



International Oil Pollution  
Compensation Funds

<b>Agenda Item 4</b>	IOPC/MAY23/4/1	
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<b>Original</b>	English	
<b>1992 Fund Assembly</b>	92AES27	●
<b>1992 Fund Executive Committee</b>	92EC80	
<b>Supplementary Fund Assembly</b>	SAES11	

## LESSONS LEARNED FROM THE *TRIDENT STAR* INCIDENT

### Note by the Secretariat

<b>Summary:</b>	In November 2022, the 1992 Fund held a wash-up meeting with the Shipowners' Mutual Protection and Indemnity Association (Luxembourg) (Shipowners' Club), the insurers of the <i>Trident Star</i> . The objective of the meeting was to discuss the handling of the <i>Trident Star</i> incident in order to identify lessons to be learned and improve the procedures for future spills, especially incidents for which the Small Tanker Oil Pollution Indemnification Agreement, 2006 (as amended 2017) (STOPIA 2006) <sup>&lt;1&gt;</sup> applies.
<b>Action to be taken:</b>	<u>1992 Fund Assembly</u>  Information to be noted.

### 1. Introduction

- 1.1. Once all claims arising out of an 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 effectively in the future.
- 1.2. At the October 2022 session of the 1992 Fund Executive Committee, the Director announced that the 1992 Fund was organising a wash-up meeting with the Shipowners' Club to appraise the handling of the incident and draw lessons learned, which would be useful especially for futures cases in which STOPIA 2006 applied (document IOPC/OCT22/11/1, para 2.1.8).
- 1.3. In November 2022, the 1992 Fund held a wash-up meeting with the Shipowners' Club, the insurers of the *Trident Star*. The objective of the meeting was to discuss the handling of the *Trident Star* incident in order to identify lessons to be learned and improve the procedures for future spills, especially incidents for which STOPIA 2006 applies. Further information on this incident can be found in document IOPC/MAR22/3/3 and in the online *Trident Star* incident report via the Incidents section of the IOPC Funds website.
- 1.4. This document focuses on the handling of the *Trident Star* incident, in particular the application of STOPIA 2006, and the conclusions drawn by the 1992 Fund following the wash-up meeting.

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

## 2. Wash-up meeting

- 2.1 In November 2022, the 1992 Fund held a wash-up meeting with the Shipowners' Club. The conclusions of the meeting are as follows:

### *Cooperation*

- 2.1.1. The excellent cooperation between the Fund and the Club under STOPIA 2006 sped up the process of reimbursement of the amounts paid by the Fund in compensation. One of the reasons for the smooth cooperation was that a similar incident (the *Double Joy* incident), in respect of a vessel insured by the same Club, had occurred in the same geographical area a few years before the *Trident Star* incident. The procedures and channels of communication already established for that incident sped up the communication between the Club and the Fund whilst dealing with the *Trident Star* incident.

### *Interim payments agreement*

- 2.1.2. The *Trident Star* incident was the first case in which an agreement on standard terms relating to interim payments between the IOPC Funds and the Shipowners' Club, was signed (document IOPC/OCT17/3/13, paragraph 8.2). The purpose of interim payments is to enable payments of compensation to be made as promptly as possible after an oil spill, whilst ensuring that the total amount paid is ultimately borne by the Club/shipowner and the IOPC Funds in the proportions envisaged by the 1992 Conventions. Although interim payments had, over the years, become a regular practice by P&I Clubs to solve incidents, the signature of the agreement provided peace of mind for the shipowners/insurers.
- 2.1.3. Although a limitation fund was constituted by the shipowner's insurers, the insurers made interim payments to claimants. Once all the claims had been settled and actions in court had been withdrawn, the Club obtained from the Court the cancellation of the letter of undertaking that had been placed with the Court as guarantee to the setup of the limitation fund.

### *2006 Memorandum of Understanding (2006 MoU)*

- 2.1.4. The Shipowners' Club is part of the International Group of P&I insurers. As there was a possibility that the liability limit applicable to the *Trident Star* under the 1992 Civil Liability Convention would be reached and that the 1992 Fund would have to pay compensation, the 2006 Memorandum of Understanding (2006 MoU) between the P&I Clubs and the 1992 Fund was invoked.
- 2.1.5. In accordance with the 2006 MoU, the Shipowners' Club and the 1992 Fund cooperated in the joint use of experts. The Club sought the Fund's approval for the engagement of new experts and of the expert's invoices. The Club sent the assessments of the claims prepared by the experts, for the Fund's approval, before payment of the claims.
- 2.1.6. This MoU did not apply to the use of lawyers, as traditionally the shipowners/insurers and the IOPC Funds have always used each their own lawyers, to avoid potential conflict of interests.<sup><2></sup>
- 2.1.7. The collaboration process in the handling of the claims arising from this incident, and the communication between the 1992 Fund and the Club worked well.

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<2> The International Group of P&I Clubs and the 1992 Fund have now reached an agreement on the inclusion of lawyers within the term 'other experts' of the 2006 Memorandum of Understanding (2006 MoU), under certain circumstances. The agreement took effect from 31 January 2018 and therefore did not apply to the *Trident Star* incident.

*Assessments / use of experts*

- 2.1.8. This case benefited from the knowledge and experience of the Singapore branch of the Shipowner's Club, in particular regarding the use of local experts. Although for the assessment of clean-up claims, ITOFF was engaged, for other types of claims there were other locally sourced experts, some of which the Club had used before in the *Double Joy* incident.
- 2.1.9. One example of this was the use of local experts for the assessment of some property damage claims, namely the clean-up of the hulls of contaminated vessels and bunkers consumption, and the claims for economic losses suffered by shipping companies.
- 2.1.10. One difficulty in this case was the novelty of some types of claims the 1992 Fund had not had to deal with before, such as the claims for loss of income by the container terminal affected by the pollution and claims for losses suffered by the shipping companies in relation to disruption to ship schedules due to contamination of the vessels or the berths allocated. It was helpful that the *Double Joy* incident gave rise to similar claims and the same experts could be used. In addition, the location of the Shipowner's Club branch, so close to the area affected by the pollution (Johor, Malaysia) made the sourcing of new experts easier.
- 2.1.11. Looking towards future incidents it was agreed that the technology advances brought about in particular during the pandemic, like the use of online meeting applications, will be of benefit for future incidents, so that meetings could be held between the Club, the IOPC Funds, the experts and claimants, which would facilitate the Fund's input in the instructions to the experts and discussions with claimants with complex claims.

*Limitation proceedings*

- 2.1.12. This is one of the incidents in which there was a difference between the time bar provided under the Conventions and the time limits to enter action in the limitation proceedings.
- 2.1.13. The time limit for filing claims against the limitation fund was six months. That could have caused problems in that some claimants risked being left out of the limitation proceedings. In the event, however, all the claims were entered in the limitation proceedings before the deadline.

*Contact with claimants*

- 2.1.14. In general, the process of dealing with the claims went smoothly. As there was a time limit of six months to enter claims in the limitation proceedings, most claims were entered in the proceedings with the exception of the claims from a clean-up contractor for costs incurred in the clean-up operations carried out in the container terminal, which was promptly assessed and settled.
- 2.1.15. Regarding the claims in the limitation proceedings, although the contact was mainly through their legal representatives, eventually all claims were properly supported, and the assessments could be carried out relatively fast and the claims were settled out of court.
- 2.1.16. The assessment of the biggest claim, from a large international shipping company, took longer mainly due to the lack of proper supporting documentation and the complexity of the claim, relating to costs and losses in respect of 42 vessels, due to the pollution of the container terminal. In addition, the movement restrictions during the pandemic extended the length of time that would have otherwise taken to assess the claim. However, this claim was also eventually settled out of court.

*The Small Tanker Oil Pollution Indemnification Agreement (STOPIA) 2006 (as amended 2017)*

2.1.17. STOPIA 2006 applied to this incident. The 1992 Fund commenced making payments to claimants once the CLC limit applicable to the *Trident Star* incident had been reached, and the Club reimbursed the 1992 Fund promptly after each Fund payment, and therefore the real compensation costs for the 1992 Fund were nil.

**3. Director's considerations**

3.1.1. The Director is grateful for the close cooperation and assistance provided to the 1992 Fund by the Shipowners' Club in resolving this incident.

3.1.2. The Director is pleased to inform the 1992 Fund Assembly that the wash-up meeting was a success, and that a number of valuable lessons were identified from the incident which may be taken into consideration when handling future incidents.

**4. Action to be taken**

1992 Fund Assembly

The 1992 Fund Assembly is invited to take note of the information contained in this document.

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