



International Oil Pollution  
Compensation Funds

<b>Agenda Item 3</b>	IOPC/NOV23/3/3	
<b>Date</b>	8 August 2023	
<b>Original</b>	English	
<b>1992 Fund Assembly</b>	92A28	
<b>1992 Fund Executive Committee</b>	92EC81	●
<b>Supplementary Fund Assembly</b>	SA20	

## INCIDENTS INVOLVING THE IOPC FUNDS — 1992 FUND

### SOLAR 1

#### 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>As at 8 August 2023, 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.</p>
<b>Recent developments:</b>	In respect of the legal proceedings, reference is made to the three actions in court in which there have been some developments (section 3).
<b>Relevant documents:</b>	The online <i>Solar 1</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>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 6 million) <sup>&lt;1&gt;</sup>
STOPIA/TOPIA applicable	STOPIA 2006 limit of SDR 20 million (USD 26.6 million)
CLC + Fund limit	SDR 203 million (USD 270 million)
Legal proceedings	Two sets of legal proceedings against the 1992 Fund by: (1) 967 fisherfolk and (2) 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

### *Legal proceedings by 967 fisherfolk*

- 3.1 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 as at 8 August 2023, had not done so.
- 3.2 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.
- 3.3 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<sup><2></sup>.
- 3.4 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<sup><3></sup>.
- 3.5 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

<sup><1></sup> The exchange rate used in this document as at 30 June 2023 is SDR 1 = USD 1.33007.

<sup><2></sup> 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.

<sup><3></sup> 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.

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 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.

- 3.6 During 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.
- 3.7 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.
- 3.8 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.
- 3.9 At a hearing in February 2022, on cross-examination, the witness presented by the claimants' 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.
- 3.10 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 claimants' 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.
- 3.11 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.
- 3.12 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 later that year.

*Developments since 2022*

- 3.13 At further hearings in June 2022, seven fish vendors/shell gatherers and fishermen were presented for examination by the claimants' lawyer, all of whom admitted on cross-examination that they had not presented any evidence of their claimed losses; that the quantum of their claims had been supplied by their lawyer; that they had not filed any claim against the 1992 Fund, nor received a denial of such claim contrary to the assertions in their Judicial Affidavits.
- 3.14 At a hearing in November 2022, all three of the claimants under cross-examination, perjured themselves by admitting that their claimed expenses exceeded their gross income, and/or that their total claims included those of other people, and/or included the costs of sale items not affected by the incident.
- 3.15 At a hearing in April 2023, the Court noted that 11 claimants had expressed their disinterest and unwillingness to testify or proceed, so the Court dismissed their claims. Further dates were set for June, August, and September to hear from the remaining fisherfolk claimants.

*Legal proceedings by a group of municipal employees*

- 3.16 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.
- 3.17 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.
- 3.18 At the June 2016 hearing, during cross-examination of the witness presented by the claimants' lawyer, 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' lawyer.
- 3.19 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.
- 3.20 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.
- 3.21 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.

- 3.22 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, and that they were volunteers or that they were paid their normal salaries on the days they performed relief work.
- 3.23 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 had 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.
- 3.24 A hearing in January 2022 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.
- 3.25 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.
- 3.26 At a court hearing in June 2022, the claimants' lawyer requested the Court for a continuance as his claimants were allegedly not available. The 1992 Fund's lawyers objected on the basis that the consolidated hearings had been especially set for hearing by the Court, in order to accommodate the number of witnesses the claimants' lawyer had intended to present. The Court ordered the claimants' lawyer to pay the costs not only of the 1992 Fund's lawyers, but also those of the lawyers representing the former Mayor, and Petron.
- 3.27 In July 2022, contrary to expectations, the Judge denied the 1992 Fund's 'cease and desist' 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.

*Developments since 2022*

- 3.28 In September 2022, five claimants who had filed claims for alleged relief services (sorting out, packing, and distributing relief goods) were, upon cross-examination, found not to have filed any claims against the 1992 Fund; not to have received any denial of the claim by the 1992 Fund; and, to be in breach of Executive Orders which denied them any right to compensation for any work undertaken in the relief operations. The 1992 Fund's lawyers requested the claimants' lawyer to file a list of the remaining witnesses, upon which he filed a list containing only 15 further names.
- 3.29 At a November 2022 hearing, all five claimants testified during cross-examination that the claimed amount of either PHP 600 or PHP 800 per day, was only decided upon and agreed by the Municipal Employees Association of Nueva Valencia. They also admitted that the 1992 Fund had never been informed of the Agreement, and that no proof of the Agreement and claims having been provided to the 1992 Fund had ever been submitted. Finally, they conceded that the work they did was purely voluntary, and that the Executive Order upon which they relied as the basis for their claim, did not contain any provision empowering, allowing, or authorising them to claim compensation against the 1992 Fund. At a subsequent hearing in February 2023, similar admissions were made by other claimants presented by their lawyer.
- 3.30 In April 2023, the claimants' lawyer requested a date for hearing the testimonies of the two remaining claimants, which are due to conclude in September 2023, following which the claimants' lawyer will file their formal offer of evidence and rest their case, and the 1992 Fund's lawyers will begin to present their evidence.

**4 Director's Considerations**

The Director notes that the legal proceedings for the claims submitted by the fisherfolk and municipal employees are continuing but the hearings for presenting the claimants' testimonies are close to concluding. Once they have concluded, the 1992 Fund's lawyers will present their evidence. 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.

---