



International Oil Pollution
Compensation Funds

Agenda Item 3	IOPC/OCT17/3/9	
Date	1 August 2017	
Original	English	
1992 Fund Assembly	92A22	
1992 Fund Executive Committee	92EC69	●
Supplementary Fund Assembly	SA14	

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 Ship Owners Mutual Insurance Association (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 was 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 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, as 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 1992 CLC and in furtherance of the blue card it had issued.

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 1992 CLC limit. The 1992 Fund was not called upon to pay compensation.

Recent developments:

In June 2017, the 1992 Fund received confirmation that the legal proceedings had been withdrawn. The incident may now be closed.

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	SDR 4.51 million (US\$6.26 million) ^{<1>}
STOPIA/TOPIA applicable	Not applicable
CLC + Fund limit	SDR 203 million
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.

<1>

Based on exchange rate on 12 July 2017 of US\$1 = SDR 0.720627 and US\$1 = Indian Rupee (INR) 64.54

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. The 1992 Civil Liability and Fund Conventions 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 1992 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 1992 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 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. 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.
- 4.4 The reliability of the samples for providing an accurate representation of the characteristics of the cargo previously 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

- 4.5 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.

- 4.6 In addition, the 1992 Fund's lawyers advised the 1992 Fund that Indian Courts were 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

5.1 Limitation proceedings

- 5.1.1 No limitation proceedings have been commenced.

Claims submitted

- 5.1.2 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. In October 2015, one of the claims was dismissed for want of prosecution. The remaining case brought by the contractor was adjourned, whilst a number of procedural steps were taken, including the filing of affidavits by the claimant. 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.
- 5.1.3 The West of England Club received advice that the provisions of the 1992 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 claim in accordance with the provisions of the 1992 CLC and in furtherance of the blue card. In subsequent discussions, the Indian Government clarified that such a right of action had been determined by the Indian Courts to be available to claimants even though it was not prescribed in statute.
- 5.1.4 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. The Director notes that since the only remaining claim in this case has been settled, and all the legal formalities have been concluded, this incident can now 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.
