Arbitrator 1 curriculum vitae  
Receipt from courier service

## JAMS

Mediterraneo Wine Cooperative  
Claimant

v.

Equatoriana Super Markets S.A.  
Respondent

### Request for Arbitration and Statement of Claim

#### I. Parties

1. Mediterraneo Wine Cooperative is organized under the laws of the country of Mediterraneo. Mediterraneo Wine Cooperative (hereafter “Wine Cooperative”) has legal personality and can bring legal actions in its own name. It has its principal office at 140 Vineyard Park, Blue Hills, Mediterraneo. The telephone number is (0) 425-1930 and the fax number is (0) 425-1937. The general e-mail address is [wine@off.mb](mailto:wine@off.mb). It is represented in this arbitration by Horace Fasttrack, 75 Court Street, Capitol City, Mediterraneo, Tel. (0) 146-9845, Telefax (0) 146-9850, [fasttrack@law.mb](mailto:fasttrack@law.mb).

2. Wine Cooperative produces and markets wine from grapes grown by its members. It sells wine both domestically and for export.

3. Equatoriana Super Markets S.A. is a corporation organized under the laws of Equatoriana. It has its principal office at 415 Central Business Centre, Oceanside, Equatoriana. The telephone number is (0) 555-7356. The telefax is (0) 555-7359 and the general e-mail address is [info@supermarkets.eq](mailto:info@supermarkets.eq).

4. Equatoriana Super Markets S.A. (hereafter “Super Markets”) is the largest operator of super markets in the country of Equatoriana with about 2,000 outlets. With the wide selection of wines that it sells in its stores, it is the largest retailer of wine in the country.

#### II. Facts

5. From 7 to 10 May 2006 Wine Cooperative participated in a trade fair for the wine industry held in Durhan, Oceania. Super Markets sent a buying team to the fair to look for wines not previously marketed in Equatoriana. In particular, they had plans to mount a major wine promotion during the month of October 2006. While at the fair they showed particular interest in a red wine shown by Wine Cooperative that goes by the name “Blue Hills 2005”. It is a blended wine of several different grape varieties grown in the Blue Hills region, Mediterraneo. Subsequent to the fair there was an exchange of letters between Mr. Cox, sales manager for Wine

Cooperative, and Mr. Wolf, wine buyer for Super Markets, in which there was a discussion as to the amount that might be ordered and the price. (Claimant's Exhibits Nos. 1 – 3)

6. On 10 June 2006 Mr. Wolf sent an order for 20,000 cases of Blue Hills 2005 at a price of US\$68.00 per case, for a total contract price of US\$1,360,000. The wine was to be delivered in four shipments. There was to be a first shipment of 10,000 cases on 10 August 2006. A second shipment of 5,000 cases would follow by 15 September 2006. The third shipment of 2,500 cases was due between 1 and 3 October 2006. Super Markets was to give notice as to when the fourth shipment was to be made. The fourth shipment was contingent upon sales of Blue Hills having reached 12,000 cases by 25 September 2006. (Claimant's Exhibit No. 5)

7. In the letter accompanying the order Mr. Wolf wrote that Super Markets would need an acceptance of the order by 21 June 2006, since it was important for them to be able to plan for the wine promotion. Mr. Wolf wrote that, if there had been no acceptance of the order by then, they would turn to another wine distributor for the wine promotion. (Claimant's Exhibit No. 4)

8. When the letter and order arrived on 10 June 2006 Mr. Cox was absent from the office on a business trip. Since the order as placed by Super Markets was somewhat different from the price quotation that Mr. Cox had made, it was necessary to await his return to authorize its acceptance. Mr. Cox was expected to return on 19 June 2006, which he did. A message to this effect was sent to Mr. Wolf on receipt of the order for the wine by Ms. Sarah Kringle, assistant to Mr. Cox. (Claimant's Exhibit No. 6) Mr. Wolf replied the same day by e-mail asking Ms. Kringle to be sure to have Mr. Cox act upon the order immediately on his return, since Super Markets was operating under a tight time schedule for its wine promotion. (Claimant's Exhibit No. 7)

9. Mr. Cox returned to the office on 19 June 2006, signed the contract, and sent it to Mr. Wolf by the ABC courier service, all in the morning of 19 June 2006. (Claimant's Exhibit No. 8. The copy of the contract in Claimant's Exhibit No. 5 shows Mr. Cox's signature and the date on which he signed it.) The ABC tracking service on the internet shows that it was received at Super Markets on 21 June 2006.

10. In the afternoon of 19 June 2006 Mr. Cox received an e-mail message from Mr. Wolf purporting to withdraw the offer. (Claimant's Exhibit No. 9) The message seems to have been received by the server at Wine Cooperative on 18 June 2006, but the internal network at Wine Cooperative had a service failure on 18 June that was not corrected until the afternoon of 19 June. Mr. Wolf stated in his message that the reason for the purported withdrawal of the offer was that the newspapers in Equatoriana had reported that anti-freeze had been used to sweeten wine produced in the Blue Hills region of Mediterraneo.

11. Mr. Cox immediately answered the same day that the newspaper articles were incorrect. No anti-freeze fluid had been used to sweeten any wine produced in Mediterraneo. (Claimant's Exhibit No. 10) Subsequently, on 15 July 2006 Mr. Cox sent Mr. Wolf a copy of the executive summary of a report prepared by Professor Sven Ericson, Head of Department, Wine Research Institute, State University of Mediterraneo, in regard to the preparation of the vintage years 1996 through 2005 from the Blue Hills region of Mediterraneo. (Claimant's Exhibits Nos. 12 and 13) Professor Ericson is an internationally recognized expert in regard to the vinification processes.

12. The report showed that diethylene glycol had been used as a sweetening agent in the 2005 vintage. The report showed that ethylene glycol, not diethylene glycol, is the common anti-freeze ingredient. The report acknowledged that diethylene glycol was a toxic substance when ingested in substantial quantities. However, the report showed that diethylene glycol, when used in the minute quantities present in the 2005 vintage, is not a dangerous substance. In fact, when used in such almost unrecognizable quantities it is less toxic than is the alcohol in the wine.

13. Nevertheless, Mr. Wolf repeated the purported withdrawal of the offer and added that it would be several years at least before Super Markets would consider purchasing any wine from the country of Mediterraneo. (Claimant's Exhibit No. 14) In a letter of 10 August 2006 Mr. Wolf re-affirmed that the matter was closed and that Super Markets would not consider purchasing any wine from Mediterraneo (Claimant's Exhibit No. 16), even though Mr. Cox had suggested that Wine Cooperative would be able to give Super Markets an unusually good price. (Claimant's Exhibit No. 15)

14. An amount of 3,000 cases of Blue Hills 2005 remains unsold in addition to the 20,000 cases that belong to Super Markets.

### III. Arbitration clause, applicable law

15. The contract has no choice of law clause. Both Equatoriana and Mediterraneo are parties to the United Nations Convention on Contracts for the International Sale of Goods (CISG).

16. Both Equatoriana and Mediterraneo have adopted the text of the UNCITRAL Model Law on Electronic Commerce.

17. The arbitration clause is found in paragraph 13 of the contract. It provides as follows:

“Any dispute, controversy or claim arising out of or relating to this contract, including the formation, interpretation, breach or termination thereof, including whether the claims asserted are arbitrable, will be referred to and finally determined by arbitration in accordance with the JAMS International Arbitration Rules. The tribunal will consist of three arbitrators. The place of arbitration will be Vindobona, Danubia. The language to be used in the arbitral proceedings will be English. Judgment upon the award rendered by the arbitrators may be entered by any court having jurisdiction thereof.”

18. Danubia has adopted the 1985 text of the UNCITRAL Model Law on International Commercial Arbitration with a single amendment to article 8. Equatoriana, Mediterraneo and Danubia are all party to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 (New York Convention).

### IV. Legal Conclusions

19. A tribunal formed in accordance with the JAMS International Arbitration Rules would have jurisdiction over the dispute.

20. Super Markets contracted to purchase 20,000 cases of Blue Hills 2005 from Wine Cooperative at a price of price US\$68.00 per case, for a total purchase price of US\$1,360,000.

21. Super Markets has refused to take delivery of the wine, contrary to CISG, Article 53, and has claimed that no contract existed.

#### V. Appointment of Arbitrator

22. The Claimant appoints the following individual as its party-appointed arbitrator:

Ms. Arbitrator 1  
14 Advocate Way  
Oceanside, Mediterraneo

Tel: (0) 614-1570  
Fax: (0) 614-1571  
Email: arbitrator1@lawyers.mb

#### VI. Relief

23. Mediterraneo Wine Cooperative requests the Tribunal to find:

- that the Tribunal has jurisdiction to consider the dispute between Mediterraneo Wine Cooperative and Equatoriana Super Markets S.A.;
- that the offer made by Equatoriana Super Markets S.A. to purchase 20,000 cases of Blue Hills 2005 from Mediterraneo Wine Cooperative for US\$1,360,000 was irrevocable under CISG, Article 16, until Mr. Cox had sufficient time to accept it after his scheduled return on 19 June 2006;
- that Mr. Cox accepted the offer on behalf of Mediterraneo Wine Cooperative by sending the signed contract on 19 June 2006 which was received on 21 June 2006;
- that Equatoriana Super Markets S.A. contracted to purchase 20,000 cases of Blue Hills 2005 from Mediterraneo Wine Cooperative for US\$1,360,000;
- that Equatoriana Super Markets S.A. has refused to take delivery of the wine in violation of CISG, Article 53; and
- that Equatoriana Super Markets S.A. has not paid the purchase price of US\$1,360,000.

24. Consequently, Mediterraneo Wine Cooperative requests the Tribunal to order Equatoriana Super Markets S.A.:

- to pay Mediterraneo Wine Cooperative the purchase price of US\$1,360,000;
- to pay storage costs of US\$5,000;

- to pay interest at the prevailing market rate in Mediterraneo on the said sum from the date of breach to the date of payment;

- to pay all costs of arbitration, including costs incurred by the parties.

(Signed)  
Counsel

18 June 2007

Claimant's Exhibit No. 1

Mediterraneo Wine Cooperative  
140 Vineyard Park, Blue Hills, Mediterraneo  
telephone number (0) 425-1930  
fax number (0) 425-1937.  
[wine@off.mb](mailto:wine@off.mb)

14 May 2006

Mr. Harald Wolf  
Principal Wine Buyer  
Equatoriana Super Markets S.A.  
415 Central Business Centre  
Oceanside, Equatoriana

Re: Blue Hills 2005

Dear Mr. Wolf:

It was a great pleasure to meet you at the Durhan Wine Fair last week and to have the opportunity to discuss the exciting developments in the wine industry in Mediterraneo with you.

We are proud of the progress that the industry has made in the past twenty-five years. Mediterraneo has a long history of producing wine. However, until 1997 it was rather ordinary and sold only for domestic consumption. Since then the quality of the wine produced by our vigneronns has improved continuously. It was no surprise that two of our whites along with Blue Hills 2005 among our reds won prizes at the Durhan fair. That has become common in recent years.

You indicated a particular interest in Blue Hills 2005 for the wine promotion you are planning. Blue Hills is an outstandingly fine wine in its price category, as was acknowledged by the jury. That makes it an outstanding choice for a promotion of quality wines. You will do very well with it.

Our list price for Blue Hills 2005 is US\$80.00 per case ex cellar. Naturally, we would be pleased to discount the price depending on the quantity you might order.

I look forward to hearing from you again in the near future.

Sincerely,  
(Signed)  
Steven Cox  
Sales Manager

Claimant's Exhibit No. 2

Equatoriana Super Markets S.A.  
415 Central Business Centre  
Oceanside, Equatoriana  
Telephone (0) 555-7356  
Telefax (0) 555-7359  
[info@supermarkets.eq](mailto:info@supermarkets.eq)

22 May 2006

Mr. Steven Cox  
Sales Manager  
Mediterraneo Wine Cooperative  
140 Vineyard Park  
Blue Hills, Mediterraneo

Re: Blue Hills 2005

It was indeed a pleasure to have met you at the Durhan wine fair. We found the entire fair to be an outstanding success. There were many excellent wines on offer. I have to say that yours were among the best in their price bracket. Congratulations on winning prizes for your whites and the Blue Hills 2005.

We are indeed interested in featuring the Blue Hills 2005 in our wine promotion that will take place in October. It has just the right character to take the lead in the promotion.

At the moment we are still in the planning stage for the promotion, so I cannot as yet be definitive as to the amount we would order. However, it should be between 10,000 and 20,000 cases, each 12 x 75 cl.

I would appreciate receiving your quote for such an amount.

Sincerely,  
(Signed)  
Harald Wolf  
Principal Wine Buyer  
Equatoriana Super Markets S.A.

Claimant's Exhibit No. 3

Mediterraneo Wine Cooperative  
140 Vineyard Park, Blue Hills, Mediterraneo  
telephone number (0) 425-1930  
fax number (0) 425-1937.  
[wine@off.mb](mailto:wine@off.mb)

1 June 2006

Mr. Harald Wolf  
Principal Wine Buyer  
Equatoriana Super Markets S.A.  
415 Central Business Centre  
Oceanside, Equatoriana

Re: Blue Hills 2005

Dear Mr. Wolf:

You are making a wise choice in choosing Blue Hills 2005 as the lead wine in your wine promotion. I cannot but comment once again that this is an exceptionally fine wine that will certainly satisfy all of your customers.

For an order of 10,000 cases we would be pleased to grant a 10 percent discount from the list price. That would bring the price to US\$72.00 per case.

Naturally we could do even better for an order of 20,000 cases. For that amount we could give you a discount of 15 percent per case. The net price would be US\$68.00 per case. Transportation from our premises would be at your expense, which we estimate at US\$5,000. We would, of course, be pleased to deliver in several different shipments, if you thought that a single delivery of 20,000 cases would be too much at one time.

Sincerely,  
(Signed)  
Steven Cox  
Sales Manager  
Mediterraneo Wine Cooperative

Claimant's Exhibit No. 4

Equatoriana Super Markets S.A.  
415 Central Business Centre  
Oceanside, Equatoriana  
Telephone (0) 555-7356  
Telefax (0) 555-7359  
[info@supermarkets.eq](mailto:info@supermarkets.eq)

10 June 2006

Mr. Steven Cox  
Sales Manager  
Mediterraneo Wine Cooperative  
140 Vineyard Park  
Blue Hills, Mediterraneo

Re: Blue Hills 2005

Sent by e-mail attachment and by courier

Dear Mr. Cox:

Your price of US\$68.00 per case for 20,000 cases of Blue Hills 2005 is an acceptable price for a wine of that quality.

You will find enclosed our purchase order/contract form with the requisite details. I would ask you to sign it and return it to me promptly. The date of our wine promotion has been moved from October to September, which means that we must now move quickly.

Since we are now under rather intense time pressure to prepare the wine promotion, we would have to turn to another quality wine as the featured item in our promotion if the contract closing were to be delayed beyond 21 June 2006.

Sincerely,  
(Signed)  
Harald Wolf  
Principal Wine Buyer  
Equatoriana Super Markets S.A.

Encl. Purchase Order

Claimant's Exhibit No. 5

Equatoriana Super Markets S.A.  
Purchase Order  
(Extracts only)

1. Equatoriana Super Markets S.A. offers to purchase from Mediterraneo Wine Cooperative the amount of 20,000 cases Blue Hills 2005 at a price of US\$68.00 ex cellar per case for a total price of US\$1,360,000.

2. Delivery shall be made in four installments: 10,000 cases by 10 August 2006; 5,000 cases by 15 September 2006; 2,500 cases between 1 and 3 October 2006; 2,500 cases upon 30 days notice. The fourth delivery is contingent upon a minimum of 12,000 cases having been sold by 25 September 2006.

\*\*\*

13. Any dispute, controversy or claim arising out of or relating to this contract, including the formation, interpretation, breach or termination thereof, including whether the claims asserted are arbitrable, will be referred to and finally determined by arbitration in accordance with the JAMS International Arbitration Rules. The tribunal will consist of three arbitrators. The place of arbitration will be Vindobona, Danubia. The language to be used in the arbitral proceedings will be English. Judgment upon the award rendered by the arbitrators may be entered by any court having jurisdiction thereof.

(Signed)  
Harald Wolf  
Principal Wine Buyer  
Equatoriana Super Markets S.A.

(Signed)  
Steven Cox  
Sales Manager  
Mediterraneo Wine Cooperative

Date: 10 June 2006

Date: 19 June 2006

Claimant's Exhibit No. 6

From: Sarah Kringle  
Sent: 11 June 2006  
To: Harald Wolf  
Subject: Blue Hills 2005

Dear Mr. Wolf,

Your letter to Mr. Cox and the purchase order for 20,000 cases of Blue Hills 2005 that you attached to an e-mail message to him have been received. Mr. Cox is currently absent from the office and will return on 19 June. Your letter and the purchase order will receive his immediate attention on his return.

Sincerely,

Sarah Kringle  
Assistant to Mr. Steven Cox, Sales Manager  
Mediterraneo Wine Cooperative

Claimant's Exhibit No. 7

From: Harald Wolf  
Sent: 11 June 2006  
To: Sarah Kringle  
Subject: Blue Hills 2005

Dear Ms. Kringle:

Thank you for your message. Please be sure to have Mr. Cox act on our purchase order immediately on his return, since we are operating under a narrow time frame for our wine promotion in September.

Sincerely,

Harald Wolf  
Principal Wine Buyer  
Equatoriana Super Markets S.A.

Claimant's Exhibit No. 8

Mediterraneo Wine Cooperative  
140 Vineyard Park, Blue Hills, Mediterraneo  
telephone number (0) 425-1930  
fax number (0) 425-1937.  
[wine@off.mb](mailto:wine@off.mb)

19 June 2006

Mr. Harald Wolf  
Principal Wine Buyer  
Equatoriana Super Markets S.A.  
415 Central Business Centre  
Oceanside, Equatoriana

Re: Blue Hills 2005

Sent by courier

Dear Mr. Wolf:

You will find enclosed a signed copy of the contract you sent me. Although you provided that the final 2,500 cases were contingent on the sale of 12,000 cases by 25 September, I am pleased to agree to the price I quoted for 20,000 cases. I am sure that with the promotion you have planned, you will be taking all 20,000 cases and coming back for more.

As you know, this is the first time our wine from Mediterraneo will be marketed in Equatoriana. I am so pleased that you are the launch customer.

Sincerely,  
(Signed)  
Steven Cox  
Sales Manager, Mediterraneo Wine Cooperative

Claimant's Exhibit No. 9

From: Harald Wolf  
Sent: 18 June 2006  
To: Steven Cox  
Subject: Blue Hills 2005

Dear Mr. Cox:

We regretfully inform you that we are withdrawing the offer to purchase 20,000 cases of Blue Hills 2005 made by us on 10 June 2006.

All of this morning's newspapers in Equatoriana had a prominent article about the scandal in the production of wine in Mediterraneo. The articles reported that anti-freeze had been used to sweeten wine in your country. It particularly mentioned that the part of Mediterraneo in which the action was most prevalent was the Blue Hills area.

I hardly need to say that we cannot sell wine to our customers that has been adulterated in that way. Moreover, we were planning to feature Blue Hills 2005 in our wine promotion, which would have created for us a commercial catastrophe going far beyond our sales of wine.

Sincerely,

Harald Wolf  
Principal Wine Buyer  
Equatoriana Super Markets S.A.

Claimant's Exhibit No. 10

Mediterraneo Wine Cooperative  
140 Vineyard Park, Blue Hills, Mediterraneo  
telephone number (0) 425-1930  
fax number (0) 425-1937.  
[wine@off.mb](mailto:wine@off.mb)

19 June 2006

Mr. Harald Wolf  
Principal Wine Buyer  
Equatoriana Super Markets S.A.  
415 Central Business Centre  
Oceanside, Equatoriana

Re: Blue Hills 2005

Sent by e-mail attachment and by courier

Dear Mr. Wolf:

Your message of today comes as a great shock and disappointment. The newspaper articles to which you refer are undoubtedly based upon an article that originally appeared in "Mediterraneo Today" last week. Mediterraneo Today is a sensation seeking newspaper that is always looking for scandal, and that will make it up if necessary.

The statement that anti-freeze fluid has been used in the production of wine from the Blue Hills region of Mediterraneo is completely incorrect. We are considering bringing a legal action against Mediterraneo Today for its outrageous conduct in this matter.

In preparation for the law suit we are considering, we have contacted Professor Sven Ericson to investigate the entire production process of wine from the Blue Hills region and to prepare an expert report. You may be aware that Professor Sven Ericson is the head of the Wine Research Institute at the Mediterraneo State University and is a world renowned leader in research into improving wine production. I will send you a copy of his report as soon as it has been prepared.

In the meantime, I must note that I signed your contract form and sent it to you this morning by ABC courier. I note from the ABC tracking site that it should be delivered to your office tomorrow, which is within the time you indicated for acceptance. I understand from our lawyers that we have a completed contract. We will be shipping the first delivery of Blue Hills 2005 in accordance with the details contained in the contract. I am sure that you will have a successful wine promotion with Blue Hills 2005 as your featured wine.

Sincerely,  
(Signed)  
Steven Cox  
Sales Manager, Mediterraneo Wine Cooperative

Claimant's Exhibit No. 11

Equatoriana Super Markets S.A.  
415 Central Business Centre  
Oceanside, Equatoriana  
Telephone (0) 555-7356  
Telefax (0) 555-7359  
[info@supermarkets.eq](mailto:info@supermarkets.eq)

20 June 2006

Mr. Steven Cox  
Sales Manager  
Mediterraneo Wine Cooperative  
140 Vineyard Park  
Blue Hills, Mediterraneo

Re: Blue Hills 2005

By e-mail attachment and courier

Dear Mr. Cox:

I acknowledge receipt of your letter of yesterday attached to your message to me.

I appreciate your confirmation that no wine from the Blue Hills region contains anti-freeze fluid. The report from Professor Sven Ericson will be received and read with interest.

However, what is of immediate importance is that our offer to purchase 20,000 cases of Blue Hills 2005 has been withdrawn. You have already received the withdrawal. It is irrelevant that your acceptance may be delivered tomorrow. Our lawyers have told us that there is no completed contract.

I might remark that, even if it proves to be the case that Blue Hills 2005 contains no anti-freeze fluid, we can hardly feature it as the lead wine in our wine promotion. With the bad publicity that wine from the Blue Hills region has received in the Equatoriana newspapers, it is no longer has the qualities necessary to be an "outstanding choice for a promotion of quality wines", to quote from your letter of 14 May 2006. I request that you do not ship any of it to us because we will not take delivery.

Sincerely,  
(Signed)  
Harald Wolf  
Principal Wine Buyer  
Equatoriana Super Markets S.A.

Claimant's Exhibit No.12

Mediterraneo Wine Cooperative  
140 Vineyard Park, Blue Hills, Mediterraneo  
telephone number (0) 425-1930  
fax number (0) 425-1937.  
[wine@off.mb](mailto:wine@off.mb)

15 July 2006

Mr. Harald Wolf  
Principal Wine Buyer  
Equatoriana Super Markets S.A.  
415 Central Business Centre  
Oceanside, Equatoriana

Re: Blue Hills 2005

Sent by e-mail attachment and by courier

Dear Mr. Wolf:

Following my last letter to you about the false allegation that anti-freeze fluid had been used in the production of wines from the Blue Hills region of Mediterraneo, I enclose a copy of the report prepared by Professor Sven Ericson.

It should make it clear that Blue Hills 2005 has not been adulterated in any way. We refrained from shipping the 20,000 cases to you because of the statement in your letter of 20 June 2006 that you would refuse to take delivery. We are still holding the wine for you and request your shipping directions.

Sincerely,  
(Signed)  
Steven Cox  
Sales Manager  
Mediterraneo Wine Cooperative

Encl. Professor Ericson report

## Claimant's Exhibit No. 13

### Investigation into the Production of Wine In the Blue Hills Region, Mediterraneo

#### Executive Summary

An article was published in Mediterraneo Today on 13 June 2006 in which it was stated that anti-freeze fluid had been used in the production of wine in the Blue Hills wine region in Mediterraneo. Further articles in subsequent editions of Mediterraneo Today described the production methods used as a "scandal". Other newspapers in Mediterraneo and abroad published articles based on those that had appeared in Mediterraneo Today.

The majority of the members of Mediterraneo Wine Cooperative are grape growers in the Blue Hills region. There are also members in the other wine districts in Mediterraneo. It is the foremost distributor of wines produced in Mediterraneo.

I was instructed by Mediterraneo Wine Cooperative to conduct an investigation into the methods used in the production of wine in Blue Hills. In conducting my investigation I reviewed the production records of Mediterraneo Wine Cooperative for the vintage years 1996 through 2005. Furthermore, chemical analysis of sample bottles from each of the vintage years and labels for the wine grown in Blue Hills was conducted in my laboratory. In particular, a gas chromatograph with hydrogen flame ionization detector (Varian Aerograph 600 D) was used to detect the presence of ethylene glycol or diethylene glycol.

Both the records and the chemical analysis indicated that no sweetening agents had been used in any vintage year other than 2005. The growing season in 2005 had been unusually cold and wet. Consequently, the grapes had not ripened sufficiently to produce normal amounts of natural sugars. It is normal to introduce a sweetening agent to bring the must to the proper level for fermentation. Cane or beet sugar is often used, and is wholly lawful, for example, in Bordeaux, but there are other sweetening agents that can be used.

The records show that 500 grams of diethylene glycol per 2,500 litre fermentation vat (= 3,333 75 cl bottles) were used in the fermentation process of Blue Hills 2005, giving a concentration of 0.15g diethylene glycol per 75 cl bottle of wine. The chemical analysis of the wine confirmed those results.

Diethylene glycol is often confused by non-specialists with ethylene glycol to which it is related but from which it is chemically wholly distinct; for example, carbon monoxide is poisonous but carbon dioxide is a significant component of the air we breathe. Ethylene glycol is the principal ingredient in most brands of anti-freeze used in automobile radiators. It is highly toxic. A fatal dose to human adults is considered to be about 30 centiliters and consumption of smaller amounts may lead to a medical emergency necessitating an ambulance, a hospital visit and stomach pumping. If ethylene glycol had been used in the production of wine from the Blue Hills region, there would have been a significant number of resulting hospital visits and, most probably, deaths.

Diethylene glycol can also be used as an anti-freeze fluid, since it, like ethylene glycol, lowers the temperature at which water freezes. However, that is a relatively rare use for it.

Although diethylene glycol is toxic when consumed in excessive amounts, its toxicity is considerably lower than that of ethylene glycol. More specifically, it is about one one-thousandth as toxic. There is some controversy as to the exact amount of diethylene glycol that can be consumed safely. However a possible lethal dose for humans is considered between 0.44-0.45cm<sup>3</sup>/kg body weight (US Environmental Health and Safety Authority). The concentrations of diethylene glycol used in producing Blue Hills 2005 and the other wines from the Blue Hills region (0.15 grams per 75 centiliter bottle) would be equal to 0.002 grams of diethylene glycol per kg body weight for a 70 kg individual.

It would, therefore, be necessary to consume an extraordinary amount of Blue Hills 2005 before there would be any health concerns from the diethylene glycol. To put this into context, the alcohol in the wine would induce toxic effects prior to those resulting from the diethylene glycol.

(Signed)  
Professor Sven Ericson  
Head, Wine Research Institute  
Mediterraneo State University

13 July 2006

Claimant's Exhibit No. 14

Equatoriana Super Markets S.A.  
415 Central Business Centre  
Oceanside, Equatoriana  
Telephone (0) 555-7356  
Telefax (0) 555-7359  
[info@supermarkets.eq](mailto:info@supermarkets.eq)

25 July 2006

Mr. Steven Cox  
Sales Manager  
Mediterraneo Wine Cooperative  
140 Vineyard Park  
Blue Hills, Mediterraneo

Re: Blue Hills 2005

Dear Mr. Cox:

Thank you for sending me the report from Professor Sven Ericson. I note that his opinion is that there would be no health consequences from consumption of Blue Hills 2005, even though diethylene glycol has been used in its production.

I must repeat, however, that what is of immediate importance is that our offer to purchase 20,000 cases of Blue Hills 2005 has been withdrawn.

It is bothersome to read in Professor Ericson's report that diethylene glycol can be used as an anti-freeze fluid and, I gather, is so used on occasion. Even though there may be no health concerns associated with the quantities used in the Blue Hills 2005 (which I do not accept), it would be inviting a commercial disaster to feature the wine in one of our promotions after the negative publicity it has received in Equatoriana.

I regret to say that it will be several years at best before we will be able to consider purchasing any wines from Mediterraneo.

Sincerely,  
(Signed)  
Harald Wolf  
Principal Wine Buyer  
Equatoriana Super Markets S.A.

Claimant's Exhibit No. 15

Mediterraneo Wine Cooperative  
140 Vineyard Park, Blue Hills, Mediterraneo  
telephone number (0) 425-1930  
fax number (0) 425-1937.  
[wine@off.mb](mailto:wine@off.mb)

30 July 2006

Mr. Harald Wolf  
Principal Wine Buyer  
Equatoriana Super Markets S.A.  
415 Central Business Centre  
Oceanside, Equatoriana

Re: Blue Hills 2005

Dear Mr. Wolf:

I regret that you state in your letter of 25 July 2006 that it will be several years before you would be able to consider purchasing any wines from Mediterraneo.

As you saw yourself at the Wine Fair in Durhan, we have many excellent wines in Mediterraneo. Blue Hills 2005 is an excellent wine. There are many others that you would be extremely happy with. It is not the only one that you might consider.

If you were to place an order with us, we should be able to give you an unusually good price. We desire very much to be able to bring our wines to Equatoriana.

Sincerely,  
(Signed)  
Steven Cox  
Sales Manager  
Mediterraneo Wine Cooperative

Claimant's Exhibit No. 16

Equatoriana Super Markets S.A.  
415 Central Business Centre  
Oceanside, Equatoriana  
Telephone (0) 555-7356  
Telefax (0) 555-7359  
[info@supermarkets.eq](mailto:info@supermarkets.eq)

10 August 2006

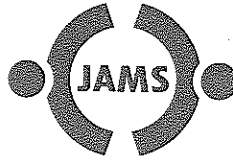
Mr. Steven Cox  
Sales Manager  
Mediterraneo Wine Cooperative  
140 Vineyard Park  
Blue Hills, Mediterraneo

Re: Blue Hills 2005

Dear Mr. Cox:

I am sorry, but the matter is closed. We will not be purchasing any wines from Mediterraneo for at least the next several years.

Sincerely,  
(Signed)  
Harald Wolf  
Principal Wine Buyer  
Equatoriana Super Markets S.A.



THE RESOLUTION EXPERTS

21 June 2007

Horace Fasttrack, Esq.  
Advocate at the Court  
75 Court Street  
Capitol City, Mediterraneo

*Re: Mediterraneo Wine Cooperative v. Equatoriana Super Markets S.A.*  
*JAMS International Arbitration Case No. 0123456789*

Dear Mr. Fasttrack:

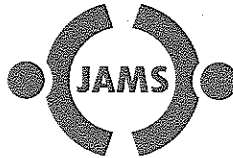
We acknowledge receipt of your letter of 18 June 2007 enclosing the requisite number of copies of a Request for Arbitration together with proof of service upon the Respondent, Equatoriana Super Markets S.A. Our invoice is enclosed for the filing fee of US \$2,000. Payment may be wired to JAMS c/o Bank of America, Orange, California, USA, Account No. 7609999.

We further note the appointment of Ms. Arbitrator 1 as the Claimant's party-appointed arbitrator.

JAMS will also notify the Respondent of the filing of the Request for Arbitration.

Sincerely,

Sharon O'Shaughnessy  
Case Manager



THE RESOLUTION EXPERTS

21 June 2007

Equatoriana Super Markets S. A.  
415 Central Business Centre  
Oceanside, Equatoriana

*Re: Mediterraneo Wine Cooperative v. Equatoriana Super Markets S.A.*  
*JAMS International Arbitration Case No. 0123456789*

Dear Sir:

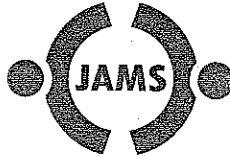
Please be informed that JAMS has received the enclosed Request for Arbitration and Statement of Claim ("the Request") dated 18 June 2007. The Request names Equatoriana Super Markets S.A. as party-Respondent. In accordance with Article 4 of the JAMS International Arbitration Rules, Equatoriana has 30 days to deliver to the Claimant a Statement of Defense and to name its party-appointed arbitrator.

The Claimant's address is set forth in the Request. All correspondence should be copied to JAMS to the attention of:

Sharon O'Shaughnessy  
Case Manager  
JAMS  
280 Park Ave., West Bldg., 28<sup>th</sup> Floor  
New York, NY 10017

Sincerely,

Sharon O'Shaughnessy



THE RESOLUTION EXPERTS

## APPOINTMENT OF ARBITRATOR

21 June 2007

Ms. Arbitrator 1  
14 Advocate Way  
Oceanside, Mediterraneo

Re: Mediterraneo Wine Cooperative v. Equatoriana Super Markets S.A.  
JAMS International Arbitration Case No. 0123456789

Dear Ms. Arbitrator 1:

Mediterraneo Wine Cooperative has invited you to serve as its party-appointed arbitrator for the above-referenced matter. Please note that this arbitration will be conducted in accordance with JAMS International Arbitration Rules and Procedures.

I have attached a full service list for this matter for your review. I would appreciate it if you could please provide me with any written disclosures you deem necessary at your earliest convenience so that I may distribute that information to the parties.

Thank you very much, and if you have any questions please do not hesitate to contact me directly at 212-607-8888.

Sincerely,

Sharon O'Shaughnessy  
Case Manager

cc: Horace Fasttrack

**Ms. Arbitrator 1  
14 Advocate Way  
Oceanside, Mediterraneo**

29 June 2007

Ms. Sharon O'Shaughnessy  
Case Manager  
JAMS  
280 Park Ave., West Bldg., 28<sup>th</sup> Floor  
New York, NY 10017

*Re: Mediterraneo Wine Cooperative v. Equatoriana Super Markets S.A.  
JAMS International Arbitration Case No. 0123456789*

Dear Ms. O'Shaughnessy:

In accordance with Article 7.6 of the JAMS International Arbitration Rules, I acknowledge receipt of JAMS' letter of 21 June 2007, and hereby accept appointment as arbitrator in the above captioned arbitration. My address appears above. I can be reached at telephone number (0) 614-1570, fax number (0) 614-1571 and email: [arbitrator1@lawyers.mb](mailto:arbitrator1@lawyers.mb).

I have reviewed the Service List enclosed with your letter and have nothing to disclose. In accordance with Article 8 of the Rules, I confirm my independence and impartiality.

Sincerely,

Ms. Arbitrator 1

Horace Fasttrack  
Advocate at the Court  
75 Court Street  
Capitol City, Mediterraneo  
Tel. (0) 146-9845  
Telefax (0) 146-9850

10 July 2007

Ms. Sharon O'Shaughnessy  
Case Manager  
JAMS  
280 Park Avenue  
West Bldg., 28<sup>th</sup> Floor  
New York, NY 10017  
United States of America

Re: Mediterraneo Wine Cooperative v. Equatoriana Super Markets S.A.  
Amendment to Statement of Claim  
JAMS International Arbitration Case No. 0123456789

Dear Ms. O'Shaughnessy:

I refer to my letter of 18 June 2007 by which I conveyed to you the request for arbitration and the statement of claim in the above titled arbitration and to your letter of 21 June 2007 acknowledging receipt.

In the meantime Mediterraneo Wine Cooperative has received a notice of the commencement of action by Equatoriana Super Markets S.A. in the Commercial Court of Vindobona, Danubia requesting a declaration that no arbitration agreement exists between it and Mediterraneo Wine Cooperative. This is in breach of JAMS International Arbitration Rules Article 17.3.

I attach an amendment to the Request for Arbitration bringing this matter to the attention of the Tribunal to be appointed.

Sincerely yours,  
(Signed)  
Horace Fasttrack

## Amendment to Request for Arbitration

JAMS

Mediterraneo Wine Cooperative  
Claimant

v.

Equatoriana Super Markets S.A.  
Respondent

JAMS International Arbitration Case No. 0123456789

### Amendment to Request for Arbitration and Statement of Claim

1. Pursuant to JAMS International Arbitration Rules, Article 5.1, Mediterraneo Wine Cooperative hereby submits an amendment to its Request for Arbitration and Statement of Claim.

2. On 6 July 2007 Mediterraneo Wine Cooperative received a notice from the Commercial Court of Vindobona, Danubia, that Equatoriana Super Markets S.A. had commenced an action in that court requesting it to issue a decision stipulating that no arbitration agreement existed between Equatoriana Super Markets S.A. and Mediterraneo Wine Cooperative in regard to the “alleged sale of 20,000 cases of Blue Hills 2005”. The petition to the Commercial Court requested it to issue an order that, pending decision of the court, Mediterraneo Wine Cooperative should be ordered not to pursue an arbitration pursuant to the “alleged arbitration clause”. JAMS was not named in the petition to the Commercial Court. The action was stated to rest upon the Danubian Arbitration Law, Article 8, which provides:

#### Article 8. Arbitration agreement and substantive claim before court

(1) A court before which an action is brought in a matter which is the subject of an arbitration agreement shall, if a party so requests not later than when submitting his first statement on the substance of the dispute, refer the parties to arbitration unless it finds that the agreement is null and void, inoperative or incapable of being performed.

(2) Prior to the constitution of the arbitral tribunal, an application may be made to the court to determine whether or not arbitration is admissible.

(3) Where an action referred to in paragraph (1) or (2) of this article has been brought, arbitral proceedings may nevertheless be commenced or continued, and an award may be made, while the issue is pending before the court.

3. The tribunal may note that paragraph (2) of Article 8 is an addition to the UNCITRAL Model Law on International Commercial Arbitration, which has been adopted by Danubia without other

amendment. Paragraph (3) specifically permits the arbitral proceedings to commence and even that an award may be made while the issue is pending before the court. It is expected that the Commercial Court will refuse the request to order Mediterraneo Wine Cooperative not to pursue the arbitral proceedings pending a decision by the Court as to whether there is an arbitration agreement.

4. By bringing this action in the courts of Danubia the respondent, Equatoriana Super Markets S.A., has breached its agreement contained in the JAMS International Arbitration Rules, Article 17.3, which provides:

“17.3 By agreeing to arbitration under these Rules, the parties will be treated as having agreed not to apply to any court or other judicial authority for any relief regarding the Tribunal’s jurisdiction, except with the agreement in writing of all parties to the arbitration or the prior authorization of the Tribunal or following the latter’s ruling on the objection to its jurisdiction.”

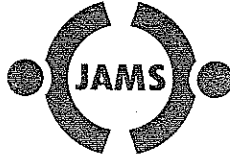
5. Mediterraneo Wine Cooperative requests the tribunal to declare that the respondent, Equatoriana Super Markets S.A., is in violation of its obligations towards the claimant and towards the tribunal by commencing litigation in the Commercial Court of Vindobona, Danubia. Mediterraneo Wine Cooperative draws the attention of the tribunal to Article 27.3 of the JAMS International Arbitration Rules:

If a party, without showing good cause, fails to comply with any provision of, or requirement under, these Rules or any direction given by the Tribunal, the Tribunal may draw the inferences that it considers appropriate.

6. The tribunal is requested to order Equatoriana Super Markets S.A. to terminate its litigation in the court until the tribunal has had an opportunity to rule as to whether it has jurisdiction. The tribunal is further requested to order Equatoriana Super Markets S.A. to pay the full costs of the litigation in the Commercial Court, including all of the expenses of representation incurred by Mediterraneo Wine Cooperative.

(Signed)  
Counsel

10 July 2007



THE RESOLUTION EXPERTS

13 July 2007

Equatoriana Super Markets S. A.  
415 Central Business Centre  
Oceanside, Equatoriana

*Re: Mediterraneo Wine Cooperative v. Equatoriana Super Markets S.A.*  
JAMS International Arbitration Case No. 0123456789

Dear Sir:

Please be informed that JAMS has received the enclosed Amendment dated 10 July 2007 to the Request for Arbitration and Statement of Claim dated 18 June 2007. The Request for Arbitration and Statement of Claim was previously sent to you under cover letter dated 21 June 2007. In accordance with Article 5.2 of the JAMS International Arbitration Rules, Equatoriana has 20 days to reply to the Amended Request. Such reply should be sent to the Claimant with a copy to JAMS to the attention of:

Sharon O'Shaughnessy  
Case Manager  
JAMS  
280 Park Ave., West Bldg., 28<sup>th</sup> Floor  
New York, NY 10017

Sincerely,

Sharon O'Shaughnessy

Joseph Langweiler  
Lawyer  
14 Capitol Boulevard  
Oceanside, Equatoriana  
Tel. (0) 214 77 32  
Telefax (0) 214 77 33  
langweiler@host.eq

17 July 2007

Ms. Sharon O'Shaughnessy  
Case Manager  
JAMS  
280 Park Ave., West Bldg., 28th Floor  
New York, NY 10017  
United States of America

Subject: Mediterraneo Wine Cooperative, Claimant v. Equatoriana Super Markets S.A.,  
Respondent: Statement of Defense  
JAMS International Arbitration Case No. 0123456789

Dear Ms. O'Shaughnessy:

I represent Equatoriana Super Markets S.A. in this matter. The power of attorney is enclosed.

I should bring to your attention that there is an action pending in the Commercial Court of Vindobona, Danubia, in which the Court has been requested to declare that the arbitration clause upon which Mediterraneo Wine Cooperative bases its request for arbitration in this matter was never concluded. The Commercial Court has also been requested as an interim measure to order that, pending decision of the court, Mediterraneo Wine Cooperative be ordered not to pursue an arbitration pursuant to the "alleged arbitration clause". The Court has not as yet decided upon either the request for interim measure or the merits of the action.

In order to preserve the position of Equatoriana Super Markets S.A., a statement of defense is submitted in regard to both the jurisdictional argument and the merits, such statement being without prejudice to our right to contest both jurisdiction and the merits. In compliance with JAMS International Arbitration Rules, Article 4.1 the original of the statement of defense has been sent to Mr. Fasttrack, counsel for Mediterraneo Wine Cooperative

Equatoriana Super Markets S.A. appoints Prof. Arbitrator 2 to the tribunal. His CV is enclosed.

Sincerely,  
(Signed)  
Joseph Langweiler

Encl. Power of Attorney  
Statement of Defense  
Prof. Arbitrator 2 CV  
Receipt from courier service

## JAMS

Mediterraneo Wine Cooperative  
Claimant

v.

Equatoriana Super Markets S.A.  
Respondent

JAMS International Arbitration Case No. 0123456789

### Statement of Defense

#### I. Facts

1. Equatoriana Super Markets S.A. (Super Markets) does not contest the basic narrative set forth in the Statement of Claim. However, it will bring to the attention of the tribunal several elements in the correspondence between the two parties set forth in Claimant's Exhibits that have not been pointed out by the claimant, Mediterraneo Wine Cooperative (Wine Cooperative). It will do so in the context of its arguments as to why there is no arbitration clause binding the two parties, and therefore that the tribunal lacks jurisdiction over the dispute, and why the respondent is not in any case bound to the claimant by any contract of sale.

#### II. Applicable Law and Alleged Arbitration Clause

2. Super Markets agrees that, if there was a sales contract, it would be governed by the United Nations Convention on Contracts for the International Sale of Goods (CISG). It also agrees that the rules governing the formation of any contract of sale would be those found in Part II of the CISG.

3. The arbitration clause that is alleged to give this tribunal jurisdiction is found in paragraph 13 of the purchase order. It provides as follows:

“Any dispute, controversy or claim arising out of or relating to this contract, including the formation, interpretation, breach or termination thereof, including whether the claims asserted are arbitrable, will be referred to and finally determined by arbitration in accordance with the JAMS International Arbitration Rules. The tribunal will consist of three arbitrators. The place of arbitration will be Vindobona, Danubia. The language to be used in the arbitral proceedings will be English. Judgment upon the award rendered by the arbitrators may be entered by any court having jurisdiction thereof.”

4. Danubia has adopted the 1985 text of the UNCITRAL Model Law on International Commercial Arbitration (Model Law) as its Arbitration Law. In its Statement of Claim Claimant, Wine Cooperative noted that Danubia had enacted the Model Law with an amendment to Article 8 of the Model Law. The amendment consists of a new paragraph (2) added to Article 8, with a

consequent adjustment to paragraph (3). The full text of Article 8 of the Arbitration Law of Danubia is:

(1) A court before which an action is brought in a matter which is the subject of an arbitration agreement shall, if a party so requests not later than when submitting his first statement on the substance of the dispute, refer the parties to arbitration unless it finds that the agreement is null and void, inoperative or incapable of being performed.

(2) Prior to the constitution of the arbitral tribunal, an application may be made to the court to determine whether or not arbitration is admissible.

(3) Where an action or application referred to in subsection 1 or 2 has been brought, arbitral proceedings may nevertheless be commenced or continued, and an arbitral award may be made, while the issue is pending before the court.

5. Equatoriana, Mediterraneo and Danubia are all party to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention).

III. No Arbitration agreement was Concluded between Super Markets and Wine Cooperative

6. The arbitration clause on which Wine Cooperative relies is found in paragraph 13 of the purchase order sent by Super Markets on 10 June 2006. The purchase order was withdrawn on 18 June 2006 by e-mail. The alleged acceptance of the purchase order was sent on 19 June 2006. CISG, Article 16(1) provides:

Until a contract is concluded an offer may be revoked if the revocation reaches the offeree before he has dispatched an acceptance.

7. Since the arbitration clause was one of the provisions in the offer to purchase made by Super Markets by sending the purchase order and the offer was effectively withdrawn before the acceptance was sent by Wine Cooperative, no aspect of the offer was accepted, including the arbitration clause.

IV. Super Markets was within its rights to petition the Commercial Court of Vindobona

8. In its amendment to the Statement of Claim Wine Cooperative complains that Super Markets petitioned the Commercial Court of Vindobona to declare that there was no arbitration agreement between it and Wine Cooperative. It alleges that that constituted a violation of JAMS International Arbitration Rules, Article 17.3.

9. Article 17.3 provides:

By agreeing to arbitration under these Rules, the parties will be treated as having agreed not to apply to any court or other judicial authority for any relief regarding the Tribunal's jurisdiction, except with the agreement in writing of all parties to the arbitration or the prior authorization of the Tribunal or following the latter's ruling on the objection to its jurisdiction. (Emphasis supplied)

10. Article 17.3 applies when there has been an arbitral agreement but one of the parties contests the jurisdiction of the tribunal in regard to the dispute. One such situation might be that the respondent alleges that the dispute falls outside the scope of the agreement. However, before Article 17.3 can have any effect, there must have been an arbitration agreement. In a case such as the present where there is no arbitration agreement, Article 17.3 cannot prohibit a party from petitioning a state court to declare that there is no such agreement.

11. It is a matter of the law of the particular state as to whether it will allow such a petition prior to a decision by the arbitral tribunal as to whether it has jurisdiction or not. In the case of Danubia, it is clearly stated in the Arbitration Law, Article 8(2) that

(2) Prior to the constitution of the arbitral tribunal, an application may be made to the court to determine whether or not arbitration is admissible.

12. Article 8(3) also provides that

(3) Where an action or application referred to in subsection 1 or 2 has been brought, arbitral proceedings may nevertheless be commenced or continued, and an arbitral award may be made, while the issue is pending before the court.

13. Article 8(3) is permissive. It is left to the best judgment of the arbitral organization or the arbitral tribunal as to whether the arbitral proceedings should be continued or, in this case, whether they should be commenced. Where the arbitral proceedings have not yet begun and, moreover, where the arbitral tribunal has not even been created, the discretion granted by the Arbitration Law of Danubia as to whether to commence the arbitration prior to a decision by the Commercial Court should be exercised in favor of saving the expenses involved in what would be duplicate proceedings to determine the existence or non-existence of an arbitral agreement.

#### V. No Contract of Sale was concluded between Super Markets and Wine Cooperative

14. The issue has already been discussed above in paragraphs 6 and 7 in regard to the absence of an arbitration agreement.

#### VI. The Offer to Purchase the Wine was not Irrevocable

15. The Statement of Claim in paragraph 23 states that the offer contained in the purchase order was irrevocable until Mr. Cox returned from his business trip. This is clearly incorrect. Super Markets did not even know that Mr. Cox was on a business trip when the purchase order was sent. It is therefore obvious that no statement in regard to the making of the offer could be construed as indicating that it would be irrevocable for any period of time.

16. Wine Cooperative's argument seems to be based on the exchange of e-mails between Sarah Kringle and Mr. Wolf after Wine Cooperative received the offer. (Claimant's Exhibits Nos. 6 and 7) It is questionable whether any statements made subsequent to the offer can have the effect of making the offer irrevocable under CISG Article 16(2)(a).

17. Even if they can, the content of the e-mail exchange cannot be said to have stated a fixed time for acceptance or given any other indication that would lead to the irrevocability of the offer. In the message from Ms. Kringle, she notified Mr. Wolf that Mr. Cox was absent from the office until 19 June 2006. (Claimant's Exhibit No. 6) Mr. Wolf replied "Please be sure to have Mr. Cox act on our purchase order immediately on his return, since we are operating under a narrow time frame for our wine promotion in September." (Claimant's Exhibit No. 7) Mr. Wolf was simply saying that further delay would cause problems for Super Markets. He did not say that the offer had to be accepted immediately on Mr. Cox's return.

18. It is clear that CISG Article 16(2)(b) cannot apply since Wine Cooperative clearly did not rely on the offer by taking any action or failing to take an action that it would otherwise have done. The only "reliance" was that Mr. Cox attempted to accept the offer after it had been withdrawn. That is certainly not the reliance about which CISG Article 16(2)(b) is speaking.

## VII. Legal Conclusions

19. Super Markets requests the tribunal to find that:

In regard to the jurisdiction of the tribunal:

- No arbitration agreement was entered into between Super Markets and Wine Cooperative;
- Consequently, the tribunal has no jurisdiction to consider the dispute.

In regard to the claim that a contract of sale was concluded:

- The offer from Super Markets to purchase 20,000 cases of Blue Hills 2005 was not irrevocable under CISG Article 16(2)(b);
- Since the withdrawal of the offer by Super Markets was received by Wine Cooperative before Wine Cooperative sent its acceptance, no contract of sale was concluded (CISG Article 16(2)(a)).

If the tribunal were to find that it had jurisdiction and that a contract of sale had been concluded:

- That, following the articles that appeared in the newspapers in Equatoriana stating that anti-freeze had been used in wine from the Blue Hills region of Mediterraneo, Blue Hills 2005 was not "fit for [the] particular purpose expressly ... made known to the seller at the time of the conclusion of the contract" which was to feature Blue Hills 2005 in the wine promotion planned by Super Markets in September 2006.

## VIII. Appointment of Arbitrator

20. The Respondent appoints the following individual as its party-appointed arbitrator:

Professor Arbitrator 2  
18 Fortunate Way  
Harbor City, Oceania  
Tel. 0 476 2391  
Fax. 0 476 2392

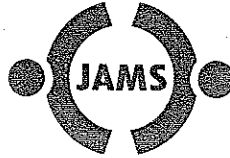
IX. Relief

21. Equatoriana Super Markets S.A. requests the tribunal to:

- stay any proceedings until the Commercial Court of Vindobona, Danubia has ruled on the existence or non-existence of an arbitral agreement;
- if it should decide not to stay the proceedings, to dismiss the claim brought by Mediterraneo Wine Cooperative on the grounds that it has no jurisdiction since no arbitration agreement was concluded;
- if it should find that an arbitration agreement was concluded, to dismiss the claim brought by Mediterraneo Wine Cooperative as unfounded since no contract of sale was concluded;
- . to order Mediterraneo Wine Cooperative to pay all costs of the arbitration, including the costs of legal representation incurred by Equatoriana Super Markets S.A.

(Signed)  
Counsel

17 July 2007



THE RESOLUTION EXPERTS

## APPOINTMENT OF ARBITRATOR

23 July 2007

Professor Arbitrator 2  
18 Fortunate Way  
Harbor City, Oceania

Re: Mediterraneo Wine Cooperative v. Equatoriana Super Markets S.A.  
JAMS International Arbitration Case No. 0123456789

Dear Professor Arbitrator 2:

Equatoriana Super Markets S.A. has invited you to serve as its party-appointed arbitrator for the above-referenced matter. Please note that this arbitration will be conducted in accordance with JAMS International Arbitration Rules and Procedures.

I have attached a full service list for this matter for your review. I would appreciate it if you could please provide me with any written disclosures you deem necessary at your earliest convenience so that I may distribute that information to the parties.

Thank you very much, and if you have any questions please do not hesitate to contact me directly at 212-607-8888.

Sincerely,

Sharon O'Shaughnessy  
Case Manager

cc: Joseph Langweiler, Esq.

**Prof. Dr. Arbitrator 2  
18 Fortunate Way  
Harbor City, Oceania**

3 August 2007

Ms. Sharon O'Shaughnessy  
Case Manager  
JAMS  
280 Park Ave., West Bldg., 28<sup>th</sup> Floor  
New York, NY 10017

*Re: Mediterraneo Wine Cooperative v. Equatoriana Super Markets S.A.  
JAMS International Arbitration Case No. 0123456789*

Dear Ms. O'Shaughnessy:

In accordance with Article 7.6 of the JAMS International Arbitration Rules, I acknowledge receipt of JAMS' letter of 23 July 2007, and hereby accept appointment as arbitrator in the above captioned arbitration. My address appears above.

After a review of the Service List enclosed with your letter, I have nothing to disclose. I confirm my independence and impartiality in the matter.

Sincerely,

Prof. Dr. Arbitrator 2

**Ms. Arbitrator 1  
14 Advocate Way  
Oceanside, Mediterraneo**

7 August 2007

Prof. Arbitrator 2  
18 Fortunate Way  
Harbor City, Oceania

*Re: Mediterraneo Wine Cooperative v. Equatoriana Super Markets S.A.  
JAMS International Arbitration Case No. 0123456789*

Dear Prof. Arbitrator 2:

In accordance with Article 7.4 of the JAMS International Arbitration Rules, may I suggest that we jointly appoint Prof. Dr. Presiding Arbitrator as the President of the Tribunal. He is a man of great integrity, and I am sure that the parties will be well-served if he agrees to act as the Chair of the panel.

Sincerely,

Ms. Arbitrator 1

**Professor Arbitrator 2  
18 Fortunate Way  
Harbor City, Oceania**

9 August 2007

Ms. Arbitrator 1  
14 Advocate Way  
Oceanside, Mediterraneo

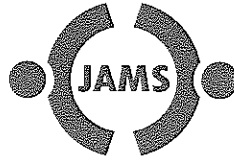
*Re: Mediterraneo Wine Cooperative v. Equatoriana Super Markets S.A.  
JAMS International Arbitration Case No. 0123456789*

Dear Ms. Arbitrator 1:

This is to notify you that the Respondent, Equatoriana Super Markets S.A. agrees to the appointment of Prof. Dr. Presiding Arbitrator as President of the Tribunal in the above-referenced arbitration.

Sincerely,

Prof. Arbitrator 2



THE RESOLUTION EXPERTS

## APPOINTMENT OF ARBITRATOR

15 August 2007

Re: Mediterraneo Wine Cooperative v. Equatoriana Super Markets S.A.  
JAMS International Arbitration Case No. 0123456789

Dear Professor Dr. Presiding Arbitrator:

Ms. Arbitrator 1 and Professor Arbitrator 2, the party-appointed arbitrators for the above-referenced matter, have invited you to serve as the President of the arbitration Tribunal. Please note that this arbitration will be conducted in accordance with JAMS International Arbitration Rules and Procedures.

I have attached a full service list for this matter for your review. I would appreciate it if you could please provide me with any written disclosures you deem necessary at your earliest convenience so that I may distribute that information to the parties.

Thank you very much, and if you have any questions please do not hesitate to contact me directly at 212-607-8888.

Sincerely,

Sharon O'Shaughnessy  
Case Manager

cc: Ms. Arbitrator 1  
Professor Arbitrator 2  
Horace Fasttrack  
Joseph Langweiler, Esq.

**SERVICE LIST**

**Case Name:** Mediterraneo Wine Cooperative vs.  
Equatoriana Super Markets S.A.

**Hear Type:** Int'l Arbitration

**Reference #:** 0123456789

**Case Type:** Business/Commercial

**Ms. Arbitrator 1**

14 Advocate Way  
Oceanside, Mediterraneo

Claimant Arbitrator

**Party Represented:**

Mediterraneo Wine  
Cooperative

**Professor Arbitrator 2**

18 Fortunate Way  
Harbor City, Oceania

Respondent Arbitrator

**Party Represented:**

Equatoriana Super Markets  
S.A.

**Professor Dr. Presiding  
Arbitrator**

Neutral

**Horace Fastrack**

75 Court Street  
Capitol City, Mediterraneo

Claimant

**Party Represented:**

Mediterraneo Wine  
Cooperative

**Joseph Langweiler**

14 Capitol Boulevard  
Oceanside, Equatoriana

Respondent

**Party Represented:**

Equatoriana Super Markets  
S.A.

**Prof. Dr. Presiding Arbitrator  
45 Hope Avenue  
Vindobona, Danubia**

17 August 2007

Ms. Sharon O'Shaughnessy  
Case Manager  
JAMS  
280 Park Ave., West Bldg., 28<sup>th</sup> Floor  
New York, NY 10017

*Re: Mediterraneo Wine Cooperative v. Equatoriana Super Markets S.A.  
JAMS International Arbitration Case No. 0123456789*

Dear Ms. O'Shaughnessy:

In accordance with Article 7.6 of the JAMS International Arbitration Rules, I acknowledge receipt of JAMS' letter of 15 August 2007 notifying me of my appointment as President of the arbitration Tribunal in the above matter. I am pleased to accept the appointment.

After a review of the Service List enclosed with your letter, I have nothing to disclose. I confirm my independence and impartiality in the matter.

Sincerely,

Prof. Dr. Presiding Arbitrator

## JAMS

Mediterraneo Wine Cooperative  
Claimant

v.

Equatoriana Super Markets S.A.  
Respondent

JAMS International Arbitration Case No. 0123456789

### Procedural Order No. 1

1. This arbitration is between Mediterraneo Wine Cooperative as claimant and Equatoriana Super Markets S.A. as respondent. They shall be referred to in this Procedural Order as Wine Cooperative and Super Markets, as both of them have done in their Statement of Claim and Answer.
2. On 1 October 2007 the tribunal conferred by means of a conference call as to the procedure that should be followed in the arbitration. Of immediate relevance is that the Presiding Arbitrator was authorized to make procedural decisions, subject to later approval by the tribunal.
3. On 4 October 2007 the Presiding Arbitrator held a conference call with Mr. Horace Fasttrack, counsel for claimant Wine Cooperative, and Mr. Joseph Langweiler, counsel for respondent Super Markets.
4. Mr. Langweiler stated that Super Markets had participated in the creation of the tribunal by appointing Prof. Arbitrator 2 only because Article 8(3) of the Arbitration Law of Danubia provided that the arbitration could commence while the issue as to whether an arbitration agreement existed between the parties was before the court. He continued to insist that the tribunal had no jurisdiction to consider the dispute. He reiterated that no arbitration agreement had been concluded between the two parties.
5. Mr. Fasttrack for Wine Cooperative replied that it was the business of the tribunal to determine whether there an arbitration agreement had been concluded between the parties and that Super Markets had violated JAMS rule 17.3 by commencing litigation in the Commercial Court of Vindobona, Danubia.
6. Both counsel were reminded that the purpose of the conference call was to establish the procedure, and in particular the time schedule, that would be followed and not to discuss the merits of any of the issues raised by the statement of claim and its amendment as well as the statement of defense.
7. The President of the tribunal informed counsel that during the conference call between the members of the tribunal on 1 October they had discussed whether the tribunal should automatically stay its proceedings awaiting the decision of the Commercial Court of Vindobona.

The tribunal recognized that the authority granted by the Arbitration Law of Danubia, Article 8(3) to commence and continue arbitral proceedings while the issue of jurisdiction was before the court was discretionary. The tribunal had decided that there would be no immediate stay of the arbitral proceedings until both Super Markets and Wine Cooperative had presented their arguments by way of memorandum and oral argument.

8. Normally, any argument that the tribunal lacked jurisdiction should be argued before argument on the merits. This is particularly the case where, as in this dispute, there is a request that the tribunal stay its proceedings awaiting a decision by the court on the jurisdiction of the tribunal. Nevertheless, in a case like the present where no witnesses are anticipated, combining arguments on the merits with the jurisdictional arguments could be expected to increase the efficiency of the arbitration proceedings. Mr. Langweiler for Super Markets agreed to this procedure, though he expressed his strong concern that it might prejudice his argument for a stay of the proceedings awaiting the decision of the court. The President of the tribunal assured him that his request for a stay would be given full consideration and would be considered first by the tribunal in its deliberations. If the Tribunal grants the stay, the arbitral proceedings will halt at that point awaiting the judgment of the court.

9. As noted above, it is not expected that there will need to be an extensive procedure to determine facts at this stage of the arbitration. Those factual issues that may need to be developed at this first stage of the arbitration will be determined in accordance with the procedures found in the Rules of the Fifteenth Annual Willem C. Vis International Commercial Arbitration Moot. In accordance with those Rules questions may be submitted to Professor Eric Bergsten, preferably by e-mail at [eric.bergsten@chello.at](mailto:eric.bergsten@chello.at), by Thursday, 25 October 2007. The target date for the answers to be distributed to all parties is Wednesday, 31 October 2007.

10. It was agreed that the memoranda should be prepared by Mediterraneo Wine Cooperative for submission by e-mail by Thursday, 6 December 2007. Equatoriana Super Markets, S.A. is to submit its memorandum by e-mail by Wednesday, 17 January 2008.

11. The memoranda should discuss the following issues. In regard to jurisdiction of the Tribunal:

- Whether a stay of the arbitral proceedings should be granted awaiting a decision of the Commercial Court of Vindobona, Danubia;
- Whether an arbitral agreement was concluded between Mediterraneo Wine Cooperative and Equatoriana Super Markets, S.A.;
- The consequences that might follow from the alleged violation by Equatoriana Super Markets, S.A. of JAMS International Arbitration Rule 17.3.

In regard to the substance of the dispute:

- Whether a contract of sale was concluded between the two parties;

- If a contract of sale was concluded, whether Blue Hills 2005 were fit for the particular purpose that had been made known to Mediterraneo Wine Cooperative at the conclusion of the contract.

12. The memoranda should not discuss the remedies claimed by Mediterraneo Wine Cooperative for the alleged breach of the contract of sale. There should also be no discussion of the allocation of the costs of arbitration. Those issues will be considered at a later stage of the arbitration, if they are necessary.

13. Oral arguments will be scheduled in the month of March 2008 in Vindobona (Vienna) and in Hong Kong. All participants in the Vienna arguments will be invited to a welcoming event followed by a reception on the evening of Friday, 14 March 2008. Arguments will take place beginning the following morning, Saturday, 15 March 2008. Participants will also be invited to a welcoming party sponsored by the Moot Alumni Association on Thursday evening, 13 March 2008. Participants in the Hong Kong arguments will receive their schedule independently.

(Signed)  
President of the Tribunal

5 October 2007

## JAMS

Mediterraneo Wine Cooperative  
Claimant

v.

Equatoriana Super Markets S.A.  
Respondent

JAMS International Arbitration Case No. 0123456789

### Procedural Order No. 2

In conformity with the instructions given in Procedural Order No. 1 there have been a number of requests for clarification. There follow in this Procedural Order the clarifications requested.

### **Scope of the issues to be argued in the memoranda and orally**

Counsel are reminded that only those issues set out in Procedural Order No. 1 are to be discussed. Issues that will arise if the tribunal finds it has jurisdiction and proceeds to decide the merits of the dispute, such as issues dealing with the remedies claimed by Wine Cooperative or the allocation of costs, and those issues that might arise under theories not set out in the Statement of Claim, must be reserved for any eventual later stages of the arbitration. In the latter case amendment to the Statement of Claim would be necessary. See JAMS International Arbitration Rules, Article 5. Counsel are also reminded that the oral arguments will not be evidentiary hearings, and new factual material beyond that permitted in the Moot Rules paragraph 23 may not be introduced either at that time or in the memoranda preparatory to them.

### **Legal questions**

#### **1. Has Danubia adopted the 2006 amendments to the UNCITRAL Model Law on International Commercial Arbitration?**

Not as yet, though they are under consideration as being a desirable development in the law. The Danubian Arbitration Law is at present the 1985 text of the Model Law with the amendment to Article 8 that is mentioned.

#### **2. Has any other country adopted a provision similar to Article 8(2) of the Danubian Arbitration Law?**

It appears that the provision was copied from the English translation of the German Arbitration Law of 1998.

**3. Are either Equatoriana or Mediterraneo party to the 2005 United Nations Convention on the Use of Electronic Communications in Electronic Commerce?**

Not yet.

**4. Did either Equatoriana or Mediterraneo make any changes in the text of the UNCITRAL Model Law on Electronic Commerce when they adopted it as national legislation?**

Both filled in the blanks where called for in the Model Law, but none of the filled in provisions affect the current dispute. There were no other changes to the text of the Model Law in either country.

**5. Did either Equatoriana or Mediterraneo make any declarations or reservations when ratifying the CISG?**

No.

**6. Is the CISG positive law binding on the courts in both Equatoriana and Mediterraneo?**

Yes.

**7. What is the general rule on formation of contracts in the three countries involved in this dispute, i.e. other than that arising out of the CISG?**

The general rule in Mediterraneo is similar to that in the CISG. Equatoriana follows the general common law rules, i.e. irrevocable offers only in a so-called option contract and acceptance on dispatch of the acceptance. While the general rule for domestic contracts in Danubia is similar to that in Equatoriana, in contracts involving one or more foreign parties the courts in Danubia seek to apply the substantive law of the most appropriate country. When considering contracts for the sale of goods, at times they have applied the law of the seller's country while on other occasions they have applied the law of the buyer's country. The difference in results depends on the overall commercial situation of the parties and of the terms of the contract in question. When the question is whether a contract has been concluded, they follow the law of the country whose law they would apply to the substance of the contract.

**8. Does Danubia apply the same rule on formation of the contract to an arbitration clause and to the contract in which it is located?**

The issue has not been decided by any court in Danubia. Therefore, the answer to the question is unknown. That is likely to be an issue in the litigation before the Vindobona Commercial Court.

**9. When did Super Markets commence the action in the Vindobona Commercial Court?**

The action was filed on 4 July 2007. Wine Cooperative had not yet filed any defense to the action at the time that it filed its amended Statement of Claim on 10 July 2007. However, it did file its defense on 18 July 2007, at which time it requested the court to delay any ruling until the

arbitral tribunal had had an opportunity to decide on the question as to whether an arbitration agreement had been concluded.

**10. When is the Vindobona Commercial Court expected to rule on the matter?**

No decision is expected prior to the summer of 2008. The Vindobona Commercial Court is the court designated in Article 6 of the Danubian Arbitration Law (Model Law) to consider arbitration matters, including whether there is a valid arbitration agreement, when the seat of the arbitration is in Vindobona.

## **Diethylene Glycol**

**11. Is the use of diethylene glycol regulated in wine or other consumables in either Equatoriana or Mediterraneo?**

There are no specific provisions in regard to the use of diethylene glycol in wine in either country. There are provisions in both countries as to the amount that can be present in consumables in general. The amount present in the Blue Hills 2005 is less than the permitted amount in both countries.

**12. Is the presence of diethylene glycol required to be listed on the labels on the wine bottles?**

Neither country requires the label on a bottle of wine to show its ingredients. There are regulations in both countries as to the minimum amount of a given grape variety that must be present for a wine to be sold as a varietal wine. Since Blue Hills 2005 was a mixture of several grape types and was not sold as a varietal, those regulations do not apply.

**13. Can the presence of diethylene glycol be determined by tasting the wine?**

No, it requires a chemical analysis.

**14. Have there been any reports of health problems associated with drinking Blue Hills 2005?**

No.

**15. Did the bottles of Blue Hills 2005 entered in the Durham Wine Fair and that were tasted by employees of Super Markets contain diethylene glycol?**

Yes, they were from the same production as all the rest of the wine sold under that label. The wine buying team for Super Markets included experienced personnel in purchasing wine.

## **Contract**

**16. Are there any provisions in the purchase order, other than those in Claimant's Exhibit No. 5, that are relevant to the dispute or its resolution?**

No.

**17. Did the parties discuss arbitration or dispute settlement prior to the dispute?**

The entire record of communications between the parties subsequent to the wine trade fair is in the record submitted to the arbitral tribunal. It would have been an unusual event for a sales manager and a buyer for a super market chain to have discussed arbitration or other dispute settlement provisions in the contract. Those are almost always issues raised by lawyers.

**18. Why were the JAMS International Arbitration Rules selected in the purchase order form and Vindobona as the place of arbitration?**

The specific information as to the reasons is not available. However, the JAMS Rules are representative of modern rules for international commercial arbitrations and Danubia has adopted the UNCITRAL Model Law on International Commercial Arbitration. Moreover, its courts are known to be supportive of arbitration.

**19. Does Super Markets use the purchase order form for all of its purchases?**

Yes.

## **Wine**

**20. How many cases of Blue Hills 2005 were produced?**

A total of 87,000 cases were produced.

**21. Why were 3,000 cases, in addition to the 20,000 in dispute, not yet sold?**

Following the newspaper articles about the diethylene glycol sales of Blue Hills 2005 were somewhat slower than would otherwise have been expected. There was not, however, a radical drop in sales, particularly in the domestic market.

**22. Had Mr. Cox been aware that diethylene glycol had been used to sweeten the Blue Hills 2005?**

Yes, he had been aware of the production process used to make the wine at all relevant times.

**23. When Blue Hills 2005 was described as a “quality wine”, was this an official designation granted by an official organization in Mediterraneo?**

No, it was a general description of the wine by Mr. Cox. Mediterraneo does not have an officially recognized designation of “quality wine”. Similarly, when Mr. Wolf spoke of a promotion of “quality wines”, he was not referring to an official designation.

**E-mail**

**24. To which e-mail addresses were the various messages sent?**

All e-mails between Mr. Wolf and Mr. Cox and between Mr. Wolf and Ms. Kringle were sent to their individual addresses at Super Markets and Wine Cooperative respectively. Mr. Wolf and Mr. Cox had exchanged business cards with their addresses at the Durhan Wine Fair.

**25. Did Ms. Kringle have access to all of the messages that had been sent to Mr. Cox?**

Yes, as his assistant she had access to all of the messages sent to him.

**26. What was the nature of the computer failure on 18 June 2006?**

The problem was in the software. The server was able to receive messages from outside, but could not communicate with the various computers in the internal network at Wine Cooperative.

**27. Is the server located on the premises of Wine Cooperative?**

Yes. Wine Cooperative has one person who is responsible for the information technology at the Cooperative. When matters arise that are beyond his ability, a service company is called. In this case it required the aid of the service company to fix the software problem.

**28. Why did Mr. Wolff send the message on a Sunday?**

The first article in Equatoriana about the use of “antifreeze” in the wine in Mediterraneo appeared in the newspapers on Friday, 16 June 2006. The newspapers had further articles on Saturday, 17 June 2006. On Sunday, 18 June 2006, Mr. Wolf decided that the offer to purchase 20,000 cases of Blue Hills 2005 should be withdrawn and he sent the message from his home using his e-mail account at Super Markets.

(Signed)  
President of the Tribunal

29 October 2007