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OIL POLLUTION
COMPENSATION
FUND 1992

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Agenda item 3

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INCIDENTS INVOLVING THE 1992 FUND

INCIDENT IN ARGENTINA

Note by the Director

Objective of document:

To inform the Executive Committee of the developments regarding the incident that took place in Argentina in December 2007 which may involve the 1992 Fund.

Summary of the incident so far:

A significant quantity of oil impacted the shoreline in Caleta Córdova, Chubut Province, Argentina, on 26 December 2007.

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.

An investigation into the cause of the incident was commenced by the Criminal Court of Comodoro Rivadavia (Argentina). The *Presidente Arturo Umberto Illia (Presidente Illia)*, that had been loading oil at a loading buoy off Caleta Córdova, was detained and an inspection of the ship by the Argentinean Coast Guard (Prefectura Naval) revealed a fault in its ballast system. An inspection in the port of discharge also revealed that there were residues of crude oil in three ballast tanks.

The owner and the insurer of the *Presidente Illia* contest liability and argue that the oil which impacted the coast must have come from another source.

The Criminal Court in Comodoro Rivadavia has reached a preliminary decision that the spill originated from the *Presidente Illia*. The shipowner has appealed against this decision.

The *Presidente Illia* is insured with the West of England Ship Owners Mutual Insurance Association (Luxemburg) (West of England Club).

The limit of liability of the owner of the *Presidente Illia* under the 1992 Civil Liability Convention (CLC) is estimated to be 24 067 845 SDR (£24.7 million) ^{<1>} and it seems likely that the total admissible damage caused by the spill will be within the shipowner's limit.

<1>

In this document conversion of currencies has been made on the basis of the exchange rate as at 21 May 2009 (1 SDR = £1.0253, 1 US\$ = £0.6314, 1 ARS = £0.16905).

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 *Presidente Illia*. 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.

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

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 further 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*, a so-called 'mystery spill', the shipowner and the West of England Club would recover the amounts of compensation paid from the 1992 Fund.

Recent developments:

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 reconfirmed that the incident would be dealt with as a joint Club/Fund case and that the West of England Club and the Fund would operate as provided in the Memorandum Of Understanding (MOU) between the International Group of P&I Clubs and the IOPC Funds. It was also 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.

In April 2009 the experts and the Fund with its lawyer visited the area affected by the spill. During that visit meetings took place with groups of fishermen and local authorities, where the Fund explained the functioning of the compensation regime.

As a result of the visit potential claimants were identified and claim forms were handed out (paragraphs 8.4 - 8.9).

Action to be taken:

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 (Presidente Illia)</i>
Date of incident	25/26.12.2007
Place of incident	Argentina
Cause of incident	Probably a technical failure during deballasting
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 (Luxemburg) (West of England Club)
CLC Limit	24 067 845 SDR (£24.7 million)
STOPIA/TOPIA applicable	No
CLC and FC Limit	203 million SDR (£208.1 million)
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. 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 Impact of the spill

- 2.1 Following reports of oil at sea on 26 December 2007 the Argentine authorities (Defensa Civil and Prefectura Naval) undertook overflights of the coastal area off Caleta Córdova, Chubut Province, (see maps in Annexes I and II) and reported a slick covering about 14 km² and estimated to contain about 50-200 tonnes of crude oil.
- 2.2 Later the same day, a significant quantity of oil stranded over a total of about 5.7 kilometres of the shoreline of Caleta Córdova, of which about 1.5 kilometres was heavily oiled.
- 2.3 Several animal welfare and environmental associations, together with some 250 volunteers, undertook bird rescue and rehabilitation. A bird recovery centre was set up in an abandoned poultry farm. Some 400 birds are reported to have died as a result of the spill.
- 2.4 The local fishing activities were disrupted, although it is understood that the municipality arranged the transport of subsistence fishermen to alternative sites further along the coastline to continue their fishing operations. It is expected that there will be economic losses in the fisheries sector.
- 2.5 The area affected by the spill is used for recreational purposes and therefore it is expected that there will also be losses in the tourism sector.
- 2.6 A crisis Committee was established shortly after the incident, comprising local, provincial and federal authorities, fishermen, affected persons, and the operator of the loading buoy. The Crisis Committee recommended that a risk assessment be conducted to establish the social and environmental consequences of the incident and to make recommendations on any remediation measures needed.

3 Clean-up operations

- 3.1 Clean-up operations on the shoreline were undertaken from 27 December 2007 to 22 February 2008 by local contractors under the supervision of the local government.
- 3.2 Clean up was concentrated on the 1.5 kilometres of coastline most heavily oiled and involved the removal of some beach substrate. Local environmental scientists advised against this measure and less intrusive methods of clean up were used thereafter.
- 3.3 Approximately 160 m³ of oily water and 900 m³ of oily debris were collected during the clean-up operations.

4 1992 Civil Liability and Fund Conventions

- 4.1 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 Arturo Umberto Illia* (*Presidente Illia*) under the 1992 CLC is estimated to be 24 067 845 SDR (£24.7 million).
- 4.2 The *Presidente Illia* was insured for pollution liabilities with the West of England Ship Owners Mutual Insurance Association (Luxemburg) (West of England Club).

5 Investigations into the cause of the incident

- 5.1 Soon after the spill the Argentinean 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.
- 5.2 A number of other vessels in the area were inspected by the Argentinean Coast Guard but all were allowed to continue on their passage.

6 Legal proceedings

- 6.1 The 1992 Fund has appointed an Argentinean lawyer to follow the legal proceedings initiated as a result of this incident.
- 6.2 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.
- 6.3 In March 2008, the Criminal Court rendered a preliminary decision that names the shipowner's representative (Superintendente), the master and several other officers of the *Presidente Illia*, as parties responsible for the incident.
- 6.4 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.
- 6.5 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.

6.6 The accused parties have appealed.

6.7 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.

7 Claims for compensation in Court

7.1 Shortly after the spill, the province of Chubut submitted a request for security for US\$50 million (£34.6 million) to the Criminal Court of Comodoro Rivadavia. The Court dismissed the request for security on procedural grounds.

7.2 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.

8 Claims handling

8.1 In November 2008, the Argentinean lawyer and environmental expert appointed by the 1992 Fund visited Caleta Córdova to gather information on the status of the legal proceedings and to inspect the area affected by the pollution.

8.2 Discussions were held in London between the 1992 Fund and the West of England Club. It was agreed that the 1992 Fund and the Club would cooperate in the assessment and settlement of claims arising as a result of the pollution and that the West of England Club would pay claims for compensation assessed and approved in accordance with the principles laid down in the 1992 Civil Liability and Fund Conventions.

8.3 It was further agreed with the West of England Club 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*, a so called 'mystery spill', the shipowner and the West of England Club would recover the amounts of compensation paid from the 1992 Fund.

8.4 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 reconfirmed that the incident would be dealt with as a joint Club/Fund case and that the West of England Club and the Fund would operate as provided in the Memorandum Of Understanding (MOU) between the International Group of P&I Clubs and the IOPC Funds. It was also 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 the claims process.

8.5 The experts and the Fund representatives with their lawyer visited the area affected by the spill. During that visit a meeting took place with a representative of the Chubut Province, where the Fund representatives explained the functioning of the compensation regime. It was agreed that, since this was the first spill in Argentina to which the CLC/Fund regime applied, the Fund representatives

would visit Rawston, Provincial capital of Chubut, once the compensation process was underway, to explain the compensation regime to provincial authorities.

- 8.6 A site visit was carried out on the Caleta Córdova shoreline. The shoreline was seen to be generally clean although there were isolated patches of weathered oil.
- 8.7 Meetings were held with small groups of fishermen in Caleta Córdova, where the compensation regime was explained and claim forms were handed out. The fishermen expressed concern that they had suffered economic losses with regards to the oil pollution in the region and also reported human health concerns they believed to have arisen from the oil pollution. The Fund representatives stressed that compensation was available only to claimants who could demonstrate that they had suffered an actual economic loss.
- 8.8 A meeting was held with a representative of the Municipality of Comodoro Rivadavia, where the compensation regime was explained. It was stated that the Municipality would be likely to make a claim for costs incurred following the incident, in relation to aid paid to fishermen.
- 8.9 As a result of the visit the following potential claimants/claims were identified:
- Local municipality, for aid paid to local fishermen during the time the fisheries were impacted;
 - Cost of clean-up operations;
 - Cost of bird rescue operations;
 - Fishermen in Caleta Córdova for losses suffered;
 - Fish processing plant; and
 - Tourist operators.

9 Action to be taken by the Executive Committee

The 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.

* * *

ANNEX I



ANNEX II

Coastal area off Caleta Córdova, Chubut Province, Argentina

