INTERNATIONAL
OIL POLLUTION
COMPENSATION
FUND 1992

EXECUTIVE COMMITTEE
30th session
Agenda item 3

92FUND/EXC.30/6/Add.1
6 October 2005
Original: ENGLISH

INCIDENTS INVOLVING THE 1992 FUND

ERIKA

Note by the Director

Summary: A number of judgements have been rendered by the French Courts since the Executive Committee's June 2005 session. The document contains a summary of the judgements.

One judgement relates to a claim by a student who, contrary to what had been the case in 1998 and 1999, had not been employed in the summer of 2000 at a camping site as a kitchen assistant. The French Court accepted the claim which had been rejected by the 1992 Fund. The policy of the IOPC Funds has been that claims by employees who had been made redundant or put on part-time work are not admissible. The question arises whether the Fund should review the policy in this regard. The further question arises as to whether in any event this claim, which has been presented by a person who did not have employment but an expectation to obtain employment, is admissible. If this claim were to be considered not admissible, the question arises whether the 1992 Fund should appeal against the judgement in spite of the very low amount involved.

Action to be taken:

(a) decide whether to maintain or change the policy of the IOPC Funds that claims for losses suffered by employees who have been made redundant or placed on part-time work are not admissible;

(b) if claims of the type referred to in sub-paragraph (a) above were to be considered admissible in principle, decide whether the claim by the student covered by the judgement of the Commercial Court in Rennes in section 1.3 should be considered admissible; and

(c) if the Committee were to answer the question set out in sub-paragraph (b) in the negative, decide whether the 1992 Fund should lodge an appeal against the judgement by the Commercial Court in Rennes in spite of the very low amount involved.

1 Court judgements in respect of claims against the 1992 Fund

1.1 The document summarises the judgements in respect of claims against the 1992 Fund made public since the Executive Committee's June 2005 session[<1>].

1.2 Five judgements by the Commercial Court in Rennes

Sign post manufacturer

1.2.1 A company making sign posts for hotels and other businesses had submitted a claim for €88 878 (£60 000) for losses allegedly suffered in the years 2000 and 2001 as a result of the *Erika* incident. The 1992 Fund had rejected the claim on the ground that the claimant provided services to other businesses in the tourist industry but not directly to tourists and that, for this reason, there was not a sufficient link of causation between the contamination and the alleged loss.

1.2.2 In a judgement rendered in June 2005, the Commercial Court in Rennes noted that the claimant's activity had declined considerably since 1997, well before the *Erika* incident took place, and concluded that there was no direct link of causation between the reduction in turnover from 1997 to 2000 and the *Erika* incident. For these reasons the Court rejected the claim.

1.2.3 The claimant has appealed against the judgement.

Oyster grower

1.2.4 An oyster grower in Morbihan had submitted a claim for €31 770 (£21 000) relating to loss of income allegedly suffered as a result of the pollution caused by the *Erika* incident. The 1992 Fund had rejected the claim on the grounds that the there was not a sufficient link of causation between the alleged loss and the *Erika* incident and that the claimant had not proved that he had suffered any loss in 2000.

1.2.5 In a judgement rendered in June 2005, the Court held that the claimant had not proved that he had suffered 'pure economic loss' according to the 1992 Fund's admissibility criteria. The Court pointed out that the assessment made by the Fund's experts showed that the claimant had achieved higher sales figures in 2000, ie the year after the *Erika* incident, than in the previous year. The Court held in addition that the claimant had not established that there was a direct link of causation between the loss, if any, and the incident. For these reasons the Court rejected the claim.

1.2.6 At the time this document was published, the claimant had not appealed against the judgement.

Property letting and crêperie

1.2.7 A claimant in Finistère had submitted a claim for €77 467 (£52 000) for loss of income of two commercial activities in 2000 and 2001, namely letting furnished property to tourists and running a crêperie. The 1992 Fund had assessed the claim for the year 2000 at €13 819 (£9 000), compared to the claimed amount of €29 367 (£19 893), and had rejected the claim for 2001 on the ground that the *Erika* incident had not had any negative impact on tourism in the area in 2001 and that there was not a link of causation between the loss allegedly suffered in 2001 and the contamination resulting from the *Erika* incident.

1.2.8 In a judgement rendered in June 2005, the Court agreed with the 1992 Fund's assessment of the losses in 2000. The Court considered, however, that although the claimed amount for 2001 appeared exaggerated, it was not unrealistic to believe that the psychological effect of the pollution caused by the *Erika* incident could have influenced the 2001 tourist season. The Court

---

<1> The judgements were rendered also against the shipowner and Steamship Mutual. In order not to burden the text in paragraphs 1.2.1-1.4.7 reference is made only to the 1992 Fund.

stated, however, that it did not have sufficient information to be able to assess the quantum of the losses for 2001. The Court requested the Fund's experts to assess the claim for that year as regards both commercial activities.

1.2.9 The 1992 Fund's experts are assessing the claim as requested by the Court.

Fishing ports

1.2.10 A Chamber of Commerce had submitted a claim for €16 470 (£11 000) for additional costs incurred as a consequence of the *Erika* incident. Of the amount claimed, €1 703 (£1 151) related to a series of analyses of seawater for oil pollution in ports along the coast of South Finistère, and €13 589 (£9 184) related to the costs of increased consumption of fresh water used to clean up the stalls of a fish auction hall. The claim had been assessed by the 1992 Fund at €7 065 (£4 800), of which €1 093 (£740) was for the seawater analyses and €4 789 (£3 236) for the increased consumption of fresh water. In its assessment the Fund had excluded the cost of the seawater analyses that had been carried out in two ports located outside the area affected by the contamination.

1.2.11 In a judgement rendered in June 2005, the Court agreed with the 1992 Fund's assessment of the part of the claim relating to the increased consumption of fresh water. As regards the seawater analyses the Court noted, however, that the authorities had given instructions that such analyses should be carried out along the entire coast of South Finistère. The Court held that seawater analyses carried out in ports in the area should not be discarded even if the oil did not eventually affect them. The Court considered that the analyses in those ports had been justified and should have been included in the assessment. Therefore, the Court requested the parties to re-assess the claim accordingly.

1.2.12 The 1992 Fund's experts have reassessed the claim for seawater analyses taking into account the Court's decision in this regard and a proposal for a settlement will be forwarded to the claimant.

Oyster grower

1.2.13 An oyster grower in Morbihan had claimed €9 579 (£6 500) for losses suffered in 2000 as a consequence of the incident. The 1992 Fund had assessed the claim at €1 387 (£940).

1.2.14 In a judgement rendered in June 2005, the Court agreed with the method used by the 1992 Fund to assess the loss by comparing the claimant's turnover for the year after the incident with the turnover of the previous year. The Court, however, assessed the loss at €2 737 (£1 850).

1.2.15 Neither the 1992 Fund or the claimant has appealed against the judgement.

1.3 Judgement by the Commercial Court in Rennes concerning a claim by a student who had failed to obtain expected employment, allegedly due to the *Erika* incident

The claim

1.3.1 A claim for loss of income for €978 had been presented by a student who, contrary to what had been the case in 1998 and 1999, had not been employed in the summer of 2000 at a camping site in Névez, Department of Finistère, as a kitchen assistant. This claim had been rejected by the 1992 Fund on the ground that there was not a sufficient link of causation between the alleged loss and the oil pollution resulting from the *Erika* incident

The court proceedings

1.3.2 The student brought legal action in the Commercial Court in Rennes maintaining that, had it not been for the *Erika* incident, he would as in previous years have been employed at the camping

site. He maintained that as he lived in Névez where the camping site was located, it was inconceivable for him to work in any other area, since the costs he would have incurred would have absorbed the major part of his salary. He also made the point that since seasonal workers were engaged many months in advance, it was too late for him to find alternative employment by the time it had been established that the 2000 tourist season would be affected by the oil pollution.

1.3.3 In the proceedings the 1992 Fund argued that the claim did not fulfil the Fund's criteria for admissibility and that, in any event, as a seasonal worker the student should have been able to find work outside the area affected by the oil spill.

1.3.4 The Commercial Court noted that the camping site was located in the contaminated area and that its activities had been greatly affected by the oil spill. The Court concluded therefore that the student's activity at the camping site was highly integrated with the economy of the affected area, that as a student he was very dependant on this employment and that he could not have taken other employment as a kitchen assistant, since this would have made it necessary for him to leave the place where his parents lived and that for this reason it would not have been possible for him to find alternative, similar, employment. The Court therefore accepted the claim and ordered the shipowner, Steamship Mutual and the 1992 Fund to pay the claimed amount of €978 (£650) plus legal interest and an amount of €3 000 (£2 000) in costs. The Court also decided that the judgement was immediately enforceable whether or not an appeal was lodged.

1.3.5 This claim, although for a very low amount, gives rise to a question of principle, namely whether claims by persons who as a result of an oil pollution incident are laid off work or have not been given expected employment are admissible for compensation under the 1992 Conventions.

1.3.6 The Fund has not yet been notified of the judgement, which makes it possible for the Executive Committee to decide whether an appeal should be lodged. In any event, since the Court had declared that, whether or not appealed, the judgement was enforceable, the 1992 Fund will pay the awarded amount plus interest and cost.

Previous consideration of the issue

Aegean Sea and Braer incidents

1.3.7 Following the *Aegean Sea* and *Braer* incidents, claims for loss of income were submitted by employees at fish processing plants, mussel farms and shellfish purification plants who had either been placed on part-time work or who had been made redundant.

1.3.8 When the 1971 Fund Executive Committee examined these claims some delegations expressed the view that the losses should be governed by the contractual relationship between the employer and the employee. One delegation was of the view that these losses were a direct result of the pollution, and another delegation considered that the claims were admissible provided that there was a link of causation between the incident and the loss.

1.3.9 The Committee took the view that the losses suffered by employees were a more indirect result of contamination than losses suffered by companies or the self-employed, since the losses of employees were the result of their employers being affected by the consequences of a spill and therefore having to reduce their workforce; reference was also made to the fact that, although the Executive Committee at a previous session had accepted claims for fish processing plants, the losses suffered by their employees were considered one step more remote than losses suffered by fish processors. The Committee concluded that such losses could not be considered as 'damage caused by contamination' and therefore did not fall within the definition of 'pollution damage' (document FUND/EXC.35/10, paragraphs 3.3.23 and 3.4.24).

1.3.10 At a later 1971 Fund Executive Committee session, some delegations observed that this was an unfortunate decision concerning the 'weakest in society', and that it was not appropriate to make

such a distinction between employees and companies or the self-employed. The Committee decided that it would reconsider the matter if new evidence or facts were presented to justify a re-examination (document FUND/EXC.36/10, paragraph 3.3.7).

1971 Fund Intersessional Working Group

1.3.11 The issue was considered in 1994 by the 7th Intersessional Working Group set up by the 1971 Fund Assembly to examine the criteria for the admissibility of claims within the scope of the 1969 Civil Liability Convention, the 1992 Fund Convention and the 1992 Protocols thereto, namely whether and, if so, to what extent the 1971 Fund should pay compensation for loss of income suffered by employees in certain sea-related activities who had been made redundant or put on part-time work as a result of an oil pollution incident. The Group also addressed the situation where employers in sea-related activities maintained their work force, although there was either insufficient work to keep the employees occupied or no work at all for many months; the question was whether, in such cases, in the assessment of compensation to the employer, deductions should be made for salaries paid to such employees. The Working Group's considerations of this issue are reflected in its report (document FUND/A.17/23, paragraphs 7.2.46 – 7.2.57).

1.3.12 The Working Group recalled that the 1971 Fund Executive Committee had considered claims by salmon farmers in the *Braer* case who had been unable to harvest their fish and had maintained their workforce although there had been either insufficient work to keep the employees fully occupied or no work at all for many months. It was noted that the Executive Committee had taken the view that the damage suffered by these salmon farmers related to damage to property and that it would be for the individual salmon farmer to decide whether or not to retain staff without this having any impact on the amount of compensation available.

1.3.13 As regards claims submitted in the *Braer* case by fish processors in similar situations, the Working Group recalled that the 1971 Fund Executive Committee had decided that, when examining whether deductions should be made for salaries to the employees who were retained, each claim would have to be considered on its own merits in the light of the circumstances of the individual claimant. It was noted that the Executive Committee had taken the view that the decision should be based on whether or not the claimant had acted reasonably in the circumstances *vis-a-vis* the following criteria:

- what would have been the cost of redundancy payments?
- what would be the cost of re-employing staff?
- for how long would there be insufficient work?
- what would be the difficulties in re-employing suitable staff?
- what damage would be done to the claimant's reputation as a responsible employer if employees were made redundant?
- what difficulties would there be for those made redundant in finding new employment?

1.3.14 The Working Group agreed with the position taken by the 1971 Fund Executive Committee in the cases of the employers referred to in paragraphs 1.3.12 and 1.3.13 above.

1.3.15 The Working Group recalled previous decisions by the Executive Committee as regards employees having been made redundant in connection with the *Aegean Sea* and *Braer* incidents.

1.3.16 During the discussions in the Working Group several delegations took the view that employees who had been made redundant as a result of an oil spill should in principle be entitled to compensation for the loss incurred. It was argued that the decisive criterion should be whether the activity in question had been affected by the spill, regardless of the corporate structure of the activity. It was pointed out by these delegations that if an employer laid off staff, thereby reducing his loss, the loss did not disappear but was transferred to the persons who were made redundant. Some delegations maintained that the employer's action to lay off staff should be considered as measures taken to minimise his loss and that the loss suffered by the employees

should therefore be considered as 'loss or damage caused by preventive measures' which would qualify for compensation under Article I.6 of the Civil Liability Convention. These delegations recognised that an acceptance of claims of this type would give rise to difficult questions of how to assess the losses and what should be the limit of the 1971 Fund's obligation to pay compensation in such cases. In the view of these delegations, difficulties of this type, which were of a practical nature, should not be an obstacle to these claims being accepted in principle. These delegations accepted that the 1971 Fund could not pay compensation to such employees for an indefinite period of time.

1.3.17 A number of delegations supported the position taken by the 1971 Executive Committee and maintained that claims of this type should be rejected, since the losses suffered by the employees were a more indirect result of the contamination than the losses suffered by companies or the self-employed.

1.3.18 Some delegations expressed the view that the 1971 Fund should take a flexible approach to claims for losses suffered by employees who had been made redundant and that such claims should be decided on a case by case basis, in the light of the circumstances of the particular claimant.

1.3.19 The Working Group recognised that if the 1971 Fund were to accept in principle claims by employees of the type discussed above, several additional questions would have to be addressed, namely:

- which groups of employees would be entitled to compensation?
- for what period of time would compensation be payable?
- what would be the relationship between social security systems and compensation under the Civil Liability Convention and the Fund Convention?

1.3.20 Some delegations made the point that social security payments were not recoverable from the 1971 Fund.

1.3.21 The Working Group noted that there was a diversity of opinions within the Group in respect of whether the 1971 Fund should pay compensation for loss of income to employees who had been made redundant as a result of an oil spill. The Working Group considered, therefore, that the matter should be referred to the Assembly for decision (document FUND/A.17/23, paragraph 7.2.55).

1971 Fund Assembly

1.3.22 The Working Group's report was considered by the 1971 Fund Assembly at its 17th session, held in October 1994. The Assembly, which endorsed the Working Group's report, noted that the Working Group had not been able to draw any conclusion as to whether and, if so, to what extent the 1971 Fund should pay compensation for loss of income suffered by employees in certain sea-related activities who had been made redundant or put on part-time work as a result of an oil pollution incident. The Assembly did not consider it appropriate to take any decisions on this issue. It was nevertheless decided that the 1971 Fund should adopt a cautious approach in respect of such claims (document FUND/A.17/35, paragraphs 26.9 and 26.10).

1.3.23 Since the Working Group did not propose, and the 1971 Fund Assembly did not decide, that the policy adopted by the 1971 Fund Executive Committee on this issue should be changed, the Director has applied the policy laid down by the Committee in the very few cases when claims of this kind have been presented to the 1971 Fund or the 1992 Fund after the 1971 Fund Assembly's October 1994 session, ie that such claims are not admissible.

1992 Fund policy

1.3.24 The 1992 Fund Assembly decided, at its 1st session held in June 1996, that the criteria hitherto laid down by the 1971 Fund Executive Committee should be applied by the 1992 Fund in its consideration of the admissibility of claims (1992 Fund Resolution N°3, document 92FUND/A.1/34, Annex II.

Director's considerations

1.3.25 Since the Commercial Court in Rennes in its judgement accepted a claim, which in the Director's view is not admissible on the basis of the policy laid down by the IOPC Funds' governing bodies, the question arises as to whether the 1992 Fund should lodge an appeal against the judgement since it concerns a matter of principle, in spite of the very low amount involved. The Executive Committee may in this context wish to review the policy adopted in the early nineties that claims for loss of income by employees who have been made redundant or placed on part-time work as a result of an oil spill are not admissible. If this policy were to be confirmed, the claim by the student would also have to be considered inadmissible. Should, however, the Committee decide to change the Funds' policy in this respect and consider claims by employees who have been made redundant or placed on part-time work admissible in principle, the Committee would have to consider whether also claims by persons who were not employed at the time of the oil spill, but had expectations of employment, should be considered admissible in principle.

1.3.26 It should be noted that in the context of the *Prestige* incident claims have been presented for loss of income by employees in the fisheries sector which have given rise to the same policy issue.

(a) The Claims Office in Spain received ten claims from employees whose employment contracts had been temporarily suspended or for whom the working hours had been temporarily reduced. Some of these claimants have been partially or totally compensated by the Spanish authorities either through social security schemes or through the compensation systems put in place by the Spanish Government in relation to the *Prestige* incident. These claims were rejected in accordance with the Fund policy.

(b) A fish wholesaler that employed one of the claimants referred to in sub-paragraph (a) submitted a claim to the Fund for loss of sales during the fishing ban period. In the assessment of this claim, account was taken of the savings in personnel costs made by the company by having temporarily suspended the employee's contract.

(c) A fish processing company that employed seven of the claimants referred to in sub-paragraph (a) was closed down permanently in 2004. The company and the employees have alleged that, although the company had been experiencing financial difficulties already before the *Prestige* incident, the incident was the final factor that precipitated the closure. The employees' claims cover only the period of inactivity during the fishing bans. The employees have not submitted claims for the period after the closure, but they have later maintained that they not only suffered losses during the period of inactivity of the company as a consequence of the fishing bans, but that, as a result of the permanent closure of the company, they continued to incur losses. The company has submitted a claim to the Fund for loss of income during the fishing bans although there is not enough information to assess the claim.

1.3.27 As set out above, when this issue was considered in the early nineties, opinions were split both in the Executive Committee and in the intersessional Working Group. It was, on the one hand, argued that the losses suffered by employees being laid off were a more indirect result of the contamination than losses suffered by companies and the self-employed and that such losses could not be considered as damage by contamination. It was, on the other hand, suggested that the decisive criteria should be whether the activity in question had been affected by the spill and not

the corporate structure. However, the Executive Committee took the decision that claims by such employees were not admissible, and this has therefore been the IOPC Funds' policy.

1.3.28 In the Director's view, the decisive issue is whether, using the terminology that has been developed by the Funds since the *Aegean Sea* and the *Braer* incidents, there is a sufficiently close link of causation between the contamination and the losses suffered by employees who have been laid off or placed on part-time work and therefore have suffered what is known as 'pure economic loss'" (ie economic loss suffered by persons whose property has not been contaminated by the oil). As decided by the governing bodies, when considering whether such a close link exists in respect of claims for pure economic loss in the tourism sector, account should be taken of the following factors (Claims Manual, April 2005 edition, page 28):

- The geographic proximity of the claimant's business activity to the contaminated area (for example whether a tourist hotel, campsite, restaurant or bar is located on or close to the affected coast).
- The degree to which the claimant's business is economically dependent on an affected coastline (for example whether a hotel or restaurant located close to an affected coast caters solely or predominantly for leisure visitors or for the business community).
- The extent to which a claimant had alternative sources of supply or business opportunities (for example whether a reduction in income form tourists was offset by income from those involved in the response to an oil pollution incident, such as clean-up personnel and representatives from the media).
- The extent to which the claimant's business forms an integral part of the economic activity within the area affected by the spill (for example whether the business is located or has assets in the area, or employs people living there).

1.3.29 These criteria use in the English version the expressions 'the claimant's business activity' and 'the claimant's business'[<2>]. In the Director's view it appears that these expressions would also cover individuals working in a tourist business such as at a hotel or a camping site. If this is so, it has to be considered on a case-by-case basis whether claims by individual employees who have been made redundant or placed on part-time work fulfil these criteria.

1.3.30 In this context reference should be made to the position taken by the Funds as regards losses suffered by businesses that provide goods or services to other businesses in the tourism industry but not directly to tourists, so called 'second degree tourism claims'. The Funds' established policy as regards this category of claim is that there is not a sufficiently close link of causation between the contamination and any losses suffered by such claimants and that therefore claims of this type will not normally qualify for compensation. The Director considers, however, that employees at hotels, restaurants and camping sites personally render services to tourists and that claims by employees in such businesses who have been made redundant or placed on part-time work should not, therefore, be considered as 'second degree tourism claims'.

1.3.31 As mentioned above, during the discussions in the Working Group some delegations maintained that the employer's action to lay off staff should be considered as preventive measures and that the losses suffered by the employees should be considered as 'loss or damage' caused by preventive measures. This view was, however, not accepted by the Working Group. It will be recalled that the 1971 Fund Executive Committee and the Working Group agreed, and the 1971 Fund Assembly endorsed the agreement, that measures taken to prevent or minimise pure economic loss could qualify for compensation provided that the loss to be prevented fell within the definition of 'pollution damage' and that the measures fulfilled certain criteria (document FUND/A.17/23, paragraphs 7.2.34, 7.2.35 and 7.2.37). However, in the Director's view it was not

---

[<2>] The French version contains the expression l'activité du demandeur' and 'l'activité commerciale du demandeur', whereas the Spanish version uses 'la actividad commercial del reclamante' y 'la actividad del reclamante'.

intended that losses suffered by employees made redundant or put on part-time work would be considered as losses caused by preventive measures and therefore be admissible in principle.

1.3.32 The Executive Committee may nevertheless wish to consider whether the IOPC Funds' policy in respect of the admissibility of claims by employees who have been made redundant or placed on part-time work is too restrictive.

1.3.33 It should be noted that if the Executive Committee were to change the Funds' policy and consider that claims of such employees are admissible in principle, it would be necessary to address the questions referred to in paragraph 1.3.19 above. It is suggested, however, that these issues would have to be considered on a case by case basis in the light of the facts of the particular incident and the situation of the individual claimant, in order to establish whether there is a sufficiently close link of causation between the contamination and the claimant's loss.

1.3.34 Even in the event that the Executive Committee were to decide that claims for losses suffered by employees who have been made redundant or put on part-time work would be admissible in principle, the Committee would also have to consider whether claims by seasonal workers who, like the student in the present case, were not employed at the time of an oil spill but had a reasonable and justified expectation of gaining employment should be admissible. In the Director's view such losses are one step further away from the contamination and for that reason they should in any event be considered as not fulfilling the criterion of a sufficiently close link of causation between the contamination and the loss.

1.3.35 If the Executive Committee were to decide that claims by seasonal workers who, due to an oil spill, did not get expected employment in the tourism sector are not admissible in principle, the Committee would have to consider whether, in spite of the very low amount involved, the 1992 Fund should lodge an appeal against the judgement in which the Commercial Court in Rennes accepted the claim by the student. The Director considers that, although it may be seen as an overreaction to lodge an appeal in such a case, the case deals with a matter of principle as to admissibility, and it may therefore nevertheless be appropriate for the 1992 Fund to appeal.

1.4 Judgements by the Commercial Court in Lorient

Camping site

1.4.1 The owner of a camping site in Morbihan had claimed €7 013 (£4 750) for losses allegedly suffered in 2001, moral damages and loss of image as a consequence of the *Erika* incident. The 1992 Fund had rejected the claim on the ground that there was not a sufficient link of causation between the alleged losses and the contamination since, according to the information collected by the expert's engaged by the Fund, the *Erika* incident had not, except in a few restricted areas, had any negative impact on the tourism activity in the area after the 2000 season. The claimant had been compensated by the Fund for €18 238 (£12 350) for his economic losses in 2000.

1.4.2 In a judgement rendered in 2005 the Commercial Court in Lorient stated that it was not bound by the Fund's criteria for admissibility of claims and that it was its function to establish whether there was any pollution damage under the 1992 Conventions and, if so, to assess it and verify the existence of a sufficient link of causation between the loss and the incident. The Court noted that even if there had not been any traces of oil on the beaches in the south of Brittany after the summer of 2000, which had not been proven, this would not be sufficient to exonerate the defendants if evidence was brought that there had been a reduction in turnover in 2001 as a result of the *Erika* incident. However, the Court noted that the claimant had not proved the existence of any such loss or that he had suffered moral damages or loss of image. For these reasons the Court rejected the claim.

1.4.3 At the time this document was published, the claimant had not appealed against the judgement.

Seven other tourism businesses

1.4.4 In July 2005, the Commercial Court in Lorient rendered judgements in respect of seven claims from businesses in the tourism sector relating to 'pure economic loss' in which the Court appointed a court expert to examine whether there was a link of causation between the alleged losses and the contamination caused by the incident and assess the losses incurred.

1.4.5 Five of the claims had been accepted by the Fund in respect of losses in 2000, albeit sometimes for lower amounts, but had been rejected by the Fund in respect of losses in 2001, since there was not a sufficient link of causation between the alleged losses and the contamination. A sixth claim, by an estate agent, for loss of income in its letting activity and property sales was rejected by the Fund on the grounds that no loss in respect of letting had been proven and that it had not been established that the incident had had a long-term impact on property sales. The seventh claim, by the owner of a campsite, had been assessed by the Fund at a lower amount than claimed and the claimant had not agreed with the assessment. Details of the seven claims are summarised in the table below.

Business activity	Amount claimed €	Issue
Property letting	299 463	Claim for losses in 2001 rejected by the 1992 Fund
Processing and sales of seafood (two claims)	459 214 218 993	Claim for losses in 2001 rejected by the 1992 Fund Claim for losses in 2001 rejected by the 1992 Fund
Tourist train operator	69 625	Claim for losses in 2001 rejected by the 1992 Fund
Camping site	28 946	Claimant did not accept assessment of €11 068
Property letting and sales	59 174	Claim rejected by the 1992 Fund due to no proven losses in respect of letting and sales only postponed
Yacht club	49 325	Claim for losses in 2001 rejected by the 1992 Fund
Property letting	108 940	Claim for losses in 2001 rejected by the 1992 Fund

1.4.6 In the seven judgements the Commercial Court in Lorient stated that it was not bound by the 1992 Fund's criteria for admissibility, which were internal to the Fund. The Court also stated that it was for the Court to interpret the concept of 'pollution damage' in the 1992 Conventions and to apply it to the various claims by determining whether there was a sufficient link of causation between the loss and the contamination. In the case of the five claimants with claims relating to losses in 2001 the Court considered that the fact that all traces of oil on the coasts of south Brittany had disappeared by the end of summer 2000 did not necessarily imply that there was no link of causation between the event that lead to the damage ('le fait générateur') and the losses suffered and that it was for the Court to decide whether such a link existed. The Court held, however, in respect of all seven cases that the facts had not been established and appointed a court expert to assess whether those claimants had suffered losses in the period covered by their respective claims compared to previous years and, if so, to determine whether their losses were due to pollution resulting from the *Erika* incident.

1.4.7 The expert appointed by the Court is examining the seven claims.

2 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) as regards the claim dealt with in section 1.3 above to decide:

(i) whether to maintain or change the policy of the IOPC Funds that claims for losses suffered by employees who have been made redundant or placed on part-time work are not admissible;

(ii) if claims of the type referred to in sub-paragraph (i) above were to be considered admissible in principle, to decide whether the claim by the student covered by the judgement of the Commercial Court in Rennes should be considered admissible; and

(iii) if the Committee were to answer the question set out in sub-paragraph (ii) above in the negative, decide whether the 1992 Fund should lodge an appeal against the judgement by the Commercial Court in Rennes in spite of the very low amount involved; and

(c) to give the Director such other instructions in respect of this incident as it may deem appropriate.
