



International Oil Pollution  
Compensation Funds

<b>Agenda Item 3</b>	IOPC/OCT19/3/2	
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<b>1992 Fund Assembly</b>	92A24	
<b>1992 Fund Executive Committee</b>	92EC73	●
<b>Supplementary Fund Assembly</b>	SA16	

## INCIDENTS INVOLVING THE IOPC FUNDS — 1992 FUND

### PRESTIGE

#### Note by the Secretariat

<b>Objective of document:</b>	To inform the 1992 Fund Executive Committee of the latest developments regarding this incident.
<b>Summary:</b>	<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&amp;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.</p> <p>In December 2018 the Spanish Supreme Court awarded losses as follows: EUR 1 439.08 million (pollution damage EUR 884.98 million + pure environmental and moral damages EUR 554.10 million).</p> <p>The judgment stated that moral and pure environmental damages were not recoverable from the 1992 Fund.</p>
<b>Recent developments:</b>	<p>In accordance with the judgment, and as authorised by the Executive Committee, the 1992 Fund paid into Court the amount of EUR 27.2 million. The 1992 Fund retained EUR 804 800 for the reasons explained in section 3.3.</p> <p>In addition, the Fund provided the Court with a list of the amounts due to the claimants in the Spanish legal proceedings prorated at 15.22%. This level of payments resulted from dividing the amount awarded by the Court by the amount available in compensation.</p> <p>The Court of Cassation in France, in the context of the action by the French Government against the American Bureau of Shipping (ABS), delivered a judgment in April 2019 deciding that ABS cannot rely on the defence of sovereign immunity.</p>
<b>Relevant documents:</b>	The online <i>Prestige</i> incident report can be found via the Incidents section of the IOPC Funds' website.
<b>Action to be taken:</b>	<p><u>1992 Fund Executive Committee</u></p> <p>Information to be noted.</p>

# 1 Summary of incident

Ship	<i>Prestige</i>
Date of incident	13.11.2002
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 Limited (London P&I Club)
CLC Limit	EUR 22 777 986
CLC + Fund limit	EUR 171 520 703
Level of payments	15.22%
Compensation	<p>The 1992 Fund has paid into Court the amount available for compensation from the 1992 Fund under the Conventions, retaining EUR 804 800 (see section 3.3), i.e. EUR 147.9 million. The London P&amp;I Club paid into Court the amount of the CLC limit i.e. 22.8 million. It is for the Court in La Coruña to distribute the amount available for compensation between the claimants.</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 amendments, is EUR 1 439.08 million (pollution damage EUR 884.98 million + pure environmental and moral damages EUR 554.10 million). The 1992 Fund is liable for the pollution damage, and not for pure environmental and moral damages. The shipowner and the London P&amp;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 EUR 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> The Court of Appeal rejected the claim by Spain against ABS for considering that Spain had not produced sufficient evidence to establish that ABS had acted in a reckless manner.</p> <p><u>France</u> France brought a legal action against ABS in Bordeaux. The 1992 Fund has also brought a legal action against ABS to prevent its right to obtain reimbursement from ABS becoming time-barred under French law.</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**

For information on the judgment of the Supreme Court on liability see document IOPC/APR16/3/2.

### 3.2 **Judgment of the Supreme Court on quantum<sup><1></sup>**

3.2.1 In December 2018, the Spanish Supreme Court delivered its judgment on the quantification of the losses. The total amount awarded, after amendments in January and March 2019, was EUR 1 439.08 million (pollution damage EUR 884.98 million + pure environmental and moral damages EUR 554.10 million), as follows:

- EUR 1 357.14 million (pollution damage EUR 803.04 million + pure environmental and moral damages EUR 554.10 million) to the Spanish State.
- EUR 67.5 million, i.e. the claimed amount, to the French State.
- EUR 14.44 million for individual claimants in Spain and France.

3.2.2 The judgment also awarded interest to be quantified by the Court.

3.2.3 The judgment clarified that pure environmental and moral damages were not recoverable from the 1992 Fund.

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

### 3.3 **Payment into the Court**

3.3.1 The Court in charge of the enforcement of the judgment issued an order requesting the 1992 Fund to pay the limit of its liability after deducting the amounts already paid by the Fund, i.e. EUR 28 million.

3.3.2 At its April 2019 session, the Executive Committee noted that the Director was of the view that the 1992 Fund should comply with the judgment. It was noted, however, that there were legal proceedings pending in other jurisdictions and that if the 1992 Fund were to pay the full amount available from the 1992 Fund to the Spanish Court, these claimants would not be able to receive compensation from the 1992 Fund.

3.3.3 The Committee noted that the Director considered it prudent for the 1992 Fund to keep EUR 800 000 available to pay the claimants with legal actions pending before the French courts, should they obtain a judgment from the French courts.

3.3.4 The Committee also noted that the Director considered that the 1992 Fund should keep EUR 4 800 available to pay the Portuguese Government, who was not a party to the legal proceedings in Spain.

3.3.5 The Committee further noted that the final level of payments would not be confirmed until the legal proceedings in France had been resolved and the distribution made by the Court had been considered. It was noted that at that time, the Executive Committee would have to decide how to distribute the balance

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<sup><1></sup> Section 3.3 of document IOPC/APR19/3/2.

of EUR 800 000 that would have not been used to pay compensation in France and whether EUR 4 800 was due to the Portuguese Government.

3.3.6 At that session the 1992 Fund Executive Committee decided to authorise the Director to pay to the Spanish Court EUR 28 million less:

- (i) EUR 800 000 which should be kept available to pay any judgments by French courts; and
- (ii) EUR 4 800 which should also be kept available to pay the Portuguese Government to ensure that the principle of equal treatment between claimants is maintained.

3.3.7 In April 2019, the 1992 Fund paid into the Court some EUR 27.2 million. The Fund also provided the Court with a list of the amounts due to the claimants in the Spanish legal proceedings prorated at 12.65% (for the amounts to be paid under the 1992 Fund Convention) and 2.57% (for compensation available under the 1992 Civil Liability Convention (CLC))<sup><2></sup>.

#### **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 paragraph 3.2.1).

4.2 There are also other 38 actions totalling EUR 824 700 brought by claimants in France, but the 1992 Fund reached agreements with those claimants, and has paid EUR 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 EUR 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 Court.
- There remain 19 actions totalling EUR 1.2 million pending before French courts.

4.4 The French courts have rendered judgments awarding some EUR 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**

4.5.1 In April 2010, the French Government brought a legal action in the Court of First Instance in Bordeaux against the classification society of the *Prestige*, namely the American Bureau of Shipping (ABS). The defendants opposed this action relying on the defence of sovereign immunity. The Judge referred the case for a preliminary ruling by the Court on the question of whether ABS was entitled to sovereign immunity from legal proceedings.

4.5.2 In a judgment rendered in March 2014, the Court decided that ABS was entitled to sovereign immunity as the Bahamas (the flag State of the *Prestige*) would be. The French Government appealed against the judgment.

4.5.3 The Court of Appeal in Bordeaux rendered its decision in March 2017. The Court of Appeal considered that in the litigation, France was not relying upon faults committed by ABS in its activity of statutory certification on behalf of the Bahamas State. The Court considered that France was instead relying on alleged negligence

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<2> See section 2 of document IOPC/APR19/3/2/1.

in the performance of ABS' obligations in the technical visits and periodic inspections carried out in the context of its classification activity, which were related to a private agreement between ABS and the owner of the *Prestige*, and which France argued had contributed to the occurrence of the *Prestige* incident. The Court therefore overturned the ruling of the Court of First Instance and decided that ABS could not benefit from sovereign immunity.

- 4.5.4 The Court of Appeal ordered the case to be remitted to the Court of First Instance for the continuation of the proceedings in which it will consider pending procedural objections and the merits of the claims.
- 4.5.5 In June 2017, ABS lodged a further appeal to the Court of Cassation.

#### *Judgment by the Court of Cassation*

- 4.5.6 The Court of Cassation rendered its judgment in April 2019. The Court considered that the certification and classification work came under different legal regimes and were separable. In the Court's view only the certification work authorised a private-law company to avail itself of the sovereign immunity of the flag State, which had specially authorised it to issue the statutory certification, on its behalf, to the shipowner.
- 4.5.7 The Court of Cassation recalled that the Court of Appeal in Bordeaux, in its judgment, had held that the liability of the ABS organisations in this case, which are private law companies, was raised, not for their certification work on behalf of the State of the Bahamas, but for their classification work. This was due to infringements committed in fulfilling obligations to carry out periodical visits and inspections required of them by the agreement ABS had entered into with the owner of the *Prestige*. The Court of Cassation, therefore, upheld the previous judgment and decided that ABS could not avail itself of the defence of sovereign immunity in this case.
- 4.5.8 Now the case will go back to the Court of First Instance in Bordeaux to consider the merits of France's claim against ABS.

#### 4.6 Legal action by the 1992 Fund against ABS

- 4.6.1 Following the decision of the 1992 Fund Executive Committee at its October 2012 session, the 1992 Fund brought a recourse action against ABS in the Court of First Instance in Bordeaux.
- 4.6.2 ABS submitted points of defence alleging that it was entitled to sovereign immunity as the Bahamas (the flag State of the *Prestige*) would be.
- 4.6.3 The proceedings in the Court of First Instance in Bordeaux have been stayed.

### **5 Director's considerations**

- 5.1 In accordance with the judgement of the Spanish Supreme Court, and as authorised by the Executive Committee, the 1992 Fund has paid into Court the amount available from the 1992 Fund under the 1992 Fund Convention, less the amounts already paid by the 1992 Fund and leaving aside a small amount to cover potential liabilities in France and Portugal. The amount paid to the Court is EUR 27.2 million, with EUR 804 800 being retained by the 1992 Fund as explained in section 3.3.
- 5.2 In addition to the payment, the Fund also provided the Court with a list of the amounts due to the claimants in the Spanish legal proceedings prorated at 12.65% (for the amounts to be paid under the 1992 Fund Convention) and 2.57% (for compensation available under the 1992 CLC). It is for to the Court, however, to distribute the compensation between the claimants.
- 5.3 The Court of Cassation in France, in the context of the action of the French Government against ABS, has decided that ABS cannot rely on the defence of sovereign immunity. The proceedings will now continue on the merits of the French Government claim against ABS.

**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.

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