

# Environmental liability: the sinking of the vessel "Prestige"

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In 2005, the Ministry of Economy and Finance commissioned the CCS to make a study of the economic loss the year before that had been caused to owners of fishing, shellfish and aqua-farming businesses by the accident involving the tanker *Prestige*, pursuant to Royal Decree 276/2005 of 11 March. The study was conducted by the Expertise Area of the CCS and was used as the basis for compensating losses to those affected using the fund available at that time of 3 million euros.

The tanker *Prestige*, carrying 77,000 tonnes of residual fuel oil off the Spanish coast, suffered a structural failure on 13 November 2002 and ended up sinking 170 miles west of Vigo on 19 November, spilling 63,000 tonnes of its cargo. The fuel initially reached the predominantly rocky Galician coastline, leaving it polluted. Over the following few weeks, it gradually began to affect Spain's northern coast and part of France's Atlantic shoreline.

The Consorcio de Compensación de Seguros (CCS) cooperated in work on assessing the damage arising from the *Prestige* in three clearly distinct phases:

- Under Royal Decree 1053/2003 of 1 August, endorsing regulations of Royal Decree Law 4/2003 of 20 June, with respect to the damage caused by the accident involving the tanker *Prestige* (BOE, Official State Gazette, of 02/08/2003), the Ministry of Economy and Finance commissioned the CCS to appraise the loss that could be assessed directly, this being understood to mean both direct property damage and business interruption.

Those affected had the option of filing claims against those potentially responsible for the incident, the International Oil Pollution Compensation (IOPC) Funds or the aforementioned Ministry. The IOPC Funds comprise two worldwide intergovernmental funds (the 1992 Fund and the Supplementary Fund) that provide compensation for oil pollution damage resulting from spills from tankers in the member states, of which Spain is one. On the date of the sinking of the *Prestige*, the amount of compensation payable by the IOPC Funds was limited to 135 million in SDRs (Special Drawing Rights, equivalent to some USD 179 million), which were felt not to be enough to cover all the damages.

- After all the claims to examine had been received in July 2004, the CCS appraised the loss caused by the *Prestige* for around 1,000 claims which had been filed with the Ministry by assorted affected parties that same month. The assessments included both direct property damage (cleaning of vessels or sea-water inlets/intakes, for example) and loss of profits on business activities from the date of the incident up to the restoration of such activities throughout

the period over which the impact caused by the *Prestige* incident lasted. To carry out the assessment work, the CCS relied on 96 outside adjusters who were regular partners in appraising loss from extraordinary risks, the cover for which falls to the CCS.

In other words, the Spanish state advanced the compensation pay-outs which affected individuals could claim from either those responsible for the accident or the IOPC Funds using the assessments carried out by the CCS.

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- In January 2010, while participating in the proceedings in connection with the liability attaching to the *Prestige*, the State Legal Service asked the CCS to assess the detriment to the Spanish state based on the documentation furnished. The State's claim, set at some 984 million euros, had to be reviewed by the CCS. The assessments by the court appraisers and the IOPC Funds were around 20 % and 30 % of the sum claimed.

For this task entrusted to it, the CCS was assisted by three appraisers who were regular partners with it as regards extraordinary risks and had also taken part in the initial direct appraisal phase. The appraisal was defended in court in May 2013 and came to a figure of 811 million euros, a sum which included the amount assessed in the initial direct appraisal phase.

The La Coruña Provincial Court judgment of 15 November 2017 validated the appraisal by the CCS with respect to the detriment to the State of 811 million euros, to which it added an additional set of items of loss, thus arriving at a final figure of 1.573 billion euros in damages.

The judgment by the Supreme Court of 19 December 2018 ratifies the decision to accept the appraisal by the CCS as opposed to those by the IOPC Funds and the court appraisers, while also adding an amount by way of VAT as compensable to the Spanish State of 43 million euros.

The final amount of damages awarded to the State as a result of the *Prestige* incident included several components:

- Actual damages: costs of cleaning activities, property damage and other expenses deriving from the spill. The costs of cleaning operations and others in relation to the spill were mainly met by various different Spanish State ministries and by other administration levels (regional governments and city councils). Notable within this figure are the sums for extracting the fuel from the ship-wreck (performed by the Ministry of Public Works) and the work on cleaning up the sea and the coastline (carried out by the Ministries of the Environment, Public Works and Defence).
- Business interruption to individuals and private companies.
- 30 % on the sum total for actual damages and business interruption by way of harm to the environment.
- 30 % on the above cumulative figure by way of pain and suffering.

At that time, civil liability for damage in relation to oil pollution had the following rules in force in Spain:

- Convention on Civil Liability for Oil Pollution Damage (CLC92), 1991.
- International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage (IOPC Fund), 1992.

The La Coruña Provincial Court and the Supreme Court held that the compensation to those affected should be paid:

- By those parties responsible according to their liability:
  - The ship's captain (Apostolos Ecannis Mangouras) directly.
  - The insurer of the ship (The London Steamship Owners Mutual Insurance Association – London P&I) up to a ceiling of USD 1 billion.
  - Subsidiarily, the owner, builder and shipping company (*Mare Shipping Inc.*).
- By the IOPC Funds: up to the limits laid down under the applicable convention, excluding environmental damage or pain and suffering.

The environmental damage caused by an oil spill mainly depends on the following factors according to the study “Cost of spills” by the organisation ITOPF (International Tanker Owners Pollution Federation): type of crude or fuel, amount spilled, location and speed of the slick, features of the affected coast and handling of the response operations.

The fight against marine environmental pollution in Spain is a public service that has to be provided by the Central Government and the competent government bodies. The Ministry of Public Works is responsible for the cleaning of maritime waters and the fight against marine environmental pollution by shipping.



Following the *Prestige* incident, a set of costs were initially incurred in towing the ship away from the coast to minimise the amount of fuel reaching it and so that more oil could be retrieved out at sea as well. After the tanker had sunk, to reduce the leakage of fuel out of the tanks, the State signed a plan of action agreement with Repsol YPF in April 2004 to direct the work at hand, which consisted of sealing leaks and perforating the four tanks in the wreck and plugging them with valves to remove the fuel using a system known as “hot-tapping”. This way, some 13,800 tonnes of fuel were extracted, at a cost of 109 million euros.

Despite the above action taken, the *Prestige* spilled 63,000 tonnes of fuel into the sea, which affected 2,980 km of coastline. Although the spill was far smaller than in other previous accidents in Europe, the stretch of coastline hit was actually the largest to date. Of a total of 1,064 Spanish beaches, from the border of the river Miño with Portugal to the French coast, 743 were affected to a greater or lesser degree.

A contingent from several countries (Spain, France, Portugal, the UK, Italy, Germany, Belgium, Norway and Denmark) was assembled to help out with work to clean up the sea and combat the pollution. This body contributed sea-going resources that worked alongside fishing vessels from the zone over five miles off the coast to protect the inlets extending inland from fuel. A total of 86,385 metres of barriers were erected to protect both natural and economic resources at a cost of 40 million euros.

Up to December 2004 a total of 53,000 m<sup>3</sup> of fuel waste mixed in with water was picked out of the sea. A volume of 15,000 m<sup>3</sup> was collected by pollution-response shipping and the rest by fishing vessels. The cost of the retrieval work by pollution-response ships came to 24 million euros.

In spite of the efforts by this group, the fuel reached the coast and it became necessary to engage in manual clean-up work. These tasks were carried out thanks to a whole host of people, whose numbers included volunteers, members of the armed forces, staff from the arms of government concerned and personnel under contract through the company TRAGSA. The amount of spent working days up to September 2004 numbered 1,380,395, of which 25.6 % were served by volunteers, 18.6 % by members of the armed forces and 55.8 %, roughly speaking, by those under contract.

For the purposes of access of cleaning resources, some rural routes were upgraded and new infrastructure was even built. Airborne resources were also deployed to monitor the movement of oil-slicks and their arrival on the coast, as well as observers on the ground who moved along the beaches.

The final figures as regards waste collected showed 53,137 tonnes at sea (an emulsion of sea-water and fuel), 116,077 tonnes onshore (a mixture of sand and fuel) and, as has been mentioned, 13,800 tonnes directly from the ship-wreck. All in all, this amounted to 183,000 tonnes, representing three times the spillage. Waste management, responsibility of the *Xunta de Galicia* (Galician regional government), was performed at two new plants of 6,000 m<sup>2</sup>, which were purpose-built at as waste-processing point in the province of La Coruña at a cost of 22 million euros.

According to a study by researchers at the University of Santiago de Compostela, some 450,000 m<sup>2</sup> of rocky area were affected and 526 tonnes of fuel were spilled into the depths of the continental shelf. An estimated figure of between 115,000 and 230,000 sea-birds died and all of the marine ecosystems were harmed. The Atlantic Islands of Galicia Maritime-Terrestrial National Park was also affected.

Due to the pollution of the sea, several bans on fishing and shellfish harvesting were also imposed, which were delimited according to zones and dates, up to May 2003. These affected the zone's economy, not only the fishing and shellfish harvesting sector, but also several activities that are indirectly linked to the latter. Pursuant to Royal Decrees 7/2002 and 8/2002, the Ministry of Agriculture, Fisheries and Foods set up a system of temporary unemployment compensation assistance for ship-owners and crews of fishing vessels, onshore shellfish harvesters, net operators, top level marketers, fish market and ice-factory workers, and fishermen's guilds. This aid consisted of a daily sum by way of compensation for work stoppage due to bans.

The slick from the tanker *Prestige* did not only affect public property directly (seas and coasts), but also caused property damage to private assets: the fuel reached aquaculture facilities, seawater intakes at purification plants and hotels offering seawater-based thermal treatments, mussel farming rafts, etc. Both the direct property damage and the halting of activity in the zone caused business interruption for numerous enterprises, for which



the loss was appraised by the CCS; ranging from fish and shellfish marketers through to distributing supermarkets and including transport and distribution companies, tinned food firms, manufacturers of wooden boxes for fish and shellfish, etc. The tourism industry was also hit, not by property damage but by business interruption, in the areas of accommodation, catering, leisure, etc., in all of the communities affected by the spill, especially in Galicia. The sums valued by the CCS were 26 million euros for activities in general and 40 million for businesses associated with cultivating and marketing mussels.

*Photograph source: [www.lavozdeGalicia.es](http://www.lavozdeGalicia.es)*