



INCIDENTS INVOLVING THE 1992 FUND

ERIKA

Note by the Director

Summary:	Since the issue of document 92FUND/EXC.36/4/Add.1 two more judgements have been rendered by the French courts. This document contains a summary of these judgements.
Action to be taken:	Information to be noted.

1 Court judgements in respect of claims against the 1992 Fund

Commercial Court in Lorient

1.1 Claim by a tour operator

1.1.1 A tour operator in the United Kingdom specialising in selling holidays in various European countries submitted a claim for £2 582 673 for losses suffered in 2000 and 2001 as a result of the *Erika* incident. The 1992 Fund assessed the claim for a loss suffered in 2000 for the amount of £751 935. This amount was paid to the claimant. The Fund, however, rejected the claim for losses in 2001 since it considered that the claimant had not established a link of causation between the alleged damage and the contamination caused by the incident. The claimant brought proceedings before the Commercial Court in Lorient.

1.1.2 In a judgement rendered in February 2007 the Court stated that the Fund's criteria for admissibility of claims were not binding on the national courts and that it was for the Court to interpret the concept of 'pollution damage' in the 1992 Conventions and to apply it in each individual case by determining whether there was a sufficient link of causation between the event and the damage. The Court considered that other businesses in the area had not been affected and that the camping activity in 2001 was normal bearing in mind the weather conditions. The Court held that the claimant had not provided evidence of the alleged loss nor of a link of causation between the alleged loss and the incident and for these reasons rejected the claim.

1.1.3 When this document was issued, the claimant had not appealed against the judgement.

1.2 Claim by a tour operator

1.2.1 A tour operator in the United Kingdom specialising in selling holidays in various European countries submitted a claim for £2 360 393 for losses suffered in 2000 and 2001 as a result of the *Erika* incident. The 1992 Fund had assessed the claim for a loss suffered in 2000 in the amount of £756 052. This amount was paid to the claimant. The Fund had rejected the claim for losses in 2001 since it considered that the claimant had not established a link of causation between the

alleged loss and the contamination. The claimant brought proceedings before the Commercial Court in Lorient.

- 1.2.2 In a judgement rendered in February 2007 the Court stated that the Fund's criteria for admissibility of claims were not binding on the national courts. The Court held that the claimant had not established that there was a link of causation between the alleged loss and the incident and for this reason rejected the claim.
- 1.2.3 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:

- (a) to take note of the information contained in this document; and
 - (b) to give the Director such other instructions as regards the issues dealt with in this document as it may deem appropriate.
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