



International Oil Pollution
Compensation Funds

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1992 Fund Assembly	92AES23	
1992 Fund Executive Committee	92EC72	●
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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.

Limitation proceedings by the shipowner of the Hebei Spirit

A total of 127 483 claims for KRW 4 227 billion (£2 915 million)^{<1>} have been submitted in limitation proceedings brought by the shipowner. In January 2013, the Limitation Court rendered its judgment awarding KRW 738 billion (£509 million). A considerable number of objections were filed by the claimants and the 1992 Fund in the Seosan Court.

All but 38 claims have been finalised, and the Courts in the Republic of Korea have awarded a total amount of KRW 432.9 billion (£299 million). The great majority of the judgments rendered by the Courts followed the 1992 Fund's assessments of claims.

Legal proceedings against the 1992 Fund

A total of 117 504 separate legal actions have been filed in the Seosan Court against the 1992 Fund to protect the claimants' rights of compensation. The Court decided not to progress the separate lawsuits pending the outcome of the objection proceedings which were dealing with the same claims.

^{<1>} The exchange rate used in this document (as at 14 January 2019) is £1 = KRW 1 449.96, except in respect of payments made by the 1992 Fund where the conversion has been made at the rate on the date of payment.

Claims situation

The Skuld Club had paid KRW 186.8 billion^{<2>} (£129 million) in compensation. The 1992 Fund has paid a total of KRW 107.3 billion (£69 million) in compensation to the Government of the Republic of Korea, of which KRW 67.3 billion (£41.5 million) was in respect of subrogated claims at a level of payments of 60% and KRW 40 billion (£27.5 million) as an advance payment. The amount currently available for compensation is KRW 27.5 billion (£19 million).

Balancing payment to the Skuld Club

In April 2017, the Executive Committee authorised the Director to make an advance balancing payment to the Skuld Club of KRW 22 billion (£15 million), in order to avoid the Skuld Club remaining 'out of pocket' for a long period of time on account of the amount ultimately due to it. The payment was made in May 2017.

Recent developments:*Establishment of the limitation fund*

In November 2018, the Limitation Court in Seosan issued the CLC distribution table for this incident. The amount which the Limitation Court required the Skuld Club to deposit (SDR 89.77 million plus interest) was KRW 230.9 billion (£159.2 million), which included KRW 139.4 billion (£96.1 million) of principal and KRW 91.5 billion (£ 63.1 million) of interest. By December 2018, 38 claimants had objected to the distribution table. The objections by 36 of these claimants were made against the amounts paid by the Skuld Club and may, therefore, have an impact on the amount of compensation due by the 1992 Fund to the Skuld Club.

Balancing payment to the Skuld Club

Based on the exchange rate applied by the Limitation Court, the Skuld Club has paid KRW 47.4 billion (£32.7 million) in excess of its limit (KRW 139.4 billion). In view of this, and considering the provisional balancing payment of KRW 22 billion made in April 2017, the amount due to the Skuld Club would be KRW 25.4 billion (£17.6 million). However, due to the 38 objections to the distribution table, this figure is not final.

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

Bearing in mind that the case is rapidly reaching its conclusion, the Director and the Government of the Republic of Korea are currently discussing the possibility of reaching an agreement by which the 1992 Fund would transfer the remaining amount available for compensation to the Government for it to pay all remaining claims. Further meetings will be held at the end of February and March 2019. The Director hopes to provide further details to the Executive Committee in an addendum to this document.

^{<2>} The Skuld Club had based 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 Court established the limitation fund on 13 November 2018. On that date, the amount of the limitation fund was fixed by the Limitation Court at KRW 139 376 902 000 plus interest.

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> Decide whether to authorise the Director to make a payment of KRW 22 billion to the Skuld Club.

1 Summary of incident

Ship	<i>Hebei Spirit</i>
Date of incident	7 December 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	China
Gross tonnage	146 848 GT
P&I insurer	China Shipowners Mutual Insurance Association (China P&I)/ Assuranceforeningen Skuld (Gjensidig) (Skuld Club)
CLC limit	SDR 89.77 million
STOPIA/TOPIA applicable	No
CLC + Fund limit	SDR 203 million or KRW 321.6 billion
Standing last in the queue (SLQ)	A number of central and local government agencies are 'standing last in the queue' with regard to their claims.
Legal proceedings	(i) Limitation proceedings concerning the liability of the shipowner of the <i>Hebei Spirit</i> (section 4); (ii) two lawsuits by an oyster and ark shell culturist in Taeon, following a request for a retrial (section 5.1); (iii) 36 objection proceedings to the Limitation Court decision (section 4.2) (iv) legal proceedings against the 1992 Fund (section 5.2)

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 have been submitted in the limitation proceedings. On 15 January 2013, the Limitation Court rendered its judgment, awarding KRW 738 billion in respect of 63 213 claims and rejecting 64 270 claims.
- 3.2 As at 29 January 2019, 127 481 of the claims submitted in the limitation proceedings have been settled and 59 597 claims have been awarded a total of KRW 432.9 billion (£299 million). A total of 67 886 claims have been rejected. Two claims are still pending, and 36 claimants have objected to the distribution table proposed by the Limitation Court (section 4.2).

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 (1992 CLC) limitation amount (SDR 89.77 million) was converted into KRW 139 376 902 000 by the Limitation Court in November 2018, at the exchange rate of SDR 1 = KRW 1 552.60.
- 3.4 Before the decision by the Limitation Court, 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. In accordance with the Cooperation Agreement, the Skuld Club had undertaken to pay claimants 100% of their claims as assessed by the Fund and the Skuld Club up to the Club's limit.
- 3.5 The Government undertook that, were the Limitation Court to subsequently require the Skuld Club to deposit the limitation amount in court, the Government would deposit it.
- 3.6 In order to commence making payments pending the decision on the exchange rate by the Limitation Court, the Skuld Club had converted SDR 89.77 million into Korean won using the exchange rate in November 2008, when it deposited a Letter of Undertaking to the Limitation Court. This rate was much higher than the rate subsequently applied by the Limitation Court, for reasons associated with the 2008 financial crisis.
- 3.7 In April 2017, the Director presented to the Committee his view that, applying the rate used by the 1992 Fund when fixing the total compensation available in March 2008, the payments made by the Skuld Club exceeded the 1992 CLC limit by some KRW 44 billion (approximately £30 million), and a balancing payment for that amount would be due to the Skuld Club from the 1992 Fund. In April 2017, the Executive Committee authorised the Director to make an advance payment of KRW 22 billion (£15 million), i.e. 50% of that balance, to the Skuld Club, on account of the amount ultimately due to the Club. This amount was paid in May 2017.
- 3.8 In view of the exchange rate applied by the Limitation Court, the Skuld Club has made overpayments totalling some KRW 47.4 billion. On the basis of the above, the amount due from the 1992 Fund to the Club would be KRW 25.4 billion.
- 3.9 However, 36 claimants have raised objections to the amount awarded to the Skuld Club in the distribution table, alleging that the Club had either made erroneous compensation or had failed to take appropriate measures to preserve the right of subrogation. As a consequence, the Director proposes that the Executive Committee authorise him to make an additional payment of KRW 22 billion (£15.3 million) to the Skuld Club on account of the amount due, setting aside a balance of KRW 3.4 billion (£2.3 million) to be paid when the legal proceedings have been concluded. This sum is calculated as per the table below.

	Amount (KRW)
CLC limit (as determined by the Limitation Court)	139 376 902 000
Skuld Club's interim payments	186 831 480 571
Amount overpaid by Skuld Club	47 454 578 571
Payment already made by the 1992 Fund to Skuld Club	22 000 000 000
Additional payment to be made by the 1992 Fund to the Skuld Club	22 000 000 000
Balance	3 454 578 571

Payments made by the Government of the Republic of Korea

- 3.10 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 1992 Fund.
- 3.11 Since the 1992 Fund has commenced making payments for compensation in June 2015, the Government has submitted subrogated claims to the 1992 Fund totalling KRW 191.6 billion (£132 million).

Payments made to the Government of the Republic of Korea

- 3.12 The 1992 Fund has made payments totalling KRW 67.3 billion (£41.5 million) to the Government of the Republic of Korea at a level of payment of 60% of the established losses in respect of its subrogated claims.
- 3.13 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.
- 3.14 The 1992 Fund, therefore, has paid a total of KRW 107.3 billion (£69 million) to the Government. The 1992 Fund has some KRW 27.5 billion (£18.6 million) available to pay compensation, as shown in the table below:

	Amount (KRW)
Losses awarded by the Limitation Court	432 891 869 545
Amount available for compensation	321 618 990 000
Amount paid by the Skuld Club	186 831 480 571
Amount paid by the Government and subrogated against the 1992 Fund	191 634 267 401
Amount paid by the 1992 Fund to the Government	107 304 071 166
Balance	27 483 438 263

- 3.15 Bearing in mind that the distribution table was issued in November 2018 and that the end of this incident seems to be approaching, the Director and the Government of the Republic of Korea are discussing the possibility of reaching an agreement by which the 1992 Fund would transfer the remaining amount available for compensation and the Government would pay all remaining claims.

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 had been submitted in the limitation proceedings. On 15 January 2013, the Limitation 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 to the Limitation Court were filed in the Seosan Court (87 204 by the claimants and 63 163 by the Club and the 1992 Fund).

- 4.1.2 The Courts have issued 194 judgments in respect of 42 919 claims. The remaining claims have been resolved through mediation agreements in cases where matters of principle were not under discussion. As a result of the Courts' actions, 127 481 claims have been resolved, and a total of KRW 432.9 billion (£299 million) have been awarded to the claimants. Two claims are still pending following a request for retrial, and 36 claimants have objected to the distribution table submitted by the Court.
- 4.1.3 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 Establishment of the limitation fund

- 4.2.1 In November 2018, the Limitation Court in Seosan established the *Hebei Spirit* limitation fund and issued a distribution table for this incident, fixing the limitation amount at KRW 230 861 609 346 (£159.2 million), which included KRW 139 376 902 000 (£96.1 million) of principal and KRW 91 484 707 346 (£63.1 million) of interest, at the exchange rate of SDR 1 = KRW 1 552.60. The Government, on the basis of the Second Cooperation Agreement signed with the Skuld Club, deposited KRW 230 861 609 346.
- 4.2.2 By December 2018, the Limitation Court received 38 objections to the distribution table. Two of the objections referred to the amount of the two claims which are currently subject to retrial (Section 5.1 below). The other 36 objections refer to fishing boat claims. In their objections, the 36 claimants alleged that the amount paid in compensation by the Skuld Club towards their claims, totalling KRW 336 738 714 (£232 240) should not form part of the subrogated claim made by the Skuld Club but rather added to their claims.
- 4.2.3 In January 2019, the Seosan Court rejected all the objections. By the time this document was published, the 36 fishing boat claimants had appealed the decision to the Appeal Court. It is not yet known whether the remaining claimant will also appeal for its two claims.

5 Legal proceedings

5.1 Retrial of two claims

- 5.1.1 Two claims are still pending due to a request for a retrial by the owner of two aquaculture facilities after the judgment rendered by the Supreme Court of Korea in May 2018.
- 5.1.2 In June 2018, after the decision by the Supreme Court, the claimant had filed two applications for retrial.
- 5.1.3 In its judgment in January 2019, the Appeal Court rejected both applications for retrial. The claimant has appealed the judgment to the Supreme Court.

5.2 Legal proceedings against the 1992 Fund

A total of 117 504 claimants had filed legal actions against the 1992 Fund in the Seosan Court to protect their rights against the 1992 Fund. The Court decided not to progress the separate lawsuits for the time being since the same claims were being dealt with in the objection proceedings. Fourteen claims have been withdrawn from these proceedings. The remaining lawsuits are still pending.

6 Director's considerations

- 6.1 The amount of established losses now totals KRW 432.9 billion (£299 million). All but 38 claims have been resolved.
- 6.2 The Government of the Republic of Korea is paying compensation to all victims at 100% of their established losses and has been subrogating these payments to the 1992 Fund. All but 236 claimants have received compensation by either the Skuld Club or the Government. The 1992 Fund has paid KRW 107.3 billion (£69 million) to the Government in compensation for its subrogated claims and KRW 27.5 billion (£18.6 million) is still available to pay compensation in respect of this incident.
- 6.3 The Government is attempting to contact the remaining claimants to pay them the compensation awarded by the Court.
- 6.4 Since most claims have been finalised by the Courts and since the Limitation Court has taken its decision with regard to the distribution of the limitation fund to claimants, the Director considers that the time is right to try to reach an agreement with the Government of the Republic of Korea to resolve the case. To this end, the Director has had a number of fruitful exchanges with the Government on a possible bilateral agreement with the Government which would allow the 1992 Fund to pay the Government the compensation available and would provide the safeguards the 1992 Fund would need to be protected from judgments by the Courts against the 1992 Fund.
- 6.5 The Director hopes to be able to provide further details to the Executive Committee in an addendum to this document.

7 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; and
- (b) decide whether to authorise the Director to make a payment of KRW 22 billion to the Skuld Club.
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