



International Oil Pollution
Compensation Funds

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1992 Fund Executive Committee	92EC81	●
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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.
Summary:	<p>On 23 June 2018, the oil and chemical tanker <i>Bow Jubail</i> (23 196 GT) collided with a jetty owned by LBC Tank Terminals in Rotterdam, the Netherlands. As a consequence of the collision, a leak occurred in the area of the starboard bunker tank, resulting in a spill of fuel oil into the harbour. The ensuing pollution affected vessels in the vicinity, quays and other property, and wildlife.</p> <p>At the time of the incident, the <i>Bow Jubail</i> was in ballast. The oil spilled was bunker oil. The shipowner applied before the Rotterdam District Court for leave to limit its liability in accordance with the Convention on Limitation of Liability for Maritime Claims, 1976, as modified by the 1996 Protocol (LLMC 76/96). The shipowner argued that the incident was covered under Article 1.8 of the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001 (Bunkers Convention 2001).</p> <p>In November 2018, the Rotterdam District Court decided that the shipowner had not proved that the tanker did not contain residues of persistent oil at the time of the incident and that the <i>Bow Jubail</i> qualified as a 'ship' as defined under the 1992 Civil Liability Convention (1992 CLC). The Court decided not to grant the leave to limit its liability under the Bunkers Convention 2001. The shipowner appealed to the Court of Appeal in The Hague.</p> <p>The Court of Appeal in The Hague rendered its judgment on 27 October 2020, confirming the decision of the Rotterdam District Court that the <i>Bow Jubail</i> qualified as a 'ship' as defined under the 1992 CLC. The shipowner appealed against the judgment to the Supreme Court of the Netherlands. The 1992 Fund applied to be allowed to join the proceedings in the Supreme Court and in December 2021, was admitted as an interested party in the proceedings.</p> <p>The Supreme Court delivered its judgment on 31 March 2023, confirming the previous decisions of the Rotterdam District Court and the Court of Appeal in The Hague. As a consequence, the 1992 Civil Liability Convention will apply to this incident. The limitation amount applicable under the 1992 CLC would be</p>

SDR 16 million (£15.2 million)^{<1>}. Due to the discussion regarding the relevant convention, the shipowner did not set up a limitation fund earlier in the case. In June 2023, the shipowner requested leave to limit its liability in accordance with the 1992 CLC.

In the meantime, in order to avoid claims from being time-barred under the 1992 Civil Liability and Fund Conventions, legal actions had also been brought by several claimants before the Rotterdam District Court against the shipowner, its insurer (Gard P&I (Bermuda) Ltd) and other parties. The 1992 Fund had been notified or included as a defendant in some of the actions, in case the 1992 Civil Liability and Fund Conventions were to apply to this incident.

The claims submitted in this case already exceed the limit that would apply to the ship under the 1992 CLC. It is therefore likely that the total established pollution damage will exceed the 1992 CLC limit, and in that case, the 1992 Fund Convention will apply to this incident. It is unlikely that the Supplementary Fund Protocol would apply as the losses are unlikely to exceed the limit of liability under the 1992 Fund Convention.

Recent developments:

On 14 September 2023, the Rotterdam Limitation Court held its first hearing to set up the limitation fund. At the hearing some of the claimants argued that the guarantee to be provided by the owner's P&I Club should also include legal interest accruing between the date of the incident and the date the limitation fund was set up.

Since the original request by the owner was to set up a fund up to the amount of the 1992 CLC limit, ie SDR 15 991 676 (£15.2 million), the Court allowed a period of two weeks for the shipowners to decide whether or not to amend their application to set up a limitation fund so as to include legal interest.

The Court indicated that it will make its decision on whether or not the owner might set up a limitation fund and, if so, in what amount, at a hearing scheduled for the end of October 2023.

Relevant documents:

The online *Bow Jubail* incident report can be found via the Incidents section of the IOPC Funds' website.

Action to be taken: [1992 Fund Executive Committee](#)

Information to be noted.

1 Summary of incident

Ship	<i>Bow Jubail</i>
Date of incident	23.06.2018
Place of incident	Rotterdam, the Netherlands
Cause of incident	Collision with a jetty
Quantity of oil spilled	Approximately 217 tonnes of heavy fuel oil
Area affected	Rotterdam Port, the Netherlands

^{<1>} The exchange rates used in this document as at 30 June 2023 are: 1 SDR = £ 1.05169 and £1 = EUR 1.1653, except in respect of payments made by the 1992 Fund where the conversion has been made at the rate on the date of payment.

Flag State of ship	Norway
Gross tonnage	23 196 GT
P&I insurer	Gard P&I (Bermuda) Ltd
1992 CLC limit	SDR 15 991 676 (£15.2 million)
STOPIA/TOPIA applicable	Yes
1992 CLC + 1992 Fund + Supplementary Fund limit	The limit provided under the three Conventions would be SDR 750 million.
Legal proceedings	Legal actions have been brought by several claimants before the District Court in Rotterdam against the shipowner, its insurer and other parties. The 1992 Fund has been notified or included as a defendant in some of the actions, in case the 1992 Civil Liability and Fund Conventions were to apply to this incident. In June 2023, the shipowner started 1992 CLC limitation proceedings for this incident in the Court of Rotterdam.

2 Background information

- 2.1 On 23 June 2018, the oil and chemical tanker *Bow Jubail* (23 196 GT) collided with a jetty owned by LBC Tank Terminals in Rotterdam, the Netherlands. As a consequence of the collision, a leak occurred in the area of the starboard bunker tank, resulting in a spill of fuel oil into the harbour. The ensuing pollution affected vessels in the vicinity, quays and other property, and wildlife.
- 2.2 At the time of the incident, the *Bow Jubail* was in ballast; however, on the voyage prior to the incident, from Houston, to Rotterdam via Antwerp, the *Bow Jubail* carried 'oil' as referred to in the 1992 Civil Liability Convention (1992 CLC).
- 2.3 The shipowner states that the tanks were clean of oil cargo residues at the time of the incident.

3 Applicability of the Conventions

- 3.1 The Netherlands is Party to the 1992 Civil Liability and Fund Conventions and the Supplementary Fund Protocol.
- 3.2 Article I(1) of the 1992 CLC defines 'ship' as:
- 'any sea-going vessel and seaborne craft of any type whatsoever constructed or adapted for the carriage of oil in bulk as cargo, provided that a ship capable of carrying oil and other cargoes shall be regarded as a ship only when it is actually carrying oil in bulk as cargo and during any voyage following such carriage unless it is proved that it has no residues of such carriage of oil in bulk aboard'.
- 3.3 At the time of the incident, the *Bow Jubail* was in ballast. The oil spilled was bunker oil. The question is whether there were any residues of previous cargoes on board. The burden of proof that there were no residues on board lies with the shipowner. The relevant test was the one applied by local law, in this case, the law of the Netherlands. The Supreme Court in the Netherlands decided that the 1992 CLC applies to this case. However, it is unlikely that the Supplementary Fund Protocol would apply as the losses are unlikely to exceed the limit of liability under the 1992 Fund Convention.

3.4 The ship is insured with Gard P&I (Bermuda) Ltd, which is a member of the International Group of P&I Associations (International Group). The limitation amount applicable to the *Bow Jubail* if the 1992 CLC were to apply would be SDR 15 991 676, but the owner of the *Bow Jubail* is a Party to the Small Tanker Oil Pollution Indemnification Agreement (STOPIA) 2006 (as amended 2017)^{<2>}, whereby the shipowner would indemnify, on a voluntary basis, the 1992 Fund up to SDR 20 million.

4 Limitation proceedings

4.1 Limitation proceedings under the Bunkers Convention 2001

4.1.1 Following the incident, the shipowner applied before the Rotterdam District Court for leave to limit its liability in accordance with the LLMC 76/96. The shipowner argued that the incident was covered under Article 1.8 of the Bunkers Convention 2001. Accordingly, the shipowner requested to establish a Limitation Fund in the form of a guarantee issued by the shipowner's insurer, Gard P&I (Bermuda) Ltd.

4.1.2 The Court issued its decision in November 2018, holding that the shipowner had not sufficiently substantiated that the tanks of the *Bow Jubail* did not contain residues of persistent oil carried in bulk at the time of the incident, as provided for in Article I(1) of the 1992 CLC. The Court assumed that the *Bow Jubail* qualified as a 'ship' as defined in the 1992 CLC and decided not to grant the leave to limit its liability under the Bunkers Convention 2001. The shipowner appealed to the Court of Appeal in The Hague.

4.1.3 The Court of Appeal in The Hague delivered its judgment on 27 October 2020^{<3>}, confirming the decision of the Rotterdam District Court that the shipowner had not sufficiently substantiated that the tanks of the *Bow Jubail* did not contain residues of persistent oil carried in bulk at the time of the incident, as provided for in Article I(1) of the 1992 CLC. Accordingly, the Bunkers Convention 2001 did not apply, and the limitation of the shipowner's liability was governed by the 1992 CLC, not the LLMC 76/96.

4.1.4 In its judgment, the Court of Appeal considered that there is no generally accepted standard procedure to determine when a ship, which could serve both as an oil tanker under the 1992 CLC and as a chemical tanker under the Bunkers Convention 2001, ceased to be a ship under the 1992 CLC. In the Court's view, 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. The Court further considered that shipowners and their P&I Clubs, as well as the IOPC Funds and those who contribute to them, have an interest in such a procedure. The shipowner appealed against the judgment to the Supreme Court of the Netherlands.

4.1.5 In March 2023, the Supreme Court delivered its judgment, confirming the previous decisions of the Rotterdam District Court and the Court of Appeal in The Hague. The 1992 Civil Liability Convention will therefore apply in this case.

4.2 Limitation proceedings under the 1992 Civil Liability Convention

4.2.1 In June 2023, the shipowner applied before the Rotterdam District Court for leave to limit its liability in accordance with the 1992 CLC, requesting to establish a Limitation Fund in the form of a guarantee issued by the shipowner's insurer, Gard P&I (Bermuda) Ltd.

<2> From this point forward, references to 'STOPIA 2006' should be taken to read 'STOPIA 2006 (as amended 2017)'.

<3> A translation of the judgment was published in the online *Bow Jubail* incident report, which can be found via the Incidents section of the IOPC Funds' website. A detailed report on the judgment can be found in document IOPC/NOV20/3/12/1.

- 4.2.2 The first hearing of the Rotterdam District Court was held in September 2023. The 1992 Fund attended the hearing with the Fund's lawyers, since it was expected that the liability arising out of this incident would exceed the 1992 CLC limit.
- 4.2.3 Furthermore, at the hearing, the Court indicated that it would appoint a fund administrator to review the claims. The Court also viewed favourably the 1992 Fund's intention to review the claims with the aim to settling them amicably.
- 4.2.4 At the hearing, none of the claimants were against the owner's limitation request in principle. However, they argued that the limitation amount should include the interest over the period between the date of the incident and the date the limitation fund was set up, since the initial application to set up limitation proceedings only referred to the 1992 CLC limitation amount.
- 4.2.5 The Rotterdam District Court indicated that it would take its decision on this issue at a hearing on 25 October 2023.

5 Civil proceedings

- 5.1 A total of 29 legal actions have 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.
- 5.2 At the inception of the case, the indication was that the total claims amounted to some EUR 80 million (£68.7 million). However, after a preliminary review of the amounts claimed by the parties whose claims are not time-barred, the total provisional estimate appears closer to EUR 60 million (£51.5 million) bearing in mind that not all claimants have quantified their damages in full and some have not quantified them at all. The amount claimed as at 10 October 2023 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 STOPIA 2006, which is SDR 20 million (£19.1 million).
- 5.3 The 1992 Fund intervened in these proceedings and, through its lawyers in the Netherlands, 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. These claims have now been filed in the limitation proceedings.

6 Director's considerations

- 6.1 This case may have broad implications for the definition of a 'ship' under the 1992 CLC or under the Bunkers Convention 2001, in particular with reference to tankers capable of carrying both persistent oil and other chemical substances as cargo.
- 6.2 The Court of Appeal made reference to this matter when it considered that there is no generally accepted standard procedure to determine when a ship that can serve both as an oil tanker under the 1992 CLC 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.

- 6.3 At their May 2023 session, the 1992 Fund Executive Committee requested that the Director explore the possibility of developing a guidance document detailing a standard procedure to determine when a ship that can serve both as an oil tanker under the 1992 CLC and as a chemical tanker under the Bunkers Convention 2001, ceased to be a 'ship' under the 1992 CLC (document IOPC/MAY23/9/1, paragraph 3.6.33).
- 6.4 At that session, the Director noted that the 1992 Fund's position in this case had been that there was already a standard procedure under the International Convention for the Prevention of Pollution from Ships (MARPOL). He also acknowledged that, following the decision of the courts in the Netherlands, further guidance might need to be developed.
- 6.5 The Director is therefore consulting with the joint Audit Body of the 1992 Fund and the Supplementary Fund, industry representatives, and technical and legal experts in order to develop a proposal for the way forward. This proposal is outlined in document IOPC/NOV23/4/4.

7 1992 Fund Executive Committee

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