



International Oil Pollution  
Compensation Funds

Agenda Item 3	IOPC/NOV21/3/8	
Date	23 September 2021	
Original	English	
1992 Fund Assembly	92A26	
1992 Fund Executive Committee	92EC77	●
Supplementary Fund Assembly	SA18	

## INCIDENTS INVOLVING THE IOPC FUNDS — 1992 FUND

### NESA R3

#### 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>On 19 June 2013, the 856 GT tanker <i>Nesa R3</i>, carrying 840 tonnes of bitumen from the port of Bandar Abbas in the Islamic Republic of Iran, sank off Port Sultan Qaboos, Muscat, the Sultanate of Oman. Tragically, the master lost his life in the incident.</p> <p>The <i>Nesa R3</i> carried less than 2 000 tonnes of persistent oil as cargo and so was not required to maintain compulsory liability insurance. The shipowner of the <i>Nesa R3</i> had nonetheless taken out insurance with the Indian Ocean Ship Owners Mutual P&amp;I Club, Sri Lanka. The limitation amount applicable under the 1992 Civil Liability Convention (CLC) would be SDR 4.51 million (£4.7 million)<sup>&lt;1&gt;</sup>. However, the shipowner never set up a limitation fund.</p> <p>In October 2013, the Omani Government commenced legal action against the shipowner and the insurer in the Court of Muscat, as they had refused to meet their obligations under the 1992 CLC. In February 2016, the 1992 Fund joined the legal action by the Omani Government against the shipowner and the insurer of the <i>Nesa R3</i>.</p> <p>In December 2017, the Court of Muscat issued a judgment which awarded OMR 4 154 842.80 (£7.8 million) to the Omani Government and OMR 1 777 113.44 (£3.3 million) and BHD 8 419.35 (£16 000) to the 1992 Fund. Both the Omani Government and the 1992 Fund have appealed the judgment.</p> <p>Of the 33 claims received by the 1992 Fund, 28 have been settled at the total amount of OMR 3 521 364.39 (£6.7 million) and BHD 8 419.35 (£16 000). The remaining claims were rejected.</p>
<b>Recent developments:</b>	<p>Having reached a settlement with the 1992 Fund of all the claims, the Omani Government undertook to withdraw all claims in the proceedings. As at 23 September 2021, the claims have not been withdrawn.</p> <p>Once the legal proceedings in Oman are finalised, the 1992 Fund may be able to bring legal proceedings against the shipowner and insurer in the United Arab Emirates and</p>

<sup><1></sup> The exchange rates used in this document are: £1 = SDR 0.9697; £1 = OMR 0.5319; and £1 = BHD 0.5209 (as at 30 June 2021), except in respect of payments made by the 1992 Fund where the conversion has been made at the rate on the date of payment.

	Sri Lanka, respectively, to recover the amount paid in compensation. However, the 1992 Fund's attempts to contact the shipowner and insurer have not met with success.
	The 1992 Fund is investigating the financial position of the shipowner and insurer to ascertain their solvency.
<b>Relevant documents:</b>	The online <i>Nesa R3</i> incident report 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>Nesa R3</i>
Date of incident	19.06.2013
Place of incident	About 1.4 nautical miles off Port Sultan Qaboos, Muscat, the Sultanate of Oman
Cause of incident	Sinking
Quantity of oil spilled	In excess of 250 tonnes
Area affected	Some 40 kilometres of shoreline
Flag State of ship	Saint Kitts and Nevis
Gross tonnage	856 GT
P&I insurer	Indian Ocean Ship Owners Mutual P&I Club, Sri Lanka
CLC limit	SDR 4.51 million (£4.7 million)
STOPIA/TOPIA applicable	Not applicable
CLC + Fund limit	SDR 203 million or OMR 120.8 million (£227 million)
Claims settled	Twenty-eight claims totalling OMR 3 521 364.39 (£6.7 million) and BHD 8 419.35 (£16 000).
Legal proceedings	The 1992 Fund has joined the legal proceedings commenced by the Omani Government against the shipowner/insurer.

## 2 Background information

- 2.1 On 19 June 2013, the 856 GT tanker *Nesa R3*, built in 1981, sank in 65 metres of water approximately 1.4 nautical miles off Port Sultan Qaboos, Muscat, the Sultanate of Oman. The Saint Kitts and Nevis flagged ship had arrived in Port Sultan Qaboos on 19 June 2013 to make a routine delivery of bitumen from Bandar Abbas, Islamic Republic of Iran. The exact nature of the problems encountered and the sequence of events leading to the incident remain unknown. Tragically, the ship's master lost his life in the incident.
- 2.2 Background information, including an analysis of the claims submitted, is provided in more detail in the online *Nesa R3* incident report.

## 3 Applicability of the Conventions

- 3.1 Oman is Party to the 1992 Civil Liability Convention (CLC) and the 1992 Fund Convention.
- 3.2 The tonnage of the *Nesa R3* was 856 GT. Therefore, the limitation amount applicable under the 1992 CLC is SDR 4.51 million (£4.7 million).

- 3.3 The *Nesa R3* carried less than 2 000 tonnes of persistent oil as cargo and as such, was not required to maintain compulsory insurance under the 1992 CLC. The shipowner of the *Nesa R3* had, nevertheless, taken out insurance with the Indian Ocean Ship Owners Mutual P&I Club, based in Sri Lanka. The insurer of the ship, however, has refused to consider any claims and has stated the reason for the refusal was that the cargo came from the Islamic Republic of Iran. The shipowner/insurer of the *Nesa R3* did not set up a Limitation Fund in accordance with the 1992 CLC.
- 3.4 In October 2013, the 1992 Fund Executive Committee authorised the Director to make payments of compensation in respect of the admissible losses arising out of the *Nesa R3* incident and to claim reimbursement from the shipowner/insurer.

#### **4 Claims for compensation**

- 4.1 A total of 33 claims for clean-up operations, surveys of the wreck, environmental monitoring studies and economic losses, totalling OMR 5 915 218 (£11.1 million), were submitted to the 1992 Fund.
- 4.2 Of these, 28 claims were settled by the 1992 Fund for a total of OMR 3 521 364.39 (£6.7 million) plus BHD 8 419.35 (£16 000). The remaining claims were rejected.

#### **5 Legal proceedings**

- 5.1 The Omani Government's attempts to obtain a financial commitment from the shipowner were unsuccessful. Therefore, the Government commenced legal action in respect of all claims for the amount of OMR 5 932 703 (£11.1 million) at the Court of Muscat against the shipowner and insurer of the *Nesa R3* since both had refused to meet their obligations under the 1992 CLC. In February 2016, the 1992 Fund joined the legal action commenced by the Omani Government. The 1992 Fund and the Omani Government agreed to cooperate with each other in their attempts to recover compensation from the shipowner and insurer. Under Omani law, the time-bar period is five years from the date the claimant is aware of the damage.
- 5.2 In December 2017, the Court of Muscat rendered a judgment which found that the shipowner and insurer of the *Nesa R3* were jointly liable to pay compensation to the 1992 Fund and the Omani Government. The Court awarded OMR 1 777 113.44 (£3.3 million) plus BHD 8 419.35 (£16 000) to the 1992 Fund, which corresponded to the amounts paid by the 1992 Fund at that time and, to the Omani Government, the difference between the amount it claimed in court i.e. OMR 5 932 703 (£11.1 million) and the amount received from the 1992 Fund, in other words, OMR 4 154 842.80 (£7.8 million).
- 5.3 The 1992 Fund appealed the judgment since it had awarded amounts above the value of the claims already settled by the 1992 Fund. The Omani Government also appealed the judgment, claiming that the amount it should be entitled to receive in compensation was OMR 10 million (£19 million). The Court of Appeal postponed its hearings several times due to the attempts to notify the insurer through diplomatic channels.
- 5.4 Following the settlement of all the claims, the Omani Government agreed to withdraw from court all claims settled with the 1992 Fund. The request to withdraw a claim can only be made during a hearing by the Court.
- 5.5 In December 2019, the company which conducted the survey on the wreck made a request to the Court of Appeal to join the action against the owner/insurer of the ship in order to recover the balance of their claim said to be worth OMR 10 million (£19 million). The calculation of this amount was not explained in the application.

- 5.6 The subsequent hearing of the Court of Appeal was scheduled for May 2020, at which time it was expected that the government claims would be withdrawn and that a decision would be taken by the Court with regard to the contractor's application to join the legal action. However, due to the COVID-19 pandemic, the hearing has been postponed several times.
- 5.7 At a hearing in May 2021, the Fund's lawyers submitted a memorandum to the Court of Appeal asking the Court to request the Omani Government to withdraw their claim from the proceedings as per the signed settlement agreement. However, in a subsequent hearing in June 2021, the Omani Government submitted pleadings in Court that stated that the Fund had paid only part of the total amount of the Ministry of Environment and Climate Affairs (MECA) claim through the settlement agreement and requested the Court of Appeal to order the owner and insurer of the *Nesa R3* to jointly or severally pay OMR 10 million (£19 million).
- 5.8 In a hearing in July 2021, the 1992 Fund's lawyers submitted a memorandum in response to MECA's earlier pleadings, asking the Court of Appeal to issue a judgment declaring that MECA's claim should be considered withdrawn, and reiterated the 1992 Fund's previous pleadings submitted in the appeal proceedings, taking into account the updated amount of the claim of OMR 3 521 364.39 (£6.7 million).
- 5.9 In particular, the Fund's pleading noted that, after the Primary Court judgment was rendered, MECA had signed a settlement agreement amounting of OMR 3 521 364.39 (£6.7 million) and had not raised any further demands after that to the Fund, but that subsequently MECA had failed to withdraw their Appeal according to Article (6) of the settlement agreement, which contravened Article (512) of the Omani Civil law which provides that a party to a settlement agreement may not go back on it.
- 5.10 The next hearing in the Court of Appeal is scheduled for November 2021.

## **6 Director's considerations**

- 6.1 Following the execution of the settlement agreement with the 1992 Fund, it is expected that the Omani Government will withdraw from court all claims settled with the 1992 Fund. The Director will appreciate any efforts the Omani Government can make to achieve a resolution to this matter.
- 6.2 The 1992 Fund's lawyers in Oman have informed the Director that once the Appeal Court renders its judgment, all parties can still appeal the judgment to the Supreme Court before the case can be considered finalised. If, as expected, the Court of Appeal renders its judgment by the end of 2021 and that judgment is appealed, the case might be considered by the Supreme Court in 2022.
- 6.3 Once the legal proceedings in Oman are finalised, the 1992 Fund will have to examine the possibility of recovering the amounts it has paid from the shipowner/insurer of the *Nesa R3*. It is likely that this would mean bringing legal proceedings against the shipowner in the United Arab Emirates and against the insurer in Sri Lanka, where its headquarters are located.
- 6.4 The Secretariat will report on the progress of the legal proceedings and the options for recovery actions at future meetings of the 1992 Fund Executive Committee.

**7 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.

---