



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 €829 million (£561 million)^{<1>} have been received by the Office in Spain and claims totalling €97 million (£66 million) have been received by the Office in France. The Portuguese Government has submitted claims for €4.3 million (£3.0 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 €171.5 million (£116 million). 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 insurer.

The Spanish Government introduced legislation in the form of Royal Decrees that made available funds to compensate in full the victims of the pollution. According to information provided by the Spanish Government, agreements have been reached with the great majority of the workers in the fisheries sector and payments totalling some €88million (£60 million) have been made to them under the Royal Decrees.

The 1992 Fund has been informed that 971 claims have also been presented under this legislation. These claims will be assessed by the Consorcio de Compensación de Seguros, a state owned insurance organisation, following the criteria used to apply the 1992 Civil Liability and Fund Conventions.

In October 2003 the Spanish Government submitted a claim for €383.7 million (£260 million). The Director made an interim assessment of the claim, arriving at a figure of €107 million (£72 million), and on this basis a payment was made of 15% of that amount, ie €16 050 000 (£11.1 million).

<1> In this document conversion of currencies has been made on the basis of exchange rate as at 16 September 2005 (€ = £0.6772) except in respect of payments made by the 1992 Fund where the conversion has been made at the rate on the date of payment.

The Director 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 (£205 million). Having made the assessment, and as authorised by the Assembly, the Director 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 €57 555 000 (£39.9 million).

The Spanish Government has subsequently submitted further claims. The total amount claimed by the Spanish Government is €62.5 million (£449 million).

Action to be taken: Information to be noted.

1 The incident

- 1.1 On 13 November 2002 the Bahamas registered tanker *Prestige* (42 820 GT), carrying 76 972 tonnes of heavy fuel oil, began listing and leaking oil while some 30 kilometres off Cabo Finisterre (Galicia, Spain). On 19 November, whilst under tow away from the coast, the vessel broke in two and sank some 260 kilometres 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 an estimated 25 000 tonnes of cargo. Over the following weeks, oil continued to leak from the wreck at a declining rate. It was subsequently estimated by the Spanish Government that approximately 13 800 tonnes of cargo remained in the wreck.
- 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 west coast of France.
- 1.3 Major clean-up operations were carried out at sea and on shore in Spain. Significant clean-up operations were also undertaken in France. Clean-up operations at sea were undertaken off Portugal.
- 1.4 The *Prestige* was entered with the London Steamship Owners Mutual Insurance Association (London Club).
- 1.5 For details of the clean-up operations and the impact of the spill reference is made to 92FUND/EXC.24/5, 92FUND/EXC.24/5/Add.1 and 92FUND/EXC.25/3/1.

2 Removal of the oil from the wreck

- 2.1 An International Technical Committee was set up by the Spanish Government under the co-ordination 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. A contract to remove the remaining oil from the *Prestige* was signed between the Spanish Government and Repsol YPF. The removal of the oil, which commenced in May 2004, was finalised in September 2004. Some 13 000 tonnes of cargo was removed from the forepart of the wreck. Approximately 700 tonnes was left in the aft section, which was treated with biological agents aimed at accelerating the degradation of the oil.
- 2.3 The Spanish Government has submitted a claim of €109.2 million (£74 million) for the operation of removing the oil remaining in the wreck. This claim gives rise to a question of principle as regards admissibility. This issue is dealt with in an addendum to this document.

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 20 September 2005 the Claims Handling Office in La Coruña had received 741 claims totalling €829 million (£561 million). These include a claim for €32 million (£89 million) from a group of 58 associations from Galicia, Asturias and Cantabria representing 13 600 fishermen and shellfish harvesters and five claims from the Spanish Government. The first claim from the Spanish Government was for €383.7 million (£260 million), submitted in October 2003, the second for €44.6 million (£30 million), submitted in January 2004, the third for €85.5 million (£58 million), submitted in April 2004, the fourth, submitted in two parts, the first in December 2004 and the second in April 2005, for €157.2 million (£106 million) and the fifth for €87.8 million (£59 million). The first, second and third claims included items for the cost of clean-up operations in the Atlantic National Park amounting to €1.9 million (£8 million) in total. These items have been withdrawn since funding for these operations has been obtained from another source. This withdrawal, together with subsequent amendments, has brought the total of the amount claimed by the Spanish Government to €662.5 million (£449 million).
- 4.2 The claims submitted by the Spanish Government relate to costs incurred in respect of at sea and onshore clean-up operations, removal of the oil from the wreck, compensation payments to fishermen and shellfish harvesters, tax relief for businesses affected by the spill, administration costs and costs relating to publicity campaigns.
- 4.3 The table below provides a breakdown of the different categories of claims received by the Claims Handling Office in La Coruña.

Category of claim	No. of claims	Amount claimed €
Property damage	229	2 907 732
Clean-up	16	4 161 279
Mariculture	12	8 142 675
Fishing and shellfish gathering	153	134 861 755
Tourism	10	612 472
Fish processors/vendors	274	14 897 463
Miscellaneous	42	1 189 342
Spanish Government	5	662 505 963
Total	741	829 278 681

- 4.4 The first claim received from the Spanish Government was assessed on an interim basis by the Director in December 2003 at €107 million (£72 million). As regards payments to the Spanish Government, reference is made to section 11.
- 4.5 Since December 2003, a number of meetings have been held with representatives of the Spanish Government and a considerable amount of further information has been provided in support of its claims. Cooperation with representatives of the Spanish Government is continuing and progress is being made on the assessment of the claims submitted by the Government.
- 4.6 Of the 736 other claims submitted, 65% have been assessed. Many of the remaining claims lack sufficient supporting documentation and such documentation has been requested from the claimants. Four hundred and fourteen of these other claims for €23.4 million (£16 million) have

been approved for €2.4 million (£1.6 million) and interim payments totalling €3 118 (£56 000)^{<2>} have been made at 15% of the assessed amounts in respect of 79 of the approved claims. The remaining approved claims await a response from the claimants or are being reexamined following claimants' disagreement with the assessed amount. One hundred and seventeen claims for €10 million (£6.8 million) have been rejected, the majority because the claimant has not demonstrated that a loss had been suffered.

- 4.7 At the Executive Committee's May 2004 session the Spanish delegation stated that 67 municipalities had requested compensation totalling €37.6 million (£25.5 million) and that the four affected autonomous regions had estimated their damage at €150 million (£102 million). The delegation also stated that the claimed amounts were awaiting approval by the State before payments were made to these public authorities. In May 2005, 52 municipalities in Galicia signed agreements with the Spanish Government and a further three were expected to sign agreements in the near future. Another 20 municipalities in Asturias have accepted proposals made by the Spanish Government. At the Executive Committee's June 2005 session, the Spanish delegation informed the Committee that the Spanish Government would submit claims for the costs incurred by autonomous regions and municipalities that had been paid by the Government and for the costs incurred in the disposal of the oily residues. That delegation stated that it expected to submit these claims together with the claims assessed by the Consorcio by the end of 2005 or early in 2006.

France

- 4.8 By 20 September 2005, the Claims Handling Office in Bordeaux had received 410 claims totalling €7 million (£66 million). The table below provides a breakdown of the different types of claims.

Category of claim	No. of claims	Amount claimed €
Property damage	9	87 772
Clean-up	38	7 682 256
Mariculture	120	1 712 788
Shellfish gathering	3	116 810
Fishing boats	54	846 000
Tourism	164	17 985 252
Fish processors / vendors	9	301 446
Miscellaneous	12	779 521
French Government	1	67 499 154
Total	410	97 011 000

- 4.9 Of the 410 claims submitted to the Claims Handling Office, 73% have been assessed. Many of the remaining claims lack sufficient supporting documentation and such documentation has been requested from the claimants. Two hundred and seventy-one claims have been approved for €5.9 million (£4 million) and interim payments totalling €703 543 (£476 000) have been made at 15% of the assessed amounts in respect of 117 of the approved claims. The remaining approved claims await a response from the claimants or are being reexamined following claimants' disagreement with the assessed amount. Fifty-five claims have been rejected, the majority because the claimants have not demonstrated that a loss had been suffered.
- 4.10 One hundred and four oyster farmers based in the Arcachon basin near Bordeaux have submitted claims totalling €807 037 (£547 000) for losses allegedly suffered as a result of market resistance due to the pollution. The experts engaged by the London Club and the 1992 Fund have examined

<2> Compensation payments made by the Spanish Government to claimants have been deducted when calculating the interim payments.

these claims and 91 of them, totalling €701 686 (£475 000), have been assessed at €263 253 (£179 000). The remaining thirteen are to be examined by the experts. Payments totalling €6 343 (£11 000) have been made in respect of 28 of these claims at 15% of the assessed amounts.

- 4.11 In September 2005, representatives of the 1992 Fund and the experts appointed by the 1992 Fund met the Association Interprofessionnelle pour le Développement de la Pêche Artisanale (ASSIDEPA), representing the fishery claimants, and the Centre de Gestion et de Comptabilité Agricole (CGCA), representing the oyster farmer claimants. The problems encountered in assessing the outstanding claims were discussed between these representatives and the representatives of the 1992 Fund. A representative of each association was nominated to hold further discussions with the Fund's experts in order to complete the outstanding assessments as soon as possible.
- 4.12 The Claims Handling Office has received 164 tourism-related claims totalling €17.9 million (£12 million). One hundred and eighteen of these claims have been assessed at a total of €5.2 million (£3.5 million). One hundred claims have been approved for €4.5 million (£3 million) and interim payments totalling €50 859 (£373 000) have been made at 15% of the assessed amounts in respect of 62 claims.
- 4.13 In May 2004, the French Government submitted a claim for €7.5 million (£45.7 million) in relation to the costs incurred for clean-up and preventive measures. Experts appointed by the 1992 Fund and the London Club are assessing this claim. In October 2004 representatives of the Fund and the Fund's experts met with representatives of the French Government to discuss the assessment process and what further information was required for the assessment to be completed. After a preliminary assessment of the Government's claim had been made, a formal request for further information was sent to the French Government in August 2005.
- 4.14 A further 38 claims, totalling €7.7 million (£5.2 million), have been submitted by local authorities for costs of clean-up operations. Twenty of these claims have been assessed at €3.4 million (£2.3 million). Fourteen claims have been approved for €62 037 (£651 000) and interim payments totalling €120 889 (£82 000) have been made in respect of 10 claims at 15% of the assessed amounts.

Portugal

- 4.15 In December 2003, the Portuguese Government submitted a claim for €3.3 million (£2.2 million) in respect of clean up and preventive measures. A meeting was held in July 2004 between representatives of the 1992 Fund and representatives of the Government departments involved. In February 2005, the Portuguese Government provided the 1992 Fund with additional documentation in support of its claim. The additional documentation included a supplementary claim for €1 million (£677 000) also in respect of clean-up and preventive measures. The claims have been provisionally assessed at €1.5 million (£1 million).

5 Time bar

- 5.1 Under the 1992 Civil Liability Convention, rights to compensation from the shipowner and his insurer are extinguished unless legal action is brought within three years of the date when the damage occurred (Article VIII). As regards the 1992 Fund Convention, rights to compensation from the 1992 Fund are extinguished unless the claimant either brings legal action against the Fund within this three-year period or notifies the Fund within that period of an action against the shipowner or his insurer (Article 6). Both Conventions also provide that in no case shall legal actions be brought after six years from the date of the incident.
- 5.2 In September 2005 individual letters were sent to all those who had submitted claims to the Claims Handling Offices in Spain and France and with whom settlements had not been reached by that time about the time bar issue. Advertisements are being placed in the national and local press in Spain and France drawing attention to the time bar issue. In respect of the *Prestige*

incident it may be uncertain as to from which day the three year time bar period starts to run for the individual claimant (ie the day when the respective claimant's loss occurred). In view of the uncertainty as to the starting point of the time bar period, it is suggested in the letters and in the advertisements that the claimants should assume that the time bar period commenced on the day of the incident (ie 13 November 2002) in order to avoid any risk of the claims becoming time-barred. It is also made clear that even if a claimant has taken legal action, this will not prevent further discussions concerning his claim for the purpose of reaching an out-of-court settlement.

- 5.3 At the meeting in September 2005 with the representatives of ASSIDEPA and CGCA referred to in paragraph 4.11 above, the 1992 Fund's representative took the opportunity to draw the attention of the representatives of these claimants to the impending third anniversary of the incident and to the steps that had to be taken by those claimants whose claims had not been settled by 13 November 2005 to prevent their claims becoming time-barred.

6 Payments and other financial assistance by the Spanish Authorities

- 6.1 The Spanish Government and regional authorities made payments of €40 (£27) 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 as subrogated claims in the claim by the Spanish Government, pursuant to Article 9.3 of the 1992 Fund Convention.
- 6.2 The Spanish Government has also provided aid to other individuals and businesses affected by the oil spill in the form of loans, tax relief and waivers of social security payments.
- 6.3 In June 2003 the Spanish Government adopted legislation in the form of a Royal Decree (Real Decreto-Ley) making available €60 million (£108 million) to compensate in full the victims of the pollution. 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.
- 6.4 In July 2004 another Royal Decree increased the funds available for compensation to €249.5 million (£169 million). In addition, the Decree extended the period in which persons in the fishing, shellfish harvesting and aquaculture sectors could claim for losses suffered directly as a result of the incident to include 2004. The funds available for compensation of losses occurring during 2004 were limited by the Decree to €3 million (£2 million). Claimants were required to submit claims for such losses by 31 March 2005.
- 6.5 At the February 2004 session of the Executive Committee 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 first 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 a formula or a scale. It was stated that some 5 000 claims of other groups would be subject to individual assessments.
- 6.6 In May 2005 the Spanish Government informed the 1992 Fund that agreements had been reached with some 19 500 workers in the fisheries sector and payments totalling some €88 million (£60 million) had been made to them under the Royal Decrees. It is expected that the claims which had been lodged in the legal proceedings before the Criminal Court in Corcubi6n (Spain) on behalf of these workers will be withdrawn following their settlement with the Spanish Government under the Royal Decrees (cf. paragraph 12.1).
- 6.7 The 1992 Fund was informed by the Spanish Government in 2004 that claims which under the Decrees will be subject to individual assessment, will be assessed by the Consorcio de

Compensación de Seguros (the Consorcio), a state-owned insurance organisation set up to pay claims for damage not normally covered by commercial insurance policies, such as damage due to terrorist activities or natural disasters. As at 20 September 2005, 971 claims had been received by the Consorcio relating to some 3 700 persons.

- 6.8 Since the Royal Decrees provide that the assessment of claims will be made following the criteria used to apply the 1992 Civil Liability and Fund Conventions, meetings have been held between representatives of the Consorcio and of the 1992 Fund to discuss the criteria. The claims received by the Consorcio have been categorised as follows:

Category of claim	Number of claims
Mariculture (property damage & loss of income)	103
Fishing (property damage & loss of income)	179
Fish & shellfish vendors (loss of income)	310
Fish & shellfish processors (loss of income)	79
Employees fisheries sector (loss of income)	109
Tourism (loss of income)	86
Land (damage & loss of income during clean-up operations)	72
Property damage	14
Miscellaneous	19
Total	971

- 6.9 The total amount claimed is €229.9 million (£156 million).
- 6.10 The Consorcio has requested the assistance of the experts appointed by the London Club and the 1992 Fund in the assessment of 243 of these claims for a total of €48 million (£33 million). Many of the claims that have been referred to these experts are not supported by sufficient evidence to demonstrate the loss claimed. The Consorcio has requested further evidence and information from the claimants. The experts of the Consorcio and the experts appointed by the London Club and the 1992 Fund have made joint assessments of 161 claims. One hundred and forty-eight of these claims, for €10 million (£7 million) have been approved by the 1992 Fund and the London Club for €1.5 million (£1 million). One hundred and thirty-four claims included in the 243 claims with which the Consorcio has requested assistance have also been submitted directly to the Claims Office. Details of 83 of the joint assessments have been provided, with the approval of the claimants, to the Consorcio. Further assessments are in progress.

7 Payments and other financial assistance by the French Authorities

- 7.1 The French Government has introduced a scheme to provide payments in excess of the amounts paid by the 1992 Fund to claimants in the fishery and shellfish harvesting sectors who made a request to that effect by 13 December 2004. Payments were made in January 2005 to 175 claimants for a total of €1 153 621 (£781 000).
- 7.2 The French Government has informed the Director that these payments were advances on the payments to be made by the 1992 Fund and are to be repaid by the claimants and that the Government will not pursue subrogated claims against the 1992 Fund in respect of the payments made.

8 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 (£15.4 million). On 28 May 2003 the shipowner

deposited €2 777 986 with the Criminal Court in Corcubión (Spain) for the purpose of constituting the limitation fund.

9 Maximum amount available under the 1992 Conventions

9.1 The maximum amount of compensation under the 1992 Civil Liability Convention and the 1992 Fund Convention is 135 million 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 by the Assembly 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 the euro *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 (£116 million).

10 Level of payments

The Director will revert to this issue in an addendum to this document, together with a proposal as to the level of payments.

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 wished 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 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 and 15% of that claim as submitted (15% of €83.7 million = €7 555 000), subject also to the Spanish Government 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.

11.3 The Assembly 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 by the Spanish Government.

11.4 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.

11.5 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 and on that basis the 1992 Fund made a payment of €6 050 000 (£11.1 million), corresponding to 15% of the interim assessment.

- 11.6 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, and concluded that the admissible damage would be at least €303 million (£205 million).
- 11.7 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 €383.7 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 the provision by the Spanish Government of a bank guarantee covering the above-mentioned difference (ie €41 505 000) from the 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 of the payment decided by the Executive Committee or the Assembly.
- 11.8 The payment to the Spanish State totalling €7 555 000 (£39 914 906) was made on 17 December 2003.

12 Court actions

Spain

- 12.1 Some 2020 claims have been lodged in the legal proceedings before the Criminal Court in Corcubión (Spain). Two hundred and thirteen of these claims involve persons who have submitted claims directly to the London Club and 1992 Fund through the Claims Office in La Coruña. No details of the losses suffered have been provided to the Court. It is expected that claimants who have settled with the Spanish Government under the Royal Decrees will withdraw their claims from the court proceedings.

France

- 12.2 At the request of a number of communes, the Administrative Court in Bordeaux appointed experts to establish the extent of the pollution at various locations in the affected area.
- 12.3 In July 2003 five oyster farmers commenced summary proceedings against the shipowner, the London Club and the 1992 Fund before the Commercial Court in Marennes d'Oleron requesting provisional payments of amounts totalling approximately €400 000 (£271 000). In July 2004, the Court rendered a summary judgement in which it rejected the request on the grounds that the claimants had not provided sufficient evidence to justify summary proceedings. In its judgement, the Court invited the claimants to submit their claims to the Claims Handling Office in Bordeaux. No such claims have been received.

United States

- 12.4 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 (the New York Court) requesting compensation for all damage caused by the incident, estimated initially to exceed US\$700 million (£388 million) and estimated later to exceed US\$1 000 million (£554 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.
- 12.5 ABS denied the allegation made by the Spanish State and in its turn took action against the State, arguing that if the State had suffered damage this had been caused in whole or in part by its own negligence. ABS made a counterclaim and 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. The New York Court dismissed the counterclaim by ABS on the grounds that the Spanish State was entitled to sovereign immunity. ABS is seeking reconsideration by the Court or permission to appeal.

- 12.6 As part of the discovery procedure in the New York litigation, ABS requested production by the Spanish State of all documents and material forming part of the file of the Criminal Court in Corcubi3n investigating the *Prestige* incident, as well as all the documents and material reviewed by the Spanish Permanent Commission for the Investigation of Maritime Accidents. The Spanish State responded, asserting that the requested documents and material were protected from disclosure by privilege under Spanish procedural law. ABS opposed the assertion of privilege. In a decision rendered in August 2005, after having taken into account the various competing interests involved the New York Court denied the Spanish State's assertion of privilege and ordered the production of the documents. The Spanish State has appealed against this decision.
- 12.7 On 10 September 2005, the Spanish State submitted a petition to the Criminal Court in Corcubi3n maintaining that these documents and material were privileged under Spanish procedural law and could not be provided to ABS and requested the Criminal Court to take a decision on this issue. So far no decision has been rendered.
- 12.8 Regional authorities of the Basque Region (Spain) 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 (£27.7 million). The authorities argued *inter alia* that ABS had been 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 New York Court dealing with the claim by the Spanish State referred to in paragraph 12.4. ABS has sought permission from the New York Court to file an indemnity claim against the Spanish State, seeking recovery of any amount for which it may be held liable to the Basque Region. The Court has not yet issued a decision in that regard.

13 Recourse action by the 1992 Fund against ABS

- 13.1 At its October 2004 session the Executive Committee decided that the 1992 Fund should not take recourse action against ABS in the United States and deferred any decision on recourse action against ABS in Spain until further details surrounding the cause of the *Prestige* incident had come to light. The Committee explicitly stated that this decision was without prejudice to the Fund's position *vis-à-vis* legal actions against other parties (document 92FUND/EXC.26/11, paragraphs 3.7.42 – 3.7.72).
- 13.2 The Director was instructed to follow the ongoing litigation in the United States, monitor the ongoing investigations into the cause of the incident and take any steps necessary to protect the 1992 Fund's interests in any relevant jurisdiction (document 92FUND/EXC.26/11, paragraph 3.7.71).

14 Investigations into the cause of the incident

14.1 The Bahamas Maritime Authority

The Bahamas Maritime Authority (ie the authority of the flag State) has carried out an investigation into the cause of the incident. A brief summary of the report on the investigation was presented to the Executive Committee at its March 2005 session (document 92FUND/EXC.28/5, section 13.1). The discussion of the report at the session is reflected in the Record of Decisions (document 92FUND/EXC.28/8, paragraphs 3.4.52 – 3.4.60).

*Spain*14.2 The Spanish Ministry of Public Works

The Spanish Ministry of Public Works (Ministerio de Fomento) has carried out an investigation into the cause of the incident through the Permanent Commission on the Investigation of Maritime Casualties (the Commission) that has the task of determining the technical causes of maritime accidents. A brief summary of the reports on the investigation was presented to the Executive Committee at its June 2005 session (document 92FUND/EXC.29/4, section 13.2). The discussion of the reports at that session is reflected in the Record of Decisions (document 92FUND/EXC.29/6, paragraphs 3.2.80 – 3.2.85).

14.3 The Criminal Court in Corcubión

The Criminal Court in Corcubión in 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 a 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.

*France*14.4 The French Ministry of Transport and the Sea

The French Ministry of Transport and the Sea (Secrétariat D'État aux Transports et à La Mer) has carried out a preliminary investigation into the cause of the incident through the General Inspectorate of Maritime Affairs – Bureau of investigations – accidents/sea (Inspection General des Services des Affaires Maritimes – Bureau enquêtes – accidents / mer (BEAmer)). A brief summary of the report on the investigation was presented to the Executive Committee at its June 2005 session (document 92FUND/EXC.29/4, section 13.4). The discussion of the report at that session is reflected in the Record of Decisions (document 92FUND/EXC.29/6, paragraphs 3.2.87 – 3.2.94).

14.5 An examining magistrate in Brest

An examining magistrate in Brest is carrying out a criminal investigation into the cause of the incident.

14.6 The 1992 Fund's involvement

The 1992 Fund continues to follow the ongoing investigations through its Spanish and French lawyers.

15 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 the handling of this incident and of claims arising therefrom as it may deem appropriate.
-