

**DRUŠTVO ZA POMORSKO PRAVO
SLOVENIJE**



**MARITIME LAW ASSOCIATION
OF SLOVENIA**

EUROPEAN MARITIME DAY 2011



THE BUNKERS CONVENTION 2001: CHALLENGES FOR ITS IMPLEMENTATION

Norman A. Martínez Gutiérrez

Paper presented at the round-table

‘EU Maritime Policy and the (Northern) Adriatic’

organized by the Maritime Law Association of Slovenia (MLAS)

Portorož, Slovenia

20 May 2011

THE BUNKERS CONVENTION 2001: CHALLENGES FOR ITS IMPLEMENTATION

Norman A. Martínez Gutiérrez*

This brief intervention presents an outline of the provisions of the Bunkers Convention and briefly discusses the challenges in its implementation.

The International Convention on Civil Liability for Bunker Oil Pollution Damage¹ was adopted by a Diplomatic Conference held at the IMO Headquarters in London on 23 March 2001.² The Convention entered into force internationally on 21 November 2008 and, by 31 May 2011, there were 58 State Parties representing 88.06 per cent of the world's tonnage.³

A widespread ratification and implementation of the Bunkers Convention is extremely important, particularly because nearly half of the total number of pollution claims result from bunker oil spills⁴ and because, due to the highly viscous and persistent character of most bunker oils, bunker oil spills are usually more difficult and more costly to clean up than crude oil spills.⁵ Moreover, the adoption of the Bunkers Convention completed the international legal framework on liability and compensation for pollution damage⁶ previously comprising

* Senior Lecturer, IMO International Maritime Law Institute, Malta. Paper presented at the round-table 'EU Maritime Policy and the (Northern) Adriatic' organized by the Maritime Law Association of Slovenia (MLAS), EU Maritime Day 2011, 20 May 2011, Portorož, Slovenia.

¹ Hereafter referred to as the 'Bunkers Convention'.

² The origins of the Bunkers Convention are found in an Australian proposal submitted first to the thirty-sixth session of IMO's MEPC in 1994 (MEPC 36/21/6 of 8 August 1994) and then to the Legal Committee's seventy-third session in 1995 (LEG 73/12 of 12 July 1995).

³ www.imo.org.

⁴ C. Wu, 'Liability and Compensation for Bunker Pollution', *J.Mar.L. & Com.* 33(4), 2002, 553 at 555.

⁵ See LEG 73/12/1 of 12 September 1995; LEG 74/4/2 of 9 August 1996; LEG 77/6/2 of 20 March 1998; and LEG 78/5/1 of 7 August 1998.

⁶ For an analysis of the conventions dealing with liability and compensation for pollution damage and their relationship with the global limitation conventions see Chapters 5 and 7 of N.A. Martínez Gutiérrez, *Limitation of Liability in International Maritime Conventions: The Relationship between Global Limitation Conventions and Particular Liability Regimes*, Routledge, London / New York, 2011.

the 1969 International Convention on Civil Liability for Oil Pollution Damage⁷ (as amended by the 1992 Protocol thereto)⁸ and the 1996 International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea⁹ (as amended by the 2010 Protocol thereto).¹⁰

1. SCOPE OF APPLICATION

In accordance with Article 2, the Bunkers Convention applies to pollution damage caused in the territory, including the territorial sea, and the Exclusive Economic Zone of a State Party,¹¹ as well as to preventive measures, wherever taken, to prevent or minimize such damage. Therefore, to identify the scope of application of the Convention, it is necessary to understand what is meant by ‘pollution damage’ and ‘preventive measures’.

Article 1(9) defines pollution damage as including:

- (a) loss or damage caused outside the ship by contamination resulting from the escape or discharge of bunker oil from the ship, wherever such escape or discharge may occur, provided that compensation for impairment of the environment other than loss of profit from such impairment shall be limited to costs of reasonable measures of reinstatement actually undertaken or to be undertaken; and
- (b) the costs of preventive measures and further loss or damage caused by preventive measures.

This definition was taken almost verbatim from the definition found in Article I(6) of the Civil Liability Convention 1992. In fact, the only amendment was that the reference to ‘oil’ in the Civil Liability Convention 1992 was replaced in the Bunkers Convention with ‘bunker oil’. This minor linguistic amendment makes the scope of application of the Bunkers Convention much wider than that of the Civil Liability Convention 1992. The reason for this

⁷ Hereafter referred to as the ‘Civil Liability Convention’.

⁸ Hereafter referred to as the ‘Civil Liability Convention 1992’.

⁹ Hereafter referred to as the ‘HNS Convention’.

¹⁰ Hereafter referred to as the ‘HNS Convention 2010’.

¹¹ If the relevant State has not declared an Exclusive Economic Zone, the Convention applies to an area extending not more than 200 nautical miles from the baselines established in accordance with international law.

is that Article 1(5) of the Bunkers Convention defines ‘bunker oil’ as ‘*any* hydrocarbon mineral oil, including lubricating oil, used or intended to be used for the operation or propulsion of the ship, and any residues of such oil’.¹² Accordingly, the definition of ‘bunker oil’ in the Bunkers Convention is not limited to persistent oils so it may include lighter fuels such as marine diesels and lubricating oils.¹³

Article 1(7) then defines preventive measures as ‘any reasonable measures taken by any person after an incident has occurred to prevent or minimize pollution damage’. This definition is identical to that found in Article I(7) of the Civil Liability Convention 1992.

1.1 Exclusions

The Bunkers Convention does not cover damage as defined in the Civil Liability Convention (as amended), whether or not compensation is payable under that Convention.¹⁴ This means, for example, that the Bunkers Convention cannot be applied to a ‘persistent’ bunker oil spill from a laden tanker even if the relevant State is a Party to the Bunkers Convention but not to the Civil Liability Convention.¹⁵

Following the general rule of immunity of State-owned vessels, the Bunkers Convention does not apply to warships, naval auxiliary or other ships owned or operated by a State and used, for the time being only on Government non-commercial service.¹⁶ However, State Parties may decide to apply the Convention to their warships. If they decide to do so, they must

¹² Emphasis added.

¹³ For example, although the Civil Liability Convention 1992 is intended to cover bunker oil pollution damage from tankers, it will not apply if the polluting bunkers are not ‘persistent’ oil. In this case the Bunkers Convention will apply.

¹⁴ Article 4(1).

¹⁵ The same result would follow if the State is a Party to the Civil Liability Convention, but not to the Civil Liability Convention 1992, and the tanker in question is on ballast and has residues of oil from the preceding voyage. In this scenario, although the Civil Liability Convention 1969 cannot apply because it only covers damage caused by ships ‘actually’ carrying oil as cargo, the Bunkers Convention cannot not apply because the said damage would fall within the meaning of the Civil Liability Convention 1992. See M. Jacobsson, ‘Bunkers Convention in Force’, 2009, 15 JIML 21 at 24-25.

¹⁶ Article 4(2).

notify this to the IMO Secretary-General specifying the terms and conditions of such application.¹⁷

2. PERSONS LIABLE

The Bunkers Convention imposes liability on the ‘shipowner’; a term that is defined as meaning ‘the owner, including the registered owner, bareboat charterer, manager and operator of the ship’.¹⁸ Thus, unlike the Civil Liability Convention 1992, the Bunkers Convention does not channel liability to the registered owner. In fact, the Bunkers Convention does not exclude claims against parties other than the shipowner, as was done by Article III(4) of the Civil Liability Convention 1992. It seems that the reason for not including channelling provisions in the Bunkers Convention was agreed upon to allow the injured parties to seek compensation from different sources.¹⁹

2.1 Responder Immunity

An important omission of the Bunkers Convention is that it does not offer legal protection to persons who carry out preventive measures in response to a bunker oil spill. This legal protection is important because it encourages persons to take measures to prevent or minimize pollution damage without fear of potential liability.

Recognizing the importance of this omission, the 2001 Diplomatic Conference adopted a Resolution which urges States, when implementing the Bunkers Convention, to consider the need to introduce legal provision for the protection of persons taking measures to prevent or minimize the effects of bunker oil pollution. This is the first notable challenge for State Parties to ensure adequate implementation of the Convention. How are State Parties to address this issue?

¹⁷ Article 4(3).

¹⁸ Article 1(3)

¹⁹ See Martínez Gutiérrez, *op. cit.*, p. 163.

- (a) The Resolution recommends that persons taking preventive measures be exempt from liability unless the liability in question resulted from their personal act or omission, committed with the intent to cause damage, or recklessly and with knowledge that such damage would probably result.
- (b) To implement this, State Parties are encouraged by the resolution to follow the relevant provisions of the HNS Convention as a model for their legislation.

It may be noted that following this Resolution, a number of States have enacted provisions on responder immunity in their domestic legislation.²⁰

3. BASIS OF LIABILITY

Article 3 contains the main provisions relating to the basis of the shipowner's liability. It provides that:

Except as provided in paragraphs 3 and 4, the shipowner at the time of an incident shall be liable for pollution damage caused by any bunker oil on board or originating from the ship, provided that, if an incident consists of a series of occurrences having the same origin, the liability shall attach to the shipowner at the time of the first of such occurrences.²¹

Liability under the Bunkers Convention is thus strict. However, the shipowner's liability is not absolute as he will not be liable for pollution damage if he proves that:

- (a) the damage resulted from an act of war, hostilities, civil war, insurrection or a natural phenomenon of an exceptional, inevitable and irresistible character; or
- (b) the damage was wholly caused by an act or omission done with the intent to cause damage by a third party; or
- (c) the damage was wholly caused by the negligence or other wrongful act of any Government or other authority responsible for the maintenance of lights or other navigational aids in the exercise of that function.²²

²⁰ Ibid., p. 164.

²¹ Article 3(1).

²² Article 3(3).

When more than one person is liable for the damage, liability is joint and several.²³ In this respect, the Convention allows the shipowner to seek indemnity from the other persons liable for the damage, as it clearly states that it does not prejudice any right of recourse of the shipowner which exists independently of the Convention.²⁴

It is important to note that if the shipowner proves that the pollution damage resulted wholly or partially from an act or omission done with intent to cause damage by the person who suffered the damage or from the negligence of that person, the shipowner may be exonerated wholly or partially from liability to such person.²⁵

4. COMPULSORY INSURANCE

Article 7(1) of the Bunkers Convention requires the registered owner of a ship having a gross tonnage greater than 1000 registered in a State Party to maintain insurance or other financial security, such as the guarantee of a bank or similar financial institution, to cover potential liability for pollution damage.²⁶

4.1 The Amount of Compulsory Insurance Cover

In accordance with Article 7(1), the registered owner must maintain insurance or other financial security in an amount equal to the limits of liability under the applicable national or international limitation regime, but in all cases, not exceeding an amount calculated in

²³ Article 3(2).

²⁴ Article 3(6).

²⁵ Article 3(4).

²⁶ It is noteworthy that, although the Convention applies to all ships, ships having a gross tonnage lower than 1000 are not subject the requirement of maintaining compulsory insurance. De la Rue argues that this minimum tonnage figure aims to avoid a disproportionate workload on flag State administrations and P&I Clubs who under the Civil Liability Convention 1992 had to handle the paperwork required for the issue of certificates for a few thousand oil tankers and who now, without this minimum tonnage restriction, would face an enormous administrative burden in certifying the complete non-tanker fleet. See C. de la Rue, 'The Bunkers Convention – Two Years On', 8(3) S.&T.I. (2011) 4.

accordance with the Convention on Limitation of Liability for Maritime Claims, 1976,²⁷ as amended by the 1996 Protocol thereto.²⁸

4.2 The Compulsory Insurance Certificate

Ships having a gross tonnage greater than 1000 registered in a State Party must carry a certificate attesting that insurance or other financial security is in force to meet any potential liability as provided in Article 7(1).²⁹ The certificate must be issued by a State Party, in the form of the model set out in the annex to the Convention.³⁰ However, a State Party may wish to delegate this duty to an institution or organization which it recognizes for this purpose.³¹ If a State Party decides to delegate the issue of the certificate to a recognized institution or organization, such State must ‘fully guarantee the completeness and accuracy of the certificate so issued’, and must notify such delegation to the IMO Secretary-General.³²

The certificate must be issued in the official language or languages of the issuing State, provided that where the said language is not English, French or Spanish, a translation to any of these languages must be included in the certificate. The issuing State may also choose to omit the text in its official language and issue the certificate exclusively in one of the aforesaid languages.³³

Once issued, the certificate must be carried on board the ship and a copy must be deposited with the authorities who keep the record of the ship’s registry.³⁴ The Convention obliges State Parties to accept certificates issued or certified by other State Parties as having the same force as certificates issued or certified by them.³⁵ The Convention also imposes an obligation

²⁷ Hereafter referred to as the ‘LLMC Convention’.

²⁸ Hereafter referred to as the ‘1996 LLMC Protocol’.

²⁹ Article 7(2).

³⁰ Article 7(2).

³¹ Article 7(3)(a).

³² Article 7(3)(b).

³³ Article 7(4).

³⁴ Article 7(5).

³⁵ Article 7(9).

on State Parties to ensure under their national laws that ships entering or leaving ports in their territories have the required insurance or other financial security in force.³⁶ This obligation is not limited to ships flying the flag of that State but applies to ships whatever the State of registration.³⁷ In enforcing this provision, State Parties may choose not to require ships to carry the relevant certificate on board when visiting its ports, provided that the State issuing the said certificate has notified the IMO Secretary-General that it maintains records in electronic format, accessible to all State Parties, attesting the existence of the certificate.³⁸

A ship owned by a State Party which does not maintain the relevant compulsory insurance or other financial security required by Article 7, must carry a certificate issued by the appropriate authorities of the State of the ship's registry declaring that the ship is owned by that State and that the ship's liability as provided in Article 7(1) is covered.³⁹

The two challenges States face in implementing the requirements of compulsory insurance are:

- (a) understanding whether tankers are also subject to the requirement of compulsory insurance under the Bunkers Convention; and
- (b) determining what are the required formalities to issue a Bunkers Convention Certificate.

In relation to the question of whether tankers are required to procure the Bunkers Convention certificate it may be recalled that the definition of 'ship' in the Bunkers Convention includes tankers.⁴⁰ In addition, the Bunkers Convention covers bunker spills of persistent and non-persistent hydrocarbon mineral oils – this goes beyond the scope of application of the Civil Liability Convention 1992, which is limited to persistent oils.⁴¹ Finally, if a combination ship in ballast does not have any residues of persistent oil carried as cargo in the preceding voyage, such ship would not fall within the Civil Liability Convention 1992 definition of

³⁶ Article 7(11).

³⁷ Article 7(12).

³⁸ Article 7(13).

³⁹ Article 7(14).

⁴⁰ Article 1(1) provides that “‘ship’ means *any* seagoing vessel and seaborne craft, *of any type whatsoever*” (emphasis added).

⁴¹ Jacobsson, *op. cit.*, p. 33.

‘ship’ and would thus not be covered by that Convention.⁴² Therefore, although the procurement of a Bunkers Convention certificate would impose additional administrative burdens on tankers, it is argued that the Bunkers Convention’s requirement of obtaining the relevant certificate also extends to tankers.

Regarding the formalities required by States to issue a Bunkers Convention compulsory insurance certificate, it may be mentioned that the Bunkers Convention does not establish the specific requirements that shall be met for the issue of the certificate. Article 7(2) merely states that:

A certificate attesting that insurance or other financial security is in force in accordance with the provisions of this Convention shall be issued to each ship *after the appropriate authority of a State Party has determined that the requirements of paragraph 1 have been complied with.*⁴³

The question remains as to how will the appropriate authority of a State Party determine that the requirements of Article 7(1) have been complied with. In this respect it may be noted that although since the entry into force of the Civil Liability Convention it has been the practice that States require the presentation of a ‘Blue Card’,⁴⁴ recently States began accepting electronic Blue Cards forwarded in PDF format.⁴⁵ This recent practice has been endorsed by IMO⁴⁶ and States are therefore encouraged to accept electronic Blue Cards to issue the Bunkers Convention Certificate.

5. THE RIGHT OF DIRECT ACTION

Article 7(10) of the Bunkers Convention provides that any claim for compensation for pollution damage may be brought directly against the insurer or other person providing financial security for the registered owner’s liability for pollution damage (traditionally P&I

⁴² Ibid. pp. 33-34.

⁴³ Emphasis added.

⁴⁴ The Blue Card is essentially a certificate issued by the P&I Club or any other person or institution providing financial security attesting that there is insurance in force in accordance with the provisions of the Convention.

⁴⁵ De la Rue, op. cit. pp. 4-5.

⁴⁶ Ibid, p. 5.

Clubs). Where a direct action is brought against the insurer or provider of financial security, the defendant may limit liability to an amount equal to the amount of the insurance or other financial security required to be maintained in accordance with Article 7(1), even if the shipowner is not entitled to limitation of liability according to Article 6.

It is noteworthy that when sued directly, the insurer or provider of financial security may invoke all the defences available to the shipowner. Additionally, he may invoke the defence that the pollution damage resulted from the wilful misconduct of the shipowner. It is also important to mention that when sued directly, the insurer or provider of financial security has the right to require the shipowner to be joined in the proceedings.

6. TIME LIMITS

To be entitled to obtain compensation under the Bunkers Convention the claimant must bring an action thereunder within three years from the date when the damage occurred. However, the Convention provides that in no case can an action be brought more than six years from the date of the incident which caused the damage.⁴⁷

7. JURISDICTION

Where an incident results in pollution damage in any of the areas referred to in Article 2(a) of one or more State Parties, actions for compensation under the Bunkers Convention may only be brought in the courts of any such State Parties.⁴⁸ The Convention thus imposes a duty on each State Party to ensure that its courts have jurisdiction to entertain actions for compensation under the Convention.⁴⁹ This creates another challenge for State as it may call for positive legislative action on State Parties that goes beyond the mere fact of giving force of law to the provisions to the Convention. State Parties must ensure legislative clarity to

⁴⁷ Article 8.

⁴⁸ Article 9.

⁴⁹ Article 9(3).

ensure that claimants have access to their courts to seek compensation under the Bunkers Convention.

8. RECOGNITION AND ENFORCEMENT OF JUDGEMENTS

The Bunkers Convention imposes an obligation on State Parties to recognize any judgement given by a competent Court which is enforceable in the State of origin provided that it is no longer subject to ordinary forms of review. However, this will not be the case where the judgement was obtained by fraud, or where the defendant was not given reasonable notice and a fair opportunity to present his or her case.⁵⁰

9. LIMITATION OF LIABILITY

Unlike the Civil Liability Convention 1992 and the HNS Convention, the Bunkers Convention does not create a separate (free-standing) limitation regime. Article 6 merely provides that:

Nothing in this Convention shall affect the right of the shipowner and the person or persons providing insurance or other financial security to limit liability under any applicable national or international regime, such as the Convention on Limitation of Liability for Maritime Claims, 1976, as amended.

This provision does not harmonize an applicable international regime, since the shipowner's liability will be determined by the law of the State where the pollution occurs and, as it is now known, States have different rules on the subject.⁵¹ Moreover, questions have been raised as to whether the shipowner may have a right to limit his liability at all, since Article 2 of the LLMC Convention does not expressly recognize 'pollution damage' as one of the claims for which limitation is available. In fact, several organizations and authors have

⁵⁰ Article 10(1).

⁵¹ Some States are Parties to the 1957 International Convention Relating to the Limitation of the Liability of Owners of Sea-Going Ships, other States may be Parties to the LLMC Convention, others to the 1996 LLMC Protocol, others may have their own national legislation providing different limits of liability, and there are States which do not allow limitation of liability for pollution incidents. See Martínez Gutiérrez, *op. cit.*, p. 165.

carefully studied the interrelation between the LLMC Convention and the Bunkers Convention and have asserted that, although there is an assumption that claims for bunker oil pollution damage may be limited under the LLMC Convention, this is not free from doubt.⁵² However, a careful analysis of the *travaux préparatoires* of the Bunkers Convention reveals that the intention of the 2001 Diplomatic Conference was that any claim subject to that Convention would be subject to limitation under the LLMC Convention (as amended). In fact, when considering the linkage between the Bunkers Convention and the LLMC Convention, it was noted that '[b]oth the limits and procedures of the 1996 LLMC Convention would apply to any claim under the Bunkers Convention'.⁵³

It is in relation to limitation of liability that we find the last challenge faced by States in the implementation of the Bunkers Convention. In this respect it may be argued that for the effective implementation of the purpose of the Bunkers Convention, State Parties must ensure that the shipowner has a right to limit liability for bunker oil pollution claims. Alternatively, the shipowner may be facing a strict and unlimited liability, which was not the intention of the 2001 Diplomatic Conference. As may be recalled, the 2001 Diplomatic Conference adopted a Resolution urging all States to become Parties to the 1996 LLMC Protocol. Therefore by becoming Parties to the 1996 LLMC Protocol State Parties are not only ensuring a proper implementation of the Convention but also promoting the harmonization of international maritime law in this area.

Accordingly in addressing this last challenge in the implementation of the Bunkers Convention the first step for State Parties would be to ratify the 1996 LLMC Protocol. Once this is done, considering that the LLMC Convention (as amended) does not expressly mention bunker oil pollution claims under the list of claims subject to limitation, State Parties must ensure in their domestic law that bunker oil pollution claims are accepted as falling within the scope of the LLMC Convention. This may be done by a legal interpretation of the Convention by the local judiciary or by expressly providing in their domestic law that bunker oil spill claims will be subject to limitation under the LLMC Convention. The latter was the

⁵² LEG 74/4/2 of 9 August 1996, p. 4. See also LEG/CONF.12/9 of 18 January 2001, p. 4.

⁵³ LEG 78/5/3 of 18 September 1998. It is important to mention that, at the request of the Australian delegation, the Legal Committee is considering the possibility of revising the limits of liability set out in Article 6(1)(b) of the LLMC Convention as amended by the 1996 Protocol 'to ensure that the limits will adequately cover clean-up costs and damages from incidents resulting in the release of substantial amounts of bunker oil'.

approach adopted by the UK through 168 of the Merchant Shipping Act 1995. This is particularly important where the relevant State Party has made a reservation in relation to Article 2(1)(d) of the LLMC Convention and the claims relate to clean-up costs and preventive measures relating to the removal of the wreck causing the bunker oil spill. In these instances, unless the State clarifies the situation as mentioned above, it may be questionable whether the shipowner has a right to limit his liability in relation to these claims.⁵⁴

10. CONCLUSIONS

With the adoption of the Bunkers Convention there is now an international legal framework covering liability and compensation for damage caused by all substances which may escape from a ship.⁵⁵ However, for the Convention to achieve its objectives, it must be effectively implemented by State Parties. State Parties thus face a number of challenges to ensure the proper implementation of the Convention.

As discussed above, the first challenge State Parties face is to ensure that in their domestic legislation they make provision for responder immunity. This is a substantial lacuna left by the Convention, which State Parties must fill to encourage persons to take preventive measures to prevent or minimize bunker oil pollution damage. To implement this, State Parties are encouraged to follow the 2001 Diplomatic Conferences Resolution and take the relevant provisions of the HNS Convention as a model for their legislation.

The second challenge relates to the requirement of compulsory insurance. Here, States must ensure that tankers also procure the compulsory insurance certificate required by the Convention. Alternatively, States may be faced with unfortunate situations dealing with bunker oil pollution from tankers which are not covered by the Civil Liability Convention (as amended) and for which a Bunkers Convention certificate is not available. Similarly, States must ensure that, although always ensuring that the relevant insurance or financial security is available, the formalities required to issue the relevant certificate are minimum. Accordingly,

⁵⁴ See Martínez Gutiérrez, *op. cit.*, p. 193.

⁵⁵ P. Griggs, 'A Busy Schedule for International Maritime Law', 4(1) S.&T.L.I. , 2003, p. 29 at 30.

in implementing the Bunkers Convention, State Parties may accept electronic Blue Cards as proof of the existence of the relevant insurance or financial security.

Another challenge faced by State Parties is that relating to the obligation of ensuring that their courts have jurisdiction to entertain actions for compensation under the Convention. In this respect, States must make sure that their domestic legislation guarantees that claimants have access to their courts to seek compensation under the Bunkers Convention.

Finally, with the entry into force of the Bunkers Convention it has become necessary to guarantee that the shipowner has right to limit his liability in relation to claims for bunker oil pollution damage. As explained earlier, it is argued that these claims already are subject to limitation under the LLMC Convention (as amended). Nonetheless, bearing in mind the numerous doubts expressed on this point, it may be advisable that any future amendment to the LLMC Convention should expressly include these claims by adding a new paragraph (g) to Article 2 thereby expressly extending the right to limit in respect of 'claims for bunker oil pollution damage'. Until that happens, it is up to State Parties to ensure, in their domestic legislation, that shipowner's have a right to limit liability in relation to bunker oil pollution claims.