



International Oil Pollution
Compensation Funds

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1992 Fund Assembly	92A27	
1992 Fund Executive Committee	92EC79	●
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INCIDENTS INVOLVING THE IOPC FUNDS — 1992 FUND

HEBEI SPIRIT

Note by the Secretariat

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

Summary: On 7 December 2007, the *Hebei Spirit* (146 848 GT) was struck by the crane barge *Samsung N°1* while at anchor about five miles off Taean on the west coast of the Republic of Korea. About 10 900 tonnes of crude oil escaped into the sea from the *Hebei Spirit*. The three southerly provinces on the west coast of the Republic of Korea were affected to various degrees.

Claims situation

The amount available for compensation for the *Hebei Spirit* incident under the 1992 Civil Liability and Fund Conventions, KRW 321.6 billion has been paid in full. The Skuld Club has initially paid KRW 186.8 billion^{<1>} in compensation. The 1992 Fund has paid KRW 134.8 billion (£87.3 million) in compensation to the Government of the Republic of Korea.

Limitation proceedings by the shipowner of the Hebei Spirit

All 127 483 claims submitted in limitation proceedings brought by the shipowner have now been finalised and the total amount awarded by the Court is KRW 432.9 billion.

In November 2018, the Seosan Court determined the limitation fund to be deposited at KRW 230.9 billion, of which KRW 139.4 billion represented the principal and KRW 91.5 billion interest.

The limitation fund was deposited in court in August 2019 and was distributed in September 2019, bringing the limitation proceedings to a close.

<1>

The Skuld Club had based its provisional calculation of the limitation amount on the exchange rate at 30 November 2008, the date on which the Letter of Undertaking was deposited into the Seosan Court. The Seosan Court established the limitation fund on 14 November 2018. On that date, the amount of the limitation fund was fixed by the Seosan Court at KRW 139 376 902 000 plus interest.

Balancing payments to the Skuld Club

In view of the overpayments made by the Skuld Club due to the different exchange rates used, the 1992 Fund has reimbursed a total of KRW 47.4 billion (£32.2 million) to the Skuld Club.

Bilateral agreement between the 1992 Fund and the Government of the Republic of Korea

In April 2019, the Director signed a bilateral agreement with the Government of the Republic of Korea by which the 1992 Fund transferred the remaining amount available for compensation i.e. KRW 27 486 198 196 (£18.3 million) to the Government for it to use when paying all the remaining claims.

Recourse action against the bareboat charterer of the Samsung N°1, the two tugs and the anchor boat (known as the Marine Spread)

In March 2009, the Seoul Central District Court rendered an order for the commencement of the limitation proceedings brought by the bareboat charterer of the Marine Spread involved in the collision, Samsung Heavy Industries Co., Ltd (SHI), and set the limitation fund at KRW 5.6 billion. SHI deposited this amount in the Seoul Central District Court (SHI Limitation Court). The SHI Limitation Court decided to wait to distribute the limitation fund until after the assessment decision was issued by the Seosan Court.

In February 2021, the SHI Limitation Court determined the 1992 Fund's claim to be KRW 155.8 billion i.e., the amount claimed in that court by the 1992 Fund for the amount paid in compensation, plus statutory interest, and granted the 1992 Fund a share of the SHI distribution fund totalling KRW 3 271 486 069 (£2.2 million). That amount was paid to the 1992 Fund in June 2021.

Recent developments:*Lessons learned from the Hebei Spirit incident*

In October 2019, the Director informed the Executive Committee that it was his intention to hold a meeting with all those involved in the handling of the incident to discuss the case and the lessons to be learned from it, to enable the IOPC Funds to deal with incidents more efficiently in the future.

The meeting was scheduled to take place in Seoul in May 2020, with the participation of the Government of the Republic of Korea, the Skuld Club and the experts involved, as well as central and local government agencies involved in the incident. However, due to the global COVID-19 situation and the restrictions placed on travel, the meeting had to be postponed. The meeting took place in June 2022. The conclusions of that meeting can be found in document IOPC/OCT22/4/3.

All the claims related to this incident have been settled, and all legal actions have been finalised. Therefore, this incident can now be considered closed.

Relevant documents:

The online *Hebei Spirit* incident report can be found via the Incidents section of the IOPC Funds website.

Action to be taken:	<u>1992 Fund Executive Committee</u> Information to be noted.
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1 Summary of incident

Ship	<i>Hebei Spirit</i>
Date of incident	07.12.2007
Place of incident	Taeon, Republic of Korea
Cause of incident	Collision
Quantity of oil spilled	Approximately 10 900 tonnes of crude oil
Area affected	The three southerly provinces on the west coast of the Republic of Korea.
Flag State of ship	People's Republic of China
Gross tonnage	146 848 GT
P&I insurer	China Shipowners Mutual Insurance Association (China P&I)/ Assuranceföreningen Skuld (Gjensidig) (Skuld Club)
CLC limit	SDR 89.77 million or KRW 139.4 billion
STOPIA/TOPIA applicable	No
CLC + Fund limit	SDR 203 million or KRW 321.6 billion
Legal proceedings	All legal proceedings related to this incident have been finalised.

2 Background information

The background to this incident is summarised above and provided in more detail in the online *Hebei Spirit* incident report.

3 Claims for compensation

3.1 A total of 127 483 claims for KRW 4 227 billion were submitted in the limitation proceedings. On 15 January 2013, the Seosan Court rendered its judgment, awarding KRW 738 billion. A large number of objections were filed in the Seosan Court by the claimants, the Skuld Club and the 1992 Fund. All the claims submitted in the limitation proceedings have now been finalised.

3.2 The Skuld Club had paid KRW 186.8 billion in compensation. The 1992 Fund has paid a total of KRW 134.8 billion (£87.3 million) in compensation to the Government of the Republic of Korea.

Payment made to the Skuld Club

3.3 The total compensation payable for the *Hebei Spirit* incident under the 1992 Conventions (SDR 203 million) was fixed in March 2008 at KRW 321.6 billion. The 1992 Civil Liability Convention (CLC) limitation amount (SDR 89.77 million) was fixed at KRW 139.4 billion by the Seosan Court in November 2018, at the exchange rate of SDR 1 = KRW 1 552.60.

3.4 Before the decision by the Seosan Court on the limitation amount, the Skuld Club had made interim payments of some KRW 186.8 billion, based on a Cooperation Agreement signed in July 2008 between the shipowner, the Skuld Club and the Government of the Republic of Korea. Due to the 2008 financial crisis, this exchange rate was much higher than the rate subsequently applied by the Seosan Court in 2018. Consequently, the Fund made an advance payment to the Skuld Club totalling KRW 22 billion (£15 million).

- 3.5 In November 2018, the Seosan Court determined the exchange rate applicable to the *Hebei Spirit* limitation fund, fixing the amount to be distributed at KRW 139.4 billion. The overpayments made by the Skuld Club were thus determined to be some KRW 47.4 billion. Following the Court's decision, the Fund reimbursed the Skuld Club an additional KRW 22 billion (£14.9 million).
- 3.6 Following the finalisation of the legal proceedings related to the *Hebei Spirit* in November 2019, the Fund reimbursed to the Skuld Club the remaining balance of KRW 3.4 billion (£2.3 million). With that payment, the Fund has now reimbursed the entirety of the overpayment by the Skuld Club.
- 3.7 A final reconciliation of costs has been completed in 2021. The joint costs which were still being incurred after the end of 2020, and mainly related to the storage of incident documents for the period of time required under Korean law, are being shared between the Skuld Club and the 1992 Fund.

Payments made by the Government of the Republic of Korea

- 3.8 A Special Law for the support of the affected inhabitants and the restoration of the marine environment in respect of the *Hebei Spirit* incident was approved by the National Assembly of the Republic of Korea in March 2008 and entered into force in June 2008. Under the provisions of the Special Law and on the basis of the Cooperation Agreement, the Government of the Republic of Korea was authorised to make payments in full to claimants based on the assessments made by the Skuld Club and the 1992 Fund. The Government has been making payments of compensation to the claimants at 100% of the assessed amounts in accordance with the Special Law and has become subrogated to the rights of the claimants against the Skuld Club and the 1992 Fund.

Payments made to the Government of the Republic of Korea by the 1992 Fund

- 3.9 As at October 2017, the 1992 Fund had made payments totalling KRW 67.3 billion (£41.5 million) to the Government of the Republic of Korea at a level of payments of 60% of the established losses in respect of its subrogated claims.
- 3.10 In October 2017, the Executive Committee authorised the Director to make an advance payment of KRW 40 billion (£27.5 million) to the Government to speed up the payment process, thereby allowing the Government to allocate the available funds to claimants more quickly. The payment required the Government to release the 1992 Fund in respect of that amount and to issue the relevant receipt and release document. The payment was made in November 2017.
- 3.11 In April 2019, the Executive Committee authorised the Director to sign a bilateral agreement with the Government which would allow the 1992 Fund to pay the Government the remaining amount available for compensation and would provide the safeguards the 1992 Fund would need to be protected from further actions in the courts.
- 3.12 In late April 2019, the Director signed a bilateral agreement with the Government and the 1992 Fund paid the remaining compensation, i.e. KRW 27 486 198 196 (£18.3 million), which the Government then distributed to the claimants.

4 Limitation proceedings

4.1 Proceedings in the Limitation Court by the shipowner of the *Hebei Spirit*

- 4.1.1 A total of 127 483 claims were submitted in the limitation proceedings. On 15 January 2013, the Seosan Court rendered its judgment, assessing the losses arising out of the *Hebei Spirit* incident at a

total of KRW 738 billion in respect of 63 213 claims and rejecting 64 270 claims. Some 150 367 objections were filed in the Seosan Court.

- 4.1.2 As a result of the Courts' actions, all claims have now been resolved and a total of KRW 432.9 billion (£278 million) have been awarded to 59 597 claims. A total of 67 886 claims were rejected.
- 4.1.3 The *Hebei Spirit* limitation proceedings were finalised in September 2019. At that time, the distribution of the *Hebei Spirit* limitation fund was completed and the Seosan Court announced the conclusion of the limitation proceedings, which are now officially closed.
- 4.1.4 A summary of the judgments rendered by the Seosan Court, the Appeal Court and the Supreme Court can be found in the online *Hebei Spirit* incident report, which can be accessed via the Incidents section of the IOPC Funds' website.

4.2 Recourse action against the bareboat charterer of the Marine Spread (SHI)

- 4.2.1 In December 2008, the bareboat charterer of the Marine Spread, SHI, filed a petition in the Seoul Court requesting the SHI Limitation Court to issue an order granting SHI the right to limit its liability in the amount of SDR 2.3 million.
- 4.2.2 In March 2009, the SHI Limitation Court rendered an order for the commencement of the limitation proceedings. The SHI Limitation Court decided to grant SHI the right to limit its liability and set the limitation fund at KRW 5.6 billion including legal interest. SHI deposited this amount in Court.
- 4.2.3 The SHI Limitation Court adjourned the hearings for investigation of the registered claims until after the assessment decision was issued by the Seosan Court, in view of the fact that a large number of claims were submitted in both Courts, and that a similar assessment process was already ongoing in the *Hebei Spirit* limitation proceedings.
- 4.2.4 In July 2019, after the finalisation of the Hebei Spirit limitation fund proceedings, the SHI Limitation Court resumed its hearings. The 1992 Fund submitted a claim in the limitation proceedings for the amount paid in compensation for this incident, i.e. KRW 134 787 509 429 (£87.3 million), plus any statutory interest accrued as per Korean law.
- 4.2.5 In February 2021, the SHI Limitation Court, in its assessment decision, accepted all points previously made by the 1992 Fund, and recognised the Fund's claim as totalling KRW 155 785 519 163, i.e., the principal amount of KRW 134 787 509 429 plus KRW 20 998 009 734 in interest. At the same time, the Court issued a table showing the distribution of the SHI limitation fund to the parties to the proceedings. The Court determined the 1992 Fund's share of the SHI distribution fund to be KRW 3 271 486 069 (£2.2 million).
- 4.2.6 The Court's decision was not appealed nor was the distribution table challenged and, therefore, the decision became final in May 2021. In June 2021, the Limitation Court paid the amount of KRW 3 271 486 069 to the 1992 Fund.
- 4.2.7 With the conclusion of all the legal proceedings, this incident can now be considered closed.

5 Wash-up meeting

- 5.1 Once all claims arising out of a major incident have been finalised, the IOPC Funds normally holds a wash-up meeting with all those involved to discuss the case and identify what lessons can be learned to enable the IOPC Funds to deal with incidents more efficiently in the future.

- 5.2 The wash-up meeting for the *Hebei Spirit* incident was scheduled to take place in Seoul in May 2020. However, due to the global COVID-19 situation and the consequent restrictions on travel, the meeting had to be postponed until travel became possible again.
- 5.3 Upon consultation with the Skuld Club and the Government of the Republic of Korea, the meeting was rescheduled for June 2022 in Seoul. The Government of the Republic of Korea hosted the meeting and arranged all the logistics on site. The meeting, which ran for two days, was attended by: IOPC Funds Secretariat and Skuld Club personnel; both international and Korean experts who were involved in the assessment of claims; officials from the Central Government and local authorities; judges who had been involved in the legal proceedings; and claimants' representatives. Frank and open discussions were had in the meetings, focusing on the lessons learned from the handling of this incident.
- 5.4 The lessons learned from this incident have been summarised in document IOPC/OCT22/4/3, which also contains a report on the meeting drafted by the former Director of the IOPC Funds.

6 Director's considerations

- 6.1 The Director is grateful for the close cooperation and assistance provided to the 1992 Fund by the Skuld Club and the Government of the Republic of Korea in resolving this major incident. This incident was concluded in less than 15 years which, considering the number of claims submitted and the complexities of the legal proceedings arising from the incident, can be considered a notably good result. Nonetheless, the Director considers that it may be possible to improve certain aspects of incident management in order to improve the efficiency of the claims-handling process.
- 6.2 The Director is pleased to inform the 1992 Fund Executive Committee that the washup meeting was a success, and that a number of valuable lessons were identified from this incident which may be taken into consideration when handling future incidents.

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.
