

 <p><b>INTERNATIONAL OIL POLLUTION COMPENSATION FUNDS</b></p>	<b>Agenda item: 3</b>	IOPC/JUN10/3/6	
	Original: ENGLISH	28 May 2010	
	1992 Fund Executive Committee	<b>92EC48</b>	•
1992 Fund Working Group	<b>92WG6/1</b>		

## INCIDENTS INVOLVING THE IOPC FUNDS – 1992 FUND

### INCIDENT IN ARGENTINA

#### Note by the Director

<b>Objective of document:</b>	To inform the 1992 Fund Executive Committee of the latest developments regarding this incident.
<b>Summary of the incident so far:</b>	<p>A significant quantity of oil impacted the shoreline in Caleta Córdova, Chubut Province, Argentina, on 25-26 December 2007.</p> <p>A total of 5.7 kilometres of coastline is reported to have been affected. Clean-up operations on the shoreline were undertaken by local contractors under the supervision of the provincial government.</p> <p>An investigation into the cause of the incident by the Criminal Court of Comodoro Rivadavia (Argentina) reached a preliminary decision that the spill originated from the <i>Presidente Arturo Umberto Illia (Presidente Illia)</i>. However, the shipowner and the insurer of the <i>Presidente Illia</i> contest liability. The shipowner has appealed against the decision and argues that the oil which impacted the coast must have come from another source.</p> <p>The <i>Presidente Illia</i> was insured with the West of England Ship Owners Mutual Insurance Association (Luxembourg) (West of England Club).</p> <p>The limit of liability of the owner of the <i>Presidente Illia</i> under the 1992 Civil Liability Convention (1992 CLC) is estimated to be 24 067 845 SDR (£23.7 million or AR\$133.2 million)<sup>&lt;1&gt;</sup>. It seems likely that the total admissible damage caused by the spill will be within the shipowner's limit.</p> <p>A claim for compensation has been submitted to the Court in Comodoro Rivadavia by the Chubut Province against the Master and the Owner of the <i>Presidente Illia</i>. The claim, which has not been quantified, is for compensation for the damage caused by the incident including damage to the environment. The shipowner has submitted points of defence denying his liability for the spill and requesting the Court to bring the 1992 Fund into the proceedings. The Court has agreed to this request and the Fund was formally notified in October 2009. The Argentine lawyers appointed by the 1992 Fund are preparing defence submissions.</p>

<1> In this document conversion of currencies has been made on the basis of the exchange rate as at 17 May 2010 (1 SDR = £0.9838, £1 = US\$1.4432, £1 = AR\$ 5.6276).

Discussions were held between the 1992 Fund and the West of England Club and it was agreed that the shipowner and his insurer would pay claims for compensation assessed and approved in accordance with the principles laid down in the 1992 Civil Liability and Fund Conventions. It was agreed that, if it is finally established that the oil which impacted the coast did not come from the *Presidente Illia* but from another source, the shipowner and the West of England Club would attempt to recover the amounts of compensation paid from the party responsible for the oil spill and, if it is proved that the oil spill must have come from a tanker other than the *Presidente Illia* but it remains unknown which one, a so-called 'mystery spill', the shipowner and the West of England Club would recover the amounts of compensation paid from the 1992 Fund.

Some 30 inhabitants of the area have been admitted by the Court in Comodoro Rivadavia as claimants. It is expected that they will quantify their claims at a later stage.

Representatives of the shipowner, the West of England Club and the 1992 Fund met in Buenos Aires with their lawyers and experts in April 2009. It was agreed that there would be three joint experts to cooperate in the claims handling process and that one of the experts would also act as a focal point to coordinate that process.

***Recent developments:***

As at 17 May 2010, 86 claims, for a total of AR\$21.9 million (£3.9 million) and one claim for US\$81 615 (AR\$318 200 or £56 500), had been submitted to the expert acting as the focal point for the Club and Fund in Argentina by fishermen, tourism-related businesses and animal welfare organisations. These claims are being examined by the Club's and Fund's experts.

***Action to be taken:***

1992 Fund Executive Committee:

Information to be noted.

**1 Summary of incident**

Ship	The Criminal Court in Comodoro Rivadavia has reached a preliminary decision that the spill originated from the <i>Presidente Arturo Umberto Illia</i> ( <i>Presidente Illia</i> )
Date of incident	25/26.12.2007
Place of incident	Argentina
Cause of incident	Probably during deballasting as a result of a technical failure
Quantity of oil spilled	Between 50 to 200 tonnes of crude oil
Area affected	Caleta Córdova, Chubut Province (Argentina)
Flag State of ship	Argentina
Gross tonnage (GT)	35 995 GT
P&I insurer	West of England Ship Owners Mutual Insurance Association (Luxembourg) (West of England Club)
CLC Limit	24 067 845 SDR (£23.7 million or AR\$133.2 million)
STOPIA/TOPIA applicable	No
CLC and FC Limit	203 million SDR
Claims for compensation so far	One claim for compensation, which has not been quantified, for damage caused by the incident including damage to the environment, was submitted to the Court in Comodoro Rivadavia by the Chubut Province. As at 17 May 2010, 86 claims for compensation for a total of AR\$21 9 million (£3.9 million) and one claim for US\$81 615 (AR\$318 200 or £56 500) had been submitted by fishermen, fish processors and sellers, tourism businesses and animal welfare organisations. More claims are expected.
Note	The owner of the <i>Presidente Illia</i> and its insurer deny liability for the spill and the shipowner has requested the Court to bring the 1992 Fund into the proceedings. If they were successful in their appeal against the Court's decision, and it is established nevertheless that the spill came from a 'ship' as defined in the 1992 Civil Liability and Fund Conventions, the 1992 Fund would have to pay compensation from the outset.

**2 Introduction**

- 2.1 This document sets out the general situation in respect of the *Presidente Arturo Umberto Illia* (*Presidente Illia*) incident, which occurred at Caleta Córdova near Comodoro Rivadavia off the coast of Argentina on 25/26 December 2007.
- 2.2 As regards details about the incident and the clean-up operations reference is made to the Annual Report 2008 (pages 132 - 134).

**3 1992 Civil Liability and Fund Conventions**

- 3.1 Argentina is Party to the 1992 Civil Liability Convention (1992 CLC) and the 1992 Fund Convention. The limit of liability of the owner of the *Presidente Illia* under the 1992 CLC is estimated to be 24 067 845 SDR (£23.7 million or AR\$133.2 million).
- 3.2 The *Presidente Illia* was insured for pollution liabilities with the West of England Ship Owners Mutual Insurance Association (Luxembourg) (West of England Club).

**4 Investigations into the cause of the incident**

- 4.1 Soon after the spill the Argentine Coast Guard (Prefectura Naval) started an investigation into the incident. The Coast Guard inspected the *Presidente Illia* both in Caleta Córdova and, in the port of

discharge, Campana. These inspections revealed a fault in the ballast system and that there were residues of crude oil in three ballast tanks.

- 4.2 A number of other vessels in the area were inspected by the Argentine Coast Guard but all were allowed to continue on their passage.

## **5 Criminal proceedings**

- 5.1 The 1992 Fund has appointed an Argentine lawyer to follow the legal proceedings initiated as a result of this incident.
- 5.2 An investigation into the cause of the incident was commenced by the Criminal Court of Comodoro Rivadavia. Following a court order, the *Presidente Illia* was detained in Campana in January 2008. An inspection of the ship revealed a leak in the ballast line passing through N°1 centre cargo tank. In a second inspection, residues of crude oil were found in three ballast tanks. The Court investigated in particular the role of the shipowner's representative (Superintendente), the Master and several other officers of the *Presidente Illia*, the operator of the loading buoy and the cargo inspector.
- 5.3 In March 2008, the Criminal Court rendered a preliminary decision that named the shipowner's representative (Superintendente), the Master and several other officers of the *Presidente Illia*, as parties responsible for the incident.
- 5.4 The Court considered that whilst the *Presidente Illia* was loading Escalante crude oil on 25 and 26 December 2007 at a loading buoy off Caleta Córdova, an unknown quantity of the oil that was being loaded had entered the ballast system due to a fault in the ballast line, and had subsequently been spilled emulsified with water during the deballasting process.
- 5.5 The Court stated that its conclusions were supported by chemical analyses which show that remains of hydrocarbons were found in the ballast pipes as well as in the pump of segregated ballast from the *Presidente Illia*, and that these remains matched the type of oil loaded at the loading buoy, and were also substantially similar to the samples taken on the shore in Caleta Córdova. When the authorities carried out their inspection and took samples upon the vessel's arrival at the port of discharge, they observed the dripping of hydrocarbon coming from the ballast-discharging pipe. Moreover, information contained in the relevant reports by the cargo inspector allegedly indicates that the quantity received ashore at the discharge port was notably less than the quantity transferred to the ship at the loading port.
- 5.6 The accused parties have appealed.
- 5.7 The shipowner and the insurer maintain that the *Presidente Illia* was unlikely to have caused the damage. They argue that any spill caused by the *Presidente Illia* was very minor and highly unlikely to have reached the coast and that the oil that reached the coast must therefore have come from another source. The shipowner and the insurer also argue that anonymous oil spills are frequent in Caleta Córdova and question the validity of the analysis carried out by the laboratory appointed by the Court.

## **6 Civil proceedings**

- 6.1 Shortly after the spill, the province of Chubut submitted a request for security for US\$50 million to the Criminal Court of Comodoro Rivadavia. The Court dismissed the request for security on procedural grounds.
- 6.2 The province of Chubut has also submitted a claim in the Court of Comodoro Rivadavia for compensation for the damage caused by the incident, including damage to the environment. The claim has not been quantified. The shipowner has submitted points of defence denying his liability for the spill and requesting the Court to bring the 1992 Fund into the proceedings.

- 6.3 In October 2008, the Master submitted pleadings as a co-defendant in the claim by the province of Chubut and also asked that the Court summons the 1992 Fund. The plaintiffs were in agreement and the Court decided that the 1992 Fund should be brought into the proceedings and that the proceedings should be halted pending notification of the 1992 Fund. The Fund was formally served with the notification in London on 19 October 2009. The lawyers acting for the 1992 Fund are preparing defence submissions.
- 6.4 To ensure prompt access to the file in the criminal proceedings for the purpose of preparing the defence, the 1992 Fund requested the Court to be allowed to take part in the criminal proceedings. This was denied. The 1992 Fund appealed the decision but, in December 2009, the appeal was denied.

## 7 Claims handling

Representatives of the shipowner, the West of England Club and the 1992 Fund met in Buenos Aires with their lawyers and experts in April 2009. It was agreed that there would be three joint experts to co-operate in the claims handling process and that one of the experts would also act as a focal point to coordinate the claims process. Between May 2009 and March 2010, meetings between the Club's and Fund's expert acting as the focal point and the claimants have taken place in Caleta Córdova to gather additional information. The claims are being assessed by the Club's and Fund's experts.

## 8 Claims situation

- 8.1 As at 17 May 2010, 86<sup><2></sup> claims for compensation for a total of AR\$21.9 million (£3.9 million) and one claim for US\$81 615 (AR\$318 200 or £56 500), had been submitted.
- 8.2 The table below gives details of the situation in respect of claims in various categories:

Category	No. of claims submitted	Claimed amount ARS	Claimed amount US\$
<b>Clean up and preventive measures</b>	2	101 210.00	81 615
<b>Fisheries</b>	80	19 670 995	0.00
<b>Miscellaneous</b>	1	1 063 257	0.00
<b>Tourism</b>	3	1 073 394	0.00
<b>Total</b>	<b>86</b>	<b>21 908 856</b> <b>(£3.9 million)</b>	<b>81 615</b> <b>(AR\$318 200 or</b> <b>£56 500)</b>

- 8.3 Two claims for clean up and preventive measures have been received from animal welfare organisations.
- 8.4 The claimants in the fisheries sector are mainly individuals and comprise artisanal foot and boat fishermen, processors and sellers while others are buyers and resellers of fish. Many of the claimants carry out more than one of these activities and work in groups. The species caught and processed include octopus, limpets and mussels and silverside. Purchases for processing or reselling mostly involve king crab, shrimp, angelfish, croaker and squid. There are three claims from the owners of fish processing plants and further claims from the casual labourers they use.
- 8.5 A municipal agency has claimed for various costs incurred as a result of the incident.

<sup><2></sup> The majority of claims were originally submitted by individuals. Investigations have revealed that many of these individuals work in groups and their claims have therefore been consolidated, as appropriate, into group claims.

8.6 Claims from the tourism sector are from two grocery store workers, a hotel and a tourist/fishing tours operator.

**9 Provisional payments**

Since the majority of claimants are artisanal fishermen, they have few records available to assist them in quantifying their losses. The lack of documentation is unavoidably extending the time required to make assessments of the losses. In view of this, the West of England Club has agreed to make provisional payments of AR\$4 000 to each claimant considered to have an admissible claim for at least that amount. It is expected that these payments will be made in the near future.

**10 Action to be taken**

1992 Fund Executive Committee

The 1992 Fund Executive Committee is invited:

- (a) to take note of the information contained in this document; and
- (b) to give the Director such instructions in respect of this incident as it may deem appropriate.

---