



International Oil Pollution  
Compensation Funds

<b>Agenda Item 3</b>	IOPC/APR17/3/6	
<b>Date</b>	31 March 2017	
<b>Original</b>	English	
<b>1992 Fund Assembly</b>	92AES21	
<b>1992 Fund Executive Committee</b>	92EC68	●
<b>Supplementary Fund Assembly</b>	SAES5	

## INCIDENTS INVOLVING THE IOPC FUNDS — 1992 FUND

### ALFA I

#### Note by the Secretariat

**Objective of document:** To inform the 1992 Fund Executive Committee of the latest developments regarding this incident.

**Summary:** On 5 March 2012, the Greek-registered tanker *Alfa I*, laden with 1 800 tonnes of cargo, hit a submerged object while crossing Elefsis Bay, near Piraeus, Greece and sank in 18–20 metres of water. Oil impacted some 13 kilometres of the shoreline of Elefsis Bay, contaminating a number of local beaches. Clean-up operations were conducted at sea and on the shoreline.

Since the tonnage of *Alfa I* (1 648 GT) is below 5 000 units of tonnage, the limitation amount applicable under the 1992 Civil Liability Convention (1992 CLC) is 4.51 million SDR (€5.73 million)<sup><1></sup>. The tanker had an insurance policy limited to €2 million which stated that only non-persistent mineral oils would be covered.

Six claims for compensation, together totalling €16.15 million, were submitted by two clean-up contractors to the shipowner. The shipowner also received a claim for clean-up expenses from the Greek authorities for some €222 000.

In May 2015, the Piraeus Court of First Instance awarded the first clean-up contractor, the sum of €14.4 million. The 1992 Fund's lawyers were instructed to prepare an appeal once the first instance judgment was formally served.

In July 2015, the 1992 Fund and its experts met with the first clean-up contractor to further discuss the incident. After lengthy discussions, the first clean-up contractor agreed to a proposal to accept the sum of €12 million in full and final settlement of its claim against the shipowner, insurer and the 1992 Fund. It was understood that the insurer would pay the equivalent of the shipowner's full limit of liability of 4.51 million SDR, as they had indicated their willingness to settle the claim for commercial reasons.

At the October 2015 sessions of the IOPC Funds' governing bodies, the Executive Committee authorised the Director to agree a settlement of €12 million, in full and final settlement of the first clean-up contractor's claim against the shipowner, insurer and the 1992 Fund, on condition that the insurer first paid the equivalent of the

<1> Based on the exchange rate of 7 February 2017 of €1 = 0.78709 SDR.

limitation amount due (4.51 million SDR or approximately €5.73 million). Subsequently however, the insurer indicated that it was not willing to settle the claim by paying the limitation amount.

At the April 2016 sessions of the IOPC Funds' governing bodies, the Executive Committee authorised the Director to settle the main contractor's claim for €12 million and to claim back from the insurer the 1992 CLC limit, noting that it was a pragmatic solution to avoid incurring further costs and interest.

In accordance with the decision of the Executive Committee, the 1992 Fund agreed the terms of a settlement agreement with the main contractor, and in October 2016 settled the contractor's claim against the insurer, shipowner and 1992 Fund for €12 million, with the intention to claim back from the insurer the 1992 CLC limit.

**Recent developments:**

Shortly after the payment was made to the main contractor, the insurer and shipowner filed appeals against the first instance judgment originally rendered in May 2015. The main contractor also filed an appeal against the insurer and shipowner, attempting to increase the judgment from the figure awarded in May 2015 (€14.4 million), to the figure originally claimed (€15.8 million). The 1992 Fund's lawyers issued interventions in response to the appeals submitted.

In December 2016, the 1992 Fund was informed that the insurer would likely be put into voluntary liquidation as it could not comply with Greek insurance solvency regulations. The 1992 Fund filed applications for prenotated mortgages against the unencumbered buildings owned by the insurer, at six different Greek land registries, in support of the Fund's subrogated rights. However, only one of the land registries accepted the 1992 Fund's original application and granted the registration of prenotated mortgages on two properties owned by the insurer, as security for a proportion of the Fund's claim amounting to €851 000.

Thereafter, the 1992 Fund made applications to the Piraeus Court of First Instance, against the decisions of the Land Registrars of Athens/Faliro/Glyfada and Koropi regarding their refusal to register prenotated mortgages against the insurer's properties. A hearing of the 1992 Fund's applications took place in early February 2017 and a decision was expected within two months. In the meantime, the 1992 Fund also requested, and was granted, a provisional order prohibiting any change in the legal status of the properties. A further application for the registration of a prenotated mortgage against property owned by the insurer in Piraeus was due to be heard on 7 March 2017.

The second clean-up contractor also provided further information to enable the 1992 Fund's experts to assess their claim, and agreed to adjourn the Court hearing originally planned for February 2016 in order to allow the 1992 Fund and its experts to discuss the claim in more detail. In February 2017, a revised assessment was prepared by the 1992 Fund's experts for consideration by the second clean-up contractor.

**Relevant documents:**

The [online Alfa I 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>Alfa I</i>
Date of incident	05.03.2012
Place of incident	Elefsis Bay, Piraeus, Greece
Cause of incident	Collision with submerged wreck of vessel
Quantity of oil spilled	Estimated to be approximately 330mt
Area affected	Contamination of some 13km of shoreline of Elefsis Bay near Piraeus, Greece
Flag State of ship	Greece
Gross tonnage	1 648 GT
P&I insurer	Aigaion Insurance Company SA, Greece
CLC Limit	4.51 million SDR (€5.73 million)
STOPIA/TOPIA applicable	Not applicable
CLC + Fund limit	203 million SDR (€257.9 million)
Compensation paid	€12 million
Legal proceedings	<p><i>Legal proceedings commenced against the 1992 Fund:</i></p> <p>(1) A claim by the main clean-up contractor for some €15.8 million which was settled for €12 million;</p> <p>(2) A claim by the second clean-up contractor for approximately €350 000.</p> <p><i>Claim by Greek State against the shipowner and insurer:</i></p> <p>In February 2015, a writ of action was served by the Greek State on the shipowner and insurer for some €222 000 for clean-up expenses. A hearing for directions took place in May 2015. The 1992 Fund has not been formally notified of the claim and no further information has been provided by the shipowner.</p>

## 2 Background information

The background information to this incident is summarised above. Further background information is provided in more detail in the [online Alfa I incident report](#).

## 3 Civil proceedings

### 3.1 The settlement with the main clean-up contractor

3.1.1 At the April 2016 sessions of the 1992 Fund Executive Committee, the Director was authorised to settle the main clean-up contractor's claim for €12 million and to claim back from the insurer the sum due under the 1992 Civil Liability Convention (1992 CLC). Accordingly, the 1992 Fund instructed its Greek lawyers to enter into discussions with the clean-up contractor to finalise the terms of the settlement agreement, and to formalise the arrangements which will be necessary to pursue the insurer for the recourse action.

3.1.2 In September 2016, the insurer served the clean-up contractor and the 1992 Fund with a transcribed copy of the first instance judgment. Under Greek law, such an action began the 60-day period for the receiving parties (i.e. the main clean-up contractor and the 1992 Fund) to submit an appeal. The insurer also submitted its appeal to the Court and a hearing was arranged for 16 March 2017. The clean-up contractor also submitted its appeal against the first instance judgment it obtained in May 2015, for €14.4 million. This step was necessary because under Greek

law, the first instance judgment is not final and binding until the appeal procedure has been exhausted.

- 3.1.3 In October 2016, the 1992 Fund settled the main contractor's claim against the shipowner, insurer and the 1992 Fund for the sum of €12 million, in consideration of an assignment from the clean-up contractor to the 1992 Fund of an equal part of its claim against the insurer<sup><2></sup>.

*Developments since October 2016*

- 3.1.4 In early November 2016, the 1992 Fund was informed by its lawyers that the insurer had contacted them to state that it would likely have to file for insolvency in the following accounting period<sup><3></sup>, as it had insufficient reserves to comply with the Insolvency Regulations<sup><4></sup> under Greek law. Subsequently, during meetings held between the insurer and the 1992 Fund's lawyers, the insurer stated that for reasons of prestige it did not want to disrupt the Greek insurance market by letting the insurance company be placed under liquidation, but instead preferred to manage all existing claims and pending issues for as long as possible, aiming for an 'orderly' close down.
- 3.1.5 The insurer stated that the *Alfa I* claim, was an obstacle to this approach, because the Bank of Greece (being the supervising authority for insurance companies under law 4364/2016) was pressing them to increase their reserves, whereas, if the respective claim was settled the insurer believed that the company would be given more time to manage the pending issues and claims.
- 3.1.6 The insurer therefore orally proposed to pay €1 million in full settlement of its liability for the equivalent of the limitation amount due (4.51 million SDR or approximately €5.73 million) under the 1992 CLC. The insurer also stated that its previous verbal offer of €2 million, plus another €2 million from the re-insurers<sup><5></sup>, was no longer valid, because the company did not have the funds and the re-insurance compensation would be paid only if the insurer paid the first €2 million. The 1992 Fund's lawyers requested a meeting with the insurer to discuss the proposed liquidation of the insurance company, and also requested the insurer to provide the latest statements of the assets and liabilities of the insurer.
- 3.1.7 The 1992 Fund's lawyers advised that in their view, the offer of €1 million could be bettered by securing the Fund's claim in respect of the limitation sum due from the insurer under the 1992 CLC, through mortgages obtained over the insurer's assets, which they had previously identified as including some €10.6 million of unencumbered assets (properties)<sup><6></sup>. The verbal offer was rejected by the 1992 Fund. Following the meeting with the insurer, the 1992 Fund instructed its lawyers to immediately file applications at six different Greek land registries in whose jurisdictions the

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<2> The clean-up contractor's original claim amounted to some €15.8 million plus interest and costs.

<3> During the first quarter of 2017.

<4> Established by Directive 2009/138 of the European Parliament and Council (known as Solvency II), which was enacted in Greece by virtue of law 4364/2016.

<5> Reported in document [IOPC/APR16/3/6](#).

<6> Article 240 of law 4364/2016 (enacting in Greece the Solvency II Directive 2009/138/EC) equips with a privilege, ahead of insurance claims :

- a. the liquidation costs and remuneration
- b. employees claims for remuneration (including in house lawyers remuneration claims in the last two years before liquidation) and severance pay
- c. tax due to the State
- d. social security duties
- e. claims on properties encumbered with rights *in rem*

A prenotated mortgage is a right *in rem*. Upon a final and un-appealable judgment being issued, the prenotated mortgage may be rendered into a full mortgage, retroactively as of the date of registration of the prenotated mortgage. Therefore if the prenotated mortgages are registered, the 1992 Fund's claim for compensation will rank ahead of other insurance claims.

insurer's properties were located, to register prenotated mortgages, in order to secure the 1992 Fund's claim in respect of the sum due from the insurer under the 1992 CLC, which had been paid by the 1992 Fund as part of the main contractor's settlement. However, initially only the land registry in Thessaloniki accepted the 1992 Fund's application and granted the registration of prenotated mortgages on two properties owned by the insurer as security for a proportion of the 1992 Fund's claim amounting to €851 000.

3.1.8 Thereafter, the 1992 Fund made applications to the Piraeus Court of First Instance, against the decisions of the Land Registrars of Athens/Faliro/Glyfada and Koropi regarding their refusal to register prenotated mortgages against the insurer's properties. The 1992 Fund's applications were heard by the Court on 2 February 2017, with judgment expected within two months thereafter. In the meantime the 1992 Fund was granted a provisional order prohibiting the change of the legal status of the properties. A further application for the registration of a prenotated mortgage against property owned by the insurer in Piraeus was set to be heard on 7 March 2017.

3.1.9 In early February 2017, the insurer served an extrajudicial declaration protesting against the settlement reached with the main contractor, alleging *inter alia*, that the settlement with the main contractor had given an erroneous impression to the judges of the Court of Appeal. The 1992 Fund's lawyers responded stating that the settlement had been based on the assessment of the 1992 Fund's experts and in order to enable the 1992 Fund to comply with its obligations to provide compensation for pollution damage to the extent that the protection afforded by the 1992 CLC was inadequate.

### 3.2 The claim by the second clean-up contractor

3.2.1 In 2016, the 1992 Fund requested the second clean-up contractor to provide further evidence in support of their claim, which was originally filed for approximately €350 000. Following the provision of further information by the second clean-up contractors, the 1992 Fund has re-assessed the claim at some €60 000.

3.2.2 At present, the 1992 Fund is discussing the second clean-up contractor's claim with the claimant and hopes to be in a position to finalise the assessment and make payment of the claim in the near future.

## 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.

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