



International Oil Pollution
Compensation Funds

Agenda Item 3	IOPC/APR19/3/4	
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1992 Fund Assembly	92AES23	
1992 Fund Executive Committee	92EC72	●
Supplementary Fund Assembly	SAES7	

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:

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. 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 SDR 4.51 million (€5.49 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, were submitted by two clean-up contractors to the shipowner and insurer. The shipowner and insurer also received a claim for clean-up expenses from the Greek State for some €222 000.

In May 2015, the Piraeus Court of First Instance awarded the main clean-up contractor, the sum of €14.4 million. At its April 2016 session, the 1992 Fund Executive Committee authorised the Director to settle the main contractor's claim for €12 million and to claim back from the insurer the 1992 CLC limit (SDR 4.51 million).

Shortly after the payment was made to the main contractor, the shipowner and insurer filed appeals against the first instance judgment rendered in May 2015. The main contractor also filed an appeal against the shipowner and insurer, attempting to increase the figure awarded by the judgment in May 2015 (€14.4 million), to the figure originally claimed (€15.8 million).

In December 2016, the 1992 Fund was informed by the insurer's lawyers that the insurer would likely be put into voluntary liquidation as it could not comply with Greek insurance solvency regulations. In February 2018, the Bank of Greece revoked the insurer's license and placed the company under liquidation for failure to maintain the necessary solvency capital requirements under Greek law.

In March 2018, the Piraeus Court of Appeal issued its judgment dismissing all the insurer's allegations made in 2017. The judgment distinguished the case of carriage of more than 2 000 tonnes of oil (in which case the 1992 CLC right to limit applies) from the case of carriage of less than 2 000 tonnes of oil and held that in either case there was an obligation to insure and a right of direct action against the insurer.

The judgment also held that since no limitation fund had been established in this case, the insurer was liable for the full amount claimed, i.e. for €15.8 million.

Recoverability of the 1992 CLC limit from the insurer

When the 1992 Fund was informed that the insurer would be put into liquidation, the 1992 Fund filed applications for prenotated mortgages^{<2>} against buildings owned by the insurer, and following the insurer having been placed under liquidation, the 1992 Fund registered its claim with the liquidator.

In relation to the 1992 Fund's attempts to secure prenotated mortgages over the insurer's properties, in late July 2018, the Piraeus Court of Appeal accepted that the 1992 Fund could register prenotated mortgages existing prior to 1 January 2016. The insurer has appealed this judgment to the Greek Supreme Court.

In contrast, the Athens Court of Appeal held that the right to record prenotated mortgages existed only for judgments issued after 1 January 2016, and the final judgment issued in May 2015, must be provisionally enforceable. The 1992 Fund has appealed this judgment to the Supreme Court.

The 1992 Fund's Greek lawyers have advised that the change to the law of 1 January 2016, makes no differentiation on whether the final judgment on the basis of which prenotated mortgages are requested, should have been issued before or after 1 January 2016. Accordingly, they advised that the Athens Court of Appeal's judgment is incorrect.

Recent developments:

Since the 1992 Fund now has two judgments in its favour from the Piraeus Court of Appeal and the Thessaloniki Court of First Instance, and one against it from the Athens Court of Appeal, the 1992 Fund has appealed the issues to the Greek Supreme Court. If successful, this will raise the 1992 Fund up the list of creditors of the insurer, now in liquidation. The 1992 Fund's lawyers have also requested the liquidator to confirm the claims filed against the insurer's assets and await the liquidator's response.

Relevant documents:

The [online Alfa I 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.

^{<2>} A prenotated mortgage is a right in rem. Upon a final and unappealable judgment being issued, the prenotated mortgage may be rendered into a full mortgage, retroactively as of the date of registration of the prenotated mortgage. Therefore, if the prenotated mortgages are registered, the 1992 Fund's claim for compensation will rank ahead of other unsecured claims.

1 Summary of incident

Ship	<i>Alfa I</i>
Date of incident	5 March 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
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	SDR 4.51 million (€5.49 million)
STOPIA/TOPIA applicable	Not applicable
CLC + Fund limit	SDR 203 million (€247.32 million)
Legal proceedings	<p><i>Legal proceedings:</i></p> <p>(a) A claim against the shipowner, insurer and 1992 Fund, by the main clean-up contractor for some €15.8 million which was settled for €12 million; and</p> <p>(b) a claim against the shipowner and insurer by the second clean-up contractor which became time-barred on 5 March 2018.</p> <p><i>Claim by Greek State against the shipowner and insurer:</i></p> <p>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. In July 2018, the Greek State registered its claim with the liquidator.</p>

2 Background information

The background information to this incident is summarised above. Further background information is provided in more detail in the [online Alfa I incident report](#).

3 Civil proceedings

Claim by second clean-up contractor

- 3.1 The second clean-up contractor decided not to accept the 1992 Fund's offer of settlement of its claim for €100 000. The Court set a date for hearing the second contractor's claim in October 2017, but this was adjourned until May 2018 in anticipation of the expected judgment of the Court of Appeal in the 1992 Fund's legal action against the insurer. Given that the incident took place on 5 March 2012, this claim became time barred on 5 March 2018 i.e. six years from the date when the incident occurred (Article 6, 1992 Fund Convention).

The settlement with the main clean-up contractor

- 3.2 In October 2016^{<3>}, the 1992 Fund settled the main clean-up contractor's claim against the shipowner, insurer and the 1992 Fund for €12 million, in consideration of an assignment from the clean-up contractor to the 1992 Fund of an equal part of its claim against the insurer. The main contractor's original claim amounted to some €15.8 million plus interest and costs.
- 3.3 Shortly after the payment was made to the main contractor, the shipowner and insurer filed appeals against the first instance judgment originally rendered in May 2015. The main contractor also filed an appeal against the shipowner and insurer, attempting to increase the figure awarded by the judgment in May 2015 (€14.4 million), to the figure originally claimed (€15.8 million).
- 3.4 In March 2018, the Piraeus Court of Appeal issued judgment No 187/208 dismissing all the shipowner and insurer's allegations. Specifically, the Court ruled that:
- Under the 1992 Civil Liability Convention (1992 CLC), the obligation of insurance (and the corresponding right of direct claim against the insurer) applies in the case of actual carriage of more than 2 000 tonnes of persistent oil;
 - however, Article 9 of law 314/1976 which ratified the 1992 CLC in Greece, imposes a similar obligation of insurance for vessels carrying up to 2 000 tonnes of oil, with a right to limit at SDR 600 X GRT and with all remaining provisions of the 1992 CLC remaining applicable (e.g. right of direct claim against the insurer); and
 - in order to limit liability, the corresponding limitation fund must be established.
- 3.5 The judgment distinguished the case of carriage of more than 2 000 tonnes of oil (in which case the 1992 CLC right to limit applies) from the case of carriage of less than 2 000 tonnes of oil, but in either case the Court held that there was an obligation to insure and a right of direct action against the insurer. Furthermore, since no limitation fund had been established in this case, the Court held that the insurer was liable for the full amount claimed, i.e. for €15.8 million.

4 Recourse actions*Recoverability of the 1992 CLC limit from the insurer*

- 4.1 After making payment to the main contractor in October 2016, the 1992 Fund attempted to persuade the insurer to repay the limitation sum due under the 1992 CLC. However, after failing to reach any amicable solution with the insurance company, the 1992 Fund's lawyers advised that in their view, the 1992 Fund's interest would be better safeguarded by securing its claim in respect of the limitation sum due from the insurer under the 1992 CLC, through mortgages obtained over the insurer's assets, which they had previously identified as including some €10.6 million of unencumbered assets (properties)^{<4>}.

^{<3>} In April 2016, the 1992 Fund Executive Committee authorised the Director to settle the main clean-up contractor's claim for €12 million and to claim back from the insurer the sum due under the 1992 CLC.

^{<4>} Article 240 of law 4364/2016 (enacting in Greece the Solvency II Directive 2009/138/EC) equips with a privilege, ahead of insurance claims, *inter alia*, claims on properties encumbered with rights *in rem*. A prenotated mortgage is a right *in rem*. Upon a final and unappealable judgment being issued, the prenotated mortgage may be rendered into a full mortgage, retroactively as of the date of registration of the prenotated mortgage. Therefore, if the prenotated mortgages are registered, the 1992 Fund's claim for compensation will rank ahead of other unsecured claims.

- 4.2 The 1992 Fund instructed its lawyers to immediately file applications at six different Greek land registries in whose jurisdictions the insurer's properties were located, to register prenotated mortgages, in order to secure the 1992 Fund's claim in respect of the sum due from the insurer under the 1992 CLC, which had been paid by the 1992 Fund as part of the main contractor's settlement. However, initially only the land registry in Thessaloniki accepted the 1992 Fund's application and granted the registration of prenotated mortgages on two properties owned by the insurer as security for a proportion of the 1992 Fund's claim amounting to €851 000.

Applications for prenotated mortgages — Thessaloniki

- 4.3 In July 2017, the insurer submitted a writ of action before the Thessaloniki Court of First Instance, requesting the deletion of the prenotated mortgages recorded on its Thessaloniki properties on the grounds that the first instance judgment of the Court of Piraeus could not be considered a title for the prenotated mortgages since it was issued in 2015. Pleadings for this writ of action were submitted before court in November 2017. In late 2018, the Court issued a judgment, dismissing the insurer's request.

Applications for prenotated mortgages — Athens

- 4.4 In early August 2017, the 1992 Fund attended before the Athens Court of Appeal for a hearing date for its appeal against the Athens Court of First Instance judgment that had dismissed the Fund's application for prenotated mortgages over the insurer's properties in Athens, Koropi, Faliro and Glyfada. The appeal was set for hearing on 9 November 2017. In February 2018, the Athens Court of Appeal dismissed the 1992 Fund's appeal and held that the possibility to record prenotated mortgages by virtue of a first instance judgment existed only for judgments that were issued after 1 January 2016^{<5>} and which were declared provisionally enforceable. In November 2018, the Fund appealed the decision of the Athens Court of Appeal to the Supreme Court. A date for the hearing is awaited.

Applications for prenotated mortgages — Piraeus

- 4.5 The 1992 Fund's application to register prenotated mortgages was initially denied by the Piraeus registry, but following a successful appeal, a prenotated mortgage was recorded on a property owned by the insurer in Piraeus. The insurer filed a caveat against the judgment which was accepted by the Court but subsequently appealed by the 1992 Fund, and in July 2018, the Piraeus Court of Appeal issued its judgment, finding in favour of the 1992 Fund, and accepting the opposite views from those accepted by the Athens Court of Appeal. The insurer (now in liquidation) has recently appealed the decision of the Piraeus Court of Appeal to the Greek Supreme Court and a hearing date has been set for 24 February 2020.

Insurer's liquidation

- 4.6 In February 2018, the Bank of Greece revoked the insurer's license and placed the company into liquidation for failure to maintain the necessary solvency capital requirements under Greek law. The liquidator was appointed shortly afterwards.
- 4.7 In July 2018, the 1992 Fund registered its claim with the liquidator. The 1992 Fund's lawyers have requested the liquidator to release the details of the other claims which have been lodged against the insurer, and this information is awaited.

<5> The judgment was issued in May 2015.

Legal considerations

- 4.8 At present, the 1992 Fund faces one adverse judgment from the Athens Court of Appeal denying the 1992 Fund the right to record prenotated mortgages against the insurer's properties. This has been appealed by the 1992 Fund to the Supreme Court.
- 4.9 In respect of the judgment in favour of the 1992 Fund from the Piraeus Court of Appeal, the insurer has also appealed that decision to the Supreme Court, and a hearing date has been set for 24 February 2020.
- 4.10 Finally, a recent judgment from the Thessaloniki Court of First Instance dismissed the insurer's writ of action, and which effectively permits the registration of the prenotated mortgages on the Thessaloniki properties.
- 4.11 The 1992 Fund's lawyers have advised that if the judgment from the Athens Court of Appeal is overturned at the Supreme Court, (and by implication, the Piraeus Court of Appeal is upheld) this would permit the 1992 Fund the right to record prenotated mortgages against the insurer's properties and would raise the 1992 Fund up the list of creditors above other claimants with insurance claims^{<6>}.
- 4.12 The Director will report any developments in the legal proceedings at the next session of the 1992 Fund Executive Committee.

5 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.

^{<6>} At present, as a creditor, the 1992 Fund's claim will rank in order, and be paid *pro rata*, with all other insurance claims.