



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

PRESTIGE

Note by the Secretariat

Objective of document:

To inform the 1992 Fund Executive Committee of the latest developments regarding this incident.

Summary:

The *Prestige* broke in two and sank some 260 kilometres west of Vigo (Spain). Approximately 63 272 tonnes of heavy fuel oil were spilled. The oil had a significant impact on fisheries, aquaculture and tourism businesses in Spain and France and extensive clean up and preventive measures were carried out in both countries. Preventive measures were also carried out in Portugal.

The 1992 Fund has already levied all the contributions payable in relation to this incident and has established a Major Claims Fund to pay all the compensation due in respect of this incident.

The compensation amount available for the *Prestige* incident under the Conventions is €171.5 million. Some €121 million in compensation has already been paid to victims of this spill by the 1992 Fund. A further €27.7 million of compensation is left from the 1992 Fund. In addition, €22.8 million is available from the amount deposited in the Criminal Court in Corcubión by the shipowner's insurer, the London Steamship Owners' Mutual Insurance Association Ltd. (London P&I Club).

In January 2016, the Spanish Supreme Court delivered a judgment finding that the master of the *Prestige* was criminally liable for damages to the environment, with civil liability. The judgment also found that the shipowner had civil liability and was not entitled to limit its liability and that its insurer, the London P&I Club, had civil liability up to the limit of its policy of US\$1 000 million. In the judgment, the 1992 Fund was found to have civil liability within the limit provided for by the 1992 Fund Convention. The judgment decided to defer the quantification of damages to the Civil Court in La Coruña (Audiencia Provincial).

The master submitted a motion for dismissal of the Supreme Court judgment but the Supreme Court rejected the motion. The master also requested leave to appeal to the Constitutional Court but this Court has denied the master's leave to appeal. It is not known whether the master will appeal to the European Court of Human Rights.

Following the judgment of the Supreme Court, the case was sent to the Civil Court in La Coruña (Audiencia Provincial) for the quantification of the losses.

In France there are 94 actions pending. The proceedings against the American Bureau of Shipping (ABS), the classification society that certified the *Prestige*, are also pending.

Recent developments:	<p>The 1992 Fund, with the help of its experts, has examined the information the claimants have submitted to the Civil Court in La Coruña (Audiencia Provincial) and has submitted replies to the claimants' submissions.</p> <p>The shipowner's insurer, the London P&I Club, is also participating in the quantification proceedings. The master, the shipowner and the London P&I Club are submitting replies to the quantifications submitted by the claimants.</p> <p>The judgment is expected at the end of 2017 or beginning 2018.</p>
Relevant documents:	The online Prestige incident report can be found via the Incidents section of the IOPC Funds' website.
Action to be taken:	<p><u>1992 Fund Executive Committee</u></p> <p>Information to be noted.</p>

1 Summary of incident

Ship	<i>Prestige</i>
Date of incident	13.11.2002
Place of incident	Spain
Cause of incident	Breaking and sinking
Quantity of oil spilled	Approximately 63 200 tonnes of heavy fuel oil
Area affected	Spain, France and Portugal
Flag State of ship	Bahamas
Gross tonnage	42 820 GT
P&I insurer	London Steamship Owners' Mutual Insurance Association Ltd. (London P&I Club)
CLC Limit	€22 777 986
CLC + Fund limit	€171 520 703
STOPIA/TOPIA applicable	Not applicable
Level of payments	15% and 30% (subject to conditions)
Compensation	<p><u>Spain</u> Two payments to the Spanish Government totalling €115 million minus €1 million, subject to a bank guarantee and an undertaking to pay all claimants in Spain. Total amount paid in Spain to date, including payments to individual claimants, is €114.6 million.</p> <p><u>France</u> Level of payments at 30%, subject to the French Government 'standing last in the queue'. Total paid to individual claimants in France is €5.8 million.</p> <p><u>Portugal</u> Payment to Portuguese Government of €328 488.</p>
Legal proceedings against the 1992 Fund	<p><u>Spain</u> In January 2016, the Supreme Court delivered its judgment, finding that:</p> <ul style="list-style-type: none"> the master was criminally liable for damages to the environment, with civil liability;

	<ul style="list-style-type: none"> • the shipowner was found to have subsidiary civil liability and was not entitled to limit its liability; • the London P&I Club was found to have direct civil liability up to the limit of its insurance policy of US\$1 000 million; and • the 1992 Fund was found to have civil liability with the limit provided in the 1992 Fund Convention. <p><u>France</u> Civil actions by 94 claimants remain pending in various French courts.</p> <p><u>Portugal</u> Legal proceedings were started but discontinued after settlement with the Portuguese Government.</p>
Recourse actions	<p><u>United States</u> In a final ruling, the Court of Appeal rejected the claim by the Spanish State against the American Bureau of Shipping (ABS).</p> <p><u>France</u> France brought a legal action against ABS. The 1992 Fund has also brought a legal action against ABS to prevent its right to obtain reimbursement from ABS becoming time-barred.</p>

2 Background information

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

3 Claims for compensation

3.1 Spain

3.1.1 The claims-handling office in La Coruña received 845 claims totalling €1 037 million. This included a claim from the Spanish Government totalling €984.8 million.

3.1.2 The claim by the Spanish Government was assessed at €300.2 million. The Spanish Government has not agreed with this assessment and has decided to maintain its claim in court against the 1992 Fund and other parties. The other claims have been assessed at €3.9 million.

3.1.3 Payments totalling €114 million have been made to the Government. Other payments totalling €666 935 have been made in respect of individual claims submitted to the claims-handling office and in court, at 30% of the assessed amount and taking into account the aid received by the claimants from the Government.

3.2 France

3.2.1 The claims-handling office in Bordeaux received 482 claims totalling €109.7 million. This included the claim from the French Government totalling €67.5 million.

3.2.2 The individual claims submitted to the claims-handling office were assessed at €19 million. The claim submitted by the French Government has been assessed at €42.2 million. The French Government has not agreed with this assessment and has decided to maintain its claim in court against the 1992 Fund and other parties.

3.2.3 Payments totalling €5.8 million have been made to individual claimants. No payments have been made to the French Government since it is standing last in the queue.

3.3 Portugal

- 3.3.1 The Portuguese Government submitted a claim totalling €4.3 million in respect of the costs incurred in clean up and preventive measures.
- 3.3.2 The claim by the Portuguese Government was finally assessed at €2.2 million. The Portuguese Government has agreed with the assessment and has withdrawn the legal action brought against the 1992 Fund before the Portuguese courts.
- 3.3.3 The 1992 Fund made a payment to the Portuguese Government of €328 488, corresponding to 15% of the final assessment.

4 Criminal proceedings in Spain

4.1 As a result of the conclusion of the investigation of the case, the Criminal Court in Corcubión decided in July 2010 that four individuals should stand trial for criminal and civil liability as a result of the *Prestige* oil spill, namely, the master, the chief officer and the chief engineer of the *Prestige* and the civil servant who had been involved in the decision not to allow the ship into a place of refuge in Spain.

4.2 Civil claims in the criminal proceedings

- 4.2.1 Under Spanish law, civil claims may be submitted in the criminal proceedings as the Criminal Court has to decide not only on criminal liability, but also on civil liability derived from the criminal action.
- 4.2.2 The 1992 Fund has been a party to the proceedings from the beginning, as a party with strict civil liability under the 1992 Fund Convention.
- 4.2.3 There were 2 531 claims lodged in the legal proceedings before the Criminal Court in Corcubión. This figure includes a legal action brought by the Spanish Government, not only on its own behalf but also on behalf of regional and local authorities and a number of other claimants or groups of claimants. Included in the aforementioned figure are also 174 claims by French parties, including the French Government.
- 4.2.4 The total amount claimed in the criminal proceedings in Spain is €2 317 million, including some €1 214 million claimed for pure environmental damage, mainly by the Spanish Government, and some €2.37 million claimed for moral damage by a number of individuals. However, the Spanish Public Prosecutor is arguing that the total damage in Spain as a result of the incident is €4 328 million, on the basis of a theoretical study on the economic consequences of the *Prestige* incident. In addition, claims totalling €108.7 million are being pursued by claimants in France, including the French Government.

4.3 Judgment of the Criminal Court in La Coruña (Audiencia Provincial)^{<1>}

The Audiencia Provincial in La Coruña issued a judgment on 13 November 2013, finding that the master, the chief engineer of the *Prestige* and the civil servant who had been involved in the decision not to allow the ship into a place of refuge in Spain, were not criminally liable for damages to the environment. The judgment, therefore, did not award any compensation to claimants.

4.4 Cassation Appeal

- 4.4.1 Some 19 parties submitted appeals to the Supreme Court, including the Spanish and French Governments, some individual claimants in Spain, and local and regional authorities in France. Of these parties, only 12 were seeking compensation, namely the Spanish and French Governments, a Spanish

^{<1>} The Audiencia Provincial handles both civil and criminal cases.

regional authority, a French regional authority, seven individuals and the Public Prosecutor, who is representing all victims of the spill in the proceedings.

4.4.2 The 1992 Fund has participated in the proceedings before the Supreme Court, as a party with strict civil liability under the 1992 Fund Convention, and has submitted pleadings defending the application of the Conventions.

4.4.3 The London P&I Club did not attend the hearings. The Supreme Court ordered that the Club should be notified of the Audiencia Provincial judgment.

4.5 Judgment of the Supreme Court

4.5.1 In January 2016, the Spanish Supreme Court rendered its judgment^{<2>} after consideration of the appeals submitted against the judgment of the Audiencia Provincial. The Supreme Court judgment set aside the judgment of the Audiencia Provincial and found the master guilty of a crime against the environment, with full direct liability for all losses caused by the criminal action.

4.5.2 The judgment confirmed the acquittal of the chief engineer of the *Prestige* and of the civil servant who had been involved in the decision not to allow the ship into a place of refuge in Spain.

Civil liability

4.5.3 The Court found that the master, the shipowner and its insurer and the 1992 Fund had civil liability as follows:

- The Court considered that the damage was a consequence of the master's recklessness, which justified a finding of civil liability of the master.
- The Court held that the shipowner had subsidiary civil liability. Furthermore, the judgment considered that the shipowner had acted recklessly and with knowledge that damage would probably result and that therefore, applying Article V(2) of the 1992 Civil Liability Convention (1992 CLC), the shipowner could not benefit from the limitation of liability established in the Convention.
- The judgment also found that the insurer, the London P&I Club, had direct civil liability, up to the limit of the insurance policy of US\$1 000 million. The Court applied domestic law (criminal law, law of insurance and law of maritime transport) to decide that the insurer should pay compensation up to the amount in the policy of insurance. The Court also based its decision on the fact that the London P&I Club had not intervened in the proceedings to defend its rights.
- The judgment recognises that the 1992 Fund has strict liability and that this is limited according to the 1992 Fund Convention.

<2> The judgment can be found via the Incidents section of the IOPC Funds' website, of which full translations in English and French are also available. A detailed summary of the judgment can be found in document [IOPC/APR16/3/2](#).

Damages

4.5.4 The judgment establishes that the quantification of the damages will be made at a later stage in separate legal proceedings in the Civil Court in La Coruña (Audiencia Provincial). The quantification will be based on the evidence submitted by all the parties, including experts' reports.

4.6 Appeal by the master

4.6.1 The master submitted a motion for dismissal of the Supreme Court judgment, arguing that the judgment breached his fundamental rights of defence and his right to a trial with all the guaranties. However, the Supreme Court rejected the master's motion.

4.6.2 The master requested leave to appeal to the Constitutional Court but this Court has denied the leave to appeal. It is not known whether the master will appeal to the European Court of Human Rights.

4.7 Proceedings for the quantification of the losses

4.7.1 Following the judgment of the Supreme Court, the case was sent to the Civil Court in La Coruña (Audiencia Provincial) for the commencement of the proceedings to quantify the losses.

4.7.2 In May 2016, the Civil Court in La Coruña (Audiencia Provincial) rendered a decision ordering the parties to specify the nature and amount of their claims.

4.7.3 The 1992 Fund, with the help of its experts, has examined the information the claimants have submitted into court and has submitted replies to the claimants' submissions.

4.7.4 The shipowner's insurer, the London P&I Club, has entered an appearance in the quantification proceedings, without prejudice to the Club's right to exercise all defences available to the Club in the appropriate forum, and stating that this appearance does not mean the Club consents to the Supreme Court judgment which is being executed. The London P&I Club insists that the Club does not admit liability over the CLC limit but that in case this limit was not accepted, the Club's liability could not go over the limit of the insurance policy of US\$1 000 million.

4.7.5 The master, the shipowner and the London P&I Club are submitting replies to the quantifications submitted by the claimants.

4.7.6 The judgment is expected at the end of 2017 or beginning 2018.

5 Civil proceedings in France

5.1 Actions by 94 claimants remain pending in French courts with claims amounting to a total of €77 million. These actions have been stayed.

5.2 Some 174 French claimants, including various communes, joined the criminal proceedings in Spain.

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

5.3.1 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). 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.

- 5.3.2 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 *Prestige*) would be. The French Government appealed against the judgment.

Judgment by the Court of Appeal in Bordeaux

- 5.3.3 The Court of Appeal in Bordeaux rendered its decision in March 2017. The Court of Appeal considered that in the litigation, France was not relying upon faults committed by ABS in its activity of statutory certification on behalf of the Bahamas State. The Court considered that France was instead relying on alleged negligence in the performance of ABS's obligations in the technical visits and periodic inspections carried out in the context of its classification activity, which were related to a private agreement between ABS and the owner of the *Prestige*, and which France argued had contributed to the occurrence of the *Prestige* incident. The Court therefore overturned the ruling of the Court of First Instance and decided that ABS could not benefit from sovereign immunity.
- 5.3.4 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.
- 5.3.5 In June 2017 ABS lodged a further appeal against the Court of Appeal's decision. This further appeal will be examined by the Court of Cassation. The proceedings before the Court of First Instance will therefore be suspended until the Court of Cassation renders its decision.

5.4 Legal action by the 1992 Fund against ABS

- 5.4.1 Following the decision of the 1992 Fund Executive Committee at its October 2012 session, the 1992 Fund brought a recourse action against ABS in the Court of First Instance in Bordeaux.
- 5.4.2 ABS submitted points of defence alleging that it was entitled to sovereign immunity as the Bahamas (the flag State of the *Prestige*) would be.
- 5.4.3 The proceedings in the Court of First Instance in Bordeaux have been stayed.

6 Director's considerations

- 6.1 The judgment of the Supreme Court, although providing general criteria for the assessment of damages, does not quantify the losses. The quantification will be made by the Civil Court in La Coruña (Audiencia Provincial). The 1992 Fund is a party in such proceedings and is defending the application of the Conventions for each of the claims.
- 6.2 A judgment is expected by the end of 2017 or beginning of 2018. The judgment could be appealed to the Supreme Court but since the Supreme Court only accepts appeals on matters of law it is likely to be a final judgment.
- 6.3 The Director, with the help of the 1992 Fund's Spanish and French lawyers and experts, continues to monitor developments in this case and will report to a future session of the 1992 Fund Executive Committee.

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.
