



INTERNATIONAL
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COMPENSATION
FUND 1992

EXECUTIVE COMMITTEE
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Agenda item 3

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INCIDENTS INVOLVING THE 1992 FUND

ERIKA

Note by the Director

Summary:	Two further judgements have been rendered, namely by the Commercial Court in Brest and the Civil Court in Sables d'Olonne, rejecting claims against the 1992 Fund by an oyster grower and the owner of a bar.
Action to be taken:	Information to be noted.

1 Court judgements in respect of claims against the 1992 Fund

1.1 Judgement by the Commercial Court in Brest

1.1.1 In February 2005 the Commercial Court in Brest rendered a judgement in respect of a claim for €3 265 (£52 000) from an oyster grower in North Finistère. The claim, relating to alleged loss of income, had been rejected by the shipowner, Steamship Mutual and the 1992 Fund on the grounds that there was not a reasonable degree of proximity between the contamination and the alleged loss and that in any event no loss had been proven.

1.1.2 In its judgement the Commercial Court stated that, in accordance with the French Constitution, the 1992 Civil Liability and Fund Conventions took precedence over French laws. The Court also stated that the claimant had deliberately overvalued his loss, that the business activity was located in North Finistère, ie far away from the area affected by the *Erika* oil spill, and that the claimant was not economically dependent on the affected resource. The Court held that the claim did not fulfil any of the criteria for the admissibility of claims for pure economic loss established by the Fund and for this reason rejected the claim.

1.1.3 At the time of the issue of this document the claimant had not appealed against the judgement.

1.2 Judgement by the Civil Court in Sables d'Olonne

1.2.1 In March 2005 the Civil Court in Sables d'Olonne rendered a judgement in respect of a claim for €3 852 (£38 000) from the owner of a bar.

1.2.2 The 1992 Fund, the shipowner and his insurer had accepted as admissible the part of this claim relating to loss of income and additional financial expenditure and had assessed the losses at €30 291.62 (£21 500). The Fund had paid this amount to the claimant.

- 1.2.3 The other part of the claim related to losses allegedly suffered in connection with the claimant selling his business which, according to the claimant, had lost value as a result of the *Erika* incident. This part of the claim had been rejected by the 1992 Fund, the shipowner and Steamship Mutual on the ground that there was not a sufficient link of causation between the reduction in the sale price and the *Erika* incident.
- 1.2.4 The Court held that the loss of income and additional financial expenditure incurred by the plaintiff had been compensated by the 1992 Fund in full and that therefore the plaintiff had been put in the same economic position as he would have been in if the incident had not occurred. The Court considered that there was no link of causation between the pollution caused by the *Erika* incident and the decision taken by the plaintiff to sell his business. For these reasons the claim was rejected.
- 1.2.5 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 to take note of the information contained in this document.
