



International Oil Pollution
Compensation Funds

Agenda Item 3	IOPC/NOV24/3/3	
Date	3 September 2024	
Original	English	
1992 Fund Assembly	92A29	
1992 Fund Executive Committee	92EC83	●
Supplementary Fund Assembly	SA21	

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 28 August 2024, 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.</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 Philippines.</p>
Recent developments:	In respect of the legal proceedings, reference is made to the two actions in court in which there have been some developments (see section 3).
Relevant documents:	The online Solar 1 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 5.7 million) ^{<1>}
STOPIA/TOPIA applicable	STOPIA 2006 limit of SDR 20 million (USD 25.3 million)
CLC + Fund limit	SDR 203 million (USD 256.6 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**

3.1 **Legal proceedings by 967 fisherfolk**

3.1.1 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 (£3.87 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. 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.

3.1.2 Attempts to settle the case were unsuccessful as the claimants' lawyers failed to prepare any formal documentation furthering their case. 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 procedures for the presentation of documents to the opposing party and the Court.

3.1.3 There followed a series of adjournments and hearings at which the claimants failed to present suitable witnesses to substantiate their case. This continued from 2016 to 2020. Hearings in 2020 were postponed due to the COVID-19 pandemic. During hearings in 2021 and 2022, several claimants were cross-examined and admitted that their lawyer had dictated the amounts of their claims without any grounds or evidence. The Judge also made an order for the claimants' lawyer to pay the costs of the hearing, including the expenses of the 1992 Fund's lawyers who were in attendance, due to the time wasted.

3.1.4 In April 2022, similar groundless testimonies were heard; consequentially, the 1992 Fund requested its lawyers to file an application at court to dismiss any such fraudulent claims.

3.1.5 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.

^{<1>} The exchange rate used in this document as at 30 June 2024 is SDR 1 = USD 1.2641 and £1 = PHP 74.0873, except in respect of payments made by the 1992 Fund where the conversion has been made at the rate on the date of payment.

3.2 Developments since 2023

Throughout hearings in 2024, several claimants testified and were cross-examined by the 1992 Fund's lawyers. During cross-examination, three claimants admitted that their main source of income was from professions other than fishing, and that they did not have any documentary evidence to prove their claims.

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. 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 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' 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. Further hearings took place through 2016 and 2017, to continue the examination of the witnesses submitted by the claimants' lawyer.

3.3.4 The case was set for further hearings in 2018 and 2019, but postponed due to the claimants failure to provide witnesses. Further hearings were set for 2020, but were cancelled due to the COVID-19 pandemic.

3.3.5 In July 2021, the claimants presented a single witness to testify at the hearing. 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.

3.3.6 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.

3.3.7 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 against the 1992 Fund at the local claims office 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.

3.3.8 At a hearing in June 2022, 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.

3.3.9 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 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.

3.3.10 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 Exhibits and rest their case, and the 1992 Fund's lawyers will begin to present their evidence.

3.4 Developments since 2023

In a February 2024 hearing, the claimants' lawyer advised that one of the claimants had withdrawn their claim. The claimants have also filed their Formal Offer of Exhibits, to which the 1992 Fund's lawyers filed Comments and Objections. As at 28 August 2024, the Court is examining these submissions and will provide its ruling in due course.

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.
