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INCIDENTS INVOLVING THE 1992 FUND

ERIKA

Note by the Director

Summary: Four additional judgements have been rendered by the French Commercial Courts, rejecting claims against the 1992 Fund by an agency recruiting temporary workers, the owner of a crêperie, the owner of a restaurant/crêperie and the owner of shops selling sports clothing.

Action to be taken: Information to be noted.

1 Court judgements in respect of claims against the 1992 Fund

1.1 Judgements by the Commercial Court in Vannes

1.1.1 In June 2005 the Commercial Court in Vannes rendered three judgements in respect of claims against the 1992 Fund.

1.1.2 An agency recruiting temporary workers in the agriculture and oyster growing sectors had submitted a claim for €48 198 (£33 000) relating to loss of income in 2000. The claim had been rejected by the 1992 Fund on the grounds that there was not a sufficient link of causation between the alleged loss and the contamination.

1.1.3 In its judgement, the Commercial Court in Vannes stated that, in accordance with the French Constitution, the 1992 Civil Liability and Fund Conventions took precedence over French law. The Court noted that in order to harmonise the principles of compensation, the governing bodies of the Fund had established criteria for the admissibility of claims which were set out in the Claims Manual, in particular, that in order for a claim to be admissible there should be a sufficient link of causation between the pollution and the loss or damage allegedly suffered by the claimant. In the judgement it was stated that the criteria for admissibility of claims established by the Fund made it possible to determine if there was a sufficient link of causation, namely the geographic proximity between the claimant's activity and the contamination, the degree to which the claimant was economically dependant on an affected resource, the extent to which the claimant had alternative sources of supply or business opportunities, and the extent to which the claimant's business formed an integral part of the economic activity within the area affected by the spill.

1.1.4 The Court noted that the claimant's activity concerned in particular the agriculture sector. The Court held that the claimant had not shown that the reduction in turnover was caused by the *Erika* incident. For this reason the Court rejected the claim.

- 1.1.5 The owner of a crêperie in Morbihan had submitted a claim for €52 806 (£36 000) relating to loss of income allegedly due to the *Erika* incident. The claim had been rejected by the 1992 Fund on the grounds that having bought the crêperie on 31 May 2000, ie six months after the *Erika* incident took place, the claimant was fully aware of the consequences the incident could have on his commercial activity.
- 1.1.6 In its judgement, the Commercial Court in Vannes noted the position taken by the governing bodies of the 1992 Fund, ie that in order for a claim to be admissible there should be a sufficient link of causation between the pollution and the loss or damage allegedly suffered by the claimant. The Court referred to the admissibility criteria established by the governing bodies for claims for pure economic loss. The Court noted that the claimant had purchased the business with full knowledge that the incident had taken place and the consequences it could have on his activity. The Court held that the claimant had not proved that the reduction in the turnover was a consequence of the pollution and, for this reason, rejected the claim.
- 1.1.7 The owner of a restaurant/crêperie in Morbihan had submitted claims for loss of income in 2000 and 2001 totalling €53 748 (£37 000). The claims relating to losses in 2000, in the amount of €5 748 (£25 000), covered the entire calendar year. The 1992 Fund had taken the view that the *Erika* incident only affected the tourism industry up to the end of the tourism season at the end of November 2000 and had accepted the claim as admissible in principle for that period but had rejected the part of the claim relating to December 2000. The Fund had assessed the admissible part of the claim at €2 304 (£8 000). The Fund had rejected part of the claim for losses allegedly suffered in 2001 on the ground that the incident had not affected the claimant's business during that year.
- 1.1.8 In its judgement the Court referred to the fact that in order to harmonise the principles of compensation, the governing bodies of the Fund had established criteria for admissibility of claims, contained in the Claims Manual, particularly that there should be a sufficient link of causation between the pollution and the loss or damage allegedly suffered by the claimant.
- 1.1.9 The Court held that as regards the claim relating to 2000 the claimant was entitled to compensation for losses suffered during the period January – November, which corresponded to the tourism season. The Fund's assessment of the loss was accepted by the Court which considered the assessment well founded.
- 1.1.10 As regards to the claim for 2001, the Court held that the claimant had not proved that he had suffered any loss during that year and that, on the contrary, the 1992 Fund had provided evidence showing that the decrease in turnover in 2001 and 2002 was due to factors other than the *Erika* incident. For this reason the Court rejected this claim.
- 1.1.11 When this document was issued none of the claimants had indicated whether they intended to appeal against the judgements.

1.2 Judgement by the Civil Court in Saint Nazaire

- 1.2.1 In June 2005 the Civil Court (Tribunal de Grande Instance) in Saint Nazaire rendered a judgement in respect of a claim for €127 216 (£87 000) by a company owning five shops selling sports clothing and accessories in La Baule (Loire Atlantique) in respect of losses allegedly suffered in 2000 as a result of the *Erika* incident. The claim had been assessed by the 1992 Fund at €2 822 (£8 800), and the claimant had received a provisional payment of €0 257 (£7 000).
- 1.2.2 One part of the claim related to losses incurred resulting from the claimants having closed one of his shops due to a reduction in turnover allegedly caused by the *Erika* incident. The Court held that the claimant had not proved that the reduction in sales was due to the *Erika* incident. As to the other part of the claim, the Court decided that the claimant had failed to prove that he had suffered a more significant loss due to the *Erika* incident than what had been assessed by the 1992

Fund. The Court ordered the shipowner, Steamship Mutual and the 1992 Fund to pay to the claimant the balance of the amount assessed by the 1992 Fund, ie € 564 (£1 800).

- 1.2.3 When this document was issued the claimant had not indicated whether he intended to appeal 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.
