



Agenda Item 3	IOPC/MAR20/3/4
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1992 Fund Assembly	92AES24
1992 Fund Executive Committee	92EC74
Supplementary Fund Assembly	SAES8

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:	<p>On 5 March 2012, the Greek-registered tanker <i>Alfa I</i>, laden with 1 800 tonnes of cargo, hit the wreck of the <i>City of Mykonos</i> while crossing Elefsis Bay, near Piraeus, Greece and sank, with the escaped oil impacting some 13 kilometres of the shoreline of Elefsis Bay. Clean-up operations were conducted at sea and on the shoreline.</p> <p>Since the tonnage of <i>Alfa I</i> (1 648 GT) is below 5 000 units, the limitation amount applicable under the 1992 Civil Liability Convention (CLC) is SDR 4.51 million (EUR 5.59 million)^{<1>}. The tanker had an insurance policy limited to EUR 2 million which stated that only non-persistent mineral oils would be covered.</p> <p>Six claims for compensation, together totalling EUR 16.15 million, were submitted by two clean-up contractors to the shipowner and insurer. The shipowner/insurer also received a claim for clean-up expenses from the Greek State for some EUR 222 000.</p> <p>In May 2015, the Piraeus Court of First Instance awarded the main clean-up contractor the sum of EUR 14.4 million. The 1992 Fund has settled the main contractor's claim for EUR 12 million and is claiming back from the insurer the 1992 CLC limit (SDR 4.51 million). 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.</p> <p>In March 2018, the Piraeus Court of Appeal issued its judgment dismissing the insurer's allegations. The judgment held that since no Limitation Fund had been established in this case, the insurer was liable for the full amount claimed by the main clean-up contractor, i.e. for EUR 15.8 million.</p> <p>In June 2019, the insurer filed an appeal to the Supreme Court against the March 2018 judgment. The 1992 Fund has also filed an appeal to the Supreme Court supporting the obligatory insurance provisions under Article VII of 1992 CLC. The appeal is set to be heard in February 2021.</p> <p>In September 2019, the 1992 Fund was served with legal proceedings by the second clean-up contractor, for some Euro 349 400 plus interest. The claim was heard by the</p>

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Based on the exchange rate of 15 January 2020 of SDR 1 = EUR 1.2388.

	Piraeus Court of First Instance in late January 2020. The 1992 Fund defended the claim on the basis that it is time-barred.
Recent developments:	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 registered its claim with the liquidator, in order to raise the 1992 Fund up the list of creditors of the insurer.
	In this regard, 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, which the 1992 Fund has appealed to the Supreme Court.
	However, in January 2020, the 1992 Fund was informed that the 1992 Fund's claims against the liquidation fund of the insurer had been dismissed by the liquidator. Despite further enquiries made by the 1992 Fund's Greek lawyers, no reason has yet been provided for the reason for the dismissal and further details are awaited from the Bank of Greece, the supervising authority of the liquidation. The Fund's lawyers have sent the liquidator an extrajudicial declaration requesting the full list of claims and the justification for the dismissal of the Fund's claim. Further legal steps before the Athens Court of First Instance may be necessary to try to reinstate the Fund's claims before the liquidator.
Relevant documents:	The online <i>Alfa I</i> incident report can be found via the Incidents section of the IOPC Funds' website.
Action to be taken:	<u>1992 Fund Executive Committee</u>
	Information to be noted.

1 Summary of incident

Ship	<i>Alfa I</i>
Date of incident	05.03.2012
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 (EUR 5.59 million)
STOPIA/TOPIA applicable	Not applicable
CLC + Fund limit	SDR 203 million (EUR 251.48 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 EUR 15.8 million which was settled for EUR 12 million;</p>

^{<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.

	<ul style="list-style-type: none"> (b) appeal proceedings brought by the shipowner/insurer against the main clean-up contractor and the 1992 Fund. The insurer has appealed the March 2018 judgment of the Piraeus Court of Appeal to the Greek Supreme Court. That judgment had 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 the Court held that, in either case, there was an obligation to insure and a right of direct action against the insurer; (c) a claim against the shipowner/insurer by the second clean-up contractor which became time-barred on 5 March 2018; (d) recourse proceedings brought by the 1992 Fund for prenotated mortgages against the insurer's unencumbered properties for recovery of the CLC limit; (e) a claim by the Greek State against the shipowner/insurer. In February 2015, a writ of action was served by the Greek State on the shipowner/insurer for some EUR 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; and (f) a claim against the 1992 Fund by the second clean-up contractor for some EUR 349 400 commenced in September 2019.
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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. 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).
- 3.2 In September 2019, the 1992 Fund was served with legal proceedings for some Euro 349 400 plus interest, by the second clean-up contractor. At a court hearing in late January 2020, the 1992 Fund defended the claim on the basis that the claim is time-barred.

Settlement with the main clean-up contractor

- 3.3 In October 2016^{<3>}, the 1992 Fund settled the main clean-up contractor's claim against the shipowner, insurer and the 1992 Fund for EUR 12 million, in consideration of an assignment from the clean-up

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

contractor to the 1992 Fund of an equal part of its claim against the insurer. The main contractor's original claim amounted to some EUR 15.8 million plus interest and costs.

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

Appeal Court Judgment No. 187/2018

- 3.5 In March 2018, the Piraeus Court of Appeal issued judgment No. 187/2018 dismissing all the shipowner/insurer's allegations.
- 3.6 The judgment distinguished the case of carriage of more than 2 000 tonnes of oil (in which case the 1992 Civil Liability Convention (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 EUR 15.8 million.
- 3.7 However, in June 2019, the insurer filed an appeal against judgment No. 187/2018, arguing that these are two separate insurable risks (insurance for carriage of cargoes of at least 2 000 tonnes under the 1992 CLC and insurance for carriage of cargoes of less than 2 000 tonnes under article 9 of law 314/1976) and that the Piraeus Court of Appeal has mixed them by accepting a compensation liability under article 9 of law 314/1976 on the basis of a 1992 CLC certificate that was issued for a different risk. The insurer's appeal is set to be heard in February 2021.
- 3.8 The 1992 Fund's lawyers have filed an appeal to the Supreme Court supporting the obligatory insurance under article VII of 1992 CLC and the ensuing right of direct action against the insurer, and to further highlight that the blue card was issued by the insurer and subsequently relied upon by the Greek authorities in granting the 1992 CLC certificate. Furthermore, it is the 1992 Fund's lawyers' view that the Conventions should prevail over domestic law as supported by article 28 of the Greek Constitution. The 1992 Fund's lawyers will attempt to arrange a joint hearing with the insurer's appeal, set for 2021.

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 an 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 EUR 10.6 million of unencumbered assets (properties)^{<4>}.
- 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

<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.

mortgages on two properties owned by the insurer as security for a proportion of the 1992 Fund's claim amounting to EUR 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 the Thessaloniki Court of First Instance in November 2017. In late 2018, the Thessaloniki Court of First Instance issued a judgment, dismissing the insurer's request, which the insurer subsequently appealed.
- 4.4 The hearing of this appeal took place in December 2019, on documents alone, before the Thessaloniki Court of Appeal and a decision is awaited.

Applications for prenotated mortgages — Athens

- 4.5 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 1992 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, and a decision on this appeal is awaited.
- 4.6 The decision on the appeal is important, not only because it concerns several and the most valuable properties of the insurer, but because it is the first opportunity for the Supreme Court to consider the legal issues arising from the amendment to the law in January 2016, and will likely influence the subsequent appeal filed by the insurer regarding the Piraeus properties.

Applications for prenotated mortgages — Piraeus

- 4.7 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) appealed the decision of the Piraeus Court of Appeal to the Supreme Court and a hearing date has been set for 24 February 2020.

Insurer's liquidation

- 4.8 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.
- 4.9 In July 2018, the 1992 Fund registered its claim with the liquidator. The 1992 Fund's lawyers have repeatedly made requests to the liquidator to release the details of the other claims which were lodged against the insurer, but the liquidator has not released the information.

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The judgment was issued in May 2015.

- 4.10 In January 2020, the 1992 Fund's lawyers reported that the liquidator's website indicated that the claim submitted by the 1992 Fund had been dismissed, without giving any reason. The 1992 Fund's lawyers have expressed surprise since the 1992 Fund's appeal had been upheld by the Piraeus Court of Appeal, and have sent the liquidator a declaration protesting the dismissal of the 1992 Fund's claim and requesting a full list of the admissible claims and the justification for the liquidator's refusal to include the 1992 Fund's claim within the list. Depending on the response received, it may be necessary to consider appealing before the Athens Court of First Instance asking for the 1992 Fund's claim to be included in the list of admissible claims, the costs of which are advised to be fairly minimal.
- 4.11 If the 1992 Fund is successful in recording prenotated mortgages, the 1992 Fund's lawyers have advised that they are confident that the 1992 Fund's claim would have a reasonable chance to be given priority over other creditors of the insurance company^{<6>}.

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> Article 240 of law 4364/2016 (enacting in Greece the Solvency II Directive 2009/138/EC) equips with a privilege, ahead of insurance claims:

- (a) the liquidation costs and remuneration;
- (b) employees' claims for remuneration (including in house lawyers' remuneration claims in the last two years before liquidation) and severance pay;
- (c) tax due to the State;
- (d) social security duties;
- (e) claims on properties encumbered with rights *in rem*.