



INTERNATIONAL
OIL POLLUTION
COMPENSATION
FUNDS

Agenda item: 3	IOPC/APR16/3/6/1	
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1992 Fund Assembly	92AES20	
1992 Fund Executive Committee	92EC66	•
Supplementary Fund Assembly	SA12	

INCIDENTS INVOLVING THE IOPC FUNDS -1992 FUND

ALFA I

Note by the Secretariat

Summary:	Further information is provided in respect of recent developments arising from this incident.
Action to be taken:	<u>1992 Fund Executive Committee</u> To decide whether to authorise the Director to settle the main contractor's claim for €12 million on the basis that the 1992 Fund pays the full settlement amount and claims from the insurer the 1992 Civil Liability Convention (1992 CLC) limit, i.e. SDR 4.5 million (€5.65 million).

1 Recent developments

- 1.1 The main clean-up contractor has indicated that he would submit an appeal for the difference between his claim and the first instance judgment for €14.4 million. He has indicated that the only reason he had not filed an appeal so far was because of an ongoing strike declared by the Bar Associations in Greece, making it impossible to submit the appeal or to initiate further legal proceedings against the insurer.
- 1.2 The 1992 Fund's lawyer has indicated that the interest which had accrued on the first instance judgment, currently amounted to some €2.7 million, and that until a judgement was rendered in respect of any appeal proceedings (which have not yet even commenced), interest would continue to accrue on the claim, at an approximate annual rate of 8%.
- 1.3 Recently the insurer has indicated that his offer to settle the litigation commenced by the main contractor for €4 million was on condition that the settlement would conclude the dispute. In other words, he wished to pay only €4 million, instead of his 1992 Civil Liability Convention (1992 CLC) liability of €5.65 million.
- 1.4 The main contractor then indicated that, in order to avoid further long delays and expensive legal costs, he would be prepared to continue with the settlement of €12 million, provided that the insurer paid €4 million instead of its 1992 CLC liability of €5.65 million and the 1992 Fund would pay any shortfall left outstanding by the insurer, i.e. if the Fund would agree to pay €8 million, instead of €6.35 million (€12 million - €5.65 million). The main contractor indicated that this offer would stand until the end of June 2016, after which he would pursue his claim in its entirety by appealing the judgment.
- 1.5 The main contractor's lawyer has recently indicated that, in his view, the insurer is in breach of the (European) Solvency II Regulations, having assigned its vehicle insurance business to a German insurance company, and concentrating its marine insurance business through Lloyds of London underwriters.
- 1.6 At present, it is understood that the insurer is still trading and underwriting marine insurance business.

2 Director's consideration

- 2.1 It currently appears that, unless the insurer decides, or is ordered by the court, to comply with its legal obligations to pay the full amount of the 1992 CLC limit, he is not willing to pay more than €4 million towards his full 1992 CLC limit of €5.65 million.
- 2.2 When the settlement offer was discussed, the main contractor highlighted his concern at the possibility that the insurer would not willingly pay his 1992 CLC liability. Under these circumstances, the main contractor requested the Director to consider whether the 1992 Fund would be prepared to fund any shortfall of the insurer's 1992 CLC liability.
- 2.3 The Director is aware that currently the contractor has received no compensation in respect of the incident which took place in March 2012 and for this reason recommends that the 1992 Fund Executive Committee consider authorising him to settle his claim in the amount of €12 million on the basis that the 1992 Fund pays the full settlement amount and claims from the insurer the 1992 CLC limit i.e. SDR 4.5 million (€5.65 million).
- 2.4 The advantages of such an approach are:
- The 1992 Fund would comply with its obligation under the 1992 Fund Convention to pay the main contractor who has received no compensation. Such an approach would help to reassure the main contractor that if he is unable to obtain full satisfaction for the amount of compensation due under the 1992 CLC, the Fund would comply with its obligation in accordance with Article 4(1) (b) of the 1992 Fund Convention;
 - the 1992 Fund would then claim back from the insurer the 1992 CLC limit; and
 - from a commercial viewpoint, a settlement of the main contractor's claim for €12 million, when he already has obtained a first-instance judgment for €14.4 million, continues to make financial sense and in addition, the Court of Appeal is unlikely to render a judgment within two years, meaning that interest at approximately 8% per annum will accrue on the judgment.

3 Action to be taken

1992 Fund Executive Committee

The 1992 Fund Executive Committee is invited to decide whether to authorise the Director to settle the main contractor's claim for €12 million on the basis that the 1992 Fund pays the full settlement amount and claims from the insurer the 1992 CLC limit, i.e. SDR 4.5 million (€5.65 million).
