



## INCIDENTS INVOLVING THE 1992 FUND

### ERIKA

Note by the Director

<b>Summary:</b>	Since the issue of document 92FUND/EXC.34/6/Add.2 four more judgements have been rendered by the French courts. The document contains a summary of these judgements.
<b>Action to be taken:</b>	Information to be noted.

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

##### **1.1 Commercial Court in Saint Nazaire**

###### *Estate agent*

1.1.1 An estate agent in La Turballe had submitted a claim for €35 826 (£24 000) for losses suffered in his three commercial activities, namely sales and annual and seasonal letting of properties. The 1992 Fund took the view that the sales and the annual letting of properties were not dependant on the number of tourists visiting the affected area. The Fund however accepted that the seasonal letting of properties in that area had been affected by the incident and, in order to enable it to assess the admissible part of the claim, requested the claimant to provide a breakdown for each of the three activities. The claimant did not provide the information required and brought legal proceedings before the Commercial Court.

1.1.2 In a judgement rendered in October 2006 the Court held that as regards sales and annual letting of properties it was certain that there was not a sufficient link of causation between the reduced income and the contamination. The Court also held that by not providing the accounting information required the claimant had failed to establish that his commercial activity was closely dependant on the seasonal visitors attracted by the clean coastline. For these reasons the Court rejected the claim in respect of all three activities.

1.1.3 When this document was issued, the claimant had not appealed against the judgement.

###### *Campsite owner*

1.1.4 The owner of a campsite in Asserac had submitted a claim for €121 959 (£83 000) for reduction in the value of his campsite allegedly as a result of the *Erika* incident. The 1992 Fund had rejected the alleged claim since the claimant had not established that there was a link of causation between the reduction in value of the campsite and the contamination.

1.1.5 In a judgement rendered in October 2006 the Court held that the reduction in the campsite sale price was not linked to the *Erika* incident. He had alleged that, although prior to the *Erika* incident he had received an offer from a potential buyer at FFfr4 600 000, he was only able to sell

the property in October 2000 to another buyer for FFr3 800 000. The Court considered that it had been established that the reduction in the number of visitors to the campsite during the 2000 summer season had been compensated by an increase of army personnel using the campsite during the spring of that year. The Court held that the *Erika* incident, which took place in December 1999, had not had any impact on the claimant's turnover and that the reduction in value was the result of other causes and for this reason rejected the claim.

- 1.1.6 When this document was issued, the claimant had not appealed against the judgement.

*Campsite operator*

- 1.1.7 The operator of a campsite in Croisic submitted a claim for €252 462 (£171 000) in respect of losses suffered in 2000. The 1992 Fund had assessed the losses at €135 466 (£92 000) and an interim payment of €108 301 (£74 000) was made to the claimant. The balance of €27 165 (£18 000) was offered to the claimant but he refused to accept the payment and brought a legal action before the Commercial Court claiming compensation of €192 838 (£131 000).

- 1.1.8 In a judgement rendered in October 2006 the Court awarded the claimant €192 554 minus €108 301 (£74 000) already paid to the claimant by the Fund. The Court considered that the Fund in its assessment of the claim had incorrectly deducted the salary received by the claimant as a saved overhead. The Court also ordered the provisional execution of the judgement.

- 1.1.9 The Director together with the 1992 Fund's French lawyer and experts are considering whether the Fund should appeal against the judgement.

1.2 Commercial Court in Lorient

*Property letting*

- 1.2.1 A company letting sixteen properties to tourists in Belle Ile en Mer submitted a claim for losses suffered in its activity of seasonal lettings for €94 433 (£64 000). The 1992 Fund had assessed the claim at €24 071 (£16 000) and an interim payment for that amount was made to the claimant. The claimant did not agree with the Fund's assessment and brought legal proceedings before the Commercial Court.

- 1.2.2 In a judgement rendered in September 2006 the Court stated that it was not bound by the Fund's criteria for admissibility and that it was for the Court to interpret the concept of 'pollution damage' in the 1992 Conventions and to apply it in each individual case by determining whether there was a sufficient link of causation between the event and the damage. The Court rejected the claim on the ground that the claimant had not proved it had suffered a financial loss in excess of that assessed by the Fund.

- 1.2.3 When this document was issued, the claimant had not appealed against the judgement.

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

The Executive Committee is invited

- (a) to take note of the information contained in this document; and
  - (b) to give the Director such other instructions as regards the issues dealt with in this document as it may deem appropriate.
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