



International Oil Pollution
Compensation Funds

Agenda Item 3	IOPC/APR24/3/3	
Date	25 March 2024	
Original	English	
1992 Fund Assembly	92AES28	
1992 Fund Executive Committee	92EC82	●
Supplementary Fund Assembly	SAES12	

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, fuel oil from the bunkers tanker's spilled into the harbour. The ensuing pollution affected vessels in the vicinity, quays and other property, and wildlife.</p> <p>In March 2023, the Supreme Court of the Netherlands confirmed the decisions by the Rotterdam District Court and by the Appeal court that the <i>Bow Jubail</i> qualified as a 'ship' as defined under the 1992 Civil Liability Convention (1992 CLC).</p> <p>As a consequence, the 1992 CLC applies to this incident. The limitation amount applicable under the 1992 CLC is SDR 16 million (£15.2 million)^{<1>}.</p> <p>Legal actions have 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.</p> <p>In June 2023, the owner's P&I Club applied to the Rotterdam District Court to limit its liability under the 1992 CLC to the amount of the 1992 CLC limit, i.e. SDR 15 991 676 (£15.2 million) by way of a Letter of Undertaking (LOU).</p> <p>In October 2023, the Court rejected the application by the owner's P&I Club to limit its liability under the 1992 CLC, indicating that the application should include the interest accrued.</p>

^{<1>} The exchange rates used in this document as at 31 December 2023 are: 1 SDR = £1.053810 and £1 = EUR 1.1540, except in respect of payments made by the 1992 Fund where the conversion has been made at the rate on the date of payment.

Recent developments:	<p>In December 2023, the shipowner submitted a new application to the Rotterdam District Court to limit its liability under the 1992 CLC, to an amount which included interest counting from the start of the day after the incident up to the start of the day following which the fund would be constituted.</p> <p>The three-year anniversary of the spill will be on 23 June 2024. The IOPC Funds will be informing those claimants who have not yet commenced action against the Fund of the approaching time bar, and recommending that they should commence legal proceedings to protect their rights.</p>
Relevant documents:	The online Bow Jubail incident report can be found via the Incidents section of the IOPC Funds' website.
Action to be taken:	<u>1992 Fund Executive Committee</u>
	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
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	<p>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.</p> <p>In December 2023, the shipowner applied to limit its liability for this incident under the 1992 Civil Liability Convention (1992 CLC) before the Rotterdam District Court.</p>

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. Details of the incident can be found in the [Bow Jubail incident report](#) on the IOPC Funds' website.

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 The 1992 Civil Liability Convention (1992 CLC) applies to this case, thus the 1992 Fund Convention will also apply 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.
- 3.3 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* is SDR 15 991 676 (£15.2 million), 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 (£19 million).

4 Limitation proceedings

- 4.1 Limitation proceedings under the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001 (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 LOU issued by the shipowner's insurer, Gard P&I (Bermuda) Ltd.
- 4.1.2 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 that the 1992 Civil Liability Convention will therefore apply in this case. Details of the limitation proceedings under the Bunkers Convention 2001 can be found in documents [IOPC/MAY23/3/6](#) and [IOPC/MAY23/3/6/1](#).
- 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 LOU issued by the shipowner's insurer, Gard P&I (Bermuda) Ltd for the 1992 CLC amount.
- 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 In October 2023, the Rotterdam District Court, rejected the application, indicating that the application to limit liability under the 1992 CLC should include the interest accrued over the period between the date of the incident and the date the limitation fund was set up. It then informed the shipowner that they could either amend their application to increase the amount of the limitation to include interest, or submit another application which included the interest.
- 4.2.4 In December 2023, the shipowner submitted a new application to limit its liability under the 1992 CLC, to an amount which included interest counting from the start of the day after the incident up to the start of the day following which the fund would be constituted.
- 4.2.5 As at 25 March 2024, the Court had not yet decided whether to accept the shipowner's application.

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

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. Given the decision of the Supreme Court in March 2023, these claims have now been filed in the limitation proceedings.
- 5.2 In a preliminary review of the amounts claimed by the parties whose claims are not time-barred, the total provisional estimate appears close to EUR 60 million (£52 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 25 March 2024 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 million).

6 Director's considerations

- 6.1 The *Bow Jubail* incident occurred on 23 June 2018. Due to the legal proceedings under the Bunkers Convention 2001 and the late involvement of the 1992 Fund in the case, no settlement of claims has been made yet.
- 6.2 The 1992 Fund had been notified of the limitation proceedings brought against the shipowner within three years from the date when the damage occurred. However, as the notification of the limitation proceedings to the 1992 Fund is not an action seeking compensation against the 1992 Fund, pursuant to the relevant Article of the 1992 Fund Convention, claimants should bring a lawsuit seeking compensation against the 1992 Fund within six years from the date of the incident in order to protect their right to compensation by securing an enforceable judgment against the 1992 Fund. Consequently, the IOPC Funds will inform those claimants who only notified the Fund of their claims that they should commence a lawsuit by 23 June 2024, to protect their rights.
- 6.3 At its May 2023 session, the 1992 Fund Executive Committee authorised the Director to sign an Interim Payment Agreement with the Gard Club (Bermuda) Ltd, and to apply it retrospectively to the amounts approved by the 1992 Fund and paid by the Club prior to the signature of the Agreement, so that those payments are considered as interim payments of established losses which fall within the provisions of the Agreement (see document [IOPC/MAY23/9/1](#), paragraph 3.6.32).
- 6.4 This Agreement has not yet been signed, as the situation with respect to the shipowner's application to limit its liability has not yet been finalised. Talks continue with the Gard Club (Bermuda) Ltd concerning the management of the incident.
- 6.5 The Director will report on the outcome of these discussions at the next session of the 1992 Fund Executive Committee.

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.
