



International Oil Pollution  
Compensation Funds

<b>Agenda Item 3</b>	IOPC/OCT19/3/3	
<b>Date</b>	23 August 2019	
<b>Original</b>	English	
<b>1992 Fund Assembly</b>	92A24	
<b>1992 Fund Executive Committee</b>	92EC73	●
<b>Supplementary Fund Assembly</b>	SA16	

## 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 1 August 2019, 32 466 claims have been received and payments totalling PHP 987 million (£10.79 million) have been made in respect of 26 870 claims mainly in the fisheries sector. 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>Three claims remain outstanding, namely, a claim by the Philippine Coast Guard (PCG), a claim by 967 fisherfolk and a claim by a group of municipal employees. All are subject to legal proceedings in the Republic of the Philippines. No further payments have been made since October 2010.</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
STOPIA/TOPIA applicable	STOPIA 2006 limit of SDR 20 million
CLC + Fund limit	SDR 203 million
Legal proceedings	Three sets of legal proceedings against the 1992 Fund by: (1) the Philippine Coast Guard, (2) 967 fisherfolk and (3) 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 the Philippine Coast Guard**

3.1.1 The Philippine Coast Guard (PCG) brought legal proceedings to ensure its rights were safeguarded in relation to two claims for costs incurred during clean-up and pumping operations. Defence pleadings were filed by the 1992 Fund. An offer of settlement for PHP 104.8 million was made for both claims and was accepted by the PCG. In April 2012, the Secretariat provided the PCG with a draft compromise agreement, the terms of which were quickly agreed with the PCG. However, since then, due to a number of changes in personnel at the PCG and the necessity to gain approval to the terms of the compromise agreement from the Office of the Solicitor General of the Republic of the Philippines, matters have been delayed. A further issue has been whether Congressional Approval to the settlement agreement was required.

3.1.2 In February 2017, the claimant and the 1992 Fund's lawyers appeared at court for a Judicial Dispute Resolution (JDR) procedure where the court exercised its power to try to aid the parties to finally arrive at a settlement. In August 2017, the Court was informed by the PCG that the Lower House of Representatives (Congress) had already approved in principle the compromise agreement and the PCG was now waiting for the approval of the Upper House (Senate). However, the Court was also told that the sponsor of the Senate Resolution had asked the PCG to submit an endorsement from the Commission of Audit regarding the expenses paid by the PCG during the clean-up operations.

3.1.3 The 1992 Fund's lawyers stated that in their opinion, the settlement was being complicated by the continued attempts to obtain Congressional Approval, which in their view was not necessary and that the matter should be dealt with by the Philippine courts as originally proposed.

3.1.4 Through February and April 2018, further court hearings took place at which the PCG updated the Court as to the progress of the Congressional Approval. In August 2018, the PCG obtained the endorsement of the Office of the Presidential Spokesperson for immediate approval of the House Resolution granting congressional approval to the compromise agreement. The PCG indicated that it was also seeking the approval of the Philippine President to the compromise agreement.

### *Developments since 2018*

3.1.5 Further hearings took place in September and November 2018 whereby the PCG informed the Court that they were coordinating the approval of the settlement with the Senate. However, in March 2019, the PCG submitted a Manifestation to the Court which stated that in February 2019, it had liaised with the House Committee on Ecology which had questioned whether it was possible for the PCG to negotiate for a higher settlement. The 1992 Fund filed a Counter Manifestation stating *inter alia* that: (1) in a Manifestation of December 2016, the PCG had informed the Court that it had accepted the compromise offer of

PHP 104 million in settlement of its claim; (2) that the 1992 Fund had consistently notified the Court that the signatures of the PCG and 1992 Fund, assisted by the Solicitor General as an additional signatory in his capacity as the official lawyer of governmental agencies, were sufficient for the Court to approve the compromise agreement; (3) that the 1992 Fund had repeatedly requested the PCG to sign the compromise agreement in order for the 1992 Fund to make payment of the agreed settlement sum of PHP 104 million; and (4) that the PCG claim had been assessed and accepted at PHP 104 million in accordance with the 1992 Fund Claims Manual and guidelines.

3.1.6 Subsequently, in May 2019, the PCG confirmed to the court that the PCG would seek congressional approval for a settlement offer of PHP 104 million and not for a higher amount. The case was reset for hearing in July 2019, at which the PCG stated that they would only settle the claim when they had obtained congressional approval to do so.

### 3.2 Legal proceedings by 967 fisherfolk

3.2.1 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 to date, have not done so.

3.2.2 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.

3.2.3 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><1></sup>.

3.2.4 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><2></sup>.

3.2.5 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 a Motion for Partial Summary Judgment. The 1992 Fund's lawyers objected to this Motion as: (1) it was without merit, since the witnesses presented by the claimants had not proved their claim for purported damage of 22 weeks 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 Motion deprived the Fund of the right of due process of law; and (4) the Motion did not comply with the court filing requirements. Subsequently, the Court denied the claimants' Motion for Partial Summary Judgment.

3.2.6 In January 2018, the claimants again failed to submit revised Judicial Affidavits. The Court admonished them to submit the revised Affidavits at the next hearing, failing which their right to present evidence for

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<1> 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.

<2> 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.

all claimants would be waived. The hearing of the case was reset for May 2018. In May 2018, after a further failure to present the correct number of witnesses, the claimants were ordered to pay a fine, and the hearing was reset for July 2018.

#### *Developments since 2018*

3.2.7 Through the remainder of 2018 and 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. On another occasion, the claimants' lawyers failed to attend the court hearing set for February 2019; they were fined and warned that if they failed to attend the next hearing the testimony of their intended witness would be waived.

3.2.8 At a subsequent hearing in April 2019, the witnesses presented by their lawyers were proven not to be the ones who executed the claims forms, and further court hearings were set for July and August 2019.

#### 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. 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 are 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 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.

3.3.3 At the June 2016 hearing, during cross-examination of the witness presented by the claimants, 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.

3.3.4 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.

#### *Developments since 2018*

3.3.5 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. The latest hearing for examination of further witnesses has been set for August 2019.

#### **4 Director's Considerations**

The Director notes that the legal proceedings are continuing, but the 1992 Fund's lawyers have indicated that due to the number of witnesses presented by the claimants, the court hearings may take a number of years to conclude. The 1992 Fund's lawyers are continuing to exert all efforts to fast track the presentation of witnesses and to finalise the case.

**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.

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