



QORTI CIVILI PRIM`AWLA

ONOR. IMHALLEF
JOSEPH ZAMMIT MCKEON

Illum il-Hamis 14 ta` Dicembru 2017

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**Argus Insurance Agencies
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Argus Insurance Company
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Il-Qorti :

I. Preliminari

Rat ir-rikors guramentat ipprezentat fit-18 ta` Meju 2015 li jaqra hekk :-

1. *Illi l-attur kien, fis-sajf ta` sentejn ilu, assigura l-lanca tieghu, bl-isem Rhapsody 1, mas-socjeta` konvenuta taht Marine Hull Policy numru*

tal-polza F.PCE.0008/12 u dan wara li s-socjeta` konvenuta kienet talbitu li jsir "survey" fuq l-imsemmija dghajsa u wara li kienet hi stess li indikatlu s-"surveyor" tal-ghazla taghha u cioe` s-Sur Tony Dalli biex dan jikkonduci "survey" tal-lanca tieghu.

2. *Illi s-Sur Dalli kien fil-fatt ikkonduca u dan fil-5 ta` Gunju 2012, kopja ta` liema "survey" qed jigi hawn anness u mmarkat **dokument A**, f'liema "survey" kien ikkonkluda :*

" ... we are in the opinion that the boat is strong in structure and in a seaworthy condition. It is suitable to sail in the Maltese and Sicilian water..." u dan wara li kien, izjed `il fuq fis-survey report tieghu kkonkluda wkoll li "the bottom hull was inspected and confirmed to be in good condition".

3. *Illi nhar il-Hadd 8 ta` Gunju 2014 u allura fil-bidu tal-istagun ta` wara li din il-lanca kienet giet iccertifikata kif fuq intqal u allura wara li ghamlet biss tliet xhur tintuza fuq il-bahar, kienet involuta f`incident meta waqt li kienet ghaddejja "cruising" fil-fliegu ta` bejn Malta u Ghawdex fid-direzzjoni t`Ghawdex din il-lanca giet f`kuntatt ma` oggett li kien qed jiggallegra taht l-ilma b`dan li garrbet hsara, kollox kif jigi spjegat b`izjed dettal waqt it-trattazzjoni ta` dan ir-rikors.*

4. *Illi immedjatament li d-dghajsa inkaljat ma` dan l-oggett taht l-ilma beda diehel kwantita` ta` ilma bahar fl-istess dghajsa u ghalkemm l-attur gibed b`velocita` lejn il-port tal-Imgarr biex jipprova jsalva l-lanca tieghu qabel ma din teghreq, din gherqet l-istess mal-moll tal-port tal-Imgarr bir-rizultat li sofriet hsara kbira.*

5. *Illi l-attur kien mill-ewwel avvza lis-socjeta` intimata bl-akkadut, kien mill-ewwel qabbad "divers" biex jghollu d-dghajsa in kwistjoni minn qiegh il-bahar, tellaghha fuq karru in segwitu hadha lura Malta permezz ta` vapur tal-Gozo Channel u fuq istruzzjonijiet tas-socjeta` intimata wassal il-lanca fil-fabbrika ta` Jet Glass gewwa San Gwann hekk kif gie indirizzat jaghmel mis-socjeta` intimata.*

6. *Illi s-socjeta` intimata kienet ghall-ewwel serrhet ras ir-rikorrenti li la darba l-incident kien kaz genwin u li d-dghajsa in kwistjoni kienet ghadha kif giet "surveyed" is-sena ta` qabel l-incident u kienet ghamlet biss cirka tliet xhur l-izjed erba` fil-bahar mid-data ta` dak is-"survey" il-"claim" kienet se tigi onorata bir-rikorrenti jircievi dak l-ammont dovut jew ghat-tiswija tal-hsara ossia pagament ekwivalenti ghas-somma assicurata*

f'kaz li jigi stabbilit li l-lanca tigi ddikjarata bhala "constructive total loss" alternattivament f'kaz li jsehh din tal-ahhar jigi negozjat ammont li s-socjeta` intimata thallas lir-rikorrenti filwaqt li dan izomm ir-"wreck" tad-dghajsa u dan ghas-saldu tad-danni li jkun sofra r-rikorrenti in segwitu ghal dan l-incident.

7. *Illi hin bla waqt ir-rikorrenti rcieva ittra minghand is-socjeta` intimata, u cioe` fit-8 ta` Awwissu 2014, **dokument B** hawn anness, permezz ta` liema huwa gie avzat li s-socjeta` intimata ma kellha l-ebda hsieb li thallas il-hsarat ikkawzati fuq il-lanca tal-esponenti in segwitu ghall-incident in kwistjoni hlief ghad-danni biss li gew ikkagunati meta d-dghajsa laqtet l-oggett taht l-ilma kollox kif jigi spjegat dettaljatament waqt it-trattazzjoni tal-kawza.*

8. *Illi in segwitu ghal din l-ittra kien sar skambjament ta` korrispondenza fosthom l-ittra mibghuta mill-konsulent legali tar-rikorrenti lis-socjeta` intimata fil-11 ta` Dicembru 2014 **dokument C** hawn anness, diversi inkontri kemm bejn il-"managing director" tas-socjeta` assicurata u r-rikorrenti kif ukoll bejn il-konsulent legali tar-rikorrenti, ir-rikorrenti rapprezentanti tas-socjeta` intimata, is-"surveyor" Dalli l-"managing director" tal-Jet Glass bil-ghan li jintlahaq ftehim, dan baqa` ma sehxx anki wara li r-rikorrenti nghata x`jifhem li dan il-"claim" kien se jigi saldat.*

9. *Illi l-unika raguni ghaliex is-socjeta` intimata qed tirrifjuta li taccetta l-"claim" fl-interita` taghha hija ghaliex skont is-"surveyor" taghha Anthony Dalli li kien l-istess "surveyor" li fis-sajf ta` qabel l-incident kien stqarr li d-dghajsa kienet kompletament "seaworthy" u li in segwitu fuq dan ir-rapport tieghu, is-socjeta` intimata kienet accettat li tassigura din id-dghajsa, il-boltijiet li kienu jzommu t-"transom shield" li maghha tkun imwahnha z-"Z drive" tal-magna kienu mikulin u li kienet din ir-raguni ghaliex id-dghajsa gherqet u mhux minhabba li laqtet oggett iebes taht l-ilma bir-rizultat li z-"Z drive" tqacat parzjalment minn mac-cappa tad-dghajsa bir-rizultat li dahal hafna ilma minn fejn dan tqacat u d-dghajsa allura gherqet.*

10. *Illi ghandu jinghad li s-"surveyor" Anthony Dalli, qabel ma kien ghamel is-"survey" fuq din id-dghajsa fuq inkarigu tas-socjeta` intimata fil-5 ta` Lulju 2014 kien l-istess "surveyor" li ghamel is-"survey" fuq l-istess dghajsa sena biss qabel u meta r-rikorrenti kien in segwitu ghal dan l-ewwel "survey" assigura d-dghajsa tieghu taht polza "marine hull" simili pero` ma` socjeta` assiguratrici differenti kien anke f'dan is-"survey" indika li din id-dghajsa kienet "in good seaworthy condition" sabiex anki hawn abbazi ta` dan l-ewwel*

“survey” id-dghajsa kienet giet assigurata mas-socjeta` assiguratrici Thomas Smith.

11. *Minkejja li saru zewg “surveys” f`sentejn u mill-istess “surveyor” li fit-tnejn id-dghajsa giet iddikjarata wara li saritilha spezzjoni bir-reqqa qabel ma nhargu z-zewg “survey reports”, li kienet “in good seaworthy condition”, fit-tielet “survey” li ghamel l-istess Anthony Dalli wara li dan ispezzjona d-dghajsa wara l-incident mertu ta` din il-kawza kkonkluda li t-tort tal-hsara li sofriet id-dghajsa meta din gherqet kienet ir-responsabbilta` unika ta` sid id-dghajsa l-esponenti billi dan kien, bi traskuragni u ghal zmien twil naqas li jiehu kura tal-boltijiet li jzommu t-“transom shield” taz-“Z drive” mwahhla mat-“transom” (cappa) tad-dghajsa u wara li wasal ghal din il-konkluzjoni kien ta` parir lis-socjeta` intimata li twarrab il-“claim” a rigward il-hsara fuq id-dghajsa li giet ikkagunata wara li din gherqet fil-port tal-Imgarr.*

12. *Illi fi kliem l-istess Anthony Dalli fis-“survey report” tieghu tat-30 ta` Lulju 2014 **dokument D** hawn anness ikkonkluda hekk :*

“It was noted that the upper two and the PORT side middle studs were eroded and had sheared through extensive corrosion. The corrosion did not materialize in the last few months, but happened over an extensive period of time.”

“The corrosion, which eventually eroded the studs holding the transom shield, came from sea water and seeping past the rubber seal between the boat transom and the transom shield. All internal nuts holding the transom shield, including the three remaining nuts on the studs which were still holding the transom shields were found heavily rusted and corroded. The rusted condition of the nuts and studs was clearly visible from inside the boat, even before removing the transom shield.”

“This proves the fact, that even prior to the accident, all internal holding nuts and transom shield studs had at some point been exposed to sea water ingress over an extensive period. These should have been clearly noticed by the owner during routine engine compartment inspections. If the nuts and studs holding the transom shield were in good condition, then there would not have been any water ingress from the transom shield.”

*Ikompli jinsisti s-“surveyor” Anthony Dalli fl-istess rapport li “we are of the opinion that what happened in this case is that when the Z drive fell back into water, it naturally slammed hard against the bottom of the transom shield. This sudden and intense force, **combined with the eroded condition of the upper transom shield studs**, caused the top of the*

transom shield to move outwards, causing rapid water ingress into the boat” (enfasi mizjud).

*“Under normal conditions, such event would surely not cause the transom shield to dislodge from the boat transom. This was only sustained **because the three upper studs were clearly eroded prior to the accident** and could not sustain the impact when the Z drive re-entered the water. **Thorough investigation of the transom shield clearly showed that the transom shield was only held in place by the bottom two and the stbd side middle studs**” (enfasi mizjud).*

*“If all the studs were in good condition **and not eroded as they were** (enfasi mizjud) the transom shield would have withstood the movement and slamming back of the Z drive.”*

“The top part of the transom shield would never have moved out (dislodged) unless something was wrong with the studs, which in this case, were found to be eroded and broken.”

*“From the picture attached, showing the view from the internal stern compartment, **one could easily notice that the nuts were corroded**” (enfasi mizjud).*

Jikkonkludi fl-ahhar tar-rapport tieghu s-Sur Dalli hekk :

*“The studs were eroded through corrosion and theses sheared well before the incident. The condition of the studs and the nuts clearly show that the transom shield lacked attention **and most probably had never been removed from its position for studs and seal to be inspected**”.*

13. *Illi minkejja dak kollu li kkonkluda s-“surveyor” Anthony Dalli u li abbazi tieghu s-socjeta` intimata ddecidiet li twarrab dan il-“claim”, is-“surveyor” imqabba mir-rikorrenti u cioe` l-inginier Paul Cardona kien hareg rapport huwa stess wara li gie mitlub hekk jaghmel mir-rikorrenti ara **dokument E** hawn anness li permezz tieghu l-Inginier Cardona kien ikkonkluda billi qal :*

“We have looked at the three bolts in question and they do not show any wastage or lacking of the material which would mean that the bolts were intact and the failure is definetely not due to a reduction in the cross section and over loading of the boat.”

“We have also seen that the Z Drive suffered mechanical damages clearly indicating that it hit a submerged object.”

14. *Illi cio nonostante u ghal ragunijiet li taf bihom biss is-socjeta` intimata tenut kont il-fatti fuq dikjarati, din xorta wahda baqghat tirrifjuta li tonora l-obligazzjonijiet taghha versu r-rikorrenti ai termini tal-polza ta` assigurazzjoni fuq indikata u ghalhekk kellha ssir din il-kawza.*

15. *Illi r-rikorrenti jaf bil-fatti fuq esposti personalment.*

Tghid ghaldaqstant is-socjeta` intimata, ghar-ragunijiet premissi u ghal dawk li ghandhom jirrizultaw waqt it-trattazzjoni tal-kawza, ghaliex m`ghandhiex din l-Onorabbli Qorti :

1. *Tiddikjara u tiddeciedi li l-incident fuq riferit u li fih id-dghajsa tal-intimat, wara li habtet ma` oggett iebes li kien qed jiggallegha taht il-bahar waqt li d-dghajsa in kwistjoni kienet qed taqsam il-fliegu bejn Malta u Ghawdex fid-data fuq imsemmija, kien incident li kien kopert bil-polza tal-assigurazzjoni mahruga mis-socjeta` intimata a favur tar-rikorrenti, ghal liema polza l-esponenti kien hallas il-“premium” lilu mitlub mis-socjeta` intimata wara li din accettat li tohrog il-polza in kwistjoni u tkopri lill-esponenti ai termini tal-istess polza.*

2. *Konsegwentement tillikwida d-danni sofferti mill-esponenti ai termini tal-istess polza, bhala konsegwenza tal-imsemmi dghajsa meta din habtet mal-oggett mohbi taht l-ilma izda dawk id-danni wkoll li soffra l-esponenti bhala konsegwenza tal-ingress ta` ilma fid-dghajsa tieghu wara l-impatt liema ingress wassal biex il-lanca tal-esponenti teghreq fil-port tal-Imgarr u dan jekk hemm bzonn bl-opra ta` Perit nominandi.*

3. *Konsegwentement tikkundanna lis-socjeta` intimata thallas lill-esponenti dawk id-danni li jigu hekk likwidati kif fuq intqal.*

Bl-ispejjez inkluzi dawk tal-ittra interpellatorja tal-11 ta` Dicembru 2014 u ta` diversi inkontri li saru bejn l-esponenti u l-legali tieghu mas-socjeta` intimata bl-iskop li jintlahaq ftehim u bl-ispejjez tal-mandat ta` sekwestru numru 700/15 intavolat mir-rikorrenti qabel ma gew intavolati dawn il-proceduri. Bl-imghaxijiet dovuti skont il-ligi mid-data meta dawn huma dovuti sad-data tal-pagament effettiv u bl-ingunzjoni tas-socjeta` intimata ghas-subizzjoni.

Rat il-lista tad-dokumenti kif ukoll il-lista tax-xhieda.

Rat ir-risposta guramentata pprezentata fit-2 ta` Gunju 2015 li taqra hekk :-

1. *Illi s-socjeta` eccipjenti kienet harget polza ta` assigurazzjoni tat-tip "Pleasure Craft Extra Policy" bin-numru F.PCE.0008.12 fuq il-"yacht" di proprjeta` tal-attur bl-isem RHAPSODY I. Kopji ta-Certifikat tal-Assigurazzjoni u tal-Kundizzjonijiet relattivi ghall-polza ta` assigurazzjoni mahruqa mis-socjeta` eccipjenti f`dan il-kaz qeghdin jigu hawn annessi, esebiti u mmarkati bhala **Dok. RG1** u **Dok. RG2** rispettivament;*

2. *Illi nhar id-9 ta` Gunju 2014, l-attur irregistra "claim" mas-socjeta` eccipjenti fejn irrapporta li nhar it-8 ta` Gunju 2014, waqt li kien qiegħed fuq il-bahar bil-"yacht" tieghu, hass daqqa. Il-magna bdiet tirrevuja u l-"yacht" bdiet tivvibra, u għalhekk huwa rritorna lejn il-port tal-Ingarr, Malta. Skont l-attur, b`danakollu, hekk kif huwa nizel mill-"yacht", dan imtela bl-ilma u għereq. Kopja tal-"Claim Form" relattiv qiegħda tigi hawn annessa, esebita u mmarkata bhala **Dok. RG3**;*

3. *Illi, kuntrarjament għal dak li gie dikjarat fil-paragrafu 6 tar-Rikors Guramentat, is-socjeta` eccipjenti qatt ma accertat lill-attur li hija kienet se tkopri d-danni minnu reklamati f`dan ir-rigward. Dak li attwalment gara kien, li skont ma hija l-prassi, malli rceviet il-"claim", is-socjeta` eccipjenti inkarigat lill-Inginier Anthony Dalli bhala "Marine Surveyor" sabiex jispezzjona n-natura u l-entita` tad-danni sofferti fil-"yacht" tal-attur, u dan dejjem fuq bazi ta` mingħajr pregudizzju;*

4. *Illi fir-Rapport minnu redatt nhar it-30 ta` Lulju 2014 [li kopja tieghu tinsab esebita flimkien mar-Rikors Guramentat tal-attur bhala **Dok. D**], l-inginier Dalli kkonkluda li :-*

a. *L-impatt soffert mill-"yacht" fl-incident tat-8 ta` Gunju 2014 ikkawza danni fiz-"Z" drive propellers u z-"Z" drive lower gear case fin" [ara s-sezzjoni intestata "Findings" fit-tieni pagna tar-Rapport **Dok. D**];*

b. *Illi tali danni wahedhom ma setghu qatt iwasslu sabiex il-"yacht" jimtela bl-ilma u jegħreq [ara t-tieni paragrafu tas-sezzjoni intestata "Note" fit-tieni pagna tar-Rapport **Dok. D**];*

c. Illi l-“yacht” imtela bl-ilma ghaliex it-“transom Shield” inqala` u ccaqlaq minn fuq. L-inginier Dalli spjega li dan gara **mhux minhabba l-hsara fil-“propellers” jew fil-“lower case fin”**, izda minhabba l-fatt li z-zewg “studs” ta` fuq u l-port side studs tat-“transom shield” kienu tmermru [ara s-sezzjoni intestata “Transom Shield – Inspection” fit-tieni pagna tar-Rapport **Dok. D**];

d. Illi t-tmermir tal-“istuds” **ma rrizultax mill-impatt** soffert fl-incident de quo, izda kien **attribwibbli diretta u unikament ghan-nuqqas da parti tal-attur li jzomm il-“yacht” tieghu fi stat tajjeb ta` manutenzjoni**, liema cirkostanza mhix koperta mill-polza ta` assicurazzjoni mahruga mill-eccipjenti.

5. Illi ghalhekk, skont il-polza ta` assicurazzjoni relattiva, is-socjeta` eccipjenti hija tenuta li tindennizza lill-attur **biss** ghad-danni sofferti direttament bhala konsegwenza tal-impatt soffert fit-8 ta` Gunju 2014, ossia l-hsarat fiz-“Z” drive propellers u z-“Z” drive lower gear case fin”. Mill-bqija, il-parti tat-talba attrici li teccedi tali danni, ghandha tigi michuda bl-ispejjez kontra l-attur;

6. Ghal kull buon fini, is-socjeta` eccipjenti tirrileva li l-ispezzjoni tal-“yacht” tal-attur effettwata mill-Inginier Anthony Dalli fil-5 ta` Gunju 2012 [li kopja tieghu tinsab esebita flimkien mar-Rikors Guramentat tal-attur bhala **Dok. A**], qabel ma s-socjeta` eccipjenti harget il-polza ta` assicurazzjoni relattiva, saret **sentejn qabel id-data tal-incident** de quo. Ghalhekk certament ma jreggix l-argument tal-attur li d-dikjarazzjoni tal-Inginier Dalli minnu maghmula fl-2012 li l-“yacht” kienet f`kundizzjoni tajba, teskludi jew hija b`xi mod kontradittorja mal-konkluzjoni fir-Rapport tat-30 ta` Lulju 2014 [Dok. D], li l-istess “yacht” ma kinitx fi stat tajjeb ta` manutenzjoni sentejn wara – sentejn huwa perjodu twil ghal bicca tal-bahar li tiffaccja l-elementi;

7. Illi anke b`referenza ghal dak li nghad fir-Rikors Guramentat fis-sens li l-attur allegatament inghata l-impresjoni li l-“claim” kien se jigi saldat, assolutament mhux minnu – anzi, irid jinghad li, in segwitu ghall-indikazzjonijiet tal-Inginier Dalli fir-Rapport tat-30 ta` Lulju 2014, l-attur kien intrabat li jissottometti l-“istuds” immermrin ghal ezaminazzjoni minn espert fi hdan l-Universita` ta` Malta, izda ghal xi raguni, l-attur baqa` qatt ma indika jekk tali “studs” attwalment ittihdux ghal tali ezaminazzjoni u jekk saret tali ezaminazzjoni, l-attur qatt ma informa lis-socjeta` eccipjenti bir-riżultati tal-istess. B`hekk, certament li s-socjeta` eccipjenti ma kienet qatt f`pozizzjoni li taccetta l-“claim” tal-attur;

8. *Illi ghalhekk, it-talbiet attrici, in kwantu inkompatibbli ma` dak hawn fuq premess, ghandhom jigu michuda fis-sens li jigi ddikjarat li l-eccipjenti hija biss tenuta li tkopri d-danni sofferti fiz-“Z” drive propellers u z-“Z” drive lower gear case fin”. In kwantu kienu dawn biss koperti bil-polza, mentri d-danni rimanenti kienu konsegwenzjali ghan-nuqqas ta` manutenzjoni adegwata mill-attur innifsu u kwindi mhux koperti bil-polza relattiva;*

9. *Illi minn dan isegwi wkoll li s-socjeta` eccipjenti m`ghandhiex tigi tenuta li thallas l-ispejjez inutli ta` dawn il-proceduri u wisq anqas l-interessi fuq ammont li lanqas biss ghadu qatt gie likwidat mill-attur innifsu u huwa, fi kwalunkwe kaz, esagerat u mhux dovut in kwantu fil-maggor parti tieghu, mhux kopert mill-polza kif gia nghad.*

Salv eccezzjonijiet ulterjuri.

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

Semghet ix-xiehda u rat il-provi l-ohra li tressqu fil-kors tal-kawza.

Rat il-verbal tal-access fejn ikkostatat *de visu* d-dghajsa in kwistjoni.

Rat in-noti ta` osservazzjonijiet illi pprezentaw il-partijiet.

Rat illi l-kawza thalliet ghas-sentenza ghal-lum.

Rat l-atti l-ohra tal-kawza.

II. Xiehda

Meta xehed, filwaqt li kkonferma l-kontenut fattwali tar-rikors guramentat, **l-attur** ghamel korrezzjoni tas-sitt paragrafu tar-rikors guramentat ghaliex ghalkemm jinghad illi d-dghajsa kienet *surveyed* is-sena ta` qabel l-incident, is-*survey* fil-fatt kien sar fl-2012 ossija sentejn qabel l-incident.

Dwar l-incident, l-attur xehed illi kien ghaddej bid-dghajsa tieghu in kwistjoni fil-bahar tal-fliegu bejn Malta u Ghawdex. `Il barra mid-dhul ghall-port tal-Mgarr, Ghawdex, hass daqqa u hoss kbir tant illi d-dghajsa bdiet tivvibra. Naqqas il-gass, imbaghad rega` ziedu, u d-dghajsa baqghet tivvibra normali. Wara li bdiet tivvibra d-dghajsa, huwa hass li kien hemm xi haga hazina u ghalhekk beda diehel biha lejn l-Mgarr. Meta dahlu fil-port, id-dghajsa bdiet niezla. Flimkien mieghu, kien hemm it-tfajla tieghu Daniela Azzopardi. Beda diehel l-ilma fid-dghajsa, u ghalhekk beda jdoqq il-*buzzer* u bdiet tixghel il-*beach pump*. L-ilma kien wasal sal-*floor board* u huwa pprova jbattal bil-barmil biex jipprova jsib mnejn kien diehel l-ilma. Pero` ma rnexxielux isib tarf ghaliex ftit tal-hin wara, id-dghajsa gherqet hdejn is-*slipway*.

Kompla jghid li huwa pprova jsalva lid-dghajsa u kien ghalhekk li saq lejn l-Mgarr izda din spiccat bil-pruwa mgħollija u l-poppa taht l-ilma. Dahal l-ilma anke fil-parti ta` quddiem tad-dghajsa. Minhabba li gara huwa cempel lil qraha biex imorru ghalihom Ghawdex bil-karru tad-dghajsa. Kellu diffikolta biex itella` d-dghajsa. Kien hemm min issuggerielu li jingieb krejn. Kien hemm zewg bughadassa li ppruvaw jtellghu d-dghajsa izda l-blalen ma kinux bizzejjed ghaliha. Kien hemm xi nies li gabu xi pompi biex ibattlu l-ilma u hekk sar. Bil-mod id-dghajsa ntrefghet u nharget lura biex b`hekk iddahhal il-karru u bdiet tittella` bil-mod minn fuq l-*slipway*.

Stqarr illi l-incident sehh fil-11.00 a.m. Irnexxielhom itellghu d-dghajsa fid-9.00 p.m. Huwa hallas lill-bughadassa bejn €1,600 u €1,800. Id-dghajsa giet Malta fuq il-karru migbud bil-vettura tieghu.

Kompla jghid li l-ghada ta` l-incident, huwa mar flimkien mat-tfajla tieghu biex javzaw lill-kumpannija konvenuta ("Argus") b`li kien gara u saret *claim*. Argus talbitu biex jiehu d-dghajsa ghand Jet Glass li kienu l-agenti ta` Yanmar, li kienet il-marka tal-magna tad-dghajsa. U hekk ghamel.

Xehed li Argus accettat li thallas għall-hsara li kellha d-dghajsa fuq barra izda mhux tal-hsara li kellha fuq gewwa.

Fisser illi s-*surveyor* ta` Argus, Anthony Dalli ("Dalli") iccertifika li d-dghajsa kellha *bolts* li skont Dalli kienu *sheared for a long period of time* dan meta Dalli stess kien ghamel *survey* tad-dghajsa xi sentejn qabel, kif ukoll

sena ohra qabel meta d-dghajsa kellha incident zghir u nkiser parti miz-z-drive taghha. Ghalhekk Dalli kien spezzjona d-dghajsa tlett darbiet b`kollox.

Kompla jfisser illi huwa nkariga lill-Ing. Paul Cardona (“**Ing. Cardona**”) sabiex jispezzjona d-dghajsa wara l-incident.

Imbaghad saret laqgha flimkien fejn kien assistit mill-Av. Kenneth Grima. Wara din il-laqgha, Albert Cardona minn Argus informa lilu u lit-tfajla tieghu sabiex jiehdu r-ricevuti tal-ispejjez. Huwa kien talab lil Albert Cardona biex jghidlu dan kollu quddiem Dr Grima u hekk gara. Cio` nonostante ma ntlahaq l-ebda ftehim. Albert Cardona ma kienx talbu r-ricevuti minghajr pregudizzju. Huwa ghadha lil Albert Cardona l-prova tal-ispejjez kollha inkluzi dawk ta` gewwa tad-dghajsa u tal-bughaddasa.

Stqarr illi d-dghajsa kienet *a total loss* ghax l-ispiza telghet aktar milli kien tiswa. Huwa ma nghatax stima tal-*pre accident value* tad-dghajsa. Sentejn qabel, *is-survey report* kien juri stima tal-valur tad-dghajsa fl-ammont ta` €28,000.

Qal li Argus irrifjutat li thallas il-hsara ta` gewwa ghaliex skont Argus dik il-hsara kienet ikkagunata mill-fatt illi l-*bolts* kienu tgherrew.

Stqarr illi wara l-incident id-dghajsa spiccat fil-parapett tad-dar tieghu. Inqalghet il-magna u saret *service* izda baqghat ma gietx imsewwija.

Ipprezenta kopja tas-*survey report* li sar meta d-dghajsa kienet assikurata ma` Thomas Smith Insurance Agency Limited u kellha incident zghir. Ir-rapport sar minn Anthony Dalli fl-2011. Sostna li fir-rigward ta` dak l-incident, Dalli kien qallu sabiex jixtri z-drive iehor u ghall-bqija tad-dghajsa kollox kien sew. Qabel dak ir-rapport, id-dghajsa kienet spezzjonata darbtejn.

Ippreciza li Dalli kien rega` spezzjona d-dghajsa fl-2012 wara inkariku ta` Fogg Insurance Agencies Limited (kif qabel kien jisimha Argus). Dan sar ghaliex huwa ried kopertura assikurativa ohra peress illi kien ser ihalli d-dghajsa ghal zmien itwal Sa Maison. Dalli kien iccertifika li d-dghajsa bhala *seaworthy*. Fl-ebda waqt ma Dalli attira l-attenzjoni tieghu ghal xi sadid jew li d-dghajsa kienet f`kundizzjoni hazina.

Sostna li wara li kienet assigurata minn Argus, id-dghajsa ntuzat fis-sajf bejn wiehed u iehor zewg jew tlett weekends fix-xahar bejn Gunju u Awissu.

Stqarr illi l-incident sehh fil-5 ta` Gunju 2014 u d-dghajsa damet ffit s'ghat mgharrqa.

Spjega li s-*surveyor* ghamel spezzjoni tad-dghajsa xahar u nofs wara.

Qal illi l-koperatura li kellu kienet *full*. L-assikurazzjoni qatt ma obbligatu jaghamel *surveys* regolari tad-dghajsa.

Ipprezenta prospett l-ispejjez li garrab fl-ammont ta` EUR 32,814.67c.

Spjega li minn dawn l-ispejjez, Argus offriet li thallas biss is-somma ta` EUR 1,820.50c li tkopri l-parti ta` isfel taz-z-drive li tinsab imkissra u l-iskrejjen.

Spjega li huwa ghandu stima ohra fil-pussess tieghu li tindika li jekk kellu jirringa d-dghajsa, l-ispejjez kienu jitilghu ghal EUR 26,475.79c.

Kompla fissier illi jekk huwa jinghata l-ammont li qed jitlob ta` EUR 32,814.67c, Argus tista` liberament tiehu l-*wreck* tad-dghajsa.

Li kieku kellu jsewwi, huwa jistenna li jkun risarcit bl-ammont ta` EUR 26,475.79c, liema ammont jista` ma jkoprix spejjez fil-magna li jistghu jigu notati meta din tinfetah ghat-tiswija. Stqarr li huwa diga` hallas €1,800 lil Jet Glass.

Fil-**kontroezami** huwa xehed illi kien ihalli d-dghajsa fil-bahar Wied il-Ghajj bejn Gunju u Awissu izda biddel il-polza ta` assikurazzjoni ghal fuq Argus peress li ried li jhalli d-dghajsa fil-bahar ghal zmien itwal ossija sal-ahhar ta` Settembru.

Ikkonferma li meta d-dghajsa kienet assigurata ma` Thomas Smith, id-dghajsa setghet tithalla min-nofs Meju sa nofs Settembru fil-bahar go Wied il-Ghajn.

Sostna li huwa kien talab li d-dghajsa tkun assigurata bejn nofs Settembru sa l-ahhar ta` Settembru gewwa Sa Maison izda Thomas Smith ma accettawx. Kien ghalhekk li kien bidel ghal Argus. Ried idewwem id-dghajsa aktar fil-bahar sabiex ikun jista` johrog ghal-lampuki.

Xehed illi meta d-dghajsa ma tkunx fil-bahar, tkun fil-parapett tad-dar tieghu Wied il-Ghajn. Id-dghajsa hija kbira 22 pied waqt li l-parapett tieghu huwa ta` 80 pied. Il-parapett mhuwix mghotti izda d-dghajsa kellha *cover* tal-*canvas*. Id-dghajsa tkun alzata fuq il-karru mill-art ghal gholi ta` mill-anqas zewg piedi.

Spjega li fil-polza kien hemm imnizzel li fix-xitwa huwa seta` johrog bid-dghajsa minn tlugh sa nzul ix-xemx, b`dan illi l-polza ma tkunx tkopri jekk tithalla fil-bahar fix-xitwa ghall-hsara li tigi bil-maltemp.

Ikkonferma li rappresentant ta` Argus ha r-ritratti tal-parapett fejn kienet tithalla d-dghajsa. Fil-fatt Argus kienet accettat illi d-dghajsa tibqa` fil-parapett u tibqa` koperta bil-polza ta` assigurazzjoni.

Ipprezenta tlett bicciet ta` *bolts* li kienu nvoluti fl-incident in kwistjoni.

Daniela Azzopardi xehdet illi kienet mal-attur fuq id-dghajsa tieghu dak il-hin tal-incident sejrjn lejn Ghawdex. Meta qorbu lejn Ghawdex, semghet hoss kbir, id-dghajsa hadet skoss u bdiet titrieghed. L-attur naqqas il-gass u rega` zied il-gass biex jidhlu l-Mgarr. Innotat li beda diehel l-ilma huma u deklin fil-port. L-attur qabad barmil u beda jnehhi l-ilma izda l-ilma kien minghajr kontroll u d-dghajsa komplet tinsel.

Komplet tghid illi kien hemm nies li gabu l-pompi ta` l-ilma biex jghinuhom kif ukoll gew assistiti minn zewg bughaddasa.

L-ghada marru ghand Argus u kellmu lil Albert Cardona li ssuggerixxa li d-dghajsa tittiehed ghand Jetglass. Hija marret biex thallas il-*claim* izda Albert Cardona qalilha biex ma thallashiex dakinhar.

Kompliet tghid li s-*survey* dam zmien twil biex wasal u meta wasal, hi u l-attur ma qablux mal-kontenut ghaliex skont is-*survey*, huma kellhom jinghataw ammont ta` flus li ma jkunx ikopri l-hsara kollha li grat minn gewwa. Sostniet li l-hsara ta` gewwa kienet koperta bil-polza izda nonostante dan Argus irrifjutat li thallas l-ispejjez ta` gewwa.

Qalet li kienu tkellmu ma` l-Ing. Cardona li ppropona li ssir laqgha mal-Av. Kenneth Grima u Albert Cardona. Fl-ahhar tal-laqgha, Albert Cardona gibed lill-attur mal-genb u qallu biex jghidlu kemm irid tad-dghajsa biex imbaghad jitkellem mas-superjuri tieghu. L-attur mar jigri ghal Dr Grima u Albert Cardona rega` qal l-istess kliem.

Spjegat li kien intbaghat email bl-ammont mitlub u b`terminu sa meta kellha tinghata risposta, izda huma baqghu bla twegiba.

Ghalhekk saret din il-kawza.

P.S. 1233 John Attard ipprezenta r-rapport tal-incident.

Albert E. Cardona xehed illi huwa direttur ta` Argus, kif ukoll is-Senior Commercial Underwriting Manager taghha. Fiz-zmien tal-incident mertu ta` din il-kawza kien responsabbli mill-*marine claims*. Fuq livell personali huwa sid ta` dghajsa kif ukoll dilettant tad-dghajjes. Kien hu li hareg il-polza davor l-attur.

Stqarr illi fid-9 ta` Gunju 2014, l-attur infurmah bl-incident. Qallu li d-dghajsa tieghu kienet gherqet fil-port tal-Mgarr wara li beda diehel l-ilma mix-xquq ta` bejn iz-z-drive u l-poppa. Kien infurmat illi d-dghajsa ttellghet mill-ilma ghal fuq il-karru fil-port ta` l-Mqarr u minn hemm hadha d-dar tieghu Marsascalea.

Kompla jixhed illi l-attur mela l-*claim form*. Kien dovut *policy excess* ta` EUR 400 izda ftehm u li dan ma jithallasx, u jekk il-hsara tkun tkopri l-hsara kollha, l-*excess* kien jitnaqqas mill-indennizz. Billi l-attur qallu li l-

magna tad-dghajsa kienet Yanmar, huwa ssuggerixxa lill-attur li din tittiehed ghand Jetglass Limited li kienu l-agenti ta` Yanmar. L-attur avzah illi t-*trailer* tieghu kien gralu xi hsara. Saru arrangamenti sabiex Anthony Farrugia ta` Jetglass imur bil-karru tieghu u jiehu d-dghajsa mill-fond tal-attur.

Fisser illi sar ftehim ma` Anthony Farrugia sabiex dan izarma l-magna tad-dghajsa tal-attur sabiex inaddafha mill-ilma bahar li kien dahal halli b`hekk isalva l-magna. Wara xi jiem, Anthony Farrugia nfirmah li l-magna kienet giet salvata u kienet qed tahdem tajjeb. Farrugia talbu biex imur il-fabbrika mas-*surveyor* Anthony Dalli biex jaraw ix-xoghol li sar. Ghal dan l-inkontru, l-attur ma kienx mar ghalkemm kien avzat.

Xehed li kienet osservata l-hsara li kien hemm fit-*transom shield* li kienet maqlugha u mghawga min-naha ta` fuq. Iz-zewg nahat tat-*transom shield* kienu nqalghu `l barra. Abbazi tal-esperjenza tieghu, ta` Farrugia u ta` Dalli, kien evidenti l-moviment li wassal biex id-dghajsa taghmel l-ilma u teghreq. Innota li z-zewg *studs* ta` fuq u wiehed minn tan-nofs kienu mittiekla (*eroded*) u kienet tqacctu (*sheared*) peress li kien hemm hafna korrozjoni. Kien evidenti li din il-korrozjoni sehhet fuq perijodu twil ta` zmien minhabba nuqqas ta` manutenzjoni. Ghalihom id-dghajsa ma kenitx gherqet minhabba xi accident imprevidibbli imma minhabba n-nuqqas ta` manutenzjoni ; u allura dan l-incident ma kienx kopert bil-polza.

Kompla stqarr illi wara li ghamel dawn il-kostatazzjonijiet, huwa avza lil Farrugia biex jieqaf mix-xogholijiet u johrog kont ghax-xoghol li ghamel fuq il-magna liema kont intbaghat fil-11 ta` Awissu 2014. Is-*surveyor* Anthony Dalli hareg ir-rapport tieghu fis-7 ta` Lulju 2014 u huwa baghat ghall-attur fl-1 ta` Awissu 2014. Informa lill-attur b`dak li kien irrizulta. Argus avzat lill-attur illi kienet lesta li thallas biss tal-hsara fl-iskrejjen (*propellers*) u fil-parti ta` isfel tal-*gear case* taz-z-drive peress li kien car li l-iskrejjen kienu hadu impatt ma` xi haga li kienet fil-bahar ; u dak kien riskju kopert bil-polza. Il-hsarat l-ohra ma kinux koperti ghax tqacctu l-*studs* u konsegwenza ta` dan saret iktar hsara u gherqet id-dghajsa. Kieku l-*studs* ma tqacctux, il-hsara kienet tkun koncentrata biss fl-iskrejjen u fil-parti ta` isfel tal-*gear case* taz-z-drive. Ghadda kopja tar-rapport tas-*surveyor* lill-attur.

Kompla jghid illi in segwitu kellmu l-Ing. Cardona li kien inkarikat mill-attur li qallu li kien ser jnehhi t-tlett *studs* u jehodhom ghand metallurgista biex ikun hemm spjegazzjoni dwar dak li gara. Huwa ghanmel kuntatt ma` Farrugia u ma` Dalli u ta l-awtorizzazzjoni tieghu biex isir dak li

ppropona l-Ing. Cardona. Eventwalment Ing. Cardona rrilaxxa rapport li kopja tieghu nghata lilu. Baqa` ma rcieva ebda rapport ta` metallurgista.

Xehed li qabel saret din il-kawza kienet skambjata korrisprondenza u anke saru laqghat.

Anthony Farrugia - Direttur Manigerjali ta` Jetglass Limited - xehed illi ilu involut fin-negozju ta` l-bcejec tal-bahar mill-1983 inkluz dghajjes. Qal li hkien kontattat minn Albert Cardona ta` Argus sabiex jipprova jsalva l-magna ta` dghajsa tal-attur li kienet gherqet. Wara li d-dghajsa ngiebet fil-hanut tax-xoghol taghhom u sar ix-xoghol, irnexxielu jsalva l-magna. Id-dghajsa baqghet ghandhom sabiex tkun spezzjonata minn Anthony Dalli s-surveyor ta` Argus.

Ighid illi huwa osserva li l-kagun tal-gharqa tad-dghajsa kien ghaliex tqacctet ic-cappa ta` wara msejha *transom shield* minn mad-dghajsa u b`hekk beda diehel l-ilma minn hemm. Huwa mmarka bil-kulur isfar fuq Dok RF 1 t-*transom shield*. Dok RF2 juri z-drive. Id-drive kienet ghadha mwahhla mat-*transom shield* u din kienet ghadha mwahhla mad-dghajsa izda t-*transom shield* kienet tidher imqacctu u maqlugha mill-parti ta` fuq. Spjega li din kienet tidher miftuha minn fuq b`madwar 1 cm jew 1.5 cm u kienet maghluqa minn taht.

Stqarr illi ghalih kienet haga stramba kif it-*transom shield* kien imqacctat minn fuq, dan ghaliex normalment, meta jintlaqat iz-z-drive, it-tendenza hija li titqacctat il-parti ta` isfel tat-*transom shield* u mhux il-parti ta` fuq. Jekk il-forza tal-impatt issehh hekk kif spjegat, it-tqacctat kellu jkun minn isfel u mhux minn fuq. L-attur kien qallu li huwa kien habat ma` xi haga, il-magna giet qisha *free* u f` salt, il-magna rega` nizlet u beda diehel l-ilma. Ghalhekk jispjega ghalfejn it-*transom shield* tqacctet minn fuq.

Kompla stqarr illi fil-fehma tieghu, xi haga habtet mad-*drive*, din tohrog barra mill-ilma bil-konsegwenza li l-*load* fuq il-magna jitlaq ghax il-*propellers* ikunu hargu barra mill-ilma. Il-magna b`hekk tigi *free* ghax ma ssibx *load* u kollox jerga` jinzal `l isfel. Xhin nizlet `l isfel, id-*drive* rega` kompla b`forza qawwija peress li nizlet mhux biss b`gravita` izda bl-iskrejjen jaqdfu. Ghalhekk il-hsara sehhet mhux meta qalghet id-daqqa u telghet `il fuq izda meta nizlet `l isfel. Meta nizlet `l isfel b`sahha tremenda, tqacctat il-parti ta` fuq tat-*transom shield*.

Spjega illi huwa qatt ma ltaqa` ma` sitwazzjoni fejn *it-transom shield* tqacctet minn fuq. Spjega li *l-bolt* jkollu zewg kamini fiz-zewg truf. Il-parti r-roza tal-*bolt* huwa fejn jehel mat-*transom shield*. Il-parti l-ohra tkun minn gewwa tad-dghajsa biex torbot *it-transom shield* mad-dghajsa. Ikun hemm ukoll *washer* biex l-iskorfina tissikka fuq l-injama. Huwa kkonferma li fid-dghajsa in kwistjoni, huwa ra tlett *bolts* imqacctin u tlieta ohra ghadhom imwahhlin. Ikkonferma li *l-bolts* ezebiti bhala Dok AS kienu bhal dawk li kien hemm fid-dghajsa u kellhom parti nieqsa. Fil-fatt dawn il-*bolts* ghandhom zewg partijiet neqsin. It-tqaccit sar min-naha r-roza. Il-parti tan-naha ta` l-iskorfina nqatghet minn impjegati tieghu sabiex ikun jista` jinqala` *l-bolt*. Fl-incident in kwistjoni, it-tqaccit sar fil-parti l-ohra tal-*bolt*.

Kompla spjega illi l-istat tal-*bolts* huwa wiehed *damaged* u *corroded* apparti li huma maqtughin. Biex jinqalghu, l-impjegati tieghu kellhom jaqtghu min-naha fejn hemm l-iskorfina. Anthony Dalli kien irrakkomanda li jsir test tal-metallurgija u ghalhekk ma kellux oppozizzjoni li dawn il-*bolts* jinqalghu. Sostna li fl-istat li kienu *l-bolts*, dawn ma kinux *seaworthy*. Qal li l-parti li tqacctet u li ghadha mwahhla got-*transom shield* kienet kollha *corroded* u ma kinitx tiflah. In-naha l-ohra fejn kien imwahhal il-*bolt* kien hemm *corrosion* sostanzjali fejn ghad hemm bicca minn dan il-*bolt*. Kien hemm *corrosion* kbira fit-*transom shield* li ma kellhiex x` jaqsam ma` dan l-incident. Huwa spjega li li kieku ma kienx hemm dan il-*corrosion*, il-hsara kienet issehh f` partijiet ohra fid-dghajsa u mhux fil-parti fejn suppost kellha tkun l-aktar b`sahhitha. Fil-fehma tieghu, f` kaz normali, kien jitqaccat id-*drive* u jibda diehel l-ilma bil-mod u d-dghajsa ma kinitx teghreq sakemm ma tithalliex xi tlett ijiem fil-bahar.

Fil-**kontroezami**, xehed illi l-esperjenza li ghandu fil-magni tad-dghajjes hija Prattika mhux akkademika. Argus tirreferi klijenti taghha lilu meta l-magna ta` dghajsa tkun tat-tip li taghha Jetglass Limited hija d-distributur Malta. Il-klijenti jigu riferuti sabiex issir stima ta` kemm tkun ser tigi tiswa t-tiswija ta` magna.

Qal illi fil-kaz in esami, meta d-*drive* rega` nizlet `l isfel, din kellha l-iskrejjien jghaqqudu b`magna ta` 185 h.p. jimbuttaw go fiha.

Ikkonferma li kien hemm tlett *bolts* li kienu marbutin ma` *transom shield* li tqacctun mill-parti fejn jehlu mat-*transom shield*. It-*transom shield* tkun imwahhla mal-poppa tad-dghajsa. Il-materjal tal-*bolts* ikun *tampered steel* iggalvanizzat mentri t-*transom shield* tkun ta` l-*aluminium*. Huwa naturali li meta hadid jigi fil-kuntatt ma` l-ilma dan jissaddad. Sostna li biex jitlef is-sahha tieghu, irid ikun hemm oggett madwaru li dejjem qed izommu

mxarrab. Insista li dawn it-tip ta' *bolts* mhux suppost jkunu msadda ghaliex ikunu go post li ma jkunx espost ghall-ilma.

Stqarr illi minn ezami okulari, huwa wasal ghall-konkluzjoni li l-*bolt* kellu anke *centralized corrosion*. Kien hemm parti fejn jintrabat mat-*transom shield* li kien mikul. Qal li l-parti fejn il-*bolt* ileqq hija l-parti li nqatghet mill-impjegati tieghu. Jekk imbaghad wiehed jara n-naha l-ohra, ossija l-parti qasira u din tigi mibruxa, din ukoll ser tigi tleqq. Izda l-parti qasira hija aktar dgħajfa mill-parti t-twila. Huwa insista li l-problema nholqot minhabba li l-parti tal-*bolt* li qeghda gewwa u qeghda in kuntatt ma' l-*aluminium* kellha *metal fatigue* kkagunat b' *corrosion*.

Qal li hemm procedura dwar manutenzjoni fejn il-magna tkun trid tinqala' bil-fors kull sentejn izda mhux it-*transom shield*. Fil-process normali ta' manutenzjoni, it-*transom shield* ma tinqalax izda tigi spezzjonata minn barra biss u huwa fil-kaz biss li tigi osservata xi haga mhux normali li din tinqala'. Huwa spezzjona biss il-*bolts* u ma llimahomx. Qal illi mhijiex procedura normali li tinqala' t-*transom shield* sabiex dgħajsa tigi ccertifikata bhala *seaworthy*.

Spjega illi kien hemm reazzjoni partikolari bejn l-azzar u l-*aluminium* li sehhet minhabba dhul ta' ilma. Sakemm ma hemmx sinjali esterni jew interni fid-dgħajsa li jindikaw tracci ta' dhul ta' ilma, ma jsirx il-qlugh tat-*transom shield* u ta' *seal*.

Ikkonferma li r-*rubber seal* innifsu u l-*bolts* li jkunu qed jghattu r-*rubber seal* innifsu mhumiex vizibbli ghall-ghajnejn. L-unika parti tal-*bolt* li tidher tkun il-parti fejn ikun hemm l-iskorfina.

L-Ing. Paul Cardona xehed illi huwa ghamel ir-rapport datat 10 ta' Settembru 2014 fuq inkariku ta' l-attur u kkonferma l-kontenut tal-istess.

Xehed illi z-drive jmexxi d-dgħajsa ; fuq din hemm is-*shield*. It-tlett *bolts* ta' taht kienu ghadhom shah izda mgħawwgin. Talab lis-*shipyard* sabiex jaqilghu dawn it-tlett *bolts* li kienu *sheared* peress li ried jezaminahom bir-reqqa. Is-*surveyor* ta' Argus spjega li l-*bolts* fallelw minhabba li kienu *corroded*. Fil-fatt izda mhux hekk kien il-kaz ; ma kinux *corroded*. Kull ma kellhom dawn il-*bolts*, kienet *surface corrosion* b' mod illi jekk jinbarxu ftit, jigu jleqq u tajbin.

Sahaq illi dawn il-*bolts* ma kellhomx *pitting* u *wastage* fuqhom. Bhala *bolt*, dan kien integru fil-hin ta` l-incident. Spjega li meta z-drive tiehu xi haga taht l-ilma, it-tendenza hi li tqacat ta` taht u mhux il-*bolts* ta` fuq. Fil-kaz tal-lum, tqacat ta` fuq minhabba l-*whiplash* li kien hemm. Ta` isfel spiccaw tghawwgu bil-konsegwenza li l-forza kollha marret fuq ta` fuq. Spjega li d-daqqa saret fuq ta` fuq izda mhux ghax kien hemm *wear and tear* fil-*bolts*.

Kompla jixhed illi huwa ta struzzjonijiet lill-attur sabiex izomm it-tlett *bolts* lill-attur bhala prova. Sostna li s-*surveyor* ta` Argus kien tal-fehma illi dawn il-*bolts* huma *pitted*, *worn down* u *heavily corroded*. Insista li dawn kienu *corroded* izda mhux *wasted*. Is-sahha tal-*bolts* kienet ghadha hemm fl-intier taghha.

Gharaf il-*bolts* in kwistjoni bhala dawk li huma esebiti a fol 194 tal-process.

Kompla spjega illi r-rapport li ghamel is-*surveyor* ta` Argus kien zbaljat fejn tnizzel illi l-magna tad-dghajsa hija Volvo. L-istess fejn inghad illi d-dghajsa ghandha *shaft* meta fil-verita` din ghandha z-drive. Divers minn *shaft*, z-drive ikun mghaqqda mal-magna.

Spjega li l-*bolts* kienu nqasmu fi tnejn – parti li spiccat fil-bahar u parti li baqghu gewwa. Il-parti li kienet baqghet gewwa tinqala`.

Fil-**kontroezami** xehed illi spjega li huwa pprova jinkariga espert tal-metallurgija biex jezamina dawn il-*bolts* izda dan ma setax jaqdihom.

Stqarr illi meta jintuza t-terminu *shearing*, dan ifisser li l-oggett qisu nqata` b`imqass. Issa meta kien hemm ic-caqlieq kien hemm *shearing force* `il fuq u sar it-tqaccit. Sahaq illi l-*bolts* li tqacctu ma kellhomx *pitting*, *wastage* u *corrosion* izda kellhom biss *surface corrosion*. Spjega li *pitting* ifisser li jkun imtaqqab, *wastage* ifisser meta parti mill-*bolt* ma tkunx ghadha integra, waqt li *surface corrosion* tfisser li fil-wicc ikun hemm lega tal-hadid.

Kompla jghid li l-*bolts* jorbtu s-*shield* li tghatti z-z-drive. Spjega li ma hemmx differenza bejn dik il-parti tal-*bolt* li tkun qeghda fuq barra u l-parti

tal-*bolt* li qeghda fuq gewwa. Il-kondizzjoni tat-tlett *bolts* imghawgin li baqghu fil-post kienu fl-istess stat bhal dawk ta` fuq.

Fisser illi huwa qatt ma ra d-dghajsa qabel ghamel ir-rapport tieghu.

Sahaq illi l-*bolts* kellhom a *clean cut shearing* ; li kieku kien hemm *pitting* jew *wastage* ma kienx ikun hemm a *clean cut*. Din il-*clean cut shearing* kienet indikattiva tal-fatt illi l-*bolts* kellhom is-sahha originali taghhom. Is-sadid kien biss fil-wicc. Il-*bolts* huma ta` l-azzar u mhux tal-hadid.

Kompla jghid illi z-z-drive ghandha *vertical shaft* u *horizontal shaft* li huma parti minnha. Il-magna li tahdem b`z-drive tkun fuq wara tal-magna.

Spjega illi ma jiftakarx fejn kienet ippozizzjonata l-magna ta` din id-dghajsa partikolari. Ippreciza izda illi jekk il-magna tkun fin-nofs tad-dghajsa u z-z-drive tkun fuq wara, allura jkun hemm bzonn ta` *shaft* li jghaqqadhom.

Stqarr illi jkun hemm *corrosion* minhabba kuntatt bejn l-ilma u l-metall kif ukoll ma` l-ossignu. Spjega li l-*plywood* jassorbi l-ilma u ghalhekk ikun niedi.

Anthony Dalli xehed illi huwa *marine engineer* u *marine surveyor*.

Stqarr illi huwa kien ilu madwar ghoxrin sena jahdem *freelance* ma` diversi kumpanniji ta` assikurazzjoni fosthom Argus.

Muri Dok A datat 5 ta` Gunju 2012, xehed illi dak huwa *survey* li ghamel wara spezzjoni li saret fuq id-dghajsa tal-attur.

Il-magna kienet Yanmar. L-agent Malta ta` Yanmar huwa Jetglass.

Fisser illi l-magna kienet istallata taht id-*deck* ffitit `il quddiem min-nofs mentri z-z-drive kienet fuq in-naha ta` wara tad-dghajsa. Bejniethom

kien hemm *shaft* u *t-transom shield* kienet maghquda maz-z-drive. Is-*shield* tkun qed hemm sabiex ma jidholx ilma fuq gewwa.

Kompla jghid li a fol 15, hemm *damage survey report* illi sar wara li l-attur ghamel il-*claim*.

Qal illi l-ispezzjoni tad-dghajsa saret ghand Jetglass.

Stqarr illi kien ra d-dghajsa darb`ohra fl-2011 wara li kellha habta zghira fejn kellha hsara fiz-z-drive u f`xi *gears*.

Rega` ra d-dghajsa t-tielet darba wara l-incident mertu ta` din il-kawza.

Qal li meta ra d-dghajsa ghand Jetglass din l-ewwel kienet armata mbaghad kienet zarmata.

Qabel ma kienet zarmata, kienet tidher il-hsara fiz-z-drive u fit-*transom shield*, peress li din kienet miftuha minn quddiem b`xi 20 cm. Kien hemm hsara ohra il-*propellers*.

Spjega li wara li d-dghajsa giet zarmata, inqalghet iz-z-drive u ghalhekk huwa seta` jara l-hsara taghha fuq barra. Iz-z-drive ghandha mekkanizmu msejjah *reverse lock* fejn meta tkun sejjer `il quddiem u tahbat, din toghla minn wara biex ma jkunx hemm il-hsara. Qal illi fil-kaz tal-lum dak li gara huwa li bid-daqqa li hadet id-dghajsa, din gholiet u rega` nizlet ; probabilment bid-daqqa li hadet, il-*bolts* ta` fuq gew *sheared*. Qal illi ra li dawn il-*bolts* kienu mimlija *corrosion*. Billi d-dghajsa gherqet, dak li seta` sehh kien *surface corrosion* izda l-*corrosion* li osserva hu sehh tul xhur shah. Qal illi l-*corrosion* li fuqha kien qed jinsisti kienet tat-tip illi saret hsara minn gewwa fuq dawk il-*bolts*.

Ikkonferma li l-*bolts* ezebiti Dok AS huma dawk li kienu fid-dghajsa in kwistjoni.

Sostna li jidher li kien hemm *surface corrosion* apparti li kienu mikulin ukoll.

Ikkonferma li fejn sar il-qtugh dan kien dritt u fejn kien hemm qtugh ma kien jidher l-ebda sadid.

Stqarr illi l-bolts kellhom jittiehdu ghal test tal-metallurgija sabiex ikun determinat ghala kienu tqacctu. Fisser illi l-bolts kienu tqacctu mit-tarf id-dejjaq filwaqt li l-parti wiesa` baqghet ingastata fid-dghajsa fit-*transom shield*.

Xehed li l-konkluzjoni tieghu kienet li kien hemm *corrosion* u r-rakkomandazzjoni tieghu kienet fis-sens illi kellhom jittiehdu ghand metallorogu ghall-ezami.

Qal illi ma jafx jekk sarx dak l-ezami partikolari.

Kompla jghid illi jkun hemm *stress fatigue* meta jittieklu l-bolts u mbaghad jiehdu daqqa.

Huwa sostna li fir-rapport tieghu, huwa qal li jista` jkun li l-bolts marru minhabba *stress fatigue*.

Sahaq illi kieku l-bolts kienu ghadhom godda, l-incident ma kienx jigri.

Fil-fehma tieghu, id-daqqa u l-konsegwenzi taghha huma mputabbli ghall-istat tal-bolts.

Fil-**kontroezami** kkonferma li spezzjona d-dghajsa fl-2011, fl-2012 u fl-2014.

Xehed illi fl-2011 huwa ma kienx osserva l-bolts peress li l-hsara kienet fil-*gears* u fil-*propellor*. Fl-2012, ghamel *evaluation survey* u ghalhekk lanqas ma sarx ezami ta` l-bolts. Fl-2014 sar biss esami ta` l-bolts. Huwa sostna li fl-2012, is-*survey* kien ukoll *condition report* li kien rikjest li jsir qabel ma saret il-polza ta` assikurazzjoni fuq id-dghajsa de qua.

Stqarr illi fir-rapport ta` l-2012, huwa kkonkluda li l-kundizzjoni tad-dghajsa kienet wahda tajba u tiflah ghall-bahar.

Ighid illi skont hu, il-*corrosion* sehhet bejn l-2012 sa l-2014.

Spjega li huwa ra l-*bolts fit-transom shield* izda osserva li kien hemm *corrosion*. Ma kienx hu li qala` l-*bolts*. Rahom maqlughin waqt din il-kawza. Il-bdil ta` l-*bolts* mhux parti mis-*servicing* normali ta` dghajsa izda jekk tkun osservata *corrosion*, ikun hemm bzonn li tigi rimedjata l-problema.

Ipprezenta ritratt ta` *bolt* li baqa` fil-post.

Qal illi nqalghu s-sitta *bolts* tad-dghajsa izda huwa ra t-tlieta biss li ngabu bhala prova fil-Qorti.

Fil-fehma tieghu kien hemm *extensive corrosion* fil-bolts li baqghu mwahhlin.

B`riferenza ghax-xiehda tal-Ing. Cardona dwar ir-rapporti tieghu, stqarr illi fl-ahhar tar-rapport tieghu, huwa irrakomanda sabiex dawn il-boltijiet jittiehdu go laboratorju ghal test tal-metallurgija sabiex jaccerta ruhu mill-konkluzjoni tieghu illi kien hemm *extensive corrosion*.

III. Dokumenti

Fil-kors tal-gbir tal-provi, kienu prezentati diversi dokumenti, fosthom rapport teknici dwar id-daghjsa in kwistjoni.

1. Ir-rapporti ta` Anthony Dalli

a) Survey report datat 19 ta` Lulju 2011 (Dok JB1 a fol 126 sa 128)

Dan ir-rapport jirrelata dwar incident precedenti u separat minn dak mertu ta` din il-kawza.

Fir-rapport jinghad hekk :-

“1. The three blades of the propeller were damaged.

2. When the propeller was turned the shaft could not turn.

As it was suspected that there is internal damage, the owner was informed to contact the mechanic in order to remove the “Z” drive and transport it to his workshop in order to dismantle it to ascertain the damage.

...

The Z Drive was dismantled and the following damage was confirmed :

The gears had broken teeth.

The bearing was damaged.

The top housing was damaged.

The lower gear case was internally damaged.

The horizontal shaft was bent.

...

Guided by the findings, we are of the opinion that the propellers had fouled with an underlying hard object.

...

Thhe damaged parts to be replaced and Z drive to be assembled.”

**b) Condition survey report datat 5 ta` Gunju 2012
(Dok A a fol 8 sa 10 tal-process)**

F` dan ir-rapport, Anthony Dalli jghid illi :-

*“The bottom hull was inspected and confirmed to be in good condition
....*

We are of the opinion that the boat is strong in construction and in a seaworthy condition. It is suitable to sail in the Maltese and Sicilian waters.

...

We estimate that the value of the boat in its present condition is in the region of EUR 28,666.”

**c) Survey report datat 30 ta` Lulju 2014
(Dok D a fol 15 sa 18 u a fol 248 sa 267 tal-process)**

Saru dawn il-kostatazzjonijiet :

“1. The “Z” drive propellers had damaged blades due to the alleged contact with an underlying hard object.

2. The “Z” drive lower gear case fin was damaged during the contact.

3. The transom shield was dislodged and distorted from its position (approx.. 20 mm from the top end). It was removed from its position.

Note :

The propellers were damaged and the lower gear case fin was also damaged with the alleged contact of the “Z” drive with the underlying hard object. Under normal circumstances, when the lower gear case or propellers of the “Z” drive come in contact with a hard object, the transom shield would not dislodge from the boat transom.

In extreme circumstances, the upper yoke holding the “Z” drive to the transom shield would break, causing the stern-drive to break away from the transom shield and remain hanging on the bellows and shift cable. This abnormal situation required

further investigation and the removal of the transom shield from the boat in order to establish the cause of the transom shield dislodgement.

Transom shield – Inspection

The transom shield was found dislodged and distorted from the top end. Both the sides of the transom shield had moved outwards (aft) and this movement caused water ingress in the boat.

It was noted that the upper two and the PORT side middle studs were eroded and had sheared through extensive corrosion. The corrosion did not materialize in the last few months, but happened over an extensive period of time.

The corrosion, which eventually eroded the studs holding the transom shield, came from sea water seeping past the rubber seal between the boat transom and the transom shield. All internal nuts holding the transom shield, including the three remaining nuts on the studs which were still holding the transom shield were found heavily rusted and corroded. The rusted condition of the nuts and studs was clearly visible from inside the boat, even before removing the transom shield.

This proves the fact, that even prior to the accident, all internal holding nuts and transom shield studs had at some point been exposed to sea water ingress over an extensive period. These should have been clearly noticed by the owner during routine engine compartment inspections. If the nuts and studs holding the transom shield were in good condition, then there would not have been any water ingress from the transom shield.

...

We are of the opinion that what happened in this case is that when the “Z” drive fell back into the water, it naturally slammed hard against the bottom of the transom shield. This sudden and intense force, combined with the eroded condition of the upper transom shield studs, caused the top of

the transom shield to move outwards, causing rapid water ingress into the boat.

Under normal circumstances, such event would surely not cause the transom shield to dislodge from the boat transom. This was only sustained because the three upper studs were clearly eroded prior to the accident and could not sustain the impact when the “Z” drive re-entered the water. Thorough investigation of the transom shield clearly showed that the transom shield was only held in place by the bottom two and STBD side middle studs.

...

If all studs were in good condition and not eroded as they were, the transom shield would have withstood the movement and slamming back of the “Z” drive.

The top part of the transom shield would have never moved out (dislodged) unless something was wrong with the studs, which in this case, were found to be eroded and broken.

In this case, only the lower two and the middle STBD side studs and nut of the transom shield prevented the “Z” drive and transom shield from falling into the sea.

From the pictures attached, showing the view from the internal stern compartment, one could easily notice that the nuts were corroded. This was due to water in the compartment. A routine inspection of the compartment by the owner would have surely prompted that immediate attention to the state of the transom shield nuts and studs was required.

The studs were eroded through corrosion and these sheared well before the incident. The condition of the studs and nuts clearly show that the transom shield lacked attention and most probably had never been removed from its position for studs and seal to be inspected.”

This would be further ascertained if the broken studs were to be removed from the boat transom and analysed in a metallurgy laboratory.”

2. **Ir-rapport tal-Ing. Paul Cardona**

Ir-rapport tal-Ing. Cardona huwa datat **10 ta` Settembru 2014.**

Jinghad hekk :-

“... We note that three bolts have sheared with the result of the transom shield coming off causing flooding of the vessel which resulted in the sinking.

We have looked at the three bolts in question and they do not show any wastage or lacking of the material which would mean that the bolts were intact and the failure is definitely not due to a reduction in the cross section and overloading of the boat.

We have also seen that the Z Drive suffered mechanical damages clearly indicating that it hit a submerged object.

As discussed with Mr Albert Cardona, of Fogg Insurance, Jet Glass will now remove the three broken bolts and we would arrange for a metallurgical examination of these bolts to determine the cause of failure.

It is also to be noted that due to the length of time between the date of the incident, the date of survey by the Underwriter`s Surveyor and today, the surface of these bolts has corroded.”

Pleasure Craft extra policy
(a fol 34 sa 71 tal-process)

Din hija l-polza ta` assikurazzjoni illi harget Argus favur l-attur fir-rigward tad-dghajsa in kwistjoni ghaz-zmien ta` bejn il-5 ta` Ottubru 2013 u l-4 ta` Ottubru 2014. Il-valur assikurat kien ta` EUR 29,966.00c.

Fost il-pattijiet u l-kondizzjonijiet, jirrizulta li l-polza kienet tkopri *“loss or damage directly caused by sudden and unforeseen accident including ... collision, stress of weather, stranding, sinking ...”*.

Skont il-polza, l-attur seta` jitlob indennizz li kien jinkludi *salvage charges, sue and labour costs, sighting costs, pollution costs, fire extinguishing appliances and safety flares*.

Il-polza tghid ukoll :-

“What is the most we will pay

*Except in respect of sue and labour costs referred to above, we will not pay more in total than the **Total Sum Insured** noted in the **Schedule** for any one claim under this **Section** in respect of anyone occurrence or series of occurrences originating from one event.We will pay for a **Total Loss** of your **Insured Pleasure Craft** and other covered property, only if the **Insured Pleasure Craft** is completely lost or destroyed. We will also pay for a **Constructive Total Loss** if the cost of recovering and repairing the **Insured Pleasure Craft** is greater than the amount of insurance shown for your **Insured Pleasure Craft** on the **Schedule**.*

*Sue and labour costs covered above are payable in addition to the **Total Sum Insured** or any **Sum Insured** but the maximum sum we will pay in respect of sue and labour costs for the **Insured Pleasure Craft** or any part thereof arising from each separate occurrence or series of occurrences originating from one event is the **Sum insured** in respect of any affected item and the **Total Sum Insured** in the aggregate.”*

Exceptions

We will not pay for:-

1. *Loss or damage caused by wear and tear, corrosion, vermin, insects, fungus, marine life, electrolysis or osmosis, gradual deterioration, rust, dampness, normal wetting or weathering....”*

IV. L-access

Il-Qorti hadet vizjoni tad-dghajsa in kwistjoni meta ratha fil-parapett tad-dar tal-attur bl-isem “Alcazar” 30, Triq id-Dugh, Marsaskala, fil-kors ta` access illi sar fit-2 ta` Mejju 2017.

Sar dan il-verbal :-

“Fil-parapett imsemmi, kienet osservata d-dghajsa bl-isem Rhapsody I.

Il-pruwa tinsab `l gewwa u tidher il-poppa kollha.

Ghar-rigward tal-poppa, il-Qorti kkoncentrat fuq is-settur (illum vojta) fejn tkun solitament imwahnla z-Z Drive u rat it-toqob fejn jidhlu l-boltijiet li in segwitu jigu ssikkati bl-appoziti skorfini fuq il-gewwa tad-dghajsa.

Dwar dan il-punt, il-Qorti rreferiet ghar-ritratti li kienu ttiehdu minn Anthony Dalli wara l-incident, in partikolari ritratt li juri skorfini ma` bolt minn gewwa mdawwra bis-sadid.

Fuq domandi tal-Qorti, Anthony Dalli stqarr illi meta ghamel l-ewwel survey tad-dghajsa biex issir l-assikurazzjoni taghha huwa ma ghamilx ezami ta` dik il-parti tad-dghajsa. U allura ma setax jixhed dwar il-kondizzjoni tal-iskorfini.

Min-naha tieghu, l-attur stqarr illi meta saret l-assikurazzjoni d-dghajsa kienet fi stat tajjeb inkluzo l-parti ndikata mill-Qorti.

Sar ezami taz-Z Drive li jinsab maqlugh u mqieghed fl-art tal-parapett.

Kienu osservati l-boltijiet ta` isfel li baqghu fil-post tagghom meta gara l-incident.

Kienet ikkonstata l-kondizzjoni tagghom.

Kienu osservati wkoll it-tliet siti fin-naha ta` fuq taz-Z Drive fejn kienu t-tliet boltijiet illi tqacctu bl-incident.

Il-partijiet tal-boltijiet li tqacctu huma esebiti fl-atti tal-kawza.

Il-Qorti rat il-parti ta` kull bolt imqaccat li baqghet imwahnha fil-post taghha fiz-Z Drive.

Il-Qorti ghamlet tqabbil bejn il-parti tal-bolt esebiti u dik il-parti li baqghet il-post, u dawn qablu, ikkostatat l-istat tal-azzar taz-zewg partijiet, u kkostatat ukoll l-istat tal-azzar tal-boltijiet ta` isfel li ma tqacctux bl-incident.

Dwar ir-ritratt li ha Anthony Dalli tal-iskorfina msadda, Ing Paul Cardona ghamel osservazzjoni fis-sens illi dik l-iskorfina mhijiex ta` xi wiehed mit-tlett boltijiet li tqacctu ghaliex fl-incident il-boltijiet ma tqacctux mill-iskorfina li kienu qed jorbtu z-Z Drive fil-post apozitu taht il-poppa tad-dghajsa izda tqacctu mill-post fejn kienu nseriti fiz-Z Drive stess.”

V. Il-fatti

Bil-kawza tal-lum l-attur qieghed jitlob illi jigi ndennizzat u kkompensat minn Argus skont il-polza fuq riferita ghall-incident li garrbet id-dghajsa tieghu bl-isem “Rhapsody I” bhala konsegwenza tal-incident tat-8 ta` Gunju 2014.

Mill-assjem tal-provi, ma jidhirx illi huwa kkontestat illi d-dghajsa tal-attur garrbet incident waqt in-navigazzjoni bejn Malta u Ghawdex meta z-z-drive tad-dghajsa habat ma` oggett li kien fil-bahar. Konsegwenza tal-

impatt, iz-drive hareg barra mill-ilma u meta rega` nizel lura fl-ilma, nizel b`forza qawwija ghax kellu l-*propellers* ghaddejjin bis-sahha kollha tagghom. Xhin nizel b`daqstant qawwa, tqacctu tlett boltijiet li jorbtu t-*transom shield* mad-dghajsa u bil-konsegwenza li beda diehel kwantita` ta` ilma fid-dghajsa b`mod u manjiera din spiccat gherqet fejn l-*islipway* fil-port ta` Mgarr, Ghawdex, wara li l-attur ghamel l-almu tieghu biex iwassal id-dghajsa lejn dak il-port wara li kien sehh l-incident.

Irrizulta li d-dghajsa ttellghet mill-bahar bl-ghajnuna ta` xi bughadassa li marru fis-sit fejn gherqet id-dghajsa biex jaghtu assistenza. L-attur ghabba d-dghajsa fuq il-karru taghha u ttiehdet lejn Malta b`wiehed mill-vapuri tal-Gozo Channel Line. L-ghada l-attur mar ghand Argus fejn ghamel claim (fol 72 sa fol 74) sabiex jigi ndennizzat. Min-naha taghha, Argus tat struzzjonijiet lill-attur sabiex jiehdu d-dghajsa ghand Jetglass Limited u hekk sar.

Irrizulta li Jetglass Limited battle il-magna tad-dghajsa mill-ilma u salvat il-magna. Imbaghad sar survey minn Anthony Dalli, ghal Argus.

Wara li ghamlet l-accertamenti taghha, Argus accettat li thallas lill-attur parti biss mill-hsara li garrab peress illi kienet tal-fehma li l-unika hsara li sehhet kagun tal-impatt tad-dghajsa mal-oggett fil-bahar kienet dik li kien hemm fiz-Z-drive. Ma accettatx li thallas tal-hsara l-ohra, partikolari fit-*transom shield*, ghaliex ikkonkludiet li dik il-hsara ma kenitx *an insured event* jew *an insured peril* peress illi dik il-hsara ma kenitx dovuta gha;-impatt izda kienet imputabbli ghal nuqqas ta` manutenzjoni da parti tal-attur tal-bolts li kienu qeghdin iservu bhala rbit.

Il-konkluzjonijiet tal-assikurazzjoni konvenuta kienu rigettati mill-attur anke fuq l-iskorta tal-fehmiet espresso mill-konsulent tieghu *ex parte* l-Ing. Paul Cardona.

Ghalhekk saret din il-kawza.

VI. Il-posizzjoni tal-assikurazzjoni konvenuta

Il-polza de qua kienet taghti indennizz wara incidenti imprevisi fuq il-bahar li jwasslu anke ghal gharqa ta` opra tal-bahar.

Fil-kaz tal-lum, ma hemmx qbil bejn il-partijiet dwar liema hsara Argus kienet obligata taghti kopertura skont il-polza.

Argus tikkontendi illi tenut kont tal-fatti u cirkostanzi tal-kaz hija kellha taghti indennizz biss ghall-hsara li garrab iz-z-drive tad-dghajsa u ma kenitx obligata taghti risarciment ghall-hsara li garrbet id-dghajsa bl-gharqa taghha. Argus tikkontendi illi kieku l-boltijiet li jorbtu t-*transom shield* ma kienux bis-sadid u *corroded*, il-boltijiet ma kinux jitqacctu bl-impatt tad-dghajsa mal-oggett fil-bahar.

Il-Qorti taghmel riferenza ghal ittra datata 8 ta` Awissu 2014 li minghajr pregudizzju baghtet Argus lill-attur fejn jinghad illi skont hi, il-kawza ta` l-incident kienet dovuta ghall-fatt illi whud mill-studs li jzommu it-*transom shield* kienu *corroded* u ma kinux fi stat ta` tajjeb ta` manutensjoni. Jinghad hekk fl-ittra :-

“During the survey and investigations carried out on the boat, it results that the transom shield was found dislodged and distorted from the top end. Both sides of the transom shield had moved outwards (aft) and this movement had caused water ingress in the boat. It was noted that the upper two and the PORT side middle studs were eroded and had sheared through excessive corrosion. The corrosion did not materialize in the last few months, but happened over an extensive period of time.

We are of the opinion that what happened is that when the “Z” drive fell back into the water, it naturally slammed hard against the bottom of the transom shield. This sudden and intense force, combined with the eroded condition of the upper transom shield studs, caused the top of the transom shield to move outwards, causing the rapid water ingress into the boat.

If all the studs were in good condition and not eroded as they were, the transom shield would have withstood the movement and slamming back of the “Z” drive.

For the reasons above which results from the thorough investigation, the only costs of repairs recoverable under the Pleasure craft Policy of

insurance will be the damages sustained to the propellers and the lower part of the gear case of the "Z" drive." (fol 11 u fol 210).

Il-kontenut ta` din l-ittra jaqbel kemm ma` dak li sostna s-surveyor Anthony Dalli fir-rapport tieghu datat 30 ta` Lulju 2014 kif ukoll max-xiehda *in estenso* moghtija minn Anthony Farrugia li kien tal-fehma illi l-incident ma kienx isehh b`mod daqstant drastiku li kieku l-boltijiet kienu fi stat tajjeb ta` manutenzjoni u mhux *corroded* li effettivament sab illi kienu.

Argus tinsisti li ma hemm l-ebda ness ta` kawzalita` bejn l-*insured event* u l-hsara sofferta fit-*transom shield*, ghaliex din il-hsara kienet imputabbli unikament ghan-nuqqas ta` manutensjoni da parti tal-attur.

Argus issostni l-posizzjoni taghha b`riferenza ghall-*policy exclusions* li huma relatati specifikament ma` *wear and tear, corrosion, gradual deterioration, and rust*.

Min-naha tieghu, l-attur jikkontesta l-konkluzjonijiet tal-kontroparti u jinsisti li l-boltijiet kienu fi stat ta` sahha tajba.

VII. L-ewwel talba

1. Il-polza ta` assikurazzjoni

Il-polza ta` assikurazzjoni tohloq relazzjoni bilaterali bejn il-kontraenti fejn in konsiderazzjoni tal-hlas ta` premium mill-assikurat lis-socjeta` assikuratrici, din tal-ahhar tintrabat li tindennizza lill-assikurat taghha fl-eventwalita` li dan isofri xi telf bhala resultat ta` riskju li jkun kopert bil-polza.

L-element principali ta` dan it-tip ta` kuntratt huwa r-riskju liema riskju tassumieh s-socjeta` assikuratrici.

F`dan is-sens ghalhekk dan huwa kuntratt bilaterali b`titolu oneruz in kwantu l-kontraenti jirregolaw l-obbligazzjonijiet ta` bejniethom billi bil-hlas

tal-premium da parti tal-assikurat tiskatta l-obbligazzjoni ta` l-indennizz da parti tas-socjeta` assikuratrici.

2. Il-kawza prossima

L-awtur **John Birds** fil-ktieb tieghu "**Modern Insurance Law**" [Second Edition] Pag.185 ighid hekk :-

"It is not sufficient in order that an insured should recover for a loss that the loss falls within the cover provided as a matter of construction or definition. He must also show that the loss was proximately caused by an insured peril. The proximate cause does not, however, mean the last cause but the effective or dominant or real cause. Working out what is the proximate cause in any situation is strictly a question of fact."

E.R. Hardy Ivamy fil-**General Principles of Insurance** [4th Edition, 1979] Pg.415-416 ighid :-

"Where the peril insured against though undoubtedly causing the loss is preceded in point of time by an excepted cause there is no loss within the meaning of the policy if the excepted cause can be regarded as the proximate cause. If the peril insured against is the reasonable and probable consequence, directly and naturally resulting in the ordinary cause of events from the excepted cause, the excepted cause is the cause of the loss within the meaning of the policy since there is no break in the sequence of clauses and the relation of cause and effect between the excepted cause and the loss is therefore established. It is not necessary for the excepted cause to remain in operation down to the loss ; it is sufficient that it has started the chain of circumstances leading to the loss. The whole circumstances beginning from the excepted clause constitute one accident ; the intervention of the peril insured against is merely the natural and probable consequence of the excepted cause."

Dan premiss, u qabel ma tqis il-kwistjoni tal-istat tal-boltijiet, il-Qorti sejra taghmel riferenza ghall-argumenti li ressaq l-attur fin-nota ta` sottomissjonijiet tieghu.

L-attur jikkontendi illi fid-dritt assikurattiv, il-principji ewlenin jingabru filli :-

1. sabiex jigi stabbilit jekk il-hsara mgarrba hijiex koperta bil-polza jew le, wiehed ghandu jhares lejn il-kawza l-aktar prossima

(immedjata) li wasslet ghal hsara/incident u dan in omagg ghal principju : *causa proxima non remota spectator* ;

2. l-oneru tal-prova li r-riskju assigurat, jew il-kawza tat-telf, huwa tassew riskju/kawza eskluza kif patwit fil-polza jaqa` proprju fuq l-assigurator li jqajjem l-eskluzjoni favur tieghu ;
3. huwa pacifiku li l-istess assigurator ma jistax jinheba wara l-eskluzjoni biex jezimi ruhu mill-obbligi u r-responsabilitajiet tieghu taht il-polza.

Fl-isfond ta` dawn il-principji, l-attur jikkontendi illi fil-kaz tal-lum il-kawza l-aktar prossima li tat lok ghall-incident kienet il-forza qawwija tal-impatt taz-z-drive meta dan laqat oggett fil-bahar b`konsegwenza ta` liema hareg mill-ilma u rega` nizel `l isfel b`velocita` tant qawwija li ghawweg u qata` l-boltijiet tar-*ransom shield*.

Skont l-attur, mhuwiex necessarju li din il-Qorti toqghod tezamina kawzi ohra aktar remoti li setghu taw lok ghall-incident.

Il-Qorti hija tal-fehma illi ghalkemm li l-incident sehh ghaliex iz-z-drive laqtet oggett fil-bahar, saru argument fis-sens illi l-istess incident ma kienx igib mieghu konsegwenzi tant drastic u gravi bhalma gara fil-kaz tal-lum li kieku l-boltijiet kienu fi stat tajjeb ta` manutenzjoni.

Ghalhekk ghal din il-Qorti, l-istat u l-kondizzjoni tad-dghajsa, b`mod partikolari tal-boltijiet, ma jirraffigurawx ruhhom ma` kawza remota li setghet tat lok ghall-incident, izda ghal kawza prossima li seta` tat lok ghall-istess incident.

Huwa fatt accertat u ppruvat illi ghax tqacctu t-tlett boltijiet beda diehel l-ilma fid-dghajsa bir-rizultat li din spiccat mgharrqa.

Ghalhekk il-Qorti tqis li l-konsiderazzjoni tal-qaghda tad-dghajsa, b`mod partikolari tat-tliet boltijiet, huwa fattur rilevanti fl-accertament tal-kawza prossima.

3. Stat u kondizzjoni tad-dghajsa

L-attur jikkontendi li l-kundizzjoni tad-dghajsa kienet giet kostatata minn spezzjoni li ghamel is-surveyor Anthony Dalli f`zewg okkazjonijiet qabel l-incident. Ighid illi f`ebda rapport minn dawn, ma kien notat jew indikat li kien hemm xi dhul ta` ilma fid-dghajsa jew li l-boltijiet in kwistjoni kellhom problemi ta` deterjorazzjoni jew ta` sadid.

Il-Qorti ma tarax li ghandha taghti piz probatorju determinanti liz-zewg *surveys* datati 19 ta` Lulju 2011 u 5 ta` Gunju 2012 ghall-fini tal-incident in esami.

Apparti t-trapass taz-zmien li ghadda bejn id-data tas-surveys, Anthonby Dalli stess jaccetta illi meta huwa ghamel dawk is-*surveys* huwa kien qed jiccekkja dwar aspetti ohra li ghandhom x`jaqsmu mal-vijabbilita` u kondizzjoni ta` d-dghajsa, u ma kienx esamina, u allura ma kienx ta importanza ghall-istat li kienu jinsabu fihom il-boltijiet partikolari.

4. Stat u kondizzjoni tal-boltijiet

Il-Qorti gharblet il-provi li ressqu z-zewg partijiet dwar l-istat u l-kondizzjoni tal-boltijiet.

Irrizulta li t-*transom shield* kienet imwahnla maz-Z Drive b`sitt boltijiet.

Irrizulta li meta z-Z Drive qalghet id-daqqa taht il-bahar, tlieta minn dawn il-boltijiet inqasmu u spiccaw bicca mwahhlin mat-*transom shield* u bicca ohra mwahhlin fid-dghajsa.

5. Il-provi tas-socjeta` konvenuta

Argus toqghod fuq ix-xiehda ta` Anthony Dalli u ta` Anthony Farrugia.

Ghal din il-Qorti, ix-xiehda ta` Anthony Dalli u r-rapport tieghu ta` wara l-incident ma jammontawx ghal prova konklussiva illi l-boltijiet kienu imsadda u *corroded* b`tali mod li minhabba dan tqacctu bl-impatt tad-dghajsa mal-oggett fil-bahar.

Anthony Dalli jaccetta bhala fatt illi wara l-incident ma kienx ezamina l-partijiet tal-boltijiet li baqghu mwahhla, u li kien wasal ghall-konkluzjonijiet tieghu *de visu* u mir-ritratti li kien ha ta` l-boltijiet hekk kif kienu mwahhla fid-dghajsa.

Anthony Dalli jaccetta li ra l-boltijiet biss fil-pendenza ta` din il-kawza, wara li kienu esebiti mill-attur.

Mistoqsi mill-qorti dwar x` tip ta` *corrosion* osserva, Anthony Dalli wiegeb illi fil-fehma tieghu dak li kien qed jara ma kinitx semplici *surface corrosion*. Meta kien rinfaccjat bil-fatt li kien hemm partijiet fejn il-boltijiet kien jidhru bojod jew grizi, huwa wiegeb illi f`dawk ma tantx kien hemm *corrosion* anzi addirittura kienu ghadhom intatti.

Apparti dan kollu, Anthony Dalli fil-kors tax-xiehda tieghu jistqarr illi huwa rakkomanda fir-rapport tieghu illi l-boltijiet ghandhom jittiehdu go laboratorju tal-metallurgija sabiex isir esami tal-istat u kondizzjoni tagghom ghall-fini ta` konferma jew xort`ohra tal-konkluzjonijiet tieghu.

Anthony Dalli jaghmel enfasi ripetuta illi fl-ahhar mill-ahhar kollox kien jiddependi mir-risultat tal-ezami metallurgiku tal-boltijiet.

Minkejja r-rakkomandazzjoni ta` Anthony Dalli, ma jirrizultax illi argus hadet il-briga li tinsisti b`mod car u minghajr ekwivoci li jsir dak li kien rakkomandat minn Anthony Dalli.

Huwa minnu wkoll illi kien l-Ing. Cardona li nsista li jinghata l-awtorizzazzjoni sabiex jaqla` l-bicciet rimanenti tal-boltijiet u jibghathom ghal esami test metallurgiku.

Jibqa` l-fatt illi t-test tal-metallurgija baqa` ma sarx.

Dan premiss, l-oneru tal-prova tas-sussistenza tal-eskluzjoni tal-applikazzjoni tal-polza jispetta u jinkombi fuq spallejn is-socjeta` konvenuta.

Il-Qorti tirreferi ghad-decizjoni unanima tal-Qorti Suprema tal-Kanada fil-kaz : **Progressive Homes Ltd. v. Lombard General Insurance Co. of Canada** : 2010 SCC 33 : fejn inghad hekk :-

“As noted above, exclusion clauses reduce the scope of coverage by removing from coverage certain risks that were within the coverage specified by the coverage provisions :

Even if the claims fall within the initial grant of coverage... then coverage may still be excluded if the insurance company shows that an exclusion clause applies. (at para. 12).

...

As explained above when discussing that the order of interpretation of insurance contracts (i.e. coverage provisions, exclusions, exceptions), exclusions do not create coverage. However, because contracts should be considered as a whole and provisions should read harmoniously where possible, exclusion clauses can inform the meaning of coverage provisions :

Exclusions do not create coverage - they preclude coverage when the claim otherwise falls within the initial grant of coverage. Exclusions, should, however, be read in light of the initial grant of coverage.

...

Lombard argues that the exclusion clauses do not create coverage. This is true. But reading the insurance policy as a whole is not the same as conjuring up coverage when there was none in the first place. Consistency with the exclusion clauses is a further indicator that the plain meaning of “property damage” is the definition intended by the parties. (at para. 27 and 37).

...

Once an insured establishes that the claim is within the scope of the coverage provision it then is up to the insurer to prove that an exclusion applies :

Having found that the claims in the pleadings fall within the initial grant of coverage, the onus now shifts to Lombard to show that coverage is precluded by an exclusion clause. Because the threshold for the duty to defend is only the possibility of coverage, Lombard must show that an exclusion clearly and unambiguously excludes coverage. (at para. 51).”

Fil-kitba **“Exclusions - The Burden of Proof”** li tidher fil-website tal-British Insurance Brokers` Association jinghad hekk :-

“Whereas you must prove to the insurer that the claim is covered by the Insuring Clause (see above) the burden of proof is the other way round with regard to exclusions. The onus is upon the insurer to prove that an exclusion clause applies to the policy.

However, it is important to note that if the Insuring Clause includes a phrase such as “Excepting... (a certain aspect of cover)” then it is for you to prove that such exception does not apply. It is important to appreciate that in some cases the burden of proof can be shifted from Insurer to Insured by the wording of the policy. It will usually be found under the heading “Conditions” and so you must be alert.”

Fil-kitba : **“Claims and the question of onus”** : Frank Liebenberg u Ana Mullins ighidu hekk :-

“Fundamental principle

In dealing with an insurance claim, in practice, the question of onus is probably the most important one in resolving the claim. The procedures for dealing with claims should bear this in mind and be structured accordingly. The point of departure with onus is common sense and stated as follows in Van Wyk v Lewis 1924 AD, `the person who asserts must prove`. This is but common sense;

anyone who claims something faces the burden of proving it. This common sense approach is well-established in the law in general, in contract in particular, and, more specifically, in insurance contracts.

.....

Onus and policy exceptions

Having dealt with the operative clause, often an insurer may repudiate a claim because of an exception in the policy. Almost always it will be the insurer asserting that it is not liable because of the exception. The application of the fundamental principle of onus means that the burden to prove that the facts fall within the exception rests on the insurer.”

Tenut kont tal-premess, din il-Qorti tghid illi kellha tkun Argus li tassikura li jsiru t-testijiet tal-metallurgija li kien qed jirrakkomanda li jsiru mis-surveyor taghha.

Din il-Qorti ma tistax taghti affidament lanqas fuq bilanc ta` probabilitajiet ta` dak mistqarr minn Anthony Dalli meta tqis illi dan baqa` ma ghamel ebda ezami ta` l-boltijiet, imqar minn barra, izda qaghad biss fuq ritratti taghhom li ha huwa stess, tenut kont tal-fatt illi Anthony Dalli nnifsu kien irrakkomanda li jsiru l-ezami jiet metallurgici.

Il-Qorti sejra tirreferi ghax-xiehda ta` Anthony Farrugia.

Dan sostna li solitament meta z-Z drive tohrog `il barra u terga` tinsel b`impatt qawwi, jinkisru partijiet ohra aktar dghajfa fid-dghajsa. Fl-istess nifs jikkonferma illi fil-kazi normali, kien xorta wahda jibda diehel l-ilma izda b`mod aktar bil-mod li jaghti cans li l-gharqa tad-dghajsa tigi evitata.

Tajjeb li jigi rilevat illi Anthony Farrugia xehed biss abbazi ta` spezzjoni *de visu* mhux wara li ghamel testijiet.

Tajjed jinghad ukoll illi l-inkariku ta` Anthony Farrugia ma kienx dak li jagixxi bhala surveyor jew bhala espert *ex parte* izda l-inkariku li kellu kien illi wara li d-dghajsa ttiehdet ghandu jaghmel sabiex inehhi l-ilma tal-bahar mill-magna sabiex jipprova jsalva l-magna minn aktar hsara, u rnexxielu.

Meta dan ix-xhud kien rinfaccjat bil-fatt li l-intern tal-boltijiet kien jidher li mhux difettuz u *corroded*, dan allega li x`aktarx kienet il-parti li baqghet fiz-Z drive li kienet imsadda. Madanakollu accetta illi qatt ma pprova jillima dik il-parti tal-bolt li baqghet fiz-Z drive jew ghamel xi testijiet ohra biex ikun jista` jistabilixxi l-istat u kondizzjoni attwali ta` dik il-parti tal-boltijiet.

6. Il-provi tal-attur

Apparti d-deposizzjoni tieghu dwar id-dinamika tal-incident, l-attur ressaq bhala xhud lill-Ing. Paul Cardona bhala espert *ex parte*. Kemm fir-rapport kif ukoll fix-xieghda tieghu, l-Ing Cardona sahaq illi l-boltijiet kellhom biss *surface corrosion* u li kienu zammew is-sahha u l-funzjoni kollha taghhom.

Skont Argus, ix-xieghda tal-Ing. Cardona kienu mimlija inezattezzi.

Skont is-socjeta` konvenuta, l-Ing. Cardona kien zbaljat meta stqarr illi (i) partijiet mill-boltijiet spiccaw il-bahar, meta skont Anthony Farrugia, il-parti li tqacctet baqghet imwahnla got-*transom shield* ; (ii) l-boltijiet issaddu minhabba l-hin li d-dghajsa ghamlet taht l-ilma wara l-incident in ezami ; (iii) l-parti nadifa fit-tlett boltijiet ezebiti kienet il-parti minn fejn tqacctu l-boltijiet ; u (iv) l-livell tas-sadid kien biss *surface corrosion*.

Din il-Qorti qieset il-provi kollha fl-assjem taghhom.

Tghid illi hija konvinta b`dan mistqarr mill-Ing. Cardona ghar-ragunijiet li gejjin :-

- a. Fl-ewwel lok, hija ezaminat il-boltijiet imqaccta li gew ezebiti u fil-fehma taghha, il-mod kif dawn tqacctu b`mod daqstant nett (stante li kienu "*sheared*") jindika li dawn tqacctu wara l-impatt qawwi meta z-Z drive rega` nizlet gol-bahar bil-*propellers* ghadhom ghaddejjin *in full power*.

- b. Waqt l-udjenza ta` l-20 ta` Ottubru 2016, irrizulta li l-*corrosion* ma kienet xejn ghajr saff ta` sadid fil-wicc li tnehha b`semplici lima. Infatti wara l-Ing. Cardona llima wiehed mill-boltijiet in kwistjoni, beda jidher li taht is-saff tas-sadid tal-wicc, kien hemm l-azzar griz ileqq li ma kienx mikul internament.
- c. Waqt is-smigh tal-provi, il-Qorti setghet tevalwa u tikkonsidra t-tlett boltijiet li tqacctu kif ukoll bolt gdid tal-istess ghamla u funzjoni li pprezentat Argus ghall-fini komparattiv.
- d. Waqt l-access, il-Qorti nnotat ukoll l-istat u l-kondizzjoni tat-tlett boltijiet ta` isfel li baqghu fil-post taghhom meta gara l-incident kif ukoll it-tliet siti fin-naha ta` fuq taz-Z drive fejn kienu t-tliet boltijiet illi tqacctu bl-incident. Inoltre, il-Qorti rat il-parti ta` kull bolt imqaccat li baqghet imwahnha fil-post taghha fiz-Z rrive. Meta sar it-tqabbil bejn il-parti tal-bolt esebit u dik il-parti li baqghet il-post, kif ukoll osservat l-istat tal-azzar tal-boltijiet imqaccta u l-istat tal-azzar tal-boltijiet ta` isfel li ma tqacctux bl-incident, hija kienet altru milli konvinta li t-tezi ta` l-Ing. Paul Cardona kienet tajba u veritiera.

Il-Qorti qieset ukoll nota l-kontenut ta` l-ittra legali li baghat l-avukat ta` fiducja tal-attur datata 15 ta` Jannar 2015 ezebata a fol 214 u 215 tal-process fejn inghad hekk :-

“ ... spoke to both my client and to Engineer Paul Cardona on the sheared bolts with Engineer Cardona confirming that after the relative tests were made the result was that they had indeed sheared possibly also on account of wear and tear.”

Minkejja dak li nkiteb, l-Ing. Paul Cardona bil-gurament tieghu kkonferma li t-tqaccit ta` l-boltijiet sehh minhabba l-impatt qawwi li kien hemm, u mhux minhabba li l-boltijiet kienu fi stat ta` sahha ridott minhabba *corrosion*.

Provi li jistghu jikkjarifikaw dak li ried jinghad fl-ittra ma tressqux ghall-konjizzjoni tal-Qorti.

Fin-nota ta` sottomissjonijiet taghha, is-socjeta` assikuratrici ssostni li, fl-assenza ta` spjegazzjoni sodisfacenti ohra li t-*transom shield* tqaccat u ma rreagixxiex kif suppost li jaghmel, ghandha tapplika l-prezunzjoni legali ta`

res ipsa loquitur. Dan fis-sens li huwa ragonevoli li wiehed jassumi li fl-assenza ta' spjegazzjoni sodisfacenti ohra, l-incident sehh minhabba l-boltijiet immermra li ma gewx mizmuma fi stat ta' manutenzjoni tajjeb u skont l-arti u s-sengha.

Din il-qorti ma taqbilx ma' dak li qeghda tissottometti s-socjeta' konvenuta.

Fil-fehma taghha, il-presunzjoni *res ipsa loquitur* m'ghandhiex tigi applikata ghall-kaz tal-lum

Qed jinghad hekk ghaliex kemm Anthony Farrugia u kif ukoll l-Ing. Cardona fissru x'seta' gara u kif bil-mod kif sehh l-impatt kien hemm it-tqaccit fit-*transom shield*.

Ghalhekk Farrugia jghid illi huwa qatt ma ra tqaccit ta' *transom shield* minn fuq, izda mid-deskrizzjoni dwar dak li sehh moghtija minn sid id-dghajsa, irrizulta li xi haga habtet maz-*Z-drive* u din harget barra mill-ilma bil-konsegwenza li l-*load* fuq il-magna telaq ghax il-*propellers* hargu barra mill-ilma. B'hekk il-magna giet *free* ghax ma sabitx *load* u kollox rega' nizlet 'l isfel. Xhin nizlet 'l isfel, iz-*Z-drive* rega' nizlet b'forza qawwija peress li nizlet mhux biss effett tal-gravita' izda bl-iskrejjen jaqdfu. Ghalhekk, il-hsara sehhet mhux meta qalghet id-daqqa u telghet 'il fuq izda meta nizlet 'l isfel. B'hekk meta nizlet 'l isfel b'sahha tremenda, tqaccat il-parti ta' fuq tat-*transom shield*.

Din hija spjegazzjoni ragonevoli tad-dinamika ta' dan l-incident.

Inoltre l-Qorti sejra toqghod fuq dak li osservat hi.

Sejra tistrieħ ukoll fuq il-fatt li Argus baqghet ma ressqitx provi dwar dak allegat b'mod sodisfacenti li jikkonvinci lil din il-Qorti dwar il-veracita' ta' dak li qed jigi allegat minnha.

Il-*policy exclusion* kellha tigi ppruvata minn Argus. Dan ma sarx sal-grad rikjest mil-ligi.

Huwa nutli li Argus targumenta li kien jinkombi fuq l-attur li jipprova l-kaz tieghu u li kien ghalhekk oneru tieghu li jressaq testijiet tal-metallurgija sabiex jipprova li dan il-kaz ma kienx *wear and tear*.

Taghmel din l-osservazzjoni ghaliex ladarba kienet ippruvata d-dinamika ta` dak li sehh u li d-danni effettivament sehhew in vista ta` l-incident, kien jinkombi fuq l-intimata li tressaq provi konvincenti li jippruvaw l-applikazzjoni ta` l-eskluzjoni inserita fil-polza ta` assikurazzjoni.

Ghalhekk dan l-oneru kien jispetta lil Argus occorrendo bil-prova tat-test tal-metallurgija.

Fl-isfond tal-premess, il-Qorti tafferma li ma kienx hemm prova sodisfacenti da parti ta` Argus li fil-kaz tal-lum kellha tkun operattiva l-eskluzjoni tal-polza li kienet qeghda tinvoka favur taghha sabiex ma tindennizzax lill-attur.

Anke ghalhekk qeghda tilqa` l-ewwel talba attrici.

VIII. It-tieni talba

Fil-kaz tal-lum, irrizulta li l-polza de qua ghandha bhala “*total sum insured*” ghal “*loss or damage*” is-somma ta` EUR 29,660.00c.

Il-polza taghmel distinzjoni bejn kaz fejn ikun hemm “*total loss*” ossija “*where the pleasure boat is entirely destroyed*” u kaz ta` “*constructive total loss*” ossija “*where the Insured Pleasure Craft is beyond economical repair meaning that the cost of repair and/or recovery would exceed the Total Sum Insured shown in the Schedule.*”

L-attur ipprezenta prospett a fol 129 tal-process relatat max-xenajru ta` “*total loss*” flimkien ma` spejjez li nkorra ghas-salvatagg tad-dghajsa, ghat-trasport tad-dghajsa lejn Malta u xi spejjez ohra.

Fil-kors tal-gbir tal-provi, l-attur ghamel talba ta` indennizz fl-ammont ta` EUR 32,814.67c konsistenti fis-somma assigurata ta` EUR 28,966 (li mhijiex ezatta peress li mill-polza tirrizulta li hija EUR 29,966) ; EUR

1803.87 bhala spejjez dovuti lil Jetglass ai termini ta` l-*invoice* ezebita ta fol 130 sa 131; EUR 1534 rapprezentanti spejjez ta` *boat salvage*; EUR 93.15 u EUR 4.65 rapprezentati spejjez ta` transport tad-dghajsa tramite s-servizz tal-Gozo Channel; u EUR 413 rapprezentanti spejjez relatati ma` tiswija ta` *self starter* u *alternator* (fol 132).

Il-Qorti tirriskontra zball fil-prospett peress li t-total ta` danni kellu jammonta ghal EUR 33,814.67c minhabba li l-ammont ta` “*sum insured*” gie erronjament innizzel bhala EUR 28,966 minflok EUR 29,966.

Kien ipprezenta prospett iehor a fol 133 tal-process fl-ammont ta` EUR 26,475.79c, li jkopri : EUR 1,026.60c spejjez a favur ta` Nikky Upholstery (fol 134 u fol 171) ; EUR 345 spejjez a favur ta` Sea Link Solar Panel (fol 135) ; EUR 3,652.86c rapprezentanti spejjez lil JFC Marine Transom (fol 136 u fol 170); EUR 725.70c rapprezentanti spejjez lil JFC Marine Windlass (fol 137) ; EUR 413 lil Charles Garage Electrician (fol 138) ; EUR 5,040.36 lil Jet Glass (fol 139 sa 143); EUR 3,740.00 lil Jet Glass Supply Repairs (fol 144 sa 145, fol 172 u fol 173) ; EUR 5,686.10c bhala *evaluation costs* (fol 146 sa 147 u fol 174 sa 175) ; EUR 1.803.87c lil Jet Glass Invoice Repair (fol 148) ; EUR 1,820.50c lil Jet Glass *Quote for Stern Repair* (fol 149 u 150); EUR 1 534 bhala spejjez ta` *boat salvage* ; Eur 93.15 u EUR 4,65c rapprezentanti spejjez ta` transport mal-Gozo Channel u EUR 590 rapprezentati *axle for trailer*.

Dwar dan l-ahhar prospett, tajjeb jinghad illi l-attur irrileva li r-rapprezentanti ta` Jetglass kienu spjegawlu li huwa biss meta tinfetah il-magna illi seta` jkun stabbilit kemm kienet sejra tiswa t-tiswija.

Peress li dwar l-ahhar prospett, ma hemmx certezza dwar il-quantum involut ghall-ispejjez kollha sabiex id-dghajsa tissewwa, il-Qorti tara li ghandha tghaddi sabiex tordna li l-attur ikun indennizzat ghall-valur kopert taht il-polza flimkien ma` l-ispejjez ohra inkorsi minnu.

Il-Qorti tqis li l-attur ghandu jigi ndennizzat b`dawn l-ammonti : EUR 29,966 fir-rigward tas-somma assicurata ; EUR 1803.87 ghall-ispejjez dovuti lil Jetglass Limited skont l-*invoice* a fol 130 sa 131 ; EUR 93.15 u EUR 4.65 rapprezentati spejjez ta` transport tad-dghajsa ; u EUR 413 bhala spejjez relatati ma` t-tiswija ta` *self starter* u *alternator* (fol 132) : total ta` EUR 32,280.67c.

Dwar l-ammont ta` EUR 1534 rapprezentanti spejjez li thallsu lill-
bughadassa li gheni fis-salvatagg, il-Qorti ma tqisx li ngabu provi mill-attur
dwar il-korrettezza taghha.

Dan qed jinghad peress li fix-xieghda tieghu l-attur ma kienx cert kemm
kien l-ammont li allegatament hallas lil dawn il-bughadassa.

Imbaghad minn qari ta` l-email ezebit a fol 216, jidher li l-legali ta` l-
attur kiteb lis-socjeta` konvenuta fejn indika li s-somma li thallset lill-
bughadassa kien fl-ammont ta` EUR 1,300.

Din id-diskrepanza fl-ammonti assolutament ma tikkonvincix lil din il-
Qorti.

Kien jinkombi fuq l-attur li jzomm provi li jsostnu l-ispiza li nkorra,
partikolarment fid-dawl tal-fatt li din ma kinitx xi spiza zghira u li huwa
kien ser jaghmel *claim* mas-socjeta` ta` assigurazzjoni li certament kienet ser
titlob xi tip ta` ricevuta li verament sar dan il-pagament.

Tajjed li jkun notat ukoll illi minn din is-somma ta` EUR 32,280.67c,
ghandha titnaqqas is-somma ta` EUR 400 li hija l-*excess* skont il-polza, li
baqa` ma thallasx mill-attur.

**Is-somma li qeghda tigi likwidata skont it-tieni talba tammonta
ghal EUR 31,880.67c.**

IX. It-tielet talba

Il-Qorti qeghda tilqa` t-tielet talba fil-parametri tat-tieni talba.

Decide

**Ghar-ragunijiet kollha premissi, il-Qorti qeghda taqta` u
tiddeciedi din il-kawza billi taqta` u tiddeciedi hekk :-**

Tichad l-eccezzjonijiet kollha.

Tilqa` l-ewwel talba.

Tilqa` t-tieni talba billi tillikwida favur l-attur indennizz fl-ammont ta` wiehed u tletin elf tmien mija u tmenin Ewro sebgha u sittin centezmu (€31,880.67c).

Tilqa` t-tielet talba billi tikkundanna lill-kumpannija konvenuta sabiex thallas lill-attur l-ammont ta` wiehed u tletin elf tmien mija u tmenin Ewro sebgha u sittin centezmu (€31,880.67c), skont kif fuq inghad, bl-imghax legali b`effett mil-lum sad-data tal-effettiv pagament.

Tikkundanna lill-kumpannija konvenuta sabiex thallas l-ispejjez kollha ta` din il-kawza.

**Onor. Joseph Zammit McKeon
Imhalled**

**Amanda Cassar
Deputat Registratur**