



International Oil Pollution
Compensation Funds

Agenda Item 3	IOPC/APR25/3/3	
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Original	English	
1992 Fund Assembly	92AES29	
1992 Fund Executive Committee	92EC84	●
Supplementary Fund Assembly	SAES13	

INCIDENTS INVOLVING THE IOPC FUNDS — 1992 FUND

REDFFERM

Note by the Secretariat

Objective of document:

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

Summary:

In January 2012, the Secretariat was informed of an incident which occurred on 30 March 2009 at Tin Can Island, Lagos, Nigeria.

The barge *Redfferm* sank following a transshipment operation from the tanker *MT Concep*. The *Redfferm* spilled an unknown quantity of cargo of low pour fuel oil (LPFO) into the waters surrounding the site, which then impacted upon the neighbouring Tin Can Island area.

A claim for USD 26.25 million was filed in March 2012 against, *inter alia*, the 1992 Fund by 102 communities allegedly affected by the incident. At its October 2013 session, the Director informed the 1992 Fund Executive Committee that due to the difficulties in assessing the losses of victims from an incident which occurred almost three years before the 1992 Fund was first informed of it, the Director regretted that he could not recommend that he be instructed to make payment of compensation to the claimants in respect of this incident (document [IOPC/OCT13/11/1](#), paragraph 3.12.30).

In February 2014, the Secretariat wrote to the claimants rejecting their claim on the following grounds:

- (a) the barge *Redfferm* was not a 'ship' under Article I(1) of the 1992 Civil Liability Convention (1992 CLC);
- (b) there were a large number of discrepancies between the claimed losses and other sources of information; and
- (c) there was a lack of information submitted to prove the claimants' identities and occupations.

In May 2018, the claimants filed an amended statement of claim, which increased the claim from the previously filed total of USD 26.25 million to USD 92.26 million. In view of the amended statement of claim filed by the claimants, the 1992 Fund was obliged to file a defence.

In early 2022, a First Instance Judge delivered a summary judgment against the first and second defendants (the owner of the *MT Concep* and the owner of the barge *Redfferm* respectively) and granted the claimants their claim in the sum of USD 92.26 million. The

Judge also awarded the claimants the sum of USD 5 million as general damages. The summary judgment failed to take account of the various defences and counter affidavits filed by several of the defendants including the 1992 Fund.

In response, the first and second defendants filed applications to set aside the summary judgment on the grounds of fraud. Before these applications were heard, the claimants filed, and were granted by the Judge, garnishee proceedings against the first defendant and erroneously including the 1992 Fund^{<1>}. The 1992 Fund's lawyers filed proceedings, and subsequently succeeded to remove the 1992 Fund from the list covered by the garnishee proceedings.

In 2022, the claimants' lawyer discontinued the claim against the former third defendant Thames Shipping Agency Ltd (Thames Shipping), the agent of the owners of the *MT Concep* and the barge *Redfferm*. The 1992 Fund then became the third defendant.

At a further court hearing in November 2022, in response to a request to proceed to trial, the claimants' lawyer was instructed by the Judge to bring a formal application to set matters down for trial. In February 2023, the claimants' lawyer wrote to the 1992 Fund's lawyers requesting the 1992 Fund to pay the judgment debt. Following the advice of the 1992 Fund's lawyers, the 1992 Fund did not respond.

In February 2024, the claimants' lawyer sought and was granted leave to renew the writ of summons which the second defendant alleged to have expired. In May 2024, the Judge adjourned the case until 3 July 2024 for trial. On that date, the claimant's lawyer did not appear and the 1992 Fund's lawyer reminded the Court that a previous application seeking the dismissal of the claims for being time-barred remained pending. The Court set a date for 25 September 2024 for hearing that application.

Recent developments:

In January 2025, the Judge dismissed the 1992 Fund's application and gave reasons at odds to the order sought, and held that the same application had been previously argued and dismissed. The 1992 Fund's lawyers filed an appeal against the ruling on two grounds, namely that the Judge failed to make a finding (and that the claim filed by the claimants was time-barred), and that he failed to consider the contents of the affidavits filed by the parties. The appeal was accompanied by an application for a stay of the proceedings against the 1992 Fund, pending the appeal.

Relevant documents:

The [online Redfferm incident report](#) can be found via the Incidents section of the IOPC Funds' website.

Action to be taken: 1992 Fund Executive Committee

Information to be noted.

^{<1>} The purpose of the garnishee proceedings is to list all the banks in which the defendants may be expected to have funds in order to compel them to disclose what funds they have, and ultimately to satisfy the judgment debt.

1 **Summary of incident**

Ship	<i>Redfferm</i>
Date of incident	30.03.2009
Place of incident	Tin Can Island, Lagos, Nigeria
Cause of incident	Barge sinking following transshipment operation
Quantity of oil spilled	Unknown. Reports range from the residues of oil on board to between 100 and 650 tonnes.
Area affected	Tin Can Island, Lagos, Nigeria
Flag State of ship	Nigeria
Gross tonnage	430 GT
P&I insurer	Not insured or unknown
CLC limit	SDR 4.51 million (USD 5.88 million) ^{<2>}
STOPIA/TOPIA applicable	N/A
CLC + Fund limit	SDR 203 million (USD 264.7 million)
Compensation paid	None paid to date

2 **Background information**

The background information to this incident is provided in more detail in the [online Redfferm incident report](#).

3 **Claims for compensation**

3.1 The only claim submitted to the 1992 Fund as at 14 February 2025, was the claim filed in March 2012 on behalf of 102 communities for USD 26.25 million^{<3>}. In May 2018, the claimants were granted leave to amend their statement of claim. The amended statement of claim increased the claim from the previously submitted total of USD 26.25 million to USD 92.26 million, but no calculations or evidence of the losses claimed were presented.

3.2 The details of the valuations submitted to the 1992 Fund are shown in the [online Redfferm incident report](#).

3.3 **Reasons for rejection of claim**

3.3.1 A full analysis of the claim submitted by the claimants was conducted by the 1992 Fund's experts in February 2014. Following this, the 1992 Fund wrote to the claimants' representative rejecting the claims submitted on the following grounds:

- (a) the barge *Redfferm* was not a 'ship' under Article I(1) of the 1992 CLC;
- (b) there were a large number of discrepancies between the claimed losses and other sources of information on the number of items of fishing gear in the Lagos lagoon area; and
- (c) there was a lack of information submitted to prove the claimants' identities and occupations.

3.3.2 Further information on the reasons for the rejection of the claim is provided in the [online Redfferm incident report](#).

^{<2>} The exchange rate used in this document as at 31 December 2024 is SDR 1 = USD 1.304130.

^{<3>} Before the claim was filed at court, the claimants' lawyer stated that the claim amounted to USD 16.25 million but when the claim was filed at court, this had increased to USD 26.25 million. This was subsequently amended to USD 92.26 million in May 2018.

4 Civil proceedings

- 4.1 In March 2012, a claim for USD 26.25 million was filed by the lawyer representing 102 communities allegedly affected by the spill against the owner of the *MT Concep*, the owner of the *Redfferm*, Thames Shipping Agency Ltd (Thames Shipping) (the agent of the owners of the *MT Concep* and the barge *Redfferm*), and the 1992 Fund.
- 4.2 The claim filed at court on behalf of the 102 communities is comprised of: claims for clean-up operations and pollution prevention measures (USD 1.5 million); claims for property damage (USD 2.5 million); claims for economic loss in the fisheries, mariculture and fish processing sectors (USD 10 million); claims for economic loss in the tourism sector (USD 1.5 million); claims for environmental damages (USD 750 000); and general damages (USD 10 million).
- 4.3 In February 2013, the 1992 Fund applied to be removed from the proceedings as a defendant and replaced as an intervenor on the basis that primary liability for the spill rested with the owner of the *Redfferm*. The claimants' lawyer agreed to stay the proceedings against the 1992 Fund, in order that the claims assessment process could commence without the need for the 1992 Fund to simultaneously defend a legal action. Later, however, the claimants' lawyer opposed the 1992 Fund's application to be removed as a defendant and replaced as an intervenor. At the Court of First Instance, the Judge denied the 1992 Fund's application, so the 1992 Fund appealed the ruling.
- 4.4 In September 2013, the Court sat for a hearing of an application by Thames Shipping, the agent of the owner of the barge *Redfferm*, to set aside service of the writ claiming that it was defective. In October 2013, the Judge ruled against Thames Shipping. In November 2013, Thames Shipping filed an appeal against the ruling.
- 4.5 The Judge also stayed the proceedings pending the determination of the 1992 Fund's appeal against the first instance ruling in which the Judge had refused to remove the 1992 Fund as a defendant and replace it as an intervenor.
- 4.6 Subsequently, on a number of occasions throughout 2014 and 2015, the 1992 Fund's lawyers wrote to the Registrar of the Court of Appeal, requesting that the 1992 Fund's appeal against the first instance ruling be listed for a hearing date. On the 9 October 2017 the Court of Appeal declined to hear either of the two pending appeals and referred the case back to the Federal High Court for continuation of the trial.
- 4.7 As a result of the return of the case to the Federal High Court, and since the Court of Appeal declined to hear the 1992 Fund's appeal against the joinder of the 1992 Fund as a defendant in the case, the 1992 Fund was obliged to file a defence to the claim.
- 4.8 However, before the defence was filed, in early May 2018, Thames Shipping filed an application seeking a stay of the proceedings pending in the Federal High Court. However they withdrew the motion on the 10 May 2018.
- 4.9 Subsequently, on the same day at a hearing of the Federal High Court, the claimants were granted leave to amend their statement of claim. The amended statement of claim against the owner of the *MT Concep*, the owner of the *Redfferm*, Thames Shipping and the 1992 Fund repeated its allegations that the claimants had suffered economic loss under various heads of claim as follows: claims for costs of clean-up and pollution prevention measures; claims for properties damaged; claims for economic loss in the fisheries, mariculture and fish processing sectors; and claims for economic loss. The amended statement of claim increased the claim from the previously submitted total of USD 26.25 million to USD 92.26 million. As at 14 February 2025, no calculations or evidence of the losses claimed has ever been presented.
- 4.10 The 1992 Fund filed a defence stating, *inter alia*, that the barge *Redfferm* was not a 'ship' under Article I(1) of the 1992 CLC and that therefore, the 1992 Fund had no liability.

- 4.11 In February 2022, a First Instance Judge delivered a summary judgment against the owner of the *MT Concep* (the first defendant) and the owner of the barge *Redfferm* (the second defendant) and granted the claimants their claim in the sum of USD 92.26 million. The Judge also awarded the claimants USD 5 million as 'general damages'. In his judgment, the Judge did not refer to the Memorandum of Appearance and Statement of Defence filed by the first defendant, nor did he refer to the counter-affidavit filed by the 1992 Fund in opposition to the claimants' application for final judgment against the first and second defendants.
- 4.12 The first and second defendants filed applications to set aside the summary judgment on the grounds of fraud on the basis that the Court had been misled into believing that the first defendant had failed to enter appearance or file a defence, when it had in fact done both. The Judge refused to set aside the judgment against the first defendant, but set aside the judgment against the second defendant on the grounds that they had not been properly served with the originating processes.
- 4.13 In early June 2022, the claimants' lawyer filed, and the Judge ordered, garnishee proceedings against the first defendant as well as the 1992 Fund, in pursuance of the summary judgment against the first defendants. The 1992 Fund's lawyer filed an application seeking to remove the 1992 Fund from the list since it was wrongly included in the garnishee proceedings.
- 4.14 In November 2022, the claimants' lawyer discontinued the case against the former third defendant (Thames Shipping). Accordingly, the 1992 Fund then became the third defendant.
- 4.15 At a further court hearing in November 2022, the Judge upheld the default judgment and garnishee order against the first defendant, set aside the default judgment against the second defendant, and struck out the garnishee proceedings against the 1992 Fund. The claimants' lawyer requested the Judge to set the matter down for trial, but the Judge instructed the claimants' lawyer to make a formal application to do so.
- 4.16 In view of the developments, the Director, the Deputy Director/Head of Claims and the Claims Manager handling the incident met with the 1992 Fund's Nigerian lawyer during his visit to the United Kingdom in December 2022. The Director expressed his concern at the recent developments, noting that a number of procedural steps which would ordinarily be expected to have been complied with by the courts, had seemingly been ignored in the Nigerian legal proceedings.
- 4.17 The 1992 Fund's Nigerian lawyer explained that the reason why interlocutory applications were removed from the Rules of Court was that the procedure was being abused; trials were being stalled by preliminary objections, so the rules were changed so as to hear such applications after close of pleadings at the time of trial. Accordingly, many aspects of the procedural steps which had been missed would be dealt with at the time of trial.
- 4.18 The 1992 Fund's Nigerian lawyer also advised that he was confident that the default judgment against the first defendant (the owner of the *MT Concep*) would be set aside at trial, but that even if this did not occur and the judgment was subsequently entered against the first defendant, he advised that a separate set of legal proceedings would have to be commenced against the 1992 Fund once it had been shown that the first defendant lacked the resources to pay any judgment, and that these would be time-barred.
- 4.19 The 1992 Fund's lawyers have advised that at present there are a number of scenarios which might occur but that it is too early to say with any degree of certainty which of the following scenarios will arise:
- (a) The 1992 Fund is at liberty at the time of trial to apply to be struck out of the proceedings on the grounds that there is no nexus between the 1992 Fund and the alleged damage. The 1992 Fund can argue that judgment cannot be given against the 1992 Fund for the sums claimed by the claimants. However, if the 1992 Fund is struck out from the proceedings, the 1992 Fund will take no further part in the proceedings since it was unsuccessful in its attempt to be listed only as an intervener.

Accordingly, the 1992 Fund would not be entitled to cross-examine the claimants on the damages claimed.

- (b) Alternatively, if the judgment against the first defendant is eventually upheld for the damages claimed and the claimants seek enforcement against the 1992 Fund in the erroneous belief that the 1992 Fund should settle the judgment sum, then the arguments, *inter alia*, that the barge is not a 'ship' within Article I(1) of the 1992 CLC will be used as part of the 1992 Fund's defence, as has been already pleaded.
- (c) If the first and second defendants' pleadings and appeals succeed, and the summary judgment is set aside, then the Judge will have to set the matter down for trial and the matters in scenario (a) above will arise.
- (d) If, at the end of the trial, the Judge holds that the 1992 Fund is liable, the 1992 Fund shall have no option but to appeal.

4.20 The Secretariat has sought advice from its Nigerian lawyers, and has been provided with assurance that the 1992 Fund still retains its arguments regarding the applicability of Article I(1) of the 1992 CLC. However, in view of the fact that the summary judgment against the first defendant has so far been upheld, it is possible that matters will proceed to trial.

4.21 In February 2023, the claimants' lawyer wrote to the 1992 Fund's lawyers requesting payment of the judgment. No response was given and no compensation has been paid as the Director has not been authorised to make payment of compensation arising from this incident.

4.22 In February 2024, the claimants' lawyer sought, and was subsequently granted, the leave of the Court to renew the writ of summons which the Court had declared had expired. In May 2024, at a hearing which confirmed that the second defendant had been correctly served with court proceedings, the Judge set the trial date for 3 July 2024.

4.23 On that date, no counsel appeared for the claimants, and the 1992 Fund's lawyers reminded the Judge that an application asking the Court to dismiss the claim against the 1992 Fund for being time-barred remained pending. The case was adjourned until 25 September 2024 for hearing the 1992 Fund's application.

4.24 Developments since November 2024

4.24.1 In January 2025, the Judge dismissed the 1992 Fund's application and gave reasons at odds with the order sought. He wrongly opined that the same application had been previously argued and dismissed. He failed to make a ruling on the order sought in the application, namely, to dismiss the suit on the grounds of time bar.

4.24.2 The 1992 Fund appealed against the ruling on two grounds, namely that the Judge failed to make a finding (and that the claim filed by the claimants was time-barred), and secondly that he failed to consider the contents of the affidavits filed by the parties. The appeal was accompanied by an application for a stay of the proceedings against the 1992 Fund, pending the appeal. The 1992 Fund's Nigerian lawyers have advised that it is possible that the Judge may refuse the application for the stay of proceedings and continue with the trial which he has fixed for 26 February 2025.

5 Director's considerations

5.1 The Director notes that there are a range of possible scenarios regarding the future course of the legal proceedings and that the 1992 Fund has already filed a defence rejecting the claims submitted on the grounds, *inter alia*, that the barge *Redfferm* was not a 'ship' within Article I(1) of the 1992 CLC.

- 5.2 The Director also notes that it appears that a number of procedural steps which would ordinarily be expected to have been complied with by the courts, have seemingly not been dealt with in the Nigerian legal proceedings, or at least will not be dealt with until the matter proceeds to trial.
- 5.3 The Director continues to follow the legal developments closely bearing in mind the potential impact on the 1992 Fund. As at 14 February 2025, a trial date is still possible, but the 1992 Fund's lawyers have filed an appeal requesting that the claim against the 1992 Fund be dismissed. They further filed an application in the lower court that the legal proceedings be stayed, pending the determination of the appeal filed.

6 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.
