



International Oil Pollution
Compensation Funds

Agenda Item 3	IOPC/APR17/3/3/Rev.1 ^{<1>}	
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1992 Fund Executive Committee	92EC68	●
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INCIDENTS INVOLVING THE IOPC FUNDS – 1992 FUND

VOLGONEFT 139

Note by the Secretariat

Objective of document:	To inform the 1992 Fund Executive Committee of the latest developments regarding this incident.
Summary:	<p>On 11 November 2007, the Russian-registered tanker <i>Volgoneft 139</i> broke in two in the Kerch Strait which links the Sea of Azov and the Black Sea between the Russian Federation and Ukraine. It is believed that up to 2 000 tonnes of fuel oil were spilled at the time of the incident. Some 250 kilometres of shoreline both in the Russian Federation and in Ukraine were affected by the oil.</p> <p>The shipowner was insured for protection and indemnity by Ingosstrakh (Russian Federation), which does not belong to the International Group of P&I Associations (International Group). The insurance cover is limited to 3 million SDR (RUB 116.3 million). Since the minimum limit under the 1992 Civil Liability Convention (1992 CLC) after November 2003 is 4.51 million SDR (RUB 174.8 million), there is an ‘insurance gap’ of some 1.51 million SDR (RUB 58.5 million).</p> <p>In June 2012, the Arbitration Court of Saint Petersburg and Leningrad Region held that the insurers had a liability of 3 million SDR in accordance with Russian law as published in the Russian Official Gazette at the time of the incident. However, in a judgment rendered in October 2013 the Presidium of the Supreme Court ordered that the previous judgments be set aside in respect of the part that had ordered the 1992 Fund to cover the ‘insurance gap’ of 1.51 million SDR and ordered that the case be sent to the Arbitration Court of Saint Petersburg and Leningrad Region for reconsideration on that point.</p> <p>At its April 2013 session, the 1992 Fund Executive Committee decided to authorise the Director to pay private claimants in full according to the June 2012 court ruling and make interim payments to the three government claimants, namely the federal agency, the regional government and the local government, with pro-rated deductions to cover the ‘insurance gap’. In accordance with this decision, the 1992 Fund has paid all private claimants in full.</p>

^{<1>} This document has been reissued since the original document contained some errors in the information provided in the Civil proceedings section.

In a judgment delivered in November 2014, the Arbitration Court of Saint Petersburg and Leningrad Region decided that the 'insurance gap' should be allocated between all the claimants on an equal basis. According to this judgment, the 1992 Fund has overpaid the private claimants some RUB 8.7 million.

In order to recover the amounts overpaid to private claimants, the 1992 Fund has applied for the reversal of the execution of the 2012 judgment.

Talks between the 1992 Fund and Ingosstrakh suggested that Ingosstrakh might be willing to deduct from the payments due to individual claimants, the amounts overpaid to these claimants by the 1992 Fund. Ingosstrakh would then pay these deducted amounts back to the 1992 Fund. However, Ingosstrakh is denying payment to claimants arguing that, due to the wording of the judgment, it is not strictly required to pay and that doing so would be illegal.

Recent developments:

At a hearing in October 2016, the Arbitration Court granted the 1992 Fund's petition for the reversal of the execution of the 2012 judgment. The reversal of the execution of the judgment formally entitles the 1992 Fund to receive from private claimants the amounts overpaid to them in comparison with what the November 2014 judgment awarded. The Court has issued enforcement certificates to the 1992 Fund for it to recover from the private claimants the overpaid amounts. The 1992 Fund's lawyers are contacting the private claimants to see whether they would be prepared to comply with the judgment execution reversal ruling voluntarily.

The 1992 Fund has paid RUB 24 884 797 awarded by the November 2014 judgment to the local government of the area affected by the spill. The Fund has also contacted the other two remaining government claimants to pay the amounts owed to them. The Fund is now waiting for a reply from those claimants.

In January 2017, the Arbitration Court decided that the Kerch Port Authority had been liquidated and that a newly created Crimea Maritime Ports had not assumed Kerch Port Authority liabilities. The 1992 Fund has appealed against this decision. The Fund argued that the new enterprise should be liable for the obligations of the Kerch Port Authority.

Relevant documents:

The [online Volgoneft 139 incident](#) report can be found via the Incidents section of the IOPC Funds' website.

Action to be taken:

1992 Fund Executive Committee

Information to be noted.

1 Summary of incident

Ship	<i>Volgoneft 139</i>
Date of incident	11.11.2007
Place of incident	Kerch Strait, between the Sea of Azov and the Black Sea, Russian Federation and Ukraine
Cause of incident	The vessel broke into two sections
Quantity of oil spilled	Up to 2 000 tonnes of fuel oil
Area affected	Taman Peninsula, Tuzla Spit and Chushka Spit, Russian Federation and Ukraine
Flag State of ship	Russian Federation
Gross tonnage	3 463 GT
P&I insurer	Ingosstrakh
P&I cover	3 million SDR or RUB 116.3 million
CLC limit	4.51 million SDR or RUB 174.8 million
'Insurance gap'	1.51 million SDR or RUB 58.5 million
CLC + Fund limit	203 million SDR or RUB 7.9 billion
STOPIA/TOPIA applicable	Not applicable
Amount awarded or settled	RUB 453.7 million awarded against the shipowner/Ingosstrakh and the 1992 Fund
Amount paid	RUB 101.1 million paid so far by the 1992 Fund—Ingosstrakh has not yet made any payments

2 Background information

The background information to this incident is provided in more detail in the [online *Volgoneft 139* incident report](#).

3 Limitation proceedings

- 3.1 The *Volgoneft 139* was owned by JSC Volgotanker, which was declared bankrupt in March 2008 by the Commercial Court in Moscow. The *Volgoneft 139* was insured by Ingosstrakh (Russian Federation) for 3 million SDR, i.e. the minimum limit of liability under the 1992 Civil Liability Convention (1992 CLC) prior to November 2003. Since the minimum limit under the 1992 CLC after November 2003 was 4.51 million SDR, there is an 'insurance gap' of some 1.51 million SDR.
- 3.2 In February 2008, the Arbitration Court of Saint Petersburg and Leningrad Region issued a ruling declaring that the limitation fund had been constituted by means of a letter of guarantee for 3 million SDR (RUB 116.3 million), issued by Ingosstrakh.
- 3.3 All the claimants in the limitation proceedings have included the 1992 Fund as a defendant. Therefore, the 1992 Fund has been involved as a defendant in the limitation proceedings from the beginning. The judgments and claims for compensation in the limitation proceedings are dealt with in section 4 (Civil proceedings) and section 5 (Claims for compensation) below.

4 Civil proceedings

Arbitration Court of Saint Petersburg and Leningrad Region's judgment—June 2012

- 4.1 In June 2012, the Arbitration Court of Saint Petersburg and Leningrad Region delivered a judgment awarding claimants amounts totalling RUB 503.2 million, including legal interest. In addition, the Court awarded some claimants' court fees and expenses totalling RUB 318 969 to be paid by Ingosstrakh, the shipowner and the 1992 Fund in equal parts.

4.2 The Court decided that the shipowner/Ingosstrakh should pay the awarded amounts up to 3 million SDR and that the 1992 Fund should pay all amounts above 3 million SDR. Since the 1992 CLC limit applicable at the time of the incident was 4.51 million SDR, the judgment left an 'insurance gap' of some 1.51 million SDR. The Court decided that the shipowner's limit should be 3 million SDR since that was the limit of liability published by the Russian Official Gazette at the time of the incident.

4.3 The 1992 Fund appealed against the judgment on the point of the 'insurance gap'.

Supreme Court's ruling—July 2013

4.4 In a ruling delivered in July 2013, the Supreme Court decided that the Presidium of the Supreme Court should consider the 1992 Fund's appeal on the 'insurance gap'. In its considerations the Supreme Court stated that it was incorrect that the 1992 Fund should have to pay the 'insurance gap' because the amendments to the 1992 CLC had not been published in the Russian Federation prior to the date of the incident, nor brought to the attention of the shipowner and insurer.

Presidium of the Supreme Court's ruling—October 2013

4.5 In a judgment rendered in October 2013, the Presidium of the Supreme Court ordered that the judgments of the Arbitration Court of Saint Petersburg and Leningrad Region, the Court of Appeal and the Court of Cassation be set aside in respect of the part that had ordered the 1992 Fund to cover the 'insurance gap' of 1.51 million SDR and ordered the case to be sent to the Arbitration Court of Saint Petersburg and Leningrad Region for reconsideration on that point.

Judgment of the Arbitration Court of Saint Petersburg and Leningrad Region—November 2014

4.6 In a judgment delivered in November 2014, the Arbitration Court of Saint Petersburg and Leningrad Region considered that the difference between the limitation fund deposited in Court by the shipowner's insurer of 3 million SDR and the amount of the shipowner's liability limit that would correspond under the 1992 CLC of 4.51 million SDR should be distributed between all claimants and therefore decided to deduct the 'insurance gap' of 1.51 million SDR pro rata from the amount previously awarded to all claimants (see table in paragraph 5.3 below). This judgment is now final.

Reversal of the execution of the 2012 judgment

4.7 Since the 1992 Fund had paid the private claimants the full amounts owed to them as per the 2012 judgment, and the 2014 judgment reduced those amounts, the 1992 Fund now finds that it has overpaid these claimants in amounts totalling RUB 8.7 million (£118 745) (see section 5).

4.8 The 1992 Fund has applied for the reversal of the execution of the 2012 judgment, asking for the return of the overpaid amounts to the Fund.

4.9 At a hearing in October 2016, the Arbitration Court granted the 1992 Fund's petition. The reversal of the execution of the judgment formally entitles the 1992 Fund to receive from private claimants the amounts overpaid to them in comparison with what was awarded in the November 2014 judgment. The Court has issued enforcement certificates to the 1992 Fund to enable it to recover from the private claimants the overpaid amounts.

Enforcement of the judgment against the shipowner's insurer

4.10 The 2012 judgment ordered the shipowner to pay the claimants, and decided that the judgment is to be executed by means of the limitation fund constituted by the ruling of the Arbitration Court.

- 4.11 However, since the judgment only directly orders the shipowner to pay, and the shipowner is bankrupt, Ingosstrakh is denying payment arguing that it is not strictly required to pay and that doing so would be illegal.
- 4.12 One of the claimants, a salvage company, has requested that the Court either changes the wording of the judgment or clarifies how the judgment can be executed against Ingosstrakh. The Court has so far rejected the claimant's request.

Proceedings brought by the salvage company against Ingosstrakh

- 4.13 The salvage company has also brought a separate action against Ingosstrakh at the Arbitration Court of Saint Petersburg and Leningrad Region requesting the Court to order Ingosstrakh to pay the salvage company the amount awarded to them from the liability limitation fund by the 2012 judgment. The 1992 Fund has constituted itself as a third party in these proceedings, requesting that the Court orders that when Ingosstrakh pays the amount owed by it to the salvage company, the amount overpaid to the claimant by the 1992 Fund should be paid back to the 1992 Fund.
- 4.14 At a hearing in November 2016, the Court granted the salvage company's request but denied the 1992 Fund's request on the grounds that the Fund had already won the right to recover the overpaid amount by virtue of the reversal of the execution of the 2012 judgment.

Kerch Port Authority

- 4.15 In January 2017, the Arbitration Court of Saint Petersburg and Leningrad Region decided that the Kerch Port Authority had been liquidated and that a newly created Crimea Maritime Ports had not assumed Kerch Port Authority liabilities. The 1992 Fund has appealed against this decision. At the hearing, the 1992 Fund argued that the new enterprise should be liable for the obligations of the Kerch Port Authority.
- 4.16 The 1992 Fund is investigating the possibility to recover the amount of RUB 503 337 (£6 804) overpaid to the Kerch Port Authority.

5 Claims for compensation

June 2012 judgment

- 5.1 At its April 2013 session, the 1992 Fund Executive Committee decided to authorise the Director to pay private claimants in full according to the 2012 ruling of the Arbitration Court of Saint Petersburg and Leningrad Region and make interim payments to the three government claimants with pro-rated deductions to cover the 'insurance gap'. In accordance with that decision the 1992 Fund paid all private claimants in full.

November 2014 judgment

- 5.2 The total amount awarded against the shipowner/Ingosstrakh and the 1992 Fund in the June 2012 judgment, including costs, together with the amount settled out of court for the shipowner's claim, was RUB 512.3 million. Following the November 2014 judgment, this amount was reduced to RUB 453.7 million.
- 5.3 The table on the following page shows the amounts awarded against the 1992 Fund by the Arbitration Court of Saint Petersburg and Leningrad Region in November 2014.

Claimant	Total awarded in November 2014 judgment or settled out of court (including costs)	To be paid by the shipowner/insurer	To be paid by the 1992 Fund (in accordance with the 2014 judgment)	Paid by the 1992 Fund (in accordance with the 2012 judgment)	Amount the 1992 Fund can recover from claimants
Federal Agency	687 817	186 048	501 769	0	0
Regional Government	334 056 877	89 721 648	244 335 229	0	0
Local Government	33 938 977	9 054 181	24 884 797	24 884 797	0
Contractor	61 496 820	13 543 513	47 953 307	54 736 656	6 783 349
Charterer	2 948 015	652 582	2 295 433	2 605 629	310 196
Shipowner ^{<2>}	8 755 555	0	8 755 555	8 755 555	0
Tourist operator	7 382 865	2 267 460	5 115 405	6 256 693	1 141 288
Kerch Port (Ukraine)	4 456 449	1 066 685	3 389 764	3 893 101	503 337
Total	453 723 375 (£6.2 million) ^{<3>}	116 492 117 (£1.6 million)	337 231 258 (£4.6 million)	101 132 431 (£1.4 million)	8 738 170 (£118 745)

- 5.4 The 1992 Fund has the right to recover from the private claimants a total of RUB 8.7 million.
- 5.5 The 1992 Fund has now paid the amount of RUB 24 884 797 awarded by the November 2014 judgment to the local government of the area affected by the spill. The Fund has also contacted the other two remaining government claimants to pay the amounts owed to them. The Fund is now waiting for a reply from those claimants.
- 5.6 Ingosstrakh has not yet made any payments to claimants. Discussions with its representatives suggest that Ingosstrakh might be willing, when the time comes for it to pay claimants, to discount from the amount due by them to private claimants the amounts overpaid by the 1992 Fund to these claimants. Ingosstrakh would then pay the deducted amounts to the 1992 Fund.

6 Considerations

Director's considerations

- 6.1 In accordance with the April 2013 decision by the 1992 Fund Executive Committee, the 1992 Fund has commenced making payments and all private claimants were paid in full in accordance with the 2012 judgment.
- 6.2 The 1992 Fund applied a provisional solution to the problem of the 'insurance gap', i.e. discounting the 'insurance gap' from the amounts due to the government claimants. However, in its judgment of November 2014 the Arbitration Court of Saint Petersburg and Leningrad Region decided that the 'insurance gap' should be allocated between all the claimants on an equal basis. According to this judgment, the 1992 Fund has overpaid the private claimants by some RUB 8.7 million (£118 745). If Ingosstrakh was to pay the full amount owed by it to the individual claimants according to the November 2014 judgment, these claimants would be overcompensated. Ingosstrakh has not yet made any payments to claimants.

^{<2>} The court did not award any amounts in respect of the shipowner's claim. However, the claim was settled out of court and it is included in the table to show the complete claims situation.

^{<3>} At 7 February 2017, the rate of exchange was of £1 = RUB 73.5874.

- 6.3 The Court has granted the 1992 Fund's petition for the reversal of the 2012 judgment which will allow the 1992 Fund to recover the amounts overpaid by it. The 1992 Fund's lawyers are contacting the private claimants to see whether they would be prepared to comply with the execution reversal ruling voluntarily. If that is not successful, enforcement certificates would have to be filed with the court marshals' service for compulsory enforcement.
- 6.4 It is doubtful whether the Fund will have much success in recovering the overpaid amount to the Kerch Port Authority. The 1992 Fund lawyers are currently investigating what the legal position is and whether the 1992 Fund can practically receive the overpaid amount of RUB 503 337 (£6 804) from the Kerch Port Authority.
- 6.5 The 1992 Fund has paid the amount awarded to the local government of the area affected by the spill in accordance with the November 2014 judgment and has contacted the other two remaining government claimants to pay the amounts owed to them.

7 Action to be taken

1992 Fund Executive Committee

The 1992 Fund Executive Committee is invited to take note of the information contained in this document.
