



INCIDENTS INVOLVING THE 1992 FUND

PRESTIGE

Note by the Director

Summary:

The shipowner's P&I insurer and the 1992 Fund have established Claims Handling Offices in La Coruña (Spain) and Bordeaux (France). Claims totalling €71 million (£445 million)^{<1>} have been received by the office in Spain and claims totalling €13.8 million (£9.2 million) by the office in France.

The Portuguese Government has submitted a claim for €3.3 million (£2.2 million) in respect of clean-up and preventive measures in Portugal.

The total amount of the accepted claims arising from the *Prestige* incident will significantly exceed the total amount of compensation available, 135 million Special Drawing Rights corresponding to €71.5 million (£113.9 million). The Executive Committee decided that the 1992 Fund's payments should for the time being be limited to 15% of the loss or damage actually suffered by the respective claimants, as assessed by the experts engaged by the Fund and the insurer.

In June 2003 the Spanish Government adopted legislation in the form of a Royal Decree (Real Decreto-Ley) making available €160 million (£106.2 million) to compensate in full the victims of the pollution. Under this Decree the Spanish Government will acquire by subrogation the rights of those victims who decide to claim under this legislation. So far the Spanish Government has received some 29 000 claims for compensation from victims of the *Prestige* incident, the majority of which are related to groups of workers in the fisheries sector, and has made payments to a substantial number of them totalling €67 million (£44.8 million).

In October 2003 the Spanish Government submitted a claim for €383.7 million (£263 million). The Director made an interim assessment of the claim, based on the information available, arriving at a figure of €107 million (£75 million), and on this basis a payment was made of 15% of that amount, ie €16 050 000 (£11.1 million). He also made a general assessment of the total of the admissible damage in Spain arising from the *Prestige* incident resulting in a total figure of at least €303 million (£213 million). Having made the assessment, and as authorised by the Assembly, he made a further payment of €41 505 000 (£28.8 million) against a guarantee provided by a Spanish bank, bringing the total amount paid by the 1992 Fund to the Spanish Government to €7 555 000 (£39.9 million).

Action to be taken: Decide the level of the 1992 Fund's payments

<1> Conversion of currencies in this document has been made on the basis of exchange rates as at 26 April 2004 except in respect of payments made by the 1992 Fund where the conversion has been made at the rate on the date of payment.

1 The incident

- 1.1 On 13 November 2003 the Bahamas registered tanker *Prestige* (42 820 GT), carrying 76 972 tonnes of heavy fuel oil, began listing and leaking oil while some 30 km off Cabo Finisterre (Galicia, Spain). The *Prestige* lost an unknown but substantial quantity of oil initially while drifting towards the Spanish coast. On 19 November, whilst under tow away from the coast, the vessel broke in two and sank some 260 km west of Vigo (Spain), the bow section to a depth of 3 500 metres and the stern section to a depth of 3 830 metres. The break-up and sinking released additional cargo estimated to be in the region of 25 000 tonnes. Over the following weeks oil continued to leak from the wreck at a declining rate.
- 1.2 Due to the highly persistent nature of the *Prestige's* cargo, released oil drifted for extended periods with winds and currents, travelling great distances. The west coast of Galicia (Spain) was heavily contaminated and oil eventually moved into the Bay of Biscay affecting the north coast of Spain and France. Traces of oil were detected in the United Kingdom (the Channel Islands, Isle of Wight and Kent).
- 1.3 The *Prestige* was entered with the London Steamship Owners Mutual Insurance Association (London Club).
- 1.4 As regards the clean-up operations and the impact of the spill reference is made to documents 92FUND/EXC.24/5, 92FUND/EXC.24/5/1 and 92FUND/EXC.24/5/2.

2 Removal of the oil from the wreck

- 2.1 An International Technical Committee was set up by the Spanish Government under the coordination of the Spanish oil company Repsol YPF to consider possible methods of removing the oil from the wreck.
- 2.2 In December 2003, following trials in the Mediterranean and subsequently on the wreck site, the Spanish Government decided that the cargo remaining in the wreck should be removed using aluminium shuttle containers filled by gravity through holes cut in the tanks. These aluminium containers will, when filled, be raised to within some 30 metres of the sea surface. From there the oil will be heated and pumped to a surface vessel. Any oil remaining in the wreck after the removal operation will be subjected to bio-remediation. The Spanish Government has estimated that the cost of the work will be €9.3 million (£66 million), including the costs incurred to date of some €2.3 million (£23 million).
- 2.3 A contract to remove the remaining oil from the *Prestige* has been signed between the Spanish Government and Repsol YPF and the work is due to take place between May and October 2004.

3 Claims Handling Offices

In anticipation of a large number of claims, and after consultation with the Spanish and French Authorities, the London Club and the 1992 Fund established Claims Handling Offices in La Coruña (Spain) and Bordeaux (France).

4 Claims for compensation

Spain

- 4.1 As at 26 April 2004 the Claims Handling Office in La Coruña had received 516 claims totalling €70.8 million (£445 million). These include a claim for €131.6 million (£87 million) from a group of 58 associations from Galicia, Asturias and Cantabria representing 13 600 fishermen and shellfish harvesters and three claims from the Spanish Government, the first for €383.7 million (£255 million) submitted in October 2003, the second for €44.6 million (£30 million) submitted in January 2004 and the third for €85.5 million (£57 million) submitted in April 2004. The claims by the Spanish Government relate to costs incurred until the end of December 2003 in respect of

at sea and on shore clean-up operations, compensation payments to fishermen and shellfish harvesters, tax relief for businesses affected by the spill, administration costs and costs relating to publicity campaigns.

- 4.2 It is expected that some of these claimants who have settled with the Spanish Government under the Royal Decree referred to in paragraph 5.4 will withdraw their claims from the Claims Handling Office.
- 4.3 The tables below provide a breakdown of the different categories of claim received by the Claims Handling Office in La Coruña.

Category	Amount claimed €
Property damage	2 423 733
Clean-up	430 327 866
Mariculture	8 026 408
Fishing and shellfish gathering	216 407 999
Tourism	6 014 201
Fish processors/sellers	6 781 453
Miscellaneous	788 777
Total (516 claims)	€670 770 437 (£445.4 million)

- 4.4 The first claim received from the Spanish Government has been assessed by the Director at €107 million (£75 million). As regards payments to the Spanish Government, reference is made to section 11.
- 4.5 The second and third claims from the Spanish Government are being examined by the experts engaged by the 1992 Fund and the London Club.
- 4.6 Two hundred and sixty-four other claims totalling €14 268 449 (£9.5 million) have been assessed at €1 175 766 (£780 700). Many of the remaining claims lack sufficient supporting documentation and such documentation has been requested from the claimants. Interim payments totalling €4 445 (£2 951) have been made at 15% of the assessed amounts in respect of 17 of the assessed claims. Seventy-seven claims have been rejected, the majority because the claimant has not demonstrated that a loss had been suffered. Nineteen claims are being examined by the London Club and the Fund. The remaining claims await a response from the claimants or are being reexamined following claimants' disagreement with the assessed amount.

France

- 4.7 By 26 April 2004, 225 claims totalling €13.8 million (£9.2 million) had been received by the Claims Handling Office in Bordeaux. The table below provides a breakdown of the different categories of claims received.

Category	No. of claims	Amount claimed €
Property damage	9	87 772
Clean-up	25	5 196 381
Mariculture	98	608 602
Shellfish gathering	3	116 810
Fishing boats	33	422 483
Tourism	49	7 199 181
Fish processors / vendors	3	77 009
Miscellaneous	5	95 847
Total	225	€13 804 086 (€9.2 million)

- 4.8 Ninety-four oyster farmers based in the Arcachon basin near Bordeaux have submitted claims totalling €50 000 (£365 000) for losses allegedly suffered as a result of market resistance due to the pollution. These claims have been examined by the experts engaged by the London Club and the 1992 Fund, and 14 claims totalling €7 000 (£51 000) have been assessed at €1 000 (£40 504).
- 4.9 Seventy-six other claims for €3 million (£2 million) have been assessed at €1 462 989 (£971 400). The remaining 55 claims are being assessed by the experts appointed by the London Club and 1992 Fund. Six claims have been rejected. Payments totalling €536 (£6 332) have been made at 15% of the assessed amount in respect of three of the assessed claims.

Portugal

- 4.10 The Portuguese Government has submitted a claim for €3.3 million (£2.2 million) in respect of clean-up and preventive measures in Portugal. This claim is being assessed by the Fund's and Club's experts.

5 Payments and other financial assistance by the Spanish Authorities

- 5.1 The Spanish Government and regional authorities made payments of some €40 (£26.6) per day to all those directly affected by the fishing bans. These included shellfish harvesters, inshore fishermen and associated onshore workers with a high dependence on the closed fisheries, such as fish vendors, fishing net repairers and employees of fishing co-operatives, fish markets and ice factories. Some of these payments have been included in subrogated claims by the Spanish authorities pursuant to Article 9.3 of the 1992 Fund Convention, and it is expected that further subrogated claims will be presented.
- 5.2 The Spanish Government has also provided aid to other individuals and businesses affected by the oil spill in the form of tax relief and waivers of social security payments.
- 5.3 The Spanish Government has made available to victims of the pollution credit facilities totalling €100 million (£66 million). As the damage covered by these loans will eventually form the basis of claims against the Fund either directly or in subrogation, the Fund, at the Spanish Government's request, agreed to assist in carrying out such evaluations.
- 5.4 In June 2003 the Spanish Government adopted legislation in the form of a Royal Decree (Real Decreto-Ley) making available €160 million (£106 million) to compensate in full the victims of the pollution. Under this Decree the Spanish Government will acquire by subrogation the rights of those victims who decide to claim under this legislation. To receive compensation the claimants had to submit their claims by 31 December 2003, had to renounce the right to claim compensation in any other way in relation to the *Prestige* incident and transfer their rights of

compensation to the Spanish Government. The Decree provides that the assessment of claims will be made following the criteria used to apply the 1992 Civil Liability and Fund Conventions.

- 5.5 At the 24th session of the Executive Committee held in February 2004, the Spanish delegation informed the Committee that some €75 million (£50 million) was available for payment of compensation in accordance with the Royal Decree, €57.5 million of which had been received from the 1992 Fund and €17.5 million from other sources. The Spanish delegation mentioned that the Spanish Government had received almost 29 000 claims for compensation from victims of the *Prestige* incident who wished to use the payment mechanism set out in the Royal Decree. It was also mentioned that of those claims, some 22 800 related to groups of workers in the fisheries sector which would be assessed by means of a system using either objective estimates or a scale. It was stated that some 5000 claims of other groups would be subject to individual assessments.
- 5.6 The Government has informed the 1992 Fund that out of the 5 000 claims of other groups of claimants, some 4 000 claims had been presented by persons and companies involved in mussel production and some 1 000 claims from other sectors.
- 5.7 In April 2004 the Spanish Government informed the 1992 Fund that it had reached agreements with a substantial number of workers in the fisheries sector and that payments totalling €7 425 090 (£48 million) had been made under the Royal Decree to the great majority of the 22 800 workers in the fisheries sector.

6 Shipowner's liability

The limitation amount applicable to the *Prestige* under the 1992 Civil Liability Convention is approximately 18.9 million SDR or €22 777 986 (£16 million). On 28 May 2003 the shipowner deposited €22 777 986 with the Criminal Court in Corcubi3n (Spain) for the purpose of constituting the limitation fund.

7 Investigations into the cause of the incident

- 7.1 A Court in Corcubi3n (Spain) is carrying out an investigation into the cause of the incident in the context of criminal proceedings. The Court is investigating the role of the master of the *Prestige*, of one civil servant who was involved in the decision not to allow the ship into a port of refuge in Spain and a manager of the ship's management company.
- 7.2 The Permanent Commission of Investigation of Maritime Incidents, under the authority of the Spanish Ministry of Infrastructure and Public Works, is gathering the necessary information to be able to issue a report on the *Prestige* incident. Given the scale of the incident, it will take some time for the investigation to be completed.
- 7.3 As regards France, an examining magistrate in Brest is carrying out a criminal investigation into the cause of the incident.
- 7.4 The 1992 Fund is following these investigations through its Spanish and French lawyers.

8 Court actions

Spain

- 8.1 One thousand eight hundred and sixty-eight claimants who allegedly suffered losses as a result of the incident have joined the legal proceedings before the Court in Corcubi3n (Spain). No details of the losses have been provided to the Court. Eighty of these claimants have submitted claims to the Claims Handling Office in La Coru3a. It is expected that some of these claimants who have settled with the Spanish Government under the Royal Decree referred to in paragraph 5.4 will withdraw their claims from the court proceedings.

France

- 8.2 At the request of a number of communes, the Administrative Court in Bordeaux has appointed experts to establish the extent of the pollution at various locations in the affected area.
- 8.3 In July 2003 five oyster farmers commenced summary proceedings against the shipowner, the London Club and the 1992 Fund before the Court of Commerce in Marennes requesting provisional payments of amounts totalling approximately €400 000 (£282 040). A hearing is scheduled for 14 May 2004.

United States

- 8.4 The Spanish State has taken legal action against the American Bureau of Shipping (ABS), the classification society of the *Prestige*, before the Federal Court of first instance in New York requesting compensation for all damage caused by the incident estimated to exceed US\$700 million (£390 million). The Spanish State has maintained *inter alia* that ABS had been negligent in the inspection of the *Prestige* and had failed to detect corrosion, permanent deformation, defective materials and fatigue in the vessel and had been negligent in granting classification.
- 8.5 ABS has denied the allegation made by the Spanish State and has in its turn taken action against the State, arguing that if the State suffered damage this was caused in whole or in part by its own negligence. ABS has made a counterclaim and has requested that the State should be ordered to indemnify ABS for any amount that ABS may be obliged to pay pursuant to any judgement against it in relation to the *Prestige* incident.
- 8.6 Regional authorities of the País Vasco took legal action against ABS in the Federal Court of first instance in Houston, Texas, claiming compensation for clean-up costs and payments made to individuals and businesses for US\$50 million (£28 million). The authorities have argued *inter alia* that ABS was in breach of its duty to inspect the *Prestige* adequately and had classified the vessel as seaworthy when it was not. This legal action has been transferred to the Federal Court of first instance in New York dealing with the claim by the Spanish State referred to in paragraph 8.4.

9 Maximum amount available under the 1992 Fund Convention

- 9.1 The maximum amount of compensation available under the 1992 Civil Liability Convention and the 1992 Fund Convention is 135 million Special Drawing Rights (SDR) per incident, including the sum paid by the shipowner and his insurer (Article 4.4 of the 1992 Fund Convention). This amount should be converted into the national currency, on the basis of the value of that currency by reference to the SDR on the date of the decision of the Assembly as to the first date of payment of compensation.
- 9.2 Applying the principles laid down in the *Nakhodka* case, the Executive Committee decided in February 2003 that the conversion in the *Prestige* case should be made on the basis of the value of that currency vis-à-vis the SDR on the date of the adoption of the Committee's Record of Decisions of that session, ie 7 February 2003. As a result 135 million SDR corresponds to €171 520 703 (£121 million).

10 Level of payments

Consideration by the Executive Committee in May 2003

- 10.1 Unlike in previous cases, the insurer of the *Prestige* (The London Club) has decided not to make individual compensation payments up to the shipowner's limitation amount following legal advice that if the Club were to make payments to claimants in line with past practice, it was likely that these payments would not be taken into account by the Spanish courts when the shipowner set up the limitation fund, with the result that the Club could end up paying twice the limitation amount.

- 10.2 At its 21st session in May 2003 the Executive Committee decided that the 1992 Fund's payments should for the time being be limited to 15% of the loss or damage actually suffered by the respective claimants as assessed by the experts engaged by the Fund and the London Club. The Committee further decided that the 1992 Fund should, in view of the particular circumstances of the *Prestige* case, make payments to claimants, although the London Club would not pay compensation directly to them (document 92FUND/EXC.21/5, paragraphs 3.3.32 and 3.3.34).

Consideration by the Executive Committee in October 2003

- 10.3 At its 22nd session in October 2003 the Executive Committee decided that in view of the remaining uncertainties as to the level of admissible claims the level of payments should be maintained at 15% (document 92FUND/EXC.22/14, paragraph 3.7.24).

Consideration by the Executive Committee in February 2004

- 10.4 At the Executive Committee's 24th session held in February 2004 the Spanish Government stated that it estimated the total damage in Spain to be €34.8 million (£554 million). The overall losses in France were estimated by the French Government to be in the range of €145.2 to 202.3 million (£96 – 134 million), although the maximum losses were expected to be around €176 million (£124 million). The Portuguese delegation stated that the total amount of the damage in Portugal was some €3.3 million (£2.2 million).
- 10.5 In view of the figures provided by the Governments of the three States concerned and the remaining uncertainties as to the level of admissible claims, the Executive Committee decided to maintain the level of payments at 15% of the loss or damage suffered by the respective claimants (document 92FUND/EXC.24/8, paragraph 3.4.43).

Review by the Executive Committee of the level of payments at the May 2004 session

- 10.6 The Director has not received any further information from the Spanish, French and Portuguese Governments on the loss or damage caused by the incident. On the basis of the figures given in February 2004 and in view of the remaining uncertainties as to the level of admissible claims, the Director feels unable to propose an increase in the level of payments beyond 15% of the loss or damage suffered by the respective claimants.
- 10.7 Any further information received on the costs of the incident will be presented to the Executive Committee in an addendum.

11 Payments to the Spanish Government

- 11.1 At the Executive Committee's October 2003 session the Spanish delegation proposed that the 1992 Fund should, subject to certain safeguards, make advance payments on account to the Spanish Government and the Governments of other affected States which wish to receive such advance payments. In view of the importance of the issue and the ramifications involved, the Executive Committee decided to refer the matter to the Assembly.
- 11.2 The Assembly noted that the Director would make an interim assessment of any claim submitted by the Government of Spain and that he would make a payment of 15% of the assessed amount, as authorised by the Executive Committee (document 92FUND/A.8/30, paragraph 20.28).
- 11.3 Taking into account the exceptional circumstances of the *Prestige* incident, the Assembly decided as follows (document 92FUND/A.8/30, paragraph 20.29):
- (a) The Assembly authorised the Director, subject to a general assessment by the Director of the total of the admissible damage in Spain arising from the *Prestige* incident, to make a payment of the balance between 15% of the assessed amount of the claim submitted on 2 October 2003 by the Spanish Government and 15% of that claim as submitted (15% of €83.7 million = €7 555 000) and also subject to the Government of Spain providing a

guarantee from a financial institution, not from the Spanish State, which would have the financial standing laid down in the 1992 Fund's Internal Investment Guidelines so as to protect the 1992 Fund against an overpayment situation.

- (b) The Assembly decided that such a guarantee should cover the difference between 15% of the assessed amount of the claim submitted on 2 October 2003 and 15% of that claim as submitted (15% of €83.7 million = €7 555 000). Further, it was decided that the terms and conditions of the guarantee should be to the satisfaction of the Director.
 - (c) The Assembly instructed the Director to provide full information on assessments and payments under paragraph (a) and to provide explanations when required by any Member State.
 - (d) The Assembly also decided that the Executive Committee should review, at its next session, the payments made. It was also decided that if the Committee reduced the payment amount, the difference should be repaid.
 - (e) It was further decided that if any other State having suffered losses relating to the *Prestige* incident were to seek the same solution for payments on the same terms, such a request should be submitted to the Executive Committee.
- 11.4 With the assistance of a number of experts, the Director made an interim assessment of the Spanish Government's claim. On the basis of the documentation provided, he arrived at a preliminary assessment of €107 million (£71 million) and on that basis the 1992 Fund made a payment of €6 050 000 (£11.1 million), corresponding to 15% of the interim assessment.
- 11.5 In addition, the Director, with the assistance of a number of experts, also carried out a general assessment of the total of the admissible damage in Spain, which concluded that the admissible damage would be at least €303 million (£201 million). On that basis, and as authorised by the Assembly, the Director made an additional payment of €41 505 000 (£28.8 million), corresponding to the difference between 15% of €83.7 million or €7 555 000 and 15% of the preliminarily assessed amount of the Government's claim, €6 050 000. That payment was made against a bank guarantee covering the above mentioned difference (ie €41 505 000) by Instituto de Credito Oficial, a Spanish bank with high standing in the financial market, and an undertaking by the Spanish Government to repay any amount or amounts decided by the Executive Committee or the Assembly up to €41 505 000. Under the terms of the guarantee, the bank will, up to the amount of the guarantee, pay to the Fund the amount or amounts requested by the Director without him having to show the Fund's right to repayment.
- 11.6 The payment to the Spanish State totalling €7 555 000 (£39 914 906) was made on 17 December 2003.
- 11.7 The payments made to the Spanish Government were reviewed by the Executive Committee at its 24th session in February 2004.
- 11.8 The Executive Committee noted a statement by the Director that the assessments made with respect to the Spanish Government's claim and the total of the admissible losses in Spain provided very conservative estimates. It was noted that the original claim by the Spanish Government examined by the Fund's experts covered only the period to 31 July 2003, that many of the items included in that claim had not been addressed as a result of lack of information, that a similar situation applied in respect of the expenditure incurred by the regional governments of the affected areas, that fisheries losses had been assessed on the basis of general statistical data and not on actual data relating to specific claimants and that therefore it was likely that the estimates would rise substantially as more information and documentation became available.

11.9 Having reviewed the assessments made by the Director, the Executive Committee thanked the Director for the clear and transparent explanation of his assessment of the claim by the Spanish Government and his general assessment of the overall losses in Spain (document 92FUND/EXC.24/8, paragraph 3.4.30).

12 Action to be taken by the Executive Committee

The Executive Committee is invited:

- (a) to take note of the information contained in this document;
- (b) to decide on the level of compensation payments; and
- (c) to give the Director such instructions in respect of the handling of this incident and of claims arising therefrom as it may deem appropriate.
