



International Oil Pollution  
Compensation Funds

<b>Agenda Item 3</b>	IOPC/APR19/3/6	
<b>Date</b>	11 February 2019	
<b>Original</b>	English	
<b>1992 Fund Assembly</b>	92AES23	
<b>1992 Fund Executive Committee</b>	92EC72	●
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## INCIDENTS INVOLVING THE IOPC FUNDS — 1992 FUND

### TRIDENT STAR

#### Note by the Secretariat

**Objective of document:**

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

**Summary:**

On 24 August 2016, the tanker *Trident Star* (3 177 GT) spilled an unconfirmed quantity of marine fuel oil in the ATT Tanjung Bin (ATB) oil terminal, Port of Tanjung Pelepas (PTP), Johor, Malaysia, during loading operations. The incident appears to have resulted from the overfilling of the vessel's no. 5 port side cargo tank.

Approximately 3.5 kilometres of an adjacent container terminal belonging to the PTP was oiled. Several cargo vessels and tugs were oiled following the incident. Some of the container terminal's berths were closed or experienced disruption of their normal activity for around three weeks due to the pollution. The container terminal activated its oil spill response service provider to undertake clean-up operations.

The shipowner is insured with The Shipowners' Mutual Protection and Indemnity Association (Luxembourg) (Shipowners' Club), which is a member of the International Group of P&I Associations (International Group).

It is very likely that claims for pollution damage will exceed the 1992 Civil Liability Convention (1992 CLC) limit applicable to the *Trident Star*. It is likely, therefore, that the 1992 Fund will be required to pay compensation in respect of this incident.

The shipowner is a party to the Small Tanker Oil Pollution Indemnification Agreement (STOPIA) 2006 whereby the shipowner will indemnify the 1992 Fund for the difference between the 1992 CLC limit and the amount of compensation paid by the 1992 Fund, up to a limit of SDR 20 million. It is however unlikely that the losses will exceed SDR 20 million.

Nine actions have been filed in the limitation proceedings regarding the *Trident Star* (section 5 on Limitation proceedings).

Given the likelihood that the 1992 Fund will have to pay compensation, the 1992 Fund is intervening in the limitation proceedings in order to protect the Fund's rights.

<b>Recent developments:</b>	<p>Twenty-one claims totalling some USD 17 million and RM 31.9 million (USD 7.8 million)<sup>&lt;1&gt;</sup> have been received.</p> <p>The experts engaged by the Shipowners' Club and 1992 Fund are reviewing the documentation that the claimants in the limitation proceedings have submitted in support of their claims.</p>
<b>Relevant documents:</b>	The <a href="#">online Trident Star incident report</a> can be found via the Incidents section of the IOPC Funds' website.
<b>Action to be taken:</b>	<u>1992 Fund Executive Committee</u>
	Information to be noted.

## 1 Summary of incident

Ship	<i>Trident Star</i>
Date of incident	24 August 2016
Place of incident	Malaysia
Cause of incident	Overflow
Quantity of oil spilled	Unconfirmed
Flag State of ship	Malaysia
Gross tonnage	3 177 GT
P&I insurer	The Shipowners' Mutual Protection and Indemnity Association (Luxembourg) (Shipowners' Club)
CLC Limit	SDR 4.51 million (USD 6.3 million)
STOPIA applicable	Yes – STOPIA 2006 limit of SDR 20 million (USD 27.9 million)
CLC + Fund limit	SDR 203 million (USD 283.6 million)
Claims situation	Twenty-one claims have been received for a total of USD 24.8 million. Two claims have been assessed at USD 2.4 million and paid by the Club.
Legal proceedings	Nine actions by 19 claimants have been filed in the limitation proceedings. The 1992 Fund is intervening in the limitation proceedings in order to protect the Fund's rights.

## 2 Background information

- 2.1 On 24 August 2016, the tanker *Trident Star* (3 177 GT) spilled an unconfirmed quantity of marine fuel oil in the ATT Tanjung Bin (ATB) oil terminal, Port of Tanjung Pelepas (PTP), during loading operations. The PTP is situated on the estuary of the Pulai River in Johor, Malaysia.
- 2.2 The incident appears to have resulted from the overfilling of the vessel's no. 5 port side cargo tank.
- 2.3 The oil appears to have drifted across the mouth of the Pulai River to the PTP container terminal. Approximately 3.5 kilometres of the container terminal wharf was oiled. Several cargo vessels and tugs were oiled following the incident. Some of the container terminal's berths were closed or experienced disruption of their normal activity for around three weeks.
- 2.4 Further background information is provided in more detail in the [online Trident Star incident report](#).

<sup><1></sup> The currency exchange rates at 14 January 2019 were as follows: USD 1 = SDR 0.7158 / RM 4.0995.

### **3 Applicability of the Conventions**

- 3.1 Malaysia is Party to the 1992 Civil Liability Convention (1992 CLC) and the 1992 Fund Convention. The claims for pollution damage may exceed the 1992 CLC limit applicable to the *Trident Star*. It is likely that the 1992 Fund will be required to pay compensation in respect of this incident.

#### *Details of the insurance and STOPIA 2006*

- 3.2 The ship is insured with The Shipowners' Mutual Protection and Indemnity Association (Luxembourg) (Shipowners' Club), which is a member of the International Group of P&I Associations (International Group). The limitation amount applicable to the *Trident Star* in accordance with the 1992 CLC is SDR 4.51 million, but the shipowner of the *Trident Star* is a party to the Small Tanker Oil Pollution Indemnification Agreement (STOPIA) 2006 whereby the shipowner will indemnify, on a voluntary basis, the 1992 Fund for the difference between the limitation amount applicable to the *Trident Star* under the 1992 CLC and the amount of compensation paid by the 1992 Fund, up to a limit of SDR 20 million.
- 3.3 It is unlikely that the total losses in respect of this case will exceed SDR 20 million.

### **4 Claims for compensation**

#### **4.1 Clean-up contractor**

- 4.1.1 A claim totalling some USD 2 582 103 has been received from a clean-up contractor for costs incurred in the clean-up operations carried out in the container terminal, including cleaning of the hulls of some vessels that were in that terminal. The claim has been provisionally assessed by the experts engaged by the Club and the Fund in the amount of USD 1 535 516 and, with the 1992 Fund's approval, the assessed amount has been paid by the Shipowners' Club.
- 4.1.2 A second claim totalling some USD 953 040 was submitted by the same clean-up contractor for costs incurred during the second phase of the clean-up operations. The claim, with the 1992 Fund's approval, was settled for the claimed amount.

#### **4.2 Operator of the PTP container terminal**

- 4.2.1 The operator of the PTP container terminal has submitted a claim totalling some RM 31.9 million (USD 7.8 million) for losses suffered as a result of the temporary closure of the terminal. This claimant has joined the limitation proceedings (see section 5 on Limitation proceedings).
- 4.2.2 The experts engaged by the Club and the Fund are examining the documentation provided in support of this claim.

#### **4.3 Claims by shipping companies**

- 4.3.1 Eighteen shipping companies have submitted claims for costs of hull clean up and consequential economic losses, totalling USD 13 524 905. These claimants have joined the limitation proceedings (see section 5).
- 4.3.2 The experts engaged by the Club and the Fund are examining the documentation provided in support of this claim.

#### 4.4 Claims situation

The table below provides a summary of the claims received so far:

<b>Claimant</b>	<b>Claimed (USD)</b>	<b>Claimed (RM)</b>	<b>Paid by Club (USD)</b>
Clean-up contractor (2 claims for first and second phase of clean up)	USD 3 535 143		USD 2 488 556
Container terminal operator		RM 31 862 212	
Shipping companies (18)	USD 13 524 905		
<b>TOTAL</b>	<b>USD 17 060 048</b>	<b>RM 31 862 212 (USD 7.8 million)</b>	<b>USD 2 488 556</b>

#### 5 Limitation proceedings

- 5.1 The shipowner applied to the High Court of Malaya in Kuala Lumpur (Malaysia) for the commencement of limitation proceedings. The limitation decree was granted in February 2017.
- 5.2 The 1992 Fund has appointed a Malaysian lawyer to follow the proceedings.
- 5.3 Nine actions have been filed in the limitation proceedings.
- 5.4 The claimants had, at the end of July 2018, submitted documents in support of their claims in the limitation proceedings. The Shipowners' Club and 1992 Fund are currently examining the documentation to determine the admissible quantum of their claims.
- 5.5 Since it is likely that the 1992 Fund will have to make compensation payments in this case, the 1992 Fund is intervening in the limitation proceedings in order to protect the Fund's rights.

#### 6 Director's considerations

- 6.1 Claims for pollution damage arising from this incident will exceed the 1992 CLC limit applicable to the *Trident Star*, although it is not likely to exceed SDR 20 million. The 1992 Fund will be liable to pay compensation once the 1992 CLC limit is reached, albeit all payments will be later recovered from the shipowner's insurer under STOPIA 2006.
- 6.2 The 1992 Fund is intervening in the limitation proceedings in order to protect the Fund's rights.
- 6.3 The experts engaged by the Shipowners' Club and the 1992 Fund are examining the documentation submitted by the claimants in Court. Once the claims have been assessed it would be possible to have a clearer idea as to the admissible amount of the damage arising from this incident and the likely liability for the 1992 Fund.

#### 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.

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