



International Oil Pollution
Compensation Funds

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INCIDENTS INVOLVING THE IOPC FUNDS — 1992 FUND

PRESTIGE

Note by the Secretariat

Objective of document:	To inform the 1992 Fund Executive Committee of the latest developments regarding this incident.
Summary:	<p>The 1992 Fund has already levied all the contributions payable in relation to this incident and has established a Major Claims Fund to pay all the compensation due in respect of this incident.</p> <p>The compensation amount available for the <i>Prestige</i> incident under the 1992 Civil Liability and Fund Conventions is €171.5 million. Some €120.7 million in compensation has already been paid to victims of this spill by the 1992 Fund. A further €28 million of compensation remains available from the 1992 Fund. In addition, €22.8 million is available from the amount deposited in the Criminal Court in Corcubi3n by the shipowner's insurer, the London Steam-Ship Owners' Mutual Insurance Association Ltd. (London P&I Club).</p> <p>In January 2016, the Spanish Supreme Court delivered a judgment finding that the master of the <i>Prestige</i> was criminally liable for damages to the environment, with civil liability. The judgment also found that the shipowner had civil liability and was not entitled to limit its liability and that its insurer, the London P&I Club, had civil liability up to the limit of its policy of USD 1 000 million. In the judgment, the 1992 Fund was found to have civil liability within the limit provided for by the 1992 Fund Convention. The judgment decided to defer the quantification of damages to the Court in La Coru3a^{<1>}.</p> <p>In November 2017, the Court in La Coru3a delivered a judgment on the quantification of the compensation. The total amount awarded by this Court, after amendment, was €1 650 million. The 1992 Fund and other parties filed an appeal before the Supreme Court.</p>
Recent developments:	In December 2018 the Spanish Supreme Court delivered its judgment on the quantification of the losses. After requests for corrections and clarifications, the judgment was amended in January and March 2019. The total amount awarded, after the amendments, is €1 439.08 million (losses €884.98 million + pure environmental and moral damages €554.10 million), as follows:

- The amount awarded to the Spanish State is €1 357.14 million (losses €803.04 million + pure environmental and moral damages €554.10 million).
- The amount awarded to the French State is the full claimed amount i.e. €67.5 million.
- The Supreme Court decided to include VAT in the compensation awarded to the Spanish and French States.
- The amount awarded to individual claimants in Spain and France is €14.44 million.

In addition, the judgment awards interest, to be quantified by the Court who will enforce the judgment.

The judgment clarifies that moral and pure environmental damages are not recoverable from the 1992 Fund.

The judgment confirms its previous decision that the London P&I Club is liable for all the damages caused by the incident, including moral and pure environmental damages, up to the limit of its policy of USD 1 000 million.

The Director is commencing discussions with the Governments of Spain and France to reach a solution on the distribution of the remaining €28 million available for compensation from the 1992 Fund.

Relevant documents:

The [online Prestige incident report](#) can be found via the Incidents section of the IOPC Funds' website.

Action to be taken:

1992 Fund Executive Committee

Information to be noted.

1 Summary of incident

Ship	<i>Prestige</i>
Date of incident	13 November 2002
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	42 820 GT
P&I insurer	London Steam-Ship Owners' Mutual Insurance Association Ltd. (London P&I Club)
CLC Limit	€22 777 986
CLC + Fund limit	€171 520 703
Level of payments	15% and 30% (subject to conditions)
Compensation	<u>Spain</u> Two payments made to the Spanish Government totalling €115 million minus €1 million, subject to a bank guarantee and an undertaking to pay all claimants in Spain at 30%. Level of payments: 30%. Total amount paid in Spain, including payments to individual claimants, is €114.6 million.

	<p><u>France</u> Level of payments at 30%, subject to the French Government's claim 'standing last in the queue'. Total paid to individual claimants in France is €5.8 million at 30%.</p> <p><u>Portugal</u> Payment to Portuguese Government of €328 488 at 15% since no guarantee (bank guarantee or 'standing last in the queue') was provided.</p>
Legal proceedings against the 1992 Fund	<p><u>Spain</u> In December 2018, the Spanish Supreme Court delivered a judgment on the quantification of the damages. The amount awarded, after amendment in January and March 2019, is €1 439.08 million (losses €884.98 million + pure environmental and moral damages €554.10 million). The 1992 Fund is only liable for the losses, whereas the shipowner and the London P&I Club are liable for the entire amount, including pure environmental and moral damages, up to the limit of its insurance policy of USD 1 000 million.</p> <p><u>France</u> There are 42 actions pending in France, with claims totalling some €6.4 million (see section 4).</p> <p><u>Portugal</u> Legal proceedings were started but discontinued after settlement with the Portuguese Government.</p>
Recourse actions	<p><u>United States</u> In a final ruling, the Court of Appeal rejected the claim by Spain against the American Bureau of Shipping (ABS).</p> <p><u>France</u> France brought a legal action against ABS. The 1992 Fund has also brought a legal action against ABS to prevent its right to obtain reimbursement from ABS becoming time-barred.</p>

2 Background information

Background information is provided in detail in the [online Prestige incident report](#).

3 Criminal proceedings in Spain

3.1 Judgment of the Supreme Court on liability

Criminal liability

3.1.1 In January 2016, the Spanish Supreme Court rendered a judgment^{<2>} finding the master guilty of a crime against the environment, with full direct liability for all losses caused by the criminal action.

Civil liability

3.1.2 The Court found that the master, the shipowner and its insurer and the 1992 Fund had civil liability as follows:

- The Court considered that the damage was a consequence of the master's recklessness, which justified a finding of civil liability of the master.
- The Court held that the shipowner had subsidiary civil liability. Furthermore, the judgment considered that the shipowner had acted recklessly and with knowledge that damage would probably result and that therefore, applying Article V(2) of the 1992 Civil Liability Convention (1992 CLC), the shipowner could not benefit from the limitation of liability established in the Convention.
- The judgment also found that the insurer, the London P&I Club, had direct civil liability, up to the limit of the insurance policy of USD 1 000 million. The Court applied domestic law (criminal law, law of insurance and law of maritime transport) to decide that the insurer should pay compensation up to the amount in the policy of insurance and not just the limit that would apply under the 1992 CLC.
- The judgment recognised that the 1992 Fund has strict liability and that this is limited according to the 1992 Fund Convention.

Damages

3.1.3 The judgment established that the quantification of the damages would be made at a later stage in separate legal proceedings in the Court in La Coruña.

3.2 Judgment of the Court in La Coruña on quantum

3.2.1 In November 2017, the Court in La Coruña delivered a judgment on the quantification of the compensation deriving from the Supreme Court judgment. The compensation awarded, after an amendment in January 2018, was €1 650 million^{<3>}.

3.2.2 Several parties, including the 1992 Fund, submitted cassation appeals to the Spanish Supreme Court.

<2> The Supreme Court judgment can be found via the [Incidents section](#) of the IOPC Funds' website in its original Spanish format. Extracts of the judgment have been translated into English and French and are also available on the website. A detailed summary of the judgment can be found in document [IOPC/APR16/3/2](#).

<3> The operative part of the correcting judgment gave the figure of €1 648.25 million, as reported in previous documents. However, taking the judgment as a whole, the amount awarded is in reality €1 650 million.

3.3 Judgment of the Supreme Court on quantum

3.3.1 The Supreme Court delivered its judgment on the quantification of the losses on 20 December 2018. In its judgment, the Court dismissed most of the appeals by individual parties and the appeals by the master, the shipowner and the London P&I Club. However, the judgment accepted the appeals of the Spanish and French states in their entirety. Concerning the Fund's appeal, the judgment accepted the appeal but only in part.

3.3.2 The total amount awarded, after amendments in January and March 2019, is €1 439.08 million, as summarised in the following table.

Claimants	Awarded by Supreme Court (losses) €	Awarded by Supreme Court (pure environmental and moral damages)* €	Total awarded by Supreme Court €
Spanish State	803.04 million	554.10 million	1 357.14 million
French State	67.50 million	0	67.50 million
Individual claimants in Spain	9.33 million	0	9.33 million
Individual claimants in France	5.11 million	0	5.11 million
TOTAL	€884.98 million	€554.10 million	€1 439.08 million

* Pure environmental and moral damages are only payable by the shipowner/London P&I Club. The 1992 Fund is not liable for these damages.

3.3.3 The judgment on quantum can be found via the [Incidents section](#) of the IOPC Funds' website in its original Spanish format. Extracts of the judgment have been translated into English and French, and are also available on the Fund's website. A summary of the judgment is provided in this section of the document.

Spanish State

3.3.4 The Supreme Court, in its judgment, accepted the appeal by the 1992 Fund that the Court should discount from the amount awarded to the Spanish State, €128 million for payments made by the State in compensation for temporary disruption to the fishing sector, since that amount had not been justified nor included in the expert's report followed by the Court. The Supreme Court deducted that amount from the award to the Spanish State and, as a result, the total amount awarded to the Spanish State for losses was reduced. The amounts awarded to the Spanish State are as follows:

- Losses for €803.04 million.
- Pure environmental damages, calculated as 30% of the losses, i.e. €240.9 million. The Court referred to the need for the ecosystem to recover itself without any human intervention. The Court also stated that these damages go beyond the mere damage reparable by the clean-up operations.
- Moral damages, at 30% of the sum of the losses and pure environmental damages, i.e. €313.2 million. When considering moral damages, the Supreme Court referred to feelings

of anger, worry and frustration derived from the spill and the indelible imprint left by the perception that catastrophes of this kind could occur.

- The total amount awarded to the Spanish State is €1 357.14 million (losses €803.04 million + pure environmental and moral damages €554.10 million).

3.3.5 The Supreme Court also included VAT in the compensation owed to the Spanish State, on the basis of the same arguments explained when considering the French State claim (see paragraph 3.3.6 below).

French State

3.3.6 The French State, like the Spanish State, had requested the inclusion of VAT in the compensation owed to it. The Supreme Court accepted this request, on the basis that:

- the payment of VAT and the payment of compensation have different causes and cannot be set off against each other. One is compensation for the losses suffered as a result of the spill, whereas the other is a consequence of an economic activity carried out which, by itself, creates a tax obligation.
- the non-compensation of VAT to the State would be to treat the State in a different way than the treatment to a particular person who had undertaken the reparation for themselves, to whom VAT would be paid.

3.3.7 The Supreme Court therefore awards the French State the full claimed amount of €67.5 million.

Other claimants in Spain and France

3.3.8 As for the private individuals and regional and local entities claimants, the Court awarded a total of €9.33 million for individual claimants in Spain and €5.11 million for individual claimants in France.

1992 Fund

3.3.9 The judgment partially accepted the Fund's appeal, accepting that the damages covered by the Conventions are those specified in Article I(6) of the 1992 CLC, thus excluding pure environmental damages and moral damages. The judgment also accepted the 1992 Fund's appeal in that €128 million should be deducted from the amount awarded to Spain as this amount had not been justified by an expert report.

3.3.10 The 1992 Fund had argued that the amount payable by the 1992 Fund should be apportioned among all those affected by the spill and not only between the parties represented in the legal proceedings in Spain. The Supreme Court has not taken a decision on this issue, but it may be inferred that its intention is that the compensation available from the 1992 Fund should be distributed between the parties represented in the legal proceedings in Spain only.

3.3.11 Concerning the distribution of the amount available for compensation, the judgment states that it is for the Spanish courts to distribute the compensation, as established by the CLC and the Fund Convention. The judgment dismisses the Fund's argument that, based on the provisions of the Fund Convention, it is for the 1992 Fund Assembly to decide on the apportionment and distribution of the compensation available for all claimants.

3.3.12 The judgment also dismissed the Fund's appeal on the assessment of the losses suffered by the Spanish and French States because, in its view, it is not for the Supreme Court to review the evidence submitted, nor for the 1992 Fund to impose its own criteria for the assessment of claims.

Master, shipowner and London P&I Club

3.3.13 The judgment dismissed in its entirety the appeals submitted by the master, the shipowner and the London P&I Club.

3.3.14 The judgment confirms that the master has unlimited liability and that the shipowner and the London P&I Club have a corresponding subsidiary civil liability.

3.3.15 The master, shipowner and London P&I Club were also held liable for pure environmental and moral damages.

Interest

3.3.16 The judgment also awarded procedural interest to all claimants from the date of the judgment until the date of payment of the compensation owed to them. In addition, the Court also awards interest for delayed payment to those claimants who had requested it. Interest arising from delayed payments is calculated from the date of the formulation of the claim in Court until the date of the judgment.

Enforcement of the judgment

3.3.17 In its judgment, the Supreme Court accepts the arguments put forward by the Public Prosecutor and declares that the enforcement of the judgment will be the responsibility of the Court. It will not be necessary for the claimants to request the enforcement of the judgment, but it will be the Spanish Court who will arrange for the enforcement of the judgment directly.

3.3.18 The Court in charge of the enforcement of the judgment issued a decree in February 2019 ordering the master, the shipowner and the London P&I Club to pay the amounts awarded by the Supreme Court plus 30% for interests and costs. According to the order, the London P&I Club should pay up to its limit of USD 1 000 million, including the limitation fund. The Court has also ordered the 1992 Fund to pay the limit of its liability after deducting the amounts already paid, i.e. €28 million.

3.3.19 The 1992 Fund has submitted to the Court a pleading with the following arguments:

- The 1992 Fund will voluntarily pay the amounts awarded to the claimants in accordance with the Supreme Court judgment, after prorating and after the deduction of the amounts already paid to the claimants. There will be no need for an enforcement against the 1992 Fund.
- Before proceeding to the payment of the amounts available from the 1992 Fund, the Fund has to determine the prorating of that amount among all claimants, taking into account the following:
 - (a) Amounts awarded by the Spanish Supreme Court.
 - (b) Amounts awarded by the French Courts.
 - (c) Claims pending resolution in legal proceedings in France.
 - (d) Claims agreed out of court with the 1992 Fund in Spain, France and Portugal.

4 Civil proceedings in France

4.1 There are 42 legal actions pending before the French Courts. This figure does not include the action that the French Government brought to protect its rights since its claim has been fully satisfied by the Spanish Court (see paragraphs 3.3.6 and 3.3.7).

4.2 There are also other 38 actions totalling €824 700 brought by claimants in France, but the 1992 Fund reached agreements with those claimants, paying €123 906 at 30%, as guaranteed by the French Government's claim standing last in the queue.

4.3 Among the 42 legal actions pending in France, the following should be noted:

- Twenty-three actions totalling €5.2 million are by claimants who also brought actions in the legal proceedings in Spain and in respect of which there is a final judgment in Spain. It would be expected that these actions should be withdrawn as far as the damages comprising the claims overlap with those included in the judgment by the Spanish Supreme Court.
- There remain 19 actions totalling €1.2 million pending before French courts.

4.4 The French courts have rendered judgments awarding some €1.18 million to claimants in France. The 1992 Fund has paid these claims at 30%.

4.5 Legal action by France against the American Bureau of Shipping (ABS)

For information on the legal action by France against the American Bureau of Shipping (ABS), reference is made to document [IOPC/OCT18/3/2](#), paragraph 4.4.

4.6 Legal action by the 1992 Fund against ABS

For information on the legal action by the 1992 Fund against the ABS, reference is made to document [IOPC/OCT18/3/2](#), paragraph 4.5.

5 Director's considerations

5.1 The Supreme Court delivered its judgment in December 2018, modified in January and March 2019, partially allowing the 1992 Fund's appeal. Whereas the Director does not agree with the judgment, he is of the view that the 1992 Fund should comply with it.

5.2 This judgment will not have a financial impact on the 1992 Fund. Although the damages caused by the incident exceeds by far the amount available for compensation under the international Conventions, the Supreme Court judgment recognises that the 1992 Fund's liability is limited to €148.7 million. The judgment will not have a financial impact on contributors as the Fund has already levied all the contributions payable in relation to this incident.

5.3 The Director, however, considers that the Supreme Court judgment constitutes a dangerous precedent for other incidents in the future. There are three areas where the Director would like to comment in particular.

Application of the criteria for admissibility of claims

5.4 Reflecting its experience over many years, the governing bodies of the 1992 Fund have adopted detailed criteria for the assessment of the losses of all classes of claimants which are set out in the Claims Manual. While the question of the recoverability of any loss will ultimately be a matter for the courts of Member States, in practice, they are guided by and follow the criteria in the Claims

Manual. The Supreme Court ignored the criteria adopted by Member States and made no proper assessment as to their applicability to the claims. In the Director's view, this decision and approach creates a dangerous precedent which other courts might follow in future cases and which endangers the uniform application of the international Conventions in all Member States.

- 5.5 Putting this argument in figures, the losses suffered by the Spanish State were assessed by the 1992 Fund at €300 million. The Supreme Court has awarded €803 million. In the case of France, the 1992 Fund's assessment of the claim by the French Government totalled €42.2 million, whereas the Supreme Court has awarded €67.5 million.

Pure environmental damages and moral damages

- 5.6 The Supreme Court judgment has awarded €554.10 million for pure environmental damages and moral damages based on 30% of the losses awarded. The judgment has confirmed that the 1992 Fund is not liable for these two types of damages, as Article I(6) of the 1992 CLC do not recognise them. The Director is satisfied that the Court has applied the Conventions in this point. However, this does not apply to the master, shipowner and the London P&I Club and therefore these parties would be liable for the pure environmental damages and moral damages.
- 5.7 It is difficult to understand the rationale of the judgment on this point since the 1992 Fund's liability and the shipowner and Club's liability arise from the same Article I(6) of the 1992 CLC. It appears that on this point the Supreme Court has applied internal law (criminal law, law of insurance and law of maritime transport) to the shipowner and Club and the international Conventions to the Fund.
- 5.8 The international Conventions clearly provide that compensation for impairment of the environment shall be limited to costs of reasonable measures of reinstatement actually undertaken or to be undertaken. In addition, the Assembly in a Resolution in 1980 decided that compensation could not be paid based on theoretical models.
- 5.9 Applying in part the international Conventions and in part national law is a way to circumvent the Conventions and again sets up a dangerous precedent for the future.

Distribution of the amounts available for compensation under the Conventions.

- 5.10 In its judgment, the Supreme Court states that it is for the Spanish Court to distribute the amounts available for compensation. The Court does not clarify whether the amount available from the 1992 Fund would be available also for claimants that are not party to the court proceedings. However, it could be inferred that the court intended that the compensation available from the 1992 Fund should be distributed between the parties to the legal proceedings in Spain only, ignoring the rights of claimants, like the Portuguese Government, which has settled its claims with the 1992 Fund and who has received 15% of its compensation.
- 5.11 The Director is also concerned that there are legal proceedings pending before the French Courts which will take many years before they are finalised. If the Spanish Court enforcing the judgement were to receive the full amount available for compensation left (€28 million), these claimants would be deprived of the compensation from the 1992 Fund which would be due to them.
- 5.12 The Director is in discussions with the Spanish and French Governments to find a solution to the complexities involved in this case and which will allow the Fund to pay the balance of €28 million available for compensation less an amount necessary to protect the compensation which might be due to the French claimants with legal proceedings pending before the French Courts. The Director will be issuing an addendum to this document once he has had these discussions with the French and Spanish Governments.

6 Action to be taken

1992 Fund Executive Committee

The 1992 Fund Executive Committee is invited to take note of the information contained in this document.
