INTERNATIONAL OIL POLLUTION COMPENSATION FUNDS

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INCIDENTS INVOLVING THE IOPC FUNDS – 1992 FUND

VOLGONEFT 139

Note by the Secretariat

Objective of document:	To inform the 1992 Fund Executive Committee of the latest developments regarding this incident.
Summary of the incident so far:	On 11 November 2007, the Russian-registered tanker *Volgoneft 139* broke in two in the Kerch Strait which links the Sea of Azov and the Black Sea between the Russian Federation and Ukraine. It is believed that up to 2 000 tonnes of fuel oil were spilled at the time of the incident. Some 250 kilometres of shoreline both in the Russian Federation and in Ukraine were affected by the oil. The shipowner was insured for protection and indemnity by Ingosstrakh (Russian Federation), which does not belong to the International Group of P&I Associations. The insurance cover is limited to 3 million SDR (RUB 116.3 million) which is well below the minimum limit under the 1992 Civil Liability Convention (1992 CLC) of 4.51 million SDR (RUB 174.8 million). There is therefore an 'insurance gap' of some 1.51 million SDR (RUB 58.5 million). In June 2012, the Arbitration Court of Saint Petersburg and Leningrad Region held that the insurers had a liability of 3 million SDR in accordance with Russian law as published in the Russian Official Gazette at the time of the incident. The Court of Appeal and the Court of Cassation confirmed the judgement of the Arbitration Court of Saint Petersburg and Leningrad Region. However, in a ruling delivered in July 2013, the Supreme Court decided that the Presidium of the Supreme Court should consider the 1992 Fund appeal on the 'insurance gap'. In a judgement rendered in October 2013 the Presidium of the Supreme Court ordered that the judgements of the Arbitration Court of Saint Petersburg and Leningrad Region, the Court of Appeal and the Court of Cassation be set aside in respect of the part that had ordered the Fund to cover the 'insurance gap' of 1.51 million SDR and ordered that the case be sent to the Arbitration Court of Saint Petersburg and Leningrad Region for reconsideration on that point. At its April 2013 session the 1992 Fund Executive Committee decided to authorise the Director to pay private claimants in full according to the June 2012 court ruling and make interim payments to the three government claimants, namely the federal agency, the regional government and the local government, with pro-rated deductions to cover the 'insurance gap'. The 1992 Fund has made payments totalling RUB 76.2 million to all private claimants in full. The 1992 Fund has also contacted the remaining three government claimants to arrange an interim payment of their losses. The three government claimants have not replied to the 1992 Fund's offer of payment.

Recent developments:	In a judgment delivered in November 2014 the Arbitration Court of Saint Petersburg and Leningrad Region decided that the 'insurance gap' should be allocated between all the claimants on an equal basis. The shipowner has appealed against the judgement but the appeal has not yet been considered by the Court of Appeal.
Action to be taken:	1992 Fund Executive Committee Information to be noted.

1 Summary of incident

Ship	*Volgoneft 139*
Date of incident	11.11.2007
Place of incident	Kerch Strait, between the Sea of Azov and the Black Sea, Russian Federation and Ukraine
Cause of incident	The vessel broke into two sections
Quantity of oil spilled	Up to 2 000 tonnes of fuel oil
Area affected	Taman Peninsula, Tuzla Spit and Chushka Spit, Russian Federation and Ukraine
Flag State of ship	Russian Federation
Gross tonnage	3 463 GT
P&I insurer	Ingosstrakh
P&I cover	3 million SDR or RUB 116.3 million (£1.2 million)[<1>]
CLC limit	4.51 million SDR or RUB 174.8 million (£1.8 million)
'Insurance gap'	1.51 million SDR or RUB 58.5 million (£0.6 million)
CLC + Fund limit	203 million SDR or RUB 7 868.3 million (£80.2 million)
STOPIA/TOPIA applicable	Not applicable
Amount awarded or settled	RUB 453.7 million (£4.6 million)
Amount paid	RUB 76.2 million (£0.8 million)[<2>]

2 Background information

The background information to this incident is summarised above and provided in more detail at the Annex.

3 Limitation proceedings

3.1 The *Volgoneft 139* was owned by JSC Volgotanker, which was declared bankrupt in March 2008, by the Commercial Court in Moscow. The *Volgoneft 139* was insured by Ingosstrakh (Russian Federation) for 3 million SDR, ie the minimum limit of liability under the 1992 CLC prior to November 2003. Since the minimum limit under the 1992 CLC after November 2003 is 4.51 million SDR, there is an 'insurance gap' of some 1.51 million SDR.

3.2 In February 2008, the Arbitration Court of Saint Petersburg and Leningrad Region issued a ruling declaring that the limitation fund had been constituted by means of a letter of guarantee for 3 million SDR (RUB 116.3 million).

3.3 All the claimants in the limitation proceedings have included the 1992 Fund as defendant. Therefore, the 1992 Fund has been involved as a defendant in the limitation proceedings from the beginning.

[<1>] The conversion of currencies has been made on the basis of the exchange rate as at 23 February 2015, 1 RUB = £0.01019.

[<2>] The real amount paid by the 1992 Fund is £1 527 250, i.e. the sterling amount that the 1992 Fund had to pay when it had to purchase RUB 76 247 634 for payment to the claimants in 2013.

The judgements and claims for compensation in the limitation proceedings are dealt with in sections 4 and 5 headed 'civil proceedings' and 'claims for compensation' respectively.

4 Civil proceedings

4.1 Of the three legal issues arising from this incident, 'Metodika' and *force majeure* have already been solved, and only the 'insurance gap' remains outstanding (see sections 6.1 and 6.2 in the Annex).

Arbitration Court of Saint Petersburg and Leningrad Region's judgement – June 2012

4.2 In June 2012, the Arbitration Court of Saint Petersburg and Leningrad Region delivered its judgement on quantum, awarding amounts totalling RUB 503.2 million, including legal interest. In addition, the Court awarded some claimants' court fees and expenses totalling RUB 318 969 to be paid by the Ingosstrakh, the shipowner and the 1992 Fund in equal parts.

4.3 The Court decided that the shipowner/Ingosstrakh should pay the awarded amounts up to 3 million SDR and that the 1992 Fund should pay all amounts above 3 million SDR. Since the 1992 CLC limit applicable at the time of the incident was 4.51 million SDR, an 'insurance gap' of some 1.51 million SDR remains. In the judgement, the Court decided that the shipowner's limit should be 3 million SDR since that was the limit of liability under the 1992 CLC at the time of the incident, as published by the Russian Official Gazette.

4.4 The 1992 Fund appealed against the judgement by the Arbitration Court, but the judgement was confirmed by the Court of Appeal in September 2012 and the Court of Cassation in January 2013. The 1992 Fund requested leave to appeal to the Supreme Court.

Supreme Court's ruling – July 2013

4.5 In a ruling delivered in July 2013, the Supreme Court decided that the Presidium of the Supreme Court should consider the 1992 Fund's appeal on the 'insurance gap'. In its considerations the Supreme Court stated that it was incorrect that the 1992 Fund should have to pay the 'insurance gap' because the amendments to the 1992 CLC had not been published in the Russian Federation prior to the date of the incident, nor brought to the attention of the shipowner and insurer.

Presidium of the Supreme Court's ruling – October 2013

4.6 In a judgement rendered in October 2013 the Presidium of the Supreme Court ordered that the judgements of the Arbitration Court of Saint Petersburg and Leningrad Region, the Court of Appeal and the Court of Cassation be set aside in respect of the part that had ordered the 1992 Fund to cover the 'insurance gap' of 1.51 million SDR and ordered the case to be sent to the Arbitration Court of Saint Petersburg and Leningrad Region for reconsideration on that point.

Judgement of the Arbitration Court of Saint Petersburg and Leningrad Region – November 2014

4.7 In a judgment delivered in November 2014, the Arbitration Court of Saint Petersburg and Leningrad Region decided the following:

- the untimely publication on the territory of the Russian Federation of the amendments to the liability limits in the 1992 CLC which had increased the minimum liability limit for the shipowner from 3 million SDR to 4.51 million SDR, and the untimely disclosure of those amendments to the professional participants of the market should not be a reason to impose an additional financial burden on the 1992 Fund.

- The Court considered that the difference between the limitation fund deposited in Court by the shipowner's insurer of SDR 3 million SDR and the amount of the shipowner's liability limit that would correspond under the 1992 CLC of 4.51 million SDR should be distributed between all claimants.

- The Court therefore decided to deduct the 'insurance gap' of 1.51 million SDR *pro rata* from the amount previously awarded to all claimants.

4.8 The shipowner has appealed against the judgement, arguing mainly that Volgotanker had been declared bankrupt and the 1992 Fund should cover the insurance gap by virtue of article 4.1(b) of the 1992 Fund Convention which provides as follows:

> 'the Fund shall pay compensation to any person suffering pollution damage if such person has been unable to obtain full and adequate compensation for the damage under the convention, … (b) because the owner liable for the damage under the 1992 Liability Convention is financially incapable of meeting his obligations in full and any financial security that may be provided … does not cover or is insufficient to satisfy the claims for compensation for the damage …'

4.9 The appeal by the shipowner has not yet been considered by the Court of Appeal.

5 Claims for compensation

5.1 At its April 2013 session, the 1992 Fund Executive Committee decided to authorise the Director to pay private claimants in full according to the 2012 ruling of the Arbitration Court of Saint Petersburg and Leningrad Region and make interim payments to the three government claimants with pro-rated deductions to cover the 'insurance gap'. In accordance with that decision the 1992 Fund paid all private claimants in full and only the three government agencies remain to be paid.

5.2 The total amount awarded against the shipowner/Ingostrakh and the 1992 Fund in the June 2012 judgement, including costs, together with the amount settled out of court for the shipowner's claim, was RUB 512.3 million (£5.2 million). Following the November 2014 judgement, this amount was reduced to RUB 453.7 million (£4.6 million).

5.3 The following table shows the amounts awarded against the 1992 Fund by the Arbitration Court of Saint Petersburg and Leningrad Region in June 2012 and November 2014, and the amounts paid by the 1992 Fund.

Claimant	**June 2012 judgement awarded against 1992 Fund (including costs)**	**Paid by 1992 Fund (on the basis of 2012 judgement, as authorised by the Executive Committee)**	**November 2014 awarded against 1992 Fund**[<3>] **(including costs)**	**Amount the 1992 Fund can recover from claimants (following November 2014 judgement)**
Federal Agency	595 413		501 769	
Regional Government	289 495 125		244 335 229	
Local Government	29 420 686		24 884 797	
Contractor	54 736 656	54 736 656	47 953 307	6 783 349
Charterer	2 605 629	2 605 629	2 295 432	310 197
Shipowner	8 755 555	8 755 555	8 755 555	0
Tourist operator (Private)	6 256 693	6 256 693	5 115 405	1 141 288
Port of Kerch (Ukraine)	3 893 101	3 893 101	3 389 764	503 337
TOTAL	**RUB 395 758 858** (£4 million)	**RUB 76 247 634** (£777 000)[<4>]	**RUB 337 231 258** (£3.4 million)	**RUB 8 738 171** (£89 000)

5.4 If the terms of the November 2014 judgement were to remain unchanged, the 1992 Fund would have the right to recover from the private claimants a total of RUB 8.7 million (£89 000).

<3> Amounts previously awarded, with a pro rata reduction of the 'insurance gap'.

<4> The real amount paid by the 1992 Fund is £1 527 250, i.e. the sterling amount that the 1992 Fund had to pay when it had to purchase RUB 76 247 634 for payment to the claimants in 2013.

6 Director's considerations

6.1 In accordance with the April 2013 decision by the 1992 Fund Executive Committee, the 1992 Fund has commenced making payments and all private claimants have been paid in full.

6.2 The 1992 Fund has also made an offer to the three government agencies to pay the amounts owed to them after having discounted the 'insurance gap'. However, these claimants did not reply to the 1992 Fund's offer and it appears that these claimants are waiting for a final judgement on the 'insurance gap' issue before accepting any interim payment of their claims.

6.3 The 1992 Fund applied a provisional solution to the problem of the 'insurance gap', ie discounting the 'insurance gap' from the amounts due to the government claimants. However, in its judgement of November 2014 the Arbitration Court of Saint Petersburg and Leningrad Region decided that the 'insurance gap' should be allocated between all the claimants on an equal basis.

6.4 If the terms of the November 2014 judgement were to be upheld in a final judgement, the 1992 Fund would have to decide whether to recover from the individual claimants the amount overpaid (see table in paragraph 5.3). Also, at some point the 1992 Fund will have to pay the amounts corresponding to the three government claims.

6.5 The shipowner has appealed against the judgement. The 1992 Fund is now awaiting developments in the Court of Appeal.

7 Action to be taken

1992 Fund Executive Committee

The 1992 Fund 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 as it may deem appropriate.

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ANNEX

BACKGROUND INFORMATION - VOLGONEFT 139

1 Incident

1.1 On 11 November 2007, the Russian-registered tanker *Volgoneft 139* (3 463 GT, built in 1978) broke in two in the Strait of Kerch linking the Sea of Azov and the Black Sea between the Russian Federation and Ukraine. The tanker was at anchor when it was caught in a severe storm and heavy seas. After the vessel had broken in two, the stern section remained afloat and using the casualty's own engines, the Captain managed to beach it on a nearby sand bank. The crew were then rescued and taken to the Port of Kavkaz (Russian Federation). The fore section remained afloat at anchor for a while and then sank.

1.2 The tanker was loaded with 4 077 tonnes of heavy fuel oil. It is understood that between 1 200 and 2 000 tonnes of fuel oil were spilt. Following removal of 913 tonnes of heavy fuel oil, the aft section was towed to Kavkaz, where it was eventually sold. A month after the incident, the fore section was temporarily raised and 1 200 tonnes of a mixture of fuel oil and water were recovered from tanks one and two. In August 2008 the fore section of the wreck was raised again and towed to the Port of Kavkaz where it was dismantled for scrap.

1.3 It was reported that three other cargo vessels loaded with sulphur (*Volnogorsk*, *Nakhichevan* and *Kovel*) also sank in the same area within two hours of the incident.

2 Impact

Some 250 kilometres of shoreline, both in the Russian Federation and in Ukraine, are understood to have been affected by the oil. Heavy bird casualties, numbering in excess of 30 000, were reported.

3 Response operations

3.1 A joint crisis centre was set up to coordinate the response between the Russian Federation and Ukraine. Operations at sea were reported to have recovered some 200 tonnes of heavy fuel oil.

3.2 In the Russian Federation significant parts of the shorelines of the Taman peninsula and the Tuzla and Chushka Spits were affected by the oil. Shoreline clean up was undertaken by the Russian military and civil emergency forces and some 70 000 tonnes of oily debris, sand and sea grass were taken away for disposal.

3.3 In Ukraine some 6 500 tonnes of oily waste were collected, mainly from Tuzla Island, and were transferred to the Port of Kerch prior to disposal.

3.4 In November and December 2007, the Secretariat contacted the Russian Embassy in London and the Ministry of Transport in Moscow, offering the help of the 1992 Fund to the Russian authorities in dealing with the incident. A number of meetings took place at the 1992 Fund Secretariat's offices at which the compensation regime was explained in detail. The 1992 Fund offered to send experts to the Russian Federation to monitor the situation and provide advice to the Russian authorities. However, no official reply was received from the Russian authorities and, without the required letters of invitation and visas, neither the representatives of the 1992 Fund nor its experts could visit the affected area to monitor the clean-up operations.

4 Applicability of the Conventions

4.1 The Russian Federation is a Party to the 1992 Civil Liability Convention (1992 CLC) and 1992 Fund Convention. Ukraine was not, at the time of the incident, Party to the 1992 Civil Liability or Fund Conventions. Although it had deposited an instrument of ratification of the 1992 CLC with the

Secretary-General of the International Maritime Organization (IMO) on 28 November 2007, this did not enter into force in Ukraine until 28 November 2008.

4.2 The *Volgoneft 139* was owned by JSC Volgotanker. In March 2008, JSC Volgotanker was declared bankrupt by the Commercial Court in Moscow.

4.3 The *Volgoneft 139* was insured by Ingosstrakh (Russian Federation) for 3 million SDR, ie the minimum limit of liability under the 1992 CLC prior to November 2003. The minimum limit under the 1992 CLC after November 2003, however, is 4.51 million SDR. There is therefore an 'insurance gap' of some 1.51 million SDR.

4.4 The *Volgoneft 139* was not insured by a P&I Club belonging to the International Group of P&I Associations and was therefore not covered by the Small Tanker Oil Pollution Indemnification Agreement (STOPIA) 2006.

5 Claims for compensation

5.1 During 2009, a number of meetings were held in London and Moscow between the Russian authorities, the Secretariat and the 1992 Fund's experts to facilitate the exchange of information and to monitor the progress of claims. The Secretariat and the Fund's experts visited Moscow, Krasnodar and the Vessel Traffic System (VTS) in Kavkaz in February 2010, where they held meetings with the Ministry of Transport, a representative of the owner and the charterer of the *Volgoneft 139*, several local authorities in the Krasnodar area, the Harbour Masters of Kavkaz and Temryuk and a claimant in the tourism sector.

5.2 The Secretariat and the 1992 Fund's experts visited Krasnodar in February 2011 to meet with claimants to try to solve the issues pending with the claims. Meetings were held with the regional and municipal authorities whose claims, relating to clean up and preventive measures, constitute the majority of the claimed amount. The main point of disagreement with these claimants was the amount of waste collected which, in the Fund's view, was not technically reasonable. A meeting was also held with a representative of the Port of Kerch to discuss the claim submitted by the Port for clean up and preventive measures. During that visit, meetings also took place with representatives of some individual claimants in the fisheries and tourism sectors.

5.3 A meeting took place in London in late February 2011 between the 1992 Fund, its lawyer and experts and representatives of the Russian Ministry of Transport. The Fund and its experts made a further visit to Moscow in March 2011, to meet with representatives of the Russian Government and the insurer.

5.4 At its April 2013 session, the 1992 Fund Executive Committee decided to authorise the Director to pay private claimants in full according to the ruling of the Arbitration Court of Saint Petersburg and Leningrad Region and make interim payments to the three government claimants with pro-rated deductions to cover the 'insurance gap'. In accordance with that decision the 1992 Fund paid all private claimants in full and there remain only the three government agencies to be paid. As at October 2014, the 1992 Fund is awaiting a reply from the three government agencies to be able to pay the amounts owed to them after having discounted the 'insurance gap'.

5.5 The table below summarises the claims situation as at October 2014.

Claimant	**Awarded by Court or settled (including costs) (RUB)**	**To be paid by Ingosstrakh (RUB)**	**To be paid by 1992 Fund (RUB)**	**Paid by 1992 Fund (RUB)**	**To be paid by 1992 Fund (RUB)**	**'Insurance gap' (RUB)**
Federal agency	781 461	186 048	595 413	0	484 211	111 202
Regional Government	379 216 773	89 721 648	289 495 125	0	236 451 561	53 043 564
Local Government	38 474 867	9 054 181	29 420 686	0	24 047 852	5 372 834
Contractor	68 280 170	13 543 513	54 736 656	54 736 656	0	0
Charterer	3 258 211	652 582	2 605 629	2 605 629	0	0
Shipowner (out of court settlement)	8 755 555	0	8 755 555	8 755 555	0	0
Tourist operator (private)	8 524 153	2 267 460	6 256 693	6 256 693	0	0
Port of Kerch (Ukraine)	4 959 886	1 066 685	3 893 101	3 893 101	0	0
Total	**512 251 076**	**116 492 117**	**395 758 858**	**76 247 634**	**260 983 624**	**58 527 600**

6 Civil proceedings

6.1 'Metodika' claim

6.1.1 At a meeting in May 2008 the Russian authorities informed the 1992 Fund that Rosprirodnadzor, a federal agency for the protection of the environment, had submitted a claim for environmental damage for some RUB 6 048.6 million. This claim was based on the quantity of oil spilled, multiplied by an amount of Roubles per ton ('Metodika'). The Secretariat informed the Russian authorities that a claim based on an abstract quantification of damages calculated in accordance with a theoretical model was in contravention of Article I.6 of the 1992 CLC and therefore not admissible for compensation, but that the 1992 Fund was prepared to examine the activities undertaken by Rosprirodnadzor to combat oil pollution and to restore the environment to determine if and to what extent they qualified for compensation under the Conventions. The 1992 Fund has assessed the costs incurred by Rosprirodnadzor at RUB 688 487.

6.1.2 In September 2010, the Arbitration Court of Saint Petersburg and Leningrad Region rendered a judgement rejecting the 'Metodika' claim. In its judgement the Court noted that, under Article I.6 of the 1992 CLC, compensation for damage to the environment, other than loss of benefit caused by such damage, should be limited to the expenses for the reasonable reinstatement measures, as well as the expenses for the preventive measures and subsequent damage caused by such measures. The Court also noted that the expenses included in the other claims arising from the incident covered any preventive and reinstatement measures actually taken as a result of the incident.

6.1.3 Rosprirodnadzor has not appealed and the judgement is therefore final.

6.2 *Force majeure*

6.2.1 Ingosstrakh, the shipowner's insurer, submitted a defence in Court arguing that the incident was wholly caused by a natural phenomenon of an exceptional, inevitable and irresistible character (force majeure) and that therefore no liability should be attached to the owner of the *Volgoneft 139* (Article III.2(a) of the 1992 CLC). If this argument were to be accepted by the Court, the shipowner and its insurer would be exonerated from liability and the 1992 Fund would have to pay compensation to the victims of the spill from the outset (Article 4.1(a) of the 1992 Fund Convention).

6.2.2 The 1992 Fund appointed a team of experts to examine the weather conditions in the area and the circumstances at the time of the incident to determine the validity of the shipowner's defence. In June 2008 the experts visited the area where the incident occurred and inspected the aft section of the wreck in the Port of Kavkaz.

6.2.3 In summary, the conclusions of the experts were as follows:

- the storm of 11 November 2007 was not exceptional since there are records of similar and comparable storms being experienced in the region four times in the past 20 years;

- it was not inevitable that the *Volgoneft 139* would be caught in the storm. There were timely forecasts of the storm and conditions were accurately predicted so there had been sufficient opportunities to avoid the vessel being exposed to the storm in the way it had been; and

- the storm of 11 November 2007 was irresistible in so far as the *Volgoneft 139* was concerned, as the conditions associated with the storm were in excess of the vessel's design criteria.

6.2.4 To fully understand the circumstances of the incident, the Secretariat and the 1992 Fund's experts visited the Kerch VTS in Ukraine in November 2009 and the VTS in Kavkaz, Russian Federation, in February 2010.

6.2.5 On the basis of the additional information made available during the visits, the 1992 Fund's experts broadly confirmed their preliminary conclusions that the storm of 11 November 2007 was not exceptional. They concluded that it was not inevitable that the *Volgoneft 139* would be caught in the storm, since there had been sufficient opportunities to avoid the vessel being exposed to the storm in the way it had been. The experts also confirmed their initial view that the *Volgoneft 139* should not have been in the area at the time of the incident since the conditions associated with the storm were in excess of the vessel's design criteria.

6.2.6 Whereas the 1992 Fund's experts' initial view had been that the Kerch Strait anchorage was considered as a commercial port, the experts understood from their visits in November 2009 and February 2010 that the Strait was not operated as a port. During the visits to the VTS in Kerch and in Kavkaz, the experts learned that none of the port authorities had powers to close the anchorage in case of a storm warning or to direct vessels to vacate the anchorage. It was therefore the conclusion of the experts that it was the responsibility of the master and the shipowner to take action to avoid the casualty.

6.2.7 In September 2010 the Arbitration Court of Saint Petersburg and Leningrad Region decided that the shipowner and its insurer had not provided evidence that the oil spill resulted from an act of God, which was exceptional and unavoidable. The Court concluded that the master, having had all the necessary storm warnings, had not taken all necessary measures to avoid the incident and that therefore the incident was not unavoidable for the vessel. The Court also concluded that the storm was not exceptional since there was data of comparable storms in the area. In its judgement the Court decided that the spill did not result from a natural phenomenon of an exceptional nor inevitable character, and that the shipowner and his insurer were therefore liable for the pollution damage caused by the spill.

6.2.8 Ingosstrakh has not appealed and the judgement is therefore final.

6.3 Quantum and merits of claims for compensation

6.3.1 At a hearing in January 2011, the Arbitration Court of Saint Petersburg and Leningrad Region requested that the 1992 Fund present a justification for its position on the relationship between the amount of oil spilled and the amount of waste collected, which was the main contentious issue in the assessment of some clean-up claims.

6.3.2 The 1992 Fund submitted its report to the Court at a hearing in March 2011. The report compared the amount of oily waste collected during the response to the incident and the oily waste collected in a number of other incidents. The report concluded that in the *Volgoneft 139* incident, the amount of oily waste collected was some 40 times the amount of oil spilled whereas in other spills this proportion was between 2.5 times and 15 times. The cost of this additional clean up and disposal of oily waste would therefore not be considered reasonable and therefore would not be admissible for compensation.

6.3.3 Hearings took place in May, July, October, November and December 2011, and in February, April and June 2012 at the Arbitration Court of Saint Petersburg and Leningrad Region.

6.3.4 At the February 2012 hearing the Court decided that all claimants had the right to legal interest according to Russian law and ordered the claimants to submit their interest calculations.

6.3.5 In June 2012 the Court delivered its judgement on quantum, awarding amounts totalling RUB 503.2 million, including legal interest. In addition, the Court awarded some claimants court fees totalling RUB 164 445 to be paid by Ingosstrakh, the shipowner and the 1992 Fund in equal parts.

6.3.6 The table below summarises the amounts awarded by the judgement of the Arbitration Court of Saint Petersburg and Leningrad Region, against the 1992 Fund's assessment of the claims.

	Claimed amount (RUB)	**1992 Fund assessment (RUB)**	**Court judgement (RUB)**	
			Principal	**Legal interest**
Clean up contractor	63 926 933	50 766 549	50 766 549	17 413 621
Regional Government	434 687 072	241 045 047	337 866 060	41 350 713
Local Government	42 960 768	24 949 162	33 954 965	4 456 180
Port of Kerch (Ukraine)	9 170 697	1 739 454	3 770 772	1 089 164
Charterer	9 499 078	2 312 714	2 312 714	891 050
Tourist operator (private)	8 524 153	8 524 153	8 524 153	0
Shipowner	27 706 290	8 755 555	0	0
Federal agency (Rosprirodnadzor)	753 332	688 487	688 487	92 974
Total	**597 228 323**	**338 781 121**	**437 883 700**	**65 293 702**
			503 177 402	

6.4 The 'insurance gap'

6.4.1 In February 2008 the Arbitration Court of Saint Petersburg and Leningrad Region issued a ruling declaring that the limitation fund had been constituted by means of a letter of guarantee for 3 million SDR (RUB 116.3 million). In April 2008 the 1992 Fund appealed against the Court's ruling, arguing that at the time of the incident the limit of the shipowner's liability under the 1992 CLC was 4.51 million SDR (RUB 174.8 million) and that therefore the Court's ruling which had established the shipowner's limitation fund at only 3 million SDR should be amended. The Court of Appeal, the Court of Cassation and the Supreme Court confirmed the decision of the Arbitration Court of Saint Petersburg and Leningrad Region, maintaining that Russian Courts should apply the limits as published in the Russian Official Gazette at the time when the incident occurred.

6.4.2 In June 2012 the Arbitration Court of Saint Petersburg and Leningrad Region delivered its judgement on quantum, awarding amounts totalling RUB 503.2 million including legal interest. In addition, the Court awarded some claimants' court fees and expenses totalling RUB 318 969 to be paid by Ingosstrakh, the shipowner and the 1992 Fund in equal parts.

6.4.3 The Court decided that the shipowner/Ingosstrakh should pay the awarded amounts up to 3 million SDR and that the 1992 Fund should pay all amounts above 3 million SDR. In the judgement, the Court decided that the shipowner's limit should be 3 million SDR since that was the limit of liability under the 1992 CLC at the time of the incident as published by the Russian Official Gazette.

6.4.4 The 1992 Fund appealed against the judgement by the Arbitration Court, but the judgement was confirmed by the Court of Appeal in September 2012 and the Court of Cassation in January 2013. The 1992 Fund requested leave to appeal to the Supreme Court.

6.4.5 In a ruling delivered in July 2013, the Supreme Court decided that the Presidium of the Supreme Court should consider the 1992 Fund's appeal on the 'insurance gap'. The Supreme Court stated that:

- When rendering their judgements the lower courts had not taken into account the amendments to the liability limits under the 1992 Civil Liability and Fund Conventions that had been introduced through a resolution adopted by the Legal Committee of the IMO in October 2000, which had entered into force in November 2003.

- The lower courts had not taken into account that in accordance with the Vienna Convention on the Law of Treaties 1969, a treaty enters into force in the order and on the date provided in the treaty itself. This Convention also provides that a treaty shall be amended by agreement among the participants. In the course of consideration of the present case, a question arose as to whether the amendments to the liability limits had been published in the Russian Federation when the limitation fund was established in 2007. International practice in similar cases established that a company (unlike a physical person) cannot justify performance of actions in violation of any rules of law by referring to the fact that these rules had not been officially published in the State.

- The lower courts had not investigated the question of whether the shipowner knew or should have known about the increase of the liability limits. In addition, the lower courts should have questioned whether the insurance company, as a professional participant of the market of international insurance of liability in connection with the transportation of oil, should have been aware of the resolutions of the IMO, increasing the limits of liability of the shipowners.

- The approach by the lower courts, according to which the 1992 Fund should pay the amount of underinsurance because the amendments of the liability limits had not been published prior to the date of the incident in the Russian Federation nor brought to the knowledge of professional participants of the market, incorrectly took into account the circumstance that the 1992 CLC and the 1992 Fund Convention contained a rule that amendments thereto were introduced on the basis of decisions of the IMO.

- The approach taken by the lower courts violated the rights and lawful interests not only of the 1992 Fund but also of its contributors in Member States.

- A lower liability limit imposed an unjustifiable additional financial burden on the 1992 Fund and its contributors by way of the difference between 4.51 million SDR and 3 million SDR.

6.4.6 In a judgement rendered in October 2013 the Presidium of the Supreme Court ordered that the judgements of the Arbitration Court of Saint Petersburg and Leningrad Region, the Court of Appeal and the Court of Cassation be set aside in respect of the part that had ordered the Fund to cover the 'insurance gap' of 1.51 million SDR and ordered that the case be sent to the Arbitration Court of Saint Petersburg and Leningrad Region for reconsideration on that point. The reasons for the decision are contained in the judgement by the Presidium of the Supreme Court, which was published in March 2014.

6.4.7 The Arbitration Court invited all the parties to submit in writing their positions on the 'insurance gap' issue.

6.4.8 Ingosstrakh has, in its pleadings, argued that:

- With the increase of the 1992 CLC limits in 2000, which came into force in 2003, the Russian Federation was obliged to carry out the necessary procedures to amend the internal legislation to make it comply with the new liability limits. However the amendments to the CLC limits were not published in the Russian Federation in a timely manner.
- As per Article 15 of the Russian Constitution and Article 5 of the Law on International Treaties of the Russian Federation, international treaties should be officially published to take effect in Russia; unpublished provisions of international treaties do not have force of law in Russia.
- In view of the above, Russian citizens and legal persons did not have an obligation to apply those amendments to the CLC limits, and the courts did not have legal grounds to render judgements based on the new limits. The Harbourmaster of Astrakhan port, uninformed by the Ministry of Transport of the new limits, issued the certificate in respect of insurance of *Volgoneft 139* for 3 million SDR.
- There is no legal basis to reconsider the amount of the shipowner's (Volgotanker) liability limitation fund constituted in the St Petersburg Court. In any case, neither Volgotanker nor Ingosstrakh should bear liability to increase the limitation fund since it would be inconsistent with the rules of the law in force at the time.
- The limitation fund's amount should not be reconsidered and all the claimants should have their awarded compensation reduced *pro rata* to cover the missing 1.51 million SDR. The claimants will have the right to claim, in separate proceedings, compensation of their damages from the Russian Federation since the Ministry of Transport and the Ministry of Foreign Affairs failed to take timely steps to publish amendments to the 1992 CLC.

6.4.9 Volgotanker has submitted pleadings arguing that the 1992 Fund should assume the liability to cover the insurance gap and satisfy all the claims as per the judgement of 26 June 2012. Volgotanker argues that the 1992 Fund should cover the insurance gap since it was not possible for all the claimants to obtain full compensation under the 1992 CLC, despite all necessary measures having been taken.

6.4.10 The 1992 Fund has, in its pleadings, argued mainly that:

- According to the limits in force internationally (including in the Russian Federation) at the time the incident occurred, the shipowner's liability limit was 4.51 million SDR and not 3 million SDR.
- As a result, the shipowner (Volgotanker) should have had valid insurance in place to cover its liability under the 1992 CLC of 4.51 million SDR. The amount of the insurance certificate is only 3 million SDR but that does not exempt the shipowner of its liability for the underinsurance amount of 1.5 million SDR.
- In any case the 1992 Fund can only commence payments starting from 4.51 million SDR, as stated in the Conventions.

6.4.11 In addition, the Fund has also included in its pleadings the following arguments of the Supreme Court and the Presidium of the Supreme Court:

- In accordance with Article 24 of the Vienna Convention on the Law of Treaties, a treaty enters in force in the manner and on the date provided in the treaty itself. Besides, Article 39 of this Convention provides that a treaty shall be amended by agreement among the participants in the manner which is agreed either in the text of the primary treaty, or directly in the agreement by which amendments are made to the text of the primary treaty.
- Articles 14 and 15 of the 1992 CLC establish that it is within the competence of the International Maritime Organization to convene a conference to make amendments thereto. Amendments to the liability limits were made by Resolution LEG.1(82), dated 18 October 2000, and entered into force on 1 November 2003.

- To make the 1992 Fund responsible for paying compensation from 3 million SDR would violate not only the rights and lawful interests of the 1992 Fund but also of contributors in 1992 Fund Member States, which finance the 1992 Fund.
- The late publication in the Russian Federation of the amendments to the liability limits as set forth in the 1992 Fund Convention, increasing the scope of the oil pollution damage liability limit from 3 million SDR to 4.51 million SDR, cannot be a basis to impose an ungrounded financial burden on the 1992 Fund.
- To establish in this case a lower liability limit of the 1992 CLC limitation fund, whereas higher liability limits for shipowners from all the Contracting States of the 1992 CLC entered into force on 1 November 2003, imposes ungrounded additional financial burden on the 1992 Fund in terms of the difference between 4.51 million SDR and 3 million SDR and, as a consequence, on the contributors to the 1992 Fund.
- International practice has established that a company (unlike a physical person) cannot justify performance of actions in violation of any rules of law by referring to the fact that these rules had not been officially published in the State. The shipowner, and particularly the insurance company, as a professional participant of the market of international insurance of liability in connection with the transportation of oil, should have been aware of the resolutions of the IMO, increasing the limits of liability of the shipowners.

6.4.12 In a judgment delivered in November 2014 the Arbitration Court of Saint Petersburg and Leningrad Region considered that the untimely publication on the territory of the Russian Federation of the amendments to the liability limits in the 1992 CLC which had increased the minimum liability limit for the shipowner from SDR 3 million to SDR 4.51 million, and the untimely disclosure of those amendments to the professional participants of the market should not be a basis to impose an additional financial burden on the 1992 Fund. The Court considered that the difference between the limitation fund deposited in Court by the shipowner's insurer of SDR 3 million and the amount of the shipowner's liability limit that would correspond under the 1992 CLC of SDR 4.51 million, should be allocated to all claimants. The Court therefore decided to discount the 'insurance gap' of SDR1.51 million from the amount previously awarded to all claimants.