



INTERNATIONAL
OIL POLLUTION
COMPENSATION
FUND 1992

EXECUTIVE COMMITTEE
45th session
Agenda item 3

92FUND/EXC.45/5/Add.1
8 June 2009
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INCIDENTS INVOLVING THE 1992 FUND

VOLGONEFT 139

Note by the Director

Summary:	At the March 2009 session of the Executive Committee the French delegation enquired whether the Secretariat could have the relevant decisions by the Russian Courts translated and made available to the Committee, so that delegations would be in a position to better understand the basis of the decisions taken. In accordance with this request, the Secretariat has arranged translations of the five relevant decisions which are contained in the annex to this document.
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Action to be taken:	Information to be noted.
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1 Background information

- 1.1 At the 44th session of the 1992 Fund Executive Committee, held in March 2009, the French delegation enquired whether the Secretariat could have the relevant decisions by the Russian Courts translated and made available to the Committee, so that delegations would be in a position to better understand the basis of the decisions taken (cf document 92FUND/EXC.44/10, paragraph 3.4.10).
- 1.2 In accordance with this request, the Secretariat has arranged translations of the five relevant decisions which are contained in the annex to this document.
- 1.3 Delegations may wish to note that, since Russian is not an official language of the IOPC Funds, the translations have not been proofread in the usual way.

2 Action to be taken by the Executive Committee

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

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ANNEX

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SUPREME ARBITRATION COURT OF THE RUSSIAN FEDERATION

DECISION

On the return of a petition
for supervisory review of court judgements

No. 13688/08

Moscow

12 December 2008

The judge of the Supreme Arbitration Court of the Russian Federation, N.A.Ksyenofontova, having considered the petition of the 1992 International Oil Pollution Compensation Fund of 27 November 2008 (not numbered) for the supervisory review of the Decision of the Arbitration Court of Saint Petersburg and Leningrad Region of 28 February 2008 in respect of case No. A56-243 5/2008, the Ruling of the Thirteenth Arbitration Appeals Court of 30 May 2008 and the Ruling of the Federal Arbitration Court of the Northwestern District of 5 September 2008 in respect of the same.

ESTABLISHED

that the petition was lodged in contravention of the requirements set down in section 36 of the Arbitration Procedure Code of the Russian Federation.

In its Decision No. 13688/08 of 5 November 2008 the Judicial collegium of the judges of the Supreme Arbitration Court of the Russian Federation refused the petitioner in the referral of case No. A56-2435/2008 of the Arbitration Court of Saint Petersburg and Leningrad Region to the Presidium of the Supreme Arbitration Court of the Russian Federation on the basis of the absence of grounds provided for under article 304 of the Arbitration Procedure Code of the Russian Federation, for amendment or repeal in exercise of supervisory powers of the Decision of 28 February 2008, the Ruling of the Thirteenth Arbitration Appeals Court of 30 May 2008 and the Ruling of the Federal Arbitration Court of the Northwestern District of 5 September 2008.

The petitioner considers that the petition is being submitted on new grounds.

By way of new grounds the petitioner points to the official publication of the international act, which was not accepted by the courts in respect of this matter owing to it being unpublished at the time that the contested court decisions were made.

The indicated grounds do not constitute new grounds as applied to the procedure for supervisory review of court judgements because the supervisory instance verifies them for conformity with the legislation that is in force at the time the judgement is made.

Given the non-compliance with the conditions for reconsideration with said complaint, provided for under part 9 of article 299 of the Arbitration Procedure Code of the Russian Federation, the complaint cannot be accepted and is returned.

In accordance with article 296 of the Arbitration Procedure Code of the Russian Federation, the Judge of the Supreme Arbitration Court of the Russian Federation

DECIDED:

to return to the petitioner the petition of the 1992 International Oil Pollution Compensation Fund of 27 February 2008 (not numbered) for supervisory review of the Decision of the Arbitration Court of Saint Petersburg and Leningrad Region of 28 February 2008 in respect of case No. A56-243 5/2008, the Ruling of the Thirteenth Arbitration Appeals Court of 30 May 2008 and the Ruling of the Federal Arbitration Court of the Northwestern District of 5 September 2008 in respect of the same.

Enclosed: The petition and the documents that were enclosed with it – on 37 pages + 12 copies of the documents.

Judge N.A.Ksyenofontova

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SUPREME ARBITRATION COURT OF THE
RUSSIAN FEDERATION

DECISION

on denial of referral of the case to the Presidium
of the Supreme Arbitration Court of the Russian Federation

No. 13688/08

Moscow

5 November 2008

The Supreme Arbitration Court of the Russian Federation, comprising the presiding judge N.A. Ksyenofontova and judges L.G. Vorontsova and I.M. Maramyshkina considered in a court hearing the application of the Maritime [sic] Oil Pollution Compensation Fund for reconsideration in accordance with the supervisory procedure of the Ruling of the Arbitration Court of Saint. Petersburg and the Leningrad Region of 28 February 2008 in respect of case No.A56-2435/2008, the Ruling of the Thirteenth Arbitration Appeals Court of 30 May 2008 and the Ruling of the Federal Arbitration Court of the Northwestern District of 5 September 2008 in respect of the same case in the action of the Federal State Unitary Enterprise *Novorossisk Authority for Search-and-Rescue, Salvage and Underwater Engineering Work* against the Joint Stock Company *Volga Bulk-oil Shipping Company – Volgotanker*, the Open Joint Stock Insurance Company *Ingosstrakh* and the 1992 International Oil Pollution Compensation Fund for the recovery of 73 450 452 Roubles of damage caused by the oil spill that resulted from the accident of the tanker “*Volgoneft-139*”.

THE COURT ESTABLISHED:

that before a decision had been made on the present case, the JSC *Volga Bulk-oil Shipping Company – Volgotanker* applied to establish in the Arbitration Court of Saint Petersburg and the Leningrad Region a liability limitation fund for the Shipping Company in the amount of 116 636 700 Roubles to cover any claims for reparation of damage caused by the oil spill, having provided a guarantee from OJSIC *Ingosstrakh*.

The Decision of 28 February 2008 of the Arbitration Court of Saint Petersburg and the Leningrad Region accepted the guarantee of OJSIC *Ingosstrakh* in the amount 116 636 700 Roubles (constituting the Rouble equivalent of 3 000 000 special drawing rights) as acceptable and sufficient provision for the liability limitation fund of the owner of the tanker *Volgoneft-139*, JSC *Volga Bulk-oil Shipping Company – Volgotanker* for damage caused by the oil spill from said tanker on 11 November 2007.

The Arbitration Court of Saint Petersburg and the Leningrad Region also constituted the liability limitation fund of the owner of the vessel *Volgoneft-139* in the sum of 116 280 000 Roubles to cover any claims for reparation of damage caused by the oil spill made against JSC *Volga Bulk-oil Shipping Company – Volgotanker* and/or against any person for action, inaction or omission for which the shipowner is liable, by means of presenting the guarantee of OJSIC *Ingosstrakh* in the sum of 116,636,700 Roubles.

The court of first instance was governed in its decision by the fact that under article 5, paragraph 1 of the 1992 Liability Convention and article 320 of the Merchant Shipping Code of the Russian Federation, the shipowner has the right to limit his liability in respect of any one incident to the total sum of 3 000 000 units of account for a ship with a capacity not exceeding 5000 tonnes. The capacity of the ship *Volgoneft-139* was 3 463 tonnes.

Under article 11 of the Merchant Shipping Code of the Russian Federation the unit of account shall be “a single special drawing right” which equated to 38.76 Roubles as at 21 January 2008.

Taking account of the above, the court reached the conclusion that the shipowner has the right to limit his liability to the sum of 116 280000 Roubles.

The Ruling of the Thirteenth Arbitration Appeals Court of 30 May 2008 and the Ruling of the Federal Arbitration Court of the Northwestern District of 5 September 2008 upheld the Decision of 28 February 2008 without amendment.

The courts of the appeal and cassation instances considered the arguments made by the 1992 International Oil Pollution Compensation Fund that in the consideration of this dispute there had been a violation of article 15, part 4, of the Constitution of the Russian Federation, as in accordance with the decision of the Legal Committee of the Intergovernmental Maritime Consultative Organization [sic] of 18 October 2000 the owner of a ship of a capacity not exceeding 5 000 units has the right to limit his liability under the International Convention on Civil Liability for Oil Pollution Damage, 1969, in respect of any one incident to the total sum of 4 510 000 special drawing rights.

In rejecting the arguments made, the courts of the appeal and cassation instances relied on the fact that in accordance with the provisions of article 15, parts 3 and 4, of the Constitution of the Russian Federation and article 5, part 3, and article 30 of the Federal Act "On International Agreements of the Russian Federation", those international agreements that have entered into force and have been published officially and in accordance with procedure may be applied directly by the courts.

As the amendments of the Legal Committee of the Intergovernmental Maritime Consultative Organization of 18 October 2000 to the 1069 [sic] Convention as amended by the 1992 Protocol have not been officially published in the Russian Federation and the relevant changes have not been made to article 320 of the Merchant Shipping Code of the Russian Federation, they are not subject to application by the courts.

The Maritime Oil Pollution Compensation Fund is requesting reconsideration of said court judgments in accordance with the supervisory procedure, on grounds of the incorrect interpretation by the courts of the provisions of article 15 of the Constitution of the Russian Federation, which, in the opinion of the petitioner, do not envisage the non-application of unpublished international treaties.

Having familiarised itself with the arguments of the petitioner and the materials available, the court does not find grounds as provided for under article 304 of the Arbitration Procedure Code of the Russian Federation for reconsideration of the challenged court judgments in accordance with the supervisory procedure.

The 1969 Convention as amended by the 1992 Protocol entered into force for the Russian Federation on 20 March 2001 and was published on 12 April 2004.

However, the date of entry into force of an international agreement only means the obligatoriness of the provisions of the relevant international agreement for the States that have signed it.

By virtue of article 15 of the Constitution of the Russian Federation and article 5, paragraph 3, of the Federal Act "On International Agreements of the Russian Federation", the obligatoriness of application of the standards of an international agreement for private individuals, which the parties of this dispute are, shall arise only from the date of the official publication of the international agreement of the Russian Federation.

On the basis of the above, the conclusions of the courts as to the non-applicability in consideration of this dispute of the unpublished amendments of the Legal Committee of the Intergovernmental Maritime Consultative Organization of 18 October 2000 to the 1969 Convention are founded.

Governed by articles 299, 301, 304 of the Arbitration Procedure Code of the Russian Federation, the Supreme Arbitration Court of the Russian Federation

DECIDED:

to deny referral to the Presidium of the Supreme Arbitration Court of the Russian Federation case No.A56-2435/2008 of the Arbitration Court of Saint Petersburg and the Leningrad Region for reconsideration under the supervisory procedure of the Decision of 28 February 2008, the Ruling of the Thirteenth Arbitration Appeals Court of 30 May 2008 and the Ruling of the Federal Arbitration Court of the Northwestern District in respect of this case.

Presiding judge signature N.A.Ksyenofontova

Judge signature L.G.Vorontsova

Judge signature I.M.Maramyshkina

Stamp of the Highest Arbitration Court of the Russian Federation: "True copy"

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FEDERAL ARBITRATION COURT OF THE NORTHWESTERN DISTRICT
Ul. Yakubovicha, d. 4,
Saint Petersburg, 190000 www.fasszo.arbitr.ru

RULING

5 September 2008

Case No. A56-2435/2008

The Federal Arbitration Court of the Northwestern District, comprising the presiding judge S.V. Afanasyeva, and judges K. Yu.Korobova and N.N Malishevoy,

with the participation of:

M.B.Levchenko (letter of attorney of 10 January 2008) and K.L.Stikhina (letter of attorney of 25 August 2008) from the Federal State Unitary Enterprise “*Novorossisk Authority for Search-and-Rescue, Salvage and Underwater Engineering Work*”.

S.P.Rudyenko (letter of attorney of 5 March 2008) from the Joint Stock Company “*Volga Bulk-Oil Shipping*”, “*Volgotanker*”;

T.V.Aleshkina (letter of attorney of 19 November 2007) and V.G. Yermolayeva (letter of attorney of 19 November 2007) from the Open Joint Stock Insurance Company “*Ingosstrakh*”;

M.Yu.Sokolova (letter of attorney of 17 February 2008) from the 1992 International Oil Pollution Compensation Fund;

and N.E.Batovoy (letter of attorney of 28 March 2008) and A.R.Mkrtchyana (letter of attorney of 19.05.2008) from the Federal Service on the Supervision in the sphere of the use of nature (Rosprirodnadzor),

having considered on 4 September 2008 in an open hearing the cassation petition of the 1992 International Oil Pollution Compensation Fund with regard to the Decision of the Arbitration Court of Saint Petersburg and Leningrad Region of 28 February 2008 (Judge S.F. Markin) and the Ruling of the Thirteenth Arbitration Appeals Court of 30 May 2008 (Judges V.V. Cheremoshkina, T.A. Kashina and V.B.Slobozhanina) pertaining to case No.A56-2435/2008,

ESTABLISHED:

that the Federal State Unitary Enterprise “*Novorossisk Authority for Search-and-Rescue, Salvage and Underwater Engineering Work*” (hereinafter: Enterprise) applied to Arbitration Court of Saint Petersburg and Leningrad Region with a case against the Joint Stock Company *Volga Bulk-Oil Shipping* “*Volgotanker*” (hereinafter: Shipping Company”, the Open Joint Stock Insurance Company “*Ingosstrakh*” (hereinafter: Insurance Company) and the 1992 International Oil Pollution Compensation Fund (hereinafter: International Fund) for the recovery of 73 450 452 Roubles in reparation of damages caused by the oil spill that resulted from the accident that occurred on 11 November 2007 with a tanker belonging to the first respondent “*Volgoneft-139*” (hereinafter: Tanker).

Before a decision has been made on the case, the Shipping Company submitted an application to establish in the Arbitration Court of Saint Petersburg and Leningrad Region a liability limitation fund for the Shipping Company in the amount of 116 636 700 Roubles (hereinafter: Limitation Fund) to cover any claims for reparation of damages caused by the oil spill from the Tanker, the Insurance Company having made available a guarantee in this amount on 15 February 2008.

The Decision of 28 February 2008 (with account of the Corrigendum of 5 March 2008) accepted the Insurance Company’s guarantee in the amount of 116 636 700 Roubles as acceptable and adequate provision for the Limitation Fund; the Limitation Fund was established in the Arbitration Court of Saint Petersburg and Leningrad Region for the sum of 116 636 700 Roubles, constituting the Rouble equivalent of 3 000 000 special drawing rights (hereinafter: SDR); it was proposed that the Shipping Company disseminate information about the establishment of the Limitation Fund in the “*Rossiiskaya Gazeta*” and submit to the court a list of the known creditors of the Limitation Fund.

The Ruling of the Thirteenth Arbitration Appeals Court of 30 May 2008 upheld the ruling of 28 February 2008 without amendment.

Subsequently the Federal Service for Supervision in the field of Environmental Management (hereinafter: Rosprirodnadzor), the Department of Emergency Situations and State Ecological Control of the Krasnodar Region, the State enterprise "Kerch Merchant Port" became involved in the case in the capacity of plaintiffs as well as the Federal State institution "the Administration of Sea Ports of Taman" and the Administration of Temryuk District in the capacity of third parties.

In its cassation petition the International Fund asks for the Decision of 28 February 2008 and the Ruling of 30 May 2008 to be overturned, and for the case to be sent for re-consideration in the court of the first instance.

As grounds for the petition the petitioner pointed to the fact that the court of first instance and the appeals court in contravention of part 4 of article 15 of the Constitution of the Russian Federation did not take account that, in accordance with the decision of the Legal Committee of the International Maritime Organisation of 18 October 2000, the owner of a ship not exceeding 5000 units of tonnage shall be entitled to limit his liability under the International Convention on Civil Liability for Oil Pollution Damage, 1969 (hereinafter: 1969 Convention) to the total sum of 4 510 000 SDR for any one incident.

In responses to the cassation petition, the Enterprise, Insurance Company and Shipping Company, alluding to its groundlessness, ask for the Decision of 28 February 2008 and the Ruling of 30 May 2008 to be upheld without amendment.

At the court hearing the representative of the International Fund pleaded in favour of the cassation petition, whilst the representatives of the Enterprise, the Shipping Company, the Insurance Company and Rosprirodnadzor pleaded against it.

Other persons involved in the case were advised of the time and place of the hearing, but they did not send their representatives to the hearing, in consequence of which the cassation petition was considered in their absence.

The legality of the contested court rulings was verified in the appeals process.

Pursuant to case materials, on 11 November 2007, the Tanker, which had a full capacity of 3463 tonnes and was loaded with oil, broke in two in very rough seas whilst at anchor in the Kerch Strait.

As a result of this accident the sea and shoreline became polluted with oil.

The Enterprise, having incurred expenses in the execution of measures to prevent and minimize the oil pollution, applied to the appeals court with the present case.

Under the Federal Act of 2 January 2000 No. 27-FZ, the Russian Federation became party to the 1992 Protocol amending the 1969 Convention (hereinafter: 1992 Protocol) and denounced the 1969 Convention with effect from the date the 1992 Protocol entered into force for the Russian Federation.

Under article 6 of the 1969 Convention as amended by the 1992 Protocol, the owner of a ship not exceeding 5000 units of tonnage shall be entitled to limit his liability under the 1969 Convention in respect of any one incident to the total sum of 3 000 000 units of account for a ship (paragraph 1); for the purpose of availing himself of the limitation provided for in paragraph 1, the owner shall constitute a fund for the total sum representing the limit of his liability with the Court or other competent authority of any one of the Contracting States in which action is brought under Article IX or, if no action is brought, with any Court or other competent authority in any one of the Contracting States in which an action can be brought under Article IX. The fund can be constituted either by depositing the sum or by producing a bank guarantee or other guarantee, acceptable under the legislation of the Contracting State where the fund is constituted, and considered to be adequate by the Court or other competent authority (paragraph 3); the fund shall be distributed among the claimants in proportion to the amounts of their established claims (paragraph 4); the "unit of account", referred to in paragraph 1 is the Special Drawing Right, as defined by the International Monetary Fund (paragraph 9).

Similar provisions are set down in article 11, paragraph 1, and in articles 320 and 322 of the Merchant Shipping Code of the Russian Federation (hereinafter: MSC RF).

Taking into account these legal provisions, and that the capacity of the Tanker did not exceed 5000 tonnes, the court of first instance, reasonably allowed the request submitted by the Shipping Company,

and acknowledged the Insurance Company's guarantee as acceptable and adequate provision for the limitation fund and constituted the limitation fund for the sum of 116 280 000 Roubles, constituting the Rouble equivalent of 3 000 000 SDR.

The argument of the appellant in the cassation petition that the limitation fund should have been constituted for the sum of 4 510 000 SDR, as established by the decision of the Legal Committee of the International Maritime Organisation of 18 October 2000, was rightly not taken into account by the court of the first instance and the appeals court on account of the following.

Under part 4, article 15 of the Constitution of the Russian Federation and article 5, paragraphs 1 and 2 of the Federal Act of 15 July 1995 No.101-FZ "On International Agreements of the Russian Federation" (Hereinafter: Act No.101-FZ), the admitted principles and standards of international law and international agreements of the Russian Federation constitute part of its legal system. If an international agreement of the Russian Federation establishes rules that contradict those provided for by law, the rules of the international agreement shall be applied.

Paragraph 3 of the same article 5 of Act No.101-FZ stipulates that the provisions of officially published international agreements of the Russian Federation do not require the adoption of domestic legislation in order to be applied, but apply directly in the Russian Federation. For implementation of other provisions of international agreements of the Russian Federation, the relevant legal instruments are enacted.

The international agreement is subject to application if the Russian Federation, represented by the competent bodies of the State authorities, has consented to be bound to the international agreement by means of one of the actions set out in article 6 of Act No. 101-FZ: by signature of the agreement; exchange of the documents that constitute it; ratification of the agreement; adoption of the agreement; acceptance of the agreement; becoming party to the agreement; by any other means agreed by the parties to the agreement and also on condition that the agreement in question has entered into force for the Russian Federation.

Proceeding from article 15 parts 3 and 4 of the Constitution of the Russian Federation and article 5 part 3 of Act No. 101-FZ, the courts may apply directly those international agreements that have entered into force, and that have been officially published in the Compendium of Legislation of the Russian Federation or in the Bulletin of International Agreements in accordance with the procedure established under article 30 of Act No.101-FZ. Official communications of the Ministry of Foreign Affairs of the Russian Federation regarding the entry into force of international agreements concluded on behalf of the Russian Federation and on behalf of the Government of the Russian Federation are subject to publication in the same way as international agreements (article 30 of Act No.101-FZ).

Thus, international agreements are subject to application in the Russian Federation in the event of the adoption of domestic acts that apply them, or directly, if the adoption of such domestic acts is not required, but on condition of the official publication of these international agreements.

The 1969 Convention as amended by the 1992 Protocol entered into force for Russia on 20 March 2001 and was published on 12 April 2004 in the Compendium of Legislation of the Russian Federation, No.15.

The amendments to the 1969 Convention as amended by the 1992 Protocol adopted on 18 October 2000 by the Legal Committee of the International Maritime Organisation have not been officially published in the Russian Federation and the amendments have not been introduced to article 320 of the MSC RF.

In consequence of this, said amendments were not subject to application by the court.

Given that the decision and the ruling being contested were made in accordance with the norms of substantive and procedural law, there are no grounds for overturning them.

Pursuant to articles 286, 287, 289 and 290 of the Arbitration Procedure Code of the Russian Federation, the Federal Appeals Court of the Northwestern District

DECIDED:

that the Decision of the Arbitration Court of Saint Petersburg and Leningrad Region of 28 February 2008 and the Ruling of the Thirteenth Arbitration Appeals Court of 30 May 2008 in respect of case No. A56-2435/2008 are upheld without amendment, and the cassation petition of the 1992 International Oil Pollution Compensation Fund is rejected.

Presiding Judge: S.V.Afanasyev

Judges: K.Yu.Korobov
N.N. Ualisheva

Certified copy:

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Judge S.V. Afanasyev [signature]

Specialist E. A. Skrilyeva [signature]

* * *

RULING

City of Saint Petersburg

Case No. A56-2435/2008

30 May 2008

Substantive provisions of the Ruling declared on 28 May 2008

Ruling issued in full on 30 May 2008

The Thirteenth Arbitration Appeals Court

Composed of:

Presiding Judge: V.V. Cheremoshkina

Judges: T.A. Kashina and V.B.Slobozhanina

Court proceedings recorded by: L.G. Kovalchuk

Having considered in open court hearing the appeal petition (registration number 13AP-3896/2008) of the 1992 International Oil Pollution Compensation Fund

Against the Decision of the Arbitration Court of the City of Saint Petersburg and the Leningrad Region of 28 February 2008 on case No.A56-2435/2008 (judge S.F. Markin),

Made in the action of the Federal State Unitary Enterprise *Novorossisk Authority for Search-and-Rescue, Salvage and Underwater Engineering Work*

against 1) JSC "*Volga Bulk-oil Shipping Company – Volgotanker*

2) OJSIC *Ingosstrakh*

3) 1992 International Oil Pollution Compensation Fund

On compensation for damage from oil pollution from the tanker

With the participation of:

on behalf of the petitioner: M.B Lyevenchenko., letter of attorney No. 31/Yur. of 10 January 2008

on behalf of the respondents:

1) S.P.Rudyenko, letter of attorney No. 86 of 5 March 2008

2) T.V.Alyeshin, letter of attorney No. 168065-645/08 of 4 February 2008

V.G.Yermolayev, letter of attorney No.168065-645/08 of 4 February 2008

3) M.Y. Sokolov letter of attorney of 17 February 2008

ESTABLISHED:

1. That the Decision of the Arbitration Court of the City of Saint Petersburg and the Leningrad Region of 28 February 2008 (as amended by the decision on amendment of a typographical error of 5 March 2008) granted the application of the JSC *Volga Bulk-Oil Shipping Company – Volgotanker* to establish a liability limitation fund. The court recognized the guarantee of OJSIC *Ingosstrakh* for the sum of 116 636 700 Roubles as acceptable and sufficient security for the liability limitation fund of the owner of the tanker *Volgoneft-139*, Joint Stock Company *Volga Bulk-Oil Shipping Company Volgotanker* for damage caused by the oil spill from the tanker *Volgoneft-139* on 11 November 2007

- and ruled to establish in the Arbitration Court of the city of St.Petersburg and the Leningrad Region the liability limitation fund of the owner of the vessel *Volgoneft-139* (IMO No. 8849608, call sign UHWV, gross tonnage 3463, flag Russia) in the sum of 116 280 000 Roubles to cover any claims for reparation of damage caused by the oil spill from the tanker *Volgoneft-139* on 11 November 2007 made against Joint Stock Company *Volga Bulk-Oil Shipping Company Volgotanker* and/or any person for action, inaction or omission for which Joint Stock Company *Volga Bulk-Oil Shipping Company Volgotanker* is liable, by means of the provision of the guarantee of OJSIC *Ingosstrakh* for the sum of 116 636 700 Roubles., as well as to order the claimant to place in the *Russian Gazette* information about the establishment of the liability limitation fund, specifying the date of the preliminary judicial hearing, to provide the court with a list of the known creditors of the fund and send the decision on the establishment of the liability limitation fund to all possible creditors of the fund.

The 1992 International Oil Pollution Compensation Fund (hereinafter: the Fund) has submitted an appeal petition requesting that the decision on the establishment of the liability limitation fund for *Volgotanker* as the shipowner be overturned and the matter be sent back to the Arbitration Court of the City of Saint Petersburg and the Leningrad Region for reconsideration.

As grounds for its petition, the Fund refers to the circumstance that, when determining the limit of liability of the owner of the vessel, the Court did not take into account the increase, by Decision of the Legal Committee of IMO (International Maritime Organization) of 18 October 2000, in the limit of liability of the owner of a vessel in respect of ships with a capacity not exceeding 5 000 to 4 510 000 SDR (Special Drawing Rights as defined by the International Monetary Fund).

Federal State Unitary Enterprise *Novorossisk Authority for Search-and-Rescue, Salvage and Underwater Engineering Work* did not present a response to the appeal, however its representative at the court hearing asked the court to uphold the court decision without amendment and dismiss the appeal, being of the opinion that the amendment referred to had rightly not been applied by the court of first instance when determining the limit of liability.

JSC *Volga Bulk-Oil Shipping Company Volgotanker* and OJSIC *Ingosstrakh* presented responses to the appeal petition and asked the court to uphold the court ruling without amendment and dismiss the appeal petition for the reasons set out in its response.

At the court hearing the parties supported their legal positions.

In the appeals procedure, the legality and well-foundedness of the decision were verified.

As established by the court of first instance and follows from the provided materials, on 11 November 2007 at about 04.40 hours the tanker *Volgoneft-139* (IMO No.8849608, call sign UHWV, gross tonnage 3463, flag Russia), at anchor in the Kerch Strait carrying a cargo of fuel oil, broke in two as the result of a very large wave. As a result of the accident there was pollution of the sea and the shoreline.

On 18 January 2008 Federal State Unitary Enterprise *Novorossisk Authority for Search-and-Rescue, Salvage and Underwater Engineering Work* filed a suit with the Arbitration Court of the City of Saint Petersburg and the Leningrad Region against JSC *Volga Bulk-Oil Shipping Company - Volgotanker* as the owner of the vessel *Volgoneft-139*, for restitution or oil pollution damage in the amount of 73 450 452 Roubles.

On 25 January 2008 proceedings were initiated in the suit.

When it accepted the application of the JSC *Volga Bulk-Oil Shipping Company - Volgotanker* to establish the liability limitation fund of the owner of the vessel *Volgoneft-139* (IMO No. 8849608, call sign UHWV, gross tonnage 3463, flag Russia) in the amount of 116 280 000 Roubles, the court of first instance was well-founded in its determination of the value of the liability limitation fund as 3 million units of account.

Under article 5, paragraph 1(a) of the 1969 Liability Convention as amended by the Protocol of 27 November 1992, “The owner of a ship shall be entitled to limit liability under this Convention in respect of any one incident to an aggregate amount calculated as follows: 3 million SDR for a ship of a capacity not exceeding 5000 units”.

This provision is enshrined in article 320 of the Merchant Shipping Code of the Russian Federation.

The appellant did not provide the court with evidence of legal grounds for the application by the court of the calculation of the amount of the limitation of liability at the rate of 4 510 000 SDR. The letter of the Ministry of Transport of the Russian Federation and the commentary on the Merchant Shipping Code of the Russian Federation under the editorship of Professor G.G. Ivanov cannot serve as such.

The court accepts the argument of the respondents that the 1992 amendments to the Liability Convention referred to by the petitioner and establishing a higher limit on the liability of the owner of the vessel in relation to vessels with a capacity not exceeding 5000 t. – 4 510 000 SDR – have not been published officially in the Russian Federation and, neither have the appropriate amendments been introduced into the MSC RF, and, therefore are not subject to application.

Under article 15, part 4, of the Constitution of the Russian Federation and article 5, paragraph 1 of the Federal Act “On international agreements of the Russian Federation”, international agreements of the Russian Federation along with the generally admitted principles and rules of international law shall be a constituent part of its legal system.

Under article 2 (a) of the Federal Act “On international agreements of the Russian Federation”, an international agreement of the Russian Federation shall be understood to mean an international agreement concluded by the Russian Federation with a foreign State (or States), or with an international organisation in writing and governed by international law regardless of whether such an agreement is contained in a single document or several interconnected documents, as well as regardless of its specific title.

International agreements of the Russian Federation may be concluded on behalf of the Russian Federation, on behalf of the Government of the Russian Federation and on behalf of the Federal bodies of executive power.

Article 5, paragraph 3, of the Federal Act “On international agreements of the Russian Federation” establishes that the provisions of officially-published international agreements of the Russian Federation, not requiring the adoption of domestic acts for their application, shall have direct effect in the Russian Federation. For implementation of other provisions of the international agreements of the Russian Federation the relevant legal instruments shall be adopted.

An international agreement shall be subject to application if the Russian Federation through the competent State authorities has consented to be bound to the international agreement by means of one of the actions listed in article 6 of the Federal Act “On international agreements of the Russian Federation”: signature of the agreement; the exchange of the documents constituting it; the ratification of the agreement; approval of the agreement; acceptance of the agreement; accession to the agreement; by any other means agreed by the contracting parties, but also on condition that the agreement in question has entered into force for the Russian Federation.

It follows from the meaning of article 15, parts 3 and 3 [sic] of the Constitution of the Russian Federation, article 5, paragraph 3 of the Federal Act “On international agreements of the Russian Federation” that the international agreements that may be applied directly are those that have entered into force and have been officially published in the Compendium of Legislation of the Russian Federation and in the Bulletin of International Agreements in the manner provided for under article 30 of the Federal Act “On international agreements of the Russian Federation”, whilst official communications of the Ministry of Foreign Affairs of the Russian Federation on the entry into force of international agreements concluded on behalf of the

Russian Federation and on behalf of the Government of the Russian Federation shall be subject to publication in the same manner as international agreements.

Thus, international agreements shall be applicable in the Russian Federation subject to the fulfilment of a whole series of conditions specified in this paragraph and based on the norms of the Constitution of the Russian Federation and the Federal Act “On the international agreements of the Russian Federation.”

The Liability Convention entered into force for Russia on 20 March 2001 and was published in the Compendium of Legislation of the Russian Federation and in the Bulletin of International Agreements.

On the basis of the above, the court of first instance rightly applied the 1992 Liability Convention, which had been officially published in the Compendium of Legislation of the Russian Federation (Compendium of Legislation of the Russian Federation 12 April 2004 No.15 Art. 1345) and the Bulletin of International Agreements (Bulletin of International Agreements 2004 No.6 p.20-32) in the manner provided for under article 30 of the Federal Act “On international agreements of the Russian Federation.”

Being governed by articles 269 and 272 of the Arbitration Procedure Code of the Russian Federation, the Thirteenth Arbitration Appeals Court

RULED:

That the Decision of the Arbitration Court of the City of Saint Petersburg and the Leningrad Region of 28 February 2008 on case No. A56-2435/2008 be upheld, and the appeal petition dismissed.

The Ruling may be appealed against in the Federal Arbitration Court of the Northwest District within two months from the date the ruling is issued in full.

Presiding Judge: V.V.Chyeryemoshkina

Judges: T.A. Kashina
V.B. Slobozhanina

* * *

DECISION

City of Saint Petersburg

Case No. A56-2435/2008

24 January 2007

The judge of the Arbitration Court of the city of Saint Petersburg and the Leningrad region
S.F.Markin,

Having considered the application of the Defendant /debtor in the cases regarding the bankruptcy of the Joint Stock Company *Volga Bulk-Oil Shipping Company Volgotanker* and the establishment of a liability limitation fund

ESTABLISHED:

That the Joint Stock Company *Volga Bulk-Oil Shipping Company –Volgotanker* has applied to the Arbitration Court of the City of St.Petersburg and the Leningrad Region with a petition to establish a liability limitation fund for the owner of the ship *Volgoneft-139* (IMO No. 8849608, call sign UHWV, gross tonnage 3463, flag Russia) in the sum of 116 280 000 Roubles to cover any claims for compensation for damage caused by the oil spill from the tanker *Volgoneft-139* on 11 November 2007 made against the Joint Stock Company *Volga Bulk-Oil Shipping Company - Volgotanker* and/or against any person, for action, in-action or omission for which the Joint Stock Company *Volga Bulk-Oil Shipping Company –Volgotanker* is liable, by means of the provision of a guarantee from the Open Joint Stock Insurance Company *Ingosstrakh* in the sum of 116 280 000 Roubles.

According to the case materials, on 11 November 2007 at approximately 04.40 hours the tanker *Volgoneft-139* (IMO No. 8849608, call sign UHWV, gross tonnage 3463, flag Russia), at anchor in the Kerch Strait with a cargo of fuel oil broke in two on a very large wave. As a result of the accident there was pollution of the sea and shoreline.

On 18 January 2008 the Federal State Unitary Enterprise *Novorossisk Authority for Search-and-Rescue, Salvage and Underwater Engineering Work* filed a suit in the Arbitration Court of Saint Petersburg and the Leningrad Region against the JSC *Volga Bulk-oil Shipping Company – Volgotanker* as the owner of the ship *Volgoneft-139* for reparation of damage from oil pollution in the amount of 73 450 452 Roubles.

On 25 January 2008 proceedings were initiated in said action..

Under article 3, paragraph 1, of the 1992 Liability Convention and article 316 of the Merchant Shipping Code of the Russian Federation (hereinafter: MSC RF), the shipowner shall from the moment of the incident or, if the incident consists of a series of events, from the moment of the first event, be held liable for any damage from pollution caused by the vessel as a result of the incident.

Under article 5, paragraph 3, of the 1992 Liability Convention and article 322 of the MSC RF the shipowner, for the purposes of limiting his liability for damage from pollution , must establish a liability limitation fund for the total sum equating to the limit of his liability in a court or arbitration court in which a claim for pollution damage compensation has been filed against him, or, if no such claim has been filed, in a court or arbitration court in which such a claim may be filed. Such a fund may be established by means of depositing the sum with the court or arbitration court or providing a bank guarantee or other financial security acceptable under the legislation of the Russian Federation and deemed adequate by the court or arbitration court.

By virtue of article 5, paragraph 1, of the 1992 Liability Convention and article 320 of the MSC RF, the shipowner has the right to limit his liability in relation to one incident to the total sum calculated as follows: 3 million units of account for a ship not exceeding 5000 tonnes capacity.

According to the International Tonnage Certificate of the Vessel issued by the Russian Maritime Registry of Shipping on 25 April 1998 the capacity of the vessel *Volgoneft-139* was 3463 tonnes.

A unit of account, in accordance with article 11 of MSC RF, shall be a single special drawing right as defined by the International Monetary Fund. The exchange rate for a special drawing right (SDR) against the Rouble as at 21 January 2008 was 1 SDR = 38.76 RUB.

Thus, the shipowner has the right to limit his liability to the sum of $3\,000\,000 \times 38.76 = 116\,280\,000$ RUBs.

The owner of a vessel carrying in bulk as cargo more than 2000 tons of oil, by virtue of article 323 of the MSC RF, is required for the purpose of covering his liability for pollution damage on the basis of the rules provided for in chapter XVIII of the MSC RF, arrange insurance or provide other financial security for the liability (bank guarantee or other credit institution) for a sum equal to the limit of his liability for pollution damage.

The liability of the shipowner is insured by OJSIC *Ingosstrakh*. In accordance with the insurance policy dated 1 June 2007 No. 425/17/07, the liability of OJSIC *Ingosstrakh* for all claims in respect of each insurance incident, including liability for oil pollution from a vessel, is established in the sum of 5 000 000 US Dollars, which in accordance with the exchange rate of the Central Bank of the Russian Federation as at 21 January 2008 constituted $5\,000\,000 \times 25.41 = 127\,050\,000$ (Roubles).

JSC *Volgotanker* provided a guarantee from OJSIC *Ingosstrakh* dated 15 February 2008 in the amount of 116 636 700 Roubles.

The procedure for the establishment of a fund is not directly provided for in the Arbitration Procedure Code of the Russian Federation (APC RF), however, in accordance with article 3, part 3, of the APC RF, if an international agreement of the Russian Federation establishes rules that are different from those provided for in the legislation of the Russian Federation regarding judicial proceedings in the arbitration courts, rules of the international agreement shall be applied. Consequently, in this case the rules of the 1992 Liability Convention and MSC RF should be applied.

Regardless of the fact that the procedure for the establishment of a fund is not directly provided for in the Arbitration Procedure Code of the Russian Federation, however, the fund has the characteristics of a counter security, therefore in this case article 94 of the APC RF may be applied by analogy.

Taking into consideration the above, being governed by article 5 of the 1992 liability Convention, articles [sic] 11, articles 316, 320, 322 and 323 of the Merchant Shipping Code of the Russian Federation, and articles 3 and 94 of the Arbitration Procedure Code of the Russian Federation, , the Arbitration Court

DECIDED:

1. To grant the application of JSC *Volga Bulk-Oil Shipping Company Volgotanker* to establish a liability limitation fund.
2. To recognise the guarantee of OJSIC *Ingosstrakh* for the sum of 116 636 700 Roubles as acceptable and sufficient security for the liability limitation fund of the owner of the tanker *Volgoneft-139*, Joint Stock Company *Volga Bulk-Oil Shipping Company Volgotanker* for damage caused by the oil spill from the tanker *Volgoneft-139* on 11 November 2007.
3. To establish in the Arbitration Court of the City of Saint Petersburg and the Leningrad Region the liability limitation fund of the owner of the vessel *Volgoneft-139* (IMO No. 8849608, call sign UHWV, gross tonnage 3463 , flag Russia) in the sum of 116 280 000 Roubles to cover any claims

for reparation of damage caused by the oil spill from the tanker *Volgoneft-139* on 11 November 2007 made against Joint Stock Company *Volga Bulk-Oil Shipping Company Volgotanker* and/or any person for action, inaction or omission for which Joint Stock Company *Volga Bulk-Oil Shipping Company Volgotanker* is liable, by means of the provision of the guarantee of OJSIC *Ingosstrakh* for the sum of 116 636 700 Roubles.

4. The defendant is ordered:

- to place in the *Russian Gazette* information about the establishment of the liability limitation fund, specifying the date of the preliminary judicial hearing;
- to provide the court with a list of the known creditors of the fund and send the decision on the establishment of the liability limitation fund to all possible creditors of the fund.

Judge

S.F.Markin

DECISION

On amendment of a typographical error

City of Saint Petersburg

5 March 2008

Case No. A56-2435/2008

The Judge of the Arbitration Court of the City of Saint Petersburg and the Leningrad Region S.F. Markin,

Having considered the case in the action of the Federal State Unitary Enterprise *Novorossisk Authority for Search-and-Rescue, Salvage and Underwater Engineering Work* against the Joint Stock Company *Volga Bulk-oil Shipping Company – Volgotanker*, the Open Joint Stock Insurance Company *Ingosstrakh*, and the 1992 International Oil Pollution Compensation Fund on compensation for damage from oil pollution from a tanker

without the parties being called,

ESTABLISHED:

that in the preparation of the court judgment “the Decision on the establishment of a liability limitation fund of 28 February 2008 in respect of case No. A56-2435/2008” a typographical error was introduced in the date of the decision, viz. instead of “28 February 2008”, the date “24 January 2007” was shown.

Given that this typographical error is of a technical nature and does not change the substance of the decision, the court finds that this error shall be subject to amendment.

Pursuant to article 179 of the Arbitration Procedure Code of the Russian Federation, the Arbitration Court

DECIDED:

1. To amend the typographical error in the date of the decision on the establishment of the liability limitation fund, viz. to replace the date “24 January 2007” with “28 February 2008”.
2. An appeals petition against the decision may be submitted to the Thirteenth Arbitration Appeals Court within a deadline of not more than one month from the date of its pronouncement.

Judge

S.F.Markin

[Stamp: True Copy, Arbitration Court of the City of Saint Petersburg and the Leningrad Region, Assistant to the Judge. Signature. Dated 06/03/2008]