



## INCIDENTS INVOLVING THE 1992 FUND

### ERIKA

#### COURT JUDGEMENT IN RESPECT OF CLAIMS AGAINST THE FUND

##### Note by the Director

<b>Summary:</b>	The Civil Court (Tribunal de Grande Instance) in Nantes rendered a judgement dated 29 January 2004 in respect of claims by the owners of two hotels in Nantes for pure economic loss. These claims had been rejected by the 1992 Fund since, in the Fund's view, they did not fulfil the criteria for admissibility laid down by the Funds' governing bodies in that there was not a reasonable degree of proximity between the alleged losses and the pollution. In the light of the Fund's criteria, the Court rejected the claims on the ground that the claimants had not shown a link of causation between the alleged losses and the oil pollution caused by the <i>Erika</i> incident.
<b>Action to be taken:</b>	Information to be noted.

### 1 Introduction

Claims by the owners of two hotels in Nantes for loss of revenue during the period March-September 2000 attributed by the claimants to the *Erika* incident were submitted to the Claims Handling Office in Lorient in November 2000. Both claims were rejected by the Steamship Mutual and the 1992 Fund in July 2001 on the grounds that a sufficient degree of proximity between the alleged losses and the contamination had not been shown. The Club and the Fund took the view that from available information it was clear that the hotels in question were both reliant on business-related visitors for which the *Erika* incident had no relevance and that although the hotels were also used by tourists, there was no indication of a link between these visitors and the area affected by the incident.

### 2 Court actions

- 2.1 The claimants took legal action against the shipowner, Steamship Mutual, the manager of the *Erika* (Panship Management and Services Ltd) and the 1992 Fund in the Civil Court (Tribunal de Grande Instance) in Nantes, claiming compensation for €121 859 (£86 000) and €65 553 (£46 000) respectively for losses allegedly suffered due to a reduction in turnover during the period March-September 2000 in comparison to 1997-1999 and 2001 caused by the *Erika* incident. The point was made that the *Erika* incident had resulted in a great reduction in hotel reservations and a great increase in cancellations. The claimants stated that for one of the hotels the damage had been particularly serious since that hotel had concentrated its business efforts on group tourism resulting in a large number of reservations for 2000. The claimants maintained that the *Erika* incident had resulted in a number of reservations for the claim period being cancelled.

- 2.2 In its pleading, the 1992 Fund referred to its criteria for admissibility established by its governing bodies. In particular, the Fund made the point that the hotels in question were located in the centre of Nantes, that the guests at these hotels were mainly business people and that it had not been shown that the alleged cancellations were due to the *Erika* incident. The Fund drew attention to the fact that some of the cancellations referred to by the claimants had in fact been made before the *Erika* incident. In the Fund's view there was not, therefore, a sufficient link of causation between the oil pollution and the alleged losses.
- 2.3 The shipowner, Steamship Mutual and the *Erika*'s management company concurred with the 1992 Fund's position. In addition, the management company maintained that no action could be brought against it due to the provisions on channelling of liability in Article III.4.a of the 1992 Civil Liability Convention.
- 2.4 As regards the management company, the Court dismissed the action for the reason given by that company.
- 2.5 In a judgement dated 29 January 2004 the Court rejected the claims for reasons summarized below:

The governing bodies of the 1992 Fund have established certain criteria for the admissibility of claims, in particular a requirement that there should be a reasonable degree of proximity between the contamination and the loss suffered by the claimant. These criteria make it possible to determine whether there is a sufficient link of causation.

The hotels in question are located in the centre of Nantes which is more than 50 kilometres from the nearest beach resort and the hotels are open all the year round. Nantes is a major city which attracts many visitors as a result of its industrial and commercial activities and its historical and cultural attractions rather than due to its location in relation to the beaches on the Atlantic coast. In the claim documents, the hotels have been described as 'office-hotels', which indicates that the guests who stay at these hotels are not for the most part tourists who, in their choice of where to stay, might be influenced by an oil pollution incident. The brochures published by the hotels and their websites show that the hotels cater mainly for business visitors. No evidence has been provided to show that one of the hotels was focused on tourist groups.

The cancellations during 2000 were not made invoking the *Erika* incident but giving other reasons or no reason at all. The documents presented by the claimants to support the allegations that the cancellations were caused by the *Erika* incident should be treated with considerable scepticism. Some cancellations which, according to the claimants had been caused by the *Erika* incident, were in fact made prior to the incident. It has not been shown, therefore, that the reduction in the number of guests at the hotels was caused by the *Erika* incident.

In these circumstances and in the light of the criteria for admissibility established by the 1992 Fund which are, by the way, dictated by common sense, the claimants have not shown a link of causation between the alleged losses and the oil pollution caused by the *Erika* incident.

### **3 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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