



International Oil Pollution
Compensation Funds

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Supplementary Fund Assembly	SA16	

INCIDENTS INVOLVING THE IOPC FUNDS — 1992 FUND

TRIDENT STAR

Note by the Secretariat

Objective of document:	To inform the 1992 Fund Executive Committee of the latest developments regarding this incident.
Summary:	<p>On 24 August 2016, the tanker <i>Trident Star</i> (3 177 GT) spilled an unconfirmed quantity of marine fuel oil in the ATT Tanjung Bin (ATB) oil terminal, Port of Tanjung Pelepas (PTP), Johor, Malaysia, during loading operations. The incident appears to have resulted from the overfilling of the vessel's no. 5 port side cargo tank.</p> <p>Approximately 3.5 kilometres of an adjacent container terminal belonging to the PTP was oiled. Several cargo vessels and tugs were oiled following the incident. Some of the container terminal's berths were closed or experienced disruption of their normal activity for about three weeks due to the pollution. The container terminal activated its oil spill response service provider to undertake clean-up operations.</p> <p>The shipowner is insured with The Shipowners' Mutual Protection and Indemnity Association (Luxembourg) (Shipowners' Club), which is a member of the International Group of P&I Associations.</p> <p>The shipowner is a party to the Small Tanker Oil Pollution Indemnification Agreement (STOPIA) 2006 whereby the shipowner will indemnify the 1992 Fund for the difference between the 1992 CLC limit and the amount of compensation paid by the 1992 Fund, up to a limit of SDR 20 million. It is, however, unlikely that the losses will exceed SDR 20 million.</p> <p>Nine actions were filed in the limitation proceedings regarding the <i>Trident Star</i> (see section 5 on Limitation proceedings). Given that the 1992 Fund will be liable to pay compensation, the 1992 Fund is intervening in the limitation proceedings in order to protect the Fund's rights.</p>
Recent developments:	A claim, from a clean-up contractor for costs incurred in the clean-up operations carried out in the container terminal, has been settled at USD 1.7 million and this amount has been paid by the Shipowners' Club.

	The claim submitted by the operator of the PTP container terminal, for losses suffered as a result of the temporary closure of the terminal, has been settled at RM 18.3 million (USD 4.4 million) ^{<1>} .
Relevant documents:	The online <i>Trident Star</i> incident report can be found via the Incidents section of the IOPC Funds' website.
Action to be taken:	<u>1992 Fund Executive Committee</u>
	Decide whether to authorise the Director to make final settlements on behalf of the 1992 Fund of claims arising from the <i>Trident Star</i> incident.

1 Summary of incident

Ship	<i>Trident Star</i>
Date of incident	24.08.2016
Place of incident	Malaysia
Cause of incident	Overflow
Quantity of oil spilled	Unconfirmed
Flag State of ship	Malaysia
Gross tonnage	3 177 GT
P&I insurer	Shipowners' Club
CLC Limit	SDR 4.51 million or RM 27.1 million (USD 6.1 million)
STOPIA applicable	Yes – STOPIA 2006 limit of SDR 20 million (USD 27.1 million)
CLC + Fund limit	SDR 203 million (USD 283.9 million)
Claims situation	Three claims have been settled at USD 7.1 million. Eighteen claims remain outstanding for a total of USD 8.2 million.
Legal proceedings	Nine actions by 19 claimants were filed in the limitation proceedings. It is expected that one of the claimants will withdraw its action in the limitation proceedings following an out of court settlement. The 1992 Fund is intervening in the limitation proceedings in order to protect the Fund's rights.

2 Background information

- 2.1 On 24 August 2016, the tanker *Trident Star* (3 177 GT) spilled an unconfirmed quantity of marine fuel oil in the ATT Tanjung Bin (ATB) oil terminal, Port of Tanjung Pelepas (PTP), during loading operations. The PTP is situated on the estuary of the Pulai River in Johor, Malaysia.
- 2.2 The incident appears to have resulted from the overfilling of the vessel's no. 5 port side cargo tank.
- 2.3 The oil appears to have drifted across the mouth of the Pulai River to the PTP container terminal. Approximately 3.5 kilometres of the container terminal wharf was oiled. Several cargo vessels and tugs were oiled following the incident. Some of the container terminal's berths were closed or experienced disruption of their normal activity for about three weeks.
- 2.4 Further background information is provided in more detail in the online *Trident Star* incident report.

3 Applicability of the Conventions

- 3.1 Malaysia is Party to the 1992 Civil Liability Convention (1992 CLC) and the 1992 Fund Convention.

^{<1>} The currency exchange rates at 30 June 2019 were as follows: USD 1 = SDR 0.7151 / RM 4.1325.

Details of the insurance and STOPIA 2006

- 3.2 The ship is insured with The Shipowners' Mutual Protection and Indemnity Association (Luxembourg) (Shipowners' Club), which is a member of the International Group of P&I Associations. The limitation amount applicable to the *Trident Star* in accordance with the 1992 CLC is SDR 4.51 million. However, the shipowner of the *Trident Star* is a party to the Small Tanker Oil Pollution Indemnification Agreement (STOPIA) 2006, whereby the shipowner will indemnify, on a voluntary basis, the 1992 Fund for the difference between the limitation amount applicable to the *Trident Star* under the 1992 CLC and the amount of compensation paid by the 1992 Fund, up to a limit of SDR 20 million.
- 3.3 It is unlikely that the total losses in respect of this case will exceed SDR 20 million.

4 Claims for compensation

- 4.1 The claims for pollution damage exceed the 1992 CLC limit applicable to the *Trident Star*. The 1992 Fund will, therefore, be liable to pay compensation in respect of this incident.
- 4.2 The Executive Committee may wish to grant the Director the authority to settle all claims arising from this incident to the extent that they do not give rise to issues of principle not previously considered by the Funds' governing bodies.
- 4.3 The Agreement on interim payments between the Shipowners' Club and the 1992 Fund, applicable to the *Trident Star* incident, was signed in late September 2017.

4.4 Clean-up contractor

- 4.4.1 A first claim totalling some USD 2 582 103 from a clean-up contractor for costs incurred in the clean-up operations carried out in the container terminal, including cleaning of the hulls of some vessels that were in that terminal, has been settled at USD 1 746 131 and, with the 1992 Fund's consent, this amount has been paid by the Shipowners' Club.
- 4.4.2 A second claim totalling some USD 953 040 was submitted by the same clean-up contractor for costs incurred during the second phase of the clean-up operations. The claim, with the 1992 Fund's consent, was settled for the claimed amount.

4.5 Operator of the PTP container terminal

The operator of the PTP container terminal submitted a claim totalling some RM 31.9 million (USD 7.8 million) for losses suffered as a result of the temporary closure of the terminal. This claimant joined the limitation proceedings (see section 5 on Limitation proceedings). This claim has now been settled at RM 18 300 000 (USD 4.4 million).

4.6 Claims by shipping companies

- 4.6.1 Eighteen shipping companies have submitted claims for costs of hull clean up and consequential economic losses, totalling USD 8 216 674. These claimants have joined the limitation proceedings (see section 5).
- 4.6.2 The experts engaged by the Club and the Fund are examining the documentation provided in support of these claims.

4.7 Claims situation

The table below provides a summary of the claims received so far:

Claimant	Claimed outstanding (USD)	Settled (RM)	Settled and paid by Club (USD)
Clean-up contractor (two claims for first and second phase of clean up)			2 699 171
Container terminal operator		18 300 000	
Shipping companies (18)	8 216 674		
TOTAL	8 216 674	18 300 000 (USD 4.4 million)	2 699 171

5 Limitation proceedings

- 5.1 The shipowner applied to the High Court of Malaya in Kuala Lumpur, Malaysia, for the commencement of limitation proceedings. The limitation decree was granted in February 2017 and the limitation fund was constituted in March 2017.
- 5.2 Nine actions were filed in the limitation proceedings. Following the out of court settlement reached with one of the claimants, it is expected the claimant will withdraw its action in the limitation proceedings.
- 5.3 The Shipowners' Club and 1992 Fund are currently examining the documentation provided by the remaining claimants in order to determine the admissible quantum of their claims.
- 5.4 Since the 1992 Fund will be liable to pay compensation in this case, the 1992 Fund is intervening in the limitation proceedings in order to protect the Fund's rights.

6 Director's considerations

- 6.1 Claims arising from this incident exceed the 1992 CLC limit applicable to the *Trident Star*, although it is not likely to exceed SDR 20 million. The 1992 Fund will be liable to pay compensation once the 1992 CLC limit is reached, albeit all payments will be later recovered from the shipowner's insurer under STOPIA 2006.
- 6.2 The experts engaged by the Shipowners' Club and the 1992 Fund are examining the documentation submitted in support of the outstanding claims. Once the claims have been assessed, it would be possible to have a clearer idea as to the admissible amount of the damage arising from this incident and the liability for the 1992 Fund.
- 6.3 Since it is clear the 1992 Fund will have to pay compensation in this case, the Director recommends that he be authorised to make final settlements of all claims arising from this incident to the extent that they do not give rise to issues of principle not previously considered by the Funds' governing bodies.
- 6.4 The 1992 Fund will report further developments to the Executive Committee at the next session.

7 Action to be taken

The 1992 Fund Executive Committee is invited to decide whether to authorise the Director to make final settlements on behalf of the 1992 Fund of claims arising from the *Trident Star* incident.