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OIL POLLUTION  
COMPENSATION  
FUND 1992

EXECUTIVE COMMITTEE  
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Agenda item 3

92FUND/EXC.33/5/Add.1  
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## INCIDENTS INVOLVING THE 1992 FUND

### ERIKA

#### Note by the Director

<b>Summary:</b>	A judgement has been rendered by the Court of Appeal in Rennes, rejecting two claims against the 1992 Fund, one by a fisherman and the other by a local fishermen's union.
<b>Action to be taken:</b>	Information to be noted.

#### **1 Court judgements in respect of claims against the 1992 Fund**

##### **1.1 Judgement by the Commercial Court in Rennes**

- 1.1.1 A fisherman had submitted a claim for €8 027 (£5 500) relating to loss of income due to the *Erika* incident. The claimant had accepted the assessment of his claim made by the 1992 Fund and the shipowner's insurer, the Steamship Mutual Underwriters Association Ltd (Bermuda) for €1 357 (£900). The claimant had received two provisional payments totalling €1 085 (£740) and had signed full and final receipts and releases in respect of that amount, leaving a payment of €272 (£160) outstanding. Before the last compensation payment was made, the claimant brought proceedings against the 1992 Fund arguing that the previous agreement reached with the Fund was not valid, claiming compensation for losses totalling €6 942 (£4 700).
- 1.1.2 A local fishermen's union joined in these legal proceedings supporting this claimant, who is one of its members. The union did not make a specific claim for loss or damage caused by the *Erika* incident, but claimed against the 1992 Fund the symbolic amount of €1 (£0.7) for non-defined damages.
- 1.1.3 In a judgement rendered in March 2005, which was reported to the Executive Committee at its June 2005 session (document 92Fund/EXC.29/3, paragraph 9.2), the Commercial Court rejected the claim by the individual claimant. The Court considered that by signing a full and final receipt and release agreement the claimant had accepted the terms of the proposed agreement and entered into a valid settlement according to French law. The Court stated that receipt and release agreements were in all aspects valid settlement documents and were considered under the French Civil Code as contracts by which the parties ended an existing dispute or prevented a dispute arising. The Court concluded therefore that the settlement between the individual claimant and the Fund was valid and dismissed the action, stating that the claimant was not entitled to further compensation for more than the balance of the settlement amount. The Court stated that the

claimants' union had not suffered any damage falling within the scope of the 1992 Civil Liability and Fund Conventions and held that its claim was inadmissible. The Court also stated that the actions of the individual claimant and the union were excessive and ordered them to pay a symbolic amount of €1 to the shipowner, Steamship Mutual and the Fund.

1.2 Judgement by the Court of Appeal in Rennes

1.2.1 The individual claimant and the union appealed against the judgement.

1.2.2 In a judgement rendered in May 2006 the Court of Appeal in Rennes confirmed the judgement of the Commercial Court with regard to the individual claimant, since, having signed a full and final receipt and release agreement, the claimant had lost his right to sue the Fund and Steamship Mutual. The Court considered that the 1992 Fund and Steamship Mutual, by providing an amicable compensation to the victims of the pollution caused by the *Erika*, had avoided the need for the claimant to be involved in a lengthy and expensive litigation and had also acted according to the requirements of French law. The Court also considered that if the claimant had agreed to the amicable settlement at the time, it was because he had found it convenient to do so, and that his opposition two years later was to be considered too late and invalid.

1.2.3 The Court, stated that the legal action by the union was admissible, since any trade union could be party in legal proceedings to defend the general interests of the members of the profession it represented. The Court recognised the right of the union to question in general terms the processes and modalities of compensation of fishermen and others deriving their income from the sea, but should not deal with individual losses suffered by the victims of the pollution. However, the Court dismissed the union's claim, since it was not well founded.

1.2.4 When this document was issued, the claimant and the union had not pursued their claims in the Court of Cassation.

**2 Action to be taken by the Executive Committee**

The Executive Committee is invited to take note of the information contained in this document.

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