



INCIDENTS INVOLVING THE 1992 FUND

ERIKA

Note by the Director

Summary:

Six thousand nine hundred and fifty-nine claims for compensation have been submitted and 94.5% of the claims have been assessed. Compensation payments totalling €99.3 million (£68 million^{<1>}) have been made in respect of 5 579 claims.

Legal actions against the shipowner, his insurer and the 1992 Fund were taken by 795 claimants. Out-of-court settlements have been reached with 409 of these claimants. Actions by 386 claimants are pending.

The French Courts have rendered judgements in 19 cases. The document contains a summary of these cases.

Action to be taken:

Information to be noted.

1 Introduction

- 1.1 This document sets out the general situation in respect of the *Erika* incident which occurred off the coast of Brittany (France) on 12 December 1999 and deals with recent developments.
- 1.2 As regards the incident, the clean-up operations, the removal of the oil from the wreck of the *Erika* and the impact of the spill, reference is made to the Annual Report 2003 (pages 88-89).
- 1.3 Since the Executive Committee's October 2004 session, no developments have taken place with respect to the court surveys for evaluation of damages, the investigation into the cause of the incident and the various court actions, except as set out below.

2 Amount available for compensation

- 2.1 At the request of the shipowner, the Commercial Court in Nantes issued an order on 14 March 2000 opening limitation proceedings. The Court determined the limitation amount

<1> The French franc was replaced by the Euro on 1 January 2002. Although claims have generally been made in French francs and payments effected up to 31 December 2001 were made in French francs, the amounts in the document have with a few exceptions been given in Euros only. The rate of conversion is €1 = FFfr6.55957. Conversion of Euro into Pounds sterling has been made on the basis of the rate at 10 February 2005 (€1 = £0.688) except in the case of claims paid by the 1992 Fund where conversions have been made at the rate of exchange on the date of payment.

applicable to the *Erika* at FFr84 247 733 corresponding to €12 843 484 (£9.1 million) and declared that the shipowner had constituted the limitation fund by means of a letter of guarantee issued by the shipowner's P&I insurer, Steamship Mutual Underwriting Association (Bermuda) Limited (Steamship Mutual).

- 2.2 In 2002, the limitation fund was transferred from the Commercial Court in Nantes to the Commercial Court in Rennes and a new liquidator was appointed.
- 2.3 The maximum amount available for compensation under the 1992 Civil Liability Convention and the 1992 Fund Convention (135 million SDR) was calculated by the Director at FFr1 211 966 811 corresponding to €184 763 149 (£131 million). The Executive Committee endorsed this calculation at its April 2000 and October 2001 sessions. In October 2000 and October 2001 the Assembly endorsed the Committee's decision.

3 Undertakings by TotalFinaElf and the French Government

- 3.1 TotalFinaElf undertook not to pursue claims against the 1992 Fund or against the limitation fund constituted by the shipowner or his insurer relating to its costs arising from operations in respect of the wreck, the clean-up of shorelines and disposal of oily waste, and a publicity campaign to restore the image of the Atlantic coast, if and to the extent that the presentation of such claims would result in the total amount of all claims arising out of this incident exceeding the maximum amount of compensation available under the 1992 Conventions, ie 135 million SDR.
- 3.2 The French Government also undertook not to pursue claims for compensation against the 1992 Fund or the limitation fund established by the shipowner or his insurer if and to the extent that the presentation of such claims would result in the maximum amount available under the 1992 Conventions being exceeded. However the French Government's claims would rank before any claims by TotalFinaElf if funds were available after all other claims had been paid in full.

4 Other sources of funds

- 4.1 The French Government introduced a scheme to provide emergency payments to claimants in the fishery sector, administered by OFIMER (Office national interprofessionnel des produits de la mer et de l'aquaculture), a government agency attached to the French Ministry of Agriculture and Fisheries. OFIMER stated that it based its payments on assessments made by Steamship Mutual and the 1992 Fund. OFIMER has paid €4.2 million (£3.0 million) to claimants in the fishery sector and €2.1 million (£1.5 million) to salt producers.
- 4.2 The French Government also introduced a scheme to provide supplementary payments to claimants in the tourism sector. Payments totalling €10.1million (£7.1 million) have been made under that scheme.

5 Level of the 1992 Fund's payments

- 5.1 At its 20th session, held in February 2003, the Executive Committee authorised the Director to increase the level of payments from 80% to 100% of the amount of the loss or damage actually suffered by the respective claimants as assessed by the 1992 Fund's experts when he considered it safe to do so. After a careful assessment, the Director considered in April 2003, in spite of the remaining uncertainties as to the total level of admissible claims, that there was a significant safety margin and decided to increase the level of payments to 100% (document 92FUND/EXC.20/7, paragraph 3.2.48).
- 5.2 At the Executive Committee's 22nd session in October 2003, the Director stated that, although there remained considerable uncertainties as to the total amount of the established claims, this uncertainty had been reduced since April 2003 and that it might therefore be possible in the near future to make payments in respect of the French Government's claim. The Committee authorised

the Director to make such payments to the extent that he considered there was a sufficient margin between the total amount of compensation available and the Fund's exposure in respect of other claims (document 92FUND/EXC.22/14, paragraph 3.4.11). After having reviewed his earlier assessment of the total level of admissible claims, the Director decided that there was a sufficient margin to enable the 1992 Fund to commence payments to the French State. On 29 December 2003, the 1992 Fund paid €10 106 004 (£6 973 146) to the French State, corresponding to the French Government's subrogated claim in respect of the supplementary payments to claimants in the tourism sector.

- 5.3 Having again reviewed the situation in the light of the developments during 2004, the Director decided that there was sufficient margin to enable the 1992 Fund to make a further payment to the French State. In October 2004 the French State was paid an amount of € 964 338 (£4 145 215) relating to the French Government's supplementary payments made under the scheme to provide emergency payments to claimants in the fishery, mariculture, oyster farming and salt producing sectors administered by OFIMER.

6 Claims situation

- 6.1 As at 10 February 2005, 6 959 claims for compensation had been submitted for a total of €206 million (£142 million). By that date 95% of the claims had been assessed. Eight hundred and sixteen claims, totalling €22 million (£15 million), have been rejected.
- 6.2 Payments for compensation had been made in respect of 5 579 claims for a total of €99.3 million (£68.3 million), out of which Steamship Mutual had paid €12.8 million (£8.8 million) and the 1992 Fund €86.5 million (£59.5 million).
- 6.3 The following table gives details of the situation in respect of claims in various categories.

Claims submitted by 10 February 2005					
Category	Claims submitted	Claims assessed	Claims rejected	Payments made	
				Number of claims	Amounts €
Mariculture and oyster farming	1 003	998	89	837	7 754 627
Shellfish gathering	529	526	109	366	888 313
Fishing boats	319	318	29	280	1 099 551
Fish and shellfish processors	51	50	6	43	976 832
Tourism	3 680	3 648	444	3171	73 871 212
Property damage	708	435	98	328	2 040 406
Clean-up operations	146	135	12	116	6 331 699
Miscellaneous	523	472	29	438	6 310 434
Total	6 959	6 582	816	5 579	99 273 074

7 Legal proceedings

- 7.1 A number of court actions for compensation have been brought in various jurisdictions in France.
- 7.2 The Conseil Général of Vendée and a number of other public and private bodies have brought actions in various courts against the shipowner, his insurer, companies in the Group TotalFinaElf and others requesting that the defendants should be held jointly and severally liable for any claims not covered by the 1992 Civil Liability Convention.

- 7.3 The French State has brought legal actions against the shipowner, his insurer, the 1992 Fund and others claiming compensation for €190.5 million (£135 million).
- 7.4 Four companies in the Group TotalFinaElf have taken actions against the shipowner, his insurer, the 1992 Fund and others claiming €143 million (£101 million).
- 7.5 Steamship Mutual has brought action in the Commercial Court in Rennes against the 1992 Fund, requesting *inter alia* the Court to note that, in the fulfilment of its obligations under the 1992 Civil Liability Convention, Steamship Mutual had paid €12 843 484 (£9.1 million) corresponding to the limitation amount applicable to the shipowner, in agreement with and under the control of the 1992 Fund and its Executive Committee. Steamship Mutual has further requested the Court to declare that it had fulfilled all its obligations under the 1992 Civil Liability Convention, that the limitation amount had been paid and that the shipowner was exonerated from his liability under the Convention. Steamship Mutual has also requested the Court to order the 1992 Fund to reimburse it any amount it will have paid in excess of the limitation amount.
- 7.6 There have been no significant developments since the Executive Committee's 26th session in October 2004 in these proceedings which are described in detail in document 92FUND/EXC.24/2.
- 7.7 Claims totalling €484 million (£343 million) have been lodged against the shipowner's limitation fund constituted by the shipowner's insurer, Steamship Mutual. This amount includes the claims by the French Government at €190.5 million (£130 million) and by TotalFinaElf at €170 million (£116 million). However, most of these claims, other than those of the French Government and TotalFinaElf, have been settled, and it appears therefore that these claims should be withdrawn against the limitation fund to the extent that they relate to the same loss or damage. The 1992 Fund has received formal notification from the liquidator of the limitation fund of the claims lodged against that fund.
- 7.8 Legal actions against the shipowner, Steamship Mutual and the 1992 Fund were taken by 795 claimants. By 10 February 2005 out-of-court settlements had been reached with 409 of these claimants. Actions by the remaining 386 claimants (including 212 salt producers) were pending. The total amount claimed in the pending actions, excluding the claims by the French State and TotalFinaElf, was €66 million (£47 million).
- 7.9 The 1992 Fund will continue the discussions with the claimants whose claims are not time-barred and are admissible in principle for the purpose of arriving at out-of-court settlements.

8 Court survey relating to the claims by salt producers

- 8.1 Efforts were made to minimise the impact of the spill on coastal salt production in marshes in Loire Atlantique and Vendée, and a number of monitoring and analytical programmes were implemented. Salt production resumed in Noirmoutier (Vendée) in mid-May 2000 as a result of an improvement in sea water quality, and bans which had been imposed to prevent the intake of sea water in Guérande (Loire Atlantique) were lifted on 23 May 2000. A group of independent producers in Guérande tried to resume salt production but were unable to take in sufficient sea water to produce salt. Members of a co-operative who account for some 70% of the salt production in Guérande decided not to produce salt in 2000 on the grounds of protecting market confidence in the product.
- 8.2 Claims for lost salt production due to delays to the start of the 2000 season caused by the imposed ban on water intake were received from producers (both independent and members of the co-operative) in Guérande and Noirmoutier. Claims were also presented for costs of restoration of salt ponds in Guérande in 2001. The experts engaged by the 1992 Fund and Steamship Mutual had considered that salt production was possible in 2000, but that as a result of the interruption caused by the ban on water intake, the maximum yield would have been 20% of that expected for

the year. Interim compensation payments were made to the claimants on the basis of 20% lost production.

- 8.3 At the request of the 1992 Fund and Steamship Mutual, a court expert was appointed to examine whether it was feasible to produce salt in 2000 in Guérande that would meet the criteria relating to quality and the protection of human health. The court expert presented his report in late December 2004. The court expert concluded that salt production was feasible in 2000, but that as a result of the bans that were imposed, the maximum yield would have been between 4% and 11% of normal production.
- 8.4 The 1992 Fund will attempt to reach final settlements with claimants in light of the court expert's findings.

9 Court judgements in respect of claims against the 1992 Fund

9.1 Judgements by the Commercial Court in Lorient and the Court of Appeal in Rennes

- 9.1.1 In December 2003 the Commercial Court in Lorient rendered judgements in respect of four claims in the tourism and fisheries sectors which had been rejected by the shipowner, Steamship Mutual and the 1992 Fund.
- 9.1.2 One of these claims, for €10 671 (£7 600), related to loss of income allegedly suffered by the owner of a property in the affected area which was to be let to other businesses (and not directly to tourists) but, according to the claimant, could not be let due to the negative effects of the *Erika* incident.
- 9.1.3 In its judgement the Commercial Court stated that its function was to establish whether there was damage and, if so, to assess it in accordance with the criteria of French law. The Court held that, under French law, a claim for compensation was admissible if there was a sufficient link of causation between the event and the damage, and if it was shown that the damage would not have occurred if the event had not taken place. In the Court's view, the *Erika* incident was the sole cause of the pollution and its economic consequences. The Court stated that it was not bound by the criteria for admissibility laid down by the 1992 Fund. The Court ordered the shipowner, Steamship Mutual and the 1992 Fund to pay compensation to the claimant for loss of rental income at €10 671 (£7 300).
- 9.1.4 The three other judgements related to claims by a person selling and letting machines for the production of ice cream, by a hotel situated in Carnac and by an oyster grower in Morbihan. These claims had been rejected by the 1992 Fund on the grounds that the claimants had not shown that there was a sufficient link of causation between the alleged loss and the contamination caused by the *Erika* oil spill. After having made the same statement in respect of the criteria to be applied and stating that it was not bound by the Fund's criteria, the Court appointed an expert to investigate whether there was a link of causation between the alleged loss and the oil pollution.
- 9.1.5 At its 24th session held in February 2004 the Executive Committee decided that the 1992 Fund should pursue appeals against the four judgments, considering the importance of the issue for the proper functioning of the compensation regime based on the 1992 Conventions (document 92FUND/EXC.24.8, paragraph 3.1.27).
- 9.1.6 The 1992 Fund appealed against the four judgements.
- 9.1.7 In a judgement rendered in May 2004 the Court of Appeal rejected the claim referred to in paragraph 9.1.3 above. In its judgement the Court stated that although the 1992 Fund's criteria were not binding on national courts, the claimant had not shown that there was a sufficient link of causation between the event in question and the alleged damage, nor had the claimant proven that any damage existed. The claimant has not appealed against the Court of Appeal's judgement

9.1.8 The reasons given by the Court of Appeal were summarised in paragraph 8.1.10 of document 92FUND/EXC.26/4.

9.1.9 The appeals relating to the other three claims have not yet been heard by the Court of Appeal.

9.2 Judgement by the Civil Court in Nantes

In January 2004 the Civil Court (Tribunal de Grande Instance) in Nantes rendered a judgement 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 Fund's governing bodies in that there was not a reasonable degree of proximity between the alleged losses and the pollution. The Court rejected the claims in the light of the Fund's criteria, which in the Court's view were dictated by common sense, on the grounds that the claimants had not shown a link of causation between the alleged losses and the oil pollution caused by the *Erika* incident. The claimants did not appeal against the judgement.

9.3 Judgement by the Commercial Court in Rennes

9.3.1 In April 2004 the Commercial Court in Rennes rendered a judgement in respect of a claim for €6 350 (£61 000) by a company in Rennes which carried out activities both as a tour operator selling hiking tours in Brittany, Ireland and the Channel Islands and as a traditional travel agency. The company claimed compensation for losses allegedly suffered during 2000 as a result of a reduction of sales due to the *Erika* incident.

9.3.2 This claim had been rejected by the 1992 Fund. The Fund considered that as regards sales through other tour operators (second degree tourism claims'), there was not a reasonable degree of proximity between the contamination and the alleged losses. As for sales direct to tourists, the Fund considered that no loss had been proven.

9.3.3 The Court referred in its judgement to the requirement under the French Constitution that international treaties ratified by France took precedence over French laws, thus precluding claims being made against the shipowner and his insurer otherwise than in accordance with the Convention. For this reason, contrary to what the claimant had argued, he could not base his claim on certain provisions of the Civil Code. The Court also pointed out that the criteria for admissibility had been adopted by the Fund in order to achieve uniformity so as to ensure equal treatment of victims. The Court rejected the claim on the grounds that it had not been established that there was a sufficient link of causation between the contamination and the damage suffered in that the claimant's activities were not carried out only in the area affected by the *Erika* oil spill, but also other parts of France and abroad, and that the claimant was not greatly dependent on the affected area.

9.3.4 The claimant appealed against the judgement. A further review by the Fund's experts showed that the claimant had proven a loss for an amount of €30 000 (£20 000) as regards sales direct to tourists, and an out-of court settlement was reached for that amount, as a result of which the claimant withdrew the appeal.

9.4 Judgement by the Commercial Court in Saint Brieuc

9.4.1 In September 2004 the Commercial Court in Saint Brieuc rendered a judgement in respect of a claim for €3 265 (£24 000) by a person operating a campsite in Côtes d'Armor, which is located in the northern part of Brittany, in respect of losses allegedly suffered in 2001 as a result of the *Erika* incident.

9.4.2 The operator of this campsite had previously submitted a claim in respect of losses suffered during 2000. This earlier claim was settled at €15 883 (£11 000) and that amount was paid by the

1992 Fund to the claimant in December 2002. The Fund had considered that, although this campsite was located in northern Brittany, ie outside the area directly affected by the *Erika* oil spill, the spill had resulted in loss of business for the season of 2000. However, with a few exceptions, there was no remaining contamination on the beaches in Brittany after the end of the season of 2000. For this reason, the 1992 Fund had rejected the claim for losses during the 2001 season on the ground that any loss of business suffered by the operator of this campsite during that period did not result from the contamination of the beaches caused by the *Erika*.

9.4.3 The Court nevertheless held that the claim was admissible, since it considered that the reduction in turnover in 2001 compared to 1999 was caused by the *Erika* incident, and ordered the shipowner, Steamship Mutual and the 1992 Fund to pay compensation for an amount of €26 719 (£18 000).

9.4.4 The 1992 Fund has appealed against the judgement.

9.5 Judgement by the Civil Court of first instance in Saintes

9.5.1 The owner of a restaurant in Barzan in the Department of Charente-Maritime had presented a claim for €30 425 (£22 000) relating to losses allegedly suffered in 2000 as a result of the *Erika* incident. The claim had been rejected by the Fund on the grounds that it did not fulfil the criteria for admissibility of claims relating to pure economic loss, in particular that of geographic proximity between the claimant's activity and the contamination, the restaurant being located more than 130 kilometres from the nearest polluted beach in Charente-Maritime.

9.5.2 The claimant brought action in the Civil Court of first instance in Saintes. The claimant maintained that the contamination of some beaches in Charente-Maritime had had the consequence of discouraging tourists from visiting any destinations in the department and that therefore the claim fulfilled the Fund's criteria of geographic proximity.

9.5.3 In its judgement in October 2004, the Court stated that it was appropriate to apply the 1992 Fund's admissibility criteria for the interpretation of the 1992 Conventions, and that this had not been contested by the claimant.

9.5.4 The Court made the point that the polluted beaches nearest to the claimant's restaurant were more than 100 kilometres away and the fact that these beaches were located in the same department was not sufficient for fulfilling the criterion of geographic proximity. The Court stated that there could not be any confusion in the minds of tourists between the polluted beaches and the part of the coast where the restaurant was located. In addition, the Court considered that the claimant could not be considered economically dependant on the affected resource. Furthermore, the Court stated that the claimant had not provided any evidence supporting the allegation that there was a link of causation between the contamination resulting from the *Erika* incident and a reduction in the number of tourists visiting the area where the restaurant was located or the reduction in the restaurant's turnover. For these reasons, the Court held that the claim did not fulfil the criteria adopted by the Fund's governing bodies and that there was not therefore a sufficient link of causation between the incident and the alleged loss. The claim was therefore rejected.

9.5.5 The claimant did not appeal against the judgement.

9.6 Judgement by the Commercial Court in Nantes

9.6.1 The owner of a hotel with service apartments on the outskirts of Nantes submitted a claim for losses suffered due to a reduction in the number of hotel guests allegedly as a result of the *Erika* incident. The 1992 Fund had rejected the claim on the grounds that the service apartments were located near a big city more than 50 kilometres from the nearest beach resort, that they were traditionally let all year round to employees of various businesses in Nantes and its surroundings, and that as the rooms were not primarily used by tourists, there was not a sufficient link of

causation between the losses claimed and the *Erika* oil spill.

9.6.2 In a judgement rendered in November 2004 the Commercial Court in Nantes upheld the Fund's rejection of this claim on the ground that it did not meet the Fund's criteria, in particular as to the distance between the alleged losses and the *Erika* oil spill.

9.6.3 The claimant did not appeal against the judgment.

9.7 Judgements by the Commercial Court in Saint-Nazaire

9.7.1 An oyster grower in the Department of Loire Atlantique had claimed compensation for losses allegedly suffered in 2000 and 2001, and these claims had been settled and paid. The claimant had also presented a claim for €28 110 (£20 000) for losses allegedly suffered in 2002, but this claim had been rejected by the 1992 Fund on the ground that there was not a link of causation between the losses allegedly suffered in 2002 and the *Erika* incident. In a judgement rendered in December 2004 the Court agreed with the Fund and rejected the claim. At the date of this document this claimant had not lodged an appeal.

9.7.2 The owners of a property located directly on the beach in the Department of Loire Atlantique had sought compensation for damage to their property. The claim had been assessed by the 1992 Fund for an amount that was disputed by the claimants. In a judgement rendered in December 2004 the Court arrived at an assessment that was close to that made by the Fund's experts. The claimant has appealed against the judgement.

9.7.3 A small company operating a bar-restaurant in the Department of Loire Atlantique had sought compensation for loss of business in 2000. The claim had been assessed by the 1992 Fund's experts at about half the claimed amount. The claimant did not accept this assessment and pursued the claim in court. In a judgement rendered in December 2004 the Court accepted the valuation by the 1992 Fund's experts. The manager of the company presented a claim for loss of salary. The Court dismissed this claim, since the claimant had not provided any evidence of the alleged loss. At the date of this document the claimant had not lodged an appeal.

9.7.4 A company in Le Croisic in the Department of Loire Atlantique that let and sold pleasure boats and motors, had claimed compensation for reduction in sales in 2000 allegedly caused by the *Erika* incident. Whereas the Fund had accepted that part of the claim relating to the letting of boats, it had rejected the alleged losses relating to sales, on the ground that the sales related to durable goods which, in particular as regards boats, could be deferred following an occurrence like the *Erika* oil spill and that for this reason there was not a sufficient link of causation between the incident and the alleged losses.

9.7.5 In a judgement rendered in December 2004 the Court stated that the losses in respect of the sales would not have occurred if the *Erika* incident had not taken place and that the link between the event that resulted in the losses and the losses had been sufficiently established. The Court expressed the view that the Fund's criteria could contribute to the Court's analysis but were not binding on the Court. The Court appointed an expert with the mandate to assess the losses suffered by the claimant as a result of the incident, taking into account the normal developments in the market. The 1992 Fund will not appeal against the judgement and will follow the work of the expert.

9.7.6 An insurer had made a subrogated claim against the 1992 Fund for €30 000 (£447 000) in respect of a claim it had paid to a group of hotels in La Baule for losses incurred as a result of the cancellation of a major millennium party which was to have taken place on the local beach. This payment had been made pursuant to an insurance policy covering costs incurred in organising the cancelled party. The Municipal Council of La Baule had issued a decree on 27 December 1999 prohibiting all access to the beaches in La Baule, as a result of which the party had to be cancelled. Although the 1992 Fund had considered that the claim was admissible in principle, it

had been rejected on the ground that the claimant had not submitted sufficient information enabling the Fund to assess the losses and that the insurer had not taken into account the income received by the hotels for the period of the Millennium festivities, which should have been deducted from the losses due to the cancellation of the event.

9.7.7 In a judgement rendered in December 2004 the Court estimated the income over the period of the Millennium festivities at €200 000 (£142 000). The Court ordered the shipowner, Steamship Mutual and the 1992 Fund to pay the insurer the balance of €430 000 (£305 000). The 1992 Fund has appealed against this judgement.

9.8 Judgements by the Commercial Court in Vannes

9.8.1 A wholesale business operating from various locations in Brittany supplying bottled drinks to cafés, hotels and campsites (but not directly to tourists), not only in the area affected by the *Erika* oil spill but also in other areas, submitted a claim for loss of revenue. The Fund rejected the claim on the ground that it was a 'second degree tourism claim'. In a judgement rendered in November 2004 the Court upheld the Fund's position, holding that the claimant had failed to show that the reduced turnover was due to the pollution resulting from the *Erika* incident. The claimant has appealed against the judgement.

9.8.2 The owner of a grocery store located 200 metres from the shore in the Department of Morbihan had submitted a claim for loss of revenue and moral damages in respect of stress suffered as a result of the incident. The 1992 Fund had accepted that the claim for loss of revenue was admissible in principle, but for a considerably lower amount than that claimed. The Fund had rejected the claim for moral damages since such claims were not admissible under the Conventions. In a judgement rendered in November 2004 the Court upheld the Fund's assessment of the loss of turnover and agreed with the Fund that the claim for moral damages fell outside the scope of the 1992 Conventions. The claimant did not appeal against the judgement.

9.8.3 The owner of a hotel located in the centre of Vannes had presented a claim for €9 830 (£42 000) for loss of income in 2000. The 1992 Fund had approved the claim for €16 427 (£12 000) and had made a provisional payment to the claimant. The claimant pursued the claim in court for an increased amount of €65 100 (£46 000). In a judgment rendered in December 2004 the Court assessed the loss at €24 546 (£18 000) and ordered the Fund, the shipowner and Steamship Mutual to pay this sum, minus the amount already paid to the claimant. Neither party appealed against the judgement. The Fund has paid the claimant the amount awarded by the Court.

9.8.4 In December 2004 the Court rendered a judgement in respect of claims for losses suffered in 2000, 2001 and 2002 by the owner of a property in Sarzeau in the Department of Morbihan, located 1 km from the beach, relating to losses allegedly suffered as a result of the reduction in income from letting the property to tourists.

9.8.5 The 1992 Fund had accepted the claim relating to the year 2000 as admissible in principle, but the amount of the losses assessed by the Fund, which was lower than the claimed amount, was not accepted by the claimant. The Court agreed with the Fund's assessment. As regards the claims relating to the years 2001 and 2002, the Fund had rejected the claims on the ground that there was not any reduction in income from letting the property during these years due to the *Erika* incident. Having referred to the Fund's criteria and in particular the requirement of a sufficient link of causation between the contamination and the claimant's losses, the Court stated that the claimant had not demonstrated such a link and rejected the claims. The claimant did not appeal against the judgement.

9.9 Judgment by the Commercial Court in Paris

9.9.1 An oyster grower in Carantec in Brittany, 50 km north of Brest, had submitted two claims for €10 044 (£7 100) and €39 182 (£27 800) relating to reduction in sales as a result of the *Erika*

incident. These claims had been rejected by the 1992 Fund, the shipowner and Steamship Mutual on the ground that the claimant's business was located well outside the area affected by the *Erika* oil spill and that there was no link of causation between the alleged losses and the incident.

9.9.2 In a judgment rendered in January 2005, the Commercial Court rejected the claims. The Court stated that national courts were competent to interpret the notion of damage in the 1992 Conventions as well as to determine whether there was in the particular case a sufficient link of causation between the incident and the alleged loss. The Court held that either the alleged losses did not exist, or had not been proven. The Court also held that there was no evidence of a direct or indirect link to the incident.

9.9.3 The claimant had also brought actions against the master of the *Erika*. The Court held that actions against the master were not permitted pursuant to Article III.4(a) of the 1992 Civil Liability Convention.

9.9.4 The claimant has informed the Fund that he will appeal against the judgment.

9.10 Other court cases

A number of other cases have been heard during the period October 2004-February 2005 by various Courts of first instance but the Courts have not yet rendered their judgements.

10 Recourse actions by the 1992 Fund

As regards the recourse actions taken by the 1992 Fund as a protective measure in order to prevent potential claims against third parties to recover the amounts paid by the Fund in compensation, there have been no developments since the Executive Committee's February 2004 session (cf document 92FUND/EXC.24/2, section 9).

11 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 instructions in respect of this incident as it may deem appropriate.
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