



International Oil Pollution
Compensation Funds

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

INCIDENTS INVOLVING THE IOPC FUNDS – 1992 FUND

SOLAR 1

Note by the Secretariat

Objective of document:	To inform the 1992 Fund Executive Committee of the latest developments regarding this incident.
Summary:	<p>As at 7 August 2017, 32 466 claims have been received and payments totalling PHP 987 million (£10.79 million) have been made in respect of 26 870 claims mainly in the fisheries sector. All claims have been assessed and the local claims office has closed.</p> <p>The owner of the <i>Solar 1</i> is a party to the Small Tanker Oil Pollution Indemnification Agreement 2006 (STOPIA 2006) whereby the limitation amount applicable to the tanker is increased, on a voluntary basis to SDR 20 million. It is very unlikely that the amount of compensation payable in respect of this incident will exceed the STOPIA 2006 limit of SDR 20 million and therefore very unlikely that the 1992 Fund will be called upon to pay compensation.</p> <p>Three claims remain outstanding, namely, a claim by the Philippine Coast Guard (PCG), a claim by 967 fisherfolk, and a claim by a group of municipal employees. All are subject to legal proceedings in the Philippines. No further payments have been made since October 2010.</p>
Recent developments:	In respect of the legal proceedings, reference is made to the three actions in court in which there have been some developments (section 3).
Relevant documents:	The online Solar 1 incident report can be found via the Incidents section of the IOPC Funds' website.
Action to be taken:	<p><u>1992 Fund Executive Committee</u></p> <p>Information to be noted.</p>

1 **Summary of incident**

Ship	<i>Solar 1</i>
Date of incident	11.08.2006
Place of incident	Guimaras Strait, the Philippines
Cause of incident	Sinking
Quantity of oil spilled	2 000 tonnes of industrial fuel oil
Area affected	Guimaras, Philippines
Flag State of ship	Republic of the Philippines
Gross tonnage	998GT
P&I insurer	Shipowners' Mutual Protection and Indemnity Association (Luxembourg) (Shipowners' Club)
CLC limit	SDR 4.51 million
STOPIA/TOPIA applicable	STOPIA 2006 limit of SDR 20 million
CLC + Fund limit	SDR 203 million
Compensation	Total amount paid to date: PHP 987 million (£10.79 million)
Legal proceedings	Three sets of legal proceedings are currently pending against the 1992 Fund.

2 **Incident**

The background information to this incident is provided in more detail in the [online *Solar 1* incident report](#).

3 **Civil proceedings**

3.1 **Legal proceedings by the Philippine Coast Guard (PCG)**

3.1.1 The PCG brought legal proceedings to ensure its rights were safeguarded in relation to two claims for costs incurred during clean-up and pumping operations. Defence pleadings were filed by the 1992 Fund. An offer of settlement for PHP 104.8 million was made for both claims and was accepted by the PCG. In April 2012, the Secretariat provided the PCG with a draft compromise agreement, the terms of which were quickly agreed with the PCG. However, since then due to a number of changes in personnel at the PCG, and the necessity to gain approval to the terms of the compromise agreement from the Office of the Solicitor General of the Philippines, matters have been delayed.

3.1.2 In February 2015, the Director met with the Ambassador of the Philippines in London to discuss a proposal to pay the PCG's claim directly to the Ambassador as a representative of the Philippine Government, for transfer to a nominated Philippine Government Treasury account, in return for a duly signed and authorised receipt and release document, in order that the PCG could receive the assessed sum of PHP 104.8 million.

3.1.3 In August 2015, the Director was informed that the Solicitor General and the PCG had agreed to settle the PCG claim at the amount assessed by the 1992 Fund, and that the Solicitor General would sign the compromise agreement.

3.1.4 In February 2016, one of the PCG lawyers and the lawyers representing the 1992 Fund and the Shipowner's Club respectively, signed the compromise agreement, thereby formally recognising the PCG's agreement to accept the figure of PHP 104.8 million in full and final settlement of the PCG claim, and their agreement to dismiss the legal proceedings which had been commenced by the PCG. The parties currently await the signature of the Solicitor General.

- 3.1.5 In July 2016, the 1992 Fund's lawyers received an invitation to attend a workshop in Manila dealing with *inter alia*, 'actions for the final closure of the *Solar 1* case'. The 1992 Fund's lawyer was instructed to attend and to explain the current situation regarding the compromise agreement to those attending.
- 3.1.6 In February 2017, the claimant and the Fund's lawyers appeared at court for a Judicial Dispute Resolution (JDR) procedure where the court exercised its power to try to aid the parties to finally arrive at a settlement. The main issue under discussion was whether Congressional Approval was required for the compromise agreement; the claimants lawyers stated that in their opinion, Congressional Approval was required and they were making efforts to obtain same. The Judge indicated that in his view, obtaining Congressional Approval would take a long time, and warned the PCG that continued delay would constrain him to act favourably on a motion to dismiss the case for failure to prosecute. The PCG was therefore ordered to submit a progress report on the congressional approval by March 2017. A further JDR hearing was set for April 2017 in order to encourage the parties to fast track the finalisation of the settlement process.
- 3.1.7 In March 2017, the PCG requested the Court to order service of summons of its previously-stayed complaint against the 1992 Fund, in order to secure that the court had jurisdiction over the parties to hear the efforts to resolve the case through settlement. The Court set a hearing date in June 2017 for the PCG to report on the progress of obtaining Congressional Approval of the compromise agreement, but no representative from the PCG attended the hearing so the Court reset the hearing date for August 2017.
- 3.2 Legal proceedings by 967 fisherfolk
- 3.2.1 A civil action was filed in August 2009 by a law firm in Manila that had previously represented a group of fisherfolk from Guimaras Island. The suit pertains to claims from 967 of these fisherfolk totalling PHP 286.4 million (£4.66 million) for property damage as well as economic losses. The claimants rejected the 1992 Fund's assessment of a 12-week business interruption, as applied to all similar claims in this area, arguing that fisheries were disrupted for over 22 months without, however, providing any evidence or support. The 1992 Fund filed defence pleadings in response to the civil action, noting that under the law of the Philippines, the claimants have to prove their losses but to date, have not done so.
- 3.2.2 In April 2012, the Guimaras Court ordered that the case proceed through the Philippine legal system. Accordingly, a pre-trial hearing took place in July 2012 in order to explore the possibility of an amicable settlement. The 1992 Fund's lawyer attended the pre-trial hearing at which the Court ordered that mediation hearings take place in August and September 2012 before a court-accredited Mediator.
- 3.2.3 The 1992 Fund instructed its lawyers to meet with the claimants' lawyers before the first mediation hearing in August took place, in an attempt to settle the matter and to minimise the costs that would otherwise be incurred by attending the mediation hearings, but no progress was made as the claimants' lawyers had not prepared any formal documentation furthering their case.
- 3.2.4 Thereafter, the case proceeded to mediation and a pre-trial hearing took place in September 2012 at which directions were given for the future conduct of the case, including discovery procedures for the presentation of documents to the opposing party and the Court. In June 2013, the claimants failed to submit Judicial Affidavits as required under Philippine law. The 1992 Fund's lawyer therefore applied that the Court declare the claimants as having waived the right to adduce evidence, in effect, requesting a plea for the outright dismissal of the claim^{<1>}.

<1> Under Philippine law, the trial process is as follows: the claimants have the burden of proving their claim by presenting evidence, followed by the defendants presenting contrary evidence or evidence by denial. Both parties will then submit a memorandum to the Court. The Court will then render its judgment.

- 3.2.5 In October 2013, the Court denied the 1992 Fund's application to dismiss the complaints for failure of the claimants to submit their Judicial Affidavits at four pre-trial settings, accounting for a failure to comply four times with the rule^{<2>}.
- 3.2.6 The case was re-set for hearings in July 2015, at which the claimants indicated that they would present technical witnesses in support of their claim. However, none were presented at the hearing, and the hearings were adjourned until September 2015.
- 3.2.7 After a further adjournment, in January 2016 a hearing for the continuation of the cross-examination, re-examination and further cross-examination of the claimants' witness from the Department of Environment and Natural Resources took place.
- 3.2.8 During the cross-examination of the witness, the 1992 Fund's lawyers showed the Court that the witness had no personal knowledge of the alleged contamination of the waters of Guimaras from August 2006 to May 2011, and that the authenticity, truthfulness and accuracy of the data was questionable and inadmissible as evidence. The results of the analysis showed that the waters of Guimaras were not contaminated by oil.
- 3.2.9 A further hearing date was set for March 2016 but adjourned until June 2016, for the continuation of the presentation of witnesses. At the June 2016 hearing, during the 1992 Fund's lawyers' cross-examination the 1992 Fund's lawyers were able to show that the witness was not entitled to litigate as a pauper litigant and that her claim was exaggerated, as her aggregate claim was greater than what she could have earned as a fisherwoman during the time she was allegedly affected by the oil spill.
- 3.2.10 Further hearings took place over the following months to continue the examination of the witnesses submitted by the claimants. In September 2016, the claimants' lawyers filed a Motion for Partial Summary Judgment, to which the 1992 Fund's lawyers objected as (1) it was without merit, since the three witnesses presented by the claimants had not proved their claim for purported damage of 22 weeks as alleged; (2) it sought to deny the Fund the right to present its evidence that damage, if any, was only for 12 weeks; (3) the Motion deprived the Fund of the right of due process of law; and (4) the Motion did not comply with the court filing requirements. Subsequently the Court denied the claimants' Motion for Partial Summary Judgment.
- 3.2.11 In February 2017, a further witness was submitted by the claimants but upon cross-examination the Fund's lawyers showed the Court that the witness' claim was excessive and was without a factual or legal basis.
- 3.2.12 In April 2017, the 1992 Fund's lawyers attended a court hearing at which the witnesses that the claimants had intended to present to the Court were not allowed to testify as their Affidavits were defective. At a subsequent court hearing, the claimants served an application for Motion for Trial by Commission^{<3>}, which the 1992 Fund opposed as the procedure was not appropriate. A decision from the Court is still awaited regarding the proposed Motion, but the Fund's lawyers advise that they expected the Motion to be denied as it was without merit.
- 3.2.13 Subsequently, at a court hearing in June 2017, when the claimants were under a duty to present ten witnesses in support of their claim, they failed to do so and the Judge warned the claimants that if they failed to present at least ten witnesses on the next hearing date, then the Judge would have no option

<2> The Judge apparently adopted a liberal view, i.e. that the rule is not inflexible and must yield to the 'realities' in a given case.

<3> A procedure whereby the parties agree to refer any issues to a commissioner, when the trial of an issue of fact requires the examination of a long account on either side, or when a question of fact, other than upon the pleadings, arises during the case.

but to dismiss the case for failure to prosecute the claim. At that hearing, the claimants' lawyers indicated that they were experiencing difficulties compelling witnesses to attend and that it was the law firm itself which had advanced the expenses for the case.

3.2.14 At a further hearing held in July 2017, the claimants were ordered to amend their Judicial Affidavits for failing to accurately transcribe the language actually used by the examining counsel as well as the actual language used by the witness in answering the questions. A further hearing date was set for August 2017.

3.3 Legal proceedings by a group of municipal employees

3.3.1 Ninety-seven individuals, employed by a municipality on Guimaras during the response to the incident, have taken action in court against the mayor, the ship's captain, various agents, ship and cargo owners and the 1992 Fund on the grounds of not having been paid for their services. After a thorough review of the legal documents received, the 1992 Fund filed pleadings of defence in court, noting in particular that the majority of claimants were not engaged in activities admissible in principle. Furthermore, a number of the claimants are already included within a claim submitted and settled by the Municipality of Guimaras.

3.3.2 In April 2012, the Guimaras Court ordered that a pre-trial hearing take place in July 2012, in order to explore the possibility of an amicable settlement. The 1992 Fund's lawyers attended the pre-trial hearing at which the Court ordered that mediation before a court-accredited Mediator take place in August 2012. However, no progress was made, as the claimants' lawyers made no further proposals nor did they produce any further evidence to support their case.

3.3.3 The Guimaras Court initially set a similar timetable as for the claim involving the 967 fisherfolk, and a number of court hearings occurred between 2012 and 2015, during which the status of several of the claimants presented by their lawyers, was examined. Further court hearings to conclude the examination of the witnesses submitted by the claimants were set to take place in July 2015, but no witnesses were presented for the claimants, and the matter was adjourned until June 2016 for the continuation of the presentation of witnesses.

3.3.4 At the June 2016 hearing, during cross-examination of the witness presented by the claimants, the 1992 Fund's lawyers were able to show the court that the claimant was not entitled to compensation as he had already received payment by the municipal government of Nueva Valencia, and that the claimant was claiming compensation for alleged clean-up operations that he purportedly performed as early as 1 August 2006, when in fact the oil spill occurred only on 11 August 2006.

3.3.5 Further hearings took place through the summer of 2016, to continue the examination of the witnesses submitted by the claimants.

3.3.6 In July 2017, a further hearing took place for the examination of a witness put forward by the claimants. Upon cross examination by the 1992 Fund's lawyers, it was proved that the witness under examination was not a pauper litigant and that the alleged relief operation claimed to have been performed were done during office hours. It was further proved that the witness' claim was exaggerated and without basis. The Judge thereafter ordered a continuance of the hearing for the re-examination of the witness by the claimants lawyer, and a further hearing date was set for August 2017.

4 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.
