



International Oil Pollution
Compensation Funds

Agenda Item 3	IOPC/APR17/3/2/1	
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Original	English	
1992 Fund Assembly	92AES21	
1992 Fund Executive Committee	92EC68	●
Supplementary Fund Assembly	SAES5	

INCIDENTS INVOLVING THE IOPC FUNDS – 1992 FUND

PRESTIGE

French judgment

Note by the Secretariat

Objective of document:	To inform the 1992 Fund Executive Committee of a new judgment concerning the <i>Prestige</i> incident, which may be of interest to the 1992 Fund.
Summary:	<p>In April 2010, France brought a legal action in the Court of First Instance in Bordeaux against the classification society of the <i>Prestige</i>, the American Bureau of Shipping (ABS). The defendants opposed this action, relying on the defence of sovereign immunity. The Judge referred the case for a preliminary ruling by the Court on the question of whether ABS was entitled to sovereign immunity from legal proceedings.</p> <p>In a judgment rendered in March 2014, the Court decided that ABS was entitled to sovereign immunity, as the Bahamas (the flag State of the <i>Prestige</i>) would be, since ABS was carrying out functions delegated to it by the Government of the Bahamas. The French Government appealed against the judgment.</p>
Recent developments:	In a judgment rendered in March 2017, the Court of Appeal in Bordeaux decided that ABS could not benefit from sovereign immunity and that the trial on the merits of the legal action brought by France against ABS should continue in the Court of First Instance in Bordeaux.
Relevant documents:	The online <i>Prestige</i> incident report can be found via the Incidents section of the IOPC Funds' website. The March 2017 judgment will also be available, in its original language, in that section.
Action to be taken:	<u>1992 Fund Executive Committee</u>
	Information to be noted.

1 Introduction

This document provides information on a new judgment concerning the *Prestige* incident that may be of interest to the 1992 Fund. The background to the incident is contained in document [IOPC/APR17/3/2](#).

2 Legal action by France against the American Bureau of Shipping (ABS)

2.1 In April 2010, France brought a legal action in the Court of First Instance in Bordeaux against the classification society of the *Prestige*, namely the American Bureau of Shipping (ABS), arguing that the failings of ABS in its activity of classification of ships had contributed to the occurrence of the incident.

2.2 The defendants opposed this action relying on the defence of sovereign immunity, arguing that its activity of classification was closely linked to the certification activity which is related to the sovereignty of States, in particular the Bahamas. ABS argued that the certification and classification activities were closely interlinked and impossible to differentiate. ABS had also argued that since the *Prestige* flew the flag of the Bahamas, ABS had acted on behalf or under the orders of that State, acting by delegation, and that therefore it had carried out acts of public authority or in the interest of a public service involving the statutory certification.

2.3 The Judge referred the case for a preliminary ruling by the Court on the question of whether ABS was entitled to sovereign immunity from legal proceedings.

2.4 Judgment by the Court of First Instance in Bordeaux

2.4.1 In a judgment rendered in March 2014, the Court of First Instance in Bordeaux decided that ABS was entitled to sovereign immunity on the basis that the Bahamas (the flag State of the *Prestige*) would be, since ABS was carrying out functions delegated to it by the Government of the Bahamas.

2.4.2 The French Government appealed against the judgment. In its appeal, France argued that the faults committed by ABS only concerned classification activity carried out by ABS pursuant to private contracts with the shipowner, which resulted in class certificates being issued and that this activity was carried out in the performance of a commercial relationship not related to the statutory certification functions carried out by ABS on behalf of the Government of the Bahamas.

2.5 Judgment by the Court of Appeal in Bordeaux

2.5.1 The Court of Appeal in Bordeaux rendered its decision in March 2017. The Court of Appeal considered that:

- ABS was a private commercial company and that the litigation concerned is related to its possible liability, incurred during its participation in transport operations by the commercial ship, *Prestige*, arising from an oil spill which has caused pollution damage in the territory, territorial sea or the Exclusive Economic Zone of France, all areas over which France exercises its responsibility in accordance with the United Nations Convention on the Law of the Sea (UNCLOS).
- The damage has been suffered in France and therefore French law is applicable. ABS is a private organisation that, when carrying out its activity of classification, applies norms and technical standards concerning shipbuilding projects and ship inspections, intervening several times in the transport chain.
- In this litigation, France is not relying upon faults committed by ABS in its activity of statutory certification on behalf of the Bahamas State. France is instead arguing that the negligent manner in which ABS performed its obligations in the technical visits and periodic inspections carried out in the context of its classification activity, which are related to a private agreement between ABS and the owner of the *Prestige*, contributed to the occurrence of the *Prestige* incident.

2.5.2 The Court therefore, overturning the ruling of the Court of First Instance, decided that ABS could not benefit from sovereign immunity. The Court of Appeal ordered the case to be remitted to the Court of First Instance for the continuation of the proceedings in which it will consider pending procedural objections and the merits of the claims.

3 Director's considerations

3.1 The judgment of the Court of Appeal in Bordeaux is important but it is only one step in the proceedings brought by France against ABS.

3.2 If ABS does not appeal against the judgment, the proceedings will continue in the Court of First Instance in Bordeaux, which will consider the merits of the case.

3.3 The Director will continue to monitor these proceedings and will report to the 1992 Fund Executive Committee at future sessions.

4 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.
