INTERNATIONAL OIL POLLUTION COMPENSATION FUNDS

Agenda item: 3	IOPC/APR13/**3/5**
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1992 Fund Executive Committee	**92EC58**	•
1971 Fund Administrative Council	**71AC30**	
1992 Fund Working Group 6	**92WG6/5**	
1992 Fund Working Group 7	**92WG7/2**	

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 ship was owned by JSC Volgotanker which has since been declared bankrupt by the Commercial Court in Moscow. 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 174.4 million). There is therefore an 'insurance gap' of some 1.5 million SDR. All claims with supporting documentation have been assessed by the 1992 Fund at RUB 338.78 million (£7.3 million) [<1>]. In July 2012 the Arbitration Court of the city of Saint Petersburg and Leningrad Region delivered its judgement on quantum which awarded claimants RUB 503.2 million (£10.9 million) including legal interest. In the judgement it was 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 1992 Fund appealed against the judgement.
Recent developments:	The Court of Appeal and the Court of Cassation have confirmed the judgement of the Arbitration Court of Saint Petersburg and Leningrad Region. The Fund has appealed to the Supreme Court. The Director and some members of the Secretariat visited Russia in December 2012 and February 2013 to meet with the Russian authorities and the claimants in order to discuss the payment of compensation and try to resolve the 'insurance gap'.

[<1>] The conversion of currencies has been made on the basis of the exchange rate as at 1 March 2013, £1 = RUB 46.1367.

	Although the decision of the Supreme Court is still pending, the Director proposes in this document an interim solution so that payment of compensation to victims of the spill can be made.
Action to be taken:	1992 Fund Executive Committee Authorise the Director to make payments in respect of this incident as described in paragraphs 7.7 and 7.8.

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 (£2.5 million)
CLC limit	4.51 million SDR or RUB 174.4 million (£3.8 million)
Insurance gap	1.5 million SDR or RUB 58.5 million (£1.27 million)
CLC & Fund limit	203 million SDR or RUB 7 868.3 million (£170.4 million)
STOPIA/TOPIA applicable	Not applicable
Claims received	RUB 8 486 679 741 (£183.8 million)
Claims assessed by the 1992 Fund	RUB 338.78 million (£7.3 million)
Court judgement	RUB 503.2 million (£10.9 million)
Total amount adjudicated or settled out of court	RUB 511.9 million (£11 million)

2 Background information

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

3 Legal issues

3.1 'Metodika' claim

3.1.1 A federal environmental agency (Rosprirodnadzor) 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 claimants 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 Civil Liability Convention (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.

Judgement of the Arbitration Court of the city of Saint Petersburg and Leningrad Region

3.1.2 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.

3.1.3 Rosprirodnadzor did not appeal and the judgement is therefore final.

3.2 *Force majeure*

3.2.1 Ingosstrakh 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 the shipowner and its insurer were exonerated from liability 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).

Judgement of the Arbitration Court of Saint Petersburg and Leningrad Region

3.2.2 In September 2010 the Arbitration Court of Saint Petersburg and Leningrad Region 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.

3.2.3 Ingosstrakh did not appeal and the judgement is therefore final.

3.3 The 'insurance gap'

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 174.4 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. These decisions have resulted in there being an insurance gap of RUB 58.5 million.

3.4 Quantum and merits of claims for compensation

3.4.1 At a hearing in February 2012 [<2>] the Arbitration Court of Saint Petersburg and Leningrad Region decided that all claimants had the right to legal interest according to Russian law.

3.4.2 In June 2012 the Court delivered its judgement on quantum, awarding amounts totalling RUB 503.2 million including legal interest. In addition, the Court order 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.

3.4.3 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 4.5 million SDR, there remains an

[<2>] Information regarding earlier court hearings in 2008, 2009, 2010 and 2011 can be found in the Annex attached to this document.

'insurance gap' of some 1.5 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.

3.4.4 The 1992 Fund has 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 has appealed the judgement before the Supreme Court.

4 Claims for compensation and amounts awarded by the Court

4.1 The tables below summarise the claims situation as of March 2013 and the amounts awarded by the Court:

Claimant	**Claim (RUB)**	**Assessed by Fund (RUB)**	**Awarded by Court**	
			Capital (RUB)	**Interest (RUB)**
Federal agency (Rosprirodnadzor)('Metodika')	6 048 600 000	0	0	0
Federal agency (Rosprirodnadzor)	753 332	688 487	688 487	92 974
Contractor (Private)	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	42 921 443	24 949 162	33 954 965	4 456 180
Charterer (Private)	9 499 078	2 312 714	2 312 714	891 050
Tourist operator (Private)	8 524 153	8 524 153	8 524 153	0
Port of Kerch (Ukraine)	9 170 697	1 739 454	3 770 722	1 089 164
Ministry of Emergencies	4 311 700	Time-barred	-	-
Regional government	1 831 730 564	Time-barred	-	-
Local government	328 479	Time-barred	-	-
Fisheries (Private)	4 520 000	Time-barred	-	-
Shipowner (assessment agreed with 1992 Fund out of court)	27 706 290	8 755 555	0	0
TOTAL	**8 486 679 741 (£183.8 million)**	**338 781 122 (£7.3 million)**	**437 883 650**	**65 293 702**
			503 177 352 (£10.9 million)	

	Amounts awarded or settled out of court (RUB)
Awarded by Court	503 177 352
Out of Court settlement – shipowner	8 755 555
TOTAL	**511 932 907 (£11 million)**

4.2 In addition, the Court awarded some claimants' court fees totalling RUB 318 969 to be paid by Ingosstrakh, the shipowner and the 1992 Fund in equal parts.

4.3 In order to give a complete picture of the claims submitted as a result of this incident, the table above also includes claims, totalling RUB 1 840.9 million that became time-barred due to the claimants not having protected their compensation rights.

5 Meetings with the Russian authorities

The Director and some members of the Secretariat visited the Russian Federation in December 2012 and February 2013 where they met with representatives of the Russian Ministry of Transport, Ingosstrakh and the claimants. At the meetings the Director reiterated the Fund's position and the urgent need to find a solution to the 'insurance gap' so that compensation could be paid to the victims of the spill.

6 Attempts to solve the 'insurance gap'

6.1 There are three possible solutions for the 'insurance gap' of RUB 58.5 million:

1) to deduct the 'insurance gap' *pro-rata* between all the claimants; or
2) to deduct the whole 'insurance gap' from the regional authority's claim and leave it to the Russian authorities to decide how to allocate it between them; or
3) to deduct the 'insurance gap' *pro-rata* across the three government claimants: regional authority, local authority and federal agency (Rosprirodnadzor) and pay all private claimants in full.

6.2 The first option would mean that all claimants share the 'insurance gap' equally. The second and third options would allow private claimants to be paid the amounts according to the judgement in full and payments to be made to the three government claimants less the gap pro-rated according to the adjudicated amounts. The government claimants would then have to decide whether to enforce the judgement in the UK to recover the remainder.

7 Director's considerations

7.1 The Arbitration Court of Saint Petersburg and Leningrad Region has already rendered judgement in respect of some of the issues arising from this incident, namely the issue of *force majeure* and 'Metodika' (see section 3).

7.2 There remains, however, the issue of the 'insurance gap' to be resolved. In its judgement of July 2012, confirmed by the Court of Appeal and the Court of Cassation, the Arbitration Court decided that the 1992 Fund should pay all amounts above the limit of 3 million SDR and therefore the 'insurance gap' of some 1.5 million SDR needs to be resolved before the Fund can commence payments. The July 2012 judgement of the Arbitration Court has been confirmed by the Court of Appeal and the Court of Cassation, but it is now subject to the appeal before the Supreme Court. However, once a final decision by the Supreme Court is rendered, the 1992 Fund will have to make payments according to the final judgement.

7.3 The Director remains of the view that it is important to ensure that the 1992 Fund pays compensation to the victims of the *Volgoneft 139* incident as soon as possible. Whilst claimants have cooperated with the 1992 Fund and its experts, more than five years have passed since the incident occurred and no payments have been made to the claimants.

7.4 The Director's position is that the Fund should only pay claims substantiated by the Court judgement above 4.51 million SDR even though the Court recognised the shipowner's limit at 3 million SDR. However, the Director proposes that the Fund pay private claimants in full according to the Court ruling and makes interim payments to the three government claimants with pro-rated deductions to cover the 'insurance gap'.

7.5 In the discussions with the Russian authorities, it was made clear that the first possible solution to resolve the 'insurance gap', ie to deduct the insurance gap *pro-rata* between all claimants, would not be fair as the private claimants would be penalised when they had no responsibility for the 'insurance gap'.

7.6 It was therefore proposed that the fairest solution would be to deduct the 'insurance gap' from one of the three government agencies who had submitted claims. In discussions with the Ministry of Transport in Moscow, option 2 was suggested, ie to deduct the 'insurance gap' from the amount awarded by the court to the regional authority. However although this option was discussed with the regional authority, the necessary approval was not obtained.

7.7 The third option to resolve the 'insurance gap', ie to deduct the insurance gap *pro-rata* across the three government claimants, is therefore the remaining option. The table below shows how the payments would be distributed.

Claimant	**Total amount awarded or settled out of court (RUB)**	**To be paid by Ingosstrakh (RUB)**	**To be paid by Fund (RUB)**	**Contribution to 'insurance gap' (RUB)**
Federal agency	781 461	186 048	484 211	111 202
Regional government	379 216 773	89 721 648	236 451 561	53 043 564
Local government	38 411 145	9 011 700	24 026 611	5 372 834
Contractor	68 180 170	13 476 846	54 703 324	0
Charterer	3 203 764	616 284	2 587 480	0
Shipowner	8 755 555	0	8 755 555	0
Tourist operator	8 524 153	2 267 460	6 256 693	0
Port of Kerch (Ukraine)	4 859 886	1 000 018	3 859 868	0
TOTAL	**511 932 907 (£11 million)**	**116 280 004 (£2.5 million)**	**337 125 303 (£7.23 million)**	**58 527 600 (£1.27 million)**

7.8 If this interim solution were to be adopted, the private claimants would receive compensation in full and the 'insurance gap' would be distributed *pro rata* between the three government agencies. The Russian Federation would have to decide whether to try to recover the amounts deducted. The Director recommends he be authorised by the Executive Committee to make payments following this option.

7.9 The Director considers the above to be an interim solution for the 'insurance gap' and he intends to carry on discussions with the Russian authorities.

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;

(b) to authorise the Director to make payments in respect of this incident as described in paragraphs 7.7 and 7.8.

(c) 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, from 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 and 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.

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 is however 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

The table below summarises the claims situation as of October 2012.

	Claimed amount (RUB)	**1992 Fund assessment (RUB)**
Clean up contractor	63 926 933	50 766 549
Regional government	434 687 072	241 045 047
Local government	42 960 768	24 949 162
Port of Kerch (Ukraine)	9 170 697	1 739 454
Charterer	9 499 078	2 312 714
Tourist operator (private)	8 524 153	8 524 153
Shipowner	27 706 290	8 755 555
Federal agency (Rosprirodnadzor)	753 332	688 487
Total	**597 228 323**	**338 781 121**

6 Legal issues

6.1 'Metodika' claim

6.1.1 At a meeting in May 2008 the Russian authorities informed the 1992 Fund that Rosprirodnadzor 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.

Judgement of the Arbitration Court of Saint Petersburg and Leningrad Region

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 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 took place and inspected the aft section of the wreck in the Port of Kavkaz. [<1>]

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, since there were timely forecasts of the storm and conditions were accurately predicted, so that 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 Vessel Traffic System (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 However, 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.

Judgement of the Arbitration Court of Saint Petersburg and Leningrad Region

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, 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.

[<1>] For details regarding the preliminary conclusions reached by the 1992 Fund's experts, reference is made to the IOPC Funds' Annual Report 2008, pages 119–122.

6.3 The 'insurance gap'

6.3.1 In February 2008, the 1992 Fund received a notification from the Arbitration Court of Saint Petersburg and Leningrad Region of proceedings brought by a Russian clean-up contractor against the shipowner, Ingosstrakh and the 1992 Fund. A number of other claimants have also brought proceedings in the same Court.

6.3.2 In February 2008, in the context of these proceedings, the Court issued a ruling declaring that the shipowner's limitation fund had been constituted by means of an Ingosstrakh letter of guarantee for RUB 116 280 000, equivalent to 3 million SDR.

6.3.3 In April 2008, the 1992 Fund appealed against the Court's ruling. In its pleadings the 1992 Fund argued that at the time of the incident the limit of the shipowner's liability under the 1992 CLC was 4.51 million SDR (RUB 175.3 million) and that, under the Russian Constitution, international conventions to which the Russian Federation is Party, take precedence over Russian internal law and that therefore the Court's ruling establishing the shipowner's limitation fund at only 3 million SDR (RUB 116.3 million) should be amended. In May 2008, the Court of Appeal rejected the 1992 Fund's appeal.

6.3.4 The 1992 Fund lodged another appeal. In September 2008 the Court of Cassation rendered a decision dismissing the 1992 Fund's appeal. In its reasoning, the Court considered that, since Russian Law still provided that the shipowner's limit of liability under the 1992 CLC was, in the case of the *Volgoneft 139*, RUB 116 280 000 (3 million SDR), it was for Russian courts to apply the limits of liability as published in the Russian Official Gazette. The 1992 Fund appealed to the Supreme Court in Moscow, since the Court's decision was in clear contravention of the 1992 CLC as amended with effect from 1 November 2003. In November 2008 the Supreme Court confirmed the decision by the Court of Cassation.

Court decisions on the insurance gap

6.3.5 In September 2010 the Arbitration Court of Saint Petersburg and Leningrad Region decided to maintain its original decision that the shipowner's limitation fund was 3 million SDR or RUB 116.6 million. The Court reached this decision on the grounds that the amendments to the limits available under the 1992 CLC and 1992 Fund Convention had not been published in the Russian Official Gazette at the time of the incident.

6.3.6 The 1992 Fund appealed to the Appeal Court against this decision on the grounds that, at the time this judgement was rendered, the new limit of the shipowner's liability, namely 4.51 million SDR, had been officially published in the Russian Official Gazette and therefore properly incorporated into Russian legislation.

6.3.7 The Appeal Court confirmed the decision by the Arbitration Court of Saint Petersburg. The 1992 Fund submitted a cassation complaint to the Court of Cassation.

6.3.8 In its decree in April 2011 the Court of Cassation rejected the appeal submitted by the 1992 Fund and upheld the decision on the establishment of the shipowner's limitation fund of 3 million SDR. The 1992 Fund appealed to the Supreme Court.

6.3.9 The Supreme Court sustained the decisions of the Arbitration Court of Saint Petersburg and Leningrad Region, the Court of Appeal and the Court of Cassation.

6.4 Quantum and merits of claims for compensation

6.4.1 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.

6.4.2 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.

6.4.3 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.

6.4.4 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.

Judgement on quantum and merits of the claims

6.4.5 In July 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.

6.4.6 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	
Shipowner	27 706 290	8 755 555		
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	

6.4.7 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 4.5 million SDR, there remains an 'insurance gap' of some 1.5 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.

6.4.8 In August 2012, the 1992 Fund appealed against the judgement on the grounds that:

(i) the limit of the shipowner's liability under the 1992 CLC at the time of the incident was 4.51 million SDR (RUB 174.4 million) and therefore the Court's ruling establishing the shipowner's limitation fund at only 3 million SDR (RUB 116.3 million) should be amended; and

(ii) the judgement does not explain the assessment of the amounts of compensation adjudicated in favour of the various claimants. Therefore, it remains unclear how the Court calculated the awarded amounts and on what evidence the judgement was reached.

6.4.9 A local authority claiming for the costs incurred in clean up and preventive measures also appealed against the judgement since the amount awarded was lower than the claimed amount. In September 2012 the Court of Appeal confirmed the judgement by the Arbitration Court. The 1992 Fund has appealed the judgement before the Court of Cassation.

7 Meetings between the Russian authorities and the Secretariat

7.1 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.

7.2 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 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.

7.3 The Secretariat and the 1992 Fund's experts visited Krasnodar in February 2011 to meet with claimants to try to solve the issues pending in 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.

7.4 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.

8 Considerations

8.1 Executive Committee

8.1.1 Since the incident was first reported to the 1992 Fund Executive Committee in March 2008, the question of whether to authorise the Director to make payments of claims for compensation in respect of the *Volgoneft 139* has been considered on numerous occasions. The conclusion at each discussion of the issue has been that a number of issues would have to be resolved before the Committee could authorise the Director to make such payments.

March 2011

8.1.2 At its March 2011 session the 1992 Fund Executive Committee decided not to authorise the Director to commence payments of established losses arising from the *Volgoneft 139* incident and instructed him to continue with the efforts to try to resolve the three outstanding issues, namely: payment by the insurer up to 3 million SDR, the submission of outstanding oil reports and a solution to the problem of the 'insurance gap'.

October 2012

8.1.3 At its October 2012 session, the Executive Committee noted that although a number of delegations had suggested that the 1992 Fund should try to pay compensation to the victims of this incident, the majority of delegations considered that the problem of the 'insurance gap' had first to be resolved before the 1992 Fund could start making payments. The Executive Committee instructed the Director to continue discussions with the claimants and the Russian authorities to explore a solution to the problem of the 'insurance gap' and revert to the Executive Committee with a proposal at a future session.

8.1.4 As instructed, the Director will continue monitoring the legal proceedings before the Russian Courts and to pursue the discussions with the claimants and Russian authorities to explore a solution to the problem of the insurance gap. A proposal will be presented to the Executive Committee at a future session.