



International Oil Pollution
Compensation Funds

Agenda Item 3	IOPC/APR17/3/4/1	
Date	7 April 2017	
Original	English	
1992 Fund Assembly	92AES21	
1992 Fund Executive Committee	92EC68	●
Supplementary Fund Assembly	SAES5	

INCIDENTS INVOLVING THE IOPC FUNDS – 1992 FUND

HEBEI SPIRIT

Note by the Secretariat

Objective of document: To provide the 1992 Fund Executive Committee with the latest information regarding the amounts claimed in court and settled so that it can decide as to the level of payments regarding this incident.

Summary: *Compensation paid and available*

The total amount available for compensation under the 1992 Fund Convention is 203 million SDR or KRW 321.6 billion (£226 million), including the amount paid by the Assurancéföreningen Skuld (Gjensidig) (Skuld Club) in accordance with the provisions of the 1992 Civil Liability Convention. The Skuld Club had paid KRW 186.8 billion^{<1>} (£132.7 million). The 1992 Fund has paid KRW 64 billion (£39.3 million) to the Korean Government in respect of 51 606 subrogated claims, corresponding to 60% of the established losses. The 1992 Fund has therefore KRW 70 billion (£53 million) available to pay compensation in respect of this incident.

Level of payments

In April 2016, the 1992 Fund Executive Committee decided to increase the level of payments from 50% to 60% of the established losses taking into account the number of claims pending at that time and the amount already awarded for the finalised claims. The initial level of payments had been set at 35% in June 2008 and increased to 50% in October 2015.

As at 24 March 2017, out of the 127 483 claims submitted in court, 126 213 (99% of the total claims submitted) had been finalised. The total amount awarded for these claims is KRW 415 billion (£292 million). There are still 1 270 claims pending (1% of the total claims submitted) totalling KRW 146 billion (£102 million)^{<2>}.

The Director considers that there is still a certain level of uncertainty in respect of the pending claims and therefore recommends that the Executive Committee maintain

<1> The amount for which the owner of the *Hebei Spirit* is liable has not yet been established. The Skuld Club is basing its provisional calculation of the limitation amount on the exchange rate at 18 November 2008, the date on which the Letter of Undertaking was deposited into the Limitation Court. The limitation amount in Korean won will be fixed by the Korean Courts when all legal proceedings have been finalised.

<2> The exchange rate used in this document £1 = KRW 1 422.24.

the level of payments at 60%. The Director also recommends that this level of payments be reviewed at the next session of the Executive Committee.

Action to be taken:

1992 Fund Executive Committee

- (a) Decide whether to maintain the level of payments at 60% of the established losses; and
- (b) decide whether to review the level of payments at its next session.

1 Level of payments

- 1.1 In June 2008, the 1992 Fund Executive Committee decided, in view of the uncertainty as to the total amount of the admissible claims, to set the level of payments at 35% of the established losses. This decision was maintained at subsequent meetings of the 1992 Fund Executive Committee until the Executive Committee decided at its October 2015 session, to increase the level of payments to 50% of the established losses. This level was increased to 60% at the April 2016 session of the 1992 Fund Executive Committee.
- 1.2 As at 24 March 2017, out of the 127 483 claims submitted in court, 126 213 had been finalised by judgment, reconciliation or had been withdrawn (99% of total claims submitted) and claimants had been awarded a total of KRW 415 billion. A total of 1 270 claims totalling KRW 146 billion were still pending before the Korean Courts.
- 1.3 The total amount available for compensation under the 1992 Fund Convention is 203 million SDR or KRW 321.6 billion. This amount includes the amount paid by the Skuld Club in accordance with the provisions of the 1992 Civil Liability Convention.
- 1.4 The following table provides estimates of the total amount of losses in respect of this incident and the percentages of the amount claimed/awarded, taking into account the amount available for compensation.

Scenarios	Amount (KRW billion)	Amount (£ million)	1992 Fund's limit (KRW 321.6 billion) as a percentage of the amount claimed/awarded
1. Claimed in court and amounts settled (paragraph 1.6 below)	561	394	57%
2. Amounts settled (126 213 claims) plus amounts awarded by the Limitation Court for the pending claims (1 270 claims) (paragraph 1.7 below)	440	309	73%

- 1.5 Based on the estimates set out in the table above, the following two scenarios can be envisaged.

Scenario 1

- 1.6 The amount still claimed in court (i.e. KRW 146 billion) plus the amounts already awarded by the Courts (KRW 415 billion) provide a total exposure of some KRW 561 billion. The amount available under the 1992 Conventions (KRW 321.6 billion) would correspond to 57% of the total exposure.

Scenario 2

- 1.7 Some 126 213 claims totalling KRW 415 billion, have been finalised by judgment and reconciliation through the Korean Courts or had been withdrawn. These decisions have become final. If the amounts which the Courts would award to the 1 270 pending claims were to be estimated, based on the figures awarded by the Limitation Court (i.e. KRW 25 billion) for these claims, it would provide a total exposure of some KRW 440 billion. The amount available under the 1992 Conventions would correspond to 73% of the total exposure.

2 Director's considerations

- 2.1 The total amount available for compensation under the Conventions is KRW 321.6 billion (£226 million). The Skuld Club had paid KRW 186.8 billion (£132.7 million). The 1992 Fund has paid KRW 64 billion (£39.3 million) to the Korean Government in respect of 51 606 subrogated claims, corresponding to 60% of the established losses. The 1992 Fund has therefore KRW 70 billion (£53 million) available to pay compensation in respect of this incident.
- 2.2 It is clear at this stage that the total amount of compensation available will have to be paid and that therefore the 1992 Fund will have to pay KRW 70 billion (£53 million), which is still available in compensation.
- 2.3 Some 99% of the claims submitted (126 213 claims) have been finalised by judgment and reconciliation through the Korean Courts or had been withdrawn. The Korean Courts have followed the 1992 Fund's admissibility criteria so far. It is therefore to be expected that the Courts will continue the same pattern in respect of a remaining 1 270 unresolved claims (1% of the total claims submitted).
- 2.4 The Director considers that it is unlikely that the Korean Courts will award amounts higher than those awarded by the Limitation Court but that it would be prudent to maintain a safety margin of 13% to protect the 1992 Fund from an overpayment situation.
- 2.5 The Korean Government is, in accordance with the provisions of the Special Law, compensating all claimants at 100% of the established losses. The Korean Government is then subrogating these claims and receiving compensation from the 1992 Fund at the level of payments decided by the 1992 Fund Executive Committee. The Korean Government is in fact the only claimant affected by the level of payments.
- 2.6 The Director therefore recommends that the 1992 Fund Executive Committee maintain the level of payments at 60% of the established losses. The Director also recommends that this level of payments be reviewed at the next session of the 1992 Fund Executive Committee.

3 Action to be taken**1992 Fund Executive Committee**

The 1992 Fund Executive Committee is invited to:

- (a) take note of the information contained in this document;
 - (b) decide whether to maintain the level of payments at 60% of the established losses; and
 - (c) decide whether to review the level of payments at its next session.
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