



International Oil Pollution
Compensation Funds

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1992 Fund Executive Committee	92EC69	●
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INCIDENTS INVOLVING THE IOPC FUNDS – 1992 FUND

HAEKUP PACIFIC

Note by the Secretariat

Objective of document:	To inform the 1992 Fund Executive Committee of developments regarding this incident.
Summary:	<p>In April 2013, the Secretariat was informed of an incident which took place in April 2010 in the Republic of Korea. The <i>Haekup Pacific</i>, an asphalt carrier of 1 087 GT, was involved in a collision with the <i>Zheng Hang</i>.</p> <p>The <i>Haekup Pacific</i> was heavily damaged on her aft port quarter as a consequence of the collision on 20 April 2010 and subsequently sank in waters of approximately 90 metres depth on 21 April 2010 off Yeosu, Republic of Korea. The <i>Haekup Pacific</i> was laden with 1 135 metric tonnes of asphalt cargo together with bunkers of 23.37 metric tonnes of intermediate fuel oil (IFO) and 13 metric tonnes of marine diesel oil (MDO).</p> <p>The <i>Haekup Pacific</i> was entered as a ‘relevant ship’ within the definition of the Small Tanker Oil Pollution Indemnification Agreement (STOPIA) 2006 and STOPIA 2006 will therefore apply, increasing the limit to SDR 20 million (US\$28.14 million)^{<1>}.</p> <p>Shortly after sinking, a small spill of some 200 litres of oil occurred resulting in some minor pollution. The local coastguard launched a clean-up operation and ordered the shipowner to monitor any further oil spill at the site for one month. No oil was reportedly found during that period. The <i>Haekup Pacific</i>’s P&I Club (UK P&I Club) paid some US\$136 000 in clean-up and preventive measures costs.</p> <p>In early May 2010, the Yeosu City and Marine Police issued removal orders to the shipowner, requesting it to remove the wreck (with the asphalt cargo on board) and the bunkers remaining on board.</p> <p>In April 2013, the shipowner/insurer issued legal proceedings against the 1992 Fund in the Seoul Central District Court before the expiry of the three-year anniversary of the date when the damage occurred, in order to protect their rights in respect of any future liability for costs of the removal operations which they might have to pay. The UK P&I Club indicated that if the shipowner/insurer and the 1992 Fund could agree that the pollution damage which triggered the three-year time bar under the 1992 Fund Convention had not yet occurred (as no costs had yet been paid in respect of the</p>

^{<1>} Based on the exchange rate of 18 April 2016 (SDR 1 = US\$1.407450) when the claim was submitted to the Seoul Central District Court by the UK P&I Club.

potential claim for removal operations), then only the six-year time limit under the 1992 Fund Convention would be applicable.

The UK P&I Club and the 1992 Fund therefore settled the terms of an agreement on facts stating that since the costs of the potential claim for the removal operations had not been incurred by the shipowner/insurer, as the removal operations had not yet taken place, the damage in respect of the removal operation claim had not yet occurred for the purposes of Article 6 of the 1992 Fund Convention.

As a consequence of signing the agreement, the legal proceedings commenced by the shipowner/insurer against the 1992 Fund were withdrawn in June 2013.

In November 2015, the shipowner instructed surveyors to conduct an environmental assessment, so as to submit a report to the Yeosu City and Marine Police. The report concluded that the sunken vessel with the asphalt cargo on board, did not pose a hazard to the environment and it was safe to leave the wreck with the asphalt cargo, lying in its present position and condition.

On 19 April 2016, the shipowner and insurer filed a claim for US\$46.9 million, (subsequently amended to US\$25.13 million in accordance with the STOPIA arrangement) against the 1992 Fund before the expiry of the six-year time bar, in order to preserve the shipowner and insurer's rights against the 1992 Fund in the event that they are instructed to comply with the wreck and oil removal orders.

In September 2016, the Yeosu City and Marine Police and the Ministry of Oceans and Fisheries (MOF) had a meeting to consider issues regarding the *Haekup Pacific* and agreed to continue discussing the management plan for the vessel, taking into consideration the environmental assessment report.

In December 2016, the 1992 Fund was served with a claim form for US\$46.9 million through diplomatic channels. The 1992 Fund has not yet been served with the amended claim form for US\$25.13 million in accordance with the STOPIA arrangement.

In April 2017, following an agreement reached between the UK P&I Club and the 1992 Fund, the Korean Courts agreed to stay the proceedings until further notice. The 1992 Fund's lawyers advised that the Korean Courts may of its own volition resume court hearings at a future date to check the status of the dispute and ascertain whether the parties wish to request a further stay of proceedings.

Recent developments:

Relevant documents:

The [online Haekup Pacific 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>Haekup Pacific</i>
Date of incident	20.04.2010
Place of incident	Yeosu, Republic of Korea
Cause of incident	Collision and subsequent sinking
Quantity of oil spilled	Estimated to be approximately 200 litres (one barrel)
Area affected	No immediate impact on coastline
Flag State of ship	Republic of Korea
Gross tonnage	1 087 GT
P&I insurer	UK P&I Club
CLC limit	SDR 4.51 million (US\$6.34 million) ^{<1>}
STOPIA/TOPIA applicable	Yes – STOPIA 2006 limit of SDR 20 million (US\$28.14 million) ^{<1>}
CLC + Fund limit	SDR 203 million (US\$285.7 million) ^{<1>}
Legal proceedings	None paid to date by the Fund. US\$136 000 paid by insurers in respect of clean-up and preventive measures.
	Legal proceedings commenced in April 2013 prior to expiry of three-year time bar by the shipowner and insurer against the 1992 Fund, then withdrawn following agreement by all parties upon the terms of a side letter.
	Legal proceedings filed against the 1992 Fund in April 2016 in relation to the six-year time bar. Legal proceedings currently stayed by agreement with the UK P&I Club.

2 Introduction

The background information to this incident is summarised above. Further details of the background information and claims submitted are provided in the [online *Haekup Pacific* incident report](#).

3 Developments since October 2016

There have been no developments to report regarding the revocation of the wreck and oil removal orders, or further discussions between the Yeosu City and Marine Police and shipowner/insurer regarding the management plan of the vessel.

4 Applicability of the Conventions

4.1 At the time of the incident, the Republic of Korea was a Party to the 1992 Civil Liability Convention (1992 CLC) and the 1992 Fund Convention. The limit of liability of the shipowner is estimated to be SDR 4.51 million. The *Haekup Pacific* was also entered as a 'relevant ship' within the definition of the Small Tanker Oil Pollution Indemnification Agreement (STOPIA) 2006.

4.2 Under the terms of STOPIA 2006, the 1992 Fund has legally enforceable rights of indemnification from the shipowner of the difference between the limitation amount applicable to the tanker under the 1992 CLC (SDR 4.51 million) and the total amount of admissible claims, or SDR 20 million, whichever is the less.

5 Claims for compensation

As at 11 July 2017, no claims against the 1992 Fund have been presented for assessment.

6 Limitation proceedings

No limitation proceedings have been commenced.

7 Civil proceedings

- 7.1 In April 2013, the shipowner/insurer commenced legal proceedings against the 1992 Fund in the Seoul Central District Court.
- 7.2 At the time of filing the proceedings against the 1992 Fund, the UK P&I Club indicated to the Secretariat that they had no wish to further pursue the matter through the courts but only wished to protect their rights in respect of the costs already incurred and their potential claim for the costs of the removal operations before the expiry of the three-year anniversary of the date of the damage. The UK P&I Club indicated that because the Korean authorities had not yet officially withdrawn the removal orders originally issued in 2010, the shipowner/insurer might yet be required to undertake or bear the costs of the removal operations at some stage in the future.
- 7.3 In this regard, the UK P&I Club indicated that if the shipowner/insurer and the 1992 Fund could agree that the pollution damage which triggered the three-year time bar under the 1992 Fund Convention had not yet occurred (as no costs had yet been paid in respect of the potential claim for removal operations), then only the six-year time limit under the 1992 Fund Convention would be applicable. Assuming such agreement could be reached, the shipowner/insurer would withdraw the lawsuit they had filed and would await developments regarding the potential claim for the removal operations until the six-year time period expired. Such a contractual agreement would be in the interests of the shipowner/insurer and the 1992 Fund as neither party wished to continue with potentially costly legal proceedings.
- 7.4 Therefore, in conjunction with the 1992 Fund's Korean lawyers and noting that the ultimate decision regarding the time-bar issue would be a matter for the national courts to decide, the 1992 Fund agreed the terms of an agreement on facts stating that since the removal operations had not yet taken place and the estimated costs had not been incurred by the shipowner/insurer, the damage in respect of the removal operation claim had not yet occurred for the purposes of Article 6 of the 1992 Fund Convention.
- 7.5 As a consequence of signing the agreement, the legal proceedings commenced by the shipowner/insurer were withdrawn in June 2013, and the parties agreed to let matters lie pending the possible revocation of the removal orders.

Developments in 2016

- 7.6 Despite the intervening time, it appears that the removal orders will not readily be lifted soon. In early 2016, the shipowner/insurer's lawyers were advised by the Korean Ministry of Oceans and Fisheries (MOF) that it would not take any action regarding the wreck removal order, since, in its view, the decision should be taken by the Yeosu City and Marine Police.
- 7.7 In September 2016, the Yeosu City and Marine Police and the MOF had a meeting to consider issues regarding the *Haekup Pacific* and agreed to continue discussing the management plan for the vessel taking into consideration the environmental assessment report.
- 7.8 Since it appears that the removal orders would not readily be lifted, in April 2016, the shipowner/insurer took the precaution of filing a claim against the 1992 Fund, to protect their rights in respect of the costs already incurred and their potential claim for the costs of the removal operations, before the expiry of the six-year anniversary of the date of the incident which caused the damage.

- 7.9 The claim originally filed against the 1992 Fund in April 2016, amounted to US\$46.9 million plus interest, based on a shipowner's limit of liability of SDR 4.51 million.
- 7.10 Subsequently, the shipowner/insurer amended the claim, to reflect the fact that the vessel fell under the provisions of STOPIA 2006, under which the insurer voluntarily agreed to increase its liability to SDR 20 million (US\$28.14 million).

Revised claim filed

Claim Item	Amount
Preventive Measures	US\$0.136 million
Estimated salvage costs to remove the asphalt cargo, bunkers and wreck	US\$53.14 million
less	-
Shipowner's STOPIA limit of liability amount (based on SDR 20 million) at date of filing of claim	US\$28.14 million
Value of revised claim filed	US\$25.13 million

- 7.11 Accordingly, following amendment, the claim against the 1992 Fund amounts to US\$25.13 million.
- 7.12 In December 2016, the 1992 Fund was served with a claim form for US\$46.9 million through diplomatic channels. The 1992 Fund has not yet been served with the amended claim form for US\$25.13 million in accordance with the STOPIA arrangement.
- 7.13 In April 2017, following an agreement reached between the UK P&I Club and the 1992 Fund, the Korean Courts agreed to stay the proceedings until further notice. The 1992 Fund's lawyers advised that the Korean Courts may of its own volition resume court hearings at a future date to check the status of the dispute and ascertain whether the parties wish to request a further stay of proceedings.

8 Director's considerations

- 8.1 The Director notes that at present the wreck and oil removal orders remain in place, but have not been enforced. The Director also notes that as a consequence, in April 2016 the shipowner/insurer took the precaution of filing a claim against the 1992 Fund in respect of the costs already incurred and their potential claim for the costs of the removal operations, before the expiry of the six-year anniversary of the date of the incident which caused the damage.
- 8.2 The Director is aware that at present, no claim for the costs of the oil removal operations can be assessed, since the costs of the oil removal operation have not yet been incurred by the shipowner/insurer.
- 8.3 The Director notes that the Yeosu City and Marine Police and the MOF have been closely considering the next actions to be taken by each side in respect of the removal orders currently in place. The Director is also aware that the 1992 Fund's Korean lawyers have advised that if the removal orders which are currently in place, are not revoked, it is possible that the Korean Courts may permit the case to be stayed for a short period of time, but thereafter, if the case proceeds through the Korean Courts, it is likely that a Judge would dismiss the shipowner/insurer's claim against the 1992 Fund, for the reason that no damages for the costs of the removal operations have yet been incurred.

8.4 The Director therefore considers that the most prudent step to take is to let matters lie pending the decision of the Korean authorities, and in the meantime, if steps are required to be taken in defence of the shipowner/insurer's claim, it would be on the basis that no damages for the costs of the removal operations have yet been incurred.

9 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.
