



INCIDENTS INVOLVING THE 1992 FUND

ERIKA

Note by the Director

Summary:	Fourteen judgements have been rendered by the French courts since the Executive Committee's March 2007 Session. A summary of these judgements is given.
Action to be taken:	Information to be noted.

1 Court judgements in respect of claims against the 1992 Fund

1.1 Commercial Court in Lorient

Claim by the owner of two toy shops

1.1.1 The owner of two toy shops in Lorient and Vannes submitted a claim totalling €39 717 (£26 996) for loss of income allegedly suffered as a result of the *Erika* incident and additional costs related to the production of a sales catalogue and the relocation of one of the shops. The 1992 Fund assessed the loss of income at €10 470 (£7 116) but rejected the claim for additional costs since, in the Fund's view, the production of sales catalogues and the relocation of business premises were normal commercial practices and, therefore, there was not a sufficient link of causation between the claimed costs and the *Erika* incident. The claimant brought proceedings before the Commercial Court in Lorient.

1.1.2 In a judgement rendered in April 2007 the Court stated that it was not bound by the Fund's criteria for admissibility of claims 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. However, the Court adopted the Fund's views on the absence of a link of causation and held that the claimant had not proved to have suffered losses beyond the loss of income assessed by the Fund.

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

1.2 Commercial Court in Quimper

1.2.1 In April 2007 the Commercial Court in Quimper rendered judgements in respect of twelve claims from businesses in the tourism sector and one claim from a fish wholesaler, for pure economic losses allegedly due to the *Erika* incident. The claims and the judgements are summarised in the following table:

Business activity	Amount claimed		Fund's assessment	Court's judgement
	2000	2001		
Property letting		€27 851	Claim rejected	Claim rejected
Camping		€21 188	Claim rejected	Claim rejected
Camping		€21 797	Claim rejected	Claim rejected
Crêperie		€3 222	Claim rejected	Claim rejected
Camping		€60 624	Claim rejected	Claim rejected
Camping		€43 479	Claim rejected	Claim rejected
Camping		€11 853	Claim rejected	Claim rejected
Camping		€11 342	Claim rejected	Claim rejected
Camping	€204 417	€170 527	€114 630 € (2000), already paid Claim rejected (2001)	€114 630 € (2000) Claim rejected (2001)
Fish wholesaler	€1 005 356		Claim rejected	Claim rejected
Camping	€6 972		€5 432	€5 432
Property letting	€23 232		€5 317	€5 317
Restaurant	€22 540	€24 774	€7 211 (2000) already paid Claim rejected (2001)	€22 540 (2000) Claim rejected (2001)

- 1.2.2 The first eight claims in the table 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. In the judgements the Court stated that although it was clear that the *Erika* incident had had an effect on the businesses in the tourism sector in 2001, that effect was diluted amongst a combination of other causes from which it was not possible to distinguish the relative weights in the downturn experienced in 2001. The Court rejected the claims for losses in 2001 since the claimants had not shown that there was a link of causation between the contamination and their alleged losses in 2001.
- 1.2.3 A camping operator had submitted a claim for €164 025 (£111 488) for losses in 2000 and €170 527 (£115 907) for losses in 2001. The 1992 Fund had assessed the claim for 2000 at €114 630 (£77 914) and the full assessed amount had been paid to the claimant. The claim for losses in 2001, however, was rejected by the 1992 Fund for lack of a sufficiently close link of causation. The claimant brought an action in court claiming a further €89 787 (£61 028) to the amount already paid by the Fund for 2000 and €170 527 (£115 907) for losses in 2001.
- 1.2.4 In its judgement, the Court rejected the claim for losses in 2001 for the same reasons as mentioned in paragraph 1.2.2 above and agreed with the Fund's assessment of the losses for 2000.
- 1.2.5 A fish wholesaler had submitted a claim for €1 005 356 (£683 340) for alleged losses suffered in 2000. The claimant alleged that the pollution had spoiled the image of the quality of the products sold by the claimant. The 1992 Fund had rejected the claim since the claimant had not proved any

loss. The Fund had also argued that there was no link of causation between the alleged losses and the contamination since the claimant's business was located outside the affected area, there was no dependence on the affected resources and the claimant had alternative sources of supply.

- 1.2.6 In its judgement the Court considered previous judgements on similar cases rendered by an appeal court that had stated that it was for the national courts 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 Commercial Court considered that even if the claimant's business was not strictly located in the area affected by the pollution, an official study had indicated that there had been a market disaffection towards sea produce and therefore a loss of income in the related sector. The Court concluded, however, that the claimant had not proved any losses and for that reason rejected the claim.
- 1.2.7 The owner of a camping and a property letting agent had submitted claims for losses in 2000 for €6 972 (£4 739) and €23 232 (£15 791) respectively. The 1992 Fund had assessed the claims at €5 431 (£3 691) and €5 317 (£3 614) respectively. In the judgements the Court agreed with the Fund's assessment of the claims.
- 1.2.8 The owner of a restaurant had submitted a claim for €20 301 (£13 799) for alleged losses suffered due to the *Erika* incident in 2000. The 1992 Fund had assessed the claim for 2000 at €7 211 (£4 901) and that amount had been paid to the claimant. Since the owner had purchased the restaurant in June 1999, the Fund had not considered the business data for the preceding years when the restaurant was under a different ownership and had instead based its assessment on a study commissioned by the French Ministry of Economy of the losses suffered generally in the tourism sector as a result of the spill. The claimant had subsequently submitted a claim for €24 774 (£16 839) for losses suffered in 2001, which was rejected by the Fund since the claimant had not proved that there was a sufficient link of causation between the alleged losses and the contamination. The claimant brought an action against the Fund claiming an additional €15 329 (£10 419) as a complement for the losses in 2000 and €24 774 (£16 839) for losses suffered in 2001.
- 1.2.9 In its judgement the Court rejected the losses suffered in 2001 for the same reasons stated in paragraph 1.2.2 but accepted the claim for losses in 2000. The Court stated that in the assessment of the losses it was not unreasonable to take into account the business figures of previous years, independently of the business ownership, and that on the other hand it would be artificial to base the assessment on a theoretical study. The Court therefore awarded the claimant a further €15 329 (£10 419) for losses in 2000. The 1992 Fund has not appealed against the judgement.
- 1.2.10 When this document was issued none of the claimants had appealed against the judgements.

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 instructions as regards the issues dealt with in this document as it may deem appropriate.
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