



INCIDENTS INVOLVING THE 1992 FUND

INCIDENT IN GERMANY

Note by the Director

Summary: The German authorities took legal action against the owner of a ship, the *Kuzbass*, suspected of having caused oil pollution in Germany in 1996, and against his insurer. The shipowner and the insurer maintained that the polluting oil did not originate from the *Kuzbass*. The 1992 Fund intervened in the proceedings and maintained that the *Kuzbass* was the most likely source of the pollution. The German authorities also took legal action against the 1992 Fund to prevent their claim from becoming time-barred. On 12 December 2002 the Court of first instance rendered a judgement on the issue of liability and held that the shipowner and the insurer were jointly and severally liable for the pollution damage.

Action to be taken: Information to be noted.

1 The incident

- 1.1 From 20 June to 10 July 1996 crude oil polluted the German coastline and a number of German islands close to the border with Denmark in the North Sea. The German authorities undertook clean-up operations at sea and on shore and some 1 574 tonnes of oil and sand mixture was removed from the beaches.
- 1.2 The German Federal Maritime and Hydrographic Agency took samples of the oil that was washed ashore. The German authorities have maintained that comparisons with an analytical chemical database on North Sea crude oils originally developed by the Federal Maritime and Hydrographic Agency showed that the pollution was not caused by crude oil from North Sea platforms. Chemical analysis showed that the oil in the samples was of Libyan origin.
- 1.3 Investigations by the German authorities revealed that the Russian tanker *Kuzbass* (88 692 GT) had discharged Libyan crude in the port of Wilhelmshaven on 11 June 1996. According to the German authorities there remained on board some 46 m³ of oil which could not be discharged by the ship's pumps.

- 1.4 The *Kuzbass* departed from Wilhelmshaven on 11 June 1996 and passed a control point near the Dover Coast Guard station on 14 June 1996. Based on an evaluation of data provided by Lloyd's Maritime Information Services, the German authorities have maintained that there were no other movements of tankers with Libyan crude oil on board during the time and in the area in question. According to the German authorities, analyses of oil samples taken from the *Kuzbass* matched the results of the analyses of samples taken from the polluted coastline.
- 1.5 The German authorities approached the owner of the *Kuzbass* and requested that he should accept responsibility for the oil pollution. They stated that, failing this, the authorities would take legal action against him. The shipowner and his P & I insurer, the West of England Ship Owners' Mutual Insurance Association (Luxembourg) (West of England Club), informed the authorities that they denied any responsibility for the spill.

2 1992 Fund's involvement

- 2.1 The German authorities informed the 1992 Fund that, if their attempts to recover the cost of the clean-up operations from the owner of the *Kuzbass* and his insurer were to be unsuccessful, they would claim against the 1992 Fund.
- 2.2 The limitation amount applicable to the *Kuzbass* under the 1992 Civil Liability Convention is estimated at approximately 38 million SDR (£34 million).

3 Legal actions

- 3.1 In July 1998 the Federal Republic of Germany brought legal actions in the Court of first instance in Flensburg against the owner of the *Kuzbass* and the West of England Club, claiming compensation for the cost of the clean-up operations for an amount of DM2.6 million (€1.3 million, approximately £850 000).
- 3.2 The 1992 Fund was notified in November 1998 of the legal actions. In August 1999, the 1992 Fund intervened in the proceedings in order to protect its interests.
- 3.3 The owner of the *Kuzbass* and the West of England Club presented pleadings to the Court maintaining that their own chemical analyses had demonstrated that the oil carried by the *Kuzbass* was not identical to the oil found ashore. They pointed out that the oil carried by the *Kuzbass* was Libyan Brega crude oil whereas the polluting oil was not.
- 3.4 The shipowner and the West of England Club also referred to the results of the investigation of the German police and of the Italian public prosecutor^{<1>}, both of which, according to the owner and the Club, had not found any valid evidence to support the accusation against the *Kuzbass*.
- 3.5 In their reply to the Court, the German authorities maintained that there was *prima facie* evidence that the pollution could only have been caused by the *Kuzbass* and that the analysis carried out on behalf of the shipowner and the Club did not rebut this *prima facie* evidence.
- 3.6 The pleadings submitted by the owner of the *Kuzbass* and the West of England Club and the pleadings presented by the German authorities are summarised in paragraphs 3.3 – 3.5 of document 92FUND/EXC.14/3.
- 3.7 The Court appointed an expert to consider the evidence as to the origin of the oil, and in particular whether the samples of oil and sand mixture contained residues of tank washing and/or residues of slops and whether the residues originated from Libyan Brega crude oil. The expert concluded that the samples in question contained without any doubt residues of crude oil typical of those

<1> The port of discharge of the next cargo was in Italy.

found in tank washings (slops) from oil tankers. He stated that there was no trace of sludge in the samples. The expert expressed the view that the quantity of oil recovered (ie several hundred tonnes) ruled out that sludge oil had contributed to the pollution. On the basis of the examination carried out by the Federal Maritime and Hydrographic Agency the oil in question was in his view without any doubt Libyan crude oil, but it was not possible to relate this oil to a particular well. The expert also stated that it was not possible to establish whether the pollution was caused by the cargo carried by the *Kuzbass* without having access to samples taken from its slops tank.

- 3.8 The Court ordered the defendants to produce the complete recordings of the OD-MAC-System and the complete oil record book for the year 1996. The defendants replied that these documents were not available any more since the *Kuzbass* had been scrapped long ago and therefore most of the vessel's documents had been destroyed.

4 Considerations by the Director

- 4.1 The Director concurred with the findings of the court expert. However, after studying the analytical data submitted by the Federal Maritime and Hydrographic Agency, in particular the mass spectrograms of the pollution samples, he noted that there was a remarkable match with Libyan Es Sider crude as opposed to Libyan El Brega crude, the latter being the oil transported by the *Kuzbass* on the voyage immediately prior to the alleged pollution offence. According to the schedule of Libyan crude exports produced by Lloyd's Maritime Information Services, prior to carrying the cargo of El Brega crude to Wilhelmshaven, the *Kuzbass* had carried two cargoes of Es Sider crude (loaded on 14 February and 28 March 1996) and one cargo of Ras Lanuf crude (loaded on 22 February 1996). If the *Kuzbass* had been the source of the pollution, and if this had resulted from the overboard discharge of slops accumulated over several voyages, this might, in the Director's view, explain why the mass spectrograms of the pollution samples most resembled mass spectrograms of Es Sider crude. On the basis of the evidence presented by the German authorities the Director considered that the pollution was caused by a discharge of crude oil closely resembling Es Sider crude from a tanker and that the *Kuzbass* was the most likely source of the contamination.
- 4.2 In September 2002 the 1992 Fund submitted to the German authorities a document summarising the Fund's position.
- 4.3 On 12 December 2002 a hearing before the Court of first instance was held in Flensburg. The Court presented a summary of the facts and gave a provisional opinion on the legal issues involved. Thereafter the claimant, the defendants and the Fund addressed the main issues.
- 4.4 The same day the Court rendered a part-judgement in which it held that the owner of the *Kuzbass* and the West of England Club jointly and severally liable for the pollution damage on the grounds that the circumstantial evidence pointed overwhelmingly to the oil having originated from the *Kuzbass*. The Court did not deal with the quantum of the losses suffered by the German authorities and stated that this issue would be considered at the request of one of the parties, but not until the judgement on liability issue had become final.
- 4.5 It is not known whether the shipowner and the West of England Club intend to appeal against the judgement.

5 Time bar

- 5.1 Claimants lose their right to compensation under the 1992 Fund Convention unless they bring court action within three years of the date on which the damage occurred or make formal notification to the 1992 Fund of a court action against the shipowner or his insurer within that three-year period. However, in no case shall a court action be brought after six years from the date of the incident which caused the damage.

5.2 As indicated above the German authorities notified the 1992 Fund of their legal actions against the owner of the *Kuzbass* and the West of England Club in order to prevent their rights against the 1992 Fund becoming time barred at the expiry of the three-year period. However, in order to prevent their claims against the Fund becoming time barred at the expiry of the six-year period, the authorities took legal action against the 1992 Fund on 14 June 2002. The 1992 Fund applied to the Court to stay the proceedings in respect of this action, pending the outcome of the action by the German authorities against the shipowner and the West of England Club. The stay was granted by the Court on 12 November 2002.

6 Action to be taken by the Executive Committee

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