

 INTERNATIONAL OIL POLLUTION COMPENSATION FUNDS	Agenda item: 3	IOPC/OCT10/3/7
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	1992 Fund Assembly	92A15
	1992 Fund Executive Committee	92EC49 •
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INCIDENTS INVOLVING THE IOPC FUNDS – 1992 FUND

PRESTIGE

Note by the Director

Objective of document:	To inform the 1992 Fund Executive Committee of the latest developments regarding this incident.
Summary of the incident so far:	<p>The Bahamas-registered tanker <i>Prestige</i> broke in two and sank some 260 kilometres west of Vigo (Spain). Approximately 63 200 tonnes of heavy fuel oil were spilled. The oil had a significant impact on fisheries, aquaculture and tourism businesses in Spain and France. Extensive clean up and preventive measures were carried out in Spain and France. Some preventive measures were also carried out in Portugal.</p> <p>The shipowner's P&I insurer, London Steamship Owners' Mutual Insurance Association Ltd (London Club), and the 1992 Fund established Claims Handling Offices in La Coruña (Spain) and Lorient (France).</p> <p>Legal proceedings have been initiated in Spain (section 6) and in France (section 7). A court action was also initiated in the United States by the Spanish State against the American Bureau of Shipping (ABS), the classification society that certified the <i>Prestige</i> (section 9).</p> <p>In May 2010 the Criminal Court in Corcubión, which was investigating the cause of the incident, declared the instruction of the case as concluded.</p>
Recent developments:	<p>The claims situation in Spain and France is summarised in sections 3, 4 and 5. The process of assessing claims in both Spain and France continues.</p> <p>In July 2010, the Criminal Court in Corcubión decided that four persons should stand trial for criminal and civil liability as a result of the <i>Prestige</i> oil spill, namely, the Master, the Chief Officer and the Chief Engineer of the <i>Prestige</i> and the civil servant who had been involved in the decision not to allow the ship into a place of refuge in Spain. In the decision the Court stated that the London Club and the 1992 Fund were directly liable for the damages arising from the incident and that their liability was joint and several. The Court also decided that the shipowner, the management company, and the Spanish State were vicariously liable. In the decision, the Court requested the parties with civil liability to provide security to cover their liabilities up to their respective legal limits. The 1992 Fund has requested the Court to reconsider the above decision, on the grounds of public policy (section 6.1).</p>

The District Court in New York issued its second judgement in August 2010, granting ABS' Motion for Summary Judgment and again dismissing Spain's claims against ABS. The Spanish State has appealed against the judgement (section 9).

Action to be taken: 1992 Fund Executive Committee:

Information to be noted.

1 Summary of incident

Ship	<i>Prestige</i>
Date of incident	13.11.02
Place of incident	Spain
Cause of incident	Breaking and sinking
Quantity of oil spilled	Approximately 63 200 tonnes of heavy fuel oil
Area affected	Spain, France and Portugal
Flag State of ship	Bahamas
Gross tonnage (GT)	42 820 GT
P&I insurer	London Steamship Owners' Mutual Insurance Association Ltd (London Club)
CLC Limit	€2 777 986
STOPIA/TOPIA applicable	No
CLC + FC Limit	€171 520 703
Compensation	
Level of payments	15%/30% subject to conditions
Spain	Two payments to the Spanish Government totalling €15 million minus €1 million, subject to: <ul style="list-style-type: none"> • Bank guarantee • Undertaking to pay all claimants in Spain
France	Level of payments at 30% subject to the French Government standing last in the queue.
Portugal	Payment to Portuguese Government of €328 488, corresponding to 15% of the assessment of its claim for preventive measures. A further payment to the Portuguese Government would be made in the event that the 1992 Fund Executive Committee were to increase the level of payments unconditionally.
Outstanding claims	
Spain	Some 125 claims are awaiting a reply from the claimant.
France	27 claims are being re-examined following the claimants' disagreement with the assessed amount.
Portugal	None.
Legal proceedings	
Spain	In conjunction with an investigation into the cause of the incident, criminal proceedings have been brought against the Master, Chief Officer and Chief Engineer of the <i>Prestige</i> and a civil servant involved in the decision not to allow the ship into a place of refuge. Some 2 122 claims for compensation have been submitted into the proceedings.
France	Civil actions by 129 claimants remain pending in various French courts.
Portugal	Legal proceedings were started but discontinued after settlement with the Portuguese Government.
United States	A court action has been brought by the Spanish State against ABS, the classification society that certified the <i>Prestige</i> .

2 The incident

- 2.1 On 13 November 2002 the Bahamas-registered tanker *Prestige* (42 820 GT), carrying 76 972 tonnes of heavy fuel oil, began listing and leaking oil while some 30 kilometres off Cabo Finisterre (Galicia, Spain). On 19 November, whilst under tow away from the coast, the vessel broke in two and sank some 260 kilometres west of Vigo (Spain), the bow section to a depth of 3 500 metres and the stern section to a depth of 3 830 metres. The break-up and sinking released an estimated 63 000 tonnes of cargo. Over the following weeks, oil continued to leak from the wreck at a declining rate. It was subsequently estimated by the Spanish Government that approximately 13 800 tonnes of cargo remained in the wreck.
- 2.2 Due to the highly persistent nature of the *Prestige's* cargo, released oil drifted for extended periods with winds and currents, travelling great distances. The west coast of Galicia (Spain) was heavily contaminated and oil eventually moved into the Bay of Biscay, affecting the north coast of Spain and France.
- 2.3 Major clean-up operations were carried out at sea and on shore in Spain. Significant clean-up operations were also undertaken in France. Clean-up operations at sea were undertaken off the coast of Portugal.
- 2.4 The *Prestige* had insurance for oil pollution liability with the London Steamship Owners' Mutual Insurance Association Ltd (London Club).
- 2.5 Between May and September 2004, some 13 000 tonnes of cargo were removed from the fore part of the wreck. Approximately 700 tonnes were left in the aft section.
- 2.6 For details of the clean-up operations and the impact of the spill, reference is made to the Annual Report 2003 (pages 106-109).
- 2.7 For details of the investigations into the cause of the incident, reference is made to the Annual Report 2005 (pages 116-121).

3 Claims for compensation

3.1 Spain

- 3.1.1 As at 10 September 2010, the Claims Handling Office in La Coruña have received 844 claims totalling €1 020.7 million. These include 14 claims from the Spanish Government totalling €68.5 million. The table below provides a breakdown of the different categories of claims:

Category of claim	No. of claims	Amount claimed €
Property damage	232	2 066 103
Clean up	17	3 011 744
Mariculture	14	20 198 328
Fishing and shellfish gathering ^{<1>}	180	3 610 886
Tourism	14	688 303
Fish processors/vendors	299	20 838 322
Miscellaneous	74	1 775 068
Spanish Government	14	968 524 084
Total	844	1 020 712 838

^{<1>} One claim totalling €132 million from a group of 58 associations has been withdrawn following a settlement with the Spanish Government.

3.1.2 As at 10 September 2010, 752 (90.66%) of the claims other than those of the Spanish Government have been assessed for €3.9 million. Interim payments totalling €27 327 (£461 991)^{<2>} have been made in respect of 173 of the assessed claims, mainly at 30% of the assessed amount. Sixty-six claims are awaiting a response from the claimant and nine are in progress. Four hundred and twenty-five claims (totalling €8 million) have been rejected and 19 have been withdrawn by the claimants. The remaining claims could not be assessed as the documentation submitted so far is insufficient to carry out an assessment.

3.2 France

3.2.1 As at 10 September 2010, 482 claims totalling €109.7 million have been received by the Claims Handling Office in Lorient. This includes the claims by the French Government totalling €7.5 million. The table below provides a breakdown of the different categories of claims:

Category of claim	No. of claims	Amount claimed €
Property damage	9	87 772
Clean-up	61	10 512 569
Mariculture	126	2 336 501
Shellfish gathering	3	116 810
Fishing boats	59	1 601 717
Tourism	195	25 166 131
Fish processors/vendors	9	301 446
Miscellaneous	19	2 029 820
French Government	1	67 499 154
Total	482	109 651 920

3.2.2 Of the 482 claims submitted to the Claims Handling Office, 94% had been assessed by 7 May 2010. Four hundred and fifty-four claims had been assessed for €8 million and interim payments totalling €5.6 million had been made at 30% of the assessed amounts in respect of 361 claims. The remaining claims await a response from the claimants or are being re-examined following the claimants' disagreement with the assessed amount. Fifty-eight claims totalling €3.8 million had been rejected because the claimants had not demonstrated that a loss had been suffered due to the incident. Three claims totalling some € 000 have been withdrawn by the claimants.

3.2.3 Sixty-one claims, totalling €10.5 million, have been submitted by local authorities for costs of clean-up operations. Fifty-four of these claims have been assessed at €4.6 million. Interim payments totalling €1.3 million have been made in respect of 47 claims at 30% of the assessed amounts.

3.2.4 One hundred and twenty-six claims, totalling €2.3 million, have been submitted by oyster farmers for losses allegedly suffered as a result of market resistance due to the pollution. The experts engaged by the London Club and the 1992 Fund have examined these claims and 120 of them, totalling €1.9 million, have been assessed at €468 231. Payments totalling €131 955 have been made in respect of 90 of these claims at 30% of the assessed amounts.

3.2.5 The Claims Handling Office has received 195 tourism-related claims totalling €25.2 million. One hundred and eighty-five of these claims have been assessed at a total of €3.1 million and interim payments totalling €3.9 million have been made at 30% of the assessed amounts in respect of 154 claims.

^{<2>} Compensation payments made by the Spanish Government to claimants have been deducted when calculating the interim payments.

3.3 Portugal

In December 2003, the Portuguese Government submitted a claim for €3.3 million in respect of the costs incurred in clean up and preventive measures. On the basis of additional documentation submitted in February 2005, the Portuguese Government increased its claim by €1 million. The claim was finally assessed at €2.2 million. The Portuguese Government accepted this assessment. In August 2006, the 1992 Fund made a payment of €28 488, corresponding to 15% of the final assessment (cf Annual Report 2006, pages 103-109). This payment does not preclude a further payment to the Portuguese Government in the event that the 1992 Fund Executive Committee were to increase the level of payments unconditionally.

4 Claims by the Spanish Government

4.1 Claims submitted

The Spanish Government submitted a total of 14 claims for an amount of €68.5 million. The claims by the Spanish Government relate to costs incurred in respect of at sea and on shore clean-up operations, removal of the oil from the wreck, compensation payments made in relation to the spill on the basis of national legislation and the costs incurred therein (Royal Decrees)^{<3>}, tax relief for businesses affected by the spill, administration costs, costs relating to publicity campaigns, costs incurred by local authorities and paid by the Government, costs incurred by 67 towns that had been paid by the Government, costs incurred by the regions of Galicia, Asturias, Cantabria and the Basque Country and costs incurred in respect of the treatment of the oily residues.

4.2 Payments to the Spanish Government

4.2.1 The first claim received from the Spanish Government in October 2003, for €383.7 million, was assessed on an interim basis in December 2003 at €107 million, and the 1992 Fund made a payment of €16.1 million, corresponding to 15% of the interim assessment. The 1992 Fund also made a general assessment of the total of the admissible damage in Spain and concluded that the admissible damage would be at least €303 million. On that basis, and as authorised by the Assembly, the 1992 Fund made an additional payment of €41.5 million, corresponding to the difference between 15% of €383.7 million or €57.6 million and 15% of the preliminarily assessed amount of the Government's claim, €16.1 million. That payment was made against the provision by the Spanish Government of a bank guarantee covering the above mentioned difference (ie €41.5 million) from the Instituto de Credito Oficial, a Spanish bank with high standing in the financial market, and an undertaking by the Spanish Government to repay any amount of the payment decided by the 1992 Fund Executive Committee or the 1992 Fund Assembly.

4.2.2 In March 2006 the 1992 Fund made an additional payment of €6.4 million^{<4>} to the Spanish Government, in accordance with the distribution of the amount payable by the 1992 Fund in respect of the *Prestige* incident, as authorised by the 1992 Fund Executive Committee at its October 2005 session (cf Annual Report 2006, pages 103-106).

<3> For details regarding the scheme of compensation set up by the Spanish Government reference is made to the Annual Report 2006, pages 109-111.

<4> The Director was authorised to pay the Spanish Government €57 365 000 but, as requested by the Spanish Government, the 1992 Fund retained €1 million in order to make payments at the level of 30% of the assessed amounts in respect of the individual claims that had been submitted to the Claims Handling Office in Spain.

4.3 Assessment of the claims

- 4.3.1 The claims by the Spanish Government, totalling €68.5 million, were provisionally assessed at €66.5 million. The 1992 Fund's experts have examined further documentation recently submitted in support of compensation payments made in relation to the spill on the basis of national legislation and have finalised the assessment of the costs incurred by one of the affected regions. As a consequence, the total assessed amount for the claims submitted by the Spanish Government is now €287.7 million. A letter has been sent to the Spanish Government to communicate the latest assessment of their claims.
- 4.3.2 The reason for the difference between the claimed and assessed amounts in respect of the costs incurred in clean-up operations was that, applying the Fund's criteria of technical reasonableness, there was found to be a disproportion between the response carried out by the Spanish State and the pollution and threat thereof, as regards human and material resources and also as regards the extension in time of the operations.
- 4.3.3 Regarding the compensation payments made in relation to the spill on the basis of national legislation and tax relief for businesses affected by the spill, some of the payments had the character of aid and were paid to the population in the affected areas without consideration of the damage or losses suffered by the recipients of the payments. The tax relief was applied in a similar fashion. Applying the Fund's criteria, an assessment has been made of the losses suffered by the fisheries sector in Spain as a result of the incident.
- 4.3.4 The amount claimed by the Spanish Government includes VAT and, since the Government recovers the VAT, the corresponding amounts have been deducted from the claim.
- 4.3.5 Another reason for the difference between the claimed and assessed amount can be found in the claim for the removal of oil from the wreck for €109.2 million. At its February 2006 session, the 1992 Fund Executive Committee decided that some of the costs incurred in 2003, prior to the removal of the oil from the wreck, in respect of sealing the oil leaking from the wreck and various surveys and studies that had a bearing on the assessment of the pollution risk posed, were admissible in principle, but that the claim for costs incurred in 2004 relating to the removal of oil from the wreck was inadmissible (cf Annual Report 2006, pages 111-114). Following the Executive Committee's decision, the claim was assessed at €9.5 million.

5 Claims by the French Government

- 5.1 In May 2004, the French Government submitted claims for €67.5 million in relation to the costs incurred for clean up and preventive measures. The 1992 Fund and the London Club made a provisional assessment of the claims at €31.2 million. After the analysis of further documentation submitted by the French Government, the claims have been reassessed at €38.5 million and a letter explaining the assessment has been sent to the Government.
- 5.2 The amount claimed by the French Government includes VAT and, as in the claim by the Spanish Government, this amount has been deducted from the claim.
- 5.3 Part of the difference between the claimed and assessed amounts lies in the lack of sufficient supporting documentation for some items of the claim. Therefore, it is possible that the assessed amount could increase if the French Government were to submit the required information. Other parts of the claim have been rejected for being not admissible according to the Fund's criteria.
- 5.4 A meeting took place in November 2009 between the Secretariat, its experts, and the French Government, to discuss the assessment of the Government's claim. At the meeting, the Secretariat undertook to provide further details of the assessment to the French Government. As requested, a letter has been sent to the French Government providing a detailed breakdown of the assessment of the claim.

6 Legal proceedings in Spain

6.1 Criminal investigation

- 6.1.1 Shortly after the incident, the Criminal Court in Corcubión (Spain) started an investigation into the cause of the incident to determine whether any criminal liability could arise from the events. The Court was investigating the role of the Master, Chief Officer and Chief Engineer of the *Prestige* and of a civil servant who had been involved in the decision not to allow the ship into a place of refuge in Spain.
- 6.1.2 In March 2009, the Criminal Court in Corcubión issued a decision declaring the instruction of the case as concluded. In the decision, the Court exonerated from liability the civil servant who had been involved in the decision not to allow the ship into a place of refuge in Spain and decided to continue the proceedings against the Master, Chief Officer and Chief Engineer of the *Prestige*.
- 6.1.3 Some of the parties to the criminal proceedings appealed against that decision, pleading that the Appeal Court declare the nullity of the Corcubión Court's decision in respect of the non-liability of the civil servant mentioned above. The French Government also appealed, pleading that some employees of the Classification Society that certified the *Prestige*, American Bureau of Shipping (ABS), should be incriminated and that proceedings should be initiated against them as well.
- 6.1.4 In October 2009, the Court of Appeal in La Coruña (Audiencia Provincial) overturned the Criminal Court's decision and ordered the Court to reinstate the proceedings against the civil servant who had been involved in the decision not to allow the ship into a place of refuge in Spain.
- 6.1.5 In May 2010, the Criminal Court in Corcubión declared the instruction of the case concluded. In July 2010 the Court decided that four persons should stand trial for criminal and civil liability as a result of the *Prestige* oil spill, namely, the Master, the Chief Officer and the Chief Engineer of the *Prestige* and the civil servant who had been involved in the decision not to allow the ship into a place of refuge in Spain. In the decision, the Court stated that the London Club and the 1992 Fund were directly liable for the damages arising from the incident and that their liability was joint and several. The Court also decided that the shipowner, the management company and the Spanish State were vicariously liable. In the decision, the Court requested the parties with civil liability to provide security to cover their liabilities up to their respective legal limits.
- 6.1.6 The 1992 Fund has requested the Court to reconsider the above decision on the grounds of public policy, since a request to the 1992 Fund to deposit a guarantee in Court was in contravention with the spirit of the 1992 Fund Convention and the treaty obligations incurred by Spain. In its pleadings the 1992 Fund argues that the Fund's mission is to compensate the persons that suffer pollution damage in accordance with the 1992 Fund Convention, that the Fund has already paid a great part of the claims arising for the *Prestige* incident and that there were still outstanding claims in France and Portugal that the Fund will have to compensate. The 1992 Fund has also argued that a request for the Fund to provide a security would impede the Fund to compensate the victims that are not party to the criminal proceedings and therefore it would prevent the Fund from complying with its mission.
- 6.1.7 The proceedings will be transferred to another court, the Audiencia Provincial in La Coruña. It is expected that the hearing on the criminal and civil merits of the case will commence in 2011.

6.2 Civil claims

- 6.2.1 As at 10 September 2010, some 2 122 claims, out of which 31 by French claimants, were lodged in the legal proceedings before the Criminal Court in Corcubión (Spain). The experts engaged by the 1992 Fund have examined the vast majority of those claims.

- 6.2.2 As at 10 September 2010 and excluding the claims by the Spanish Government and the French claimants, 119 of those claims have been assessed for €796 721. Interim payments totalling €218 294 have been made at 30% of the assessed amount, taking into account the aid received if applicable. Of the remaining claims, 420 have received payments as a result of a settlement agreement with the Spanish Government and 1 551 have received aid from the Spanish Government. The assessment of these claims is included in the subrogated claim submitted by the Spanish Government (cf section 4).
- 6.2.3 The Spanish Government has taken legal action, not only on its own behalf but also on behalf of regional and local authorities and a number of other claimants or groups of claimants.
- 6.3 Court experts' report
- 6.3.1 The Criminal Court in Corcubi3n appointed Court experts to examine the civil claims lodged in the criminal proceedings. In January 2010, the Court experts submitted their report.
- 6.3.2 The experts engaged by the 1992 Fund have examined the report. They have concluded that, in general, the Court experts have noticed the lack of supporting documentation submitted in most claims. In their assessments the Court experts have not, in most cases, examined the link of causation between the damage and the pollution. In some cases, the amount assessed by the 1992 Fund is higher than the Court's experts' assessment due to the fact that the 1992 Fund's experts had more information available to them, allowing a more detailed assessment of the claims.
- 6.3.3 The 1992 Fund's experts are finalising the assessment of the civil claims submitted to the Criminal Court, in order to try to reach out-of-court settlements with claimants when possible and also in order to be ready to submit defence pleadings when the hearing commences.

7 Legal proceedings in France

- 7.1 Two hundred and thirty-two claimants, including the French Government, brought legal actions against the shipowner, the London Club and the 1992 Fund in 16 courts in France, requesting compensation totalling some €11 million, including €67.7 million claimed by the Government.
- 7.2 One hundred and three of these claimants have since withdrawn their actions, thus actions by 129 claimants remain pending in court for compensation claims amounting to a total of €85.6 million.
- 7.3 The courts have granted a stay of proceedings in 19 legal actions, either in order to give the parties time to discuss their claims out of court, or until the outcome of the criminal proceedings in Corcubi3n is known.
- 7.4 Some 31 French claimants, including various communes, have joined the legal proceedings in Corcubi3n, Spain.
- 7.5 In April 2010, the French State brought a legal action in the Court of First Instance in Bordeaux against three companies in the group of the ABS, the classification society that certified the *Prestige*. There have been no developments in respect of this action.

8 Judgements by courts in France

There have been no new judgements in the courts in French courts concerning the *Prestige* incident since June 2010.

9 Court action in the United States

9.1 Background information

- 9.1.1 The Spanish State has taken legal action against ABS before the District Court of First Instance in New York, requesting compensation for all damage caused by the incident, estimated initially to

exceed US\$700 million and later to exceed US\$1 billion. The Spanish State has maintained, *inter alia*, that ABS had been negligent in the inspection of the *Prestige* and had failed to detect corrosion, permanent deformation, defective materials and fatigue in the vessel and had been negligent in granting classification.

9.1.2 ABS denied the allegation made by the Spanish State and in its turn took action against the State, arguing that, if the State had suffered damage, this was caused in whole or in part by its own negligence. ABS made a counterclaim and requested that the State be ordered to indemnify ABS for any amount that ABS may be obliged to pay pursuant to any judgement against it in relation to the *Prestige* incident.

9.1.3 For details about the defence of sovereign immunity, discovery of the criminal file in Corcubión, financial records and e-mail communications, reference is made to the Annual Report 2007, pages 101 to 104 and the Annual Report 2008, pages 103 to 107.

9.2 ABS's defence that it acted as 'the pilot or any other person, (...), who performs services for the ship'

9.2.1 For details about ABS's request for a summary judgement and the opposition by the Spanish State, reference is made to the Annual Report 2008, pages 104 and 105.

First judgement by the District Court

9.2.2 In January 2008 the District Court accepted ABS's argument that ABS fell into the category of 'any other person who performs services for the ship' under Article III.4(b) of the 1992 Civil Liability Convention (1992 CLC). The Court further ruled that, under Article IX.1 of the 1992 CLC, Spain could only make claims against ABS in its own courts and it therefore granted ABS's motion for summary judgement, dismissing the Spanish State's claim.

9.2.3 In its decision, the District Court also denied all pending motions as now being non-actionable, except for the pending motions over sanctions for Spain's failure to comply with the discovery requests relating to e-mails (cf paragraph 9.1.3).

9.2.4 The Spanish State appealed. ABS also filed an appeal against the Court's decision to dismiss its counterclaims for lack of jurisdiction. The Spanish State also filed a motion with the Court of Appeal seeking to dismiss ABS's appeal.

9.2.5 For details about the appeal by the Spanish State, its request that the Fund present an *amicus curiae* brief and ABS's counter appeal, reference is made to the Annual Report 2008, pages 104 to 105.

Court of Appeal

9.2.6 The Court of Appeal rendered its decision in June 2009, reversing both the dismissal of Spain's case and the dismissal of ABS's counterclaims, which the District Court had held did not fall under an exception to the Foreign Sovereign Immunities Act (FSIA).

9.2.7 With respect to Spain's claim, the Court of Appeal held that the 1992 CLC cannot divest a U.S. federal court of subject matter jurisdiction. However, in sending the case to the District Court, the Court of Appeal stated that the District Court may still exercise its discretion to decline jurisdiction based on *forum non conveniens* or principles of international comity. The Court of Appeal decision made the point that ABS' willingness to fully submit to jurisdiction in Spain was a relevant factor in any decision to decline jurisdiction. The Court of Appeal also pointed out that the District Court should consider the equities in declining jurisdiction at this advanced stage in the litigation process. If the District Court decided to retain jurisdiction, then the Court of Appeal has instructed it to conduct a conflict of laws analysis to determine which law should govern this case.

9.2.8 The Court of Appeal reinstated the original counterclaims by ABS that had been dismissed under the FSIA, holding that ABS's counterclaims did arise out of issues of duty and causation which were 'similar, if not identical' to the issues raised by Spain's claim.

- 9.2.9 The case was sent to the District Court Judge for further consideration.
- 9.2.10 A hearing took place in May 2010. For details regarding the arguments submitted by both parties at that hearing reference is made to document IOPC/JUN10/3/2, paragraphs 9.2.10-9.2.12.

Second judgement by the District Court

- 9.2.11 The District Court issued its second judgement in August 2010, granting ABS' Motion for Summary Judgment and again dismissing Spain's claims against ABS.
- 9.2.12 The Court held that the determinative factors in the choice of law analysis in this case were: the place of the wrongful act; the domicile of the injured party and the domicile of the defendant. The Court decided that U.S. law governed in this case, primarily based on Spain's allegations that the critical wrongful act occurred in ABS' headquarters in the U.S. and based on the fact that ABS headquarters did set central standards for the certification of vessels and that at least one of the operative certificates in place at the time of the *Prestige* incident was issued from those headquarters.
- 9.2.13 The Court noted that Spain did not cite, nor could the Court locate in its own research, any U.S. legal precedent where a classification society has been held liable to a third party for damages caused by the failure of a vessel and that Spain had submitted no evidence that it had specifically relied upon the class certificate issued to the *Prestige*. The Court also noted the 'great disparity' between the fee earned by ABS for the survey conducted in China and the damages sought by Spain.
- 9.2.14 The Court finally stated that it was unwilling to accept Spain's proposed rule 'that a classification society owes a duty to refrain from reckless behaviour to all coastal states that could foreseeably be harmed by failures of classified ships', finding that would amount to an 'unwarranted expansion of the existing scope of tort liability'. The Court also held that such an expansion would be inconsistent with a shipowner's non-delegable duty to provide a seaworthy vessel.
- 9.2.15 The Spanish State has appealed against the judgement.

10 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 matters dealt with in this document as it may deem appropriate.
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