

# Report of the Mater Dei Inquiry Board

Dealing with the investigation of recent findings and  
technical results concerning the construction of the Accident  
and Emergency Department at Mater Dei Hospital

June 2015



MINISTRY FOR ENERGY AND HEALTH

## Table of Contents

I. Preamble .....	3
II. Historical Background .....	6
III. Concrete and Design Specifications .....	8
IV. Present Day Technical Reports regarding concrete tests and design assessment .....	9
iAS Report .....	9
Arup Report.....	11
V. Documentation Reviewed .....	13
1. Present day technical reports .....	13
2. Relevant Contracts and Agreements .....	14
3. Monthly works progress reports .....	17
4. Concrete Tests .....	18
5. Other Reports .....	20
6. Project Management Office Correspondence and Certificates.....	23
7. Other correspondence.....	25
8. Minutes of FMSS and FMS Meetings.....	32
9. Development Permits .....	37
VI. Testimony of Witnesses Summoned .....	44
VII. Analysis .....	75
VIII. Civil and Contractual Responsibility .....	85
Contractor's Responsibility .....	85
Project Management's Responsibility .....	94
IX. Criminal Responsibility .....	95
X. Conclusions .....	96

# Mater Dei Inquiry

## I. Preamble

The Ministry for Energy and Health, in terms of Article 4 of the Inquiries Act (Chapter 273 of the Laws of Malta), constituted this inquiry board, hereafter known as the **Mater Dei Inquiry Board or MDIB**, to investigate recent findings and technical results concerning the construction of Mater Dei Hospital, with particular reference to the concrete strength of the columns found within Block D 1.1 and D 1.3 of the Hospital Block.

The remit of the Board included the following:

1. Establish a detailed timeline and sequence of events regarding the construction of Mater Dei Hospital;
2. Summon such witnesses, and request such documentation as the Board deems fit;
3. Assess and determine any potential civil and/or criminal liability and recommend appropriate legal action;
4. Prepare a report and detailed dossier of supporting evidence of the findings.

The timeframe for the conclusion of the Inquiry report was originally set for the 31<sup>st</sup> of December 2014. However, due to the voluminous and detailed nature of the task at hand, various extensions were requested and conceded up until the publication of this final report.

In compiling the present report, and in order to fulfil to the fullest extent its remit as above indicated, the Board has held the following sittings:

- **4<sup>th</sup> September 2014** – first meeting of the Board where the Minister of Energy and Health, Hon. Konrad Mizzi thanked the Members of the Board

for accepting their appointment and gave a basic description of events leading up to the constitution of the Board.

- **10<sup>th</sup> September 2014** – the Inquiry Board reviewed the preliminary findings to date and established a basic timeline of events outlined.
- **26<sup>th</sup> September 2014** –documentation was reviewed and analysed by the Board.
- **13<sup>th</sup> October 2014** – Arch. Martin Attard Montaldo, Project Manager, was called up as witness and duly notified, but failed to appear.
- **24<sup>th</sup> October 2014** – Arch. Albert Cauchi, Arch. Vince Cassar, Arch. Frank Cortis, and Arch. Martin Attard Montaldo called to give testimony. All witnesses summoned gave evidence save for Arch. Attard Montaldo who informed the Board that he was abroad on work related travel.
- **10<sup>th</sup> November 2014** – Arch. Joe Cassar, Arch. Peter Zammit, Arch. Richard England, Dr Joseph Fenech, Arch. Raymond Farrugia and Mr Emanuel Attard called up as witnesses. All witnesses summoned attended save for Arch. Prior to the sitting Joe Cassar and Mr Emanuel Attard who separately informed the Board that they would be travelling on the appointed day. Arch. Raymond Farrugia, Director General of Works Division was represented by Mr Peter Schembri, Senior Technical Officer Works Division.
- **17<sup>th</sup> November 2014** – Arch. Joe Cassar and Mr Emanuel Attard summoned to give evidence. Both attended.
- **10<sup>th</sup> December 2014** – Arch. Mario Grech, Arch. Paul Borg, and Mr Alfred Kitcher. Both Arch. Mario Grech and Mr Alfred Kitcher attended hearings. Arch. Paul Borg was indisposed.
- **22<sup>nd</sup> December 2014** – Arch. Martin Attard Montaldo, Arch. Paul Borg and Arch. Vince Cassar were called to give evidence. All attended hearings.
- **19<sup>th</sup> January 2015** – Hon. Minister Michael Farrugia, Dr. Louis Galea, and Arch. Albert Cauchi summoned. All attended save for Dr. Louis Galea who informed the Board by email that he would not be in Malta before the Easter Holidays.

- **9<sup>th</sup> April 2015** – Dr. Louis Galea summoned to give evidence.
- **15<sup>th</sup> May 2015** – Arch. Paul Camilleri, ex-President of FMS and Mr Brian St John, ex-CEO of FMS, summoned to give evidence. Mr St. John duly appeared before the board, however Arch. Camilleri informed the Board that due to health matters he could not attend.
- **19<sup>th</sup> May 2015** – Board visited Arch. Paul Camilleri's home to take his testimony.
- **29<sup>rd</sup> May 2015** – Mr Brian St John and Mr John Dalli summoned to give evidence. Dr Andrew Borg Cardona assisted Mr St John. Board also intended to take the evidence of Arch Paul Camilleri, however it was informed that he was indisposed due to health reasons.

During these sittings the above witnesses were summoned and questioned. Even though there may have been other witnesses that could have been called before the Board who may have shed some light on certain events, the Board felt that for the purposes of the Inquiry, it would have been more pertinent to identify and summon those witnesses who had intimate first-hand knowledge of the works, either due to their position within Government or their role in the construction or oversight thereof, otherwise the list of witnesses summoned would have been interminable. Having said that the Board wanted to ensure that, as far as it was possible, it had the best and most complete understanding of the facts. To this extent, time extensions were requested where they were deemed necessary in order to ensure that important witnesses heard. Reference is made to the letter, dated 24<sup>th</sup> May 2015, by which the Inquiry was informed by FMS President Peter Cordina that documentation requested by the Board on the 5<sup>th</sup> of December 2014 had been found in the Finance Department and had been passed onto the then Financial Controller but documentation was not forthcoming. Documentation concerned amongst others, the Project Closure Agreement and the ensuing works. Obviously this necessitated further time extensions. The resulting evidence from the witnesses' statements is dealt with in detail below.

Moreover, the Board has requested and reviewed an inordinate amount of documentation that is also detailed below. The relevant documentation is compiled in the dossier annexed to this report. The evidence seen and heard by this Board of Inquiry has been sufficient for the Board to reach its conclusions herein expressed. However, it is to be noted that some specific details still remain unclear. Most of the events concerning the scope of inquiry occurred circa twenty years ago and thus memories of witnesses have started to fade. Moreover, the documentation regarding the construction of the San Raffaele Hospital, today known as Mater Dei Hospital spans decades, amounting to literally thousands of documents, and has not been properly filed and kept in such a way as to facilitate research and retrieval.

The analysis made and conclusions reached by the Board are based solely on the documentation reviewed by it and testimony received.

## **II. Historical Background**

In the early 1990s the government of the day developed plans for the construction of the 480 bed specialised teaching hospital. It was to be modelled on the San Raffaele Hospital of Milan. For this purpose in 1991 the Italo-Maltese Monte Tabor Foundation was constituted and soon after the Foundation for Medical Scientific Services (FMSS) was set-up.

In 1993, the Monte Tabor Foundation was contracted to provide FMSS with the designs for the new hospital; to provide construction supervision services, and an agreement was also reached for Monte Tabor to take over operations of the hospital once complete. Representatives from the Fondazione Centro San Romanello di Monte Tabor and representatives of the Maltese Government constituted the Monte Tabor Foundation. The Monte Tabor Foundation appointed Ortesa Spa as designers of the project. Within the same year, the Project Management Office was set-up between the Malta University Services Ltd. and the Works Division.

On the 12<sup>th</sup> of September 1995, Skanska JV was awarded the contract for the construction of the hospital with works commencing on the 10<sup>th</sup> October 1995. By July 1996 levels 8 and 9 of Blocks D1.1 and D1.3 were by and large already constructed.

On the 26<sup>th</sup> October 1996, there was a change in Government and with it a radical change in policy and vision for the project. The new government of the day determined to expand the project into a general hospital to replace St. Luke's Hospital.

In February 1997, works were temporarily suspended pending fresh designs, but resumed in April of that same year.

Following a meeting between Prime Minister Dr Alfred Sant and Don Verze in April 1997, the relationship between the Government of Malta and Ortesa Spa was terminated.

On the 29<sup>th</sup> of January 1998, full development permission was granted for the construction of an additional floor on the existing structure together with a new wing to the hospital. However this expansion did not include any alterations to Blocks D1.1 and D1.3 as evidenced by plans attached to planning permission numbered PA 0135/98.

In 1998, following a call for tenders, Norman and Dawbarn were engaged as the designers for the new expanded hospital.

In September 1998, there was another change of government and soon after in December 1998, an MOU was signed with Skanska JV for the design, execution and completion of the new hospital. Negotiations started in earnest which led to the Design and Build Cost Plus Agreement dated 29<sup>th</sup> of February 2000.

In November 2000, PA 3856/99 was granted to construct additions to Blocks D1.1 and D1.3. A subsequent permit provided for the construction of underground service tunnels below the edifice.

On the 12<sup>th</sup> April 2005, the contract with Skanska JV was amended and the Cost Plus agreement was replaced with a lump sum contract. On the basis of this amended agreement, a Decision Group was constituted to oversee the finalization of the project. Parliamentary Secretary Tonio Fenech was appointed Chairman thereof on the 12<sup>th</sup> of April 2005. Minister John Dalli subsequently substituted him on the 28<sup>th</sup> May 2008.

Handing Over Certificates for Mater Dei were issued on the 29<sup>th</sup> June 2007. However, works were officially declared concluded on the 19<sup>th</sup> February 2009 by means of a Project Closure Agreement, subject to some variation orders included in this final agreement which was concluded by 2011.

### **III. Concrete and Design Specifications**

The relevant construction contract and design agreements and specifications indicate that the concrete strength of the columns across the whole site, including therefore Blocks D1.1 and D1.3, had to be of strength 30 MPa. For the avoidance of doubt, due to reference to different units in the report, 1MPa is equivalent to 1 N/MM<sup>2</sup>.

Regarding structural design criteria clause 3.5.2 – Seismic Load Criteria of Schedule B – Design Criteria forming part of the original design contract provided that “*Occupancy importance factors to calculate earthquake design loads shall be taken into consideration as applicable to the Maltese Islands*”. Clause 3.5.1 (A)(1)(c) – Seismic of Schedule C – General Design Criteria and Technical Guidelines confirmed that “*The requirements of Seismic Zone applicable for the Maltese Islands shall be used in design*”.

Interestingly, clause 3.4.6 – Provision for Expansion to Schedule B, above referred, provides that “*The site proposed shall allow for expansion above the floorspace proposed. It is prudent to allow the hospital structure to expand because of possible development of its role to include other activities not now identified. The hospital may, with time, achieve a wider community importance.*”



#### **IV. Present Day Technical Reports regarding concrete tests and design assessment**

The Board was in receipt of two distinct sets of technical reports concerning concrete strength found *in situ* in Blocks D 1.1 and D 1.3 one of which was compiled by Innovative Architecture Structures (hereinafter referred to as 'iAS') and the other by Ove Arup and Partners Limited (hereinafter referred to as 'Arup').

The Board is wary of attempting to paraphrase the technical assessment and conclusions of the report in order to ensure the integrity of the technical evaluation. To this end, the Board shall limit itself, as much as possible, to reporting the salient parts of said reports *verbatim*.

##### ***iAS Report***

The first report received was that prepared by iAS. The report provides a technical analysis of three sets of tests which had been carried out on concrete columns on site. These tests were administered by testing laboratories Terracore and Solid Base, both local facilities, and another set of tests carried out by Terracore and Celltest, the latter being a foreign facility. The scope of the report was to "*to determine that the current concrete quality in blocks D1.1 and D1.3 at Mater Dei Hospital matched those specified in the provided as-built drawings and specifications.*"

Some of the observations made during the extraction of the samples for testing included:

- *During extraction of the core samples, the core machine operators observed a variability in the time required for core extraction from one column to another.*
- *From a visual inspection of cores extracted from Block D1.3 Level 8 there appeared to be a degree of carbonation.*

- *From a visual inspection of the cores prior to and after crushing, the difference in colour and aggregate type indicated a variance in the constituent materials used within the concrete. The lighter concrete colour of some cores indicates a reduced cement content, while inspection of the aggregates indicates the use of a mix of weaker (Tal-Franka) and stronger (Tal-Qawwi) aggregates.*
- *From a visual inspection of the initial cores the presence of carbonation was noted. For this reason carbonation tests were carried out on a number of columns in block D1.3 Level 8. Table 7 shows the depth of carbonation observed in a number of columns. The depth of carbonation was observed to vary between 20mm and 55mm. Seven out of the ten sample locations exhibited a depth of carbonation greater than 40mm. In some cases the carbonation reached the layer of reinforcement that could lead to corrosion of said reinforcement and eventually spalling.*

From tests analysed by iAS it was determined that the areas exhibiting the highest degree of inconsistency and inadequacy were levels 8 and 9 of the blocks in question. In this regard the report states that *"The results obtained from testing the initial cores varied considerably from one another, having a maximum failure stress of 36.6N/mm<sup>2</sup> and a minimum of 9.7N/mm<sup>2</sup>. Due to the high degree of inconsistency and inadequate concrete performance at level 8 and level 9, further testing was required to confirm or otherwise the results of Phase 1."*

On the basis of detailed analyses of the tests carried out iAS concluded that:

- *From a total of over 60 cores in level 8 and over 50 cores in level 9, a high degree of variability was noted in the results attained. Corrected compressive strengths range from below C15 to over C35 in certain cases. This needs to be compared to original specified strength of C30.*

- *Comparing the results attained by solid base to those attained by Terracore a general increase in the strengths attained by Solid base can be noted. The reason for this cannot be clearly ascertained however it is likely that such increase can be due to a number of factors such as but not limited to machine operators, testing machinery used etc. Notwithstanding Solid base tests still exhibit a high degree of variability in their overall results. It is pertinent to note, as previously stated that both laboratories have confirmed that they have worked to within the tolerance allowed by relevant EN standards.*
- *Visual inspection of the various cores extracted has also confirmed a high degree of variability. Cores with lower strength tended to be whiter in colour, sometimes with aggregate easily loosened by hand. It was also visually noted that there is a variation in the aggregate of some of the cores. This has led the undersigned to believe that there is an inconsistency in at least one of the primary materials used in the mix, i.e. the aggregate. The quantity or location of this inconsistency cannot be ascertained at time of writing this report.*
- *Adopting the results attained from the various cores to determine the characteristic compressive strength of the structure through the relevant equations found in European Standards is not providing clear results which can be utilised. Terracore results position this strength in the region of C15 whilst results from Solid Base put forward a picture ranging from anywhere between C15 to C25. Based on the number of cores at hand, which is in the opinion of the undersigned a very good representative sample, one would not expect this range of variability. This variability could potentially be attributed to the considerable variance of results of the individual cores.*

### ***Arup Report***

The subsequent Arup report presented to the Board essentially confirmed the findings by iAS at least with regards to concrete strength. However the scope of Arup's report went further and an assessment of the structural design was made with a view of providing advice on the structural condition of the building.

Some salient observations made by Arup during their investigation of the site include the following:

- *We accessed the service tunnel to block D1.1 and found evidence of previous concrete repairs. Those repairs had not been effective in stopping corrosion of the reinforcement. As a result, corrosion of the reinforcement had continued, leading to spalling of the repair mortar and a progressive reduction of column capacity.*
- *From the petrographic examination it was noted that the concrete appeared generally porous. Site observations support this view.*
- *The Arup/ CRL tests in October 2014 similarly showed that in a significant number of test locations the carbonation depth was well advanced and had reached the depth of the steel reinforcement. This level of carbonation is considered high for good quality concrete of this age. Typically for concrete 20 years old carbonation would be expected to be less than 20mm.*
- *It is understood that concrete in Malta should contain only Tal-Qawwi aggregates. Visual inspection of the cores identified some inclusion of Tal-Franka.*

On the basis of the tests carried out by Arup with regards to concrete strength they concluded that:

- *High levels of carbonation can be attributed to the following;*
  - *Higher water : cement ratio*
  - *Poor compaction*
  - *Porous materials*

- *The characteristic strength as determined by core sampling (18MPa) is significantly below the specified design strength (30MPa). This is most likely due to poor construction (Aggregate type, water : cement ratio, poor compaction) and is not in Arup opinion a result of any deterioration over time.*
- *The durability of the structure is at risk due to the quality of the concrete. In particular columns in high humidity environments are at risk of corrosion to the reinforcement and a regular inspection and repair regime will need to be implemented.*

However somewhat more worrisome are the conclusions reached by Arup with regards to their assessment of the structural design. Succinctly, Arup found that the design, independently of the concrete strength found *in situ* failed to meet seismic load design criteria. This failure is naturally further exacerbated by the weakness of the concrete found in site.

In conclusion, with a view to simplifying the above technical considerations, both reports confirm that concrete strength found on site is measurably lower than that specified in the contract. Moreover structural analysis of the design carried out by Arup indicates that the design does not meet seismic design criteria and therefore fails to meet design requirements.

## **V. Documentation Reviewed**

In the course of its inquiry the Board has requested and reviewed the following documentation:

### *1. Present day technical reports*

As outlined above, the Board has been presented with two sets of technical reports. One compiled by Innovative Architecture Structures and another by Ove Arup and Partners Limited.

## *2. Relevant Contracts and Agreements*

- Contract No. SRH 001/93 – entered into by the Foundation for Medical Sciences and Services (hereinafter referred to as 'FMSS') and the Italo-Maltese Foundation Monte Tabor (hereinafter referred to as 'Monte Tabor') on the 9<sup>th</sup> of July 1993 and supported by a letter of intent signed on the 15<sup>th</sup> of July 1992. This agreement formed the basis of the design specifications upon which the design of the then San Raffaele Hospital was to be based. Moreover it was intended that Monte Tabor was to take over the operation of the hospital once constructed. However this part of the agreement never materialized in view of the fact that the relationship between the parties was terminated in 1997 as shall be detailed later on.
- Construction Supervision Contract – entered into by FMSS and Monte Tabor dated June 1994. The contract reviewed by Board was an unsigned copy of the agreement, as the original was not traced. Having said that, minutes of the 13<sup>th</sup> of July 1994 of the FMSS Board indicated that the contract was signed on the 2<sup>nd</sup> of June 1994. The scope of this agreement, as its title implies, was for the supervision of the construction works once commenced.
- FIDIC Construction Contract – entered into by FMSS and Skanska International Building AB in joint venture with Blokrete Ltd, Devlands Ltd. and Cassar, Grech, Ebejer and Partners, (hereinafter referred to collectively as 'Skanska JV') dated 12<sup>th</sup> of September 1995. This construction contract was the first agreement the main scope of which was the construction of what was known as the San Raffaele Hospital.
- Memorandum of Understanding for New Hospital Project: Malta – entered into by the renamed Foundation of Medical Services (hereinafter referred to as 'FMS') and Skanska JV dated 4<sup>th</sup> December 1998. Said MOU

provided that Skanska JV would be contracted for the design, execution and completion of the new hospital which is today known as Mater Dei Hospital. It further stipulated that the new contract would be an addendum to the FIDIC Construction Contract referred to above. Said MOU provided that FMS intended *"to enter into such agreement under the terms of which the Client will pay actual cost together with a management fee of 7.5%."* Moreover, the same MOU was accompanied by a Memorandum of Agreement wherein FMS agreed to pay directly to Skanska JV the sum of Lm 2,000,000 within 15 days from the signing thereof. It is to be noted that this MOU was retrieved from the FMS safe and kept apart from the rest of the documentation pertaining to the hospital project which, by and large, were stored in boxes in the FMS store. Upon collecting said document and inquiring as to the reason for its segregation the Inquiry representative was told that orders had been given for it to remain locked up in the safe. Nevertheless, no reasons therefor were forthcoming, though it is noted that same MOU was mentioned in the Design & Build Cost Plus referred to here under. Moreover, no mention of said MOU was found in the FMS Board minutes at the time of signing.

- Design and Build Cost Plus Agreement – entered into by FMS and Skanska JV dated 29<sup>th</sup> of February 2000. By virtue of this agreement, Skanska JV was contracted to take responsibility for both the design and execution of works on a cost plus basis which means that FMS was to pay Skanska JV all costs incurred plus a management fee as percentage of value of works.
- Amendment Agreement - entered into between FMS and Skanska JV dated 12<sup>th</sup> April 2005. Various changes were made to the Design & Build Cost Plus agreement particularly converting the contract into a lump sum contract. Furthermore the parties defined the expiration of the professional indemnity insurance that also covered guarantees on design, the

expiration of which was set at 21<sup>st</sup> March 2020 rather than 15 years following the issuance of the taking over certificate. Finally the contract also established a dispute resolution mechanism that involved the constitution of a Decision Group. In the event that agreement was not reached within the Decision Group both parties with a view to reaching an amicable agreement would appoint a senior executive. If all attempts fail the matter would be referred to arbitration.

- Terms of Settlement Agreement – Signed by Arch. Paul Camilleri and Lars-Erik Alm dated 26<sup>th</sup> December 2008 provide for the resolution of pending claims whereby FMS agreed to pay EUR 5,125,000 to Skanska JV. Skanska JV was to carry out certain works still pending at its own expense. The performance and retention bonds were respectively reduced to Eur 4,900,000 and Eur 2,100,000 from Eur 7,979,338 and Eur 3,494,060. Finally, a waiver of all other claims including future concerns, claims and disputes was provided for, however the rights under the Maltese Law were specifically retained.
- Draft Settlement Agreement – dated 21<sup>st</sup> January 2009 by and large embodied the terms found in the terms of settlement agreement, above referred. However various versions of this unsigned document were traced and it was finally converted into the Project Closure Agreement.
- Project Closure Agreement – entered into by FMS and Skanska JV dated 19<sup>th</sup> February 2009. In terms of this agreement both parties waived claims they had vaunted against each other; FMS issued variation orders in the value of EUR 5,125,000 to Skanska JV; and waived any present, past or future concerns, claims or disputes that the parties may have against each other.



### 3. *Monthly works progress reports*

Various works progress reports were reviewed with a view to establishing and ascertaining a basic timeline of the progress of works and to identify the timeframe within which the works subject to the inquiry were carried out.

From said progress reports it transpires that works had commenced on the 10<sup>th</sup> of October 1995. By and large the hospital site was excavated by other contractors. The whole site from its foundations was being built concurrently, in that the whole site was being built simultaneously rather than adopting a sectional completion approach. Specific reference to reports is made hereunder:

- Report dated 18<sup>th</sup> December 1995 covering the period between 10<sup>th</sup> October 1995 and 30<sup>th</sup> November 1995 – During this period an overall survey of excavation works done by others was carried out. Some additional excavation works were carried out including area D 1.1.
- Report dated 10<sup>th</sup> January 1996 covering the month of December 1995 – Works on the temporary offices and the gate house were completed. Further excavations were carried out and concrete to foundations in areas D1 and C1 were cast.
- Report dated 6<sup>th</sup> February 1996 covering the month of January 1996 – Excavation for external drainage system was carried out including D1.1 and D1.3. Lean concrete was cast in certain areas including D1.1 and D1.3. Concrete and reinforcement for footings and columns in D1.3 was carried out.
- Report dated 5<sup>th</sup> March 1996 covering works carried out in the month of February 1996 – Lean concrete was cast and reinforcement for external walls of area D1.1 was carried out. Concrete and

reinforcement for columns in area D1.3 were cast and put in place, and reinforcement of internal and external walls for same area was carried out.

- Report dated 3<sup>rd</sup> April 1996 for works carried out in the month of March 1996 – Concrete Columns at 2<sup>nd</sup> basement level, or level 8 as referred to today, for area D1.3 were completed.

The Board retrieved other sparse progress reports, however these do not cover the entire hospital construction in a chronological sequence; reports of the latter type could further provide clarity to the exact timeframes of construction. What was somewhat evident from said reports is that construction of the D1 area was one of the first to commence and in a more advanced stage compared to other areas.

#### *4. Concrete Tests*

Copious concrete tests as carried out during construction were reviewed in order to further ascertain timeline of specific concrete works and in order to be able to make the necessary comparisons with present day technical reports.

Extensive concrete tests spanning the months from January to September 1996 were traced and reviewed. Particular reference is drawn to the following:

- Concrete Cube Crushing Test carried out by Skanska JV dated 20<sup>th</sup> February 1996 for concrete places in columns in area D1.3 at -7.33 level. Supplier of concrete was Mixer Ltd bearing truck registration number K 0347. On the basis of 3 cube tests, 28 day test results indicated an average on 30.2 N/MM<sup>2</sup>. Samples were collected by a certain Mr Alphonse Borg and tested by a certain Mr A Caruana.

- Concrete Cube Crushing Test dated 26<sup>th</sup> February 1996 for concrete places in columns in area D1.3 and D1.4 at -7.33 level. Supplier of concrete was Mixer Ltd bearing truck registration number LAC 127. On the basis of 3 cube tests, 28 day test results indicated an average on 31.5 N/MM2. Samples were collected by a certain Mr Alphonse Borg are tested by a certain Mr A Caruana.
- Concrete Cube Crushing Test dated 1<sup>st</sup> March 1996 for concrete places in columns in area D1.3, D1.4 and D1.5 at -7.33 level. Supplier of concrete was Mixer Ltd bearing truck registration number LAC 127. On the basis of 3 cube tests, 28 day test results indicated an average on 43.55 N/MM2. Samples were collected by a certain Mr Alphonse Borg and tested by a certain Mr A Caruana.
- Concrete Cube Crushing Test dated 28<sup>th</sup> May 1996 for concrete places in columns in area D1.3 at -4.73 level. Supplier of concrete was Mixer Ltd bearing truck registration number LAC 127. On the basis of 3 cube tests, 28 day test results indicated an average on 38.53 N/MM2. Samples were collected by a certain Mr Dean and tested by a certain Mr  

Mr
Kitcher.

The above indicated that at time of testing, and not necessarily at moment of casting, all concrete samples met the contract specification levels. Moreover, those same tests tend to confirm that the works on the concrete columns in levels 8 and 9, at least in area D1.3, started in February 1996 and continued definitely until May of that same year. Furthermore, it seems that most concrete placed in columns was provided by Mixer Ltd, even if other suppliers including Maghtab Construction Ltd, Blokrete Ltd and Devlands Ltd provided concrete and concrete based materials to the site. Therefore it cannot be ascertained with certainty that all concrete

placed in the columns of areas D1.1 and D1.3 originated from one supplier.

### 5. *Other Reports*

Various internal reports were reviewed, chief amongst them reports prepared by Bovis Europe which had been appointed by the Ministry of Finance mid-1996 to audit the project particularly from a financial perspective, Ortesa Spa who were originally subcontracted as designers of the then San Raffaele Hospital by Monte Tabor, and Architect Vince Cassar, then Director of the Works Department who was brought in to help steer the project by Minister for Health at the time, Dr Louis Galea.

Specific reference is made to the following reports:

- Status Report dated 26<sup>th</sup> May 1996 compiled by Mr Emanuel Attard FMSS Chief Executive. Said report raises concerns regarding the Ortesa design and construction supervision contracts' implementation and interpretation. It indicates that at the time of construction the design contract was not yet finalized and had to be so finalized by mid-July. It outlined various meetings held with a view to finding a solution to the outlined problems. It further indicates that works on Block D1.1 had one week left till completion, with photos showing it was at an advanced stage. Outlines further show that general works were approximately six weeks behind schedule mostly due to the contractor's slow mobilisation, design problems and unforeseen ground conditions. An attached programme of works indicated that the complete structural works for the whole of the Main Hospital Block, that is Block D were to be complete by February 1997.
- Report by Bovis Europe dated 8<sup>th</sup> July 1996 covering the period up to June 1996, titled Project Audit Report – Number 1. Under section headed Quality of Works, Bovis Europe reported that "*Quality*

*standards and control do not appear to meet the requirements of such an important project. For example, whilst the general standard of concrete surface finish on vertical surfaces and soffits is good, bad practices in concrete placing have been noted which could lead to durability problems.*" In its subsequent report Number 2, Bovis Europe noticed no improvement in the quality of works on site.

- Final Structural Design Review undertaken on the 22-26<sup>th</sup> July 1996 prepared by Ing. Albert Cauchi, Structural Discipline Leader and Ing. Denis Camilleri. This report was intended to be the final review of the structural designs prepared by Ortesa. In its summary and recommendations the reviewers determined that design was in conformity with what is normally presented by a structural design office though it lacked (a) co-ordination with other disciplines like architecture, mechanical and technical drawings; and (b) quality checking of drawings. The design package presented lacked quality assurance, however it was noted that the contract with Ortesa did not specifically mention quality assurance procedures. Reviewers determined that up to date of issue of report Ortesa had answered most uncertainties on drawings and Skanska JV had carried out its own quality checks. However they recommended one of two options: (1) a quality assurance procedure be carried out by an independent company; or (2) alternatively, another milestone, say two months, is given to Ortesa to complete designs following Skanska's questions. Option 1 was preferred, however evidence and documentation indicates that it was not adopted by FMSS.
- Confidential Report prepared by Architect Vince Cassar addressed to Hon Dr Louis Galea dated 9<sup>th</sup> September 1996. In this report Mr Cassar details his assumed role in the project after he was requested to intervene by the Minister and Fr Peter Serracino Inglott sometime in

July 1996 in order to tackle out problems and difficulties that the project was facing. Mr Cassar states that the reasons for compiling said report as he felt that the *"situation as it stands at present is one which poses a certain amount of preoccupation and there are crucial decisions to be taken by the Client which will definitely effect the success or otherwise of this project."* Moreover he states that the report was being presented at the forthcoming FMSS meeting on the 10<sup>th</sup> of September and the meeting to be held on the 12<sup>th</sup> of September with the Prime Minister.

Mr Vince Cassar proceeds to outline his main concerns being that (a) the Client was not fulfilling his obligations as it was clear that the design at the time was not yet completed; (b) the Contractor was at fault as the works were not progressing at the rate necessary to meet contractual deadlines and instances of poor quality and workmanship were also evident; and (c) the Project Manager was not exercising his full responsibilities and authority.

Mr Cassar presented the Minister with two Options intended to resolve matters: either to continue with the designs drawn up by Ortesa and with the Contractor limiting its request for information to the essential, or otherwise to commission a detailed study and review of the drawings and design, make the necessary adjustments, and issue correct drawings and designs. Ominously he warned that if Option 1 was availed of, that is to maintain the status quo: *"besides giving rise to further innumerable Request for Information (RFIs), claims for extension of time and extra costs could result in having a building not a hospital – with a number of services thrown in, with problems at commissioning stage – assuming that commissioning can be done – and thereafter with rampant maintenance problems"* (emphasis added).

## **6. Project Management Office Correspondence and Certificates**

Various correspondence and certificates issued by the PMO were reviewed, including instruction to Contractor and Interim Payment certificates issued in terms of the 1995 construction contract. Specific reference is made to the following:

- Skanska JV request dated 4<sup>th</sup> January 1996 for approval by PMO of Mixer Ltd as concrete supplier for concrete to be supplied as per specification 03300.
- Minutes of Technical Meeting No. 19 dated 3<sup>rd</sup> April 1996 concerns were raised regarding the quality of Concrete Test Results. Minute 7.2 provides that *"A discussion followed regarding whether the results were within specification or gave rise to concern. MS questioned the procedure for making the cubes and whether segregation was occurring in the wheel barrow. RA stated that they took concrete quality very seriously especially because of the slipform. RA believed the results were within specification but they would investigate the analysis and see how quality may be improved. MS concluded that he was very concerned about the consistency of the test results even within batches."*
- Interim Payment Certificate Number 7 dated 27<sup>th</sup> May 1996 which included a payment certificate of extensive works on columns of area D 1.3.
- Letter dated 11<sup>th</sup> July 1996 issued by Ortesa and addressed to PMO – Following a site inspection carried out by Ortesa on the 9<sup>th</sup> of July 1996 numerous concerns with the situation on site were raised. Principally (a) that *"quality of works totally insufficient and not acceptable in many*

areas" (emphasis added); (b) lack of site security; and (c) lack of proper site order and maintenance. The letter was accompanied with various photos evidencing, according to Ortesa, poor quality of reinforced concrete work and compaction, bad levels of cast concrete in walls, and bad positioning and alignment of predalles. Area D1.3 featured on more than one occasion in the photos evidencing bad workmanship.

- Letter dated 2<sup>nd</sup> August 1996 issued by PMO in reply to Ortesa's letter referred to above. Specifically with regards to quality of works, PMO replied that whilst there was room for improvement, to their considered opinion quality was considered generally good. Somewhat tongue in cheek they further added that "*I would also add that whilst we appreciate Ortesa's advice on the quality of works... it is not acceptable that Ortesa make these observations 9 months after the commencement of works. Where have Ortesa been these last 9 months?*" PMO reiterated that action had been taken to penalise the Contractor for the lack of progress and for the poor quality of works, however the quality of design by Ortesa also left a lot to be desired.
- Letter dated 28<sup>th</sup> August 1996 from Ortesa to PMO in response to the above referred letter. In a strong worded letter Ortesa retorted that "*In our report we wrote that "quality of works (is) totally insufficient and not acceptable in many areas". This does not mean that quality of works is not acceptable everywhere, but that in many areas it is insufficient and not acceptable. We also attached photographs with evidence of that. If PMO does not agree with our evaluation and is satisfied with the quality of works everywhere, this means that the PMO will bear the responsibility for those decisions towards the FMSS.*" Reference to various other correspondence where Ortesa raised similar concerns with PMO was made, however they were not found by the Inquiry.



- Letter dated 5<sup>th</sup> September 1996 issued to FMSS – PMO informed FMSS that 21 columns in the C1 area did not satisfy the construction tolerances for plumb as specified in the Contract. Four columns had already been demolished. Ortesa were suggesting that 13 columns should be demolished and the remaining 8 be paid at a reduced rate of 75%. However, PMO determined that such a measure would be excessive and impractical, and only 3 columns be demolished and the rest paid at a reduced rate of 75%.
- Letter dated 10<sup>th</sup> December 1997 issued to Skanska JV – the letter reads verbatim as follows *"We refer to your letter Ref. JT/jt/SPM/2682 dated 21 November 1997. Please be informed that since the contents of our letter referenced W2/CH000702.DOC dated 10<sup>th</sup> May 1996 are in order, we feel that the need has now arisen to test 1 cube out of every 5 cubes at Kordin laboratories. You are to comply with this instruction with immediate effect."* However attempts to find the correspondence referred to in order to better give context to this letter proved futile.
- Letter dated 16<sup>th</sup> January 1998 issued to Skanska JV – wherein concerns were raised regarding concrete crushing tests issued by Skanska JV. Particularly, the letter states *"We note that the 7 day tests depart from the traditional 67% of 28 day strength indicator... We further need explanation as to how the 7 day and 28 day tests of Test No. 638 are almost identical. In sample 624 a 7 day test is higher than a 28 day test."*

## **7. Other correspondence**

Correspondence between various entities was reviewed. Particular reference is drawn to the following exchange of correspondence between the referred entities:

- Letter dated 17<sup>th</sup> of July 1996 sent by Ing. Carlo Mereghetti to Don Verze,. He referred to his private note dated 3<sup>rd</sup> July 1996 (a copy of which was not traced) and his trip to Malta between the 9<sup>th</sup> and 11<sup>th</sup> of July 1996. He exclaimed that *"Lo stato del cantiere e assolutamente inaccettabile."* He complained that works were in delay and the Contractor did not seem to have the human resources to remedy the situation. Moreover he explained that there was lack of site security, *"la qualita del prodotto, per alcuni versi scadente, per altri addirittura inaccettabile"*, and of lack of site order and maintenance.

Somewhat ominously he opined that *"L'impressione personale che nasce da questi fatti e che l' impresa abbia ormai "tirato i remi in barca", abbandonando qualsiasi tentative di riorganizzazione del cantiere e stia solo aspettando il momento piu opportune per presentare le sue reserve e richieste di Danni, che saranno sicuramente altissime. **Momento che potrebbe essere deciso in base a considerazioni non solo tecniche, ma anche politiche.***

*Sono molto preoccupato in quanto ritengo che tutte le colpe siano state fatte ricadere su ORTESA quale capro espiatorio di una situazione che, come le ho spiegato nella mia nota, e molto piu complessa e con responsabilita diverse. Purtroppo fino ad ora la documentazione ufficiale prodotta a sostegno di questi fatti non sembra sufficiente e non evidenzia tutte le carenze e le mancanze dell' impresa.*

*In questo momento sarebbe fondamentale un' azione forte da parte della direzione lavori per costringere l' impresa a lavorare dove puo, mettendola in mora per i ritardi, e lasciando da parte equilibrismi contrattuali e bizantinismi inutile.*

*Ritengo invece che l' attuale atteggiamento della direzione lavori di non prendere decisioni operative in tempi adeguate e di fatto di scaricare tutte le responsabilità sui disegni di progetto, non corrisponde ad una corretta gestione del cantiere e può addirittura danneggiare ORTESA.*

*La situazione è molto delicata e credo bisognerà valutare l' eventualità di dissociare formalmente le nostre responsabilità da quelle della direzione lavori, della quale contrattualmente dovremmo fare parte integrante.*

*Data la gravità della situazione ho ritenuto opportuno sottoporre queste considerazioni alla sua attenzione, in modo che facesse le valutazioni necessarie."*

- Report dated 3<sup>rd</sup> December 1999 sent from Emanuel Attard, FMS CEO to Arch. Martin Attard Montaldo, Head Engineering Operations New Hospital Project, detailing the state of negotiations with regards the Design and Build contract. Point 3.02 of the report with reference to a report drawn up by the on site team stated that *"the report by the on site team indicates that there are serious concerns in the designs submitted by Skanska vis-a-vis their meeting the requirements of F.M.S. The report details weaknesses in the following areas: ... Structure..."*. The report in its conclusions also pointed out that *"A most important factor which we feel should be brought to the attention of the Board and more importantly to the New Hospital Cabinet Committee is the crucial subject of Contract Cost which according to the attached report can reach a best and worst position of Lm 105 million and Lm 122 million respectively, without taking into account purchase of equipment."*
- Letter dated 20<sup>th</sup> January 2000 issued by Arch. Martin Attard Montaldo, Client's Representative to Skanska JV detailing the structural and seismic

resistance design parameters. Notably with regards the Seismic Parameters a design load factor of 1.4 was identified.

- Letter dated 12<sup>th</sup> April 2005 sent by Parliamentary Secretary Tonio Fenech to Skanska JV. Referring to the 2005 Amendment Agreement, Hon Fenech informed Skanska that the Government of Malta was nominating Hon. Tonio Fenech and Arch. Paul Camilleri, and FMS was appointing John Barr, Project Director, and John Wilson, Project Manager. Furthermore he informed them that the Group was to convene monthly until the Time for Completion and thereafter by agreement.
- Letter dated 28<sup>th</sup> May 2008 sent by Arch. Martin Attard Montaldo, Client's Representative to Skanska JV whereby he informed the latter that with regards the Decision Group, Government was appointing Minister John Dalli to replace Minister Tonio Fenech and reconfirming Arch. Paul Camillier, and FMS was appointing Arch. Martin Attard Montaldo and Jack Story in replacement of John Wilson and John Barr.
- Letter dated 5<sup>th</sup> December 2008 sent by Skanska JV to Minister John Dalli, Arch. Paul Camilleri, President FMS, and Arch. Martin Attard Montaldo, Client Representative FMS. The letter details that following the failure to reach a settlement of pending claims within the Decision Group, Skanska was escalating the matter to Senior Executive level in terms of clause 2.1.71 of the Amendment Agreement, and was appointing Mr Lars-Erik Alm as its representative, with the first meeting between such Senior Executives to be held on the 16<sup>th</sup> of December 2008.
- Email dated 21<sup>st</sup> January 2009 sent by Arch. Paul Camilleri to legal counsel and copied to Brian St John, Martin Attard Montaldo and Alison Aquilina. Email included the following attachments:

- Copy of Terms of Settlement Agreement signed on the 26<sup>th</sup> of December 2008;
- Draft Settlement Agreement as proposed by Skanska JV. One notes that the recitals in the draft agreement clearly explain the intention of the parties framing the agreement as a compromise agreement. However these recitals are ultimately radically changed in the Project Closure Agreement. Furthermore up to this point the Eur 5,125,000 to be paid to Skanska JV was still by way of claims settlement rather than variation orders;
- Skanska JV Comments to the proposed Settlement Agreement, wherein Skanska points out that the Waiver clause in the draft Settlement Agreement was modified and extended from that agreed in the Terms of Settlement Agreement. This extended waiver clause is ultimately retained in the Project Closure Agreement.

Paul Camilleri tells legal counsel that he has various points with which he is not in agreement and which he wishes to discuss during a meeting they were to have.

- Email dated 21<sup>st</sup> January 2009 sent by Arch. Paul Camilleri to legal counsel and copied to Brian St John, Martin Attard Montaldo and Alison Attard, wherein Paul Camilleri tells recipients *"Please find attached a slightly amended terms of settlement agreement which I shall be signing with Lars-Erik Alm today. I have effectively removed the word claim and replaced it with 'variations order/s'".* Attached with said email was another version of the Terms of Settlement Agreement with the amendments above indicated.
- Email dated 5<sup>th</sup> April 2009 sent from Paul Camilleri, President FMS, to Minister John Dalli wherein he states that *"I realize that I have not communicated with you directly regarding the closure of negotiations with*

*Skanska, despite the fact that Brian advised me that he had briefly informed you about it. I feel that the agreement we reached is, by far, a much better conclusion than that which was proposed and rejected by Skanska, albeit informally, in late 2007/early 2008. Your clear direction and backing were extremely important in our achieving this result. Just in case you had not been forwarded a copy of this 'Project Closure' agreement, I am attaching herewith a PDF copy thereof."* He then proceeded to give a general overview of the terms agreed. Of particular relevance is the following passage: *"In general, FMS accepted works which albeit not being in full accordance to contract specifications, still carried out their intended function – and, in any case, these had been supervised by FMS's staff for the years it took to build the Hospital. As such the ceding of these points, besides being weak to defend in an Arbitration Tribunal (due to the tacit approval by the site staff), will not impinge on the Hospital's efficacy."*

- Letter dated 3<sup>rd</sup> March 2011 issued by FMS to Skanska JV outlining that during a routine inspection, extensive structural problems were noted in the water reservoirs. Skanska JV was directed to carry out tests in order to ascertain the root cause of the defects. Moreover Skanska JV was informed that unless a reply was received within 10 days from issuance of the letter, FMS would take legal action in terms of Maltese Law.
- Legal Advice remitted on the 1<sup>st</sup> of April 2011 by FMS legal counsel regarding the position at law with regards to the defects identified in the reservoirs, wherein counsel with reference to Articles 1725 and 1726 states that *"in my view, these Articles in the law could give FMS sufficient ground to argue that clause 9.1 should not debar FMS from raising additional claims at this point."*

- Undated and unsigned notes on legal advice above referred wherein the author of such notes comments that whilst legal counsel *"has scrutinized the Project Closure Agreement and concluded that there may be remedies under the Civil Code, SMJV will argue with some conviction, that the intensions of FMS and SMJV in the Project Closure Agreement is for all claims "past, present or future" to be waived"*.
- Letter dated 26<sup>th</sup> July 2011 issued by Chris Klement on behalf of Skanska JV to FMS. Attached to the letter was a report drawn up by DeMicoli and Associates and concrete tests carried out by Solid Base which concluded that concrete strength at 20MPa was lower than that expected in such conditions. However Skanska JV reiterated that *"Any obligation that may have existed for SMJV to rectify the defects, as highlighted in the attached report, was waived by FMS through clause 9.1 of the Project Closure Agreement"*.

The attached DeMicoli and Associates report with regards to Structural Observations stated that:

*In this report some deductions regarding the mechanisms behind the observed effects are made:*

- *Quality of workmanship: Cover to all steel varying between 16 mm and 86 mm.*
- *Low compressive strength for the RC ground slab underlying the existing concrete screed.*
- *Concrete is carbonated in some areas.*
- *Amount of chloride content is low.*

*The preliminary results indicating low compressive strength represent the biggest issues in the test results. This is not in accordance with the grade of concrete that has been specified at design stage which is 30N/mm<sup>2</sup>. Furthermore during the concrete core extraction it transpired that the sub*

*floor was separated from the ground slab by about 20 to 30 mm. The cover to the concrete is also not in accordance with the specifications (at some locations) since this is supposed to be 30 mm.*

*The report mentions the high proosity of the aggregate used. This, together with the low compressive strength of the concrete floor slab and cracks result in the fact that the floor slab allows ingress of water."*

*In fact the SolidBase test report states that "The concrete forming the floor slab was found to be 20 N/sq mm in strength. The pictures illustrated below show that the concrete is composed, amongst others, of local aggregate which is usually high in water absorption."*

- Letter dated 24<sup>th</sup> November 2011 sent by Brian St John to Paul Camilleri, CEO and President of FMS respectively, wherein Brian St John was requesting the concurrence of Paul Camilleri that the pending balance of Eur 200,000 be released to Skanska JV. He explained that the funds were retained due to the defects found in the reservoirs that were constructed in February of 1996. He stated that *"The FMS, however, sought legal advice regarding this situation and legal counsel concluded that pursuing the line of attempting to get SMJV to resolve the problem was not a recommended way forward."* Thus in light of the above he felt that monies be released in favour of Skanska JV.

## **8. Minutes of FMSS and FMS Meetings**

Minutes of FMSS and FMS board meetings covering the period 1991 to 2002 were reviewed by the Board. The original composition of the FMSS Board was as follows:

Hon Dr Louis Galea – President



Hon Prof John Rizzo Naudi – Vice president  
Rev Fr Charles G Vella – Vice President  
Hon Dr Antoine Mifsud Bonnici – Hon Secretary  
Mr Edwin Vella – Hon Treasurer  
Prof Frederick Fenech  
Rev Prof Peter Serracino Inglott  
Mr Maurice Zarb Adami

Through the years 1991 to 1996, the composition changed somewhat. However Hon Dr Louis Galea remained president of the foundation throughout. Following the September 1996 General Election, on the 6<sup>th</sup> of December 1996, the composition was radically changed whereby Mr Mario Cacciottolo was appointed President, Mr Joe Barbara and Mr Alfred Vella appointed Members. Once again on the 22<sup>nd</sup> of July 1997 Board was completely recomposed with Mr Alfred Sladden being appointed President, and again on the 3<sup>rd</sup> of March 1999 with Dr J Pace being appointed President, and finally in 2005 Arch. Paul Camilleri for the remain period under review. Copies of minutes were always sent to the Ministers responsible.

Whilst it is not deemed fruitful that the full extent of the minutes review be paraphrased for the purposes of this report, some noteworthy entries are being hereunder reported:

- The first board meeting of the newly constituted FMSS was held on the 27<sup>th</sup> of July 1991. The President Hon Dr Louis Galea gave a detailed overview of the raison d'être of the Foundation and the Government's policy vision for health services. Particularly, he gave an account of the relationship that had developed over a few years with the Istituto Scientifico ed Ospedale San Raffaele of Milan which was owned by the Fondazione Centro San Romanello di Monte Tabor founded by Prof Don Luigi Maria Verze. It was with this latter foundation that the Maltese Monte

Tabor Foundation was founded. It is not clear what led to the start of the relationship between the Maltese Government and Prof Don Verze and why the San Raffaele Hospital in Milan was chosen as a model. However, this relationship would have a deep impact on the outcome of the new hospital to be built in Malta as it ultimately led to the direct appointment of Ortesa Spa as designers of the project. It has been alleged with this Board that the Italian counterparts in Monte Tabor had direct interest in Ortesa Spa.

- Direct appointment of Mr Emmanuel Farrugia as Project Director as per minute in meeting of the 12<sup>th</sup> of August 1992. This appointment also ended in controversy later on particularly during the year 1994 with accusations being levelled against Mr Farrugia by the Leader of the Opposition that he had a conflict of interest as he had commercial interests with one of the participating bidders for the works contract of the new hospital. This accusation was originally made by Hon Prof John Rizzo Naudi internally. This controversy also led to Hon Dr Louis Galea offering his resignation to then Prime Minister Eddie Fenech Adami which was turned down.
- Meeting of the 15<sup>th</sup> May 1993 – Project Management Contract – minutes regarding an agreement with MUS Ltd, a company in which Government and the University of Malta held 90% of shareholding for the setting up of the Project Management Office together with the Works Division.
- Minutes of meeting held on the 29<sup>th</sup> May 1996 confirm that FMSS were aware that Bovis Europe were appointed by Ministry of Finance and that they were in receipt of reports prepared by them. Moreover minutes record an improved relationship between Ortesa and PMO.

- Minutes of 11<sup>th</sup> July 1996 minute that the Ortesa letter of that same day was discussed by the Board.
- Minutes of the 10<sup>th</sup> September 1996 report that the concerns raised by Arch. Vince Cassar in his account presented the previous day were discussed. Moreover meeting with the Prime Minister on the 12<sup>th</sup> of September was confirmed. No decision regarding the recommendations made by Arch. Cassar was taken.
- Minutes of the 4<sup>th</sup> of March 1997 confirming that on the 5<sup>th</sup> of February 1997 PMO had issued an instruction to the contractor to suspend works until 7<sup>th</sup> March 1997.
- Minutes of 17<sup>th</sup> April 1997 detailing how, following a meeting between Don Verze and then Prime Minister Dr Alfred Sant, the relationship with Ortesa was summarily terminated. Moreover a steering committee comprised of permanent secretaries of various Ministers was to take over the oversight of the new hospital project.
- Minutes of 3<sup>rd</sup> June 1997 stating that Architects England & England had refused to carry out minor design tasks in the absence of the Designers as they had pending payments but that they would continue visiting the site to cover their legal responsibility.
- Minutes of the 12<sup>th</sup> of June 1997 stating that steering committee was taking over completely all responsibility of the new hospital project.
- Minutes of the 3<sup>rd</sup> of March 1999 wherein reference to the MOU signed on the 4<sup>th</sup> of December 1998 is made for the first time.

- Minutes of the 17<sup>th</sup> of March 1999 – minute 202.05 explaining that in light of the new Design and Build Cost Plus contract to be entered into with Skanska JV the role of the PMO had become redundant and thus the relationship with MUS Ltd was to be terminated and certain select PMO personnel were to be directly recruited with FMS.
- Minutes of meeting of the 30<sup>th</sup> of March 1999 – minute 214.01 wherein concerns were raised regarding the costs being envisaged under the new contract and with regards to the composition of the 7.5% management Fee, Mr Spiteri Gingell intervened and stated that the pervious FMS Board members had advised against the Cost Plus Agreement.
- Minutes of FMS Negotiating Team Meeting of the 18<sup>th</sup> November 1999 - minute 3.14 and 3.15 wherein members of the negotiating team present *“unanimously agreed to call upon Skanska to deliver, both on the design and financial aspect.”* Mr Emanuel Attard also emphasized that the letter should highlight *“the lack of information being provided and the poor quality of design.”*
- Minutes of 1<sup>st</sup> December 1999 – minute 380.01 Design & Build Contract Update – Mr Rene Formosa, Chief Negotiator reported progress with negotiations emphasizing that the new contract was the end product of the Memorandum of Understanding signed with Skanska JV by previous FMS Board and that the present Board was merely executing this decision by negotiating and signing the contract on the best terms possible.
- Minutes of FMS Negotiating Team Meeting of the 21<sup>st</sup> January 2000 – minutes referred to critical issues still unaddressed, and which needed to be cleared before any form of contractual commitment with Skanska. These concerns included Seismic and Structural Requirements and Quality Assurance.

- Minutes of the 15<sup>th</sup> of January 2009 – minute 1722.02 SMJV Claim Status Update – Arch. Paul Camilleri, then President of FMS, gave an update on Skanka JV's pending claims. He reported that a Decision Group meeting, chaired by Minister John Dalli held on the 2<sup>nd</sup> and 3<sup>rd</sup> December of 2008 did not manage to reach a resolution to the matter. Thus in terms of the Contract, he was nominated as Senior Executive representing the Client in order to discuss the matter with his counterpart, Mr. Lars Erick Alm, appointed by the Contractor. Two meetings were held on the 16<sup>th</sup> and 17<sup>th</sup> December 2008 during which an agreement on principle was reached. Subsequently through an exchange of emails a tentative agreement was reached subject to FMS Board approval. The agreement was presented to the Board which the FMS Board approved and a copy was sent to the lawyers for review and elaboration into a formal agreement to be signed by the end of January 2009. However review of papers presented to the Board revealed that a copy of the agreement in question was not included in the Board papers. Moreover in another file titled Project Closure Agreement, another reproduction of minute 1722.02 was found however with a marked difference. Whilst the minute in the minute book states that the President presented the agreement and elaborated on the salient points, the one found the Project Closure file states that *"The FMS President read the draft agreement between FMS and SMJV."*

## ***9. Development Permits***

The following development permits were reviewed:

- PA 3879/93 – Full development permission granted on the 27<sup>th</sup> of May 1994 for the construction of roads leading to San Raffaele Hospital and excavation of site.

- PA 5115/93 – Outline development permission granted on the 2<sup>nd</sup> of May 1994 to construct, provide finishes and mechanical and electrical services and external landscaping for the San Raffaele Hospital.
- PA 3717/94 – Full development permission granted on the 28<sup>th</sup> of July 1994 to construct, provide finishes and mechanical and electrical services and external landscaping for the San Raffaele Hospital.
- PA 497/96 – Amending development permission granted on the 26<sup>th</sup> April 1996 for the construction and carrying out of alterations works. Amendments related to the construction management report, particularly the access to the site and for the relocation of the temporary site offices.
- PA 4083/96 – Renewal of permit PA 3717/94 granted on the 25<sup>th</sup> of November 1996.
- PA 0135/98 – Full development permission granted on the 29<sup>th</sup> of January 1998 for the construction of an additional floor on the existing structure together with a new wing to the hospital.
- PA 2256/99 – Full development permission granted on the 5<sup>th</sup> of August 1999 for the excavation of the service corridors.
- PA 2744/99 – Full development permission granted on the 30<sup>th</sup> of July 1999 for the construction of extensions to block D 5.3 and block B.
- PA 3387/99 – Full development permission granted on the 10<sup>th</sup> of September 1999 for the extension of Block D 4.2 and D 1.4.

- PA 3014/99 – Full development permission granted on the 14<sup>th</sup> of September 1999 for the carrying out of structural alterations and demolition works, specifically for the demolition of the chimney and roof of Block C 1.1.
- PA 3856/99 – Full development permission granted on the 8<sup>th</sup> of November 2000 to construct additions at block D1.1 and D1.3
- PA 6227/01 – Full development permission granted on the 4<sup>th</sup> of March 2004 to carry out an extension at basement level and internal and external alterations to PA 3856/99 including plant rooms at second floor level.

#### ***10. Documentation presented by witnesses***

Witnesses summoned before the Board have either freely or upon request by the Board presented various documentation for its consideration. Specifically the Board received from witnesses the following documentation:

- Arch. Vince Cassar 24<sup>th</sup> October 2014 –
  - Confidential Letter dated 9<sup>th</sup> January 1997 addressed to Hon Dr Michael Farrugia Minister of Health, Care of the Elderly and Family Affairs wherein he expressed his concerns about the project. In point 10.1 of his letter he explains that major concerns regard the quality of the design and Contractor's rate of work. He recommended that (a) Government is to seriously consider its relationship with Monte Tabor Foundation; (b) in terms of Clause 40 suspend the works contract; (c) formulate and approve a health sector development strategy; (d) following determination of point (c) review the design either through a new consultant or through Skanska JV; (e) terminate relationship with Bovis Europe; (f) following fulfilment of point (d) recommence works on basis of approved design; and (g) place project under direct Ministerial responsibility and appoint an ad-hoc inter-Departmental Board to look

after the interests of the project. Plans attached to the letter indicate that 1<sup>st</sup> and 2<sup>nd</sup> levels in blocks D1.1 and D1.3 were complete with slabs and columns.

- Confidential Letter dated 20<sup>th</sup> January 1997 addressed to Hon Dr Michael Farrugia Minister of Health, Care of the Elderly and Family Affairs wherein he outlined three options for the further expansion of the project with a view to changing the scope of the project from a specialized 480 bed teaching hospital to a 960 bed general hospital to substitute rather than compliment St Luke's Hospital. Options included a limited lateral expansion, vertical expansion by an addition of at least 2 further floors, and taking over more adjacent land. He recommended that a mix of all three options should be availed of.
- Three photographs taken in December 1996 showing state of construction of hospital.
- Copies of notes entitled Time Lines of San Raffaele/ Mater Dei Hospital, which he had consulted during his testimony given on the 24<sup>th</sup> of October 2014.
- Arch. Albert Cauchi 24<sup>th</sup> October 2014
  - Copy of a Memorandum dated 27<sup>th</sup> May 1997 sent to Arch. Attard Montaldo voicing his concern that the size and reinforcement of columns may not be able to take any extra loads resulting from the planned expansion of the hospital.
- Arch. Richard England 10<sup>th</sup> November 2014
  - In a letter to the Board, Arch. Richard England states that England & England's involvement in the project was terminated immediately following the change in Government in October 1996. Moreover, he



asserts that the present building is different to that constructed when he was architect on record and must in fact be a new building as the original design did not include any basement levels and consisted of solely one single floor. Photos were attached to the letter.

- Arch. Joe Cassar 25<sup>th</sup> November 2014
  - Presented a copy of an agreement dated 12<sup>th</sup> April by which Devlands Ltd and CGE Limited withdrew from Skanska JV. However all architectural warranties provided by Cassar Grech Ebejer Architects and Civil Engineers in the professional capacity as Architects under the contract remained valid and in full force.
  
- Arch. Mario Grech 15<sup>th</sup> December 2014
  - Letter explaining how, on advice received from the *Kamra tal-Periti*, the responsibility of original architects on record survives a change in architects so long as works carried out by the oncoming architects do not cause any negative impact to the integrity of the original structure. Moreover he stresses that an oncoming architect whilst having to ensure that he fully studies and assimilates the data provided by previous architects, has no obligation to carry out tests to verify or confirm the data supplied, that is "*data supplied can be taken at its face value.*"
  
- Arch. Vince Cassar 26<sup>th</sup> December 2014
  - In a letter addressed to the Board, Arch. Vince Cassar with reference to the letter of the 27<sup>th</sup> May 1997 presented by Arch. Albert Cauchi made the following observations. First of all, he re-affirmed that said letter was not brought to his attention. Secondly he drew attention to the fact that Arch. Albert Cauchi had a dual role in the project, that of supervision of works on behalf of PMO and also of structural reviewer on behalf of FMSS. Thirdly he questioned the veracity of Arch.

Cauchi's statement that his advice and concerns were ignored, considering that none of the persons he allegedly approached took any action or referenced his concerns. Moreover the use of the word 'may' indicated that Arch. Cauchi himself was not certain of his statements which contrasted greatly with the fact that as supervisor of works and structural reviewer he should have known with certainty the condition of the site and thus should have been more exact and specific in his assertions. He further suggests that if the declarations made by Arch. Cauchi were true, rather than resign himself to silence, he should have either resigned his post with PMO, or as structural reviewer, or both. Finally Arch. Cassar concludes that the assertions made by Arch. Cauchi at the time was intended solely to cast doubt on decisions taken and to create obstacles to the progress of works. He closed his letter by auguring that Arch. Cauchi was not being led by hidden motives and agendas.

- Arch. Peter Borg 22<sup>nd</sup> December 2014
  - Presented copy of master plan dated 5<sup>th</sup> February 1993
  - Two photos indicating the state of construction of site by July 2000 indicating that no extensions or alterations had yet been made to blocks D1.1 and D1.3 from original design.
  - A list of relevant Development Permits.
  
- Brian St John 29<sup>th</sup> May 2015
  - Email dated 18<sup>th</sup> December 2008 sent from Paul Camilleri to Lars-Erik Alm stating that problems in the commissioning of the chillers had been identified before 1<sup>st</sup> July 2007 and hence could not understand how Skanska was stating that commissioning of the air-conditioning system had been carried out satisfactorily.
  - Email dated 20<sup>th</sup> December 2008 sent from Paul Camilleri to Minister John Dalli that included *pro-memoria* notes on the status of the

negotiations. The notes effectively all detail technical and financial issues under discussion. The email ends as follows *"It is my considered opinion that based on the climate of these meetings, recourse to arbitration by SMJV seems to be inevitable. As such, at this stage, I consider the attempt/s at resolving these issues at 'High executive' level to have failed."*

- Email dated 28<sup>th</sup> January 2009 sent by Paul Camilleri to legal counsel stating that *"Rather than 'Settlement Agreement', the agreement should be re-named ' Project Closure' agreement; the reason being that "settlement agreement' implies that FMS is giving something extra, when ineffect the agreement actually is one where we (FMS and SMJV) have jointly plotted the way forward to close off the contract. As such we should also include, either as an addendum or entrenched in the main agreement, a list of Variation Orders which the parties have already agreed upon. As such it is just a continuation of the Main And Addendum agreements and not another so-to-say stand-alone agreement."* Amongst other matters, Paul Camilleri directs legal counsel to change such terms as 'Payment of Settlement Amount' to 'Payment of Final Amount'
- Email dated 28<sup>th</sup> January 2009 sent from Paul Camilleri to legal counsel advising that the phrase 'the Main Agreement as amended by the Amendment Agreement' with regards to technical matters should be refuted as he would not like *"SMJV attempting to refer to any real or perceived understanding understanding/ agreement with the then on-site FMS site personnel to justify certain under-performance of equipment/ systems."*
- Email dated 28<sup>th</sup> January 2009 from legal counsel to Paul Camilleri stating amongst others that *"definition of works – if scope of works was not amended by the Amendment Agreement, we can remove the reference to the Amendment Agreement. If it was, however, I believe the reference ought to be retained;"*

- Email dated 28<sup>th</sup> January 2009 from Martin Attard Montaldo to legal counsel saying that the Amendment Agreement did not change the Contractor's responsibilities with regards to the Design and and the Scope of Works, explaining further that *"the only change concerned the issue of 'time' – in effect the Amendment Agreement 'wiped the slate clean'."*
- Email dated 5<sup>th</sup> February 2009 from Paul Camilleri to legal counsel, informing the latter that he had received an updated version of the agreement from Skanska JV.
- Email dated 5<sup>th</sup> February 2009 from Martin Attard Montaldo to Paul Camilleri wherein he tells Paul Camilleri that *"Lars has introduced the term 'Amended Main Agreement' which re-introduces the issue SMJV tried to force upon us which is their assertion that there was a change of Scope to the Main Agreement as a result of the Amendment Agreement – this must not be accepted."*
- Email dated 6<sup>th</sup> of February 2009 from legal counsel to Paul Camilleri wherein he lists his observations and remarks to the latest version of the agreement. Of particular note are his comments that in clauses 4.3, 4.5, 4.6 Skanska JV had reintroduced the Cost Plus concept and his objection to the terms 'mandatory' included in clause 2.1 and 2.2.
- Email dated 14<sup>th</sup> February 2009 sent from Paul Camilleri to Lars-Erik Alm outlining FMS' objections to certain changes made to the latest draft agreement proposed by Skanska JV, which objects by and large to the outlined points raised by legal counsel.
- Email dated 15<sup>th</sup> February 2009 sent by Martin Attard Montaldo to Paul Camilleri stating that he supported his position as per email outlined above.

## **VI. Testimony of Witnesses Summoned**

Reference is made to the caveat expressed in the preamble to the report that, considering that circa 20 years have passed, memories of people involved have reasonably and justifiably started to fade and at times get confused. Moreover some

witnesses who experienced and lived the events as they occurred have today either passed away or could no longer be traced, thus limiting the Board's access to the fullest clarity and certainty of relevant facts.

The following is a short recollection of the most important and salient points arising from the testimony given by the summoned witnesses:

- **Arch. Vince Cassar (VC) – 24<sup>th</sup> October 2014**

VC explained that he was involved in the hospital project basically from its inception due to his office of Director General of the Works Division and as member of FMSS. Moreover, he also participated in the evaluation and adjudication of the construction tender.

VC explained that Monte Tabor Foundation was tasked with the design of the project in 1992. Monte Tabor had appointed Oresta Spa as its subcontractor to prepare all the relevant designs. In August of 1993, together with Fr Peter Serracino Inglott, he had agreed to set up the PMO under the auspices of the Works Division and Malta University Services Ltd, with a view to gaining project management know how from such a large project.

PMO had engaged Arch. Attard Montaldo as Project Manager. Other architects involved were Frank Cortis and Albert Cauchi with the latter being responsible for overseeing works in Block D.

Works on the Hospital commenced on the 10<sup>th</sup> of October 1995, with works on all blocks of the entire edifice starting concurrently. VC confirmed that by December 1996 works on the 2<sup>nd</sup> and 1<sup>st</sup> basement levels of Blocks D1.3 and D1.1 were completed. As far as he could recall, the original seismic design was based on a seismic movement of a Richter scale 7 earthquake.

When questioned if he had concerns regarding the project, VC confirmed that he was worried about the quality of the design being delivered by Ortesa. He further expressed concerns that PMO was not managing to take full control due to lack of manpower. Moreover, he mentioned that he may have had concerns with workmanship but could not recall specific instances. Pressed further on the matter he subsequently stated that, yes; he was gravely concerned by the situation on site.

VC confirmed that after the dismissal of Ortesa and subsequently Arch. Richard England who had been engaged by Ortesa, as Director of the Works Division, he assumed the role of Architect on record and in fact had signed a change of architect form on the 22<sup>nd</sup> of October 1997. In December 1997 he had filed a development application for the extension of the hospital by 2 extra floors. He also confirmed that following the dismissal of Ortesa, the New Labour Government had engaged Norman & Dawbarn as designers of the extended hospital.

Asked about the incident concerning 21 columns being out of plumb in Block C, he stated that he could not recall the specific incident. Asked further if it was acceptable to him that works falling out of spec were accepted even if at a reduced cost, he replied categorically in the negative. Asked if anyone had drawn his attention to any structural limitations before applying for the extension in the hospital he again replied in the negative.

VC explained that the proposed extension of the hospital by a further two floors was based on structural calculations made by Arch. Karm Busuttil and no further tests were carried out as there was confidence that the construction was built to spec.

When referred to his letter to then Minister Louis Galea and the proposed meeting with the Prime Minister on the 12<sup>th</sup> of September 1996, the witness

was somewhat evasive. However he did recall that Fr Serracino Inglott crossed words with Don Verze.

When presented with the present day technical reports he expressed great surprise and concern. He expressed his opinion that such deterioration could not be consequent to normal wear and tear.

- **Arch Frank Cortis – 24<sup>th</sup> October 2014**

The evidence by Frank Cortis did not elucidate much on the main scope and investigation of the Board.

- **Arch. Albert Cauchi (AC) – 24<sup>th</sup> October 2014**

AC explained that his role on the project was as structural reviewer and for the carrying out of inspections on site. He stated that he had concerns with the design but that he was never given a copy of the agreement with Ortesa.

He stated that the site as originally built was never intended to allow for vertical expansion. In fact he presented a letter dated 27<sup>th</sup> May 1997 stating that the sizes and reinforcement of columns may not be able to take any extra load. He explained that there were various occasions on which he had to stop the Contractor from proceeding with certain works due to bad workmanship or work practices and in fact also ordered that some works be demolished. He complained that it was impossible to oversee the works on the whole site due to very limited manpower. AC stated that as far as he could recall, the site was being built one section at a time and not as a whole.

He mentioned that he was always against any further expansion of the hospital. Moreover he stated that after the year 2000 someone decided to excavate underneath the foundations of the site and he also objected. However these excavations were proceeded with. During this part of his testimony the witness became very agitated and at some point declared that

*"Jien ma kontx stmat hemmhekk. Ma konx stmat biex tkunu tafu. Jien kelli rwol importanti ħafna u skużi, stmat ta' żibel hemmhekk kont. Il-kbarat fl-uffiċċju fuq it-telefon u salarji kbar u jiena qisni dana kont... All right? U kont nifhem iktar minnhom jien. Għax dawn l-affarijiet jien ħadt ħsiebhom. Allaħares ma ħadt x'ħsieb dawn l-affarijiet jiena għax kieku diżastru kien ikun hemm imbagħad."*

Upon further questioning AC recounted how on certain occasions when he would indicate bad workmanship he would be over-ruled by those above him. Asked if he agreed with the assessment made by Arch. Attard Montaldo in his letter dated 2nd August 1996 in response to Ortesa that quality of works was generally good, he bluntly asserted that *"Le ma naqbilx kien hemm ħafna affarijiet li jinkwetawni."* He then went on a rant exclaiming that *"This is Malta pero l-Lm200 million ħadd ma jaf fejn marru. Darba bagħatuli wieħed wara, supervisor, għax jiena dejjem nitlob għal supervisors, bagħatuli wieħed kien canvasser ta' Ministru- lanqas jifhem tikka fil-x'jismu. Imbagħad id-Design and build contract? Cost-plus. Hija oxxena. Oxxena kienet dik. X'kontroll irid ikun hemm. Il-kuntrattur ma kien jkollu kontroll ta' xejn. Jagħmel li jrid! Oxxena! Min kien responsabbli għaliha din tal-cost-plus sorry ta? Ħadd ma tkellem."*

He expressed how there was a breakdown of communication within PMO to such an extent that he was not able to communicate his grave concerns to those above him in the chain of command. Presented with the present day technical reports he claimed that he was not surprised at all with the results explaining that *"I'll tell you what happens, il-konkrit jibagħatuh mill-plant, il-konkrit fil plant jkun tajjeb, aħna naraw ir-riżultati u jkunu tajbin u niffirmawh dan tajjeb, by the time it gets on site, id-driver jiftaħlu l-ilma. Kif iżżidlu l-ilma il-x'jismu tiegħu jinżel ħafna. That is one of the causes. The other cause is li they either don't vibrate properly."* He further stated that *"Jiena kont smajt li daħlu ċertu subcontractors hemmhekk li qatt ma*



*kellhom isem tajjeb- dawn kienu issemmghu fil-gazzetti bħal Bastjan Dalli. Dawn dahlu erbgħa cowboys hemmhekk first class and this is what brings the cost plus contract. Corruption. I could see it. U min ma kienx qed jarahom vera għalaq għajnejh għax...Another thing I want to mention billi kien hemm tal-franka u din u l-oħra, aħna setgħu jgħidula li ġej mingħand Blokrete u forsi kien jiġi minn x'imkien ieħor il-konkrit. Fejn tkun taf minn fejn qed iġibu l-konkrit?"*

In view of the above he was specifically asked if he had suspected that work was not being done properly, and that everyone knew that the work was not being done properly, but was being told to just let it be, he solemnly declared "Yes yes, dik."

- **Arch. Peter Zammit (PZ) – 10<sup>th</sup> November 2014**

PZ explained that he is a partner at IAS. He confirmed the contents of the reports prepared by IAS and explained that he was involved in its preparation. Asked what he thought could be the reasons for the resulting strength he stated that it most probably was the result of the concrete mix used. He further explained that it was evident that the main problems with concrete strength were in levels 8 and 9. He also clarified that level 9 is essentially the ground level of the emergency building.

- **Dr Joseph Fenech (JF) – 10<sup>th</sup> November 2014**

JF explained the role Blokrete Ltd had within Skanska JV. He stressed that Skanska had put in place a very good and robust quality assurance regime. JF further described the process by which concrete was prepared and the testing process once it is delivered on site.

Questioned specifically why subcontractors were engaged for the supply of concrete seeing as Blokrete was part of the joint venture, he freely offered the following answer: "Min jaf x'kienu, jiena ma tantx inħobb ingib konkrit ta'

ħaddieħor fuq il-proġetti tiegħi imma min jaf x'kienu l- constraints ta' dak iż-żmien jiġifieri. I do not believe illi Blockrete kellha problema fis-supply tal-konkos imma ifhmni off the record naħseb kien hemm indħil fejn qalu li kien hemm bżonn li ngibu mingħand xi ħadd. Jew Skanska kienet imġegħla ġgħib il-konkos mingħand xi ħadd imma la ħa naħlef għalija u lanqas ħa ngħid kif ġraw l-affarijiet. Jiġifieri lanqas kont involut dak iż-żmien... ma niftakarx”

- **Mr Peter Schembri (PS) – 10<sup>th</sup> November 2014**

PS, Senior Technical Officer at the Works Division, confirmed that concrete tests were carried out by the Works Division at the facility in Kordin. He recognised the certificates issued including the signatures thereon. As best as he could recall samples were not taken by Works Division officials but were delivered directly by employees of the Contractor to the laboratory.

- **Arch Richard England (RE) – 10<sup>th</sup> November 2014**

RE confirmed that England & England were engaged by Ortesa. He proceeded to replicate the exact contents of the letter by him presented and above referred. He insisted that the area in question under the original design was just one floor above ground level and that seeing the change one finds on site today from original design then it must have been rebuilt from scratch. However upon being presented with concrete tests results indicating various levels he conceded that he could be wrong. It was RE who hinted to the Board that the Italian side of Monte Tabor had direct interests in Ortesa Spa. Reference is here made to his testimony wherein he stated that: *“Għamluhix tramite San Raffaele jew tramite l-Monte Tabor Foundation għax l-Ortesa as far as I remember was the building company of the Monte Tabor foundation or of the Hospital San Raffaele għax dawn kellhom ħafna guises. The guy who used to supervise the whole thing was Don Verse li mbagħad wara ngħidilkom an anecdote imma mhux issa...”*

- Arch Emanuel Attard (EA) – 17<sup>th</sup> November 2014

EA did not add to what was already known to the Board, apart from clarifying that seeing as a meeting was in fact held with the Prime Minister on the 12<sup>th</sup> September 1996 it was clear that the problems effecting the project were of a grave nature enough to warrant a meeting at such high level. With regards to what was discussed at the meeting in question EA stated that *"Ifhemni ma niftakarx jekk il-meeting li attendejt jiena ki, enx fuq kwalita'. Naf li kien meeting li spicča ħażin ħafna... : Li t-Taljani għaddew xi kumment mhux etiku lil Prim Ministru. Il-Prim Ministru ħareġ mill-meeting... Il-kumment kien li "ma' xi pajjiz ieħor li huwa kommunist nasslu magħkom il-Maltin ma naslux". Dak li niftakar. In essence. Qed nipprova niftakar x'pajjiz semma'. Kien spicča... fil-fatt kien tneħħew imbagħad. Sa bdiet il-mixja biex jitneħħew bħala designers."*

- Arch Joe Cassar (JC) – 17<sup>th</sup> November 2014

JC gave a detailed account regarding the constitution of the joint venture and to the selection of Skanska JV as the Contractor of works.

He confirmed the general timeline of events as by now already known to the Board. He reiterated that Skanska was responsible for quality assurance on behalf of the joint venture whilst PMO oversaw the process in the interests of the client.

JC described how following the change in government after 1998, the contract changed from a measured contract to a design and build cost plus agreement. He confirmed that once design was assumed by Skanska JV, White Architects, a Swedish firm, were engaged as hospital planners, who engaged his partner in CGE Ltd, Mario Grech as their local architect. JC's architectural firm, also part of Skanska JV was assigned the structural planning and preparation of structural drawings. Seeing as structural

calculations had already been made by Arch Karm Busuttil he was roped in as structural consultant. They occasionally also consulted Arch Richard England. JC provided the following as reason for this latter engagement “*sempliċi raġuni ftakarna, ngħidu “isma jekk dan jmur sabiħ jgħidu għax ta’ Richard England.” Jekk imur imnejjek jwaħħlu fil-dan.*”

He then explained that his company CGE Ltd and Devlands Ltd left the joint venture after the Gonzi administration changed the cost plus agreement to a fixed lump sum agreement due to spiralling costs.

- **Mr Alfred Kitcher (AK) – 10<sup>th</sup> December 2014**

AK, a lab technician at the Works Division at the time of construction, confirmed that samples were not collected by Works Division officials but brought directly to the lab by Skanska JV employees. Asked if this was normal or common practice he replied “*No. No. In-normalita’ hija li mmorru noħduh aħna.*”

- **Arch Mario Grech (MG) – 10<sup>th</sup> December 2014**

MG by and large confirmed the testimony already proffered by Arch Joe Cassar. He further submitted that no tests were carried out before taking over the site and its responsibility as architect on record. He expressed that he was reassured of the fact that Skanska had a world renowned quality assurance programme.

- **Arch Martin Attard Montaldo (MAM) – 22<sup>nd</sup> December 2012**

He explained that he became involved in the project in 1993 with his first task being overseeing the design review of Ortesa’s design. PMO had a number of technical people to perform the review, such as on architecture Arch Anton Valentino and on structure Architects Tony Cassar, Denis Camilleri and Albert Cauchi.

MAM recounted how the relationship with Ortesa was always subject to numerous problems and shortcomings, primarily the timely delivery of designs. Due to this, problems with the Contractor ensued with the latter placing blame on Ortesa for delays and vice-versa.

MAM asserts that ultimate decision on choice of subcontractor rested with Skanska JV. He explained the concrete testing procedure, but nevertheless insisted that ultimate responsibility for such tests rested squarely with the Contractor. He lamented that PMO was severely understaffed and thus could not adequately cope with the scale and scope of the site stating that *"ma tistax tiċċekkja each and every column. It is impossible. Jrid jkollok armata nies..."*.

He insisted, following specific questioning by the Board, that he was never subject to any political pressure to favour any specific subcontractor. In fact he was requested by Minister John Dalli to issue a declaration to this effect following the controversy regarding the involvement of his brother Bastjan Dalli in provision of concrete.

Asked about comments and declarations made by Arch Albert Cauchi, MAM retorted as follows: *"Jien li nista' ngħid huwa dan. Albert Cauchi, issa jien ma kontx ser ngħid, imma la issa dan qal hekk, jkollu ngħid ċertu affarijjet. Albert Cauchi meta dħalna fil-proġett, l-ewwel darba li ltqajt miegħu kien hemmhekk. On a personal level, Albert Cauchi ppretenda, jista' jkollu raġun imma dik kienet il x'jismu tiegħu, li the post of project manager joħodha hu u ħadtha jien. U from that point on we never had a particularly x'jismu relationship. Hu dejjem kellu a chip on his shoulder u it was always there, ħa ngħid hekk. Jien minn naħa tiegħi on a professional level issa, għax on a personal level we had problems imma on a professional level, jekk hu bħala perit ġie u qalli li għandna problema hawnhekk, jien dejjem tgħajtu l-widen. That is the position I'm*

*taking.*" He expressed similar comments with regards to David Clarke of Bovis Europe when confronted with their report issued in July 1996. And again with regards to Ortesa, stating that they wanted to take over project management and this again after having been confronted with Ortesa's report also of July 1996.

Regarding the new Design & Build Cost Plus agreement, MAM had the following to say: *"Kelli input. I was part of the committee as well advising Government. There are pros and cons to everything. The biggest pro ta' design and build kienet minhabba il-problemi li kellna... allura tgħati responsabbilta lil one entity, and they are are responsible from beginning to end. Jigifieri Skanska issa ma jistgħux jwaħħlu fid-designers għax id-designers huma huma stess. That was probably the biggest pro. The biggest con, kontra jigifieri, was the cost-plus. The cost-plus is a bit of an open cheque."*

Asked whether he would concede, that on the basis of the present day technical reports, the PMO failed in its obligations and duties especially with regards to the client's interest he replied: *"Jekk jirrizulta hekk ma nistax ninnega. That is the... Jekk jirrizulta hekk, l-ewwelnett I am very shocked u I would never have expected this based on what I believe we did correctly to ensure that things were done properly. Jigifieri dik waħda u l-oħra Iva jekk bħala stat tal-fatt joħroġ hekk, iva, something has gone wrong. You cannot deny it."*

- Arch Vince Cassar (VC) – 22<sup>nd</sup> December 2014

Asked why, prior to proposing the extension of the hospital, they based themselves only on structural calculation and did not carry out tests to confirm that the assumptions were correct, he said normally tests would have been carried out but he was comforted by the reassurances given by Arch Karm Busuttil's calculations who was highly regarded in his field. He asserted that

the technical advice given to Minister Michael Farrugia on the 20<sup>th</sup> of January 1997 was his and that of Arch Karm Busuttil. Confronted by the May 1997 letter issued by Arch Albert Cauchi, he insisted that he had never been made aware of any similar concerns.

- **Hon. Minister Dr. Michael Farrugia (Minister) - 19<sup>th</sup> January 2015**

The Minister explained the change in government policy and vision whereby the new hospital was to change from a specialized teaching hospital complimenting St. Luke's to a general hospital replacing the latter. He explained that *"Wara dawn l-affarijiet li fil-fatt kienu saru, saru laqghat mad-diversi entitajiet professjonali bhalma huma t-tobba u n-nurses u setturi ohrajn kollha relatati mas-sahha u tkellimna magghom fuq il-kuncett illi s-servizz akut jinqasam f'zewg partijiet. Parti li jkun f' Tal-Qroqq u l-parti l-ohra illi tkun fl-Isptar San Luqa. Ir-risposta kienet minnhom kollha minghajr l-ebda dubbju illi kollha kemm huma qalulna li ma jaghmilx... dan il-kuncett ma jaghmilx sens. U anke rajna ukoll x' kien qed jigri barra minn pajjizna b' mod specjali b' referenza ghall-Ingilterra, l-iktar fejn it-tobba taghna l-iktar li ghandhom kuntatti u fejn dak iz-zmien kien hemm idea illi sptarijiet zghar jispicaw u jkunu iktar ikkoncentrati bhala sptar wiehed ghax il-management huwa ahjar u anke l-ispiza biex tmexxih tkun inqas milli jkollok zewg strutturi kompletament separat minn xulxin"*. He added that *"Wara li saru dawk il-laqghat u dawk id-decizjonijiet konna kkummissjonajna zewg rapport u wiehed minnhom Perit, Pio Busuttil biex jghatina l-parir tieghu dwar the way forward – jekk ghandux ikun l-Isptar San Luqa jew l-ISptar f' tal-Qroqq illi nkunu qeghdin inharsu lejha bhala sptar wiehed li jum University teaching hospital. U ukoll Deo Scerri u l-kumpanija tieghu biex jaghmlu l-evalwazzjoni tal-finanzi etc tal-affarijiet kif kienu sejrjn. Mir-rapporti li fil-fatt kellna ghall-ewwel il-Perit Pio Cusuttil iktar kien qisu li nmmorru lejha San Luqa minhabba li l-istruttura kienet diga qeghda hemmhekk imma min-naha l-ohra meta konna ghamilna*

*diskussjonijiet dwar diversi servizzi li xtaqna ndahhlu bhala sptar il-mod kif inhu mibni San Luqa li huwa weight structure, biex naghmlu l-biddliet kollha li xtaqna naghmlu ma kienx ideali biex jkollna sptar li jirrispetta dawn iz-zminijiet tal-lum”*

He then explained that he engaged the Works Division to provide options how best to expand the new hospital. Arch Vince Cassar advised him that the new hospital could be extended to fulfil the new requirements, saying that *“Kienu tawna l-parir li jista’ jtkabbar fuq zewg binarji... jekk niftakar tajjeb wahda minnhom li jista’ jiftah lateralment u li jistghu jitolghu sa zewg sulari fuq il-binja illi kienet iddissinjata originarjament. Jigifieri kemm fil-wiesa’ u kemm fl-gholi iktar mill-binja originali li fil-fatt kien hemm.”* Adding that *“Wara li nghatajna l-parir minn naha tal-Works Department li dan kien possibbli u li l-binja setghet tiflah dak l-ammont mid-disinnji li fil-fatt kellhom bhala informazzjoni imbaghad tlabna lil MEU – Management Efficiency Unit tal-Gvern – fejn kien hemm fiha certu wiehed kunjomu Silver li ghamel feasibility study...”*

He explained that upon taking over responsibility for the construction of Mater Dei, works were slowed down adding that *“li minhabba diversi kuntratti li kien hemm bejn l-FMS u Skanska u d-diversi commitments li kien hemm kien ghaqli li nkomolu nibnu l-frame u nieqfu bhala frame biss.”* Asked whether advice was given regarding the extent of vertical expansion possible he MF explained that *“Il-parir li kienu tawn kienet li sa zewg sulari ftit li xejn kellu jaffettwa is-seismic effect bhala struttura bhala terrimoti. Kienu qalulna li jekk nitilghu iktar minn tnejn nibdew innaqssu l-effett kontra t-terrimoti...”*

MF then explained that the relationship with Ortesa *“ma tantx kienet felici”*, and in fact after a few weeks following a meeting held at Castille with the Prime Minister the decision was taken to end all contractual relations with



them. Asked if with the termination of contractual relations with Ortesa this brought a termination of contractual relations with England & England, he stated that the latter were retained for a while. Subsequently following a tender process Norman & Dawbarn were engaged to undertake a design review, provide new designs for the extended hospital and also to act as supervisors of works once commissioned. However Norma & Dawbarn, he explained, were terminated from their engagement following the 1998 general election.

MF confirmed that a planning application for the vertical expansion of the Hospital by 2 floors and for an additional wing was submitted, however the Planning Authority only approved one floor expansion as it requested a traffic impact assessment before approving the second additional floor. He confirmed that the expansion works had commenced before the change in Government, but works were still ongoing at the time of the election. He reconfirmed that until the application for the extension, works were still on going on the site albeit at a slower pace.

He explained that the idea was that *"id-designer ma jkunx l-istess kuntrattur li qed jibni imma jkun l-istess persuna li jirregola u jivverifika ix-xoghol li jkun sar skont id-disinnji tieghu"*. He stated that Government at the time also had offers from Skanska to take over the design under a Design and Build Cost Plus agreement, but following a Cabinet decision it was turned down.

He was once again referred to the report presented by Vince Cassar dated 9<sup>th</sup> January 1997 and 20<sup>th</sup> January 1997, and was asked whether they indicated what tests were made before the recommendation to expand vertically was given. MF stated that *"safejn naf jien, l-unika haga.. illi mid-disinnjar etc li saru kien jiflah... Fil-fatt (the report said) "...limited but significant structural calculations carried out within the last three days,*

*results that the existing structure can sustain an additional two floors at all points.”* However he added that Norman & Dawbarn were also engaged to undertake a review of the original designs as there were some concerns. In this regard MF explained that *“kienet qamet xi kwistjoni anke qabel, dwar it-tip ta’ disinnji li fil-fatt kien qed jitrassqu minn Ortesa. U riedna nkunu certi li l-affarijiet li saru qabel kienu in line.”*

MF was then asked if during his time in Government he received any reports regarding any problems in the construction. MF stated that *“Le. Fil-fatt fl-ebda hin, anle allavolja kien hemm dak ir-rapport u anke ghad-decizjoni li kienu ttiehdu, ma kellna l-ebda rapport la minn naha ta’ Ortesa illi qalu “isma hemmhekk x’ se taghmlu se ittellaw sular iehor?” jew minn kwalunkwe settur iehor illi f’ xi hin gibbed l-attenzjoni dwar xi problem fuq ir-raba’ jew hames sular.”*

- Arch. Albert Cauchi (AC) – 19<sup>th</sup> January 2015

AC confirmed that after 2000 he was appointed as Client’s Representative in terms of the new contract, however his experience in the post was short lived due to clashes with FMS CEO. In this regard he stated that *“Jigifieri poġġewni f’uffiċċju jiena waħdi u żewġ Inglizi. Wieħed Wilson u l-iehor għadu zgħir- wieħed Lhudi tħares lejħ tghid dan ma jridx jkolli x’naqsam miegħu. U lis-CEO għedtlu ma rridx inkun pupu ta’ ħadd u niżluni minn hemm. Ħellsu minni.”*

Confronted by comments passed in his regard by Arch Martin Attard Montaldo he replied that *“Dan Attard Montalto jien għaliġa Attard Montalto skużani ta! Attard Montalto ma kienx jistmani lili. U ma kienx jifhem ma kellu l-ebda esperjenza ta’ xejn. Zero.”*

The following extract of AC’s testimony, it is felt should be reported *verbatim*:

PS: IL-kumpanija ta' Bastjan (...) Mixer Ltd.

AC: Mixer Ltd ehe għax dan kien daħal hemmhekk for a while pero later on in the project mhux mill-bidu.

PS: F'xi żmien daħal.

AC: ehe ehe F'xi żmien daħal pero jiena to be quite honest ma kontx naf bih. Jew (...) barra. Daħlet il-politika. Jiddispjaċini ngħid daħlet il-politika. Għax anke tinduna mit-tip ta' kuntratturi li kienu deħlin. Min poġġihom hemm. Imbagħad daħal il-Ministru Dalli kien in charge għal cost plus hu kien kollox. Is-subcontractors kollha mingħandu kienu jiġu. Darba towards the end, mhux towards the end in the design and build contract, jiena kellna x'jismu tas-signs, tas-signage kellna meeting fuq tas-signage, jiena kont qiegħed hawn, kien hemm xi għoxrin ruħ u l-kuntrattur qiegħed hemmhekk. Għedtilhom il-budget huwa daqshekk u ma jridx jiżdied iktar minn hekk. Iqum il-kuntrattur, jdur mal-mejda hekk, qalli "int min int?" Hekk għamilli ta. Qalli "int min int?" Għedtlu jien? Għedtlu jien id-design manager. Għedtlu minn bagħatek għidlu li l-budget huwa daqshekk u mhux suppost naqbzuħ il-budget. Għax konna qedgħin qisna sandwich. Aħna suppost nikkontrollaw u ngħidu li ma naqbzux certain budget u min kien qiegħed jibghathom, xi hadd wara xi purtiera li jien ma nafux, qed itih il-ftehim biex iżżid.

PS: Ha nsaqsik...

AC: Jien ma nafx. Jien għalhekk iddejjajt naħdem hemmhekk. Kelli dwejjaj kbar.

PS: Ha nsaqsik, Perit...

AC: Qed ngħidlek, l-incident li ftakart ta' jiġifieri jiena.

PS: Perit...

AC: Ma niddejjajx ngħidhom dawn jiena jista' jiġi min jiġi.

AC even expressed concerns regarding the testing being carried out by the Works Division stating "Konna... kien hemm question marks fuq it-testing. U kien hemm question marks fuq it-testing tal-Gvern ukoll. Ma konniex... Niftakar kelli question marks jiena fuq it-testing tal-Public Works... Jiena

*kelli dubbju fuq kollox! Kelli dubbji jiena mill-bidunett... Dawn kont tkellimthom jiena. Mhux ma' Vince Cassar. Dawn kont tkellimthom in house. Kont tkellimthom. Il-Project Management Office fuq l-ilmenti ta'... fuq id-dubbji tiegħi tat-testing... No feedback kienet li baqgħu għaddejin. Ix-xogħol għaddej u l-cubes għaddejin."*

In an email dated 2<sup>nd</sup> February 2015, following his testimony, AC wrote to the Board that the testing of concrete cubes was under the responsibility of Arch Frank Cortis.

- **Dr. Louis Galea (LG) – 9<sup>th</sup> April 2015**

LG first gave a brief description of the original scope of the new hospital confirming that at first the new hospital was intended to be a specialized teaching hospital which was to provide support to and not substitute the St. Luke's Hospital. He asserted that early on in 1988, Government of the day had identified the Istituto Scientifico Ospedale di Milano as the model upon which to base the new hospital and immediately thereafter cooperation agreements were reached with said *Istituto*.

Pressed to explain how the *Istituto* was identified, and whether an open call was initiated LG explained that the *Istituto* was chosen directly following discussions with local experts and the study of various other models found in England and America.

LG explained that in order to give effect to the above decisions two foundations were created: Monte Tabor Foundation created by the Italian counterparties on which the Maltese Government had representation through LG himself, Prof. Serracino Inglott and Prof. Rizzo Naudi; and the FMSS created by the Maltese Government and on which the Italian counterparties had representation through Don Luigi Maria Verse, Mario Cal and Dun Charles Vella.

He explained that the Italian counterparties through said cooperation agreements, were tasked with providing amongst others, the design of the new hospital through their undertaking, Ortesa Spa. He confirmed that the persons involved from the Italian side had a direct interest in Ortesa Spa. He elucidated that whilst Ortesa Spa were tasked with the full details of the design, Arch Richard England was to prepare the architectural concept and drawings. The PMO was established and tasked with the oversight duties of the works and the design.

With regards to the choice of the Contractor LG explained that Government, on advice had elected to use a pre-selection procedure through which a shortlisting of candidates was made following which such shortlisted candidates were invited to tender.

As far as he could recall by the 1996 election, construction was pretty much in its early phases.

Asked if following the commencement of construction in October 1995, any problems were encountered regarding the process and quality of works he stated that: *"Minn mindu beda x-xoghol sakemm domt Ministru responsabbli ma kelli qatt, qatt ma gie a konnjizzjoni tieghi xi kaz jew xi ilment li, jew ix-xoghol kien qed jaqa lura jew li kien hemm xi problema mal-kuntrattur."*

However, presented with various documentation LG changed and further qualified his initial categorical statement. Faced with the Bovis Europe report of June 1996, LG stated that he had a vague memory of it but does not recall discussing the details of it. He said that such detail would have been seen and reviewed by the PMO.

When shown a copy of the Ortosa July 1996 report he stated that he could not recall seeing the report itself but conceded that he must have seen it as it was discussed in the FMSS meeting of the 11<sup>th</sup> July 1996. Once again he asserted that such matters would have been handled by PMO. Shown the exchanged between Ortosa and PMO regarding the report in question, he stated that he did not know of such exchanges. Asked if he knew of any tensions between Ortosa and PMO he stated that: *“Ma nafx b’xi incidenti partikolari ta’ xi tensjoni bejn l-individwi partikolari.”* However when shown the exchange between the two entities in question he qualified his previous statement declaring that: *“Jiena kont al corrente mhux ta’ din it-tip ta’ tensjoni kif qed tiddiskriviha imma li kien hemm punti ta’ certu divergenza fuq evalwazzjoni ta’ kwistjonijiet li kien jinqalu, ma rridx nghid kuljum imma fuq on site bejn il-PMO u l-kuntrattur, in-nies ta’ Ortosa etc.”* However he stated that he gave a lot of weight to the PMO and thus did not take further action.

LG was then shown the confidential letter sent to him in September 1996 by Arch. Vince Cassar. He said that he could not recall the details as to why Arch. Cassar was asked to intervene, but clearly in light of the arising issues Government must have felt that a second opinion was warranted. When then confronted with the options outlined by Arch. Vince Cassar and the sombre tone used in the report in explaining the consequences of such options LG explained that: *“Le dan it-trapass evidentement konxxju sew tieghu jiena. Forsi mhux id-dettalji. Imma li f’ dan l-istadju ahna konna qeghdin anke rinfaccati b’ din it-tip ta’ ghazla dwar id-designer, dik konna deg nikkonsidrawha u kien f’ dan l-istadju li l-materja giet sorvolata b’ din il-maniera u li telghet anke fil-livell sew ta’ Bord u sew tal-Prim Ministru”.* Asked if he remembered the meeting with the Prime Minister and the outcome of same he explained that : *“Naf li kienet decizjonali. Naf li konna qed niddiskutu imma illum l-gurnata ma nafx jekk il-bidla li niehdu u ma nhallux lil Ortosa bhala designer hadniex hawn jew le.”*

Asked if he today felt that the decision to directly engage the *Istituto di San Raffaele di Milano* and consequently Ortesa , with the resulting problems, was a bad decision he declared that: *“Le, fuq l-ghazla le, imma fuq l-aspett tal-Ortesa kien hemm, mhux l-ghazla koncettwali, mhux fuq l-ghazla tal-kollaborazzjoni ta’ ricerka u ta’ livell mediku, imma fuq l-aspett tal-kostruzzjoni innifsu dik il-parti ta’ Ortesa dik kienet il-parti li dawn ic-cirkostanzi li bdew jemergu fin-’96’ kien beda johrog car li s-sitwazzjoni riedu jittiehdu d-decizjonijiet li kien qed jindika l-Perit Vince Cassar.”*

When asked if he did not consider the position of the Italian counterparty having a direct interest in the project through Ortesa whilst also being represented in FMSS, the client, as giving rise to a conflict of interest he stated that: *“Le fil-mument li ahna hadna dawn id-decizjonijiet ma rajniex din, ma hassejniex li ha jkun hemm [kunflitt ta’ interess].”*

Asked if any due diligence was done on the *Istituto* and whether concerns were flagged considering that Don Verse had already been found guilty of attempting to bribe a public official back in the 1970s and had been accused of *associazioe mafiosa* before the Italian Parliament he said that: *“Id-due diligence kienet fuq l-Istituto Scientifico u l-ISptar innifsu u r-rating li kellu l-Ministru tas-Sahha Taljan dwar is-servizzi li kien qed jaghti... Irrid nghid li r-relazzjoni u l-presenza ta’ Dun Charles Vella f’ dan kollu kienet kontinwament presenza li tixtieq tara l-ahjar gid ghal Malta, li tistieq nisfruttawa.”*

Regarding the lack of proper testing procedures, LG stated that he was not aware of the exact testing process being used but was comforted by the fact that PMO should have ensured that the highest standards and practices were being observed.

When asked if he was aware that Mixer Ltd was authorized as a subcontractor in early January 1996, LG denied any involvement and stated that he did not know that such authorisation was requested and the matter was never discussed at Board level.

Finally he was confronted by two allegations made before the Board, the one concerning the use of unqualified Minister canvassers as site inspectors, and the other that there might have been political interference regarding the choice of sub-contractors, LG categorically denied his involvement or of having known of any such allegations.

Following the elections of October 1996, LG stated that he had no further involvement in the Health sector and thus could not assist the Inquiry any further.

- **Mr. Brian St. John (BSJ) – 15<sup>th</sup> May 2015**

BSJ explained that he was appointed as acting CEO of FMS in September 2008 and then officially confirmed in February 2009. He explained that the first thing he had to deal with were the numerous snags and unfinished works, particularly the Containment Level 3 Labs, which were still pending even though handing over of the site took place on the 29<sup>th</sup> of June 2007.

BSJ confirmed that at the time various meetings were taking place with a view to resolving matters concerning these pending works and with a view of resolving claims vaunted by Skanska JV, however he stated that he could not remember the details.

Asked specifically about the waiver included in the Project Closure Agreement, he re-iterated that he simply could not recall the details even though they had taken place only 6 years ago. In fact he even had difficulty recalling who the members of the FMS Board were. Asked if he had advised the Board on the



Project Closure Agreement, he replied in the affirmative however he could not recall if he had advised the Board regarding the waiver clause. In this regard he stated that: *"Jien niftakar, again jigifieri, ic-chances huma li tajthom hafna advice fuq dan il-kuntratt u fuq il-performance ta' Skanska dak iz-zmien. Inti tistaqsiniex jekk... Jigifieri id-domanda tieghek specifika hafna jekk fuq dik il-klawzola 9.1 jien mortx il-Bord u jekk orkitniex ghajneja u dan. Jien qed nghidlek li fuq dik ma nistax niftakar x' ghidtilhom lil Bord dak iz-zmien. Cara?"*

- Arch. Paul Camilleri (PC) – 19<sup>th</sup> May 2015

PC explained that he was appointed member of the FMS Board in 2001 and became its President in 2007. He explained that by the end of 2008 various negotiation meetings were being held with a view of ensuring that pending works were finalized and in order to determine penalty claims raised by Skanska JV. In fact an agreement was reached, the Project Closure Agreement, through which said claims were settled and in fact substantially reduced by Skanska to circa 5 million Euro.

Asked specifically about clause 9.1 of the agreement, which provided for a general waiver of any further claims being raised by either party, PC stated that he was constantly under advisement and also sought re-assurances that all the works were done in accordance with the standards and specifications established in the contract of works. He explained that *"Jigifieri qabbadna it-tim kollhu taghna u bdejn nduru ha naraw x' difetti hemm minn naha taghna halli wiehed jinnegozja. U bazikament, il-project closure agreement kien wasalna fl-ahhar dak il-kompromess li deherilna li setgha jkun accettabbli ghaz-zewg nahat."* He added that *"Jekk niftakar se, ahna bhala Bord konna tlabna li jkun hemm id-dokumentazzjoni kollha in place ta' testing, commissioning, handing over, kollox li sar it-testing kollu kif suppost li l-bini huwa normali. Jigifieri bejn 2007 li kien hemm il-handing over u 2009 hemm distakk mhux hazing ta' zmien. Ahna konna qed*

*nitolbu lil kulhadd li jghidulna isma ahna ghandna kollox in order? Ir-records huwa kollox in order? Hemm kollox in order? Tlabna kull dipartiment fis-sens electrical, mechanical, civil, structural minn naha taghna li mal-counterparts tagghom li huma tal-joint venture".* Assurances were also sought from Arch. Martin Attard Montaldo, who was assisting in discussions at the time who, from his end, confirmed that all testing was carried out and all works were in order. In this regard he said that *"Iva li lilna isserhilna rasna li hemm kollox. Jigifieri li ahna t-testijiet kollha li kellna naghmlu u d-dokumentazzjoni kollox li hemm huwa kollox in order."* Adding further that *"Issa, ha nitkellem bhala perit hawn. F' progett bhal dan, ghax ovvjament intom qed taghmlu l-inkjesta fuq il-kollonni. Progett bhal dan, anke progetti hafna izghar, iz-zomm ir-records ta' testing ta' cubes, ta' kollonni u kollox li inti x' hin taghmel assessment ghandekx taccetta klawzola bhal dik li hija ovvjament pjuttost tassattiva ghandek id-due diligence warajk."* Asked if the intention of such clause was to close off the project once and for all PC stated that *"L-intendiment dak li kien. Li wara li sar ezercizzju dettalljat hafna li regghu nfethu l-kotba kollha, rajna it-testing kollu li kien hemm, id-dokumenti kollha li kienu in order sew u kollox biex naghlqu kapitlu li kien ser jibqa jkaxkar u konna sejrjn arbitragg, jidhirli Parigi konna sejrjn. Li tlabna l-accertazzjoni li stajna minn nies teknici u wara li anke hadna direzzjoni mill-Gvern, ghax haga bhal din allavolja kont qed imexxi n-negozjati jien dejjem ma xi hadd, dehrilna li ghamilna xoghlna sew u li kien hemm value for money...Allura tlabna l-accertazzjonijiet kollha, jidhirli hemm dokumentat fl-FMS isma f' kull dipartiment, hemm xi difetti? Iccekjkajtu? Hemm xi haga? Nistghu nghalquha din? Imma ser jkollna klawzola bhal dik."*

When confronted with the fact that the reciprocal waiver of the then outstanding claims was regulated by a different provision of the Project Closure Agreement and as such the waiver in clause 9 was not necessary in order to settle the pending claims, PC stated that the clause was inserted on

the insistence of the Contractor. He explained that failure to reach an agreement would have led to lengthy arbitration proceedings involving millions of euros, so after requesting assurance that works were all to the standards requested and after having receiving such assurance he felt it was prudent to close and settle the matter. Obviously, he further explained, that prior to signing the agreement he had sought the Board's approval and naturally also clearance and direction from Government. However he explained that no physical testing was carried out before proceeding with the Project Closure Agreement. In fact he stated that *"Iva imma meta jiena bhala perit kont structural engineer, meta l-isptar kienu ilu jopera tlett snin, difett struttural 99% tal-kazi johrog mill-ewwel. Jigifieri jekk kolonna hija difettuza se ticaqlaq mal-ewwel. Ser johorgu d-difetti mal-ewwel. Kien hemm nies daru u ghamlu inspection tal-isptar, datba darbtejn, tlett darbiet. Ahna rajna d-dokumentazzjoni. U tawna l-accertazzjoni taghhom li ma hemmx difetti."*

However pressed further on the matter, PC made the startling declaration, that negotiations with Skanska JV were being held in bad faith from their end, and that there could also have been fraudulent or malicious intent. He explained that at no point was a waiver of the kind found in the Contract discussed or agreed upon, stating that: *"Le. L-idea nista' naccertak ma kienetx li naghmlu a complete waiver like that. Nista' naccertak. Kif qed taqrahili nammetti illi... L-idea kienet li l-pendenzi tal-posizzjoni taghhom fil-bidu, issa nghalqu kollox f' dan figura li lanqas hemm kalkolu ezatt ta' kif ilhaqna ghalih. Ghax ahna bejn nghidu hekk u hekk,"* He conceded that *"Kien hemm naivety minn naha taghna."* However he stated that no one had drawn attention to him as to the consequence of such clause, not even by the FMS lawyers at the time who were drafting up the wording together with Skanska JV lawyers. Moreover he recalled that the CEO at the time, Mr. Brian St John, was requested to make a full presentation to the Board and did not raise any concerns regarding the clause in question. He added that *"Dik il-*

*klawzola iffirmajta jien, m' hemmx x' tahrab minnha. Jien rajtha, ffirmajtha u resaqniha l-Bord. Acetta l-Bord. U konna nzommu infurmat lill Ministru. To be fair mhux d-dettalji lil Ministru Dalli. Qed nghidulu isma ahna ha nmexxu hekk."*

Asked what he thought of the clause under consideration he stated that *"Naqbel li din l-klawzola kieku ma kienetx hemm kienet tkun ahjar."* However he added that *"Kieku ried il-Gvern kien jghati direzzjoni le ibqghu insistu sal-ahhar punt, dan l-agreement ma kienx isir. Dan l-agreement sar u ghal xi raguni iddahlet dik il-klawzola li kieku kont f'posizzjoni ahjar milli jien kont immur nipprova nindaga jien minn jeddi ghax m'ghandix records. Nara daqxejn email per ezempju, x'wassal u f'liema stadju dahlet din. U ghaliex dahlet, f'liema stadju jigifieri... Kieku jien naf li issa klawzola bhal dik ser tintuza ser johorgu minn haga li nqalet, li hadd ma kien jaf biha u hadd ma stenna li ser tinqala, kont immurr inhaddem rasi nara jien kif nista niggielida. Naf jien li mhux ir-remit taghkom."*

- **Mr. Brian St. John (BSJ) – 29<sup>th</sup> May 2015**

Before given his testimony Legal Counsel to witness, Dr Andrew Borg Cardona registered the fact that in the media it was reported that Minister Konrad Mizzi seemed to know what was being said by witnesses, stating that if this was the case, it was deplorable. The Board noted his concerns and gave its reassurances.

BSJ stated that he was not part of the Decision Group, however he could not say for certain. He affirmed that he was not involved at all in the construction of Mater Dei per se but got involved in the migration to Mater Dei in 2007.

Asked why negotiations in the Decision Group failed he said there were various reasons chiefly amongst them was Skanska's failure to meet certain deliverables. These were ultimately included in the Project Closure

Agreement. He could not remember the extent of his involvement with the negotiations by the Senior Executive. However he was mostly focused on the pending works and technical matters. He referred to an email dated 20<sup>th</sup> December 2008 sent by Paul Camilleri to Minister John Dalli which included pro-memoria notes listing the reasons as to why they failed to agree in the decision group. It also listed technical matters that he had raised in a report. At the time he was a MITA employee and had not yet officially taken up his post in FMS. He explained that he had prepared the report sometime in June 2008. However he re-iterated that he had no recollection of participating in meetings between the parties' Senior Executive.

He recalled that Terms of Settlement were concluded but could not remember when. Neither could he recall if he had commented on these Terms of Settlement. He neither knew if Minister John Dalli was informed of said Terms of Settlement. Asked if the Minister of Finance was informed of the financial package agreed in the Terms of Settlement at the time of its signing, again he could not recall, but was certain that he was informed subsequent to the conclusion of Project Closure Agreement.

He was then referred to the FMS Board meeting held on the 15<sup>th</sup> of January 2009. He was informed that Paul Camilleri had testified that he had given a presentation to the Board on the terms of settlement, however he could neither confirm nor deny if this was the case.

Asked about the Settlement Agreement drafted by Skanska JV on the 21<sup>st</sup> of January 2009, and whether changes were made from the Terms of Settlement, he re-iterated that he was only involved in technical matters. When pushed by the Board that he was acting CEO of FMS at the time, his answer remained unchanged.

He then proceeded to read out the emails outlined above in the report.

Asked if after they had agreed to the terms of the Project Closure Agreement, if the FMS Board was called to give its approval he said he could not remember. Neither could he remember if he knew that the Project Closure Agreement was going to be signed on the 19<sup>th</sup> of February 2009, however he stated that probably he did not and was unsure if anyone at all was informed.

Asked if he could recall giving any advice which was not of a technical nature before the signing of the Project Closure Agreement he replied in the negative. However he was reassured by the fact that legal counsel had reviewed the agreement. When asked, he neither could recall if he had discussed the agreement *per se* with any Minister.

Referred to the email dated 5<sup>th</sup> April 2009 sent by Paul Camilleri to Minister John Dalli wherein it states that BSJ had given Minister Dalli a brief update, once again he re-iterated that he would have only discussed technical matters. However when pressed further he conceded that he could have discussed the contract itself.

Referred to the structural problems found in the reservoirs next to Blocks D1.1 and D1.3, which through physical testing carried out it transpired that the concrete cast was inferior to that expected, he said he could not remember such reports. Asked if, once faced with such reports, he considered testing other areas of the Hospital constructed at the same time as the reservoirs he replied in the negative. Referred then to Skanska JV's recourse to Clause 9.1 of the Project Closure Agreement as a defence he stated that he could not recall with certainty reading such letter.

He was then referred to his letter dated 24<sup>th</sup> November 2011 addressed to Arch Paul Camilleri wherein, despite the defects in the reservoirs he asked for the remaining balance of Eur200,000 to be released to Skanska JV. In this

regard he was asked why he was recommending such release despite legal opinion, he replied that in fact it was due to such legal opinion that no action could be taken that he was asking FMS's President concurrence that the remaining balance be released.

He was then referred to the legal opinion provided by legal counsel on the 1<sup>st</sup> of April 2011, and specifically in relation to Clause 9.1 of the Project Agreement wherein it stated that such a clause might not entirely debar FMS from pursuing further claims. In this regard he was asked why, faced with such legal opinion FMS still did not pursue legal action he could not answer. He was then referred to the undated and unsigned notes regarding the advice remitted by legal counsel wherein doubt was raised regarding said legal opinion. He stated that he had not written said notes, did not know who had and was not sure if he had ever seen them. He was once again asked why he asked for the retention money to be released, answering that the holding of retention money was regulated by special procedure. Ultimately he stated that he interpreted that legal advice as a preclusion from the possibility of taking any further action against Skanska JV.

- **Mr John Dalli (JD) – 29<sup>th</sup> May 2015**

JD stated that in 1987 he was Parliamentary Secretary for Industry and then he was appointed Minister for the Economy in 1988. He explained that at the time he had no connection with the Hospital project. He became involved in 1992 when he was appointed as Minister of Finance.

Asked if he was involved in discussions with the Italian counterparts of the project in its initial phases, he explained that he had no involvement and was not part of the discussions. Moreover he emphatically stated that "*jien dejjem kont kontra dak il-ftehim.*" Asked why he explained that "*Ir-raguni il-ghaliex, jiena ifhimni, ma tantx..., jekk minix sejjer zball, dana kien gie Don Verze jweghdna li ha jibnilna sptar b' xejn fil-bidu. Imbaghad beda*

*gej it-tip ta' kuntratti li riedu jiehdu, u jiena kont xettiku hafna u ma kontx inkluz fid-diskussjonijiet.*" He explained further that it was Minister Louis Galea who led the discussions with Don Verze and the rest of the Italians.

Asked about the choice of Skanska JV and his involvement in that choice he explained that as Minister of Finance and hence responsible for the Department of Contracts, the adjudication of the contract fell within the remit of his Ministry. But obviously, he stated, he was not directly involved in the adjudication. He recalled issues with the adjudication, which had led to an appeal from one of the bidders, CMC, as they felt that they should have been awarded the bid, however the case was later dropped.

Asked about the involvement of Mixer Ltd, owned by his brother Bastjan Dalli, which was confirmed as concrete subcontractor in January 1996, he stated that *"jiena qatt ma dhalt fl-operat tal-kuntratt, fl-operations as such qatt ma ndhalt."* He said that he never asked who the subcontractors supplying concrete were. In fact he said he got to know that Mixer Ltd were involved in Mater Dei through the media when the whole controversy came to light.

Referred to Bovis Europe's report issued in July 1996 wherein problems with workmanship were raised and asked if he had taken any action on the basis of that report he said that he would have transmitted such report to the Minister responsible of the project and FMSS. He recalled that he had engaged Bovis Europe to audit the project as problems with Skanska JV were already evident at that stage of the project. He stressed that *"jekk fir-rapport kienu qalu li hemm xi defizenzi f' xi haga ma nkunx mort niccekja jien, jien nkun ghaddejt看 lin-nies..."*. JD said that the problems impacting the project were discussed at Cabinet level, including most probably the engagement of Bovis Europe.



Asked about the meeting held on the 12<sup>th</sup> of September 1996 between the Prime Minister and Ortesa representatives, including Don Verze, he stated that he could not recall attending such a meeting or if he was involved in the discussions. In this context he said *“jien kontx prezenti jew le, jien kont dejjem kritiku ta’ l-affarijiet, kritiku ta’ l-overspecifications li kien hemm, dejjem ghamilta cara fil-meetings kollha li kellna, jigifieri biex lili kienu jzommuni l’ boghod ma riedu xejn”*. He also noted that *“meta kienu dawn in-nies li qed tghidli, Peter Serracino Inglott, Louis Galea, dawk kienu hbieb ta’ Don Verze.”*

Asked who had negotiated the 1998 MOU which led to the Design & Build Cost Plus Agreement, JD emphatically replied *“mhux l-FMS jkunu nnegozjawh dak il-kuntratt.”* Asked if he was informed of it, he stated that as he was Minister of Finance he would have been informed. Regarding the Cost Plus element he stated that that decision would have been taken by FMS, adding that *“ma nahsibx li kien jkun sar minghajr l-approvazzjoni tal-Kabinett. Jien kif ghidt anke fil-pubbliku affarijiet ta’ dawn il-protata jigu diskussi at Cabinet level”*. He added *“ Ara l-Prim Ministru ta’ dak iz-zmien kellu l-ownership ta’ dan l-isptar, l-ownership fis-sens illi l-kuncett kien tieghu, tajjeb, u kien qed jiffollowjah fid-dettal u allura kien mar pass pass bl-aktar mod dettaljat.”* JD said he had no doubt that the then Prime Minister would have known that the contract was going to change to a Cost Plus basis, declaring *“m’ ghandiex dubbju, mija fil-mija”*.

He explained that the Cost Plus element was introduced with a view to contain costs stating that *“ huwa biex inti taccerta ruhhek illi qed tibbaza fuq cost u lil kuntrattur qed taghtih persentagg ta’ profit, u mhux fuq kull haga joqghod jivvinta x’ profitti jaghmel”*. Asked why Skanska was assigned the Design of the project where Noarman & Dawbarn, engaged by the previous administration, were close to finalizing their designs, he said that *“is-soltu storja hux li li jaghmel wiehed ma joghgbux lill-iehor. X’ nista’ nghidlek*

*jien, pero f' dik it-tip ta' decizjoni zgur ma hadtiex jien.*" JD however declared that he had agreed to the Cost Plus part of the contract as the concept of Cost Plus was not bad if one had control of costs.

Hes was then asked if he was being informed and updated with regards to the negotiations of the Project Closure Agreement. To this he replied that he would have been informed and also would have given his input *"ta' x' ghandhom jcedu u x' m' ghandhomx jcedu, fis-sens ta' l-operat tal-kuntratt."* He said that it was Brian St John and Paul Camilleri who kept him informed, especially due to the fact that they were leading the negotiations. Asked if he had approved the Project Closure Agreement in its final format, JD replied in the negative and that in fact he had never seen it. He referred to an email dated 5<sup>th</sup> of April 2009 as evidence thereof. He added that *"u lanqas qaluli li kienu qeghdin jiffirmawh u lanqas ma gejt infurmat li kkonkludew"*. Hence he did not know of the final format of the agreement. He also noted that the now infamous Waiver Clause was not referred to in said email. JD further pointed out that the information contained in the email was given to him 6 weeks after the conclusion of the agreement.

Asked if he would have agreed with Clause 9.1 as stipulated in the contract he said that the question was hypothetical. However from a reading of the contract he would have immediately inquired as to why the Contract included such a waiver when Clause 2 thereof already had provided for a waiver or pending claims. He then added that Clause 5 expressly retained rights under Maltese law, which were not waived by Clause 9. Having said that, he reiterated that he had not seen the contract and he would have raised questions had he done so.

## VII. Analysis

1. It is firmly evident from the present day technical reports above referenced that the strength of concrete cast in columns in Blocks D 1.1 and D 1.3 at 18MPa is substantially below the 30MPa strength specified in the contract. Technical analysis carried out by iAS and Arup categorically indicates that such discrepancy is not a consequence of normal wear and tear or otherwise bad maintenance, but is rather the consequence of substandard material used in the site and bad workmanship. Moreover, from evidence tendered by Arch Peter Zammit and the iAS and Arup reports, that the discrepancy in concrete strength is more pronounced - if not confined - to levels 8 and 9 of the hospital blocks subject of this inquiry.
2. Documentation, particularly progress reports (see especially Status Report dated 26<sup>th</sup> May 1996 compiled by Mr Emanuel Attard FMSS Chief Executive), original concrete testing, photos and testimony received strongly indicates if not confirms to the Board that the works in the columns in question were mostly carried out in the first half of 1996. The original concrete tests found by the Board all indicate that the concrete in question was provided by Mixer Ltd but as there were other suppliers providing material to the site, and the fact that not all concrete cast was tested, this cannot be ascertained with absolute certainty. Other concrete suppliers where Blokrete Ltd, Devlands Ltd and Maghtab Construction Ltd.
3. Extension works, carried out under the Labour Administration following the change in policy and scope of the project did not impact in any way on Blocks D1.1 and D1.3 under review, as confirmed by planning applications. Those carried out by the Nationalist Administration then under the Design and Build Cost Plus Contract, added to and extended the structure. There is no evidence that the areas under study were demolished, but rather it transpires that Block D1.3 was extended vertically and Block D 1.1 was extended both horizontally

and vertically. Arup who reviewed the structural drawings pertaining to the project also drew this conclusion.

4. More disconcerting are Arup's findings that there is also a defect in design seeing as it fails to meet the seismic load specifications that a project such as that in question, a hospital, and more specifically the accident and emergency unit, should meet. The Board, however, is not in a position to determine whether the failure of design emanates from the original design done by Ortesa Spa or from the altered design prepared by Skanska JV. Whatever the case, the Board feels that the alterations to the site in question were of such an invasive nature, enough to impact and possibly alter the structural integrity of the original construction built in accordance with the Ortesa design. Thus, it was ultimately the responsibility of the final designers, that is, Skanska JV, in terms of the Design & Build contract, to ensure that the site, as a whole, delivered to the client met its agreed specifications. Based on the design parameters issued by the Client's Representative to Skanska JV on the 20<sup>th</sup> of January 2000 where a design load factor of 1.4 was identified, the failure of design is ever more pronounced. Taking this design load factor into consideration, according to Arup, as understood by the Board, in the case of an seismic event, a majority number of columns would fail or suffer significant damage, especially when the design failure is compounded by the weak concrete found on site.
  
5. It is the understanding of the Board that most tests were carried out by the Contractor himself with a small sample being tested by an independent laboratory, in this case the Kordin facility of the Works Division. On the basis of a letter issued by PMO to Skanska JV dated 10<sup>th</sup> December 1997, it seems that one out of every five tests were carried out by the Works Division.

The Board has enough evidence to determine that the tests provided by the Contractor are fraudulent. As aforementioned, concrete strength could not have deteriorated over time and are in fact a direct consequence of the materials and

workmanship used at the time of construction. Considering the extent of the defective concrete found on site, it is evident that such defect could not be a result of genuine mistake or failure of oversight, but must have been the result of a concerted effort from which the Contractor, Suppliers, and possibly third parties benefitted. From test results furnished by the Contractor, which were found, it transpires that some such tests were carried out by Blokrete Ltd as they carried the company's stamp. However not all such results were so stamped and thus one cannot be certain that Blokrete Ltd itself and its officials were directly involved or perpetrators of said fraud, even though they together with the other joint venture members stood to benefit. Even if one had to consider the possibility that the tests themselves were correct and then through bad workmanship onsite and the addition of substandard materials the concrete was lowered in strength, the fact remains that such activity could still reasonably be deemed criminal. Once again such activity had to be carried out on such a massive scale that it cannot be the result of mere oversight but had to be intentioned by Skanska JV with a view to obtaining financial gain to the detriment of the client. Having said that the Board has no evidence identifying any particular individual or individuals, and firmly believes that the authorities should investigate the matter further.

With regards to the concrete testing carried out by Kordin facility the Board has serious reservations regarding the integrity of said tests, seeing how they contrast so dramatically with present day tests. The Board however cannot cast any responsibility on the Works Division lab technicians issuing such certificates. As evident from the test certificates themselves and from testimony received, most curiously the samples tested by the Works Division were not collected by officials of the testing facility but by employees of the Contractor himself. Therefore the Board cannot ascertain whether it is the test results or testing methods that were defective or whether the Contractor was misrepresenting the source of the sample and/or the coordinates of the *in situ* casting of the sampled concrete. What the present day technical reports seem to suggest however is that the test results cannot be deemed to represent a true and fair assessment of

the quality of concrete placed in the site. However, neither can one reasonably conclude that those same results are the fruit of fraudulent misrepresentation *per se*. As explained by various witnesses, samples were taken from concrete batches delivered to the site via appropriate delivery trucks. The deterioration of the strength of the concrete sampled could have occurred after the extraction of the samples, through the excessive addition of water whilst it was being cast, addition of substandard and porous aggregate and finally bad compaction of the cast concrete.

6. Original design specifications required the design to ensure that the edifice had to not only provide for seismic loads applicable to the Maltese Islands, but also to allow for future expansion **above** the original floor space proposed. In light of this, the Board is somewhat perturbed by the letter of the 27<sup>th</sup> of May 1997 presented to it by Arch Albert Cauchi. This is being affirmed as the only two logical conclusions that can be drawn from such letter is that either the design presented by Ortesa did not meet specifications, or otherwise he was aware that the *in situ* conditions independently of design did not permit further vertical expansion. In both instances it was Arch Cauchi's responsibility along with others to intervene and demand corrective measures, both as a structural design reviewer, and site inspector specifically assigned to Block D. The Board is not satisfied with the excuse provided by him, that he was not listened to or that his concerns were never considered. In this regard the Board agrees with Arch Vince Cassar that if such was the case, Arch Cauchi should have resigned his post and not remained directly involved till the end in a project in which he had no faith. The Board feels that the reasons for such letter could either have been motivated by technically extraneous reasons, or more probably, a recognised need to provide adequate cover for himself against evident shortcomings in the execution of the project which he so emphatically recounted throughout his testimony.
7. The Board believes that the PMO was found wanting, severely understaffed and unprepared for the crucial role it assumed for the success of a project of this

magnitude. This by no means is intended to detract from the enormity of the task they were entrusted with or otherwise to minimize the personal efforts of the persons involved. However, all persons involved in the PMO interviewed by the Board seemed to be more interested in distancing themselves from the project and laying blame at the others' door rather than providing the Board with a clear statement of fact of how events occurred. Particularly, the reasons given by Arch Martin Attard Montaldo for various reports raising concerns about the progress of the project, that is, that they were all ultimately after his position rather than being driven by a desire to ensure the success of the project, jarred with what is otherwise expected from a person holding such an important office. The facts as known today show that in fact the concerns then raised were more than justified and warranted. The constant and persistent failings of the PMO, and subsequently the Client's Representative, to carry out the expected oversight borders in the least on gross negligence. The Board is somewhat disturbed by the numerous missed opportunities through which the scale of the failings in the project could have been uncovered. This lack of oversight borders on the criminal for the sheer scale of it, especially when one considers and takes into account the testimony of Arch. Albert Cauchi who insisted that he had on many occasions voiced his concerns but was either disregarded or shot down. Not free from his own failings, particularly the failure to commission appropriate tests prior to recommending expansions of the site, Arch Vince Cassar seems to have been more genuine in his interventions in the project, recognizing the importance and urgency of addressing the multitude of concerns plaguing it.

8. Blame surely has to be levelled at Ortesa Spa for its pronounced let-down in providing the necessary expertise and level of diligence needed for the proper commissioning of such a project. From documentation seen and evidence heard by the Board, Ortesa's shortcomings were evident as early as 1993 and little to no improvement was recorded over the years. This raises further doubts regarding the direct and continued relationship initiated at least as early as 1989 that the Government of the day sought with Ortesa, Monte Tabor and Don Verze

which, as explained above, has remained somewhat shrouded in mystery. It is also to be noted that in terms of the 1994 Construction Supervision Contract, Ortosa was also tasked with overseeing construction and thus share in the failure of the PMO in protecting the interests of the client. That being said, the Board views with extreme concern the insinuations made in the missive sent by Ing. Carlo Mereghetti to Don Verze on the 17<sup>th</sup> of July 1996, extensively referenced above. Said letter seems to suggest that decisions were not being taken on the basis of technical concerns but that there were other 'political' influences and forces at play in the direction of the project.

9. Moreover the client himself, that is FMSS and ultimately the Government also failed by omission if not by commission, by failing to intervene when faced with the growing problems and concerns afflicting the project. As aforementioned, delays in submission of designs and with the progress of works were evident from the beginning of the project. The same goes for the quality of the works, as confirmed by testimony in particular that of Arch. Albert Cauchi. However, independently of such testimony, by July of 1996 there was enough documentary evidence which, under normal circumstances, should have cajoled FMSS into action in order to ensure the integrity of such an important project so crucial to the advancement of health services on the island. In this regard reference is made to the reports issued in quick succession by Bovis Europe and Ortosa on the 8<sup>th</sup> and 11<sup>th</sup> July 1996 respectively which both highlighted serious deficiencies in the quality of works evident on the site. Further reference is made to the report issued by Arch Vince Cassar on the 10<sup>th</sup> of September 1996. However in spite of said reports, FMSS and the Government remained passive, resolving only to hold further meetings rather than taking the necessary direct and drastic measures required. It is to be noted that FMSS at the time had the Minister responsible for the project, Hon. Dr Louis Galea as president and Hon. John Rizzo Naudi and Hon Antoine Mifsud Bonnici as vice president and secretary respectively, all three of which were members of the Government. Thus it would be naive to consider that the Government did not know or could not have known



of the dire state that the project was in. Dr. Louis Galea whilst at first denying having knowledge or being confronted with any major issues and concerns during the initial phase of construction, seems to then indicate that by September 1996 matters had come to a head and Government was seriously considering terminating the role of Ortesa Spa in the project and thus that of the Italian counterparties. However the Board could not find any corroborating evidence of such decision.

The Board is also seriously concerned over certain statements made by witnesses which allege that there was political intervention and direction in the choice of concrete suppliers.

Further concerns arise from the manner in which the MOU signed with Skanska JV in December 1998, was executed and documented. This MOU was retrieved from the FMS safe and had been kept apart from the rest of the documentation pertaining to the hospital project which, by and large, was stored in boxes in the FMS store. Moreover, no mention of the said MOU was found in the FMS Board minutes at the time of its signing. This MOU seems to have been 'authorless' with all and sundry trying to distance themselves from it. The MOU led to the formulation of the design and build cost plus agreement of February 2000 that, as described by the Project Manager, equates to an open cheque for which the Maltese people paid dearly. The cost plus element of this agreement was also referred to by the Structural Surveyor and Site Supervisor obo Projects Management Office and described it as "corruption". Moreover Lm2,000,000 were paid to the Contractor in terms of an attached Memorandum of Agreement, however no explanation is given for the payment thereof. Minutes seen by the Board indicate that this sum was give as a 'gesture of goodwill'.

The Board is genuinely perturbed by the general and absolute waiver granted in the Project Closure Agreement, particularly in light of the evidence tendered by Arch. Paul Camilleri who alluded to bad faith negotiations and possible fraudulent

and malicious intent of the Contractor, who however, despite such reservations, signed the agreement nonetheless. However this Board cannot start to comprehend how the FMS Board and Senior Management could have accepted such a clause without any reservations. It is pertinent that an outline is given as to how events leading to the Project Closure Agreement occurred:

- On the 2<sup>nd</sup> and 3<sup>rd</sup> of December 2008 the Decision Group meet with a view to resolving various claims raised by the parties against each other. These negotiations fail.
- On the 16<sup>th</sup> and 17<sup>th</sup> of December 2008 Arch. Paul Camilleri and Lars-Erik Alm, Senior Executives appointed by the parties meet to try and find an amicable settlement.
- On the 20<sup>th</sup> of December 2008 Arch. Paul Camilleri informs Minister Dalli via email that discussions have failed and arbitration is inevitable.
- Inexplicably on the 26<sup>th</sup> Of December 2008 the Senior Executives reach an agreement and signed a Terms of Settlement Agreement. The waiver in this agreement read as follows: *“Except as explicitly stated in these terms of settlement agreement, to be finalized and entrenched in a formal settlement agreement, the parties will not be liable whatsoever for all and any further and future concerns, claims or disputes that the parties have or may have in respect of the main agreement and the amendment agreement. **In all other respects, the Laws of Malta shall apply”**.*
- On the 15<sup>th</sup> of January 2009 the FMS Board meets and approves the Terms of Settlement Agreement. Curiously two version of the minutes were found, one stating that Arch. Paul Camilleri read out the agreement, the other that the terms where presented to the Board and the sailent points discussed.
- On the 21<sup>st</sup> of January 2009, Skanska JV send its first version of the Settlement Agreement based on the terms of settlement. This draft Settlement Agreement contains for the first time a version of an

absolute waiver of rights. Moreover notes drafted by Skanska JV on the draft Settlement Agreement are sent which state that "*Waiver clause proposed with extended text compared to 'Terms of Settlement Agreement'*". Despite this note, no comment is passed by all involved, and the clause is accepted as is.

- On that same day Arch. Paul Camilleri sends an email to FMS' Legal Counsel with attached the Terms of Settlement Agreement, draft Settlement Agreement and Skanska JV notes for his review. Soon after he sends a new version of the Terms of Settlement Agreement however with a fundamental change. The Eur 5,125,000 to be paid would be by way of a variation order and not as a settlement of claims. He further informs legal counsel that the new version was to be signed that same day. However FMS Board is not reconvened to approve the new Terms of Settlement Agreement.
- Throughout various exchanges, the draft Settlement Agreement changes into the Project Closure Agreement, which provides for variation orders, acceptance for previous works, waiver of reciprocal claims and finally in Clause 9 for a waiver of any rights to vaunt claims past, present and future in terms of the previous contracts. Most curiously even the recitcles are changed from ones giving the context of the contract as one of settlement to one of commissioning of new works.
- On the 19<sup>th</sup> of February 2009 the Project Closure is signed allegedly, according to witnesses, unbeknowst to anyone.
- On the 5<sup>th</sup> of April 2009, Paul Camilleri emails Minister John Dalli, and sends a silent copy thereof to FMS CEO, Brian St John, somewhat apologetically informing him that he had not kept him abreast of the developments in the negotiations. He also sends him a copy of the agreement, though Mr Dalli insisted during testimony that there was no attachment to the email in question.

This series of events does not imbue the Board with confidence that due process was followed by the FMS negotiating team, even though legal counsel was consulted extensively. It is not clear why the Minister responsible was not kept in constant update on the progress of negotiations and authorization sought prior to conclusion. Neither is it clear why the Terms of Settlement Agreement approved by the Board were subsequently changed without the Board's knowledge. Nor why a settlement agreement was ultimately changed into a project closure agreement through which new works were effectively commissioned. This Board is neither convinced that the CEO at the time, Mr. Brian St. John has absolutely no memory of discussions concerning such an important clause.

Finally however the Board is most disturbed by the events that transpired during 2011 when FMS became cognizant of structural defects and deficiencies in the reservoirs adjacent to Blocks D1.1 and D1.3. By July 2011 FMS had confirmation that weak and below spec concrete was cast in said reservoirs. Moreover it was aware that such works were carried out in February 1996 when the base and first two floors of Block D, that is the Main Hospital Block were constructed. The reports and findings of testing facility SolidBase, engaged by DeMicoli and Associates to run concrete compressive tests, effectively confirmed then what has today been confirmed by the present day technical reports. FMS' failure to raise further concerns regarding the integrity of the remainder of the construction is inexplicable and totally inexcusable. When Skanska JV was confronted with those findings it immediately made recourse to Clause 9 of the Project Closure Agreement and found no legal challenge from FMS. Even the final balance of Eur 200,000 being retained by FMS in view of the findings were released to Skanska JV in November of that same year at the behest of CEO Brian St John. In this regard the Board also finds very troubling the mischaracterization by the CEO of the legal advice received by FMS on the matter, in his letter to Arch. Paul Camilleri asking for his concurrence to release the retained funds.

10. However nothing from the above observations should in any way minimize or detract from the full and ultimate responsibility that should be borne and attributed to the Contractor, Skanska JV. It was ultimately the responsibility of the Contractor to ensure in good faith its complete compliance with and adherence to its assumed contractual obligations and responsibilities. Considering the nature of the project and the financial investment it entailed, considering further that Skanska JV was entrusted with the construction of the whole site throughout all its phases and finally also with its design, no excuse can be deemed acceptable for the serious failings which have ultimately resulted as evidenced by the present day technical reports. It is even harder to accept the present condition of the site when one considers that Skanska JV was ultimately tasked with the Design & Build contract to finalize the project on a cost plus basis, which as described by some of the witnesses equates to an open cheque for which the Maltese people paid dearly. The Board feels that it is shameful how a contractor of international renown, fame and stature such as Skanska International could default so comprehensively in its quality assurance and oversight, and possibly participated in fraudulent activity.

## **VIII. Civil and Contractual Responsibility**

### ***Contractor's Responsibility***

It results that the Contractor assumed responsibility for the good quality of the works executed and materials supplied. This is expressed in the Building Contract dated 12<sup>th</sup> of December 1995 as well as in the Design and Build Contract of the 29<sup>th</sup> February, 2000, which, incidentally, according to the Memorandum of Understanding dated 4<sup>th</sup> of December 1998 was to be considered as an addendum to the former contract. In effect it is expressly stated in this same MoU that, primarily, Contractor shall carry out and be responsible for the design, execution and completion of works in accordance with the altered design submitted by Contractor and accepted by Client.

The facts show that the Contractor engaged White Architects as Design Subcontractor to prepare the altered design and local architects Cassar, Grech and Ebejer to produce the site drawings. The facts also show that the latter roped in Architect Karm Busuttil (now deceased) as the expert structural Engineer to assist them. It transpires that this Architect had originally (1997) made calculations based on Ortesa's original designs and determined that the existing structure could take on a load of two extra floors. Apart from such calculations no physical tests were carried out. In Vince Cassar's own words "*taghmel design, taghmel studju fuq dak li ghandek bhala disinn. Issa jekk inti kont qiegħed hemmhekk fuq ix-xogħol u taf ix-xogħol kif sar u taf il-grade tal-konkrit kif inhu, it-testijiet tal-konkrit li ghandek u x'għidulu, tiddeciedi jekk tridx taghmel xi testijiet ta' xi haga. Normalment kont taghmel testijiet, jigifieri ticcekkja u tara. Isma konkrit grade 30 huwa?*" (sitting 22.12. 2014.). All concerned, including the Contractor and his Subcontractors appear to have given weight to Architect Busuttil's calculations and refrained from carrying out any tests.

On the basis of legal doctrine and jurisprudence, purely from a civil law point of view, it is an accepted principle that the Contractor:-

- (i) "*għandu l-obbligu li jezegwixxi x-xogħol lilu kommess fis-sens li huwa għandu l-obbligu wkoll li jara li dan ix-xogħol ikun sejjer isir utilment u mhux b'mod li l-quddiem juri difetti....Dan fis-sens li hu "għandu jiggarantixxi l-bonta' tax-xogħol tieghu (Vol. XL pl p 485);*
- (ii) "*L-appaltatur li jezegwixxi hazin ix-xogħol li jifforma l-oggetti ta' l-appalt huwa responsabbli għad-dannu kollu li jigi minn dik l-ezekuzzjoni hazina" (Vol. XXXVII pIII p883). Ghax kif jinsab ritenut ukoll "f'kaz bhal dan hu għandu mill-ewwel ma jagħmel ix-xogħol jew ikollu jirrispondi għad-difetti li jigu l-quddiem" (Mario Blackman vs. Carmelo Farrugia et noe, App. Kumm., 27 ta' Marzu, 1972);*
- (iii) "*Dan huwa hekk avolja jkun hemm l-approvazzjoni tax-xogħol (Vol. XLI pl p667) jew l-appaltatur ikun mexa skond l-ispecifications jew l-istruzzjonijiet lilu mogħtija mill-kommittent. "E' dovere dell'appaltatore di resistere ad ordini che egli vedesse pregiudizievoli alla solidita' o contrarii alle buone regole dell'arte"*

*(Vol. XXV pl p727). Kif ahjar imfisser u spjegat, "l-appaltatur hu obbligat u hu dejjem responsabbli li jaghti lill-appaltant opra sodisfacenti, u ma jistghax jallega li x-xoghol sar mhux sewwa ghax hu ghamlu kif ried il-kommittent, billi l-appaltatur hu obbligat jirrezisti ghal kwalunkwe intromissjoni tal-kommittent" (Vol. XLII pl p1003);*

*(iv) Meta allura jirrizultaw dawn id-difetti, l-appaltatur jitqies in kolpa minhabba inadempiment. "Il-kolpa kontrattwali hija dik li tikkonsisti fin-nuqqas ta' l-ezekuzzjoni jew fezekuzzjoni hazina, ta' l-obbligazzjoni rizultanti mill-kuntratt (Vol. XXXVIII pl p292);*

*(v) L-istess regoli huma metru siewi biex ikun accertat ukoll il-bontà, o meno, tal-materjal uzat ghax, kif ritenut, l-ezekuzzjoni tax-xoghol tinvolvi anke l-ghazla tal-materjali u l-appaltatur ma ghandux jadopera materjali mhux tajba (Rebecca Aquilina vs. Giuseppe Sciortino et", App. Kumm., 5 ta' Dicembru, 1955)*

These extracts are taken from the following judgements of our Courts, viz, "Pierre Darmanin vs. Moira Agius et", App. Inf., 6 October 2004 and "Anthony Borg nomine vs. Martin Pillow noe", Civil Court, First Hall, 10 October, 2008.

Besides these highlights what is more fundamental is the fact that as a general principle of Civil law, the contract is law between the contracting parties (art. 992 Civil Code), and as such, in view of what has been expressed above, the Contractor must, all things being equal, abide by the contractual warranty, and, consequently, be held liable for the defects in the works detected in the present day technical reports.

Having stated the above the, Board needs to address the issue of the waiver granted in Clause 9 of the Project Closure Agreement. Before commenting on this particular Agreement, the Board feels that it is worthwhile to register this preamble:-

- (i) Following the terms of settlement reached by the respective Senior Heads of Skanska JV and FMS, the former drew up a formal Settlement Agreement. In this

Agreement there was a general Waiver provision (Clause 16) which read as follows:

*Except as explicitly stated in this Settlement Agreement, the parties will not be liable whatsoever for all and any further, past, present or future concerns, claims or disputes that the parties have or may have in respect of the Main Agreement and the Amendment Agreement and each Party waives with binding effect all its rights in relation to the Main Agreement and the Amendment Agreement except in relation to those rights explicitly stated in this Settlement Agreement.*

This waiver clause was extended beyond that agreed in the Terms of Settlement Agreement with the inclusion of the words “*and each Party waives with binding effect all its rights ...*”.

- (ii) This Agreement was examined by FMS's lawyer and a series of variations and amendments followed;
- (iii) Eventually, it results that the parties changed its name to Project Closure Agreement containing only ten clauses. Of note is the fact that this Agreement mentions two waiver provisions; one at Clause 2 entitled Reciprocal Waiver of Rights; and a reproduction of the aforementioned general Waiver at Clause 9;
- (iv) This Agreement was then signed on the 19th February 2009 by Architect Paul Camilleri on behalf of FMS, Lars-Erik Alm for Skanska JV, and Dr Joe Fenech on behalf of Blokrete Ltd.

Without for the time being taking into consideration all the known facts and circumstances relative to the project hereinabove described, one might argue, from a purely legal standpoint and viewing the agreement as a whole, that Clause 9, even as worded, does not hinder the right of FMS to raise further and additional claims against SMJV. This interpretation is borne out by the rationale of Clause 5 headed



"Acceptance", which expressly stipulates that the acceptance of the Works carried out or those to be completed as per Clause 4 of the Agreement, does not withstall any rights which both contracting parties have under Maltese law.

Subject to what will be stated further on, as a matter of Maltese law, if this Agreement is to be considered as one of compromise falling within the definition of article 1718 of the Civil Code

*1718. A compromise is a contract whereby the parties, by means of a thing given, promised or retained, put an end to a lawsuit which has commenced or prevent a lawsuit which is about to commence.*

as ulteriorly qualified by case-law ( "**Carmelo Cini vs. John Cini**", App. Inf., 22nd March, 2006), it may well be that articles 1725 and 1726 of the Civil Code under the institute of "Compromise" would come into play:

*1725. A compromise shall not extend beyond the subject-matter thereof: a renunciation in a contract of compromise of all rights, actions, and claims, applies only to what relates to the controversy which has given rise to such compromise.*

*1726. A compromise shall only settle the controversies which the parties had in view, whether such parties have expressed their intention in special or general terms, or whether such intention appears as a necessary consequence of what has been expressed.*

On the other hand, viewed from a perspective of the common intent of the parties to the Agreement, another plausible interpretation could be the following. As already stated, in its original format the agreement reached started out as a "Settlement" contract. Eventually, after a number of altered versions it finally dwindled down to a Project Closure Agreement. Apart from significant changes to its opening recitals from those of the Settlement Agreement and head changes (e.g. "Variation order/s" in lieu of "Claims" at Clause 4), the Project Closure Agreement introduced for the first time at Clause 2 thereof a Reciprocal Waiver of Rights which reads as follows:

*2.1 Subject to the terms and conditions of this Project Closure Agreement, SMJV hereby irrevocably waives any and all contestations and claims made, alleged or asserted against FMS before the date of this Project Closure Agreement (the "SMJV Released Claims"), and declares that it has no further claim against FMS under or in connection with the Amended Main Agreement and irrevocably undertakes that it shall not at any time hereafter allege, assert or pursue, or cause or assist any third party to allege, assert or otherwise in any manner pursue or seek to enforce the SMJV Released Claims under or in connection with the Amended Main Agreement, against FMS.*

*2.2 Subject to the terms and conditions of this Project Closure Agreement, FMS hereby irrevocably waives any and all contestations and claims made, alleged or asserted against SMJV before the date of this Project Closure Agreement (the "FMS Released Claims"), and declares that it has no further claim against SMJV under or in connection with the Amended Main Agreement and irrevocably undertakes that it shall not at any time hereafter allege, assert or pursue, or cause or assist any third party to allege, assert or otherwise in any manner pursue or seek to enforce the FMS Released Claims under or in connection with the Amended Main Agreement, against SMJV.*

Incidentally, this provision never formed part of the Settlement Agreement.

In this context, in view of the reciprocal waiver of claims in clause 2 above reported, one query that logically arises is what induced the contracting parties to retain in the same Agreement the Waiver at clause 9. One plausible argument is that the parties wanted, once and for all, to close the chapter on the project and all and any further, past, present or future concerns, claims or disputes. The notes sent by Arch. Paul Camilleri to Minister John Dalli on the 5th of April 2009 could be understood in this light:

*"In general, FMS accepted works which albeit not being in full accordance to contract specifications, still carried out their intended function – and, in any*

*case, these had been supervised by FMS's staff for the years it took to build the Hospital. As such the ceding of these points, besides being weak to defend in an Arbitration Tribunal (due to the tacit approval by the site staff), will not impinge on the Hospital's efficacy".*

The wording of this clause is wide enough to encompass all sorts of claims and pretensions. Commenting on article 2048 of the French Civil Code, corresponding to article 1725 of our Civil Code, the renowned author Laurent ("Principii di Diritto Civile", Vol. XXVIII, no. 388) makes this important observation: "*Si vede che il legislatore ha poca fiducia nella redazione degli atti; accade raramente che essa sia l'opera delle parti, e coloro che li redigono vi mettono raramente la precisione e la chiarezza desiderabile. Pero' non bisogna spingere le cose a far dire al legislatore cio' che non ha voluto dire. Quando i termini di una convenzione non lasciano alcun dubbio, bisogna stare a quella, allo stesso modo che deve applicarsi la legge nel senso chiaro che presenta. Non vi ha luogo ad interpretazione che quando vi e' dubbio, ed in questo caso devesi tenere conto dell'intenzione, nei contratti ancor piu' che nelle leggi, perche' queste sono generalmente meglio redatte.*" Another author Dalloz (voce Transazione) retains that there could be two kinds of compromises: "*alcune generali, altre particolari. Nelle prime la rinunzia a tutti i diritti, azioni e pretensioni comprende tutti i diritti qualsivogliano di colui che rinunzia, poiche' hanno le parti voluto por termine a tutto; nelle seconde non vi si estende che a quelle relative alla controversia che vi ha dato luogo, poiche' esse circoscrivonsi al loro oggetto*".

From records examined Clause 9 was put to the test in 2011. It has resulted to the Board that when an issue arose in that year regarding defects in water tanks and underlying concrete and FMS expected Skanska JV to make good for the same, the latter rejected such a claim on the strength of Clause 9 stating that "*In response to your correspondence dated 3<sup>rd</sup> March 2011, SMJV maintain their position as previously outlined. Any obligation that may have existed for SMJV to rectify the defect, as highlighted in the attached report, was waived by FMS through Clause 9.1 of the Project Closure Agreement*". At the time, and notwithstanding legal counsel's advice based on

articles 1725 and 1726 of the Civil Code, no further action was pursued by FMS Board still headed by Architect Paul Camilleri.

Moreover FMS, who initially threatened Skanska JV that it would be withholding the payment of the last instalment of the Retention money, acquiesced to Skanska JV's stance and eventually proceeded to make the final payment.

Pursuing further the matter under consideration from a Maltese law perspective under the institute of Prescription, the position is as follows. Being of a contractual nature the prescriptive period to action a claim for damages in the case of "Appalt", that is a contract of works, is five years (see inter alia Art. 2156(f) of the Civil Code; "**Carmela Manicolo vs. Philip Hili**", Appeal, 5th October, 1998). This prescriptive period starts to run in the case of works not executed "*skond l-arti u s-sengha*" "*mid-data ta' l-ezekuzzjoni tax-xoghlijiet u mhux minn dik li fiha ssir taf bil-htija l-parti danneggjata*" ("**Joseph Vella et vs. Emanuel Bonello et**", Civil Court, First Hall, 14th July, 1971). On the other hand, in the case of works not carried out according to specifications, this same prescriptive period runs from the date the works at issue were completed.

Furthermore, one has to consider article 1638 of the Civil Code which provides as follows:

*1638. (1) If a building or other considerable stone work erected under a building contract shall, in the course of fifteen years from the day on which the construction of the same was completed, perish, wholly or in part, or be in manifest danger of falling to ruin, owing to a defect in the construction, or even owing to some defect in the ground, the architect and the contractor shall be responsible therefor.*

It is more than clear, as so confirmed by Arup's report, that this provision of the law bears no significance to the matter under review. According to local jurisprudence an action based on this disposition of the law "*kellha bhala presuppost mhux kwalunkwe lezjoni ghall-edificcju jew difett ta' kostruzzjoni imma r-rovina totali jew parzjali, jew almenu l-perikolu evidenti anke jekk mhux imminenti tar-rovina....La darba ma kienx*

*hemm perikolu ta' tigrif, l-art. 1732 (illum, art. 1638) ma setax jigi applikat, ghax kien jonqos wiehed mill-estremi tal-istess disposizzjoni...."* ("Michele Mallia vs. Perit William Micallef et", Appell Kummercjali, 15th November, 1968).

Having considered the above, the facts as they transpired make the matter more complex and convoluted. Considering that:

- the works in question have been accepted over the years, leading to a possible tacit acceptance of the defects, and/or renunciation of right;
- it seems to have been the will of the parties to close off the project once and for all by means of the Project Closure Agreement as evidenced by the words of Arch. Paul Camilleri above referred;
- that FMS already failed to institute legal action against Skanska JV when structural defects were discovered;
- FMS did not rebut to Skanska JV's defence that Clause 9 of the Project Closure Agreement which meant that no further claim could be raised against it; and
- the failure to carry out further physical tests when FMS had, or should have had reasonable grounds to doubt the structural integrity of the site;

any future action, despite the legal principles above discussed, may be hindered and threatened.

Finally however the Board refers to Article 2154 of the Civil Code:

*2154. (1) With regard to the prescription of civil actions for damages arising from criminal offences, the rules laid down in the Criminal Code relating to the prescription of criminal actions shall be observed.*

*(2) Nevertheless, any person who has stolen a thing, or who has become the possessor thereof by means of an offence of fraud, or who has received or bought such thing, knowing it to have been stolen or fraudulently acquired, cannot prescribe for it, notwithstanding any lapse of time.*

If through further investigations carried out by the authorities, criminal responsibility is definitely identified and concretized, future legal actions for civil damages against the perpetrators may still be possible.

### ***Project Management's Responsibility***

A Project Manager was appointed by the Foundation for Medical Sciences and Services whose duties emanate from the Contract dated 12<sup>th</sup> September, 1995. Inter alia, among his multi-task responsibility he had to supervise the Works carried out and, in particular, the quality management and certification of such works. To better perform such duties the Project Manager had a number of Architects to oversee specific building areas. It is worthwhile to point out that as per clause 2.1 (c) of the said Contract it is provided that *"Except as expressly stated in the Contract, the Project Manager shall have no authority to relieve the Contractor of any of his obligations under the Contract."* From this, one can infer that ultimately the responsibility for the correct and proper execution of the works lay with the Contractor, and any verified defects had to be made good by him.

This does not mean that the Project Manager was exempt from any responsibility towards the Client (FMMS). In the Board's view the overall picture resulting from a recital of the facts above detailed seems to show shortcomings, bordering on gross negligence, even though one ought to point out as aforementioned that the Project Manager's team was highly under staffed to supervise the whole range of the works simultaneously carried out *in situ* by the Contractor who, incidentally, had his own supervisors on site.

It has been held by our Courts on the strength of a judgement by the Italian Court of Cassation (28<sup>th</sup> November, 2001, No, 15124) that *"in tema di responsabilita' conseguente a vizi o difformita' dell'opera appaltata, il direttore dei lavori per conto del committente, sebbene presta un'opera professionale in esecuzione di una obbligazione di mezzi e non di risultati, poiche' e' chiamato a svolgere la propria attivita' in situazioni involgenti l'impiego di peculiari competenze tecniche, deve utilizzare le proprie risorse intellettive ed operative per assicurare, relativamente all'opera in corso di realizzazione,*

*il risultato che il committente-proponente si aspetta di conseguire, onde il suo comportamento deve essere valutato non con riferimento al normale concetto di diligenza, ma alla stregua della "diligentia quam in concreto"; costituisce, pertanto, obbligazione del direttore dei lavori l'accertamento della conformita'sia della progressiva realizzazione dell'opera al progetto, sia delle modalita' dell'esecuzione di essa alle regole della tecnica. Conseguentemente non si sottrae a responsabilita' ove ometta di vigilare e di impartire le opportune disposizioni al riguardo, nonche' di controllarne l'ottemperanza da parte dell'appaltatore ed, in difetto, di riferirne al committente."* This extract was reproduced in the case "**Joseph Falzon nomine vs. Marquita Briffa et**", **Civil Court, First Hall, 27<sup>th</sup> April, 2005, confirmed by the Court of Appeal on 4<sup>th</sup> July, 2008.** This judgement went on to state "*Naturalment dan appena enuncjat jirrigwarda r-rapport intern bejn il-kommittent u d-direttur tax-xoghlijiet*". In the same sense is the judgement handed down by the Court of Appeal in its Inferior Jurisdiction, "**Maria Concetta Stivala et vs. Pierre Buttigieg et**", **22<sup>nd</sup> January, 2010.**

These responsibilities outlined above by and large were assumed by the Client's Representative under the Design & Build contract.

However it is to be pointed out that the prescriptive period for any action on the basis of the above is also that of 5 years which start to lapse from termination of works. However in the event that fraudulent dereliction of duty is identified through the appropriate legal process, action for civil damages could still be possible.

Having made the above observations, it is the opinion of the Board that the report should be sent to the Attorney General for his further assessment and determination of the civil liabilities of the parties involved and to advise FMS and Government on the best legal action and avenues, if any, available to them.

## **IX. Criminal Responsibility**

As mentioned above the Board is firm in its opinion that the widespread failings uncovered by the present day technical reports indicates that the pervasive weak

concrete found in the site is a result of intended fraudulent actions. However the Board has not found the necessary evidence to link such fraud with any individual or group of individuals.

Moreover the Board, after having analysed all the evidence before it and the witness statements is left with a distinct impression that events as they transpired were not the fruit of coincidence or providence but seem to indicate an element of concertation and direction. Too many occasions have been missed which could have uncovered the extent of such extensive and absolute failings for such to be solely down to unfortunate coincidence. In this regard the words written by Ing. Carlo Mereghetti to Don Verze, and statements made by certain witnesses re-enforce this impression. However once again the Board has not uncovered any evidence that could conclusively indicate, or rather implicate any individual or group of individuals.

The Board also has serious concerns regarding certain statements made under oath and events as they occurred leaving it with reasonable suspicion of wrong-doing. These include statements made by witnesses alleging political intervention in the choice of concrete suppliers, corruption, and alluding to possible fraudulent acts in the conclusion of the Project Closure Agreement.

In light of the above the Board strongly recommends that this report along with the dossier are sent to the Commissioner of Police for further investigations.

## **X. Conclusions**

On the basis of the above, the Board concludes:

1. That, on the basis of the present day technical reports, the concrete cast in columns in Blocks D 1.1 and D 1.3 at 18MPa is substantially inferior to that specified in the Contract;

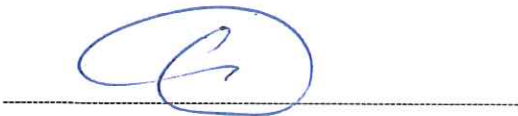


2. That review of the structural design indicates that there is also a failure of design in terms of design specifications;
3. That those entities that were best placed to insure the Contractor's contractual compliance, including Ortesa as designers and supervisor of works, PMO as project manager and subsequently Client's Representative, and FMSS (FMS) and Government as clients, knew or should have known of the various shortcomings in the execution of works, however failed to act in a diligent manner as reasonably and objectively expected of them, and whose actions bordered on gross negligence;
4. That responsibility and contractual liability for the failures identified in the present day technical reports ultimately lies with the contractor, Skanska JV, however documentation seen by the Board indicates that FMS in the Project Closure Agreement, and actions of the Client may have hindered its right to vaunt any further claims against the Contractor, which could limit FMS and Government in pursuing the necessary redress.
5. The Board, considering the full extent of the evidence presented before it, is firm in its opinion that the widespread failings uncovered by the present day technical reports indicates that the pervasive weak concrete found in the site is a result of intended fraudulent actions. Moreover the Board is left with a distinct impression that events as they transpired were not the fruit of coincidence or providence but seem to indicate an element of concertation and direction.
6. That in light of the above, a copy of the report should be sent to the Attorney General and the Commissioner of Police, and possibly even the Auditor General, for their further assessment and determination, and where appropriate to further advise FMS and Government of possible legal actions and remedies available to them.

Signed by:



Justice Emeritus Philip Sciberras



Mr. Karl Cini



Architect Joseph Scalpello

Today, 1<sup>st</sup> of June 2015