



INTERNATIONAL
OIL POLLUTION
COMPENSATION
FUNDS

Agenda item: 3	IOPC/OCT09/3/4	
Original: ENGLISH	12 September 2009	
1992 Fund Assembly	92A14	
1992 Fund Executive Committee	92EC46	•
Supplementary Fund Assembly	SA5	
1971 Fund Administrative Council	71AC24	

INCIDENTS INVOLVING THE 1992 FUND

ERIKA

Note by the Director

Summary:

On 12 December 1999 the *Erika* sank in the Bay of Biscay, some 60 nautical miles off the coast of Brittany, France. Some 400 kilometres of shoreline were polluted by the oil, causing a considerable impact in particular on businesses in the fisheries and tourism sector.

As at 12 September 2009, 7 131 claims for compensation had been submitted for a total of €388.9 million. Compensation payments totalling €129.7 million have been made in respect of 5 939 claims. One thousand and sixteen claims have been rejected.

Nineteen legal actions against the shipowner, his insurer and the 1992 Fund are still pending. The total amount claimed in the pending actions, excluding the claims by Total, is some €21 million.

Recent developments:

In a judgement, delivered in January 2008, the Criminal Court in Paris held the representative of Tevere Shipping, the president of Panship Management and Services, Registro Italiano Navale (RINA) and Total criminally liable for the damage caused by the incident and awarded claimants damages in the amount of €192.8 million. The four parties have appealed against the judgement. A hearing before the Court of Appeal is expected to take place in October 2009.

The Commune of Mesquer brought a legal action against Total, where it was argued that the cargo on board the *Erika* was, under European law, a waste. The Court of Appeal in Bordeaux will decide whether or not Total contributed to the occurrence of the pollution caused by the *Erika* incident.

Three court judgements involving the 1992 Fund have been rendered since March 2009. Details of these judgements are provided in section 6.

Action to be taken:

1992 Fund Executive Committee:

Information to be noted.

1 Summary of incident

Ship	<i>Erika</i>
Date of incident	12.12.99
Place of incident	France
Cause of incident	Breakage, sinking
Quantity of oil spilled	Approximately 19 800 tonnes of heavy fuel oil
Area affected	West coast of France
Flag State of ship	Malta
Gross tonnage (GT)	19 666 GT
P&I insurer	Steamship Mutual Underwriting Association (Bermuda) Ltd (Steamship Mutual)
CLC Limit	€12 843 484
STOPIA/TOPIA applicable	No
CLC + Fund limit	€184 763 149
Compensation:	Total amount paid: €29.7 million
Standing last in the queue:	The French Government and Total undertook to stand last in the queue after all other claimants. The French Government claim has been paid in full by Total.
Legal proceedings:	19 actions remain pending. The total amount claimed in these actions is €21 million.

2 Introduction

- 2.1 This document sets out the general situation in respect of the *Erika* incident, which occurred off the coast of Brittany (France) on 12 December 1999, and deals with recent developments.
- 2.2 As regards details about the incident, the clean-up operations, the removal of the oil from the wreck of the *Erika*, the shipowner's limitation fund, the maximum amount available for compensation, the undertakings by Total and the French Government and other sources of funds, reference is made to the Annual Report 2008 (pages 77-90).

3 Claims situation

- 3.1 As at 12 September 2009, 7 131 claims for compensation had been submitted for a total of €388.9 million. Payments of compensation had been made in respect of 5 939 claims for a total of €29.7 million, out of which Steamship Mutual, the shipowner's insurer, had paid €2.8 million and the 1992 Fund €16.9 million. Some 1 016 claims, totalling €1.8 million, had been rejected.

3.2 The table below gives details of the situation in respect of claims in various categories:

Claims situation as at 12 September 2009					
Category	Claims submitted	Claims assessed	Claims rejected	Payments made	
				Number of claims	Amounts €
Mariculture and oyster farming	1 007	1 004	89	846	7 763 339
Shellfish gathering	534	534	116	373	892 502
Fishing boats	319	319	30	282	1 099 551
Fish and shellfish processors	51	51	7	44	977 631
Tourism	3 696	3 693	457	3211	76 113 602
Property damage	711	711	250	460	2 556 905
Clean-up operations	150	145	12	128	31 904 886
Miscellaneous	663	655	55	595	8 387 521
Total	7 131	7 112	1 016	5 939	129 695 937

4 **Criminal proceedings**

4.1 With regard to the criminal proceedings brought as a result of the incident, reference is made to the Annual Report 2008, pages 80-81.

4.2 The representative of Tevere Shipping, the president of Panship Management and Services, RINA and Total parties were held criminally liable in a judgement delivered by the Criminal Court of Paris in January 2008. A number of civil parties have appealed against this judgement. A hearing is scheduled to take place for five weeks as from 5 October 2009.

4.3 No further developments have taken place since the 1992 Fund Executive Committee session in March 2009.

5 **Legal proceedings involving the 1992 Fund**

5.1 With regard to the legal proceedings brought as a result of the incident, reference is made to the Annual Report 2008, pages 82-83.

5.2 Legal actions against the shipowner, Steamship Mutual and the 1992 Fund were taken by 796 claimants. By 12 September 2009 out-of-court settlements had been reached with a great number of these claimants and the courts had rendered judgements in respect of most of the other claims. Nineteen actions are still pending. The total amount claimed in the pending actions, excluding the claims by Total, is some €21 million.

5.3 The 1992 Fund will continue discussions with the claimants whose claims are not time-barred for the purpose of arriving at out-of-court settlements if appropriate.

6 **Court judgements in respect of claims against the 1992 Fund**

6.1 **Court of Appeal in Rennes**

Two mussel processors

6.1.1 Two mussel processors had submitted claims for economic losses in 2000 and 2001. The claims relating to losses suffered in 2000 had been settled with the 1992 Fund but the claims relating to losses in 2001 had been rejected.

- 6.1.2 In a judgement delivered in December 2007, the Commercial Court in Lorient agreed with the Fund's assessment as regards losses in 2000. As regards the claim for losses in 2001, the Court stated that the fact that there was no pollution in the area where the claimant's business operated in 2001, which in the Court's opinion was not proved, was not relevant if it was proved that the claimant had suffered losses as a direct consequence of the incident. The Court, however, concluded that the claimant had not proved that he had suffered losses in 2001 as a consequence of the *Erika* incident and therefore rejected the claim. Both claimants appealed against this judgement (document 92FUND/EXC.40/4, paragraphs 7.1.1 and 7.1.10 to 7.1.11).
- 6.1.3 The Court of Appeal delivered its judgement in February 2009 and confirmed the judgement of the Commercial Court. It concluded that the claimants had not proved that there was a sufficiently close link of causation between the alleged losses and the contamination as a result of the *Erika* incident.
- 6.1.4 The claimants did not appeal against the judgement before the expiry of the time limit on 12 May 2009. The Court of Cassation issued a certificate in August 2009 confirming that the claimants did not file any further appeal. The judgement is therefore final.

Owner of rental apartments

- 6.1.5 An owner of rental apartments submitted a claim for economic losses totalling € 751. The 1992 Fund rejected the claim since the claimant had not proved to have suffered losses as a result of the contamination caused by the *Erika* incident.
- 6.1.6 The Commercial Court in Lorient rendered its judgement in April 2008. The Court stated that it was not bound by the 1992 Fund's criteria for admissibility and that it was for the Court to interpret the concept of 'pollution damage' and to apply it to the individual claim by determining whether there was a sufficiently close link of causation between the event that lead to the damage ('le fait générateur') and the losses suffered. The Court, however, rejected the claim on the grounds that the claimant had not proved to have suffered losses (document 92FUND/EXC.41/3, paragraphs 6.1.2 to 6.1.4).
- 6.1.7 The claimant appealed against the judgement.
- 6.1.8 The Court of Appeal delivered its judgement in June 2009 confirming the judgement of the Commercial Court on the grounds that the claimant had not proved that there was a sufficiently close link of causation between the alleged losses and the contamination as a result of the *Erika* incident.
- 6.1.9 As at 12 September 2009 the claimant had not appealed against the judgement.

Estate Agent

- 6.1.10 An estate agent submitted a claim totalling €74 564 for economic losses allegedly suffered in 2000 and linked to the *Erika* incident. The 1992 Fund rejected the claim since the claimant had not proved to have suffered losses as a result of the contamination caused by the *Erika* incident.
- 6.1.11 The Commercial Court in Lorient rendered its judgement in April 2008. After making the same statement as the one mentioned in paragraph 6.1.6, the Court rejected the claim on the grounds that the claimant had not proved to have suffered losses as a result of the *Erika* incident.
- 6.1.12 The claimant appealed against the judgement. In September 2008, the claimant presented an additional claim to the Court for €37 280 for losses incurred in 2001.
- 6.1.13 The Court of Appeal delivered its judgement in June 2009 and confirmed the decision of the Commercial Court on the grounds that the claimant had not proved that there was a sufficiently close link of causation between the alleged losses and the contamination as a result of the *Erika* incident. With regard to the claim for losses in 2001, the Court of Appeal held that the additional claim was time-barred under Article VIII of the 1992 Civil Liability Convention and Article 6 of the 1992 Fund Convention.

6.1.14 As at 12 September 2009 the claimant had not appealed against the judgement.

7 Legal proceedings by the Commune de Mesquer against Total

7.1 A legal action was brought by the Commune de Mesquer against Total before the French Courts, where it argued that the cargo on board the *Erika* was in fact a waste under European law. The Court of Cassation transferred the case to the Court of Appeal in Bordeaux for a decision on whether or not Total contributed to the occurrence of the pollution caused by the *Erika* incident.

7.2 For details about considerations by the 1992 Fund Executive Committee in 2007 and 2008 and the decision rendered by the Court of Cassation in December 2008, reference is made to Annual Report 2008, pages 88 to 90.

7.3 There has been no development on the legal proceedings since the 1992 Fund Executive Committee session in March 2009.

8 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.
