



International Oil Pollution
Compensation Funds

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1992 Fund Executive Committee	92EC69	●
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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 SDR 4.51 million (€5.49 million)^{<1>}. 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 SDR 4.51 million, 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 1992 Fund 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 limitation amount due (SDR 4.51 million or approximately €5.49 million). Subsequently however, the insurer indicated that it was not willing to settle the claim by paying the limitation amount.

<1> Based on the exchange rate of 11 July 2017 of €1 = SDR 0.821875.

At the April 2016 sessions of the IOPC Funds' governing bodies, the 1992 Fund 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 Fund and insurer's proportion of the contractor's claim against the 1992 Fund for €12 million, with the intention to claim back from the insurer the 1992 CLC limit.

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 by the insurer's lawyers 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^{<2>} against the unencumbered buildings owned by the insurer, at six different Greek land registries, in support of the Fund's claim for the return of the 1992 CLC limit, based on its subrogated rights under the 1992 CLC. 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.

Recent developments:

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 in June 2017, the Court issued its judgment denying the 1992 Fund the grant of prenotated mortgages over those properties. The 1992 Fund appealed the decision to the Athens Court of Appeal. In the meantime, the 1992 Fund also requested and was granted, a provisional order prohibiting any change in the legal status of the properties pending its appeal.

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.

^{<2>}

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 unsecured claims.

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	SDR 4.51 million (€5.49 million)
STOPIA/TOPIA applicable	Not applicable
CLC + Fund limit	SDR 203 million (€246.9 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 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. The clean-up contractor's original claim amounted to some €15.8 million plus interest and costs.

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 (during the first quarter of 2017), as it had insufficient reserves to comply with the Insolvency Regulations^{<3>} 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 (SDR 4.51 million 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 reinsurers (see document [IOPC/APR16/3/6](#)), 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)^{<4>}. 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 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

<3> 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.

<4> 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 unsecured claims.

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 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 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.

Developments since April 2017

- 3.1.10 In May 2017, the Athens Court of First Instance issued a judgment in which it accepted the main contractor's appeal against the refusal of the Piraeus Land Registry to register a prenotated mortgage over the insurer's Piraeus property. In response, the insurer submitted a third party appeal against the judgment, and also requested the Court to grant a provisional order prohibiting the registration of any prenotated mortgages until its third party appeal had been heard by the Court, but this latter request was subsequently rejected by the Judge.
- 3.1.11 In June, the insurer appointed English lawyers which contacted the Secretariat to contend that the 1992 Fund had obtained a number of injunctions against the assets of the insurer which prevented the insurer from paying any claim, disposing of assets and registering mortgages on various of the insurer's properties. The insurer's lawyers also contended that the 1992 Fund had sought excessive security in the form of the prenotated mortgages from the insurer, and had harmed the insurer's business, the payment of claims, the future operation of its license and the ability to limit under the 1992 CLC should they wish to do so in the future. They also contended that preventing the orderly run-off of the insurer's current business would severely damage other assureds of the insurer and their ability to have their claims paid.
- 3.1.12 The insurer then threatened to bring an action in the English High Courts for an order restraining the 1992 Fund and the main contractor from taking any actions against any of the insurer's assets over and above the value of the 1992 CLC limit and to immediately withdraw any injunctions for the excess amount.
- 3.1.13 In response, the 1992 Fund's lawyers explained that security for the prenotated mortgages had only ever been sought for the value of the 1992 CLC limit plus interest amounting to some €6.2 million^{<5>}, and that the provision of mortgages over various of the insurer's properties in no way harmed the insurer's ability to pay claims, nor did it affect the insurer's operation of its license or harm the insurer's business. The Fund's lawyers also noted that the insurer stated it had fully reserved in its accounts for

^{<5>} The principle of '*multiple mortgages*' provided by articles 1264 and 1270 of the Greek Civil Code allows for a claim to be secured by mortgages on numerous properties of the debtor, and each such property remains encumbered for the full amount of the claim until such time as the claim is fully paid by the auction proceeds of any of the encumbered properties. Once the claim value is reached, the remaining rights against the other secured properties disappear.

payment of the amount of the limit under the insurance policy amounting to €2 million and on this basis, invited the insurer to provide such sum to the 1992 Fund in part payment of its subrogated claim.

- 3.1.14 Subsequently, the insurer made various vague proposals regarding options of providing security to the value of the 1992 CLC limit, (including the possible assignment of the benefit of the reinsurance policies to the 1992 Fund), in return for which it was proposed that the 1992 Fund desist from pursuing its claims for prenotated mortgages. However, after investigating each of the proposals, it subsequently transpired that none of the options were feasible, nor were the reinsurers in fact willing to assign the reinsurance policies to the 1992 Fund.
- 3.1.15 In July 2017, the insurer submitted a writ of action before the Court of First Instance of Thessaloniki, requesting the deletion of the prenotated mortgages recorded on its Thessaloniki properties on the ground that the first instance judgment of the Court of Piraeus could not be considered a title for the prenotated mortgages since it was issued in 2015. Pleadings for this writ of action were set to be submitted before Court by 22 November 2017.
- 3.1.16 In early August, the 1992 Fund's lawyers attended before the Athens Court of Appeal for a hearing date for its appeal against the Athens Court of First Instance judgment that had dismissed the Fund's application for prenotated mortgages over the insurer's properties in Athens, Koropi, Faliro and Glyfada. The appeal was set for hearing on 9 November 2017.
- 3.1.17 The 1992 Fund's lawyers also requested a provisional order prohibiting any change in the legal status of the properties until the above hearing. The judge requested the insurer to be summoned to attend for the hearing of the provisional order request and set a date for the hearing of 5 September 2017. The insurer was also put on notice that any change in the legal status of their property prior to the hearing date, would be treated as an action defrauding creditors.

Claim by second clean-up contractor

- 3.1.18 The second clean-up contractor has to date, chosen not to accept the 1992 Fund's offer of settlement of its claim for €100 000. The court has set a date for hearing the second contractor's claim in October 2017.

4 Director's considerations

- 4.1 The Director notes that the insurer has to date not paid any compensation to the claimants nor does it appear willing at this stage to establish a limitation fund, since it has contended that Article VII of the 1992 CLC did not apply to the incident since the *Alfa I* was not carrying more than 2 000 tonnes of persistent mineral oil, and that the security provided by the insurer did not cover claims arising from the incident.
- 4.2 The Director intends to continue pursuing the insurer for its subrogated claim for the return of the value of the 1992 CLC limit and interest. The Director also notes that despite several attempts to resolve the Fund's claim, the insurer has made no concrete proposals which stand up to investigation and has indicated a desire to continue the civil proceedings. The Director further notes that the future conduct of the proceedings may depend on the judgment of the Appeal Court which is expected in late October / early November 2017, upon receipt of which the Director will report the developments to the 1992 Fund Executive Committee at its next session.

5 **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.
