



INTERNATIONAL
OIL POLLUTION
COMPENSATION
FUND 1992

THIRD INTERSESSIONAL
WORKING GROUP
Agenda item 2

92FUND/WGR.3/8/9
13 June 2001
Original: ENGLISH

REVIEW OF THE INTERNATIONAL COMPENSATION REGIME

Submitted by the International Group of P & I Clubs

Summary:	This document describes a proposal which is being developed to provide voluntarily an increase in the minimum limit of liability for small shipowners in those States which may opt for a third tier of compensation funded by oil receivers.
Action to be taken:	The Working Group is invited to take note of this development.

- 1 The International Group of P & I Clubs supports the increase in the levels of compensation under the 1992 Protocols which will come into effect in November 2003. Moreover, the desire of some States to provide for further increases is well understood and in the light of the debate at the Intersessional Working Group meeting in March 2001 concerning difficult questions of limitation and treaty law it seems clear that this further layer of compensation can be provided most readily as an interim measure by the provision of an optional third tier in excess of the current 1992 Fund Protocol limit which would be funded exclusively by oil receivers.
- 2 However, the Clubs and shipowners remain committed to the notion of sharing the burden of compensating the victims of oil spills, which underlies the CLC/Fund regime. Sharing is achieved in practice under the existing regime only on a very broad basis : in a very large claim from a small ship, like the *Erika*, the proportion of compensation paid by the ship interests will be small in comparison with the funding provided by oil receivers. Nonetheless overall (as will be seen from the graphs provided with our earlier document, 92WRG.3/8/3) the shipowners' contribution over a period will equal if not exceed that made by oil receivers because such large claims are very rare and are balanced by the very much greater number of cases that will fall within the 1992 CLC limits.
- 3 The pattern of sharing will vary over time as the claims pattern develops and the increases which will come into effect in 2003 will clearly have an impact, increasing the shipowners' proportion by about 50% in all CLC/Fund cases. The proposed optional third tier may also have an impact

although the extent of this in reality is far more speculative. The only claim to date that is likely to fall within that layer of responsibility is the *Erika*. Nonetheless, although the likelihood of claims at the level of the third tier is small the extra exposure of oil receivers is acknowledged, suggesting that some additional financial contribution by shipowners might be warranted.

- 4 As was recognised at the Intersessional Working Group meeting in March 2001 there are complex legal difficulties in the way of providing a further layer of shipowner responsibility at this stage by way of treaty. In order to assist those States which require further compensation and in the interests of producing a rapid solution to the problem the Clubs in the International Group of P & I Clubs with the support of shipowner organisations are developing a proposal for a voluntary increase in the limit of liability for small ships under the 1992 CLC Protocol which would apply only in those States which opt for the proposed third tier of compensation in excess of the 1992 Fund limits. Thus in those States the amount of compensation paid by shipowners for spills from smaller tankers, which often carry particularly polluting cargoes, would be substantially increased whether or not the optional third tier was in fact brought into play in the particular incident. By these means the notion of sharing can be maintained.

- 5 In order to understand how the impact of this proposal would be spread throughout the shipping industry it may be necessary to explain how Club oil pollution cover is arranged : the first \$5 million of every oil pollution claim is met by the Club in which the relevant vessel is entered; in excess of \$5 million the claim is shared by all the Clubs in the International Group and, if it is sufficiently large, may be met by the reinsurance arrangements which the Clubs make on the commercial market. Since it is estimated that over 98% of the tankers which require a CLC certificate are covered by Clubs in the International Group it will be seen that the risk is covered in effect by the whole of the shipowning industry. In order to consult the whole of this industry it is necessary to put the proposal before Club Boards, each of which is composed of shipowner representatives who together determine the policy to be followed by each Club. The process of consulting Club Boards on the principle of the proposal is currently taking place and it is hoped that by the time of the next meeting of the Third Intersessional Working Group in June it will be possible to announce the result of this consultation. If approved in principle and, depending on the outcome of the meeting in June, it will then be necessary to ask Club Boards to consider the proposal in detail.

- 6 In the meantime it may be helpful to summarise the key elements of the proposal:
 - The proposal would apply only to States party to the 1992 Fund Protocol that also opted for the third tier of compensation funded by oil receivers that is currently being considered by the Third Intersessional Working Group.
 - The proposal would involve an undertaking to the IOPC Fund to pay voluntarily the difference between the minimum limit provided in Article V of 1992 CLC (as increased with effect from November 2003) and the voluntarily agreed new minimum.
 - The level of voluntary increase has yet to be agreed but it is envisaged that the increase will only apply to the minimum limit provided by Article V of CLC. This is fixed at SDR 3million under the 1992 Protocols (SDR 4.51million in 2003) for a ship not exceeding 5,000g.t. Club Boards have yet to approve a precise level of increase but if, for the purpose of illustration only, a three-fold voluntary increase were applied the minimum limit would be increased from SDR 4.51 to SDR 13.53 and that figure would apply in respect of all vessels up to 19,247 . There would be no increase for vessels larger than 19,247g.t.
 - There would be no corresponding increase therefore in the overall CLC limit of SDR 59.7 million (SDR 89.77 million with effect from 2003)
 - There would be no corresponding increase in the limit of the second tier Fund.

- 7 The proposal set out above is being developed in order to help maintain a balance between shipowner and cargo interests in the short to medium term and for this purpose it has been assumed that the existing regime of liability would remain largely unchanged. If that assumption is not correct and any essential element of that regime were to be amended, for example, channelling, definition of damage or the existing test for determining the right to limit, then the proposal would have to be reconsidered.
-