

## Quddiem l-Arbitru għas-Servizzi Finanzjarji

Każ ASF 148/2024

UY u VY

(‘l-Ilmentaturi’)

vs

MAPFRE MSV Life p.l.c. (C 15722)

(‘il-Fornitur tas-Servizz’)

Seduta 24 ta’ Jannar 2025

L-Arbitru,

Wara li ra l-ilment magħmul kontra s-socjetà *MAPFRE MSV Life p.l.c.* dwar il-polza ta’ assikurazzjoni fuq il-ħajja (*Comprehensive Life Policy*) bin-numru 50XXXN favur l-Ilmentaturi.

Fis-sustanza tiegħu, l-ilment jittratta telf li l-Ilmentaturi jallegaw li sofrew fil-polza ta’ assikurazzjoni fuq il-ħajja meta din immaturat b’ammont ferm inqas minn dak li kien imwiegħed lilhom mill-istess Fornitur tas-Servizz.

*L-Ilment*<sup>1</sup>

Fl-ilment tagħhom, l-ilmentaturi ppremettew u ssottomettew is-segwenti:

1. Illi l-polza ta’ assikurazzjoni fuq il-ħajja mmaturat fil-valur ta’ €30,458.17.
2. Illi originarjament meta kien avvicinahom rappreżentant tal-Fornitur tas-Servizz kien spjegalhom illi jekk iħallsu Lm365.00 fis-sena għal ħamsa u

<sup>1</sup> Formola tal-Ilment minn paġna (p.) 1 - 5, bid-dokumentazzjoni addizzjonali minn p. 6 - 73.

għoxrin sena, mal-maturità tal-polza huma ser jieħdu s-somma ta' Lm30,484.00 (€71,027.72).

3. Illi din is-somma kienet imniżżla kemm fuq il-*quotation* kif ukoll fuq il-*brochure* tal-Fornitur tas-Servizz.
4. Illi l-Ilmentaturi huma ddiżappuntati bis-somma li qed tiġi offruta lilhom mill-Fornitur tas-Servizz stante li hija ferm inqas mis-somma li kienet ġiet imwiegħda lilhom meta sar il-bejgħ tal-istess polza.

### *Rimedju mitlub*

Għaldaqstant, l-Ilmentaturi qegħdin jitolbu li jingħataw is-somma ta' €71,027.72, liema somma kienet ġiet originarjament imwiegħda lilhom mill-Fornitur tas-Servizz.

### **Ra t-twegiba tal-Fornitur tas-Servizz<sup>2</sup>**

*"Reply of MAPFRE MSV Life p.l.c. in terms of Chapter 555 of the Laws of Malta*

*1. MAPFRE MSV Life plc ("MMSV") refers to the allegation made by the complainants that the maturity value of the policy in question numbered 50228N of the nature Joint Endowment Assurance with Profits including Funeral Expenses ("the Policy") was not equivalent to highest estimated maturity value which was indicated by MMSV when the Policy was sold to the complainants. Consequently, the complainants are requesting the Honourable Arbiter to order MMSV to pay the complainant the difference between the said figures by paying an amount in addition to the Maturity Value of the Policy which originally amounted to amounting to Euro 30,458.17, and which amount MMSV was in a position to pay upon the maturity of the Policy.*

*In this regard, MMSV is of the view that the claimants' request is unfounded and therefore, the complainants are not entitled to receive any compensation in addition to the maturity value, and this for the reasons that have already been communicated in detail to the complainant by virtue of the reply letter of MMSV to the complaint made by the complainant, dated 27<sup>th</sup> June 2024 (a*

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<sup>2</sup> P. 79 - 85, bid-dokumentazzjoni addizzjonali minn p. 86 - 105.

*copy of which was presented with the complaint marked as Fol. fol.008-010) and as is going to be explained in further detail hereunder.*

- 2. In the first place, the amount being requested by the complainant is based on an estimate shown in two quotations that were presented by the complainant together with his complaint (the quotations are marked as fol.17 and fol.18 of the complaint). The quotations in question contained the words Estimated Maturity Value including Reversionary Bonus and I-Estimated Maturity Value including Reversionary and Terminal Bonuses. The quotation also included the following wording: "The quotation provided is for illustration only and does not confer any rights." Therefore, none of the figures which were indicated in the quotation as "estimated" could be said to have been guaranteed.*
- 3. The estimated maturity value shown in the quotations in question were calculated using the bonus rates that were being declared by MMSV at the time that the Policy was being sold.*

**The estimated maturity values shown in the quotations were not guaranteed because they were based on the investment conditions and circumstances at the time.**

*At the time, the value of the investments was much higher than it is today. In fact, the rate used to calculate the estimated maturity value as shown in the quotations, was that of 6.75%, which rate had remained constant until the year 1998 and then increased slightly in 1999 to 7% and started to decrease from the year 2000. The most important factor that affects bonus rates is the underlying investment performance and in recent years the investment returns internationally were lower.*

**In the light of the above, the quotations in question were in fact correct because they were issued according to the circumstances at the time and therefore MMSV had acted in good faith.**

- 4. The fact that the quotations indicate two estimated maturity values, the value of which are substantially far apart from each other, further confirm that there was an investment element to the Policy and that the amount being claimed by the complainants could not have been guaranteed. In the circumstances at the time that the Policy was being sold, MMSV was already indicating that if*

*the circumstances in the investment market had remained constant, the Policy could have matured either at a value of Lm22,168 (Euro 51,637.55) or at the higher value of Lm30,484 (Euro 71,008.62). It results that the complainants based their complaint on the largest estimated maturity value indicated in the quotation.*

- 5. Besides the fact that the quotation indicates two maturity values as "estimated" and therefore, said figures could not have been guaranteed, the complainants were also presented with notes together with the quotation (a copy of the notes attached to the quotation are being attached and marked as **Dok. MSV 1**)). In fact the quotation (fol. 17) states that "IMPORTANT NOTES OVERLEAF: Please read carefully these notes before accepting and signing this quotation". It also stated that by their signature the complainants confirmed that they read and understood the Important Notes to the quotation.*
- 6. The said notes delve into the meaning of "Reversionary Bonuses" and "Terminal Bonus". The said notes also explain that the Policy was participating "in the Company's distribution of its profits by means of an allocation of an Annual Bonuses declared from time to time ... The rates of Reversionary Bonuses, once declared, are guaranteed to be paid at maturity or on prior death of the Life Assured."*

**Therefore, these notes explained that there was an element of investment to the Policy and that it was not obligatory for MMSV to declare reversionary bonuses every year but that it was in its discretion to do so.**

*Therefore, the amount that was indicated in the quotation as estimated maturity value including reversionary bonuses in the amount of Lm 22,168 (Euro 51,637.55) was not guaranteed because one needed to wait at the end of every year in order to confirm whether MMSV was going to declare a reversionary bonus for the previous year and if in the affirmative at what rate and it was only at that time that the complainant could have been certain how the value of the Policy Account of his Policy was increasing over the years. This is so, because as was explained in the notes, it was only those bonuses which were declared by MMSV from time to time were in fact guaranteed to be paid to the complainant.*

7. In fact, the life policy schedule of the Policy (presented with the complaint fol. 022), provides that “In respect of each premium paid, Lm364.90 shall be credited to the Policy Account which will be increased by the bonuses which **may** be declared by the Company from time to time.” This continues to support what was provided for in the notes above mentioned in relation to the fact that MMSV was not obliged to declare reversionary bonuses every year but once declared then they were guaranteed to be paid to the policyholder. This also explains that the investment premium, which as at the date of the maturity of the Policy had amounted to Euro 19,811.25, was in fact also guaranteed to be paid upon maturity or on prior death of the life assured and this in addition to the bonuses which would have been declared by MMSV during the term of the Policy. This was not the case with other investments, such as those known as the unit linked policies where the payments of no amounts were guaranteed. Therefore, MMSV adhered to its obligations under the Policy because the Maturity value of the Policy exceeded the investment premium that was paid by the complainant by an additional Euro 10,646.92 which amount represents the bonuses that have been declared by MMSV during the term of the Policy.

**Furthermore, the only amount mentioned on the Life Policy Schedule was the sum assured, and no amounts containing the word 'Estimate' in the quotation were mentioned on this Schedule, which further shows that therefore according to the agreement between the parties the estimate maturity value including reversionary bonus and the estimate maturity value including reversionary bonus and terminal bonus were never guaranteed.**

8. The notes that formed part of the quotation above-mentioned also provided that “Whilst the purpose of these notes is to guide the policyholders and prospective policyholders the benefit provided by the Policy are conferred by the Policy document t... In the case of conflict of meaning between this quotation and the Policy document, the Policy document shall prevail.”

**This meant that the complainant could not treat the quotation as a stand-alone document, but had to be read and understood in the light of the notes that formed part of the quotation and more importantly in the light of the terms and conditions of the policy document (also presented with the claim).**

9. In addition, the Important Notes make it clear that: “The Estimated Maturity Values shown overleaf have been calculated using the bonus rates declared by the Company at the previous year end. **Depending on the performance of the company, bonus rates may go down as well as up.**”
10. The Important Notes also state that “**Investment returns can go down as well as up and therefore past performance is not necessarily a guide to the future.**”
11. In so far as the Terminal Bonus is concerned, the notes forming part of the quotation, provided that: “**Depending on its profit experience, the Company may, after the Policy’s TENTH year decide to allocate from time to time a Terminal Bonus in addition to the other declared bonuses ...as they depend materially on the investment performance at the time of the claim, they may be reduced or even withdrawn altogether.**” Therefore, the amount being indicated in the quotation as “estimated maturity value including reversionary and terminal bonus” in the amount of Lm 30,484 (Euro 71,008.62) was likewise not guaranteed because MMSV had the discretion not to pay a terminal bonus.
12. Furthermore, on 11th June 1999, the complainants also signed a document known as "Product Information" (a copy of which is attached herewith and marked as “**Doc. MSV 2**”) which explained among many things how policy bonuses are calculated and paid. This document explains that

“With Profits policies **may** earn Reversionary and Terminal Bonuses.”

The method of calculation is as follows:-

Reversionary Bonuses are calculated daily as a percentage of the Investment Premium whilst Terminal Bonuses, **if declared at the option of the Company**, are normally expressed as a percentage of the Policy Account or as a nominal amount after payment of the ten full years’ premium.

A Terminal Bonus if declared is payable on policies that become claims by maturity or death, but not surrender.

**The rate of bonus if declared will depend upon the performance of the Company and the investment market both locally and overseas.**

**When presenting you with the Company's official written quotation for the Estimated Maturity value we have based our calculations solely on current bonus rates.**

**Please note that past performance is not necessarily a guide to future performance. Once Reversionary Bonuses are declared they are guaranteed."**

13. The complainants also attached to 'Policy Literature' to his complaint (attached as fol.11-13). If one reads this document and understands the comparison highlighted by this material, it is noted that it is comparing endowment assurance which is "a medium to long term tax efficient investment" where the Maturity Value is tax free, with an alternative investment at the same rate (which in the year 1999 was 7/7.25%) after deduction of the 15% tax. In no way does the leaflet guarantee that the rate would remain unchanged after 25 years. In fact the rate was described as current and was therefore referring to the interest rate in 1999.

This comparison is truthful because if the complainants had chosen to invest in alternative investment that was not tax-free, the final maturity value would have been much lower. When reading the leaflet it is clear that it is not guaranteeing any amounts to be paid at maturity. The amount of the premium mentioned in the advertising material was a simple example of Lm 1 per day, which therefore amounts to Lm365 per year.

The Advertising material must be placed in the context of all documents and explanations provided to the complainants. It was not the case that the complainant was only given the brochure to make the decision whether to take the policy in question but other documents such as quotations, policy, policy schedules, Important Notes and Product information (all referred to in this reply) were provided which give a more detailed idea of what the product includes. In fact, in the policy document and in particular in the policy schedule it is stated that bonuses were not mandatory but it was within the MSV's discretion to declare or not to declare such bonuses. This is another reason why the estimated maturity value of the policy in question indicated in the estimate was not guaranteed but was only an estimate and only the sum assured was guaranteed.

14. *Therefore, at the moment that the Policy was being sold, MMSV had provided the complainant with sufficient information about the Policy, including the fact that part of it was an investment and what the eventual maturity value shall be made up of and how said amount was calculated. **Notwithstanding, the complainant is merely basing his claim on the quotations without putting them in the context of all the other documents also provided to the complainant when the Policy was being sold to him and every year thereafter as shall be explained hereunder.***
15. *MMSV continued to act in good faith even after the Policy was issued in favour of the complainant until the maturity thereof because it always managed the MSV With Profits Fund in the best interest of the policyholders including the complainant. Said Fund has been managed not only subject to the scrutiny of MMSV's executive management and investment committees, but also subject to the scrutiny of the independent actuary director of Willis Towers Watson and of the Malta Financial Services Authority.*

*The performance of the said Fund is entirely and always subject to the changes and shifts that take place in the value of the investment markets in which MMSV invests the investment premium of its policyholders. The investment returns can go down as well as up and therefore past performance is not necessarily a guide to the future. Therefore, the difference between the estimated maturity values shown in the quotations and the maturity value is merely reflective of the shift in the performance of the investment markets during the term of the Policy.*

16. *Notwithstanding the fact that the maturity value could not be equivalent to any one of the estimated maturity values indicated in the quotations due to the said shift in the performance of the market investments, the investment part of the Policy still rendered a good return when compared to other similar investments that were available during the term of the Policy despite the fact that the return was made while there were three financial crisis, besides the fact that during the year 2018, the classes of assets around the world had registered a negative income and when the Policy matured the investment markets had been substantially negatively impacted as a result of the COVID 19. In fact, the complainant made a gain in the amount of Euro 10,646.92 after deducting the maturity value from the investment premium that was paid by*



*the complainant which results in a rate of return on investment premium amounting to Euro 3.16% and a rate of return (gross of 15% withholding tax) on investment premium amounting to Euro 3.72%. It also needs to be emphasised that the maturity value of the Policy is tax free and that this benefit is not applicable in other forms of regular savings where the complainant would have been otherwise obliged to pay taxes from his return.*

- 17. During the term of the Policy, MMSV always kept the complainant informed about the value of the Policy Account of his Policy and how said value was increasing every year and about the bonuses that were being declared by MMSV, which bonuses were being credited to the Policy Account of the Policy. This information was communicated to the complainant by MMSV by sending to him, on a yearly basis, a Bonus Statement together with the so-called Important Notes.*

*As from 2001, MMSV had also started sending to the complainant, every year, a Media Release (copies of the bonus statements are attached with the complaint and marked Fol. 39- 57 and copies of some, bonus statements, Important Notes and Media Releases are being attached to this reply and marked as Document "MSV 3").*

*Therefore, the complainant was fully aware of what bonuses were being declared and of the value of the Policy over the years. Apart from the use of the terms "Estimated" and "illustration" used in the quotations which are self-explanatory, the Important Notes forming part of the Bonus Statements above-mentioned as well as the media releases have repeatedly made it clear that the bonus rates were not guaranteed and that they depended on the performance of the underlying investments, and therefore, said investments could go up as well as down.*

*Therefore, the values of the Estimated Maturity Value including Reversionary Bonus and Estimated Maturity Value including Reversionary and Terminal Bonuses indicated in the quotations could be varied depending on the performance of the investments during the term of the Policy.*

*Thus MMSV continues to demonstrate and acclaim that it has supplied sufficient information to the complainants about the policy in question at all stages including after the issuance of the policy and in fact MMSV did not*

receive any request for withdrawal of the policy after these documents were provided to the complainants.

18. Apart from the investment element to the Policy, the same Policy also provided a guaranteed life cover over the complainant's life, such that MMSV was obliged to pay the sum assured, in the amount of Lm7,539.00 (Euro17,561.15) to the heirs of the complainants in the case of their demise at any time that the Policy was in force. The said life cover had a price and have been completely ignored by the complainant and not normally available under other forms of regular savings. In fact, the obligation of MMSV to pay the sum assured above-mentioned is clearly reflected in the quotation (fol. 17) by the word "Guaranteed" as opposed to "estimated" in the case of the maturity value.

19. The Policy (presented with the claim) provides that:

*"The **COMPANY HEREBY AGREES to pay the greater of either the Basic Sum Assured or Policy Account (if any)** (emphasis added) and/or the specified additional benefits (if any) to the Payee named in the Schedule on the happening of the Event Assured Against subject to the payment to the Company of the Premiums detailed in the Schedule in the manner specified therein and to the proper observance of the terms and conditions of this contract."*

*Therefore, MMSV clearly adhered to its obligations under the Policy, as opposed to what is being alleged, because it has offered the value of the Policy Account of the Policy as at the date of the maturity thereof because said value had by far exceeded the value of the Sum Assured.*

20. MMSV maintains that the Policy was sold in accordance with the regulations that were applicable at the time when the Policy was being sold. In fact, before the Policy was issued and therefore simultaneously with filling in his proposal form, the complainant was presented with the Statutory Notice that was issued in accordance with the provisions of the Life Insurance (Statutory Notice) Regulations, 1989 and was in fact signed by the complainant himself (a copy of which is attached herewith and marked as "**Doc. MSV 4**").

*The Statutory Notice set out several warnings including the right of the complainant to withdraw from purchasing the Policy and the manner to do so. This Notice was intended to give policyholders the right to withdraw from the transaction when the policyholder may have second thoughts about the policy or was somehow pressurized to purchase the policy. However, in this case, the complainant did not exercise any of the said rights set out in the Notice and consequently agreed to proceed with the Policy.*

21. *Finally, MMSV maintains that it has always adhered to its obligations under the Policy and therefore, it should not be ordered to pay any compensation other than the final maturity value or any expenses that may be incurred in relation to this procedure because it has been instituted for no valid reason, as shall also be proved during the course of these proceedings.*

*With reservation for any further pleas.”*

## **Seduti**

Fl-ewwel seduta ta' nhar id-19 ta' Novembru 2024, l-Ilmentatur xehed is-segwenti:

***“Ngħid li aħna konna ġejna avviciinati u għamilna investiment fl-insurance ħamsa u għoxrin sena ilu. U konna ġejna assikurati li konna qed nagħmlu bla dubju xi ħaġa tajba għall-familja biex ngħinu l-pensjoni. Ngħid li minn dakinhar konna nafu bis-2nd Pillar u bdejna naħsbu għall-pensjoni.***

***Ngħid li kien ftit xhur qabel ma għalaqt l-erbgħin sena, u għidna li kien mument opportun meta avviciinawna biex nagħmluha. Ngħid li kien ġie s-Sur Callus u bdejna ninvestu.***

***Ngħid li aħna m'aħna familjari xejn mal-affarijiet finanzjarji; m'aħna midħla xejn ta' dawn l-affarijiet.***

***Ngħid li mat-tieni darba li Itqajna kkonvinciena li jekk ninvestu xi ħaġa tal-flus dakinhar konna ser insibuha fil-pensjoni.***

***Għadda z-żmien, u aħna komplejna nħallsu l-premium kif konna miftehmin li nħallsu. Imma, eventwalment, dan l-aħħar ħadna sorpriża naqra kerha.***

***Ngħid li aħna tant ma nifhmux fihom li mxejt mal-leaflet u mal-leaflet għamiltha b’Lm1 kuljum għax kienet tirreklama b’eżempju biha u għidt ħa nimxi biha u mxejt magħha u għidt ħalli fl-aħħar mill-aħħar, meta jgħaddu l-ħamsa u għoxrin sena nkun nista’ nikkomparaha magħha.***

***Hawnhekk qed nuri l-leaflet li pprovdewlna dakinhar u qalulna li ser nieħdu daqshekk. U bdejna ninvestu Lm1 kuljum, jiġifieri Lm365 fis-sena.***

***Ngħid li meta ġiet biex tagħlaq, ġejna offruti ħafna anqas mis-somma maħduma mill-Middlesea. Ngħid li minflok €71,000 ġejna offruti €30,458.***

***Ngħid li jien bqajt issummat għax rajt li hemm differenza kbira għax għalkemm nafu li jistgħu jitolgħu u jinżlu u mhumiex garantiti l-affarijiet – u qalulna li anke nistgħu nieħdu iżjed eventwalment u nistgħu nieħdu anqas – imma hemm differenza kbira.***

***Aħna nixtiequ li tal-anqas inkunu vicin ta’ dak li ddikjaraw. Ngħid li diffikultajiet kellu l-bank u kellna aħna bħala familja, jiġifieri kulhadd jgħaddi minnhom.***

***Ngħid li bażikament dan hu l-‘complaint’ tagħna.”<sup>3</sup>***

Xehdet imbagħad l-Ilmentatriċi, fejn stqarret li:

***“Ngħid li aħna għamilniha biex ngħinu ruħna peress li jiena ma kontx naħdem u kelli erbat itfal. Ngħid li dak iż-żmien ma kienx hawn ‘childcare’ u ma kienx hawn fejn tista’ taħdem ‘easy’ bħal-lum; u jiena dejjem serraħt rasi li meta noħroġ il-pensjoni, nistgħu nieħdu xi ħaġa li tpatti li jiena ma naħdimx.***

***U bdejna ninvestu f’din biex ma noqogħdux fuq il-pensjoni tal-Gvern biss.”<sup>4</sup>***

Għall-mistoqsijiet tal-Arbitru, l-Ilmentaturi wiegħbu li:

***“Mistoqsija min ikkuntattja lil min biex saru dawn iż-żewġ laqgħat, ngħidu li hu kkuntattjana. Ngħid li kien ċemplilna s-Sur Donald Callus u qalilna li peress li jiena kont ser nagħlaq l-erbgħin sena, dan kien żmien opportun biex ninvestu.***

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<sup>3</sup> P. 106 - 107

<sup>4</sup> P. 107

***Ngħidu li l-ewwel kien hemm din it-telefonata, imbagħad aħna aċċettajna li jiġi d-dar, imbagħad morna l-uffiċċju l-Furjana biex niffirmaw il-karti. Ngħidu li darba ġie d-dar u d-darba ta' wara morna l-uffiċċju biex niffirmaw il-karti fil-11 ta' Ġunju 1999.***

***Mistoqsija konniex nafuh qabel lis-Sur Donald Callus, ngħidu li le, ma konniex nafuh qabel. Kien ċemplilna hu.***

***Ngħidu li wara li kkonkludejna, qatt ma tkellimna aktar miegħu. Però, imbagħad, xtaqna li nitkellmu imma qalulna li ma kienx għadu magħna.***

***Eventwalment, matul il korsa taz-żmien, tlabnihom biex niltaqqgħu magħhom għax konna nirċievu l-‘statements’, imma meta kont immur inħallas il-Furjana, kienu jgħiduli li rrid inħalliha sal-aħħar din u mhix kwistjoni li niltaqqgħu għax bil-‘maturity’ u bir-‘reversionary’ u t-‘terminal bonuses’ ikunu jistgħu jagħtuna kemm ser tkun.***

***Ngħid li aħna kellna żewġ stimi. Kellna waħda ‘Estimated with reversionary bonus’ u l-oħra ‘Estimated with reversionary and terminal bonus’.***

***Ngħid li t-talba tagħna qiegħda fuq l-ammont il-kbir. Għax dik kienet il-wegħda li għamel magħna. Ngħid li eventwalment lanqas is-somma ż-żgħira m’offrewlna.”<sup>5</sup>***

Fil-kontroezami, l-Ilmentaturi komplew li:

***“Naqblu li l-polza inbiegħet ħamsa u għoxrin sena ilu fl-1999.***

***Mistoqsi jekk nikkonfermax li niftakar kelma b’kelma dak kollu li ntqal mis-Sur Callus fil-‘meeting’ li sar ħamsa u għoxrin sena ilu, ngħid li ħafna milli qalilna s-Sur Callus nikkonferma li meta ġejna l-Furjana li kien jidhirli li kien il-Middlesea Insurance – xi ħaġa hekk – kien hemm iżjed minn persuna waħda minbarra s-Sur Callus u kkonvincewna billi qalulna li dawn tajbin, li kulħadd qed jagħmel minn dawn l-affarijiet. U aħna għidna, “Ser nidhlu għaliha din il-biċċa xogħol skont kif qiegħda fuq il-leaflet”; u ngħid li apparti dak li qalilna s-Sur Callus, qgħadna fuq din. Ngħid li dan kien fit-tieni ‘meeting’.***

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<sup>5</sup> P. 107 – P. 108

***Mistoqsi x'qalilna s-Sur Callus fl-ewwel 'meeting', ngħid li qalilna li qiegħed fi żmien li ser nagħlaq erbgħin sena u li qegħdin fi żmien tajjeb li naħsbu għall-pensjoni wara li nirtira. Qalilna li din tirrendilna tajjeb għax inkunu nistgħu inżiduha.***

***Ngħid li qalilna għal kemm tista' titla' jekk ninvestu b'dak l-ammont u, imbagħad, nistgħu nagħmluha kif irridu: nistgħu neħduhom f'daqqa, nistgħu inqassmuhom kull xahar, jigifieri beda jagħmlilna ħafna emfasi li aħna qegħdin fiż-żmien li nibdew din l-insurance.***

***Ngħidu li s-Sur Callus wiegħedna li fl-aħħar tal-insurance, ser nieħdu dik is-somma.***

***Mistoqsi kemm dam dan il-'meeting', ngħid li dam bejn nofs siegħa u tliet kwarti.***

***Mistoqsi neskludix li seta' spjegalna aktar fid-dettall, ngħid li spjegalna hu li prova jbiegħilna dan il-prodott. Ngħid li rana taħt aħna 'on time', kif qal hu meta qal li ser nagħlqu erbgħin sena u spjegalna ħafna kemm sejr in tajbin u kemm għolew.***

***Qed jingħad li fil-'Quotation', m'hemmx il-figura biss li qed nibbażaw l-ilment tagħna fuqha imma hemm figuri oħrajn.***

***Mistoqsija spjegalniex fuq dawk il-figuri l-oħrajn u mistoqsija spjegalniex x'kienet dik il-figura ta' Lm7,539, ngħid li dik jekk immutu konna koperti li nieħdu dik is-somma.***

***Mistoqsija spjegalniex il-figura ta' Lm22,168, ngħid li jien ma niftakarx dettalji fuqha din bejn il-'maturity value including estimated reversionary bonus' u l-'maturity value including reversionary bonus and terminal bonus' għax aħna dejjem lejn dak ħarisna; qisu dik qbizniha.***

***Ngħid li spjegalna li jekk niddeċiedu li nwaqqfuha qabel għaxar snin nitilfu l-flus u ma jaqblilniex inwaqqfuha. Dik spjegahielna wkoll li qabel għaxar snin nitilfu l-flus.***

***Qed niġu mistoqsija jekk kienx spjegalna fuq is-somma ta' Lm22,168 jew spjegalna u ma niftakrux.***

***Ngħid li meta konna għadna m'aħniex decizi kien hemm tliet sinjuri fir-  
'reception' u qalulna li tajba u hemmhekk qisu kkonvinċewna u ffirmajna l-  
karti. Hu l-aktar li għamlilna enfasi kemm hi tajba u kemm tirrendi.***

***Mistoqsija mill-Arbitru x'qalilna dwar is-somma tat-Lm30,484, jekk konniex ser  
neħduha żgur, ngħid li fiż-żgur, mela. Dawk jitiġħu u qalilna anke bl-eżempju  
tal-'leaflet' li konna 'l fuq iżjed minn sitta u tletin sena. Ngħid li fuq il-figura ta'  
Lm30,484, kien aċcertana.***

***Qed jingħad li ftit ilu jien għidt li setgħet tvarja. Ngħid li jitiġħu u jinżlu din  
kulhadd jafha. U, fil-fatt, Lm32,000 hawn fuq il-'leaflet' imma fuq l-istima  
għamilhielna aktar konservattiva. Ngħid li din mhux ftit varjat; din varjat  
ħafna.***

***Qed jingħad li jien konxju li l-'estimated maturity value' mhux garantit u li jista'  
jvarja għax għadni kif għidtha fil-bidu, li jista' jvarja 'l isfel jew 'il fuq, u  
mistoqsi jekk aħniex qed nilmentaw li l-MSV, fl-opinjoni tagħna, ma nvestietx  
tajjeb biżżejjed, ngħid li l-MSV tagħmel xogħolha bħala istituzzjoni finanzjarja,  
imma aħna bdejna ngħidu, "Tgħid toghla għax qligħ il-kumpanija iddikjarat."***

***Mistoqsi iniex konxju li tista' titla' jew tinzel, ngħid iva, kulhadd konxju. Imma  
meta tvarja, mhux ser tvarja daqshekk.***

***Qed niġi referut għad-dokument f'pagna 7 tal-proċess u nikkonferma li daww  
huma l-firem tagħna.***

***Qed niġi referut għall-'Important Notes', il-'Product Information' (MSV 2) u l-  
'Istatutory Notice' (MSV 4) u nikkonfermaw il-firem tagħna.***

***Mistoqsi qrajtx dawn id-dokumenti, jekk tajniex kashom, ngħid li naħseb li  
tajna kashom bilfors dakinhar."***

***Qed jiġi kkwotat mill-Important Notes dan li ġej:***

***"The estimated maturity value shown overleaf has been calculated using the  
bonus rates declared by the company at the previous year end. Depending on  
the performance of the company, bonus rates may go down as well as up."***

***"Nikkonferma li kont konxju tagħha din.***

***Mistoqsi meta għamilt il-polza ridtx nagħmel investment riskjuż jew inkella ridtx ingemma', ngħid li hu assigurana li jekk inżommu l-'commitment' tagħna ta' kull sena, u rajna kif għamilna għax kellna diffikultajiet matul is-snin bil-familja, eċċ., aħna nieħdu dak li wiegħedna. Aħna ma konniex nafu kif ser tħaddmuhom il-flus tagħna, intom tridu taraw kinux riskjużi jew humiex riskjużi. Ovvja li ma ridniex nitilfu l-kapital.***

***Ngħid li dak iż-żmien li xtrajt il-polza, kont 'supervisor' ma' kumpanija XXXX, waħda minn XXXX bħala XXXXX. U bħala edukazzjoni, sas-sekondarja u mbagħad sentejn Trade School.***

***Qed jingħad li jien minbarra li ġemmajt, għamilt gwadann ta' Lm10,646 li jiġu 3.16% 'rate of return on investment premium' u 3.72% u mistoqsi iniex konxju li għamilt dan il-gwadann fuq il-polza, ngħid li dan qisu tidwir mal-lewża, ngħidu li ma konniex nafu kemm ser nagħtu u affarijiet hekk. Il-kumpanija ddikjarat qligħ u minn fuq il-'website' tagħha stess, is-sena l-oħra għamlet €14.6m u, allura din in-naqra tagħna?! Nafu, iva, li qed joffrulna qligħ ta' madwar 3% imma dak mhux daqs kemm ftiehmna.***

***Qed jingħad li jien qed insemmi ħafna dan il-'leaflet', imma dan il-leaflet ma jiggarrantilix l-'estimated maturity value', anzi jgħidli taħt il-'graph': "Kalkolu għall-futur ibbażat fuq il-bonuses attwali ddikjarati kurrenti."***

***Mistoqsi nikkonferma li fuq dan id-dokument m'hemm l-ebda garanzija, u anzi li qed jurini r-rata kif kienet dak iż-żmien u li l-investment huwa bbażat fuq din ir-rata, ngħid li naqbel li hemm miktub dan fuq id-dokument. Imma jekk tibda mid-dokument minn fuq, anke jekk ma taqrax, jekk tara bil-'highlighter' minn hawn se tieħu dawn. U aħna fuq dik imxejna għax aħna kif iddikjarajna fil-bidu m'aħniex midħla tas-settur finanzjarju. Aħna dik kienet it-'target' tagħna, għamilna mezz bis-sagrifiċċji kollha: daqxejn mill-'overtime', daqxejn mill-'bonus' u kont ngħaqqad dawn id-€900 fis-sena u nħallsuha.***

***Ergajt mistoqsi nikkonferma li m'hemmx garanzija fuq dan id-dokument, ngħid li l-garanzija ma jagħtuhiex hawnhekk.***

***Qed jingħad li fix-xhieda tiegħi għidt li ma ltqajtx mar-rappreżentant, Donald Callus, wara li xtrajt il-polza, u qed jingħad li fis-sistema tal-kumpanija hemm li fl-2009 u 2010 xtrajna żewġ poloz oħra mibjugħin mill-istess Donald Callus.***



***Ngħidu li iva, imma mhux fuq din il-polza, mhux l-istess haġa. Ngħid li konna nvestejna xi flus u, imbagħad, bdew sejrin hażin u neħhejnihom wara xi żmien. Imma fuq din il-polza ma konniex tkellimna ma’ Donald Callus.”<sup>6</sup>***

Wara din is-seduta, ġie ppreżentat l-*Affidavit*<sup>7</sup> ta’ Victor Farrugia bħala *Chief Operations Officer* tal-MSV fejn ġew essenzjalment imtennija l-punti u l-argumenti li tqajmu mill-Fornitur tas-Servizz fit-twegiba tiegħu għall-ilment.

Fit-tieni u l-aħħar seduta tat-8 ta’ Jannar 2025, is-Sur Victor Farrugia ħalef bil-ġurament l-*Affidavit* li ġie ppreżentat, filwaqt li l-Ilmentaturi iddikjaraw li ma kellhom l-ebda mistoqsijiet x’jagħmlu lil Victor Farrugia dwar dan l-istess *Affidavit*.

Barra minn hekk, Dr Mallia Schembri, li kienet qed tirrappreżenta lill-Fornitur tas-Servizz, iddikjarat li dan tal-aħħar m’għandux aktar provi xi jressaq peress li r-rappreżentant li kien biegħ il-polza lill-Ilmentaturi m’għadux magħna.

F’din l-istess seduta, kemm l-Ilmentaturi kif ukoll il-Fornitur tas-Servizz, ressqu s-sottomissjonijiet finali tagħhom b’mod verbali.

L-Ilmentaturi iddikjaraw li:

***“Ngħidu li aħna qgħadna fuq il-‘leaflet’ u fuq dak li konna ftehemna mas-Sur Callus, Alla jaħfirlu; u anke fl-uffiċċju tagħhom il-Furjana.***

***Ngħidu li fl-aħħar mill-aħħar, bil-COVID u mingħajr COVID, il-kumpanija tiddikjara qligħ, u ‘good luck’ u nixtiequ lill-MSV li tibqa’ sejra bħal kumpaniji oħra u nixtiquhom li jmorru tajjeb.***

***Nitolbu li aħna ma nbatux għall-kumplament ta’ haġjitna għax ma nilhqux l-aspettattiva li kellna għax hekk konna qed nittamaw li nilhqu.***

***Il-kumpanija qalulna li ma marrux tajjeb fuq tagħna għax tal-2024 għadha ma ħarġitx imma tal-2023 kellhom €14.6 miljun qligħ. U jalla jagħmlu iżjed għax mill-qligħ ikunu jistgħu jagħtuna dik il-biċċa li qed nippretendu aħna biex inkunu nistgħu nimxu aħna wkoll.”<sup>8</sup>***

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<sup>6</sup> P. 108 – P. 111

<sup>7</sup> P. 114 – P. 120

<sup>8</sup> P. 124 – P. 125

Il-Fornitur tas-Servizz sostna li:

***“Ngħid li l-MSV tikkontesta l-allegazzjoni tal-ilmentaturi li ingħatat xi wegħda tal-ammont li huwa stmat, u dan għaliex fil-kuntratt tal-polza kien hemm miktub ċar li kien imwiegħed kien “the greater of the Sum Assured or the Policy Account whichever is greater”, u fil-fatt, huma ħadu dak li huwa fil-‘Policy Account’ li fil-fatt eċċeda l-ammont tas-‘Sum Assured’.***

***Barra minn hekk, jekk wieħed iħares lejn id-dokumenti, il-‘quotations’ (paġni 17 u 18 tal-proċess) jgħidu ċar li l-‘maturity value’ kien stmat u s-‘Sum Assured’ kien indikat bħala garantit, jiġifieri kull ‘quotation’ per se u dokumenti bħall-‘Important Notes’, il-‘Product Information’ u l-‘Bonus Statements’ li dejjem irċewew matul il-kors tal-polza wrew dan.***

***Fix-xhieda tiegħu u anke fis-sottomissjonijiet tiegħu, l-ilmentatur jagħmel referenza għal-‘leaflet’ (paġna 13 tal-proċess) u jgħid li ħa xi garanzija minnu. Iżda, dan il-‘leaflet’ meta jinqara juri li fl-ebda ħin ma hemm li l-ammont li qed jippretendi l-ilmentatur kien garantit f’dan il-‘leaflet’.***

***Fil-fatt, il-‘leaflet’ jgħidlek: “Kalkolu għall-futur ibbażat fuq bonuses attwali ddikjarati kurrenti ...”.***

***Fil-fatt, ir-rata kienet deskritta kurrenti u, għalhekk, kienet qed tirreferi għar-rata tal-imgħax meta nbiegħet din il-polza fl-1999.***

***Barra minn hekk, il-‘leaflet’ trid titpogġa fil-kuntest tad-dokumenti kollha li rċewew, l-ispjegazzjonijiet li ngħataw u ma kienx il-każ li l-ilmentatur ingħata biss il-‘leaflet’ biex jieħu deċiżjoni jidholx għall-polza jew le. Iżda, kif semmejt irċieva dokumenti oħra bħall-polza, l-‘Product Information’, l-‘Important Notes’, il-‘Policy Schedules’ li jagħtu idea aktar dettaljata ta’ x’kien garantit u x’kien stmat u li, allura, l-ammont li qed jippretendu ma kienx garantit.***

***Fix-xhieda tiegħu, is-Sur UY qal li kien konxju li l-figura setgħet titla’ jew tinzel.***

***Fil-fatt, jgħid li “kulħadd konxju” ta’ dan.***

***Huwa jgħid li kien konxju tal-kitba li kien hemm fuq l-‘Important Notes’, li:***

***“The Estimated Maturity Values shown overleaf have been calculated using the bonus rates declared by the Company at the previous year end. Depending on the performance of the company, bonus rates may go down as well as up.”***

***Iżda minkejja dan, li kien konxju tad-dokumenti, l-ilmentaturi xorta qed jippretendu l-ogħla ammont avolja saret ammissjoni li huma raw id-dokumenti u kienu konxji ta’ dawn li kienu stimi u li setgħu ivarjaw.***

***L-ilmentatur fix-xhieda tiegħu jgħid ukoll li huwa konxju li l-‘leaflet’ ma jagħti l-ebda garanzija bil-miktub, jgħid dan qalu fix-xhieda tiegħu ukoll. Hawnhekk juri li kien konxju li ma kien hemm l-ebda wegħda, li ma kien hemm l-ebda garanzija.***

***Hawnhekk naraw kontradizzjoni; il-verżjoni ma tantx kienet ċara, fl-opinjoni tagħna.***

***Fix-xhieda preċedenti tiegħu, meta mistoqsi fuq l-‘Estimated Maturity Value including Reversionary Bonus’ li kien għall-ammont ta’ €22,168, hu qal li Donald Callus kien qabizha avolja dan l-ammont kien jidher fuq żewġ ‘quotations’ u kien ukoll ‘handwritten’. Allura jekk dan kien ‘handwritten’ fuq dokument, qabizha? Sinjal li ntqal xi diskors fuq dan l-ammont. Dan juri dubju li ovvjament għaddew ħamsa u għoxrin sena u bit-trapass taż-żmien jista’ jkun li l-ilmentaturi setgħu insew xi diskors li ntqal waqt il-laqgħa.***

***Fix-xhieda tal-ilmentatur, intqal ukoll fir-rigward tad-dokumenti li ngħataw, qal, “Naħseb li tajna kashom bilfors dakinhar.”***

***Għalhekk ma nnegawx fix-xhieda tagħhom li d-dokumenti ngħataw lilhom mir-rappreżentant u kienet negligenza da parti tagħhom jekk kellhom dawn id-dokumenti u ma qrawhomx jew ma tawx kashom meta huma qed jgħidu li kienu għandhom id-dokumenti u li taw kashom bilfors dakinhar.***

***Fix-xhieda tiegħu, l-ilmentatur qal ukoll li dak iż-żmien li xtara l-polza kien ‘supervisor’ ma’ kumpanija mekkanika u bħala edukazzjoni sas-sekondarja, imbagħad, sentejn Trade School. Fil-fatt, ipprezentajna wkoll il-‘Proposal Form’ (bgħatniha ‘by email’ għax ma kinitx fil-proċess) u fuq il-‘Proposal Form’ jidher li kien ‘Project Manager’ ma’ Gasan. U, għalhekk, juri li kellu tip t’għarfien ta’ kif jaqra u kellu edukazzjoni sabiex jaqra d-dokumenti li ngħataw lilu.***

***Sfortunatament, peress li r-rappreżentant huwa mejjet, l-MSV m'għandhiex l-opportunità li tippreżenta bħala prova l-verżjoni tal-persuna li bieghet il-polza.***

***Għalkemm l-ilmentaturi jallegaw li kien hemm xi nies oħra fir-'reception' fit-tieni laqgħa imma ma ndikawx min kienu dawn in-nies, allura, aħna m'għandna l-ebda informazzjoni għad-dispożizzjoni tagħna dwar min seta' kien fir-'reception' dakinhar tat-tieni 'meeting'.***

***L-ilmentaturi ma ppreżentaw l-ebda prova li dak iż-żmien kellhom xi għażla ta' polza differenti jew kont bankarju b'rati inqas u lanqas ipprovaw li garrbu xi 'opportunity loss'. Tant hu hekk, li fix-xhieda tagħhom qalu li ma riedu jitlef ebda kapital.***

***L-ilmentaturi għamlu gwadann ta' €10,664.92 li jiġi 3.6% 'rate of return' u 'average rate of return' ta' 3.72%.***

***Barra minn hekk, l-investiment kien bla riskju u kellhom ukoll il-benefiċċju tal-'Life Cover' li diġà spjegajnih matul dawn il-proċeduri.***

***Fl-opinjoni tagħna, hija ċara li l-aspettattiva tal-ilmentaturi li jirċievu l-'Estimated Maturity Value including Reversionary and Terminal Bonuses' ma kinitx waħda legittima u tiċhad kull allegazzjoni li l-bejgħ seta' kien qarrieqi.***<sup>9</sup>

## **Sema' lill-partijiet**

### **Ra l-atti kollha tal-każ**

#### **Jikkunsidra**

Il-punt kruċjali f'dan l-ilment jitratta l-allegati wegħdiet li saru lill-ilmentaturi fil-mument li l-polza giet mibjugħa lilhom, liema wegħdiet sarulhom fir-rigward tal-ammont li kellhom jirċievu mal-maturità, li iżda issa li l-polza immaturat, ġew offruti ammont ferm inqas.

L-Arbitru jrid imur għall-waqt li kienet qed tinbiegħ il-polza ilmentata, x'gie mwiegħed lill-ilmentaturi u x'eventwalment gie mogħti jew offrut lilhom mal-maturità. Irid jara wkoll kif sar il-bejgħ tal-prodott ilmentat u, fuq kollox, jekk

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<sup>9</sup> P. 125 – P. 126

dan laħaqx *‘l-aspettattivi raġonevoli u legittimi tal-konsumaturi u dan b’referenza għaž-żmien meta jkun allegat li jkunu seħħew il-fatti li jkunu taw lok għall-ilment.’*<sup>10</sup>

Hawn l-Arbitru għandu sitwazzjoni fejn, fir-rigward tal-mod kif sar il-bejgħ tal-polza in kwistjoni, għandu biss f’idejh il-verżjoni tal-Ilmentaturi, minħabba li, sfortunatament, ir-rappreżentant tal-Fornitur tas-Servizz li biegh din l-istess polza, illum huwa mejjet. Għalhekk, dan il-każ jipprezenta ċirkostanzi ta’ żbilanċ li ma jippermettux lill-Arbitru jkollu wkoll il-verżjoni tar-rappreżentant li kien preżenti fil-mument tal-bejgħ u, għalhekk, l-Arbitru sema’ biss qanpiena waħda.

Minħabba f’hekk, huwa aktar diffiċli għall-Arbitru sabiex jasal għall-konklużjoni jekk dan kienx każ ta’ *mis-selling* min-naħa tar-rappreżentant tal-Fornitur tas-Servizz jew xi forma ta’ memorja selettiva min-naħa tal-Ilmentaturi li jiftakru biss dak li jridu.

Għaldaqstant, fid-deher ta’ dan kollu, l-Arbitru ser jiffoka fuq id-dokumenti ppreżentati flimkien mad-dikjarazzjonijiet tal-Ilmentaturi nfushom sabiex ikun jista’ jasal għal din id-deċiżjoni.

Fl-ilment oriġinarjament sottomess, l-Ilmentaturi ddikjaraw li fil-mument li l-polza giet mibjugħa lilhom, ir-rappreżentant tal-Fornitur tas-Servizz kien qalilhom li mal-maturità kellhom jingħataw is-somma ta’ Lm30,484, kif anke hu rappreżentat fil-*brochure* mogħtija lilhom u l-*quotation*.

Fix-xhieda tagħhom, l-Ilmentatur stqarr *‘... aħna tant ma nifhmux fihom li mxejt mal-leaflet u mal-leaflet għamiltha b’Lm1 kuljum ... u għidt ħa nimxi biha u mxejt magħha ...’*<sup>11</sup>

Tenna wkoll li meta żaru l-uffiċini tal-Fornitur tas-Servizz sabiex jiffirmaw id-dokumenti neċessarji, kienu ikkonvinċew lilhom infushom li *‘Ser nidħlu għaliha din il-biċċa xogħol skont kif qiegħda fuq il-leaflet.’*<sup>12</sup>

L-Ilmentatur stqarr li mal-maturità tal-polza, hu baqa’ ssummat bl-ammont ikkwotat lilhom, għax *‘... rajt li hemm differenza kbira għax għalkemm nafu li jistgħu jitilgħu u jinżlu u mhumiex garantiti l-affarijiet – u qalulna li anke nistgħu*

<sup>10</sup> Kap. 555, Artiklu 19(3)(c)

<sup>11</sup> P. 107

<sup>12</sup> P. 108

*nieħdu iżjed eventwalment u nistgħu nieħdu anqas – imma hemm differenza kbira.*<sup>13</sup>

A bażi ta' din id-dikjarazzjoni, huwa evidenti li l-Ilmentatur kien konxju tal-fatt li, kif anke irrefera għalih hu stess, ma kien hemm xejn garantit. Barra minn hekk, l-Ilmentatur kien konxju wkoll tal-element ta' kopertura fuq il-ħajja, għax meta mistqosi dwar il-figura ta' Lm7,539 imniżzla fil-*quotation*, qal<sup>14</sup> li dik kienet titħallas f'każ ta' mewt.

Kif digà ntqal aktar kmieni, l-Arbitru jsib ċertu diffikultà biex jifhem jekk dan kienx każ fejn is-*salesperson* li b'mod imprudenti emfasizza s-sabiħ u ma kienx kawt biżżejjed biex jispjega sew id-differenza bejn dak li kien garantit u dak li kien stmat, jew inkella kienx każ fejn l-Ilmentaturi fehemu dak li riedu jifhem u ma kinux insidjużi biżżejjed biex jagħtu importanza anke l-aspetti mhux garantiti tal-*quotation*, avolja dawn ġew spjegati.

Fil-kontroezami, l-Ilmentatur stqarr b'mod ċar li:

*'Mistoqsi inix konxju li tista' titla' jew tinzel, ngħid iva, kulħadd konxju ...'*<sup>15</sup>

Apparti l-fatt li l-Ilmentatur innifsu ddikjara li kien konxju tal-fatt li l-*estimated maturity value* kkwotat lilhom fil-mument tal-bejgħ, jista' kvarja 'l fuq u 'l isfel, l-Arbitru ma jistax ma jinnotax li spjega dwar dan, partikolarment dwar il-mod kif taħdem il-polza u dwar il-*bonuses* u kif dawn jiġu allokati, giet anke mogħtija lill-Ilmentaturi f'dokumenti oħra, partikolarment f'dokument titolat *'Product Information'*<sup>16</sup>, li kopja tiegħu giet sottomessa mill-Fornitur tas-Servizz, u li dan gie anke ppreżentat lill-Ilmentaturi infushom u iffirmit minnhom stess.

F'dan id-dokument, huwa espress b'mod ċar li:

*'When presenting you with the Company's official written quotation for the Estimated Maturity Value we have based our calculations solely on current bonus rates.'*<sup>17</sup>

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<sup>13</sup> P. 107

<sup>14</sup> P. 109

<sup>15</sup> P. 110

<sup>16</sup> P. 87 – P. 88

<sup>17</sup> P. 88

Meta mistoqsi dwar jekk qarax dan id-dokument referut flimkien ma' dokumenti oħrajn ipprezentati lilhom, l-Ilmentatur stqarr li:

*'Mistoqsi qrajtx dawn id-dokumenti, jekk tajniex kashom, ngħid li naħseb li tajna kashom bilfors dakinhar.'*<sup>18</sup>

Dokument ieħor referut waqt il-kontroeżami, u li ukoll jinkludi referenza għall-fatt li l-*estimated maturity value* imniżżel fil-*quotation*, ġie ikkalkolat a bażi tal-*bonus rates* iddikjarati mill-kumpanija fis-sena ta' qabel, huwa dak titolat *Important Notes*. Għal darb'oħra, l-Ilmentatur iddikjara li:

*'Nikkonferma li kont konxju tagħha din.'*<sup>19</sup>

Referenza għal dan il-fattur huwa ukoll fil-*brochure*, li l-Ilmentaturi irreferew kontinwament għalih u li huma indikaw li għamli l-polza a bażi tal-informazzjoni mogħtija lilhom f'dan id-dokument. Il-*brochure* jindika biċ-ċar li s-somma kkwotata hija ibbażata fuq *'Kalkolu għall-futur ibbażat fuq bonusis attwali ddikjarati kurrenti ...'*<sup>20</sup>

Meta mistoqsi jikkonferma li f'dan l-istess dokument ma ġiet mogħtija l-ebda garanzija u li, fuq kollox, qed tiġi ndikata r-rata ta' dak iż-żmien u li l-investment qed ikun ibbażat fuq din l-istess rata, l-Ilmentatur stqarr li *'... naqbdel li hemm miktub dan fuq id-dokument,'*<sup>21</sup> filwaqt li ġie ddikjarat li:

*'Ergajt mistoqsi nikkonferma li m'hemmx garanzija fuq dan id-dokument, ngħid li l-garanzija ma jagħtuhiex hawnhekk.'*<sup>22</sup>

Evidentement, l-Arbitru jifhem li l-Ilmentaturi ma kinux kuntenti bis-somma li ġiet offruta lilhom mal-maturità minħabba li din tvarja, anke b'mod sostanzjali, minn dik li allegatament ġiet imwiegħda lilhom originarjament. Iżda, fl-istess waqt, ma jistax ma jinnotax li fix-xhieda tiegħu, l-Ilmentatur lanqas kien daqstant konsistenti fl-argumenti mressqa.

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<sup>18</sup> P. 110

<sup>19</sup> P. 110

<sup>20</sup> P. 13

<sup>21</sup> P. 111

<sup>22</sup> *Ibid.*

Kien hemm mument i fejn stqarr<sup>23</sup> li r-rappreżentant tal-Fornitur tas-Servizz kien aċċertahom li ser jieħdu s-somma kkwotata lilhom fejn iżda, imbagħad, għal diversi drabi oħra, ammetta li kien jaf li m'hemm xejn garantit, u li l-valur jista' jogħla kif ukoll jinżel, u li l-figura kkwotata setgħet tvarja.<sup>24</sup>

Fuq kolloxx, l-Arbitru ma jistax ma jirreferix għall-fatt riżultanti li żmien wara li xtraw din il-polza ilmentata, l-Ilmentaturi kienu anke permezz tal-istess rappreżentant tal-Fornitur tas-Servizz xtraw żewġ poloz oħra maħruġa minn dan tal-aħħar. L-Ilmentaturi ammettew<sup>25</sup> li xtraw żewġ poloz mingħand Donald Callus, waħda fis-sena 2009 u l-oħra fis-sena 2010.

Dan minkejja li dak iż-żmien, ir-rata tal-*bonus* dikjarata<sup>26</sup> kienet diġà niżlet għal kważi nofs dak dikjarat fis-sena li huma xtraw il-polza ilmentata, allura, jiġi kkonfermat li verament l-Ilmentaturi kienu konxju tal-fatt li permezz tal-*quotation* u tal-*brochure*, ma kienet giet mogħtija lilhom l-ebda garanzija fir-rigward tal-ammont li kellhom jieħdu mal-maturità u li, fuq kolloxx, il-valur tal-investment jista' jogħla kif ukoll jinżel. Minkejja li permezz tal-*statements* li kienu qed jirċievu, bdew jinnotaw li l-ammont kien ser ivarja, jidher li xorta waħda kienu kuntenti li jagħmlu żewġ poloz oħra, minkejja li r-rata kkwotata kienet ferm inqas.

Hawn l-Arbitru jikkonkludi li dan huwa każ fejn, kif diġà intqal aktar kmieni, l-Ilmentaturi kienu jafu x'kienet il-polza u l-benefiċċji li jiġu offruti magħha u, fuq kolloxx, kienu konxji tal-fatt li fil-mument tal-bejgħ ma kienet qed tingħatalhom l-ebda garanzija.

L-Arbitru huwa tal-fehma li dan l-ilment qed isir mhux għax l-Ilmentaturi jhossu li saret xi haġa hażina fil-konfront tagħhom mill-Fornitur tas-Servizz jew ir-rappreżentant tiegħu, iżda għax jaħsbu li mhux għust li haħdu haħna anqas minn dak li ttamaw għalih minkejja li l-Fornitur tas-Servizz baqa' jagħmel profitti sostanzjali.

<sup>23</sup> P. 109 – '*Mistoqsi mill-Arbitru x'qalilna dwar is-somma tat-Lm30,484, jekk konniex ser neħduha żgur, ngħid li fiż-żgur, mela ... Ngħid li fuq il-figura ta' Lm30,484, kien aċċertana.*'

<sup>24</sup> P. 107, P. 109, P. 110

<sup>25</sup> P. 111

<sup>26</sup> P. 9 - A bażi tar-risposta li l-Fornitur tas-Servizz ta lill-Ilmentaturi, ir-rata tal-*bonus* dikjarata fis-sena 2008 kienet dik ta' 3.65% u dik dikjarata fl-2009 kienet ta' 3.25%.



Bla ma jidhol fuq il-verità tal-fatti li gab l-Ilmentatur, jehtieg jigi ccarat li l-qligh fuq polza bhal din huwa marbut mal-investimenti abbinati mal-polza u mhux mal-andament generali tan-negozju tal-Fornitur tas-Servizz li huwa mifruq fuq hafna prodotti differenti.

## **Analizi**

Biex tintlaħaq il-figura kkwotata u li dwarha qed jintalab kumpens, irid isir '*compounding*' b'rata għolja li għalkemm kienet fattibbli fis-sena ta' qabel l-1999, ma kinitx xi haġa li setgħet tiġi sostnuta u garantita għal 25 sena sħaħ.

Anke persuna mhux tant intiza fil-finanzi tifhem li mhux floku tassumi li dawn ir-rati kienu ser jibqgħu f'dak il-livell għal 25 sena speċjalment peress li l-kontribuzzjoni tagħhom kienu mifruqa fuq 25 sena u mhux xi '*lump sum*' *investment* li tista' tiġi investita mal-ewwel biex torbot ir-rati tal-imghax għal żmien twil. Dan appart li dak iż-żmien *bonds* għal terminu twil fil-Lira Maltija ma kinux jeżistu.

Min-naħa l-oħra, l-Arbitru jhoss li l-Fornitur tas-Servizz messu kien aktar kawt fil-kwotazzjonijiet li joħroġ u flok waħda messu ħareġ *spectrum* ta' kwotazzjonijiet maħduma b'rati differenti għax fuq perjodu ta' 25 sena xejn ma jibqa' stabbli. B'hekk kien ikun aktar ċar li, fil-fatt, il-figuri kienu stimi u mhux garanzija. Fil-fatt, ingħad li wara s-sena 2000, bdew joħroġu tliet kwotazzjonijiet u mhux waħda, u dan kien jgħin biex il-klijent jifhem li ma kien hemm xejn garantit għal 25 sena.

**Għalhekk, għar-raġunijiet kollha mogħtija aktar 'il fuq f'din id-deċiżjoni, l-Arbitru jiddeciedi li l-ilment huwa wieħed ġust, ekwu u raġonevoli, u ser jilqgħu imma limitatament sakemm dan huwa kompatibbli ma' din id-deċiżjoni.**

## **Kumpens**

F'dan il-każ, l-Arbitru qed jagħti rimedju għaliex iħoss li l-aspettattivi tal-Ilmentaturi, sal-limitu ta' fejn kienu legittimi, ma ġewx milħuqa. L-aspettattivi tagħhom kienu li mal-maturità tal-polza kienu ser jirċievu s-somma ta' €71,027.72, li, iżda, fid-data tal-maturità ġew offruti ferm inqas. Iżda ma jistax jingħad li l-aspettattivi tal-Ilmentaturi kienu kompletament legittimi.

L-Arbitru jrid jasal għal kumpens li jrid ikun ibbażat fuq ġustizzja ekwitattiva kif huwa sanzjonat li jagħmel espressament permezz tal-Artikoli 19(3)(b) u 26 tal-Kap. 555 tal-Liġijiet ta' Malta. Filwaqt li jara wkoll li dan l-ammont ikun raġonevoli, dan ma jstax ikun preċiż minħabba li hemm diversi fatturi li jridu jiġu ikkunsidrati.

L-Ilmentaturi ma pprezentaw l-ebda prova li dak iż-żmien kellhom xi għażla għajr polza bħal dik ilmentata jew inkella kont bankarju b'rati inqas. Għaldaqstant, l-Ilmentaturi lanqas ipprezentaw xi tip ta' prova li minħabba li huma ddeċidew li jieħdu l-polza offruta a bażi tal-informazzjoni mogħtija, huma garrbu xi tip ta' *opportunity loss*. Fuq kollox, mingħajr preġudizzju għal dak dikjarat hawn fuq, l-Arbitru ma jhossx li permezz ta' din il-polza, wieħed għandu x'jitlef.

Apparti l-element ta' kopertura fuq il-ħajja, l-Ilmentaturi kellhom iċ-ċans li jikkontribwixxu għat-tfaddil permezz ta' din l-istess polza u dan billi jhallsu ammont żgħir kull sena għal ħamsa u għoxrin sena sħaħ.

Barra minn hekk, meta l-Arbitru ħares lejn l-andament kumplessiv tal-polza, ra li r-rendiment tagħha kien ta' aktar minn 3.7%<sup>27</sup> li, fiċ-ċirkostanzi kollha, ma kienx wieħed ħażin, u għalhekk, dan għandu ukoll jiġi ikkunsidrat fi sfond fejn il-kapital tal-investment kien sostanzjalment garantit. Anke kellhom benefiċċju ta' kopertura fuq ħajjithom li beda mill-ewwel ġurnata tal-polza.

Għalhekk, meta qies iċ-ċirkostanzi kollha tal-każ, l-Arbitru wasal għad-deċiżjoni li mhux ekwu li jilqa' t-talba sħiħa tal-Ilmentaturi. Dan għal raġunijiet diġà mfissra hawn fuq u anke għaliex:

- L-Ilmentaturi ma kinux ġustifikati jassumu li r-rati prevalenti fl-1999 kienu ser jibqgħu applikabbli għal 25 sena sħaħ galadarba l-investment tagħhom ma kienx fuq bażi *lump sum*.
- Il-kundizzjonijiet tal-*quotation* kienu għand l-Ilmentaturi għal żmien biżżejjed qabel ma gie ffinalizzat l-impenn għall-polza ilmentata, u kellhom kull ċans jifhmu dak li kien garantit u dak li kien stimat.

- Meta tingħata stima għal affarijiet li jseħħu fi żmien qasir huwa raġonevoli li wieħed jistenna li l-varazzjoni tar-realtà mill-istima tkun żgħira. Izda stima għal żmien 25 sena ma tistax raġonevolment tistenna li l-varjazzjoni tkun żgħira, għax 25 snin huwa żmien twil u kollox jaf jinbidel, u ma hawn ħadd li jista' jbassar x'ser jgħri mill-investimenti fi żmien daqstant twil.

Għalhekk l-Arbitru jiddeċiedi li s-somma xierqa li għandha tingħata lill-Ilmentaturi bħala kumpens hija dik ta' **€3,046**.

**Għaldaqstant, ai termini tal-Artikolu 26(3)(c)(iv) tal-Kap. 555 tal-Liġijiet ta' Malta, l-Arbitru qed jordna lil MAPFRE MSV Life p.l.c. tħallas lill-Ilmentaturi s-somma ta' tlett elef u sitta w'erbgħin ewro (€3,046) b'żieda mas-somma diġà offruta, cioè, mas-somma ta' €30,458.17<sup>28</sup> u, għalhekk, iħallashom is-somma kumplessiva ta' €33,504.17.**

**Bl-imgħax ta' 3.15%<sup>29</sup> minn ħamest ijiem tax-xogħol wara d-data ta' din id-deċiżjoni sad-data tal-ħlas effettiv.**

**L-ispejjeż ta' dan il-każ huma għall-Fornitur tas-Servizz.**

**Alfred Mifsud**

**Arbitru għas-Servizzi Finanzjarji**

### **Nota ta' Informazzjoni relatata mad-Deciżjoni tal-Arbitru**

#### *Dritt ta' Appell*

Id-Deciżjoni tal-Arbitru legalment torbot lill-partijiet, salv id-dritt ta' appell regolat bl-artikolu 27 tal-Att dwar l-Arbitru għas-Servizzi Finanzjarji (Kap. 555) ('l-Att'), magħmul quddiem il-Qorti tal-Appell (Kompetenza Inferjuri) fi żmien għoxrin (20) ġurnata mid-data tan-notifika tad-Deciżjoni jew, fil-każ li ssir talba

<sup>28</sup> P. 8

<sup>29</sup> Rata kurrenti MRO (*Main Refinancing Operations*) tal-Bank Ċentrali Ewropew

għal kjarifika jew korrezzjoni tad-Deciżjoni skont l-artikolu 26(4) tal-Att, mid-data tan-notifika ta' dik l-interpretazzjoni jew il-kjarifika jew il-korrezzjoni hekk kif provdut taht l-artikolu 27(3) tal-Att.

Kull talba għal kjarifika tal-kumpens jew talba għall-korrezzjoni ta' xi żbalji fil-komputazzjoni jew klerikali jew żbalji tipografici jew żbalji simili mitluba skont l-artikolu 26(4) tal-Att, għandhom isiru lill-Arbitru, b'notifika lill-parti l-oħra, fi żmien ħmistax (15)-il ġurnata min-notifika tad-Deciżjoni skont l-artikolu msemmi.

Skont il-prattika stabbilita, id-Deciżjoni tal-Arbitru tkun tidher fis-sit elettroniku tal-Uffiċċju tal-Arbitru għas-Servizzi Finanzjarji wara li jiskadi l-perjodu tal-appell. Dettalji personali tal-ilmentatur/i jkunu anonimizzati skont l-artikolu 11(1)(f) tal-Att.

#### *L-Ispejjeż tal-Proċeduri*

Skont l-artikolu 26(3)(d) tal-Att dwar l-Arbitru għas-Servizzi Finanzjarji (Kap. 555) ('l-Att'), l-Arbitru ddecieda min għandu jhallas l-ispejjeż tal-proċeduri u f'liema proporzjon, skont iċ-ċirkostanzi partikolari tal-każ.

L-ispejjeż tal-proċeduri mhumiex limitati għall-pagament tal-ispejjeż applikabbli fuq ilment magħmul mal-Uffiċċju tal-Arbitru għas-Servizzi Finanzjarji (preżentament Ewro25), imma jistgħu wkoll jinkludu kull pagament raġonevolment u legalment applikabbli ta' spejjeż professjonali u legali mħallsa mill-ilmentatur, limitati għal atti pprezentati matul il-każ. Tali spejjeż professjonali m'għandhomx jinkludu spejjeż ġudizzjarji jew ħlasijiet oħra kontingenti magħmula barra l-proċeduri tal-każ.

L-ammont ta' tariffi u spejjeż rigward servizzi professjonali jew ta' konsultazzjoni mogħtija lill-konsumaturi relatati mat-talbiet jew proċeduri taht l-Att, li jistgħu legalment u raġonevolment jintalbu bħala parti mill-ispejjeż tal-proċeduri, mhumiex speċifikati fid-dispożizzjonijiet preżenti tal-Att.

L-Arbitru jistenna iżda li tali tariffi u spejjeż għandhom jirriflettu t-tariffi u spejjeż hekk kif stipulati u applikabbli għal proċeduri magħmula fil-Qorti Ċivili ta' Malta fil-Kodiċi ta' Organizzazzjoni u Proċedura Ċivili.

