



INTERNATIONAL
OIL POLLUTION
COMPENSATION
FUND 1992

EXECUTIVE COMMITTEE
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Agenda item 3

92FUND/EXC.22/3
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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. The Court of first instance held that the shipowner and the insurer were jointly and severally liable for the pollution damage. The shipowner and the insurer have appealed against the judgement.

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 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 In order to prevent their claims against the Fund becoming time barred at the expiry of the six-year period from the date of the incident, the German authorities took legal action against the 1992 Fund in 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 in November 2002.
- 3.4 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.
- 3.5 In December 2002 the Court rendered a part-judgement in which it held that the owner of the *Kuzbass* and the West of England Club were jointly and severally liable for the pollution damage. The Court acknowledged that the German authorities had failed to provide conclusive evidence that the *Kuzbass* was the vessel responsible, but that the circumstantial evidence pointed overwhelmingly to that conclusion. 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 the liability issue had become final.

- 3.6 The shipowner and the West of England Club have appealed against the judgement. In the appeal they have argued that the Court of first instance followed incorrect and irregular procedures in that essential parts of the records of the hearing in December 2003 do not properly reflect the statements made at the hearing. The appellants further maintain that the Court took evidence from the public prosecutor's office in relation to the criminal investigation without a court order and without giving them the opportunity to comment on the evidence.
- 3.7 The main thrust of the appellants' grounds for appeal is that the chemical analyses of the pollution samples did not provide conclusive proof that the oil originated from the *Kuzbass* and that there were three other vessels in the southern North Sea at the relevant time that had previously carried cargoes of Libyan crude oil and which could therefore have caused the pollution.
- 3.8 The 1992 Fund's lawyers have expressed the view that on the basis of the circumstantial evidence pointing to the *Kuzbass* as the source of pollution, and the lack of exonerating evidence of the appellants, the decision of the first instance Court should be confirmed by the Appeal Court.
- 3.9 The Fund has applied to the Appeal Court for permission to inspect the court files, including the file of the public prosecutor's office, following which the Fund will prepare a statement of response. The Director has proposed a meeting with the German authorities before finalising the statement.

4 Action to be taken by the Executive Committee

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