



International Oil Pollution
Compensation Funds

Agenda Item 3	IOPC/APR17/3/5	
Date	3 April 2017	
Original	English	
1992 Fund Assembly	92AES21	
1992 Fund Executive Committee	92EC68	●
Supplementary Fund Assembly	SAES5	

INCIDENTS INVOLVING THE IOPC FUNDS – 1992 FUND

MT PAVIT

Note by the Secretariat

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

Summary: In April 2014, the 1992 Fund was informed of an incident which took place in July 2011 in India. On 31 July 2011, the *MT Pavit*, a product tanker of 999 GRT built in 1990, ran aground off Juhu Beach, Mumbai, India. The vessel was originally insured by the West of England Club, but at the time of the incident cover had been cancelled.

The *MT Pavit* was abandoned by its 13-man crew on 29 June 2011, approximately 110 nautical miles from Ras al Madrasah, the Sultanate of Oman, reportedly due to engine failure and water ingress into the engine room. However, on 31 July 2011, after drifting for approximately one month across the Arabian Sea, the *MT Pavit* ran aground on the Juhu-Versova beach, some 18 kilometres north of Mumbai, India.

At the time of grounding, the vessel was unladen, but prior to the incident, had previously carried a cargo of Marine Gas Oil (MGO). The 1992 Fund's experts advised that the majority (approximately 90%) of oils categorised as MGO are non-persistent. Contractors were mobilised by the Director General of Shipping and arrived at the casualty on 6 August 2011. The contractors reported that the tanker's cargo/ballast tanks and engine room contained 10–20 tonnes of oily sea water/sludge.

The vessel remained aground until 13 August 2011, when she was refloated by the contractors. The vessel was initially towed to Dighi Port, approximately 70 miles from the grounding site, and later towed to the adjacent port of Dabhol, arriving on 31 August 2011. After several unsuccessful attempts were made to contact the vessel interests, it was entered for auction. However, no buyer has been found and the vessel remains unsold.

In June 2014, three claims were submitted to the 1992 Fund in respect of towage services, oil removal/clean-up operations, and refloating. In view of the forthcoming expiry of the three-year time bar, upon receipt of the claims, the 1992 Fund advised the claimants of the time bar provisions in the 1992 Fund Convention to ensure that their rights were protected.

Two of the claims, totalling US\$1.8 million, were filed at Court, within three years of the date of damage. One of these claims was subsequently dismissed for want of prosecution.

Due to the difficulties experienced in gathering reliable evidence regarding the cargo carried on board the *MT Pavit*, in August 2016 and with the agreement of the West of England Club, the 1992 Fund instructed surveyors to attend upon the vessel to take samples from the manifold, pump room and cargo tanks. The results of the analysis showed that all of the samples were persistent oil.

The experts were requested to confirm the reliability of the samples given that they were taken some six years after the event and from an abandoned ship. The experts confirmed without doubt that the cargo had consisted of persistent mineral oil. Accordingly, the Director is of the view that the 1992 Civil Liability and Fund Conventions apply to the incident. The results of the survey report analysis were sent to the West of England Club, which decided to respond to the claim in accordance with the provisions of the CLC and in furtherance of the blue card it had issued.

Recent developments:

In March 2017, a Director of the West of England Club and the Head of the Claims Department of the IOPC Funds, travelled to India to discuss the claim with the claimant and to meet the Indian authorities. Following discussions with the claimant, the West of England Club agreed to enter into a compromise settlement with the contractor which was below the CLC limit, and the claim was withdrawn from court. The 1992 Fund will not be called upon to pay compensation.

Relevant documents:

The [online *MT Pavit* 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 Summary of incident

Ship	<i>MT Pavit</i>
Date of incident	31.07.2011
Place of incident	Mumbai, India
Cause of incident	Grounding
Quantity of oil spilled	Unconfirmed
Area affected	No impact on coastline
Flag State of ship	Panama
Gross tonnage	999 GRT
P&I insurer	West Of England Ship Owners Mutual Insurance Association (Luxembourg) (West of England Club)
CLC Limit	4.51 million SDR (US\$6.11 million) ^{<1>}
STOPIA/TOPIA applicable	Not applicable
CLC + Fund limit	203 million SDR

<1> Based on exchange rate on 7 February 2017 of US\$1 = 0.737321 SDR and US\$1 = Indian Rupee (INR) 67.38

Compensation	Contractor's claim settled by P&I Club. No compensation paid by the 1992 Fund.
Legal proceedings	Two sets of legal proceedings commenced in July 2014 against the 1992 Fund, one of which was dismissed for want of prosecution. The other set of legal proceedings was withdrawn following settlement of the claim.

2 **Background information**

The background information to this incident is summarised above. Further information on the incident and the claims submitted is provided in more detail in the [online MT Pavit incident report](#).

3 **Applicability of the 1992 Conventions**

- 3.1 At the time of the incident, India was a Party to the 1992 Civil Liability Convention (1992 CLC) and to the 1992 Fund Convention. It appears that the 1992 Civil Liability and Fund Conventions do apply to the incident, because the residue of oil carried on board the MT Pavit was persistent mineral oil.

Details of the insurance and blue card

- 3.2 The West of England Club had insured the vessel at the start of the voyage, and had issued a blue card in respect of third-party oil pollution liabilities to the shipowner. At the time of the incident, cover had been cancelled, but despite some uncertainty over the status of the CLC's direct action provisions against insurers under Indian law, the West of England Club agreed that it would respond to the claim in accordance with the provisions of the CLC and in furtherance of the blue card it had issued.

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

- 4.1 Details of the preliminary investigations into the cause of the incident are provided in the [online MT Pavit incident report](#).
- 4.2 Having been notified of the incident almost three years after the event, the 1992 Fund instructed experts to advise on the recoverability of losses claimed by the contractors. Additionally, the 1992 Fund instructed a firm of naval architects to advise on the operations conducted during the refloating operations and to comment upon the threat of a grave and imminent threat of release of oil.

Analysis of the residues of oil on board the MT Pavit

- 4.3 At the April 2015 session of the 1992 Fund Executive Committee, it was reported that the only information provided to date relating to the previous cargo, was a comment in the master's witness statement, which stated that on 17 May 2011, the vessel sailed from Sharjah with a cargo of 1 781 tonnes of Marine Gas Oil (MGO) for discharge at Berbera, Somalia. The vessel discharged its cargo on 2 June 2011 and sailed from Berbera on 22 June 2011, with no cargo on board.
- 4.4 The Fund's experts advised that MGO, sometimes referred to as N^o2 Fuel Oil, is a generic term covering a range of oils with a boiling point in the range of 160–358°C (321–676°F) at atmospheric pressure^{<2>}. The experts advised that the majority (approximately 90%) of oils categorised as MGO,

<2> The experts advise that the oils produced for the majority of the boiling point range, by distillation between 160°C (321°F) to 340°C (645°F), would in all likelihood be non-persistent. However, MGOs produced for the remainder of the range from 340°C (645°F) to 358°C (676°F) would probably be persistent, on the basis that less than 50% may distil by 340°C.

are non-persistent. They also advised that without an analysis of the MGO residue found in the cargo tanks, or details of the distillation characteristics specific to the previous cargo^{<3>}, it was impossible to say definitely whether the previous cargo was persistent or non-persistent oil.

- 4.5 In August 2016, the 1992 Fund, with the agreement of the West of England Club, instructed surveyors to attend upon the vessel in order to take samples from the cargo tanks. The surveyor found that no tank lids, access plates or manhole covers had been removed from the cargo tanks, and the surveyor therefore had to open the tanks using significant physical effort as they were all completely rusted and seized solid, which resulted in some of the tank lid spindles shearing off in the process.
- 4.6 Nine separate samples of cargo residue totalling some 4.5 litres in all, were taken from the port forward manifold, tanks No.4 (port and starboard), tank No.5 (port), and the pump-room bilges. The samples were sealed and sent to a laboratory in the United Kingdom for testing, which revealed that all of the samples tested were persistent mineral oil. Of particular note was the presence of persistent mineral oil within the port forward manifold, which effectively formed a sealed container, and was therefore most representative of the cargo discharged on the vessel's last voyage. From that it can be inferred that the *MT Pavit* was carrying persistent mineral oil on her last voyage.
- 4.7 The reliability of the samples for providing an accurate representation of the characteristics of the cargo being carried was raised with the experts, in view of the fact the samples were taken some six years after the event and from an abandoned ship. The experts were of the clear opinion that it was possible to determine without doubt from the samples that the cargo had consisted of persistent mineral oil.

Grave and imminent threat of pollution damage

- 4.8 At the time of the incident, the *MT Pavit* had grounded in a heavily populated part of Mumbai on a popular beach for recreational activities and near a fishing community. She was being continually beset by heavy seas caused by the prevailing monsoon conditions. There was considered to be a risk that the vessel might suffer structural damage and release oil residues into the environment. The authorities, took the view that such a situation required immediate preventive measures to be undertaken to prevent and minimise the grave and imminent threat of pollution damage.
- 4.9 In addition, the 1992 Fund's lawyers have advised the 1992 Fund that Indian courts are very likely to consider the situation generated by the *MT Pavit* on a beach in Mumbai, as creating a grave and imminent threat of causing pollution damage as per Article I(8) of the 1992 CLC.

5 Civil proceedings

Limitation proceedings

- 5.1 No limitation proceedings have been commenced.

Claims submitted

- 5.2 Initially, three claims were submitted to the 1992 Fund, of which only two were subsequently filed against the 1992 Fund in the Bombay High Court, within the three-year time bar.

<3> Details of the cargoes and any samples were requested but were not provided or are not available.

- 5.3 In June 2015, both claims were listed for directions and adjourned until July 2015 for filing of written statements. At the directions hearing, the 1992 Fund's lawyers requested the claimants' lawyers to stay the proceedings, in view of the fact that from the evidence provided by that date, it appeared that the *MT Pavit* was not carrying residues of a persistent mineral oil in bulk as cargo as defined under Article I(5) of the 1992 CLC. Both claims were adjourned until July 2015 for filing of written statements, following which, the claims were adjourned for preparation of issues and points of dispute.
- 5.4 In October 2015, one of the claims (for towage services) was dismissed for want of prosecution. The 1992 Fund's lawyers have stated that as time progresses it will be increasingly difficult for that claimant to reinstate its claim against the 1992 Fund.
- 5.5 The remaining case brought by the contractor was adjourned, and from January to May 2016 whilst a number of procedural steps were taken, including the filing of affidavits by the claimant.
- 5.6 In early January 2017, as a result of changes to the Indian Civil Procedure Code for high-value claims, the case was reassigned to the Commercial Court, and a hearing date for further directions was awaited.
- 5.7 The West of England Club had received advice that the provisions of the CLC relating to a right of direct action against insurers may not have been incorporated into Indian law. However, in order to uphold the proper working of the Conventions, the Club agreed to respond to the claims in accordance with the provisions of the CLC and in furtherance of the blue card. In subsequent discussions the Indian Government have clarified that such a right of action has been determined by the Indian Courts to be available to claimants even though it is not prescribed in statute.
- 5.8 In early March 2017, a Director of the West of England Club, and the Head of the Claims Department, travelled to India to discuss the claim with the claimant and to meet the Indian authorities. Following discussions with the claimant and taking into consideration a number of factors including the grave and imminent threat of environmental damage, in the interests of finalising the matter without the need for protracted litigation, the West of England Club agreed to amicably settle the contractor's claim, and the claim was withdrawn from court.

6 Director's considerations

- 6.1 The Director would like to thank the Indian authorities for their assistance in resolving this difficult incident, which is the first incident in India involving the 1992 Civil Liability and Fund Conventions.
- 6.2 The Director would also like to thank the West of England Club for responding to the contractor's claim so effectively, as a consequence of which, the contractor's claim has been settled and the proceedings against the defendants, including *inter alia*, the West of England Club, the 1992 Fund and the Indian authorities, have been withdrawn.
- 6.3 The Director will continue monitoring this incident, however it appears that since the only claim in this case has been settled, once all the legal formalities are concluded this incident will be closed.

7 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.
