

???????? C-282/07

État belge – SPF Finances

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Truck Center SA

(?????? ?? cour d'appel de Liège ??? ?? ?????? ?????????????? ??????????)

????????? ???? ????????????

????????? ?????????? ?? ??????? – ?????????? ?????????????? – ?????????? ??????????

?? ??????? – ?????????? ?????????? – ?????? ???????

(???????, ??, ?????? 52 (???, ??????? ??????????????, ?????? 43 ??), ?????? 58 (???, ?????? 48 ??), ?????? 73 B ??? 73 ? (???, ????????????, ?????? 56 ?? ??? 58 ??))

?????????, ? ??????????? ?????????????? ??? ?????????? ??? ?????? ?????????? ?????????? ?????????
?????? ?????????? ??? ?????????????? ?????????? ??? ?????????, ?????????????? ???
????????????? ??? ?????? ?????????????? ?????????? ??? ?? ?????? ?????????????? ??? ?????????
????? ????, ? ?? ??? ?????? ??????, ????, ?????? ?????????????? ?? ?????? ??? ?????? ??? ?????
????????????? ?????? ?????? ?????????? ??? ?????? ?????????? ??? ?????? ??? ?????? ??? ?
????????????? ??? ?????? ?????? ?????????? ??? ?? ?????? ?????? ??? ?????? ?????????? ??? ?????
????????? ??? ?? ?????? ?????? ?????????? ??? ?????? ?????????? ?????? ?????????, ????, ???, ??? ?????
?????????, ?? ?????? ?????? ?????? ?????????? ??? ??? ?????????? ??? ??? ?????? ??? ?????? ??? ?????? ???
????????? ????, ???, ??? ?????? ??????????, ???????? ?? ?????? ??? ?????? ??? ?????? ??? ??????.
?????????, ? ?????? ?????? ??? ?????? ??? ?????????????? ??? ?????? ?????? ?????? ??? ?????? ??????
????????????? ??? ?????? ?????? ??? ? ?????? ?????? ??? ?????? ??? ?????????? ?????????? ???
????????? ?? ?????? ?????? ?????????????? ??? ?????? ?????? ?????????? ?????????? ??????????

????? ?????????????? ??????? ??????. ??????????, ??????, ?????????? ??? ??????????????
????? ?????? ??? ?? ?????? ??? ?????? ?????????????? ?????? ?????? ?????????? ??????
????? ??? ?????????????? ??? ?????? ??????, ?? ?????? ?????? ?????????????? ??? ????
????? ???, ??????? ??????????, ??? ?????? ?????????????? ??? ?????? ?????????? ??? ????
??? ?? ?????? ?????????? ???, ??? ?????? ?????????? ?????????, ? ?????????? ?????? ??? ??
??? ?????? ?????? ??? ?? ?????? ??? ?????? ??? ?????????? ?????????? ?????? ??? ??????
????? ??? ?????????????? ??? ?????? ?????????? ?????? ?????? ?????????? ??? ?????? ??? ??????
????????? ?????? ?????? ??? ?????? ?????? ??? ?????? ?????? ?????????? ?????? ??? ?????? ???
????? ??? ?? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??? ??????
????? ??????, ?? ?????????? ?????? ??? ?????? ?????? ?????? ?????? ??? ?????? ?????? ???
????? ??? ?????? ??? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ??? ?????? ???
????? ??????. ???????, ?? ?????????? ?????? ??? ?????? ?????? ?????? ??? ?????? ?????? ???
????? ??? ?????? ??? ?????? ?????? ??? ?????? ?????? ?????? ?????? ??? ?????? ??? ??????
????? ?????? ??? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ??? ?????? ??? ??????
????? ?????? ??? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ??? ?????? ??? ??????
????? ?????? ??? ?????? ?????? ??? ?????? ?????? ?????? ?????? ??? ?????? ??? ??????
????? ?????? ??? ?????? ?????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ??? ??????
????? ?????? ??? ?????? ?????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ??? ??????
????? ?????? ??? ?????? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
????? ?????? ??? ?????? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
????? ?????? ??? ?????? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
????? ?????? ??? ?????? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
?????.

??????????, ? ?????????? ??? ?????? ?????????? ?????? ?????? ?????????? ?????? ??????????
?????????? ??? ?????????? ?????? ?????????? ?????????? ?????? ??? ?????? ?????????? ???
????? ?????? ?? ?????? ?????? ?????????? ??????, ??????, ?? ?????? ?????? ?????? ?????? ???
????? ?? ?????????? ?? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??? ??????, ?
????? ?????? ?? ?????? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ???
????? ?????? ?? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ???
????? ?????? ?? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??? ??????
????? ?????? ?? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??? ??????
????? ??????.

??? ?? ?????? ???, ? ?????????? ??? ?????? ?????????? ??? ?????? ?????????? ??? ??????
??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? 52 ??? ?????? ???
????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? 73 B ??? ??????.

(??, ?????? 41-52 ??? ??????.)

????? ??? ?????????? (????? ????)

??? 22?? ?????????? 2008 (*)

«????????? ?????????? – ?????? 52 ??? ?????? ?? (??, ?????? ?????????? ???, ???
43 ??) ??? 58 ??? ?????? ?? (??, ??? 48 ??) – ?????? ?????? ??? ?????? –
????? 73 B ??? 73 ? ??? ?????? ?? (??, ?????? ???, ??? 56 ?? 58 ??) – ??????
????? ?????? – ?????? ??? ?????? ??? ?????? ??? ?????? – ?????? ??? ??????
????? ??? – ?????? ??? ?????? ??? – ?????? ?????? ??? ?????? ??? ?????? ???

?????????????? ?? ??????? ?????????? – ?? ??????? ?????? ?????? ?????? ??? ??
????? ??? ?????????????? ?? ?????????? ??? ?????? – ?????????? ?????? ??? ??????????
??? ?????? ?????????? – ?????????? – ??????»

???? ?????? C282/07,

?? ?????????? ?????? ?????????? ?????????????? ?????????? ?????? 234 ??,
?? ?????? ?? cour d'appel de Liège (?????) ?? ?????? ?? 6?? ?????? 2007, ? ??????
????????? ??? ?????????? ??? 13 ?????? 2007, ??? ?????? ??? ??????

État belge – SPF Finances

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Truck Center SA,

?? ?????????? (?????? ?????),

????????? ??? ??? K. Lenaerts, ?????? ??????, T. von Danwitz, R. Silva de Lapuerta
(?????????), ?. ?????? ??? J. Malenovský, ???????,

????? ??????????: J. Kokott

?????????: K. Sztranc-S?awiczek, ?????????? ??????????

????? ??? ?????? ??? ?????? ?????????? ??? ?????? ??? ??' ?????????? ??????????????
?? 15?? ????? 2008,

????????? ??? ?????? ??? ?????????? ??? ???????:

- ? Truck Center SA, ?????????? ??? X. Thiebaut ??? X. Pace, avocats,
- ? ?????? ???????, ?????????????? ??? ?? C. Pochet ??? ??? J.-C. Halleux,
- ? ?????? ???????, ?????????????? ??? ??? J.-C. Gracia,
- ? ?????? ??? ???, ?????????????? ??? ?? C. M. Wissels ??? ??? Y. de Vries,
- ? ?????????? ??? ?????, ?????????????? ??? ??? L. I. Fernandes ??? V. B. Guimarães,
- ? ?????????? ??? ?????, ?????????????? ??? ??? T. Harris,
????????? ??? ??? K. Bacon, barrister,
- ? ?????????? ??? ?????, ?????????? ??? ??? J.-P. Keppenne ???
R. Lyal,

????? ??? ?????? ??? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ?? ??????????
?? 18?? ?????????? 2008,

????? ??? ??????

??????

??? 73 ? ??? ??????? ?? (???, ???????????, ????? 56 ?? ??? 58 ??).

2 ? ?????? ??? ?????????? ??? ?????? ?????? ?????? ?????? ??? ??????
????????? ??? ??? Truck Center SA (????? Truck Restaurant Habay, ??? ????: Truck Center), ??
???? ?? ??????, ?????????? ?? ?? ?????????? ?????? ??? ?????? ?? ??????????, ??? ?? ???
1994 ??? 1996, ? ?????? ??? ?????? ?????? ??? ??? ?????? ? SA Wickler Finances (???
????: Wickler Finances), ?? ??? ???? ??????????.

?? ?????? ???????

3 ??? ?? ?????? ??????????, ?? ?????????? ??? ?????? ?????????? ??? ???
????????? ??? ?????? ?????? ??? ?????? ?????? ?? ??????????.

4 ?? ????? 266 ??? ?????? ?????? ?????????? 1992 (??? ????: CIR 1992) ??????:

«?? ??????? ???????, ??? ?? ?????????? ??? ?????? ??? ?????? ??? ?????? ?? ???????
????, ?? ??????? ??????? ?? ?????????? ?? ??? ? ?? ?????? ??? ??? ?????? ?????? ??????
????? ??? ?????????? ?????????? ??? ???????, ?????? ??? ??? ??? ?????? ??????
????? ?? ?????????? ??? ?????????? ?????????? ?? ??????? ?????? ?? ?????????? ?? ??????????????
[...]»

5 ?? ????? 267 ??? CIR 1992 ?????? ???:

«? ??????????? ? ? ??????? ???????????, ?? ?????? ? ? ?????, ??????????? ??? ???????
????? ??????? ??????. ?? ??????????? ??????, ?????? ????, ? ?????? ?????????? ???
????????? ?? ?? ?????????? ???????, ??? ?? ? ? ?????????? ?????? ??? ??????
?????????, ?????? ? ??????? ?????????? ??????? ??? ?????? ? ?????? ?????? ?????? ?? ???
????????? [...]»

6 ?? ????? 105 ??? 119 ??? ??????? ?????????? ?????????? ??? ??????? ???
????????? 1992, ??? 27?? ??????? 1993 (??? ????: AR/CIR 1992) ??????? ??? ??????
????? ??????? ??? ??? ?????? ?????? ?????? ?????? (????????????? ??? ?????? ???
??? ?????? ????).

7 ?? ????? 105, ????? 3, ??????? b, ??? AR/CIR 1992 ??????? ???, ??? ??????
????????? ??? ?????? ????, ?? «????????????? ??????» ??????? ?? ??????????????
???? ?????? ??????.

8 ?????? ??? ????? 107, ??????? 2, ????? 9, ??????? c, ??? AR/CIR 1992,
????????????? ??? ??? ?????? ?????? ?????? ?????? ??? ?????? ??? ?????????? ???
??? ?????? ??? ?????? ??????.

9 ? ?????? ?????? ??? ?????????? ?????? ?????? ?????? ?????? ??? ?????? ?????????? ???
????????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ???
?? ?????? ?????? ?????? ?????? ?? ??? ?????? ?????? ?????? ??? ?????? ?????? ??? 17
????????? 1970 (??? ????: ??????-????????????? ??????), ?????????? ??? ??????
??? ?????????? ?????????? ?????? ?????? ?????? ??? ?????? ??? ?????? ?????? ???
?????????.

10 ?? ????? 11 ??? ??????? ????:

«§ 1. ?? ?????? ??? ??????????? ??? ?? ??????????? ?????? ??? ??????????????? ??
?????? ??? ??? ????? ?????????????? ?????? ??? ?????? ?? ?????????????? ?? ??? ?? ???
?????.

§ 2. ????????, ?? ?????? ?????? ??????? ?? ??????????? ??? ?????????????? ???
????? ?????????? ??? ??????? ?? ?? ?????????? ??? ?????? ??? ???????, ??? ???? ?? ????
????????? ??? ?? ??????? ?? ??????? ?? 15 % ??? ?????? ???.

§ 3. ??? ??????????? ??? ?? ?????????? ??? ?????? ??????? 2, ?? ?????? ??? ??????? ??
?????????? ??? ?????????? ??? ?????? ??? ?????? ?????????? ??? ?????? ?????????????? ??
????????? ??? ?? ?????? ?????????? ??? ??????.

?? ?????????? ??? ?????? ??? ?????? ?????? ?????? ??????????:

1. ??? ?????? ?? ???????? ? ?????? ?????? ??????, ??? ?????? ?? ??????
????????? ??? ?????? ?????? ??????

2. ??? ?????? ?? ??????????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ?????????? ??? ??????
????? ??? ?????? ??? ?????? ?????? ??? ?????? ?????? ??? ?????? ??????.

11 ?? ????? 23 ??? ?????????? ??? ?????? ??????:

«§ 1. ??? ?????? ??? ?????????? ??? ???????????, ? ?????? ?????????? ??? ?????????? ?? ???:

[...]

2. ? ?????? ??? ??????????? ??? ?????? ?????? ?? ?? ?????? ?????? ??????:

[...]

b) ??? ??? ?????? ??? ?????????? ??? ?????? ?????? 11, § 2, ?????????????? ???
????? ??? ?????? ?????????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ???' ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
[...]»

? ?????? ??? ?????? ??? ?????? ??? ?? ?????????? ??? ??????

12 ??? 25 ?????????? 1992, ? Wickler Finances, ? ?????? ?????? ?? 48 % ???
????????? ?????????? ??? Truck Center, ???????? ??? ?????? ??? ?????? ?????? ???
50 ?????????? ?????? (BEF).

13 ??? ?? 1994 ?? ?? 1996, ?? ?????? ?????? ??? ?????? ?????????????? ??????????
????? ?????? ?????????? ??? ?????? ?????? ???' ?????? ?????? ?????? ?????? ???.

14 ??? 11 ?????????? 1997, ?????? ??? Truck Center ?????? ??????????????

?????????? ?????? ??????? ??????, ?? ?????????? 13,39 % ??? ?? ?? 1994 ??? 1995 ??? ??
????????? 15 % ??? ?? ??? 1996.

15 ??? 17 ?????????? 1998, ? Truck Center ??????? ?????????? ??????? ??? ??
?????? ?????? ?????? ?????????????? ?????????? ?????? ?????? ??? ??????? ??????????????
????????? ??????.

16 ?? ??????? ?? 15?? ?????????? 2004, ? ?? ??? ?????????? ???????????, ???'
?????, ??? ??????? ?????? ?????? ??? ?? ??? ?????.

17 ??? 15 ?????? 2005, ? Truck Center ?????? ??????? ??????? ??? tribunal de
première instance d'Arlon.

18 ??????? ?? ? ?????? ?????????? ??????? ??? ?????????? ??????? ??? ??
?????? ?????? ?????? ?????? ?????? ??? ?????????? ??? ??????? ??? ???????
????????? ?????????? ??? ?????? 56 ??, ?? tribunal de première instance d'Arlon, ?? ???????
?? 17?? ????? 2006, ??????? ??? ???????? ??? Truck Center.

19 ??? 7 ?????? 2006, ?? ?????? ?????? ?????? ?????? ??? ?? ?????????? ??????
?????? ??? ??????? ??????????.

20 ??? ??? ??????? ????, ?? cour d'appel de Liège ?????????? ?? ?????????? ??
????????? ??? ?? ??????? ?? ?????????? ?? ?????????? ?? ?????????? ??????????:

«?????????? ??? ?? ?????? 73 [...] ??? ?????? [...] ?? ?????? 105, ?????? 3, ??????? b,
?? 107, ??????? 2, ??????? 9, ??? ?????????? ?????????? ??? CIR 92, ??
????????? ?? ?? ?????? 23 ??? ?????-????????? ?????? [...], ?????? ??????????
?? ?????? ?? ?????? ??? ?????????????? ??? ?????????????? ??? ?????? ??????????
????????????? ??? ??? ??? ?? ?????? 107, ?????????? 2, ?????? 9, ??? ?????????? ???
????, ?????, ?? ?????????? ?? ?????????? ??? ?????????? ??? ?????????????? ??? ?????? ??????????
?? ?????????? ??? ?????? ??? ?????????? ?????????? ?? ??? ?????? ?????? ?????? ???,
????????, ?????????? ?? ?????????????? ?? ??? ?????? ?????? ?????? ?????????? ?? ??????????
?? ?????????? ?????? ?????? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????;»

??? ??? ?????????? ??????

21 ?? ?? ??????? ??, ?? ?????? ?????????? ?????? ?????????????? ?? ?????????????? ?? ??
????? 73 B ?? 73 ? ?? ?????? ?????? ?????????? ?????????? ?????? ?????? ?????? ??????
????????? ?????????? ?? ?????? ?????? ??? ?????? ??? ?????? ??? ?????????????? ?? ?? ??????
????????? ??? ?????? ?????? ?????? ?????? ?????? ?????????? ?? ??? ?????? ?????? ???, ??
????????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??? ??????
????????? ??? ?????? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ???.

22 ???????????, ??????????? ??, ?????? ?????? ?????????? ?????? ?????????? ?????? ??????????
??????????, ??? ?????? ?????? ?? 293, ?????? ???????, ??, ?? ?????? ???
????????? ??? ?????????? ?? ???????, ?????????? ???????, ?? ?????? ?????? ?? ??????????
?? ?????????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?? ?????? ??? ??????????
????????? (??.. ?????????? ?? 12?? ????? 1998, C?336/96, Gilly, ?????? 1998, ?. I?2793,
?????? 24 ?? 30, ?? 21?? ?????? 1999, C?307/97, Saint-Gobain ZN, ?????? 1999, ?.
I?6161, ??? 57, ?? 5?? ?????? 2005, C?376/03, D., ?????? 2005, ?. I?5821, ??? 52,
?? 19?? ?????? 2006, C?265/04, Bouanich, ?????? 2006, ?. I?923, ??? 49, ?? 7??
????????? 2006, C?470/04, N, ?????? 2006, ?. I?7409, ??? 44, ?? 12?? ??????????
2006, C?374/04, Test Claimants in Class IV of the ACT Group Litigation, ?????? 2006, ?.

I?11673, ????? 52, ????? ??? ??? 14?? ?????????? 2006, C?170/05, Denkavit Internationaal
??? Denkavit France, ??????? 2006, ?. I?11949, ????? 43).

23 ??????????, ??? ????? ?? ?????? ?? ?????? ??? ??????????? ?????????? ??? ?????????????? ?????????? ??? ?????? ?????????????? ???' ?????? ??? ?????, ?? ?????? ??? ?????? ?? ?????? ?? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????? ??? ?????????? ??? ?????? (???. ?????????????? ?????????? Saint-Gobain ZN, ????? 58, ??? Denkavit Internationaal ??? Denkavit France, ????? 44). ??????????, ? ??????? ????? ??? ?????????? ?????????? ??? ?????? ??? ?????????? ?????????? ??? ?????? ?????? ?????????? (????????????? ?????? Bouanich, ????? 50, ??? Denkavit Internationaal ??? Denkavit France, ????? 44).

24 ????? ???? ?????????? ??????, ?????? ?? ?????????????????? ?? ?????????????? ?????? ???
????? ??? ???? ?????? ?????????? ??? ?????? ??? ?????? ?????? ?????? ?????? ??? ?????? 73 B
???? ?????????? ??? ?????????? ?????????????? ??? ?????????? ??? ?????? ?????? 52 ??? ?????????? ??
(???, ?????? ??????????????, ??? 43 ??) ??? 58 ??? ?????? ?? (???, ??? 48 ??) ???
????????? ??????????????.

25 ??????????????, ???????, ???, ??? ????? ??????????, ??? ?????????? ????
????????? ??? ?????????? ??? ?????????? ??? ?????????? ?????????????? ?????????? ??
????????? ??????? ?????????? ??? ?????? ?????????? ??? ??? ?????????? ??????? ???
????????? ??????? ?????? ??? ?????????? ?????? ?????????? ?????????????? ?????? ?????? ??????
??????, ?????? ? ?????????? ??? ?????? ??? ?????????? ?? ?????????????? ?? ?????? ??????????????
????????? ??? ?????????? ??? ?????????? ??? ?? ?????????? ??? ?????????????? ??? ??
(????????? ??? 12? ?????????? 2006, C?196/04, Cadbury Schweppes ??? Cadbury
Schweppes Overseas, ?????? 2006, ?. I?7995, ????? 31, ??? 13? ?????? 2007, C?524/04,
Test Claimants in the Thin Cap Group Litigation, ?????? 2007, ?. I?2107, ????? 27, ??? ??? 6??
????????? 2007, C?298/05, Columbus Container Services, ?????? 2007, ?. I?10451, ???
29).

26 ?? ???????????, ? ??????? ?? ?????? 11, ??????????? 3, ??????? ??????, ?????? 2,
??? ?????-????????????????????? ?????????? ?????????? ??? ?? ??? ?????? ??? ?????????? ???
????????????? ??? ?????? ?????? ?????????? ??? ?????????? ??? ?????????????? ??? ?????
????? ???????.

27 ????????, ? ??????? ???. ?????????? ???. ??? ????? ?????????????? ???. ??? ??????
????????????? ???. ??? ??? ???. ???. ?????????????? ???. ??? ????? ???. ?????????????? ???. ??? ???.
????????????? ???. ???, ? ?????? ??????? ???. ??? ?????? ?????????? ???. 25 % ??? ?????? ?
????????????? ???. ??? ?????? ???. ??? ?????? ???. ??? ?????? ???. ??? ?????? ???. ??? ?????? ???.
???. ??? ?????? ???. ??? ?????? ???. ???.

28 ??? ??? ??????? ??? ?????????? ?????????? ??? ? Wickler Finances ??????? ?? 48 %
??? ?????????? ??? Truck Center.

29 ????? ?? ??????? ?????????? ???????, ???????, ??? Wickler Finances ???????
????????? ??????? ??? ??????? ??????? ????? ?????????????? ??? Truck Center.

30 ????? ????????, ? ??????????? ????? ?????? ?????? ?? ?????????? ?? ??? ?? ?????
52 ??? 58 ??? ???????.

31 ? ?????????? ????????????, ??? ??? ?? ??? 52 ??? ?????? ?????????? ???
????????? ?????? ??? ? ??? ?????? ?????????? ??' ?????? ??? ?????? ??? ?????? ??
????? ????????????, ??? ??? ?? ??? ?????? ??? ?????????? ????????????, ??? ??
????? ????????????, ?? ?????? ??? ?????? ?? ?????????? ? ?????????? ??? ??????

?????????????? ?? ???? ?????? ?? ??????????, ??????????????, ??????? ?? ?? ?????? 58 EK,
???? ?? ???? ?? ??????? ?? ?????? ?????? ?????? ?? ?????? ?? ?? ??????? ?????? ??
???? ?? ??????????? ?? ???, ??? ??????? ?? ?????? ?????? ?? ?? ?????? ??????????? ??
???? ?? ??????? ?? ??????????, ?? ??????? ?? ?????? ?? ?????????????? ?? ?? ??????
????? ?????? ?? ?????????????? ?? ?????????? (?. ??????? ?? 16?? ?????? 1998,
C?264/96, ICI, ?????? 1998, ?. I?4695, ????? 20, ????? ?? ?????????????? ???????
Saint-Gobain ZN, ??? 35, Cadbury Schweppes ??? Cadbury Schweppes Overseas, ??? 41,
Test Claimants in Class IV of the ACT Group Litigation, ??? 42, ??? ?? Denkavit
Internationaal ??? Denkavit France, ??? 20).

32 ?????? ?????? ??? ????????, ?????? ?? ?????????? ??? ? ???? ?????? ??? ???? ?????? ??? ?????? ???
?????? 58 ??? ??????? ???????????, ?????? ? ?????????? ??? ???? ?????? ??? ?????? ???????, ??? ???
????????????? ??? ?????????? ??? ?? ??? ?????? ??? ?????? ??? ?????? ?????? ??????. ?? ??????
????? ??? ?? ?????? ??? ?????????????? ??? ?????? ?????? ??? ?????? ?????? ??? ?????????? ??????????
????????????? ??? ??? ?????????? ??? ??? ? ??? ?????? ??? ?????? ?????? ?????????? ??? ?????? ??????
?????, ?? ??? 52 ??? ??????? ??? ?? ?????????? ??? ?????? ??????????????. ?????? ???
????????? ?????????????? ??? ?????? ??? ?????????? ??? ???? ?????????? ??? ?????? ?????????? ???
????????? ??? ?????? ??? ?????? ?????? ???????, ??? ??? ?????????????? ??? ?????? ?????????? ???
????? ??? ?????? ??? ?????? ??? ?????? (??.. ?????????? Test Claimants in Class IV of the
ACT Group Litigation, ???????????????, ????? 43, Denkavit Internationaal ??? Denkavit France,
??????????????, ????? 22, ??? ??? 26?? ?????? 2008, C?284/06, Burda, ??? ??? ???
????????????? ??? ?????? ??? ???????, ?????? 77).

33 ?????? ??? ????????????, ?? ?????? ?????????????? ?????? ?? ?????????? ?? ????
????? ?? ????????????, ??????????? ? ?????????? ?????????? ?????????? ?? ?????? ??
????????? ?? (??.. ?????????? ?? 30?? ?????????? 1995, C-55/94, Gebhard, ??????
1995, ?. I-4165, ????? 37, ??? 5?? ?????????? 2004, C?442/02, CaixaBank France, ??????
2004, ?. I- 8961, ????? 11, ??? Columbus Container Services, ???????????????, ????? 34).

35 ????????, ?????? ?????? ??? ?????????????? ???????????, ?????? ?????? ???
????????????? ??? ??? ?????? ??? ?????????????? ?? ?????????? ?? ?????????????? ???
???????, ??? ??? ?????????????? ??? ??? ?????? ??? ?????????????? ?? ????????
????????????? ??? ?????? ??? ?? ??????, ???????????, ?????????????? ??? ?????? ???
????? ????????, ??? ?????? ?????? ?????????? ? ????????, ???.

36 ??????????, ?????????? ?? ??????????? ?? ? ?????????? ?????????? ?????????? ??????????
????????? ?????? ?????????? ??????????, ?????? ?? ?????????? ?? ? ?????????? ???
????????????? ?????? ??????, ??? ?? ?????? ??? ?????????? ?????????? ??? ??????
?????????, ?????????? ?????? (?????? Test Claimants in Class IV of the ACT
Group Litigation, ????????????, ????? 46).

37 ????? ?????? ??????????, ? ??????? ?????????? ?????????? ?????????? ??? ?????? ??????????
????????????? ??????? ?? ?????????? ?????????? ?????????? ???? ?????? ?????? ??? ?????? ?????? ??
????????????? ?????????? (?. ??????? ?? 14?? ?????????? 1995, C?279/93,
Schumacker, ?????? 1995, ?. I?225, ???? 30, ??? 11?? ?????????? 1995, C?80/94, Wielockx,
?????? 1995, ?. I?2493, ???? 17, ??? Test Claimants in Class IV of the ACT Group Litigation,
??????????????, ???? 46).

38 ????? ??????, ????, ??? ?????? ???????????, ? ?????????? ??? ?????????? ?????????? ???

????? ???? ?????? ??????????? ?? ??? ?????????? ??? ?? ?????????? ?????????? ??????????
(????????????????? ?????????? Schumacker, ???? 31, ??? Wielockx, ???? 18).

39 ? ?????????????? ?????????????? ??? ?????????????? ?????????? ?????????? ??? ???
????????????? ?????? ?????????? ??? ?????? ?????? ?????? ?? ??????????????, ??? ???
??, ?? ?????????? ?????????? ??? ??? ?????? ??? ?????? (?? . ?????????????? ??????????
Wielockx, ???? 19, ??? ??? Denkavit Internationaal ??? Denkavit France, ???? 24).

40 ???????, ??? ?? ?????????? ?? ??? ?????????? ??? ????? ?????????? ??? ?????? ??? ?????? ????.

41 ??????????, ???????, ?? ?????????? ??? ? ?????????? ?????? ?????????????? ???
????????? ? ?????????? ?????? ??? ?????? ?????? ?????????? ??? ?????????? ??? ??????
????? ?????? ?????? ??? ?????????????? ?????? ?????????? ??? ??????????, ?????????????? ???
????????????? ?????? ?????????????? ?????? ??? ?? ?????? ?????????????? ??? ?????? ??? ??
????? ?????? ?????, ??? ????? ?????????? ?? ??? ?????? ??? ?????? ?????????????? ?????????????.

42 ???????, ??????, ??? ?????????? ??? ??? ?????? ??? ? ?????????? ??? ?????? ???
?????? ??? ??? ? ?????????? ??? ?????? ?????? ?????? ?????? ?????? ?????????????? ???
??????, ?? ?????? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ???
????? ?????? ?????????????? ?????? ?????? ?????? ??? ?????? ?????? ?????? ?????? ??? ??????
????????????? ??? ?????? ???????, ???, ??? ?????? ?????????, ?? ?????? ?????? ?????? ??????
??? ??? ?????? ??? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ???, ???, ??? ??????
?????????, ?????? ?? ?????? ??? ?????? ??? ?????.

43 ???????, ? ??????? ?????? ??? ?????? ??? ?????????????? ??? ?????? ?????? ??? ?????
?????? ?????????? ??? ?????? ??? ? ?????? ??? ?????? ??? ?????? ?????? ??????????????
????? ?????? ?? ?????? ?????????????? ??? ?????? ?????? ?????????? ??????????????
?????????, ??? ????? ?????????? ?????? ??????.

44 ??????????, ??????, ??????? ??? ?????????? ??? ?????? ?????? ?????? ??? ?????? ???
??? ?????????? ?????????? ??? ?????? ?????? ?????? ?????? ??? ?????? ?????????????? ???
????????? ???????, ???????, ?????? ?? ??? ?????????? ??? CIR 1992, ?? ?????? ???
????????????? ??? ?? ?????? ???????, ?????? ?????????? ??? ?????? ?????????? ??????????????
??? ?????? ?????? ?????? ??? ??? ?????? ?????????? ??? ?????, ??? ?????? ??????.

45 ???????, ?? ?????? ?????? ?????????? ??? ?????? ??? ?????? ?????? ?????? ??? ???
????? ??? ?????????? ?????????????? ??? ?????? ?????? ?????? ??? ?????? ?????????????? ???
????????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????????? ??? ?????? ???
??? ?? ?????? ?????? ??? ?????????????? ??? ?????? ?????? ?????????? ??? ?????? ?????? ???
????????? ?????? ??? ?????-????????????? ??????.

46 ???????, ?? ?????????? ??? ?????? ?????? ?????? ??? ?????? ?????? ?????? ?????? ???
??? ?????????? ??? ?? ?????????? ??? ?????? ?????? ?????? ??? ?????? ?????? ???
????? ??? ?? ?????????? ??? ?????? ?????? ?????? ??? ?????? ?????? ?????? ??????.

47 ???, ??? ?? ?????? ??? ?????? ?????? ?????? ?????? ?????????? ?????????? ?????? ???
????????????? ?????????? ??? ?????? ?????? ?????? ?? ?????? ??? ?????? ??? ?????? ???
????????? ??? ???.

48 ???????, ??? ?? ?????????? ??? ?????? ?????? ?????? ?????? ??? ?????? ??????????????
????? ?????? ?????????? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????????? ?????????? ?,
????? ??? ?????? ?????? ?????? ?????? ??? ?????? ??? ?????, ??? ?????? ??? ?????? ??? ???
????????????? ??? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ???, ???

????? ??? ???????, ? ?????? ??? ????? ?????????? ?? ?????? ??? ??????????

49 ??????????????, ????? ??? ??? ????? ?????????? ?? ?????? ??? ???
????????????? ?????? ?????????? ?, ? ?????????? ??? ?? ?????????? ?????? ??? ???
????????? ??? ?????? ??? ????? ?????????? ?????????? ??? ?????? ??? ??????????
????????? ?????????? ??? ?????? ??? ?????? ?????????? ?????? ?????? ??? ??????
????????? ??????, ??????, ?????, ??? ?????????? ? ?????? ?????????? ?????? ???
????????? ??????????, ?? ?????? ??? ?????? ?????? ??? ?????????? ?? ?????? ?????????? ??
????????? ??? ?????? ?????? ???, ??????, ? ?????? ?????? ??? ?????? ?????? ??? ??????
??? ???? ??? ?????????? ?? ?????????? ??? ?????? ?????? ?????? ?????? ???
????????? ??? ??? ?????????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ??? ?????????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ???.

50 ??? ??? ??????? ????, ? ?????????? ??? ?????? ?????????? ??? ?????????? ???
????????? ??? ?????????? ?????????? ??? ?????? ??? ?????? ??? ?????? 52 ??? ??????.

51 ??? ??? ?? ?????????? ?????????? ??? ?????????? ?????????? ??? ?? ??? 73 B
??? ???????, ?????? ? ?????????? ??? ?? ?????????? ??? ?????????? ?????? ?????? ??????????
????? ??? ?? ??? ?????? ??? ?????????? ??? ?????????? ??? ?????????? ?????? ?????????? ???
????????? (????????? ??? 12?? ?????????? 2006, C?446/04, Test Claimants in the FII Group
Litigation, ?????? 2006, ?. I?11753, ????? 60, ??? Columbus Container Services,
??????????, ??? 56).

52 ???????, ??? ??? ??? ?????? ???????, ??? ?????????? ?????? ??? ?????? ?? ???
? ??????? ??? ?? ??? 52, 58, 73 B ??? 73 ? ??? ?????? ??? ?????? ??? ?????? ???
????????? ?????????? ?????????? ??? ?????? ??? ?????? ???, ??? ??? ??? ??? ???
????????? ??? ??? ???, ? ?????? ?????????? ?????????? ??? ?????? ??? ??? ??? ???
????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ??? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ??? ??? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???, ??? ?????? ???
?????.

??? ??? ??????? ????

53 ??????? ??? ? ?????? ?????????? ??? ?? ??? ?????? ?????????? ??? ?????? ???
??? ?????????? ?????????? ??? ?????? ??? ?????? ?????? ??? ?????? ?????????? ???, ?' ???
????????? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??????????
????? ?????? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
??? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???.

??? ??? ?????? ????, ?? ?????? (????? ????) ??????????:

?? ?????? 52 ??? ???????? ?? (???, ??????? ???????????????, ?????? 43 ??), 58 ???
????????? ?? (???, ?????? 48 ??), 73 B ??? ??????? ?? ??? 73 ? ??? ?????????? ?? (???,
???????????, ????, 56 ?? ??? 58 ??), ?????? ??? ??????? ?? ?????????? ??????????????
???????????, ??????? ??????? ???????, ????, ????, ????, ????, ????, ????, ????, ????,
????? ????, ? ????, ?????????? ???????????, ????, ????, ????, ????, ????, ????, ????,
????????????? ????, ???????????????, ????, ???????, ????, ???????, ????, ?????????? ????,
?? ????, ??????, ????, ??????, ????, ???????????, ????, ???????, ????, ????, ???????????,
????? ????, ??????, ????, ???????????, ????, ???????, ???????????, ????, ??????
????? ????, ?? ???????????, ????, ???????, ???????????, ????, ???????, ????, ??,
????? ??????.

(???????????)

* ??????? ??????????????: ? ???????.