



International Oil Pollution
Compensation Funds

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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:

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), Johor, Malaysia, during loading operations. The incident appears to have resulted from the overfilling of the vessel's no. 5 port side cargo tank.

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 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.

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 (USD 27.5 million)^{<1>}. It is, however, unlikely that the losses will exceed SDR 20 million.

Nine actions comprising 19 claimants were filed in the limitation proceedings regarding the *Trident Star* (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.

Recent developments:

Since claims arising from this incident exceed the 1992 CLC limit applicable to the *Trident Star* of RM 27.1 million (USD 6.3 million), the 1992 Fund is liable to pay compensation now, albeit all payments will be recovered later from the shipowner's insurer under STOPIA 2006. Claims have been settled at USD 7.5 million of which the Fund has paid USD 561 695.

Claims by a group of shipping companies, totalling USD 6.6 million, remain outstanding and are being assessed by the Shipowners' Club and the 1992 Fund (paragraph 4.5.5).

^{<1>} In general, the exchange rates used in this document are those of 30 June 2020: USD 1 = RM 4.2850 and USD 1 = SDR 0.7261.

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> Information to be noted.

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 6.3 million)
STOPIA applicable	Yes – STOPIA 2006 limit of SDR 20 million (USD 27.5 million)
CLC + Fund limit	SDR 203 million or RM 1 176 million (USD 274.5 million)
Claims for compensation	Claims have been settled at USD 7.5 million. The claims by a group of shipping companies, totalling USD 6.6 million, remain outstanding.
Legal proceedings	Nine actions were filed in the limitation proceedings. The only remaining actions are those by a group of five shipping companies. All the others have been settled out of court. 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 seems 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 (CLC) and the 1992 Fund Convention.

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 (USD 6.3 million). However, the shipowner 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 (USD 27.5 million).
- 3.3 It is unlikely that the total losses in respect of this case will exceed SDR 20 million (USD 27.5 million).

4 Claims for compensation

- 4.1 The claims for pollution damage exceed the 1992 CLC limit applicable to the *Trident Star* i.e. USD 6.3 million. The 1992 Fund is, therefore, liable to pay compensation in respect of this incident.

4.2 Claims situation

The table below provides a summary of the claims settled and outstanding so far:

Claimant	Claims outstanding (USD)	Settled (RM)	Settled (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)	6 645 293.14		561 695
TOTAL	6 645 293.14	18 300 000 (USD 4.3 million)	3 260 866

4.3 Clean-up contractor

Two claims 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, have been settled at USD 2 699 171 and this amount has been paid by the Shipowners' Club.

4.4 Operator of the PTP container terminal

A claim 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 18 300 000 (USD 4.3 million) and this amount has been paid by the Shipowners' Club.

4.5 Claims by shipping companies

- 4.5.1 As the liability limit applicable to the *Trident Star* under the 1992 CLC, USD 6.3 million, has been reached, the 1992 Fund has started making payments to claimants. Since STOPIA 2006 applies to this case, the shipowner's insurer has been reimbursing these amounts to the 1992 Fund as explained in the following paragraphs.

- 4.5.2 Eighteen shipping companies have submitted claims for costs of hull clean up and consequential economic losses, totalling some USD 8 million. These claimants have joined the limitation proceedings.
- 4.5.3 Two claims for the costs incurred in cleaning the hull of two tankers affected by the pollution, totalling USD 265 448 have been settled at USD 87 366. This amount was reimbursed to the 1992 Fund by the shipowner's insurer. As a consequence of the settlements, these claimants have withdrawn their actions in the limitation proceedings.
- 4.5.4 The 1992 Fund and the shipowner's insurer have also assessed claims by 11 claimants in a group of shipping line companies, relating to five container vessels, for costs included in clean-up and consequential economic losses, totalling USD 815 604. The assessed amount was USD 474 329. This amount has been paid by the Fund. The payment will be reimbursed by the shipowner's insurer, under STOPIA 2006. As a consequence of the settlements, these claimants have withdrawn their actions in the limitation proceedings.
- 4.5.5 The claims by five claimants belonging to a group of shipping companies, totalling USD 6.6 million, remain outstanding and are being assessed by the Shipowners' Club and the 1992 Fund. These claims are related to 42 vessels owned or chartered by the various claimants. The claims are as follows:
- costs and losses incurred as a result of 22 vessels being contaminated; and
 - costs and losses incurred as a result of the diversion to a Singapore terminal of 20 vessels in order to avoid the pollution in the PTP container terminal.

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 comprising 19 claimants (the operator of the container terminal and the 18 shipping companies) were filed in the limitation proceedings. Following out of court settlements reached with claimants, the only remaining actions are those by the five claimants belonging to a group of shipping companies. The Shipowners' Club and 1992 Fund are currently examining the documentation provided by these claimants in order to determine the admissible quantum of their claims (see paragraph 4.5.5).
- 5.3 Since the 1992 Fund will be liable to pay compensation, it 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 unlikely to exceed SDR 20 million (USD 27.5 million). Therefore, the 1992 Fund has been paying compensation to claimants ever since the 1992 CLC limit was reached, albeit all payments are being recovered from the shipowner's insurer, the Shipowners' Club, under STOPIA 2006.
- 6.2 The Director would like to thank the Shipowners' Club for their excellent cooperation in this case, both in respect of the handling of claims and the prompt reimbursement of payments under STOPIA 2006.
- 6.3 The 1992 Fund will report further developments to the 1992 Fund Executive Committee at the next session.

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.
