



International Oil Pollution  
Compensation Funds

<b>Agenda Item 3</b>	IOPC/OCT17/3/6	
<b>Date</b>	1 August 2017	
<b>Original</b>	English	
<b>1992 Fund Assembly</b>	92A22	
<b>1992 Fund Executive Committee</b>	92EC69	●
<b>Supplementary Fund Assembly</b>	SA14	

## INCIDENTS INVOLVING THE IOPC FUNDS – 1992 FUND

### REDFFERM

#### Note by the Secretariat

<b>Objective of document:</b>	To inform the 1992 Fund Executive Committee of the latest developments regarding this incident.
<b>Summary:</b>	<p>In January 2012, the Secretariat was informed of an incident which occurred in March 2009 at Tin Can Island, Lagos, Nigeria.</p> <p>The barge <i>Redfferm</i> sank following a transshipment operation from the tanker <i>MT Concep</i>. The <i>Redfferm</i> spilled an unknown quantity/residue of cargo of low pour fuel oil (LPFO) into the waters surrounding the site, which then impacted upon the neighbouring Tin Can Island area.</p> <p>A claim was filed in March 2012 against, <i>inter alia</i>, the 1992 Fund by 102 communities allegedly affected by the incident for US\$26.25 million.</p> <p>In June 2012, the Director and members of the Secretariat visited Nigeria to ascertain further facts of the incident, attempt to meet with the barge owner and visit the affected area.</p> <p>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 recommend that he be instructed to make payment of compensation to the claimants in respect of this incident.</p> <p>In February 2014, the Secretariat wrote to the claimants rejecting their claim on the following grounds:</p> <ol style="list-style-type: none"> <li>(a) The barge <i>Redfferm</i> was not a ‘ship’ under Article I(1) of the 1992 Civil Liability Convention (1992 CLC);</li> <li>(b) there were a large number of discrepancies between the claimed losses and other sources of information on the number of items of fishing gear in the Lagos lagoon area; and</li> <li>(c) there was a lack of information submitted to prove the claimants’ identities and occupations.</li> </ol>

<b>Recent developments:</b>	The legal proceedings in Nigeria are still continuing, but there was no significant progress during 2017. The 1992 Fund has been notified that its appeal against the refusal of the Judge to remove the 1992 Fund as a defendant and replaced as an intervenor has been set down for hearing in the Court of Appeal in October 2017.
<b>Relevant documents:</b>	The <a href="#">online Redfferm incident report</a> can be found via the Incidents section of the IOPC Funds' website.
<b>Action to be taken:</b>	<u>1992 Fund Executive Committee</u>  Information to be noted.

## 1 Summary of incident

Ship	<i>Redfferm</i>
Date of incident	30 March 2009
Place of incident	Tin Can Island, Lagos, Nigeria
Cause of incident	Barge sinking following transshipment operation
Quantity of oil spilled	Unknown. Reports range from the residues of oil on board to between 100–650 tonnes.
Area affected	Tin Can Island, Lagos, Nigeria
Flag State of ship	Nigeria
Gross tonnage	430 GT
P&I insurer	Not insured or unknown
CLC limit	SDR 4.51 million (US\$6.26 million) <sup>&lt;1&gt;</sup>
STOPIA/TOPIA applicable	N/A
CLC + Fund limit	SDR 203 million (US\$281.7 million)
Compensation	None paid to date
Legal proceedings	Proceedings have been commenced against, <i>inter alia</i> , the owners of the tanker <i>MT Concep</i> , the owner of the barge <i>Redfferm</i> , both vessels' agent and the 1992 Fund.

## 2 Background information

The background information to this incident is summarised above and an analysis of the claims submitted and the reasons for rejection of the claim, is provided in more detail in the [online Redfferm incident report](#).

## 3 Claims for compensation

- 3.1 The only claim submitted to the 1992 Fund as at 18 July 2017 was the claim filed in March 2012, on behalf of 102 communities, for US\$26.25 million <sup><2></sup>.
- 3.2 The claim filed at court in March 2012 is not time-barred pursuant to Article VIII of the 1992 Civil Liability Convention (1992 CLC).

<sup><1></sup> The exchange rate used in this document as at 11 July 2017 is SDR 1 = US\$1.38768.

<sup><2></sup> Before the claim was filed at court, the claimants' lawyer stated that the claim amounted to US\$16.25 million, but when the claim was filed at court, this had increased to US\$26.25 million.

3.3 The details of the valuations submitted to the 1992 Fund are shown in the [online Redfferm incident report](#).

3.4 Reasons for rejection of claim

Following a full analysis of the claim submitted by the claimants, conducted by the 1992 Fund's experts, in February 2014 the 1992 Fund wrote to the claimants' representative rejecting the claims submitted on the grounds detailed below:

- (a) The barge *Redfferm* was not a 'ship' under Article I(1) of the 1992 CLC;
- (b) there were a large number of discrepancies between the claimed losses and other sources of information on the number of items of fishing gear in the Lagos lagoon area; and
- (c) there was a lack of information submitted to prove the claimants' identities and occupations.

3.5 Further information on the reasons for the rejection of the claim is provided in more detail in the [online Redfferm incident report](#).

**4 Civil proceedings**

4.1 In March 2012, a claim for US\$26.25 million was filed by the lawyer representing 102 communities allegedly affected by the spill against the owners of *MT Concep*, the owners of *Redfferm*, Thames Shipping Agency Ltd (Thames Shipping) (agent of both the *MT Concep* and the *Redfferm*) and the 1992 Fund.

4.2 The claim filed at court was filed on behalf of 102 communities allegedly affected by the spill. It comprised claims for clean-up operations and pollution prevention measures (US\$1.5 million) claims for property damage (US\$2.5 million), claims for economic loss in the fisheries, mariculture and fish processing sectors (US\$10 million); claims for economic loss in the tourism sector (US\$1.5 million), claims for environmental damages (US\$750 000) and general damages (US\$10 million).

4.3 In February 2013, the 1992 Fund applied to be removed from the proceedings as a defendant and replaced as an intervenor on the basis that primary liability for the spill rested with the owner of the *Redfferm*. The claimants' lawyer also agreed to stay the proceedings against the 1992 Fund, in order that the claims assessment process could commence without the need for the 1992 Fund to simultaneously defend a legal action. Later however, the claimants' lawyer opposed the 1992 Fund's application to be removed as a defendant and replaced as an intervenor. At first instance, the Judge denied the 1992 Fund's application, so the 1992 Fund appealed the judgment.

4.4 In September 2013, the court sat for a hearing of an application by Thames Shipping, the agent of the owner of the barge *Redfferm*, to set aside service of the writ, claiming that the service of the writ was defective. In October 2013, the Judge ruled against Thames Shipping. In November 2013, Thames Shipping filed an appeal against the ruling.

4.5 The Judge also stayed the proceedings pending the determination of the 1992 Fund's appeal against the first instance ruling in which the Judge had refused to remove the 1992 Fund as a defendant and replace it as an intervenor.

4.6 On a number of occasions subsequently throughout 2014 and 2015, the 1992 Fund's lawyers wrote to the Registrar of the Court of Appeal requesting that the 1992 Fund's appeal against the first instance ruling, be listed for a hearing date. A date for the hearing was finally set for May 2016.

- 4.7 In May 2016, the 1992 Fund's lawyers appeared in the Court of Appeal to argue the 1992 Fund's application. The Court was informed that there were two pending applications; the appellants' application to regularise its process and the respondents' application seeking an order to dismiss the appeal for want of diligent prosecution.
- 4.8 The Court observed however that two of the respondents were not served with hearing notices in respect of the day's proceedings and consequently the applications could not be heard. The Court adjourned the hearing until November 2016.

*Developments since October 2016*

- 4.9 No further steps were taken in the legal proceedings during 2017, but the 1992 Fund has been notified that its appeal against the refusal of the Judge to remove the 1992 Fund as a defendant and replaced as an intervenor has been set down for hearing in the Court of Appeal in 9 October 2017.

**5 Director's considerations**

- 5.1 The Director is very grateful for the assistance provided by the Nigerian delegation and the excellent cooperation it has provided to the Secretariat in dealing with this difficult incident, without which the Secretariat would have faced difficulty in obtaining information about the incident.
- 5.2 The Director notes that since the *Redferm* is not a 'ship' within the definition of Article I(1) of the 1992 CLC, the 1992 Conventions do not apply to this incident.
- 5.3 Additionally, the Director regrets that the lack of specific information submitted did not enable the 1992 Fund to assess the claim submitted positively and as a consequence, the claims submitted have been 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.

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