



International Oil Pollution  
Compensation Funds

<b>Agenda Item 3</b>	IOPC/MAY23/3/4	
<b>Date</b>	18 April 2023	
<b>Original</b>	English	
<b>1992 Fund Assembly</b>	92AES27	
<b>1992 Fund Executive Committee</b>	92EC80	●
<b>Supplementary Fund Assembly</b>	SAES11	

## 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> (Welance Marine Inc.) had, nevertheless, taken out insurance with the Indian Ocean Shipowners' Mutual P&amp;I Club, Sri Lanka (Indian Ocean P&amp;I Club). The limitation amount applicable under the 1992 Civil Liability Convention (1992 CLC) would be SDR 4.51 million (£5 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 (£9 million) to the Omani Government and OMR 1 777 113.44 (£3.8 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> <p>Having reached these settlements with the 1992 Fund of all the claims, the Omani Government undertook to withdraw all claims in the proceedings. As at 18 April 2023, the claims have not been withdrawn.</p>

<sup><1></sup> The exchange rates used in this document are: £1 = SDR 0.9018; £1 = OMR 0.4623; and £1 = BHD 0.4527 (as at 3 January 2023), except in respect of payments made by the 1992 Fund where the conversion has been made at the rate on the date of payment.

<b>Recent developments:</b>	<p>In January 2023, the Court of Appeal issued a judgment, recognising the Fund's claim and rejecting the appeals by the Environmental Authority (previously MECA) and the shipowner and the insurer of the <i>Nesa R3</i>.</p> <p>Once the legal proceedings in Oman are finalised, the 1992 Fund will be able to bring legal proceedings against the shipowner and the insurer in the United Arab Emirates and Sri Lanka respectively, to recover the amount paid in compensation. So far, the 1992 Fund's several attempts to contact the shipowner and the insurer have not been successful.</p>
<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>	<p><u>1992 Fund Executive Committee</u></p> <p>Information to be noted.</p>

## 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 (£5 million)
STOPIA/TOPIA applicable	Not applicable
CLC + Fund limit	SDR 203 million or OMR 120.8 million (£261 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 and the 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 (1992 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 (£5 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* (Welance Marine Inc.) had, nevertheless, taken out insurance with the Indian Ocean Shipowners' Mutual P&I Club (Indian Ocean P&I Club), based in Sri Lanka. The insurer of the ship, however, had 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 and the insurer of the *Nesa R3* did not set up a limitation fund in accordance with the 1992 CLC. Subsequently, the insurer was dissolved.
- 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 and the insurer (document IOPC/OCT13/11/1, paragraph 3.16.19).

### **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 (£12.8 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 (£12.8 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 the 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 the 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 (£3.8 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 (£12.8 million) and the amount received from the 1992 Fund, in other words, OMR 4 154 842.80 (£9 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 (£21.6 million). The Court of Appeal postponed its hearings several times due to 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, Undine Marine Industries (UMI), the company which conducted the survey on the wreck, made a request to the Court of Appeal to join the action against the shipowner and the insurer of the ship in order to recover the balance of their claim said to be worth OMR 10 million (£21.6 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 was postponed several times.
- 5.7 At a hearing in May 2021, the 1992 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 1992 Fund had paid only part of the total amount of the Environmental Authority's claim through the settlement agreement and requested the Court of Appeal to order the shipowner and the insurer of the *Nesa R3* to jointly or severally pay OMR 10 million (£21.6 million).
- 5.8 In a hearing in July 2021, the 1992 Fund's lawyers submitted a memorandum in response to the Environmental Authority's earlier pleadings, asking the Court of Appeal to issue a judgment declaring that the Environmental Authority'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, the Environmental Authority had signed a settlement agreement amounting to OMR 3 521 364.39 (£6.7 million) and had not raised any further demands after that to the Fund but that subsequently, the Environmental Authority 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 In March 2022, the Court of Appeal in Muscat decided to appoint an accountant expert to review the settlement agreement concluded between 1992 Fund and the Environmental Authority before the appealed judgment is issued, in order to determine the amounts owed to the Environmental Authority, if any, and the amounts owed to the Fund. In June 2022, the court-appointed expert issued his report, confirming the total amount settled by the Fund and also noting that the Environmental Authority had agreed to withdraw its claims from court.
- 5.11 In January 2023, the Court of Appeal in Muscat rendered its judgment, in which the Court:
- accepted the appeal by the 1992 Fund;
  - dismissed the appeal by the Environmental Authority;
  - denied the request by UMI to join the proceedings;
  - ordered Indian Ocean P&I Club and Welance Marine Inc. to pay the 1992 Fund an amount of OMR 3 521 364.39 and BHD 8 419.350; and
  - ordered the Environmental Authority, Indian Ocean P&I Club and Welance Marine Inc. to pay the case expenses.

- 5.12 The timeframe to file an objection by way of cassation before the Supreme Court is 40 days, starting from the day after the day the judgment was issued. An objection filed before the Supreme Court is adjudicated by a panel of seven experienced and competent judges of Omani and non-Omani nationalities. The Supreme Court supervises and oversees the judgments rendered by the lower courts in Oman, and only adjudicates on issues of law.
- 5.13 In February 2023, the Indian Ocean P&I Club filed an objection before the Supreme Court. As at 18 April 2023, the objection was under the assessment of the Court on its form where the Court would look at the legal representation, legal grounds for filing the objection and other formal requirements. Only once the Court accepts the objection in form, will the Court notify the other parties and provide a copy of the objection for the other parties to respond to within 15 days. There is no hearing before the Court.

## **6 Director's considerations**

- 6.1 Following the execution of the settlement agreement, it is expected that the Omani Government will withdraw from Court all claims settled by the Fund. The Director will appreciate any efforts made by the Omani Government to resolve this matter.
- 6.2 It is understood that Indian Ocean P&I Club has objected to the judgment of the Court of Appeal in the Supreme Court. The Supreme Court has not yet determined whether it will accept it or dismiss it.
- 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 and the insurer of the *Nesa R3*. In preparation for that, the 1992 Fund has investigated the financial position of the shipowner and the insurer to ascertain their solvency. The result of this investigation has shown that it was unclear whether either entity had sufficient funds to cover the claims arising from this incident.
- 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.

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