

	Agenda item: 3		IOPC/OCT09/3/3		
	Original: ENGLISH		28 August 2009		
	1992 Fund Assembly		92A14		
	1992 Fund Executive Committee		92EC46	•	
	Supplementary Fund Assembly		SA5		
1971 Fund Administrative Council		71AC24			

INCIDENTS INVOLVING THE IOPC FUNDS

1992 FUND: AL JAZIAH 1, N°7 KWANG MIN AND SHOSEI MARU

Note by the Director

Summary:	In this document the latest information is provided regarding the following incidents: <i>Al Jaziah 1</i> , <i>N°7 Kwang Min</i> and <i>Shosei Maru</i> .
Action to be taken:	<u>1992 Fund Executive Committee:</u> Information to be noted.

1 *Al Jaziah 1*

Summary of the incident

1.1	Ship	<i>Al Jaziah 1</i>
	Date of incident	24.01.00
	Place of incident	Abu Dhabi, United Arab Emirates
	Cause of incident	Sinking
	Quantity of oil spilled	100-200 tonnes of fuel oil
	Flag State of ship	Honduras
	Gross tonnage (GRT)	681 GRT
	P&I insurer	None
	CLC Limit	3 million SDR (£2.6 million)
	Compensation	All the claims have been settled and paid, for a total amount of Dhs 6.4 million (£870 000). The 1971 and 1992 Funds have each contributed 50% of the amounts paid.
	Legal proceedings:	The Funds have taken recourse action against the shipowner claiming reimbursement of the amount paid in compensation, ie Dhs 6.4 million (£870 000). The Court has decided in favour of the Funds, but it will be very difficult to execute the judgement since the shipowner does not have sufficient assets.

1.2 On 24 January 2000, the tanker *Al Jaziah 1* (681 GRT), laden with fuel oil, sank in about ten metres of water five miles north-east of the port of Mina Zayed, Abu Dhabi, United Arab Emirates (UAE). It was estimated that approximately 100 to 200 tonnes of cargo escaped from the wreck. The oil drifted under the influence of strong winds towards the nearby shorelines polluting a number of small islands and sand banks. Some mangroves were also oiled. The sunken vessel was refloated by salvors and taken into the Abu Dhabi Freeport.

1.3 The vessel was not entered with any classification society and did not hold any liability insurance.

Applicability of the Conventions

- 1.4 The 1992 Fund Executive Committee and the 1971 Fund Administrative Council decided at their October 2000 sessions that, since the United Arab Emirates was at the time of the *Al Jaziah 1* incident party to both the 1969/1971 Conventions and the 1992 Conventions, both sets of Conventions applied to the incident, and that the liabilities should be distributed between the 1971 Fund and the 1992 Fund on a 50:50 basis.

Claims for compensation

- 1.5 All claims were settled and paid at Dhs 6.4 million (£870 000). The 1971 and 1992 Funds will not be required to make any further compensation payments.

Recourse action

- 1.6 At their October 2002 sessions, the governing bodies of the 1971 and 1992 Funds decided that the 1992 Fund should pursue a recourse action against the shipowner on the grounds that the vessel was not seaworthy and that the shipowner was not entitled to limit his liability.
- 1.7 In January 2003 the Funds commenced legal action in the Abu Dhabi Court of First Instance against the entity being the registered owner^{<1>} of the *Al Jaziah 1* and its sole proprietor, requesting that the defendants should pay Dhs 6.4 million (£870 000) to the Funds, the amount to be distributed equally between the 1971 Fund and the 1992 Fund.
- 1.8 In a judgement rendered in March 2008 the Court decided to order the shipowner to pay the Funds an amount of Dhs 6 402 282 (£870 000) and that this amount should be distributed equally between the 1971 Fund and the 1992 Fund.
- 1.9 The shipowner has not appealed against the judgement and therefore it has become final.
- 1.10 The Funds have requested the Court to enforce the judgement and at a hearing in July 2008 the Court bailiff informed the Funds' lawyers that the shipowner was in serious financial difficulties. It was suggested that the Funds would have to investigate whether the shipowner had other financial resources to pay in accordance with the judgement.
- 1.11 The Funds' lawyers have been advised by the Court that the shipowner had a heavy burden of debts of some Dhs 63 million including the judgement awarded in favour of the Funds, that the shipowner had been in prison due to his inability to pay his debts and that he had been released recently from prison after having given an undertaking to pay an amount of Dhs 4 200 per month from his salary towards the payment of his debts.
- 1.12 The Funds' lawyers have investigated whether the shipowner has additional assets available to pay the judgement but according to the investigation carried out the shipowner has no additional assets. The Funds' lawyers have advised the Funds that in the present circumstances it would be very difficult to recover the amounts awarded by the Court of First Instance.
- 1.13 At their October 2008 sessions, the governing bodies of the 1971 and 1992 Funds instructed the Director to approach the shipowner to discuss a settlement, taking into account his financial situation.
- 1.14 The Funds, through their lawyers in the United Arab Emirates, have approached the shipowner in accordance with the instructions by the Funds' governing bodies.
- 1.15 There has been no progress in the discussions with the shipowner.

<1> Under the law of the United Arab Emirates, this type of entity, known as 'sole proprietorship', does not have assets or liabilities separate from its owner.

2 *N°7 Kwang Min*

Summary of the incident

2.1	Ship	<i>N°7 Kwang Min</i>
	Date of incident	24.11.05
	Place of incident	Republic of Korea
	Cause of incident	Collision
	Quantity of oil spilled	37 tonnes of fuel oil
	Area affected	Busan (Republic of Korea)
	Flag State of ship	Republic of Korea
	Gross tonnage (GT)	160 GT
	P&I insurer	Not applicable
	CLC Limit	Not applicable
	STOPIA/TOPIA applicable	No
	CLC + FC Limit	203 million SDR (£193 million)
	Claims for compensation	All claims submitted for this incident so far have been settled except for two. The owners of two seaweed farms have commenced legal actions against the owners of the two vessels involved in the proceedings. No further claims are expected.
	Note	The owner of the <i>N°7 Kwang Min</i> was not insured for pollution liabilities and had insufficient financial assets to cover the claims for compensation for pollution damage arising from the incident.

2.2 On 24 November 2005 the Korean tanker *N°7 Kwang Min* (160 GT) collided with the Korean fishing vessel *N°1 Chil Yang* (139 GT) in the port of Busan, Republic of Korea. A total of 37 tonnes of heavy fuel oil escaped into the sea from a damaged cargo tank. The remaining oil onboard the *N°7 Kwang Min* was transferred to a number of other vessels. The *N°7 Kwang Min* was subsequently taken to a shipyard in Busan.

2.3 The 1992 Fund appointed a team of Korean surveyors to monitor the clean-up operations and investigate the potential impact of the pollution on fisheries and mariculture.

2.4 As regards clean-up operations and the impact of the spill, reference is made to the Annual Report 2008, page 107.

Applicability of the 1992 Fund Convention

2.5 In December 2005 the Korean Ministry of Maritime Affairs and Fisheries informed the 1992 Fund that the *N°7 Kwang Min* was not insured for pollution liabilities and that the registered owner had insufficient financial assets to cover the claims for compensation for pollution damage arising from the incident.

2.6 At its February/March 2006 session, the 1992 Fund Executive Committee endorsed the position taken by the Director as regards his authority to settle claims and also authorised him to make final settlement of all further claims arising out of the incident (cf Annual Report 2006, page 119).

Claims for compensation

2.7 All claims submitted for this incident except for two have been settled at a total amount of KRW 1.9 billion (£1.1 million).

2.8 Two seaweed culturists who had initially agreed with the assessed amount of respectively KRW 4 591 959 and KRW 5 305 481, at a later stage refused to accept the proposed settlement and commenced legal actions against the owners of the two vessels involved in the incident.

2.9 The 1992 Fund has participated in the above legal proceedings as an Independent Party in order to assist the owner of the *N°7 Kwang Min*, on the premise that, being the owner of *N°7 Kwang Min* insolvent, the 1992 Fund would have to ultimately pay the compensation.

2.10 No further claims are expected out of this incident.

Legal actions

2.11 The results of the investigation into the cause of the incident by the Busan Maritime Safety Tribunal concluded that the liability ratio between the owner of the *N°7 Kwang Min* and the owner of the fishing vessel *N°1 Chil Yang* was 40:60.

2.12 The owner of the *N°7 Kwang Min* filed an appeal with the Korean Central Marine Safety Tribunal against the decision of the Busan Maritime Safety Tribunal on the liability ratio of the incident. The Korean Central Marine Safety Tribunal delivered its decision that the apportionment of the liabilities between the owner of the *N°7 Kwang Min* and the owner of the fishing vessel *N°1 Chil Yang* was 35:65

2.13 The Director instructed the 1992 Fund's lawyers in the Republic of Korea to take steps for the Fund to intervene in the court proceedings in order to explore the possibility of recovering the sums paid in compensation for this incident. As a result of the lawyers' investigation the Fund commenced recourse action against the owners of the *N°1 Chil Yang* and *N°7 Kwang Min*.

Recourse action against the owner of the N°7 Kwang Min

2.14 The owner of the *N°7 Kwang Min* has two assets, namely an apartment and the tanker *N°7 Kwang Min*, both of which are mortgaged for substantial amounts. Since the mortgagee banks have priority over any other creditors, it was unlikely that the 1992 Fund could recover any sums in respect of these properties.

2.15 Following a decision of the 1992 Fund Executive Committee in October 2007, the Director instructed the Fund's lawyers to discontinue the recourse action against the owner of the *N°7 Kwang Min* (cf Annual Report 2008, page 109).

Limitation proceedings by the owner of the N°1 Chil Yang

2.16 In January 2007, the owner of the *N°1 Chil Yang* made an application to the Busan District Court for the commencement of limitation proceedings in order to limit his liability to the applicable limitation amount under the Korean Commercial Code, ie 83 000 SDR or KRW 125 638 796.

2.17 The Fund intervened as a claimant in the limitation proceedings in order to recover, to the extent possible, the sums paid in compensation for this incident. In April 2007, the claims of the 1992 Fund were registered with the Busan District Court (Limitation Court). The Limitation Court also received claims by the two seaweed culturists (cf paragraph 2.7 above) and the owner of the *N°7 Kwang Min*.

2.18 In August 2007 the Limitation Court assessed the claim by the 1992 Fund in the amount of KRW 1.3 billion, and the claim by the two seaweed culturists at the amount assessed by the 1992 Fund. The Limitation Court also assessed the claim of the *N°7 Kwang Min* owner against the *N°1 Chil Yang* owner at KRW 26 million. (cf document 92FUND/EXC.42/13, section 6).

2.19 In September 2007 the two seaweed culturists appealed to the Busan District Court against the decision made by the Limitation Court.

Appeal proceedings

- 2.20 In July 2008 the Busan District Court decided to consolidate the legal action of the two seaweed culturists against the owners of the *N^o7 Kwang Min* and the *N^o1 Chil Yang* (cf paragraph 2.6 above) and their action against the owner of the *N^o1 Chil Yang* and the Fund to set aside the decision of the Limitation Court (cf paragraph 2.16).
- 2.21 In August 2008, the Busan District Court delivered its judgement in relation to both lawsuits. The Busan District Court upheld the assessment decision made by the Limitation Court, which had confirmed the Fund's assessment of the claims. The Busan District Court further ordered the owners of the two vessels to pay the losses of the two seaweed culturists as assessed by the Limitation Court plus interest. If the owner of the *N^o7 Kwang Min* were unable to pay the losses of the two claimants, the Fund would still be liable to pay compensation in the amount decided by the court.
- 2.22 In June 2009, the two seaweed culturists appealed to the Supreme Court against the decision of the Busan Appellate Court. The appeal was filed against the owners of the vessels and against the 1992 Fund. It is uncertain when the Supreme Court will render its decision.

3 *Shosei Maru*

Summary of the incident

3.1	Ship	<i>Shosei Maru</i>
	Date of incident	28.11.06
	Place of incident	Seto Inland Sea, Japan
	Cause of incident	Collision
	Quantity of oil spilled	Approximately 60 tonnes of heavy fuel oil
	Area affected	Shodoshima, Japan
	Flag State of ship	Japan
	Gross tonnage (GT)	153 GT
	P&I insurer	Japan Ship Owners' Mutual Protection and Indemnity Association
	CLC Limit	4.51 million SDR or ¥738 629 760
	STOPIA/TOPIA applicable	No
	CLC+Fund limit	203 million SDR (£193 million)
	Claims for compensation	All claims submitted for this incident have been settled. No further claims are expected.
	Notes:	The 1992 Fund has paid ¥172 million in compensation and costs. The 1992 Fund recovered ¥75 million from the <i>Trust Busan</i> . Once the limitation proceedings of the <i>Trust Busan</i> are terminated, the incident can be considered closed.

- 3.2 On 28 November 2006, the Japanese tanker *Shosei Maru* (153 GT) collided with the Korean cargo vessel *Trust Busan* (4 690 GT) three kilometres off Teshima, in the Seto Inland Sea in Japan. About 60 tonnes of heavy fuel oil and bunker diesel oil escaped into the sea from a damaged cargo tank and from the bunker oil tank of the *Shosei Maru*. The remaining oil on board was transferred to another vessel. The *Shosei Maru* was subsequently towed to the port of Tonosho in Shodoshima.
- 3.3 The *Shosei Maru* was insured with the Japan Ship Owners' Mutual Protection and Indemnity Association (Japan P&I Club).
- 3.4 The 1992 Fund and the Japan P&I Club appointed a team of Japanese surveyors to monitor the clean-up operations and investigate the potential impact of the pollution on fisheries and mariculture.

- 3.5 Approximately five kilometres of shoreline composed of rocks, boulders and pebbles, as well as port installations, were polluted to varying degrees. The oil also affected a number of seaweed cultivation farms as it passed through the supporting structures.
- 3.6 Onshore clean-up operations were carried out in four locations in Shodoshima, Kagawa Prefecture. The clean-up operations were concluded by 31 January 2007.
- 3.7 Details of the impact of the incident and of the clean-up operations can be found in Annual Report 2008, page 114.

Claims for compensation

- 3.8 All the claims submitted with regard to this incident have been assessed jointly by the 1992 Fund and the Japan P&I Club at a total amount of ¥899 693 953. These claims have been paid by the Japan P&I Club. No further claims are expected.

Applicability of the 1992 Conventions and STOPIA 2006

- 3.9 The limitation amount applicable to the *Shosei Maru* under the 1992 Civil Liability Convention (1992 CLC) was 4.51 million SDR or ¥738 629 760. The ship was not covered by the Small Tanker Owners Pollution Indemnification Agreement (STOPIA).2006.

Legal proceedings

- 3.10 Details of the results of the investigation into the cause of the incident and of the limitation proceedings of the *Shosei Maru* and *Trust Busan* were given in Annual Report 2008, pages 114 to 116.

Limitation proceedings of the Shosei Maru

- 3.11 On 31 March 2008 the owner of the *Shosei Maru* established a limitation fund in the Takamatsu District Court in accordance with the 1992 Civil Liability Convention. The 1992 Fund filed the application for intervention in the limitation proceedings with respect to the *Shosei Maru*.
- 3.12 On 22 July 2008 the 1992 Fund and the Japan P&I Club reached a settlement agreement, by which the 1992 Fund recognised that it was liable to pay the difference between the total amount paid in compensation by the Japan P&I Club and the limitation amount in accordance with the 1992 Civil Liability and Fund Conventions.
- 3.13 On 30 July 2008 the 1992 Fund paid to the Japan P&I Club, ¥161 064 193 (£754 823) in compensation for the pollution damage in execution of the settlement agreement. The Fund also paid to the Japan P&I Club the corresponding share of the survey fees totalling ¥11 091 695 (£51 981). As a consequence, the 1992 Fund acquired by subrogation the rights that each of the original claimants had against any third party including the owners/demise charterers of the *Trust Busan*.
- 3.14 The limitation proceedings of the *Shosei Maru* were terminated on 1 October 2008.

Limitation proceedings of the Trust Busan

- 3.15 In November 2007 the bareboat charterer of the *Trust Busan* made an application to the Okayama District Court for the commencement of the limitation proceedings in order to limit his liability to the applicable limit in accordance with Japanese law, ie 2 076 000 SDR or ¥371 469 060.
- 3.16 The 1992 Fund intervened as a claimant in the limitation proceedings in respect of the *Trust Busan* in order to recover, to the extent possible, ¥172 155 888 (£806 804) which the 1992 Fund had paid in compensation and cost for this incident (cf paragraph 3.15).

- 3.17 On 25 August 2009 the owners of the *Shosei Maru*, the 1992 Fund, Sompo Japan Insurance Inc. and the bareboat charterer of the *Trust Busan* reached a settlement agreement.
- 3.18 On the basis of the agreement, the 1992 Fund will receive the amount of ¥74 553 897 from the bareboat charterer of the *Trust Busan*, This amount corresponds to about 43% of the amount of compensation and survey costs paid by the 1992 Fund for the *Shosei Maru* incident.
- 3.19 According to the agreement the bareboat charterer of the *Trust Busan* will file a notice of termination of the proceedings in the Okayama Court after the payment to the claimants. The Court's Order of termination will become definitive and effective one month after being published in the Official Gazette.
- 3.20 Once the limitation proceedings of the *Trust Busan* are terminated, the incident can be considered closed.

4 Action to be taken

1992 Fund Executive Committee

The 1992 Fund Executive Committee is invited:

- a) to take note of the information contained in this document; and
 - b) to give the Director such other instructions as regards this incident as it may deem appropriate.
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