



International Oil Pollution
Compensation Funds

Agenda Item 4	IOPC/OCT17/4/6	
Date	11 August 2017	
Original	English	
1992 Fund Assembly	92A22	●
1992 Fund Executive Committee	92EC69	
Supplementary Fund Assembly	SA14	

LEGAL PROCEEDINGS ARISING FROM THE PLATE PRINCESS

Note by the Secretariat

Summary:

The *Plate Princess* incident took place on 2 May 1997 in the Bolivarian Republic of Venezuela. Further information relating to the incident, including a full case study, is available under the Incidents section of the IOPC Funds' website.

In May 2015, the Director was served with a copy of a Registration Order, issued by the English High Court, registering a judgment of the Maritime Court of Appeal of Venezuela dated 24 September 2009, granted in favour of the Puerto Miranda Union (a fishermen's trade union), in respect of claims arising from the incident.

Following a successful application by the 1992 Fund to the English High Court, the Registration Order was set aside. An application by the Puerto Miranda Union to the Court of Appeal for permission to appeal was dismissed in October 2016.

In June 2017, the 1992 Fund was served with a copy of a judgment dated 23 February 2017 (2017 judgment) issued by the Constitutional Chamber of the Supreme Court of Justice of the Bolivarian Republic of Venezuela.

Recent developments:

The 2017 judgment is the result of an application to the Constitutional Chamber of the Supreme Court of Justice of Venezuela for a judicial review of a judgment of the Maritime Court of Appeal in August 2014. The aim of the application was to seek a declaration that, as a matter of Venezuelan law, the 1992 Fund should be deemed responsible for the consequences of the *Plate Princess* incident, in place of the 1971 Fund, which ceased to exist on 31 December 2014.

The 2017 judgment provides that:

- (i) The 1992 Fund Protocol that amends the 1971 Fund Convention applies to the *Plate Princess* incident because, on the Venezuelan Supreme Court's interpretation of the 1992 Fund Protocol, the 1992 Fund Convention was in force in Venezuela at the time of the incident;
- (ii) Although the 1992 Fund has its own legal personality and is independent from the 1971 Fund, the 1992 Fund is liable for compensation to the victims of the *Plate Princess* incident, by virtue of the Venezuelan Supreme Court's interpretation of the transitional provisions of the 1992 Fund Protocol.

Action to be taken:

1992 Fund Assembly

Information to be noted.

1 **Background information**

- 1.1 The *Plate Princess* incident took place on 2 May 1997 in the Bolivarian Republic of Venezuela. Further information relating to the incident, including a full case study, is available under the Incidents section of the IOPC Funds' website.
- 1.2 Details of the legal proceedings arising from the *Plate Princess* incident are set out in documents [IOPC/OCT15/4/7](#), [IOPC/OCT15/4/7/1](#), [IOPC/APR16/4/8](#), [IOPC/OCT16/4/5](#) and in an IOPC Funds' [news article](#) dated 27 October 2016^{<1>}.

Chronology of recent developments in the English legal proceedings

- 1.3 In May 2015, the Director was served with a copy of a Registration Order, issued by the English High Court, registering a judgment of the Maritime Court of Appeal of Venezuela dated 24 September 2009.
- 1.4 The judgment had been granted in favour of the Puerto Miranda Union, in respect of claims allegedly arising from the *Plate Princess* incident which took place in 1997 in the Bolivarian Republic of Venezuela.
- 1.5 The Registration Order was obtained against the 'International Oil Pollution Compensation Fund', and it was therefore unclear whether it was intended to be directed against the 1992 Fund, or the 1971 Fund which had been dissolved and had ceased to exist on 31 December 2014, or both. The 1992 Fund therefore applied to the English High Court for (i) a declaration that the Registration Order did not apply to it; alternatively (ii) that the Registration Order be set aside on the basis that the 1992 Fund was immune from jurisdiction and enforcement pursuant to the 1992 Fund Headquarters Agreement and Article 5 of the 1996 Order^{<2>}.
- 1.6 On 22 July 2015, in a judgment (2015 judgment) issued immediately after the hearing, the Judge set aside the Registration Order and affirmed the 1992 Fund's immunity from jurisdiction. The Judge found that the 1992 Fund Convention was not in force in Venezuela at the time of the incident. The Judge also awarded the 1992 Fund its legal costs, amounting to some £61 000. To date, these have not yet been paid by the Puerto Miranda Union, in spite of demands having been sent to their legal representative in London.
- 1.7 In September 2015, the Puerto Miranda Union applied to the Court of Appeal for permission to appeal the July 2015 judgment by the English High Court. The 1992 Fund filed voluntary submissions opposing the granting of permission to appeal.
- 1.8 In February 2016, the Puerto Miranda Union's application for permission to appeal was rejected on paper. The Puerto Miranda Union requested an oral hearing for the Court of Appeal to reconsider its refusal to grant permission to appeal.
- 1.9 On 26 October 2016 at the Court of Appeal in London, Lord Justice Lindblom presided over the oral hearing. Lord Justice Lindblom went through each of the 14 grounds of appeal presented by the Union's representative and dismissed each of them in turn. The Court of Appeal, which had refused permission to appeal on paper in February 2016, agreed with the earlier decisions of the English High Court that the 1971 Fund and 1992 Fund had distinct legal personalities. It therefore followed that a judgment against the 1971 Fund was not a judgment against the 1992 Fund as originally claimed by the Puerto Miranda Union. The Court of Appeal also confirmed that the 1992 Fund was immune because the 1992 Fund

<1> News article entitled 'Court of Appeal refuses the Puerto Miranda Union permission to appeal judgment by the English High Court'.

<2> The International Oil Pollution Compensation Fund 1992 (Immunities and Privileges) Order 1996.

Convention was not in force in Venezuela at the time of the incident. Lord Justice Lindblom then ordered that the Union's oral application for permission to appeal to the Court of Appeal finally be dismissed.

Developments in 2017

- 1.10 In June 2017, the 1992 Fund was served with a copy of the 2017 judgment, which was the result of an application to the Constitutional Chamber of the Supreme Court of Justice of Venezuela for a judicial review of a judgment of the Maritime Court of Appeal in August 2014 which reversed an earlier appeal by the 1971 Fund.
- 1.11 The judgment provides that:
- The 1992 Fund Protocol that amends the 1971 Fund Convention applies to the *Plate Princess* incident, because, on the Venezuelan Supreme Court's interpretation of the 1992 Fund Protocol, the 1992 Fund Convention was in force in Venezuela at the time of the incident;
 - Although the 1992 Fund has its own legal personality and is independent from the 1971 Fund, the 1992 Fund is liable for compensation to the victims of the *Plate Princess* incident, by virtue of the Venezuelan Supreme Court's interpretation of the transitional provisions of the 1992 Fund Protocol;
 - The 1992 Fund is to be notified of this decision; and
 - The Maritime Court of First Instance in Venezuela is to be informed of the judgment.

2 Legal opinion of Dr Thomas A Mensah

- 2.1 The Assembly will recall that at the October 2012 session of the 1971 Fund Administrative Council, the Director submitted a document^{<3>} attaching the legal opinion^{<4>}, of Dr Thomas A Mensah, (who is an expert on matters relating to the Law of the Sea, Maritime Law, International Environmental Law and Public International Law), entitled 'Legal basis for the 1971 Fund to refuse to pay compensation for damage resulting from the *Plate Princess* incident (27 May 1997)'.
- 2.2 The Assembly will also recall that in his legal opinion, Dr Mensah concluded at paragraph 61 of his opinion, that:

'The claim that Venezuela "automatically became a party to the 1992 Protocol" when the 1971 Fund Convention entered into force for Venezuela is factually incorrect. Information from the depositary of the Convention, clearly demonstrates that Venezuela did not become a Party to the 1992 Fund Convention until July 1999. Further, the claim of Venezuela that 1992 Fund Member States are under any liability in respect of incidents that occurred when the 1971 Fund was in force, even when they were not members of the 1971 Fund, has no basis in law. It is in direct conflict with the express provisions of the 1971 Fund Convention and the principles of the general international law of treaties.'

3 Director's considerations

- 3.1 The Director regrets that the legal proceedings arising from the *Plate Princess* incident are not concluded. The Director notes that the 2017 judgment argues that, according to Venezuelan law, the transitional provisions of the 1992 Fund Convention apply to the *Plate Princess* incident.

<3> See document [IOPC/OCT12/3/4/1](#).

<4> Dated 7 September 2012.

- 3.2 However, the Director notes that, as expressed by the English High Court in July 2015 and the Court of Appeal in October 2016, the transitional provisions of the 1992 Fund Protocol applied to Member States which had ratified the 1992 Fund Protocol through the deposit of a relevant instrument, but had yet to denounce the 1971 Fund Convention. They did not however apply to Member States like Venezuela, which had not ratified them.
- 3.3 The Director recalls that Venezuela ratified the 1992 CLC and the 1992 Fund Protocol on 22 July 1998, and these Conventions entered into force in Venezuela in July 1999, over two years after the *Plate Princess* incident, which occurred in May 1997.
- 3.4 The Director also recalls that the July 2015 judgment and the Court of Appeal held that the transitional provisions in the 1992 Fund Protocol did not apply to the *Plate Princess* incident, and the English courts' interpretation of the position in international law corresponds with the opinion of Dr Mensah.
- 3.5 The Director intends to defend the 1992 Fund if further action is taken by the Puerto Miranda Union and the 1992 Fund is required to respond, since Venezuela did not become a Party to the 1992 Fund Convention until July 1999, two years after the *Plate Princess* incident.
- 3.6 The Director shall also continue to request the payment of outstanding legal costs of £61 000, which were awarded to the 1992 Fund in the 2015 judgment, but which remain unpaid.

4 Action to be taken

1992 Fund Assembly

The 1992 Fund Assembly is invited to take note of the information contained in this document.
