



International Oil Pollution
Compensation Funds

Agenda Item 3	IOPC/OCT22/3/3	
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1992 Fund Assembly	92A27	
1992 Fund Executive Committee	92EC79	●
Supplementary Fund Assembly	SA19	

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 2 August 2022, 32 466 claims have been received and payments totalling PHP 1 091 million (£12.3 million) have been made in respect of 26 872 claims mainly in the fisheries sector and also for the main clean-up claim presented by the Philippine Coast Guard (PCG). 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 (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. As a result, it is very unlikely that the 1992 Fund will be called upon to pay compensation.</p> <p>Two claims remain outstanding, namely, a claim by 967 fisherfolk and a claim by a group of municipal employees. Both are subject to legal proceedings in the Republic of the Philippines. The claim by the PCG was paid in August 2022.</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 <i>Solar 1</i> incident report can be found via the Incidents section of the IOPC Funds' website.
Action to be taken:	<u>1992 Fund Executive Committee</u>
	Information to be noted.

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, the Philippines

Flag State of ship	The Philippines
Gross tonnage	998 GT
P&I insurer	Shipowners' Mutual Protection and Indemnity Association (Luxembourg) (Shipowners' Club)
CLC limit	SDR 4.51 million (USD 5.99 million) <1>
STOPIA/TOPIA applicable	STOPIA 2006 limit of SDR 20 million (USD 26.56 million)
CLC + Fund limit	SDR 203 million (USD 269.54 million)
Legal proceedings	Three sets of legal proceedings against the 1992 Fund by: (1) the Philippine Coast Guard; (2) 967 fisherfolk; and (3) a group of municipal employees remain to be settled.

2 **Background information**

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**

- 3.1.1 The Philippine Coast Guard (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 several 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 Republic of the Philippines, matters have been delayed. A further issue subject to lengthy discussions has been whether Congressional approval to the settlement agreement was required.
- 3.1.2 In August 2018, the PCG obtained the endorsement of the Office of the Presidential Spokesperson for immediate approval of the House Resolution granting Congressional approval to the compromise agreement. The PCG indicated that it was also seeking the approval of the Philippine President to the compromise agreement.
- 3.1.3 Further hearings took place in September and November 2018 whereby the PCG informed the Court that they were coordinating the approval of the settlement with the Senate. However, in March 2019, the PCG submitted a Manifestation to the Court which stated that in February 2019, it had liaised with the House Committee on Ecology which had questioned whether it was possible for the PCG to negotiate for a higher settlement. The 1992 Fund filed a Counter Manifestation stating *inter alia* that: (1) in a Manifestation of December 2016, the PCG had informed the Court that it had accepted the compromise offer of PHP 104.8 million in settlement of its claims; (2) that the 1992 Fund had consistently notified the Court that the signatures of the PCG and 1992 Fund, assisted by the Solicitor General as an additional signatory in his capacity as the official lawyer of governmental agencies, were sufficient for the Court to approve the compromise agreement; (3) that the 1992 Fund had repeatedly requested the PCG to sign the compromise agreement in order for the 1992 Fund to make payment of the agreed settlement sum of PHP 104.8 million; and (4) that the PCG claims had been assessed and accepted at PHP 104.8 million in accordance with the 1992 Fund Claims Manual and guidelines.

<1> The exchange rate used in this document as at 30 June 2022 is SDR 1 = USD 1.327780

- 3.1.4 In May 2019, the PCG confirmed to the Court that the PCG would seek Congressional approval for a settlement offer of PHP 104.8 million and not for a higher amount. The case was reset for hearing in July 2019, at which the PCG stated that they would only settle the claims when they had obtained Congressional approval to do so.
- 3.1.5 Subsequently, due to the PCG's inability to obtain Congressional approval for the agreed settlement within the timescale permitted by the Court, the presiding Judge terminated the attempt at judicial dispute resolution and ordered the case be reset to a different court for the continuation of pre-trial procedures.
- 3.1.6 At a hearing in January 2020, the PCG indicated that a new lawyer for the PCG would be dealing with the court case. The 1992 Fund's lawyers were informed by that lawyer, that the view of the PCG and the Office of the Solicitor General was now that there was no need to obtain Congressional approval to the agreed settlement. The 1992 Fund instructed its lawyers to meet with the PCG Commandant to discuss the matter and the lack of progress, in an attempt to resolve the settlement and payment of the claim.
- 3.1.7 The case was set for a further hearing in June 2020 but was cancelled as several personnel from the Court tested positive for COVID-19. Subsequent hearings reset for September and October 2020 were also cancelled, and reset for November for continuation of the preliminary conference and pre-trial hearing. In the meantime, the PCG also sought the permission of the Court to serve a summons on the President of the shipowning company, against whom they had previously been unable to serve due to the shipowning company no longer having an office in the Philippines.
- 3.1.8 Following the court hearing in November 2020, the PCG's lawyer confirmed that they were not seeking the approval of Congress but would obtain the approval of the Secretary of Transportation since the PCG settlement was under the remit of the Department of Transportation. However, the PCG lawyer then stated that PCG would still pursue the remaining balance of their claim, over and above the settlement sum of PHP 104.8 million. The 1992 Fund's lawyer immediately countered that this was not acceptable; the settlement sum of PHP 104.8 million was a full and final settlement and constituted a full and final payment of the PCG claim, and any further claim would be dismissed.
- 3.1.9 Further court hearings in December 2020, for the marking of exhibits, made little progress and further hearings were scheduled for February 2021, but were delayed due to the suspension of the PCG lawyer by the Office of the Ombudsman for a period of 1 year, for grave abuse of authority and oppression, in connection with an administrative case filed against the lawyer. The Office of the Solicitor General (OSG) then took over as lead counsel for the PCG.
- 3.1.10 At a subsequent meeting with the OSG, the 1992 Fund's lawyers were informed that the OSG had given its recommendation for the settlement of the case, on the condition that an additional stipulation be added in the settlement, so that if the PCG found additional evidence to prove its claim after the dismissal of the case due to settlement, then the PCG could retain the right to file another claim against the 1992 Fund to run after any additional claims.
- 3.1.11 The Secretariat advised that this was not acceptable as the settlement needed to be final but agreed to allow the PCG a period of 30 days to search their records for any further evidence not previously assessed, and to send this to the 1992 Fund and its experts for review and assessment.
- 3.1.12 After the expiry of the agreed 30-day period in March 2021, a further period of 30 days was requested and granted due to the fact that the PCG had many staff members absent due to the COVID-19 pandemic. Following that period, the parties agreed the terms of the revised compromise agreement and joint application to dismiss the claim, and the procedure to follow to ensure that payment was made in return for the claim being dismissed at court.

Developments since 2021

- 3.1.13 In early 2022, the PCG, the 1992 Fund's lawyers and the shipowner/insurer's lawyer signed the revised compromise agreement. Thereafter, the agreement was forwarded to the OSG to add its signature to the agreement. The OSG unilaterally amended the front page of the agreement to detail the fact that it would deduct part of the settlement sum for acting as the PCG's legal counsel, in accordance with Philippine law. Since this arrangement was purely a bilateral arrangement between the PCG and the OSG, and did not impact upon the 1992 Fund's obligation to pay the compensation sum to the designated bank account, the agreement was forwarded to the Court for it to approve the settlement.
- 3.1.14 In late July 2022, the Court approved the revised compromise agreement and in early August, upon receipt of the stamped court judgment, the 1992 Fund paid the PCG's claim to the designated bank account. Pursuant to the compromise agreement, upon receipt of funds, the PCG will withdraw its legal proceedings against the 1992 Fund and the 1992 Fund will invoice the P&I Club for an indemnification for the payment in accordance with the terms of the Small Tanker Oil Pollution Indemnification Agreement (STOPIA) 2006.
- 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 must 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. Attempts to settle the case were unsuccessful as the claimants' lawyers failed to prepare any formal documentation furthering their case.
- 3.2.3 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. Therefore, the 1992 Fund's lawyer applied to the Court to declare the claimants as having waived the right to adduce evidence, in effect, requesting a plea for the outright dismissal of the claim^{<3>}.
- 3.2.4 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^{<4>}.
- 3.2.5 After a series of further adjournments and hearings at which the claimants failed to present suitable witnesses to substantiate their case, in September 2016 the claimants' lawyers filed an application for Partial Summary Judgment. The 1992 Fund's lawyers objected to this application as: (1) it was without merit, since the witnesses presented by the claimants had not proved their claim for purported damage of 22 months as alleged; (2) it sought to deny the Fund the right to present its evidence that

<3> 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.

<4> 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.

damage, if any, was only for 12 weeks; (3) the application deprived the Fund of the right of due process of law; and (4) the application did not comply with the court filing requirements. Subsequently, the Court denied the claimants' application for Partial Summary Judgment.

- 3.2.6 Through 2018 and the early months of 2019, a number of witnesses were presented by the claimants' lawyers, but their claims were proved to have no factual or legal basis. At a subsequent hearing in April 2019, the witnesses presented were proven not to be the ones who executed the claims forms, and a further court hearing was set for August 2019.
- 3.2.7 The August 2019 hearing was cancelled and subsequently reset to January 2020, at which the claimant's lawyer filed a motion to cancel the hearing due to the impending eruption of the Taal Volcano. The hearing was reset to April 2020, at which the 1992 Fund's lawyers filed a motion to hold the hearings twice a month and for a minimum of 15 witnesses to be examined at each hearing, in an attempt to expedite the presentation of the witnesses. A further hearing was set for August 2020 but was cancelled and reset to October 2020 due to the COVID-19 pandemic. Due to the rising number of COVID-19 cases, a motion to move to online hearings was granted for November 2020, but the hearings were cancelled due to infection of court staff with the COVID-19 virus.
- 3.2.8 In April 2021, the claimants presented a single witness to testify at the hearing but due to time constraints with the Judge, the case was reset to June and July 2021. At that hearing, upon cross-examination by the 1992 Fund's lawyers, the two witnesses produced by the claimants confirmed that their claim amounts had been dictated to them by their lawyer and had no basis in fact. Further hearings were set for September and October 2021.

Developments since 2021

- 3.2.9 At a hearing in February 2022, on cross examination, the witness presented by the claimant's lawyer admitted that the amount was merely supplied by her lawyer and that she had not submitted any documents proving the claimed amounts. The witness also admitted not having filed any claim with the 1992 Fund and, therefore, there was nothing for the 1992 Fund to deny, contrary to her assertion in her Judicial Affidavit that the 1992 Fund had wrongly denied her claim.
- 3.2.10 At a number of further hearings in April 2022, similar testimonies were heard; consequentially, the 1992 Fund requested its lawyers to file an application at court to dismiss any such fraudulent claims as it was apparent that: a) none of the witnesses presented to date by the claimant's lawyer had filed any documents proving their monthly income upon which their claim had been based; b) the claimed amounts submitted for the witnesses presented, had simply been supplied by the claimants' lawyer with no basis for their calculations; c) the claimants had not filed claims against the 1992 Fund nor had they subsequently received denials of these claims.
- 3.2.11 The 1992 Fund also instructed its lawyers to file a 'cease and desist application' against the claimants' lawyer in order to force him to refrain from wasting costs and further court time.
- 3.2.12 At a subsequent hearing in June 2022, the claimants' lawyer requested a postponement due to the unavailability of witnesses; such request was vehemently denied by the 1992 Fund's lawyers since the consolidated hearings had been specifically set to deal with the large numbers of witnesses remaining to be examined and cross-examined. The Judge denied the claimants' lawyer's request and ordered him to pay the costs of the hearing including the expenses of the 1992 Fund lawyers in attendance. Further hearing dates were set for July, August and September 2022.

3.3 Legal proceedings by a group of municipal employees

- 3.3.1 Ninety-seven individuals, employed by a Municipality of 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 were 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 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. The 1992 Fund's lawyers also showed 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. Further hearings took place through 2016 and 2017, to continue the examination of the witnesses submitted by the claimants.
- 3.3.4 The case was set for further hearings in May and June 2018. At those hearings, the claimants' lawyers requested a postponement as they could not present the required number of witnesses. The Judge ordered the lawyers to pay a fine for requesting the postponement and for not being ready with other witnesses. The case was reset to late July 2018.
- 3.3.5 In a series of court hearings through the remainder of 2018 and early months of 2019, a limited number of witnesses were presented by the claimants' lawyers but in every case, the 1992 Fund's lawyers were able to show the Court that their claims for compensation had no basis. A further hearing was set for August 2019.
- 3.3.6 The August 2019 hearing was cancelled and subsequently reset to April 2020. At the 1992 Fund's instruction, its lawyers filed an application to expedite the examination and cross-examination of the witnesses. A further hearing was set for August 2020 but was cancelled and reset to October 2020 due to the COVID-19 pandemic. Due to the rising number of COVID-19 cases, an application to move to online hearings was granted for November 2020, but the hearings were cancelled due to infection of court staff with the COVID-19 virus.
- 3.3.7 In April 2021, the claimants presented a single witness to testify at the hearing but due to time constraints with the Judge, the case was reset to July 2021, at which, upon cross-examination by the 1992 Fund's lawyers, the five claimants presented at the hearing confirmed *inter alia* that they had not paid court filing fees, that their activity reports were not signed and validated by the Mayor, were volunteers or that they were paid their normal salaries on the days they performed relief work.
- 3.3.8 Further hearings were set for September and October 2021 respectively, during which one of the witnesses presented by the claimants' lawyer stated that it was her lawyer who prepared her claim, which she merely signed. She further stated that had she not been approached by the claimant's lawyer, she would not have filed a claim, as the relief work she claimed to have performed was purely humanitarian in character, intended to help her fellow townspeople.

Developments since 2021

- 3.3.9 A hearing in January was postponed due to adverse weather conditions and reset for February and March 2022, at which the four witnesses presented by the claimants' lawyer all testified under

cross-examination that: a) they had not filed any claim against the 1992 Fund; b) the services they had rendered were voluntary and not motivated by money, and the documents which had been submitted on their behalf did not bear the signature of the mayor or any other official of the accounting office; c) that the amounts claimed were merely supplied by the claimants' lawyer; d) that the amounts claimed as compensation were for alleged transportation expenses, even though the vehicles that were used to deliver and distribute goods were provided by the Mayor's Office; and e) that they had not filed any claim with the 1992 Fund and, therefore, there was nothing for the 1992 Fund to deny, contrary to the assertions in the Judicial Affidavit filed by the claimants' lawyer that the 1992 Fund had wrongly denied the claims.

3.3.10 Similar testimonies were heard from other witnesses presented by the claimants' lawyer at other hearings through the summer of 2022, and the 1992 Fund instructed its lawyers to file a 'cease and desist' application against the claimants' lawyer.

3.3.11 In July 2022, contrary to expectations, the Judge denied the 1992 Fund's application, on the basis that the claimants' claims contained '*factual allegations that warranted a full trial*'. The 1992 Fund's lawyers filed an application for reconsideration, on the basis that the 'factual allegations' were readily apparent from the testimonies to date, all of which had been based on false information provided by the claimants' lawyer himself. A court date is awaited for consideration of the applications filed.

4 Director's Considerations

4.1 The Director is extremely pleased to note that the payment to the PCG has finally been made and thanks the PCG, and the lawyers representing the 1992 Fund and P&I Club, for their extensive work in finalising this payment.

4.2 The Director also notes that the legal proceedings for the claims submitted by the fisherfolk and municipal employees are continuing but the 1992 Fund's lawyers have indicated that, due to the number of witnesses presented by the claimants, the court hearings may take a number of years to conclude. The 1992 Fund's lawyers are continuing to exert all efforts to fast-track the presentation of witnesses and to finalise the legal proceedings.

5 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.
