

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

E. SHARPSTON

??? 14?? ?????????? 2016 (1)

?????? C?546/14

Degano Trasporti S.a.s. di Ferrucio Degano & C. ??? ??????????

[?????? ??? Tribunale di Udine (???????)
??? ??? ?????? ?????????????? ??????????]

«?????? ?????????????? ??? — ?????? 2006/112/?? — ??????? ?? ?????????? ?????? —
????????????? ??? ?????????? ?????????? — ?????? ?????????? ?????? ??? ?? ??????
????? — ??? ??? ?????????? ??????????»

1. ?? ??????????? ?? ??????? ?????????? ??? ?????????? ????? ?????????????? ?????? ??? ?? ??????? ???
?????? ??????? ??? ?? ?????? ??? ?? ?????????? ??? ?? ?????????? ??? ?? ?????????? ??? ??
??? ?????? ?????????? ??? ?? ?????????? ??? ?? ?????????? ??? ?? ?????????? ??? ??
????????????? ??? (??? ????: ???) ??? ?????????? ?????? ??? ??????????. ? ??????????
????????? ??? ?????? ?????????? ?????????????? ??? ?? ??????????, ??????, ?? ?????????????? ?
????????????? ?????? ??? ?????? ?????? ??? ?????? ???, ?????????, ?? ??
????????????? ?????? ??? ?????????? ?????? ??? ?????? ??? ?????? ??? ?????? ?? ??? ??????
????????????? ??? ?????????? ???, ??? ?????? ???, ??? ?????????? ??? ?????? ??? ?????? ???
?? ?????? ??? (????? ??? ?????????? ??????????). ?? ??? ?????? ??????
????????????? ??????????, ?? Tribunale di Udine (?????????? ??? Udine, ??? ????: ??????
?????????) ?????, ??? ?????, ?? ?????????????? ?? ?? ?????? ?????? ?????????????? ??
?????? ?????? ?? ?????? ??? ?????? ?????????? ?????????? ??? ?? ?????? ?? ?????????? ??
????????, ??? ?????? ?????????? ??? ?????????? ??? ?????????? ?????????? ??? ?????????? ??
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????????? ???.

?????????

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

2. ?? ?????? 4, ?????????? 3, ??? ??????:

«?????? ?? ??? ??? ?????? ?????????? ???????????, ? ?????? ??? ?? ?????? ??? ?????????? ???
?? ?? ??? ?????? ?????? ?????? ?????? ?????????? ??? ?????? ?????????? ??? ?????????? ??? ??????????»

? ? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????????? ???
??? ?????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????????? ??? ?????????? ???
????????? ??? ??????.

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

3. ?? ??????? ?? ??????? ?? (2) ??????? ?? ??????? ?? ?? ??????? ??
?????????? ???:

«(4) ? ?????????? ??? ?????? ??? ?????????????? ??? ????? ?????????? ??? ?????? ?????????????? ???
 ??????? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????????????? ??? ?????? ??? ?????? ?????? ?????? ??????,
 ?? ?????? ??? ?????????? ??? ?????? ??? ?????? ?????? ?????????????? ??? ?????? ??? ?????? ?????? ??????
 ?????????? ??? ?????? ??? ??????????. ?????????? ??? ?????? ?????????? ??? ?????????????? ??? ??????????????
 ?????????? ??? ?????????? ??? ?????? ??? ?????? ?????? ?????????, ??? ?????? ??? ?????????? ??? ?????
 ?????????????? ??? (??), ?? ?????????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
 ?????????? ?? ?????? ?????? ?? ?????????? ??? ?????? ??? ?????? ??? ?????????????? ??? ?????? ???
 ?????? ??? ??? ??? ?? ?????????? ??? ??????.

[...]

(7) ?? ?????? ??????? ?? ?? ?????? ?? ?????????? ?? ?????????????? ?? ?????????????? ?? ???
????????????? ?? ??? ?? ?? ?????????? ?? ?? ?????????? ?? ?? ?????????? ?? ?? ?????????? ?? ?? ???
[...].

(8) [...] ? ?????????????????? ?? ???????????, ?? ??? ?????????? ?? ?????? ??????,
????????????????? ?? ?????????? ?? ?????? ?????? ?????? ?? ?????????? ??????????. ??????
?????? ?????? ??????????????????, ?????? ?????, ?? ?????????????? ?? ??? ?? ???? ?????? ??
????????? ?? ?? ??? ?????????? ?????? ?????????? ?? ?????? ?????????? ?????? ? ??????
????????????? ?? ?? ?????? ?????????? ?? ?????? ?????????? ?? ?????? ?????????? ??????»

4. ??? ? ? ?????? 2, ?????????? 1, ??? ?????? ????, ??? ?????????? ??? ??????????
?? ??? ?????????????? ? ?????? ?????? ? ? ?????? ?????????? ??? ??????????????
?? ?????? ?????? ??? ?????? ??? ?????? ?????? ?????? ??? ?????????? ??? ?????? ???
?????? ? ? ??? ?????? ???, ??? ? ? ?????? ????.

5. ?? ?????? 206 ??????:

«???? ??????????? ????? ??? ??????????? ?? ?????????? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??
????? ??????? ??? ?????? ??? ?????????? ??? ?????????? ??? ?????? 250. ??????, ?? ?????? ???
?????? ?? ??????? ??????????? ??????????? ?????????? ??? ?????????? ??? ?????? ??? ?????? ??
????? ??? ??????? ????????????.»

6. ???? ?? ?????? 212, ?? ?????? ??? ??????? ?? ?????????????? ?? ?????????????? ?? ?????????????????? ??
????? ?? ?????? ??????? ?? ?????????????? ?? ?????????????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ??????????.

7. ????? ?? ?????? ??????? ??? ?????? 273, «[?] ???? ???? ?????? ?? ?????????? ???
????? ?????????? ??? ?????? ?????????? ??? ?? ?????????? ??? ?????? ?????????? ???
??? ??? ??? ??????, ?? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ???
????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?? ??? ?????????? ??? ?? ??????????
????? ??? ??????, ??? ?????????? ??? ?????? ??? ?????? ???, ?? ?????????? ??? ??????
?? ?? ?????? ??? ??????».

8. ????? ?? ?????? 2, ??????????? 1, ???????? ??, ??? ?????????? 2007/436 (3), ?? ?????????? ?????? ?? ?????? ?????????? ??????????????, ?????? ?????, ?? ????? «???? ??? ?????????? ?????????? ?????????? ?? ???? ?? ?????? ?????????? ?????????? ??, ? ?????? ?????????? ??????????

????????? ?? ??? ??????????? ??????». ??? ???? 2, ?????????? 4, ? ?? ??? ?????? ??????
?????????? ????, 0,30 %.

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

9. ?? ??? 160 ??? ??????? ??????????? 267 ??? 16?? ?????? 1942, ??? ????
????????????? (Regio Decreto del 16 marzo 1942, n. 267 ?? ??? : ??????????? ??????),
????????? ?????????? ?????????? ?????????? (concordato preventivo) ??? ??????????
????????? ? ??????? ?? ?????????? ?????????, ?? ?????????? ??? ???? ?? ?????? ?? ???
?????? ??????????. ? ?????????? ????? ?????????? ?? ?????????? ??? ?????????? ???
????????? ??? ??? ?????????? ?????????? ??? ?????????? ?????????? ??? ?? ??????
????????????? ??? ?????????????? ?????????. ??????, ? ?????????? ?????? ?? ?????????? ??
?? ??????? ?????????? ?????????? ?????????? ?????????? ?????????, ?? ?????????? ??
????????????? ?????????????? ?????????? ??? ?? ?????????? ?????? ??? ?? ?????? ?????
????? ?? ?????????? ?????????? ??? ???????.

10. ? ??????? ??????????? ??????????? ?????? ?? ??????????? ?????? ?????????? ??
?????? ??? ??????? Tribunale (?????????????). ??????? ?? ?? ?????? 162 ??? ???????????
?????, ?? ?? ??? ?????????? ?????? ???' ?????? ?? ?????????? ??? ?????????? ??
????????? ?????????? ??? ?? ?????????? ?????????? ?????????? ??? ??????????, ??
????????? ??? ?????? ?????? ?? ?????????? ??? ?????????? ?????????? ??? ?????? ??????
????????? ?? ?????????? ??? ??? ?????????. ? ??????? ??????, ??? ?? ?????? 177, ??
????????? ??? ?????????? ??? ?????????? ?????????? ??? ?????????? ??? ?????????? ???
????????? ??? ?????????? ?? ?????? ?????? ?????? ?????? ?????? ?????? 180 ??????
??? ?? ?????????? ?????? ?? ?????????? ??? ??' ?????? ??? ?????? ?????????? ??????
?????????, ?????? ?????????? ??? ?????? ?????? ?????????? ?????????? ??????????. ???
????????? ??? ?? ??????????, ? ?????????? ?????????? ?????? ?????????? ??? ??????
????? ???????.

11. ? ??????? ??? ?????????? ?????? ??? ?????? ?????????? ?????? ?????????? ??????????
????????? ??? ??? ?????????? ??????? ?? ??? ?????? ?? ?????? ?????????? ??? ??????????
??? ??????? ??? ?????????? ?????????? ??????????, ??? ?????????? ?? ?????? ?????????? ???.
?????, ?????????? ??? ??? ??? ?? ?????? 173 ??? ?????????? ?????? ?????? ??????????
????????? ??? ?????? ?????????? ??? ?????? ?????? ?????? ?????? ?????????? ?????????? ??????????
????????? ??? ??? ??? ?????? ??? ? ?????????? ?????? ?????????? ??????????.

12. ??? ?? ?????? 182ter ??? ?????????? ??????, ? ??????? ?????? —????????? ?? ???
????????? ??? ??? ?????????? ?????????— ?? ??????? ?????? ?????? ?????????? ?????? ???
????? ??????? ?????????? ?????????? ?????? «????????? ?????? ??????»., ? ??????? ???,
? ?????? ?????????? ?????? ?????? ?????????? ??? ?? ?????? ?? ?????????? ??????????
????????? ?? ?????????? ?????? ??????????, ?????? ?? ?????? ?????? ??? ?????? ??????????
????????? ??? ???/? ?????????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????
????????? ??? ?????? ?? ?????? ?????? ??? ?????? ?????? ?????? ??? ?????? ?????? ???
??? ?? ?????? ?? ?????????? ?????? ??????, ??? ?????? ?????? ??? ?????? ?????? ???
????????? ???, ? ?????? ??? ?? ?????? ?????? ?????? ?????? ?????????? ?????? (19??
??????).

13. ??? ?? ??????? ??? ?????????? ?? Corte di Cassazione (????????? ??????????) ???
?????? ??? ??????? ??? ??????? ?? ?? ?????? 160 ??? ?????????? ?????? ??????????
????????? ?????????? ??? ?????? ?????????? ?? ?????? ?????????? ?????? ??????
????????? ?????????? ??? ?????? ?????????? ?????? ?????? ?????? ?????? ??? ??????
?? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ???, ??
????????? ?????? ??? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ???, ??

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

14. ??????, ??? ?????? ?? ?????????? ??? Corte di Cassazione, ? ?????????? ?? ??????????
?????? ?????????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????????? ?????????? ??????????
?????? ?????? ??? ?????? ??? ?????????? ??? ?????????? ?????????? ?????????? . ??? ?? ?????? ???
????????? ?????? ??? Corte di Cassazione ?????????? ?? ??? ???, ??????
?????, ?? ??? ??? ??? ??? ?????????? ?????? (4) ??? ?????? 4, ?????????? 3, ??? ???
??? ?????? ??????, ? ??? ?????? ?????? ? ?????????? ??? ??? ?????????? ?????? ??? ??? (5).
?? ?????? ?????????? ??? ?????????? ?? ??? ??? ??? ? ??? ??? Corte di Cassazione
????? ?????????? ??? ??? ?????? ??? ?????????? ??? ??????????.

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

15. ? Degano Trasporti S.a.s. di Ferruccio Degano & C. (??? ????: Degano) ?????? ??????
?? ?????????? ???????????, ??? 22 ????? 2014, ?????? ?????????? ???????????, ???
????????? ?????? ??? ??? ?????????? ?? ?????? ??? ?????????? ???
????????????? . ??? ??? ??????, ?????????? ?????????? ?????????? ?? ?????????? ?? ??????????????
?? ??????, ??? ?????????? ?????? ?????? ?????? ??? ?????????? ??? ?????????? ??????????
????????? ?????? ?????? ??? ?????? ?????????? ??????, ?????? ??? ?????? ??? ??????????
?? ??? ??? ?????? ??? Degano.

16. ?? ?????? ?????????? ?????????? ?? ? ?????? ?????? ?? ?????????? ?? ?????????? ??
?????????, ?? ?? ?????? ?? ???? ?????? ?????? ?????? ?????? ?????? ?????? ?? ?????????? ??
Degano. ??????, ?????????? ?? ??? ??? ???? ?????? ?????? ?????? ?? ?????????? ??
?? ?????? ?????? ?????????? ?? ???? ?????????? ?????? ??? ?? ?????????? ?????? ??
????? ??? ?????????? ???, ??? ? ?????????? ??? ?????????? ??? ?????????? ???
?????????, ??? ?????????? ??? ?????????? ?????? ?????????? ?? ??? ??? ?????? ??????????
????? ??? ??? ?????????? ???, ??? ???? ? ?????? ?????? ??? ?? ??? ?????? ?????????? ???
????????? ?????????? ??????????. ??? ??????????, ??? ???? ? ?????? ?????? ??????????
????????? ??? ??? ?????????? :

«????? ?? ??? ??? ?????? ??? ?????????? ??? ?????? 4, ?????????? 3, ??? ??? ??? [??????] ???
??], ??? ?????? ??? ?????????? ??? ?????????? ?????? ??????? ??? ??????, C?132/06,
EU:C:2008:412? ??????? ??? ??????, C?174/07, EU:C:2008:704 ??? Belvedere Costruzioni,
C?500/10, EU:C:2012:186, ?????????? ?????? ??? ?????? ?????? ?????? ?????? (???)
?????????, ??? ?????? ??? ?????? ??????, ?????????? ??? ?????? 162 ??? 182b ???
????????? ?????????? ???) ?????????? ?????????? ??? ?????? ?????????? ??? ??????????
????????? ??? ?????? ?????????? ???, ?? ?? ?????????? ??? ?????????? ??? ?????????? ???
???? ?????? ??? ?????????? ??? ?????????? ??? ??? ??? ???? ?????? ??? ?????? ??????????
????? ??? ?????????? ??? ?????????? ??? ??? ??? ???? ?????? ??? ?????? ??????????
?? Tribunale, ?????????? ??? ?????? ?? ?????????? ??????????;»

17. ?????? ?????????? ?????????? ??? ??? Degano, ??? ?????? ??? ??? ??????
????????? ??? ??? ?????? ??????. ??? ?????????? ???' ?????????? ??????.

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

18. ? ?????? ?????? ?????? ??? ?? ?????? ?????????? ?????? ?? ?????????? ?? ??? ??
?? ? ?????? ??? ?????????? ?????? ?????? ?????? . ?? ??? ??? ?????? ??????????
?? ?????? ?????????? ?????? ?????? ?????? ?????? ?? ?????????? ?? ?????????? ???

????????? ??? Degano ??? ?????????? ??????????. ?? ?????? ?????????? ????????,
?????????, ??? ? ?????????? ??? ?????? ???' ??????????, ????? ??, ??? ?????? ???,
????????????? ?????????? ?????????? ?????? ?????????????? ?????????????? ??????????????
??? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ??????
????? ??? ??????????.

19. ??? ??? ????? ???, ? ?????? ?????????????? ?????????? ??? ?????? ??????????.
20. ??????? ??? ?????? ?????????? ??? ?????? ?????????? ?????????? ?? ??????
????????????? ?????????? ??? ?????????? ?????? ?????????? ?????????? ?????? ??? ??
????????? ?? ?????????? ??? ?????????? ?????? ?????????? ?????????? ?? ?????????? ???
????? ?????????? ?????????? ?????????? (6). ?????? ?????? ?? ?????????? ???
????????????? ?????????? ?????? ?????????? ?????? ?????? ?????????? ?????? ???
????? ?????? ?????????? ?????????? ?????? ?????? ?????? ?????????? ?????? ???
????? ?????? ?????????? (7). ??? ???????, ?? ?????? ??? ?????? ?????? ?????? ??????
????????? ?????? ??? ?????????? ?????????? ?????????? ?????? ??? ?????????? ???
????????? ?????? ??? ?????? ??? ?? ?????? ?????????? ?? ?????????? ?? ?????????? ??
????? ?? ?????? ?????? ??? ?????? ??? ?????? ?????? ?????????? ??? ?????????? ?? ?????????? ??
????? ?? ?????? ?????? ??? ?????? ??? ?????? ?????? ?????????? ??? ?????????? ?? ?????????? ??.
21. ???????, ??? ?? ?????????? ??? ?????? ?????? ??? ?????? ?????? ?? ?????????? ???
??? ??????? ??? ?????? ?????????? ??? ?????? ?? ?????? ??? ?????? ?????????? ???
????????? ??? ?????? ?? ?????????? ?????????? (8), ??? ?????? ??
????????? ??? ?????? ??? ??????.
22. ??? ?????? ??? ?????? ??? ?????, ?? ?????? ?????????? ?????????? ?? ?????????? ???
??? ?? ??? ?????????? ?? «??? ?????? ?????? ?????? ??????????????» ??? ??????????
??????????. ???????, ?????? ?? ?????????? ??? ?????????? ?? ?????????? ???
??? ?? ?????????? ?????????? ??? ?????????? ?? ?????????? ??? ?????????? ???
????????? ??? ?? ?????????? ??? ?????? ?????????? ??? ?????? ??? ?????? ??? ??
????????? ??? ?????? ??? ?????????? ??? ?????? ?????????? ??? ?????????? ???, ???
????????? ??? ?????? ??? ?????????? ??? ?????? ?????????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????????? ??? ?????? ?????????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????????? ??? ?????? ?????????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????????? ??? ?????? ?????????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????????? ??? ?????? ?????????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????????? (9).
23. ???, ? ?????? ?????????? ?????????? ?????????? ??? ?????? ??? ?????????? ???
????????? ?????????? ?? ??? ? ?????????? ??? Corte di Cassazione —?????? ??
??? ?????? ? ?????????? ?????????? ??? ?????? ??? ?????? ??? ?????? 160 ??? ??????????
????? ?????? ?????? ?? ?????????? ??? ?????? ?????????? ??? ?????? ???—????? ??? ??
????? ??? ?????????? ??? ??? ?? ?????????? ??? ?????? ??? ?????? 4, ?????????? 3, ???
??? ??? ?????? ??????. ?????? ?? ?????? ?????????? ?????????? ??? ?????? ??? ??
Corte di Cassazione ??? ?????????? ?? ?????? 160 ??? ?????????? ???, ??? ??
?????? ?? ?????????? ?? ?????? ??? ?????????? ?????????? ??? ?????? ??? ??
????? ?? ?????? ??? ?????? ??? ?????????? (10).

?????????

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

24. ??? ?????????? ??? Degano ?????? ?? ?????????? ?????????? ??? ??
?????? ?? ?????? 160 ??? ?????????? ???, ??? ?? ?????????? ?????????? ??
????????? ?????????? ??? ?? ?????? ?? ??? ?????? ?????????? . ?????? ??? ?????? ??? ??
????????? ?????????? ?????????? ?? ?????????? ?????????? ??? ?????????? ??? ??

Degano.

25. ??????????, ??? ?????????? ??? ??? ?????? ??? ?????? ?????? ?????? ?????????????? ?
?????? ? ?? ??? ?????? ?????? ??? ??? ??? Degano ??? ?? ?????? ??????. ??? ??????
?? ?????? ??????????, ?????????? ?????? ?????? ?????? ?????? ?????? ??? ??????????
????????????? ??????????.

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

27. ????????, ??? ??????? ???. ?????? ?????????? ??? ?, ?? ?????? ????. ?????????? ???.
????????? ????. ??? ?????? ????. ?????????? ????. ?????????? ????. ?????????? ????.
?????, ????. ?????? ????. ?????? ????. ?????? ????. ?????? ????. ?????? ????.
????. ?????? ????. ?????? ????. ?????? ????. (12).

28. ??????, ?? ?????????? ????? ?????????? ????? ? ?????? ?? ? ?????????? ????? ??????????
????????????? ??? ?? ?????????? ??? ?????? ?????? ?? ?????????? ?????? ?? ?????????????? ??? ??????????????
????????? ??? ?????? ?????? ??? ?????? (13). ?? ?????????? ??? ?? ?? ?????? ?????
?????????????, ??????? ?? ?? ?????? 2, ?????????? 1, ??? ?????????? 2007/436, ?? ??????
??? ??? ?????????? ??????? ?????????? ??? ?????? ??? ?????????????? ??? ??? ??? ??,
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ???
??, ?? ?????????? ?? ?? ?????????? ?????? ??? ??????, ?? ?? ?????? ??? ?????? ??? ?????? ???
????????????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ??, ?????????? ??? ?????? ???
????????? ??? ??? ?????? ??? ?????????? ??? ?????? ??? (14).

29. ????????, ??? ?????????? ?? ?????????????? ?????????? ?????????? ?? ???? ??
????? ?? ??? ????? ?????????????????? ?? ?????????????? ??? ?????, ??? ?????? ??? ????? ??????????
????? ?????? ??? ?????? ??? ?????? ??????. ? ?????? ?????? ??? ?????? ?????? ?? ??????????????
????? ?? ??? ?????? ??? ?????????? ?????? ?????????? ??? ?????? ?????? ??? ?????? ?? ??? ??????
????? ??? ???, ??? ?????? ?? ?????????????? ?? ?????????? ??? ?????? ?????????? ??? ??????
????? ??? ?????? ?? ?????????????? ?? ?????????? ??? ?????? ?????? ??? ?????? ??? ??????
?? ??? (15). ??? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??
????? ?? ??? ?????? ???, ? ?????? ?????? ??? ?????? ?? ?????????? ??? ?????? ?????? ??? ??????
????????? ? ?????? (16).

30. ??????? ?? ??? ?? ??????? ?? ??????????? ???????, ??? ?? ???????????????
????????? ?? ??????? ??, ??? ?? ???????, ??? ?? ??????? ??, ??? ?? ??????????? ??, ??? ??
?????? ??, ??? ?? ??????????? ??, ??? ?? ??????????? ??, ??? ?? ??????????? ??, ??? ??
?????????? ??, ??? ?? ??????? ??, ??? ?? ??????????? ??, ??? ?? ??????????? ??, ??? ??
?????? ??, ??? ?? ??????? ??, ??? ?? ??????? ??, ??? ?? ??????????? ??, ??? ?? ??????????? ??,
??? ?? ??????? Belvedere Costruzioni (18), ??? ?? ??????? ??, ??? ?? ??????????? ??, ??? ??
?????????? ??, ??? ?? ??????? ??, ??? ?? ??????????? ??, ??? ?? ??????????? ??, ??? ?? ??????????? ??,
??????, ??? ?? ??????????? ??, ??? ?? ??????????? ??, ??? ?? ??????? ??, ??? ?? ??????? ??, ??? ??
?????????? ??, ??? ?? ??????????? ??, ??? ?? ??????????? ??, ??? ?? ??????? ??, ??? ?? ??????????? ??,
?????????? ??, ??? ?? ??????????? ??, ??? ?? ??????????? ??, ??? ?? ??????????? ??, ??? ??
?????????? ??, ??? ?? ??????????? ??, ??? ?? ??????????? ??, ??? ?? ??????????? ??, ??? ??

????????????? ?????? ??? ??? ?????? ??? ?????????????? ??? ?????? ?????????????? ??? ?????? ???? ??
 ?????? ?????????? ?? ?????? ??? ?????? ?????? ??????, ?????????????? ??
 ?????????? ?????? ??? ?????? ??? ?????? ?????? ?????? ??? ?????????? ??? ?????????? ???
 ?????????? ??? ?????? ??? ?????? ?????? ?????? ?????? (19).

31. ??????????, ??? Belvedere Costruzioni ?? ?????????? ?????? ??? ??? ??
????? 4, ?????????? 3, ??? ??? ?? ?????? 2 ??? 22 ??? ?????? ?????????? ?????????????? ???
??? ??????? ??? ?????????? ??? ?????????????? ?????????? ?????????? ?????????? ? ???
????????? ??? ?????????? ?????????? ??? ?????????? ?????????? ?????????? ?????????? ???
????? ?? ??? ?????? ??? ?????? ?? ?????????? ?????????? ?????????? ?????????? ?????????? ???
????? ??? ??? ?????????? ??? ?????????? ??? ?????? ??? ?????????? ?????????? ??? ? ??????????
????? ?????????? ??? ?????????? ??? ??? ??? ???' ??? (20). ? ?????? ?????? ??? ??????
????? ??? ?? ?????????? ?????????? ??? ?????????? ?????????? ??? ?????????? ???
????????????? ?????????? —????? ?????? ??? ?? ?????????? ???— ??? ??? ???
????????? ?????????? ??? ?????????? ??? ?????????? ??? ??????. ? ?????????? ???
????????? ?????????? ??? ?? ?????? ?? ?????? ??? ?????? ?????? ?? ?? ?????? ??? ??????
????????? ??? ?????????? ??? ?????????? ?????????? ???, ??? ?? ??? ?????? ??????
????????????? ?????????? ?????????? ?????????? ??? ?????? ?????? ?????????? ??????????
????? ?????????? ?????????? ?????????? (21).

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

32. ? ??????? ?????????? ??? ? ?????????? ?????????? ??? ?????????? ??? ?????????? ???
????????? ??? ?????? ??? ?????? ?? ?????? ??? ?????? ??? ?????????????? ??? ?????? ??????????
????????? ??? ?????? ??????. ????, ?????????? ??? ?????? ?? ?????????? ??? ?????? ?????? ???
????????? ??? ?????? ??? ?????? ??? ? ?????? ???, ?? ?????????? ?? ??? ?????? ??? ?????? ??
????????? ??? ?????? ??? ?????? ??? ?????? ???, ?? ?????????? ?? ??? ?????? ??? ?????? ??
????????? 3, ??? ?????? ??? ?????????? ??? ??????????, ?????????? ?? ??? ?????? ?????? ???
??? ?????? ??? ?????????? ?? ?????????? ?? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ???
?????????. ????, ??? ?????? ??? ?????? ?? ?????????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????????? ??? ?????? 212 ??? ?????? ??? ?????? ???, ?????? ???, ?????? ??? ??
????????? ??? ?????? ??? ??????. ??? ?????? ?? ?????????? ?? ?????????? ??? ?????????? ???
????????? ?? ?????????? ??? ?????? ?? ?????????? ??? ?????? ??? ?????? ??? ?????? ???, ??? ??????
????????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????? ??? ?????? ???, ??? ??????
?????????, ??? ?????? ??? ?????????? —????????? ??? ?? ?????? ??? ?????? ??? ??????????
?????????— ??? ?????? ??? ?????? ??? ?????? ?? ?????? ??? ?????????? ?? ??? ?????? ???
????????? ??? ?????? ??? ?????????? ???, ??? ?????? ?? ?????????? ??? ?????? ?? ??????????
?????, ??? ?????? ??? ?????????? ??? ??????????, ??? ?????? ??? ?????????? ??? ?????????? ???,
????? ??? ?????? ??? ??????????

33. ?? ??????? ?? ???? ?? ?? ?????????? ???????????, ?? ?????, ??? ?? ????? ???, ???
?????????? ?? ??????????.

34. ????' ?????, ?? ?????????? ??? ?? ?????????? ??? ?????? ?? ?????? ??????????????
?????? ?? ?? ?????? ?????? ??????????, ?? ?????? ?? ?????????? ??? ??????????????
?????????? ?? ?? ??????, ?? ?????? ?????????? ??? ?????? ?? ?????? ?? ?????? ?? (22).
????? ??????? ?? ? ?????????? ?????? ??? ?????? ?????? ?????? ?? ?????? ?? ?????????? ??
?????? ?? ?????????? ??? ?????????? ??? ?????? ?????? ?????? ?? ?????? ?? ?????? ??
?????????? ?? ?? ?????????????? ??? ?????? ??? ?????? ?????? ?? ?????? ?? ??????,
????????????? ?? ?. ??????, ?? ?????? ?????? ??? ?????? ?? ?????? ?????? ?? ?? ??????
???? ?? ?????????? ?????? ?????????? ??? ?????? ?? ?????? ?????? ?? ?????? ??
????????? ?? ?? ?????? ?????? ??????????.

35. ????? ?????????? ??? ?????? ?????? Belvedere Costruzioni. ?????????? ??? ? ??????

? ?????????????? ?????????? ??? ?????? ?? ?????? ?????? (23). ?? ?????????? ??????
??? ?????? ??? ?????? ??? ?, ??????, ??? ? ?????????? ?????????????? ???
????????????? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ?? ??????????????
??? ?????? ??? ?? ?????????? ?????????? ??? ?????? ?? ?????????? ?????? ??????
????????? (24) ???, ???????, ??? ? ?????? ?????? ??? ?????????? ?????? ?????? ??????
??? ??? ?????????? ??? ??? ?????????? ?????? ???????, ??? ?????????? ?????? ????
????? ??? ?????? ??? ?????????????? ?????????? ???, ?? ??? ??? ?????????? ?????? ??????
???, ??? ?????????????? ?????????? ?????? ??? ?????? ??? ?????? ?? ??? ???
????????????? ??? ?????????? ??? ?????? ??? ?????? ???, ????? ??? ?????????? ???
????? ??? ?????????? ?????? (25).

36. ??? ???????, ?? ?????????? ?????????? ?????? ??? ?????? ?????? ?????? ?? ??????
????? ?? ?????????? ??? ??? ?????? ?????? ?????????? ???, ?????? ?? ??????????
????? ?? ?????? ??????????, ?????? ??? ?????????? ?????? ??? ?????? ?? ?????? ???
????? ?? ?????? ??? ?? ?????????? ?????????? ?????? ?? ?????? ?? ??? ???
????????????? ?? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?? ?? ??????????
????? ??? ?????? ?????????? ??????.

37. ??? ?????? ???, ?? ?????? ??? ?????? ?? ?????? ??? ?????? ?????? ?????? ????
??? ?????? ??? ?????????? ??? —??? ??? ?????? ?????? ??? ?????? — ?
????????? ??? ?????? ?????? ??? ?????????? ?? ?????????? ?????? ??? ?????? ???
??????, ?????? ? ?????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ??????????
????? ??? ??????. ??? ?????????? ???, ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
????????? ?????????? ??? ?????? ?? ??? ?????? ??? ?????????? ???, ?? ?????? ??? ??????
?? ?????? ?????? ?? ?????? ??? ?????? ?????????? ?????????? (????? ?? ?????? ?? ??
????????? ?????????? ?????????? —?, ??? ?????? ?????? ??? ?????? ?????????? ??????????
????? ???, ?? ?????? ?????? ??????). ?????? ?????????? ??????????.

38. ??????, ?????????? ??? ? ?????? ??? ?????? ??? ?????? ?????? ?? ??? ??????
??? ?????? ??? ?? ?????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????,
????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ???.

39. ??????, ? ?????? ?????????? ?????? ?????? ??? ?????? ??? ?????????? ???, ?????? ???,
????? ? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ??? ?????? ???
????????? ??? ? ?????????? ??? (????????????? ???, ?? ?? ??????, ??? ?????? ???).

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

41. ??????, ?????? ??? ? ?????? ?????? ??? ?????? ??? ?????? ??????????
????????? ??? ?????? ???, ?????? ???' ?????? ? ?????????? ??? ?????? ?? ?????????? ???
????? ?????? ??? ? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
????? ?????? (????????????? ??? ?????? ??? ? ?????? ??? ?????? ??? ?????? ??? ??????
????????? ??? ?????? ???). ? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ???

???????????? ?????????????? ??? ??????????? ??? ?????????? ??? ?????????????? ??? ?????????? ??
?????? ??????? ??? ?????? ??? ??????????. ??? ??????????, ?? ?????????????? ?????????? ???????
?? ??????????? ??? ??????????? ?????????? ??? ?????????????? (26). ????, ? ??????????? ???
????????????? ??????????? ?????????? ??? ?????????? ?? ?????????????? ?? ?????? ??? ?? ??????? ???
????????????? ??? ?? ???????????, ??? ??? ?????????????? ?????????, ??? ?????????? ???
????????? ??? ?????? ??? ??????????? ????. ?????? ?????? ?? ???????????, ??? ???????????, ???
????????? ??? ?????????? (?) ??? ?????????? ?? ?????? ?????? ?????? ??? ???????????) ?? ??
????????? ?????????? ?? ?? ?????????????? ??? ?????????????? ??????????????????.

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

43. ??????? ??? ?????????? ??? Degano ? ?????????? ??? ?????????? ?? ?????????? ??
????????????? ?????????? ??? ?????????? ???, ??? ?????????? ??? ?????? ?????????????? ??
?????? ??????????. ??? ????? ?????????? ?????????? ?????????? ?? ?????? ?? ?????????????? ??? ?
????????? ?? ?????????????? ?? ?????????? ?? ?????????? ?????????????? ?????????????? ?? ??????
??????????, ??? ?????????? ?? ?????????? ?????????, ?? ?? ??? ?????? ?????? ?????????? ?? ??
????????? ??? ?????????? ??? ?? ?????? ??? ?????? ?? ?????? ?? ?????????? ??? ?????? ???
????????????? ?????????????? ??? ?????????? ?????????? ??? ?????????? ?? ?????????????? ?? ??????????
????????, ?????????? ??? ??????????????????, ??? ?????????? ??? ??? ?????????? ??? ?????????? ???
?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????????? ??? ?????????? ???
(27).

44. ????, ?? ?????? ?? ?????? ??? ???? ???? ???? ?????????? ?????? ??? ?????????? ??? ??
????????? ??? ??????. ?? ?????? ?????????? ?????????? ?? ?????? ?????????? ?? ??? ??? ??
????????? ?????????? ?????????? ??? ?????????? ?????? ??? ?? Corte di Cassazione. ???
????????? ?????? ?? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??? ?????? ??
????????? ?? Corte di Cassazione ??? ?????????? ???.

???????

45. ??? ???????, ??? ??? ?????? ??? ?? ?????????? ??? ?????? ?? ?????? ??? ?????? ???
Tribunale di Udine ??? ??????? ????:

????? ?? ?????? 4, ?????????? 3, ??? ??? ???? ???? 2006/112/?? ??? ???????????, ??? 28??
????????? 2006, ??????? ?? ?? ?????? ??????? ?????? ?????? ?????????????? ????, ??????????????
?? ??????? ????????, ??? ?? ??????? ?????? ????, ?? ?? ??? ?????? ?????????? ????
?? ?????????? ??? ?? ?????? ??? ?????????? ?? ?????????? ??? ?????????? ??? ?????????? ??
????????? ??????? ?? ?????????? ?????????? ?????????? ???????????, ?????????? ??
????????? ??????? ?? ?????????? ???, ????? ?? ?????????? ?????????? ?????????? ??? ?????????? ??
?? ?????????? ??? ?? ??????? ??? ?????????? ??? ?? ?????????? ??? ?????????? ??? ?????????? ??
????????? ??? ?? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ??
?? ?? ??? ?????? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ??
?????????.

- 1 — ?????? ??? ??????????: ? ??????.
- 2 — ?????? ??? ??????????, ??? 28?? ???????? 2006, ?????? ?? ???? ?????? ??????
????? ?????????? ??? (?? L 347, ?. 1, ??? ?: ?????? ??? ???).
- 3 — ?????? 2007/436/??, ?????? ??? ??????????, ??? 7?? ?????? 2007, ??? ??
????? ??? ??? ?????? ??? ?????????? (EE L 163, ?. 17). ? ?????? 2007/436
????????? ?? ??? ?????? ??? ?????????? (2014/335/??, ?????? ??? ??????????, ??? 26?? ????? 2014,
??? ?? ?????? ??? ?????? ??? ?????? ??? ?????????? (?? L 168, ?. 105), ? ?????? ??
????????? ?????????? ??? 1? ?????????? 2014 ??? ?????? ? ?????? ??? ??
????? ??????. ??????, ?? ?????????????? ?????? ?????? ?????? ??????????.
- 4 — ??., ????????, ????????, ????????, ??? ?????? (C?132/06, EU:C:2008:412)?
???????, ??? (C?174/07, EU:C:2008:704) ??? Belvedere Costruzioni (C?500/10,
EU:C:2012:186).
- 5 — ??? ?????? 77/388/?? ?? ??????????, ??? 17?? ????? 1977, ??? ??????????????
??? ?????????? ??? ?????? ???, ??? ??????? ?? ??? ?????? ?????? ?????? — ???
????? ?????? ?????????? ????: ?????????? ?????? ??? (?? ??. ??? 09/001, ?. 49) (???: ???).
- 6 — ??., ?? ?????? ????????, ?????? Torresi (C-58/13 ??? C-59/13, EU:C:2014:2088, ???
19).
- 7 — ??., ?? ?????? X (C?60/02, EU:C:2004:10, ?????? 25, 26 ??? 28).
- 8 — ??., ?????? ????, ?????? Job Centre (C?111/94, EU:C:1995:340, ??? 11) ???
????? Bengtsson (C?344/09, EU:C:2011:174, ??? 19).
- 9 — ??., ??????, ?????? Corsica Ferries (C?18/93, EU:C:1994:195, ??? 12) ??? Roda
Golf & Beach Resort (C?14/08, EU:C:2009:395, ??? 33).
- 10 — ??., ?????? ????, ?????? Rheinmühlen-Düsseldorf (166/73, EU:C:1974:3, ???
4) ??? Cartesio (C?210/06, EU:C:2008:723, ??? 93).
- 11 — ???. ?????????? ?????????? ??? ?????? (C?132/06, EU:C:2008:412, ??? 37) ???
Belvedere Costruzioni (C?500/10, EU:C:2012:186, ??? 20). ???. ?????? ?????????? ??????????
????? ?????? (C?174/07, EU:C:2008:704, ??? 36) ??? Cabinet Medical Veterinar Tomoiag?
Andrei (C?144/14, EU:C:2015:452, ??? 25).
- 12 — ?????????? ?????????? ??? ?????? (C?132/06, EU:C:2008:412, ??? 38) ???
Belvedere Costruzioni (C?500/10, EU:C:2012:186, ??? 21).
- 13 — ?????????? ?????????? ??? ?????? (C?132/06, EU:C:2008:412, ??? 39) ???
Belvedere Costruzioni (C?500/10, EU:C:2012:186, ??? 22).
- 14 — ???. ?????? Åkerberg Fransson (C?617/10, EU:C:2013:105, ??? 26). ???. ??????
????? ?????? ??? ?????? (C?539/09, EU:C:2011:733, ??? 72) ??? ?????????? ???
????? ?????? Belvedere Costruzioni (C?500/10, EU:C:2011:754, ??? 47).

- 15 — ???. ?????????? ?????????? ????. ?????? (C?132/06, EU:C:2008:412, ????? 39) ??? Belvedere Costruzioni (C?500/10, EU:C:2012:186, ????? 22). ???. ?????? ?????? Nuova Invincibile (C?82/14, EU:C:2015:510, ????? 23).
- 16 — ??????? ???????? ????. ?????? (C?132/06, EU:C:2008:412, ????? 45). ???. ?????? ?????????????? ?????? 4 ??? 7 ??? ?????? ?????? ???.
- 17 — ?????????? ???????? ????. ?????? (C?132/06, EU:C:2008:412) ??? ???????? ????. ?????? (C?174/07, EU:C:2008:704). ?? ?????? ?????? ????. ?????? 2, ?????? 1, 206, 252, ?????? 1, ??? 273 ??? ?????? ????. (?) ????. 252, ?????? 1, ?????? ????. ?????? ?????? ????. ????.
- 18 — C?500/10 (EU:C:2011:754, ?????? 36).
- 19 — ??????? ???????? ????. ?????? (C?132/06, EU:C:2008:412, ?????? 43 ??? 44).
- 20 — ?????? Belvedere Costruzioni (C?500/10, EU:C:2012:186, ?????? 28).
- 21 — ??., ????????, ?????? 35 ??? ??????? ???.
- 22 — ?????? 26 ??? 32 ??????
- 23 — ???????? ????. ?????? Belvedere Costruzioni (C?500/10, EU:C:2011:754, ?????? 48).
- 24 — ?????? Belvedere Costruzioni (C?500/10, EU:C:2012:186, ?????? 23 ??? 25).
- 25 — ?????? Belvedere Costruzioni (C?500/10, EU:C:2012:186, ?????? 26 ??? 27).
- 26 — ????? 177 ??? 180 ??? ?????????? ????.
- 27 — ?????? ??? ????????, ??? 12?? ?????? 2014, ??? ??? ??? ?????????? ????. ?????????? ????. ??? ????????????, C(2014) 1500 ??????, ?. 4 ??? 5.