



International Oil Pollution
Compensation Funds

Agenda Item 3	IOPC/NOV24/3/7	
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1992 Fund Assembly	92A29	
1992 Fund Executive Committee	92EC83	●
Supplementary Fund Assembly	SA21	

INCIDENTS INVOLVING THE IOPC FUNDS — 1992 FUND

NESA R3

Note by the Secretariat

Objective of document: To inform the 1992 Fund Executive Committee of the latest developments regarding this incident.

Summary: On 19 June 2013, the 856 GT tanker *Nesa R3*, 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.

The *Nesa R3* 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 *Nesa R3* (Welance Marine Inc.) had, nevertheless, taken out insurance with the Indian Ocean Shipowners' Mutual P&I Club, Sri Lanka (Indian Ocean P&I Club). The limitation amount applicable under the 1992 Civil Liability Convention (1992 CLC) would be SDR 4.51 million (£4.34 million)^{<1>}. However, a limitation fund was not set up by the shipowner.

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 *Nesa R3*.

In December 2017, the Court of Muscat issued a judgment which awarded OMR 4 154 842.80 (£8 536 763.51) to the Omani Government and OMR 1 777 113.44 (£3.65 million) and BHD 8 419.35 (£17 665.44) to the 1992 Fund. Both the Omani Government and the 1992 Fund have appealed the judgment.

In January 2023, the Court of Appeal issued a judgment, recognising the 1992 Fund's claim and rejecting the appeals by the Environmental Authority (formerly the Ministry of Environment and Climate Affairs (MECA)) and the shipowner and the insurer of the *Nesa R3*.

^{<1>} The exchange rates used in this document as at 30 June 2024 are: £1 = SDR 1.039260, £1 = OMR 0.4867 and £1 = 0.4766, except in respect of payments made by the 1992 Fund where the conversion has been made at the rate on the date of payment.

	<p>Of the 33 claims received by the 1992 Fund, 28 have been settled at the total amount of OMR 3 521 364.39 (£7.24 million) and BHD 8 419.35 (£17 665.44). The remaining claims were rejected.</p> <p>Having settled all of its claims with the 1992 Fund, the Omani Government undertook to withdraw all claims from the proceedings. However, as at 20 August 2024, the claims had not been withdrawn.</p>
Recent developments:	<p>The 1992 Fund's investigations into the financial circumstances of the shipowner and the insurer indicated that any recourse actions taken against the Indian Ocean P&I Club and the vessel's owners, would be unlikely to enable the 1992 Fund to recover any of the compensation paid for this incident. The 1992 Fund is continuing to liaise with the Government of Oman regarding the withdrawal of its claims against the 1992 Fund.</p>
Relevant documents:	<p>The online Nesa R3 incident report can be found via the Incidents section of the IOPC Funds' website.</p>
Action to be taken:	<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 (£4.34 million)
STOPIA/TOPIA applicable	Not applicable
CLC + Fund limit	SDR 203 million or OMR 102 667 250 (£210 969 780)
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 (£4.34 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 (£12.15 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 (£12.19 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 January 2018, the Primary 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 (Environment Authority). The Court awarded OMR 1 777 113.44 (£3.65 million) plus BHD 8 419.35 (£17 665.44) to the 1992 Fund, which corresponded to the amounts paid by the 1992 Fund at the time of the judgment, and awarded the Omani Government OMR 4 154 842.80 (£8.54 million), representing the amount of its claim, OMR 5 932 703 (£12.19 million), less the sums already paid by the 1992 Fund.
- 5.3 The 1992 Fund appealed the judgment since it had awarded amounts to the Environment Authority above the value of the claims already settled by the 1992 Fund. The Environment Authority also appealed the judgment, claiming that the amount it should be entitled to was OMR 10 million (£20.5 million).

- 5.4 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;
 - ordered Indian Ocean P&I Club and Welance Marine Inc. to pay the 1992 Fund an amount of OMR 3 521 364.39 (£7.24 million) and BHD 8 419.35 (£17 665.44); and
 - ordered the Environmental Authority, Indian Ocean P&I Club and Welance Marine Inc. to pay the case expenses.
- 5.5 In February 2023, the Indian Ocean P&I Club filed an objection before the Supreme Court. As at 14 August 2024, the objection was still under the assessment of the Court.
- 5.6 On 20 December 2018, the 1992 Fund reached an agreement with the Omani Government to settle its claims out of court. The settlement agreements provide that the Omani Government must withdraw these claims against the 1992 Fund by application to the Court.
- 5.7 The 1992 Fund's lawyers are continuing to liaise with the Omani Government regarding the withdrawal of the Government's claims against the 1992 Fund from the Court, in accordance with the terms of the settlement agreement. The Director appreciates the efforts made by the Omani Government to resolve this matter.

6 Director's considerations

- 6.1 The 1992 Fund has investigated the financial position of the shipowner and the insurer to ascertain their solvency, to assess a possible recourse action against either. The result of this investigation showed that neither entity had sufficient funds to cover the claims arising from this incident.
- 6.2 The Director considers that any recourse actions taken against the Indian Ocean P&I Club or the shipowner are unlikely to enable the 1992 Fund to recover any of the compensation paid for this incident.
- 6.3 The Secretariat will report on the progress of the legal proceedings and the withdrawal of the Omani Government's claims against the 1992 Fund 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.
