



International Oil Pollution
Compensation Funds

Agenda Item 3	IOPC/OCT17/3/7	
Date	26 July 2017	
Original	English	
1992 Fund Assembly	92A22	
1992 Fund Executive Committee	92EC69	●
Supplementary Fund Assembly	SA14	

INCIDENTS INVOLVING THE IOPC FUNDS – 1992 FUND

JS AMAZING

Note by the Secretariat

Objective of document:

To inform the 1992 Fund Executive Committee of the latest developments regarding this incident.

Summary:

In May 2011, the 1992 Fund was informed of a spill which occurred in June 2009 from the tanker *JS Amazing* which had spilled an unknown quantity of low pour fuel oil into the Warri River, Delta State, Nigeria. The incident was not widely reported outside of Nigeria. No record of any insurance cover could be found with a P&I Club from the International Group of P&I Associations.

In May 2012, a claim for NGN 30.5 billion (£75.23 million)^{<1>} was filed against, *inter alia*, the 1992 Fund by representatives of 248 communities allegedly affected by the spill.

In June 2012, the Director and members of the Secretariat visited Nigeria and met with the claimants' representatives, the Nigerian Ports Authority (NPA), the Nigerian Maritime Administration and Safety Agency (NIMASA) and the Nigerian Oil Spill Detection and Response Agency (NOSDRA) in order to gather further background information.

In July 2012, the 1992 Fund applied to strike itself out as a defendant but sought leave to be an intervenor on the basis that primary liability for the first tier of compensation rested with the shipowner, but recognising that the 1992 Fund might be called upon to pay compensation in excess of the shipowner's limit of liability^{<2>}.

In March 2013, the 1992 Fund was informed that the claimants had obtained a court order for the arrest and detention of the *JS Amazing*.

In June 2013, the Federal High Court in Warri agreed to add Pipelines and Product Marketing Company Limited (PPMC) as a defendant to the proceedings.

At the October 2013 sessions, the Director informed the 1992 Fund Executive Committee that due to the delay between the incident occurring and the 1992 Fund receiving notification of the incident, and the difficulties in proving and assessing the losses of victims from an incident which occurred almost three years before the 1992 Fund was informed of the incident, the Director regretted that he could not

<1> The exchange rates used in this document as at 07 July 2017 are: £1 = SDR 0.928336 and £1 = NGN 405.42.

<2> The rights of an intervenor allow the 1992 Fund to challenge the evidence of loss or damage submitted without having any judgment entered against it at the trial.

recommend that he be instructed to make payment of compensation to the claimants in respect of this incident.

Having examined all of the information provided, in 2014 the 1992 Fund rejected the claims on the basis that insufficient evidence had been submitted in support of the claims.

In March 2014, the 1992 Fund's motion to be removed as a defendant and replaced as an intervenor was granted.

In May 2016, the Court observed that the first defendant had a pending application dating from June 2013 challenging the jurisdiction of the Court. The matter was adjourned and a date was awaited to hear the application.

Recent developments:

In December 2016, the claimants filed a notice of discontinuance at the Federal High Court in Warri and the Court dismissed the case. No reason was provided to the 1992 Fund's lawyers for the discontinuance of the action. In the spring of 2017, the 1992 Fund received a copy of the notice of discontinuance. The incident may now be considered closed.

Relevant documents:

The [online JS Amazing incident report](#) can be found via the Incidents section of the IOPC Funds' website.

Action to be taken:

1992 Fund Executive Committee

Information to be noted.

1 Summary of incident

Ship	JS Amazing
Date of incident	06.06.2009
Place of incident	Ijala, Warri River, Delta State, Nigeria
Cause of incident	Hull of vessel punctured during cargo loading due to underwater obstruction at berth
Quantity of oil spilled	Approximately 1000 tonnes of low pour fuel oil
Area affected	Warri River, Delta State, Nigeria
Flag State of ship	Nigeria
Gross tonnage	3 384 GT (6 097 mt deadweight)
P&I insurer	Said to be uninsured at time of incident, although pre- and post-incident was insured by the South of England P&I Club (in liquidation)
CLC limit	SDR 4.51 million (£4.86 million)
STOPIA/TOPIA applicable	N/A
CLC + Fund limit	SDR 203 million (£218.67 million)

Legal proceedings	Five sets of legal proceedings were commenced: (i) Proceedings by NOSDRA against PPMC; (ii) proceedings against the shipowner by a number of communities; (iii) proceedings by the shipowner against the Nigerian National Petroleum Corporation (NNPC), Warri Refining and Petrochemical Company Limited and PPMC; (iv) proceedings by 248 communities against the shipowner, the joint liquidators of the South of England P&I Club, and the 1992 Fund for NGN 30.5 billion (£75.23 million); and (v) proceedings by 248 communities to arrest the <i>JS Amazing</i> .
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2 Introduction

The background information to this incident is summarised above. Further background information, including an analysis of the claims submitted, is provided in more detail in the [online *JS Amazing* incident report](#).

3 Claims for compensation

3.1 In May 2012, a claim for NGN 30.5 billion (£75.23 million) was filed against, *inter alia*, the 1992 Fund by 14 representatives on behalf of 248 unnamed communities allegedly affected by the spill. One of the claimants' representatives provided the 1992 Fund with a spreadsheet said to have been agreed by the other representatives which provided details of the 14 representatives and the communities they represented^{<3>}. The Secretariat received information separately from 7 of the 14 representatives on behalf of 189 communities. Some of those communities were not included within the representatives' spreadsheet.

3.2 Analysis of the claims submitted and reasons for rejection of claims

3.2.1 The 1992 Fund's experts examined all the claims submitted on behalf of the 248 communities and reported that for all claims presently submitted, insufficient evidence was given with the claims to support the quantum of the losses claimed^{<4>}.

3.2.2 Further details of the reasons for the rejection of the claims are provided in the [online *JS Amazing* incident report](#).

4 Civil proceedings

4.1 Five sets of legal proceedings were commenced:

- (i) Legal proceedings by NOSDRA against PPMC;
- (ii) legal proceedings commenced by some communities against the shipowner;
- (iii) legal proceedings commenced by the shipowner for recovery of damage to the ship;
- (iv) legal proceedings commenced by 248 communities for compensation; and
- (v) legal proceedings commenced by claimants to arrest the *JS Amazing*.

^{<3>} The names of the representatives on the writ and the spreadsheet do not necessarily coincide.

^{<4>} With the exception of a small number claims from the owners of fishponds, for which minimal but often out of date documentary evidence has been submitted.

- 4.2 Of the five sets of legal proceedings commenced, the 1992 Fund was only involved in the legal proceedings commenced by the 248 communities for compensation, and has no knowledge of the other legal proceedings.
- 4.3 Proceedings commenced by 248 communities for compensation
- 4.3.1 In May 2012, a claim for NGN 30.5 billion was filed against the shipowner, the joint liquidators of South of England P&I Club and the 1992 Fund by representatives of 248 communities allegedly affected by the spill.
- 4.3.2 In July 2012, the 1992 Fund applied to strike itself out as a defendant, but also sought leave to be an intervenor on the basis that primary liability for the first tier of compensation rested with the shipowner, but recognising that the 1992 Fund might be called upon to pay compensation in excess of the shipowner's limit of liability.
- 4.3.3 In February 2013, the 1992 Fund's Nigerian lawyer advised that the case had been transferred from the Federal High Court in Asaba to a new Federal High Court established in Warri, Delta State. As a consequence, the 1992 Fund's motion to strike itself out as a defendant and to be replaced as an intervenor was adjourned until March 2014.
- 4.3.4 In June 2013, the shipowner applied to have the proceedings by the claimants dismissed on the basis of a legal technicality concerning the jurisdiction of the Court to hear the case and improper service upon the defendants.
- 4.3.5 At the hearing in March 2014, the Judge granted the 1992 Fund's application to strike itself out as a defendant and be replaced as an intervenor. The Judge refused to hear the shipowner's application to have the proceedings dismissed on the basis of a legal technicality, until the shipowner complied with a previous costs order. The Judge ordered the claimants to amend its writ to include PPMC as a third party to the proceedings. The proceedings were then adjourned.
- 4.3.6 In February 2015, the claimants applied for a further adjournment to enable them to serve the amended writ upon the defendants. The matter was listed for a hearing in March 2015, but the court did not sit and the matter was adjourned on a number of further occasions through 2015, for the hearing of the claimants' application.
- 4.3.7 In April 2016, a hearing took place at which the claimants were ordered to amend its writ and regularise its process, and the matter was adjourned until May 2016.
- 4.3.8 In May 2016, the Court observed that the first defendant had a pending application dated June 2013, challenging the jurisdiction of the Court. The Court decided that the application must take precedence over other applications and the parties awaited a date, for the hearing of the first defendant's application. However, no further applications were made until December 2016, when the claimants filed a Notice of Discontinuance and requested the Court to dismiss the claim.

Developments since 2016

- 4.3.9 In the spring of 2017, the 1992 Fund was provided with a copy of the Notice of Discontinuance.
- 4.3.10 Given that all civil claims in this case have been resolved and there is no liability for the 1992 Fund, this incident can now be closed.
- 4.3.11 Details of the other legal proceedings are provided in the [online JS Amazing incident report](#).

5 Director's considerations

- 5.1 The Director is very grateful for the assistance provided by the Nigerian delegation and the excellent cooperation it provided to the Secretariat in dealing with this difficult incident, without which the Secretariat would have been faced with more difficulties obtaining information, given the location of, and the time elapsed since the incident.
- 5.2 The Director regrets that the lack of specific information submitted did not permit the 1992 Fund to assess the claims submitted positively and as a consequence the claims submitted were rejected.

6 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.
