

Qorti Civili, Prim'Awla

Imhallef Anthony Ellul

Rikors numru: 1180/2012AE

**Atlas Insurance PCC Ltd u Middlesea Insurance plc, f'isimhom u bhala  
surrogati fid-drittijiet tal-assikurat Attad Bros. Co Ltd**

**vs**

**Elmo Insurance Ltd**

31 ta' Ottubru, 2016.

Permezz ta' rikors prezentat fit-28 ta' Novembru 2012, l-atturi ppremettew u talbu:-

*Illi l-kumpanija Attard Bros. Co. Ltd., bhala sub-kuntrattur, kienet qeghda tesegwixxi appalt ta' xogholijiet fil-post maghruf bhala Pender Place, limiti ta' san Giljan;*

*Is-socjetajiet esponenti hargu Contractors All Risk Insurance Policy favur "Pender Ville Limited as the Principal and/or Pender Contracting Limited as Main Contractor and/or sub-contractors each for their respective rights and interests" li fosthom tkopri lis-subkuntrattur Attard Bros Co. Ltd., (Polza Numru 93371 870 001) li kopja taghha qed tigi hawn annessa bhala Dok A;*

*Illi rigward l-istess xogholijiet, is-socjeta' intimata Elmo Insurance Ltd harget ukoll "Contracts Works Policy" favur l-istess Attard Bros. Co. Ltd. (Polza Numru 258-35017) li kopja taghha qed tigi hawn annessa bhala Dok B, kif aktar 'l isfel ahjar spjegat;*

*Illi fit-2 ta' Gunju 2009 sehh hruq enormi fil-lant tax-xoghol b'konsegwenza tad-danni kif ser jinghad aktar 'l isfel;*

*Illi allura ghal dan l-incident kien hemm zewg poloz ta' assikurazzjoni, wahda tas-socjetajiet rikorrenti u l-ohra tas-socjeta' intimata Elmo Insurance Ltd u ghalhekk id-danni konsegwenzjali kellhom jithallsu bin-nofs bejn il-partijiet;*

*Illi d-danni ammontaw ghal zewg miljuni, hamsin elf, sitt mija u wiehed u ghoxrin Ewro (€2,050,621) li kellhom jithallsu bin-nofs bejn il-partijiet u cioe' in kwantu ghal miljun hamsa u ghoxrin elf, tliet mija u ghaxar Ewro u hamsin centezmu (€1,025,310.50) mis-socjetajiet rikorrenti bejniethom u in kwantu ghal miljun hamsa u ghoxrin elf, tliet mija u ghaxar Ewro u hamsin centezmu (€1,025,310.50) mis-socjeta' intimata Elmo Insurance Limited;*

*Illi s-socjetajiet rikorrenti, jonoraw l-obbligi taht il-polza minnhom mahruga u ma jdahhlux lill-kumpanija assikurata fil-kwistjoni bejn il-partijiet dwar min ghandu jhallas id-danni sofferti, hallsu, b'surroga ta' drittijiet, l-ammont totali tad-danni rizultanti mill-istess imsemmi incendju lill-assikurat taghhom, fl-ammont ta' zewg miljuni, hamsin elf, sitt mija u wiehed u ghoxrin Ewro (€2,050,621) f'diversi okkazzjonijiet kif jidher mill-ircevuti rilaxxjati, u hawn annessi bhala dokumenti markati bin-numri minn wiehed sa tmienja (1 sa 8); u cioe';*

*Dok. 1: Ftehim datat 24 ta' Settembru 2009 dwar accettazzjoni ta' hlas b'surroga tas-somma ta' €150,000;*

*Dok. 2: Ftehim datat 22 ta' Ottubru 2009 dwar accettazzjoni ta' hlas b'surroga tas-somma ta' €600,000;*

*Dok. 3: Ftehim datat 17 ta' Dicembru 2009 dwar accettazzjoni ta' hlas b'surroga tas-somma ta' €350,000;*

*Dok. 4: Ftehim datat 22 ta' Frar 2010 dwar accettazzjoni ta' hlas b'surroga tas-somma ta' €290,000;*

*Dok. 5: Ftehim datat 22 ta' April 2010 dwar accettazzjoni ta' hlas b'surroga tas-somma ta' €300,000;*

*Dok. 6: Ftehim datat 19 ta' Lulju 2010 dwar accettazzjoni ta' hlas b'surroga tas-somma ta' €110,000;*

*Dok. 7: Ftehim datat 22 ta' Ottubru 2010 dwar accettazzjoni ta' hlas b'surroga tas-somma ta' €250,000;*

*Dok. 8: Ftehim datat 22 ta' Gunju 2011 dwar accettazzjoni ta' hlas b'surroga tas-somma ta' €651, peress li ghal-kemm is-somma imhallsa fuq l-istess ftehim kienet ta' €30,621, is-somma ta' €30,000 kienet thallset fuq bazi ta' "ex gratia";*

*Illi dawn id-danni gew kwantifikati u kalkolati mill-"Loss Adjustors" professjonali "A.P. Services" li kienet giet imqabba ghal dan l-ghan mis-socjetajiet rikorrenti u s-socjeta' intimata giet infurmata mill-istess A. P. Services bil-fatt li kienet giet hekk inkarigata u bil-fatt li kienet ser tghaddi sabiex taghmel l-ezercizzju tal-"loss adjustment", kif jigi pruvat waqt it-trattazzjoni tal-kawza, pero' dina dejjem baqghet inadempjenti;*

*Illi ghas-servizzi minnhom resi, l-imsemmija ditte A. P. Services thallset l-ammont ta' erbgha u tletin elf, erba' mija u tmienja u disghin Ewro (€34,498) kif jidher mill-ircevuta rilaxxjata mill-istess ditte ta' Loss Adjustors li kopja taghha qed tigi hawn annessa bhala Dok. C;*

*Illi nofs dan l-ammont ta' €34,498 ammontanti ghal sbatax-il elf mitejn u disgha u erbghin Ewro (17,249) ghandu jithallas mis-socjeta' intimata ghaliex huwa ancillati ghad-danni mhallsa mis-socjetajiet rikorrenti;*

*Ghalhekk id-danni totali mhallsa u sofferti mis-socjetajiet rikorrenti b'konsegwenza tal-incident fuq imsemmi tat-2 ta' Gunju 2009 jammontaw ghal zewg miljuni, u hamsa u tmenin elf, mija u dsatax-il Ewro (€2,085,119) u ghalhekk sehem is-socjeta' intimata jammonta ghal nofs dan l-ammont u cioe' ghal miljun, tnejn u erbghin elf, hames mija u disgha u hamsin Ewro u hamsin centezmu (€1,042,559.50c);*

*Illi saru diversi tentative u laqghat bejn il-partijiet u skambju ta' korrispondenza bejn il-konsulenti legali tal-partijiet, biex din il-vertenza tigi risolta amikevolment, fejn is-socjetajiet rikorrenti, fuq talba tal-konsulent legali tas-socjeta' intimata permezz tal-ittra tal-15 ta' Frar 2012 (Dok. D) fornew lis-socjeta' intimata bid-dokumenti kollha hemm mitluba skond kif jidher permezz tal-ittra tal-konsulent legali tar-rikorrenti (Dok. E);*

*Illi s-socjeta' intimata, minkejja li kienet taf li diga' inharget Polza ta' Assikurazzjoni (Dok. A) mis-socjetajiet rikorrenti li tkopri x-xogholijiet imsemmija, insistiet mas-socjeta' Attard Bros Co. Ltd., klient taghha ghal diversi snin, illi fuq parir taghha stess tohrog il-polza ta' assikurazzjoni (Dok. B) a favur l-istess socjeta' Attard Bros Co. Ltd. Ic-cirkostanzi ta' kif giet mibjugha din il-polza jirrizultaw mill-Affidavit ta' Michael Attard hawn anness Dok. F, fejn anness mieghu hemm Endorsement minn Elmo Insurance Ltd. retroattiv hemm markat Dok. A u li gie ribattut mis-socjeta' Attard Bros Co. Ltd. permezz ta' ittra tal-konsulent legali taghha hemm markat Dok. B;*

*Illi fic-cirkostanzi la darba l-istess riskju kien assigurat kemm mas-socjetajiet rikorrenti u kif ukoll ma' dik intimata, is-socjeta' intimata kienet obbligata illi tikkontribwixxi ghall-imsemmija hsarat fil-proporzjon ta' nofs u cioe' fl-ammont ta' miljun, tnejn u erbghin elf, hames mija u disgha u hamsin Ewro u hamsin centezmu (€1,042,559.50c) kif fuq dettaljatament spjegat;*

*Peress li s-socjeta' intimata rrifjutat illi tikkontribwixxi ghall-imsemmija hsarat, u dana nonostante l-ittra ufficjali tas-socjeta' assikurata, Attard Bros Co. Ltd. tas-16 ta' Settembru 2009 (Dok. G), u ghalhekk kellha ssir din il-kawza.*

*Ghaldaqstant, is-socjetajiet atturi jitolbu għar-ragunijiet premissi, lil din l-Onorabbli Qorti sabiex:*

(1) tiddikjara illi s-socjeta' intimata kienet qed tkopri r-riskji li sehew fl-incident tat-2 ta' Gunju 2009 fuq imsemmi u konsegwentement tiddikjara li s-socjeta' intimata hija obbligata tikkontribwixxi sehemha mid-danni mhallsa mis-socjetajiet rikorrenti fl-ammont ta' zewg miljuni, u hamsa u tmenin elf, mija u dsatax-il Ewro (€2,085,119) jew kull ammont iehor li jirrizulta waqt it-trattazzjoni tal-kawza fil-proporzjon ta' nofs (1/2) jew fi proporzjon iehor li jirrizulta waqt it-trattazzjoni tal-kawza;

(2) tikkundanna lill-istess socjeta' intimata Elmo Insurance Ltd. thallas lis-socjetajiet rikorrenti l-ammont ta' miljun, tnejn u erbgħin elf, hames mija u disgha u hamsin Ewro u hamsin centezmu (€1,042,559.50c) jew kull ammont verjuri li jirrizulta waqt it-trattazzjoni tal-kawza, rapprezentanti sehemha mill-ammont ta' danni mhallas lill-assikurat Attard Bros Co. Ltd.

Bl-ispejjez inkluzi dawk tal-ittra ufficjali tad-19 ta' Mejju 2011 u bl-imghax legali mid-data tal-hlas ta' kull ammont rispettiv magħmul lill-assikurat sal-pagament effettiv, kontra s-socjeta' intimata, illi r-rapprezentanti tagħha huma ngunti għas-subizzjoni.

## Il-konvenuta wiegħbet:

1. Illi fl-ewwel lok it-talbiet attrici huma nsostenibbli stante illi s-socjetajiet attrici ddekkadew mid-drittijiet tagħhom taht il-polza ta' assikurazzjoni mahruġa mill-istess socjeta' konvenuta u senjatament a tenur ta' dak provdut fl-art. 7 (e) u 14 tal-kondizzjonijiet kontenuti fl-imsemmija polza:-

All benefit under this Policy shall be forfeited if:

(e) the claim be made and rejected and an action or suit be not commenced either within three months after such rejection, or in the case of arbitration taking place in pursuance of Condition 14 of this Policy, within three months after the Arbitrator or arbitrators or Umpire shall have made their award.

Illi l-art. 14 jipprovdi wkoll:-

If the Company shall disclaim liability to the Insured for any claim hereunder and such claim shall not within twelve calendar months from the date of such disclaimer have been referred to arbitration under the provisions herein contained then the claim shall for all purposes be deemed to have been abandoned and shall not thereafter be recoverable hereunder.

Kif jigu pruvati, il-pretensjonijiet tas-socjetajiet attrici u tal-assikurat tagħhom kienu ġew respinti formalment izda la l-atturi u lanqas l-assikurat tagħhom ma agixxew tempestivament entro t-termini indikati fl-imsemmija polza ta' assikurazzjoni;

2. Illi subordinatament u mingħajr pregudizzju għall-premess, it-talbiet attrici huma nfondati fil-fatt u fid-dritt peress illi l-polza mahruġa mis-socjeta' konvenuta ma kienet qatt intiza li tipprovdi kopertura simili u kurrenti għal dik għa provduta mis-socjeta' attrici peress illi din intalbet minn ABL specifikament bhala kopertura addizzjonali fejn dik provduta mis-socjetajiet attrici ma kinitx tipprovdi kopertura partikolari u għalhekk f'kaz illi ma jithallasx kumpens a bazi tal-polza mahruġa mis-socjetajiet attrici. F'dan is-sens l-Endorsement No. 2 mahruġ mis-socjeta' konvenuta kien jirrifletti l-intendiment tal-partijiet meta nħarget il-polza originarjament u ma zied xejn ma dak li kien għa intiz u miftiehem bejn il-partijiet;

3. Illi subordinatament u in kwantu s-socjeta' attrici qed jitolbu hlas fi proporzjon ta' nofs minn dak imhallas lill-assikurat tagħhom, din it-talba hija nfondata fil-fatt u fid-dritt stante' illi apparti li ma għandha l-ebda bazi fid-dritt, lanqas biss tirrizulta fondata in vista tal-fatt illi z-zewg poloz ta' assikurazzjoni mertu tal-vertenza ma humiex identici u ma kienux ikopru l-istess materja u riskji u b'hekk ma jistgħux jitqiesu bhala poloz ta' assikurazzjoni dupplici, kif jigi pruvat aħjar waqt is-smiegh tal-kaz;

4. Illi subordinatament u mingħajr pregudizzju, kwalunkwe kontribuzzjoni li tista' finalment tigi likwidata favur is-socjetajiet attrici għandha tirrifletti r-responsabbilta' massima u rispettiva tal-assikuraturi nvoluti u t-talba tas-socjetajiet attrici li kwalunkwe hlas magħmul minnhom għandu

*jinqasam b'mod ugwali mas-socjeta' konvenuta la hija gustifikabbli fil-fatt tenet kont tac-cirkostanzi li jiddistingwu dawn iz-zewg poloz u lanqas fid-dritt;*

*5. Illi f'kull kaz u minghajr pregudizzju ghall-premess, it-talbiet attrici huma nfondati fil-fatt u fid-dritt.*

Il-qorti semghet il-provi u trattazzjoni, u qrat l-atti li jinkludu noti ta' sottomissjonijiet.

## **Kwistjoni.**

Fit-2 ta' Gunju 2009 sehh incendju f'sit fejn kien qieghed isir zvilupp u maghruf bhala Pender Place u Mercury House. Attard Bros Co Ltd kienet inghatat sub-appalt biex tibni. L-atturi hargu polza *Contractors All Risk* fir-rigward tal-progett li kienet tkopri fost'ohrajn lil Attard Bros Co Ltd<sup>1</sup>. Il-perjodu tal-assikurazzjoni kienet mill-1 ta' Frar 2007 sal-31 ta' Jannar 2014. Fir-rigward tal-istess progett, is-socjeta konvenuta harget favur Attard Bros Co Ltd *Contract Works Policy*.

L-atturi harrku lill-konvenuta sabiex tikkontribwixxi ghall-hsara li sofriet Attard Bros Co Ltd fi hruq li sehh fit-2 ta' Gunju 2009, u li ghalih l-atturi hallsu b'kollox is-somma ta' €2,085,119. Hlas li l-atturi jsostnu li kellu jsir mill-kontendenti f'sehem ugwali gjaladarba fi zmien li sehh l-incident Attard Bros Co Ltd kienet koperta minn dawn iz-zewg poloz.

L-azzjoni tal-atturi hi bazata fuq is-segwenti premessi<sup>2</sup>:

*"Illi allura ghal dan l-incident kien hemm zewg poloz ta' assikurazzjoni, wahda tas-socjetajiet rikorrenti u l-ohra tas-socjeta intimata Elmo Insurance Ltd u ghalhekk id-danni konsegwenzjali kellhom jithallsu bin-nofs bejn il-partijiet....."*

*"Illi fic-cirkostanzi ladarba l-istess riskju kien assigurat kemm mas-socjetajiet rikorrenti u kif ukoll ma' dik intimata, is-socjeta intimata kienet obbligata illi tikkontribwixxi ghall-imsemmija hsarat fil-proporzjon ta' nofs u cioe fl-ammont ta' miljun, tnejn u erbghin elf, hames mija u disgha u hamsin Ewro u hamsin centezmu (€1,042,559.50) kif fuq dettaljament spjegat."*

Fis-seduta tal-15 ta' Frar 2013 gie verbalizzat:

*"Hemm qbil li l-kwistjoni dwar l-ammont ta' hlas pretiz mill-atturi jigi trattat eventwalment wara li tinghata sentenza preliminarj mill-qorti dwar jekk il-kumpannija konvenuta ghandhiex obbligu li tikkontribwixxi fil-hlas ta' danni li sofra l-assigurat." (fol. 98).*

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1. Skond il-polza, l-assigurati huma: *Pender Ville Limited as the Principal and/or Pender Contracting Limited as Main Contractor and or sub-contractors each for their respective rights and interests.*

<sup>2</sup> Ara rikors guramentat.

Il-qorti trid tiddetermina jekk il-polza tas-socjeta konvenuta nhargitx bhala *contingency policy* biex taghmel tajjeb ghal claims li ma jkunux koperti mill-polza tal-atturi, jew jekk dik il-polza nhargitx bhala *double insurance*<sup>3</sup>.

## **Konsiderazzjoni.**

1. Hu minnu li fl-okkju tar-rikors guramentat l-atturi ddikjaraw li harrku lill-konvenuta, f'isimhom personali u bhala surrogati fid-drittijiet ta' Attard Bros Co. Ltd. Madankollu minn qari tal-premessi tar-rikors guramentat, hu altru milli evidenti li l-kawzali tal-azzjoni hi li l-atturi jippretendu li gialadarba fiz-zmien li sehħ l-incident kien hemm polza *Contracts Work Policy* mahruġa mill-konvenuta, allura ghandha obbligu li tikkontribwixxi ghal nofs id-danni u spejjez li thallsu mill-atturi. Il-kawza tal-atturi hi bazata **biss** fuq il-kuncett ta' kontribuzzjoni li nsibu fid-dritt Ingliż f'kaz ta' *double insurance*;

*"Contribution should be carefully distinguished from subrogation. Since contribution implies more than one contract of insurance, it is only where there are two or more policies involved that there can be any confusion between two. Subrogation ensures that the assured receives no more than an indemnity; **contribution ensures that the insurers do not suffer injustice amongst themselves because of that rule.** Unlike a claim for subrogation, a contribution action must be brought in the insurer's own name."<sup>4</sup>*

L-atturi ta' xejn semmew fl-okkju tar-rikors guramentat li harrku lill-konvenuta wkoll bhala surrogati fid-drittijiet ta' Attard Bros Co Ltd, stante li m'hemm l-ebda konnessjoni bejn dik id-dikjarazzjoni u l-azzjoni li fil-fatt ipproponew. M'huwiex bizzejjed li fl-okkju jinghad li l-atturi qeghdin iharrku lill-konvenuta bhala surrogati fid-drittijiet tal-assigurat taghhom. Il-kawzali u t-talbiet m'ghandhom x'jaqsmu xejn ma' azzjoni ta' surroga li tiddependi fuq interament fuq ir-reponsabbilta tal-assikurazzjoni lill-assigurat. It-tip ta' azzjoni li jkun ippropona l-attur tirrizulta minn dak li jinghad fil-premessi u talbiet tal-att promotur u mhux xi dikjarazzjoni li l-attur jaghmel fl-okkju. Id-dritt ta' kontribuzzjoni m'huwiex xi dritt li jinghata lill-kumpannija assiguratrici

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<sup>3</sup> "147. *If an insured, whether deliberately or inadvertently, takes out policies on the same risk with more than one insurer so that he is doubly insured, he can at common law recover his entire loss from one insurer, although not of course from all, because of the principle of subrogation; that insurer then has the right in equity to sue the other insurers for a contribution. In practice, the issue rarely arises in this way because of a standard condition in all indemnity policies providing that if there is any other insurance on the same property or risk the insurer will no pay more than its rateable proportion of any loss or damage. This rateable proportion clause does not affect the legal principles of double insurance, but prevents the insured from claiming all his loss from only one insurer.*" (*Insurance Law in the United Kingdom*, John Birds, Kluwer Law International, (2010) pagna 103).

<sup>4</sup> *Colinvaux's Law of Insurance*, Robert Merkin (Tmien Edizzjoni, London Sweet & Maxwell, pagna 414, ara fol. 201 tal-process).

bhala surrogata fid-drittijiet tal-assigurat taghha. Ghalhekk fejn it-talba hi sabiex l-assikurazzjoni thallas kontribuzzjoni, ma tistax tiddefendi ruhha billi taghti eccezzjonijiet bazati fuq klawzoli ta' procedura li jkunu fil-polza li tkun harget lill-assigurat taghha. Ghalhekk qalu sew l-atturi li:

*"Fil-kaz ta' azzjoni ta' kontribuzzjoni, ir-restrizzjonijiet procedurali kontenuti fil-polza m'ghandhomx ikollhom ebda rilevanza fir-relazzjonijiet bejn is-socjetajiet assikurattivi inter se."*<sup>5</sup>

Gialadarba l-azzjoni tal-attrici hi azzjoni ta' kontribuzzjoni, allura l-konvenuta ma tistax tiddefendi ruhha billi tinvoka klawzoli mill-polza ta' assikurazzjoni li jiffissaw it-terminu li fih l-assigurat kellu jipproponi proceduri a bazi tal-polza.

2. Il-kontendenti m'ghamlu l-ebda riferenza ghal xi *rateable proportion clause*<sup>6</sup> fil-poloz in ezami;

*"The contract may provide that, if there are other contracts of insurance covering the loss, **the insurer shall be obliged to pay only his proportion of the loss.** When:*

*"there are several policies, and where there, in point of fact, is double insurance, then in order to do away with the old practice of the insured recovering the whole from one of the several insurance offices, and then the one from whom it is recovered being put to obtain contribution from the others, this clause was put in to say that the insured should, in the first instance, proceed against the several insurance companies for the aliquot parts for which they are liable in consequence."* (*The Law of Insurance Contracts*, Malcolm A. Clarke, Lloyd's of London Press Ltd, 1989, pagna 586)<sup>7</sup>.

Klawzola 12 tal-polza tal-konvenuta m'hijiex *rateable proportion clause*.

3. Il-konvenuta harget polza *Contract Works Insurance* (fol. 35) li tkopri:

*"Item 1 The Contract Works, which term shall include all permanent and temporary works executed in the performance of the Insured Contract plus all materials to be incorporated therein, the property of the Insured or for which they are responsible, all situated at the Contract Site.*

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<sup>5</sup> Il-konvenuta stess tidher li taccetta dan tant li fin-nota ta' sottomissjonijiet qalet: *"Illi jekk mill-banda l-ohra, l-azzjoni f'dan ir-rigward qed tigi avvanzata mis-socjetajiet attrici kif surrogata fid-drittijiet tal-assigurat taghhom, f'dan il-kaz il-kawza tiehu xejra ghal kollox differenti u s-socjeta esponenti ghandha kull dritt li tissolleva eccezzjonijiet a bazi tal-polza ta' assikurazzjoni mahruqa minnha stess."* (fol. 385).

<sup>6</sup> *"In practice contribution is most unlikely to arise in quite the way described because of a standard term in all indemnity insurances. This will provide that if there is any other insurance on the property or the risk covered by the policy, the insurer will not be liable to pay or contribute more than its rateable proportion of any loss or damage. Such a rateable proportion clause does not affect the basic legal principle double insurance, but it simply prevents the insured from recovering all his loss from one insurer."* (*Bird's Modern Insurance Law*, pagna 361, ara fol. 217).

<sup>7</sup> Ara estratt a fol. 189.

*Item 2 Constructional Plant and Equipment, Tools, Tackle, Temporary Building and their contents, all in accordance with the inventory submitted to and agreed with the Company, being the property of the Insured or for which they are responsible in connection with the performance of the Insured Contract all situated at the Contract Site.*

*Item 3 Costs and Expenses necessarily incurred by the Insured with the written consent of the Company in removing Debris of the portion or portions of the Property Insured under Items 1 and 2 above, destroyed or damaged by any peril hereby insured against.*

*Item 4 Existing property belonging to the Principal, located on or immediately adjacent to the Contract Site."*

4. *Il-Contractors All Risk Insurance* tal-atturi tkopri, fost'affarijiet ohra, *material damage* (fol. 31);

*"... If at any time during the period of cover the items or any part thereof entered in the schedule shall suffer any unforeseen and sudden physical loss or damage from any cause, other than those specifically exclude, in any manner necessitating repair or replacement, the Company will indemnify the Insured in respect of such loss or damage as hereinafter provided by payment in cash replacement or repair (at their own option) up to an amount not exceeding in respect of each of the items specified in the Schedule.....*

*The Company will also reimburse the Insured for the cost of clearance of debris following upon any event giving rise to a claim under this Policy provided a separate sun therefor has been entered in the Schedule."*

Hekk ukoll il-polza tal-konvenuta tkopri (fol. 39):

*"... Physical loss of or damage to any item of the Property Insured from any case whatsoever*

*(a) In the case of Contract Works from the time of erection at the Contract Site and thereafter until the completion of the Insured Contract or the expiry of the Period of Insurance whichever is the sooner."*

Jidher li z-zewg poloz kienu qeghdin ikopru **l-istess riskju**. Il-konvenuta ma ressqet l-ebda prova li jistghu jwasslu lill-qorti ghal fehma differenti.

5. Il-konvenuta ssostni<sup>8</sup> li harget il-polza *Contract Works Insurance* fuq talba ta' Michael Attard li talab, **"... sabiex tipprovdi kopertura addizzjonali sabiex f'kaz illi ghal xi raguni l-polza mahruga minghand is-socjetajiet attrici ma tipprovdi kopertura ta' xi riskji, Attard Bros Co. Ltd jkollha serhan tal-mohh b'kopertura addizzjonali mahruga mill-Elmo. Fl-istess hin kien dejjem intiz illi l-polza tal-Elmo kellha topera biss fl-eventwalita' illi dik il-polza tas-socjetajiet attrici ma tkoprix direttament."** (fol. 93).

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<sup>8</sup> Ara paragrafu 10 tat-twegiba guramentata.

F'dan ir-rigward Michael Attard<sup>9</sup> xehed li dwar assikurazzjoni kien jiehu parir minghand il-konvenuta u meta tkellem maghhom:

*"... dahluli dubju jekk dik l-insurance li kienet harget il-Pender (mal-Atlas u l-Middlesea) kinitx fil-fatt tkopri kollox kif jiena dejjem inkun nixtieq. Rinfaccjat b'dan id-dubju, jiena tlabt u l-Elmo offrewli polza ohra sabiex inserrah rasi, u **jigri x'jigri nkun mija fil-mija kopert. Irrid nghid li din il-polza ma talbuhilix il-Pender – din kienet polza li ftehmt jien mal-Elmo u li kienet polza b'kopertura addizzjonali.**"<sup>10</sup>*

Xhud iehor tal-atturi kien Thomas Sammut, *contracts manager* tas-socjeta Attard Bros. Co Ltd, li qal li waqt laqgħa ma' ufficjali tas-socjeta konvenuta:

*"... Nifhem illi Elmo kienu qed isostnu li ahna bhala l-klijenti taghhom, sabiex inkunu mija fil-mija koperti, kellna nohorgu xi kopertura addizzjonali. Niftakar car illi d-diskors li kien qed isir kemm minni u kif ukoll mill-Managing Director tiegħi, Michael Attard kien fis-sens illi l-Elmo kellhom jaghtuna dawk il-koperturi tal-insurance li ahna konna obbligati naghtu lil Pender kif ukoll, **jekk jidhrilhom li kien hemm lok għal xi kopertura addizzjonali – sabiex nigu koperti fejn ma konniex, allura dawn kellhom ukoll jipprovdu dik il-kopertura.**" (fol. 131).*

Kliem li wiehed facilment jista' jargumenta li fil-fatt jikkonferma t-tezi tas-socjeta konvenuta. Il-qorti tifhem li din kienet ir-raguni għalfejn ma sarx kontro-ezami lil dawn ix-xhieda. Pero' jibqa' l-fatt li meta Attard Bros. Co Ltd irceviet l-endorsement 2 tal-polza tal-konvenuta, kienet pronta baghatet ittra legali fejn sejhet lill-konvenuta tirtira l-endorsement (ara paragrafu 3 tal-ittra legali datata 14 ta' Settembru 2009 a fol. 68) in kwantu kkontestat li l-polza tal-konvenuta inharget bhala *contingency policy*. Sahansitra, Gaston Degiovanni (loss adjuster) xehed: "*jiena staqsejt lill-klijent cioe' lil Attard Bros u lil insurance broker tiegħu dwar dak li qaluli ta' Elmo li din kienet contingency policy. Huma t-tnejn li huma cahdu. Qaluli dawk insurance policy identici.*" (fol. 152-153).

Mill-provi hu evidenti li meta s-socjeta konvenuta harget il-polza ta' assikurazzjoni kienet taf li Attard Bros Co Ltd kienet assigurata taht il-polza *Contractors All Risk* tal-atturi li tkopri l-appalt (*Contract Work*<sup>11</sup>). Kien biss permezz ta' *endorsement* li harget **wara li sehh l-incident** (fol. 67) li l-konvenuta ddikjarat li jithallas indenniz lil Attard Bros Co Ltd fl-eventwalita' li ma tigix indennizzata taht il-polza *Contractors All Risks* tal-atturi minhabba li l-polza l-ohra tkun "*... More restrictive in scope/limits than that provided by this Policy.*" Kliem intiz biex jirrendi l-polza li harget is-socjeta konvenuta

<sup>9</sup> Xhud tal-atturi.

<sup>10</sup> Affidavit, fol. 65.

<sup>11</sup> Ara fol. 12.



bhala *contingency insurance*. Endorsement datat 28 ta' Lulju 2009, cjoe' iktar minn sena wara li harget il-polza. Fil-fehma tal-qorti gialadarba l-endorsement inhareg wara d-data tal-incident, wahdu m'ghandux valur probatorju ghal dak li jikkoncerna x'kienet l-intenzjoni tal-partijiet meta harget il-polza *Contract Works Policy*.

Christopher Cuschieri, *general manager* tal-konvenuta xehed (fol. 329):

*"Offrejna biex nimlew dawn id-dubji u Attard Brothers ikollhom l-istess tip ta' kopertura, tigi minn fejn tigi, **issuggerejna a contingent CAR policy** b'mod u manjiera li jekk il-polza ta' Pender ma tasalx li thallas ghal xi raguni jew ohra, tidhol taghna fl-assenza tal-ewwel polza."*

Pero' dan m'huwiex rifless fil-*Contract Works Policy* tal-konvenuta. Fil-fehma tal-qorti l-argumenti favur it-tezi tal-atturi huma li:-

- i. jekk din il-polza kellha tkun biss *contingency policy* u ghalhekk l-iskop principali taghha, allura wiehed kien jistenna li dan kien jigi rifless fl-endorsement 1 bid-data tal-4 ta' Jannar 2008 (fol. 52) u mhux b'endorsement 2 (fol. 67) datat 28 ta' Lulju 2009, cjoe' wara l-incident. Fl-endorsement 1 hemm xejn inqas minn sittax-il memoranda. Mill-mod kif xehdu Christopher Cuschieri u Mario Vella, il-polza kellha tkun *contingency policy* u ghalhekk kien il-karattru essenzjali tal-polza. Pero' jekk kien hekk il-qorti ma tistax tifhem kif l-element principali tal-polza, cjoe' dik ta' *contingency insurance*, ma giex rifless fil-kuntratt ta' assikurazzjoni. Wara l-incident kien facli ghal Elmo li tghid li sar zball, pero dan m'huwiex bizzzejjed.
- ii. Endorsement 2 li nhareg fit-28 ta' Lulju 2009 (fol. 67) hu l-kaz klassiku ta' *contingent insurance*, cjoe' fejn l-assigurat m'huwiex kopert minn assikurazzjoni ohra. Fil-fatt f'dak l-endorsement jinghad li biha l-konvenuta ser tkopri lill-assigurat fejn hemm polza li hi "*more restrictive in scope/limits than that provided by this Policy, the Company hereby agrees that this Policy will provide insurance.....*" Madankollu, Christopher Cuschieri xehed li fil-laqa' li kienet saret is-Sibt, Elmo offriet lil Michael Attard "*... a contingent CAR policy b'mod u manjiera li **jekk il-polza ta' Pender ma tasalx li thallas ghal xi raguni jew ohra**, tidhol taghna ghall-assenza tal-ewwel polza.*" (enfazi tal-qorti, fol. 329). Dak li xehed Cuschieri ferm iktar wiesgha minn dak li hemm fl-endorsement numru 2 li tillimita l-kopertura tal-Elmo **biss** ghal dawk il-kazijiet fejn l-assigurat m'ghandux kopertura taht il-polza tal-atturi. Kliem li jirrifletti dak li qalet il-konvenuta f'paragrafu 10 tal-parti ntestata *Fatti* tat-twegiba guramentata (fol. 10) u li komplet issostni matul il-kawza. Fil-fatt fis-seduta tal-20 ta'

Novembru 2013 id-difensur tal-konvenuta ddikjara li, **".... l-polza mahruga mis-socjeta konvenuta kienet intiza li tkopri lill-assikurat b'mod addizzjonali fejn dik tas-socjetajiet attrici ma tkoprix u li ghalhekk qatt ma kienet intiza li tforni lill-assikurat kopertura simili u kurrenti ghal dik tal-atturi."** (fol. 148)<sup>12</sup>. F'kull kaz l-ebda wahda minn dawn ic-cirkostanzi mhi fil-polza ta' assikurazzjoni li originarjament harget il-konvenuta.

iii. F'endorsement 1 Memorandum U, jinghad (fol. 56):

*"It is hereby understood and agreed that the following Contribution Clause is applicable under this policy in relation to Section I, Item 2 Only:*

*It is hereby understood and agreed that in relation to **Section I Item 2 only of this Policy**, the Company agrees to handle and settle all claims without seeking contribution with other policies issued by Pender Ville Ltd and/or Pender Contracting Ltd and/or Pendergardens Ltd."*

Dan b'riferenza ghal *Plant and Equipment* (fol. 50), li ma kienx kopert fil-polza li hargu l-atturi (fol. 12). Implicitament ifisser li fir-rigward tal-koperturi l-oħra taht *Contract Work Policy* (Section 1 Items 1, 3 u 4), il-konvenuta zammet il-jedd li titlob il-kontribuzzjoni. Ir-raguni tghidlek li kieku l-intenzjoni kienet li l-*Contract Works Policy* tkun semplicement *contingency policy* biex taghti kopertura fejn il-polza tal-atturi ma kinitx<sup>13</sup>, allura fil-*contribution clause* f'Memorandum U ta' endorsement 1, kien jinghad l-istess li nghad fir-rigward ta' Section 1 Item 2. Il-qorti ma taqbel xejn mal-konvenuta li l-fatt li Items 1,3 u 4 ma ssemmewx f'Memorandum U ta' endorsement 2, allura jfisser li dwar daww il-items il-polza kienet biss *contingency insurance*. Pjuttost jidher mod iehor.

Argumentli li fil-fehma tal-qorti huma ferm iktar b'sahhithom mill-provi li fuqhom il-konvenuta ssostni li l-ftehim kien li l-*Contract Works Policy* tkun *contingent insurance*.

6. In vista ta' dak li nghad fil-paragrafu precedenti jfisser li fiz-zmien tal-incident kien hemm zewg poloz li qeghdin ikopru l-istess appalt (*contract work*) u tindif tas-sit mill-materjal, li jkopru dannu min-nirien u l-istess persuna (Attard Bros Co Ltd). Il-polza mahruga mill-konvenuta kellha wkoll tirispondi biex tindennizza lill-assikurat fir-rigward tal-*contract works* u tnehhija ta' *debris*.

Il-kuncett ta' *contribution* zviluppa fid-dritt Ingliz tal-assikurazzjoni u hu bbazat fuq il-kuncett tal-ekwita';

<sup>12</sup> L-istess li xehed Mario Vella (seduta tal-31 ta' Ottubru, 2014, ara fol. 253).

<sup>13</sup> Ara t-tieni eccezzjoni tal-konvenuta (fol. 94).

*"The contribution principle. If there is double insurance, so that two or more insurers are potentially liable for the same loss, the insurer called upon to make payment may have the right to seek contribution from the other insurers. **The right of contribution is an equitable principle of some antiquity which does not rest on contract or statute and which allows one insurer to recover from another by reason of having made payment to the assured in respect of a sum for which the latter was also liable.....***

*There is a right of contribution only where the following conditions, which are discussed in what follows, are met:*

- (a) There is double insurance, in that two policies cover the same assured, the same interest and the same period and are more or less of the same scope;*
- (b) Both policies respond to the loss;*
- (c) The paying insurer has paid under legal liability and not as a volunteer;<sup>14</sup>*

Il-konvenuta m'hijjex tikkontesta li dan il-principju japplika fid-dritt tal-assikurazzjoni lokali.

Mill-provi rrizulta li fid-data tal-incident:

- i. Kien hemm zewg poloz ta' ndennizz;
- ii. Il-poloż kienu jkopru l-istess interess;
- iii. Iz-zewg poloz kienu jkopru r-riskju li ta lok ghat-telf li sofra l-assigurat;
- iv. Il-poloż kienu jkopru l-istess oggett;
- v. Kull polza kienet responsabbli taghmel tajjeb ghat-telf li sofra l-assigurat;

In vista tal-konkluzjoni li l-qorti waslet ghalha, f'dan il-kaz kien hemm *double insurance*, u l-konvenuta ghandha obbligu li tikkontribwixxi ghall-hlas li ghamlu l-atturi lill-assigurat taghhom.

## **Ghal dawn il-motivi tiddeciedi billi:-**

### **1. Fir-rigward tal-ewwel eccezzjoni:**

- i. Tiddikjara li l-kwistjoni tad-dekadenza ma tapplikax fir-rigward tal-kuncett ta' *contribution*, gialadarba l-azzjoni li pproponiet l-attrici hi l-azzjoni ta' kontribuzzjoni.**
- ii. Tiddikjara li ghalkemm fl-okkju tar-rikors guramentat l-atturi ddikjaraw li kienu qeghdin jagixxu wkoll bhala surrogati fid-drittijiet tal-assikurat Attard Bros Co Ltd, fir-realta l-kawzali u t-talbiet huma bazata fuq il-principju ta' *contribution*, u**

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<sup>14</sup> *Colinvaux's Law of Insurance*, 8 Edizzjoni, Robert Merkin (London Sweet & Maxwell, 2006 pagna 414, ara pagna 201).

**ghalhekk il-kliem "...bhala surrogati fid-drittijiet tal-assikurat Attard Bros Co. Ltd (C3599)" m'huma tal-ebda konsegwenza ghall-ezitu tal-kawza.**

**Ghaldaqstant tichad l-eccezzjoni.**

- 2. Tichad it-tieni eccezzjoni u tiddikjara li s-socjeta konvenuta hi obbligata li tikkontribwixxi fir-rigward tal-hlas li ghamlu l-atturi in konnessjoni mal-incident li sehh fit-2 ta' Gunju, 2009.**

**Spejjez jibqghu rizervati ghas-sentenza finali.**

Anthony Ellul.