INTERNATIONAL
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COMPENSATION
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INCIDENTS INVOLVING THE IOPC FUNDS – 1992 FUND

ALFA I

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 5 March 2012, the Greek-registered tanker *Alfa I,* laden with 1 800 tonnes of cargo, hit a submerged object while crossing Elefsis Bay, near Piraeus, Greece and sank in 18-20 metres of water. The incident also resulted in the tragic loss of the master's life. Oil impacted some 13 kilometres of the shoreline of Elefsis Bay, contaminating a number of local beaches. Clean-up operations were conducted at sea and on the shoreline. Since the tonnage of *Alfa I* (1 648 GT) is below 5 000 units of tonnage, the limitation amount applicable under the 1992 Civil Liability Convention (1992 CLC) is 4.51 million SDR (€5.71 million)<1>. The tanker had an insurance policy limited to €2 million which stated that only non-persistent mineral oils would be covered. Six claims for compensation, together totalling €16.15 million, have been submitted by two clean-up contractors to the shipowner. The shipowners have also received a claim for clean-up expenses from the Greek authorities for some €222 000. In addition, in June 2012 the Elefsis Harbour Master issued a fine of €150 000 to the shipowner. In October 2013, the 1992 Fund was formally notified and served with a copy of one of the clean-up contractor's claim against the shipowner and insurer for €15.8 million before the Maritime Court of First Instance in Piraeus, Greece. The 1992 Fund was also served with a Notice of Hearing specifying the date of the first hearing, which was set for February 2014. In February 2014, the 1992 Fund filed an intervention before the Maritime Court of First Instance to defend the 1992 Fund's interests and to challenge the quantum of the losses claimed by the above clean-up contractor. By agreement between the parties, the date of the initial hearing was adjourned to October 2014. In July 2014, the 1992 Fund met with the insurer's lawyers and surveyors in preparation for a subsequent meeting with the clean-up contractors to discuss the claim.

<1> Based on the exchange rate of 13 July 2015 of €1 = 0.789829 SDR.

In October 2014, the first clean-up contractor's claim and the 1992 Fund's intervention were heard by the Court.

Recent developments:

In January 2015, the Director and the Claims Manager responsible for dealing with the incident, together with the Fund's expert, met with the insurer, and the clean-up contractor to further discuss the claim and to ascertain whether it was possible to settle the claim before the court rendered its judgment.

In the meeting, the insurer indicated that the reinsurers had instructed it to fight the claim, on the basis that since the *Alfa I* had carried less than 2 000 tonnes of persistent mineral oil, the 1992 CLC did not apply, and thus the insurer and reinsurers had no liability. This view was not shared by the Fund.

In a subsequent meeting with the clean–up contractor during which its claim was discussed in detail, it stated that it would provide further documentation to prove the claim. This was subsequently provided and passed on to the 1992 Fund's experts for assessment.

In February 2015, the clean-up contractor also served the 1992 Fund with legal proceedings before the expiry of the three-year time bar. At the same time, a second clean-up contractor, that had initially been retained for one day at the commencement of the clean-up operations, filed legal proceedings for some €349 000 against the shipowner, and its insurer. The 1992 Fund was also notified of these proceedings. In June 2015 the 1992 Fund filed an intervention before the Maritime Court of First Instance to challenge the quantum of the above losses claimed (i.e. the €349 000).

In May 2015, the Piraeus Court of First Instance awarded the first clean-up contractor, the sum of €14.4 million. The 1992 Fund's lawyers were instructed to prepare an appeal once the first instance judgment was formally served.

In July 2015, the 1992 Fund sent the first clean-up contractor, the details of the 1992 Fund's experts' assessment of its claim.

In late July, the 1992 Fund and its experts met with the first clean-up contractor, to further discuss the incident. After full day discussions, the first clean-up contractor agreed to a proposal to accept the sum of €12 million in full and final settlement of its claim against the shipowner, insurer and the 1992 Fund. It was understood that the insurer will pay the equivalent of the shipowner's full level of limit of liability of 4.51 million SDR.

Action to be taken:

1992 Fund Executive Committee

Decide whether to authorise the Director to agree a settlement for €12 million in full and final settlement of the first clean-up contractor's claim against the 1992 Fund.

1 Summary of incident

Ship	*Alfa I*
Date of incident	05.03.2012
Place of incident	Elefsis Bay, Piraeus, Greece
Cause of incident	Collision with submerged wreck of vessel
Quantity of oil spilled	Estimated to be approximately 330 mt[2]
Area affected	Contamination of some 13 km of shoreline of Elefsis Bay near Piraeus, Greece
Flag State of ship	Greece
Gross tonnage	1 648 GT
P&I insurer	Aigaion Insurance Company SA, Greece
CLC limit	4.51 million SDR (€5.71 million)
STOPIA/TOPIA applicable	Not applicable
1992 CLC + 1992 Fund limit	203 million SDR (€257 million)
Claims submitted	Six claims totalling €16.15 million have been submitted to the shipowner by two clean-up contractors. The 1992 Fund was served as a defendant in respect of the claim by one contractor, and was formally notified of the second contractor's claim. The shipowner also received a claim for clean-up expenses from the Greek authorities for some €222 000, but this was not formally notified to the 1992 Fund. The Elefsis Harbour Master also issued an administrative fine of €150 000 to the shipowner.
Compensation	None paid to date.

[2] Based on a deduction of the quantity of oil recovered from the wreck of the tanker from the amount loaded on board the tanker at the time of the incident.

Legal proceedings	Proceedings were commenced by a clean-up contractor against the shipowner and the insurer in August 2013. The 1992 Fund was served with a copy of the clean-up contractor's claim, and a Notice of a Hearing, before the Maritime Court of First Instance in Piraeus. In February 2014, the 1992 Fund filed an intervention before the Maritime Court of First Instance defending the 1992 Fund's interests and challenging the quantum of the losses claimed by those clean-up contractors. In October 2014, the matter proceeded to a first instance hearing with judgment awaited thereafter. In February 2015, the clean-up contractor served the 1992 Fund with legal proceedings in order to preserve time before the expiry of the three-year time bar. In May 2015, the Piraeus Court of First Instance issued a judgment for some €14.4 million plus interest in respect of the claim by the first clean-up contractors. The 1992 Fund instructed its lawyers to prepare to file an appeal once the first instance judgment was formally served. At present, the judgment transcript has not been formally served, so the appeal has not yet been filed. *Claim by second set of clean up contractors* In February 2015, just before the expiry of the three year time bar, a second clean-up contractor commenced proceedings for some €349 000 against the shipowner and insurer. The 1992 Fund was formally notified of the claim. In June 2015, the 1992 Fund issued a joinder in respect of the claim, challenging the quantum of the losses claimed by that contractor. A date was set for a hearing of the Fund's application in November 2015. *Claim by Greek State against the shipowner and insurer* In February 2015, a writ of action was served by the Greek State on the shipowner and insurer, for some €222 000 for clean-up expenses. A hearing for directions took place in May 2015. The 1992 Fund has not been formally notified of the claim.

2 Introduction

The background information to this incident is summarised above. Further information and details of the claim submitted by the first clean-up contractor are provided at the Annex.

3 Civil proceedings

3.1 In February 2014, the 1992 Fund filed an intervention before the Maritime Court of First Instance, Piraeus, Greece to defend the 1992 Fund's interests and to challenge the quantum of the losses claimed by the clean-up contractor which had commenced proceedings in August 2013.

3.2 The 1992 Fund informed the Court of the applicable legal provisions of the 1992 Civil Liability and Fund Conventions and the necessity for the shipowner to establish a limitation fund, and also

challenged the quantum of the claims submitted by the clean-up contractors. In particular, the 1992 Fund challenged the presence of skimmer vessels, tugs and a large salvage tug and other equipment in the area surrounding the wreck of the *Alfa I* for extended periods of time after the oil was removed from the wreck.

3.3 By agreement between the parties, the date of the initial hearing at which both the clean-up contractors' claim and the 1992 Fund's intervention would be heard by the Court, was adjourned to October 2014. The Court duly sat at that time.

3.4 In February 2015, the clean-up contractors served legal proceedings upon the 1992 Fund in order to preserve time before the expiry of the three year time bar.

3.5 In May 2015, the Maritime Court of First Instance issued a judgment for some €14.4 million plus interest, in respect of the claim by the first clean-up contractor. The 1992 Fund instructed its lawyers to prepare to file an appeal against the first instance judgment, to be filed once the official court transcript was served. To date, the transcript has not yet been served, as it appears that the first clean-up contractor is willing to settle its claim without further court proceedings.

Claim by a second clean-up contractor

3.6 In February 2015, before the expiry of the three-year time bar, a second clean-up contractor filed legal proceedings for some €349 000, against the shipowner and its insurer. The 1992 Fund was formally notified of the claim. The 1992 Fund passed on the details of the claim to its experts for assessment.

3.7 In June 2015, the 1992 Fund issued a joinder in respect of the claim, challenging the quantum of the losses claimed by that contractor. A date was set for a hearing of the Fund's application to take place in November 2015.

Claim by the Greek State

3.8 In February 2015, a writ of action was served by the Greek State on the shipowner and insurer, for some €222 000, for clean up expenses incurred following the incident. The 1992 Fund has not been formally notified of the claim.

4 Claims for compensation

Claim for €349 000 by a clean-up contractor

4.1 One claim for equipment mobilisation and cleaning and demobilisation of equipment totalling some €349 000 by a clean-up contractor, has been submitted to the shipowner and insurer. The clean-up contractor was contracted directly by the shipowner to respond to the incident, prior to the shipowner's insurer subsequently instructing another clean-up contractor (the main clean-up contractor) to complete the bulk of the oil removal and shoreline clean-up operations.

4.2 The claim for €349 000 was passed to the 1992 Fund's experts for assessment, and who await the provision of further documentation and information to be provided by the claimant, to enable the 1992 Fund's experts to finalise their assessment in due course.

Claim for €15.8 million by a clean-up contractor

4.3 Five claims totalling €15.8 million in respect of clean-up operations and preventive measures have been submitted to the shipowner by the main clean-up contractor. These claims have also been assessed by the 1992 Fund's experts. Further details of the claims submitted by this clean-up contractor are detailed in the Annex.

Claim for €222 000 by the Greek authorities

4.4 The Greek authorities issued a claim for some €222 000 for clean-up expenses against the shipowner and insurer, but has not been formally notified to the 1992 Fund.

5 Assessment of claims

5.1 The 1992 Fund's experts have assessed both claims made against the 1992 Fund. Further information is required in order to finalise the assessment of the claim for €349 000.

5.2 However, following the provision of further evidence by the main clean-up contractor (with claim for €15.8 million), the 1992 Fund's experts have assessed this claim amounting to some €8.8 million (including items which have been queried and for which answers are likely to be provided in the affirmative).

5.2 Additionally, under Greek law the claimant is entitled to interest upon the claim, calculated according to a rising scale of interest, which is designed to encourage parties to settle the claim.[3] An indicative average default interest rate for the period 2012-2015 is approximately 8%.

5.3 Accordingly, the total of the assessed claim of the main clean-up contractor including interest, (calculated up to late July 2015, being the date of the discussions with the clean-up contractors), presently amounts to some €11.1 million.

6 Discussions with the claimant and insurer

Meeting with the clean-up contractor (January 2015)

6.1 At the January 2015 meeting with the clean-up contractor, the details of the contractor's claim were discussed and further information was sought to enable the expert to proceed with an assessment of the claim. The insurer's new lawyer also attended the meeting but took a minimal role in the discussions.

6.2 The details of the discussions which took place in January 2015 are provided in the Annex. Following the meeting, the clean-up contractors provided some further information to enable the 1992 Fund's experts to proceed with their assessment of the claim.

The first-instance judgment (May 2015)

6.3 In May 2015, the Maritime Court of First Instance, Piraeus rendered its judgment, awarding the first clean-up contractor some €14.4 million plus interest from the date of filing the claim (August, 2013). The 1992 Fund instructed its lawyers to prepare to file an appeal as soon as permitted, after the official transcript of the judgment was served. To date, the official transcript of the judgment has not yet been served.

Meeting with the first clean-up contractor in July 2015 to discuss the possibility of a global settlement

6.4 Following the Judge rendering judgment in favour of the first clean-up contractor for €14.4 million plus interest, in May 2015, the Director invited the clean-up contractor and insurer to meet in London, to discuss the possibility of resolving the outstanding claims against the shipowner, insurer and 1992 Fund, by means of a global settlement.

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[3] Greek law provides for default interest (which at the date of the incident was 8.75%), to apply once a claim arises; the interest rate then increases to default interest plus 2%, once a writ of action is served, and increases thereafter to default interest plus 3%, once a final judgment which awards a sum with interest has been issued.

6.5 Prior to discussions with the clean-up contractor, the insurer indicated that due to commercial reasons, it would now be willing to pay up to the limit of the shipowner's limit of liability, namely 4.51 million SDR, as part of a global settlement with the 1992 Fund.

6.6 In July 2015, the first clean-up contractor and its lawyers attended in London to discuss with the 1992 Fund, the possibility of a global settlement to resolve all claims against the 1992 Fund.

6.7 At the discussions, the first clean-up contractor indicated that it would be prepared to enter into a global settlement in order to resolve its claim, provided that the insurer was willing to pay a sum equivalent to the shipowner's limit of liability, with the 1992 Fund paying the excess of its claim over and above the shipowner's limit of liability.

6.8 Notwithstanding that the first instance court had already rendered judgment in the sum of €14.4 million, the clean-up contractor indicated that it would agree to a proposal to accept the sum of €12 million in full and final settlement of its claim against the shipowner, insurer and the 1992 Fund. It was understood that the insurer will pay the equivalent of the shipowner's full level of limit of liability of 4.51 million SDR.

7 Director's considerations

7.1 The Director notes that the primary liability for any pollution damage caused as a result of the incident under the 1992 CLC rests with the shipowner (Article III(1) of the 1992 CLC). The shipowner would be entitled to limit its liability to 4.51 million SDR (€5.71 million) (Article V(1), paragraph (a) of the 1992 CLC) in the event that it were to establish a limitation fund.

7.2 The Director notes that as at 03 September 2015, no limitation fund has been established. However, the Director also notes that no challenge to the shipowner's right to limit has been commenced, nor is it the intention of the 1992 Fund to challenge the shipowner's right to limit liability. In addition, it is the Director's understanding that due to commercial reasons, the shipowner's insurer would prefer to finalise its dealings, by paying the equivalent of the limitation amount due (4.51 million SDR) as part of a settlement with the 1992 Fund.

7.3 The Director is also aware that currently the claimants have received no compensation in respect of the incident, which took place in March 2012.

The merits of settling the clean-up contractor's claim for €12 million

7.4 The Director has taken legal advice from the 1992 Fund's lawyers, who advise that even if the 1992 Fund were to appeal the first instance court judgment in favour of the clean-up contractor, for €14.4 million, and were to succeed on every point of its appeal, the 1992 Fund is unlikely to obtain a much better result than the proposed settlement offer of €12 million.

7.5 Furthermore, if the 1992 Fund were to appeal the first-instance judgment, it is unlikely that a judgment from the Greek Court of Appeal would be available within three years, during which time, interest would continue to accrue on the judgment, in the region of €1.3 million per year.

7.6 Furthermore, the 1992 Fund's lawyers have advised, that if the 1992 Fund were to appeal the first-instance judgment, the clean-up contractors have indicated that they would also appeal, in an attempt to improve the judgment already rendered.

7.7 In view of the foregoing, the Director considers that a possible settlement of the largest claim against the 1992 Fund, for the sum of €12 million including interest, with the shipowner or its insurer paying the equivalent of the limitation amount due (4.51 million SDR), would be a good settlement figure, taking into consideration the advice of the 1992 Fund's technical advisors on the merits of the claim, and making an allowance for the litigation risk and increased interest upon the claim, that would otherwise be due, if the 1992 Fund were to proceed with an appeal to the Greek Court of Appeal.

The outstanding claims

7.8 It should be noted that although the claim by the main clean-up contractor could be settled for €12 million, there remains outstanding the claim by the other clean up contractor for €349 000. In addition, the shipowner and insurer would also face the claim by the Greek State for some €222 000.

7.9 The Director recommends that he be instructed to agree a settlement of €12 million in full and final settlement of the main clean-up contractor's claim against the shipowner, insurer and the 1992 Fund, on the basis that the insurer will pay the the equivalent of the limitation amount due (4.51 million SDR).

8 Action to be taken

1992 Fund Executive Committee

Decide whether to authorise the Director to agree a settlement for €12 million in full and final settlement of the main clean-up contractor's claim against the shipowner, insurer and the 1992 Fund, on the basis that the insurer will pay the equivalent of the limitation amount due (4.51 million SDR).

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ANNEX

BACKGROUND INFORMATION – ALFA I

1 Incident

1.1 On 5 March 2012, the tanker *Alfa I* hit a submerged object, the marked wreck of the vessel *City of Mykonos,* while crossing Elefsis Bay near Piraeus, Greece. The impact punctured the bottom hull plating of *Alfa I* over a length of some 30 metres. Shortly thereafter, the *Alfa I* listed over onto her starboard side and sank. The *Alfa I* came to rest in 18-20 metres of water with her stern in contact with the seabed but the bow still visible above water. The incident also resulted in the tragic loss of the master's life.

1.2 The *Alfa I* was built in 1972 as a single hull tanker with 12 cargo tanks and later converted to a double-hulled tanker. According to the official custom seal and documents provided by the Hellenic Petroleum SA (Aspropirgos Installations) and the shipowner company (Via Mare Shipping Company), on 4 March 2012, the *Alfa I* loaded with 1 800 tonnes of cargo comprising 1 499 tonnes of fuel oil IFO cst, 299 tonnes of fuel oil IFO 180 cst and 275 m^3 of marine gas oil 0.1%. After sinking, an unknown quantity of oil was released from the tanker through the manholes, vent pipes and sounding pipes on her deck.

2 Impact

Oil impacted along some 13 kilometres of the shoreline of Elefsis Bay, contaminating a number of local beaches in Loutopyrgos, Neraki and Nea Peramos, and also the Salamina Island (Faneromenis and Batsi). In addition it is reported that some oil impacted less accessible areas of rocky shore and a naval base.

3 Response operations

3.1 At-sea operations

3.1.1 A salvage company was engaged by the shipowner under a salvage contract and divers employed by this company stopped the release of oil into the water by closing and tightening the manholes, vent pipes and sounding pipes. No further loss of oil was reported.

3.1.2 A perimeter consisting of two sets of booms was placed around the wreck of the tanker and anchored at regular intervals to maintain it in the prevailing weather conditions.

3.1.3 Subsequent salvage activity focussed on the removal of the cargo from *Alfa I* by 'hot tapping' which involved drilling into each cargo tank and pumping out the contents. The salvors recovered some 1 579 m^3 of heavy fuel oil (fuel oil N°2), some 158 m^3 of marine grade oil (fuel oil N°1) and some 94 m^3 of slops from the wreck of the tanker between 13 March and 28 April 2012.

3.1.4 The viscous nature of the cargo and the equipment employed during the oil removal delayed the operations, but reports provided by surveyors appointed by the shipowner's insurer indicate that the oil removal operations from the wreck of the tanker were completed by 25 April 2012 and tank flushing and sealing operations continued until 28 April 2012. Following the oil removal operation, the surveyors appointed by the shipowner's insurer requested that the clean-up contractors provide documentation and an estimate of the costs incurred during the operation, but this was not provided until late August 2012.

3.1.5 Another company was contracted to undertake the response operations at sea using oil recovery vessels, booms and skimmers. An unknown quantity of oil was recovered at sea by vessels normally used for oil and debris removal in the port. The clean-up contractors reported that some 1 200 metres of booms were deployed around the casualty and skimmers were used to collect the oil. It is understood that the contractors were instructed to surround the area where the tanker sank with two booms (one within the other). In addition, some 200 to 300 metres of booms were deployed to protect a marina and an oyster farm nearby.

3.2 Shoreline clean up

3.2.1 The amount of oil which impacted the shoreline and the quantity of waste material removed during the clean-up operations is not known.

3.2.2 The company contracted to undertake response operations at sea was also contracted to carry out the manual cleaning of the shoreline affected. Some 30 to 50 people were employed to manually remove the oil along with beach sediment (mainly gravel and pebbles) and to put the waste in bags for disposal.

3.2.3 One clean-up team consisting of nine people remained operating at Faneromeni and Salamis on 5 May 2012. According to reports provided by the clean-up contractors, cleaning of the equipment used during the response operations (with the exception of the booms surrounding the sunken tanker) was completed on or around 5 June 2012. It is understood that clean-up operations were completed by 30 June 2012.

3.3 Site visit by the 1992 Fund Secretariat

3.3.1 In May 2012, the Head of the Claims Department and the Claims Manager handling the incident visited the location of the sunken tanker and the areas affected by the spill.

3.3.2 The Secretariat was informed that only a small area contaminated by the spill remained to be cleaned and that the majority of the clean-up operations had been concluded. It was noted that the site of the sunken tanker was only marked by the presence of floating oil booms with a salvage tug in attendance and that no marker buoys had been placed to warn other ships of the location of the sunken tanker, or of its proximity to the surface of the sea. Both the expert retained by the Fund and the Fund's Head of Claims/Technical Adviser at the time noted that the presence of two booms as a perimeter was unnecessary if just one boom was deployed correctly. No visible oil was seen to be leaking from the wreck.

4 Applicability of the Conventions

4.1 Greece is a Party to the 1992 Civil Liability and Fund Conventions.

4.2 Since the *Alfa I* (1 648 GT) is below 5 000 units of tonnage, the limitation amount applicable under the 1992 CLC is 4.51 million SDR. The total amount available for compensation under the 1992 CLC and 1992 Fund Convention is 203 million SDR.

4.3 Consequently, if the total amount of damages caused by the spill were to exceed the limitation amount applicable under the 1992 CLC, the 1992 Fund would be liable to pay compensation to the victims of the spill.

4.4 Alternatively, the 1992 Fund would be liable to pay compensation if the shipowner was financially incapable of meeting his obligations in full and any insurance provided did not cover or was insufficient to satisfy the claims for compensation, after the claimants had taken all reasonable steps to pursue the legal remedies available to them (Article 4.1, paragraph (b) of the 1992 Fund Convention).

4.5 Greece is also a Party to the Supplementary Fund Protocol. The *Alfa I* is therefore the first incident taking place in a Member State of the Supplementary Fund. It is however very unlikely that the incident will exceed the limit under the 1992 Fund Convention.

5 Investigation into the cause of the incident

5.1 The Secretariat was informed that the Greek authorities were conducting an investigation into the incident, but that this would initially be confidential and would only be made available to the general public when the files were forwarded to the District Attorney of Athens for publication.

5.2 Early in 2013, the 1992 Fund received a copy of the report of the Council of Investigation of Marine Incidents regarding the *Alfa I* incident.

5.3 The Council of Investigation of Marine Incidents on behalf of the Greek Government found that the tanker was seaworthy in all respects and had undergone partial reconstruction as a double-hulled tanker. The Council considered that the liability for the incident was attributable to the master, but that it was unclear what had led the master to take the actions he had taken and thus there were a number of questions that remained unanswered and which required further investigation.

5.4 The Council found that the master of the *Alfa I* had made efforts to lessen the consequences of the collision with the wreck of the *City of Mykonos* and to avoid the sinking of his ship. This was evidenced by the position of the engine controls, attempts to manoeuvre by turning the rudder, warning of the crew and nearby vessels by sound signals and his attempts to confirm that all members of his crew had obeyed his order to abandon ship, which may have deprived him of the possibility of saving himself.

5.5 For the reasons detailed above, the Council concluded that the sinking of the *Alfa I*, the abandonment of the vessel by her crew, the total loss of the cargo and the death of her master constituted a maritime accident and was due to the fault of the master of the tanker.

5.6 The Secretariat requested the 1992 Fund's Greek lawyer to ascertain what further investigations, if any, were taken in light of the points raised in the Council's report. As at April 2015, the Secretariat is awaiting further details.

6 Claims for compensation

The clean-up contractors have filed a claim against the shipowner and the shipowner's insurer before the Court of First Instance in Piraeus for some €15.8 million. The claims are being examined by the Fund and are detailed below.

Date submitted	Category of claim	Claim amount (€)
June 2012	Clean up by Greek authorities	0.26 million
August 2012	Clean-up contractors' claim for period from 5 March to 30 June 2012	13.3 million
November 2012	Clean-up contractors' claim for period from 1 July to 31 October 2012	1.05 million
January 2013	Clean-up contractors' claim period from 1 November to 31 December 2012	0.54 million
January 2013	Clean-up contractors' claim for period from 1 January to 15 January 2013	0.13 million
May 2013	Clean-up contractors' claim for period from 16 January to 28 April 2013	0.82 million
	Total claims submitted	**16.10 million**

7 Civil proceedings

7.1 In February 2014, the 1992 Fund filed an intervention before the Court of First Instance in Piraeus to defend the 1992 Fund's interests and to challenge the quantum of the losses claimed by the clean-up contractors (some €15.8 million). In July 2014, the 1992 Fund met with the insurer's lawyers and surveyors in preparation for a subsequent meeting to be arranged with the clean-up contractors to discuss the claim and to attempt to settle it out of court.

7.2 In January 2015, the Director and the Claims Manager responsible for dealing with the incident, together with the Fund's expert, met with the insurer, and the clean-up contractors to further discuss the claim and to ascertain whether it was possible to settle the claim before the court rendered its judgment.

7.3 In the meeting, the insurer indicated that the reinsurers had instructed it to fight the claim, on the basis that since the *Alfa I* had carried less than 2 000 tonnes of persistent mineral oil, the 1992 CLC did not apply, and thus the insurer and reinsurers had no liability. This view was not shared by the Fund.

7.4 In a subsequent meeting with the clean–up contractors during which their claim was discussed in detail, they stated that they would provide further documentation to prove their claim, but as at April 2015, this had not been provided.

7.5 In February 2015, the clean-up contractors also served the 1992 Fund with legal proceedings before the expiry of the three-year time bar.

8 <u>Other issues</u>

8.1 <u>The shipowner and the insurance policy of the *Alfa I*</u>

8.1.1 The *Alfa I* had P&I cover including pollution risks with Aigaion Insurance Company SA (Aigaion), a fixed premium insurance provider. The policy is subject to English law and practice. The terms of that policy provided for trading in Greek waters only and contained a limit of liability as follows:

> 'Euro 2 000 000 combined single limit each vessel for all claims any one accident or occurrence'

8.1.2 It also includes the following express warranty:

> 'Warranted non-persistent cargoes only'

8.1.3 The shipowner's insurer issued certificates (Blue Cards) to the Central Port Authority of Piraeus in respect of liability under the Bunkers Convention and liability under the 1992 CLC. The 1992 CLC certificate provided:

> 'Certificate furnished as evidence of insurance pursuant to Article VII of the International Convention on Civil Liability for Oil Pollution Damage 1969, and Article VII of the International Convention for Oil Pollution Damage 1992…
>
> This is to certify that there is in force in respect of the above named ship while in the above ownership a policy of insurance satisfying the requirements of (A) Article VII of the International Convention on Civil Liability for Oil Pollution Damage 1969, and (B) Article VII of the International Convention on Civil Liability for Oil Pollution Damage 1992 where and when applicable.'

8.1.4 On the basis of the Blue Card, the Greek authorities as the flag State issued a certificate of insurance in the form specified in the Annex of the 1992 CLC specifying, *inter alia*, Aigaion as the insurer.

8.1.5 There was a contradiction between the terms of the insurance policy and the Blue Card issued to the Greek Authorities by the shipowner's insurer, Aigaion, because the insurance policy was limited to some €2 million with an express warranty that only non-persistent mineral oils would be covered. However, the Blue Card provided to the Central Port Authority of Piraeus stated that an insurance policy was in place which complied with Article VII of the 1992 CLC 'where and when applicable'. The Greek Authorities were therefore unaware of the terms of the insurance policy and its contradiction with the submitted Blue Card. As soon as the information came to light, the Greek authorities informed the Penal Prosecutor of Athens and instructed him to investigate the case.

8.1.6 In view of the contradiction between the terms of the insurance policy and the Blue Card presented to the Greek authorities by the shipowner's insurer, and because the insurance policy is subject to English law and jurisdiction, the 1992 Fund instructed a barrister to advise on the legal implications under English law of the warranty contained within the insurance policy and the terms of the Blue Card presented to the Greek authorities by the shipowner's insurer which stated that an insurance policy was in place which complied with Article VII of the 1992 CLC 'where and when applicable'.

8.2 The conclusions of the 1992 Fund's legal advisor

8.2.1 In the view of the 1992 Fund's legal advisor:

(a) The insurer, Aigaion, is liable for the full limit of liability under the 1992 CLC, namely 4.51 million SDR;

(b) The insurer's liability arises regardless of the apparent contradiction between the certificate and the insurance policy; and

(c) The insurer would not be able to defeat claims by asserting that there had been a breach of warranty.

The insurer is liable for the full limit of liability under the 1992 CLC

8.2.2 He is also of the view that the insurer is liable to the full 1992 CLC limit of 4.51 million SDR because:

(a) It is 'the insurer…. for the owner's liability for pollution damage' under Article VII(8) of the 1992 CLC; and

(b) It caused a certificate to be issued by the Greek authorities, attesting that insurance was in force in accordance with the provisions of the Convention.

8.2.3 Article VII(8) of the 1992 CLC provides:

> 'Any claim for compensation for pollution damage may be brought directly against the insurer or other person providing financial security for the owner's liability for pollution damage. In such case the defendant may, even if the owner is not entitled to limit his liability according to Article V, paragraph 2, avail himself of the limits of liability prescribed in Article V, paragraph 1. He may further avail himself of the defences (other than the bankruptcy or winding up of the owner) which the owner himself would have been entitled to invoke. Furthermore, the defendant may avail himself of the defence that the pollution damage resulted from the wilful misconduct of the owner himself, but the defendant shall not avail himself of any other defence which he might have been entitled to invoke in proceedings brought by the owner against him. The defendant shall in any event have the right to require the owner to be joined in the proceedings.'

8.2.4 In the view of the 1992 Fund's legal advisor, Article VII(8) is a free-standing provision which applies against insurers simply because they insured the owner of the *Alfa I* for liability for pollution damage. Specifically, Aigaion's Terms and Conditions provided cover in respect of 'liabilities, costs and expenses incurred by reason of or in consequence of the actual or threatened accidental release or escape of oil or any pollution substance from the insured vessel', and encompassed liability to pay clean-up expenses.

8.2.5 Furthermore, he also considers that it does not matter that compulsory insurance was not obligatory in accordance with Article VII(1) of the 1992 CLC[1]. He is of the view that the first sentence of Article VII(8) of the 1992 CLC, applies both to insurers providing compulsory insurance in accordance with Article VII(1) of the 1992 CLC, and to insurers providing non-compulsory insurance, for the owner's liability for oil pollution damage.[2]

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[1] It is not known whether the *Alfa I* was carrying more than 2 000 tonnes of persistent oil at the time of the incident.

[2] There is further limited support for the suggestion that Article VII(8) applies even where insurance is not mandatory, as evidenced by the common practice of tankers carrying 1992 CLC certificates even when not carrying persistent oil cargoes.

The insurer's liability arises regardless of the apparent contradiction between the certificate and the insurance policy

8.2.6 In the view of the 1992 Fund's legal advisor, there are sound justifications for holding an insurer liable in circumstances where its own conduct has led directly to a certificate being issued under Article VII(2) of the 1992 CLC, even if that certificate has been issued incorrectly.

8.2.7 He is of the view that if the insurer's own conduct misled and induced the State authority to make a determination that the requirements of Article VII(1) of the 1992 CLC had been complied with, there are good reasons why the insurer should not be able to withdraw from this determination, and why it should be subjected to the effects of Article VII(8) of the 1992 CLC.

8.2.8 Moreover, in light of its conduct, which has misled third parties and potentially allowed a vessel to trade in waters which it should have been prohibited from entering, it should not be open to the insurer to deny that the 1992 CLC applies to it.

Insurer's reliance on breach of warranty to limit claims

8.2.9 The 1992 Fund's legal advisor also considers that the last two sentences of Article VII(8) of the 1992 CLC contain a restriction on the ability of the insurer to use defences which he might otherwise have been entitled to invoke, in proceedings brought by the owner against him. Specifically, he is of the view that this prevents the insurer from relying on the warranty contained within the insurance policy, for the shipowner to carry non-persistent cargoes only, which was breached by the *Alfa I* carrying persistent mineral oil, at the time of the incident.

8.2.10 He is also of a similar view with regard to the indemnity limit of €2 million contained within the insurance policy, and believes that the insurer will not be able to limit its liability to €2 million.

9 Considerations

9.1 In respect of the *Alfa I* insurance coverage there is a contradiction in the terms of the policy and the Blue Card issued to the Greek Authorities by the shipowner's insurer, Aigaion, because the insurance policy is limited to some €2 million, with an express warranty permitting the carriage of non-persistent mineral oils only. However, the Blue Card provided to the Central Port Authority of Piraeus, states that an insurance policy was in place which complied with Article VII of the 1992 CLC 'where and when applicable'.

9.2 The Director is of the view that if the shipowner's insurer were to refuse payment of compensation for pollution damage either on the grounds that the policy of insurance contained a warranty ('warranted non-persistent cargoes only') or that the policy was limited to €2 million, the 1992 Fund might wish to consider whether to contest the terms of the insurance provided.

9.3 Following discussions with the 1992 Fund's Greek and English lawyers, the Director is of the view that Aigaion would be *prima facie* liable to pay compensation for the damages caused by the spill. Aigaion is the insurer identified in the Certificate of Insurance issued by the Greek authorities in the form specified in the Annex to the 1992 CLC. Furthermore, the tanker was allowed to trade in Greek waters on the basis of the representation made on the certificate of insurance (Blue Card) issued by Aigaion.

9.4 However, the Director is also aware that in accordance with Article 4.1, paragraph (b) of the 1992 Fund Convention, the 1992 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 terms of the 1992 CLC from the owner, after having taken all reasonable steps to pursue the legal remedies available to him.

9.5 As suggested during the October 2012 session of the 1992 Fund Executive Committee, the Director submitted the matter of the possible consequences of discrepancies between insurance policies, Blue Cards and certificates issued under the 1992 CLC to the IMO Legal Committee.

9.6 At the 101st session of the IMO Legal Committee in May 2014, it was decided that the guidelines relating to insurance providers which had been issued to Member States regarding the adoption of Bunker Certificates were to be extended to the presentation of Blue Cards by insurers for certificates for the 1992 CLC, 2010 HNS Convention and Wreck Removal Convention (WRC).