



International Oil Pollution
Compensation Funds

Agenda Item 3	IOPC/MAY23/3/6/1	
Date	9 May 2023	
Original	English	
1992 Fund Assembly	92AES27	
1992 Fund Executive Committee	92EC80	●
Supplementary Fund Assembly	SAES11	

INCIDENTS INVOLVING THE IOPC FUNDS—1992 FUND

BOW JUBAIL

Note by the Secretariat

Objective of document:	To inform the 1992 Fund Executive Committee of the latest developments regarding this incident.
Recent developments:	<p>The Supreme Court rendered its judgment on 31 March 2023, confirming the previous decisions of the Rotterdam District Court and the Court of Appeal in The Hague that the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001 (Bunkers Convention 2001) did not apply to the <i>Bow Jubail</i> incident since the shipowner had not proved that the <i>Bow Jubail</i> did not contain residues of persistent oil at the time of the incident and that the <i>Bow Jubail</i> therefore qualified as a ship as defined under the 1992 Civil Liability Convention (1992 CLC).</p> <p>Pending the decision of the Supreme Court, and in case the 1992 Civil Liability and Fund Conventions were held to apply to this incident, 29 legal actions were brought by 57 claimants before the Rotterdam District Court against the shipowner, its insurer and other parties. The 1992 Fund was notified or included as a defendant in the actions.</p> <p>As the claims submitted so far in the legal proceedings exceed EUR 50 million, it is anticipated that the total pollution damage will exceed the limit that would apply to the ship under the 1992 CLC and, in that case, the 1992 Fund Convention will apply to this incident.</p>
Relevant documents:	The online <i>Bow Jubail</i> incident report can be found via the Incidents section of the IOPC Funds website.
Action to be taken:	<p><u>1992 Fund Executive Committee</u></p> <p>The 1992 Fund Executive Committee is invited to:</p> <ol style="list-style-type: none"> (a) take note of the information contained in this document; (b) decide whether to authorise the Director to make payments in respect of losses arising out of this incident; and (c) to give the Director such instructions in respect of the handling of this incident as it may deem appropriate.

1 Limitation proceedings

- 1.1 The Supreme Court delivered its judgment on 31 March 2023, dismissing the appeals by the shipowners, the Gard P&I Club and the 1992 Fund, and confirming the previous decisions of the Rotterdam District Court and the Court of Appeal in The Hague. The Court further ordered the shipowner and the 1992 Fund to pay costs in amounts assessed by the Court.
- 1.2 The Supreme Court did not give any reasons as to why it had reached that decision but merely noted when dismissing the appeals that, when considering the matter, it had not been necessary for the Court to answer any questions that are important for the unity or development of the law. The 1992 Funds' lawyers advise that, in accordance with the provisions of the Judicial Organisation Act of the Netherlands, if an appeal raises no questions of importance to the unity or development of the law, no reasons need be given by the court. The 1992 Funds' lawyers also commented that the legal questions raised were, in their opinion, of utmost importance to the maritime community.
- 1.3 At the time this document was issued, the Gard P&I Club was preparing to apply before the Rotterdam District Court for leave to limit its liability in accordance with the 1992 CLC.

2 Civil proceedings

- 2.1 A total of 29 legal actions had been brought by 57 claimants before the Rotterdam District Court against the shipowner, its insurer and other parties in order to protect their right to receive compensation in case the Supreme court decided the *Bow Jubail* qualified as a ship under the 1992 CLC. The 1992 Fund has been notified of all the actions and has been included as a defendant in most of them.
- 2.2 At the inception of the case, the indication was that the total claim amounted to some EUR 80 million. However, after a preliminary review of the amounts claimed by the parties who have protected time, the total provisional amount appears closer to EUR 50 million. Notwithstanding this, as not all the claimants have quantified their damages in full, and some have not quantified them at all, the total amount claimed is expected to increase. The amount claimed up to the time this document was published is already well in excess of the 1992 CLC limit, as well as in excess of the indemnity that the shipowner would provide to the 1992 Fund under the Small Tanker Oil Pollution Indemnification (STOPIA) 2006 (as amended 2017)^{<1>}, which is SDR 20 million.
- 2.3 The 1992 Fund had intervened in these proceedings and, through its Dutch lawyers, had obtained a stay of the proceedings until the Supreme Court delivered its decision on the question of whether the *Bow Jubail* qualifies as a ship under the 1992 CLC or not.

3 Director's considerations

- 3.1 The Director is disappointed with the Supreme Court decision in the Netherlands, given that the 1992 Fund was not able to participate in the proceedings from the start and now is left with significant financial exposure.
- 3.2 As already mentioned in document IOPC/MAY23/3/6, this case may have broad implications for the definition of a ship under the 1992 CLC or a ship under the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001 (Bunkers Convention 2001) in particular with reference to tankers capable of carrying both persistent oil and other chemical substances as cargo.
- 3.3 The Court of Appeal touched on the matter when it considered that there is no generally accepted standard procedure to determine when a ship, which can serve both as an oil tanker under the 1992 CLC

<1> From this point forward, references to 'STOPIA 2006' should be taken to read 'STOPIA 2006 (as amended 2017)'.

and as a chemical tanker under the Bunkers Convention 2001, ceases to be a ship under the 1992 CLC. The Court of Appeal further remarked that consideration should be given by the Parties to the 1992 Fund Convention to the creation of such a standard procedure that could then be followed, with a view to invoking the exception provided for in Article I(1) of the 1992 CLC.

- 3.4 In the case of the *Bow Jubail* incident, since the Dutch courts determined that the 1992 Civil Liability and Fund Conventions apply in this case, the 1992 Fund will have to pay compensation as required by the Conventions.
- 3.5 Although STOPIA 2006 applies to this case and the 1992 Fund will be indemnified by the shipowner up to a limit of SDR 20 million, it is expected that the claims arising from this incident will exceed the STOPIA 2006 limit.
- 3.6 The Director therefore proposes that the 1992 Fund Executive Committee authorise him to make payments of compensation in respect of losses arising out of the *Bow Jubail* incident.

4 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;
 - (b) decide whether to authorise the Director to make payments in respect of losses arising out of this incident; and
 - (c) to give the Director such instructions in respect of the handling of this incident as it may deem appropriate.
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