



International Oil Pollution
Compensation Funds

Agenda Item 3	IOPC/OCT17/3/4	
Date	25 September 2017	
Original	English	
1992 Fund Assembly	92A22	
1992 Fund Executive Committee	92EC69	●
Supplementary Fund Assembly	SA14	

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:

On 11 November 2007, the Russian-registered tanker *Volgoneft 139* 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 understood 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.

The shipowner was insured for protection and indemnity by Ingosstrakh (an insurance company based in the Russian Federation), which does not belong to the International Group of P&I Associations. The insurance cover is limited to SDR 3 million (RUB 116.3 million). Since the minimum limit under the 1992 Civil Liability Convention (1992 CLC) after November 2003 is SDR 4.51 million (RUB 174.8 million), there is an ‘insurance gap’ of some SDR 1.51 million (RUB 58.5 million).

In June 2012, the Arbitration Court of Saint Petersburg and Leningrad Region held that the insurers had a liability of SDR 3 million 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 SDR 1.51 million and ordered that the case be sent to the Arbitration Court of Saint Petersburg and Leningrad Region for reconsideration on that point.

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 provisional 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 paid all private claimants in full.

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 had overpaid the private claimants some RUB 8.7 million.

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

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 issued enforcement certificates to the 1992 Fund for it to recover from the private claimants the overpaid amounts.

Recent developments:

The 1992 Fund has now paid the amounts awarded by the November 2014 judgment to the three government claimants that remained to be paid: the local government and regional government affected, and a federal agency.

The 1992 Fund lawyers have contacted the four private claimants that were overpaid by the Fund to see whether they would be willing to voluntarily return the overpaid amounts. Two claimants, the charterer of the *Volgoneft 139* and a salvage company, have returned the amounts overpaid. Another claimant, a tourist operator, has agreed to return the money overpaid in instalments.

The 1992 Fund's lawyers have advised that the Fund's chances of recovering the amount of RUB 503 337 (£6 497) from the fourth claimant, the Kerch Port Authority, are uncertain. Bearing this in mind, and given the substantial additional legal costs that further attempts to recover the overpaid amounts will involve, the Director has decided to discontinue the recovery process in relation to 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	SDR 3 million or RUB 116.3 million
CLC limit	SDR 4.51 million or RUB 174.8 million
'Insurance gap'	SDR 1.51 million or RUB 58.5 million
CLC + Fund limit	SDR 203 million 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 (see table in paragraph 4.4)
Amount paid	RUB 346 million paid by the 1992 Fund, of which the Fund has recovered RUB 7.9 million overpaid to private claimants—Ingosstrakh has not yet made any payments (see table in paragraph 4.4)

2 Background information

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

3 Application of the Conventions

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 (an insurance company based in the Russian Federation) for SDR 3 million, 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 SDR 4.51 million, there is an ‘insurance gap’ of some SDR 1.51 million.

4 Claims for compensation

- 4.1 All the claims arising from this incident have been submitted in the context of legal proceedings and the payments to claimants arise mostly from court judgments, which are dealt with in section 6 (Civil proceedings).

June 2012 judgment (see paragraphs 6.1.1–6.1.3)

- 4.2 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 provisional 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 (see paragraph 6.1.6)

- 4.3 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, of which the insurer was liable for RUB 116.5 million and the 1992 Fund was liable for RUB 395.8 million. Following the November 2014 judgment, this amount was reduced to RUB 453.7 million, of which the insurer must pay RUB 116.5 million and the 1992 Fund is liable for RUB 337.2 million. The 1992 Fund has the right to recover from the private claimants a total of RUB 8.7 million (see table in paragraph 4.4).

4.4 The table below shows the amounts awarded against the 1992 Fund by the Arbitration Court of Saint Petersburg and Leningrad Region in November 2014 and the payments made by the Fund.

Claimant	Awarded against the 1992 Fund by the 2012 judgment or settled out of court (RUB)	To be paid by the 1992 Fund (in accordance with the 2014 judgment or settled out of court) (RUB)	Paid by Fund (RUB)	Overpayment (RUB)	Recovered (RUB)
Federal agency	595 413	501 769	501 769	0	
Regional Government	289 495 125	244 335 229	244 335 229	0	
Local Government	29 420 686	24 884 797	24 884 797	0	
Contractor (salvage company)	54 736 656	47 953 307	54 736 656	6 783 349	6 783 349
Charterer	2 605 629	2 295 433	2 605 629	310 196	310 196
Shipowner ^{<1>}	8 755 555	8 755 555	8 755 555	0	
Tourist operator (private)	6 256 693	5 115 405	6 256 693	1 141 288	791 288 ^{<2>}
Kerch Port (Ukraine)	3 893 101	3 389 764	3 893 101	503 337 (£6 497)	
TOTAL	RUB 395 758 858 (£5 108 379)	RUB 337 231 258 (£4.4 million)	RUB 345 969 429 (£4.5 million)	RUB 8 738 170 (£112 791)	RUB 7 884 833 (£101 776)

4.5 The 1992 Fund has now paid the amounts awarded by the November 2014 judgment to the three claimants that remained to be paid: the local government and the regional government of the area affected by the spill, and the federal agency for the protection of the environment.

4.6 Ingosstrakh has not yet made any payments to claimants.

5 Limitation proceedings

5.1 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 SDR 3 million (RUB 116.3 million), issued by Ingosstrakh.

5.2 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 in the limitation proceedings are dealt with in section 6 (Civil proceedings).

^{<1>} Although the claim by the shipowner was rejected by the Court for considering that a defendant could not be a claimant in the same proceeding, the Fund assessed the claim and reached an out of court settlement with the shipowner. This claim has been included in the table to give a complete picture of all the claims paid by the Fund in relation to this incident.

^{<2>} This claimant has chosen to repay the overpaid amount in instalments. There is a balance of some RUB 350 000 remaining to be paid.

6 Civil proceedings

6.1 Insurance gap

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

6.1.1 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.

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

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

Supreme Court's ruling—July 2013

6.1.4 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

6.1.5 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 SDR 1.51 million 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

6.1.6 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 SDR 3 million and the amount of the shipowner's liability limit that would correspond under the 1992 CLC of SDR 4.51 million should be distributed between all claimants and therefore decided to deduct the 'insurance gap' of SDR 1.51 million pro rata from the amount previously awarded to all claimants (see table in paragraph 4.4).

6.2 Recovery of the amounts overpaid by the 1992 Fund

Reversal of the execution of the 2012 judgment

6.2.1 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 found that it had overpaid these claimants in amounts totalling RUB 8.7 million (£112 791)^{<3>} (see table in paragraph 4.4).

<3> The rate of exchange as at 11 August 2017 was £1 = RUB 77.4725

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

6.2.3 The 1992 Fund's lawyers have contacted the claimants to see whether they were willing to make a voluntary payment of the amounts they owed to the Fund.

Charterer of the Volgoneft 139

6.2.4 The charterer of the *Volgoneft 139*, which had been overpaid by the 1992 Fund in the amount of RUB 310 196 agreed to return to the Fund the amount overpaid. The Fund has now received the payment.

Tourist operator

6.2.5 A tourist operator that had been overpaid by the Fund by RUB 1.1 million has accepted to voluntarily return the overpaid amount and is in the process of making the payment in instalments.

Salvage company

6.2.6 A salvage company that had been overpaid by the Fund by RUB 6.8 million, initially refused to pay voluntarily but has now made the payment of the amount it owed to the 1992 Fund.

Kerch Port Authority

6.2.7 In January 2017, the Arbitration Court of Saint Petersburg and Leningrad Region decided that the Kerch Port Authority had been liquidated and that the newly created Crimea Maritime Ports had not assumed the Kerch Port Authority's liabilities. The 1992 Fund appealed against this decision, arguing that the new enterprise should be liable for the obligations of the Kerch Port Authority.

6.2.8 The Court of Appeal agreed with the Fund. However, Crimea Maritime Ports appealed to the Court of Cassation.

6.2.9 In a judgment rendered in July 2017 the Court of Cassation decided that Crimea Maritime Ports had not been established as a result of a merger of the Crimean Ports (including Kerch Port) and that therefore Crimea Maritime Ports should not assume Kerch Port Authority liabilities. The Court of Cassation considered that the property formerly owned by the Kerch Port had first been transferred to the Crimea Republic, and only then Crimea Maritime Ports was established to manage that property (among others). The Court of Cassation then concluded that the Kerch Port property had not been directly transferred to Crimea Maritime Ports and that therefore there had not been a merger of property of Crimean Ports.

6.2.10 At the April 2017 session of the 1992 Fund's Executive Committee, concerns were raised by many delegations about the high legal costs incurred in connection with the *Volgoneft 139* incident. There were suggestions that a cost benefit analysis should be carried out, since the 1992 Fund had already spent in legal costs a substantial proportion of the amount it was trying to recover.

6.2.11 The 1992 Fund's lawyers have advised that the Fund's chances of recovering the amount owed by the Kerch Port Authority are uncertain.

6.2.12 Bearing the above in mind and given the substantial additional legal costs the 1992 Fund would incur if it decided to continue to try to recover the RUB 503 337 (£6 497) owed by this claimant, the Director has decided to discontinue the recovery process in relation to the Kerch Port and therefore the Fund has not appealed to the Supreme Court.

6.3 Enforcement of the judgment against the shipowner's insurer

6.3.1 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.

6.3.2 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.

6.3.3 One of the claimants, the 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.

7 Director's considerations

7.1 Having obtained the reversal of the 2012 judgment, which formally entitled the 1992 Fund to recover the amounts overpaid to four individual claimants, two of the claimants have paid the amount they owed to the 1992 Fund and a third claimant, a tourist operator, is in the process of returning the overpaid amount.

7.2 The Fund's Russian lawyers have advised the Director that the chances of recovering from the fourth claimant, the Kerch Port, are slim. The Director has carried out a cost benefit analysis comparing the legal costs incurred in the attempts to recover from this particular claimant (£5 218), with the amount the Fund has the right to recover (RUB 503 337 or £6 497). Given that the Fund has already spent in legal costs more than 75% of the amount it is trying to recover from this claimant, and given the additional legal costs the Fund would have to incur were it to continue its efforts to recover, the Director has decided to discontinue any attempt to recover the amount overpaid to the Kerch Port Authority.

7.3 The 1992 Fund has paid all the amounts it owed to the claimants. However, Ingosstrakh has not yet made any payments to claimants and it is refusing to make any payments on the basis of an alleged defect in the working of the 2012 judgment.

8 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.
