

Italgasbeton - Assitalia

The relation that insurance Company accepts and establishes with the client is based on mutual trust, where the insurance Company analyses the risk and, on his own independent choice, accepts and assumes to sign the policy.

An insurance Company that meets his own ethic deontology respecting the signed policy is a serious insurance Company; otherwise, it is a not reputable Company, not worthy of any trust.

Premises

the policy, (cfr.: see annex 151 00435557 polizza rischi industriali"), signed between Italgasbeton and Assitalia, besides several possible events, covers the "burst" with the following definition in chapter DEFINITIONS: "*the sudden crush of containers due to excess of internal pressure of fluids not due to chemical explosion*" - cfr. see page 6, distinguishing this event from the "*explosion due to chemical reaction*" – cfr. see page 5.

In chapter GENERAL INSURANCE CONDITIONS, RULES GOVERNING THE INSURANCE IN GENERAL, article 17 describes the procedure to estimate the damages, and article 18 writes: "*the results of the verification of the existence, quality and quantity, the value of the insured goods are obligatory for the parties, which waive any appeal right now*".

In chapter SPECIAL PROVISIONS, article 4 writes: "*the insured client has the right to obtain, before the settlement of the accident, a down payment . . omissis . . the down payment will not be no more than 1,033,000.00 euro. .*"

Background

the production of blocks in aerated autoclaved concrete - lime base provides:

- the formulation of a mixture of approximately 40,425 kg of sand, lime, cement and 19,275 kg of water, which becomes rapidly before a dense fluid, then a plastic pudding, after a flabby solid soaked in water
- a phase of hardening in autoclave at about 180 ° C and 12.5 bar with saturated steam which accelerates the mineralization process of the flabby solid imbibed of water

Inside the autoclave, over 19 tons of liquid water are always present, imbibed into the blocks in aerated autoclaved concrete – lime base, to which at least one ton of water is added formed by the condensation of steam during hardening

Events

2007: on 18th July, an autoclave bursts and destroys more than half of the facility and generates the death of an employee; the facility is placed under judicial sequestration

2007: on 25th July, eng. Gianni Mercati, head of Industrial Damage Management - Assitalia General Direction in Rome, visits the disaster site and expresses his assessment of damage aloud: "*the damage is at least 12 million euro*", going pale in front of eng. Paolo Siciliano and geom. Giuseppe Mauro - Assitalia's experts and geom. A. Natalini - Italgasbeton's expert

2007: in November, INA-Assitalia does not comply with the contractual commitment which provides the payment in advance of 1,033,000.00 euro, as article 4 writes

2008: on 3rd January, the criminal CTU relates to the proceeding due to the death event, and settles his expertise on the disaster; the CTU indicates the **responsibility of the event** is ascribed to the designer & the manufacturer of the autoclave, against whom the criminal proceeding is in force for the death of the employee - (Proc. Pen. 437/08 PM at Frosinone Court)

2008: on 14th July, the Board of Arbitrators, consisting of three experts responsible to estimate the amount of damage in accordance with article 17 of the policy, unanimously endorses the

- Arbitration Award** quantifying the damage amount in 7,4 million euro at the state, and in more than 8,3 million euro at new state, (cfr.: see annex " processo verbale conclusivo di perizia ")
- 2008: in mid-December the first phase of reconstruction of the facility is completed and all licenses & permissions are obtained: **the factory can begin to manufacture**
- 2009:** on 14th January, in front of Directors of Ministry of Economic Development and various Councilors of Lazio Region, INA-Assitalia representative declares that "*the company does not expect to pay the damage suffered by Italgasbeton spa and confirms **the loss of jobs is not a problem that affects Assitalia***", (cfr.: see annex " verbale riunione con assitalia")
- 2010: on 8th February, following the attempted mediation of Confindustria, Assitalia *suggested a hypothesis of a settlement with Italgasbeton of an amount between 1,800,000.00 and 2,750,000.00 euro*, compared with a previous proposal verbally made to the Italgasbeton's lawyer of 1,500,000.00 euro
- 2010:** on 3rd August, the **Court of Rome** condemns INA-Assitalia to damages: 6.92 million of euro + interest at presentation of the bill of the new autoclave + legal fees for 17,000 euro; moreover, the **Court of Rome** rules that damage must be reimbursed to Italgasbeton and not to BNL. The information remains in the meanders of chancellery (!) and it happens that Ina-Assitalia has the time to appeal to the Court of Appeals to suspend the execution of the judgment, (cfr.: see annex "sentenza 18840/10")
- 2011:** on 3rd March, following the audience on 25th February after the appeal made by Assitalia on 23.12.2010 and received on 12.01.2011, the Court of Appeal of Rome **suspends the enforceability** of the judgment of the Court of Rome in August 2, 2010 (cfr.: see annex "sospensione esecutività sentenza 18840/10") because:
- a) "*in point of fumus, the questionability of the matter makes not implausible, and in any case to investigate, the reasons of the appellants*"
 - b) "*the size of the sum is high, being not unreasonable perplexity about the solvency of the creditor company in the future*"
- 2011:** on 5th April, the Court of Appeal of Rome – following the request to advance the audience because of the conditions of the company - "*expresses a negative advice both because the organization of the audiences of this Court does not allow the acceptance of the instance and because the reasons are not documented,*" (cfr.: see annex "1° rigetto istanza anticipazione udienza")
- 2011:** on 4th November, the Court of Appeal of Rome **adjourns to 13/10/2013** the audience for the conclusions in spite of the lawyers of all parties had agreed and expressed the opportunity to conclude as soon as possible; the President of the Court of Appeal - in disagreement with the Counsellor who had proposed even 13.10.2015! - invited Italgasbeton lawyer to submit a new request to advance the audience.
- 2012:** on 3rd February, the Court of Appeal of Rome rejects the request to advance the audience fixed on 10.13.2013 because "*the collegiate audiences closer in time are already committed to the processes of greater seniority of registration and the load of roles of each judge does not allow the inclusion of other causes*" (cfr.: see annex "2° rigetto istanza anticipazione udienza ")
- 2012:** on 29th March, the **Presidency of the Council of Ministers** "*focuses on the judicial affairs of the company*" and urges the Ministry of Justice and the Ministry of Economic Development to follow the case "*with the request to provide response to the company and to keep it informed of future developments*" (cfr.: see annex "risposta Presidenza Consiglio dei Ministri")
- 2012:** on 30th March, eng. U. Ceccarelli asks a meeting to the justices of the 3rd Division of the Court of Appeal of Rome and pleads the request to advance the audience, because if time still runs the company could fail and over 150 direct and indirect jobs could be losen. The president and the councilors listen to and invite to submit a new instance of anticipation, (cfr.: see annex " promemoria colloquio in Corte d'Appello ")

- 2012:** on 29th May, a new instance is presented to anticipate the audience to terminate the proceedings vs. Assitalia; perhaps as a result of the various interventions carried out, the Court of Appeal of Rome **anticipates the audience on 30.11.2012**
- 2012:** on 21st June, a parliamentary interpellation is presented to the Government, signed by 39 parliamentarians, bothering with Italgasbeton situation and positions against Assitalia and RDB SpA, (cfr.: see annex " Camera dei Deputati Seduta pubblica"); through MiSe - Ministry of Economic Development - **the Government** provides explanations and "guarantees" intervention on behalf of the company (cfr.: see annex " MiSE risposta ad interpellanza urgente")
- 2012: on 30th November, the Court of Appeal of Rome gives 60 days + 20 days to the parties to discuss the conclusions to terminate the proceedings vs. Assitalia
- 2013:** on 1st March, the Court of Appeal of Rome, "*after reading the legal proceedings,*" (forgetting the **Arbitration Award** made unanimously by the Board of Arbitrators in 2008 and the judgment of 1st degree in 2010 where Assitalia is condemned to damages), believes "*that it is necessary to carry out technical consultancy*" and issues the decree to start an investigative phase, setting the C.T.U. on 03.05.2013, (cfr. : see annex " ordinanza di rimessione")
- 2013:** in October, the C.T.U. of the proceedings against Assitalia settles his expertise where he states that "*autoclave n. 5 is really burst, as all physical phenomena that have occurred are typical of a burst*"; he recognizes that "*Italgasbeton, even with good care, never could easily become aware of the diversity . . . Those, instead, who could point out such differences were ISPELS and the autoclave inspectors, but this thing has not happened . . . much more difficult was to point out the use of a steel with different characteristics . . . only metallographic investigation could highlight the differences*"; he confirms the damage quantified by the Board of Arbitrators in 2008 noting that "*the real damage incurred by Italgasbeton is certainly more consistent, especially for the production stop and the sales stop, for the many financial expenses incurred to repair the facility and to resume the production, for the impossibility to develop the company . . and/or to develop new facilities abroad,* (cfr.: see annex "CTU di ing. A. Ricciardi")
- 2013:** on 13th December, the Court of Appeal of Rome finally puts in decision the proceedings against Assitalia and BNL. It should be noted that on 28th November 2013, the Court of Appeal of Rome accepts the request of Councillor Angelo Martinelli's abstention from the proceedings, so the admission to decision "sees" a new College, renewed for two thirds. At the audience, the advisor judge dr. Lo Sinno voices aloud with blame tone to the new President of the Court, facing engineer Ceccarelli, "*that man writes!*", citing the 3rd event indicated in the letter sent by eng. Ceccarelli to the highest Italian Institutions to highlight some of the events that occurred during the various stages of the proceedings at the Court of Appeal of Rome
- 2014:** on 16th April, is presented to the Public Prosecutor's Office of Rome, first acts Protocol n. 063110, the **expose against adv. Gregory / Assitalia** for offenses: slander / art. 368 + defamation / art 595 Criminal Code
- 2014:** on 2nd May, comes the "**disconcerting**" judgment of the Court of Appeal in Rome that contains motivations, as well as being unfounded and not understood in legal terms, do not correspond to the historical reality of the event.
- The Court, going into technical arguments totally inaccurate (cites the phenomenon of "radial fatigue" !? to recognize that the policy does not cover the disaster - not recognized as burst!), arrives to claim that in the autoclave there was not water in the liquid phase. Court's**

persuasion is irrefutably denied per tabulas. To reject the right of Italgasbeton and to accept the question of the insurance companies, the Court considers as gold the arguments put forward by the C.T. of insurance groups, who distorts reality by ignoring the presence of water. But yet the C.T. himself recognizes the presence of water in page 5 of his report and describes the event that occurred in page 23 in the correct way defining flashing explosion! In any way the “disconcerting” judgment considers the valuations of the technicians who have cited Literature and Science on the matter. Yet, what is more serious and heavy is that the “disconcerting” judgment does not consider the valuations and conclusions of the C.T.U. of the Court of Appeal itself! (cfr.: see annex “confutazione del convincimento della Corte”)

2014: in October, starts the appeal in the Supreme Court against the "disconcerting" judgment of the Court of Appeal of Rome, (cfr.: see annex “ricorso in Cassazione”)

2016: with n° 668/2016 judgment, the Supreme Court quashes the "disconcerting" judgment of the Court of Appeal in Rome because **it violated 4 articles n° 1362, 1363, 1367, 1370** of the Civil Code and refers to a new Court of Appeals of Rome, (cfr.: see attached “sentenza Cassazione n° 668-2016”)

The 668/2016 judgment is law-school!

It states in point 5.7 of page 22 that **"in presence of ambiguous clauses the judge must to interpret them against the predisposing, pursuant to art. 1370 of the Civil Code"**, (cfr.: vedere allegato “articolo su giuricivile, rassegna di diritto e procedura civile”)

So Italgasbeton must be repaid by Assitalia-General undoubtedly, (and BNL must recognize this Italgasbeton right, when anybody interprets the terms of the contract drawn up by BNL).

2016: On June 28, the Court of Appeal of Rome celebrates the hearing following the appeal launched by Italgasbeton; unfortunately, because BNL artfully launched two other petitions on the same subject, the Court of Appeal of Rome - in the face of the claims of BNL which wants to consider its petitions - had to work for the reunification of the procedures and defer the hearing on October 25, 2016.

On 25 October the Court remands to the **next hearing of 12/05/2017!**

Last but not least, Assitalia refused the payment of the damages of 3 other events in 2006 and 2008, of which it had already signed the amicable settlement of the amount recognized for the damage (01.08.2006 complaint: event n° 820464 – amount 35,000 euro; 27.01.2009 complaint: event n° 804674 - amount 32,620 euro; 13.11.2006 complaint: event n° 820464 - amount 25,000 euro). At the Court of Rome, it has been also necessary to produce the spontaneous statements of the experts of Assitalia itself, where they certify they have verified the repair of damages suffered by Italgasbeton at the time. In proceeding n° 6769/2013 in the Court of Rome, in front of Italgasbeton entitled to a refund of three claims dating back to 2006 and 2008, Assitalia-Generali told the court that it wants to pay, but *"can not because BNL has placed the reserve to be paid to instead of Italgasbeton"*! Current proceedings in the Court of Appeal of Rome, R.G. to be defined: **the next hearing to be defined**

Such behavior is incomprehensible and contrary to the economic size as well as to the ethics of an insurance company like Assitalia - Generali is, (whose CEO, dr. Mario Greco and followings, pompously announced to the world yearly that *"the industrial income of General attests a positive trend, with a premium income of 70 BILLION euro and a net profit of 4.2 BILLION euro"*). Every year, Generali reports a net profit of more than 1 billion eur!

Except to imagine / to assume that it takes time in order to achieve the failure of Italgasbeton to reduce the due payment.

Italgasbeton complains therefore the behavior above described and continues to believe that there is Justice in Italy, as considers amoral but - above all - not worthy of an Insurance Company what Assitalia-Generali is making.

Another suggestive fact is that Banca Nazionale del Lavoro, into the proceedings at first instance, Supreme Court and Appeal, still asks the payment of damages. This is happening, despite this request has no legal basis and despite the bank is under civil proceedings and under investigation at the Prosecutor's Office of Rome as result of Italgasbeton's statement for the crimes of usury when the bank will take any money from Italgasbeton.

QUO USQUE TANDEM ABUTERE, ASSITALIA, PATIENTIA NOSTRA?
UNTILL WILL ASSITALIA ABUSE OUR PATIENCE?