QORTI CIVILI PRIM`AWLA

ONOR. IMHALLEF
JOSEPH ZAMMIT MCKEON

Illum il-Hamis 15 ta` Dicembru 2016

Kawza Nru. 8
Rik. Gur. Nru. 1084/13 JZM

Brian Tonna bhala stralcjarju tas-socjeta` European Insurance Group Limited (C-35708)

kontra

Luciano Rotondi, Andrea Ratti, Enzo Resciniti, Bruno Lago, Vincenzo Viscione, Paolo Viscione, Giovanni Sidoti, Antonio Resciniti, Giuseppe Resciniti u Fabio Solano

Il-Qorti :

I. <u>Preliminari</u>

Rat ir-rikors guramentat prezentat fil-<u>11 ta` Novembru 2013</u> li jaqra hekk :–

<u>Generali</u>

*1. Wara li kienet ilha rregistrata Malta mill-21 ta` Frar 2005 (Kopja tac-certifikat ta` registrazzjoni hawn anness u mmarkat Dok "A"), EIG giet illicenzjata mill-Malta Financial Services Authority ("**MFSA**") biex tipprovdi servizzi t`assikurazzjoni b`effett mit-22 ta` Novembru 2007 (Kopja tal-licenzja hawn annessa u mmarkata Dok "B"). L-awtorizzazzjoni kienet biex EIG tkopri riskji fl-Italja, b`dan li ma setghetx ikollha stabbiliment hemmhekk.*

2. B`effett mis-26 t`April 2010, EIG giet ipprojbita mill-awtoritajiet Taljani (Istituto per la Vigilanza sulle Assicurazioni Private e di Interesse Collettivo ("ISVAP")) li tidhol f`aktar kuntratti t`assikurazzjoni fl-Italja (Kopja tal-provvediment ta` l-ISVAP hawn anness u mmarkat Dok "C").

3. Il-licenzja li kellha EIG biex tipprovdi servizzi t`assikurazzjoni giet irrevokata mill-MFSA fit-12 ta` Lulju 2010 (Kopja tal-ittra annessa u mmarkata Dok "D").

4. B`effett mis-6 t`Awwissu 2010, EIG tqieghdet f`amministrazzjoni mill-MFSA: l-amministratur mahtur kien Raphael Aloisio, ta` Deloitte (Kopja tal-ittra annessa u mmarkata Dok "E").

5. Ir-rikorrent Brian Tonna gie mahtur mill-MFSA bhala stralcjarju ta` EIG b`effett mid-29 ta` Settembru 2011 (Kopja tal-ittra annessa u mmarkata Dok "F").

6. EIG hi insolventi.

<u>EIG bhala kumpannija</u>

7. Kif inghad, EIG twieldet bhala kumpannija fil-21 ta` Frar 2005 (Ara Dok "A").

8. Il-kapital azzjonarju awtorizzat u mahrug tal-EIG kien ta` hames mitt Liri Maltin (Lm500) maqsum f`hames mitt (500) sehem ta` lira Maltija (Lm 1) il-wahda, interament sottoskritt kif gej: (i) COMPAGNIA GENERALE SERVIZI E FINANZA CO.GE.S.FIN. LIMITED (kumpannija Ngliza bin-numru 5265693) ("COGESFIN") (Id-direttur ta` COGESFIN huwa Paolo Viscione sa mid-29 ta` April 2011. Il-kapital azzjonarju ta` COGESFIN huwa ta` GBP 4,701,000 maqsum f`4,701,000 sehem ta` lira Sterlina (GBP 1) il-wahda, interament sottoskritt kif gej: (i) Giovanni Sidoti b`erba` mija u sebghin elf u mitt (470,100) ishma; u Paolo Viscione b`erba` miljun mitejn u tletin elf u disa` mitt (4,230,900) sehem (ara kopja tal-prospett annwali ta` COGESFIN sad-data 31 ta` Awissu 2012, hawn annessa u mmarkata Dok "G") b`erba` mija disgha u disghin (499) ishma; u (ii) Prof. Luciano Rotondi bir-rimanenti sehem wiehed. L-ewwel direttur ta` EIG kien l-istess Prof. Luciano Rotondi (Kopja tal-ewwel memorandum u statut t`assocjazzjoni tal-EIG hawn anness u mmarkat Dok "H").

9. Fil-5 ta` Novembru 2007, il-kapital azzjonarju awtorizzat tal-EIG zdied ghal hames miljun u hames mitt elf Ewro (€5,500,000) maqsum f` hames miljun u hames mitt elf (5,500,000) sehem ta` Ewro (€1) il-wiehed. COGESFIN issottskriviet ghal hames miljun erba` mija u tmienja u disghin elf u tmien mija u erbghin (5,498,840) ishma ohra ta` Ewro (€1) is-sehem (Kopja tal-Form H dwar l-ghoti ta` ishma rregistrata mar-Registratur tal-Kumpanniji hija hawn annessa u mmarkata bhala Dok "I").

10. Il-komposizzjoni ufficjali tal-Bord tad-Diretturi tal-EIG tbiddlet minn zmien ghal zmien. It-tibdil huwa rifless fid-dokument hawn anness u mmarkat Dok "J". Apparti d-Diretturi Ufficjali, id-Diretturi Ohrajn kienu sostanzjalment jaqdu l-istess funzjonijiet dwar it-tmexxija tal-EIG, bhad-Diretturi Ufficjali, jew min minnhom.

<u>L-operat ta` EIG jitwaqqaf mill-awtorijiet u EIG titqieghed f`amministrazzjoni</u>

11. Kif indikat iktar `l fuq, il-licenzja li l-EIG kienet inghatat biex tipprovdi servizzi ta` assikurazzjoni fis-suq Taljan giet irrevokata mill-MFSA b`effett mit-12 ta` Lulju 2010 (Kopja tal-ittra mibghuta mill-MFSA lid-diretturi ta` EIG biex tinfurmhom bid-decizjoni hawn annessa u mmarkata Dok "D"), u dan wara li fis-26 ta` April 2010 l-ISVAP kienet ordnat lill-EIG li ma tidholx f`aktar kuntratti fl-Italja (Kopja tal-provvediment mahrug mill-

Istituto per la Vigilanza sulle Assicurazioni Private e di Interesse Collettivo ("ISVAP") fis-26 ta` April 2010 hawn anness u mmarkat bhala Dok "C"). L-MFSA spjegat ir-ragunijiet li wasslu ghar-revoka tal-licenzja fid-dettal fl-ittra ta` l-10 ta` Gunju 2010 lid-diretturi ta` EIG (Kopja hawn annessa u mmarkata Dok "K").

*12. Sussegwentement u b`effett mis-6 ta` Awwissu 2010, l-MFSA hatret lil Raphael Aloisio tad-ditta Deloitte (l-"**Amministratur**") biex jiehu f`idejh l-attiv u l-kontroll tal-kummerc tal-EIG skont id-dispozizzjonijiet tal-artikoli 28(1)(c) u 28(1)(d) tal-Att dwar il-Kummerc tal-Assigurazzjoni (Kap.403 tal-Ligijiet ta` Malta) (Kopja tal-ittra tal-hatra tal-Amministratur hawn annessa u mmarkata Dok "E"). Fis-17 ta` Ottubru 2011, l-Amministratur ipprezenta rapport finali lill-MFSA (Kopja hawn annessa u mmarkata Dok "L"), fejn identifika, fost affarijiet ohra, il-kwistjonijiet serji li kienet qed tiffaccja l-kumpannija.*

Il-hatra ta` stralcjarju

13. B`effett mid-29 ta` Settembru 2011, ir-rikorrent Brian Tonna, CPA, ta` Nexia BT, The Penthouse, Suite 2, Capital Business Centre, Entrance C, Triq Taz-Zwejt, San Gwann SGN 3000 (l-"**Istralcjarju**") inhatar mill-MFSA bhala stralcjarju tal-EIG ai termini tal-artikolu 28(1)(f) tal-Att dwar il-Kummerc tal-Assigurazzjoni (Kap.403 tal-Ligijiet ta` Malta) ai fini tal-likwidazzjoni tal-affarijiet tal-EIG (Kopja tal-ittra tal-hatra tal-Istralcjarju hawn annessa u mmarkata Dok "F"). L-inkarigu tal-Amministratur gie fi tmiemu mal-hatra tal-Istralcjarju.

Dikjarazzjoni ta` stat ta` insolvenza

14. Il-verifiki li kien beda jaghmel l-Amministratur u li kompla jinvestiga u jevalwa l-Istralcjarju wasslu lill-Istralcjarju biex jikkonferma li l-EIG kienet fi stat ta` insolvenza qabel ma dahlet fl-amministrazzjoni. L-avviz dwar l-istat tal-insolvenza tal-EIG gie ppublikat fi tlett gazzetti gurnalieri, jigifieri: The Times of Malta (fil-21 ta` Settembru 2012); In-Nazzjon (fis-26 ta` Settembru 2012); u l-Orizzont (fit-2 ta` Ottubru 2012), kif ukoll fuq is-sit elettroniku tal-EIG (Kopji tal-publikazzjonijiet hawn annessi u mmarkati bhala Dok "M" sa Dok "P").

It-tmexxija u l-gestjoni ta` EIG

15. Kif ser jirrizulta mill-provi, l-intimati, jew min minnhom, mexxew lill-EIG bi ksur tad-dmirijiet fiducjarji nkombenti fuqhom meta, fost affarijiet ohra:

i. Mexxew hazin l-affarijiet ta` EIG bir-rizultat li l-kumpannija soffriet telf kbir;

ii. Ippermettew lill-EIG li ssostni telf u ma kinux jafu u/jew ma setghux jikkontrollaw dan it-telf;

iii. Naqsu milli jzommu struttura ta` tmexxija xierqa ghall-EIG u wkoll naqsu milli jikkontrollaw l-istruttura ta` tmexxija li kienet vigenti;

iv. Naqsu milli jmexxu l-kummerc t`assigurazzjoni tal-EIG b`mod xieraq billi naqsu milli jmexxu l-operat ta` kumpannija (inkluz il-hrug ta` poloz t`assikurazzjoni) u naqsu milli jimplimentaw process ta` claims handling;

v. Ikkawzaw u /jew ippermettew iz-zamma dizastruza tal-kotba (books of account u financial statements) ta` EIG u ppermettew li l-kotba ta` EIG jaghtu rapprezentazzjoni qarrieqa tal-istat ta` EIG, tant li l-awdituri rrifjutaw li jaghtu opinjoni dwar il-kontijiet ghas-sena li ghalqet fil-31 ta` Dicembru 2009 (ara pagni 39 u 40 tal-kontijiet ghas-sena 2009, Dok "Q"), u l-awdituri ma tawx opinjoni fuq dawn il-kontijiet;

vi. Ippermettew u/jew ippartecipaw f`misapproprjazzoni u/jew devjazzjoni ndebita ta` fondi ta`, jew dovuti lil, EIG;

vii. Ippermettew u/jew ippartecipaw f`numru ta` transazzjonijiet li permezz taghhom suppost li nbieghu ishma f`EIG, b`obbligu da parti tal-EIG li tixtri lura l-istess ishma jew taghmel tajjeb ghall-hlas dovut lix-xerrej, anki billi tohrog poloz t`assikurazzjoni in konnessjoni ma` dawn it-transazzjonijiet;

viii. Ippermettew u/jew ippartecipaw, permezz ta` paraventu, fis-suq assikurattiv Taljan kontra r-regoli ta` l-Italja.

Ghaldaqstant, jghidu ghalhekk l-intimati ghaliex din l-Onorabbli Qorti m`ghandhiex :

1. Tiddikjara li l-intimati, jew min minnhom, kisru l-obbligi taghhom fil-konfront tal-EIG;

2. Tiddikjara ulterjorment li l-EIG soffriet danni minhabba fl-agir tal-intimati, jew min minnhom;

3. Tiddikjara lill-intimati, jew min minnhom, responsabbli ghall-hlas ta` danni u wkoll responsabbli li jroddu lura kull proprjeta` flimkien mal-beneficcji l-ohra kollha miksuba minnhom, sew direttament kif ukoll indirettament;

4. Tillikwida l-ammont ta` danni hekk imgarrba, u jekk ikun il-kaz ukoll l-ammont ta` proprjeta` u beneficcji kollha miksuba minnhom, sew direttament kif ukoll indirettament, anke jekk ikun il-kaz bil-hatra ta` periti nominandi; u

5. Tordna lill-intimati, jew min minnhom, ihallsu lis-socjeta rikorrenti dik is-somma ta` danni, proprjeta` u beneficcji hekk likwidati.

Bl-ispejjez u bl-interessi skont il-ligi sad-data tal-pagament effettiv.

Rat il-lista tax-xhieda u l-elenku ta` dokumenti.

Rat ir-risposta guramentata tal-konvenut <u>Antonio Resciniti</u> li kienet prezentata fis-<u>17 ta` Frar 2014</u> li taqra hekk :–

01 Illi preliminarjament u minghajr ebda pregudizzju, qed tigi ssolevata l-eccezzjoni tan-nuqqas ta` gurisdizzjoni u kompetenza ta` din l-Onorabbli Qorti biex tisma` u tiddeciedi r-rikors fl-ismijiet premessi, fil-konfront tal-intimat Antonio Resciniti;

02. Illi dan stante illi l-esponenti, Antonio Resciniti, jirrisjedi fl-Italja u senjatament f`Via Ottavio Caiazzo, 19 Sc. B, Napli, u dan kif jidher ben evidenzjat mill-kopja tal-karta tal-identita` Taljana tal-istess esponenti li qed tigi hawn mehmuza u mmarkata bhala Dokument 'AR01';

03. Illi in vista tal-fatt li l-esponenti ma jirrisjedix Malta u stante l-fatt li dan ir-rikors huwa talba ghad-dikjarazzjoni ta` responsabbilita` u ghall-ordni tar-rizarciment ta` danni da parti tal-intimat, Antonio Resciniti, allura din l-Onorabbli Qorti m`ghandha ebda gurisdizzjoni u m`hijiex kompetenti sabiex tisma` u tiddeciedi dan ir-rikors;

04. Illi wkoll in via preliminari u assolutament ukoll minghajr ebda pregudizzju ghall-premess, l-esponenti qed jissolleva inoltre n-nuqqas ta` kompetenza ta` din l-Onorabbli Qorti biex tisma` u tiddeciedi dan ir-rikors fil-konfront tal-intimat, Antonio Resciniti, stante li fil-kuntratt tal-'Conferimento del Incarico di Consulenza' (hawn mehmuz u mmarkat bhala Dokument AR02) fejn l-esponenti gie fil-fatt appuntat bhala konsulent tas-socjeta` rikorrenti, il-partijiet u cioe` s-socjeta` European Insurance Group Limited (C-35708), (gja in likwidazzjoni) u l-esponenti, kienu ftehmu li kull kontroversja li tinqala fir-rigward tal-kuntratt suriferit ghandha tigi risolta permezz ta` arbitragg u dan kif jirrizulta ampjament ippruvat mill-Klawsola 7 tal-istess kuntratt li qed isir riferenza ghalih f`dan il-paragrafu li ghal konvenjenza ta` din l-Onorabbli Qorti qed jigi hawn ikkwotat u riprodott :

7. <u>Clausola Compromissoria</u>

Tutte le controversie nascente dalla conclusione, interpretazione e/o dalla esecuzione del presente contratto saranno deferite ad un Collegio Arbitrale costituito da tre arbitri….; (Klawsola 7 tal-kuntratt immarkat Dokument AR02 mehmuz).

05. Illi, minghajr pregudizzju ghall-premess, ghandu jigi rilevat li l-esponenti, Antonio Resciniti, qatt ma kellu rwol ta` direttur fis-socjeta` European Insurance Group Limited (C-35708), u kien gie appuntat bhala konsulent permezz ta` rizoluzzjoni fil-Bord tad-Diretturi tas-socjeta` rikorrenti fil-25 ta` Frar 2010 (vide l-ahhar pagna tad-Dokument AR02 mehmuz);

06. Illi, minghajr pregudizzju, l-esponenti fil-fatt kien gie appuntat biss u esklussivament bhala konsulent ghas-socjeta` rikorrenti u qatt ma kellu x`jaqsam mas-socjeta` rikorrenti la mil-lat organizzattiv u wisq anqas mil-lat ta` decizjonijiet fuq livell manigerjali, la qabel u lanqas wara ma fil-fatt gie appuntat;

07. Illi in vista ta` dan l-esponenti ma jistax jaqbel mat-tezi tar-rikorrenti illi huwa qatt gie appuntat bhala direttur tas-socjeta` rikorrenti, jew li qatt kellu xi rwol amministrattiv fil-gestjoni tas-socjeta`, European

Insurance group Limited (C-35708), u ma jista` jaccetta qatt li b`xi mod jitqieghed fl-istess 'keffa' mad-diretturi l-ohra;

08. Illi ghandu jirrizulta ampjament ippruvata li x-xoghol ta` konsulenza mas-socjeta` rikorrenti li ghalih gie ngaggat l-istess esponenti u qabel ma fil-fatt gie appuntat l-istess esponenti, kien effettivament jitwettaq minn persuna ohra, u mhux l-istess esponenti;

09. Illi l-istess esponenti kien gie nnotifikat ufficjalment b`din il-kariga fil-15 ta` Marzu 2010 sabiex seta` jibda bl-inkarigu tieghu fis-16 ta` Marzu 2010;

10. Illi fid-29 ta` Marzu 2010, saret spezzjoni kemm mill-ufficjali tal-ISVAP kif ukoll mill-ufficjali tal-Guardia di Finanza;

11. Illi din l-ispezzjoni kellha l-effett li kull ma fil-fatt sehh wara d-data tal-ispezzjoni (u cioe` dik tad-29 ta` Marzu 2010) mwettqa minn dawn l-ispetturi sehh dejjem taht il-kontroll u bil-firma u bl-approvazzjoni kompleta tal-istess ufficjali tal-ISVAP u tal-Guardia Di Finanza;

12. Illi fir-rigward tal-perijodu li ghalih ghamilha ta` konsulent tas-socjeta` rikorrenti, ghadu jigi ribadit u rilevat li l-perijodu effettiv li ghalih l-esponenti kien fil-fatt qed jaghmilha ta` konsulent skont l-istess kuntratt mehmuz (Dokument AR02) kien effettivament biss ta` disghat (9) ijiem lavorativi, jigifieri mid-data tal-15 ta` Marzu 2010, u cioe` perijodu ta` erbatax (14)-il gurnata kurrenti li minnhom wiehed irid inaqqas hamest ijiem (zewg weekends u festa pubblika [Jum San Guzepp]);

13. Illi waqt dawk id-disghat ijiem lavorativi, l-unika haga li l-esponenti rnexxielu jaghmel kien li jibda jambjenta ruhu dwar ix-xoghol li kellu fil-fatt jesegwixxi, u xejn aktar;

14. Illi tajjeb li jigi rilevat li r-rwol tal-esponenti fir-rigward tas-socjeta` rikorrenti kien biss ta` konsulent u f`ebda punt ma kellu la l-inkarigu, wisq anqas il-poter li jiehu xi decizjoni fuq livell manigerjali jew fir-rigward ta` finanzi;

15. Illi in oltre kif fil-fatt saret l-ispezzjoni da parti tal-ufficjali tal-ISVAP u l-Guardia di Finanza, l-esponenti mill-ewwel wera x-xewqa tieghu li jiddimetti ruhu mir-rwol ta` konsulent tal-istess socjeta` rikorrenti;

16. Illi biex jaghmel dan, l-esponenti kellu, skont il-kuntratt mehmuz Dokument AR02 – Klawsola 6, jaghti preavviz ta` ghoxrin gurnata tal-intenzjoni tieghu li jiddimetti ruhu mir-rwol ta` konsulent tas-socjeta` rikorrenti;

17. Illi fil-fatt is-socjeta` rikorrenti m`accettatx id-dimissjoni tal-esponenti sakemm irnexxielha tingagga konsulent ohra sabiex tokkupa l-istess kariga tal-esponenti;

18. Illi fil-fatt dan sehh fit-8 ta` Lulju 2010;

19. Illi effettivament id-dimissjoni tal-esponenti giet accettata mis-socjeta` rikorrenti proprju minn dik id-data u cioe` mit-8 ta` Lulju 2010;

20. Illi, minghajr pregudizzju ghall-premess, tajjeb li jigi enfasizzat li matul il-perijodu ta` qabel l-appuntament tieghu tal-konsulent lis-socjeta` rikorrenti, l-esponenti qatt ma kellu x`jaqsam mal-istess socjeta` rikorrenti u ghalhekk b`ebda mod ma jista` jinzamm b`xi mod anke remotament responsabbli ghal kull ma seta` sehh qabel l-istess data tal-appuntament tieghu, jew sussegwenti ghad-dimissjoni tieghu minn konsulent tas-socjeta` rikorrenti in likwidazzjoni;

21. Illi fil-perijodu minn mindu saret l-ispezzjoni da parti tal-ufficjali tal-ISVAP u tal-Guardia di Finanza sad-data tad-dimissjonijiet tieghu, u cioe` mid-29 ta` Marzu 2010 sat-8 ta` Lulju 2010, l-esponenti kien taht is-supervizjoni kostanti u kontinwa tal-istess ufficjali fuq imsemmija u kull decizjoni li setghet ittiehdet, ittiehdet bil-kunsens u approvazzjoni piena tal-istess ufficjali;

22. Illi tajjeb li jigi enfasizzat li l-esponenti f`ebda punt qatt ma kellu xi rwol manigerjali jew decizjonali fl-istruttura tas-socjeta` rikorrenti u li hu qatt ma kellu x`jaqsam ma` xi fondi li kellha tircievi jew li kellha thallas l-istess socjeta` rikorrenti;

23. Illi fil-fatt l-esponenti lanqas biss kien konoxxenti dwar liema banek effettivament kienu jintuzaw mis-socjeta` rikorrenti;

24. Illi assolutament minghajr ebda pregudizzju ghall-premess, jekk stess kien hemm xi nuqqas da parti ta` xi hadd, dan in-nuqqas zgur ma jahtix ghalih l-esponenti u dan stante li hu qatt ma kellu x`jaqsam xejn mas-socjeta` rikorrenti fuq livell manigerjali, u wisq anqas mas-socjeta` Novvosad Insurance and Financial Services Limited (Socjeta` rregistrata fir-Renju Unit) li kienet il-broker tas-socjeta` European Insurance Group Limited (C-35708) u li fil-fatt ghandha tinzamm responsabbli ghall-akkadut fil-konfront ta` European Insurance Group Limited (C-35708);

25. Illi in oltre l-esponenti qatt ma okkupa rwoli ufficjali fis-socjeta` Novvosad Insurance and Financial Services Limited (Socjeta` rregistrata fir-Renju Unit) li fil-fatt ghandha tinzamm unikament responsabbli in pieno ghall-akkadut, ghal liema akkadut l-esponenti zgur qatt ma kellu x`jaqsam xejn mieghu, wisq anqas ma jista` jigi qatt ippruvat li l-istess esponenti seta` qatt b`xi mod naqas mid-dmirijiet u doveri tieghu, kif qed timplika s-socjeta` rikorrenti;

26. Illi tajjeb li jigi rilevat li l-lat finanzjarju tas-socjeta` Novvosad Insurance and Financial Services Limited (Socjeta` rregistrata fir-Renju Unit), li fil-fatt kienet u ghandha tinzamm responsabbli ghall-akkadut, kien jiggestih l-intimat l-iehor cioe Paolo Viscione;

27. Illi l-esponenti qatt ma kellu poter li jaccedi ghall-informazzjoni fir-rigward tal-kontijiet bankarji tal-istess Novvosad Insurance and Financial Services Limited (Socjeta` rregistrata fir-Renju Unit) u qatt ma kellu l-jedd li jiffirma sabiex jeffetwa prelevamenti jew depositi ta` fondi fil-kont tal-istess Novvosad Insurance and Financial Services Limited (Socjeta` rregistrata fir-Renju Unit) wisq anqas johrog xi cekkijiet tal-istess Novvosad Insurance nad Financial Services Limited (Socjeta` rregistrata fir-Renju Unit) jew, del resto, tas-socjeta` rikorrenti, kif gie rilevat aktar `l fuq;

28. Illi in vista tal-premess, u in vista tal-fatt li s-sitwazzjoni li sabet ruhha fiha s-socjeta` European Insurance Group Limited (C-35708) hija htija esklussivament tas-socjeta` Novvosad Insurance and Financial Services Limited (Socjeta` rregistrata fir-Renju Unit) u in vista tal-fatt li l-esponenti qatt ma kellu ebda rwol ufficjali la fl-istess socjeta` Novvosad Insurance and Financial Services Limited (Socjeta` rregistrata fir-Renju Unit) u wisq anqas fis-socjeta` rikorrenti, l-agir tal-esponenti qatt u f`ebda punt ma jista` jitqies

bhala jinkwadra ruhu f`kondotta ta` nuqqas ta` tharis tad-dmirijiet tal-intimat versu s-socjeta` rikorrenti;

29. Illi in oltre l-kondotta tal-istess esponenti zgur u f`ebda punt ma tista titqies li setghet qatt saret b`xi mod li turi xi nuqqas da parti tal-intimat u minhabba f`hekk it-talba li qed jaghmel ir-rikorrenti sabiex l-istess esponenti jigi ddikjarat responsabbli ghad-danni li soffriet l-istess socjeta` European Insurance Group Limited (C-35708) ghandha tigi michuda bl-ispejjez kontra l-istess rikorrenti;

30. Illi assolutament minghajr pregudizzju ghall-premess, l-esponenti qatt u b`ebda punt ma jista` jigi ddikjarat responsabbli ghad-danni allegatament sofferti mis-socjeta` European Insurance Group Limited (C-35708), u wisq inqas ma jista` jigi ordnat li jhallas xi danni li setghet soffriet l-istess socjeta` rikorrenti, sempliciment peress l-kondotta tal-esponenti b`ebda mod ma tistax titqies li tista` b`xi mod timplika lill-istess esponenti f`xi nuqqas ta` 'duty of care' fil-konfront tal-istess esponenti.

31. Salv eccezzjonijiet ulterjuri jell ikun il-kaz.

Rat il-lista tax-xhieda u l-elenku ta` dokumenti.

Rat ir-risposta guramentata ta` <u>Enzo Resciniti</u> li kienet prezentata fis-<u>17 ta` Frar 2014</u> li taqra hekk :–

01 Illi preliminarjament u minghajr ebda pregudizzju, qed tigi ssollevata l-eccezzjoni tan-nuqqas ta` gurisdizzjoni u kompetenza ta` din l-Onorabbli Qorti biex tisma` u tiddeciedi r-rikors fl-ismijiet premessi;

02 Illi dan stante illi l-esponenti, Enzo Resciniti, jirrisjedi fl-Italja u senjatament f`Via di Casal Bruciato Nro 10, Roma, u dan kif jidher ben evidenzjat mill-kopja tal-karta tal-identita` Taljana tal-istess esponenti li qed tigi hawn mehmuza u mmarkata bhala Dokument 'ER01';

03 Illi in vista tal-fatt li l-esponenti ma jirrisjedix Malta u stante l-fatt li dan ir-rikors huwa talba ghad-dikjarazzjoni ta` responsabbilita` u ghar-rizarciment ta` danni, allegatament sofferti mir-rikorrenti, allura din l-

Onorabbli Qorti m`ghandha ebda gurisdizzjoni u m`hijiex kompetenti sabiex tisma u tiddeciedi dan ir-rikors;

04. Illi wkoll in via preliminari u assolutament ukoll minghajr ebda pregudizzju ghall-premess, il-kwistjoni tal-prezunti danni allegatament sofferti mis-socjeta` European Insurance Group Limited (C-35708) diga` giet deciza minn Qorti Taljana u senjatament mit-Tribunale di Roma Terza Sezione Civile permezz ta` sentenza moghtija mill-istess tribunal fit-2 ta` Mejju 2013, li kopja taghha qed tigi hawn annessa u mmarkata bhala Dokument ER02;

05. Illi assolutament minghajr ebda pregudizzju ghall-premess, jekk stess kien hemm xi nuqqas da parti ta` xi hadd, dan in-nuqqas zgur ma jahtix ghalih l-esponenti u dan stante li hu qatt ma kellu x`jaqsam xejn mas-socjeta` Novvosad Insurance and Financial Services Limited (Socjeta` rregistrata fir-Renju Unit) li kienet il-broker tas-socjeta` European Insurance Group Limited (C-35708) u li l-fatt ghandha tinzamm responsabbli ghall-akkadut fil-konfront ta` European Insurance Group Limited (C-35708);

06 Illi l-esponenti qatt ma okkupa rwoli ufficjali fis-socjeta` Novvosad Insurance and Financial Services Limited (Socjeta` rregistrata fir-Renju Unit) li fil-fatt ghandha tinzamm responsabbli in pieno ghall-akkadut, ghal liema akkadut l-esponenti zgur qatt ma kellu x`jaqsam xejn mieghu, wisq inqas ma jista` jigi qatt ippruvat li l-istess esponenti seta` qatt kellu xi ntenzjoni frawdolenti, kif qed jimplika r-rikorrenti;

07 Illi tajjeb li jigi rilevat li l-lat finanzjarju tas-socjeta` Novvosad Insurance and Financial Services Limited (Socjeta` rregistrata fir-Renju Unit), li fil-fatt kienet u ghandha tinzamm responsabbli ghall-akkadut, kien jiggestih l-intimat l-iehor u cioe` Paolo Viscione;

08 Illi l-esponenti qatt ma kellu poter li jaccedi ghall-informazzjoni fir-rigward tal-kontijiet bankarji tal-istess Novvosad Insurance and Financial Services Limited (Socjeta` rregistrata fir-Renju Unit) u qatt ma kellu l-jedd li jiffirma sabiex jeffetwa prelevamenti jew depoziti ta` fondi fil-kont tal-istess Novvosad Insurance and Financial Services Limited (Socjeta` rregistrata fir-Renju Unit), wisq inqas johrog xi cekkijiet tal-istess Novvosad Insurance and Financial Services Limited (Socjeta` rregistrata fir-Renju Unit);

09. Illi in vista tal-premess, u in vista tal-fatt li s-sitwazzjoni li sabet ruhha fiha s-socjeta` European Insurance Group Limited (C-35708) hija htija esklussivament tas-socjeta` Novvosad Insurance and Financial Services Limited (Socjeta` rregistrata fir-Renju Unit) u in vista tal-fatt li l-esponenti qatt ma kellu ebda rwol ufficjali fl-istess socjeta` Novvosad Insurance and Financial Services Limited (Socjeta` rregistrata fir-Renju Unit), l-agir tal-esponenti qatt u f`ebda punt ma jista` jitqies bhala li jilledi b`xi mod id-doveri tal-istess intimat fil-konfront tar-rikorrenti;

10. Illi in oltre l-kondotta tal-istess esponenti zgur u f`ebda punt ma tista` titqies li setghet qatt saret b`xi intenzjoni frawdolenti jew inkella b`xi mod tmur kontra d-doveri tieghu u minhabba f`hekk it-talba li qed jaghmel ir-rikorrenti fil-konfront tal-intimat, Enzo Resciniti ghandha tigi michuda bl-ispejjez kontra l-istess rikorrenti;

11. Illi l-mod kif mexa l-esponenti b`mod ma jista` qatt u b`ebda mod jinkwadra ruhu f`ambitu ta` kondotta li a bazi taghha din l-Onorabbli Qorti tista` b`xi mod thoss ruhha gustifikata li 'it lifts the corporate veil', kif qed jitlob l-istess rikorrenti, u dan anke minhabba l-fatt li tali ordni tal-Qorti jeffetwa b`mod mhux ekwu l-protezzjoni li taghti l-ligi lill-ufficjali ta` kumpannija li jispiccaw vittma tac-cirkostanzi, bhalma gara fil-kaz tal-esponenti;

12. Illi assolutament minghajr pregudizzju ghall-premess, ghandha tingieb prova fin ghall-grad rikjest mil-ligi tal-quantum tad-danni allegatament sofferti mis-socjeta` European Insurance Group Limited (C-35708), kif ukoll dawn l-allegati danni jistghu b`xi mod jigu mputabbli lill-intimat, Enzo Resciniti;

13. Illi, minghajr pregudizzju, l-allegazzjonijiet kif imnizzla fil-paragrafu 15 tar-rikors originali, qed jigu michuda bl-akbar qawwa u zgur li b`ebda mod dawk l-allegazzjonijiet ma jistghu b`xi mod jigu anke remotament imputabbli lill-intimat, Enzo Resciniti, u dan anke in vista tal-fatt li fl-istess paragrafu, issir referenza specifika ghall-fatti li okkorrew qabel ma l-istess intimat, Enzo Resciniti, gie appuntat direttur u cioe` Lulju 2009;

14. Illi, minghajr pregudizzju, tajjeb li jigi ssolevat li l-intimat, Enzo Resciniti, fil-fatt kull ma ghamel bhala direttur kien biss hdax-il xahar;

15. Illi in vista ta` dan zgur ma seta` la qatt kellu b`xi mod x`jaqsam mal-akkadut izda dahal fuq 'fait accompli';

16. Illi l-intimat, Enzo Resciniti, zgur u b`ebda mod ma seta` jaghmel xejn sabiex b`xi mod jirranga s-sitwazzjoni, kif qed tippretendi l-istess rikorrenti;

17. Illi minhabba f`hekk l-istess intimat, Enzo Resciniti, b`ebda mod ma jista` jitqies li qatt seta` b`xi mod kellu x`jaqsam mal-akkadut, u dan apparti dak li ser jinghad f`dan ir-rigward fil-paragrafu sussegwenti;

18. Illi, minghajr pregudizzju, oltre dak rilevat fil-paragrafu precedenti, tajjeb li jigi rilevat, li fid-29 ta` Marzu 2010, kienet saret spezzjoni da parti ta` ufficjali tal-ISVAP u tal-Guardia di Finanza Taljana u li minn dik id-data kulma sehh fis-socjeta`, European Insurance Group Limited (C-35708), sehh kompletament bil-kunsens u bl-approvazzjoni tal-istess ufficjali kemm tal-ISVAP, kif ukoll tal-Guardia di Finanza;

19. Salv eccezzjonijiet ulterjuri jekk ikun il-kaz.

Rat il-lista tax-xhieda u l-elenku ta` dokumenti.

Rat ir-risposta guramentata ta` <u>Fabio Solano, Paolo Viscione, Vincenzo Viscione u Bruno Lago</u> li kienet prezentata fid-<u>19 ta` Frar 2014</u> li taqra :–

<u>Eccezzjonijiet</u>

*1. Illi fl-ewwel lok u preliminarjament **in-nuqqas ta` gurisdizzjoni** ta` dawn il-Qrati billi l-forum kompetenti biex tisma` din il-kawza a tenur tal-**Art. 5 tar-Regolamenti 44/2001** hija dik Taljana u dana mhux biss billi l-intimati kollha huma residenti fl-Italja izda anke billi jidher li l-allegazzjonijiet tar-rikorrenti huma diretti lejn allegazzjoni ta` agir u azzjonijiet li sehhew l-Italja (kif jirrizulta mill-paragrafu 16) u mhux Malta.*

2. Illi fit-tieni lok u preliminarjament ***in-nuqqas ta` gurisdizzjoni*** *anke minhabba l-lis pendens a tenur tal-****Art 27 tar-Regolamenti 44/2001****. U dana billi jidher li hemm kawzi fuq l-istess fatti gja fl-Italja billi dawn l-akkuzi fil-fatt gew attribwiti wkoll lejn il-figura tal-Amministratur tal-Kumpannija (precedessur tal-likwidatur), fost il-kawzi li hemm l-Italja, inkluzi fost ohrajn kawza derivanti minn rapport maghmula minn EIG kontra Resciniti; u kawza ta` Cogesfin kontra l-Amministratur tal-kumpannija t-tnejn f`Ruma.*

3. Illi fit-tielet lok ***selecta una via non datur recorsum ad alteram****. L-esponenti gja` gie notifikat b`kawza ohra fl-istess mertu u l-likwidatur attur ghalhekk ghandu jiddeciedi b`liema kawza jipprocedi.*

4. Illi fir-raba` lok u bla pregudizzju ghal premess il-****preskrizzjoni duennali*** *billi jirrizulta li (a) l-MFSA appuntat Amministratur sabiex jiehu kontroll tal-kumpannija fis-6 ta` Awwissu 2010; u (b) l-Amministratur kien qed jipprospetta agir frawdolenti fir-rapport tieghu datat Ottubru 2011.

5. Illi fil-hames lok u qabel xejn fil-mertu huwa l-obbligu tal-likwidatur rikorrenti jgib prova konklussiva tal-fatti kollha tal-kaz li fil-fatt is-socjeta` European Insurance Group Limited kienet insolventi qabel il-hatra tal-amministratur.

6. Illi fis-sitt lok u qabel xejn fil-mertu huwa l-obbligu tal-likwidatur rikorrenti ghandu jindika x`inhi l-allegazzjoni diretta fil-konfront ta` kull intimat biex dawn ikunu f`pozizzjoni li jressqu l-eccezzjonijiet u provi appoziti ghal dawk l-allegazzjonijiet u b`hekk il-Qorti tkun tista` taghti smigh xieraq lill-esponenti.

7. Illi l-esponenti jinsistu li ma huwiex sewwa li huma kollha jigu mharrka u t-tajn mwaddba b`mod indiskriminat u bl-iktar mod nebuluz fuq kulhadd meta evidentement l-intimati kollha kellhom rwoli differenti fil-kumpannija. Partikolarment ghandu jigi rilevat li l-kumpannija kienet bdiet procedure kontra whud mill-intimati u terzi ohra qabel ma gie mahtur amministratur izda mal-hatra tieghu l-amministratur ma ghamel xejn u bl-ebda mod ma mexxa dawk il-kawzi.

8. Illi fis-seba` lok u fil-mertu l-pretenzjoni tal-likwidatur giet imressqa unikament bhala tarka biex jostor l-izbalji fatali li saru mill-

amministratur tal-kumpannija mahtur mill-MFSA u l-istess MFSA li waqfet diversi pagamenti necessarji milli jsiru.

9. Illi fit-tmien lok u bla pregudizzju ghal premess l-esponenti jichdu kategorikament li kienu b`xi mod responsabbli ghall-fatti kif allegati mir-rikorrenti, liema allegazzjonijiet huma nfondati fil-fatt u fid-dritt.

10. Illi fid-disgha lok l-esponenti jopponu ghall-ispejjez inutli li qed jikkawza l-likwidatur billi ghamel tlett kawzi kontra l-intimati meta seta` facilment ipproceda b`kawza wahda u b`hekk naqqas l-ispejjez ghal kulhadd. Partikolarment in kwantu l-likwidatur qieghed jallega li l-kumpannija hija nsolventi ghandu jaghti garanzija tajba li meta jirrizulta li l-esponenti ma jahtu xejn ghall-allegazzjonijiet tieghu huwa jkun f`pozizzjoni li jirrifondi lura l-ispejjez gudizzjarji u extra gudizzjarji lill-esponenti.

11. Salv eccezzjonijiet ohra skont il-ligi.

<u>Dwar il-fatti</u>

12. Illi l-fatti deskritti b`mod lakoniku fl-ewwel hames paragrafi tar-rikors attrici ma humiex kontestati;

*13. Illi dwar **is-sitt paragrafu** attrici sta ghall-likwidatur igib prova li l-kumpannija EIG fil-fatt hija nsolventi u inoltre li din l-insolvenza ma kinitx ikkagunata minhabba l-izbalji, serji, maghmula kemm mill-MFSA u kemm mill-Amministratur minnha mahtur;*

14. Illi l-fatti deskritti fil-paragrafi sebgha sa ghaxra ma humiex kontestati;

15. Il-fatti deskritti fil-paragrafi hdax sa tlettax ma humiex kontestati ghalkemm irid jinghad li dawn id-decizjonijiet taw lok ghal kawzi f`diversi Qrati u Tribunali f`diversi fora;

*16. Illi l-fatti deskritti fil-paragrafu **erbatax** huma kontestati fissens li sta ghar-rikorrenti jgib prova tal-insolvenza minnu allegata u ta` min din l-insolvenza hija t-tort;*

*17. Illi l-fatti deskritti fil-paragrafu **hmistax** huma kontestati bhala assolutament infondati fil-fatt u fid-dritt, l-esponenti jirriserva kemm li jirrispondi b`mod iktar ampju wara li l-likwidatur rikorrenti jressaq allegazzjonijiet konkreti fil-konfront tal-esponenti; u kif ukoll li jipprocedi ulterjorment inkluz bi proceduri separati kontra dawn l-allegazzjonijiet qarrieqa.*

18. Illi l-esponenti jirrilevaw li l-amministratur u l-likwidatur mahtur jahtu ghall-opacita` shiha b`liema mexxew in-negozju tal-kumpannija EIG Ltd tant li lanqas ma talbu jew taw l-icken iota ta` informazzjoni lill-esponenti.

19. Illi fir-realta` jrid jinghad li qari korret tar-rapport tal-Amministratur jikkonferma li l-problemi kollha tal-EIG nhalqu meta l-MFSA ndahlet fil-gestjoni tal-kumpannija u waqfet pagamenti essenzjali bhal pagamenti tat-taxxi u dawk ghal servizzi essenzjali u baqghet izzomm dawn il-pagamenti minkejja diversi nterpellanzi. Dan kollu kif sahansitra jirrizulta mir-rapport ahhari tal-Amministratur;

20. Illi in oltre l-Amministratur kien ghamel diversi sejhiet fl-Italja li wasslu ghal "paniku" u possibilment agir frawdolenti mill-policyholder ta` assikurazzjoni mill-Kumpannija, billi fil-perijodu li l-Amministratur kellu l-gestjoni tal-kumpannija s-sejhiet li saru ghall-hlas fuq poloz kien ferm iktar (kwazi d-doppju) mis-sejhiet li kienu jsiru precedentement.

21. Jirrizulta ampjament mid-dikjarazzjonijiet tal-istess Amministratur partikolarment fil-Final progress report 17 October 2011 illi sabiex jevita r-responsabbilta` ghall-izbalji tieghu jakkuza lil kulhadd bi zbalji, huwa sinifikattiv infatti li sahansitra jasal biex jakkuza l-avukati Taljani mqabbda minnu stess bi frodi u qerq. Intant jigi rilevat li l-esponenti gew skagonati minn kull htija l-Italja meta l-prosekutur Taljan iddecieda ma jipprocediex bl-akkuzi li tressqu kontrihom u dana wara investigazzjoni approfondita.

22. Illi fl-ahhar mill-ahhar ghandu jirrizulta ampjament li l-esponenti Bruno Lago gie mdahhal f`dawn il-proceduri semplicement bhala stratagemma tal-likwidatur sabiex ma jhallasx id-djun (inkluz ta` pagi mhux mhallsa) li huma dovuti lill-esponenti u li l-likwidatur qed jirrifjuta jirrikonoxxi illegalment u minghajr ebda raguni valida fil-ligi.

Bl-ispejjez u bl-ingunzjoni in subizzjoni tar-rikorrenti.

Rat il-lista tax-xhieda u l-elenku ta` dokumenti.

Rat ir-risposta guramentata tal-konvenut <u>Giuseppe sive Pino Resciniti</u> li kienet prezentata fis-<u>6 ta` Marzu 2014</u> li taqra hekk :–

01 Illi preliminarjament u minghajr ebda pregudizzju, qed tigi ssollevata l-eccezzjoni tan-nuqqas ta` gurisdizzjoni u kompetenza ta` din l-Onorabbli Qorti biex tisma` u tiddeciedi r-rikors fl-ismijiet premessi;

02 Illi dan stante illi l-esponenti, Giuseppe sive Pino Resciniti, jirrisjedi fl-Italja u senjatament f`Via degli Aranci, 40, Rocchetta a Volturno, Caserta u dan kif jidher ben evidenzjat mill-kopja tal-licenzja tas-sewqan Taljana tal-istess esponenti li qed tigi hawn mehmuza u mmarkata bhala Dokument 'GR01';

03 Illi in vista tal-fatt li l-esponenti ma jirrisjedix Malta u stante l-fatt li dan ir-rikors huwa talba ghar-rizarciment ta` danni, allura din l-Onorabbli Qorti m`ghandha ebda gurisdizzjoni u m`hijiex kompetenti sabiex tisma u tiddeciedi dan ir-rikors;

04 Illi wkoll in via preliminari u assolutament ukoll minghajr ebda pregudizzju ghall-premess, il-kwistjoni tal-prezunti danni allegatament sofferti mis-socjeta` European Insurance Group Limited (C-35708) diga` giet deciza minn Qorti Taljana u senjatament mit-Tribunale di Roma Terza Sezione Civile permezz ta` sentenza moghtija mill-istess tribunal fis-17 ta` Settembru 2012, li kopja taghha qed tigi hawn annessa u mmarkata bhala Dokument GR02;

05 Illi assolutament minghajr ebda pregudizzju ghall-premess, ghandu jigi rilevat li l-unika relazzjoni li l-esponenti, Giuseppe sive Pino

Resciniti kellu mas-socjeta` rikorrenti kien f`ambitu ta` impjegat u dan ghandu jigi ampjament ippruvat minn kuntratt ta` xoghol li dwaru kienu ftehmu l-istess Giuseppe sive Pino Resciniti u s-socjeta` rikorrenti, fl-1 ta` Jannar 2010, liema kopja ta` kuntratt qed jigi hawn anness u mmarkat bhala Dokument GR03;

06 Illi ghandu jigi rilevat ukoll li l-istess impjieg tal-esponenti, Giuseppe sive Pino Resciniti, kien biss ghall-perijodu ta` sena;

07 Illi in oltre fl-istess kuntratt gie stipulat li kellu jkun hemm perijodu ta` prova (probation) ta` sitt xhur;

08 Illi l-impjieg tal-esponenti, Giuseppe sive Pino Resciniti, fil-fatt gie tterminat QABEL ma skada l-perijodu ta` prova u senjatament fil-21 ta` Gunju 2010 u dan ghandu jirrizulta car mill-ittra ta` terminazzjoni ta` impjieg hawn annessa u mmarkata bhala Dokument GR04;

09 Illi minghajr pregudizzju ghall-premess, ghandu jigi enfasizzat illi r-rwol tal-istess esponenti waqt il-permanenza tieghu fuq ix-xoghol mas-socjeta` rikorrenti, huwa qatt la kien jara klijenti, u wisq anqas b`xi mod qatt kellu x`jaqsam ma` flejjes jew kontijiet bankarji tas-socjeta` rikorrenti;

10 Illi d-doveri tal-esponenti meta kien impjegat mas-socjeta` rikorrenti, kien biss 'back office work' u cioe` li jircievi 'claim forms' li jkunu gja saru u jghaddi dawn il-'claim forms' lill-persuna li fil-fatt kienet inkarigata biex tipprocesshom;

11 Illi, minghajr pregudizzju, l-esponenti, Giuseppe sive Pino Resciniti qatt ma okkupa rwoli ufficjali fis-socjeta` rikorrenti u ghalhekk l-istess esponenti zgur qatt ma kellu x`jaqsam mal-akkadut, wisq anqas ma jista` jigi qatt ippruvat li l-istess esponenti seta` qatt kellu xi ntenzjoni frawdolenti, kif qed jimplika r-rikorrenti;

12 Illi l-esponenti qatt ma kellu poter li jaccedi ghall-informazzjoni fir-rigward tal-kontijiet bankarji tal-istess rikorrenti u qatt ma kellu l-jedd li jiffirma sabiex jeffettwa prelevamenti jew depoziti ta` fondi fil-kont tal-istess socjeta`;

13 Illi in vista tal-premess, u in vista tal-fatt li s-sitwazzjoni li sabet ruhha fiha s-socjeta` European Insurance Group Limited (C-35708) hija htija esklussivament ta` terzi u zgur mhux tal-esponenti, l-istess esponenti qatt u b`ebda mod ma` jista` jitqies agixxa b`xi mod frawdolenti jew b`xi mod li seta` juri li seta` kellu x`jaqsam mal-akkadut;

14 Illi in oltre l-kondotta tal-istess esponenti zgur u f`ebda punt ma tista` titqies li setghet qatt saret b`xi intenzjoni frawdolenti u minhabba f`hekk it-talba li qed jaghmel ir-rikorrenti sabiex l-istess esponenti ghandu jinzamm personalment responsabbli ghad-danni li soffriet l-istess socjeta` European Insurance Group Limited (C-35708) ghandha tigi michuda bl-ispejjez kontra l-istess rikorrenti;

15 Illi assolutament minghajr pregudizzju ghall-premess, qed tigi eccepita wkoll in-nuqqas ta` prova tal-quantum tad-danni allegatament sofferti mis-socjeta` European Insurance Group Limited (C-35708);

16 Illi l-'kalkolu' kif imnizzel fir-rikors odjern fir-rigward ta` danni huwa kalkolu li huwa assolutament gratwit u definittivament mhux imsejjes fuq il-verita` tal-fatti, wisq inqas assodat minn xi prova kredibbli;

17 Illi dan ghandu johrog car anke in vista tal-fatt li r-rikorrenti f`ebda punt ma gab xi dokumenti jew xi prova ohra li permezz taghha seta` b`xi mod anke remotament jissustanzja t-talba ezagerata u eccessiva tieghu ghad-danni allegatament sofferti;

18 Salv eccezzjonijiet ulterjuri jekk ikun il-kaz.

Rat illi wara li kien accertat li l-konvenuti kollha kienu notifikati, il-partijiet kienu diretti sabiex jittrattaw l-eccezzjonijiet dwar il-gurisdizzjoni tal-qorti.

Rat illi l-konvenuti Luciano Rotondi, Andrea Ratti u Giovanni Sidoti ma pprezentawx risposta guramentata.

Rat illi din il-kawza nstemghet flimkien ma` l-kawzi bin-nru 1082/2013 JZM u 1083/2013 JZM, bil-provi jkunu komuni u jghoddu ghat-tlieta.

Rat il-provi.

Rat il-verbal li ghamlu l-partijiet fl-udjenza tal-21 ta` April 2015 fejn kien dikjarat illi European Insurance Group Limited kienet kumpannija registrata fir-Registru tal-Kumpanniji ta` Malta bin-nru C 35708.

Rat in-nota li pprezenta l-attur fl-4 ta` Novembru 2015 fejn iddikjara li l-gurisdizzjoni ta` din il-qorti kienet ibbazata fuq l-Art 5(1) tar-Regolament EC 44/2001.

Rat il-verbal li ghamlu l-partijiet fl-udjenza tal-11 ta` Frar 2016 fejn qablu li l-kollha huma residenti u domiciljati fl-Unjoni Ewropeja.

Rat il-verbali tal-udjenzi l-ohra.

Rat in-noti ta` osservazzjonijiet.

Semghet is-sottomissjonijiet bil-fomm.

Rat id-digriet li tat fl-udjenza tat-12 ta` Mejju 2016 fejn halliet il-kawza ghas-sentenza dwar l-eccezzjonijiet tal-gurisdizzjoni tal-qorti.

Rat l-atti l-ohra tal-kawza.

II. <u>Is-sentenza tal-lum</u>

Bis-sentenza tal-lum, qeghdin ikunu decizi l-eccezzjonijiet dwar il-gurisdizzjoni u l-kompetenza ta` l-qorti.

Fil-kaz tal-konvenut Antonio Resciniti :
l-ewwel, it-tieni, it-tielet u r-raba` eccezzjonijiet.

Fil-kaz ta` l-konvenut Enzo Resciniti :
l-ewwel, it-tieni u t-tielet eccezzjonijiet.

Fil-kaz tal-konvenuti Fabio Solano, Paolo Viscione, Vincenzo Viscione u Bruno Lago :
l-ewwel u t-tieni eccezzjonijiet.

Fil-kaz tal-konvenut Giuseppe sive` Pino Resciniti :
l-ewwel, it-tieni u t-tielet eccezzjonijiet.

Fattwalment l-eccezzjonijiet huma bbazati fuq il-pretiza illi ladarba l-konvenuti kollha jirrisjedu l-Italja, pajjiz membru tal-UE, u ladarba l-mertu tal-istanza attrici jittratta allegazzjonijiet dwar kondotta u agir li gara fl-Italja, huma l-qrati Taljani li ghandhom gurisdizzjoni mhux dawk Maltin.

Fil-kaz tal-konvenut Antonio Resciniti, inghatat l-eccezzjoni tan-nuqqas ta` kompetenza abbazi ta` klawsola arbitrali.

Fil-kaz ta` l-konvenut Fabio Solano, Paolo Viscione, Vincenzo Viscione u Bruno, inghatat ukoll l-eccezzjoni li din il-qorti m`ghandhiex gurisdizzjoni ghaliex diga` kienu istitwiti u huma pendenti quddiem il-qrati Taljani kawzi dwar l-istess mertu.

III. <u>L-Art 5 tar-Regolament tal-Kunsill Ewropew Nru 44/2001 tat-22 ta` Dicembru 2000 dwar gurisdizzjoni, u r-rikonoxximent u ezekuzzjoni ta` sentenzi fil-materji civili u kummercjali – maghruf ukoll bhala "Brussels 1"</u>

Ghall-konsiderazzjoni tal-eccezzjonijiet dwar gurisdizzjoni, il-ligi applikabbli hija l-<u>Brussels 1</u>.

Ir-Regolament tal-Kunsill Ewropew 1215/2012 – maghruf ukoll bhala "<u>Brussels Recast</u>" – u li ha post Brussels 1 - ighodd ghal kwistjonijiet li kienu istitwiti wara Jannar 2015, li mhuwiex il-kaz tal-lum.

Dan premess, il-Qorti tirrileva illi Brussels 1 jaghmel parti mil-ligijiet ta` Malta. Propju ghaliex huwa Regolament (ghad-differenza ta` Direttiva) jidhol direttament biex jaghmel parti mil-legislazzjoni tal-pajjizi membri tal-UE inkluz Malta mid-data tad-dhul fis-sehh.

<u>L-Art 3 ta` Brussels 1</u> ighid :-

1. Persons domiciled in a Member State may be sued in the courts of another Member State only by virtue of the rules set out in Sections 2 to 7 of this Chapter.

2. In particular the rules of national jurisdiction set out in Annex I shall not be applicable as against them.

L-Annex I jistipola li fil-kaz ta` Malta, id-disposizzjonijiet li mhux applikabbli a tenur tal-Art 3(1) huma l-Art 742, 743 u 744 tal-Kap 12 u l-Art 549 tal-Kap 13.

Ghalhekk huma l-Art 2 sal-Art 7 ta` Brussels 1 li jghoddu ghall-kaz tal-lum.

Saret analizi ta` Brussels 1 fis-sentenza ta` din il-Qorti (**<u>PA/FS</u>**) tad-9 ta` Jannar 2012 fil-kawza "**<u>Av. Dr. Edward DeBono noe vs No Stop Technology Limited</u>**" fejn inghad hekk :-

L-artikolu 2(1) ta` l-EC Regulations 44/2001 jghid hekk :

"1. Subject to this Regulation, persons domiciled in a Member State shall, whatever their nationality, be sued in the courts of that Member State."

Ghalhekk, generalment il-gurisdizzjoni tissejjes fuq id-domicilju tal-parti mharrka. Madanakollu, imbaghad l-artikolu 5 jitkellem dwar Special jurisdiction u jghid hekk :

"A person domiciled in a Member State may, in another Member State, be sued:

1. (a) in matters relating to a contract, in the courts for the place of performance of the obligation in question;

(b) for the purpose of this provision and unless otherwise agreed, the place of performance of the obligation in question shall be :

in the case of the sale of goods, the place in a Member State where, under the contract, the goods were delivered or should have been delivered, .

in the case of the provision of services, the place in a Member State where, under the contract, the services were provided or should have been provided,

(c) if subparagraph (b) does not apply then subparagraph (a) applies;…"

Wara jitkellem fuq maintenance, tort, delict or quasi-delict, civil claim for damages or restitution which is based on an act giving rise to criminal proceedings, dispute arising out of the operations of a branch, agency or other establishment.

Interessanti huwa dak li jsemmi l-artikolu 23 ta` l-EC Regulation 44 ta` l-2001 li f`Malta kien applikabbli mill-1 ta` Mejju 2004. Dan l-artikolu jghid hekk:

"1. If the parties, one or more of whom is domiciled in a Member State, have agreed that a court or the courts of a Member State are to have jurisdiction to settle any Disputes which have arisen or which may arise in connection with a particular legal relationship, that court or those courts shall have jurisdiction. Such jurisdiction shall be exclusive unless the parties have agreed otherwise. Such an agreement conferring jurisdiction shall be either :

(a) in writing or evidenced in writing ; or

(b) in a form which accords with practices which the parties have established between themselves ; or

(c) in international trade or commerce, in a form which accords with a usage of which the parties are or ought to have been aware and which in such trade or commerce is widely known to, and regularly observed by, parties to contracts of the type involved in the particular trade or commerce concerned …

… Kif qalet din il-Qorti kif presjeduta, fid-decizjoni taghha tat-23 ta` Jannar, 2007 fil-kawza fl-ismijiet ***Mrbookmaker.com Ltd. (C27649) vs***

***Stichting De Nationale Sporttotalisator, Entita` Estera****, wara ezami tal-Brussels Regulation, persuna b`domicilju fi Stat Membru ghandha tigi imfittxija f`dak l-Istat Membru u dan ghall-fini ta` l-artikolu 2(1). Il-preambolu 11 ta` l-istess regolamenti jghid :*

"The rules of jurisdiction must be highly predictable and founded on the principle that jurisdiction is generally based on the defendant`s domicile and jurisdiction must always be available on this ground …The domicile of a legal person must be defined autonomously so as to make the common rules more transparent and avoid conflicts of jurisdiction."

Fil-kawza deciza mill-Qrati Ewropej fl-ismijiet ***Kalfelis vs Shroder****, Case 189/1987 (Reports 1988 page 05565) inghad li "all exceptions to the rule that the defendant must be sued in the state of his domicile are to be construed narrowly". Dan kien bazat fuq il-principju tad-dritt generali tal-konvenut, ossija dak li jigi imharrek fid-domicilju tieghu (Ara f`dan is-sens ukoll is-sentenza tal- European Court of Justice fil-kawza* ***"Athanasios Kalfelis vs Bankhaus Schroder, Munchmeyer, Hengst and Co.,*** *deciza mill-Fifth Chamber fis-27 ta` Settembru 1988, Case no 189/87 European Court Reports 5565, u s-sentenza lokali fl-ismijiet* ***Bell Med Limited C26412 Vs Pari Mutuel Urban*** *deciza mill-Qorti ta` L-Appell Civil Superjuri fit-18 ta` Settembru 2009.*

Il-Qorti tirreferi ghall-kawza deciza fit-30 ta` Gunju, 2011 minn din il-Qorti presjeduta mill-Imhallef Mark Chetcuti fl-ismijiet ***Avukat Dr. Edward DeBono nomine vs No Stop Technology Limited*** *(Citazz. Nru. 1049/10) fejn intqal:*

*"L-abdikazzjoni ghal gurisdizzjoni ta` forum skond il-principji normali legali kif enunzati fil-Council Regulation 44/2001 hi eccezzjoni ghar-regola u bhala tali trid tirrizulta b`mod car u univoku. Din hi l-interpretazzjoni kostanti kif tirrizulta mill-gurisprudenza Maltija u hi l-istess anki fil-forum Ewropew fejn fis-sentenza deciza mill-****First Chamber tal-European Court of Justice*** *fit-12 ta` Ottubru 2008 fl-ismijiet* ***Nicole Hassett vs South Eastern Health Board and Cheryl Doherty vs North Western Health Board*** *gie stipulat is-segwenti:*

18. Moreover, as is stated in the 11th recital in the preamble to Regulation No. 44/2001, jurisdiction based on the defendant`s domicile – in accordance with the general rule – ***must always be available, save in a few well defined situations*** *in which the subject matter of the litigation or the autonomy of the parties warrants a different linking factor.* ***Such situations must accordingly be interpreted strictly****."*

Jidher ghalhekk li l-eccezzjonijiet ghal artikolu 2 fuq riferit ta` din l-EC Regualtion ghandhom jigu interpretati b` mod ristrett.

Sentenza ohra kienet dik illi tat din il-Qorti (**PA/SM**) fl-4 ta` Dicembru 2014 fil-kawza "**Alpha Briggs Mediterranean Limited vs 38859) vs Briggs Environmental Services Limited**" fejn inghad hekk dwar l-Art 10, 11 u 12 ta` Brussels 1 :-

10.2. Ir-regolament tal-Unjoni Ewropea 44/2001:

10.2.1. Illi dan ir-Regolament ghandu forza ta` Ligi f`Malta u hu applikabbli b`mod dirett;

10.2.2. Illi dan ir-Regolament japplika ghal kaz odjern billi dan hu kwistjoni ta` natura civili u mhux eskluz mill-operat tal-istess Regolament;

10.2.3. Illi dan ir-Regolament japplika wkoll a bazi tal-artiklu 742 (6) tal-Kap 12 tal-Ligi ta` Malta;

10.2.4. Illi l-artiklu 2 tal-imsemmi Regolament jistabilixxi li:

"persons domiciled in a Member State shall, whatever their nationality, be sued in the Courts of that Member State";

*10.2.5. Illi dan gie ribadit mill-First Chamber tal-Qorti Ewropea tal-Gustizzja fil-kaz "**Nicole Hassett vs South Eastern Health Board** u **Cheryl Doherty vs North Western Health Board** tat-2 t`Ottubru, 2008, citati mill-istess socjeta` intimata, (ara foll 80);*

10.2.6. Illi kif kompliet tirribadixxi l-istess qorti indikata fil-paragrafu precedenti fil-kawza numru C - 281/02 minnha wkoll citata fl-istess nota: (ara foll 80);

"It must be observed, first, that Article 2 of the Brussels Convention is mandatory in nature and that, according to its terms, there can be no derogation from the principle it lays down except in the cases provided for by the Convention";

10.2.7. Illi ghalhekk ghandu jkun pacifiku li kemm ir- Regolamenti in dizamina u l-kazistika Ewropea li tinforzha, jirrikjedu li wiehed ghandu jigi mharrek fl-istat Membru fejn l-istess intimat ikun domiciljat;

10.2.8. Illi jirrizulta li s-socjeta` intimata:

10.2.8.i. Hi registrata l-Iskozja, (ara foll 52);

10.2.8.ii. Topera wkoll l-Iskozja, (ara foll 50);

10.2.9. Illi l-ftehim tal-1 t`April, 2008, pattwit bejn il-partijiet ma jistabilixxi l-ebda klawsola rigwardanti l-gurisdizzjoni bejn il-kontendenti f`kaz ta` dizgwid;

10.2.10. Illi l-oggett tal-istess ftehim kellu jigi ezercitat fl- Oman;

Ikkunsidrat:

11.0. Illi minn ezami tal-fatti kif fuq sintetikament esposti jirrizulta segwenti:

11.1. Illi l-ftehim pattwit fuq riferit gie konkluz f`Malta;

11.2. Illi s-socjeta` rikorrenti hi registrata u topera f`Malta;

11.3. Illi s-socjeta` intimata hi registrata fl-Iskozja;

11.4. Illi l-oggett meritu tal-ftehim hekk pattwit kellu jigi ezegwit l-Oman, (ara foll 77);

Ikkunsidrat :

12. Illi tenut kont tas-suespost ghandu jkun pacifiku li l-anqas l-artiklu 5 tar-Regolament Ewropei Numru 44/2001, ma` japplikaw ghall-vertenza odjerna".

Fuq l-istess linja kienet is-sentenza ta` din il-Qorti **(PA/AE**) [l-appell mar dezert] tal-15 ta` Ottubru, 2012 fil-kawza "**Chemimart Limited vs Reckitt Benckiser Healthcare International Limited**" fejn inghad :-

Ir-regola generali hi li persuna ghandha titharrek fil-pajjiz fejn hi domiciljata (Artikolu 2 tar-Regolament 44/2001), forum domicilii. M`hemmx kontestazzjoni li l-kumpannija konvenuta hi domiciljata fl-Ingilterra. L-Artikolu 3(1) tas- Sezzjoni 1 Kapitolu II tar-Regolament 44/2001 jipprovdi li `persuni domiciljati fi Stat Membru jistghu jigu mfittxija fil-qrati ta` Stat Membru iehor biss bis-sahha tar-regoli mnizzla fis-Sezzjonijiet 2 sa` 7 ta` dan il-Kaptiolu.`.

Jidher ghalhekk li r-regola generali hi li persuna ghandha tigi mharrka fl-Istat Membru fejn hi domiciljata. Madankollu hemm eccezzjonijiet…… Fil-kaz ***Jakob Handte & Co GmbH v Traitements Mecano-chimiques des Surfaces SA*** *(1992) (C-26/91) deciz mill-Qorti*

Ewropea fis-17 ta` Gunju 1992, inghad li r-regola generali li persuna ghandha titharrek fl-Istat Membru fejn hi domiciljata "…is a general principle because it makes it easier, in principle, for a defendant to defend himself. Consequently, the jurisdictional rules which derogate from that general principle must not lead to an interpretation going beyond the situations envisaged by the Convention.".

Dan premess, u qabel tghaddi ghall-analizi tal-Art 5 ta` Brussels 1, li abbazi tieghu l-attur noe jikkontendi li din il-Qorti ghandha gurisdizzjoni, il-Qorti tirrileva illi l-mertu tal-kawza tal-lum ma jinkwadrax fost il-kazi li ghalihom Brussels 1 mhux applikabbli.

Infatti l-**Art 1 u 2 ta` Brussels 1** ighidu :-

1. This Regulation shall apply in civil and commercial matters whatever the nature of the court or tribunal. It shall not extend, in particular, to revenue, customs or administrative matters.

2. The Regulation shall not apply to:

(a) the status or legal capacity of natural persons, rights in property arising out of a matrimonial relationship, wills and succession;

(b) bankruptcy, proceedings relating to the winding-up of insolvent companies or other legal persons, judicial arrangements, compositions and analogous proceedings;

(c) social security;

(d) arbitration.

3. In this Regulation, the term "Member State" shall mean Member States with the exception of Denmark.

Kif jirrizulta mill-premessi tar-rikors guramentat, din il-kawza kienet promossa ghaliex min-naha tal-attur noe qed jigi allegat illi l-konvenuti kisru l-obbligi statutorji taghhom fil-konfront ta` European Insurance Group Limited ("**EIG Limited**"), u li kagun ta` dan, EIG Limited garrbet danni, li taghhom intalbet il-likwidazzjoni u kundanna tal-hlas. Jidher ghalhekk li l-kawza qeghda titmexxa fuq binarju distint minn dak tal-istralc. Ghalhekk Brussels 1 ighodd ghal din il-kawza.

L-Art 5 ta` Brussels 1 jaqra hekk :-

A person domiciled in a Member State may, in another Member State, be sued :

1. (a) in matters relating to a contract, in the courts for the place of performance of the obligation in question;

(b) for the purpose of this provision and unless otherwise agreed, the place of performance of the obligation in question shall be:

- in the case of the sale of goods, the place in a Member State where, under the contract, the goods were delivered or should have been delivered,

- in the case of the provision of services, the place in a Member State where, under the contract, the services were provided or should have been provided,

(c) if subparagraph (b) does not apply then subparagraph (a) applies

2. in matters relating to maintenance, in the courts for the place where the maintenance creditor is domiciled or habitually resident or, if the matter is ancillary to proceedings concerning the status of a person, in the court which, according to its own law, has jurisdiction to entertain those proceedings, unless that jurisdiction is based solely on the nationality of one of the parties ;

3. in matters relating to tort, delict or quasi-delict, in the courts for the place where the harmful event occurred or may occur;

4. as regards a civil claim for damages or restitution which is based on an act giving rise to criminal proceedings, in the court seised of those proceedings, to the extent that that court has jurisdiction under its own law to entertain civil proceedings;

5. as regards a dispute arising out of the operations of a branch, agency or other establishment, in the courts for the place in which the branch, agency or other establishment is situated;

6. as settlor, trustee or beneficiary of a trust created by the operation of a statute, or by a written instrument, or created orally and evidenced in writing, in the courts of the Member State in which the trust is domiciled;

7. as regards a dispute concerning the payment of remuneration claimed in respect of the salvage of a cargo or freight, in the court under the authority of which the cargo or freight in question :

(a) has been arrested to secure such payment, or

(b) could have been so arrested, but bail or other security has been given; provided that this provision shall apply only if it is claimed that the defendant has an interest in the cargo or freight or had such an interest at the time of salvage."

L-attur noe isostni li din il-Qorti ghandha gurisdizzjoni abbazi tal-Art 5(1).

Id-disposizzjoni tipprovdi illi persuna lit kun domiciljata fi Stat Membru tista` tkun imfittxija fi Stat Membru iehor dwar materji li ghandhom x` jaqsmu ma` xi kuntratt, fil-qrati tal-post tat-twettieq ta` l-obbligi risultanti.

Il-konvenuti jgibu l-argument illi t-talbiet attrici huma generici tant li minn qari ta` r-rikors guramentat ma hemmx indikazzjoni cara jekk it-talbiet humiex ibbazati fuq reat jew reati, fuq culpa aquiliana jew fuq culpa *ex contractu.*

Jidher li l-ilmenti tal-attur noe *inter alia* huma :

(i) illi l-konvenuti jew min minnhom mexxew hazin l-affarijiet ta` EIG Limited bir-rizultat li din garrbet telf kbir ;

(ii) illi l-konvenuti hallew li EIG Limited iggarrab telf, u ma kienux jafu u/jew ma setghux jikkontrollaw it-telf ;

(iii) illi l-konvenuti naqsu milli jzommu struttura ta` tmexxija xierqa ghall-EIG Limited u wkoll naqsu milli jikkontrollaw l-istruttura ta` tmexxija li kienet vigenti ;

(iv) illi l-konvenuti naqsu milli jmexxu l-kummerc ta` assigurazzjoni ta` l-EIG Limited b`mod xieraq billi naqsu milli jmexxu l-operat ta` kumpannija (inkluz il-hrug ta` poloz ta` assikurazzjoni) u naqsu milli jimplimentaw process ta` claims handling ;

(v) illi l-konvenuti kkawzaw u/jew ippremettew iz-zamma dizastruza tal-kotba (*books of account u financial statements*) ta` EIG Limited u ppermettew li l-kotba taghha jaghtu rapprezentazzjoni qarrieqa ta` l-istat taghha, tant li l-awdituri rrifjutaw li jaghtu opinjoni dwar il-kontijiet ghassena li ghalqet fil-31 ta` Dicembru 2009 u l-awdituri ma tawx opinjoni fuq dawn il-kontijiet ;

(vi) illi l-konvenuti ppermettew u/jew ippartecipaw fil-misapproprjazzjoni u/jew devjazzjoni indebita ta` fondi ta` EIG Limited jew ta` fondi dovuti lilha ;

(vii) illi l-konvenuti ppermettew u/jew ippartecipaw f`numru ta` transazzjonijiet li permezz taghhom suppost li nbieghu ishma fl-EIG Limited, bl-obbligu da parti ta` l-EIG Limited li tixtri lura l-istess ishma jew taghmel tajjeb ghall-hlas dovut lix-xerrej, anki billi tohrog poloz ta` assikurazzjoni in konnessjoni ma` dawn it-transazzjonijiet ; u

(viii) illi l-konvenuti ppermettew u/jew ippartecipaw, permezz ta` paraventu, fis-suq assikurativ Taljan kontra r-regoli ta` l-Italja.

Minn esami anke *prima facie* ta` dawn il-pretensjonijiet, huwa evidenti li din il-kawza ma kenitx promossa biss fuq allegati vjolazzjonijiet ta` obbligi kontrattwali u ta` obbligi fiducjarji, izda fuq l-allegat twettieq ta` atti ta` natura delittwali jew kwazi delittwali.

Kif sar fil-kawza "**Chemimart Limited vs Reckitt Benckiser Healthcare International Limited**" (op. cit.) il-Qorti tevalwa kull talba li saret fir-rikors promotur u tqis jekk tinkwadrax taht xi wahda mill-eccezzjonijiet ravvizati fl-Art 5. F`dik il-kawza infatti l-Qorti sabet li l-ewwel talba kienet tirrigwarda ilment tal-attrici li kien jaqa` barra mir-relazzjoni kontrattwali u kienet ghalhekk tikkwalifika bhala materja relatat ma` *tort*, bil-konsegwenza li kellu jigi ezaminat l-Art 5(3). Dwar it-tieni talba, l-Qorti kienet sostniet li din la taqa` fil-kategorija ta` kontrattwali u lanqas setghet titqies bhala materja ta` *"tort, delict or quasi-delict"* ghax hemm it-talba ma kinitx bazata fuq allegat *"wrongdoing"* da parti tal-konvenuta ; ghalhekk l-Art 5(3) ma setax jigi nvokat. Il-Qorti hemm ikkonkludiet illi jekk pretensjoni ma tistax tingieb taht l-Art 5 tista` dejjem titressaq fil-qrati fejn hu domiciljat il-konvenut.

Fil-kaz tal-lum, jidher li l-ewwel talba hija fondata fuq obbligazzjoni kontrattwali. It-tieni talba tidderiva minn *tort.* Inoltre hemm ilmenti li jistghu jammontaw ghal reat. Per konsegwenza, it-tielet, raba` u hames

talbiet iridu jigu nvestigati taht dawn il-lenti differenti ta` responsabbilita` ta` l-konvenuti, mhux go keffa wahda, bhalma ttenta jaghmel l-attur noe.

IV. Dwar l-Art 5 ta` Brussels 1

Iz-zewg partijiet jaghmlu riferenza ghall-fatt li ghal materji li ghandhom x` jaqsmu ma` kuntratt, ir-regola hija li ghandu jigi stabbilit il-post tat-twettieq ta` l-obbligi. Sabiex jigi identifikat dan il-post, saret referenza ghall-fatt li fil-kazi ta` din ix-xorta, l-Art 5(1) jiddefinixxi dan bhala l-post fejn skont il-kuntratt, is-servizzi kellhom jigu provduti, ezegwiti jew kkonsenjati.

Iz-zewg partijiet jirreferu ghad-decizjoni tal-ECJ fil-kawza "Holterman Ferho Exploitatie BV and Others vs F.L.F. Spies von Büllesheim" li kienet deciza fl-10 ta` Settembru 2015. Iz-zewg jaghtu l-interpretazzjoni taghhom tad-decizjoni b`mod li tassisti t-tezi rispettiva taghhom dwar gurisdizzjoni ta` din il-qorti.

Fil-fehma ta` din il-Qorti dan il-pronunzjament huwa utili hafna sabiex jitfa` dawl fuq is-soluzzjoni tal-vertenza.

Dak kien kaz dwar *director liability.*

Fl-analizi tieghu tal-kaz li huwa migbur fit-kitba bl-isem "**ECJ answers jurisdiction questions in director liability case**" tat-8 ta` Dicembru 2015, l-awtur Patrick Haas ighid :-

"In 2014, in a case involving director liability, the Dutch Supreme Court referred three questions on the application of the EU Brussels I Regulation to the European Court of Justice (ECJ) …… The questions concerned matters of international jurisdiction in a case between a Dutch company and its director who lived in Germany and performed his management activities from there. Since the director was also an employee of the company, the Supreme Court`s first question was whether the special jurisdictional provisions in the EU Brussels I Regulation on employment contracts also had to be applied to the corporate law claim. On September 11 2015 the ECJ answered the questions.

….

Facts

Mr Spies used to be the director of Ferho, a Dutch limited liability company, and was tied to the company by an employment contract. He was domiciled in Germany and performed his management tasks relating to Ferho in Germany. Further, Spies was the director of three German subsidiaries. In the case at hand Spies was being held liable for mismanagement of Ferho during the term of his directorship. The liability claim submitted to a Dutch court was based on :

- *improper management as a managing director (Section 2:9 of the Civil Code);*
- *default under the employment contract (Section 7:661 of the code); and*
- *tort (Section 6:162 of the code).*

Spies argued that the Dutch courts had no jurisdiction based on, among other things, Article 20(1) of Brussels I. This article stipulates that an employer may bring proceedings only in the courts of the member state where the employee is domiciled. According to Spies, the claim should have been submitted to the competent German court.

The district court and the Court of Appeal declared themselves incompetent to rule on the dispute. In cassation, the Supreme Court found that it needed further explanation of Brussels I and referred the following questions to the ECJ :

- *Does Section 5 of Brussels I – which contains special jurisdictional provisions with regard to employment contracts – prevent the applicability of Section 2 of Brussels I in case of a claim against a director also tied to the company by an employment contract?*
- *If not, would the relationship between a director and a company qualify under Article 5(1) of Brussels I (contract)? If so, would the place where such agreement was or should have been executed be the place where the company has its corporate residence within the meaning of Article 60 of Brussels I?*
- *If not, would a claim based on a breach of a director`s obligations under Dutch corporate law qualify under Article 5(3) of Brussels I (tort)? If so, would the place where the damage occurred be the place where the company has its corporate residence within the meaning of Article 60 of Brussels I?"*

Dwar l-ewwel kwesit, l-ECJ qalet :-

33 By its first question, the referring court asks, in essence, whether the provisions of Chapter II, Section 5 (Articles 18 to 21) of Regulation No 44/2001, must be interpreted as meaning that, in a situation such as that at issue in the main proceedings in which a company sues a person, who has

performed the duties of director and manager of that company, in order to establish misconduct on the part of that person in the performance of those duties and to obtain redress from him, they preclude the application of Article 5(1) and (3) of that regulation.

34 It must be stated at the outset that the issue of the application of the special rules for determining jurisdiction, laid down in that section of Regulation No 44/2001, arises in the present case only if Mr Spies von Büllesheim can be considered to be bound, through an `individual contract of employment` for the purposes of Article 18(1) of that regulation, to the company of which he was a director and manager, and could thus be classified as a `worker` for the purposes of Article 18(2).

35 It must be noted, first, that Regulation No 44/2001 does not define either `individual contract of employment` or `worker`.

36 Secondly, the issue of classifying the connection between Mr Spies von Büllesheim and that company cannot be resolved on the basis of national law (see, by analogy, judgment in Kiiski, C-116/06, EU:C:2007:536, paragraph 26).

37 In order to ensure the full effectiveness of Regulation No 44/2001, in particular Article 18, the legal concepts that regulation uses must be given an independent interpretation common to all the Member States (judgment in Mahamdia, C-154/11, EU:C:2012:491, paragraph 42).

38 Inasmuch as Regulation No 44/2001 replaces the Brussels Convention, the interpretation provided by the Court in respect of the provisions of the Brussels Convention is valid also for those of that regulation whenever the provisions of those Community instruments may be regarded as equivalent (judgment in Zuid-Chemie, C-189/08, EU:C:2009:475, paragraph 18).

39 With regard to Article 5(1) of the Brussels Convention, a provision which was used as the basis for adopting Articles 18 to 21 of Regulation No 44/2001, the Court has already held that contracts of employment have certain particularities: they create a lasting bond which brings the worker to some extent within the organisational framework of the business of the undertaking or employer, and they are linked to the place where the activities are pursued, which determines the application of mandatory rules and collective agreements (judgment in Shenavai, 266/85, EU:C:1987:11, paragraph 16).

40 That interpretation is borne out by paragraph 41 of the Report by Mr Jenard and Mr Möller on the Convention on Jurisdiction and the

Enforcement of Judgments in Civil and Commercial Matters, signed at Lugano on 16 September 1988 (OJ 1990 C 189, p. 57), according to which, in relation to the independent concept of a `contract of employment`, it may be considered that it presupposes a relationship of subordination of the employee to the employer.

41 Furthermore, as regards the term `employee`, the Court has held in its interpretation of Article 45 TFEU and a number of EU legislative acts, such as Council Directive 92/85/EEC of 19 October 1992 on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding (tenth individual Directive within the meaning of Article 16(1) of Directive 89/391/EEC) (OJ 1992 L 348, p. 1), that the essential feature of an employment relationship is that for a certain period of time one person performs services for and under the direction of another in return for which he receives remuneration (see, in the context of the freedom of movement for workers, judgment in Lawrie-Blum, 66/85, EU:C:1986:284, paragraphs 16 and 17, and, in the context of Directive 92/85, judgment in Danosa, C-232/09, EU:C:2010:674, paragraph 39).

42 It is also necessary to take those factors into account as regards the notion of `employee` for the purposes of Article 18 of Regulation No 44/2001.

43 With regard to the purpose of Chapter II, Section 5 of Regulation No 44/2001, suffice it to note that, as is clear from the thirteenth recital, the regulation aims to provide the weaker parties to contracts, including contracts of employment, with enhanced protection by derogating from the general rules of jurisdiction.

44 In that respect, it is important to recall that the provisions in Section 5 are not only specific but also exhaustive (judgment in Glaxosmithkline and Laboratoires Glaxosmithkline, C-462/06, EU:C:2008:299, paragraph 18).

45 It is in the light of the foregoing considerations that the referring court must determine, on the basis of the criteria set out in paragraphs 39 and 41 above, whether in the present case Mr Spies von Büllesheim, in his capacity as director and manager of Holterman Ferho Exploitatie, for a certain period of time performed services for and under the direction of that company in return for which he received remuneration and was bound by a lasting bond which brought him to some extent within the organisational framework of the business of that company.

46 More specifically, with regard to the relationship of subordination, the issue whether such a relationship exists must, in each particular case, be assessed on the basis of all the factors and circumstances characterising the relationship between the parties (judgment in Balkaya, C-229/14, EU:C:2015:455, paragraph 37).

47 It is for the referring court to examine the extent to which Mr Spies von Büllesheim, in his capacity as a shareholder in Holterman Ferho Exploitatie, was able to influence the will of that company`s administrative body of which he was the manager. In that case, it will be necessary to establish who had authority to issue him with instructions and to monitor their implementation. If it were to turn out that Mr Spies von Büllesheim`s ability to influence that body was not negligible, it would be appropriate to conclude that there was no relationship of subordination for the purposes of the Court`s case-law on the definition of a worker.

48 If, after examining all the factors mentioned above, the referring court were to find that Mr Spies von Büllesheim, in his capacity as director and manager, had a bond with Holterman Ferho Exploitatie through an individual contract of employment for the purposes of Article 18(1) of Regulation No 44/2001, it would be for that court to apply the rules on jurisdiction laid down in Chapter II, Section 5 of Regulation No 44/2001.

49 In the light of all the foregoing considerations, the answer to the first question is that, in a situation such as that at issue in the main proceedings in which a company sues a person, who performed the duties of director and manager of that company, in order to establish misconduct on the part of that person in the performance of his duties and to obtain redress from him, the provisions of Chapter II, Section 5 (Articles 18 to 21) of Regulation No 44/2001 must be interpreted as meaning that they preclude the application of Article 5(1) and (3) of that regulation, provided that that person, in his capacity as director and manager, for a certain period of time performed services for and under the direction of that company in return for which he received remuneration, that being a matter for the referring court to determine.

…

The provisions of Chapter II, Section 5 (Articles 18 to 21) of Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, in a situation such as that at issue in the main proceedings in which a company sues a person, who performed the duties of director and manager of that company in order to establish misconduct on the part of that person in the performance of his duties

and to obtain redress from him, must be interpreted as meaning that they preclude the application of Article 5(1) and (3) of that regulation, provided that that person, in his capacity as director and manager, for a certain period of time performed services for and under the direction of that company in return for which he received remuneration, that being a matter for the referring court to determine.

Patrick Haas ighid dwar din id-domanda illi :-

The ECJ ruled that Section 5 of Brussels I states that Section 2 of Brussels I does not apply in case of a claim against a director, provided that the relationship with the director is considered to be an employment contract within the meaning of Brussels I. An employment contract exists if, for a certain period, the director performed services for and under the direction of the company in return for remuneration. The ECJ held that this issue was for the referring court to determine. Regarding the subordination relationship, the court considered that it was for the referring court to examine the extent to which Spies, in his capacity as a shareholder of the company, could influence the administrative body of the company of which he was the manager. If his ability to influence that body was not negligible, it would be appropriate to conclude that there was no subordination relationship.

Patrick Haas jaghmel dan l-apprezzament :-

Section 5 of Brussels I applies only if a director is tied to a company by an employment contract within the meaning of that section. The fact that the contract qualifies as an employment contract under national law is not decisive. According to the ECJ, an employment contract exists if, for a certain period, a person performed services for and under the direction of a company in return for remuneration and was bound by a lasting bond which to some extent brought him or her within the organisational framework of the company. This definition may be unsurprising, but it is nevertheless interesting as it is the first time that the ECJ has clearly defined the term `employment contract` in the context of Brussels I.

The ECJ`s considerations with regard to the required relationship of subordination appear realistic. It is for the referring court to examine the extent to which Spies, in his capacity as a shareholder in Ferho, could influence the administrative body of the company of which he was the manager. No subordination relationship exists if the director`s ability to influence the administrative body was not negligible.

F`kitba ohra bl-isem "**Note to EUCJ 10 September 2015, C-47/14 (Holterman Ferho v Spies)**" li harget fil-5 ta` Novembru 2015, l-awtrici Cathalijne van der Plas ghamlet dawn ir-rilievi :

5. As far as the first question is concerned, it is relevant to know that Section 5 of Brussels I contains special jurisdiction provisions for `individual contracts of employment`. Section 5 (Articles 18-21 Brussels I; now Articles 20-23 Recast) takes precedence – due to its protective nature– over Article 2 and Article 5 Brussels I. Pursuant to Article 20 an employer may only bring an action against its employee before the courts where the employee is domiciled.

6. The Court emphasises the interpretation, independently from the regulation, of the term `individual contracts of employment`. For this interpretation the Court not only seeks examples from previous case law relating to the Convention on the Jurisdiction and Enforcement of Judgments in Civil and Commercial Matters (the precursor to Brussels I) and the explanatory Jenard-Möller report that accompanies it, but also previous case law of the Court with regard to other EU legislation on employees, such as Article 45 of the TFEU (free movement of workers) and various directives. The Court infers from this that the essential feature is that 1) for a certain period of time a person performs services for and under the direction of another person in return for which he receives remuneration 2) there is a lasting bond which brought the worker to some extent within the organizational framework of the business of that company.

7. Although the Court says nothing more on this lasting bond, it still stresses that the answer to the question whether a relationship of subordination exists must `in each particular case, be arrived at on the basis of all the factors and circumstances characterising the relationship between the parties` (paragraph 46).

8. Whether the contract between Spies and Holterman satisfies these criteria is for the national courts to verify. The Court does, however, give some pointers. According to the Court it needs to be investigated to what extent Spies, as Holterman shareholder, could influence the will of the administrative body of the company of which he was the director: who was authorised to give Spies instructions and to see to it that those instructions were carried out? If that influence (of Spies as shareholder) was `not negligible`, then the required relationship of subordination does not exist for the purpose of Section 5. In my view, a relationship of subordination does not exist where the director is a majority shareholder (in Dutch: DGA), whereas where a director under the articles of association is not also a (majority) shareholder there often will be a relationship of subordination.

9. If the outcome of the investigation by the national courts is that the legal relationship between Spies and Holterman qualifies as a `contract of employment` within the meaning of Section 5, this section precludes application of Article 5 Brussels I `in a situation such as that at issue in the main proceedings in which a company sues a person, who performed the duties of director and manager of that company, in order to establish misconduct on the part of that person in the performance of his duties and to obtain redress from him` (paragraph 49) (italics added by CvdP). From this, I infer that the distinction observed in Dutch substantive law between the liability of the director as employee and liability based on his company law relationship with the company does not apply at the level of Brussels I.

Similment fil-kitba bl-isem "**The liability of a company director from the standpoint of the Brussels I Regulation**" li harget fis-27 ta` Ottubru 2015, l-awtur Pietro Franzina jasal ghal din il-konkluzjoni :-

The ECJ observed in this respect that one must ascertain, at the outset, whether the defendant could be considered to be bound to the company by an "individual contract of employment". This would in fact make him a "worker" for the purposes of Article 18 of Regulation No 44/2001 and trigger the application of the rules on employment matters set forth in Section 5 of Chapter II, irrespective of whether the parties could also be tied by a relationship based on company law.

Relying on its case law, the ECJ found that the defendant performed services for and under the direction of the claimant company, in return for which he received remuneration, and that he was bound to that company by a lasting bond which brought him to some extent within the organisational framework of the business of the latter. In these circumstances, the provisions of Section 5 would in principle apply to the case, thereby precluding the application of Article 5(1) and Article 5(3).

The ECJ conceded, however, that if the defendant, in his capacity as a shareholder in the claimant company, was in a position to influence the decisions of the company`s administrative body, then no relationship of subordination would exist, and the characterisation of the matter for the purposes of jurisdiction would accordingly be different.

Dwar it-tieni kwesit, l-ECJ ippronunzjat ruhha hekk :-

50 By its second question, the referring court asks, in essence, whether Article 5(1) of Regulation No 44/2001 must be interpreted as meaning that an action brought by a company against its former manager on

the basis of an alleged breach of his obligations under company law comes within the concept of `matters relating to a contract`. If the answer is in the affirmative, the referring court asks whether the place where the obligation that is the basis for the claim was performed or ought to have been performed corresponds to the place referred to in Article 60(1)(b) and (c) of that regulation.

51 That question is relevant for the purposes of the decision in the main proceedings if the referring court were to find, after examining the evidence provided in response to the first question referred, that Mr Spies von Büllesheim did not perform his duties as an employee of Holterman Ferho Exploitatie.

52 In order to reply to the first part of the second question, it must be stated that, in accordance with settled case-law, the concept of `matters relating to contract`, referred to in Article 5(1) of Regulation No 44/2001, presupposes the existence of an obligation freely assumed by one party towards another (see judgment in Česká spořitelna, C-419/11, EU:C:2013:165, paragraph 46).

53 As the Advocate General stated in point 46 of his Opinion, Mr Spies von Büllesheim and Holterman Ferho Exploitatie freely assumed mutual obligations in that Mr Spies von Büllesheim chose to manage and administer that company, and the company undertook to remunerate him for those services, so that their relationship may be regarded as being contractual in nature, and consequently the action brought by the company against its former manager on the basis of the alleged breach of his obligation to perform his duties properly under company law comes within the concept of `matters relating to contract` for the purposes of Article 5(1) of Regulation No 44/2001.

54 In that regard, it appears that the activity of a manager creates close links of the same kind as those which are created between the parties to a contract and that, as a consequence, the action brought by the company against its former manager on the basis of the alleged breach of his obligation to perform his duties properly under company law may legitimately be considered to come within the concept of `matters relating to contract` for the purposes of Article 5(1) of Regulation No 44/2001 (see, by analogy, judgment in Peters Bauunternehmung, 34/82, EU:C:1983:87, paragraph 13).

55 With regard to the issue of the `place`, within the meaning of Article 5(1) of Regulation No 44/2001, where the obligation that is the basis for the claim was performed or ought to have been performed, it is necessary to determine whether that action is covered by Article 5(1)(a) or by the second indent of Article 5(1)(b) of that regulation.

56 In that regard, it must be observed that, taking account of the hierarchy established between points (a) and (b) by point (c) of that provision, the rule of jurisdiction laid down in Article 5(1)(a) of Regulation No 44/2001 is intended to apply only in the alternative and by default with respect to the other rules of jurisdiction in Article 5(1)(b) of that regulation (judgment in Corman-Collins, C-9/12, EU:C:2013:860, paragraph 42).

57 It is clear from the case-law of the Court that a contract which has as its characteristic obligation the provision of services will be classified as a `provision of services` within the meaning of the second indent of Article 5(1)(b) of that regulation (judgment in Car Trim, C-381/08, EU:C:2010:90, paragraph 32). The concept of `services` requires at least that the party who provides the service should carry out a particular activity in return for remuneration (judgment in Falco Privatstiftung and Rabitsch, C-533/07, EU:C:2009:257, paragraph 29).

58 In the context of company law, since the characteristic obligation of the legal relationship between the manager and the company being managed requires a particular activity in return for remuneration, that activity must be classified as a `provision of services` within the meaning of the second indent of Article 5(1)(b) of Regulation No 44/2001.

59 It is in the light of those considerations that the Court must determine the place where the obligation that is the basis for the claim was performed or ought to have been performed.

60 Taking account of the wording of the second indent of Article 5(1)(b) of Regulation No 44/2001, according to which it is the place in the Member State where, `under the contract`, the services were provided or should have been provided which is decisive, the place of the main provision of services must be deduced, in so far as possible, from the provisions of the contract itself (judgment in Wood Floor Solutions Andreas Domberger, C-19/09, EU:C:2010:137, paragraph 38).

61 In the case in the main proceedings, it is common ground that the contract of 7 May 2001 did not contain any clause requiring Mr Spies von Büllesheim to carry out his activities in a specific place.

62 However, it is for the referring court to verify in the articles of incorporation of Holterman Ferho Exploitatie, or in any other document that defines the obligations of the manager vis-à-vis that company, whether it is possible to ascertain the place where the services were mainly provided by Mr Spies von Büllesheim.

63 If neither the provisions of the articles of association of Holterman Ferho Exploitatie, nor any other document defining the obligations of the manager vis-à-vis the company, make it possible to determine the place where the services were mainly provided by Mr Spies von Büllesheim, it will, in such a case, be necessary to take into consideration the fact that those services were provided on behalf of that company.

64 As the Advocate General stated in point 57 of his Opinion, in the absence of any derogating stipulation in the articles of association of the company, or in any other document, it is for the referring court to determine the place where Mr Spies von Büllesheim in fact, for the most part, carried out his activities in the performance of the contract, provided that the provision of services in that place is not contrary to the parties` intentions as indicated by what was agreed. For that purpose, it is possible to take into consideration, in particular, the time spent in those places and the importance of the activities carried out there, it being a matter for the national court to determine whether it has jurisdiction in the light of the evidence submitted to it.

65 In the light of the foregoing considerations, the answer to the second question is that Article 5(1) of Regulation No 44/2001 must be interpreted as meaning that an action brought by a company against its former manager on the basis of an alleged breach of his obligations under company law comes within the concept of `matters relating to a contract`. In the absence of any derogating stipulation in the articles of association of the company, or in any other document, it is for the referring court to determine the place where the manager in fact, for the most part, carried out his activities in the performance of the contract, provided that the provision of services in that place is not contrary to the parties` intentions as indicated by what was agreed.

...

Article 5(1) of Regulation No 44/2001 must be interpreted as meaning that an action brought by a company against its former manager on the basis of an alleged breach of his obligations under company law comes within the concept of `matters relating to a contract`. In the absence of any derogating stipulation in the articles of association of the company, or in any other document, it is for the referring court to determine the place where the manager in fact, for the most part, carried out his activities in the performance of the contract, provided that the provision of services in that place is not contrary to the parties` intentions as indicated by what was agreed.

Patrick Haas (op. cit.) jaghmel dan il-kumment dwar il-konkluzjoni tal-ECJ :-

In regard to the second question, the ECJ ruled that an action brought by a company against a former director on the basis of an alleged breach of the director`s company law obligations falls within the concept of "matters relating to a contract" as referred to in Article 5(1) of Brussels I. The ECJ considered such relationship to be a "contract for the provision of services" within the meaning of Article 5(1)(b) of Brussels I because the legal relationship between a director and a company is characterised by the performance of a particular activity in return for remuneration. Further, the ECJ ruled that in the absence of any stipulation in the company`s articles of association or any other document, it was for the referring court to determine the place where the director had carried out most of his activities, provided that the provision of services in that place was not contrary to the parties` intentions. Article 5(1)(b) states that the courts of such place are competent to rule on the dispute ….

The ECJ left it for the referring court to decide whether an employment contract within the meaning of Brussels I existed. If it did not, the second question becomes relevant. In this context the ECJ ruled that an action brought by a company against its former manager on the basis of an alleged breach of his or her obligations under company law falls within "matters relating to a contract", as referred to in Article 5(1) of Brussels I. In the case at hand, Spies and Ferho freely assumed mutual obligations as Spies chose to manage and administer the company and the company undertook to remunerate him for those services. This decision is in line with the ECJ`s decision in Peters Bauunternehmung (34/82, EU:C:1983:87).

The further specification that the relationship between a company and its managing director be regarded as a contract for the provision of services appears to be technically correct, but leads to a remarkable distinction between directors with and without remuneration. In the event of a contract for the provision of services, the courts of the place where the services were primarily provided or should have been provided under the contract have jurisdiction. The ECJ reiterated that this place must be deduced, insofar as possible, from the contract itself (as held in Wood Floor Solutions Andreas Domberger, C-19/09, EU:C:2010:137).

If the contract does not specify the place where the director should carry out his or her activities, it is for the referring court to verify from the company`s articles of association or any other document that defines the manager`s obligations towards the company whether it is possible to ascertain the place where the services were mainly provided. If not, it is for the referring court to determine the place where the director, for the most part, carried out

his or her activities in the performance of the contract. For that purpose, it is possible to consider the time spent in those places and the importance of the activities carried out there.

One of the essential characteristics of a contract for the provision of services is that the services are provided in return for remuneration, as the ECJ emphasised in its decision. In the context of international jurisdiction, this leads to a distinction between directors performing their services for remuneration and directors performing their services without remuneration. For instance, directors of foundations and associations in the charity, cultural and religious sectors often receive no remuneration.

In case of a contract for the provision of services, the place of the main provision of services under the contract constitutes jurisdiction. In case of a `normal` contract, the place of the `litigious obligation` (to be defined in accordance with national law) constitutes jurisdiction. In other words, while in a contract for services the place is more abstractly defined on the basis of the main provision of services under the contract, in a normal contract the place is more specifically defined on the basis of the litigious claim. It is remarkable that different criteria apply when defining jurisdiction in cases against directors performing their services with or without remuneration.

Pietro Franzina (op. cit.) jiehu l-istess linja :-

The second question raised by the Hoge Raad was whether Article 5(1) of the Brussels I Regulation applies to a case where a company director, not bound by an employment relationship with the company in question, allegedly failed to perform his duties under company law.

The ECJ noted that, generally speaking, the legal relationship between a director and his company is contractual in nature for the purposes of Article 5(1), since it involves obligations that the parties have freely undertaken. More precisely, a relationship of this kind should be classified as a "provision of services" within the meaning of the second indent of Article 5(1)(b). Jurisdiction will accordingly lie, pursuant to the latter provision, with the court for the place where the director carried out his activity.

To identify this place, one might need to determine, as indicated in Wood Floor Solutions, where the services have been provided for the most part, based on the provisions of the contract. In the absence of any derogating stipulation in any other document (namely, in the articles of association of the company), the relevant place, for these purposes, is the place where the director in fact, for the most part, carried out his activities in the performance

of the contract, provided that the provision of services in that place is not contrary to the parties` agreed intentions.

Finalment dwar it-tielet kwesit, l-ECJ tghid :-

66 By its third question, the Hoge Raad der Nederlanden asks, in essence, whether Article 5(3) of Regulation No 44/2001 must be interpreted as meaning that, inasmuch as the applicable national law makes it possible to commence legal proceedings simultaneously on the basis of a contractual relationship and of tort, delict or quasi-delict, that provision covers a situation such as that at issue in the main proceedings in which a company is suing a person both in his capacity as manager of that company and on the basis of wrongful conduct. If the answer is in the affirmative, the referring court wishes to know whether the place where the harmful event occurred or may occur corresponds to the place referred to in Article 60(1)(b) and (c) of that regulation.

67 As with the second question referred, the third question is relevant for the purposes of the decision in the main proceedings in the event that the referring court were to find, after examining the evidence provided in response to the first question referred, that Mr Spies von Büllesheim did not perform his duties as an employee of Holterman Ferho Exploitatie.

68 It is settled case-law that Article 5(3) of Regulation No 44/2001 applies to all actions which seek to establish the liability of a defendant and do not concern `matters relating to a contract` within the meaning of Article 5(1) of the regulation (see, inter alia, judgment in Brogsitter, C-548/12, EU:C:2014:148, paragraph 20 and the case-law cited).

69 Thus, as is clear from the reply to the second question, the legal relationship between a company and its manager must be classified as coming under `matters relating to a contract` for the purposes of Article 5(1) of Regulation No 44/2001.

70 Consequently, inasmuch as national law makes it possible to base a claim by the company against its former manager on allegedly wrongful conduct, such a claim may come under `tort, delict or quasi-delict` for the purposes of the jurisdiction rule set out in Article 5(3) of Regulation No 44/2001 only if it does not concern the legal relationship of a contractual nature between the company and the manager.

71 If the conduct complained of may be considered a breach of the manager`s contract, that being a matter for the referring court to determine, it must be concluded that the court which has jurisdiction to rule on that

conduct is the one specified in Article 5(1) of Regulation No 44/2001. If not, the jurisdiction rule set out in Article 5(3) of that regulation applies (see, by analogy, judgment in Brogsitter, C-548/12, EU:C:2014:148, paragraphs 24 to 27).

72 In that regard, it should be recalled that Article 5(3) of Regulation No 44/2001 must be interpreted independently and strictly (judgment in CDC Hydrogen Peroxide, C-352/13, EU:C:2015:335, paragraph 37 and the case-law cited). As regards the place where `the harmful event occurred or may occur` in Article 5(3) of Regulation No 44/2001, it must be recalled that that expression is intended to cover both the place where the damage occurred and the place of the event giving rise to it, so that the defendant may be sued, at the option of the applicant, in the courts for either of those places (judgment in Coty Germany, C-360/12, EU:C:2014:1318, paragraph 46).

73 According to settled case-law, the rule of special jurisdiction laid down in Article 5(3) of that regulation is based on the existence of a particularly close connecting factor between the dispute and the courts of the place where the harmful event occurred or may occur, which justifies the attribution of jurisdiction to those courts for reasons relating to the sound administration of justice and the efficacious conduct of proceedings (judgment in CDC Hydrogen Peroxide, C-352/13, EU:C:2015:335, paragraph 39 and the case-law cited).

74 In matters relating to tort, delict or quasi-delict, the courts for the place where the harmful event occurred or may occur are usually the most appropriate for deciding the case, in particular on the grounds of proximity and ease of taking evidence (judgment in CDC Hydrogen Peroxide, C-352/13, EU:C:2015:335, paragraph 40).

75 Identification of one of the linking factors recognised by the case-law set out in paragraph 72 above must therefore make it possible to establish the jurisdiction of the court objectively best placed to determine whether the elements that constitute liability do in fact exist, so that only the court within whose jurisdiction the relevant linking factor is situated may validly be seised (judgment in CDC Hydrogen Peroxide, C-352/13, EU:C:2015:335, paragraph 41 and the case-law cited).

76 As far as the place of the event giving rise to the damage is concerned, it is necessary, as the Advocate General stated in point 65 of his Opinion, to bear in mind that that place may be situated in the place where Mr Spies von Büllesheim carried out his duties as manager of the Holterman Ferho Exploitatie company.

77 With regard to the place where the damage occurred, it is clear from the case-law of the Court, that that is the place where the damage alleged by the company actually manifests itself (see, to that effect, judgment in CDC Hydrogen Peroxide, C-352/13, EU:C:2015:335, paragraphs 52).

78 In the present case, in order to determine where Mr Spies von Büllesheim`s wrongful conduct in the exercise of his duties as manager could have caused the damage, the referring court must, on the basis of the evidence at its disposal, take into account the fact that the term `place where the harmful event occurred` cannot be construed so extensively as to encompass any place where the adverse consequences can be felt of an event which has already caused damage actually taking place elsewhere.

79 In the light of the foregoing considerations, the answer to the third question is that, in circumstances such as those at issue in the main proceedings in which a company sues its former manager on the basis of allegedly wrongful conduct, Article 5(3) of Regulation No 44/2001 must be interpreted as meaning that that action is a matter relating to tort or delict where the conduct complained of may not be considered to be a breach of the manager`s obligations under company law, that being a matter for the referring court to verify. It is for the referring court to identify, on the basis of the facts of the case, the closest linking factor between the place of the event giving rise to the damage and the place where the damage occurred.

…

In circumstances such as those at issue in the main proceedings in which a company is suing its former manager on the basis of allegedly wrongful conduct, Article 5(3) of Regulation No 44/2001 must be interpreted as meaning that that action is a matter relating to tort or delict where the conduct complained of may not be considered to be a breach of the manager`s obligations under company law, that being a matter for the referring court to verify. It is for the referring court to identify, on the basis of the facts of the case, the closest linking factor between the place of the event giving rise to the damage and the place where the damage occurred.

Patrick Haas (op. cit.) ighid :-

In answer to the third question, the ECJ considered that Article 5(3) of Brussels I applied only if the director`s conduct could not be considered to be a breach of his obligations under company law. Otherwise, Article 5(1) of Brussels I applied….The answer to the third question is less interesting. It confirms earlier ECJ case law. According to the case law, Article 5(3) of Brussels I (tort) applies only to actions which seek to establish the liability of a

defendant and do not concern "matters relating to a contract" within the meaning of Article 5(1) of Brussels I. Only where the challenged conduct may not be considered a breach of the manager`s obligations under company law does Article 5(3) of Brussels I come into play. In such cases it is for the referring court to identify, based on the facts, the closest linking factor between the place of the event giving rise to the damage and the place where the damage occurred.

Fl-istess vena, Pietro Franzina ighid :-

Finally, inasmuch as national law makes it possible to base a claim by the company against its former manager simultaneously on the basis of allegedly wrongful conduct, the ECJ, answering the third question raised by the Hoge Raad, stated that such a claim may come under "tort, delict or quasi-delict" for the purposes of Article 5(3) of the Brussels I Regulation whenever the alleged conduct does not concern the legal relationship of a contractual nature between the company and the manager.

The ECJ recalled in this connection that the Regulation, by referring to "the place where the harmful event occurred or may occur", intends to cover both the place where the damage occurred and the place of the event giving rise to it. Insofar as the place of the event giving rise to the damage is concerned, reference should be made to the place where the director carried out his duties as a manager of the relevant company. For its part, the place where the damage occurred is the place where the damage alleged by the company actually manifests itself, regardless of the place where the adverse consequences may be felt of an event which has already caused a damage elsewhere.

Ghalhekk li jemergi mid-decizjoni tal-ECJ skont l-awturi Patrick Haas [op. cit.] u Cathalijne van der Plas [op. cit.] huwa illi :-

The ECJ has issued an interesting decision that is relevant to many international director liability cases. It demonstrates that in such cases the competent court is not automatically the court of the place of establishment of the company. If a director has an employment relationship within the meaning of Brussels I, only the courts of the place where he or she is domiciled are competent. If a director does not have an employment agreement, much depends on the agreed or actual place of performance. Thus, to prevent any jurisdictional issues, it may be sensible to bring suits before the courts where the defendant is domiciled (Patrick Haas)

All in all this judgment answers three important questions of qualification: 1) if a director has a `contract of employment` (under Article 18 Brussels I), that company can only bring an action on account of directors` liability before the courts of the Member State in which the director is domiciled; 2) if there is no such contract of employment the courts may, in connection with an action on account of directors` liability, assume jurisdiction under Article 2 or Article 5(1), but 3) not under Article 5(3) Brussels I, a provision which only comes into play if the act to which the action relates is unlawful, irrespective of the contract. (Cathalijne van der Plas).

Tajjeb jekk issir riferenza wkoll ghad-decizjoni tal-ECJ tal-11 ta` Marzu 2010 fil-kawza "**Wood Floor Solutions Andreas Domberger GmbH vs Silva Trade SA : Case C-19/09**" fejn inghad :-

1. The second indent of Article 5(1)(b) of Regulation No 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters must be interpreted as meaning that that provision is applicable where services are provided in several Member States. Where the services in question are provided at several places in different Member States, a differentiated approach cannot be applied to the objectives of proximity and predictability pursued by the centralisation of jurisdiction in the place of the provision of services under the contract at issue and by the determination of sole jurisdiction for all claims arising out of that contract. (see paras 27, 29, operative part 1)

2. The second indent of Article 5(1)(b) of Regulation No 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters must be interpreted as meaning that where services are provided in several Member States, the court which has jurisdiction to hear and determine all the claims arising from the contract is the court in whose jurisdiction the place of the main provision of services is situated. For a commercial agency contract, that place is the place of the main provision of services by the agent, as it appears from the provisions of the contract. The determination of the place of the main provision of services according to the contractual choice of the parties meets the objective of proximity, since that place has, by its very nature, a link with the substance of the dispute.

If the provisions of a contract do not enable the place of the main provision of services to be determined, but the agent has already provided such services, it is appropriate, in the alternative, to take account of the place where he has in fact for the most part carried out his activities in the performance of the contract, provided that the provision of services in that place is not contrary to the parties` intentions as it appears from the provisions of the contract. For that purpose, the factual aspects of the case may be taken into

consideration, in particular, the time spent in those places and the importance of the activities carried out there.

Finally, if the place of the main provision of services cannot be determined on that basis, it must be regarded as the place where the commercial agent is domiciled. That place can always be identified with certainty and is therefore predictable. Moreover, it has a link of proximity with the dispute since the agent will in all likelihood provide a substantial part of his services there. (see paras 36, 38-43, operative part 2)

In partikolari fil-para 38 sa 43 tad-decizjoni, l-ECJ sahqet illi :-

38 Having regard to the objective of predictability laid down by the legislature in recital 11 in the preamble to the regulation, and taking account of the wording of the second indent of Article 5(1)(b), according to which it is the place in a Member State where, under the contract, the services were provided or should have been provided which is decisive, the place of the main provision of services must be deduced, in so far as possible, from the provisions of the contract itself. Thus, in the context of a commercial agency contract, the place where the agent was to carry out his work on behalf of the principal, consisting in particular in preparing, negotiating and, where appropriate, concluding the transactions for which he has authority has to be identified, on the basis of that contract.

39 The determination of the place of the main provision of services according to the contractual choice of the parties meets the objective of proximity, since that place has, by its very nature, a link with the substance of the dispute.

40 If the provisions of a contract do not enable the place of the main provision of services to be determined, either because they provide for several places where services are provided, or because they do not expressly provide for any specific place where services are to be provided, but the agent has already provided such services, it is appropriate, in the alternative, to take account of the place where he has in fact for the most part carried out his activities in the performance of the contract, provided that the provision of services in that place is not contrary to the parties` intentions as it appears from the provisions of the contract. For that purpose, the factual aspects of the case may be taken into consideration, in particular, the time spent in those places and the importance of the activities carried out there. It is for the national court seised to determine whether it has jurisdiction in the light of the evidence submitted to it (Color Drack, paragraph 41).

41 Fourth, if the place of the main provision of services cannot be determined on the basis of the provisions of the contract itself or its actual

performance, the place must be identified by another means which respects the objectives of predictability and proximity pursued by the legislature.

42 For that purpose, it will be necessary for the purposes of the application of the second indent of Article 5(1)(b) to consider, as the place of the main provision of the services provided by a commercial agent, the place where that agent is domiciled. That place can always be identified with certainty and is therefore predictable. Moreover, it has a link of proximity with the dispute since the agent will in all likelihood provide a substantial part of his services there.

43 Having regard to all the above considerations, the answer to the Question 1(b) is that the second indent of Article 5(1)(b) of the regulation must be interpreted as meaning that where services are provided in several Member States, the court having jurisdiction to hear and determine all the claims based on the contract is the court within whose jurisdiction the place of the main provision of services is situated. For a commercial agency contract, that place is the place of the main provision of services by the agent, as it appears from the provisions of the contract or, in the absence of such provisions, the actual performance of that contract or, where it cannot be determined on that basis, the place where the agent is domiciled.

V. <u>Risultanzi</u>

Fid-dawl ta` l-premess, il-Qorti tibda billi tirrimarka li fil-kaz tal-lum, irrizulta li l-azzjoni kienet istitwita kontra zewg kwalitajiet ta` konvenuti : azzjoni kontra d-diretturi ufficjali – li kienu Luciano Rotondi, Andrea Ratti, Enzo Resciniti u Bruno Lago ; u azzjoni kontra diretturi ohrajn li kienu huma Vincenzo Viscione, Paol Viscione, Giovanni Sidoti, Antonio Resciniti, Giuseppe Resciniti, u Fabio Solano. Skont Dok J a fol 158, jirrizulta li d-diretturi hekk indikati “ufficjali” mir-rikorrenti noe kellhom ghal xi zmien jew iehor il-kariga ta` diretturi.

Ma tressqux provi dwar il-kompiti jew l-inkariku li kellhom id-diretturi “ufficjali”.

Lanqas ma tressqu prodotti dwar kuntratti ta` ingagg (jekk kien hemm).

Jew provi dwar rimunerazzjoni (jekk kien hemm).

Fin-nuqqas ta` provi ta` din ix-xorta, il-Qorti ma tarax li tista` ggebbed l-argument u tqis li huma applikabbli l-Art 18 sa 21 ta` Brussels 1.

Ghalhekk il-Qorti ma tarax li tista` tiskarta l-applikazzjoni tal-Art 5.

Dwar il-posizzjoni tal-hekk deskritti bhala "diretturi ohra", saru provi biss tal-kuntratti ta` impjieg individwali ta` Giuseppe Resciniti u Antonio Resciniti.

Dwar il-konvenuti l-ohrajn, ma tressqux provi. Fil-fatt lanqas huma ndikati fl-elenku ufficjali ta` diretturi ta` EIG Limited.

Ghalhekk, fir-rigward ta` dawn l-ohrajn, lanqas ma jista` jinghad in linea ma` dak deciz mill-ECJ fil-kawza fuq riferita ta` **Ferho vs Spies**, li l-Art 5 mhuwiex applikabbli.

Min-naha l-ohra, minn ezami tal-atti, jirrizulta li Giuseppe sive Pino Resciniti kellu kuntratt ta` xoghol, liema kuntratt huwa ezebit a fol 368. Fil-kuntratt jinghad specifikament a fol 376 illi :-

"*Se vi sia qualsiasi controversia su qalsiasi materia oggetto del presente contratto, tale controversia sara` risolta dalle Corti di Malta o da qualsiasi altro organismo competente.*"

Jirrizulta li Antonio Resciniti kien ukoll impjegat ta` EIG Limited ghax kien appuntat konsulent taghha skont il-kuntratt ezebit a fol 291 et seq. Hemm kien miftiehem (ara fol 293) illi :-

"Tutte le controversie nascenti dalla conclusione, interpretazione e/o dalla esecuzione del presente contratto saranno deferite ad un Collegio Arbitrale costituito da tre arbitri, di cui due indicate dale parti ed il terzo designato d` accord dai due arbitri designati come sopra, ovvero in difetto di accordo, dal Presidente del Tribunale di Roma."

Fid-dawl tal-premess, il-Qorti tqis li Giuseppe sive` Pino Resciniti u Antonio Resciniti jaqghu fid-definizzjoni ta` impjegati li

tat l-ECJ fis-sens illi huma koperti bl-Art 18 et seq <u>mhux</u> bl-Art 5 ta` Brussels 1.

Ghal dawn it-tnejn ighoddu dawn id-disposizzjonijiet :-

<u>Article 18</u>

1. In matters relating to individual contracts of employment, jurisdiction shall be determined by this Section, without prejudice to Article 4 and point 5 of Article 5.

2. Where an employee enters into an individual contract of employment with an employer who is not domiciled in a Member State but has a branch, agency or other establishment in one of the Member States, the employer shall, in disputes arising out of the operations of the branch, agency or establishment, be deemed to be domiciled in that Member State.

<u>Article 19</u>

An employer domiciled in a Member State may be sued:

1. in the courts of the Member State where he is domiciled ; or

2. in another Member State:

(a) in the courts for the place where the employee habitually carries out his work or in the courts for the last place where he did so, or

(b) if the employee does not or did not habitually carry out his work in any one country, in the courts for the place where the business which engaged the employee is or was situated.

<u>Article 20</u>

1. An employer may bring proceedings only in the courts of the Member State in which the employee is domiciled.

2. The provisions of this Section shall not affect the right to bring a counter-claim in the court in which, in accordance with this Section, the original claim is pending.

<u>Article 21</u>

The provisions of this Section may be departed from only by an agreement on jurisdiction:

1. which is entered into after the dispute has arisen; or

2. which allows the employee to bring proceedings in courts other than those indicated in this Section.

Fir-rigward ta` Giuseppe Rescinito, irrizulta li fil-kuntratt ta` impjieg tieghu hemm imnizzel illi l-gurisdizzjoni hija dik tal-Qrati Maltin ghal dak li ghandu jirrigwarda ma` dak il-kuntratt. Bl-applikazzjoni mbaghad ta` l-Art 21 fuq riferit, jidher illi r-regola illi l-azzjoni ghandha tittiehed fl-Istat Membru fejn l-impjegat huwa domiciljat, giet mwarrba bil-klawsola fil-kuntratt ta` impjieg fejn tnizzel specifikament illi huma l-Qrati Maltin li ghandhom gurisdizzjoni.

Ghalhekk ghar-rigward ta` Giuseppe Resciniti biss, fejn ghandu x`jaqsam ma` obbligi kuntrattwali emergenti mill-kuntratt ta` impjieg ma` EIG Limited, il-Qrati Maltin ghandhom gurisdizzjoni.

Ghar-rigward ta` Antonio Resciniti, fil-kuntratt ta` impjieg tieghu ma tnizzel xejn dwar gurisdizzjoni. Kulma tnizzel kien li kwalunkwe disputa kellha tkun risolta bi proceduri ta` arbitragg.

Din il-kwistjoni sejra tkun trattata `l quddiem.

Ghalhekk fil-konfront ta` l-obbligi kontrattwali ta` Antonio Resciniti, din il-Qorti tiddikjara li m`ghandhiex gurisdizzjoni stante li japplika l-Art 20 fejn jinghad kjarament illi l-gurisdizzjoni hija tal-Istat Membru fejn hu domiciljat.

Il-Qorti sejra tghaddi biex tevalwa jekk l-Art 5(1) japplikax fil-kaz tad-diretturi l-ohra - hlief ghal Giuseppe Resciniti u Antonio Resciniti.

Fil-kaz tad-diretturi hekk imsejha “ufficjali”, ghandu jigi determinat il-post tat-twettiq ta` l-obbligu kontrattwali, ossija fil-kaz tal-lum l-Istat Membru fejn kellhom jigu provduti jew suppost li kellhom ikunu pprovduti s-servizzi.

Il-Qorti sejra tissenjala dawk li fil-fehma taghha huma punti saljenti li jistghu jistabilixxu s-sit :-

(a) L-objects clause ta` EIG Limited tghid illi :

"*The objects for which the company is established are set below. The company will be engaged solely in carrying trading activities below from Malta but not in Malta, with persons outside Malta who are not resident in Malta, except for those activities necessary for the operation of the company ..*"

(b) L-interessi ta` EIG Ltd kienu fl-Italja peress li jirrizulta li l-licenzja li tat l-MFSA harget bil-ghan li tkopri attivita` fl-Italja.

(c) Id-diretturi hekk imsejha "ufficjali" mharrka fil-kawza tal-lum huma kollha domiciljati u residenti fl-Italja.

(d) EIG Limited hija kumpannija Maltija registrata skont il-ligijiet ta` Malta.

(e) Il-laqghat ta` EIG Limited saru kollha Malta u d-decizjonijiet dwarha ttiehdu Malta.

Da parti attrici, isir l-argument illi ladarba ma hemmx kuntratt li jistabilixxi post partikolari fejn fih id-diretturi ufficjali kellhom jipprestaw is-servizzi taghhom, kellu jitqies li abbazi tad-decizjoni tal-ECJ fi **Ferho vs Spies** "*in such a case, be necessary to take into consideration the fact that those services were provided on behalf of that company.*"

Tajjeb jinghad illi dan l-estratt tad-decizjoni kien trattat b`riserva minn kummentaturi fosthom Cathalijne van der Plas (op. cit.) ghaliex f`dak il-kaz Spies kien direttur ta` tlett kumpaniji sussidjarji ohra :

Presumably it has to do with the fact that Spies was also director of/had power of attorney over three German subsidiaries and that his duties were primarily undertaken in Germany. The Court appears to be saying that – even if Spies was predominantly working in or from Germany – Holterman`s Dutch seat must be considered relevant for the purpose of localisation.

Skont l-*objects clause* ta` EIG Limited, jirrizulta illi EIG Limited kellha tipprovdi servizzi barra minn Malta. Pero` ghandha ssir distinzjoni bejn is-servizzi li kellha taghti EIG Limited, u s-servizzi li d-diretturi ufficjali

kellhom jaghtu lil EIG Limited vis a` vis ir-**relazzjoni kontrattwali** li kellhom maghha.

Huwa minnu li EIG Limited kellha tipprovdi servizzi barra minn Malta izda r-relazzjoni kontrattwali ezistenti bejn id-diretturi hekk imsejjha "ufficjali" u EIG Limtied kienet tittratta dwar servizzi gewwa Malta. Tant hu hekk illi l-laqghat tas-socjeta` u d-decizjonijiet ta` l-istess ittiehdu mid-diretturi gewwa Malta. Per konsegwenza, ghal dak li ghandu x` jaqsam ma` d-diretturi "ufficjali", dawn kellhom jipprovdu s-servizzi taghhom lejn EIG Limited gewwa Malta, u allura skont l-Art 5(1) ta` Brussels 1, din il-Qorti ghandha gurisdizzjoni safejn ghandu x`jaqsam ma` obbligi kontrattwali.

Mhux l-istess jista` jinghad fil-kaz tad-diretturi hekk imsejha "ohrajn" eskluzi biss Antonio Resciniti Giuseppe Resciniti.

Ma rrizultax li dawn kienu diretturi bhalma kienu d-diretturi "ufficjali".

Lanqas ma tressaq xi kuntratt ta` impieg li seta` kellhom ma` EIG Limited bhalma sar fil-kaz ta` Antonio Resciniti u Giuseppe Resciniti.

Ma tressqu l-ebda provi dwar x`relazzjoni kellhom dawn id-diretturi hekk imsejha "ohrajn" ma` EIG Limited.

Il-konsegwenza hija li ma hemmx prova li kienet tezisti xi relazzjoni kontrattwali bejn EIG Limited u dawn id-diretturi "ohrajn" – eskluz ghal Antonio Resciniti u Giuseppe Resciniti. Ghalhekk l-Art 5(1) ma jistax jigi applikat ghalihom.

Dan premess, il-Qorti sejra tara jekk ghandhiex gurisdizzjoni fir-rigward ta` dawk l-ilmenti tal-attur noe li jaqghu fil-kategorija ta` *tort, delict* jew *quasi-delict* liema kwistjonijiet ghandhom jigu decizi fil-post fejn ikun isehh l-event dannuz.

Ghad-differenza ta` l-obbligi kontrattwali, fil-kaz ta` *tort, delict* jew *quasi-delict* ma hemmx distinzjoni ta` xi jsir minn diretturi msejha "ufficjali" u diretturi msejha "ohrajn".

John O`Brien fil-ktieb "**Conflict of Laws"** (Cavendish – Second Edition) ighid :-

While the court has insisted that Art 5(3) must be regarded as an independent concept covering all actions which seek to establish the liability of a defendant and which are not related to contract. Kalfelis vs Bankhaus Schroder Muncluneyer, Hengst and Co (Case 189/97) (1988) ECR 5565.

Dwar il-frazi *"the place where the harmful event occurred"* O`Brien ighid :-

The first difficulty arises as to the distinction between where the initiating act arose and where the damage took place… In ***Bier BV vs Mines de Potasse D` Alsace SA*** *Case 21/76 (1978) ……the European court held that the expression "where the harmful event occurred" embraced both where the act was done and where the damage was suffered. The court justified this decision on the basis that the object of the provision was to provide an appropriate forum other than that provided under Art 2. If the expression was confined to the place of the act rather than also the place of the damage then no proper alternative would arise.*

Ghar-rigward tal-pretensjonijiet attrici naxxenti mill-kategorija ta` obbligazzjonijiet taht ezami, il-Qorti tal-fehma li l-eventi dannuzi sehhew fl-Italja. L-atti saru fl-Italja ghaliex in-negozju ta` EIG Limited kien dwar attivita` barra minn Malta u d-dannu kien subit fl-Italja kif ukoll Malta minn EIG Limited.

Dwar id-dannu li EIG tallega li garrbet Malta, il-Qorti hija konsapevoli li l-ECJ ma estendietx il-principju ta` **Bier vs Mines De Potasse d` Alsace** li jghid :-

If the act takes place in State A and the damage is caused in State A, the fact that there is consequential loss in State B will not suffice to confer jurisdiction on the courts of State b. Thus in Marinari v Lloyds Bank plc, an Italian plaintiff who had his property confiscated in London was not able to sue in the Italian courts under Art 5(3) on the basis that he had suffered consequential financial loss in Italy. On reference by the Italian courts, the

European courts of justice held that th expression "the place wher the harmful event occurred" did not cover consequential financial loss in State B wher the act and the damage had arisen and been suffered in State A. (ara : O`Brien : op. cit.)

Fil-fehma ta` din il-Qorti, l-ilmenti attrici dwar allegat agir delittwali jew kwazi-delittwali jirrigwardaw agir li sehh fl-Italja. Il-fatt li ttiehdet azzjoni biss kontra dawk mid-diretturi li mhux domiciljati Malta jindika li l-agir lamentat sehh l-Italja u mhux Malta. Hemm ukoll ix-xiehda ta` Av. Marisa Attard li tghid illi l-kredituri ta` EIG Limited jinsabu l-Italja. Ghalhekk ghal dawk l-ilmenti li jaqghu fl-ambitu ta` *tort, delict* jew *quasi-delict*, din il-Qorti ma ghandhiex gurisdizzjoni in vista tal-Art 5(3) billi ma jirrizultax li Malta kienet il-post fejn sehh l-*harmful event.*

Ghar-rigward tal-Art 5(4), din id-disposizzjoni hija rilevanti fil-kaz ta` azzjoni civili ghal danni naxxenti minn reati kriminali.

Ghal darb`ohra, anke f` dan ir-rigward, m`ghandhiex issir distinzjoni bejn id-diretturi msejha "ufficjali" u dawk imsejha "ohrajn".

Hemm uhud mil-lmenti li jammontaw ghal reati kriminali, fosthom kien allegat li saret misapproprjazzjoni ta` flus, u rapprezentazzjoni falza tas-sitwazzjoni ekonomika, finanzjarja jew patrimonjali ta` EIG Limited.

Abbazi tal-provi, jirrizulta li fuq talba tal-attur noe, bdew proceduri kriminali kontra uhud mill-konvenuti. Kien hemm procediment kriminali Nru 19066/11 fl-Italja kontra Fabio Solano, Vincenzo Viscione, Bruno Lago, Luciano Rotondi, u Paolo Viscione. Kien hemm procediment iehor penali Nru 19072/11 fl-Italja inizjat wara talba tal-attur noe fejn l-akkuza kienet dik ta` misapproprjazzjoni minn Paolo Viscione.

Tajjeb jinghad illi l-hsieb wara l-Art 5(4) huwa li jassisti vittma ta` reat kriminali li jkollu sentenza dwar kumpens ghal danni mill-istess qorti kriminali li tkun qeghda tiddeciedi dwar l-istess reat. Dan jaghmel sens peress li Brussels 1 ma tapplikax ghal kwistjonijiet kriminali izda biss ghal kwistjoni civili jew kummercjali.

John O`Brien (op. cit.) ighid :-

Although the Conventions are confined to civil or commercial matters, they apply whatever the nature of the court or tribunal, and extend to criminal courts. In many European countries, the victim of a crime may intervene oin the criminal proceedings in order to claim damages arising from the offence. The locus standi of the victim under the civil law is acknowledged and the criminal court will make an award of damages. This procedure is common in the case of road accidents where an injured party will intervene in the criminal prosecution for dangerous driving to obtain an ancillary award for damages (An example being the judgement of Hamilton J in ***Raulin v Fisher*** *(1911) 2KB 93, which concerned the attempt to enforce a civil award in England). Thus, under Art 5(4) the victim of a criminal act can seek compensarion or restituition from a criminal court, if it has the power to make such orders under its own internal law , even though the defendant happens to be domiciled in a contracting state other than the one dealing with the criminal offence.*

L-Art 5(4) ma japplikax ghall-kaz odjern peress li din tal-lum mhijiex kawza fejn qed jintalab risarciment ta` danni fil-kors ta` proceduri kriminali. Jaghmel izda sens li f`kaz bhal dak odjern, fejn diga` kien hemm proceduri kriminali kontra uhud mill-konvenuti, kwalunkwe azzjoni civili relatata ma` danni konsegwenzjali ghal tali reati kriminali tinstema` mill-qrati li ghandhom gurisdizzjoni fuq ir-reat kriminali. Dwar dawk il-konvenuti li ghadhom mhux mixlija b`reati kriminali, din il-Qorti xorta wahda ma tqisx illi hija ghandha gurisdizzjoni biex tiddeciedi l-kwistjoni hi peress illi sabiex jigu likwidati danni ghal reati kriminali, irid jigi stabbilit li sehh reat kriminali, li ma jaqax fil-gurisdizzjoni ta` din il-Qorti. Ghalhekk talba ghal danni li giet imressqa abbazi ta` allegazzjoni ta` reat kriminali kompjut mhijiex ser tigi kkunsidrata minn din il-Qorti peress li fir-rigward ta` l-konvenuti li bdew proceduri kontra taghhom fl-Italja, din il-Qorti m` ghandhiex gurisdizzjoni in vista tal-Art 5(4), mentri fir-rigward ta` dawk il-konvenuti li kontra taghhom ghadhom ma ttiehduc proceduri kriminali, din il-Qorti m`ghandhiex gurisdizzjoni li tiddeciedi dwar jekk in effetti sehhx reat u fuq l-iskorta ta` dan tillikwida d-danni.

Ghar-rigward tal-Art 5(5),

Din id-disposizzjoni tittratta kwistjonijiet dwar l-operazzjoni ta` *branch, agency* jew *other establishment*.

Din il-Qorti ma tarax li din id-disposizzjoni tapplika peress illi fil-kaz tal-lum qeghdin jigu nvestigati lmenti li saru dwar l-agir ta` persuni fisici mhux dwar l-operazzjoni ta` *branch, agency* jew *other establishment.* Huwa minnu li hemm parti mir-rikors promotur, fejn huwa allegat li l-konvenuti jew min minnhom ippermettew u/jew ippartecipaw permezz ta` paraventu fis-suq assikurattiv Taljan kontra r-regoli ta` l-Italja, izda dan l-ilment xorta wahda jirrigwarda l-kondotta ta` l-konvenuti bhala individwi. Ghalhekk mhux il-kaz li jkun mistharreg ulterjorment l-Art 5(5).

VI. It-tieni eccezzjoni tal-konvenuti Fabio Solano, Paol Viscione, Vincenzo Viscione u Bruno Lago

L-Art 27 ta` Brussels 1 jaqra :-

1. Where proceedings involving the same cause of action and between the same parties are brought in the courts of different Member States, any court other than the court first seised shall of its own motion stay its proceedings until such time as the jurisdiction of the court first seised is established.

2. Where the jurisdiction of the court first seised is established, any court other than the court first seised shall decline jurisdiction in favour of that court.

Fil-kitba "**Lis Alibi Pendens Under The Council Regulation (EC) No 44/2001 On Jurisdiction And The Recognition And Enforcement Of Judgments In Civil And Commercial Matters**" ippubblikata fl-10 ta` Frar 2015, l-awtrici Nada Starovlah tghid hekk dwar l-Art 27 :-

Both Articles 27 and 28 of the EU Regulation 44/2001 regulate the existence of lis alibi pendens and related judicial actions. In particular it is a doctrine that regulates the jurisdictional relationship of courts hearing concurrent proceedings involving the same or related causes of action between the same parties pending in the courts of different Member States.

*In the English case of **Ferrexpo AG-and-Gilson Investments Limited and ors[2012] EWHC 721**, it was stated that where Article 27 of the EU Regulation is engaged, there is no scope for the operation of Article 28, and that once there are proceedings in different Member States involving the same cause of action and between the same parties, the matter is governed by Article*

27 and its mandatory regime. Hence it can be argued that as per Article 27 of the EU Regulation 44/2001, the Court has the power to stay on its own motion(automatic power) an action filed before it when there is an action filed before the Court of another Member State involving the ***same cause of action*** *and* ***between the same parties.***

Fit-tesi tal-Master of Law in International Business Law fl-Universita` ta` Exeter ta` Settembru 2004 bl-isem "**Lis alibi pendens under the Brussels I Regulation - How to minimise `Torpedo Litigation` and other unwanted effects of the `first-come, first-served` rule**" l-awtrici Julia Eisengraeber tittratta *inter alia* l-frazi "*same cause of action*" fl-Art 27(1) u tghid :-

The term `cause of action` is a well-known concept in the procedural law of all Member States but possesses a different stage of elaboration throughout Europe...The ECJ solved this problem within the scope of the Brussels Regulation by establishing an autonomous concept of `same cause of action` without recourse to a comparative analysis of the legal situation in the Member States. Two precedents are crucial in this context: ***Gubisch Maschinenfabrik v. Palumbo*** *(C-144/86 Gubisch Maschinenfabrikv. Palumbo [1987] ECR4861) and* ***The Tatry v. The Maciej Ratja*** *(C-406/92 The Tatry v. The Maciej Ratja [1994] EC RI-5439).*

In ***Gubisch*** *the Court stated that two actions are identical if they are between the same parties and `involve the same cause of action and the same subject-matter`.*

This duality is rooted in the French language version ("demandes ayant le même objet et la même cause").

According to the ECJ, "for the purposes of Article 21 of the Convention [Article 27 Regulation], the "cause of action" comprises the facts and the rule of law relied on as the basis of the action."

...

In ***Gubisch*** *a German limited partnership, Gubisch Maschinenfabrik KG, started proceedings in Germany against a purchaser from Italy, Mr. Palumbo, for payment arising from a contract of sale. Subsequently, Mr. Palumbo brought an action in Italy seeking a declaration that the contract between both parties was invalid. After a lis pendens plea was rejected by the Italian court, Gubisch appealed to the next highest court in Italy, which asked the ECJ to interpret the term`same subject-matter`.*

The Court held that the term `same subject-matter` could not "be restricted so as to mean two claims which are entirely identical." The Court then came to the conclusion that one of the two actions was brought to enforce and the other to rescind one and the same contract and therefore `the question whether the contract is binding [...] lies at the heart of the two actions."…But the Court attached great importance to the purpose expressed in Article 27 (3) Brussels Convention [Article 34 (3) Brussels Regulation] of avoiding irreconcilable judgments between the same parties. And it underlined how such judgments could arise if the competing claims had to be entirely identical before a lis alibi pendens plea could be upheld.

*The **Tatry** decision is somehow complementary to Gubisch. It deals with a situation where first an action demanding a negative declaration concerning liability for damages was brought in a Dutch court. Subsequently, an action for the payment of damages was brought before an English court, which also, like in Gubisch, rejected a lis alibi pendens plea. On appeal, asked by the Court of Appeal in a preliminary ruling, the ECJ held that an action for a negative declaration and an action for payment both concern the question of liability and thus involve the `same causeof action`. According to the Court the second element, the "object of the action" for the purpose of Article 21 [Article 27 Regulation] is defined as `the end the action has in view`.*

Therefore, the two actions have the same object since the issue of liability is central to both actions.

Dwar l-element l-iehor inerenti fl-Art 27 tghid :-

Still, another condition must be fulfilled before considering lis pendens and this is that the two proceedings in questions have to be between the same parties.

Article 27 requires that parallel proceedings concern the `same parties`. As the Court held in Gubisch, the terms used in Article 27 in order to determine whether a situation of lis pendens arises must be regarded as independent.

…

In general terms, it is required that the parties to the two actions be identical. However, this is to be defined irrespective of their procedural position. Hence, the plaintiff in the first action may be the defendant in the second.

Concerning multi-party cases, the ECJ adopted a party by party approach in The Tatry.According to the ECJ: "the second court seised is required to decline jurisdiction only to the extent to which the parties to the proceed ings before it are also parties to the action previously commenced; it does not prevent the proceedings from continuing between the other parties."

The Court made clear that in litigation involving multiple parties, Article 27 applies as between pairs of plaintiff and defendant and that each lis between a plaintiff and a defendant has to be considered individually to determine which court was seised of it first in time. Yet, as this individual treatment may lead to inconvenient fragmented jurisdiction, the court may resort to the rule on `related action` to allow the consolidation of the whole dispute before the court first seised.

Fuq l-iskorta tal-provi li saru fil-kaz tal-lum, il-kawzi li kienu menzjonati in sostenn ta` l-eccezzjoni huma :-

(i) Kien hemm procediment kriminali (*procedimento penale number 19066/11)* li gie imwaqqaf u li kien sar kontra Solano Fabio, Viscione Vincenzo, Girardi Mario, Lago Bruno, Rotondi Luciano, Vicione Paolo, Russo Oscar u Sorice Luciano fuq *"associazione criminale e esercizio abusive dell` attivita` assicurattiva"* u *"ostacolo alla attivita` di vigilanza del regolatore"*

(ii) Kien hemm procediment iehor penali bin-numru 19072/11 li gie inizjat fuq talba specifika ta` Brian Tonna bhala stralcjarju ta` EIG Limited fejn l-akkuza kienet dwar mizapproprjazzjoni minn Paolo Viscione, Russo Oscar, Balsamini Paolo u Di Barbaro Ottavio. Din ghadha pendenti.

(iii) Saret procedura ohra kriminali bin-numru 39568/2012 kontra Paolo Viscione, Luciano Sorice u Oscar Russo fejn instabu hatja .

(iv) Inghatat sentenza fl-20 ta` april 2015 fil-kawza penali (*riparazione per l`ingiusta detenzione)* mehuda kontar Girardi; filwaqt li hemm pendenzi penali (*riparazione per l-ingiusta detenzione)* li ghadhom pendenti fir-rigward ta` Vincenzo Viscione, Fabio Solano u Bruno Lago.

(v) Hemm pendenza quddiem it-Tribunal Amministrattiv ta` Ruma (Procedimento TAR) liema kaz gie miftuh minn EIG Ltd kontra id-decizjoni ta` ISVAP ghal sospensjoni tal-licenzja ta` EIG.

(vi) Hemm ukoll pendenza quddiem il-Qrati Civili bin-numru 77861/2011 li hija kawza miftuha minn CoGesFin Ltd kontra Deloitte bhala stralcjarju ta` EIG Limited.

(vii) Hemm procedura ohra civili bin-numru 61013/2011 fl-ismijiet NIf Global Services Ltd gia` Nowosad Insurance & Financial Service Ltd v Deloitte u EIG –European Insurance Group Limited. Spjega li din hija kawza fejn qed jintalab li Deloitte tinzamm responsabbli li ddistruggiet il-portofoljo tal-klijenti ta` Nowosad. Dan il-kaz gie deciz fuq punt procedurali.

(viii) Saret *denuncia* ta` Bruno Lago fil-kwalita` tieghu ta` *Presidente del Consiglio di Amministrazione della Societa` European Insurance Grop Limited* kontra *Enzo Resciniti* li kien *general manager* tal-kumpanija. Dan il-kaz gie arkivjat u imwaqqaf mill-imhallef.

(ix) Hemm proceduri civili istitwiti minn European Insurance Group Limited kontra Enzo Resciniti u ohra kontra Antonio Resciniti u Giuseppe Resciniti. Dawn iz-zewg kawzi gew decizi kontra EIG Ltd fuq punti procedurali.

Din il-Qorti tara li ghandha fl-ewwel lok tiskarta kwalunkwe procediment penali li kien hemm sal-lum, peress illi Brussels 1 japplika biss ghal kazi civili u kummercjali.

Din il-Qorti ghandha tiskarta ukoll il-pendenza quddiem it-Tribunal Amministrattiv ta` Ruma (Procedimento TAR) liema kaz gie miftuh minn EIG Ltd kontra id-decizjoni ta` ISVAP ghal sospensjoni tal-licenzja ta` EIG u peress li din ma tirrigwardax l-istess partijiet fil-kawza odjerna kif ukoll lanqas ma tirrigwarda l-istess mertu.

Fl-istess sens, ghandha titqies il-pendenza quddiem il-Qrati Civili Taljana bin-numru 77861/2011 miftuha minn CoGesFin Ltd kontra Deloitte bhala stralcjarju ta` EIG Limited u l-procedura l-ohra civili bin-numru 61013/2011 fl-ismijiet NIf Global Services Ltd gia` Nowosad Insurance & Financial Service Ltd v Deloitte u EIG –European Insurance Group Limited lanqas ma jissodisfaw ir-rekwizit rikjest mill-Art 27 fir-rigward ta` partijiet li jkunu l-istess ghal dawk fil-kaz odjern.

Dwar id-denunzja li saret minn Bruno Lago fil-kwalita` tieghu ta` *Presidente del Consiglio di Amministrazione della Societa` European Insurance Group Limited* kontra *Enzo Resciniti*, din lanqas ma tirrigwarda l-istess partijiet fil-kawza tal-lum.

Jifdal il-kawza civili istitwita minn European Insurance Group Limited kontra Enzo Resiniti (Dok ER02) u l-kawza kontra Antonio Resciniti u Giuseppe Resciniti (Dok GR02).

Dawn kienu decizi fuq punti procedurali.

Kienu saru fi zmien meta ma kienx ghadu nhatar l-attur bhala stralcjarju ta` EIG Limited.

Din il-Qorti tara li l-procedura kontra Antonio u Giuseppe Resciniti kienet talba sabiex EIG Limited tigi rizarcita d-danni kkagunati lilha b`atti jew omissjonijiet li saru minn entrambi Resciniti liema atti jew omissjonijiet gew rapportati minn spetturi ta` ISVAP u li wasslu lill-MFSA sabiex tirrevoka l-licenzja ta` EIG Limited.

Il-procedura kontra Enzo Resciniti saret sabiex jigi dikjarat li dan kien responsabbli ghall-atti ta` *mala gestio* li wasslu lill-MFSA biex tirrevoka l-licenzja u lil ISVAP biex izzomm lil EIG Limited milli taghmel kuntratti godda fl-Italja. Kien hemm ukoll talba ghall-kundanna u hlas ta` dawn id-danni emergenti.

Tajjeb wiehed ifakkar li din il-Qorti diga` hadet posizzjoni fis-sens illi m`ghandhiex gurisdizzjoni hlief fir-rigward ta` Giuseppe Resciniti ghal dak li ghandu x`jaqsam ma` obbligi kuntrattwali emergenti mill-kuntratt ta` impjieg ma` EIG Limited u fir-rigward tad-diretturi "ufficjali" ghal dak li ghandu x` jaqsam ma` obbligi kuntrattwali gejjin mir-relazzjoni taghhom ma` EIG Limited.

Ghalhekk ladarba l-proceduri civili saru biss fil-konfront ta` Enzo, Giuseppe u Antonio Resciniti, l-Art 27 ma japplikax fir-rigward ta` l-konvenuti l-ohra, in partikolari d-diretturi hekk imsejha "ufficjali" eskluz biss Enzo Resciniti.

Dwar Antonio Resciniti, din il-Qorti diga` hadet posizzjoni fis-sens illi m`ghandhiex gurisdizzjoni sabiex tiddeciedi dwar kwistjonijiet relatati mieghu ; ghalhekk l-eccezzjoni ta` lis alibi pendens fir-rigward tieghu ma ghandha l-ebda utilita`.

Fil-kaz ta` Enzo u Giuseppe Resciniti, din il-Qorti tara li l-mertu tal-kawzi civili istitwiti fl-Italja huwa simili ghal dak tal-kawza tal-lum, b`denominatur komuni u cioe` dak li jigu likwidati u mhallsa d-danni li garrbet EIG Limited.

Huwa minnu li dawk il-kawzi ma gewx decizi fuq il-mertu izda dan mhuwiex argument tajjeb bizzejjed li jwaqqa` l-obbligu li ghandha l-Qorti fil-ambitu tal-Art 27 u cioe` illi twaqqaf kwalunkwe procedura li jkollha quddiemha.

L-Art 27 ma jaghti ebda diskrezzjoni lill-Qorti, izda jimponi obbligu mandatorju fuqha li titwaqqaf is-smiegh tal-kawza.

Lanqas ma huwa argument sostenibbli dak illi fil-proceduri esteri, ma kienx involut l-istralcjarju attwali. Huwa minnu li dawk il-proceduri kienu gew istitiwiti mill-amministratur li kien appuntat qabel inhatar l-istralcjarju, izda dak dejjem mexxa fl-isem ta` EIG Limited.

Ghalhekk din il-Qorti hija tal-fehma li l-Art 27 ta` Brussels 1 ighodd fil-kaz ta` Enzo Resciniti u Giuseppe Resciniti.

VII. <u>Ir-raba` eccezzjoni tal-konvenut Antonio Resciniti</u>

Il-klawsola eccepita (ara fol 293) tghid :-

Tutte le controversie nascenti dalla conclusione, interpretazione e/o dalla esecuzione del presente contratto saranno deferite ad un Collegio Arbitrale costituito da tre arbitri, di cui due indicate dale parti ed il terzo designato d` accord dai due arbitri designati come sopra, ovvero in difetto di accordo, dal Presidente del Tribunale di Roma.

Sar l-argument illi kellhom isiru proceduri ta` arbitragg fl-Italja mhux kawza Malta.

Din il-Qorti diga` rriteniet illi fir-rigward ta` Antonio Resciniti m` ghandhiex gurisdizzjoni la ghal dak li jirrigwarda obbligi kontrattwali, la

ghal kwistjonijiet delittwali jew kwazi-delittwali kif ukoll lanqas ghal kwistjonijiet civili ta` danni emergenti minn akkuzi kriminali.

Ghalhekk sejra tastjeni milli tiehu konjizzjoni ulterjuri ta` din ir-raba` eccezzjoni.

VIII. Osservazzjoni tal-ahhar

Il-Qorti tirrimarka illi fl-isfond ta` dak li kien deciz mill-ECJ fil-kaz ta` Ferho v Spies, *to prevent any jurisdictional issues, it may be sensible to bring suits before the courts where the defendant is domiciled*. Dan sabiex tkun skansata l-frammentazzjoni ta` kawzi.

Decide

Ghar-ragunijiet kollha premessi, il-Qorti qeghda taqta` u tiddeciedi hekk :-

Tilqa` l-ewwel, it-tieni u t-tielet eccezzjonijiet tal-konvenut Giuseppe sive` Pino Resciniti limitatament billi tiddikjara illi ghandha gurisdizzjoni biss sabiex tisma` u tiddeciedi fil-konfront tal-konvenut Giuseppe sive` Pino Resciniti l-mertu tal-talbiet attrici naxxenti minn obbligi ta` natura kontrattwali.

Tilqa` l-ewwel, it-tieni u t-tielet eccezzjonijiet tal-konvenut Enzo Resciniti limitatament billi tiddikjara illi ghandha gurisdizzjoni biss sabiex tisma` u tiddeciedi fil-konfront tal-konvenut Enzo Resciniti l-mertu tal-talbiet attrici naxxenti minn obbligi ta` natura kontrattwali.

Tilqa` l-ewwel u t-tieni eccezzjonijiet tal-konvenut Bruno Lago limitatament billi tiddikjara illi ghandha gurisdizzjoni biss sabiex tisma` u tiddeciedi fil-konfront tal-istess konvenut il-mertu tal-talbiet attrici naxxenti minn obbligi ta` natura kontrattwali.

Tilqa` l-ewwel u t-tieni eccezzjonijiet tal-konvenuti Fabio Solano, Paolo Viscione u Vincenzo Viscione u tiddikjara li m`ghandhiex gurisdizzjoni sabiex tisma` u tiddeciedi l-mertu tal-talbiet attrici fil-konfront taghhom.

Tilqa` l-ewwel, it-tieni u t-tielet eccezzjonijiet tal-konvenut Antonio Resciniti u tiddikjara li m`ghandhiex gurisdizzjoni sabiex tisma` u tiddeciedi l-mertu tal-talbiet attrici fil-konfront tieghu.

Tastjeni milli tiehu konjizzjoni ulterjuri tar-raba` eccezzjoni tal-konvenut Antonio Rasciniti.

Bl-applikazzjoni tal-Art 223(3) tal-Kap 12, tordna li kull parti tbati l-ispejjez taghha.

Onor. Joseph Zammit McKeon
Imhallef

Amanda Cassar
Deputat Registratur